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WHO: The Office of the Federal Register.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–21 of August 1, 1988

Presidential Certification To Permit U.S. Contributions to the International Fund for Ireland

Memorandum for the Secretary of State

Pursuant to Section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (P.L. 99–415), I hereby certify that: (1) the Board of the International Fund established by the Anglo-Irish Agreement is, as a whole, broadly representative of the interests of the communities in Ireland; and (2) disbursements from the International Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland.

You are requested to report this determination to the Congress immediately.

This determination shall be effective immediately and shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, August 1, 1988.

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Title 3—

The President

Proclamation 5846 of August 12, 1988

National Civil Rights Day, 1988

By the President of the United States of America

A Proclamation

The people of the United States owe much to our courageous countrymen over the years who have dedicated their lives to the achievement of equal rights, equal opportunity, equal protection of the law, and mutual respect and reconciliation. These Americans have reminded us that the promise of the Declaration of Independence is a universal and eternal one—that God has granted everyone alike "certain unalienable Rights, . . . among these . . . Life, Liberty and the pursuit of Happiness" and that our duty and privilege as Americans is to guard and guarantee this promise always.

The protection of our rights requires champions in every generation. Twenty-five years ago this month, the Reverend Martin Luther King, Jr., led the March on Washington in the cause of civil rights and helped awaken among his fellow Americans a strong and true sense that justice, if it is to be genuine, must ever be color-blind. The anniversary of this event is a fitting time for all Americans to reflect on our achievements in this regard and to recall the need for continual vigilance and constant effort in behalf of the promise of equality for all.

One element of ensuring the promise of equality is effective enforcement of our civil rights laws. Discrimination and prejudice have no place in American life. The more we continue to eliminate all traces of injustice from our land and to foster brotherhood, the more we can truly sing, "from every mountainside, let freedom ring."

The Congress, by House Joint Resolution 140, has designated August 12, 1988, as "National Civil Rights Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 12, 1988, as National Civil Rights Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities, including a pause at noon for a moment of silence in tribute to those who have given their lives to secure civil rights for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of August, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

Implementation of the Use of SF–86, "Questionnaire for Sensitive Positions"

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to change the forms required to request an NRC personnel security clearance and/or material access authorization for NRC licensee personnel, licensee contractors and other persons when an Office of Personnel Management (OPM) background investigation is necessary. The OPM has stipulated the use of the SF–86, "Questionnaire for Sensitive Positions" as the basis for their background investigations. Therefore, NRC will discontinue use of the NRC Form–1, "Personnel Security Questionnaire"; NRC Form–259, "Authority to Release Information for a Security Clearance Investigation"; and SF–85A, "National Agency Check, Data for Nonsensitive or Noncritical-Sensitive Position." These forms will be replaced by the SF–86.

EFFECTIVE DATE: September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Harbaugh, Facilities Security and Operational Support Branch, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4128.

SUPPLEMENTARY INFORMATION: Licensee personnel, licensee contractors, and other persons who require access to classified information must be granted an NRC personnel security clearance. Those requiring access to or control over special nuclear material must be granted an NRC material access authorization. As of September 16, 1988, the Office of Personnel Management (OPM) will accept only the Standard Form (SF) 86, which will serve as the basis for the investigations of all individuals requiring such clearances and/or authorizations. The NRC will discontinue use of the NRC Form–1, "Personnel Security Questionnaire" and certain other related forms. Therefore, current provisions of Parts 11 and 25 must be amended to reflect changes in form requirements.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective 30 days after publication.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The OMB clearance for NRC Form–1, "Personnel Security Questionnaire" (3150–0048) is being discontinued and replaced by the SF–86, "Questionnaire for Sensitive Positions" which has been approved by OMB, number 3206–0007.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Cynthia G. Harbaugh, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–4128.

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15 paragraphs (b) and (c) (1) and (2) are revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(b) Applications for special nuclear material access authorization for individuals, other than those qualifying under the provisions of § 11.15(a)(2), must be made on forms supplied by the Commission, including:

(1) Questionnaire for Sensitive Positions (SF–86, Parts 1 and 2);

(2) Two completed standard fingerprint cards (FD–258);

(3) Security Acknowledgement (NRC Form 176);

(4) Other related forms where specified in accompanying instruction (NRC–254); and

(5) A statement by the employer, prospective employer, or contractor identifying the job to be assigned to or assumed by the individual and the level of authorization needed, justified by appropriate reference to the licensee's security plan.

(c)(1) Except as provided in paragraph (c)(2) of this section, NRC–U and R special nuclear material access authorizations shall expire 5 years from the date of issuance. If continued NRC–U and R special nuclear material access authorization is required, an application for renewal must be submitted at least 120 days prior to its expiration date. Failure to make a timely application will result in expiration of special nuclear material access authorization. Special nuclear material access authorization for which a timely application for renewal has been made may be continued beyond the expiration date pending final action on the application. An application for renewal must include:

(i) A statement by the licensee that at the time of application for renewal the individual's assigned or assumed job requires an NRC–U special nuclear material access authorization, justified by appropriate reference to the licensee's security plan;

(ii) Questionnaire for Sensitive Positions (SF–86, Parts 1 and 2);

(iii) Two completed standard fingerprint cards (FD–258); and

(iv) Other related forms where specified in accompanying NRC instructions (NRC Form 254).

(2) An exception to the NRC–U special nuclear material access authorization expiration date and the time for submission of NRC–U special nuclear material access authorization renewal applications is provided for those individuals who have a current and active DOE–Q access authorization and who are subject to DOE Selective Reinvestigation Program requirements. For these individuals, the time for submission of NRC–U special nuclear material access authorization renewal applications may coincide with the time for submission to DOE of the SF–86 pursuant to DOE Selective Reinvestigation Program requirements. The licensee may submit to NRC, concurrent with its submission to DOE, a copy of the SF–86 which is dated and bears an original signature together with the forms and information required by paragraphs (c)(1) (i), (iii) and (iv) of this section, as the supporting documentation for an NRC–U special nuclear material access authorization renewal application. Any NRC–U special nuclear material access authorization issued in response to a renewal application submitted pursuant to this paragraph will not expire until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Selective Reinvestigation Program (generally every five years). At that time (and at the time of each subsequent reinvestigation of the individual), the licensee may again submit, concurrent with its submission to DOE, a copy of the SF–86 which is dated and bears an original signature together with the forms and information required by paragraphs (c)(1) (i), (iii), and (iv) of this section as the supporting documentation for the renewal application. Failure to file such a renewal application concurrent with the time for submission of an individual's SF–86 to DOE pursuant to DOE Selective Reinvestigation Program requirements will result in the expiration of the individual's NRC special nuclear material access authorization. NRC–U special nuclear material access authorizations for which timely applications for renewal have been made may be continued beyond the expiration date, pending final action on the application.

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., P. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9071).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 25.8, paragraph (c)(1) is revised to read as follows:

§ 25.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(1) In § 25.17, SF–86 is approved under control number 3206–0007.

* * * * *

5. In § 25.17, the first sentence of paragraph (c)(2) is removed and paragraph (c)(1) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(c)(1) Each personnel security packet submitted, must include the following completed forms:

(i) Questionnaire for Sensitive Positions (SF–86, Parts 1 and 2);

(ii) Two Standard fingerprint cards (FD–258);

(iii) Security Acknowledgment (NRC Form 176); and

(iv) Other related forms where specified in accompanying instructions (NRC–254).

* * * * *

6. In § 25.27, paragraph (b) is revised to read as follows:

§ 25.27 Reopening of cases in which requests for access authorizations are cancelled.

* * * * *

(b) Additionally, if 90 days or more have elapsed since the date of the last Questionnaire for Sensitive Positions, a complete personnel security packet (see § 25.17(c)) shall be executed by the individual. The NRC Division of Security, based on investigative or other needs, may require a complete personnel security packet in other cases as well. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation is required.

§ 25.29 [Amended]

7. Section 25.29 is amended by removing the words "Personnel Security Questionnaire" from the first sentence and substituting the words "Questionnaire for Sensitive Positions".

Dated at Rockville, Maryland this 3rd day of August, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–18472 Filed 8–15–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Reg. T; Docket No. R–0633]

Credit By Brokers and Dealers; Foreign Sovereign Debt Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting an amendment to Regulation T that will permit broker-dealers to extend "good faith" loan value on long-term debt securities issued or guaranteed as a general obligation by a foreign sovereign, its provinces, cities or states, or a supranational entity if there is available an explicit or implicit rating of the entity in one of the two highest rating categories by a nationally recognized statistical rating

organization. The amendment will provide equitable treatment for U.S. broker-dealers who, unlike banks and foreign broker-dealers, were previously prohibited from extending purpose credit on these securities.

EFFECTIVE DATE: September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452–2781. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452–3544.

SUPPLEMENTARY INFORMATION: The proposal for this amendment to Regulation T was published in the **Federal Register** on April 26, 1988 (53 FR 14812). Eighteen comments were received on the proposal. All supported the general principle of permitting broker-dealers to extend credit on highly rated foreign sovereign debt securities. Some commenters asked for clarification of the coverage or suggested changing the eligibility boundaries. The following is a more detailed discussion of those comments.

One commenter suggested that the definition be narrowed to eliminate basing marginability on the rating obtained for a prior issue. The Board believes that the nature of margin account practices under Regulation T, the flexibility afforded broker-dealers in determining "good faith" credit, and the relatively high rating required are sufficient to ensure the availability of a market for the securities, information on the issuer, and current prices. This commenter also noted the additional risk associated with bonds denominated in foreign currency and suggested that perhaps only dollar-denominated bonds should be permitted. This would sharply narrow the range of bonds eligible from that first proposed by the Board. Because timely information on exchange rates is readily available, no problem is foreseen in establishing bond prices in dollars (as is required for all securities held in a margin account). It is also expected that both customers and broker-dealers will appreciate that the purchase of these securities carries an element of exchange-rate risk.

A comment from a rating service suggesting the use of two ratings instead of one was not followed because it was believed that the proposed rating criterion, which was patterned after the one used by Congress for "mortgage related securities," is appropriate for foreign sovereign debt securities. In many instances, foreign sovereign debt ratings are available from two agencies, although in others only one rating is available. Under Regulation T, lenders are always free to impose more stringent standards than the rule requires and could require two ratings as a condition of making credit available.

In response to a comment asking for specific inclusion of language covering municipalities and other subdivisions, the word "cities," used in its generic sense, has been added to the entities covered by the rule. This same commenter suggested additional language to define the term guaranty to cover situations where an instrumentality acts as agent for its sovereign or where the related sovereign is under some other obligation to provide funds for the instrumentality and meet its obligations. Cases where the issuing instrumetality acts as agent for the sovereign are believed to be covered by this amendment. Other types of guarantees will be reviewed by Board staff on a case-by-case basis.

Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 3, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q and 78w), 12 CFR Part 220 is amended to read as follows:

PART 220—[AMENDED]

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

2. Section 220.2 is amended by adding a new paragraph (r)(4) to read ((r) introductory text is republished):

§ 220.2 Definitions.

* * * * *

(r) "OTC margin bond" means: * * *

(4) A debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces, states, or cities, or a supranational entity, if at the time of the extension of credit one of the following is rated in one of the two highest rating categories by a nationally recognized statistical rating organization:

(i) The issue,

(ii) The issuer or guarantor (implicitly), or

(iii) Other outstanding unsecured long-term debt securities issued or guaranteed by the government or entity.

By order of the Board of Governors of the Federal Reserve System, August 10, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–18418 Filed 8–15–88; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

Fair Housing

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending § 338.1(f) of its regulations to eliminate improvement, maintenance and repair loans from existing "home loan" data-gathering requirements. Home-equity loans for these purposes would also be eliminated. The original definition of home loan, which was adopted in 1978, has expanded in scope beyond its original intent with the development and rapidly increasing use of secured, open-end, home-equity loan products. This amendment brings more uniformity to fair housing lending data requirements among federal bank regulators and should result in administrative cost savings for both the FDIC and state nonmember banks. This amendment is expected to reduce the paperwork burden on the banking industry without impairing enforcement of fair housing lending laws.

DATES: Effective 30 days after publication in the **Federal Register**, with state nonmember banks having the option of continuing to comply with the FDIC's current rule and existing interpretations until 180 days after publication in the **Federal Register**. This latter option is presented in order to provide banks sufficient lead time in which to phase-out pre-printed application forms.

FOR FURTHER INFORMATION CONTACT: Partricia A. McCormick, Fair Lending Analyst, Office of Consumer Affairs (1–800–424–5488 or 1–202–898–3538), Federal Deposit Insurance Corporation,

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550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064–0046. [The estimated average burden associated with the collection(s) of information in this final rule is 8 hours per recordkeeper.]

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to John R. Keiper, Jr., Assistant Executive Secretary, Room 6108, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation.

Background

Part 338, 12 CFR Part 338, is the FDIC's fair housing regulation. It applies to all state-chartered banks which are insured by the FDIC but which do not belong to the Federal Reserve System ("state nonmember banks").

Part 338 implements the Fair Housing Act (FHA), 42 U.S.C. 3533(a), 3535(c), & 3601–19 and the Equal Credit Opportunity Act of 1974 ("ECOA") (15 U.S.C. 1691–91f), in accordance with the Federal Reserve Board's (FRB) Regulation B, 12 CFR Part 202. Section 338.4 also spells out the monitoring responsibilities delegated to the FDIC in § 202.13 of Regulation B.

Part 338 has two main purposes, each related to the ECOA and to the FHA. The ECOA forbids banks (and all other creditors) from engaging in unlawful discrimination in making loans generally and commands the Federal Reserve Board (FRB) to write ECOA's implementing regulation. 15 U.S.C. 1691 and 1691b. The FRB's Regulation B specifies data-gathering rules for most consumer loans. But, in the case of loans related to the purchase or refinancing of the borrower's dwelling, the FRB's rules (Section 202.13(d)) specify that sister federal financial regulatory agencies have the *option* of requiring the institutions they supervise to comply with the requirements contained in Parts (a), (b) and (c) of § 202.13 as written *or* of substituting a monitoring program of their own which imposes requirements that include, at a minimum, these same requirements. See 12 CFR 202.13. In exercising this option, the FDIC adopted Section 4 of Part 338 in 1978. The FHA forbids banks (and certain other creditors) from engaging in unlawful discrimination in making housing related loans. 42 U.S.C. 3605. Part 338 helps to provide the monitoring information and certain other information needed to enforce that prohibition.

The existing Part 338 requires state nonmember banks to collect certain information from all applicants for a "home loan." Part 338 originally defined a home loan as follows:

"Home loan" means any extension of credit relating to:

(1) The purchase or construction of or the refinancing for a dwelling which is or will be comprised of one to four residential units; at least one of which the applicant intends to occupy as a principal residence, and which secures or will secure the extension of credit; or

(2) The improvement, repair, or maintenance of a dwelling which is comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence, and which secures or will secure the extension of credit. 12 CFR 338.1(f).

Currently, every state nonmember bank that receives a home loan application must request and retain information regarding the applicant's race/national origin, sex, marital status and age (hereafter referred to as monitoring information). 12 CFR 338.4(a)(1)(i) & (2)(i). State nonmember banks with assets exceeding $10 million and having an office in a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area must collect additional data. The extra data include, but are not limited to, the applicant's total assets and liabilities, the purchase price or current market value of the property, and the property's census tract. *Id.* 338.4(a)(2)(ii). Certain state nonmember banks that collect the additional information must also record monitoring information on a log-sheet of home loan applications on a branch-by-branch basis. *Id.* 338.4(a)(2)(iv).

A state nonmember bank must ask for this monitoring information during the initial contact with the home loan applicant. *Id.* 338.4(a)(2)(ii) & (2)(iii)(A). The bank must retain the information on file for 25 months after notifying the applicant of the action taken on the application. *Id.* 338.4(c).

FDIC Proposal

On August 18, 1987 (52 FR 30928) the FDIC published for public comment a proposed rule to amend the definition of "home loan". The FDIC indicated at that time that the proposed amendment, if approved by the FDIC Board of Directors, would make necessary certain technical and conforming changes to eliminate language which would become superfluous to Part 338.

The proposed rule presented was written as follows:

"Home loan" means any extension of credit the primary purpose of which is the purchase or construction of or the refinancing for a dwelling that secures or will secure the extension of credit, which dwelling is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence.

In order to conform more precisely to the wording in § 202.13 of Regulation B, the following minor revisions in language have been made.

"Home loan" means any extension of credit the primary purpose of which is the purchase, construction, or refinancing of a dwelling that secures or will secure the extension of credit, which dwelling is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence.

Reasons for the Proposed Change

In the published proposal, the FDIC cited three reasons for changing the definition of "home loan":

(1) To bring the FDIC's data-gathering requirements into line with those of the Comptroller of the Currency ("OCC") and the FRB. Neither agency applies the data-gathering requirements to loans made for improving, repairing, or maintaining the borrower's dwelling (herein referred to generally as "home improvement loans").

(2) To remove "home equity" loans from the FDIC's Part 338 data-gathering requirement. Home-equity loans are general-purpose, open-end loans secured by the borrower's dwelling. The FDIC does not believe that the FHA was meant to apply to loans of this kind, or that it is useful to distinguish home-equity loans from other kinds of general purpose, open-end consumer credit.

(3) To eliminate the FDIC recordkeeping requirements that have not proven useful. Although the FDIC has monitored home improvement loans for several years, the number of complaints alleging unlawful discrimination in making such loans has been very small.

The primary reason for the proposal is to establish more uniformity with similar regulations of sister federal financial regulators. As stated in the proposed rule, neither the OCC nor the FRB require lenders to obtain monitoring information on home-equity loans for

the purpose of home improvement, repair or maintenance. The OCC imposes the special monitoring information requirement only in the case of loans made "for the purchase, permanent financing for construction, or the refinancing of the borrower's residence." 12 CFR 27.2(f). The FRB's parallel monitoring information requirement applies only to loans "primarily for the purchase or refinancing" of the borrower's residence. *Id.* 202.13(a).

On March 30, 1988 the FRB approved, after consideration of comments received from the public, the following revision to the *Official Staff Commentary* concerning the Regulation B § 202.13 monitoring information collection requirements: "An application for an open-end home equity line of credit is not subject to this section [202.13] unless it is readily apparent to the creditor where the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling." With most home-equity type loans thus exempted, a non-uniformity between the FRB and the FDIC requirements becomes conspicuous. Without FDIC proposed changes, state nonmember bankers may mistakenly believe they are in compliance with existing Part 338 when they comply with the open-end, home-equity loan requirements of Regulation B.

Due to the time and care necessary to review and, where necessary to record existing Part 338 monitoring information and additional data collecting requirements, state nonmember banks are placed at a competitive disadvantage. In 1986, according to aggregate Home Mortgage Disclosure Act ("HMDA") data, approximately 29% (107,458) of secured home loans originated by FDIC supervised banks were home improvement loans. Generally, home-equity loans are not included in the HMDA improvement reporting.

Home-equity loans continue to be the fastest-growing U.S. consumer loan product. At the end of 1987, 32 percent of commercial banks offered such loans, representing borrowing by consumers of $30.4 billion (see "Home Equity Lines of Credit" by Glenn B. Canner, James T. Fergus, and Charles A. Luckett, p. 367, *The Federal Reserve Bulletin*, June, 1988). A survey of users indicated that 25% intended a first use of the home-equity account to be for home improvement; 19% indicated a later use for this purpose (Canner, *et al.*, p. 365). The authors reported (pp. 361–362) that home-equity loans have become increasingly popular with borrowers because: (1) Of certain tax revisions affecting the deductibility of interest paid on consumer credit; (2) finance rates are more attractive than for alternative loan products; and (3) the intensive marketing programs initiated by lenders, including price concessions. Such loans have become increasingly popular with lenders because: (1) they carry a relatively low risk of loss from default (i.e., the loan is secured by the borrower's home); (2) home-equity loans reduce further loan origination costs and help to establish a long-term relationship with the borrower; (3) variable-rate pricing reduces loss risk; and (4) such customers tend to be of higher-income and of higher educational achievement than for homeowners without home-equity accounts (Canner, *et al.*, pp. 364 and 368).

The FDIC has come to recognize that including open-end, home-equity loans (which have as their purpose home improvement) within the scope of Part 338 causes special problems for both consumers and bankers. For example, both bankers and borrowers generally regard these lines of credit as a variety of consumer loans—albeit with a higher degree of security for the lender—rather than as residential real estate loans. While it is comparatively easy to determine the purpose of a closed-end loan at the time the loan is made and to segregate home loans from other loans at that time, this is not as easy in the case of open-end, home-equity loans. For such loans, banks do not typically place any constraints on the intended use of the loan proceeds; borrowers want the funds for a variety of purposes, often yet to be determined. In short, the borrower's implied *primary* purpose in taking out a home-equity loan is simply to gain additional liquidity. This remains true even if the borrower happens to draw upon it to reduce or pay off a mortgage loan. To require loan applicants to identify a purpose for open-end credit other than that of accessing a line of credit when the purpose has no bearing on the loan decision is confusing to such applicants.

Bankers have reported to the FDIC that the process of requesting the monitoring information is combersome and confusing in the case of home-equity loans and tends to deter consumers from supplying the information voluntarily. The loan application must indicate that the monitoring information is being requested by the federal government for compliance with statutes that prohibit creditors from discriminating against applicants on certain bases. But at the same time, the current application must also explain that the monitoring information is only requested when the home-equity loan is a home improvement type loan. In effect, to avoid supplying monitoring information, borrowers are given an incentive to avoid labeling a home-equity loan as a home improvement loan.

In addition to the foregoing, the FDIC has found the current data-monitoring requirements to be only marginally useful in the case of home-equity loans. Banks generally advertise these loans in the media, and offer to mail the customer a loan application on request. This procedure reduces the likelihood of certain types of unlawful discrimination e.g., race and sex discrimination based on visual observation. Imposing the data monitoring requirements could conceivably be counterproductive in some instances, since the lender would not always otherwise be aware of the applicant's race or sex.

Principal Issues Raised in the Comment Letters

The following were suggested as issues for comment in the request for public comment regarding the FDIC's proposed revisions to Part 338:

Issue 1: From all interested parties, general comments regarding the proposal to delete home improvement, repair and maintenance loans from inclusion under the definitions of section 338.1(f) and specifically any comments which would support or challenge the "Reasons for the Proposal."

Issue 2: From the standpoint of consumer and civil rights groups and banks, comments would be helpful regarding perceived possible effects on bank compliance with fair housing lending laws of omitting home improvement, repair, and maintenance loans from the scope of Part 338.

Issue 3: From the standpoint of banks, comments on the following would be helpful:

a. What specific problems, if any, have banks had in complying with the information recording requirements of Part 338 regarding home improvement, repair and maintenance loan applicants for both secured closed-end and open-end (i.e., home equity) loans?

b. How many hours or staff time are estimated to be required in a year to comply with the information recording requirements for home improvement, repair and maintenance loan applicants for both secured closed-end and open-end loans? What are the estimated dollar costs? Please explain the way in which these estimates were computed.

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The FDIC received 73 public comment letters, 69 of which were in support of the proposed amendment and four of which were opposed. Of these 73, 64 were from financial institutions (with only one opposed to the proposal); six were from trade associations (none opposed); one was from an agency of the federal government (opposed); and two were from community advocacy groups (both opposed). No new documented information concerning the proposed changes was received.

Evaluation of Comments

Issue 1: Narrowing the Definition of Home Loan

One opposing respondent replied that the narrowing of the defined scope of loans covered for purposes of recordkeeping does not fully reflect the intent of Congress in Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act). This respondent also stated that the subject proposal, if adopted, would give rise to substantial confusion regarding the nature of discriminatory financing activities prohibited under section 805 of the Fair Housing Act (42 U.S.C. 3605). The FDIC believes neither of those two points to be the case. First, open-end, home-equity loans did not generally exist in 1968 when the Fair Housing Act was enacted. Secondly, the recordkeeping requirements of Part 338 are, in point of fact, a substitute monitoring program adopted under ECOA's Regulation B, § 202.13. Within § 338.4(d) it is stated that a bank collecting the data in compliance with § 338.4 will be in compliance with the recordkeeping requirements of § 202.13 of Regulation B. To the extent this is the case, the extant proposal is not an explicit or implicit comment upon the nature or scope of discriminatory financing activities prohibited under the Fair Housing Act. Section 338.4 speaks primarily to ECOA and secondarily to the Fair Housing Act.

Another respondent writing in opposition to the proposed change, stated that since home-equity loans are secured by real estate, homes owned by minorities or located in older or predominantly minority neighborhoods could be viewed as of less value or less marketable than comparable properties located elsewhere. This respondent argued that the lender's decision as to whether or not to extend a home-equity loan and, if so, on what terms, is based on the lender's assessment of the value and marketability of the underlying real estate. This respondent contended that because home-equity loans are based on homes, they are much more comparable to mortgages than they are to other forms of open-end credit. Another respondent agreed with this view and further stated that a failure to provide equity lines in a particular area may give rise to claims of redlining and denials of services in connection with dwellings under Section 804 and 805 of the Fair Housing Act.

The FDIC believes that secured, open-end, home-equity loans having an acknowledged purpose of home improvement are more akin to traditional consumer lending than to mortgage lending and can be monitored and enforced according to procedures that the FRB mandates and the FDIC uses for other consumer loans. The FRB, which has rulemaking authority for ECOA and periodically updates Regulation B, relying in part on the public comment process, has recently elected to generally exclude these categories (i.e., home-equity and home improvement) from the scope of the monitoring information categories just as it has for non-secured credit generally. Also, to the extent that open-end, home-equity loans are not easily differentiated by purpose (since the primary purpose of such loans is liquidity), the FDIC believes the home improvement-type categories should be deleted from the scope of the definitions of home loan.

Another opposing respondent indicated that significant lending discrimination exists with regard to home-improvement and home-equity loans. This respondent cited one case where a lender denied home-equity loan applicants or offered reduced loan amounts (relative to the applicant's equity in the property and relative to the bank's advertised loan policy) allegedly on the basis of race.

The FDIC has no record of any state non member bank engaging in such practices. The FDIC maintains a constant watch for evidence of discrimination through various means including: (1) A comprehensive complaint processing program; (2) an effective bank examination program which evaluates the compliance by banks with fair lending laws: and (3) a toll-free number which credit applicants and others may call during workdays. Despite this comprehensive compliance monitoring system, no evidence of any such discrimination has been found. The FDIC believes that if racial or economic redlining were to be occurring regarding home-equity loans, such would likely be evident for home purchase loans as well. Certain banks (see § 338.4(a)(2)(iv)) must keep the log-sheets of home purchase, refinance, and construction loan applicants (along with HMDA reports which include home improvement loans), to assist in the identification of possible geographically-based discriminatory patterns. The FDIC examiners will continue to review these records. Rejected applications for secured, home improvement-type loans, including home-equity loans, are generally easily accessible since they usually are collected in file drawers together. All evidence of prohibited discriminatory policies and practices brought to the attention of appropriate regulatory authorities is investigated.

The FDIC has provided for more comprehensive monitoring information requirements than other regulators in the past. This practice has resulted in on-going cost burdens with few benefits. Limited financial resources dictate that, within the mandates of pertinent laws, the FDIC's focus now be concentrated on established problem areas. Should a future problem in either of the areas of secured home-improvement or home-equity loans become apparent, the FDIC would consider redrafting its regulations to effectively deal with such problems.

One opposing respondent commented that, since home-equity lines of credit are a relatively new phenomenon, it is not yet clear whether these loans may be subject to prohibited bases discrimination, or to what extent. This respondent argued that this type of loan should therefore be included in the FDIC data collection system. This same respondent also suggested that in order to avoid borrower confusion with regard to which type of loan requires a request for monitoring data, that such data be requested for *all* home-equity loans, regardless of the use to which the loan proceeds will be put.

This suggestion is beyond the scope of this proposal and is also beyond the rulemaking authority of the FDIC. The subject proposal only deals with loans which have a home improvement type purpose since, under existing Part 338 requirements, only home-equity loans for home purchase, construction, refinance and home improvement-type purposes are not covered; home-equity loans for other purposes are *not* covered since this is expressly prohibited by § 202.5 of Regulation B. Section 202.13 of this same regulation requires the collection of pertinent information for monitoring purposes *only* where a creditor receives an application for credit primarily for the purchase or refinancing of dwelling to be occupied by the applicant as a principal residence and where the extension of credit will be secured by the dwelling. While home-equity loans are relatively new, open-end consumer credit is not new and

neither is secured credit. Because the FDIC has received no secured home improvement-type complaints during the previous three and one-half years (and only two such complaints in 1984, with no unlawful discrimination found in either case), it has concluded that at least for the present, the number of such problems does not support continuation of existing Part 338 coverage.

One opposing respondent stated that complaints, or lack thereof, are not adequate evidence of fair lending compliance or noncompliance. The FDIC does not base its reasoning for the subject proposal solely on a lack of complaints. The FDIC has an effective and comprehensive fair lending compliance enforcement system in place. This system is founded on the FDIC compliance examination program where banks are periodically evaluated and rated as to their performance, the large majority of which are consistently found to be in compliance with all fair housing lending laws, regulations and rules. Whenever fair housing lending deficiences in policies and/or procedures are found, they are corrected and closely monitored. In addition, anyone in the United States has instant access to the FDIC via a toll-free hotline during working hours to discuss possible bank/customer problems. Moreover, the Washington-based FDIC Fair Lending Analyst has reported receiving no telephone inquiries concerning home-equity loans for any purpose.

An opposing respondent asserted that the lack of a large number of compliants does not diminish the value of the monitoring information requested and further stated that the absence of such information was viewed as an impediment to the investigation of individual compliants filed as well as in the determination as to whether a financial institution is in compliance with nondiscrimination statutes. This respondent also stated that the lack of such data on applicants for home improvement and home-equity loans will make it difficult to document that this type of financing for dwellings is available on a nondiscriminatory basis. Another respondent stated opposition to the deletion of home improvement loans from the monitoring information requirements since such information was viewed as "minimal and essential to the investigation of lending discrimination allegations".

Currently, Part 338 requires the following monitoring information for home improvement-type loans: Race/national origin, sex, marital status and age. For secured loans, Regulation B permits a creditor to ask marital status (Section 202.5 (d)(1)). Age is permitted to be asked generally (Section 202.6(b)(2)(ie–iv)). Thus, for home-equity loans, this information is likely to be present, even if the subject proposal were to be adopted, allowing comparisons to be made on these bases. As regards the category of sex, obtaining a control grouping of opposite sex applicants is generally possible using first name identifiers. For national origin, as with sex, a similar, although not identical situation exists. As for the category of race, comparisons could still be made on this basis in a general way since bank examiners use HMDA reports, which include a listing, by census tract or county, of home purchase and home improvement loans. Examiners also have at hand the HMDA aggregation reports for Metropolitan Statistical Area(s) which can be used as a comparative base-point to measure an approximate demand relative to geographic location. Patterns can be deducted from such reports for the discovery of discriminatory practices where groups of minotiry homeowners are unable to acquire home improvement loans. At times, deed transfer data can also be accessed for comparative purposes.

One respondent (opposed) stated that since the lenders the FDIC regulates are commercial lenders, home improvement loans often represent a substantially larger portion of their housing related loans than do home purchase mortgage loans. Therefore, access to information on home improvement loans would be critical for examiners to make an accurate determination as to the lender's compliance with fair housing and fair lending laws. Without information on these loans, examiners would be forced to determine compliance on the basis of a relatively limited portion of the lender's housing related loan portfolio, i.e., mortgage loans.

Again, the primary goal of the Part 338 proposed amendments is to bring the FDIC rule requirements into greater uniformity with the requirements of Regulation B and this regulation does not include requiring the recording of monitoring data on home improvement loans. In addition, banks which may be engaging in illegal discrimination, either intentionally or unintentionally risk discovery through periodic compliance examination where examiners are expected to review a sample of rejected credit applications, with particular emphasis on applications from women and minorities. They are to determine whether the information available in the records is consistent with and supports the reasons for denial stated on the adverse action notices and that the reasons for rejection are consistent with the bank's written and/or oral policies as previously determined and were applied consistently to both minority and non-minority applicants.

Issue 2: *Effects on Bank Compliance with Fair Lending Laws:*

Generally, bankers view this change in definition as benefitting compliance efforts. Cited frequently by bank respondents was the highly competitive nature of the secured credit market along with the fact that home improvement loans enhance the value of the lender's collateral and thus are viewed as preferred lending risks. Also, applicants for such loans are generally more financially established and more credit worthy than applicants for other consumer credit. However, one respondent opposed to the change in definition, pointed out that discriminatory behavior is not based on logic. While this may be true, the FDIC has to date little evidence of a problem regarding illegal discrimination with regard to secured home improvement applicants. In March of 1985, the FRB proposed revisions to Regulation B to include requiring the monitoring information requirements regarding credit applications for the repair or improvement of the borrower's principal residence. In the *Final Rule* preface, the FRB stated that they received 104 comments on this item of the proposed revision with over half of the commenters generally opposing the proposed change arguing, in part, burdensomeness. And finally, while one respondent opposed to the change stated:

> * * * since the equity lines are in part based upon the market value of dwellings and are secured by the dwelling it is possible that failure to provide equity lines in particular areas may give rise to claims of redlining and denials of services in connection with dwellings under Section 804 and Section 805 of the Federal Fair Housing Act.

The FDIC has no evidence that this has occurred.

Typical of banker comments are the following:

> We believe that the proposed change recognizes the changing lending situation for home loans and, particularly, the increase in revolving lines of credit secured by the borrower's residence. To attempt to have consumers state a single use of such lines of credit is not practical.
>
> Furthermore, since these loans or lines of credit are generally limited to a percentage of the owner's equity and are typically fully secured, unlawful discrimination would seem less likely.

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One trade association commented:

Traditionally, home-equity loans have been marketed to consumers as a tool to improve their residences. With the increased growth in equity in homes throughout the country and as a result of new Federal income tax treatment for interest deductions favoring home-equity loans, the frequency and focus of such loans has been significantly altered. Now consumers are tapping the equity in their homes in order not only to provide for improvements to their residences but also to assist in meeting other needs such as education and debt consolidation. The marketplace has demonstrated that the Corporation is correct in indicating that "home-equity loans are likely to become popular as substitutes for unsecured, open-end credit."

Another trade association offered the following:

When the FDIC adopted Part 338's monitoring information requirements in 1978, home equity credit lines were not prevalent as a lending vehicle. Since lenders often advertise these loans in print media and mail loan applications upon request, both the relevancy and the accuracy of this monitoring data have been questioned. With lenders taking fewer applications in person, the likelihood of certain types of discrimination is significantly reduced. In addition, many lenders have complained that a substantial number of customers either omit the monitoring section or complete it incorrectly.

One banker wrote:

The current wave of home equity secured lending, prompted by recent tax law changes, is more akin to traditional consumer lending than mortgage lending. Indeed, in most banks these new home equity products are managed from the consumer/installment loan department. Certainly these new loans are not the type of "home loans" contemplated by the drafters of the Fair Housing Act, and it makes sense to exempt them from the data gathering requirements.

The impact of home-equity loans on banks relative to Part 338 was expressed thusly by one banker:

As lending is progressing to a more insecure climate, real estate will be used to a greater and greater degree. To report every real estate secured loan on fair housing would be to report 70% of a bank's current day business when the purpose [of the regulation] is something quite different.

The one creditor opposing the proposal responded that he had observed that banks, in general, avoid altogether or make "low ball" repair/rehabilitation type loans available to borrowers in communities heavily populated by minorities. This creditor stated that the data requirements should continue in order to keep pressure on banks to make such loans. As an enforcer of fair housing practices by lenders, this has not been the observation of FDIC examiners. If this were the case, it would be a violation of fair lending laws and once posed in the form of a complaint to the attention of the appropriate financial regulators, would receive requisite enforcement attention and resolution.

Issue 3a: *Bank Compliance Problems with the Monitoring Information Requirements:*

One trade association suggested the possible negative effects the existing data requirement may have on home improvement lending as follows:

The problems state chartered non-member banks have had with complying with 12 CFR 338's information recording requirements are principally with open end credit "home equity" loans. Applicants for this type of credit may or may not have a specific use for draws when applying for a "home equity" loan. Further, even if home improvement is the applicant's intent for his or her first draw, it is doubtful the borrower knows what future draws will be used for.

As a result of this quandary, some creditors have required applicants for home equity loans to agree in their applications that the program will not be used for home improvements. Thus, the regulation has effectively limited borrower's access to credit for home improvement loans.

One banker responded that it is a very confusing matter when information is required to be collected in one instant and is a violation to be collected in another. Another agreed: "It is often confusing to loan officers as to when they are supposed to collect this data and when they are not." As one banker stated:

Given the board scope of the 'improvement, repair, or maintenance' category, and the recent upsurge in equity secured lending for a wide variety of non-traditional purposes, bankers are many times unsure whether the data should be gathered for a particular loan.

Another banker stated:

The current tax law has prompted our bank, as well as our competitors, to market home equity loans on a large scale * * *. At [the loan's] inception, the purpose may be unknown, or if known, future draws may be for other purposes.

Another banker stated that to attempt to have consumers state a single use of such lines of credit is not practical. Possible confusion as to the purpose along with the use to which the monitoring data will be put was addressed by one trade association:

Since lenders often advertise these loans in print media and mail loan applications upon request, both the relevancy and the accuracy of this monitoring data have been questioned. With lenders taking fewer applications in person, the likelihood of certain types of discrimination is significantly reduced. In addition, many lenders have complained that a substantial number of customers either omit the monitoring section or complete it incorrectly.

With regard to home improvement loans, a trade association reported:

One specific problem over the years concerns indirect home improvement loans or those loans which can be classified as credit sales. A large percentage of home improvement loans are generated by contractors or sellers of goods and services for home improvement purposes. Those loans are, in the majority of cases, consummated without the * * * bank's having an opportunity to interview or observe the applicant to obtain the monitoring information.

Some bankers acknowledged the changing lending situation for home loans, citing increased competition among lenders and the increasing sophistication of both borrowers and lenders. One banker stated that because of the foregoing, all fair housing reporting requirements should have a sunset provision because the need to produce loans, i.e., to maximize profits, far exceeds any desire to discriminate. The reference is to the increasingly competitive secured credit lending market.

Issue 3b: *Compliance Burden in Time and Money:*

While one respondent (opposed) questioned the cost burden of the present regulation, the great majority of lender and trade association respondents (47 of 70) cited the collection of the monitoring information as burdensome. Smaller banks indicated that the lifting of data-monitoring requirements would be particularly beneficial. Bankers generally questioned the relevancy, validity and usefulness of the monitoring data. Some bankers estimated the actual costs of collecting the information (including training costs) by hours per day, per year, relative to staff salaries. Even modest costs came to be understood by some as more significant when annualized and especially when combined with shrinking profit margins. Cost estimates varied. One banker stated: "Since these loans [home-equity and home improvement] are, on average, less than one-third the size of the average residential mortgage at our bank, the incremental cost per loan of gathering and recording this information is more than three times as great per loan." Costs were not the only concern of bankers, however. One reported that eliminating home-equity and home improvement loans from the data requirements would reduce the paperwork burden on the banking industry without having a negative impact on [compliance with] fair

housing regulations. Another banker stated: "Any steps to reduce the paperwork burden on community banks without jeopardizing the basic rights of the consumer would be appreciated."

Burdensomeness has a special meaning from the perspective of holding companies, as one respondent noted:

> The FDIC, having a different requirement than the Federal Reserve or the Comptroller of the Currency, has given us problems in the past. We have both non-member state banks, member state banks, and national banks in our bancorporation. We do much of our training for present and future lenders on a combined basis. It is very hard to accomplish this training when we are dealing with two or three sets of rules. It is also quite common for us to transfer personnel from one bank to another. One problem that exists is when an individual is lending at a national bank or member state bank and asks for monitoring information for a loan that is to be used for a home improvement, that individual would be breaking the law. However, if the person is working at a non-member state bank and fails to ask monitoring information on an application for a home improvement, he would be breaking the law.

Related Issues Raised

Cited also by one respondent were the commitments made by the FDIC in the settlement agreement (which expired in 1983) arising out of the 1976 lawsuit brought by major civil rights organizations. In that agreement, the FDIC committed to establishing a data collection and analysis system to apply to written applications for home purchase loans. This system was to consider inclusion of applications for secured home improvement loans, depending upon the ease with which such loans could be segregated from loans made for purposes other than the repair or remodeling of residential property and whether sufficient added information relating to lending practices could be obtained to justify the additional data collection costs. Experience has shown that it is very difficult to segregate loans for home improvement-type purposes from all other home-equity loans and the costs to collect data for home improvement-type loans relative to the benefits gained do not appear to be justified.

Other suggestions raised by respondents concerned the desire to eliminate refinancing from the definition of home loan in Part 338. This is not currently an option for consideration by the FDIC. While an enforcement agency may require more comprehensive compliance than is specified in Regulation B, it is prohibited to require less (Section 202.13(d)). The information to be requested in Regulation B § 202.13(a) concerns application for credit primarily for the purchase or refinancing of a dwelling. The same argument pertains for respondents who suggested eliminating the collection of certain data from all types of home loan applicants. Section 338.4 exists primarily as a response to the requirements specified in ECOA's Regulation B.

One respondent questioned the FDIC's continuing inclusion of construction loans in the Part 338 definition of home loan. The FRB's Official Staff Commentary at § 202.12(a)3 exempts temporary financing to construct a dwelling from § 202.13 requirements. The FDIC believes that such financing should be included in the scope of Part 338 data requirements since creditor's decisions in this case can determine an applicant's access to housing, a central concern in fair housing lending.

One respondent suggested that while the FDIC is reviewing its fair lending enforcement system, the use of testers to investigate possible fair lending violations be considered. At present, the FDIC does not employ testing. However, as has previously been publicly affirmed (see the **Federal Register**, October 1, 1985, Vol. 50, No. 190), the FDIC will consider testing if examiners strongly suspect that a bank is engaged in illegal prescreening and if the FDIC views testing as the only reliable way to detect that activity.

One community advocate raised the point that the Paperwork Reduction Act was not meant to interfere with the authority of any Federal agency to enforce civil rights laws. The FDIC stated in its proposed rule concerning the amendment of Part 338, that the proposed changes could reduce the paperwork burden of the banking industry without impairing the enforcement of the fair housing lending laws. The purpose of the proposal was only indirectly in response to the Paperwork Reduction Act. The primary concern here was the rapidly increasing volume of loans beginning to fall within the broadly drafted scope of the § 338.1(f) definition of "home loan." The FDIC did not foresee the advent of open-end, home-equity loans in 1978 when the original definition was written and to include these types of loans within the scope of Part 338 as has happened goes beyond the original intent of the rule.

The FDIC does not intend by this change to imply that less priority is accorded matters concerning fair lending compliance. Efforts to streamline procedures are aimed at adhering to standards of effectiveness, efficiency, and uniformity. The FDIC has a strong continuing commitment to the enforcement of all fair lending laws, regulations and rules, and this change is not in contravention of that position.

Based on full consideration of all of the points raised both in support of, and in opposition to, the proposed amendment, the FDIC is amending Part 338 to eliminate improvement, maintenance and repair loans from existing "home loan" data-gathering requirements. Home-equity loans for these purposes would also be eliminated. Part 338 amendments require monitoring information to apply to loans the primary purpose of which is home purchase, construction and refinancing. The FDIC believes that this amendment will reduce the paperwork burden on the banking industry without impairing enforcement of fair housing lending laws.

List of Subjects is 12 CFR Part 338

Advertising, Banks, Banking, Civil rights, Credit, Fair housing, Mortgages, Reporting and recordkeeping requirements, Signs and symbols.

The Board of Directors of the Federal Deposit Insurance Corporation amends Part 338 of Title 12 of the *Code of Federal Regulations* as follows:

PART 338—FAIR HOUSING

1. The authority citation for Part 338 continues to read as follows:

> **Authority:** Sec. 2, Pub. L. 86–671, 74 Stat. 547 (12 U.S.C. 1817); sec. 8, Pub. L. 797, 64 Stat. 879, as amended by secs. 202, 204, Pub. L. 89–695, 80 Stat. 1046, 1054, and sec. 110, Pub. L. 93–495, 88 Stat. 1506 (12 U.S.C. 1818); sec. 9, Pub. L. 797, 64 Stat. 881, as amended by sec. 205, Pub. L. 89–695, 80 Stat. 1055 (12 U.S.C. 1819); sec. 203, Pub. L. 89–695, 80 Stat. 1053 (12 U.S.C. 1820(b)); sec. 805, Pub. L. 90–284, 82 Stat. 83, 84, as amended by sec. 808, Pub. L. 93–383, 88 Stat. 729 (42 U.S.C. 3605, 3608); sec. 501, Pub. L. 93–495, 88 Stat. 1521, as amended by sec. 2, Pub. L. 94–239, 90 Stat. 251 (15 U.S.C. 1691, et seq.); 40 FR 49306, 12 CFR Part 202; 37 FR 3429, 24 CFR Part 110.

2. Section 338.1 is amended by revising paragraph (f) to read as follows:

§ 338.1 Definitions.

* * * * *

(f) "Home loan" means any extension of credit the primary purpose of which is the purchase, construction, or refinancing of a dwelling that secures or will secure the extension of credit, which dwelling is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence.

3. Section 338.4 is amended by revising paragraphs (a)(2)(i)(G) and (a)(2)(ii)(C)(*1*)(*v*) to read as follows:

§ 338.4 Recordkeeping requirements.

(a) * * *

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(2) * * *
(i) * * *
(G) Loan type, using the following categories: purchase of existing dwelling; refinancing of existing home loan; construction loan only; construction-permanent; other (specify).
* * * * *
(ii) * * *
(C) * * *
(*1*) * * *
(*v*) Other (specify).
* * * * *

By Order of the Board of Directors.
Dated at Washington, DC, this 9th day of August, 1988.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88-18432 Filed 8-15-88; 8:45 am]
BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25530; Amdt. No. 91-204]

Cockpit Voice Recorders (CVR) and Flight Recorders

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule; correction.

SUMMARY: In the July 11, 1988, issue of the **Federal Register** (53 FR 26134), the FAA published a final rule amending its regulations to require digital flight data recorders and cockpit voice recorders (CVRs) to be installed in a broad category of airplanes and rotorcraft operated by air carriers and commuters, as well as in selected aircraft operated in general aviation. In the preamble to the rule, additional comments have been requested on Part 91 requirements. However, the page number as well as the **Federal Register** cite of the Notice of Proposed Rulemaking which contains the questions that commenters are directed to is incorrect. This document serves to correct that error.

Correction of the Amendment

1. In consideration of the foregoing, in the third column on page 26140, in the sixth and seventh lines, "page 4315" should read "page 4321," and "[53 *FR* 4315]" should read "[53 *FR* 4314]."

§ 91.35 [Corrected]

2. Also, on page 26145 in the third column, in § 91.35 (d)(2), remove "; and" and add a period.

An additional correction to this document is published elsewhere in the Corrections Section of this issue.

John H. Cassady,
Assistant Chief Counsel for Regulations and Enforcement.
[FR Doc. 88-18025 Filed 8-15-88; 8:45 am]
BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-25969]

Delegation of Authority to Director of Division of Market Regulation

AGENCY: Securities and Exchange Commission.
ACTION: Final rule amendment.

SUMMARY: The Commission is amending its regulation concerning Organization and Program Management to delegate authority to the Director of the Division of Market Regulation to exempt any transaction or transactions, either unconditionally or on specified terms and conditions, pursuant to Rules 10b-4(d), 10b-8(f), and 10b-13(d) under the Securities Exchange Act of 1934. This amendment should facilitate prompt and careful review and consideration of applications for such exemptions.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Burke or Jodie Kelley, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, telephone (202) 272-2848.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced an amendment to its delegation of authority to the Director of the Division of Market Regulation ("Division").

The amendment to Rule 30-3(a) of its regulation concerning Organization and Program Management [1] authorizes the Director ("Division Director") of the Division to grant exemptions where appropriate pursuant to Rule 10b-4(d),[2] Rule 10b-8(f),[3] and Rule 10b-13(d) [4] under the Securities Exchange Act of 1934 ("Exchange Act").[5] This delegation of authority will facilitate prompt and careful review and consideration of applications for such exemptions. In addition, the amendment will help conserve the resources of the Commission and the Division, since the staff will not be required to present exemption requests under these rules to the Commission, but can act upon them pursuant to delegated authority.[6]

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act,[7] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment prior to its effective date is also unnecessary.

List of Subject in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

Text of Amendment

The Commission hereby amends Title 17, Chapter II of Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A, continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs 38, 211, 54 Stat. 841, 855, 15 U.S.C. 77s, 78w, 77sss, 80a-37, 80b-11.

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[1] 17 CFR 200.30-3(a).

[2] 17 CFR 240.10b-4(d) provides:
This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms and conditions, as not constituting a manipulative or deceptive device or contrivance or fraudulent, deceptive, or manipulative act or practice comprehended within the purpose of this rule.

[3] 17 CFR 240.10b-8(f) provides:
This section shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms and conditions, as not constituting a manipulative or deceptive device or contrivance comprehended within the purpose of this section.

[4] 17 CFR 240.10b-13(d) provides:
This section shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms or conditions, as not constituting a manipulative or deceptive device or contrivance or a fraudulent, or deceptive or manipulative act or practice comprehended within the purpose of this section.

[5] 15 U.S.C. 78a *et seq.*

[6] In any particular case where the Division Director believes it appropriate, an exemption request may be submitted to the Commission. *See* 17 CFR 200.30-3(a).

[7] 5 U.S.C. 553(b)(A).

2. 17 CFR 200.30–3 is amended by revising paragraph (a)(6) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(6) Pursuant to Rules 10b–4(d), 10b–6(h), 10b–7(o), 10b–8(f), and 10b–13(d) (§§ 240.10b–4(d), 240.10b–6(h), 240.10b–7(o), 240.10b–8(f), and 240.10b–13(d) of this chapter), to grant requests for exemptions from Rules 10b–4, 10b–6, 10b–7, 10b–8, and 10b–13 (§§ 240.10b–4, 240.10b–6, 240.10b–7, 240.10b–8, and 240.10b–13 of this chapter).

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

Date: August 11, 1988.

[FR Doc. 88–18507 Filed 8–15–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 173

Contractor Business Integrity and Ethics

AGENCY: Office of the Under Secretary of Defense (Acquisition), DoD.

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on Contractor Business Integrity and Ethics which was published July 29, 1988 (53 FR 28636) (FR Doc. 88–17034). The action is necessary to add language which was inadvertently omitted from 32 CFR, section 173.1.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred Volkman, Director, Contract Policy Administration, DASD(P)/CPA, (202) 697–0895.

Accordingly, 32 CFR Part 173 is corrected as follows:

§ 173.1 [Corrected]

Section 173.1, page 28637, is amended by adding in the second sentence of paragraph (a) between the word "subcontractors" and the word "if" the words "in excess of $100,000".

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 11, 1988.

[FR Doc. 88–18483 Filed 8–15–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego Regulation 88–23]

Safety Zone Regulations: San Diego Bay, California, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a moving safety zone in San Diego Bay, San Diego, California. This safety zone consists of the water area within five hundred (500) feet (153 meters) of the sailing vessel *Stars and Stripes* as it transits San Diego Bay on 7 September, 9 September and 11 September 1988. The safety zone is needed to protect the *Stars and Stripes* and spectators in vessels from hazards associated with a large number of vessels operating in a confined area. Entry into this zone is prohibited during this operation unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 0800 Pacific Daylight Time (PDT) on 7 September 1988, and terminates at 2400 (PDT) 11 September 1988, or sooner, if terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Thomas S. Orzech, USCG, c/o U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 557–5860.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Following the normal rulemaking process would have been contrary to the public interest since immediate action is needed to respond to potential hazards to vessels and persons in the area.

Drafting Information: The drafters of this regulation are LT Thomas S. Orzech, project officer for the Captain of the Port, and CDR Samuel E Burton, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation: This safety zone consists of the waters area within five hundred (500) feet (153 meters) of the sailing vessel *Stars and Stripes* as it transits San Diego Bay on the published dates. This safety zone moves with the *Stars and Stripes* as it transits San Diego Bay from the 10th Avenue Marine Terminal to Ballast Point and while it returns to 10th Avenue Marine Terminal. This regulation is needed to prevent a hazard to vessels and persons in the area of this safety zone. It is expected that in excess of 4000 pleasure craft will observe or participate in this event, and the resulting congestion will present an extreme hazard to the *Stars and Stripes*, patrol and committee vessels, and spectator vessels in the area. Positive control of this event is necessary to prevent injury and property damage during this event.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation: In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.40–1, 6.04–6, and 160.5.

2. A new § 165.T1122 is added to read as follows:

§ 165.T1122 Safety Zone: San Diego Bay, California, Pacific Ocean.

(a) *Location:* This safety zone consists of the water area within five hundred (500) feet (153 meters) of the sailing vessel *Stars and Stripes* as it transits San Diego Bay.

(b) *Effective Dates:* This regulation becomes effective at 0800 Pacific Daylight Time (PDT) on 7 September 1988 and terminates at 2400 (PDT), on 11 September 1988 unless sooner terminated by the Captain of the Port.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: 8 August 1988.

J.W. Scarborough,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 88–18521 Filed 8–15–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP San Diego Regulation 88–24]

Safety Zone Regulations: San Diego Bay, California, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a moving safety zone in San Diego Bay, San Diego, California. This safety zone consists of the water area within five hundred (500) feet (153 meters) of the sailing vessel *New Zealand* as it transits San Diego Bay on 7 September, 9 September and 11 September 1988. The safety zone is needed to protect the *New Zealand* and spectators in vessels from hazards associated with a large number of vessels operating in a confined area. Entry into this zone is prohibited during this operation unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 0800 Pacific Daylight Time (PDT) on 7 September 1988, and terminates at 2400 (PDT) 11 September 1988, or sooner, if terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Thomas S. Orzech, USCG, c/o U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 557-5860.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Following the normal rulemaking process would have been contrary to the public interest since immediate action is needed to respond to potential hazards to vessels and persons in the area.

Drafting Information: The drafters of this regulation are LT Thomas S. Orzech, project officer for the Captain of the Port, and CDR Samuel E. Burton, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation: This safety zone consists of the waters area within five hundred (500) feet (153 meters) of the sailing vessel *New Zealand* as it transits San Diego Bay on the published dates. This safety zone moves with the *New Zealand* as it transits San Diego Bay from the 10th Avenue Marine Terminal to Ballast Point and while it returns to 10th Avenue Marine Terminal. This regulation is needed to prevent a hazard to vessels and persons in the area of this safety zone. It is expected that in excess of 4,000 pleasure craft will observe or participate in this event, and the resulting congestion will present an extreme hazard to the *New Zealand*, patrol and committee vessels, and spectator vessels in the area. Positive control of this event is necessary to prevent injury and property damage during this event.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation: In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T1123 is added to read as follows:

§ 165.T1123 Safety Zone: San Diego Bay, California, Pacific Ocean.

(a) *Location:* This safety zone consists of the water area within five hundred (500) feet (153 meters) of the sailing vessel *New Zealand* as it transits San Diego Bay.

(b) *Effective Dates:* This regulation becomes effective at 0800 Pacific Daylight Time (PDT), on 7 September 1988 and terminates at 2400 (PDT), on 11 September 1988 unless sooner terminated by the Captain of the Port.

(c) *Regulations:*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: 8 August 1988.

J.W. Scarborough,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 88-18522 Filed 8-15-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-444; RM-5973]

Radio Broadcasting Services; Parkersburg, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 256B1 for Channel 257A at Parkersburg, West Virginia, and modifies the license of Station WMGP (FM) to specify operation on the new channel, as that community's second wide coverage area FM service, at the request of Signal One Communications, Inc. A site restriction of 6.2 kilometers (3.9 miles) southwest of the city is required, at coordinates 39-14-00 and 81-37-00. In addition, concurrence has been obtained from the Canadian government. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-444, adopted June 30, 1988, and released August 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under West Virginia, by removing Channel 257A and adding Channel 256B1 at Parkersburg.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-18485 Filed 8-15-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-480; RM-6003]

Radio Broadcasting Services; Peshtigo, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241A to Peshtigo, Wisconsin, as that community's first local FM service, at the request of Good Neighbor Broadcasting, Incorporated. The channel can be allotted in compliance with § 73.207 of the Commission's Rules, at reference coordinates 45-03-18 and 87-45-12. Concurrence from the Canadian

government has been obtained. With this action, this proceeding is terminated.

DATES: Effective September 22, 1988; the window period for filing applications will open on September 23, 1988 and close on October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–480, adopted June 30, 1988, and released August 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin, by adding Channel 241A to Peshtigo.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18488 Filed 8–15–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–479; RM–5998]

Radio Broadcasting Services; Minocqua, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240C1 for Channel 240A at Minocqua, Wisconsin, and modifies the license for Station WWMH(FM) to specify operation on the higher class co-channel, at the request of Lakeland Broadcasting, Inc., as that community's first wide coverage area FM service. The substitution can be made in compliance with the Commission's minimum distance separation requirements, at reference coordinates 45–52–14 and 89–42–35. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–479, adopted June 30, 1988, and released August 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Wisconsin, by removing Channel 240A and adding Channel 240C1 at Minocqua.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18487 Filed 8–15–88; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 504, 514, 515, 522, 532, 534, 536, 537, 552 and 553

[APD 2800.12 CHGE 56]

General Services Administration Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to revise section 504.803 to eliminate confusion regarding the documents filed under each tab, to prescribe the use of GSA Form 3420, Contract/Modification File Checklist; to revise section 504.805 to make minor editorial changes; to revise part 514 to include a format for making administrative determinations regarding mistakes in bids and to make other miscellaneous changes regarding submission of bids, pickup and delivery of bids, bid custodians, and bid openings; to revise part 515 to incorporate a class deviation to the FAR provision on late submissions, modifications, and withdrawals of proposals for use by the Federal Supply Service in Solicitations for Multiple Award Schedules, to provide material on submission of proposals, to clarify the requirements for abstracting proposals in negotiated procurements, and to clarify the rules regarding disclosure of information pertaining to negotiated procurements; to revise section 522.1007 to delete the reference to Appendix C in paragraph (a) and to substitute information on obtaining the Service Contract Act Directory of Occupations; to revise section 532.606–70 to require the contracting officer to advise the finance office whether to suspend collection efforts pending resolution of a dispute; to revise section 534.002–70 to delete references to the Systems Acquisition Review Council and GSA Order 5400.36 which has been canceled; to revise section 536.201 to eliminate the requirement for sending a copy of contractor performance reports to the Office of Contracts, to provide for cross referencing and to provide for use of the performance reports when making contractor responsibility determinations; to revise section 537.110 to include material that is being deleted from the prescriptive language in section 552.237–70 and to correct the clause number in paragraph (b), to revise section 552.210–78 to incorporate the substance of a class deviation approved for use by FSS in November 1984 and to change the title "GSA supply distribution facility" to "GSA wholesale distribution center," and to make other miscellaneous changes; to revise section 552.210–79 to delete language that repeats material in part 510; to delete section 552.214–71 and 552.215–71; to revise section 552.237–1 to correct the section number; to revise section 552.237–71 and 552.237–72 to delete language that repeats language in part 537; to add section 553.370–3420 to illustrate the GSA Form 3420, Contract/Modification File Checklist and to delete Appendixes B and C. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: August 16, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition policy and Regulations on (202) 566–1224.

SUPPLEMENTARY INFORMATION:

Background

The General Services Administration published GSAR Notice 5–87 in the **Federal Register** (52 FR 30694) on August 17, 1987, inviting comments from interested parties. Comments received from the AMPEX Corporation and various offices within GSA have been reviewed, reconciled, and incorporated when appropriated, in this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule does not contain information collection requirements which require the approval of OMB under (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 504, 514, 515, 522, 532, 534, 536, 537, 552, and 553

Government procurement.

1. The authority citation for 48 CFR Parts 504, 514, 515, 522, 532, 534, 536, 537, 552, and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The General Structure to the GSAR is amended by deleting Appendixes B and C.

PART 504—ADMINISTRATIVE MATTERS

3. Section 504.803 is amended by amending paragraph (a) to combine subparagraphs (23) and (24), by renumbering subparagraphs (25), (26), (27), (28) and (29) as (24), (25), (26), (27) and (28) and revising newly redesignated (a)(28) to read as follows:

504.803 Contents of contract files.

(a) * * *

(23) Contractual action. Successful bid or proposal and all pertinent correspondence applicable to the contractual action. Subcontracting plans that are incorporated in and made a material part of a contract, as required by FAR 19.705–5(a)(5), should be filed under this tab.

(24) Evidence of concurrence for legal sufficiency of the appropriate counsel (if applicable).

(25) Any required approvals—GSA Form 1535, Recommendation for Award (if applicable).

(26) GSA Form 2932, Proposed Substantial Contract Award (if applicable).

(27) Standard Form 99, Notice of Award of Contract, (if applicable).

(28) GSA Form 3439, GSA/FPDS Individual Contract Action Report or other FPDS reporting documentation.

4. Section 504.805 is revised to read as follows:

504.805 Disposal of contract files.

The contracting officer's accountability for contract files shall terminate at the end of their retention period when the notice of disposal is received from the National Archives and Records Administration, and disposal is approved by the appropriate records liaison officer whose organization has functional responsibility for the files.

5. The table of contents for Part 514 is amended by revising the title of section 514.301–70 to read as follows:

PART 514—SEALED BIDDING

Subpart 514.3—Submission of Bids

514.301–70 Facsimile transmission of bids.

* * * * *

514.201–6 [Amended]

6. Section 514.201–6 is amended by removing and reserving paragraph (a).

* * * * *

7. Section 514.301–70 is revised to read as follows:

514.301–70 Facsimile transmission of bids.

Bids, modifications, or withdrawals of bids transmitted through facsimile equipment may not be considered unless authorized by the solicitation. Facsimile bids, as used herein, refers to messages transmitted via facsimile equipment directly to a GSA office or facility. It does not include messages sent to commercial carriers for delivery to the office designated for receipt of bids (e.g. zap mail). Solicitations may not authorize the submission of facsimile bids unless the facsimile equipment is located in the office designated to receive bids so the incoming messages can be properly safeguarded. When authorizing the submission of facsimiles, the contracting officer must state in the solicitation that facsimile submissions are authorized, and provide the telephone number of facsimile receiving equipment and compatibility characteristics (e.g., make and model number, receiving speed, communications protocol).

8. Section 514.304–1 is revised to read as follows:

514.304–1 General.

Upon receipt of a late bid, the bid custodian shall record it on the duplicate copy of the list of bidders and immediately notify the responsible contracting officer that the bid has been received. The contracting officer will arrange for the bid to be picked up or delivered.

9. Section 514.370 is revised to read as follows:

514.370 Copies of bids required in submission.

Bids shall be submitted in an original and at least one copy which may be a machine produced copy. Additional copies may be required, if warranted. The original will be used by the contracting activity for the tabulation of bids. The copy will be retained by the Business Service Center for public information until the bid abstract is available to replace it. When information such as the GSA Form 527, Contractor's Qualifications and Financial Information, or Standard Form 24, Bid Bond, is submitted with a bid, it shall not be retained by the Business Service Center for public information.

10. Section 514.401 is amended by revising the introductory text of paragraph (a), subparagraph (a)(1), subparagraph (a)(4) and paragraph (c) read as follows:

514.401 Receipt and safeguarding of bids.

(a) Except as otherwise provided in paragraph (c), bids and modifications shall be received and safeguarded by the appropriate Business Service Center until the time specified for opening. Adequate space and facilities must be provided for the receipt and safeguarding of bids and for the holding of public bid openings. This shall include a locking-type bid box located within sight of the bid custodian and in a place where bidders or their representatives can readily deposit bids. Bids received shall be handled as follows:

(1) At the initial point of receipt, each envelope (or other covering) received by mail and identified as containing a bid shall be immediately timestamped or indicated thereon the place, date, and time of receipt by authorized personnel. Then the bid(s) shall be delivered by special handling to the bid custodian. Each Business Service Center Director shall designate bid custodians and alternates, as may be required, to perform the functions incident to the receipt, custody, and recording of bids.

* * * * *

(4) Hand-carried bids delivered before bid opening time will be deposited in the locked bid box. The bid custodian shall have custody of a key or combination to the bid box. In the event a hand-carried bid is not placed in the bid box by the

bidder, but is handed to the bid custodian or other GSA personnel, it shall be time stamped immediately and then handled in the same manner as provided for mailed bids. At least once daily (and immediately preceding the time for each scheduled bid opening), the bid custodian shall remove and time stamp the bids, record them and place them with any other bids previously received.

* * * * *

(c) Business Service Center Directors may designate an individual(s) working at a PBS Facility Support Center or Enhanced Field Office as a bid custodian, provided: (1) Adequate space and facilities are available within the Facility Support Center or Enhanced Field Office, (2) the individual(s) has been trained and (3) the Facility Support Center or Enhanced Field Office has a Small Business Technical Advisor. If such designations are made, the designated bid custodian must submit monthly reports to the BSC Director for forwarding to the Office of Small and Disadvantaged Business Utilization (AU).

11. Section 514.402–1 is amended by revising paragraph (a) to read as follows:

514.402–1 Unclassified bids.

(a) Public bid openings will normally be held in the Business Service Center. The schedule for bid openings shall be developed jointly by the Business Service Center and the bid opening officer in order to avoid conflicts. The contracting officer shall be responsible for obtaining space for bid openings which are to be held outside the Business Service Center. When the bid opening will be held elsewhere, the contracting officer shall inform the Business Service Center serving the geographic area in which the contracting office is located, of the invitation number and the location where the public bid opening will be held.

* * * * *

12. Section 514.402–3 is amended by revising paragraph (a) to read as follows:

514.402–3 Postponement of openings.

(a) When the contracting officer postpones a bid opening (see FAR 14.402–3), an amendment (see FAR 14.208) to the solicitation must be issued and distributed to all prospective bidders and the appropriate Business Service Center by mail or telegraph as soon as possible. The new time and date set for bid opening must be established as soon as possible and coordinated with the Business Service Center. Prospective bidders must be notified of the new time and date.

* * * * *

13. Section 514.406–3 is amended by revising paragraphs (b) and (c) to read as follows:

514.406–3 Other mistakes disclosed before award.

* * * * *

(b) *Format for determinations.* Determinations under FAR 14.406–3 must be prepared in the format shown below.

FINDINGS AND ADMINISTRATIVE DETERMINATION ALLEGED MISTAKE IN BID ("PRIOR TO AWARD" OR "AFTER AWARD") BY (NAME OF BIDDER) (IFB NO.)

Pursuant to Federal Acquisition Regulation 14.406 and General Services Administration Acquisition Regulation 514.406, I hereby make the following findings:

FINDINGS

(List in chronological order the information required by FAR 14.406, including a numerical list of exhibits.)

DETERMINATION

Based on the above findings, I hereby determine in accordance with FAR (14.406–3 (a) or (b), (c), (d), (g) or 14.406–4) that (include an appropriate statement indicating the determination to permit withdrawal, correction, etc.).

Contracting Officer (Determinations under FAR 14.406–3(g)(5) or 14.406–4)

Date

Head of Contracting Activity (Determinations under FAR 14.406–3 (a) (b) (c) or (d))

Date

I have reviewed the above case as to form, technical accuracy of the proposed determination, and the general accuracy of the supporting evidence and approved it as to legal sufficiency.

Assigned Counsel

Date

(c) *Legal review and concurrence.* Assigned counsel must approve determinations by the HCA and Contracting Officer regarding mistakes in bid.

14. Section 514.406–4 is revised to read as follows:

514.406–4 Mistakes after award.

Assigned counsel must approve determinations by the HCA and Contracting Officer regarding mistakes in bid.

PART 515—CONTRACTING BY NEGOTIATION

515.407 [Amended]

15. Section 515.407 is amended by removing and reserving paragraph (a).

* * * * *

16. Section 515.411 is revised to read as follows:

515.411 Receipt of proposals and quotations.

(a) Solicitations should provide for proposals and modifications to proposals to be submitted to the appropriate contracting office unless arrangements have been made with the local Business Service Center (BSC) for receipt and safeguarding of proposals by the BSC.

(b) Classified proposals and quotations must be handled under FAR 15.411, GSAR Subpart 504.4, and the requirements of GSA Order, Freedom of Information Act procedures (ADM 1035.11).

17. Section 515.411–70 is revised to read as follows:

515.411–70 Recording of offers.

The GSA and/or Standard Forms prescribed for abstracting bids in sealed bidding may be used to abstract proposals or quotations submitted in connection with competitively negotiated procurements where more than one offer is received in response to the solicitation. (See FAR 4.803(a)(10).) The forms may be appropriately modified to include all of the information necessary for evaluation. Abstracts shall not be provided to the Business Service Center or diclosed except as provided in 515.1070. See FAR 15.411, 15.413 and 15.1001 regarding disclosure of information..

18. Section 515.412 is added to read as follows:

515.412 Late proposals and modifications.

(a) Contracting Officers in the Federal Supply Service have been authorized to deviate from the FAR provision at 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals in solicitations for Multiple Award Schedules by deleting paragraph (a)(3). The effect of this deviation is to establish the closing date for receipt of proposals in block 9 of the Standard Form 33, Solicitation, Offer and Award, as a firm cut-off date for receipt of proposals. Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it qualifies under paragraphs (a)(1), (a)(2), or (b) of FAR 52.215–10.

(b) When contracting officers deviate from the FAR provision as outlined in paragraph (a) above, no additional special item numbers may be added to the proposal after the firm cut-off date established for receipt of proposals. However, additional products and/or models may be added when the item offered falls under a Special Item Number originally submitted in a timely manner.

19. Section 515.1070 is revised to read as follows:

515.1070 Release of information concerning unsuccessful offerors.

(a) GSA Order, GSA Freedom of Information Act (FOI) procedure (see ADM 1035.11), should be consulted to determine what information may be disclosed.

(b) When small purchase procedures are used, the names and dollar amounts of unsuccessful offerors may be released upon request without processing through the formal FOI procedures.

(c) When the contracting officer determines, in connection with negotiated procurements (other than small purchases), that the administrative time and workload of processing regular FOIA requests (see FAR 14.408–1(c)) is greater than the workload involved in preparing an abstract of offers to be displayed at an appropriate Business Service Center, the following rules apply:

(1) An abstract of offers may be prepared for display after award in the appropriate Business Service Center in addition to the notification required by FAR 15.1001(c).

(2) The abstract must include only the names, addresses, and "best and final" prices offered, for unclassified acquisitions where the award is based on price and price related factors. The successful offeror(s) must be identified.

(3) Abstracts must not contain information regarding failure to meet minimum standards of responsibility or other notations properly exempt from disclosure to the public under FOI regulations.

(d) The information outlined in paragraph (c) above must not be disclosed when the contracting officer determines, on a case by case basis, that it is not in the best interest of the Government or when it may be competitively harmful to offerors such as when negotiations are in process for an item that was recently awarded under another solicitation.

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

20. Section 522.1007 is amended by revising paragraph (a) to read as follows:

522.1007 Notice of intention to make a service contract.

(a) The Department of Labor (DOL) has issued a Service Contract Act Directory of Occupations to use in determining job classifications when procuring services. The directory is available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It contains occupational titles and descriptions that contracting offices must use when listing on SF 98a the classes of service employees to be used. When contracting officers are unable to find an appropriate title or description in the directory, they must develop and submit an appropriate occupational title and description for the work to DOL with the SF 98 request.

* * * * *

PART 532—CONTRACT FINANCING

21. Section 532.606–70 is revised to read as follows:

532.606–70 Referral of delinquent debts.

(a) When the contracting officer determines that a debt in excess of $100 is delinquent, the contracting officer shall forward notification of the delinquent debt to the applicable finance office for collection in accordance with the Debt Collection Act of 1982, and possible forwarding to a credit reporting agency.

(b) If the contractor appeals the contracting officer's demand for payment pursuant to the Disputes clause of its contract, the contracting officer shall advise the finance office whether to suspend collection efforts pending resolution of the dispute.

PART 534—MAJOR SYSTEM ACQUISITION

22. Section 534.002–70 is revised to read as follows:

534.002–70 Directives.

The policies and procedures applicable to major systems acquisition are contained in GSA orders and the Federal Information Resources Management Regulation (FIRMR). Personnel concerned with acquiring major systems should be familiar with the following:

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

23. Section 536.201 is amended by revising paragraph (c) to read as follows:

536.201 Evaluation of contractor performance.

* * * * *

(c) The contracting officer shall include a copy of the report in the regional evaluation report file and the contract file. The regional evaluation report file should include a cross reference for all names under which a contractor does business with GSA. The evaluation report files are to be used when making preaward determinations of contractor responsibility.

PART 537—SERVICE CONTRACTING

24. Section 537.110 is amended by revising paragraphs (a) and (b) to read as follows:

537.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.237–70, Qualifications of Offerors, in solicitations and contracts for building services when the contract amount is expected to exceed the small purchase limitation. A supplemental provision may be used with this provision to outline specific qualification requirements for individual contracts.

(b) The contracting officer shall insert the clause at 552.237–71, Qualifications of Employees, in solicitations and contracts for building services when the amount is expected to exceed the small purchase limitation. Supplemental clauses may be used with the clause at 552.237–71 to outline specific requirements regarding employees who will perform work on contracts.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

25. Section 552.210–78 is revised to read as follows:

552.210–78 Charges for packaging and packing.

As prescribed in 510.011(i), insert a clause substantially as follows:

CHARGES FOR PACKAGING AND PACKING (MAY 1988)

If supplies shipped to a GSA wholesale distribution center are not packaged and packed in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking.

by contract or otherwise, and charge the Contractor therefor at the rate of $____*____ per man-hour or fraction thereof. The Contractor will also be charged for material costs, if incurred. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of Clause)

*The rate to be inserted in the above clause shall be determined by the Commissioner, Federal Supply Service, or a designee.

26. Section 552.210–79 is amended by revising the introductory paragraph to read as follows:

552.210–79 Packing list.

As prescribed in 510.011(j), insert the following clause:

* * * * *

552.214–71 [Reserved]

27. Section 552.214–71 is removed and reserved.

* * * * *

552.215–71 [Reserved]

28. Section 552.215–71 is removed and reserved.

29. Section 552.237–1 is redesignated 552.237–70 and the introductory paragraph is revised to read as follows:

552.237–70 Qualifications of offerors.

As prescribed in § 537.110(a), insert the following provision:

* * * * *

30. Sections 552.237–71 and 552.237–73 are amended by revising the introductory paragraphs to read as follows:

552.237–71 Qualifications of employees.

As prescribed in 537.110(b), insert the following clause:

* * * * *

552.237–72 Certification regarding "Quasi-Military Armed Forces."

As prescribed in 537.110(c), insert the following certification:

* * * * *

Note.—GSA Form 3420, Contract/Modification File Checklist mentioned in the summary is illustrated in and made a part of the regulation. However, the form is not illustrated in the **Federal Register** or the Code of Federal Regulations. Individual copies may be obtained from any GSA contracting activity or the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Washington, DC 20405.

PART 533—PROTESTS, DISPUTES AND APPEALS

31. Section 533.370–3420 is added to read as follows:

533.370–3420 GSA Form 3420, Contract/Modification File Checklist.

Dated: July 29, 1988.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88–18340 Filed 8–15–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355–7127]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA issues this notice to increase the Harpoon Boat category quota of giant Atlantic bluefin tuna from 60 short tons (st) to 75 st and to decrease the inseason adjustment amount from 104 st to 89 st accordingly. The increase is necessary to prevent an early closure of this segment of the fishery.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–3600, extension 324.

SUPPLEMENTARY INFORMATION: Final regulations governing the Atlantic bluefin tuna fishery were published on October 25, 1985 (50 FR 43396). Paragraph 285.22(g) of Title 50 provides that the Director, Northeast Region, NMFS (Regional Director) may allocate during the fishing season any portion (from zero to 100 percent) of the inseason adjustment amount (104 st) to any segment of the fishery. The Regional Director is required to publish a notice of allocation in the **Federal Register** before such allocation becomes effective. Consistent with § 285.22(g), the Regional Director has considered the following factors:

(1) The usefulness of information obtained from catches of the particular gear segment of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

The Regional Director has determined that a 15 st allocation to the Harpoon Boat category is appropriate based on these factors.

Current landing reports indicate that the Harpoon Boat quota of 60 st of giant Atlantic bluefin tuna will be harvested by the effective date of this notice. A significant increase in the number of vessels permitted in the Harpoon Boat category has occurred from 1980 to the present (from 30 vessels to 250 vessels). This increase in the number of vessels actively engaged in the fishery has increased the ability of the fleet to harvest the quota during favorable fishing conditions. The rate of harvest, when tuna are present and weather conditions permit, has reached 10 to 15 st per week. At this rate of harvest, the 60 st quota will be taken by mid-August and the fishing for giant Atlantic bluefin tuna by vessels permitted in the Harpoon Boat category will cease for the remainder of 1988. The traditional closure of this segment of the fishery is in September, when weather conditions are no longer favorable. Allocation of the inseason adjustment amount will delay closure of the fishery during the optimal season.

An allocation of 15 st from the inseason adjustment amount would have 89 st available for allocation to other gear categories. An allocation of 15.6 st will be necessary to account for the overage from the incidental longline fishery. Based on current landings data for all gear categories in the Atlantic bluefin tuna fishery, the 73.4 st remaining in the inseason adjustment amount should be more than sufficient to provide for potential shortages in other gear segments.

The Regional Director, therefore, increases the Harpoon Boat quota in § 285.22(b) from 60 st to 75 st and decreases the inseason adjustment amount in § 285.22(g) from 104 st to 89 st. The Regional Director will make provisions for the overage from the incidental longline fishery when the 1988 season ends on December 31, 1988. When the adjusted Harpoon Boat quota is reached, the further taking and retention of Atlantic bluefin tuna by vessels permitted in this category will be prohibited for the remainder of 1988.

Notice of this action will be mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.22, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et eq.*)

Dated: August 11, 1988.

Joe P. Clem,

Acting Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18469 Filed 8-11-88; 3:12 pm]

BILLING CODE 3510-22-M

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50 CFR Part 641

[Docket No. 71154-8119]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the regulations for the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This rule modifies the exemption from the red snapper minimum size limit for a person fishing with a trawl for species other than reef fish, provided the total weight of reef fish does not exceed five percent of all other species aboard. This rule also removes expired language exempting undersized red snapper caught by persons fishing from headboats. The intent of this rule is to reduce the mortality of undersized red snapper, thus hastening recovery of the fishery stock, and to clarify the regulations.

EFFECTIVE DATE: September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council) and its implementing regulations at 50 CFR Part 641. Section 641.23(b)(3) exempts from the minimum size limit for red snapper persons lawfully fishing with trawls from domestic vessels in the exclusive economic zone (EEZ). The rationale in the FMP for this exemption was to prevent wastage of the few undersized red snapper caught in shrimp trawls and to avoid making vessels in the groundfish fishery cull the very small red snapper taken in this mixed species fishery.

Some fishermen who target reef fish species in the Gulf of Mexico are landing and selling undersized red snapper taken from the EEZ, claiming the fish were caught in trawls. In some cases, undersized red snappers are transferred at sea to trawl vessels. In other cases, trawls are carried aboard hook-and-line vessels merely to support a claim that undersized red snapper were caught by trawl gear. Through these artifices, fishermen are using the current wording of the trawl exemption to frustrate enforcement of the size limit on red snapper.

To stop these practices within the intent of the Council as expressed in the FMP, NOAA proposed (53 FR 5809, February 26, 1988) (1) to apply the exemption for trawl-caught undersized red snapper only when the total weight of red snapper does not exceed five percent of all other fish on board and (2) to prohibit the transfer of red snapper from one vessel to another at sea.

It was also proposed to (1) revise the definition for authorized officer to clarify the participants in an enforcement agreement through which a State or Federal officer becomes an authorized officer, (2) add a phrase to the definition of EEZ to conform to current usage, (3) clarify that the U.S. Coast Guard is not a party to a State/Federal agreement for data collection, and (4) in § 641.23(b), remove the exemption for persons fishing from headboats from the size limit for red snapper, which expired on May 8, 1987.

Comments and Responses

Comments on the proposed rule were received from the Council and from an organization representing commercial fishermen in Florida. The Council requested that "reef fish" be substituted for "red snapper" in determining the percentage of all other fish on board. The Council pointed out that the total weight of *all* reef fish, rather than only red snapper, was a more appropriate criterion for determining when a person was fishing for species other than reef fish and thus should be exempt from the minimum size regulation for red snapper. The Council also pointed out that its recommended change would create only a negligible additional burden on legitimate shrimp and groundfish trawl vessels because red snapper typically constitute the major proportion of reef fish taken as bycatch by those vessels.

NOAA concurs with the Council's rationale and its assessment of the extent of additional burden. Furthermore, the preamble of the proposed rule stated that "the exemption for trawl-caught undersized red snapper is proposed to be amended by applying it only to a person who is trawling for species other than reef fish" (53 FR 5809, Feb. 26, 1988). In view of the language quoted from the preamble of the proposed rule, the change in regulatory text requested by the Council is a logical outgrowth of the proposed rule, and NOAA is including the requested change in the regulatory text of this final rule.

The organization representing commercial fishermen objected to the prohibition on transfer of red snapper at sea on the grounds that such prohibition is (1) a burdensome regulation that would prohibit legitimate transfers of red snappers over the minimum size limit and (2) totally unnecessary to solve the problem addressed. While such a prohibition may enhance enforcement, in light of burdens on the fishing industry associated with it, NOAA believes it should be addressed through the deliberative plan amendment process. Accordingly, the prohibition on transfer of red snapper at sea is deleted from this final rule. Basing the exemption for trawl-caught undersized red snapper on the weight of fish on board may be sufficient to solve the problem addressed. It will, at least, reduce the quantities of undersized red snapper that may be transferred and landed by trawlers, possibly to the extent that such transfers are no longer economical. Additional measures, if needed, may be considered by the Council.

Changes From the Proposed Rule

In addition to the changes discussed above, the technical changes in the proposed rule to revise the definitions for authorized officer and EEZ and to clarify the parties to a State/Federal agreement for data collection are not included in this final rule. These technical changes have been made by a final rule, technical amendment, (53 FR 24644, June 29, 1988) that consolidated into a new 50 CFR Part 620 those regulations common to all domestic fisheries.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this rule is necessary for the conservation and management of the reef fish fishery and that it is consistent with the Magnuson Act and other applicable law.

This rule conforms regulatory language to a provision of the existing FMP and makes a technical correction in the regulations implementing the FMP. It does not result in a significant change in the original environmental impact statement for the FMP and, thus, is categorically excluded from the

requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Under Secretary for Oceans and Atmosphere, NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under E.O. 12291. No cost to the fishing industry or change in fishing practices is likely to result since legitimate shrimp and groundfish trawl vessels do not normally exceed the five percent bycatch limitation in this rule. This rule will contribute to reducing mortality of undersized red snapper as was intended in the FMP. Reduction of mortality and the exemption for trawl-caught red snapper were fully considered in the regulatory impact review prepared when the FMP was implemented. Other aspects of this rule are minor and technical.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. This is because the revised exemption to the minimum size limit, which applies only when the quantity of reef fish is not more than five percent of the total weight of all other fish on board, is not expected to affect a substantial number of small entities. The 14,000 shrimp and groundfish trawl vessels operating in the Gulf of Mexico normally do not have reef fish on board exceeding the five percent catch limit and therefore, would continue to be exempt. Thus, the rule would affect only those few operators who attempt to subvert the regulations. The revision would close a loophole in the rule for a relatively small number of hook-and-line or other vessels, and will serve to achieve the intended objectives of the FMP. All other changes are technical and would not affect current operating practices or impose costs on the fishermen. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

In the final rule that implemented the FMP (49 FR 39553, October 4, 1984), NOAA concluded that, to the maximum extent practicable, the FMP is consistent with the coastal zone management programs of each State adjoining the Gulf of Mexico (except Texas, which does not have an approved program under the Coastal Zone Management Act). Since this rule does not directly affect the coastal zone in a manner not ready fully evaluated in the FMP and the initial consistency determination, a new consistency determination is not required.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 11, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.23, paragraph (b)(3) is redesignated as paragraph (b)(2) and is revised to read as follows:

§ 641.23 Size and incidental catch restrictions.

* * * * *

(b) * * *

(2) A person fishing with at trawl for species other than reef fish is exempt from the minimum size limit for red snapper. For the purposes of this paragraph, a person fishing with a trawl is considered to be fishing for species other than reef fish when the total weight of reef fish does not exceed five percent of all other fish (including shrimp) aboard.

* * * * *

[FR Doc. 88–18470 Filed 8–15–88; 8:45 am]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 158
Tuesday, August 16, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 667; Ref: Notice No. 659]

Use of the Word "Light" (Lite) In the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 659, a notice of proposed rulemaking (NPRM), published in the Federal Register on June 17, 1988 (53 FR 22878). ATF has received three requests, representing both domestic and foreign interests, for an extension of the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the NPRM.

DATE: Written comments must be received on or before November 15, 1988.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 ATTN: Notice No. 659.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On June 17, 1988, ATF published Notice No. 659, a notice of proposed rulemaking, presenting two alternatives regarding the use of the word "light" (lite), referring to a product containing low or reduced calories. These alternatives were in addition to the proposals made in Notice No. 600 (August 21, 1986; 51 FR 28836).

Subsequent to publication of Notice No. 659, ATF received three requests, representing both domestic and foreign interests, to extend the close of the comment period 90 days, from August 16, 1988, to November 15, 1988. One comment, submitted on behalf of the Union Europeene des Alcools, Eaux-de-Vie et Spiritueux ("Union des Alcools") requested the extension due to the summer holiday schedule in Europe, and to the fact that the organization plans to discuss the issues raised in the notice at their next meeting, which isn't until mid-September.

Another commenter, a national trade association of manufacturers and importers representing over 85 percent of the distilled spirits sold in the United States (Distilled Spirits Council of the United States, Inc.), requested the extension in order to afford its members sufficient time to develop their respective positions, in view of the complexity and importance of the "light" issue.

Similar concerns regarding the summer holiday schedule were expressed by the third commenter, Bacardi Imports, Inc.

ATF finds the reasons mentioned above to be valid and is, therefore, extending the comment period until November 15, 1988.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors and, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Signed: August 8, 1988.

Stephen E. Higgins,
Director.

[FR Doc. 88–18301 Filed 8–15–88; 8:45 am]

BILLING CODE 4810–31–M

27 CFR Part 5

[Notice No. 668; Ref: Notice No. 658]

Label Disclosure for Brandy and Whisky Treated With Wood

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period and extension of use-up period for ATF Ruling 87–3.

SUMMARY: This notice extends the comment period for Notice No. 658, a notice of proposed rulemaking, published in the Federal Register on May 24, 1988 (53 FR 18574). ATF has received three requests, representing both domestic and foreign interests, to extend the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the notice. This notice also extends the use-up period for compliance with ATF Rul. 87–3 from December 31, 1988 to July 31, 1989.

DATE: Written comments must be received on or before Nov. 22, 1988.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 ATTN: Notice No. 658.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1988, AFT published Notice No. 658 (53 FR 18574) proposing to amend the regulations in 27 CFR Part 5 concerning the wording, and placement, of the disclosure statement for brandy and whisky treated with wood.

The Bureau also solicited comments on a petition it received, filed jointly by the Federation des Exportateurs de Vins et Spiritueux (FEVS) and the National Association of Beverage Importers, Inc. (NABI), concerning the usage and label disclosure for brandy treated with an infusion of oak chips, i.e., the Boise method. This petition was supported by several U.S. brandy producers.

Subsequent to publication of the notice, ATF received three requests, representing both domestic and foreign interests, to extend the comment period. Two of the commenters requested that the comment period be extended (from August 22, 1988) to December 31, 1988.

In one comment, submitted by the petitioners, it was noted that contact with and among European countries during the summertime is difficult, because of the traditional holiday period. Consequently, many of the concerns generated by the notice cannot be given collaborative review until the fall of 1988.

The second comment, submitted on behalf of the U.S. brandy producers (previously mentioned), requested an extension in order to provide them with additional time to contact individuals and gather information which will not be available until after grape harvests in the fall.

The third comment, submitted on behalf of the Union Europeene des Alcools, Eaux-de-Vie at Spiritueux ("Union des Alcools"), requested an extension due to the summer holiday schedule in Europe, and to the fact that the organization plans to discuss the issues raised in the notice at their next meeting, which isn't until mid-September.

ATF finds the reasons mentioned above to be valid. However, the Bureau believes that an extension of an additional 90 days is sufficient and is, therefore, extending the comment period until November 22, 1988.

In addition, so as not to place an undue burden on the industry and, in order to provide the Bureau with sufficient time to complete this rulemaking proceeding, ATF is extending the use-up period for compliance with ATF Rul. 87-3, A.T.F. Q.B. 1987-3, 12, and corresponding Industry Circular 87-6 (dated September 4, 1987) from December 31, 1988 to July 31, 1989.

Drafting Information

The author of this document is coordinator James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Signed: August 8, 1988.

Stephen E. Higgins,

Director.

[FR Doc. 88-18300 Filed 8-15-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Rocky Mountain National Park Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to modify the fishing regulations in Rocky Mountain National Park. The proposed rule changes would allow fishing in streams and lakes in Rocky Mountain National Park as designated by the Superintendent pursuant to authority provided by National Park Service general regulations. The park's active monitoring program has identified conservation concerns which include protecting and restoring native fish populations while affording a high quality fishing experience within limits necessary to perpetuate fish populations and riparian vegetation. The proposed changes to regulations address these concerns and will correct, on an annual basis, problems identified with the current regulations. With these proposed changes in place, the park staff will be able to more effectively manage the fishery resources by manipulating season dates, bait and terminal gear restrictions, and the use of creel limits (including catch-and-release). Effects of the proposed rules are expected to be minimal. This rulemaking will not alter to any degree the number of angler days presently occurring.

DATE: Written comments will be accepted through September 15, 1988. Comments should be addressed to: Mr. James B. Thompson, Superintendent, Rocky Mountain National Park, Estes Park, CO 80517.

FOR FURTHER INFORMATION CONTACT:
David R. Stevens, Research Biologist, Rocky Mountain National Park, Estes Park, CO 80517. Phone: (303) 586-2371.

or

David J. Essex, Chief Park Ranger, Rocky Mountain National Park, Estes Park, CO 80517. Phone: (303) 586-2371.

SUPPLEMENTARY INFORMATION:

Background

The present Rocky Mountain National Park fishing regulations are codified in 36 CFR 7.7(a). They permit fishing in selected waters of the park with a variety of regulations for specific lakes and streams.

Technical fishing assistance has been provided to Rocky Mountain National Park by the U.S. Fish and Wildlife Service for 30 years. The present objectives have evolved since the late 1950s to closely coincide with the park's primary purpose, which is to preserve natural environments and native plant and animal life, and to provide for the enjoyment of the same in ways that maintain natural conditions.

Thus, the specific objectives of the park's fishery program are:

1. Protect and restore native fish populations, and meet the requirements of the Endangered Species Act of 1973.
2. Maintain a high quality fishing experience for the anglers.
3. Allow angler use according to National Park Service policy, and within limits necessary to perpetuate fish populations and riparian vegetation.

Attainment of these objectives requires that angler harvests do not alter natural replenishment rates or age structure, or significantly reduce numbers, biomass, or sizes, from those occurring in unfished populations. This management policy necessitates both a philosophical and literal distinction between recreational angling and removing fish for cosumption.

Protective policies of the National Park Service that have prevented significant degradation of the aquatic habitat have also restricted the use of maintenance stocking in park waters. Given these constraints, special angling regulations have become the primary means to accomplish park fishery objectives.

Regulations used to protect fish and maintain angling quality have included manipulating season dates, bait and terminal gear restrictions, and the use of creel limits (including catch-and-release).

Of the 147 lakes within Rocky Mountain National Park, only 42 lakes are capable of maintaining reproducing fish populations due to cold water

temperature or lack of spawning habitat. Of the 42 lakes that sustain reproducing fish populations, 11 lakes and 11 streams contain pure populations of native trout species. The majority of these native fish populations were restored since 1973, under the Endangered Species Act.

Because of the sensitivity of these native fish populations, the park staff must be able to respond rapidly to changes that occur in a dynamic ecosystem resulting from human activities and natural events.

The park's fishing regulations are currently codified in 36 CFR 7.7(a). In order for even minor changes to be made in these regulations through normal rulemaking procedures, approximately eight months are required. This process involves extensive review at various Government levels and includes a period set aside for public review and comment.

The proposed change in the development of the park's fishing regulations would allow the Superintendent the ability to make routine changes in the regulations locally, in a timely manner, using discretionary authority provided by National Park Service general regulations in 36 CFR 1.5. This procedure will afford greater protection to the park's fishery resources, be more responsive to public needs and allow park managers greater flexibility to respond to specific situations.

Public notice of restrictions established by the Superintendent will be provided through signs, maps, brochures, newspaper notices or other appropriate methods as required by 36 CFR 1.7. Detailed information pertaining to the nature and extent of fishing restrictions will be readily available to anglers in the park. Permanent or otherwise significant closures of park waters (such as the ones listed in paragraph (a)(3) of this rulemaking) are subject to the rulemaking requirements of 36 CFR 1.5(b) and will continue to be codified in 36 CFR 7.7.

The park's fishing regulations will be reviewed at least annually by park staff and the U.S. Fish and Wildlife Service, and recommendations for changes, if any, will be made to the Superintendent.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

Drafting Information

The primary authors of these regulations are David Essex, Chief Park Ranger, and David Stevens, Research Biologist, both of Rocky Mountain National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public angling to the extent of impacting the aquatic ecosystem;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By revising § 7.7(a) to read as follows:

§ 7.7 Rocky Mountain National Park.

(a) *Fishing.*

(1) Fishing restrictions, based on management objectives described in the park's Resources Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, on any activity pertaining to fishing, including, but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, size, creel, and possession limits.

(3) Fishing in closed waters or violating a condition or restriction established by the Superintendent is prohibited.

* * * * *

Date: June 24, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–18498 Filed 8–15–88; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3429-7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Duro Textile Printers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implemention Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision defines and imposes reasonably available control technology (RACT) for Duro Textile Printers (Duro) located in Fall River, Massachusetts. This revision is necessary to limit volatile organic compound (VOC) emissions from this source. The intended effect of this action is to propose approval of a source-specific RACT determination made by the Commonwealth in accordance with commitments specified in its ozone attainment plan approved by EPA on November 9, 1983 (48 FR 51480). This action is being taken in accordance with section 110 of the Clean Air Act.

DATE: Comments must be received on or before September 15, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, EPA Region I, JFK Federal Building, Room 2311, Boston, MA 02203. Copies of the State submittal and EPA's Technical Support Document for this proposed action are available during normal business hours at the Environmental Protection Agency, Region I, JFK Federal Building, Room 2311, Boston MA 02203; and the Division of Air Quality Control, Department of Environmental Quality Engineering, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565–3248; FTS 835–3248.

SUPPLEMENTARY INFORMATION: On June 29, 1987, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted proposed revisions to EPA including a proposed Plan Approval between the DEQE and Duro for incorporation into Massachusetts' SIP. The proposed Plan Approval establishes and imposes RACT to control VOC emissions from Duro. RACT must be defined for Duro under Massachusetts SIP Rule 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)." Massachusetts Rule 310 CMR 7.18(17) requires the DEQE to impose RACT requirements on otherwise unregulated stationary sources of VOC with potential emissions greater than 100 tons per year. EPA approved Rule 310 CMR 7.18(17) on November 9, 1983 (48 FR 51480) as part of Massachusetts' Ozone Attainment Plan. That approval stipulated that all RACT determinations made under this rule would be submitted to EPA as source-specific SIP revisions.

Massachusetts does not have a regulation specifically for Duro's fabric printing operations. The Massachusetts regulation for fabric coating only applies to facilities that apply a uniform layer of material across the entire width of the fabric substrate. Duro prints fabric by applying its print pastes with a series of application rolls, each with partial coverage. Therefore, the SIP's fabric coating regulation does not apply. Additionally, the SIP's regulation for graphics arts sources does not apply to Duro because the regulation applies specifically to flexographic, packaging rotogravure, and publication rotogravure printing. The processes that Duro utilizes, roller printing and rotary screen printing, are significantly different from those processes.

The DEQE has proposed emission limitations in its proposed Plan Approval which enforceably reduce Duro's VOC emissions by 74 percent. In 1980, the baseline year of the design of Massachusetts ozone attainment plan, Duro's emissions were 149 tons per year (TPY). The proposed Plan Approval enforceably limits Duro's VOC emissions to 0.156 tons per day (39 TPY). In addition, prior to final rulemaking by EPA, the DEQE must amend its Plan Approval to limit the VOC content of Duro's coating inks to a level no higher than those coating inks currently used by the company (at the time of the proposed Plan Approval). Consequently, this Plan Approval will then include a pounds of VOC per unit of volume of ink as well as a limit on overall emissions of VOC.

In order to determine if a 74 percent reduction in VOC emissions represents a reasonable level of control for Duro, EPA's Control Technology Guideline (CTG) Documents for source categories whose VOC emitting processes are comparable to that of fabric printing were consulted. The main difference between graphics arts printing and fabric printing is in the substrates actually printed. For this reason, the emission limits suggested in the EPA publication entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography," (EPA–450/2–78–033) could be reasonable for some types of fabric printing. The fabric printing done by rollers at Duro would be most similar to rotogravure printing because, as in the definition of rotogravure", the images being printed are recessed, rather than raised, as in flexographic printing. The CTG for graphic arts identifies two types of rotogravure printing, packaging rotogravure and publication rotogravure. These two types differ as to the type of substrates printed. While neither type of rotogravure printing specifically includes fabric printing, packaging rotogravure products (detergent cartons, etc.) are slightly more similar in function to printed fabrics than are publication rotogravure products (magazines, etc.) The CTG recommends a 65 percent overall reduction in VOC emissions from packaging rotogravure and a 75 percent overall reduction for publication rotogravure when using add-on controls. In addition to roller printers, Duro uses rotary screen printers for the majority of its printing operations. Rotary screen printing is not similar to the processes covered by the graphics arts CTG. Despite this fact, it is instructive that none of the Graphic Arts CTG suggests greater than a 75 percent overall reduction for any printing operation. Therefore in light of reductions recommended in CTG's for other printing processes. A reduction on the order of 75 percent would be reasonable for rotary screen printing operations.

The DEQE has determined that a 74 percent reduction for Duro's entire facility constitutes RACT. This is consistent with the CTG anticipated reductions from graphic arts sources. To achieve this reduction on a daily basis, the DEQE has limited Duro's emissions to 0.156 tons per day for each day of its 250 days of operation per year (39 TPY total). In addition, prior to final rulemaking by EPA, the DEQE must amend its Plan Approval to include a VOC emission limit for each of Duro's inks (i.e., pounds of VOC per pound of solids). Each of these inks must be limited to a specific VOC content no higher than its current VOC content (at the time of the proposed Plan Approval). The DEQE's formal SIP submittal must also include justification that the emission limit in pounds of VOC per pound of solids for each ink represents RACT (e.g., present Duro's attempts at reformulation or substitution to inks with a lower VOC content). The DEQE submitted its proposed Plan Approval as a source-specific SIP revision to fulfill the commitment made in the Massachusetts ozone attainment plan to determine and impose RACT on non-CTG sources with the potential emissions greater than 100 TPY.

EPA is proposing to approve this Massachusetts State Implementation Plan revision for Duro, which was submitted on June 29, 1987, and is soliciting public comments on issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

These revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made in areas other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Massachusetts and submitted to EPA for incorporation into the SIP. "Parallel processing," it is estimated, will reduce the time necessary for final approval of these SIP revisions by 3 to 4 months.

Proposed Action

EPA is proposing to approve a proposed Plan Approval submitted by the DEQE as a SIP revision request for Duro Textile Printing in Fall River, Massachusetts. The proposed Plan Approval limits Duro's emissions to 0.156 tons VOC per day to be met on each day of its 250 days of operation (a total of 39 tons per year). EPA's final approval is contingent upon DEQE's amending the Plan Approval to require that Duro use coating inks with a VOC content no higher than those inks currently in use at the facility.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: September 16, 1987.

Michael R. Deland,

Regional Administrator, Region I.

Editorial Note: This document was received at the office of the Federal Register August 11, 1988.

[FR Doc. 88–18453 Filed 8–15–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 145

[FRL–3427–9]

Environmental Protection Agency and Nebraska Department of Environmental Control Underground Injection Control Program Aquifer Exemption Proposal

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing; correction of date.

SUMMARY: The purpose of this notice is to correct the date of the public hearing for the Chadron Aquifer Exemption request. On July 21, 1988 a public hearing date of August 22, 1988 was mistakenly published (53 FR 27534); that date will now read August 23, 1988.

DATE: The hearing date is August 23, 1988.

ADDRESSES: Comments and requests to testify should be mailed to Angela Ludwig, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the NDEC Aquifer Exemption Request and supporting documents are available, during the comment period, for the review between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following locations:

Environmental Protection Agency, Region VII, Water Division, 726 Minnestoa Avenue, Kansas City, Kansas 66101. Phone: (913) 236–2815

Nebraska Department of Environmental Control, 301 Centennial Mall, South, Lincoln, Nebraska 68509, Phone: (402) 471–2186

Nebraska Department of Environmental Control, Chadron Office–Room 112, Chadron, Nebraska 69337, (308) 432–2550

Nebraska Oil and Gas Conservation Commission, 1135 Jackson, Sidney, Nebraska 69162. Phone: (308) 254–4595

The hearing will be held on August 23, 1988 at 7:00 p.m., in the Howard M. Dodd Hall, Highway 20, P.O. 392, Fort Robinson State Park, Crawford, Nebraska.

FOR FURTHER INFORMATION CONTACT: Angela Ludwig, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, phone (913) 236–2815. Comments should also be sent to this address.

Date: August 5, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88–18456 Filed 8–15–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 571

[Docket No. 88–17]

Interpretations and Statements of Policy

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 88–17 and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due August 26, 1988.

ADDRESS: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 88–17 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 88–17, the Commission proposes an interpretive rule stating that common carriers or conferences may not require the production of a Department of Justice Business Review Letter prior to or as part of a service contract negotiation process with a shippers' association. The rule is intended to help eliminate unnecessary impediments to the operation of shippers' associations and the negotiation of service contracts.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–18435 Filed 8–15–88; 8:45 am]

BILLING CODE 6730–01–M

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46 CFR Part 581

[Docket No. 88–16]

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 88–17 and found that its resolution of this

proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due August 26, 1988.

ADDRESS: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 88–16 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and that preparation of an environmental impact statement is not required.

In Docket No. 88–16, the Commission proposes to amend its service contract regulations to permit the correction of clerical or administrative errors in a service contract's essential terms.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–18436 Filed 8–15–88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 94

[PR Docket No. 88–191]

Order Granting Extension of Time

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order granting extension of time.

SUMMARY: The Private Radio Bureau has adopted an Order granting the Motion for Extension of Time to file reply comments filed by Harris Corporation in this proceeding concerning point-to-multipoint use and the filing of applications in the Private Operational Fixed Microwave Service.

DATE: Reply comment deadline extended until August 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is the text of the Bureau's Order in PR Docket No. 88–191, adopted July 28, 1988.

The text of this Bureau decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554 and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

1. On April 21, 1988, the Commission adopted a *Notice of Proposed Rule Making (Notice)* in the above-captioned matter (53 FR 23132 (June 20, 1988). Comments on the *Notice* were due July 18, 1988, and reply comments are due on or before August 2, 1988.

2. On July 22, 1988, The Community Telecommunications Network (CTN) filed Motion to Accept Late-Filed Comments. In order to allow all interested parties to have the full fifteen days to respond to these comments, The Harris Corporation (Harris) also requested the Commission extend the time for filing reply comments. Harris contends that two weeks does not allow sufficient time for thoroughly analyzing the comments. It asks that the time for filing reply comments be extended to August 16, 1988.

3. It appears that the public interest would be served by granting an additional period in order to afford interested parties a full opportunity to respond to all the comments, including CTN's. Therefore, we will extend the reply comment deadline until August 16, 1988.

4. Accordingly, it is ordered, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties have until August 16, 1988, to file reply comments in this proceeding.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 88–18009 Filed 8–15–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86.144]

Review of Technical Parameters for FM Allocation Rules; FM Broadcast Stations

AGENCY: Federal Communication Commission.

ACTION: Proposed rule: extension of comment period.

SUMMARY: This action, in response to a request filed jointly by Peter and John Fellowship, Inc. and Key Broadcasting Corporation, extends by two weeks the reply comment period for the Further Notice of Proposed Rule Making in MM Docket 86–144. That further notice (53 FR 10259, March 30, 1988) proposes revised minimum distance separation requirements for FM broadcast stations on IF-related channels.

DATES: Reply comments are due by August 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order Granting Request for Time to File Reply Comments in MM Docket 86–144, adopted on July 27, 1988 by the Chief, Mass Media Bureau under delegated authority and released on August 8, 1988. The full text is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88–18488 Filed 8–15–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88–380, RM–6264]

Television Broadcasting Services; Jonesboro, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Outlaw Broadcasting, seeking the allotment of UHF television Channel 48 to Jonesboro, Arkansas, as that community's second

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local commercial television broadcast service. Reference coordinates utilized for this proposal are 35–50–12 and 90–42–24.

Although the Commission has imposed a freeze on new TV allotments in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby.

DATES: Comments must be filed on or before September 29, 1988, and reply comments on or before October 14, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, intersted parties should serve the petitioner, as follows: Outlaw Broadcasting, c/o Jeffrey Pylant, 6 Keyser Woods Court, Baltimore, MD 21208.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–380, adopted July 1, 1988, and released August 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Meida Bureau.

[FR Doc. 88–18489 Filed 8–15–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–386, RM–6413]

Radio Broadcasting Services; Orlando, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Urban Broadcasting Corporation requesting the substitution of Channel 255C2 for Channel 255A at Orlando, Florida, and the modification of its permit for a new station there to specify the higher powered channel. Channel 255C2 can be allotted to Orlando in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) west to avoid a shortspacing to Station WKGR, Channel 254C, Fort Pierce, Florida. The coordinates for this allotment are North Latitude 28–33–00 and West Longitude 81–25–30. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel of Orlando nor require the petitioner to demonstrate the availability of an additional equivalent channel for use by other interested parties.

DATES: Comments must be filed on or before September 26, 1988, and reply comments on or before October 11, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–386, adopted July 14, 1988, and released August 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18490 Filed 8–15–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–379, RM–6354]

Radio Broadcasting Services; Havana and Madison, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Ed Winton, licensee of Stations WMLO, Channel 285A, Havana, Florida, and WIMV, Channel 285A, Madison, Florida, proposing the substitution of Channel 285C2 for Channel 285A at Havana and the substitution of Channel 274A for Channel 285A at Madison. Channel 285C2 can be allotted to Havana with a site restriction of 15.3 kilometers (9.5 miles) east to avoid a short-spacing to Station WOAB, Channel 285A, Ozark, Alabama, and to unused Channel 287A at Chattahoochee, Florida. Channel 274A can be allotted to Madison in compliance with the Commission's minimum distance separation requirements without a site restriction. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 285C2 at Havana will not be accepted. The procedures outlined in § 1.420 do not apply to the change of channel at Madison since no upgrade in facilities is contemplated.

DATES: Comments must be filed on or before September 29, 1988, and reply comments on or before October 14, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: Eugene T. Smith, Esq., 715 G Street SE., Washington, DC 20003 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–379, adopted July 1, 1988, and released August 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18491 Filed 8–15–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking on Motorcycle Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: NHTSA denies a petition for rulemaking from Mark E. Goodson requesting an amendment of the Federal motor vehicle safety standard on motorcycle brake systems. The petition asked that cotter pins, safety wires and castle or lock nuts be required for the rear brake assembly of motorcycles because of an accident that allegedly occured when the absence of the adjusting nut prevented the brake pedal from activating the drum brake shoes. The agency is denying the petition because Standard No. 122 is already intended to cover the type of failure reported, and the agency's records show only one similar accident over the past 12 years.

FOR FURTHER INFORMATION CONTACT: Scott Shadle, Office of Rulemaking, NHTSA (202–366–5273).

SUPPLEMENTARY INFORMATION: On February 25, 1988, Mark E. Goodson, a professional engineer in Lewisville, Texas, petitioned "to request that FMVSS 123 (sic) be changed so as to increase motorcycle safety". He asked that motorcycles be required to use "a cotter pin, safety wire and castle not (sic) or lock nut" on their rear brake assembly. This would call for an additional fastener to be used as a backup nut to the adjustment nut. Thus, if the adjustment nut came losse, it would not fall off. The adjustment nut with which most motorcycles are equipped has a detent to hold it in place, but nothing more. Mr. Goodson had examined a motorcycle whose dirver was fatally injured because, in his opinion, the adjustment nut was missing which "prevented the brake pedal action from activating the drum brake shoes.".

The agency has conducted a technical review of Mr. Goodson's petition in accordance with 49 CFR 552.6. Standard No. 122 already contains an appropriate performance requirement. A motorcycle is required by paragraph S5.1 to "have either a split service brake system or two independently actuated service brake systems." Paragraph S5.1.1 admonishes that "(f)ailure of any component on a mechanical service brake system shall not result in a lack of braking ability in the other service brake system on the vehicle." Under S5.2, each independently activated service brake system must be capable of stopping the motorcycle in a controllable manner from certain specified speeds in maximum specified distances. The agency believes that these performance requirements are achieving their purpose because a review of its consumer complaint file for the years 1976–88 disclosed only one other reported incident of a rear brake failure on a motorcycle due to the absence of a brake adjusting nut. It appears that many mechanical drum braked vehicles already have additional means of securing the locking nut, and hydraulically applied disc brakes do not use adjusting nuts.

At the end of the technical review, the agency has determined that there is no reasonable possibility that an amendment of the nature requested would be issued at the conclusion of a rulemaking proceeding, and the petition is denied.

(15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on August 10, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–18409 Filed 8–15–88; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 53, No. 158
Tuesday, August 16, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on August 26, 1988, at the Westin Miyako Hotel, 1625 Post Street, San Francisco, California 94115. The propose of the meeting is to plan activities and discuss the upcoming forum on higher education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Debra Hesse or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 8, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–18420 Filed 8–15–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economic and Statistical Affairs

Senior Executive Service; Performance Review Board Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic and Statistical Affairs Senior Executive Service (SES) Performance Appraisal System:

Joseph F. Caponio
Carol S. Carson
John E. Cremeans
Robert B. Ellert
Lucy A. Falcone
C.L. Kincannon
Frederick T. Knickerbocker
Daniel B. Levine
Martin Marimont
Jerome A. Mark
Harry A. Scarr
Charles A. Waite
Katherine K. Wallman
Allan H. Young

Edward A. McCaw,

Executive Secretary, Economic and Statistical Affairs, Performance Review Board.

[FR Doc. 88–18425 Filed 8–15–88; 8:45 am]

BILLING CODE 3510–SS–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, September 7, 1988, at 8 a.m., at the Radisson Hotel Wilmington, 700 King Street, Wilmington, DE (telephone: 302–655–0400), to adopt 1989 quotas for surf clams, ocean quahogs, squid, mackerel and butterfish, and to discuss other fishery management and administrative matters. The public meeting will adjourn on the afternoon of September 8 but may be lengthened or shortened depending upon progress of the agenda. The Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

For further information, contact John C. Bryson Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901–6790; telephone: (302) 674–2331.

Date: August 11, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–18514 Filed 8–15–88; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Representatives of the non-Indian commercial and recreational fisheries north of Cape Falcon, who serve on the Pacific Fishery Management Council's Salmon Advisory Subpanel, will convene a public meeting on August 24, 1988, at 10 a.m., at the Pacific Council's chambers (address below). The purpose of the public meeting is to refine the details of ocean salmon harvest allocation alternatives which may replace the current framework amendment allocation schedule. The Council will review the allocation alternatives at its September 21–22, 1988, meeting prior to approving the alternatives for public review. Oral and written statements pertaining to the non-Indian salmon harvest allocation north of Cape Falcon will be accepted at appropriate times during the August 24 public meeting.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: August 10, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–18515 Filed 8–15–88; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Application for Permit: Douglas E. Grout, John I. Nelson (P422)

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

Applicant: Douglas E. Grout, John I. Nelson, 34 Bridge Street, Concord, New Hampshire 03301.

Type of Permit: Scientific Research.

Name and Number of Animals: shortnose sturgeon (*Acipenser brevirostrum*) 100.

Type of Take: Sturgeon will be captured using gill nets for a tag/release study. There is the possibility of recapture of individuals as a part of the program to obtain information on movements of the species within the Great Bay estuary and the New Hampshire coastal area.

Location of Activity: Great Bay estuary and coastal New Hampshire over a 3-year period.

Written data or views or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Ave., NW., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930.

Date: August 10, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-18471 Filed 8-15-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the Socialist Republic of Romania

August 11, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 18, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6497. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: At the request of the Socialist Republic of Romania, the U.S. Government has agreed to increase the current designated consultation levels for Categories 315 and 361. As a result, the limits for Categories 315 and 361, which are currently filled, will re-open.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 11542, published on April 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 11, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 4, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on August 18, 1988, the directive of April 4, 1988 is being amended to increase the current limits for cotton textile products in the following categories:

Category:	Amended 12-mo. limit [1]
315	1,750,000 square yards.
361	565,000 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-18468 Filed 8-15-88; 8:45 am]

BILLING CODE 3510-DR-M

Textile and Apparel Categories; Change in Visa Arrangements to Coincide With the Onset of the New Category System; Correction

August 11, 1988.

In the letter to the Commissioner of Customs under the "Country Specific Section" for Korea and Taiwan, add TSUSA number 355.3500 to footnote 1 for Category 229-P (see 52 FR 49189, published on December 30, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-18468 Filed 8-15-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Request for Bilateral Textile Consultations With the Government of Costa Rica

August 11, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION: On July 28, 1988, the United States Government requested the Government of Coasta Rica to enter into consultations concerning exports to the United States of cotton trousers, slacks and shorts in Categories 347/348, produced or manufactured in Costa Rica.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Costa Rica, the Committee for the Implementation of Textile Agreements may later establsh a limit for the entry and withdrawal from

warehouse for consumption of cotton trousers, slacks and shorts in Categories 347/348, produced or manufactured in Costa Rica and exported to the United States during the twelve-month period which began on July 28, 1988 and extends through July 27, 1989, at a level of 912,767 dozen.

A summary market statement for these categories follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 347/348, or to comment on domestic production or availability of textile products included in the categories, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consulations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs functions of the United States."

The United States remains committed to finding a solution concerning Categories 347/348. Should such a solution be reached in consultations with the Government of Costa Rica, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Costa Rica—Market Statement

Men's and Boys', Women's and Girls' Cotton Trousers, Slacks and Shorts (Category 347/348)

July 1988.

Summary and Conclusions

U.S. imports of cotton trousers, slacks and shorts (Category 347/348) from Costa Rica reached 944,596 dozen during the year ending May 1988, 32 percent above the 717,201 dozen imported a year earlier. Cotton trouser, slack and short imports from Costa Rica were 837,816 dozen in 1987 and 599,668 dozen in 1986. During the first five months of 1988, imports of cotton trousers, slacks and shorts (Category 347/348) from Costa Rica reached 464,146 dozen, 30 percent above the 357,366 dozen imported during the same period of 1987.

The U.S. market for cotton trousers, slacks and shorts (Category 347/348) has been disrupted by imports. The sharp and substantial increase in imports from Costa Rica is contributing to this disruption.

U.S. Production and Market Share

Between 1982 and 1987, U.S. production of cotton trousers, slacks and shorts (Category 347/348) fluctuated within a relatively narrow range increasing in one year and declining in the next year. The compound annual rate of growth during this five year period was less than one percent. In 1987, U.S. production declined by two percent below the 1986 level. In contrast, U.S. imports of cotton trousers, slacks, and shorts increased in every year since 1982, increasing at a compound annual rate of 17 percent. As a result, U.S. manufacturers lost market share in every year. Their share of the market fell from 75 percent in 1982 to 59 percent in 1987, a drop of 16 percentage points.

U.S. Imports and Import Penetration

U.S. imports of cotton trousers, slacks and shorts (Category 347/348) more than doubled between 1982 and 1987, increasing from 13,133 thousand dozen in 1982 to 29,132 thousand dozen in 1987. During the first five months of 1988, imports of cotton trousers, slacks and shorts (Category 347/348) reached 15,011 thousand dozen, 5 percent above the level imported during the same period of 1987. The ratio of imports to domestic production more than doubled, rising from 33 percent in 1982 to 70 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 75 percent of Category 347/348 imports from Costa Rica during the first five months of 1988 entered under TSUSA numbers 381.6210—men's and boys' cotton woven shorts, not ornamented; 381.6240—men's cotton woven trousers and slacks except those of denim or corduroy, not ornamented; 384.4724—women's and girls' cotton woven shorts, not ornamented; and 384.4765—women's cotton woven trousers and slacks except those of denim, corduroy or velveteen, not ornamented. These garments entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable garments.

[FR Doc. 88-18467 Filed 8-15-88; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of a short-term fixed commitment contract for the supply of highly enriched uranium (93.15 percent uranium-235) for use in research reactors within the European Community, and for low-enriched uranium (19.75 percent uranium-235) for use in research reactors within the European Community. Approximately 35,000 separative work units are involved under Contract No. DE-SCO5-88UEO 7119.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 11, 1988.

George J. Bradley, Jr.,

Deputy Principal Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-18503 Filed 8-15-88; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(1), it intends to renew on a restricted eligibility basis a grant to the Council of Great Lakes Governors (CGLG) to organize and carry out a Regional Biomass Program in the Great Lakes Area of the Northern Tier States.

The grant is being renewed for a 1-year period beginning September 1, 1988. The estimated amount is $500,000.

Procurement Request No.: 05-880R21390.001.

Project Scope: This grant renewal is to continue a Regional Biomass Program in the Great Lakes Area of the Northern Tier States. The primary purpose is to implement biomass research and development technology utilization, and technology transfer on a regional basis in a manner which will maximize the participation of the public and private sectors of each state. CGLG has the unique capability to equally represent all of the states in the Great Lakes subregion and involve the appropriate private and public interest groups in the states. CGLG is an existing, regionally organized consortium with background experience in management of similar activities. Eligiblity for this study is, therefore, restricted to CGLG.

FOR FURTHER INFORMATION CONTACT: Lynda H. McLaren, Energy Technology Branch, Energy Programs Division, U.S. Department of Energy, Oak Ridge, TN 37831-8611, (615-576-1763).

Issued in Oak Ridge, Tennessee, on August 5, 1988.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 88-18501 Filed 8-15-88; 8:45 am]

BILLING CODE 6450-01-M

Super-Clean Coal-Water Slurry (SCCWS) Combustion Testing in Oil-Designed Industrial Boilers

AGENCY: Department of Energy.

ACTION: Program Opportunity Notice No. DE-PN22-88PC88697.

SUMMARY: The U.S. Department of Energy, Pittsburgh Energy Technology Center intends to issue a Program Opportunity Notice (PON) soliciting participants and potential host sites for a demonstration designed to show that SCCWs can effectively replace oil distillate as a fuel in oil-designed industrial boilers. The host sites for the demonstrations must be located in the U.S. and use SCCWs derived from U.S. coals.

This cost shared effort will be international in scope. The U.S. Department of Energy has signed a Memorandum of Understanding (MOU) with Government of the Italian Republic, a leading importer of U.S. coal. Italy and the U.S Department of Energy have agreed on a bilateral program to demonstrate that U.S. coals can be prepared into SCCWs that can be used in an environmentally and economically acceptable manner in Italian and U.S. oil-designed industrial boilers. Each country will develop and direct its respective demonstration program and the data/information generated will be shared.

It is anticipated that a minimum of 20,000 tons of SCCWs, produced from U.S. coals, will be apportioned between the two countries and fired selected host sites boilers of multiple sizes and types. This PON will specify requirements for planning, host site preparation, SCCWs performance and processing, and test burns in the host site's oil-designated industrial boiler.

It is anticipated that multiple awards in the form of cooperative agreements will be made from DOE funds totalling approximately three million dollars. Substantial cost sharing is required from the private sector.

All responsible individuals, corporations, non-profit organizations, educational institutions and state or local governments any submit an application for consideration.

DATES: This solicitation is expected to be available to interested parties on or about October 20, 1988. Applications are due approximately December 6, 1988.

Contact: Potential applicants desiring to received a copy of this solicitation should provide a written request to: Dale A. Siciliano, Acquisition and Assistance Division, U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236.

Gregory J. Kawalkin,

Acting Director, Acquisition and Assistant Division Pittsburgh Energy Technology Center.

[FR Doc. 88-18505 Filed 8-15-88; 8:45 am]

BILLING CODE 6450-01-M

Senior Executive Service; Performance Review Board

ACTION: Amendment to the SES Performance Review Board Appointments.

SUMMARY: This notice lists the additional members to serve on the Performance Review Board standing register for the Department of Energy. This supplements the listings published in 52-FR 32165, on August 26, 1987, and 52-FR 34980, on September 16, 1987.

EFFECTIVE DATE: These appointments are effective as of July 29, 1988.

The additional names for the SES Performance Review Board are as follows:

Ronald Hanson
John Robertson
Timothy Crawford
Edward Cumesty
Victor Alessi
William Dorsey
David Nelson
Henry Gill
J. Phillip Hamric
Peter Brush
Guy Caruso
Charles Croxton
David Frederickson
George Haymond
John Bennett
Charles Brown, Jr.
Grover Smithwick
Charles Teclaw
Jerry Thompson
Robert Rosselli
Jerome Saltzman
Thomas Heenan

Issued in Washington, DC, on August 10, 1988.

Harry L. Peebles,

Executive Secretary, Executive Personnel Board.

[FR Doc. 88-18504 Filed 8-15-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-31-NG]

Great Lakes Gas Transmission Co.; Order Amending Authorization To Import and Export Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Amending Authorization To Import and Export Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Great Lakes Gas Transmission Company (Great

Lakes) amend authorization to import and export natural gas. The order issued in ERA Docket No. 88–31–NG authorizes Great Lakes to increase the volumes of natural gas it presently imports and exports under a transportation service agreement with TransCanada Pipelines Limited from 887,500 Mcf per day to 925,000 Mcf per day for a term ending November 1, 2005.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 10, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–18506 Filed 8–15–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF87–483–001 et al.]

AES Barbers Point, Inc., et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. AES Barbers Point, Inc.

[Docket No. QF87–483–001]

August 8, 1988

On July 15, AES Barbers Points, Inc., c/o Paul T. Hanrahan, 1925 North Lynn Street, Suite 1200, Arlington, Virginia 22209 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oahu, Hawaii. The facility will consist of two circulating fluidized bed steam generators and one extraction/condensing steam turbine-generator. The thermal energy recovered from the facility will be used for heating oil tanks in a nearby refinery. The net electric power production capacity will be 146 megawatts. The primary energy source will be coal. Construction of the facility will begin on or about October 1, 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. National Steel Corporation

[Docket No. QF88–479–000]

August 9, 1988.

On July 29, 1988, National Steel Corporation (Applicant) of Route 12, Portage, Indiana 46368, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility will be located near Applicant's existing facility in Lake County, Indiana. The facility will consist of a combustion turbine generator, a waste heat recovery steam generator and a steam turbine generator. The thermal output of the facility, in the form of steam, will be used for steel plant processes and waste water treatment. The maximum net electric power production capacity of the facility will be 22.26 MW. The primary energy source will be natural gas. The facility is expected to begin operation during the first quarter of 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Coso Energy Developers

[Docket No. QF86–590–001]

August 10, 1988.

On July 28, 1988, Coso Energy Developers (Applicant), c/o California Energy Company, Inc., 601 California Street, San Francisco, California 94108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The geothermal small power production facility will be located on the Naval Weapons Center of the United States Navy at China Lake, near Ridgecrest, California. The facility will consist of three turbine generating units. The primary energy source will be geothermal fluids. The original application was filed by California Energy Company, Inc., and was granted on August 5, 1986 (37 FERC ¶ 62,149).

The recertification is requested due to transfer of ownership from Coso Geothermal Company to the applicant; the change of the facility's location from one site to two sites; the inclusion of a 28.2-mile 220 kV transmission line and interconnection facilities; and decrease in the net electric power production capacity of the facility from 79.5 MW to 70.4 MW. All other facility's characteristics remain unchanged.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18442 Filed 8–15–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–128–002

National Fuel Gas Supply Corp.; Compliance Filing

August 11, 1988.

Take notice that on August 4, 1988, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 69
Third Revised Sheet No. 70
Second Revised Sheet No. 71
Second Revised Sheet No. 72

National states that the purpose of this filing is to comply with the Commission's order issued in Docket No. RP88–128–000 on May 27, 1988.

National states that this filing eliminates interruptible sales from its take-or-pay calculations when allocating take-or-pay costs passed through by Texas Eastern Transmission Corporation (Texas Eastern).

National states that its proposed revised tariff sheets reflect additional take-or-pay costs allocated to it by Texas Eastern under the Commission's order issued June 23, 1988, in Docket No. RP88–80–004. These additional costs are said to result from the Commission's order issued on May 16, 1988, in Docket Nos. RP88–27–005, *et al.*, which required

United Gas Pipe Line Company to remove interruptible sales from its take-or-pay calculations.

National further states that none of these take-or-pay costs have been allocated to non-jurisdictional sales customers since National has not and is not providing sales servicer to non-jurisdictional customers.

National states that it corrected its original filing to allocate a minor portion of such costs to Eastern Natural Gas Company, which is the sucessor in interest to the Ohio markets of National Fuel Gas Distribution Corporation.

The proposed effective date of the tariff sheets listed above is May 1, 1988.

Copies of National's filing were served on National's jurisdictional customers and on the interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18443 Filed 8-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-85-001]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

August 11, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 29, 1988 tendered for filing Twelfth Revised Sheet Nos. 2 through 38 to its FERC Gas Tariff, Original Volume No. 1-A.

Panhandle states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Village of Pawnee, Illinois, et al.* vs. *Panhandle Eastern Pipe Line Company*, in the subject docket. Under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Panhandle changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. Twelfth Revised Sheet Nos. 2 through 38 reflect these adjustments in the monthly based period for each Small Customer. Panhandle proposes an effective date of September 1, 1988.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18444 Filed 5-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-81-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 11, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 3, 1988 tendered for filing as part of its FERC Gas Tariff, Fifty Revised Volume No. 1, six copies each of the following tariff sheets:

Second Revised Sheet No. 306
Second Revised Sheet No. 307
First Revised Sheet No. 330A
Second Revised Sheet No. 331
Second Revised Sheet No. 467
Fourth Revised Sheet Nos. 490-522

Texas Eastern State that this filing makes the revisions to Texas Eastern's March 22, 1988 tariff filing as required by the Commission's July 19, 1988 Order issued in Docket No. RP88-81-002 *et al.*

Texas Eastern states the above tariff sheets reflect its July 14, 1988 filing, made pursuant to Order No. 497, issued June 1, 1988, which has not yet been approved by the Commission. In the event the sheets filed on July 14, 1988 are not approved or are revised in any way, Texas Eastern will refile the above listed tariff sheets to reflect the final determination on Texas Eastern's July 14, 1988 filing.

Texas Eastern states that the proposed effective date of the tariff sheets listed above is July 19, 1988, the date of the Commission's order issued in this proceeding.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all Current Rate Schedule IT-1 shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18445 Filed 5-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-230-000]

Texas Gas Transmission Corp.; Tariff Filing

August 11, 1988.

Take notice that on August 8, 1988, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Original Sheet No. 14D
Original Sheet No. 14E
Original Sheet No. 14F
Original Sheet No. 14G
First Revised Sheet No. 124
Original Sheet No. 125
Original Sheet No. 126

Texas Gas states that the filing is made to reflect the allocation of Tennessee Gas Pipeline Company's take-or-pay demand surcharge to Texas Gas's downstream customers. This filing is consistent with the Commission's proposed Interim Rule and Statement of Policy pursuant to Order No. 500 issued August 7, 1987, which allows "downstreatm pipelines * * * to allocate the fixed take-or-pay charges of upstream pipelines on the same basis as that upon which they are incurred, namely cumulative purchase deficiencies." Texas Gas reserves the righ to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court. The proposed effective date of the tariff sheets listed above is August 1, 1988.

Copies of this filing have been served upon Texas Gas's jurisdictional and nonjurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18446 Filed 5-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-78-002]

Transwestern Pipeline Co.; Tariff Changes

August 11, 1988.

Take notice that on August 8, 1988, Transwestern Pipeline Company (Transwestern) filed Substitute 3rd Revised Sheet No. 30 in compliance with the Order issued on June 24, 1988 in the above-referenced docket which rejected filing of 3rd Revised Sheet No. 30. Transwestern seeks any necessary waivers of the Commission's regulations to permit such tariff sheet to become effective July 11, 1988. Copies of Transwestern's filing were sent to all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to become a party to this proceeding should on or before August 18, 1988 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. Protests will be considered by the Commission in determining the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18447 Filed 8-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-150-002]

Transwestern Pipeline Co.; Tariff Changes

August 11, 1988.

Take notice that on August 5, 1988, Transwestern Pipeline Company (Transwestern) filed in compliance with the Commission Letter Order issued on June 30, 1988 in the above-referenced docket the following revised tariff sheets:

8th Revised Sheet No. 75
8th Revised Sheet No. 76
4th Revised Sheet No. 76B
4th Revised Sheet No. 76C

Transwestern seeks any necessary waivers of the Commission's regulations to permit such tariff sheets to become effective June 1, 1988. Copies of Transwestern's filing were sent to all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to become a party to this proceeding should on or before August 18, 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18448 Filed 8-15-88; 8:45 am]

BILLING CODE 6717-10-M

[Docket No. RP78-86-004]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

August 11, 1988.

Take notice that Trunkline Gas Company (Trunkline) on July 29, 1988 tendered for filing Twelfth Revised Sheet No. 21-C.8 to its FERC Gas Tariff, Original Volume No. 1.

Trunkline states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Kaskaskia Gas Company, et al.* vs. *Trunkline Gas Company*, in the subject docket. Under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual based period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Trunkline changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. Twelfth Revised Sheet No. 21-C.8 reflects these adjustments in the monthly base period for each Small Customer. Trunkline proposes an effective date of September 1, 1988.

Trunkline states that copies of this filing have been served on all customers subject to the tariff sheet and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before August 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18449 Filed 8-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-30-001]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

August 11, 1988.

Take notice that Trunkline Gas Company (Trunkline) on August 5, 1988, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Sixty-Third Revised Sheet No. 3-A

The proposed effective date of the revised tariff sheet is September 1, 1988.

Trunkline states that in conjunction with FERC Staff's review of the instant PGA filing, a further revision to Trunkline's carrying charge surcharges calculation is necessary to reflect the Commission's order dated August 31, 1987 in Docket No. TA87-2-30-000. The revised tariff sheet and supporting schedules filed herewith reflect this revision in the computation of Trunkline's Section 18.3, deferred purchased gas cost carrying charge surcharge.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18450 Filed 8-15-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $860,896 (plus accrued interest) obtained as a result of a Consent Order that the DOE entered into with E.D.G., Inc. (Case No. KEF-0003), a reseller-retailer of petroleum products located in Long Beach, California. The monies will be available to the identified purchasers listed in the Appendix to the Decision and Order.

DATE AND ADRESS: Applications for Refund of a portion of the consent order fund must be filed in duplicate no later than February 1, 1989 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to case number KEF-0003.

FOR FURTHER INFORMATION CONCTACT: Thomas L. Wieker, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a December 17, 1979 consent order between the DOE and E.D.G., Inc. (EDG). That Consent Order settled certain disputes between the firm and the DOE concerning EDG's possible violations of DOE regulations in its sales of gasoline and No. 2 distillates. The Consent Order covers the period August 19, 1973 through September 24, 1976.

The Decision sets forth the procedures and standards that the DOE has formulated to distribute the contents of an escrow account in the amount of $860,896, funded by EDG pursuant to the Consent Order. Under the procedures adopted, the consent order fund will be made available for disbursement to 28 purchasers identified in the Consent Order that were allegedly overcharged by EDG in its sales of gasoline and No. 2 distillates. These customers and their respective overcharge amounts are listed in the Appendix of the Decision and Order. The OHA will consider refund applications only from these 28 identified EDG customers. The amount of the refund available to an applicant will be limited to the amount it was allegedly overcharged by EDG according to the Consent Order.

In order to obtain a refund, a claimant must furnish the DOE with evidence that it was injured by the alleged overcharges. However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms that file refund claims in amounts of $5,000 or less. The specific requirements for proving injury are set forth in the Decision and Order.

Applications for Refund must be postmarked no later than February 1, 1989. Refund applicants must file two copies of their submission. All applications will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: August 9, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

August 9, 1988.

Name of Firm: E.D.G., Inc.

Date of Filing: October 16, 1985.

Case Number: KEF-0003.

On October 16, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving E.D.G., Inc., (EDG). 10 CFR Part 205, Subpart V. This Decision and Order sets forth the procedures that the OHA has formulated to govern the distribution of the EDG settlement fund.

I. Background

EDG was a "reseller-retailer" of gasoline and no. 2 distillates as that term was defined in 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firm's pricing practices during the period August 19, 1973 through September 24, 1976 (the consent order period), the ERA alleged that EDG overcharged its customers in its sales of gasoline and

no. 2 distillates.[1] In order to settle all claims and disputes between EDG and the DOE, the two parties entered into a consent order that became final on December 17, 1979. The Consent Order covers EDG's sales of motor gasoline and no. 2 distillates during the consent order period.

This Decision and Order concerns the distribution of $945,524, plus accrued interest, that EDG remitted to the DOE for direct restitution to 29 of its identified reseller-retailer customers. *See* EDG Consent Order, 44 FR 73140 (December 17, 1979).[2] Appendix D of the EDG Consent Order, which is attached as an appendix to this Decision and Order, sets forth the names of these EDG purchasers and the amount that each customer was allegedly overcharged by EDG.[3] Accordingly, the potential refund claimants in this proceeding are the reseller-retailer customers listed in the Appendix to this Decision and Order.[4]

On March 16, 1988, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the settlement fund. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments were solicited. 53 FR 9691 (March 24, 1988). In addition, copies of the PD&O were mailed to the 28 potential claimants identified in the Appendix to this Decision and Order.[5] We received comments concerning our proposed procedures from Al-Sal Oil Company, Inc. (Al-Sal), Anco Oil Company (Anco), and Energy Refunds, Inc. of Hardin, Kentucky (ERI). These comments will be addressed in our discussion of the final refund procedures to be adopted in this proceeding.

II. Refund Procedures

As indicated in the PD&O, the EDG customers listed in the Appendix to this Decision and Order constitute a finite set of potential refund claimants. We will therefore consider refund applications *only* from these customers. Furthermore, each claimant's maximum refund in this proceeding will be limited to the amount listed next to its name in the Appendix. We recognize that any eligible firm could have been overcharged in amounts greater than the overcharges specified in the Appendix to this Decision and Order. Nonetheless, an eligible firm may not receive a refund in excess of the amount specified in the Appendix. As indicated above, the Appendix to this Decision and Order is a copy of Appendix D to the Consent Order, showing the amounts collected by the ERA with respect to EDG's transactions with given customers. it would simply be illogical to permit an applicant to receive a refund that exceeds the amount that the ERA collected with respect to the consent order firm's transactions with that applicant. Moreover, it would be inequitable to permit such a refund, because it would deplete the consent order fund at the expense of other parties entitled to direct and indirect restitution from the fund. Accordingly, on the grounds of both logic and equity, an eligible firm's maximum refund will be limited to the amount specified for that firm in the Appendix.

(A) Determination of Injury

The allocation of potential refund amounts to claimants is only the first step in the distribution process. In order to receive a refund, an applicant must demonstrate that it did not pass on the alleged overcharges to its customers during the consent order period. *See, e.g., Office of Enforcement,* 8 DOE ¶82,597 at 85,396 (1981). As we have done in many prior refund cases, we are adopting specific injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from providing that they were injured by EDG's alleged overcharges. We will discuss these presumptions in Section II(A)(1) below.

(1) Showing of Injury

In the PD&O, we proposed adopting the presumption that purchasers seeking refunds of $5,000 or less, excluding interest, were injured by EDG's alleged overcharges. We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, any identified purchaser listed in the Appendix to this Decision and Order whose claim is $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of EDG products it purchased during the consent order period. *Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 at 88,210 (1984).

In the PD&O, we also proposed that any identified purchaser whose claim exceeds $5,000 will be required to provide a detailed demonstration of its injury, as well as detailed purchase volume information. Such a claimant will be required to demonstrate that it maintained a bank of unrecovered product costs. In addition, the claimant must show, through market conditions or otherwise, that it did not pass through those increased costs to its customers. Such a showing might be made through a demonstration of a competitive disadvantage, lowered profit margin, decreased market share or depressed sales volume during the period of purchases from EDG. *American Pacific International,* 14 DOE ¶ 85,158 at 88,295 (1986). If a claimant that is eligible for a refund in excess of $5,000 elects not to submit the cost bank and purchase price information described above, it may still apply for a small claims refund of $5,000, plus accrued interest.

In its comments to the PD&O, ERI suggests that we adopt a 40 percent injury presumption for resellers and retailers with "mid-level" claims. Previously used only in large refund proceedings, this mid-level presumption allows resellers and retailers to receive 40 percent of their full volumetric shares up to $50,000, without making detailed demonstrations of injury. *See Gulf Oil Corporation,* 16 DOE ¶ 85,381 (1987) (*Gulf II*). A key purpose of the mid-level injury presumption is to ease the administrative burden placed on the OHA in Subpart V refund proceedings that involve thousands of applicants. We see no reason why it should be

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[1] EDG ceased its petroleum operations on September 24, 1976 and was therefore subject to the regulations only until that date.

[2] On January 9, 1980, EDG remitted $945,524 in principal and $360,859 in interest to the DOE. According to our records, this total of $1,306,383 ($945,524 + $360,859 = $1,306,383), which includes principal and interest accrued thereon, should be treated as principal. *See* March 21, 1988 Memo from the Office of Hearings and Appeals to the Office of the Controller at 1. Any successful claimants in this proceeding will be awarded a pro-rata share of the $1,306,383, plus a pro-rata share of the interest that has accrued on this amount since the date of remittance.

[3] World Oil Company, Inc., one of the 29 EDG customers identified in Appendix D of the EDG Consent Order, waived its right to a refund in the EDG proceeding under a consent order it entered into with the DOE on January 19, 1984. *See* World Consent Order, 49 FR 2290, 2291 (January 19, 1984). Consequently, the DOE transferred the amount designated to World in the EDG proceeding, $445,487 in principal and $412,216 in interest, from the EDG Escrow Account to the World Account. World Oil Company is therefore not eligible to apply for a refund in this proceeding.

[4] The Consent Order states that EDG agreed to refund an additional $54,476, plus accrued interest, to 34 of its end-user customers. *See* Appendix C of EDG Consent Order for a list of these end-user customers and the amounts that they were allegedly overcharged by EDG. These funds have already been distributed pursuant to the Consent Order and therefore are not subject to the present Subpart V proceeding.

[5] The addresses of the EDG customers listed in the Appendix to this Decision and Order were obtained from DOE audit files.

applied to a small proceeding such as this one. Processing the claims will not be an administrative burden, as there will be a maximum of 28 refund applicants in this proceeding. ERI provides no substantive basis why the OHA should apply the mid-level presumption to smaller refund proceedings. ERI merely asserts that the OHA should apply a 40 percent mid-level presumption in the EDG proceeding. We therefore will not adopt ERI's suggestion that we should apply a mid-level presumption of injury in EDG proceeding.

The comments filed by Al-Sal and Anco relate to the required showing of injury.[6] Both firms protest that the burden of proof for reseller-retailers claiming refunds over the proposed $5,000 small claims threshold will be unduly time consuming and burdensome. *See* March 21, 1988 letter from Fred Frank of Al-Sal Oil Company, Inc. to Marisa T. Arico, OHA staff analyst; *see also* March 30, 1988 letter from Milton Miller, attorney for Anco Oil Company, to Marisa T. Arico, OHA staff analyst. Al-Sal and Anco also state that neither of them retains the necessary cost "bank" information to make the injury showing and contend that since they are identified as overcharged customers, they should not be required to submit further proof of injury.

Both Al-Sal and Anco have misunderstood the purpose of the injury showing. Although Al-Sal is eligible for a potential refund of $46,512 and Anco is eligible for a potential refund of $12,268, the question remains whether or not Al-Sal and Anco passed through any or all of the alleged overcharges to their customers. If they did pass through the alleged overcharges, they did not suffer economic injury as a result of EDG's pricing practices. In that case, they would not be eligible for a refund. *See* 10 CFR 205.280 ("This Subpart establishes special procedures pursuant to which refunds may be made to injured persons . . ."). The burden of proof lies with the company to prove injury. *See Inland U.S.A., Inc./UCO Oil Co.*, 13 DOE ¶ 85,288 (1985), *reconsideration denied*, 13 DOE ¶ 85,394 (1986).

Al-Sal's and Anco's argument that they no longer maintain information regarding their banks of unrecouped costs provides no basis for changing the injury showing required in this proceeding.[7] If Al-Sal and Anco disposed of their records, that action was prematurely taken. Al-Sal and Anco, like all firms in the petroleum industry, were required to maintain records regarding their pricing of petroleum products during the period of price controls. *See* 50 FR 4957 (February 5, 1985) (preamble to amendment to 10 CFR 201.1 eliminating recordkeeping for most firms). The preamble to the February 5, 1987 amendment put firms on notice that they might wish to retain voluntarily their records in order to support Subpart V claims. We therefore reject Al-Sal's and Anco's argument that they should not be required to make a showing of injury. Therefore, the procedures set forth in the PD&O will be adopted as proposed.

III. General Refund Application Requirements

If any one of the firms listed in the Appendix to this Proposed Decision is not a reseller-retailer, it is still eligible to apply for a refund in this proceeding. We are adopting a presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by EDG's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices on non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,450 (1986). Therefore, if any EDG purchaser listed in the Appendix to this Decision and Order is an end-user, it need only establish that it was an ultimate consumer of EDG gasoline and/or no. 2 distillates during the consent order period to receive its maximum refund amount.

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from any of the 28 identified purchasers listed in the Appendix to this Decision and Order that purchased EDG gasoline and/or no. 2 distillates during the consent order period. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) The name of the consent order firm, E.D.G., Inc., the case number, KEF-0003 and the applicant's name shuld be prominently displayed on the first page.

(2) The name, title, address and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The manner in which the applicant used the EDG product, i.e., whether it was a reseller-retailer or end-user.

(4) The volume of EDG gasoline and/or no. 2 distillates that the applicant purchased during each month of the consent order period (August 19, 1973 through September 24, 1976) in which it claims that it was injured by the alleged overcharges. If the applicant is an end-user or a reseller-retailer claiming $5,000 or less, it may instead submit a certification that it purchased gasoline and/or no. 2 distillates from EDG on a regular basis during the consent order period.

(5) If the applicant is a reseller-retailer claiming a refund in excess of $5,000, it should also:

(a) State whether it maintained banks of unrecouped increased product costs and furnish the OHA with monthly bank calculations, and

(b) Submit evidence to establish that it did not pass through the alleged overcharges to its customers. For example, a firm may compare the prices it paid for EDG gasoline and/or no. 2 distillates with average prices in the firm's market area for each month in which it seeks a refund. (In the absence of an accurate market survey provided by the applicant, the OHA will use the market price information contained in *Platt's Oil Price Handbook and Oilmanac*).

(6) A statement of whether the applicant was in any way affiliated with EDG. If so, the applicant should explain the nature of the affiliation.

(7) A statement of whether there has been any change in ownership of the entity that purchased the EDG product. If so, the name and address of the current (or former) owner should be provided.

(8) A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been teminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the

[6] Because Al-Sal's and Anco's comments address the same issues, they will be discussed together in this section of the Decision and Order.

[7] In accordance with our previously stated positions regarding firms that do not have contemporaneous cost bank data, we will permit any potential claimant to reconstruct or approximate its cost banks using profit margin data. *See, e.g., Husky Oil Co.*, 13 DOE ¶ 85,045 at 88,113-114 (1985).

pendency of the Application for Refund. *See* 10 CFR 205.9(d).

(9) The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed *in duplicate* and must be filed no later than February 1, 1989. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585. Any applicant that believes its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is privileged or confidential. All Applications should be sent to: E.D.G., Inc. Special Refund Proceeding Case No. KEF–0003, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(B) Distribution of the Remainder of the Consent Order Funds Attributable to EDG's Sales of Gasoline and No. 2 Distillates

In the event that money remains after all refund claims from the EDG fund have been analyzed, those funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong. 2d Session., Cong. Rec. H11319–21, (Daily E. October 17, 1986).

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by E.D.G., Inc. pursuant to the consent order that became effective on December 17, 1979, may now be filed.

(2) All Applications must be filed no later than February 1, 1989.

Dated: August 9, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

Identified purchasers	Potential refund [1]
Al-Sal Oil	$46,512
Anco Oil Co	12,268
Brokers Petroleum Inc	84,541
J.E. Dewitt	78,123
Dunbar Texaco	752
Dytron Development Co	36,258
Fletcher Oil Co	170
Fisher Motor Co	35,713

APPENDIX—Continued

Identified purchasers	Potential refund [1]
Golden Arrow Dairy	98,303
H.E. Graham	156,430
Greinke Petroleum Corp	1,511
Archie Jacobs	486
Jessups Drive-In Dairy	602
Keen, Inc	29,081
L&S Service	2,165
Lockmann Farms	422
Mag Oil Co	2,296
Marlax Petroleum Co	65,724
William L. Martin II	3,818
Nickey Petroleum Co	2,792
Payless Oil Co	3,897
Pesky	635
Petromar Distributors	111,645
Quick Save	5,673
Reliance Dairy	8,819
Rocky Home Dairy	61,701
Santa Fe Service	346
Bob Smith Oil Co	10,213
Total	860,896

[1] Each identified purchaser's potential refund was calculated by adding the amount it was allegedly overcharged by EDG to its prorated share of the interest that had accrued up until the date of remittance. This amount does *not* include a prorated share of the interest that has accrued on the escrow account since the date of remittance.

[FR Doc. 88–18502 Filed 8–15–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3429–2]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application From Northern Engineering and Testing, Inc., for an Equivalent Method Determination

Notice is hereby given that on July 11, 1988, the Environmental Protection Agency received an application from Northern Engineering and Testing, Inc., 600 South 25th Street, Billings, Montana 59107, to determine if their inductively coupled argon plasma optical emission spectrometry method for the determination of lead in suspended particulate matter collected from ambient air should be designated by the Administrator of the EPA as an equivalent method under 40 CFR Part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 88–18457 Filed 8–15–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3429–3]

Ambient Air Monitoring Reference and Equivalent Methods; Designation of Ambient Air Monitoring Equivalent Method

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is: EQL–0888–068, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Argon Plasma Optical Emission Spectrometry (State of Rhode Island)."

The applicant's request for an equivalent method determination for the above method was received on July 15, 1987. Additional requested information pertinent to the original submittal was received on May 12, 1988.

This method has been tested by the applicant, the State of Rhode Island, in accordance with the test procedures prescribed in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedures specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with a mixture of nitric acid and hydrocholoric acid, facilitated by heat and ultrasonication. The lead content of the sample is analyzed by inductively coupled argon plasma optical emission spectrometry using the 220.35 nm lead emission line and instrument conditions optimized by the user laboratory. A sample of the extract solution is nebulized to form an aerosol which is excited with high temperature argon gas produced by passing of argon through a powerful radio frequency field. Radiation emitted from the plasma enters a spectrometer where it is separated into selected wavelengths and sensed by separate photomultiplier tubes for each element of interest. The luminous energy thus measured is

converted to an output signal which can be related to the concentration of each element of interest in the sample. The analytical system is capable of rapid sequential multi-element determinations. Technical questions concerning the method should be directed to the State of Rhode Island, Department of Health, Air Pollution Laboratory, 50 Orms Street, Providence, Rhode Island 02904.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using inductively coupled argon plasma optical emission spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of Section 2.8 of Appendix C to 40 CFR Part 58 (Modifications of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR Part 53.

Additional information concerning this action may be obtained by writing to Director, Environmental Monitoring Systems Laboratory, Quality Assurance Division (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 88–18458 Filed 8–15–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Richard Culpepper et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Richard Culpepper, Grand Rapids, MI.	BPH–860505MQ (Previously dismissed)	88–362
B. David K. Kuiper, Grand Rapids, MI.	BPH–860506MY	.....
C. FM Grand Rapids Limited Partnership, Grand Rapids, MI.	BPH–860507PQ	.....
D. Don H. Barden, Grand Rapids, MI.	BPH–860507PR	.....
E. Grand Rapids 98, Inc., Grand Rapids, MI.	BPH–860507PS	.....
F. Heith Broadcasting Corp., Grand Rapids, MI.	BPH–860507PT	.....
G. Stone Communications, Inc., Grand Rapids, MI.	BPH–860507QC	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 F.R. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard—E,G
2. Comparative—All
3. Ultimate—All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–18492 Filed 8–15–88; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Tana S. Knetsch et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Tana S. Knetsch, DeKalb, IL.	BPH–870817MG	88–360
B. Northern Illinois Student Association, DeKalb, IL.	BPH–870819MA	.....
C. Adlai E. Stevenson, IV, DeKalb, IL.	BPH–870819MD	.....
D. Robert M. Mason, Laura S. Moch d/b/a M & M Broadcasting, DeKalb, IL.	BPH–870819ME	.....
E. Nelson Enterprises, Inc., DeKalb, IL.	BPH–870819MN	.....
F. Peggy Jo Martis, DeKalb, IL.	BPH–870819MW	.....
G. Second City Broadcasting, Inc., DeKalb, IL.	BPH–870819NA	.....
H. Hometown Communications, Inc., DeKalb, IL.	BPH–870819NF	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. City Coverage—A, D, G, H
2. Financial—B
3. Air Hazard—C, F, H
4. Comparative—A–H
5. Ultimate—A–H

3. If there is any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–18493 Filed 8–15–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 17]

Rates, Charges and Services Provided at Marine Terminal Facilities; Order Extending Investigation

The Commission instituted this nonadjudicatory investigation by order published May 19, 1987, (52 FR 18743) to examine the furnishing of marine terminal facilities and services in connection with the transfer of cargo between an ocean common carrier, on the one hand, and a shipper or consignee or other means of transportation, on the other. The

Commission established a date by which the Investigative Officer is to provide a final report of findings and recommendations.

Upon request of the Investigative Officer, the date by which a final report of findings and recommendations shall be provided to the Commission is extended to August 31, 1988.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-18437 Filed 8-15-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

B.H.C., Inc., Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 2, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *B.H.C., Inc.*, Arlington, Georgia; to become a bank holding company by acquiring 80 percent of the voting shares of Bostwick Banking Company, Arlington, Georgia.

Board of Governors of the Federal Reserve System, August 10, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18410 Filed 8-15-88; 8:45 am]

BILLING CODE 6210-01-M

Bank of Boston Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 2, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation*, Boston, Massachusetts; to acquire 100 percent of the voting shares of BankVermont Corporation, Burlington, Vermont, and thereby indirectly acquire Bank of Vermont, Burlington, Vermont.

In connection with this application, Applicant also proposes to acquire Future Planning Associates, South Burlington, Vermont, and thereby engage in providing retirement plan consulting, design and actuarial and administrative services to corporations and individuals pursuant to the Board's Order of March 6, 1986 (72 Federal Reserve Bulletin 337 (1986)). These activities will be provided in the New England States.

Board of Governors of the Federal Reserve System, August 10, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18411 Filed 8-15-88; 8:45 am]

BILLING CODE 6210-01-M

Chattahoochee Bancorp, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Chattahoochee Bancorp, Inc.*, Atlanta, Georgia; to become a bank holding company by acquiring The Buckhead Bank, Atlanta, Georgia, and The Chattahoochee Financial Corporation, Marietta, Georgia, and thereby indirectly acquire The Chattahoochee Bank, Marietta, Georgia.

In connection with this application, Applicant proposes to acquire Chattahoochee Residential Mortgage Services, Inc., and thereby engage in mortgage lending activities pursuant to § 225.25(b)(1)(iii); Chattahoochee Business Group, Inc., and thereby engage in the origination and servicing of Small Business Administration guaranteed loans pursuant to § 225.25(b)(1); and Chattahoochee Services, Inc., and thereby engage in management consulting services to *de novo* financial institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18412 Filed 8-15-88; 8:45 am]

BILLING CODE 6210-01-M

High Point Financial Corp., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 7, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *High Point Financial Corp.*, Branchville, New Jersey; to acquire 100 percent of the voting shares of The Pocono Bank, Milford, Pennsylvania, a *de novo* bank. Comments on this application must be received by August 31, 1988.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *State Bancorp, Inc.*, Washington, Indiana; to merge with Spurgeon Financial Corporation, Spurgeon, Indiana, and thereby indirectly acquire The Spurgeon State Bank, Spurgeon, Indiana, and Pike County Bank, Petersburg, Indiana. Comments on this application must be received by August 31, 1988.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Rocky Mountain Bancorporation, Inc.*, formerly Raldon, Inc., Billings, Montana, to merge with Western Bancshares, Inc., Billings, Montana, and thereby indirectly acquire Western Bank of Billings, Billings, Montana.

2. *Dakota Company, Inc.*, Minneapolis, Minnesota, to acquire through its subsidiary, South Dakota Bancorp, Inc., Minneapolis, Minnesota, 51.9 percent of the voting shares of Valley National Bank of Sioux Falls, Sioux Fallas, South Dakota. Comments on this application must be received by September 2, 1988.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National of Nebraska, Inc.*, Omaha, Nebraska; to acquire 80 percent of the voting shares of Firn-Co., Inc., North Platte, Nebraska, and thereby indirectly acquire First National Bank and Trust Company, North Platte, Nebraska.

Board of Governors of the Federal Reserve System, August 10, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18413 Filed 8-15-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Ira Hoberman*, Lake Wood, New Jersey; to acquire 1.94 percent of the voting shares of First State Bancorp, Howell, New Jersey, and thereby indirectly acquire First State Bank, Howell, New Jersey.

Board of Governors of the Federal Reserve System, August 10, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18414 Filed 8-15-88; 8:45 am]

BILLING CODE 6210-01-M

Integra Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Integra Financial Corporation*, Mt. Lebanon, Pennsylvania; to acquire United Data Services, Inc., Franklin, Pennsylvania, and thereby engage in providing data processing services to an unaffiliated third party pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18415 Filed 8-15-88; 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1988.

A. Federal Reserve Bank of Cleveland (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation*, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Investment Corporation, Richmond, Virginia, in providing portfolio investment advice and the furnishing of general economic information and advice, general economic statistical forecasting services, and industry studies to retail and institutional customers pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18416 Filed 8-15-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bernard F. Weindruch*, Davenport, Iowa, to acquire 2.3 percent; Ira J. Weindruch, Davenport, Iowa, to acquire 2.3 percent; Perry B. Hansen, Rock Island, Illinois, to acquire 2.4 percent; Sanra K. Kratz, Decorah, Iowa, to acquire 2.4 percent; and Douglas M. Kratz, Decorah, Iowa, to acquire 2.4 percent of the voting shares of Financial Services Corporation of the Midwest, Rock Island, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Jerry F. Wilbur, Jr.*, Dragoon, Arizona; to acquire an additional 5.68 percent of the voting shares of First Midwest Bankshares, Inc., Princeton, Kentucky, and thereby indirectly acquire First Bank and Trust Company, Princeton, Kentucky.

Board of Governors of the Federal Reserve System, August 10, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18417 Filed 8-15-88; 8:45 am]

BILLING CODE 6210-01-M

The Bank of Tokyo, Ltd.

Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) and section 225.14 of the Board's Regulation Y (12 C.F.R. 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. § 18.42(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 30, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Bank of Tokyo, Ltd.*, Tokyo, Japan; to indirectly acquire all of the voting shares of Union Bank, Los Angeles, California. In connection with this application, California First Bank, San Francisco, California, has applied to become a bank holding company by acquiring all of the voting shares of Union Bank. Immediately after the acquisition, Union Bank will merge into California First Bank.

The Federal Deposit Insurance Corporation approved the merger of Union Bank into California First Bank pursuant to the Bank Merger Act on July 19, 1988.

Board of Governors of the Federal Reserve System, August 11, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-18553 Filed 8-15-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

ACTION: Notice of Availability, Elimination of Tuberculosis Advisory Committee, et. al.

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463 (5 USC Appendix 2), the Fiscal Year 1987 annual reports for the following Federal advisory committees utilized by the Centers for Disease Control have been filed with the Library of Congress:

Advisory Committee for Elimination of Tuberculosis
Board of Scientific Counselors, National Institute for Occupational Safety and Health
Immunization Practices Advisory Committee
Interagency Committee on Smoking and Health
National Committee on Vital and Health Statistics
Prevention Centers Grant Review Committee
Safety and Occupational Health Study Section

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC (telephone 202/267-6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue SW., Washington, DC (telephone 202/245-6791).

Dated: August 10, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-18431 Filed 8-15-88; 8:45 am]

BILLING CODE 4160-18-M

Smoking and Health Interagency Committee; Meeting

AGENCY: Centers for Disease Control, HHS.

ACTION: Notice of Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Centers for Disease Control announces the following Committee meeting.

Name: Interagency Committee on Smoking and Health.

Time and Date: 9 a.m.-4 p.m., October 27, 1988.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health on: (a) Coordination of all research and eduction programs and other activities within the Department and with other Federal, State, local, and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, Federal agencies, and State and local public health agencies with respect to smoking and health activities.

Matters to be Discussed: The entire meeting will be open to the public. It will include a discussion of the public health implications of tobacco sponsorship of sporting events. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from: John Bagrosky, Executive Secretary, Interagency Committee on Smoking and Health, Park Building, Room 1-10, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: FTS: 443-1575; Commercial: (301) 443-1575.

Dated: August 10, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 88-18429 Filed 8-15-88; 8:45 am]

BILLING CODE 4160-18-M

Vital and Mental Health Statistics National Committee; Meeting

AGENCY: Centers For Disease Control, HHS.

ACTION: Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Health Care Statistics established

pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting (working session).

Name: National Committee on Vital and Health Statistics Subcommittee on Health Care Statistics.

Time and Date:

9:00 am–5:00 pm—September 14, 1988
9:00 am–1:00 pm—September 15, 1988

Place: Room 337A–339A, Hubert H. Humphrey Buildings, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: This will be an organizational and working session of this new Subcommittee. Members will be briefed on the status of plans for health care statistics programs at the National Center for Health Statistics (NCHS), and discuss directions for the Subcommittee in providing recommendations to NCHS in the development and implementation of these programs.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: August 10, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 88–18430 Filed 8–15–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88D–0202]

Status of Dental Supplies Such as Denture Cleaners, Adhesives, Cushions, and Repair Materials as a Device or Cosmetic; Revised Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide 7124.05, "Status of Dental Supplies Such as Denture Cleaners, Adhesives, Cushions, and Repair Materials as a Device or Cosmetic" (August 9, 1988). The purpose for revising Compliance Policy Guide 7124.05 is to delete the reference to drugs in the subject line of the guide and delete the policy statement that a denture cleaner may also be a food additive, if residual cleaner is left on the denture.

ADDRESS: A copy of the guide is available for public examination at, and written requests for a single copy of the guide may be submitted to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Kathleen S. Shanahan, Center for Devices and Radiological Health (HFZ–323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–427–8040.

SUPPLEMENTARY INFORMATION: FDA has revised Compliance Policy Guide 7124.05 by deleting references to the regulation of dental supplies, repair materials, and cleaners as drugs or food additives. The agency has determined that denture cleaners, adhesives, cushions, and repair materials should be regulated as medical devices or accessories; and such products are subject to the device provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*).

Compliance Policy Guide 7124.05 is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Written requests for single copies of the Compliance Policy Guide should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch (address above).

This notice is issued under the authority of 21 CFR 10.85.

Dated: August 9, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–18426 Filed 8–15–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0296]

Drug Export; Transderm Scop® (Scopolamine)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that CIBA Consumer Pharmaceuticals has filed an application requesting approval for the export of the human drug Transderm Scop® to Switzerland.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquires concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that CIBA Consumer Pharmaceuticals, Raritan Plaza III, Edison, New Jersey 08837, has filed an application requesting approval for the export of the drug Transderm Scop®, to Switzerland. This product is indicated for prevention of nausea and vomiting associated with motion sickness in adults. The application was received and filed in the Center for Drug Evaluation and Research on August 1, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the

application to do so by August 26, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 9, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-18427 Filed 8-15-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, October 6-7, 1988, Building 1, Wilson Hall, 3rd Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public on October 6 from 8:30 a.m. to recess and on October 7 from 8:30 a.m. to adjournment to discuss administration details and for the discussion and review of concepts and programs within the Division. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892-3100 (301/496-5708) will provide a summary of the meeting and a roster of committee members, upon request.

Other information pertaining to this meeting can be obtained from the Acting Executive Secretary, Elise Mackie, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20892-4200 (301-427-8630), upon request.

Dated: August 9, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-18464 Filed 8-15-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute, President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, September 19, 1988, at The University of Arizona, College of Medicine, Conference Center, 1501 N. Campbell Avenue, Tucson, AZ 85724.

This meeting will be open to the public on September 19 from 8:30 a.m. to 1 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel; the Director, NCI; and a number of Arizona area researchers dealing with Innovations in Cancer Treatment.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A29, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members, and substantive program information upon request.

Dated: August 9 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-18465 Filed 8-15-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-08-4220-10; COC-48697]

Proposed Withdrawal and Proposed Public Meeting; Colorado

August 8, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw National Forest System land near Snowmass, Colorado, for 20 years to protect recreational facilities and resource values at the Snowmass Ski Area. This notice closes the land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing and to Forest Service management.

DATE: Comments on this proposed withdrawal must be received on or before November 14, 1988.

ADDRESS: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 236-1768.

SUPPLEMENTARY INFORMATION: On July 28, 1988, the Department of Agriculture, Forest Service, filed application to withdraw the following described National Forest System land from location and entry under the mining laws, subject to valid existing rights:

White River National Forest

Sixth Principal Meridian

T. 10 S., R. 85 W.,
- Sec. 7, lot 1, SE¼NE¼, W½NE¼, W½, SE¼;
- Sec. 8, lot 6, SW¼NW¼, SW¼;
- Sec. 17, NW¼, NW¼SW¼, W½SW¼ SW¼;
- Sec. 18, All;
- Sec. 19, N½N½N½, N½S½NW¼;
- Sec. 20, NW¼NW¼NW¼.

T. 10 S., R. 86 W.,
- Sec. 10, lots 1 thru 6, SE¼NW¼, E½E½ SW¼NW¼, E½SW¼, E½E½W½ SW¼, S½SE¼;
- Sec. 11, lots 3 thru 6, S½S½;
- Sec. 12, lots 4 thru 8, S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼;
- Sec. 13, All;
- Sec. 14, All;
- Sec. 15, E½NE¼, N½NW¼NE¼,SE¼ NW¼NE¼, E½SW¼NW¼NE¼, NE¼ SW¼NE¼, E½NW¼SW¼NE¼, N½SE¼SW¼NE¼,SE¼SE¼SW¼ NE¼, N½NE¼NE¼NW¼, SE¼NE¼ NE¼NW¼, E½E½SE¼, N½NW¼NE¼ SE¼, SE¼NW¼NE¼SE¼, E½SW¼ NE¼SE¼;
- Sec. 22, E½E½NE¼;
- Sec. 23, N½, N½S½, E½SW¼SW¼, E½ NW¼SW¼SW¼; NE¼SW¼SW¼ SW¼, SE¼SW¼, N½SW¼SE¼, N½SW¼SW¼SE¼,SW¼SW¼SW¼ SE¼, NW¼SE¼SW¼SE¼;N½ NW¼SE¼SE¼SW¼NW¼SE¼SE¼, NW¼NE¼SE¼SE¼,
- Sec. 24, N½N½, N½S½N½, S½SW¼ NW¼, SW¼SE¼NW¼, N½SE¼SE¼ NW¼, NW¼NW¼NE¼SW¼, N½NE¼ NW¼SW¼,SW¼NE¼NW¼SW¼, NW¼NW¼SW¼, N½SW¼NW¼ SW¼, SW¼SW¼NW¼SW¼;
- Sec. 26, NW¼NW¼NW¼NE¼, N½N½ NW¼, NW¼SW¼NE¼NW¼.

The area described aggregates approximately 5,531 acres of National Forest System land in Pitkin County, Colorado. The National Forest System land described are intended to include those outside the boundary of the Maroon Bells-Snowmass Wilderness Area.

The purpose of this withdrawal is to protect recreational facilities and high resource values within the Snowmass Ski Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the undersigned

BEST COPY AVAILABLE

officer of the Bureau of Land Management.

A public meeting will be scheduled and held concerning the proposed withdrawal as required by regulation. Notice of the time and location of this meeting will be published in the **Federal Register** at least 30 days prior to the date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to allow those discretionary uses that do not conflict with the ski area permit and use.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88-18482 Filed 8-15-88; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9053, Block 427, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on August 8, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OSC Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executive of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 8, 1988.

J. Rogers Pearch,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-18419 Filed 8-15-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Park System Advisory Board: Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247), that a meeting of the National Park System Advisory Board will be held in New Orleans, Louisiana, October 22-25, 1988.

The general business session will start at 8:30 a.m., Monday, October 24, and conclude during the late afternoon on Tuesday, October 25. It will be held in Room 222 of the U.S. Customs House, 423 Canal Street, New Orleans, Louisiana. The Advisory Board will consider potential National Historic Landmark nominations plus a variety of matters relating to the National Park System. The meeting will follow an orientation tour and briefings on issues at Jean Lafitte National Historical Park and Preserve.

The business meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on first-come, first-served basis. Anyone may file with the Advisory Board a written statement concerning the meeting. Persons wishing further information concerning this meeting may contact Mr. David L. Jervis, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127 (telephone (202) 343-4030).

Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting in Room 1218 Interior Building, 18th and C Streets, NW., Washington, DC.

William Penn Mott, Jr.,

Director, National Park Service.

[FR Doc. 88-18500 Filed 8-15-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 6, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 31, 1988.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Hartford County

Barber, Giles, House (18th and 19th Century Brick Architecture of Windsor TR), 411—413 Windsor Ave., Windsor, 88001498

Case, Benomi, House (18th and 19th Century Brick Architecture of Windsor TR), 436 Rainbow Rd., Windsor, 88001497

Chapman, Taylor, House (18th and 19th Century Brick Architecture of Windsor TR), 407 Palisado Ave., Windsor, 88001492

Ellsworth, Horace H., House (18th and 19th Century Brick Architecture of Windsor TR), 316 Palisado Ave., Windsor, 88001489

First Church Parsonage (18th and 19th Century Brick Architecture of Windsor TR), 160 Palisado Ave., Windsor, 88001488

Former Fire Station (18th and 19th Century Brick Architecture of Windsor TR), 14 Maple Ave., Windsor, 88001485

Grace Church Rectory (18th and 19th Century Brick Architecture of Windsor TR), 301 Broad St., Windsor, 88001477

Hartford & New Haven Railroad Depot (18th and 19th Century Brick Architecture of Windsor TR), Central St., Windsor, 88001479

Hartford & New Haven Railroad—Freight Depot (18th and 19th Century Brick Architecture of Windsor TR), 40 Central St., Windsor, 88001505

Harvey, William H., House (18th and 19th Century Brick Architecture of Windsor TR), 1173 Windsor Ave., Windsor, 88001503

Hathaways Store (18th and 19th Century Brick Architecture of Windsor TR), 32 East St., Windsor, 88001482

Hayden, Captain Nathaniel, House (18th and 19th Century Brick Architecture of Windsor TR), 128 Hayden Station Rd., Windsor, 88001483

House at 111 Maple Avenue (18th and 19th Century Brick Architecture of Windsor TR), 111 Maple Ave., Windsor, 88001486

House at 130 Hayden Station Road (18th and 19th Century Brick Architecture of Windsor TR), 130 Hayden Station Rd., Windsor, 88001484
House at 44 Court Street (18th and 19th Century Brick Architecture of Windsor TR), 44 Court St., Windsor, 88001480
House at 736 Palisado Avenue (18th and 19th Century Brick Architecture of Windsor TR), 736 Palisado Ave., Windsor, 88001494
Loomis, Capt., James, House (18th and 19th Century Brick Architecture of Windsor TR), 881 Windsor Ave., Windsor, 88001499
Loomis, Col. James, House (18th and 19th Century Brick Architecture of Windsor TR), 208—210 Broad St., Windsor, 88001476
Loomis, George G., House (18th and 19th Century Brick Architecture of Windsor TR), 1003 Windsor Ave., Windsor, 88001500
Loomis, Gordn, House (18th and 19th Century Brick Architecture of Windsor TR), 1021 Windsor Ave., Windsor, 88001501
Loomis, Ira, Jr., House (18th and 19th Century Brick Architecture of Windsor TR), 1053 Windsor Ave., Windsor, 88001502
Magill, Henry, House (18th and 19th Century Brick Architecture of Windsor TR), 390 Palisado Ave., Windsor, 88001495
Mills, Timothy Dwight, House (18th and 19th Century Brick Architecture of Windsor TR), 184 Deerfield Rd., Windsor, 88001481
Moore, Edward and Ann, House (18th and 19th Century Brick Architecture of Windsor TR), 464 Broad St., Windsor, 88001478
Murphy, Patrick, House (18th and 19th Century Brick Architecture of Windsor TR), 345 Palisado Ave., Windsor, 88001490
Payne, Daniel, House (18th and 19th Century Brick Architecture of Windsor TR), 27 Park Ave., Windsor, 88001495
Phelps, Eli, House (18th and 19th Century Brick Architecture of Windsor TR), 18 Marshall Phelps Rd., Windsor, 88001487
Shelton, William, House (18th and 19th Century Brick Architecture of Windsor TR), 40 Pleasant St., Windsor, 88001496
Stony Hill School (18th and 19th Century Brick Architecture of Windsor TR), 1195 Windsor Ave., Windsor, 88001504
Sweetland, Sophia, House (18th and 19th Century Brick Architecture of Windsor TR), 458 Palisado Ave., Windsor, 88001493

Middlesex County

Hazelton, James, House, 23 Hayden Hill Rd., Haddam, 88001468

New Haven County

Edgerton, 840 Whitney Ave., New Haven, 88001469

DELAWARE

Kent County

Palmer Home, 115 American Ave., Dover, 88001443

FLORIDA

Levy County

Cedar Keys Historic and Archaeological District, Address Restricted, Cedar Key vicinity, 88001449

GEORGIA

Fulton County

Long, Crawford W., Memorial Hospital, 35 Linden Ave., NE, Atlanta, 88001465

IDAHO

Lewis County

Bridwell, James F., House, 107 Fifth St., Kamiah, 88001446

MARYLAND

Caroline County

Second Methodist Church Parsonage, Main St., Greensboro, 88001444

MASSACHUSETTS

Barnstable County

Bray, Thomas, Farm, 280 Weir Rd., Yarmouth, 88001455
Newcomb, John, House, Address Restricted, Wellfleet vicinity, 88001457
Rowell House, Gull Pond Rd., Wellfleet, 88001458

Berkshire County

New Boston Inn, Jct. of MA 8 and MA 57, Sandisfield, 88001459

Franklin County

Burkeville Covered Bridge, Main Poland Rd. over South River, Conway, 88001456

Middlesex County

Shirley Center Historic District, Brown, Center, Horsepond, Parker and Whitney Rds., Shirley, 88001454

MISSISSIPPI

Alcorn County

Dilworth, Thomas F., House, Turn W off Hwy. 45, S of Biggersville at Doty's Grove and Tony's Service Station, Biggersville vicinity, 88001463

MISSOURI

St. Louis County

Alswel, 12696 Alswell La., Sunset Hills vicinity, 88001460

NEW HAMPSHIRE

Belknap County

Gordon—Mash Library, Main St., New Hampton, 88001437

Grafton County

Lyme Common Historic District, Dorchester Rd., John Tomson Way, On the Common; Pleasant and Union Sts., E. Thetford Rd., Main and Market Sts., Lyme, 88001435
Minot—Sleeper Library, 14 Pleasant Street, Bristol, 88001434

Hillsborough County

Milford Town House & Library Annex, Nashua St., Milford, 88001436

NEW MEXICO

Lincoln County

Archeological Site LA 61200 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vicinity, 88001506
Archeological Site LA 12151 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vicinity, 88001507
Archeological Site LA 12153 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vicinity, 88001508
Archeological Site LA 12155 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vicinity, 88001509
Archeological Site LA 61201 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vicinity, 88001510
Archeological Site LA 61202 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vicinity, 88001511
Archeological Site LA 61204 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vicinity, 88001512
Archeological Site LA 61206 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vicinity, 88001513
Archeological Site LA 61208 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vicinity, 88001514
Archeological Site LA 61211 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vincinity, 88001515
Archeological Site LA 61210 (Prehistoric and Historic Agricultural Sites in the Lower Rio Bonito Valley TR), Address Restricted, Lincoln vincinity, 88001516

NEW YORK

Albany County

Clinton Avenue Historic District, Along Clinton Ave. from Quail to N. Pearl Sts., Albany, 88001445

Dutchess County

Reformed Dutch Church of Fishkill Landing, 44–50 Ferry St., Beacon, 88001438

Franklin County

Joseph, Beth, Synagogue, Lake and Mill Sts., Tupper Lake, 88001441

Hamilton County

Wells Baptist Church, Main St., Wells, 88001440

Kings County

Sunset Park Historic District, Roughly bounded by Fourth Ave., Thirty-eighth St., Seventh Ave. and Sixty-fourth St., Brooklyn, 88001464

Orange County

District School No. 9, NY 17A, Goshen vicinity, 88001451

Suffolk County

St. Andrew's Episcopal Church, Main St., Yaphank, 88001442

Ulster County

Common School No. 10, Northside of Upper Cherrytown Rd., Accord vicinity, 88001439

RHODE ISLAND

Providence County

Bridgham—Arch—Wilson Streets Historic District, Roughly bounded by Lester and Bridgham Sts., Elmwood Ave., Warren and Dexter Sts., Providence, 88001433

SOUTH CAROLINA

Orangeburg County

Gilmore House, S of intersection of State St. and Eutaw Rd., Holly Hill, 88001470

TENNESSEE

Knox County

Gibbs, Nicholas, House, Emory Rd., Knoxville, 88001447

VERMONT

Franklin County

St. Bartholomew's Episcopal Church, VT 118, Montgomery, 88001467

Windham County

Dover Town Hall, School House Rd., Dover, 88001466

VIRGINIA

Bath County

Warm Springs Mill, E side of VA 645, Warm Springs, 88001448

WEST VIRGINIA

Kanawha County

Gilmore, Elizabeth Harden, House, 514 Broad St., Charleston, 88001462

Marion County

Shaw House, 425 Morgantown Ave., Fairmont, 88001461

Randolph County

Perly, Fred A., House, Address Restricted, Jenningston vicinity, 88001453

WISCONSIN

Ashland County

P-Flat Site (47AS47), Address Restricted, Bayfield, vincinity, 88001471

The following properties were either missing or erroneously listed under the wrong county in our Annual List dated Tuesday, May 24, 1988, under Properties Determined Eligible in the National Register in Fiscal Year 1986 and Fiscal Year 1987, and should read as follows:

FY 86

CALIFORNIA

San Diego County

Morean Village vincinity, *Corral Canyon, OHV: USPS 851216A (43 Sites),* (3/11/86)

FY 87

CALIFORNIA

San Diego County

Santee vincinity *Archeological Site CA–SDi–9243,* (10/21/86) Vista, *Red Barn,* 139 N. Santa Fe (2/26/87)

[FR Doc. 88–18499 Filed 8–15–88; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kenneth Curtis Davis, R.Ph. and Larry Nicholson, d/b/a Paramount II Pharmacy and Paramount Pharmacy; Revocation of Registrations

On June 23, 1988, the Administrator of the Drug Enforcement Administration (DEA) issued Orders to Show Cause and Immediate Suspensions of Registration to Kenneth Curtis Davis, R.Ph. and Larry Nicholson, d/b/a Paramount II Pharmacy, of 1109 7th Street NW., Washington, DC and Paramount Pharmacy, of 601 60th Street, Fairmont Heights, Maryland. The Orders to Show Cause proposed to revoke DEA Certificates of Registration BP1113935 and BP1156644, previously issued to the aforementioned pharmacies, and to deny any pending applications for renewal of such registrations on the grounds that the continued registration of these pharmacies was inconsistent with the public interest. Simultaneously, citing his preliminary finding that the continued registration of these pharmacies during the pendency of these proceedings posed an imminent threat to the public health and safety, the Administrator ordered the immediate suspension of the two registrations.

The Orders to Show Cause and Immediate Suspensions of Registration were personally served at both pharmacies on June 23, 1988. At that time, DEA Special Agents seized the pharmacies' DEA Certificates of Registration, all unused order forms and controlled substances located on the premises. More than thirty days have elapsed since the service of the Orders to Show Cause and Immediate Suspensions of Registration. Neither Mr. Davis, Mr. Nicholson, nor any other agent or representative of the pharmacies has responded to the Orders to Show Cause. Therefore, the Administrator concludes that the parties have waived their opportunity for a hearing in this matter, and enters his final order based upon the DEA investigative files and the record of this proceeding as it now appears. See 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that Paramount II Pharmacy was initially registered as a retail pharmacy by the Drug Enforcement Administration on October 8, 1987. Paramount Pharmacy was initially registered by the Drug Enforcement Administration on November 4, 1987. Both pharmacies are owned by Kenneth Curtis Davis, R.Ph. and Larry Nicholson. Soon after the pharmacies were registered, the DEA Washington Field Division received reports from controlled substance distributors that the pharmacies were ordering excessive quantities of both glutethimide and codeine products on a frequent basis. The reports received indicated that Paramount II Pharmacy and Paramount Pharmacy ordered excessive quantities of Schedule III codeine preparations, glutethimide tablets, and Schedule V cough preparations during the period from October 1987 to April 1988.

The Administrator notes that the combination of glutethimide and codeine (either in tablets or cough syrups) is known in the illicit drug market as "loads," "fours and doors" and "pancakes and syrup." The combination of the two drugs is highly abused and extremely dangerous. There is no known legitimate medical use for the combination of glutethimide and codeine products.

The Administrator also notes that in December 1986, the Drug Enforcement Administration immediately suspended and later revoked the DEA Certificate of Registration of Good Peoples Inc. Pharmacy, of Philadelphia, Pennsylvania. See *Good Peoples Inc. Pharmacy,* 52 FR 7040 (1987). The immediate suspension and revocation of that pharmacy's registration was based on information that the pharmacy had filled several fraudulent and unauthorized controlled substance prescriptions and that an audit of the pharmacy's controlled substance stock revealed excessive, unexplained shortages of glutethimide and codeine products. Kenneth Curtis Davis had been the registered pharmacist and manager for that pharmacy since 1985. In addition, during interviews with DEA Diversion Investigators in 1986, Mr. Davis admitted to dispensing controlled substances from Good Peoples Inc. Pharmacy not pursuant to valid prescriptions.

The Administrator further finds that based upon the reports of excessive purchases by Paramount Pharmacy and Paramount II Pharmacy, as well as Mr. Davis' controlled substance handling

background, on May 11, 1988, DEA Diversion Investigators conducted an audit of the controlled substance stock at Paramount II Pharmacy for the period from October 8, 1987, to May 11, 1988. The audit revealed excessively large and unexplained shortages of a number of controlled substances, including the following: 59,900 dosage units of glutethimide .5 mg. (generic), a 98.9% shortage; 4,300 dosage units of Doriden .5 mg., a 100% shortage; 89,100 dosage units of APAP/Acetaminophen #4 with codeine, a 99.71% shortage; 500 dosage units of Tylenol #4 with codeine, a 71.43% shortage; 100 dosage units of aspirin #3 with codeine (generic), a 100% shortage; 3,700 dosage units of aspirin #4 with codeine (generic), a 72.55% shortage; 500 dosage units of Empirin #3 with codeine, an 83.33% shortage; 4,500 dosage units of Empirin #4 with codeine, a 97.83% shortage; 100 dosage units of Fiorinal #1, a 100% shortage; 100 dosage units of Fiorinal #3, a 100% shortage; 100 dosage units of Tussionex tablets, a 100% shortage; 16 ounces of Tussionex syrup, a 34.48% shortage; 9,168 ounces of Bromanyl cough syrup, a 96.63% shortage; 4 ounces of Robitussin AC cough syrup, a 50% shortage; 24 ounces of Novahistine DH cough syrup, a 100% shortage; 24 ounces of Novahistine expectorant, a 100% shortage; 256 ounces of Prometh VC with codeine, a 39.02% shortage; 16 ounces of Triacin C expectorant, an 11.11% shortage; and 4 ounces of Cheracol syrup, a 33.33% shortage. The pharmacy could not account for more than 171,000 dosage units of controlled substances during the six-month audit period. In addition, the audit revealed excessively large and unexplained overages of the following controlled substances: 4,900 dosage units of APAP/Acetaminophen #2 with codeine, a 490% overage; 1,040 dosage units of Tylenol #3 with codeine, a 104% overage; 96 ounces of Guisatuss, a 32% overage; 8 ounces of Naldecon CX; 256 ounces of Bromanate DC expectorant, a 200% overage; and 128 ounces of Bromotuss with codeine syrup. The pharmacy had no ordering or receiving records for the Naldecon CX or Bromotuss cough syrup which were discovered during the audit.

The audit also revealed a number of recordkeeping violations, including: Failure to maintain controlled substance invoices for drugs received by the pharmacy; failure to maintain accurate prescription files; failure to properly maintain Schedule II order forms in a readily retrievable manner; and the improper transfer of controlled substances between registered locations.

On May 11, 1988, DEA Diversion Investigators also conducted a controlled substance audit at Paramount Pharmacy for the period from November 4, 1987, to May 11, 1988. That audit also revealed excessive and unexplained shortages of both glutethimide and codeine products, totalling approximately 32,000 dosage units, as well as excessive and unexplained overages of several codeine products. In addition, the audit revealed a number of recordkeeping violations, including: Failure to maintain receiving invoices; failure to maintain accurate dispensing records; failure to maintain records of transfers of controlled substances between registered locations; and failure to maintain controlled substance prescriptions in a readily retrievable manner. The audit conducted at Paramount Pharmacy also revealed that the pharmacy had dispensed Schedule II controlled substances although it was not registered to handle any Schedule II controlled substances.

The Administrator finds that the improper controlled substance handling activities discovered at Paramount Pharmacy and Paramount II Pharmacy practically duplicate those which took place at Good Peoples Inc. Pharmacy under the management of Mr. Davis. In less than seven months of operation, Paramount Pharmacy and Paramount II Pharmacy could not account for more than 200,000 dosage units of glutethimide and codeine products. These shortages suggest that the pharmacies were diverting large quantities of controlled substances for other than legitimate medical purposes. What few records the pharmacies maintained were not in compliance with DEA recordkeeping requirements. The results of the DEA investigation strongly suggest that the primary function of these pharmacies was to divert enormous quantities of controlled substances into the illicit market, rather than to dispense them for legitimate purposes. Clearly, such improper and illegal activities by DEA registrants cannot be tolerated.

Based upon Mr. Davis' history of improper and unlawful controlled substance handling activities, the excessive shortages and overages at both pharmacies, and the pharmacies' failure to maintain controlled substance records in accordance with Federal laws and regulations, the Administrator concludes that the continued registration of both pharmacies would be inconsistent with the public interest, and that both DEA registrations must be revoked. Therefore, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration BP1113935, previously issued to Kenneth Curtis Davis and Larry Nicholson, d/b/a Paramount Pharmacy, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of either registration be, and they hereby are, denied.

At the time the Orders to Show Cause and Immediate Suspensions of Registration were served on Paramount Pharmacy and Paramount II Pharmacy, all controlled substances possessed by the pharmacies under the authority of their then-suspended registrations were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking appeal has elapsed. Accordingly, these controlled substances shall remain under seal until September 15, 1988 or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

The order is effective August 16, 1988.

John C. Lawn,

Administrator.

Dated: August 9, 1988.

[FR Doc. 88-18423 Filed 8-15-88; 8:45 am]

BILLING CODE 4410-09-M

Ray Roya, M.D.; Denial of Application

On May 24, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Ray Roya, M.D. of 3429 N. Harlem Avenue, Chicago, Illinois 60634 and 1414 N. Damen Avenue, Chicago, Illinois 60622, proposing to deny his application, executed on August 20, 1987, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Roya's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was sent to Dr. Roya by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Roya and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Ray Roya, M.D. is deemed to have waived his

opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Roya was convicted in the United States District Court for the Northern District of Illinois of 24 counts of illegal distribution of controlled substances, felony offenses relating to controlled substances. On April 14, 1978, these convictions were affirmed by the United States Court of Appeals for the Seventh Circuit.

Since his controlled substance-related felony convictions, Dr. Roya has applied for a DEA Certificate of Registration two times prior to the application which is the subject of this final order. On both occasions, Dr. Roya's applications for registration were denied by the Administrator of the Drug Enforcement Administration. See, *Ray Roya, M.D.*, Docket No. 82–34, 49 FR 3700 (1984); and *Ray Roya, M.D.*, Docket No. 80–22, 46 FR 45842 (1981). On September 29, 1986, Dr. Roya was convicted in the State of Illinois, Circuit Court of Cook County of attempting to bribe both a state official and a Federal administrative law judge for the purpose of influencing the restoration of his DEA registration.

The Administrator also finds that on June 1, 1988, subsequent to the issuance of the Order to Show Cause in this matter, the State of Illinois, Department of Professional Regulation indefinitely suspended Dr. Roya's license to practice medicine. Therefore, Dr. Roya is not currently authorized to handle controlled substances in the State of Illinois.

Based on Dr. Roya's illegal dispensing of controlled substances and felony convictions regarding such dispensing, his attempted bribery conviction and his lack of state authorization to handle controlled substances, the Administrator concludes that Dr. Roya's registration with the Drug Enforcement Administration would be inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered by Dr. Roya. Therefore, the Administrator concludes that Dr. Roya's application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application of Ray Roya, M.D., executed on August 20, 1987, for registration under the Controlled Substances Act, be, and it hereby is, denied.

John C. Lawn,

Administrator.

Date: August 9, 1988.

[FR Doc. 88–18422 Filed 8–15–88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Assistant Director for Science and Engineering Education has determined that the establishment of the following advisory panels within the Division of Materials Development, Research and Informal Science Education is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Panels: Advisory Panel for Applications of Advanced Technologies; Advisory Panel for Informal Science Education; Advisory Panel for Instructional Materials Development; and Advisory Panel for Research in Teaching and Learning.

Purpose: Primarily, to review and evaluate proposals in their disciplines and to provide oversight, general advice, and policy guidance to the Division.

M. Rebecca Winkler,

Committee Management Officer.

August 11, 1988.

[FR Doc. 88–18434 Filed 8–15–88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Co.; Exemption

I

Carolina Power & Light Company (the licensee), acting for itself and the North Carolina Eastern Municipal Power Agency, is the holder of Facility Operating License No. NPF–63, issued on January 12, 1987, which authorized full power operation of the Shearon Harris Nuclear Power Plant, Unit 1 (the facility). A superceded license (NPF–53), issued October 24, 1986, authorized the licensee to operate the facility at steady-state reactor power levels not in excess of 139 megawatts thermal. This license provides, among other things, that they are subject to all rules and regulations and Orders of the Commission.

II

Section 50.71(e)(3)(i) of 10 CFR Part 50 requires the licensees of nuclear power reactors to submit an updated Final Safety Analysis Report (UFSAR) within 24 months of either July 22, 1980, or the date of issuance of the operating license, whichever is later. The above regulation would have required submittal of the UFSAR for Shearon Harris, Unit 1, by October 24, 1988.

By letter dated April 21, 1988, the licensee requested an exemption from 10 CFR 50.71(e) requiring the refiling of a complete Final Safety Analysis Report (FSAR) as the UFSAR within twenty-four months after the issuance of an operating license. The licensee proposes to continue to use the current FSAR and to update it through the issuance of a FSAR amendment in the same manner as the licensing process. The licensee, in the above cited letter, references and discusses three of the six special circumstances provided in 10 CFR 50.12(a)(2) that would support the consideration of the issuance of this exemption.

One of these categories, 10 CFR 50.12(a)(2)(ii), states:

> Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;

The underlying purpose of the rule was to provide a single complete updated integrated document that would accurately describe the facility. During the licensing process, the current FSAR was amended by Amendment No. 39 on October 30, 1986. The licensee states that the existing FSAR is in the state of completeness contemplated by the rule and the underlying purpose of the rule could be achieved through the amendment process.

III

The NCR staff has reviewed the licensee's request for an exemption from 10 CFR 50.71(e)(3)(i) which requires the filing of an UFSAR. Instead, the licensee would continue to use the existing FSAR and update it through the amendment process. Prior to the issuance of the rule, there was no regulation requiring the applicants or licensees to incorporate changes to, or amendments of, the application of the license into the FSAR. Consequently, the FSARs were not kept up-to-date. In view of the recent licensing of the Shearon Harris, Unit 1, the current FSAR is in the comparable state of completeness contemplated by

the rule, and the subsequent routine updating of the relatively small percentage of the FSAR text and figures would meet the underlying purpose of the rule. Because the necessary safety information will be provided in the amendment to update the existing FSAR, no undue risk would result from the proposed exemption.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), this exemption is authorized by law, and that the application of the regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(iii) and (vi) apply to this situation.

Application of the 10 CFR 50.71(e) requirement for updating the FSAR in this situation, i.e., submitting a new and separate UFSAR, is not necessary to achieve the underlying purpose of the rule, which is to ensure that the updated information be available in the FSAR. Since updating the current FSAR by means of the amendment process does not conflict with the intent of the rule, the granting of the exemption complies with the intent of the regulation and comports with the special circumstances described in 10 CFR 50.12(a)(2)(ii).

Accordingly, the Commission hereby grants an exemption, as described in Section III above from § 50.71(e)(3)(i) of 10 CFR Part 50, from the requirement to file a separate and new updated FSAR for the Shearon Harris Nuclear Power Plant, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 26693). This exemption is effective upon issuance.

For The Nuclear Regulatory Commission.

Dated in Rockville, Maryland, this 10th day of August 1988.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-18474 Filed 8-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-23 issued to Carolina Power & Light Company (the licensee) for operation of the H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

The proposed amendment would change the Technical Specifications (TS) of certain reactor parameters in Section 2.3.1 and 3.1.3 to reflect the correct reactor coolant loop resistance temperature detector (RTD) system response time and to support the elimination of the RTD bypass system.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 15, 1988 the licensee may file a requrest for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and hwo wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.174, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding;(2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also indentify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirments described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20055, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Releigh, Noth Carolina, 27602, attorney for the licensee.

Nontimely filings of petition for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained

absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request shall be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 26, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Hartsville Memorial Library, Home and Fifth Avenue, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 9th day of August 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-18475 Filed 8-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-334 and 50-412]

Duquesne Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-66 and NPF-73, issued to Duquesne Light Company (the licensee), for operation of the Beaver Valley Power Station, Units 1 and 2 located in Shippingport, Pennsylvania.

The proposed amendment would exclude all containment isolation weight-and spring-loaded check valves not subject to containment type C leakage testing from the surveillance requirements of Section 3.6.3.1. The current surveillance testing requirements applicable to these valves are items 4.6.3.1.1.a.2 and 4.6.3.1.2.e. The proposed amendment would add a footnote to Table 3.6-1 excluding these check values from these surveillance requirements and, instead, references the ASME Section XI testing requirements of 4.0.5.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 15, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any persons whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of a petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for

amendment dated June 22, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, B.F. Jones Memorial Libary, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 9th day of August 1988.

For The Nuclear Regulatory Commission.

John F. Stolz,

Director Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactors Regulation.

[FR Doc. 88–18476 Filed 8–15–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio.

In accordance with the licensees' application for amendment dated July 15, 1988, the amendment would delete License Condition 2.C.(3)(t) and would incorporate Item 2 of that license condition as a technical specification surveillance requirement. Additionally, the applicability of TS Section 4.0.4 to Auxiliary Feedwater (AFW) Surveillance Requirements would be clarified.

Specifically, the proposed amendment would delete Item 1 of License Condition 2.C.(3)(t) which requires the stationing of an operator in the Startup Feedwater Pump/Auxiliary Feedwater Pump (SUFP/AFW) area during operation of the SUFP, and would delete Item 3 which requires the installation of an SUFP to remove the hazard to the AFW pumps associated with operation of the existing SUFP. Item 2, which requires isolation of the SUFP and SUFP cooling water from outside the SUFP/AFW area when the plant is in Modes 1, 2, or 3, also would be deleted, but would become the basis for Surveillance Requirement 4.7.1.2.a.4.

A footnote to TS 3.7.1.2, relating to the applicability of TS 3.0.4 would be deleted and replaced by a statement, added to TS 4.7.1.2.b.2, relating to the provisions of TS 4.0.4 to improve clarity.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change against the above standards as required by 10 CFR 50.91(a). The Commission has reviewed the licensee's evaluation and agrees with it. The licensee concluded that:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the SUFP will not be used and will be isolated while the plant is in an operational mode requiring operable AFW pums or an operable Motor Driven Feed Pump (MDFP) when there is a hazard to the operability of those pumps. Furthermore, Surveillance Requirement 4.7.1.2.a.4 will require verification of isolation of the SUFP while the plant is in those operational modes. The proposed change regarding the applicability of Specification 3.0.4 merely clarifies the intent of the existing requirement.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because there will be no change from the present method of operation in Modes 1, 2, or 3.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because there will be no change from the present method of operation in Modes 1, 2, or 3.

Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 15, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate in a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filled by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

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Any person who has filed a petiton for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considered. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petiton for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitons are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (data petition was mailed); (plant name); and (publication date and page number of this **Federal Register** noticed). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw Pittman, Potts and, Trowbridge, 2300 N Street, NW., Washington DC 20037, attorney for Toledo Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safty and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 15, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, 20555 and at University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 11th day of August, 1988.

For The Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.

Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–18473 Filed 8–15–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 106 to Facility Operating License No. DPR–28 issued to Vermont Yankee Nuclear Power Corporation (the licensee), which revised the Technical Specifications for operation of the Vermont Yankee Nuclear Power Station located in Windham County, Vermont. The amendment was effective as of the date of issuance.

The amendment revises the Technical Specifications by increasing the test interval for logic system functional testing from once every six months to once per operating cycle.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 26, 1988 (53 FR 2115). A petition for leave to intervene was filed following this notice by the State of Vermont, however, following extensive discussions between the technical staffs of the State and the NRC, the State withdrew its hering request. On June 30, 1988, the Atomic Safety and Licensing Board dismissed the petition to intervene and terminated the proceeding.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated November 30, 1987 and clarifying information dated January 20, 1988 and April 13, 1988, (2) Amendment No. 106 to License No. DPR–28, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's

Public Document Room, 1717 H Street NW., Washington, DC and at the Brooks Memorial Library, 244 Main Street, Brattleboro, Vermont 05301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 9th day of August 1988.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Project Manager, Project Directorate I–3 Division of Reactor Projects, I/II.

[FR Doc. 88–18477 Filed 8–15–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25986; File No. SR–NASD–88–32]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to the Authority of the Director of Arbitration To Fill Vacancies on Arbitration Panels

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 22, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on August 2, 1988, filed Amendment No. 1 thereto as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Sections 21 and 24 of the Code of Arbitration Procedure ("Code"). The following is the text of the proposed rule change. New language is italicized, deleted language is in brackets.

Code of Arbitration Procedure

Notice of Selection of Arbitrators [1]

Sec. 21. The Director of Arbitration shall inform the parties of the *arbitrators'* names and [business affiliations of the arbitrators] *employment histories for the past ten (10) years, as well as information disclosed pursuant to section 23,* at least eight (8) business days prior to the date fixed for the [initial] *first* hearing session. *A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background. In the event that prior to the first hearing session, any arbitrator should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a replacement arbitrator to fill the vacancy on the panel. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past ten years, as well as information disclosed pursuant to section 23. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the first hearing session or the five- (5-) day period provided under section 22, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in section 22.*

* * * * *

Disqualification or Other Disability of Arbitrators

Sec. 24. In the event that any arbitrator, after the commencement of the first *hearing* session but prior to the rendition of the award, should become disqualified, resign, die, refuse or *otherwise* be unable to perform [or to discharge his duties] *as an arbitrator,* [the Director of Arbitration, upon such proof as he deems satisfactory, shall, where permitted by applicable law, either (a) appoint a new member to the panel to replace such arbitrator, obtaining the consent of the parties, or (b) with the consent or waiver of the parties, direct that the arbitration proceed without the substitution of a new arbitrator] *the remaining arbitrator(s) shall continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of the vacancy on the panel. Upon objection, the Director of Arbitration shall appoint a replacement arbitrator to fill the vacancy and the hearing shall continue. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past ten years, as well as information disclosed pursuant to section 23. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five- (5-) day period provided under section 22, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in section 22.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A Uniform Arbitration Code (the "Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of representatives of the NASD, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established throughout the securities industry a uniform system of arbitration procedures. The proposed rule changes to sections 21 and 24 of the Code are intended to substantially conform the provisions of the NASD's Code to changes in the Uniform Code approved by SICA on June 28, 1988.

Section 21 of the Code

The current provisions of section 21 require that the parties be informed of the names and business affiliations of the arbitrators within eight business days prior to the date fixed for the initial hearing session.[2] When a vacancy

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[1] For purposes of clarity, the proposed rule change to Section 21 of the Code incorporates proposed amendments to the current text of the section previously filed and pending with the Commission in SR–NASD–88–29. The proposed rule change to the current text of Section 21 reflected in SR–NASD–88–29 is as follows:

Sec. 21. The Director of Arbitration shall inform the parties of the *arbitrators'* names and [business affiliations of the arbitrators] *employment histories for the past ten (10) years, as well as information disclosed pursuant to section 23,* at least eight (8) business days prior to the date fixed for the initial hearing session. *A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background.*

[2] In SR–NASD–88–29, the NASD proposed that the parties be informed of the employment histories of the arbitrators for the past ten years.

occurs on the hearing panel just prior to or during the eight-day period, and a replacement arbitrator is appointed, a party may nonetheless refuse to go forward on the pre-assigned hearing date on the basis that they have not received notice of the name and buisness affiliations of the arbitrator at least eight days prior to the hearing. The Director of Arbitration currently lacks the authority to fill the vacancy and proceed to hold the hearing on the selected date.

The proposed rule change to section 21 of the Code is intended to give the NASD Director of Arbitration authority to fill any vacancy on an arbitration panel that occurs subsequent to appointment but prior to the first hearing session of the panel and to proceed with the hearing as planned even though the parties may not receive eight business days' notice of the names and business affiliations of the replacement arbitrator. The proposed rule change requires the Director of Arbitration to inform the parties as soon as possible of the name and employment history of the replacement arbitrator, as well as any disclosure by the replacement arbitrator pursuant to section 23 of the Code. The rule change proposed in SR–NASD–88–29 to permit a party to make further inquiry of the Director of Arbitration concerning an arbitrator's background is also applicable to any replacement arbitrator. In addition, section 21 is proposed to be amended to clarify that a party may exercise its right to challenge the replacement arbitrator as provided in section 22 of the Code.

Section 24 of the Code

Section 24 of the Code addresses the situation where a vacancy occurs on an arbitration panel after commencement of a hearing. In this event, the Director of Arbitration is currently required to obtain the consent of the parties to either appoint a replacement arbitrator or proceed with the hearing without a replacement arbitrator. However, section 24 fails to address the situation where consent cannot be obtained from the parties. Thus, where the Director of Arbitration is unable to obtain consent of all parties to one of the two courses of action intended to remedy the vacancy, a new panel must be appointed and a new hearing held.

The NASD is proposing to amend section 24 to clarify that a hearing either must continue with the remaining arbitrators or, if any party objects within five days of notification of the vacancy, the Director of Arbitration will appoint a replacement arbitrator. The Director of Arbitration is required to inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past ten years, as well as any information disclosed pursuant to section 23 and to respond to any further inquiry regarding the replacement arbitrator's background. Also included in section 24 is the clarification that the parties retain the right to challenge the replacement arbitrator as provided in section 22.

Peremptory Challenge

In those arbitration proceedings where a peremptory challenge [3] has not previously been exercised by the particular parties, one consequence of the proposed rule changes to sections 21 and 24 of the Code is that the five-day period for the exercise of a peremptory challenge may not be available to the parties. Thus, a hearing could be held pursuant to section 21 or could be continued pursuant to section 24 prior to the expiration of the parties' right to assert a peremptory challenge under section 22. The NASD believes that although the five-day period within which a party may exercise a peremptory challenge will be shortened, in certain cases, to the time remaining prior to the scheduled hearing session, that the proposed rule change is in the interest of public investors as it is intended to significantly expedite the processing of arbitration claims where a vacancy occurs on the hearing panel.

Therefore, the NASD is proposing to amend sections 21 and 24 to clarify that the parties' right to assert a peremptory challenge under section 22 must be within the five-day period specified in section 22 or the time remaining for the first hearing session under section 21 or the next hearing session under section 24, whichever is shorter.

The proposed rule change by the NASD is intended to improve the efficiency of the internal procedures of its Arbitration Department, which has experienced within the last six months an unprecedented increase in the number of arbitration filings. The proposed rule change will significantly expedite the processing of arbitration claims by reducing the delay between the initiation and conclusion of proceedings where an arbitrator is unable to continue in that capacity. At the same time, the parties retain the right to receive the name and employment history of the replacement arbitrator, to make further inquiry regarding the replacement arbitrator's background and to challenge the replacement arbitrator within the parameters of section 22.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, as the proposed rule change will facilitate the arbitration process in the public interest and, therefore, is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD has neither solicted nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communciations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[3] Under Section 22 of the Code, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five business days of notification of the identity of the persons named to the panel. In comparison, there is no time limit on a challenge for cause.

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-32 and should be submitted by September 6, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 9, 1988.

Jonathan C. Katz,

Secretary.

[FR Doc. 88-18509 Filed 8-15-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 25981; File No. SR-PSE-88-12]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Specialist Post Expansion on the San Francisco and the Los Angeles Equities Floors of the PSE

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 23, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to consider applications for five (5) additional specialist posts in each of its Los Angeles and San Francisco equities trading facilities for a total of 10 additional posts.

The Board of Governors of the PSE has appointed special committees to make recommendations on the orderly expansion of specialist activity on each of the floors. These special committees and the Joint Equity Floor Trading Committee have made recommendations to the Board concerning the new specialist posts. These committees had extensive input from the membership community.

The PSE proposes to accept applications for specialist posts from all interested parties, including non-PSE members. Applicants may apply for the posts that will be located in Los Angeles and in San Francisco. Notification has been sent to all PSE members outlining the proposed expansion. A press release was issued on May 31, 1988, to inform the public of the post expansion. In addition, two applications, one for the firm and the other for the registered specialist, have been sent to all members.

There is a $250 application fee for each specialist post. This fee is for the administrative costs of processing the applications. In addition, the firm will be charged a fee of $30,000 for the implementation and development of the expansion post, which includes the technology, construction, and related costs. This fee includes the following costs: Physical construction of each post; installation of new Quotron Terminals and set up of Securities Industry Automation Corporation software; purchase and installation of data communications equipment and lines; telephone equipment and lines; and incidental costs.

All applications received on or before June 30, 1988, will be considered by the Exchange. Applicants, whose applications have been on file as of June 1, 1988, have been requested to update the information contained on their applications. The Board intends to interview final applicants at its meetings on July 28 and 29, 1988.

PSE intends that the ten additional posts will be operational in Fall 1988.

The procedures approved by the Board for the post expansion include the following:

- New applications would be considered equally with applications on file as of June 1, 1988.
- The minimum number of dually-traded common stocks that each post could maintain is 10.
- Existing specialist posts would be allowed to freeze a certain number of dually-traded stocks based upon the average of the post's evaluation scores for the first three quarters in 1987 and the first quarter of 1988. New issues allocated after June 7, 1988, may not be frozen.

Specialists Rated;[2] *Permitted to Freeze*

Below 75%—12 stocks
75% and above, but below 80%—13 stocks
80% and above, but below 85%—14 stocks
85% and above—15 stocks

- Specialists would not be allowed to freeze additional stocks because of order routing arrangements made with member firms.
- "Local" stocks[3] would not be eligible to be picked. If a post trades eligible common stocks, plus preferred stocks and/or warrants of the same issuer, and the common was frozen, the preferred and/or warrants would also be considered frozen; if the common was not frozen, an expansion post could select the common plus the preferred and/or warrants in one pick. In those situations where a post trades preferred or warrants but not the common, the preferred would be treated the same as a common stock.[4]
- The new specialist at the expansion posts would be permitted to select up to 20 common stocks from the list of available stocks, but a maximum of only one stock from each existing specialist post. Expansion posts would be exempt from having stocks picked from them in subsequent expansions for one year from their commencement of operation.
- There would be a limit on the number of stocks that can be taken from existing posts as follows:

Posts in existence prior to 1985—5 stocks
Posts created in 1985—3 stocks
Posts created in 1986—2 stocks

- After the drafting process has taken place, existing specialists voluntarily could offer certain stocks to the expansion posts without jeopardizing any future allocations to the existing specialists. Allocation Committee approval would be required for any such offer.
- Spin-off stocks would be considered as separate stocks for purposes of selection.

All specialists have been notified that the policies adopted by the Board of Governors and enforced during Phase I (1984) and Phase II (1985) of the PSE Expansion Specialist Program will be enforced during the present expansion program. These policies are:

1. Switching of stocks between specialist posts will not be permitted when notice of expansion specialist posts is issued by the Exchange. This

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[1] 15 U.S.C. 73s(b)(1) (1988).

[2] The number of specialists and the total number of stocks traded by those specialists for each ratings category on both the Los Angeles and San Francisco equity trading floors are as follows: below 75%—19 specialists, 467 stocks; 75% and above, but below 80%—32 specialists, 884 stocks; 80% and above, but below 85%—13 specialists, 410 stocks; 85% and above—8 specialists, 288 stocks.

[3] A "local" stock is an issue that is only listed on the PSE.

[4] The PSE has stated that the combination of common stocks, preferred stocks and/or warrants of the same issuer will be regarded as a single stock for the purposes of either being frozen by an existing specialist or for selection by a new specialist at an expansion post.

prohibition will remain in effect until the Allocation Committee rules otherwise.

2. If there is a change of specialist at an existing specialist post (other than expansion post) the new specialist at such post will not be able to apply for a stock until their performance is evaluated and they may lose stocks in case of expansion posts. A new specialist's performance will be evaluated after a month by the Allocation Committee on his respective floor and will be able to apply for a stock after their performance has been evaluated.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE has recently received a substantial amount of interest in expansion of specialists posts. The PSE believes that, in view of current market conditions, post expansion would enhance liquidity and volume. Because of this renewed interest in post expansion, the Equity Floor Trading Committee ("EFTC") has reviewed and made recommendations concerning PSE's ability to absorb new posts in its new and expanded trading facilities, and the PSE's operational capacity to properly regulate and support additional posts. In addition, the Board of Governors appointed two special committees to make recommendations for the orderly expansions of the posts. The Specialist Post Expansion Committee ("SPEC") consists of 14 members from both equity floors. The second committee is a special Board committee consisting of the Chairman, President and three public Governors. The SPEC is responsible for formulating criteria for expansion and submitting recommendations to the special Board committee for review and acceptance.

In considering the expansion, the EFTC considered the number of posts that could be added without adversely affecting PSE's physical and operational capacities to properly regulate and support those posts. The EFTC determined that ten new specialist posts could be created. The EFTC also concluded that a ten post expansion would not have any adverse or detrimental effect on existing specialist posts.

The recommendations of the EFTC and the special committees have reviewed and adopted by the Executive Committee of the Board.

The PSE believes that the proposed post expansion program is consistent with section 6(b) of the Securities Exchange Act of 1934, and furthers the objectives of section 6(b)(2) of said Act. In particular, it would provide for access by qualified members to PSE specialist registration.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were solicited from all members of the PSE in a Notice to Members (ML–88–41) dated May 31, 1988. A press release was issued on May 31, 1988, to inform the public of the post expansion. No written comments on the proposed rule change were received by the PSE.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–88–12 and should be submitted by September 6, 1988.

IV. Commissions Findings and Order Granting Accelerated Approval

As noted above, the procedures outlined by the Exchange for the proposed expansion of specialists on the PSE's Los Angeles and San Francisco trading floors are substantially similar to those procedures used in previous specialist post expansions on the PSE in 1984 and again in 1985.[5]

The PSE has stated in its filing that various committees of the Exchange, including the SPEC (made up of representatives from specialists and floor brokers on the San Francisco and Los Angeles equity trading floors), closely reviewed the procedures and specialist selection criteria employed in the prior specialist expansions and determined that they were appropriate under current conditions. The SPEC also recommended, and the PSE has approved, minimal selection criteria and considerations for applicants for specialist post expansion. These include:

—The applicant must be able to meet current minimum requirements for specialist post capital ($100,000 in cash or marketable securities) and also should be aware that this capital requirement may be increased and that they must be able to meet the new requirements.
—For an applicant that maintains a specialist post on the PSE on another national securities exchange, the ratings the specialist post received in the last two years and any other history of trading by the applicant that may be relevant.
—Applicants must describe the level of commitment they will make to the Exchange including the amounts of capital and time that will be committed to each post.
—Whether the applicant is willing to take a specialist post at a different location than requested.
—The number of stocks the applicant intends to trade at each post.[6]
—How the applicant intends to select each specialist.
—Applicant familiarity with the Exchange's rules and procedures including SCOREX, post cashiering, and the PSE's specialist evaluation program.

The Exchange has stated that it views an applicant's ability to satisfy the consideration and requirements in its

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[5] *See* Securities Exchange Act Release No. 21578, December 18, 1984, 49 FR 50349; Securities Exchange Act Release No. 22515, October 9, 1985, 50 FR 42111.

[6] Currently, all PSE specilist posts are required to trade a minimum of 10 stocks.

proposed selection criteria very seriously. While the proposed rule change would authorize the creation of 10 additional specialist posts, the PSE has stated that it will only approve those applicants that are fully capable of executing the responsibilities of a specialist even if that would mean that not all authorized specialist posts will be assigned.[7]

The Commission has reviewed closely the proposed rule change and believes that the procedures, criteria and fees for the PSE's proposed specialist post expansion program are reasonable and consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirement of Section 6 and the rules and regulations thereunder. These procedures are substantially similar to the procedures previously approved by the Commission in connection with the Exchange's 1984 and 1985 specialist post expansions.[8] The procedures strike a reasonable balance between the Exchange's need to expand the amount of specialist capital and improve the liquidity of its markets and the interests of the PSE's current specialists.

In this regard, the procedures permit existing specialist posts to reserve or "freeze" a minimum number of stocks currently traded at the post from those stocks subject to possible reallocation to the newly created specialist posts and allows the Exchange to take into account a specialist unit's previous evaluation rating for the four previous quarters in determining the number of stocks a specialist unit may reserve.

Further, the proposed criteria and considerations for selection of applicants for specialist post expansion clearly make consideration by the Exchange of an applicant's capital resources to meet current and possible future PSE capital requirements, together with the applicants prior specialist performance ratings (if the applicant is currently a specialist) or trading history, key considerations in determining whether an applicant should be selected for an expansion post.[9]

In so far as they utilize specialist performance ratings, the proposed specialist post expansion procedures are also consistent with the procedures for the appointment and evaluation of specialists and the creation of new specialist posts originally approved by the Commission for the PSE, on a pilot basis, in 1981.[10] The Commission believes that the specialist expansion procedures, and the criteria for the selection of applicants for new specialist post, are particularly appropriate in light of the critical demands on specialist capital that were experienced on all exchanges during the October 1987 market break [11] in as much as additional specialists will help add capital and liquidity to the PSE's market.

The Commission also believes that the PSE's proposed $250 application fee and $30,000 fee for the implementation and development of new expansion post are reasonable. Cost estimates submitted by the Exchange indicate that the actual cost to build and purchase the necessary equipment for a new specialist's post will exceed the amount of the implementation and development fee. The PSE has stated that it will absorb any extra costs encountered in connection with adding the new specialist posts.[12]

Finally, because the PSE is not increasing the overall number of stocks being traded on the floor, but reallocating the current configurations of stocks between existing and new specialist posts, the Commission does not believe that this proposed rule unduly impacts on the capacity of current order routing or execution systems. In any event, the Commission expects that the PSE will take all reasonable and necessary steps to ensure that it has adequate operational capacity to support the expansion posts before they are actually implemented this fall.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the PSE can immediately proceed with its review and approval of final applicants for specialist expansion posts. We note that the procedures to be employed are substantially similar to those previously approved by the Commission and that the PSE, during its process of considering whether to undertake this expansion, received no negative comments from its members to the proposal.

It is therefore order, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 8, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-18508 Filed 8-15-88; 8:45 am]

BILLING CODE 8010-01-M

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[7] Telephone conversation between John Kotovich, Vice President and General Counsel, PSE, and Holly Smith, Special Counsel, Division of Market Regulation, on June 30, 1988.

[8] *See* note 3, *supra*.

[9] The Exchange states that it will take into consideration an applicant's commitment to the Exchange. The Commission notes that while it is reasonable and appropriate for the PSE to consider the amount of time and capital an applicant will commit to each post, this criterion cannot be used in a discriminatory manner to exclude firms that also use other exchanges for their transactions. *See also* Securities Exchange Act Release No. 24411, April 29, 1987, 52 FR 17870, note 17.

[10] *See* Securities Exchange Act Release No. 17815, May 27, 1981, 46 FR 30918. Under the pilot program, specialists are rated on three separate measures of performance on a quarterly basis: (1) The specialist evaluation questionnaire; (2) national market system quote performance; (3) SCOREX performance. Letter from John Kotovich, Vice President and General Counsel, PSE, to Robert Sevigny, Attorney, Division of Market Regulation, dated July 7, 1988 ("PSE's July 7 Letter").

[11] *See* The Division's report on the October 1987 Market Break, Chapter 4 (February 1988).

[12] *See* PSE's July 7 Letter.

[Rel. No. IC-16519; (812-7054)]

American Affordable Housing VI Limited Partnership; Application for Exemption

August 10, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: American Affordable Housing VI Limited Partnership, a Delaware limited partnership (the "Partnership"), and its general partner, Boston Capital Aasociates Limited Partnership, a Massachusetts limited partnership (the "General Partner") (collectively, the "Applicants").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) of the 1940 Act from all provisions of the Act.

Summary of Application: Applicants seek an order of exemption from all provisions of the 1940 Act in connection with their offering of units of beneficial interest in the Partnership.

Filing Date: The application was filed on June 24, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 6, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to

the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 313 Congress Street, Boston, Massachusetts 02210–1232.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel at (202) 272–3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summry of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations:

1. The Partnership was formed under the Delaware Revised Uniform Limited Partnership Act as of June 1, 1988. Pursuant to registration under the Securities Act of 1933, the Partnership plans to offer up to $100,000,000 of unites of beneficial interest ("Units") in the Partnership in 10,000,000 Units of $10 each. Accordingly, the Partnership's securities will be held by more than 100 persons.

2. The Unites will be sold only to subscribers who meet the following suitability standards: (1) Annual gross income of $35,000 and a net worth (exclusive of home, home furnishings and automobiles) in excess of $35,000, or (2) net worth (excluding home, home furnishings and automobiles) of not less than $75,000. The Partnership will also impose a minimum investment requirement of $5,000.

3. The Partnership will operate as a "two-tier" partnership, that is, the Partnership will invest as a limited partner in operating partnerships ("Operating Partnerships") which will acquire, be the beneficial owner of, construct and/or rehabilitate, and which will operate and maintain, multifamily residential apartment complexes (the "Apartment Complexes"). Each of the Apartment Complexes is expected to qualify for the low-income housing tax credit under Seciton 42 of the Internal Revenue Code of 1986, and most of the Apartament Complexes are anticipated to qualifty for additional federal, state and/or local assistance ("Government Assistance").

4. The Partnership is organized as a limited partnership because that form of organization is the only one that provides investors with both liability limited to their capital investment and the ability to claim on their individual tax return the deduction, losses, credits, and other tax items that originate from the Partnership's interest in the Operating Partnerships.

Applicants' Legal Analysis:

1. The Partnership's exemption from the provisions, rules and regulations promulgated pursuant to the 1940 Act is both necessary and appropriate in the public interest and consistent with the protection of investors. The investment in the Apartment Complexes, which are expected to qualify for low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 and most of which are also anticipated to receive additiuonal Government Assistance, furthers the Congressionally-declared policy of encouraging the participation of private enterprise in the provision of housing for low or moderate income families. In addition, the low-income housing tax credit program and the other Government Assistance will subject the Apartment Complexes to significant government regulatory controls.

2. The final paragraph of Investment Company Act Release No. 8456 (August 9, 1974) contemplates that the exemptive power of the Commission under section 6(c) of the 1940 Act may be applied to two-tier partnerships which engage in the kind of activities in which the Partnership will engage. The release lists two conditions which must be satisfied in order to qualify for such an exemption: (1) "Interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be suitable; and (2) "requirements for fair dealing by the General Partners of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company."

3. The Partnership's Agreement of Limited Partnership (the "Partnership Agreement") and its Prospectus (the "Prospectus") will contain numerous provisions designed to insure fair dealing by the General Partner with the investors ("Investors"). All potential conflicts of interest between the General Partner and the Investors will be disclosed in the Prospectus, including the receipt of commission, fees, and other compensation by the General Partner and its affiliates. All such compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. The Partnership believes that such compensation meets the guidelines contained in the statement of policy adopted by the North American Securities Administrators Association, Inc., with respect to real estate programs. The Partnership and the Partnership Agreement will contain various provisions designed to eliminate or significantly reduce conflicts of interests.

4. The Partnership Agreement will provide that certain actions cannot be taken by the General Partner without the express consent of a majority in interest of the Investors. Such actions include: sale of the Partnership's interests in the Operating Partnerships or sale at any one time of all or substantially all of the assets of the Partnership, dissolution of the Partnership, and the admission of a successor or additional General Partner.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–18510 Filed 8–15–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16518; File No. 812–6963]

American Skandia Life Assurance Corporation et al.; Application for Exemption

August 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: American Skandia Life Assurance Corporation ("Skandia Life"); Skandia Life Variable Account B (the "Account") and Skandia Life Equity Sales Corporation ("SLESCO").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction from the assets of the Account of the mortality and expense risk charges imposed under certain variable annuity contracts (the "Contracts").

Filing Date: The application was filed on January 19, 1988, and amended on June 6, 1988, and July 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 2, 1988. Request a hearing in

writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secrtetary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Skandia Life, The Account and SLESCO: Tower One, Corporate Drive, P.O. Box 883, Shelton, Connecticut 06484–9932.

FOR FURTHER INFORMATION CONTRACT: Joyce M. Pickholz, Attorney (202) 272–3046 or Clifford E. Kirsch, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations:

1. Skandia Life is a stock life insurnce company incorporated under the laws of Connecticut, all of whose issued and outstanding shares of capital stock were acquired by Skandia U.S. Investment Holding Corporation ("SUSIH") on May 25, 1988. Prior to that date Skandia Life (then known as Hartford Variable Annuity Life Insurance Company) was a wholy owned subisdiary of Hartford Life Insurance Company. SUSIH is a wholly owned subsidiary of Skandia International Insurance Corporation, which in turn is wholly owned by Skandia International Holding A.B.

2. Immediately after the acquisition of Skandia Life by SUSIH on May 25, 1988, the Board of Directors elected by SUSIH unanimously adopted resoultions creating the Account. The Account is registered with the Commission under the Act as a unit investment trust. The Contracts are individual flexible premium tax deferred variable annuity contracts.

3. SLESCO will serve as the distributor and principal underwriter of the Contracts. SLESCO is registered under the Securities Exchange Act of 1934 and with the National Association of Securities Dealers, Inc. as a broker-dealer.

4. The Account will invest in shares of one or more investment portofolios of Advisers Management Trust or The Alger American Fund or such other fund or funds as may be made available by Skandia Life and the Account (the "Funds").

5. During the accumulation and payout periods, Skandia Life will deduct from the Account, on a daily basis, an administration fee at the rate of 0.15% per annum. Prior to the annuity date, Skandia Life will deduct a maintenance fee of $30 per year from the sub-account holdings attributable to any particular contract in the same proportion as each sub-account holding bears to the cash value of such Contract. After the annuity date, this charge will be deducted from payments. The administration and maintenance fees cannot be increased by Skandia Life. The application, through incorporation by reference of the registration statement for the Contracts, states that the administration and maintenance charges are assessed at amounts that Skandia Life believes necessary to recover the actual costs of maintaining and administering the Contracts and the Account.

6. A mortality and expense risk charge will be deducted daily from the net asset value of the Account at a rate of 1.25% per annum of the daily net assets in the Account. Of that amount, approximately 0.90% is allocable to the Skandia Life's assumption of mortality risks and 0.35 % is allocable to Skandia Life's stated assumption of the expense risks. Skandia Life assumes this mortality risk by virtue of annuity rates incorporated in the Contracts which cannot be changed. Additional mortality risks are assumed when the Sub-accounts decline in value resulting in losses to Skandia Life on paying death benefits. The expense risk undertaken by Skandia Life is that the administration and maintenance fees, which are guaranteed, may be insufficient to cover the actual costs of maintaining the Contracts and the Account.

7. A contingent deferred sales charge may be assessed on full or partial surrender. Under the free withdrawal privilege, a contractowner may partially surrender (at a single time each year) without any contingent deferred sales charge being imposed, up to the greater of the Contract's growth, as defined in the contract, or 10% of the new premiums. Growth equals the then current cash value less all unliquidated premiums. Unliquidated means not previously surrendered. New premiums are those received within six years of the date of the partial surrender. There is no carry forward of any unused portion of this 10% limit to succeeding years. Any amounts so withdrawn shall be deemed to come first from new premiums, then from other premiums, then any remaining surrender value. Amounts withdrawn under the free withdrawal privilege are not considered a liquidation of premiums. On partial surrenders, the contingent deferred sales charge is 6% of any unliquidated new premiums surrendered, for amounts surrendered in excess of the free withdrawal privilege. For this purpose, partial surrenders excluding amounts taken under the free withdrawal privilege will be considered to come first from new premiums then other premiums, then any remaining surrender value. If there are multiple new premiums, the one received earliest is liquidated first, then the one received next earliest, and so forth. On full surrender within six years of a premium payment, a charge is made in an amount of 6% of unliquidated new premiums. As stated above, for purposes of the contingent deferred sales charge, amounts withdrawn under the free withdrawal privilege are not considered a liquidation of premiums. In no event will the total sales charges for a particular Contract exceed 9% of the premium payments for that Contract.

8. Skandia Life represents that the charge of 1.25% for mortality and expense risks assumed by Skandia Life is within the range of industry practice with respect to comparable annuity products. This representation is based on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results, of its comparative survey.

9. Applicants acknowledge that the contingent deferred sales charge may be insufficient to cover all costs relating to the distribution of the contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the sales charge. Skandia Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the contractowners. The basis for such conclusion is set forth in a memorandum which will be maintained by Skandia Life at its administrative offices and will be available to the Commission.

10. Skandia Life represents that the Account will only invest in management investment companies which undertake to have boards of directors or trustees, a majority of whom are not "interested

persons" of such companies, approve any plan adopted under Rule 12b–1 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–18511 Filed 8–15–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16520, 812–7037]

First Investors Option Fund, Inc., et al.; Application for Exemption

August 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: First Investors Option Fund, Inc. ("Option Fund"), First Investors High Yield Fund, Inc. ("High Yield Fund"), First Investors Corporation ("First Investors"), and First Investors Periodic Payment Plans for Investment in First Investors Option Fund, Inc. (the "Plan").

Relevant 1940 Act Sections: Approval requested for exchange of shares under section 11(a) and 11(c); exemption requested under section 17(b) from the provisions of section 17(a) as to purchase and sale of shares; permission for joint transactions under section 17(d) and Rule 17d–1 thereunder, and approval requested under section 26(b) to the substitution of shares.

Summary of Application: Applicants seek an order to approve the transfer of substantially all of the assets of Option Fund in exchange for the shares of High Yield Fund pursuant to an Agreement and Plan of Reorganization; and to approve the substitution of shares of High Yield Fund for shares of Option Fund as the underlying investment for the Plan, subject to the approval of the proposed reorganization by the Planholders and shareholders of Option Fund; and to effect certain affiliated transactions in connection with such reorganization.

Filing Date: The application was filed on May 18, 1988, and was amended on August 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, First Investors Corporation, 120 Wall Street, New York, New York 10005 Attention: Andrew J. Donohue, Secretary and General Counsel.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420 or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Both Option Fund and High Yield Fund (collectively, the "Funds") are diversified open-end management investment companies registered under the 1940 Act. First Investors is organized under the laws of the State of New York and registered as a broker-dealer under the Securities Exchange Act of 1934. First Investors' primary business is as co-underwriter of the First Investors group of mutual funds, which include the Funds and as sponsor and underwriter of Single Payment and Periodic Payment Plans for investment in certain registered investment companies that are members of the First Investors group of mutual funds. The Plan, which is for investment in shares of Option Fund, is organized as a unit investment trust and registered under the 1940 Act. Applicants have indicated that for the purposes of the 1940 Act, First Investors is the underwriter, depositor and sponsor of the Plan as those terms have been interpreted by the SEC with respect to periodic payment plans.

2. The Plan provides for long-term investment programs through periodic payment plans, for investment in, and accumulation of shares of, the Option Fund. Purchase payments for accounts established under the Plan, net of charges and expenses applicable at the time of purchase, are invested in shares of the Option Fund at the current net asset value of such shares. Holders of the Plan ("Planholders") receive disclosure information required under the 1940 Act about the Plan, as well as about the Option Fund. Planholders are advised of, and have voting privileges at, meetings of the Option Fund. If the voting privilege of a Planholder is not exercised, First Investors (the Plan's sponsor) will advise the Plan's custodian to vote such Planholders' shares of the Option Fund in proportion to the shares of those Planholders who did exercise their voting privileges.

3. The Board of Directors of Option Fund has determined that under present market conditions, Option Fund's equity options trading presents a level of risk not commensurate with the rate of return to shareholders. The Option Fund Board further determined that whereas High Yield Fund likewise has the primary investment objective of seeking high current income, the proposed reorganization would best serve Option Fund shareholders by affording them the opportunity to participate in a fund which reasonably could provide a steady flow of higher income at a lower level of risk. Additionally, the Boards of Directors of the Funds have each determined that the combination of assets of the Funds would permit greater portfolio diversification for High Yield as the surviving Fund, resulting in less risk exposure to shareholders. Furthermore, the larger asset base would permit certain expenses applicable to both Funds (such as custodian fees, legal and accounting fees, taxes, printing expenses, filing fees, etc.) to be reduced. The net effect should be a savings of costs to the combined High Yield Fund and a reduction in the per share expenses applicable to its shareholders.

4. On March 21, 1988 the Funds entered into an Agreement and Plan of Reorganization (the "Agreement") which provided for the transfer of substantially all of the assets of Option Fund to High Yield Fund in exchange for shares of common stock of High Yield Fund having the same aggregate net asset value, the distribution of such shares to Option Fund shareholders in the liquidation, and subsequent dissolution, of Option Fund. Consummation of the Agreement was obtained by the approval of majority of Option Fund shareholders at a Special Meeting of shareholders held on July 6, 1988.

5. The respective Boards of Directors of High Yield Fund and Option Fund have each unanimously approved the proposed reorganization as being in the best interests of the respective Fund shareholders, after having considered, among other factors, the objectives and policies of each Fund, the assets and liabilities of each Fund, the operations

of the business and management of the two Funds, the prospects of each Fund individually and combined, and the fairness to the respective shareholders of each Fund as a result of the exchange of shares being done on a net asset value basis. Factors taken into consideration by the Board of Directors of each of the Fund, where noted, in approving the proposed reorganization included the following:

A. *Anticipated Future Performance.* After reviewing various alternatives, such as changing the investment policies of the Option Fund (which would require shareholder approval), the directors of the Option Fund concluded there is a reasonable likelihood that, under present market conditions, the proposed reorganization would best serve Option Fund shareholders by providing them with a higher level of current income and lower level of risk, without adversely affecting High Yield Fund shareholders.

B. *Compatible Investment Objectives and Policies.*

C. *Greater Diversification.* To the extent High Yield Fund as the surviving entity would have a substantially larger asset base, greater diversification in its portfolio is possible. The Boards of Directors assert that this greater diversity will result in less risk exposure to shareholders and better investment performance over a broader range of market conditions.

D. *Cost Structure.* Consummation of the proposed reorganization and the resultant combination of the Funds should result in reductions in certain costs of operating the Funds. Although the annual management fee for High Yield Fund (1.0% on the first $200 million of average daily net assets) is higher than that charged to Option Fund (0.75% on the first $250 million of average daily net assets), such fee is otherwise reasonable and justified by the additional investment research and statistical analysis necessary for the investment adviser to make informed investment decisions concerning high yield debt securities. Furthermore, the integration of the portfolios of the two Funds is expected to eliminate a significant portion of brokerage costs that would be paid by the Option Fund if it were to remain a separate fund.

E. *Tax Considerations.* If the Option Fund were to liquidate and shareholders were to receive the net asset value of their shares in liquidating distributions, gain or loss would be recognized for Federal income tax purposes. While the proposed reorganization is not contingent upon receipt of an opinion from special counsel, it is anticipated that the proposed reorganization will not cause Option Fund shareholders to recognize a gain or loss for Federal income tax purposes.

F. *Continuity of Investment for Option Fund Shareholders.* The proposed reorganization will allow Option Fund shareholders to maintain without interruption their investment in a fund manged by the same investment advisor which seeks to provide high current income.

G. *Continuity of Sales Representative Services.* Since the Funds are distributed by the same Co-Underwriters, First Investors Mangement Company, Inc. and First Investors Corporation (the "Co-Underwriters"), representatives of retail broker-dealers having sales agreements with the Co-Underwriters will be able to assist their Option Fund shareholder clients with High Yield Fund matters. Such shareholder clients may, if they wish, have the continuing and uninterrupted attention of such representatives.

H. *Shareholder Service.* As a member of the First Investors Group of Funds, High Yield Fund has available the same range of services currently provided to Option Fund shareholders. In addition, with the consolidation of the operations of the Funds, the Board of Directors anticipate that the services provided to shareholders may be done more efficiently and at less net cost.

6. The Board of Directors of First Investors has determined that the best course of action for Planholders is to provide for continuity of their long-term investment objective through the continuance of the Plan via a substitution of the shares of High Yield Fund for the shares of Option Fund in accordance with the Agreement. In so determining, the Board of Directors of First Investors took into account all of the factors considered by the respective Boards of Directors of the Funds, including the following: a) the otherwise impossibility of Planholders to continue to invest in securities previously purchased by them; b) the disadvantage to Planholders if there is a liquidation of Option fund and termination of the Plan; c) the similarity of investment objectives and policies between the Funds; d) if the substitution is permitted, all the Planholders' rights would continue under the Plan without any changes whatsoever; e) the substitution would be subject to Planholder approval and, therefore, would not be at the discretion of First Investors; f) the Planholders have adequate voting rights and full disclosure in connection with the proposed reorganization and substitution; g) the underlying exchange of shares in connection with the proposed reorganization and substitution will be at net asset value; h) the substitution would be done on a tax-free basis to Planholders; and i) the differences in which the Funds involved seek to achieve their common investment goals and objectives is justified by the fact that the substitution will result in Planholders' investments being in securities that have a greater potential to satisfy the Option Fund's investment objectives.

7. The First Investors Board further noted that the rights of Planholders under the Plan will not be changed as a result of the proposed reorganization. Additionally, the Board noted that First Investors will remain as the Plan sponsor, and after the substitution of shares, the only other change to the Plan would be the change of its name to First Investors Periodic Payment Plans for Investment in First Investors High Yield Fund, Inc., to reflect the substituted securities of High Yield Fund.

8. Each Fund has agreed to assume its own expenses in connection with the Agreement and will bear the shared expenses of reorganization in proportion to the total net assets of each Fund because in the opinion of their Board of Directors, the reasonable expectation of the substantial cost savings and added efficiency to a unified fund will in the long term accrue as a substantial benefit to the shareholders of both Funds. All such expenses to be assumed by the Funds are customary and appropriate to the transaction in question, and it is anticipated that these fees shall be reasonable in amount and not out of the ordinary.

Applicants' Legal Conclusions

1. Applicants believe section 11(b) of the 1940 Act is controlling in this case since a majority of shareholders involved approved the reorganization, and thus, section 11(a) and 11(c) of the 1940 Act are not applicable. However, to the extent that sections 11 (a) and (c) of the 1940 Act are deemed to be applicable because of an exchange of shares between open-end, management investment companies and the shares of a unit investment trusts, Applicants request the SEC's approval thereunder.

2. The prohibitions of Section 17 of the 1940 Act against transactions by a registered investment company and affiliates thereof may apply since the transactions in question involve affiliated persons as that term is defined in the 1940 Act. Accordingly, Applicants request an order pursuant to sections 17(b) and 17(d) of the 1940 Act and Rule 17d–1 thereunder, permitting the

proposed reorganization and the resulting exchange of securities.

3. The proposed substitution of shares involves the sponsor (First Investors) of a registered unit investment trust (Plan) holding the security of a single issuer (Option Fund) to substitute another security (High Yield Fund) and, therefore, requires the approval of the SEC to such substitution under Section 26(b) of the 1940 Act. Accordingly, Applicants request an order pursuant to Section 26(b) of the 1940 Act approving said substitution subject to the approval of the proposed reorganization by the Planholders and shareholders of Option Fund.

4. For the reasons listed above and set forth more fully in the application, Applicants submit that the SEC should issue the order requested under: (i) section 11(a) and 11(c) of the 1940 Act since the proposed exchanges are done on the basis of relative net asset values of the investment companies; (ii) section 17(b) of the 1940 Act since the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the investment companies involved and with the general purposes of the 1940 Act; (iii) section 17(d) and Rule 17d–1 thereunder since the proposed transaction is consistent with the provisions, policies and purposes of the 1940 Act and the participation of the registered investment companies is on a basis no different from or less advantageous than any other participant; and (iv) section 26(b) of the 1940 Act since the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–18512 Filed 8–15–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16521; File No. 812–6915]

Monarch Life Insurance Company et al.; Application for Exemption

August 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Monarch Life Insurance Company ("Monarch Life"), Monarch Life Insurance Company Separate Account VA ("Separate Account VA"), First Variable Life Insurance Company ("First Variable"), First Variable Annuity Fund BE ("Fund BE") and Variable Annuity Sales Corporation ("VASCO").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from Sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction from the assets of Separate Account VA and Fund BE of a daily mortality and administrative expense risk charge imposed under certain variable annuity contracts (the "Contracts").

Filing Date: The application was filed on October 23, 1987. Amendments were filed on June 13, 1988 and July 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on September 5, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Monarch Life and Separate Account VA, One Monarch Place, Springfield, Massachusetts 01144; First Variable Life, Fund BE and VASCO, 111 Center Street, Suite 2110, Little Rock, Arkansas 72201.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272–3450 or Clifford E. Kirsch, Special Counsel, at (202) 272–2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300)).

Applicants' Representations

1. Monarch Life is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts in 1901 and is a wholly-owned subsidiary of Monarch Capital Corporation, a New York Stock Exchange listed company. Monarch Life established Separate Account VA on October 20, 1987. First Variable Life is a stock life insurance company organized under the laws of the State of Arkansas in 1968 and is also a wholly-owned subsidiary of Monarch Capital Corporation. First Variable Life established Fund BE on July 15, 1988. VASCO, a wholly-owned subsidiary of First Variable Life and an indirect wholly-owned subsidiary of Monarch Capital Corporation, is a broker-dealer registered under the Securities Exchange Act of 1934 that, along with other broker-dealers who are members of the National Association of Securities Dealers, Inc., will distribute the Contracts. The Contracts are flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts.

2. Separate Account VA will be divided initially into eleven subaccounts, each of which will invest in a separate investment portfolio of Variable Investors Series Trust, a Massachusetts business trust (the "Trust"). The Trust is a no-load, open-end, diversified, series management investment company registered under the 1940 Act (File No. 33–11183; 811–4969), offering eleven investment portfolios. Fund BE will be divided initially into five subaccounts, each of which will invest in a separate investment portfolio of Benham Variable Insurance Trust, a Massachusetts business trust (the "Fund"). The Fund is a no-load, open-end, diversified, series management investment company registered under the 1940 Act (File Nos. 33–13916; 811–5139), offering eight investment portfolios.

3. Monarch Life and First Variable Life (collectively, the "Companies") impose a mortality and expense risk charge (the "Risk Charge") equivalent to an annual rate of 1.25% of the average daily net asset value of Separate Account VA and Fund BE, respectively. Applicants state that the mortality component (approximately 0.75%) of the Risk Charge is intended to compensate First Variable Life and Monarch Life for assuming the risk that their actuarial estimate of mortality rates may prove erroneous (i.e., the risk that a beneficiary may receive annuity benefits for a period longer than those reflected in the Contract's guaranteed annuity rates or may die at a time when the death benefit guaranteed by the Contract is higher than the accumulation value of the participant's Contract); and that the expense component

(approximately 0.50%) of the Risk Charge is intended to compensate First Variable Life and Monarch Life for assuming the risk that administrative charges, which are guaranteed not to increase, may prove insufficient to cover expenses actually incurred. The Risk Charge is guaranteed and may not be increased by the Companies.

4. A charge of $30 will be deducted from the initial purchase payment for each Contract to cover costs associated with the issuance of the Contract. An annual maintenance charge of $30 will be assessed each Contract during each Contract year during the accumulation period and at annuitization. The Companies estimate that this charge will represent the actual cost of providing administrative services.

5. No deduction for distribution or sales expense will be imposed upon purchase payments when received by the Companies. Rather, the Companies may recoup some or all of such distribution expenses from a withdrawal charge ("Withdrawal Charge"). The cumulative total of all withdrawal charges is guaranteed never to exceed five percent of the owner's aggregate purchase payments.

6. Applicants represent that the level of the Risk Charge is reasonable in relation to the risks assumed by the Applicants under the Contracts and within the range of industry practice for comparable annuity contracts. This representation is based upon Monarch Life's and First Variable Life's analysis of publicly available information about such contracts, taking into consideration the particular annuity features of comparable contracts, including such factors as current charge levels, charge level guarantees or annuity rate guarantees, the manner in which the charges are imposed, and the markets in which the contracts are offered. Applicants state that the Companies have incorporated the identity of the products analyzed and its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request.

7. Applicants represent that the Withdrawal Charge assessed in connection with certain partial or total withdrawals or at annuitization may be insufficient to cover all costs of distributing the Contracts. Applicants state that if the actual amounts derived from the Withdrawal Charge prove insufficient to cover the actual costs of distributing the Contracts, the deficiency will be met from Monarch Life's and First Variable Life's general corporate funds, including amounts, if any, derived from the Risk Charge not otherwise applied to the expenses the Risk Charge was designed to defray. Applicants represent that Monarch Life and First Variable have concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit Separate Account VA and Fund BE and the owners of the Contracts. Monarch Life and First Variable Life will maintain at their administrative offices and make available to the Commission a memorandum setting forth the basis for their conclusion that Separate Account VA's and Fund BE's distribution financing arrangement will benefit Separate Account VA and Fund BE and the owners of the Contracts.

8. Separate Account VA and Fund BE will invest only in management investment companies which undertake, in the event any such company should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by its boards of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the 1940 Act.

For the Commission, by the Divison of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–18513 Filed 8–15–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25988; File No. SR–DTC–88–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Company

The Depository Trust Company ("DTC") on June 30, 1988, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would authorize the DTC to adopt procedures applicable to foreign-owned shares of United States communications and maritime issues that would permit DTC participants: (1) To deposit such shares in their DTC accounts, and (2) to make such shares available for DTC's book-entry services. The Commission is publishing this notice to solicit public comment on the proposal.

I. DTC's Description of the Proposal

DTC states in its filing that the laws of the United States restrict the amount of stock of certain communications and maritime issues that may be owned beneficially by persons that are not United States citizens.[1] In conformity with these laws, DTC states that heretofore its procedures have operated to assure that only shares of such issuers that are owned beneficially by United States citizens may be held by DTC.

DTC states that now, in conjunction with communications and maritime issuers and their transfer agents, it has established a certification procedure that would permit DTC participants to deposit foreign-owned shares of such issuers into special segregation accounts ("Seg–100 accounts") at DTC where they would be registered in DTC's nominee name of Cede & Co.[2] These foreign-owned shares also would be eligible for DTC's book-entry services.

Under the certification procedure, DTC would report to the subject issuers' transfer agents the total holdings in the participants' Seg–100 accounts for each subject CUSIP number.[3] The transfer agents (1) would maintain records of their issuers' securities in the Seg–100 accounts by CUSIP number; and (2) would have the right to reject any DTC request for transfer of shares into Cede & Co., if such transfer would cause the statutory restriction on foreign-owned shares to be exceeded. In event the statutory limit were exceeded, DTC states that it would reverse any credit accorded to a participant's account for the rejected share amount and upon receipt of any rejected share certificate would forward it to the participant.

II. DTC's Rationale for the Proposal

DTC states in its filing that the purpose of the proposal is to permit foreign-owned shares of United States communication and maritime issues to be eligible for DTC's book-entry services. DTC further states that the proposal is consistent with the Act, particularly section 17A of the Act, in that it would promote the prompt and

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[1] DTC states that shares owned beneficially by non-United States citizens are prohibited from exceeding 25% of certain stock issues by provisions of the Shipping Act and the Federal Communications Act. Telephone conversation between Albert M. Munson, Associate Counsel, DTC, and Thomas C. Etter, Attorney, Securities and Exchange Commission, August 2, 1988.

[2] DTC states that the procedures authorized by the proposed rule filing would conform with the requirements of the said Shipping Act and the Federal Communications Act. *Id.* The Commission, however, is taking no position on whether this proposal meets the requirements of the Shipping Act or of the Federal Communications Act.

[3] DTC notes that the sole exception to this procedure would be shares of Communications Satellite Corporation, which has declined to participate in the proposal. *Id. See also,* DTC's Important Notice, dated June 16, 1988.

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accurate clearance and settlement of transactions in units of communications and maritime securities.

III. Proposal's Effectiveness and Solicitation of Comments

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of the Act.

Interested persons may submit written comments within 21 days after notice is published in the **Federal Register**. Six copies of such comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for materials that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal offices of the DTC. All submissions should refer to File No. SR–DTC–88–09 and should be submitted by September 6, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 10, 1988.

[FR Doc. 88–18428 Filed 8–15–88; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New Routine Uses

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine uses for TVA–15, "Land Between The Lakes Hunter Records—TVA," and TVA–30, "Land Between The Lakes Mailing Lists—TVA."

SUMMARY: This publication gives notice, as required by the Privacy Act, of TVA's intention to establish one new routine use for the system of records entitled TVA–15, "Land Between The Lakes Hunter Records—TVA," and two new routine uses for the system of records entitled TVA–30, "Land Between The Lakes Mailing Lists—TVA." Details of the proposed routine uses are described in the **SUPPLEMENTARY INFORMATION** section.

DATE: Comments must be received by September 15, 1988.

ADDRESS: Comments should be sent to Ronald E. Brewer, Tennessee Valley Authority, 1010 Georgia Avenue, 100 Lupton Building, Chattanooga, Tennessee 3740–2801.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615–751–2520.

SUPPLEMENTARY INFORMATION: One new routine use for TVA–30 would permit disclosure "To provide mailing lists to participants in Land Between The Lakes Leadership Training programs for the purpose of facilitating communication among participants." The second news routine use for TVA–30 would permit disclosure "To provide mailing lists to students or faculty of educational institutions for the purposes of research." This routine use is also proposed for TVA–15. The current text of TVA–15 appears at 53 FR 10983, April 4, 1988. The current test of TVA–30 appears at 53 FR 10990–10991, April 4, 1988.

John W. Thompson,

Vice President, Services.

[FR Doc. 88–18441 Filed 8–15–88; 8:45 am]

BILLING CODE 8120–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–61]

Unfair Trade Practices; Brazil's Lack of Adequate Intellectual Property Protection for Pharmaceuticals and Fine Chemicals

AGENCY: Office of the United States Trade Representative.

ACTION: Request for additional public comments on possible U.S. actions in response to certain Brazilian unfair trade practices.

SUMMARY: Pursuant to the notice of July 26, 1988 (53 FR 28100), the Trade Policy Staff Committee (TPSC) is soliciting comments on the attached annex. This annex contains the list of items that were published in the notice of July 26, 1988, in terms of the Harmonized System tariff nomenclature (HS).

SUPPLEMENTARY INFORMATION: As indicated in a notice of July 26, 1988 (53 FR 28100), on July 23, 1987, the U.S. Trade Representative initiated an investigation under section 302 of the Trade Act of 1974, as amended (the "Act"), concerning Brazil's lack of patent protection for pharmaceuticals and fine chemicals (52 FR 28223). Initiation of the investigation was in response to a petition filed by the Pharmaceutical Manufacturers Association (PMA) under section 302(a) of the "Act" on June 11, 1987.

On July 21, 1988, the President determined under section 301 of the "Act" that the Government of Brazil has engaged in acts, policies and practices with respect to the denial of patent protection for pharmaceuticals and fine chemicals that are unreasonable and burden or restrict U.S. commerce. The President also determined that he intends to take appropriate and feasible action in response to the Government of Brazil's policies and practices and is, therefore, considering increasing customs duties or otherwise restricting the importation of products from Brazil. In this regard, the President directed the U.S. Trade Representative to hold a public hearing on a list of products accounting for about $200 million worth of exports to the United States from Brazil. From this list, appropriate products will be chosen for increased duties or other import restrictions.

In response to the President's directive to the U.S. Trade Representative, the TPSC will hold a public hearing on a list of products accounting for about $200 million worth of exports from Brazil to the United States. From this list, appropriate items will be chosen for increased duties or other import restrictions. As indicated in the notice of July 26, 1988, the TPSC will hold a public hearing on the list starting at 9:30 AM on September 8 (and 9 if necessary) at the U.S. International Trade Commission, Court Room A, Room 100, 500 E Street, SW, Washington, DC, 20436.

The Harmonized System Tariff Nomenclature

The attached annex lists those HS subheadings which contain the products provided for in the current Tariff Schedules of the United States (TSUS) items listed in the annex to the notice of July 26, 1988. As was mentioned in the July 26 notice, due to changes in the tariff nomenclature between the TSUS and HS, differences in product coverage may occur. Therefore, comments are being sought on any product coverage discrepancies that may arise.

The product descriptions for the listed HS subheadings are provided in USITC publication No. 2030 entitled "Harmonized Tariff Schedule of the United States, Annotated for Statistical Reporting Purposes, First Edition." This document can be purchased from the Superintendent of Documents, U.S.

Government Printing Office, Washington, DC, 20402, or reviewed at the Office of Executive and International Liaison, Room 716, U.S. International Trade Commission (USITC), 500 E Street, SW, Washington, DC, 20436, telephone (202) 252–1141. Additional information concerning the attached HS-based annex and its relationship to the TSUS based annex in the notice of July 26, 1988, also is available for review at the USITC Office of Executive and International Liaison.

Public Comments

The deadline for receipt of written comments on the HS based annex, specifically on the differences in precise product coverage resulting from the conversion to the HS, has been extended from August 29, 1988, to the close-of-business Thursday, September 8, 1988. Comments concerning the TSUS based annex and request to appear at the public hearings are still required on the dates listed in the July 26, 1988, notice. All written comments on this HS based annex should be provided to Ms. Carolyn Frank, Secretary of the TPSC, Office of the U.S. Trade Representative, Room 523, 600 17th Street, NW., Washington, DC, 20506. The comments must provide the following information: (1) the name, address and telephone number of the party commenting; (2) the HS subheadings and relevant TSUS items that are of interest to the party commenting; and (3) an explanation of how the HS based annex differs in its product coverage from the TSUS based annex and the implications of such differences for the party commenting. All written comments must be filed in accordance with 15 CFR 2006.8.

FOR FURTHER INFORMATION CONTACT: Questions concerning the specific product coverage of the HS-based annex should be referred to the Office of Executive and International Liaison, USITC, at the phone number listed above.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

ANNEX

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13021990	28142000	28261110	28275950	28332950	28369200
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21022040	28161000	28262000	28281000	28334050	28371100
21022060	28162000	28269000	28291100	28341010	28371900
25010000	28163000	28271000	28291900	28342100	28372010
25020000	28170000	28272000	28299010	28342200	28372050
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25281000	28183000	28273200	28301000	28342950	28391100
25289000	28191000	28273300	28309000	28352100	28392000
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25302020	28209000	28273500	28319000	28352300	28401100
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28070000	28220000	28273700	28322000	28352500	28403000
28091000	28252000	28273800	28323010	28352600	28411000
28112100	28253000	28273910	28323050	28352910	28413000
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28419010	29031400	29190050	29269027	29335929	29350043
28419020	29035910	29201020	29302020	29335930	29361000
28419030	29052900	29209010	29309010	29339018	29362100
28419050	29053950	29213050	29309050	29339026	29362200
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28443010	29146920	29224210	29332100	29339035	29362915
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28489000	29171925	29225017	29334020	29349016	29372900
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28499010	29181650	29225025	29335110	29349025	29379220
28499020	29181710	29231000	29335150	29349047	29379230
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28500005	29183050	29242939	29335923	29350033	29381000
28500007	29189005	29251920	29335925	29350035	29389000
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48102900	48173000	48235100	84629900	85229060
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48172040	48234000	84252000	85211000	

[FR Doc. 88-18600 Filed 8-15-88; 8:45 am]
BILLING CODE 3190-01-C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; Proposed System of Records

The Department of Transportation (DOT) herewith publishes a proposal to create a system of records. This system does not duplicate any existing DOT system.

Any person or agency may submit written comments on the proposed system to the U.S. Coast Guard (G–PXM) ATTN: Elaine Sweetland, 2100 2nd St., SW., Washington, DC 20593–0001. Comments must be received on or before October 19, 1988, will be considered.

If no comments are received, the proposed changes will become effective 60 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, August 11, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

The Office of the Secretary, on behalf of the Coast Guard, proposes to establish a new system of records subject to the Privacy Act of 1974. The record system is named the Child Care Program Record System DOT/CG 634. This system will cover all records maintained on children of active duty members of the uniformed services and other Federal employees who are enrolled in a Coast Guard child care program.

The purpose of this notice is to create a system to include all registration files at Child Development Centers. These files contain family information, medical records of the child, emergency medical care authorization, field trip permission, authorization for release of child, eligibility for participation in state or Federal programs, and communication between the center and parents to be used for the purposes described under the appropriate headings in the attached copy of the system notice prepared for publication in the Federal Register.

The authority for maintenance of the system is contained in 44 U.S.C. 3101 and 14 U.S.C. 632.

Since the information contained in the system is supplied by parents or medical personnel in order to enroll a child in a child care program, the probable effect on the privacy interests of the general public is minimal.

A description of the steps taken by the Department to safeguard these records is given under the appropriate heading in the attached copy of the system notice prepared for publication in the Federal Register.

The record system is maintained to protect the health and safety of the children, to establish the eligibility for participation in the Child Care Food Program, and to record communication between the center and the parents about the children. These are compatible with the routine uses of reporting medical conditions, preventing health and communicable disease control problems, and with providing eligibility information to agencies sponsoring the Child Care Food Program.

The purpose of this report is to comply with the Office of Management and Budget Circular A–130, Appendix 1, dated December 12, 1985.

DOT-CG 634

SYSTEM NAME:

Child Care Program Record System

SYSTEM LOCATION:

At the facility where the care was provided or is being provided.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

a. Children enrolled in a Coast Guard child care program. Eligible children include children of active duty members of the uniformed services and children of Federal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Information about the family;
b. Medical history of child;
c. Authorization for emergency medical care;
d. Permission for field trips;
e. Authorization to release child to someone other than parent;
f. Establishment of eligibility for participation in state or Federally sponsored programs;
g. Communication between the center and parents about child; and
h. Other necessary records to protect health and safety of children.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES FOR SUCH USES:

a. Provided to Federal, state, or local governments and agencies to report medical conditions and other data required by law; to aid in preventive health and communicable disease control problems.

b. Provided to Department of Agriculture and state agencies for use in determining eligibility to participate in the Child Care Food Program (CCFP).

c. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on forms in file folders or in computer file.

RETRIEVABILITY:

Name of child.

SAFEGUARDS:

Files are maintained in a secured filing cabinet or secured computer file. Access is limited to authorized center staff.

RETENTION AND DISPOSAL:

a. Child's record file is destroyed 3 years after date of last action. Registration/medical forms may be sent to another shcool or center if child transfers. CCFP eligibility records are transferred to an audit file at the end of each year where they are not retrieved by child's name. Audit records are destroyed after 3 years or after audited, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager: Chief, Office of Personnel, Department of Transportation, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

a. Written request or personal visit to the child care center which provided care.

b. Written request to Commandant (G–TIS), U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001

Proof of identity may be required prior to permitting access to records. Written request should include full name of the individual requestor and the full name of the child whose records are requested.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure.

RECORD SOURCE CATEGORIES:

Parents or medical personnel familiar with the child's medical history.

[FR Doc. 88–18517 Filed 8–15–88; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 88–063]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–463; 5 U.S.C. App. I) notice is hereby given of the eighteenth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 29, 1988, in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander G.A. Bird, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6232.

Dated: August 10, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88–18518 Filed 8–15–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–064]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 8, 1988, at the West Gulf Maritime Association, 1717 East Loop, Suite 200, Houston, Texas. The meeting is scheduled to begin at approximately 10:30 a.m. and end at 12:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. Individuals making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement of the Advisory Committee at any time.

Additional information may be obtained from Commander G.A. Bird, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6232.

Dated: August 10, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88–18519 Filed 8–15–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–065]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 8, 1988, at the West Gulf Maritime Association, 1717 East Loop, Suite 200, Houston, Texas. The meeting is scheduled to begin at approximately 9:00 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. Individuals making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander G. A. Bird, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6234.

Dated: August 10, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88–18520 Filed 8–11–88; 8:45 am]

BILLING CODE 4910–14–M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption; Vanchem, Inc., et al.

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49

CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application numbers. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closed August 30, 1988.

ADDRESS: *Comments to:* Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

Application No.	Applicant	Renewal of exemption
3768-X	Vanchem, Inc., Lockport, NY	3768
4052-X	Boeing Commercial Airplanes, Seattle, WA [1]	4052
6267-X	Hydrotech Chemical Corp., Marietta, GA	6267
6293-X	Olin Corp., East Alton, IL	6293
6293-X	Hercules, Inc., Wilmington, DE	6293
6349-X	Airco Industrial Gases, New Jersey, NJ	6349
6369-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE	6369
6538-X	Hanco International, Inc., Miami, FL	6538
6922-X	Halocarbon Products Corp., North Augusta, SC	6922
6971-X	Chem Service, Inc., West Chester, PA [2]	6971
7052-X	Maxell Corp. of America, Fair Lawn, NJ	7052
7466-X	Firmenich Inc., Princeton, NJ	7466
7648-X	Sunwest Aviation, Ogden, UT	7648
7719-X	Turner Co. of Cooper Group, Sycamore, IL	7719
7840-X	Weber Aircraft, Inc., Burbank, CA	7840
8023-X	Acurex Corp., Mountain View, CA	8023
8080-X	Occidental Chemical Corp., Dallas, TX [3]	8080
8431-X	The Dow Chemical Co., Midland, MI	8431
8445-X	Aqua-Tech, Inc., Port Washington, WI	8445
8450-X	Atlantic Research Corp., Camden, AR [4]	8450
8451-X	Stresau Laboratory, Inc., Spooner, WI	8451
8451-X	Schlumberger Perforating and Testing Center, Rosharon, TX [5]	8451
8526-X	The ServiceMaster Co., L.P., Downers Grove, IL	8526
8526-X	National Starch and Chemical Corp., Bridgewater, NJ	8526
8554-X	IRECO, Inc., Salt Lake City, UT	8554
8723-X	Pacific Powder Co., Olympia, WA	8723
8723-X	Pacco, Inc., Tenino WA	8723
8861-X	Hoover Group, Inc., Beatrice, NE	8861
8913-X	Eurotainer, S.A., Paris, France	8913
9052-X	Chemical Handling Equipment Co., Inc., Toledo, OH [6]	9052
9228-X	Southern California Chemical Co., Inc., Santa Fe Springs, CA	9228
9253-X	Wiva Verpakkingen B.V., Oosterhout, Netherlands	9253
9262-X	Gearhart Industries, Inc., Fort Worth, TX	9262
9286-X	Sonoco Fibre Drum Inc., Lombard, IL	9286
9290-X	Mauser Packaging, Limited, Litchfield, CT	9290
9307-X	Better Methods, Inc., Paterson, NH	9307
9316-X	Fluoroware Inc., Chaska, MN [7]	9316
9323-X	U.S. Department of Defense, Falls Church, VA	9323
9421-X	Taylor-Wharton Division of Harsco Corp., Harrisburg, PA [8]	9421
9616-X	James Russell Engineering Works, Inc., Boston (Dorchester), MA	9616
9623-X	Atlas Powder Co., Dallas, TX	9623
9623-X	ETI Explosives Technologies International Inc., Wilmington, DE	9623
9623-X	Buckley Powder Co., Englewood, CO	9623
9643-X	Eastman Kodak Co., Rochester, NY	9643
9649-X	U.S. Department of Defense, Falls Church, VA	9649
9655-X	Chevron U.S.A., Inc., El Segundo, CA	9655
9657-X	Noranda Sales Corp., Toronto, Ont	9657
9659-X	Compositek Corp., Brea, CA	9659
9716-X	Comdyne I, Inc., West Liberty, OH [9]	9716
9816-X	Amrex Chemical Co., Inc., Binghamton, NY	9816
9858-X	Fomo Products, Inc., Norton, OH [10]	9858
9960-X	Youth With A Mission, Salem, OR [11]	9960

[1] To authorize an increase in the volumetric capacity to 35 fluid ounces and a change in the Proper Shipping Name to Nitrogen.

[2] To authorize an alternative method of packaging for reshippers who are returning the material to the holder of the exemption.

[3] To authorize renewal and an alternative sparger pipe system for the tank car tanks.

[4] To authorize transport, in the applicant's vehicles, of containers of rocket motors within the designated shipping area.

[5] To authorize an additional packaging described as a 2 x 15 inch Schedule 80, seamless stainless steel pipe.

[6] To authorize modification of the metal frame containing a polyethylene tank.

[7] To authorize renewal, the use of 1/4 inch rivets, instead of 1/4 inch bolts, as an alternative means of joining the polyethylene tank components and cargo vessel as additional mode of transportation

[8] To authorize deletion of the provision that requires fraction toughness testing.

[9] To authorize the use of 6061-T6 aluminum liners in addition to the current 6351-T6 aluminum liners.

[10] To authorize a change of improper reference to 2P containers, an increase in equilibrium pressure of the lading at 130 degrees Fahrenheit from 160 psig to 170 psig an increase in the total weight of the package.

[11] To extend an exemption originally issued on an emergency basis to authorize carriage onboard a passenger carrying aircraft of a small quantity of a flammable liquid contained in a safety lamp.

Application No.	Applicant	Parties to exemption
5600-P	Bandgap Technology Corp., Broomfield, CO	5600
7052-P	Beta Phase, Inc., Menlo Park, CA	7052
7052-P	3M, St. Paul, MN	7052
7052-P	Whittaker-Yardney Power Systems, Waltham, MA	7052
7052-P	Hitachi-Maxell, Ltd., Tokyo, Japan	7052
7876-P	Millinckrodt, Inc., Paris, KY	7876
7946-P	Imaging and Sensing Technology Corp., Horsehead, NY	7946
8141-P	Whittaker-Yardney Power Systems, Waltham, MA	8141
8239-P	Imaging and Sensing Technology Corp., Horseheads, NY	8239
8523-P	CCR/SATI, Paris La Defense, France	8523
8716-P	Whittaker-Yardney Power Systems, Waltham, MA	8716
8978-P	Whittaker-Yardney Power Systems, Pawcatuck, CT	8978
9066-P	Volkswagen of America, Inc., Troy, MI	9066
9181-P	Whittaker-Yardney Power Systems, Waltham, MA	9181
9212-P	Island Gases Limited, Christiansted St. Croix U.S., VI	9212
9271-P	Florida East Coast Railway Co., St. Augustine, FL	9271
9688-P	Whittaker-Yardney Power Systems, Waltham, MA	9688
9785-P	Zim-American Israeli Shipping Co., Inc., New York, NY	9785

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 8, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-18461 Filed 8-15-88; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions; Thermex Energy Corp.

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1 Motor vehicle, 2 Rail freight, 3 Cargo vessel, 4 Cargo-only aircraft, 5 Passenger-carrying aircraft.

DATE: Comment period closes September 14, 1988.

ADDRESS: *Comments to:* Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10008-N	Thermex Energy Corporation, Dallas, TX.	49 CFR 172.101, 175.3	To authorize shipment of Detonating cord, Class A explosive by air. (mode 4)
10017-N	CECO Equipment, Inc., Kilgore, TX	49 CFR 173.119(a)(2), 173.119(m)(4), 173.245(a)(4), 178.81.	To authorize shipment of oil well treating compounds, classed as Flammable liquid, Corrosive material or Combustible liquid in non-DOT Specification, 60 or 110 gallon capacity tanks mounted on a truck chassis. (mode 1)
10018-N	CIBA-GEIGY Corporation, Ardsley, NY.	49 CFR 173.359	To authorize shipment of an Organophosphorus Pesticide Liquid, n.o.s., classed as Poison B in a non-DOT Specification polyethylene portable tank.
10019-N	Structural Composites, Industries, Pomona, CA.	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3.	To authorize manufacture marking and sale of non-DOT Specification fiber reinforced plastic cylinders for the shipment of certain compressed gases, classed as Nonflammable gas. (modes 1, 2, 3, 4)
10020-N	Allwaste, Stafford, TX	49 CFR 173.245b(a)(10)	To authorize shipment of a material described as Corrosive solid, n.o.s., classed as Corrosive material, in a non-DOT Specification, roll-off container carried on a tractor trailer truck.
10021-N	Thermacore, Inc., Lancaster, PA	49 CFR 173.304	To authorize shipment of Ammonia, anhydrous, classed as Nonflammable gas, in non-DOT Specification pressure vessels described as heat pipes. (mode 1)
10022-N	Union Carbide Corporation, Linde Division Danbury, CT.	49 CFR 173.119, 173.245, 173.246, 173.247, 173.251, 173.264, 173.273, 173.302, 173.304, 173.328, 173.34(a)(1), 173.346.	To authorize the use of a non-DOT Specification salvage cylinder to overpack and transport damaged or leaking packages of various hazardous materials. (mode 1)
10023-N	American Chrome & Chemicals Inc., Corpus Christi, TX.	49 CFR 173.164	To authorize shipment of Chromic acid crystals, described as chromic acid, solid and classed as Oxidizer, in a non-DOT Specification, lined polypropylene bulk bag. (modes 1, 2, 3)
10024-N	V. E. Enterprises, Inc., Springer, OK	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.341-5, 178.342-3, 178.343-5.	To authorize shipment of liquid and semi-solid hazardous waste materials and mixtures, classed as Flammable liquid, Corrosive material or Poison B, in a non-DOT Specification cargo tank. (mode 1)
10027-N	Japan Oxygen, Inc., Long Beach, CA	49 CFR 173.318	To authorize shipment of Helium, refrigerated liquid, classed as Nonflammable gas, in a non-DOT Specification container, similar to a DOT Specification MC-338 cargo tank. (modes 1, 3)
10028-N	E. I. Du Pont De Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.255(a)(4)	To authorize shipment of Dimethyl sulfate, classed as Corrosive material, in DOT Specification 112A400W tank cars. (mode 2)
10029-N	Thompson-Hayward Chemical Company, Kansas City, KS.	49 CFR 173.268(a)	To authorize shipment of Hydrochloric acid and Sulfuric acid, both classed as Corrosive, and Nitric acid (over 40%), classed as Oxidizer, in a compartmented DOT Specification MC 312 cargo tank. (mode 1)
10031-N	Universal Cryogenics Corporation, Alburtis, PA.	49 CFR 172.293, 173.318, 173.320, 176.30, 176.76(h).	To authorize manufacture, marking and sale of non-DOT specification portable tanks, enclosed in a frame or skid mounted, for shipment of liquefied helium and liquefied hydrogen, classed as flammable gas. (modes 1, 2, 3)

Note.—The number 9999-N assigned to Arbel-Fauvet-Rail which was published in the July 15, 1988 **Federal Register** Vol. 53, No. 136 (New Exemptions) is changed to 10032-N.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 8, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-18462 Filed 8-15-88; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

1989-90 Fulbright Teacher Exchange Program

The United States Information Agency announces the 1989-90 Fulbright Teacher Exchange Program.

Applications are invited from elementary and secondary school teachers and administrators and college faculty to teach in schools or colleges or to attend seminars abroad under the Mutual Educational and Cultural (Fulbright) Act of 1961. Not all categories of applicants are eligible for exchange or seminar positions with all countries. Eligibility requirements include: (1) U.S. citizenship; (2) bachelor's degree; (3) three years of full-time teaching experience for teaching positions; two years full-time teaching experience for seminar positions; (4) current full-time employment in appropriate subject areas and at appropriate teaching level for which application is made; and (5) fluency in foreign languages for certain non-English speaking countries. USIA cannot guarantee that a particular program will be in a given year. Subject to the availability of Federal funds and the cooperation of foreign nations we anticipate having programs in Argentina, Belgium/Luxembourg, Brazil, Canada, Chile, Colombia, Cyprus, Denmark, Federal Republic of Germany, France, Hungary, Iceland, Italy, Mexico, The Netherlands, Norway, Panama, The Philippines, Senegal, South Africa, Switzerland, and United Kingdom. Usually, U.S. and foreign teachers exchange teaching positions for one academic year. U.S. and foreign teachers continue to receive a salary from their home institutions. A limited number of one-way teaching assignments are also available. In addition, seminars are presently planned in Italy and the Netherlands. Participants in seminars may be provided with transportation, room board, and/or tutition, depending on the program. Applications for the 1989–90 competition must be submitted by October 15, 1988. The application packet is disseminated in August and September. Further information should be requested from the: Fulbright Teacher Exchange Program, E/ASX, United States Information Agency, 301 4th St. S.W., Washington, DC 20547, (202) 485–2555.

Warren Obluck,

Deputy Director, Office of Academic Programs.

Date: August 8, 1988.

[FR Doc. 88–18461 Filed 8–15–88; 8:45 am]

BILLING CODE 8230–01–M

VOL 53 ISS 158 AG 16 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 158
Tuesday, August 16, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 15, 22, 29, and September 5, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 15

Monday, August 15

2:00 p.m.
Briefing on Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting).

Tuesday, August 16

2:00 p.m.
Briefing on Maintenance Workshop (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of August 22

Tentative.
There are no meetings scheduled for the Week of August 22.

Week of August 29

Tentative.
There are no meetings scheduled for the Week of August 29.

Week of September 5

Tentative.

Wednesday, September 7

10:00 a.m.
Briefing on Proposed Rule on Degreed Operators (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

ADDITIONAL INFORMATION: Affirmation of "Amendment of Commission Regulations on Ownership of Securities by Certain NRC Employees and on Acceptance of Food, Refreshments, and Travel Expenses From Outside Parties" (Public Meeting) was held on August 11.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.
August 11, 1988.

[FR Doc. 88-18612 Filed 8-12-88; 2:43 pm]
BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 53, No. 158
Tuesday, August 16, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Navy

Patent Licenses; Pennwalt Corp.

Correction

In notice document 88-17196 beginning on page 28681 in the issue of Friday, July 29, 1988, make the following correction:

On page 28681, in the third column, under SUMMARY, in the seventh line, "4,469,967" should read "4,469,976".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, 29, 91, 121, 125, and 135

[Docket No. 25530; Amdt. Nos. 23-35, 25-65, 27-22, 29-25, 91-204, 121-197, 125-10, 135-26]
[RIN 2120-AC48]

Cockpit Voice Recorders (CVR) and Flight Recorders

Correction

In rule document 88-15179 beginning on page 26134 in the issue of Monday, July 11, 1988, make the following corrections:

1. On page 26139, in the first column, in the sixth complete paragraph, in the first line, insert "not" after "are".

2. On page 26142, in the first column, in the fourth complete paragraph, in the second line, "has" should read "have".

PART 29—[CORRECTED]

§ 29.1459 [Corrected]

3. On page 26145, in the second column, in § 29.1459(a)(5), in the fifth line, "date" should read "data".

PART 91—[CORRECTED]

§ 91.35 [Corrected]

4. On the same page, in the third column, in § 91.35(b), in the fifth line, "seats or" should read "seats of"; and in § 91.35(c), in the third line, "continuously" was misspelled.

Appendix E—[Corrected]

5. On page 26146, Appendix E is corrected as follows:

a. In the first column, in the 19th entry, "Spoiler-Speedbrake (Discrete)" should read "Spoiler/Speedbrake (Discrete)".

b. In the second column, in the eighth entry, in the first line, "useable" was misspelled.

c. In the third column, in the second entry, in the first line, "ks." should read "kts."

d. In the fifth column, in the 2nd, 9th through 13th, and 15th through 17th entries, remove the period after the percent sign; and in the 7th entry, remove the period after the degree mark.

Appendix F—[Corrected]

6. On the same page, in Appendix F, in the second column, in the fourth entry, "350°" should read "360°".

PART 121—[CORRECTED]

Appendix B—[Corrected]

7. On page 26147, in Appendix B, make the following corrections:

a. In the second column, in the third entry, "1.2 $_D$" should read "1.2 V_D".

b. In the same column, in the sixth entry, "-75°" should read "±75°".

c. In the third column, the eighth entry should read ±2%.

d. In the fifth column, in the 2nd, 4th, 6th, and 8th entries, remove the period at the end of the entries.

8. On page 26148, in Appendix B, in the second column, in the next to last entry, "0-200 NM" should read "0-200 NM;"

PART 125—[CORRECTED]

§ 125.225 [Corrected]

9. On page 26149, in the first column, in § 125.225(b) introductory text, in the 15th line, "with" should read "within".

10. On the same page, in the third column, in § 125.225(i), in the third line, "paragraph" should read "paragraphs".

Appendix D—[Corrected]

11. On page 26150, in Appendix D, in the fifth column, in the 2nd, 8th through 10th, 15, and 20th entries, remove the period at the end of the entries; and in the 4th entry, "0.5." should read "0.5 ".

12. On page 26151, in Appendix D, in the second column, in the next to last entry, "0-200 NM" should read "0-200 NM;".

PART 135—[CORRECTED]

Appendix B—[Corrected]

13. On page 26152, in Appendix B, in the fifth column, in the 3rd, 4th, 7th, 8th, 13th and 14th entries, remove the period at the end of the entries; also, in the 12th entry, remove the period after "fpm".

Appendix C—[Corrected]

14. On page 26153, in Appendix C, in the fifth column, in the 10th through 12th and 14th through 17th entries, remove the period after the percent sign.

Appendix D—[Corrected]

15. On page 26154, in Appendix D, make the following corrections:

a. In the second column, in the eighth entry, "(discretion)" should read "(discrete)"; and in the 41st line, "HM" should read "NM".

b. In the fifth column, in the 3rd, 4th, and 6th entries, remove the period at the end of the entries; also, in the 16th entry, remove "/".

Appendix E—[Corrected]

16. On page 26155, in Appendix E, in the fifth column, in the 1st, 3rd, 5th, 6th, and 8th through 14th, and 17th entries, remove the period at the end of the entries.

For a Federal Aviation Administration correction to this document, see the Rules section of this issue.

BILLING CODE 1505-01-D

federal register

Tuesday
August 16, 1988

Part II

Environmental Protection Agency

40 CFR Part 148

Underground Injection Control Program; California List and Certain "First Third" Wastes; Final Rule

VOL 53 ISS 158 AUG 16 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 148

[FRL 3420-7]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions, Phase Two; California List and Certain "First Third" Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating rules implementing the Congressionally mandated prohibitions on the underground injection of selected hazardous wastes. This proposed action is being taken in response to amendments to the Resource Conservation and Recovery Act (RCRA) enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

Today's promulgation establishes effective dates for "California list" wastes (as defined by section 3004(d) of RCRA), as well as certain wastes prohibited under section 3004(g) of RCRA.

The general framework for implementing the land disposal restrictions for injection of hazardous wastes was promulgated on July 26, 1988 (53 FR 28118 *et seq.*); that rule should be consulted for a more thorough explanation of the Agency's rationale concerning the implementation of the "no migration" standard and other general requirements.

DATES: This final rule is effective August 5, 1988.

ADDRESSES: The official record for this rulemaking is located in Room 1013C East Tower, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The public must make an appointment to review docket materials by calling Eric Callisto at (202) 382-5508.

FOR FURTHER INFORMATION CONTACT: John Atcheson, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5508.

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I. Background

A. Statutory Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the continued land disposal of hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the wastes remain hazardous (RCRA section 3004 (d)(1), (e)(1), (f)(2), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the disposal of dioxins and solvents and the list of wastes specified in section 3004(d)(2), termed the "California list", in injection wells.

Wastes meeting the treatment standards set by EPA under section 3004(m) of RCRA may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)).

Land disposal prohibitions are effective immediately upon promulgation of rules banning disposal unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA section 3004(h) (1) and (2)). However, these effective date variances may not exceed 2 years beyond the otherwise applicable statutory effective date. In addition, two 1-year, case-by-case extensions of the effective date may be granted under certain circumstances (RCRA section 3004(h)(3)).

For the purposes of the land disposal restrictions program, the statute specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The statute also sets forth a series of deadlines for Agency action.

The land disposal prohibitions apply to all hazardous wastes identified or listed under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of identification or listing (RCRA section 3004(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or newly identified waste.

1. Section 3004(f)

Section 3004(f) addresses the disposal by injection of solvents, dioxins, and California list wastes. Specifically, this section requires the Administrator to promulgate rules prohibiting the disposal of such wastes into wells if it

may "reasonably be determined that such disposal may not be protective of human health and the environment for as long as the wastes remain hazardous * * *". If EPA does not determine those instances where disposal would be protective, the injection of these wastes is prohibited on August 8, 1988, under section 3004(f)(3).

2. Section 3004(g)

Section 3004(g) of RCRA applies to all methods of land disposal. It requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed in 40 CFR Part 261 under RCRA section 3001(c) as of November 8, 1984, other than the wastes referred to in section 3004 (d) and (e). EPA promulgated this schedule on May 28, 1986 (51 FR 19300 *et seq.*).

Section 3004(g)(5) provides that the regulation promulgated by the Administrator must prohibit methods of land disposal except for methods "which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous * * *".

Furthermore, the section provides that, except for wastes which comply with the standards expressed in section 3004(m), a method of land disposal may not be determined to be protective of human health and the environment, "unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

3. Standard for Demonstrating Protection of Human Health and the Environment

On July 26, 1988, the Agency promulgated rules which applied the same standard to injection of hazardous waste, regardless of whether the waste was covered under section 3004(f) or section 3004(g) (53 FR 28118, *et seq.*). A brief summary of that rule follows.

As noted in the rule, section 3004 (f) and (g) do not use the same language, but both require a demonstration that injection is protective of human health and the environment. Under section 3004(g) it is clear that such a demonstration must include a showing of "no migration" from the injection zone for as long as the wastes remain hazardous. EPA believes that the "no migration" standard of section 3004(g) helps define what is protective of human health and the environment under section 3004(f). Section 3004(g), by its terms, restricts the injection of certain hazardous wastes into injection wells. Since the wastes covered under section 3004(f) are just as hazardous to human health and the environment as those under section 3004(g), EPA believes that injection of either set of wastes should be subject to the same standard. Thus, the Agency believes that the "no migration" demonstration should be similar for all injection wells regardless of the type of injected waste, and that the "no migration" standard should apply to all facilities injecting hazardous waste regardless of which section of the statute they are subject to.

B. Effect on State UIC Primacy

States need not seek authorization to administer the land disposal restrictions program codified in Part 148 to maintain Underground Injection Control (UIC) primacy. These provisions are in effect in all States as a matter of Federal law. However, the Agency expects that State agencies which have primacy for the UIC program will wish to implement Part 148, and receive authorization to grant "no migration" exemptions from land disposal restrictions as well as case-by-case extensions under section 3004(h)(3). However, before such authorization can be granted, the State would have to demonstrate that it has the authority to implement section 3004 (f), (g) and (h) (3) of RCRA, and receive authorization to do so. A thorough discussion of the conditions under which such authorization can take place can be found in 50 FR 28728 *et seq.*, July 15, 1985, 51 FR 40618 *et seq.*, Nov. 7, 1986, and 52 FR 25783 et seq., July 8, 1987. In addition, where jurisdiction for UIC and RCRA do not reside in the same State agency, EPA will require a Memorandum of Understanding between the two entities, clearly outlining responsibilities for granting exemptions.

C. Summary of the Land Disposal Restrictions Framework

1. Regulatory Framework

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) establishing the regulatory framework for implementing the land disposal restrictions. Corrections to the November 7, 1986, final rule were included in a June 4, 1987, **Federal Register** notice (52 FR 21010) to clarify the Agency's approach to regulating restricted wastes. Some changes to the framework were also made in the July 8, 1987, rulemaking on the California list wastes (52 FR 25760). Rules which specifically address disposal of hazardous waste through injection wells were promulgated on July 26, 1988 (53 FR 28118 *et seq.*).

By each deadline, according to a schedule established either in the statute under section 3004 (d), (e), or (f) (or promulgated on May 28, 1986 (51 FR 19300), for section 3004(g) wastes), the Agency intends to promulgate the applicable treatment standards for each hazardous waste. Restricted wastes may be land disposed in a Subtitle C facility if they meet the applicable treatment standards.

After the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards will be prohibited from continued disposal in injection wells unless a petition has been approved under Subpart C of Part 148 demonstrating that continued management of those hazardous wastes in the injection well is protective of human health and the environment for as long as the waste remains hazardous. Also, § 148.4 provides that EPA may, on a case-by-case basis, grant an extension to the effective date according to the procedures outlined in § 268.5. An extension may not exceed one year, and the Administrator may not renew an extension more than once.

2. Applicability

Land disposal is defined as including, but not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave.

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes placed into land disposal units after the effective date of a statutory or regulatory prohibition are subject to the restrictions, but wastes land-disposed prior to the applicable effective date are not required to be removed or exhumed for treatment. Similarly, the restrictions on storage of affected hazardous wastes apply only to wastes placed in storage after the effective date of an applicable land disposal restriction. If, however, wastes subject to the land disposal restrictions are removed from either a storage unit or land disposal unit after the effective date, such wastes would be subject to the restrictions and treatment standards.

The provisions of the land disposal restrictions apply to wastes produced by all generators of over 100 kilograms of hazardous waste (or greater than 1 kg of acute hazardous waste) in a calendar month; however, wastes produced by generators of less than 100 kilograms of hazardous waste (or less than 1 kg of

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acute hazardous waste) per calendar month are exempt from the land disposal prohibitions.

The land disposal restrictions apply to both interim status and permitted facilities. All permitted facilities are subject to the restrictions regardless of existing permit conditions. The regulations at 40 CFR 270.4(a) have been amended so that compliance with a RCRA permit (including permits-by-rule under § 270.60(b)) no longer constitutes compliance with Subtitle C as a whole.

3. Development of RCRA Section 3004(m) Treatment Standards

In the November 7, 1986, rulemaking, EPA promulgated a technology-based approach to setting treatment standards under section 3004(m). These treatment standards are based on the performance of the best demonstrated available technology (BDAT) identified for the hazardous constituents.

In developing the treatment standards, EPA first characterizes the wastes and establishes treatability groups for wastes having similar physical and chemical properties, and thus, similar treatability characteristics. Once the treatability groups are established, EPA collects and analyzes data on identified technologies used to treat the wastes in each treatability group.

EPA identifies those technologies that are "demonstrated" by full-scale operation. The demonstrated technologies are then evaluated to determine whether they may be considered "available". Under the land disposal restrictions framework initially used, to be considered "available", the Agency determined whether the demonstrated technologies: (1) Are commercially available, and (2) substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

As explained in the April 8, 1988, proposal, the Agency is reevaluating the role of risk in making capacity determinations. A thorough description of this issue can be found at 53 FR 11774, April 8, 1988, and 53 FR 17606, May 17, 1988.

The performance data on the demonstrated available technologies are evaluated to determine whether the data are representative of well-designed and well-operated treatment systems. Only data from well-designed and well-operated systems are included in determining best demonstrated available technology (BDAT). Such performance data are then statistically analyzed to determine the performance level representative of treatment by the candidate technology. EPA may set the treatment standards as either a specific technology or as a performance level of treatment monitored by measuring the concentration level of the hazardous constituents in the waste or treatment residual, or an extract of the waste or treatment residual. When possible, EPA would prefer to set a treatment standard as a performance level, allowing the regulated community greatest flexibility in meeting the treatment standard. When treatment standards are set as performance levels, the regulated community may use any technology (not otherwise prohibited, e.g., dilution) to treat the waste to meet the treatment standard, and is not limited to only those technologies which have been considered in determining BDAT.

In the final rule prohibiting land disposal of solvents and dioxins by means other than injection (52 FR 40593, November 7, 1986), EPA promulgated regulations requiring the regulated community to use the Toxicity Characteristic Leaching Procedure (TCLP) (Part 268, Appendix I) when developing the extract from the waste or treatment residual. This extract must be analyzed to determine whether the concentrations of hazardous constituents meet the applicable treatment standards (which are expressed in Table CCWE at § 268.41 as constituent levels in the TCLP extract). The TCLP has only been promulgated for monitoring compliance with the treatment standards established for the F001–F005 spent solvent wastes and the F020–F023 and F026–F028 dioxin contaminated wastes treatment standards, and will only be used when the treatment standards are expressed as concentration of hazardous constituents in a waste (or treatment residual) extract.

4. Determination of Alternative Capacity and Ban Effective Dates

a. Establishing Effective Dates. The manner in which effective dates are established differs according to what sections of the statute govern particular wastes. Solvents, dioxins, and California list wastes, which are covered under section 3004 (d), (e), and (f), are subject to the so-called "hard hammer". Under this statutory scheme, the waste is automatically banned upon the statutory deadline, regardless of whether the Agency acts to set BDAT or fails to prohibit disposal of such wastes (although the Agency may, under section 3004(h)(2), provide variances for up to 2 years based on lack of alternate capacity). The statutory deadline prohibiting land disposal of these wastes by injection is August 8, 1988.

Pursuant to section 3004(g), the Agency must establish a schedule by which any hazardous wastes not covered under section 3004 (d), (e), or (f) are banned. The statute mandates that these scheduled wastes be addressed in three stages: August 8, 1988; June 8, 1989; and May 8, 1990. It further states that the wastes should be placed in one of these "thirds" based on their intrinsic hazard and volume. High-volume, highly hazardous wastes are placed in the first third; wastes with relatively lower hazards or which are produced in lower volumes are placed in the later thirds. Unlike the wastes subject to the "hard hammer", there is no immediate statutory ban on all forms of land disposal in cases where the Agency fails to take action. If EPA fails to establish prohibition dates for the first two "thirds" by the August 8, 1988 or June 8, 1989 deadlines, respectively, the wastes in the first two "thirds" are not banned by the statute from land disposal until May 8, 1990, unless EPA issues regulations establishing an earlier effective date for the ban. If these wastes were to be managed in a landfill or surface impoundment, the units would have to comply with the requirements of section 3004(o) during the period the wastes were not subject to a ban.

b. Effective Dates Based on National Capacity Determinations. The Agency has the authority to grant national variances (for up to a 2-year maximum) from the statutory effective date based upon a lack of adequate alternative capacity. To make this determination, EPA considers, on a nationwide basis, both the physical capacity of alternative treatment technologies (permitted and interim status facilities that are expected to be on-line by the effective date) and the quantity of restricted wastes generated. If adequate capacity is available, the restriction on land disposal of that waste goes into effect upon the statutory deadline. If there is a significant shortage of national capacity, EPA may set an alternative effective date based on the earliest date on which capacity for treatment that is protective of human health and the environment will be available. During the period of the national variance, the waste may be land disposed in compliance with § 268.5(h)(2).

c. Case-by-Case Extensions. The Agency will consider granting up to a one-year extension (renewable only once) of a ban effective date on a case-by-case basis to an applicant who

applies for such an extension. The applicant must demonstrate (among other things stated in § 268.5) that a good faith effort has been made to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his wastes, and that he has entered into a binding contractual commitment to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond his control. During the period of the extension, the waste may be land disposed in compliance with § 268.5(h)(2).

5. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (§ 268.4(a)(3)) as long as treatment residuals that fail to meet the applicable treatment standard or prohibition level are removed within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with § 268.4.

As promulgated in the California list final rule for surface disposed wastes (52 FR 25760), evaporation of hazardous constituents as the principal means of treatment is not considered treatment for the purposes of this exemption (§ 268.4(b)).

6. Dilution Prohibition

As established in the November 7, 1986, rule, and modified in the July 8, 1987, rule, dilution is prohibited as a substitute for adequate treatment. This includes dilution to achieve compliance with a treatment standard or compliance level, as well as dilution to circumvent the effective date of a prohibition, to otherwise avoid or circumvent a land disposal prohibition (§ 268.3). However, dilution is permitted only if it is a necessary part of the treatment process.

7. Storage Prohibition

Storage of prohibited wastes is banned except where storage is solely for the purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal (§ 268.50). RCRA-permitted treatment, storage, and disposal facilities may store restricted wastes for as long as needed, provided such storage is solely for this purpose. However, if the facility stores a restricted waste for more than one year, it bears the burden of proof that such storage was solely for this purpose (no notification of storage exceeding one year is required). For storage of less than one year, EPA bears the burden of proof that such storage was not for the sole purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal. This statutory prohibition on storage does not apply to RCRA wastes which meet the treatment standard, wastes which have been granted a variance or an extension to the effective date, and stored wastes which are the subject of a "no migration" exemption under § 148.20.

8. Variance From the Treatment Standard

EPA established the variance from the treatment standard to account for those wastes which are unable to meet the applicable treatment standards, even if well designed and well operated systems are used (§ 268.44). Petitions must demonstrate (among other things) that the waste is significantly different from the wastes evaluated by EPA in setting the treatment standard and that the waste cannot be treated in compliance with the applicable treatment standard. This variance procedure could establish a new waste treatability group and corresponding BDAT treatment standard that would apply to all wastes meeting the criteria of the new waste treatability group.

9. "No Migration" Exemption

Section 148.20 as published (53 FR 28118 *et seq.*) outlined in detail the Agency's plan for implementing the "no migration" provisions of RCRA with respect to injected wastes. Briefly, a petitioner would be required, through modeling, to demonstrate there would be no migration of hazardous constituents from the injection zone for as long as the waste remained hazardous. This demonstration could be made in one of two ways. The operator could demonstrate, using flow and transport models, that the site conditions are such that injected fluids would not migrate vertically out of the injection zone or migrate within the injection zone to a point of discharge for a period of ten thousand years. Alternatively, an owner or operator could show that the waste is transformed, due to geochemical processes, for example, in such a manner that it would become nonhazardous at the edge of the injection zone. In keeping with existing policy, the Agency used health-based standards, such as Maximum Contaminant Levels (MCLs), to define hazardous levels. A demonstration based on geochemical modeling could not rely on attenuative mechanisms occurring outside the injection zone.

Also, the operator must demonstrate that the well was in compliance with the substantive area of review, corrective action, and mechanical integrity requirements of Part 146 as promulgated on July 26, 1988 (53 FR 28118 *et seq.*).

II. Response to Comments

A. General Comments

The majority of the comments received on the proposal strongly supported the Agency's specific decisions on granting variances to individual waste codes. Most of the commenters who objected to the Agency's decisions did so on the basis of the general framework or general assumptions in the capacity analyses, rather than decisions made about a specific waste. These comments are addressed below.

1. On-site Treatment Capacity

Several commenters contended that the Agency ignored or underestimated capacity available from on-site treatment systems. Commenters pointed out that the technology for such systems, particularly in the form of "package" units capable of treating organics or heavy metals, are well developed and available. In a related vein, commenters suggested that the Agency's concern about transportation effectively limiting available capacity was, therefore, overstated because on-site treatment units could substantially reduce the volumes of waste requiring transport. Several of these commenters acknowledged that adequate on-site treatment capacity was not available now, but maintained that it could be developed quickly. These commenters argued that any extension granted should, therefore, be for significantly less than two years. Others concluded that when the capacity of on-site treatment units are considered, there is adequate capacity to treat these injected wastes now.

The Agency recognizes that on-site package units may be available and can be developed, but does not believe that these units will substantially contribute to available capacity for the following reasons. First, as a manufacturer of these systems noted in commenting on these regulations, these units are not

currently available in sufficient numbers. Second, these units often cannot meet the very stringent levels established in EPA's BDAT standards, and, therefore, may not constitute available alternative capacity. Finally, as outlined in the August 27, 1987, rule with regard to injected solvents (52 FR 32450) and in the April 26, 1988, proposal, the Agency expects that extremely large volumes of waste will be generated as a result of CERCLA cleanups and remedial actions taken pursuant to section 3004(u) of RCRA. The capacity required to treat these wastes will, for the next few years, overwhelm any conceivable ability to manufacture package units capable of meeting BDAT standards.

The Agency has employed in recent proposals (52 FR 32450, August 27, 1987) the hierarchy to be used in apportioning available capacity against wastes being generated and disposed. To briefly summarize those allocation decisions, EPA intends to apply against available capacity first those wastes being disposed of in surface units, next wastes resulting from CERCLA or RCRA cleanups, and finally, wastes being injected. The Agency believes this to be the most protective approach from the perspective of protecting human health and/or the environment, and believes it to be consistent with the statutory mandate for the following reasons. Facilities generating wastes from CERCLA and RCRA cleanups, by definition, pose a threat to human health and/or the environment. Congress, in section 1004(b) of RCRA, specifically identified surface impoundments and landfills as the least favored method of waste management. While the statute set up a presumption that generally favored minimization, reuse, and treatment over land disposal, it clearly indicated that a hierarchy existed within land disposal (See S. Rpt. 284 98th Cong. 1st Sess. at 14 and Cong. Record S. 9153, July 25, 1984). Moreover, section 3004 (f) and (g) applied substantial demands on alternative treatment capacity which, in some cases, compete with requirements elsewhere in the amendments. Corrective action is an example. Given the established threat to human health or the environment which cleanup sites pose, and the clear hierarchy established in the statute, the Agency believes this framework for apportioning available capacity to be appropriate. The Agency will, therefore, allocate wastes from remedial actions or corrective actions against available capacity prior to those being injected.

Finally, as noted in section (II)(A)(2)(b) of this preamble, significant quantities of waste will be generated as impoundments comply with the requirements of section 3005(j) of RCRA, and either close or retrofit the impoundment to meet the minimum technology standards of section 3004(o). It appears that in most instances, the wastes generated from these impoundments will be handled and treated on-site, thus placing a further demand on these "package" systems.

Accordingly, the Agency rejects the argument that sufficient on-site capacity can be developed using on-site package units or systems to accommodate the volumes of waste currently being generated. Such systems are not currently available in sufficient numbers, cannot be manufactured in sufficient numbers in the short-term, and may not be capable of meeting BDAT standards. Moreover, the capacity which can be provided by these systems will be used by wastes resulting from CERCLA and RCRA cleanups, and by impoundments complying with section 3005(j).

Another source of on-site capacity which commenters suggested EPA had not adequately considered was the reuse, recycling, and/or minimization of wastes. EPA has investigated the extent to which these options might provide capacity by reducing demand, but has found little to suggest that any significant reductions in volumes could be achieved in the near future through their use. EPA expects that the implementation of the land disposal prohibitions will provide further incentives to pursue these management options. The ability of these processes to reduce the volumes of the very dilute wastes which are typically injected, however, appears to be quite small since often these streams already undergo one or more recovery steps prior to injection.

2. Assumptions Used to Establish Quantity of Waste Requiring Treatment

One commenter objected to several assumptions the Agency used to establish the quantity of waste requiring treatment. This commenter and several others contended that the Agency was attempting to systematically overestimate the amount of waste requiring treatment and underestimate the amount of treatment or other capacity available. The specific objections and concerns raised by these commenters follow.

a. Assumptions on Concentration of the Waste. A commenter specifically objected to an assumption made in the Agency's April 8, 1988, and May 17, 1988, proposals concerning cyanide and metal bearing wastes disposed of in surface units. The Agency has stated that in the absence of concentration data, EPA would assume that the waste exceeded concentration levels listed in the statute.

The commenter pointed to data used in the capacity analyses for injected wastes to support the contention that this assumption considerably overstates the quantity of restricted California list waste disposed of in surface units. The commenter suggested that this overestimation of demand for alternative capacity from wastes disposed of in surface units directly affects the accuracy of the capacity analyses for injected wastes, since these analyses build on determinations made for waste disposed of in surface units.

The Agency believes the comment raises legitimate concerns, but believes an examination of new data from the Agency's ongoing Treatment, Storage, Disposal, and Recycling (TSDR) Survey mitigates the concern in two ways. First, using the TSDR data, the amount of waste being disposed of in surface units is dramatically less than was identified by the Agency in earlier estimates of waste quantities. The commenter's concern centered, in part, on the Agency overestimating the volume of surface disposed waste. On May 17, 1988, EPA applied the TSDR data to surface disposed waste and adjusted the effective prohibition dates as appropriate (53 FR. 17578 *et seq.*). Thus, with the improved data used in those capacity analyses, one basis for the commenter's concern is largely no longer valid. Similarly, the survey data improves the Agency's quality of data on waste concentrations, further reducing the range of uncertainty and with it the volume of waste which could be incorrectly attributed in this analysis.

Moreover, many of the wastes listed in the "First Third" would be California list wastes at higher concentrations. For example, K062 wastes would, at appropriate concentrations, also be considered as California list wastes, both by virtue of the metals content and the presence of hexavalent chromium. Thus, the distinction between whether or not a metal bearing waste is at concentrations sufficiently high to make it a California list waste is most relevant when the prohibition dates vary by the concentration of the waste. In the case of injected waste, however, the prohibition date for both California list and "First Third" wastes is August 8, 1988 (although wastes covered under the "First Third" may be subject to the "soft hammer"). Accordingly, the volume of injected cyanide or metals requiring treatment on that date is, to some extent, independent of the concentration

since much of the low concentration metal and some cyanides are picked up by the "First Third" category. (It should be noted that capacity determinations conducted for injected waste avoided double counting between wastes in the "First Third" and the California list wastes whenever possible.)

b. Volumes of Waste not Considered in the Analysis. The Agency believes that the commenter's contention that EPA has intentionally or systematically overestimated the volumes of waste requiring treatment is without foundation. Indeed, EPA's assumptions in estimating the demand for treatment from traditionally generated hazardous wastes have been conservative. However, there are significant volumes of wastes (including those containing metals and cyanides) which the Agency has not included in earlier capacity analyses or the TSDR Survey, which more than offset these conservative assumptions. As noted in this section, wastes resulting from surface impoundments which are closing pursuant to section 3005(j) have not been included; liquid wastes from CERCLA and RCRA cleanups have not been included; and leachate collected from leachate collection systems has not been included. One corporation estimates that the volume of leachate they generate exceeded 400 million gallons annually under the current regulatory framework. The Agency has also not considered the very substantial demands on treatment capacity resulting from the requirements of section 3004(g)(6). Under this section, operators of surface impoundments or landfills which dispose of wastes subject to the "soft hammer", (i.e., wastes listed under either the "First Third" or "Second Third" for which the Agency has not established BDAT) are required to treat their waste using the best method practically available which reduces waste toxicity or mobility. In most cases, these treatments would be precisely those methods specified as BDAT for other wastes covered under either the "First Third" or section 3004(f).

The Agency believes, therefore, that on the whole, the assumptions regarding volumes of waste disposed have been conservative, and tend to understate demand rather than overstate it. In addition, concentrations would seem to have little effect on whether a waste volume exceeds the available capacity, given that injected wastes are often subject to the same deadline, independent of concentration. This is so because in many cases, the statute applies the same deadline to a concentrated California list waste and a more dilute version of the same waste covered under the "First Third".

c. Waste Streams Which Vary in Levels or Concentrations. A commenter objected to assumptions the Agency made regarding wastes which varied in character, particularly in the case of corrosives, again contending that the assumption overstated the amount of waste requiring treatment. The commenter particularly objected to counting an entire stream of waste as corrosive even though the pH might vary—occasionally exceeding the prohibition level of 2, and sometimes falling below it.

In response, the Agency would like to note that in defining whether or not a waste was deemed to be a hazardous waste (or similarly, whether it is considered a California list waste) the Agency has chosen to take the most stringent interpretation, i.e., that if a waste varies in concentration or characteristics at times, it will be classified according to the highest concentration or, in the case of corrosive wastes, the lowest pH values.

To do otherwise would be to substantially reduce the volumes of waste subject to the ban—an approach which would be inconsistent with the intent of the statute. The Agency believes that the mandate of the HSWA amendments was to discourage land disposal in favor of minimization, recycling or treatment, unless such land disposal can meet the very stringent standards of section 3004 (d), (e), (f), and (g). Therefore, the EPA believes that the appropriate course of action is to take a conservative approach in determining when a waste is subject to the prohibition and would therefore require treatment. Any attempt to segregate when the waste was subject to the ban and when it was not would be extremely difficult to implement. The Agency has chosen to make the determination inclusive, and, therefore, believes it appropriate to count the entire volume of a restricted waste stream against available capacity. Moreover, the available data on the pH of injected waste streams does not indicate a high degree of variability.

Accordingly, the Agency acknowledges the assumption that an entire stream is subject to the prohibition when the characteristics of the waste vary may maximize the demand on treatment or other alternative capacity. However, it also maximizes the amount of waste subject to the prohibition—a result that is protective and most consistent with the statutory mandate.

This same commenter, in a related comment, objected to the EPA's approach to quantifying the amount of hexavalent chromium being land disposed. The Agency counted the total volume of chromium bearing waste as hexavalent, unless it was known with certitude that the waste stream contained only chromium in its trivalent state.

Again, the Agency believes it appropriate to be conservative in estimating total volumes of waste required to be restricted. This approach is particularly appropriate in the case of chromium, since it can easily change from trivalent to hexavalent under appropriate conditions. Moreover, as with other categories of waste, the volumes which are or will be managed as a result of site cleanups vastly exceeds available alternative capacity; thus, under the allocation decisions outlined in section (II)(A)(1) of this preamble, the shortfall in capacity becomes even more critical.

d. Double Counting of Wastes. One commenter, consulting a study performed by a contractor to identify the quantity of waste being injected, noted that the contractor's report made no attempt to segregate out waste streams which would be assigned to more than one schedule (Ref. 3). The commenter also objected to an assumption that was made in the report regarding waste segregation. Basically, the report assumed that waste streams could not be further segregated when there was no data to suggest otherwise. Again, the commenter contended that these assumptions tended to overstate the amount of waste requiring treatment on a given prohibition date.

The Agency would like to note that while the report made no attempt to segregate wastes by schedule, both the TSDR Survey (used for surface disposed waste on the May 17, 1988 capacity analyses) and the report used as the basis for the April 26, 1988 proposal on injected wastes, identified waste streams at the point of generation (Refs. 2 and 3). When there are "as generated" waste streams which contain wastes subject to different prohibition dates, the issue is which prohibition date to select when counting the waste against available capacity. In most instances, it is necessary to count the entire stream against available capacity according to the date the waste is first prohibited. Take, for example, a given solvent waste stream prohibited from land disposal on August 8, 1988. If it also contains a sufficiently large volume of a toxic characteristic waste which is prohibited on May 8, 1990, to render any

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biological treatment infeasible, then effectively, the entire stream may have to be treated by the earliest date. Since the Agency's analysis was based on waste as generated, this is often the case when a multi-constituent waste stream subject to different schedules is being evaluated.

Similarly, many wastewater treatment systems are volume limited—that is, the system must be designed to handle the entire volume of flow, regardless of when in a regulatory schedule the various wastes contained in the generated waste stream may fall. If a million gallon per day waste stream is run through a steam stripping unit to extract HOCs for subsequent combustion, it does not matter that some component of the waste stream is not banned on the same schedule as the HOCs; the system must still be able to handle a million gallons per day.

3. Large Volume Waste Streams

The Agency outlined in its proposal several problems associated with high volume waste streams which served to limit the availability of alternative capacity. These included the lack of a means of transporting large volumes of waste, the unavailability of tanks of sufficient size and of appropriate materials to handle wastes, the difficulty of managing large volumes of residuals, the difficulty of obtaining needed State and local permits, and the potential operational problems associated with injecting treated wastes.

a. Occurrence of Large Volume Waste Streams. Commenters pointed out that large volume waste streams are not unique to injection wells and noted that surface facilities handling California list wastes had already successfully met the statutory hammers, in many cases without a variance to the effective date. One commenter noted that many of these surface units managed volumes that were as large as many of those being injected. They concluded from this that injection wells could also make the deadline.

The Agency believes the commenter has overlooked several important points. First, as the commenter's own data show, the percentage of surface units handling large volumes as a fraction of all surface units is much less than the percentage of injection wells which do. While the absolute number of surface units is larger than the number of injection wells, problems unique to large volume flows affect a larger proportion of injection wells. For example, using the commenter's own data, only 9% of surface facilities disposed of corrosives in excess of 25 million gallons per year, while 59% of the injection wells handling corrosives exceeded this amount. Similarly, less than 3% of the surface units disposed of cyanide wastes in excess of 25 million gallons per year, while 89% of the injection wells did. Data on other California list wastes show similar differences. To the extent that the problems outlined for large volume facilities limit the availability of treatment, a disproportionate number of injection wells would be so limited.

Second, wastes in impoundments which comply with section 3005(j) and meet minimum technology requirements may no longer be subject to land disposal prohibitions. Thus, facilities which choose to double line their impoundments may, in many cases, no longer face the prohibition and therefore no longer require treatment. In this way, sizable quantities of waste have been treated in place without placing demand on tank supply and transportation, without generating huge additional volumes of residuals, without requiring additional State and local permits, and without substantially altering the engineering of related above ground appurtenances. The same cannot be said for wastes managed in injection wells. Therefore, the commenter's conclusion—that because surface units had successfully complied with earlier deadlines the impediments outlined for large volume injected waste streams were without foundation—is not valid.

Finally, the very substantial demands of wastes resulting from RCRA—and to a lesser degree CERCLA cleanups, were not competing for tank and other capacity before July of 1987, when these surface units were complying with the land disposal prohibitions. The Agency is now issuing permits and implementing corrective action, and has expanded the number of sites on the National Priorities List. EPA has noted earlier the extremely large volumes of wastes these actions are and will be generating over the next two years. The Agency's analysis of these quantities show them to be much larger than the volumes associated with California list wastes disposed of in surface units. The volumes of injected wastes requiring alternative capacity occurs in addition to these cleanup wastes.

Accordingly, the Agency believes that these commenters were in many ways "comparing apples with oranges" in their analyses and believes, further, that the considerations raised in the proposal relative to injected large volume waste streams pose very real and substantial impediments to the availability of alternative capacity.

b. Transportation as a Limit on Availability of Capacity. Although most commenters agreed that for large volume waste streams transportation served to limit available alternative capacity, a few commenters objected to this contention. One commenter maintained that the increase in hazardous waste requiring transportation as a result of these rules was very small compared to the amount of hazardous *materials* being transported now. This same commenter went on to note that barges could increase capacity by one third, although they noted that only six of the largest 200 TSD facilities could be served by barge. The commenter indicated that the additional increment of waste requiring transport represented less than a 1% increase in the amount of hazardous materials currently being transported.

The focus of the commenter's argument is that ultimately transportation could be made available as market forces and manufacturing capabilities catch up with the demand created by the displaced wastes. References quoted by the commenter suggest that this adjustment could take as little as six months. In investigating this issue, the Agency consulted a number of sources. Some suggested that transportation capacity could indeed be available in as little as six months, while several others suggested that transportation would limit the availability of alternative capacity for considerably longer (Refs. 3, 4 and 5). None found that the capacity to transport injected wastes would be available upon the prohibition date. EPA agrees with the commenter's contention that market forces could ultimately provide incentive for the transportation industry to develop additional capability, but data available to the Agency indicates this will take some time certainly more than six months, and likely closer to two years.

The same commenter maintained that the suggestion that transportation might limit the availability of alternative capacity violated the statute in two ways. First, they contended that this decision was somehow regional in nature, and second, they asserted that the Agency was invoking economics in the determination. First, a clear reading of the proposal should make obvious that the analysis is national in scope. Second, the Agency is indicating that the limited amount of transportation *physically* prevents capacity from being available. EPA is not suggesting that transportation is prohibitively expensive, but simply that it does not now exist, and will not for the short term. As noted in the April 26, 1988 proposal, until market forces and

manufacturing do catch up with the increased demand, transportation is "effectively unavailable".

c. Delays in Availability of Capacity Resulting from Permitting. In the proposal, the Agency indicated that the need to acquire local and State permits for treating the wastes and managing the residuals could also serve to limit the availability of alternative treatment.

One commenter suggested that permits would not delay the availability of alternative capacity since in most cases RCRA permits would not be required for treatment systems or for sites to handle the residuals from these systems. The commenter then went on to analyze federal permitting requirements and correctly note that, in general, tanks used as "elementary neutralization units" and "totally enclosed" systems do not require permits. They further noted that, in most cases, the Agency specified treatment levels, and not specific methods when establishing BDAT. They concluded from this that operators could select treatment methods which would not require discharge to surface waters. In this way they contended that operators could select treatment options which would avoid the necessity of obtaining a National Pollutant Discharge Elimination System (NPDES) permit.

Avoiding developing new treatment capacity which might require an NPDES permit from consideration, as the commenter suggested, would have the effect of substantially reducing potential new capacity, particularly for the dilute waste streams which are typically injected. Thus, the commenter's suggestion that by avoiding treatment methods which would require an NPDES permit, operators could comply more expeditiously with treatment methods, would actually remove substantial amounts of capacity from consideration and therefore bolster the case for a capacity variance, rather than limit it.

More importantly, EPA was addressing the need to acquire *local* and *State* permits, in addition to federal permits. Federal RCRA and NPDES permits are required for many treatment facilities and can serve to delay availability of treatment. Similarly, local and State permits are required for most facilities which manage hazardous waste. These permits, too, can substantially delay the availability of alternative capacity. The commenter's analysis ignored the effect that local permit requirements could have on limiting capacity, and therefore did not address one of the main impediments the Agency outlined in its proposal. The Agency continues to believe that compliance with local and State requirements in constructing treatment units and managing residuals does serve to limit the availability of alternative capacity.

Furthermore, the commenter's suggested solution—that EPA grant national capacity variances under section 3004(h)(2) on a local or case-by-case basis—is neither practical, nor legal.

d. Delays Due to Facility Construction. The Agency noted in the proposal that the length of time required to construct facilities necessary to comply with the proposed treatment standards, or to transport wastes, could serve to limit the availability of alternative capacity. One commenter objected to this line of reasoning, noting that the prohibitions have been a matter of public knowledge since the statute was enacted, and that for many wastes, the specified BDAT standards have been available for several years. The commenter noted that planning cycles supplied by industry show that for solvents and many other wastes, adequate time was available to construct required facilities. Nevertheless, such capacity has not become available; therefore, the time required to develop, supply, and construct such capacity is an appropriate consideration in establishing effective dates.

4. Adequacy of Capacity Data

Commenters objected to the use of the 1981 RIA Mail Survey and updates of that survey as the basis for establishing volumes of alternative capacity available. Commenters contended that the survey was dated and that the information was no longer accurate.

As noted earlier, the Agency has recently completed a national survey on treatment, storage, disposal and recycling facilities (the TSDR Survey, Ref. 2). The Agency has evaluated the proposed capacity variances and effective dates contained in the April 26, 1988, proposal against this new data. In the majority of cases, the new data corroborates the decisions proposed in April (see 53 FR 14892 *et seq.*). In those cases where it does not, EPA will not establish final rules setting effective dates, but will repropose such decisions based on the new information contained in the TSDR Survey.

B. Comments Not Relevant to This Rulemaking

Comments were also received on the Agency's proposals for setting effective dates for the prohibitions regarding surface units, and its proposal for evaluating petition demonstrations from injection wells. The Agency has or will consider these comments in the context of these rules to the extent appropriate, and not as part of this rule.

III. Summary of Today's Rule

This section outlines the Agency's determinations of effective dates for California list wastes and certain "First Third" wastes. As noted earlier, the capacity analyses in the April 26, 1988, proposal were based on the best information available at that time. The Agency has subsequently obtained data from the ongoing comprehensive TSDR Survey which provides more up to-date information, particularly with respect to the volume of alternative capacity available nationally.

As outlined in section (II)(4) of this preamble, the Agency has examined the decisions proposed on April 26, 1988, using this updated data. In most instances, EPA has determined that the proposed effective dates are appropriate, and is proceeding to set these dates as part of today's final rule. In other instances, the new information suggests that the proposed dates are not appropriate. In these cases, the Agency will repropose the effective dates as expeditiously as possible. The conclusions reached have changed only for three low volume "First Third" wastes (K016, K019, and K030). EPA's conclusions regarding the availability of capacity for these three injected wastes will be proposed and finalized with the so called "Second Sixth" wastes (i.e., those "First Third" wastes for which BDAT standards were first proposed on May 17, 1988; see 53 FR 17578 *et seq.*). In the mean time, these wastes will be subject to the "soft hammer" provisions of section 3004(g)(6). In the sections which follow, EPA initially compares only the amount of wastes being disposed of in injection wells against available capacity. In this analysis, "available capacity" is defined as the capacity remaining after waste disposed of in surface units is applied against capacity. If the injected volume exceeds available capacity, the waste category is granted a variance and no further analysis is conducted. If, however, the available capacity exceeds the volume injected and the volume managed in surface units, the Agency must then evaluate the volume of wastes resulting from corrective actions and remedial responses. Where the Agency does not grant a variance, EPA will first assure that the alternative capacity is adequate to handle the volumes of waste projected to be generated from RCRA and CERCLA cleanups over the next two years. The Agency currently projects that between 33.9 and 71.4

billion gallons of California list wastes and "First Third" wastes will be generated by such cleanups in this time frame (Ref. 1).

Table 1 gives a summary of the effective dates for the ban against the underground injection of California list wastes and certain "First Third" wastes proposed on April 26, 1988 (other than K016, K019, and K030, which will be finalized at a later date), and today's final decision on these effective dates. Discussions of each effective date follow. In these discussions, EPA presents volume data as proposed on April 26, 1988, as well as information from the TSDR Survey.

TABLE 1

RCRA waste code	Effective date proposed on April 26	Effective date in final rule
K062	2-year variance, 8/8/90.	Unchanged.
K049–K052.	2-year variance, 8/8/90.	Do.
K104	2-year variance, 8/8/90.	Do.
K071	2-year variance, 8/8/90.	Do.
Chromium-bearing wastes.	2-year variance, 8/8/90.	Do.
Metals	2-year variance, 8/8/90.	Do.
Cyanides	2-year variance, 8/8/90.	Do.
Corrosives	2-year variance, 8/8/90.	Do.
PCBs	Prohibited, 8/8/88	Do.
HOCs	Dilute HOCs (<1%)—2-year variance, 8/8/90. Concentrated HOCs >1%)—prohibited, 8/8/88.	Do.

A. California List Wastes

1. Free Cyanides

There is a total volume of 1.36 billion gallons of cyanide wastes injected annually (Ref. 3). The data available to the Agency show that at least 170 million gallons of this waste exceeds the statutory prohibition level of 1000 mg/l, but the concentration data are not good on the remaining 1.19 billion gallons injected. The Agency believes that cyanide oxidation is the most effective method for reducing the concentration of cyanide bearing wastes to the levels specified in the statute. The cyanide oxidation capacity available for injected wastes is 162 million gallons according to the TSDR survey. The EPA identified about 64 million gallons of such capacity in the RIA survey. In either case, the Agency has determined that there is a shortfall of capacity which, when cleanup wastes are considered, is substantial.

Accordingly, EPA will provide a 2-year variance to the prohibition date for injected cyanide bearing wastes subject to the California list prohibitions. These wastes will be prohibited from injection on August 8, 1990.

2. Metals

The Agency identified 234 million gallons of injected metal wastes subject to the prohibition. The appropriate treatment for these wastes is chemical precipitation and, based on the TSDR Survey, the Agency identified 128 million gallons of such capacity available. The RIA survey and the April 26, proposal showed 163 million gallons of such capacity. Again, there is a substantial shortfall of alternative capacity under either data set.

The Agency therefore is providing a 2-year variance, and will prohibit the land disposal by injection of metal bearing wastes subject to the California list prohibitions on August 8, 1990.

3. Corrosives

There are over 1 billion gallons of corrosive wastes injected annually that are subject to the California list prohibitions. Based on the TSDR Survey, there are less than 30 million gallons of neutralization capacity available. No specific volume of neutralization capacity was identified in the April proposal, although tank capacity was seen to be inadequate. The Agency outlined in the proposal the impediments to constructing additional capacity in the short term (see Section (II) of this preamble for a thorough discussion of the comments on this point) for large volume waste streams. Again, there is a significant shortfall of alternative capacity.

In view of the lack of alternative capacity, the Agency is granting a 2-year variance to the effective date, and will prohibit the injection of corrosives with a pH less than 2 on August 8, 1990.

4. Halogenated Organic Compounds (HOCs)

On July 8, 1987, the Agency stated that HOC containing wastes subject to the California list restriction were defined by those HOCs listed in 40 CFR Part 268, Appendix III. Further, with respect to surface land disposal, EPA granted a 2-year variance for HOCs at concentrations equal to or above 10,000 mg/l. The Agency specified incineration as treatment for such wastes, and noted that there was not adequate capacity. On May 17, 1988, the Agency proposed to rescind the variances for concentrated solvents and HOCs disposed of in surface units based on substantial increases in the estimated amount of treatment capacity.

The Agency stated in the April 26, 1988 proposal that available data showed no HOCs injected at over one percent concentration, but indicated it would review any data which suggested that concentrated HOCs were injected and make capacity determinations on the basis of such data. The EPA did not receive any comments indicating that concentrated HOCs are injected, although after the comment period closed several operators indicated in the context of their "no-migration" petitions that they were injecting concentrated HOCs. Nevertheless, the volumes disposed are substantially less than the available treatment capacity. Current information show about 246 million gallons of liquid combustion capacity, the specified BDAT for concentrated HOCs.

Accordingly, HOCs at concentrations above 10,000 ppm will be banned on August 8, 1988.

The Agency specified wastewater treatment as treatment applicable to dilute HOC wastewaters that are at concentrations between 1,000 and 10,000 mg/l. (HOCs below 1,000 mg/l are not subject to California List prohibitions). On August 27, 1987, the Agency indicated that 85 million gallons of dilute HOC wastewaters above the statutory concentration levels (1000 mg/l) are injected annually (52 FR 32451). On April 26, 1988, the Agency identified 319 million gallons of dilute HOC-containing wastewaters injected each year at concentrations above 1,000 mg/l (53 FR 14897–14898). The TSDR survey shows about 245 million gallons injected annually. The Agency had found previously that appropriate wastewater treatment capacity was not sufficient to handle injected dilute HOCs (52 FR 32450. August 27, 1987) and still believes that to be the case. Accordingly, EPA is granting a 2-year capacity variance and imposing the prohibition on injection of dilute HOC wastewaters at concentrations greater than or equal to 1000 mg/l (and less than 10,000 mg/l) on August 8, 1990.

5. Polychlorinated Biphenyls (PCBs)

At the time of the proposal, the Agency had identified 25,000 gallons of PCBs being injected, and had proposed to prohibit the injection of such wastes on August 8, 1988. Data from both the TSDR and the RIA surveys indicate that the treatment capacity for such wastes (liquid combustion) substantially exceeds the volume disposed. Furthermore, it appears that PCBs are

not injected at concentrations above the statutory prohibition level of 50 ppm. Accordingly, the Agency will prohibit the injection of PCBs on August 8, 1988.

6. Chromium Wastes

In the April 26 proposal, the Agency proposed to grant a capacity variance to the prohibition on injection of chromium wastes covered by the California list. In that notice, EPA identified approximately 105 million gallons of waste above the statutory ban level. An additional 237 million gallons is being injected, but the Agency does not have data on the concentration levels of these chromium-bearing wastes (Ref. 3). EPA cannot determine how much of the 237 million gallons may exceed statutory ban levels, but available information does indicate that the entire volume of the waste is above the suggested lower levels listed on August 12, 1987 (52 FR 29998). The Agency believes a treatment train consisting of chromium reduction, chemical precipitation, and settling or filtration is the best method of achieving the statutory concentration levels. The latest information shows approximately 109 million gallons of chromium reduction capacity for injected wastes (Ref. 2). The April 26 proposal identified only 35 million gallons of such capacity. Despite the increase in capacity, EPA believes the most prudent course of action, given the uncertainty about the total volume of waste injected at levels subject to the ban, the considerations of limited transportation, impending additional wastes from the "Second Third," the competing demand for capacity from section 3004(u) and CERCLA wastes, and the difficulty of managing residuals from large volume waste streams is to grant a capacity variance for this waste stream. Accordingly, EPA is today granting a 2-year variance from the prohibition and banning the injection of chromium wastes subject to section 3004(f) on August 8, 1990.

B. Selected "First Third" Wastes

1. K062

On April 26, the Agency published capacity determinations for K062 wastes (See 53 FR 14899). This waste is spent pickle liquor from steel finishing operations. In that proposal, EPA indicated that a 2-year capacity variance was warranted because the volume of waste requiring treatment exceeded the available treatment capacity. As indicated, the Agency expected at that time to complete a survey which would provide better data on both the volume of wastes being land disposed, and the available treatment capacity. Based on this more recent analysis (Ref. 2), the Agency believes that the volume of waste being disposed of in surface land disposal units still substantially exceeds the capacity available to treat these wastes. EPA's latest analysis indicates that 128 to 148 million gallons of K062 are injected each year (Refs. 2 and 3).

The BDAT for injected K062 wastes consists of chromium reduction followed, in many cases, by neutralization. The TSDR Survey identified approximately 109 million gallons of chromium reduction capacity and 30 million gallons of neutralization capacity available for injected wastes. The Agency also has information that suggests that extremely large volumes of "derived from" K062 are being generated from RCRA and CERCLA groundwater cleanups and from leachate collection systems (Ref. 1). In view of this, the Agency believes there is a substantial shortfall in capacity. Accordingly, EPA will provide a 2-year variance from the prohibition date and ban the land disposal by injection of K062 wastes unable to meet the BDAT treatment standard on August 8, 1990.

2. K049–K052

The Agency has proposed to grant 2-year variances to the effective date prohibiting disposal of the K049–K052 wastes (certain petroleum refining wastes) in either surface units or injection wells (see 53 FR 11776, April 8, 1988 and 53 FR 14899, April 26, 1988). More recently, the Agency reexamined these analyses for surface disposed wastes (see 53 FR 17578 May 17, 1988). Based on this, the Agency retained its proposal to grant 2-year variances from the prohibition dates for surface disposed wastes and ban such disposal on August 8, 1990. This decision is based on the 133.5 million gallons of these wastes disposed of in surface units annually (Ref. 2) and the decision rule to allocate the applicable BDAT treatment capacity for these streams (sludge combustion and stabilization) to other "First Third" surface disposed wastes.

An assessment of the data available to the Agency at this time shows an additional 400,000 more gallons of K050 being deep well injected than was indicated in the April 26, 1988, proposal. In addition, this data indicates that approximately 109,000 more gallons of K049 waste are being injected than was previously thought (Refs. 2 and 3). The estimated amounts of injected K051 and K052 wastes made on April 26 remain unchanged. Based on the limited treatment available, and the decision to allocate available treatment first to surface wastes, the Agency will grant 2-year variances to injected K049–K052 wastes unable to meet the BDAT treatment standards. They will be prohibited from injection on August 8, 1990.

3. K104

Wastes categorized as K104 are combined wastewater streams generated from the production of nitrobenzene and aniline. In the April 26 notice, EPA identified just under 13 million gallons of this waste being injected each year and proposed to grant a 2-year capacity variance based on lack of adequate treatment capacity (see 53 FR 14899). The TSDR Survey indicates that nearly 57 million gallons of K104 are being injected each year. The Agency has identified BDAT for K104 as solvent extraction followed by steam stripping and activated carbon adsorption. The Agency has identified only 1 million gallons of solvent extraction capacity available for injected wastes. EPA, therefore, believes the capacity variance proposed on April 26, 1988, to be appropriate and will grant a 2-year variance from the August 8, 1988, deadline. Under today's rule, K104 wastes not meeting the BDAT treatment standards will be prohibited on August 8, 1990.

4. K071

On April 8 and April 26 the Agency proposed to grant a capacity variance to the prohibition against both the surface disposal and underground injection, respectively, of K071 wastes (brine purification muds from the mercury cell process in chlorine production) (See 53 FR 11777 and 53 FR 14899).

The TSDR Survey results do not change the volumes or capacity determinations made on April 26 for injected K071 wastes. BDAT for this waste has been identified as acid leaching followed by chemical oxidation, dewatering of sludges and sulfide precipitation of metals in the effluent. The Agency believes that there is inadequate capacity to treat this waste (Ref. 2), and therefore believes the capacity variance proposed on April 26, 1988, to be appropriate. Land disposal by injection of K071 wastes not meeting the BDAT treatment standards will be prohibited on August 8, 1990.

IV. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule,

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as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or
2. A major increase in costs or prices for consumers or individual industries; or
3. Significant adverse effects on competition, employment, investment, innovation or international trade.

The Agency has performed an analysis of the regulation to assess the economic effect of associated compliance costs for both the California list and the "First Third" list wastes (Refs. 6 and 7). Total compliance costs of the entire California list and "First Third" list regulations (i.e., those being finalized today as well as those which will be proposed in the near future) are estimated at $41.9 million, or $11.8 million annualized. Alternate treatment costs are estimated to total $36 million ($11.44 million annualized) and petition costs are estimated to be $5.9 million ($0.42 million annualized). The California list wastes and selected "First Third" wastes being addressed today are included in these costs. These costs indicate that the rule does not constitute a major rule under Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical and other manufacturing companies. The Agency is not aware of any small entities that would be affected by this rule. Section 148.1(c)(3) of the regulatory framework for this rule exempts any small quantity generator, as defined in § 261.5, from the underground injection prohibitions proposed in that framework. The Administrator certifies that this rule will not have significant economic effects on a substantial number of small entities. As a result of this finding EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2040–0042.

V. References

(1) Estimated Quantity of Extracted Ground Water—RCRA Facilities and CERCLA Sites: 1988–1990; Report to U.S. EPA, ICF Incorporated, July 1988.

(2) Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions, First Third Waste Volumes, Characteristics, and Required and Available Treatment Capacity—Part II; U.S. EPA, OSW, May 1988.

(3) Findings on Class I Hazardous Wells Affected by the Land Ban Rules; Temple, Barker and Sloane, December, 1987.

(4) Evaluation of Availability of Alternate Treatment and Disposal Capacity for Injected Hazardous Wastes; Tischler/Kocurek for the Chemical Manufacturers Association, October 1987.

(5) Comments of the Chemical Manufacturers Association on EPA's Proposed Rule Regarding Hazardous Waste Disposal Injection Restrictions; Chemical Manufacturers Association, October, 1987.

(6) Regulatory Impact Analysis of Proposed Hazardous Waste Disposal Restrictions for Class I Injection of California List Wastes, EPA Report, Contract No. 68–03–3348; Cadmus Group, Inc., October 1987.

(7) Regulatory Impact Analysis of Proposed Hazardous Waste Disposal Restrictions for Class I Injection of First Thirds List Wastes, EPA Report, Contract No. 68–03–3348; Cadmus Group, Inc., October 1987.

List of Subjects in 40 CFR Part 148

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Water pollution control.

Dated: August 5, 1988.

Lee M. Thomas,

Administrator.

Therefore Chapter I of Title 40 is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for Part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.12 is added to read as follows:

§ 148.12 Waste specific prohibitions—California list wastes.

(a) Effective August 8, 1988, the hazardous wastes listed in 40 CFR 268.32 containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm or halogenated organic compounds at concentrations greater than or equal to 10,000 mg/kg are prohibited from underground injection.

(b) Effective August 8, 1990, the hazardous wastes listed in 40 CFR 268.32, other than those listed in paragraph (a) of this section, are prohibited from underground injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension is granted under § 148.4 of this part.

3. Section 148.14 is added to read as follows:

§ 148.14 Waste specific prohibitions—First Third wastes.

(a) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K049, K050, K051, K052, K062, K071, and K104 are prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension is granted under § 148.4 of this part.

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Tuesday
August 16, 1988

Part III

Office of the United States Trade Representative

Trade Policy Staff Committee; Articles Being Considered for Possible Duty Removal; Notice; Scheduling of Public Hearing

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Articles Being Considered for Possible Duty Removal

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; scheduling of public hearing.

SUMMARY: This publication gives notice of articles which may be considered for duty removal in the Uruguay Round of Multilateral Trade Negotiations and the scheduling of a public hearing in connection therewith.

FOR FURTHER INFORMATION CONTACT: Daniel Leahy, (202–395–7210), Office of Policy Coordination, Office of the U.S. Trade Representative, 600 17th Street, NW., Washngton, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Articles Which May Be Considered in Trade Negotiations

In confomity with section 131(a) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2131(a)), notice is hereby given of the articles which may, in negotiations conducted in the Uruguay Round of the Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade (GATT), be considered for the removal of duties or continuance of duty-free treatment.

II. List Articles Which May Be Considered in the Tropical Products Negotiations

The U.S. negotiating proposals in the agriculture and tropical products areas are closely linked. However, because the Punta del Este declaration inaugurating the Uruguay Round calls for "special attention" for tropical products, in particular with respect to the timing of these negotiations, we are holding hearings now with respect to the articles listed in the annex to this notice. The listed articles may be considered for elimination of duties or continuance of existing duty-free treatment, as appropriate. The articles are identified by reference to eight-digit subheading numbers of the proposed Harmonized Tariff Schedule of the United States (HTSUS) and consist of all articles in such listed subheadings. The HTSUS is for sale by the Superintendent of Documents, Government Printing Office, Washington DC 20402, and is also available for inspection at any field office of the U.S. Customs Service or the Department of Commerce. A list giving informal abbreviated descriptions of the articles contained in the HTSUS subheadings identified in this notice is available upon written request from the Secretary, Trade Policy Staff Committee (TPSC), Office of the United States Trade Representative, Executive Office of the President, 600 17th Street, NW. Washington, DC 20506.

The list of articles in this notice reflects work conducted by the GATT Committee on Trade and Development in 1982–84 and is being used solely to provide an interim basis for proceeding with work in connection with the Uruguay Round Negotiations on tropical products. It has not been accepted by the United States as constituting a definition of tropical products.

III. Public Hearing

Section 133 of the Trade Act (19 U.S.C. 2153) requires that the President afford an opportunity for any interested person to present his or her views concerning any U.S. or foreign tariff concession, modification or continuance which could be offered or sought by the United States, any nontariff barrier to trade or any other matter relevant to proposed trade agreements. In accordance with the Trade Act, the TPSC will conduct a public hearing beginning at 10:00 a.m., on September 27, 1988. If necessary, the hearing will continue on September 28. The hearing will be held in the Amphitheater, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC. Interested persons wishing to testify orally at the hearing must provide written notice of their intention by 12:00 noon, September 15, 1988, to Carolyn Frank, Office of the U.S. Trade Representative, Room 523, 600 17th Street, NW., Washington, DC 20506. In addition, they must provide the following information:

(1) Their names, addresses and telephone numbers; and

(2) A summary of their presentation, including the products, with HTSUS item numbers, to be discussed.

Those persons presenting oral testimony must submit a complete written statement in 20 copies in English by 12:00 noon, September 22, 1988 to Carolyn Frank at the above address. Remarks at the hearing should be limited to no more than a 10 minute summary of the written statement, to allow time for possible questions from the Chairwoman and the interagency panel.

Persons not wishing to participate in the hearing may submit a written statement in 20 copies in English to Carolyn Frank at the above address by 12:00 noon, September 29, 1988. Any business confidential material must be clearly marked as such and must be accompanied by a nonconfidential summary thereof. Parties are referred to section 2003 of Title 15 of the Code of Federal Regulations for the rules concerning oral testimony, the submission of written briefs, the treatment of business confidential information and other procedures related to the TPSC hearing.

IV. Advice of the International Trade Commission

On behalf of the President, and in compliance with section 131(a) of the Trade Act, the U.S. International Trade Commission has been furnished with the list of articles published in this notice for the purpose of receiving from the Commission its advice on the probable economic effect on the U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. duties or the continuance of U.S. duty-free or excise treatment, as appropriate. A notice of the Commission's investigation, and of public hearings to be held in connection therewith, was published in the Federal Register of August 3, 1988 (53 FR 29285).

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

Articles Which May be Considered for Elimination of U.S. Duties

Tropical Products

Articles provided for in the subheadings of the proposed Harmonized Tariff Schedules of the United States (HTSUS) which are listed below and which are not annotated with an asterisk may be considered for the elimination of U.S. import duties and are the subject of the request for advice of the U.S. International Trade Commission.

Subheadings listed below which are annotated with an asterisk are included in the indicative list of tropical products developed by the GATT Committee on Trade and Development, but such subheadings currently have a Column 1 rate of duty "free" in the HTSUS, and the duty-free status is bound in the U.S. Schedule annexed to the GATT.

I. Tropical Beverage Items

Coffee and Products

0901.11.00*	0901.22.00*	2101.10.40
0901.12.00*	0901.30.00*	
0901.21.00*	2101.10.20	

Coca and Products

1801.00.00*	1803.10.00*	1804.00.00*
1802.00.00*	1803.20.00	1805.00.00

Tea and Instant Tea

0902.30.00*	2101.20.20*
0902.40.00*	2101.20.40

II. Spices, Flowers, Plants, etc.

Spices and Essential Oils—Tropical

0904.11.00*	0909.10.00*	0910.99.40
0904.12.00*	0909.20.00*	0910.99.50*
0904.20.20	0909.30.00	0910.99.60
0904.20.40	0909.40.00*	3301.14.00*
0904.20.60	0909.50.00*	3301.21.00*
0904.20.70	0910.10.20*	3301.22.00*
0904.20.80*	0910.10.40	3301.26.00*
0905.00.00*	0910.20.00*	3301.29.10
0906.10.00*	0910.30.00*	3301.29.20
0906.20.00*	0910.40.20*	3301.29.50*
0907.00.00*	0910.40.30	3301.30.10
0908.10.00*	0910.40.40	3301.30.50*
0908.20.20	0910.50.00*	3301.90.00*
0908.20.40*	0910.91.00	
0908.30.00*	0910.99.20*	

Cut Flowers

0603.10.30	0603.10.70	0603.90.00
0603.10.60	0603.10.80	

Plants, Vegetable Materials, Lacs, etc.

0602.10.00	1402.10.00*	4602.10.13
0602.99.20*	1402.91.00	4602.10.19
0602.99.30	1402.99.00*	4602.10.21
0602.99.40	1403.10.00	4602.10.22
0602.99.60	1403.90.20	4602.10.23
0602.99.90	1403.90.40	4602.10.25
1211.90.20*	1404.10.00*	4602.10.29
1211.90.40	1404.90.00*	4602.10.40
1211.90.60	1521.10.00	4602.10.50
1211.90.80*	1521.90.20	9401.50.00
1301.10.00*	1521.90.40*	9401.90.10
1301.20.00*	3203.00.10*	9401.90.25
1301.90.40	3203.00.50	9401.90.35
1301.90.90*	4601.10.00	9401.90.50
1302.14.00*	4601.20.20	9403.80.30
1302.19.20*	4601.20.40	9403.80.60
1302.19.40	4601.20.60	9403.90.10
1302.19.90*	4601.20.80	9403.90.25
1302.39.00	4601.20.90	9403.90.40
1401.10.00	4601.91.20	9403.90.50
1401.20.20*	4601.91.40	9403.90.60
1401.20.40	4602.10.05	9403.90.80
1401.90.20	4602.10.11	
1401.90.40	4602.10.12	

III. Certain Oilseeds, Vegetable Oils, and Oil Cakes

1202.10.00	1513.19.00*	1519.19.20
1202.20.00	1513.21.00*	1519.19.40
1203.00.00	1513.29.00* [2]	1519.20.00
1207.10.00	1515.30.00	1519.30.20
1207.30.00*	1515.50.00	1519.30.40
1207.92.00*	1515.90.20	1519.30.80
1207.99.00*	1515.90.40	1520.10.00
1208.90.00	1516.20.10	1520.90.00
1508.10.00	1516.20.90	2305.00.00
1508.90.00	1516.00.20	2306.50.00
1511.10.00 [1]	1516.00.40	2306.60.00
1511.90.00 [1]	1519.11.00	2306.90.00
1513.11.00*	1519.12.00	

IV. Tobacco, Rice, and Tropical Roots

Tobacco and Tobacco Products

2401.10.20	2401.20.40	2402.10.30
2401.10.40	2401.20.60	2402.10.60
2401.10.60	2401.20.80	2402.10.80
2401.10.80	2401.30.30*	2402.20.10
2401.20.05	2401.30.60	2402.20.80
2401.20.20	2401.30.90	2402.20.90

Rice

1006.10.00	1006.30.10	1102.30.00
1006.20.20	1006.30.90	1103.14.00
1006.20.40	1006.40.00	

Manioc and Other Tropical Roots, and Products Thereof

0714.10.00	0714.90.50*	1903.00.20*
0714.90.10	0714.90.60	1903.00.40
0714.90.20	1106.20.00*	
0714.90.40	1108.14.00*	

[1] Palm oil and its fractions imported to be used in the manufacture of iron or steel products, or of tin plate or terne plate are bound free of duty in the GATT.

[2] Palm kernel oil unfit for use as food is not bound free of duty in the GATT.

V. Tropical Fruits and Nuts

Bananas and Banana Products

0803.00.20* [1]	0811.90.10	2008.99.15
0803.00.30*	1106.30.20	
0803.00.40	2008.99.13	

Other Tropical Fruits and Nuts and Products

0801.10.00*	0813.40.40	2008.19.15
0801.20.00*	0813.40.80	2008.19.20
0801.30.00*	0813.40.90	2008.19.25
0802.90.10	0813.50.00	2008.19.30
0802.90.15	1106.30.40	2008.19.40
0802.90.20	2001.90.10	2008.19.50
0802.90.25	2001.90.20	2008.19.85
0802.90.80	2001.90.25	2008.19.90
0802.90.90	2001.90.30	2008.20.00
0804.10.20	2001.90.35	2008.91.00
0804.10.40	2001.90.40	2008.92.10
0804.10.60	2001.90.42	2008.92.90
0804.10.80	2001.90.45	2008.99.05
0804.30.20	2001.90.50	2008.99.10
0804.30.40	2001.90.60	2008.99.18
0804.30.60	2006.00.20	2008.99.20
0804.40.00	2006.00.30	2008.99.23
0804.50.40	2006.00.40	2008.99.25
0804.50.60	2006.00.50	2008.99.28
0804.50.80	2006.00.60	2008.99.29
0807.20.00	2006.00.70	2008.99.30*
0810.90.20* [2]	2006.00.90	2008.99.35
0810.90.40	2007.10.00	2008.99.40
0811.90.20*	2007.99.05	2008.99.42
0811.90.22	2007.99.10	2008.99.45
0811.90.25	2007.99.15	2008.99.50
0811.90.30*	2007.99.20	2008.99.60
0811.90.35	2007.99.25	2008.99.61
0811.90.40	2007.99.30*	2008.99.63
0811.90.50	2007.99.35	2008.99.65
0811.90.55	2007.99.40	2008.99.80
0811.90.60	2007.99.45	2008.99.90
0812.90.10	2007.99.48	2009.40.20
0812.90.20	2007.99.50	2009.40.40
0812.90.30	2007.99.55	2009.80.20*
0812.90.40	2007.99.60	2009.80.40
0812.90.90	2007.99.65	2009.80.60
0813.40.10	2007.99.70	2009.80.80
0813.40.15	2007.99.75	2000.90.20
0813.40.20	2008.11.00	2009.90.40
0813.40.30	2008.19.10*	

[1] Dried bananas are not bound free of duty in the GATT.

[2] Kiwi fruit is not bound free of duty in the GATT.

VI. Tropical Wood and Rubber

Tropical Wood and Wood Products

4403.10.00*	4408.90.00* [1]	4412.11.20
4403.31.00*	4409.20.10*	4412.11.50
4403.32.00*	4409.20.25*	4412.12.05
4403.33.00*	4409.20.40*	4412.12.10
4403.34.00*	4409.20.50	4412.12.15
4403.35.00*	4409.20.60*	4412.12.20
4403.99.00*	4409.20.65	4412.12.50
4407.21.00*	4409.20.90*	4414.00.00
4407.22.00*	4410.10.00	4418.20.00
4407.23.00*	4410.90.00*	4418.30.00
4407.99.00*	4412.11.05	4418.50.00
4408.20.00*	4412.11.10	4418.90.20*
4418.90.40	4421.90.50	9401.90.15
4419.00.40	4421.90.60	9401.90.40
4419.00.80	4421.90.70*	9403.30.40
4420.10.00	4421.90.80	9403.30.80
4420.90.20	4421.90.85	9403.40.40
4420.90.40	4421.90.88*	9403.40.60
4420.90.60	4421.90.90	9403.40.90
4420.90.80	9401.61.20	9403.50.40
4421.10.00	9401.61.40	9403.50.60
4421.90.10	9401.61.60	9403.50.90
4421.90.15*	9401.69.20	9403.60.40
4421.90.20	9401.69.40	9403.60.80
4421.90.30	9401.69.60	9403.90.70
4421.90.40	9401.69.80	

Natural Rubber and Rubber Products

4001.10.00*	4009.10.00	4014.90.50
4001.21.00*	4009.20.00	4015.11.00
4001.22.00*	4009.30.00	4015.19.10
4001.29.00*	4009.40.00	4015.19.50
4001.30.00*	4009.50.00	4015.90.00
4005.10.00*	4011.10.00	4016.10.00
4005.20.00*	4011.20.00	4016.91.00
4005.91.00*	4011.40.00	4016.92.00
4005.99.00*	4011.50.00	4016.93.00
4006.10.00	4011.91.10*	4016.94.00
4006.90.10	4011.91.50	4016.95.00
4006.90.50	4011.99.10*	4016.99.03
4007.00.00	4011.99.50	4016.99.05
4008.11.10	4013.10.00	4016.99.10
4008.11.50	4013.20.00	4016.99.15
4008.19.10	4013.90.10*	4016.99.20
4008.19.50	4013.90.50	4016.99.25
4008.21.00	4014.10.00	4016.99.50
4008.29.00	4014.90.10	4017.00.00

[1] Reinforced or backed decorative wood veneers, not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the wood are not bound free of duty in the GATT.

VII. Jute and hard Fibers

5303.10.00*	5311.00.40	5702.39.10
5303.90.00*	5311.00.60	5702.39.20
5304.10.00*	5607.10.00	5702.49.10
5304.90.00*	5607.21.00*	5702.49.15
5305.11.00*	5607.29.00	5702.49.20
5305.19.00	5607.30.10*	5702.59.10
5305.21.00*	5607.30.20	5702.59.20
5305.29.00*	5608.90.10	5702.99.10
5305.91.00*	5608.90.20	5702.99.20
5305.99.00*	5608.90.30	5703.90.00
5307.10.00	5609.00.10	5705.00.10*
5307.20.00	5609.00.20	5705.00.20
5308.10.00*	5609.00.30	5905.00.10*
5308.90.00	5609.00.40	5905.00.90
5310.10.00*	5701.90.10	6305.10.00*
5310.90.00	5701.90.20	6305.90.00
5311.00.20	5702.20.10	
5311.00.30	5702.20.20*	

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Part IV

Department of Agriculture

Forest Service

Recreation Residence Authorizations; Notice of Adoption of Final Policy

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DEPARTMENT OF AGRICULTURE

Forest Service

Recreation Residence Authorizations

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy.

SUMMARY: The Forest Service hereby gives notice that it is adopting certain new policy and procedures for administering special use permits that authorize privately-owned recreation residences on National Forest System lands. When adopted, the policy will place in effect a new method of calculating annual fees for recreation residences. It will also establish policy concerning the period of time authorized by the permit and determinations concerning the renewability of the permit.

EFFECTIVE DATE: This policy is effective August 31, 1988. The 15-day delay will allow distribution of the policy through the Agency's internal directive system.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Ruben M. Williams, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 235–2253.

SUPPLEMENTARY INFORMATION: On January 2, 1987, the Forest Service published a notice of proposed policy for the administration of recreation residence permits (52 FR 206–218). The proposed policy recommended several changes in the current policy for administering recreation residences including a proposal to calculate the annual fee by multiplying the base fee times the percent of change in the Implicit Price Deflator-Gross National Product (IPD–GNP). This new fee system would have become effective in 1987. The proposal also called for establishment of a new base fee at 20-year intervals, issuing permits for a 20-year period with a provision for renewal at the end of the first 10-year period, involvement of permittee representatives in reviewing decisions appealed to Regional Foresters, and the review of nonrenewal decisions 2 to 3 years prior to termination of the permit. The proposal was developed by the Forest Service and a working group representing recreation residence permittees, established at the request of the Chief of the Forest Service.

Analysis of Public Comment

During the public comment period on this proposal, the Forest Supervisor of the Eldorado National Forest in California, issued the Highway 88 Future Recreation Use Determination Draft Environmental Impact Statement (EIS). The preferred alternative in the draft EIS called for the removal of 82 recreation residences located near the lakeshore of Silver Lake and at other locations. Materials about the Future Use Determination were mailed to permittees in other States by the Northern Sierra Summer Home Association requesting their support in opposing the proposed nonrenewal action. Many people apparently confused the **Federal Register** notice on Recreation Residence policy with the **Federal Register** notice on the draft EIS. The Forest Supervisor withdrew the draft EIS on April 2, 1987, because the policy on future use determinations was one of the major items being considered in the proposed recreation residence policy and because of the confusion the draft EIS was creating. Any future action or study of the recreation residences in the Eldorado and other National Forests will be consistent with the direction contained in this final policy. Both the proposed policy and this final policy provide greater protection to the permittees from nonrenewal of their recreation residence permits. In this policy, we have limited the purposes for which recreation residence sites may be reclaimed by narrowing the definition of higher priority use as it applies to recreation residence sites.

To the extent possible, and based on the relative merit of the comments, the policy has been revised to respond to the comments and suggestions received. In addition, the text has been changed to improve clarity and to conform to Forest Service directive system policy and standards where necessary.

Several respondents questioned our notification procedures, i.e., direct mailings to all recreation residence permittees and via the **Federal Register** to all others. Each permittee was mailed a copy of the notice of the proposed policy because the changes would directly affect them and the administration of their permits. The general public was notified of the proposed policy via the Federal Register because this means of public notice has widespread circulation and meets Federal legal notice requirements.

Independently, the National Forest Recreation Association mailed to all recreation residence permittees a situation review position statement and offered a questionnaire-style response form. Completed questionnaires represented about 92 percent of the comments received on the proposed policy.

The Forest Service received 3,188 responses on the proposed recreation residence policy. The number and percentage of responses by category of respondent is as follows:

Respondent	Number	Percentage
Permittee	3,072	96.4
Permittee Family Member or Friends	21	0.7
Permittee Association	17	0.5
Others	56	1.7
Forest Service Personnel	22	0.7
Total	3,188	100.0

All of the comments received have been reviewed and given consideration in reaching the final decision. The summary of comments have been organized by topic and the Forest Service response to these topics follows.

1. *Base Fees and Indexing.* The Agency proposed to use established fees that became effective during the years 1978–1982 as the basis for a 20-year fee cycle using changes in the overall Implicit Price Deflator (IPD) for annual adjustments. Base fees would be updated to 1987 by applying the IPD adjustments.

About 81 percent of the reviewers supported the 20-year fee cycle and adjustment of the base fee by using the IPD. Other reviewers suggested such changes as: (1) No indexing of fees; (2) using an index that reflects Regional or State differences; (3) using a base period prior to 1978; (4) starting the indexing in 1987 or a year after the base fee year was established; (5) using the reduced fee resulting from the Appropriations Acts of 1983–1986 as the fee base; or (6) preparing new appraisals using current market sales to establish a base fee. All of these proposals were considered in the development of the proposed and final policy, and all of them, except the last one, would have the effect of reducing the fee that would become effective upon adoption of this policy. Establishing new base fees based on current appraisals would result in increased fees, but we do not believe it would be cost effective at this time.

The proposed method of adjusting fees for the years up to and including 1987 is unchanged in the final policy; however, we have clarified that the index is the Implicit Price Deflator-Gross National Product (IPD–GNP). In the proposed policy we used the term "overall Implicit Price Deflator."

For the years 1988 and thereafter to the end of the fee cycle, the fees will be adjusted by applying the percentage change in the index for the second quarter of the previous year to the second quarter of the current year to the

current fees. For example, the percentage change in the index from June 1986 to June 1987 gives the factor to apply to the 1987 fees to obtain the 1988 fees.

Originally, the Forest Service and the Chief's permittee working group had proposed a 4-year phase-in of the 1987 fee increase. In the administrative review of the proposal, the phase-in period was limited to 3 years. This change in the phase-in period was identified in the response form mailed to permittees by the NFRA. Almost all of the permittee respondents asked that the phase-in period be 4 years rather than 3 years.

Other respondents favored no phase-in of fee increases stating that the phase-in of fee increases adds to the Forest Service administrative cost and reduces receipts to the Federal Government. Among the comments were concerns that the proposed phase-in of fee increases was more generous than the previous policy which provided for the phase-in of fee increases when the amount of the increase is $75 or more. Some questioned why the Forest Service was proposing a different policy for the phase-in of recreation residence fee increases from the phase-in policy for linear rights-of-way published in the **Federal Register** on December 5, 1986, noting that only the amount of the fee increase in excess of $100 or 100 percent of the previous fee could be phased-in.

We recognize that a significant number of permits will have fee increases of less than $100 and a few of less than $20. We also recognize that the phase-in of fees adds marginally to our administrative costs and reduces receipts to the Federal Government. These facts were recognized and considered when the Forest Service was meeting with the permittee working group attempting to reach an equitable solution to the fee controversy. We continue to believe that it is important to consider the fee issue as a whole. The overall policy change will significantly increase the fees that have been charged since 1983. At that time, the Congress enacted legislation that statutorily limited fee increases and required the Forest Service to grant fee credits for fees paid in previous years that exceeded the statutory limits. Under the final policy, we will restore the fees that were charged prior to 1983 and adjust the base fee by the IPD–GNP index to arrive at the 1987 fee. Only the fee increase resulting from the adjustment of the base fee will be phased-in. The base fee amount will not be phased-in, it will be restored. Likewise, annual fee adjustments for 1988 and fee adjustments that may occur in later years will not be phased-in.

The new fee schedule will apply to permits for which the fees have already been paid for 1987 and 1988. A supplementary billing will be sent to permittees for the additional amounts owed under the new fee schedules for those years (see Implementation section).

Finally, in mid-1986 we assured the Congress that we had reached agreement, subject to approval within the Administration, with the permittee working group on the fee issue. On this basis, we requested, and the Congressional Appropriations Committees agreed, that no provisions be embodied in the 1987 Appropriation Act that would limit fees for 1987, as had been the case in each Appropriation Act since 1983, should the new policy be implemented in 1987. A similar request was made, and agreed to, for the 1988 Appropriation Act. The phase-in of fee increases over a 4-year period was in the agreement reached with the permittee working group. Given the overwhelming support of the reviewers for the 4-year phase-in, rather than the 3-year period in the proposed policy, the final policy provides for a 4-year phase-in of the 1987 fee increase.

While we will not limit the phase-in of fee increases to a dollar or percentage amount, we have, as in our proposed policy, provided for the phase-in of fees for only those permittees who accept new recreation residence permits. The new recreation residence permits contain a provision for the annual adjustment of the fee amount by the percentage of change in the IPD–GNP index. Fee increases will not be phased-in for those permittees who retain their old permits which provides only for adjustment of the fee at 5-year intervals (Implementation section).

2. Index Limitation. Most reviewers favored the 10 percent limitation on the increase or decrease in the fees resulting from the annual IPD adjustment for 1988 and thereafter. Some reviewers recommended no limitation, and others recommended limitations ranging from 2 to 7 percent. We believe the 10 percent limitation is a reasonable level that protects both the public interest and the permittee and, therefore, it is not changed in the final.

3. *Appraisals and Fee Determination.* The proposed policy provided that the Forest Service would clarify and standardize instructions used in appraising recreation residence sites to ensure common minimum standards in the various appraisal tasks. Eighty-five percent of the commenters supported the proposed policy on appraisals. Some of the concerns expressed by those not agreeing dealt with appraisal procedures or process, such as constraints of the special use permit on use of the residence, winter accessibility, and the possibility of nonrenewal. We have considered these limitations on use in developing detailed appraisal procedures and the standard appraisal contract. Other commenters asked that we base the permit fee on the Forest Service cost of administering the permits or valuations by local tax assessors. We considered these methods in developing the proposed policy, but did not adopt them, because they would not result in fair market value fees, which the Agency is required by statute and OMB regulations to charge. Some respondents encouraged us to consider land leases where available in our appraisals rather than lot sales. Others asked us to clarify who selects and pays when a third appraisal is needed.

In our market surveys we have found that recreation residence sites are almost always sold in the private market rather than leased for construction of a residence by an individual. Therefore, because of the scarcity of such leases, we do not believe it would be practical to expend the money to search for such leases. Therefore, the final policy on appraisals and fee determinations is unchanged from the proposal. However, we have clarified that the permittee and the Forest Service will share equally the cost of a third appraisal.

4. *Annual Rental Rate.* About 73 percent of the respondents favored the continuance of basing the annual rental on 5 percent of the appraised site value. Other reviewers asked that the rate be reduced for senior citizens, retirees, pensioners, veterans and other living on fixed income. We do not have statutory authority to discount the fee because of age or economic status of the permittee. The rate of 5 percent recognizes the various limitations on recreation residence use resulting from Federal ownership of the land. Therefore, the rate remains unchanged.

5. *Term Permit.* Nearly 88 percent of the respondents favored revision of the Term Permit Form and of the proposal to issue the permits for a 20-year period with a provision to renew it at the end of 10 years, unless the Forest Service has identified a need to use the site for a higher public purpose. The Forest Service has worked with the permittee representatives in revision of the Term Permit. A copy of the new recreation residence permit is included in the

Forest Service Handbook 2709.11—Special Uses.

6. *Higher Public Purpose.* We proposed that higher public purpose for future use determinations be defined as "a higher priority use of a site for the benefit of the general public that is timely, clearly needed, in public demand, and where other sites to satisfy the need cannot reasonably be made available."

While most reviewers agreed with the proposed changes, several respondents objected to the proposed definition of higher public use and to the criteria for not renewing recreation residence use. They felt that there are valid reasons for not renewing recreation residence use of a site that could not be fully considered and evaluated using the proposed standards. For example, some believed that nonrenewal should be justified based on the need for access to streams or lakeshores. There was a feeling that the Forest Service under this proposal could only decide not to renew the residence use if the site was needed for development of public recreational facilities and no other alternative could be found.

One reviewer raised the question of applicability of the higher public purpose criteria to recreation residences located in congressionally-designated National Recreation Areas and Wild and Scenic River corridors. The decision on whether to allow recreation residences to remain in such congressionally-designated areas will be handled in a manner consistent with the enabling legislation. It is recognized that the management purpose including visual management considerations may be specifically identified in the legislation establishing these special areas.

We believe the definition of higher public purpose and the policies and guidelines for making renewal decisions are sufficiently flexible to allow the Forest Service to recapture recreation residence sites needed for public use and management of the National Forests. The guidelines do not restrict the Agency only to reclaiming sites where physical facilities are required. Therefore, the proposed definition is not changed in the final policy.

7. *Future Use Determinations.* The proposed policy included specific guidelines for conducting studies to determine whether another use should be made of recreation residence sites. Those guidelines emphasized the importance of considering common, shared, or multiple-uses that integrate recreation residences with other uses of a site; the feasibility of using other sites to meet the higher public purposes for the recreation residence sites; the potential recreational and financial losses of permittees and others using their improvements as opposed to the benefits to the general public to be gained by removal of the residences.

Over 90 percent of the respondents agreed with the statement in the response form prepared by the NFRA. That form said, "Before deciding that recreation residence sites will be converted to higher use, it is important to have an objective, fully explanatory description and analysis of the relevant data needed to explore the reasonable alternatives. A separate study is needed. It should be available to affected permittees. Specific guidelines for conducting it are necessary."

In addition, some respondents commented that permittee participation in the future use determination process should result in a reduction of appeals. Another recommendation was to use a non-partisan arbitrator between the Forest Service and permittees. The United States Statutes do not allow the Forest Service to use arbitration for decisions regarding the use of National Forest lands.

The Forest Service developed the term "future use determination" in the mid-1960's when we had a number of recreation residence tracts under nonrenewal notice or being studied for possible nonrenewal. At that time, we did not have the environmental review and decision making process that came about pursuant to the National Environmental Policy Act (NEPA). Now decisions on land uses, including special uses of National Forest lands, must be made and documented in accordance with NEPA, and implementing regulations, policies, and procedures. We have concluded that the term "future use determination" is not needed and causes confusion among permittees and Forest Service field people. For that reason, we have eliminated the term "future use determination" from the final policy as well as the requirement to conduct a future use determination study prior to renewal of recreation residence permits.

Instead, renewal of recreation residence permits will be determined in the same manner as other special use permit renewals. We will use NEPA procedures in making decisions on the renewal of recreation residence permits. When proposed alternative uses for recreation residence sites that involve a higher public purpose are identified in a Forest Plan or in the NEPA scoping process for a project, the Forest officer will consider continuance in the analysis of alternatives for that proposed higher public use. If a Forest Plan or scoping for a project does not identify a need for a higher public use of the site, the permits will be renewed.

The Forest Service will continue to provide a 10-year notice prior to the nonrenewal of a recreation residence as provided in the proposal. In the final policy, we have changed the term "private recreation use permittee" to "non-commercial recreation use permittee." The change in terminology should help remove some of the negative connotations associated with the label of an exclusive, private use of public lands. It will also help reinforce the fact that a residence cannot be used or operated as a business. We have also emphasized that recreation residences are an important component of the overall National Forest recreation program.

8. *In-Lieu Sites.* We proposed to make a reasonable effort to provide other sites upon which permittees may build or relocate their improvements when not renewing a recreation residence permit for a higher public purpose. Most permittee respondents agreed with the proposal, and some asked that the offer of an in-lieu site be extended to owners of a recreation residence permit who acquired the residence after a nonrenewal notice had been given. Other respondents opposed the offer of alternative sites for various reasons. Among the chief concerns was that the offer of in-lieu sites would lead to the permanent relocation of private recreation residences on the National Forest that are available to only a very limited number of citizens of the United States. Another concern was the added cost to the Forest Service of offering in-lieu sites, such as planning, conducting environmental reviews, processing appeals, and adminstration of the sites. We agree that offering in-lieu sites will add to the costs of administering the recreation residence program and will help perpetuate recreation residences on the National Forests. In the past 15 years there have been very few nonrenewal decisions. Based on this experience, we expect the cost of offering in-lieu sites to be very low.

In the final policy, we have clarified our intent to offer an in-lieu site to an existing owner as well as to a new owner of a recreation residence under nonrenewal notice.

Recreation residences under nonrenewal are commonly sold to people who attempt to use the facilities as their principal place of residence. Because the use of a recreation residence as a principal place of residence conflicts with the purpose for recreation residences and statutory

authority, we are clarifying that an in-lieu site cannot be used as a principal place of residence even though the existing residence site is used full time.

Use of in-lieu sites must be consistent with the Forest Plan and must comply with State law and local government ordinances and zoning. Additionally, facilities developed on an in-lieu site must comply with Federal, State, and local building codes, and the holder will be required to pay any costs.

9. *Adjustment of Fees Upon Nonrenewal.* The proposal to freeze a fee upon a decision not to renew a permit and to reduce the fee during the last 10-year period was supported by nearly 86 percent of the reviewers. Some reviewers agreed to freezing the fee during the last 10-year period, but objected to reducing the fee. They questioned whether such fee reductions met the requirement to charge fair market value.

We find the value of the recreation residence use is reduced during the last few years prior to the nonrenewal of the residence use. The market clearly shows that value declines when limitations are placed on use. We believe the fee reduction in the last 10 year period is fair and equitable and meets the requirement to charge fair market value fees. Therefore, we have in the final policy provided for reduction of the fee as proposed.

Other reviewers asked that the fee reduction provision be granted to permits under life tenure. This would be inappropriate since the expiration date for life tenure permits is unknown. To stay a fee increase or reduce the fee on an annual basis for permits under life tenure would deprive the public of a reasonable fee for exclusive use of Federal land.

Rarely are life tenure provisions used in recreation residence permits. Where they have been used, the Forest Service would be willing, upon the request of the permittee, to review the need for the termination and where there is a need to continue with the termination action, to issue a permit with a fixed expiration date. The permittee would then qualify for a reduced fee. If there is no need to continue with the termination, a new 20-year term permit would be issued.

As discussed in this policy, notice of nonrenewal of recreation residence use must be given at least 10 years prior to the expiration date. A longer time period may be given, and in the past up to 20 years advance notice was given. Therefore, in order to be consistent in the fees charged permits under nonrenewal notice, we have clarified that the annual fee will be frozen on the tenth year prior to the scheduled expiration date rather than the date that the notice of nonrenewal is given.

Having considered the comments received, the Agency adopts the proposed policy on adjustment of fees upon nonrenewal without change, except as noted in the previous paragraph.

10. *New Recreation Residence Tracts.* A number of respondents asked the Forest Service to open new recreation residence tracts for development. They state that new sites when developed would provide more opportunity for others to own and enjoy a residence in the National Forests. Some believe that it is an economical method to provide recreational opportunities on the National Forests and would result in increased receipts to the Forest Service and help reduce the Nation's deficit.

In the mid-1960's, the Forest Service established a policy to discontinue the designation and approval of new recreation residence tracts. By that time, many private landowners had subdivided their properties for second home developments and there was no longer a need to use the National Forest for second homes. Since that time, there has been an abundant supply of second home lots that have similar or better amenities than lots that might be approved for recreation residences on the National Forest. There are approximately 3 million second homes in the Nation and about 15,800 of these homes are recreation residences on the National Forest. Currently, there are several million lots on private lands that have not been developed. Therefore, the approval of additional recreation residence sites on the National Forests could adversely impact the sale of lots for the second home market. For these reasons the Forest Service will continue its longstanding policy of not authorizing new tracts for recreation residence sites.

11. *Participation in Appeals.* The proposal stated that the Agency would work with permittee representatives who desire to participate in the resolution of recreation residence issues appealed to the Regional Forester by other permittees. About 87 percent of the reviewers concurred with the proposed policy and 674 permittees expressed an interest in working with permittee representatives and the Forest Service in the resolution of issues. Other respondents objected to the proposal feeling that the Forest Service would be making an alliance with a special interest group that can be perceived as giving the special interest an advantage over members of the general public and other special interest groups. Some questioned whether the release of the information without the permittee's consent would be a breach of the Privacy Act. Others noted that the Agency does not grant similar privileges to other special interest groups, who very well may want to be informed and involved in the resolution of issues in which they have an interest.

Our intent is to reach a fair and equitable resolution to permittee complaints, and we believe permittee representatives can assist the Forest Service in this effort. We distinguish recreation residence permittees from other interest groups through the business relationship arising from the term permit. Issues and complaints must necessarily be resolved within the context of the terms of the permit. Since all permittees have the same permit, a decision relating to one permit could affect others.

Where requested, the Agency will advise any individual permittee or permittee organization of issues related to administration of recreation residence authorizations for the purpose of reducing conflict between permittees and the Forest Service. The proposal is adopted, but in response to concern about breach of privacy, a clarifying statement has been added that notice by the Forest Service will be given to permittee representatives or others of an issue of concern to a permittee or an issue under appeal, unless requested otherwise by the permittee/appellant.

12. *Base Fee Reviews.* We proposed to review certain base fees to ensure that they are reflective of fair market value. In the proposal, we also invited respondents to provide additional criteria or unusual appraisal situations or problems. Less than 6 percent of the respondents expressed a problem with their base fee. Therefore, this provision is adopted as proposed. As a result, the Forest Service has reviewed or is presently reviewing.

a. Permits where the 1978–1982 fee is currently under appeal and a decision is to be made as required by the administrative appeal regulations (36 CFR 211.18).

b. Permits where appraisals were not conducted and used in establishing fees during the 1978–1982 period (in some cases, we may use an earlier or a later appraisal as the basis for the base fee that will be adjusted by the applicable IPD–GNP factor).

c. Permits whose fees are not based on an appraisal.

d. Permits in which the commenters questioned the appraisal values, except that appraisals that have already been reviewed and resolved in the administrative appeals process will not be reviewed.

13. *Review of Decisions Not to Renew Permits.* We proposed to conduct supplemental or follow-up reviews of nonrenewal decisions prior to expiration of the permit to determine if circumstances have changed. Most reviewers were agreeable to the proposal to review earlier nonrenewal decisions prior to the actual expiration date.

Similarly, most reviewers agreed with the item in the National Forest Recreation Association response form that asked the Forest Service to review all decisions for permits that have expired, but the residences have not been removed. It should be noted that this was not included in our proposal. To require a review of recreation residence permits that have already expired could unnecessarily delay Forest Service development plans and schedules for an area.

The Forest Service did agree to implement supplemental reviews of permits with a nonrenewal notice provided the resulting decisions are non-appealable. On July 22, 1987, we published in the Federal Register an Interim Rule that changed the administrative appeal regulation at 36 CFR 211.18 to accomplish this. Upon adoption of a final rule, we will require, as a matter of policy, that, upon request of the holder, a review will be conducted 2 years prior to the established expiration date of the permit for permits expiring in 1989 and thereafter. Forest Supervisors will notify affected permittees of the pending review and request their input.

Regarding permits that are not being renewed after 1987 or 1988, the Forest Service issued instructions to its field offices on July 17, 1987, directing Forest Supervisors to notify all such permittees of their opportunity to petition the Forest Supervisor to review the earlier nonrenewal decision. The notice to the permittees made clear that any decision resulting from the review is excluded from appeal under the Administrative Appeal Regulation (36 CFR 211.18). The basis for this is the Interim Rule published in the Federal Register on July 22, 1987 (52 FR 27547).

In reviewing nonrenewal decisions, the Forest Supervisor will determine whether or not circumstances have changed since the original decision was made and if the reasons for nonrenewal are still valid. If the site is still needed for a higher priority use, the permittee is to be promptly notified. If the site is no longer needed for a higher priority use, a new 20-year term permit will be issued.

14. *Isolated Cabin Permits.* The Agency proposed to work with permittee representatives to identify and review any arbitrary and/or unfair action in establishing nonrenewal dates for isolated cabins. We proposed conditions under which the reviews would be made. The NFRA permittee response form stated that, "isolated cabins should not be removed only because they are isolated. Removal of cabins that might otherwise qualify as recreation residences should be based primarily on whether they are in conflict with higher needs for the site." Most respondents agreed with the statement. Other respondents felt that cabins built on invalid mining claims, in trespass, and for other purposes to support a commercial operation, such as a sawmill or range allotment, should be removed so that the public could make use of the lands. They believe that a policy change that would allow these cabins to be managed as recreation residences would give a windfall to the current owners, would continue the private exclusive use of public lands, and could encourage others to occupy National Forest lands without a permit.

One respondent pointed out that the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210) provides specific direction for permitting and terminating cabins in Alaska. We agree that cabins on National Forest lands in Alaska must be administered in accordance with the ANILCA and that those cabins cannot be included under the general policy for administration of cabin permits that applies to other National Forest System lands.

The permittee working group believes that there are isolated cabin permits that should be allowed continued occupancy of National Forest lands. While the Forest Service is willing to review individual situations, agreement has not been reached as to the guidelines for identifying individual isolated cabins that may qualify for recreation residence permits.

The permittee working group and the Forest Service will continue to pursue identification of isolated cabins which may qualify and standards for their conversion to recreation residences or continuance under isolated cabins policies. Additional public comment on this subject will be requested in a future Federal Register notice.

The Forest Service identified those isolated cabin occupancies that were scheduled for removal in 1987 and 1988. A joint review of these cases, and the attendant planned public involvement will provide insights into what standards may be used in determining which isolated cabin permits should appropriately be converted to recreation residence permits.

Based on agreement with the permittee working group, isolated cabins in the following categories will not qualify for conversion to recreation residences:

a. Cabins having been provided relief under the Mining Claim Occupancy Act (30 U.S.C. 701–708).

b. Cabins built in trespass which can be resolved by the Small Tracts Act (16 U.S.C. 521c–521i).

c. Cabins existing under a deed restriction in a Forest Service land acquisition.

d. Situations where delay in removal would disrupt Forest Service development plans where funds are budgeted.

e. If removal is by final court order or litigation.

15. *Compensation.* Eighty-five percent of the respondents favored compensation when a permit is not renewed because the site is needed for a higher priority purpose. They want to be paid for the value of their improvements, cost of moving to an in-lieu site, and cost of restoring the old site. However, not everyone agreed with the concept of compensation because the 10-year notice of nonrenewal with progressive fee reductions would already provide partial compensation for the permittee. Some felt that compensation should be at a percentage that is less than the fair market value of the improvements.

The NFRA permittee response form contained an inquiry as follows: "If such compensation is not available, and if permittee-paid "insurance" could be arranged to provide its equivalent, I would be willing to pay the following percentage of my fee (my annual fee is: $_____)".

Approximately 43 percent of the respondents said they would be willing to pay a percentage of their fee in an insurance type of account for this purpose.

As stated in the January 2, 1987, Federal Register notice, the Forest Service does not have authority to compensate permittees for the value of their improvements after a permit has expired. The Forest Service remains willing to work with permittees in pursuit of alternative protection such as private insurance. We will continue to point out to holders that one of the risks of owning a recreation residence on National Forest lands is that the permit may not be renewed.

16. *Transition.* The Agency proposed to offer new 20-year term permits after approval of the final policy except in those cases where a nonrenewal notice had been given or an analysis of the need for providing for higher public

purposes was underway or was planned within 5 years. Almost all of the respondents agreed with the proposal. Therefore, permittees with unexpired terms on their permits must decide whether to immediately accept new term permits or wait until the existing permit term ends. The fee increase effective in 1987 will be phased-in over a 4-year period for those choosing to accept new permits. For permittees who keep their existing permits, the fee increase will not be phased-in. It is anticipated that most permittees who choose the new permit will receive a 20-year term permit. However, individual Forest Supervisors may elect not to grant a full 20-year term when nonrenewal is already established or must be considered within the next 5 years.

Following the analysis of public comment, the Forest Service continued discussions with the working group of recreation residence permittees for the purpose of refining and clarfying the final policy. This continued permittee review and involvement combined with the Department's internal review and clearance on this complex policy has resulted in a greater delay in adoption of the final policy then originally anticipated but has also produced a policy that meets the Government's needs and most of permittees' concerns.

Implementation

The Forest Service plans the following actions and methods for implementing this final policy:

1. A new term permit has been developed, to be issued in Chapter 50 of Forest Service Handbook 2709.11, that will implement the changes in recreation residence policy. Permittees will be offered an opportunity to convert their existing permit to the new permit and will have 75 days to respond to the Forest Supervisor's notification (item 2) indicating their intention.

2. Within 45 days of the effective date of this policy, Forest Supervisors will provide each permittee the new permit including the length of term which will be granted and the revised fee.

3. If the Forest Supervisor decides on a term of less than 20 years, the reasons for the shorter term will be stated. Except for permits on tenure, the term must be at least 10 years and cannot be less than the term remaining on the existing permit. If a term less than 20 years is necessary because a recreation residence renewal study is underway or planned, the length of term granted should provide for time to complete the study plus at least 10 years.

4. For those permittees electing to retain their existing permit, fees for 1987 will be determined by multiplying the cumulative IPD–GNP index for the number of years since the existing fee was established. For example, the 1987 fee for a permit with a fee of $300, established in 1979, would be $456 ($300 times 1.52). In accordance with the terms of existing permits, the fee established for 1987 would remain constant until the end of the 5-year fee adjustment period set forth in the permit. At the end of the adjustment period, the appropriate cumulative IPD–GNP index would be applied to redetermine the fee. This methodology would continue until expiration of the term of existing permits, at which time the new standard term permit would be issued, unless notice of nonrenewal has been given.

5. For permittees electing to convert their existing permit to the new permit, the fee will apply as of 1987. The fee charged in 1987 will be the product of the base fee multiplied by the appropriate IPD–GNP index. (See Forest Service Handbook 2709.11—Special Uses, Chapter 30.) The amount of the fee increase will be phased-in over a 4-year period for these permittees Fees for 1988 will then be determined by applying the index to the 1987 fees.

6. Since permittees have already paid a partial fee for 1987 and 1988, a supplemental billing will be mailed to each permittee to collect the additional fee owed for these two years. If the amount of the supplemental fee exceeds $100, Forest Supervisors will be authorized to collect the supplemental fees for 1987 and 1988, if the holder desires, over a period of time, not to exceed four months. Any credits due permittees resulting from the 1983–1986 Appropriation Acts provision will be applied to the supplemental fee.

7. This recreation residence policy will be issued as amendments to Forest Service Manual (FSM) Chapters 2340 and 2720 and Forest Service Handbook (FSH) 2709.11, Special Uses. The revised policy for recreation residences, as it would appear in the Agency's directive system, is set forth at the conclusion of this notice.

May 19, 1989.

George M. Leonard,

Associate Chief.

Revised Recreation Residence Policy and Procedures

(Note: The Forest Service uses alpha-numeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual and Handbook that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering recreation residence use authorizations. The direction in FSH 2709.11, Chapters 30 and 40, will be issued as Interim Directives and will be converted to the permanent direction in 1 year. All other policy will be issued as final direction.)

Title 2300—Recreation, Wilderness, and Related Resource Management

2347—Non-Commercial Recreation Use

This section deals with privately built and owned structures allowed on National Forest land under special use authorization. These structures are maintained for the use and enjoyment of holders and their guests. As recreation facilities, they are vacation sites and may not be used on a permanent basis (FSM 2721.23).

2347.03—Policy

1. Manage non-commercial recreation use sites in accordance with basic recreation policy in FSM 2303 as important and valid components of the overall National Forest recreation program.

2. Maintain in place those existing facilities now occupying National Forest land under special use authorization that (a) are at locations where the need for a higher public purpose has not been established, (b) do not constitute a material, uncorrectable offsite hazard to National Forest resources, and (c) do not endanger the health or safety of the holder or the public.

3. Deny applications for construction of new facilities except where they would replace similar existing facilities.

4. Deny any proposal for commercial activity at permitted, non-commercial recreation use sites.

5. Require non-commercial recreation use holders to maintain their sites to protect the natural forest environment. Do not allow construction or placement of non-authorized facilities on these sites.

2347.1—Recreation Residences (FSM 2721.23 and FSH 2709.11)

1. Recreation residences are a very important use of National Forest System lands. They are an important component of the overall National Forest recreation program and have the potential of supporting a large number of recreation person-days. The Forest Service will work in partnership with the holders of these permits to maximize the recreational benefits of these residences.

2. Administer recreation residence special use permits to ensure proper use of the site for family and guest recreation purposes.

3. Use every reasonable effort to provide in-lieu sites to holders who have received nonrenewal or termination notices (except termination for breach). For this purpose, sites within or adjacent to the National Forest containing the residences being terminated or under nonrenewal, including undeveloped or withdrawn sites, shall be available as in-lieu sites. New tracts may be established for recreation residence in-lieu sites at locations not needed in the foreseeable future for a higher public use. In-lieu sites should be comparable to the sites being recovered when possible, but make sure that holders are informed that the Agency cannot guarantee that the available in-lieu sites will be entirely satisfactory. Do not establish new recreation residence tracts for any other purpose than for providing in-lieu sites (FSM 2721.23e).

4. Although a few full-time residences are currently authorized by special use permit, do not approve any new authorizations for such uses, except in special situations to provide caretaker or other similar services where there is a strongly demonstrated need (FSM 2347.12). Do not approve in-lieu sites for full-time residence use.

5. Issue 20-year term permits and renew them every 10 years unless need for a higher public use at the same location has been documented and established.

6. Give holders at least 10 years written advance notice if the use is not to be continued, except when the permit is to be terminated when (a) it is in the public interest, particularly when the final decision authority does not rest with the Forest Service, (b) there is an uncorrected breach of the permit, or (c) the site has been rendered unsafe by catastrophic events such as flood, avalanche, or massive earth movement. In these exceptions, give as much advance notice as possible.

7. Review nonrenewal decisions two years prior to the scheduled expiration date to determine if the original decision is still valid, provided the decision is non-appealable.

8. Termination of a recreation residence permit within the term of the permit should not be undertaken unless there are appropriations to pay for the improvements and there is an urgent need to use the site before it could be recaptured for public use by nonrenewal procedures. When considering a termination, follow the procedures for permit renewals and nonrenewals to the extent practical (FSH 2709.11, 41.23).

2347.11—Preventing Unauthorized Residential Use

Prevent unauthorized full-time residence use by enforcing the terms of the special use permit. Continue to administer those recreation residences presently authorized as a principal place of residence in accordance with provisions of the special use permit, under policy adopted in 1970. Upon transfer or sale of improvements, discontinue the residential use and authorize only recreation residence use.

2347.12—Caretaker Residences

2347.12a—Authority

Authorize caretaker use of a recreation residence with an annual permit, Form 2700–4, under the Act of June 4, 1897. (Require applicants who currently have term permits to exchange them as a condition of obtaining the caretaker authorization.)

2347.12b—Caretaker Residence Use

1. The Forest Supervisor may authorize caretaker residence in limited cases where it is demonstrated that caretaker services are needed for the security of a recreation residence tract, and alternative security measures are not feasible or reasonably available. The need for a caretaker residence rarely can be justified where yearlong occupancy is already authorized in the tract.

2. Authorize no more than one caretaker residence per recreation residence tract unless factors such as size and layout of the tract call for more than one. The affected tract association, or if there is no association, at least 60 percent of the affected holders, must document approval of request for a caretaker residence. Require the applicants for caretaker use to document the caretaker services they will provide.

3. Issue the annual permit only for an existing residence. The permit must contain a provision that automatically terminates authorization for yearlong use in case of change in ownership. Do not authorize construction of a new residence for caretaker services.

4. Coordinate applications for caretaker residence permits with local Governmental agencies to avoid creating unreasonable demands or burdens for such services as snow plowing, mail delivery, garbage pickup, school bus, or emergency services.

5. The fees for caretaker residences will be 25 percent more than those charged for recreation residence use of a similar site in the tract.

6. A tract association may own caretaker residences.

7. If a site ceases to be used as a caretaker residence, issue a new term permit for recreation residence use to the holder, if qualified, or to the purchaser of the improvements.

Title 2700—Special Uses Management

2721.23—Recreation Residence

This designation incudes only those residences that occupy planned, approved tracts or those groups established for recreation residence use (FSM 2347 for basic policy on recreation residence use).

2721.23a—Administration

The following direction relates specifically to issuance and administration of special use permits for recreation residence. For recreation residence permits in Alaska, follow the additional requirements in Section 1303(d) of the Alaska National Interest Lands Conservation Act.

1. Issue special use permits for recreation residence in the name of one individual or to a husband and wife. Upon reissuance, renewal, or amendment, revise authorizations that are not issued to an individual or to a husband and wife, so that the responsible person is identified.

2. Issue no more than one recreation residence special use permit to a single family (husband, wife, and dependent children).

3. Do not issue special use permits for recreation residence use to entities such as commercial enterprises, nonprofit organizations, business associations, corporations, partnerships, or other similar enterprises, except that a tract association may own a caretaker residence.

4. To the extent possible, issue all recreation residence permits in a tract, or in logical groups of tracts, with the same expiration date.

5. To help defray costs and provide additional recreation opportunities, a holder may obtain permission for incidental rental for specific periods. Ensure that rental use is solely for recreation purposes and does not change the character of the area or use to a commercial nature. Rental arrangements must be in writing and approved in advance by the authorized officer. The holder must remain responsible for compliance with the special use authorization.

6. Allow no more than one dwelling per site to be built. In those cases where more than one dwelling (residence/sleeping cabin) currently occupies a single site, allow the use to continue in accordance with the authorization.

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However, correct such deficiencies, if built without prior approval, upon transfer of ownership outside of the family (husband, wife and dependent children).

7. When a recreation residence is included in the settlement of an estate, issue a new special use permit, updated to reflect policy and procedural changes, to the properly determined heir, if eligible. Prior to estate settlement, issue an annual renewable permit to the executor or administrator to identify responsibility for the use pending final settlement of the estate. When a recreation residence is sold, issue a new term permit to the buyer, if eligible.

8. Specify in the permit that the recreation residence must be occupied at least 15 days annually, the minimum acceptable period of occupancy.

9. Issue recreation residence term permits for a maximum of 20 years.

a. Term permits shall provide for renewal of 20-year permits 10 years before expiration unless nonrenewal has been established.

b. At the end of the first 10 years after initial issuance, offer holders, in writing, new 20-year term permits that also include the provision for renewal at the end of 10 years, unless written notice of nonrenewal has been given.

c. Continue to renew term permits in this same manner unless holders are given notice of nonrenewal.

10. When a higher public need for the site has been documented and established (FSH 2709.11, Chapter 40), initiate nonrenewal action.

a. Notify existing and prospective holders of the reasons, and provide them with copies of the documentation.

b. Allow the current term permit to expire under its own terms, or issue a new term permit for between 10 and 20 years, depending on the time of the identified need.

c. Clearly specify any limited tenure in the new permits with: "This permit will terminate on (*insert date*) and will not be renewed."

11. Recreation residences are a valid use of National Forest System lands and an important component of the total National Forest recreation program. Recreation residences may represent a substantial investment and have the potential of supporting a large number of recreation person-days per acre compared with other uses. Therefore, when considering nonrenewal of recreation residence permits for an alternative use, be sure the clear weight of the evidence is on the side of the need for the higher public purpose or use at the location.

12. Before approval by the Forest Supervisor, the Regional Forester will review proposed nonrenewal notices, supporting documentation and summary of public comments, and may modify them.

13. In cases where a nonrenewal decision has been made and use beyond the expiration date will be authorized for a limited period of time, issue a term permit for a corresponding period of time, not to exceed 20 years.

14. The Forest Supervisor or Regional Forester may review nonrenewal decisions at any time, using current Forest Service Manual and Forest Service Handbook policies and guidelines and considering any new or changed conditions. Forest Supervisors, upon request of the holder, shall review all such decisions 2 years prior to the expiration date (FSH 2709.11, Sec. 41.23d), provided decisions resulting from such review are non-appealable.

15. In the event a recreation residence is destroyed or substantially damaged by a catastrophic event such as a flood, avalanche, or massive earth movement, conduct an environmental analysis to determine whether improvements on the site can be safely occupied in the future under Federal and State laws before issuing a permit to rebuild. Normally, the analysis should be completed within 6 months of such an event.

Allow rebuilding if the site can be occupied safely. However, if the need for a higher public use at the same location has been documented and established, do not allow rebuilding if the improvements are more than 50 percent destroyed. If rebuilding is not authorized, make every reasonable effort to offer in-lieu sites to holders.

16. At the time special use permits are issued, advise holders that they must notify the Forest Service if they intend to sell their improvements, and that they must provide a copy of the special use permit to a prospective purchaser before finalizing a sale. Whenever possible, advise a prospective purchaser of the terms and conditions of the special use permit before the sale is final.

17. Usually, do not stay a fee increase pending completion of an appeal of the fee under the administrative review regulations. Make any adjustments resulting from the administrative review through credit, refund, or supplemental billing.

18. During the term of the permit, termination of the use may only take place in accordance with the terms and conditions of the permit.

Before approval by the Forest Supervisor, the Regional Forester will review proposed terminations (except termination for breach of terms of the permit), with supporting documentation and a summary of the public comments, and may modify them.

2721.23b—Applications

Insofar as practicable, notify a new or prospective owner that he or she must make application for the authorization to use existing improvements in accordance with 36 CFR 251.54.

2721.23c—Permit Preparation

1. Use the Term Special Use Permit for Recreation Residence (FSH 2709.11, ch. 50), to authorize recreation residences, except use Form FS–2700–4, Special Use Permit, when:

a. Extended use of a nonrenewed recreation residence is authorized and a minimum term of continued use cannot be predicted.

b. Continuance of the recreation residence use is conditioned on the owner complying with specific Forest Service requirements before a term permit is issued.

c. The improvements are managed by a third party pending settlement of an estate, bankruptcy proceedings, or other legal action.

d. Yearlong occupancy is authorized by the Forest Supervisor, at which time the improvement ceases to be a recreation residence.

2. Include in either permit all authorized improvements associated with recreation residence use; however, do not authorize use of more than the statutory maximum of 5 acres under a term permit. Authorize community or association-owned improvements, such as water systems, by a separate permit (Form FS–2700–4).

2721.23d—Fee Determination (FSH 2709.11, ch. 30)

1. Use fair market value as determined by appraisal in determining the base annual rental fees for recreation residence sites. Redetermine the base fee at 20-year intervals.

2. Adjust the fee annually by the annual (second quarter to second quarter) change in the Implicit Price Deflator-Gross National Product (IPD–GNP).

3. Use professional appraisal standards in appraising recreation residence sites for fee determination purposes (FSH 2709.11).

4. Where feasible, contract with private fee appraisers to perform the appraisal.

5. Require appraisers to coordinate the assignment closely with affected holders by seeking advice, cooperation, and information from the holders and local holder associations.

6. Retain only qualified appraisers. To the extent feasible, use those appraisers most knowledgeable of market conditions within the local area.

7. Before accepting any appraisal, conduct a full review of the appraisal to ensure the instructions have been followed and the assigned values are supported properly.

Forest Service Handbook 2709.11—Special Uses

Chapter 30—Fee Determination

33—Recreation Residence Fees

33.1—*Base Fees and Indexing.* Follow these procedures in determining the base (beginning) fee and subsequent fees under a 20-year cycle.

1. As the initial base, use the fees established in one of the years between 1978 and 1982. The first year of the fee cycle will be the first year of the established fee (disregarding any phase-in that may have been provided). Adjust the full base fee forward by applying the appropriate cumulative Implicit Price Deflator-Gross National Product (IPD–GNP) adjustment factor shown in Exhibit 1. New fees for 1989, established in this manner, will be phased-in over a 4-year period (1989–1992) at the rate of one-fourth of the increase each year, except that fees will not be phased-in for those permits that limit fee adjustments to 5-year intervals.

In those cases where there may not be a fee established for the 1978–1982 period, Regional Foresters are authorized, subject to concurrence of the Chief, to utilize a different starting date and to adjust the length of the fee cycle so that all permits will have a new base fee determined during the 1998–2002 period.

2. For 1990 through the last year of the fee cycle, adjust the fees on an annual basis by calculating the percentage change of the IPD–GNP index (as reported by the Bureau of Economic Analysis, Department of Commerce, in July of each year) from the second quarter of the previous year to the second quarter of the current year and applying this percentage adjustment factor to the current year's fees.

For term permits that restrict adjustments to 5-year intervals, apply the IPD index adjustments cumulatively at 5-year intervals. At the end of the current 20-year term, or earlier if agreed to by the holder, revise permits to provide for annual indexing.

3. Limit the annual fee adjustment for 1990 and thereafter to 10 percent per year when the change in the IPD–GNP index exceeds 10 percent in any one year. The index amount in excess of 10 percent will be carried over and applied to the fee for the next succeeding year in which the index factor is less than 10 percent. The 10 percent limit shall not apply to the fee adjustment (phased-in amount) for 1989.

4. Re-appraise the site toward the end of the 20-year cycle. Beginning in the twenty-first year (the first year of the next fee cycle; 1998 in the case of 1978 fees), put into effect the base fee for the next 20-year cycle by applying 5 percent to the newly determined appraised market value of the site for recreation residence purposes.

5. In those few cases where one or more additional sleeping structures (guest cabins, and so forth) have been added to a single site, add to the current adjusted base fee an additional charge equal to 25 percent of the fee established for a single residence use of the site or $100, whichever is greater, per structure.

EXHIBIT 1—SEC. 33.1—IPD–GNP ADJUSTMENT FACTOR BY YEAR

Base fee year	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Cum. Adj.
1978	1.101	1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.771
1979		1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.609
1980			1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.473
1981				1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.346
1982					1.050	1.032	1.038	1.0233	1.026	1.028	1.029	1.261

(NOTE: Cum. Adj. = Cumulative Adjustment.)

The above factors for fee years 1979–1988 were taken from Table 5, Price Indexes and the Gross National Product Implicit Price Deflator, as published in the *Survey of Current Business* by the Department of Commerce, Bureau of Economic Analysis, February 1988. These factors represent an annual rate, based on the percent change from the first quarter to the second quarter of the indicated year. The 1987 factor of 1.026 is the percentage change in the IPD–GNP index from the second quarter of 1985 to the second quarter of 1986 as reported in the July 1986 issue of "United States Department of Commerce News," a publication by the Bureau of Economic Analysis. The IPD–GNP index for the second quarter of 1985 is 111.1. The 1988 and 1989 factors, was determined following the same procedures, using the appropriate year's publication. The factors for 1979–1989 in Exhibit 1 are shown only to illustrate how the cumulative adjustment factor used to establish the 1989 fee is determined. The factor were determined by chain multiplying the factor for the years within the base fee year period (for 1982 this would be $1.050 \times 1.032 \times 1.038 \times 1.033 \times 1.026 \times 1.028 \times 1.029 = 1.261$.)

The following two examples illustrate use of this table in determining the 1989 fee:

(1) A fee of $412 that became established in 1982 (first year in the fee cycle) would be adjusted to $520 in 1989 ($412 × 1.261). This would be the fee amount owed by a holder who does not accept the new term permit and would remain constant until the end of the five year adjustment period. If a new term permit is accepted, the fee would be phased-in, and the holder would be charged $439 for 1989, instead of the full amount.

(2) A 1980 base year fee of $315 would be adjusted to $464 ($315 × 1.473) with the actual 1989 charge limited to $352 for a new term permit. A holder who keeps the old permit would pay the full fee of $464 in 1989.

Factors for the years 1990 and thereafter will be determined in the same manner as the 1980 factor. Using the 1989 factor as an example, the index for the second quarter of 1987 as reported in the July 1987 Bureau publication is 117.2; the index for February 1988 in the July 1988 Bureau publication is 120.6. The percentage change in the index to be used to determine 1989 fees is 120.6 minus 117.2 divided by 117.2. Thus, 1989 fees will be 2.9 percent higher than 1988 fees for those permits that are indexed.

Using the above two examples, calculation of the 1990 fees for those accepting new term permits would be as follows:

(A 1990 IPD–GNP adjustment factor of 1.028 is assumed.)

(1) The full 1989 fee of $520 times the IPD–GNP index factor for 1990 of 1.028

equals $535, the full fee for 1990. The increase in the fee is $15. The amount of the 1989 fee increase to be phased-in in 1990 is $54 ($520−$412=$108/2=$54). Thus, the 1990 fee to be charged is the base 1982 fee of $412+$54+$15=$484.

(2) The full 1990 fee equals $477, a fee increase of $13. The amount of the 1989 fee increase to be phased-in in 1990 is $75 ($464−$315=$149/2=$75). Thus, the 1990 fee to be charged is the base 1980 fee of $315+$75+$13=$403.

33.11—Fee Credits. Provide holders any unused or remaining credits due them under provisions of the Appropriations Acts for fiscal years 1983 through 1986.

33. 2—Fees on Nonrenewal. When permits are placed on tenure (that is, the special use permit will not be renewed upon expiration), the annual fee for the tenth year prior to the expiration, referred to as the "base on-tenure fee," will be taken as a base and the fee for each year during the last ten years will be one-tenth of the base multiplied by the number of years then remaining on the permit. For eample, charge a holder with 9 years remaining 90 percent of the frozen fee; with 8 years, 80 percent; and so forth.

Use the following schedule to calculate the holder's fee during the 10-year period:

Years remaining	Percent of base on-tenure fee
10	100
9	90
8	80
7	70
6	60
5	50
4	40
3	30
2	20
1	10

Use the following fee determination procedures when a review of the nonrenewal decision shows conditions have changed that warrant continuation of the recreation residence permit.

1. If a new 20-year term permit is issued, the Forest Service shall recover one-half of the sum of the amount of fees foregone while the previous permit was under nonrenewal notice. Collect this amount evenly over a 10-year period. The obligation will run with the site and be charged to a subsequent purchaser.

The new fee shall be the annual index adjusted fee computed as though no limit on tenure existed, plus the amount specified above until paid in full.

2. If a 20-year term permit is not issued, and the occupancy of the subject site is to be allowed to continue for less than 10 years, do not recover past fees. Determine the new fee by:

a. Computation of the fee as if no nonrenewal notice was issued reduced by the appropriate percentage for the number of years of the extension provided (that is, a 6-year tenure period results in a fee equal to 60 percent of the new base on-tenure fee).

b. If a site is allowed to continue past a 10-year period and is returned to a normal permit, the Forest Service shall recover fees as outlined in item 1, computed for the most recent 10-year period in which the term of the permit was limited.

33.3—Appraisals. Use the following process to determine the fair market value of recreation residence sites.

1. Use appraisals made by professional appraisers for determining the market value of the fee simple estate of the National Forest land underlying the site subject to a special use permit, but without consideration as to how the authorization would or could affect the fee title of the site (FSH 5409.12, Chapter 6 for the standard contract to be used to establish fair market value of recreation residence sites).

2. In consultation with affected holders, select and appraise typical sites (rather than all individual sites) within groups that have essentially the same or similar value characteristics. Within such groupings, adjust for measurable differences between the sites. (Once properly established, typrical site classifications should rarely change.)

3. Ensure appraised values are based on comparable market sales of sufficient quality and quantity that will result in the least amount of dollar adjustment to make them reflective of the subject sites' characteristics. Such characteristics include:

a. Physical differences between subject site and the comparable sales.

b. Legal constraints imposed upon the market by governmental agencies.

c. Economic considerations evident in the local market.

d. Locational considerations of subject site in relation to the market (sales) comparable.

e. Functional usability and utility of the site.

f. Amenities occurring to the site as compared with selected sales comparables.

g. Availability of improvements (such as roads, water systems, and power lines) provided by nonholder entities, including the United States. Do not adjust for improvements furnished by holders.

h. Other market forces and factors identified as having a quantifiable effect upon value.

33.31—Appraisers.—1. Select fee appraisers who hold a current certification of competence from a nationally recognized professional appraisal organization. It the case of Forest Service appraisers, use those individuals who have received adequate training through professional appraisal organizations and who have satisfactorily completed the basic courses necessary to demonstrate competence.

2. Require appraisers to sign a standard agreement that states:

a. The approved appraisal format to be used.

b. The approved standard forms to be used.

c. A full, complete, and accurate definition of the appraisal problem.

d. The standards of professional competence, ethics, and practice to which the appraiser shall adhere.

e. Those requirements of the appraisal assignment that may be imposed under (1) statutes, (2) Federal regulations, (3) Forest Service policies, and procedures, and (4) situations unique to the given appraisal assignment.

3. Require appraisers to notify affected holders by mail and offer to meet with them to discuss the assignment, answer questions specific to the assignment, and seek advice, information, and cooperation from the holders and their local organization. The appraiser must notify holders of such a meeting at least 30 days in advance of the meeting. Send notices to the address used for bills for collection. Use the notice to give the holders advance information on the appraisal assignment. At such meetings, require that the appraiser have available copies of the appraisal instructions, directions, and requirements for review by the holders. An appraisal cannot be made prior to the meeting with the holders.

33.32—Establishing Recreation Residence Site Value. 1. Upon receipt of the appraisal report, conduct a review of the appraisal in conformance with the standards of the National Association of Review Appraisers.

2. Following review and acceptance of the appraisal, notify affected holders of Forest Service acceptance of the report. In the notification, inform holders that they and other interested parties have 45 days in which to review the appraisal. Upon request, provide copies of the report(s) and supporting documentation pursuant to the Freedom of Information Act.

3. Upon request, provide an opportunity for affected holders to obtain, at their expense, an appraisal report from an appraiser holding at least

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the same or similar qualifications as the one selected by the Forest Service.

a. The Forest Service will provide the holders with a copy of the standards used by the appraiser selected by the Forest Service and holders will provide the standards to the holder-employed appraiser. The holder will require the observance of these standards, including a signed certification that ensures an understanding of the appraisal instructions and standards. Reject any appraisals that do not meet these standards.

b. Subject the holder-furnished appraisal to the same review requirements as the appraisal obtained by the Forest Service.

4. Give full and complete consideration to both appraisals. If the two appraisals disagree in value by more than 10 percent, ask the two appraisers to try and reconcile or reduce their differences. If the appraisers cannot agree, the Forest Supervisor will utilize either or both appraisals to determine the fee.

5. When requested, seek a third appraisal.

a. The cost shall be shared equally by the holder and the Forest Service.

b. This appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.

Title 2700—Special Uses Management

2721.23e—Analysis of Recreation Residence Continuance (FSH 2709.11, ch. 40)

Follow these instructions in determining whether recreation residence use may continue at current sites or whether the sites should be converted to a higher public use.

1. Analyze and consider the future use needs of recreation residence sites before renewing the authorizations for new terms. Before issuing a nonrenewal decision, ensure that the action is fully supported by a report conducted within the requirements of the National Environmental Policy Act and Forest Service analysis process. If done as part of the Forest Plan, the report will be included as a separate appendix to the plan.

2. Ensure that continuance of recreation residence uses conforms with the Act of March 4, 1915, authorizing issuance of term special use permits for summer homes.

3. Base nonrenewal decisions on the extent of the need for higher public use of the site. Higher public use or purpose refers to a higher priority use of the site by the public that is timely, clearly needed, in public demand, and where other sites to satisfy the need cannot reasonably be made available. In meeting public needs, give consideration to alternatives such as (a) availability of sites other than recreation residence sites to satisfy the public needs, (b) feasibility of common, shared, or multiple uses that include recreation residences, and (c) increased feasibility of common or shared use through adjustment of site and tract size, configuration of boundaries, or location of improvements.

4. Coordinate continuance of recreation residence use with decisions contained in the Forest Land and Resource Management Plan. When there is no readily identifiable higher public future use of the site and continued use is consistent with the Forest Land Management Plan, a decision to renew may qualify for categorical exclusion under NEPA procedures.

5. When permits are not renewed at expiration, make every reasonable effort to offer holders alternative (in lieu) sites at locations not needed in the foreseeable future for a higher public use (FSM 2347.1, and FSH 2709.11, sec. 41.23b and sec. 41.23d).

6. In the event of a nonrenewal decision, give the holder at least 10 years continued use and identify the specific higher public purpose(s) for which the land is being recovered. Allow continued use of the site until such time as conversion to the new use is ready to begin.

7. Proposals to convey recreation residence tracts into private ownership by land exchange may be considered at any time. Such proposals will be processed in accordance with the instructions in FSM 5430 applicable to all land exchanges.

2721.23f—Participation In Issue Resolution

1. Give notice of any recreation residence issues and appeals that reach the Regional Forester to holder representatives, and others that request to be notified, unless requested otherwise by the appellant. This includes the National Forest Recreation Association Homeowners Divison and National Inholders Associations. The purpose is, on a regional basis, to provide an opprtunity for the holder representatives to participate in order to reduce conflict between holders and the Forest Service. As necessary, specify a Forest Officer to work with the holder representatives and others.

2. Consider information submitted by permittee representatives within the context of the Secretary of Agriculture's administrative appeal regulations.

3. The reviewing officers may exercise their authority to extend time given the permittees and other parties a reasonable time to submit their information, not to exceed thirty (30) days.

2721.23g—Noncompliance

Give a written notice and provide a reasonable opportunity for a holder to correct special use permit violations before terminating the use for breach or noncompliance. Termination for noncompliance shall be only for a breach that continues after notice and a reasonable opportunity for correction has been given.

2721.23h—Site Restoration

On termination or nonrenewal of the permit, require the holder to return the property to a condition acceptable to the Forest Supervisor. The holder may release the improvements to the Forest Service upon approval of the Forest Supervisor.

Forest Service Handbook 2709.11—Special Uses

Chapter 40—Special Uses Administration

41.23—Recreation Residence.

41.23a—Continuing Recreation Residence Use. (FSM 2721.23e). As with all types of special uses, decisions to issue new permits and/or decisions not to renew are appealable decisions which must be appropriately supported under the requirements of NEPA.

1. In most cases, scoping will result in a finding that the sites are not needed for higher public purpose within the next 20 years and a new 20 year term permit can be issued. Such a finding will likely qualify for categorical exclusion.

2. If scoping indicates that there is firm and factual basis for believing that there may be a future higher public purpose within 20 years, after consultation with the Regional Forester, conduct an environmental analysis to determine whether or not the sites should be recovered for higher public purposes and, if so, when. Such studies will begin with the understanding that recreation residences are a valid use of National Forest lands unless clearly demonstrated otherwise. (FSM 2721.23a). Site disturbance resulting from removal and relocation of the recreation residence plus impacts of new construction may dictate that an environment assessment or environmental impact statement will be necessary.

3. Decisions to recover sites for a higher public use must be coordinated

with the Forest plan but are to be in a self-contained form.

4. If there is no reasonably foreseeable need for the recreation residence tract to be used for a higher public purpose, or if identified public needs can be met through land exchange, encourage and facilitate an exchange of the sites (on a tract or group basis) for private lands suitable for National Forest purposes.

5. Where appropriate, require deed restrictions on National Forest land disposals to ensure the recreation residence use continues in a manner compatible with adjoining or nearby National Forest uses.

41.23b—Minimum Analysis Requirements for Nonrenewal Actions—1. *Report.* When nonrenewal is anticipated or could be recommended, the environmental assessment and/or the environmental impact statement must contain an objective and detailed description and analysis of all relevant data, and any explanatory notes, charts, and maps needed to explore all reasonable alternatives. The environmental analysis process must be followed and there must be an action plan.

During the analysis process, encourage and solicit information and comments from permittees and other interested parties. Involve affected permittees in all phases of the process except the decision itself. Provide them 120 days or more encompassing a season of use to comment on a draft of the environmental assessment and/or the environmental impact statement and the supporting documentation.

To ensure Region-wide uniformity, submit the reports, if they recommend nonrenewal, including holder comments, to the Regional Forester for review before the Forest Supervisor approves the nonrenewal.

Provide holders and interested parties with copies of the final report and decision immediately after the decision date.

Consider the following aspects in the report:

a. *Recreation Use.* Discuss the relationship between the recreation residence use and other present and proposed uses of the site. Thoroughly describe elements of compatibility and conflict. If there are current or anticipated conflicts, described the feasibility of other sites to meet public use needs or how general public needs on the site can be provided for by modifying recreation residence or proposed public use. Develop a full range of alternatives that at a minimum:

(1) Show ways to meet the public recreation needs without significant conflict with recreation residence uses, if possible, and how existing or potential conflicts can or cannot be mitigated.

(2) Examine the feasibility of common, shared, or multiple use that includes the recreation residences. Also examine the feasibility of adjusting site and tract sizes, configurations and boundaries, or relocation of site improvement to better a accommodate such use.

(3) Examine the feasibility of alternative sites for general public use. Include in this analysis suitable private lands that the Forest Service could acquire by land exchange. The presumption is that such alternative sites are available unless otherwise demonstrated.

(4) Show how the current and/or future need for other planned recreation uses outweighs or is outweighed by the benefits of continued recreation residence use.

(5) Compare the potential recreation and financial losses to holders and their guests with the benefits that the public would gain from nonrenewal of the authorization.

(6) Examine the impacts of recreation residence removal, new construction, and increased public use.

b. *Other Resources.* Show in what way recreation residence occupancy is compatible or in conflict with other National Forest resources. Consider the applicability of Section 106 of the National Historic Preservation Act and other Federal and State laws which may have an effect on these resources.

c. *Environmental Impacts.* Discuss the environmental impacts of continued recreation residence use, together with the impacts of any improvements necessary for their continued use, compared with the impacts of any proposed alternative public use.

d. *Health and Safety.* Examine whether the occupancy constitutes a hazard to the health and safety of the general public or the holders. Explain specifically how and in what manner these hazards will occur and the opportunities for acceptable curative actions. Discuss whether health and safety standards can be met.

e. *Administrative Problems.* Explain if the occupancy creates untenable administrative problems or costs when related to the benefits provided the holders and the general public, including fees, cultural benefits, barriers to environmentally harmful use, and other amenities or services attributable to the presence of the holders and their improvements.

f. *In-Lieu Site Availability.* Make every reasonable effort to locate and reserve in-lieu sites that could be offered the holder for building or relocation of improvements. Such sites must be nonconflicting locations within or adjacent to the National Forest containing the residences (FSM 2347.1 and FSM 2721.23e). Appropriate alternatives for consideration are undeveloped or withdrawn sites in, near, or adjacent to established tracts, or new traces at locations not needed in the foreseeable future for a higher public use. Sites that are vacant because of breach or other factors shall be available as in-lieu sites. Follow these procedures:

(1) If possible, offer in-lieu sites to holders at the time the nonrenewal notice is given. If sites do not become available until later, offer them then.

(2) Give first priority to identifying and offering in-lieu sites in the same tract or an expansion of that tract, where feasible.

(3) Allow the holders 90 days from the date of the joint inspection of the lieu site or 90 days from the final disposition of any appeals of the nonrenewal decision, whichever is later, to accept or reject the offer.

(4) When holders accept such offers, reserve the offered sites. Do not charge a fee until the holder begins improving the site. The site reservation will expire upon holders failure to occupy the new site on a mutually-agreed upon schedule.

(5) Allow holders accepting offers to continue use of their current sites until the expiration date. Inform the holders that they should be prepared to move to the in-lieu site during the 24 months prior to the scheduled occupancy removal, provided a supplemental review of the nonrenewal action has been completed.

(6) The opportunity to develop an in-lieu site, if accepted by the previous owner, will be extended to the new owner when there is a change in ownership of authorized improvements.

(7) Do not offer alternative sites for termination actions stemming from noncompliance with special use permit terms.

2. *Factors To Consider In Nonrenewal Actions.* Support nonrenewal decisions by full consideration and documentation of the following specific factors and criteria:

a. The specific intended use or uses and the estimated time and budgetary feasibility of the need.

b. The need for the alternative use and the reason for its priority.

c. The reasons the public need cannot be met at an alternative location.

d. All reasonable alternatives to the conversion, including the possibility of combining or sharing public uses with

recreation residence uses; and adjusting or altering lots or location of improvements to better accommodate common or shared uses.

e. The reasons any conflict between the recreation residences and the proposed alternative use cannot be resolved.

f. The need to develop and provide the public use needed in a cost effective manner.

3. *Higher Public Purpose.* Identify and consider whether or not there is clear need for higher priority use of the site that is of benefit to the general public, is timely, in public demand, and where other sites to satisfy the need cannot reasonably be made available. Need and timeliness, for example, can be demonstrated by capacity use of similar nearby facilities.

Examples of higher public purposes include but are not limited to (1) public roads and other public rights-of-way where no reasonable alternatives exist, (2) legally mandated public safety or health requirements, (3) other public recreation needs, (4) habitat requirements for rare or endangered species, and (5) commercial use developments serving National Forest programs, such as authorized resort accommodations, where no reasonable public or private alternatives exist. Determination of higher public purpose for commercial use must show a clear and convincing need and bear a greater burden of proof than those for other uses. Higher public purposes do not include unspecified public needs or uses, such as general Forest use or open space alone.

41.23c—Nonrenewal Notification. Provide holders 10 years or more advance notice of nonrenewal actions except in cases involving breach, or when the site has been rendered legally unsafe by catastrophic events such as avalanche, flooding, or massive earth movement, or where the Forest Service does not have final decision authority. In these exceptions, make an effort to provide as much notice as possible.

Include in a nonrenewal notice:

1. A description of the action and the reasons for the decision. Normally, use the same expiration date for all affected holders in a particular group or tract.

2. Identification of the environmental assessment report or the environmental impact statement upon which the decision is based.

3. Notice of appeal rights under 36 CFR 211.18.

4. Notice that the holder should refrain from making costly repairs, improvements, or expenditures. Advise the holder that such expenditures will not be required unless they are necessary to protect public health or safety.

Refer to FSM 2721.23a for procedure when recreation residences are destroyed or substantially destroyed by catastrophic events.

41.23d—Review of Nonrenewal Actions. The Forest Supervisor or the Regional Forester may review nonrenewal actions in process and should consider such reviews when circumstances or Forest Service direction have changed in such a manner that could suggest modification of the original decision (FSM 2721.23a).

For permits scheduled to expire in 1989 or thereafter, Forest Supervisors will review all such decisions two years prior to the non-renewal date upon request of the holder to analyze possible new circumstances or direction, and to determine whether or not the basis for the decision is still valid, providing the decision resulting from such review is non-appealable.

For all reviews, the following apply:

1. Reviews will be in writing and conducted in accordance with FSM 2721.23e.

2. Affected holders will be notified in writing and asked to provide input for reviews and will be allowed involvement in all but the decision phase of the review process.

3. If review indicates that a site will remain needed for higher public use at the established date, the earlier decision may remain unchanged.

4. If review indicates that a site is no longer needed for higher public purposes, or is not needed as soon as estimated, provide for continuation of the recreation residence use by issuing a new permit for an appropriate term

Forest Service Handbook 2701.11—Special Uses

Chapter 50—Terms and Conditions

54—Special Use Authorizations

54.1—Term Special Use Permit for Recreation Residences. (Exhibit 1.)

BILLING CODE 3410-11-M

EXHIBIT 1 - SEC. 54.1

USDA - Forest Service TERM SPECIAL USE PERMIT For Recreation Residences Act of March 4, 1915, As Amended (Ref. FSM 2710)	Holder No. /	Type Site	Authority
	Auth. Type	Issue Date / /	Expir. Date / /
	Location Sequence No.		Stat. Ref.
	Latitude - -	Longitude - -	LOS Case

_____ of _____
(Holder Name) (Billing Address - 1)

_____ _____ _____ _____
(Billing Address - 2) (City) (State) (Zip Code)

(hereafter called the holder) is hereby authorized to use National Forest lands, for a recreation residence for personal recreational use on the _____ National Forest, subject to the provisions of this permit including items _____ through _____, on page(s) _____ through _____. This permit covers _____ acres.

Described as: (1) Lot _____ of the _____ tract.
(A plat of which is on file in the office of the Forest Supervisor.)

OR (2) _____ as shown on the attached map.
(Legal Description)

The following improvements, whether on or off the site, are authorized in addition to the residence structure:

_____

_____

_____

This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere.

THIS PERMIT IS NOT TRANSFERABLE
PURCHASERS OF IMPROVEMENTS ON SITES AUTHORIZED BY THIS PERMIT MUST SECURE A NEW PERMIT FROM THE FOREST SERVICE.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS.

ACCEPTED:
HOLDER'S NAME AND SIGNATURE DATE

APPROVED:
AUTHORIZED OFFICER'S NAME AND SIGNATURE TITLE DATE

BILLING CODE 3410-11-C

Terms and Conditions

I. Authority and use and Term Authorized

A. This permit is issued under the authority of the Act of March 4, 1915, as amended (16 U.S.C. 497), and Title 36, Code of Federal Regulations, Sections 251.50–251.64. Implementing Forest Service policies are found in the Forest Service Directives System (FSM 2720, 2340; FSH 2709.11, Chap. 10–50). Copies of the applicable regulations and policies will be made available to the holder at no charge upon request made to the office of the Forest Supervisor.

B. The authorized officer under this permit is the Forest Supervisor, or a delegated subordinate officer.

C. This permit authorizes only personal recreation use of a noncommercial nature by the holder, members of the holder's immediate family, and guests. Use of the permitted improvements as a principal place of residence is prohibited and shall be grounds for termination of this permit.

D. Unless specifically provided as an added provision to this permit, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by a Government agency, utility association, or individual.

E. Expiration at End of Term: This authorization is for a term of 20 years and will expire on

---

II. Operation and Maintenance

A. The authorized officer, after consulting with the holder, will prepare an operation and maintenance plan which shall be deemed a part of this permit. The plan will be reviewed annually and updated as deemed necessary by the authorized officer and will cover requirements for at least the following subjects:

1. Maintenance of vegetation, tree planting, and removal of dangerous trees and other unsafe conditions.
2. Maintenance of the facilities.
3. Size, placement and descriptions of signs.
4. Removal of garbage or trash.
5. Fire protection.
6. Identification of the person responsible for implementing the provisions of the plan, if other than the holder, and a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

(Other provisions may be included, such as fencing, road maintenance, boat docks, piers, boat launching ramp, water system, sewage system, incidental rental, and the Tract Association).

(Note: Regional Foresters may add specific provisions that Forest Supervisors should include in the plan.)

III. Improvements

A. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this permit or approved in writing by the authorized officer in the operation and maintenance plan. Improvements requiring specific approval shall include, but are not limited to: signs, fences, name plates, mailboxes, newspaper boxes, boathouses, docks, pipelines, antennas, and storage sheds.

B. All plans for development, layout, construction, reconstruction or alteration of improvements on the site, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be approved by the authorized officer before the commencement of any work.

IV. Responsibilities of Holder

A. The holder, in exercising the privileges granted by this permit, shall comply with all present and future regulations of the Secretary of Agriculture and all present and future federal, state, county, and minicipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. However, the Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

B. The holder shall exercise diligence in preventing damage to the land and property of the United States. The holder shall abide by all restrictions on fires which may be in effect within the forest at any time and take all resonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during a closed fire season established by law or regulation without written permission from the authorized officer.

C. The holder shall protect the scenic and esthetic values of the National Forest System lands as far as possible consistent with the authorized use, during construction, operation, and maintenance of the improvements.

D. No soil, trees, or other vegetation may be removed from the National Forest System lands without prior permission from the authorized officer. Permission shall be granted specifically, or in the context of the operations and maintenance plan for the permit.

E. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damage, other than ordinary wear and tear, to National Forest lands, roads and trails caused by the holder's activities.

F. The holder assumes all risk of loss to the improvements resulting from acts of God or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events. In the event the improvements authorized by this permit are destroyed or substantially damaged by acts of God or catastrophic events, the authorized officer will conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis will be provided to the holder within 6 months of the event.

G. The holder has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.

H. In case of change of permanent address or change in ownership of the recreation residence, the holder shall immediately notify the authorized officer.

V. Liabilities

A. This permit is subject to all valid exising rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. The holder shall be liable for any damage suffered by the United States resulting from or related to use of this permit, including damages to National Forest resources and costs of fire suppression. Without limiting available civil and criminal remedies which may be available to the United States, all timber cut, destroyed, or injured without authorization shall be paid for at stumpage rates which apply to the unauthorized cutting of timber in the state wherein the timber is located.

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VI. Fees

A. Fee Requirement: This special use authorization shall require payment in advance of an annual rental fee.

B. Appraisals:

1. Appraisals to ascertain the fair market value of the site will be conducted by the Forest Service at least every 20 years. The next appraisal will be implemented in _____ (insert year).

2. Appraisals will be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, from which the appraisal standards have been developed giving accurate and careful consideration to all market forces and factors which tend to influence the value of the site.

3. If dissatisfied with an appraisal utilized by the Forest Service in ascertaining the permit fee, the holder may employ another qualified appraiser at the holder's expense. The authorized officer will give full and complete consideration to both appraisals provided the holder's appraisal meets Forest Service standards. If the two appraisals disagree in value by more than 10 percent, the two appraisers will be asked to try and reconcile or reduce their differences. If the appraisers cannot agree, the Authorized Officer will utilize either or both appraisals to determine the fee. When requested by the holder, a third appraisal may be obtained with the cost shared equally by the holder and the Forest Service. This third appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.

C. Fee Determination:

1. The annual rental fee shall be determined by appraisal and other sound business management principles. (36 CFR 251.57(a)). The fee shall be 5 percent of the appraised fair market fee simple value of the site for recreation residence use.

Fees will be predicated on an appraisal of the site as a base value, and that value will be adjusted in following years by utilizing the percent of change in the Implicit Price Deflator—Gross National Product (IPD–GNP) index as of the previous June 30. A fee from a prior year will be adjusted upward or downward, as the case may be, by the percentage change in the IPD–GNP, except that the maximum annual fee adjustment shall be 10 percent when the IPD–GNP index exceeds 10 percent in any one year with the amount in excess of 10 percent carried forward to the next succeeding year where the IPD–GNP index is less than 10 percent. The base rate from which the fee is adjusted will be changed with each new appraisal of the site, at least every 20 years.

2. If notice of nonrenewal has been given, the annual fee in the tenth year will be taken as the base, and the fee each year during the last 10-year period will be one-tenth of the base multiplied by the number of years then remaining on the permit. If a new 20-year permit should later be issued, the holder shall pay the United States one-half of the amount of fees foregone, for the most recent 10-year period in which the permit has been under nonrenewal notice, by the United States while the previous permit was under a nonrenewal notice. This amount may be paid in equal annual installments over a 10-year period in addition to those fees for existing permits. Such amounts owing will run with the property and will be charged to any subsequent purchaser of the improvements.

D. Initial Fee: The initial fee may be based on an approved Forest Service appraisal existing at the time of this permit, with the present day value calculated by applying the IPD–GNP index to the intervening years.

E. Payment Schedule: Based on the criteria stated herein, the initial payment is set at $_____ per year and the fee is due and payable annually on _____ (insert date). Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a nonworkday, the charges shall not apply until the close of business of the next workday. Any payments not received within 30 days of the due date shall be delinquent.

F. Interest and Penalties:

1. A fee owed the United States which is delinquent will be assessed interest based on the most current rate prescribed by the United States Department of Treasury Financial Manual (TFM–6–8020). Interest shall accrue on the delinquent fee from the date the fee payment was due and shall remain fixed during the duration of the indebtedness.

2. In addition to interest, certain processing, handling, and administrative costs will be assessed on delinquent accounts and added to the amounts due.

3. A penalty of 6 percent per year shall be assessed on any indebtedness owing for more than 90 days. This penalty charge will not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

4. When a delinquent account is partially paid or made in installments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

G. Nonpayment Constitutes Breach: Failure of the holder to make the annual payment, late payment charge, or any other charges when due shall be grounds for termination of this authorization. However, no permit will be terminated for nonpayment of any monies owed the United States unless payment of such monies is more than 90 days in arrears.

H. Applicable Law: Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations. (31 U.S.C. 3711 *et seq.*).

VII. Transfer, Sale, and Rental

A. Nontransferability: Except as provided in this section, this permit is not transferable.

B. Transferability Upon Death of the Holder:

1. If the holder of this permit is a married couple and one spouse dies, this permit will continue in force, without amendment or revision, in the name of the surviving spouse.

2. If the holder of this permit is an individual who dies during the term of this permit and there is no surviving spouse, an annual renewable permit will be issued, upon request, to the executor or administrator of the holder's estate. Upon settlement of the estate, a new permit incorporating current Forest Service policies and procedures will be issued for the remainder of the deceased holder's term to the eligible family member (parent(s), children, and grandchildren) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.

C. Divestiture of Ownership: If the holder through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this permit shall be terminated. If the person to whom title to said improvements is transferred is deemed by the authorizing officer to be qualified as a holder, then such person to whom title has been transferred will be granted a new permit. Such new permit can be, at the discretion of the authorized officer, for a full term or for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit

to the prospective purchaser before finalizing the sale. The holder cannot make binding representations to the purchasers as to whether the Forest Service will reauthorize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

VIII. Termination

A. Termination for Cause: This permit may be terminated for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such termination for cause, the holder shall be given notice and provided a reasonable time—not to exceed ninety (90) days—within which to correct the breach.

B. Termination in the Public Interest During the Permit Term:

1. This permit may be revoked or terminated during its term at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b).) In the event of such termination in the public interest, the holder shall be given one hundred and eighty (180) days prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the site in a shorter period of time.

2. The Forest Service and the holder agree that in the event of a termination in the public interest, the holder shall be paid damages. Termination in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest termination shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another site which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of termination. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of termination. If the holder has received notification that the permit will not be renewed, then the amount of damages shall be adjusted as of the date of termination by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to termination (measured from the date of the notice of termination) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: *Provided,* That if mutual agreement is not reached, the authorized officer shall determined the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR 211.18) and the amount as determined on appeal shall be final and conclusive on the parties hereto: *Provided further,* That upon the payment to the holder of the amount fixed by the authorized officer, the right of the Forest Service to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

IX Renewal

A. This permit may be renewed for another term up to 20 years in duration if the site is still being used for the purposes previously authorized and is being continually operated and maintained in accordance with all the provisions of the permit. In making a renewal, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current federal and state land use plans, laws, regulations, or other management decisions. (36 CFR 251.64.)

B. The authorized officer may decide to renew this authorization at any time prior to the expiration date of this permit. Ten years prior to the expiration date of this permit, the authorized officer will make a renewal decision. If it is determined that the use may continue, a new 20-year authorization will be granted upon the holder's surrendering of the existing authorization.

C. In the event the authorized officer decides not to renew the permit, the holder shall be notified in writing. The holder will be given at least 10 years to utilize the site in the event of a decision not to renew the permit. To the extent that the 10 years would run beyond the expiration date of the permit, the permit term shall be extended to accommodate the 10-year notice, provided that the total tenure of the holder's occupancy does not exceed 30 years by such extension.

D. Two years before permit expiration, the holder may request the Forest Supervisor to review the reason for nonrenewal of the permit in the light of any change in circumstances, and the Forest Supervisor shall determine whether or not changed circumstances warrant continuation of the use. The authorized officer will notify holder in a timely manner of his or her right to make such a request. Determinations under such reviews are not decisions for purposes of the Secretary of Agriculture's administrative appeal regulations.

E. Nonrenewal decisions based on a higher public use of the site by the Forest Service will be documented by an environmental analysis which demonstrates the higher priority use of a site for the benefit of the general public, that is timely, in public demand, and where other sites to satisfy the need cannot reasonably be made available.

X. Rights and Responsibilities Upon Termination or Nonrenewal

A. Removal of Improvements Upon Termination or Nonrenewal: At the end of the term of occupancy authorized by this permit, or upon abandonment, or termination for cause, Act of God, or catastrophic event, or in the public interest, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall return the site to a condition approved by the authorized officer unless otherwise agreed to in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period—not to exceed one hundred and eighty (180) days from the date the authorization of occupancy is ended—the improvements shall become the property of the United States, but in such event, the holder remains obligated and liable for the cost of their removal and the restoration of the site.

B. In case of termination or nonrenewal, except if termination is for cause, the authorized officer will make every reasonable effort to locate and reserve in-lieu sites available at that time that could be offered the permit holder for building or relocation of

improvements. Such sites will be nonconflicting locations within the National Forest containing the residence being terminated or under nonrenewal or in adjacent National Forests. Any in-lieu site offered the holder must be accepted within 90 days of the offer or within 90 days of the final disposition of an appeal on the termination or nonrenewal under the Secretary of Agriculture administrative appeal regulations, whichever is later, or this opportunity will terminate.

XI. Miscellaneous Provisions

A. This permit replaces a special use permit issued to:

_____ on _____, 19____.
(Holder Name) (Date)

B. The Forest Service reserves the right to enter upon the property to inspect for compliance with the terms of this permit. Reports on inspection for compliance will be furnished to the holder.

C. Issuance of this permit shall not be construed as an admission by the Government as to the title to any improvements. The Government disclaims any liability for the issuance of any permit in the event of disputed title.

D. If there is a conflict between the foregoing standard printed clauses and any special clauses added to the permit, the standard printed clauses shall control.

Note: Additional provisions may be added by the authorized officer to reflect local conditions.

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 596

Enterprise Zone Development; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 596

[Docket No. R-88-1392; FR-1913]

Enterprise Zone Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements Title VII (Enterprise Zone Development) of the Housing and Community Development Act of 1987, (Pub. L. 100-242). This Title authorizes the Secretary of the Department of Housing and Urban Development (HUD) to designate not more than 100 zones based entirely on rank order of distress. The Secretary is authorized to waive HUD regulations, promote coordination and expedite consideration of all HUD programs within the designated zones.

The purpose of the program is to encourage business to invest in distressed areas, thereby creating jobs and assisting in the economic revitalization of these areas.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Block Grant Assistance, Room 7280, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6588. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

Legislation to authorize Enterprise Zones has been a goal of the Administration since its inception. Since 1982, several Enterprise Zone Bills have been introduced on behalf of the Administration, providing significant tax incentives as well as the potential for waiver of Federal regulations.

In his 1986 Legislative Message, President Reagan stated: "More than half of the states have set up their own enterprise zones, even without Federal incentives. These zones have created new jobs and spurred billions of dollars in capital investment. Their success is testimony to the power of this concept and is just a small indication of how much could be accomplished if Federal incentives were added to those of States and localities. Adding Federal incentives would make existing zones far more economically attractive and successful and would also encourage more State and local zones. Accordingly, I am renewing my call to the Congress to take up effective Federal Enterprise Zone legislation which will complement the State Programs."

The Housing and Community Development Act of 1987 included Title VII, Enterprise Zone Development, as a new program. As required by the statute, the proposed rule for Title VII was published for comments on June 3, 1988. The 30 day comment period closed on July 5, 1988.

II. Comments

The Department received nineteen public comments in response to the June 3, 1988 proposed rule. In addition, a number of telephone calls were received.

Several of the commenters and callers raised concern over the requirement of UDAC eligibility for the nominating jurisdiction. Others, concerned because designation will be based entirely on rank order of distress, suggested that the quality of the Course of Action should be taken into consideration in making the designation. Both of these provisions, however, are so clearly required by the statute that there is no basis for interpretation through rulemaking.

The Secretary is not authorized to designate any zones which have an inadequate Course of Action. Accordingly, even though the designation will be based on the rank order of distress, HUD will emphasize the necessity for development of a credible local strategy as reflected in the Course of Action.

As suggested by one commenter, in evaluating the Course of Action, the rule does provide for consideration of the past efforts, as reflected in state enterprise zone designation, as well as effective coordination of local, State and Federal efforts. (See § 596.202(C)).

One commenter suggested that HUD require that more than four of the core elements in the Course of Action be required to make the determination of adequacy. The statute is clear that meeting not less than four of the core elements constitutes an adequate Course of Action. Therefore, we see no basis for expansion of this provision through rulemaking.

Several commenters suggested that the measurement criteria for the poverty rate be modified so that the average of all census tracts of the nominated area meet the poverty criteria. The language of the statute is clear, however, that the requirement applies to "* * * the poverty rate for *each* populous census tract * * * or equivalent county division". Accordingly, this provision cannot be modified through rulemaking.

One commenter questioned the appropriateness of the "special assistance" contemplated for HUD programs in support of Enterprise Zones, on the theory that this would detract from the Enterprise Zone "Experiment".

HUD could play a useful role in encouraging more intergovernmental cooperation and sharing of "success" models from the different States by sponsoring workshops and conferences, this commenter said. The Department will continue its support of such efforts, but our focus will be on support of the zones designated in accordance with Title VII.

Several commenters noted that the Enterprize Zone Program needs Federal tax incentives to maximize a positive influence on businesses in the zone. While having merit, the comment goes well beyond the purview of rulemaking under Title VII.

One commenter noted that the 25-year designation period seems excessive. This period is in the statute and, in any case, is a maximum. The nominating jurisdiction is free to specify a shorter time period. This commenter also suggested that HUD take a leadership role in coordinating other Federal activities in Enterprise Zones. As a practical matter, HUD has been working actively with other Federal agencies from whom we have received significant indications of support, and HUD will continue this effort on a zone by zone basis following designation.

One State government commented that it was pleased with the Federal government's support of State efforts to revitalize economically distressed communities, and welcomes the opportunity to join in the nomination process.

Another State noted its strong support for the Federal enterprise zone effort, and raised a question about the population loss criterion. The State pointed out that more recent data to demonstrate population loss are

available than from the 1980 census. However, the statute specifies 1970–1980 as the time frame to which the population loss determination applies. Accordingly this could only be changed by amending the law and cannot be addressed by rulemaking.

The same commenter suggested designation of zones on a semiannual basis over a two-year period, primarily to enable States with relatively new enterprise zone programs to compete effectively. The statute does not require that nominated areas be State zones, but rather implies that the basis for the joint nomination process is to assure State support for zone activities. Nothing precludes States without zone programs from participating. This comment will, however, be taken into consideration before HUD's publication of the **Federal Register** Notice announcing submission period, deadline dates and number of zones to be designated in accordance with § 596.304.

One State is concerned because its State law does not explicitly authorize application for Federal enterprise zones. However such explicit authorization is not required by Title VII. The requirement is only that the State join in the nomination by providing support for the Course of Action and certifying the eligibility data. This can be done, HUD believes, under general governmental powers and should not require State enabling legislation.

The same commenter objects to rural areas being ranked separately. However this is specified in the statute and there is no room for HUD interpretation.

One commenter suggested clarification of the one-third rural set-aside to say "* * * 100 enterprise zones, at least one-third of * * *" The rule states that there will be "not less than one-third". We think this is clear and have not changed the language in the rule.

Several commenters provided suggestions regarding waiver of HUD regulations and coordination of HUD programs. Except for subject matter which is required by statute (and therefore cannot be waived) the provisions of this rule are broad enough to cover all of the possibilities that have been raised. These suggestions will be very helpful to the department in preparing for coordination of HUD programs in zones following designation.

One commenter misunderstood the requirement for UDAG eligibility for the jurisdiction. If UDAG eligibility is based on a "pocket of poverty" designation, the proposed zone could be in or adjacent to the "pocket of poverty" area, as long as the zone eligibility criteria are met.

The same commenter suggested Regional allocations of zones, to attempt to achieve a geographic dispersion. Again, the statute is clear that the designations will be based solely on rank order of distress, and accordingly, this suggestion cannot be adopted.

Another commenter suggested that the same distress criteria be applied to both the urban and rural zones—specifically, that zones in each category be required to meet only one of the four distress criteria to demonstrate eligibility (unemployment, poverty, income level, population loss). The law specifies that urban areas must meet the poverty and unemployment test, and must satisfy one of the other two criteria. Accordingly, this suggestion cannot be adopted.

Another commenter was concerned that rural areas in the State could not meet the 1.5 unemployment rate and therefore could not be eligible. This comment reflects a misunderstanding of the eligibility criteria for rural areas. Only one of the four criteria (unemployment, poverty, income level, or population loss) must be met for a rural area to be eligible.

One commenter suggested that, with regard to Indian Tribes, the definition of "Reservation" should be changed to add "off reservation lands" held in trust by the Secretary of Interior. Since the statute uses the term "Reservation" there is no basis for changing the reference in the rule.

The same commenter was concerned about the requirement for a "continuous boundary" for an Enterprise Zone on an Indian Reservation. Even if a particular reservation does not possess a continuous boundary, an Enterprise Zone may be so constructed that it does present such a boundary and hence may qualify for designation.

The suggestion was made by this commenter that HUD use data from the Department of Interior to compile the employment statistics to be used to rate nominated areas on Indian Reservations. The regulation currently states in § 596.101(d)(1) that "unemployment will be based upon decennial census data adjusted by the most recently available annual average unemployment estimates, from the Bureau of Labor Statistics for the smallest jurisdiction which includes the nominated area." We have checked with the Bureau of Indian Affairs concerning the data available on unemployment on Indian Reservations and found that the data is inconsistent in quality for different Reservations. In addition, the methodology used to derive the data is not standard and is not consistent with that for other areas nationwide. The estimates of the Bureau of Labor Statistics (BLS) of the U.S. Department of Labor are the only labor force and unemployment data for all nationwide areas derived using a uniform standard methodology. Since nominated areas must compete with each other for designation on the basis of these and other criteria specified in the legislation, the Department considers it to be especially important to use data which is available nationwide and is derived using a standard methodology. Therefore, HUD has decided not to change this provision of the regulation.

Another issue raised by this commenter is that of UDAG eligibility for Indian Reservations, particularly the problem caused by the fact that those Tribes which never received revenue sharing are ineligible for the UDAG program.

Section 701(c)(3)(B) of the Housing and Community Development Act of 1987 provides that an area eligible for nomination must be "located wholly within the jurisdiction of a local government eligible for assistance under section 119 of the Housing and Community Development Act of 1974." (section 119 of the Housing and Community Development Act of 1974 is the UDAG enabling legislation). All nominated areas are subject to this requirement including nominated areas on Indian Reservations. In addition, in determining UDAG eligibility with regard to Indian Tribes, the Department is constrained by section 14001 (b)(6) of the Consolidated Omnibus Reconciliation Act of 1985 (Pub. L. 99–272), which provides that section 119 (n)(2) of the Housing and Community Development Act of 1974 (the section of the UDAG enabling legislation concerning Indian Tribes) is amended to state that an eligible applicant *"was* an eligible recipient under Chapter 67 of title 31, U.S. Code (General Revenue Sharing) prior to the repeal of such Chapter."

The same commenter suggested that the regulation should be clarified to permit joint nominations by Tribes and State or local government. This is already provided for in the rule. (see § 596.200(a)).

Two commenters were concerned that the reference to "program setasides" referred to preference for minority businesses in contracting. In the Context of Subpart C—Coordination of Housing and Urban Development Programs, "program setasides" is given as an example of one form of special assistance, and refers to an allocation of

program funds specifically for Enterprise Zones, and does not refer to the contracting process.

Crime problems and the homeless population should be considered as evidence of general distress, one commenter suggested. The regulation states that "general distress shall be evidenced by describing conditions of distress existing within the area * * * such as abandoned housing, infrastructure deficiencies, or other appropriate indicators of conditions of general distress. HUD agrees these might be "appropriate indicators of conditions of general distress" for some localities.

One commenter suggested that size of communities be a basis for allocating zones, i.e. small SMSA, large SMSA, and Non-SMSA. However, the statute provides only for the one-third rural setaside. Accordingly, there is no basis for additional allocation requirements through rulemaking.

III. Addition to Final Rule

In the proposed rule, § 596.400 Monitoring, was reserved. Following discussions within the Department, the following section now is being included in the final rule:

Section 596.400 Monitoring

HUD's role in monitoring Enterprise Zone activity will be kept to the minimum necessary to determine compliance with the State and local commitments made in accordance with § 596.200(4) or (for an Indian Reservation) the assurance required by § 596.201(b). Monitoring will be carried out in conjunction with ongoing CPD activities in the community, e.g., CDBG monitoring visits.

The rationale for this approach is that since the Secretary is authorized to revoke an Enterprise Designation (§ 596.401), a process must be in place to determine whether conditions exist that would trigger revocation. At the same time, the Department does not want to place an undue burden on either the HUD field office or on Enterprise Zone designees.

IV. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicated that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic export markets. If Congress passes tax legislation to augment the authority under which this rule is promulgated, the implementing rule for such legislation would constitute a major economic impact and the Department would prepare a Regulatory Impact Analysis at that time.

The information collection requirements contained in Part 596 of this rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. No person may be subjected to penalty for failure to comply with the information collection requirements contained in Part 596 until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the Enterprise Zone Program will permit small entities to apply for designation and to benefit from their participation in the program, the impact on these entities is a function of the operation of Title VII of the Housing and Community Development Act of 1987, and is not caused by the rulemaking, which merely provides the machinery for designations of zones under the statutory criteria.

This rule is not listed in the Department's semiannual agenda of regulations published on April 25, 1988 (53 FR 13854), under Executive Order 12291 and the Regulatory Flexibility Act at 49 FR 15960.

A catalog of Federal Domestic Assistance Program number for the Enterprise Zone Development Program is 14.233.

List of Subjects in 24 CFR Part 596

Enterprise zones, Economic development, Housing and urban development, Community development.

Accordingly, the Department adds a new 24 CFR Part 596, as follows:

PART 596—ENTERPRISE ZONE DEVELOPMENT

Subpart A—General Provisions

Sec.
596.1 Applicability and scope.
596.2 Objective and purpose.
596.3 Definitions.
596.4 Secretarial review and enterprise zone designation.
596.5 Waivers.
596.6 Consultation with other federal agencies.

Subpart B—Area Requirements

596.100 General.
596.101 Eligibility requirements.

Subpart C—State and Local Government Actions

596.200 Nominations by State and local governments.
596.201 Nomination of Indian reservations.
596.202 Course of action.

Subpart D—Zone Designation Process

596.300 Nomination for designation of an enterprise zone.
596.301 HUD action and review of nominations for zone designation.
596.302 Selection factors for designation of nominated zones.
596.303 Zone designation in rural areas.
596.304 Number of zones designated.

Subpart E—Post Zone Designation

596.400 Monitoring.
596.401 Revocation of enterprise zone designation.
596.402 Evaluation and reporting.

Subpart F—Waiver or Modification of Rules

596.500 Requests for waivers or modifications.
596.501 Waiver or modification of HUD rules in enterprise zones.

Subpart G—Coordination of Housing and Urban Development Programs

596.600 Coordination of HUD programs.

Authority: Title VII, Housing and Community Development Act of 1987 (42 U.S.C. 11501–11505); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 596.1 Applicability and scope.

(a) This part covers policies and procedures applicable to enterprise zones authorized under Title VII of the Housing and Urban Development Act of 1987, (Pub. L. 100–242, approved February 5, 1988).

(b) This part includes provisions relating to area requirements, the process of nomination of enterprise zones and the designation of enterprise zones by HUD.

§ 596.2 Objective and purpose.

The purpose of this part is to provide for the establishment of enterprise zones in order to stimulate the creation of new jobs, particularly for disadvantaged workers and long-term unemployed individuals, and to promote revitalization of economically distressed areas primarily by providing or encouraging:

(a) Tax incentives at the State and local levels;

(b) Specific actions to reduce, remove, simplify, or streamline governmental requirements at the Federal, State, and local levels; and

(c) Improved local services and an increase in the economic stake of enterprise zone residents in their own community and in its development, particularly through the increased involvement of private, local, and neighborhood organizations.

§ 596.3 Definitions.

The following definitions apply to this Part:

Act means Title VII of the Housing and Community Development Act of 1987 [Pub. L. 100-242, approved February 5, 1988).

Course of Action means a strategy developed and agreed to by the appropriate State and local governments to reduce the various burdens borne by employers and employees in an area determined to meet the eligibility requirements of the statute. The course of action must include four out of six provisions identified in § 596.202(b), and must include written comments from the local government and State in which the nominated area is located that they will follow the course of action.

Designated enterprise zone means an area which has been designated by the Secretary as an enterprise zone and within which the provisions of section 703, 704, and 705 of the Act will apply.

HUD means the United States Department of Housing and Urban Development.

Indian reservation means an area determined to be a reservation by the Secretary of the Interior. As with the UDAG program, for the purposes of the Enterprise Zones program, the term "Indian reservation" will include former Indian reservations in Oklahoma, as determined by the Secretary of the Interior.

Indian tribal government means the governing body of any tribe, band, community, village, or group of Indians, or Alaska Natives which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise substantial governmental functions.

Local government means any county, city, town, township, parish, village, the District of Columbia, or other general purpose political subdivision of a State, or combination thereof, which is an eligible applicant for assistance under the Urban Development Action Grant program under 24 CFR 570.451(e).

Metropolitan Statistical Area is an area designated by the Office of Management and Budget as a freestanding Metropolitan Statistical Area or a Primary Metropolitan Statistical Area, where both primary and consolidated Metropolitan Statistical Areas exist.

Nominated enterprise zone means an area which has been nominated by a State and by a unit or units of local government for designation as an enterprise zone.

Rural area means either:

(a) An area located within the jurisdiction of a unit or units of local government with a population of less than 50,000 and which is wholly located outside of a Metropolitan Statistical Area; or

(b) An area located within the jurisdiction of a unit or units of local government not meeting the criteria of paragraph (a) of this Section which is determined by the Secretary, after consultation with the Secretary of Commerce, to be a rural area.

Secretary means the Secretary of Housing and Urban Development.

State means any State of the United States and the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other of the possessions of the United States.

§ 596.4 Secretarial review and enterprise zone designation.

(a) *Review and Designation.* The Secretary of Housing and Urban Development will review nominations submitted by State and local governments to determine the adequacy of courses of action submitted in accordance with the requirements of the Act. The Secretary will designate a maximum of 100 enterprise zones. The designations shall be based entirely upon the rank order of distress, except that the Secretary will not designate a zone if it is determined to have an inadequate course of action.

(b) *Rural Set Aside.* Of the areas designated by the Secretary pursuant to paragraph (a), at least one-third shall be located in rural areas.

(c) *Period of Designation.* The designation of an area as an enterprise zone shall remain in full effect during the period beginning in the effective date of designation by the Secretary and ending on the earliest of:

(1) December 31 of the 24th year after such date;

(2) The date designated by the State and local governments as set forth in their nomination; or

(3) The date the Secretary revokes the designation of the zone pursuant to § 596.401.

§ 596.5 Waivers.

The Secretary may waive any requirement of this Part not required by statute when it is determined that the application of the requirement would adversely affect the purposes of the Act.

§ 596.6 Consultation with other federal agencies.

The Secretary will consult with other Federal agencies regarding enterprise zones as follows:

(a) *Data.* The Secretary will consult with the Director of the Bureau of the Census or the Commissioner of the Bureau of Labor Statistics, as appropriate, with regard to the data required for determinations of eligibility of areas nominated as enterprise zones under this Part.

(b) *Designation Process.* Before the designation of nominated enterprise zones by the Secretary, the Secretary will consult with the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Director of the Office of Management and Budget; and the Administrator of the Small Business Administration.

(c) *Indian Reservations.* The Secretary will consult with the Secretary of the Interior regarding the designation of nominated enterprise zones located within Indian reservations.

(d) *Regulatory Waivers.* The Secretary may consult with other Federal agencies, as appropriate, regarding requests for waivers and modifications submitted to HUD or to such other agencies under § 596.500.

Subpart B—Area Requirements

§ 596.100 General.

(a) *Eligibility.* An area is eligible for nomination by a State and one or more local governments, and for designation under the requirements of this Part if the area:

(1) Meets the population and boundary tests set forth in § 596.101(a);

(2) Is located wholly within the jurisdiction of one or more units of local government which meet the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974;

(3) Meets the tests of pervasive poverty, unemployment, and general distress set forth in § 596.101(c);

(4) Meets the additional tests of unemployment, poverty, and low income or population loss in § 596.101(d); and

(5) Contains no portion of an area which is included either in an area previously designated as a federal enterprise zone under this Part or as part of another area nominated for designation as a federal enterprise zone.

(b) *Data usage for eligibility determinations.* The tests of population and distress set forth in § 596.101 are to be computed based on data from the Bureau of Census and from the Bureau of Labor Statistics. The data shall be comparable as to point or period of time and as to methodology. Appropriate data will be identified by a Notice published in the **Federal Register**.

(c) *Usage of statistical area boundaries.* While the boundary of an enterprise zone does not have to coincide with the boundaries of census statistical areas, the eligibility requirements set forth in § 596.101 will be computed using the lowest level of census statistical areas for which appropriate census data are available and which can reliably be used to perform the tests. The various tests describe the appropriate level of census statistical areas for making the determination regarding each test (i.e., tract, block group, block, minor civil divisions, or enumeration district). The census statistical areas must be the smallest group to entirely contain the nominated zone.

§ 596.101 Eligibility requirements.

To be eligible for nomination and designation as an enterprise zone, an area must meet each of the following criteria.

(a) *Population and physical location.* The area must:

(1) Be located in its entirety within the jurisdiction of the unit or units of local government nominating the area;

(2) Have a continuous boundary;

(3) Have a population of at least 4,000, unless:

(i) It is located in a rural area, in which case it must have a population of at least 1,000; or

(ii) It is located on an Indian reservation, in which case there is no minimum population requirement.

No maximum population size or geographic size is stipulated for an enterprise zone because HUD does not want to limit the flexibility of local governments and states in defining the zones to meet local goals for stimulating economic development.

(b) *Meeting the requirement for federal assistance under the Urban Development Action Grant program.* Eligibility for designation of an enterprise zone under this part is limited to areas located within the jurisdiction of one or more units of local government eligible for assistance under the Urban Development Action Grant (UDAG) program. The jurisdiction must be identified to meet the minimum distress tests or meet the requirements for pocket of poverty based on designations considered current for the purpose of enterprise zone eligibility. Local governments must have been determined eligible by HUD to participate in the UDAG program under 24 CFR 570.453 or 570.466(a), and eligibility has not been subsequently withdrawn by HUD. Nominations from local governments that do not meet this requirement will not be accepted for processing by HUD.

(c) *Pervasive poverty, unemployment, and general distress.* An area must evidence conditions of pervasive poverty, unemployment, and general distress.

(1) *Pervasive poverty and unemployment.* The conditions of poverty must be reasonably distributed throughout the entire area. The poverty rate shall be described by citing nationally and locally available statistics on poverty. The unemployment situation shall be demonstrated through provision of information on job loss, plant closing, or other unemployment indicators which have affected the area.

(2) *General distress.* The area must be an area of general distress. General distress shall be evidenced by describing conditions of distress existing within the area, other than those of poverty and unemployment, such as abandoned housing, infrastructure deficiencies, or other appropriate indicators of conditions of general distress.

(d) *Tests for unemployment, poverty, low income, or population loss.* A nominated enterprise zone in an urban area must meet the requirements of unemployment and poverty, and either low income or population loss. The data used to make tests will be expressed to the nearest tenth of a percent. The criteria are as follow:

(1) *Unemployment.* The unemployment rate for the smallest number of block groups or enumeration districts which entirely contain the nominated enterprise zone must be at least one and one half times the national rate for the same period. Unemployment for this purpose will be based upon decennial census data adjusted by the most recently available annual average unemployment estimates from the Bureau of Labor Statistics for the smallest jurisdiction which includes the nominated zone. The adjustment shall be made by multiplying the decennial unemployment and employment data by the ratio of the latest annual average unemployment estimate over the decennial year estimate.

(2) *Poverty.* The poverty rate for each census tract that contains any part of the nominated enterprise zone must be at least 20 percent under the most recent available census data. If census tracts are not defined, evidence of the 20 percent rate of poverty is required at the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas. The poverty rate will be determined using the estimated number of persons in families or as unrelated individuals who had incomes below the poverty thresholds for the decennial census. Census tracts (or other comparable areas) containing fewer than 100 persons as of the decennial census will not be tested under § 596.101 (c)(1) and (d)(2);

(3) *Low income.* For the smallest number of block groups or enumeration districts which entirely contain the nominated enterprise zone, at least 70 percent of the households must be below 80 percent of the median household income for the local government(s). The percent of household below 80 percent of median income is interpolated using decennial census tables which show the number of households in various income intervals. In the case of a joint application, each part of the zone must meet the 80 percent of median income criterion for its jurisdiction; or,

(4) *Population loss.* There must be at least a 20 percent population loss from 1970 to 1980. The 1970 population will be based on the smallest group of census areas for which data are available and which entirely contain the zone. The 1980 data will be based on the smallest group of census areas which entirely contain the 1970 areas.

(e) *Eligibility requirements for rural areas.* A nominated area that is a rural area as defined by these regulations must meet the requirements of paragraphs (a), (b) and (c) of this section and at least one of the criteria set forth in paragraph (d).

Subpart C—State and Local Government Actions

§ 596.200 Nominations by State and local governments.

A State and local government may nominate an area which is located

wholly within the jurisdiction of the local government and which meets the nomination criteria set forth in paragraph (b) of this section for designation as an enterprise zone.

(a) *Nominations involving more than one unit of local government.* Two or more units of local government jointly may nominate, in conjunction with the State, areas that meet the nomination criteria set forth in paragraph (b) for designation as an enterprise zone.

(b) *Nomination criteria.* A nomination must comply with each of the following requirements:

(1) The area must meet the eligibility requirements set forth in § 596.100(a).

(2) The State and local government, or governments in which the area is located must have the legal authority to nominate the area for zone designation and to carry out the course of action in accordance with § 596.202.

(3) All requirements of State and local law for the nomination must have been fulfilled.

(4) The State and local government or, in the case of joint nominations, each local government, must agree in writing to the specific provisions of the course of action to be carried out by each governmental entity, and must provide assurances that the commitments set forth in the course of action will be carried out during the period specified in the course of action.

§ 596.201 Nomination of Indian reservations.

(a) In the case of an Indian reservation, the governing body of the reservation may nominate areas located within the jurisdiction of the Indian reservation.

(b) The governing body of the reservation shall be deemed, for purposes of this part, to be both the State and local government for the reservation, and shall be responsible for meeting the requirements of § 596.200(b).

§ 596.202 Course of action.

The State and local government shall develop a course of action designed to reduce the various burdens borne by employers or employees in the nominated area and to promote community revitalization, as follows:

(a) *Implementation.* A course of action may be implemented by the local government or by the State nominating an area for designation (or both), and by nongovernmental entities. A course of action may be funded from the proceeds of any Federal assistance program as well as from State, local, or private resources.

(b) *Elements of Course of action.* A course of action must include, but is not limited to, four of the following six elements:

(1) A reduction of tax rates, fees, or user charges applying within the enterprise zone;

(2) An increase in the level or efficiency of public services within the enterprise zone;

(3) Actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;

(4) Involvement of public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide employers, employees and residents of the nominated area:

(i) Jobs and job training;
(ii) Technical assistance;
(iii) Financial assistance; and
(iv) Other assistance.

(5) The giving of special contract preference to businesses owned and operated by members of any minority; and

(6) The gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

(c) *Recognition of past efforts.* In evaluating courses of action agreed to by any State or local government, the Secretary will take into account the past efforts of a State or local government in reducing the various burdens borne by employers and employees in the area involved.

(d) *Prohibition of assistance for business relocations.*

(1) The course of action may not include any action to assist:

(i) The relocation of any establishment; or

(ii) Any subcontractor whose purpose is to divest, or whose economic success is dependent upon divesting, any other contractor or subcontractor of a contract customarily performed by such other contractor or subcontractor.

(2) This limitation does not apply to the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary where:

(i) The establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operation; and

(ii) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other areas where the existing business entity conducts business operations.

Subpart D—Zone Designation Process

§ 596.300 Nomination for designation of an enterprise zone.

A separate Nomination for Designation of an Enterprise Zone must be submitted for each area for which enterprise zone designation is requested. The Nomination for Designation of an Enterprise Zone must be submitted in a form prescribed by HUD, and must consist of complete and accurate information. The Nomination for Designation of an Enterprise Zone shall contain:

(a) *Eligibility information.* Information necessary to determine whether the area meets the eligibility requirements of § 596.101(a);

(b) *State and local government certifications.* The nomination Certifications by the State and by each unit of local government in which the designated zone is located that:

(1) Each unit of local government meets each of the eligibility criteria set forth in § 596.101 (a) and (b);

(2) The area meets the population and boundary tests of § 596.101(a);

(3) The area is one of poverty, unemployment, and general distress and that the conditions are pervasive throughout the area as required by § 596.101(c);

(4) The area meets the tests of unemployment, poverty, low income or loss of population, set out in § 596.101(d); and

(5) The area contains no portion of an area that is either already designated as an enterprise zone under this part or is otherwise included in any other area nominated for designation as an enterprise zone under this part;

(6) Each governmental entity has the authority, with respect to the nominated area, to:

(i) Nominate the area for designation as an enterprise zone;

(ii) Make the State and local commitments required under § 596.200(b)(4); and

(iii) Provide assurances that these commitments will be fulfilled.

(7) The written agreement between the State and local government or governments required by § 596.200(b)(4) has been executed.

(c) *Maps and zone description.* Maps and a general description of the area shall accompany the nomination request.

§ 596.301 HUD action and review of nominations for zone designation.

(a) *Establishment of submission procedures.* HUD will establish a time period and procedures for the submission of Nominations for Designation of an Enterprise Zone. The submission deadline and addresses for submission of nominations will be published by Notice in the Federal Register. The data and specific criteria which will be used to establish eligibility will also be identified in the Notice.

(b) *Acceptance for processing.* HUD will accept for processing those Nominations for Designation of an Enterprise Zone which HUD determines have met the criteria required by this part. HUD will notify the State and local government or tribal governing body within 10 working days from receipt of the nomination whether or not the nomination has been accepted for processing. The criteria for acceptance for processing are as follows:

(1) The Nomination for Designation of an Enterprise Zone must be received by HUD on or before the close of business on the date established by Notice in the Federal Register.

(2) Each unit of local government must be determined by HUD to have met the requirements of § 596.101(b).

(3) The Nomination for Designation of an Enterprise Zone must be complete and contain a proposed course of action as required by § 596.202, and the certifications required by § 596.300 (b) and (c).

(c) *Evaluation of nominations.* Each nomination accepted for processing will be reviewed by HUD to determine that, in the judgement of the reviewing official, the problems to be addressed have been adequately accessed and the actions proposed in the course of action appear to address these problems.

(d) *Publication of designations.* Announcements of those zones receiving designation will be made by publication of a Notice in the Federal Register.

§ 596.302 Selection factors for designation of nominated zones.

Zone designation will be based solely on rank order of distress. Each area will be ranked within each of the criteria set forth in § 596.101(d) on the basis of the amount by which the area exceeds the criteria. For the poverty criterion the ranking will be based on the overall poverty rate for the smallest number of block groups, enumeration districts which contain the zone. The rank order will then be determined by the highest average ranking with respect to the four criteria. In any instance where the data are missing and the applicant did not establish that the area would pass the test, a rank of zero would be used.

§ 590.303 Zone designation in rural areas.

For rural areas as defined in § 596.3, rank order of distress will be determined separately as set forth in § 596.101(e).

§ 596.304 Number of zones designated.

HUD may choose in advance to designate less than the maximum number of eligible zones in any one submission period. When HUD announces a submission period, HUD will announce the number of enterprise zones which will be designated as a result of that period. Qualified areas which are not selected in one submission period may reapply in a subsequent submission period.

Subpart E—Post Zone Designation

§ 596.400 Monitoring.

HUD's role in monitoring Enterprise Zone activity will be kept to the minimum necessary to determine compliance with the state and local commitments made in accordance with § 596.200(4) or (for an Indian Reservation) the assurance required by § 596.201(b). Monitoring will be carried out in conjunction with ongoing CPD activities in the community, e.g., CDBG monitoring visits.

§ 596.401 Revocation of enterprise zone designation.

The Secretary, after the consultations required by § 596.6 (b) or (c), as appropriate, may revoke the designation of an area as an enterprise zone if the Secretary finds that a local government or the State in which the zone is located is not complying substantially with the State and local commitments made in accordance with § 596.200(b)(4) or, (for an Indian reservation) the assurance required by § 596.201(b).

(a) *Warning letter.* Before revoking the designation of an area as an enterprise zone, the Secretary will issue a letter of warning to the nominating State and local governments:

(1) Advising that the Secretary has determined that one or more parties to the written agreement required by § 596.200(b)(4) or, (for an Indian reservation) the assurance required by § 596.201(b), are not complying substantially with the agreement or assurance; and

(2) Requesting a reply from all involved parties, within a specified period of time.

(b) *Issuance of a notice of revocation.* After providing a minimum of 90 days for parties to respond and upon a finding by the Secretary under this section, the Secretary may issue a final notice of revocation of the designation of the area as an enterprise zone.

§ 596.402 Evaluation and reporting.

For the zones designated in accordance with § 596.302, the Department will require periodic reports. These reports will identify the local and state actions which have been taken in accordance with the course of action and describe the economic and physical revitalizations which has occurred in the zone. The following types of data will be needed for evaluation of Enterprise Zone progress:

(a) *Base line data.* Base line data for the zone and the city as a whole to permit comparison of the city and zone before and after designation.

(b) *Job strategy.* A description of the strategy employed to create and maintain jobs in the zone;

(c) *Business data.* Collection of annual data on new firms created and terminated in the zone and for the city as a whole, the origin of firms moving into the zone (within or outside the SMSA), whether or not the firms are branches of existing firms, the number of firm expansions, jobs created, jobs retained for firms which provide solid evidence that they would have moved out of the zone in the absence of incentives, and a listing of benefits received by new and expanding firms.

Subpart F—Waiver or Modification of Rules

§ 596.500 Requests for waivers or modifications.

(a) *Parties to a request.* A Request for Waiver or Modification of a HUD rule shall be executed by the local government or Indian tribal government of the jurisdiction that nominated an area designated an enterprise zone under this part.

(b) *Submission requirements.* A Request for Waiver or Modification must be submitted in writing in a form prescribed by HUD. The Request shall contain:

(1) A citation of the specific rule or rules for which a waiver or modification is requested;

(2) A brief description of the change requested; and

(3) A brief description of why the change would promote the achievement of job creation, community development, or economic revitalization.

§ 596.501 Waiver or modification of HUD rules in enterprise zones.

(a) *Authority to grant waivers or modifications.* Upon the written request

of the governments that nominated an area as enterprise zone under this part, the Secretary may waive or modify all or part of any rule which the Secretary has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the designated enterprise zone, in order to further the objectives of the program.

(b) *Standards for consideration of requests for waivers and modifications.* In considering a request for a waiver or modification, the Secretary will weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization against the effect the change is likely to have on the underlying purposes of applicable statutes and rules affected by the change.

(c) *Secretarial determination.* A request for a waiver or modification may be approved whenever the Secretary finds that the public interest served by the modification would outweigh the public interest served by continuing the rule unchanged.

(d) *Waivers or modifications not authorized.* The Secretary will not approve any request to waive or modify any rule which:

(1) Was adopted to carry out a statute or Executive Order which prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, marital status, national origin, age, or handicap;

(2) Would directly violate a statutory requirement; or

(3) Would be likely to present a significant risk to the public health, including envionmental health or safety.

(e) *View of interested parties.* To facilitate reaching a decision on any requested waiver or modification, the Secretary may seek the views of interested parties.

(f) *90 day review period for requests.* Not later than 90 days after receipt of a request under § 596.501, the Secretary will make a determination whether to grant a request for waiver or modification.

(g) *Notification.* Upon a determination by the Secretary to approve a waiver or modification, HUD shall inform the State and local governments requesting the waiver or modification.

(h) *Effect of subsequent amendments to rules waived or modified.* If, subsequent to the granting of a waiver or modification, HUD amends the rule for which the waiver or modification has been granted, the waiver or modification shall continue, in full force and effect unless the governments requesting the waiver or modification are consulted with respect to the effect of the amendment on the requested waiver or modification and the Secretary determines, that the justification for the waiver or modification is no longer valid.

Subpart G—Coordination of Housing and Urban Development Programs

§ 596.600 Coordination of HUD programs.

(a) To the maximum extent possible, the Secretary of HUD will provide special assistance to Enterprise Zones designated in accordance with § 596.302. This will include, but not be limited to:

(1) Expedited processing;

(2) Priority funding;

(3) Program setasides; and

(4) Provision of technical assistance in furtherance of the objectives of Title VII.

(b) Although the designation of a federal enterprise zone under this part does not in itself constitute a federal action that would trigger application of Executive Orders 11625 and 12432 concerning minority business enterprise, the provision of federal funds to carry out elements of a course of action will require that the appropriate provisions of the program providing the funds regarding Executive Orders 11625 and 12432 be met.

Date: August 9, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

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Part VI

Department of Agriculture

Forest Service

36 CFR Part 222

Grazing and Livestock Use on the National Forest System; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing and Livestock Use on the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service proposes to revise its regulations for administering livestock grazing use on National Forest System lands. These proposed revisions result from review of the regulations as required by E.O. 12291. This proposal would eliminate unnecessary sections and revise and clarify the remaining regulations so that the public and Agency employees find them clearer and thus easier to use. The proposed regulations would clarify the definition of excess livestock, remove the rules on grazing advisory boards, and provide for establishing a minimum number of livestock (lower limit) for which a new permit would be issued. The proposed regulations also would make applicants ineligible for a new permit if they have not been in compliance with previous permits held. The proposed regulations would allow authorized officers to credit permittees for specified range improvements when determining grazing fees within the National Forests in the Eastern States. In addition, they would provide for a paid or free livestock use permit for vegetation management and provide for a service charge for processing actions related to a permit when initiated or caused by a permittee or applicant.

DATE: Comments must be received by October 17, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2200), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the office of the Director, Range Management Staff, Room 601, Rosslyn Plaza, 1621 North Kent Street, Arlington, Virginia, between the hours of 8:30 a.m. and 4:00 p.m..

FOR FURTHER INFORMATION CONTACT: Don Nelson, Range Management Staff, (703) 235–8142.

SUPPLEMENTARY INFORMATION:

Background

The existing rules governing grazing and livestock use on National Forest System lands (36 CFR Part 222, Subpart A) provide guidance for the management of the range environment, the issuance and modification of grazing and livestock permits, compensation for permittees' interest in authorized permanent improvements, cooperation in management, improvement of rangelands, the use of the range betterment fund, and grazing advisory boards.

Pursuant to E.O. 12291 requirements to review existing regulations on a 5-year cycle, Forest Service personnel involved with range management at various field levels and in the Washington Office have participated in the review of these regulations. As a result of using the existing regulations, the Agency has identified some provisions that need to be revised and clarified, new provisions that are needed, and other sections which may be eliminated.

Proposed Revisions

A brief description of the major changes proposed in the rule, keyed to the section numbers in which they appear, follows.

Section 222.1 Excess vs. Unauthorized Livestock

The definition of excess livestock currently in Forest Service directives includes all of a permittee's livestock regardless of their geographic location in relation to the permitted area. Where some of a permittee's livestock are located a long distance from the permitted area, yet manage to stray onto National Forest System lands, these livestock should be dealt with as unauthorized, rather than as excess, livestock. The proposed rule would define excess livestock as those livestock that are a part of a permittee's herd unit associated with assigned allotments and that are on National Forest System lands or other lands under Forest Service control in greater numbers or at times or places other than those authorized. This change brings the definition into consistency with the rules governing prohibited acts on National Forest System lands at 36 CFR Part 261. As defined in 36 CFR 261.2, livestock that are not a part of a permittee's herd unit associated with assigned allotments are unauthorized livestock, and their owners are prohibited from placing or allowing them to enter or be on the National Forest System or other lands under Forest Service control (36 CFR 261.7).

Section 222.4 Qualification Requirements for Permits

The Federal Land Policy and Management Act of 1976, Section 402(c)(2), requires that, in order to be given first priority for receipt of a new permit, existing permittees must be in compliance with the terms and conditions in the permit and any applicable rules and regulations. Under the current rule, permittees who have their premits canceled because they violated their permit terms and conditions may reorganize as a new entity and are eligible to hold a permit providing they are otherwise qualified. This is contrary to public policy and the intent of the Federal Land Policy and Management Act of 1976. The terms and conditions established in a permit are determined necessary to properly manage, and thus protect, the public's resources. Operations by a permittee with a record of noncompliance with permit terms and conditions are a risk to the public resource. The objective of this section is to protect the public interest and the Government by allowing only those who have satisfactory performance records and who meet established requirements to participate in the grazing program.

In determining eligibility for a new permit or for reissuance of a permit under the proposed rule, an authorized officer would consider current performance under federal permits held at the time of application as well as performance under other federal permits held within the past 36 months. A thirty-six month period is believed to be a reasonable period of performance to consider in establishing a record of performance under grazing permits. This consideration would extend to any affiliates of the applicant or permittee and would include review of all federal permits or leases held by those parties. Examples of applications of the proposed standard for determining affiliation can be found at 13 CFR 121.3.

Under the proposed rule, permit violations which are so serious as to result in cancellation of an entire permit within a relatively recent period of time (36 months) prior to submission of the application under review may result in the applicant being found to be ineligible for a new permit.

As is presently the practice, before a permit would be canceled for noncompliance with the terms and conditions, the authorized officer would notify the permittee that alleged violations of the terms and conditions had occurred, and based on these violations, the officer may take action against the permit. The permittee would be given the opportunity to respond to the notice of alleged violations of the terms and conditions of the permit (§ 222.9). After considering all of the facts presented, the authorized officer would decide whether a permit violation had occurred and what, if any, action against the permit was appropriate. This decision would be subject to review

under the Administrative Appeal Regulations of the Secretary of Agriculture (36 CFR 200, Subpart B).

Section 222.6 Lower Limit

Presently there is no limit on how few livestock may be authorized to graze under a permit. The Agency's cost, on an animal basis, of administering a permit for a small number of livestock is prohibitive. The proposed rule would give the Forest Service the authority to establish lower limits on a local basis after consultation with local livestock producers. Lower limits would not apply to existing permittees or to applicants who reside on ranch or agricultural lands within or contiguous to National Forest System lands and other lands under Forest Service control and who distinctly depend on these lands to support animals whose products are consumed or whose services are used directly by the family of the resident.

Section 222.7 Free Use

In some areas, the vegetation, such as chaparral, is managed by grazing livestock. Where the primary land management objective is to manage vegetation rather than to produce livestock, a livestock use permit may be issued. The proposed regulations, at § 222.7(b)(3)(iv), would allow the authorized officer discretion to issue free livestock use permits. Where such factors as location or quality of forage make it uneconomical for the livestock operator to pay a fee, this is a cost-effective way to manage these lands. The existing rule does not permit this option.

Section 222.10 Cost Recovery

Pursuant to 31 U.S.C. 9701, it is the policy of the Forest Service to recover the cost of providing services to users who seek a special privilege or use, especially when costs exceed those normally incurred by the Agency. Therefore, it is proposed to assess a service charge to recover the administrative and clerical costs for processing permit actions initiated by an existing or prospective permittee. The service charge would reflect the processing costs and would be adjusted periodically to reflect any changes in these costs.

Section 222.11 Range Improvements in the East

In the Eastern half of the United States, National Forest land has potential to be used for livestock production by improving the condition of the soil, water, and vegetation. Such improvements would include, but not be limited to, fences, water developments, seeding, or other range improvements. The proposed regulations would be revised to allow an authorized officer, under terms of a permit, to require a permittee to implement specified structural and nonstructural range improvement programs, where necessary for utilization of the range resource or for satisfactory maintenance of the ecosystem. In determining the grazing fee to be charged, the authorized officer could, where appropriate, credit the permittee for expenditures for specified range improvements. The specifications and the completion schedule for required improvements would be a part of the grazing permit and approved allotment management plan.

At the current grazing level, range improvements with an estimated annual value of $100,000 could be accomplished. There are approximately 2,100,000 acres of existing range or pasture land within the National Forests in the Eastern States. Implementing this proposal could possibly affect 70,000 acres of this range in a 30-year period.

Grazing Advisory Boards. The authority for Grazing Advisory Boards, established under the Federal Land Policy and Management Act of 1976, expired December 31, 1985. Thus, the current regulations at § 222.11 concerning Grazing Advisory Boards are obsolete and are proposed to be removed.

The Department of Agriculture has authority, under the Federal Advisory Committee Act (5 U.S.C. App. 1), and the implementing regulation at 41 CFR Part 101–6.10, and the Food and Agriculture Act of 1977 (7 U.S.C. 2281, et seq.), to establish advisory boards reflecting a variety of points of view and resource interests to advise the Forest Service on management of the resources of the National Forest System including forage.

In addition to these specific changes, gender specific references have been identified throughout the rule and eliminated. Wherever possible, the language—but not the intended meaning—of the existing rule has been revised for clarity and ease of reading; for example, text written in passive voice has been rewritten in active voice whenever possible. In addition, the rule would be reorganized for easier use by permit holders and Agency personnel. Under the proposal, definitions (now in § 222.1) would be revised to eliminate terms with commonly understood meanings as well as those terms that are better understood if explained in the context of the rule.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this regulation is not a major rule. The regulation is procedural and will have little effect on the economy.

Small Entity Impact

It has been determined that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

Based on both experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4). These are procedural rules governing livestock grazing and use. Authorized officers carefully plan livestock grazing and use at the local level. These officers conduct environmental analysis on a site specific basis.

Paperwork Burden/Information Collection

The proposed regulations would not increase the paperwork burden on grazing permittees or require new information requirements. OMB has approved for use through October 31, 1989, the following Forest Service grazing-related forms: FS 2200–1, Refund, Credit, or Transfer Application; FS 2200–2, Application for Temporary Grazing Permit—Part I; FS 2200–12, Waiver of Term Grazing Permit; FS 2200–13, Escrow Waiver of Term Grazing Permit Privileges; FS 2200–15, Application and Permit for Livestock Use; FS 2200–16, Application for Term Grazing Permit; and FS 2200–17, Application for Term Private Land Grazing Permit. These forms have been assigned OMB clearance number 0596–0003.

List of Subjects in 36 CFR Part 222

Grazing lands, Livestock, National forests, National grasslands, Range management, Wildlife, and Wild horses and burros.

Therefore, for the reasons set forth in the preamble, it is proposed to revise Subpart A of Part 222 of Title 36 of the Code of Federal Regulations to read as follows:

PART 222—RANGE MANAGEMENT

Subpart A—Grazing and Livestock Use on the National Forest System

Sec.
222.1 Definitions.
222.2 Allotments.
222.3 General provisions applicable to all grazing and livestock use permits.
222.4 General qualification requirements applicable to all permits.
222.5 Term permits; types and duration.
222.6 Term permits; qualification and other requirements.
222.7 Other types of grazing and livestock use permits.
222.8 Reissuance of permits.
222.9 Cancellation, suspension, and modification of permits.
222.10 Permit fees and charges.
222.11 Range improvements.
222.12 Compensation for permittees' interest in range improvements.
222.13 Range Betterment Fund.
222.14 Cooperative management.
222.15 Cooperation in other grazing matters.
222.16 Information collection requirements.

Authority: 7 U.S.C. 1011, 16 U.S.C. 472, 16551, 16 U.S.C. 572, 16 U.S.C. 580g, 16 U.S.C. 580h, 16 U.S.C. 580l, 16 U.S.C. 1600 *et seq.*, 31 U.S.C. 9701, 43 U.S.C. 1901–1903, 43 U.S.C. 1751–1752.

Subpart A—Grazing and Livestock Use on the Natural Forest System

§ 222.1 Definitions.

For the purposes of this subpart—

Business concerns or individuals are *affiliates* of a permittee if, directly or indirectly, either one controls or has the power to control the other, or a third party of parties controls or has the power to control both.

An *allotment* is a designated area of land available for livestock grazing.

An *allotment management plan* is a document that specifies the actions to be taken to manage and protect the range resource and reach a given set of objectives.

Base property is land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by the permittee in order to qualify for a term grazing permit.

Cancel means action taken to permanently invalidate a term grazing permit in whole or in part.

An *escrow waiver* is a document with specific clauses, executed by a permittee who mortgages permitted livestock or base property, waiving certain term grazing permit privileges (except the privilege of continuing to graze livestock) to the United States (§ 222.6(b)(3); § 222.8(c)).

Excess Livestock are any livestock owned by the holder of a Forest Service grazing permit, are a part of the permittee's herd unit associated with assigned allotments, and are on National Forest System lands or other lands under Forest Service control in greater numbers or at times or places other than those authorized.

Grazing Permit is any Forest Service document authorizing livestock to use National Forest System lands or other lands under Forest Service control where the main purpose is livestock production.

Land subject to livestock grazing means National Forest System lands and other lands under Forest Service control within established allotments.

Lands within National Forests in the 16 contiguous Western States means lands within a designated National Forest and in the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

Lands within the National Forests in the Eastern States are National Forest lands not in the 16 contiguous Western States or Alaska.

Livestock means foraging animals kept or raised for livestock production, other use, or pleasure.

Livestock Use Permit is any Forest Service document authorizing livestock to use the National Forest System lands or other lands under Forest Service control where the primary purpose is other than livestock production; for example, transportation livestock.

Modify a permit means to change the terms and conditions of an issued permit.

National Forest System lands are the National Forests, National Grasslands, Land Utilization Projects, and other lands, waters, or interests therein administered by the Forest Service or designated for administration through the Forest Service as a part of the system (16 U.S.C. 1609).

Other lands under Forest Service control are non-federal public or private lands over which the Forest Service has been given control through lease, agreement, waiver, or other means.

Permitted livestock are livestock being grazed under a permit or those that were grazed under a permit during the preceding season, including offspring retained for herd replacement.

Range betterment means rehabilitation, protection, and improvement of National Forest System lands and other lands under Forest Service control to arrest range deterioration and improve the condition of the vegetation with resulting benefits to wildlife, watershed protection, and livestock production.

Range betterment fund means the fund established by Title IV, section 401(b)(1) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751). Fifty percent of all monies received by the United States as fees for grazing livestock on the National Forests in the 16 contiguous Western States are credited to this fund, which upon appropriation by Congress, is available for range rehabilitation, protection, and improvement.

Range Improvement means any activity or program that includes facilities or treatments constructed, installed, or undertaken for the purpose of improving the range resource or the management of livestock and includes the following types:

(a) Nonstructural range improvements are those treatments undertaken to improve range that do not involve construction of improvements. Examples include: seeding, controlling undesirable vegetation by burning or spraying, mowing, fertilization, furrowing, and similar practices relating to the vegetation or soil.

(b) Structural range improvements are physical facilities or structures that are constructed or installed for the purpose of improving the range, facilitating range management, or controlling distribution and movement of livestock. Structural improvements may be permanent or temporary and include such items as fences, dams, ponds, pipelines, wells, and trails.

(1) Permanent range improvements are those treatments or structures that become a part of the land, such as dams, ponds, pipelines, wells, fences, trails, and seedings.

(2) Temporary range improvements are short-lived or portable structures which can be removed. These may include such items as troughs, pumps, corrals, and portable buildings.

Transportation livestock refers to livestock used as pack and saddle stock for travel on National Forest Systems lands and other lands under Forest Service control.

Unauthorized use rate is the amount charged for excess or unauthorized livestock use (36 CFR Part 222.50 and 36 CFR 261.2).

§ 222.2 Allotments.

(a) *Allotment Designation.* Authorized officials shall designate which National Forest System lands and other lands under Forest Service control are available for grazing. When approved by the landowner, lessee, or cooperating agency, allotments may include associated private and other public lands in order to form logical range

management units for effective coordinated resource management.

(b) Allotment Management Plans—(1) Purpose and scope. Allotment management plans shall govern the use and management of livestock grazing on forage producing National Forest System lands and other lands under Forest Service control. Subject to the availability of appropriated funds, the Forest Service shall develop and implement allotment management plans consistent with forest land and resource management plans (36 CFR Part 219) and in consultation, cooperation, and coordination with the affected permittees, associations, landowners, and other interest parties, as well as appropriate State and local government agencies administering land within the area covered.

(2) *Content.* Allotment management plans shall:

(i) Prescribe the manner in and extent to which livestock operations will be conducted in order to meet the resource protection, multiple use, sustained yield, economic, and other needs and objectives as determined for the lands involved; and

(ii) Describe the type, location, ownership, and general specifications for the range improvements in place or to be installed and maintained on the lands to meet the livestock grazing and other land management objectives; and

(iii) Contain such other provisions relating to livestock grazing and other objectives as may be prescribed by the Chief of the Forest Service, consistent with applicable law.

(iv) Be updated by the responsible Forest officer as needed.

§ 222.3 General provisions applicable to all grazing and livestock use permits.

(a) Grazing permits and livestock use permits are a privilege which convey no right, title, or interest in any United States lands or resources.

(b) All livestock use of National Forest System lands and other lands under Forest Service control requires written authorization by a grazing or livestock use permit issued by an authorized Forest Service officer, except as provided for in § 222.7 of this subpart.

(c) The authorized Forest Service officer shall prescribe the terms and conditions of each grazing and livestock use permit subject to other applicable regulations in this chapter, applicable direction issued through the Forest Service Directives System (36 CFR 200.3), forest land and resource plans (36 CFR Part 219), and allotment management plans (§ 222.2(b)).

(d) Members of grazing associations or grazing districts to which the Forest Service has issued a term permit must address their grievances to the association or district in accordance with the term permit, and the governing constitution and bylaws of the organization (§§ 222.5(a)(3) and 222.6(a)(1)(i)).

(e) Government agencies are not eligible to receive terms or temporary grazing permits.

§ 222.4 General qualification requirements applicable to all permits.

(a) An authorized officer shall issue a grazing permit only when an applicant satisfies the general requirements of this section and any special qualifications required for the particular type of permit sought (§ 222.6).

(b) Permits shall be issued only to private entities such as individuals, partnerships, corporations, associations and organizations.

(c) The applicant and any affiliate(s), as defined in § 222.1 of this subpart, must be determined to have a satisfactory record of performance under federal grazing permits held.

(1) The applicant and any affiliate(s) must be determined to be in compliance at the time of application and permit issuance with the terms and conditions of any existing Forest Service or other federal grazing permits presently held and with the rules and regulations applicable to those permits. The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether an applicant and any affiliates are in compliance with existing permit terms and conditions and applicable rules and regulations.

(2) Any applicant or affiliate(s), who has had any Forest Service or other federal grazing permit canceled for cause within the past 36 calendar months, shall be presumed to have an unsatisfactory performance record, unless the authorized officer determines that the circumstances were properly beyond the permittee or affiliate's control or that the permittee or affiliate has taken appropriate corrective action.

(d) In determining whether or not affiliation exists, authorized officers shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members and contractural relationships.

(e) Applicants must submit an application and any other information requested by the authorized officer in order to determine that all qualifications have been satisfied.

§222.5 Term permits; types and duration.

(a) *Types of permits.* The following types of grazing permits offer a term of up to 10 years and priority for renewal at the end of the term:

(1) A *term grazing permit* is a permit issued to qualified applicants, in accordance with §§ 222.4 and 222.6 of this subpart, to graze livestock on National Forest System lands and other lands under Forest Service control.

(i) Term grazing permits may be issued to grazing or livestock associations organized, in accordance with § 222.14(a) of this subpart, to promote cooperative efforts in management of National Forest System lands and other lands under Forest Service control.

(ii) Term grazing permits with provisions for grazing on-and-off Forest Service administered lands may be issued when a logical grazing area contains both lands under Forest Service control and lands controlled by the applicant.

(iii) Term grazing permits may be issued to applicants interested in developing ranges in the eastern National Forest System lands which have not been previously grazed under permit.

(2) A *term private land grazing permit* is a permit issued to an applicant who controls grazing lands adjacent to National Forest System lands and other lands under Forest Service control and who waives exclusive grazing use of these lands to the United States for the full period the permit is to be issued.

(3) A *grazing agreement* is a document authorizing eligible grazing associations or districts, organized under State law, to graze a specified amount on National Forests System lands and other lands under Forest Service control. Grazing agreements authorize associations or districts to issue and administer grazing permits subject to rules, policies, and procedures established by the Forest Service.

(b) *Duration of term grazing permits.* The maximum length of a term grazing permit is 10 years.

(1) On National Forest lands in the 16 contiguous Western States, the authorized officer shall issue permits for a the full 10-year period, unless the land is pending disposal, the land will be devoted to other uses prior to the end of ten years, or it will be in the best interest of sound land management to specify a shorter term.

(2) On all other National Forest System lands and other lands under Forest Service control, consistent with forest plans and the objectives for the

allotment, the authorized officer may issue permits for 10 years or less.

(3) The term of a grazing agreement may be for a period of 10 years or less.

§ 222.6 Term permits; qualification and other requirements.

(a) Qualification requirements. In addition to the general qualification requirements applicable to all permits (§ 222.4), applicants for term permits must meet the applicable requirements of items (1)–(3) of this paragraph.

(1) Except as otherwise provided in this section or subsequent direction issued by the Chief of the Forest Service, the applicant for a term grazing permit must own the livestock to be grazed under permit. The applicant must also own such base property as required by the Forest Supervisor.

(i) Members of grazing or livestock associations that are organized in accordance with § 222.14(a) of this subpart and that hold term grazing permits, must own the livestock to be grazed under their individual permits issued by the associations. The members must also own such base property as required by the Forest Supervisor.

(ii) Applicants for term grazing permits with on-and-off provisions must own the livestock to be grazed "on" the portion of the permit covering the lands under Forest Service control. The applicants must also own such base property as required by the Forest Supervisor.

(iii) Applicants of term permits for developing ranges on lands within National Forest System in the Eastern States are not required to own livestock or base property. However, when these permits expire, these permittees will have to meet the requirements in paragraph (a)(1) of this section and § 222.4 of this subpart to qualify for a new term grazing permit.

(2) Term private land grazing permits may be issued to applicants who control the private land adjacent to National Forest System lands and other lands under Forest Service control. The permittee may run livestock owned by other parties under the permit.

(3) Grazing Agreements may be issued to grazing associations or grazing districts organized under State law. The Forest Supervisor shall determine the livestock ownership and base property ownership requirements that association or district member must meet.

(4) A term grazing permit may be issued to a purchaser for permitted livestock or base property, if the outstanding permit is first waived to the United States by the current permittee and the purchaser is otherwise eligible and qualified.

(b) *Other requirements for term permits.* An authorized officer may prescribe other requirements for term grazing permits including, but not restricted to, the following:

(1) Conditions and length of time of nonuse;

(2) Limits on the total number of permitted livestock including upper limits, exceptions to limits, and lower limits for new applicants not qualifying for a permit under § 222.7(b)(2)(i) of this subpart and;

(3) Procedures and conditions under which an escrow waiver of a term grazing permit may be executed by a permittee and confirmed by an authorized officer (§ 222.8(c)).

§ 222.7 Other types of grazing and livestock use permits.

An authorized officer may permit other grazing activities and livestock uses of a short duration by applicants who meet the requirements of § 222.4 of this subpart as follows:

(a) Temporary grazing permits may be issued for one year or less on a charge basis to authorize:

(1) Use of range by a different permittee when an authorized officer suspends a term grazing permit.

(2) Increased number of livestock to use forage created by unusually favorable climatic conditions.

(3) Use of forage made available because a permittee, for reasons of personal convenience, has exercised the nonuse provision of a permit.

(4) Use of the range by a former permittee who desires to graze livestock for the remainder of the grazing season when all of the following conditions exist:

(i) The base property has been sold,

(ii) The term permit waived,

(iii) A new term permit issued,

(iv) And the new permittee does not want to graze livestock that season.

(5) Use of the range in the event of drought or other emergency where such use would not result in permanent resource damage.

(b) Livestock use permits may be issued for up to one year, for a charge or free, as follows:

(1) *Paid permits for:*

(i) Transportation livestock to applicants engaged in commercial packing, dude ranching or other commercial enterprises, such as mining, ranching, and logging activities, that involve transportation livestock.

(ii) Animals used to breed livestock permitted to graze on lands administered by the Forest Service.

(2) *Free permits to:*

(i) Persons who reside on ranch or agricultural lands within or contiguous to National Forest System lands and other lands under Forest Service control for up to 10 head of livestock whose products are consumed or whose services are used directly by the family of the resident, and who distinctly need such National Forest System lands and other lands under Forest Service control to support such animals.

(ii) Campers and travelers for livestock actually used during the period of occupancy. Such use may be authorized without written permit.

(iii) Cooperators who clearly need National Forest System lands and other lands under Forest Service control for horses, mules, or burros to support research, administration, or other work being conducted. This may be authorized without written permit.

(3) *Paid or free permits for:*

(i) Research purposes and administratives studies.

(ii) Trailing livestock across National Forest System lands and other lands under Forest Service control.

(iii) Horses, mules, or burros to holders of grazing permits who clearly need National Forest System lands and other lands under Forest Service control to support the management of permitted livestock.

(iv) Livestock use where the primary objective is managing vegetation.

§ 222.8 Reissuance of permits.

(a) To be eligible for reissuance of a term permit, holders must meet the general qualification requirements of § 222.4 of this subpart as well as all other qualifications for the particular permit involved.

(b) Holders of term permits have first priority for receipt of a new permit at the end of the term period, if they are found eligible as specified in paragraph (a) of this section.

(c) Until an escrow waiver is released, the Forest Service recognizes the lender named on the escrow waiver as having the first priority for receipt of the permit at such time as the lender acquires title to the permitted livestock or the base property listed on the escrow waiver. If an authorized officer cancels a permit because of a violation of the terms and conditions of the permit, the escrow waiver is also canceled and the lender has no priority for receipt of the permit.

(d) Holders of temporary grazing and livestock use permits as described in § 222.7 of this subpart do not receive any priority for reissuance of future permits.

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§ 222.9 Cancellation, suspension, and modification of permits.

(a) Authorized officers may cancel grazing and livestock use authorizations in whole or in part as follows:

(1) Where lands grazed under the permit are to be devoted to another public purpose including disposal. In these cases, except in an emergency, the authorized officer must give the permittee two years advance notice of the intent to cancel.

(2) In the event a permittee:

(i) Refuses to accept modification of the terms and conditions of an existing permit.

(ii) Refuses or fails to comply with qualification requirements.

(iii) Waives the permit back to the United States.

(iv) Fails to resume grazing on an allotted range after exhausting the maximum period of time approved for nonuse.

(v) Chooses to dispose of all or part of the base property or permitted livestock, unless under approved nonuse, but does not choose to waive the term permit. Under these circumstances, the permittee shall be given one year from the date of a notice issued in accordance with paragraph (c) of this section to reestablish eligibility before an authorized officer cancels the permit.

(3) In the case of term grazing association permits or grazing agreements, for noncompliance with Title VI of the Civil Rights Act of 1964 and Department of Agriculture regulations promulgated thereunder.

(b) An authorized officer shall cancel or suspend a permit in whole or in part as circumstances require if a permittee:

(1) Fails to pay grazing fees within the established time limit.

(2) Does not comply with terms and conditions in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based.

(3) Allows excess livestock on National Forest System lands or other lands under Forest Service control. (See § 222.10(b) of this subpart for charges for excess use.)

(4) Knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto.

(5) Is convicted for failing to comply with Federal laws or regulations or State laws relating to protection of air, water, soil, and vegetation; fish, wildlife, and other environmental values when exercising the grazing use authorized by the permit.

(c) When an authorized officer believes that a violation of the terms and conditions of a permit has occurred and that canceling or suspending a permit may be warranted under paragraph (a) or (b) of this section, the officer shall notify the permittee of the alleged violation and that the officer is considering taking action against the permit. The officer shall give the permittee the opportunity to respond before deciding to cancel or suspend the permit in whole or in part.

(d) An authorized officer has authority to modify the terms and conditions of a permit for the following purposes:

(1) To conform to current situations brought about by changes in law, regulation, Executive order, implementation of a forest land and resource management plan (36 CFR Part 219), development or revision of an allotment management plan, or other resource needs.

(2) To alter the seasons of use, numbers, kinds, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or upon permittee request. In this case, the authorized officer shall give a permittee one year's notice of such modifications required by the Agency, except in cases of emergency or when agreed to in advance and in writing by the permittee.

(e) In order to update terms and conditions, term grazing permits may be canceled at the end of a calendar year. In this case, the new permit is to be reissued to the existing permit holder for a new term of 10 years on National Forests in the 16 contiguous Western States. On all other National Forest System lands and other lands under Forest Service control, consistent with forest plans and the objectives for the allotment, the authorized officer may reissue these permits for 10 years or less.

§ 222.10 Permit fees and charges.

(a) Authorized officers shall establish grazing fees and livestock use fees in accordance with the rules in subpart C of this part and § 222.11(d) of this subpart.

(b) Authorized officers shall charge permittees for excess livestock use at the unauthorized use rate established in accordance with 36 CFR 222.50.

(c) An authorized officer shall assess a service charge to recover the administrative and clerical costs for processing each action related to a permit that is initiated by a permittee or applicant or that results from permittee performance or conduct under an existing permit. Examples of permit processing actions that would require a service charge are applications, waivers, escrow waivers, and replacement or supplemental bills for collection. Where processing actions are initiated by an authorized officer, there is no service charge. Service charge assessments shall be adjusted periodically as costs change.

§ 222.11 Range improvements.

(a) An authorized officer may grant permission to individuals, organizations, or agencies other than the Forest Service to maintain or perform work on structural and nonstructural range improvements consistent with forest land and resource management plans and allotment management plans.

(b) All range improvements are subject to the following conditions:

(1) All new improvements to be made by permittees shall be authorized by permit modification, the provisions of which become a part of the grazing permit(s).

(2) Title to permanent structural range improvements rests in the United States. Title to temporary structural range improvements may be retained by the cooperator or permittee, if no part of the cost for the improvement is borne by the United States.

(3) Title to nonstructural range improvements rests in the United States.

(4) Range improvement work performed by a cooperator or permittee on National Forest System lands and other lands under Forest Service control does not confer the exclusive right to use the improvement or the land influenced.

(c) An authorized officer may, under the terms of a permit, require a permittee to maintain range improvements on National Forest System lands and other lands under Forest Service contorl to specified standards.

(d) Within the National Forests in the Eastern States, an authorized officer may require a permittee to implement, as a prerequisite to grazing, specified range improvements when necessary for utilizing the grazing resource and maintaining the ecosystem in satisfactory condition. The specifications and the completion schedule for required improvements will be a part of the grazing permit and approved allotment management plan. Permittee expenditures for such required improvements may, at the discretion of an authorized officer, be credited in calculating the permittee's grazing fees upon satisfactory completion of the improvement.

(e) In accordance with section 32(c), Title III, Bankhead Jones Farm Tenant Act (7 U.S.C. 1010–1012), the cost to a grazing permittee in complying with requirements of a grazing permit or

agreement may be considered in determining the annual grazing fee on National Grasslands or Land Utilization Projects if that cost has not already been used in establishing the grazing base value.

§ 222.12 Compensation for permittees' interest in range improvements.

(a) Subject to the availability of appropriated funds, current permittees shall be compensated for the current value of any authorized permanent range improvements they placed or constructed on the lands, whenever a term permit issued for grazing livestock on National Forest lands in the 16 contiguous Western States is canceled, in whole or in part, in accordance with § 222.9(a)(1) of this subpart. In determining the current value, the Agency shall utilize the original permittee investment as established in the authorizing document less straight line depreciation.

(b) A permittee who waives a grazing permit based on the sale of base property or sale of permitted livestock is not entitled to and shall not receive any compensation under this section.

(c) If a permit expires and is not reissued, no compensation will be granted for range improvements to the former permittee under this section.

§ 222.13 Range Betterment Fund.

(a) In addition to range development which is accomplished through other funds, range development may also be accomplished under the provisions of 43 U.S.C. 1701 (note) through use of the appropriated Range Betterment Fund. One-half of the available funds shall be expended on the National Forest from which they were derived. The remaining one-half of the fund is to be allocated for range rehabilitation, protection, and improvements on National Forest lands within the Forest Service Region where they were derived.

(b) During the planning of the range improvement program, forest officers shall consult with affected permittees and other interested persons or organizations.

§ 222.14 Cooperative management.

(a) *Cooperation with local livestock or grazing associations.*

(1) Authorized officers may recognize, cooperate with, and assist local livestock or grazing associations in the management of livestock and range resources on a single range allotment, associated groups of allotments, or other association-controlled lands on which the members' livestock are permitted to graze.

(2) To qualify for cooperative management with the Forest Service, these associations must provide the means for their members to:

(i) Manage their permitted livestock and the range resources;

(ii) Meet jointly with Forest officers to discuss and formulate programs for management of their livestock and the range resources;

(iii) Communicate proposals, issues, or concerns to Forest Service officials through their designated officers or committees;

(iv) Share costs for handling of livestock, construction, and maintenance of range improvements or other accepted programs deemed needed for proper management of the permitted livestock and range resources; and

(v) Formulate special association rules needed to ensure proper resource management.

(3) To obtain Forest Service recognition, local livestock or grazing associations must meet the following requirements:

(i) A majority of the grazing permittees on the allotments involved must be members of the association.

(ii) The association's activities must be governed by a constitution and bylaws approved by the authorized officer.

(iii) The officers of the association must be elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws.

(iv) The officers, other than secretary and treasurer, must be grazing permittees on the allotments involved.

(4) An authorized officer may withdraw recognition of an association at the request of the majority of the grazing permittees or when the association is inactive and does not hold an annual or a special meeting during a 12-month period.

(b) *Cooperation with national, State, and county livestock organizations.* Authorized officers should endeavor to establish and maintain close working relationships with national livestock organizations who have an interest in the administration of National Forest System lands and other lands under Forest Service control and should encourage forest officers to work cooperatively with State and county livestock organizations having similar interests.

(c) *Interagency cooperation.* Authorized officers may cooperate with other Federal agencies that have an interest in management of the range resource on public or private lands.

(d) *Cooperation with others.* The Forest Service may cooperate with other agencies, institutions, organizations, and individuals having an interest in improvement of range management on public and private lands.

§ 222.15 Cooperation in other grazing matters.

(a) Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon National Forest System lands and other lands under Forest Service control or the livestock which graze thereupon, the Forest Service will cooperate with:

(1) State, county, and Federal agencies in the application and enforcement of all laws and regulations relating to livestock diseases, sanitation, and noxious farm weeds.

(2) The Animal and Plant Health Inspection Service and other Federal or State agencies and institutions in surveillance of pesticide application programs; and

(3) State cattle and sheep sanitary or brand boards in control of estray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971.

(b) Subject to the availability of appropriated funds, the Forest Service will cooperate with county or other local weed control districts in analyzing noxious farm weed problems and developing control programs for areas of which the National Forest System lands and other lands under Forest Service control are a part.

§ 222.16 Information collection requirements.

Requirements of this Subpart are administered through the following forms which have been assigned OMB clearance number 0596–0003:

(a) A person or entity desiring to apply for a grazing permit or livestock use permit must complete one of the following application forms to be considered:

(1) FS 2200–2, Application for Temporary Grazing Permit—Part I.

(2) FS 2200–15, Application and Permit for Livestock Use.

(3) FS 2200–16, Application for Term Grazing Permit.

(4) FS 2200–17, Application for Term Private Land Grazing Permit.

(b) A permittee desiring a refund, credit, or transfer of grazing fees must complete Form FS 2200–1, Refund, Credit, or Transfer Application.

(c) A permittee desiring to waive a term permit back to the Forest Service

must complete Form FS 2200–12, Waiver of Term Grazing Permit.

(d) A permittee desiring to have the Forest Service hold a term grazing permit in escrow in favor of a lending institution must complete Form FS 2200–13, Escrow Waiver of Term Grazing Permit Privileges.

Date: August 10, 1988.

F. Dale Robertson,

Chief.

[FR Doc. 88–18460 Filed 8–15–88; 8:45 am]

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Part VII

Department of Education

Office of Vocational and Adult Education

National Adult Education Discretionary Program; Notice

VOL 53 ISS 158 AUG 16 1988 UMI

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

National Adult Education Discretionary Program

AGENCY: Department of Education.

ACTION: Notice of Final Priorities and Selection Criterion for Fiscal Year 1988.

SUMMARY: The U.S. Secretary of Education (Secretary) establishes absolute priorities for the fiscal year 1988 grant competition under the National Adult Education Discretionary Program. Under the priorities, funds are reserved for applied research and evaluation projects focusing on instructional approaches to adult basic education. The Secretary also uses a new criterion, evaluation plan, to be used in evaluating applications submitted for this competition.

EFFECTIVE DATE: These priorities and selection criterion take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities and selection criterion, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Richard F. DiCola, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education (Room 519, Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202–5516. Telephone (202) 732–2359.

SUPPLEMENTARY INFORMATION:

Program Information

Instructional approaches used in adult basic education programs vary according to State or local policy, teacher preference, or student goals. Instruction may be offered in classroom settings, small group sessions, or on an individualized basis. Although many adult basic education programs use traditional print-based materials, more and more programs are using various kinds of technology ranging from computer-assisted instruction to education at a distance, such as instruction via interactive television or satellite.

Some instructional approaches to adult basic education appear to work well with particular groups of adults but less well with other groups. For example, some instructional approaches seem to be more effective with urban-based populations while others appear to work better with rural populations. The effectiveness of other instructional approaches seems to vary on the basis of socioeconomic factors. Several States have taken steps to determine which instructional approaches work best with particular types of adults. In conjunction with these efforts, a number of projects funded under section 310 of the Adult Education Act (State-administered Special Experimental Demonstration Projects and Teacher Training) have developed instructional techniques that have proven successful for the groups for whom they were designed. Little research has yet been conducted, however, on why a particular approach to adult basic instruction has had positive results with a particular segment of the adult population. Results of research projects addressing the priorities in this notice should provide information needed for determining which adult basic education instructional approaches enhance learning for different groups of adults.

For additional information on projects funded under section 310, a fact sheet has been included as part of the application package for this program. Also included in the application package is a list of State Directors of Adult Education, whom prospective applicants can contact for specific information about and comments on section 310 projects, particularly those deemed suitable for replication.

A "Notice of Proposed Priorities and Selection Criterion for Fiscal Year 1988" was published in the **Federal Register** on April 1, 1988 (53 FR 10804) describing the proposed priorities and selection criterion and requesting public comment. No comments were received suggesting changes to this notice.

Priorities

In accordance with 34 CFR 75.105(c)(3), the Secretary establishes absolute priorities by reserving funds under the National Adult Education Discretionary Program in fiscal year 1988 for projects that—

(1) Develop and evaluate instructional approaches, especially those using educational technology and computer software; or

(2) Replicate projects funded under section 310 of the Adult Education Act using a research design that will determine which instructional approaches work best with various groups of adults. Applicants electing to replicate section 310 projects are required to obtain and submit, along with their application, comments from the appropriate State Office of Adult Education indicating that the section 310 project is worthy of replication.

Criteria for Evaluating Applications

The Secretary uses the selection criteria in 34 CFR 431.31 (a), (b), (c), (e), (f), and (g), and, for this competition only, the Secretary also uses the following criterion:

Evaluation Plan (20 points).

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The applicant's methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(2) The applicant provides—

(i) A clear and specific description of the instructional approach, including the reasons for its selection;

(ii) A clear identification of the population groups to be served by the instructional approach, including size, characteristics, and methods of recruitment and selection;

(iii) The estimated costs per student of the instructional approach; and

(iv) A complete description of the measures and standards of comparison to be used in evaluating the effectiveness of the instructional approach.

(Authority: 20 U.S.C. 1207a)

Dated: July 5, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–18525 Filed 8–15–88; 8:45 am]

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Part VIII

Department of Education

Office of Postsecondary Education

Perkins Loan (Formerly the National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant Programs; Notice

VOL 53 ISS 158 AG 16 1988 UMI

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Perkins Loan (Formerly The National Direct Student Loan), College Work-Study, And Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Filing the Fiscal Operations Report and Application to Participate in the Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 189 funds—for use in the 1989–90 award year—under the Perkins Loan, CWS and SEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. Institutions will be notified of the closing date for establishing institutional eligibility to participate in the Perkins Loan, CWS and SEOG programs through a separate notice in the **Federal Register.**

The Secretary further gives notice that an institution that had a Perkins Loan fund or expended CWS or SEOG funds during the 1987–88 award year is required to report its program expenditures as of June 30, 1988, to the Secretary.

The Perkins Loan, CWS, and SEOG programs are authorized by Parts E, C, and Part A Subpart 2, respectively, of title IV of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1087aa–1087ii; 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3.)

Closing Date: An institution may choose to submit its 1987–88 Fiscal Operations Report and the 1989–90 Application to Participate in the Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs (FISAP–ED FORM 646–1; OMB No. 1840–0073) by—

(1) Submitting the completed data cells on the paper form (ED Form 646–1);

(2) Submitting the completed data cells on a data diskette provided by the Department;

(3) Creating a tape from data stored in a pre-defined format on a mainframe computer, and submitting that tape; or

(4) Transmitting the data from a personal or mainframe computer through a modem.

To ensure consideration for 1989–90 funds:

(1) An institution that chooses to send a paper FISAP must submit it by September 16, 1988.

(2) An institution that chooses to send an electronic FISAP either by mailing or hand-delivering a data diskette or tape, or by modem, must submit it by September 30, 1988.

FISAPs Delivered by Mail: A FISAP (ED Form 646–1) sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 400 Maryland Avenue SW., (Room 4621, Regional Office Building 3), Washington, DC 20202.

A diskette or tape containing FISAP data must be addressed to Electronic FISAP, c/o Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland 20910.

An institution must show proof of mailing its FISAP. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a FISAP is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

FISAPs Delivered by Hand: A FISAP that is hand delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 7th and D Streets, SW., Room 4621, Regional Office Building 3, Washington, DC 20202.

A diskette or tape containing FISAP data must be taken to Electronic FISAP, c/o Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland 20910.

Hand-delivered FISAPs, diskettes, or tapes will be accepted between 8:00 a.m. and 4:30 p.m. daily [Washington, DC time], except Saturdays, Sundays and Federal holidays. A FISAP that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

FISAPs Delivered Electronically: A FISAP that is delivered electronically must be transmitted by either a personal or mainframe computer to the host ED computer using a modem. In addition, one original completed signature page and two copies of the completed signature page from ED Form 646–1 must be submitted under separate cover to Electronic FISAP, c/o Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland 20910 by September 30, 1988.

FISAP Information: FISAPs were mailed by the program office in mid-July. An institution must prepare and submit its FISAP in accordance with the instructions included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations: The following regulations are applicable to these programs:

Perkins Loan—34 CFR Parts 674 and 668.
College Work-Study—34 CFR Parts 675 and 668.
Supplemental Educational Opportunity Grant—34 CFR Parts 676 and 668.

Further Information: For further information or to request a FISAP contact Ms. Gloria Easter, Chief, Financial Management Section, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4621, ROB–3, Washington, DC. 20202. Telephone (202) 732–3758).

(20 U.S.C. 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

(Catalog of Federal Domestic Assistance Nos. 84.038, Perkins Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

Dated: August 2, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–18526 Filed 8–15–88; 8:45 am]

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Part IX

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

VOL 53 ISS 158 AUG 16 1988 UMI

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of August 1, 1988 of 22 deferrals contained in the four special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987, February 19, and July 29, 1988.

Rescissions (Table A and Attachment A)

As of August 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of August 1, 1988, $5,149.9 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the **Federal Registers** listed below.

Vol. 52, FR p. 37739, Thursday, October 8, 1987

Vol. 52, FR p. 42400, Wednesday, November 4, 1987

Vol. 53, FR p. 6734, Wednesday, March 2, 1988

Vol. 53, FR p. 29418, Thursday, August 4, 1988

Joe Wright,

Acting Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1988 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	0
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	0

****

TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	9,311.6
Routine Executive releases through August 1, 1988 (OMB/Agency releases of $4,186.0 million and cumulative adjustments of $24.3 million)	-4,161.7
Overturned by the Congress.....	0
Currently before the Congress.....	5,149.9

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1988

As of August 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of August 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D88-20	2,949,000		2-19-88	980,000			17,500	1,986,500
Economic support fund	D88-1	40,000		10-1-87					
	D88-1A		1,960,727	2-19-88	1,022,333				978,394
Military assistance	D88-21	608,186		2-19-88					
	D88-21A		1,000	7-29-88	507,316				101,870
International disaster assistance	D88-22	13,479		2-19-88	11,650				1,829
Special Assistance for Central America									
Promotion of stability and security in Central America	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D88-5	120,425		10-1-87					
	D88-3A		10,529	2-19-88	300				130,654
Timber salvage sales	D88-4	34,841		10-1-87	10,456				24,385
Cooperative work	D88-5	628,025		10-1-87	157,084				470,941
Gifts, donations, and bequests for forest and rangeland research	D88-6	104		10-1-87	60				44
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D88-7	900		10-1-87					
	D88-7A		1,297,848	2-19-88	1,297,848				900
Family Housing									
Family housing, Defense	D88-8	51,015		10-1-87					
	D88-8A		135,940	2-19-88	186,955				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D88-9	636		10-1-87					
	D88-9A		149	2-19-88					
	D88-9B		611	7-29-88	26				1,369

Attachment B - Status of Deferrals - Fiscal Year 1988

As of August 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-88
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D88-14	120		10-29-87					120
Southeastern Power Administration, Operation and maintenance	D88-15	2,000		10-29-87	2,000				0
Southwestern Power Administration, Operation and maintenance	D88-16	6,000		10-29-87					
	D88-16A		7,200	2-19-88					13,200
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D88-17	774		10-29-87					
	D88-17A		2,426	2-19-88	3,200				0
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D88-18	2,391		10-29-87					
	D88-18A		569	2-19-88					2,960
Social Security Administration									
Limitation on administrative expenses (construction)	D88-10	6,171		10-1-87					
	D88-10A		36	2-19-88					6,207
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund	D88-19	85,000		10-29-87	6,800			6,800	85,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D88-11	11,638		10-1-87					11,638
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D88-12	879,049		10-1-87					
	D88-12A		450,858	2-19-88					1,329,907
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS		5,443,688	3,867,892		4,186,028	0		24,300	5,149,852

[FR Doc. 88-18523 Filed 8-15-88; 8:45 am]

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H.R. 442/Pub. L. 100-383

To implement recommendations of the Commission on Wartime Relocation and Internment of Civilians. (Aug. 10, 1988; 102 Stat. 903; 14 pages) Price: $1.00

H.R. 3811/Pub. L. 100-384

To designate the Federal building located at 50 Spring Street, Southwest, Atlanta, Georgia, as the "Martin Luther King, Jr. Federal Building." (Aug. 10, 1988; 102 Stat. 917; 1 page) Price: $1.00

H.J. Res. 475/Pub. L. 100-385

To designate October 1988 as "Polish American Heritage Month." (Aug. 10, 1988; 102 Stat. 918; 1 page) Price: $1.00

S. 2385/Pub. L. 100-386

Community and Migrant Health Centers Amendments of 1988. (Aug. 10, 1988; 102 Stat. 919; 5 pages) Price: $1.00

H.R. 5015/Pub. L. 100-387

Disaster Assistance Act of 1988. (Aug. 11, 1988; 102 Stat. 924; 38 pages) Price: $1.25

H.R. 4726/Pub. L. 100-388

To designate the United States Post Office Building located at 700 Main Street in Danville, Virginia, as the "Dan Daniel Post Office Building." (Aug. 11, 1988; 102 Stat. 962; 1 page) Price: $1.00

S.J. Res. 40/Pub. L. 100-389

To give special recognition to the birth and achievements of Aldo Leopold. (Aug. 11, 1988; 102 Stat. 963; 1 page) Price: $1.00

S.J. Res. 248/Pub. L. 100-390

To designate the week of October 2, 1988, through October 8, 1988, as "Mental Illness Awareness Week." (Aug. 11, 1988; 102 Stat. 964. 2 pages) Price: $1.00

S.J. Res. 263/Pub. L. 100-391

To designate the period commencing November 13, 1988, and ending November 19, 1988, as "Geography Awareness Week." (Aug. 11, 1988; 102 Stat. 966; 2 pages) Price: $1.00

S.J. Res. 273/Pub. L. 100-392

Designating October 6, 1988 as "German-American Day" (Aug. 11, 1988; 102 Stat. 968. 1 page) Price: $1.00

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Federal Register
Vol. 53, No. 159
Wednesday, August 17, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

[Docket No. AMS-FV-88-067]

Avocados Grown in South Florida and Imported Avocados; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule the provisions of an interim final rule which changed the minimum maturity requirements currently in effect on a continuous basis for shipments of fresh avocados grown in South Florida, and for avocados imported into the United States. The interim final rule changed the maturity shipping schedules for the Pinkerton and Reed varieties of avocados, added the Buccaneer variety to the schedule, and deleted the Day variety from the schedule. That rule also made changes in the maturity schedule in Table I of the regulation to synchronize it with the 1988–89 calendar years. These changes were designed to promote orderly marketing conditions for avocados in the interest of producers and consumers, and to provide fresh markets with mature fruit to create and maintain consumer satisfaction and sales.

EFFECTIVE DATES: Section 915.332 is adopted as a final rule effective August 17, 1988. This section is applicable to avocados imported into the United States under § 944.31 as of August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20250, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this section on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 34 handlers of Florida avocados subject to regulation under the marketing order for avocados grown in South Florida, and an estimated 20 importers who import avocados into the United States. In addition, there are approximately 300 avocado producers in South Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, importers, and producers may be classified as small entities.

An interim final rule amending § 915.332 *Florida avocado maturity regulation* was issued May 31, 1988, and published in the **Federal Register** (53 FR 20601, June 6, 1988). Section 915.332 specifies continuous maturity requirements for fresh shipments of avocados grown in South Florida. The maturity requirements are in terms of color for certain varieties which turn red or purple when mature, and in terms of minimum weights or diameters for specified time periods during the shipping season for some 60 varieties and two seedling types of avocados grown in Florida. The time periods are for seven-day increments, beginning on Monday of each week and ending on Sunday.

The interim final rule changed the maturity shipping schedule and minimum weight and diameter requirements for the Pinkerton and Reed varieties of avocados based on maturity test data developed last season. That rule also added the Buccaneer variety to the maturity shipping schedule, and deleted the Day variety from the schedule, based on shipping data developed last season for all varieties. Such data shows that a new variety, the Buccaneer, was shipped for the first time last season, while the Day variety was not shipped. In addition, that rule made necessary changes in the effective periods specified in Table I of the maturity regulation to synchronize these periods with the 1988–89 calendar years.

The changes in the maturity requirements applicable to Florida avocado shipments were unanimously recommended by the Avocado Administrative Committee. The committee works with the Department in administering the marketing agreement and order program.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The current minimum maturity requirements applicable to fresh shipments of avocados grown in South Florida and imported avocados have been in effect on a continuous basis since the 1987–88 season. The maturity requirements for Florida avocados are intended to prevent the shipment of

immature avocados, to improve buyer confidence in the marketplace, and to foster increased consumption. Similar maturity requirements have been issued each year over the past several seasons, and Florida avocado producers and handlers have found such requirements beneficial in the successful marketing of their avocado crops.

The minimum weight and diameter maturity requirements are used primarily during the first part of the harvest season for each variety to make sure that the avocados are sufficiently mature to complete the ripening process prior to shipment. Another maturity requirement based on the skin color of the fruit is also used to determine maturity for certain varieties of avocados which turn red or purple when mature. The maturity requirements are designed to make sure that all shipments of Florida avocados are mature, so as to provide consumer satisfaction essential for the successful marketing of the crop, and to provide the trade and consumers with an adequate supply of mature avocados in the interest of producers and consumers.

Some Florida avocado shipments are exempt from the maturity requirements. Handlers may ship up to 55 pounds of avocados during any one day under a minimum quantity exemption, and may make gift shipments of up to 20 pounds of avocados in individually addressed containers. Also, avocados utilized in commercial processing are not covered by the maturity requirements.

Fresh Florida avocado shipments are projected at 1,200,000 bushels (55 pounds net weight) for the 1988–89 season, compared with fresh shipments of 1,129,587 bushels shipped in 1987–88, 956,217 bushels in 1986–87, and 1,110,130 bushels in 1985–86. Florida avocados are shipped every month of the year. The new season normally begins with light shipments of early varieties in late May or early June, with heavy shipments following in late June or early July. Florida avocados compete primarily with avocados produced in California, with estimated shipments of about 9,000,000 bushels during the 1987–88 season. Avocados imported into the United States amounted to about 287,000 bushels in 1987.

A minimum grade requirement of U.S. No. 2 is also currently in effect on a continuous basis for Florida avocados under § 915.306 (7 CFR Part 915).

Section 8e of the Act (7 U.S.C. 608e–1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action continues the changed maturity requirements for domestically produced avocados, the changed requirements are also continued for imported avocados.

Avocado import maturity requirements are specified in § 944.31 (7 CFR Part 944). That section establishes comparable maturity requirements for avocados imported into the United States, based on the maturity requirements specified in § 915.332 for avocados grown in Florida. Comparable requirements may be issued upon not less than three days notice whenever the Secretary determines that the application of restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the imported and domestic commodity.

Avocado import grade requirements are currently in effect on a continuous basis under § 944.28 (7 CFR Part 944). Such grade requirements specify that all avocados imported into the United States must grade at least U.S. No. 2, which requires that the avocados be mature.

The avocado maturity and grade import regulations both contain an exemption provision which permits persons to import up to 55 pounds of avocados exempt from such import requirements.

The maturity requirements, specified herein, reflect the committee's and the Department's appraisal of the need to change the maturity requirements applicable to domestic and import shipments of avocados.

Therefore, the Department's view is that changing the maturity regulations would not adversely impact growers, handlers, and importers. The application of the maturity requirements to both Florida and imported avocados over the past several years have helped to assure that only mature avocados were shipped to fresh markets. The committee continues to believe that the maturity requirements for Florida avocados are needed to improve grower returns. Although compliance with these maturity requirements would affect costs to handlers and importers, these costs appear to be significantly offset when compared to the potential benefits of assuring the trade and consumers of mature avocados.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Avocado handlers are aware of these changed maturity requirements, which were unanimously recommended by the committee at a public meeting; (2) this action continues, unchanged, maturity requirements currently in effect for Florida avocados and handlers would need no additional time to continue operating in accordance with such requirements; (3) shipment of the 1988–89 season Florida avocado crop is currently underway; (4) the avocado import requirements are mandatory under section 8e of the Act; (5) the interm final rule provided a 30-day comment period, and no comments were received; and (6) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food grades and standards, Imports, Avocados.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Parts 915 and 944 is taken:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR Parts 915 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending § 915.332, which was published in the **Federal Register** (53 FR 20601, June 6, 1988), is adopted as a final rule without change.

3. This section is applicable to avocados imported into the United States under § 944.31 as of August 22, 1988.

Dated: August 11, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–18516 Filed 8–16–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-98-AD; Amdt. 39-5998]

Airworthiness Directives: Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, except for the Model A300-600, which requires certain changes to the procedures in the Airplane Flight Manual (AFM) related to operation of the emergency lighting system. This amendment is prompted by pilot reports that the emergency lighting system does not illuminate with loss of AC power, and that the AFM does not contain compensating procedures which would ensure that the lights would be turned on by the flight crew prior to the need for an emergency evacuation. This condition, if not corrected, could result in the lack of emergency lighting for evacuation of the airplane's occupants in an emergency when the airplane's normal AC power is interrupted.

EFFECTIVE DATE: September 2, 1988.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Générale de L'Aviation (DGAC), which is the airworthiness authority of France, has notified the FAA of an unsafe condition which may exist on Model A300 series airplanes, excluding the Model A300-600, relating to the operation of the emergency lighting system. There have been pilot reports that, during a check of the emergency lighting system, the lights did not illuminate with loss of AC power, and the Airplane Flight Manual (AFM) did not contain compensating procudures which would ensure that the lights would be turned on by the flight crew prior to an emergency evacuation. [Federal Aviation Regulation (FAR) § 25.812 requires that the emergency lighting system illuminate upon loss of the airplane's normal electrical power, or that procedures exist which will ensure that emergency lighting is provided without the need for crew action during an emergency evacuation.] This condition, if not corrected, could result in the lack of emergency lighting during an evacuation when the airplane's normal AC power is interrupted.

The FAA has determined that the operational procedures in the AFM must be revised to require that:

a. The MIN CABIN LT selector, if installed, be in the "ON" position for taxi, takeoff, landing, and ditching. This will ensure that the cabin overhead exit lighting is provided for emergency evacuation independent of any further crew action, but does not provide for illumination of the floor proximity lighting.

b. The EMER EXIT LT selector be switched to the "ON" position by the flight crew for emergency evacuation. This will provide for illumination of the floor proximity lighting, but requires crew action when conducting an emergency evacuation. The EMER EXIT LT selector cannot be switched on earlier since the battery which powers the system only has the capacity to provide illumination for approximately 13 minutes.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist on other airplanes of the same type design registered in the United States, this AD requires revising the AFM to ensure cabin illumination will be provided for an emergency evacuation. This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking pursuant to this subject.

Since a condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, excluding the Model A300-600, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the possibility that the emergency lighting will not be provided to the airplanes occupants for evacuation when the airplanes normal AC power is interrupted, accomplish the following.

A. Within 10 days after the effective date of this AD, the following procedures must be applied and a copy of this AD or the changes indicated below must be inserted in the appropriate Section of the Airplane Flight Manual (AFM), as indicated below:

1. This sentence is to be inserted facing 3-02-00 page 11:

"EMERGENCY PROCEDURES—DITCHING

When ditching, the MIN CABIN LT selector (if installed) must be switched ON".

2. This sentence is to be inserted facing 3–02–00 page 12:

"EMERGENCY PROCEDURES—EMERGENCY EVACUATION

When the procedure EMERGENCY EVACUATION is applied, the EMER EXIT LT selector must be selected 'ON' after parking brake is ON".

3. This sentence is to be inserted facing 4–03–00 page 1:

"NORMAL PROCEDURES—TAXI

Prior to push back, the MIN CABIN LT selector (if installed) must be switched 'ON' and remain ON until gear retraction."

4. This sentence is to be inserted facing 4–03–00 page 4:

"NORMAL PROCEDURES—LANDING

Before landing, the MIN CABIN LT selector (if installed) must be switched 'ON' and should remain ON until engine shutdown or until parked."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 2, 1988.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–18542 Filed 8–16–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–01–AD; Amdt. 39–5996]

Airworthiness Directives: Boeing Model 737–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires the modification of the autopilot flight control computers (FCC) and autopilot mode control panel (MCP). This amendment is prompted by reports of Boeing Model 737–200 series airplanes (equipped with Sperry Model SP–177 autopilots) having reported occurrences of non-selected changes in Altitude (ALT), Indicated Airspeed/Mach (IAS/MACH) and/or Vertical Speed (V/S) display window values on the autopilot mode control panel. This condition, if not corrected, could result in the airplane flying at an unassigned altitude.

EFFECTIVE DATE: September 23, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; and Honeywell Incorporated, Sperry Commercial Flight Systems Group, P.O. Box 21111, Phoenix, Arizona, 85036, Attn: Customer Services, Air Transport Systems Division. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office; telephone (206) 431–1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway, South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement or modification of the FCC and MCP on certain Boeing Model 737–200 series airplanes, was published as a Supplemental Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on April 29, 1988 (53 FR 25406). That action amended an earlier NPRM, published in the **Federal Register** on February 19, 1987 (52 FR 5140), to specify different, improved replacement parts and modification units, and to reflect different revisions of the applicable service bulletins. The requirement to install these improved parts and units was necessary, since those called out in the original NPRM proved to be inadequate in eliminating the unsafe condition addressed in this AD action.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received in response to the Supplemental NPRM.

The commenter, the Air Transport Association (ATA) of America, expressed concern that its operators who have already modified the subject units in accordance with earlier service bulletin releases will be required to modify the units again. Since the modification will be accomplished by the manufacturer, the ATA requested that FAA verify that the manufacturer's modification schedule is compatible with the proposed compliance period. The FAA has been advised by Sperry Corporation that modification of the fleet can be accomplished in a timely manner in accordance with the compliance time required by this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to replace the units or 24 manhours per airplane to modify the affected components; and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,400 to replace the units, or $64,320 to modify the affected components.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule, will not have a significant economic impact, positive or negative, on a

substantial number of small entities because few, if any, Boeing Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applied to Model 737-200 series airplanes, equipped with Sperry Model SP177 autopilot flight control computers (FCC) and mode control panels (MCP), as listed in Boeing Service Bulletin 737-22A1090, Revision 1, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent non-selected changes in airplane Altitude (ALT), Indicated Airspeed/Mach (IAS/MACH) and/or Verticial Speed (V/S) display windows on the autopilot mode control panel, accomplish the following:

A. Within one year after the effective date of this AD, accomplish either of the following:

1. Install improved FCC and MCP described in Boeing Service Bulletin 737-22A1090, Revision 1, dated February 25, 1988; or

2. Modify the FCC and MCP in accordance with Honeywell Service Bulletins A21-1141-162, dated November 20, 1987, and 21A-1141-163 dated February 19, 1988.

B. An alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Avionics Inspector (PAI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; and the Honeywell Corporation, Sperry Commercial Flight Systems Group, P.O. Box 21111, Phoenix, Arizona 85036, Attn: Customer Services, Air Transport Systems Division. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 23, 1988.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18546 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-10-AD; Amendment 39-6000]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain BAe Jetstream Model 3101 (includes Model 3100) airplanes, which requires an initial inspection of the essential busbar to determine if adequate clearance exists to prevent arcing to surrounding structure, and modification to remedy the inadequate clearance. This action is the result of an FAA review of a report of arcing and the subsequent issuance of a mandatory Alert Service Bulletin by the foreign airworthiness authority. The actions specified in this AD will prevent arcing, and possible loss of essential bus services during critical phases of flight.

EFFECTIVE DATE: September 16, 1988.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless already accomplished.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 24-A-JM7631, dated September 10, 1987, applicable to this AD may be obtained from British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. John P. Dow, Sr., FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring an initial inspection of the essential busbar to determine if adequate clearance exists to prevent arcing to surrounding structure, and modification to remedy the inadequate clearance on certain BAe Jetstream Model 3101 (includes Model 3100) airplanes was published in the **Federal Register** on April 11, 1988 (53 FR 11871). The proposal resulted from a report by a Jetstream Series 3100 airplane operator of arcing between the terminal of a cable and an adjacent busbar mounting bracket on the lefthand bulkhead at fuselage station 130. Consequently, British Aerospace issued Notice to Operators No. J 31-24-2 to advise operators of this situation and provide a suitable interim rectification action. This was followed by issuance of ASB Jetstream 24-A-JM7631, dated September 10, 1987, which describes an initial inspection of the terminal area to ensure adequate clearance exists between the terminal tag of a cable and an adjacent structure. This inspection allows continued operation, and describes remedial action to provide adequate clearance if it does not exist.

The Civil Aviation Authority (CAA) of the United Kingdom (UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the UK, classified this Alert Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

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The FAA examined the available information related to the issuance of ASB Jetstream 24-A-JM7631, dated September 10, 1987, and the mandatory classification of this Service Bulletin by the CAA-UK, and concluded that the condition addressed by BAe ASB Jetstream 24-A-JM7631, dated September 10, 1987, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the Federal Aviation Regulations to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public.

The FAA has determined that this regulation involves approximately 120 airplanes at an approximate one time cost of $30 for the inspection action and $120 for the modification action when it is required for each airplane, or a total one time maximum fleet cost of $18,000. The cost of compliance with the proposed AD is so small that it will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace (BAe): Applies to Model 3101 (includes Model 3100) Jetstream (Serial Numbers 601 thru 646, 648 thru 655, 657, 658, 660 thru 666, 668 thru 695, 697 thru 708, 710 thru 713, 715 thru 741, 743 thru 756, and 758 thru 761) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent electrical arcing and possible damage to the airplane with loss of essential electrical bus services, accomplish the following:

(a) Visually inspect for correct cable terminal ends on cable PD4 and PD6 at terminal post T1BH-2 as described in British Aerospace (BAe) Alert Service Bulletin (ASB) Jetstream 24-A-JM7631, dated September 10, 1987, "Part A—Initial Inspection". If the installation is not as described in the above ASB, prior to further flight modify the cable terminal configuration of cables PD4 and PD6 at terminal post T1BH-2 as described in BAe ASB Jetstream 24-A-JM7631, dated September 10, 1987, "Part B—Rectification".

(b) A 10% adjustment to the compliance time may be used to allow accomplishment of the AD with other scheduled maintenance activities.

(c) The airplane may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA c/o American Embassy, 1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20091; Telephone (703) 435-9100; or may examine this document at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 16, 1988.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18545 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-103-AD; Amdt. 39-5999]

Airworthiness Directives: De Havilland Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to De Havilland Model DHC-8-100 series airplanes, which requires inspection and adjustment, where necessary, of the engine starter-generator brush access cover. It also requires adding a rubber grommet or sealant material at the terminal block area of the generator. This amendment is prompted by field observations of open gaps and cavities on the engine starter-generator, which is located near high pressure fuel components and lines. This condition, if not corrected, could result in explosion and fire when a fuel leak comes in contact with internal arcing of the generator.

EFFECTIVE DATE: September 2, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., De Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: M. Schoenberger or P. Perrotta, ANE-174, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: It has been determined that a potential fire hazard exists on some starter-generator installations on De Havilland Model DHC-8-100 series airplanes because of openings on the generator housing at the brush access cover band and at the terminal block where the conductor bars enter the housing. The location of the starter generator on the engine is close to high pressure fuel components, lines, and fittings. This renders the unsealed starter generator a potential ignition source. It delayed ignition occurs after a high pressure fuel leak, serious nacelle damage could result.

The FAA has reviewed and approved Lucas Aerospace Service Information Letter No. 23088–00X–03, dated June 20, 1988, which describes procedures for positioning, securing, and re-safetywiring the brush access cover band on each starter-generator; and Service Information Letter No. 23088–00X–04, Revision 1, dated July 28, 1988, which describes procedures for sealing the open area of the terminal slot.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires positioning of the brush access cover to close off gaps at the clamp end, and either adding a rubber grommet at the terminal block conductor bars or, as an interim measure, applying sealant material around the terminal block openings, in accordance with the service bulletins previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA intends to revise this rulemaking action to require the installation of the rubber grommet seal on all affected Model DHC–8–100 series airplanes; the optional action of applying the sealing compound, as reflected in paragraph B., is considered interim action at this time. However, the proposed compliance time for installation of the seal is sufficiently long so that notice and public comment will not be impracticable.

Additionally, Lucas Aerospace has advised FAA that it is preparing additional service information concerning procedures for installing the grommet seal; when the information is available, the FAA may consider including those specific procedures in the requirements of this AD.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*, which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

12. By adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to all Model DHC–8–100 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent ingestion of flammable fluids into the engine starter-generator, which could cause a fire in the nacelle, accomplish the following:

A. Within five calendar days after the effective date of this AD, and thereafter every time the brush access cover band has been loosened or whenever a starter-generator is replaced, position, secure, and re-safetywire the brush access cover band on each engine starter-generator, in accordance with Lucas Aerospace Service Information Letter No. 23088–00X–03, dated June 20, 1988.

B. Within 150 flight hours after the effective date of this AD, seal the openings around the terminal post conductor bars where they enter the generator case by either using a Lucas Aerospace Power Equipment Corporation (Lucas Aerospace) grommet, Part Number 23088–1290; or applying a fillet of Dow Corning RTB–738 sealing compound and MIL–P–46112B Kapton sheet, in accordance with Lucas Aerospace Service Information Letter No. 23088–00X–04, Revision 1, dated July 28, 1988.

Note.—Care should be exercised to ensure excess sealant is not allowed to enter the interior of the starter-generator. Also, verify that sealed joint has cured in accordance with manufacturer's instructions prior to operation of the engine.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, New York Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., De Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective September 2, 1988.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–18543 Filed 8–16–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–29–AD; Amdt. 39–6002]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires the covering of a gap in the engine compartment firewall between the core cowl and thrust reverser cowl interface at the pylon to cowl fillet fairing. This amendment is prompted by reports of a gap in the firewall in this area of approximately ⅜ inch by 4 inches. This condition, if not corrected, could result in penetration of an engine fire through this gap, which may then spread to other parts of the airplane.

EFFECTIVE DATE: September 26, 1988.

ADDRESSES: The applicable service information may be obtained from

Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, ANM-140S; telephone (206) 431-1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the covering of a gap in the engine compartment firewall between the core cowl and thrust reverser cowl interface at the pylon to cowl fillet fairing on Boeing Model 767 series airplanes, was published in the **Federal Register** on April 22, 1988 (53 FR 13286).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments were received from Boeing and the Air Transport Association (ATA) of America:

Boeing commented that the applicability of the rule should be limited to the Model 767 airplanes with Pratt and Whitney JT9D-7R4 series engines and General Electric CF6-80A and -80A2 engines only. The conditions cited in the NPRM do not exist in the Model 767 airplanes equipped with General Electric CF6-80C2 or Pratt and Whitney PW4000 series engines. The FAA concurs with these comments and the applicability statement has been revised in the final rule to more clearly state which Model 767 engine installations are affected.

The ATA commented that, while no ATA member expressed technical objection to the proposed rule, nearly all of the affected members expressed concern with the 90 day compliance period. ATA requested that a compliance period of 180 days after the effective date of the AD be adopted for the following reasons:

1. The cost impact data provided in the proposed rule indicates that it would take approximately 14 manhours per airplane to accomplish the required modifications. After issuance of the NPRM, Boeing issued Service Bulletins 767-54A0027 for the JT9D engine installations, and 767-54A0028 for the CF6 engine installations, with estimate 28 to 32 manhours per airplane. The elapsed time estimate is eight hours, which does not include the cure time for an epoxy that is necessary. This epoxy set-up time requires an additional eight hours minimum or, preferably, an additional 24 hours elasped time. This will require the operators to schedule the modification at a main maintenance base visit. If a 90 day compliance period is adopted, the operators will be forced to reschedule their operations in order to accommodate the additional maintenance holds that will likely result in airplanes being removed from scheduled operations.

2. The ATA understands that, while some parts kits are now available, the kits for spare engines will not be available until July 28, 1988.

3. ATA believes that air safety will not be compromised by extending the compliance period to 180 days.

The FAA concurs with this request. The 14 manhours accomplishment time reflected in the NPRM was based on initial estimates of the time required to incorporate the firewall seals that were still under development by Boeing. Although the NPRM does not specify any particular firewall seal design, it was recognized by, and was the intent of, the FAA that the Boeing firewall seal design would be the predominant means of compliance with the AD. Since the final estimate for the installation of this design effectively extends the AD action from an overnight stop for each airplane to a main maintenance base visit, the FAA concurs with the ATA comment that airplanes would be required to be removed from scheduled operations with the 90 day compliance period. The FAA does not consider the comment concerning spare engine kit availability to have any major relevance in this determination since the AD only applies to engines already installed on airplanes. A modified cowling can be transferred to a spare engine when it is installed. In any case, kits are expected to be available for all engines, including spares, by July 28, 1988. The FAA has determined that air safety would not be significantly compromised by extending the compliance period from 90 to 180 days. Therefore, the AD has been revised accordingly. Additionally, the cost impact analysis has been revised to reflect the latest data concerning the number of manhours and costs required for accomplishing the requirements of this AD.

The NPRM stated that Boeing was developing service bulletins for both the Pratt and Whitney JT9D and General Electric CF6 installations, which would accomplish the intent of the proposed rule and that these service bulletins could be referenced as an acceptable means of compliance when approved by the FAA. Boeing Service Bulletin 767-54A0027, addressing JT9D-7R4D, -7R4E, and -7R4E4 powered Model 767 airplanes, was approved on June 2, 1988. Boeing Service Bulletin 767-54A0028, addressing CF6-80A and -80A2 powered Model 767 airplanes, was approved on June 10, 1988. Since these service bulletins are currently available, the AD has been revised to state that a firewall seal assembly installed in accordance with these service bulletins is an acceptable means of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes noted above.

It is estimated that 90 airplanes of U.S. registry will be affected by this AD, that it will take approximately 31 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. It is estimated that parts would be provided at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $111,600.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, equipped with Pratt and Whitney JT9D-7R4D, -7R4E, or -7R4/E4 engines, or General Electric CF6-80A or -80A2 engines, certificated in any category. Compliance required within 180 days after the effective date of the AD, unless previously accomplished.

To preclude the spread of an engine fire to other parts of the airplane through a gap in the engine firewall, accomplish the following:

A. Accomplish either paragraph A.1., or A.2., below.

1. Install a firewall seal to cover a gap located between the engine core cowl and thrust reverser cowl at the pylon to cowl fillet fairing, in a manner approved by the manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

2. Install a firewall seal assembly in accordance with Boeing Alert Service Bulletin 767-54A0027, dated June 2, 1988, for airplanes equipped with Pratt and Whitney JT9D-7R4D, -7R4E, or -7R4E4 engines; or Boeing Alert Service Bulletin 767-54A0028, dated June 10, 1988, for airplanes equipped with General Electric CF6-80A or -80A2 engines.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 26, 1988.

Issued in Washington, DC, on August 9, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18539 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-28-AD; Amdt. 39-6001]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires inspection of the aft pressure bulkhead for damage and cracking, and repair, as necessary. This amendment is prompted by reports of damage on the aft side of the pressure bulkhead sustained during maintenance operations. This condition, if not corrected, could lead to failure of the aft pressure bulkhead and depressurization of the airplane.

EFFECTIVE DATE: September 26, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection of the aft pressure bulkhead on certain Boeing Model 767 airplanes for damage and cracking, and repair, as necessary, was published in the **Federal Register** on April 22, 1988 (53 FR 13285).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments from the manufacturer and one operator were received requesting that the initial threshold for inspection be adjusted for those operators currently accomplishing the required inspection at 6,000 flight cycle intervals. The FAA notes that credit for previously performed inspections is provided by the statement "unless previously accomplished," reflected in the compliance statement of the rule. Paragraph A. of the AD has been revised, however, to clarify the intent of the rule in this regard.

An operator requested that a definition of a flight cycle be included in the final rule to note that, when cabin differential pressure is below 2.0 PSI, flight cycles need not be counted. The FAA concurs with this request and has added a new paragraph C. to the AD to include this definition. The FAA has determined that this revision is congruent with the intent of the AD and will not adversely impact safety.

The Air Transport Association (ATA) of America, on behalf if its members, had no objections to the proposed AD. However, it requested a note be added to the AD which states that a detailed inspection accomplished in accordance with the Maintenance Planning Document (MPD) constitutes an equivalent inspection to the inspection described by the service bulletin referred to in the proposed AD. The FAA does not concur with this request since the MPD is not FAA-approved. Under the provisions of paragraph D., however, operators may request approval for alternate means of compliance for inspections equivalent but not identical to those required by the AD.

Additionally, the final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph D.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously described.

The FAA notes that, at this time, inspection procedures for fatigue cracking are not contained in the referenced Boeing service bulletin; however, the manufacturer has advised FAA that the service bulletin will be revised to include such procedures.

When these inspection procedures are available, the FAA may consider further rulemaking to revise this AD to require inspection for fatigue cracks.

It is estimated that 82 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. Operators is estimated to be $39,360.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line numbers 1 through 175, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a condition that could lead to depressurization of the airplane, accomplish the following:

A. Prior to the accumulation of 6,000 flight cycles or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later, unless accomplished within the last 5,000 flight cycles, and thereafter at intervals not to exceed 6,000 flight cycles, perform a detailed visual inspection of the aft side of the entire body station 1582 pressure bulkhead for damage (as defined in the Structural Repair Manual) and cracking, in accordance with Boeing Service Bulletin 767–53–0026, dated November 19, 1987.

B. Repair damage and cracking, prior to further flight, in accordance with Boeing Service Bulletin 767–53–0026, dated November 19, 1987.

C. For the purposes of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was equal to or greater than 2.0 PSI.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 26, 1988.

Issued in Washington, DC, on August 9, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–18540 Filed 8–16–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–88–AD; Amdt. 39–6003]

Airworthiness Directives: British Aerospace Viscount 700 and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of British Aerospace (BAe) Viscount Model 700 and 800 series airplanes by individual letters. This AD requires a visual inspection between wing Stations 96 and 131 of the wing upper skin top surface and lower surface above the main (center) spar upper cap for corrosion, and repair or replacement of the damaged parts, if necessary. This action was prompted by reports of corrosion found on the top surface of the inner wing top spar boom between Wing Stations 96 and 131. This condition, if not corrected, could result in structural failure of the wing.

EFFECTIVE DATES: September 6, 1988.

This AD was effective earlier to all recipients of Priority Letter 88–14–04, dated July 8, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113, telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region. 17900 Pacific Highway South, C–68966, Seattle, Washington 98168

SUPPLEMENTARY INFORMATION: On July 8, 1988, the FAA issued priority letter 88–14–04, applicable to British Aerospace (BAe) Viscount Model 700 and 800 series airplanes, which requires a visual inspection between Wing Stations 96 and 131 of the wing upper skin top surface and lower surface above the main (center) spar upper cap for corrosion, and repair or replacement of damaged parts, if necessary. That

action was prompted by reports of corrosion found on the top surface of the inner wing top spar boom between Wing Stations 96 and 131. This condition, if not corrected, could result in structural failure of the wing.

British Aerospace has issued Campaign Wire REF FSS/VIS/886135, dated June 30, 1988, which describes procedures for visual inspection between Wing Stations 96 and 131 of the wing upper skin top surface and lower surface above the main (center) spar upper cap for corrosion, and repair or replacement of damaged parts, if necessary. The United Kingdom Civil Aviation Authority (CAA) has classified the British Aerospace Campaign Wire as mandatory and has issued British Airworthiness Directive 001-07-88 to address this subject.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires visual inspections between Wing Stations 96 and 131 of the wing upper skin top surface and lower surface above the main spar upper cap for corrosion, and repair or replacement of damaged parts, it necessary, in accordance with the British Aerospace Campaign Wire described above. In addition, the FAA has determined that, since the unsafe condition addressed by this action concerns corrosion, the inspection must be repeated at 12-month intervals.

Following issuance of the Priority Letter AD, one operator inquired of FAA if the applicability of the AD intended to include the Viscount Model 810 as part of the "800 series airplanes." The FAA notes that the designation of "all Viscount Model 700 and 800 series airplanes" in the applicability statement includes *all* model numbers in those series (i.e., 744, 745, 810 series).

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, is accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, appropriate, will be prepared and placed in the regulatory docket (otherwise, and evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Viscount Model 700 and 800 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent structural failure of the wing, accomplish the following:

A. Within 7 days after the effective date of this AD, and thereafter at intervals not exceed 12, months, accomplish the following:

1. Visually inspect the right and left upper wing surface between Wing Stations 96 and 131 above the main (center) spar upper cap for evidence of corrosion, in accordance with British Aerospace Campaign Wire REF /FSS/VIS/886135, date June 30, 1986. Signs of corrosion include lifting of the skin, loose fasteners, and corrosion stains around the fasteners.

2. Visually inspect the underside of the upper wing skin surface between Stations 96 and 131 both front and aft sides of the main (center) spar upper cap, both right and left wings, for evidence of corrosion, in accordance with British Aerospace Campaign Wire REF FSS/VIS/886135, dated June 30, 1988. This area is accessed through the main landing gear (MLG) bay.

B. If corrosion is found or suspected as result of the inspections required by paragraph A., above, prior to further flight, remove the wing upper skin between wing stations 96 and 131 for more thorough inspection for corrosion, and repair or replace corrosion-damaged structures, if necessary, in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 6, 1988

It was effective earlier to all recipients of Priority Letter AD 88-14-04, issued July 8, 1988.

Issued in Washington, DC, on August 9, 1988.

Thomas E. McSweeny

Acting Director, Office of Airworthiness.

[FR Doc. 88-18538 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 176

[T.D. 88-47]

Customs Regulations Amendments To Correct Outdated References

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

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SUMMARY: This document amends § 176.21, Customs Regulations, by changing the reference to the Department of Justice office responsible for referring statements on agreed facts (stipulations) from the "Customs Section" to the "International Trade Field Office". It also corrects the zip code for that office by changing "10007" to read "10278".

The International Trade Field Office of the Department of Justice is responsible for referring statements on agreed facts (stipulations) which are to be used by the Department of Justice in submitting cases to the Court of International Trade to Customs officials for certification. These amendments are being made to prevent any confusion or undue delays in the preparation of, delivery to, or receipt of any such statements by the International Trade Field Office.

EFFECTIVE DATE: August 17, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel A. Pinkus, Assistant Chief Counsel, International Trade Litigation, U.S. Customs Service, 26 Federal Plaza, New York, New York 10278, (212) 269–9271.

SUPPLEMENTARY INFORMATION:

Background

Statements of agreed facts (stipulations) are used by the Department of Justice in submitting cases to the Court of International Trade. The office of the Justice Department which is responsible for referring stipulations to Customs officials for certification used to be known as the "Customs Section". It is now known as the "International Trade Field Office". Also, the zip code for the office has been changed to "10278" from "10007". Section 176.21, Customs Regulations (19 CFR 176.21), currently sets forth the outdated title and zip code of the office.

As part of its continuing program to keep its regulations current and thus serve the public better, Customs is amending § 176.21, Customs Regulations, in this document to correct the office title and zip code. These changes will prevent confusion and facilitate the receipt and delivery of statements to the International Trade Field Office.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by the E.O. are not required.

Public Notice Requirement

Inasmuch as the amendments merely correct the office title and zip code which have changed since the regulations were initially issued, and neither impose any additional burdens on, or take away any existing rights or privileges from the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(2), a delayed effective date is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in Part 176

Courts.

Amendments to the Regulations

Part 176, Customs Regulations (19 CFR Part 176), is amended as set forth below.

PART 176—PROCEEDINGS IN THE COURT OF INTERNATIONAL TRADE

1. The authority citation for Part 176 continues to read as follows:

Authority: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624.

§ 176.21 [Amended]

2. Section 176.21 is amended by removing the words "Customs Section", and inserting in their place, the words "International Trade Field Office", and further, by removing the zip code "10007" and inserting in its place, the zip code "10278".

William von Raab,

Commissioner of Customs.

Approved: August 2, 1988.

Salvatore R. Martoche,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88–18559 Filed 8–16–88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 970

[Docket No. R-88-1407; FR-2463]

Public Housing Program; Demolition or Disposition of Public Housing Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This rule implements section 121 of the Housing and Community Development Act of 1987. Section 121 amends section 18 of the United States Housing Act of 1937, which governs the demolition and disposition of public and Indian housing. The provision combines two of the previous demolition criteria, so that demolition may be approved if the project is obsolete due to its physical condition, location, or other factors which make it unusable for housing *and* no reasonable program of modifications, such as rehabilitation, is feasible to return the project to useful life. Section 121 also provides that projects may not be demolished or disposed of, unless the public housing agency has developed a plan for the provision of an additional replacement unit for each unit involved. The plan must include a schedule for its completion (not to exceed six years); and HUD must, upon approving the plan, agree to commit the funds necessary to carry out it over the approved schedule, to the extent such funding is not provided from other sources (*e.g.*, State or local programs or proceeds of disposition) and subject to availability of future appropriations. In addition, section 121 repealed a previous statutory provision which made section 18 inapplicable to conveyance of units under homeownership programs. This rule continues that inapplicability to units under certain homeownership programs.

DATES: *Effective date:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published

announcing a specific effective date. Comment due date: October 17, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nancy S. Chisholm, Director, Office of Policy, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–6713. A telecommunications device for deaf persons (TDD) is available at (202) 472–6725. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

[**Note:** This interim rule makes changes, as discussed below, to the existing rule on demolition or disposition of public housing. Except for some minor editorial revisions and technical conforming changes, these changes reflect 1987 legislative amendments, also discussed below, and therefore are only the necessary amendments to the existing rule to implement the required statutory changes. Accordingly, commenters are requested to limit their comments to changes made as a result of the 1987 legislative amendments.]

Section 121 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) ("1987 Act") amended section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) ("1937 Act")—HUD's rules governing the demolition and disposition of public and Indian housing. The provision combined two of the criteria for demolition of public housing units, by requiring *both* that the project or portion of the project be obsolete as to physical condition, location, or other factors, making it unusable for housing purposes *and* that no reasonable program of modifications is feasible under the standards set forth in 24 CFR Part 968 (Comprehensive Improvement Assistance Program), to return the project or portion of the project to useful life. Before this statutory change, *either* criterion could be the basis for demolition of a project or portion of a project. The regulatory amendment for implementation of this statutory requirement can be found in § 970.6 of this rule.

The 1987 Act made no change in the alternative demolition criterion which is applicable to demolition of only a portion of a project; *i.e.*, where demolition will help to assure the useful life of the remaining portion of the project (*e.g.*, selective demolition of units to reduce project density incident to comprehensive modernization of an older project).

Section 121 of the 1987 Act also mandated detailed requirements for a replacement housing plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit—on a one-for-one basis—for each public housing dwelling unit to be demolished or disposed of. Approval of an application for demolition or disposition requires a commitment for the funds necessary to carry out the plan. To the extent such funding is not provided from other sources (*e.g.*, State or local programs or proceeds of disposition), HUD approval of the application for demolition or disposition will be conditioned on HUD's agreement to commit, subject to availability of future appropriations, the funds necessary to carry out the plan in accordance with its approved schedule. Because of the responsibility imposed on HUD to commit the funds necessary to carry out the plan, a high degree of certainty with respect to State and local commitments is necessary.

The statutory requirements for the plan enumerate the following types of eligible replacement housing, to be used singularly or in any combination: (1) The acquisition or development of additional public housing dwelling units; (2) the use of 15-year project-based assistance under section 8, such as Moderate Rehabilitation under 24 CFR Part 882, Subparts D & E, and Project-Based Certificate Assistance under 24 CFR Part 882, Subpart G: (3) the use of not less than 15-year project-based assistance under other Federal programs, such as Housing Development Grants under 24 CFR Part 850; (4) the acquisition or development of dwelling units assisted under a State or local government program that provides for project-based assistance that is, in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years), comparable to assistance under section 8(b)(1) of the 1937 Act; or (5) any combination of such methods, or (6) the use of 15-year tenant-based assistance under section 8 (excluding vouchers under section 8(o)) which complies with specified statutory conditions as discussed below. Other *examples* of the types of housing that are acceptable replacement housing are Property Disposition projects with 15-year section 8 assistance and section 202/8 projects.

Based on projected appropriations for the sources of replacement housing listed above, the Department anticipates that (1) the acquisition or development of additional public housing dwelling units and (2) the use of 15-year project-based assistance under section 8 will be the most available sources. Currently, there is no additional funding expected for the Housing Development Grant Program listed under (3) above, although acceptable sources may come from the section 202/8 program for eligible tenants. Sources from State and local government programs are also possible, if such programs meet the criteria specified above under (4). The use of 15-year tenant-based assistance under section 8 is questionable at this time, because of pending legislation which proposes to reduce the term of that type of assistance from 15 years to 5 years.

[**Note.**—The statutory restrictions on types of housing assistance that may be counted as replacement units do not apply to relocation. For example, tenants may relocate to other, existing public housing units, or to privately owned housing, with voucher assistance, as qualified below. The purpose of relocation is to assure that all displaced families obtain other suitable housing at affordable rents, while the purpose of one-for-one replacement is to assure that the total housing stock available is not diminished.]

Although section 121 of the 1987 Act prohibits the use of vouchers for replacement housing, the Department has determined that vouchers may be an acceptable relocation housing resource, provided the PHA can ensure that the rent paid by the displaced tenant following relocation will not exceed the amount permitted under section 3(a) of the 1937 Act. The rule further requires that the PHA be responsible for providing assistance to the displaced tenant in that regard and permits the PHA to use vouchers or certificates to ensure that the rent paid by the tenant does not exceed the amount permitted under section 3(a) of the 1937 Act. The rule states that the displaced tenant may, in any event, request a voucher under the section 8 Housing Voucher Program if it is of the tenant's choosing and the tenant understands that rent under the section 8 Housing Voucher Program may exceed the amount permitted under section 3(a) of the 1937 Act.

Despite the possible unlikelihood of section 8 tenant-based assistance being an acceptable replacement resource, as discussed above, the following statutory limitations on its use should be kept in mind:

The use of section 8 tenant-based assistance (Existing Housing certificates) for replacement housing requires a two-part finding by HUD that (1) project-based assistance is

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infeasible, and (2) private rental housing is actually available to those who would be assisted under the plan and the supply of such housing is sufficient for the total number of certificates and vouchers available in the community and is likely to remain available for the full 15-year term of the assistance. Such finding should be based on objective information, such as the following statutory data elements: rates of participation by landlords in the section 8 program; size, conditions and rent levels of available rental housing as compared to section 8 standards; the supply of vacant existing housing meeting the section 8 housing quality standards with rents at or below the fair market rent, or the likelihood of adjusting the fair market rent; the number of eligible families waiting for public housing or housing assistance under section 8; and the extent of discrimination against the types of individuals or families to be served by the assistance.

To justify the two-part finding, the PHA must provide sufficient information to support both parts of the finding—why project-based assistance is infeasible and how the conditions and tenant-based assistance will be met, based on the pertinent facts of the particular local situation.

The determination as to infeasibility of project-based assistance must be based on the standards for feasibility stated in the regulations pertaining to each type of eligible project-based program identified in § 970.11, including public housing, as well as the other types of eligible Federal, State and local programs. Thus, a finding of infeasibility may be made only if the applicable feasibility standards could not be met under *any* of the eligible programs, or any combination of them. For example, with regard to the feasibility of additional public housing development, relevant factors would include local needs for new construction or rehabilitation, availability of suitable properties for acquisition or sites for construction, and HUD determinations under cost containment policies.

The second part of the finding—availability of housing for tenant-based assistance—is a matter of whether the facts concerning local need and housing supply justify such a finding. Above are listed the statutory data elements on which a finding should be based. HUD may require additional data as may be relevant in particular circumstances.

The 1987 Act also includes a requirement that the replacement housing plan contain a schedule for completing the plan, within a period consistent with the size of the proposed demolition or disposition, but that the schedule shall in no event exceed six years. Other requirements contained in the Act are (1) that the plan be approved by the unit of general local government in which the project is located, (2) that the plan ensure that the rent paid by the tenant after relocation will not exceed that permitted under the Act, and (3) that there be no action to demolish or dispose of any unit until the tenant has been relocated to decent, safe, sanitary, and affordable housing that is, to the maximum extent practicable, of the tenant's choice. The rule also allows replacement with units of different sizes, after analysis of local needs, to accommodate changes in local priority needs, provided that at least the same total number of individuals and families may be accommodated.

Regulatory amendments implementing the statutory requirements discussed above can be found in §§ 970.4, 970.5, 970.6, 970.7, 970.8, of this rule and in a new § 970.11 relating specifically to the replacement housing plan requirements.

Paragraph (b) of § 970.5 is revised to specify in the last sentence, which states that the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 does not apply to displacement as a result of the activities covered by Part 970, that inapplicability goes only to disposition activities under Part 970. The Uniform Relocation Act Amendments of 1987, Pub. L. 100–27, amended the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to remove the exemption for relocation because of demolition of public housing. When implementing regulations for the Relocation Act Amendments are made final (approximately April 1989), they will be applicable to displacement from public housing as a result of demolition activities covered by Part 970. Pending effectiveness of the Relocation Act Amendments in April 1989, the exemption covering demolition and disposition activities as contained in the existing § 970.5 stands.

In addition to the regulatory amendments discussed above, § 970.2, Applicability, is amended to except from coverage of Part 970 homeownership sales under (1) section 21 of the 1937 Act (as added by section 123 of the 1987 Act), (2) the Turnkey III/IV and Mutual Help Homeownership Opportunity Programs, and (3) other homeownership programs, such as the Public Housing Homeownership Demonstration Program, and other homeownership programs established under sections 5(h) or 6(c)(4)(D) of the 1937 Act. (Section 21 pertains to homeownership programs through resident management corporations.) Thus, the demolition/disposition regulations will be inapplicable to all conveyances for homeownership.

The Department has also determined that Part 970 should not apply to demolition or disposition of units deprogrammed before February 5, 1988 (the effective date of the 1987 Act). Units are deprogrammed for varying reasons, and because of this, the Department invites public comment concerning whether Part 970's requirements ought to be applied to some or all housing units deprogrammed after February 5, 1988, and in the future. This interim rule, by its silence, extends coverage to all units deprogrammed after February 5, 1988.

A technical correction is made to § 970.4(e) (redesignated by this rule as § 970.4(d)) to clarify that the requirements of environmental and historic perservation statutes applicable to the existing regulation also apply to the replacement housing plan required under the 1987 Act.

Editorial corrections are made to § 970.5 to reword the first sentence of paragraph (a) to state that "tenants who are to be displaced as a result of demolition *or* disposition shall be *relocated* to other decent, safe, sanitary and affordable housing * * *" (Emphasis supplied.)

In § 970.9, paragraph (b)(1) is amended to state that net proceeds (after payment of HUD-approved costs of diposition and relocation) shall be used for the retirement of outstanding obligations, *if any*, issued to finance original development or modernization of the project in recognition of the possibility that such obligations may have been forgiven. (See 42 U.S.C. 1437b.) Reference to the payment of development costs has been deleted because development cost is contained in the outstanding obligation, and double payment should not be implied.

A new § 970.12 is added which specifies the types of actions that may be permitted before approval of an application for demolition or disposition. The section mandates that a PHA may not take any action to demolish or dispose of a public housing project without obtaining HUD approval under Part 970, and that until such time, the PHA must continue to meet its obligations under the ACC as far as operation and maintenance of the project. However, approval is not required for planning activities, analysis, or consultations, such as viability studies, comprehensive modernization planning or comprehensive occupancy planning.

Other Matters

Justification for Interim Rule

Section 7(o) of the Department of Housing and Urban Development Act provides tha no rule may become effective until after the first period of 30 calendar days of continuous session of Congress following its publication. Under the current congressional calendar, the Department must publish a final or interim rule no later than September 7, 1988, in order for it to become effective this calendar year. A final or interim rule published after that date must wait until Congress convenes in January 1989 for the 30 calendar days of session to run and would not become effective until mid-March 1989.

It is not feasible for the Department to develop a proposed rule, publish that proposed rule and provide a period for comment, and develop and publish a final rule, all by September 7, 1988. In the meantime, processing and approval of applications for demolition or disposition of public housing units, other than in the case of emergencies threatening the health or safety of tenants or of the community, have been suspended awaiting regulatory implementation of the 1987 Act requirements. Therefore, the Department has determined that it is both impracticable and contrary to the public interest to extend the developmental period for this rule by requiring public comment before its date of effectiveness. Accordingly, this rule is being promulgated as an interim rule to facilitate implementation of an effective rule this calendar year, while still providing for public comment. Public comment will be taken into account in a follow-up final rule.

Findings and Certifications

A Finding on No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been submitted to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will have a significant economic impact on a substantial number of small entities because the 1987 Act provides for substantial contributions of funds by the Federal government to assist in bearing the costs associated with the policy changes reflected in the rule. This cost sharing will, of course, by available both to large and small PHAs whose demolition and disposition decisions are affected by the rule.

This rule was listed as item number 1023 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 970

Public housing.

Accordingly, 24 CFR Part 970 is amended as follows:

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

1. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 18, United States Housing Act of 1937 (42 U.S.C. 1437p); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 970.2, paragraph (c) is revised and a new paragraph (g) is added, to read as follows:

§ 970.2 Applicability.

* * * * *

(c) The conveyance of public housing for the purpose of providing homeownership opportunities for lower income families under Section 21 of the Act, the Turnkey III/IV or Mutual Help Homeownership Opportunity Programs, or the Public Homeownership Demonstration Program or other homeownership programs established under section 5(h) or 6(c)(4)(D) of the Act.

* * * * *

(g) Units deprogrammed before February 5, 1988.

3. In § 970.4, paragraph (b) is removed, existing paragraphs (c), (d), and (e) are redesignated as (b), (c), and (d), and newly redesignated (d) is revised and a new paragraph (e) is added to read as follows:

§ 970.4 General requirements for HUD approval of applications for demolition or disposition

* * * * *

(d) Demolition or disposition (including any related replacement housing plan) will meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the National Historic Preservation Act of 1966 (16 U.S.C. 469), and related laws, as stated in the Department's regulations at 24 CFR Part 50.

(e) The public housing agency has developed a replacement housing plan, in accordance with § 970.11, and has obtained a commitment for the funds necessary to carry out the plan over the approved schedule of the plan. To the extent such finding is not provided from other sources (*e.g.*, State or local programs or proceeds of disposition), HUD approval of the application for demolition or disposition is conditioned on HUD's agreement to commit the necessary funds (subject to availability of future appropriations).

4. Section 970.5 is revised to read as follows;

§ 970.5 Relocation of displaced tenants on a nondiscriminatory basis.

(a) (1) Tenants who are to be displaced as a result of demolition or disposition must be relocated to other decent, safe, sanitary, and affordable housing (at rents no higher than permitted under the Act,) which is, to the maximum extent practicable, housing of their choice, on a nondiscriminatory basis, without regard to race, color, religion (creed), national origin, handicap, age, or sex, in compliance with applicable Federal and State laws.

(2) Relocation may be to other publicly assisted housing, including housing assisted under section 8 of the Act and housing available as a result of the section 8 Housing Voucher Program, provided the PHA ensures that the rent

paid by the displaced tenant following relocation will not exceed the amount permitted under section 3(a) of the Act. The PHA shall be responsible for providing assistance to the displaced tenant in this regard and may use vouchers or certificates to ensure that the rent paid by the tenant does not exceed the amount permitted under section 3(a) of the Act. Nothing in this paragraph shall prohibit a displaced tenant from requesting a voucher under the section 8 Housing Voucher Program for use in a housing unit with rent that exceeds the amount permitted under section 3(a) of the Act, if such a unit is chosen by a displaced tenant who has been provided an opportunity to use housing voucher assistance in accordance with this paragraph.

(b) In addition to provision of relocation housing, assistance to all displaced tenants shall include assistance in finding other suitable housing, including payment of actual, reasonable moving costs, and counseling and advisory services to assure that full choices and real opportunities exist for tenants displaced from public housing scheduled for demolition or other disposition to select relocation housing in a full range of neighborhoods in which suitable relocation housing may be found, in and outside areas of minority concentration. Tenants to be displaced become eligible for assistance as of the date of receipt of an official notice to move. Pending the effectiveness of final rules to implement the 1987 amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("the URA"), the URA does not apply to displacement as a result of the desposition activities covered by this part.

5. Section 970.6 is revised to read as follows:

§ 970.6 Specific criteria for HUD approval of demolition requests.

In addition to other applicable requirements of this part, HUD will not approve an application for demolition unless HUD determines that one of the following criteria is met:

(a) In the case of demolition of all or a portion of a project, the project, or portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes and no reasonable program of modifications, in keeping with the Comprehensive Improvement Assistance Program (CIAP) regulations in 24 CFR Part 968, is feasible to return the project or portion of the project to useful life. Major problems indicative of obsoleteness are—

(1) As to physical condition: structural deficiencies, substantial deterioration, or other design or site problems (*e.g.*, severe erosion or flooding);

(2) As to location: physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review in accord with 24 CFR Part 50, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use;

(3) Other factors which have seriously affected the marketability, usefulness, or management of the property.

(b) In the case of demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project (*e.g.*, to reduce project density).

6. In § 970.7, paragraph (a)(2) is revised to read as follows:

§ 970.7 Specific criteria for HUD approval of disposition requests.

(a) * * *

(2) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as lower income housing projects, and that will preserve the total amount of lower income housing stock available to the community. A PHA must be able to demonstrate to the satisfaction of HUD that the additional units are being provided in connection with the disposition of the property.

* * * * *

7. In § 970.8, paragraph (f) is revised to read as follows:

§ 970.8 PHA application for HUD approval.

* * * * *

(f) A replacement housing plan, as required under § 970.11, and a statement from the unit of general local government in which the project is located, indicating approval of the replacement plan.

* * * * *

8. In § 970.9, paragraph (b)(1) is revised to read as follows:

§ 970.9 Disposition of property; use of proceeds.

* * * * *

(b) * * *

(1) For the retirement of outstanding obligations, if any, issued to finance original development or modernization of the project; and

* * * * *

9. Section 970.11 is redesignated as § 970.13, and new §§ 970.11 and 970.12 are added, to read as follows:

§ 970.11 Replacement Housing Plan.

(a) HUD may not approve an application or furnish assistance under this part unless the PHA submitting the application for demolition or disposition also submits a plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit (at rents no higher than permitted under the Act) for each public housing dwelling unit to be demolished or disposed of under the application. The plan must include any one or combination of the following:

(1) The acquisition or development of additional public housing dwelling units;

(2) The use of 15-year project-based assistance under section 8 (as provided for in 24 CFR Part 882, Subpart G);

(3) The use of not less than 15-year project-based assistance under other Federal programs;

(4) The acquisition or development of dwelling units assisted under a State or local government program that provides for project-based assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years) to assistance under section (8)(b)(1) of the Act; or

(5) The use of 15-year tenant-based assistance under section 8 of the Act (excluding vouchers under section 8(o)), under the conditions described in paragraph (b) of this section.

(b) Fifteen-year tenant-based assistance under section 8 may be approved under the replacement plan only if:

(1) There is a finding by HUD that replacement with project-based assistance (including public housing, as well as other types of project-based assistance under paragraph (a) of this section) is not feasible under the feasibility standards established for project-based assistance; that the supply of private rental housing actually available to those who would receive project-based assistance under the plan is sufficient for the total number of certificates and vouchers available in the community after implementation of the plan; and that this available housing supply is likely to remain available for the full 15-year term of the assistance; and

(2) HUD's findings under paragraph (b)(1) of this section are based on objective information, which must include rates of participation by landlords in the section 8 program; size, condition, and rent levels of available rental housing as compared to Section 8 standards; the supply of vacant existing housing meeting the section 8 housing quality standards with rents at or below the fair market rent or the likelihood of adjusting the fair market rent; the

number of eligible families waiting for public housing or housing assistance under Section 8; the extent of discrimination practiced against the types of individuals or families to be served by the assistance; and such additional data as HUD may determine to be relevant in particular circumstances.

(3) To justify a finding under paragraph (b)(1) of this section, the PHA must provide sufficient information to support both parts of the finding—why project-based assistance is infeasible and how the conditions for tenant-based assistance will be met, based on the pertinent data from the local housing market, as prescribed in paragraph (b)(2) of this section. The determination as to infeasibility of project-based assistance must be based on the standards for feasibility stated in the respective regulations which govern each type of eligible project-based program identified in paragraph (a) this section, including public housing under paragraph (a)(1) of this section as well as the other types of eligible Federal, State and local programs of project-based assistance under paragraphs (a)(2) through (4) of this section. A finding of infeasibility may thus be made only if the applicable feasibility standards cannot be met under *any* of those project-based programs, or any combination of them. For example, with regard to additional public housing development, feasibility would be determined by reference to Part 941 and any other applicable regulations and requirements, to include consideration of such factors as local needs for new construction or rehabilitation, availability of suitable properties for acquisition or sites for construction, and HUD determinations under cost containment policies. With regard to Section 8 programs involving rehabilitation, an example of a major feasibility factor would be the prospects for participation of private owners willing to meet the rehabilitation requirements.

(c) The plan must be approved by the unit of general local government in which the project is located.

(d) The plan must include a schedule for carrying out all its terms within a period consistent with the size of the proposed demolition or disposition, except that the schedule for completing the plan shall in no event exceed 6 years from the date specified to begin plan implementation.

(e) The plan must include a method which ensures that at least the same total number of individuals and families will be provided housing, allowing for replacement with units of different sizes to accommodate changes in local priority needs.

(f) Where existing occupants will be displaced, the plan must include a relocation plan in accordance with §§ 970.5 and 970.8(d).

(g) The plan must prevent the taking of any action to demolish or dispose of any unit until the tenant of the unit is relocated in accordance with § 970.5. This does not preclude actions permitted under § 970.12, actions required under this part for development and submission of the PHA's application for HUD approval of demolition or disposition, or actions required to carry out a relocation plan which has been approved by HUD in accordance with §§ 970.5 and 970.8(d).

(h) The plan must include an assessment of the suitability of the location of proposed replacement housing based upon application of the Site and Neighborhood standards established at 24 CFR 941.202 (b), (c), and (d).

(i) The plan must contain assurances that any replacement units acquired, newly constructed or rehabilitated will meet the applicable accessibility requirements set forth in 24 CFR 8.25.

§ 970.12 Required and permitted actions prior to approval.

A PHA may not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining HUD approval under this part. Until such time as HUD approval may be obtained, the PHA shall continue to meet its ACC obligations to maintain and operate the property as housing for lower income families. This does not, however, mean that HUD approval under this part is required for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning or comprehensive occupancy planning.

Date: July 25, 1988.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-18497 Filed 8-16-88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1295-88]

Organization of the Department of Justice

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending § 0.34(c) of Title 28 of the Code of Federal Regulations, which concerns the function and membership of a policy advisory group for INTERPOL-United States National Central Bureau. The amendment will create a Management Policy Group in INTERPOL with the discretion to convene an advisory group. Establishment of the Management Policy Group offers a more efficient and effective method of reviewing and developing INTERPOL programs and policies.

EFFECTIVE DATE: August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Jo Grotenrath, General Counsel, United States National Central Bureau, U.S. Department of Justice, Washington, DC 20530. Phone Number : (202) 272-8383. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: INTERPOL's initial policy advisory group was structured in a manner perceived at the time to be the most efficient and effective means of reviewing and developing INTERPOL programs and policies. In actual practice over the years, responsibility for the INTERPOL programs came to be centered in what is known as the Management Policy Group, which is described in greater detail below. Accordingly, the original structure and composition of the advisory group no longer adequately fulfills the anticipated needs.

The designated Management Policy Group, with the discretion to convene an advisory group, offers a more efficient and effective method of reviewing and developing INTERPOL programs and policies.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities. It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Administrative practice and procedure.

Accordingly, 28 CFR Part 0 is amended to read as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C 301, 2303; 8 U.S. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*, 50 U.S.C.

App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Paragraph (c) of § 0.34 is amended by revising it to read as follows:

§ 0.34 [Amended]

* * * * *

(c) Serve as a member of a Management Policy Group to review and develop INTERPOL programs and policies. This Management Policy Group will include the designee of the Attorney General, who is the United States representative to INTERPOL, and the designee of the Secretary of the Treasury, who is the alternate representative to INTERPOL. The Attorney General's designee and the Secretary of the Treasury's designee may expand the Management Policy Group to include any U.S. Government official serving as an elected officer to INTERPOL, e.g., President, Vice President or Executive Committee Member. The Management Policy Group, at its discretion, may convene an advisory group comprised of the heads of the agencies or offices which are participating members of the United States National Central Bureau (USNCB), as necessary, to assist in the review and development of INTERPOL programs and policies. The Attorney General's designee representing the Department of Justice and the Secretary of the Treasury's designee representing the Department of the Treasury may submit any matter regarding INTERPOL-USNCB leadership or organization placement within the Department of Justice to the advisory group for resolution by a majority decision.

* * * * *

Date: August 8, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–18571 Filed 8–16–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 191

[DoD Directive 1440.1]

The DoD Civilian Equal Opportunity (EEO) Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part establishes the Civilian Equal Employment Opportunity (EEO) Program within the Department of Defense. It authorizes Special Emphasis Programs for women, minorities, and persons with disabilities and establishes the Defense Equal Opportunity Council, the Civilian EEO Review Board, and Special Emphasis Program Boards. The purpose is to institutionalize EEO activities and consolidate guidance in a single document. This part affects applicants for employment within the Department of Defense as well as employees.

EFFECTIVE DATE: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Claiborne D. Haughton Jr., Director for Civilian Equal Opportunity Policy, Department of Defense, 3A272, The Pentagon, Washington, DC 20301–4000. Telephone: (202) 695–0105 or AUTOVON 225–0105.

SUPPLEMENTARY INFORMATION: The Department of Defense last published 32 CFR Part 191 in the **Federal Register** on May 24, 1977 (42 FR 26422).

List of Subjects in 32 CFR Part 191

Equal employment opportunity, Government employees, Military personnel.

Accordingly, 32 CFR Part 191 is revised to read as follows:

PART 191—THE DOD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM

Sec.

191.1 Purpose.
191.2 Applicability and scope.
191.3 Definitions.
191.4 Policy.
191.5 Responsibilities.
191.6 Procedures.
191.7 Civilian EEO program staff.
191.8 Defense equal opportunity council and EEO boards.
191.9 Information requirements.
191.10 Effective date.

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

§ 191.1 Purpose.

This part:

(a) Implements the DoD Humans Goals Charter; 29 U.S.C. 791, 792, 793, and 795; guidance from the Equal Employment Opportunity Commission (EEOC); guidance from the Office of Personnel Management (OPM); Executive Order 11830; General Services Administration Order ADM 5420.71; Executive Orders 11141; 11246 Part II, 11375, and 12086; Office of Management and Budget (OMB) Circular No. A–11; 42 U.S.C. 2000E–16; Executive Order 11478; 38 U.S.C. 2014; 29 U.S.C. 631(b) and 633a; 5 U.S.C. Chapters 43 and 72; Secretary of Defense Policy on Sexual Harassment, July 17, 1981; Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) Multiple Addressee Memorandum, August 16, 1981; and 29 U.S.C. 206(d) by establishing the Civilian Equal Employment Opportunity (EEO) Program, to include affirmative action programs, consistent with guidance from the Equal Employment Opportunity Commission (EEOC), Office of Personnel Management (OPM), and the DoD Human Goals Charter.

(b) Consolidates in a single document provisions of Secretary of Defense Multiple Addressee Memorandum, June 23, 1981; DoD Directive 1100.11, DoD Directive 1450.1, DoD Directive 5120.46, and DoD Directive 1100.15, therefore cancelling each document.

(c) Authorizes, as an integral part of the Civilian EEO Program, the establishment of Special Emphasis Programs (SEPs) entitled the Federal Women's Program (FWP), the Hispanic Employment Program (HEP), and the Handicapped Individuals Program (HIP), as well as, at the discretion of responsible officials, SEPs for the additional groups covered by the Federal Equal Opportunity Recruitment Program (i.e., the Asian/Pacific Islander Employment Program, the Black Employment Program, and the American Indian/Alaskan Native Employment Program).

(d) Establishes the Defense Equal Opportunity Council (DEOC), the Civilian EEO Review Board, the SEP Boards.

(e) Authorizes the issuance of DoD Instructions and Manuals to implement this part and guidance from standard-setting agencies such as EEOC and OPM, consistent with DoD 5025.1–M.

§ 191.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD) and activities supported administratively by OSD, the Military Departments, the Organization of the Joint Chiefs of Staff (as an element of the OSD for the purposes of this program), the Unified and Specified Commands, the Defense Agencies, the Army and Air Force Exchange Service, the National Guard Bureau, the Uniformed Services University of the Health Sciences, the Office of Civilian Health and Medical Programs of the Uniformed Services, and the DoD Dependents Schools (hereafter referred to collectively as "DoD Components").

(b) Applies worldwide to all civilian employees and applicants for civilian employment within the Department of Defense in appropriated and non-appropriated fund positions.

(c) Does not apply to military personnel, for whom equal opportunity is covered by DoD Directive 1350.2 [1].

(d) Covers Federal employment issues under section 504 of the Rehabilitation Act of 1973, as amended, even though DoD Directive 1020.1 [2] implements section 504 with respect to programs conducted and assisted by the Department of Defense. The standards established under section 501 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 791, 792, 793, and 795), are to be applied under section 504 of the Act with respect to civilian employees and applicants for civilian employment in Federal Agencies.

§ 191.3 Definitions.

Affirmative action. A tool to achieve equal employment opportunity. A program of self-analysis, problem identification, data collection, policy statements, reporting systems, and elimination of discriminatory policies and practices, past and present. Such a program does not contemplate and shall not include any preferential treatment of any person on the basis of race, color, national origin, religion, sex, age, or handicap.

Age. A prohibited basis discrimination. For purposes of this Directive, persons protected under age discrimination provisions are those 40 years of age or older, except when a maximum age requirement has been established by statute or the OPM. Aliens employed outside the limits of the United States are not covered by this definition.

Discrimination. Illegal treatment of a person or group based on race, color, national origin, religion, sex, age, or handicap.

Equal Employment Opportunity (EEO). The right of all persons to work and advance on the basis of merit, ability, and potential, free from social, personal, or institutional barriers of prejudice and discrimination. Equal employment opportunity is the objective of affirmative action programs.

Handicapped individual. A person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. For purposes of this Part, such term does not include any individual who is an alcoholic or drug abuser and whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question, or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others. As used in this paragraph:

(a) *Physical or mental impairment.* Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal and special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(b) *Major life activities.* Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment.* Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment.* Has:

(1) A physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation;

(2) A physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or

(3) None of the impairments defined above but is treated by an employer as having an impairment.

Minorities. All persons classified as black (not of Hispanic origin), Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native.

National origin. A prohibited basis for discrimination. An individual's place of origin or his or her ancestor's place of origin or the possession of physical, cultural, or linguistic characteristics of a national origin group.

Race. A prohibited basis for discrimination. For purposes of this part, all persons are classified as black (not of Hispanic origin), Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, and White, as follows:

(a) *Black (not of Hispanic origin).* A person having origins in any of the black racial groups of Africa.

(b) *Hispanic Origin.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless or race.

(c) *Asian or Pacific Islander.* A person having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

(d) *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

(e) *White.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Religion. Traditional systems of religious belief and moral or ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views. The phrase "religious practice" as used in this Part includes both religious observances and practices. DoD Components are expected to accommodate an employee's religious practices unless doing so causes undue hardship on the conduct of the Component's business.

Sexual harassment. Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(b) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting this person; or

(c) Such conduct has the purpose or effect interfering with an employee's performance or creating an intimidating, hostile, or offensive environment.

Special Emphasis Program (SEPs). Programs established as integral parts of the overall EEO program to enhance the employment, training, and advancement of a particular minority group, women, or handicapped persons.

Standard-setting agencies. Non-DoD Federal Agencies authorized to establish Federal Government-wide EEO policy or program requirements. The term includes the EEOC; OPM: DoL, Office of Federal Contract Compliance Programs (OFCCP); and OMB.

§ 191.4 Policy.

It is DoD Policy to:

(a) Recognize equal opportunity programs, including affirmative action programs, as essential elements of readiness that are vital to the accomplishment of the DoD national security mission.

(b) Develop and implement affirmative action programs to achieve

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[1] Copies may be obtained if needed from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia PA 19120.

[2] See footnote 1 to § 191.2(c).

the objective of a civilian work force in which the representation of minorities, women, and handicapped individuals at all grade levels, in every occupational series, and in every major organization element is commensurate with the representation specified in EEOC and OPM guidance.

(c) Ensure that Civilian EEO Program activities for minorities, women, and handicapped individuals are integrated fully into the civilian personnel management system.

(d) Assess progress in DoD Component programs in accordance with the affirmative action goals of the Department of Defense.

(e) Prohibit discrimination based on race, color, religion, sex, national origin, mental or physical handicap, or age.

(f) Eliminate barriers and practices that impede equal employment opportunity for all employees and applicants for employment, including sexual harassment in the work force and at work sites and architectural, transportation, and other barriers affecting handicapped individuals.

§ 191.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel* (ASD(FM&P)), or designee, shall:

(1) Represent the Secretary of Defense in all matters related to the DoD Civilian EEO Program, consistent with DoD Directive 5124.2 [3]

(2) Establish and chair the DEOC.

(3) Establish a Civilian EEO Review Board.

(4) Develop policy and provide program oversight for the Civilian EEO Program.

(5) Ensure full implementation of this Part, monitor progress of affirmative action program elements, and advise the Secretary of Defense on matters relating to the Civilian EEO Program.

(6) Ensure that realistic goals that provide for significant continuing increases in the percentages of minorities, women, and handicapped individuals in entry, middle, and higher grade positions in all organizations and occupations are set and accomplished until the overall DoD objective is met and sustained.

(7) Prepare a new DoD Human Goals Charter each time a new Secretary of Defense is appointed.

(8) Ensure fair, impartial, and timely investigation and resolution of complaints of discrimination in employment, including complaints of sexual harassment.

(9) Establish DoD SEPs for the FWP, HEP, and HIP. In addition, the ASD (FM&P) shall have discretion to establish DoD SEPs for the additional groups covered by the Federal Equal Opportunity Recruitment Program (i.e., the Asian/Pacific Islander Employment Program, the Black Employment Program, and the American Indian/Alaskan Native Employment Program).

(10) Establish DoD Special Emphasis Program Boards to assist with implementation of SEPs under this Part.

(11) Establish DoD Civilian EEO Award Programs to provide for the annual issuance of Secretary of Defense Certificates of Merit to DoD Components and individuals for outstanding achievement in the major areas covered by this Part, and to review all awards and management training programs within the Department of Defense to ensure that minorities, women, and handicapped individuals receive full and fair consideration consistent with their qualifications and the applicable program criteria.

(12) issue implementing instructions and other documents, as required, to achieve the goals of the DoD Civilian EEO Program and to provide policy direction and overall guidance to the DoD Components.

(13) Represent the Department of Defense on programmatic EEO matters with EEOC, OPM, the Department of Justice, other Federal Agencies, and Congress.

(14) Represent the Department of Defense on the Interagency Committee on Handicapped Employees under E.O. 11830, as amended, and the Interagency Committee for Computer Support of Handicapped Employees under General Services Administration Order ADM 5420.17.

(15) Represent the Department of Defense at meetings and conferences of non-Federal organizations concerned with EEO programs, and coordinate DoD support of such organizations' activities with the Assistant Secretary of Defense (Public Affairs) and with DoD General Counsel in accordance with DoD Directive 5410.18 [4], DoD Instruction 5410.19 [5], DoD Directive 5500.2 [6], and DoD Directive 5500.7 [7].

(16) Serve as the DoD liaison with the Office of Federal Contract Compliance Programs (OFCCP), Department of Labor (DoL), for the purpose of providing contract information, forwarding complaints of discrimination filed against DoD contractors, and implementing administrative sanctions imposed against DoD contractors for violations of E.O. 11141; E.O. 11246; as amended by E.O. 11375, E.O. 12088; and DoL implementing regulations.

(17) Ensure that the DoD FAR Supplement contains appropriate contract provisions for EEO for Government contractors and subcontractors under Executive Orders 11141, 11246 Part II, 11375, and 12086; Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and DoL implementing regulations.

(b) The *Heads of DoD Components*, or their designees, shall:

(1) Ensure that all EEO policies are disseminated widely and that they are understood and implemented at all levels within their Components.

(2) Ensure that their Components comply with EEOC and OPM guidance and this Part and that minorities, women, and handicapped individuals receive full and fair consideration for civilian employment in all grade levels, occupations, and major organizations, with special emphasis on mid-level and higher grades and executive-level jobs, including the Senior Executive Service (SES) and SES candidate pools.

(3) Treat equal opportunity and affirmative action programs as essential elements of readiness that are vital to accomplishment of the national security mission.

(4) Designate a Director of Civilian Equal Opportunity and allocate sufficient staff and other resources to ensure a viable EEO program under this Directive. This includes assignment of staff to be responsible for EEO and affirmative action programs generally and SEP Managers for the SEPs established under this Part at the Component level.

(5) Establish SEPs for the FWP, HEP, and HIP. In addition, the Component Head shall have discretion to establish SEPs for the additional groups covered by the Federal Equal Opportunity Recruitment Program (i.e., the Asian/Pacific Islander Employment Program, the Black Employment Program, and the American Indian/Alaskan Native Employment Program).

(6) Require that EEO be included in critical elements in the performance appraisals of all supervisors, managers, and other Component personnel, military and civilian, with EEO responsibilities.

(7) Ensure fair, impartial, and timely investigation and resolution of complaints of discrimination in

[3] See footnote 1 to § 191.2(c).

[4] See footnote 1 to § 191.2(c).

[5] See footnote 1 to § 191.2(c).

[6] See footnote 1 to § 191.2(c).

[7] See footnote 1 to § 191.2(c).

employment, including complaints of sexual harassment.

(8) Set realistic Component goals and motivate subordinate managers and supervisors to set and meet their own goals until overall DoD and Component goals are met and sustained.

(9) Evaluate employment policies, practices, and patterns within their respective Components and identify and correct and institutional barriers that restrict opportunities for recruitment, employment, advancement, awards, or training for minorities, women, and handicapped individuals; and ensure that EEO officers and civilian personnel officers provide leadership in eliminating these barriers.

(10) Ensure that installations and activities establish focused external recruitment programs to produce employment applications from minorities, women, and handicapped individuals who are qualified to compete effectively with internal DoD candidates for employment at all levels and in all occupations.

(11) Establish a continuing EEO educational program (including training in the prevention of sexual harassment) for civilian and military personnel who supervise civilian employees.

(12) Establish EEO Awards Programs to recognize individuals and organizational units for outstanding achievement in one or all of the major EEO areas covered by this Part.

(13) Review all award and management training programs to ensure that minorities, women, and handicapped individuals are considered, consistent with their qualifications and program criteria.

(14) At military installations having a civilian work force and military units, ensure that the Civilian EEO Program is managed by and conducted for civilian personnel only and that the Military Equal Opportunity Program is managed by and conducted for military personnel only. Any exceptions to this policy must be authorized by the Component head.

§ 191.6 Procedures.

(a) Officials designated in this Directive shall allocate resources necessary to develop methods and procedures to ensure that all elements of this Part are fully implemented and are in compliance with the spirit and intent of the DoD Human Goals Charter, laws, executive orders, regulatory requirements, and other Directive and Instructions governing the Civilian EEO Program within the Department of Defense.

(b) Heads of DoD Components, in accordance with EEOC and OPM guidance and subject to oversight by and supplemental guidance from the ASD(FM&P), or designee shall:

(1) Develop procedures for and implement an affirmative action program for minorities and women, consistent with section 717 of the Civil Rights Act of 1964, as amended; E.O. 11478; guidance from EEOC; and guidance from OPM.

(2) Develop procedures for and implement an affirmative action program for handicapped individuals, consistent with section 501 of Rehabilitation Act of 1973, as amended, and guidance from EEOC.

(3) Develop procedures for and implement an affirmative action program for disabled veterans, consistent with DoD Directive 1341.6.[8] This program shall be consistent with the program established in paragraph (b)(2) of this section and coordinated with the Component's HIP manager.

(4) Develop procedures for and implement systems for investigation and resolution of complaints of employment discrimination under section 717 of the Civil Rights Act of 1964, as amended; sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended and DoD Directive 1020.1; section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; the Age Discrimination in Employment Act of 1967, as amended; guidance from EEOC; and applicable case law.

(5) Develop procedures for and implement a Federal Equal Opportunity Recruitment Program for minorities and women and a comparable special recruitment program for handicapped individuals in accordance with the Civil Service Reform Act of 1978; EEOC instruction concerning affirmative action programs for handicapped individuals; guidance from OPM; external recruitment programs to obtain employment applications from minorities, women, and handicapped individuals who are competitive with internal DoD candidates for employment at all levels.

(6) Develop procedures for and implement all SEPs established under this part at the Component level. These SEPs shall be integral parts of the Civilian EEO Program and shall be conducted in accordance with the provisions of this Part and applicable EEOC and OPM guidance.

(7) Develop procedures for and implement a program to eliminate sexual harassment in Component work places, consistent with DoD Policy on Sexual Harassment memorandums, and to ensure compliance with the Equal Pay Act.

(8) Develop procedures for and implement a program of employment preference for spouses of military personnel, in accordance with DoD Instruction 1404.11.[9]

(9) Develop procedures for and implement a selective placement program for handicapped individuals in accordance with guidance from OPM. This program shall be consistent with the program established in paragraph (b)(2) of this section, and coordinated with the Component's HIP manager.

(10) Develop procedures for and implement staffing initiatives, training and development programs, and upward mobility programs designed to increase the representation of qualified minorities, women, and handicapped individuals on certificates of eligibility and accompanying lists of individuals eligible for special appointments that are provided to selecting officials at all levels within the Component. These programs should include SES candidate programs and shall be targeted in career field in which there is underrepresentation and a likelihood of vacancies (e.g., science and engineering positions).

(11) Develop procedures for and implement a program to evaluate all supervisors and managers with EEO responsibilities on their contributions to and support of the Component's EEO program. Specifically, Component SES and General Manager personnel, when appropriate, shall have their EEO responsibilities defined as a critical element in their performance appraisals in accordance with the Civil Service Reform Act of 1978.

(12) Develop procedures for an implement a program to participate in and conduct ceremonies, where appropriate, at all levels of the Component to observe nationally proclaimed or other specially-designated community activities that particularly affect minorities, women, and handicapped individuals and that support the Civilian EEO Program. Military and civilian personnel should both participate whenever possible. Example of special observances include Dr. Martin Luther King Jr.'s Birthday, Black History Month, National Women's History Week, Women's Equality Day, Hispanic Heritage Week, National Employ the Handicapped Week, and the Decade of Disabled Persons.

(13) Develop procedures for and implement a program to revise documents and change practices and

[8] See footnote 1 to § 191.2(c).

[9] See footnote 1 to § 191.2(c).

policies that discriminate against civilian personnel on the basis or race, color, sex, religion, national origin, mental or physical handicap, or age.

(14) Develop procedures for and implement and affirmative action program for the continued Federal employment of minorities, women, and handicapped individuals who have lost their jobs in DoD Components because of contracting decisions made under OMB Circular No. A–76. (Under OMB Circular Federal employees have, in general, the right of first refusal of employment under these contracts.)

(15) Develop precedures for and implement a program for computer support of handicapped employees, consistent with DoD participation in activities of the Interagency Committee for Computer Support of Handicapped Employees in accordance with General Services Administration Order ADM 5420.71.

§ 191.7 Civilian EEO program staff.

(a) EEO Managers, including SEP Managers and other staff who are responsible for EEO and affirmative action programs, shall function at a level that is sufficiently responsible with the assigned organization to enable them to communicate effectively the goals and objectives of the program and to enable them to obtain the understanding, support, and commitment of managers and other officials at all levels within the organization.

(b) It shall be the responsibility of EEO Managers, SEP Managers, and other program staff to develop, coordinate, implement, and recommend to managers, other officials, and covered groups the policy, guidance, information, and activities necessary to attain the goals of the SEPs and the overall DoD Civilian EEO Program.

§ 191.8 Defense equal opportunity council and EEO boards.

(a) The DEOC shall be chaired by the ASD (FM&P) and shall coordinate policy for and review civilian and military equal opportunity programs, monitor progress of program elements, and advise the secretary of Defense on pertinent matters. One of the mandates of the DEOC shall be to pursue an aggressive course of action to increase the numbers of minorities, women, and handicapped individuals in management and executive positions at grades 13 and above, including the SES and, at the request of the Secretary of Defense, Schedule C, and other noncareer executive positions in the SES and on the Executive Schedule. Members of the DEOC shall include the assistant Secretary of Defense (Reserve Affairs) and the Assistant Secretaries with responsibility for personnel policy and reserve affairs in the Military Departments.

(b) The Civilian EEO Review Board shall be chaired by the ASD(FM&P), or designee. The Board shall support the DEOC and shall be made up of designated EEO and personnel representatives from the DoD Components and such other individuals as may be necessary to carry out the work of the DEOC and implement this Part. The Board shall work with career management officials, other key management officials, and union representatives in developing policies, programs, and objectives.

(c) The DoD SEP Boards shall be chaired by the DoD SEP Managers. These Boards shall be comprised of designated SEP Managers from the DoD Components and such other individuals as may be necessary to advise and assist in EEO activities and policy development in the Department of Defense. The Boards shall work with career management officials, other key management officials, and union representatives in developing policies, programs, and objectives.

(d) The DEOC, Civilian EEO Review Board, and each SEP Board established at the DoD level shall have a Charter that describes its organization, management, functions, and operating procedures, consistent with DoD Directive 5105.18.[10]

(e) Civilian EEO Review Boards and SEP Boards may be established at Component, command, and installation levels as well as the DoD level to assist in program activities.

(f) Members of covered groups should be represented on Civilian EEO Review Boards, SEP Boards, and subcommittees at all levels; and consideration should be given to participation by military personnel and by Federal employees who are union representatives.

§ 191.9 Information Requirements

(a) The ASD(FM&P) shall:

(1) Submit an annual report to the Secretary of Defense on the status of the DoD EEO program. This report shall be developed from existing documents, such as affirmative action plan accomplishment reports, civil rights budget reports, semiannual discrimination complaint reports, and Federal Equal Opportunity Recruitment Program reports, plus statistical data obtained from the Defense Manpower Data Center and reports of visits to DoD installations.

[10] See footnote 1 to 191.2(c).

(2) Submit a consolidated DoD annual report on actual and estimated expenditures for all civil rights programs to the OMB in accordance with OMD Circular No. A–11 and other OMB guidance.

(3) Submit consolidated DoD semiannual reports on discrimination complaints to the EEOC in accordance with EEOC guidance. This reporting requirement is assigned Interagency Report Control Number 0288–EEO–SA.

(b) Heads of DoD Components shall:

(1) Submit an annual report on actual and estimated expenditures for all Component EEO programs to the ASD(FM&P), or designee, in accordance with DoD 7110.1–M. This reporting requirement is assigned RCS DD–COMP (AR) 1092.

(2) Submit semiannual reports on discrimination complaints to the ASD(FM&P), or designee, in accordance with guidance from the EEOC. This reporting requirement is assigned Interagency Report Control Number 0288–EEO–SA.

(3) Submit copies of affirmative action program plan, affirmative action program plan updates, and affirmative action plan accomplishment reports for minorities, women, and handicapped individuals to the ASD(FM&P), or designee, in addition to copies of annual reports for the Federal Equal Opportunity Recruitment Program.

(4) Ensure that designated officials submit information for an annual report on computer support of handicapped employees and for reports on individual computer accommodations for handicapped employees. These reporting requirements are assigned RCS DD–FM&P (A) 1731 and RCS DD–FM&P (AR) 1732.

§ 191.10 Effective date.

This part is effective May 21, 1987.

Linda M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

August 11, 1988.

[FR Doc. 88–18563 Filed 8–16–88; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 199

[DoD Regulation 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Updating CHAMPUS Prevailing Charges

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the comprehensive CHAMPUS Regulation, DoD 6010.8–R (32 CFR Part 199), to allow the Secretary of Defense increased flexibility regarding the timing of updates to the prevailing charge levels which limit the amounts which are payable under CHAMPUS for professional services. This revision is in accordance with 10 U.S.C. 1079(h)(2), which permits the Secretary to adjust the base period for calculation of prevailing charges as frequently as he considers appropriate.

EFFECTIVE DATE: September 16, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue or for each group of pages as actually bound, payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Charles Gallegos, Chief, Office of Program Development, OCHAMPUS, telephone (303) 361–3005.

To obtain copies of this document, see the "Address" section above.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8–R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

I. Summary of Proposed Rule

On June 3, 1988, a proposed rule was published in the **Federal Register** (53 FR 20592) which offered the opportunity for public comment on the CHAMPUS proposal to increase the flexibility of the Secretary of Defense regarding the timing of updates to prevailing charge levels for CHAMPUS payments for professional services.

As was explained in the notice of proposed rulemaking, CHAMPUS currently reimburses professional services based on the allowable charge method, in which reimbursement is based on the lower of: (1) The billed charge for a service, or (2) the prevailing charge level that does not exceed the 80th percentile of billed charges for similar services in the same locality during a base period.

Section 1079(h)(2), Chapter 55, Title 10, United States Code, permits the Secretary to adjust the base period for calculation of prevailing charges "as frequently as he considers appropriate." The CHAMPUS Regulation currently is less permissive than the Statute, requiring that the base period shall be adjusted annually, which means that prevailing charges are updated on an annual basis.

The Congressional intent behind the current statutory provision is that DoD have the flexibility to determine how often to update the prevailing charge levels based on all relevant circumstances. The major relevant circumstances that should be taken into account relate to the need to, on the other hand, responsibly constrain program cost growth, and on the other hand, maintain payment levels adequate to assure the availability of services to CHAMPUS beneficiaries.

Full consideration of both types of circumstances in determining the frequency of prevailing charge updates should take into account such factors as the rate of medical cost inflation. At times of high physician cost inflation, it is more important to have frequent updates so as to keep payment rates high enough to maintain very broad provider availability. At times of low physician cost inflation, however, frequent updates may have the effect of unnecessarily raising program costs by increasing payments even if not needed to maintain very widespread provider availability.

The current practice of automatic annual updates of the prevailing charge levels is not necessarily reflective of the most reasonable and appropriate balance between the two objectives of assuring broad provider availability and responsibly monitoring cost growth. Thus, the notice of proposed rulemaking concluded that it would appear reasonable and appropriate for DoD to have the flexibility to make the decision based on the actual circumstances presented.

II. Discussion of Comments

We received one comment in response to the proposed rule, from the American Medical Association (AMA). The AMA expressed general support for the proposal, but recommended that any variation from the 12-month timeframe for updates of prevailing charges should be subject to public comment.

Response: We agree, and have included in the final rule a requirement for a 30-day comment period following publication of a notice of intent to depart from the general pattern of annual updates.

III. Summary of Final Rule

The final rule mirrors the proposed rule, with the exception of a new requirement for a 30-day comment period prior to any final decision by OCHAMPUS to depart from the general practice of annual updates to the prevailing charge levels.

As was stated in the notice of proposed rulemaking, this rule should not be mistaken as hinting a weakened DoD commitment to assuring for CHAMPUS beneficiaries the availability of a very broad range of physicians and other providers who will be perfectly willing to accept CHAMPUS allowable payment rates and will not "balance bill" beneficiaries for any unallowed balances. CHAMPUS now has a remarkable record in this regard, achieving an extraordinarily high level of provider claims paid as billed. In fact, it is estimated that only about four percent of all dollars billed for professional services provided to CHAMPUS beneficiaries are subject to balance billing to beneficiaries. DoD intends to maintain an excellent record in this regard.

Thus, to summarize, this final rule to build into the regulation the same flexibility as Congress established in the statute is intended to permit consideration of all relevant factors before any changes are made to the prevailing charge levels.

The proposed amendment affects § 199.14(f)(1)(i)(B)(2) of the CHAMPUS regulation as it appears in the Code of Federal Regulations, Title 32. The corresponding citation in the DoD directives system is DoD 6010.8–R, Chapter 14, Section F(1)(b)2.

IV. Other Regulatory Procedures

A. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the executive authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

B. Regulatory Flexibility Act and E.O. 12291

This final rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

§ 199.14 [Amended]

2. Section 199.14(f)(1)(i)(B)(*2*) is revised to read as follows:

(*2*) The base period shall be a period of 12 calendar months and shall be adjusted at least once a year, unless the Director, OCHAMPUS, determines that a different period for adjustment is appropraite and publishes a notice to that effect in the **Federal Register**. Prior to publishing the final notice, a notice of intent shall have been published, which allowed a 30-day period for public comment on the proposed action.

August 12, 1988.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department Of Defense.

[FR Doc. 88-18603 Filed 8-16-88; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 375

[DoD Directive 5122.5]

Assistant Secretary of Defense (Public Affairs)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The position of Assistant Secretary of Defense (Public Affairs), (ASD(PA)), is authorized under the provision of Title 10, United States Code with responsibilities, functions, and authorities as prescribed by the Secretary of Defense. As indicated in the subject Part, the ASD(PA) serves as the principal staff advisor and assistant to the Secretary of Defense for all facets of public information required within the Department of Defense.

This Part has been updated to reflect an organizational change within the Office of the ASD(PA). Based on a recommendation by an Office, Secretary of Defense study team which was required by the Goldwater-Nichols Act of 1986, the Defense Information Services Activity (DISA) was disestablished and its manpower and functions were transferred to the Office of the ASD(PA). This revision reflects the changes in organization and functions.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone (202) 697-1142.

SUPPLEMENTARY INFORMATION:

List of Subject in 32 CFR Part 375

Organization and management.

Accordingly, 32 CFR Part 375 is revised to read as follows:

PART 375—ASSISTANT SECRETARY OF DEFENSE (PUBLIC AFFAIRS)

Sec.

375.1 Reissuance and purpose.
375.2 Definition.
375.3 Responsibilities.
375.4 Functions.
375.5 Relationships.
375.6 Authorities.
375.7 Effective date.

Authority: 10 U.S.C. 136.

§ 375.1 Reissuance and purpose.

This part:

(a) Revises 32 CFR Part 375 and establishes, pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 136, one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Public Affairs) (ASD(PA)), with responsibilities, functions, and authorities as prescribed herein.

(b) Disestablishes the Defense Information Services Activity (DISA) and consolidates its functions into the Office of the Assistant Secretary of Defense (Public Affairs) (OSDA(PA)).

§ 375.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense (OIG, DoD), the Defense Agencies, and the DoD Field Activities.

§ 375.3 Responsibilities.

The *Assistant Secretary of Defense (Public Affairs)* ASD(PA)) shall:

(a) Serve as principal staff advisor and assistant to the Secretary of Defense for DoD public information, internal information, the Freedom of Information act, mandatory declassification review and clearance of DoD information for public release, community relations, information training, and audiovisual matters.

(b) Ensure a free flow of news and information to the media, appropriate forums, the general public, and to the internal audiences of the Armed Forces, limited only by national security constraints as authorized by E.O. 12356 and statutory mandates.

(c) Act as the releasing agency for DoD information and audiovisual materials to news media representatives. Evaluate news media requests for DoD support and cooperation and determine appropriate level of DoD participation.

§ 375.4 Functions.

The *ASD(PA)* shall:

(a) For each of the areas of responsibility cited in § 375.3.

(1) Develop policies, plans, and programs in support of DoD objectives and operations.

(2) Monitor evaluate, and develop systems, standards, and procedures for the administration and management of approved policies, plans, and programs.

(3) Issue policy guidance to DoD Components.

(4) As required, participate with the Comptroller of the Department of Defense in planning, programming, and budgeting activities.

(5) Promote coordination, cooperation, and mutual understanding among DoD Components and with other Federal, State, and local agencies and the civilian community.

(6) Serve on boards, committees, and other groups, and represent the Secretary of Defense outside of the Department of Defense.

(b) Conduct security reviews, consistent with E.O. 12356 and DoD Directives 5230.9 [1] and 5400.4 [2], of all material prepared for public release and publication originated by the Department of Defense, including testimony before congressional committees, or by its contractors, DoD employees as individuals, and material submitted by sources outside the Department of Defense for such review.

(c) Review for conflict with established DoD and national security policies or programs, official speeches, news releases, photographs, films, and other information originated within the Department of Defense for public release, or similar material submitted for review by other executive agencies of the U.S. Government.

(d) Oversee the provision of news analysis and news clipping services for the OSD, OJCS, and the Military Departments' headquarters.

(e) As required, prepare speeches, public statements, congressional

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[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120

[2] See footnote 1 to § 375.4(b)

testimony, articles for publication, and other materials for public release by selected DoD and White House officials.

(f) Serve as official point of contact for public and media appearances by DoD officials, and conduct advanced planning and coordination, as required, with private, public, and media organizations for such events.

(g) Receive, analyze, and reply to inquiries regarding DoD policies, programs, or activities that are received from the general public either directly or from other Government Agencies. Prepare and provide to the referring office replies to inquiries from the general public that are forwarded from the Congress and the White House.

(h) Evaluate and approve:

(1) Requests for DoD cooperation in programs involving relations with the public consistent with 32 CFR Parts 237 and 238.

(2) Requests by news media representatives or other non-DoD personnel for travel in military carriers for public affairs purposes.

(i) Establish policy for the Department of Defense Freedom of Information Act Program consistent with 5 U.S.C. 552 and 32 CFR Part 285.

(j) Direct and administer the Freedom of Information Act Program consistent with 32 CFR Part 285 and DoD Instruction 5400.10 [3] and the access portion of the DoD Privacy Act consistent with DoD Directive 5400.11 for the OSD, OJCS, and other DoD Components as may be assigned.

(k) Direct and administer the Mandatory Declassification Review Program consistent with E.O. 12356 and DoD Directive 5200.1 [4] for the OSD, OJCS, and other DoD Components as may be assigned.

(l) Exercise direction, authority, and control over the American Forces Information Service (AFIS) in accordance with 32 CFR Part 372. The policy and program responsibilities of AFIS include the following:

(1) Management of the DoD Internal Information Program.

(2) Armed Forces Radio and Television Service (AFRTS), consistent with 32 CFR Part 372a.

(3) DoD visual information and audiovisual activities, and joint visual information services, consistent with DoD Directives 5040.2 [5] and 5040.3.[6]

(4) DoD newspapers, including European and Pacific *Stars and Stripes*, and civilian enterprise publications, consistent with 32 CFR Part 297.

(5) DoD periodicals, consistent with 32 CFR Part 248.

(6) American Forces Press and Publications Service (AFPPS).

(7) DoD information training, to include providing policy guidance regarding the Defense Information School, consistent with DoD Directive 5160.48.[7]

(m) Provide DoD assistance to non-Government, entertainment-oriented motion picture, television, and video productions consistent with DoD Instruction 5410.16.[8]

(n) Evaluate and coordinate the DoD response to requests for speakers received by the Department of Defense and, as required, assist in scheduling, programming, and drafting speeches for the participation of qualified personnel.

(o) Perform such other functions as the Secretary of Defense may assign.

§ 375.5 Relationships.

(a) In the performance of assigned duties, the ASD(PA) shall:

(1) Coordinate and exchange information with DoD Components having collateral or related functions.

(2) Use existing facilities and services of the Department of Defense and other Federal Agencies to avoid duplication and achieve maximum efficiency and economy.

(3) Maintain liaison with and provide assistance to the general public, representatives of the news media, and private organizations seeking information relating to the activities of the Department of Defense.

(b) Heads of DoD Components shall coordinate with the ASD(PA) on all matters related to the functions cited in § 375.4.

§ 375.6 Authorities.

The ASD(PA) is hereby delegated authority to:

(a) Issue DoD Instructions, publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M, which carry out policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands regarding public affairs matters shall be issued directly to the Commanders of the Unified and Specified Commands. Instructions that have operational implications shall be coordinated with the Chairman, Joint Chiefs of Staff (CJCS), consistent with DoD Directive 5105.35.[9]

(b) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 7750.5,[10] as necessary.

(c) Communicate directly with DoD Components. The channel of communications with the Unified and Specified Commands regarding public affairs matters shall be between the ASD(PA) and the Commanders of the Unified and Specified Commands. Communications that have operational implications shall be coordinated with the CJCS consistent with DoD Directive 5105.35.

(d) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public.

(e) Establish arrangements for DoD participation in those non-DoD Government programs for which the ASD(PA) has been assigned primary staff cognizance.

(f) Act as the sole agent at the Seat of Government for the release of official DoD information for dissemination through any form of public information media.

(g) Establish accreditation criteria and serve as the approving and issuing authority for credentials for news gathering media representatives traveling in connection with coverage of official DoD activities.

(h) Approve military participation in public exhibitions, demonstrations, and ceremonies of national or international significance.

(i) In the absence of a known DoD originator of classified information, declassify official information submitted for security review, mandatory declassification review, and in response to Freedom of Information Act actions.

§ 375.7 Effective date.

This part is effective August 4, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 12, 1988.

[FR Doc. 88–18562 Filed 8–16–88; 8:45 am]

BILLING CODE 3810-01-M

[3] See footnote 1 to § 375.4(b).
[4] See footnote 1 to § 375.4(b).
[5] See footnote 1 to § 375.4(b).
[6] See footnote 1 to § 375.4(b).
[7] See footnote 1 to § 375.4(b).
[8] See footnote 1 to § 375.4(b).
[9] See footnote 1 to § 375.4(b).
[10] See footnote 1 to § 375.4(b).

VOL 53 ISS 159 AG 17 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[FRL-3425-9; KY-046]

Approval And Promulgation of Implementation Plans; Kentucky: Opacity Variance for TVA's Paradise Steam Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves an opacity variance for boiler Units 1 and 2 at Tennessee Valley Authority's (TVA's) Paradise Steam Plant. This variance was submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) on August 6, 1986. The opacity limitations approved for Units 1 and 2 are 61 percent and 50 percent, respectively. Testing under procedures agreed to by EPA and the Commonwealth of Kentucky has confirmed that both units can demonstrate compliance with the 0.11 pounds per million BTU (lbs/mm BTU) particulate emission limitation when the current 20 percent opacity standard of Regulation 401 KAR 61.015, Section 4(2), is exeeded. Today's approval makes the relaxed opacity limits federally enforceable.

DATES: This rule will become effective on September 16, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations.

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Pamela E. Adams of the EPA Air Programs Branch at the above address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On August 6, 1986, Kentucky submitted to EPA a request for an opacity variance for Units 1 and 2 at TVA's Paradise Steam Plant in Muhlenberg County, Kentucky. This request was made in the form of a State Implementation Plan (SIP) revision so that the revised opacity limits will be federally enforceable, and EPA will not enforce the limitations contained in Regulation 401 KAR 61:015. Opportunity for public participation and input relevant to this request was provided through a public hearing conducted on May 13, 1985, at the Capital Plaza Tower in Frankfort, Kentucky. Kentucky is requesting this opacity variance in accordance with the provisions of Regulation 401 KAR 50:055, Section 2(6). EPA proposed to approve this variance on August 24, 1987 (52 FR 31791). No comments were received in response to that proposal.

When boiler Units 1 and 2 are operated at normal full load with all associated emission control equipment optimized, TVA's Paradise Steam Plant is capable of complying with the 0.11 lbs/mmBTU particulate emission limitation but incapable of complying with the 20 percent opacity limitation of Regulation 401 KAR 61:015, Section 4(2), using EPA's Method 9. The TVA attributes the high opacity readings from Units 1 and 2 to nitrogen oxide (NO_x) formation associated with the boiler units rather than to particulate emissions.

Paradise Units 1 and 2 are identical crushed coal, cyclone-fired boilers. Due to the higher temperatures in the cyclones, these boilers produce twice as much NO_x as conventional pulverized coal-fired boilers. Units 1 and 2 are each equipped with an electrostatic precipitator and a wet limestone scrubber for emission control. The temperature of the flue gas leaving the scrubbers is reduced by approximately 125 degrees. Furthermore, oxygen is available within the scrubber units due to leakage and the addition of oxidizing air. These two factors result in more rapid conversion of nitrogen oxide to nitrogen dioxide (NO_2). Since NO_2 is a visible, brownish colored gas, TVA attributes the high opacity readings from Units 1 and 2 to this NO_2. Supporting this claim, TVA explains that Paradise Unit 3, which operates without a scrubber, does not produce high opacity emissions as do Units 1 and 2. In order to meet the requirements of Kentucky Regulation 401 KAR 50:055, Section 2(6), and establish the basis for an alternate opacity standard for Units 1 and 2, testing was conducted using procedures that were established in a "Compliance Test Protocol" mutually agreed upon by EPA and the Commonwealth of Kentucky.

On October 30 and 31, 1984, particulate stack tests were conducted on Unit 1 at the Paradise Steam Plant. Similar tests were conducted on Unit 2 at the plant on November 7 and 9, 1984. The operating modes and testing procedures are discussed in detail in the **Federal Register** notice proposing approval of this opacity variance (52 FR 31791) and will not be repeated here. Testing determined the particulate emissions, visual opacity, and in-stack monitor opacity of boiler Units 1 and 2. Testing was performed by the Test and Performance Section of TVA. The tests were observed by representatives of the Kentucky Division of Air Pollution Control (KDAPC). Representatives of the Environmental Protection Agency observed the Unit 1 test.

Testing procedures were followed acceptably by TVA personnel, and the isokinetics for all six runs were within the acceptable range of 0.90 to 1.10. Results of the stack tests reveal that the actual particulate emission rate for both units was 0.04 lbs/mm BTU during testing. Identical mass particulate emissions from independent but identical units operated identically (optimized for maximum particulate emission control) show that the particulate emissions from Paradise Units 1 and 2 cannot be reduced below the measured 0.04 lb/mm BTU. These particulate emissions comply with the 0.11 lb/mm BTU standard. The Unit 1 average visual opacity reading value was 55 percent. The maximum six minute average reading observed during the stack tests was 61 percent. The in-stack monitor values corresponding to the times of the visual readings averaged 35 percent. The corresponding Unit 2 readings were 40 percent, 50 percent, and 38 percent respectively. For all test runs, the opacities (visual and monitor) exceeded the current 20-percent standard as the units operated under normal full load with all emission control equipment optimized.

The opacity limitations being approved in this notice for Units 1 and 2 of TVA's Paradise Steam Plant are 61 percent and 50 percent, respectively. These limitations were the highest recorded opacities for each unit during emission testing under procedures mutually agreed to by Kentucky and EPA. While EPA is approving these revised opacity limitations, EPA is uncomfortable with opacity variances since many factors can contribute to high opacities in each situation (e.g., NO_x, sulfur oxides, particulate, other sulfates). EPA is currently undertaking a study of high opacity situations and may recommend solutions other than opacity variances in the future.

Final Action: EPA is today finalizing approval of an opacity variance for TVA's Paradise Steam Plant boiler Units 1 and 2. This variance will allow 61

percent opacity according to EPA Method 9 for Unit 1 and 50 percent opacity according to EPA Method 9 for Unit 2. These proposed opacity limitations were the highest recorded for each unit during emission testing conducted with units operating under normal full load with all emission control equipment optimized. Both units can demonstrate compliance with the particulate emission limitation at these opacities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 17, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Date: August 1, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(54) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(54) An opacity variance for boiler Units 1 and 2 of Tennessee Valley Authority's (TVA's) Paradise Steam Plant, submitted on August 6, 1986, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Permit No. 0–86–75, for the TVA Paradise Steam Plant, issued by the Kentucky Natural Resources and Environmental Protection Cabinet on July 24, 1986.

(B) Letter of August 6, 1986, from the Kentucky Natural Resources and Environmental Protection Cabinet.

(ii) Other material—none.

[FR Doc. 88–17802 Filed 8–16–88; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–300189A; FRL–3430–7]

Montmorillonite-Type Clay Treated With Polytetrafluoroethylene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts montmorillonite-type clay treated with polytetrafluoroethylene (PTFE; CAS Reg. No. 9002–84–0) from the requirement of a tolerance when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest. This regulation was requested by Jellinek, Schwartz, Connolly, and Freshman, Inc., on behalf of Edward Lowe Industries, Inc.

EFFECTIVE DATE: Effective on August 17, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Kerry B. Leifer, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of June 22, 1988 (53 FR 23421), which announced that Jellinek, Schwartz, Connolly, and Freshman, Inc., on behalf of Edward Lowe Industries, Inc., had requested that 40 CFR 180.1001 be amended by establishing an exemption from the requirement of a tolerance for montmorillonite-type clay treated with polytetrafluoroethylene when used as a carrier in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellents in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the amendment to 40 CFR Part 180 will protect the public health. Therefore, the regulation is being established as set forth below.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the grounds for the objections. A hearing will be granted if the provisions of the regulation deemed objectionable and the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* *	* *	*
Montmorillonite-type clay treated with polytetrafluoroethylene (PTFE; CAS Reg. No. 9002-84-0).	PTFE content not greater than 0.5% (w/w) of clay.	Carrier.
* *	* *	*

[FR Doc. 88-18582 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3429-8]

Mississippi; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final authorization.

SUMMARY: Mississippi has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Mississippi's application and has made a decision, subject to public review and comment, that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revisions. Mississippi's application for program revision is available for public review and comment.

DATES: Final authorization for Mississippi shall be effective October 17, 1988, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Mississippi's program revision application must be received by the close of business September 16, 1988.

ADDRESSES: Copies of Mississippi's program revision application are available during normal business hours at the following addresses for inspection and copying: Mississippi Department of Natural Resources, 2380 Highway 80 West, P.O. Box 10385, Jackson, Mississippi 39209, U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460 Phone: 202/382-5926, U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365: Phone (404) 347-4216. Written comments should be sent to Otis Johnson at the below address.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, 345 Courtland Street NE.; Atlanta, Georgia 30365; Telephone No. 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6929(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266 and 124 and 270.

B. Mississippi

Mississippi initially received final authorization of its hazardous waste program on June 27, 1984. On April 6, 1988, Mississippi submitted a final program revision application for non-HSWA requirements promulgated through June 6, 1986, and the HSWA requirement, State Availability of Information promulgated on November 8, 1984. Today, Mississippi is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's application, and has made an immediate final decision that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Mississippi. The public may submit written comments on EPA's immediate final decision up until September 16, 1988. Copies of Mississippi's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Mississippi's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Mississippi has agreed that it will not use it's variance authority granted under section 17-17-27(5) of the *Mississippi Code* in any manner that would render it's Hazardous Waste Program less stringent. Procedures used by the State must be substantially equivalent to those used by EPA in granting exceptions or variances to Federal regulations. Concurrence is specifically required for changes in testing or analytical methods. Those State requirements that are more stringent than the Federal program may be relaxed through the variance procedure, provided that the final State requirement is not less stringent than the Federal requirement. The State agreed to transmit to EPA a copy of all variances granted within ten (10) days of approval of the variance. The State also agrees that it will provide the written assurance necessary upon completion of negotiation of the FY 1989 RCRA Subtitle C Grant, to be included in a signed Memorandum of Agreement between Mississippi and the Environmental Protection Agency.

To date, all RCRA hazardous waste management permits in Mississippi have been issued by the State under the authority granted to the State during previous authority. Therefore, there will be no change in the status of permits or permitting authority on the effective date of this rule. Mississippi is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

C. Decision

I conclude that Mississippi's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final

authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Mississippi is today seeking authority to administer the following Federal requirements promulgated prior to June 6, 1986.

Federal requirement	Federal promulgation date
Biennial Reports	Jan. 28, 1983.
Permit Rules—Settlement Agreement.	Sept. 1, 1983.
Interim Status Standards—Applicability.	Nov. 22, 1983.
Chlorinated Aliphatic Hydrocarbon Listing.	Feb. 10, 1984.
National Uniform Manifest	Mar. 20, 1984.
Permit Rules—Settlement Agreement.	Apr. 24, 1984.
Interim Status Standards—Applicability.	Nov. 21, 1984.
Corrections to Test Methods Manual.	Dec. 4, 1984.
Redefinition of Solid Waste	Jan. 4, 1984.
Interim Status Standards for Landfills.	Apr. 23, 1985.
Closure, Post-Closure and Financial Responsibility Requirements.	May 2, 1986.
Listing of Spent Pickle Liquor	May 28, 1986.
State Availability of Information—Section 3006(f).	Nov. 8, 1984.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 14, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-18478 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

[AA-230-07-6310-02; Circular No. 2610]

Sales Administration; Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This rulemaking adopts as final the interim amendments to 43 CFR Parts 5460—Sales Administration, and 5470—Contract Modification—Extension—Assignment. Those amendments concern the extension of time for cutting and removing contract timber in limited circumstances and conditions resulting from fires and other natural disasters.

EFFECTIVE DATE: November 5, 1987.

ADDRESS: Suggestions or inquiries should be sent to: Director (230), Bureau of Land Management, Department of the Interior, 1800 'C' Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Dave Estola, (503) 231-6837

or

Gary Ryan, (202) 653-8864.

SUPPLEMENTARY INFORMATION: Disastrous fires in August and September, 1987, in southwestern Oregon damaged a volume of timber exceeding, in preliminary field estimates, a third of a billion board feet. In order to allow salvage of as much of the value of this damaged timber as possible, this rulemaking was published on an interim final basis on November 5, 1987 (52 FR 42586), effective the date of publication. The public was invited to comment on the rulemaking for 60 days ending January 4, 1988.

The Bureau of Land Management received 1 comment from a business entity. This letter raised several concerns as to implementation of the regulations, but offered no objection to the regulations themselves. Accordingly, the interim final rulemaking published on November 5, 1987, is republished today without amendment to the regulatory language, effective on the date of original publication, November 5, 1987. The regulations in this rulemaking will be applied in all subsequent situations caused by natural or other disasters.

First, the comment suggested that the regulations should be implemented in a manner that does not distinguish between pre- and post-1982 timber sale contracts. This comment has already been adopted in Bureau implementation guidance for fire salvage extensions, which does not distinguish between contracts signed before and after 1982.

Second, the comment urged that extensions of BLM timber contracts should be allowed where purchasers harvest salvage timber from lands administered by the Forest Service. This comment will not be adopted. The Bureau has a unique timber receipt sharing arrangement with the western Oregon counties. Granting reciprocal extensions for Forest Service salvage sales would delay the collection of BLM timber receipts and cause an adverse impact on local economies.

Third, the comment suggested that extensions of BLM timber sale contracts should be allowed for the harvest of salvage timber from Federal lands lying beyond the purchaser's normal marketing area. This comment will not be adopted in implementation of these regulations. If extensions were granted without market area limitations, an abnormal market situation would be created. Purchasers holding expensive pre-1982 contracts would tend to bid on sales outside their usual market area in order to obtain extensions of their pre-1982 contracts, contrary to the public interest in completing those contracts so that the timber management program can continue in an orderly manner.

Finally, the comment suggested that § 5463.2(b) should be implemented in a manner allowing "pass-through" extensions from a non-manufacturing timber purchaser to an entity with milling capabilities. This comment is not adopted because pass-through extensions would have a doubling effect on the amount of extension credit, and would be difficult to administer. Under BLM regulations both companies in a pass-through situation would be entitled to extension credits, which would amount to a doubling of the credits.

The principal authors of this final rulemaking are Dave Estola, Oregon State Office, and Gary Ryan, Division of Forestry, Washington Office, assisted by the staff of the Division of Legislation

and Regulatory Management, Bureau of Land Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Bureau of Land Management sells timber valued at approximately $100 million annually, but this rulemaking will affect only a minimal proportion of those sales, and not every year. The last incident to occur to which this proposed procedure would have been an appropriate response was 25 years ago. Also, all purchasers will be affected equally, regardless of size.

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 5460

Forest and forest products, Government contracts, Land Management Bureau, Public lands.

43 CFR Part 5470

Forest and forest products, Government contracts, Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

PARTS 5460 AND 5470—[AMENDED]

The interim rule amending 43 CFR Parts 5460 and 5470 which was published at 52 FR 42586 on November 5, 1987, is adopted as a final rule without change.

James E. Cason,

Deputy Assistant Secretary of the Interior.

July 11, 1988.

[FR Doc. 88-18575 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Part 8340

[Circular No. 2609; AA-340-08-4333-02]

Off-Road Vehicles; Clarifying Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations covering the use of off-road vehicles on the public lands. These regulations were issued by the Department of the Interior as proposed rulemaking and published in the Federal Register on July 17, 1987 (52 FR 27017) with a public comment period of 60 days. Three comments were received and considered during the development of this final rulemaking. This final rulemaking revises the regulations in 43 CFR Part 8340 to clarify some definitions used in the existing regulations and simplify the designation process.

EFFECTIVE DATE: September 16, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Assistant Director—Land & Renewable Resources (220), Bureau of Land Management, Room 5626, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Schneider, (202) 343-9353.

SUPPLEMENTARY INFORMATION: This final rulemaking amends the existing regulations for managing off-road vehicles on the public lands by making definitions more compatible with the actual on-the-ground experiences and with existing land use planning decisions, and eliminating the requirement for publication of a separate notice of off-road vehicle area designation in the Federal Register.

The proposed rulemaking was published in the Federal Register on July 17, 1987 (52 FR 27017), with a 60 day comment period. During the 60 day comment period, 3 comments were received from associations.

One commenter agreed that the wording of the proposed rulemaking simplified the wording of the existing regulations and expressed the hope that the revisions would provide for greater understanding and compliance among off-highway vehicle users.

Another commenter believed the changes did not reduce the BLM's ability to regulate use of off-road vehicles and correctly placed responsibility for the planning of such use within the Bureau's overall land use planning processes, but expressed concern with the lack of reference to a means of notifying the public regarding the designation of lands. The commenter felt that voluntary compliance with closures and limits must be emphasized, and that such compliance is dependent upon awareness among recreationists about where their activities are inappropriate as well as appropriate.

Neither the proposed nor the final rulemaking have eliminated the notification of the public concerning designation of the public lands for off-road vehicles. Rather they have simplified the process by eliminating one step. As was discussed in the preamble of the proposed rulemaking, the identification, evaluation, and designation of public lands for off-road vehicle use is accomplished through the Bureau of Land Management's resource management (land use) planning process as described in 43 CFR Part 1600. This process also integrates the environmental impact statement and environmental assessment requirement of the Council of Environmental Quality's regulations (40 CFR Parts 1500-1508) that implement provisions of the National Environmental Policy Act. Both the Bureau's land use planning regulations and the Council of Environmental Quality's regulations provide for publication of advisory and descriptive Federal Register notices concerning the availability of all these documents for public review and input, making unnecessary the requirement for and expense of the separate notice required by the existing off-road vehicle regulations. And finally, the record of decision for each planning document discusses the off-road, vehicle designations. The public will receive adequate notice of the designations through these documents.

In addition to this concern, the commenter also recommended that consideration be given to changing the terminology for describing the vehicles from "off-road vehicles" to "off-highway vehicles" in a future amendment to the regulation. It was felt that this language would cover a wider range of recreational vehicles, would help eliminate the implication that all of these vehicles are designed solely for use off of existing roads and trails, which they are not, and would be consistent with the term many states now use in registering these vehicles. This recommendation has been noted by the BLM and a change in terms will be considered in a future revision of the regulations.

A final comment recommended that the proposed changes not be adopted. The commenter specifically took issue with the amendment of the first sentence of § 8341.2(a), objecting to the deletion of the words "or trails" from

the phrase "close the areas or trails affected". Two reasons were given for the objection. First, the commenter felt that it is difficult and perhaps impossible to identify all ORV trails and areas that are subject to designation in the BLM's resource management plans because the draft planning and environmental analysis documents do not always address route designations on a road by road basis. Furthermore, the commenter stated that the final Resource Management Plan and Environmental Impact Statement may be changed from the draft documents, and changes and oversights in route or area designations may go unnoticed until it is too late. Secondly, the identification of routes on the ground is more difficult where numerous routes exist. The commenter stated that since the BLM does not mark the routes subject to restrictions, it is nearly impossible in some heavily roaded areas to determine which routes are affected. In some cases this has resulted in the wrong routes being closed. The commenter concluded by stating that the present procedure is the best way for the public to participate in the ORV route designation process.

In reviewing this comment it was felt that a misunderstanding had occurred concerning the BLM's position and that a clarification is necessary. The designation process deals with areas, not individual roads and trails. If an area is closed, all roads and trails in that area are closed to off-road vehicle use. If an area is designated as limited, how the roads and trails are identified depends on the limitations placed on the area. For example, if an area designation is limted to "designated roads and trails", then those roads and trails designated for use will be identified on maps and on the ground as necessary. The change in the rulemaking does not preclude the identification of specific roads and trails for off-road vehicle use. It also does not change the public participation process used to identify which roads and trails would remain available for use but with a limited designation.

After considering the comments, it was decided to adopt, without change, the wording of the proposed rulemaking.

The principal author of this final rulemaking is Richard Traylor, Division of Recreation, Cultural, and Wilderness Resources, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human envirommment and that no detailed statements pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes made by this final rulemaking will benefit the using public in that they simplify and clarify the designation process. The changes will impact all users equally, whether large or small.

There are no information collection requirements in the changes made by this final rulemaking to 43 CFR Part 8340 which require approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 8340

Public lands, Recreation and recreation areas, Traffic regulations.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Taylor Grazing Act (43 U.S.C. 315a), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 15, 1960, as amended (16 U.S.C. 670 *et seq.*), the Land and Water Conservation Fund Act (16 U.S.C. 4601–6a), the National Trails System Act (16 U.S.C. 1241 *et seq.*) and Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands) (37 FR 2877, 3 CFR Part 74, 332), as amended by Executive Order 11989 (42 FR 26959), Part 8340, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

James E. Cason,

Acting Assistant Secretary of the Interior.

July 20, 1988.

PART 8340—[AMENDED]

1. The authority citation for Part 8340 continues to read:

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 et seq., 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 4601–6a, 16 U.S.C. 1241 *et seq.* and 43 U.S.C. 1701 *et seq.*

2. Section 8340.0–5 is amended by revising paragraphs (f), (g) and (h) to read:

§ 8340.0–5 Definitions

* * * * *

(f) "Open area" means an area where all types of vehicle use is permitted at all times, anywhere in the area subject to the operating regulations and vehicle standards set forth in Subparts 8341 and 8342 of this title.

(g) "Limited area" means an area restricted at certain times, in certain areas, and/or to certain vehicular use. These restrictions may be of any type, but can generally be accommodated within the following type of categories: Numbers of vehicles; types of vehicles; time or season of vehicle use; permitted or licensed use only; use on existing roads and trails; use on designated roads and trails; and other restrictions.

(h) "Closed area" means an area where off-road vehicle use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.

§ 8341.2 [Amended]

3. Section 8341.2(a) is amended by removing from where it appears in the first sentence thereof the phrase "close the areas or trails affected" and replacing it with the phrase "close the areas affected".

4. Section 8342.2 is revised to read:

§ 8342.2 Designation procedures.

(a) *Public participation.* The designation and redesignation of trails is accomplished through the resource management planning process described in Part 1600 of this Title. Current and potential impacts of specific vehicle types on all resources and uses in the planning area shall be considered in the process of preparing resource management plans, plan revisions, or plan amendments. Prior to making designations or redesignations, the authorized officer shall consult with interested user groups, Federal, State, county and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have its views given consideration.

(b) *Designation.* The approval of a resource management plan, plan revision, or plan amendment constitutes formal designation of off-road vehicle use areas. Public notice of designation or redesignation shall be provided through the publication of the notice required by § 1610.5–1(b) of this Title. Copies of such notice shall be available to the public in local Bureau offices.

(c) *Identification of designated areas and trails.* The authorized officer shall, after designation, take action by marking and other appropriate measures to identify designated areas and trails so that the public will be aware of locations and limitations applicable

thereto. The authorized officer shall make appropriate informational material, including maps, available for public review.

[FR Doc. 88-18574 Filed 8-16-88; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD 87-016]

Emergency Position Indicating Radio Beacons for Uninspected Fishing, Fish Processing, and Fish Tending Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the uninspected vessel regulations by requiring emergency position indicating radio beacons (EPIRBs) to be carried on uninspected fishing, fish processing, and fish tender vessels operating on the high seas. The Coast Guard Authorization Act of 1986 amended the shipping laws of the United States by requiring those vessels to have the number and type of EPIRBs prescribed by regulation. By implementing the law, the regulations will ensure rapid and effective search and rescue during emergency situations.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: Between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, comments are available for inspection and copying at the Marine Safety Council (C-CMC) Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1477. The Final Evaluation may also be inspected or copies at the Marine Safety Council.

FOR FURTHER INFORMATION CONTACT: LCDR Stanford W. Deno, Survival Systems Branch, Room 1404, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-1444. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On November 10, 1986, the Ninety-Ninth Congress passed Pub. L. 99-640, known as the "Coast Guard Authorization Act of 1986" (100 Stat. 3545). Section 16 of that Act amended Section 4102 of Title 46 of the United States Code by adding paragraph (e) which requires uninspected fishing, fish processing, and fish tender vessels operating on the high seas to carry the number and type of EPIRBs prescribed by regulation. This Final Rule implements that law. A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on September 3, 1987 (52 FR 33448) and invited comments for a 45 day period ending October 19, 1987. On October 16, 1987, the comment period was extended for one month to expire on November 19, 1987. Notice of that extension was published in the **Federal Register** on October 22, 1987 (52 FR 39548). Twenty-six comments were received. Two comments expressed a general objection to the concept of requiring EPIRBs on fishing vessels, while eight comments generally supported the proposal. A discussion of the other, more specific comments follows.

Drafting Information.

The principal persons involved in drafting these regulations are: LCDR William M. Riley, Project Manager, and Mr. Stanley Colby, Project Counsel, Office of Chief Counsel.

Discussion

Definition of "high seas" Several comments asked for clarification of the term "high seas." In addition to the written comments, many telephone calls expressed confusion about the applicability of 3 mile, 12 mile, and 200 mile limits as well as the boundary lines for international and inland "rules of the road."

High seas are simply international waters as defined in 33 CFR 2.05-1(a); that is, waters which are neither U.S. territorial waters nor territorial waters of another country. The U.S. still claims only a 3-mile territorial waters boundary. The "12 mile limit" refers to the Contiguous Zone, a band of high seas within 9 miles of the territorial waters over which nations traditionally exert limited authority. Similarly, the "200 mile limit" refers to the Exclusive Economic Zone, a band of the high seas over which the U.S. unilateraly asserts authority to regulate fisheries and seabed mining under the Magnuson Fishery Conservation and Management Act, as amended (16 USC 1801, *et. seq.*)

Definition of "fishing vessel" A number of comments also requested definition of the term "fishing vessel." Three written comments and a significant number of telephone comments addressed this issue. Several asked whether pleasure boats engaged in sport fishing were considered "fishing vessels." Others asked whether small passenger vessels and party fishing boats were affected by these rules. One comment asked whether inspected small passenger vessels not carrying passengers for hire, but fishing commercially on a particular voyage, would be affected. Another asked if "fishing" included clamming, dredging oysters, and catching shrimp.

"Fishing vessel," "fish processing vessel," and "fish tender vessel" are defined by law in 46 USC 2101. Recreational boats are regulated under 33 CFR Subchapter S. The regulations being amended, in Part 25 of 46 CFR Subchapter O, apply only to uninspected commercial vessels such as fishing boats and tugboats. Therefore pleasure boats are not affected. Small passenger vessels, carrying more than six passengers, are *inspected* under 46 CFR Subchapter T, and are therefore not affected by this rule. However, small passenger vessels temporarily operating as uninspected fishing vessels are subject to these rules. Commercial party fishing boats carrying six or less passengers for hire are uninspected and are regulated under 46 CFR Subchapter O. However, it is not the intent of these rules to require EPIRBs on such vessels, unless they too are operating temporarily to harvest fish rather than to carry passengers. The definition of "fish" (46 USC 2101(11)), which is applicable to uninspected vessels (46 USC Chapter 41), includes finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

Cost Five comments stated that the estimated cost of $600 in the proposed rule for satellite EPIRBs was to low. Four of these comments included alternate costs estimates, ranging from $1000 to $2200. The most credible of these estimates was $1450, from a manufacturer who intends to introduce a satellite EPIRB at that price. We believe this price will gradually decrease as other suppliers enter the market. The estimate of $1450 has been accepted and incorporated into the Final Evaluation.

Phase-out period Sixteen comments addressed the proposed phase-out period for existing EPIRBs. Two comments supported the proposed 10-year phase-out period. Six comments supported the alternative proposal of 6 years contained in the preamble of the NPRM. Two comments suggested a period of 5 years. Three comments suggested a period of 3 years. One comment suggested a period of 2 years. Two comments objected to any phase-out period at all. Since the satellite EPIRBs are so far superior to the existing EPIRBs, and the existing EPIRBs are relating inexpensive, and there seems to be general support for a shorter phase-put period than 10 years, the final rule has been rewritten to include a 6-year phase-out period.

Existing Class A EPIRBs Several comments addressed a statement in the NPRM concerning the failure of up to 25% of existing 121.5/243 MHz Class A EPIRBs to meet FAA Technical Standard Order C–91a (TSO C–91a). Four comments stated that EPIRBs which do not comply with TSO C–91a should not be allowed. One comment stated that non-complying EPIRBs should be allowed in warm-water, near-shore fisheries. However, two comments asked how to identify a complying EPIRB, and two comments pointed out that no existing EPIRB is labeled to show it complies with TSO–C91a.

No existing EPIRB is certified by either the FCC or the Coast Guard as meeting TSO C–91a, since this FAA Technical Standard Order will apply only to future aircraft Emergency Locating Transmitters (ELTs). Therefore, the rules were not changed and no reference to TSO–C–91a has been added. Instead, the Coast Guard will take action, separate from this rulemaking process, to identify and withdraw the approvals of those Class A EPIRBs which do not operate reliably with the COSPAS/SARSAT satellite system because of inadequate frequency stability and power spectrum. This future action will be accomplished in accordance with 46 CFR 2.75–50(a).

Existing Class B and O EPIRBs Nine comments discussed the status of exsting EPIRBs other than Class A during the phase-out period. One comment stated that any EPIRB purchased in good faith should be allowed. One comment stated that non-float-free EPIRBs should be allowed because of the risk of theft, washing overboard, or deterioration due to exposure. The remaining comments all stated that Class B and O EPIRBs were inferior and should not be allowed to replace a float-free EPIRB. Since the problems with Class B and O EPIRBs are acknowledged and there is little support for their continued use, no change has been made in the final rule to allow their use during the phase-out period.

Type acceptance Four comments called for more technical requirements for certification of EPIRBs to be included in these rules. These comments were rejected because the vessel requirements of 46 CFR Subchapter O do not include technical standards for equipment that must be approved. Satellite EPIRBs will be type accepted by the FCC, a process which includes Coast Guard review. The technical standards will be addressed in FCC rules. Therefore no change has been made in the final rule.

Registration Three comments suggested that these rules contain a requirement that the EPIRB be registered with NOAA to enable identification. Registration of the EPIRBs is expected to be required by FCC rules and need not be included in these rules.

Other radio equipment One comment stated that a VHF–FM radio should be required as a prerequisite to having an EPIRB. This rulemaking was intended to address only the implementation of 46 USC 4102(e) which only provides for EPIRBs. There is no indication that, in amending 36 USC 4102, Congress intended to broaden the Coast Guard's authority to require other radio equipment aboard uninspected fishing, fish processing, and fish tender vessels. Therefore this comment is rejected.

EPIRBs installed in inflatable liferafts. One comment stated that EPIRBs in inflatable liferafts should only be permitted as optional equipment in addition to the required EPIRB, because they are exempt from testing under the rule. This is a misconception. Testing of the EPIRB in the inflatable liferaft is accomplished during annual servicing of the raft. In order to include an EPIRB in the equipment package of a Coast Guard approved inflatable liferaft, the raft manufacturer will have to incorporate instructions for testing and re-arming the EPIRB in the Coast Guard approved servicing manual for the raft. A Coast Guard approved servicing facility will have to follow the procedures in the manual when servicing the raft. For clarification, the Final Rule has been modified to except from the testing only those EPIRBs installed in rafts if they are Coast Guard approved and serviced annually by an approved facility. Section 25.26–1 requires the EPIRB to be float-free and automatically activated. If the EPIRB is in a float-free liferaft and the EPIRB is rigged to activate automatically when the raft floats free and inflates, then the EPIRB would satisfy these rules.

Testing and Servicing. One comment stated that the master should not be held responsible for testing because there is no longer a master on the document. Another comment agreed that the "owner/operator" should be responsible, adding that a log of tests should be kept on board. One comment stated that a battery test of the EPIRB was not enough, while another comment cautioned that the test should not involve radiating an actual signal. Both suggested language to the effect that the manufacturer's instructions be followed. One comment stated that monthly tests were too frequent because each test drains the battery, may result in a false alarm, may result in improper resetting, and would be difficult to enforce. The Coast Guard did not accept these comments. None of the arguments were convincing. There is still a master of every vessel, who is responsible for its current condition and operation. "Operator" is a vague term. The Coast Guard anticipates that FCC will include procedures for the tests in the type acceptance standards. Proper testing should not wear out a properly designed EPIRB or its battery. Frequent testing will develop familiarity with test procedures and result in fewer mistakes such as false alarms and improper resetting.

Enforcement and penalties. One comment stated that a penalty for violation was not provided by the proposed rules. Penalties for violation of these rules are already provided by 46 USC 4106 and do not require rulemaking.

Availability of satellite EPIRBs Two comments expressed concern that the satellite EPIRB is a product that does not yet exist, may not work, and that fishing vessels should not be the first to have to try out the new technology. Satellite EPIRBs do exist, have been tested extensively by the COSPAS/SARSAT partners (US, USSR, France, and Canada), and do work. They are not commercially available in this country currently due chiefly to the absence of regulations requiring them or providing for their use. Necessary final rules permitting manufacture and sale of such beacons are expected to be completed by the FCC in the fall of 1988. The beacons should be readily available before mid-1989. To allow adequate time for installation of satellite EPIRBs, the final rule establishes a compliance date one year after the effective date. The Coast Guard will continue to consult with the FCC and manufacturers and will adjust the compliance date, if necessary, to allow approximately six months for installation of satellite EPIRBs after the units are readily available. If production is delayed, adjustments to the compliance date will be made and published in the **Federal Register.** Availability of the technology now coincides with the Coast Guard's newly obtained authority to require EPIRBs on fishing vessels. The Coast Guard's position is that it is preferable to require the prompt installation of EPIRBs having superior performance, rather than to require fishing vessels to install an inferior EPIRB now, then go through a costly replacement program at some later date.

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Regulatory evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the docket. It may be inspected or copied at the Office of the Marine Safety Council (see "**ADDRESSES**", above).

The final evaluation uses a cost estimate of $1450 for each of the estimated 31,555 fishing vessels that would be affected. This revised cost estimate is based on the comments received on the NPRM, and is believed to be higher than the actual cost which will be achieved through volume production. The arbitrarily high figure has thus been used as a conservative basis for the evaluation. Approximately half of the affected vessels would have to install satellite EPIRBs within a year, at a cost of about $22.9 million. The remainder would replace their existing conventional EPIRBs over a 5-year period at a cost, adjusted to 1988 dollars, of about $19.8 million, for a total of about $42.6 million for the industry to comply with the requirements in the rules in a 6-year period.

In addition to the saving of lives, primary benefits of the regulations include more timely notification to the authorities that a casualty has occurred and more accurate identification of the object of the search and the area to be searched, which should contribute to large savings of money for the Coast Guard and other organizations involved in a search.

In the three-year period from 1982 to 1984, 288 lives were lost as a result of total losses of fishing vessels. Although the number of lives that may be saved through mandatory EPIRB requirements cannot be predicted, using the minimally accepted value of a human life of one million dollars, the saving of only a few lives each year would justify the cost of these rules.

More tangible benefits can be identified in the reduction of search and rescue costs. The search for the fishing vessel AMAZING GRACE took 16 days and cost $12 million before the search was abandoned. There was no definite notice that a casualty had occurred, and the area to be searched was unknown. In contrast, a number of searches for pleasure vessels and fishing vessels have been expedited by EPIRBs carried voluntarily. The savings to the government as a result of elimination or significant reduction of only three or four large-scale searches would justify the cost of these rules, even without considering the lives that may be saved by more timely location of vessels in distress.

The Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Generally, fishing vessel operators are considered to be small entities in that they are typically not part of large diversified corporations, and generally own no more than a few vessels. The $1450 cost is not considered significant for any of these vessels. As recognized by the phase-out period for existing EPIRBs, when properly maintained, these units have a long useful life.

It has been determined that this rulemaking is categorically excluded from detailed environmental evaluation. The Categorical Exclusion Determination is available in the docket for examination, copying, and public comment. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

List of Subjects in 46 CFR Part 25

Fire prevention, Marine safety.

In consideration of the foregoing, Subchapter C of Title 46, Code of Federal Regulations, is amended as follows:

PART 25—[AMENDED]

1. By revising the authority citation to Part 25 to read as follows:

Authority: 46 U.S.C. 4104 and 4302; 49 CFR 146.

2. By amending Part 25 by adding a new Subpart 25.26 to read as follows:

Subpart 25.26—Emergency Position Indicating Radio Beacons

Sec.

25.26–1 Uninspected Fishing, Fish Processing, and Fish Tender Vessels.
25.26–5 Servicing of EPIRBs.

Subpart 25.26—Emergency Position Indicating Radio Beacons

§ 25.26–1 Uninspected Fishing, Fish Processing, and Fish Tender Vessels.

(a) After August 17, 1989, the owner of an uninspected vessel that is a fishing vessel, a fish processing vessel, or a fish tender vessel shall ensure that the vessel does not operate on the high seas, as defined in 33 CFR 2.05–1(a), unless it has on board—

(1) an FCC Type Accepted Category 1, float-free, automatically activated, 406 MHz Emergency Position Indicating Radio Beacon (EPIRB); or

(2) a 121.5/243 MHz Class A EPIRB meeting paragraph (b) of this section.

(b) Until August 17, 1994, a Coast Guard approved 121.5/243 MHz Class A EPIRB may be on board a vessel, under paragraph (a) of this section, if the EPIRB is operable and installed on the vessel on or before October 3, 1988.

§ 25.26–5 Servicing of EPIRBs.

(a) The master of each vessel required to have an EPIRB under this subpart shall ensure that each EPIRB on board is tested and serviced as required by this section.

(b) The EPIRB must be tested by the visual or audio output indicator to determine whether or not it is operating immediately after installation and at least once each month thereafter, unless it is an EPIRB installed in a Coast Guard approved inflatable liferaft that is tested annually during the servicing of the inflatable liferaft by an approved facility. If the EPIRB is not operating, it must be repaired or be replaced with an operating EPIRB.

(c) The battery of the EPIRB must be replaced—

(1) Immediately after the EPIRB is used for any purpose other than being tested; and

(2) Before the expiration date that is marked on the battery.

Dated: March 22, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88–18628 Filed 8–16–88; 8:45 am]
BILLING CODE 4910–14–M

Office of the Secretary

48 CFR Part 1252

[Docket No. 45256; Amdt. 3–3]

Acquisition Regulations; Correction

AGENCY: Office of the Secretary, DOT.

ACTION: Correction notice.

SUMMARY: This rule makes editorial corrections to the recently published final rule which effected the republication of the Department's Transportation Acquisition Regulation (TAR) (48 CFR Chapter 12). The final rule was published in the **Federal Register** on Thursday, July 28, 1988 (53 FR 28396) and will be effective on August 29, 1988.

DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Charles Ventura at 400 Seventh Street SW., Room 9100, Washington, DC 20590, phone number (202) 366–4271.

SUPPLEMENTARY INFORMATION: The final rule amending 48 CFR Chapter 12, was preceded by an interim final rule which was published at 52 FR 44522 on November 19, 1987. The final rule made changes to several clauses included in Part 1252 of 48 CFR Chapter 12. The final rule inadvertently cited the incorrect effective dates for these changed clauses. The changed clauses should be dated "August 1988" to reflect the same effective date as the final rule itself. This notice indicates the correct dates for the clauses which were changed.

List of Subjects in 48 CFR Chapter 12

Government procurement.

This correction notice is issued under delegated authority under 49 CFR Part 1.59(q).

Dated: August 11, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Accordingly, the Department of Transportation makes corrections to 48 CFR Chapter 12 as follows:

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1252.207–70 [Corrected]

1. Section 1252.207–70 is corrected by changing the effective date for both TAR clause 1252.207–70, Implementation of Right of First Refusal of Employment, and its Alternative to read "(Aug 1988)."

1252.215–72 [Corrected]

2. Section 1252.215–72 is corrected by changing the effective date for TAR clause 1252.215–72, Cost Proposal Instructions, to read "(Aug 1988)."

1252.222–70 [Corrected]

3. Section 1252.222–70 is corrected by changing the effective date for TAR clause 1252.222–70, Service Contract Act of 1965—Contracts of $2,500 or Less, to read "(Aug 1988)."

1252.222–75 [Corrected]

4. Section 1252.222–75 is corrected by changing the effective date for TAR clause 1252.222–75, Service Contract Act of 1965 as Amended, to read "(Aug 1988)."

1252.245–70 [Corrected]

5. Section 1252.245–70 is corrected by changing the effective date for TAR clause 1252.245–70, Government Property Reports, to read "(Aug 1988)."

[FR Doc. 88–18617 Filed 8–16–88; 8:45 am]
BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–11; Notice 25]
RIN 2127–AC45

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This notice amends the specifications for gasoline, tar remover, and power steering fluid, used in the chemical resistance test for replaceable bulb headlamps with plastic lenses. After consideration of comments received in response to a proposal published in March 1987, the agency is adopting through incorporation by reference ASTM Reference Fuel C as the specification for gasoline. Tar remover is to consist by volume of 45% xylene and 55% petroleum base mineral spirits. The power steering fluid used in the test is to be that specified by the vehicle manufacturer for use in the vehicle on which the headlamp is intended to be installed. The reason for the restated test fuels is that the original specification for gasoline failed to take into consideration the existence and concentration of aromatic hydrocarbons, the specification for tar remover could be clarified, and that the composition of power steering fluid differed from vehicle to vehicle. The effect of the amendment is that Reference Fuel C will be more representative of unleaded gasoline in the chemical resistance test. Tar remover will have the composition of that used in the Canadian standard and will promote international harmonization. Power steering fluid will be that recommended for use in the vehicle by its manufacturer, that fluid being the most likely type of power steering fluid to contact the headlamp of the vehicle.

DATE: The effective date of the rule is September 16, 1988. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 16, 1988.

ADDRESS: Petitions for reconsideration of the rule should refer to the docket number and notice number, and must be addressed to the Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (202–366–5276).

SUPPLEMENTARY INFORMATION: On March 18, 1987, NHTSA published Notice 22 to Docket 81–11 (52 FR 8482) in which it granted and denied several petitions for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment.* One of these petitions was filed by Ford Motor Company, and related to aspects of the chemical resistance tests for replaceable bulb headlamps with plastic lenses. In Ford's view, the definitions of gasoline and tar remover, two of the fluids prescribed for the tests, were imprecise. The agency agreed with Ford; and granted its petition, although it did not concur with the definitions that Ford recommended as substitutes.

For the reasons given in Notice 22 NHTSA proposed that the composition of the previously specified unleaded gasoline of 89 octane or above be 47% toluene, 3% benzene, and 50% iso-octane. It proposed that tar remover consist by volume of 45% xylene and 55% petroleum base mineral spirits. The agency had also tentatively concluded that power steering fluid should be clarified to mean the fluid recommended by the vehicle manufacturer for use in the vehicle now which the headlamp was intended to be installed.

Six commenters responded to the proposal: Ford, General Motors Corporation, Chrysler Corporation, Volkswagen of North America, ETL Laboratories, Inc., and Corning. The commenters either supported or were silent regarding the proposed composition of tar remover. Therefore, this composition (identical to that specified by Canada in its chemical resistance test) has been adopted. Xylene is found in most gasoline, and because NHTSA's proposed gasoline test fluid composition does not include xylene, it was deemed desirable to have some testing with fluid containing xylene.

GM and Chrysler supported the proposal regarding power steering fluid. Ford, however, commented that it saw no safety need for the fluid's inclusion in the standard, but that if it were to be specified, its elements ought to be representative of power steering fluids, as a surrogate for actual fluids. However, power steering fluids differ significantly in their compositions, and some manufacturers, e.g., Honda,

recommend that operators use only one specific fluid and none other to avoid damaging the power steering system. Other manufacturers recommend a specific fluid but mention an allowable substitute. This has led NHTSA to conclude that the power steering fluid to be used in the chemical resistance test must be that recommended for use in the vehicle, Ford's comment notwithstanding. No commenters, other than Ford, objected to this proposal. Power steering fluid reservoirs in some instances are located near a headlamp. The fluid is subject to spillage and overflow under pressure or when overheated with heat from the engine. After considering these comments, the agency is amending the requirement to specify that the fluid used in the test is the power steering fluid recommended by the vehicle manufacturer for use in the vehicle on which the headlamp is to be installed.

The composition of gasoline occasioned the most comment. NHTSA had proposed a fuel composed of 47% toluene, 3% benzene, and 50% iso-octane. Ford continued to support ASTM Reference Fuel D (40% toluene, 60% iso-octane). Chrysler and GM suggested ASTM Reference Fuel C (50% toluene, 50% iso-octane). ETL was in favor of "gasoline the consumer uses" on the basis that it provides a "real world" test. Volkswagen advised against use of a formula that might become quickly outdated. Corning urged adoption of two or more formulas that would represent the extremes of composition.

The agency has decided to adopt ASTM Reference Fuel C, as recommended by GM and Chrysler. The composition is substantially similar to that proposed by NHTSA, and eliminates benzene, a toxic fluid determined to be a carcinogen. Reference Fuel C is a standard solvent used primarily for testing the effect of liquids on rubber. An octance number is irrelevant for its use and has not been adopted. Aromatic hydrocarbons (which include both toluene and benzene) are the active ingredients of gasoline which are likely to attack plastic materials upon exposure. NHTSA believes that the percentage (by volume) of aromatic hydrocarbons in the gasoline test fluid should correspond approximately to the maximum percentage found in commercially available unleaded high octane gasoline. In adopting Reference Fuel C, the agency rejects a suggestion by Ford for specifying a fluid with 40% toluene and 60% iso-octane (ASTM Reference Fuel D). In its comment, Ford said that a 40% level of toluene, an aromatic hydrocarbon, was selected as representative of a level more stringent than that found in 97% of commercially available gasoline. The agency believes that the stringency of the test fluid should be referenced to the level found in *unleaded* gasolines, rather than that found in *all* commercially available gasoline. Hence, a level more stringent than that found in approximatley 97% of unleaded gasoline with 89 or greater octane is deemed appropriate. The 97% figure is in accord with that suggested by Ford. In its comments, Ford stated that data oabtained in the MVMA Gasoline Survey for the 1983 Winter Season resulted in an average value (mean) of 33.6% aromatic hydrocarbons and a standard deviation of 8.4% for premium unleaded gasoline. Extrapolating that data with the use of standard statistical methods leads to the conclusion that 50.4% (33.6 + 2(8.4)) level of aromatic hydrocarbons would equal or exceed the level found in 97% of commercially available premium unleaded gasoline. Thus, the use of ASTM Reference Fuel C, with 50% toluene, is deemed appropriate. ETL's suggestion to use commercially available gasoline was not adopted because the instability of hydrocarbons in gasoline between the time the fluid is removed from the tank and the time it is used in compliance testing was the basis for the agency's conclusion that a different fuel was required.

The final rule incorporates ASTM Reference Fuel C as specified in ASTM D 471–79 *Standard Test Method for Rubber Property—Effect of Liquids* used as specified in Annex 2 to Motor Fuels Section 1 *Test Methods for Rating Motor, Diesel, Aviation Fuels,* 1985 Annual Book of ASTM Standards. This material has been submitted to the Director of **Federal Register** for approval by the effective date of the rule, in accordance with regulations of both the **Federal Register** and NHTSA (5 USC 552(a) and 1 CFR Part 51, and 49 CFR 571.5(a) respectively).

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. The rule neither imposes any additional requirements nor alters the cost impacts of requirements already adopted.

NHTSA has also analyzed this rule for the purposes of the National Environmental Policy Act and determined that it will result in no significant impacts. As a result of the amendment, the definition of gasoline is changed from an undefined term to one using a quantified ratio of chemicals. The agency believes that commercial gasoline obatined at the pump has been used for the chemical resistance test, and that unleaded gasoline of 89 octane and above contains a small though unknown percentage of benzene, a known carcinogen. The adoption of the ASTM Reference Fuel, which does not contain benzene, will benefit the human environment. Further, although the total quantity of test fluid that will be used in a single year is unknown, the agency estimates that only three-quarters of an ounce of fluid will be required to test a headlamp. With respect to tar remover, the agency is also moving from an undefined term to one using a quantified ratio of chemicals; however, the levels of xylene and petroleum based mineral spirits is approximately the same for all tar removers and the impact upon the environment will be unchanged by this aspect of the rule. Finally, as for power steering fluid, the change to the qualification "as recommended by the vehicle manufacturer" should have minimal impact. Some automobile manufacturers recommend only one fluid whereas others recommend one and mention an allowable substitute.

The agency has considered the impact of this rule in relation of the Regulatory Flexibility Act. For the reasons discussed above, I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle lighting equipment, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles and lighting equipment will not be impacted.

Finally, the agency has considered this rule as it relates to Executive Order 12612 "Federalism." The rule will preempt any State law that differs from the rule, but will not preempt any State law that is identical to the rule, according to the express preemption provision of 15 U.S.C. 1392(d).

The engineer and lawyer primarily responsible for this proposal are Jere Medlin and Taylor Vinson respectively.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 continues to read as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

2. Paragraphs (b)(1), and (b)(3) of paragraph S6.4 of § 571.108 are revised to read as follows:

§ 571.108 Standard No. 108, Lamps, reflective devices, and associated equipment.

* * * * *

S6.4 Chemical resistance.

* * * * *

(b) * * *

(1) ASTM Reference Fuel C, which is composed of Isooctane 50 volume % and Toluene 50 volume %. Isooctane must conform to A2.7 in Annex 2 of the Motor Fuels Section of the *1985 Annual Book of ASTM Standards,* Vol. 05.04, and Toluene must conform to ASTM specification D362–84, *Standard Specification for Industrial Grade Toluene.* ASTM Reference Fuel C must be used as specified in:

(i) Paragraph A2.3.2 and A2.3.3 of Annex 2 to *Motor Fuels, Section 1* in the 1985 Annual Book of ASTM Standards; and

(ii) OSHA Standard 29 CFR 1910.106–*Handling Storage and Use of Flammable Combustible Liquids.*

(2) Tar remover (consisting by volume of 45% xylene and 55% petroleum base mineral spirits).

(3) Power steering fluid (as specified by the vehicle manufacturer for use in the motor vehicle on which the headlamp is intended to be installed).

* * * * *

Issued on June 21, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88–18537 Filed 8–16–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 71158–7288]

Foreign Fishing Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final reassessment and reserve release, and request for comments.

SUMMARY: NMFS announces apportionment of the 46,400 metric ton reserve of Pacific whiting to foreign and domestic fisheries in the exclusive economic zone (EEZ) off Washington, Oregon, and California, and requests comments on this action. This action is based on a reassessment of the needs of the domestic fishing industry, and revises the 1988 estimates of domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and the total allowable level of foreign fishing (TALFF) for Pacific whiting. This action is intended to assure that the needs of the domestic industry are met before additional amounts are made available to the foreign fishery, and to provide for additional allocations of Pacific whiting to foreign countries, if appropriate, of those amounts surplus to domestic needs.

DATES: This action is effective on August 12, 1988. Comments must be submitted by September 16, 1988.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR 611.70 and Part 663 state that the Secretary of Commerce (Secretary) annually specifies a numerical optimum yield (OY), DAH, DAP, JVP, TALFF, and a reserve for Pacific whiting. Regulations at 50 CFR 611.70(d) establish procedures to reassess DAH, DAP, and JVP on or about July 1 each year, and to increase TALFF during the fishing year by any part of the reserve or surplus DAH that the Secretary determines will not be harvested by U.S. fishermen.

The initial DAP and JVP for 1988 were based on the projected needs of the U.S. industry, as surveyed by the NMFS Northwest Region in December 1987. The industry was surveyed again in June 1988 to determine whether there was any change in the domestic intent and capacity to harvest and process Pacific whiting for the rest of the calendar year. Past and projected U.S. catch, effort, and processing performance were taken into account. This preliminary reassessment indicated that the initial DAP and JVP should be increased by 2,000 mt and 15,000 mt, respectively, for a total increase to DAH of 17,000 mt. Because only 17,000 mt of the 46,400 mt reserve will be needed by U.S. harvesters in 1988, the remaining 29,400 mt is available for release to TALFF.

The results of the preliminary reassessment and the proposed release of the reserve were announced at the July 12–13, 1988 meeting of the Pacific Fishery Management Council (PFMC) in Portland, Oregon, and the public had opportunity to comment at that time. No comments were received. Therefore, the final reassessment and release of the reserve is the same as preliminarily announced to the Council in July.

The preliminary reassessment was not published in the **Federal Register** because prior consultation with the Council could not occur until mid-July. Publication of the final reassessment now, and the release of the reserve, is necessary because TALFF is small in 1988 and several foreign participants may exhaust their allocations prior to the release of the reserve if the final reassessment reserve/release is not published now. Because foreign countries often rely to a great extent on their directed fishing allocations to make their joint venture operations economically viable, any delay in releasing the reserve could jeopardize U.S. joint venture operations. Thus, the Administrator, NOAA, finds that circumstances compel publication of the final reassessment and reserve release now without having previously published the preliminary reassessment.

The purpose of releasing the portion of the reserve surplus to domestic needs is to provide for full utilization of the Pacific whiting resource by allowing for additional allocations to foreign countries in amounts which will not be utilized by the U.S. industry. However, there is no certainty that any or all of the additional TALFF will be allocated to foreign countries during 1988.

Secretarial Action

This action revises the 1988 initial specifications for Pacific whiting announced on January 6, 1988 (53 FR 246) as indicated in the following table.

CHANGES TO THE OPTIMUM YIELD SPECIFICATIONS FOR PACIFIC WHITING IN 1988 (IN METRIC TONS)

	Initial specification	Change	Final specification
OY	232,000		232,000
DAH	166,000	+17,000	183,000
DAP	16,000	+2,000	18,000
JVP	150,000	+15,000	165,000

CHANGES TO THE OPTIMUM YIELD SPECIFICATIONS FOR PACIFIC WHITING IN 1988 (IN METRIC TONS)—Continued

	Initial specification	Change	Final specification
TALFF	19,600	+29,400	49,000
Reserve	46,400	−46,400	

Classification

The reassessment of the needs of the domestic industry and the reapportionment of the Pacific whiting reserve to domestic and foreign fisheries are based upon the most recent data available. The action is taken under the authority of 50 CFR 611.70(d), is in compliance with Executive Order 12291, and is covered by the regulatory flexibility analysis and environmental impact statement prepared for the authorizing regulations. The action contains no collection of information requirement for purposes of the Paperwork Reduction Act.

This action is time critical, and so is taken without prior notice and public review. Foreign fishing allocations may be almost fully harvested by the time this notice is published in the **Federal Register.** Additional allocations are contingent upon release of the reserve. Delay in issuance of additional allocations is costly to the foreign fleet and may jeopardize U.S. joint venture operations. For these reasons, delay is impracticable, unnecessary, and contrary to the public interest. As a result, the Administrator, NOAA, finds that good cause exists to waive the requirement for prior public comment.

The public has had opportunity to comment on this action at the July 1988 meeting of the Pacific Fishery Management Council, at which time the Council concurred with this action. Written public comments also will be accepted for 30 days after publication of this notice in the **Federal Register.**

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries.

Dated: August 12, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18601 Filed 8-12-88; 2:21 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 71148-8001]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of notice of closure.

SUMMARY: The Acting Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) for the "other rockfish" category in the Central Regulatory Area of the Gulf of Alaska has not been harvested. The Secretary of Commerce (Secretary), therefore, is modifying the previous closure notice, referenced below, by promulgating a reopening now and a new closure date. This action is necessary to fully harvest the TAC. It is a management action that makes best use of fishery resources in the Gulf of Alaska.

DATES: This notice for reopening is effective at noon, August 14, 1988, Alaska Daylight Time (ADT), until 12 Noon (ADT), August 20. Subsequently, this area will again be closed, effective after 12 Noon (ADT), August 20, 1988, until midnight, Alaska Standard Time (AST), December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the Exclusive Economic Zone (EEZ) in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.2 of the regulations defines the Western, Central, and Eastern Regulatory Areas in the Gulf of Alaska. Under the procedure set forth at § 672.20(a), 1988 TACs were established for each groundfish target species or species group and apportioned among the regulatory areas or district (53 FR 890, January 14, 1988).

One of the groups of groundfish species for which TAC was established is the "other rockfish" category, which in the Central Regulatory Area consists of members of the genus *Sebastes,* as described in Table 1 of § 672.20. The 1988 TAC for "other rockfish" in the Central Regulatory Area is 7,100 metric tons (mt) and is apportioned entirely to domestic annual processing (DAP).

On July 8, 1988, NMFS closed the Central Regulatory Area to further retention of "other rockfish", because the best available projected catch information indicated that the TAC would be reached on that date (53 FR 26441, July 13, 1988). Subsequent tallying of fish tickets and weekly catch reports, however, showed that the real catch was 6,515 mt, or 585 mt less than the TAC. The Secretary, therefore, is reopening the "other rockfish" season at 12:00 noon ADT on August 14, 1988. NMFS has determined that the number of vessels that will participate in the reopening will catch the remaining TAC by August 20, 1988. Therefore, the Secretary is also announcing that further retention of "other rockfish" in the Central Regulatory Area after 12:00 noon ADT August 20, 1988, is prohibited.

Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18602 Filed 8-12-88; 2:22 pm]

BILLING CODE 3510-22-M

50 CFR Part 674

[Docket No. 80630-8130]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing the U.S. Exclusive Economic Zone off Southeastern Alaska to commercial fishing for all salmon species for 10 days. This action is necessary to stop the harvest of coho salmon by the troll fishery and is intended to ensure that the coho salmon stocks are not overharvested.

DATE: This notice is effective at 2359 hours Alaska Daylight Time (ADT), Sunday, August 14, 1988, and will expire at 2400 hours ADT, Wednesday, August 24, 1988. Public comments are invited until September 15, 1988.

ADDRESS: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. During the 30-day public comment period, the data upon which this notice is based will be available for public

inspection from 0800 through 1630 hours ADT Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the U.S. Exclusive Economic Zone (EEZ) off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska, East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*). Article III of the treaty requires that each Party conduct its fisheries to prevent overfishing of the salmon stocks subject to the treaty. The coho stocks being protected by this action are stocks subject to the treaty (article I (6) and 1988 amendment of annex IV, chapter 5).

On 12 July 1988 (in conjunction with a similar closure by the State of Alaska), the Secretary of Commerce (Secretary) closed the EEZ for the commercial harvest of chinook salmon and closed the Fairweather Grounds to the harvest of all salmon because the trollers had apparently harvested their allocation of chinook salmon (53 FR 26779, July 15, 1988). As of 28 July, the Alaska Department of Fish and Game estimates that the trollers have harvested about 231,900 chinook salmon, of which about 213,500 are charged to the quota of 263,000 set by the Pacific Salmon Treaty and about 18,500 are from Alaska's new salmon enhancement activities and are supplemental to the quota. Before the fishery started, the total allowable harvest of chinook salmon by the troll fishery was forecast to be about 221,000. Thus, the troll fishery has harvested its allocation of chinook salmon for 1988.

On 26 July (also in conjunction with similar actions by the State of Alaska), the Secretary closed for 10 days the entire EEZ off Southeast Alaska to commercial fishing for all salmon species to protect coho salmon from being overharvested because it appeared that coho were considerably below average in abundance this year (53 FR 28403, July 28, 1988). That closure expired on 4 August, and the EEZ (except for the Fairweather Grounds) reopened to commercial fishing for salmon species other than chinook.

The available information since the troll fishery reopened on 5 August reaffirms the Secretary's opinion that coho are well below average in abundance this year in Southeast Alaska. the harvest by the commercial troll fishery is only about 28 percent of the 1981–1985 average harvest at this time. The coho harvests by the commercial gillnet fishery are about 50 percent of the average, and the sport harvest is only about 30 percent of the average.

Regulations implementing the FMP (at § 674.23(a)) provide that the Secretary may modify the fishing times and areas whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area;

(2) The catch per unit of effort and the rate of harvest;

(3) The relative abundance of salmon stocks within the management area;

(4) The condition of salmon stocks throughout their ranges;

(5) Any other factors relevant to the conservation of salmon.

The Secretary, therefore, in reviewing the available information on the coho stocks and fisheries, has determined that the effect of overall fishing effort, the catch per unit of effort, and the below average rate of harvest throughout the management area indicate that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of fishing times if coho stocks are to be conserved and managed adequately.

The available data shows the coho stocks to be well below average in abundance; accordingly, the Alaska Department of Fish and the Secretary have decided to close the troll fishery in State and Federal waters for 10 days to protect the remaining coho. During the closure, the Alaska Department of Fish and Game will continue to monitor the strength of the coho harvests of the sport, gillnet, and purse seine fisheries in State waters.

The closure will become effective after this notice has been filed for public inspection with the Office of Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stock harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c). However, a § 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of notices like this one, which did not provide an opportunity for the public to comment before it became effective. The aggregated data upon which this closure is based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: August 12, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–18650 Filed 8–12–88; 4:43 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 159
Wednesday, August 17, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Schedules

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations to eliminate the requirement for agreements between agencies and OPM in employing persons with mental retardation. The proposed change is intended to improve the use of this appointing authority by eliminating a requirement not specifically required in law.

DATES: Comments must be submitted on or before October 17, 1988.

ADDRESS: Send or deliver written comments to Patricia Paige, Chief, Programs Division, Office of Affirmative Recruiting and Employment, Career Entry Group, Office of Personnel Management, Room 6332, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Orian Falkenborg, (202) 632–0601.

SUPPLEMENTARY INFORMATION: A Presidential memo to heads of executive departments and agencies in September, 1961, announced that the U.S. Civil Service Commission was establishing a special appointing authority in the excepted service for mentally retarded applicant. Under the regulations published in 5 CFR Part 213, for this authority, agencies are required to execute a written agreement with the Office of Personnel Management before they and their components may use this appointing authority. The original purpose of this agreement was to ensure that agencies followed the procedures specified in the Federal Personnel Manual. Most agencies have executed this agreement, and they have now had many years of experience in using this appointing authority. The Personnel Directors' Productivity Task Force has recommended that the requirement for the written agreement be eliminated. OPM reviewed this requirement and agreed that it is no longer necessary.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined by section 1(b) of E.O. 12991, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal applicants.

List of Subjects in 5 CFR Part 213

Government employees, administrative practice and procedure.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend Part 213 of Title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301, and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931); 3307, 8337(h), and 8457.

2. In § 213.3102, paragraph (t) is revised to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office.

* * * * *

[FR Doc. 88–18578 Filed 8–16–88; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–90–AD]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection and repair, as necessary, of the body and canted bulkhead structure for cracks at the nose gear wheel well forward corners. Recent service experience indicates that airplanes which have been modified by the incorporation of an external doubler need to be inspected externally as well as internally to detect cracks. Since an undetected crack may result in sudden loss of cabin pressurization and extensive structural damage, a new AD is being proposed to include additional inspection and repair requirements. This action would also add additional airplanes which may be subject to similar cracking.

DATE: Comments must be received no later than October 11, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention, Airworthiness Rules Docket No. 88–NM–90–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing

address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-90-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: On August 24, 1984, FAA issued AD 84-18-02, Amendment 39-4906 (49 FR 35622; September 9, 1984), applicable to certain Boeing Model 747 series airplanes, to require inspection and repair, as necessary, of the body and canted bulkhead structure for cracks at the nose gear wheel well forward corners. That action was prompted by reports from five operators that 12 cracks were found on nine airplanes. Such cracking, if not detected and corrected, could result in sudden loss of cabin pressurization, as well as structural damage to the airplane.

Since issuance of that AD, service experience has indicated that airplanes modified by the incorporation of an external doubler need to be inspected externally, as well as internally, to detect cracks. It was also discovered by the manufacturer that Group 3 airplanes, as defined in Boeing Service Bulletin 747-53-2112, may also have similar cracking. Because an undetected crack may result in sudden loss of cabin pressurization and extensive structural damage, the FAA has determined that additional inspections are required in order to adequately detect cracking, and that Group 3 airplanes must also be subject to these inspections.

The FAA has reviewed and approved Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988, which describes an inspection program that will ensure the structural integrity of the nose gear wheel well forward lower corner structure.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would supersede AD 84-18-02 and require additional inspections of the nose gear wheel well forward corners on certain Boeing Model 747 series airplanes, including Group 3 airplanes, in accordance with the Boeing service bulletin previously described.

It is estimated that a total of 114 airplanes (including 24 additional planes) of U.S. registry would be affected by this AD, that it would take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $2,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,140,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entites because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 84-18-02, Amendment 39-4906 (49 FR 35622; September 11, 1984), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, Groups 1, 2, and 3 as listed in Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the body skin and the canted pressure bulkhead structure, accomplish the following:

A. For Group 1 airplanes on which the initial inspection requirements of Airworthiness Directive (AD) 84-18-02 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. Prior to the accumulation of 4,000 landings or within the next 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 landings, perform a detailed visual inspection of the nose gear wheel well forward lower corners, exterior and interior area, for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revisions 3 or 4. Additionally, perform a high frequency eddy current (HFEC) inspection of the chord and doubler for cracks at the two forward hinge fairing attach bolt locations, in accordance with Boeing Service Bulletin 747-53-2112, Revisions 3 or 4.

2. Cracks found while conducting the inspections required by paragraph A.1., above, must be repaired as follows:

a. If the crack is visible on an interior surface, or exceeds any of the limits defined in paragraph A.2.b., below, repair in accordance with FAA-approved procedures prior to further flight.

b. If the crack is visible from an exterior surface only and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of skin fasteners, repair in accordance with an FAA-approved procedure prior to the accumulation of 500 additional landings, provided that a detailed visual inspection is performed at intervals not to exceed 100 landings.

3. Inspections are to continue after repair. If additional cracks are found, repair in

accordance with FAA-approved procedures prior to further flight.

B. For Group 1 airplanes on which the initial inspection requirements of AD 84–18–02 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747–53–2112: Continue to perform the repetitive inspections and to make repairs, if necessary, in accordance with the requirements of paragraph A., above.

C. For Group 1 airplanes on which the initial inspection requirements of AD 84–18–02 have not been conducted as of the effective date of this AD, and which have been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747–53–2112:

1. Inspect the nose gear wheel well forward lower corners at the times and using the methods specified in either paragraph C.1.a. or C.1.b., below.

a. *Option I: External inspection.*

Within 1,500 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform an external detailed visual inspection of the nose gear wheel well forward lower corner structure for cracks, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. After the initial inspection, continue to inspect as follows: Perform external general visual inspections at intervals not to exceed 100 landings, and external detailed visual inspections at intervals not to exceed 1,000 landings, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988.

b. *Option II: External and internal inspection.*

Within 1,500 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform an external and internal detailed visual inspection of the nose gear wheel well forward lower corner structure for cracks, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. Repeat external and internal detailed visual inspections at intervals not to exceed 1,500 landings.

2. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

3. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

D. For Group 1 airplanes on which the initial inspection requirements of AD 84–18–02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of a doubler in accordance with AD, and which have been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747–53–2112: Continue to perform the repetitive inspections and to make repairs, if necessary, in accordance with the requirements of paragraph C. of this AD.

E. For Group 2 airplanes on which the initial inspection requirements of AD 84–18–02 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of the hinge fairing rework or modification doublers in accordance with Boeing Service Bulletin 747–53–2112: Perform the inspections and repairs, if necessary, in accordance with the requirements of paragraph A. of this AD, except that repetitive inspection intervals shall not exceed 2,000 landings. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

F. For Group 2 airplanes on which the initial inspection requirements of AD 84–18–02 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of the hinge fairing rework or modification doublers in accordance with Boeing Service Bulletin 747–53–2112: Continue to perform the repetitive inspections and to make repairs, if necessary, as described in paragraph A. of this AD, except that repetitive inspection intervals shall not exceed 2,000 landings. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

G. For Group 2 airplanes on which the initial inspection requirements of AD 84–18–02 have not been conducted as of the effective date of this AD, and which have been modified by incorporation of the hinge fairing rework in accordance with Boeing Service Bulletin 747–53–2112:

1. Within 6,000 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform a low frequency eddy current (LFEC) inspection for cracks in the underskin doubler at the nose gear wheel well forward lower corners, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. Repeat low frequency eddy current inspections in the underskin doubler at intervals not to exceed 2,000 landings.

2. If a crack is found that is visible on an interior surface or exceeds any of the limits in paragraphs G.3., below, repair in accordance with FAA-approved procedures prior to further flight.

3. If an underskin doubler crack is found that is not visible from the interior and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of fasteners, repair in accordance with FAA-approved procedure prior to the accumulation of 500 additional landings, provided that a detailed visual inspection of the nose gear wheel well forward corner structure is performed at intervals not to exceed 100 landings.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

H. For Group 2 airplanes on which the initial inspection requirements of AD 84–18–02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of hinge fairing rework only in accordance with Boeing Service Bulletin 747–53–2112: Continue to perform the repetitive inspections and to make repairs, if necessary, in accordance with the requirements of paragraph G. of this AD.

I. For Group 2 airplanes on which the initial inspection requirements of Ad 84–18–02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of the hinge fairing rework and modification doublers in accordance with Boeing Service Bulletin 747–53–2112:

1. If the underskin doubler was not cracked at the time of modification, within 10,000 landings after the modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

2. If the underskin doubler was cracked at the time of modification, within 2,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

3. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

J. For Group 3 airplanes which have not been modified by incorporation of the external doubler in accordance with Boeing Service Bulletin 747–53–2112:

1. Within 6,000 landings after hinge fairing modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform a low frequency eddy current inspection for cracks in the underskin doubler at the nose gear wheel well forward lower corners, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. Repeat low frequency eddy current inspections in the underskin doubler at intervals not to exceed 2,000 landings.

2. If a crack is found that is visible on an interior surface or exceeds the limits defined in paragraph J.3., below, repair in accordance with FAA-approved procedures prior to further flight.

3. If an underskin doubler crack is found that is not visible from the interior and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of fasteners, repair in accordance with FAA-approved procedure prior to the accumulation of 500 additional landings, provided that a detailed visual inspection of the nose gear wheel well forward corner structure is performed at intervals not to exceed 100 landings.

4. Inspections are to continue after repair. If additional cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

K. For Group 3 airplanes which have been modified by incorporation of the external

doubler in accordance with Boeing Service Bulletin 747–53–2112:

1. If the underskin doubler was not cracked at the time of modification, within 10,000 landings after modification or within 1,000 landings after the effective date of AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

2. If the underskin doubler was cracked at the time of modification, within 2,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

3. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with FAA-approved procedures prior to further flight.

L. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

M. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's number of hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

N. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC on August 8, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–18544 Filed 8–16–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket Number 88–ANE–34]

Airworthiness Directives; Pratt & Whitney (PW) JT9D–7R4D, D1, E, E1, E4, G2, and H1 Series Turbofan Engines.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires the installation of containment shields in the fan case assembly and stronger material B-flange bolts on certain PW JT9D–7R4 turbofan engines, prior to December 31, 1990. The proposed AD would amend AD 87–23–05 by allowing an alternate method for the installation of fan containment hardware on certain engines and restating for clarity the existing AD requirements. The proposed AD is needed to prevent fragments of a failed fan blade from penetrating the fan case assembly which could result in damage to the aircraft.

DATES: Comments must be received on or before September 16, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 88–ANE–34, 12 New England Executive Park, Burlington, Massachusetts 01803. or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 88–ANE–34".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletins (SB's) may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB's is contained in Rules Docket Number 88–ANE–34, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Diane M. Kirk, Engine Certification Branch, ANE–142, Engine Certification Office, Engine & Propeller Directorate, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7082.

SUPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledged receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 88–ANE–34". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Amendment 39–5755 (52 FR 41704; October 30, 1987), AD 87–23–05, by allowing an alternative method for the installation of fan blade containment hardware and to clarify the compliance requirements of the existing AD. On October 9, 1987, Amendment 39–5755 was issued requiring installation of containment shields in the fan case assembly of JT9D–7R4 series engines in accordance with the applicable SB JT9D–7R4–72–311, Revision 2, or SB JT9D–7R4–72–312, Revision 2. The AD was necessary to prevent uncontained blade fragment penetration of the fan case assembly in the event of a blade failure. Field experience and analysis indicated that energy of a failed fan blade may have the required force to penetrate the fan case assembly forward of the B/flange.

Additional data gathered by the FAA, since issuance of AD 87–23–05, has shown that an interference problem can occur on JT9D–7R4D, D1, E, E1, E4, and H1 series engines during installation of containment shields under adverse tolerance conditions when installed in accordance with SB JT9D–7R4–72–312, Revision 2, dated June 26, 1987.

This proposed amendment will allow an optional procedure in accordance with SB JT9D–7R4–72–312, Revision 4, if an interference problem occurs. Interference between the front containment shield retaining bolts Part Number (P/N) 1A7544 and the fan case inner diameter (ID) flange may exist. Additional washers, P/N MS9320–10, may be installed on the forward side of B-flange to provide bolt to flange clearance. Also, adverse tolerance stack-up between the four bolts, P/N MS9209–16, and the mating B-flange nuts may result in an insufficient bolt thread engagement on some engines. If insufficient bolt thread engagement occurs, bolts MS9209–17, MS9209–18, or MS9209–19, may be used, provided there is no interference with adjacent hardware.

It has also been determined that in addition to PWA 36003 Adhesive and PR1422 Class A polysulfide sealant as specified in SB JT9D–7R4–72–311 and SB JT9D–7R4–72–312, Revision 2, an additional alternative, PR1422 Class B polysulfide sealant may be used in attaching the containment ring segments in accordance with SB JT9D–7R4–72–311, Revision 3, and SB JT9D–7R4–72–312, Revision 4.

Additionally, the FAA has determined that clarification of paragraph (b)(1) of AD 87–23–05 is required to specify containment shield and fan case compatibility for the JT9D–7R4D, D1, E, E1, E4, and H1 series engines. The installation of the applicable shield to the fan case assembly depends upon the material of the fan case. For titanium cases, the applicable shield to use is P/N 802096; for steel cases, use P/N 802095.

Since the condition is likely to exist or develop on other engines of the same type design, the proposed AD would amend Amendment 39–5755 (52 FR 41704; October 30, 1987), AD 87–23–05, by allowing an alternative procedure in the incorporation of the containment shields.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion: The FAA has determined that this proposed regulation involves 619 total engines at an approximate cost of $520,000. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this proposed regulation affects only operators using B767, B747, A310, or A300 aircraft in which the JT9D–7R4 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending § 39.13, Amendment 39–5755 (52 FR 41704; October 30, 1987) Airworthiness Directive (AD) 87–23–05, as follows:

(The amendment is restated in its entirety for clarity.)

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D–7R4, D, D1, E, E1, E4, G2, and H1 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent fan blade fragment penetration of the fan case assembly, accomplish the following prior to December 31, 1990.

(a) For JT9D–7R4G2 series turbofan engines:

(1) Modify fan case assembly by installing shield, Part Number (P/N) 802094, in accordance with PW Service Bulletin (SB) JT9D–7R4–72–311, Revision 3, dated February 19, 1988.

(2) Modify outer front fan exit case assembly (fan exit case and vane assembly), by installing ring segments, P/N's 803264–01, 803265–01, and 802448, in accordance with PW SB JT9D–7R4–72–311, Revision 3, dated February 19, 1988.

(3) Reidentify the modified fan case assembly, outer front fan exit case assembly, and the fan exit case and vane assembly, in accordance with PW SB JT9D–7R4–72–311, Revision 3, dated February 19, 1988.

(b) For JT9D–7R4D, D1, E, E1, E4, and H1 series turbofan engines:

(1) Modify fan case assembly by installing shield, P/N 802095, on engines with steel fan case assemblies and shield, P/N 802096, on engines with titanium fan case assemblies, in accordance with PW SB JT9D–7R4–72–312, Revision 4, dated July 8, 1988.

(2) Modify outer front fan exit case assembly, or detail of fan exit case and vane assembly, and install ring segments, P/N's 803261–01, 803262–01, and 802447, in accordance with PW SB JT9D–7R4–72–312, Revision 4, dated July 8, 1988.

(3) Reidentify the modified fan case assembly, the outer front fan exit case assembly, and the fan exit case and vane assembly, in accordance with PW SB JT9D–7R4–72–312, Revision 4, dated July 8, 1988.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine & Propeller Directorate, may adjust the compliance schedules specified in this AD.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Engine & Propeller Directorate, Aircraft Certification Services, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The FAA will request the approval of the **Federal Register** to incorporate by reference the manufacturer's service bulletins identified and described in this document.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–18550 Filed 8–16–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–94–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) applicable to certain Boeing Model 757 series airplanes, which would require periodic

freeplay checks of the elevator, and replacement of worn elevator power control actuator (PCA) rod end bearings, if necessary. This proposal is prompted by reports of excessive wear of elevator PCA rod end and reaction link rod end bearings. This condition, it not corrected. could lead to unacceptable airframe vibration during flight.

DATES: Comments must be received no later than September 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–94–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Beoing Commerical Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region., 17900 pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA, Northwest Moutain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contract concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Officer of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–94–ADF, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. *Discussion:* The manufacturer has notified the FAA of the finding of excessive wear of elevator PCA rod end and reaction link rod end bearings of in-service Boeing Model 757 series airplanes. Four airplanes experienced intermittent airframe vibrations and five airplanes experienced pitch oscillations with the autopilot engaged. These experiences occurred as a result of PCA rod end and PCA reaction link rod end bearing wear. These bearings are prone to execessive wear because of corrosion resulting from insufficient lubrication and seals which permit moisture to penetrate the bearings. Worn elevator PCA rod end bearings, if not detected and corrected, can result in excessive elevator freeplay and unacceptable airframe vibration during flight.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–27A0086, dated June 9, 1988, which defines the specific inspection procedures to be used to check the elevator for freeplay. A modification is described in the service bulletin, which consists of replacing the existing bearings with improved bearings.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require periodic elevator freeplay checks on elevators incorporating old design bearings, and replacement. as necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 136 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $163,200.

The regulations set forth in this notice would be prmulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. This, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that his document (1) involves a proposed regulation which is not major under Executive order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.19 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes listed in Boeing Alert Service Bulletin 757–27A0086, dated June 9, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent unacceptable airframe vibrations during flight, accomplish the following:

A. Within the next 90 days after the effective date of this AD or prior to the accumulation of 3,000 flight hours total time in service, whichever occurs later, and thereafter at intervals not to exceed 3,000 flight hours, perform an elevator freeplay check in accordance with Boeing Alert Service Bulletin 757–27A0086, dated June 9, 1988. If freeplay exceeds the limits specified in the service bulletin, before further flight, replace elevator power control actuator (PCA) reaction link rod end bearings and PCA rod end bearings, as necessary, in accordance with the sevice bulletin.

B. Terminating action for the repetitive inspection requirements of paragraph A. of this AD consists of replacing all old design bearings with improved bearings, in accordance with the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may by used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway south, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeny

Acting Director, Officer of Airworthiness.

[FR Doc. 88-18541 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 88-AEA-7]

Proposed Alteration of Jet Route; New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-217 located in the vicinity of Hancock, NY. A segment of J-217 west of the Keating, PA, very high frequency omni-directional radio range and tactical air navigational aid (VORTEC) is never used or requested. This notice proposes to revoke that segment between Keating and Franklin, PA. This proposed action would reduce chart clutter.

DATES: Comments must be received on or before September 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 88-AEA-7, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AEA-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to revoke a segment of Jet Route J-217 between Keating, PA, and Franklin, PA. This segment of J-217 is never used and we are proposing to remove this segment from the charts whereby reducing chart clutter. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 1.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

Section J-217 [Revised]

From Hancock, NY; to Keating, PA.

Issued in Washington, DC, on August 8, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-18548 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 88-AEA-6]

Proposed Alteration of a Jet Route; New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of a jet route located in the vicinity of New York, NY. The LaGuardia, NY, very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) will be relocated from its current site on Rikers Island, NY, to the LaGuardia Airport. This action would amend the description of one jet route affected by the relocation.

DATES: Comments must be received on or before September 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 88-AEA-6, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AEA-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of a jet route that will be affected by the relocation of the LaGuardia VOR/DME. The LaGuardia VOR/DME will be relocated from Rikers Island, NY, to the LaGuardia Airport (lat. 40°47'01"N., long. 73°52'08"W.). This action would change the description of one jet route affected by this relocation. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-42 [Amended]

By removing the words "LaGuardia, NY; INT LaGuardia 043° and Hartford, CT, 236° radials;" and substituting the words "LaGuardia, NY; INT LaGuardia 042°T(054°M) and Hartford, CT, 236°T(249°M) radials;"

Issued in Washington, DC, on August 5, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-18547 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852-3236]

Montgomery Ward & Co., Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Chicago, Ill. retailer from misrepresenting service contract coverage and products' need

for maintenance, adjustment, or servicing. The consent agreement also would prohibit respondent from making any claims about the durability of any product for which it sells service contracts, unless it has competent and reliable evidence that substantiates its claims.

DATE: Comments must be received on or before October 17, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lawrence Hodapp, FTC/H–238A, Washington, DC 20580. (202) 326–3105.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or view will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Service contracts, Trade practices.

Agreement Containing Order to Cease and Desist

The Agreement herein, by and between Montgomery Ward and Company, Inc., hereinafter sometimes referred to as "respondent," by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

(1) Montgomery Ward & Co., ("Montgomery Ward") is an Illinois corporation. Montgomery Ward has its principal office or place of business located at One Montgomery Ward Plaza, Chicago, Illinois.

(2) Respondent has been served with a copy of the Complaint issued by the Federal Trade Commission charging it with violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a) (1980).

(3) Respondent admits all the jurisdictional facts set forth in the Commission's Complaint in this proceeding.

(4) Respondent waives:

(a) any further procedural steps;

(b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement.

(5) This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

(6) This Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the Complaint.

(7) This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent: (a) Issue its decision containing for following Order to Cease and Desist in disposition of the proceeding, and (b) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to Order to respondent's address as stated in this Agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order not defined therein, and no agreement, understanding, representation, or interpretation not contained in the order or the Agreement may be used to vary or contradict the terms of the Order.

(8) Respondent has read the Complaint and the Order contemplated hereby and understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that is may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that respondent Montgomery Ward & Co., Inc., its successors and assigns, and its officers, representatives, agents, and employees, acting directly or through any corporation, subsidiary, division, or other device, in connection with the marketing or sale of any service contract, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

(1) The necessity of maintenance, adjustments or servicing of any product for which any service contract is sold or offered for sale;

(2) That any person or organization has endorsed the use, purchase, desirability, or necessity of any service contract; or

(3) The coverage by any service contract of routine maintenance, repairs occassioned by improper use of the product by any person, day-to-day servicing, cleaning, or adjustments.

For the purpose of this Order, the term "service contract" shall mean a contract in writing to perform, over a fixed period of time or for a specified duration, any service relating to the maintenance or repair (or both) of a product, which contract is sold to consumers for separate consideration than the insured product.

II

It is further ordered that Montgomery Ward & Co., Inc., its successors and assigns, and its officers, representatives, agents, and employees, acting directly or through any corporation, subsidiary, division, or other device, in connection with the marketing or sale of any service contract, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, about the durability or reliability of, the incidence of malfunctions or defects in, or the incidence of repairs or servicing of, any product for which any service contract is sold or offered for sale, unless at the time of such representation respondent possesses and relies upon competent and reliable evidence that substantiates such representation. Evidence in the

form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevent professions to yield accurate, reliable, and reproducible results.

III

It is further ordered that respondent and its successors and assigns shall maintain for three (3) years after the date of the last dissemination of the representation and upon request make available to the Federal Trade Commission for inspection and copying:

1. Copies of all materials relied upon by each representation subject to this Order; and

2. Copies of all materials relating to any tests, experiments, analyses, research, studies, surveys, or expert opinions in the possession of the respondent that may contradict, qualify, or call into question any representation subject to this Order.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment, or sale, resulting in the termination of respodent and the creation of one or more successors, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

V

It is further ordered that respondent, within thirty (30) days of the date of service of this Order, shall distribute a copy of this Order to each of respondent's corporate and territorial operating divisions' officers or agents of respondent at store manager level or greater with supervisory responsibility in connection with the marketing or sale of any service contract and shall obtain from each such person a signed statement acknowledging receipt of a copy of the Order.

VI

It is further ordered that within sixty (60) days after the date of service of this Order respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Montgomery Ward, Inc., Montgomery Ward Plaza, Chicago, Illinois 60671. Montgomery Ward is a national retailer of consumer products. The company offers service contracts on a variety of the products it sells, including both its private label products and products carrying other brand names.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges Montgomery Ward with making express misrepresentations of fact in the sale and offering for sale of service contracts in order to induce consumers to purchase service contracts. Part I alleges that Ward misrepresented the necessity of performing repairs, maintenance, adjustment, and or servicing on products for which it sells service contracts. Part I alleges also that the company misrepresented to consumers that *Consumer Reports* endorsed the purchase of service contracts.

In addition, Part II of the complaint alleges that Ward misrepresented the terms or features of its service contracts. The complaint charges Ward with making misrepresentations regarding the coverage by certain service contracts of routine maintenance, cleaning, adjustments, and or repairs necessitated by improper use. In Part III, the complaint alleges that Ward represented to consumers that current models of its products require the same or greater maintenance than earlier models. The complaint alleges that at no time has Montgomery Ward possessed and relied upon substantiation for such representations.

The proposed consent order would prohibit Ward from making the types of misrepresentations set forth in the complaint. Part I of the order would prohibit misrepresentations relating to the product's need for maintenance, adjustment, or servicing; the endorsement by any persons or organizations of the purchase of service contracts; and the coverage by any service contract of routine maintenance, day to day servicing, cleaning, adjustment, or repairs necessitated by improper use.

Part II of the proposed consent order would require Ward to possess and rely upon competent and reliable evidence that substantiates any claim made about the reliability or durability, or the incidence of repairs or servicing required for any product for which a service contract is sold. Part III would require Ward to maintain copies of all materials which it relied upon in making any representation, as well as copies of materials relating to all tests, analyses, expert opinions, or other information that may qualify or call into question any such representation, for a period of three years after the last date of dissemination of the material.

The proposed consent order would also require Montgomery Ward to distribute a copy of the order to each of its officers or agents, at store manager level or higher, who have supervisory authority in connection with the marketing or sale of service contracts. It would require Ward to obtain a signed statement from each such person acknowledging receipt of a copy of the order. Finally, the proposed order would require Montgomery Ward to file a compliance report within sixty (60) days after service of the order, and to notify the Commission of any proposed change in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-18554 Filed 8-16-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM88-17-000]

Regulations Governing the Public Utility Regulatory Policies Act of 1978

July 29, 1988

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing the implementation of Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA). Since issuance of the current regulations, a number of problems have developed with the interpretation and implementation of these regulations. This notice of proposed rulemaking addresses problems with the criteria and procedures under section 201 of PURPA by which qualifying small power

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production and cogeneration facilities, *i.e.*, qualifying facilities (QFs), can obtain PURA benefits. Specifically, the Commission proposes to revise its regulations regarding certification procedures for qualifying facilities and the technical standards for cogeneration and small power production facilities.

The Commission also solicits comments on three potential changes to the regulation regarding electric utility ownership of QFs. First, the Commission seeks comment on whether there should be a bar against purchases by a utility from an affiliated QF. Second, if a bar against affiliate sales is adopted, the Commission seeks comments on whether to allow a utility's subsidiary to own 100% of a QF. Finally, the Commission seeks comments on the advisability of adopting a revenue test for defining when a company is "primarily engaged" in the sale of non-QF electric power.

DATES: The Commission is scheduling a public hearing to be held on November 16, 1988, to provide interested persons with an opportunity to make oral presentation of their views. Requests to participate must be filed in writing (separately from comments) with the Secretary on or before October 27, 1988.

An original and 14 copies of written comments on the proposed rule must be filed with the Commission on or before October 27, 1988.

Replies to written comments must be filed with the Commission on or before November 28, 1988. Replies to written comments must not exceed 15 double-spaced pages.

ADDRESS: Requests to participate at the public hearing, written comments and reply comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

For Further Legal Information Contact:

Gilda E. Rodriguez, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8155.

For Further Technical Information Contact:

James C. Liles, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426 (202) 357–8069.

John Emami, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426 (202) 376–9381.

SUPPLEMENTARY INFORMATION: The Commission provides all interested persons an opportunity to inspect or copy the contents of this notice of proposed rulemaking during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is avilable at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. CIPS operates at 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking is available on CIPS for 10 days from the date of issuance.

The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 100, 825 North Capitol Street NE., Washington, DC 20426.

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I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing the implementation of Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA).[1] Since issuance of the current regulations, a number of problems have developed with the interpretation and implementation of these regulations. The instant rulemaking addresses problems with the criteria and procedures under section 201 of PURPA by which qualifying small power production and cogeneration facilities, *i.e.*, qualifying facilities (QFs), can obtain PURPA benefits.[2]

[1] 16 U.S.C. 796–825r (1982).

[2] Section 210 of PURPA directs the Commission to "prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage

Continued

Specifically, the Commission proposes to clarify its rules by amending Part 292. In so doing, the Commission believes it will satisfy its statutory obligation to periodically review and revise regulations as necessary to encourage cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for electric consumers.

II. Background

PURPA was one component of Congress' effort to solve what was perceived as a nationwide energy crisis in 1978, when it enacted omnibus legislation intended to provide for increased conservation of electric energy and increased efficiency in the use of facilities and resources by electric utilities.

In PURPA, Congress recognized the potential of cogeneration[3] and small power production[4] to increase the efficiency of generating electric energy and reduce the nation's reliance on imported oil.[5]

Prior to the enactment of PURPA, a cogeneration or small power production facility seeking to establish interconnected operation with a utility faced three major obstacles. First, a utility was not generally willing to purchase the electric output or was not willing to pay a fair rate for that output. Second, some utilities charged discriminatorily high rates for back-up service to cogeneration and small power production facilities. Third, QFs that provided electricity to a utility's grid risked being considered a public utility and subject to extensive state and Federal regulation.[6]

In recognition of these impediments, Congress enacted Title II of PURPA to foster the development of cogeneration and small power production.

Section 210 also directs the Commission to exempt qualifying cogeneration facilities and certain small power production facilities, in whole or in part, from the Federal Power Act (FPA),[7] the Public Utility Holding Company Act (PUHCA),[8] and state laws and regulations regarding the financial or organizational regulation of electric utilities, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.[9]

Congress took this action because it believed that the burdens of traditional utility-type regulation were likely to discourage cogeneration and small power production.[10] Thus, Congress concluded that exempting these facilities from traditional utility-type regulation would be an effective stimulus to QF development.[11]

Section 3(17) of the FPA, as amended by PURPA, defines a qualifying small power production facility as an entity which "produces electric energy solely by the use, as a primary energy source, or biomass, waste, renewable resources, geothermal energy, or any combination thereof," [12] with a power production capacity which, together with any other facilities located at the same site, is not greater than 80 megawatts.[13] A small power producer must use a specified "primary energy source" for all electric generation, except as required for emergency, maintenance, control and related purposes.[14] Persons "not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)" may obtain qualifying small power production facility status if they meet such eligibility requirements as the Commission may prescribe by rule.[15]

A qualifying cogeneration facility is defined as a facility that produces electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes.[16] Unlike the provisions governing small power production facilities, the statute does not specify maximum size or primary energy source limitations for cogeneration facilities. However, in order to qualify, a person not primarily engaged in the generation or sale of electric power must satisfy requirements governing minimum size, fuel use and fuel efficiency as the Commission may prescribe by the rule.[17]

The Commission implemented sections 201 and 210 in a series of rulemakings in 1980.[18] The

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cogeneration and small power production * * *." In a separate rulemaking in Docket No. RM88-6-000, the Commission recently proposed to clarify its rules on the administrative determination of avoided cost under PURPA. *See* Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities, 53 F.R. 9331, IV FERC Statutes and Regulations, Proposed Regulations ¶ 32,457 at 32,155 (1988) [hereinafter ADFAC NOPR]. The Commission also proposed rules in Docket No. RM88-5-000 to permit states to set avoided cost rates through bidding mechanisms. *See* Regulations Governing Bidding Programs, 53 F.R. 9324, IV FERC Statutes and Regulations, Proposed Regulations ¶ 32,455 at 32,031 (1988) [hereinafter Bidding NOPR].

[3] Cogeneration is the sequential production of electrical power and useful thermal energy, such as heat or steam. The sequential use of energy can involve either electricity production first, thermal application second ("topping-cycle") or vice versa ("bottoming-cycle"). Because both types of energy (heat and electricity) are produced in a single process, fuel savings in the range of 10-30% are generally possible in cogenerated production of electricity and steam as compared to producing the two separately. *See* Stobaugh and Yergin (editors), *Energy Future* 159 (Random House 1979). These fuel efficiencies were explained in a 1980 General Accounting Office report:

> Most industrial process steam is produced through direct combustion of fossil fuels. Direct combustion of results in available heat reaching temperatures as high as 3,600 degrees F. Most industrial processes, however, require steam at much lower temperatures, less than 400 degrees F. Thus, burning fuels to produce only low-temperature process steam is an inefficient use of energy. Substantial fuel savings can be achieved if the high-temperature energy available from combustion is first used to generate power, and then reject heat, ranging from 200 to 1,000 degrees F, depending on the types of fuel and systems involved, is used for industrial process heat applications.

Comptroller General, "Industrial Cogeneration—What It Is, How It Works, Its Potential," at 11 (U.S. General Accounting Office, 1980).

[4] Small power production facilities use biomass, waste, renewable resources (including wind, solar, and water) geothermal energy, or any combination thereof to produce electric power. Reliance on these sources of energy can reduce the demand for traditional fuels.

[5] *See* Report of the Senate Committee on Energy and Natural Resources on S. 2114 (the Senate version of PURPA), No. 95-442, 95th Cong., 1st Sess. 2 (1977).

[6] *See, e.g.*, 123 Cong. Rec. 23848 (daily ed. Aug. 1, 1977) (remarks of Sen. Percy); *id.* at 32403, (Oct. 5, 1977) (remarks of Sen. Durkin); *id.* at 32437, (remarks of Sen. Haskell); *Id.* 32419 (remarks of Sen. Hart).

[7] 16 U.S.C. 792 *et seq.* (1982).

[8] 15 U.S.C. 79 *et seq.* (1982).

[9] 16 U.S.C. 824a-3(c) (1982). Qualifying cogeneration facilities, qualifying small power production facilities not exceeding 30 megawatts power production capacity are exempt. 16 U.S.C. 824a-3(e) (1982). Subsequent legislation exempted geothermal and solar powered small power producers up to 80 megawatts from FPA and PUHCA oversight. Energy Security Act, Pub. L. 96-294, section 643(b); Energy and Water Development Appropriations Act of 1988, Pub. L. 100-202, section 310.

[10] *See* Executive Office of the President, The National Energy Plan (G.P.O. 1977) at 45. *See also The Commonwealth of Massachusetts, Cogeneration: Its Benefits to New England* (Oct. 1978).

[11] Resource Planning Associates, Inc., *The Potential for Cogeneration Development in Six Major Industries by 1985* (1977).

[12] *See* 18 CFR 292.204. Biomass was defined by the Commission to mean any organic material not derived from fossil fuels; waste is any by-product material other than biomass. 18 CFR 292.202 (a) and (b). Renewable resources include energy sources such as solar, wind and hydropower.

[13] 16 U.S.C. 796(17)(A) (1982).

[14] 16 U.S.C. 796(17)(B) (1982).

[15] 16 U.S.C. 796(8)(C) (1982).

[16] 16 U.S.C. 796(18)(A) (1982).

[17] 16 U.S.C. 796(18)(B). These rules were promulgated in Order No. 69 issued February 19, 1980.

[18] *See Small Power Production and Cogeneration Facilities; Regulations Implementing section 210 of the Public Utility Regulatory Policies Act of 1978,*

Continued

Commission's Order No. 70 implements section 201 by setting forth procedural and technical criteria by which cogeneration and small power production facilities can obtain qualifying status.[19] Procedurally, Order No. 70 permitted qualification without a need for Commission action, *i.e.*, QFs were given the opportunity to self-qualify. It also made available an optional procedure whereby a facility can gain Commission certification as a QF.

With respect to technical standards, Order No. 70 set forth permitted levels of fossil fuel use by qualifying small power production facilities for such purposes as ignition, startup, testing, flame stabilization, and control, and for operation during unanticipated outages of the primary energy source.

For qualifying cogeneration facilities, Order No. 70 set forth efficiency standards for certain new facilities using oil or gas and adopted operating standards for all topping-cycle cogeneration facilities in order to assure that a qualifying cogenerator is a *bona fide* cogenerator that procudes a minimum quantity of thermal energy as well as electricity.[20] Order No. 70 established further definitions and procedures to determine QF status, described more fully in each section below.

Pursuant to § 292.205(d) of the Commission's regulations, the Commission may waive the operating and efficiency standards "upon a showing that the facility will produce significant energy savings."[21] Order No. 70 also set forth criteria for the ownership of QFs so as to limit ownership of qualifying QFs to entities not primarily engaged in the generation or sale of electric power.[22]

The Commission proposes to revise its procedural and technical rules to reflect experience with the QF program. Moreover, the Commission solicits comments on any procedural or technical modifications to the rules that may have been overlooked. By proposing these clarifying changes the Commission is satisfying its continuing obligation to review its policies and rules that encourage cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for electric consumers, and thereby fulfill its statutory responsibilities under PURPA.[23]

III. Proposed Procedural Modifications

A. Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A single response may be a notice of qualifying status. As discussed *infra*, under the Paperwork Reduction Act, section IX, the information collection burden is estimated to be substanitally shorter under the self-qualification method than under the application certification procedure. The eight hours indicated above is a weighted average reflecting the projected number of both types of those filings as well as the length of time to complete a particular filing. Send comments regarding this burden estimate, or any other aspect of this collection of information; including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Kenneth Thomas at (202) 357–5253) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

B. Commission Certification Versus Self-Qualification

1. Background

The original Notice of Proposed Rulemaking (NOPR) that the Commission issued to implement sections 201 and 210 of PURPA[24] required that any person seeking qualifying status for a facility: Initiate discussions with the utility with which it wished to interconnect; and file an application with the Commission. This was intended to resolve potential problems between the applicant and affected electric utility early in the development of a QF, as well as ensure that an applicant consider the suitability of its facility for interconnected operation.

Most of the comments received on this proposed regulation favored eliminating the filing requirement either for all qualifying facilities or for specific classes of facilities. These commenters argued that the complexity, delays, and uncertainties caused by case-by-case certification would act as a significant economic disincentive to owners of small facilities. One utility[25] proposed having regulations on an "exception" basis where the utility, state regulatory authority, or other interested party could object to the granting of qualifying status.

In the final rule,[26] the Commission eliminated the requirement that all persons seeking status as a QF must file an application with the Commission. The Commission stated:

> The Commission believes the initiation of purchase and sale arrangements * * * will necessitate the flow of information between potential qualifying facilities and affected electric utilities. The Commission therefore notes that the requirements contained in the proposed rule both for discussions between a potential qualifying facility and the utility with which it wishes to interconnect and for the filing of substantial information with the Commission are not necessary.[27]

The final rule provides that any small power producer or cogenerator which meets the critiera for qualification set forth in § 292.203 of the Commission's rules is considered a qualifying facility. Facilities meeting these requirements need only provide notice to the Commission of their status in order to be eligible for PURPA benefits. This is commonly referred to as self-qualification.

Under the statute, Commission certification of a facility's eligibility for PURPA benefits is unnecessary. However, the Commission did provide

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Order No. 69, 45 FR 12,214, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,128 (1980); *Small Power Production and Cogeneration Facilities—Qualifying Status*, Order No. 70, 45 FR 17,959, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶30,134 (1980); *order on reh'g* (of Order Nos. 69 and 70), 45 FR 33,958, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,160 (1980). American Electric Power Service Corp. v. FERC, 675 F.2d 1226 (1982), *reversed in part*, American Paper Institute v. American Electric Power Corp., 461 U.S. 402 (1983).

[19] The Commission declined to include any fuel use criteria in its definition of qualifying cogeneration facilities. The United States Court of Appeals for the District of Columbia Circuit affirmed the Commission with respect to fuel use, holding that the statute did not require the Commission to establish separate fuel use criteria and that the Commission's regulations "were a reasoned, adequate response to the charge Congress gave it." American Electric Power Service Corp. v. FERC, 675 F.2d 1226, 1241 (DC Cir. 1982).

[20] 45 FR 17960, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶30,134 at 30933.

[21] 18 CFR 292.205(d) (1987).

[22] 45 FR 17970, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶30,134 at 30,953. Ownership criteria are set forth at 18 CFR 292.206 (1987).

[23] 16 U.S.C. 2601 *et. seq.* (1982).

[24] Docket No. RM79–54, 44 FR 38822, FERC Statutes and Regulations, Proposed Regulations 1977–1981, ¶ 32,024 (1981).

[25] Pacific Gas and Electric Co.

[26] Order No. 70, 45 FR 17971, FERC Statutes and Regulations, Regulations preambles 1977–81 ¶ 30,134 and 30,954.

[27] 45 FR 17962, FERC Statutes and Regulations, Regulations Preambles 1977–81 ¶ 30,134 at 30,938.

for an alternative approach under which developers with novel technologies or approaches could seek certification of their status by the Commission. This provision of the rules was viewed as a means of resolving disputes.

2. Problem

Currently, in order to have qualifying status a facility must either follow a self-qualification procedure or apply for and obtain Commission certification.

Although notices of self-qualification have comprised approximately 50 percent of applications received, it is unclear why self-qualification has not been utilized to an even greater degree. Apparently, the biggest obstacle is the reluctance of financial institutions to back projects without the Commission's "seal-of-approval." For example, one applicant specifically stated that the lenders to the project required Commission certification as a QF as a condition to the project's financing.[28] To the extent such "forced" filings delay bringing eligible facilities into service and therefore increase the cost of facilities entering into production, the development of cogeneration and small power production is discouraged, contrary to the intent of Congress.

Although the Commission cannot force financial institutions to back self-qualified projects, we can address the likely cause of their reluctance to do so. This reluctance may be the result of uncertainty over eligibility for PURPA benefits. If so, the clarifications suggested in this proposed rule, as well as the development of standardized applications for Commission certification, should alleviate the problems.

Such clarifications may not address, however, all of the problems that make financial institutions reluctant to finance self-qualified projects. Apparently, some electric utilities and state regulatory agencies use Commission certification as a prerequisite for dealing with electric utilities.[29] Such a requirement may be designed to distinguish *bona fide* QFs in order to assure that the benefits of cogeneration and small power production are actually realized when purchases are made. However, such a requirement is contrary to the Commission's rules. The Commission reemphasizes utilities' obligation to offer to interconnect with, purchase from, and sell to self-qualified facilities. Commission certification is not necessary to qualify facilities for these PURPA benefits; self-qualification is sufficient.

3. Proposed Solution

The Commission recognizes the concerns implicit in distinguishing *bona fide* QFs from power producing facilities not entitled to the benefits of PURPA. In an effort to address these issues and to lend more credence to the self-qualification option, the Commission proposes that instead of a self-qualification notice, a QF file an affidavit, with the Commission, signed by the facility's owner, operator, or authorized representatives which provides a basic description of the facility as required by the exiting rules and a statement that the facility meets the Commission's criteria. The advantage of such a statement is that, since it is a legally binding document, it provides greater assurances of a facility's qualifying status than the minimal filing now required.

Where it is clear that a facility meets the Commission's criteria, there is little risk to attesting to its eligibility for PURPA benefits. If QF developers do not have the expertise to determine whether they meet the requisite criteria to supply an affidavit, they could employ industry "experts" to do so. The Commission has tentatively concluded that an affidavit would provide utilities and state regulatory authorities adequate assurance that a facility is not being misrepresented, and that it does provide the inherent benefits associated with cogeneration or small power production. As such, the demand for Commission certification should be lessened.

The Commission also proposes that a self-qualifying facility provide the same affidavit to the utility it expects to deal with. The Commission proposes that the utility be afforded 90 days after receipt of the affidavit to file objections with the Commission regarding such qualification. Absent filing such an objection the utility would be obligated to deal with such facilities pursuant to our rules without insisting upon Commission certification. The Commission does not wish to encourage needless paperwork or expend time and resources unnecessarily; therefore, the Commission solicits comments on ways to discourage the filing of frivolous objections.

The Commission also solicits comments on what information should be included in the affidavit, both to satisfy the Commission's need for information and to facilitate utilities' ability to determine whether to object. The Commission also invites comments on what procedural steps might be appropriate after an objection is filed. Assuming that the Commission retains the certification procedure, one option for resolving objections could be a limited certification review process.

The Commission also solicits comment on the continued need for the opportunity to obtain Commission certification. Our review of QF applications for certification suggests that in many such applications, eligibility for qualifying status is easily ascertained. These facilities should use the self-qualification option and not the Commission certification option. If the Commission certification option were eliminated, facilities employing those novel technologies applications and ownership arrangements for which Commission certification was originally designed could apply for a declaratory order under the Commission's rules.[30] The benefits of a separate procedure appear negligible, and the option of self-qualification may never be fully successful as long as the opportunity for Commission certification remains. The Commission, therefore, solicits comments on the possibility of eliminating the procedure for Commission certification. In the event the Commission concludes that the option of Commission certification is no longer necessary, and eliminates the possibility for such certification, the sections of the rules concerning the certification process for which revisions are being proposed may be omitted from the final rule.

c. Qualifying Facility Certification Application Filing Requirements

1. Background

Of the 3,998 QF filings made from the beginning of the QF program through December 31, 1987, 2,011 have been applications for certification by the Commission. Although approximately 50 percent of these have been filed in complete form and have been processed routinely, incomplete filings have created problems. Deficient filings result in staff requests for supplemental data, which delay the ultimate decision on the application. Deficient filings have not been entirely the fault of the applicants, but may also result from modifications to the information required for certification due to case precedent as the QF program has evolved.

Information submitted in a certification application is presently specified in the regulations in broad terms and subsequent case law has necessitated additional information to

[28] Ecogen One Partners Ltd., Docket No. QF87-615-001 (1988).

[29] *See, e.g.*, application by McKee Products, Inc. in Docket No. QF86-902-001, 43 FERC ¶ 61,534 (1988).

[30] 18 CFR 385.207(a)(2) (1987).

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be filed. In practice, precise measures have been developed to aid in using these broad guidelines. Moreover, the Commission has confronted a variety of situations not explicitly anticipated when the original rules were issued. Novel combinations of technologies, energy sources, heat uses and business arrangements have occurred that have required the Commission to interpret the proper application of its rules in acting on individual certification filings. Thus, applicants must often examine not only the basic language of the regulations but also the history of related cases in order to file a complete application. This can be burdensome for applicants, who may not have ready access to Commission resources. For some applicants, a filing for QF certification may be the initial and only time they deal with this Commission.

2. Proposed Solution

In the event the Commission continues to use the certification option, the Commission proposes to explicitly outline its information requirements by incorporating two standardized application forms in our regulations. Specifically, the Commission proposes to delete § 292.207(b)(3) and (b)(4) from the current rules and replace them by adding § 292.207(b)(2)(i), which would contain the form for applicants requesting certification of a facility as a small power production facility, and § 292.207(b)(2)(ii), which would contain the form for applicants requesting certification of a facility as a cogeneration facility. Applicants would use such forms for all applications for certification. By incorporating the specific information required by the rules, the Commission seeks to make it easier for the public to apply for certification, to reduce the number of deficiency letters from staff, and to eliminate unnecessary delays in processing certification applications. The Commission solicits comments on the adequacy of the data request in the proposed forms. The Commission notes that any form would require some degree of flexibility since the uniqueness of individual facilities and novel applications will occasionally require supplemental data submissions.[31]

3. General Contents of Applications For Commission Certification

All applicants, whether small power producers or cogenerators, must file a common set of infomation. The Commission proposes to continue requiring identifying information such as the name and address of the applicant and the location of the facility. The Commission proposes to require additional information in order to accelerate routine processing and evaluation of applications. The telephone number of a person with direct knowledge of the application should be provided. Either the owner or operator may be the applicant. Also, the location of the facility should include the state, county, town and street address if known.

Electric utility interests in QFs present the Commission with special information needs.[32] Information is required with respect to the identity of the owner of the facility and the percentage of equity ownership by any electric utility or electric utility holding company. The Commission proposes to require that the applicant provide a statement as to whether or not an electric utility, electric utility holding company, or any combination thereof, has or will an ownership interest in the facility, and to require copies of relevant agreements.

The Commission further proposes the following data requirement: Description of the facility; identification of the principal components (such as boilers, prime movers, and electric generators); and a narrative sufficient to identify any characteristics of the facility that the applicant believes may bear upon its qualification status.

The Commission also proposes that the energy source to be used by the facility be identified in terms of: wastes; renewables, such as water, solar and wind; geothermal resources; fossil fuels, such as coal, oil or natural gas; and biomass. A description of the energy source is also required (*e.g.* if biomass, the applicant should describe its form, such as landfill gas, municipal solid waste, wood waste from logging, etc.).

The Commission requires sufficient information to verify that the small power producer's capacity is below the 30 megawatt threshold for exemption from FPA rate regulation and 80 megawatt threshold for qualifying small power production status. This requires an indication as to the power production capacity of the facility as defined in new § 292.202(s).

For the definition of power production capacity, the Commission will use the standard set forth in *Occidental Geothermal Inc.*,[33] where the Commission stated that the power production capacity of a facility is the maximum net output of the facility, as measured at the busbar, which can be safety and reliably achieved under the most favorable operating conditions likely to occur over a period of several years.[34]

4. Application Requirements for Small Power Production Facilities

The Commission proposes to modify application requirements for small power production facilities. For purposes of verifying the eligibility of a small power production facility for qualifying status, the applicant should indicate not only whether the facility is within one mile of other small power production facilities owned by the applicant and uses the same energy source, but also the identity and individual power production capacities of such facilities.[35]

In addition to the annual energy input of any natural gas, oil or coal, the Commission proposes to require the percentage of total energy input to the facility for each.

The Commission also proposes that small power producer applicants demonstrate that any wastes that are both primary energy sources and not included in the proposed list of wastes meet the Commission's proposed "no current commercial value" test.[36]

5. Application Requirements for Cogeneration Facilities

The Commission proposes certain changes to the application requirements for cogeneration facilities. Currently, the Commission's regulations simply require a description of the cogeneration system as to whether it is a topping- or bottoming-cycle facility, the date installation of the facility began, and "sufficient" information to determine compliance with "any applicable requirements under § 292.205." No other specifics are provided. Consequently, many cogeneration certification filings provide inadequate information for approval.

The review of cogeneration certification applications primarily focuses on whether the facility conforms to the requirement for sequential use of energy, and the operating and efficiency standards. Therefore, it is essential for applicants to provide a cycle diagram that depicts the facility's sequential use

[31] For example, in McKee Products, Inc., 43 FERC ¶ 61,534 (1988), the Commission considered whether kinetic energy produced as the result of moving rocks down conveyor belts constitutes waste.

[32] *See* Ultrapower 3, 27 FERC ¶ 61,094 (1984).

[33] 17 FERC ¶ 61,231 (1981).

[34] *See* discussion in Power Production Capacity, *infra*.

[35] *See* Windfarms, Ltd., 13 FERC ¶ 61,017 (1980).

[36] *See* discussion in Waste, *infra*. *See* Kenvil Energy Corp., 23 FERC ¶ 61,139 (1983); Electrodyne Research Corp., 32 FERC ¶ 61,102 (1985).

of energy, and which allows verification of the other technical data. Quantitative information must be submitted regarding the energy flows pertinent to evaluation of the facility's compliance with the operating and efficiency standards.

To determine compliance with the operating standard, the Commission must be able to validate the data used by the applicant in its calculation of the standard.[37] The Commission must also be able to validate the data used by the applicant in its calculation of the facility's compliance with the efficiency standard. In view of this, the Commission proposes to require that an applicant submit a legible cycle diagram. The cycle diagram should depict the physical arrangement of the system components and show system energy flows and conditions (*i.e.*, fuel flow inputs, working fluid flow rates, temperature, pressure and enthalpy at inputs and outputs of prime movers and at delivery to useful thermal energy applications). A demonstration of compliance with the efficiency standard for topping-cycle oil and gas cogeneration facilities with less then 50 percent use of these fuels will no longer be required.[38]

The Commission also proposes that data be submitted that indicate separately the annual energy input from each energy source (such as natural gas, coal, or oil) in terms of quantity consumed and Btu content. Btu content determinations using the standard industry Lower Heating Value for gas and oil will remain, unchanged. Where appropriate, separate data pertaining to gas or oil used for supplementary firing would be required.

The Commission proposes to modify its requirements for energy output information, as well as its requirements for energy input information. Data pertaining to the annual useful power output (net electrical output and net mechanical output, if applicable) and annual useful thermal energy output (topping-cycles) will be required. More specifically, the useful thermal energy output information should address any heating, cooling or process uses for external industrial or commercial purposes, and should include a description of each such process.

Additional information is required for verification of the useful thermal output. For heating or cooling uses, the applicant would be asked to identify the aggregate annual use, factoring hourly and seasonal variations into the calculation of the annual total. For process uses of thermal energy, the applicant would be asked to identify the output available for use (*i.e.*, actually delivered to process) and also provide the enthalpy (Btu/lb), pressure (psia), average flow rate (lbs/hr) and temperature (deg-F) of working fluids that deliver the thermal output to process, and of any return from process.

For purposes of demonstrating conformance with the operating and efficiency standards, the annual aggregate thermal energy input and output due to any supplementary firing must be provided in terms of Btu content.

D. Administration of The 90-Day Certification Period And Rejection Of Applications For Noncompliance

An application for Commission certification of qualifying status is filed with the Secretary's Office pursuant to § 292.207 of the Commission's regulations. Section 292.207(b)(5) provides that an order granting or denying the application, setting the matter for hearing or "tolling" the time for issuance of an order will be issued within 90 days of the filing of a complete application. There appears to be some confusion on the part of many applicants as to when this 90-day frame starts.

The Commission proposes to clarify that the 90-day time period for Commission action does not begin until all the information needed to complete the application has been submitted. In approximately 50 percent of all applications, the information supplied by an applicant is insufficient to verify that a project meets the Commission's QF requirements. In such cases, a determination of qualifying status is not possible and additional information is requested from the applicant. The 90-day period does not commence running until a complete application is received—*e.g.*, until the receipt of all information filed in response to deficiency letters.

E. Effect of OF Project Modification on Qualifying Status

Section 292.207(d)(2) of the Commission's rules implementing PURPA provides that a previously certified qualifying facility may petition the Commission for a ruling on whether a prospective change to the facility would affect its qualifying status.[39] Currently, no distinction is made between petitions under this rule and an original application for qualifying status certification under § 292.207(b). Payment of a substantial filing fee has been required [40] and lengthy review by Commission staff, including publication of a notice in the **Federal Register**, has unnecessarily delayed action for many simple project modifications.[41]

Assuming that the Commission retains its certification process, the Commission is reevaluating the need to subject all "recertification" filings to the same degree of scrutiny as the initial application for certification of qualifying status. The current approach to QF project modification appears unnecessary and overly burdensome. In many cases, proposed changes to a qualifying facility are minor in nature and clearly would not affect a facility's qualifying status. Of course, such changes could and should be handled through self-qualification. But in the event Commission certification is sought, such changes should be approved (or "certified") in an expedited manner. In most cases, the "difficult" questions (such as does the facility apply its thermal output to a "useful" purpose) have already been answered in the original certification. Thus, the effort required to evaluate these changes typically will be substantially less than that required for the original certification and does not warrant charging petitioners the § 292.207(b) filing fee or subjecting the petition to protracted review.

Streamlining the review of § 292.207(d)(2) petitions should reduce administrative burdens for both the Commission and QFs. Consequently, the Commission proposes to allow QFs undertaking certain changes to their facilities to maintain their qualifying status by simply notifying the Commission of the particular change. To facilitate this process, the Commission would include a list of such modifications for convenient reference. Notification would take the form of a letter to the Commission describing the

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[37] The 5 percent operating standard requires a comparison of the facility's useful thermal output (made available for use in an external commercial or industrial process, or used in a heating or cooling application) to the total energy output (the sum of the useful thermal and power outputs).

[38] *See* discussion in Efficiency Standard Calculations, *infra*.

[39] Section 292.207(d)(2) states that:

(2) Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under this section, a small power producer or cogenerator may apply to the Commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status.

[40] In a separate rulemaking (RM87–26–000), filing fees for Commission certification as a QF were recently increased to $4,310 for cogenerators and $6,560 for small power producers.

[41] Currently an order usually takes at least 30 days from the publication of the notice of the change in the **Federal Register** since interested parties are usually given that long to intervene.

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change in sufficient detail that the Commission can readily determine that it would not affect a facility's status. For changes identified below the Commission would return a copy of the letter to the applicant stamped "approved."

It is possible, however, that certain modifications would substantially alter the basic characteristics of the facility and therefore would entail a more detailed and thorough review. For example, significant decrease in efficiency or in the operating standard calculations (particularly when a facility's previous eligibility was borderline) or changes in the technical design of a facility can affect a facility's qualifying status. Petitions for such major modifications are more appropriately treated as an original filing for certification of qualifying status. Therefore, should continued Commission certification be sought, fundamental changes in the design or operation of a facility would need to be reviewed under § 292.207(b). If a proposed change could not be stamped "approved," it would be treated as a section 207(b) filing with the required fee assessed.

1. Examples of Changes That Would Not Affect QF Status

For purposes of the above proposal, the following is a nonexhaustive list of changes to a QF that would clearly not affect its qualifying status. This means that it is readily evident from a review of a letter describing the change that the qualifying status of the facility would not be affected. Initially, the Commission proposes the following list of changes:

- A change in the name of the corporation or partnership owning the QF.
- A change in the ownership of a small power production facility if the new and remaining owners are unaffiliated with an electric utility, electric utility holding company or combination thereof.
- A change in the ownership of a cogeneration facility if (1) the new and remaining owners are unaffiliated with an electric utility, electric utility holding company or a combination thereof, and (2) the user of the thermal energy produced by the cogenerator is unaffiliated with the cogenerator.
- A change in the location of a proposed qualifying small power production facility if the new location is not within one mile of any other small power production facility and is owned by the same parties and uses the same primary energy source.
- A decrease in the amount of natural gas or oil used by a cogeneration facility if the efficiency and operating standard calculations for the facility remain at or above the minimum limits for those standards.
- A decrease in the amount of fossil fuel used by a small power production if the total use of fossil fuel remains below the limit for the fuel use.
- A change in the primary energy source of a small power production facility if the new energy source is biomass, renewable resources, geothermal resources, one of the waste energy sources in our proposed list, or any combination thereof.
- A change in the energy source of a cogeneration facility if the new primary energy source does not result in an increase in the facility's use of natural gas or oil.
- An additional use of a cogeneration facility's themal output if the original uses are maintained as specified in the original certification order.
- An increase in the efficiency or operating standard calculation of a cogeneration facility.
- A change in the power production capacity of a small power production facility, if the facility capacity does not exceed the capacity limit established for that particular type of facility.
- A change in the power production capacity of a cogeneration facility if the efficiency and operating standard calculations for the facility remain at or above the minimum limits for those standards.

The Commission requests comment on the appropriateness of these changes and any additional changes to QFs that could be included.

IV. Proposed Technical Modifications for Both Small Power Production and Cogeneration Facilities

A. Electric Utility Ownership of QFs

1. Background

Under sections 3(17)(C) and 3(18)(B) of the FPA as amended by PURPA, a QF can only be "owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)." [42] The Conference Report explained:

The terms "qualifying small power production facility" and "qualifying cogeneration facility" exclude facilities which are owned by a person who is primarily engaged in the generation or sale of electric power. Electric utilities may participate in an entity which owns such facilities with other persons and such entity could qualify under these definitions. The test of this case is whether the entity which owns the facility is primarily engaged in the generation or sale of electric power other than in connection with its ownership of the cogeneration facilities or small power production facilities.[43]

In its Notice of Proposed Rulemaking (NOPR) leading to the adoption of its current ownership criteria,[44] the Commission stated:

[U]nder a literal interpretation of the Conference Committee's statement, several electric utilities could form a subsidiary which owned small power production or cogeneration facilities. Such a subsidiary would constitute an entity which is not primarily engaged in the generation or sale of electric power other than in connection with its ownership of cogeneration or small power production facilities. Under such an interpretation the subject facility would be eligible to receive qualifying status.[45]

In its final rule, the Commission noted that several commenters to the NOPR agreed with the Commission that, under a literal interpretation of the Conference Report, electric utilities could form subsidiaries which would own QFs, and such subsidiaries would not be "primarily engaged in the generation or sale of electric power other than in connection with its ownership of cogeneration or small power production facilities." [46] Thus, utility subsidiaries could own cogeneration and small power production facilities without such facilities' losing their qualifying status.

However, the Commission declined to adopt this position in its final rule, restating its conclusion as contained in the proposed rule that the thrust of section 201 was to limit the advantages of qualifying status to facilities which are now "owned primarily" by electric utilities or their subsidiaries.[47] The Commission concluded that the rulemaking comments did not provide sufficient reasons to change the limitation on utility ownership of 50 percent that had been included in the proposed regulation.[48]

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[42] 16 U.S.C. 796 (17)(C) and (18)(B) (1982).

[43] H.R. No. 1750, 95th Cong., 2nd Sess. 89, *reprinted in* 1978 U.S. Code Cong. & Ad. News 7797, 7823, *and in* FERC Statutes and Regulations ¶ 5151 at 5097.

[44] Docket No. RM79-54, 44 FR 38822, FERC Statutes and Regulations, Proposed Regulations 1977-1981 ¶ 32,028 at 32,333 (1981). The ownership criteria are codified at 18 CFR 292.206 (1987).

[45] Docket No. RM-79-54, 44 FR 38822, FERC Statutes and Regulations, Proposed Regulations, 1977-1981 ¶ 32,028 at 32,333 (1981).

[46] *See* Order No. 70, Final Rule, Small Power Production and Cogeneration Facilities—Qualifying Status, Docket No. RM79-54, 45 FR 17959, FERC Statutes and Regulations, Regulations Preambles 1977-1981 ¶30,134 at 30,953 (1980).

[47] *Id.*

[48] In orders on rehearing of Order No. 70, the Commission permitted gas utility holding companies

Continued

In fashioning its ownership restriction, the Commission has equated ownership interest with equity interest.[49] In so doing, the Commission has determined that it must review two elements in order to determine a participant's "equity interest" in a QF project—(1) the entitlement to profits, losses and surplus after return of initial capital contribution (*i.e.*, the stream of benefits) and (2) the share of control of the venture.[50] The latter element must be reviewed in order to evaluate whether the utility participant is able to alter the allocation of benefits among the project participants:

> [The Commission's] examinations have focused on voting interests as well as special agreements (such as service control contracts) between utility partners and the partnership. The result sought is to avoid utility interest manipulation of the benefits flowing from a facility such that the utility would gain some undue advantage vis-a-vis other investors in the facility.[51]

In several orders applying the equity interest test, the Commission has held that:

(a) A utility developing a QF under a partnership arrangement with a non-utility is limited to 50 percent of the partnership's stream of benefits. However, the utility's initial contribution to capital may exceed 50 percent of total capitalization, depending on how the contribution is structured.[52]

(b) A lack of utility control over management of the facility does not entitle the utility limited partner to receive more than 50 percent of the profits of a venture.[53]

(c) Disparate capital contributions are permitted where such contributions are to be reflected in the partnership accounts as debt of the partnership, and profits are allocated equally between the partners.[54]

(d) A utility may lend money to a QF in which it has an interest in amounts greater than 50 percent of the capitalization, so long as its share of the profits remains within the 50 percent limit. Depending on how it is structured, a "preferred stock" type interest may be considered debt rather than equity.[55]

(e) Where a partnership agreement provides for disparate or unspecified allocations of the stream of benefits between utility and nonutility partners over any period during the life of the project, such allocations must reflect the time value of money such that the utility would not receive more than 50 percent of the stream of benefits.[56]

In applying the equity interest test in § 292.206(b), the Commission has invoked an "upstream" requirement, imputing subsidiary ownership of a QF to an electric utility or electric utility holding company parent, thus disallowing qualifying status where the subsidiary's equity interest in the QF exceeds 50 percent.[57]

The Commission's most recent application of the "upstream" test was in *Dominion Resources, Inc.* (*Dominion*).[58] In applying the "upstream" test, the Commission noted that § 292.206(b) of the current regulations deals with the attribution of ownership of a QF by subsidiaries of electric utilities rather than the extent of that ownership. The Commission adopted Dominion's modified proposal that the parent company's equity interest, for purposes of the 50 percent rule of § 292.206(b), should be determined by looking to the parent's derivative share in the QF, that share being a function of its percentage share (determined by its share in the subsidiary) in the subsidiary's share of the facility.[59] However, the requirements of § 292.206 will not be met if an electric utility or electric utility holding company holds more than a 50 percent interest in, or control of, a subsidiary *and* that subsidiary holds more than a 50 percent interest in, or control of, the facility.[60] The Commission further held that:

> A facility will meet the ownership requirements of PURPA as implemented by our regulations so long as the interest in the stream of benefits and control by a utility or utilities, by whatever mechanism used, does not exceed 50 percent. As was always the case, the subsidiary's interest in the qualifying facility will be imputed to its parent. However, the interest of the parent will be determined as described above, and control will be examined to make sure the limitation is met, for purposes of determining whether the 50 percent rule has been exceeded.

Several commenters at the Commission's Conferences on PURPA [61] suggested that allowing electric utility subsidiary ownership of up to 100 percent of a QF could advance the purposes of PURPA.[62] They maintained that by drawing on the experience and related expertise of personnel available from electric utilities, more efficient and reliable facilities could be constructed and that the PURPA goals of electric energy conservation, optimization of facility efficiency and equitable rates to electric consumers would be better served.[63] Some commenters also argued that removal or relaxation of the 50 percent ownership restriction would serve to make for more equitable treatment of the utility industry by allowing electric utilities' customers to have a greater share of the benefits of cogeneration.[64]

Several commenters suggested that self-dealing may be guarded against by either requiring the 100 percent subsidiary-owned QF to be located outside of the parent utility's service territory or simply prohibiting the subsidiary-owned QF from selling back to the parent utility, or holding company

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and electric utility holding companies found by the Securities and Exchange Commission to be "exempt holding companies" under sections 3(a)(3) and 3(a)(5) of the Public Utility Holding Company Act (PUHCA) to wholly own QFs. Order No. 70–B, 45 FR 52,779, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,178 (1980); Order No. 70–C, 45 FR 66,787, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,193 (1980). Section 3(a)(3) of PUHCA allows an exemption when the holding company is only incidentally a holding company and is primarily engaged in another business. Section 3(a)(5) allows an exemption when the holding company is such only with respect to foreign public utilities.

[49] *See* 18 CFR 292.206(b) (1987).

[50] *See* Ultrapower 3, 27 FERC ¶ 61,094 (1984); KP Diversified Investors, Inc., 32 FERC ¶ 61,013 at 61,050 (1985).

[51] Dominion Resources, Inc., 43 FERC ¶ 61,079 at 61,251 (1988). *See also* Ultrapower 3, 27 FERC at 61,084; CMS Midland, Inc., 38 FERC ¶ 61,244 at 61,827 (1987); Prodek/Hydro Resources Joint Venture, 41 FERC ¶ 61,152 (1987).

[52] Ultrapower 3, 27 FERC at 61,184.

[53] KP Diversified Investors, 32 FERC ¶ 61,013 at 61,050.

[54] Beowawe Geothermal Power Co., 33 FERC ¶ 62,205 (1985).

[55] CMS Midland, Inc., 38 FERC at 61,828.

[56] Prodek/Hydro Resources Joint Venture, 41 FERC ¶ 61,152 (1987).

[57] The first statement of the test as "upstream" is provided in Order No. 70–D, Docket No. RM79–54, 46 FR 11251 at 11252, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,234 at 31,475 (1981).

[58] 43 FERC ¶ 61,079 at 61,250 (1988).

[59] *Id.*

[60] *Id.* at 61,251.

[61] Docket No. RM87–12–000, 52 FR 2552 (1987).

[62] *See* Comments to the Commission's Conference on PURPA, Docket No. RM87–12–000, filed by Southern California Edison Co. at 7; Gulf States Utilities Co. at 11; Middle South Utilities, Inc. at 2–4; Virginia Power Co. at 18–19; Commonwealth Edison Co. at 4; Baltimore Gas & Electric Co. at 5–6; Public Utilities Commission of Ohio at 2–3; Illinois Commerce Commission at 12; Colorado-Ute Electric Association, Inc. at 11.

[63] *See, e.g.*, Comments to the Commission's Conference on PURPA, Docket No. RM87–12–000, filed by Georgia Power Co. at 20; Virginia Power Co. at 19; Southern California Edison Co. at 7; Statement of J.L. King, Senior Vice Pres. System Executive Operations, Middle South Utilities, Inc. at 4.

[64] *See* Comments to the Commission's Conference on PURPA, Docket No. RM87–12–000, filed by Southern California Edison Co. at 7; Statement of J.L. King, Senior Vice Pres.-System Executive-Operations, Middle South Utilities, Inc. at 4.

system.[65] Other commenters, however, opposed allowing electric utility subsidiaries to own over 50 percent of a QF. Among their arguments were that: (1) There might be a possible bias toward the sort of projects with which utilities are most familiar; [66] (2) utilities would favor projects owned by their subsidiaries; [67] and (3) the existing rule represented a reasonable compromise between customer and shareholder interests.[68] One state commission suggested that decisions to allow utilities to participate in cogeneration be made on a state-by-state basis.[69] However, another commenter suggested that federal guidelines were needed, because state-by-state results were likely to vary, to no one's advantage. The commenter also suggested that the Commission gather comments on organizational and financial separation.[70]

2. Discussion of Issues

a. *Introduction*—As the above discussion of Commission orders indicates, the current regulations and policy on electric utility ownership of QFs require the Commission to engage in an examination of the stream of benefits and management organization of QF projects on a case-by-case basis. These examinations often involve determinations about appropriate discount rates, what is or is not a benefit, whether a particular preferred stock is equity or debt, and who can exercise control over the business venture. The process may become more difficult to administer should analyses become more complex. However, a codification of our existing precedent could help eliminate such administrative difficulties.

Aside from administrative inefficiencies, the Commission's current 50 percent ownership restriction may not be the best means for achieving the policy objectives of PURPA. The present rule may be too lenient in some circumstances, and too strict in others. Limiting utility equity participation to 50 percent may unnecessarily restrict the advantages of utility participation where the potential for abuse of monopoly power through self-dealing by an electric utility is low, yet may offer incomplete protection where the potential for abuse is high. On the other hand, the Commission's ownership rule has worked reasonably well. The rule has proven sufficiently flexible to allow utilities to participate in QF projects and, at the same time, appears to offer adequate protection against abuses due to self-dealing in many circumstances.

b. *Concerns Regarding Utility Ownership of OFs*—(1) *Self-dealing.* The legislative history of PURPA does not fully explain the rationale behind the limitation on utility ownership of QFs. The legisaltive record is clear that none of the drafters wanted to discourage utility ownership of cogeneration. However, one of Congress' concerns was to protect against the potential abuse of monopoly power that might result if electric utilities were exempted from traditional utility regulation.[71] One means of abusing monopoly power is self-dealing—that a utility may favor its own subsidiary over others. However, the means by which such favoritism may be expressed range from the simple to the exceedingly complex.

Abuses due to self-dealing might arise under a variety of circumstances. A utility might offer a higher price for QF power from its subsidiaries than from nonaffiliated QFs. Alternatively, the price may be no higher, but other contract terms may be more favorable. Self-dealing concerns may also arise in the duration of contract negotiations.

Potential for abuse due to self-dealing may also arise apart from contract negotiations. For states that set avoided cost administratively, a utility subsidiary could be placed "first in line" to avoid the next increment of capacity. Subsequent QFs would receive lower (or no) capacity payments since the utility's capacity needs would already have been satisfied. In such a case, the utility, by purchasing first from its own subsidiary, might indeed skew the payments in favor of its own interests.

The potential for abuse of monopoly power through self-dealing also extends to circumstances beyond the construction of the QF. For example, a utility might be more lenient in enforcing performance standards upon its subsidiary than upon its nonaffiliated QFs. Or, if QF contracts call for dispatchable power, a utility might self-

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[65] *See* Comments to the Commission's Conference on PURPA, Docket No. RM87–12–000, filed by Baltimore Gas & Electric Co. at 5–6; Signal Energy Systems, Inc. (which opposes lifting the 50 percent restriction but, alternatively, supports a service area restriction if utility subsidiaries are to be allowed to have majority ownership) at 5; Virginia Power Co. at 18–19; Oregon Department of Energy at 5–6. *See also* comments of ELCON at 18.

[66] Comments to the Commission's Conference on PURPA, Docket No. RM87–12–000, filed by Massachusetts Executive Office of Energy Resources at 5.

[67] *See* Comments to the Commission's Conference on PURPA, Docket No. RM87–12–000, filed by Massachusetts Executive Office of Energy Resources at 5; Office of Consumers Counsel, State of Ohio at 16; Dow Chemical U.S.A. at 4; Scott Paper Co. at 10; American Paper Institute (initial comments) at 23–24; ELCON at 8.

[68] Comments to the Commission's Conference on PURPA, Docket No. RM87–12–000, filed by Alabama Electric Cooperative, Inc. and Allegheny Electric Cooperative, Inc. at 16.

[69] *See* Comments to the Commission's Conference on PURPA, Docket No. RM87–12–000, filed by Public Utility Commission of Texas at 14.

[70] *See* Comments to the Commission's Conference on PURPA, Docket No. RM87–12–000, filed by Renewable Energy Institute at 10–11.

[71] Early versions of PURPA required that utilities be given the right of first refusal to construct and operate cogeneration facilities before a cogenerator could itself build such a facility. *See, e.g.*, the Cogeneration and Waste Heat Utilization Act (H.R. 6661 and S. 1363); the Electric Utility Act of 1977 (H.R. 6860). These bills also extended tax credits to utilities investing in congeneration. However, when President Carter proposed the National Energy Act, the ownership of qualifying cogeneration projects was limited to those "to primarily engaged in the generation or sale of electric energy." *See* section 522(b) of H.R. 6831 and S. 1469, the National Energy Act. In testimony before the House and Senate on the issue of utility ownership, the Federal Power Commission (FPC) agreed that the FPA must be amended to make cogeneration more lucrative for utilities, but expressed concern, however, about relaxing price regulation for utilities by virtue of their ownership of congeneration since utilities have monopoly power. The FPC commented that both utilities have monopoly power. The FPC commented that both utilites and industrials should be allowed to own cogeneration facilities but only industrials should be assumed to be competitive enough to be freed from price regulation. Response to the Federal Power Commission in Appendix, *Responses to Subcommittee's Request for Answers to Questions on Public Utilities*, in Part 3, Vol. II, National Energy Act, *Hearings Before The Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce*, 95th Cong., 1st Sess. (1977) at 1743–46. Also, witnesses expressed concern that mandatory ownership of cogeneration by utilities would deprive industrials of their independence from utilities and thereby discourage industrial development of cogeneration. *See, e.g.*, Testimony of Mr. Gerald L. Decker in Part 3, Vol. II, National Energy Act, *Hearings Before The Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce*, 95th Cong., 1st Sess. (1977) at 338.

The bill initially passed by the House, H.R. 8444, contained tax incentives for utilities owning cogeneration facilities, gave utilities the right of first refusal to construct and operate cogeneration plants, and did not contain the Carter Administration's ownership limitation with regard to exempted QFs. *See* section 546(b) of H.R. 8444, the National Energy Act (introduced by Rep. Ashley). 123 Cong. Rec. 27,244 (Aug. 5, 1977). In contrast, while the Senate bill, S. 2114, was also designed to encourage utility ownership of cogeneration, it did contain the Administration's limitation of utility ownership of exempted cogeneration. *See* section 12(c) of S. 2114, the Public Utilities Regulatory Policy Act of 1977 (*reported* by the Committee on Energy and Natural Resoruces). 123 Cong. Rec. 32,696 (Oct. 6, 1977). With regard to this provision, Senator Johnston explained that the exemption from FPA and PUHCA regulation applies only to persons not primarily engaged in generating and selling electric power. 123 Cong. Rec. 32391 (Oct. 5, 1977). The Conference Report adopted the Senate's position with no explanation. However, in explaining the owenrship restriction, the Conference Report stated that "[t]he test of this [ownership] case is whether the entity which owns the facility is primarily engaged in the generation or sale of electric power other than in connection with its ownership of the cogeneration facilities or small power production facilities." H.R. No. 95–1750, Public Utility Regulatory Policies Act, 95th Cong., 2d Sess. 89 (1978).

deal by dispatching its own facilites preferentially.

The above forms of self-dealing could be very difficult to identify since there are legitimate reasons for a utility to treat different suppliers unequally. For example, the utility subsidiary might propose a technically superior project. Whether an electric utility concluded contract negotiations with its QF subsidiary more quickly than with others because of favoritism, or simply because the subsidiary proposed a better project, presents very difficult questions. Regulators could face an extremely complicated task in unraveling the utility's motives and might never be able to identify abuses due to self-dealing from the reasonable exercise of management discretion.

Another potential self-dealing problem is the utility's manipulation of the avoided cost when it receives substantial power affiliated QFs. For example, the utility could sign contracts with affiliated QFs that call for the avoided energy cost to be computed on an "as delivered" basis. At some future time, the utility could experience an outage of its coal-fired baseload unit and instead rely on more expensive oil or gas-fired sources. The utility would not incur a financial penalty for this. Rather, the coal-fired unit would remain in rate base, and the higher fuel costs would be passed through to ratepayers in the fuel adjustment clause charge. The avoided energy cost would also rise, resulting in greater profits to the QF subsidiary.

(2) Cross-subsidization.

Another concern with utility ownership of QFs is ratepayer subsidization of the electric utility's QF activities. This concern is not unique to electric utility participation in QFs. Indeed, this same concern arose during Commission consideration of the proposed regulations regarding independent power producers (IPPs).[72] When a company subject to cost-plus regulation diversifies into an unregulated competitive venture, an incentive develops to pass costs from the unregulated activity on to captive customers of the regulated activity. It is particularly difficult to protect against such behavior when the unregulated activity is in the same field as the regulated one (as in the case of electric utility ownership of QFs).

The problem of cross-subsidization is not new, however, and the opportunity to misallocate costs arises only to the extent that regulators are unable to separate nonregulated activity costs from native load-related costs. State regulatory agencies have had to deal with these issues many times in the past, and have developed techniques which, although imperfect, allocate costs between regulated and unregulated ventures. Some states require that unregulated activities be placed in separate subsidiaries to simplify accounting demands. Others may forbid diversification altogether.

The Commission tentatively concluded in the IPPs NOPR [73] that this problem may be best dealt with by the states, since they have had the most experience with it and because it relates more directly to retail rates. Recent experience suggests that it would be difficult for franchised electric utilities to cross-subsidize.[74] Generally, franchised electric utilities now face more aggressive state regulators who have experience with policing utility involvement in diversified activities and potential abuses due to cross-subsidies and cost misallocations. Cross-subsidization may also be difficult because industrial consumers, in particular, have considerable ability to vary their demands for electrical energy in response to price increases.[75] The phenomenal growth of self-service through cogeneration under PURPA, the increasing demands of industrial customers to "shop" for their electrical needs and the "rate discounts" franchised electric utilities are offering their industrial customers to delay cogeneration all attest to the price-sensitivity of industrial customers. In short, misallocations and cross-subsidization may subject the utility to significant regulatory and business risks.

c. *Advantages of Greater Electric Utility Participation in QFs.*

Counterbalancing the concerns with utility participation in QFs are two principal advantages: The utilities' expertise and their access to capital. Many utilities have engineering staff whose experience and expertise could be put to work designing and constructing efficient QFs. Additionally, many utilities have a substantial flow of internally generated funds available for diversification into other businesses. There may be distinct efficiency gains to be achieved by allowing a utility's particular expertise to be brought to bear in an area not too far afield from its core business.

There are already very competent companies involved in the financing, construction, and operation of QFs. But maximizing the number of participants in the QF market, including utilities, cannot but have positive effects on achieving further efficiencies—to the benefit of consumers.[76] The existing ownership regulations may impede electric utility participation in QFs even when there is no risk of self-dealing. Allowing for greater participation of electric utilties when the risks of such increased participation are low would encourage the development of efficient QFs consistent with the goals of PURPA.

Furthermore, permitting greater electric utility participation in QFs could also benefit consumers by permitting QFs to become active in power projects that would not qualify as QFs under PURPA. Investors in non-QF power plants are, by definition, electric utilities. QFs, therefore, can only make a minimal investment in non-QF power projects without simultaneously becoming electric utilities and thus subjecting themselves to the Commission's current ownership restriction. As long as electric utility participation in QFs is restricted, QFs cannot participate in non-QF power projects without jeopardizing their QF status.

3. Potential Reforms of Ownership Restriction

Although the Commission recognizes that certain problems have been raised concerning the Commission's current ownership rules, we do not believe that we have an adequate basis at this time to conclude that any change is warranted. The existing rule appears to represent a reasonable compromise between all of the interests involved in the QF industry. However, because questions have been raised as to whether our regulation is fully achieving

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[72] Regulations Governing Independent Power Producers, Docket No. RM88-4-000, 53 FR 9327, IV FERC Statutes and Regulations, Proposed Regulations ¶ 32,456 at 32,114 (1988) [hereinafter IPPs NOPR] (proposing relaxed FPA pricing regulation and streamlined FPA corporate regulation for a class of nontraditional power suppliers that the Commission can categorically conclude lack significant market power).

[73] *Id.*

[74] *Id.*

[75] The demand-side substitution of energy inputs is discussed generally by James L. Sweeney, *The Response of Energy Demand to Higher Prices: What Have We Learned?* 74 Am. Econ. Rev. (Proceedings) 31-37 (1984).

[76] The Commission tentatively concluded in Docket No. RM88-5-000, that purchases from QFs fall within the meaning of "another source" under the PURPA section 210(d) definition of "incremental cost of alternative energy." Thus, any reduction in QF costs due to competition resulting from increased number of potential QFs will not only benefit society as a whole, but will also be translated into lower avoided costs and savings to consumers. Bidding NOPR ¶ 32,455 at 32,027.

the purposes of PURPA, the Commission seeks comment on a number of matters.

Where there is little possibility of abuse due to direct self-dealing, the current 50 percent restriction may unnecessarily inhibit electric utility involvement. Where the possibility of abuse of monopoly through self-dealing cannot be ruled out, the present 50 percent equity limitation on utility ownership may not offer complete protection.

The Commission solicits comment on the need to circumscribe direct utility participation in QF projects by a means other than focusing on utilities' equity position. One approach could be to focus on utilities' control of such projects.[77] The Commission also desires commentary on whether the regulation of utility participation in QFs should parallel the Commission's proposed regulation of IPPs.[78]

By imposing similar restrictions on utility ownership of QFs and IPPs, it may be possible to avoid the Commission's regulations biasing franchised utilities' investment choices in QFs and IPPs. Absent reform of the current QF ownership regulations, dissimilar treatment of IPPs may create incentives for electric utilities to "game the system." If electric utilities were not allowed to own IPPs selling to affiliates but were allowed to own up to 50 percent of a QF doing so, to the extent the utility wants to make sales to affiliates an incentive would exist to create QFs by adding contrived thermal loads to facilities that would otherwise be IPPs or regulated utility plants. On the other hand, to the extent the utility does not want to engage in affiliate transactions it may avoid OFs and concentrate on IPP projects. It will do this because it can own 100 percent of IPPs, but is limited to 50 percent ownership in QFs. Thus, absent alteration, the Commission's existing ownership restriction may actually discourage the development of QF projects. Parallel regulatory treatment would eliminate the possibility of the Commission's ownership restriction's biasing utilities' choices between IPP and QF projects.

Accordingly, the Commission solicits comments on three potential changes to the regulations regarding electric utility ownership of QFs. The first potential reform on which the Commission seeks comment is a bar against affiliate sales. Congress left it to the Commission to prescribe, by rule, regulations necessary to carry out the purposes of PURPA. As such, the Commission has broad authority to take action necessary to ensure that electric utility ownership of QFs would not undermine the purposes and objectives of PURPA. The abuse of monopoly power through self-dealing may be serving to discourage the development of nonaffiliated QFs. Such action may also undermine the independence of industrial cogenerators. Accordingly, the Commission seeks comment on whether the potential for abuse due to self-dealing is a matter that requires Commission action.

A key concern regarding potential abuses due to self-dealing is that the franchised electric utility can financially benefit by purchasing from its affiliate. Should Commission action be warranted, to successfully protect against potential abuses due to self-dealing the definition of an "affiliate" may have to be structured to eliminate the potential for financial gain due to self-dealing. This suggests that, to fully succeed, franchised electric utilities may need to be prohibited from purchasing from QF projects in which they own more than a *de minimis* share of the project. Rather than wrestle with how to define "*de minimis*" on a case-by-case basis, the Commission could simply bar any transaction where the purchasing utility has *any* financial interest.[79] This bar would be administratively easy to apply, and should not limit the flow of electric utility capital into QF projects.

A restriction on affiliate sales, however, may not need to be imposed without exception. Not all arrangements between electric utility-owned QFs and affiliates necessarily raise self-dealing issues. For example, an East Coast utility that owns several West Coast QFs might find it desirable to have its QFs sell to an affiliate and then have this affiliate act as a broker of the QFs' power. Alternatively, if wheeling can be arranged, the utility could use power from one QF to provide power to other QFs. Since the franchised affiliate would not be involved in the transaction in any way, other than through its ownership of the QFs, self-dealing is not a concern. Also, potential abuses due to self-dealing are unlikely to be a major problem when the electric utility is procuring QF power in a competitive bidding program.

Consequently, restrictions on affiliate sales may not be necessary under a variety of circumstances. It might be possible to accommodate such circumstances by establishing a waiver of any affiliate sale restriction whenever there is limited or no potential for abuse due to self-dealing. One possibility that pershaps should be explored would be to have any prohibition against affiliate sales operate as a blanket restriction, subject to waiver by state regulatory authorities on a case-by-case basis. The state regulatory authorities could review the specific facts of each case for potential self-dealing, and have the authority to grant a waiver where supported by the facts. Alternatively, the waiver could be granted by the Commission upon petition by the QF and affiliated utility and possibly in conjunction with the relevant state regulatory Commission. The Commission invites comments on the possibility of waiving the bar against affiliate sales, how such a waiver should be implemented procedurally, and how it ought to be applied with respect to nonregulated utilities. The Commission also solicits comment on alternative approaches other than a case-by-case waiver that would permit affiliate sales

[77] The issue of control has been considered in a number of other contexts which might offer guidance in developing standards for what would constitute control in the instant situation. For example, under the Jones Act, 46 U.S.C.A. 688, which provides a cause of action for seamen who are injured in the course of their employment, seamen have a cause of action if they can show effective control by U.S. interests over foreign ships. Effective control has been defined through a non-exhaustive list of factors, such as the allegiance of the defendant shipowner. Under the Financial Accounting Standards Board accounting standards, the usual condition for control is ownership of a majority (over 50%) of the outstanding stock although the power to control may also exist with a lesser percentage of ownership, e.g., by contract or lease. Under the Federal Trade Commission's Premerger Rule § 801.1(b), in the case of an entity that has no outstanding voting securities control means having the right to 50 percent or more of the profits of an entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity, or regardless of its form of organization, having the contractual power presently to designate 50 percent or more of its directors or individuals exercising similar functions.

In contrast to numerical tests, in Order No. 497 (Docket No. RM87–5–000) the Commission adopted a definition of control for identifying affiliates which emphasizes the authority to direct or cause the direction of the management or policies of a business entity rather than a percentage of ownership or voting rights; a 10 percent voting interest creates a rebuttable presumption of control. Similarly, § 240.12b–2 of the Securities and Exchange Commission's regulations defines control as directly or indirectly possessing the power to direct or cause the direction of the management and policies of a person through ownership of voting securities, contract or otherwise. 15 CFR 240.12b–2 (1987).

[78] Under the Commission's proposed definition of IPPs, a subsidiary of a franchised utility could not sell to the parent subsidiary and qualify for IPP treatment for that transaction. A franchised utility or subsidiary of the franchised utility could only qualify as an IPP for nonaffiliate sales of power. IPPs NOPR at 32,112.

[79] It should be noted that such a bar would be prospective only.

when there is little potential for abuse due to self-dealing.

The second change would be the elimination of the "upstream" attribution of ownership provided the previous change barring affiliate sales is adopted. Elimination of such attribution would permit utility subsidiaries to own 100 percent of QF projects. The Commission solicits comment on whether such a change would be appropriate provided that the rulemaking record supports the conclusion that such ownership would foster the purposes of PURPA, and provided that such ownership does not run afoul of the concerns about exempting from FPA regulation those persons that have monopoly power. Electric utility ownership of QFs through subsidiaries may encourage active electric utility participation in QFs while at the same time ensuring that electric utilities' activities in which they have monoply power remain subject to FPA and PUHCA regulation. Also, eliminating the "upstream" test and permitting electric utility subsidiaries to own 100 percent of QFs would support allowing QFs to own 100 percent of non QF power projects without losing their QF status. They could accomplish this result by either setting up subsidiaries through which to invest in IPPs, or reorganizing so that QFs become a subsidiary of a parent corporation that participates in IPP projects.

Finally, the Commission seeks comment on the advisability of adopting a revenue test for defining when a company is "primarily engaged" in the sale of non-QF electric power. Under PURPA, a qualifying facility must be "owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration and small power production facilities)." [80] Under a "revenue test," persons whose business is not primarily that of electric utilities, but who may sell some power that is not from a qualifying facility, would be permitted to own QFs. A person could be engaged in both QF and non-QF power transactions and not be deemed "primarily engaged," provided that power transactions did not constitute that person's primary business.[81] The Commission solicits comment on the value of adopting a revenue test, and if so, how such a test should be structured.

The Commission recognizes that any revisions in the ownership criteria should be made effective prospectively. Barring affiliate sales, for example, a new ownership test, if applied to existing projects, could disturb a very large number of contracts. Also, permitting utility subsidiaries to own 100 percent of QFs in combination with an affiliate sales restriction could result in a major reorganization of the electric utility industry's participation in QF projects. Therefore, the Commission solicits comments on whether the Commission, if it were to change its ownership rules, should not only grandfather existing projects and contracts, but also provide for a transition period before any new restrictions would become effective.

Calendar Year

The Commission's rules require all QFs to meet the operating and efficiency standards on a calendar year basis. Small power production facilities using fossil fuels must meet a similar requirement with respect to the proportion of fossil fuel use. Under a strict interpretation of the "calendar year" language, QFs must meet the Commission's standards, on average, between the period of January 1 to December 31 of every year. This interpretation of the calendar year language is clearly overrestrictive and does not reflect the Commission's original intent.

The Commission proposes to clarify its intent by establishing a 12 consecutive month average as the period of applicability for a QF's first year of operation. Under this proposal, QF facilities would be required to meet the Commission's technical standards on an annual basis beginning on the in-service date of the facility. Accordingly, the Commission proposes to replace the phrase "during any calendar year" in §§ 292.204(b)(2), 292.205(a)(1), and 292,205(a)(2) with "on an annual basis beginning with the inservice date of the QF."

V. Proposed Technical Modifications for Cogeneration Facilities

A. Efficiency and Operating Standards

Cogeneration facilities can realize significant fuel savings through the sequential use of energy to produce two forms of useful output, namely electric power and heat, as opposed to the separate production of electric power and heat. To assure that the efficiency inherent in the joint production of power and thermal energy would be realized, the Commission established an "operating standard" for topping-cycle cogeneration facilities.[82] The Commission's standard requires that "[f]or any topping-cycle cogeneration facility, the useful thermal energy output of the facility must, during any calendar year period, be no less than 5 percent of the total energy output." [83]

The 5 percent thermal output requirement was the result of a balancing of competing interests. It does not preclude any available technology nor does it bias the choice of fuels. However, the operating standard by itself does not assure the most efficient use of energy.[84]

In the original rulemaking, therefore, the Commission sought to assure the efficient use of scarce fuels by imposing an efficiency standard on topping-cycle cogeneration facilities using oil or natural gas. Both energy sources were considered to have high strategic value and were subject to pervasive use and price regulation. Strategic concerns have led to extensive efforts to conserve oil and natural gas. These include: The Energy Supply and Environmental Coordination Act of 1974 (ESECA),[85] which proposed to deal with the Nation's energy shortages following the oil embargo "by providing for coal conversion," among other things; and the Powerplant and Industrial Fuel Use Act of 1978 (FUA),[86] which prohibited, except to such extent as may be authorized under Title II, Subtitle B of the FUA,[87]

(1) The use of natural gas or petroleum as a primary energy source in any new electric powerplant;

(2) Construction of new electric powerplants without the capability to

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[80] 16 U.S.C. 796(17)(C) and (18)(B) (1982).

[81] So long as power sales are not the primary business, a company can engage in a variety of business ventures without losing its QF status. For example, Company A derives 50 percent of its income from manufacturing widgets, 20 percent from sales of QF power, and 30 percent from sales of IPP power. In this instance, Company A would still have a qualifying facility since power sales in general (and IPP power sales in particular) would not consititute its primary business.

[82] A topping-cycle cogeneration facility means a cogeneration facility in which the energy input to the system is first used to produce useful power output, and the reject heat from power production is then used to provide useful thermal energy (18 CFR 292.202(d)). In bottoming-cycle cogeneration facilities the sequence of the two processes is reversed.

[83] 18 CFR 292.205(a)(1) (1987).

[84] For example, calculations show that for a steam turbine cogeneration facility, a 5 percent operating standard improves fuel use efficiency by less than 1 percent—fuel use being measured as the difference in energy requirements of the cogeneration facility and the quantity of energy that would be required if the electric generation and thermal use functions were satisfied separately. A 20 percent operating standard only increases energy savings to 4.2 percent.

[85] Pub. L. 93–319.

[86] Pub. L. 95–620.

[87] Under the provisions of Title II, Subtitle B of FUA the Secretary of the Department of Energy granted exemptions to the gas or oil use prohibition to 38 cogeneration facilities in 1985, 34 in 1986, and 28 in 1987.

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use coal or any other alternate fuel as a primary energy source; and

(3) The use of natural gas or petroleum as a primiary energy source in a new major fuel-burning installation consisting of a boiler.

The efficiency standard developed by the Commission was intended to further the conservation of gas and oil by guarding against inefficient use of these fuels in cogeneration facilities. The standard requires that, for topping-cycle cogeneration facilities (that began on or after March 13, 1980) for which any of the energy input is oil or natural gas, the useful power output plus one-half of the useful thermal energy output during any calendar year must be no less than 45 percent of the total energy input of natural gas and oil to the facility when the operating standard calculation is less than 15 percent.[88] This standard is relaxed to 42.5 percent when the operating standard calculation is more than 15 percent.[89]

No efficiency standard is applied to facilities using other fuels. The major alternative to gas and oil is coal. An abundant domestic supply of coal, free from price and use regulations,[90] made this unnecessary.

Sine the Commission's efficiency standards were promulgated, the nation's natural gas supply picture has improved dramatically and world oil prices have stabilized. So much so, that Congress amended the FUA and the Natural Gas Policy Act (NGPA). The FUA amendments relaxed or repealed many of the restrictions on the use of natural gas and petroleum fuels in new power plants, major fuel-burning installations, and other facilities. Specifically, the amendments allow gas or oil use by certain baseload facilities [91] provided that they certify that they are not precluded from being coal-capable. Those facilities precluded from being coal-capable must seek an exemption from the Department of Energy. The amendment (Pub. L. 100–42) also removed the incremental pricing requirements under Title II of the NGPA.

Now that government control of the uses and prices of natural gas have largely been removed, questions have arisen as to the continued usefulness of the efficiency standard. Given deregulation of oil and natural gas prices, the efficient use of fuel is ultimiately determined by economic considerations, as reflected in the market price of natural gas and oil. Oil and gas prices now reflect their relative scarcity or abundance. As such, it may be argued that choices among alternative fuels should be based on long-term expectations of their price and availability. Prices will encourage the appropriate use and conservation of these fuels.

The Commission raised the issue of the continued appropriateness of its operating and efficiency standards in its regional conferences.[92] The opinions of the various segments of the electric utility industry differ on the need for and magnitude of the operating and efficiency standards.

Regulated electric utilities essentially agreed that both standards should be increased, but there is a lack of unanimity as to the appropriate level of the increases. Increasing the standards, the utilities argue, would (1) eliminate the "PURPA machines"; (2) bring electric generation and thermal output into a more satisfactory balance; and (3) better fulfill the societal objectives of conserving energy in general, and natural gas and oil in particular. The operating standard most frequently recommended by electric utilities is 25 percent.[93] Utilities argue that this is the minimum standard that is needed to attain all the above objectives: it would discourage questionable thermal energy schemes; it would provide for a more satisfactory balance between thermal use and electric power generation; and it would increase fuel use efficiency.

Most regulated electric utilities assert that the current efficiency standard is not very meaningful. The bulk of the oil and gas used by cogeneration facilities is for consumption in combined-cycle units. Modern technology has progressed to a point where normal operation of a combined-cycle facility would readily result in attainment of a 45 percent efficiency standard.[94] Thus, utilities argue, as a minimum, the efficiency standard should be raised to 50 percent.

The nonregulated electric utilities that commented on issues relating to "PURPA machines" and the need to change the operating and efficiency standards generally seem to agree with their regulated counterparts.[95]

Cogenerators almost unanimously disagree with this position. Most small power producers concur with the cogenerators that the Commission's current standards for qualification either are adequate or should be reduced. Several reasons are given for this position.

First, with the FUA amendments arguably there is no longer any need for efficiency standards.[96] Second, for most cogenerators, particularly the large ones, the need to find additional thermal load to meet the requirements of an increased operating standard may create a hardship, or lead to the creation of questionable thermal loads. Third, to the extent that thermal loads are fixed, an increase in the operating standard will reduce the capacity of the generating component and, therefore, the overall efficiency of the cogenerator.[97] Fourth, from an energy conservation standpoint, even relatively inefficient cogeneration is more efficient than simple production of electric power.[98] Fifth, higher efficiency standards reduce the operational flexibility of the facility and make dispatching more difficult.[99] Since most utilities want dispatchable QFs, this would greatly discourage cogeneration.

The Commission has several options regarding its operating and efficiency standards. The standards could be increased to levels that would assure substantial increases in the energy

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[88] 18 CFR 292.205(a)(2)(B) (1987).

[89] 18 CFR 292.205(a)(2)(A) (1987). Operating and efficiency standards are not feasible for bottoming-cycle cogeneration facilities and, therefore, no standards for such facilities are in place except where supplementary firing is involved.

[90] "Project Independence" (1974) found that increased use of the country's abundant indigenous coal reserves could provide a long-term solution to the nation's apparent growing shortage of natural gas and ever-increasing reliance on imported oil.

[91] A baseload unit is one that generates greater than 3,500 hours per year. U.S. Department of Energy certification of future coal capability is required for cogenerators using more than 100 million Btus/hour of natural gas or oil and selling more than 50 percent of their electrical output. Otherwise, no certification is required to use natural gas or oil.

[92] Commission's Conference on PURPA, Docket No. RM87–12–000, 52 FR 2552, FERC Statutes and Regulations ¶ 35,011 (1987).

[93] *See* Comments of Utah Power and Light Co., Florida Power Corporation, Oklahoma Gas and Electric Co., Southwestern Electric Power Co., and Middle South Utilities, Inc.

[94] The Technical Assessment Guide, EPRI P–4463–SR, December, 1986, lists a heat rate (at higher heat value) of 8150 Btu/kWh for a conventional 220-megawatt combined-cycle unit operating at full load and using distillate fuel oil or gas fuel. That yields an efficiency (at lower heat value as used in the Commission's regulations) of 46.32 percent when the fuel is natural gas and 44.89 percent when the fuel is a light distillate oil.

[95] *See* Comments of Alabama Electric Cooperative, Inc. (recommended that the Commission act to discourage "PURPA machines"); National Rural Electric Cooperative Assoc. (NRECA) (supported proposal that current thermal efficiency standard for cogenerators be increased); Colorado-Ute Electric Assoc. (suggested that overall efficiency of a QF should at least meet or exceed the efficiency of a comparable electric utility and that the operating standard be increased to 25%).

[96] *See* Comments of Signal Energy Systems.

[97] *See* Comments of Cogen Technologies, Inc.

[98] *See* Comments of ANR Venture Management Co.

[99] *See* Testimony of Albert Smith, Chairman and President, PSE Inc. at Tr. 243–244, Commission's Conference on PURPA, Washington, DC, April 16, 1987.

efficiency of individual cogeneration facilities. Alternatively, the Commission could eliminate the standards altogether, or leave the standards unchanged.

Increasing the existing standards would undoubtedly discourage some potential cogenerators that are in all other respects consistent with the Congressional intent for the PURPA program. Eliminating the standards would make cogenerators for all practical purposes indistinguishable from other powerplants.

The Commission proposes to leave the operating and efficiency standards unchanged as long as *bona fide* cogenerators enjoy the special privileges bestowed by PURPA.

The Commission believes that a simple means of identifying *bona fide* cogeneration facilities remains appropriate. The current minimum operating standard, that 5 percent of the facility's total energy output be in the form of useful thermal energy output, meets such a test. Elsewhere in this NOPR, the Commission is proposing more detailed economic tests which should discourage token uses of thermal output for QFs. Furthermore, with the encouragement of entrepreneurial investment in non-QF power projects as an alternative to cogeneration, there may be less incentive to employ "creative" use of thermal output. Maintenance of the operating standard will also assure some degree of energy efficiency and fuel conservation.

The Commission also believes that the efficiency standard should remain at its current level for cogenerators using oil and natural gas. Although this standard does not assure that cogeneration facilities be made as efficient as possible, it does require that cogeneration facilities be no less efficient than state-of-the-art combined-cycle generating plants. With the amendments to the FUA, utilities may now construct combined-cycle baseload plants. Cogenerators would be held to a standard no more and no less strict.

Finally, the Commission observes that where the purchasing utility's avoided costs are accurately set, the market will dictate the proper balance thermal and electric output.[100] Maintenance of both standards at current levels would offer protection against wasteful use of fuel if avoided costs, as set through administrative methods, are determined inaccurately.

B. Efficiency Standard Calculations

1. Background

Under § 292.205(a)(2), the efficiency standard for new topping-cycle cogeneration facilities is applied to *"any* topping-cycle cogeneration facility for which *any* of the energy input is natural gas or oil".[101] Both facilities that use oil or natural gas as the primary energy source and those using other primary energy sources in combination with some oil or gas must meet the Commission's efficiency standard.

2. Problem

Some cogeneration facilities are primarily fired by energy sources other than oil or natural gas and use only small amounts of these fuels, for purposes such as ignition, start-up, flame stabilization, and control. The application of the Commission's efficiency standard to these facilities has been a source of some confusion.

The Commission's efficiency standard was designed to assure that topping-cycle cogeneration facilities fired by oil or natural gas use these fuels more efficiently than any combination of facilities separately producing electricity and steam.[102] As such, the efficiency standard is intended to be directed toward facilities primarily fired by these fuels and was not intended for topping-cycle cogeneration facilities not primarily fired by oil or gas. These facilities easily exceed the Commission's standard by wide margins.[103]

3. Proposed Solution

The Commission believes that topping-cycle cogenerators using oil or natural gas in amounts less than or equal to 50 percent of the annual energy input should not be required to document compliance with the Commission's efficiency standard. The Commission proposes to exempt topping-cycle cogeneration facilities using only some natural gas or oil from providing computations as evidence that they meet the Commission's efficiency standard. Thus, only topping-cycle cogeneration facilities that derive more than 50 percent of their annual energy input from oil or natural gas would be required to document that they meet the Commission's efficiency standard. The Commission believes this proposal will further streamline the review of certification applications.

C. Sequential Use of Energy

In adopting its regulations for qualifying status of cogeneration facilities, the Commission added the requirement of sequential use of energy to the statutory definition of a cogeneration facility.[104] In so doing, the Commission explained that sequential use means that:

> rejected heat from a power production or heating process is used in another power production or heating process. It is precisely this "cascading" use of energy in sequential processes that gives rise to the energy conserving characteristic of cogeneration.[105]

There are two type sof sequential uses of energy. In a "topping-cycle" cogeneration facility, the energy input to the facility is first used to produce power, and the reject heat from power production is then used to provide useful heat.[106] In a "bottoming-cycle" cogeneration facility, the energy input to the system is first applied to a useful heating process, and the residual heat emerging from the process is then used for power production.[107]

In applying these criteria, the Commission may determine that only part of a cogeneration facility meets the sequential use requirement. Accordingly, it may certify the qualifying status of that portion of the facility that meets the sequential use

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[100] The Commission has proposed, in a separate rulemaking (Docket No. RM88–5–000), to waive the efficiency standard for oil- and gas-fired cogeneration facilities that compete in a bidding program for capacity payments and are selected as winning bidders. This waiver would not apply to the operating standard under § 292.205(a). *See* Bidding NOPR at 32,030.

[101] 18 CFR § 292.205(a)(2) (emphasis added). The efficiency standard applies only to facilities, the installation of which began on or after the date the rules were issued, March 13, 1980.

[102] 45 FR, note 56 at 17967.

[103] The reason for this is that the standard compares the overall output of a facility only to the natural gas or oil input. Thus, facilities using small amounts of oil or natural gas for purposes of flame stabilization, start-up, or control easily exceed the Commission's standard.

[104] Section 201 of PURPA added section 3(18)(A) of the FPA which defines a cogeneration facility as a facility which produces (i) electric energy, and (ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes. 16 U.S.C. 796(18)(A) (1982). The Commission's regulations define a cogeneration facility as "equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy." 18 CFR 292.202(c) (1987).

[105] Order No. 70, 45 F.R. 17959, 17960–61, FERC Statutes and Regulations, Regulations Preambles 1977–81 ¶ 30,134 at 30,934–35. *See also* EG&E, Inc., 16 FERC ¶ 61,060 at 61,104 (1981).

[106] 18 CFR 292.202(d) (1987). In a topping-cycle facility, not all of the working fluid (typically steam) which passes through the prime mover (typically a turbine) to produce electricity must be applied to a useful thermal output. The sequential use rule requires, for example, only that the portion of turbine steam flow used for a thermal purpose be previously used for generation. *See* Texas Industries, Inc., 29 FERC ¶ 61,051 at 61,111 (1984); Adolph Coors Co., 34 FERC ¶ 61,209 at 61,355 (1986).

[107] 18 CFR 292.202(e) (1987).

requirements while denying certification to the nonsequential use portion of the same facility.[108] In some combined-cycle cogeneration configurations, applicants appear to have designed their projects so that a token amount of steam from the condensing steam turbine can be extracted to establish sequential use.

The Commission is proposing a revision to its current regulations in order to eliminate potential confusion about the sequential use requirement and to eliminate the incentive to propose token uses of steam which do not improve the cogeneration facility's efficiency. The Commission notes that, although the sequential use requirement is discussed in the preamble to Order No. 70,[109] the term is not explicitly defined in the regulations. However, the sequential use requirement is implied in our definitions of topping- and bottoming-cycle cogeneration facilities.[110] The Commission is also concerned that the current use requirement, as it has been applied on a case-by-case basis, may have resulted in inconsistent application of the requirement and a bias toward certain technologies over others.

The Commission reaffirms the general definition that sequential use of energy means either that rejected heat from power production is used to provide useful thermal energy, or that rejected heat from a thermal process is used for power production, so that, in either case, energy flows from one activity to the other. However, we are proposing to modify the definition of at topping-cycle cogeneration facility to allow that only some of the reject heat from power production must be used for a useful purpose independent of power production—an industrial thermal process or a heating application, for example. The definition will then be consistent with Commission case practice.[111] In order for a topping-cycle cogeneration facility to qualify for the PURPA benefits, energy delivered to a useful thermal process or heating application must have first been routed through some portion of the power production process. Similarly, the Commission proposes to make a parallel change in the definition of bottoming-cycle facilities.

There are many possible arrangements of equipment that would satisfy the rule outlined above. It is important to note that thermal energy would not have to be extracted from every turbine. The rule requires only that thermal energy be extracted somewhere along a chain of turbines linked by a sequential energy flow. A condensing turbine may be part of a qualifying cogeneration facility, provided that useful thermal energy is extracted from an "upsteam" turbine. In this example, the upstream turbine provides steam both to a thermal process and to a lower pressure, downstream turbine.

By contrast, an example that would not meet our proposed definition of sequential use of energy is a situation where a condensing unit takes steam directly from fuel-fired boilers, uses it to generate power, then condenses it, with none of the steam being used for any thermal energy application.[112]

A combined-cycle facility would meet the proposed sequential use test in a number of ways. Useful thermal energy could be extracted in the form of steam from the steam turbine. Alternatively, the thermal energy could be taken directly from the heat recovery boiler, since this energy would already have passed through a power producing process in the gas turbine. Of course, a combined-cycle power plant without any heat recovery would not qualify as a cogeneration facility.

D. Useful Thermal Energy Output

Under section 201 of PURPA, a qualifying cogeneration facility must produce steam or forms of useful energy (thermal energy output) which are used for industrial, commercial, heating, or cooling purposes.[113] The existence of a *bona fide* useful thermal energy output is what distinguishes a *dual* product cogenerating facility from a single product generating facility.

In order to be considered "useful," a thermal output must have an "independent business purpose" with some economic justification.[114] The rationale for this test rests on the premise that opportunities for improved energy efficiency with cogeneration arise from the production of dual products, electricity and useful heat, from a single energy source. Therefore, the absence of a genuine purpose for a heat product negates the potential to gain improved efficiency from cogeneration.

The Commission's application of the independent business purpose test has evolved along two areas of concern. One such area of concern is the determination that a cogeneration facility must have two *separate* products.[115] The objective in such cases is to determine that the proposed "useful thermal product" is truly separate and not just one of the processing steps in the production of electricity. As the Commission stated in *Electrodyne:*[116]

> [U]seful thermal energy output must truly be an output. Thermal applications such as power plant feedwater heating, deaerating and fuel preparation are internal to the power production cycle and are, therefore, not outputs * * * [T]he application must be used for a process in which thermal energy effects a chemical or physical change. The production of electricity or mechanical energy, a steam driven pump for instance, is not a thermal output.

The second area of concern has focused on the validity of the business purpose underlying the thermal application. Whereas industrial and commercial processes with established steam or heat requirements and standard thermal uses for heating and cooling buildings have been considered acceptable without any additional evidence of business purpose, new or unusual applications of thermal energy have had to be supported by evidence that the thermal output is to be used in an economically justified activity and is not contrived to satisfy the Commission's operating standard to obtain QF status.[117]

A variety of information could be used to substantiate the legitimate business purpose of a novel thermal use. The Commission has not restricted the nature of information that would constitute sufficient economic justification, but has suggested that cost/benefit studies might be used to provide the necessary evidence.[118]

The determination that a new technology or novel heat use constitutes an independent business purpose and is, therefore, consistent with a "useful thermal energy output" has been a

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[108] *See, e.g.*, California Portland Cement Co., 20 FERC ¶ 61,217 (1982).

[109] *See* 45 F.R. 17960–62, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,134 at 30,934–37.

[110] 18 CFR 292.202(d) and (e).

[111] *See* Texas Industries, Inc., 29 FERC ¶ 61,051 and County of Olmsted, Minnesota, 31 FERC ¶ 61,066.

[112] *See* Adolph Coors Co., 34 FERC ¶ 61,209 at 61,355 (1988).

[113] 16 U.S.C. 796(18)(A) (1982).

[114] *See* EG&E, Inc. 16 FERC ¶ 61,060 at 61,104 (1981) ("the use of thermal energy must be completely independent of the power production process"); John W. Savage, 28 FERC ¶ 61,233 (1984) (applicant provided persuasive evidence of the independent economic attractiveness of his aquaculture venture).

[115] 16 FERC at 61,104.

[116] Electrodyne Research Corp., 32 FERC ¶ 61,102 at 61,279 (1986). (Footnote omitted).

[117] *See* EG&E, Inc., 16 FERC at 61,104; John W. Savage, 28 FERC ¶ 61,273 (1984); James A. Drake and Miller's Plant Farm—Foliage and Chrysanthemum Division of Dustin, Oklahoma, Inc., 28 FERC ¶ 61,241 (1984); *Electrodyne*, 32 FERC at 61,279; Fayette Manufacturing Corp., 36 FERC ¶ 61,230 (1986).

[118] *See* Electrodyne Research Corp., 32 FERC ¶ 61,102 (1986).

difficult and time consuming task for both the Commission and QF certification applicants. Applicants for QF status have not known with certainty what information must be supplied in order to establish the economic justification of a thermal output. This uncertainty has increased the difficulty of planning and developing cogeneration projects and, in the worst cases, may encourage some applicants to try to "game the system" by producing elaborate business projections for nonfunctional undertakings. Appraising the economic viability of different types of new undertakings, such as greenhouses, fish farms and industrial gas plants, is very time consuming, and involves decision making over which reasonable people can differ.

1. Proposed Solution

Determining the independent business purpose of the thermal output does not assure that the primary objective of the Commission's cogeneration rules is actually met. The existence, or lack, of an independent business purpose does not assure that there is a net gain in energy efficiency. In place of the independent business purpose test for new or non-standard thermal uses in qualifying cogeneration facilities, the Commission proposes to require that applicants demonstrate that the revenues received from the sale of heat or steam are equal to or greater than the cost of an equivalent quantity of the QF's fuel input. This test for novel thermal uses would require that the applicant sell heat or steam at a price that would at least compensate for the cost of the fuel consumed to provide it. The revenues would not include income from the sale of electricity or any other product. Therefore, no qualifying cogeneration facility would "give away" heat to continue a useful thermal purpose only to meet the standards to qualify for status.

Where the thermal user is not affiliated with the facility, evidence of an arms-length transaction has been taken to indicate economic justification for the thermal use. In cases where the cogenerator and the thermal user are affiliated, more elaborate documentation of the economic justification has been required. A contract between a QF and a nonaffiliated heat or steam customer that specified a price per Btu for energy delivered to the user that is equal to or greater than the Btu equivalent price of the cogenerator's fuel actually used would satisfy this test.[119] Transactions between affiliated entities would be subject to the same standard, but additional documentation on the derivation of the price attributed to the steam or heat transfer may be required to substantiate that prices between affiliates are fair representations of market value. The Commission solicits comments on what kind of documentation would be necessary.

The Commission invites comment on how it might most easily substantiate transfer prices among affiliates. By setting a standard based on the price paid for thermal energy rather than the business purpose, the Commission intends to streamline the requirements for obtaining QF status and to discourage token thermal uses which do not improve the efficiency of energy utilization.

E. Bottoming-Cycle

1. Background

Bottoming-cycle cogeneration facilities are cogeneration facilities which use a single energy source first to produce useful thermal energy and then to recover heat left over from the first process application and use it to produce electric power. In other words, the sequential process in bottoming-cycles is first thermal applications and second electric generation.

Bottoming-cycle cogeneration plants are far less common than topping-cycle facilities. Of the approximately 3,998 QF filings received by the Commission, only 9 are listed as bottoming-cycle cogeneration facilities. Nevertheless, the technology is well established and the Commission's regulations provide standards for bottoming-cycle QFs.

2. Problem

Technically, opportunities to install bottoming-cycle cogeneration facilities are far fewer than for topping-cycles because most thermal applications use energy at relatively low temperatures—compared to either the combustion temperature of the fuel or the temperature at which the turbine generator operates. Many bottoming-cycle designs require supplemental firing to increase the energy level of the reject heat used for electric generation. This supplemental firing reduces the natural energy efficiency of cogeneration.

Under the current rules, bottoming-cycle designs with unlimited supplemental firing could easily lead to program abuses. For example, a modest amount of process heat at a low temperature and pressure could be fed into a waste heat recovery boiler with large amounts of supplemental firing. At the extreme, these configurations could become power plants embodying little of the improved energy efficiency the program is intended to capture.

Some proposed bottoming-cycle cogeneration facilities have received QF certification as small power production facilities using waste heat as the primary energy source.[120] But if these facilities are treated as small power production applications, they are subject to the size limits. Furthermore, the classification of waste under the small power production category is already sufficiently difficult without trying to expand the definition to cover some types of cogeneration designs as well as energy sources.

3. Proposed Solution

The potential for abuse of bottoming-cycle QF status could be substantially reduced by imposing an operating standard on such facilities. Unfortunately, it would be very difficult to establish the necessary engineering standards to determine overall contributions to thermal and power uses for bottoming-cycle configurations. The Commission solicits comments on a test for bottoming-cycle cogeneration facilities with supplementary firing.

On an annual basis beginning with the in service date, the proposed supplementary firing standard would require that all energy inputs subsequent to thermal use not exceed one half the energy input into the thermal application. Under this limitation, energy applied to supplementary firing would be constrained and could never become the major energy input to the entire system. Of course, it would be possible to use wasteful amounts of energy in the first thermal stage application in order to reduce supplementary fuel consumption. The Commission expects that this strategy would be discouraged by the cost of the additional fuel, and the likely impact on the thermal process of greatly increasing the flow of fuel and combustion air, and by properly set avoided cost rates for utility purchases of electricity.

Bottoming-cycle applications that do not use supplementary firing would not be affected by this change.

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[119] The Commission would consider requests for confidential treatment of such information pursuant to § 388.112 of the regulations. 18 CFR 388.112 (1987).

[120] *See, e.g.*, Energy Technology Engineering Center, Rockwell International Corp., 31 FERC ¶ 62,357 (1985).

VI. Technical Standards For Small Power Production Facilities

A. Waste

Under PURPA, a qualifying small power production facility must produce electric energy "solely by the use, as a primary energy source, a biomass, waste, renewable resources, geothermal resources, or any combination thereof * * *" [121] The term "waste" was not defined in the statute. The Conference Report merely stated that "the term 'waste' in the definition of 'small power production facility' includes wood and liquid or solid waste." [122] In its final rule implementing PURPA, the Commission defined waste as "by-product materials other than biomass." [123]

The Commission has found it difficult to determine what constitutes a by-product. [124] In addition to determining what constitutes a "by-product", the Commision has examined whether the energy source had any commerical value. In *Stieren Farms,* [125] the Commission determined that gas from an abandoned coal mine was waste and noted that "generally waste is an economic concept referring to materials whose cost of salvage or marketing exceed the cost of disposal." Later, in *Kenvil Energy Corporation,* [126] the Commission found that to be a "waste", the energy source must be both a by-product and currently have little or no commercial value. In *Pynoyl Corporation, (Pynoyl)* [127] the Commission found that low quality natural gas produced from a natural gas well which had little or no commercial value could be considered waste. The Commission held that the gas was an undesired product and was a by-product of the distillate recovery process. However, the Commission also reasoned that low quality gas is an undesired result of the search for high quality gas. The Commission stated:

> Consistent with the intent of PURPA, we believe that natural gas which is not commercially marketable because of its poor quality may be considered to be a by-product. Whenever a drilling operation is undertaken, the desired result is that a remarketable product will be found. If the gas which is actually found has no commercial value because of its poor quality, the gas is an undesired product. [128]

The Commission has found that applying the by-product test is cumbersome and does not adequately address the issue of what constitutes "waste". The Commission believes that waste can be determined by examining only the economic value of the energy source rather than also determining whether it is a by-product of some manufacturing, production or industrial process. The Commission further believes that a strict adherence to the by-product test might exclude some energy sources that, although not technically by-products, are generally considered to be waste because they have no value. Therefore, the Commission proposes to redefine waste as "an energy source other than biomass that has essentially no commercial value at the time and place in which it is produced."

This proposed definition would account for the time when the energy source is produced as well as the area in which it is produced. An energy source may have some economic value but because of market conditions at the time it may have no commercial value. For example, an energy source produced in one area of the country may not be marketable in the area in which it is produced but may be marketable in another area. However, transportation costs may make the sale uneconomic. The Commission is requesting comments as to how to account for these geographic differences in determining whether an energy source is waste.

The Commission is also proposing to adopt a list of specific energy sources materials that it considers to be waste. The list is intended to be illustrative, and not inclusive. In addition to these specific energy sources, identified below, the Commission recognizes that there are other potential sources of "waste" energy that meet the definitions of waste. Some of these potential energy sources have already been included in various applications for certification as for example, oil-impregnated diatomaceous shale, residual heat, and heat from exothermic reactions. For other potential "waste" energy sources, there is no Commission precedent. These include char and tar (coal by-products), crankcase oil, oil shale retort residues and oil storage tank bottoms (oil by-products). The Commission invites comment on whether additional energy sources should be added to the list of specific energy sources that meet the definition of "waste".

The Commission proposes to treat the following specified energy sources as "waste":

(1) Anthracite culm producted prior to July 23, 1985. [129]

(2) Anthracite coal refuse that has a heating value no greater than 6,000 Btu per pound and that has 45 percent or more ash. [130]

(3) Bituminous coal refuse that has a heat content no greater than 9,500 Btu per pound and that has 25 percent or more ash. [131]

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[121] 16 U.S.C. 796(17)(A)(i) (1982).

[122] H.R. Rep. No. 1750, 95 Cong., 2nd Sess. 89, *reprinted in* 1978 U.S. Code Cong. and Ad. News, 7797 at 7823 and in FERC Stats. & Regs. ¶ 515 at 5079.

[123] 18 CFR 292.202(b). The Commission proposed the following definition of "waste" in its notice of Proposed Rulemaking (Docket No. RM79–54): The term "waste" covers municipal, agricultural, and industrial wastes and includes any byproduct materials of any operation for which market value is less than disposal cost. Waste may be solid, liquid or gaseous. Municipal sewage sludge would be a qualifying fuel under this definition. Manure and cornstalks are examples of qualifying agricultural wastes. Wood derived waste and debris from sawmill, lumbering, or pulp mill operations would qualify as biologically derived industrial wastes. This proposed definition of waste did not receive favorable public response. All of the examples of waste were subsumed within the definition of biomass, thus leaving no concrete example of what type of material would constitute waste. Moreover, the commenters pointed out extensive problems in applying the economic test, "market value is less than disposal cost." Calculation of both market value and disposal cost is difficult and both are likely to fluctuate widely.

[124] *See, e.g.,* Kenvil Energy Corporation, 23 FERC 61,139 (1983), and Tulsa Energy Corporation, 19 FERC ¶ 61,331 (1982).

[125] 17 FERC ¶ 61,280, (1980) at 61,509.

[126] 23 FERC ¶ 61,139 (1983).

[127] 38 FERC ¶ 61,136 (1987).

[128] In *Pynoyl,* the Commission recognized that its decision could result in an increase in applications proposing to use low quality natural gas as a primary energy source in small power production facilities. In anticipation of this increase, the Commission, in Order No. 471, established generic standards for determining whether natural gas is commercially unmarketable. 38 FERC at 61,361. Interpretation of "Waste" Natural Gas, III FERC Stats. & Regs., ¶ 30,744, 52 FR 19,308 (May 22, 1987). *See,* 18 CFR 2.400 (1987).

[129] The Commission determined that anthracite culm produced prior to July 23, 1985, is waste in Electrodyne Research Corp., 32 FERC ¶61,102 (1985).

[130] This includes anthracite culm produced after July 23, 1985, anthracite silt and other anthracite refuse from mining operations. An analysis of data on the quality of anthracite and anthracite refuse (including culm and silt) that is being purchased by electric utilities for boiler fuel shows that anthracite refuse that has a heating value no greater than 6,000 Btu per pound and an ash content of at least 45 percent includes less than 1 percent of anthracite considered to be of commercial grade during the five year period 1981–1985.

[131] The category includes:

(1) Cleaning plant tailings from coal cleaning operations;

(2) Gob (loose coal refuse) left behind on the floor of mined areas;

(3) Bone or bone coal (carbonaceous shale that has a high content of noncombustible materials); and

(4) Other bituminous coal refuse, such as "pond coal," "filter cake" and "screen refuse." Pond coal is the very fine coal that is carried away from the cleaning plant with the wash water and is allowed to settle in ponds. "Filter cake" is the solid or semi-solid material separated from a liquid and remaining on a filter after pressure or vacuum filtration. "Screen refuse" is a coal-bearing refuse generated in the crushing and screening of coal.

Continued

(4) Top or bottom subbituminous coal that has a heat content of 8,000 Btu per pound or less and a sulfur content of 1.5 percent or more and which has been determined to be waste by the Bureau of Land Management.[132]

(5) Lignite produced in association with the production of montan wax, and lignite that becomes exposed as a result of such a mining operation.[133]

(6) Gaseous fuels, except (a) synthesis gas from coal, and (b) natural gas (including natural gas liquids and liquefiables) from gas and oil wells unless the natural gas meets the requirements of § 2.400 of the Commission's regulations.[134]

(7) Petroleum coke that cannot be commercially marketed.[135]

(8) Rubber tires that cannot be commercially marketed.[136]

(9) Plastics that cannot be commercially marketed.[137]

(10) Materials that a government agency has certified for disposal by combustion.[138]

The Commission's proposed definition of "waste" would be applied prospectively only. Furthermore, once an application for qualifying status for a particular project is granted, certification for that project may not later be revoked on the ground that the "waste" material is later found to have commercial value. This requirement is necessary to protect the small power production facility against the loss of or inability to obtain financing.

B. Permissible "Minor Uses" of Fossil Fuels in Small Power Production Facilities

Under the FPA as amended by PURPA, a small power production facility may use "minimum amounts" of fossil fuels for purposes of ignition, startup, testing, flame stabilization and control uses and also to alleviate or prevent unanticipated equipment outages and emergencies directly affecting public health, safety or welfare.[139] In implementing these statutory requirements, the Commission adopted regulations allowing a small power production facility to use, in the aggregate, up to 25 percent fossil fuels (natural gas, oil, or coal) for the listed statutory purposes.[140] The Commission subsequently authorized "minor uses" of fossil fuels in addition to those specified in the statute, provided that the use in question enhances the efficiency of the facility's essential fixed assets.[141]

The current 25 percent test has resulted in some difficulty in obtaining adequate information for processing certification applications where applicants enumerate uses other than those permitted in the statute but do not explain how the essential fixed assets are being used more efficiently by such uses. Additionally, various uses under the essentially fixed assets test have been problematic.[142]

Practically no bituminous coal with a heat content of 9,500 Btu per pound or less and 25 percent or more ash was purchased by electric utilities during the five-year period 1981–1985.

The heat content of coal decreases as the moisture and ash content of the coal increases. When a high ash and a high moisture content combine in the same coal, the result is a low Btu refuse. However, the moisture content can frequently be reduced by a drying operation, thus increasing the heat content of the coal and rendering it into a marketable product. Consequently, a bituminous coal, regardless of its type and origin, must be both low in Btu content and high in ash content in order to be "waste."

[132] The Commission determined that top or bottom subbituminous coal was "waste" in Big Horn Energy Partners, 38 FERC ¶ 61,285 (1987). In some areas of the Powder River Coal Basin (covering northeastern Wyoming and southeastern Montana), the top and bottom layers of subbituminous coal seams are inferior in quality to the main, central portions of the seams. Where these quality differences occur, a thin layer of coal at the top may be removed and mixed with the spoil. After the central portion of the seam is mined, a thin layer of coal at the bottom of the seam may be left unmined. In most strip mining operations, the bulk of the "top" and "bottom" coal is blended in with coal from the main central portions of the coal seams and is marketed as single commercial product. However, if the "top" or "bottom" coal is so inferior that it cannot be blended and still meet buyers' quality requirements, such coal is waste. Since most of the subbituminous coal in the Powder River Coal Basin is from Federal lands, the determination of what "top" and "bottom" coal is waste should be made by the Bureau of Land Management.

[133] Lignite is a low rank coal in which the alteration of vegetal material has proceeded farther than in peat but not as far as in subbituminous coal. In a few areas of the country, lignite contains montan wax that is recovered for sale as feedstock for the manufacture of candles, phonograph records and polishes. In American Lignite Products Company, 25 FERC ¶ 61,054 (1983), the Commission certificated a small power production facility that proposed to use lignite residue resulting from the production of montan wax.

[134] This category includes refinery gases, coke oven gas, blast furnace gas, carbon black gas, and coal mine gas. It also includes "waste" natural gas as defined in Order No. 471, Interpretation of "Waste" Natural Gas, III FERC Stats. & Regs. ¶ 30,744, 52 FR 19,308 (May 22, 1987). *See*, 18 CFR 2.400 (1987).

Synthesis gas from coal is not included because synthesis gas plants can be designed to produce a low Btu gas (less than 300 Btu per Mcf) and a residual char that has little or no market value. If neither of the products can be sold commercially, both could qualify as "waste." This would simply be a roundabout way of using good quality coal to produce "waste."

Refinery gases are a by-product of petroleum refining. Refinery gases have a high Btu content (1000+ Btu per cubic foot) but may be unsuitable for pipeline use because of impurities. These gases are usually used in the refinery to generate process heat. Excess gases are sometimes sold as power plant fuel.

Coke oven gas is formed in the production of coke. In producing coke, some of the coal used is converted to gases or vapors. After valuable products are recovered from the gases, the noncondensable portion is called coke oven gas. Coke oven gas has a heating value of 575 to 590 Btu per cubic foot and burns readily because of its high free-hydrogen content.

Blast furnace gas is used in mills for heating furnaces, for gas engines and for steam generation. Blast furnace gas is variable in quality but generally has a high carbon monoxide content and low heating value (about 85 Btu per cubic foot).

Carbon black is of nearly pure elementary carbon composed of small spherical particles that are usually produced from natural gas and other hydrocarbons by partial combustion or thermal decomposition under carefully controlled conditions. The flue gases from carbon black manufacture have a residual heat value of 60 Btu per cubic foot and can be burned to produce steam.

Coal mine gas comes from abandoned or active coal mines. When an abandoned underground coal mine is sealed off, gases containing elevated concentrations of methane may accumulate in the mine. The gas mixture may be tapped and burned for heating nearby homes or for the production of steam. Active underground coal mines are ventilated to remove methane and other noxious gases. Methane gas may be of pipeline quality but is not under enough pressure to be suitable for long distance transport.

The mined out areas in underground coal mines employing the longwall mining method are filled with gob (a mixture of unmined coal and roof rock) that is usually a source of methane gas emissions. Gob gas is a mixture of mine air and methane and its Btu content varies. Vertical bore holes that are used to drain methane gas from the coal seam may then be used to drain gob gas. Both types of gas have been used for space heating and for steam production.

[135] Petroleum coke ordinarily has less than 1 percent ash, has a high fixed carbon content (about 90 percent), is very low in volatile matter (6 percent to 11 percent) and usually contains more than 4.5 percent sulfur. For these reasons, it is not a very desirable boiler fuel.

[136] Tires are reported to have an average heating value of 14,500 Btu per pound.

[137] Plastics refer to synthetic or natural resins that can be molded by heat or pressure into finished products.

[138] Various industrial processes generate hazardous waste by-products and contaminated materials frequently. These by-products and materials originate from the manufacture of paints, textiles, paper and ink or processes associated with printing, metal working or those using nonchloride hydrocarbons. One method of disposing of these by-products and materials is by combustion.

Defining the material as waste simply recognizes the obvious fact that it has no commercial value. The definition in no way affects the requirement that the combustion of the material and its use as fuel could be undertaken only in compliance with all applicable Federal, state or municipal environmental control laws or regulations and the approval of the appropriate governmental bodies.

[139] 16 U.S.C. 796(17)(B) (1982).

[140] Order No. 70, 45 FR 17959, 17966, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,134 at 30,945; *amended*, 45 FR 33958, 33962, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,160 at 31,113 (1980).

[141] *See* LUZ Solar Partners Ltd., 30 FERC ¶ 61,122 (1985); Power Developers, Inc., 32 FERC ¶ 61,101 (1985), *reh. denied*, 34 FERC ¶ 61,136 (1986; Northeastern Power Co., 34 FERC ¶ 61,197 (1986); LUZ Solar Partners II Ltd., 34 FERC ¶ 61,383 (1986).

[142] *See, e.g.*, Hydro Corp. of Pennsylvania, 43 FERC ¶ 61,276 (1988) where a diesel engine was proposed for a hydroelectric project.

In the Commission's recent conference on PURPA, Southern California Edison Company argued that the limit on supplementary use of fossil fuels should be reduced from 25 percent to 10 percent.[143] Other commenters not only opposed more stringent fuel use regulations, but favored raising the limit to 50 percent, citing the repeal of portions of the Powerplant and Industrial Fuel Use Act of 1978 (Fuel Use Act) as a reflection of Congressional intent to ease the restrictions on the use of fossil fuels. They also claimed that increasing the allowable use of fossil fuels would have a positive effect on the dispatchability and load-following capabilities of technologies relying on intermittent resources, *i.e.*, solar energy.[144]

Based on the Commission's experience with QF applications since Fiscal Year 1985, the Commission believes that it may be appropriate to reestablish the fossil fuel use percentage at a level such that any use below such a level would be presumed to meet the statutory uses and other minor uses permitted by the regulations. This proposal would allow the Commission to avoid time-consuming inquiries into the specific uses of fossil fuels in small power production facilities. The administratively burdensome "essential fixed assets" test would be eliminated in favor of a simple percentage rule.

For example, a limit of 15 percent fossil fuel use would encompass virtually all of the small power producer applications reviewed by the Commission. The basis for this percentage is the information contained in prior applications where specific information was provided on amounts of fossil fuel to be used for the specified statutory purposes. The following two tables provide such information for applications involving "waste" burning QFs and for biomass QFs.

[143] *See* Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by Southern California Edison Company at 7.

[144] Comments to the Commission's Conference on PURPA, Docket No. RM87-12-000, filed by LUZ at 2-5, Hawaiian Sugar Planters Association at 4; Solar Stirling Industries, Inc. at 3; Renewable Energy Institute at 9. The Fuel Use Act was intended, in pertinent part, to prohibit or, as appropriate, minimize the use of natural gas and petroleum for the benefit of present and future generations, while encouraging greater use of coal and other alternative fuels as primary energy sources. 42 U.S.C. 8301 (1982).

WASTE.—PERCENTAGE OF FOSSIL FUEL USE

	(0–5)	(6–10)	(11–15)	(16–20)	(20–25)	Total [145]	Unspecified	Total [145]
QFs	20	0	1	0	0	21	71	91
Percent	95		5			100		

[145] Total filings reviewed. A few filings processed since FY 1985 were unavailable in the files.

BIOMASS.—PERCENTAGE OF FOSSIL FUEL USE

	(0–5)	(6–10)	(11–15)	(16–20)	(20–25)	Total	Unspecified	Total [146]
QFs	105	17	[147] 8	[148] 2	0	132	158	290
Percent	79.5	13	6	1.5		100		

[146] Total filings reviewed. A few filings processed since FY 1985 were unavailable in the files.

[147] Seven of the eight applications propose to use up to 15 percent natural gas for ignition, start-up, testing, and flame stabilization. Staff experience shows such uses are generally within 5 percent of the total. One application proposes that fossil fuel usage will not exceed 13.7 percent. It is not clear how such exact figure was calculated since the purposes of the fossil fuel usage are stated as ignition and such use generally falls in the (0–5) percent range.

[148] One of the two filings was a notice which proposed to use 20 percent natural gas in conjunction with a combustion turbine in a wood-fired small power production facility. As an application this presumably would not be permitted under *Power Developers*. The other filing proposes to use natural gas for "emergency uses" and it is not clear from the application as to the exact nature of such "emergency uses." The statute requires that such use be allowed only when public health and safety is involved.

Under this approach, the Commission would not conduct inquiries into the nature of proposed fossil fuel uses so long as such uses fell within the percentage limitation. It would also be unnecessary to determine whether proposed uses of fossil fuels would enhance the efficiency of facilities' essential fixed assets. Whatever percentage limitation is established would be considered sufficiently minor as to meet the statutory intent of a minor use without further inquiry. The Commission invites comments as to what percentage would be appropriate as the upper limit for fossil fuel use.

The Commission occasionally receives requests to certify small power producers that purchase a portion of the energy input to the facility in the form of electricity [149] or steam [150] instead of direct use of fossil fuels such as oil, gas and coal. Although the regulations speak to the use of fossil fuels for minor uses, such indirect uses of fossil fuels are also considered as input to the facility in determining the proportions of energy supplied from waste, renewable, geothermal or hydroenergy sources.

The Commission, however, recognizes that under certain circumstances individual waivers of the percentage limitation may be appropriate. The Commission solicits comments on whether such waiver requests should be entertained. If waiver requests are allowed, the Commission also solicits comments on the criteria to be used to determine whether to grant these requests.

[149] McKee Products, Inc., 43 FERC ¶ 61,534 (1988).

[150] LaJet Energy Co., 43 FERC ¶ 61,288 (1988).

Most recently, Representatives Philip Sharp and Carlos Moorhead, Chairman and Ranking Minority Member of the House Subcommittee on Energy and Power, respectively, brought to the Commission's attention the possibility that setting the maximum allowable use of non-renewable fossil fuel at 15 percent, rather than 25 percent, may adversely affect the promising technological breakthroughs in solar technology that motivated Congress to increase the maximum size of solar facilities that can be exempted from federal and state law under section 210(e) of PURPA from 30 to 80 megawatts. This is not the intent of the Commission, and the Commission solicits comment on this possibility. The Commission also requests comment on whether this concern would be adequately accommodated and the development of solar technology further

encouraged through the possibility of waivers of a percentage limitation. The Commission is also concerned that any change in the allowed amount of fossil fuel might adversely impact small power production facilities in the planning stage. Commentary is requested on the need for a transition period if changes are adopted.

C. Power Production Capacity

1. Background

The electrical capacity of a small power production facility is of crucial importance under the PURPA regulatory scheme. By statutory definition, small power production facilities must be no larger than 80 megawatts. Moreover, certain of the regulatory exemptions generally afforded to QFs are not extended to small power production facilities larger than 30 megawatts. Facilities powered by "waste," wind and hydropower are subject to both the FPA and PUHCA if their capacity exceeds 30 megawatts. Facilities fired with biomass would be subject to the FPA but exempt from PUHCA. Geothermal facilities and solar facilities (for a limited period of two years) are exempt from the regulatory provisions of both statutes, up to the maximum allowable size of 80 megawatts.

Many types of projects exhibit economies of scale in size ranges up to a few hundred megawatts. Such projects can produce electricity more cheaply if sized larger. But if sized too large, a facility may be exposed to regulation as a utility or may fall outside the definition of a small power production facility. A clear tension exists between the economic motivation of project developers and the statutory framework. For this reason, the Commission has repeatedly been confronted with questions of how to measure the electrical capacity of a small power production facility.

2. Problem

Small power production facilities employ a wide range of energy sources and technologies. This variation greatly complicates the task of determining a particular facility's electrical capacity. There are two reasons for this. First, the on-site station use of electricity can vary enormously.

Station use is the use of power in the power plant itself. For example, electricity is typically used to operate boiler feedwater pumps, and induced and forced draft fans, and for excitation of the generator. All of these station uses are consumed in the process of power production. Only the net output (gross output less station use) of a facility is available to consumers of electricity, and the Commission has concluded in *Power Developers, Inc.*[151] that utilities are only obligated to purchase a QF's net output.

Station use of power depends on the production process employed. Hydroelectric facilities require very little station use of power. Geothermal facilities may require a large amount, since geothermal fluids must be pumped through the facility and reinjected into the ground. Power production from municipal solid waste may also require a large input of station use for processing the garbage. The station use problem makes reliance on the generator's nameplate rating an unreliable guide to the facility's actual production capability.

Station use is not the only complicating factor. The output of a power plant can be limited by any of a number of elements in the facility. In a Rankine cycle steam plant, the limited component could be the boiler, the turbo-generator, or the condenser. For large utility power plants, the individual components are engineered to operate harmoniously. But the components of a small power production facility are typically not custom designed and produced. These projects often use a variety of "off the shelf" components. Discussions with small power producers have indicated that standard turbine sizes are sometimes ordered that are oversized relative to the available energy resource. Again, the generator's nameplate rating may be a poor guide to the facility's real capability.

3. Proposed Soution

The Commission is proposing to codify its decision in *Occidental Geothermal Inc.*,[152] in which we explained:

> The Commission will consider the "power production capacity" of a facility to be the maximum net output of the facility which can be safely and reliably achieved under the most favorable operating conditions likely to occur over a period of several years. The net output of the facility is its send out after subtraction of the power used to operate auxiliary equipment in the facility necessary for power generation (such as pumps, blowers fuel preparation machinery, and exciters) and for other essential electricity uses in the facility from the gross generator output.

We are proposing to add a new § 292.202(p) that will reflect the concept of net capacity outlined in *Occidental Geothermal*. The Commission recognizes that this definition does not eliminate the need for some measure of judgment in assessing the capacity of a small power production facility. We have tentatively concluded that the exercise of reasonable judgment is necessary for determining a facility's capacity. Any other approach, such as using nameplate capacity, appears to overlook the large variation in station use of power among small power production technologies. The Commission believes that its proposed definition will help QF certification applicants by sparing them the need to research the record of case decisions since 1981. Comments are invited on the merits of the proposed definition.

In addition to the question of *how* a QF's capacity is to be measured, the Commission must also decide *where* the measurement is to be made. Small power production facilities may comprise interconnection equipment, transformers, and radial transmission lines as well as the generator. Since electrical losses occur in all such equipment, the capacity of a facility will vary if measured at different points in the facility.

The capacity of a powerplant has traditionally been measured at the busbar. However, in *Malacha Power Project, Inc.* (*Malacha*),[153] the Commission ruled that:

> "the electric power production capacity of the facility is the capacity that the electric power production equipment delivers to the point of interconnection with the purchasing electric utility's transmission system."[154]

The logic of the *Malacha* order was that capacity should be measured at the "outer envelope" of the facility. Since switchyards and radial transmission lines were found to be part of the facility,[155] the facility's capacity should be measured at the end of such switchyards and lines.

Apart from appearing consistent with the finding that a QF can include certain interconnection and transmission facilities, the *Malacha* approach provides one other benefit to small power producers. Larger generation facilities can be constructed than if capacity were measured at the busbar. In effect, certain transmission and

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[151] 32 FERC ¶ 61,101 (1985), *reh. denied*, 34 FERC ¶ 61,136 (1986).

[152] 17 FERC ¶ 61,231 (1981).

[153] 41 FERC ¶ 61,350 (1987).

[154] *Id.* at 61,946.

[155] *See* Clarion Power Co. (Clarion), 39 FERC ¶ 61,317 (1987); Sycamore Cogeneration Co. (Sycamore), 40 FERC ¶ 61,237 (1987) where the Commission determined that a QF facility included transmission lines as long as they are used for transmitting the QF's power to the purchasing utility and transmitting backup, supplemental and maintenance power to the QF.

transformer losses are counted as internal losses in the facility.

The *Malacha* approach also has certain apparent drawbacks. The need to collect data on switchyard and transmission losses is one obvious liability. The required data may be complex. Losses will vary (in a nonlinear manner) due to the influence of such factors as the weather, the load imposed on the equipment and the power factor. The cost of collecting and analyzing such data would be imposed on all petitioners for QF certification, through the filing fee. The additional factors that affect transmission and switchyard losses may also make the capacity of individual QFs more uncertain, and subject to challenge if the factors change.

Moreover, the *Malacha* approach is inconsistent with the approach is inconsistent with the approach used to determine the capacity of utilities' generation resources. If the capacity of utility powerplants were evaluated at the busbar and QFs were evaluated after transformation and transmission, the QFs may be underpaid for their capacity. This is likely to occur because the utilities' power must also be stepped up to transmission voltage and carried over transmission lines. These losses must be treated consistently in order for QFs to be paid a correct measure of avoided cost. The Commission has recognized this need by including line losses as a factor which may affect avoided cost.[156]

On balance, the Commission believes that its statutory mandate to encourage QFs would best be met by measuring a QF's capacity at the busbar. The alternative approach of measuring capacity at the point of interconnection appears to raise problems that far outweigh the few benefits. The Commission wishes to emphasize that any rule which may be adopted would not affect the qualifying status of any facility already certified.

VII. Environmental Finding

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[157] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[158] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[159]

Under this NOPR the Commission proposes to clarify its regulations on the criteria and procedures under which cogeneration and small power production facilities can obtain qualifying status for PURPA benefits. The proposed application form is a procedural requirement specifying certain information to be included in an application for certification. The proposed rule does not substantially change existing Commission regulations with respect to the criteria and procedures by which qualifying facilities can obtain PURPA benefits.

Section 201 of PURPA includes "waste" as an allowable primary energy source for qualifying small power production facilities. To the extent the Commission is proposing a revised definition of "waste" and providing an illustrative list of waste energy sources, this action simplifies current Commission practice but does not substantially change the effect of the underlying legislation.

The Commission is also proposing to revise the limit on the amount of fossil fuel that can be used in a small power production facility from 25 percent of the facility's energy input to 15 percent. This 15 percent limit, however, would have encompassed virtually all of the small power production applications received by the Commission since the beginning of the PURPA program. Therefore, a prospective change in this standard should have no significant environmental effect.

Accordingly, the Commission has determined that the proposed rule, if adopted, would not constitute a major Federal action significantly affecting the quality of the human environment.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider whether the rule, if promulgated, will have a "significant economic impact on a substantial number of small entities." An agency is not required to make an RFA analysis, however, if it certifies that the rule will not have such an impact.[160]

The proposed rule would provide a number of benefits to small business entities. The proposed rule would improve the usefulness of the self-qualifying approach for small power production and cogeneration facilities seeking to qualify for PURPA benefits (qualifying facilities of QFs). Small entities would benefit by avoiding the time and expense of requesting Commission certification. In the event that a small entity desires Commission review of a proposed QF (either by certification or by declaratory order), the proposed rule would reduce administrative expense by clearly spelling out the information that needs to be filed. For facilities that have already been certified as QFs, the proposed rule under § 292.207(d)(2) would provide a quick and relatively inexpensive means of ascertaining the impact of changes to the QF. The proposed rule would provide workable alternatives to certification and should act to reduce the cost of certification.

For these reasons, the Commission believes that the streamlined regulatory procedures applicable to QFs will have a beneficial impact on these entities. Since the impact on these small entities affected by this rule is expected to be beneficial, the Commission does not believe the economic impact will be "significant" within the meaning of the RFA. The Commission certifies, therefore, that this rule, if promulgated, will not have a significant economic effect on a substantial number of small entities.

IX. Paperwork Reduction Act

The Paperwork Reduction Act [161] and the Office of Management and Budget's (OMB) regulations [162] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this NOPR are being submitted to the OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to streamline the process by which qualifying small power production and cogeneration facilities may apply for certification and to eliminate unnecessary delays in processing certification applications. In addition, the Commission encourages facilities to follow an alternative self-qualification procedure, which reduces the filing requirement to an affidavit providing a basic description of the facility and a statement that it meets the Commission's criteria. In either case,

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[156] *See* 18 CFR 292.304(e) (1987); ADFAC NOPR.

[157] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), III FERC Statutes and Regulations ¶ 30,783 (Dec. 10, 1987).

[158] 18 CFR 380.4 (1987).

[159] 18 CFR 380.4(a)(2)(ii) (1987).

[160] 5 U.S.C. 605(b) (1982).

[161] 44 U.S.C. 3501–3520 (1982).

[162] 5 CFR 1320–12 (1985).

these filings are on a one-time only basis.

For a small power production or cogeneration facility that files an application for certifiction, the information collection burden is estimated to be 22 hours per response. The number of likely respondents is 254 based on FY 1987 filings.

For facilities that choose the self-qualification procedure, the information collection burden is estimated to be approximately one hour per response. The number of likely respondents is 523 based on FY 1987 filings.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Kenneth Thomas at (202) 357–5253). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

X. Comment Procedures

A. Written Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 29426 and should refer to Docket No. RM88–17–000. Written comments received on or before October 27, 1988, will be considered by the Commission. Replies to written comments must be filed with the Commission on or before November 28, 1988. Replies to written comments may not exceed 15 double spaced pages. An original and 14 copies of the comments should be filed with the Secretary.

All written comments will be placed in the Commission's public files, and will be available for public inspection in the Commission's Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

B. Public Hearing

The Commission is scheduling a public hearing to be held November 16, 1988, to provide interested persons with an opportunity to make oral presentations of their views. A request to participate must be submitted in writing to the Office of the Secretary on or before October 27, 1988. A request to participate must be filed separately from any comments filed in this proceeding.

The public hearing will not be of a judicial or evidentiary nature. There will be no cross-examination of persons presenting statements. However, the Commission may question these persons and an opportunity to respond orally will be provided. A stenographer will prepare a transcript of the hearing, which will be available in the public file for this proceeding, Docket No. RM88–17–000, in the Commission's Public Reference Room. Any further procedural rules will be addressed by the Commission at the hearing.

The hearing is intended to provide for a public discussion of the issues in this notice and is for oral presentations only.

List of Subjects in 18 CFR Part 292

Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 292, Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Stalon reserved the right to file concurring opinion. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation for Part 292 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–824c (1982), as amended by Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Electric Consumers Protection Act of 1986, Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), as amended.

2. In § 292.202, paragraphs (b), (d), (e) and (h) are revised and paragraphs (s) and (t) are added to read as follows:

§ 292.202 Definitions.

* * * * *

(b) "Waste" means an energy source, other that biomass, that has essentially no commercial value at the time and place in which it is produced. "Waste" includes, but is not limited to, the following:

(1) Anthracite refuse than has a heat content of 6,000 Btu or less per pound and has 45 percent or more ash;

(2) Anthracite culm produced prior to July 23, 1985;

(3) Bituminous coal refuse that has a heat content of 9,500 Btu per pound or less and has 25 percent or more ash;

(4) Top or bottom subbituminous coal that:

(i) Has a heat content of 8,000 Btu per pound or less and has a sulfur content of 1.5 percent or more; and

(ii) Has been determined to be waste by the Bureau of Land Management;

(5) Lignite produced in association with the production of montan wax and lignite that becomes exposed as a result of such an operation;

(6) Gaseous fuels except:

(i) Synthesis gas from coal; and

(ii) Natural gas (including natural gas liquids and liquefiables) from gas and oil wells unless the natural gas meets the requirements of § 2.400 of this chapter;

(7) Petroleum coke that cannot be commercially marketed;

(8) Rubber tires that cannot be commercially marketed;

(9) Plastics that cannot be commercially marketed; and

(10) Materials that a government agency has certified for disposal by combustion.

* * * * *

(d) "Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and at least some of the reject heat from the power production is then used to provide useful thermal energy;

(e) "Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and at least some of the reject heat emerging from the process is then used for power production;

* * * * *

(h) "Useful thermal energy output" of a topping-cycle cogeneration facility means:

(1) The thermal energy made available for use in an established industrial or commercial process, or used in a heating or cooling application; or

(2) The thermal energy made available for use in a nonconventional industrial or commercial process if the revenues received from the sales of heat or steam are equal to or greater than the cost of an equivalent quantity of the qualifying facility's fuel input.

* * * * *

(s) "Power production capacity" means the maximum gross electric power output capability of a facility that can be safely and reliably achieved under favorable operating conditions over several years minus auxiliary loads necessary for power production. Power production capacity must be measured at the facility busbar.

(t) "Sequential use" of energy means the use of:

(1) Reject heat from a power production process at least some of which is then used in a thermal application (topping-cycle facility); or

(2) Reject heat from a thermal application at least some of which is then used for power production (bottoming-cycle facility).

3. In § 292.204, paragraph (b)(2) is revised to read as follows:

§ 292.204 Criteria for qualifying small power production facilities.

* * * * *

(b) *Fuel use.*

* * * * *

(2) Use by the facility of energy sources other than the primary energy sources may not, in the aggregate, exceed ____ [1] percent of the total energy input of the facility on an annual basis beginning with the in-service date of the facility.

4. In § 292.205, paragraphs (a) and (b)(1) are revised to read as follows:

§ 292.205 Criteria for qualifying cogeneration facilities.

(a) *Operating and efficiency standards for topping-cycle facilities.*

(1) *Operating standard.* For any topping-cycle cogeneration facility, the useful thermal energy output of the facility, on an annual basis beginning with the in-service date of the facility, must be no less than 5 percent of the total energy output.

(2) *Efficiency standard.*

(i) for a topping-cycle cogeneration facility, the installation of which began on or after March 13, 1980, and for which more than 50 percent of the energy input is natural gas or oil, the useful power output of the facility plus one-half of the useful thermal energy output, on an annual basis beginning with the in-service date of the facility:

(A) Subject to paragraph (a)(2)(i)(B) of this section, must be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; or

(B) If the useful thermal energy output is less than 15 percent of the total energy output of the facility, must be no less than 45 percent of the total energy input of natural gas and oil to the facility.

(ii) For a topping-cycle cogeneration facility not subject to paragraph (a)(2)(i) of this section, there is no efficiency standard.

(b) *Efficiency standards for bottoming-cycle facilities.*

(1) For a bottoming-cycle cogeneration facility with supplementary firing, the installation of which began on or after March 13, 1980, the facility, on an annual basis beginning with its in-service date:

(i) Must have a useful power output of no less than 45 percent of the energy input of natural gas and oil used for supplementary firing; and

(ii) Must not have an energy input from fuel used for supplementary firing as expressed in Btus that exceeds 50 percent of the energy input for the thermal process.

* * * * *

5. Section 292.207 is revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

(a) *Self-Qualification.*

(1) A small power production facility or cogeneration facility that meets the criteria established in § 292.203 is a qualifying facility.

(2) The owner or operator of a facility qualifying under this paragraph must file an affidavit with the Commission signed by the owner, operator, or authorized representative of the facility that includes:

(i) The name and address of the applicant and location of the facility;

(ii) A brief description of the facility, including a statement identifying the facility as either a small power production facility or a cogeneration facility;

(iii) The primary energy source used or to be used by the facility;

(iv) The power production capacity of the facility; and

(v) A statement that the facility meets the criteria established in § 292.203 of this part.

(3) A facility that self-qualifies under this paragraph must also provide the utility with which it expects to interconnect a copy of the affidavit described in paragraph (a)(2) of this section.

(4) Unless a utility files an objection with the Commission within 90 days of receiving the affidavit described in paragraph (a)(3) of this section, the utility must meet its obligations with respect to that qualifying facility as provided in § 292.303 of this Part.

(b) *Optional procedure*

(1) *Application for Commission certification.* In lieu of the certification procedures in paragraph (a) of this section, an owner or operator of a facility may file with the Commission an application for Commission certification that the facility is a qualifying facility. The application must be accompanied by the fee prescribed by Part 381 of this chapter.

(2) *General contents of application.*

(i) An applicant requesting certification of a facility as a qualifying small power production facility under this paragraph must provide a completed and signed FERC Form 556–A.

(ii) An applicant requesting certification of a facility as a qualifying cogeneration facility under this paragraph must provide a completed and signed FERC Form 556–B.

(3) *Commission action.*

(i) Within 90 days after an application is filed, the Commission will issue an order granting or denying the application, tolling the time for issuance of an order, or setting the matter for hearing. An order that denies certification will identify the specific requirements that were not met. If an order is not issued within 90 days of the filing date of the complete application, the application is granted.

(ii) For purposes of this paragraph, the date an application is filed is the date the Office of the Secretary receives all the information necessary to comply with the requirements of this Part.

(4) *Notice.*

(i) Applications for certification filed under this paragraph must include a copy of a notice of the request for certification for publication in the **Federal Register.** The notice must state the applicant's name, the date of the application, and a brief description of the facility for which qualification is sought. This description must include:

(A) A statement indicating whether such facility is a small power production facility or a cogeneration facility;

(B) The primary energy source used or to be used by the facility;

(C) The power production capacity of the facility; and

(D) The location of the facility.

(ii) The notice must be in the following form:

(Name of Applicant)

Docket No. QF–

Notice of Application for Commission Certification of Qualifying Status of a (Small Power Production) (Cogeneration) Facility

On (date of application was filed), (name and address of applicant) filed with the Federal Energy Regulatory Commission an application of a facility as a qualifying (small

[1] *Editorial note:* The Final rule will specify a figure.

power production) (cogeneration) facility pursuant to § 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

(Description of facility)

A person who wishes to be heard or to object to granting qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. A motion or protest must be filed within 30 days after the date of of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. A person who wishes to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

(c) *Revocation of qualifying status.*

(1) The Commission may revoke the qualifying status of a qualifying facility which has been certified under this section if such facility fails to comply with any of the statements contained in its application for Commission certification.

(2) Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under this section, a small producer or cogenerator may apply to the Commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status.

(3) For purposes of this section, the following alterations or modifications will not result in revocation of qualifying status:

(i) A change in the name of the corporation that owns the qaualifying facility;

(ii) A change in the ownership of a small power production facility if the new and remaining owners are not affiliated with an electric utility, an electric utility holding company, or a combination thereof;

(iii) A change in the ownership of a cogeneration facility if:

(A) The new and remaining owners are not affiliated with an electric utility, an electric utility holding company, or a combination thereof; and

(B) The user of the thermal energy produced by the cogeneration facility is not affiliated with the owner of the cogenerator facility;

(iv) A change in the location of a proposed qualifying small power production facilty if the new location is not within one mile of another small power production facility that:

(A) Is owned by the same person(s); and

(B) Uses the same primary energy source(s);

(v) A decrease in the amount of natural gas or oil used by a cogeneration facility if the efficiency and operating standard calculations for the facility remain at or above the minimum limits for those standards;

(vi) A decrease in the amount of fossil fuel used by a small power production facility if the total use of fossil fuel remains below the limit specified in § 292.204(b)(2) of this part;

(vii) A change in the primary energy source of a small power production if the new primary energy source is:

(A) Biomass, a renewable resource, or a geothermal resource;

(B) One of the waste energy sources listed in § 292.202(b) of this part; or

(C) A combination of the energy sources in paragraphs (c)(3)(vi)(A) and (c)(3)(vi)(B) of this section;

(viii) A change in the energy source of a cogeneration facility if the new primary energy source does not result in an increase in the facility's use of natural gas or oil;

(ix) An additional use of a cogeneration facility's thermal output if the original uses are maintained as specified in the original certification order;

(x) An increase in the efficiency or operating standard calculation of a cogeneration facility;

(xi) A change in the power production capacity of a qualifying small power production facility if the facility's capacity does not exceed the capacity limit established for that particular type of facility; or

(xii) A change in the power production capacity of a cogeneration facility if the efficiency and operating standard calculations for the facility remain at or above the minimum limits for those standards.

(4) A qualifying facility that has been certified under this section must notify the Commission, in writing, of a change listed in paragraph (c)(3) of this section.

[Editorial Note. The following forms and Statements will not appear in the Code of Federal Regulations]

Appendix A—Forms and Statements

[FERC Form No. 556–A]

Application for Certification of Qualifying Factility Status as a Small Power Production Facility

(To be completed for the purpose of demonstrating conformance with the qualification criteria of § 292.203(a))

1a. Full name of applicant:

1b. Full address of applicant:

1c. Indicate whether applicant is the owner and/or the operator of the facility:

1d. Signature of authorized individual:

2. Person to whom communications regarding the application may be addressed:

Name:

Title:

Telephone number:

Mailing address:

3. Location of facility to be certified:

State:

County:

City of town:

Street address (if known):

4a. Is any owner of the facility an electric utility or electric utility holding company or any combination thereof?

4b. If no, sign a statement that no electric utility or electric utility holding company, or any combination thereof, has or will have an ownership interest in the facility to be certified.

4c. If yes, identify each owner, provide the relevant agreement, and for each owner indicate the percentage of ownership (voting securities) and for each owner provide, as Attachment A, a description of the relevant equity interest of the utility or holding company.

DESCRIPTION OF THE FACILITY

5a. Describe the principal components of the facility:

Boilers:

Prime movers:

Electric generators:

5b. Indicate the net electric power production capacity of the facility:

5c. Indicate the date installation of the facility commenced or will commence:

5d. Describe the primary energy source (Specification of an energy source for which the Commission has not established a generic standard in section 292.202(b) requires additional documentation):

6. Provide the annual energy input in terms of Btu, and the percentage of the total annual energy input, of the facility regarding the use of:

Natural Gas:

Oil:

Coal:

Other (Specify, *e.g.*, electric steam, etc.):

7a. If any other small power production facility located within one mile of the facility in this application is owned by the same person and uses any of the same primary energy source, provide the following information about the other facility:

Facility name (as filed with the FERC):

QF docket number (as assigned by the FERC):

Name of Common Owner:

Common primary energy source:

Power production capacity (in MW):

8. Response to this is optional. Discuss particular characteristics of the facility which the applicant believes might bear on its eligibility for certification:

Public reporting burden for this collection of information is estimated to average 16

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hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to Kenneth Thomas (202) 357–5253, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FERC Form No. 556–B]

Application for Certification of Qualifying Facility Status as a Cogeneration Facility

(To be completed for the purpose of demonstrating conformance with qualification criteria of § 292.203(b))

1a. Full name of applicant:
1b. Full address of applicant:
1c. Indicate whether applicant is the owner and/or the operator of the facility:
1d. Signature of authorized individual:
2. Person to whom communications regarding the application may be addressed:

Name:

Title:

Telephone number:

Mailing address:

3. Location of facility to be certified:

State:

County:

City or town:

Street address (if known):

4a. Is any owner of the facility an electric utility or electric utility holding company or any combination thereof?

4b. If no, sign a statement that no electric utility or electric utility holding company, or any combination thereof, has or will have an ownership interest in the facility to be certified.

4c. If yes, identify each owner, provide the relevant agreement, and indicate the percentage of ownership (voting securities) and for each owner provide, as Attachment A, a description of the relevant equity interest of the utility or holding company.

DESCRIPTION OF THE FACILITY

5a. Describe the cogeneration system, including whether the facility is a topping- or bottoming-cycle facility.

5b. Describe the principal components of the facility:

Boilers:

Prime movers:

Electric generators:

5c. Indicate the net electric power production capacity of the facility:

5d. Indicate the date installation of the facility commenced or will commence:

6. Provide, as Attachment B, a cycle diagram showing the physical arrangement of system components, interconnecting energy flow paths and operating information at average hourly facility output including:

All fuel flow inputs (Btu/hr):

Electric output (KW or MW):

Mechanical output (hp):

Working fluid (*e.g.* Steam) conditions at input and output flow of prime mover(s) and at delivery to and return from useful thermal applications:

Flow rates (lbs/hr):

Temperature (deg. F):

Pressure (psia):

Enthalpy (Btu/lb):

7. Provide the annual energy input in Btu for each of the primary energy sources (use lower heating value for natural gas or oil):

8. Provide the annual energy input in Btu for each of the energy sources used for supplementary firing (use lowerheating value for natural gas or oil):

9. Provide the annual useful power output in equivalent Btu showing the net electric energy output (MW/h) and, if any, the net mechanical energy output (horserpower/hour):

10. Response to this is optional. Discuss particular characteristics of the facility which the applicant believes might bear on its eligibility for certification:

FOR TOPPING-CYCLE FACILITIES (Items 11–13)

11a. Provide a description of the heating and cooling uses and/or the industrial or commercial process for which the thermal energy output is applied.

11b. Provide for facilities where the useful thermal output does *not* employ an established industrial process, the average cost of primary energy (¢/million Btu) and the average revenue received for useful thermal output (¢/million Btu) and for affiliated thermal user show that the product's sales recovers such cost:

12a. Useful Thermal Energy Output

For heating and cooling uses:

Provide the annual useful thermal energy output in terms of the integrated usage, accounting for hourly and seasonal variations (Btu):

For process uses:

Provide the annual thermal energy output sent to process less delivery losses and less any energy return from process in terms of:

Enthalpy (Btu/lb):

Pressure (psia):

Temperature (deg. F):

Average annual flow rate (lbs/hr):

12b. Provide that portion of the total annual thermal energy output reported in 12a which is the result of any supplementary firing (Btu):

12c. Demonstrate, in Attachment C, that the annual useful thermal output and annual useful power output are in compliance with the operating standard.

13. If oil or natural gas inputs are greater than 50% of the annual fuel input in Attachment D, demonstrate that the annual useful thermal output, annual useful power output, and annual natural gas or oil input are in compliance with the applicable efficiency standard.

FOR BOTTOMING-CYCLE FACILITIES (Items 14–15)

14. Provide a description of the industrial or commercial process to which the energy input to the system is first applied and from which the reject heat is then used for power production.

15a. Demonstrate, in Attachment E, that the annual useful power output and annual natural gas or oil input from supplementary firing are in compliance with the applicable efficiency standard.

15b. Demonstrate that energy input for supplementary firing does not exceed 50% of the energy input to the primary energy input.

Public reporting burden for this collection of information is estimated to average 28 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to Kenneth Thomas (202) 357–5253, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Concurring Opinion of Commissioner Charles A. Trabandt

I concur in the issuance of this Notice of Proposed Rulemaking (NOPR) on the regulations governing implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA), with several observations and reservations.

First, I am pleased that the Commission now is finally addressing the PURPA implementation issues highlighted in the four regional Public Conferences on PURPA held in early 1987. Those issues have been awaiting action since then, because of the Commission's primary focus on the three electric policy NOPRs in Docket Nos. RM88–4, 5, and 6., While I preferred strongly that we take up and dispose of these issues first, at least we can finally act on them in the broader context of the other pending proposals. Hopefully, in the end, we will be successful in developing a consistent and complementary set of obviously interrelated policies for the implementation of PURPA and the Federal Power Act (FPA) under these four NOPRs, as well as the electric transmission NOPR under development at this time by the Commission staff.

I urge all interested parties in their review of this NOPR to carefully consider that need for consistent and complimentary policies across the broad spectrum of interrelated issues presented in the four NOPRs and under review in the transmission area. Parties whenever possible should reflect such consideration and conclusions on the various interrelated issues in their comments in this docket. To that end, I have included as an attachment my opening statement at the public hearings on RM88–4, 5 and 6 on July 21 and 22, 1988. I particularly invite the attention of interested parties to the alternate approach for the pending NOPRS I recommended on page 4 of the statement. I would appreciate it if commenters would comment on how the proposals in the instant NOPR could be made consistent with and complementary to such an alternate approach.

Second, as a general matter, this proposal deals with another whole series of PURPA issues, including self certification of qualifying facilities, utility ownership of QFs, Efficiency and Operating standards, and a series of technical requirements affecting

fuels and technology. The proposal could make sweeping changes in the various requirements, which control the types of projects that qualify for PURPA benefits. When one stands back from the 120 page proposal, the potential bottom line is obvious to any observer. The proposal could greatly expand PURPA coverage in terms of technology, fuel, utility ownership, operations and otherwise.

As a result, FERC under this NOPR could dramatically liberalize qualification for PURPA and open the floodgates for an entire new generation of Qualified Facilities (QFs), which under the old rules would have to be non-QF Independent Power Producers (IPPs). The practical result would be that many independent power projects now would receive PURPA benefits, not be subject to the Public Utility Holding Company Act, and avoid certain state regulation. As a result, the proposal could be yet another way to force an independent competitive generating sector in the name of the primacy of economic efficiency. Notwithstanding Commission staff protestations to the contrary at the July 13, 1988, Commission meeting, there is good reason to believe that the underlying objective here is to make IPPs eligible for qualifications as QFs and receipt of PURPA benefits. I do not believe that result is justified by the existing record.

Fourth, I have serious concerns about the ownership issue in this NOPR. In my judgment, Congress made unambiguously clear its intent with regard to ownership of QFs in PURPA.

Under sections 3(17)(C) and 3(18)(B) of the FPA as amended by PURPA a QF can only be "owned by a person not primarily engaged in the generation or sale of a electric power (other than electric power solely from cogeneration facilities or small power production facilities)." (16 U.S.C. 796(17)(C) and (18)(B) (1982).

The terms 'qualifying small power production facility' and 'qualifying cogeneration facility' exclude facilities which are owned by a person who is primarily engaged in the generation or sale of electric power. Electric utilities may participate in an entity which owns such facilities with other persons and such entity could qualify under these definitions. *The test of this case is whether the entity which owns the facility is primarily engaged in the generation or sale of electric power other than in connection with its ownership of the cogeneration facilities or small power production facilities.*

(H.R. No. 1750, 95th Cong., 2nd Sess. 89, *reprinted in* 1978 U.S. Code Cong. & Ad. News 7797, 7823, *and in* FERC Statutes and Regulations ¶ 5151 at 5097). (Emphasis added)

In its Notice of Proposed Rulemaking (NOPR) leading to the adoption of its current ownership criteria, the Commission stated:

[U]nder a literal interpretation of the Conference Committee's statement, several electric utilities could from a subsidiary which owned small power production or cogeneration facilities. Such a subsidiary would constitute an entity which is not primarily engaged in the generation or sale of electric power other than in connection with its ownership of cogeneration or small power production facilities. Under such an interpretation the subject facility would be eligible to receive qualifying status.

(Docket No. RM79–54, 44 Fed. Reg. 3882, FERC Statutes and Regulations, Proposed Regulations 1977–1981 ¶ 32,028 at 32,333 (1981))

However, the Commission declined to adopt this position, because it believed that "the thrust of section 201 of PURPA is to limit the advantages of qualifying status to cogeneration and small power production facilities which are not owned exclusively by electric utilities or their subsidiaries." Consequently, the Commission proposed that QFs be limited to 50 percent ownership by electric utilities, public utility holding companies, or their subsidiaries (hereinafter referred to as "ownership restriction").

In the final rule, the Commission noted that several commenters to the NOPR agreed with the Commission that, under a literal interpretation of the Conference Report, electric utilities could form subsidiaries which would own QFs, and such subsidiaries would not be "primarily engaged in the generation or sale of electric power other than in connection with its ownership of cogeneration or small power production facilities." (*See* Order No. 70, Final Rule, Small Power Production and Cogeneration Facilities—Qualifying Status, Docket No. RM79–54, 45 Fed. Reg. 17595, FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,134 at 30,953 (1980)). Thus, utility subsidiaries could own cogeneration and small power production facilities without such facilities losing their qualifying status. However, the Commission again declined to adopt this position in its final rule, restating its belief that the thrust of section 201 was to limit the advantages of qualifying status to facilities which are not "owned primarily" by electric utilities or their subsidiaries. The Commission concluded that the rulemaking comments did not provide sufficient reasons to change the percentage.

The threshold question for the Commission today is whether PURPA, as a matter of law apart from any relevant policy consideration arising from the pending NOPRs, would sanction the ownership through an affiliate or subsidiary of a QF by an electric utility primarily engaged in the generation or sale of non-cogeneration electric power. Or, put another way, whether the Commission's judgment at the time of initial PURPA implementation not to allow corporate veils to be used to extend PURPA section 210 benefits to electric utilities remains legally valid. On this issue, the plain meaning of the statute and the clear intent of Congress in the Conference Report support persuasively the original conclusion of the Commission adopted in the 1980 regulations.

Nevertheless, the Commission's Office of General Counsel (OGC) has completed an exhaustive, if not necessarily wholly objective, review of the legislative history of this issue in PURPA and not surprisingly concluded that under settled rules of statutory construction the Commission now could reinterpret legally the ownership limitation to allow utility subsidiaries to own 100% of QFs. The OGC opines that permitting utility subsidiaries to own 100% of the QFs thus should not be viewed as a reversal of the Commission's prior interpretation of PURPA, but may be characterized solely as a "new policy position." That so-called new policy position could be adopted, accordingly to OGC, if the Commission obtains evidence in this Docket supporting the conclusion that 100% utility subsidiary ownership fosters the purpose of PURPA to encourage cogeneration, without offending Congressional concern about exempting electric utilities from the FPA.

That conclusion here also would support as a matter of law, it is argued, (a) 50% direct ownership of QFs by an electric utility or 100% direct ownership if not more than 50% of revenues are attributable to non-QF power sales; (b) 100% direct ownership by (i) subsidiaries of electric utilities, which could include an IPP subsidiary, and (ii) electric utility holding companies; and (c) QF direct ownership of IPPs where no more than 50% of the revenues came from non-QF power sales. These ownership possibilities could be coupled to a restriction in some form on sales by utility-subsidiary QFs to the parent utility or on location of the utility-subsidiary QF in the utility's service territory, if the Commission decided such restriction was necessary because of concerns about utility monopoly power or potential abuses due to self-dealing. Thus, OGC concludes, the Commission has broad latitude in this rulemaking docket to reinterpret the ownership test in the statute as a "new policy position" and completely restructure the 1980 regulations to effectuate the new policy position.

I shall await the comments of interested parties as to the OGC position, rather than debate it at length at this point in the proceedings. Suffice it to say that thus far I remain unmoved by the analysis presented to the Commission, which might be characterized uncharitably as revisionist legislative history and analysis, to the effect that somehow Congress didn't really mean what it said or, in the alternative, Congress should not have meant it, in light of our new policy position. For me, any effort ten years after enactment of PURPA to find the corporate veil suddenly impenetrable, as if resurrected *sua sponte* from the legal trash heap, will require a great deal more in objective and persuasive argumentation that that presented thus far to the Commission.

Next, the Commission here is proposing to make a fundamental shift in the processing of QF applications from Commission certification to self-certification. The Commission already has received communications from QF and independent power officials urging a cautious approach to this proposal. In a nutshell, they are very concerned that the current form of Commission certification may continue to be necessary in order to provide adequate legal certainty of the project's eligibility for QF status and resulting PURPA benefits. That legal certainty is particularly important for the financial community in the context of project-type financing and for electric utilities in terms of applicable law and avoided cost rates. I believe that the Commission must be

very careful in assessing and responding to those quite legitimate concerns reflecting the real world requirements for QF project development. The Commission, in my judgment, cannot attempt to abandon Commission certification unless and until there is persuasive evidence that self-certification as a practical matter will be fully adequate to provide the necessary legal certainty to assure the predictable development and financing of future QF projects. Only that approach would support the fundamental PURPA section 210 objective of encouragement of cogeneration.

Finally, I remain concerned about the potential impact and effect of the proposed changes in the technical area, particularly the sequential use of energy. The proposal here would liberalize significantly the current requirement such that potentially much larger power plants could qualify for QF status. This is one example of the effect where IPP-type projects may now more easily qualify for QF status, thus expanding the scope of the PURPA cogeneration program beyond original Congressional intent. I recommend that commenters review all the technical proposals and carefully assess the potential aggregate effects and impact on the current program.

At the July 13 meeting, I pointed out the proposed 15% bright line test for the permissible "minor uses" of fossil fuels would have the obvious effect of prohibiting the qualification of innovative solar energy technology QFs, such as the LUZ projects. I am pleased that the NOPR has been modified to acknowledge that problem and seek comment on the spectrum of other possibilities available to address the issue. Without prejudging the preferred option, I believe the Commission must balance carefully the desire for administrative expediency in processing applications, on one hand, and the continued importance of pursuing available renewable resource technologies for the near term and long range future, on the other. In the end, we must strike a responsible compromise between those two considerations.

Before concluding, I want to note that the procedures for public comment were modified at the July 27 Commission meeting to provide that the Commission could ask questions of witnesses at the public hearing and that they would be allowed to answer orally, as well as in writing for the record. While this may seem to be a small matter, the Commission over the last year has refused to allow witnesses at public hearings to provide oral responses to Commissioner questions. As I have previously stated, that restriction rendered the public hearings into a public farce and a gross embarrassment to the Commission, to say nothing of the extreme and understandable frustration experienced by the muzzled witnesses. The whole approach, in my judgment, made a mockery of the intended due process aspect of the public hearing process, and prevented the Commission from having the open dialogue with witnesses so essential to Commission and public understanding of these issues. I am pleased that the modification was adopted and further that it will be a precedent for all furture public hearings. It is time to end such due process excesses in our public comment procedures.

In conclusion, I support the issuance of this NOPR for public comment. It appears that it has been developed in many respects as a companion to the three pending electric NOPRs, as another step to mandate a competitive electric generating sector comprised of IPPs and QFs, and with the QF benefits extended more broadly to IPPs. In some sense, this NOPR would narrow the gap between IPPs and QFs and make the QF program more comparable to and parallel with the IPP NOPR. At the same time, these PURPA implementation issues have deserved resolution since the public hearings in early 1987, irrespective of the other electric policy NOPRs. Consequently, the Commission should proceed to address them now while continuing the rulemaking proceeding in the other dockets. Subject to these several observations and reservations noted previously, I concur.

Charles A. Trabandt,
Commissioner.

Public Hearings on RM88–4, RM88–5 and RM88–6 Opening Statement of Commissioner Trabandt

July 21 and 22, 1988.

I want to join my colleagues in welcoming the large number of witnesses for these two days of hearings on the electric policy Notices of Proposed Rulemakings (NOPR) in Docket Nos. RM88–4, RM88–5 and RM88–6. These are very important hearings, indeed, on the Commission's three interrelated proposals in the areas of all source competitive bidding (ASCB), Independent Power Producers (IPP) and administrative determination of avoided cost (ADFAC) under the Public Utility Regulatory Policies Act (PURPA), including the *Orange and Rockland* decision. At the outset, I would like to make some brief observations for the benefit of the witnesses and other interested parties.

U.S. Secretary of Energy John Herrington last year stated that reform of electric power regulation must *not* be undertaken just for the sake of change. Rather, the objective of such reforms must be to make the system work *better*, not just to make it work *differently*. The public comments filed in these dockets and the public testimony today and tomorrow will provide the Commission with an assessment of whether these proposals, in fact, will make the current system work better or just differently. A quick-look review of the filed comments indicates that the proposals clearly would *not* improve the system and, in all likelihood would make the system work much worse, as well as differently. In fact, the comments reflect virtually no support for the particular ASCB proposal and indicate generally strong opposition on the merits from all segments of industry, states and consumers.

I also want to highlight for the witnesses and other interested parties the comments of Senator J. Bennett Johnston, distinguished Chairman of the U.S. Senate Committee on Energy and Natural Resources, at the confirmation hearing last week for Betsy Moler, who was nominated by President Reagan for FERC Commissioner. Senator Johnston stated that it is premature to adopt these rulemakings at this time, for a number of reasons. First, because there are too many holes in the rulemakings, too many things that haven't been thought out. It is in effect incomplete. Second, because Ms. Moler and any other new Commissioners ought to have a chance to take a look at the rulemakings and be involved in the rulemakings and to have the time to do so. He would hope that the Commission will slow down our process and not rush to judgment. He would regard that as a rush to judgment if we tried too quickly to enact these rules, because he thinks it's just premature and they have not been thought out. Senator Johnston characterized his comments as a statement which he hoped will get over to FERC and concluded by saying, "I hope that message gets over there." Senator Domenici concurred with Chairman Johnston's view that these rulemakings ought to go slow. It is my belief that Chairman Johnston's comments reflect a bipartisan consensus in the Senate. That fact should be of critical importance to this Commission in deciding how to proceed with these NOPRs.

Congressman Phil Sharp of Indiana, the distinguished Chairman of the Energy and Power Subcommittee in the U.S. House of Representatives, commented last year about Federal-state responsibilities under PURPA, and he reiterated those remarks last month in a letter to FERC.

PURPA's evolution over the past ten years—both positive and negative—is in part the result of the division of authority between FERC and the state commissions. That bifurcation is a proper exercise in both Federalism and energy policy, and I urge FERC to remain sensitive to the key role that the state commissions play. The appropriate role for FERC must be to clarify Federal law—where necessary—and to provide guidance with advice—where appropriate—(but) not to mandate any particular model or approach (for the states).

Again, a quick-look review of the filed comments indicates that the proposals are *not* sensitive at all to the key role that state commissions play. Quite the contrary, the proposals would mandate a particular model and a particular approach for every state. The proposals would have sweeping preemptive effect, which would largely federalize state implementation of PURPA and preempt inconsistent state laws and actions in electric regulation. In particular, almost all existing state competitive programs would be struck down under the proposals.

Furthermore, closely related Commission action in June in the *Orange and Rockland* rehearing and in the decision in the Florida *Industrial Cogenerators* case have demonstrated beyond any reasonable doubt that there really is only one way to proceed—*and that is the FERC way.* The procedural and substantive aspects of those cases reflect a recurring FERC approach of unabashed Federal arrogance and inherent Federal superiority, with profound negative implications for these electric NOPRs. In

those cases, FERC established itself as an appeals court for all state PURPA actions with a "star chamber" process. FERC, as a Federal "Big Brother," has issued these Federal dictatorial fiats as part of its concerted effort to federalize all implementation of PURPA *and* regulation of the generation sector of the electric industry. With the FERC way as the only way, FERC will virtually mandate the restructuring of the electric generation sector.

I have repeated many times over the past year the threshold issue of the need for these interrelated proposals. What is the real objective? What is broke that needs to be fixed? What is the problem FERC is attempting to solve with these initiatives? The proposals argue that the "regulatory compact" is broken irreversibly and must be replaced with ASCB and IPP in a newly competitive and independent generating sector to achieve the primacy of economic efficiency and to ensure adequate supplies of electric power in the future. The filed comments do not agree that the regulatory compact is broken, nor that ASCB and IPP will improve efficiency or better assure adequate supplies. To the contrary, the comments document decreased efficiency and less assured supply, with serious potential reliability risk, under these proposals.

In the real world of today, 28 or more states, including New York, New Jersey, Colorado and Washington most recently, have adopted, or are in the process of adopting, various forms of competitive processes for the selection of new electric generation facilities. Similarly, a growing number of utilities are soliciting bids for new generation capacity, with many thousands of megawatts already bid for several thousand megawatts of solicited capacity for utilities across the country. All of that state and utility activity has proceeded thus far without one single new word of regulations from FERC. And yet, those state competitive programs and utility solicitation programs, it appears, would be seriously threatened, if not wiped out completely, by these proposals for no apparent public policy purpose.

It also is quite apparent that the NOPRs inevitably will force a piecemeal decisionmaking process for Federal transmission policy contrary to the interests of all segments of the electric industry. The far better, and long overdue, approach to transmission reform is in a separate generic rulemaking specific to Federal transmission regulation. Otherwise, FERC will inevitably fall into the tyranny of small decisions so thoroughly discredited by Dr. Alfred Kahn and many others. Without any particular or clear vision of a comprehensive and cohesive transmission policy, we will make a series of discrete decisions, each one perhaps rational, which will add up to an irrational result. Even though each step will be conscious, the cumulative result will be largely inadvertent, because there is not a clear conception of what the ultimate outcome would or should be. Federal transmission policy is far too important to allow the tyranny of small decisions to be the result.

In a general way, then, how should the Commission proceed with the proposals in the NOPRs in the face of the overwhelmingly negative public comments. I recommend that the witnesses, and those filing reply comments in August, consider the following approach. First, the bidding NOPR would become the functional equivalent of a policy statement approving state competitive processes under PURPA with general guidelines and very few, if any, specific requirements. Second, the ADFAC NOPR would be scaled back dramatically to address only the need for power and capacity payments issue, with a few general guidelines. Third, the IPP NOPR would provide some modest relief from current regulations, as in the January, 1988, *Orange and Rockland* IPP case. All transmission policy and Federal preemptive effects would be removed from the three pending proposals as a result. And, fourth, FERC would develop and issue a NOPR addressing on a generic basis reform of Federal transmission regulation, *before* adopting final rules in the other three pending dockets. I believe this approach would be generally consistent with the majority of public comments and urge its consideration by all parties.

I look forward to all the testimony. Thank you.

[FR Doc. 88-18181 Filed 8-16-88; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3430-1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking; extension of public comment period.

SUMMARY: On June 30, 1988, EPA published a proposed rulemaking in the **Federal Register** (53 FR 24735) to approve a revision to the Missouri State Implementation Plan (SIP). The purpose of this SIP revision is to attain the National Ambient Air Quality Standards for ozone in the Kansas City ozone nonattainment area. EPA Region VII received a request to extend the public comment period for 30 days. Therefore, the purpose of this notice is to extend the comment period deadline from August 1 to August 31, 1988.

DATE: Comments must be received by August 31, 1988.

ADDRESS: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker, (913) 236-2893; FTS 757-2893.

Dated: August 5, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88-18583 Filed 8-16-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP-7E3559, 8E3585/P457; FRL-3429-6]

Pesticide Tolerances for Ethyl 3-Methyl-4-(Methylthio) Phenyl (1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances for regional registration be established for the combined residues of the nematicide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate (also referred to in this document as fenamiphos) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities kiwifruit and non-bell peppers. The proposed regulation to establish maximum permissible levels for residues of the pesticide in or no the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 7E3559, 8E3585/P457), must be received on or before September 16, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m.,

Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick NJ 08903, has submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administration, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the nematocide fenamiphos and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on certain raw agricultural commodities.

1. *PP 8E3585.* Petition submitted on behalf of the Agricultural Experiment Station of California for kiwifruit at 0.1 part per million (ppm).

2. *PP 7E3559.* Petition submitted on behalf of the Agricultural Experiment Stations of California and Puerto Rico and the U.S. Department of Agriculture for non-bell peppers at 0.6 ppm.

The petitioner proposed that use of fenamiphos on kiwifruit be limited to California and use on non-bell peppers be limited to California, Georgia, and Puerto Rico based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) for cholinesterase inhibition (ChE) at 1 ppm (equivalent to 0.025 milligram (Mg)/kilogram (kg/day) and no systemic effects at 10 ppm (the highest dose tested)).

2. A 2-year feeding/oncogenicity study in rats with a NOEL for cholinesterase inhibition at less than 2.0 ppm (equivalent to 0.1 mg/kg/day) and no systemic effects at 10 ppm (equivalent to 0.5 mg/kg/day). The study was negative for oncogenic effects under the conditions of the study at all feeding levels.

3. An 18-month oncogenicity study in mice with feeding levels of 2, 10, and 50 ppm (equivalent to 0.3, 1.5, and 7.5 mg/kg/day), which was negative for oncogenic effects under the conditions of the study at all levels tested.

4. A three-generation reproduction study with no reproductive effects at 30 ppm (highest dose tested).

5. A teratology study in rabbits with developmental and maternal NOEL's at 0.5 mg/kg.

6. A neurotoxicity study in hens with no neurotoxicity damage at 12.5 mg/kg (highest dose tested).

7. In a metabolism study in rats, fenamiphos was methabolized to its sulfoxide and sulfone analogs with 50 percent excreted in the urine within 12 to 15 hours.

8. Genotoxicity studies including an Ames test (negative), a dominant lethal test in mice (negative), an *in vitro* assay in Chinese hamster ovary cells (negative for nonactivation assay at concentrations up to 130 micrograms/milliliter and for activation assay up to 230 micrograms/milliliter), and gene mutation using *Bacillus subtilis* (negative).

Data currently lacking include a teratology study in a second species. Data requirements for registration of fenomiphos are identified in a Registration Standard for the chemical, which was issued in June of 1987.

The acceptable daily intake (ADI), based on the 2-year feeding study in dogs with a NOEL for cholinesterase inhibition at 1.0 ppm (0.025 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.00025 mg/kg of body weight (bw)/day. The expected residue contribution (ARC) from existing tolerances is calculated to be 0.000098 mg/kg bw/day, which is equivalent to 39 percent of the ADI. The current action will contribute an additional 0.000006 mg/kg bw/day of residues to the human diet.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using a thermionic detector, is available in the *Pesticide Analytical Manual,* Vol. II (PAM II) for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.349 would protect the public health. No secondary residues in meat, milk, or eggs are expected since kiwifruit and non-bell peppers are not considered livestock feed commodities. Therefore, it is proposed that the tolerances for regional registration be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3559, 8E3585/P457]. All written comments filed in response to these petitions will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 2, 1988.

Edwith F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

180—[AMENDED]

1. The authority citation For Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.349(c) is amended by adding and alphabetically inserting the raw agricultural commodities kiwifruit and nonbell peppers, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

* * * * *

(c) * * *

Commodities	Parts per million
* * * * *	
Kiwifruit	0.1
Peppers, non-bell	0.6
* * * * *	

[FR Doc. 88-18454 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3621/P458; FRL-3429-5]

Pesticide Tolerance for N-(Mercaptomethyl) Phthalimide S-(0,0-Dimethyl Phosphorodithioate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the sum of residues of the insecticide *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) (also referred to in this document as phosmet) and its oxygen analog in or on the raw agricultural commodity crabapples. The proposed regulation was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4) in support of regional registration.

DATE: Comments, identified by the document control number [PP 8E3621/P458], should be received on or before September 16, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 8E3621 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for cholinesterase-inhibiting residues of the insecticide phosmet and its oxygen analog *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorothioate) in or on the raw agricultural commodity crabapples at 15 parts per million (ppm). The petition was later amended to propose a tolerance for crabapples at 20 ppm.

The petitioner proposed that use of phosmet on crabapples be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

The toxicological data considered in support of the proposed tolerance include:

1. A 2-year feeding study in dogs with a no-observed-effect level (NOEL) for brain and red blood cell cholinesterase inhibition (ChE) at 40 ppm (equivalent to 1 milligram (mg)/kilogram (kg)/day) and a systemic NOEL at 400 ppm (equivalent to 10 mg/kg/day).

2. A 2-year oncogenic study in Charles River strain of albino rats with dosage levels of 20, 40, and 400 ppm (equivalent to 1, 2, and 20 mg/kilogram (kg)/day) was negative for oncogenic effects under the conditions of the study. This study is considered inadequate (supplementary data) for the evaluation of oncogenic potential because the number of animals sacrificed at the end of the study was too small to fully evaluate tumor response. The rat study demonstrates NOELs for systemic effects and plasma, red blood cells and brain cholinesterase inhibition at 40 ppm.

3. A three-generation reproduction study in rats with no reproductive effects at 80 ppm (highest dose tested).

4. A teratology study in rabbits with a NOEL for teratogenic effects at 60 mg/kg/day (highest dose tested).

5. A teratogenic study in monkeys with a NOEL for teratogenic effects at 8 mg/kg/day (highest dose tested).

6. Mutagenicity studies including an assay in *Salmonella typhimurium* (positive, with and without metabolic activation); a mouse lymphoma multiple endpoint test for forward mutations (positive, with and without metabolic activation); mouse lymphoma multiple endpoint test cytogenic assay (positive for structural chromosomal aberrations without metabolic activation); a cell transformation study using BALB/3T3 cells (positive); a micronucleus test (negative); and a test with human fibroblast DNA (negative, with and without activation).

7. A 2-year oncogenicity study in B6C3F1 mice with dosage levels of 5, 25, and 100 ppm (equivalent to 0.75, 3.75, and 15 mg/kg of body weight/day) demonstrated an increase in hepatocellular adenomas (also reflected as an increase in the incidence of adenomas/carcinomas combined) at the highest dose level tested (100 ppm) in male mice. There was also evidence for hyperplasia in male mice. The results of the interim sacrifice indicates that the liver tumors occurred in male mice with reduced latency. No significant increase in carcinomas occurred, however, indicating that there was no clear trend of progressing to malignancy. Phosmet also produced positive trends for

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adenomas, carcinomas, and both tumor types combined in female mice. None of these tumors were significantly elevated at the highest dose level tested, there was no hyperplasia, and no indication that the tumors occurred with a reduced latency period.

The Agency has concluded that the data constitute limited evidence of oncogenicity and has tentatively classified phosmet as a Category C carcinogen (possible human carcinogen), pending the submission and evaluation of a repeat 2-year oncogenicity study in rats and additional mutagenicity studies. In accordance with the "Guidelines for Carcinogen Risk Assessment," published in the **Federal Register** of September 24, 1986 (51 FR 33992), the Agency has decided not to develop a quantitative estimation of the oncogenic potential of phosmet until the requested studies are submitted and evaluated in conjunction with the mouse oncogenicity study.

The acceptable daily intake (ADI), based on the 2-year feeding study in rats with a NOEL of 2.0 mg/kg/day and using a 100-fold safety factor, is calculated to be 0.02 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.032028 mg/kg/day. The current action will increase the TMRC by 0.000008 mg/kg/day, a 0.025 percent increase). The Agency concludes that the amount of phosmet added to the diet from the proposed use will not significantly increase dietary exposure. Thus the tolerance established by this proposed rule is considered to pose a negligible increment in risk.

The nature of the residues for the proposed use on crabapples is adequately understood. The residues of concern consist of the parent compound phosmet and its oxygen analog. An adequate analytical method, gas chromatography, is available in the *Pesticide Analytical Manual*, Vol. II (PAM II), Method III, for enforcement purposes. There is no expectation of secondary residues in meat and milk since crabapples are not considered an animal feed commodity. There are currently no actions pending against the continued registration of this chemical. Since the ADI is established based on systemic effects, tolerances for phosmet and its oxygen analog are no longer expressed in terms of cholinesterase-inhibiting residues. The tolerance regulation under 40 CFR 180.261 was recently revised to express phosmet tolerances in terms of "the sum of the residue for *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog."

Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingeredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 8E3621/P458]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 2, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.261 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.261(b) is amended by adding and alphabetically inserting the raw agricultural commodity crabapples, to read as follows:

§ 180.261 N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
Crabapples	20
* * * * *	

[FR Doc. 88-18455 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3422-5]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located offshore of Los Angeles, California for the disposal of dredged material removed from the ports of Los Angeles, Long Beach and other nearby harbors or dredging sites. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before September 16, 1988.

ADDRESSES: Send comments to: Dr. Wendy Wiltse, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

The file supporting this proposed designation is available for public inspection at the following locations:

1. EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC.

2. EPA Region IX, Library, 215 Fremont Street, San Francisco, CA.

3. Army Corps of Engineers, Los Angeles District, Library 300 North Los Angeles Street, Los Angeles, CA.

FOR FURTHER INFORMATION CONTACT: Dr. Wendy Wiltse at the above address, or call (415) 974–8812.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated the authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter 1, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2462 *et seq.*) and was last extended on August 24, 1984 (49 FR 33647 *et seq.*). That list established this site as an interim site. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., (NEPA) requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to built into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations (39 FR 16186, May 7, 1974).

The EPA prepared a Draft EIS entitled Los Angeles/Long Beach (LA–2) Ocean Dredged Material Disposal Site Designation. On October 9, 1987, a notice of availability of the DEIS for public review and comment was published in the **Federal Register** (52 FR 37832, October 9, 1987). Anyone desiring a copy of the DEIS may obtain one from the address given above. The public comment period on this DEIS closed on December 22, 1987 after receipt of 14 comment letters.

The following substantive comments were discussed in the 14 comment letters:

1. Several commentors were concerned that designation of the site would conflict with fisheries interests in the San Pedro Channel. EPA contacted fisheries resource agencies and local fishermen to determine the extent of benthic fishing effort in the vicinity of the disposal site. We determined that a trawl fishery does not exist in the area because there are too many snags on the bottom to tow a net; and the developing trap fishery for prawns is restricted to rocky locations. Pelagic fisheries will not be affected by dredged material disposal.

2. Some commentors requested that the disposal site be moved to deeper water. EPA evaluated a specific location 11 nautical miles from the Palos Verdes Peninsula in 470 fathoms of water. We determined that this site, within the San Pedro Basin, was not acceptable because the basin has very low dissolved oxygen levels. Disposal of dredged material in this environment may produce anoxic conditions in the basin which could adversely affect the benthic communities. Designation of the deeper site would also cause the disposed material to be spread over a much greater area than the LA–2 site.

3. One commentor requested that the site management program be included in the FEIS. The section on site monitoring was expanded to cover the guidance provided in the Ocean Dumping Regulations (49 CFR 228.13). Site management programs will be defined at the national level of EPA and the Corps as agreed to in the EPA/Corps National Memorandum of Understanding on ocean dumping. Region 9 and the Corps' Los Angeles District will prepare a detailed site management program and circulate the proposal for public review, subsequently.

4. The question of relative costs of disposal at LA–2 versus the deep water site was raised. The Corps' Los Angeles District estimated that disposal at the deep water site would increase costs by 64%. Similar estimates were given by the Ports of Los Angeles and Long Beach. Cost of disposal operations is not a criterion for site selection and was not considered as a factor in the FEIS.

5. EPA was requested to evaluate the cumulative impacts of designating the LA–2 site. The impact tables contained in Chapter 4 Environmental Consequences were revised to reflect further analysis of cumulative impacts in that chapter. Endangered Species Act and National Historic Preservation Act coordination have been carried out as documented in Chapter 5 of the FEIS.

6. The last major comment focused on the toxicity of the dredged material disposed at LA–2. During the Corps' Ocean Dumping Permit process under Section 103 of the MPRSA, EPA and the Corps review sediment test data and results of bioassays to determine whether the proposed dredged material is suitable for ocean disposal. Only dredged material which passes these tests are considered suitable for ocean disposal. Sediments that show significant toxicity, bioaccumulation of contaminants or abnormally high concentrations of contaminants are prohibited from ocean disposal. Alternative disposal methods must be used if the project is to proceed.

C. Alternatives Analysis

The action discussed in the FEIS is designation for continuing use of an ODMDS. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of specific ocean dredged material disposal permits is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The FEIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land-based disposal alternatives were examined in the DEIS and found to be unacceptable for disposal of large amounts of dredged material. This alternative will be evaluated by the Corps of Engineers, Los Angeles District on a case-by-case basis during the permitting process.

The following alternatives were evaluated in this FEIS:

1. No Action—This alternative would prevent final designation of the LA–2 site and prohibit further use of the ODMDS. No action would force the Corps to designate their own site under Section 103 of MPRSA, or modify or cancel dredging projects that rely on ocean disposal of suitable material.

2. Delayed Action Alternative—Delaying the designation of the LA–2 site would be a violation of the 1980 Consent Agreement between EPA and the National Wildlife Federation. The need for an ODMDS is a continuing concern and requires conclusion of the site designation process in the most expeditious manner possible.

3. Upland Disposal (including Landfilling in Port Areas and Disposal at Sanitary Landfills)—These alternatives are considered on a case-by-case basis when the Corps' permit applications are reviewed. Beach replenishment is preferred if the dredged material is suitable. Disposal of large amounts of dredged material at upland sites is not a feasible long-term solution for management of dredged material

disposal because the capacity of these sites is limited in the Los Angeles area.

4. LA–2 ODMDS (Preferred Alternative)—This site was selected as the preferred alternative because it has been used historically since the 1970's, it is between 65 and 170 fathoms and the environmental impacts at the site are acceptable. The anticipated use of the site will not cause significant environmental impacts if the site is designated and conflicts with other uses of the ocean are minimal.

5. Shallow Water ODMDS—This site would be located close to the Palos Verdes Peninsula near the Los Angeles County sewage outfall. Synergistic effects from the outfall, proximity to fishing and boating areas, kelp beds, cultural resources, navigation and shoreline process were issues evaluated in the FEIS.

6. Deep Water ODMDS—The deep water site is located 11 nautical miles off the Palos Verdes Peninsula in 470 fathoms of water. Major considerations include: the size of the area affected by disposal, potential for anoxic conditions in the deep basin, oil and gas development, and the feasibility of monitoring and surveillance at the site.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

D. Proposed Site Designation

The proposed site is located approximately 6 nautical miles offshore of the Los Angeles/Long Beach breakwater and occupies an area of about 2.39 square nautical miles. Water depths within the area are between 65 and 175 fathoms (118 and 320 meters). The coordinates of the site are as follows: 33°37'06" North x 118°17'24" West with a radius of 0.76 nautical miles. If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

E. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the continental shelf and historical sites are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6(a) lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site, as discussed below under the eleven specific factors, is acceptable under the five general criteria. Historical use at the existing site has not resulted in substantially adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast* [40 CFR 228.6(a)(1)]. The LA–2 site is located approximately 6 nautical miles (11 kilometers) from shore on the continental slope leading to the San Pedro Basin at depths ranging from 65 to 175 fathoms (118–320 meters). The bottom, consisting of fine sediment, slopes to the west.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases* [40 CFR 228.6(a)(2)]. The LA–2 site provides feeding and breeding areas for common resident benthic species. Designation of the site will not affect any geographically limited habitats, breeding sites or critical areas that are essential to commercially important species or rare or endangered species.

3. *Location in relation to beaches and other amenity areas* [40 CFR 228.6(a)(3)]. The LA–2 site is 6 nautical miles from the nearest shoreline. EPA and the Corps have determined that visual impacts of plumes, transport of dredged material to any shoreline and alteration of any habitat of special biological significance or marine sanctuary will not occur if this site is designated.

The LA–2 site is approximately 1.2 nautical miles south of the southeastern tip of the study area defined under the Santa Monica Bay Restoration Project (SMBRP). SMBRP is part of EPA's National Estuary Program. The ODMDS and the study area are separated by a deep canyon. Any resuspended sediments from the San Pedro Shelf area are expected to either move into the canyon or off the shelf into the San Pedro Basin. There should be minimal effect from LA–2 on the southeastern edge of Santa Monica Bay.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste if any* [40 CFR 228.6(a)(4)]. An annual average of approximately 200,000 cubic yards of predominantly silts and clays dredged from Los Angeles and Long Beach Harbors are expected to be disposed at the ODMDS once it is designated. The dredged material proposed for disposal at the site must pass stringent sediment chemistry and bioassay tests before a permit is issued by the Corps. Disposal will be from split hull barges towed by tugboat to the site. No dumping of toxic materials or other kinds of industrial or municipal wastes will be permitted at the site.

5. *Feasibility of surveillance and monitoring* [40 CFR 228.6(a)(5)]. The U.S. Coast Guard (USCG) will conduct spot surveillance of disposal activities at the site. EPA and the Corps will assist the USCG within the limits of their jurisdiction.

Physical and biological sampling will be key factors in the site monitoring program. The monitoring program will be established to answer several questions including: the area of impact and effects on grain size, sediment chemistry and benthic infauna; disposal model verification and sediment transport; potential for bioaccumulation of contaminants in local species; and potential impacts on commercial and recreational fisheries. If significantly adverse impacts are detected at the site, the site management plan will be flexible enough to allow for appropriate action.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any* [40 CFR 228.6(a)(6)]. Water currents in the vicinity of LA–2 are variable but move predominantly to the northwest and southeast along bathymetric contour lines. Vertical mixing and currents will disperse fine material disposed at the LA–2 site to the northwest or southeast. The main direction of sediment transport is from the continental shelf down the slope to the floor of deep basins. Dredged material reaching the bottom at LA–2 would be transported offshore and down the slope by currents and sediment slumping.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects)* [40

CFR 228.6(a)(7)]. LA–2 has been used as an interim site for disposal of dredged material since the late 1970's. Impacts of this disposal activity at LA–2 include a greater range of fine and coarse sediments that are poorly sorted; elevated concentrations of heavy metals, pesticides, and PCBs; and lower species diversity of demersal fish, benthic infauna and epifauna compared to the reference site. These effects are considered to be acceptable localized impacts. Impacts on the water column are minimal and temporary, associated with disposal events. The potential for cumulative effects with other discharges is considered to be small at LA–2 and will be assessed in future monitoring of impacts in the vicinity of LA–2.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean* [40 CFR 228.6(a)(8)]. Interference with shipping is minimal because of the low income of material to be discharged at LA–2 (200,000 cubic yards per year) and because the disposal site is located outside of the U.S. Coast Guard Precautionary Area and major traffic lanes. Impacts on commercial fishing are expected to be minor and temporary since most of the catch in the vicinity of LA–2 consists of pelagic species, and the impacts of dredged material disposal on the upper water column are intermittent and short-term. The strongest impacts of dredged material disposal are localized changes in the bottom community; no major bottom fisheries exist in the vicinity of LA–2. Sportfishing, pleasure boating, and dredged material disposal are presently coexisting at LA–2 and no changes are expected. Conflicts with future oil and gas development are possible, but can be mitigated.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys* [40 CFR 228.6(a)(9)]. Water quality at LA–2 is indistinguishable from the water quality of nearby areas. Sediment quality differs from a reference site in grain size distribution, and levels of heavy metals, pesticides, and PCBs. Species diversity of benthic epifauna, infauna, and demersal fish is lower at LA–2 than at the reference site, although many of the same species exist at both sites.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site* [40 CFR 228.6(a)(10)]. Opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ODMDS in response to physical deposition of sediments. *Capitella*, an opportunistic polychaete worm, does occur in high denisity at the LA–2 site. This worm is preyed upon by bottom-feeding fish and is not directly harmful to other species.

11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance* [40 CFR 228.6(a)(11)]. There are no known shipwrecks nor any known aboriginal artifacts in the vicinity of the LA–2 site.

F. Proposed Action

This FEIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation. The designation of the LA–2 site as an EPA approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region IX.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual ocean disposal of materials. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Harry Seraydarian,

Acting Regional Administrator for Region IX.

In consideration of the foregoing, Subchapter H of Chapter 1 of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing paragraph (a)(1)(i)(E) Long Beach, CA and by removing from the Dredged Material Site listing in paragraph (a)(3) the entry for, Los Angeles, and by adding paragraph (b)(68) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(68) Los Angeles (LA–2) Ocean Dredged Material Disposal Site-Region IX.

Location: 33° 37′ 06″ N., 118° 17′ 24″ W. (0.76 nautical mile radius).

Size: 2.39 square nautical miles.

Depth: 65 to 175 fathoms (118 to 320 meters).

Primary Use: Ocean dredged material disposal.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material.

[FR Doc. 88–18584 Filed 8–16–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5450

[AA–230–08–6310–02]

Sales of Forest Products

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of the existing regulations in 43 CFR Part 5450, Award of Contract; General. The potential exists for Bureau of Land Management (BLM) timber sale contracts to be defaulted by purchases who choose not to complete the contracts by their expiration dates. Such defaults create forest management problems and reduce timber revenues to the Federal Treasury and local governments. This proposed rulemaking would require additional

security from purchasers of new sales where the purchaser has defaulted on a past sale contract and has not paid or bonded for the damages associated with the defaulted sale. The increased security would reduce the Government's risk of non-performance by defaulters and increase the likelihood that all purchasers will complete their timber sale contracts on time. This proposed rule would supplement the existing pre-award qualification rule which requires the authorized officer of the BLM to determine whether the high bidder is qualified or responsible to perform the obligations of the contract. In addition to the authorized officer's existing duty to assess the high bidder's qualification in terms of having contractor status, financial capability, skill, and ability, this proposal will give the authorized officer the basis to deal with the high bidder's responsibility as demonstrated by performance on past contracts.

DATE: Comment period expires September 16, 1988. Comments received or postmarked after this date may not be considered in the decionsmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Department of the Interior, Bureau of Land Management, 1800 "C" Street, NW., Room 5555 Main Interior Bldg., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Lyndon Werner, (202) 653–8864.

SUPPLEMENTARY INFORMATION: Current regulations at 43 CFR 5450.1(a) authorize the authorized officer to require a high bidder to provide such information as is necessary to determine the ability of the bidder to perform the obligations of the contract. The default of a past contractor(s) indicates that the purchaser may not be capable of meeting or may willfully disregard contractural obligations. Regardless of the cause, a likelihood of failure to perform new contractural obligations is unaccepable to the United States, and presents the need for additional security against such failure in appropriate circumstances.

Failure to perform or a default on Federal sale contracts impairs the land management ability of the Federal Government, reduces local and Federal government revenue, and affects other timber purchase companies. Reoffering defaulted timber sales interrupts the orderly offering of timber sales in the same vicinity by requiring the adjustment and repetition of actions already completed. Efficient reforestation is complicated by the uncertain timing associated with potential default and resale. The complications associated with the determination of cumulative environmental impacts is increased because of the passage of time. The collection of receipts shared by the United States and local government is delayed and actual amounts collected may be reduced. The United States is placed in the uncertain position of not knowing whether the defaulter is either able or willing to complete other contracts.

Under law, defaulted timber sales sold prior to January 1, 1982, are reoffered for sale as part of rather than in addition to the normal timber sale program. This results in reduced inventories of timber held by timber purchasers, possible lower employment in local communities, and less revenue for country government due to reduced timber receipts. Also, due to the potential for the default process to be time consuming, the distribution of damage collection receipts could be delayed, and actual amounts collected and distributed could be reduced. In addition, defaulting rather than performing an expensive or difficult timber contract could place the defaulter in a better competitive position, compared to a competitor that has met its contractural obligations, when bidding on new timber sales, thus disrupting the bidding process.

Under the proposed rulemaking, a purchaser that has defaulted on a Federal timber sale contract, and has bid on another contract, would be required to establish bidder responsibility by paying or bonding or any combination of the two for any one of the following: (1) The total unpaid balance of the purchase price of all defaulted contracts, (2) the unsettled damages on all previous defaults, or (3) 50 percent of the purchase price of contracts bid after the default. Payment of 50 percent would increase the likelihood of performance on the new contract. The regulations at 43 CFR 5400.0–5(r) state that affiliates of the purchaser may be considered as the purchaser. Therefore, a default by an affiliate of the purchaser of a new timber sale could trigger additional bidder requirements for that purchaser. Additional requirements imposed by the provisions of this proposed rulemaking on the bidder in response to contract defaults would apply to all subsequent sales in which the bidder participates until he/she either pays or bonds for the payment of the remaining amount due on all defaulted sales or pay or bonds for the payment of damages created by all defaults.

The principal author of this proposed rulemaking is David Estola of the Branch of Forestry, Oregon State Office, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, Washington, DC.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Few timber companies are expected to default, and all members of the timber harvest community are treated equally.

This rule does not contain information collection requirements that require approvel by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 5450

Administrative practice and procedure, Forest and forest products, Public lands, Government contracts.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5450—AWARD OF CONTRACT

Subpart 5450—Award of Contract; General

1. The authority citation continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

2. Section 5450.1(b) is revised to read as follows:

§ 5450.1 Pre-award qualifications of high bidder.

* * * * *

(b) A purchaser who has defaulted on a timber sale contract under this title by failing to complete payment of its total purchase price by the expiration date of the contract is considered a risk for purposes of being awarded future timber sale contracts. If a purchaser deemed a risk is the high bidder on a new timber sale, the authorized officer shall send a notice by registered mail requiring such purchaser to establish bidder responsibility by paying or bonding, or a combination of the two for any one of

the following: (1) The total unpaid balance of the purchase price of all defaulted sales, (2) the unsettled damages on all defaults, or (3) 50 percent of the purchase price of contracts bid after the most recent default. Any payment applied toward 50 percent of a contract's bid price after the default(s) will be held as final payment for timber cut and/or removed under terms of the contracts. Acceptable bonding options are listed at § 5451.1 of this title. Payment and bonding are due within time limits stated in § 5450.1(c). Should the purchaser fail to demonstrate responsibility within 30 days of receipt of the notice, the authorized officer shall offer the contract for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract. Failure to demonstrate responsibility within 30 days of receipt of the notice indicates that the purchaser is not responsible, and debarment proceedings shall be considered under § 5441.1 of this title.

James E. Cason,

Acting Assistant Secretary of the Interior.

July 19, 1988.

[FR Doc. 88-18576 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6932]

Proposed Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Kern County (unincorporated areas)	
Caliente Creek:	
At confluence of Indian Creek	*2,652
At confluence of Sand Canyon Creek	*2,765
Just downstream of an unnamed road connecting Rolling Oaks Road to Indian Spring Road	*3,069
Just downstream of Rolling Oaks Road	*3,165
At limit of detailed study located approximately 1,300 feet upstream of Rolling Oaks Road	*3,196
Indian Creek:	
Approximately 50 feet upstream of Caliente Creek Road	*2,667
Just downstream of first intersection with Indian Creek Road looking upstream	*2,744
By intersection of Hog Canyon Road and Indian Creek Road	*2,770
Caliente Creek Tributary:	
At confluence with Caliente Creek	*2,830
Approximately 1,400 feet downstream of County Road 5995	*2,915
Approximately 140 feet upstream of County Road 5995	*2,960
Weaver Creek:	
At confluence with Caliente Creek	*2,859
Approximately 200 feet downstream of the County Road 5995 Bridge	*3,013
Home Toad Hills Alluvial Fan:	
At the intersection of Douglas Avenue and Koch Street	#1
Approximately 3,500 feet north of the intersection of Kock Street and Arroyo Avenue	#2
At the intersection of Arroyo Avenue and Rosewood Boulevard	#3
Little Dixie Wash:	
Approximately 150 feet upstream of U.S. Highway 395	*2,466
Just upstream of West Ridgecrest Boulevard	*2,495
Just downstream of Southern Pacific Railroad	*2,513
Approximately 50 feet downstream of Bowman Road	*2,538
4,300 feet upstream of Bowman Road	*2,566
Maps are available for review at the Kern County Planning Department, 1415 Truxton Avenue, Bakersfield, California.	
Send comments to The Honorable Roy Ashburn, Chairman, Kern County Board of Supervisors, 1415 Truxton Avenue, Room 601G, Bakersfield, California 93301.	
COLORADO	
DeBeque (town), Mesa County	
Roan Creek:	
Approximately 1,200 feet downstream of County Road 44	*4,909
Approximately 20 feet upstream of County Road 44	*4,913
Approximately 1,360 feet upstream of County Road 44	*4,918
Maps are available for review at Town Hall, 343 Minter Street, DeBeque, Colorado.	
Send comments to The Honorable James Lounds, Mayor, Town of DeBeque, Town Hall, 343 Minter Street, DeBeque, Colorado 81630.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Dolores (town), Montezuma County	
Dolores River:	
Approximately 2,100 feet downstream of downstream edge of 4th Street Bridge	*6,924
Approximately 95 feet upstream of 8th Street, extended	*6,943
Approximately 1,950 feet upstream of 12th Street, extended	*6,961
Maps are available for review at Town Hall, 420 Central Avenue, Dolores, Colorado.	
Send comments to The Honorable James Koenig, Mayor, Town of Dolores, P.O. Box 630, 420 Central Avenue, Dolores, Colorado 81323.	
Georgetown (town), Clear Creek County	
Clear Creek:	
Entire shoreline of Georgetown Lake	*8,445
At 15th Street	*8,465
Approximately 70 feet downstream of footbridge	*8,480
Approximately 90 feet upstream of 7th Street	*8,508
Approximately 800 feet upstream of 6th Street	*8,539
Approximately 730 feet upstream of 3rd Street extended	*8,597
South Clear Creek:	
At confluence with Clear Creek	*8,490
Approximately 150 feet upstream of Main Street	*8,526
Approximately 300 feet upstream of Main Street	*8,536
Approximately 80 feet upstream of 3rd Street	*8,662
Maps are available for review at Town Hall, 404 Sixth Street, Georgetown, Colorado.	
Send comments to The Honorable Jerry Buckley, Mayor, Town of Georgetown, Town Hall, P.O. Box 426, Georgetown, Colorado 80444.	
Montezuma County (unincorporated areas)	
Dolores River:	
Approximately 1,200 feet upstream of State Highway 145	*6,924
Approximately 12,400 feet upstream of State Highway 145	*6,965
Approximately 7,900 feet downstream of confluence of Carver Canyon Creek	*7,044
Approximately 3,000 feet upstream of confluence of Carver Canyon Creek	*7,107
Approximately 4,300 feet upstream of Country Road 36	*7,169
Approximately 8,550 feet upstream of confluence of Spruce Water Canyon Creek	*7,232
Approximately 2,700 feet downstream of Four Corners Bridge	*7,293
Approximately 7,150 feet upstream of Four Corners Bridge	*7,350
Approximately 1,690 feet upstream of Private Road	*7,403
West Dolores River:	
Approximately 550 feet downstream of State Highway 145	*7,361
Approximately 715 feet upstream of State Highway 145	*7,372
Approximately 2,850 feet upstream of State Highway 145	*7,391
Mancos River:	
Approximately 3,350 feet downstream of Spruce Street	*6,911
Approximately 140 feet downstream of Spruce Street	*6,966
Approximately 1,225 feet upstream of Town of Mancos eatern corporate Limits	*7,068
Lost Canyon Creek:	
Approximately 1,400 feet downstream of County Road 30	*6,925
Approximately 75 feet upstream of County Road 30	*6,932
Approximately 2,250 feet upstream of County Road 30	*6,943
Chicken Creek:	
Approximately 6,650 feet downstream of Driveway Bridge	*6,928
Approximately 2,610 feet downstream of Driveway Bridge	*6,970
Approximately 1,250 feet upstream of Driveway Bridge	*7,004
Maps are available for review at the Montezuma County Courthouse, County Administrator's Office, 109 West Main Street, Cortez, Colorado.	
Send comments to The Honorable Robert L. Maynes, Chairman, Montezuma County Board of Commissioners, County Courthouse, 109 West Main Street, Room 302, Cortez, Colorado 81321.	
FLORIDA	
Cape Canaveral Port Authority, Brevard County	
Atlantic Ocean/Canaveral Barge Canal:	
At State Road 401	*7
About 3600 feet east of the intersection of South Jetty Drive and Herring Street	*14
Banana River:	
Just north of the intersection of Grouper Road and Cape Road	*3
Just north of the Cape Canaveral South gate entrance	*6
Maps available for inspection at the Cape Canaveral Port Authority Station Director's Office, 200 George King Boulevard, Cape Canaveral, Florida.	
Send comments of The Honorable Charles Rowland, Director, Cape Canaveral Port Authority, P.O. Box 267, Cape Canaveral, Florida 32920.	
Palm Shores (town), Brevard County	
Indian River: Along shoreline	*5
Maps available for inspection at the Mayor's Home, 5275 North Harbor Boulevard, Palm Shores, Florida.	
Send comments to The Honorable Paul Liker, Mayor, Town of Palm Shores, P.O. Box 360915, Melbourne, Florida 32936.	
GEORGIA	
Pierce County (unincorporated areas)	
Alabaha River:	
About 0.8 mile upstream of mouth	*65
Just downstream of U.S. Route 82	*84
Satilla River:	
Just upstream of State Route 121	*71
At county boundary	*96
Maps available for inspection at the County Clerk's Office, County Courthouse, Blackshear, Georgia.	
Send comments to The Honorable Forrest W. Sweat, Chairman, Board of County Commesioners, Pierce County, P.O. Box 679, Blackshear, Georgia 31516.	
IDAHO	
McCall (city), Valley County	
North Fork Payette River:	
Approximately 1,450 feet downstream of West Lake Street/State Highway 55	*4,981
Approximately 880 feet downstream of West Lake Street/State Highway 55	*4,984
Maps are available for review at City Hall, 212 Park Street, McCall, Idaho.	
Send comments to The Honorable John J. Allen, Jr., Mayor, City of McCall, P.O. Box 721, McCall, Idaho 83638.	
ILLINOIS	
Hanover (village), Jo Daviess County	
Apple River:	
About 1.5 miles downstream of Hanover Dam	*618
About 0.8 mile upstream of Hanover Dam	*622
Maps available for inspection at the Clerk's Office, Village Hall, Hanover Illinois.	
Send comments to The Honorable Donald Schaible, Village President, Village of Hanover, Village Hall, Box 12, Hanover, Illinois 61041-0012.	
IOWA	
Clayton (city), Clayton County	
Mississippi River:	
At downstream corporate limits	*625
At upstream corporate limits	*626
Maps available for inspection at the City Hall, R.R. #2, Garnavillo, Iowa.	
Send comments to The Honorable Arnold Schultz, Mayor, City of Clayton, City Hall, R.R. #2, Garnavillo, Iowa 52409.	
KANSAS	
Ellsworth (city), Ellsworth County	
Smoky Hill River:	
About 250 feet upstream of U.S. Highway 156	*1,533
Just downstream of Burlington Northern railroad	*1,539
K-14 Tributary:	
Just upstream of 8th Street	*1,546
Just downstream of Douglas Avenue (upstream crossing)	*1,562
Shallow Flooding (overflow from K-14 Tributary): Within community	#2
Maps available for inspection at the City Offices, Ellsworth, Kansas.	
Send comments to The Honorable Robert S. Homolka, Mayor, City of Ellsworth, P.O. Box 163, Ellsworth, Kansas 67439.	
KENTUCKY	
Nicholasville (city), Jessamine County	
Town Fork:	
About 950 feet downstream of John C. Watts Drive	*895
Just downstream of John C. Watts Drive	*896
Just upstream of John C. Watts Drive	*904
Just downstream of Norfolk Southern Railway	*941
Just upstream of Norfolk Southern Railway	*947
About 4250 feet upstream of Brookview Drive	*963
Maps available for inspection at the City Hall, 517 North Main Street, Nicholasville, Kentucky.	
Send comments to The Honorable James Mayson, Mayor, City of Nicholasville, P.O. Box 158, Nicholasville, Kentucky 40356.	
MAINE	
China (town), Kennebec County	
West Branch Sheepscot River:	
Approximately .6 mile upstream of corporate limits	*209
Approximately 540 feet upstream of Weeks Mills Road	*217
Meadow Brook:	
Approximately 1,000 feet downstream of Tobey Road	*300
Approximately 100 feet upstream of Dingo Road	*320
Maps available for inspection at the Town Manager's Vault, South China, Maine.	
Send comments to The Honorable Hugh Krajewski, Manager of the Town of China, Kennebec County, R.R. #1, Box 970, South China, Maine 04358.	
Kingfield (town), Franklin County	
Carrabassett River:	
At downstream corporate limits	*536
Approximately 1.8 miles upstream of confluence of West Branch Carrabassett River	*601
West Branch Carrabassett River:	
At confluence with the Carrabassett River	*569
Approximatley 2 miles upstream of confluence with Carrabassett River	*574

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Clerk's Safe, Kingfield, Maine.	
Send comments to The Honorable Lois L. Gould, Chairman of the Town of Kingfield Board of Selectmen, Franklin County, P.O. Box 1585, Kingsfield, Maine 04947.	
Owls Head (town), Knox County	
Rockland Harbor:	
At Broad Cove	*13
At Coopers Beach	*15
At Ocean Avenue	*16
At Battery Point	*16
Owls Head Bay:	
At Main Street	*13
At Ginn Point	*17
Shoreline at Lighthouse Road extended	*18
Muscle Ridge Channel:	
At Ash Point Drive extended	*14
At Otter Point	*14
At Ash Point	*17
Ballyhac Cove: At Dublin Road	*10
Maps available for inspection at the Municipal Building, Star Route 32, Owls Head, Maine.	
Send comments to The Honorable Jack Rausch, Chairman of the Town of Owls Head Planning Board, Knox County, Star Route 32, Box 176, Owls Head, Maine 04854.	
South Thomaston (town), Knox County	
Atlantic Ocean'	
Shoreline along Seal Harbor	*11
Shoreline along Waterman Point	*13
Southeastern shoreline of Burnt Island	*26
Weskeag River: Entire length within corporate limits	*10
St. George River: Entire length within corporate limits	*11
Maps available for inspection at the Town Office, South Thomaston, Maine.	
Send comments to the Honorable Nancy Pomroy-Stone,Chairman of the Town of South Thomaston Planning Board, Knox County, H.C.R. 33, P.O. Box 418, South Thomaston, Maine 04858.	
MINNESOTA	
Bigfork (city), Itasca County	
Big Fork River:	
About 1.31 miles downstream of the confluence of Rice River	*1,305
About 0.78 mile upstream from Cedar Street	*1,307
Rice River:	
At mouth	*1,306
About 800 feet upstream of Cemetery Road	*1,306
Maps available for inspection at the City Hall, Bigfork, Minnmesota.	
Send comments to The Honorable Chris Johnson, Mayor, City of Bigfork, City Hall, Bigfork, Minnesota 56628.	
Isanti (city), Isanti County	
Rum River:	
About 2,450 feet downstream of the confluence of Spirit Brook	*911
About 900 feet upstream of Wagon Road	*911
Spirit Brook:	
At mouth	*911
Just Downstream of Whiskey Road	*911
About 800 feet upstream of Fifth Avenue	*923
Park Brook:	
At mouth	*923
Just downstream of Wagon Road	*927
Just upstream of Wagon Road	*932
About 1400 feet upstream of Third Avenue	*935
Maps available for inspection at the City Hall, Isanti, Minnesota.	
Send comments to The Honorable Randy Polzin, Major, City of Isanti, City Hall, Isanti, Minnesota 55040.	
MISSOURI	
Dunklin County (unincorporated areas)	
Ditch No. 1:	
Approximately 0.5 mile downstream of U.S. Highway 62	*280
Approximately 0.9 mile upstream of Broadwater Road	*283
Ditch No. 1 Tributary A:	
At downstream County boundary	*283
Approximately 50 feet upstream of St. Louis—Southwestern Railroad	*286
Ditch No. 1 Tributary B:	
At downstream County boundary	*284
Approximately 25 feet upstream of St. Louis—Southwestern Railroad	*289
Ditch No. 14:	
Approximately 1.1 miles downstream of Route J	*287
Approximately 0.3 mile upstream of Bernard Road	*288
Shipley Slough:	
Approximately 0.4 mile downstream of St. Louis—San Francisco Railroad	*261
At Ely Street	*261
Kinnemore Slough Ditch:	
Approximately 675 feet downstream of State Route 25	*245
Approximately 0.8 mile upstream of St. Louis—Southwestern Railroad	*246
Honey Cypress Creek:	
Approximately 1.27 miles downstream of State Route 164	*242
Approximately 3.1 miles upstream of St. Louis—Southwestern Railroad	*246
Maps available for inspection at the Dunklin County Courthouse, Kennett, Missouri.	
Send comments to the Honorable Van Hawkins, Jr., Presiding Commissioner of Dunklin County, P.O. Box 188, Kennett, Missouri 63857.	
NEW HAMPSHIRE	
Greenland (town), Rockingham County	
Pickering Brook:	
Approximately 1,260 feet downstream of State Route 151	*7
At upstream corporate limits	*27
Great Bay: Entire shoreline within community including Winnicut River up to dam near State Route 101	*7
Maps available for inspection at the Town Office, 575 Portsmouth Avenue, Greenland, New Hampshire.	
Send comments to the Honorable Richard Rugg, Chairman of the Town of Greenland Board of Selectmen, Rockingham County, Town Office, 575 Portsmouth Avenue, Greenland, New Hampshire 03840.	
Stratham (town), Rockingham County	
Squamscott River: Entire reach of stream within corporate limits	*8
Maps available for inspection at the Stratham Town Office, Route 101, Stratham, New Hampshire.	
Send comments to the Honorable Martin Wool, Chairman of the Town of Stratham Board of Selectmen, Rockingham, County, P.O. Box 115, Stratham, New Hampshire 03885.	
Wolfeboro (town), Carroll County	
Lake Wentworth: Entire shoreline within corporate limits	*536
Rust Pond: Entire shoreline within corporate limits	*580
Lake Winnipesaukee: Entire shoreline within corporate limits	*506
Crescent Lakes: Entire shoreline within corporate limits	*536
Maps available for inspection at the Town Office, Maine Street, Wolfeboro, New Hampshire.	
Send comments to the Honorable Shirley E. Ganem, Chairman of the Town of Wolfeboro Board of Selectmen, Carroll County, P.O. Box 629, Wolfeboro, New Hampshire 03894.	
NEW YORK	
Verona (town), Oneida County	
Fish Creek (flooding affecting Wood Creek):	
At Cove Road along Wood Creek	*375
At County Road 50A along Wood Creek	*378
At Kilts Road along Wood Creek	*380
Approximately 0.9 mile north of the intersection of Wood Creek Road and Lock Road (extended)	*387
Oneida Creek:	
Confluence with Oneida Lake	*373
Approximately 1.7 miles upstream of State Route 13	*377
Approximately .60 mile downstream of State Route 13	*379
At State Route 31	*381
Approximately 350 feet upstream of State Route 13	*382
Approximately .50 mile upstream of State Route 13	*384
Downstream side of Swallow Road	*395
Upstream side of Swallow Road	*397
Approximately 1.4 miles upstream of Swallow Road	*399
Approximately 1.7 miles upstream of Swallow Road	*402
Approximately 2.2 miles upstream of Swallow Road	*403
Approximately 1.9 miles downstream of New York State Barge Canal	*409
Downstream side of New York State Barge Canal	*415
Upstream of New York State Barge Canal	*418
Upstream side of County Road 89 (Oneida Street)	*419
Approximately 0.2 mile upstream of Oneida Street	*419
Approximately .60 mile downstream of Interstate Route 90	*420
At downstream side of CONRAIL track	*422
Approximately 400 feet upstream of CONRAIL track	*423
Approximately 0.3 mile downstream of Sconondoa Street	*425
At downstream side of Sconondoa Street	*426
Approximately 800 feet upstream of Sconondoa Street	*426
Sconondoa Creek:	
Approximately 500 feet upstream of confluence with Oneida Creek	*426
Approximately 1,100 feet downstream of upstream corporate limits	*428
At upstream corporate limits	*433
Maps available for inspection at the Town Office Building, Durhamville, New York.	
The Honorable Maurice O. Deeley, Supervisor of the Town of Verona, Oneida County, R.D. 1, Box 249, Durhamville, New York 13054.	
Western (town), Oneida County	
Mohawk River:	
At confluence of Delta Reservoir	*555
Approximately 1,440 feet upstream of Hillside Road	*662
Lansing Kill:	
At confluence with the Mohawk River	*649
At upstream corporate limits	*750
Wells Creek:	
At confluence with the Mohawk River	*579
At confluence of Gifford Creek	*615
Big Brook:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
At confluence of Gifford Creek	*615
At upstream corporate limits	*748
Beaver Meadow Brook:	
At confluence with Big Brook	*685
Approximately 680 feet downstream of Glett Road	*702
Dunn Brook:	
At confluence with Lansing Kill	*714
Approximately 1,225 feet upstream of State Route 46	*787
Maps available for inspection at the Town Supervisor's residence, 9201 Mullen Hill Road, Ava, New York.	
Send comments to the Honorable Edwin C. Rapke, Supervisor of the Town of Western, Oneida County, 9201 Mullen Hill Road, Ava, New York 13303.	
NORTH CAROLINA	
King (city), Stokes County	
Crooked Run Creek:	
About 1000 feet downstream of Meadowbrook Drive	*901
Just downstream of Meadowbrook Drive	*904
About 1100 feet downstream of White Road	*969
Just downstream of White Road	*974
Just upstream of White Road	*981
Just downstream of Meadowbrook Drive	*1003
Danbury Creek:	
Just upstream of confluence of Goff Creek	*896
Just downstream of North Main Street	*971
Maps available for inspection at the City Hall, King, North Carolina.	
Send comments to the Honorable Robert R. Martin, City Manager, City of King, P.O. Box 1132, King, North Carolina 27021.	
OHIO	
Fairfield County (unincorporated areas)	
Hocking River:	
About 1000 feet downstream of Chessie System	*763
Just upstream of Campground Road	*839
About 1.9 miles upstream of Campground Road	*877
Hocking River Diversion:	
Confluence with the Hocking River	*770
About 1.0 mile upstream of the confluence with the Hocking River	*776
South Fork Licking River:	
About 8000 feet downstream of State Route 360	*884
About 2900 feet upstream of State Route 360	*891
Walnut Creek:	
Just upstream of County Route 6	*762
Just downstream of Contrail	*784
Just upstream of U.S. Route 33	*789
About 1500 feet upstream of State Route 256	*870
Little Walnut Creek:	
Confluence with Walnut Creek	*862
About 2000 feet upstream of State Route 188	*891
Popular Creek:	
Confluence with Walnut Creek	*803
Just downstream of Basil Western Road	*832
Just upstream of Basil Western Road	*837
About 2400 feet upstream of Poplar Creek Road	*952
Pawpaw Creek:	
About 4000 feet downstream of confluence of Pawpaw Creek Tributary	*869
About 2300 feet upstream of confluence of Pawpaw Creek Tributary	*872
Pawpaw Creek Tributary:	
Confluence with Pawpaw Creek	*869
About 1500 feet upstream of confluence with Pawpaw Creek	*870
Rush Creek:	
About 1.4 miles downstream of Hansley Road	*770
About 1.2 miles upstream of Swartz Mill Road	*774
Just upstream of Marietta Road	*796
About 1300 feet upstream of Conrail	*808
Little Rush Creek:	
About 400 feet downstream of Conrail	*769
About 1.1 miles upstream of State Route 664	*902
Tributary A:	
Confluence with Rush Creek	*772
About 1600 feet upstream of Carpenter Road	*819
Tributary B:	
Confluence with Rush Creek	*773
Just downstream of Paradise Road	*791
Baltimore Tributary:	
Just upstream of Conrail	*852
Just downstream of Roley Road	*869
Raccoon Run:	
Just upstream of State Route 664	*793
Just downstream of Schwilk Road	*837
Just upstream of Conrail, about 100 feet upstream of Schwilk Road	*842
Just downstream of State Route 37	*848
Turkey Run:	
About 5800 feet downstream of Bethel Road	*788
About 2600 feet upstream of Bethel Road	*800
Tributary H:	
Confluence with Little Rush Creek	*867
Just downstream of Lake Road	*901
Tributary I:	
Confluence with Raccoon Run	*798
Just downstream of State Route 37	*826
Hunters Run:	
Just upstream of U.S. Route 22 at City of Lancaster corporate limits	*834
Just downstream of Crumley Road	*879
Just upstream of Crumley Road	*885
About 400 feet upstream of a Private Drive which is an extension of Whiley Road	*926
Pleasant Run:	
Confluence with Hocking River	*790
About 1300 feet upstream of Beatty Road	*918
Pleasant Run Lateral: Confluence with Pleasant Run just downstream of Duffy Road	*829
Ewing Run:	
About 4400 feet downstream of Rainbow Drive	*873
About 1600 feet upstream of confluence of Ewing Run Lateral	*917
Fetters Run:	
About 1.5 miles downstream of State Route 37	*835
About 3400 feet upstream of Rainbow Drive	*907
Ohio Canal:	
Just upstream of Chessie System	*832
Just upstream of confluence of Lateral A	*842
Lateral A:	
Confluence with Ohio Canal	*842
About 200 feet upstream of Farm Lane	*884
Lateral B:	
Confluence with Ohio Canal	*841
Just downstream of Upper Hocking Watershed Structure #6	*842
Just upstream of Upper Hocking Watershed Structure #6	*849
Just downstream of Coonpath Road	*853
Lateral C:	
Confluence with Ohio Canal	*834
About 6100 feet upstream of U.S. Route 33	*862
Lateral D:	
About 2000 feet downstream of Wilson Road	*848
About 1400 feet upstream of Farm Lane	*882
Blue Valley Lateral:	
Confluence with Hocking River	*772
About 4500 feet upstream of Farm Lane	*798
Blacklick Creek:	
At county boundary	*796
About 1800 feet upstream of Interstate 70	*836
Maps available for inspection at the County Regional Planning Commission, County Courthouse, Lancaster, Ohio.	
Send comments to The Honorable Steven Goody, President, Board of County Commissioners, Fairfield County, County Courthouse, Lancaster, Ohio 43130.	
OKLAHOMA	
Goldsby (town), McClain County	
Canadian River:	
Approximately 1.9 miles upstream of River mile 195.3	*1,084
Approximately 6.6 miles upstream of River Mile 195.3	*1,104
Crooked Bridge Creek:	
Approximately 1,800 feet downstream of State Route 74	*1,096
Approximately .5 mile upstream of State Route 74	*1,198
Goldsby Creek:	
At Interstate Route 35	*1,121
Approximately .9 mile upstream of State Route 74	*1,162
Maps available for inspection at the Goldsby Town Hall, Route 1, Washington, Oklahoma.	
Send comments to The Honorable Gene McPherson, Mayor of the Town of Goldsby, McClain County, Route 1, Box 54, Washington, Oklahoma 73093.	
Wright City (town), McCurtain County	
Choctaw Creek:	
Approximately 360 feet downstream of the downstream corporate limits	*387
Approximately 180 feet upstream of the corporate limits	*392
Cypress Creek: For the entire distance within the community	*387
Maps available for inspection at the Town Hall, West 10th Street, Wright City, Oklahoma.	
Send comments to The Honorable David Davis, Mayor of the Town of Wright City, McCurtain County, P.O. Box 370, Wright City, Oklahoma 74766.	
OREGON	
Fossil (city), Wheeler County	
Butte Creek:	
Approximately 850 feet downstream of West 1st Street	*2619
At confluence with Cottonwood Creek	*2635
Approximately 75 feet downstream of the west side crossing	*2650
At John Day Highway (State Highway 19—	*2672
Approximately 2,250 feet upstream of John Day Highway (State Highway 19)	*2693
Along John Day Highway (State Highway 19) between Main Street and Jay Street; and just east of Main Street	#1
Cottonwood Creek:	
At confluence with Butte Creek	*2635
At John Day Highway (State Highway 19)	*2664
Approximately 1,300 feet upstream of West 7th Street (at south corporate limits)	*2687
Along Adams Street, between West 6th and West 3rd Streets, westerly toward confluence between Butte and Cottonwood Creeks	#1
Maps are available for review at City Hall, 175th North Main Street, Fossil, Oregon.	
Send comments to The Honorable Andrew F. Leckie, Mayor, City of Fossil, 175th North Main Street, Fossil, Oregon 97830.	
Mitchell (city), Wheeler County	
Bridge Creek:	
Approximately 400 feet downstream of U.S. Route 26 (at western corporate limits)	*2710
Approximately 200 feet downstream of the west side corssing Old Highway (Business Loop Road)	*2755
Approximately 60 feet downstream of the east side corssing of Old Highway (Business Loop Road)	*2801
At confluence with Keyes Creek	*2833
Approximately 1,900 feet upstream of the confluence with Keyes Creek (at southeastern corporate limits)	*2882
Keyes Creek:	
At confluence with Bridge Creek	*2833
Approximately 120 feet upstream of Prairie Road	*2845

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 520 feet upstream of Prairie Road (at eastern corporate limits)	*2661
Maps are available for review at City Hall, Mitchell, Oregon.	
Send comments to The Honorable Kent Powell, Mayor, City of Mitchell, P.O. Box 66, Mitchell, Oregon 97750.	
Wasco (city), Sherman County	
Spanish Hollow Creek:	
Approximately 2,500 feet downstream of Church Street (at northern corporate limits)	*1187
Approximately 25 feet upstream of Church Street	*1231
Just downstream of Davis Street	*1269
Just upstream of McPhearson Street	*1281
At eastern corporate limits	*1308
Maps are available for review at City Hall, 1004 Clark Street, Wasco, Oregon.	
Send comments to The Honorable Elaine Kalista, P.O. Box 26, Wasco, Oregon 97065.	
PENNSYLVANIA	
Adams (township), Butler County	
Breakneck Creek:	
At downstream corporate limits	*959
At Township Route 391	*1,021
At upstream corporate limits	*1,057
Maps available for inspection at the Township Building, 75 Hutchman Road, Mars, Pennsylvania.	
Send comments to The Honorable Don Aiken, Chairman of the Township of Adams Board of Supervisors, Butler County, P.O. Box 424, Mars, Pennsylvania 16046.	
Auburn (borough), Schuylkill County	
Bear Creek:	
At confluence with the Schuylkill River	*449
At upstream corporate limits	*472
Maps available for inspection at Ms. Brenda Fessler's residence, 112 Orchard Street, Auburn, Pennsylvania.	
Send comments to The Honorable John Ready, President of the Borough of Auburn Council, Schuylkill County, Borough Hall, P.O. Box 89, Auburn, Pennsylvania 17922.	
Callery (borough), Butler County	
Breakneck Creek:	
At downstream corporate limits	*959
At upstream corporate limits	*969
Maps available for inspection at the Borough Office, Main Street, Callery, Pennsylvania.	
Send comments to The Honorable Paul S. Fulmer, President of the Callery Borough Council, Butler County, Main Street, Callery, Pennsylvania 16024.	
Cass (township), Schuylkill County	
West Branch Schuylkill River:	
At downstream corporate limits	*702
Approximately 1,200 feet upstream side of Access Road	*968
Maps Available for inspection at the Cass Township Office, Minersville, Pennsylvania.	
Send comments to The Honorable Joseph Marpunas, Chairman of the Township of Cass Council, Schuylkill County, P.O. Box 114, Minersville, Pennsylvania 17954.	
Clifford (township), Susquehanna County	
East Branch Tunkhannock Creek:	
Downstream corporate limits	*990

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1 mile upstream from confluence with Dundaff Creek	*1,082
Dundaff Creek:	
Confluence with East Branch Tunkhannock Creek	*1,052
Upstream corporation limits	*1,110
Maps available for inspection at the residence of Mary T. Lewis, Clifford Township Secretary, Box 339, Clifford, Pennsylvania.	
Send comments to The Honorable Vincent Halsey, Chairman of the Township of Clifford Board of Supervisors, Susquehanna County, Clifford, Pennsylvania 18413.	
Evans City (borough), Butler County	
Breakneck Creek:	
Approximately 160 feet downstream of the downstream corporate limits	*927
Approximately 0.5 mile upstream of the upstream corporate limits	*948
Maps available for inspection at the Borough Building, 220 Wahl Avenue, Evans City, Pennsylvania.	
Send comments to The Honorable Gene Pressau, President of the Borough of Evans City Council, Butler County, Jefferson Street, Evans City, Pennsylvania 16033.	
Franklin (township), Susquehanna County	
Snake Creek:	
At downstream corporate limits	*1,069
Approximately 0.4 miles upstream of T-683	*1,118
Maps available for inspection at the Township Building, Franklin, Pennsylvania.	
Send comments to The Honorable Bob Darrow, Chairman of the Township of Franklin Board of Supervisors, Susquehanna County, Box 259, R.D. 3, Montrose, Pennsylvania 18801.	
Greenwood (township), Columbia County, Pennsylvania	
Little Fishing Creek:	
At downstream corporate limits	*580
Approximately 950 feet downstream of L.R. 19054	*655
Approximately 0.3 mile upstream of State Route 42	*712
Green Creek:	
At confluence of Little Green Creek	*623
Approximately 350 feet upstream of T-599	*673
Maps available for inspection at the Greenwood Township Building, right off Pennsylvania Route 254, Millville, Pennsylvania.	
Send comments to The Honorable Edward Gregorowicz, Chairman of the Township of Greenwood Board of Supervisors, Columbia County, R.D. #3, Benton, Pennsylvania 17814.	
Harmony (borough), Butler County	
Connoquenessing Creek:	
Approximately .6 mile downstream of downstream corporate limits	*906
Approximately .12 mile upstream of upstream corporate limits	*909
Maps available for inspection at 217 Mercer Street, Harmony, Pennsylvania.	
Send comments to The Honorable C. W. Beighey, President of the Borough of Harmony Council, Butler County, 126 N. Pittsburgh Street, Zelienople, Pennsylvania 16063.	
Hop Bottom (borough), Susquehanna County	
Martins Creek:	
At downstream corporate limits	*840
At upstream corporate limits	*870

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Hop Bottom Borough Building, Forrest Street, Hop Bottom, Pennsylvania 18824.	
Send comments to The Honorable Ronald Barankiewich, President of the Hop Bottom Borough Council, Susquehanna County, R.D. 1, Hop Bottom, Pennsylvania 18824.	
Jessup (township), Susquehanna County	
East Branch Wyalusing Creek:	
Approximately 1.6 miles downstream of T-316	*1,005
Downstream side of State Route 706	*1,080
Approximately 1.2 miles upstream of LR 57009	*1,150
Approximately 0.7 mile upstream of T-684	*1,186
Send comments to the home of the Township Secretary, Ralph Bunnell, R.D. 5, Box 234, Montrose, Pennsylvania.	
The Honorable Bruce K. Griffis, Chairman of the Township of Jessup Board of Supervisors, Susquehanna County, R.D. 5, Montrose, Pennsylvania 18801.	
Lehman (township), Pike County	
Saw Creek:	
Approximately 160 feet downstream of Winona Falls Road (T-301)	*435
At upstream side of dam	*475
Approximately 720 feet upstream of Stoney Hollow Drive	*482
Maps available for inspection at the Township Municipal Building, Lehman, Pennsylvania.	
Send comments to The Honorable Walter Bensley, Chairman of the Township of Lehman Board of Supervisors, Pike County, R.D. 1, Box 268, Bushkill, Pennsylvania 18324.	
Liberty (township), Susquehanna County	
Snake Creek:	
Approximately .35 mile downstream from T-798	*999
Upstream corporate limits	*1,068
Maps available for inspection at the Chairman of the Board of Supervisors' home, Box 149, R.D. 1, Halstead, Pennsylvania.	
Send comments to The Honorable Dewey Lyon, Chairman of the Township of Liberty Board of Supervisors, Susquehanna County, Box 149, R.D. 1, Halstead, Pennsylvania 18822.	
Lathrop (township), Susquehanna County	
Martins Creek:	
Approximately 200 feet downstream from the downstream corporate limits	*762
Approximately 300 feet upstream from T-377	*804
At upstream corporate limits	*869
Maps available for inspection at R.D. 1, c/o James Pratt, Box 156A, Hop Bottom, Pennsylvania.	
Send comments to The Honorable Elwood Phelps, Chairman of the Township of Lathrop Board of Supervisors, Susquehanna County, R.D. 1, Hop Bottom, Pennsylvania 18824.	
Lenox (township), Susquehanna County	
East Branch Tunkhannock Creek:	
Approximately .7 mile upstream of Interstate Route 81	*964
Upstream corporate limits	*991
Maps available for inspection at Box 36, c/o Edward Pietryk, Lenoxville, Pennsylvania.	
Send comments to The Honorable Edward Pietryk, Chairman of the Township of Lenox Board of Supervisors, Susquehanna County, Box 36, Lenoxville, Pennsylvania 18441.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Mars (borough), Butler County	
Breakneck Creek:	
Approximately 40 feet downstream of the downstream corporate limits	*1,007
At the upstream corporate limits	*1,021
Maps available for inspection at the Borough Building, Spring Street, Mars, Pennsylvania.	
Send comments to The Honorable Russell Merriman, President of the Borough of Mars Council, Butler County, Garfield Avenue, Mars, Pennsylvania 16046.	
New Milford (township), Susquehanna County	
Salt Lick Creek:	
Downstream corporate limits	*990
.4 mile upstream of L.R. 57062	*1,276
Maps available for inspection at the Township Building, New Milford, Pennsylvania.	
Send comments to The Honorable Richard Holbrook, Chairman of the Township of New Milford Board of Supervisors, Susquehanna County, New Milford, Pennsylvania 18834.	
Penn (township), Butler County	
Connoquenessing Creek:	
At downstream corporate limits	*969
At upstream corporate limits	*978
Maps available for inspection at the Township Building, 6495 Old Plank Road, Butler, Pennsylvania.	
Send comments to The Honorable Arthur W. Percy, Chairman of the Township of Penn Board of Supervisors, Butler County, 106 Weckerly Road, Butler, Pennsylvania 16001.	
Pine (township), Columbia County	
Little Fishing Creek:	
At downstream corporate limits	*632
Approximately 1,500 feet upstream of State Highway 42	*712
Maps available for inspection at Mr. Roger Gordner's residence, beside the Township Building, on Township Road #750, Millville, Pennsylvania.	
Send comments to The Honorable Roger Gordner, Chairman of the Township of Pine Board of Supervisors, Columbia County, R.D. #1, Box 144, Millville, Pennsylvania 17846.	
Valencia (borough), Butler County	
Breakneck Creek:	
At downstream corporate limits	*1,057
Approximately 230 feet upstreamn of the upstream corporate limits	*1,069
Maps available for inspection at the Borough Building, Almira Street, Valencia, Pennsylvania.	
Send comments to the Honorable Fred Preik, President of the Borough of Valencia Council, Butler County, Three Degree Road, Valencia, Pennsylvania 16059.	
York (township), York County	
South Branch Cordorus Creek:	
At downstream corporate limits	*390
At the confluence of East Branch Codorus Creek (Lower Reach)	*417
East Branch Codorus Creek (Lower Reach):	
At the confluence with South Branch Codorus Creek	*417
Approximately 0.93 mile upstream of the confluence with South Branch Codorus Creek	*420
East Branch Codorus Creek (Upper Reach):	
At confluence with Lake Redman	*495
At the confluence of Barshinger Creek	*516
Barshinger Creek:	
At the confluence of East Branch Codorus Creek (Upper Branch)	*518
Approximately 70 feet upstream of Arbor Drive	*680
Inner Creek:	
Approximately 250 feet upstream of the confluence with East Branch Codorus Creek	*495
Approximately .34 mile upstream of Lioners Creek Road	*632
Tributary #1:	
At the confluence with Barshinger Creek	*587
Approximately 130 feet upstream of Stine Hill Road	*661
Tyler Run:	
At corporate limits	*478
Approximately 0.23 mile upstream of Kirch Road	*608
Mill Creek:	
At downstream corporate limits	*457
Approximately 0.27 mile upstream of Locust Street	*754
Tributary #2:	
At the confluence with Mill Creek	*475
Approximately 75 feet upstream of Oak Road	*623
Tributary #3:	
At confluence with Tributary #2	*495
Approximately .50 mile upstream of Springwood Road	*589
Maps available for inspection at the Township Building, 76 Revere Road, York, Pennsylvania.	
Send comments to The Honorable Robert Jacobs, Chairman of the Township of York, York County, 76 Revere Road, York, Pennsylvania 17402.	
Texas	
City of Denver City, Yoakum County	
Playa P-3A:	
At intersection of West Fir Street and South Avenue F	*3,554
At upstream corporate limits	*3,559
Playa P-4-P-1-A:	
At downstream (northwest) corporate limits	*3,572
Approximately 0.5 mile upstream of Main Avenue	*3,585
Maps available for inspection at the City Hall, Denver City, Texas.	
Send comments to The Honorable Lloyd Landers, Mayor of the City of Denver City, Yoakum County, P.O. Box J, City Hall, 3rd & Main, Denver City, Texas 79323.	
Plainview (City), Hale County	
Running Water Draw:	
At downstream corporate limits	**3,346
At upstream corporate limits	*3,378
Tributary A:	
Approximately 1,550 feet upstram of corporate limits	*3,378
At upstream corporate limits	*3,382
Tributary to Running Water Draw:	
At confluence with Running Water Draw	*3,364
Approximately 1,850 feet upstream of corporate limits at Playa C	*3,380
Playa F2: Entire area within corporate limits	*3,386
Maps available for inspection at the Municipal Building, 901 Broadway, Plainview, Texas.	
Send comments to The Honorable Earl V. Ridlehuber, Mayor of the City of Plainview, Hale County, 901 Broadway, Plainview, Texas 79073.	
Wellington (city), Collingsworth County	
Wellington Tributary No. 1:	
Approximately 200 feet upstream of Houston Street	*2,034
Approximately 1,200 feet upstream of Houston Street	*2,037
Maps available for inspection at the City Hall, Wellington, Texas.	
Send comments to The Honorable Milburn Derryberry, Mayor of the City of Wellington, Collingsworth County, P.O. Box 949, Wellington, Texas 79095.	
VIRGINIA	
Madison County (unincorporated areas)	
Hughes River:	
At State Route 231	*622
Downstream side of most downstream crossing of State Route 707	*692
Approximately 1,580 feet downstream of State Route 681	*770
Approximately 1,580 feet upstream of State Route 681	*808
Rose River:	
At confluence with Robinson River	*602
Approximately 1.1 miles upstream of confluence with Robinson River	*675
Approximately 1.8 miles upstream of confluence with Robinson River	*750
Approximately 2.7 miles upstream of confluence with Robinson River	*825
Approximately 3.4 miles upstream of confluence with Robinson River	*900
Approximately 3.9 miles upstream of confluence with Robinson River	*975
Approximately 4.2 miles upstream of confluence with Robinson River	*1,050
Approximately 4.4 miles upstream of confluence with Robinson River	*1,077
Robinson River (Lower Reach):	
At USGS gage 01666500	*310
Approximately 1.8 miles upstream of USGS gage 01666500	*317
Robinson River (Upper Reach):	
Approximately 0.6 mile downstream of State Route 231	*482
Approximately 1.6 miles downstream of State Route 231	*555
Approximately 0.6 mile downstream of State Route 670	*630
Approximately 150 feet upstream of State Route 643	*690
Approximately 7.1 miles upstream of State Route 231	*770
Approximately 8.0 miles upstream of State Route 231	*845
Approximately 2,100 feet downstream of State Route 600	*920
Approximately 1,300 feet upstream of State Route 600	*995
Approximately 0.8 mile upstream of State Route 600	*1,070
Approximately 1.0 mile upstream of State Route 600	*1,127
Maps available for inspection at the County Administrator's Office, County Courthouse, Madison, Virginia.	
Send comments to The Honorable Stephen L. Utz, Madison County Administrator, P.O. Box 705, Madison, Virginia 22727.	
WEST VIRGINIA	
Ceredo (town), Wayne County	
Ohio River:	
Downstream corporate limits	*551
At confluence of Twelvepole Creek	*552
Twelvepole Creek: Entire length within community	*552
Jordan's Branch: Entire length within community	*542
Maps available for inspection at the Town Hall, Ceredo, West Virginia.	
Send comments to The Honorable Mose Napier, Mayor of the Town of Ceredo, Wayne County, Town Hall, Ceredo, West Virginia 25707.	
Kenova (City), Wayne County	
Ohio River:	
Approximately 100 feet downstream of confluence of Big Sandy River	*550

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 528 feet upstream of Norfolk and Western Railway Bridge	*551
Big Sandy River:	
At confluence with Ohio River	*550
Approximately 1,500 feet upstream of CSX Transportation Bridge	*550
Maps available for inspection at the City Building, 15th and Pine Street, Kenova, West Virginia.	
Send comments to The Honorable Franklin D. Heck, Mayor of the City of Kenova, Wayne County, City Building, P.O. Box 268, Kenova, West Virginia 25530.	
WISCONSIN	
Augusta (city), Eau Claire County	
Bridge Creek:	
About 150 feet downstream of State Road 27	*946
About 1 mile upstream of Stone Street	*963
Maps available for inspection at the City Clerk's Office, City Hall, 106 East Lincoln, Augusta, Wisconsin.	
Send comments to The Honorable Romane Woodford, Mayor, City of Augusta, City Hall, 106 East Lincoln, Augusta, Wisconsin 54722.	
Ellsworth (village), Pierce County	
Isabelle Creek:	
About 850 feet downstream of Main Street	*1,029
About 350 feet upstream of Railroad Street	*1,062
Isabelle Creek Tributary:	
At mouth	*1,044
Just upstream of Pleasant Avenue	*1,092
Maps available for inspection at the Village Hall, West Main Street, Ellsworth, Wisconsin.	
Send comments to The Honorable Bill Falteisek, Village President, Village of Ellsworth, Village Hall, P.O. Box 47845, West Main Street, Ellsworth, Wisconsin 54011.	
Knapp (village), Dunn County	
Wilson Creek: Within community	*907
Maps available for inspection at the Village Hall, Knapp, Wisconsin.	
Send comments to The Honorable Joy E. Close, Village President, Village of Knapp, Village Hall, Knapp, Wisconsin 54749.	
Woodville (village), St. Croix County	
Carr Creek:	
Just upstream of South Side Drive	*1,123
Just downstream of Chicago and North Western railroad	*1,141
Maps available for inspection at the Village Hall, 102 South Main Street, Woodville, Wisconsin.	
Send comments to The Honorable Arthur M. Best, Village President, Village of Woodville, Village Hall, P.O. Box 205, 102 South Main Street, Woodville, Wisconsin 54029.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Maricopa County Unincorporated Areas.	Sols Wash	Approximately 50 feet downstream from Vulture Mine Road.	None	*2,165
			At the Atchison Topeka and Santa Fe Railway bridge in Section 32, T.8N., R.5W.	None	*2,235
			Approximately 1½ miles upstream from the Atchison Topeka and Santa Fe Railway in Section 31, T.8N., R.5W.	None	*2,292
			At the Yavapai and Maricopa County boundaries in Section 35, T.8N., R.6W.	None	*2,386
	Maps are available for review at the Maricopa County Flood Control District, 3335 West Durango, Phoenix, Arizona 85009.				
	Send comments to the Honorable Thomas Freestone, Chairman, Maricopa County Board of Supervisors, 111 South Third Avenue, Phoenix, Arizona 85003.				
Arizona	Town of Wickenburg, Maricopa County.	Sols Wash	At the confluence with Hassayampi River	*2,051	*2,050
			At U.S. Highway 89	*2,063	*2,059
		One mile upstream from U.S. Highway 89	*2,104	*2,103	
			2/3 mile downstream from Vulture Mine Road	None	*2,135
			At Vulture Mine Road	None	*2,166
	Maps are available for review at Town Hall, 120 E. Apache, Wickenburg, Arizona.				
	Send comments to The Honorable James Mason, Mayor, Town of Wickenburg, Town Hall, P.O. Box 1269, Wickenburg, Arizona 85358.				
California	City of Petaluma, Sonoma County.	Petaluma River	At U.S. Highway 101	*7	*7
			Just downstream of Payran Street	*15	*16
			At confluence of North Corona Channel	*25	*26
			Just upstream of North Petaluma Boulevard southbound lane.	*32	*33
			At upstream corporate limits	*36	*36
		Adobe Creek	At confluence with Petaluma River	*7	*7
			Just downstream of South McDowell Boulevard exit.	None	*13
			Just upstream of Sartori Drive	None	*26
			Just downstream of Casa Grande Road	None	*73
		Thompson Creek	Approximately 90 feet downstream of 8th Street Bridge.	None	*22
			At corporate limit	None	*41
		Kelly Creek	Just upstream of 8th Street	None	*28
			Approximately 50 feet upstream of the 12th Street Footbridge.	None	*55

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
		Washington Creek	Just upstream of Madison Street	None	°17
			Just upstream of Maria Drive	None	°37
			Approximately 70 feet downstream of the city's corporate limits.	None	°78
		East Washington Creek	Just upstream of Washington Street	None	°34
			Just upstream of Maria Drive	None	°37
	Just upstream of Ely Boulevard	None	°56		
			Approximately 100 feet downstream of the city's corporate limits.	None	°82
		Lynch Creek	At the confluence with Petaluma River	°16	°17
			Just upstream of U.S. Highway 101, northbound	None	°20
			Just upstream of Maria Drive	None	°41
			Just downstream of Ely Boulevard	None	°53
			Just upstream of Ely Boulevard	None	°61
		Carpi Creek	At the confluence with Petaluma River	°18	°20
			Approximately 200 feet upstream of McDowell Boulevard.	None	°32
			Just downstream of Ely Boulevard	None	°49
		Corona Creek	At the confluence with Capri Creek	None	°26
		North Corona Channel	At the confluence with Petaluma River	°25	°26
			Just downstream of U.S. Mail Driveway	None	°29
		Willow Brook	At the confluence with Petaluma River	°36	°36
			Just downstream of Old Redwood Highway	None	°40
		Shallow Flooding	Ponding at Napa Court	°28	°26
			At the intersection of McDowell Boulevard North and Scott Street.	#2	#2
			At the intersection of Scott Street and Holm Road.	#2	#3

Maps are available for review at the Community Development and Planning Department, 11 English Street, Petaluma, California.

Send comments to the Honorable Patricia Hilligoss, Mayor, City of Petaluma, P.O. Box 61, Petaluma, California 94953.

Florida	Unincorporated Areas of Brevard County.	St. John's River	About 11.1 miles downstream of the county boundary.	None	°11
			At county boundary	None	°24
		Kid Creek	Just downstream of U.S. Route 1	None	°5
			About 0.63 mile upstream of William Avenue	None	°14
		North Prong Creek	At mouth	None	°6
			Just upstream of Wildon Road	None	°9
		South Prong Creek	Within community	°10	°6
		Goat Creek:	At mouth	°5	°5
			About 0.65 mile upstream of Leghorn Road	None	°24
		Crane Creek Diversion from St. John's River.	Within community	None	°21
		Eau Gallie River	About 900 feet upstream of Eau Gallie Boulevard	None	°7
			About 2200 feet upstream of Wickam Road	None	°22
		Mosquito Lagoon	At the intersection of Haulover Canal and State Road 3.	None	°5
			Along shoreline	None	°7
		Atlantic Ocean	About 200 feet north of the intersection of Northwest Drive and Northeast Drive.	None	°9
			About 350 feet east of the intersection of Orange Street and State Road A1A.	°12	°16
		Banana River	At the intersection of 14th Street and Palmer Court.	°5	°2
			Along shoreline, about 2,000 feet west of the intersection of Hangar Road and NASA Parkway East.	None	°7
		Indian River	Just northeast of the intersection of State Road 5 and Pineda Expressway.	°5	°3
			About 2000 feet northwest of the intersection of Country Road and Flounder Creek Road.	°4	°8
		Newfound Harbor	About 600 feet west of the intersection of Eastwood Drive and Newfound Harbor Drive.	°5	°3
			Just west of the intersection of Acorn Street and Angel Avenue.	°5	°6

Maps available for inspection at the Planning and Development Services, 2575 North Courtney Parkway, Merritt Island, Florida.

Send comments to The Honorable Tom Jenkins, Administrator, Brevard County, P.O. Box 1496, Titusville, Florida 32781-1496

Florida	City of Cape Canaveral	Atlantic Ocean	Just east of the intersection of Washington Avenue and Ridgewood Avenue.	°8	°9

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 650 feet east of the intersection of Polk Avenue and Ridgewood Avenue.	*12	*14
		Banana RiverAlong Justamere Drive about 850 feet west of the intersection of Justamere Drive and North Atlantic Avenue.	*4	*3	
			Along shoreline about 1100 feet west of the intersection of Center Street and North Atlantic Avenue.	*4	*5
Maps available for inspection at the City Hall, Cape Canaveral, Florida.					
Send comments to The Honorable Leo Nicholas, City Manager, City of Cape Canaveral, P.O. Box 326, Cape Canaveral, Florida 32920.					
Florida	City of Cocoa, Brevard County.	Indian River	About 175 feet west of the intersection of Indian River Drive Mac Farland Drive.	*4	*4
			Just east of the intersection of Mulberry Street and Indian River Drive.	*4	*6
Maps available for inspection at the City Hall, 603 Brevard Avenue, Cocoa, Florida.					
Send comments to The Honorable Dollye L. Robinson, Mayor, City of Cocoa, P.O. Box 1750, Cocoa, Florida 32922					
Florida	City of Cocoa Beach, Brevard County.	Banana River	Just west of the intersection of Palm Avenue and Olive Street.	*5	*2
			Just west of the west end of Sarasota Lane	*5	*5
		Atlantic Ocean	Just east of the intersection of Ocean Beach Boulevard and Gadsen Lane.	None	*11
			About 400 feet east of the intersection of Atlantic Boulevard and 2nd Street North.	*9	*16
Maps available for inspection at the City Hall, Cocoa Beach, Florida.					
Send comments to The Honorable James E. Smith, City Manager, City of Cocoa Beach, P.O. Box 320280, Cocoa Beach, Florida 32932-0280.					
Florida	Town of Indialantic, Brevard County.	Indian River	About 300 feet west of the intersection of Michigan Avenue and Riverside Drive.	*6	*5
			About 350 feet west of the intersection of Palmetto Place and South Riverside Drive.	*7	*7
		Atlantic Ocean	About 300 feet east of the intersection of 2nd Avenue and State Road A1A.	None	*11
			About 150 feet east of the intersection of Wave Crest Street and 11th Avenue.	*13	*15
Maps available for inspection at the Town Hall, 216 5th Avenue, Indialantic, Florida.					
Send comments to The Honorable Edward A. Gross, Town Manager, Town of Indialantic, 216 5th Avenue, Indialantic, Florida 32903.					
Florida	City of Indian Harbour Beach, Brevard County.	Banana River	Along shoreline	*6	*3
		Indian River	Along shoreline	*6	*4
		Atlantic Ocean	About 250 feet east of the intersection of State Road A1A and Atlantic Boulevard.	None	*11
			About 400 feet east of the intersection of State Road A1A and Ocean Dunes Drive.	*12	*15
Maps available for inspection at the City Hall, 2055 South Patrick Drive, Indian Harbour Beach, Florida.					
Send comments to The Honorable Richard G. Edgeton, City Manager, City of Indian Harbour Beach, 2055 South Patrick Drive, Indian Harbour Beach, Florida 32937-4497.					
Florida	Unincorporated Areas of Indian River County.	Main Relief Canal	About 300 feet downstream of Country Club Drive	None	*6
			Just downstream of spillway	None	*10
			Just upstream of spillway	None	*17
			About 1.9 miles upstream of King's Highway	None	*24
		North Relief Canal	About 0.8 mile downstream of U.S. Route 1	None	*7
			About 1 mile upstream of 66th Avenue	None	*23
		Lateral G	At mouth	None	*15
			About 2100 feet upstream of King's Highway	None	*23
		Lateral H	At mouth	None	*15
			Just downstream of 41st Street	None	*21
		South Relief Canal	At mouth	None	*5
			Just downstream of 43rd Avenue	None	*21
		Sebastian Creek/South Prong Creek.	At mouth	10	*8
			About 100 feet downstream of Wabasso Road	None	*17
		Atlantic Ocean	Just west of A1A about 6000 feet south of North County Boundary.	8	*7
			About 300 feet east of the intersection of Live Oak Road and 46th Place.	12	*17
		Lateral J	At mouth	None	*15
			About 3000 feet upstream of Highland Drive	None	*21

BEST COPY AVAILABLE

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Indian River	About 1,600 feet west of A1A, about 2000 feet south of North County Boundary.	8	*5
			On Wabasso Island	8	*10
		Vero Lakes Channel A	About 100 feet upstream of mouth	None	*11
			At confluence of Vero Lakes Channel D	None	*23
		Vero Lakes Channel B	At mouth	None	*20
			About .9 mile upstream of 101st Avenue	None	*24
		Vero Lakes Channel C	At mouth	None	*22
			About .5 mile upstream of 106th Avenue	None	*24
		Vero Lakes Channel D	At mouth	None	*23
			About 2,700 feet upstream of 102nd Avenue	None	*25
		St. John's Marsh	At the intersection of State Road 60 and County Road 512.	None	*22
			Just downstream of State Road 60	None	*29

Maps available for inspection at the County Administration Building, 1840 25th Street, Vero Beach, Florida.

Send comments to The Honorable Charles P. Balczun, Administrator, Indian River County, County Administration Building, 1840 25th Street, Vero Beach, Florida 39260.

Florida	Town of Indian River Shores, Indian River County.	Atlantic Ocean	Along shoreline	11	*17
		Indian River	At the intersection of Hidden Oak Land	5	*7
			Barker Island	7	*9

Maps available for inspection at the Town Hall, 6001 North A1A, Vero Beach, Florida.

Send comments to The Honorable Joseph C. Dorsky, Town Manager, Town of Indian River Shores, Town Hall, 6001 North A1A, Vero Beach, Florida 32963.

Florida	Town of Malabar Brevard County.	Turkey Creek Channel B	About 700 feet upstream of mouth	17	*14
			About 1.34 miles upstream of mouth	17	*18
		Turkey Creek Channel C	Just upstream of mouth	17	*14
			About 1.1 miles upstream of mouth	18	*19
		Turkey Creek Channel G	At mouth	17	*14
			About .58 mile upstream of mouth	17	*19
		Turkey Creek Channel D	At mouth	16	*14
			About .68 mile upstream of mouth	17	*17
		Goat Creek	At mouth	8	*5
			About 2000 feet upstream of Unnamed Road	None	*11
		Indian River	About 200 feet east of intersection of Rocky Point Road and State Road 5.	8	*6
			Just east of intersection of South Rocky Point Drive and Rocky Point Road.	9	*7

Maps available for inspection at the Town Hall, Malabar, Florida.

Send comments to The Honorable Eugene Callagy, Mayor, Town of Malabar, P.O. Box 245, Malabar, Florida 32950-0245.

Florida	City of Melbourne, Brevard County.	St. Johns River	Within community	*24	*20
		Eau Gallie River	At mouth	*6	*
		Just downstream of Wickham Road.	*21	*14	
		Crane Creek	About 700 feet downstream of U.S. Route 1	*9	*5
			Just upstream of Evans Road	*24	*21
		Crane Creek Channel A	At mouth	*19	*12
			About 0.4 mile upstream of Airport Road	*22	*22
		Crane Creek Channel B	At mouth	*14	*6
		About 1800 feet upstream of South Fairway Drive.	*21	*16	
		Indian River	About 400 feet east of the intersection of Jouret Street and Pineapple Avenue.	*7	*3
			Just east of the intersection of Jernigan Avenue and Riverview Drive.	*9	*7
		Atlatic Ocean	About 300 feet east of the intersection of Paradise Boulevard and State Road A1A.	None	*11
			Along shoreline	*12	*15

Maps available for inspection at the City Hall, 900 East Strawbridge Avenue, Melbourne, Florida.

Send comments to the Honorable Samuel H. Halter, City Manager, City of Melbourne, 900 East Strawbridge Avenue, Melbourne, Florida 32901.

Florida	Town of Melbourne Beach, Brevard County.	Atlantic Ocean	Along Ocean Avenue about 175 feet east of intersection with Atlantic Street.	None	*13
			About 300 feet east of the intersection of Atlantic Street and Ocean Avenue.	*13	*15
		Indian River	Just west of the intersection of South Riverside Drive and 1st Avenue.	*7	*6

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Along shoreline about 100 feet west of intersection of A Avenue and South Riverside Drive.	*7	*7
Maps available for inspection at the Town Hall, 507 Ocean Avenue, Melbourne Beach, Florida.					
Send comments to the Honorable Ken Resor, Town Manager, Town of Melbourne Beach, Town Hall, 507 Ocean Avenue, Melborne Beach, Florida 32915					
Florida	Town of Melbourne Village Brevard County.	Crane Creek Diversion from St. John's River.	About 400 feet upstream of Wickham Road	*24	*21
			About 2400 feet upstream of Dayton Boulevard	*23	*22
Maps available for inspection at the Town Hall, 535 Hammock Road, Melbourne Village, Florida.					
Send comments to the Honorable George Woodmansee, Mayor, Town of Melbourne Village, Town Hall, 535 Hammock Road, Melbourne Village, Florida 32904					
Florida	Town of Orchid, Indian River County.	Indian River	On Horseshoe Island	*7	*8
			At mouth of East Channel	*7	*10
Maps available for inspection at the Mayor's Home, 1 Dearfield Drive, Vero Beach, Florida.					
Send comments to the Honorable Lee E. Johnston, Mayor, Town of Orchid, 1 Dearfield Drive, Vero Beach, Florida 32963.					
Florida	City of Palm Bay, Brevard County.	St. John's River	Within community	*24	*21
		Turkey Creek	Just upstream of U.S. Route 1	*7	*5
			About 0.67 mile upstream of Port Malabar Boulevard.	*16	*14
		Turkey Creek Channel A	At mouth	*12	*9
			About 2100 feet upstream of Knetch Road	*20	*19
		Turkey Creek Channel B	Within community	*16	*14
		Turkey Creek Channel C	Within community	*16	*14
		Turkey Creek Channel C-76	At mouth	*None	*14
			About 1350 feet upstream of Charles Boulevard	*None	*29
		Turkey Creek Channel D	Just upstream of mouth	*16	*14
			Just upstream of Oaklyn Street	*16	*17
		Indian River	Just east of the intersection of Herndon Circle and Anglers Drive.	*9	*6
			Just east of the intersection of Apollo II Boulevard and Harbor Boulevard.	*9	*7
Maps available for inspection at the City Hall, 2145 Palm Bay Road NE., Palm Bay, Florida.					
Send comments to The Honorable Richard Diamond, City Manager, City of Palm Bay, City Hall, 2145 Palm Bay Road, NE., Palm Bay, Florida 32905					
Florida	City of Rockledge, Brevard County.	St. John's, River	Within community	*20	*18
		Indian River	Along Old Dixie Highway about 0.61 mile south of the intersection of Floridelphia Avenue.	None	*4
			Just east of the intersection of Bouganvilla Drive and Rockledge Drive.	*3	*6
Maps available for inspection at the City Hall, Rockledge, Florida.					
Send comments to The Honorable James McKnight, City Manager, City of Rockledge, P.O. Box 488, Rockledge, Florida 32955–0488.					
Florida	City of Satellite Beach, Brevard County.	Atlantic Ocean	About 200 feet east of the intersection of Ocean Spray Avenue and Sheppard Boulevard.	None	*11
			About 400 feet east of the intersection of Ocean Spray Avenue and Sheppard Boulevard.	*12	*15
		Indian River	Within community	*6	*3
Maps available for inspection at the City Hall, 510 Cinnamon Drive, Satellite Beach, Florida.					
Send comments to The Honorable Michael P. Crotty, City Manager, City of Satellite Beach, City Hall, 510 Cinnamon Drive, Satellite Beach, Florida 32937–3197.					
Florida	City of Sebastian, Indian River County.	Indian River	At intersection of Indian River Drive and Davis Street.	*8	*8
			About 100 feet east of intersection of Indian River Drive and Harrison Street.	*8	*9
		South Prong Creek/Sebastian Creek.	About 800 feet west of intersection of Robin Lane and Roseland Road.	*None	*6
			About 400 feet upstream of confluence of Elkcam Waterway.	*None	*13
		Collier Creek	About 200 feet downstream of Roseland Road	*None	*6
			Just downstream of spillway	*None	*10
			Just upstream of spillway	*None	*18
			About 250 feet downstream of Fellsmere Road	*None	*18
		Collier Water-Way/Elkcam Waterway.	About 200 feet upstream of mouth	*None	*12
			Just downstream of dam	*None	*13
			Just upstream of dam	*None	*18
			About 200 feet downstream of Fellsmere Road	None	*19

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, 1225 Main Street, Sebastian, Florida.					
Send comments to The Honorable Robert McClary, City Manager, City of Sebastian, P.O. Box 780127, Sebastian, Florida 32978-0127					
Florida	City of Titusville, Brevard County.	Shallow Flooding (due to ponding from rainfall):.	At the intersection of Cherrywood Lane and Hickory Hill Boulevard.	None	*20
			At the intersection of Crescent Drive and Melody Lane.	None	*22
		Indian River	Just east of the intersection of Coquina Avenue and State Road 5.	*4	*3
			Just east of the intersection of Main Street and Indian River Avenue.	*4	*5
Maps available for inspection at the City Hall, Titusville, Florida.					
Send comments to The Honorable Randall Reid, City Manager, City of Titusville, P.O. Box 286, Titusville, Florida 32781-2806.					
Florida	City of Vero Beach, Indian River County.	Main Relief Canal	About 700 feet downstream of U.S. Route 1	None	*9
			Just downstream of spillway	None	*10
			Just upstream of spillway	None	*17
			Just upstream of control structure	None	*20
		Indian River	At the intersection of Beachland Boulevard and Mockingbird Drive.	*5	*6
			Fareley Island	*5	*8
		Atlantic Ocean:	About 300 feet east of the intersection of Easter Lilly Lane and Ocean Drive.	*12	*17
			About 1,000 feet east of intersection of Tulip Lane and Ocean Drive.	*9	*13
Maps available for inspection at the Planning Department, City Hall, Vero Beach, Florida.					
Send comments to The Honorable John V. Little, City Manager, City of Vero Beach, P.O. Box 1389, Vero Beach, Florida 32961-1389.					
Florida	City of West Melbourne, Brevard County.	St. John's River	Within community	*23	*20
		Crane Creek Diversion from St. John's River.	Just upstream of John Rodes Boulevard	*23	*21
			Just downstream of Evans Road	*24	*22
		Crane Creek	Just upstream of Dairy Road About 2,700 feet upstream of.	*23	*19
			Dairy Road	*23	*20
Maps available for inspection at the City Hall, 2285 Minton Road, West Melbourne, Florida.					
Send comments to The Honorable Mark K. Ryan, City Manager, City of West Melbourne, City Hall, 2285 Minton Road, West Melbourne, Florida 32904.					
Iowa	City of Independence, Buchanan County.	Wapsipinicon River	About 1.1 miles downstream of Third Avenue S.E.	*908	*900
			About 1,900 feet upstream of Illinois Central Railroad.	*915	*911
		Malone Creek	At mouth	*908	*901
			About 1.1 miles upstream from Third Street N.E.	*928	*932
Maps available for inspection at the City Hall, 331 First Street, East, Independence, Iowa.					
Send comments to The Honorable Frank Birmmer, Mayor, City of Independence, City Hall, 331 First Street, East, Independence, Iowa 50644.					
Massachusetts	Andover, Town, Essex County.	Merrimack River	Approximately 7,800 feet downstream of Interstate Route 93.	*49	*50
			At upstream corporate limits	*56	*59
		Shawsheen River	Upstream side of Boston and Maine Railroad	*34	*35
			Downstream side of Ballardville Dam	*63	*64
		Fish Brook	At confluence with Merrimack River	None	*55
			Approximately 30 feet upstream of Greenwood Road.	None	*123
		Hussey Brook	At confluence with Shawsheen River	None	*37
			Approximately 0.7 mile upstream of Beacon Street.	None	*137
		Hussey Brook Tributary	At confluence with Hussey Brook	None	*61
			Approximately 250 feet upstream of Beacon Street.	None	*94
Maps available for inspection at the Engineering Department, Town Offices, Andover, Massachusets.					
Send comments to The Honorable William Downes, Chairman of the Town of Andover Board of Selectmen, Essex County, Town Offices, Andover, Massachusetts 01810.					
Massachusetts	Dracut, Town, Middlesex County.	Merrimack River	At downstream corporate limits	*52	*57
			At upstream corporate limits	*59	*63
		Beaver Brook	At downstream corporate limits	*70	*76
			Approximately 700 feet upstream of Parker Avenue.	*85	*87

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,400 feet upstream of Parker Avenue.	*88	*87
			Approximately 1,000 feet upstream of Phineas Street.	*90	*91
			At confluence of Gumpas Pond Brook	*124	*123
		Richardson Brook	At confluence with Merrimack Road	*56	*60
			Upstream side of Methuen Street	*79	*86
			Upstream side of Cranberry Road	None	*107
			Upstream side of State Route 113 (Broadway Street).	None	*168
		Trout Brook	At confluence with Richardson Brook	None	*85
			Upstream side of Parker Avenue	None	*143
		Tributary to Beaver Brook	At confluence with Beaver Brook	None	*91
			Approximately 880 feet upstream of Lakeview Avenue.	None	*106
		Peppermint Brook	At confluence with Beaver Brook	*70	*75
			Approximately 100 feet downstream of Hildreth Street.	*82	*81
		Gumpas Pond	At upstream corporate limits (State Boundary)	*124	*123

Maps available for inspection at the Town Hall, Town Clerk's Vault, Dracut, Massachusetts.

Send comments to The Honorable Dennis Piendak, Manager of the Town of Dracut, Middlesex County, 67 Arlington Street, Dracut, Massachusetts 01826.

Massachusetts	Town of Needham, Norfolk County.	Charles River	At downstream corporate limits	*75	*75
			At upstream corporate limits	*110	*109
		Fuller Brook	Entire reach from corporate limits upstream to a point approximately 630 feet downstream of S.R. 135.	None	*134

Maps available for inspection at the Planning Department, Town Hall, Needham, Massachusetts 02192.

Send comments to The Honorable H. Philip Garrity, Chairman of the Town of Needham Board of Selectmen, Norfolk County, 1471 Highland Avenue, Needham, Massachusetts 02192.

Michigan	Garfield Township, Newaygo County.	Muskegon River	At downstream corporate limits	None	*627
			About 800 feet downstream of Bridge Street	None	*642

maps available for inspection at the Township Hall, 6333 Bingham Avenue, Mewaygo, Michigan.

Send comments to The Honorable Janet Barends, Supervisor, Township of Garfield, Township Hall, 6333 Bingham Avenue, Newaygo, Michigan 49337.

Mississippi	City of Columbus, Lowndes County.	Tombigbee River	About 1.0 mile downstream of Illinois Central Gulf Railroad.	*172	*170
			About 1.3 miles upstream of Columbus Lock and Dam.	*178	*176
		Luxapalila Creek	About 1.0 mile downstream of Illinois Central Gulf Railroad.	None	*170
			About 1.8 miles upstream of U.S. Highway 82	None	*184
		Vernon Branch	Just downstream of Illinois Central Gulf Railroad	*177	*180
			About 300 feet upstream of Illinois Central Gulf Railroad.	*180	*182
		Magby Creek	At mouth	*172	*177
			Just downstream of Lehmbeig Road	*188	*188

Maps available for inspection at the City Hall, Columbus, Mississippi.

Send comments to the Honorable James Trotter, Mayor, City of Columbus, P.O. Box 1405, Columbus, Mississippi 39701.

Mississippi	Unincorporated Areas of Lowndes County.	Black Creek	At confluence with Luxapalila Creek	None	*185
			Just downstream of Gilmer Road	None	*218
		Ellis Creek	At confluence with Tombigbee River	*164	*162
			About 2.6 miles upstream of State Highway 69	*228	*228
		Greens Creek	At confluence with Ellis Creek	*166	*163
			Just downstream of Lake Lowndes Road	*273	*273
		Luxapalila Creek	At mouth	*171	*169
			At state boundary	*213	*214
		Luxapalila Creak Tributary	At confluence with Luxapalila Creek	*200	*199
			About 2,000 feet upstream of State Highway 50	*228	*228
		McCrary Creek	Just downstream of Sewage Treatment Plant Access Road.	*171	*172
			At state boundary	*275	*275
		Oak Slush Creek	At confluence with Tombigbee River	*176	*173
			Just upstream of Younger Road	*206	*207
		Oak Slush Creek Tributary	At confluence with Oak Slush Creek	*176	*175
			About 2,500 feet upstream of West Point Road	*188	*188
		Ellis Creek Tributary	At confluence with Ellis Creek	*178	*179
			About 3,900 feet upstream of Hildreth Road	*266	*266

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Tombigbee River	At state boundary	*155	*153
			At confluence of Buttahatchie River	*193	*186
		Tombigbee River Tributary No. 1.	At confluence with Tombigbee River	*168	*166
			About 3,600 feet upstream of Burlington Northern railroad.	*186	*186
		Tombigbee River Tributary No. 2.	At mouth	*177	*176
			About 1,100 feet upstream of New Bell Road	*198	*198
		Yellow Creek	At confluence with Luxapalila Creek	*192	*196
			About 2.3 miles upstream of Caledonia-Steens Road.	*204	*204
		Tibbee Creek	At mouth	*178	*176
			At confluence of Catalpa Creek	*181	*181
		Magby Creek	Just upstream of Lehmberg Road	*190	*188
			Just downstream of Lee Stokes Road	*228	*230
			Just upstream of Lee Stokes Road	*233	*235
			At state boundary	*235	*236

Maps available for inspection at the County Courthouse, Columbus, Mississippi.

Send comments to the Honorable Harold Blalock, President, Board of Supervisors, Lowndes County, P.O. Box 1364, Columbus, Mississippi 39703.

North Dakota	City of Killdeer, Dunn County.	Spring Creek	Approximately 1,500 feet downstream of Section Line Road.	*2226	*2226
			Backwater along Gumbo Creek, approximately 700 feet upstream of Section Line Road.	*2226	*2228
			At the Burlington Northern Railroad	*2229	*2231
			Approximately 3,460 feet downstream of State Highway 22.	*2241	*2241
			Approximately 1,800 feet upstream of State Highway 22.	*2248	*2247
			Approximately 6,000 feet upstream of State Highway 22.	*2255	*2255

Maps are available for review at City Hall, Railroad Street, Killdeer, North Dakota.

Send comments to the Honorable Robert Binek, Mayor, City of Killdeer, P.O. Box 515, Killdeer, North Dakota 58640.

Ohio	City of Lancaster, Fairfield County.	Hoking River	About 1,500 feet downstream of Sugar Grove Road.	*807	*807
			Just downstream of Collins Road	*836	*836
		Pleasant Run	Just upstream of Duffy Road	None	*819
			Just downstream of Marietta Road	*842	*842
		Baldwin Run	At mouth	*813	*812
			At confluence of Fetters Run	*822	*822
		Ewing Run	At confluence with Baldwin Run	*822	*822
			About 2,400 feet upstream of Rainbow Drive	*904	*913
		Fetters Run	At mouth	*822	*822
			About 8,000 feet upstream of Granville Pike	*877	*876
		Tarhe Run	At mouth	*816	*818
			About 1,700 feet upstream of abandoned railroad bridge.	*None	*847
		Hunters Run	At mouth	*821	*821
			Just downstream of Lincoln Avenue	*834	*834
		Lateral A	At mouth	*823	*823
			About 1,300 feet upstream of Hawthorne Drive	*None	*869
		Lateral B	At mouth	*824	*824
			Just downstream of West Fair Avenue	*831	*836
			Just upstream of West Fair Avenue	*836	*836
			Just downstream of Farm Road	*844	*844
			Just upstream of Farm Road	*849	*849
			About 400 feet upstream of Nolder Drive	*None	*862
		Raccoon Run	Just upstream of Conrail	*None	*843
			Just downstream of Marietta Road	*None	*848
		Lateral D	At mouth	*831	*831
			About 1.5 miles upstream of West Fair Avenue	*None	*868

Maps available for inspection at the Municipal Building, 104 East Main Street, Lancaster, Ohio.

Send comments to The Honorable Don Maddux, Mayor, City of Lancaster, Municipal Building, 104 East Main Street, Lancaster, Ohio 43130.

South Carolina	City of Georgetown, Georgetown County.	Whites Creek	About 0.9 mile downstream of CSX railroad	*11	*9
			About 2,600 feet upstream of Highmarket Street	*11	*11
		Whites Creek Tributary	Within community	*11	*10
		Winyah Bay/Sampit River	Along Whites Creek from corporate limits to CSX railroad.	*11	*9
		Winyah Bay	At intersection of U.S. Route 17 and Martin Street..	*12	*9

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At intersection of Front Street and Meeting Street	*11	*9
			Along shoreline south of Sampit River	*16	*14
Maps available for inspection at the City Hall, 120 North Fraser Street, Georgetown, South Carolina.					
Send comments to The Honorable H.E. Donoitt, Mayor, City of Georgetown, City Hall, 120 North Fraser Street, Georgetown, South Carolina 29442.					
South Carolina	Unincorporated Areas of Georgetown County.	Allston Creek Tributary No. 1	Just upstream of U.S. Business Route 17	None	*11
			About 1.0 mile upstream of U.S. Route 17 Bypass	None	*25
		Allston Creek Tributary No. 2	Just upstream of U.S. Business Route 17	None	*11
			About 1400 feet upstream of Lee Street	None	*21
		Atlantic Ocean	About 3.7 miles upstream along the Santee River from the confluence of the South Santee River.	None	*8
			At Georgetown County/Horry County boundary along coastline.	*19	*23
		Bells Swamp	At mouth	None	*17
			Just upstream of State Route 249	None	*39
		Bells Swamp Tributary	At mouth	None	*17
			Just upstream of State Route 126	None	*31
		Black River	Just upstream of U.S. Route 701	None	*5
			Just downstream of State Route 51	None	*12
		Boser Swamp	At mouth	None	*20
			Just downstream of State Route 35	None	*22
		Canaan Branch	At mouth	None	*9
			Just downstream of State Route 318	None	*20
		Chapel Creek	Just upstream of State Route 52	None	*8
			About 2000 feet upstream of U.S. Route 701	None	*22
		Chapel Creek Tributary No. 1	At mouth	None	*8
			About 2200 feet upstream of Woodlands Road	None	*11
		Chapel Creek Tributary No. 2	At mouth	None	*8
			Just downstream of State Route 180	None	*19
		Chapel Creek Tributary No. 3	At mouth	None	*9
			Just downstream of State Route 180	None	*20
		Chapel Creek Tributary No. 4	At mouth	None	*9
			About 1000 feet upstream of State Route 180	None	*15
		Chapel Creek Tributary No. 5	At mouth	None	*13
			About 900 feet upstream of State Route 180	None	*16
		Cypress Creek	At mouth	None	*8
			About 1.1 miles upstream of U.S. Route 701	None	*12
		Cypress Creek Tributary No. 1	At mouth	None	*8
			About 2400 feet upstream of confluence of confluence of Cypress Creek Tributary No. 2	None	*18
		Cypress Creek Tributary No. 2	At mouth	None	*9
			About 750 feet upstream of State Route 820	None	*13
		Parsonage Creek Tributary	Just upstream of U.S. Business Route 17	None	*11
			Just upstream of U.S. Route 17	None	*19
		Pennyroyal Creek	At mouth	None	*9
			Just downstream of Pennyroyal Road	None	*9
		Port Creek	Just upstream of State Route 36	None	*16
			At confluence of Boser Swamp	None	*20
		Ports Creek	At mouth	None	*9
			Just downstream of U.S. Route 17A	None	*9
		Pennyroyal Swamp	At confluence of Boser Swamp	None	*20
			About 2.9 miles upstream of confluence of Boser Swamp.	None	*34
		Port Creek Tributary	At mouth	None	*17
			About 1.33 miles upstream of mouth	None	*40
		Sampit River	At mouth	*16	*14
			Just downstream of U.S. Route 17A	None	*9
		St. Paul Branch	At mouth	None	*8
			Just downstream of U.S. Route 701	None	*20
		St. Pauls Branch Tributary No. 1.	At mouth	None	*8
			Just downstream of dam (about 1400 feet upstream of mouth).	None	*8
			Just upstream of dam (about 1400 feet upstream of mouth).	None	*13
			About 3200 feet upstream of dam (about 1400 feet upstream of mouth).	None	*17
		St. Pauls Branch Tributary No. 2.	At mouth	None	*8
			Just downstream of State Route 269	None	*12
		Turkey Creek	At mouth	None	*9
			Just downstream of Pennyroyal Road	None	*9
		Whites Creek	At mouth	*11	*9
			Just downstream of old railroad grade	None	*17

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Whites Creek Tributary No. 1	At mouth	*11	*9
			About 1800 feet upstream of mouth	None	*13
		White Creek Tributary No. 2	At mouth	*11	*9
			About 2550 feet upstream of mouth	None	*12
		Whites Creek Tributary No. 3	At mouth	*11	*9
			About 0.95 mile upstream of mouth	None	*18
		Whites Creek Tributary No. 4	At mouth	*11	*9
			About 1750 feet upstream of U.S. Route 17A	None	*17
		Whites Creek Tributary No. 5	At mouth	*11	*10
			About 1850 feet upstream of mouth	None	*18
		Whites Creek Tributary No. 6	At mouth	*11	*11
			About 1.42 miles upstream of mouth	*11	*18
		Whites Creek Tributary No. 7	At mouth	*11	*17
			About 2500 feet upstream of mouth	*11	*18
		Winyah Bay Tributary	Just upstream of Belle Isle Lake Concrete Weir	*14	*10
			Just downstream of South Island Road	*14	*12
Maps available for inspection at the Building Department, County Courthouse, Georgetown, South Carolina.					
Send comments to The Honorable Dan L. Guffey, County Administrator, Georgetown County, County Courthouse, P.O. Drawer 1270, Georgetown, South Carolina 29442.					
South Caroline	Town of Paleys Islands, Georgetown County.	Atlantic Ocean	At the intersection of Myrtle Avenue and Third Street.	*16	*14
			About 800 feet north and 1,200 feet east of the intersection of the North Causeway and Myrtle Avenue.	*19	*21
Maps available for inspection at the Pawleys Island Visitor's Center, North Causeway, Pawleys Island, South Carolina.					
Send comments to The Honorable James D. Prince, Mayor, Town of Pawleys Island, P.O. Box 1818, Pawleys Island, South Carolina 29585.					
Tennessee	City of Copperhill, Polk County.	Ocoee River	About 0.65 mile downstream of Fightingtown Creek.	None	*1,453
			About 0.62 mile upstream of Fightingtown Creek	None	*1,458
Maps available for inspection at the City Hall, Copperhill, Tennessee.					
Send comments to the Honorable Sylvan Greene, Mayor, City of Copperhill, City Hall, P.O. Box 640, Copperhill, Tennessee 37317.					
Texas	Garland City, Dallas County.	Duck Creek	Approximately 9,980 feet downstream of Broadway Boulevard.	*438	*437
			At upstream corporate limits	*596	*595
		Stream 2C1	At confluence with Duck Creek	*443	*442
			Downstream side of Tacoma Drive	*485	*486
		Stream 2C2	At confluence with Duck Creek	*497	*496
			Upstream side of Roanoke Drive	None	*563
		Stream 2C6	At confluence with Duck Creek	*573	*572
		Rowlett Creek	Approximately 2,500 feet downstream of Miller Road.	*440	*441
			Approximately 3,100 feet downstream of Blackburn Road.	*501	*502
		Stream 2D1	At downstream corporate limits	None	*440
			Upstream side of Centerville Road	*481	*482
		Mills Branch	At confluence with Rowlett Creek	*445	*448
			Downstream side of Atchison-Topeka and Santa Fe Railroad.	*534	*535
		Stream 2D5	At confluence with Rowlett Creek	*492	*494
			Approximately 100 feet upstream of North Star Road.	*518	*517
		Stream 2D6	At confluence with Stream 2D5	*493	*494
			Upstream side of North Star Road	*510	*511

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Spring Creek	Approximately 1,000 feet downstream of Naaman School Road.	*489	*490
		Stream 215.5	Approximately 200 feet downstream of Spring Creek Parkway.	*None	*537
			At upstream corporate limits	*None	*556

Maps available for inspection at the City Hall, Garland, Texas.

Send comments to the Honorable Bill Tomlinson, Mayor of the City of Garland, Dallas County, P.O. Box 469002, Garland, Texas 75046.

Vermont	Royalton, Town, Windsor County.	White River	At downstream corporate limits Windsor County	*457	*457
			At upstream corporate limits	*476	*475
		First Branch White River	At confluence with White River	*535	*532
			At corporate limits	*516	*511
		Second Branch At confluence with White River.	*507	*506	
			At upstream corporate limits	*530	*528

Maps available for inspection at the Town Clerk's Office, South Royalton, Vermont.

Send comments to the Honorable David Lyman, Chairman of the Town of Royalton Board of Selectmen, Windsor County, P.O. Box 680, South Royalton, Vermont 05068.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: August 10, 1988.

[FR Doc. 88–18579 Filed 8–16–88; 8:45 am]

BILLING CODE 6718–01–M

Notices

Federal Register
Vol. 53, No. 159
Wednesday, August 17, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Working Group on Model Rules; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Working Group on Model Rules of the Administrative Conference of the United States, to be held at 12 noon on Friday, September 9, 1988, at the offices of the Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC.

The Working Group will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by federal agencies in formal adjudications.

For further information concerning this meeting, contact Gary J. Edles, Legal Counsel, Administrative Conference of the United States, 2120 L Street, NW., Washington, DC. (Telephone: 202–254–7020).

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Jeffrey S. Lubbers,
Research Director.
August 10, 1988.

[FR Doc. 88–18565 Filed 8–16–88; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agriculture Biotechnology Research Advisory Committee.
Date: September 22–23, 1988.
Time: 9:00 a.m. to approximately 5:00 p.m. on September 22, 9:00 a.m. to approximately 3:00 p.m. on September 23.
Place: Room 104–A, the "Williamsburg Room", USDA Administration Building, 14th and Independence Avenue SW., Washington, DC.
Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person below.
Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistance Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major items to be considered at this meeting are the development of guidelines for biotechnology research in agriculture and a field handbook for agricultural researchers using materials and methods of biotechnology.
Contact Person: Dr. Alvin L. Young, Executive Secretary, Agriculture Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC, 20250. Telephone (202) 447–9165.

Done at Washington, DC, this 8th day of August 1988.

Robert W. Long,
Deputy Assistant Secretary, Science and Education.

[FR Doc. 88–18655 Filed 8–16–88; 8:45 am]
BILLING CODE 3410–22–M

Forms Under Review by Office of Management and Budget

August 12, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service
  California Pears, Plums, and Peaches, Marketing Order No. 917
  No agency report forms
  Recordkeeping; On Occasion; Monthly; Semi-annually
  Farms; Businesses or other for-profit; Small business or organizations;
  3,562 responses; 2,826 hours; not applicable under 3504(h)
  Virginia M. Olson (202) 447–5057

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 88–18593 Filed 8–16–88; 8:45 am]
BILLING CODE 3410–01–M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date and Time: September 13–14, 1988—September 15, 1988, 8:30 a.m.–5:00 p.m.—8:30 a.m.–12:00 noon

Place: 1021 East Bandanna Boulevard, St. Paul, Minnesota (Bandanna Squire).

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. John A. Naegele, Executive Secretary, U. S. Department of Agriculture, Cooperative, State Research Service, Room 328, Aerospace, Building, Washington, DC 20251–2200, Telephone: 202–447–4587.

Done at Washington, DC, this 8th day of August, 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–18656 Filed 8–16–88; 8:45 am]

BILLING CODE 3410–22–M

Farmers Home Administration

Farmers Home Administration Programs and Activities Covered Under Executive Order 12372

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The purpose of this Notice is to inform State and local governments and other interested persons of USDA programs and activities included within the scope of Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR 3015, Subpart V, at 48 FR 29100, dated June 24, 1983.

DATE: August 17, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Clayman, Environmental Protection Specialist, Program Support Staff, FmHA, Room 5302-South Building, Washington, DC 20250 (Telephone 202–382–9656).

SUPPLEMENTARY INFORMATION: The programs listed below by Catalog of Federal Domestic Assistance (CFDA) number are being included for coverage under E.O. 12372.

Farmers Home Administration

10.424 Industrial Development Grants

This program was previously included in the CFDA under this same number. It was deleted from the catalog in June 1982 due to an expiration of its budget authority. Consequently, it was deleted from the list of programs subject to the Executive Order in a **Federal Register** (FR) notice on January 9, 1985 (50 FR 1040).

The program is now being reinstated and it will appear in the June 1988 basic edition of the CFDA. Additionally, through publication of this FR notice, it will again become eligible for review under the Intergovernmental Review Process. States interested in reviewing this program may add it to their list of USDA programs eligible for review under the Executive Order.

10.437 Rural Development Loan Fund

The Rural Development Loan Fund (RDLF) is a loan program designed to assist in the establishment and development of businesses in rural areas.

The RDLF program provides for loans to private and public nonprofit organizations referred to as intermediaries. These intermediaries then relend these funds to qualifying applicants known as the ultimate recipient.

This program was originally administered by the Department of Health and Human Services (HHS) under Catalog of Federal Domestic Assistance Number 13.664. Some of the funds that were loaned to intermediaries, before the transfer to USDA, have not as yet been loaned to ultimate recipients.

All of these loans, including those from intermediaries to ultimate recipients, will be subject to review under E.O. 12372.

10.438 Intermediary Relending Program

The Intermediary Relending Program (IRP) is a new program authorized by Congressional action. It provides for loans from FmHA to private or public nonprofit organizations which are called intermediaries. Loans to any one intermediary may not exceed $3,000,000. The intermediaries will use the funds to help establish revolving loan funds. The intermediaries will then provide loans in rural areas for business and community development projects. The entities that receive loans from intermediaries are called ultimate recipients.

Loans to intermediaries under this program are subject to Executive Order 12372 and eligible for inclusion in the Intergovernmental Review Process. Loans from intermediaries to ultimate recipients, using funds the intermediary received from FmHA, are also subject to Executive Order 12372 and the Intergovernmental Review Process.

Date: July 20, 1988.

Neal Sox Johnson,

Acting Administrator Farmers Home Administration.

[FR Doc. 88–18594 Filed 8–16–88; 8:45 am]

BILLING CODE 3410–07–M

COMMISSION ON CIVIL RIGHTS

Hawaii Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m., on September 6, 1988 at the Ilikai Hotel, 1777 Ala Moana Boulevard, Waikiki Suite, Honolulu, Hawaii 96815. The purpose of the meeting is to obtain information on the status of the implementation of the Hawaiian Homes Commission Act.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre S. Tatibouet, or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 9, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–18566 Filed 8–16–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held September 8, 1988, 9:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and

Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Military Critical Technologies List (MCTL) into the Export Administration Regulations and provides for continuing review to update the Regulations as needed.

Agenda: Open Session

1. Opening Remarks by the Chairman.

2. Introduction of Members & Public Attendees.

3. Introduction of Invited Guests.

4. Presentation of Papers or Comments by the Public.

5. Consideration of Ad Hoc Group's Recommendations to the MCTL Technical Advisory Committee Rgarding Role of the TACs in the List Review Process.

6. Review of Proposed Changes in Technical Data Regulations.

7. Review of Proposed Changes to Executive Order 12356.

Executive Session:

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in sections 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes contact Ruth D. Fitts, 202–377–2583.

Dated: August 12, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–18610 Filed 8–16–88; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and State antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Wasington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86–A0011."

OETCA has received the following application for an amendment to Export Trade Certificate of review #86–00011, issued on June 30, 1987 (52 FR 25622, July 11, 1987).

Applicant: Millers' National Federation (MNF), 600 Maryland Avenue, SW, Suite 305 West, Washington, DC 20024.

Contact: Roy M. Henwood, Jr., President, telephone: (202) 484–2200.

Application: #86–A0011.

Date Deemed Submitted: August 2, 1988.

Summary of the Application

Millers' National Federation seeks to amend its certificate by making the following changes with respect to the parties named as "Members" within the meaning of 15 CFR 325.2(1):

1. Delete International Multifoods Corporation of Minneapolis, Minnesota as a "Member."

2. Add Dixie Portland Flour Mills, Inc. of Memphis, Tennessee as a "Member."

Under the proposed amendment, "Members" would include (in addition to the applicant): Roy M. Henwood, President of MNF; Paul B. Green, Consultant to MNF; and members of the Foreign Agricultural Policy Committee of MNF to the extent that they represent MNF as members of the committee (Cereal Food Processors, Inc.; ADM Milling Company; Bartlett Milling Company; ConAgra/Peavey; Dixie Portland Flour Mills, Inc.; The Pillsbury Company; and Cargill, Inc.).

Date: August 12, 1988.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 88–18609 Filed 8–16–88; 8:45 am]

BILLING CODE 3510–DR–M

Applications for Duty-Free Entry of Scientific Instruments; Texas A&M University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question on whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington,

DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–051R. *Applicant:* Texas A & M University, Department of Chemistry, College Station, TX 77843–3255. *Instrument:* Fluorescence Lifetime Spectrometer. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. Original notice of this resubmitted application was published in the Federal Register of January 22, 1988.

Docket Number: 88–111R. *Applicant:* National Aeronatics and Space Administration, Langley Research Center, Building 1195A, Room 103, Hampton, VA, 23665–5225. *Instrument:* FT–IR Spectrophotometer. *Manufacturer:* BOMEM, Inc., Canada. Original notice of this resubmitted application was published in the Federal Register of April 27, 1988.

Docket Number: 88–231. *Applicant:* University of Kentucky, Markey Cancer Center, 800 Rose Street, Lexington, KY 40536–0084. *Instrument:* Scanning Electron Microscope, Model S–800. *Manufacturer:* Hitachi Scientific, Japan. *Intended use:* The instrument will be used to examine biological samples to determine surface character and material content. In addition, the instrument will be used for educational purposes in the course Introduction to Electron Microscopy. *Application Received by Commissioner of Customs:* July 20, 1988.

Docket Number: 88–232 *Applicant:* University of Kentucky, Markey Cancer Center, 800 Rose Street, Lexington, KY 40536–0084. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi Scientific, Japan. *Intended use:* The instrument will be used to examine biological samples to determine surface character and material content. In addition, the instrument will be used for educational purposes in the course Introduction to Electron Microscopy. *Application received by Commissioner of Customs:* July 20, 1988.

Docket Number: 88–233. *Applicant:* Carnegie Mellon University, 5000 Forbes Avenue, Pittsburgh, PA 15213. *Instrument:* Electron Microscope, Model HB501. *Manufacturer:* VG Microscopes, Ltd., United Kingdom. *Intended use:* The instrument will be used for investigations of a large variety of specimens ranging from fine magnetic particles used in magnetic recording to thin films of magnetic material grown by molecular beam epitaxy. These investigations will be conducted to obtain a fundamental understanding of the magnetization of submicrometer specimens near surfaces. *Application received by Commissioner of Customs:* July 22, 1988.

Docket Number: 88–234. *Applicant:* University of Kentucky, Department of Anatomy and Neurobiology, MS209 Medical Center, 800 Rose Street, Lexington, KY 40536–0084. *Instrument:* Scanning Electron Microscope, Model S–2300–1. *Manufacturer:* Hitachi Scientific, Japan. *Intended use:* The instrument will be used for studies of animal and human biological tissue that are under investigation in the determination of human disease related processes. The experiments are centered around the morphological basis for functional phenomena. The overall objectives of these studies are to determine the normal biological processes of the body that are involved in the cardiovascular, respiratory, reproductive and neural systems. An understanding of the mechanisms for these processes will enable fellow scientists to discover new treatments for many disease processes such as Alzheimer's, hypertension, sudden infant death syndrome and infertility. In addition, the instrument will be used in the course Anatomy 662 Ultrastructural Anatomy to acquaint the student with the theory and techniques of electron microscopy. *Application received by Commissioner of Customs:* July 25, 1988.

Docket Number: 88–235. *Applicant:* University of Pennsylvania, School of Medicine, Department of Anatomy, 37th and Hamilton Walk, Philadelphia, PA 19104–6058. *Instrument:* Electron Microscope, Model JEM–1200/EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* The instrument will be used to study the ultrastructure of biological tissues, mainly the mammalian eye and brain. The objective of the studies is to determine the wiring of the neural circuits in order to relate these to neural function, particularly human vision. The instrument will also be used on a one-to-one basis in the training of medical, graduate students, residents and fellows. *Application received by Commissioner of Customs:* July 25, 1988.

Docket number: 88–236. *Applicant:* Baylor College of Medicine, Department of Biochemistry, One Baylor Plaza, Houston, TX 77030. *Instrument:* Electron Microscope, Model JEM–1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd. *Intended use:* The instrument will be used for studies of the following materials:

DNA from bacteriophage,
DNA helix destabilizing protein from T4 bacteriophage,
DNA helix destabilizing protein from *E. coli*,
RecA protein from *E. coli*,
Crotoxin complex protein from rattlesnake venom,
Tetanus toxin from bacterial cells,
Rotavirus.

High resolution images and diffraction patterns will be recorded from these protein molecules at different tilt angles with the electron microscope. In addition, the instrument will be used on a one-to-one basis in the training of medical, graduate students and residents. *Application received by Commissioner of Customs:* July 26, 1988.

Docket Number: 88–237. *Applicant:* Arizona State University, Tempe, AZ 85287. *Instrument:* Optical Microscope Stage System. *Manufacturer:* Autoscan Systems Pty. Ltd., Australia. *Intended use:* The instrument will be used for the study of fission-tracks in natural minerals and glasses to determine the uplift history of mountain ranges through the fission-tract dating of apatite. *Application received by Commissioner of Customs:* July 26, 1988.

Docket Number: 88–240. *Applicant:* Research Foundation, State University of New York, Stony Brook, NY 11794. *Instrument:* Micromanipulator. *Manufacturer:* Narashige, Japan. *Intended use:* The instrument will be used for studying the physiology of muscle contraction in order to understand how muscle contracts from a molecular standpoint. *Application received by Commissioner of Customs:* July 27, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–18644 Filed 8–16–88; 8:45 am]

BILLING CODE 3510–DS–M

Decision on Application for Duty-Free Entry of Scientific Accessory; Texas A&M Research Foundation

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–186. *Applicant*: Texas A & M Research Foundation, College Station, TX 77843. *Instrument*: Spectrascan Accessory, MG–3000. *Manufacturer*: Hi-Tech Scientific, United Kingdom. *Intended use*: See notice at 53 FR 20153, June 2, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated July 21, 1988 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-18645 Filed 8-16-88; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Massachusetts, Amherst

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket number: 88-191. *Applicant:* University of Massachusetts, Amherst, MA 01003. *Instrument:* NMR Spectrometer, Model MSL-300. *Manufacturer:* Bruker Instruments, Inc., West German. *Intended use:* See notice at 53 FR 19983, June 1, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (June 23, 1987).

Reasons: The foreign instrument provides a microimaging and cross polarization magic angle spinning with high power multiple pulse decoupling capability. The capability is pertinent to the applicant's intended purpose and we know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-18646 Filed 8-16-88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Appointment of Members to General Performance Review Board

In a notice published in the **Federal Register** on April 22, 1988, (53 FR 13309), the National Bureau of Standards (NBS) announced the membership, terms, and purpose of the General Performance Review Board (GPRB).

This notice announces the following changes in the membership of the GPRB:

Dr. James E. Hill, Chief, Building Environment Division, National Engineering Laboratory, replaces Dr. Karl G. Kessler as Chair, GPRB. Dr. Hill's appointment will run until December 31, 1989.

Dr. Alvin H. Sher, Assistant Director for Management Information Technology, National Engineering Laboratory, replaces Dr. James E. Hill as a member of the GPRB. Dr. Sher's appointment will run until December 31, 1989.

Mr. Allen L. Hankinson, Chief, Systems and Software Technology Division, Institute for Computer Sciences and Technology, replaces Ms. Helen M. Wood. Mr. Hankinson's appointment will run until December 31, 1989.

Persons desiring any further information about the GPRB or its membership may contact Mrs. Elizabeth W. Stroud, Chief, Personnel Divison, National Bureau of Standards, Gaithersburg, Maryland, 20899, telephone (301) 975-3000.

Date: August 11, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-18522 Filed 8-16-88; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Updating Prevailing Charges

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of intent to defer update of CHAMPUS prevailing charge levels for professional services.

SUMMARY: The Director of the Office of CHAMPUS intends to defer the update of CHAMPUS prevailing charge levels for professional services effective October 1, 1988. This will have the effect of maintaining the prevailing charge levels in effect for Fiscal Year 1988, which ends on September 30, 1988. This action will be taken only if the Medicare Economic Index (MEI) is not in place effective October 1, 1988 as a limit on growth in CHAMPUS prevailing charges. The deferral of the update will last for twelve months, or until the MEI becomes effective as a limit on growth in prevailing charges, whichever comes first.

This notice is published in accordance with 32 CFR 199.14(f)(1)(i)(B)(*2*).

DATES: Written comments must be received on or before September 16, 1988. Effective date for the intended action would be October 1, 1988.

ADDRESS: Send comments to Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the **Federal Register** is $1.50 for each issue or for each group of pages as actually bound, payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Charles Gallegos, Chief, Office of Program Development, OCHAMPUS, telephone (303) 361-3005.

To obtain copies of this document, see the "Address" section above.

SUPPLEMENTARY INFORMATION: The Director of the Office of CHAMPUS intends to defer the update of CHAMPUS prevailing charge levels for professional services effective October 1, 1988. This will have the effect of maintaining the prevailing charge levels in effect for Fiscal Year 1988, which ends on September 30, 1988.

There are several reasons for implementing a deferral of the update of CHAMPUS prevailing charges for professional services. First, CHAMPUS costs have been rising at an alarming rate, resulting in Congressional calls for Department of Defense action to restrain costs. From fiscal year 1984 to 1987 CHAMPUS costs grew by over 70 percent, from $1.2 billion to over $2.1 billion. The professional services component has been growing faster than CHAMPUS as a whole, increasing by nearly 90 percent from 1984 to 1987. This

year professional services will account for about $1 billion. DoD has taken a series of steps to gain some control over components of the CHAMPUS budget, most notably including the establishment of a Diagnosis Related Group (DRG)-based payment system and other payment method reforms affecting certain categories on institutional charges. To date, however, CHAMPUS has not yet implemented needed cost saving measures relating to professional fees.

Second, because CHAMPUS continues to pay for most professional fees on the basis of the physician's or other provider's billed charges, CHAMPUS allowable amounts are higher than necessary to assure fair payment to providers and broad access to care for beneficiaries. Part of the reasons for this is that CHAMPUS has not yet adopted some of the cost containment measurs that have become popular with public and private payors. For example, beginning in 1974 under an Act of Congress, the Medicare program began restraining the rate of growth in professional fees by limiting increases to amounts justified by documented changes in physician office practice costs and general wage levels, these things being measured by the Medicare Economic Index (MEI). As an indication of the generosity of current CHAMPUS allowable relative to other payers, the CHAMPUS cost per professional visit grew by about 31 percent from 1984 to 1987, while the MEI grew by only 7.5 percent. Thus, it is most likely that the FY 1988 CHAMPUS physician payment levels (to be carried over in FY 1989) generally exceed those Medicare will be paying in FY 1989.

The third reason for implementing a deferral of allowable charge updates is that this can be accomplished without hardship to CHAMPUS beneficiaries. Under current procedures, the vast majority of all physicians' charges are paid exactly as billed. Because of this, there is almost no amount disallowed and almost no balance billing of the beneficiary. In total, about 93 percent of the total amount charged by physicians is allowed by CHAMPUS. Less than four percent of all dollars shown in billed charges are subject to balance billing. Because CHAMPUS payment rates are now so high, there is room for modest constraint without risk of a significant drop in assignment rates or an increase in balance billing.

For these three primary reasons, the Director of CHAMPUS, with the approval of the Assistant Secretary of Defense for Health Affairs, proposes to defer any allowable charge update for fiscal year 1989. This proposal, however, is subject to change depending upon final Congressional action on the pending Defense Appropriations Act for Fiscal Year 1989. Congress is considering including in the Act a provision incorporating into CHAMPUS the MEI. This would limit growth in prevailing charges to the MEI amount.

If the MEI provision is enacted to be effective October 1, 1988, the deferral contemplated in this notice will not be undertaken. Absent adoption of the MEI prior to October 1, the intent is that the deferral will last for twelve months (or until the MEI provision might be adopted and become effective, whichever comes first).

To recap, the Department intends to defer the update of CHAMPUS prevailing charge levels for professional services effective October 1, 1988. This will have the effect of maintaining the prevailing charge levels in effect for Fiscal Year 1988, which ends on September 30, 1988. This notice is published to solicit public comment on this planned action. In accordance with 32 CFR 199.14(f)(1)(i)(B)(*2*), a final notice will be published prior to implementation of the action.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-18604 Filed 8-16-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 8-9 September 1988.

Time: 0800 to 1730 hours each day.

Place: General Dynamics, Pomona, CA.

Agenda: The Army Science Board Independent Assessment Panel (STINGER Missile) will meet to review eight taskers that were identifed at the previous 30 June-1 July 1988 meeting. Discussions will include providing answers to RMP missile performance problems. This meeting will be closed to the public in accordance with section 552b(c) of Title 5 U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-18605 Filed 8-16-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (EIS) for the Upper Bayou Teche, LA, Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a Draft EIS.

SUMMARY: This study will investigate water supply needs of the Teche-Vermilion Basins and will recommend a proposed action to satisfy those needs by increasing the fresh water supply to both lower Bayou Teche and the Vermilion River. Consideration will be given to the variation in water needs throughout the year and the competing demands for water.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action should be addressed to Stan Green, (504) 862-1486, and those regarding the Draft EIS should be addressed to Ken Froehlich, (504) 862-2508, U.S. Army Corps of Engineers, Planning Division (CELMN-PD-RE), P.O. Box 60267, New Orleans, Louisiana 70160-0267.

SUPPLEMENTARY INFORMATION: .

1. Authority

This effort is being conducted as an interim study under the "Mermentau, Vermilion, and Calcasieu Rivers and Bayou Teche, Louisiana," study. Approval for the interim study was granted by the Corps of Engineers, Lower Mississippi Valley Division, by letter dated 9 August 1983.

2. Proposed Action

The proposed action consists of recommending a plan to increase the water supply to lower Bayou Teche and the Vermilion River. The plan will consider the alternatives described below. The Teche-Vermilion Basins water supply project, completed in 1982, supplements low flows in Bayou Teche and the Vermilion River with water pumped from the Atchafalaya River. Since project completion, full pumping capacity has not been attained due to inadequate flow capacity of Upper Bayou Teche. Inadequate fresh water supplies contribute to saltwater intrusion in the lower parts of the basin.

Saltwater intrustion in the agricultural water supply results in reduced yields to rice and crawfish farmers. Over 10,000 acres of rice and 12,000 acres of crawfish farms are affected by lack of fresh water.

3. Alternatives

The alternatives being considered are: (a) Channel improvements to Bayou Teche from Port Barre to Arnaudville, (b) channel improvements for West Atchafalaya Basin Protection Levee borrow pit and new channel cut, (c), a change in operating procedures for the Bayou Courtableau Drainage Structure, (d) No-action plan, which would involve a status-quo scenario whereby there be no change in Federally mandated operating procedures or Federal construction activities.

4. Scoping Process

a. Public input for scoping will be achieved through the distribution of a widely circulated Scoping Input Request to all segments of the public having an interest in the project. In addition, a news release will be issued to the local media. The notice and release will request submission of views on alternatives, significant resources in the study area, and any other project-related issue considered important.

b. A tentative list of significant issues to be discussed in the EIS includes: Agriculture, business and industrial activity, displacement of people and farms, employment, tax revenues, property values, public facilities and services, noise, housing, community cohesion, community facilities, endangered species, wildlife resources, fishery resources, forest resources, wildlife refuges and management areas, National Register sites, and other cultural and historical resources.

c. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report to accompany the EIS. Coordination will be maintained with the U.S. Fish and Wildlife Service on endangered species, and the Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. Coordination will be maintained with the State Historic Preservation Officer.

d. A 60-day public review period will be allowed so that all interested agencies and individuals have the opportunity to comment on the draft report and EIS.

5. Meeting Schedule

Public meetings for the specific purpose of scoping are not being considered. Comments received as a result of the Scoping Input Request will be compiled and analyzed, and Scoping Document summarizing the results will be made available to all respondents.

6. Availability

The draft report and EIS are scheduled to be available to the public in July 1989.

Date: August 2, 1988.

Lloyd K. Brown,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-18638 Filed 8-16-88; 8:45 am]

BILLING CODE 3710-84-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Wilmington Harbor Passing Lane, New Hanover and Brunswick Counties, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The passing lane would consist of widening the existing 38-foot-deep by 400-foot-wide navigation channel in the Cape Fear River by 200 feet for a distance of up to 6 miles. The purposes of these improvements would be to provide sufficient widths so that large ships (with a beam in excess of 100 feet) can safely pass one another, to avoid major delays caused by inability to pass, and to enable ships to maintain speed while passing throughout the widened portion of the river.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Frank Yelverton, Environmental Resources Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402-1890, telephone: (919) 343-4640.

SUPPLEMENTARY INFORMATION: The DEIS is being prepared as a part of the feasibility study for the Wilmington Harbor Passing Lane and the feasibility study is being conducted under authority of section 107 of the River and Harbor Act of 1960, as amended. The proposed passing lane is to be located approximately midway between the ocean bar at the mouth of the Cape Fear River and the North Carolina State Ports Authority facilities. The length of the alternatives considered for the passing lane vary from 1.5 to 6 miles long. Preliminary analysis indicates that the most economical and environmentally sound method of dredging during construction and maintenance would be by bucket and barge; however, alternative dredging and disposal methods, including beach disposal, will be discussed in the DEIS. Disposal of the dredged material by bucket and barge would be in the U.S. Environmental Protection Agency designated ocean dredged material disposal site approximately 4 miles southwest of the mouth of the Cape Fear River. The area to be dredged is generally greater than 15 to 20 feet deep at mean low water and in all cases is greater than 10 feet deep at mean low water.

All private interests and Federal, State, and local agencies having an interest in the study are hereby notified of the study and are invited to comment at this time. Also, a scoping letter requesting input to the study was sent to all known interested parties on July 6, 1988, and comments were requested by August 8, 1988. No scoping meeting is proposed. All comments received as a result of this notice of intent and the scoping letter will be considered in preparation of the DEIS.

Significant issues to be analyzed in the DEIS include: (1) Economic benefits of improvements, (2) acceptability of sediments for ocean disposal, (3) alternative dredging and disposal methods, (4) impacts to fishes and benthic resources, and (5) impacts to cultural resources.

The lead agency for this project is the Wilmington District, Corps of Engineers. Cooperating agency status has not been assigned to, or requested by, any other agency.

The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State laws and Executive Orders.

The DEIS is currently scheduled to be available in April 1990.

Dated: August 3, 1988.

Paul W. Woodbury,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-18639 Filed 8-16-88; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF ENERGY

Financial Assistance Award; University of Massachusetts at Amherst

AGENCY: Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: In accordance with 10 CFR 600.7(b), eligibility for award of a grant, resulting from Procurement Request No. 01-88EH79082.000, will be restricted to

the University of Massachusetts, at Amherst. The DOE is conducting negotiations with the University of Massachusetts, at Amherst for the support of a petroleum contaminated soils conference. These negotiations are expected to result in the issuance of Grant Number DE–FG01–88EH79082 in which the DOE will provide $5,000 of the total estimated cost of $167,000, for a performance period of twelve months, estimated to begin September 19, 1988.

Project Scope: The grant will provide assistance for one conference entitled, "Third Annual Conference on petroleum Contaminated Soils," that will provide technical experts a forum to improve their understanding of the sources, effects, controls, mitigations and reclamation of petroleum contaminated soils and groundwater. It will also give a forum to discuss rational scientifically defensible solutions to these problems as well as provide an understanding of the threats to human health and the environment.

The proposed grantee, The University of Massachusetts at Amherst and the conference organizer, Professor Paul T. Kostecki, Ph.D., are uniquely qualified to organize and conduct this conference. While other firms have expertise in petroleum contaminated soils, the University of Massachusetts at Amherst, is recognized as a leader in the area of determining health hazards associated with complex mixtures such as petroleum products as well as analytical techniques for determining petroleum products in the soil; has two past experiences putting on a national conference of this type and magnitude; has done extensive planning and coordination for this upcoming conference and has a working relationship with the foremost experts in the field.

FOR FURTHER INFORMATION CONTACT: Stanley T. Colt, MA–453.1, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5645.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88–18652 Filed 8–16–88; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; (Cooperative Agreements); Morgantown Energy Technology Center

AGENCY: Department of Energy (DOE).

ACTION: Notice of Noncompetitive Financial Assistance for Cooperative Agreements.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award additional funds to Cooperative Agreements with the University of North Dakota, Energy and Mineral Research Center (UNDEMRC), and the University of Wyoming Research Corporation's Western Research Institute (WRI).

The DOE has determined that award of additional funds on a noncompetitive basis to UNDEMRC and WRI is appropriate based on the following information:

The activities to be funded are continuations of existing research programs and associated funding profiles. The research programs are currently funded in Cooperative Agreements with UNDEMRC and WRI. In 1982 Congress authorized and directed the DOE to "defederalize" three Energy Technology Centers. The principal purpose of this direction was to increase the performance of fossil energy research by the private sector. Pursuant to the direction of Congress, DOE entered into Cooperative Agreements with UNDEMRC and WRI. The Cooperative Agreements effected the defederalization by divesting the DOE of the facilities at the former Grand Forks Energy Technology Center and the Laramie Energy Technology Center. The Agreements also provided DOE sponsorship and funding for UNDEMRC to continue research into more efficient and economical means by which low-ranked coal resources may be utilized and for WRI to perform research associated with gaseous and liquid hydrocarbon resources. It was the intent of the DOE, when entering into the agreements, that the Participants would obtain financial support above that provided by the Government. Accordingly, the funding profiles for each agreement are such that the Government's share of the cost of performance decreases each year. During the past three years most nonfederal organizations with fossil energy research interests have reduced their research efforts; consequently, UNDEMRC and WRI have not been able to obtain the anticipated nonfederal financial participation. The decreasing DOE funding of these research activities and the minimal support from other sources has endangered the Participants' ability to continue to perform the required research. The Government continues to have the mission of sponsoring energy related research in the areas of low-ranked coal utilization and liquid and gaseous hydrocarbon production. UNDEMRC and WRI have developed into key organizations in the DOE's research programs. Therefore, in order to ensure the satisfactory continuation of the activities presently being funded by DOE, it has been determined that it is appropriate to award additional funds to UNDEMRC and WRI on a noncompetitive basis.

FOR FURTHER INFORMATION CONTACT: L. Carol Roberson (I07), U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4466.

Date: August 11, 1988.

Louie L. Calaway,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88–18653 Filed 8–16–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

AGENCY: Department of Energy.

ACTION: Notice of intent to fund research and development project.

SUMMARY: The Department of Energy (DOE), Oak Ridge Operations Office, intends to negotiate a contract with Champion International Corporation for "Development of a Black Liquor Pilot Gasifier for the Pulp and Paper Industry." based on an unsolicited proposal. Champion International and its subcontractor, Rockwell International Corporation, have conducted research and development in black liquor gasification since 1981. A gasifier producing gas for use in combined-cycle cogeneration shows high potential as an alternative to the Tomlinson Recovery Boiler. The unsolicited proposal is for a 15 tons per day unit which, when tested, could culminate in the building of a larger pilot unit at a pulp and paper mill site.

The proposed effort is to be partially funded in Fiscal Year 1988. Completion of the 15 tons per day phase will be subject to availability of funds in later years. The proposed effort, involving an estimated 11.4 man-years, is to be completed within a 27-month time period from start of the contract.

This notification provides an opportunity for pulp and paper companies, and equipment manufacturers, to consider participation in funding the 15 TPD pilot unit. DOE feels that the gasifier project could provide significant benefits for paper-makers and equipment manufacturers and should be continued to commercialization. This notice

represents the only official notice of intent on the part of DOE.

ADDRESS: Request for information regarding the proposed contract and written responses to this notice shall be addressed to:

U.S. Department of Energy, Office of Industrial Programs, CE–142, Room 5F–044, 1000 Independence Avenue, SW., Washington, DC 20585.
ATTN: Mr. S.F. Sobczynski, Program Manager

DATES: This notice is effective until September 16, 1988. DOE will evaluate and take appropriate action on each response received prior to and on this date, and may extend the effective period depending on the results of responses received.

Issued at Washington, DC, on August 4, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88–18654 Filed 8–16–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–576–000, et al.]

Indeck Gas Supply Corp. et al.; Natural Gas Certificate Filings

Take notice that the follwing filings have been made with the Commission:

1. Indeck Gas Supply Corporation.

[Docket No. CP88–576–000]

August 9, 1988.

Take notice that on July 13, 1988, Indeck Gas Supply Corporation (Indeck), an Illinois corporation, whose mailing address is 1111 South Willis Avenue, Wheeling, Illinois 60090, filed in Docket No. CP88–576–000 an application pursuant to section 3 of the Natural Gas Act (NGA), §§ 153.10–153.111 of the Commission's Regulations, and Executive Order No. 10485, as amended by Executive Order No. 12038, and Delegation Order No. 0204–112 of the Secretary of Energy, requesting a Presidential Permit and other authorization under section 3 of the NGA as may be required for the siting, construction, operation, maintenance and connection of facilities at the international border between the United States and Canada, all as more fully set forth in the application on file with the Commission and open for public inspection.

Indeck states that the proposed pipeline facilities (the Indeck Import facility) would consist of approximately two miles of 16-inch pipe. It is stated that the proposed facility would extend from a point at the international border under the Niagara River near Lewiston, New York, where it would interconnect with the facilities of TransCanada Pipeline Limited (TCPL), where it would then interconnect with the proposed facilities of National Fuel Gas Supply Corporation (National Fuel).

Indeck states it is concurrently filing an application with the Economic Regulatory Administration (ERA) requesting authorization to import, over the 15-year period, 11 Bcf of Canadian gas. It is further stated that all the imported gas would be delivered to and consumed by three gas fired cogeneration projects to be constructed, owned and operated by affiliates of Indeck in Tonawanda, Silver Springs and Ilion, New York.

Indeck states that the imported gas would be purchased at the wellhead and transported in Canada through the facilities of TCPL. It is explained that upon receipt of the imported gas from TCPL, Indeck would transport the gas through the proposed Indeck Import Facility and deliver it to National Fuel. It is stated that National Fuel would then transport the gas to an interconnection with the local distribution facilities of National Fuel Gas Distribution Company (Distribution) for redelivery to the Indeck-Yerkes project in Tonawanda, New York. It is stated that National Fuel would also transport the gas to two points of interconnection with the facilities of CNG Transmission Corporation (CNG) for transportation to the remaining two Indeck Cogeneration projects located in Silver Springs and Ilion, New York. Indeck states that National Fuel, CNG, and Distribution have expressed willingness to provide these transportation services on a firm basis. Furthermore, Indeck states that it would prepare and file with the U.S. Army Corps of Engineers an application for a river crossing permit and for any necessary authorizations from the State of New York.

Comment date: August 30, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88–658–000]

August 9, 1988.

Take notice that on August 3, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP88–658–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport natural gas for Transco Energy Marketing Company (TEMCO), a marketer, pursuant to a transportation agreement date June 1, 1988. Transco explains that service commenced June 0, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–4945–000. Transco further explains that the peak day quantity would be 285,000 dekatherms, the average daily quantity would be 285,000 dekatherms, and that the annual quantity would be 104,025,000 dekatherms. Transco explains that it would receive natural gas for TEMCO's account at points of receipt in Pennsylvania, New Jersey, Alabama, Georgia, Texas, Louisiana, offshore Louisiana and offshore Texas and would redeliver natural gas for TEMCO's account to Florida Gas Transmission Company at Vinton, Calcasieu Parish, Louisiana and East White Lake Field, Vermilion Parish, Louisiana.

Comment date: September 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88–629–000]

August 9, 1988.

Take notice that on July 26, 1988, Tennessee Gas Pipline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–629–000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service for CSX NGL Corporation (CSX), an end-user, underApplicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the National Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated July 1, 1988, it proposes to transport on an interruptible basis, up to 50,000 dekatherms of national gas for CSX from various receipt points located offshore Louisiana, as more fully described in the request, to an interconnection between Tennessee and Texas Gas Transmission Corporation located at Egan, Acadia Parish, Louisiana, for use at CSX' Eunice Plant.

Applicant also states that no construction of facilities will be required to provide the transportation service.

The Applicant further states that the peak day quantities would be 50,000 dekatherms, the average daily guantities would be 2,967 dekatherms, and the annual quantities would be 1,086,240 dekatherms. Applicant avers that service under Section 284.223(a) commenced July 7, 1988, as reported in Docket No. ST88–4792 (filed July 19, 1988).

Comment date: September 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP88–647–000]

August 9, 1988.

Take notice that on August 1, 1988, Williston Basin Interstate Pipline Company (Williston Basin), Suit 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP88–647–000 a request, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a sales tap and appurtenant facilities under its blanket certificate authorization issued in Docket Nos. CP82–487–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to abandon a sales tap located on its Elk Basin to Billings Red Line in Yellowstone County, Montana. It is stated that the customer, Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., no longer requires service throuh this tap because the retail customer previously receiving service through this tap is no longer in business. Williston Basin further states that since the sales tap will be abandoned on its existing transmission right-of-way, there will be no significant adverse impact on the environment.

Comment date: September 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Colorado Insterstate Gas Company

[Docket No. CP88–643–000]

August 9, 1988.

Take notice that on July 28, 1988, as supplemented on August 3, 1988, Colorado Insterstate Gas Company, (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP88–643–000 a certificate application pursuant to section 7(c) of the Natural Gas Act and in compliance with a Commission letter order issued July 15, 1988, in Docket No. RP87–74–000 for authority for a sales standby service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CIG requests certificate authority for an elective daily sales standby service for its customers purchasing gas under certain of its Original Volume No. 1 Tariff firm sales rate schedules. CIG indicates that the authority is requested in compliance with and pursuant to the Commission's July 15, 1988, letter order in Docket No. RP87–74–000 in which an uncontested offer of settlement related to the service was approved.

CIG proposes to charge for the service an initial rate equal to the difference between the non-gas fixed cost embodied in CIG's sales commodity rate and the maximum firm transportation commodity charge. CIG indicates that the sales standby charge as provided by the settlement offer is currently 38.91 cents per Mcf, subject to adjustment based upon the outcome of Docket No RP87–30. CIG also indicates that inasmuch as the customer is already paying for the firm system capacity, the reservation fee, otherwise applicable to firm transportation service, is waived.

CIG requests that the certificate authority be made effective on July 14, 1987, in conformity with (1) the Commission's order issued July 15, 1987, in Docket No. RP87–74–000 wherein the Commission accepted CIG's tariff filing to initiate a sales standby service and charge effective July 14, 1987, and (2) the stipulation and agreement, and related letter order issued July 15, 1988, wherein CIG proposed and the Commission approved establishment of sales standby rates effective July 14, 1987.

Comment date: August 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. K N Energy, Inc.

[Docket No. CP88–649–000]

August 10, 1988.

Take notice that on August 1, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP88–649–000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act for authorization to redistribute volumes of gas delivered to Northwestern Public Service Company (Northwestern) among three existing delivery points under the certification issued in Docket No. CP83–140–000, *et. al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

K N proposes to redistribute Northwestern's Winter Period Service demand volumes by reassigning all of these volumes presently delivered to the North Platte delivery point (3222 Mcf) to the Grand Island delivery point and the Kearney delivery point. It is stated that the volumes delivered to the Grand Island delivery point would be increased from 2100 Mcf to 3711 Mcf (1611 Mcf increase) and that the volumes delivered to the Kearney delivery point would be increased from 2843 Mcf to 4454 Mcf (1611 Mcf increase).

K N states that no change in Northwestern's total authorized volumes would result from the proposed reassignment. K N further states that the proposed reassignments would have no material impact on K N's peak day and annual deliveries.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP88–645–000]

August 10, 1988.

Take notice that on July 29, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–645–000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct one delivery point and appurtenant facilities to accommodate natural gas deliveries to Michigan Gas Company (MGC) under its blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that MGC has requested that Northern construct one small delivery point to accommodate Natural gas deliveries to the community of Bruces Crossing, Michigan to be served by MGC. Northern further states that the estimated peak day and annual volumes to be delivered to MGC at the delivery point to be located in Ontonagon County, Michigan, would be 134 Mcf and 20,028 Mcf, respectively.

Northern indicates that the volumes to be delivered to MGC at the proposed delivery point would be within its currently authorized firm entitlement, as authorized by Commission order issued on November 9, 1987, in Docket No. RP85–206–11 through RP85–206–27, and

would, therefore, have no impact on Northern's peak day and annual deliveries. Northern further indicates that the required volumes would be served from the firm entitlement currently designated by MGC for delivery to Ontonagon, Michigan.

Northern states that the total estimated cost to construct the proposed delivery point would be $6,280.00 and that MGC would not be required to contribute in aid of construction.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-657-000]

August 10, 1988.

Take notice that on August 3, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-657-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Placid Oil Company (Placid), under the certificate issued in Docket No. CP88-328-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Transco states that it proposes to transport natural gas from a point of receipt located in High Island Block 232, Offshore Texas to its Johnsons Bayou delivery point.

Transco further states that the maximum daily and annual quantities that it would transport for Placid would be 25,000 dt equivalent and 8,577,500 dt equivalent, respectively.

Transco indicates that in Docket No. ST88-4822 it reported that transportation service for Placid commenced under the 120-day automatic authorization provisions of § 284.233(a).

It is stated in the application that Transco would construct no new facilities to provide the proposed service, but that Placid would construct a meter station and appurtenant facilities in High Island Block 232, Offshore Texas at an estimatd cost of $2,100,000 to interconnect with Transco's 12-inch diameter pipeline in High Island Block 232, Offshore Texas.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Border Pipeline Company

[Docket No. CP88-652-000]

August 10, 1988.

Take notice that on August 2, 1988, as supplemented August 8, 1988, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-652-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate certain measurement appurtenances in order to increase the capacity of the Welcome Meter Station (Welcome) located in Martin County, Minnesota, under the authorization issued Docket No. CP84-420-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public insepction.

Northern Border proposes to install an additonal filter/separator and install gas heating equipment with larger capacity. It is asserted that the proposed modifications would increase the delivery capability by Northern Border to Northern Natural Gas Company, Division of Enron Corp's (Northern Natural) system at Welcome from 125,000 Mcf/d to 175,000 Mcf/d.

Northern Border alleges that the increased capacity at Welcome would enhance the operational flexibility of Northern Natural's system, increase the delivery of natural gas in Northern Natural's market area, and reduce fuel consumption on Northern Natural's system. It is stated that Northern Border is authorized to transport and deliver at Welcome on a firm basis up to 75,000 Mcf/d for Northern Natural and up to 125,000 Mcf/d for United Gas Pipe Line Company (United). It is further stated that Northern Natural and United's natural gas volumes delivered at Welcome are those, among others, which Northern Border was authorized to transport by the Commission at Docket No. CP78-124-000, (10 FERC ¶ 61,032) as amended.[1] It is asserted that Northern Border was authorized by Commission order dated January 17, 1986, in Docket No. CP86-144-000, (34 FERC ¶ 61,142) to among other things, deliver up to 125,000 Mcf/d at Welcome for the account of United. It is alleged that Northern Border is requesting authority to increase the operational capacity of the Welcome station and not the certificated levels that it deliveries to Northern Natural, United, and others at the station.

It is stated that the cost of the proposed facility modification is estimated to be $258,950. It is further stated that Northern Natural would pay all the costs associated with the project.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP88-635-000*; CP88-636-000; CP88-637-000; CP88-638-000; CP88-639-000; CP88-640-000; CP88-641-000]

*These requests are not consolidated.

August 10, 1988.

Take notice that on July 28, 1988, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-635-000, *et al.*, requests pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for various customers under Applicant's certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests which are on file with the Commission and open for public inspection.

Applicant proposes to transport, on an interruptible basis, natural gas for specified customers, as noted in the Appendix hereto. It is stated that transportation agreements between the parties provide for Applicant to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Louisiana, offshore Texas, offshore Louisiana and Canada. It is further stated that Applicant would then transport and deliver the gas, less fuel used and unaccounted-for line losses. Applicant states that each service has commenced in accordance with § 284.223(a) of the Regulations. Applicant states that no new facilities nor expansion of existing facilities are required to provide the proposed service.

Comment date: September 26, 1988, in accordance with standard Paragraph G at the end of this notice.

[1] See orders issued April 28, 1980, (11 FERC ¶ 61,088) April 24, 1981, (15 FERC ¶ 61,073) and December 14, 1984 (29 FERC ¶ 61,301).

APPENDIX

Docket No. CP88—	Filed	Customer	Redelivery point	Interruptible transportation		Annual	Docket No.[1] ST88—
				Peak (dt/d)	Average (dt/d)		
635-000	7/28/88	Archer Daniels Midland Company (shipper/end-user).	Illinois Power Company, Knox County, IL	1,200	[2] 800	[2] 292,000	4562
636-000	7/28/88	Loutex Energy Inc. (marketer)	Columbia Gas Transmission Corporation, Darke and Lucas Counties, OH.	50,000	[2] 20,000	[2] 7,300,000	4442
637-000	7/28/88	Reed Minerals Division, Harsco Corporation (shipper/end-user).	Gas Service Company, Miami County, KS	1,000	[2] 80	[2] 29,200	4527
638-000	7/28/88	Mobil Oil Corporation (producer)	General Motors, Defiance County, OH	15,000	[2] 12,000	[2] 4,380,000	4560
639-000	7/28/88	Unicorp Energy, Inc. (marketer)	(1) Michigan Gas Storage, Oakland County, MI and. (2) Trunkline Gas Company, Douglas County, IL.	100,000	[2] 30,000	[2] 10,000,000	4561
640-000	7/28/88	Gulf Energy Marketing Company (marketer).	Columbia Gas Transmission Corporation, Darke and Lucas Counties, OH.	100,000	[2] 40,000	[2] 14,600,000	4441
641-000	7/28/88	Mobil Oil Corporation (producer)	General Motors, Vermilion County, IL	15,000	[2] 12,000	[2] 4,380,000	4558

[1] Report of service under Section 284.223(a) of the Regulations.
[2] Average day and annual volumes are based upon shipper's estimates. The actual volumes are dependent upon the shipper's requirements.

11. United Gas Pipeline Company

[Docket No. CP88-653-000]

August 10, 1988.

Take notice that on August 1, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-653-000, a request for authorization pursuant to §§ 157.205 and 157.216(b) of the Regulations under the Natural Gas Act, and United's blanket certificate issued in Docket No. CP88-430-000, for authorization to abandon sales service and facilities to Texas Eastern Products Pipeline Company (Texas Eastern), a direct industrial customer, at the following locations:

Location	Contract expiration date	Service authorized in Docket No.
Sarepta Pump Station, Webster Parish, Louisiana	12/1/84	G-232
Carthage Oil Terminal, Panola County, Texas	12/1/84	G-232

United states that the sales contracts have expired and that Texas Eastern has consented to the proposed abandonments. United further states that the abandonments will be accomplished without detriment or disadvantage to its other existing customers. It is stated that the total cost of removing the facilities is estimated at $5,000.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corporation

[Docket Nos. CP88-611-000; * CP88-612-000; CP88-613-000; CP88-614-000; CP88-615-000; CP88-616-000; CP88-617-000; CP88-618-000; CP88-619-000; and CP88-624-000]

* These application are not consolidated.

August 10, 1988.

Take notice that on July 21, 1988, and July 22, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed to the Docket Nos. CP88-611-000, *et al.*, permission and approval to abandon or partially abandon firm sales entitlement to ten customers, all as more fully set forth in the applications on file with the Commission and open to public inspection.[1]

Northwest states that pursuant to § 284.10 of the Commission's Regulations, the customers, as noted in the Appendix hereto, converted firm sales entitlements under their respective service agreements to firm transportation under Nortwestern's Rate Schedule TF-1. Northwest states that it now requests to abandon or partially abandon firm sales entitlement to each customer associated with the reductions in firm sales service to be effective as of the dates noted on the Appendix. Nortwest states that, pursuant to § 284.10(f)(2), the exercise of contract conversion rights by a firm sales customer under Section 284.10(d) constitutes consent by that customer to the abandonment of sales service to the extent of the conversion.

Comment date: August 31, 1988, in accordance with Standard Paragraph F at the end of this notice.

[1] See attached Appendix for details of each application, including customer name, rate schedule, revised sales entitlement, etc.

APPENDIX

Docket No. CP88—	Filed	Customer	Rate schedule	Firm sales entitlement (MMBtu/d)			Effective date of reduction
				Current	Reduction	Revised	
611-000	7/21/88	CP National Corporation	ODL-1	30,871	23,871.0	7,000.0	7/1/88
612-000	7/21/88	The Washington Water Power Company	ODL-1	133,270	73,270.0	60,000.0	7/1/88
613-000	7/21/88	City of Ellensburg, Washington	DS-1	6,000	1,500.0	4,500.0	7/1/88
614-000	7/21/88	Southwest Gas Corporation	ODL-1	126,563	106,563.0	20,000.0	7/1/88

BEST COPY AVAILABLE

APPENDIX—Continued

Docket No. CP88—	Filed	Customer	Rate schedule	Firm sales entitlement (MMBtu/d)			Effective date of reduction
				Current	Reduction	Revised	
615-000	7/21/88	Questar Pipeline Company and Colorado Interstate Gas Company	PL-1	80,041	80,041.0		7/1/88
			PL-1	160,077	160,077.0		7/1/88
616-000	7/21/88	Cascade Natural Gas Corporation	ODL-1	206,123	144,523.0	61,600.0	7/1/88
617-000	7/21/88	Washington Natural Gas Company	ODL-1	306,733	156,733.0	150,000.0	7/1/88
618-000	7/21/88	Intermountain Gas Company	ODL-1	113,024	112,924.0	100.0	7/1/88
619-000	7/21/88	Utah Gas Service Company	DS-1	6,433	5,146.0	1,287.0	7/1/88
624-000	7/22/88	Northwest Natural Gas Company	ODL-1	286,044	85,810.3	200,233.7	7/1/88

13. United Gas Pipe Line Company

[Docket No. CP88-655-000]

August 10, 1988.

Take notice that on August 1, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-655-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon a natural gas transportation service for Florida Gas Transmission Company (Florida Gas) authorized by Commission order on December 15, 1978 in Docket No. CP87-498, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that pursuant to the Commission order it is authorized to transport up to 25,000 Mcf of natural gas per day for Florida Gas under a gas transportation agreement dated August 16, 1978, from a point on United's ten-inch diameter Bogolusa lateral in Jefferson Davis County, Mississippi to various existing interconnections between the systems of United and Florida Gas in St. Landry Parish, Louisiana, St. Helena Parish, Louisiana, and Stone County, Mississippi.

United indicates that the gas transportation agreement was cancelled on May 4, 1988, and that it has given Florida Gas written notice terminating such service in accordance with the terms of the agreement.

Comment date: August 31, 1988, in accordance with Standard Paragraph F at the end of this notice.

14. Panhandle Eastern Pipe Line Company

[Docket No. CP88-648-000]

August 12, 1988.

Take notice that on August 1, 1988, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-648-000, a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service to Gulf Energy Marketing Company (Gulf Energy), a marketer, under Panhandle's blanket transportation certificate issued November 20, 1987, in Docket No. CP86-585-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to transport for Gulf Energy up to 100,000 dt of natural gas per day or approximately 14,600,000 dt of natural gas annually, pursuant to a transportation agreement dated May 4, 1988. Panhandle states that the transportation service for Gulf Energy commenced June 1, 1988, under the 120-day automatic authorization provisions of § 284.223(a). Panhandle states that it notified the Commission of the commencement of the transportation service in Docket No. ST88-4441.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18624 Filed 8-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-131-003]

Carnegie Natural Gas Co.; Compliance Filing

August 11, 1988.

Take notice that on August 5, 1988, Carnegie Natural Gas Company (Carnegie) tendered for filing certain revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet No. 94a
Second Revised Sheet No. 104
Second Revised Sheet No. 121
Second Revised Sheet No. 126

Carnegie states that these tariff sheets are filed in compliance with a Letter Order dated July 15, 1988. The proposed effective date is June 2, 1988.

Carnegie states First Revised Sheet No. 94a is being filed to state that Original Sheet 94a is superseded by Substitute Second Revised Sheet Nos. 93 and 94. Second Revised Sheet No. 121 is filed to delete the processing fee requirement from Carnegie's interruptible transportation rate schedule, § 3.1. Second Revised Sheet Nos. 104 and 126 are filed to reduce the penalty for excess deliveries during gas supply curtailment and to provide for notification of the imbalance.

Carnegie states that the filing was served on parties to Docket No. RP88–131–000 and each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18618 Filed 8–16–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–126–001]

Colorado Interstate Gas Co., Compliance Filing

August 11, 1988.

Take notice that on August 5, 1988, Colorado Interstate Gas Company (CIG) filed Substitute Third Revised Sheet No. 60 and Substitute Fifth Revised Sheet No. 61 to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1988.

CIG states that this filing is in compliance with the Director Letter Order of July 8, 1988 and the proposed tariff changes affect Section 21 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

CIG states that copies of this filing have been served upon its jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18622 Filed 8–16–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–224–001]

Freeport Interstate Pipeline Co.; Filing

August 11, 1988.

Take notice that on August 4, 1988, Freeport Interstate Pipeline Company (Freeport) filed Substitute Original Sheet No. 6 and Substitute Original Sheet No. 50 to its FERC Gas Tariff, Original Volume No. 1, to be effective February 6, 1988.

Freeport states that the purpose of this filing is to correct typographical errors on Original Sheet Nos. 6 and 50, which were previously filed on July 29, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18619 Filed 8–16–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST88–4010–000, et al.]

Exxon Gas System, Inc., et al.; Self-Implementing Transactions

August 10, 1988.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction

The "Part 284 Subpart" column in the following table indicate the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to §284.102 of the Commission's Regulations and § 311(a)(1) of the NGPA.

A "C"indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before August 31, 1988.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested persons may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation sales or assignments by a local distribution company on behalf of or to an interstates pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under §284.224 of the Commission's Regulations.

Lois D. Cashell,

Acting Secretary.

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-4010 Exxon Gas System, Inc	Transco Gas Pipe Line Corp., et al	6-01-88	C	10-29-88	10.00
ST88-4011 Northern Natural Gas Co	Adobe Gas Co	6-01-88	B		
ST88-4012 Northern Natural Gas Co	Tejas Power Corp	6-01-88	G-S		
ST88-4013 Northern Natural Gas Co	Northern Minnesota Utilities	6-01-88	B		
ST88-4014 Taft Pipeline Co		6-01-88	C	10-29-88	10.00
ST88-4015 CNG Transmission Corp	Phoenix Kdiversified Ventures, Inc	6-01-88	B		
ST88-4016 Texas Eastern Transmission Corp	Pointe Coupee Parish	6-01-88	B		
ST88-4017 Transok, Inc	Natural Gas Pipeline Co. Of America	6-01-88	C	10-29-88	37.13
ST88-4018 Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	6-01-88	B		
ST88-4019 Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	6-01-88	B		
ST88-4020 Carnegie Natural Gas Co	Columbia Gas of Pennsylvania, Inc	6-02-88	B		
ST88-4021 Tarpon Transmission	Tejas Power Corp	6-02-88	G-S		
ST88-4022 Tennessee Gas Pipeline Co	Orange and Rockland Utilities, Inc	6-02-88	B		
ST88-4023 Tennessee Gas Pipeline Co	Nashville Gas Co	6-02-88	B		
ST88-4024 Colorado Interstate Gas Co	Llano, Inc	6-02-88	B		
ST88-4025 Colorado Interstate Gas Co	Southern California Gas Co	6-02-88	B		
ST88-4026 Colorado Interstate Gas Co	Iowa-Illinois Gas & Electric Co	6-02-88	B		
ST88-4027 Transcontinental Gas Pipe Line Corp	City of Shelby	6-02-88	B		
ST88-4028 Transcontinental Gas Pipe Line Corp	City of Shelby	6-02-88	B		
ST88-4029 Transcontinental Gas Pipe Line Corp	Humble Gas System, Inc., et al	6-02-88	B		
ST88-4030 Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	6-02-88	B		
ST88-4031 Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	6-02-88	B		
ST88-4032 Transok, Inc		6-02-88	C	10-30-88	32.50
ST88-4033 Colorado Interstate Gas Co	Pacific Gas and Electric Co	6-02-88	B		
ST88-4034 Colorado Interstate Gas Co	Peoples Natural Gas Co	6-02-88	B		
ST88-4035 Colorado Interstate Gas Co	Associated Intrastate Pipeline Co	6-02-88	B		
ST88-4036 Texas Eastern Transmission Corp	American Distribution Co., Inc	6-03-88	B		
ST88-4037 Texas Eastern Transmission Corp	Central Illinois Public Service Co	6-03-88	B		
ST88-4038 Texas Eastern Transmission Corp	National Gas and Oil Corp	6-03-88	B		
ST88-4039 Texas Eastern Transmission Corp	East Ohio Gas Co	6-03-88	B		
ST88-4040 Texas Eastern Transmission Corp	Boston Gas Co	6-03-88	B		
ST88-4041 El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	6-03-88	B		
ST88-4042 El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	6-03-88	B		
ST88-4043 Webb/Duval Gatherers	Transcontinental Gas Pipe Line Corp	6-03-88	C		
ST88-4044 Texas Gas Transmission Corp	Memphis Light, Gas and Water Division	6-03-88	B		
ST88-4045 Texas Gas Transmission Corp	City of Henderson	6-03-88	B		
ST88-4046 Texas Gas Transmission Corp	City of Hamilton	6-03-88	B		
ST88-4047 Texas Gas Transmission Corp	Ohio Valley Gas Corp	6-03-88	B		
ST88-4048 Texas Gas Transmission Corp	Louisiana Resources Co	6-03-88	B		
ST88-4049 Texas Gas Transmission Corp	Carrollton Utilities	6-03-88	B		
ST88-4050 Texas Gas Transmission Corp	Ohio Valley Gas Corp	6-03-88	B		
ST88-4051 Texas Gas Transmission Corp	Mississippi Valley Gas Co	6-03-88	B		
ST88-4052 Texas Gas Transmission Corp	Indiana Utilities Corp	6-03-88	B		
ST88-4053 CNG Transmission Co	Natural Gas Pipeline Co. of America	6-06-88	C	11-03-88	24.32
ST88-4054 Valero Transmission, L.P	Transcontinental Gas Pipe Line Corp	6-06-88	C		
ST88-4055 Valero Transmission, L.P	El Paso Natural Gas Co	6-06-88	C		
ST88-4056 Valero Transmission, L.P	Trunkline Gas Co	6-06-88	C		
ST88-4057 Valero Transmission, L.P	Tennessee Gas Pipeline Co	6-06-88	C		
ST88-4058 Tennessee Gas Pipeline Co	Natural Gas Clearing. Intra. Pipeline Co	6-06-88	B		
ST88-4059 Tennessee Gas Pipeline Co	Algonquin Gas Transmission Co	6-06-88	G		
ST88-4060 Tennessee Gas Pipeline Co	East Ohio Gas Co., et al	6-06-88	BD		
ST88-4061 Delhi Gas Pipeline Co	Northern Natural Gas Co	6-06-88	C	11-03-88	35.00
ST88-4062 Exxon Gas System, Inc	Northern Natural Gas Co	6-03-88	C	10-31-88	12.50
ST88-4063 Exxon Gas System, Inc	Texas Eastern Transmission Corp	6-06-88	C	11-03-88	7.50
ST88-4064 Exxon Gas System, Inc	Northern Natural Gas Co	6-06-88	C	11-03-88	12.80
ST88-4065 Natural Gas Pipeline Co. of America	Union Electric Co	6-06-88	B		
ST88-4066 Natural Gas Pipeline Co. of America	Chevron U.S.A	6-06-88	G-S		
ST88-4067 Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	6-06-88	B		
ST88-4068 Natural Gas Pipeline Co. of America	Valero Transmission, L.P	6-06-88	B		
ST88-4069 Transcontinental Gas Pipe Line Corp	N. Carolina Natural Gas Corp	6-03-88	B		
ST88-4070 Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	6-03-88	B		
ST88-4071 Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	6-03-88	B		
ST88-4072 Transcontinental Gas Pipe Line Corp	Commission of Public Works, Greenwood	6-03-88	B		
ST88-4073 Tennessee Gas Pipeline Co	Bishop Pipeline Corp	6-03-88	B		
ST88-4074 Colorado Interstate Gas Co	Southern California Gas Co	6-03-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Sub-part	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-4075 Panhandle Eastern Pipe Line Co	Kansas Gas Supply Corp	6-03-77	B		
ST88-4076 Truckline Gas Co	Consumers Power Co	6-03-88	B		
ST88-4077 Truckline Gas Co	Consumers Power Co	6-03-88	B		
ST88-4078 Truckline Gas Co	Yankee Pipeline Co	6-03-88	B		
ST88-4079 Truckline Gas Co	Bishop Pipeline Corp	6-03-88	B		
ST88-4080 Truckline Gas Co	Access Energy Pipeline Corp	6-03-88	B		
ST88-4081 Truckline Gas Co	Access Energy Pipeline Corp	6-06-88	B		
ST88-4082 Texas Corp	Northern Natural Gas Co	6-06-88	C		
ST88-4083 United Gas Pipe Line Co	Bridgeline Gas Distribution Co	6-06-88	B		
ST88-4084 United Gas Pipe Line Co	Amalgamated Pipeline Co	6-06-88	B		
ST88-4085 United Gas Pipe Line Co	Amalgamated Pipeline Co	6-06-88	B		
ST88-4086 El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	6-07-88	B		
ST88-4087 Transcontinental Gas Pipe Line Corp	Houston Pipe Line Co	6-06-88			
ST88-4088 Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	6-06-88	B		
ST88-4089 Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	6-06-88	B		
ST88-4090 Trunkline Gas Co	Central Illinois Public Service Co	6-03-88	B		
ST88-4091 Sea Robin Pipeline Co	Baltimore Gas & Elect. Co., et al	6-07-88	B		
ST88-4092 United Gas Pipe Line Co	Mississippi Fuel Co	6-07-88	B		
ST88-4093 United Gas Pipe Line Co	Jala Pipeline Corp	6-07-88	B		
ST88-4094 United Gas Pipe Line Co	Louisiana State Gas Corp	6-07-88	B		
ST88-4095 United Gas Pipe Line Co	Houston Pipe Line Co	6-07-88	B		
ST88-4096 United Gas Pipe Line Co	Bridgeline Gas Distribution Co	6-07-88	B		
ST88-4097 Columbia Gulf Transmission Co	Columbia Gas Transmission Corp	6-07-88	G		
ST88-4098 Columbia Gulf Transmission Co	Nashville Gas Co	6-07-88	B		
ST88-4099 Columbia Gulf Transmission Co	Exxon Corp	6-07-88	G-S		
ST88-4100 Columbia Gulf Transmission Co	Shreveport Intrastate Gas Trans., Inc	6-07-88	B		
ST88-4101 Columbia Gulf Transmission Co	Peoples Natural Gas Co	6-07-88	B		
ST88-4102 Columbia Gulf Transmission Co	Virginia Natural Gas Co	6-07-88	B		
ST88-4103 Columbia Gulf Transmission Co	Alabama-Tennessee Natural Gas Co	6-07-88	B		
ST88-4104 Colorado Interstate Gas Co	Quivira Gas Co	6-08-88	B		
ST88-4105 CNG Transmission Corp	Bishop Pipeline Corp	6-08-88	G-S		
ST88-4106 CNG Transmission Corp	Industrial Energy Services Co	6-08-88	G-S		
ST88-4107 CNG Transmission Corp	PSI, Inc	6-08-88	G-S		
ST88-4108 CNG Transmission Corp	TXG Marketing	6-08-88	G-S		
ST88-4109 CNG Transmission Corp	Riley Natural	6-08-88	G-S		
ST88-4110 CNG Transmission Corp	TXG Marketing	6-08-88	G-S		
ST88-4111 CNG Transmission Corp	Bishop Pipeline Corp	6-08-88	G-S		
ST88-4112 CNG Transmission Corp	Riley Natural	6-08-88	G-S		
ST88-4113 CNG Transmission Corp	CNG Trading Co	6-08-88	G-S		
ST88-4114 CNG Transmission Corp	Direct Gas	6-08-88	G-S		
ST88-4115 CNG Transmission Corp	PSI, Inc	6-08-88	G-S		
ST88-4116 Lawrenceburg Gas Transmission Corp	Cincinnati Gas and Electric Co	6-08-88	B		
ST88-4117 Arkla Energy Resources	The Borough of Chambersburg Gas Dept	6-08-88	B		
ST88-4118 Arkla Energy Resources	Mt. Carmel Public Utility Co	6-08-88	B		
ST88-4119 Arkla Energy Resources	Cairo Public Utility Comm	6-08-88	B		
ST88-4120 Panhandle Eastern Pipe Line Co	Western Gas Processors	6-09-88	G-S		
ST88-4121 Williams Natural Gas Co	Heartland Gas Marketing, Inc	6-09-88	G-S		
ST88-4122 Williams Natural Gas Co	Vesta Energy Co	6-09-88	G-S		
ST88-4123 Tennessee Gas Pipeline Co	East Ohio Gas Co	6-09-88	B		
ST88-4124 Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	6-10-88	B		
ST88-4125 Transok, Inc	Arkla Energy Resources	6-10-88	C	11-07-88	37.13
ST88-4126 Transok, Inc	Natural Gas Pipeline Co. of America	6-10-88	C	11-07-88	37.13
ST88-4127 Kentucky West Virginia Gas Co	Equitable Gas Co	6-13-88	B		
ST88-4128 Kentucky West Virginia Gas Co	Equitable Gas Co	6-13-88	B		
ST88-4129 Kentucky West Virginia Gas Co	Equitable Gas Co	6-13-88	B		
ST88-4130 United Gas Pipe Line Co	Florida Gas Transmisstion Co	6-10-88	G		
ST88-4131 United Gas Pipe Line Co	Bishop Pipeline Corp	6-10-88	B		
ST88-4132 United Gas Pipe Line Co	Amalgamated Pipeline Co	6-10-88	B		
ST88-4133 United Gas Pipe Line Co	Jala Pipe Line Corp	6-10-88	B		
ST88-4134 United Gas Pipe Line Co	Tejas Power Corp	6-10-88	G-S		
ST88-4135 United Gas Pipe Line Co	Texaco Producing, Inc	6-10-88	G-S		
ST88-4136 Tennessee Gas Pipeline Co	Peoples Natural Gas Co., et al	6-10-88	B		
ST88-4137 ANR Pipeline Co	Great River Gas Co	6-10-88	B		
ST88-4138 ANR Pipeline Co	Consumers Power Co	6-10-88	B		
ST88-4139 ANR Pipeline Co	Mountaineer Gas Co	6-10-88	B		
ST88-4140 ANR Pipeline Co	Peoples Gas Light & Coke Co	6-10-88	B		
ST88-4141 ANR Pipeline Co	Olympic Pipeline Co	6-10-88	B		
ST88-4142 ANR Pipeline Co	Ohio Gas Co	6-10-88	B		
ST88-4143 ANR Pipeline Co	Battle Creek Gas Co	6-10-88	B		
ST88-4144 ANR Pipeline Co	Golden Gas Energies, Inc	6-10-88	B		
ST88-4145 Colorado Interstate Gas Co	Iowa-Illinois Gas & Electric Co	6-13-88	B		
ST88-4146 Williams Natural Gas Co	Oxy U.S.A., Inc	6-13-88	G-S		
ST88-4147 Tennessee Gas Pipeline Co	Access Energy Pipeline Corp	6-13-88	B		
ST88-4148 Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co	6-13-88	C		
ST88-4149 Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	6-13-88	B		
ST88-4150 Transcontinental Gas Pipe Line Corp	Southwestern Virginia Gas Co	6-13-88	B		
ST88-4151 United Gas Pipe Line Co	Peoples Gas & Power Co., et al	6-13-88	B		
ST88-4152 Texas Eastern Transmission Corp	Monterey Pipeline Co	6-14-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-4153 Texas Eastern Transmission Corp	Mississippi Valley Gas Co	6-14-88	B		
ST88-4154 Texas Eastern Transmission Corp	Indiana Gas Co, Inc	6-14-88	B		
ST88-4155 Texas Eastern Transmission Corp	Public Service Electric and Gas Co	6-14-88	B		
ST88-4156 Texas Eastern Transmission Corp	Brooklyn Union Gas Co	6-14-88	B		
ST88-4157 Texas Eastern Transmission Corp	Union Electric Co	6-14-88	B		
ST88-4158 Texas Eastern Transmission Corp	Public Service Electric and Gas Co	6-14-88	B		
ST88-4159 Texas Eastern Transmission Corp	Brooklyn Union Gas Co	6-14-88	B		
ST88-4160 Texas Eastern Transmission Corp	Philadelphia Gas Works	6-14-88	B		
ST88-4161 Texas Eastern Transmission Corp	City of Batesville	6-14-88	B		
ST88-4162 Texas Eastern Transmission Corp	Philadelphia Electric Co	6-14-88	B		
ST88-4163 Texas Eastern Transmission Corp	City of Loretto	6-14-88	B		
ST88-4164 Texas Eastern Transmission Corp	Brooklyn Union Gas Co	6-14-88	B		
ST88-4165 Texas Eastern Transmission Corp	City of Cairo	6-14-88	B		
ST88-4166 Texas Eastern Transmission Corp	City of Norwich	6-14-88	B		
ST88-4167 Texas Eastern Transmission Corp	City of Liberty	6-14-88	B		
ST88-4168 Texas Eastern Transmission Corp	City of New Harmony	6-14-88	B		
ST88-4169 Texas Eastern Transmission Corp	Bay State Gas Co	6-14-88	B		
ST88-4170 Texas Eastern Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4171 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4172 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4173 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4174 CNG Transmission Corp	Hope Gas, Inc	6-14-88	B		
ST88-4175 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4176 CNG Transmission Corp	Niagara Mowhawk Power Corp	6-14-88	B		
ST88-4177 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4178 CNG Transmission Corp	Peoples Natural Gas Co	6-14-88	B		
ST88-4179 CNG Transmission Corp	Corning Natual Gas Corp	6-14-88	B		
ST88-4180 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4181 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4182 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4183 CNG Transmission Corp	Peoples Natural Gas Co	6-14-88	B		
ST88-4184 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4185 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4186 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4187 CNG Transmission Corp	Peoples Natural Gas Co	6-14-88	B		
ST88-4188 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4189 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4190 CNG Transmission Corp	River Gas Co	6-14-88	B		
ST88-4191 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4192 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4193 CNG Transmission Corp	Peoples Natural Gas Co	6-14-88	B		
ST88-4194 CNG Transmission Corp	East Ohio Gas Co	6-14-88	B		
ST88-4195 CNG Transmission Corp	East Ohio Gas Co	6-14-88	B		
ST88-4196 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4197 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4198 CNG Transmission Corp	Peoples Natural Gas Co	6-14-88	B		
ST88-4199 CNG Transmission Corp	Peoples Natural Gas Co	6-14-88	B		
ST88-4200 CNG Transmission Corp	Peoples Natural Gas Co	6-14-88	B		
ST88-4201 CNG Transmission Corp	Peoples Natural Gas Co	6-14-88	B		
ST88-4202 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4203 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4204 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4205 CNG Transmission Corp	Tennessee Gas Pipeline Co	6-14-88	G		
ST88-4206 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4207 CNG Transmission Corp	New York State Electric and Gas Co	6-14-88	B		
ST88-4208 CNG Transmission Corp	Mountaineer Gas Co	6-14-88	B		
ST88-4209 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4210 CNG Transmission Corp	East Ohio Gas Co	6-14-88	B		
ST88-4211 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4212 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4213 CNG Transmission Corp	River Gas Co	6-14-88	B		
ST88-4214 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4215 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4216 CNG Transmission Corp	North Penn Gas Co	6-14-88	B		
ST88-4217 CNG Transmission Corp	Niagara Mohawk Power Corp	6-14-88	B		
ST88-4218 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4219 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4220 CNG Transmission Corp	Rochester Gas & Electric Corp	6-14-88	B		
ST88-4221 CNG Transmission Corp	Hope Gas, Inc	6-14-88	B		
ST88-4222 CNG Transmission Corp	Peoples Natural Gas Co	6-14-88	B		
ST88-4223 Transco Louisiana Intrastate Pipeline Co		6-14-88	C	11-11-88	00.49
ST88-4224 Transco Louisiana Intrastate Pipeline Co		6-14-88	C	11-11-88	01.02
ST88-4225 Tennessee Gas Pipeline Co	CNG Transmission Corp	6-14-88	G		
ST88-4226 Tennessee Gas Pipeline Co	Cokinos Natural Gas Co	6-14-88	B		
ST88-4227 Tennessee Gas Pipeline Co	Energy Buyers Service Corp	6-14-88	G-S		
ST88-4228 Trunkline Gas Co	Bishop Pipeline Corp	6-15-88	B		
ST88-4229 Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	6-15-88	B		
ST88-4230 Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	6-15-88	B		

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ST88-4231 El Paso Natural Gas Co	Northern Illinois Gas Co	6-15-88	B		
ST88-4232 El Paso Natural Gas Co	Southwest Gas Corp	6-15-88	B		
ST88-4233 El Paso Natural Gas Co	B&A Pipeline Co	6-15-88	B		
ST88-4234 Valero Transmission L.P	Texas Eastern Transmission Corp	6-15-88	C		
ST88-4235 United Gas Pipe Line Co	Clinton Newberry Nat. Gas Authority	6-15-88	B		
ST88-4236 United Gas Pipe Line Co	SNG Intrastate Pipline, Inc	6-15-88	B		
ST88-4237 United Gas Pipe Line Co	Chevron U.S.A	6-15-88	G-S		
ST88-4238 Tennessee Gas Pipline Co	Energy Marketing Exchange, Inc	6-15-88	G-S		
ST88-4239 Tennessee Gas Pipline Co	Energy North, Inc	6-15-88	B		
ST88-4240 Tennessee Gas Pipline Co	Florida Gas Transmission Co	6-15-88	G		
ST88-4241 Tennessee Gas Pipline Co	Columbia Gas Transmission Corp	6-15-88	G		
ST88-4242 Southern Natural Gas Co	South Carolina Pipeline Corp	6-15-88	B		
ST88-4243 Southern Natural Gas Co	Atlanta Gas Light Co	6-15-88	B		
ST88-4244 Southern Natural Gas Co	SNG Intrastate Pipeline, Inc	6-15-88	B		
ST88-4245 Southern Natural Gas Co	City of Tnon	6-15-88	B		
ST88-4246 Mississippi Valley Gas Co		6-16-88	C	11-13-88	33.70
ST88-4247 Tennessee Gas Pipeline Co	Tejas Power Corp	6-16-88	G-S		
ST88-4248 Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	6-16-88	G		
ST88-4249 Tennessee Gas Pipeline Co	Energy North, Inc	6-16-88	B		
ST88-4250 Transcontinental Gas Pipe Line Corp	Pennsylvania Gas & Water Co., et al	6-16-88	B		
ST88-4251 Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	6-16-88	B		
ST88-4252 Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	6-16-88	B		
ST88-4253 Transcontinental Gas Pipe Line Corp	Southwestern Virginia Gas Co	6-16-88	B		
ST88-4254 Transcontinental Gas Pipe Line Corp	Northern Ill. Gas Co., et al	6-16-88	B		
ST88-4255 United Texas Transmission Co	Natural Gas Pipeline Co. of America	6-17-88	C		
ST88-4256 Phillips Gas Pipeline Co	Phillips Natural Gas Co	6-17-88	G-HT		
ST88-4257 Texas Eastern Transmission Corp	Southern Connecticut Gas Co	6-17-88	B		
ST88-4258 Texas Eastern Transmission Corp	Indiana Gas. Co., Inc	6-17-88	B		
ST88-4259 Texas Eastern Transmission Corp	City of Lebanon	6-17-88	B		
ST88-4260 Texas Eastern Transmission Corp	Central Illinois Public Service Co	6-17-88	B		
ST88-4261 Texas Eastern Transmission Corp	City of Kennett	6-17-88	B		
ST88-4262 Texas Eastern Transmission Corp	Public Service Electric and Gas Co	6-17-88	B		
ST88-4263 Texas Eastern Transmission Corp	Orange and Rockland Utilities, Inc	6-17-88	B		
ST88-4264 Transcontinental Gas Pipe Line Corp	Northern Illinois Gas Co	6-17-88	B		
ST88-4265 Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	6-17-88	B		
ST88-4266 Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	6-17-88	B		
ST88-4267 Northwest Pipeline Corp	Iowa-Illinois Gas & Electric Co	6-17-88	B		
ST88-4268 Northwest Pipeline Corp	Cascade Natural Gas Corp	6-17-88	B		
ST88-4269 United Gas Pipe Line Co	City of Dublin, et al	6-17-88	B		
ST88-4270 United Gas Pipe Line Co	Peoples Gas & Power Co., Inc., et al	6-17-88	B		
ST88-4271 United Gas Pipe Line Co	Texas Southern Pipeline, Inc	6-17-88	B		
ST88-4272 United Gas Pipe Line Co	South Carolina Pipeline et al	6-17-88	B		
ST88-4273 United Gas Pipe Line Co	Texaco Gas Marketing, Inc	6-17-88	G-S		
ST88-4274 United Gas Pipe Line Co	Tejas Power Corp	6-17-88	G-S		
ST88-4275 United Gas Pipe Line Co	Trans Louisiana Gas Co., Inc	6-17-88	B		
ST88-4276 Northern Natural Gas Co	East Ohio Gas Co	6-17-88	B		
ST88-4277 Northern Natural Gas Co	Exxon Corp	6-17-88	G-S		
ST88-4278 Columbia Gulf Transmission Co	Columbia Gas Transmission Corp	6-17-88	G		
ST88-4279 Cranberry Pipeline Corp		6-17-88	C	11-14-88	74.50
ST88-4280 Natural Gas Pipeline Co. of America	Transcontinental Gas Pipe Line Corp	6-20-88	G		
ST88-4281 Natural Gas Pipeline Co. of America	Exxon Gas System, Inc	6-20-88	B		
ST88-4282 Natural Gas Pipeline Co. of America	Venture Pipeline Co	6-20-88	B		
ST88-4283 El Paso Natural Gas Co	Southwest Gas Corp	6-20-88	B		
ST88-4284 Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	6-20-88	B		
ST88-4285 Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	6-20-88	B		
ST88-4286 Williams Natural Gas Co	Ford Motor Co	6-20-88	G-S		
ST88-4287 ANR Pipeline Co	Producers Gas Pipeline Co.	6-20-88	B		
ST88-4288 ANR Pipeline Co	Paris Henry Co. Public Utility Dist	6-20-88	B		
ST88-4289 ANR Pipeline Co	Wisconsin Gas Co	6-20-88	B		
ST88-4290 ANR Pipeline Co	Michigan Gas Utilities Co	6-20-88	B		
ST88-4291 ANR Pipeline Co	Michigan Gas Co	6-20-88	B		
ST88-4292 ANR Pipeline Co	Paris Henry Co. Public Utility Dist	6-20-88	B		
ST88-4293 ANR Pipeline Co	Quivira Gas Co	6-20-88	B		
ST88-4294 ANR Pipeline Co	Access Energy Pipeline Corp	6-20-88	B		
ST88-4295 ANR Pipeline Co	Union Natural Gas Pipeline Co	6-20-88	B		
ST88-4296 Trunkline Gas Co	Transamerican Gas Transmission Corp	6-20-88	B		
ST88-4297 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4298 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4299 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4300 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4301 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4302 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4303 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4304 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4305 Trunkline Gas Co	Superior Natural Gas Corp	6-20-88	G-S		
ST88-4306 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4307 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4308 Trunkline Gas Co	Consumers Power Co	6-20-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-4309 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4310 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4311 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4312 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4313 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4314 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4315 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4316 Trunkline Gas Co	Consumers Power Co	6-20-88	B		
ST88-4317 Trunkline Gas Co	Atlanta Gas Light Co	6-20-88	B		
ST88-4318 Tennessee Gas Pipeline Co	CNG Transmission Corp	6-21-88	G		
ST88-4319 Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	6-21-88	G		
ST88-4320 Tennessee Gas Pipeline Co	Nashville Gas Co	6-21-88	B		
ST88-4321 Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co	6-21-88	G		
ST88-4322 Tennessee Gas Pipeline Co	City of Holyoke Gas and Electric Dept	6-21-88	B		
ST88-4323 Tennessee Gas Pipeline Co	Midwestern Gas Transmission Co	6-21-88	G		
ST88-4324 Tennessee Gas Pipeline Co	City of Lobelville	6-21-88	B		
ST88-4325 Tennessee Gas Pipeline Co	City of Springfield	6-21-88	B		
ST88-4326 Tennessee Gas Pipeline Co	City of Clarksville	6-21-88	B		
ST88-4327 Tennessee Gas Pipeline Co	Westfield Gas & Electric Light Dept	6-21-88	B		
ST88-4328 Tennessee Gas Pipeline Co	Elizabeth Natural Gas	6-21-88	B		
ST88-4329 Tennessee Gas Pipeline Co	Greenbrier Gas System	6-21-88	B		
ST88-4330 Tennessee Gas Pipeline Co	City of Portland	6-21-88	B		
ST88-4331 Texas Eastern Transmission Corp	Delmarva Power and Light Co	6-21-88	B		
ST88-4332 Texas Eastern Transmission Corp	Associated Natural Gas Co	6-21-88	B		
ST88-4333 Texas Eastern Transmission Corp	Dayton Power and Light Co	6-21-88	B		
ST88-4334 Texas Eastern Transmission Corp	Elizabethtown Gas Co	6-21-88	B		
ST88-4335 Texas Eastern Transmission Corp	Elizabethtown Gas Co	6-21-88	B		
ST88-4336 Algonquin Gas Transmission Co	Southern Connecticut Gas Co	6-21-88	B		
ST88-4337 Tennessee Gas Pipeline Co	Tenngasco Corp	6-21-88	G-S		
ST88-4338 Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	6-22-88	B		
ST88-4339 Transcontinental Gas Pipe Line Corp	City of Alexander City	6-22-88	B		
ST88-4340 Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	6-22-88	B		
ST88-4341 El Paso Natural Gas Co	Southern California Gas Co	6-22-88	B		
ST88-4342 El Paso Natural Gas Co	Delhi Gas Pipeline Corp	6-22-88	B		
ST88-4343 Valero Interstate Transmission Co	Valero Transmission, L.P	6-22-88	B		
ST88-4344 Valero Transmission, L.P	Natural Gas Pipeline Co of America	6-22-88	C		
ST88-4345 Valero Transmission, L.P	Valero Interstate Transmission Co	6-22-88	C		
ST88-4346 Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	6-22-88	B		
ST88-4347 Tennessee Gas Pipeline Co	ANR Pipeline Co	6-22-88	G		
ST88-4348 Trunkline Gas Co	Consumers Power Co	6-22-88	B		
ST88-4349 Trunkline Gas Co	Consumers Power Co., et al	6-22-88	B		
ST88-4350 Trunkline Gas Co	Consumers Power Co	6-22-88	B		
ST88-4351 Texas Eastern Transmission Corp	Providence Gas Co	6-23-88	B		
ST88-4352 Texas Eastern Transmission Corp	Philadelphia Gas Works	6-23-88	B		
ST88-4353 Texas Eastern Transmission Corp	Providence Gas Co	6-23-88	B		
ST88-4354 Texas Eastern Transmission Corp	Connecticut Light & Power Co	6-23-88	B		
ST88-4355 United Gas Pipe Line Co	Riverway Gas Pipeline Co	6-23-88	B		
ST88-4356 United Gas Pipe Line Co	International Paper Co	6-23-88	G-S		
ST88-4357 Transcontinental Gas Pipe Line Corp	Natural Gas Clearinghouse, Inc	6-23-88	B		
ST88-4358 Transcontinental Gas Pipe Line Corp	City of Shelby	6-23-88	B		
ST88-4359 Transcontinental Gas Pipe Line Corp	UGI Corp	6-23-88	B		
ST88-4360 Somerset Gas Service		6-22-88	C	11-19-88	40.00
ST88-4361 Arkla Energy Resources	Delhi Gas Pipeline Corp	6-24-88	B		
ST88-4362 United Gas Pipe Line Co	Delhi Gas Pipeline Corp	6-24-88	B		
ST88-4363 United Gas Pipe Line Co	Access Energy Pipeline Corp	6-24-88	B		
ST88-4364 United Gas Pipe Line Co	City Gas Co	6-24-88	B		
ST88-4365 United Gas Pipe Line Co	Amoco Production Co	6-27-88	G-S		
ST88-4366 United Gas Pipe Line Co	Exxon Corp	6-24-88	G-S		
ST88-4367 United Gas Pipe Line Co	Amoco Production Co	6-24-88	G-S		
ST88-4368 United Gas Pipe Line Co	Mid Louisiana Gas Co	6-27-88	G-S		
ST88-4369 United Gas Pipe Line Co	Exxon Corp	6-24-88	G-S		
ST88-4370 United Gas Pipe Line Co	Mobil Oil Exp. & Producing SE, Inc	6-24-88	G-S		
ST88-4371 United Gas Pipe Line Co	Transamerican Gas Transmission Corp	6-24-88	B		
ST88-4372 ANR Pipeline Co	Michigan Consolidated Gas Co	6-24-88	B		
ST88-4373 ANR Pipeline Co	Wisconsin Natural Gas Co	6-24-88	B		
ST88-4374 Texas Eastern Transmission Corp	Bridgeline Gas Distribution Co	6-24-88	B		
ST88-4375 Texas Eastern Transmission Corp	Philadelphia Electric Co	6-24-88	B		
ST88-4376 Texas Eastern Transmission Corp	Rochester Gas & Electric Corp	6-24-88	B		
ST88-4377 Texas Eastern Transmission Corp	Baltimore Gas and Electric Co	6-24-88	B		
ST88-4378 Texas Eastern Transmission Corp	Associated Natural Gas Co	6-24-88	B		
ST88-4379 Texas Eastern Transmission Corp	Baltimore Gas and Electric Co	6-24-88	B		
ST88-4380 Texas Eastern Transmission Corp	Long Island Lighting Co	6-24-88	B		
ST88-4381 Texas Eastern Transmission Corp	Philadelphia Electric Co	6-24-88	B		
ST88-4382 Texas Eastern Transmission Corp	Rochester Gas & Electric Corp	6-24-88	B		
ST88-4383 ANR Pipeline Co	Michigan Consolidated Gas Co	6-24-88	B		
ST88-4384 Algonquin Gas Transmission Co	Fall River Gas Co	6-24-88	B		
ST88-4385 Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc	6-24-88	B		
ST88-4386 Algonquin Gas Transmission Co	Connecticut Light & Power Co	6-24-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Sub-part	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-4387 Algonquin Gas Transmission Co	Southern Connecticut Gas Co	6-24-88	B		
ST88-4388 Natural Gas Pipeline Co. of America	Wisconsin Gas Co	6-24-88	B		
ST88-4389 Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	6-24-88	B		
ST88-4390 Northwest Pipeline Corp	Northwest Natural Gas Co	6-24-88	B		
ST88-4391 Northwest Pipeline Corp	Utah Gas Service Co	6-24-88	B		
ST88-4392 Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	6-24-88	B		
ST88-4393 Transcontinental Gas Pipe Line Corp	Enserch Gas Transmission Co	6-24-88	B		
ST88-4394 Columbia Gulf Transmission Co	Nashville Gas Co., et al	6-24-88	B		
ST88-4395 Tennessee Gas Pipeline Co	Commonwealth Gas Co	6-24-88	B		
ST88-4396 Tennessee Gas Pipeline Co	Boston Gas Co	6-24-88	B		
ST88-4397 Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	6-24-88	B		
ST88-4398 Tennessee Gas Pipeline Co	Valley Gas Co	6-24-88	B		
ST88-4399 Trunkline Gas Co	Associated Intrastate Pipeline Co	6-27-88	B		
ST88-4400 Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	6-27-88	B		
ST88-4401 Transcontinental Gas Pipe Line Corp	City of Lexington, NC	6-27-88	B		
ST88-4402 El Paso Natural Gas Co	Southern California Gas Co	6-27-88	B		
ST88-4403 El Paso Natural Gas Co	Pacific Gas and Electric Co	6-24-88	B		
ST88-4404 Natural Gas Pipeline Co. of America	Cabot Energy Marketing Corp	6-27-88	G-S		
ST88-4406 Kentucky West Virginia Gas Co	Columbia Gas of Pennsylvania, et al	6-27-88	B		
ST88-4407 Kentucky West Virginia Gas Co	Columbia Gas of Kentucky, Inc	6-27-88	B		
ST88-4408 Kentucky West Virginia Gas Co	Eastern Shore Natural Gas Co	6-27-88	B		
ST88-4409 Kentucky West Virginia Gas Co	Baltimore Gas and Electric Co	6-27-88	B		
ST88-4411 Kentucky West Virginia Gas Co	UGI Corp	6-27-88	B		
ST88-4412 Northwest Pipeline Corp	Cascade Natural Gas Corp	6-27-88	B		
ST88-4413 Northwest Pipeline Corp	CP National Corp	6-27-88	B		
ST88-4414 Sabine Pipe Line Co	Indiana Gas Co., Inc	6-27-88	B		
ST88-4415 Sabine Pipe Line Co	Sun Gas Transmission Co., Inc	6-27-88	B		
ST88-4416 Sabine Pipe Line Co	Access Energy Pipeline Corp	6-27-88	B		
ST88-4417 Tennessee Gas Pipeline Co	Elizabethtown Gas Co	6-27-88	B		
ST88-4418 Tennessee Gas Pipeline Co	Orange and Rockland Utilities, Inc	6-27-88	B		
ST88-4419 Tennessee Gas Pipeline Co	Essex County Gas Co	6-27-88	B		
ST88-4420 Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	6-27-88	B		
ST88-4421 Tennessee Gas Pipeline Co	Colonial Gas Corp	6-27-88	B		
ST88-4422 Tennessee Gas Pipeline Co	Columbia Gas of Ohio, et al	6-28-88	B		
ST88-4423 Tennessee Gas Pipeline Co	Western Kentucky Gas Co	6-28-88	B		
ST88-4424 Neches Pipeline System	Natural Gas Pipeline Co. of America	6-28-88	C		
ST88-4425 Delhi Gas Pipeline Corp	ANR Pipeline Co	6-28-88	C	11-25-88	35.00
ST88-4426 Texas Gas Transmission Corp	Shreveport Intrastate Gas Trans., Inc	6-28-88	B		
ST88-4427 Texas Gas Transmission Corp	Coastal States Gas Transmission Co	6-28-88	B		
ST88-4428 Texas Gas Transmission Corp	Excel Intrastate Pipeline Co	6-28-88	B		
ST88-4429 Texas Gas Transmission Corp	Coastal States Gas Transmission Co	6-28-88	B		
ST88-4430 Texas Gas Transmission Corp	Excel Intrastate Pipeline Co	6-28-88	B		
ST88-4431 Texas Gas Transmission Corp	Excel Intrastate Pipeline Co	6-28-88	B		
ST88-4432 Texas Gas Transmission Corp	Trans Louisiana Industries Gas Co., Inc	6-28-88	B		
ST88-4433 Texas Gas Transmission Corp	Switzerland County Natural Gas Co	6-28-88	B		
ST88-4434 Texas Gas Transmission Corp	City of Elizabethtown	6-28-88	B		
ST88-4435 Texas Gas Transmission Corp	Indiana Gas Co., Inc	6-28-88	B		
ST88-4436 Texas Gas Transmission Corp	Bay State Gas Co., et al	6-28-88	B		
ST88-4437 Panhandle Eastern Pipe Line Co	Michigan Power Co	6-28-88	B		
ST88-4438 Panhandle Eastern Pipe Line Co	Superior Water, Light and Power Co	6-28-88	B		
ST88-4439 Panhandle Eastern Pipe Line Co	Consumers Power Co	6-28-88	B		
ST88-4440 Panhandle Eastern Pipe Line Co	Consumers Power Co	6-28-88	B		
ST88-4441 Panhandle Eastern Pipe Line Co	Gulf Energy Marketing Co	6-28-88	G-S		
ST88-4442 Panhandle Eastern Pipe Line Co	Loutex Energy, Inc	6-28-88	G-S		
ST88-4443 Panhandle Eastern Pipe Line Co	Illinois Power Co	6-28-88	B		
ST88-4444 Panhandle Eastern Pipe Line Co	Consumers Power Co	6-28-88	B		
ST88-4445 Panhandle Eastern Pipe Line Co	Consumers Power Co	6-28-88	B		
ST88-4446 Natural Gas Pipeline Co. of America	Spindletop Gas Distribution System	6-28-88	B		
ST88-4447 Natural Gas Pipeline Co. of America	Bridgeline Gas Distribution Co	6-28-88	B		
ST88-4448 Natural Gas Pipeline Co. of America	Transco Energy Marketing	6-28-88	G-S		
ST88-4449 CNG Transmission Corp	New York State Electric and Gas Co	6-28-88	B		
ST88-4450 CNG Transmission Corp	Niagara Mohawk Power Corp	6-28-88	B		
ST88-4451 CNG Transmission Corp	Niagara Mohawk Power Corp	6-28-88	B		
ST88-4452 CNG Transmission Corp	Bishop Pipeline Corp	6-28-88	G-S		
ST88-4453 CNG Transmission Corp	Entrade Corp	6-28-88	G-S		
ST88-4454 CNG Transmission Corp	Aluminum Smelting & Refining Co	6-28-88	G-S		
ST88-4455 CNG Transmission Corp	East Ohio Gas Co	6-28-88	G-S		
ST88-4456 CNG Transmission Corp	Brandywine Industries	6-28-88	G-S		
ST88-4457 CNG Transmission Corp	CNG Trading Co	6-28-88	G-S		
ST88-4458 CNG Transmission Corp	Winters Industries	6-28-88	G-S		
ST88-4459 CNG Transmission Corp	CNG Trading Co	6-28-88	G-S		
ST88-4460 CNG Transmission Corp	CNG Trading Co	6-28-88	G-S		
ST88-4461 CNG Transmission Corp	Unicorp	6-28-88	G-S		
ST88-4462 CNG Transmission Corp	Hadson Gas Systems, Inc	6-28-88	G-S		
ST88-4463 CNG Transmission Corp	Niagara Mohawk Power Corp	6-28-88	B		
ST88-4464 CNG Transmission Corp	United Engineering	6-28-88	G-S		
ST88-4465 CNG Transmission Corp	Hendershot & Smith	6-28-88	G-S		
ST88-4466 CNG Transmission Corp	Auburn Memorial Hospital	6-28-88	G-S		

Docket No.[1] and transporter/seller	Recipient	Date filed	Sub-part	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-4467 CNG Transmission Corp	Lincoln Electric	6-28-88	G-S		
ST88-4468 CNG Transmission Corp	PPG Industries	6-28-88	G-S		
ST88-4469 CNG Transmission Corp	Thomas Steel Strip Corp	6-28-88	G-S		
ST88-4470 CNG Transmission Corp	CNG Trading Co	6-28-88	G-S		
ST88-4471 CNG Transmission Corp	Brandywine Industries	6-28-88	G-S		
ST88-4472 CNG Transmission Corp	CNG Trading Co	6-28-88	G-S		
ST88-4473 CNG Transmission Corp	Access Energy Pipeline Corp	6-28-88	G-S		
ST88-4474 CNG Transmission Corp	PPG Industries	6-28-88	G-S		
ST88-4475 CNG Transmission Corp	CNG Trading Co	6-28-88	G-S		
ST88-4476 CNG Transmission Corp	Hadson Gas Co	6-28-88	G-S		
ST88-4477 CNG Transmission Corp	TXG Marketing	6-28-88	G-S		
ST88-4478 CNG Transmission Corp	PPG Industries	6-28-88	G-S		
ST88-4479 CNG Transmission Corp	PSI, Inc	6-28-88	G-S		
ST88-4480 CNG Transmission Corp	Manufacturers Fuel Co	6-28-88	G-S		
ST88-4481 CNG Transmission Corp	Rochester Gas & Electric Corp	6-28-88	B		
ST88-4482 CNG Transmission Corp	East Ohio Gas Co	6-28-88	B		
ST88-4483 CNG Transmission Corp	TXG Marketing	6-28-88	G-S		
ST88-4484 CNG Transmission Corp	Atlas Gas Marketing	6-28-88	G-S		
ST88-4485 CNG Transmission Corp	CNG Trading Co	6-28-88	G-S		
ST88-4486 CNG Transmission Corp	Timker Co	6-28-88	G-S		
ST88-4487 Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	6-28-88	B		
ST88-4488 Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	6-28-88	B		
ST88-4489 Transcontinental Gas Pipe Line Corp	City of Danville	6-28-88	B		
ST88-4490 Transcontinental Gas Pipe Line Corp	Eastex Gas Transmission Co	6-28-88	B		
ST88-4491 Transcontinental Gas Pipe Line Corp	Mississippi Fuel Co	6-28-88	B		
ST88-4492 Transcontinental Gas Pipe Line Corp	Bay State Gas Co	6-28-88	B		
ST88-4493 Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	6-28-88	B		
ST88-4494 Transcontinental Gas Pipe Line Corp	Mississippi Fuel Co., et al	6-28-88	B		
ST88-4495 Transcontinental Gas Pipe Line Corp	Northern Indiana Public Service Co	6-28-88	B		
ST88-4496 Transcontinental Gas Pipe Line Corp	Commission of Public Works, Lauren	6-28-88	B		
ST88-4497 United Gas Pipe Line Co	Crescent Gas Corp	6-29-88	B		
ST88-4498 Sea Robin Pipe Line Co	Columbia Gas of Ohio, Inc., et al	6-29-88	B		
ST88-4499 United Gas Pipe Line Co	Victoria Gas Corp	6-29-88	B		
ST88-4500 United Gas Pipe Line Co	United Texas Transmission Co	6-29-88	B		
ST88-4501 United Gas Pipe Line Co	Resource Group, Inc	6-29-88	G-S		
ST88-4502 United Gas Pipe Line Co	Bishop Pipeline Corp	6-29-88	B		
ST88-4503 United Gas Pipe Line Co	Victoria Gas Corp	6-29-88	B		
ST88-4504 United Gas Pipe Line Co	Baltimore Gas & Elect. Co., et al	6-29-88	B		
ST88-4505 Sea Robin Pipeline Co	Iesco Pipeline, Inc	6-29-88	B		
ST88-4506 Arkla Energy Resources	T.W. Phillips Gas & Oil Co	6-29-88	B		
ST88-4507 Arkla Energy Resources	City of Huntingburg	6-29-88	B		
ST88-4508 Arkla Energy Resources	Allied Gas/Pottsville District	6-29-88	B		
ST88-4509 Panhandle Eastern Pipe Line Co	Consolidated Fuel Corp	6-29-88	G-S		
ST88-4510 Panhandle Eastern Pipe Line Co	KPL Gas Service Co	6-29-88	B		
ST88-4511 Panhandle Eastern Pipe Line Co	KPL Gas Service Co	6-29-88	B		
ST88-4512 Colorado Interstate Gas Co	Public Service Co. of Colorado	6-29-88	B		
ST88-4513 Colorado Interstate Gas Co	Victoria Gas Corp	6-29-88	B		
ST88-4514 Tennessee Gas Pipeline Co	Northern Illinois Gas Co	6-29-88	B		
ST88-4515 Tennessee Gas Pipeline Co	North Alabama Gas District	6-29-88	B		
ST88-4516 Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	6-29-88	B		
ST88-4517 Tennessee Gas Pipeline Co	Mobil Natural Gas, Inc	6-29-88	G-S		
ST88-4518 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	6-30-88	C	11-27-88	35.00
ST88-4519 Seagull Shoreline System	Northern Natural Gas Co	6-30-88	C	11-27-88	30.00
ST88-4520 Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	6-30-88	B		
ST88-4521 Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	6-30-88	B		
ST88-4522 Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	6-30-88	B		
ST88-4523 Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	6-30-88	B		
ST88-4524 Transcontinental Gas Pipe Line Corp	Bridgeline Gas Distribution Co	6-30-88	B		
ST88-4525 Louisiana Resources Co	United Gas Pipe Line Co	6-30-88	C	11-27-88	26.43
ST88-4526 Trunkline Gas Co	Consumers Power Co	6-30-88	B		
ST88-4527 Panhandle Eastern Pipe Line Co	Reed Minerals Div. Hansco Corp	6-30-88	G-S		
ST88-4528 Tennessee Gas Pipeline Co	Access Energy Pipeline Corp	6-30-88	B		
ST88-4529 Tennessee Gas Pipeline Co	Columbia Gas of Ohio, Inc., et al	6-30-88	B		
ST88-4530 Northern Natural Gas Co	Arco Oil & Gas Co	6-30-88	G-S		
ST88-4531 Northern Natural Gas Co	Rural Energy Systems, Inc	6-30-88	B		
ST88-4532 Northern Natural Gas Co	Archer Daniels Midland Co	6-30-88	G-S		
ST88-4533 Northern Natural Gas Co	Minnegasco, Inc	6-30-88	B		
ST88-4534 Northern Natural Gas Co	Riata Energy	6-30-88	G-S		
ST88-4535 Northern Natural Gas Co	Texaco, Inc	6-30-88	G-S		
ST88-4536 Northern Natural Gas Co	Tennessee Gas Pipeline Co	6-30-88	B		
ST88-4537 Northern Natural Gas Co	NGC Intrastate Pipeline Co	6-30-88	B		
ST88-4538 Texas Eastern Transmission Corp	Public Service Electric and Gas Co	6-30-88	B		
ST88-4539 Texas Eastern Transmission Corp	North Alabama Gas District	6-30-88	B		
ST88-4540 Texas Eastern Transmission Corp	Commonwealth Gas Co	6-30-88	B		
ST88-4541 Texas Eastern Transmission Corp	East Ohio Gas Co	6-30-88	B		
ST88-4542 Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	6-30-88	B		
ST88-4543 Texas Eastern Transmission Corp	Philadelphia Electric Co	6-30-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Sub-part	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-4544 Texas Eastern Transmission Corp	Rochester Gas & Electric Corp	6-30-88	B		

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 F.R. 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 88-18390 Filed 8-16-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-47-010]

Northwest Pipeline Corp.; Filing

August 11, 1988.

Take notice that on August 8, 1988, Northwest Pipeline Corporation (Northwest) filed Corrected Substitute Thirteenth Revised Sheet No. 2 and Corrected Substitute Fifth Revised Sheet No. 2.1 to its FERC Gas Tariff, Original Volume No. 2.

Northwest states that on July 18, 1988, it submitted a filing in compliance with a Commission order issued May 18, 1988. Northwest states that in the July 18, 1988 filing it inadvertently included tariff language previously based on nominations and that Corrected Sheet Nos. 2 and 2.1 revises the language to reflect billing based on actual deliveries.

Northwest requests that the above-referenced tariff sheets be substituted for those contained in the July 18, 1988 filing and that July 3, 1988 be designated as their effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18620 Filed 8-16-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-227-001]

Paiute Pipeline Co.; Filing

August 11, 1988.

Take notice that on August 3, 1988, Paiute Pipeline Company (Paiute) filed Substitute First Revised Sheet No. 99 to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective September 1, 1988.

Paiute requests that this tariff sheet be substituted for First Revised Sheet No. 99 which was included in its filing of August 1, 1988. Paiute states that First Revised Sheet No. 99 showed Annual Entitlement and Monthly Entitlement volumes in therms and that Substitute First Revised Sheet No. 99 shows the Annual Entitlement and Monthly Entitlement volumes in dekatherms.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18621 Filed 8-16-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. SA88-13-000]

Valero Interstate Transmission Co.; Petition for Adjustment

Issued August 10, 1988.

Take notice that on July 18, 1988, Valero Interstate Transmission Company (Vitco) filed with the Federal Energy Regulatory Commission a Petition for an Adjustment and Waiver pursuant to section 502(c) of the Natural Gas Policy Act (NGPA) to allow Vitco to file a request pursuant to previously effective 18 CFR 284.103(d)(3) [1] and to retain revenues equal to out-of-pocket costs with respect to four self-implementing transportation transactions under section 311 of the NGPA during the period in which § 284.103(d)(3) was effective.[2]

Vitco states that a waiver of the regulations and approval of its accounting treatment is justified because application of the accounting treatment under previous § 284.103(d)(1), which requires that all revenues in excess of 1 cent per MMBtu be credited to Account No. 191 and flowed back to customers, will result in an undue burden and special hardship. Vitco further states that it should not be deprived of access to the procedure under § 284.103(d)(3) in order to retain revenues equal to out-of-pocket costs, even though that section has since been removed, because it could not file a meaningful application until all cost and revenue data were known at the end of the transactions.

Vitco asserts that it will suffer an inequitable and unfair burden without a waiver if it is deprived of the accounting treatment for recovery of out-of-pocket costs that it relied upon as the basis of the decision to incur those costs. Vitco further asserts that it will suffer hardship because the retention of only 1 cent per MMBtu will cause it to underrecover $581,220 plus interest.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the

[1] Section 284.103 was removed effective November 1, 1985, by Order No. 436 (50 FR 42408, Oct. 18, 1985).

[2] Vitco states that the transporters involved were Valero Transmission Company, L.P., Esperanza Transmission Company, American Pipeline Company, and United States Gas Pipe Line Company.

provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18629 Filed 8-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-22-000]

Woods Petroleum Corp.; Informal Technical Conference

August 11, 1988.

Take notice that on November 26, 1988 at 10:00 a.m. an informal technical conference in the above docketed proceeding will be held at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC in room 8308. Any issue related to this proceeding can be discussed.

All parties to this proceeding, the Commission staff, and interested members of the public are invited to attend. However, mere attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with Rule 214 of the Commission's rules of practice and procedure.[1]

For further information contact:

James Whitfield, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol St. NE., Washington, DC 20426, (202) 357-9119.

Laura L. Turner, Office of Pipeline and Producer Regulation, 825 N. Capitol St. NE., Washington, DC 20426, (202) 357-5345.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18623 Filed 8-16-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3430-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Ocean Dumping Regulation—Reports and Recordkeeping to Obtain Permit, Request Designation and Report on Permitted Dumping Activities (EPA ICR# 0824).

Abstract: Government or private business entities must apply for a permit to dump materials into the ocean. Respondents provide supporting information with their applications. Permittees submit reports and maintain records of actual dumping activities. New dumping sites may be requested other than those previously established by EPA.

Burden Statement: The estimated public reporting burden for this collection of information for Special Permit applicants is 1,094 hours to complete the application and 404 hours annually to maintain records and submit reports. For General, Interim, Research and Emergency Permit applicants, the burden is 12 hours to complete the application and 6 hours annually for reports/recordkeeping. Site Designation Requests will require approximately 8,866 hours to complete. This estimate includes the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Businesses and municipalities.

Estimated No. of Respondents: 21.

Estimated Total Annual Burden on Respondents: 27,004 hours.

Frequency of Collection: 2 responses per year.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: August 8, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88-18590 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00270; FRL-3430-6]

Nominations to the Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 *et seq.*). Under FIFRA (Pub. L. 98-201), the statutory Panel terminated on September 30, 1987. The Panel was administratively reestablished on October 1, 1987, in accordance with the requirements fo the Federal Advisory Committee Act, 5 U.S.C. (Appendix I) 9(c). Public comment on the nominations is invited. Comments will be used to assist the Agency in selecting nominees to comprise the Panel and should be so oriented.

ADDRESS: By mail, submit comments to: Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

DATE: Comments should be postmarked not later than September 16, 1988.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7695).

SUPPLEMENTARY INFORMATION:

I. Background

FIFRA amendements enacted November 28, 1975, added, among other things, a requirement set forth in section 25(d) that notices of intent to cancel or reclassify pesticide registrations

[1] 18 CFR 385.214 (1988).

prusuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions.

II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued in accordance with the requirements of section 9(c) of the Federal Advisory Committee Act, Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App I). The qualifications as provided by the Chapter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No person shall be ineligible to serve on the Panel by reason of his membership on any other advisory committee to a Federal department or agency or his employment by a Federal department or agency (except the Environmental Protection Agency). The Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of Title 40, CFR, Part 3, Subpart F-Standards of Conduct for Special Government Employees, which include rules regarding conflicts-of-interest. An officer and/or employee of an organization producing, selling, or distributing pesticides and any other person having a substantial financial interest (as determined by the Administrator) in such as organization, as well as an officer or employee of an organization representing pesticide users shall be excluded from consideration as a nominee for membership on the Panel. Each nominee selected by the Administrator shall be required, before being formally appointed, to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, including information on their education background, employment history, and scientific publications. Section 25(d) of FIFRA requires the Administrator to issue for publication in the **Federal Register** the name, address, and professional affiliations of each nominee.

B. Applicability of Existing Regulations

With respect to the requirement of section 25(d) that the Adminsitrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special government employees (which include advisory committee members) will apply to the members of the scientific Advisory Panel. These regulations appear at 40 CFR Part 3, Subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of obtaining nominees

In accordance with the provisions of section 25(d), EPA, in May 1988, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill one vacancy occurring on the SAP. NIH responded by letter dated June 21, 1988, enclosing a list of 8 nominees; NSF responded by letter dated June 9, 1988, with a list of 10 nominees.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill one vacancy occurring during calendar year 1988.

Barrett, Gary Wayne, Department of Zoology and Physiology, Miami University, Oxford, Ohio. Expertise: Ecology. Born: January 3, 1940. Education: Oakland City College, BS, 1961; Marquette University, MS, 1963; University of Georgia, PhD (zoology) 1967. Professional experience: Assistant professor biology, Drake University, 1967–1968; assistant professor, 1968–1975; acting director, Institute of Environmental Science, 1970–1975; associate professor, 1975–1977; professor of zoology, Miami University, 1977–present; Deputy Director, Institute of Environmental Science, 1975–present. Concurrent positions: Drake University Research Counsel grant, 1967–1968; NSF grant, 1970. Societies: AAA; Ecological Society of America; American Society of Mammalogists; Wildlife Society; American Institute of Biological Science. Research: Pesticide stresses on total ecosystems; mammalian population regulation and dynamics; species diversity in nature; bioenergetics of small mammal populations.

Benditt, Earl Philip, Professor, Department of Pathology, SJ–60, University of Washington Medical School, Seattle, Washington. Expertise: pathology. Born: April 15, 1916. Education: Swarthmore College, BA, 1937; Harvard University, MD, 1941. Professional experience: Instructor to associate professor, pathology, School of Medicine, University of Chicago 1944–1957; chairman of department, 1957–1981; professor, pathology, School of Medicine, University of Washington, 1957–present. Concurrent positions: Assistant director, research, La Rabida Sanitarium, Illinois, 1950–1956; visiting scientist and Commonwealth Fund fellow, Sir William Dunn School of Pathology, Oxford, 1965; council member, National Institute of Environmental Health Science, 1970–1973; consultant, Veterans Administration and U.S. Public Health Service; visiting professor, Sir William Dunn School of Pathology, Oxford, 1979–1980. Honors and Awards: Rous-Whipple Award, American Association of Pathologists, 1980; Societies; National Academy of Science; American Society of Experimental Pathologists (vice president 1974–1975; president, 1975–1976); Society of Experimental Biology and Medicine; Histochemical Society (vice president 1962–1963, president 1963–1964); American Association of Pathologists and Bacteriologists. Research: Cell injury; inflammation; wound healing; atherosclerosis and heart diseases.

Benirschke, Kurt, Professor, Reproductive Medicine and Pathology, University of California, San Diego, La Jolla, California. Expertise: pathology. Born: May 26, 1924. Education: University of Hamburg, MD 1948. Professional experience: Associate pathologist, Harvard Medical School, 1957–1960; professor and chairman of department, Dartmouth Medical School, 1960–1970; professor, Reproductive Medicine and Pathology, University of California, San Diego, 1970–present; director of research, San Diego Zoo, 1975–present. Societies: College of American Pathologists; American Association of Pathologists and Bacteriologists. Research: Pathology and endocrinology of human fetus and placenta; gemellology; mammalian hybirds.

Ferris, Benjamin Greeley, Jr., Department of Physiology, Harvard University School of Public Health, Boston, Massachusetts. Expertise: Environmental health, pulmonary diseases. Born: January 24, 1919. Educational background: Harvard College, AB 1940; Harvard Medical School, MD, 1943. Professional experience: Intern to assistant resident

pediatrician, Children's Hospital, Boston, Massachusetts, 1943–1948; assistant professor to associate professor, 1950–1971; professor, Environmental Health,School of Public Health, Harvard University, 1971–present. Concurrent positions: Research fellow in physiology, School of Public Health, Harvard University, 1948–1950; assistant physician, Phillips Academy, Andover, Massachusetts, 1949–1950; industrial research physician, Ludlow Jute Company, India, 1951; consultant, Massachusetts General Hospital, Lemuel Shattuck Hospital and Children's Medical Center, 1956–present; director, environmental health and safety, Harvard University Health Service, 1958–present; lecturer in medicine, Medical School, Tufts University, 1965–present; visiting professor, University of British Columbia, 1972–1978. Societies: AAAS, American Physiology Society; American Public Health Association; American Epidemiological Society; International Epidemiological Association. Research: Effects of airborne pollutants on human health; low levels of air pollution and exposures at work.

Kelman, Arthur, professor and chairman, Department of Plant Pathology, University of Wisconsin, Madison, Wisconsin. Expertise: phytopathology. Born: December 11, 1918. Education: University of Rhode Island, BS, 1941; North Carolina State University, MS, 1946; PhD (plant pathology), 1949. Honorary degree: Doctor of Science, University of Rhode Island, 1977. Professional experience: instructor to professor of plant pathology, North Carolina State University, 1948–1962; Reynolds Distinguished Professor Plant Pathology, 1962–1965; professor and chairman of department, 1965–1975; L. R. Jones Distinguished Professor of Plant Pathology, University of Wisconsin-Madison, 1975–present; professor of bacteriology, 1978–present. Concurrent positions: Visiting investigator, Rockefeller Institute, 1953–1954; visiting lecturer, American Institute of Biological Science, 1958–1960; NSF senior fellow, Cambridge University, 1971–1972. Honors and Awards: Fellow Award, American Phytopathology Society, 1969. Societies: National Academy of Science; American Academy of Arts and Science; American Institute of Arts and Science; American Institute of Biological Scientists; Society of General Microbiology, International Society of Plant Pathologists (vice president, 1968–1973; president, 1973–1978). Research: Physiology of parasitism, bacterial diseases of plants.

King, Donald West, Jr. Richard T. Crane distinguished professor, Department of Pathology, University of Chicago. Expertise: pathology. Born: June 30, 1927. Education: Syracuse University, MD, 1949. Professional experience: resident and instructor of pathology, College of Physicians and Surgeons, Columbia University, 1949–1952; professor and chairman of department, University of Colorado, Denver, 1961–1967; Delafield professor of pathology and chairman of department, College of Physicians and Surgeons, Columbia University, 1967–1981; dean, Division of Biological Science, 1982–1987; Richard T. Crane, distinguished professor, Department of Pathology, University of Chicago, January 1988–present. Concurrent positions: U.S. Public Health Service fellow, University of Chicago, 1954–1955 and Carlsberg Lab, 1955–1956. Societies: American Society of Experimental Pathologists; Society of Cell Biologists; Human Genetics Society; American Association of Pathologists and Bacteriologists. Research: Cell injury, membrane transport.

Longnecker, Daniel Sidney, professor, Department of Pathology, Dartmouth Medical School. Expertise: Pathology. Born: June 8, 1931. Education: State University of Iowa, AB, 1954; MD, 1956; MS, 1962. Professional experience: Assistant to associate professor, University of Iowa, 1961–1969; associate professor, School of Medicine, St. Louis University, 1969–1972; professor of pathology, Dartmouth Medical School, 1972-present. Concurrent Positions: NIH special fellow, Department of Pathology, University of Pittsburgh, 1965–1967; U.S. Public Health Service research grants, University of Iowa, 1967–1969, St. Louis University, 1969–1971 and Dartmouth College, 1975–present; visiting assistant professor, Department of Pathology, University of Pittsburgh, 1965–1967. Societies: American Society of Clinical Pathologists; International Academy of Pathologists; Society of Experimental Biology and Medicine; American Association of Pathologists; American Association for Cancer Research. Research: Biochemical mechanisms of cell injury; experimental pancreatitis; chemical carcinogenesis.

Magee, Peter Noel, Director, Fels Research Institute, Temple School of Medicine. Expertise: Pathology. Born: December 21, 1921. Education: Workshop College Cambridge University, 1940–1942, M.B., University College Hospital, London, 1945. Professional experience: house physician, University College Hospital, Kent and Sussex Hospital, 1946–1947; Graham scholar in pathology University of London, University College Hospital Medical School, 1951–1953; member, science staff, toxicology research unit Medical Research Council Labs, Carshalton, Surrey, 1953–1968; Philip Hill professor of experimental biochemistry University of London at Courtault Institute of Biochemistry, Middlesex Hospital Medical School, 1967–1975; director, Fels Research Institute, Temple University Medical School, Philadelphia 1975-present. Concurrent positions: Member, grand council Cancer Research Campaign of Great Britain, 1972-present. Awards: Johann Georg Zimmerman Science prize for cancer research Medizinische Hochschule, Hannover, 1975. Societies: British Medical Association; American Association of Pathologists; American Association for Cancer Research; Pathologists Society of Great Britain and Ireland; Biochemical Society (United Kingdom), Society of Toxicology; International Academy of Environmental Safety.

Porter, Warren Paul, professor of zoology, University of Wisconsin, Madison. Expertise: Ecology. Born: January 26, 1939. Education: University of Wisconsin-Madison, BS, 1961; University of California, Los Angeles, MA, 1963; PhD (ecology), 1966. Professional experience: NIH research associate, Washington University, 1966–1968; from assistant to associate professor, 1968–1974; professor of zoology, University of Wisconsin, Madison, 1974-present. Societies: AAAS; Ecological Society of America. Research: Animal-physical environmental interactions; system modeling of large and small ecosystems.

Scarpelli, Dante Giovanni, chairman, Department of Pathology, Northwestern University Medical School. Expertise: experimental pathology. Education: Baldwin Wallace College, BS, 1950; Ohio State University, MS, 1953; MD, 1954; PhD, 1960. Professional experience: instructor to professor of pathology, Ohio State University, 1958–1966; dean, facilities and academic affairs, University Kansas Medical Center, Kansas City, 1973–1974; professor, pathology and oncology and chairman of department, 1966–1976; professor, pathology and chairman of department, Northwestern University Medical School, Chicago, 1976-present. Honors and awards: Silver Medal, American Society of Clinical Pathologists, 1956. Societies: AAAS; American Society of Clinical Pathologists; American Association of Pathologists; Histochemical Society; Society of Experimental Biology and Medicine.

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Research: Ultrastructural cytochemistry; carcinogenesis; comparative pathology.

Seliger, Howard Harold, Professor, Department of Biology, John Hopkins University, Baltimore, Maryland. Expertise: Physics, photobiology. Born: December 4, 1924. Education: City College of New York, BA, 1943; Purdue University, MS, 1948; University of Maryland, PhD (physics), 1954; professor/leader, radioactivity, National Bureau of Standards, 1948–1958; research associate, biophysics, 1958–1963; associate professor, 1963–1968, professor, biology, Johns Hopkins University, 1968-present. Concurrent positions: Guggenheim fellow, 1958–1959; consultant, Office of Naval Research, 1963–1965; member, committee on biological effects increased solar ultraviolet, National Academy of Science, 1981. Honors and awards: Meritorious Service Award, U.S. Department of Commerce, 1958. Societies: AAAS, American Physics Society, Radiation Research Society, American Society of Biological Chemists, American Society of Photobiologists. Research: Radioactivity standardization; bioluminescence; excited states of biological molecules; marine biology of bioluminescent dinoflagellates; photometry.

Wilkinson, Christopher F., Director, Institute for Comparative and Environmental Toxicology, Cornell University, Ithaca, New York. Expertise: Entomology. born: February 9, 1938. Educational background: University of Reading, BS 1961; University of California, Riverside, PhD (entomology) 1965. Professional experience: United Kingdom Civil Service Commission, senior resident fellow, insecticide chemistry, Pest Infestation Lab, Agricultural Research Council, England, 1965–1966; from assistant professor to associate professor, 1966–1978; professor of insect toxicology, Cornell University, 1978-present. Societies: Society of Toxicologists; Entomological Society of America; Chemical Society; British Biochemistry Society. Research: Structure-activity relationships and mode of action of synergists; biochemistry; comparative biochemistry of microsomial drug metabolism.

Dated: August 9, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–18589 Filed 8–16–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3430–2]

Proposed Administrative Penalty Assessment and Opportunity To Comment; Chevron U.S.A. Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed Administrative Penalty Assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures. The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Guidance. The deadline for submitting public comment on a proposed Class I order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Chevron U.S.A. Inc., Port Allen Terminal, Port Allen Road, Port Allen, Kauai, Hawaii 96705; EPA Docket No. IX–FY88–48; filed on Aug. 5, 1988 with the Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974–8036; proposed penalty, $20,000, for violations of NPDES Permit No. HI 0020982, issued June 1, 1986, relating to the discharge of effluent containing oil and grease in excess of that permitted into the Pacific Ocean at Port Allen Terminal.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Guidance, review the Complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide an opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: Auguts 5, 1988.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 88–18586 Filed 8–16–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3430–3]

Proposed Administrative Penalty Assessment and Opportunity To Comment; Lihue Plantation Co., Ltd.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed Administrative Penalty Assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22 as amended at 52 FR 30671 (Aug 17, 1987). The procedures through which the public may submit written comment on a proposed Class II order or participant in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On the date identified below, EPA commenced the following Class II proceeding for for the assessment of penalties:

In the Matter of Lihue Plantation Company, Limited, P.O. Box 751, Lihue, Kauai, Hawaii; EPA Docket No. IX-FY88-52; filed on August 5, 1988, with Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-8036; proposed penalty, $30,000, for unauthorized discharges, and violation five NPDES Permit conditions of NPDES No. HI0000124, issued October 29, 1982.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will not issue its final order assessing a penalty in these proceedings until thirty days after the publication of this notice.

Dated: August 5, 1988.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 88-18587 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3430-4]

Proposed Administrative Penalty Assessment and Opportunity To Comment; McBryde Sugar Co., Ltd.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed Administrative Penalty Assessment and Opportunity to Comment; McBryde Sugar Co., Ltd.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of McBryde Sugar Company, Ltd., P.O. Box 8 Eleele, Kauai, Hawaii 96705; EPA Docket No. IX-FY88-51; filed on Aug. 5, 1988, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-8036; proposed penalty, $40,000, for two unauthorized discharges and violation of four conditions of permit for McBryde Sugar Plantation, NPDES No. HI 0000361, issued October 29, 1982.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will not issue its final order assessing a penalty in these proceedings until thirty days after the publication of this notice.

Dated: August 5, 1988.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 88-18588 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00271; FRL-3429-1]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD) of the State-FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Monday, September 12, and Tuesday, September 13, 1988, beginning at 8:30 a.m. each day and concluding by 3:30 p.m. Tuesday, September 13.

ADDRESS: The meeting will be held at: Hyatt Regency-Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703-486-1234).

FOR FURTHER INFORMATION CONTACT:
By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M Street, SW.,
Office of location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703)-557-7096).

SUPPLEMENTARY INFORMATION: This will be the seventh meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD). The purpose of the WC/GPD is to consider pesticide-related aspects of ground water protection and disposal of pesticide waste, excess pesticides and used pesticide containers, and to make recommendations through the full SFIREG regarding Agency policies in these key areas. The focus of the meeting will be primarily on ground water topics on September 12 and on disposal matters on September 13. The following topics are currently on the agenda.

1. The National Survey of Pesticides in Drinking Water Wells.
2. Groundwater Restricted Use Rule.
3. Agricultural Chemicals in Groundwater Strategic Plan:
   1. Plans for fall workshops;
   2. Discussion or comments received on plan.
4. State Management Plans for protection of groundwater from aldicarb.
5. Part 165 Rule (Storage and Disposal): Discussion of concepts paper.
6. Status of EDB, 2,4,5-T/Silvex and dinoseb disposal efforts.
7. Other topics as appropriate.

Dated: August 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-18376 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100057; FRL-3429-4]

Syracuse Research Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) will perform work specified under an EPA contract. This work will be done for the EPA Environmental Criteria and Assessment Office, and will require access to certain information submitted to EPA under FIFRA and FFDCA. This information may have been claimed as confidential business information (CBI) by submitters. This information will be transferred to SRC as authorized by 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), respectively. This action will enable SRC to fulfill the terms of the contract, and serves to notify affected persons.

DATE: SRC will be given access to this information no sooner than August 24, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-C8-0004, SRC will be preparing, updating, and evaluating various scientific documents and reports which will be used in the assessment of the nature and degree of hazard/risk posed by chemical pollutants for the EPA Environmental Criteria and Assessment Office. These reports will include accurate summaries of available data in the areas of acute toxicity, chronic and subchronic toxicity, and other reproductive effects. SRC's work for the next 12 months involves a selected group of chemicals, some of which are used in pesticides. A list of the pesticide chemicals appears below. Other chemicals may be included in SRC's work later in this contract. Readers may contact the person named above in approximately one year to learn if chemicals other than those on this list will be involved in this contract. This contract involves no subcontractors.

Disulfotan
Endothall
Thiofanox
Thiram
Alachlor
Aniline
1,3-dichloropropene (Telone II)
Ethylene Dibromide
Fomesafen
Hydrazine, Hydrazine sulfate
Oryzlin
Paraquat
1,1,1-trichloroethane
2,4,5-(trichlorophenoxy) propionic acid
Dimethyl phthalate
Pentachlorophenol
DDT
Dieldrin
Cacodylic acid
Cyclohexanone
Diethyl-p-nitrophenyl phosphate
Methylchlorocarbonate
Formic acid
Aldicarb
Creosote
Dimethipin (Harvade)
Folpet
Furmecyclox
Metolachlor
Oxidimethiin
Parathion
Trifluralin
Xylenes
Diethyl phthalate
Methoxychlor
Chloroform
DDE
Toxaphene
Crotonaldehyde
Dibutyl phthalate
Maleic hydrazide

The Environmental Criteria and Assessment Office and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract and these evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. This information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), SRC shall not use the information for any purpose other than purpose(s) specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, SRC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to SRC until the above requirements have been fully satisfied. Records of information provided to SRC will be maintained by the Project Officer for this contractor in the EPA Environmental Criteria and Assessment Office. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

Dated: August 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-18459 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0201]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Certain Benzodiazepine Drugs; Certain Controlled Substances Analog Drugs

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its receipt of a notification from the Secretary-General of the United Nations. The notification requests interested person to submit data or comments concerning abuse potential, actual abuse, medical usefulness, and trafficking of 13 various drug substances. A previous notification from the World Health Organization (WHO) requested similar information on the same 13 substances and was the subject of an earlier **Federal Register** notice. The purpose of the present notice is to assure full compliance with the provisions of the Controlled Substances Act (CSA). Any additional information received pursuant to this notice will also

be considered in preparing a response from the United States to WHO.

DATE: Comments by September 1, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1392.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances (the Convention). The CSA (21 U.S.C. 811 *et seq.*—Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when the Secretary-General of the United Nations notifies the United States under Article 2 of the Convention on Psychotropic Substances that WHO has information that may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State shall transmit the notice to the Secretary of Health and Human Services (HHS). The Secretary of HHS shall then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance. As discussed below, HHS has received such a notification from the Secretary-General of the United Nations.

I. Background

A notice published in the **Federal Register** of June 15, 1988 (53 FR 22386), requested essentially the same information on the same 13 substances that are listed in the Secretary-General's notification. FDA has received responses to the June 1988 notice, and those responses are acceptable for the purposes of the present notice. However, the June 1988 notice referenced a notification other than the official United Nations notification from the Secretary-General, and included two substances (diazepam and delta-9-tetrahydrocannabinol) that are not included in the official notification. Because section 811(d)(2)(A) of the CSA requires HHS to publish the official notification from the Secretary-General, it is reproduced below in order to assure full compliance with the GSA.

II. Notification

The Secretary of HHS received the following notice from the Secretary-General, United Nations:

Reference: NAR/CL.8/1988; DND 411/1(2) WHO/ECDD 26

[The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America] and has the honour to draw attention to a request from the Director-General of the World Health Organization for assistance in obtaining data on the following thirteen substances:

Benzodiazepines

1. Brotizolam
2. Etizolam
3. Midazolam
4. Quazepam

Analogues of controlled substances

5. Alfa-methylthiofentanyl
6. Para-fluorofentanyl
7. Beta-hydroxyfentanyl
8. Beta-hydroxy-3-methylfentanyl
9. Thiofentanyl
10. 3-methylthiofentanyl

Analogues of MDA

11. N-hydroxy MDA
12. N-ethyl MDA (MDE)
13. 4-methyl Aminorex

The WHO 26th Expert Committee on Drug Dependence (ECDD), to be convened in April 1989, will examine the thirteen substances listed above to determine if any proposals should be made concerning their scheduling.

Under the new review procedures adopted by WHO, the ECDD is responsible for making scheduling recommendations to the Director-General of WHO. In this connection, it would be appreciated if the Government would submit data on any of the thirteen substances. It would greatly assist the Secretary-General if such data were submitted on a substance-by-substance basis following the outline contained in the questionnaire attached to the present note as an annex.

In view of the fact that data provided by Governments will be used by WHO in the preparation of a report on this subject for a WHO review group which will meet well in advance of the 26th ECDD, it would be very much appreciated if information could be transmitted to the Secretary-General at the Government's earliest convenience and preferably before 31 July 1988. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A–1400 Vienna, Austria.

15 April 1988.

United Nations Division of Narcotic Drugs, Vienna International Centre A–1400 Vienna, Austria

Questionnaire for Data Collection for Use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

Substance Reported On:

1. Does the substance have any licit medical, veterinary, scientific or commercial use in the reporting country? If so, please describe in general terms the extent of such use.

2. Are any control measures applied to the substance at the national level? If so, please describe briefly.

3. Please describe the extent of any known abuse of the substance in the reporting country, including the degree of seriousness of the public health and social problems [1] associated with abuse of the substance.

4. Please give data or any known or presumed illicit traffic in the substance, including the number of seizures of the substance and the quantities involved, as well as the existence of any clandestine laboratories manufacturing the substance.

III. Opportunity To Submit Domestic Information

As required by 21 U.S.C. 811(d)(2)(A), FDA on behalf of HHS invites interested persons to submit data or comments regarding the above-named 13 drugs. Data and information received in response to this notice will be used to prepare scientific and medical information on these drugs, with a particular focus on each drug's abuse liability. HHS will forward that information, together with the information regarding the above-named 13 drugs received in response to the June 1988 notice, to WHO, through the Secretary of State, for WHO's consideration in preparing a report for presentation to a WHO review group, which will evaluate the need for international control or modification of the existing international control of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs, and could impose certain recordkeeping requirements on them.

HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in the second half of 1989. Any HHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

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[1] Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behaviour problems, criminality, etc. For a thorough examination of the question please refer to the WHO publication entitled "Assessment of Public Health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 656 in the WHO Technical Report Series) and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances". Geneva, 25 April 1988

Interested persons may, on or before September 1, 1988, submit to the Dockets Management Branch (address above) written comments regarding this action. This abbreviated comment period is appropriate in light of the previous notification and the time required for HHS to prepare materials to meet the deadline imposed by the Secretary-General.

Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information collection requirements that were submitted for review and approval to the Director, Office of Management and Budget (OMB). The requirements were approved and assigned OMB control number 0910–0226.

Dated: August 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–18613 Filed 8–16–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities for Grants for Preventive Medicine Residency Training Programs

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Grants for Preventive Medicine Residency Training Programs are now being accepted under the authority of section 793 of the Public Health Service Act, as amended by Pub. L. 99–129 and invites comments on the proposed funding priorities described below.

Section 793 authorizes the award of grants to accredited schools of medicine, osteopathy and public health to meet the costs of projects to:

(1) Plan and develop new approved residency training programs and to maintain or improve existing approved residency training programs in preventive medicine; and

(2) Provide financial assistance to residency trainees enrolled in such programs.

Legislative authorization for this program September 30, 1988. For FY 1989 the Administration is proposing to consolidate the various health professions categorical programs into a single, flexible grant authority. This announcement is being made in the event that the Preventive Medicine Residency Program is reauthorized and funds are made available in FY 1989. Publication of this notice is a contingency measure that will assure that grants can be awarded in a timely fashion consistent with the needs of the programs, as well as to provide for even distribution of funds throughout the fiscal year.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 793 of the PHS Act;

2. The extent of responsiveness to the project requirements;

3. The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

4. The degree to which the proposed training program emphasizes health promotion and disease prevention;

5. The degree to which the applicant demonstrates institutional commitment to the proposed program; and

6. The history of the program including number of residents who successfully completed the program.

Proposed Funding Priorities

In order to emphasize the initiative of health promotion/disease prevention and to encourage improvement of the quality of residency training experiences, three funding priorities are proposed. In the funding of approved applications, it is proposed that priority be given to projects which will:

(1) Increase enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstrated net increase of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainees. These population groups continue to be underrepresented in the medical profession. Studies show that minority physicians are more likely than others to provide health care for medically underserved populations. Therefore, this funding priority is designed to increase the number of primary care underrepresented minority physicians.

(2) Conduct residency training in areas of general preventive medicine or public health. This priority is designed to promote the training of individuals in general preventive medicine or public health who are needed to implement the Secretary's initiatives in health promotion and disease prevention.

(3) Train at least four residents in the academic year and four residents in the field year and provide evidence that the projected number can be realized from a current or projected applicant pool.

This priority is designed to encourage further expansion of the number of residents in training in view of the continuing shortage of preventive medicine specialists and a larger cohort of trainees should provide a more stimulating environment. This priority is also designed to encourage applicants to enroll a minimum number of residents and to stimulate an educational atmosphere that a good peer group normally provides.

Interested person are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to imlement any changes for the Fiscal Year 1989 award cycle, the comment period has been reduced to 30 days. All comments received on or before September 16, 1988, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the funding priorities will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays, (Federal holidays excepted), between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D33), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6880.

If additional programmatic information is needed, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–16, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6820.

The application deadline date is September 30, 1988. Applications shall be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* before the deadline and received in time for submission to the independent review group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof to timely mailing.

Applications received after the deadline date will be returned to the applicant.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

This program is listed at 13.117 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Program (as implemented through 45 CFR Part 100).

Dated: July 11, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–18615 Filed 8–16–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1846]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 8, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: National Recognition Program for Urban Development Partnerships (Entry Form).

Office: Community Planning and Development.

Description of The Need For The Information and its Proposed Use: The HUD National Recognition Program seeks to identify communities which have used Community Development Block Grant funds to generate exemplary public/private partnerships. Cities, public interest groups, and private organizations are being asked to recommend projects. HUD will identify final group of projects for special commendation by the President and the Secretary of HUD.

Form Number: HUD–40002.

Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	400		1		2.5		1,000

Total Estimated Burden Hours: 1,000.
Status: Extension.
Contact: Charles Bien, HUD, (202) 755–6587, John Allison, OMB, (282) 395–6880.

Date: July 28, 1988.

[FR Doc. 88–18599 Filed 8–16–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Establishment of New Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records administered by the Office of Information Resources Management, Office of the Secretary. The notice is entitled "Telephone Call Detail Records—Interior, Office of the Secretary–36" and describes records used to identify and eliminate the misuse of Government telephone systems. The notice is published in its entirety below.

As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget in its Circular A–130 requires a 60-day period to review such proposals. Therefore, written comments on this proposal can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received within 60 days of publication in the **Federal Register** will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Oscar W. Mueller, Jr.,
Director, Office of Management Improvement.
Date: August 8, 1988.

INTERIOR/OS–36

SYSTEM NAME:

Telephone Call Detail Records—Interior, Office of the Secretary–36.

SYSTEM LOCATION:

U.S. Department of the Interior (DOI) and bureau offices nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally Department, bureau/office, and contractor employees) who make long distance calls and individuals who received telephone calls placed from or charged to DOI telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of DOI telephone systems to place long distance calls; records indicating assignment of telephone numbers of employees; and records relating to the location of telephones. Telephone calls made to the Department's Office of Inspector General Hotline number are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., Appendix 3, Section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1348 (b), which prohibits agencies from using appropriated funds to pay for personal calls; 44 U.S.C. 3101, which authorizes agencies to create and preserve records documenting agency organizations, functions procedures and transactions; and 41 CFR 201–38.007, which limits the use of Government telephone systems to the conduct of offical business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records and data may be disclosed as is necessary, (1) to Members of Congress to respond to inquiries made on bahalf of individual constituents that are record subjects; (2) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (4) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (5) in the event that material in the system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto; (6) to employees of the Department to determine responsibility for telephone calls and to resolve any disputes and facilities the verification of discrepancies relating to billing, payment, or reconciliation of telephone operational or accountability records; (7) to provide access to all telephone records to Office of Inspector General auditors, investigators, and such other employees authorized by the Inspector General, pursuant to the authority of Sections 4 and 6 of the Inspector General Act of 1978; (8) to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter; (9) to a telecommunications company providing telecommunications support to permit servicing the account.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12); Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

Storage: Record data on computer processing media or paper files.

Retrievability: Records are retrieved by employee name, telephone number, identification number, or by a account code.

Safeguards: Access to the records is limited to Government employees who have an official need to use the records in the performance of their duties. Records are stored in a controlled area and maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and paper records. Automated records are protected from unauthorized access through password identification procedures and other systems based protection methods.

Retention and disposal: Records are disposed of as provided in the National Archives and Records Administration General Records Schedule 12.

Systems managers and address:

BEST COPY AVAILABLE

Fish and Wildlife Service, Chief, Division of Information Resources Management, Room 801, 1730 K Street NW., Washington, DC 20240 (202) 653–7464.

(2) U.S. Geological Survey, Chief, Branch of Telecommunications Services, 12201 Sunrise Valley Dr., Mail Stop 809, Reston, VA 22092 (703) 648–7006.

(3) Bureau of Indian Affairs, Telecommunications Manager, Office of Facilities Management, P.O. Box 1248, Albuquerque, NM 87103 (505) 766–2846.

(4) Minerals Management Service, Chief, Safety and Facilities Management Branch, Mail Stop 635, 1110 Herndon Parkway Building, Herndon, VA 22070 (703) 435–6220.

(5) Bureau of Mines, Telecommunications Manager, 5th Floor, 2401 E Street, Washington, DC 20240 (202) 634–1032.

(6) Bureau of Reclamation, Telecommunications Manager, Denver Federal Center, Code D7900, P.O. Box 25007, Denver, Colorado 80225 (303) 236–0970.

(7) Office of the Secretary, Office of Administrative Services, Chief, Branch of Telecommunications Management, Room 1449, 18th & C Streets, NW. Washington, DC 20240 (202) 343–1412.

(8) Office of Surface Mining Reclamation & Enforcement, Telecommunications Manager, Room 5131, 1100 L Street, Washington, DC 20240 (202) 343–5447.

(9) National Park Service, Chief, Telecommunications Engineering, P.O. Box 25287, Denver, CO 80225 (303) 969–2084.

(10) Bureau of Land Management, Chief, Branch of Telecommunications, Mail Stop 208 Prmr, 18th & C Street, NW. Washington, DC 20240 (202) 653–8853.

(11) Office of Inspector General Administration, 18th & C Street, NW., Room 5346, Washington, DC 20240 (202) 343–4356.

NOTIFICATION PROCEDURE:

Requests for notification regarding the existence of call detail report information should be addressed to the appropriate system manager. A written and signed request stating that the requester seeks information concerning call records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access to call detail information should be addressed to the appropriate system manager. All requests must be in writing and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD REQUIREMENTS:

A petition for amendment shall be addressed to the appropriate system manager, and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–18567 Filed 8–16–88; 8:45 am]

BILLING CODE 4310–RH–M

Bureau of Land Management

[AK–965–4213–15]

Alaska Native Claims Selection; Shishmaref Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Shishmaref Native Corporation. The lands involved are in the vicinity of Shishmaref, Alaska.

Within Sec. 23, T. 10 N., R. 35 W., Kateel River Meridian (unsurveyed).

A notice of the decision will be published once a week, for four (4) consecutive weeks, in *The Nome Nugget*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 16, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed with the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accorance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Bonnell,

Acting for Chief, Branch of Northwest Adjudication.

[FR Doc. 88–18640 Filed 8–16–88; 8:45 am]

BILLING CODE 4310–JA–M

Proposed Lease; California

SUMMARY: The proposed action is a Notice of Realty Action for a lifetime lease, intended to resolve a long-standing occupancy trespass, to bring occupancy under terms of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976, and 43 CFR 2920. The legal description of the site is:

Mount Diablo Meridian

T. 31 N., R. 12 W., Section 24, NW¼NE¼; portion of

DATES: On or before October 3, 1988, interested parties may sumbit comments to the Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002. Any adverse comments will be evaluated by the State Director, who may vacate or modify this Realty Action and issue a final determination. In the absence of any action taken by the State Director, this Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Mark Morse, Area Manager, at (916) 246–5325, or write to 355 Hemsted Drive, Redding, California 96002.

SUPPLEMENTARY INFORMATION: An appraisal has been made for the proposed lease area, and the lessee will be required to make yearly rental payments..

The only application that will be accepted will be from Mrs. Wilma Knowlton. The application must include reference to this notice, include the case file number (CA 20170), and have a complete description of the facilities involved. This can be accomplished by providing details of the proposed use and activities; a description of all facilities; a map of sufficient scale to be legible; a legal description of the project location (acreage); and any other information that may aid in evaluating the proposal.

Stipulations to be included with the lease are as follows: (1) Subject improvements must remain lessee's sole place of residence; (2) lease may not be transferred, assigned or inherited; (3) upon the death of lessee, her heir, Tom Divrell, will be allowed six months to remove the improvments.

Mark T. Morse,

Area Manager.

[FR Doc. 88–18568 Filed 8–16–88; 8:45 am]

BILLING CODE 4310–40–M

[Amdt. I-25693]

Idaho: Realty Action; Sale of Public Lands in Cassia County, Idaho

SUMMARY: This document amends the legal description, acreage, and appraised fair market value that were published July 21, 1988 (53 FR 27573).

FOR FURTHER INFORMATION CONTACT: Marvin Bagley, Associate District Manager, (208) 678-5514.

The July 21, 1988 (53 FR 27573) publication notice listed the legal description, acreage, and appraised fair market value as:

Legal description	Acreage	Appraised fair market value
T. 14 S., R. 22 E., B.M. section 4: SW¼SE¼	40	$3,000

The legal description, acreage, and appraised fair market value are amended to read:

Legal description	Acreage	Appraised fair market value
T. 14 S., R. 22 E., B.M. section 4: W½SW¼SE¼, W½E½SW¼SE¼	30	$2,500

Dated: August 8, 1988.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 88-18569 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-66-M

Draft Resource Management Plan/ Environmental Impact Statement and Proposed Areas of Critical Environmental Concern for the San Rafael Resource Area, Moab District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft resource management plan/ environmental impact statement.

SUMMARY: The draft resource management plan/environmental impact statement (RMP/EIS) for the San Rafael Resource Area, Moab District, Emery County, Utah and the Forest Planning Unit of the Sevier River Resource Area, Richfield District, Sevier County, Utah has been prepared for review and comment by the public, federal, state and local agencies, and Indian tribes. The RMP/EIS presents six land use alternatives for management of approximatley 1.5 million acres of public land in Emery County and Sevier County, Utah. The draft EIS also covers certain grazing management decisions in the Henry Mountain Resource Area, Richfield District, Wayne County, Utah. Several areas of critical environmental concern (ACECs) are proposed under different alternatives.

The purpose of the RMP is to guide management of the public lands and resources in the San Rafael Resource Area and the Forest Planning Unit of the Sevier River Resource Area, Bureau of Land Management (BLM). A second purpose is to provide a grazing EIS as ordered by the United States District Court.

A 90-day review and comment period will commence with publication of Notice of Availability in the **Federal Register** by the Environmental Protection Agency (EPA). Four open houses will be held to discuss the draft RMP/EIS: September 20—Courthouse, Castle, Dale, Utah; September 22—Tamarisk Restaurant, Green River, Utah; September 27—City Hall, Huntington, Utah; and September 29—Salt Palace, Salt Lake City, Utah. All four open houses will be held from 3 to 8 p.m. To be considered in the final RMP/EIS, comments must be received in the San Rafael Resource area office within 90 days after publication of EPA's notice in the **Federal Register.**

This action is announced pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR Part 1610.

FOR FURTHER INFORMATION CONTACT: James Dryden, San Rafael Resource Area Manager, BLM, 900 North 700 East, Price, Utah 84501; (801) 637-4584.

SUPPLEMENTARY INFORMATION: The San Rafael Draft RMP/EIS analyzes six alternative multiple-use management plans. Each plan provides management guidance for all relevant resource management programs administered by BLM in the planning area. Various combinations of special designations are analyzed under the alternatives.

Alternatives Analyzed

1. Alternative A (no action) presents the continuation of current management.

(2) Alternative B emphasizes the production of mineral resources and livestock forage.

(3.) Alternative C emphasizes opportunities for nonmotorized recreation and management of wildlife habitat to allow wildlife populations to attain prior stable numbers.

(4.) Alternative D emphasizes the protection of watershed values and maximum protection of cultural resources.

(5.) Alternative E emphasizes maximum access and opportunities for motorized recreation.

6. Alternative F (the preferred alternative) provides for the protection of critical soils, scenic resources within the San Rafael Swell, crucial wildlife habitat; special management for certain vegetation and cultural resource values; continuation of livestock, wild horse and burros use; and making public lands available for production of mineral resources.

Proposed ACECs: Nineteen areas are analyzed for special designation under various alternatives analyzed in the draft RMP/EIS. As a result of ACEC consolidation, 13 ACECs are nominated under F, the preferred alternative.

The special management designations are summarized in the accompanying table.

W.R. Papworth,

State Director, Utah.

TABLE 1.—NOMINATED AREA OF CRITICAL ENVIRONMENTAL CONCERN DESIGNATIONS, BY ALTERNATIVE

Area name	Acres by alternative					
	A	B	C	D	E	F
Bowknot Bend	0	1,830	1,830	1,830	1,830	1,830
Hebes Mountain	0	0	0	960	0	0
North Big Flat Top [a]	0	190	190	190	190	0
Big Flat Tops	0	0	0	0	0	2,640
San Rafael Reef	0	43,870	67,520	43,870	0	68,720
Copper Globe [b]	0	0	0	0	0	220
Dry Lake Archaeological District	0	0	16,990	16,990	16,990	16,990

TABLE 1.—NOMINATED AREA OF CRITICAL ENVIRONMENTAL CONCERN DESIGNATIONS, BY ALTERNATIVE—Continued

Area name	Acres by alternative					
	A	B	C	D	E	F
I-70 Pictographs [c]	0	30	(30)	0	(30)	0
Pictographs [d]	0	0	0	40	0	40
Little Black Mountain	0	0	0	2,160	0	0
Swasey Cabin	0	0	0	220	0	220
Temple Mountain Historic District	0	0	2,660	2,660	2,660	2,660
Tomsich Butte Historic District [e]	0	0	2,040	2,040	2,040	(2,040)
Gilson Buttes	0	0	1,750	1,750	0	0
I-70 Scenic Corridor	52,150	0	52,150	52,130	52,150	52,130
Muddy Creek	0	0	46,720	22,540	22,540	24,540
San Rafael Canyon	0	0	58,510	58,510	58,510	35,240
Segers Hole	0	0	7,120	7,120	0	7,120
Sids Mountain	0	0	89,060	89,060	0	61,870
Total	52,150	45,920	322,360	302,070	156,910	274,260

Note: All acreages are approximate and rounded to the nearest 10 acres.

[a] Under alternative F, the area name changes to Big Flat Tops.
[b] Under alternatives C and D, the Copper Globe area is part of the Sids Mountain ACEC.
[c] Under alternatives C and E, the I-70 Pictographs ACEC would be included as a special emphasis area within the I-70 Scenic Corridor.
[d] Under alternatives D and F, the Pictographs ACEC would include both the I-70 and Rochester pictograph sites.
[e] Under alternative F, the Tomsich Butte Historic District would be included as a special emphasis area within the Muddy Creek ACEC.

[FR Doc. 88-18591 Filed 8-16-88; 8:45 am]
BILLING CODE 4310-DQ-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contracting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-3470.

Title: Industrial Explosive and Blasting Agents.

OMB Approval Number: 1032-0066.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys (MIS), Minerals Yearbook Volumes I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials/A Bimonthly Survey for use by private organizations and other government agencies.

Bureau Form Number: 6-1439-A.

Frequency: Annual.

Description of Respondents: Producers of Industrial Explosive and Blasting Agents sold for consumption in the United States.

Estimated Completion Time: 1 hour.

Annual Responses: 10.

Annual Burden Hours: 10.

Bureau Clearance Officer: James T. Hereford (202) 634-1125.

John Morgan,

Acting Director, Bureau of Mines.

[FR Doc. 88-18570 Filed 8-16-88; 8:45 am]
BILLING CODE 4310-53-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2625, Block 37, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 8, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 9, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-18641 Filed 8-16-88; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

Concession Contract Negotiations; Clyde, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Clyde, Inc., authorizing it to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 17, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The forgegoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 18, 1988.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18634 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Ellis Island-Statue of Liberty NM; Concession Contract Negotiations; Restaurant and Gift Shop Facilities

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Service proposes to extend for thirty days the acceptance of applications for the concession opportunity to provide restaurant and gift shop facilities at Ellis Island, Statue of Liberty NM to September 19, 1988, in lieu of 90 days following the notice which appear in the "Federal Register", Vol. 53, No. 91, Wednesday, May 11, 1988, pages 16791 and 16792.

EFFECTIVE DATE: September 19, 1988.

ADDRESS: Interested parties should contact the Superintendent, Statue of Liberty National Monument, Liberty Island, New York, New York 10004 for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before September 19, 1988, to be considered and evaluated.

Date: August 11, 1988.

John J. Guthrie,

Acting Regional Director, North Atlantic Region.

[FR Doc. 88-18643 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations: Llewellyn Westerman

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Llewellyn Westerman, authorizing him to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 17, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed his obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 18, 1988.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18635 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations: Francis Smilowitz

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Francis Smilowitz, authorizing him to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 17, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessions has performed his obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day of following publication of this notice to be considered and evaluated.

Dated: July 18, 1988.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18636 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiators: Teroro, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

VOL 53 ISS 159 AUG 17 1988 UMI

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Teroro, Inc., authorizing it to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 17, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date, July 18, 1988.

C. W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18637 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C., app. 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, September 9, 1988.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m. for the following reasons:

Unfinished Business
Dune Cottages
Superintendent's Report
Bicycle Study
New Business

The meeting is open to the public. It is expected that as many as 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Date: August 11, 1988.

John J. Guthrie,

Acting Regional Director.

[FR Doc. 88-18633 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-258]

Agricultural and Tropical Products; Literature Search Regarding Trade Distortions and Effect of Trade Liberalization, and Calculation of Tariff Equivalents

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for comments.

EFFECTIVE DATE: August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Feinberg (202-252-1235), Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: The Commission instituted investigation No. 332-258 on July 10, 1988, following receipt of a request from the United States Trade Representative on July 5, 1988, at the direction of the President, that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide a literature review in the areas of trade-distorting policies affecting agricultural and tropical products and trade liberalization in the agricultural sector, and a calculation of tariff equivalents of border measures affecting these products in the major trading nations.

The letter from the United States Trade Representative requested the following information:

1. A review of publications and other writings, issued over approximately, the past five years by governments, international organizations, research institutes, scholars and other recognized authorities, which identify, analyze or assess trade-distorting policies or practices of the major trading nations in agricultural and tropical products, and which can be considered to have contributed significantly to the overall knowledge and assessment of the problems which distort world trade in these areas. This review should also provide a brief summary of the specific policies or practices which are indicated in these writings to be the most widespread and to produce the greatest distortions of trade.

2. A review of publications and other writings, issued over approximately the past five years, analyzing the probable effects of liberalization of the agricultural sector, including an assessment of these studies—in particular, their relevance to the proposals now under consideration in the Uruguay Round.

3. To the extent the requisite data can be obtained, a calculation of tariff equivalents of existing border measures, particularly quotas and variable levies, affecting agricultural and tropical products in the United States, Canada, the European Community, the European Free Trade Association, Japan, Argentina, Brazil and Korea.

The Commission's study is to be submitted as soon as possible but not later than April 5, 1989.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the matters to be addressed in the investigation. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be

assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than January 5, 1989. All submissions should be addressed to the Secretary of the Commission at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–18659 Filed 8–16–88; 8:45 am]

BILLING CODE 7020-02-M

Service Sector Profiles and Barriers to Trade in Services

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Kollins (202–252–1441), Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND AND SCOPE OF INVESTIGATION: The Commission instituted Investigation No. 332–257, following receipt on July 14, 1988 of a letter from the United States Trade Representative (USTR), requesting, at the direction of the President, that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide information for use by USTR in connection with trade negotiations on services in the Uruguay Round of multilateral trade negotiations.

As requested by USTR, the Commission will provide reports containing the following information—

(1) A summary profile, based on the best available data, of eleven domestic service sectors (accounting and related services; advertising; construction, engineering, and architectural services; educational and training services; equipment rental and leasing; franchising; health and medical services; insurance; management consulting; telecommunications and information services; and tourism). According to USTR, this is a representative sample of service sectors, whose selection for this purpose is based on the resources available to the Commission, time limitations, and information available from other sources.

(2) An identification and analysis of U.S. measures (State and Federal) which may impede foreign participation in the U.S. market for the eleven service sectors, and an assessment of the effect on U.S. service industries of removal of the impediments.

(3) A summary profile of certain service sectors in foreign countries and an assessment of the effect on U.S. service industries of the removal of foreign measures which impede U.S. participation in the respective foreign service markets. As requested by USTR, the Commission will prepare foreign industry profiles only for those countries in which restrictive measures are identified through an interagency process coordinated by USTR.

The USTR has requested that the Commission submit its report on (1) above within 6 months; on (2) within 9 months; and on (3) within 15 months.

WRITTEN SUBMISSIONS: No public hearing has been scheduled in this matter. However, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rule of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but no later than January 2, 1989. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal at (202) 252–1810.

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–18660 Filed 8–16–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations No. 731–TA–378 (Final) and No. 701–TA–287 (Final)]

Certain Electrical Conductor Aluminum Redraw Rod from Venezuela

Determination

On the basis of the record[1] developed in the subject investigations, the Commission determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and § 1673d(b)), that an industry in the United States is threatened with material injury[2] by reason of imports from Venezuela of certain electrical conductor aluminum redraw rod,[3] provided for in item 618.15 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold at less than fair value (LTFV) and to be subsidized by the Government of Venezuela. In addition, the Commission finds that it would not have found material injury to the domestic industry even if there had not been suspension of liquidation of entries of the merchandise.[4]

Background

The Commission instituted these investigations effective October 14, 1987 (countervailing duty), and March 28, 1988 (antidumping), following preliminary determinations by the Department of Commerce that imports of certain electrical conductor aluminum redraw rod, wrought rods of aluminum containing not less than 99 percent aluminum by weight, from Venezuela were being subsidized within the meaning of section 701, and were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1671 and 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 20, 1988 (53 FR 12997). The hearing was held in Washington, DC, on June 23,

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Brunsdale and Commissioner Liebeler dissenting.

[3] The subject product comprises wrought rods of aluminum, the foregoing which are electrically conductive and contain not less than 99 percent of aluminum by weight.

[4] This finding is made pursuant to 19 U.S.C. 1671d(b)(4)(B) and 1673d(b)(4)(B). If the Commission does not find material injury but does determine threat of material injury, it is required to find whether it would have found material injury "but for any suspension of liquidation of entries of the merchandise."

1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 5, 1988. The views of the Commission are contained in USITC Publication 2103 (August 1988), entitled "Certain Electrical Conductor Aluminum Redraw Rod From Venezuela: Determinations of the Commission in Investigations No. 701–TA–287 and 731–TA–378 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: August 5, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–18661 Filed 8–16–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–284]

Certain Electric Power Tools, Battery Cartridges and Battery Chargers; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 1, 1988, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on behalf of Makita USA, Inc., 12950 East Alondra Boulevard, Cerritos, California 90701–8775 and Makita Corporation of America, 650 Gainesville Highway, Buford, Georgia 30518. Supplements to the complaint were filed on July 7, 25, 27, and 29, 1988. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain electric power tools, battery cartridges and battery chargers into the United States, and in their sale, by reason of alleged: (1) Infringement of U.S. Registered Trademark No. 1,204,296; (2) infringement of common law trademarks; (3) false designation of sponsorship, source, or origin and false descriptions; (4) contributory infringement of, and inducement to infringe, Makita's common law and registered trademarks; (5) misappropriation of Makita's marks; (6) passing off; and (7) common law unfair competition. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure and/or prevent the establishment of an efficiently and economically operated industry in the United States.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1573.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation. Having considered the complaint the U.S. International Trade Commission, on August 9, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain electric power tools, battery cartridges, and battery chargers into the United States, or in their sale, by reason of alleged: (1) Direct infringement of U.S. Registered Trademark No. 1,204,296; (2) direct infringement of common law trademarks; (3) false representation; (4) false advertising; and (5) passing off, the effect or tendency of which is to destroy or substantially injure and/or prevent the establishment of an efficiently and economically operated industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Makita U.S.A., Inc., 12950 East Alondra Boulevard, Cerritos, California 90701–8775

Makita Corporation of America, 650 Gainesville Highway, Buford, Georgia 30518

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint and this notice are to be served:

Ko Shin Electric & Machinery Co., Ltd., 228 Chung King North Road, Sec. 3, Taipei, Taiwan

P&F Brother Industrial Corporation, P.O. Box 46–26, Taichung, Taiwan

Nu-Way Machinery Corporation, P.O. Box 46–26, Taichung, Taiwan

Jiang Charng Machinery Works Co., Ltd., No. 89, Lane 109, Feng Lien Road, Feng Yuan, Taichung, Taiwan

Jenn Feng Industrial Co., Ltd., No. 19, Lane 118, Sec. 2 Min. TSU Rd., Ping Chang Shiang, Taoyuan, Taiwan

Kuen Master Industry Ltd., P.O. Box 179, Chia Yi, Taiwan

Homegene Corp., P.O. Box 87–93, Taipei, Taiwan

Honworld International Inc., P.O. Box 67–511, Taipei, Taiwan

Union-Tech Corp., 7F, No. 420, Keelung Rd., Sec. 1, Taipei, Taiwan

Ta Shin Electric Industrial Co. Ltd., P.O. Box 47–3, Taipei, Taiwan

Poromes Enterprise Co., Ltd., Room 3, 3rd Floor, No. 19, Fu-Hsing N. Rd., Taipei, Taiwan

New Golden Star Electric Works, Ltd., No. 12, Lane 185, Nan King W. Road, Taipei, Taiwan

Famous Overseas Corporation, Room 3, 6th Floor, 102 Tun Hua S. Road, Taipei, Taiwan

Tochiado, No. 1, Lane 111, Sec. 3, Chung Sun Road, Taichung, Taiwan

Puma Industrial Co., Ltd., 4070 Tugwell Ave., Franklin Park, Illinois 60131

Alltrade, Inc., 2140 Davie Avenue, Commerce, California 90040

Jepson, Inc., 23140 Kashiwa Court, Torrance, California 90505

Jet Equipment & Tools, Inc., 1901 Jefferson Avenue, Tacoma, Washington 98401

Home Depot, 2727 Paces Ferry Road, Atlanta, Georgia 30339

Harbor Freight Salvage Co., 3491 Mission Oaks Boulevard, Camarillo, California 93010–3169

Steve's Wholesale Distributor, 2423 South Walker, Oklahoma City, Oklahoma 73109

Trade Associates, Inc., 4310 B Street, N.W., Auburn, Washington 98001

Mechanics Products, Kent, Washington 98035

International Consumer Brands, Inc., 128 Monroe Turnpike, Trumbull, Connecticut 06611–1360

Atlas Group, 115 Lehigh Drive, Fairfield, New Jersey 07006

Tool City, 10562 Westminster Avenue Between Euclid and Brookhurst, Garden Grove, California 92643

Floyd Ready and Associates, 96 Shobota Drive, Jackson, Mississippi 32909

Ace Tool Company, 9099 Bank Street, Cleveland, Ohio 44125

Nestor Sales Company, 12340 66th Street, North Largo, Florida 33543

Pay N' Pak, 1209 South Central Avenue, Kent, Washington 98032

Pace Membership Warehouse, 3350 Peoria Street, Aurora, Colorado 80010

(3) Marcia H. Sundeen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401K, Washington, DC 20436, shall be the Commission

Investigative Attorney, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission without further notice of the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–18658 Filed 8–16–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–289 (Final) and 731–TA–381–382 (Final)]

Certain Granite From Italy and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Spain of certain granite,[2] provided for in item 513.74 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Spain.

Further, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Italy and Spain of certain granite,[2] provided for in items 513.74 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted investigation No. 701–TA–289 (Final) effective December 24, 1987, following a preliminary determination by the Department of Commerce that imports of certain granite from Spain were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). The Commission instituted investigations Nos. 731–TA–381 and 382 (Final) effective February 29, 1988, following preliminary determinations by the Department of Commerce that imports of certain granite from Italy and Spain were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of March 24, 1988 (53 FR 9712) and of June 14, 1988 (53 FR 22230). The hearing was held in Washington, DC, on June 30, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 11, 1988. The views of the Commission are contained in USITC Publication 2110 (August 1988), entitled "Certain Granite from Italy and Spain: Determinations of the Commission in Investigations Nos. 701–TA–289 (Final) and 731–TA–381–382 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission:

Issued: August 11, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–18662 Filed 8–16–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–421 (Preliminary)]

Shock Absorbers and Parts, Components, and Subassemblies Thereof From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–421 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of shock absorbers,[1] provided for in item 692.32 of the Tariff Schedules of the United States (TSUS), and parts, components, and subassemblies thereof, however provided for in the TSUS, that are alleged to be sold in the United States at less than fair value.

As provided in section 733(a), the Commission must complete its

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For purposes of these investigations, the term "certain granite" refers to granite that is ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness, including the following: rough sawed granite slabs; face-finished granite slabs; and finished dimensional granite, including, but not limited to, building facing, flooring, wall and floor tiles, and crypt fronts. "Certain granite" does not include monumental stones, crushed granite, or curbing.

[1] For purposes of this investigation, the term "shock absorbers" is defined as suspension devices designed to dissipate energy from road disturbances; consisting of a piston, a fluid or gaseous medium, and a metal cylinder; primarily used in the suspension system on motor vehicles, provided for in item 692.3282 of the Tariff Schedules of the United States Annotated (1987) (TSUSA); they are also provided for under subheading 8708.80.50 of the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

preliminary antidumping duty investigation in 45 days, or in this case by September 23, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: August 9, 1988.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–252–1191), Ofice of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on August 9, 1988, by counsel on behalf of the Monroe Auto Equipment Co. Monroe, MI.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 30, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–252–1191) not later than August 25, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before September 2, 1988 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidental treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment musat conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12)

By order of the Commission.

Issued: August 12, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–18663 Filed 8–16–88; 8:45 am]

BILLING CODE 7020-20-M

[Investigation No. 337–TA–254]

Certain Small Aluminum Flashlights and Components Thereof; Denial of Motion for Release of Physical Exhibits

AGENCY: International Trade Commission.

ACTION: Denial of motion by complainant Mag Instrument, Inc., for release of certain physical exhibits.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, Suite 707, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436, telephone 202–252–1098. Hearing impaired individuals may contact the Commission's TDD terminal at 202–252–1810.

SUPPLEMENTARY INFORMATION: Complainant has moved (Motion No. 254–131–C) that the Commission permit release of certain physical exhibits for use in federal court trial between the complainant and the Brinkmann respondents currently scheduled to begin September 6, 1988. The Commission has determined to deny the motion because its determination in the above-captioned investigation is now on appeal to the U.S. Court of Appeals for the Federal Circuit. The physical exhibits are part of the Commission's evidentiary record in the appeal, Fed. R. App. P. 16(a), and, although the record is physically located at the Commission, the Court may request that any portion of the record be forwarded to it at any time. Fed. Cir. R. 17(a).

Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

By order of the Commission.

Issued: August 8, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–18664 Filed 8–16–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–254]

Certain Small Aluminum Flashlights and Components Thereof; Denial of Motion for Release of Physical Exhibits

AGENCY: International Trade Commission.

ACTION: Denial of motion by certain respondents for release of certain physical exhibits.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, Suite 707, U.S. International Trade Commission, 500 E. St., SW., Washington, DC 20436, telephone 202–252–1098. Hearing impaired individuals may contact the Commission's TDD terminal at 202–252–1810.

SUPPLEMENTARY INFORMATION: The Brinkmann respondents have moved (Motion No. 254–132–C) that the

Commission permit release of certain physical exhibits for use in federal court trial between complainant Mag Instrument, Inc., and the Brinkmann respondents currently scheduled to begin September 6, 1988. The Commission has determined to deny the motion because its determination in the above-captioned investigation is now on appeal to the U.S. Court of Appeals for the Federal Circuit. The physical exhibits are part of the Commission's evidentiary record in the appeal, Fed. R. App. P. 16(a), and, although the record is physically located at the Commission, the Court may request that any portion of the record be forwarded to it at any time. Fed. Cir. R. 17(a).

Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–18665 Filed 8–16–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–292 (Final)]

Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–292 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 167d(b)) to determine whether an industry of the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor,[1] provided for in item 711.28 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Taiwan.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce is extending the date for its final determination in this investigation to coincide with the date of its final determination in an ongoing antidumping investigation on thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for September 22, 1988).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–252–1185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1809. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor. The investigation was requested in a petition filed on April 15, 1988, by Triplex Inter Control (USA), Inc., St. Albans, VT. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 21532, June 8, 1988).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20.).

By order of the Commission.

Issued: August 11, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–18666 Filed 8–16–88; 8:45 am]

BILLING CODE 7020–02–M

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[1] For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrial outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances), consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under Tariff Schedules of the United States Annotated item numbers 711.7820 and 711.7840 and under Harmonized System item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Establishment; Advisory Policy Board (APB), Uniform Crime Reporting (UCR)

In accordance with the provisions of the Federal Advisory Committee Act, Title 5, United States Code, Appendix I (Supplement II, 1972), and 41 CFR 101–6.10, the Director, FBI, with the concurrence of the Attorney General, has determined that the establishment of the UCR APB is in the public interest in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of its establishment.

The Board will recommend to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the UCR, particularly the system's relationship with state and local criminal justice systems.

The Board will consist of 20 members from crime statistics providing agencies within the United States. Board members will be nominated by the International Association of Chiefs of Police (9), the National Sheriffs' Association (5), the National Academy Associates (2), and the Director of the FBI (4).

The Board will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its Charter will be filed in accordance with the provisions of the Act.

Date: August 11, 1988.

William S. Sessions,

Director.

[FR Doc. 88–18606 Filed 8–16–88; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Department Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency indentification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW; Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Assistant Secretary for Veterans' Employment and Training

Implementing Regulations for Veterans' Employment Programs under Title IV, Part C of the Job Training Partnership Act

1293–0001

Other (at time of application for grant)

State or local governments; non-profit institutions

85 responses; 2,720 hours; average hours per response 32 hours

The information is needed as the basis upon which the costeffectiveness of the program proposed by the grant application will be evaluated. It is the primary focus of the application for funding used for approving or denying the application for funds under Title IV–C of JTPA.

Extension

Employment Standard Administration

Request for Medical Reports

1215–0108; LS–158, LS–415, LS–525

On occasion

Businesses or other for-profit; small businesses or organizations 2520 respondents; 1,260 total hours; 30 minutes per response, 3 forms Medical reports are used by the Longshore and Harbor Workers' compensation Act program to support injured workers' claims for compensation benefits under section 7 of the Longshore Act (33 USC 901 et seq.) as amended and extended.

Signed at Washington, DC, this 11th day of August, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–18536 Filed 8–16–88; 8:45 am]

BILLING CODE 4510–79–M

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: September 14, 1988, 2:00 p.m.–5:00 p.m., Rm. N3437 A,B&C Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, DC, this 8th day of August 1988.

Eugene K. Lawson,

Deputy Under Secretary, International Affairs.

[FR Doc. 88-18533 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-28-M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review:

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions.

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

ETA Summaries—UI Trust Fund Activities
1205-0154; ETA 2112, 8401, 8403, 8405, 8413, 8414
Monthly

Form No.	Affected public	Respondents	Frequencies	Average time per response
ETA 2112	State/local Government	53	Monthly	30 mins.
ETA 8401	State/local Government	53	....do	Do.
ETA 8403	State/local Government	18	....do	Do.
ETA 8405	State/local Government	53	....do	Do.
ETA 8413	Banks	53	....do	Do.
ETA 8414	Banks	53	....do	Do.

ETA report 8403 monitors Reed Act funds. ETA Reports 2112, 8401, 8405, 8413, and 8414 are used to monitor Unemployment Trust Fund cash flow, disbursement, measure cash management performance and regulate balances pertaining to unemployment benefits paid from Federal sources. These activities are coordinated with State government accounting systems.

Reinstatement

Mine Safety and Health Administration
Permissible Equipment Testing
1219-0066
On occasion
Businesses and other for profit; small businesses or organizations
Estimated hours per application under Title 30 CFR:
Part II—Respiratory Protective Devices
40 hours per response
Part 15—Explosives and Related Articles
24 respondents, 40 hours per response, 960 hours
Part 18—Electrical Motor Driven Mine Equipment and Associates
2,866 respondents, 63 hours per response, 180,558 hours
Part 19—Electric Cap Lamps
20 respondents, 20 hours per response, 400 hours
Part 20—Electric Mine Lamps Other Than Standard Cap Lamps
17 respondents, 20 hours per response, 340 hours
Part 21—Flame Safety Lamps
6 respondents, 20 hours per response, 120 hours
Part 22—Portable Methane Detectors
19 respondents, 10 hours per response, 190 hours
Part 23—Telephones and Signaling Devices
40 respondents, 40 hours per response, 1,600 hours
Part 25—Multiple-Shot Blasting Units
4 hours per response
Part 27—Methane-Monitoring Systems
38 respondents, 20 hours per response, 760 hours
Part 28—Fuses for Use with Direct Current
11 respondents, 10 hours per response, 110 hours
Part 29—Portable Coal Dust/Rock Dust Analyst, and Continuous Duty, Warning Light Portable Methane Detector for Use In Coal Mines
1 respondent, 60 hours per response, 60 hours
Part 32—Mobile Diesel-Powered Equipment for Noncoal Mines
6 respondents, 64 hours per response, 384 hours
Part 33—Dust Collectors for Use In Connection with Rock Drilling In Coal Mines
67 respondents, 32 hours per response, 2,144 hours
Part 35—Fire-Resistant Hydraulic Fluids
5 respondents, 50 hours per response, 250 hours
Part 36—Mobile Diesel-Powered Transportation Gassy Non-coal Mines and Tunnels

55 respondents, 60 hours, 3,300 hours Total Burden Hours, 161,176.

Contains procedures by which manufacturers of mining equipment and components, material, instruments, and explosives may apply for, and have their products approved as permissible for use in mines.

Mine Safety and Health Administration

Annual Status Report and Certification and Weekly Inspections of Refuse Piles and Impoundments

1219–0015

Businesses and other for profit; small businesses or organizations

Reporting/recordkeeping requirement	Respondents	Frequency	Average time per response
Annual Status Report and Certification	675	Annually	2 hours
Weekly Inspections with Monitoring Instruments	240	Weekly	3 hours
Weekly Inspections without Monitoring Instruments	360	.....do	2 hours

76,230 total hours

Requires coal mine operators to submit to MSHA an annual status report and certification on impoundments and hazardous refuse piles; and to keep records of the results of weekly examinations and instrumentation monitoring of impoundments.

Signed at Washington, DC, this 2nd day of August, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–18607 Filed 8–16–88; 8:45 am]

BILLING CODE 4510–22–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Abtex, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 29, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 29, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 29, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 25th day of July 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of Petition	Petition No.	Articles produced
Abtex, Inc. (Company)	Houston, TX	7/25/88	7/6/88	20,822	Crude Oil.
Berol, USA (Workers)	Fairlawn, NJ	7/25/88	7/15/88	20,823	Ballpoint Pen and Markers.
Caterpillar, Inc. (UAW)	Davenport, IA	7/25/88	7/1/88	20,824	Cmponents for Bulldozers, Tractors and Lift Trucks.
Caterpillar, Inc. (UAW)	Bettendorf, IA	7/25/88	7/1/88	20,825	Components for Bulldozers, Tractors and Lift Trucks.
Cooper Lighting Group (IBEW)	LaPalma, CA	7/25/88	7/1/88	20,826	Lighting Fixtures.
Ford Labs (Company)	Moonachie, NJ	7/25/88	7/14/88	20,827	Vitamins.
Foster Canning Co. (Workers)	Farmingdale, NJ	7/25/88	7/12/88	20,828	Processed Meat based Canned Dog and Cat Food.
George-Ann Fashions Co. (Workers)	Swoyersville, PA	7/25/88	7/13/88	20,829	Children's & Ladies Blouses, Skirts and Dresses.
Humberland Dress Co. (Workers)	Mt. Carmel, PA	7/25/88	7/11/88	20,830	Ladies's and Children's Dresses, Tops and Skirts.
Indiana Gas & Chemical Corp. (USWA)	Terre Haute, IN	7/25/88	7/11/88	20,831	Foundry Coke.
Inmed Corp. (Company)	Alpharetta, GA	7/25/88	7/14/88	20,832	Disposable Medical Products (Ureteral and Catheters).
Kochy's Inc. (Company)	Middlefied, OH	7/25/88	7/13/88	20,833	Motocycle Dealership.
Robert Bruce, Inc. (ILGWU)	Philadelphia, PA	7/25/88	7/13/88	20,834	Sweaters and Knit Sport Shirts.
Sears—Repair Parts, Depot (Company)	Pennsauken, NJ	7/25/88	7/13/88	20,835	Distribution Center for Appliance Parts.
Texas Apparel Co. (ACTWU)	Eagle Pass, TX	7/25/88	7/12/88	20,836	Men's and Boy's Jeans.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of Petition	Petition No.	Articles produced
West Co. (The) (IGMPAW)	Millville, NJ	7/25/88	7/15/88	20,837	Rubber Pharmacetical Products.
W.E. Stephens Mfg Co., Inc. (Workers)	Carthage, TN	7/25/88	7/11/88	20,838	Men's Boy's and Ladies Sportswear.
Wonderknit/Score Board (Workers)	Galax, VA	7/25/88	7/12/88	20,839	Boy's and Men's Knit Shirts.
Westinghouse Elevator Co. (IBEW)	Randolph, NJ	7/25/88	7/14/88	20,840	Elevators.

[FR Doc. 88-18608 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.O. Smith Electrical Products Div. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 29, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 29, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 8th day of August 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

	Petitioner (Union/ workers/firm)	Location	Date received	Petition number	Articles produced
A.O. Smith Electrical Products Div. (IUE)	Union City, IA	8/8/88	7/28/88	20,854	Fractional h.p. motors
Bethlehem Steel Corp. (workers)	Beaumont, TX	8/8/88	7/27/88	20,855	Offshore drilling units
Blue Ridge Shirt Mfg. Co., Inc. (workers)	Fayetteville, TN	8/8/88	7/19/88	20,856	Men's & ladies' shirts and blouses
Gain Electronics (workers)	Somerville, NJ	8/8/88	7/26/88	20,857	Integrated circuits
Juvenile Shoe Corp. of America (ACTWU)	Aurora, MO	8/8/88	7/27/88	20,858	Men's, women's & children's shoes
Maiorisi Marketing (company)	Secaucus, NJ	8/8/88	7/25/88	20,859	Processed ham
Mammoth Cave Garment Co. (workers)	Cave City, KY	8/8/88	7/26/88	20,860	Denim pants and skirts
Parsons Footwear, Inc. (workers)	Parsons, WV	8/8/88	8/1/88	20,861	Shoes
Phillips Petroleum Co. (workers)	Houston, TX	8/8/88	7/19/88	20,862	Crude oil
Silly Products Co. (workers)	Corona, NY	8/8/88	7/26/88	20,863	Ladies blouses, skirts, & pants
Sebo Knitwear (ILGWU)	New York, NY	8/8/88	7/26/88	20,864	Sweaters
Sumitomo Machinery Corp of America (workers)	Teterboro, NJ	8/8/88	7/26/88	20,865	Speed reducers & gear motors

[FR Doc. 88-18534 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Hallden Machine Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 1, 1988–August 5, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,714; Hallden Machine Co., Thomaston, CT

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,712; Chemseco, Cumberland, MD

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,755; Franklin Veal, Franklin, NJ

U.S. imports of table beef and veal are negligible.

TA–W–20,728; N.L. Acme Tool Oilfield, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,723; Emerson Contract Div., Inc., Mt. Sterling, KY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,720; Bill Hill Associates and Bill Hill Oil & Gas, Longview, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,717; Sprague Meter, Bridgeport, CT

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,719; Well Improvement Specialists, Inc., Houston, TX

U.S. imports of oilfield equipment are negligible.

TA–W–20,668; Cluett Shirtmakers, Inc., Andalusia, AL

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA–W–20,722; Eaton Corp., Axle and Brake Div., Gallatin, TX

A certification was issued covering all workers of the Axle and Brake Division of Eaton Corp., Gallatin, TN separated on or after June 2, 1987.

TA–W–20,741; Donora Sportswear Co., Inc., Donora, PA

A certification was issued covering all workers separated on or after June 8, 1987.

I hereby certify that the aforementioned determinations were issued during the period August 1, 1988–August 5, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 9, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–18535 Filed 8–16–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–147–C]

Broken Heart Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Broken Heart Coal Company, General Delivery, Van Lear, Kentucky 41265 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15–16073) located in Johnson County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mines electric face equipment.

2. The mine is located in the Haddix Coal Seam, which averages 42 inches in height.

3. Petitioner states that when canopies are lowered on the mine's electric face equipment to a height which allows clearance throughout the mine, the canopies limits the equipment operator's vision.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1988. Copies of the petition are available for inspection at that address.

Date: August 10, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–18528 Filed 8–16–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–10–M]

Camp Bird Venture; Petition for Modification of Application of Mandatory Safety Standard

Camp Bird Venture, P.O. Box 1790, Ouray, Colorado 81427 has filed a petition to modify the application of 30 CFR 57.19037 (fleet angles) to its Camp Bird Mine (I.D. No. 05–00437) located in Ouray County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that fleet angles on hoists not be greater than one and one-half degrees for smooth drums or two degrees for grooved drums.

2. As an alternate method, petitioner proposes to continue to use hoists with large fleet angles on their Level 9, No. 3 Shaft Hoist Station and on their Level 14, No. 1410 Hoist Station until their exploration plans have been completed.

3. In support of this request, petitioner states that the No. 1410 Hoist which is situated at the bottom of Level 9, No. 3 Shaft has been moved as far away from the Shaft Station as it can be moved without interfering with the track haulageway which is also used for transportation of material and supplies.

4. Petitioner further states that, if their exploration program is successful, the No. 3 Shaft will deepen from Level 9 down to Level 14 about 550 feet which would consist of a new hoist room and a new hoist fleet angle and would eliminate the No. 1410 Shaft.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1988. Copies of the petition are available for inspection at that address.

Date: August 9, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–18529 Filed 8–16–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–136–C]

Eastern Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Coal Corporation, P.O. Box 219, Stone, Kentucky 41567 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment) to its B–2 Mine (I.D. No. 15–07133), and its A–3 Mine (I.D. No. 15–16388) both located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that padlocks be used to prevent mine scoop battery tightening rings from loosening to the point which would allow the battery plug to become disconnected.

2. As an alternate method, petitioner proposed to install on each scoop, a battery plug locking mechanism which would be affixed by permanent weld to the frame of the scoop. The mechanism would consist of a fabricated metal bracket of ¼ inch platesteel and a spring tensioned brass plunger with a handle attached to be used in lieu of padlocks. The locking mechanisms would be designed, installed and used to prevent the threaded rings from unintentionally loosening.

3. In support of this request, petitioner states that miners who couple and uncouple battery plugs on these machines would be trained in the proper use of the locking devices, the hazards of breaking battery plug connections under load, and the hazards of breaking battery plug connections in the areas of the mine where electric equipment is required to be permissible.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1988. Copies of the petition are available for inspection at that address.

Dated: August 9, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-18530 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-135-C]

Sea "B" Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sea "B" Mining Company, P.O. Box 26, Jewell Ridge, Virginia 24622 has filed a petition to modify the application of 30 CFR 75.327-1 (velocity of air) to its Seaboard No. 2 Mine (I.D. No. 44-03479) located in Tazewell County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the velocity of the air current in the trolley haulage entries be limited to 250 feet a minute.

2. As an alternate method, petitioner proposes to utilize 600 feet per minute in the affected track entries in lieu of 250 feet per minute.

3. In support of this request, petitioner states that—

(a) Due to the extensive area which has been mined adverse roof conditions, roof falls, and other obstructions have occurred in the intake airways beside the track entry. Doors have been installed on both belt entries and track entries in an attempt to reduce air velocity to less than 250 feet per minute. However, these attempts have resulted in a reduction in air velocity to approximately 600 feet per minute; and

(b) To rehabilitate these restricted entries, in order to reduce velocity on the belt and track entries to less than 250 feet per minute, would require removal of the roof falls, which would expose workmen to hazardous roof conditions while performing the necessary work. Limiting the velocity of the air current within the mine to ensure air velocity no greater than 250 feet per minute on the affected track entries could restrict the capability of the mine's ventilation system to dilute and carry away explosive mixtures of methane and harmful concentrations of contaminants from working places and other areas.

4. Petitioner further states that, water sprays would be maintained at belt discharge locations and where necessary to control coal dust which may exist and travel in the affected entries.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 9, 1988.

[FR Doc. 88-18531 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-138-C]

W. & P. Coal Co., Inc., Petition for Modification of Application of Mandatory Safety Standard

W. & P. Coal Company, Inc., P.O. Box 2216, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 2 Mine (I.D. No. 15-15587) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mines electric face equipment.

2. The No. 2 Mine is the Hazard No. 4 Coal Seam and ranges from 42 to 50 inches in height with rolls and undulations.

3. Petitioner states that due to an uneven roof and a soft and uneven bottom the use of cabs or canopies on the mines electric face equipment would result in a diminution of safety to the miners affected because the cabs or canopies could strike and dislodge the roof supports thereby creating the danger of a roof fall. The cabs or canopies would also limit the equipment operator's visibility thereby creating a danger to the miners working on the section.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office or or before September 16, 1988. Copies of the petition are available for inspection at that address.

Date: August 9, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-18532 Filed 8-16-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88-80; Exemption Application No. D-6689 et al.]

Grant of Individual Exemptions; Pension Mortgage Trust Program (the Trust) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pension Mortgage Trust Program (the Trust); Located in Phoenix, AZ

[Prohibited Transaction Exemption 88-80; Exemption Application No. D-6689]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the direct or indirect sale, exchange or transfer of units of beneficial interest (Units) or subsequent redemption of Units pursuant to the Trust, between the administrator (the Administrator) or the trustee (the Trustee) of the Trust and an investing plan (Plan) when such Administrator and/or Trustee are fiduciaries with respect to the Plan assets invested in the Trust provided that:

(a) The Plan pays no more or receives no less for such Unit than the Plan would have paid or received in an arm's-length transaction with an unrelated party;

(b) There is only one class of Unit and the rights and interests evidenced by such Units are not subordinate to any other interest in the Trust;

(c) Such sale, exchange or transfer is expressly authorized in writing by a fiduciary of the Plan independent of the Administrator and the Trustee after full disclosure of the real estate investment and/or specific property which constitutes the security in favor of the Trust;

(d) The Trust is an exempt trust under 501(a) of the Code and only plans qualified under 401(a) of the Code may participate or continue to hold Units; and

(e) The Trust meets the guidelines for a group trust under Internal Revenue Service Revenue Ruling 81-100, 1981-1 C.B. 326.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1988 at 53 FR 23812.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Central Electric Products Company, Inc., Profit Sharing Plan (the Plan); Located in Smyrna, Georgia

[Prohibited Transaction Exemption 88-81; Exemption Application No. D-6764]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale for $170,000 of a parcel of real property located at 1625 Spring Road, Smyrna, Cobb County, Georgia and the reversionary interest in the improvements thereon by the Plan to Messrs. Joel and Scott Lobel and Messrs. Peter and Phillip Stahlman, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1988 at 53 FR 23814.

For Further Information Contact: Alan Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

New England Life Insurance Company and Copley Advisors, Inc.; Located in Boston, Massachusetts

[Prohibited Transaction Exemption 88-82; Exemption Application No. D-6982 & D-6983]

Exemption

The restrictions of section 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (D) and (E) of the Code, shall not apply to: (1) The acquisition by Empressa Associates (Empressa), a general partnership, of a parcel of real property (the Land) from the Rancho Santa Margarita Joint Venture, an entity in which the New England Life Insurance Company (NEL) has an interest, and (2) the subsequent acquisition by Copley Investors Limited Partnership (Copley Investors), a limited partnership established by NEL and managed by Copley Advisors, Inc., a subsidiary of NEL, of a sixty percent (60%) partnership interest in Empressa; provided that such 60% interest in

Empressa does not exceed 60% of the actual costs and expenses necessarily incurred by Empressa in constructing improvements on the Land, as of the date of Copley Investors' investment in Empressa; plus 60% of the *lesser* of (a) the actual cost of the Land to Empressa; or (b) the fair market value of the Land on the date Copley Investors invests in Empressa, as determined by an updated appraisal by an independent qualified appraiser; and provided further that Copley Investors will not pay any share of the equity placement fee or of the fees and costs associated with the closing of the acquisition of the Land by Empressa.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1988 at 53 FR 23815.

Effective Date: The effective date of this exemption is February 4, 1987.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (the Trust); Located in New York, New York

[Prohibited Transaction Exemption 88–83; Exemption Application No. D–7155]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) Certain leases (the Leases) by the Trust of space in two commercial real properties (the Properties) located in Hampton, Virginia (Executive Towers) and Portland, Oregon (Parkside) to the Equitable Life Assurance Society of the United States (Equitable), Manufacturers Hanover Consumer Services (MHCS), Security Pacific Corporation (SPC), Read Commercial Properties, Inc. (Read), Prudential-Bache Securities, Inc. (Prudential-Bache) and General Electric Company (GE), each of which is a party in interest or an affiliate of a party in interest with respect to the Trust; (2) the potential amendments, renewals or extensions of the Leases; and (3) the proposed leasing by the Trust of space in the Properties to any other persons or entities that may be parties in interest with respect to the Trust (except for fiduciaries with respect to the Properties including the American Telephone and Telegraph Company and its affiliates and Eastdil Advisers, Inc. and its affiliates) including the amendments, renewals and extensions thereof; provided that the terms and conditions of any leases subject to this exemption, including any amendments, renewals or extensions thereof, are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties; and provided further that any such leases, including any amendments, renewals or extensions thereof, are approved on behalf of the Trust by Eastdil Advisers, Inc.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Tuesday, June 7, 1988 at 53 FR 20914.

Effective Date: The effective date of the exemption is May 1, 1984 as to the Executive Towers lease to Equitable; December 5, 1986 as to the Parkside lease to Equitable; May 1, 1984 as to the lease to MHCS; February 29, 1984 as to the lease to SPC; April 1, 1987 as to the lease to Read; June 22, 1983 as to the lease to Prudential-Bache, and December 20, 1982 as to the leases to GE.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Central Ohio Building and Construction Industry Investment Plan (the Program); Located in Columbus, OH

[Prohibited Transaction Exemption 88–84; Exemption Application No. D–7435]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed participation by pension plans (the Plans) in construction loans through the Program where such loans are already committed to parties in interest with respect to such Plans by certain lending institutions, provided that the terms of the loans are not less favorable to the Plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described in the notice of proposed exemption are complied with during the operation of the Program.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 6, 1988 at 53 FR 11357.

Written Comments: The Department received five written comments regarding the notice of proposed exemption. In one of the comments, the commentator expressed approval of the proposed exemption. In three of the comments, the commentators expressed a general concern about the proposed transactions. The fifth commentator indicated that he had not received timely notification of the proposed exemption. As a result, the Department decided to extend the comment period to July 30, 1988. The applicants' representative also renotified all interested persons. Following discussions of the comments with the Department, the commentators who had concerns about the proposed exemption, withdrew their comments.

Accordingly, the Department has considered the entire record, including the written comments submitted, and has determined to grant the exemption as it has been proposed.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number).

Meridian Bancorp, Inc. Savings Plan (the Plan); Located in Reading, Pennsylvania

[Prohibited Transaction Exemption 88–85; Exemption Application No. D–7440]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash on March 31, 1987 by the Plan to Meridian Bancorp, Inc., a party in interest with respect to the Plan, of a unit of limited partnership interest in Plantation Place Mortgage Company, Ltd. and a unit of limited partnership interest in Winston Apartments Mortgage Company for a price consisting of the face value of such units plus quarterly distributions accrued thereon from July 1, 1986 through March 31, 1987, provided said price was not less than the fair market value of such units at the date of this sale.

Effective Date: This exemption is effective March 31, 1987.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21940.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Bethel Clinic Employees' Profit Sharing Plan and Trust (the Plan); Located in Wichita, Kansas

[Prohibited Transaction Exemption 88–86; Exemption Application No. D–7516]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain real property (the Property) to the Bethel Clinic Building Company, L.P., a Kansas limited partnership and a party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of either the sum of $450,000 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988, at 53 FR 21942.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of August, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–18527 Filed 8–16–88; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Requests for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before October 3, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's acitivities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1–AFU–88–44). Child and spouse abuse treatment records.

2. Department of the Army (N1–AU–87–15). Ammunition and explosives malfunction reports.

3. Department of the Army, U.S. Army Intelligence and Security Command (N1–AU–88–6). Working files of imagery and analysis reports processed in accordance with inter-agency agreements (record copy maintained elsewhere).

4. Defense Intelligence Agency (N1–373–88–10). Routine and facilitative records of the Defense Intelligence College. (Records documenting major policy and operations decisions of the College will be retained permanently.)

5. U.S. Coast Guard, Command, Control and Communications (N1–26–88–2). Family advocacy records which cover child and spouse abuse case files.

6. Department of Commerce, Bureau of the Census (N1–29–87–5). Machine-readable data files for the English Language Proficiency Study, 1982.

7. Commodity Futures Trading Commission, Division of Trading and Markets (N1–180–88–3). Financial audit and review records.

8. Department of Education, Office of Management (N1–12–88–3). Training films made for the Office of Education, 1944–45.

9. Federal Energy Regulatory Commission, Office of Pipeline Producer Regulation (N1–138–88–3). Report of Producer Expenditures, Exploration and Development Activity, Production, Reserve Additions and Revenues (Form 64).

10. Fish and Wildlife Service, Boston Regional Office (N1–22–88–1). Operational records associated with wildlife refuges and Civilian Conservation Corps camps.

11. Department of Justice, Federal Bureau of Prisons (N1–129–88–1). Case files on adjudicated claims.

12. Department of Justice, Federal Bureau of Prisons (N1–129–88–2). Litigation case files.

13. Department of Justice, Civil Division, Foreign Litigation Section (N1–131–88–3). Vested asset liquidation records, closed claim files, closed litigation files, administrative records, created by the Office of the Alien Property Custodian during World War II.

14. Department of Labor, Bureau of Labor Statistics, (N1–257–87–1). Comprehensive schedule for the records of the Consumer Expenditure Survey Program and the Consumer Price and Price Index Program.

15. National Security Agency (N1–457–88–6, N1–457–88–7, and N1–457–88–8). These NSA schedules are classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)[3], and Pub. L. 86–36.

16. Office of Personnel Management (N1–146–88–2). Microfilmed veterans preference and change in status files created by the U.S. Civil Service Commission, 1887–1956.

17. Railroad Retirement Board (N1–184–88–1). Part one of agency's comprehensive schedule covering routine administrative and program records.

18. Small Business Administration, Office of Administrative Services, (N1–309–88–1). Case files on administrative proceedings maintained by the Office of General Counsel.

19. Tennessee Valley Authority, Division of Purchasing (NC1–142–85–15). Comprehensive records schedule.

20. United States Information Agency, Bureau of Programs, Policy Guidance Staff (N1–306–88–10). Facilitative files (records documenting overall policies and programs are permanent).

Dated: August 10, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–18642 Filed 8–16–88; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on these information collections must be submitted by September 16, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202 682–5401).

FOR FURTHER INFORMATION CONTACT: Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202 682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the following new collections of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Status of Dance in Elementary and Secondary Education: Dance Instructors Questionnaire
Frequency of Collection: One-time
Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions
Use: This survey is designed to gather baseline data on the condition of dance in public and private elementary, middle, and secondary American schools. Data of particular interest to this study are the performance standards of dance, curriculum content, budgets, and instructional practices.
Estimated Number of Respondents: 180
Average Burden Hours per Response: .5+
Total Estimated Burden: 97

Title: Status of Theater in Elementary and Secondary Education: Theater Questionnaire
Frequency of Collection: One-time
Respondents: State or local governments; Businesses or other for-profit;
Non-profit institutions
Use: This survey is designed to gather baseline data on the condition of theater in public and private elementary, middle, and secondary American schools. Data of particular interest to this study are the performance standards of theater, curriculum content, budgets, and instructional practices.
Estimated Number of Respondents: 375
Average Burden Hours per Response: .5+
Total Estimated Burden: 205

Title: Status of Visual Arts in Elementary and Secondary Education: (a) Elementary Principal Questionnaire; (b) Art Teacher Questionnaire
Frequency of Collection: One-time
Respondents: State or local governments; Businesses or other for-profit;
Non-profit institutions
Use: This survey is designed to gather baseline data on the condition of art in public and private elementary, middle, and secondary American schools. Data of particular interest to this study are the performance standards of art, curriculum content, budgets, and instructional practices.
Estimated Number of Respondents: (a) 632 (b) 463
Average Burden Hours per Response: (a) .5+ (b) .33+
Total Estimated Burden: 526 (a+b)

Vera K. Yancey,

Assistant Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88–18580 Filed 8–16–88; 8:45 am]

BILLING CODE 7537–01–M

BEST COPY AVAILABLE

NATIONAL SCIENCE FOUNDATION

[OMB Number 3145-0058]

Division of Instrumentation and Resources Postdoctoral Fellowships and Professional Development Awards in Studies in Science, Technology & Society Deadline: November 15

Objectives and Scope

The Program for Studies in Science, Technology, & Society is pleased to announce new guidelines for a program of postdoctoral fellowships and professional development awards. These awards will be made to scholars who wish to improve and expand their skills in historical, philosophical, ethical, normative, or social science studies of science, engineering and technology.

The program's major purpose is to link opportunities for original research to further training and study experiences. Two kinds of awards will be made: postdoctoral fellowships and professional development awards. The postdoctoral fellowships are intended for recent Ph.D.'s in an area of science, technology and society studies (for instance, history and philosophy, ethics, sociology, psychology, or anthropology of science or technology). The professional development awards are intended to support established scholars from the field of science, technology and society studies to improve their understanding of science and technology *or* to support experienced scientists and engineers wishing to develop or improve science or technology studies skills. These awards should: (1) Allow recipients to undertake original independent research and special studies while working with a senior sponsoring scholar or scholars; and, (2) depending on the recipients' background, enhance methodological and technical skills in science, technology and society studies or in areas of natural or physical sciences, mathematics or engineering.

Eligibility

The research proposed for the awards may be in any field germane to Studies in Science, Technology and Society areas of support. Projects in twentieth century science and technology, including science and technology policy, are especially encouraged. Specifically ineligible are studies in medicine and society which have a public health or clinical orientation.

To be eligible for fellowships or professional development awards in Science, Technology and Society Studies, applicants must be nationals of the United States, that is, citizens of the United States or native residents of a possession of the United States. Citizens of other countries who have applied for United States citizenship or who have permanent residency status are not eligible.

Applicants for postdoctoral fellowships must have been awarded their first doctoral degree within five years of the deadline for application or realistically expect to earn this degree by no later than one year after the deadline. Postdoctoral fellows must have earned the Ph.D. degree before tenure may begin. Persons with pre-doctoral degrees in many of these fields may be eligible for doctoral dissertation support through the Foundation's doctoral dissertation research support programs (NSF 88-35).

Normally applicants for professional development awards must have at least five years of advanced teaching and/or research experience in some field of science or engineering, history, philosophy, ethics, or the social study of science, engineering or technology. Scholars without Ph.D.'s who wish to be considered for professional development awards must demonstrate to the satisfaction of an external review panel that their training, professional status, and experience are equivalent to the requirement for the Ph.D., and that their credentials include at least five years of postdoctoral-level research experience and a record of publications or comparable professional accomplishment.

Project Sites

During the tenure of their awards, recipients must work in established and fiscally responsible nonprofit host institutions (U.S. or foreign). The institutions should clearly offer the opportunity to enhance the training and methodological sophistication of the award recipients or offer exceptional tutorial or collaborative relationships consistent with enhancement of research quality. Accessibility to laboratory and other research sites, or to relevant archival materials should also be taken into consideration in selecting institutional affiliations.

All arrangements for affiliations with senior scholars and institutions are the responsibility of the applicants. Applications must include letters from the host institutions, signed by authorized officials, affirming that the applicants will be welcome and will be provided with adequate space and basic services. They must provide statements from the senior scholars with whom the applicants plan to work, indicating a commitment to consultation and assistance in the applicants' research and learning programs during the requested tenure periods. Applicants who need assistance in identifying suitable hosts are encouraged to contact the NSF Studies in Science, Technology and Society Program to discuss the possibilities. For information, write or call 202-357-9894.

Preference will be given to applicants who move to new institutions and research environments with which they have not been affiliated at the graduate or postgraduate level, or with which they will have been affiliated for no more than three months prior to the start of fellowship tenure. Applicants who wish to affiliate with institutions with which they have had prior associations should have special justifications for these arrangements in their proposals.

Preference among professional development applicants will be given those who affiliate with host scholars from disciplines different from the category in which they have their degree or equivalent. Thus, a natural scientist who affiliates with a philosopher would be preferred to one who affiliates with another natural scientist. Similarly, an historian who affiliates with an engineer would be preferred to one who affiliates with another historian. Under exceptional circumstances, with NSF concurrence, research sites or host institutions may be changed.

Tenure, Stipends, and Allowances

Postdoctoral fellowships are generally awarded for one year of full-time research though the funds may be used over a two year period. The fellowships provide stipends of $24,000, payable at the rate of $2,000 per month; special allowances of $2,000 expendable for supplies, special travel, publication expenses, and other research related costs; and separate institutional allowances of $2,000 (for domestic host institutions only). Institutional allowances will be paid directly to U.S. host institutions to partially defray administrative costs incurred in conjunction with the fellowships. No allowances for dependents are available.

Professional development awards may be used to support full or half-time activities for up to two years. Plans for less than half-time or for intermittent tenures should provide special justification. Total stipends will not exceed $36,000. Applicants are encouraged to supplement this support from sabbatical pay and other sources. Special allowances of $2,000 are available for supplies, special travel, publication expenses and other research related costs. Institutional allowances of

$2,000 (for domestic host institutions only) will be paid directly to U.S. host institutions to defray costs incurred in conjunction with the awards. Up to $3,000 will be available for moving expenses if necessary.

Evaluation and Selection of Awardees

Evaluation criteria include: the significance and intrinsic merit of the research and training/studies programs that are proposed; the degree of enhancement of methodological skills and/or knowledge of science and technology; the perceived research competence and potential of the applicants; and the suitability and availability of the sponsoring senior scholars at the host institutions. The nature and degree of cross-disciplinary interchange and interaction will be given significant weight, especially for the professional development awards. Judicious selection of a research problem, logical organization of the learning program, clarity in project design and description, and lucid writing will weigh heavily in the evaluation process. Additional factors include: evidence of past research accomplishments (especially those documented through papers published in high-quality, peer-reviewed journals); suitability of the host institutions; likely effect of the proposed project on the future research development of the applicants; and the potential impact of the research on the field as a whole.

Awards will be made by the National Science Foundation on the basis of the recommendations of a panel of experts applying the above criteria, with due consideration to the impact of the awards on studies in science, technology and society. Successful applicants will be notified by letter.

Conditions of Appointment

Unless explained in the proposal and approved by the NSF, the postdoctoral fellows will be expected to devote full time to appropriate research during the tenure of the Fellowship; recipients of the professional development awards will generally be expected to devote at least half-time to appropriate research during the tenure of the award. All recipients of awards are expected to pursue the program for which the award was granted. Major changes in the research plan, in tenure, or institutional affiliation will require prior Foundation approval.

The annualized salaries of the recipients cannot be augmented by receipt of the award. Professional Development Award recipients may use sabbatical leave pay along with this award. Alternatively or additionally, institutions may supplement stipends for both fellows and professional development award recipients without prior permission from the Foundation, provided that such supplements are in accord with established institutional policies. Supplements may not be conditioned on any requirement for duties in addition to normal activities of the recipients and may involve teaching only to the extent that the recipients conduct or participate in seminars clearly related to their research programs. In the context of these guidelines, funds that the institution has obtained from external (including Federal) sources may be considered institutional funds. When appropriate, NSF project grants may be used for supplementation to recipients of these awards for duties which are related to their award programs.

At the conclusion of the tenure of these awards, a brief final report using NSF Form 98A must be submitted to NSF.

Intellectual Property Rights

The National Science Foundation claims no rights to any inventions or writings that might result from these awards. Recipients should note their obligation to include an acknowledgement of NSF support (citing an award number) and a disclaimer of NSF responsibility for the impact of any inventions or writings that might result from the results of these awards.

Privacy Act Notice

The application forms request certain information pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861 et seq.). The information concerning citizenship, field of study, and prior educational experience is used to determine the eligibility for this competition. Personal data such as social security numbers are used in correlating application information and materials, and for distinguishing applicants with similar names. The remaining information assists reviewing panelists in evaluating qualifications for the awards. The information supplied will be used and disclosed only in connection with the evaluation of projects, selection of award recipients, and the administration of awards. It will be used for statistical reports in a form that will not allow identification of individual applicants. Other than these uses, the information will be held in confidence to the extent permitted by law.

Post-Project Review

Selected award recipients may be invited to participate in a special NSF-sponsored symposium focused on research performed by them under this program's support. They may be asked either to present their research as papers or to participate as discussants.

Application Procedures and Materials

To be eligible for consideration, an application must be complete. Reproductions of all forms are acceptable. The signed original and all copies should be printed on only one side of the paper.

(1) NSF should be sent ten (10) collated sets of the proposal containing (in the order listed below):

(a) The application cover page [Appendix 1];

(b) A project summary of 200 words or less written to stand alone;

(c) The proposal text containing a training/study and research plan. This section should not exceed eight (8) single-spaced typewritten pages. The text should include a discussion of the objectives, methods and significance of the research during the tenure period, and the studies in the host discipline or related disciplines that will be undertaken over the period of the award.

(d) A personal statement of no more than one single-spaced typewritten page. This statement should describe the applicant's career goals in the research areas of Studies in Science, Technology and Society and the role that the project, sponsoring senior scholar, and host institution will play in enhancing those goals.

(e) The statement, [Appendix III] from the senior scholar at the proposed host institution indicating agreement to work with the applicant if the award is made;

(f) A letter from the host institution, signed by an authorized official, affirming that if the award is made, the applicant will be provided with adequate space and basic services;

(g) Complete, up-to-date *curriculum vitae* for the applicant and the host scholar;

(h) If the applicant has received an NSF award in the past five years, a section entitled "Results from Prior NSF Support" is required, consisting of no more than a single additional page for each prior award. This statement should include the award number, amount and duration of support, title of the project, summary of results, and list of publications acknowledging the NSF award.

(i) A statement of the relationship (if any) of the proposed award to the applicant's dissertation work.

(j) Three letters of recommendation may be attached. New Ph.D's should, in

general, obtain one of these letters from their thesis advisers. A copy of the applicant's training/study and research plan should be provided to these referees.

(2) Attached to the original proposal should be the following in order designated below:

(a) The duly executed Oath or Affirmation [Appendix II];

(b) Clipped on the top of the original proposal only should be Information about Principal Investigators/Project Directors (NSF Form 1225) [Appendix IV].

Timetable

Proposal submission deadline received in NSF by November 15 of each year.

Award announcement during the following March.

Tenure may begin any time after June 1 of the award year and before June 1 of the following year.

Address

Send the original and 8 copies of the application to:

Proposal Processing Unit, Room 223, National Science Foundation, 1800 G St. NW., Washington, DC 20550

Send one information copy directly to:

Studies in Science, Technology and Society Program, Division of Information and Resources, Room 320, National Science Foundation, Washington, DC 20550

The Foundation welcomes proposals on behalf of all qualified scholars, and strongly encourages women, minorities and persons with disabilities to compete fully in the program described in this document. Facilitation Awards for Handicapped Scientists and Engineers (FAH) provide support for special assistance or equipment to enable investigators, students, or staff with disabilities to work on an NSF-supported project. See the FAH announcement, or contact the FAH coordinator (202/357–7456).

In accordance with Federal statutes and regulations and NSF policies, race, color, age, sex, national origin, or disability shall not be used against, deny benefits to or exclude any person from participation in any program or activity receiving financial assistance from the National Science Fondation.

The Foundation provides awards for research in the sciences and engineering. Award recipients are wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357–7492.

(Catalogue of Federal Domestic Assistance: 47.051 Biological, Behavioral and Social Sciences)

Rachelle Hollander,

Ronald J. Overmann,

Program Directors for Studies in Science, Technology and Society.

August 15, 1988.

[FR Doc. 88–18596 Filed 8–16–88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–124]

Virginia Polytechnic Institute and State University, the Virginia Polytechnic Institute Argonaut Reactor; Order Terminating Facility Operating License

By application dated July 17, 1986, as supplemented, Virginia Polytechnic Institute and State University (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of its Argonaut Reactor Facility and to terminate Facility Operating License No. R–62. A Notice of "Proposed Issuance of Orders Authorizing Dismantling of Facility and Disposition of Component Parts, and Terminating Facility License", was published in the **Federal Register** on August 26, 1985 (51 FR 30455). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. By Order dated October 29, 1986, the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's dismantling plan.

The reactor was shutdown in July 1983 and all fuel has been removed from the core and shipped to a DOE facility for processing. The reactor facility has been completely dismantled and all requirements, particularly those relevant to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated October 29, 1986. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the Virginia Polytechnic Institute and State University, located in Blacksburg, Virginia, and pursuant to Sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(b), Facility Operating License No. R–62 is terminated as of the date of this Order. In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the **Federal Register** on August 9, 1988 (53 FR 29973).

For further details with respect to this action see: (1) The application for termination of Facility Operating License No. R–62, dated July 17, 1986, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of "Proposed Issuance of Orders Authorizing Dismantling of Facility and Disposition of Component Parts, and Terminating Facility License," published in the **Federal Register** on August 26, 1986 (51 FR 30455). Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 11th day of August 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–18611 Filed 8–16–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25991; File No. PHLX 88-25]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Foreign Currency Options Trading Hours

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1988 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange"), proposes to amend its Exchange Rule 101 to modify the hours business trading may be conducted in foreign currency options. Underlining indicates material proposed to be added; brackets indicate material proposed to be deleted.

Dealings Upon the Exchange Hours of Business

Rule 101. Except as otherwise ordered by the Board of Governors, the Exchange shall be open for the entrance of members upon every business day, at 8:00 a.m. The Exchange shall conform with daylight saving time when effective in the City of Philadelphia.

The Board of Governors shall determine by resolution the hours during which business may be transacted on the Exchange. The Board of Governors has resolved that no option series shall freely trade after 4:10 p.m. except that value Line Index Options and National Over-the-Counter Index Options shall freely trade until 4:15 p.m. each business day. The Board of Governors has resolved that except under unusual conditions as may be determined by the Board (or the Foreign Currency Options Committee or the Exchange official or officials designated by the Board) foreign currency option trading sessions shall be conducted *at such times as the Board of Governors shall specify between 6:00 p.m. Sundays and 3:00 p.m. Fridays. (Between the hours of 6:00 p.m. and 11:00 p.m. Sundays through Thursdays and in the daytime from 8:00 a.m. to 2:30 p.m. Mondays through Fridays.)*

Commentary .01

The Board of Governors has determined that the Foreign Currency Options evening trading segment generally shall correspond to 8:00 a.m. to 12:00 noon Tokyo, Japan time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to provide the Exchange with the flexibility to conform its daytime trading segment hours to coincide with the opening of trading in the European foreign exchange markets. The PHLX believes that, by coordinating daytime trading segment business hours in foreign currency options with the active morning segment hours in the prime European foreign exchange markets, it will better be able to meet the exchange rate risk protection and related hedging needs of European manufacturing, banking and other commercial firms. In this regard the Exchange via its London office surveyed existing and potential new users of the PHLX foreign currency options market to assess potential market penetration. The PHLX, since its initiation of foreign currency options trading in late 1982, has enjoyed a significant amount of order flow from European-based market participants despite trading during their late afternoon and off-business hours. Indeed, the Exchange's survey disclosed that an estimated 82% of European brokers and 84% of European banks queried would utilize PHLX foreign currency options during extended daytime trading hours (i.e., early morning trading hours in Philadelphia if they were available on the PHLX.)

For the most part, the PHLX expects the extension of the opening of the daytime foreign currency options trading segment to be treated as merely an extension of the existing trading day. Since the initiation of the evening trading segment, each trading day has been deemed to commence at 7:00 p.m. and continue until 2:30 p.m. the following aftenoon. The initiation of an expanded daytime trading segment opening would not alter this arrangement. For example, open interest and volume will continue to be calculated at the end of the daytime trading segment reflecting activity for the entire trading day (*i.e.*, the prior evening segment plus the expanded daytime trading segment). Margin requirements will continue to be based upon a net calculation of positions created throughout the entire trading day. The Exchange contemplates the expansions of the daytime trading segment will not necessitate any changes in current procedures respecting options exercises or assignments. The Exchange's real-time trade comparison system will be utilized thoughout all trading segments and augmented computer processing for the expanded daytime trading segment transactions will be initiated by the Exchange and the OCC, respectively. In this regard, the Exchange will assign additional market surveillance and operations staff personnel to cover the expanded foreign currency option daytime trading segment. The Exchange does not believe it will be necessary at the initiation of an expanded daytime foreign currency option trading segment to requre amendment to existing capital and/or position and exercise limit rules. The Exchange believes that existing firms and the recent admission of additional foreign currency option traders and brokers should provide sufficient market participants and corresponding liquidity during the expanded daytime trading segment hours.

The PHLX also notes that the interbank currency markets effectively operate on a 24 hour basis. Hence, persons that establish currency option positions before normal U.S. business hours are at risk that the underlying currency markets may move against them while the PHLX market has not yet opened. The expansion of the foreign currency option daytime trading segment will provide an opportunity for market participants to better protect themselves against 24 hour currency market fluctuations.

The flexibility built into the proposed rule is necessary because the Exchange has not determined the precise early morning time upon which to commence trading at this time. At this time the Exchange anticipates that the expanded daytime segment will be opened at 4:30

a.m., Philadelphia time. As previously discussed with Commission staff, the Exchange commits to filing a proposed rule change under section 19(b)(3)A when it identifies a specific time for the expanded early morning opening. The Exchange also commits that it will not otherwise expand or change currency options trading hours without making similar sub filings pursuant to section 19(b)(3)(A) to implement its broadened authority under this proposed rule change. This specified time will be made part of the proposed rule as commentary .02. The Exchange will provide foreign currency options participants and participant organizations with adequate notice of any such change in trading hours made as a result of implementation of the proposed rule change. The Exchange anticipates making the first such time change to expand the daytime trading segment on or around January 16, 1989.*

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer priod to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 12, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-18647 Filed 8-16-88; 8:45 am]

BILLING CODE 8010-01-M

*Pursuant to a proposed rule change previously submitted to and approved by the Commission (See File No. SR-PHLX-88-18 approved in Securities Exchange Act Release No. 25815, June 20, 1988) the PHLX expects to modify the hours of its evening trading segment from 7:00-11:00 p.m. Philadelphia time to 6:00-10:00 p.m. Philadelphia time on October 30, 1988. This is to conform to morning business hours in Tokyo, when the U.S. changes from daylight savings to Eastern Standard time.

[Release No. 35-24693]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 11, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 6, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company, et al. (70-7058)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, and Energy Initiatives, Incorporated, 95 Madison Avenue, Morristown, New Jersey 07960 ("EII"), a subsidiary of JCP&L, have filed, pursuant to sections 9(a) and 10 of the Act, a post-effective amendment to their previously filed application-declaration pursuant to sections 6(b), 9(a), 10, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order dated April 16, 1987 (HCAR No. 35-24373), EII was authorized, through December 31, 1996, to invest in cogeneration facilities qualifying under the Public Utility Regulatory Policies Act of 1973 located anywhere in the United States, and in other qualifying facilities located within the service territories of the companies that are parties to the Pennsylvania-New Jersey-Maryland Interconnection Agreement ("PJM Companies") and to perform certain services in connection with those facilities and with load management and energy storage system projects.

EII further proposes, through December 31, 1992, to perform feasibility studies, develop, and provide services for a fee in connection with qualifying facilities and load management and energy storage system projects. EII would carry on these activities directly, or indirectly through one or more corporations, partnerships, joint ventures, or other business entities. EII's investments therein, when added to its investments in qualifying facilities and other projects previously authorized, would not exceed the $7 million limitation imposed in the order cited above.

The proposed development services would include entering into power and fuel supply, asset acquisition and other contracts. Any assets so acquired would be incidental to the development services. Other contemplated services would include, but would not be limited to, contract negotiation and administration, filing and prosecution of applications for permits, development of financing programs, and consulting and management services for such qualifying facilities and projects.

EII would not act as an architect-engineer or contractor, nor, except where cogeneration facilities are concerned, would EII invest or have an ownership interest in any operating qualified facilities located outside the service territories of the PJM companies. EII will sell any ownership interest it may have acquired in connection with its development activities prior to the commencement of the construction of those facilities. EII will also, with respect to the activities mentioned above, account for and report to the Commission concerning those activities separately from its other authorized activities.

New Orleans Public Service, Inc. (70-7350)

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application with this Commission pursuant to sections 6(a)(2) and 7 of the Act.

By order dated May 12, 1987 (HCAR No. 24387), NOPSI was authorized to establish a new Mortgage ("Mortgage") providing for the issuance of Rate Recovery General and Refunding Mortgage Bonds ("G&R Bonds") and to issue and sell to institutional investors, $75 million of an initial series of G&R Bonds, 10.95% Series due May 1, 1997 ("10.95% Bonds"). The 10.95% Bonds were issued under a First Supplemental Indenture to the Mortgage, which, in relevant part, granted the holders of the 10.95% Bonds ("Bondholders") the right to tender such G&R Bonds to NOPSI for redemption upon the occurrence of certain specified events.

On February 4, 1988, the Council of the City of New Orleans adopted a resolution ("February 4th Resolution") that required NOPSI to write off and not recover from its retail electric customers $135 million of its Grand Gulf Steam Electric Nuclear Generating Station, Unit No. 1 ("Grand Gulf 1") related costs, which had been deferred for future recovery from customers, in addition to $51.2 million of previously incurred Grand Gulf 1 related costs that NOPSI had absorbed as part of the Rate Settlement with the City of New Orleans, which Settlement provided for recovery by NOPSI of its allocated share of costs associated with capacity and energy from Grand Gulf 1. As a result, NOPSI was required by the terms of the G&R Mortgage to cause an independent arbiter to deliver to the Trustee a certificate indicating whether, in the independent arbiter's opinion, the February 4th Resolution has currently materially impaired or prospectively will materially impair NOPSI's ability to perform its obligations in respect of all G&R Bonds outstanding under the G&R Mortgages. On June 24, 1988, the independent arbiter issued a certificate stating that, as to this issue, the opinion was affirmative and, thus, activated the Bondholders rights to tender their G&R Bonds for redemption. In accordance with the terms of the G&R Mortgage, on July 12, 1988, the Trustee notified the Bondholders of their right to tender their G&R Bonds for redemption; that is, that the Bondholders electing to exercise this right were required to tender their G&R Bonds to the Trustee not later than August 11, 1988 and that NOPSI would be required to redeem all outstanding G&R Bonds so tendered on August 26, 1988.

NOPSI states that the February 4th Resolution has had a substantial and adverse effect upon NOPSI's financial condition and cash flow and that, as a result, NOPSI would not have sufficient funds available to it to redeem the G&R Bonds on August 26, 1988. In order to avoid having to redeem the G&R Bonds, NOPSI now seeks authorization to enter into an agreement with the Bondholders, whereby the Bondholders would agree to forbear from tendering their G&R Bonds on August 11, 1988 and NOPSI would agree, subject to regulatory authorization, that, upon written notice from any Bondholder between November 24 and December 13, 1988, NOPSI would purchase the G&R Bonds at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase; provided, however that the Bondholders would not have the right to give such notice, and NOPSI would not be required to purchase any G&R Bonds, if an independent arbiter has delivered a certificate to each Bondholder on or prior to November 23, 1988 stating that the impairment of NOPSI's ability to perform its obligations on the G&R Bonds has ceased because of judicial or regulatory action. In addition, a Bondholder may revoke its notice of tender at any time prior to purchase of its G&R Bonds.

New Orleans Public Service, Inc. (70-7448)

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application with this Commission pursuant to sections 6(a)(2) and 7 of the Act.

By order dated January 13, 1988 (HCAR No. 24559), NOPSI was authorized to and did issue and sell to institutional investors, $40 million of NOPSI's Rate Recovery General and Refunding Mortgage Bonds ("G&R Bonds"), 13.20% Series due February 1, 1991 ("13.20% Bonds"), 13.60% Series due February 1, 1993 ("13.60% Bonds"), and 13.90% Series due February 1, 1995 ("13.90% Bonds"), issued under a Second Supplemental Indenture to NOPSI's General and Refunding Mortgage, as amended ("G&R Mortgage"). The G&R Mortgage granted the holders of the 13.20%, 13.60% and 13.90% Bonds (collectively, "Bondholders") the right to tender such G&R Bonds to NOPSI for redemption upon the occurrence of certain specified events.

On February 4, 1988, the Council of the City of New Orleans adopted a resolution ("February 4th Resolution") that required NOPSI to write off and not recover from its retail electric customers $135 million of its Grand Gulf Steam Electric Nuclear Generating Station, Unit No. 1 ("Grand Gulf 1") related costs, which had been deferred for future recovery from customers, in addition to $51.2 million of previously incurred Grand Gulf 1 elated costs that NOPSI had absorbed as part of the Rate Settlement with the City of New Orleans, which Settlement provided for recovery by NOPSI of its allocated share of costs associated with capacity and energy from Grand Gulf 1. As a result, NOPSI was required by the terms of the G&R Mortgage to cause an independent arbiter to deliver to the Trustee a certificate indicating whether, in the independent arbiter's opinion, the February 4th Resolution has currently materially impaired or prospectively will materially impair NOPSI's ability to perform its obligations in respect of all G&R Bonds outstanding under the G&R Mortgages. On June 24, 1988, the independent arbiter issued a certificate stating that, as to this issue, the opinion was affirmative and, thus, activated the Bondholders rights to tender their G&R Bonds for redemption. In accordance with the terms of the G&R Mortgage, on July 12, 1988, the Trustee notified the

Bondholders of their right to tender their G&R Bonds for redemption; that is, that the Bondholders electing to exercise this right were required to tender their G&R Bonds to the Trustee not later than August 11, 1988 and that NOPSI would be required to redeem all outstanding G&R Bonds so tendered on August 26, 1988.

NOPSI states that the February 4th Resolution has had a substantial and adverse effect upon NOPSI's financial condition and cash flow and that, as a result, NOPSI would not have sufficient funds available to it to redeem the G&R Bonds on August 26, 1988. In order to avoid having to redeem the G&R Bonds, NOPSI now seeks authorization to enter into an agreement with the Bondholders, whereby the Bondholders would agree to forbear from tendering their G&R Bonds on August 11, 1988 and NOPSI would agree, subject to regulatory authorization, that, upon written notice from any Bondholder between November 24 and December 13, 1988, NOPSI would purchase the G&R Bonds at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase; provided, however that the Bondholders would not have the right to give such notice, and NOPSI would not be required to purchase any G&R Bonds, if an independent arbiter has delivered a certificate to each Bondholder on or prior to November 23, 1988 stating that the impairment of NOPSI's ability to perform its obligations on the G&R Bonds has ceased because of judicial or regulatory action. In addition, a Bondholder may revoke its notice of tender at any time prior to purchase of its G&R Bonds.

Ohio Valley Electric Corporation (70–7499)

Ohio Valley Electric Corporation ("Ohio Valley"), U.S. Route 23, Piketon, Ohio 45561, a public utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed an application pursuant to Section 9(c)(3) of the Act.

Ohio Valley is jointly owned by AEP, Columbus Southern Power Company ("Columbus"), an operating subsidiary of AEP, and several nonaffiliate utility companies. Ohio Valley supplies the power requirements of a gaseous diffusion plant located near Portsmouth, Ohio, which is owned by the U.S. Department of Energy. On June 3, 1983, Ohio Valley entered into a contract for services and supplies from Electronic Associates, Inc. ("EAI"), a nonaffiliate corporation and provider of computer systems, for a total amount of $891,973.36. As a result of financial and other difficulties, EAI subsequently terminated its contract with Ohio Valley and, on March 10, 1988, Ohio Valley and EAI entered into a Settlement Agreement ("Settlement Agreement") with regard to Ohio Valley's claims against EAI in the amount of $974,367.50. The Settlement Agreement provided for payment to Ohio Valley of $124,100 in cash and a warrant to purchase ("EAI Warrant") EAI's common stock ("EAI Common Stock").

Ohio Valley now requests authorization to acquire an EAI Warrant to purchase a total of 21,900 shares of EAI Common Stock at $6.00 per share, through December 31, 1997. The 21,900 shares of EAI Common Stock represent 7.3% of the 300,000 shares of EAI Common Stock which can be purchased through exercise of all of the EAI warrants issued pursuant to the several Settlement Agreements,[1] or less than one percent (1%) of the total 2,862,640 shares of EAI Common Stock outstanding. Ohio Valley does not currently own any EAI securities and does not have plans to acquire any EAI securities other than by exercise of the EAI Warrants.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–18648 Filed 8–16–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05105–0195]

Banc One Venture Corp.; Filing of Application for Transfer of Control of a Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to the Regulations governing Small Business Investment Companies (SBICs) (13 CFR 107.601 (1988)) for the Transfer of Control of Banc One Venture Corporation (the Licensee) (formerly Marine Venture Capital, Inc.), 111 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act).

The SBIC was licensed on May 2, 1984, with paid-in capital and paid-in surplus of $6,000,000. The licensee is a subsidiary of the Marine Bank, N.A.; Marine Bank, N.A. being a subsidiary of the Marine Corporation (MC).

An April 1, 1988, MC merged into Banc One Corporation (Banc One) and became Banc One Wisconsin Corporation. Marine Bank, N.A. became Banc One, Milwaukee, NA.

No changes in the management or operating policies of the Licensee are contemplated.

Banc One also owns an SBIC, Banc One Capital Corporation, in Columbus, Ohio, License Number 05/06–0020.

Matters involved in the SBA's consideration of the application include the general business reputation and character of the proposed transferees and the probability of successful operation of the Licensee under their control and management in accordance with the Act and Regulations.

Notice is further given that any interested person may, not later than September 16, 1988, submit their comments, in writing, on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A similar Notice shall be published by the Licensee in newspapers of general circulation in Columbus, Ohio and Milwaukee, Wisconsin.

(Catalog of Federal Domestic Assistance Program No. 59–011, Small Business Investment Companies).

Dated: August 10, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88–18552 Filed 8–16–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1078]

Inter-American Convention on Letters Rogatory Enters Into Force on August 27, 1988

The Inter-American Convention on Letters Rogatory together with its Additional Protocol will enter into force for the United States on August 27, 1988. The United States ratified the Convention and Additional Protocol subject to the following two reservations:

1. Pursuant to Article 2(b) of the Inter-American Convention on Letters Rogatory, letters rogatory that have as their purpose the taking of evidence shall be excluded from the rights, obligations and operation of this Convention between the United States and another State Party.

2. In ratifying the Inter-American Convention on Letters Rogatory, the United

[1] EAI entered into Settlement Agreements with certain other nonaffiliate utilities that also had claims for computer services and supplies against EAI.

States accepts entry into force and undertakes treaty relations only with respect to States which have ratified or acceded to the Additional Protocol as well as the Inter-American Convention, and not with respect to States which have ratified or acceded to the Inter-American Convention alone.

In depositing its instrument of ratification with the Organization of American States, the United States declared that:

Pursuant to Article 4 of the Convention and Article 2 of the Additional Protocol, the Government of the United States wishes to inform the Secretary General that the Department of Justice is the Central Authority competent to receive and distribute letters rogatory. The mailing address for these purposes is:

Office of International Judicial Assistance, Civil Division, Department of Justice, Todd Building, Room 1234, 550 11th Street, NW., Washington, DC 20530.

Pursuant to Article 18 of the Convention, the Government of the United States wishes to inform the Secretary General that letters rogatory to be executed in the United States must be translated into the English language.

Pursuant to Article 6 of the Additional Protocol, the Government of the United States declares that the United States reserves the right to charge a total of twenty-five dollars for performance of the services referred to therein. Pursuant to Article 7 of the Additional Protocol, the Government of the United States declares that the aforementioned charge shall be waived on a reciprocal basis for the execution of a letter rogatory emanating from any State Party to both the Convention and Additional Protocol and may be otherwise waived as appropriate.

States Party to both the Convention and Additional Protocol are: Argentina, Ecuador, Guatemala, Mexico, Paraguay, Peru and Uruguay.

The Convention may be found in 14 International Legal Materials 339 (1975). The Additional Protocol may be found in 18 International Legal Materials 1238 (1979).

Forms for submitting letters rogatory will soon be available at U.S. Marshals' offices.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law.

August 8, 1988.

[FR Doc. 88-18572 Filed 8-16-88; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-068]

Chemical Transportation Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). This committee advises the Chief, Office of Marine Safety, Security and Environmental Protection on regulatory requirements for promoting safety in the transportation of hazardous materials on vessels and the transfer of these materials between vessels and waterfront facilities.

Applications will be considered for eight expiring terms and any other existing vacancies. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in applications from minorities and women.

The Committee usually meets at least once a year in Washington, DC, with subcommittee meetings for specific problems on an as-required basis.

DATE: Requests for applications should be received no later than December 1, 1988.

ADDRESS: Persons interested in applying should write to Commandant (G-MTH-1), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Commander Ronald W. Tanner, at the above mailing address, or telephone (202) 267-1217.

Dated: August 11, 1988.

J.E. Lindak,

Captain, U.S. Coast Guard, Acting Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-18627 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88-066]

Meeting of the Chemical Transportation Advisory Committee Subcommittee on Vapor Control

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of meeting of the Chemical Transportation Advisory Committee (CTAC) Subcommittee on Vapor Control. The Subcommittee is considering requirements for tank vessels and watefront facilities which use vapor control systems. The meeting will be held on Monday, September 12, 1988 and Tuesday, September 13, 1988, in Room 3437A, B, C, and D, Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end at 5:00 p.m. on Monday, and begin at 8:00 a.m. and end at 3:00 p.m. on Tuesday. The Waterfront Facilities Working Group, Tankship Working Group, and Tank Barge Working Group will submit recommendations on work items assigned at the last Subcommittee meeting. The results of a hazards analysis and comments from other organizations concerning the Subcommittee's interim standards will also be discussed.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Report on hazards analysis.
4. Comments from other organizations.
5. Consideration of the working groups' recommendations.
6. Assignment of Subcommittee work.
7. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander, R.H. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1217.

Dated: August 11, 1988.

J.E. Lindak,

Captain, U.S. Coast Guard, Acting Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-18625 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88-067]

Meeting of the Training and Qualification Working Group for the Subcommittee on Vapor Control, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Training and Qualification Working Group for the Subcommittee on Vapor Control of the Chemcial Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and

waterfront facilities which use vapor control systems. The puppose of the working group is to develop recommended standards for the training and qualificaton of personnel involved in the loading of tank vessels with vapor control systems in use. The meeting will be held on Wednesday, Septebmer 14, 1988; in Room 4315, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. At this meeting, the working group will discuss the training guidelines developed at the last meeting, and finalize its recommendatons for submission to the Subcommittee.

Attendnace is open to the public. Members of the public may present oral statements at the meetings. persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R. H. Fitch, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second St. SW., Washington, DC 20593–0001, (202) 267–1217.

Dated: August 11, 1988.

J.F. Luidak,

Captain, U.S. Coast Guard, Acting Deputy Chief, Officer of Marine Safety Security and Environmental Protection.

[FR Doc. 88–18626 Filed 8–16–88; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Report of the FAA Conference on Aging Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA hosted an international conference on aging airplanes on June 1–3, 1988, in Arlington, Virginia. Approximately 400 representatives of airlines, manufacturers, aviation industry groups, and civil airworthiness authority organizations from more than 12 countries participated in the conference. A compilation of the discussion and commentary heard at the conference is to be made available to the public on August 17, 1988.

FOR FURTHER INFORMATION CONTACT: Jeffrey Gordon, United States Department of Transportation, Transportation Systems Center, DTS–76, Kendall Square, Cambridge, Massachusetts 02142, telephone (617) 494–2254.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this report by writing to: Technical Reference Center, United States Department of Transportation, Transportation Systems Center, DTS–930, Kendall Square, Cambridge, Massachusetts 02142.

Background

On June 1–3, 1988, the FAA hosted an international conference on aging airplanes used in air carrier and commuter operations. Recent events brought to the forefront an FAA concern that the safety of the aging air transportation fleet and the past decade of operation using supplemental inspection documents should be reevaluated.

The conference was held to exchange views and discuss concepts for the future in areas which will be most productive in assuring the airworthiness of the aging fleet. The conference addressed research and development needs as well as design, maintenance, and inspection. The discussion took place in four panels which addressed the areas of airframe, engine, inspection (including nondestructive testing), and human factors. These four panels deliberated for 2 days and presented a number of recommendations on the final day of the conference.

The report provides a complete overview of the conference proceedings, consolidating all of the presentations given by keynote speakers, a narrative summary of the four panel discussions, and remarks made at the closing session.

Issued in Washington, DC, on July 5, 1988.

John K. McGrath,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service (Office of Airworthiness).

[FR Doc. 88–18551 Filed 8–16–88; 8:45 am]

BILLING CODE 4920–13–M

Radio Technical Commission for Aeronautics; Special Committee 159—Minimum Aviation System Performance Standard for GPS; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the 10th meeting of Radio Technical Commission for Aeronautics (RTCA) Special Committee 159 on Minimum Aviation System Performance Standard for GPS to be held September 8–9, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) Approval of minutes of the ninth meeting, (3) Review of DOD/FAA activity on GPS selective availability, (4) Report of the GPS Integrity Channel Working Group, (5) Review of EUROCAE WG–28 activities, (6) Review of proposed final draft of GPS Minimum Aviation System Performance Standard, (7) Other business, (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 4, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88–18549 Filed 8–16–88; 8:45 am]

BILLING CODE 4910–13–M

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463); 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 10:30 a.m., September 15, 1988, at the Corporation's Administration Building, 180 Andrews Street, Massena, New York. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administartor, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than September 8, 1988, Paul A. Maroun, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on August 10, 1988.

Paul A. Maroun,

Advisory Board Liaison.

[FR Doc. 88-18573 Filed 8-16-88; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 11, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0108.
Form Number: 1096.
Type of Review: Revision.
Title: Annual Summary and Transmittal of U.S. Information Returns.
Description: Form 1096 is used to transmit information returns (Forms 1099, 1098, 5498, and W-2G) to the Service Center. Under Internal Revenue Code section 6041 and related sections, a separate Form 1096 is used for each type of return sent to the Service Center by the payer. It is used by IRS to summarize and categorize the transmittal forms.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 3,694,520.
Estimated Burden Hours Per Response: 35 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,806,257 hours.

OMB Number: 1545-0126.
Form Number: 1120F.
Type of Review: Revision.
Title: U.S. Income Tax Return of a Foreign Corporation.
Description: Form 1120F is used by foreign corporations to report income from the following types of activities: investments, business, and branch profits. The IRS uses Form 1120F to determine if the foreign corporation has correctly reported its income, deduction and tax and if it has paid the correct amount of tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 18,000.
Estimated Burden Hours Per Response: 13 hours and 35 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 250,530 hours.

OMB Number: 1545-0644.
Form Number: 6781.
Type of Review: Extension.
Title: Gains and Losses from section 1256 Contracts and Straddles.
Description: Form 6781 is used by taxpayers in computing their gains and losses from section 1256 Contracts and Straddles and their special tax treatment. The data is used to verify that the tax reported accurately reflects any such gains and losses.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 100,000.
Estimated Burden Hours Per Response: 2 hours and 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 301,364 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-18631 Filed 8-16-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 11, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0003.
Form Number: SS-4 and SS-4PR.
Type of Review: Resubmission.
Title: Application for Employer Identification Number.
Description: Taxpayers required to have an employer identification number for use on any return, statement, or other document must prepare and file Form SS-4 or Form SS-4PR (Puerto Rico) to obtain a number. The information is used by IRS and SSA in tax administration and by the Bureau of the Census for business statistics.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 2,798,500.
Estimated Burden Hours Per Response: 41 minutes.
Frequency of Response: On occasion.
Estimated Average Reporting Burden: 1,929,253.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-18632 Filed 8-16-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 159
Wednesday, August 17, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 22, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18700 Filed 8-15-88; 11:38 am]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, September 7, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of August, 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of notice: August 11, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-18685 Filed 8-15-88; 11:13 am]

BILLING CODE 7550-01-M

VOL 53 ISS 159 AUG 17 1988 UMI

federal register

Wednesday
August 17, 1988

Part II

Environmental Protection Agency

40 CFR Parts 264 etc.
[OSW-FR-88-011]
Land Disposal Restrictions for First Third Scheduled Wastes; Final Rule

VOL 53 ISS 159 AUG 17 1988 UMI

Environmental Protection Agency

40 CFR Parts 264, 265, 266, 268 and 271

[OSW-FR-88-011; SWH-FRL-3420-4]

Land Disposal Restrictions for First Third Scheduled Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating regulations implementing the congressionally mandated prohibitions on land disposal of hazardous wastes listed in 40 CFR 268.10. This action is taken in response to amendments to the Resource Conservation and Recovery Act (RCRA), enacted in the Hazardous and Solid Waste Amendments (HSWA) of 1984. Today's notice promulgates specific treatment standards and effective dates for certain so-called "First Third" wastes. In addition, the Agency is promulgating regulations implementing the land disposal restrictions for those First Third wastes for which EPA is not establishing a treatment standard.

Furthermore, today's rule establishes regulations that do not specifically involve First Third wastes (or do not apply exclusively to such wastes). These actions include modifications to the existing requirements for the "no migration" petition process and the rescission of the nationwide capacity variance for hazardous wastes (other than contaminated soils) containing halogenated organic compounds (HOCs) granted by the Agency in the July 8, 1987 rulemaking. The Agency is also amending the treatment standard applicable to certain California list HOC wastes to allow burning in industrial boilers and furnaces, and revising the treatment standard for methylene chloride in spent solvent wastewaters from the pharmaceutical industry. EPA also is amending 40 CFR 266.20 to require that most hazardous wastes used in a manner constituting disposal meet the applicable treatment standards for the prohibited hazardous waste that they contain as a condition of remaining exempt from other RCRA standards. Additionally, today's rule modifies portions of the land disposal restrictions framework.

EFFECTIVE DATE: This final rule is effective August 8, 1988, except for the modification to 40 CFR 268.5(h)(2), which becomes effective November 8, 1988.

ADDRESS: The official record for this rulemaking is identified as Docket Number F–88–LDR9–FFFFF and is located in the EPA RCRA Docket (located in the sub-basement) 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for public holidays. To review docket materials, the public must make an appointment by calling (202) 475–9327. The public may make copies of the docket materials at a cost of $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this rulemaking contact the RCRA Hotline, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346 (toll free) or (202) 382–3000 in the Washington, DC metropolitan area. For information on specific aspects of this rule contact Stephen Weil, Mitch Kidwell or William Fortune, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4770. For specific information on treatment standards/BDAT, contact James Berlow or Larry Rosengrant, Office of Solid Waste (OS–322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7917. For specific information on capacity determinations/national variances, contact Jo-Ann Bassi, or Linda Malcolm, Office of Solid Waste (OS–322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7917.

SUPPLEMENTARY INFORMATION:

PREAMBLE OUTLINE

I. Background
- A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework
  - 1. Statutory Requirements
  - 2. Solvents and Dioxins
  - 3. California List Waste
  - 4. Scheduled Wastes
  - 5. Newly Identified and Listed Wastes
- B. Summary of the Proposed Rules
  - 1. Proposed Approach
  - 2. Applicability
  - 3. Best Demonstrated Available Technologies (BDAT)
  - 4. Waste Analysis Requirements
  - 5. Nationwide Variances from the Effective Date
  - 6. "Soft Hammer" Requirements
  - 7. "No Migration" Petition Requirements
  - 8. Comparative Risk Assessment
  - 9. Modifications to the Framework

II. Summary of Today's Final Rule
- A. Applicability
- B. Waste Analysis Requirements
- C. Treatment Standards and Effective Dates
- D. "Soft Hammer" Requirements
- E. Reinterpretation of RCRA section 3004(h)(4)
- F. "No Migration" Petition Requirements
- G. Nonrulemaking Procedures for Site-Specific Variances from the Treatment Standard

III. Detailed Discussion of Today's Final Rule
- A. Determination of Treatability Groups and Development of Treatment Standards
  - 1. Waste Treatability Groups
  - 2. Identification of BDAT
  - 3. Compliance with Performance Standards
  - 4. Applicability of Treatment Standards to Mixtures and Other "Derived-From" Residues
  - 5. Transfer of Treatment Standards
  - 6. "No Land Disposal" as the Treatment Standard
  - 7. Waste—Specific Treatment Standards
    - a. Revision of BDAT Treatment Standard for Methylene Chloride in Wastewaters from the Pharmaceutical Industry
    - b. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
    - c. K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.
    - d. K015—Still bottoms from the distillation of benzyl chloride.
    - e. K016—Heavy ends or distillation residues from the production of carbon tetrachloride.

    K018—Heavy ends from the fractionation column in ethyl chloride production.

    K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.

    K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride production.

    K030—Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.

PREAMBLE OUTLINE—Continued

f. K022—Distillation bottom tars from the production of phenol/acetone from cumene.
g. K024—Distillation bottom tars from the production of phthalic anhydride from naphthalene.
h. K037—Wastewater treatment sludges from the production of disulfoton.
i. K044—Wastewater treatment sludges from the manufacturing and processing of explosives.
K045—Spent carbon from the treatment of wastewater containing explosives.
K047—Pink/red water from TNT operations.
j. K046—Wastewater treatment sludges from the manufacturing, formulation, and loading of lead based initiating compounds.
k. K048 Dissolved air flotation (DAF) float from the petroleum refining industry.
K049—Slop oil emulsion solids from the petroleum refining industry.
K050—Heat exchanger bundle cleaning sludge from the petroleum refining industry.
K051—API separator sludge from the petroleum refining industry.
K052—Tank bottoms (leaded) from the petroleum refining industry.
l. K061—Emission control dust/sludge from the primary production of steel in electric furnaces.
m. K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).
n. K069—Emission control dust/sludge from secondary lead smelting.
o. K071—Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.
p. K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.
q. K083—Distillation bottoms from aniline production.
r. K086—Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from the cleaning of tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.

PREAMBLE OUTLINE—Continued

s. K087—Decanter tank tar sludge from coking operations.
t. K099—Untreated wastewater from the production of 2,4-dichlorophenoxyacetic acid (2,4-D).
u. K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
v. K103—Process residues from aniline extraction from the production of aniline.
K104—Combined wastewater streams generated from nitrobenzene/aniline production.
w. K106—Wastewater treatment sludge from the mercury cell process in chlorine production.
x. K004—Wastewater treatment sludge from the production of zinc yellow pigments.
K008—Oven residue from the production of chrome oxide green pigments.
K021—Aqueous spent antimony catalyst waste from fluoromethanes production.
K025—Distillation bottoms from the production of nitrobenzene by the nitration of benzene.
K036—Still bottoms from toluene reclamation distillation in the production of disulfoton.
K060—Ammonia still lime sludge from coking operations.
K100—Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
8. Appropriate Technologies for Certain First Third Wastes for Which EPA Has Not Promulgated Treatment Standards
9. Burning in Industrial Boilers and Industrial Furnaces as BDAT for Certain California List HOCs
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C. "Soft Hammer" Requirements
1. Applicability
2. Interpretation of Specific Terms

PREAMBLE OUTLINE—Continued

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E. Relationship to California List Prohibitions
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2. Wastes Granted a National Variance
F. Petitions to Allow Land Disposal of Prohibited Wastes
G. Approach to Comparative Risk Assessment
H. Determination of Alternative Capacity and Effective Dates for First Third Wastes, F001-F005 Spent Solvents, California List Halogenated Organic Compounds, and Contaminated Soil and Debris
I. Recyclable Materials Used in a Manner Constituting Disposal
J. Reclamation of Indigenous Waste
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L. Rationale for Immediate Effective Date
IV. Modifications to the Land Disposal Restrictions Framework
A. General Waste Analysis (§§ 264.13 and 265.13)
B. Operating Record (§§ 264.73 and 265.73)
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D. Purpose, Scope, and Applicability (§ 268.1)
E. Treatment in Surface Impoundment Exemption (§ 268.4)
F. Case-by-Case Extensions (§ 268.5)
G. "No Migration" Petitions (§ 268.6)
H. Testing and Recordkeeping (§ 268.7)
I. Landfill and Surface Impoundment Restrictions (§ 268.8)
J. Identification of Wastes to Be Evaluated By May 8, 1990 (§ 268.12)
K. Determination as to the Availability of the Two Year Nationwide Variance for Solvent Wastes Which Contain Less Than 1% Total F001–F005 Solvent Constituents (§ 268.30)
L. Waste Specific Prohibitions (§§ 268.30, 268.31, 268.32, and 268.33)
M. Treatment Standards (§§ 268.40, 268.41, and 268.43)
N. Variance From the Treatment Standard (§ 268.44)

PREAMBLE OUTLINE—Continued

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VI. Effects of the Land Disposal Restrictions Program on Other Environmental Programs
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B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act (MPRSA)
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VII. Regulatory Analyses
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4. Methodology
5. Results
B. Regulatory Flexibility Act
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D. Review of Supporting Documents
VIII. Implementation of the Part 268 Land Disposal Restrictions Program
IX. References
X. List of Subjects in 40 CFR Parts 264, 265, 266, 268, and 271

I. Background

A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework

1. Statutory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, prohibit the land disposal of hazardous wastes. Specifically, the amendments specify dates when particular groups of hazardous wastes are prohibited from land disposal unless "it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA sections 3004 (d)(1), (e)(1), (g)(5), 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule for restricting the disposal by underground injection of solvent- and dioxin-containing hazardous wastes, wastes referred to collectively as California list hazardous wastes (RCRA section 3004(f)(2), 42 U.S.C. 6924(f)(2)), and soil and debris resulting from CERCLA section 104 and 106 response actions and RCRA corrective actions when the soil and debris contains listed spent solvent and dioxin hazardous wastes.

The amendments also require the Agency to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. (The Agency can also grant a variance from a treatment standard by establishing a new treatability group and corresponding treatment standard for a specific waste following a successful petition demonstration). In addition, a hazardous waste that does not meet the treatment standard may be land disposed provided the "no migration" demonstration specified in sections 3004 (d)(1), (e)(1) and (g)(5) is made.

For the purposes of the restrictions, HSWA defines land disposal "to include, but not be limited to, any placement of * * * hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave" (RCRA section 3004(k), 42 U.S.C. 6924(k)).

Although HSWA defines land disposal to include injection wells, disposal of solvents, dioxins, and California list wastes in injection wells is covered on a separate schedule. The disposal of such wastes in deep wells is subject to the land disposal restrictions by August 8, 1988.

The land disposal restrictions are effective when promulgated unless the Administrator grants a national variance from the statutory date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the statutory deadline for up to one year, renewable once for up to one additional year, when an applicant "demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date" (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

The statute also allows treatment of hazardous wastes in surface impoundments that meet certain minimum technological requirements (or certain exceptions thereto). Treatment in surface impoundments is permissible provided the treatment residues that do not meet the treatment standard(s), or applicable statutory prohibition levels where no treatment standards have been established, are "removed for subsequent management within one year of the entry of the waste into the surface impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)).

In addition to prohibiting the land disposal of hazardous wastes, Congress also prohibited the storage of any waste which is prohibited from land disposal unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924 (j)).

2. Solvents and Dioxins

Effective November 8, 1986, HSWA prohibited land disposal (except by underground injection into deep wells) of dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 [1] and solvent-containing hazardous wastes numbered F001, F002, F003, F004, and F005 listed in 40 CFR 261.31 (RCRA sections 3004 (e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)). Effective August 8, 1988, the disposal of these wastes into deep injection wells is prohibited (RCRA section 3004 (f)(2), (f)(3), 42 U.S.C. 6924 (f)(2), (f)(3)). During the period ending November 8, 1988, this prohibition does not apply to disposal of solvent and dioxin contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action taken under Subtitle C of RCRA (RCRA section 3004(e)(3), 42 U.S.C. 6924 (e)(3)).

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) implementing RCRA section 3004(e). This rule not only established the general framework for the land disposal restrictions program, but also established treatment standards for the F001–F005 solvent wastes and F020–F023 and F026–F028 dioxin-containing wastes. For a more detailed summary of

[1] The final dioxin rulemaking (50 FR 1978, January 14, 1985) contains three waste codes, F026, F027, and F028, not specified in the statute. The additional waste codes are a result of reorganizations and do not represent a substantive departure from the waste codes enumerated in section 3004(e)(1).

the land disposal restrictions framework, including those regulations promulgated in the November 7, 1986 final rule, refer to the April 8, 1988 proposal (53 FR 11742).

3. California List Wastes

Effective July 8, 1987, the statute prohibited further land disposal (except by deep well injection) of the following wastes listed or identified under section 3001 of RCRA.

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) arsenic and/or compounds (as As) 500 mg/l;

(ii) cadmium and/or compounds (as Cd) 100 mg/l;

(iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

(iv) lead and/or compounds (as Pb) 500 mg/l;

(v) mercury and/or compounds (as Hg) 20 mg/l;

(vi) nickel and/or compounds (as Ni) 134 mg/l;

(vii) selenium and/or compounds (as Se) 100 mg/l; and

(viii) thallium and/or compounds (as Tl) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg.

(RCRA sections 3004 (d)(1), (d)(2), 42 U.S.C. 6924 (d)(1), (d)(2)). Effective August 8, 1988, the underground injection into deep wells of these wastes is prohibited (RCRA section 3004 (f)(2), (f)(3), 42 U.S.C. 6924 (f)(2), (f)(3)). During the period ending November 8, 1988, there is no prohibition on the land disposal of California list wastes that are contaminated soil or debris resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action taken under Subtitle C of RCRA (RCRA section 3004(e)(3), 42 U.S.C. 6924(e)(3)).

On July 8, 1987, EPA promulgated a final rule (52 FR 25760) implementing RCRA section 3004(d). This rule established treatment standards for California list wastes containing PCBs and certain HOCs, and codified the statutory prohibition on liquid corrosive wastes. The statutory prohibition is in effect for the California list wastes containing free cyanides, metals, and the California list dilute HOC wastewaters. For a more detailed summary of the land disposal restrictions framework, including the regulations and modifications promulgated in the July 8, 1987 rule, refer to the April 8, 1988 proposal (53 FR 11742).

4. Scheduled Wastes

The amendments required the Agency to prepare a schedule by November 8, 1986 for restricting the land disposal of all hazardous wastes listed or identified as of November 8, 1984 in 40 CFR Part 261, excluding solvent- and dioxin-containing wastes and California list wastes covered under the schedule set by Congress. The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, is to ensure that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines:

(A) At least one-third of all listed hazardous wastes by August 8, 1988.

(B) At least two-thirds of all listed hazardous wastes by June 8, 1989.

(C) All remaining listed hazardous wastes and all hazardous wastes identified as of November 8, 1984, by one or more of the characteristics defined in 40 CFR Part 261 by May 8, 1990.

If EPA fails to set a treatment standard by the statutory deadline for any hazardous waste in the first third or second third of the schedule, the waste may be disposed in a landfill or surface impoundment provided "such facility" is in compliance with the minimum technological requirements specified in RCRA section 3004(o) (RCRA section 3004(g)(6)). [**Note.**—In today's final rule, EPA is interpreting the term "such facility" in 3004(g)(6) to refer to the individual surface impoundment or landfill unit]. In addition, prior to disposal, the generator must certify to the Administrator that he has investigated the availability of treatment capacity and has determined that disposal in such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments applies until EPA sets a treatment standard for the waste or until May 8, 1990, whichever is sooner. Other forms of land disposal are not similarly restricted and may continue to be used for disposal of untreated wastes until EPA promulgates a treatment standard or until May 8, 1990, whichever is sooner. If the Agency fails to set a treatment standard for any scheduled hazardous waste by May 8, 1990, the waste is automatically prohibited from all forms of land disposal after that time unless the waste is the subject of a successful "no migration" demonstration (RCRA section 3004(g)(5), 42 U.S.C. 6924(g)(5)). (Also, the May 8, 1990 effective date may be extended under RCRA section 3004(h)(2) for certain Second Third and Third Third wastes, and until August 8, 1990 for certain First Third wastes.) In a May 28, 1986 final rule (51 FR 19300), EPA published the schedule for setting treatment standards for the listed and identified hazardous wastes. All wastes that are identified as hazardous by characteristic are scheduled in the Third Third, as required by RCRA. This schedule is incorporated in 40 CFR 268.10, 268.11, and 268.12.

Today's final rule promulgates the conditions under which wastes included in the first one third of the schedule of restricted hazardous wastes listed in 40 CFR 268.10 (First Third) may continue to be land disposed. This rule finalizes the April 8, 1988 (53 FR 17578) and May 17, 1988 (53 FR 15000) proposed rulemakings.

5. Newly Identified and Listed Wastes

RCRA requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR Part 261 after November 8, 1984 within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for an automatic prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

B. Summary of the Proposed Rules

1. Proposed Approach

In the interest of allowing the regulated community the most time possible for notice and comment on the Agency's approach to implementing RCRA section 3004(g), EPA believed it was prudent to propose today's rule in two separate notices. The first proposal, April 8, 1988 (53 FR 11742), proposed treatment standards and effective dates for 24 listed hazardous wastes. This proposal also presented and solicited comment on the Agency's approach to implementing the "soft hammer" provisions pursuant to RCRA section 3004(g)(6), which are applicable to First Third wastes for which EPA has not set

treatment standards or effective dates. If EPA fails to set treatment standards for any Second Third wastes by June 8, 1989, the "soft hammer" provisions will also be applicable. Amendments to the "no migration" petition process and to certain of the framework regulations, were also proposed in the April 8 notice.

The second proposal, May 17, 1988 (53 FR 17578), proposed treatment standards and effective dates for 17 additional listed hazardous wastes. Also presented in the second proposal were new capacity determinations based on the 1987 National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities. These new capacity determinations revised the effective dates proposed in the April 8, 1988 proposal for several waste codes, and also proposed to rescind certain national variances granted in previous rulemakings (November 7, 1986, 51 FR 40572; July 8, 1987, 52 FR 25760).

Today's rulemaking finalizes both the April 8 and May 17 proposals. The land disposal restrictions effective dates for First Third wastes which are disposed in deep injection wells are not addressed in this final rule, but rather, are being addressed in a separate rulemaking.

2. Applicability

In both the April 8, 1988 and May 17, 1988 proposals, EPA clarified the applicability of treatment standards to wastes derived from the treatment, storage or disposal of listed wastes and to mixtures of prohibited hazardous wastes or nonwaste matrices (such as soil). The Agency emphasized the following two points:

1. All of the residues resulting from treatment of the original listed wastes are likewise considered to be the listed waste by virtue of the derived-from rule contained in 40 CFR 261.3(c)(2). Consequently, all of the residues generated in the course of treatment would be prohibited from land disposal unless they satisfy the applicable treatment standard or meet one of the exceptions to the prohibition.

2. In general, treatment standards contain concentration levels for wastewaters and concentration levels for nonwastewaters (i.e., wastewaters and nonwastewaters are identified as separate treatability groups). These treatment standards apply to residuals resulting from treatment of the original prohibited waste. Thus, all solids resulting from treatment of a prohibited waste would have to meet the treatment standard for nonwastewaters. Likewise, wastewaters resulting from treatment (e.g., scrubber waters from incineration) would have to meet the wastewater treatment standards. EPA wishes to make clear that this approach is not meant to allow partial treatment only to change the applicable treatment standard.

In addition, the Agency clarified the applicability of the treatment standards to residues resulting from types of management other than treatment. Examples are contaminated soil or leachate derived from managing the waste. In these cases, the mixture is deemed to be the listed waste, either because of the derived-from rule, the mixture rule (40 CFR 261.3(a)(2)(iv)), or because the listed waste is contained in the matrix (see e.g., 40 CFR 261.3(d)(2), 40 CFR 261.33(d), RCRA section 3004(e)(3)). Thus, the prohibition for the particular listed waste applies to this type of waste.

3. Best Demonstrated Available Technologies (BDAT)

In the April 8 and May 17 proposals, the Agency defined the waste treatability groups by waste codes (generally separating the waste codes into "wastewater" and "nonwastewater" treatability groups) and identified the Best Demonstrated Available Technologies (BDAT) for each treatability group. Treatment standards applicable to the specific waste codes (and treatability groups) are based on the treatment performance levels achievable by the corresponding BDAT identified for each treatability group. Although treatment standards are generally expressed as concentration levels that represent the performance of BDAT, EPA wishes to clarify that any technology not otherwise prohibited (i.e., impermissible dilution) may be used to meet the applicable treatment standards. Specifically, compliance with the land disposal restrictions treatment standards is achieved by meeting the numerical performance standards established for each constituent. The specific technology (BDAT) upon which the standards are based does not need to be used (except when technologies are set as the standards, e.g. halogenated organic compounds (HOCs)).

In the April 8, 1988 **Federal Register** notice (53 FR 11742), incineration was proposed as BDAT for waste codes K015, K016, K018, K019, K020, K024, K030, K037, and K048–K052 (and the proposed treatment standards consequently were based upon the performance of that technology). Chromium reduction, followed by chemical precipitation and vacuum filtration was proposed as BDAT for K062. Solvent extraction followed by incineration of the extract and by steam stripping and activated carbon adsorption for the wastewater stream was proposed as BDAT for K103 and K104. High temperature metals recovery was proposed as BDAT for K061. For K071, acid leaching and chemical oxidation was proposed as BDAT for nonwastewaters, and sulfide precipitation and filtration was proposed as BDAT for wastewaters. Total recycle was proposed as BDAT for K069 wastes. EPA determined that the wastes K004, K008, K036, K073, and K100 are no longer being generated and disposed, and therefore, did not identify BDAT for these wastes.

In the May 17, 1988 proposal (53 FR 17578), stabilization was proposed as BDAT for waste codes F006 and K046. For waste codes K001 and K086 (solvent washes and sludges subcategory), BDAT was proposed as incineration followed by stabilization of nonwastewater residuals and chromium reduction followed by chemical precipitation for wastewater residuals. The proposed BDAT for nonwastewater forms of K022 was proposed as fuel substitution followed by metals stabilization and metals precipitation of scrubber water. Fuel substitution or incineration was the proposed BDAT for K083. EPA proposed rotary kiln incineration as BDAT for K087 and solicited information to support a conclusion that total recycling could be accomplished for some K087 subcategories. BDAT for K099 was proposed as chemical oxidation with chlorine. Incineration followed by stabilization of ash residues to immobilize the metals was the proposed BDAT for both K101 and K102. BDAT was proposed as thermal recovery for K106 nonwastewaters and sulfide precipitation followed by filtration for K106 wastewaters. The Agency determined that waste codes K021, K025, and K060, were no longer generated, and thus "No Land Disposal" was the proposed BDAT treatment standard. Waste codes K044, K045, and K047 also had "No Land Disposal" as the proposed treatment standard because open burning/open detonation was identified as treatment for these reactive wastes. Because open burning and open detonation are not considered to be land disposal provided that no reactive constituents remain after detonation (see 51 FR 40580), there would be no land disposal of a hazardous waste (see 40 CFR 261.3(a)(2)(iii)).

EPA also proposed to revise the treatment standard for methylene chloride in F001–F005 wastewaters from the pharmaceutical industry to be based on the performance of steam stripping. Furthermore, in the May 17, 1988

proposal, EPA solicited additional comment on an approach that would amend the § 268.42(c)(2) treatment standards to allow burning of California list HOCs in industrial boilers and furnaces (as well as incinerators) in accordance with applicable regulatory requirements.

4. Waste Analysis Requirements

In the April 8, 1988 proposal, EPA presented its approach to waste analysis (see 53 FR 11764). Since treatment standards represent the performance level of BDAT applied to a particular waste, the Agency's approach was to require waste analysis that best measures what the BDAT treatment technology is intended to accomplish (even though use of the identified BDAT is not required). For example, if incineration (a destruction technology) is identified as BDAT, then the treatment standards are expressed as total constituent concentration levels (i.e., waste analysis is a total composition analysis, rather than an extract analysis) to evaluate whether destruction occurs optimally. Similarly, if stabilization (an immobilization technology) is identified as BDAT, then the treatment standards are expressed as constituent concentration levels in a Toxicity Characteristic Leaching Procedure (TCLP) (see 40 CFR Part 268 Appendix I) extract to reflect whether immobilization has been optimized.

The Agency also clarified that in cases where a combination of both a destruction or removal technology and a stabilization or fixation technology is identified as BDAT, then both analyses must be employed to monitor compliance with the treatment standards. In such cases, neither test alone is designed to ensure that the technology-based treatment standards (which would be expressed as both total composition and TCLP extract concentration levels) have been met.

5. Nationwide Variance from the Effective Date

Due to the lack of sufficient alternative protective treatment or recovery capacity to treat certain of the wastes to the applicable treatment standards, a national capacity variance was proposed for several of the waste codes addressed in the April 8 and May 17 proposals. This determination was based on a comparison of the volumes of wastes requiring treatment to the amount of treatment capacity available for such treatment. Although EPA usually does not require that BDAT technologies be used to meet the applicable treatment standards (unless the technology is specified as the treatment standard for the waste in § 268.42), capacity figures are derived based on technologies identified as BDAT, to ensure that adequate treatment is available to meet the treatment standards.

In the April 8 notice, EPA proposed a two-year national variance from the effective date for K016, K018, KO19, K020, K024, K030, K037, K048–K052, K061, K071, K103 and K104. However, the Agency also noted that new capacity determinations would be presented (and thus, these proposed variances would be revisited) in a supplemental proposal (i.e., the May 17 proposal).

In the May 17 notice, EPA proposed a two-year national variance from the effective date for one additional waste code, K106, and for certain contaminated soils (First Third) that require solids incineration capacity. Also, the Agency revised the April 8 proposal, and proposed not to grant a variance for K016, K018, K019, K020, K024, K030, K037, K103, and K104. Therefore, the First Third wastes for which a two-year national variance from the effective date was proposed are K048, K049, K050, K051, K052, K061, K071 and K106. In addition, the May 17 notice proposed a two-year capacity variance for certain contaminated soils that require solids incineration capacity. The variance was proposed for soils contaminated with First Third wastes, and soils from RCRA and CERCLA response actions contaminated with solvents, dioxins and California list wastes.

Additionally, the May 17 proposal revisited certain national variances granted by previous rulemakings (i.e., November 7, 1986, 51 FR 40572; and July 8, 1987, 52 FR 25760). In light of new capacity data indicating that sufficient liquid incineration capacity exists to incinerate or thermally combust certain wastes, EPA proposed to rescind the variances granted for the following wastes:

(a) Spent solvent wastes identified as EPA Hazardous Waste Nos. F001–F005 generated by small quantity generators producing from 100–1,000 kilograms of hazardous waste per month;

(b) Solvent waste generated from section 104 or 106 response actions under CERCLA or any RCRA corrective action, except where the waste is contaminated soil or debris; and

(c) Hazardous wastes containing HOCs in concentrations greater than or equal to 1,000 mg/l, except for California list HOC contaminated soils.

6. "Soft Hammer" Requirements

In the April 8 proposal, the Agency presented its approach to implementing RCRA section 3004(g)(6), the so-called "soft hammer" provision. This "soft hammer" provision applies to First Third (and Second Third) wastes for which EPA fails to set treatment standards and effective dates by the statutory deadlines (for First Third wastes, this deadline is August 8, 1988), and applies until May 8, 1990 or until EPA promulgates treatment standards, whichever is sooner.

EPA interpreted the statutory provision to apply only to such First Third wastes when they are disposed in landfill and surface impoundment units, and further interpreted the statutory language to require that such disposal units must meet the minimum technological requirements of RCRA section 3004(o) (double liner, leachate collection system, and ground water monitoring, or equivalent performance as provided in RCRA section 3004(o)(2)). The Agency's approach to the "soft hammer" provisions required that the generator (or owner or operator) certify that there is no treatment practically available that meaningfully reduces toxicity or mobility of the waste and that, therefore, disposal of these wastes in a landfill or surface impoundment unit that meets the minimum technological requirements of section 3004(o) is the only practical alternative. This certification would also apply to those "soft hammer" wastes for which treatment was practically available and which have been treated to reduce toxicity or mobility and for which no further treatment is practically available; thus, disposal of the treatment residuals in a landfill or surface impoundment unit that meets the minimum technological requirements is the only alternative.

7. "No Migration" Petition Requirements

The April 8 proposal also included amendments to 40 CFR 268.6, the "no migration" petition process. The Agency did not present its interpretation of the statutory "no migration" language of RCRA section 3004 (d), (e), and (g) for surface disposal units; this interpretation will be presented in a separate rulemaking. The amendments presented in the April 8 notice did, however, propose additional requirements relating to:

(a) Documenting compliance with other applicable laws;

(b) Submitting monitoring plans;

(c) Procedures to be followed if there are changes in operating conditions after an exemption is granted; and

(d) Procedures to follow upon detection of hazardous constituent migration.

8. Comparative Risk Assessment

In both the April 8 and May 17 proposals, EPA presented a change in its approach to using comparative risk assessment as a decision tool in the determination of "available" treatment technologies. In the development of regulations restricting the land disposal of certain spent solvent and dioxin-containing wastes (November 7, 1986 final rule) and California list wastes (July 8, 1987 final rule), comparative risk assessments were conducted to ensure that technologies which presented greater risk than land disposal of untreated wastes were not considered in identifying BDAT. These analyses did not affect the determinations of whether a treatment was considered "available".

Upon further consideration of the existing comparative risk analysis, EPA decided not to utilize this assessment to determine "available" technologies in the First Third proposals. EPA did, however, present the possibility of conducting risk analyses in the future to distinguish between the overall degree of risk posed by alternative treatment technologies and to make determinations concerning the "best" technology based on net risk posed by the alternative technologies.

9. Modifications to the Framework

In both the April 8 and May 17 notices, the Agency proposed several modifications to the existing framework for the land disposal restrictions found in 40 CFR Part 268. EPA's implementation of the "soft hammer" provision, which restricts the disposal in landfills and surface impoundments of First Third wastes for which EPA has not set a treatment standard, was proposed in 40 CFR 268.8. Additional regulatory amendments were proposed to account for the First Third wastes, and especially, "soft hammer" wastes.

EPA also proposed to amend the recordkeeping requirements of § 268.7. The amendments would require storage facilities to be brought into the recordkeeping system, and also require generators to keep copies of the notices, certifications, and waste analyses that are associated with each shipment of restricted wastes. These changes help to ensure that a restricted waste can be tracked from the point of generation to its ultimate destination. Additionally, the Agency proposed to set a five-year limitation on the time period that such records are required to be retained by the generator.

In the April 8 proposal, EPA proposed changes to the regulatory language in § 268.6 concerning "no migration" petitions that reflect the new requirements presented in the April 8 preamble. In the May 17 proposal, EPA proposed amendments (based on recent capacity data) to certain variances granted in previous rulemakings. The Agency also proposed certain other relatively minor changes to the framework provisions.

II. Summary of Today's Final Rule

A. Applicability

Today the Agency is promulgating treatment standards and effective dates for only certain First Third wastes (i.e., those hazardous wastes listed in 40 CFR 268.10, promulgated in May 28, 1986 (51 FR 19300) pursuant to RCRA section 3004(g)). For those wastes listed in § 268.10 for which EPA does not establish treatment standards or effective dates, the Agency is promulgating regulations to allow for continued land disposal in § 268.8. These so-called "soft hammer" provisions (discussed in detail in section III.C. of today's preamble) apply until May 8, 1990, or until treatment standards or extensions to the effective date are promulgated, whichever is sooner. On May 8, 1990, there is an automatic prohibition on the land disposal of hazardous wastes listed or identified prior to the enactment of HSWA. [Note.—Today's rule does not establish treatment standards for any of the P- or U-list wastes in § 268.10. However, certain of these wastes may be subject to the California list halogenated organic compounds treatment standards, once the standards become effective.]

Also, this rule clarifies the relationship of the California list final rule (July 8, 1987, 52 FR 25760) to First Third wastes (see section III. E.). In addition, this rule clarifies the applicability of Part 268 Subpart D treatment standards to "derived-from" wastes and waste mixtures (see section III. A. 4.).

In addition, the Agency notes that the treatment standards it is promulgating today are not applicable to First Third wastes that are disposed by deep-well injection. (See RCRA section 3004(g)(5) authorizing EPA to prohibit "one or more methods of land disposal" of scheduled hazardous wastes; in this rulemaking, EPA is prohibiting disposal in surface units of most of the wastes in the first third of the schedule; EPA will address disposal by deep-well injection in a later rulemaking.) Wastes that are disposed by deep-well injection are regulated under 40 CFR Part 148, and the applicability of today's 40 CFR Subpart D treatment standards to such wastes will be addressed in a separate rulemaking. Until that time, First Third wastes disposed by deep-well injection are subject to the "soft hammer" provisions of § 268.8.

B. Waste Analysis and Recordkeeping Requirements

The Agency is today promulgating the approach to waste analysis—what to analyze to evaluate the performance of the treatment technology—was proposed. Basically, where BDAT is a destruction or removal technology, waste analysis that is most appropriate for measuring such destruction or removal is required—i.e., total waste analysis. Similarly, where BDAT is identified as an immobilization technology (e.g., stabilization), waste analysis that most appropriately measures mobilization is required—i.e., analysis of a waste extract. In cases where both technologies are identified as BDAT, both types of waste analyses are required. For a more detailed discussion, see section III. B.

In addition, the Agency is today promulgating a 5-year record retention requirement, as proposed in the May 17, 1988, Federal Register notice. This discussion is also included in section III. B. of today's preamble.

C. Treatment Standards and Effective Dates

Today's final rule establishes treatment standards and effective dates for many First Third wastes. In section III. A., the Agency identifies the waste treatability groups by waste codes and identifies the Best Demonstrated Available Technology (BDAT) for each waste code. Treatment standards applicable to each treatability group are based on the performance levels achievable by the corresponding BDAT identified for each treatability group. The Agency strongly reiterates that any technology not otherwise prohibited (i.e., impermissible dilution) may be used to meet the concentration based treatment standards.

Also, EPA is promulgating amendments to the existing treatment standards for wastewaters containing methylene chloride (as a spent solvent) generated by the pharmaceutical industry, and for California list halogenated organic compounds. See section III. A. for further discussions.

Effective dates are established based on the Agency's determination of whether sufficient protective treatment (or recovery) capacity is available to treat the restricted wastes. Although the regulated community is not required to treat restricted wastes with the technology identified as BDAT (where

treatment standards are expressed as concentration levels), the Agency generally bases its capacity determination on the availability of this technology, thus helping to ensure that adequate treatment capacity is currently available to treat wastes in compliance with the applicable treatment standard. For a detailed discussion of capacity, refer to section III. H.

D. "Soft Hammer" Requirements

Section III. C. of today's preamble discusses the requirements applicable to those First Third wastes for which treatment standards or effective dates have not been promulgated. Basically, the generator must demonstrate and certify that there is no practically available treatment that reduces toxicity or mobility of the waste and that disposal of these wastes in a landfill or surface impoundment unit that meets the minimum technological requirements of RCRA section 3004(o) (double liner, leachate collection system, and ground water monitoring) is the only practical alternative. If treatment is practically available, the generator must certify that his waste is being treated by the best treatment (i.e., the treatment which provides the most environmental benefit) practically available, as indicated in his demonstration. The residuals from treatment of "soft hammer" wastes remain "soft hammer" wastes, and if disposed in a landfill or surface impoundment unit, must be placed in a unit meeting the minimum technological requirements of 3004(o) (including section 3004(o)(2) if an appropriate demonstration can be made).

E. Reinterpretation of RCRA Section 3004(h)(4)

As discussed in section III. D., the Agency is promulgating its reinterpretation of RCRA section 3004(h)(4) as presented in the April 8, 1988, proposal. This interpretation effects the disposal of restricted wastes which have been granted an extension to the effective date (either a national capacity variance or a case-by-case extension) in a landfill or surface impoundment. Under the interpretation promulgated today and effective on November 8, 1988 (during the interim period, the original interpretation applies), if such restricted wastes are disposed in a landfill or surface impoundment unit, the individual landfill or surface impoundment *unit* must meet the minimum technological requirements of RCRA section 3004(o).

F. "No Migration" Requirements

As discussed in section III. F., the Agency is today promulgating amendments to 40 CFR 268.6, the "no migration" petition process. As proposed on April 8, 1988, these amendments cover the demonstrations required in the petition and certain other requirements on the owner or operator of a waste management unit that is subject to a "no migration" variance.

G. Nonrulemaking Procedures for Site-Specific Variances From the Treatment Standard

The Agency is promulgating amendments to the existing 40 CFR 268.44 to modify the procedures for obtaining site-specific variances from the treatment standard. This action is taken in response to commenters' request for a more streamlined procedural mechanism for obtaining a variance from the treatment standard. EPA believes that, in certain cases, informal rulemaking are neither required nor warranted, and that a more streamlined procedure for obtaining a variance from the treatment standard is justified. This approach is discussed in more detail in section III. K. of today's preamble.

III. Detailed Discussion of Today's Final Rule

A. Determination of Treatability Groups and Development of Treatment Standards

1. Waste Treatability Groups

For the First Third wastes, EPA used the individual listed waste codes as the starting point for developing waste treatability groups. In cases where EPA believed that wastes represented by different codes could be treated to similar concentrations using identical technologies, the Agency combined the codes into one treatability group. EPA based its initial treatability group decisions primarily on whether the waste codes were generated by the same or by similar industries from similar processes. EPA believes that such groupings can be made because of the high likelihood that the waste characteristics which affect treatment performance will be similar for these different waste codes. This conclusion is explained in more detail in the relevant background document for each particular waste code.

The treatment standards in today's rule generally contain concentrations presented constituent by constituent for "wastewaters" and for "nonwastewaters". The treatment standards apply to the wastes as generated as well as all of the residual wastes generated in treating the original prohibited waste. See RCRA section 3004(m)(2) indicating that treatment standards apply both to wastes and to treatment residuals therefrom. Thus, for example, all K101 and K102 wastes (including the solid residuals generated from treating K101 and K102) would have to meet the treatment standards for nonwastewaters and all wastewaters (including those generated from treating these wastes) would have to meet the treatment standards for wastewaters. For the purpose of defining the applicability of the treatment standard in this rule, the Agency defines wastewaters as wastes that contain less than 1% total organic carbon (TOC) and less than 1% total suspended solids (i.e., total filterable solids) except for those wastes identified as F001, F002, F003, F004, and/or F005 where the Agency indicated a different definition of the solvent wastewater treatability group (see 51 FR 40579 for the definition of a solvent-water mixture). Those wastes that do not meet this definition are considered to be nonwastewaters. A facility is not allowed to dilute or perform partial treatment on a waste in order to switch the applicability of a nonwastewater standard to a wastewater standard or vice versa.

However, EPA wishes to emphasize that where a waste that consists primarily of water (such as a leachate) is classified as a nonwastewater solely by its filterable solids content (i.e., total suspended solids (TSS) levels), the waste can be subjected to dewatering techniques to remove the filterable solids. Treatment standards for nonwastewaters are then applicable to the filtered solids. The filtrate is then subject to the treatment standards for the wastewaters, assuming that the filterable solids content has been reduced to less than one percent by weight. These standards are applicable if the wastes are to be placed in land disposal units, according to the appropriate provisions of today's rule.

2. Identification of BDAT

A detailed discussion of the Agency's general methodology for establishing BDAT standards is provided in 51 FR 40572 (November 7, 1986). Section III. A. of today's preamble discusses the specific application of the methodology to the First Third wastes, and provides a summary of some of the principal elements of the BDAT methodology.

Consistent with the general methodology, EPA first determined which technologies were

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"demonstrated" for a particular treatability group. EPA then screened the available treatment data for a particular treatability group with regard to the design and operation of the system, the quality assurance/quality control analyses of the data, and the analytical tests used to assess treatment performance. This screening step is consistent with EPA's promulgated approach in the November 7, 1986, rulemaking for solvent waste codes F001–F005. Also, this screening step recognizes the fact that different performance measures may be appropriate depending on the technology used (e.g., total constituent analysis for destruction of organics by incineration technologies versus TCLP analysis for immobilization of metal constituents by stabilization technologies). EPA was able to emphasize the design and operation of the treatment system for the First Third wastes because its field tests have been modified to gather detailed data to support these analyses.

After the initial screening test, EPA adjusted all treated data values based on the analytical recovery obtained in order to take into account analytical interferences associated with the chemical makeup of the treated sample. For example, a treated residual data point of 0.2 mg/kg with an analytical recovery of 50 percent would be adjusted to 0.4 mg/kg.

After adjusting the data, EPA then averaged the performance levels achieved for the various treatment operations (for which the Agency had complete data) and compared the mean values using the analysis of variance test (ANOVA), as described in the November 7, 1986, preamble (see 51 FR 40591), to determine if one technology performed significantly better. In general, where one technology performed better, it was determined to be "Best". If this technology was also determined to be "Available" (i.e., it is commercially available and provides substantial treatment), then the technology was selected as the Best Demonstrated Available Technology (BDAT). In cases where EPA only has data on one technology, but is aware of other demonstrated technologies, EPA used its engineering judgment to determine that these other technologies would not be expected to significantly improve the level of performance.

3. Compliance with Performance Standards

Treatment standards promulgated in today's rule are performance standards reflecting the performance achieved by "BDAT". As such, compliance with these standards requires only that the treatment level be achieved prior to land disposal. It does not require the use of any particular treatment technology. While dilution of the waste as a means to comply with the standard is prohibited, wastes that are generated in such a way as to naturally meet the standard can be land disposed without treatment. With the exception of treatment standards that prohibit land disposal, all treatment standards proposed today are expressed as concentration levels either in the waste (§ 268.43) or in an extract of the waste (§ 268.41).

It is important to note that several commenters misinterpreted EPA's position on compliance with the performance standards and the identification of a technology as the basis for BDAT. The specific technologies identified as the basis for BDAT for each waste code are simply those technologies which EPA utilized to develop the waste-specific performance standards. A comparable methodology exists under the Clean Water Act in establishing BPT, BAT, PSES, NSPS, and PSNS effluent limitation guidelines and standards. Any technology or combination of technologies not otherwise prohibited (i.e., impermissible dilution) can be used to achieve these standards. EPA has not, in this First Third final rule, prohibited the use of any other applicable treatment or recycling technology unless that technology is considered to be land disposal.

In today's rulemaking, EPA has used both total constituent concentration and TCLP analyses of the treated waste as measures of technology performance. For all organic and cyanide constituents, EPA is basing the treatment standards on the total constituent concentration found in the treated waste. EPA based its decision on the fact that technologies exist to remove or destroy these constituents. Accordingly, the best measure of performance would be the extent to which the various organic compounds have been removed or destroyed (as measured by the total amount of constituent remaining after treatment). The legislative history emphasizes the desirability of actually destroying organic hazardous constituents [Vol. 130, Cong. Rec. S9179 (daily ed. July 25, 1984)]. [Note.—EPA's land disposal restrictions for solvent waste codes F001–F005 and dioxin waste codes F020–F023, F026–F028 (51 FR 40572) use the TCLP value as a measure of performance. At the time that EPA promulgated the treatment standards for the solvents and dioxins, useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP data were considered to be the best measure of performance.] Where the Agency has based treatment standards on removal/recovery or destruction, whether metals or organics, the treatment standards thus are based on total waste analysis.

In cases where treatment standards for metals are based on stabilization, EPA is using the TCLP as the measure of the treatment technology's performance. The Agency's rationale is that stabilization is meant to chemically and physically minimize the mobility of the metals in the waste and that the TCLP test is specifically designed to measure the mobility of the hazardous constituents. For wastes where treatment standards are based on sequential treatment processes due to the presence of organics and metals, the waste must meet both total constituent concentrations for organics and TCLP concentrations for metals prior to land disposal.

In both the April 8, 1988 and the May 17, 1988 proposed rules for the First Third wastes, the proposed treatment standards were reported with a varying number of significant figures. The final standards in today's rule have been adjusted and rounded off to a maximum of two significant figures (in some cases, a particular standard may have only one significant figure). EPA did not intend that any greater accuracy be achieved other than that which is attainable through the standard analytical methods employed to develop the treatment data.

4. Applicability of Treatment Standards to Mixtures and Other "Derived-From" Residues

In a number of instances in today's rule, BDAT consists of an operation or series of treatment operations which generate additional waste residues. For example, BDAT for wastes K101 and K102 is based on incineration followed by metals (ash) stabilization. Incineration generates two residues requiring treatment, namely the ash residues and the scrubber waters. Treatment of the scrubber waters (to remove metals) may generate further additional inorganic residues which also may require stabilization. Ultimately, these additional wastes may require land disposal and must, therefore, meet the same standards as the stabilized ash residues. With respect to these additional wastes, the Agency wishes to emphasize that all of the residues from treatment of the original listed wastes are considered to be the listed waste by virtue of the derived-from rule contained

in 40 CFR Part 261.3(c)(2). Consequently, all of the wastes generated in the course of treatment would be prohibited from land disposal unless they satisfy the applicable treatment standard or meet one of the exceptions to the prohibition.

The Agency has not performed tests in all cases on every waste that can result from every part of the treatment train. However, the Agency's treatment standards are based on treatment of the most concentrated form of the waste. Consequently, the Agency believes that the less concentrated wastes generated in the course of treatment can be treated to these standards.

Today's treatment standards also apply to waste mixtures; i.e., mixtures of different waste streams. As the Agency has repeatedly stated in previous preambles, the more stringent standard applies in cases where a waste mixture has two or more applicable treatment standards. The Agency believes that such wastes can be treated to the meet the treatment standards applicable to the underlying wastes for several reasons. Waste mixtures commonly result in a waste in which individual constituents are less concentrated than in the original wastes. Also, in establishing treatment standards, the Agency allows for a reasonable amount of variability in the generation and treatment of the waste. Finally, while EPA believes that waste mixtures can be treated to meet the treatment standards, the rules do contain a procedure that allows a petitioner to gain a variance from the treatment standard by demonstrating that his waste cannot be treated to the level specified in the rule (see 40 CFR 268.44). To date, the Agency has not received a petition for such a variance, indicating that the treatment standards currently in effect are achievable.

The Agency, however, has determined that one class of waste mixtures—mixed hazardous/radioactive wastes—should not be included in the First Third and is amending § 268.12 (the Third Third) to move such wastes to the final third of the scheduled wastes. Therefore, these wastes will not be prohibited from land disposal until May 8, 1990. The Agency is taking this action based on the relatively small volumes of such wastes being generated; while the individual hazardous wastes may be generated in large volumes, the mixed hazardous/radioactive wastes are not. The Agency notes that this action only affects First Third wastes; spent solvents, dioxins and California list wastes that are mixed with radioactive wastes are subject to the applicable treatment standards when the standards are effective. [Note.—As discussed in section III. C. 3. a., the Agency believes that the schedule is absolutely committed to its discretion, and that the schedule of prohibited wastes therefore can be amended without notice and comment.]

EPA discussed in detail in the May 17, 1988, preamble the principle that residues from managing listed wastes, or that contain listed wastes, are covered by the prohibition for the listed waste (53 FR 17586). EPA made the following points:

(1) Hazardous waste listings are retroactive, so that once a particular waste is listed, all wastes meeting that description are hazardous wastes no matter when disposed. (As discussed below, this does not mean that such wastes are necessarily subject to Subtitle C regulation, only that they are hazardous wastes.) For example, if on August 9, 1988, EPA were to list distillation bottoms from production of X as a hazardous waste, all such distillation bottoms would be hazardous wastes, regardless of when they are or were generated. They are the thing that is listed.

(2) Residues derived from treating, storing, or disposing of these wastes are therefore also hazardous by virtue of the derived-from rule (§ 261.3(c)(2)), the mixture rule, or in some cases, because the waste itself is still found in the matrix (see § 261.3(d)(2)).

(3) Consequently, for purposes of the land disposal restrictions program, residues from managing First Third wastes, listed California list wastes, and spent solvent and dioxin wastes are all considered to be subject to the prohibitions for the underlying listed hazardous wastes.

Public comment centered on the implications of these principles with respect to management of leachate that derives from management of listed hazardous wastes. The Agency indicated that leachate could be affected by these principles: The derived from-rule explicitly mentions leachate as a type of derived-from residue that is covered by that rule, and since the statute includes "leaking" within the definition of "disposal", leachate leaking from listed wastes is therefore derived from the disposal of these wastes. As explained more fully below, however, certain of the commenters' concerns regarding leachate (for example, implications for permitting of inactive or subtitle D disposal units) appear to be misplaced.

Commenters also argued that in many cases, leachate could not be treated to the BDAT treatment levels because it is a different type of waste from the one on which the treatment standards were based. Commenters submitted certain data to support these assertions. Commenters also made the point that since leachate can contain all or most of the listed waste codes, and the Agency has indicated that waste matrices containing a number of prohibited wastes must be treated to meet the most stringent standard for every waste contained in the matrix, it would be hard to design a treatment system for leachate since it would not be clear what the ultimate treatment standard would be until EPA finishes developing treatment standards for all of the listed hazardous wastes. A variation of this comment was that treatment standards for different wastes contributing to leachate could be incompatible, making it impossible to treat all constituents to the applicable treatment standards. Commenters also stated that EPA had not accounted for treatment of leachate in its capacity estimates. A number of commenters made the further point that, especially with respect to subtitle D non-hazardous waste units, EPA's reading tended to penalize persons voluntarily collecting and treating leachate who had kept accurate historic records of what wastes went into the disposal unit. Finally, several commenters suggested that leachate should be viewed as a separate treatability group and that the Agency should develop separate treatment standards for it.

EPA first addresses those comments which disputed the Agency's interpretation of its own rules. The Agency will then address those comments questioning the applicability to leachate and other derived-from wastes of treatment standards based upon treatment of the waste from which the waste is derived.

a. *Retroactivity of Waste Listings.* A few commenters disputed the Agency's reading that hazardous waste listings are retroactive; that is, all wastes meeting the listing description are hazardous regardless of when they were disposed. EPA believes this point to be nearly self-evident: a waste either does or does not match a listing description. The time at which a waste was disposed does not affect what that waste is. Spent solvent still bottoms disposed of in 1979 (before Agency action listing these wastes as hazardous) are as much spent solvent still bottoms as those disposed in 1981 (after the listing took effect).

In addition, there are a whole series of statutory provisions that give retroactive application to hazardous waste listings. Section 103(c) of CERCLA, enacted in

November 1980 and implemented by rule in April 1981, provides that:

> (A)ny person who owns or operates or who at the time of disposal owned or operated * * * a facility at which [hazardous wastes identified or listed under RCRA section 3001] are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under subtitle C of [RCRA], notify the Administrator * * * of the existence of such facility. * * * 42 U.S.C. 9603(c).

This language indicates that wastes that have been disposed in inactive facilities are still RCRA hazardous wastes once they are identified or listed, and that owners and operators of the facilities where the hazardous wastes had been disposed are required to notify the Agency of the wastes' existence. In fact, by the terms of the statute, the provision applies *only* to hazardous wastes at inactive facilities—facilities with the waste which ceased managing the waste before it was identified or listed—because any facility with interim status or a permit is explicitly exempted from the CERCLA notification requirement. EPA's implementation of these rules followed this literal statutory language and thus required all inactive facilities still holding hazardous waste that the Agency had since identified or listed to notify EPA (46 FR 22146, 22149; April 25, 1981). Thus, EPA and Congress indicated that the Agency's listing regulations applied retroactively to hazardous wastes in inactive units, i.e., to units that ceased active management before the effective date of the subtitle C regulations.

EPA, in its May 17, 1988 notice, also cited RCRA sections 3004 (d)(3) and (e)(3) as further support for the proposition that hazardous waste listings apply to wastes whose management ceased before the date of the listing. These provisions provide that contaminated soil and debris that contain listed spent solvent or dioxin-containing hazardous wastes (or certain other wastes mentioned in section 3004(d)(2)) generated by a response action under section 104 or 106 of CERCLA, or by corrective action required under RCRA section 3004(u), remain subject (on a slower timetable) to the land disposal restrictions provisions. RCRA section 3020(b) is a similar provision. It provides that groundwater that is contaminated with hazardous waste generated by a CERCLA response or a RCRA corrective action is not subject to an otherwise-applicable prohibition on disposal in certain types of underground injection wells (provided that the contaminated groundwater is managed in accordance with certain specified standards).

Commenters argued that these provisions do not define what is a hazardous waste and therefore do not show that listed wastes are necessarily affected by these provisions. These provisions were added to the statute so as not to impede the pace of certain ongoing cleanup actions (See S. Rep. No. 284, 98th Cong. 2d Sess. 21). Most of the wastes from these cleanup actions were deposited at the sites before 1980. For example, all of the dioxin-containing wastes at the Missouri dioxin sites were deposited before 1980 (well before these wastes were listed in 1985). EPA believes that the obvious reading of these provisions is that Congress considered the wastes being removed from these actions to be listed wastes—the dioxin-containing wastes at the Missouri sites are good examples—and therefore adjusted the land disposal restrictions effective date for these wastes accordingly (or in the case of section 3020(b), accommodated certain types of cleanups involving reinjection of hazardous wastes). The Agency does not believe it makes sense to assume, as the commenters did, that these provisions apply only to the small percentage of CERCLA and corrective action response wastes that exhibit a RCRA characteristic or are listed by name (i.e., "leachate from Missouri dioxin sites"). (One commenter stated mistakenly that EPA actually had listed dioxin-containing soil and debris; the dioxin listings, F020–F023, F026–F028, apply only to process wastes and to ash from incinerating contaminated soil. EPA indicated in the preamble to these listings that contaminated soil and other mixed and derived from residues would be affected by the listings (see 50 FR 1994, Jan. 14, 1985). This is by virtue of the mixture and derived from rules, or because the listed waste would be contained in a matrix like soil.)

EPA believes therefore that the hazardous waste listings can be retroactive. Thus, wastes derived from treating, storing, or disposing of these wastes likewise are hazardous, as are mixtures of these wastes and other solid wastes. For land disposal restrictions purposes, this means that these residues could become subject to the land disposal restrictions for the listed waste from which they derive if they are managed actively after the effective date of the land disposal prohibition for the underlying waste.

b. *Derived-From Wastes Have the Same Waste Code as the Waste From Which They are Derived.* EPA disagrees with those commenters that said that derived-from or mixed wastes do not have the same waste code as the waste from which they are derived, are mixed with, or that they contain. The derived-from and mixture rules state, in essence, that listed wastes remain hazardous until delisted. What other hazardous wastes could these listed wastes be if not the waste from which they are derived or mixed? (Indeed, how were all of these wastes covered under the land disposal restrictions schedules in §§ 268.10–268.12 if not under the waste codes, since the schedule nowhere lists leachate or other derived-from residuals separately.) (Cf. *O'Leary* v. *Moyer's Landfill, Inc.*, 523 F. Supp. 642, 656 (E.D. Pa. 1981) ("A hazardous waste does not lose that description because it is mixed with some other waste, or is found in leachate, 40 CFR 261.3(a)[sic](2)(ii) * * *; indeed, leachate from hazardous waste is an important target of RCRA.")) The Agency's delisting regulations make this point by requiring petitioners with mixed or derived-from wastes to make the same demonstration that a delisting petitioner would make for the underlying waste (40 CFR 260.22(b)). The delisting petitioner also may prove that the waste as a whole is not hazardous, as can any delisting petitioner with respect to any hazardous waste. Indeed, there have been dozens of delisting petitions filed to delist residues derived from treating or disposing of multiple wastes, and it is clear from these petitions and Agency action that these residues are deemed to be listed wastes covered by the original waste codes (see, e.g. 51 FR 41324; November 14, 1986 (delisting Envirite treatment residues from treating multiple wastes, stating that the delisting is for "treatment residue (EPA hazardous waste numbers F006, F007, F008, F009, F011, F012, F019, K002, K003, K004, K005, K006, K007, K008, and K062)").

EPA also believes that section 3004(e)(3) confirms this position by stating that soils and debris contaminated with the listed solvent and dioxin wastes become subject to the prohibitions for the listed wastes even though they are not the waste itself, but rather a type of residue from management of the waste. In this regard, EPA notes that other land disposal restrictions provisions likewise equate prohibited wastes and residues from their management. Section 3004(m)(2) thus states that when a prohibited waste has been treated to the level or by the method specified by EPA (pursuant to section 3004(m)(1)), then "such waste or residue thereof" is no longer prohibited from land disposal.

One commenter also stated, incorrectly, that the Agency itself does not follow this principle in its own

CERCLA program. In fact, when EPA identifies a waste at a CERCLA response site as deriving from management of a listed waste, the residue *is* considered to be the listed waste. EPA in fact considered such wastes in its capacity estimates for each of the waste prohibitions adopted or proposed to date, surely an unnecessary action unless such residues are prohibited by virtue of the prohibition for the listed waste (see, e.g. 51 FR 40611; November 7, 1986).

The same commenter asserted erroneously that EPA had stated that solvent mixtures were not covered by the section 3004(e) prohibition on listed solvent wastes. EPA actually stated that certain solvent formulations containing 10 percent or more solvent ingredients which were listed as hazardous for the first time on December 31, 1985, were not covered by the prohibition for F001–F005 wastes (51 FR 40584; November 7, 1986). This statement has nothing to do with mixtures of hazardous waste spent solvents and other solid wastes, which are covered by the section 3004(e)(3) prohibition. (Indeed, when EPA initially proposed the solvent prohibition, many commenters criticized the Agency's capacity estimates for not taking into account mixture and derived-from rule residuals containing these listed wastes, all of which residues were covered by the prohibition and which therefore needed to be assessed (51 FR 40611; Nov. 7, 1986). EPA's final capacity estimates for the solvent prohibition rule therefore included all of these residues.)

c. *Consequences of EPA's Interpretation are Exaggerated.* Commenters expressed significant concerns that EPA's interpretation would lead to RCRA permitting of all inactive hazardous waste sites that collect leachate. They believed that if leaching is considered to be a form of disposal (which it is, since leaking is occurring, see RCRA section 1004(3)), then units from which leachate is leaking are thereby subtitle C management units subject to all of the RCRA requirements.

This reading is not correct. The permitting requirement under RCRA section 3005(a) applies to new and existing disposal facilities. "Disposal facility" is defined in the rules as "a facility * * * at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure" (see § 260.10). Section 3005(a) prohibits the operation of such facilities without a permit after the effective date of the permitting regulations, November 19, 1980. Thus, only facilities where hazardous waste is intentionally placed into land or water after November 19, 1980 require a RCRA disposal permit. Collection of hazardous leachate at otherwise inactive units consequently does not activate the unit.

A second concern dealt with subtitle D facilities that generate leachate. Commenters expressed concern that because these landfills all accepted small quantity generator listed hazardous wastes, all leachate from these facilities was thereby hazardous by the derived from rule. EPA, however, does not read the derived from rule as applying to small quantity generator hazardous wastes. Although the rules are not explicit on this point, the Agency views this exemption, like other comparable provisions such as the household waste exclusion, as applying cradle-to-grave so that residues from managing the waste retain the exemption or exclusion. In this regard, the rules are explicit that the mixture rule does not apply to mixtures of small quantity generator wastes and solid wastes (see § 261.5(h)). EPA views the derived from rule as similarly inapplicable.

d. *EPA's Reading Creates Negative Environmental Incentives.* EPA is sensitive to the comment that its reading penalizes facilities that collect their leachate and have accurate, historic records of what wastes were accepted at the units. However, this assertion is not completely correct. Facilities collecting hazardous leachate can manage the leachate in such a way as not to trigger subtitle C requirements (including the land disposal restrictions) by managing the leachate in tanks at facilities subject to regulation under the Clean Water Act (see § 264.1(g)(6)). Consequently, the reading most directly discourages subsequent management in surface impoundments, a reasonable outcome given the statutory antipathy for these devices (see RCRA section 1002(b)(7)). Indeed, the statute even allows otherwise prohibited hazardous wastes to be managed in particular types of surface impoundments without first meeting pretreatment standards (although unlike treatment tanks, such impoundments are regulated units) (see RCRA section 3005(j)(11)), so what the Agency's interpretation actually discourages is management in surface impoundments that do not satisfy the section 3005(j)(11) standards. In addition, since the derived-from rule merely shifts the burden of proving that a derived from waste is not hazardous, truly non-hazardous leachate derived from listed wastes can be delisted. There have, in fact, been delisting applications filed to delist leachate derived from listed hazardous wastes that were disposed before 1980.

Finally, EPA does not accept the argument that facilities are better off if they do not collect contaminated leachate, and so will discontinue voluntary collection. Continued release of such leachate exposes the facility to CERCLA liability, common law tort liability, and possibly criminal liability under intentional endangerment statutes. What EPA's reading does is to ensure that once hazardous derived-from residues are collected, their subsequent management will be controlled under the statute designed to control management of hazardous waste. EPA has no other statutory tool for assuring prospectively that proper management will occur. In fact, in the end, what EPA finds most troubling in the commenters' arguments is that hazardous residues from inactive sites could be withdrawn and managed without regard for RCRA requirements. Thus, for example, under the commenters' position, leachate from sites where chlorophenoxy pesticide residues were disposed could be collected and taken to non-subtitle C units (unlined impoundments, for example) because the leachate would not be considered to be a hazardous waste. This is because the waste from which the leachate is derived was disposed before the effective date of the listing, and the leachate does not exhibit any of the hazardous waste characteristics. Indeed, under some of the commenters' arguments, collecting and managing the waste itself at these sites (rather than the leachate derived from the waste's disposal) would not trigger subtitle C requirements. EPA does not find this result to be in accord with statutory policies or the language of the regulations.

e. *Whether Leachate Can Meet the Treatment Standards for the Wastes From Which It Is Derived.* Commenters also argued that landfill leachate could not typically be treated to meet the treatment standards in the rule. They also maintained that leachate (or at least leachate from commercial waste disposal facilities) should have its own treatability group reflecting its significant difference from the wastes from which it is derived.

EPA stated at proposal that although it is correct that EPA's treatment standards are based on treating single wastes, leachate that is derived from disposal of these wastes could be treated to meet the treatment standards because leachate typically is more dilute than the waste from which it is derived. Thus, for example, if the original

wastewater contains 200 ppm of methylene chloride, while leachate from disposal of the waste contains 5 ppm of methylene chloride, the leachate could be treated to meet a standard based on treating the waste with 200 ppm methylene chloride. EPA also noted that a treatability variance was available to accommodate those situations where leachate could not be treated to meet the treatment standards (53 FR 17586; May 17, 1988).

Commenters assert, however, that commercial leachate is not just from one waste, but from many. Even so, EPA still believes that leachate, even from multiple waste codes, can be treated to meet the underlying wastewater treatment standards because it contains lower concentrations of the constituents of concern than the wastes on which the treatment standards are based. Nor has the Agency seen evidence that leachate typically contains interfering agents, not found in the original wastes, that impede treatment performance. EPA has carefully examined the data submitted during the public comment period, and finds that it essentially confirms the Agency's statements at proposal. That is, the leachate has comparable or lower levels (in some cases, orders of magnitude lower) than the wastes on which treatment standards are based. None of the data suggest that leachate from commercial facilities is somehow so exceptional that it cannot be treated to meet the standards. (Indeed, of these data, many of the samples would meet the treatment standards as generated and so would not require treatment at all.) The Agency expects that where groundwater contaminated with leachate is being treated in pump-and treat operations, the standards can be met with existing technology. The treatability variance in section 268.44 also is available in those cases where leachate proves to be untreatable to the applicable standard for the prohibited wastes that it contains.

EPA also has carefully considered comments that leachate deriving from multiple waste codes will be subject to conflicting, multiple treatment standards. Examples contained in the public comments were of leachate derived from wastes whose treatment standards were based on both oxidation and reduction technologies. Another example was of leachate derived partially from wastes whose treatment standards require total constituent analysis (because treatment is based on destruction of organics), and partially derived from other wastes whose treatment standards require TCLP analysis (for fixation of inorganics). EPA does not find these examples persuasive. Waste constituents can be treated sequentially in treatment trains to avoid the types of alleged incompatibilities. For example, if leachate contains both cyanide and hexavalent chromium, cyanide can be oxidized in a tank, and hexavalent chromium can be reduced and precipitated afterwards in a separate tank. Leachate containing both organics and inorganics can be treated in a treatment train with organics being stripped, followed by metals being precipitated. Many of the treatment standards for First Third wastes are in fact based upon treatment trains of these types.

Several commenters complained of the unfairness of planning to meet a "moving target" of treatment standards. That is, they maintained that because leachate contains (or potentially contains) many or even most of the listed waste codes, they will not know until completion of the land disposal restrictions in 1990 what ultimate treatment standards for leachate will be, given that the leachate will have to be treated to meet the most stringent level for the constituents for which there are overlapping treatment standards. EPA believes, however, that ultimate treatment standards for wastewaters will not differ to any great degree. Wastewater treatment technologies are relatively standardized, and achieve performance results that are similar unless the matrices are exceptionally contaminated or contain high concentrations of interfering agents. Based on the data presently available, EPA has not found this to be the case with leachate, even leachate from commercial hazardous waste landfills. Thus, EPA believes that conventional wastewater treatment technologies or treatment trains—for example, some type of stripping technology followed by a type of chemical precipitation—will generally be able to achieve treatment standards for leachate. To the extent this becomes an issue as EPA proposes treatment standards for the remaining hazardous wastes, commenters can present data showing that conventional waste treatment systems for leachate are unable to achieve treatment standards. No such data were presented with regard to leachate containing solvents and First Third prohibited wastes, in the Agency's view. Since these wastes tend to be the most contaminated (see the statutory prioritization of solvents and the Agency's prioritization of First Third wastes based on RCRA section 3004(g)(5)), EPA believes it reasonable that subsequent treatment standards will be comparable to those already adopted.

Finally, regarding comments on the capacity to treat leachate, most collected leachate is presently treated in a way that does not even implicate RCRA, and so does not create a demand on available capacity. Thus, as noted above, tanks that treat leachate (and any other wastewater) at facilities subject to regulation under the Clean Water Act's NPDES or pretreatment programs are exempt from almost all RCRA regulation. Most leachate is treated in tanks, according to comments and the Agency's own information, and so does not require additional treatment capacity. Commenters noted that some facilities have impoundments that are used to perform polishing type treatment of leachate, but EPA believes, based on the information presented, that leachate can be treated to meet treatment standards before being placed in impoundments so that impounded leachate need not create demands on existing treatment capacity.

5. Transfer of Treatment Standards

In today's rule, some treatment standards are not based on testing of the treatment technology on the specific waste subject to the treatment standard. Instead, the Agency determined that the constituents present in the waste can be treated to the same performance levels as observed in other wastes for which EPA has previously developed treatment data. EPA believes transferring treatment performance from tested to untested wastes is valid technically.

Transfer of treatment standards to wastes from similar processing steps requires little formal analysis because of the likelihood that similar production processes will produce a waste matrix with similar characteristics. However, in the case where the industries are similar, but other aspects of production processes may be dissimilar, EPA more closely examines the waste characteristics prior to concluding that the untested waste constituents can be treated to levels associated with tested wastes.

EPA undertakes a two-step analysis when determining whether wastes generated by different processes can be treated to the same level of performance. First, EPA reviews the available waste characteristic data to identify those parameters which are expected to affect treatment selection. EPA has identified some of the most important constituents and other parameters needed to select the

treatment technology appropriate for a given waste.

Second, when an individual analysis suggests that an untested waste can be treated with the same technology as a waste for which treatment performance data are already available, EPA then analyzes a more detailed list of constituents that represent some of the most important waste characteristics which the Agency believes will affect the performance of the technology. By examining and comparing these characteristics, the Agency determines whether the untested wastes will achieve the same level of treatment as the tested waste. Where the Agency determines that the untested waste can be treated as well as the tested waste, the treatment standards can be transferred. A detailed discussion of this transfer process for each waste and constituent can be found in the BDAT background documents for each waste or waste treatability group.

Several commenters stated that they do not believe that standards for certain constituents could be transferred to certain waste codes. EPA's response to these comments are addressed in the sections of today's preamble that discuss that particular waste code or treatability group.

6. No Land Disposal as the BDAT Treatment Standard

EPA is establishing "no land disposal" as the treatment standard for several of the First Third wastes. This standard is analogous to the zero discharge standard established as Best Available Technology (BAT) under the Clean Water Act's effluent guideline program. It indicates that after examining available data, the Agency has identified that: (1) The waste can be totally recycled without generating a prohibited residue; or (2) the waste is not currently being land disposed; or (3) the waste is no longer being generated.

Several commenters provided information that for certain wastes that one or more of these premises is invalid. In those cases, the Agency will not finalize the treatment standard of "no land disposal", and will not establish a treatment standard for that waste in today's rule. The soft hammer provisions, as discussed elsewhere in this preamble, will therefore apply for those wastes or subcategories of wastes. EPA intends to develop treatment standards for these wastes prior to May 8, 1990.

For those nonwastewaters for which no specific comments were received refuting the validity of EPA's basis for "no land disposal", EPA has promulgated the standard as final. EPA has not promulgated a "no land disposal" standard as final for any wastewaters. Since First Third wastes have been historically managed in land disposal units, EPA recognizes that the potential exists for the generation of leachate from these land disposal units. Based on waste characterization data submitted by several commenters, leachates appear to meet EPA's definition of wastewaters. Therefore, EPA believes that constituent standards must be established for wastewaters (i.e., leachates) and that a "no land disposal" is not justified based on the premise of "no generation". It is important to point out that this standard is not intended to imply that the waste was so extremely hazardous that it could not be safely land disposed or handled, but rather that alternative forms of management exist for them. The Agency believes that where it has finalized a treatment standard of "no land disposal", there should either be no generation of this type of waste or that such generated wastes can be handled in a manner that will not require land disposal. In cases where a waste is generated and the basis for the "no land disposal" standard was that the waste was not being generated, or where a waste is significantly different than the waste examined by EPA (e.g., a specific spill residue), a person may petition the Agency for a treatment standard applicable to their waste using the provisions of § 268.44. Prior to May 8, 1990, the Agency could also, through a rulemaking, make the "soft hammer" provisions of § 268.8 applicable in these situations.

7. Waste Specific Treatment Standards

This section describes the development of BDAT treatment standards for all of the First Third wastes covered by today's rule.

a. *Revision of BDAT Treatment Standard for Methylene Chloride in Wastewaters from the Pharmaceutical Industry Listed as F001, F002, F003, F004 and/or F005.* Today's rule promulgates the proposed revision to the treatment standard for methylene chloride in F001–F005 wastewaters from the pharmaceutical industry. Where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date provided that rulemaking procedures are followed. RCRA section 3004(m)(1) states specifically that treatment standards are to be revised as appropriate. EPA believes that revision of this standard at this time is appropriate and timely, since the effective date for compliance will occur on November 8, 1988.

One commenter suggested that the Agency does not have adequate information to justify using treatment data from an agricultural chemical facility in determining the treatability of wastewaters from pharmaceutical facilities. In particular, the commenter believes that concentrations of methylene chloride, dissolved solids, methanol and the presence of other constituents in the wastes from the pharmaceutical industry are significantly different from those in the wastes that were studied by EPA and that these differences would affect the treatment performance for these wastes.

Based on information provided in the background document for the proposed rule, data indicated that the wastewater from the agricultural facility contained methylene chloride concentrations ranging from 2,500 to 7,400 ppm, while the wastewaters from the pharmaceutical plant contained concentrations ranging from 225 to 10,000 ppm. The Agency believes that this difference in methylene chloride concentrations is not significant and would not affect the performance of the treatment system. In addition, the Agency believes that a plant generating wastewaters with higher methylene chloride concentrations could use a steam stripper treatment system of a larger design or one with an increased retention time in order to comply with these standards.

Information provided in the background document for the proposed rule also showed that the concentration of methanol in the pharmaceutical industry wastewaters ranged from 369 to 1,684 ppm while the concentration of methanol in the agricultural wastewaters ranged from 55 to 81 ppm. The Agency recognizes that there is a difference in methanol concentrations; however, it believes that the concentration of methanol would not affect the performance of the treatment system because methanol has a higher boiling point than methylene chloride and it does not form an azeotrope with methylene chloride. In fact, methanol forms a binary azeotrope with water at a specific temperature and pressure.

Commenters also cited the difference in dissolved solids levels between pharmaceutical wastewaters and

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agricultural wastewaters. Data show that the concentration of dissolved solids in the pharmaceutical wastewaters ranged from 2,000 to 4,000 ppm, while the agricultural wastewaters ranged from 89,000 to 122,000 ppm. Although, the difference in concentration is significant, the Agency believes that the agricultural wastewaters with higher concentrations of total dissolved solids are more difficult to treat. Thus, EPA concludes that the wastewaters from the pharmaceutical industry would be easier to steam strip due to the relatively lower dissolved solids content and therefore, should be able to meet the treatment standard. Therefore, EPA maintains that it does have adequate information to justify using treatment data from an agricultural chemical facility in determining the treatability of wastewaters from pharmaceutical facilities. Thus, the Agency is promulgating the standard for wastewaters from the pharmaceutical industry based on the transfer of treatment data for wastewaters from the agricultural industry.

This treatment standard was established based on the performance of a steam stripping process. While the standard is based on data obtained from a steam stripping process, other treatment technologies that can achieve this standard are not precluded from use by this rule.

The Agency feels that it is important to reiterate that none of the treatment standards for other hazardous constituents in F001–F005 wastewaters, or any hazardous constituents in F001–F005 nonwastewaters have been revised; these standards remain as promulgated on November 7, 1986 (51 FR 40572). Also, the Agency has not revised the standard for methylene chloride in F001–F005 wastewaters other than those from the pharmaceutical manufacturing industry.

The final revised BDAT treatment standard for methylene chloride in wastewaters identified as F001, F002, F003, F004 and/or F005 from the pharmaceuticals industry is listed in the table following this section. (Note that the treatment standard is reflected in the regulations by amending § 268.41 for wastewaters from the pharmaceutical industry by removing methylene chloride and its corresponding concentration of 12.7 mg/l, and adding the revised treatment standard in § 268.43).

BDAT TREATMENT STANDARDS FOR F001, F002, F003, F004, AND F005 (WASTEWATERS)

[Pharmaceuticals Industry Subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Methylene chloride.	0.44	Not applicable.

b. *F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.* Today's rule promulgates treatment standards for five constituents proposed for F006 nonwastewaters. Individual standards based on the analysis of TCLP leachates have been established for cadmium, total chromium, lead, nickel, and silver and are listed in the table at the end of this section.

These treatment standards were established based on the performance of a stabilization process using cement kiln dust as a binding agent. Other stabilization binding agents and other treatment technologies that can achieve these standards are not precluded from use by this rule.

At the time of this rule, the Agency had not completed its evaluation of waste characterization and treatment information for antimony, arsenic, barium, and selenium. The proposed rule contained the notation "reserved" for these constituents, noting that EPA would be setting standards when the evaluation was completed. Several commenters suggested that a treatment standard of "reserved" was confusing to the regulated community and unnecessary. Since individual standards would still have to be proposed and promulgated through the normal rulemaking procedures, no benefit is achieved by the "reserved" notation for these constituents. Therefore, the Agency has dropped it from the final rule for this waste code.

Several commenters argued that EPA should not regulate copper or zinc, as EPA proposed to do, because they are not hazardous constituents specifically listed on Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, in that both zinc cyanide and copper cyanide are listed on Appendix VIII, and both are or may be components of electroplating wastes. Further, EPA has determined that both zinc and copper are aquatic toxins, and the Agency considered adding them to Appendix VIII for that reason. However, in this rulemaking the Agency is only regulating zinc and copper when they are indicators of performance of treatment of other Appendix VIII hazardous constituents. Further, the Agency believes that these metal constituents are controlled by treatment of the metal constituents that are regulated by today's rule and therefore, is not promulgating standards for copper or zinc as part of the treatment standards for F006 nonwastewaters.

F006 wastewater treatment sludges may contain treatable levels of cyanides. EPA does not consider stabilization—BDAT for the metals in this waste—to be a demonstrated technology for the treatment of cyanide. The Agency is currently investigating the use of technologies such as electrolytic oxidation, alkaline chlorination, wet air oxidation, ozonation, and other chemical oxidation as applicable technologies for F006 wastes that contain treatable quantities of cyanide. EPA will determine which of these technologies should be the basis of the BDAT standard when these data become available later this year. Since EPA has insufficient information to establish either a separate treatability group for F006 nonwastewaters containing treatable levels of cyanide or a treatment standard for the cyanide contained in them, the Agency is identifying the treatment standard as "reserved" until a standard can be proposed later this year. Because the Agency believes that a standard will be proposed within six months, the use of "reserved" is important in assuring that generators focus their attention on the treatment of cyanide as well as the metal constituents regulated in today's rule. It is also important to note that, until a standard for cyanide in F006 nonwastewaters is promulgated, those F006 nonwastewaters containing cyanides may be land disposed, as long as they do not exceed the statutory cyanide concentration prohibited under the statutory "California List" restrictions—namely liquid hazardous wastes containing free cyanides at concentrations of 1000 ppm or greater. [RCRA 3004(d), 42 U.S.C. 6924(d); see also 52 FR 25760, July 8, 1987].

Several commenters argued that dewatering technologies such as vacuum filtration, plate and frame pressure filtration, and centrifugation should be allowed and should be the basis for

BDAT. While these technologies do reduce the water content in the waste and generally reduce the volume of solid residuals that require disposal, the Agency maintains that these technologies are merely simple physical treatment technologies and generally do not provide any significant treatment of the metals or cyanide contained in the sludge. In cases where dewatering alone produces a residual that can meet the treatment standards, the Agency believes that it is the treatment prior to the dewatering step that has provided the most effective treatment of the metal constituents. Dewatering technologies are not precluded from use by this regulation and can be considered applicable technologies when the residuals meet the promulgated treatment standards or when dewatering is incorporated into an additional treatment train that produces a residual that can achieve these levels. Such a treatment train may include treatment technologies such as chromium reduction, cyanide destruction, metals precipitation, settling, filtration (or centrifugation), and solidification.

One commenter identified cases where metal recovery processes have been used for metal-bearing sludges. However, at this time, their applicability to F006 treatment sludges has not been examined in order to develop additional standards. The concentrations and identity of metals in F006 wastes vary depending on the specific metals used in the plating process. EPA has not been able to define any particular subcategories of F006 wastes that would be amenable to a particular recovery process.

Commenters also insisted that because metal recovery processes for electroplating wastewaters exist and are being used, EPA should establish a treatment standard of "no land disposal" for F006 and thereby, force all electroplating wastewaters to recovery. EPA does not believe this alternative to be viable because it is not clear that all electroplating wastewaters are amenable to recovery, and even if they were, the recovery processes themselves generate a sludge which would be F006, and thus require a treatment standard. Thus, the concentrations and identity of metals in these wastewaters can vary depending on the specific metals used in the plating process. In addition, other wastewaters are often generated at electroplating facilities from sump collections of floor rinsings, from accidental spills and from general maintenance. While these wastewaters may be potentially recovered by mixing with other process waters, there is a strong possibility that they could foul the recovery process due to nonhazardous contaminants from the floor. Recovery processes often include reverse osmosis and cation exchange techniques. These techniques often produce acidic or caustic backwashes which also must be treated. The sludge from these processes would also be classified as F006.

At this time, EPA has not been able to define any particular subcategory of electroplating wastewaters that would be amenable to a particular recovery process. Thus, the Agency believes that it is unlikely that a standard of "no land disposal" would be justified for all F006 wastes. It is important to point out that, where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date provided that rulemaking procedures are followed.

F006 waste is a sludge consisting of precipitated residues generated following treatment of wastewaters from electroplating operations. Several commenters have identified specific sources of wastewater forms of F006 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, and as a leachate from a landfill. Since generation of F006 wastewaters does occur, the premise of no generation as a basis for the treatment standard of "no land disposal" appears to be unjustified. (Please note as an interpretive matter, that supernatant from F006 generation is not considered to be F006, but simply wastewater from treatment of electroplating wastewaters. Filtrate from F006 sludges could be hazardous under the derived-from rule, but if it is similar in terms of identity and concentration of constituents in the influent to the wastewater treatment process, it is not considered to be derived-from F006. Rather, it is the original influent wastewater.)

The Agency is, therefore, not able to promulgate the treatment standard for F006 wastewaters in today's rule. EPA does intend to propose and promulgate numerical treatment standards for F006 wastewaters prior to May 8, 1990. It is likely that these standards will be based upon information available from EPA's NPDES discharge limitation program for electroplating facilities. Since no standard is promulgated in today's rule for F006 wastewaters, this subgroup of wastes is restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of F006 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR F006

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cadmium	(1)	0.066
Chromium (total)	(1)	5.2
Lead	(1)	.51
Nickel	(1)	.32
Silver	(1)	.072
Cyanides (total)	(2)	(2)

[1] Not applicable.
[2] Reserved.

c. *K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.* Today's rule promulgates treatment standards for K001 wastewaters and nonwastewaters. BDAT treatment standards for the organic constituents in K001 wastewaters and nonwastewaters were established based on the performance of a rotary kiln incinerator and specifically on the concentrations found in the residuals. BDAT treatment standards for the metal constituents in K001 nonwastewaters (ash residues) were established based on the performance of a stabilization treatment process and those for the metal constituents in K001 wastewaters were based on chemical precipitation. Other treatment technologies such as biodegradation, solvent extraction, and/or stabilization that can achieve these standards are not precluded from use by this rule.

For all wastes identified as K001, EPA is promulgating final treatment standards for six organic constituents. These are naphthalene, pentachlorophenol, phenanthrene, pyrene, toluene, and xylenes. EPA is also promulgating final treatment standards for lead. The final standard

for pentachlorophenol is the result of a relatively high analytical quantitation limit observed for this particular K001 waste. No data was received which allowed EPA to lower this standard based on lower quantitation limits for pentachlorophenol in other K001 wastes. Therefore, the promulgated standard for this constituent is as proposed.

EPA considered the establishment of treatment standards for polychlorinated dibenzofurans and polychlorinated dibenzodioxins. In the proposed rule, EPA had specifically requested comments on this issue. However, no additional data was submitted which could be evaluated to propose numerical treatment standards for these constituents. Some commenters stated that if EPA set standards for these particular hazardous constituents, no commercial facility would accept these wastes for treatment. In this final rule, EPA is not setting treatment standards for these constituents. However, it is important to point out that, where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date provided that rulemaking procedures are followed. This includes the addition of hazardous constituents such as the polychlorinated dibenzofurans and polychlorinated dibenzodioxins.

Several commenters argued that EPA should not regulate copper or zinc, as EPA proposed to do, because they are not hazardous constituents specifically listed on Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, as discussed earlier. However, in this rulemaking the Agency is only regulating zinc and copper when they are indicators of performance of treatment of other Appendix VIII hazardous constituents. Further, the Agency believes that these metal constituents are controlled by treatment of the metal constituents that are regulated by today's rule and therefore, is not promulgating standards for copper or zinc as part of the treatment standards for K001 wastes.

Several commenters suggested that land treatment also can be considered to be BDAT for this waste. Land treatment is defined as a form of land disposal under section 3004(k). Treatment standards are those that apply before land disposal; wastes must meet these standards before they can be land disposed. See section 3004(m); see also sections 3004 (d), (e), (f), and (g), all of which refer to the (m) standards as pretreatment standards which apply before land disposal. Moreover, where Congress wished to allow a form of land disposal for wastes not already meeting the treatment standard, it said so directly. See section 3005(j)(11). There is no such directive for treatment in land treatment units of wastes not already meeting the treatment standard (or subject to some type of exception from a prohibition). Consequently, EPA must reject these commenters' suggestions as a matter of law.

BDAT TREATMENT STANDARDS FOR F001

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Naphthalene	8.0	(1)
Pentachlorophenol	37	(1)
Phenanthrene	8.0	(1)
Pyrene	7.3	(1)
Toluene	.14	(1)
Xylenes	.16	(1)
Lead	(1)	0.51

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR F001

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Naphthalene	0.15	(1)
Pentachlorophenol	.68	(1)
Phenanthrene	.15	(1)
Pyrene	.14	(1)
Toluene	.14	(1)
Xylenes	.16	(1)
Lead	.037	(1)

[1] Not applicable.

d. *K015—Still bottoms from the distillation of benzyl chloride.* The BDAT treatment standard of "no land disposal" for K015 nonwastewaters was proposed based on the performance of a liquid injection incinerator and the fact that the waste contained no measurable ash (the solid residue from incineration). The detection limit for the ash content of the K015 nonwastewaters studied by EPA was 0.01% by weight. Since no comments were received indicating generation of K015 wastes with detectable levels of ash, EPA has decided that the premise of "no ash" as a basis for the treatment standard of "no land disposal" appears to be justified. Therefore, today's rule promulgates the final treatment standard of "no land disposal" for all K015. One commenter expressed concern that if K015 were mixed with a waste that did contain an ash, the resultant ash would be subject to the "no land disposal" standard for K015. EPA agrees with the commenter that the standard would be applicable, but believes that blending with a waste or fuel that contains no ash is an option that allows compliance with the "no land disposal" standard for K015. At the same time, EPA also recognizes that K015 may be generated with an ash content if K015 were inadvertently spilled (such as on soil). However, EPA cannot anticipate this type of nonroutine generation and therefore, has to disagree with these commenters. The Agency also believes that for situations such as this, the petition processes for obtaining a variance from the treatment standard provides potential generators with a viable procedure for managing the waste.

The use of other treatment technologies are not precluded by this rule. For example, while rotary kiln and fluidized bed incinerators are generally designed to handle solids and sludges, these units often are designed to incinerate liquids. In any case, where these or other treatment technologies can treat K015 without generating an ash or other solid residual, these units may be used to achieve the "no land disposal" standard for the K015 nonwastewaters.

Today's rule also promulgates final treatment standards for K015 wastewaters for all constituents as proposed. The regulated constituents are anthracene, benzal chloride, benzo (b and/or k) fluoranthene, phenanthrene, toluene, total chromium and nickel. BDAT treatment standards for the organic constituents were established based on the performance of a liquid injection incineration and the concentrations found in the scrubber water. BDAT treatment standards for the metal constituents in wastewaters were based on chemical precipitation. Because no comments were received on the proposed regulation of any of the specific constituents for K015 wastewaters, EPA assumes that generators of K015 wastes agree with EPA's assessment of the treatability of these wastes. All final treatment standards are listed in the following table:

BDAT TREATMENT STANDARDS FOR K015

[Nonwastewaters]

NO LAND DISPOSAL BASED ON NO ASH

BDAT TREATMENT STANDARDS FOR K015

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Anthracene	1.0	[1]
Benzal chloride	.28	[1]
Benzo (b and/or k) fluoranthene	.29	[1]
Phenanthrene	.27	[1]
Toluene	.15	[1]
Chromium (total)	.32	[1]
Nickel	.44	[1]

[1] Not applicable.

e. *K016—Heavy ends or distillation residues from the production of carbon tetrachloride. K018—Heavy ends from the fractionation column in ethyl chloride production. K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride production. K030—Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.* Today's rule promulgates final treatment standards for K016, K018, K019, K020 and K030 wastewaters and nonwastewaters as proposed. These five listed hazardous wastes are generated in the production of chlorinated chemicals in the organic chemical industry. The Agency noted in the April 8, 1988 proposal (53 FR 11755) that K019 was originally scheduled for Part 268 regulation in the Second Third (effective June 8, 1989). However, due to the similarity between K019 and the other wastes in this treatability group (K016, K018, K020 and K030), the Agency has chosen to accelerate the schedule for K019.

Several commenters opposed this accelerated schedule for K019, stating that business operations had been planned based on K019 being regulated in June of 1989. However, the statute does not preclude EPA from prohibiting the land disposal of a given waste ahead of schedule (and the schedule in §§ 268.10–268.12 itself says that wastes will be evaluated by a given date, indicating that the specified date is the latest time by which EPA will act), and in fact compels the Agency to prohibit the land disposal of hazardous wastes as soon as possible. Having identified BDAT and developed treatment standards for K019 wastes, the Agency believes the most prudent approach is to promulgate the standards and effective date as proposed.

BDAT treatment standards for the organic constituents in these wastes are based on the performance of rotary kiln incineration and the concentrations found in the residuals. Other treatment technologies such as fluidized bed incineration, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule.

As described fully in the background document for these wastes, individual constituent standards from waste code K019 have been transferred to those of constituents in waste codes K016, K018, K020, and K030. The Agency based this transfer of standards primarily on the physical and chemical similarity of the individual organic constituents as well as the similarities in overall characteristics of the individual wastes. Because no comments were received on the proposed regulation of any of the specific constituents for K016, K018, K019, K020 and K030 wastes, EPA assumes that generators of these wastes agree with EPA's assessment that these treatment standards can be achieved. The regulated constituents and BDAT treatment standards for these wastes are listed in the tables at the end of this section.

BDAT TREATMENT STANDARDS FOR K016

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Hexachlorobenzene	28	[1]
Hexachlorobutadiene	5.6	[1]
Hexachlorocyclopentadiene	5.6	[1]
Hexachloroethane	28	[1]
Tetrachloroethene	6.0	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K016

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Hexachlorobenzene	0.033	[1]
Hexachlorobutadiene	.007	[1]
Hexachlorocyclopentadiene	.007	[1]
Hexachloroethane	.033	[1]
Tetrachloroethene	.007	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K018

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chloroethane	6.0	[1]
1,1-Dichloroethane	6.0	[1]
1,2-Dichloroethane	6.0	[1]
Hexachlorobenzene	28	[1]
Hexachlorobutadiene	5.6	[1]
Hexachloroethane	28	[1]
Pentachloroethane	5.6	[1]
1,1,1-Trichloroethane	6.0	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K018

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Chloroethane	0.007	[1]
Chloromethane	.007	[1]
1,1-Dichloroethane	.007	[1]
1,2-Dichloroethane	.007	[1]
Hexachlorobenzene	.033	[1]
Hexachlorobutadiene	.007	[1]
Pentachloroethane	.007	[1]
1,1,1-Trichloroethane	.007	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K019

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Bis(2-chloroethyl)ether	5.6	[1]
Chlorobenzene	6.0	[1]
Chloroform	6.0	[1]
1,2-Dichloroethane	6.0	[1]
Hexachloroethane	28	[1]
Naphthalene	5.6	[1]
Phenanthrene	5.6	[1]
Tetrachloroethene	6.0	[1]
1,2,4-Trichlorobenzene	19	[1]
1,1,1-Trichloroethane	6.0	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K019

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Bis(2-chloroethyl)ether	0.007	[1]
Chlorobenzene	.006	[1]
Chloroform	.007	[1]
p-Dichlorobenzene	.008	[1]

BDAT TREATMENT STANDARDS FOR K019—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
1,2-Dichloroethane	.007	(1)
Fluorene	.007	(1)
Hexachloroethane	.033	(1)
Naphthalene	.007	(1)
Phenanthrene	.007	(1)
1,2,4,5-Tetrachlorobenzene	.017	(1)
Tetrachloroethene	.007	(1)
1,2,4-Trichlorobenzene	.023	(1)
1,1,1-Trichloroethane	.007	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K020

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
1,2-Dichloroethane	6.0	(1)
1,1,2,2-Tetrachloroethane	5.6	(1)
Tetrachloroethene	6.0	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K020

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
1,2-Dichloroethane	0.007	(1)
1,1,2,2-Tetrachloroethane	.007	(1)
Tetrachloroethene	.007	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K030

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Hexachlorobutadiene	5.6	(1)
Hexachloroethane	28	(1)
Hexachloropropene	19	(1)
Pentachlorobenzene	28	(1)
Pentachloroethane	5.6	(1)
1,2,4,5-Tetrachlorobenzene	14	(1)
Tetrachloroethene	6.0	(1)
1,2,4-Trichlorobenzene	19	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K030

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
o-Dichlorobenzene	0.008	(1)
p-Dichlorobenzene	.008	(1)
Hexachlorobutadiene	.007	(1)
Hexachloroethane	.033	(1)
Pentachloroethane	.007	(1)
1,2,4,5-Tetrachlorobenzene	.017	(1)
Tetrachloroethene	.007	(1)
1,2,4-Trichlorobenzene	.023	(1)

[1] Not applicable.

f. *K022—Distillation bottom tars from the production of phenol/acetone from cumene.* Today's rule promulgates final treatment standards for K022 nonwastewaters as proposed. Treatment standards for the organic constituents in these wastes are based on the performance of a fuel substitution unit and the concentrations found in the ash residuals. Treatment standards for the metal constituents in nonwastewaters (ash residues) are based on the performance of a stabilization treatment process. Other treatment technologies such as liquid injection incineration, rotary kiln incineration, and fluidized bed incineration, that can achieve these standards are not precluded from use by this rule.

The variety in types of alternative incineration units that are potentially applicable and are believed able to achieve the treatment standards, is primarily due to the physical form of the K022 nonwastewaters. As initially generated, K022 wastes are still bottoms that are typically pumped directly from the distillation unit as viscous organic liquids, while they remain hot. Upon cooling, the viscosity of the waste will increase and K022 can become tarry and viscous. It can be kept fluidized by mixing it with various light hydrocarbons, waste olefinic oils or solvents. If not fluidized or kept hot, the waste will eventually harden into an organic solid. One commenter suggested that these viscous or hardened solids should be able to be reheated and thus, fluidized. While the Agency has not verified this, it believes that the immediate onsite management of the waste is the determining factor on whether the waste can be handled as a liquid or as a solid.

For wastes identified as K022 nonwastewaters, EPA is promulgating final treatment standards for seven constituents. These are toluene, acetophenone, phenol, diphenylamine, diphenylnitrosamine, nickel and total chromium. The standard for diphenylamine and diphenylnitrosamine is listed as the sum of these constituents. This is necessary because the two compounds cannot be distinguished using EPA's standard analytical testing procedure.

At the time of this rule, the Agency had not completed its evaluation of waste characterization and treatment information for sulfide. The proposed rule contained the notation "reserved" for these constituents, noting that EPA would be setting standards when the evaluation was completed. Several commenters suggested that a treatment standard of "reserved" was confusing to the regulated community and unnecessary. Since individual standards would still have to be proposed and promulgated through the normal rulemaking procedures, no benefit is achieved by the "reserved" notation for these constituents. Therefore, the Agency has dropped it from the final rule for this waste code.

In the proposed rule EPA considered establishing treatment standards for polychlorinated dibenzofurans and polychlorinated dibenzodioxins for ash residuals from the burning or incineration of K022 nonwastewaters. A sample of untreated ash from the burning of K022 as a fuel substitute was analyzed for isomers of chlorinated dibenzofurans and chlorinated dibenzodioxins. A trace amount (parts per trillion) of tetrachlorodibenzofurans (TCDF) was detected in this sample. This amount was determined to be below the typical BDAT quantitation level for these compounds. In the proposed rule, EPA had specifically requested comments on the issue of regulating these compounds. Also, the Agency had noted that it was reexamining the analytical quantification procedures for the reported tetrachlorodibenzofurans. The Agency has since discovered that the laboratory that performed the analysis for isomers of chlorinated dibenzofurans and chlorinated dibenzodioxins had failed to provide audit samples or fortified (spiked) samples. Thus, the accuracy of quantification below the typical BDAT quantitation levels for the reported tetrachlorodibenzofurans can not be determined. EPA has concluded that additional analysis reproducing these results, with the proper QA/QC performed, would be required before EPA can consider development of treatment standards for these compounds. No additional data were submitted from commenters that could

be evaluated to propose treatment standards for these constituents.

As described fully in the background document for this waste, individual standards for total chromium and nickel for the K022 nonwastewaters have been transferred from the performance of solidification on F006 wastes. The Agency based this transfer of standards based primarily on the physical and chemical similarity of the individual metal constituents as well as the similarities in overall characteristics of the wastes. Because no comments were received on the proposed regulation of any of the specific constituents for K022, EPA assumes that generators of these wastes agree with EPA's assessment that these treatment standards can be achieved. The regulated constituents and BDAT treatment standards for these wastes are listed in the tables at the end of this section.

The BDAT treatment standard of "no land disposal" for K022 wastewaters was proposed based on the performance of a fuel substitution unit that generated no scrubber water. This information was the basis of the "no land disposal" standard for K022 wastewaters. In the proposed rule, EPA specifically requested comment on the premise of the "no land disposal". In response, one commenter stated that he does generate K022 wastewaters as a scrubber water. Other commenters have identified additional potential sources of wastewater forms of K022 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, and as a leachate from a landfill where K022 nonwastewaters or K022 ash residues have been previously disposed. Since generation of these wastewaters has been identified, the premise of "no generation" appears to be unjustified. As a result, the Agency has decided to not promulgate a final rule of "no land disposal" K022 wastewaters. EPA does intend to propose and promulgate treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for K022 wastewaters, these wastes are restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble. [NOTE: As discussed in detail in section III.C.3., EPA is amending section 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K022 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in non-minimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K022

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acetophenone	19	(1)
Sum of diphenylamine and diphenylnitrosamine	13	(1)
Phenol	12	(1)
Toluene	.034	(1)
Chromium (total)	(1)	5.2
Nickel	(1)	.32

[1] Not applicable.

g. *K024—Distillation bottom tars from the production of phthalic anhydride from naphthalene.* Today's rule promulgates final treatment standards for K024 wastewaters and nonwastewaters. (The Agency notes that the proposed treatment standards (see 53 FR 11757 and 11790; April 8, 1988) were in error; however, the background document for the proposed rule contained the correct concentration levels for phthalic acid—which are being promulgated today). Treatment standards are based on the performance of rotary kiln incineration and the concentrations found in the ash and scrubber water residuals. Other treatment technologies such as fluidized bed incineration and fuel substitution that can achieve these standards are not precluded from use by this rule.

EPA is regulating phthalic acid for both K024 wastewaters and K024 nonwastewaters. This constituent, although not listed as a hazardous constituent in Part 261 Appendix VIII, is being regulated as a surrogate for phthalic anhydride. Phthalic anhydride is a hazardous constituent; however, it cannot be easily analyzed, in that the analytical method readily hydrolyzes the compound to phthalic acid. The BDAT treatment standards for these wastes are listed in the following tables:

BDAT TREATMENT STANDARDS FOR K024

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Phthalic acid	28	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K024

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Phthalic acid	0.54	(1)

[1] Not applicable.

h. *K037—Wastewater treatment sludge from the production of Disulfoton.* Today's rule promulgates final treatment standards for K037 wastewaters and nonwastewaters as proposed. Treatment standards are based on the performance of rotary kiln incineration and the concentrations found in the ash and scrubber water residuals. Other treatment technologies such as fluidized bed incineration, fuel substitution units, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule.

EPA is regulating Disulfoton and toluene for K037 wastewaters and K037 nonwastewaters. Because no comments were received on the proposed regulation of these standards, EPA assumes that generators of these wastes agree with EPA's assessment that these treatment standards can be achieved. The BDAT treatment standards for these wastes are listed in the following tables:

BDAT TREATMENT STANDARDS FOR K037

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Disulfoton	0.1	(1)
Toluene	28	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K037

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Disulfoton	0.003	[1]
Toluene	.028	[1]

[1] Not applicable.

i. *K044—Wastewater treatment sludges from the manufacturing and processing of explosives. K045—Spent carbon from the treatment of wastewater containing explosives. K047—Pink/red water from TNT operations.* Today's rule promulgates "no land disposal" as the final treatment standard for K044, K045 and K047 wastewaters and nonwastewaters. The treatment standard for these wastes was established based on EPA's determination that open burning and open detonation of reactive (e.g., explosive) wastes is not considered land disposal. So long as no reactive constituents remain after detonation, there would be no land disposal of a hazardous waste (40 CFR 261.3(a)(2)(iii)). In order to provide clarification, EPA has modified the "no land disposal" standard to read "no land disposal based on reactivity".

Other technologies, such as incineration in specially designed explosion protected units and chemical deactivation processes, that can render these wastes nonreactive are not precluded from use by this rule based on a determination that residues from these technologies are no longer reactive (i.e., explosive).

One commenter pointed out that there are no established and approved analytical methods to determine the reactivity characteristic for wastes. The commenter noted that approved methods would be useful in determining whether the treatment of K044, K045, K046, and K047 was sufficient to render the waste nonreactive. The Agency agrees with the commenter to the fact that there is no official OSW analytical method (i.e., according to SW–846, 3rd ed.) to test for reactivity. However, the Agency has recently reviewed a testing protocol developed by the Department of Defense to measure the characteristic of reactivity for their hazardous wastes. While this protocol does not contain official OSW methods, the Agency believes that it represents logical and safe analytical procedures for determining the characteristic of reactivity (particularly for explosive wastes). Additional information on this protocol can be found in the background document for K046.

BDAT TREATMENT STANDARDS FOR K044, K045, AND K047

[Nonwastewaters and wastewaters]

NO LAND DISPOSAL BASED ON REACTIVITY

j. *K046—Wastewater treatment sludges from the manufacturing, formulation, and loading of lead based initiating compounds.* Today's rule promulgates a final treatment standard only for those K046 nonwastewaters that are nonreactive. A TCLP treatment standard for lead was established for these wastes based on the performance of a stabilization process. The K046 that was specifically sampled and tested by the Agency was nonreactive (i.e., nonexplosive) as originally generated. This standard does not apply to K046 nonwastewaters that are reactive (i.e., explosive) as originally generated. Residues from the open detonation, open burning, or incineration of K046 nonwastewaters that are reactive as originally generated do not have to meet these standards.

Commenters to the proposed rule stated that the data used to set the treatment standard for nonreactive K046 nonwastewaters may not be representative of their K046 wastes. Descriptions of their processes and their wastes indicated that they are generating reactive K046 wastes that they are subsequently treated by open detonation or open burning, thus creating nonreactive K046 residuals. It was these wastes that they stated were different from the nonreactive K046 that EPA studied.

The waste sampled and tested by the Agency consisted primarily of a lead carbonate sludge generated from a chemical treatment process for wastewater that originally contained the explosive compound lead azide. This sludge contained approximately 95% water and approximately 1,000 ppm total lead. In contrast, residues from one facility consist of solid ash from burning or detonating a K046 that includes lead-based initiating compounds and other explosives. The Agency recognizes that these wastes are inherently different and were not examined by EPA during the development of the K046 treatment standards. The Agency intends to reexamine the data based on its testing of nonreactive K046 nonwastewaters and determine whether the data can be extrapolated to reactive K046 wastes containing untreated lead azide or whether new data must be obtained to set treatment standards for those residues from open detonation, open burning or specialized incineration of K046 wastes that were originally reactive as generated.

In today's rule, the Agency is taking this information into account and is setting treatment standards only for those K046 nonwastewaters that are nonreactive (i.e., nonexplosive) when they are initially generated. Reactive K046 nonwastewaters that must be open detonated do not have to meet the treatment standard promulgated as final in today's rule. No comments or data were received that specifically indicated the existence of nonreactive K046 (other than nonreactive residuals from open detonation or open burning of K046 that were originally explosive as generated) that could not meet the proposed treatment standard for lead. Therefore, the Agency assumes that generators of these nonreactive (as generated) K046 wastes agree with EPA's assessment that these treatment standards can be achieved.

Some commenters indicated that they generate a mixture of K044 and K046 and were concerned that the preamble is unclear as to whether reactive K046 wastes can first be treated by open burning or open detonation to remove the reactivity hazard before stabilization. Stabilization of reactive K046 or mixtures of nonreactive K046 with reactive K044, K045, K047 or other explosive wastes would require excessive handling in an essentially untried manner. It would be dangerous and contrary to industry safety practices to impose such requirement without adequate safety testing. The Agency agrees with these commenters, in that EPA is uncertain of the risk associated with pretreating reactive (i.e., explosive) K046 wastes by open burning to eliminate the explosion hazard. Residues that do not meet the treatment standards can promptly be removed for treatment by stabilization at facilities equipped and authorized to carry out such activities. This scenario eliminates the safety hazards while addressing environmental concerns related to the toxic constituents in the waste. However, the Agency prohibits the mixing of nonreactive K046 wastes (those that are nonreactive as initially generated) with explosive wastes such as K044, K045 or K047 in order to avoid the applicability of the promulgated final treatment standard for nonreactive K046 nonwastewaters.

In the proposed rule, the Agency recognized the existence of the generation of reactive (i.e., explosive)

K045 nonwastewaters and proposed a treatment standard of "no land disposal" for these wastes based on the same rationale that the Agency used for K044, K045 and K047. However, the Agency now realizes that this rationale is not applicable because the lead present in the wastes would remain on the ground after open detonation. The Agency believes that these residues could be physically removed from the land and solidified to prevent leaching of the lead. However, the Agency has not investigated the concentration of lead in these residuals nor has it investigated the performance of solidification for these. As a result, the Agency is, therefore, not able to promulgate the "no land disposal" treatment standard for the explosive K046 nonwastewaters in today's rule. EPA does intend to propose and promulgate treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for reactive K046 nonwastewaters, these wastes are restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble.

In the proposed rule, the Agency also proposed a treatment standard of "no land disposal" for all K046 wastewaters, based on the premise that they would not be generated. Several commenters have identified specific sources of wastewater forms of K046 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, and as a leachate from a landfill. Since generation of K046 wastewaters does occur, the premise of "no generation" as a basis for the treatment standard of "no land disposal" appears to be unjustified. The Agency is, therefore, not able to promulgate the treatment standard for K046 wastewaters in today's rule. EPA does intend to propose and promulgate numerical treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for K046 wastewaters, this subgroup of wastes is restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble. [**Note.**—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K046 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

One commenter pointed out that there are no established and approved analytical methods to determine the reactivity characteristic for wastes. The commenter noted that approved methods would be useful in determining whether the treatment of K044, K045, K046, and K047 was sufficient to render the waste nonreactive. The Agency agrees with the commenter to the fact that there is no official OSW analytical method (i.e., according to SW 846, 3rd ed.) to test for reactivity. However, the Agency has recently reviewed a testing protocol developed by the Department of Defense to measure the characteristic of reactivity for their hazardous wastes. While this protocol does not contain official OSW methods, the Agency believes that it represents logical and safe analytical procedures for determining the characteristic of reactivity (particularly for explosive wastes). Further, the Agency believes that this testing protocol can be used as guidance in the determination of the applicability of the treatment standards for K046 wastes (i.e., the determination of whether the K046 waste is in the reactive or nonreactive subcategory). Additional information on this protocol can be found in the background document for K046.

BDAT TREATMENT STANDARDS FOR K046

[Nonwastewaters]

[Nonreactive subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Lead	(1)	0.18

[1] Not applicable.

k. *K048—Dissolved air flotation (DAF) float from the petroleum refining industry. K049—Slop oil emulsion solids from the petroleum refining industry. K050—Heat exchanger bundle cleaning sludge from the petroleum refining industry. K051—API separator sludge from the petroleum refining industry. K052—Tank bottoms (leaded) from the petroleum refining industry.* In today's rule EPA is promulgating treatment standards for wastewater and nonwastewater forms of K048, K049, K050, K051 and K052. These standards are based on reanalysis of the original treatment data for incineration and solvent extraction, as well as analysis of additional, recently submitted data on solvent extraction. In the proposed rule and background document for these wastes, the Agency had indicated that there was a statistical difference between these technologies. Several commenters pointed out that this difference is for only a few constituents and that the two technologies can achieve comparable performance for the majority of constituents. They also believe that there is little environmental benefit achieved in using the incineration performance data as the sole basis for setting treatment standards versus the incorporation of the solvent extraction data into the standard. They stated that both technologies could achieve concentrations of hazardous constituents in the residuals that were below health based limits for those constituents.

EPA's own statistical (ANOVA) comparison of the two technologies confirms that fluidized bed incineration provides significantly better treatment than solvent extraction for naphthalene and xylenes. However, for eleven other organic constituents there is no significant difference in achievable performance.

The proposed BDAT standards for K048–K052 nonwastewaters were based solely on the results obtained from the analysis of residual samples from incineration of K048 and K051 wastes at one refinery. Prior to the April 8, 1988 proposed regulation, industry had submitted treatment data for K048–K052 wastes using solvent extraction technologies. These data were incomplete for incorporation into the proposed standard, primarily because they did not include any total constituent concentrations in the wastes prior to treatment. During the comment period, these additional data, as well as other industry data, were provided to EPA, allowing the Agency to complete its analysis of the technology.

The solvent extraction process that was examined is designed to recover and recycle petroleum products from the K048–K052 nonwastewaters. Use of the technology thus furthers the broad Congressional goal of resource recovery as a preferred alternative to waste treatment alone (see, e.g. H.R. Rep. No. 198, 98th Cong. 1st Sess. at 31). Several commenters indicated that it also may be easier to obtain treatment permits for solvent extraction units than for incinerators due to less public concern

over the presence of these type of units in the community.

EPA has considered all of these comments and has decided that the resource recovery achieved by solvent extraction justifies its inclusion in the development of BDAT treatment standards. Therefore, EPA has established solvent extraction and incineration as BDAT for K048–K052 nonwastewaters and is promulgating revised numerical standards. EPA does not believe that this conflicts with the promulgated BDAT methodology.

A few weeks before promulgation of the final regulation, EPA received data showing performance of other types of solvent extraction systems on K048–K052. These data appear to indicate superior treatment of xylene and naphthalene than the system on which EPA is basing its treatment standards. The Agency has not had the opportunity to fully evaluate these data, however, nor has any member of the petroleum industry had the opportunity to comment on them. EPA consequently does not feel justified in basing treatment standards on this information. However the Agency is continuing to study these data and will propose to revise the treatment standards if such examination shows that significantly lower levels are actually achievable. Such a proposal may appear, for example, as part of the Second Third proposed rulemaking, expected a few months from now. However, as a result of these data, EPA believes it unwarranted to promulgate treatment standards for xylenes and naphthalene at the present time, and accordingly is reserving treatment standards for these constituents.

Today's rule promulgates treatment standards for all of the organic constituents proposed for K048, K049, K050, K051 and K052 nonwastewaters. Additionally, several other organic constituents are being regulated that were identified in characterization data for these wastes. EPA's testing of fluidized bed incineration showed substantial treatment of these constituents. However, treatment standards were not originally proposed for them because the Agency believed that they would be controlled by incineration and regulation of other organic constituents in the nonwastewater residuals from incineration. They are being regulated in today's rule because the additional data submitted by industry indicated that solvent extraction achieves substantial treatment for these constituents. However, the Agency does not have any data that indicate that these constituents would be necessarily controlled by solvent extraction if only the other organic constituents are regulated. The standards for the organic constituents are based on the results of the performance achievable by solvent extraction and/or incineration. Standards for arsenic, total chromium, nickel, and selenium are established based on the performance of a stabilization process. It is important to point out that while the standards for organic constituents are based on data obtained from solvent extraction and fluidized bed incineration, other treatment technologies such as rotary kiln incineration and biodegradation that can achieve these standards are not precluded from use by this rule.

Several commenters argued that EPA should not regulate copper, vanadium or zinc because they are not constituents specifically listed on Appendix VIII of 40 CFR part 261. The Agency does not totally agree, but is not adopting standards for these metals for reasons stated earlier in connection with F006 wastes. The final revised BDAT treatment standards for K048, K049, K050, K051 and K052 are listed in the tables at the end of this section.

Several commenters stated that dewatering technologies such as vacuum filtration, plate and frame pressure filtration, and centrifugation, as well as thermal drying, should be allowed and should be the basis of BDAT. They also provided leachability data on the residuals from these process. However, no total constituent concentration data were provided for comparison to the performance of incineration and solvent extraction. While these technologies do reduce the water content in the waste and generally reduce the volume of solid residuals that require disposal, they do not perform as well as incineration and solvent extraction technologies that EPA has determined to be BDAT for these wastes. A detailed comparison of these technologies is provided in the BDAT background documents for these wastes, located in the docket for this rule. At the same time, it is important to point out that these dewatering technologies are not precluded from use by this regulation and can be considered applicable technologies when used alone or when incorporated into an additional treatment train, provided that they produce a residual that can achieve the constituent concentrations in the treatment standards for that particular waste.

The proposed BDAT standards for organic constituents in K048–K052 wastewaters were based on a transfer of performance data for the scrubber water residual from the incineration of a similar waste. The Agency has recently completed an analysis of scrubber waters from the incineration of a K048 waste (performed earlier this year). The results of this analysis are comparable to the treatment performance data that were the basis for the proposed standards. The Agency has decided to promulgate the final treatment standards for K048–K052 wastewaters based on revised standards using the data from the incineration of the K048 waste.

Several additional organic constituents are being regulated in the K048–K052 wastewaters. These constituents were identified in characterization data for untreated K048–K052 wastes. EPA's testing of fluidized bed incineration showed substantial treatment of these constituents. However, treatment standards were not proposed for them because the Agency believed that they would be effectively controlled by incineration and regulation of other organic constituents (as indicators for these constituents) in the wastewaters. The Agency has chosen to regulate these additional organic constituents because it does not have any data that indicate that these constituents would be necessarily controlled by solvent extraction if only the other organic constituents are regulated. Because the Agency did not receive any comments nor solvent extraction treatment data for the K048–K052 wastewater residuals (from solvent extraction), the promulgated standards for the organic constituents in K048–K052 wastewaters are based on the results of the performance achievable by fluidized bed incineration. Today's rule also promulgates final treatment standards for metal constituents in K048–K052 wastewaters based on a transfer of treatment performance data (with the

exception of arsenic values, which are based on treatment of wastewaters of these petroleum refining wastes) for wastewaters containing metals using chromium reduction, lime and sulfide precipitation and vacuum filtration, as proposed.

BDAT Treatment Standards for K048

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Benzene	9.5	(1)
Benzo(a)pyrene	0.84	(1)
Bis(2-ethylhexyl)phthalate	37	(1)
Chrysene	2.2	(1)
Di-n-butyl phthalate	4.2	(1)
Ethylbenzene	67	(1)
Naphthalene	(2)	(1)
Phenanthrene	7.7	(1)
Phenol	2.7	(1)
Pyrene	2.0	(1)
Toluene	9.5	(1)
Xylenes	(2)	(1)
Cyanides (total)	1.8	(1)
Arsenic	(1)	0.004
Chromium (total)	(1)	1.7
Nickel	(1)	0.048
Selenium	(1)	0.025

[1] Not applicable.
[2] Reserved.

BDAT Treatment Standards for K048

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Benzene	0.011	(1)
Benzo(a)pyrene	.047	(1)
Bis(2-ethylhexyl)phthalate	.043	(1)
Chrysene	.043	(1)
Di-n-butyl phthalate	.060	(1)
Ethylbenzene	.011	(1)
Fluorene	.050	(1)
Naphthalene	.033	(1)
Phenanthrene	.039	(1)
Phenol	.047	(1)
Pyrene	.045	(1)
Toluene	.011	(1)
Xylenes	.011	(1)
Chromium (total)	.20	(1)
Lead	.037	(1)

[1] Not applicable.

BDAT Treatment Standards for K049

[Nonwastewaters])

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Anthracene	6.2	(1)
Benzene	9.5	(1)
Benzo(a)pyrene	0.84	(1)

BDAT Treatment Standards for K049—Continued

[Nonwastewaters])

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Bis(2-ethylhexyl)phthalate	37	(1)
Chrysene	2.2	(1)
Ethylbenzene	67	(1)
Naphthalene	(2)	(1)
Phenanthrene	7.7	(1)
Phenol	2.7	(1)
Pyrene	2.0	(1)
Toluene	9.5	(1)
Xylenes	(2)	(1)
Cyanides (total)	1.8	(1)
Arsenic	(1)	0.004
Chromium (total)	(1)	1.7
Nickel	(1)	0.048
Selenium	(1)	0.025

[1] Not applicable.
[2] Reserved.

BDAT Treatment Standards for K049

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Anthracene	0.039	(1)
Benzene	.011	(1)
Benzo(a)pyrene	.047	(1)
Bis(2-ethylhexyl)phthalate	.043	(1)
Carbon disulfide	.011	(1)
Chrysene	.043	(1)
2,4-Dimethylphenol	.033	(1)
Ethylbenzene	.011	(1)
Naphthalene	.033	(1)
Phenanthrene	.039	(1)
Phenol	.047	(1)
Pyrene	.045	(1)
Toluene	.011	(1)
Xylenes	.011	(1)
Chromium (total)	.20	(1)
Lead	.037	(1)

[1] Not applicable.

BDAT Treatment Standards for K050

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Benzo(a)pyrene	0.84	(1)
Phenol	2.7	(1)
Cyanides (total)	1.8	(1)
Arsenic	(1)	0.004
Chromium (total)	(1)	1.7
Nickel	(1)	.048
Selenium	(1)	.025

[1] Not applicable.

BDAT Treatment Standards for K050

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Benzo(a)pyrene	0.047	(1)
Phenol	.047	(1)
Chromium (total)	.20	(1)
Lead	.037	(1)

[1] Not applicable.

BDAT Treatment Standards for K051

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Anthracene	6.2	(1)
Benzene	9.5	(1)
Benzo(a)anthracene	1.4	(1)
Benzo(a)pyrene	.84	(1)
Bis(2-ethylhexyl)phthalate	37	(1)
Chrysene	2.2	(1)
Di-n-butyl phthalate	4.2	(1)
Ethylbenzene	67	(1)
Naphthalene	(2)	(1)
Phenanthrene	7.7	(1)
Phenol	2.7	(1)
Pyrene	2.0	(1)
Toluene	9.5	(1)
Xylenes	(2)	(1)
Cyanides (total)	1.8	(1)
Arsenic	(1)	0.004
Chromium (total)	(1)	1.7
Nickel	(1)	.048
Selenium	(1)	.025

[1] Not applicable.
[2] Reserved.

BDAT Treatment Standards for K051

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acenaphthene	0.050	(1)
Anthracene	.039	(1)
Benzene	.011	(1)
Benzo(a)anthracene	.043	(1)
Benzo(a)pyrene	.047	(1)
Bis(2-ethylhexyl)phthalate	.043	(1)
Chrysene	.043	(1)
Di-n-butyl-phthalate	.060	(1)
Ethylbenzene	.011	(1)
Fluorene	.050	(1)
Naphthalene	.033	(1)
Phenanthrene	.039	(1)
Phenol	.047	(1)
Pyrene	.045	(1)
Toluene	.011	(1)
Xylenes	.011	(1)
Chromium (total)	.20	(1)
Lead	.037	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K052

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Benzene	9.5	(1)
Benzo(a)pyrene	.84	(1)
o-Cresol	2.2	(1)
p-Cresol	.90	(1)
Ethylbenzene	67	(1)
Naphthalene	(2)	(1)
Phenanthrene	7.7	(1)
Phenol	2.7	(1)
Toluene	9.5	(1)
Xylenes	(3)	(1)
Cyanides (total)	1.8	(1)
Arsenic	(1)	0.004
Chromium (total)	(1)	1.7
Nickel	(1)	.048
Selenium	(1)	.025

[1] Not applicable.
[2] Reserved.

BDAT TREATMENT STANDARDS FOR K052

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Benzene	0.011	(1)
Benzo(a)pyrene	.047	(1)
o-Cresol	.011	(1)
p-Cresol	.011	(1)
2,4-Dimethylphenol	.033	(1)
Ethylbenzene	.011	(1)
Naphthalene	.033	(1)
Phenanthrene	.039	(1)
Phenol	.047	(1)
Toluene	.011	(1)
Xylenes	.011	(1)
Chromium (total)	.20	(1)
Lead	.037	(1)

[1] Not applicable.

1. *K061—Emission control dust/sludge from the primary production of steel in electric furnaces.* Today's rule revises and promulgates final treatment standards for K061 nonwastewaters. The standards proposed on April 8, 1988, were based on the performance of a high temperature metals recovery (HMTR) unit. HMTR results in the formation of a residual slag which was analyzed to determine the performance of this technology. EPA received extensive comments from industry opposing the applicability, demonstrability, and economics of HTMR for low zinc content K061. As initially proposed, treatment standards for K061 wastes with greater than 2.4% total zinc were based on HTMR. However, the applicability of these standards was based on the concentration of zinc in the residual slag from HTMR; EPA did not consider the optimum operating feed concentrations for zinc. Several commenters specifically stated that HMTR is not feasible at total zinc concentrations in the feed material of below 5% by weight. Other commenters proposed minimum zinc concentrations of 20% zinc. The majority of the comments centered on 15% zinc as a minimum. Review of the sampling data from EPA's testing of HTMR indicates that the minimum feed concentration of zinc was 12.9% and the mean value of the feed concentrations was 14.3%. Many commenters urged EPA to establish treatment standards based on the performance of stabilization, with the concentration levels to be based on the data contained in EPA's background document for the proposed rule.

Based on review of this data and in response to the comments on minimum feed concentration of zinc, the Agency has decided to promulgate a final rule with two subcategories of K061 nonwastewaters: a High Zinc Subcategory (greater than or equal to 15% total zinc) and a Low Zinc Subcategory (less than 15% total zinc).

For the K061 High Zinc Subcategory, a final BDAT treatment standard of "no land disposal" will become effective on August 8, 1990, based on HTMR. As described later in this preamble, EPA is deferring the effective date until August 8, 1990 because of inadequate HTMR capacity to meet the demand that will be created by this rule. During the two year period until August 8, 1990, interim treatment standards for the K061 High Zinc Subcategory, based on stabilization, are applicable. These interim standards are identical to the final standards for the K061 Low Zinc Subcategory described in this section.

EPA sees no legal obstacle in adopting an interim treatment standard until such time as the "no land disposal" standard takes effect. If there is insufficient capacity presently available for the best treatment technology, EPA is not precluded from requiring that the next best treatment be utilized in the interim. The alternative would be to allow disposal of untreated hazardous wastes during the interim period. In addition, during the two year period, K061 wastes in the High Zinc Subcategory treated to meet the interim standard based on stabilization may be disposed in landfills that do not meet the minimum technology requirements. Since many commenters complained that if K061 became subject to the soft hammer they would be unable to dispose of the waste in these types of units, an interim treatment standard affords these commenters a measure of relief.

The treatment standard of "no land disposal" for the High Zinc Subcategory of K061 is based on the use of HTMR to recover zinc from K061 containing more than 15% total zinc. Several classes of HTMR systems exist including rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, and rotary hearth kiln/electric furnace combinations. EPA is not requiring or recommending any specific class of HTMR as BDAT. The Agency believes that establishing HTMR as BDAT for these wastes is consistent with the national policy identified in HSWA to reduce the quantity of hazardous constituents treated and disposed. EPA has data that indicate that approximately 75% (by volume) of K061 wastes are classified as high zinc K061 wastes and contain zinc at concentrations equal to or greater than 15% by weight. At the same time, up to 60% of the total number of facilities generating K061 generate low zinc K061 wastes representing only 25% of the volume of K061.

In considering the HTMR standard for K061 wastes in the High Zinc Subcategory and specifically whether or not to express the standard as concentrations in the residuals from HTMR, the Agency considered the position stated in the proposed rule that if a secondary material being reclaimed in an industrial furnace is "indigenous" to that furnace, it ceases being a waste when it is reclaimed. The Agency has proposed to define "indigenous" to be any material generated by the same type of furnace in which it will be reclaimed. See proposed § 266.30(a), 52 FR 17034, May 6, 1987. The Agency considered other possible alternatives in the May 6, 1987 proposal, and commenters suggested additional possible interpretations which the Agency is now considering. However, the type of processing used to recover zinc from K061, plus the similarity of K061 to the raw materials smelted in zinc furnaces, appears to qualify K061 as "indigenous" under any of the current options being considered. Therefore, the Agency is promulgating a "no land disposal" standard for the High Zinc Subcategory in anticipation that a final definition of "indigenous" wastes that would include HTMR of K061 will be promulgated prior to the August 8, 1990 effective date of this standard. Also, the Agency is not precluded from revising the HTMR standard of "no land disposal" if the definition of "indigenous" waste is not made final or if it is altered in a way that might conceivably implicate the slag.

For the K061 Low Zinc Subcategory, final BDAT treatment standards, based on stabilization, will become effective on August 8, 1988. The regulated constituents and BDAT treatment standards for the two subcategories of K061 nonwastewaters are listed in the tables at the end of this section.

The revised BDAT treatment standards based on stabilization were established using performance data collected by EPA and previously referenced in the K061 and F006 background documents for the proposed rule. For lead and cadmium, the treatment standards for both subcategories are based on stabilization of a waste in the K061 nonwastewater High Zinc Subcategory. For total chromium, the treatment standards are based on stabilization of F006 wastes containing chromium. EPA has decided to transfer the chromium standard from F006 nonwastewaters to K061 nonwastewaters as a result of comments from manufacturers of specialty and stainless steel. These commenters pointed out that their K061 wastes required a separate treatment standard, due to high concentrations of chromium compared to the K061 from carbon steel manufacturers, which EPA tested. The Agency evaluated all available data characterizing K061 generated by specialty steel, stainless steel, and carbon steel production. The Agency agrees that there is a need to establish a treatment standard that accounts for the higher concentrations of chromium present in K061 generated by specialty and stainless steel production. Consequently, the Agency is promulgating the treatment standard for chromium based on stabilization of F006 electroplating wastes, many of which contain concentrations of chromium similar to those found in K061 generated by specialty and stainless steel production.

Nickel has been added to the list of regulated constituents since the time of proposal for two reasons. First, the proposed treatment standard was based on a technology (HTMR) which concentrated nickel in the treatment residual, and therefore, was not proposed as a regulated constituent. The final rule is based on a technology (stabilization) which shows significant reductions in the leachability of nickel. Since the final rule establishes metal concentrations in the waste extract, the Agency is establishing treatment standards for all constituents which are present at significant concentrations. For further discussion of regulated constituents see the Background Document for K061. Second, several commenters presented data showing that K061 from specialty and stainless steel production contain higher concentrations of chromium and nickel than the K061 from carbon steel which were previously stabilized. The Agency agrees that nickel is present in these K061 wastes at significantly higher levels, and therefore, is promulgating a treatment standard for nickel. This standard is based on stabilization of electroplating wastes (F006) containing concentrations of nickel similar to these K061 wastes.

For all K061 nonwastewaters, BDAT treatment standards are established based on cadmium, total chromium, lead and nickel concentrations in the waste extract using the TCLP. Several commenters questioned the Agency's decision not to use the data submitted as concentrations of constituents in the waste extract from the Extraction Procedure (EP) test. Several commenters also suggested that EP and TCLP test results were similar for K061. Data was submitted comparing EP and TCLP results for stabilized K061 wastes. This data showed no statistical difference in the results for the regulated constituents; however, the EP data did not include important information necessary for complete evaluation. Information missing included waste characterization of the untreated K061 wastes, design and operating data, mix ratios of solidification reagents, and laboratory quality assurance data. Consequently, the stabilization data provided which contained EP extract results were not used in calculation of the treatment standards for K061 nonwastewaters.

Several commenters stated that EPA should not regulate zinc because it is not a constituent specifically listed on Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, in that zinc cyanide and zinc phosphide are listed on Appendix VIII. Further, zinc is an aquatic toxin, and the Agency considered adding it to Appendix VIII for that reason. However, in this rulemaking the Agency is only regulating zinc when it is an indicator of performance of treatment for other Appendix VIII constituents. Further, the Agency believes that zinc is controlled by stabilization of the metal constituents that are regulated by today's rule and is not promulgating zinc standards for either of the subcategories of K061.

However, the Agency is establishing the definitions of these subcategories based on the total concentration of zinc. While a treatment standard is not actually being set, it is necessary to determine the total zinc concentration to determine applicability of the appropriate standard. (See EPA Document SW–846, "Test Methods for Evaluating Solid Wastes", Third Edition, for guidance on composite sampling to determine if the 15 percent limit is met.) A facility is not allowed to dilute or perform partial treatment on a K061 waste in order to switch the applicability of the standard for the High Zinc Subcategory to the standard for the Low Zinc Subcategory. However, the Agency does recognize that K061 wastes in the Low Zinc Subcategory are often blended with wastes in the High Zinc Subcategory in order to obtain an optimum feed concentration for zinc. The Agency does not intend to preclude this operation, and furthermore, believes that this should not be a restricted practice, because the effective result of this practice is the applicability of a standard that is more stringent i.e., from stabilization to "no land disposal" (after August 8, 1990).

Today's rule is not promulgating the proposed treatment standard of "no land disposal" for K061 wastewaters. The basis of the wastewater standard was the premise that K061 was not anticipated to be generated. Several commenters provided information to the contrary indicating that K061 wastewaters are being generated and will continue to be generated. Several facilities indicated that their K061 nonwastewaters are generated as wet sludges rather than as dry baghouse dust. The water from treating and/or dewatering these sludges are classified as K061 wastewaters. In addition, the majority of the volume of K061 nonwastewaters has been historically disposed in landfills. The aqueous leachate collected from these landfills are "derived-from" K061 wastewaters. Commenters have also identified additional specific sources of wastewater forms of K061 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, as a leachate from a landfill, and as a residual from treatment processes such as dewatering. Since generation of K061 wastewaters does occur, the premise of no generation as a basis for the treatment standard of "no land disposal" is invalid. Therefore, the Agency cannot promulgate the proposed standard of "no land disposal" for K061 wastewaters as final. Since no standard is established for K061 wastewaters, this subgroup of wastes is restricted from land disposal according to the "soft hammer" provisions. EPA intends to develop and propose numerical treatment standards by May 8, 1990. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to

include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K061 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

EPA solicited comment in the April 8, 1988, notice on the issue of whether commercial fertilizers that contain K061 dust as an ingredient should be required to meet BDAT as a condition of remaining exempt from the remaining RCRA standards when they are applied to the land. See 40 CFR § 266.20. After considering the public comment on this issue, EPA has decided not to amend the existing exemption at this time. Our reasons are the following: (1) Existing data appear to indicate that application of these fertilizers to the crops to which zinc-based fertilizers are applied does not pose significant risk from either a food chain contamination pathway or a groundwater contamination pathway; and (2) Constituent levels (and levels of extractable metals) of some of the toxic metals in zinc-based fertilizers are virtually the same, whether or not the fertilizers contain K061; levels of the remaining constituent (lead) are more variable, although some of the non K061 fertilizers (i.e., those fertilizers whose zinc comes from a non-waste source) contain more lead than any K061 fertilizer for which EPA has data. It thus is possible (although further study and data-gathering are required) that EPA could ultimately classify K061 based fertilizers as products rather than wastes.

It thus does not appear to the Agency to be the proper time to remove the existing exemption for these fertilizers. Because there has been no opportunity for notice and comment, and because of incomplete data, it also would not be proper to reclassify these fertilizers at this time. Accordingly, EPA is not taking action at this time, and so is leaving in place the exemption for zinc-containing fertilizers that include K061 wastes as ingredients.

A number of commenters (although none from the fertilizer industry) maintained that hazardous waste-derived fertilizers are not subject to RCRA at all, because the hazardous waste are not "discarded materials", and so are not solid wastes. They cited *American Mining Congress* v. *EPA*, 824 F.2d 1177 (D.C. Cir. 1987) for this proposition. EPA does not agree. The Agency views the practice as discarding for several reasons: (1) recycling involving direct placement of hazardous secondary materials on the land for final disposition is discarding because it is like land disposal, (2) unwanted contaminants in the hazardous secondary materials (for example, lead and cadmium in K061) which in no way contribute to recycling are being gotten rid of and in fact being disposed of. (Should it prove that lead and cadmium are present in hazardous waste and nonhazardous waste-derived zinc fertilizers at similar concentrations, this last point would no longer apply.) This use constituting disposal situation also does not involve the type of ongoing industrial process discussed by the court in the above-cited case. The Agency moreover finds these commenters' arguments unpersuasive given that they would make legal under RCRA such infamous use constituting disposal situations as Times Beach, Missouri (use of hazardous distillation bottom as dust suppressants). The Agency is convinced that neither Congress nor the court contemplated any such results.

INTERIM TREATMENT STANDARDS FOR K061

[Nonwastewaters]

[High Zinc Subcategory—Equal to or Greater than 15%]

[effective until August 8, 1990]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cadmium	(1)	0.14
Chromium (Total)	(1)	5.2
Lead	(1)	0.24
Nickel	(1)	0.32

[1] Not applicable.

TREATMENT STANDARDS FOR K061

[Nonwastewaters]

[High Zinc Subcategory—Greater than 15%]

[Effective after August 8, 1990]

NO LAND DISPOSAL BASED ON RECYCLING

BDAT TREATMENT STANDARDS FOR K061

[Nonwastewaters]

[Low Zinc Subcategory—Less than 15%]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cadmium	(1)	0.14
Chromium (Total)	(1)	5.2
Lead	(1)	0.24
Nickel	(1)	0.32

[1] Not applicable.

m. *K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).* Today's rule promulgates final treatment standards for K062 wastewaters and nonwastewaters as proposed. As initially generated, K062 spent pickle liquors contain less than 1% filterable solids and are classified as K062 wastewaters. Treatment standards for both K062 wastewaters and nonwastewaters were established based on the performance of chromium reduction followed by chemical precipitation with sulfide followed by precipitation, settling, filtering and dewatering of the solid residues. The standards for K062 wastewaters are based on the concentrations of metals in the wastewater residual from this process. The standards for K062 nonwastewaters are based on the analysis of TCLP leachates of the dewatered solid residues.

The standards shown below apply to all K062 wastewaters and nonwastewaters with the exception of residues generated as a result of lime ($Ca(OH)_2$) treatment that are not classified as hazardous wastes according to 40 CFR 261.3(c)(2)(ii) unless they are hazardous because they exhibit a characteristic. Therefore, any such residues would not have to comply with the BDAT treatment standards. The treatment standards do apply, however, to residues generated by other than lime precipitation.

A comment received on the August 12, 1987 Notice of Data Availability and Request for Comments (52 FR 29992) suggested that K062 nonwastewaters can be treated by high temperature metals recovery (HTMR). At this time, the applicability of HTMR to all K062 nonwastewaters has not been sufficiently verified in order to develop additional treatment standards. The

concentrations and identity of metals in K062 wastewaters vary widely depending on the specific steel being pickled. EPA has not been able to define any particular subcategories of K062 nonwastewaters that would be amenable to a particular recovery process.

Commenters also stated that since EPA is requiring the use of sulfide as a precipitant for K062 wastewaters, various recovery processes that are designed to recover metals from metal hydroxide precipitates would be precluded from use. This is not the case, for EPA is not requiring the use of sulfide, but rather establishing a performance standard for the K062 wastes. These standards do not exclude the use of lime as a precipitant. In fact, the Agency has information that the majority of generators are indeed using lime as a precipitant. These lime residues can already be sent to HTMR without meeting the standards for K062 nonwastewaters.

One commenter stated that EPA should alter the regulatory provision (§ 261.3(c)(2)(ii)) that excludes lime precipitated K062 nonwastewaters from the derived from rule. They stated that if sulfide precipitation can achieve a higher water quality, then it should be BDAT for all K062 wastewaters. The Agency cannot remove this exemption without following rulemaking procedures, and did not propose the change.

One commenter stated that since aqueous metal recovery processes for metal contaminated wastewaters exist and are being used, EPA should force K062 wastewaters to use them by establishing a treatment standard of "no land disposal" for K062. At this time, the applicability of these recovery processes to K062 wastewaters has not been sufficiently verified in order to establish a "no land disposal" standard. The high acid content and high variability in concentrations and identity of metals in these wastewaters may preclude the use of some technologies such as reverse osmosis and cation exchange due to the strong possibility that the acid or other metals could foul the recovery process. Thus, the Agency believes that a standard of "no land disposal" may eventually be possible to promulgate for certain subcategories of K062. However, it is unlikely that this standard would be justified for all K062 wastes. At this time, EPA has not been able to define any particular subcategories of K062 wastewaters that would be amenable to a particular aqueous recovery process.

Several commenters argued that EPA should not regulate copper because it is not a hazardous constituent specifically listed on Appendix VIII of 40 CFR Part 261. EPA has decided not to regulate copper here for the reasons stated earlier in connection with F006 wastes.

BDAT TREATMENT STANDARDS FOR K062

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chromium (total)	(1)	0.094
Lead	(1)	.37

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K062

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Chromium (total)	0.32	(1)
Lead	.04	(1)
Nickel	.44	(1)

[1] Not applicable.

n. *K069—Emission control dust/sludge from secondary lead smelting.* The BDAT treatment standard of "no land disposal" for K069 wastewaters and nonwastewaters was proposed based on information supplied to the Agency that indicated that K069 wastes were totally recyclable without generation of residuals. In response to this premise, one commenter provided information that they generate a K069 nonwastewater that cannot be directly recycled due to a significantly different chemical composition. The information also indicates, that, while the waste being generated meets the definition of the listed waste K069, there also is a significant difference in how it is being generated.

Most K069 wastes are baghouse dusts and scrubber sludges that act as primary air pollution control devices (APCD). The commenter's facility utilizes a baghouse for particulate collection as its primary APCD. In addition, the air leaving the baghouse is sent through a "secondary" APCD, consisting of a wet venturi scrubber utilizing lime neutralization. This "secondary" APCD has been installed primarily to reduce sulfur dioxide emissions. The sludge from this process is technically the listed waste, K069, but consists primarily of lead contaminated calcium sulfate and calcium hydroxide rather than metallic lead, lead oxides, and metal oxides that comprise typical baghouse dusts. In addition, the facility stated that it has experimented with other neutralizing agents to produce a reclaimable sludge, but has not succeeded. At the time of this rule, the Agency has not completed its analysis of all of this information. However, it does believe that these K069 wastes are fundamentally different and that the basis of total recycling for the proposed standard of "no land disposal" for K069 wastes is not justifiably extrapolated to these types of K069 wastes.

For the purposes of this rule, the Agency is establishing a Calcium Sulfate Subcategory and a Non Calcium Sulfate Subcategory for K069 nonwastewaters. The Calcium Sulfate Subcategory is defined as those emission control sludges from secondary lead smelting that are generated as calcium sulfate from secondary wet scrubbers using lime neutralization. The Non Calcium Sulfate Subcategory is defined as those emission control sludges from secondary lead smelting that are not generated as calcium sulfate from secondary wet scrubbers using lime neutralization. It is important to point out that this definition specifically includes "secondary" wet scrubbers. The Agency also recognizes that K069 may be generated as a wet scrubber sludge from other primary APCDs and that the primary APCD may incorporate lime neutralization. Because no comments were received from generators of K069 from these type of primary APCDs, the Agency assumes that the generators agree with EPA's assessment of recyclability of these wastes. As a result, the Agency has decided to promulgate a final BDAT treatment standard of "no land disposal" based on total recycling for those K069 nonwastewaters in the Non Calcium Sulfate Subcategory. EPA intends to propose and promulgate numerical treatment standards for K069 nonwastewaters in the Calcium Sulfate Subcategory (i.e., those from secondary wet scrubbers using lime neutralization) prior to May 8, 1990.

Commenters have also identified additional specific sources of wastewater forms of K069 such as those being generated at a CERCLA site, during a corrective action at a RCRA facility, and as a leachate from a landfill. In the proposed rule, EPA had based a "no land disposal" standard for the wastewaters on the belief that the total recycling process generated no

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wastewater residuals and that it was unlikely that other wastewater forms of K069 would be produced. Since generation of does occur, the premise of no generation as the basis for the standard appears to be unjustified. As a result, the Agency is therefore unable to promulgate a treatment standard for these wastewaters in today's rule. EPA does intend to propose and promulgate numerical treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for these K069 wastewaters, they are restricted from land disposal according to the "soft hammer" provisions. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K069 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33 (f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K069

[Nonwastewaters]

[Non Calcium Sulfate Subcategory]

NO LAND DISPOSAL BASED ON RECYCLING

o. *K071—Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.* Today's rule promulgates final treatment standards for K071 wastewaters and nonwastewaters. Analysis of a TCLP leachate for mercury is necessary to establish compliance with the treatment standard for K071 nonwastewaters. For K071 wastewaters, a total waste analysis for mercury is necessary to establish compliance with the standard. These standards are listed in the table at the end of this section.

The treatment standard for the K071 nonwastewaters was established based on the performance of a treatment process that includes a series of individual steps. The main purpose of which is to solubilize the mercury in the K071 brine sludge and later convert the mercury to a relatively insoluble mercury sulfide sludge. Mercury sulfide is one of the least soluble forms of mercury salts. Initially, the K071 brine sludge is leached with acid to solubilize certain forms of mercury. The sludge and acid leachate are mixed with an alkaline hypochlorite to oxidize the mercury to a highly soluble mercuric chloride (this also raises the pH). The resultant sludge is then washed with hydrochloric acid and water during a filtration step. The treatment standard for K071 nonwastewaters is based on the leachability of mercury from this filter cake. The filtrate contains the solubilized mercury, which is then precipitated out as a mercury sulfide sludge. This sulfide sludge is also filtered and/or dewatered. The aqueous residual from this process is classified as a K071 wastewater and must meet the treatment standard for mercury in K071 wastewaters. The sulfide sludge is classified as a K071 nonwastewater, unless the liquids were combined with other wastewaters from the mercury cell process prior to treatment. If so, it is a wastewater treatment residual listed specifically as K106. The Agency has data that indicate that this sulfide sludge (be it K071 or K106) will meet the treatment standard for K071 nonwastewaters, that was derived from the leachability of residual mercury in the leached brine sludge.

One commenter provided data on a specialized stabilization process for K071 brine sludges as they are initially generated (without acid or water washing). These data were generated from bench scale operations. The Agency has not determined whether this process has been demonstrated, as yet, on a full scale basis. The Agency is still in the process of examining the stabilization data for K071 nonwastewaters (as a process in lieu of acid leaching) that was submitted. EPA will determine if these data demonstrate sufficient treatment to be proposed as an alternative to acid leaching. At the time of this rule, EPA has insufficient information to establish direct stabilization as a demonstrated treatment alternative to the acid leaching procedure previously described.

Extensive EP leachate data were submitted to EPA by three facilities using only a water washing followed by a dewatering process. One of the three facilities supplied TCLP mercury concentrations for the treated K071. EPA considered, but did not use, any of these data points in the development of the treatment standards because the analysis of variance tests showed significantly better treatment was achieved by the acid leaching procedure. However, EPA would like to emphasize that other treatment technologies such as stabilization or water washing are not precluded from use by today's rule, provided that these technologies or combination of technologies can achieve the equivalent performance as measured by the treatment standards promulgated as final in today's rule.

Several commenters also stated that EPA wrongly considered the information indicating that the TCLP is a better measure of evaluating BDAT performance than the EP (Extraction Procedure). Data were submitted comparing EP data to TCLP data in both treated and untreated K071 wastes. Statistical analyses, performed by EPA, show that the EP and the TCLP procedures yield statistically similar results on the leachability of mercury in K071 wastes. Based on industry's willingness to accept a TCLP standard based on EP data and EPA analysis indicating a statistical relationship between the respective extraction methods for K071 wastes, the Agency has incorporated the additional EP data into its calculation of the final treatment standard for K071 nonwastewaters. However, the Agency maintains its position that, in general, the TCLP is a better measure of evaluating BDAT than the EP, except where data such as these exist for tests performed on the same treated waste.

Several commenters stated that a total mercury analysis is an inappropriate measure of performance for K071 nonwastewaters, since the BDAT treatment system is not designed as a complete recovery system (i.e., mercury is not being recovered directly, but rather it is being converted to recoverable mercury sulfides). At the time of the proposal, the Agency was developing a standard for K106 (wastewater treatment residues that are primarily mercury sulfides) based on recovery of the mercury by retorting of K106 wastes. EPA had determined that the mercury sulfide residues from treatment of K071 wastes were either the listed waste K106 or were similar enough to K106 wastes that they could be retorted for mercury recovery. EPA received extensive comments from industry opposing the applicability, demonstrability, and economics of retorting K106. At the same time, EPA has examined the data on the treatment of K106 and determined that there was insufficient data to support the promulgation of the proposed treatment standards based on retorting. See discussion of K106 wastes in section III.A.7.w. of this preamble. Since

recovery of K071 mercury sulfide residues was based on the establishment of retorting as BDAT for K106 and since the Agency has decided not to promulgate the standards for K106 at this time, EPA has decided to promulgate the treatment standard for K071 nonwastewaters only on the analysis of the TCLP leachate and not on a total mercury analysis. [Note: As previously stated, EPA prefers to establish treatment standards based on total metal analysis only when recovery is established as BDAT.] However, the Agency is not precluded from adding this requirement in the future, if a treatment standard based on retorting or some other recovery process is promulgated for K106 wastes.

BDAT TREATMENT STANDARDS FOR K071

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Mercury	(1)	0.025

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K071

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Mercury	0.030	(1)

[1] Not applicable.

p. *K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.* The BDAT treatment standard of "no land disposal" for K073 wastewaters and nonwastewaters was proposed based on the premise of "no generation". In the proposed rule, EPA specifically requested comment on this premise. In response, several commenters stated that at least one facility is generating K073 wastes. Since generation has been identified, the Agency is not able to promulgate a final treatment standard of "no land disposal" for any K073 wastes.

Additional information provided by one commenter indicates that at least one facility is incinerating its K073 wastes onsite and that this facility intends to cease the generation of K073 in the near future. Based on these comments, EPA now intends to pursue the development of BDAT treatment standards for K073. In particular, EPA will evaluate the performance of incineration on K073 provided that this facility intends to continue to generate K073 past May 8, 1990. If this facility ceases generation and no other generating facilities can be identified, EPA may decide to promulgate the proposed "no land disposal" treatment standard prior to May 8, 1990. However, since no standard is promulgated in today's rule for K073 wastes, these wastes are restricted from land disposal according to the "soft hammer" provisions. [**Note.**—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K073 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

It is also important to note that, until standards for all K073 wastes are promulgated, those K073 wastes containing halogenated organics may only be land disposed as long as they do not exceed a total halogenated organic concentration of 1000 ppm established in the July 8, 1987 promulgated restrictions for "California List" wastes.

q. *K083—Distillation bottoms from aniline production.* The BDAT treatment standard of "no land disposal" for K083 wastewaters and nonwastewaters was proposed based on the performance of a liquid injection incinerator that generated no residuals. The K083 nonwastewater examined by EPA, contained no measurable ash content (solid residues from incineration) at a detection limit of 0.01% by weight. The liquid incineration unit that EPA visited, did not have a vent scrubber or other pollution control device and did not generate any scrubber water. This information was the basis of the "no land disposal" standard for K083.

In the proposed rule, EPA specifically requested comment on the premise of the "no land disposal" standards for both categories of K083 wastes. In response, several commenters stated that they do generate K083 nonwastewaters with detectable levels of ash and K083 wastewaters as scrubber waters. Since generation of these wastes has been identified, the premises of "no ash" and "no generation" may be unjustified for all K083 wastes.

As a result, the Agency has decided to promulgate a final rule of "no land disposal" only for one subcategory of K083 nonwastewaters. This subcategory is identified as the No Ash Subcategory and is defined as those K083 nonwastewaters with less than 0.01% by weight ash.

The use of other treatment technologies are not precluded by this rule. For example, while rotary kiln and fluidized bed incinerators are generally designed to handle solids and sludges, these units often are designed to incinerate liquids. In any case where these or other treatment technologies can treat K083 without generating an ash or other solid residual, these units may be used to achieve the "no land disposal" standard for the K083 nonwastewaters.

EPA does intend to investigate the comments submitted and, if necessary, propose and promulgate numerical treatment standards for K083 nonwastewaters with detectable ash content and K083 wastewaters prior to May 8, 1990. Since no standard is promulgated in today's rule for these K083 wastes, they are restricted from land disposal according to the "soft hammer" provisions. [**Note.**—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K083 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K083

[Nonwastewaters]

[No Ash Subcategory—Less than 0.01%]

NO LAND DISPOSAL BASED ON NO ASH

r. *K086—Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from the cleaning of*

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tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. In today's rule, EPA is promulgating final treatment standards for seventeen organic constituents and two metal constituents in wastewaters and nonwastewaters in the K086 Solvent Washes Subcategory. These are acetone, n-butyl alcohol, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, toluene, 1,1,1,-trichloroethane, trichloroethylene, xylenes, bis (2-ethylhexyl) phthalate, cyclohexanone, 1,2-dichlorobenzene, naphthalene, nitrobenzene, total chromium, and lead. Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The final treatment standards for the wastewater and nonwastewater forms of K086 Solvent Washes are listed in the tables at the end of this section.

By definition K086 wastes can be from one of three major subcategories (depending on the material used for washing). These are: (1) Solvent Washes; (2) Solvent Sludges; and (3) Caustic/Water Washes and Sludges. For the purposes of this rule, the K086 Solvent Washes Subcategory is defined as those K086 wastes which are derived from procedures which have used any organic solvents including, but not limited to, the following: acetone, n-butyl alcohol, cyclohexanone, 1,2-dichlorobenzene, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, naphthalene, nitrobenzene, toluene, 1,1,1,-trichloroethane, trichloroethylene, and/or xylenes. The Agency believes that these are the most typical solvents that become K086 Solvent Washes. While EPA is specifically identifying these sixteen solvents in order to clarify the definition of this subcategory, the Agency recognizes that other solvents may be used by generators. In these cases, EPA has not specifically developed treatment standards for that particular unlisted solvent. While no treatment standard for that solvent has been developed, the treatment standards for lead and total chromium do apply to these K086 Solvent Washes. It is also important to note that some of these solvents, including those that are specifically listed in the definition of the Solvent Washes Subcategory, are specifically listed under the solvent waste codes F001, F002, F003, F004 and/or F005. In such cases, the treatment standards for these solvent wastes that were promulgated November 7, 1986, are already in effect. However, where two sets of standards exist for a constituent in a particular waste that has more than one applicable waste code, the more stringent standard is applicable for that constituent. For those constituents where standards are expressed as a total concentration and a TCLP concentration, both standards may apply.

The treatment standards for all of the organic constituents in the K086 wastewaters and nonwastewaters are based on the performance achieved by incineration. The treatment standards for total chromium and lead in K086 wastewaters are transferred from a similar wastewater treated at a facility previously sampled by the Agency. The wastewater treatment system included hexavalent chromium reduction to convert any hexavalent chromium to the trivalent state, chemical precipitation with excess lime to precipitate dissolved metals as solids, and filtration to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. These residues did not require further treatment because TCLP leachate concentrations were not found at treatable levels. Further details regarding BDAT development and data transfer are provided in the Background Document for this waste code.

For the purposes of BDAT, any solid ash residues from the incineration of nonwastewaters in the K086 Solvent Washes Subcategory are also classified as nonwastewaters. Scrubber waters from air pollution control devices are classified as wastewaters. Both of these residues must meet the BDAT treatment standards for the K086 Solvent Washes Subcategory prior to placement in land disposal units.

While EPA has identified incineration in units with liquid injection as BDAT for K086 Solvent Washes, other treatment technologies such as fluidized bed incineration, multiple hearth incineration, rotary kiln incineration, fuel substitution units, batch distillation and fractional distillation that can achieve these standards are not precluded from use by this rule.

The Agency has data that suggests that approximately sixteen different BDAT List solvents could be used to clean ink formulating equipment. EPA is concerned that regulation of only the solvents that were found in the tested waste matrix would create an incentive to simply switch to the use of other solvents. For this reason, EPA is regulating all sixteen BDAT List solvents. EPA transferred the performance data achieved for some of these sixteen solvents from performance data for other solvents that had similar physical and chemical properties. The Agency believes that the solvents that have been determined to be similar, can be incinerated to the same treatment concentrations. Details on the transfer of standards can be found in the BDAT Background Document for this waste code. EPA specifically solicited comments on this transfer of performance data. Commenters objected to the transfer of many of these constituents. However, they did not provide sufficient data documenting that the proposed BDAT treatment standards are not achievable. EPA specifically requested that documentation be provided in order for the Agency to consider potential changes in the standards. As a result, today's rule promulgates final treatment standards as proposed.

Today's rule is not promulgating final treatment standards for K086 wastes in the Solvent Sludges Subcategory or the Caustic/Water Washes and Sludges Subcategory. Since no standard is established, these subcategories of K086 wastes are restricted from land disposal according to the "soft hammer" provisions. EPA intends to develop and propose numerical treatment standards by May 8, 1990. [**Note.**—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K086 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in non-minimum technology units—although the requirements of section 3005(j) apply after November 8, 1988—and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K086

[Nonwastewaters]

[Solvent Washes Subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acetone	0.37	(1)
bis(2-ethylhexyl)phthalate	.49	(1)
n-Butyl alcohol	.37	(1)
Cyclohexanone	.49	(1)
1,2-Dichlorobenzene	.49	(1)
Ethyl acetate	.37	(1)
Ethyl benzene	.031	(1)
Methanol	.37	(1)
Methylene chloride	.037	(1)
Methyl ethyl ketone	.37	(1)
Methyl isobutyl ketone	.37	(1)
Naphthalene	.49	(1)
Nitrobenzene	.49	(1)
Toluene	.031	(1)
1,1,1-Trichloroethane	.044	(1)
Trichloroethylene	.031	(1)
Xylenes	.015	(1)
Chromium (total)	(1)	0.094
Lead	(1)	.37

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K086

[Wastewaters]

[Solvent Washes Subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acetone	0.015	(1)
bis(2-ethylhexyl)phthalate	.044	(1)
n-Butyl alcohol	.031	(1)
Cyclohexanone	.022	(1)
1,2 Dichlorobenzene	.044	(1)
Ethyl acetate	.031	(1)
Ethyl benzene	.015	(1)
Methanol	.031	(1)
Methylene chloride	.031	(1)
Methyl ethyl ketone	.031	(1)
Methyl isobutyl ketone	.031	(1)
Naphthalene	.044	(1)
Nitrobenzene	.044	(1)
Toluene	.029	(1)
1,1,1-Trichloroethane	.031	(1)
Trichloroethylene	.029	(1)
Xylenes	.015	(1)
Chromium (total)	.32	(1)
Lead	.037	(1)

[1] Not applicable.

s. *K087—Decanter tank tar sludge from coking operations.* In today's rule, EPA is promulgating final treatment standards for nine organic constituents and one metal constituent in K087 wastewaters and nonwastewaters. These are acenaphthalene, benzene, chrysene, fluoranthene, indeno (1,2,3-cd) pyrene, naphthalene, phenanthrene, toluene, xylenes, and lead. Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The final treatment standards for K087 wastewaters and nonwastewaters are listed in the tables at the end of this section.

The treatment standards for all of the organic constituents in the K087 wastewaters and nonwastewaters are based on the performance achieved by incineration in a rotary kiln. The treatment standards for lead in K087 wastewaters are transferred from a similar wastewater treated at a facility previously sampled by the Agency. The wastewater treatment system included hexavalent chromium reduction to convert any hexavalent chromium to the trivalent state, chemical precipitation with excess lime to precipitate dissolved metals as solids, and filtration to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment standards for K087 nonwastewaters. Further details regarding BDAT development and data transfer are provided in the Background Document for this waste code.

Several commenters stated that EPA should not regulate acenaphthalene, phenanthrene, xylenes or zinc because they are not constituents specifically listed on Appendix VII or Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, in that coal tars, zinc cyanide and zinc phosphide are listed on Appendix VIII. One of the reasons that EPA considers coal tars hazardous is the presence of significant concentrations of polynuclear aromatic hydrocarbons such as acenaphthalene and phenanthrene. Xylenes have also been identified in abundance in coal tars. Further, zinc is an aquatic toxin, and the Agency considered adding it to Appendix VIII for that reason. However, in this rulemaking the Agency is only regulating zinc when it is an indicator of performance of treatment for other Appendix VIII constituents. Further, the Agency believes that zinc is controlled by treatment of lead, which is regulated by today's rule. Therefore, EPA is not promulgating final standards for zinc as part of the treatment standards for K087 wastes, but is promulgating final standards for acenaphthalene, phenanthrene and xylenes.

For the purposes of BDAT, any solid ash residues from the incineration of K087 nonwastewaters are also classified as nonwastewaters. Scrubber waters from air pollution control devices are classified as wastewaters. Both of these residues must meet the treatment standards for the K087 prior to placement in land disposal units.

While EPA has identified incineration in a rotary kiln as BDAT for K087 nonwastewaters, other treatment technologies such as fluidized bed incineration, multiple hearth incineration, rotary kiln incineration, and various fuel substitution units that can achieve these standards are not precluded from use by this rule.

Total recycling has been identified as a potentially applicable technology for K087 wastes. Total recycling involves treating the K087 waste for (1) reuse in the coke ovens or (2) production of a commercial tar product. At this time, however, EPA has not completed its analysis of data submitted for purposes of defining which K087 materials can be beneficially recycled. Industry commenters likewise agreed that not every K087 waste is amenable to recycling (although suggesting that most K087 as generated is recyclable).

BDAT TREATMENT STANDARD FOR K087

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acenaphthalene	3.4	(1)
Benzene	0.071	(1)
Chrysene	3.4	(1)
Fluoranthene	3.4	(1)
Indeno (1,2,3-cd) pyrene	3.4	(1)
Naphthalene	3.4	(1)
Phenanthrene	3.4	(1)
Toluene	0.65	(1)
Xylenes	0.070	(1)
Lead	(1)	0.51

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K087

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acenaphthalene	0.028	(1)
Benzene	.014	(1)
Chrysene	.028	(1)
Fluoranthene	.028	(1)

BDAT TREATMENT STANDARDS FOR K087—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Indeno (1,2,3-cd) pyrene	.028	(1)
Naphthalene	.028	(1)
Phenanthrene	.028	(1)
Toluene	.008	(1)
Xylenes	.014	(1)
Lead	.037	(1)

[1] Not applicable.

t. *K099—Untreated wastewater from the production of 2,4-dichlorophenoxyacetic acid (2,4-D).* Today's rule promulgates final treatment standards for K099 wastewaters and nonwastewaters. These standards are based on chemical oxidation using chlorine. This treatment system shows substantial treatment for 2,4-dichlorophenoxyacetic acid (2,4-D). The treatment standards for wastes identified as K099 are listed in the tables at the end of this section.

Other treatment technologies that the Agency believes are applicable are chemical oxidation using other oxidizers, wet air oxidation (a specialized form of chemical oxidation), carbon adsorption followed by incineration of the carbon, and biological treatment followed by incineration of the biological sludge. These and any other technology that can achieve these standards are not precluded from use by this rule.

For wastes and treatment residues identified as K099 nonwastewaters or wastewaters, EPA is promulgating treatment standards for seven organic constituents. These are 2,4-dichlorophenoxyacetic acid and six chlorinated dioxins and chlorinated dibenzofurans. The 1 ppb analytical quantitation limit for these constituents described in the final rule for dioxin containing wastes (51 FR 40643) is also used here. This level represents the analytical limit of quantitation that can be routinely achieved.

EPA specifically requested comment on the selection of chlorine oxidation as BDAT for K099. Chlorine oxidation was selected as the treatment technology for the destruction of 2,4-dichlorophenoxyacetic acid. The data indicate that this technology provides significant reduction of this chemical. However, the data appear to indicate a slight increase in the concentration of some of the chlorinated dioxins and dibenzofurans (all values below the routine quantitation limit of 1 part per billion) from the untreated waste to the treated residuals. At this time, EPA is not certain that this implies that the chlorine oxidation process is responsible for this slight increase. The Agency specifically requested comments and data that would indicate the existence of an alternative treatment technology that could achieve the same performance for the 2,4-dichlorophenoxyacetic acid without an increase in the chlorinated dioxins and dibenzofurans. Because no comments were received on alternative treatment technologies, EPA assumes that the commenters agree with EPA's assessment that chlorine oxidation represents BDAT for K099 wastes.

The Agency received a late comment that included additional data on the performance of chlorine oxidation on K099 wastes. This data, along with the data originally presented in the K099 background document for the proposed rule, was reexamined by the Agency. These additional data indicated that the proposed treatment standard for 2,4-dichlorophenoxyacetic acid could not be achieved on a routine basis. Sufficient data were submitted enabling the Agency to calculate a revised treatment standard for this constituent. Therefore, the Agency is promulgating the revised 2,4-dichlorophenoxyacetic acid standard as final along with the standards for the chlorinated dioxins and dibenzofurans are proposed.

BDAT TREATMENT STANDARDS FOR K099

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
2,4-Dichlorophenoxyacetic acid	1.0	(1)
Hexachlorodibenzo-p-dioxins	.001	(1)
Hexachlorodibenzofurans	.001	(1)
Pentachlorodibenzo-p-dioxins	.001	(1)
Pentachlorodibenzofurans	.001	(1)
Tetrachlorodibenzo-p-dioxins	.001	(1)
Tetrachlorodibenzofurans	.001	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K099

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
2,4-Dichlorophenoxyacetic acid	1.0	(1)
Hexachlorodibenzo-p-dioxins	.001	(1)
Hexachlorodibenzofurans	.001	(1)
Pentachlorodibenzo-p-dioxins	.001	(1)
Pentachlorodibenzofurans	.001	(1)
Tetrachlorodibenzo-p-dioxins	.001	(1)
Tetrachlorodibenzofurans	.001	(1)

[1] Not applicable.

u. *K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.* In today's rule, EPA is promulgating final treatment standards for K101 and K102 wastewaters and nonwastewaters. These include ortho-nitroaniline in K101 wastes and ortho-nitrophenol in K102 wastes as well as arsenic, cadmium, total chromium, lead, mercury and nickel. The final treatment standards for these wastes are listed in the tables at the end of this section.

The BDAT treatment standards for K101 and K102 nonwastewaters were proposed based on information supplied to the Agency that indicated that untreated K101 and K102 wastes contain 590 ppm to 0.83% of arsenic. In a late comment to the proposed rule, one commenter provided information that they generate K101 and K102 nonwastewaters that contain significantly higher concentrations of arsenic (up to 26.9% total arsenic). The commenter also stated that incineration of their wastes poses a significant increase in risk due to these high concentrations of arsenic. The Agency agrees with the commenter that these K101 and K102 wastes contain a significantly higher concentration of arsenic compared to those wastes studied by the Agency (i.e., the wastes that were used to develop the treatment standards). The Agency also agrees that direct incineration of organic wastes containing very high levels of arsenic,

such as the K101 and K102 wastes generated by the commenter, poses a significant increase in risk to human health and the environment. As a result, the Agency is therefore, unable to promulgate the proposed treatment standards as final for K101 and K102 wastes with high arsenic concentrations.

For the purpose of today's rule, the Agency is therefore establishing a High Arsenic Subcategory and a Low Arsenic Subcategory for K101 and K102 nonwastewaters. The High Arsenic Subcategory is defined as those K101 and K102 wastes that contain greater than or equal to 1% total arsenic. The Low Arsenic Subcategory is defined as those K101 and K102 wastes that contains less than 1% total arsenic. This level was established based primarily on the concentration of arsenic (0.83%) measured in the waste tested by EPA. A complete explanation of how this level was determined can be found in the background document for this waste. EPA intends to propose and promulgate numerical treatment standards for K101 and K102 wastes in the High Arsenic Subcategory prior to May 8, 1990. Since no standard is promulgated in today's rule for K101 and K102 nonwastewaters in this subcategory, they are restricted from land disposal according to the "soft hammer" provisions.

Potential technologies applicable to organic wastes containing high concentrations of arsenic, such as K101 and K102 wastes in the High Arsenic Subcategory, are chemical oxidation or wet air oxidation. These technologies destroy interfering organics and convert the organic arsenicals to inorganic forms of arsenic. The inorganic forms of arsenic may then be amenable for direct recovery or may be immobilized by specialized stabilization techniques.

The treatment standards for the organic constituents in K101 and K102 nonwastewaters in the Low Arsenic Subcategory are based on the performance achieved by incineration in a rotary kiln. The treatment standards for the metals are transferred from wastewater metals treatment data for similar wastes that have been previously developed by the Agency. The wastewater treatment system includes a chemical precipitation step to precipitate dissolved metals as solids followed by a filtration step to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment standards for nonwastewaters. Further details regarding BDAT development and data transfer are provided in the Background Document for this waste code.

For the purposes of BDAT, any solid ash residues from the incineration of K1O1 and K102 nonwastewaters in the Low Arsenic Subcategory are also classified as nonwastewaters. Scrubber waters from air pollution control devices are classified as wastewaters. Both of these residues must meet the treatment standards prior to placement in land disposal units.

While EPA has identified incineration in a rotary kiln as BDAT for K101 and K102 nonwastewaters in the Low Arsenic Subcategory, other treatment technologies such as fluidized bed incineration, multiple hearth incineration, and rotary kiln incineration that can achieve these standards are not precluded from use by this rule.

For wastes identified as K101 and K102 nonwastewaters in the Low Arsenic Subcategory, EPA is regulating two specific organic constituents that are not included on the BDAT List but have been selected as indicators of effective treatment of these wastes. A standard for ortho-nitroaniline is promulgated for K101 and a standard for ortho-nitrophenol is promulgated for K102.

Several commenters stated that EPA should not regulate copper or zinc because it is not a constituent specifically listed on Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, but is not adopting a standard for reasons stated in previous sections of this preamble for F006 wastes.

At the time of this rule, the Agency had not completed its evaluation of waste characterization and treatment information for antimony, arsenic and barium in K101 and K102 nonwastewaters from the Low Arsenic Subcategory or antimony in any K101 and K102 wastewaters. The proposed rule contained the notation "reserved" for these constituents, noting that EPA would be setting standards when the evaluation was completed. Several commenters suggested that a treatment standard of "reserved" was confusing to the regulated community and unnecessary. Since individual standards would still have to be proposed and promulgated through the normal rulemaking procedures, no benefit is achieved by the "reserved" notation for these constituents. Therefore, the Agency has dropped it from the final rule for the individual constituents noted above.

BDAT TREATMENT STANDARDS FOR K101

[Nonwastewaters]

[Low Arsenic Subcategory—less than 1% total arsenic]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Ortho-nitroaniline	14	[1]
Cadmium	[1]	0.066
Chromium (total)	[1]	5.2
Lead	[1]	.51
Nickel	[1]	.32

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K101

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Ortho-nitroaniline	0.27	[1]
Arsenic	2.0	[1]
Cadmium	.24	[1]
Lead	.11	[1]
Mercury	.027	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K102

[Nonwastewaters]

[Low Arsenic Subcategory—less than 1% total arsenic]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Ortho-nitrophenol	13	[1]
Cadmium	[1]	0.066
Chromium (total)	[1]	5.2
Lead	[1]	.51
Nickel	[1]	.32

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K102

[Wastewaters])

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Ortho-nitrophenol	0.028	[1]
Arsenic	2.0	[1]
Cadmium	.24	[1]
Lead	.11	[1]
Mercury	.027	[1]

[1] Not applicable.

v. *K103—Process residues from aniline extraction from the production of aniline. K104—Combined wastewater*

streams generated from nitrobenzene/aniline production. In today's rule, EPA is promulgating final treatment standards for K103 and K104 wastewaters and nonwastewaters. These include total concentration standards for aniline, benzene, 2,4 dinitrophenol, nitrobenzene and phenol for both K103 and K104 wastes. Final treatment standards for total cyanides are promulgated only for K104 wastewaters and nonwastewaters. The final treatment standards for these wastes are listed in the tables at the end of this section.

The treatment standards for the organic constituents in K103 and K104 wastewaters and nonwastewaters are based on the performance achieved by solvent extraction followed by steam stripping and activated carbon adsorption with incineration of the solvent stream from extraction. Other treatment technologies such as steam stripping followed by activated carbon adsorption, and steam stripping followed by biological treatment are not precluded from use by this rule.

The solvent-containing stream from solvent extraction potentially can be recycled to recover nitrobenzene and aniline, or incinerated. The steam stripper overheads are condensed and decanted with the organic constituents recycled back to the process. The spent carbon from the activated carbon adsorption column is sent off-site for thermal regeneration. While the incineration component of this technology is not demonstrated for K103 and K104, available information shows that it is demonstrated on wastes similar to the contaminated solvent stream from extraction.

Because the solvent-contaminated stream potentially contains a significant amount of an explosive compound (picric acid), EPA expressed concern in the proposed rule that it may not be possible to safely use incineration. One commenter stated their belief that incineration could present significant safety hazards due to the presence of a significant amount of this explosive compound. The commenter stated that although it is possible that picric acid in solution may not present an explosion hazard, crystals of picric acid may be formed during upsets and malfunctions in the treatment system. The commenter pointed out that the crystals may accumulate over time even though the conditions for formation may not always be present and unless wetted with water will be shock sensitive and could explode with considerable force. Thus, the commenter believes that incineration is not a viable technology for the K104 wastestream because of this potential for explosion.

EPA agrees that there is a potential for explosion if the combustion of these wastes is not properly controlled. However, incineration of these types of wastes is currently practiced. As such, incineration is fully demonstrated. EPA believes the issue of explosivity would be present for any technology used for this waste. Therefore, it is unreasonable to expect that EPA would exempt this or another waste from any treatment based on a mismanagement scenario. Instead, EPA expects that treatment facilities will take care to insure and provide design and operating conditions necessary in treating this waste to the concentrations promulgated in today's rule.

One commenter suggested that EPA incorrectly based the standards for K104 on a product processing step rather than a waste treatment technology. EPA defines BDAT for both K103 and K104 wastestreams as solvent extraction followed by steam-stripping and carbon adsorption. Objections to EPA's testing procedures were raised because the sampling occurred at a time when the plant was operating the process at conditions different from those now employed. The commenter contends that the solvent extraction procedure from which EPA obtained its BDAT data was actually a manufacturing process step that has been abandoned because of technical and economic infeasibility. The commenter objected to EPA's designation of the solvent extraction process as a waste treatment technology because at the point where the solvent extraction took place, neither the extract nor the residual streams were wastes. The commenter believes the solvent extraction procedure was an experimental processing step that occurred before the stream was identified for disposal. One commenter pointed out that EPA's determination of BDAT was improper based on the Agency's own statements regarding what constitutes "demonstrated" treatment technologies. The commenter noted that the Agency's final rule implementing land disposal restrictions for certain dioxin- and solvent-containing wastes (51 Federal Register 40571 et. seq.), EPA responded to commenters' concerns over use of experimental data, such as pilot and bench scale data to establish BDAT. The preamble to the regulation states that the Agency agrees with the commenters' position that its determinations should not be based on emerging and innovative technologies.

EPA believes that solvent extraction is a fully demonstrated technology. In fact, solvent extraction of organic constituents is used for treatment of hazardous wastes (see EPA's promulgated treatment standard for K048–K052 elsewhere in this notice) and widely used in the production of organic chemicals. Further, EPA frequently bases BDAT standards for individual wastes on the performance achieved by bench or pilot scale operation of demonstrated technologies when no full scale data are available. The commenter has provided no data to show that the performance achieved by a full scale solvent extraction system will not achieve the performance measured by EPA. However, EPA has established a variance procedure, if such data become available. In the interim, EPA believes that the proposed standards are achievable.

Use of solvent extraction does not require recycle of the extract back into the process. Instead, the extract can be incinerated to achieve the promulgated final standards. Recovery or reuse of the extract is not precluded by establishment of these standards. Selection of solvent extraction as part of the BDAT treatment process is based solely on its status as a demonstrated control technology that provides effective removal of constituents from the waste stream for subsequent destruction by incineration.

One commenter disagreed with the statistical methodology used in developing the treatment standards for K103 and K104 (the same methodology that is used for all of the BDAT treatment standards). Specifically, the commenter states that following good statistical practice, EPA should use a "multiplier" in the 99th percentile calculation that reflects the number of treatment data points used in the generation of the treatment standards. The 99th percentile used by EPA is as follows: $C99 = \exp(AVG + 2.33\ \text{Stand. Dev.})$. In place of the 2.33 multiplier, the commenter suggests that EPA should use a value that corresponds to the specific number of data points used. For K103 and K104 wastewaters, this value would be 7.042.

EPA does not agree with the commenter that the 2.33 value should be changed to a multiplier that corresponds to the specific number of data points. EPA's rationale is summarized as follows: The 2.33 multiplier is extensively used by EPA in its variability factor calculations, including the Agency's effluent guidelines limitations and the recently promulgated solvent rule. Under classical statistical

theory, the 2.33 value can be used in the 99th percentile calculation for any number of data points, provided the mean and standard deviation are known (i.e., that additional data points will not increase these values). It is EPA's position (supported, in general, by available data) that as the number of data points increase, the mean and standard deviation will most frequently decrease. Therefore, EPA believes that the use of the 2.33 multiplier is appropriate. As evidence to this determination, EPA points to the variability factors currently developed for the constituents in K103 and K104. These factors are in the range of approximately 1.6 to 15.4, which substantially exceeds the variability seen in treatment of wastewaters with a much larger number of data points.

Additionally, an engineering analysis of well-designed and well-operated treatment systems would, in general, predict that both the average level of performance and variability would decrease with larger data bases. While well designed and well operated treatment systems do experience fluctuations in performance, these fluctuations are normally cyclical reflecting the fact that an inherent part of most treatment system control devices is that they continuously undercompensate and overcompensate for a desired control parameter. As the data base for such cyclical changes increases, the standard deviation would decrease because the range of values would be essentially the same, while the number of data points would be greater. As a final point in response to this comment, the commenter also recognizes that the multiplier they suggest may be inappropriate because it yields results which "might simply be too high." [Additional discussion can be found in the Agency's Response to Comments document.]

BDAT TREATMENT STANDARDS FOR K103

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Aniline	5.6	(1)
Benzene	6.0	(1)
2,4-Dinitrophenol	5.6	(1)
Nitrobenzene	5.6	(1)
Phenol	5.6	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K103

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Aniline	4.5	(1)
Benzene	.15	(1)
2,4-Dinitrophenol	.61	(1)
Nitrobenzene	.073	(1)
Phenol	1.4	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K104

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Aniline	5.6	(1)
Benzene	6.0	(1)
2,4-Dinitrophenol	5.6	(1)
Nitrobenzene	5.6	(1)
Phenol	5.6	(1)
Cyanides (Total)	1.8	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K104

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Aniline	4.5	(1)
Benzene	0.15	(1)
2,4-Dinitrophenol	0.61	(1)
Nitrobenzene	0.073	(1)
Phenol	1.4	(1)
Cyanides (Total)	2.7	(1)

[1] Not applicable.

w. *K106—Wastewater treatment sludges from the mercury cell process in chlorine production.* On May 17, 1988, EPA proposed BDAT treatment standards for K106 nonwastewaters based on the performance of a thermal recovery (retorting) unit. However, the retorting process has been demonstrated chiefly on ores consisting primarily of mercury sulfides. In the proposed rule, the Agency stated that these ores are believed to have chemical and physical characteristics similar to K106 nonwastewaters. EPA received extensive comments from industry opposing the applicability, demonstrability, and economics of retorting K106 nonwastewaters. At the same time, EPA has examined the data that it has on the treatment of K106 and similar wastes and determined that there was insufficient data to support the promulgation of the proposed treatment standards for K106.

The Agency has data points from a literature source on the treatment of K106 nonwastewaters combined with K071 nonwastewaters using dewatering followed by retorting. Since the source reports that K106 comprised only 0.5% of the feed to the retort furnace, the Agency believes the waste mixture does not sufficiently represent the majority of K106 wastes. The Agency has additional data from the treatment of a different K106 nonwastewater using retorting. However, this K106 was not generated by the conventional method of sulfide precipitation, but consisted of elemental mercury that was concentrated in the residual from membrane filtration of wastewater from the mercury cell process. EPA did not consider these data to be representative of K106 nonwastewaters because nineteen of the twenty facilities generating K106 currently generate it as a mercury sulfide sludge or residual. The Agency also has data from EPA testing on treatment of K106 nonwastewaters by stabilization. Data collected during these tests show that, while these technologies were properly operated, the data indicated that no significant reduction in leachability was achieved and in some cases, the leachability was increased.

Based on review of the sufficiency of the available data and on the comments received, the Agency has decided not to promulgate final BDAT treatment standards for K106 nonwastewaters in today's rule. Until sufficient treatment performance data can be obtained that verify that these technologies can provide significant treatment for K106 wastes, the Agency does not believe that it can promulgate treatment standards based on either of these technologies. It is important to point out that the Agency is not precluding the use of retorting or solidification for these wastes and that these technologies may prove to be BDAT for these wastes. EPA does intend to propose and promulgate numerical treatment standards for these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule, K106 wastes are restricted from land disposal according to the "soft hammer" provisions described in other sections of this preamble. [Note.—As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer"

waste contaminated groundwater. Thereby, moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K106 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33 (f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

The Agency has information on other technologies that have been identified as potentially applicable to K106 wastes. In particular, a secondary mercury recovery facility has been recently identified as treating K106 wastes by an unidentified process. Another facility that uses hydrazine to treat their wastewaters and generates K106 as a mercury hydroxide rather than a mercuric sulfide, subsequently retorts the K106 waste, to recover mercury prior to land disposal of a residual.

It is possible that because the sulfide precipitate is one of the least soluble forms of mercury salts, that no further treatment is required of K106 nonwastewaters. Since K106 already is a treatment residual from treating K071 and other mercury contaminated wastewaters, this result would be permissible under RCRA.

Other alternatives involve changing the process of generation of the wastewater treatment residuals from the use of sulfide to the use of hydrazine with lime precipitation to facilitate recovery of the mercury from K106 as a hydroxide residue. However, this would require authority under RCRA to regulate industrial process changes to facilitate changes in the composition of listed hazardous wastes. This authority does not currently exist.

x. *K004—Wastewater treatment sludge from the production of zinc yellow pigments. K008—Oven residue from the production of chrome oxide green pigments. K021—Aqueous spent antimony catalyst waste from fluoromethanes production. K025—Distillation bottoms from the production of nitrobenzene by the nitration of benzene. K036—Still bottoms from toluene reclamation distillation in the production of Disulfoton K060—Ammonia still lime sludge from coking operations. K100—Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.* The BDAT treatment standard of "no land disposal" for K004, K008, K021, K025, K036, K060 and K100 wastewaters and nonwastewaters was proposed based on the premise of "no generation". In the proposed rule, EPA specifically requested comment on current and potential sources of generation of these wastes as either wastewaters or nonwastewaters. While the Agency has received no specific comments that indicated any current generation of nonwastewater forms of these wastes as specifically listed, several commenters stated that this rule would preclude them from generation of these wastes.

In particular, commenters indicated that K060 is no longer generated because sodium hydroxide is used as a reagent rather than ammonia. Thus, K060 is not generated as listed. They stated that they may be forced to switch to ammonia due to an anticipated shortage in the supply of sodium hydroxide, and would thus begin to generate K060 as listed. A commenter also indicated that his facility was generating K060, as listed, but claims that he is reusing the K060 as a chemical substitute. One commenter claimed that although his facility is currently not generating K060 due to a cessation in production, but they may decide to resume production in the future.

The Agency cannot anticipate shifts in generation due to fluctuating reagent market conditions and therefore, has to disagree with these commenters. The Agency points out that this rule does not preclude generation of these wastes, but rather restricts the placement of these wastes in land disposal units. It is also important to point out that this is one of premises behind the EPA's establishment of petition processes for obtaining a variance from the treatment standard.

In the proposed rule, EPA recognized the possibility that wastewater forms of these wastes could be generated at a CERCLA site, during a corrective action at a RCRA facility, or as a leachate from a landfill. The Agency, therefore, also proposed a "treatment standard" for these wastewaters of "no land disposal". By establishing this standard, a facility that generated and needed to treat a wastewater, could submit a petition to the Agency for a variance from this treatment standard. The Agency believed that few, if any, petitions for a variance would be submitted because facilities generally discharge these wastewaters to a POTW or surface water under a NPDES permit. However, comments from several facilities that have land disposal units that contain previously disposed K004, K008, K021, K025, K036, K060, and K100 nonwastewaters, stated that if leachate from these wastes are identified with their respective waste codes, then the leachate would be considered wastewater forms and the "no land disposal" standard based on "no generation" would not be justified. They also stated that elimination of land disposal of these wastewaters is not feasible and that numerical treatment standards should be promulgated.

The Agency agrees that this generation of wastewater could be significant, in that these wastes have been land disposed and do exist in many land disposal units. Therefore, the Agency has decided to promulgate a final BDAT treatment standard of "no land disposal" for only the nonwastewater forms of K004, K008, K021, K025, K036, K060, and K100 nonwastewaters. EPA does intend to propose and promulgate numerical treatment standards for the wastewater forms of these wastes prior to May 8, 1990. Since no standard is promulgated in today's rule for the wastewater forms of K004, K008, K021, K036, and K060, this subgroup of wastes is restricted from land disposal according to the "soft hammer" provisions. Because K025 and K100 are wastes from the Second Third and Third Third, respectively, these provisions are not applicable to the wastewater forms of K025 until June 8, 1989 and the wastewater forms of K100 until May 8, 1990 (unless individual numerical treatment standards are proposed and promulgated prior to those dates). [Note: As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater; thereby moving the aforementioned types of wastewaters into the group of wastes identified as the Third Third. Thus, these types of K004, K008, K021, K036, and K060 wastewaters are not subject to the "soft hammer" prohibitions in § 268.33(f). This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.]

BDAT TREATMENT STANDARDS FOR K004, K008, K021, K025, K036, K060, AND K100

[Nonwastewaters]

NO LAND DISPOSAL BASED ON NO GENERATION

8. Appropriate Technologies for Certain First Third Wastes for Which EPA Has Not Promulgated Treatment Standards

For the First Third Wastes identified in the tables at the end of this section, today's rule promulgates no specific BDAT treatment standards. RCRA section 3004(g)(6) (42 U.S.C. 6924(g)(6)) provides that if EPA fails to set treatment standards for any hazardous waste included in the schedule promulgated on May 28, 1986 (51 FR 19300) by the statutory deadline, such waste may be land disposed in a landfill or surface impoundment only if the facility meets certain statutory requirements and only until May 8, 1990. These requirements have been termed the "soft hammer" provisions.

EPA has identified several treatment technologies that are generally considered appropriate for the nonwastewater forms of the First Third Wastes. These technologies include: metal recovery, leaching/oxidation, metals stabilization, ash stabilization, chemical oxidation, cyanide destruction, biodegradation, incineration, PCB incineration, and open detonation/open burning. Treatment technologies generally considered appropriate for the wastewater forms of the First Third Wastes include: aqueous metal recovery, chromium reduction, metals precipitation, steam stripping, carbon adsorption, oxidation/reduction, chemical oxidation, cyanide destruction, biodegradation, incineration, and PCB incineration. As discussed in detail in section III.C.3., EPA is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste contaminated groundwater. This action will allow these wastewater residues to be disposed in nonminimum technology units and such residues will not be subject to the certification requirements of § 268.8.

The technologies are listed as general categories of technologies that EPA believes have a reasonable probability of application to the waste codes listed. These categories do not specify any particular type of technology (e.g., incineration can represent liquid incinerators, rotary kiln, fluidized bed incinerators, etc.). The actual choice of a particular technology or even train of technologies depends on the physical and chemical characteristics of the specific waste or waste code. Specific selection of one technology depends on its functional design (e.g., if a particular nonwastewater is an organic liquid, then a liquid incinerator may be chosen over one designed to handle only solids).

EPA notes that many of these wastes, when existing as untreated wastes, are already prohibited from land disposal because they are California List wastes. The liquid cyanide wastes, for example, could exceed the statutory prohibition levels for cyanide. Several of the organic hazardous wastes undoubtedly exceed the statutory levels for wastes containing halogenated organics (HOC wastes) and are thus subject to the HOC treatment standard (after the effective date). For further discussion of the relationship of the California list prohibitions to "soft hammer" wastes refer to section III.E.1.

The following tables are presented as an aid to generators seeking appropriate technologies to treat "soft hammer" F- and K-listed wastes. [For a discussion of the treatment requirements for "soft hammer" wastes refer to section III.C.] Several technologies are listed for each waste code, in descending order of preference. EPA notes that certain technologies are only appropriate for certain constituent types (i.e., cyanide destruction is appropriate for cyanide, not to metals or organics) and that more than one treatment technology may be required (if practically available) to treat the different constituents of concern in the waste. Thus, an F007 nonwastewater could require both cyanide destruction and metals recovery or stabilization prior to land disposal in a landfill or surface impoundment. Also, while one treatment process may generally satisfy the treatment requirements for "soft hammer" waste, the Agency recognizes that treatment trains (i.e., a combination of different treatment processes) may be appropriate for certain "soft hammer" wastes. For example, K022 wastewaters may require treatment by several of the technologies listed.

The Agency emphasizes that these tables are not to be considered as strict treatment guidelines. In general, however, EPA will use these tables in evaluating the demonstrations and certifications (see section III.C.3.) received for these wastes and is providing this information to aid the generator in determining the best practically available technology (if any) for treating his waste in compliance with § 268.8.

APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD NONWASTEWATERS

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
F007	Cyanides	Cyanide destruction.
F008		
F009	Metals	Metals recovery.
F019		Metals Stabilization.
K011	Cyanides	Cyanide destruction.
K013		Incineration.
K014		Wet air oxidation.
		Ash stabilization.
K017	Halogenated organics	Incineration.
K073		Biodegradation.
		Ash stabilization.
K031	Arsenic	Metals recovery.
K084		Leaching/oxidation.
K101 and K102/high arsenic		Metals stabilization.
K046/explosive	Lead	Open detonate/burn.
		Oxidation of explosive.
		Incineration.
		Metals stabilization.
K069/CaSO4	Lead	Leaching/oxidation.
		Metals stabilization.
K085	Halogenated organics and PCB's	PCB incineration.

APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD NONWASTEWATERS—Continued

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
K035	Organics and/or metals	Biodegradation. Ash stabilization. Incineration.
K083		Wet air oxidation.
K086 solv. sludges caust. water		Biodegradation.
K106	Mercury	Ash stabilization. Metals recovery. Metals stabilization.

APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD WASTEWATERS

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
F006	Cyanides	Cyanide destruction.
F007		
F008	Metals	Aqueous metals recovery.
F009		Chromium reduction.
F019		Metals precipitation.
K004	Chromium	Chromium reduction.
K008		Metals precipitation.
K061/all		
K011	Cyanides	Cyanide destruction.
K013		Carbon adsorption.
K014		
K017	Halogenated organics	Steam stripping.
K021		Carbon adsorption.
K073		Chemical oxidation.
		Biodegradation.
K022	Unlikely to be applicable	Steam stripping.
K035		Carbon adsorption.
K036		Chemical oxidation.
K083		Biodegradation.
K060		Metals precipitation.
K031	Arsenic, Lead or Mercury	Oxidation/reduction.
K046/nonexplosive		Metals precipitation.
K069/all		
K084		
K106		
K046/explosive	Lead	Oxidation of explosive.
		Metals precipitation.
K085	Halogenated Organics and PCB's	PCB incineration.
		Biodegradation.
		Carbon adsorption.
K086 solv. sludges caust. water	Halogenated Organics and/or	Biodegradation.
		Carbon adsorption.
	Metals	Chromium reduction.
		Metals precipitation.

9. Burning in Industrial Boilers and Industrial Furnaces as BDAT for Certain California List HOCs

In the May 17 proposal, EPA proposed to amend the § 268.42(a)(2) treatment standard (i.e., incineration) applicable to certain California list HOCs to include burning in industrial boilers and furnaces (53 FR 17604). This approach was based on an earlier May 6, 1987 proposed rule on boilers and industrial furnaces burning hazardous waste (52 FR 17021) and was reproposed in the May 17 proposal because the change in the HOC treatment standard will precede the boiler and industrial furnace rule (which is scheduled for promulgation in 1989) which will establish final permitting and interim status standards for emissions from these devices. The Agency is prepared to accept this discrepancy in timing of the boilers and furnaces rule because these devices are likely to be operated efficiently so as to achieve substantial destruction of the HOCs in the waste. This is because industrial boilers and furnaces have a commercial purpose which requires relatively efficient burning (see § 260.10 definitions of "boiler" and "industrial furnace"). In addition, non-industrial boilers, some of which might be expected to destroy HOCs less efficiently, are essentially prohibited from burning hazardous waste at all (see § 266.31(b)).

While many commenters agreed with the Agency's proposal, EPA received several comments opposed to this approach, stating that the amendment to the HOC treatment standard should be delayed until the industrial boilers and furnaces emissions standards are effective. However, the Agency maintains that the reasoning presented in the May 17 proposal is valid and is promulgating the proposed amendment to § 268.42(a)(2). Today's rule will allow industrial boilers and furnaces burning in accordance with applicable regulatory standards to burn California list HOCs. When Part 266 standards become effective for these devices, the devices thus must meet these standards. Until then, these devices must meet other applicable Federal, State and local standards.

B. Testing and Recordkeeping

1. Waste Analysis

With the exception of the "no land disposal" standard (as discussed in section III. A. 6.), the treatment standards established in today's action are based on either (1) the concentration levels of the hazardous constituents in the waste or treatment residual, (2) concentration levels in an extract developed by use of the Toxicity Characteristic Leaching Procedure (TCLP), or (3) concentration levels using both total constituent concentrations and TCLP analyses. Expressing treatment standards as constituent concentration levels reflects the performance achieved by the technology (or combination of technologies) identified as the Best Demonstrated Available Technology (BDAT).

In the April 8, 1988 and May 17, 1988 proposed rulemakings, the Agency discussed the rationale for determining the analytical tests that EPA believes provide the most accurate measure of the performance of the technologies identified as BDAT. Generally, wastes for which destruction and/or removal technologies are BDAT (specifically, technologies that act to destroy organic constituents and recovery processes that reduce the metal concentration in a waste) would require a total constituent concentration analysis. Conversely, wastes for which stabilization or fixation technologies (i.e., technologies that decrease waste constituent mobility) are identified as BDAT, would require a TCLP extract analysis. EPA also used the TCLP as a measure of performance of metal recovery technologies on the basis that the leachability of metals remaining in the residual should also be analyzed as a measure of performance. In cases where a combination of both destruction or removal technologies and stabilization or fixation technologies are identified as BDAT, both analyses were employed to monitor compliance with the treatment standards. EPA solicited comment on this approach.

Many of the commenters generally argued that the proposed waste analysis requirements were inappropriate for use or too restrictive. Several commenters argued that the use of total constituent analysis is unnecessarily stringent, is beyond levels needed to protect human health and the environment, and does not provide generators with flexibility in determining how best to meet the treatment standards. Some commenters asserted that where treatment standards are based on total constituent analysis, the development of innovative technologies and the application of existing technologies intended to reduce mobility will be discouraged. Other commenters expressed concern with the additional cost of the waste analysis requirements, particularly in cases where both testing methods must be used. Concerns with respect to the applicability of the analytical tests to complex mixtures of wastes were also expressed. Some commenters suggested an approach whereby the treatment standard would be developed based on both total constituent analysis and TCLP extract analysis, and would provide the generators with the flexibility of choosing the most appropriate analytical methodology.

Critical to the scheme for restricting land disposal of First Third wastes is the determination of whether certain constituent concentrations in wastes or treatment residues exceed the applicable treatment standards. Since today's treatment standards are based upon the performance capabilities of BDAT, the Agency continues to believe that the testing requirements should focus on the objective of the technology and provide the most accurate measure of the performance of that technology. Because the principle behind destruction and recovery technologies is to destroy or reduce the constituent concentration in a waste, the logical way to measure the performance of these technologies is to analyze total concentration of waste constituents. As noted in the April 8, 1988 proposal with respect to organic constituents, Congress expected that treatment would destroy organic constituents in hazardous wastes [Vol. 130 Cong. Rec. S9179 (daily ed. July 25, 1984)]. Where stabilization or fixation technologies are identified as BDAT, the TCLP is a better measure of performance since it is designed to measure the mobility of hazardous constituents from a waste matrix. The Agency believes this rationale to be the most defensible and thus is imposing the proposed waste testing/analysis approach as part of the land disposal restriction rules being finalized today.

This approach does not allow the choice of analytical methodologies, as suggested by some commenters, since the design of each analytical test (total constituent analysis or extract analysis) is most appropriate for monitoring the performance of certain technologies, but is not as appropriate for monitoring others. Commenters indicated that this approach may hinder the application of stabilization or fixation technologies. However, it will only do so where (a) current technologies intended to reduce mobility are unable to reach the level of performance provided by BDAT or (b) where such technologies are not applicable or appropriate on a waste-specific basis. Since the treatment standards are based upon the "best" available treatment technologies, the Agency believes that the constituent concentration capable of being reached by these treatments must be measured by analytical methods which reflect the levels for which the "best" treatments were designed. With respect to analysis of complex mixtures of wastes, the Agency recognizes that such wastes potentially may increase the total number of constituents with corresponding treatment standards. However, waste analysis requirements are limited to two analytical tests (total constituent analysis or the TCLP), even if all existing restriction rules are applicable to the waste.

2. Notification Requirements

The Agency, in today's rule, is broadening the applicability of the § 268.7 notification provisions to apply to the First Third wastes, whether or not treatment standards have been established. For First Third wastes for which treatment standards and effective dates have been established, the notification requirements are the same as for other restricted wastes. However, for "soft hammer" wastes, the applicable statutory waste management requirements are somewhat different than for other restricted wastes (namely, a RCRA section 3004(g)(6) certification to EPA is not required for "soft hammer" wastes when land disposed in units other than landfills or surface impoundments). To account for these differences, today's rule includes corresponding requirements in § 268.7.

The basic difference between the notification applicable to the "soft hammer" wastes and the notification applicable to other restricted wastes is that rather than requiring notice of the applicable treatment standard or applicable prohibition (see existing § 268.7(a)(1)), the notice for "soft hammer" wastes requires the generator to notify the receiving facility of the applicable "soft hammer" prohibitions codified in § 268.33 (i.e., that such wastes are prohibited from land disposal in landfill and surface impoundment units unless accompanied by a valid certification (and demonstration, if applicable) in accordance with the requirements of § 268.8, relating to the practical unavailability of treatment technologies). The EPA Hazardous Waste Number, the manifest number associated with the waste shipment (if any), and any available waste analysis

data must also be included in this "soft hammer" notice. The notification will inform treatment facilities (and other handlers) of the obligation to treat "soft hammer" wastes destined for disposal in landfill or surface impoundment units to the extent treatment is practically available. This notification also serves to inform managers of these wastes that the storage prohibition in § 268.50 is applicable to the waste.

Furthermore, today's action amends § 268.7(a)(3) to specify that generators of wastes which are the subject of case-by-case extensions or national variances, or disposers of wastes with "no migration" exemptions must provide notification with each shipment of waste to treatment and storage facilities receiving the wastes. This change supplements, and is consistent with, the existing requirements to notify disposal facilities. The Agency is also requiring that generators retain copies of this notification.

3. Recordkeeping Requirements

The November 7, 1986, rule (51 FR 40572) established a tracking system for wastes subject to the land disposal restrictions requiring treatment facilities to have copies of the notifications and certifications received from generators or other treatment facilities, and disposal facilities to have copies of the notifications and certifications provided by generators or treatment, storage and disposal facilities as codified in 40 CFR 268.7. To better facilitate the "cradle-to-grave" tracking system, today's action includes amendments to the recordkeeping regulations to cover additional off site shipment scenarios and facilities which were previously overlooked. In addition, today's rule amends the recordkeeping provisions to include certain record retention requirements.

The previous recordkeeping provisions were applicable to generators, treatment facilities, and land disposal facilities, but the rule language omitted mention of facilities that simply store prohibited wastes without treating them. As indicated in the April 8, 1988 proposal, there is no reason for storage facilities not to be covered by the recordkeeping requirements. The Agency believes that all facilities receiving restricted wastes should be on notice that the waste is restricted and should be notified of the applicable treatment standard (or applicable prohibition) for the waste as part of a "cradle-to-grave" recordkeeping system. Accordingly, the Agency has corrected this oversight by including storage facilities under the recordkeeping requirements of § 268.7. Besides the "generator-to-storage" scenario, this notification requirement also applies to a treatment, storage or disposal facility that sends a restricted waste (or treatment residue) off site to another treatment or storage facility. Note that this requirement is applicable to all restricted wastes, not only those affected by today's rulemaking.

EPA also proposed to amend the regulatory language of § 268.7(a)(3). This requirement concerns the case where a generator's restricted waste is eligible for land disposal because it is subject to an extension of the effective date or a "no migration" exemption (i.e., the waste may be land disposed, but will not necessarily meet the otherwise applicable treatment standards). In accordance with this provision, the generator must notify the disposal facility of the status of his waste. However, current regulatory language does not account for the possibility that the waste may not be sent directly to the land disposal facility, but rather to a treatment or storage facility. To avoid confusion in cases where the wastes are not shipped to a disposal facility, and to be consistent with other § 268.7 recordkeeping requirements, the Agency is amending § 268.7(a)(3), as proposed, to require that the notice be sent with each shipment of waste to the receiving facility.

Today's rule is adding a provision (see new § 268.7(a)(5)) to require generators to retain copies of data from testing the waste, treatment residual, or extract of the waste or treatment residual developed using the TCLP. The Agency believes that this addition to the regulations will establish consistency with the existing provisions requiring that data supporting decisions to restrict wastes based on knowledge of the wastes must be maintained in the generator's files. Furthermore, this action enhances the enforceability of the regulations.

Today's action also modifies the tracking system to include in §§ 268.7(a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) provisions stating that generators and storers must retain copies of the notifications and certifications forwarded to treatment, storage, and disposal facilities and received from storage facilities. The Agency believes that these changes enhance the enforceability of the land disposal restrictions regulations and make generator and storage recordkeeping requirements consistentμ with the recordkeeping requirements of treatment and disposal facilities.

Today's final rule also modifies § 268.7(a) to provide for a limitation on the time period that records are required to be retained by generators. Under current regulations, owners and operators of facilities are required to maintain § 268.7 records for a finite period of time, i.e., until closure of the facility (§§ 264.73(b) and 265.73(b)). Previously, however, the regulatory language did not stipulate a period of time that generators needed to retain applicable records (i.e., all supporting data used to determine that a waste is restricted based solely on the generator's knowledge). As such, generators were required to maintain records for an indefinite period of time. In light of the additional information required to be maintained by generators under today's amendments to § 268.7 (i.e., copies of the § 268.7 notices, certifications, and all waste analysis data), the Agency believes that a finite time period may be a more appropriate burden on generators, while preserving the Agency's enforcement ability.

In the May 17, 1988 notice, the Agency proposed a 5-year limitation on the retention requirement for all records generators produce to comply with § 268.7 of the land disposal restrictions. EPA proposed (consistent with section 262.40 manifest requirements) that (a) the time period would begin on the date that the restricted waste is sent to on-site or off-site treatment, storage, or disposal, and (b) the retention requirement would be extended automatically during the course of any unresolved enforcement actions. EPA, however, did not propose to develop an exception reporting requirement like that required in the generator manifest provisions. The Agency recognized that the proposed retention period differed from § 262.40, which requires generators to maintain a copy of the manifest for a 3-year period, but considered the 5-year limit to be an appropriate compromise to imposing an additional exception reporting requirement. The Agency solicited comment on this approach.

Several commenters supported a record retention period of 3 years to be consistent with the generator recordkeeping requirements relating to manifests and waste analysis (see 40 CFR 262.40(a) and (c)). One commenter stated that the EPA would have ample opportunity to review these records within the 3-year period. Furthermore, it was indicated that a 5-year limit may lead to unnecessary confusion for both the regulated community and the regulators with respect to recordkeeping procedures.

The Agency disagrees with the commenters and is promulgating the 5-year generator record retention period

as proposed. EPA does not believe that such a retention period will lead to unnecessary confusion. Since such records are already required to be generated, the Agency is not imposing any additional requirement that generators affirmatively take action. This requirement simply provides that generators leave such records in their files for two more years rather than affirmatively taking action to destroy such records after three years. This 5-year time period is particularly important to the Agency's enforcement efforts because it allows EPA to obtain relevant records which would otherwise be lawfully destroyed after three years. Furthermore, the Agency believes that a 5-year record retention requirement is appropriate because it is consistent with the 5-year statute of limitations applicable to RCRA civil violations.

In addition, Agency data now indicate that § 268.7 notices are being included on manifests in few circumstances. Therefore, adopting such a requirement should not have a substantial impact on the generator manifest retention requirements.

As proposed, the record retention limit is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. For the purpose of this provision, an unresolved enforcement action includes, but is not limited to, the issuance of a Notice of Violation, a warning letter, or situations where a complaint has actually been filed.

The Agency notes that it expects the requirement on the generator to keep records of notifications and waste analysis data to be discontinued in 1994 (i.e., the latest date by which all listed or identified hazardous wastes will be subject to the treatment requirements of §§ 268.41, 268.42 and 268.43—assuming that certain wastes may be subject to a 2-year national capacity variance followed by two 1-year case by-case extensions under 40 CFR 268.5). At that time, EPA will, however, reevaluate the prevalent waste management practices to determine whether the recordkeeping requirement for generators is necessary and should be extended.

C. "Soft Hammer" Requirements

1. Applicability

RCRA 3004(g)(6) (42 U.S.C. 6924(g)(6)) provides that if EPA fails to set treatment standards for any wastes included in the schedule promulgated on May 28, 1986 (40 CFR 268.10–268.12, 51 FR 19300) by the statutory deadline:

> Such hazardous waste may be disposed of in a landfill or surface impoundment only if—
>
> (i) Such facility is in compliance with the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements); and
>
> (ii) Prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. (RCRA section 3004(g)(6)(A))

This so-called "soft hammer" applies until EPA sets treatment standards or until May 8, 1990. After May 8, 1990, all scheduled wastes (except those subject to capacity extensions) for which treatment standards have not been set will be prohibited from all methods of land disposal that have not been determined to be protective through the "no migration" process (40 CFR 268.6).

In today's final rule, the Agency is not setting treatment standards for all wastes covered by the statutory requirements. EPA thus is promulgating regulations implementing the "soft hammer" provisions of RCRA.

In the April 8 proposal, the Agency discussed the applicability of "soft hammer" provisions to wastes also subject to the California list prohibitions (52 FR 25760, July 8, 1987). In today's final rule, the Agency has maintained the interpretation discussed in the proposal. During the period in which the "soft hammer" provisions are in effect, those wastes which are currently subject to the California list requirements would remain so, and thus might be prohibited from land disposal even though they are also "soft hammer" wastes. Likewise, compliance with the California list requirements does not necessarily fulfill the requirements of the "soft hammer" provisions. In previous preambles, the Agency has stated that the more waste-specific treatment standards and effective dates will supersede the less waste-specific California list requirements. In this case, the Agency has not made determinations with respect to the specific "soft hammer" wastes, and such wastes must (at the least) be treated or otherwise comply with the applicable California list requirements. For a more detailed discussion of the relationship of the California list requirements to First Third wastes, refer to section III. E. of this preamble.

The Agency is somewhat changing the applicability of the "soft hammer" provisions from that presented in the April 8 proposal by moving certain "soft hammer" wastewater treatment residuals to the Third Third (i.e., § 268.12). The specific wastewater treatment residuals and the justification for this action is discussed in detail in section III. C. 3.

It is important to note that the "soft hammer" provisions of 40 CFR 268.8, including the demonstrations, certifications, and treatment requirements, are only applicable to those "soft hammer" wastes which (1) are not otherwise subject to California list treatment standards (e.g., halogenated organic compounds and polychlorinated biphenyls) (as opposed to California list statutory prohibitions or codified levels, e.g., liquid metal and cyanide-containing wastes), and (2) are to be disposed in landfills or surface impoundments. "Soft hammer" wastes managed by other methods of land disposal (e.g., land treatment, deep-well injection), or "soft hammer" wastes subject to California list treatment standards thus are not subject to the requirements of 40 CFR 268.8.

2. Interpretation of Specific Terms

In the statutory passage from RCRA section 3004(g)(6)(A) cited above, the terms "treatment" and "facility" are particularly important and were discussed in detail in the April 8 proposal. EPA received many comments regarding the interpretation of these terms, as well as the term "practical", as they relate to implementation of the "soft hammer".

a. *Treatment.* In the April 8 proposal, EPA solicited comment on the interpretation of "treatment" for the purposes of the "soft hammer". Many commenters stated that the Agency needed to define "treatment" in more concrete terms so that there would be a firm standard to serve as the basis for certification. (In fact, many owners and operators of disposal facilities stated that they would refuse to accept "soft hammer" wastes because of the uncertainty of possible enforcement actions due to the ambiguity involving the term "treatment".)

In spite of such comments, the Agency is not finalizing an interpretation of "treatment" that is much more definitive than in the April 8 proposal. Due to the complexity of available treatment technologies, the Agency is not able to make firm statements defining a hierarchy of treatment technologies for every "soft hammer" waste code, the availability of which should be investigated before a valid certification can be made regarding a particular waste code. By definition, the Agency has not made waste-specific determinations regarding "soft hammer" wastes, and therefore cannot make a specific interpretation of "treatment" for

each waste code (such an interpretation would be tantamount to a "soft hammer" treatment standard, which is a contradiction in terms). However, the Agency is able to offer a list of appropriate technologies to be considered as treatment for most of the F- and K-list "soft hammer" wastes (see section III. A. 8). In addition, EPA can list generic types of treatment for organic and inorganic wastes, in order of preference (i.e., which are best, next best, and so forth). However, as a preliminary matter, the Agency feels a discussion of the proposed approaches to interpreting "treatment" and comments received will be useful in understanding the difficulties encountered were one to take an alternative approach.

In the April 8 proposal, EPA expressed its belief that Congress intended that, during the period of the "soft hammer", only wastes treated to the most protective levels achievable by practically available technologies (if any) may be land disposed in landfills and surface impoundments (and that only the most protective of such units, i.e., units meeting the minimum technological requirements (MTRs) of section 3004(o), may be used). However, the Agency also stated that treatment is not required solely for the sake of treatment.

Having not made waste-specific determinations regarding the treatability of "soft hammer" wastes, the problem facing the Agency is to implement an enforceable approach to the "soft hammer" provisions by interpreting "treatment" such that it yields the most environmental benefit practically available, avoids treatment for the sake of treatment, and does not allow sham or *de minimis* treatment. An interpretation which is too stringent (i.e., an interpretation limiting "treatment" to BDAT-type treatment) could actually result in more untreated wastes being disposed in landfills and surface impoundments either because of the lack of such treatment capacity or because the treatment would possibly increase costs beyond a point that would be considered practical. Too lenient an interpretation (i.e., allowing the use of minimal treatment prior to disposal in a landfill or surface impoundment) could conceivably result in requiring treatment for the sake of treatment (an unnecessary burden on generators with little or no environmental benefit) or could actually encourage the use of sham or *de minimis* treatment where more protective treatment is practically available. The Agency does not believe this is what Congress intended.

EPA requested comment on an approach that would limit the scope of treatment technologies to those that yield a designated percent reduction in the toxicity or mobility of hazardous constituents, using a 20% reduction as an example. The Agency received mixed comments, some supporting and some opposing the approach. Some of those supporting the approach suggested limiting the percent reduction to at least 90%. In reviewing comments, the Agency realizes that this approach would fail to mitigate the ambiguities of "treatment". Many commenters expressed concerns in evaluating the percent reduction, especially where a waste or mixture of wastes contains both organics and inorganics (the reduction of organics could concentrate the inorganics). Another problem would be to specify the waste analysis method to be used to evaluate percent reduction. And finally, it is clear to the Agency that many generators lack the expertise to identify appropriate technologies yielding the designated percent reduction without possibly costly and time-consuming analyses. Thus, the Agency would be compelled to identify technologies that yield the designated percent reduction for all "soft hammer" wastes, which the Agency is unable to do. Therefore, EPA is not finalizing this approach to interpreting "treatment".

EPA also requested comment on an approach requiring that "soft hammer" wastes be treated to achieve meaningful reductions of waste toxicity or mobility and stating that sham or *de minimis* treatment cannot give rise to a valid certification. Here again, ambiguity regarding the term "meaningful" concerned many commenters. Also, this approach does not clearly state the Agency's preference for the use of practically available technologies to treat "soft hammer" wastes, providing the most environmental benefit. (Although several commenters indicated that Congress intended to allow "soft hammer" wastes to be disposed without an additional burden of treatment, allowing for whatever treatment has been previously used, the Agency strongly disagrees and believes that Congress certainly would prefer the best practically available treatment of "soft hammer" waste to less complete levels of treatment.)

In today's final rule, the Agency is interpreting "treatment" as processing which reduces the toxicity of the waste or the likelihood of migration of hazardous constituents from the waste. The Agency had attempted to provide some further detail to this broad interpretation by identifying waste management practices which EPA does not intend to require (or encourage) and by providing discussions in this preamble on the types of treatment the generator is expected to investigate.

The Agency emphasizes that it does not intend to require repetitive treatment by the same processes, such as re-incinerating ash derived from the incineration of the original waste. In many cases the Agency expects that the use of a single process to treat the waste, or quite possibly, one process for treating organics and a second process for treating inorganics, will satisfy the treatment requirements of § 268.8. EPA is not, however, absolutely limiting the treatment requirement to a single process because the appropriate treatment for some wastes may involve a standard treatment train of sequential processes, or the treatment residuals from one process may require a second treatment process. For example, use of steam stripping to treat wastewater may result in a concentrated stream that may require incineration before disposal (where the material cannot be recycled). Another example might be ash from incinerating an organic/metal-containing waste. In this case, further treatment (e.g., stabilization) might be required (depending on the concentration level of metals and the practical availability of stabilization). A final example is a waste containing metals and cyanides, which would require separate treatments for both types of constituents. The Agency will evaluate previous practices to determine whether such a train of multiple treatment steps is appropriate for a given waste.

As stated earlier, EPA is not requiring treatment solely for the sake of treatment. EPA believes appropriate technologies exist to treat "soft hammer" wastes, although these technologies may be determined not to be practically available. The Agency is not requiring, in the absence of practically available, appropriate technologies, that technologies which are not appropriate for a given waste be used. However, the appropriate technology which results in the most environmental benefit (i.e., in general, the greatest reduction in toxicity or mobility of hazardous constituents) must be used where practical and available.

EPA has attempted to provide some assistance to the generator on the types of treatment that should be investigated prior to making a certification under § 268.8. This assistance is presented in two ways. First, in section III.A.8. of this

preamble, EPA provided a list of technologies appropriate for treating specific F- and K-list "soft hammer" wastes, in order of preference, i.e., best to next-best and so forth. Because the Agency has not made a specific determination regarding the treatability of each waste, it cannot simply state that the most-preferred technology is BDAT and that each less-preferred technology yields a correspondingly less environmental benefit. However, in general, EPA will use this list of preferred technologies as a basic guide to evaluating whether the generator has investigated the technologies that yield the greater environmental benefit. Also, these appropriate technologies are listed by broad descriptions which EPA generally will not differentiate into more specific types of treatment. For example, "incineration" may mean liquid injection incineration, fluidized bed incineration, or rotary kiln incineration. Another example is "stabilization", which can include the use of silicates, lime/fly ash, cement, or cement kiln dust. Although EPA generally will not differentiate between the different specific treatment systems within the treatment category, the Agency *will* differentiate between the broad categories (i.e., the Agency may invalidate a certification for "stabilization" of organics if "incineration" is practically available, assuming incineration is the more-preferred treatment for the particular waste).

Second, the Agency is providing assistance in the form of a generic hierarchy of preferred treatment types (discussed later in this section). Where the generic hierarchy of preferred treatment types is used, the Agency will generally not differentiate between individual technologies within the generic treatment type to determine whether a different technology should be used. Rather, the Agency will evaluate whether a technology belonging to a more preferred generic treatment type is practically available. For example, "destruction" may mean thermal destruction or chemical destruction. In general, the Agency will not differentiate between the two; however, the Agency may invalidate a certification if a recovery process (a more-preferred generic treatment type) is practically available.

These lists of appropriate technologies and generic treatment types are not intended to be comprehensive, nor are they a complete catalog of the types of treatment that may be appropriate to consider in evaluating available treatment for a specific waste. There may indeed be other types of appropriate technologies available to the generator of which the Agency is unaware (e.g., innovative technologies which the Agency may not consider "demonstrated" or "available" for the purposes of BDAT). [It should also be noted that a more detailed consideration of the actual performance of the technologies may, in fact, reveal that EPA's assumed hierarchy is incorrect for any specific waste and that there may be specific waste streams where a higher-ranked appropriate technology does not provide the greater environmental benefit or is not appropriate for the waste stream. For example, a particular "organic" waste stream may contain an unusually high concentration of metals, such that incineration would not be considered appropriate.] As a practical matter, the lists of appropriate technologies and generic hierarchy of treatment types represent the minimum effort a generator should make in seeking treatment for his waste, serving as a basis for determining whether treatment is practically available. The Agency may require further justification in the demonstration if the certifier has not investigated the availability of the appropriate technologies listed for a specific waste.

Generically, the Agency generally favors recycling/recovery as the best method for treating a waste, eliminating or reducing the residual to be disposed. Where recycling is unavailable or inappropriate or ineffective, the Agency prefers technologies resulting in the destruction of hazardous constituents, where such destruction may be either thermal (i.e., incineration or burning) or chemical, especially for organics. Where neither recovery nor destruction is available or appropriate, immobilization (stabilization) is often effective, especially for inorganic constituents (Cf. H. Rep. No. 198, 98th Cong. 1st Sess. 31 (setting out a comparable hierarchy of preferred waste management alternatives)). EPA wishes to note that, given the results of the TSDR Survey (see section III. H.), the Agency believes that liquid incineration and stabilization are generally available (although the generator must determine whether such treatment is appropriate or practically available for his waste).

b. *Facility.* As proposed in the April 8 proposal, the Agency interprets the term "such facility" in RCRA section 3004(g)(6)(A) to refer to the individual landfill or surface impoundment unit. This interpretation results in the requirement that where "soft hammer" wastes (and treatment residues) are disposed in a landfill or surface impoundment, such unit must meet the minimum technological requirements (MTRs) of 3004(o) applicable to new units (i.e., double liners, leachate collection system, and groundwater monitoring).

The Agency received numerous comments on its proposed interpretation of "such facility". Most commenters opposed this restrictive use of the term and urged the Agency to interpret the term more broadly as referring to the entire facility, so that wastes could be disposed in any unit so long as any new, expanded or replacement units on the facility met the MTRs. The Agency does not agree with these comments and for reasons discussed in the preamble to the proposed rule (53 FR 11766) is finalizing the interpretation as proposed. To accept the interpretation urged by commenters would render section 3004(g)(6) meaningless; facilities are required to meet the requirements of section 3004(o) already by virtue of that provision. A further command to do so is unnecessary. As noted at proposal, the legislative history to this provision also strongly favors the Agency's reading. Moreover, these commenters ignore the remainder of section 3004(g)(6), which not only refers to "such facility" (referring back to landfills and impoundments), but also applies requirements that apply to new facilities, i.e., double liners and leachate collection systems.

EPA's interpretation is also consistent with the special concern that Congress has for surface impoundments and landfills as reflected in section 1002(b)(7) of RCRA:

> Certain classes of land disposal facilities are not capable of assuring long term containment of hazardous waste, * * * and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes;

Further, the Agency believes that the alternative of accepting the use of the word facility as applying to all units within the property boundary would not lead to the interpretation that the commenters wished, but rather to an even more restrictive result, requiring that the wastes only be disposed at facilities where every landfill and surface impoundment unit at the facility met the MTRs. This results from the reference in the statute to "* * * the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements)". At a new facility (using the property boundary definition of facility), all such units would be required to meet the MTRs. Although the literal language of

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3004(g)(6) allows this reading, EPA believes the better interpretation is the one it is adopting.

c. *Practical.* EPA received numerous comments on the April 8, 1988 proposal regarding the "soft hammer" provision. Although the Agency did not specifically request comment on the term "practical", many commenters believed this term was crucial to the interpretation of the statute and expressed their views that Congress intended "practical" to refer to the use of economic considerations in determining whether a treatment technology is a "practical" alternative to land disposal.

In general, the Agency does not consider costs when making waste management determinations under RCRA (since EPA is not authorized to do so), but rather limits such considerations to technical feasibility. However, EPA agrees with the commenters' assertions that economic considerations were not specifically excluded by Congress under RCRA section 3004(g)(6) and that by using the term "practical", Congress also allowed for cost considerations in evaluating whether available treatment is a practical alternative to land disposal for the purpose of the "soft hammer" under 3004(g)(6).

Many commenters expressed their concerns that this interpretation may create inconsistencies and confusion regarding a generator's determinations whether or not treatment is "practical". For example, a generator may consider any increase in cost to be impractical and certify an untreated "soft hammer" waste for disposal when, in fact, cost effective treatment is available. Because this certification would be self-implementing and would be considered valid until EPA took action to invalidate it, the Agency believes a discussion of how it will evaluate demonstrations with regard to the term "practical" is necessary.

Without time for further comment, EPA cannot promulgate a strictly quantified interpretation of the term "practical". Indeed, as with the interpretation of "treatment", such a task is undoubtedly self-defeating. However, the Agency can indicate how it will evaluate demonstrations and certifications regarding whether a treatment technology is practically available.

First, EPA will evaluate demonstrations with a consideration of previous practices. If a generator's "soft hammer" wastes were treated in the past, the Agency would consider at least this type of treatment to be "practical" for that generator. (This assumes that the previous practice is currently allowable; for example, a previous practice of treatment in a surface impoundment that does not qualify for the treatment in surface impoundment exemption under § 268.4, is not allowable.) However, the generator must treat his waste by the *best* treatment (i.e., the treatment yielding the greatest environmental benefit) that is practically available. The Agency does not intend the "soft hammer" provisions to act as an excuse to discontinue current treatment practices (except where such practices are no longer allowable), nor does it intend to limit the scope of "treatment" to only previously conducted treatment.

Second, EPA is presenting a cost ratio that measures the costs of treatment relative to the baseline cost of shipment and disposal in a landfill or surface impoundment unit meeting the minimum technological requirements (MTRs) of 3004(o). The cost of shipment and disposal in an MTR unit is the baseline cost because this cost is incurred by both treated and untreated "soft hammer" wastes (assuming the wastes are disposed in a landfill or surface impoundment; as stated before, wastes disposed by other methods of land disposal are not subject to the demonstrations and certifications of § 268.8).

In general, given the ratio of:

$$\frac{\text{costs of treatment, shipment and disposal}}{\text{costs of shipment and disposal}}$$

EPA will ordinarily consider a ratio of 2.0 or greater not to be "practical". Similarly, a ratio of 1.5 or less will usually be considered "practical". Within the range of 1.5 to 2.0, EPA will generally consider treatment to be "practical" unless the certifier can demonstrate why this cost should be considered not "practical" (subject to judgement of individual circumstances). The Agency emphasizes that this cost ratio and consideration of "practical" is only a basic reference tool, and not a hard and fast rule. The generator may demonstrate that a cost ratio of less than 1.5 is not "practical"; and likewise, EPA may consider a cost ratio of greater than 2.0 to be "practical", especially where previous practices so indicate.

One anomalous situation could result if EPA relied solely upon this cost ratio. For example, Generator A has an on-site MTR unit, while Generator B (across the street from Generator A) must ship his "soft hammer" waste out of state to a commercial disposal facility. The costs of shipment and disposal for Generator A would be negligible, and thus, almost any cost of treatment would be considered to be not practical, given the ratio above. Conversely, Generator B's baseline costs would be much greater, and therefore could be required to consider many more treatment technologies as practical. In such cases, EPA will evaluate Generator A's certification and demonstration of practically available treatment technologies by methods other than the above cost ratio. EPA will use other considerations, such as knowledge of available technologies and relative financial status or size of the facility and evaluate such demonstrations and certifications on a case-by-case basis.

In addition, the Agency emphasizes that where treatment is demonstrated to be a practical alternative to land disposal of untreated wastes, such treatment must be used. For example, a generator whose on-site treatment process is not yet on-line may not disregard "practical" off-site treatment and continue to dispose of untreated "soft hammer" wastes until his treatment process is on-line. Such a generator must employ the off-site treatment. (**Note.**—As discussed later in section III.C.6. of this preamble, the storage prohibition of § 268.50 applies to "soft hammer" wastes not subject to a *valid* § 268.8 certification. Therefore, "soft hammer" wastes may only be stored "* * * for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal".)

Furthermore, as stated earlier, the *best* practical *treatment* must be employed (given the list of appropriate technologies and the generic hierarchy of preferred treatment-types and determination of "practical"). This is not to be confused with the *most practical* (or cost-effective) treatment. Once all "practical" treatments have been identified, then the best treatment must be used.

EPA's interpretation of the term "practical" also responds to comments received requesting clarification of whether a generator must investigate treatment on a national or regional basis, or within an established area of, for example, 200 miles from the site. Given the Agency's interpretation of what constitutes "practical", this question becomes moot. The generator must investigate all practically available treatment, regardless of State or Regional boundaries, or any specific distance from the site.

As an alternative to the cost ratio, the Agency considered using a financial

ratio. Under this alternative, EPA would compare the incremental cost of treating a particular shipment of waste to a measure of the generator's financial strength, and determine that treatment is not practical where the ratio exceeded a specified percentage which the Agency believed would impose a significant hardship on the generator. For example, EPA would compare the incremental cost of treatment to the generator's net pre-tax profit for the waste generation period, and would consider a particular treatment to be not practical if the incremental cost exceeded X percent of net pre-tax profit.

The principal apparent advantage to using a financial ratio instead of a cost ratio is that it would tie the determination of whether a treatment is practical to the individual generator's ability to pay for the treatment. Thus the Agency could systematically avoid requiring a generator to incur undue financial hardship in seeking treatment. However, on further analysis, EPA rejected the use of a financial ratio for several reasons.

First, the use of any relatively simple financial ratio would tend to discourage waste minimization. Generators who produced relatively more waste per unit of product than similar generators in their industry would be more likely to exceed the ratio (all things being equal) and, therefore avoid the incremental treatment cost. Thus, this approach could result in rewarding inefficient generators for producing excessive amounts of waste; clearly contrary to the intent of Congress regarding waste minimization.

Second, the use of a financial ratio would pose serious implementation difficulties. For example, evaluating demonstrations for generators who produce wastes from diverse processes would require substantial effort on the part of the generator, EPA, and the States, to generate, coordinate, and substantiate the necessary data.

Third, a financial ratio would be difficult to enforce. In addition to the difficulties likely to be encountered using either the cost ratio or the financial ratio, such as verifying treatment cost data and generator diligence in pursuing treatment options, use of the financial ratio has the added difficulty of verifying the financial data submitted by the generator.

Finally, given the other considerations to be used in evaluating whether treatment is practical in addition to the cost ratio, the Agency believes the cost ratio is the more efficient method to evaluate practical treatment, in terms of time and resources. As illustrated in the example above, the cost ratio is not suited for every situation, and the Agency strongly emphasizes that the cost ratio is not to be the sole consideration in evaluating whether a particular treatment is "practical".

The Agency realizes that not all generators of "soft hammer" wastes have the sophistication in waste management to know the relative costs of treatment, shipping and disposal for their wastes. However, the Agency believes the additional information needed to demonstrate the availability of practical treatment can be easily ascertained. Also, once the generator has investigated available technologies, EPA does not believe that waste management conditions (i.e., the appropriate technologies which are practical and available) initially certified to will change so drastically during the "soft hammer" period that a complete reevaluation of "practical" treatments will be required.

3. Certification Requirements

The Agency received many comments regarding the demonstration and certification required under § 268.8 to properly dispose of "soft hammer" wastes in a landfill or surface impoundment unit meeting the minimum technological requirements of RCRA section 3004(o). EPA is finalizing the certification requirements essentially as proposed in the April 8 proposal, with some changes made in view of the Agency's final interpretation of the terms "treatment", "facility", and "practical".

a. *Certification for Treated "Soft Hammer" Wastes.* Many commenters stated that residuals from treatment of "soft hammer" wastes should not require certification or subsequent management in MTR units. The Agency, however, disagrees with the commenters' reading of the statute and is today promulgating the proposed approach. As discussed in the April 8 proposal (53 FR 11767), the Agency believes the intent of Congress is to require certifications and management in MTR units for residuals from treatment of "soft hammer" wastes. The Agency has not set treatment standards for these wastes, and EPA does not believe that Congress intended for treated "soft hammer" wastes (especially where such treatment may be considered minimal relative to BDAT-type treatment) to be shielded from the requirements of 3004(g)(6) and treated the same as wastes meeting the stringent requirements for treatment under RCRA section 3004(m). It should also be noted that Congress equated treatment residuals and the underlying waste in section 3004(m)(2), so that prohibitions applicable to the waste being treated apply to the treatment residuals as well (unless, of course, the residuals satisfy the applicable treatment standard—not the case for "soft hammer" wastes). Therefore, the requirements of § 268.8 also apply to treatment residues of "soft hammer" wastes. (As discussed more fully below, however, EPA does believe it appropriate to reprioritize the schedule for prohibiting certain wastewater residues from treatment of "soft hammer" wastes. To this extent, EPA has, it believes, accommodated some of the principle concerns raised by commenters.)

Commenters raised one further issue concerning the relationship of the "soft hammer" provision's applicability to treatment residues, plus the restrictions on placing "soft hammer" wastes only in impoundments and landfills that meet minimum technology requirements. A number of companies use BDAT-type treatment to treat "soft hammer" wastes, and then further treat the resulting treatment residues in impoundments that do not satisfy minimum technology requirements. For example, a number of companies incinerate off-specification commercial chemical products which are in the first third of the schedule of listed wastes but for which EPA did not propose treatment standards, and generate scrubber water which is further polished in biological treatment ponds. Such ponds meet the requirements of section 3005(j)(3) and so need not be retrofitted as of November 8, 1988 but for the receipt of the scrubber water from treating a "soft hammer" waste.

This result is not in keeping with the fundamental policy of the land disposal restrictions statutory provisions: effective pretreatment of wastes followed by unprohibited disposal of the treatment residues. In addition, the thrust of the "soft hammer" provision itself is to make disposal of untreated wastes for which there is no treatment standard more difficult, but not necessarily to impose the same difficulties on residues from BDAT type treatment of those wastes.

Accordingly, EPA has decided to modify its proposal so that residues from substantial treatment of certain "soft hammer" wastes may be further treated in land disposal units that do not meet minimum technology requirements. EPA is accomplishing this by amending the schedule of prohibited wastes to indicate that wastewater (i.e., less than 1% total organic carbon (TOC) and less than 1% total suspended solids (TSS)) residues from the treatment of "soft

hammer" wastes by the following list of technologies, are to be included in the third third of scheduled wastes for which EPA is to develop treatment standards. The wastewater residues from treatment affected by this action are limited to those wastewater (less than 1% TOC and less than 1% TSS) residuals resulting from the well-designed and well operated treatment of "soft hammer" wastes by: metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction. There is strong policy justification for taking this step: persons who are substantially treating their wastes to levels that may satisfy ultimate treatment standards are not precluded from further treatment of these wastes in polishing or advanced biological treatment (i.e., sections 3005 (j)(3) and (j)(13) units) that are substantially protective of human health and the environment (although not equivalent to minimum technology impoundments from the standpoint of preventing migration from the unit). Furthermore, EPA does not believe that these types of treatment residuals are the types of highly contaminated wastes deserving of prioritization in the first third of the schedule (see RCRA section 3004(g)(2)).

EPA also has decided to amend the schedule so that leachate and contaminated ground water that are derived from disposal of a "soft hammer" waste, or that contain "soft hammer" wastes, are also in the third third of the schedule (and thus would not be considered to be prohibited wastes until May, 1990 or until EPA establishes treatment standards, whichever is sooner). As discussed in section III.A.4., EPA generally believes that contaminated leachate and ground water (which is basically ground water with the leachate in it) can be treated to meet the treatment standard for the waste from which they are derived or that they contain. Notwithstanding this, however, if there is no treatment standard for the leachate or contaminated ground water to meet, EPA does not believe it fair to impose the "soft hammer" standards on these wastes. These wastes may be highly diluted so that treatment in section 3005 (j)(3) and (j)(13) impoundments may be appropriate. Thus, for reasons of fairness and appropriateness, EPA has decided to amend the schedule in section 268.12 to include leachate and contaminated ground water that are either derived from or that contain "soft hammer" wastes.

The following examples illustrate application of the regulations:

1. Generator A incinerates waste U119, a First Third waste for which EPA has not established a treatment standard. Scrubber water from the incinerator is piped to an aggressive biological treatment impoundment which has a section 3005(j)(3) retrofit waiver which does not satisfy the equivalency standard in section 3004(o)(2).

The scrubber water from incinerating this "soft hammer" waste is not a prohibited waste because it is in the third third of scheduled wastes. Consequently, placement in the surface impoundment does not violate the land disposal prohibitions.

2. Generator B treats a "soft hammer" waste in a wastewater treatment system which consists of chemical precipitation, biological treatment (all conducted in tanks), and polishing in an impoundment which has obtained a section (j)(3) waiver but cannot demonstrate section 3004(o)(2) equivalence.

The wastewater residue is not prohibited for the same reason as in example 1.

3. Generator C generates a leachate which is derived from disposal of certain "soft hammer" wastes and certain First Third wastes for which EPA has established treatment standards. The leachate is piped to an impoundment which has obtained a section 3005(j)(13) variance but has not satisfied section 3004(o)(2) equivalence.

The leachate could not be placed in the impoundment unless it meets the treatment standards for the listed wastes from which it is derived (or the most stringent standard in the event of overlapping treatment standards for the same constituent). However, if the leachate is treated to meet treatment standards before placement in the impoundment, then the placement is legal because the treated leachate would no longer be prohibited (since it would then derive from disposal of "soft hammer" wastes—a Third Third waste—and would meet all applicable treatment standards for the prohibited wastes from which it is derived).

4. Generator D generates a "soft hammer" wastewater which is pumped directly into an on-site impoundment prior to discharge under an NPDES permit. The impoundment is subject to a retrofit waiver under section 3005(j)(13), but cannot demonstrate section 3004(o)(2) equivalence.

The "soft hammer" wastewater is prohibited from land disposal in the (j)(13) impoundment. In this example, there has been no treatment, and thus this wastewater is not a wastewater residue from treatment. Therefore, this wastewater is subject to the prohibitions in § 268.33(f) and precluded from disposal in a non-MTR impoundment.

Three final notes on this matter. EPA is reprioritizing only these selected wastewaters, rather than solids destined for landfill disposal, for a number of reasons. First, wastewaters can be treated further in surface impoundments but not in landfills. Thus, wastewaters could be treated further in non-minimum technology units; solids could not be. EPA thus does not wish to foreclose the possibility of further treatment of "soft hammer" wastewater residuals, leachate and contaminated ground water. There is no corresponding opportunity for treatment for solid residues. Second, most landfill units do meet the minimum technology standards at this time—and virtually all commercial landfill units receiving hazardous wastes do. Thus, the likelihood of residues from substantial treatment of "soft hammer" wastes going to non-minimum technology landfills is not great. In confirmation, EPA made inquiries and was not informed of any actual instances of such residues from treatment of "soft hammer" wastes going to non-minimum technology landfill units. Accordingly, EPA is only reprioritizing the schedule for the wastewaters discussed above. Third, this action does not affect the regulatory status of spent solvents, dioxins, or California list wastes contained in wastewater residues from treatment, leachate, or contaminated ground water. These wastes are not subject to the schedule pursuant to RCRA section 3004(g).

Finally, EPA is amending the schedule of prohibited wastes without notice and comment. EPA believes that the schedule is absolutely committed to its discretion, given that the schedule is not subject to judicial review (see RCRA section 3004(g)(3)). The schedule also arguably constitutes a rule of Agency procedure. In either case, opportunity for prior comment is not required when EPA promulgates or amends the schedule.

b. *Certification by Owners or Operators as Well as Generators.* Comments received from many owners or operators of treatment and disposal facilities expressed strong opposition to EPA's proposed approach to expand the statutory certification requirement applicable to generators to include certification by owners or operators.

Given the Agency's interpretation of "practical", EPA agrees with the commenters. The statute requires the

generator to make the determination whether alternative treatment is practically available. It is doubtful whether the owner or operator is able to determine whether a technology is "practical" for a generator. Also, because the Agency is requiring the generator to use the *best* practically available treatment (i.e., the treatment which yields the greatest environmental benefit), the generator must make the demonstration, whether treatment is practical1y available or not. Therefore, only the generator is required (and allowed) to make the demonstration and certification pertaining to the practical availability of treatment for his waste.

However, the owner or operator *must* certify that the generator's waste has been properly treated by the technology determined by the generator to be the best practically available treatment. This is consistent with the existing certification requirements under § 268.7(b) and will allow the Agency to track the waste from cradle-to-grave.

EPA emphasizes that it is not requiring an owner or operator to demonstrate that his treatment is the best practical treatment available. Rather, the generator must make this demonstration. However, the owner or operator *must* certify that he has properly treated the waste prior to disposal.

c. *Certification.* Having somewhat better defined the terms "treatment" and "practical", EPA is promulgating a less ambiguous approach to the "soft hammer" than was proposed. However, the basic approach is essentially the same.

Prior to disposal in a landfill or surface impoundment unit meeting the minimum technological requirements of 3004(o), a generator must demonstrate his good faith effort to treat his waste by the best practically available treatment technology(ies). The generator must determine which treatment technologies are practical and available, and choose the best treatment. (Where no treatment is practical or available, the generator may so demonstrate and certify.) To make this demonstration, the generator must provide a list of facilities and facility officials contacted, complete with addresses, telephone numbers and contact dates. The generator must document or otherwise explain his determination that the treatments are not practically available, or where treatments are available, must justify that he has chosen the best treatment that is practically available.

This demonstration and certification must be submitted to the Regional Administrator. The generator must also send the demonstration and certification (and notification) to the receiving facility with the initial waste shipment. Provided that the conditions affecting the certification do not change (i.e., the same demonstration remains applicable), only the certification and notification need be sent with each subsequent waste shipment. (Copies of the certifications and demonstrations for each subsequent waste shipment need not be sent to the Regional Administrator, provided the conditions of the original certification do not change.) The notification, demonstration and certification must also be kept on-site in the generator's records. Also, should the Regional Administrator invalidate his certification, the generator must immediately notify all facilities that have received his waste that the certification (and demonstration) is no longer valid, and must keep records of this communication.

In general, one treatment process will satisfy the requirement with the exceptions of typically-used treatment trains or a combination of technologies, each of which deals with an organic and inorganic component of the waste. The Agency again notes that it generally believes that liquid injection incineration (including burning in industrial furnaces) is available for organic constituents and stabilization technologies are available for inorganic constituents.

Where treatment is available, the generator must send the notification, demonstration and certification to the treatment facility. After proper treatment, the owner or operator must then certify that the waste has been treated by the best practically available treatment (as documented in the generator's demonstration) and send this certification (and notification) and the generator's demonstration with the initial waste shipment to the disposal facility (a demonstration is not required for subsequent shipments unless conditions change). The treatment facility must keep records of demonstrations and certifications (and notifications) received and forwarded to disposal (or other receiving) facilities. The owner or operator of a treatment facility is responsible for treating the waste as the generator indicates in the certification (or demonstration) sent for that particular waste shipment, and for recordkeeping.

The disposal facility may dispose of "soft hammer" wastes (whether treated or not) only in MTR units (including those, like most section 3005 (j)(2) and (j)(4) impoundments, which satisfy the section 3004(o)(2) equivalency standard) (assuming disposal is in a landfill or surface impoundment). The owner or operator of a disposal facility is responsible for ensuring that only "soft hammer" wastes (or residuals) subject to a certification pursuant to § 268.8 (and demonstration, for the initial waste shipment) are disposed in a landfill or surface impoundment unit, and that such unit meets the minimum technological requirements.

An owner or operator of a storage facility must keep copies of notifications, demonstrations and certifications of "soft hammer" wastes received and forwarded.

To implement this approach, the Agency is departing somewhat from the proposed § 268.8. Specifically, EPA is promulgating an additional certification for the generator for cases where practical treatment *is* available. This certification requires the generator to certify that, as indicated in his demonstration, he is sending his waste to be treated by the best practically available treatment for his waste. Also, EPA is adding a certification (similar to the 268.7(b) certification) for the owner or operator to certify that he has properly treated the generator's waste, as indicated in the demonstration.

4. Treatment of "Soft Hammer" Wastes in Surface Impoundments

As discussed in the April 8 proposal (53 FR 11768), "soft hammer" wastes treated in a surface impoundment subject to the exemption for treatment in § 268.4 would be required to be removed at least annually. The Agency proposed to allow that certification for disposal may be made without removal of the residuals provided that no further treatment is practically available. The demonstration and certification may be made at the time of placement in the impoundment for treatment.

Commenters generally supported this approach, citing the identical minimum technological requirements for units which can treat restricted wastes and units which can dispose of "soft hammer" wastes (and residuals) and the potential risk of damaging the impoundment liners during removal. Therefore, EPA is promulgating its proposed approach.

5. Retrofitting Variances

As proposed, today's final rule interprets the variance provisions of 3005(j)(11) to allow "soft hammer" wastes to be treated in surface impoundments that meet the minimum technological requirements of 3004(o) or have received variances under either 3005(j)(2) (one quarter mile from an underground source of drinking water and compliance with applicable ground

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water monitoring requirements) or (j)(4) (located and designed to prevent migration of hazardous constituents to ground water or surface water). This result is logical since wastes not meeting treatment standards can also be treated in such impoundments (see section 3005(j)(11)). If there is no further treatment practically available, the residuals would not have to be removed annually, again paralleling the requirements for wastes for which treatment standards have been set and which are being treated in surface impoundments.

Although many commenters stated that the retrofit waivers granted under 3005 (j)(3) or (j)(13) should also be automatically recognized under the land disposal restrictions, the Agency disagrees. EPA believes that Congress would have included these waivers had it intended to do so. Such waivers simply do not automatically satisfy the equivalency standard in section 3004(o)(2), although they may on a unit-specific basis. Moreover, the absence of such exemptions in section 3005(j)(11) is highly suggestive. Even if EPA somehow construed the "soft hammer" provision to allow placement in non-equivalent section (j)(3) and (j)(13) impoundments, placement would still be prohibited under section 3005(j)(11). Therefore, "soft hammer" wastes cannot be treated in surface impoundments operating under retrofit waivers granted under the authority of 3005(j) (3) or (13), unless an equivalence demonstration has been made under 3004(o)(2). If this demonstration has been made, the surface impoundment has satisfied the requirements that would be applicable to new impoundments, and is not prohibited from receiving "soft hammer" wastes. (For a further discussion of these issues, see the April 8 proposal at 53 FR 11768.)

6. Storage Prohibition

As discussed in the April 8 proposal (53 FR 11770–11771), the Agency believes the storage prohibition in § 268 50 is applicable to all First Third wastes, including "soft hammer" wastes. The storage prohibition in RCRA section 3004(j) applies to wastes which are prohibited from "one or more methods of land disposal", and in RCRA section 3004(g)(6), "soft hammer" wastes are prohibited from disposal in a landfill or surface impoundment unit (unless subject to a valid certification).

EPA's proposed approach was that the storage prohibition would no longer apply to "soft hammer" wastes which are subject to a valid certification under § 268.8. No comments strongly opposing this approach were received, and therefore, the Agency is promulgating the approach as proposed. "Soft hammer" wastes thus are prohibited from storage under § 268.50, unless such wastes are subject to a valid certification under § 268.8 (see section III.C.3. for the significance of *valid* certification).

D. Disposal of Restricted Wastes Subject to an Extension of the Effective Date

In the April 8, 1988 proposal, EPA solicited comment on its intent to change the interpretation of RCRA section 3004(h)(4) that was originally promulgated in the November 7, 1986 final rule (51 FR 40572). The Agency's original interpretation provided that restricted wastes subject to an extension of the effective date which are disposed in a landfill or surface impoundment must be disposed in a "facility" in compliance with the minimum technological requirements of section 3004(o). EPA originally interpreted "facility" to refer to the area within the property boundary, encompassing all waste management units (both new and existing). Because the minimum technological requirements of section 3004(o) (double liner, leachate collection system, and groundwater monitoring) only apply to new, replacement, or lateral expansion landfill or surface impoundment units (and not to existing units), a waste subject to an extension of the effective date could be disposed at a "facility" provided all new, replacement, and lateral expansion landfill and surface impoundment units met the 3004(o) requirements. However, this interpretation had little actual impact on whether the restricted waste would be disposed in an individual "unit" that satisfied the 3004(o) requirements.

EPA has reevaluated its original interpretation and now believes that Congress intended the term "facility" to refer to "unit", which is consistent with the Agency's current interpretation of the term "facility" in RCRA section 3004(g)(6), referring to the disposal of First Third wastes for which no treatment standards have been established. Legislative history to section 3004(h)(4), in fact, states that Congress meant to prohibit disposal of restricted wastes subject to a capacity variance in all surface impoundments or landfills except those meeting minimum technological requirements applicable to new facilities. (See H.R. Conf. Rep. No. 1133, 98th Cong., 2d. Sess., 87). (This passage in the Conference Report actually refers to disposal of wastes subject to a case-by-case capacity variance under section 3004(h)(3), but EPA sees no basis for not applying it to section 3004(h)(4) as well.)

Although many commenters opposed this reinterpretation, the Agency believes the intent of Congress is clear. These commenters argued that the language of (h)(4) unambiguously applies to entire facilities and therefore that the Agency's existing interpretation is compelled. EPA disagrees. If anything, the literal language of the provisions compells the Agency's amended interpretation, because (h)(4) refers to "such facility", referring back to landfills and surface impoundments. Moreover, the reading the commenters urge makes the entire section (h)(4) into surplusage. Facilities must already be in compliance with the requirements of section 3004(o) by virtue of section 3004(o) itself. Thus, a waste subject to a capacity variance can only go to an entire facility that is complying with section 3004(o), and a command to do so (which is how the commenters would read (h)(4)) adds nothing to the law which is not already there. Congress clearly had something else in mind in promulgating section 3004(h)(4). The "soft hammer" provision of 3004(g)(6) throws light on congressional intent. This provision, as discussed previously, definitely requires "soft hammer" wastes to be disposed in minimum technology impoundments and landfills. EPA believes that Congress intended the same result for the other type of waste for which a prohibition effective date has passed but is being disposed without complying with treatment standards, namely wastes subject to a capacity variance. Finally, when one reads the unequivocal legislative history stating that wastes subject to a variance should only be disposed in minimum technology landfills and surface impoundments, it is clear to the Agency that not only is it the better reading of (h)(4) to apply to landfill and impoundment units, but that this reading probably is compelled.

However, the Agency does agree with commenters who asserted that EPA has some flexibility in setting the effective date of this new interpretation. Many commenters claimed that an August 8, 1988 effective date of the reinterpretation would disrupt their surface impoundment operations, which have been scheduled to comply with the November 8, 1988 deadline (in section 3005(j)(1)) for retrofitting surface impoundments (i.e., the date on which surface impoundments must cease to receive, store, or treat hazardous wastes unless the unit is in compliance with the minimum technological requirements of section 3004(o), or has received a waiver

from these requirements under RCRA section 3005(j) (2), (3), (4), or (13)). While the 3-month period involved is relatively short, the Agency does agree that this reinterpretation could disrupt surface impoundment operations by, in effect, moving the retrofitting deadline ahead without ample notice. Because it is not EPA's intent to unduly disrupt business operations where flexibility exists to do otherwise, the Agency has decided to make the new interpretation of RCRA section 3004(h)(4) effective on November 8, 1988. Since the interpretation of 3004(h)(4) is not a regulation establishing a prohibition from land disposal, it need not become effective immediately (see RCRA section 3004(h)(1)). However, given that the Agency believes its earlier interpretation to be wrong, that Congress intended that wastes subject to capacity variances to go to minimum technology landfills and impoundments, and that the period of business disruption for impoundments ceases on November 8, EPA believes that good cause exists to make this interpretation effective in three months rather than six (see RCRA section 3010(b)(3)).

E. Relationship to California List Prohibitions

As discussed in the July 8, 1987 California list final rule preamble (52 FR 25773), and as reflected in § 268.32(h) (i.e., the overlap of HOCs and other prohibited wastes), where the Agency makes a waste specific determination involving a California list waste, such determinations will supersede the California list treatment standards and effective dates. This principle also applies to the restrictions on the land disposal of First Third wastes. While it is clear that Agency-established treatment standards or effective dates for First Third wastes are more waste-specific than California list determinations, the applicability of the California list restrictions to "soft hammer" wastes and wastes granted a national capacity variance requires clarification.

1. "Soft Hammer" Wastes

As stated in the April 8 proposal, many of the First Third wastes are also subject to the California list prohibitions. Once treatment standards become effective for such First Third wastes, the California list prohibitions are superseded. However, since no treatment standards will have been promulgated for "soft hammer" wastes (i.e., no waste-specific determinations will have been made for these wastes), such wastes will remain subject to the California list prohibitions and treatment standards.

Because EPA does not believe that Congress intended for the statutory California list prohibitions to act as a shield from requirements promulgated under RCRA section 3004(g)(6), the "soft hammer" requirements will also apply. This includes the requirement that when such wastes (or treatment residues) are disposed in a landfill or surface impoundment only those landfill and surface impoundment units that comply with the minimum technological requirements of 3004(o) may be used. In other words, treatment to comply with the California list prohibitions does not necessarily satisfy the "soft hammer" requirements of 40 CFR 268.8 and, in fact, the California list prohibitions represent the minimum treatment required for such "soft hammer" wastes prior to land disposal—since such wastes are prohibited from land disposal at the statutory levels.

The Agency does, however, make a distinction between wastes which are subject to the statutory prohibitions of RCRA section 3004(d) (e.g., the metals and free cyanides) and wastes which are prohibited under 40 CFR 268.32 and for which EPA has promulgated treatment standards under Part 268 Subpart D (e.g., the liquid hazardous wastes containing halogenated organic compounds (HOCs) in concentrations greater than or equal to 1000 mg/l). For wastes which are subject to treatment standards (rather than the statutory prohibitions of 3004(d), or the codification of the statutory levels, such as dilute HOC wastewaters), EPA has made a determination regarding the best treatment for such wastes. The Agency believes that this determination (and subsequent treatment standard), even though it is not necessarily a waste specific determination, is more protective than the treatment requirement under the "soft hammer" provision of § 268.8. Conversely, for wastes which are subject to the statutory prohibitions of 3004(d), or which are subject to the statutory levels codified in 40 CFR 268.32, EPA has not made a determination regarding the best treatment for such wastes, and therefore, the waste management requirements under the "soft hammer" provision of § 268.8 may be more protective.

Therefore, where "soft hammer" wastes are subject to an applicable California list treatment standard under Part 268 Subpart D (i.e., the treatment standard is currently in effect), the "soft hammer" provisions of § 268.8 do not apply. Likewise, where "soft hammer" wastes are *not* subject to an Agency-established California list treatment standard under Subpart D (or the treatment standard is not yet effective) the "soft hammer" provisions of § 268.8 are applicable, with the minimum acceptable treatment for such wastes being treatment to comply with the statutory prohibitions under RCRA section 3004(d), or the codified statutory levels under § 268.32. Because the "soft hammer" provisions are only applicable to wastes that are disposed in landfills or surface impoundments, "soft hammer" wastes disposed by other methods clearly must comply with the California list prohibitions (which apply to all forms of disposal). This approach is consistent with the Agency's intent that where more than one regulatory requirement applies, the more stringent requirement governs.

EPA is providing the following list of P- and U-list "soft hammer" wastes which are potentially subject to the California list HOC treatment standard on November 8, 1988 (see section III.H. of this preamble for a discussion of the rescission of the previously granted national variance for HOCs) for the benefit of the regulated community. EPA notes that such wastes have the *potential* to be subject to the California list HOC treatment standards, depending upon the concentration levels of Part 268 Appendix III halogenated organics (52 FR 25791). After November 8, 1988, such wastes will not be considered "soft hammer" wastes (because they will have an applicable treatment standard) and will not be subject to the prohibitions in § 268.33(f) or the certification requirements of § 268.8. The wastes must be treated in accordance with § 268.32 until EPA promulgates more waste-specific treatment standards.

"Soft Hammer" Wastes Potentially Subject to the California List HOC Treatment Standard

K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin
K021—Aqueous spent antimony catalyst waste from fluoromethanes production
K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production
K085—Distillation of fractionation column bottoms from the production of chlorobenzenes
P004—Aldrin
P016—Bis-(chloromethyl) ether
P036—Dichlorophenylarsine

P037—Dieldrin
P050—Endosulfan
P058—Fluoracetic acid, sodium salt
P059—Heptachlor
P123—Toxaphene
U029—Methyl bromide
U036—Chlordane, technical
U037—Chlorobenzene
U041—n-Chloro-2,3-epoxypropane
U043—Vinyl chloride
U044—Chloroform
U046—Chloromethyl methyl ether
U061—DDT
U066—1,2-Dibromo-3-chloropropane
U067—Ethylene dibromide
U074—1,4-Dichloro-2-butene
U077—Ethane, 1,2-dichloro-
U078—1,1-Dichloroethylene
U129—Lindane
U130—Hexachlorocyclopentadiene
U158—4,4-Methylene-bis-(2-chloroaniline)
U185—Pentachloronitrobenzene
U192—Pronamide
U209—1,1,2,2-Tetrachloroethane
U210—Tetrachloroethylene
U211—Carbon tetrachloride
U226—Methylchloroform
U227—1,1,2-Trichloroethane
U228—Trichloroethylene
U237—Uracil mustard

The following examples illustrate the principles discussed above regarding overlap of California list and "soft hammer" wastes:

1. Generator A generates a corrosive waste which is also a commercial chemical product listed in § 268.10 (i.e., a First Third waste). EPA has not promulgated a treatment standard for this waste.

Generator A cannot dispose of the waste until it is treated so that it is no longer corrosive (or liquid) (see 40 CFR 268.32(a)(1), codifying the statutory prohibition level). The waste also is subject to the "soft hammer" provisions, so that further treatment may be required if the waste is destined for land disposal in an impoundment or landfill, and such units must comply with the minimum technological requirements of 3004(o).

2. Generator B generates a First Third waste for which no treatment standard has been promulgated that also contains greater than 1000 ppm HOCs, and that is not a wastewater.

In this case, the waste must be treated by the method specified for HOCs in § 268.42. Residues from such treatment would not be subject to the "soft hammer" provisions.

3. Generator C generates a First Third waste for which there is no treatment standard. He mixes this waste with a California list HOC waste that is subject to the treatment method specified in § 268.42.

The mixed waste must be treated by the method specified in § 268.42. Residues from such treatment remain subject to the "soft hammer" provisions (since one cannot automatically render the "soft hammer" provisions inapplicable by mixing a "soft hammer" waste with a waste for which a treatment standard is applicable; to allow this would create a counterproductive incentive. Moreover, the "soft hammer" portion of the mixture still has not met an applicable treatment standard.) However, if the "soft hammer" waste contains organic toxicants, the HOC treatment method undoubtedly constitutes "treatment" for the purposes of the "soft hammer" waste (although further treatment of ash for inorganic constituents may be needed, if practically available).

EPA is aware that the interpretive reading provided in this example means that all residues from treating mixtures of wastes subject to treatment standards and "soft hammer" wastes would have to be disposed in surface impoundments and landfills satisfying minimum technology requirements. There could be cases where it is technically desirable to commingle "soft hammer" wastes with prohibited wastes subject to a treatment standard. If a person desired to dispose of the residues in a non-minimum technology unit, however, he could only do so by segregating the "soft hammer" wastes for separate treatment. The Agency is not certain how often this situation might arise. Should it turn out to pose significant practical problems, EPA would consider redesignating such treatment residues as Third wastes provided all applicable treatment standards are satisfied and provided that the mode of treatment also is appropriate for the "soft hammer" waste.

2. Wastes Granted a National Variance

In the April 8 proposal, EPA solicited comment on its approach to the applicability of the California list prohibitions to First Third wastes for which treatment standards are promulgated, but which also receive a national variance due to insufficient treatment capacity. In setting the treatment standard, the Agency is making a more waste-specific determination (than the California list prohibitions); however, this determination is not effective until the variance ends. EPA proposed an approach where such First Third wastes would remain subject to the California list prohibitions during the period of the national variance.

For example, assume that a liquid metal-containing First Third waste has been granted a national variance because of inadequate capacity to treat the waste to the treatment standard, yet was not granted a variance under the less stringent (in terms of concentration levels of the metal) California list prohibitions that would otherwise be applicable. The Agency's proposed approach would require that, because capacity exists to treat the "California list" waste to allow for land disposal, the California list prohibitions still apply and the "First Third" waste would be required to comply with the California list prohibitions. The First Third treatment standard would then become applicable when the national variance expires.

EPA received no comments presenting a valid argument for not promulgating this approach, and thus, the Agency is finalizing the proposed approach. This approach is also consistent with the Agency's intent that where more than one regulatory requirement applies, the more stringent requirement governs.

F. Petitions To Allow Land Disposal of Prohibited Wastes

Under section 3004 (d), (e), and (f) of RCRA, owners and operators of land disposal units and deep injection wells may petition the Administrator for a variance from the prohibition on land disposal of untreated hazardous waste. To be considered for such a variance, the petitioner must demonstrate "to a reasonable degree of certainty that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

On November 7, 1986 EPA promulgated regulations (51 FR 40572) that provide procedures for submittal of petitions to allow land disposal of waste prohibited under Subpart C of Part 268. The regulation (40 CFR 268.6) includes information that must be provided in a "no migration" demonstration, the criteria the demonstration must meet, and the Agency's review and approval procedures.

Today's final rule creates additional requirements at 40 CFR 268.6 for petitioners seeking to demonstrate "no migration" for land disposal units by adding new procedural and informational requirements, effective on the date of promulgation, to those already codified at 40 CFR 268.6. (Note: The Agency also has proposed substantive rules to implement the land disposal restrictions for waste disposed in deep injection wells (52 FR 32446, August 27, 1987). The reader should refer to this for a complete discussion of how the Agency intends to apply the "no

migration" standards to deep injection wells.) The additional requirements for land disposal units that EPA proposed (53 FR 11771) involve the following factors:

1. Compliance with other applicable laws;
2. Monitoring plans for land disposal units;
3. Changes in operating conditions from the ones described in the variance application; and
4. Detection of migration of hazardous constituents.

For today's final rule, these requirements remain largely unchanged from the proposal. The Agency received a number of comments regarding the additional requirements for "no migration" demonstrations promulgated in today's rule, as discussed below.

1. Other Applicable Federal, State, and Local Laws

Commenters both supported and opposed a provision that would require petitioners to include information demonstrating that units for which they seek a "no migration" variance comply with other applicable Federal, State, and local laws. Those objecting to this provision did so implicitly, by opposing any additional burdens or requirements on petitioners desiring to demonstrate "no migration" and receive a variance.

As EPA stated at proposal, this requirement is needed to reveal environmentally sensitive areas and endangered species which must be protected. Since all subtitle C facilities obviously must comply with all applicable laws, the Agency is not imposing any substantive burden, and indicating which other laws apply in the "no migration" petition serves the useful function indicated above and so justifies any incremental administrative burden.

2. Monitoring Plans

a. *Requirement for monitoring media of concern to verify compliance with "no migration" demonstration.* EPA proposed that petitioners monitor their units (unless monitoring is technically impractical or infeasible) to determine if the "no migration" standard has been satisfied. Commenters both supported and opposed different aspects of this provision. The Agency continues to believe its proposal to be simple common sense. Without continued monitoring of a unit to verify the demonstration that there will be no migration for as long as the waste remains hazardous, there is no way to confirm that the "no migration" standard is being met. Thus, EPA is requiring monitoring of the appropriate media at the unit boundary. Since a "no migration" unit is to prevent migration for as long as the waste remains hazardous, monitoring in theory could last in perpetuity. EPA believes as a practical matter that monitoring until the end of the post-closure care period in 40 CFR 264.117(a)(2) (i) and (ii) (or until the wastes are removed from the unit) should suffice. To preserve flexibility, however, the Administrator may specify an alternate monitoring period on a site specific basis.

Other commenters emphasized that monitoring should not be required in a generic fashion that would cause unnecessary monitoring at some units, with no site-specific flexibility. The Agency agrees. Petitioners should include information that clearly demonstrates why monitoring of any medium would be unnecessary.

Commenters also suggested that where Subpart F ground water monitoring already exists, additional ground water monitoring should not be necessary. EPA disagrees. Subpart F ground water monitoring is not measured at (or as near as possible to) the unit boundary, and so will not detect migration at the earliest practicable time, and therefore will not be sufficient for the purposes of "no migration" verification. The Agency believes that monitoring immediately at, or as near as possible to, the unit boundary must be performed to assure that there "will be no migration from the disposal unit."

b. *Exclusion from "no migration" where monitoring is "technically infeasible or impractical".* EPA proposed that monitoring would not be required for one or more media where owners or operators demonstrate that monitoring is technically infeasible or impracticable. Most comments received opposed this provision. Commenters believed that monitoring should be mandatory, and that no infeasibility exclusion exists under Part 264 monitoring requirements. Some commenters argued that if monitoring cannot be performed to verify "no migration", a variance should not be granted, because a demonstration cannot be made with a "reasonable degree of certainty" if monitoring is infeasible. Some commenters felt that predicting "no migration" based on modeling cannot replace the use of monitoring data to verify that migration is not occurring.

The Agency agrees in principle that, in most cases, monitoring of surface disposal units is required to verify a "no migration" demonstration and that modeling alone will not be sufficient for such units. The Agency recognizes, however, that monitoring immediately at the unit boundary sometimes will be difficult in certain locations or under unusual physical conditions at a site. In these cases, EPA would require monitoring (or modified monitoring) to be conducted as near as possible to the unit boundary without compromising the integrity of the unit.

3. Changes From Conditions Described in the Variance Application

This provision requires owners or operators to report to the Administrator any changes or planned changes in conditions at the unit and/or the environment around the unit that may affect conditions upon which the petition was approved. Most comments received concerning this provision supported minimizing reporting requirements for those cases where an owner or operator plans or observes changes to a "no migration" unit. Commenters favored immediate reporting only of those changes to the variance that are significant and affect the potential for migration of hazardous constituents from the unit. EPA agrees that minor and seasonal changes in parameters such as pH, conductivity, salinity, etc. do not warrant a report to the Agency. However, the Agency believes that where changes are planned or occur that would significantly depart from those conditions described in the variance and that would affect potential migration of hazardous constituents, the owner or operator should report them. In particular, proposed changes in the waste stream received, operating practices, or unit design and construction must be reported. In addition, unusual and significant changes in the environment, such as the water table or surface water flow, warrant reporting.

4. Detection of Hazardous Constituent Migration

This provision remains essentially unchanged from the proposal. It requires that if the owner or operator determines there is migration of hazardous constituents from the unit, he must immediately suspend receipt of prohibited waste and notify EPA within 10 days. The Agency is required to determine the appropriate action to be taken within 60 days from notification.

Certain commenters indicated that to avoid false positives, additional sampling to verify a release should be allowed before making a determination that migration has occurred. The Agency agrees. While some commenters objected that action should be taken immediately upon detection of a release, EPA believes that verification within the 10-day time period is reasonable. The

proposed 10-day notification period should provide ample time for the owner or operator to perform additional sampling to verify that waste constituent migration from a unit has occurred. Therefore, the Agency has decided to retain a 10-day notification period.

Commenters also objected to the proposed 60-day period, in which the Agency determines whether the owner or operator of a unit can continue to receive prohibited wastes and whether the "no migration" variance is to be revoked, as being too lengthy. EPA disagrees and believes that the 60-day period is needed to determine whether the termination of waste acceptance and the revocation of the "no migration" variance is appropriate. Furthermore, the 60-day time period is the maximum time for the Agency to decide; under circumstances that the Agency determines warrant a faster response, it will do so.

Some commenters also stated that where the release is temporary, or once it has been corrected, waste acceptance should be resumed. EPA disagrees. We instead concur with comments indicating that once a verified release has occurred at levels that would constitute migration, the "no migration" demonstration will have failed, and the unit will have violated the terms of the "no migration" variance. At this point, the "no migration" variance would be revoked for that unit. (Corrective action might also be required pursuant to section 3004(u) or 3008(h).)

G. Approach to Comparative Risk Assessment

1. Proposed Use of Risk Analyses

Within the regulatory framework for implementing the land disposal restrictions, the Agency has in the past considered certain criteria in the determination of "available" treatment technologies. Among the criteria formerly considered was whether application of a treatment technology poses greater risks to human health and the environment than those posed by direct land disposal of the waste. See 51 FR 40592–40593 (November 7, 1986).

The previous framework for determining Best Demonstrated Available Technologies employed a methodology that evaluated the analytical results of the comparative risk analyses to identify whether a treatment alternative was "available" to set 3004(m) treatment standards. Because of the strong statutory presumption against land disposal, particularly RCRA sections 1002(b)(7) and 1003(a)(6), the analysis required that a treatment technology must be clearly more risky than land disposal (beyond the level of uncertainty in the model) before it could be designated as unavailable. Although the Agency conducted comparative risk assessments in the development of regulations prohibiting land disposal of certain spent solvent and dioxin-containing hazardous wastes (November 7, 1986 final rule) and California list wastes (July 8, 1987 final rule), use of the analyses did not affect the determination as to whether a specific treatment technology was available.

In both proposals on First Third wastes (see 53 FR 11774, April 8, 1988 and 53 FR 17606, May 17, 1988), it was explained that the Agency had decided not to utilize the existing comparative risk assessment approach for this rulemaking and was reconsidering its future application in the determination of "available" treatment technologies. One of the primary concerns addressed in the proposals related to cases where the land disposal practice is found to be less risky than any of the treatment alternatives. In such a situation, the analysis would result in a determination that no treatment technologies are "available" for the purpose of setting treatment standards. Because land disposal is prohibited by the statute in many cases, this determination would mean that a generator could not treat and land dispose of such wastes, even though the treatment technologies in question may be in compliance with other regulatory standards that are deemed protective of human health and the environment and may provide substantial treatment.

In the April 8, 1988 and May 17, 1988 proposals, the Agency solicited comment on a risk analysis approach that would distinguish between the overall degree of risks posed by alternative treatment technologies. Under this proposed approach, the net risk posed by alternative practices would be considered in the identification of "best" treatment technologies.

2. Agency Response to Comments

A number of commenters submitted remarks pertaining to the utilization of some form of risk analysis process. Several of these commenters specifically addressed the proposed approach to comparative risk assessment, while most of the others made recommendations to EPA on risk comparisons between alternative treatment technologies.

Those who commented on the proposed approach, generally agreed that the comparative risk assessment should be modified to account for the anomalous results that could occur using the existing method. One commenter supported the Agency's decision in which the risks posed by direct land disposal and alternative treatment technologies would no longer be compared. This commenter asserted that EPA does not have the authority under RCRA to conduct such a comparison as a basis for establishing BDAT. Other commenters continued to support an approach that weighs the risks of treatment technologies against the risks of disposal of untreated wastes in the consideration of "available" treatments. One commenter argued that the existing comparative risk approach should be modified rather than discarded because it serves as a valuable tool where land disposal is less risky than some treatment alternatives but more risky than others. Another commenter stated that Congress could not have intended the EPA to choose a treatment method that presents more risks than land disposal.

As indicated in the November 7, 1986 final rule (see 51 FR 40593), EPA interprets section 3004(m) as directing the establishment of treatment standards which minimize the threat to the "environment" as applying to all media (i.e., air, land, and water). Because there is no language indicating that this term does not include all media, EPA does not believe that the section 3004(m) standard can be read to preclude comparative risk analyses. However, the development of 3004(m) standards, which substantially diminish toxicity or reduce the likelihood of migration of hazardous constituents, specifically apply to "levels or methods of *treatment*", and are not contingent upon a risk comparison of treatments to land disposal. Upon further consideration, the Agency believes that the existing risk analysis approach does not begin with a comparison of equally viable options since land disposal of untreated wastes is not a viable alternative management practice under RCRA (see also RCRA sections 1002(b)(7) and 1003(a)(6)). In view of this point and the concern noted earlier, the Agency has concluded that use of the risk analysis method previously employed provides minimal benefit as a decision tool. Thus, the Agency has chosen not to utilize the existing comparative risk assessment approach in developing this final rulemaking.

The majority of the commenters who addressed risk assessments urged the Agency to compare risks between alternative treatment technologies. Several commenters asserted that the

methodology for selecting BDAT should assess the achievement of alternative treatment technologies in reducing the release of hazardous constituents to environmental media. Other commenters urged the Agency to complete comparative risk assessments between specific technologies and the proposed BDAT with respect to only certain hazardous waste codes. The Agency agrees that comparative risk analyses between applicable technologies would likely provide useful information for identifying BDAT.

3. Future Use of Comparative Risk Assessment

In the proposed rulemakings (53 FR 11774, April 8, 1988; 53 FR 17606, May 17, 1988), EPA indicated that risk analyses may be conducted to distinguish between the overall degree of risk posed by alternative treatment technologies and to make determinations concerning the "best" technology based on net risk posed by the alternative practices. In light of the commenters' support, EPA is examining the feasibility of implementing such an approach under future land disposal restriction determinations. However, as a result of the time constraints of the statutory schedule, EPA is unable to develop and utilize such an approach for the waste codes addressed by today's final rulemaking. To the extent possible, additional details of an approach for comparing risks between alternative technologies will be included as part of a proposed rulemaking on land disposal prohibitions for "Second Third" wastes.

H. Determination of Alternative Capacity and Effective Dates for First Third Wastes, F001–F005 Spent Solvents, California List Halogenated Organic Compounds, and Contaminated Soil and Debris

As explained in the May 17, 1988 proposed rule, EPA developed a new data base for capacity analyses, comprised of information from responses to the National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities (the TSDR Survey). EPA conducted the TSDR Survey during 1987 and early 1988 to obtain comprehensive data on hazardous waste management capacity and on volumes of hazardous waste being land disposed. The TSDR Survey was sent to all RCRA permitted or RCRA interim status facilities that have or plan to have treatment, disposal or recycling capabilities. The TSDR Survey was also sent to a statistical sample of facilities that have only storage. This new data base is the primary source of data for evaluation of capacity for this rule, with supplemental data used as needed. A complete description of the TSDR Survey data set and other supplemental data will be found in the *Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions First Third Waste Volume, Characteristics and Available Treatment Capacity*, referred to hereafter as the "Capacity Background Document".

On November 8, 1988 certain capacity variances promulgated in the Solvents and Dioxins final rule (51 FR 40572) expire and the wastes that had been covered by the extended effective date will be subject to the land disposal restrictions treatment standards. Also, as explained in section III. H. 4., the Agency is rescinding certain capacity variances promulgated in the California list final rule (52 FR 25760). Several commenters expressed concern that the increase in wastes requiring treatment capacity because of variance expirations and rescissions were not included in the capacity analyses for the proposed rule. The commenters argued that the volumes of these wastes reduce the capacity available for treatment of First Third wastes. However, the commenters were incorrect in this assertion; the volumes of wastes that were subject to capacity variances that are expiring or are being rescinded were included in the capacity analyses in the May 17 proposal. The capacity available for treating First Third wastes presented in the May 17 proposal, and in today's final rule, reflects only the amount of available capacity remaining after accounting for the treatment of wastes restricted from land disposal under the Solvents and Dioxins and the California list final rules.

1. Total Quantity of Land Disposed First Third Wastes

The capacity analyses for the First Third wastes for which EPA is promulgating treatment standards were performed using the new TSDR Survey data. EPA estimated the total quantities of First Third wastes that are land disposed annually based on the results of the TSDR Survey. The total waste quantities and the methods by which the wastes are stored, treated, and disposed are presented in Table 1 below. One method of land disposal, underground injection, is not included in the analyses. Underground injection has been addressed in separate rulemakings. Other methods of land disposal that are affected by today's rule, such as utilization of salt dome and salt bed formations and underground mines and caves, are not addressed in the capacity analyses because of insufficient data.

About 71 million gallons of First Third wastes are disposed of in surface impoundments annually. Ultimately, all of this waste will require alternative treatment capacity. Approximately 6 million gallons of First Third wastes are stored in surface impoundments annually. Stored wastes are eventually treated, recycled, or permanently disposed in other units. To avoid double counting, the volumes of wastes reported as being stored in surface impoundments were not included in the estimates of volumes requiring alternative treatment capacity. However, these wastes will eventually require alternative storage capacity because of the restrictions on placement of wastes into surface impoundments.

About 328 million gallons of First Third wastes are treated annually in surface impoundments that do not meet minimum technology requirements, or are residuals that have been removed from those surface impoundments that do meet minimum technology requirements. An additional 49 million gallons are stored in waste piles, 29 million gallons are treated in waste piles, and 378 million gallons are disposed in landfills and land treatment units.

TABLE 1.—TOTAL VOLUME OF LAND DISPOSED FIRST THIRD WASTES

[Million gallons/year]

Storage:	
Waste piles	49
Surface impoundments	6
Treatment:	
Waste piles	29
Surface impoundments	328
Disposal:	
Landfills	302
Land treatment	76
Surface impoundments	71
Total	861

Table 2 and Table 3 subdivide the total amount of land disposed First Third wastes into two categories: wastes for which treatment standards are being promulgated today, and wastes for which treatment standards are not being promulgated but which are subject to the "soft hammer" requirements. Wastes for which standards are being promulgated today are presented in Table 2 below.

TABLE 2.—VOLUME OF LAND DISPOSED FIRST THIRD WASTES FOR WHICH STANDARDS ARE BEING PROMULGATED

[Million gallons/year]

Storage:	
Waste piles	41
Surface impoundments	4
Treatment:	
Waste piles	27
Surface impoundments	320
Disposal:	
Landfills	274
Land treatment	76
Surface impoundments	70
Total	812

Table 3 presents the waste quantities and the method of land disposal for the First Third wastes for which treatment standards are not being promulgated, and which are subject to the "soft hammer" provisions. This category includes all of the First Third P and U wastes, as well as the following wastecodes: F007, F008, F009, F019, K011, K013, K014, K017, K031, K035, K046(partial), K069(partial), K073, K084, K085, K086, K101 (partial), K102 (partial), K106, and wastewaters from F006, K004, K008, K021, K022, K036, K046, K060, K061, K069 and K083.

Table 3.—VOLUME OF LAND DISPOSED FIRST THIRD WASTES FOR WHICH STANDARDS ARE NOT BEING PROMULGATED

[Million gallons/year)

Storage:	
Waste piles	8
Surface impoundments	2
Treatment:	
Waste piles	2
Surface impoundments	7
Disposal:	
Landfills	28
Land treatment	<1
Surface impoundments	1
Total	48

2. Required Alternative Capacity

The Agency assessed the requirements for alternative treatment capacity resulting from the promulgation of today's rule. EPA first characterized the volumes of First Third wastes for which treatment standards are being promulgated, since these wastes require alternative treatment. Waste streams were characterized on the basis of land disposal method, waste code, and physical/chemical form. Using this information, the Agency determined which treatment technologies are applicable to the waste volumes and placed the wastes into treatability groups. The volumes of alternative treatment capacity that would be required when owners or operators comply with the land disposal restrictions being promulgated was then determined. Based on this analysis, the Agency estimates that today's rule could affect about 812 million gallons of First Third wastes that are land disposed annually. Of this total, about 777 million gallons will require alternative treatment capacity, the remainder being stored. As explained elsewhere in this preamble, EPA is promulgating treatment standards expressed as concentration limits based on the performance of the Best Demonstrated Available Technology (BDAT). It is not a requirement that BDAT be used to achieve the concentration levels, but these technologies, as described in section III. A., were generally used as the basis for determining available capacity.

Several commenters expressed concern that the capacity required to treat "soft hammer" wastes was not considered in the capacity analyses, and because of this omission, the amount of available capacity would be less than was presented in the May 17 proposed rule. Since "soft hammer" wastes have no BDAT treatment standards, there is nothing upon which to base a capacity analysis. The Agency evaluated the characteristics and volumes of these wastes, and found that because of their physical form and comparatively small volume, they will not have a significant impact on available capacity. (See Table 3.) In addition, the "soft hammer" provisions require that wastes be treated where treatment is practically available (assuming such wastes are disposed in landfills or surface impoundments). If treatment is found not to be practically available, the wastes may be land disposed after appropriate certifications as to availability and practicality of treatment are made. In effect, the generators of "soft hammer" wastes will do waste-specific capacity analyses. If treatment capacity is in particularly short supply, generators can be expected to certify to the lack of practically available treatment and dispose with limited or no treatment. Thus, these wastes should not displace treatment capacity for other restricted wastes.

Also, several commenters said that the capacity for wastes generated at CERCLA response actions and RCRA corrective actions should be included in the analyses, since the number of response actions and corrective actions will be increasing and they could require much of the available capacity to treat large volumes of wastes. The Agency has determined that the greatest likelihood for a conflict of this type is for those wastes where BDAT is identified as solids/sludge incineration. The Agency has evaluated the potential demand for solids incineration capacity from CERCLA response actions and RCRA corrective actions. Although only gross estimates are available at this time, it is clear that this added increment of wastes would be in excess of the solids incineration capacity available. Therefore, a two-year national capacity variance has been granted to soil and debris from RCRA corrective actions and CERCLA response actions contaminated with wastes for which BDAT standards are based on incineration (see section III. H. 5. b.). Other types of treatment capacity (e.g., stabilization, wastewater treatment) appear to be available in amounts sufficient to accommodate other RCRA corrective action and CERCLA response action wastes. EPA plans to do a more quantitative accounting of these wastes for future land disposal restrictions rules as volume estimates become more precise.

Several commenters also argued that the quantities of wastes requiring alternative capacity are underestimated because they do not include "derived from" wastes. To the extent that "derived from" wastes were described in the TSDR survey, they are accounted for in the capacity estimates. However, if "derived from" wastes were misreported or were not included in the TSDR survey report, they may be underestimated. The Agency believes that most of the potential underreporting of "derived from" wastes was for landfill leachate. Large, commercial hazardous waste landfills can produce substantial quantities of leachate which, depending on the types and levels of contamination, may require further treatment. In response to comments raising potential capacity problems for treatment of leachate, the Agency contacted several large commercial hazardous waste landfill operators to determine how they now manage leachate. They indicated that most leachate is now sent to POTW's, to NPDES discharge or to underground injection. Since all of these practices can continue to be used, there does not appear to be a capacity constraint on disposal of leachate.

Commenters also raised questions about the ability to treat leachate derived from multiple waste streams to the appropriate treatment standards.

The Agency examined data on leachate submitted by large, commercial hazardous waste facilities and found that levels of hazardous constituents were generally well below those seen in industrial wastes. This indicates that wastewater treatment processes should provide sufficient treatment to allow leachate to meet the applicable standards. Since available wastewater treatment capacity far exceeds the demand, the Agency has concluded that there is no capacity constraint on treatment of leachate. (See section III. A. 4. for more discussions of the applicability of treatment standards to leachate.)

The volumes of First Third wastes that require alternative treatment/recycling capacity are presented in Table 4. This table includes only the quantities of wastes that require alternative commercial capacity; the volumes given do not include wastes that can be treated on-site by the generator. Several commenters argued that the Agency overestimated the amount of on-site capacity since there is no guarantee that on-site treatment will achieve the regulatory treatment standards. However, the Agency included only BDAT treatment in its assessment of both off site and on-site capacity. EPA develops BDAT such that any well-designed and well-operated treatment process should be capable of complying with the standards.

TABLE 4.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES

[million gallons/year]

Waste code	Required capacity
F006	129.0
K001	3.7
K021	[1] 0.0
K022	0.1
K044	0.0
K045	0.0
K046	1.6
K047	0.0
K060	0.0
K083	0.1
K086	0.2
K087	1.4
K099	0.0
K101/102	0.1
K004	0.0
K008	0.0
K015	0.0
K016	0.3
K018	0.0
K019	0.1
K020	<0.1
K024	0.2
K030	<0.1
K036	0.0
K037	<0.1
K048	37.1
K049	32.6

TABLE 4.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES—Continued

[million gallons/year]

Waste code	Required capacity
K050	11.8
K051	78.1
K052	12.5
K061	83.1
K062	40.1
K069	0.0
K071	3.9
K103	0.1
K104	<0.1

[1] See section III. H. 3. i. for a discussion of wastes not requiring alternative treatment capacity.

3. Capacity Currently Available and Effective Dates

Table 5 below presents the volumes of First Third wastes that require alternative treatment capacity, arranged according to the technology description of the alternative treatment required. The amount of capacity that is available in each case is also presented.

It is important to note that some of these wastes, because of their actual physical form, cannot meet treatment standards simply by using the technology identified as BDAT. These wastes must be treated through several steps, called a treatment train. The Agency assumed that the residuals in such cases will be treated using alternative technologies prior to land disposal; therefore, the total volumes reported were assigned to appropriate technologies.

TABLE 5.—ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES

[Million Gallons/Year]

Technology	Available	Required
Incineration:		
Liquids	274	<1
Solid/Sludge	7	[1] 6–160
Solvent Extraction	1	[1] 0–154
Stabilization	495	231
High Temperature Metals Recovery	34	62
Wastewater Treatment:		
Chromium reduction, chemical precipitation, settling/ filtration	260	40
Carbon adsorption, chromium reduction, chemical precipitation, settling/filtration	12	1
Sludge Treatment:		
Acid leaching, chemical oxidation, sludge dewatering	0	4

[1] Both incineration and solvent extraction are alternative technologies for K048–K052. Thus, the alternative capacity required for First third wastes ranges from 6 to 160 million gallons/year for solid/sludge incineration, and 0 to 154 million gallons/year for solvent extraction.

a. *Liquid Incineration.* Treatment standards for K015, K083 and K086 wastes are based on liquid incineration. The Agency estimates that about one million gallons per year of these wastes require liquid incineration treatment capacity. Using the new TSDR survey data, the Agency evaluated commercial capacity and determined that there is approximately 274 million gallons available, ample capacity to treat these wastes. Thus, no capacity variance was granted for K015, K083, or K086 wastes.

b. *Solid/Sludge Incineration Capacity.* Treatment standards for K001, K016, K018, K019, K020, K022, K024, K030, K037, K087, K101 and K102 wastes are based on solid/sludge incineration. The Agency estimated that 6 million gallons per year of these wastes require solid/sludge incineration capacity. Using the new TSDR Survey data, the Agency evaluated commercial incineration capacity and determined that there was about 7 million gallons of solid/sludge incineration capacity available. Based upon this data, the Agency did not grant a capacity variance for these wastes.

The Agency received a number of comments on the availability of incineration for K001 wastes. Commenters noted that some incineration facilities refused to take K001 wastes containing pentachlorophenol, while other facilities would accept only "true" K001 wastes, and not wastes which resemble, but are not, K001. Commenters also noted that substantial volumes of K001 wastes, as well as some soils contaminated with K001, will be generated when surface impoundments at wood preserving facilities are closed. Based on these factors, some commenters requested that a two-year national capacity variance be granted for K001 wastes.

An industry association submitted comments which included an informal survey conducted by one of its members of eight solids incineration facilities. According to these comments, three of the facilities would accept K001 waste for incineration without constraints on whether it was "true" K001 or K001-like waste. A fourth facility expected to receive a permit modification prior to August which would enable it to take K001, again without constraints. Two facilities said they would incinerate "true" K001 wastes. One facility would not accept K001 with pentachlorophenol. The final facility was not planning to continue incineration activities.

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This information indicates that there is capacity available to incinerate "true" K001 wastes. The wastes which resemble, but are not, K001 are not subject to the treatment standards and, therefore, cannot be considered in capacity determinations. Finally, if a particular generator cannot find an incineration facility that can or will accept his waste, he may qualify for a case-by-case extension of the effective date (see 40 CFR 268.5).

It is possible that K001 wastes produced when old surface impoundments are closed could exceed the available commercial incineration capacity, particularly if the incineration was scheduled to occur within the next twelve months. However, a number of factors could affect the amount of K001 generated during closures, particularly closure plans which incorporate *in situ* treatment either as a final solution or as a volume reduction measure prior to removal of the waste. Also, as noted above, the generator can apply under § 268.5 for a case-by-case extension of the effective date where special circumstances pertain.

Soils and debris contaminated with K001 (and other First Third wastes requiring incineration) are being granted a two-year national capacity variance (see section III. H. 5.).

Based upon these factors, the Agency will not grant a capacity variance to K001 wastes.

c. *Solvent Extraction or Incineration.* Treatment standards for K048–K052 wastes are based on solvent extraction followed by stabilization of residuals or sludge incineration followed by stabilization of ash. The Agency estimates that about 154 million gallons per year of these wastes require either solvent extraction or sludge incineration capacity as a result of today's final rule. The Agency evaluated commercial capacity and determined that there is approximately 1 million gallons of solvent extraction capacity and 7 million gallons of sludge/solid incineration capacity available. (Approximately 6 million gallons of sludge/solid capacity will be needed for K001, K016, K019, K020, K022, K024, K030, K037, K087, K101, and K102 wastes.) Therefore, a 2-year national capacity variance from the effective date is being granted for these wastes.

d. *Stabilization.* Treatment standards for F006 and K046 wastes are based on stabilization. In addition, stabilization is required for treatment residuals from other wastes. (As discussed in section III. A. 7., the Agency is setting a treatment standard based on stabilization for non-explosive K046 wastes, while allowing the "soft hammer" to apply to explosive K046 wastes.) Because the Agency does not have data which allows it to determine the volume of waste associated with each type of K046, EPA has assumed the entire volume will require stabilization. The Agency estimates that about 148 million gallons per year of these wastes require stabi1ization capacity as a result of the treatment standards promulgated today.

Many commenters questioned the capacity analysis for F006, arguing that the evaluation of available stabilization capacity does not guarantee that it is capable of achieving the treatment standard. The standard is based on the performance of cement and pozzolanic-based stabilization. Although the TSDR Survey does contain data on other stabilization methods, only these two types of stabilization were included in the capacity analysis (i.e., only the types considered as BDAT). Furthermore, the methodology for determining BDAT includes factors that account for performance variability; therefore, the Agency is reasonably sure that the capacity included in this analysis is capable of achieving the treatment standard. The Agency evaluated commercial capacity and determined that there is approximately 495 million gallons of stabilization capacity available, more than enough to treat these wastes. No capacity variance is being granted for wastes for which treatment standards are based on stabilization.

e. *High Temperature Metals Recovery/Stabilization.* The treatment standard for K061 waste containing 15% or more total zinc (high zinc K061) is based on high temperature metals recovery. For wastes containing less than 15% zinc (low zinc K061) the standard is based on stabilization. Based on data received from commenters, approximately 75% of K061 waste contains 15% or more total zinc. Thus, an estimated 62 million gallons of high temperature metals recovery capacity is required but only 34 million gallons of capacity is available. Therefore, a two-year national capacity variance from the high temperature metals recovery standard has been granted to high zinc K061 wastes. As discussed in section III. A. 7., the Agency is setting an interim standard for high zinc K061 wastes based on stabilization. Consequently the entire volume of K061 waste will require stabilization capacity on an interim basis. Thus, the required stabilization capacity is 83 million gallons for K061 plus 148 million gallons for other wastes, for a total of 231 million gallons.

Using the new TSDR survey, the Agency has determined that there is enough stabilization capacity for K061 wastes and other waste codes and, therefore, no capacity variance is being granted for the two-year period during which the interim stabilization standard will be in effect.

f. *Wastewater Treatment.* Treatment standards for K062 waste are based on wastewater treatment (chromium reduction, chemical precipitation and filtration). The Agency estimates that less than 42 million gallons per year of this waste require various types of wastewater treatment as a result of the treatment standards promulgated today.

Using the new TSDR survey data, the Agency evaluated commercial capacity and determined that there is adequate capacity available for wastewater treatment. Therefore, no capacity variance is being granted for K062.

g. *Sludge Treatment.* Treatment standards for K071 waste are based on sludge treatment (acid leaching, chemical oxidation, and sulfide precipitation and filtration). The Agency estimates that about 4 million gallons per year of this waste requires sludge treatment as a result of the treatment standards promulgated today.

After analyzing the new TSDR Survey data, the Agency has determined that there is not enough treatment capacity commercially available to treat K071. Therefore, a 2-year national capacity variance is being granted for K071.

h. *Wastes for Which Treatment Standards are Based on Solvent Recovery or Solvent Extraction.* The treatment standards for K103 and K104 wastes are based on solvent recovery. BDAT for K103 is solvent extraction, followed by steam stripping, followed by carbon adsorption, followed by carbon regeneration. BDAT for K104 is solvent extraction followed by liquid incineration and followed by steam stripping, followed by carbon adsorption, followed by carbon regeneration.

Using the new TSDR Survey data, EPA determined that the only volumes of these wastes that require alternative commercial capacity are those "derived from" wastes not amenable to solvent recovery or solvent extraction because of their physical forms. Therefore, the Agency assumed that the K103 and K104 wastes requiring alternative treatment will undergo incineration, followed by stabilization of the ash. The Agency believes that this treatment can achieve the standard, and the volumes of K103 and K104 requiring alternative treatment have been included in the incineration and stabilization totals.

i. *Wastes Not Requiring Alternative Capacity.* After reviewing the new TSDR Survey, EPA determined that a number of First Third wastes do not require alternative capacity, even though treatment standards are being promulgated. These wastes are: K004, K008, K015, K018, K021, K036, K044, K045, K047, K060, K099, and some K069. Each of these is discussed below.

Treatment standards for K044, K045 and K047 wastes are based on open detonation, for which there is no capacity constraint. The Agency believes that when open detonation is properly conducted, the residuals are no longer reactive, nor do they exhibit any other characteristic. Other treatment methods which achieve the same results are also permissible. Therefore, K044, K045, and K047 do not require alternative commercial capacity and further analysis is not necessary.

Treatment standards for K099 waste are based on chlorine oxidation. The Agency determined that this waste is only being generated at one facility, and that the generator is able to treat the waste on-site. Therefore, no volumes were reported as requiring alternative commercial capacity and no further analysis is necessary.

Treatment standards for K015 waste are based on liquid incineration, and standards for K018 waste are based on solid/sludge incineration. After analyzing the new TSDR Survey data, the Agency determined that neither of these wastes was reported in the TSDR survey as being land disposed. Therefore, no alternative treatment capacity is required. It is possible that all of these wastes are being treated on-site and do not require commercial capacity. It is also possible that these wastes are not being land disposed, or if they are, they are land disposed by a method not covered in the TSDR Survey (underground mines) or not included in the proposed rule (deep well injection). Finally, the wastes may not have required alternative capacity in 1986, the reporting period covered by the TSDR Survey.

Treatment standards for non-calcium sulfate K069 waste are based on total recycle, meaning this waste cannot be land disposed. Available information shows that most K069 wastes currently being generated are being recycled and do not require alternative capacity. As discussed in section III. A. 7., some K069 wastes contain high levels of calcium sulfate. These wastes cannot be recycled. The Agency is not promulgating a treatment standard for calcium sulfate containing K069 wastes; these wastes will be subject to the "soft hammer" requirements.

The Agency proposed a treatment standard of "no land disposal" for K004, K008, K021, K025, K036, K060, K073 and K100 wastes and for wastewaters from F006, K022, K046, K061, K069, and K106, based on the belief that they are no longer being generated or are not being land disposed. Commenters noted that these wastes are being generated in the form of landfill leachate even though ongoing production processes may no longer produce the wastes. Also, these wastes may be present in contaminated ground water and, thus, may be generated during cleanup actions.

Because a "no land disposal" standard could hinder or preclude necessary and desirable collection and treatment of leachate and contaminated ground water, the Agency has not established standards for the wastewater components of the "no land disposal" wastes. In addition, the Agency is revising the schedule for the prohibition on land disposal and establishment of treatment standards (40 CFR 268.10) to move leachate from "soft hammer" wastes, contaminated ground water from "soft hammer" wastes, and certain "soft hammer" wastewater residues from treatment to the Third Third to avoid disruptive effects while standards are developed (see section III. C. 3. for further discussion).

For the non-wastewater forms of K004, K008, K021, K036, and K060 the "no land disposal" standard is being promulgated.

j. *Other Comments on Capacity Determinations.* Several commenters felt that available capacity for treating wastes in tank systems was underestimated because additional capacity could be brought on line quickly by vendors or put into service as on-site capacity. For example, one commenter disagreed with the variance provided to K071 waste because the BDAT technologies identified for K071 are simple chemical tank treatment processes (acid leaching, chemical oxidation, and sulfide precipitation), which could be supplied readily by vendors.

The Agency believes that because of the time necessary to construct such treatment systems and (in some cases) to satisfy permitting requirements, additional capacity cannot be brought on-line quickly and should therefore not be considered when analyzing available treatment capacity. In addition, as part of the TSDR Survey, facilities were asked to report any treatment processes planned to be operational (considering construction and permit time) by January 1992. Planned capacity reported in the TSDR Survey, and taken into consideration in the Agency's capacity determinations, did not indicate that additional capacity that would change the capacity determinations promulgated today would be available in the near future.

Some commenters believe that the Agency's capacity analysis overestimated the national capacity to incinerate solids and sludges. Commenters stated that the Agency did not consider all necessary factors when determining solid/sludge incineration capacity. Factors cited as not considered included material handling restrictions, downtime for maintenance, storage restrictions, and siting and permitting difficulties for future incineration units. One commenter felt that the Agency overestimated the volume of waste requiring solid/sludge incineration capacity because pretreatment and volume reduction were not considered. The same commenter also felt that the Agency underestimated solid/sludge treatment capacity because liquid incineration capacity could easily be converted for solid/sludge incineration.

The Agency based its latest incineration capacity determination on the 1987 TSDR Survey database. When completing the TSDR Survey, the facilities were asked to consider downtime for maintenance and other factors when reporting the treatment capacity for existing and future units. Therefore, such factors should be reflected in the estimates of available solid/sludge incineration capacity. In addition, the TSDR Survey did request information on plans to change the types of capacity available (e.g., liquid to solid/sludge incineration) and this information is included in the estimates. Therefore, EPA disagrees with both of these comments.

Commenters expressed concern because the Agency's determinations of required treatment capacity did not take into account the volumes of waste that will be removed from surface impoundments undergoing clean closure. Therefore, the commenters felt that the Agency underestimated the volume of wastes requiring alternative treatment.

This issue is discussed earlier in this section with respect to K001 wood preserving wastes. Some information was provided by commenters on the volumes of wastes currently in surface impoundments at their facilities; however, for the reasons set out in the earlier discussion of K001, the Agency believes that both the timing of closures and the amount of material which will actually require incineration are

uncertain at this time, and therefore cannot be used in the capacity decision.

The new TSDR data have implications for "soft hammer" certifications. A "soft hammer" certification for a waste amenable to treatment by a method for which ample capacity exists will be critically examined by EPA and is more likely to be invalidated. Examples are wastes amenable to liquid injection incineration or to stabilization.

4. Alternative Capacity and Effective Dates for Solvent Wastes and California List Wastes

Using the new TSDR data, EPA reevaluated waste volumes requiring alternative capacity because of the Solvents final rule (51 FR 40572) and the California list final rule (52 FR 25760). The new analyses indicated significant changes in waste management practices and capacity, notably, significant increases in incineration capacity. Consequently, some national capacity variances are no longer necessary. Capacity variances are no longer needed for F001–F005 solvents generated by small quantity generators (i.e., generators of 100–1000 kilograms of hazardous wastes per month), CERCLA response actions, and RCRA corrective actions addressed in §§ 268.30(a) (1) and (2), with the exception of solvent-contaminated soils. Also, capacity variances are no longer needed for California list HOCs, with the exception of HOC-contaminated soils. BDAT for these wastes is incineration, and the new data indicate significant increases in incineration capacity, assuring adequate capacity for these wastes.

The May 17 notice proposed to terminate these national capacity variances as of the date of promulgation of the final First Third rule. Based on comments received, some of which point out the short comment period on the May 17 proposal necessitated by the statutory deadline, the Agency has decided to allow the capacity variances for certain solvent wastes to expire and to terminate the California list HOCs variance on November 8, 1988. The Agency believes that the three-month delay will not result in any adverse environmental effects and will permit generators of California list wastes, for which the variance is being terminated eight months earlier than expected, to arrange for appropriate treatment and disposal of their wastes, if they have not done so already.

5. National Variances from the Effective Date for Contaminated Soil and Debris

a. *Legal Authority.* Under RCRA sections 3004 (d)(3) and (e)(3), Congress provided that the land disposal restrictions provisions for disposal of certain "contaminated soil" and "debris" from CERCLA 104 and 106 response actions and from RCRA corrective actions would not apply until 48 months from the enactment of HSWA. These provisions apply specifically to soil and debris contaminated with spent solvents, certain dioxin-containing wastes, and California list restricted hazardous wastes. November 8, 1988, therefore, is the applicable effective date established under RCRA sections 3004 (d)(3) and (e)(3) for CERCLA and RCRA corrective action contaminated soil and debris. Congress provided no such alternative statutory effective date for CERCLA and RCRA soil and debris contaminated with First Third (or Second Third) wastes. Thus, the statutory effective date for these wastes is the same as for any other hazardous waste which is included in the first one-third of the schedule—August 8, 1988. No commenter disagreed with this analysis. (See the May 17, 1988 proposed rule for a more detailed explanation of legal authority and other aspects of the proposed variance.)

An important factor in setting this later effective date for soil and debris from cleanup actions was Congress' evident acknowledgment that it would take extra time to develop treatment capacity for soils and debris contaminated with these wastes. Foreseeing this potential shortfall, Congress placed these wastes on an alternative schedule approximately the same as the one for the first group of wastes prohibited under section 3004(g). Restricted hazardous wastes are normally prohibited from land disposal as soon as the statutory deadline passes (RCRA section 3004(h)(1)). If, however, there is a lack of adequate alternative protective treatment, recovery, or disposal capacity to treat the wastes, the Agency may set an alternative effective date based on the earliest date on which such adequate capacity becomes available, not to exceed two years (RCRA section 3004(h)(2)).

b. *Soil and Debris Capacity Variance.* In today's rule, the Agency is granting a national capacity variance for certain contaminated soils for which BDAT is based on solids incineration.

A partial estimate of the amount of soil requiring solids incineration is shown below. These amounts represent the quantity of soils land disposed at RCRA facilities in 1986. The amount of soils generated by CERCLA response or RCRA corrective actions requiring solids incineration is not currently known.

- Solvent—28 million gal/yr.
- Dioxin—(none reported in 1986).
- California List HOCs (other than First Third wastes for which treatment standards were proposed)—4 million gal/yr.
- First Third (for which treatment standards were proposed)—12 million gal/yr.

EPA expects that all of the solids incineration capacity will be utilized as a result of other actions taken today, and therefore that there will be a lack of capacity for incineration of soils.

In the May 17, 1988 proposal, the Agency also requested comment on the advisability of applying the variance to debris contaminated with solvents, certain dioxins or HOCs above 1,000 ppm, as well as to debris contaminated with First Third wastes. Several commenters addressed this issue and all were in favor of including debris in the 2-year national capacity variances. The Agency agrees and, therefore, debris is included in the national variances along with contaminated soils generated from CERCLA response actions and RCRA corrective actions. Many commenters urged that the variance be broadened to apply to soils contaminated with solvent, dioxin and California list wastes other than those from CERCLA response and RCRA corrective actions. The Agency believes this to be precluded by the wording of the statute. See the May 17 proposed rule for a more detailed explanation.

The national capacity variance applies to soils and debris contaminated with spent F001–F005 solvents and F020–F023 and F026–F028 dioxins which result from a response action taken under CERCLA sections 104 or 106 or a RCRA corrective action. Soils and debris contaminated with California list HOC wastes which result from a response action taken under CERCLA sections 104 or 106 or RCRA corrective actions are also included in the variance. Such contaminated CERCLA and RCRA soils and debris are covered by the capacity variance until November 8, 1990—two years from the statutory effective date applicable to these wastes.

A national capacity variance is also being granted for soils and debris contaminated with certain First Third wastes for which the treatment standards are based on incineration; however, it is not limited exclusively to soils from CERCLA response and RCRA corrective actions. The variance applies to soils and debris contaminated with the following First Third wastes: K001, K015, K016, K018, K019, K020, K022, K024, K030, K037, K048–K052, K083, K086, K087, K101, K102, K103 and K104. Soils and debris contaminated with the specified First Third wastes receive a

variance that extends the effective date for the land disposal restrictions to August 8, 1990.

The effective dates for soil and debris established by today's final action have been summarized in the following table:

SUMMARY OF FINAL EFFECTIVE DATES

Restricted hazardous waste	Prohibition effective date in today's final rule
I. Solvent- and dioxin-containing soil and debris from CERCLA response or RCRA corrective actions	11-8-90
II. Soil and debris NOT from CERCLA response actions or RCRA corrective actions contaminated with less than 1% total solvents or certain dioxins	11-8-88
III. Soil and debris contaminated with California list HOCs from CERCLA response actions or RCRA corrective actions	11 8-90
IV. Soil and debris contaminated with California list HOCs NOT from CERCLA response actions or RCRA corrective actions	7-8-89
V. All soil and debris contaminated with First Third wastes for which treatment standards are based on incineration	8-8-90

The Agency acknowledges that granting a national capacity variance for contaminated soils is a policy choice. That is, EPA could have separated out some segment of CERCLA and RCRA corrective action soils for immediate prohibition instead of rescinding the variance for other HOC and solvent wastes requiring solids incineration. EPA did not pursue this course for several reasons. First, it would be difficult, if not impossible, to separate out a discrete segment of contaminated clean-up soils to fit the available treatment capacity. More importantly, the precise amount of CERCLA and RCRA corrective action soils to be generated over the next 24 months is not certain due to the unpredictable pace of clean-up actions, whereas the volume of other surface disposal wastes requiring solids incineration capacity is much better quantified. By rescinding variances for the wastes whose volume is better quantified, EPA is far more certain that the existing treatment capacity will actually be utilized. That is, EPA is not reserving scarce solids incineration capacity for contaminated soils that might never be generated, and is thus structuring these variances to make certain that scarce solids incineration capacity will actually be utilized.

With respect to soils contaminated with spent solvents, certain dioxins, and HOC wastes, only those that result from a response action taken under section 104 or 106 of CERCLA or a corrective action required under RCRA are included under this capacity variance. For all other soils contaminated with these wastes, an application for a case-by-case extension may be submitted if adequate alternative capacity cannot reasonably be made available by the applicable effective date.

c. *Definition of "Soil" and "Debris".* For the purpose of determining whether a contaminated material is subject to this national variance, some definition of the terms "soil" and "debris" is needed. Soil is defined as materials that are primarily geologic in origin such as silt, loam, or clay, and that are indigenous to the natural geological environment. In certain cases soils will be mixed with liquids, sludges or debris. The Agency solicited comment on appropriate methods for determining whether such mixtures should be considered a soil waste.

Several commenters addressed this issue; they generally favored the inclusion of such mixtures in the capacity variance. However, they did not offer practical methods for making a generally applicable determination on what these mixtures should be. Therefore, the Agency will make such determinations on a case-by-case basis. As proposed, however, soils do not include wastes withdrawn from active hazardous waste management units, such as impoundment dredgings. Such wastes are sludges, not soils, and EPA has evaluated the volume of these sludges in its capacity estimates (based on TSDR survey reports), and determined that sufficient capacity exists for these wastes.

The variance obviously does not apply to materials produced as a result of the deliberate addition of soil or dirt to a restricted hazardous waste. Such a practice is forbidden by the provisions of the dilution prohibition (40 CFR 268.3).

For the purpose of determining whether a contaminated material is subject to this national variance, debris is defined as materials that are primarily non-geologic in origin such as grass, trees, and shrubs, and man-made materials such as concrete, clothing, partially buried whole or crushed empty drums, capacitors, and other synthetic manufactured items. This may also include geologic materials identified as not indigenous to the natural geological environment at or near the site or identified as indigenous rocks exceeding a total size that, based on engineering judgement, will affect performance of available treatment technologies.

d. *Notes on Drafting of the Regulatory Language.* To implement these changes in the various capacity variances, EPA is amending the regulatory language in §§ 268.30 through 268.33. With respect to the solvent wastes covered in § 268.30, the Agency is adding a new § 268.30(c) dealing with contaminated soil and debris from CERCLA response and RCRA corrective actions. This provision replaces existing § 268.1(c)(3).

New § 268.30(b) groups all the solvent wastes having a November 8, 1988 prohibition effective date. As noted above, new § 268.30(c) sets forth the 1990 effective date for CERCLA response and RCRA corrective action contaminated soil and debris. Also added is language indicating that if these wastes are to be disposed in landfills or surface impoundments until the prohibition effective date, the landfill or impoundment unit must meet the section 3004(o) minimum technology requirements (see 53 FR 11769).

The Agency is making similar changes in §§ 268.31, 268.32, and 268.33 to reflect the revised effective dates. The language in § 268.33(c) indicates that the 1990 effective date applies to all soils contaminated with First Third wastes with treatment standards based on incineration.

I. Recyclable Materials Used in a Manner Constituting Disposal

In the May 17 proposal, EPA proposed to amend § 266.20 of the regulations to provide that hazardous waste-derived products that are recycled by being placed on the land must meet the applicable treatment standard for each waste that they contain as a condition for remaining exempt from all other hazardous waste regulation (53 FR 17605). The Agency reasoned that conditioning the existing regulatory exemption in this way would effectuate the land disposal restrictions statutory provisions by requiring that hazardous wastes comply with applicable treatment standards before they are recycled by being placed on the land. Most commenters supported this proposal, a number urging the Agency to end the regulatory exemption altogether. Persons producing fertilizers from waste K061, however, maintained that their fertilizers were safe to apply and were similar in composition to other zinc containing fertilizers not produced from hazardous wastes. They therefore urged the Agency to retain the regulatory exemption or to reclassify the fertilizers. Finally, a few commenters argued that hazardous secondary materials that are recycled by being placed on the land are

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not wastes at all because they are not being "discarded".

EPA has decided to finalize the proposed rule with respect to hazardous waste derived products that are placed on the land, except that EPA is not taking any action with respect to fertilizers that use waste K061 as an ingredient (so that such fertilizers will remain exempt from regulation). EPA is conditioning the regulatory exemption for the reasons stated in the proposal, most particularly because the land disposal restrictions statutory provisions indicate that wastes are not to be placed on the land until they have been pretreated to meet the standards EPA established pursuant to section 3004(m). Where a waste-derived product is produced from more than one prohibited waste, the waste-derived product would have to meet the treatment standard for each hazardous waste that it contains, and if there are different treatment standards for common constituents, then the "product" would have to meet the most stringent of those standards.

EPA also solicited comment on an appropriate tracking system for hazardous waste-derived products to document that these materials meet the applicable treatment standards. Hazardous wastes sent to recycling facilities for ultimate use in waste-derived products that are to be placed on the land are already subject to regulation under section 268.7 (as well as the rest of subtitle C), and so persons shipping such wastes already must notify the recycler that the wastes are prohibited (§§ 268.7(a) and 266.21). EPA has decided, however, that once the recycler produces a waste-derived product that meets the treatment standard, the recycler is not required to notify the receiving facility that it (the receiving facility) is receiving a hazardous waste. The ultimate user of the hazardous waste-derived product is not a normal disposal facility, but rather operates as a commercial entity. As such, this entity is not a meaningful repository of a treatment facility's (i.e., the recycler's) certification and tracking documents prepared pursuant to § 268.7(b). Accordingly, EPA has decided that, instead of the recycler submitting information to the ultimate user, all of the § 268.7 information is to be submitted to the appropriate EPA Regional office or State authority. The only difference in reporting requirements would be that the recycling facility also keep records of the name and location of each entity receiving the hazardous waste-derived product. In this way, the appropriate regulatory authority will be on notice of the location of each shipment and that the shipment has met the applicable treatment standards for the hazardous wastes contained within the waste-derived product.

EPA has further determined that fertilizers produced from hazardous waste K061 should remain exempt from all regulation for the present time. For a further discussion of this determination, see section III. A. 7.

EPA also wishes to take this opportunity to clarify, in response to comment, that the underlying regulatory provision § 266.20, does not apply to materials, such as cement or aggregate, that are not produced from hazardous wastes. This is true even for cement or aggregate produced in a furnace that is powered in whole or in part by hazardous waste fuel. Section 266.20 applies when a process "use(s) hazardous wastes as ingredients" to produce a product that is then applied to the land (50 FR 628; January 4, 1985). To be covered by the rule, a product must "contain" the hazardous waste. Materials such as cement or aggregate that are produced from raw materials, but come from processes that may be fired by hazardous waste fuels, are consequently not covered by this provision. They do not use hazardous waste as ingredients. Section 266.20 thus applies when hazardous wastes are incorporated directly into a product which is to be applied to the land; hazardous wastes recycled in this way thus really are being disposed. There is no such direct link with disposal when hazardous wastes are used to power a process that may be producing a material that will be used on the land. Products produced in processes that use hazardous waste fuels thus are not covered by section 266.20 unless the process also uses hazardous wastes as ingredients in a product destined for land application.

Finally, EPA responds briefly to those commenters alleging that materials used in a manner constituting disposal are not being discarded and therefore are not solid wastes. As the Agency has explained many times, use constituting disposal involves as a practical matter the disposal of wastes. The wastes are being gotten rid of by placing them directly on the land (see e.g., 53 FR 521–22; January 8, 1988). The indications that Congress meant to control this recycling practice under RCRA are legion. [See RCRA section 3004(1) (use of hazardous waste as dust suppressant or for road treatment is prohibited); H.R. Rep. No. 198, 98th Cong. 1st Sess. at 46, 67–68 (hazardous waste-derived products that are placed on the land are to be the special object of EPA scrutiny under the Subtitle C program)]. To say that Congress did not intend to control these use constituting disposal situations under RCRA is to say that Congress had no intention of controlling such damage incidents as the Times Beach dioxin spreading incident where a group of communities were rendered uninhabitable as a result of use of a distillation bottoms mixed with used oil as a dust suppressant. No credible reading of the statute would authorize this type of conduct. Accordingly, EPA views all use constituting disposal recycling activities involving hazardous secondary materials as within its jurisdiction under RCRA subtitle C.

J. Reclamation of Indigenous Waste

In the proposed rules, the Agency indicated that where it was proposing treatment standards based on some type of metal recovery technology, it might not write treatment standards for the wastes generated by the metal recovery technology (for example, for the slag generated by resmelting hazardous waste K069, emission control dust/sludge from secondary lead smelting). (53 FR 11762). The Agency indicated that this result could follow from application of the so-called "indigenous" principle, which states that certain wastes destined for material recovery in industrial furnaces can be considered to be indigenous to those furnaces and so cease to be solid wastes at the point they are actually placed in the furnace. (53 FR 11753). The particular waste codes that might be affected by application of this principle are K061 and K069.

Although EPA has discussed this concept for some time, and most commenters have agreed that some type of indigenous principle is desirable and perhaps legally required, EPA has not fixed the precise scope of the concept. EPA proposed a definition in the May 6, 1987 rule dealing with emission standards for boilers and industrial furnaces, and plans shortly to repropose a somewhat different meaning for the term as part of a reproposal of the boiler and industrial furnace standards. This proposed revision would evaluate both the similarity of the process in which the waste was originally generated and the one in which it is being recovered, and would also evaluate the similarity of the waste from the standpoint of identity and concentration of Appendix VIII hazardous constituents, and the raw material that it is replacing.

Based on the information now before it, EPA believes that K061 and K069

wastes would be indigenous to metal recovery processes. K061 wastes are generated by the same type of furnace that recovers the K061 dust, furnaces from both the steel industry and the zinc smelting industry are part of the same generic SIC code 331, and the dusts are similar in composition to the virgin ores customarily smelted in zinc smelting furnaces. Not only are the zinc levels the same as found in virgin ores (15% minimum), the other toxic metals (lead and cadmium) are also present in zinc ores in comparable concentrations. Hazardous waste K069 is even more clearly indigenous to the secondary lead smelting process since it is generated directly by the secondary lead process and contains no toxic constituents not already present in the normal feed material to the secondary lead smelting furnace.

It therefore appears to the Agency that these two hazardous wastes would be considered to be indigenous to the respective metal recovery process under any of the definitions that EPA is considering. Because it appears at this time to be clear that under any ultimate regulatory regime these wastes would be indigenous, then the derived from rule would not apply to any of the wastes generated by the metal recovery process. Consequently, the treatment standards EPA is establishing today for K061 and K069 do not apply to wastes from the metal recovery processes because, by virtue of the indigenous principle, the derived from rule would not apply to these processes (i.e., the residuals from such processes would not be derived from a hazardous waste).

K. Nonrulemaking Procedures for Site-Specific Variances from the Treatment Standard

In the November 7, 1986 final rule (51 FR 40572), the Agency established a procedure for obtaining a variance from the applicable treatment standard (40 CFR 268.44). Use of this variance was envisioned in cases where restricted hazardous wastes differ significantly from the wastes evaluated in setting treatment standards and, as a result, cannot be treated to meet the applicable treatment levels or where the technology used to establish the treatment level is not appropriate to the waste. The request for this treatability variance must demonstrate, among other things, that the waste is significantly different from the wastes evaluated in establishing the treatment standard and cannot be treated in compliance with the applicable treatment standard. Prior to today's final rule, the section 268.44 variance procedures were available only through a rulemaking that would amend the regulatory treatment standards each time a variance was granted.

Today's final rule amends § 268.44 by adding procedures for requesting a site-specific variance from the treatment standard. As explained below, opportunity will be provided for public comment on site specific variances.

1. Background

On September 5, 1986, the Agency published a Notice of Availability of Data (51 FR 31783). The notice requested comments on whether EPA should have a variance from the generally applicable treatment standards, and the procedures under which such variances should be processed. Commenters generally supported allowing variances from the treatment standard. Furthermore, in the context of today's modification, some commenters, while recognizing EPA's authority to grant variances through rulemaking procedures, supported the use of nonrulemaking procedures. Because there was insufficient time to fully consider all issues relating to the variance procedure before the November 7, 1986 rule was promulgated, only a procedure for obtaining a variance from the treatment standard which required rulemaking was established (51 FR 40572); however, the Agency noted its intention to raise the nonrulemaking variance issue in the future.

The Agency requested comment on several modifications of the variance procedure in the December 11, 1986 California list land disposal restrictions proposal (51 FR 44729). Specifically, comment was requested on the advisability of allowing nonrulemaking procedures and on the applicability of such procedures. Comment was also requested on establishing a deadline for variance applications, on provisions for public comment, and on the criteria for granting nonrulemaking variances.

Nonrulemaking variance procedures were again presented for public comment in a Notice of Availability of Data published on August 12, 1987 (52 FR 30038). It was noted that the July 7, 1987 California list final rule (52 FR 25780) set forth a treatment method equivalency petition (40 CFR 268.42) that need not be processed through a formal rulemaking in cases where the relief sought would not have generic applicability and effect. In the August 12 Notice, EPA solicited further comment on the advisability of applying the same reasoning to the site-specific variance from the treatment standard so that formal rulemaking procedures are not mandated.

2. Major Comments

The Agency received several comments addressing various aspects of establishing a nonrulemaking procedure for site-specific variances from the treatment standard. The majority of commenters supported the establishment of nonrulemaking procedures; their arguments were based on the need for streamlined procedures so that variances may be reviewed in a timely manner. Several commenters suggested that a site-specific nonrulemaking variance could be included in the permitting process, thus offering an opportunity for public comment. One commenter cited the Supreme Court's decision in *Chemical Manufacturers Association* v. *NRDC*, 470 U.S. 116 (1985), as support for EPA's authority to use a streamlined variance procedure. On the other hand, two commenters expressed concerns about utilizing nonrulemaking procedures. One commented that EPA had the authority to grant variances from the treatment standard, but stated that all petitions must be subject to public review and comment before they are granted. The other commenter strongly opposed the Agency's proposed approach, arguing that nonrulemaking procedures violate RCRA sections 3004(m), 7004, and 7006.

3. Agency Response and Summary of Today's Approach

The Agency believes that nonrulemaking procedures for the variance from the treatment standard are not precluded by the statute in cases where such a determination is site-specific, having no generic applicability and effect. The Agency is taking this position for a number of reasons. First, since a generator-specific treatability variance would not be of general applicability and effect, such administrative action would not be a rule requiring utilization of the Administrative Procedure Act informal rulemaking procedures. Second, to the extent that section 3004(m) creates an independent requirement of rulemaking procedures, this requirement is satisfied by the initial rulemaking in which the BDAT treatment standard is established. In this regard, the Agency notes that there are numerous instances where a statute requires that a generally applicable standard be established by regulation, but that variances from that standard need not be established via rulemaking. Under RCRA, for example, EPA must use rulemaking to establish generally applicable standards for treatment, storage, and disposal facilities (RCRA section 3004(a)). EPA,

however, has also established variances from certain of these generally applicable requirements which can be granted by means other than rulemaking—for example, the variance from the secondary containment requirement for hazardous waste tanks is implemented by nonrulemaking procedures. (See § 264.193 (g) and (h)). Under the Clean Water Act, EPA is required to establish generally applicable effluent limitation guidelines and standards by regulation, but for years has had in place a fundamentally different factors variance from these standards that was implemented by nonrulemaking procedures. This Fundamentally Different Factors variance is now codified in the 1987 amendments to the Clean Water Act, section 301(n). In the land disposal restrictions rules themselves, EPA adopted nonrulemaking procedures for processing demonstrations of equivalency to a specified BDAT method. (See § 268.42(b)).

In fact, it appears that at least in RCRA, where Congress meant to preclude the Agency from using nonrulemaking procedures when granting variances, it said so explicitly. (See RCRA section 3001(f)) that mandates use of informal rulemaking procedures for processing delisting petitions.) In other contexts, most notably RCRA sections 3004(o)(2) and 3005(j) (2), (3), (4), and (13), Congress itself explicitly authorized nonrulemaking procedures for granting other types of variances. It thus appears to the Agency that the brief reference to "regulations" in section 3004(m)(1) does not preclude the use of nonrulemaking procedures to grant individual variances to an already promulgated treatment standard.

Therefore, today's final rule promulgates modifications to 40 CFR 268.44 that allow a site-specific variance from the treatment standard, having no generic applicability and effect, to be granted through nonrulemaking procedures. The Agency agrees as a matter of policy to allow opportunity for public notice and comment prior to granting a nonrulemaking variance from the treatment standard. Because circumstances under which one might apply for a site-specific variance vary, vehicles for public comment will be specified on a case-by-case basis.

The Agency received no requests for variances from the treatment standards promulgated in the solvents and dioxins final rule or the California list final rule. It is difficult to predict how many requests for variances from the treatment standard will be received as a result of today's final rule. Therefore, the Agency is not establishing a specific format for the variance or specifying vehicles for providing public comment at this time. Since the goal of granting site-specific variances from the treatment standard through nonrulemaking procedures is to streamline the process, the Agency will likely provide for public comment through existing public participation vehicles such as permit applications or modifications, CERCLA Remedial Investigation/Feasibility Study documents, or other relevant procedures as appropriate. In cases when there is no existing proceeding which provides the opportunity for public participation, EPA will provide opportunity for notice and comment through publication in local newspapers, by radio broadcast, or through other media, similar to the variance procedures already in place under § 260.33. If necessary, the Agency will issue guidance at a later date on the format for an application and will specify procedures for public comment.

The criteria by which a nonrulemaking site-specific variance from the treatment standard will be evaluated remain the same as those previously promulgated. The demonstration should be made that the waste is significantly different from the wastes evaluated in establishing the treatment standard and cannot be treated in compliance with the applicable treatment standard. On a site-specific basis, it may be possible to determine that BDAT treatment is inappropriate for a particular waste stream. For example, incineration of large volumes of contaminated soil under certain site-specific conditions may be found to be inappropriate treatment. Such an assertion should be supported by analytical data and treatability studies to the greatest extent possible. Each request for a variance from the treatment standard must include a statement signed by the authorized representative of the applicant certifying that the information is correct.

The applicant must apply to the Assistant Administrator for the Office of Solid Waste and Emergency Response, addressing the criteria contained in § 268.44. The authority for granting site-specific variances to the treatment standard may be delegated to the Regional Administrator in the future, at which time the application would be made to the Regional Administrator in the region where the applicant is located

The Assistant Administrator (or Regional Administrator, if authority is delegated) will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the applicant is located. The Assistant Administrator (or Regional Administrator, if authority is delegated) will accept comment on the tentative decision, usually for 30 days. Public hearings may be held upon request or at his discretion. A final decision will be made after evaluation of comments.

L. Rationale for Immediate Effective Date

The regulations promulgated today will be effective immediately except where the Agency has specified a national variance or otherwise specified an alternative effective date. HSWA requires that today's regulations become effective on or before the August 8, 1988 effective date of the restrictions on the first one-third of the wastes scheduled pursuant to RCRA section 3004(g)(4)(A). If the Agency fails to promulgate regulations for any of these wastes by the statutory effective date, the restrictions on disposal of the waste in a landfill or surface impoundment, stipulated in section 3004(g)(6)(A) take effect automatically on August 8, 1988. If the Agency has not promulgated treatment standards for any scheduled waste by May 8, 1990, that waste is prohibited from all forms of land disposal unless a generator has been granted an extension of the effective date (either a national variance or a case-by-case extension) or a "no migration" finding has been made. Hence, August 8, 1988, is the latest date for EPA to promulgate regulations that will prevent the "soft hammer" in section 3004(g) from falling for all First Third wastes. Section 3004(h) requires that regulations established under sections 3004 (d), (e), (f), or (g) be effective immediately upon promulgation. Furthermore, section 3004(m) specifies that regulations setting treatment standards must have the same effective date as applicable regulations established under sections 3004 (d), (e), (f), or (g). For today's regulations which set treatment standards and are promulgated under section 3004(g), this date will be August 8, 1988. Since the statute clearly states that the regulations implementing section 3004(g) must go into effect on or before August 8, 1988, in order to prevent the "soft hammer" from falling, EPA finds that good cause exists under section 3010(b)(3) to have an immediate effective date. For the same reason, EPA finds that good cause also

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exists under section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. section 553(d)(3), to waive the requirements that regulations be published at least 30 days before the effective date.

IV. Modifications to the Land Disposal Restrictions Framework

Today's final rule does two things. First, it promulgates the Agency's approach to restricting the land disposal of First Third wastes, presenting the conditions under which land disposal of these wastes may be continued. Second, it modifies the existing framework of the Land Disposal Restrictions Program, as first promulgated on November 7, 1986 (51 FR 40572) and subsequently modified in the July 8, 1987 California list final rule (52 FR 25760). Unless otherwise specified, these modifications will apply to all restricted wastes. This section of today's preamble summarizes these modifications and refers to more detailed discussions in other sections of this preamble.

A. General Waste Analysis (§§ 264.13 and 265.13)

The Agency is promulgating modifications to §§ 264.13 and 265.13 to reflect provisions for the treatment of "soft hammer" wastes in surface impoundments. The framework promulgated November 7, 1986 provided for an exemption allowing treatment of restricted wastes in section 3005(j)(11) surface impoundments, provided that residuals that do not meet the treatment standard are removed annually. As discussed in section III.C.4., this exemption is extended to allow for wastes subject to the "soft hammer" provisions (i.e., First Third wastes for which no treatment standard has been established). EPA is also making certain nonsubstantive modifications to make these sections more readable.

B. Operating Record (§§ 264.73 and 265.73)

The Agency is modifying §§ 264.73 and 265.73 to require retention of the § 268.8 demonstration and certification, i.e. the certifications applicable to "soft hammer" wastes. EPA is also requiring facilities to retain the new tracking notice required under § 268.7 for generators sending "soft hammer" wastes to receiving facilities, and for treatment facilities sending "soft hammer" wastes to a disposal facility. The "soft hammer" notice and certification is discussed further in sections III.B.2. and III.C.3. respectively.

C. Recyclable Materials Used in a Manner Constituting Disposal (§ 266.20)

The Agency is amending § 266.20 to require that hazardous waste-derived products whose placement on the land was previously exempt from Federal regulation must now meet the applicable Subpart D treatment standard (or 3004(d) prohibition levels) prior to such placement. EPA is, however, allowing for one exception to this requirement; namely, K061–derived fertilizers. See section III. I. for a discussion of the Agency's determination concerning this amendment.

D. Purpose, Scope, and Applicability (§ 268.1)

The Agency is modifying § 268.1 to include the "soft hammer" wastes in the applicability of the land disposal restrictions, and to allow the disposal of such wastes in landfill and surface impoundment units meeting the minimum technological requirements provided such wastes are the subject of a valid certification under § 268.8. EPA is also clarifying the applicability of Part 268 treatment standards to prohibited wastes generated from CERCLA response actions.

E. Treatment in Surface Impoundment Exemption (§ 268.4)

The modifications to the requirements of § 268.4 reflect the special conditions for allowing this exemption to apply to First Third wastes for which no treatment standards have been established. Certain nonsubstantive modifications have also been made to improve the readability of the section. The conditions relating to the disposal of "soft hammer" wastes are discussed in section III.C.4.

F. Case-by-Case Extensions (§ 268.5)

The modification to § 268.5 reflects the Agency's new interpretation of RCRA section 3004(h)(4), that wastes subject to a national or case by-case extension of the effective date, if disposed in a landfill or surface impoundment, must be disposed in a *unit* that meets the minimum technological requirements. EPA's earlier interpretation was that Congress intended such wastes to be disposed in a *facility* that meets the minimum technological requirements of 3004(o) (applicable only to new, replacement, or lateral expansion units). The discussion for this modification is found in section III.D.

G. "No Migration" Petitions (§ 268.6)

As discussed in section III.F., the Agency is modifying the existing requirements for petitioning EPA for a "no migration" exemption under § 268.6. This modification promulgates additional demonstrations required in a "no migration" petition, and certain other requirements on the owner or operator of a waste management unit that is subject to a "no migration" exemption.

H. Testing and Recordkeeping (§ 268.7)

The modifications to § 268.7 extend the notification and certification requirements to include the First Third wastes, including a new notification for "soft hammer" wastes. EPA is also applying the recordkeeping requirements of this section to treatment and storage facilities not previously included in the "cradle-to-grave" paper trail, including an additional change addressing wastes that may be land disposed under an extension, exemption, or variance. Also, a 5-year record retention period is being promulgated. The discussion for these proposed modifications is found in Section III. B.

Also, as discussed in section III.I., the Agency is modifying the tracking system to account for zinc-containing fertilizers which use K061 as an ingredient, which EPA has exempted from regulation.

Testing requirements for wastes in § 268.43 (i.e., wastes for which the treatment standards are expressed as concentration levels in the waste, rather than in the waste extract) are being promulgated. And finally, other nonsubstantive modifications are being made to improve the readability of this section.

I. Landfill and Surface Impoundment Disposal Restrictions (§ 268.8)

The Agency is promulgating a new section 268.8 which addresses the prohibition on disposal of First Third wastes for which treatment standards have not been established. An extensive discussion in section III.C. presents the Agency's approach to implementing RCRA section 3004(g)(6)(A), which is applicable to the disposal of such wastes in landfills and surface impoundments, and also promulgates EPA's approach to the type of information which must be supplied and certified prior to such disposal.

J. Identification of Wastes to Be Evaluated By May 8, 1990 (§ 268.12)

As discussed in Section III.C.3., the Agency is amending § 268.12 to move certain First Third wastewater residuals from treatment for which wastewater treatment standards have not been set into the Third Third. Similarly, the

Agency is also moving "soft hammer" leachate and ground water contaminated with "soft hammer" wastes into the Third Third. This action is taken due to the relatively low intrinsic hazard of these wastes and to avoid discouraging substantial treatment of "soft hammer" wastes.

Also, as discussed in section III.A.4., the Agency is moving one class of First Third wastes to the third third of the schedule—mixed hazardous/radioactive wastes. EPA emphasizes that this action only affects First Third wastes mixed with radioactive wastes. Waste mixtures containing spent solvents, dioxins and California list wastes are subject to the applicable land disposal restrictions.

K. Determination as to the Availability of the Two-Year Nationwide Variance for Solvent Wastes Which Contain Less Than 1% Total F001 F005 Solvent Constituents (§ 268.30)

In a June 4, 1987 technical correction notice 52 FR 21010) to the November 7, 1986 final rule prohibiting land disposal of certain spent solvent and dioxin-containing hazardous wastes, EPA promulgated an amendment to § 268.30(a)(3) reclarifying that solvent wastes that are prohibited in the hands of their initial generator—i.e., that are not subject to any applicable variance—cannot be permissibly land disposed until treated to meet the section 268.41 treatment standards. This principle applies to all residues from treatment (unless they are part of a different treatability group for which EPA has determined that no treatment capacity exists (see 52 FR 21012; June 4, 1987 and also 52 FR 22356–22357; June 11, 1987)). Because questions have been raised regarding the policy basis for the action, and because the underlying principle is an important one which warrants the fullest consideration, EPA reproposed amended § 268.30(a)(3) as part of the April 8 proposal (53 FR 11770).

EPA did not receive comment on this proposal and thus is promulgating the rule as proposed for the reasons stated in the April 8, proposal. In repromulgating regulatory language, the Agency never withdrew its existing regulation. The Agency notes, however, that its earlier actions on this issue were prospective only (see 52 FR 21010, stating that the revisions are effective on June 4, 1987). Thus, the June 4, 1987 revisions to § 268.30(a)(3) have no applicability to any certifications made before that date or to any treatment residues land disposed before that date (see 52 FR 21012, June 4, 1987 (item # 16); *id.* at 21017 (item # 62)).

L. Waste Specific Prohibitions (§§ 268.30, 268.31, 268.32, and 268.33)

Sections 268.30, 268.31, and 268.32 are being modified to reflect the reinterpertation of RCRA section 3004(h)(4), pertaining to the disposal of restricted wastes granted an extension of the effective date, as discussed in Section III.D. Also § 268.32 is changed to rescind the previously granted national variance for California list halogenated organic compounds. For a detailed discussion of this rescission, see Section III.H. Although EPA is republishing certain other language from these regulations, this is for the readers convenience and is not intended to reopen these provisions for judicial review (nor did EPA solicit or receive any comment on these provisions).

Section 268.33 promulgates the actual prohibitions on the land disposal of First Third wastes (wastes listed in § 268.10) for which EPA has established treatment standards, and also establishes effective dates based on the availability of capacity to treat these wastes. Section III.A. describes the development of these treatment standards, and section III.C. presents the capacity data and assumptions on which the effective dates are based. Section 268.33(f) promulgates the prohibitions placed on "soft hammer" wastes, as discussed in section III.C.

It should be noted that the schedules for wastes K019 and K025 (Second Third wastes listed in § 268.11) have been accelerated to include these wastes in the First Third. K100 (a Third Third waste listed in § 268.12) is also included in the First Third.

M. Treatment Standards (§§ 268.40, 268.41, 268.42, and 268.43)

Treatment standards, expressed as concentration levels in both the waste (§ 268.43, as expressed in a new Table CCW) and in a waste extract developed by using the TCLP (§ 268.42), are promulgated by amendments to Subpart D. The existing treatment standard as a specified method (incineration) for certain California list halogenated organic compounds is being modified to allow for burning in industrial boilers or furnaces (§ 268.42). Also, EPA is modifying the F001–F005 treatment standard for methylene chloride in wastewaters generated by the pharmaceutical industry. The new treatment standards are discussed in section III.A.

N. Variance from the Treatment Standard (§ 268.44)

Today's final rule promulgates modifications to 40 CFR 268.44 that allow a site-specific determination to grant a variance from the treatment standard having no generic applicability and effect to be made by nonrulemaking procedures. A detailed discussion of this approach is found in section III.K.

O. Storage Prohibition (§ 268.50)

Only a slight modification to the existing storage prohibition in § 268.50 is promulgated to account for the Agency's interpretation of RCRA section 3004(j), as applicable to "soft hammer" wastes which are the subject of a certification under § 268.8. This interpretation is presented in section III.C.6. of this notice.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003 although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924 (d) through (k), and (m)). Therefore, it has been added to Table 1 in 40 CFR 271.1(j), which

identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. Table 2 in § 271.1(j) is modified to indicate that this rule is a self implementing provision of HSWA for the Land Disposal Restrictions for the First Third of Scheduled Wastes.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see section 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. State program modifications must be made by July 1, 1991, if only regulatory changes are necessary or July 1, 1992, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see § 271.21(e)(3)).

States with authorized RCRA programs may have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these standards in their applications. However, the State must modify its program by the deadlines set forth in § 271.21(c). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. Section 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

The amendments being promulgated today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) may continue to do so without seeking authority to administer these amendments. However, a State desiring to implement Part 148 and to receive authorization to grant exemptions from the land disposal restrictions must demonstrate that it has the requisite authority to administer sections 3004 (f) and (g) of RCRA. The conditions under which such authorization may take place are summarized in section C. A further discussion must be found in the July 15, 1985 final rule 50 FR 28728.

C. State Implementation

State implementation of today's rule is affected by the following four aspects of the framework established for the land disposal restrictions (51 FR 40572).

1. Under Part 268, Subpart C, EPA is promulgating land disposal restrictions for all generators, treaters, storers, and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA is granting two-year national variances from the land disposal restrictions effective date for certain wastes, based on a lack of alternative treatment or recovery capacity. In addition, case-by-case extensions of the effective date may be granted for up to one year (renewable for one additional year) to specific applicants lacking adequate alternative capacity.

The Administrator of EPA is solely responsible for granting variances to the effective dates because capacity determinations must be made on a nationwide basis. In addition, RCRA section 3004(h)(3) specifies that the Administrator will grant or deny case-by-case extensions, after consulting the affected States, on the basis of national concerns; therefore, States cannot be authorized for this aspect of the program.

3. Under § 268.44, the Agency may grant waste-specific or site-specific variances from treatment standards in cases where it can be demonstrated that the treatment standard is inappropriate for the waste or the wastes cannot be treated to specified levels or treated by specified methods. The Agency is solely responsible for granting such variances since the result of such an action may be the establishment of new waste treatability groups applicable to all wastes meeting the new criteria. Therefore, this aspect of the program is not delegated to the States. Similarly, the authority to grant nonrulemaking variances is retained by the EPA.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous. States which have the authority to impose restrictions may be authorized under RCRA section 3006 to grant petitions for exemptions from the restrictions. Decisions on site-specific petitions do not require the national perspective required to restrict wastes or grant extensions. However, the Agency is planning to propose an interpretation of the "no migration" language in the **Federal Register** for public comment. Because of the controversy surrounding the interpretation of the statutory language, and the potential for changes in policy, EPA will be handling "no migration" petitions at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the Agency's final decision on petitions in the **Federal Register**.

VI. Effect of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the land disposal restrictions program, some generators might switch from land disposal of restricted First Third wastes to discharge to publicly-owned treatment works (POTWs) in order to avoid

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incurring the costs of alternative treatment. In shifting from land disposal to discharge to POTWs, an increase in human and environmental risks could occur. Also as a result of the land disposal restrictions, hazardous waste generators might illegally discharge their wastes to surface waters without treatment, which could cause damage to the local ecosystem and potentially pose health risks from direct exposure or bioaccumulation.

Some generators might treat their wastes prior to discharging to a POTW, but the treatment step itself could increase risks to the environment. For example, if incineration were the pretreatment step, metals and other hazardous constituents present in air scrubber waters could be discharged to surface waters. However, the amount of First Third waste shifted to POTWs would be limited by such factors as the physical form of the waste, the degree of pretreatment required prior to discharge, and State and local regulations.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act (MPRSA)

Management of some First Third wastes could be shifted from land disposal to ocean dumping and ocean based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land based treatment, disposal, and transportation, this option could become an attractive alternative. In addition, ocean-based disposal could become attractive to the regulated community if land-based treatment were not available.

Although there may be economic incentives to manage restricted First Third wastes by ocean dumping and ocean-based incineration, both technologies require permits, which could be issued only if technical requirements (e.g., physical form and heating value) and MPRSA environmental criteria (e.g., constituent concentrations, toxicity, solubility, density, and persistence) were met. MPRSA requires that nine specific factors, including the availability and impacts of land based disposal alternatives, be considered before permits can be issued for ocean disposal.

C. Air Emissions Regulated under RCRA

Some treatment technologies applicable to First Third wastes could result in cross-media transfer of hazardous constituents to air. For example, incineration of metal-bearing wastes could result in metal emissions to air. Some constituents, such as chromium, can be more toxic if inhaled than if ingested. Therefore, it might be necessary to issue regulatory controls for some technologies to ensure they are operated properly.

The Agency has taken several steps to address this issue. EPA has initiated a program to address metal emissions from incinerators. It has also initiated two rule-makings under section 3004(n) to address air emissions from other sources. The first rule-making will address emissions from equipment such as pumps, valves, and vents from units processing concentrated organic waste streams. The second rule-making will address other sources of air emissions, such as tanks and waste transfer and handling.

VII. Regulatory Requirements

A. Regulatory Impact Analysis

1. Purpose

The Agency estimated the costs, economic impacts, and benefits of today's final rule. This analysis is required for "major" regulations as defined by Executive Order No. 12291. (See the discussion of E.O. No. 12291 below.) The Agency is also required under the Regulatory Flexibility Act to assess small business impacts resulting from the proposed rule. The cost and economic impact estimates serve, additionally, as measures of the practical capability of facilities to comply with the proposed rule.

The results indicate that today's final rule is a major rule. This section of the preamble discusses the results of the analysis of the final rule as detailed in the Regulatory Impact Analysis (RIA) for the final rule. The RIA is available in the public docket.

2. Executive Order No. 12291

Executive Order No. 12291 requires EPA to assess the effect of proposed Agency actions and alternatives during the development of regulations. Such an assessment consists of a quantification of the potential costs, economic impacts, and benefits of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order No. 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis (RIA) for major rules. Major rules are defined as those likely to result in:

- An annual cost to the economy of $100 million or more; or
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has prepared an RIA and has concluded that the final rule is a major rule with an annual cost to the economy of $907–962 million.

3. Basic Approach

EPA is proposing to set treatment standards for a subset of the First Third F and K wastes and to let "soft hammers" fall on the remaining First Third wastes. The "soft hammer" provisions place restrictions on the land disposal of First Third wastes for which no treatment standards have been set by August 8, 1988. The "soft hammer" provisions will be in effect until prohibitions on land disposal ("hard hammers") fall (on May 8, 1990) or for a shorter period if treatment standards are promulgated. The possible effects of prohibitions on land disposal of wastes and of later extensions of the effective date were not examined as part of this analysis. The "soft hammer" provisions are discussed in greater detail in section III. C. of this preamble.

EPA estimated the costs, benefits, and potential economic impacts of the final rule and of one major regulatory alternative to it. Only the impacts of the final rule are presented here; results for the regulatory alternative are discussed in the RIA.

Provisions of the final rule, as analyzed in the RIA, are as follows:

- Treatment standards are established for certain F and K wastes, and
- "Soft hammer" provisions apply to remaining First Third wastes.

Two "soft hammer" scenarios for the final rule were examined:

- Scenario 1: "soft hammers" fall on remaining First Third wastes and treatment capacity is assumed not to exist; therefore, these wastes may continue to be land disposed. Landfills and surface impoundments receiving "soft hammer" wastes must meet minimum technological requirements.
- Scenario 2: "soft hammers" fall on remaining First Third wastes and treatment capacity is assumed to exist; therefore, these wastes must meet "approximate treatment standards" (treatment that will reduce the mobility and toxicity of hazardous constituents), and the treatment residuals must be disposed of in units meeting minimum technological requirements (except where the residuals are exempt from regulation).

While neither scenario corresponds exactly to the proposed rule, it was

assumed that the two scenarios would establish upper and lower bounds on the effects of the final rule. It was assumed that the "soft hammer" requirements would not affect wastes managed in waste piles or in land treatment units, since the only requirement for facilities managing these wastes would be notification.

The effects of the final rule were estimated by comparing post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions (i.e., in the absence of the regulation). The baseline is defined to be continued land disposal of wastes in units meeting minimum technological requirements.

4. Methodology

a. *Determination of Affected Wastes and Facilities.* The first step in estimating the impacts of the rule was to determine which wastes and facilities would be affected by the rule. Based on waste characterization and volume data primarily from the 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities" (the TSDR Survey), EPA identified affected wastes and facilities. (See Section III. H. for a discussion of this procedure.) The average quantity of waste contributed by generator facilities was based on EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981."

The population of wastes that would be affected by the rule may include some wastes from CERCLA responses or RCRA corrective actions; however, there are insufficient data at present to estimate these quantities. Also, underground injected wastes were excluded from this analysis since these wastes will be dealt with in the RIA for a separate rule.

The population of affected facilities includes:

- Hazardous waste treatment, storage, and disposal facilities with commercial management processes ("commercial TSDFs"), which charge a fee for hazardous waste management;
- TSDFs with only non-commercial processes ("non-commercial TSDFs"), which provide management services for wastes generated on-site or off-site by firms under the same ownership; and
- Large and small quantity generators ("generators"), which send their waste off-site to commercial TSDFs for management.

b. *Cost Methodology.* Once waste types, quantities, and baseline and post-regulatory management methods were known for the population of affected facilities, EPA developed estimates of baseline and post regulatory costs for the facilities. In estimating the costs, wastes at a facility that were amenable to co-management were grouped to identify economies of scale.

Baseline and post-regulatory costs include both on-site and off-site management costs. On-site management costs are comprised of two parts: operation and maintenance (O&M) costs and capital costs. O&M costs are incurred annually for operation and maintenance of waste treatment or disposal units. Capital costs include costs for construction and depreciable assets; these costs are restated as annual values by using a capital recovery factor based on a real interest rate of five percent. The annualized capital costs are added to yearly O&M costs to derive overall annual baseline or post-regulatory costs for facilities. By taking the difference between the annualized baseline and post-regulatory costs, annualized incremental costs for facilities were estimated.

Off-site management costs are based on commercial hazardous waste management prices. Shipping costs were included for wastes sent off-site.

c. *Economic Impact Methodology*—(1) *Non-Commercial TSDFs.* To assess economic impacts, EPA converted the before-tax incremental costs for facilities from the cost analysis to after-tax compliance costs. Compliance costs were then compared with facility financial information, organized by Standard Industrial Classification (SIC) code and facility size, to gauge impacts. (See Section C for references.)

Two ratios were used to identify facilities likely to experience adverse economic effects:

- Compliance cost divided by cost of production (the COP ratio), and
- Cash from operations divided by compliance cost (the CFO ratio).

These ratios bound possible effects on individual firms by looking at what would happen with complete pass-through of compliance costs to customers and with no pass-through of costs. The COP ratio represents the percent product price increase for facility output that occurs if the entire compliance cost—accompanied by facility profit—is passed through to customers in the form of higher prices. A change exceeding five percent is considered to imply a substantial adverse economic effect on a facility. The CFO ratio represents the number of times that a facility's gross margin covers the regulatory compliance cost if the facility fully absorbs the cost. For this ratio, a value of less than 20 is considered to represent a significant adverse effect.

Once facilities experiencing adverse economic effects were identified using the two ratios, an analysis was performed to identify which of these facilities would be likely to close. Economic effects on individual facilities were examined assuming that product price increases of five percent were possible. Those facilities for which the CFO ratio was less than two were considered likely to close.

(2) *Commercial TSDFs.* For this group of facilities, the analysis of economic effects was qualitative. This analysis included an examination of the quantity of waste each facility received as a percentage of the wastes restricted by today's rule.

(3) *Generators.* EPA's analysis of the economic impacts of this rule on generators disposing of affected wastes off-site assumed that commercial TSDFs could entirely pass on to generators the costs of compliance (in the form of higher prices for waste management services). Because of data limitations, EPA used a different approach to estimate economic impacts for generators than it used for non-commercial TSDFs. This approach based compliance costs on average waste quantities shipped from generators to commercial facilities and then compared those compliance costs with average financial data for the generators in order to assess impacts. The same impact measures used to assess impacts on non-commercial TSDFs were used to gauge impacts on generators.

d. *Benefits Methodology.* The benefits of today's rule were evaluated by considering the reduction in human health risk that would result from using alternative treatment for First Third wastes rather than employing baseline land disposal practices. Human health risk is defined herein as the probability of injury, disease, or death over a given time (70 years) due to responses to doses of disease-causing agents. The human health risk posed by a waste management practice is a function of the toxicity of the chemical constituents in the waste stream and the extent of human exposure to the constituents. The likelihood of exposure is dictated by hydrogeologic and climatic settings at land disposal units and the fate and transport of chemical constituents in environmental media.

EPA estimated human health risk in four steps. The first step was to estimate the concentrations of each of the hazardous constituents of the waste stream in each of the three media (air,

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surface water, and ground water) into which they might be released by a certain waste management technology. These estimates depend on the steady-state (i.e., continuous) release rates calculated for each technology, and on environmental fate and transport characteristics for constituents.

The next step was to estimate the total human intake, or dose, of each of the chemicals through inhalation of air or ingestion of ground water or surface water. A 65 kilogram person was assumed to be continuously exposed to contaminated media over a 70-year lifetime.

The Agency next calculated the risk to an individual from the dose derived in the previous step. For carcinogenic constituents within a wastestream, a dose-response curve was used to estimate the risk. For non-carcinogenic constituents, the exposure concentration was compared with the health-effects threshold to determine whether exposure above the threshold had occurred.

Finally, EPA estimated the population risk for carcinogenic and non-carcinogenic constituents within a wastestream. Population risk for carcinogenic constituents was determined by multiplying the average individual risk by the number of people in a given environment. Population risk for non-carcinogenic constituents was based on the number of persons exposed to concentrations exceeding the health-effects thresholds.

Benefits other than reduction in human health risk—such as resource damage avoided and corrective action costs avoided—were not quantified. Since these other benefits are likely to be significant, the benefits presented here are probably understated.

5. Results

a. *Population of Affected Facilities.* The number of facilities affected under Scenarios 1 and 2 for the final rule is very similar, as shown in Table 1. Most of the affected facilities are generators.

TABLE 1.—NUMBER OF AFFECTED FACILITIES

	Final rule	
	Scenario 1	Scenario 2
Commercial TSDFs	35	35
Non-Commercial TSDFs	102	102
Generators	1,593	1,568
Total	1,730	1,705

b. *Costs.* As shown in Table 2, the final rule is a major rule, with costs of $907–962 million per year.

TABLE 2.—COSTS OF THE FINAL RULE (ANNUALIZED INCREMENTAL COST IN MILLIONS OF 1987 DOLLARS)

	Final rule	
	Scenario I	Scenario 2
Treatment of Certain F and K Wastes	907	907
"Soft hammer" on Remaining First Third Wastes	0	55
Total	907	962

Most of the costs of the final rule are due to treatment of F and K wastes. The F and K wastes going to treatment are high-volume wastes; large portions of the wastes are managed in landfills, land treatment units, or treatment surface impoundments in the baseline and go to incineration and/or stabilization under the final rule. The ash from incineration often requires stabilization due to the ash's metal content; the scrubber effluent from incineration often requires wastewater treatment to remove metals.

The First Third wastes subject to the "soft hammer" provisions, on the other hand, are generated in relatively small quantities and therefore do not affect costs significantly. Their management under the final rule depends on which scenario is considered. Under Scenario I, the wastes continue to be land disposed in units meeting minimum technological requirements. Under Scenario 2, the wastes are mostly incinerated; however, since the wastes are largely organic with little metal content, the ash from incineration generally does not require stabilization.

Under the final rule, the two "soft hammer" scenarios result in a significant difference in cost. Scenario 1—continued land disposal of "soft hammer" wastes—results in zero incremental cost over the baseline for "soft hammer" wastes. Scenario 2—treatment of "soft hammer" wastes under "approximate treatment standards"—results in an incremental cost of $55 million per year. The costs associated with the "soft hammer" would be incurred for less than two years, i.e., until hard hammers fell, treatment standards were established, or extensions to the effective date were granted.

[Note: The costs presented in this section were based on incineration as BDAT for K048–52. Costs based on solvent extraction as BDAT for these wastes could be significantly lower.]

c. *Economic Impacts.* Most of the significantly affected facilities under the final rule are generators, as shown in Table 3. More generators are affected under Scenario 2 than Scenario 1 due to the higher management costs for "soft hammer" wastes going to treatment.

TABLE 3.—NUMBER OF FACILITIES SIGNIFICANTLY AFFECTED BY THE FINAL RULE

	Final rule	
	Scenario 1	Scenario 2
Commercial TSDFs	(1)	(1)
Non-Commercial TSDFs	45	46
Generators	960	1,119
Total	1,005	1,165

[1] TSDFs with commercial processes were assumed to pass all compliance costs through to generators; therefore, the number of significantly affected facilities was not calculated.

SIC sector 29 (Petroleum Refining and Related Products) is the most significantly affected sector; SIC 29 generators and non-commercial TSDFs account for nearly 40 percent of overall compliance costs. The number of facilities likely to close, looking at all SIC sectors, would be 197 and 199 under Scenarios I and 2, respectively.

[Note: The economic impacts presented in this section were based on incineration as BDAT for K048–52. Economic impacts based on solvent extraction as BDAT for these wastes could be significantly smaller.]

d. *Benefits.* The reductions in carcinogenic and non-carcinogenic risk due to the final rule are shown in Tables 4 and 5.

TABLE 4.—REDUCTION IN CARCINOGENIC RISK (NUMBER OF CASES AVOIDED OVER A 70-YEAR EXPOSURE PERIOD)

	Final rule	
	Scenario I	Scenario 2
Treatment of F and K Wastes	295	295
"Soft hammer" on Remaining First Third Wastes	0	65
Total	295	360

TABLE 5.—REDUCTION IN NON-CARCINOGENIC RISK (REDUCTION IN NUMBER OF PERSONS EXPOSED TO A NON-CARCINOGEN AT A DOSE ABOVE ITS RFD)

	Final rule	
	Scenario I	Scenario 2
Treatment of F and K Wastes	414	414

TABLE 5.—REDUCTION IN NON-CARCINOGENIC RISK (REDUCTION IN NUMBER OF PERSONS EXPOSED TO A NON-CARCINOGEN AT A DOSE ABOVE ITS RFD)—Continued

	Final rule	
	Scenario I	Scenario 2
"Soft hammer" on Remaining First Third Wastes	0	8
Total	414	422

The reduction in number of cancer cases due to the final rule is 295 and 360 for Scenarios 1 and 2, respectively. The largest reductions under both scenarios (150 cases) are treatment of K061 wastes (Emission Control Dust/Sludge from the Primary Production of Steel in Electric Furnaces). Restrictions on K048–K052 wastes (from the petroleum refining industry) result in a decrease of another 115 cancer cases.

The reduction in number of persons exposed to a non-carcinogen at a concentration above its RFD ranges from 414 under Scenario 1 to 422 under Scenario 2. In this case, much of the benefit under both scenarios is due to K048, K049, K061, and mixtures of these wastes, acting through ground water exposure.

Under both alternatives, the average carcinogenic risk to an individual in the population is reduced across all media by imposing land disposal restrictions. Most of this reduction in average individual risk is attributable to reduction in exposure to arsenic via ground water. [Note.—The benefits presented in this section were based on incineration as BDAT for K048–52. Benefits based on solvent extraction as BDAT for these wastes may be different.]

e. *Cost Effectiveness.* The cost effectiveness of the final rule is illustrated in Table 6. Compliance costs for the regulated community and human health risk reduction are the basis for the comparison; other potentially significant costs (e.g., Agency implementation costs) and benefits (e.g., natural resource damage avoided) were not estimated.

TABLE 6.—COST-EFFECTIVENESS OF FINAL RULE

	Final rule	
	Scenario 1	Scenario 2
Costs (Millions of 1987 Dollars per Year)	907	962

TABLE 6.—COST-EFFECTIVENESS OF FINAL RULE—Continued

	Final rule	
	Scenario 1	Scenario 2
Benefits (Reduction in Cancer Cases per Year)	4.2	5.1
Benefits (Reduction in Exposures to Non-Carcinogens at Concentrations above Threshold)	414	422
Cost Effectiveness (Millions of Dollars per Cancer Case Avoided)	215	190
Cost Effectiveness (Millions of Dollars per Non-Carcinogen Exposure Avoided)	2.2	2.3

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). An RFA is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities. EPA believes that the final rule could potentially have a significant effect on a substantial number of small entities, and particularly generators who are small businesses. However, the Agency does not have sufficient data to distinguish small business generators from large business generators or to identify alternatives for small businesses. The Agency did receive extensive comments and some data on generators of F006, a substantial number of whom are small entities. Therefore, EPA has conducted a Regulatory Flexibility Analysis for facilities affected by the standards for F006 wastes.

When EPA proposed this rule, it concluded that there would not be a substantial impact on a significant number of small entities. Since the proposal, EPA has conducted additional analysis of small business impacts. That analysis indicated that six of the nine non-commercial TSDFs that are small businesses would be significantly impacted. EPA does not consider six significantly affected facilities a substantial number of affected facilities.

EPA's analysis of small business impacts did not address commercial TSDFs or generators. Without an evaluation of impacts on generators, which represent over 90 percent of all facilities that manage First Third wastes, no definitive conclusions can be drawn on the potential impacts to small businesses. It is reasonable to expect that, since 60–71 percent of generators overall are significantly affected, there may be substantial impact on small business generators. However, EPA has no data to support this premise due to the lack of information on which generators are small businesses.

In order to determine whether alternatives are available to minimize impacts on small businesses, it is necessary to identify those wastes generated by small business generators that are most likely affected by the final rule. Based on concerns expressed in the comments, it appears that the treatment standards for F006 wastes from electroplating operations could impact small business generators significantly. Therefore, the Agency has examined three alternatives to minimize the estimated impact on small businesses generating F006 wastes. The Agency recognizes that small businesses in other industries may also be affected significantly.

The first alternative considered was not to set treatment standards for F006, and to allow the "soft hammer" provisions to apply instead. Under this alternative, generators could continue to dispose untreated F006 wastes in landfills and impoundments until May 1990 provided appropriate treatment capacity was not practically available. However, if appropriate treatment was practically available, the generator would be obliged to obtain that treatment before land disposing the waste (assuming these wastes are disposed in landfills or impoundments). Because the treatment standards for F006 wastes were based on a widely available form of stabilization, it appears unlikely that small business generators could successfully demonstrate that appropriate treatment is not practical or is not available. (Note that part of the commenters concerns on F006 arose because a major waste treatment firm, whose stabilization data formed the basis for the proposed standard, later determined that the levels achieved in those tests could not be achieved routinely. However, this was determined to be true for only two of the constituents—zinc and copper; for other reasons, the Agency has deleted zinc and copper from the F006 standards. Therefore, stabilization as normally practiced by waste treatment and disposal firms should be capable of achieving the F006 standards. The firm which developed the original test data agrees with this conclusion.) Since this alternative only provides relief for small

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business generators if treatment is not practically available, and it appears that appropriate treatment will be widely available for F006 wastes, this alternative will not be effective in providing relief to small business generators.

The second alternative considered was to set treatment standards, but to grant a two-year extension of the effective date based on lack of treatment capacity. While this alternative could provide relief to small entities for the two-year extension period, the Agency cannot legally grant this extension for reasons other than limited capacity. As noted above, stabilization capacity is widely available. The Agency's recently completed capacity analysis indicates that the amount of available stabilization capacity exceeds the amount needed for First Third wastes. Thus, the Agency cannot make the finding of insufficient capacity necessary to support an extension of the effective date.

The third alternative considered was to alter the treatment standards for F006 wastes. As noted, the Agency has deleted copper and zinc from the standards; this change should ensure that well-designed and well-operated stabilization will achieve the treatment standards. Any further change in the treatment standards would require a change in the BDAT upon which the standard is based. Alternative BDAT technologies that fulfill the mandate of the statute are likely to be more costly to the small business generators, rather than less. Less costly technologies, such as dewatering and sludge drying, do not fulfill the requirement that treatment achieve significant reductions in toxicity and mobility of hazardous constituents. Therefore, this alternative does not minimize impacts on small entities.

Based on this examination of the alternatives, the Agency has concluded that there are not practical and legally available alternatives to minimize possible impacts on small business generators of F006 wastes.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq* and have been assigned OMB control Number 2050–0085. Reporting and recordkeeping burden on the public for this collection is estimated at 10,745 hours for the 19,679 respondents, with an average of 0.55 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If an interested party wishes to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or would like a copy of the information collection request (please reference ICR #1442), contact Rick Westlund, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382–2745; and Marcus Peacock, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule was EPA's 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities" (the TSDR Survey). The average quantity of waste contributed by generator facilities was obtained from EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981" (April 1984).

Waste stream characterization data and engineering costs of waste management were based on the following EPA documents:

- "Characterization of Waste Streams Listed in 40 CFR Section 261 Waste Profiles," Vols. I and II (August 1985);
- "Characterization of Constituents from Selected Waste Streams Listed in 40 CFR Section 261," Vols I and II (August 1985);
- RCRA background and listing documents for 40 CFR Section 261;
- RCRA Section 3007 industry studies;
- "RCRA Risk-Cost Analysis Model, Appendix A: Waste Stream Data Base" (March 1984); and
- Source assessment documents for various industries.
- "1986–1987 Survey of Selected Firms in the Commercial Hazardous Waste Management Industry: Final Report" (March 1988).

Financial information for the economic impact analysis was obtained from the 1982 Census of Manufacturers and 1984 Annual Survey of Manufacturers. Producer price indices were used to restate 1984 dollars in 1987 terms.

VIII. Implementation of the Part 268 Land Disposal Restrictions Program

EPA has stated in earlier rules (see 51 FR 40572, November 7, 1986; 52 FR 21010, June 4, 1987; 52 FR 25760, July 8, 1987) that "restricted" wastes are subject to certain Part 268 requirements (e.g., the § 268.7 recordkeeping requirements and the § 268.3 dilution prohibitions) even if such wastes are subject to an exemption, extension, or variance making them eligible for land disposal. The Agency has become aware of some confusion in the regulated community regarding this point. The confusion seems to have been created through the interchanging use, by both the regulated community and, in some instances, by EPA, of the terms "restricted" and "prohibited". To eliminate this confusion, EPA clarified the distinction between "restricted" and "prohibited" wastes in the May 17 proposal (53 FR 17620). For the benefit of the regulated community, the Agency is repeating the clarification in today's rule.

"Restricted" wastes are those categories of hazardous wastes that are prohibited from land disposal either by regulation or statute (regardless of whether subcategories of such wastes are subject to a § 268.5 extension, § 268.6, "no migration" exemption, or national capacity variance, any of which makes them currently eligible for land disposal). In other words, a hazardous waste is "restricted" no later than the date of the deadline established in, or pursuant to, RCRA section 3004. Therefore, the F001–F005 solvent wastes and the F020–F023 and F026–F028 dioxin-containing wastes were "restricted" as of November 8, 1986, despite the fact that several subcategories of these wastes obtained 2-year national capacity variances allowing them to be land disposed until November 8, 1988. Similarly, California list wastes were "restricted" as of July 8, 1987, despite the fact that several subcategories of such wastes obtained 2-year national capacity variances allowing continued land disposal until July 8, 1989. Wastes contained in the schedule of thirds (51 FR 19300, May 28, 1986) are considered "restricted" no later than the dates specified in the schedule promulgated at 40 CFR 268.10, 268.11, and 268.12.

Generators must determine whether their wastes are "restricted" at the point of initial generation, i.e., when the waste is first considered a hazardous waste subject to RCRA regulation. To determine whether a hazardous waste is "restricted," generators need only

determine whether the waste belongs to a category of wastes that has been prohibited from land disposal by regulation or by the automatic "hammer" provisions of RCRA. "Prohibited" wastes are a subset of "restricted" wastes, i.e., they are those "restricted" wastes that are currently ineligible for land disposal. Therefore, a hazardous waste that is not "restricted" cannot be "prohibited" under RCRA section 3004. However, once a waste is considered "restricted", at least some of the Part 268 requirements apply.

The first Part 268 requirement applicable to "restricted" wastes is that generators must determine whether their waste currently is eligible for land disposal pursuant to the requirements of § 268.7. If the waste currently is not eligible for land disposal (i.e., the prohibition effective date has passed, the waste does not meet all applicable treatment standards or prohibition levels and no § 268.5 extensions, § 268.6 "no migration" exemption, or national capacity variances apply), then the waste currently is "prohibited" from land disposal as well as "restricted". If, however, the waste currently is eligible for land disposal (i.e., the prohibition effective date has passed but the waste meets the applicable treatment standards or prohibition levels or is subject to a § 268.5 extension, § 268.6 "no migration" exemption, or national capacity variance) then the waste is considered "restricted" but not currently "prohibited". All wastes that are "restricted" must comply with the § 268.3 dilution prohibition (assuming the wastes are land disposed or otherwise managed after the prohibition effective date), the § 268.7 waste analysis and recordkeeping requirements, and all other applicable Part 268 requirements.

As a result of the regulations promulgated today under Part 268, several options will be available to the generator or owner or operator of a treatment, storage, and disposal facility for the management of restricted hazardous wastes. This section helps the regulated community determine the appropriate waste management procedures. It provides references to the applicable 40 CFR Parts 264 and 265 requirements as well as Part 268 requirements for implementation of the various waste management options.

All the sequences in the generator's decision-making process must commence with a determination as to whether the hazardous waste is restricted in Part 268 Subpart C or RCRA section 3004(d). If the hazardous waste is not restricted, it cannot be subject to the land disposal restrictions of Part 268. It must nevertheless be managed in accordance with Parts 264 and 265.

The generator of a restricted waste must determine the appropriate treatment standards (if any) under Part 268 Subpart D (or prohibitions under RCRA section 3004(d)). The applicable treatment standards must be determined at the point of initial generation prior to any treatment. (Of course, if in the course of managing the waste a new treatability group is created, for example a scrubber water from the incineration of a nonwastewater, the treatment standard applicable to this new treatability group will apply.) At this time, he must determine the effective date of the applicable treatment standard under Part 268 Subpart C. EPA has the authority to delay the effective dates of the Part 268 treatment standards based on the unavailability of adequate national treatment capacity. Determinations as to the adequacy of treatment capacity are based on the quantity of waste generated and the availability of alternative treatment, recovery or disposal technologies. For these wastes where EPA has determined that alternative capacity is adequate, or has for whatever reason not established an alternate effective date, the treatment standards take effect immediately upon promulgation. The generator must use analysis of his waste (or waste extract, when applicable) or knowledge of his waste to make determinations as to whether his waste may go directly to land disposal or first must be treated (data supporting such knowledge and any waste analysis data must be kept on-site).

If the concentrations of the hazardous constituents in the waste (or waste extract, when applicable) are in compliance with the applicable treatment standards, the waste may go directly to land disposal. The generator must submit a notice and certification statement to the land disposal facility as required under § 268.7. The land disposal facility must verify the records of the generator in accordance with the facility's waste analysis plan. A generator that operates an on-site land disposal facility must put the information contained in the notice (except for the manifest number) in the operating record of the land disposal facility.

If the concentrations of the hazardous constituents in the waste (or waste extract, when applicable) exceeds the treatment standards, placement of the waste in land disposal units as of the effective date specified in Part 268 Subpart C is prohibited (unless the waste is subject to a case-by-case extension under § 268.5, or a "no-migration" exemption under § 268.6).

An off-site treatment or storage facility must obtain a notice from the generator as required in § 268.7. This notice must be placed in the operating record. Generators that are also treatment facilities must keep the information contained in the notice (except for the manifest number) in the facility's operating record.

When shipping the treatment residual to an interim status or RCRA permitted land disposal facility, the treatment or storage facility must certify in accordance with § 268.7 that the treatment residue meets the applicable treatment standards and must also send a notice (§ 268.7) to the land disposal facility.

If the generator's waste is a restricted waste listed in § 268.10 (i.e., a First Third waste) where treatment standards have not been set, and such waste is land disposed off-site by methods other than landfills or surface impoundments, the generator must provide a notice in accordance with § 268.7. The off-site disposal facility is required to keep the generator's notice in its operating record, and is responsible for ensuring that the waste is not disposed in a landfill or surface impoundment. If the generator disposes on-site, the information contained in the notice (except for the manifest number) must be kept in the facility's operating record, and the generator must ensure that such waste is not disposed in a landfill or surface impoundment.

If the generator's waste is a restricted waste listed in § 268.10, where treatment standards have not been set, and are disposed in a landfill or surface impoundment, such waste may only be disposed in landfill or surface impoundment units that meet the minimum technological requirements of RCRA section 3004(o) (double liner, leachate collection system, and groundwater monitoring), or satisfy the section 3004(o)(2) equivalence standard. Prior to such disposal, the generator must certify to the Regional Administrator in accordance with § 268.8.

To make this certification, the generator must investigate practically available technologies appropriate for treating his waste (see sections III. A. 8. and III. C. of this preamble for guidance on appropriate technologies and on determining whether such technologies are practical). The generator must demonstrate that he has made this investigation, certifying that either no practically available technologies exist

for treating his waste, or that the best technology(ies) practically available has been contracted to treat the waste. Prior to treatment (if any) and disposal, the generator must send the demonstration and certification to the Regional Administrator, to the receiving facility, and also keep records on-site. Provided the conditions of the certification remain unchanged, demonstrations and certifications need not be sent again to the Regional Administrator. However, if changes do occur, the generator must submit a new demonstration and certification to the Regional Administrator. Should EPA notify the generator that his certification is invalidated, the generator is responsible for immediately notifying the facility(ies) receiving his waste of such action and must keep records of such communication on-site.

Where the generator demonstrates and certifies that no practically available treatment exists, the waste may be disposed in a landfill or surface impoundment meeting the minimum technological requirements. For off-site disposal, the demonstration and certification required in § 268.7, as well as the notice required in § 268.7 must be provided with the initial waste shipment. The § 268.8 demonstration need not be provided again as long as the conditions of the demonstration have not changed. Thereafter, only the notice required in § 268.7 and the certification required in § 268.8 must be provided with each waste shipment. If such waste is disposed on-site, the demonstration and certification required is § 268.8, as well as the notice (except for the manifest number) required in § 268.7 must be kept in the operating record.

If the generator's waste is a restricted waste listed in § 268.10 where no treatment standards has been set, and the waste goes off-site for treatment, the generator must send the demonstration (only for the initial shipment), and certification required in § 268.8 and the notice required in § 268.7. The treatment facility must keep a copy of the certification, demonstration (if applicable), and notice in its operating record. If treated on-site, the information contained in the notice (except for the manifest number) must be kept in the facility's operating record. After treatment, the residuals may be land disposed in a landfill or surface impoundment unit meeting the minimum technological requirements of section 3004(o). The owner or operator must certify that the treatment indicated in the generator's demonstration has been done, prior to disposal. For off-site disposal, with the initial waste shipment, the generator's demonstration, certification and notice must be sent to the disposal facility along with the owner operator's certification. Thereafter, only the generator's *and* owner or operator's certification and notice must be sent. For on-site disposal, the information contained in the notice (except the manifest number) as well as all certifications and demonstrations must be kept in the operating record. [Note: As discussed in section III. C. 3., certain wastewater residuals from treatment of First Third wastes for which EPA has not promulgated treatment standards, as well as leachate and contaminated ground water derived from the management of First Third wastes for which EPA has not promulgated treatment standards are not prohibited from land disposal until May 8, 1990 (by virtue of amending § 268.12, reprioritizing the schedule) or until treatment standards are established, whichever is sooner.]

IX. References

(1) U.S. EPA, "Regulatory Impact Analysis of Restrictions of the Land Disposal on First Third Wastes", August, 1988.

(2) U.S. EPA, "Regulatory Impact Analysis of Restrictions on Land Disposal of First Third Wastes, Appendices", August, 1988.

(3) U.S. EPA, "Alternative Waste Management Technology Cost Estimates for the First Third Land Disposal Restrictions", August, 1988.

(4) U.S. EPA, "Background Document for First Third Wastes to Support 40 CFR 268 Land Disposal Restrictions Final Rule, First Third Waste Volumes, Characteristics, and Required and Available Treatment Capacity", August 8, 1988.

(5) U.S. EPA, "Comment Response Background Document for the First Third Proposed Land Disposal Restrictions Rule", August 8, 1988.

(6) U.S. EPA, "Response to Capacity Related Comments Submitted on the First Third Proposed Land Disposal Restrictions Rule", August 8, 1988.

(7a) U.S. EPA, "Response to BDAT Related Comments Submitted on the First Third Proposed Land Disposal Restrictions Rule", Vol. I, August 8, 1988.

(7b) U.S. EPA, "Response to BDAT Related Comments Submitted on the First Third Proposed Land Disposal Restrictions Rule", Vol. II, August 8, 1988.

(7c) U.S. EPA, "Response to BDAT Related Comments Submitted on the First Third Proposed Land Disposal Restrictions Rule", Vol. III, August 8, 1988.

(8) U.S. EPA, "Guidance Document for Applicable and Demonstrated Technologies for First Third Waste Codes", EPA/530-SW-88-031P, August 8, 1988.

(9) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for F001-F005, Addendum", EPA/530-SW-88-031R, August 8, 1988.

(10) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for F006", EPA/530-SW-88-031L, August 8, 1988.

(11) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K001", EPA/530-SW-88-0310, August 8, 1988.

(12) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K015", EPA/530-SW-88-031A, August 8, 1988.

(13) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K016, K018, KO19, K020, K030", EPA/530-SW-88-031B, August 8, 1988.

(14) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K022", EPA/530-SW-88-031Q, August 8, 1988.

(15) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K024", EPA/530-SW-88-031H, August 8, 1988.

(16) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K037", EPA/530-SW-88-031I, August 8, 1988.

(17) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K046", EPA/530-SW-88-031J, August 8, 1988.

(18) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K048, K049, K050, K051, K052", EPA/530 SW 88 031C, August 8, 1988.

(19) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K061", EPA/530-SW-88-031D, August 8, 1988.

(20) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K062", EPA/530 SW 88 031E, August 8, 1988.

(21) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K071", EPA/530-SW-88-031F, August 8, 1988.

(22) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K086", EPA/530 SW-88 031N, August 8, 1988.

(23) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K087", EPA/530-SW-88-031M, August 8, 1988.

(24) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K101, K102", EPA/530-SW-88-031K, August 8, 1988.

(25) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K103, K104", EPA/530-SW-88-031G, August 8, 1988.

X. List of Subjects

40 CFR Parts 264 and 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds

40 CFR Part 266

Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relative, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply

Dated: August 8, 1988.

Lee M. Thomas

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the CFR is amended as follows:

I. In Part 264:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

2. Section 264.13 is amended by revising paragraph (b)(7)(iii) to read as follows:

§ 264.13 General waste analysis.

* * * * *

(b) * * *

(7) * * *

(iii) The annual removal of residues which are not delisted under § 260.22 of this chapter or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of Part 268, Subpart D; or

(B) Where no treatment standards have been established;

(1) Such residues are prohibited from land disposal under § 268.32 or RCRA section 3004(d); or

(2) Such residues are prohibited from land disposal under § 268.33(f).

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

3. In § 264.73 paragraphs (b) (10), (11), (12), (13) and (14) are revised and paragraphs (b) (15) and (16) are added to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(10) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5, a petition pursuant to § 268.6, or a certification under § 268.8, and the applicable notice required by a generator under § 268.7(a);

(11) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(12) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(13) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 and § 268.8, whichever is applicable; and

(14) For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under § 268.7, except for the manifest number, and the certification and demonstration if applicable, required under § 268.8, whichever is applicable.

(15) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8; and

(16) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8.

* * * * *

II. In Part 265:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart B—General Facility Standards

2. Section 265.13 is amended by revising paragraph (b)(7)(iii) to read as follows:

§ 265.13 General waste analysis.

* * * * *

(b) * * *

(7) * * *

(iii) The annual removal of residues which are not delisted under § 260.22 of this chapter or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of Part 268, Subpart D; or

(B) Where no treatment standards have been established;

(1) Such residues are prohibited from land disposal under § 268.32 or RCRA section 3004(d); or

(2) Such residues are prohibited from land disposal under § 268.33(f).

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

3. In § 265.73 paragraphs (b) (8), (9), (10), (11) and (12) are revised and paragraphs (b) (13) and (14) are added to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5, monitoring data required pursuant to a petition under § 268.6, or a certification under § 268.8, and the applicable notice required by a generator under § 268.7(a).

(9) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(11) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 or § 268.8;

(12) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 or § 268.8.

(13) For an off-site storage facility, a copy of the notice, and the certification

and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8; and

(14) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 or § 268.8.

* * * * *

III. In Part 266:

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

2. Section 266.20 paragraph (b) is revised to read as follows:

§ 266.20 Applicability.

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in Subpart D of Part 268 (or applicable prohibition levels in § 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste constituent) that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.

IV. In Part 268:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

2. In § 268.1 paragraph (c)(3) is removed, paragraph (c)(4) is redesignated as paragraph (c)(3); paragraph (c)(5) is redesignated as paragraph (c)(4) and revised, and paragraphs (c)(5) and (d) are added to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(4) Where a farmer is disposing of waste pesticides in accordance with § 262.70;

(5) Prior to May 8, 1990, in a landfill or surface impoundment unit where all applicable persons are in compliance with the requirements of § 268.8, with respect to wastes that are not subject to the treatment standards set forth in Subpart D and not subject to the prohibitions in § 268.32 or RCRA § 3004(d).

(d) The requirements of this part shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

3. Section 268.4 is amended by revising paragraph (a)(2) to read as follows:

§ 268.4 Treatment surface impoundment exemption.

(a) * * *

(2) The following conditions are met:

(i) *Sampling and testing.* For wastes with treatment standards in Subpart D of this part and/or prohibition levels in Subpart C of this part or RCRA section 3004(d), the residues from treatment are analyzed, as specified in § 268.7 or § 268.32, to determine if they meet the applicable treatment standards or where no treatment standards have been established for the waste, the applicable prohibition levels. The sampling method, specified in the waste analysis plan under § 264.13 or § 265.13, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples.

(ii) *Removal.* The following treatment residues (including any liquid waste) must be removed at least annually: residues which do not meet the treatment standards promulgated under Subpart D of this part; residues which do not meet the prohibition levels established under Subpart C of this part or imposed by statute (where no treatment standards have been established); residues which are from the treatment of wastes prohibited from land disposal under Subpart C of this part (where no treatment standards have been established and no prohibition levels apply); or residues from managing listed wastes which are not delisted under § 260.22 of this chapter. However, residues which are the subject of a valid certification under § 268.8 made no later than a year after placement of the wastes in an impoundment are not required to be removed annually. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement.

(iii) *Subsequent management.* Treatment residues may not be placed in any other surface impoundment for subsequent management unless the residues are the subject of a valid certification under § 268.8 which allows disposal in surface impoundments meeting the requirements of section 268.8(a).

(iv) *Recordkeeping.* The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residues which do not meet the treatment standards, or prohibition levels (where no treatment standards have been established), or which are from the treatment of wastes prohibited from land disposal under Subpart C (where no treatment standards have been established and no prohibition levels apply), must be specified in the facility's waste analysis plan as required under § 264.13 or § 265.13 of this chapter.

* * * * *

4. Section 268.5 is amended by revising paragraph (h)(2) to read as follows:

§ 268.5 Procedures for case-by-case extensions to an effective date.

* * * * *

(h) * * *

(2) Such hazardous waste may be disposed in a landfill or surface impoundment unit only if such unit is in compliance with the following requirements:

* * * * *

5. Section 268.6 is amended by adding new paragraphs (a)(4) and (a)(5), by redesignating paragraph (c) as paragraph (d), (d) as (g), (e) as (h), (f) as (i), (g) as (j), (h) as (k), (i) as (l), (j) as (m), (k) as (n), and by adding new paragraphs (c), (e), and (f) to read as follows:

§ 268.6 Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268.

(a) * * *

(4) A monitoring plan that detects migration at the earliest practicable time;

(5) Sufficient information to assure the Administrator that the owner or operator of a land disposal unit receiving restricted waste(s) will comply with other applicable Federal, State, and local laws.

* * * * *

(c) Each petition referred to in paragraph (a) of this section must include the following:

(1) A monitoring plan that describes the monitoring program installed at and/or around the unit to verify continued compliance with the conditions of the variance. This monitoring plan must provide information on the monitoring of the unit and/or the environment around the unit. The following specific information must be included in the plan:

(i) The media monitored in the cases where monitoring of the environment around the unit is required;

(ii) The type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;

(iii) The location of the monitoring stations;

(iv) The monitoring interval (frequency of monitoring at each station);

(v) The specific hazardous constituents to be monitored;

(vi) The implementation schedule for the monitoring program;

(vii) The equipment used at the monitoring stations;

(viii) The sampling and analytical techniques employed; and

(ix) The data recording/reporting procedures.

(2) Where applicable, the monitoring program described in paragraph (c)(1) of this section must be in place for a period of time specified by the Administrator, as part of his approval of the petition, prior to receipt of prohibited waste at the unit.

(3) The monitoring data collected according to the monitoring plan specified under paragraph (c)(1) of this section must be sent to the Administrator according to a format and schedule specified and approved in the monitoring plan, and

(4) A copy of the monitoring data collected under the monitoring plan specified under paragraph (c)(1) of this section must be kept on-site at the facility in the operating record.

(5) The monitoring program specified under paragraph (c)(1) of this section meet the following criteria:

(i) All sampling, testing, and analytical data must be approved by the Administrator and must provide data that is accurate and reproducible.

(ii) All estimation and monitoring techniques must be approved by the Administrator.

(iii) A quality assurance and quality control plan addressing all aspects of the monitoring program must be provided to and approved by the Administrator.

* * * * *

(e) After a petition has been approved, the owner or operator must report any changes in conditions at the unit and/or the environment around the unit that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the units as follows:

(1) If the owner or operator plans to make changes to the unit design, construction, or operation, such a change must be proposed, in writing, and the owner or operator must submit a demonstration to the Administrator at least 30 days prior to making the change. The Administrator will determine whether the proposed change invalidates the terms of the petition and will determine the appropriate response. Any change must be approved by the Administrator prior to being made.

(2) If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change must be reported, in writing, to the Administrator within 10 days of discovering the change. The Administrator will determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance and revocation of the petition, petition modifications, or other responses.

(f) If the owner or operator determines that there is migration of hazardous constituent(s) from the unit, the owner or operator must:

(1) Immediately suspend receipt of restricted waste at the unit, and

(2) Notify the Administrator, in writing, within 10 days of the determination that a release has occurred.

(3) Following receipt of the notification the Administrator will determine, within 60 days of receiving notification, whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. The Administrator shall also determine whether further examination of any migration is warranted under applicable provisions of Part 264 or Part 265.

* * * * *

6. Section 268.7 is amended by revising paragraph (a) introductory text, by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, (a)(3), by redesignating paragraph (a)(4) as (a)(5) and revising it, by adding new paragraphs (a)(4) and (a)(6), by revising paragraph (b) introductory text, by redesignating paragraph (b)(1) as (b)(4) and (b)(2) as (b)(5), by adding new paragraphs (b)(1), (b)(2), (b)(3), (b)(6), (b)(7), and (b)(8), and by revising paragraph (c) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32 or section 268.43 of the part, the generator must test his waste, or test an extract developed using the test method described in Appendix I of this part, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part.

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in § 268.32 or RCRA § 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or RCRA § 3004(d). The notice must include the following information:

* * * * *

(2) If a generator determines that he is managing a restricted waste under this part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in Subpart D of this part and the applicable prohibition levels set forth in § 268.32 or RCRA § 3004(d).

* * * * *

(3) If a generator's waste is subject to a case by-case extension under § 268.5, an exemption under § 268.6, or a nationwide variance under Subpart C, with each shipment of waste, he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standards and all applicable prohibitions set forth in § 268.32 or RCRA section 3004(d);

(iii) The manifest number associated with the shipment of waste;

(iv) Waste analysis data, where available; and

(v) The date the waste is subject to the prohibitions.

(4) If a generator determines that he is managing a waste that is subject to the prohibitions under § 268.33(f) of this part and is not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of waste the generator must notify the treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(f). The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The applicable prohibitions set forth in section 268.33(f);

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data, where available.

(5) If a generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines whether the waste is restricted based on testing this waste or an extract developed using the test method described in Appendix I of this part, all waste analysis data must be retained on-site in the generator's files.

(6) Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The five year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans as required by § 264.13 or § 265.13. Such testing must be performed as provided in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(1) For wastes with treatment standards expressed as concentrations in the waste extract (§ 268.41), the owner or operator of the treatment facility must test the treatment residues, or an extract of such residues developed using the test method described in Appendix I of this part, to assure that the treatment residues or extract meet the applicable treatment standards.

(2) For wastes that are prohibited under § 268.32 of this part or RCRA section 3004(d) but not subject to any treatment standards under Subpart D of this part, the owner or operator of the treatment facility must test the treatment residues according to the generator testing requirements specified in § 268.32 to assure that the treatment residues comply with the applicable prohibitions.

(3) For wastes with treatment standards expressed as concentrations in the waste (§ 268.43), the owner or operator of the treatment facility must test the treatment residues (not an extract of such residues) to assure that the treatment residues meet the applicable treatment standards.

* * * * *

(6) If the waste or treatment residue will be further managed at a different treatment or storage facility, the treatment, storage or disposal facility sending the waste or treatment residue off-site must comply with the notice and certification requirements applicable to generators under this section.

(7) For wastes that are subject to the prohibitions under § 268.33(f) of this part and are not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of such waste the owner or operator must notify any subsequent treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(f). The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The applicable prohibitions set forth in section 268.33(f);

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data, where available.

(8) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b), the owner or operator of a treatment facility (the recycler) is not required to notify the receiving facility, pursuant to paragraph (b)(4) of this section. With each shipment of such wastes the owner or operator of the recycling facility must submit a certification described in paragraph (b)(5) of this section, and a notice which includes the information listed in paragraph (b)(4) of this section (except the manifest number) to the Regional Administrator, or his delegated representative. The recycling facility also must keep records of the name and location of each entity receiving the hazardous waste-derived product.

(c) The owner or operator of any land disposal facility disposing any waste subject to restrictions under this part must:

(1) Have copies of the notice and certifications specified in paragraph (a) or (b) of this section, and the certification specified in § 268.8 if applicable.

(2) Test the waste, or an extract of the waste or treatment residue developed using the test method described in Appendix I of this part or using any methods required by generators under § 268.32 of this part, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in Subpart D of this part and all applicable prohibitions set forth in § 268.32 of this part or in RCRA section 3004(d). Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by § 264.13 or § 265.13.

(3) Where the owner or operator is disposing of any waste that is subject to the prohibitions under § 268.33(f) of this part but not subject to the prohibitions set forth in § 268.32, he must ensure that such waste is the subject of a certification according to the requirements of § 268.8 prior to disposal in a landfill or surface impoundment unit, and that such disposal is in accordance with the requirements of § 268.5(h)(2). The same requirement applies to any waste that is subject to the prohibitions under § 268.33(f) of this Part and also is subject to the statutory prohibitions in RCRA section 3004(d) or the codified prohibitions in § 268.32 of this Part.

* * * * *

7. Section 268.8 is added to read as follows:

§ 268.8 Landfill and surface impoundment disposal restrictions.

(a) Prior to May 8, 1990, wastes which are otherwise prohibited from land disposal under § 268.33(f) of this part may be disposed in a landfill or surface impoundment which is in compliance with the requirements of § 268.5(h)(2) provided that the requirements of this section are met.

(1) Prior to such disposal, the generator has made a good faith effort to locate and contract with treatment and recovery facilities practically available which provide the greatest environmental benefit.

(2) Such generator submits to the Regional Administrator a demonstration and certification that the requirements of paragraph (a)(1) of this section have been met. The demonstration must include a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates.

(i) If a generator determines that there is no practically available treatment for his waste, he must indicate so in his

demonstration, and provide a written discussion of why he was not able to obtain treatment or recovery for that waste. The generator must also provide the following certification:

I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(ii) If a generator determines that there are practically available treatments for his waste, he must contract to use the practically available technology that yields the greatest environmental benefit, as indicated in his demonstration. He must provide the following certification:

I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that I have contracted to treat my waste (or will otherwise provide treatment) by the practically available technology which yields the greatest environmental benefit, as indicated in my demonstration. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) Where the generator has determined that there is no practically available treatment for his waste prior to disposal, with the initial shipment of waste, such generator must submit a copy of the demonstration and the certification required in paragraph (a)(2)(A) of this section to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator must retain on-site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(4) Where the generator has determined that there is practically available treatment for his waste prior to disposal, with the initial shipment of waste, such generator must submit a copy of the demonstration and the certification required in paragraph (a)(2)(B) of this section to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator must retain on-site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) After receiving the demonstration and certification, the Regional Administrator may request any additional information which he deems necessary to evaluate the certification.

(1) A generator who has submitted a certification under this section must immediately notify the Regional Administrator when he has knowledge of any change in the conditions which formed the basis of his certification.

(2) If, after review of the certification, the Regional Administrator determines that practically available treatment exists where the generator has certified otherwise, or that there exists some other method of practically available treatment yielding greater environmental benefit than that which the generator has certified, the Regional Administrator may invalidate the certification.

(3) If the Regional Administrator invalidates a certification, the generator must immediately cease further shipments of the waste, and inform all facilities that received the waste of such invalidation and keep records of such communication on-site in his files.

(c) A treatment, recovery or storage facility receiving wastes subject to a valid certification must keep copies of the generator's demonstration (if applicable) and certification in his operating record.

(1) The owner or operator of a treatment or recovery facility must certify that he has treated the waste in accordance with the generator's demonstration. The following certification is required:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with treatment as specified in the generator's demonstration. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(2) The owner or operator of a treatment, recovery or storage facility must send a copy of the generator's demonstration (if applicable) and certification under § 268.8(a)(2), and certification under § 268.8(c)(1) (if applicable) to the facility receiving the waste or treatment residues.

(d) The owner or operator of a disposal facility must ensure that those wastes prohibited under § 263.33(f) are subject to a certification according to the requirements of this section prior to disposal in a landfill or surface impoundment, and that the units receiving such wastes must meet the minimum technological requirements of § 268.5(h)(2).

(e) Once the certification is received by the Regional Administrator, and provided that the wastes have been treated by the treatment (if any), determined by the generator to yield the greatest environmental benefit practically available, the wastes or treatment residuals may be disposed in a landfill or surface impoundment unit meeting the requirements of § 268.5(h)(2), unless otherwise prohibited by the Regional Administrator.

(Approved by the Office of Management and Budget under control number 2050-0085).

8. In § 268.12, the existing text is designated as paragraph (a) and paragraphs (b), (c) and (d) are added to read as follows:

§ 268.12 Identification of wastes to be evaluated by May 8, 1990.

* * * * *

(b) Wastewater residues (less than 1% total organic carbon and less than 1% suspended solids) resulting from the following well-designed and well-operated treatment methods for wastes listed in § 268.10 for which EPA has not promulgated wastewater treatment standards: metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction. The treatment standards applicable to wastes prohibited under §§ 268.30–268.33 of this part still apply.

(c) Leachate derived from the treatment, storage or disposal of wastes listed in § 268.10 for which EPA has not promulgated wastewater treatment standards, and contaminated ground water that contains such wastes. The treatment standards applicable to wastes prohibited under §§ 268.30–268.33 of this Part still apply.

(d) Hazardous wastes listed in § 268.10 which are mixed hazardous/radioactive wastes. The treatment standards applicable to wastes prohibited under §§ 268.30–268.32 of this part still apply.

SUBPART C—PROHIBITIONS ON LAND DISPOSAL

9. Section 268.30 is revised to read as follows:

§ 268.30 Waste specific prohibitions—Solvent wastes.

(a) Effective November 8, 1986, the spent solvent wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005, are prohibited under this part from land disposal (except in an injection well) unless one or more of the following conditions apply:

(1) The generator of the solvent waste is a small quantity generator of 100–1000 kilograms of hazardous waste per month; or

(2) The solvent waste is generated from any response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or any corrective action taken under the Resource Conservation and Recovery Act (RCRA), except where the waste is contaminated soil or debris; or

(3) The initial generator's solvent waste is a solventwater mixture, solvent-containing sludge or solid, or solventcontaminated soil (non-CERCLA or RCRA corrective action) containing less than 1 percent total F001–F005 solvent constituents listed in Table CCWE of § 268.41 of this part; or

(4) The solvent waste is a residue from treating a waste described in paragraphs (a)(1), (a)(2), or (a)(3) of this section; or the solvent waste is a residue from treating a waste not described in paragraphs (a)(1), (a)(2), or (a)(3) of this section provided such residue belongs to a different treatability group than the waste as initially generated and wastes belonging to such a treatability group are described in paragraph (a)(3) of this section.

(b) Effective November 8, 1988, the F001–F005 solvent wastes listed in paragraphs (a) (1), (2), (3), or (4) of this section are prohibited from land disposal.

(c) Effective November 8, 1990, the F001–F005 solvent wastes which are contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under subtitle C of the Resource Conservation and Recovery Act (RCRA) and the residues from treating these wastes are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, these wastes may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(d) The requirements of paragraphs (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the standards of Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes and units covered by the extension.

10. Section 268.31 is revised to read as follows:

§ 268.31 Waste specific prohibitions—Dioxin-containing wastes.

(a) Effective November 8, 1988, the dioxin-containing wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F020, F02l, F022, F023, F026, F027, and F028, are prohibited from land disposal unless the following condition applies:

(1) The F020–F023 and F026–F028 dioxin-containing waste is contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action taken under subtitle C of the Resource Conservation and Recovery Act (RCRA).

(b) Effective November 8, 1990, the F020–F023 and F026–F028 dioxin–containing wastes listed in paragraph (a)(1) of this section are prohibited from land disposal.

(c) Between November 8, 1988, and November 8, 1990, wastes included in paragraph (a)(1) of this section may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2) and all other applicable requirements of Parts 264 and 265 of this chapter.

(d) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes meet the standards of Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

11. In Section 268.32 paragraphs (d), (e), (f), (g), introductory text, and (h) are revised to read as follows:

§ 268.32 Waste specific prohibitions—California list wastes.

* * * * *

(d) The requirements of paragraphs (a) and (e) of this section do not apply until:

(1) July 8, 1989 where the wastes are contaminated soil or debris not resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or a corrective action taken under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Between July 8, 1987 and July 8, 1989, the wastes may be disposed in a landfill or surface impoundment only if such disposal is in compliance with the requirements specified in § 268.5(h)(2).

(2) November 8, 1990 where the wastes are contaminated soil or debris resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action taken under Subtitle C of RCRA. Between November 8, 1988, and November 8, 1990, the wastes may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) Effective November 8, 1988, the following hazardous wastes are prohibited from land disposal (subject to any regulations that may be promulgated with respect to disposal in injection wells):

(1) Liquid hazardous wastes that contain HOCs in total concentration greater than or equal to 1,000 mg/1 and are not prohibited under paragraph (a)(3) of this section; and

(2) Nonliquid hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg and are not wastes described in paragraph (d) of this section.

(f) Between July 8, 1987 and November 8, 1988, the wastes included in paragraphs (e)(1) and (e)(2) of this section may be disposed in a landfill or surface impoundment only if such disposal is in compliance with the requirements specified in § 268.5(h)(2).

(g) The requirements of paragraphs (a), (d), and (e) of this section do not apply if:

* * * * *

(h) The prohibitions and effective dates specified in paragraphs (a)(3), (d),

and (e) of this section do not apply where the waste is subject to a Part 268 Subpart C prohibition and effective date for a specified HOC (such as a hazardous waste chlorinated solvent, see e.g., § 268.30(a)).

* * * * *

12. Section 268.33 is added to read as follows:

§ 268.33 Waste specific prohibitions—First Third Wastes

(a) Effective August 8, 1988, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. F006 (nonwastewater), K001, K004 (nonwastewater), K008 (nonwastewater), K015, K016, K018, K019, K020, K021 (nonwastewater), K022 (nonwastewater), K024, K025, K030, K036 (nonwastewater), K037, K044, K045, nonexplosive K046 (nonwastewater), K047, K060 (nonwastewater), K061 (nonwastewaters containing less than 15% zinc), K062, non $CaSO_4$ K069 (nonwastewaters), K083 (nonwastewaters), K086 (solvent washes), K087, K099, K100, K101, K102, K103, and K104 are prohibited from land disposal (except in an injection well).

(1) Effective August 8, 1988 and continuing until August 7, 1990, K061 wastes containing 15% zinc or greater are prohibited from land disposal pursuant to the treatment standards specified in § 268.41 applicable to K061 wastes that contain less than 15% zinc.

(b) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K048, K049, K050, K051, K052, K061 (containing 15% zinc or greater), and K071 are prohibited from land disposal.

(c) Effective August 8, 1990, the wastes specified in 40 CFR 268.10 having a treatment standard in Subpart D of this part based on incineration and which are contaminated soil and debris are prohibited from land disposal.

(d) Between November 8, 1988 and August 8, 1990, wastes included in paragraphs (b) and (c) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this Part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

(f) Between August 8, 1988, and May 8, 1990, the wastes specified in § 268.10 for which treatment standards under Subpart D of this Part are not applicable, including those wastes which are subject to the statutory prohibitions of RCRA section 3004(d) or codified prohibitions under § 268.32 of this Part, but not including wastes subject to a treatment standard under § 268.42 of this Part, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to § 268.8.

(g) To determine whether a hazardous waste listed in § 268.10 exceeds the applicable treatment standards specified in § 268.41 and § 268.43, the initial generator must test a representative sample of the waste extract or the entire waste depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal and all requirements of Part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

13. Section 268.40 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 268.40 Applicability of treatment standards.

(a) A restricted waste identified in § 268.41 may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using the test method in Appendix I of this part does not exceed the value shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste.

* * * * *

(c) A restricted waste identified in § 268.43 may be land disposed only if the constituent concentrations in the waste or treatment residue of the waste do not exceed the value shown in Table CCW of § 268.43 for any hazardous constituent listed in Table CCW for that waste.

14. In Table CCWE in § 268.41(a), in the column headed " F001–F005 spent solvents," "methylene chloride (from the pharmaceutical industry)" and its corresponding concentrations is deleted, and the following subtables to Table CCWE are added in numerical order by EPA Hazardous Waste Number:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE—CONSTITUTENT CONCENTRATIONS IN WASTE EXTRACT

* * * * *

F006 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Cadmium	0.066
Chromium (Total)	5.2
Lead	.51
Nickel	.32
Silver	.072
Cyanides (Total)	Reserved

K001 nonwastewaters (see also Table in § 268.43)	Concentration (in mg/l)
Lead	0.51

K022 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Chromium (Total)	5.2
Nickel	0.32

K046 nonwastewaters (Nonreactive Subcategory)	Concentration (in mg/l)
Lead	0.18

K048, K049, K050, K051 and K052 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Arsenic	0.004
Chromium (Total)	1.7
Nickel	.048
Selenium	.025

K061 nonwastewaters (Low Zinc Subcategory—less than 15% total zinc)	Concentration (in mg/l)
Cadmium	0.14
Chromium (Total)	5.2
Lead	.24
Nickel	.32

K061 nonwastewaters (High Zinc Subcategory—15% or greater total zinc): effective until 8/8/90	Concentration (in mg/l)
Cadmium	0.14
Chromium (Total)	5.2
Lead	.24
Nickel	.32

K062 nonwastewaters	Concentration (in mg/l)
Chromium (Total)	0.094
Lead	.37

K071 nonwastewaters	Concentration (in mg/l)
Mercury	0.025

K086 nonwastewaters (Solvent Washes Subcategory) see also Table CCW in § 268.43)	Concentration (in mg/l)
Chromium (Total)	0.094
Lead	.37

K087 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Lead	0.51

K101 and K102 nonwastewaters (Low Arsenic Subcategory—less than 1% Total Arsenic) (see also Table CCW in § 268.43)	Concentration (in mg/l)
Cadmium	0.066
Chromium (Total)	5.2
Lead	.51
Nickel	.32

15. In § 268.42 paragraph (a)(2) is revised to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) * * *

(2) Nonliquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid HOC-containing wastes that are prohibited under § 268.32(e)(1) of this part must be incinerated in accordance with the requirements of Part 264, Subpart O or Part 265, Subpart O, or in boilers or industrial furnaces burning in accordance with applicable regulatory standards. These treatment standards do not apply where the waste is subject to a Part 268, Subpart C treatment standard for a specific HOC (such as a hazardous waste chlorinated solventfor which a treatment standard is established under § 268.41(a)).

* * * * *

16. Section 268.43 is amended by adding paragraphs (a) and (b) and Table CCW to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) Table CCW identifies the restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the waste or treatment residual (not an extract of such waste or residual) for the allowable land disposal of such waste or residual.

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES

F001, F002, F003, F004 and F005 wastewaters (Pharmaceutical Industry)	Concentration (in mg/l)
Methylene chloride	0.44

F006 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	Reserved

K001 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Naphthalene	8.0
Pentachlorophenol	37
Phenanthrene	8.0
Pyrene	7.3
Toluene	.14
Xylenes	.16

K001 wastewaters	Concentration (in mg/l)
Naphthalene	0.15
Pentachlorophenol	.88
Phenanthrene	.15
Pyrene	.14
Toluene	.14
Xylenes	.16
Lead	.037

K015 wastewaters	Concentration (in mg/l)
Anthracene	1.0
Benzal chloride	.28
Benzo (b and/or k) fluoranthene	.29
Phenanthrene	.27
Toluene	.15
Chromium (Total)	.32
Nickel	.44

K016 nonwastewaters	Concentration (in mg/kg)
Hexachlorobenzene	28
Hexachlorobutadiene	5.6
Hexachlorocyclopentadiene	5.6
Hexachloroethane	28
Tetrachloroethene	6.0

K016 wastewaters	Concentration (in mg/l)
Hexachlorobenzene	0.033
Hexachlorobutadiene	.007
Hexachlorocyclopentadiene	.007
Hexachloroethane	.033
Tetrachloroethene	.007

K018 nonwastewaters	Concentration (in mg/kg)
Chloroethane	6.0
1,1-Dichloroethane	6.0
1,2-Dichloroethane	6.0
Hexachlorobenzene	28
Hexachlorobutadiene	5.6
Hexachloroethane	28
Pentachloroethane	5.6
1,1,1-Trichloroethane	6.0

K018 wastewaters	Concentration (in mg/l)
Chloroethane	0.007
Chloromethane	.007
1,1-Dichloroethane	.007
1,2-Dichloroethane	.007
Hexachlorobenzene	.033
Hexachlorobutadiene	.007
Pentachloroethane	.007
1,1,1-Trichloroethane	.007

K019 nonwastewaters	Concentration (in mg/kg)
Bis(2-chloroethyl)ether	5.6
Chlorobenzene	6.0
Chloroform	6.0
1,2-Dichloroethane	6.0
Hexachloroethane	28
Naphthalene	5.6
Phenanthrene	5.6
Tetrachloroethene	6.0
1,2,4-Trichlorobenzene	19
1,1,1-Trichloroethane	6.0

K019 wastewaters	Concentration (in mg/l)
Bis(2-chloroethyl)ether	0.007
Chlorobenzene	.006
Chloroform	.007
p-Dichlorobenzene	.008
1,2-Dichloroethane	.007
Fluorene	.007
Hexachloroethane	.033
Naphthalene	.007
Phenanthrene	.007
1,2,4,5-Tetrachlorobenzene	.017
Tetrachloroethene	.007
1,2,4-Trichlorobenzene	.023
1,1,1-Trichloroethane	.007

K020 nonwastewaters	Concentration (in mg/kg)
1,2-Dichloroethane	6.0
1,1,2,2-Tetrachloroethane	5.6

K020 nonwastewaters	Concentration (in mg/kg)
Tetrachloroethene	6.0

K020 wastewaters	Concentration (in mg/l)
1,2-Dichloroethane	0.007
1,1,2,2-Tetrachloroethane	.007
Tetrachloroethene	.007

K022 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acetophenone	19
Sum of Diphenylamine and Diphenylnitrosamine	13
Phenol	12
Toluene	0.034

K024 nonwastewaters	Concentration (in mg/kg)
Phthalic acid	28

K024 wastewaters	Concentration (in mg/l)
Phthalic acid	0.54

K030 nonwastewaters	Concentration (in mg/kg)
Hexachlorobutadiene	5.6
Hexachloroethane	28
Hexachloropropene	19
Pentachlorobenzene	28
Pentachloroethane	5.6
1,2,4,5-Tetrachlorobenzene	14
Tetrachloroethene	6.0
1,2,4-Trichlorobenzene	19

K030 wastewaters	Concentration (in mg/l)
o-Dichlorobenzene	0.008
p-Dichlorobenzene	.008
Hexachlorobutadiene	.007
Hexachloroethane	.033
Pentachloroethane	.007
1,2,4,5-Tetrachlorobenzene	.017
Tetrachloroethene	.007
1,2,4-Trichlorobenzene	.023

K037 nonwastewaters	Concentration (in mg/kg)
Disulfoton	0.1
Toluene	28

K037 wastewaters	Concentration (in mg/l)
Disulfoton	0.003
Toluene	.028

K048 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Benzene	9.5
Benzo(a)pyrene	.84
Bis(2-ethylhexyl)phthalate	37
Chrysene	2.2
Di-n-butyl phthalate	4.2
Ethylbenzene	67
Naphthalene	[Reserved]
Phenanthrene	7.7
Phenol	2.7
Pyrene	2.0
Toluene	9.5
Xylenes	[Reserved]
Cyanides (Total)	1.8

K048 wastewaters	Concentration (in mg/l)
Benzene	0.011
Benzo(a)pyrene	.047
Bis(2-ethylhexyl)phthalate	.043
Chrysene	.043
Di-n-butyl phthalate	.060
Ethylbenzene	.011
Fluorene	.050
Naphthalene	.033
Phenanthrene	.039
Phenol	.047
Pyrene	.045
Toluene	.011
Xylenes	.011
Chromium (Total)	.20
Lead	0.37

K049 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Anthracene	6.2
Benzene	9.5
Benzo(a)pyrene	0.84
Bis(2-ethylhexyl)phthalate	37
Chrysene	2.2
Ethylbenzene	67
Naphthalene	[Reserved]
Phenanthrene	7.7
Phenol	2.7
Pyrene	2.0
Toluene	9.5
Xylenes	[Reserved]
Cyanides (Total)	1.8

K049 wastewaters	Concentration (in mg/l)
Anthracene	0.039
Benzene	.011
Benzo(a)pyrene	.047
Bis(2-ethylhexyl)phthalate	.043
Carbon disulfide	.011
Chrysene	.043
2,4-Dimethylphenol	.033
Ethylbenzene	.011
Naphthalene	.033
Phenanthrene	.039
Phenol	.047
Pyrene	.045
Toluene	.011
Xylenes	.011
Chromium (Total)	.20
Lead	.037

K049 wastewaters	Concentration (in mg/l)
Phenol	.047
Pyrene	.045
Toluene	.011
Xylenes	.011
Chromium (Total)	.20
Lead	.037

K050 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Benzo(a)pyrene	0.84
Phenol	2.7
Cyanides (Total)	1.8

K050 wastewaters	Concentration (in mg/l)
Benzo(a)pyrene	0.047
Phenol	.047
Chromium (Total)	.20
Lead	.037

K051 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Anthracene	6.2
Benzene	9.5
Benzo(a)anthracene	1.4
Benzo(a)pyrene	.84
Bis(2-ethylhexyl)phthalate	37
Chrysene	2.2
Di-n-butyl phthalate	4.2
Ethylbenzene	67
Naphthalene	[Reserved]
Phenanthrene	7.7
Phenol	2.7
Pyrene	2.0
Toluene	9.5
Xylenes	[Reserved]
Cyanides (Total)	1.8

K051 wastewaters	Concentration (in mg/l)
Acenaphthene	0.050
Anthracene	.039
Benzene	.011
Benzo(a)anthracene	.043
Benzo(a)pyrene	.047
Bis(2-ethylhexyl) phthalate	.043
Chrysene	.043
Di-n-butyl phthalate	.060
Ethylbenzene	.011
Fluorene	.050
Naphthalene	.033
Phenanthrene	.039
Phenol	.047
Pyrene	.045
Toluene	.011
Xylenes	.011
Chromium (Total)	.20
Lead	.037

K052 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Benzene	9.5
Benzo(a)pyrene	0.84
o-Cresol	2.2
p-Cresol	0.90
Ethylbenzene	67
Naphthalene	[Reserved]
Phenanthrene	7.7
Phenol	2.7
Toluene	9.5
Xylenes	[Reserved]
Cyanides (Total)	1.8

K052 wastewaters	Concentration (in mg/l)
Benzene	0.011
Benzo(a)pyrene	.047
o-Cresol	.011
p-Cresol	.011
2,4-Dimethylphenol	.033
Ethylbenzene	.011
Naphthalene	.033
Phenanthrene	.039
Phenol	.047
Toluene	.011
Xylenes	.011
Chromium (Total)	.20
Lead	.037

K062 wastewaters	Concentration (in mg/l)
Chromium (Total)	0.32
Lead	.04
Nickel	.44

K071 wastewaters	Concentration (in mg/l)
Mercury	0.030

K086 nonwastewaters—Solvent Washes Subcategory (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acetone	0.37
bis(2-ethylhexyl) phthalate	.49
n-Butyl alcohol	.37
Cyclohexanone	.49
1,2-Dichlorobenzene	.49
Ethyl acetate	.37
Ethyl benzene	.031
Methanol	.37
Methylene chloride	.037
Methyl ethyl ketone	.37
Methyl isobutyl ketone	.37
Naphthalene	.49
Nitrobenzene	.49
Toluene	.031
1,1,1,-Trichloroethane	.044
Trichloroethylene	.031
Xylenes	.015

K086 wastewaters—Solvent Washes Subcategory	Concentration (in mg/l)
Acetone	0.015
bis(2-ethylhexyl)phthalate	.044

K086 wastewaters—Solvent Washes Subcategory	Concentration (in mg/l)
n-Butyl alcohol	.031
Cyclohexanone	.022
1,2-Dichlorobenzene	.044
Ethyl acetate	.031
Ethyl benzene	.015
Methanol	.031
Methylene chloride	.031
Methyl ethyl ketone	.031
Methyl isobutyl ketone	.031
Naphthalene	.044
Nitrobenzene	.044
Toluene	.029
1,1,1,-Trichloroethane	.031
Trichloroethylene	.029
Xylenes	.015
Chromium (Total)	.32
Lead	.037

K087 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acenaphthalene	3.4
Benzene	.071
Chrysene	3.4
Fluoranthene	3.4
Indeno (1,2,3-cd) pyrene	3.4
Naphthalene	3.4
Phenanthrene	3.4
Toluene	.65
Xylenes	.070

K087 wastewaters	Concentration (in mg/l)
Acenaphthalene	0.028
Benzene	.014
Chrysene	.028
Fluoranthene	.028
Indeno (1,2,3-cd) pyrene	.028
Naphthalene	.028
Phenanthrene	.028
Toluene	.008
Xylenes	.014
Lead	.037

K099 nonwastewaters	Concentration (in mg/kg)
2,4-Dichlorophenoxyacetic acid	1.0
Hexachlorodibenzo-p-dioxins	.001
Hexachlorodibenzofurans	.001
Pentachlorodibenzo-p-dioxins	.001
Pentachlorodibenzofurans	.001
Tetrachlorodibenzo-p-dioxins	.001
Tetrachlorodibenzofurans	.001

K099 wastewaters	Concentration (in mg/l)
2,4-Dichlorophenoxyacetic acid	1.0
Hexachlorodibenzo-p-dioxins	.001
Hexachlorodibenzofurans	.001
Pentachlorodibenzo-p-dioxins	.001
Pentachlorodibenzofurans	.001
Tetrachlorodibenzo-p-dioxins	.001
Tetrachlorodibenzofurans	.001

K101 nonwastewaters (Low Arsenic Subcategory—less than 1% total arsenic) (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Ortho-Nitroaniline	14

K101 wastewaters	Concentration (in mg/l)
Ortho-Nitroaniline	0.27
Arsenic	2.0
Cadmium	.24
Lead	.11
Mercury	.027

K102 nonwastewaters (Low Arsenic Subcategory—less than 1% total arsenic) (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Ortho Nitrophenol	13

K102 wastewaters	Concentration (in mg/l)
Ortho-Nitrophenol	0.028
Arsenic	2.0
Cadmium	.24
Lead	.11
Mercury	.027

K103 nonwastewaters	Concentration (in mg/kg)
Aniline	5.6
Benzene	6.0
2,4-Dinitrophenol	5.6
Nitrobenzene	5.6
Phenol	5.6

K103 wastewaters	Concentration (in mg/l)
Aniline	4.5
Benzene	.15
2,4-Dinitrophenol	.61
Nitrobenzene	.073
Phenol	1.4

K104 nonwastewaters	Concentration (in mg/kg)
Aniline	5.6
Benzene	6.0
2,4-Dinitrophenol	5.6
Nitrobenzene	5.6
Phenol	5.6
Cyanides (Total)	1.8

K104 wastewaters	Concentration (in mg/l)
Aniline	4.5
Benzene	.15
2,4-Dinitrophenol	.61

K104 wastewaters	Concentration (in mg/l)
Nitrobenzene	.073
Phenol	1.4
Cyanides (Total)	2.7

No Land Disposal for:

K004 Nonwastewaters [Based on No Generation]
K008 Nonwastewaters [Based on No Generation]
K015 Nonwastewaters [Based on No Ash]
K021 Nonwastewaters [Based on No Generation]
K025 Nonwastewaters [Based on No Generation]
K036 Nonwastewaters [Based on No Generation]
K044 [Based on Reactivity]
K045 [Based on Reactivity]
K047 [Based on Reactivity]
K060 Nonwastewaters [Based on No Generation]
K061 Nonwastewaters—High Zinc Subcategory (greater than or equal to 15% total zinc) [Based on Recycling]: effective 8/8/90
K069 Nonwastewaters—Non-Calcium Sulfate Subcategory [Based on Recycling]
K083 Nonwastewaters—No Ash Subcategory (less than 0.01% total ash) [Based on No Ash]
K100 Nonwastewaters [Based on No Generation]

(b) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

17. In § 268.44, paragraphs (h) through (l) are added to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(h) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste generated under conditions specific to only one site cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may apply to the Assistant Administrator of the Office of Solid Waste and Emergency Response, or his delegated representative, for a site-specific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that because the physical or chemical properties of the waste differs significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.

(i) Each application for a site-specific variance from a treatment standard must include the information in § 260.20(b)(1)–(4);

(j) After receiving an application for a site-specific variance from a treatment standard, the Assistant Administrator, or his delegated representative, may request any additional information or samples which may be required to evaluate the application.

(k) A generator, treatment facility, or disposal facility that is managing a waste covered by a site-specific variance from a treatment standard must comply with the waste analysis requirements for restricted wastes found under § 268.7.

(l) During the application review process, the applicant for a site-specific variance must comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.

Subpart E—Prohibitions on Storage

18. Section 268.50 is amended by revising paragraph (d) to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

* * * * *

(d) The prohibition in paragraph (a) of this section does not apply to waste which are the subject of an approved petition under § 268.6, a nationwide variance under Subpart C of this part, an approved case-by-case extension under § 268.5, or a valid certification under § 268.8.

* * * * *

V. In Part 271:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

2. Section 271.1(j) is amended by adding the following entry to Table l in chronological order by date of promulgation in the **Federal Register**:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
• •	• • • • •	• •	
[Insert date of promulgation of final rule in the **Federal Register**].	Land disposal restrictions for First Third wastes.	53 FR [Insert **Federal Register** page numbers]	Aug. 8, 1988.
• •	• • • • •	• •	

3. Section 271.1(j) is amended by adding the date of publication and the **Federal Register** page numbers to the following entry in Table 2.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
•	•	•	•
August 8, 1988	Land disposal restrictions on 1/3 of listed wastes.	3004(g)(6)(A)	[Insert date of publication] 53 FR [insert Federal Register page numbers]
•	•	•	•

[FR Doc. 88-18298 Filed 8-16-88; 8:45 am]

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federal register

Wednesday
August 17, 1988

Part III

Department of Housing and Urban Development

24 CFR Part 570

Community Development Work Study Program; Proposed Rule and Notice of Fund Availability

VOL 53 ISS 159 AUG 17 1988 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-88-1406; FR-2475]

Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amends section 107 of the Housing and Community Development Act of 1974 to authorize the Community Development Work Study Program (CDWSP). Elsewhere in today's issue of the **Federal Register**, HUD is publishing a notice of funding availability for CDWSP announcing the availability of $3 million from amounts that were appropriated for CDWSP in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100-202, approved December 22, 1987) (1988 Appropriations Act) and stating the requirements that will govern the use of these funds provided under the 1988 appropriations Act. This notice of proposed rulemaking references that NOFA, states HUD's intention to use the requirements contained in the NOFA as the basis for a final rule amending 24 CFR Part 570, and invites public comment on the announced requirements.

DATES: Comments on the proposed requirements must be received by October 17, 1988.

ADDRESS: Interested persons are invited to submit comments regarding the proposed requirements to the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6092. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD, for several years, has funded a work study type program under authority of the Secretary's discretionary fund to provide grants to qualified entities for the provision of assistance to governmental units in carrying out programs under Title I of the Housing and Community Development Act of 1974 (the Act). (See section 107(b)(4) of the Act). The grants were made to institutions of higher education and metropolitan planning organizations to provide educational assistance in the fields of community development to minority and economically disadvantaged students who were to be employed by governmental entities in the administration of Title I funds. HUD's technical assistance program regulations implementing section 107(b)(4) of the Act are found at 24 CFR 570.402.

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amended the Housing and Community Development Act of 1974 (the Act) to add a new section 107(c). This section authorizes a new Community Development Work Study Program (CDWSP). Under this section HUD is authorized to provide grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, and community management.

Elsewhere in today's issue of the **Federal Register**, HUD is publishing a notice of funding availability announcing the availability of $3 million for CDWSP from amounts appropriated for CDWSP in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100-202, approved December 22, 1987) (1988 Appropriations Act). The notice also announces the requirements that will govern funds made available under the 1988 Appropriations Act. The requirements reflect the existing work study program requirements without significant changes.

HUD intends to use today's NOFA as the basis for a final rule amending 24 CFR Part 570 and establishing requirements for CDWSP. For this reason, HUD is inviting public comment on the requirements contained in the NOFA, so that the final rule on the subject matter will have the benefit of public participation.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Both small and large entities are eligible for funding under the program. Since the total number of entities that will be funded under the program will be few and will include both small and large recipients, HUD does not believe that a significant number of small entities will be affected by this program.

This rule was not listed in the Department's Semiannual Agenda of Regulations published October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low- and moderate-income housing, New communities, Pockets of Poverty, Small cities.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 25, 1988.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 88–18495 Filed 8–16–88; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-88-1827; FR-2510]

Community Development Work Study Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amends section 107 of the Housing and Community Development Act of 1974 to authorize the Community Development Work Study Program (CDWSP). This notice announces the requirements that will govern the use of $3 million for CDWSP from amounts that were appropriated in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100-202, approved December 22, 1987). Elsewhere in today's issue of the **Federal Register**, HUD has published a notice of proposed rulemaking for CDWSP.

DATE: This notice is effective August 17, 1988.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6092. This is not a toll-free number. Application packages (requests for grant application) may be obtained after October 1, 1988 at the following address: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW. Room 5252, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

Background

HUD, for several years, has funded a work study type program under authority of the Secretary's discretionary fund to provide grants to qualified entities for the provision of assistance to governmental units in carrying out programs under Title I of the Housing and Community Development Act of 1974 (the Act). (See section 107(b)(4) of the Act.) The grants were made to institutions of higher education and metropolitan planning organizations to provide educational assistance in the fields of community development to minority and economically disadvantaged students who were to be employed by governmental entities in the administration of Title I funds. HUD's technical assistance program regulations implementing section 107(b)(4) of the Act are found at 24 CFR 570.402.

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amended the Housing and Community Development Act of 1974 (the Act) to add a new section 107(c). This section authorizes a new Community Development Work Study Program (CDWSP). Under this section HUD is authorized to provide grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, and community management.

In the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100-202, approved December 22, 1987) (1988 appropriations Act), $3 million was provided for CDWSP.

Purpose of Notice

This notice announces the requirements that will govern the use of funds appropriated for CDWSP for fiscal year 1988. HUD believes good cause exists for making these requirements effective for fiscal year 1988 without prior public comment. This approach is appropriate because the notice incorporates the existing work study program requirements without significant changes. The few changes that are included are generally in response to statutory changes. For example, the technical assistance work study program required students to work for two years after graduation in a governmental agency that was using Title I community development funds, or repay the assistance. This requirement was imposed to ensure that the governmental unit received assistance in carrying out its Title I program, as required by section 107(b)(4) of the Act. New section 107(c) does not contain such a requirement. Accordingly, the employment/repayment requirement has been dropped. (Students are, however, strongly encouraged to obtain such employment for two years following graduation and are required to repay tuition support and additional support if the student's participation in CDWSP is terminated at any time before the completion of the two-year term of the student's program.) Additionally, in accordance with 1987 Act, the new program adds States as eligible recipients and makes assistance available for undergraduate studies under limited circumstances.

HUD also believes that this approach is justified because the failure to make these requirements effective immediately would prevent the use of CDWSP funds during the 1989-90 school year. The time period remaining before the end of the 1988-89 school year will not permit HUD to publish proposed requirements, respond to public comments, publish a notice containing revised requirements, and select recipients, and permit the recipients to bring their program into operation. Today's notice will make funds available to recipients at the earliest possible date (*i.e.*, the second semester of the 1988-89 school year). Elsewhere in today's issue of the **Federal Register**, HUD is publishing a proposed rulemaking for CDWSP.

This notice also solicits applications for the use of the $3 million in funding. The application requirements and projected filing deadlines are set forth in section VI. of the program description below. Applicants may apply for funds for programs that begin either in the Spring 1989 or Fall 1989 semester.

CDWS Program Description

I. Applicability and objectives

Under the Community Development Work Study Program, HUD will make grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning or community management.

The primary objectives of the program are to attract minority and economically disadvantaged students to careers in community and economic development, community planning, and community management, and to provide a cadre of well-qualified professionals to plan, implement, and administer local community development programs.

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II. Definitions

The following definitions apply to CDWSP:

Applicant means an institution of higher education, a State, or areawide planning organization that submits an application for assistance under CDWSP.

Areawide planning organization (APO) means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a metropolitan or nonmetropolitan area.

CDWSP means the Community Development Work Study Program established under section 501(b)(2) of the Housing and Community Development Act of 1987 (approved February 5, 1988, Pub. L. 100–242).

Community development academic program or academic program means an undergraduate or graduate degree program in community and economic development, community planning, community management or other related fields of study. Related fields include public administration, public policy, urban economics, urban management, or urban planning, and exclude social and humanistic fields such as law, economics (except for urban economics), psychology, education, and history. Community development academic program or academic program does not include academic programs that offer joint fields of study in related and unrelated fields.

Economically disadvantaged student means a student who satisfies all applicable financial need guidelines establishes at the participating institute of higher education.

HUD means the Department of Housing and Urban Development.

Institution of higher education means a public or private educational institution that offers graduate or undergraduate degrees in a community development academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education under 34 CFR Part 603.

Metropolitan area means a metropolitan statistical area, as established by the Office of Management and Budget.

Minority student means a student who is Black, an American Indian/Alaskan Native, a Hispanic, or an Asian/Pacific Islander.

Recipient means an approved applicant that executes a grant agreement with HUD.

III. Assistance provided

(a) In General

Under CDWSP, HUD will provide funding in the form of grants to recipients to enable the recipients to make assistance available to eligible students. Grants will be provided to cover the costs of student assistance and for an administrative allowance.

(b) Cost of Student Assistance

Grants will be made to recipients to cover the costs of assistance provided to eligible students in the form of students stipends; tuition support; and additional support. The amount of the grant for student assistance shall not exceed the actual costs incurred and the limitations set forth below.

(1) *Stipend.* Recipients may provide a stipend to eligible students. The amount of the student stipend will be based upon the prevailing hourly rate for initial entry positions in the community and economic development field and the number of hours worked by the student at the work placement assignment. The maximum amount of the student stipend that may be provided under the program is $6,000 per year for an undergraduate student, and $9,000 per year for a graduate student.

(2) *Tuition support.* Student assistance may be made available to cover the costs of tuition at the participating institution of higher education. The maximum amount of the tuition support is limited to the tuition charged at the participating institution of higher education, and may not exceed $3,000 per year for an undergraduate student and $3,500 per year for a graduate student.

(3) *Additional support.* The recipient may provide additional support for books, and support for travel related to the academic program, work placement assignment, or attendance at conferences sponsored by professional organizations in the field of community and economic development. The maximum amount of additional support is limited to $1,000 per year for an undergraduate student and $1,500 per year for a graduate student.

(c) Administrative Allowance

HUD will provide an allowance to recipients to cover the administrative costs of the program. The administrative allowance is $1,000 per year for each student participating in the program.

(d) Number of Students Assigned

The minimum number of students that may be assisted under CDWSP is three students per participating institution of higher education. If an areawide planning organization or State receives assistance for a program that is conducted by two or more institutions of higher education, as described in section IV.(a)(1)(B) below, each participating institution must have a minimum of three students in the program. The maximum number of students that may be assisted under CDWSP is ten students per participating institution of higher education.

IV Eligibility and Responsibilities of Program participants

(a) Recipient

(1) *Eligibility.* (i) The following organizations are eligible to apply for assistance under the program:

(A) Institutions of higher education. Institutions of higher education offering graduate degrees in a community development academic program are eligible for assistance under CDWSP. Institutions of higher education that offer undergraduate degrees in a community development academic program are eligible if the institution is located in a metropolitan area and no institution of higher education located in the metropolitan area offers graduate degrees in a community development academic program, or if the institution is located in a nonmetropolitan area of a State and no institution of higher education located in the nonmetropolitan area offers graduate degrees in a community development academic program.

(B) Areawide Planning Organizations and States. An areawide planning organization or a State may apply for assistance for a program that will be conducted by two or more institutions of higher education.

(*1*) Institutions of higher education participating in a APO program must be located within the metropolitan or nonmetropolitan area served by the APO. Institutions of higher education participating in a State program must be located within the State.

(*2*) Except as provided below, participating institutions must offer graduate degrees in a community development academic program. Programs involving a participating institution that offers only undergraduate degrees in a community development academic program are eligible under the following circumstances: (*a*) in the case of institutions participating in an APO program, no institution of higher education located within the metropolitan or nonmetropolitan area served by the APO offers graduate degrees in a community development

academic program; or (*b*) in the case of institutions participating in a State program, no institution of higher education located within the metropolitan or nonmetropolitan area in which the institution offering undergraduate degrees is located offers graduate degrees in a community development academic program.

(ii) If a State applies for funding, institutions of higher education located in the State are not eligible recipients. If an APO applies for funding, institutions of higher education located in the metropolitan area or nonmetropolitan area served by the APO are not eligible recipients. Such institutions, however, may receive assistance through participation in an APO or State program.

(iii) To be eligible in future funding competitions for CDWSP, recipients will be required to maintain a 50 percent rate of graduation from a CDWSP-funded academic program.

Note: The graduation rate will also be considered in the ranking of applications under section VII.(b)(1).)

(2) *Recipient responsibilities.* The recipients is responsible for the administration of the program, for compliance with all program requirements, and for the coordination of program activities carried out by the work placement agencies and (if the recipient is an APO or State), the participating institutions of higher education. Specific responsibilities include, but are not limited to, the following:

(i) Recruitment and selection of students. The recipient is responsible for the recruitment and selection of students for participation in CDWSP. The recipient shall establish recruitment procedures that will identify eligible minority and economically disadavantaged students pursuing a career in community and economic development, and make such students aware of the availability of assistance opportunities. The recipient must select students in accordance with the procedures described in section V.(a) below, before the beginning of the semester for which funding has been provided.

(ii) Selection of work placement agencies. The recipient is responsible for the recruitment and selection of work placement agencies, and for the negotiation and execution of agreements covering each work placement assignment. (The requirements of the work placement agreement are set forth in section VIII., below)

(iii) Referral of students. The recipient is responsible for the referral of participating students to the work placement assignments.

(iv) Seminars. The recipient must provide regularly scheduled seminars for participating students. The purpose of the seminars is to relate the work experience provided under CDWSP to the educational experience in the student's academic program, and to address career planning and permanent job placement. At least one seminar each semester or quarter must address student obligations under CDWSP.

(v) Assignment of staff. The recipient must assign sufficient staff to administer and supervise the program on a day-to-day basis, and, where the recipient is an APO or State, to coordinate the activities of the work study coordinating committee.

(vi) Student employment following graduation. The recipient must encourage participating students to obtain employment for a minimum of two years after graduation with a unit of State or local government, Indian tribe or nonprofit private organization that receives community development funds. The degree to which recipients successfully encourage such employment will be considered as a selection factor under section VII.(b)(4) in future funding competitions.

(vii) Reports and recordkeeping. The recipient must keep records and make such reports as HUD may require. All such records must be retained by the recipient for a period of three years following the expiration of the grant. At a minimum, HUD will require recipients to:

(A) submit management and work plans including schedules for major activities, student monitoring procedures, and the assignment of staff to the program.

(B) submit the following information for each student participating in the program: information describing the student's racial, ethnic and income characteristics; the student's academic, placement and employment status; the amount of assistance provided to the student; any amount of assistance provided to the student under CDWSP that was required to be repaid to the institution; and the amount of such assistance that has actually been repaid. Such information must be submitted upon the completion of each academic school term for the institution until all assisted students have graduated or repaid all CDWSP funds to the recipient.

(viii) Other Federal requirements. The recipient must comply with all other applicable Federal requirements, including the requirements of 24 CFR 570.601 and 570.602 (nondiscrimination), 570.609 (debarred, suspended or ineligible contractors), 570.610 (uniform administrative procedures and cost principles) and 570.611 (conflicts of interest).

(ix) APO and State responsibilities. If the recipient is an APO or State, the recipient has the following additional responsibilities:

(A) The recipient must establish a committee to coordinate activities between program participants. The committee will be chaired by a representative of the recipient. Other members shall include representatives of the participating institutions of higher education, work placement agencies, participating students, and HUD, and may include advisory members as appropriate. The committee shall advise the recipient on policy matters, assist the recipient in ranking and selection of participating students, and review disputes concerning compliance with program agreements and performance.

(B) The recipient must allocate the assistance awarded under the program to the participatiing institutions of higher education. APOs and States may not make fractional awards to institutions. (*I.e.*, if assistance is awarded to support seven students, the APO or State may not award 3.5 student awards to Institution A and 3.5 student awards to Institution B.)

(b) Institutions of Higher Education

Institutions of higher education participating in a program are responsible for providing its educational component. Where the recipient is an APO or State, the institution of higher education shall assist the APO or State in the administration and operation of the program. Responsibilities include assisting the recipient in the selection of students by determining the eligibility of students for the academic program, and by making the analysis of students under the financial need guidelines established by the institution. Institutions of higher education must comply with all other applicable Federal requirements, including the requirements of 24 CFR 570.601 and 570.602 (nondiscrimination), 570.609 (debarred, suspended or ineligible contractors), 570.610 (uniform administrative procedures and cost principles) and 570.611 (conflicts of interest).

(c) Work Placement Agencies

(1) *Eligibility.* To participate in CDWSP, work placement agencies must be an agency of a State or unit of general local government, an areawide planning organization, an Indian tribe, or a private nonprofit organization

involved in comprehensive planning, land use, community development or housing activities.

(2) *Responsibilities.* Work placement agencies have the following responsibilities under the program:

(i) Work placement agencies must provide practical experience and training in the community and economic development, community planning, or community management field to participating students through work placement assignments. Work placement assignments must offer students experience in planning, developing and administering a local community or economic development program. Work placement agencies must assure that work assignments involve substantive duties that will further the student's career goals.

(ii) Work placement agencies must consult with the institution of higher education (and the APO or State, where an APO or State is the recipient) to ensure that the student's work placement assignment meets the objectives described in paragraph (i) above.

(iii) Work placement agencies must provide a number of work placement assignments that exceeds the number of students assigned to the agency and must rotate student work placement assignments among students in order to provide a wide choice of work experience.

(iv) Work placement agencies must require each student to devote sufficient time to the work placement assignment. Generally, a minimum of 12 to 20 hours per week (including seminar attendance) will be required. Work placement agencies may provide flexibility in the work period (e.g., *full-time* work placements assignments may be made during the summer or during a semester or quarter), if such a schedule is consistent with the requirements of the student's community development academic program. However, a particpating student may receive the stipend payment only during the period that the student is placed with the work placement agency.

(v) Work placement agencies shall comply with all other applicable Federal requirements, including the requirements of 24 CFR 570.601 and 570.602 (nondiscrimination), 570.609 (debarred, suspended or ineligible contractors), 570.610 (uniform administrative procedures and cost principles) and 570.611 (conflicts of interest).

(vi) Work placement agencies must maintain such records as HUD may require.

V. Student participation

(a) Student Selection

(1) *Application procedures.* Students apply directly to recipients receiving grants under CDWSP. Students will be selected in accordance with the eligibility requirements and selection procedures set out in this notice.

(2) *Eligibility.* To be eligible for participation in the program, the student:

(i) Must be an economically disadvantaged student.

(ii) Must be a full-time student enrolled in the first year of graduate study in a community development academic program at the participating institution of higher education. If an institution of higher education participating in CDWSP offers only undergraduate degrees in a community development academic program, the individual must be a junior enrolled full-time in an undergraduate degree program. Individuals enrolled in doctoral programs are ineligible.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in the community development academic program and in work placement assignments, and to comply with the professional standards set by the recipient and the work placement agencies.

(iv) May not have previously participated in CDWSP.

(v) Must provide appropriate written evidence that he or she is lawfully admitted for permanent residence in the United States, if the individual is not a citizen.

(3) *Selection.* In selecting among eligible students, the recipient must consider the extent to which each student has demonstrated:

(i) Financial need under the applicable financial need guidelines established at the institution of higher education;

(ii) An interest in, and commitment to, a professional career in community and economic development, community planning or community management; and

(iii) The ability satisfactorily to complete academic and work placement responsibilities under CDWSP.

(b) Student Responsibilities

(1) *Academic and work placement responsibilities.* Each student must enroll in a two-year program of course work. A student's academic and work placement responsibilities include: full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community development academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. A student's participation in CDWSP will be terminated for failure to meet these responsibilities and standards. If a student's participation is terminated, the student will be ineligible for further CDWSP assistance and will be required to repay to the recipient any tuition support and additional support received under seciton II.(b) (2) or (3) above. The student, however, will not be required to repay the stipend received under section II.(b)(1) above.

(2) *Responsibilities after graduation.* Each student must agree to make a good-faith effort to obtain employment with a unit of State or local government or Indian tribe administering community development programs, or a non-profit private organization that receives community development funds. The term of such employment should be for at least two consecutive years following graduation from the academic program. If the student fails to obtain such employment, the student will not be required to repay the assistance received.

VI. Application Process

HUD has developed an application package (request for grant application) describing the information that applicants for CDWSP assistance must submit which should be available after October 1, 1988. The application will set forth the deadlines for the submission of applications. The application package will be provided upon the written request of any party made to: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW. Room 5252, Washington, DC 20410.

VII. Selection Process

(a) Threshold

To be eligible for ranking, applicants must meet each of the threshold criteria described below.

(1) *Proper submission.* The application must be filed in the application form prescribed by HUD, and within the time periods established under this notice.

(2) *Eligibility.* Each applicant must demonstrate that it is elgible to participate, and must establish the eligibility of participating institutions of higher education and work placement agencies.

(3) *Capacity.* The application must demonstrate that each entity that will participate in the program as a recipient, an institution of higher education or a

work placement agency has the ability and legal capacity to carry out its respective activities under CDWSP.

(b) Ranking

In the second step of the slection process, all applications that meet the above threshold requirements will be placed in priority funding order, based on the following ranking criteria.

(1) *Academic program.* (i) Quality of academic program. HUD will consider the quality of the academic program offered by the institution of higher education, in term of course offerings, academic requirements for students, and the appropriateness of the curriculum for preparing students for a career in community or economic development, community planning, or community management.

(ii) Academic supervision. HUD will consider the qualifications of the personnel supervising students' progress in the academic program and the amount of time that will be committed to students participating in CDWSP, to determine the extent to which students participating in the program will receive adequate counseling and guidance in the academic program.

(iii) Adequacy of resources. HUD will review information regarding the resources to be committed by the institution of higher education to the academic program, to determine the adequacy of the facilities and equipment that the institution plans to use in connection with the academic program.

(iv) Rate of graduation. In future funding competitions, HUD will consider the rate of graduation from a CDWSP funded academic program in assessing the academic program.

(2) *Work experience.* HUD will review the work experience that will be provided to participating students under CDWSP, and will consider the extent to which: (i) The participating student will receive a sufficient number and variety of work placement assignments; (ii) the assignments will provide practical and useful experience to students participating in the program; and (iii) the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management.

(3) *Seminars.* HUD will review the seminars proposed by the applicant to determine the extent to which proposed seminars will relate the experience provided under the work placement assignments with the educational experience provided under the academic program, and will address career planning and permanent job placement.

(4) *Permanent employment.* HUD will consider the extent to which the proposed program, as a whole, will lead participating students directly and immediately to permanent employment in community or economic development, community planning, or community management upon completion of the program. In making this determination, HUD will consider such factors as the past placement rates in similar programs administered by the applicant and the availability of job placement serices to participating students.

(5) *Applicant's adminstrative ability.* HUD will consider the degree to which an applicant will be able effectively to coordinate and administer the program. In making this determination, HUD will examine the applicant's past experience in administering similar programs, the qualifications of the applicant's administrative and support personnel, and the amount of time the personnel will devote to the program, and the facilties and equipment that will be used in the adminstration of the program.

(6) *Commitment to meeting the needs of minority and economically disadvantaged students.* (i) HUD will consider the recipient's commitment to meeting the needs of minority and economically disadvantaged students. In making this determination, HUD will consider:

(A) The degree to which the proposed recruitment plan will effectively identify and attract qualified minority and economically disadvantaged students to the program.

(B) The extent of the commitment evidenced by the institution of higher education to meeting the needs of minority and economically disadvantaged students; the availability of financial aid and support mechanisms for such students; and the hiring of faculty and administrators with an understanding of the needs of such students.

(C) Whether funding of the proposed program will result in a net increase in the number of minority and economically disadvantaged students in the academic program at the participating institution of higher education and will not result in a decrease in the amount of financial support available to such students in the academic program or to students at the participating insitution as a whole.

(ii) If the applicant is an APO or State, HUD will also consider the extent of the APO's (or State's) commitment to meeting the needs of minority and economically disadvantaged students, including: the APO's (or State's) experience in assisting minority and economimcally disadvantaged students to find permanent employment with local governments; its plans for the placement of participating students in work placement assignments among its local governments; and its plans for assisting students who complete CDWSP to find permanent employment.

(iii) The maximum number of ranking points available to institutions of higher education, APOs and States under this paragraph (6) will be equal.

(c) Final Selection

In the final step of the selection process, eligible applications will be considered for selection in their rank order. HUD reserves the right to make awards out of rank order to achieve geographic diversity. In order to provide assistance to as many highly ranked aplications as possible, HUD may provide assistance to support a number of students that is less than the number requested under the selected applciations.

VIII. Agreements

(a) Grant Agreement

The responsibilities the recipient under CDWSP will be incorporated in a grant agreement executed by HUD and the recipient.

(b) Recipient and Student

The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under CDWSP. The agreement must be executed before the student can be enrolled in the program. A student's participation in CDWSP will be terminated for failure to meet the responsibilities and standards in the agreement.

(c) Work Placement Assignment Agreement

The institution of higher education, the APO or State (if a APO or State is the grant recipient), the participating student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each of the parties, the educational objectives, the nature of supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

(d) APO (or State) and Institution of Higher Education

Where the recipient is an APO (or a State), the recipient and each participating institution of higher education must execute a written

agreement incorporating their mutual responsibilities under CDWSP.

IX. Administration

(a) Initial Obligation of Funds

When HUD selects an application for funding, and notifies the recipient, it will obligate funds to cover the amount of the approved grant. The initial obligation of funds will be provided for student grants for two years.

(b) Disbursement

Recipients will receive grant payments by U.S. Treasury checks on a reimbursement basis.

(c) Deobligation and Recipient Repayment

(1) HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable time after selection.

(2) If a student's participation in CDWSP is terminated at any time before the completion of the two-year term of the student's program, the recipient will be required to repay to the Federal Government the amount of the tuition support and addition support provided to the student under section III.(b) (2) and (3), above. However, HUD may on a case-by-case basis and for good cause (e.g., serious illness of the student, etc.) make exceptions to this repayment requirement. Recipients will be required to make this repayment even though the student fails to fulfill his or her repayment obligation to the recipient under section V.(b). The recipient will be eligible to receive payment for the cost of the student stipend paid before the date of the student's termination and for an administrative allowance that is based on the proportion of the two-year term completed by the student. (See section III.(b)(1) and (c). A recipient may substitute a student to complete the two-year term whose participation has been terminated. The substitute student must be otherwise eligible for participation in CDWSP and must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term.

(3) Consistent with OMB Circulars Nos. A–102 and A–110, HUD, in the grant agreement, will set forth in detail other circumstances under which funds may be deobligated, recipients may be liable for repayment, or other sanctions may be imposed.

Other Matters

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register.**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CRF Part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

Authority: Sec. 107(c) Housing and Community Development Act of 1974 (42 U.S.C. 5307); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated July 25, 1988.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants; Relocation, Displacement and Acquisition; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-88-1405; FR-2474]

Community Development Block Grants; Relocation, Displacement and Acquisition

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the displacement, relocation, replacement housing, and real property acquisition policies and requirements governing the Community Development Block Grant Programs (including the Entitlement Grants Program, the State CDBG Program and the HUD-Administered Small Cities Program) and the Urban Development Action Grant Program. The major purpose of this rule is to implement section 509 of the Housing and Community Development Act of 1987, which provides that grants under sections 106 and 119 of the Housing and Community Development Act of 1974 may be made only if the grantee certifies that it is following an anti-resident-displacement and relocation plan.

DATES: *Effective Date:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

Comment Due Date: October 17, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Harold J. Huecker, Director, or Melvin Geffner, Deputy Director, Relocation and Real Estate Division, Office of Urban Rehabilitation, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-6336 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This interim rule sets forth displacement, relocation, replacement housing and real property acquisition policies and requirements governing Community Development Block Grant (CDBG) Programs (including the Entitlement Grants Program, the State CDBG Program and the HUD-Administered Small Cities Program) and the Urban Development Action Grant Program (UDAG). The Department has consolidated these policies and requirements in 24 CFR 570.606 for the Entitlement Grants Program and the HUD-Administered Small Cities Program. A new § 570.496a has been added to govern the State CDBG Program under Subpart I. Section 570.457, which governs the UDAG program, has been amended to cross-reference the requirements of § 570.606. Except for provisions governing section 104(k) of the Housing and Community Development Act of 1974 (the Act) under the UDAG program, the requirements of these three sections are substantially identical.

I. Uniform Relocation Act

Sections 570.606(a) and 570.496(a) explain the circumstances under which State agency acquisition (and the resulting displacement) for a CDBG- or UDAG- assisted activity will be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)(42 U.S.C. 4601). This interim rule retains the existing URA requirements, but revises the current regulations for clarity.

The Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, enacted April 2, 1987) recently expanded URA coverage. Before the amendment, the relocation provisions of the URA applied only to the displacement of persons (families, individuals, businesses, nonprofit organizations or farms) that results from the acquisition of real property by a Federal agency, a State or a State agency for a Federal or federally assisted project or program. The 1987 amendments added displacement that directly results from rehabilitation, demolition, or privately undertaken acquisition for Federal or federally assisted programs. This revised coverage will apply to displacement that occurs on or after April 2, 1989.

On December 17, 1987 (52 FR 48015), the Department of Transportation (DOT), as the lead agency, along with sixteen other Federal agencies published an interim final rule implementing those provisions of the 1987 URA amendments that were explicit and which allowed for little, if any, administrative discretion or interpretation. These changes were reflected in 49 CFR Part 24. HUD was unable to participate in the government-wide publication due to Congressional review requirements applicable to HUD rules under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o). HUD subsequently published an interim rule making the December 17, 1988 government-wide interim final rule effective for HUD programs on April 2, 1989 (53 FR 4964, published February 19, 1988).

On July 21, 1988 (53 FR 27598), DOT published a proposed rule implementing the remaining 1987 URA amendments by revising the existing interim rule. The July 21, 1988 rule would apply to DOT, HUD and 16 other Federal agencies. Following the consideration of comments received in response to that proposed rule as well as comments received in response to the interim final rule, a final rule will be promulgated revising 49 CFR Part 24. HUD anticipates that the publication of a final rule in today's proceeding will be published concurrently with the final government-wide URA rule. HUD will incorporate appropriate revisions to the final rule in today's proceeding as necessary, to reflect the government-wide URA rule on or before April 2, 1989. Commenters interested in the URA requirements that will be imposed in this rule should also obtain the government-wide URA proposed rule, and make appropriate comments to DOT.

II. New Subsection 104(d) Requirements

Section 509 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended section 104 of the Housing and Community Development Act of 1974 (the Act) by adding a new subsection (d), and by redesignating existing subsections (d) through (j) as subsections (e) through (k) respectively.

The new section 104(d) of the Act provides that a grant under section 106 (CDBG Programs) or section 119 (UDAG Program) may be made only if the grantee certifies that it is following a "residential antidisplacement and

relocation assistance plan." Grantees under the CDBG Entitlement Program and HUD-Administered Small Cities CDBG Program must make this certification to HUD. Grantees under the UDAG Program must make this certification to HUD in the application for each project. State recipients under the State CDBG Program must certify to the State.

Under section 509(b) of the 1987 Act, the new amendment is effective on October 1, 1988. HUD will apply the new requirements of this section as follows:

Entitlement Grants Program (Metropolitan Cities and Urban Counties)—The interim rule will govern all activities for which funds are first obligated by the grantee on or after the date the first grant from HUD is made after September 30, 1988, without regard to the source year of the funds for the activity.

UDAG and the HUD-administered Small Cities Program—The interim rule will govern grants made by HUD on or after October 1, 1988.

State CDBG Program—The interim rule will govern grant agreements from HUD to the State signed on or after October 1, 1988. Thus, the interim rule will apply to grants that a State makes to state recipients with grant amounts made available to the State by HUD after October 1, 1988.

The residential antidisplacement and relocation assistance plan under section 104(d) contains two components—a one-for-one replacement unit requirement and a relocation assistance component. These components are discussed below.

A. One-for-one Replacement Unit

1. *Replacement requirement.* The interim rule at §§ 570.606(b)(1)(i) and 570.496a(b)(1)(i) implements section 104(d)(2)(A)(i) of the Act. The rule provides that all occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under Part 570 must be replaced with low/moderate-income dwelling units. The replacement dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The interim rule requires that the replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must be:

—Located within the same community. (For the purposes of the interim rule, within the community has been interpreted to be within the recipient/grantee's jurisdiction.)

—Sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. (The number of occupants that may be housed in units shall be determined by reference to local housing occupancy codes.)

—Provided in standard condition. Replacement units include units that have been raised to standard from substandard condition.

—Designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy of the units.

For the purposes of the section 104(d) requirements, the interim rule defines low/moderate-income dwelling unit as a dwelling unit with a market rental including utility costs, that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation, as established under the Section 8 Existing Housing Program. Based on a nationwide review comparing these FMR's with median incomes of families, the Department determined that, in nearly every jurisdiction, the FMR for a unit housing a four-person household is less than 30% of the gross household income of a family earning 80% of the median income for the jurisdiction. In many areas a family with an income of 60% or 70% of the median income for the jurisdiction can pay the FMR with 30% of its gross income.

The Department recognizes that, generally, a very low-income family—a family earning less than 50% of the median income—cannot afford a unit renting at the FMR level, unless the family is provided supplemental assistance. Therefore, the Department believes that housing vouchers and certificates under the Section 8 Existing Housing Program will remain an essential part of efforts to assist very low-income households. On the other hand, units with project-based subsidies, such as public housing and Section 8 moderate rehabilitation units will also meet the criteria for the one-for-one replacement units under section 104(d) of the Act.

Given the purpose of the new legislation, the Department believes that it is appropriate to require the replacement of substandard units that can be rehabilitated economically. Accordingly, "occupiable dwelling unit" is defined to mean a dwelling unit that is in a standard condition or in a substandard condition, but suitable for rehabilitation.

The conference report on section 509 stated that the conferees did not intend to make vacant and *un*occupiable housing subject to the one-for-one replacement requirement, unless the housing was vacated within the CDBG project site after the developer or city began preparations for the project or less than one year before the grant was approved. (H. Rep. No. 426, 100th Cong., 1st Sess. 228 (1987). HUD will consider dwelling units that are vacated within such a time period to be "occupied low/moderate income dwelling units that are demolished or converted to another use as a direct result of activities assisted" under Part 570, and will require the one-for-one replacement of such housing.

Except for grants under the State CDBG program, if the grantee has a HUD-approved Housing Assistance Plan (HAP) the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the HAP will apply. If the grantee has no HUD-approved HAP, the grantee will be required to establish and make public its definition of these terms consistent with the requirements of § 570.306(e)(1). Under the State CDBG program, the State may define, or at its option, allow the state recipient to establish and make public its definition of these terms. If the state recipient establishes definitions, the State must determine if the definitions are acceptable.

2. *Submission and publication requirements.* To ensure that HUD (or the State) and the public are aware of the recipient/grantee's plans for the provision of replacement housing, the interim rule at §§ 570.606(b)(1)(ii) and 570.496a(b)(1)(ii) provides for submission of certain information to HUD or to the State, and requires the recipient/grantee to make this information public before obligating or expending funds for any activity that requires the provision of replacement housing.

3. *Exception.* Under section 104(d)(3) of the Act, the requirements discussed above will not apply if the Secretary finds, on the basis of objective data, that there is available on a nondiscriminatory basis in the area an adequate supply of habitable affordable housing for low- and moderate-income persons. Sections 570.606(b)(1)(iii) and 570.496a(b)(1)(iii) implement this provision. These sections state that the HUD Field Office will make the determination by considering the following factors: housing vacancy rates, the number of vacant low/moderate-income dwelling units, and the number of eligible families on waiting lists for assistance under programs

assisted under the United States Housing Act of 1937. The determination by the HUD Field Office that the one-for-one replacement requirement is inapplicable shall constitute the final agency action on the issue.

The interim rule provides that the "area" to be considered is the recipient/grantee jurisdiction, unless HUD determines, based on geographic and demographic factors, including location and access to places of employment, that the dwelling units located in a larger area should be considered. Such dwelling units will be considered if the Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the dwelling units that are to be demolished or converted to another use.

The Department welcomes public comment on additional factors for review of requests for exception. The Department would like to refine the rule's thresholds for making these determinations to assure that they are consistent with available data resources and provide communities with clear, understandable criteria to be considered when reviewing requests.

Except for grants under Subpart I, the grantee must submit a request for a determination to the HUD Field Office. State recipients under Subpart I must submit their request to the State which will provide a recommendation to the Field Office on the request.

B. Relocation Assistance Under Section 104(d)

The interim rule at §§ 570.606(b)(2) and 570.496a(b)(2) implements section 104(d)(2)(iii) of the Act. The rule provides that each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use, as a direct result of an activity assisted under this Part 570 shall be provided with relocation assistance. Under the statute, relocation assistance includes reimbursement for actual and reasonable moving expenses, security deposits, credit checks, other moving-related expenses, including any interim housing expenses, and certain replacement housing assistance. Displaced persons have the right to elect, as an alternative to the benefits under section 104(d) of the Act, to receive benefits under the URA, if they determine that it is in their best interest to do so.

Where possible, the interim rule makes the relocation assistance under section 104(d) of the Act identical to the relocation benefits provided under the URA. Accordingly, displaced low- or moderate-income households will receive the relocation assistance provided to displaced persons required under 24 CFR 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the household elects to receive assistance under the URA or under section 104(d) of the Act. The interim rule modifies the definition of "comparable replacement dwelling" to reflect affordability requirements contained in section 104(d), and makes other minor changes to the requirements of 24 CFR Part 42. As required by the statute, assistance under section 104(d) of the Act requires the provision of a different type of replacement housing assistance (see discussion below) and additional assistance in the form of payments of security deposits to rent a replacement dwelling and credit checks required to rent or purchase a replacement dwelling. Each displaced household is given an opportunity to elect to receive benefits prescribed under the URA or 1987 Act provisions.

Replacement housing assistance is described in section 104(d)(2)(A)(iii) of the Act. Under this section, displaced persons of low- and moderate-income must be provided with compensation sufficient to assure that, for a five-year period after relocation, the displaced family will not bear a ratio of shelter costs to income that exceeds 30 percent of income.

While section 509 provides that shelter costs shall not exceed 30 percent of *income*, the Conference report on this section requires that the recipient/grantee provide compensation to ensure that displaced low- and moderate-income households do not pay more than 30 percent of their *adjusted income* for rent (H. Rep. No. 426, 100th Cong., 1st Sess. 227 (1987)). While the Department recognizes that section 509, as enacted, is significantly different from the provision addressed in the Conference report, it does not appear that subsequent revisions were intended to impose an income standard different from adjusted income. In determining how to adjust gross income, HUD considered the use of the income computation standard used under the United States Housing Act of 1937 (see 24 CFR Parts 813 and 913), but determined that this approach would be inappropriate for programs under Part 570 since recipient/grantees are generally unfamiliar with the complicated requirements of these standards. Instead, HUD has decided to permit the grantee to make such adjustments to gross incomes as the grantee may deem appropriate. (In the case of state recipients the State, or if the State permits, the state recipient will make adjustments as it may deem appropriate.) Such an approach is similar to an approach used in the past under the Uniform Relocation Act.

Under the interim rule the recipient/grantee may provide this compensation either through the provision of a Section 8 housing voucher or certificate (through the local Public Housing Agency) or as cash rental assistance.

The Department encourages recipient/grantees to offer Section 8 housing vouchers or certificates to all displaced low- and moderate-income households, thereby increasing the likelihood that the household will be able to afford standard housing after the five-year period expires. Where the recipient/grantee provides assistance in the form of a Section 8 housing voucher or certificate, however, the household must be provided with referrals to comparable replacement dwelling units whose owners are willing to participate in the certificate or housing voucher programs. To ensure that a household will not bear a ratio of shelter costs to income that exceeds 30 percent, where a certificate or housing voucher is provided to a household, the comparable dwelling unit must be made available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively. Housing voucher recipients, of course, may reject the dwelling unit to which they are referred and use their voucher to rent another dwelling unit with a monthly cost in excess of the payment standard if they are willing to pay the difference between the rent to the owner and the housing assistance payment under the housing voucher.

If housing vouchers or certificates are not provided, the recipient/grantee must provide cash rental assistance in the form of payments equal to 60 months (*i.e.*, 5 years) times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with adjustments as described above) from the lesser of: (1) The monthly cost of rent and utilities at a comparable replacement dwelling unit, or (2) the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates. Cash assistance may be in a lump sum or in installments.

In lieu of the housing voucher, certificate or cash assistance described above, the statute permits the household to elect to receive a lump sum payment to permit the household to secure participation in a housing cooperative or

mutual housing association. The interim rule provides for the election of a lump sum payment in an amount equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with adjustments as described above) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments will be discounted at a rate that is equal to a rate of interest paid on passbook savings deposits by a federally insured bank or savings and loan institution conducting business in the recipient/grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the recipient/grantee is encouraged, subject to appropriate safeguards to issue a payment in advance of the purchase of the interest in the cooperative or mutual housing association.

Under the interim rule, a low- or moderate-income household is eligible for relocation assistance under section 104(d) of the Act if:

(1) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the recipient/grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(2) The household is required to move from the dwelling unit on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants Program); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD-administered Small Cities Program); the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG Program); or the date of the initial submission of an application to a State from a unit of general local government that is approved for the requested activity (State CDBG program). (This applies to dwelling units owned by a Federal or State agency, as defined under the URA.)

If the displacement occurs after this date, the household will not be eligible for assistance if the household is evicted for cause, if the household moved to the property after the date after receiving written notice of the expected displacement; or the grantee determines and HUD concurs that the displacement was not a result of the assisted activity. (Under the State CDBG program, the state recipient makes this determination with the State's concurrence.) If a displacement occurs before this date, the household may be eligible for assistance if the grantee or HUD determines that the displacement was a direct result of an activity assisted under Part 570. (Under the State CDBG program, either the state recipient, the State or HUD may make this determination.)

C. Steps To Minimize Displacement

Minimizing displacement has long been an integral part of the policies and requirements which govern HUD-assisted programs. Consistent with existing policies and the special emphasis on protecting low- and moderate-income persons, the Department has included at § 570.606(b), a requirement that grantees identify the steps they will take to minimize the displacement of persons from their homes and neighborhoods.

The Department believes that strong relocation assistance standards that require grantees to provide substantial levels of assistance to persons displaced by HUD-assisted programs constitute the most effective antidisplacement policy. In addition to providing meaningful help to those persons most directly affected by displacement-causing projects, the substantial costs paid by the displacing entity act as the strongest deterrent to unnecessary displacement. For these reasons, the Department has, wherever possible, included in HUD program regulations very specific relocation assistance requirements governing displacement, not subject to the URA.

The pending expansion of the URA coupled with the new relocation assistance requirements in § 570.606(b) represent the strongest antidisplacement measures to be applied to a HUD-assisted program. In determining whether grantees have met CDBG anti-displacement goals and objectives, HUD will rely primarily on the monitoring of actual displacement, including a careful examination of randomly selected relocation cases and a review of the assistance provided to persons displaced. Additionally on a random basis, the Department will interview displaced persons and inspect replacement housing. Special attention will be given to the displacement of low- and moderate-income households from their dwellings.

III. Section 104(k) Requirements

Section 104(k) of the Act states that each grantee "shall provide for reasonable benefits to any person involuntarily and permanently displaced" as a result of the use of CDBG/UDAG assistance to acquire or substantially rehabilitate property. This requirement, formerly section 104(j), was added by the Housing and Urban-Rural Recovery Act of 1983.

HUD has not, as yet, fully implemented section 104(k) for all programs covered under Part 570. Minimum section 104(k) standards for the UDAG program were added at § 570.457(c) on February 7, 1987 (52 FR 3614) and were effective on March 17, 1987. Revisions to § 570.606 implementing section 104(k) of the Act were proposed on October 31, 1984 (49 FR 43852), but a final rule in that proceeding has not as yet been issued. In the absence of regulations, technical advice concerning compliance with this provision was contained in HUD Notice CPD 88-7 (issued February 29, 1988).

The requirements of section 104(k) of the Act will effectively be superseded by April 2, 1989 by the 1987 URA amendments discussed above. All persons displaced on or after that date by acquisition, rehabilitation or demolition for a federally assisted activity will be entitled to relocation assistance under the URA. In light of the impact of section 104(k) of the Act after April 2, 1989, the Department has elected not to revise the regulations to provide detailed guidelines for providing rental assistance to persons covered by section 104(k) of the Act. The interim rule at §§ 570.606(c) and 570.496a(c) merely requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, non-profit organizations, and farms) displaced (*i.e.*, permanently and involuntarily moved) as a result of the use of assistance received under Part 570 to acquire or substantially rehabilitate property, where such displacement is not subject to the URA or section 104(d) of the Act. As described under HUD Notice CPD 88-7, recipient/grantees have discretion to develop their own policies, subject to a minimum standard that all displaced persons be provided appropriate advisory service, reimbursed for their actual reasonable moving expenses, and provided with financial assistance sufficient to enable a person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income. (The Department encourages recipient/grantees to work with the local Public Housing Agency to provide section 8 housing vouchers or certificates along with referrals to

suitable housing where the owner agrees to participate in the Section 8 Program.)

Rather than revise the existing section 104(k) requirements applicable to the UDAG program for the limited time period remaining before April 2, 1989, UDAG grantees will continue to be subject to the section 104(k) requirements as prescribed in the February 7, 1987 rule (see § 570.457(b)). HUD believes that this approach will avoid confusion for UDAG grantees during this interim period. (Provisions governing residential displacement have been revised slightly. See the discussion at Section VII., below.)

IV. Optional Relocation Assistance

Under section 105(a)(11) of the Act, a grantee may provide relocation payments and other relocation assistance for displaced individuals, families, businesses, organizations, and farm operations. Existing § 570.606(b) implements these requirements. These requirements are retained in the interim rule, with minor amendments.

The interim rule at §§ 570.606(d) and 570.496a(d) provides that optional relocation assistance may be provided if displacement is caused by an activity that is not subject to the URA, or to section 104 (d) or (k) of the Act. The recipient/grantee may also provide relocation assistance to persons covered by those laws beyond that required. Unless such assistance is provided pursuant to State or local law, the recipient/grantee is required to provide assistance only upon the basis of a written determination that the assistance is appropriate and must adopt a written policy available to the public that describes the relocation assistance that the recipient/grantee has elected to provide and that provides for equal assistance within each class of displacees.

V. Appeals

Existing § 570.606(b)(3) currently permits the owner or occupant of a property to appeal a grantee's determination that the URA does not apply to an acquisition or resulting displacement under 24 CFR part 42, Subpart J. The appeals provisions under §§ 570.606(e) and 570.496a(e) permit the appeal of determinations concerning the person's eligibility for, or the amount of, a relocation payment provided under any of the authorities described above. The interim rule requires the person to file a written appeal with the recipient/grantee, and prescribes the appeal procedures described in 24 CFR 42.10.

To comply with subsection 104(d)(2)(C) of the Act, the interim rule at § 570.606(e) and 570.496a(e) also permits a low- or moderate-income household that has been displaced from a dwelling to seek a review of the recipient/grantee's determination on his or her appeal. The review under the UDAG Program, CDBG Entitlement Program, and HUD-administered Small Cities CDBG Program is made by the HUD Field Office serving the locality. The review under the State CDBG Program is made by the State recipient.

VI. Responsibility of Grantee

Section 570.606(f) provides that the grantee is responsible for ensuring compliance with the relocation, displacement and acquisition requirements. (Under the State CDBG program, the State as grantee is responsible for ensuring compliance with these requirements by the state recipient. See § 570.496a(f).) This section also states that the cost of assistance required under the relocation, displacement and acquisition provisions may be paid from local public funds, funds provided under Part 570, or funds available from other sources, and requires the maintenance of records in sufficient detail to demonstrate compliance with the provisions of the section.

VII. Displacement

Paragraphs (g) of §§ 570.606 and 570.496a provide that a displaced person is a person that is required to move permanently and involuntarily and includes residential tenants who move from the real property if:

—The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly cost for rent and utilities that does not exceed the greater of 30 percent of the tenant household's average monthly gross income or the tenant's costs for rent and utilities before:

(1) The date that the owner submits a request to the recipient/grantee for financial assistance that is subsequently approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA.); or

(2) The date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants Program); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD-administered Small Cities Program); the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG Program); or the initial submission of an application to the State from a unit of general local government requesting assistance that is later granted (States CDBG program). (This applies to dwelling units owned by a Federal or State agency, as defined under the URA.)

—The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket moving costs incurred in connection with the move; or

—The tenant is required to relocate temporarily and is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs or other conditions of the temporary relocation are not reasonable.

Section 570.606(g) adopts the provisions currently contained in § 570.457(c), with minor miscellaneous clarifications to reflect existing HUD policies. One change to the cited UDAG provision involves the limitation on the amount of rent and utilities that may be charged a tenant upon the completion of the assisted activity. Under § 570.457(c) the limitation is based, in part, on the tenant's costs for rent and utilities on the date of preliminary funding approval for the UDAG assistance. Under the interim rule, the limitation is based upon the date of submission of a request for financial assistance, or in some cases, on the date of the application requesting assistance. HUD believes that this change is necessary to ensure a consistent relocation and displacement policy among the various programs under Title I of the Act. The modification should not have a significant impact on residential tenants required to move as a result of UDAG activities.

VIII. Loan Guarantee Provisions

In addition to the revisions discussed above, the interim rule incorporates existing policies regarding the applicability of the relocation, displacement, and acquisition requirements to activities that are financed with loan guarantees under section 108 of the Act. The interim rule revises § 570.702 to provide that the applicant for loan guarantee (or the designated public agency) must comply with requirements identical to the above-described relocation, displacement and acquisition requirements in connection with

activities that are financed in whole or in part with the loan guarantee.

Interim rule

Section 509(b) of the 1987 Act requires that the provisions of section 104(d) of the Act be effective on October 1, 1988. Department believes that the statutory duty to implement this section by that date, to explain the relationship between the various authorities governing relocation and displacement under the CDBG and UDAG progams, and to ensure that the benefits provided under section 104(d) are made available to effected members of the public as soon as possible, makes this prior notice and comment impracticable and contrary to the public interest. For these reasons, the Department does not believe that it is appropriate to subject this rule to notice and comment rulemaking before making it effective. Public comments, however, are invited for 60 days following publication of the interim rule. These comments will be considered in the adoption of a final rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does not affect the amount of funds provided under the CDBG or UDAG programs, but rather modifies and updates program requirements to comport with recently enacted legislation.

This rule was listed as Item No. 998 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.218, 14.219, 14.221, 14.225 and 14.227.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register.**

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 570.201, paragraph (i) is revised to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(i) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where the assistance is:

(1) Required under the provisions of § 570.606 (a), (b) or (c); or

(2) Determined by the recipient to be appropriate under the provisions of § 570.606(d).

* * * * *

3. In § 570.303, paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to read as follows:

§ 570.303 Certifications.

* * * * *

(h) It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the grantee is following such a plan); the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

§ 570.403 [Amended]

4. The reference to "24 CFR 570.602 (a), (b), and (c)" in § 570.403(i)(2)(i) is revised to read "24 CFR 570.606(a)".

5. Section 570.457 is revised to read as follows:

§ 570.457 Relocation, displacement and acquisition.

(a) *General.* The following relocation, displacement and acquisition provisions under 24 CFR 570.606 apply to applicants under this Subpart G:

(1) The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), as described in 24 CFR 570.606(a);

(2) The residential antidisplacement and relocation assistance plan requirements of section 104(d) of the Act, as described in 24 CFR 570.606(b);

(3) The relocation requirements of section 104(k) of the Act, as described in § 570.606(c) and modified in paragraph (b) of this section below;

(4) The optional relocation assistance requirements of section 105(a)(11) of the Act, as described in 24 CFR 570.606(d); and

(5) The appeals procedures, grantee responsibilities and displacement provisions described in 24 CFR 570.606 (e), (f) and (g).

(b) *Section 104(k) relocation requirements.* In addition to the requirements of 24 CFR 570.606(c), the written statement of relocation assistance standards under section 104(k) must include the following minimum requirements.

(1) Eligibility criteria for relocation assistance must cover:

(i) Any tenant legally occupying the property at the time the grantee enters into a contract to provide assistance for the acquisition or rehabilitation; and

(ii) Any tenant who legally moves into the property between such event and the actual acquisition or rehabilitation without receiving prior written notice of his or her possible displacement as a result of the planned acquisition or rehabilitation.

(2) Any residential or nonresidential tenant which is determined under grantee standards to be displaced as a direct result of rehabilitation or acquisition assisted under this part (not subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 or section 104(d) of the Act) must be provided with relocation assistance, including at a minimum:

(i) Reasonable moving expenses

(ii) Advisory services needed to help in relocating; and

(iii) For a displaced residential tenant:

(A) Referral to at least one suitable, decent, safe and sanitary replacement dwelling unit. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(B) Either (*1*) payment at least equal to 24 times the increase, if any, between the monthly cost of rent and utilities at the dwelling unit from which the tenant is displaced and the cost of rent and utilities at a suitable decent, safe and sanitary replacement dwelling unit; or

(*2*) The provision through the local Public Housing Agency of a certificate or housing voucher for rental assistance payments under the Section 8 Housing Assistance Payments Program, if the tenant is an eligible lower income person and such assistance is available.

6. In § 570.458, paragraph (c)(14)(ix)(I) is amended to read as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(I) The acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.457(a)(1) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.457(a)(2) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the applicant is following such a plan); the relocation requirements of § 570.457 (a)(3) and (b) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.457(a)(4) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

7. Part 570, subpart I is amended by adding a new § 570.496a to read as follows:

§ 570.496a Relocation, displacement and acquisition.

(a) *Uniform Relocation Act.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property by a State agency for an activity assisted under this subpart and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The State's certification of compliance with the URA is required in the grant agreement.

(2) An acquisition and resulting displacement by a State agency is "for an assisted activity" if it occurs on or after the date of the initial submission of an application to the State by a unit of general local government requesting assistance under this subpart that is granted for the requested activity. However, an acquisition or displacement that occurs on or after the described date is not subject to the URA if the State determines that the acquisition or displacement was not carried out for an assisted activity, and the HUD Field Office concurs in that determination. An acquisition or displacement that occurs before the described date is subject to the URA, if the state recipient, the State or the HUD Field Office determines that the acquisition or displacement was carried out for the assisted activity. The State may, at any time, request a HUD determination whether an acquisition or displacement will be considered to be for an assisted activity and thus subject to these regulations. To be eligible for relocation assistance, however, a person must also meet the eligibility criteria in 24 CFR Part 42.

(b) *Residential antidisplacement and relocation assistance plan.* Under section 104(d) of the Act, the State must ensure that each state recipient adopts, makes public and certifies to the State that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (b)(1) of this section), and relocation assistance (paragraph (b)(2) of this section). Additionally under section 106(d)(5)(A) of the Act, the state recipient must also certify to the State that it will minimize displacement of persons as a result of assisted activities.

(1) *One-for-one replacement units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under this subpart must be replaced by governmental agencies or private developers with low/moderate-income dwelling units. Replacement low/moderate-income dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must meet the following requirements:

(A) The units must be located within the state recipient's jurisdiction.

(B) The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition.

(D) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy.

(ii) Before obligating or expending funds provided under this subpart for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the state recipient must advise the State that it is undertaking the activity. The state recipient must make public, and submit to the State, if requested, the following information in writing:

(A) A description of the proposed assisted activity;

(B) The general location on a map and approximate number of dwelling units

by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

(iii) (A) The requirements of this paragraph (b)(1) do not apply if the HUD Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the state recipient's jurisdiction. In making this determination, the HUD Field Office will consider the housing vacancy rate for the jurisdiction, the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction.

(B) The HUD Field Office may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the state recipient's jurisdiction. Such additional dwelling units shall be considered if the HUD Field Office determines that the units would be suitable to serve the needs of the low- and moderate income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. The HUD Field Office must base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) A state recipient must submit its request for a determination under this paragraph (b)(1)(iii) to the State. If the State agrees with the request, the State must provide a recommendation to the HUD Field Office on the request.

(2) *Relocation assistance.* (i) Each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use, as a direct result of an activity assisted under this subpart shall be provided with relocation assistance. The low-or moderate-income household may elect to receive relocation assistance described at 24 CFR Part 42 (HUD's regulations implementing the URA), or may elect to receive the following relocation assistance:

(A) The relocation assistance described at 24 CFR Part 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses). Relocation notices must be issued consistent with, and in the manner prescribed under, 24 CFR 42.203. The definition of "comparable replacement dwelling" used in 24 CFR Part 42 is modified as described in paragraph (b)(3)(i) of this section. Displaced households provided with replacement housing assistance under paragraph (b)(2)(i)(C), in the form of a certificate or housing voucher under Section 8 of the United States Housing Act of 1937, must be provided referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. The state recipient shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

(B) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and credit checks required to rent or purchase the replacement dwelling unit; and

(C) Replacement housing assistance. Households are eligible to receive one of the following forms of replacement housing assistance:

(*1*) Each household must be offered compensation designed to ensure that, for a five-year period, the displaced household will not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent. Such compensation shall be either:

(*i*) A certificate or housing voucher for rental assistance provided through the local Public Housing Agency under Section 8 of the United States Housing Act of 1937; or

(*ii*) Cash rental assistance equal to 60 times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the State or, if the State permits, the state recipient may deem appropriate) from the lesser of: the monthly cost of rent and utilities at a comparable replacement dwelling unit or the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates.

The State, at its option, may require the state recipient to provide the cash payment in either a lump sum or in installments. The state recipient may at its discretion offer the household a choice between the certificate/housing voucher or cash rental assistance.

(*2*) If the household purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the State or, if the State permits, the state recipient may deem appropriate) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the state recipient's jurisdiction. To the extent necessary to minimize hardship to the household, the state recipient shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(ii) Eligibility for relocation assistance. (A) A low- or moderate-income household that is required to move as a direct result of demolition or conversion of a low/moderate income dwelling unit to another use, is eligible for relocation assistance under this paragraph (b)(2) if:

(*1*) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the state recipient for financial assistance that is later approved and funded for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(*2*) The household is required to move from the dwelling unit on or after the date of the initial submission of an application to the State by the unit of general local government requesting assistance under this subpart that is later approved for the requested activity. (This applies to dwelling units

owned by a Federal or State agency as defined under the URA.)

(B) If the displacement occurs on or after the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is not eligible for relocation assistance if:

(*1*) The household is evicted for cause;

(*2*) The household moved into the property on or after the date described in paragraph (b)(2)(ii)(A) of this section, after receiving written notice of the expected displacement; or

(*3*) The state recipient determines that the displacement was not a direct result of the assisted activity, and the State concurs in that determination.

(c) If the displacement occurs before the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is eligible for relocation assistance if the state recipient, the State, or HUD determines that the displacement was a direct result of an activity assisted under this subpart.

(3) *Definitions.* For the purposes of this paragraph (b):

(i) "Comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 24 CFR 42.2(c)(1) through (4); and

(B) is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed 30 percent of the household's average gross monthly income (with such adjustments to income as the State or, if the State permits, the state recipient may deem appropriate), after taking into account any rental assistance the household would receive.

Where a certificate or housing voucher is provided to a household under paragraph (b)(2)(i)(C)(*1*)(*i*) of this section, the dwelling unit must be available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively.

(ii) "Decent, safe and sanitary dwelling" means a decent, safe and sanitary dwelling as defined in 24 CFR 42.2(e).

(iii) "Low/moderate income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.

(iv) "Occupiable dwelling unit" means a dwelling unit that is in a standard condition, or is in a substandard condition, but is suitable for rehabilitation.

(v) "Standard condition" and "substandard condition suitable for rehabilitation." The State may define these terms, or may allow the state recipient to establish and make public its definition of these terms. If the state recipient establishes its definition of these terms, the State must determine if the state recipient's definition is acceptable.

(4) *Effective date.* The provisions of this paragraph (b) are applicable to grant agreements from HUD to the State signed on or after October 1, 1988.

(c) *Section 104(k) relocation requirements.* Section 104(k) of the Act requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, nonprofit organizations, or farms) displaced (*i.e.*, moved permanently and involuntarily) as a result of the use of assistance received under this subpart to acquire or substantially rehabilitate property. If such displacement is subject to paragraph (a) or (b) of this section, above, this paragraph does not apply. The state recipient must develop, adopt and provide to persons to be displaced a written notice of the relocation assistance for which they are eligible. Persons entitled to assistance under this paragraph must be provided relocation assistance, including at a minimum:

(1) Reasonable moving expenses;

(2) Advisory services needed to help in relocating. The state recipient shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(3) Financial assistance sufficient to enable any person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the State may permit state recipients to provide relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity not subject to paragraph (a), (b) or (c) of this section above. The State may also permit the state recipient to provide relocation assistance to persons covered under paragraph (a), (b) or (c) of this section beyond that required. Unless such assistance is provided pursuant to State or local law, the state recipient must provide the assistance only upon the basis of a written determination that the assistance is appropriate and must adopt a written policy available to the public that describes the relocation assistance that the state recipient has elected to provide and that provides for equal relocation assistance within each class of displacees.

(e) *Appeals* If a person disagrees with the state recipient's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the state recipient. The appeal procedures to be followed are described in 24 CFR 42.10. A low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the state recipient decision to the State.

(f) *Responsibility of grantee.* (1) The State as grantee is responsible for ensuring compliance with the requirements of this section by its state recipients.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part or funds available from other sources.

(3) The State and the state recipient must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(g) *Displacement.* For the purposes of this section, a "displaced person" is a person that is required to move permanently and involuntarily and includes a residential tenant who moves from the real property if:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly rent and estimated average cost for utilities that does not exceed the greater of:

(i) 30 percent of the tenant household's average monthly gross income; or

(ii) The tenant's monthly rent and average cost for utilities before:

(A) The date that the owner submits a request to the state recipient for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA); or

(B) The date of initial submission of an application to the State by a unit of general local government requesting assistance under this subpart that is

later approved for the requested activity. (This applies to dwelling units owned by a Federal or State agency as defined under the URA); or

(2) The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket costs incurred in connection with the move; or

(3) The tenant is required to relocate temporarily and:

(i) Is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs; or

(ii) Other conditions of the temporary relocation are not reasonable.

8. Section 570.606 is revised to read as follows:

§ 570.606 Relocation, displacement and acquisition.

(a) *Uniform Relocation Act.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property by a State agency for an activity assisted under this part and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The grantee's certification of compliance with the URA is required in the grant agreement.

(2) An acquisition and resulting displacement by a State agency is "for an assisted activity" if it occurs on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). However, an acquisition or displacement that occurs on or after the described date is not subject to the URA if the grantee determines that the acquisition or displacement was not carried out for an assisted activity, and the HUD Field Office concurs in that determination. An acquisition or displacement that occurs before the described date is subject to the URA, if the grantee or the HUD Field Office determines that the acquisition or displacement was carried out for the assisted activity. The grantee may, at any time, request a HUD determination whether an acquisition or displacement will be considered to be for an assisted activity and thus subject to these regulations. To be eligible for relocation assistance, however, a person must also meet the eligibility criteria in 24 CFR Part 42.

(b) *Residential antidisplacement and relocation assistance plan.* Under section 104(d) of the Act, each grantee must adopt, make public and certify that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (b)(1) of this section), and relocation assistance (paragraph (b)(2) of this section). The plan must also indicate the step that will be taken consistent with other goals and objectives of this part to minimize the displacement of persons from their homes as a result of any activities assisted under this part.

(1) *One-for-one replacement units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under this part must be replaced by governmental agencies or private developers with low/moderate-income dwelling units. Replacement low/moderate-income dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must meet the following requirements:

(A) The units must be located within the grantee's jurisdiction.

(B) The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition.

(D) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy.

(ii) Before obligating or expending funds provided under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the grantee must make public, and submit the following information in writing to HUD:

(A) A description of the proposed assisted activity;

(B) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

(iii)(A) The requirements of this paragraph (b)(1) do not apply if the HUD Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction. In making this determination, the HUD Field Office will consider the housing vacancy rate for the jurisdiction, the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction.

(B) The HUD Field Office may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if the HUD Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. The HUD Field Office must base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) The grantee must submit a request for a determination under this paragraph (b)(1)(iii) directly to the HUD Field Office.

(2) *Relocation assistance.* (1) Each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use as a direct result of an activity assisted under this part shall be provided with relocation assistance. The low- or moderate-income household may elect to receive relocation assistance described at 24 CFR Part 42 (HUD's regulations implementing the URA), or may elect to receive the following relocation assistance:

(A) The relocation assistance described at 24 CFR Part 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses). Relocation notices must be issued consistent with, and in the manner prescribed under, 24 CFR 42.203. The definition of "comparable replacement dwelling" used in 24 CFR Part 42 is modified as described in paragraph (B)(3)(i) of this section. Displaced households provided with replacement housing assistance under paragraph (b)(2)(i)(C) of this section, in the form of a certificate or housing voucher under Section 8 of the United States Housing Act of 1937, must be provided referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

(B) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and credit checks required to rent or purchase the replacement dwelling unit; and

(C) Replacement housing assistance. Households are eligible to receive one of the following forms of replacement housing assistance:

(*1*) Each household must be offered compensation designed to ensure that, for a five-year period, the displaced household will not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent. Such compensation shall be either:

(*i*) A certificate or housing voucher for rental assistance provided through the local Public Housing Agency under Section 8 of the United State Housing Act of 1937; or

(*ii*) Cash rental assistance equal to 60 times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the lesser of: The monthly cost of rent and utilities at a comparable replacement dwelling unit or the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates.

The grantee may provide the cash payment in either a lump sum or in installments. The grantee may at its discretion offer the household a choice between the certificate/housing voucher or cash rental assistance.

(*2*) If the household purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the grantee shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(ii) Eligibility for relocation assistance. (A) A low- or moderate-income household that is required to move as a direct result of demolition or conversion of a low/moderate income dwelling unit to another use, is eligible for relocation assistance under this paragraph (b)(2) if:

(*1*) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(*2*) The household is required to move from the dwelling unit on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA.)

(B) If the displacement occurs on or after the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is not eligible for relocation assistance if:

(*1*) The household is evicted for cause;

(*2*) The household moved into the property on or after the date described in paragraph (b)(2)(ii)(A) of this section, after receiving written notice of the expected displacement; or

(*3*) The grantee determines that the displacement was not a direct result of the assisted activity, and the HUD office concurs in that determination.

(C) If the displacement occurs before the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is eligible for relocation assistance if the grantee or HUD determines that the displacement was a direct result of an activity assisted under this part.

(3) *Definitions.* For the purposes of this paragraph (b):

(i) "Comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 24 CFR 42.2(c)(1) through (4); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed 30 percent of the household's average gross monthly income (with such adjustments to income as the grantee may deem appropriate) after taking into account any rental assistance the household would receive.

Where a certificate or housing voucher is provided to a household under paragraph (b)(2)(i)(C)(*1*)(*i*), the dwelling unit must be available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively.

(ii) "Decent, safe and sanitary dwelling" means a decent, safe and sanitary dwelling as defined in 24 CFR 42.2(e).

(iii) "Low/moderate income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing

and moderate rehabilitation established under 24 CFR Part 888.

(iv) "Occupiable dwelling unit" means a dwelling unit that is in a standard condition, or is in a substandard condition, but is suitable for rehabilitation.

(v) "Standard condition" and "substandard condition suitable for rehabilitation". If the grantee has a HUD-approved Housing Assistance Plan, the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan will apply. It the grantee does not have a HUD-approved Housing Assistance Plan, the grantee must establish and make public its definition of these terms consistent with the requirements of § 570.306(e)(1).

(4) *Effective date.* For all grants except those made under Subpart D of this part (Entitlement Grants), the provisions of this paragraph (b) are applicable to grants made on or after October 1, 1988. For grants made under Subpart D, these provisions will govern all activities for which funds are first obligated by the grantee on or after the date the first grant is made after September 30, 1988, without regard to the source year of the funds used for the activity.

(c) *Section 104(k) relocation requirements.* Section 104(k) of the Act requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, nonprofit organizations, or farms) displaced (*i.e.*, moved permanently and involuntarily) as a result of the use of assistance received under this part to acquire or substantially rehabilitate property. If such displacement is subject to paragraph (a) or (b) of this section, above, this paragraph does not apply. The grantee must develop, adopt and provide to persons to be displaced a written notice of the relocation assistance for which they are eligible. The minimum requirements for such assistance under the UDAG Program are described at § 570.457(b). Under CDBG programs, persons entitled to assistance under this paragraph must be provided relocation assistance, including at a minimum:

(1) Reasonable moving expenses;

(2) Advisory services needed to help in relocating. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(3) Financial assistance sufficient to enable any person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity not subject to paragraph (a), (b) or (c) of this section above. The grantee may also provide relocation assistance to persons covered under paragraph (a), (b) or (c) of this section beyond that required. Unless such assistance is provided pursuant to State or local law, the grantee must provide the assistance only upon the basis of a written determination that the assistance is appropriate (see 24 CFR 570.201(i)) and must adopt a written policy available to the public that describes the relocation assistance that the grantee has elected to provide and that provides for equal relocation assistance within each class of displacees.

(e) *Appeals.* If a person disagrees with the grantee's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the grantee. The appeal procedures to be followed are described in 24 CFR 42.10. A low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee decision, to the HUD Field Office.

(f) *Responsibility of grantee.* (1) The grantee is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this part.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(g) *Displacement.* For the purposes of this section, a "displaced person" is a person that is required to move permanently and involuntarily and includes a residential tenant who moves from the real property if:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly rent and estimated average cost for utilities that does not exceed the greater of:

(i) 30 percent of the tenant household's average monthly gross income; or

(ii) The tenant's monthly rent and average cost for utilities before:

(A) The date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA); or

(B) The date of the initial submission of a final statement under 24 CFR 570.302(a)(2)(Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA); or

(2) The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket costs incurred in connection with the move; or

(3) The tenant is required to relocate temporarily and:

(i) Is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs; or

(ii) Other conditions of the temporary relocation are not reasonable.

9. Section 570.702 is amended by adding a new paragraph (f) to read as follows:

§ 570.702 Application requirements.

* * * * *

(f) The applicant (or the designated public agency) shall comply with relocation, displacement and acquisition requirements in connection with activities financed in whole or in part with a loan guarantee under this subpart that are identical to the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as described at § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation

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assistance plan under section 104(d) of the Act; the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

10. Section 570.900 is amended by revising paragraph (a) to read as follows:

§ 570.900 Performance standards.

* * * * *

(a) *Relocation.* With respect to displacement, the grantee has complied with the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act)(including a certification that the applicant is following such a plan), the relocation requirements of § 570.606(c) governing displacement to section 104(k) of the Act, and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

Dated: July 26, 1988.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

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August 17, 1988

Part V

Environmental Protection Agency

40 CFR Part 700

Fees for Processing Premanufacture Notices, Exemption Applications and Notices, and Significant New Use Notices; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 700

[OPTS-260002A; FRL-3353-8]

Fees For Processing Premanufacture Notices, Exemption Applications And Notices, And Significant New Use Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a rule under section 26(b) of the Toxic Substances Control Act (TSCA). The rule requires manufacturers, importers, and processors to pay fees for premanufacture notices (PMNs), certain PMN exemption applications and notices, and significant new use notices submitted under TSCA section 5 (a) and (h) (section 5 notices). EPA is not requiring submitters to pay fees for low volume exemption notices under 40 CFR 723.50 and test market exemption applications under 40 CFR 720.38. EPA is requiring submitters to pay a fee of $1,000 for PMNs for intermediate chemical substances when such PMNs are submitted simultaneously with a PMN for the "final product" related to the intermediate chemical substance. Submitters of all other section 5 notices, including the "final product" PMN, are required to pay a fee of $2,500. However, EPA is only requiring a fee of $100 for section 5 notices submitted by small business concerns.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on August 31, 1988. This rule shall become effective on September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202-554-1404), TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This rule establishes fees for processing PMNs, certain exemption applications and notices, and significant new use notices. This rule also establishes certain remittance procedures.

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Authority

Section 26(b) of TSCA provides that the Administrator may, by rule, establish fees for persons required to submit data under sections 4 and 5 of TSCA (including premanufacture notices, significant new use notices, and exemption applications and notices) to defray the costs of administering TSCA. EPA must take into account a submitter's ability to pay the fee and the Agency's cost of reviewing the submitted data. Section 26(b) provides for maximum fees of $100 for a "small business concern" and $2,500 for all others. Section 26(b)(2) of TSCA gives EPA authority to define "small business concern."

In addition, since proposal of this rule, the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (Pub. L. 100-202) was enacted which contains a provision authorizing EPA, in 1988, to assess and collect fees and to deposit an amount not to exceed $25 million into a special fund which shall be available for appropriation, and remain available until expended, to carry out the Agency's activities in the programs for which the fees or charges are made.

II. Background

EPA issued a Notice of Availability of its "PMN User Fee Background Paper" (the paper), published in the **Federal Register** of July 11, 1986 (51 FR 25250) which included (1) the costs that the Agency believes may be defrayed by the collection of such fees, (2) the major options that the Agency had identified for implementing section 26(b), (3) a preliminary estimate of the economic impacts of such options, and (4) a possible definition of "small business concern."

On April 20, 1987, EPA issued a proposed rule (52 FR 12941) to establish a fee of $100 for section 5 notices submitted by small business concerns, for low-volume exemption notices, and for test market exemption applications; and $2,500 for all other section 5 notices.

The costs that EPA believes may be defrayed through fees collected pursuant to section 26(b) include all costs associated with receiving, processing, storing, and analyzing data submitted pursuant to section 5, as well as all costs associated with regulatory and other actions that may be prompted by a submission. The direct cost elements that may be defrayed include the salaries and expenses (including supplies, training, travel, and equipment) of the EPA Office of Toxic Substances personnel associated with these section 5 activities, and the cost of associated data processing, computer equipment, and contractor effort. Direct costs also include support functions such as secretarial, clerical, and supervisory management. Indirect costs that may be defrayed include research and development in support of the PMN program. In addition, the Agency incurs other general overhead such as personnel processing, administrative management, budget execution, rent, and utilities.

EPA's analysis of direct costs (EPA, Office of Toxic Substances. D. Gutenson and J. Newsome. "Regulatory Impact Analysis") indicates that certain costs are generally incurred with every type of section 5 notice. These costs are associated with the activities of providing pre-filing assistance to submitters, providing protection for confidential business information (CBI), processing, duplicating, and storing documents contained in submission, and initial risk screening (usually including chemical characterization, environmental and human exposure analysis, and a preliminary toxicity review (including human and environmental effects)). These costs add up to approximately $3,500 per submission. Office of Toxic Substances overhead, including supervisors and managers, clerical and secretaries, adds another $1,800 per submission. Those submissions that require more detailed analysis and regulatory action cost approximately $13,000 to $15,000 more per submission. None of the above costs include indirect Agency costs, i.e., general Agency overhead such as costs incurred by the Office of General Counsel and the Office of Administration, and research and compliance costs.

The fees that the Agency is establishing pursuant to section 26(b) will recover substantially less than the total costs of administering section 5. For fiscal 1987, total Agency costs, both direct and indirect, could each approximately $22 million compared to the maximum recovery of costs that the Agency could receive pursuant to section 26(b) of approximately $3.8 million.

EPA received over 20 comments from the public on the proposed rule, and this final rule includes changes in response to the public comments. Those changes are discussed to Unit IV below.

III. Provisions of the Rule

After careful analysis of all the comments received by EPA of the proposed rule, and review of its economic analysis, the Agency has decided to establish a fee of $100 for all section 5 notices received from small business concerns, $1,000 for section 5 notices for certain intermediate chemical substances, and $2,500 for all other section 5 submissions, except low-volume exemption notices and test market exemption applications for which no fee is required. The fees will be collected at the time of submission of the section 5 notice. EPA also has defined "small business concern" as any firm whose sales when combined with its parent company's (or the firm's sales, if no parent exists) totaled $40 million or less in its fiscal year preceding the submission date of its section 5 notice.

The rule also clarifies the status of joint submitters. EPA allows persons to submit section 5 notices jointly with others (for example, see 40 CFR 720.40(e)). The fee is the same for a joint submission of a section 5 notice as for the same kind of notice submitted by a single firm. However, with respect to the lower $100 fee for small business concerns, the lower fee does not apply to a joint submission unless all the joint submitters qualify as small business concerns under the proposed definition. Each of the joint submitters is required in the section 5 notice to certify that it qualifies as a small business concern uder § 700.43.

IV. Response To Comments

The following unit summaries the major comments and discusses the changes in the final rule in response to those comments.

EPA received a number of comments suggesting that the Agency's costs of administering the fee program might substantially offset its financial benefit. The Agency's economic analysis shows that the fee program should generate $3.8 million; the costs of administering the program are estimated to total $35,000. The Agency believes that the administrative costs are a negligible percent of the expected revenues.

Most comments asserted that the establishment of fees for section 5 notices could or would affect innovation, although all but three of these failed to comment on the degree of the effect. One industry association and one company asserted that the 10 percent foregone submission rate that EPA attributed to its proposed rule was sufficiently high to contravene TSCA section 2(b)(3) which directs the Agency to exercise its authority so as "not to impede unduly or create unnecessary economic barriers to technological innovation * * *" Another industry association, whose comments were subscribed to by a number of member companies, suggested that a correct analysis of the data upon which EPA relied for its economic analysis would indicate a foregone submission rate of about one-third, or over three times EPA's estimate.

With respect to the foregone submission rate of 10 percent associated with the proposed rule, and the 7.3 percent rate associated with the final rule, EPA believes that these estimates are very conservative and cannot be equated exactly with the fees' true effect on innovation. Unit V below clarifies this observation. The agency also believes that Congress clearly intended that it collect fees for section 5 notices and that inherent in that intention is the notion that fees will cause some firms to decide not to submit notices. However, the Agency believes that the rule's effect on innovation has been carefully weighed against the purpose of section 26(b), that is, to raise revenues to defray Agency costs, and thus is not "undue" as that term is used in section 2.

Concerning the foregone submission rate that should be calculated from the data base that the Agency used for its economic analysis (Centaur Associates Inc, 1985: Analysis of Withdrawn and Voluntarily Tested PMNs), the comment fails to take into account the Agency's statements with respect to the limits to the value of the Centaur study in predicting a company's decision to submit a PMN. The Centaur study was designed to evaluate a firm's attitudes to initiating testing after EPA had already issued a section 5(e) or 5(f) order placing restrictions on a new substance's production or use. The Agency is aware, from anecdotal evidence, that some firms' decisions not to test stemmed from liability concerns and considerations other than cost. The Agency's economic analysis also notes other misleading effects that would result from strictly interpreting the Centaur study. Consequently, the Agency used the Centaur study to estimate firms' marketing behavior from ranges of financial effects. Thus, as EPA stated in its January 1987 "Economic Analysis of Proposed PMN User Fee Rule" (in support of its April 20, 1987 proposed rule), "* * * if user fees are no more than 1.0 percent of the present value of sales, the user fees should have a minimal impact on PMN sales and profits and mandatory user fees will not affect a firm's decision to commercialize the PMN chemical. User fees in the range of 1.0 to 3.0 percent of the expected present value of sales were assumed to have a moderate impact (i.e. 50 percent) on sales and an indeterminate effect on a firm's marketing decisions. If user fees are 3.0 percent or more of the present value of sales, it was assumed that user fees would have a severe impact on sales and that the impact is likely to prevent the firm from submitting a PMN."

EPA, in its reevaluation of the impact of its proposed fees on innovation, determined that low-volume exemption notices and test market exemption applications were extremely sensitive to even a nominal fee of $100. The Agency's analysis shows a foregone submission rate of 36 percent for the low-volume exemption notices and 22 percent for the test market exemption applications. Because the Agency estimated fee revenue of less than $20,000 for these two categories of submissions combined, and considering their apparent high sensitivity to even a nominal fee, EPA decided not to establish any fee for these two types of submissions.

A number of comments suggested that companies be permitted to pay either all or a portion of the appropriate fee at the time they submitted their Notice of Commencement of Manufacture or Import (NOC) to the Agency. As EPA stated in its April 20, 1987 proposed rule, its fee structure would not sufficiently defray the Agency's costs of reviewing PMNs (which is not dependent on new chemical substances' commercialization) if it permitted payment of fees with an NOC. The Agency estimates that it would receive less than $1.5 million annually if it collected fees with NOCs. Furthermore, the Agency received no compelling arguments that collecting fees up front would have a significant impact on commercialization. One comment on the Agency's "PMN User Fee Background Paper" (see unit VI. RULEMAKING RECORD) stated that fees would not be a deciding factor as to commercialization after the PMN review is completed.

EPA received comments pointing out that the Agency treats consolidated PMNs as one in all respects except identification numbers, and consequently, it would be reasonable to charge just one fee for such consolidated PMNs. PMNs are consolidated as a result of a prenotice agreement between EPA and the submitter that the chemical

substances in question are nearly identical in structure and are expected to have the same properties. EPA establishes one file and reviews the consolidated PMNs in the identical manner as a single unconsolidated PMN. The Agency did not address this issue in its proposed rule (although it did consider the issue of PMNs related to a sequence of intermediates in the same manufacturing process). EPA agrees that because it treats a consolidated PMN as one notice for review purposes, it is reasonable to charge just one fee for a consolidated PMN and has modified the rule accordingly.

EPA, in response to a comment, is clarifying what it means by the term "sequenced intermediate". The Agency means a section 5 notice for any new chemical substance that is "intermediate" of another new chemical substance for which a section 5 notice is also submitted. 40 CFR 720.3 defines "intermediate" as any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of other chemical substances or mixtures, or that is intentionally present for the purpose of altering the rates of such chemical reactions.

In response to comments suggesting that charging a substantial fee for "intermediate" PMNs would create a significant hurdle to commercialization, EPA reevaluated the effect that a range of fees would have on the rate of foregone submissions for intermediate chemical substances. EPA's analysis shows that charging a fee of either $1,000 or $2,500 for each intermediate PMN that is submitted simultaneously with a "final product" PMN (for which a $2,500 fee is also paid) would result in a foregone submission rate between 1 percent and 3 percent higher than the rate for all section 5 notices subject to the fee schedule in this rule. EPA has decided to impose the $1,000 fee on the "intermediate" submissions primarily to promote the policy goals of more efficient administration and review, and to save the resources associated with multiple duplicative reviews when the "final product" PMN and the "intermediate" PMNs are submitted to EPA and reviewed at different times.

EPA asked for comments concerning the impact of charging the proposed $2,500 fee for polymer exemption PMNs and received eight comments suggesting either a $100 fee, reduced fee, or no fee. EPA reanalyzed the impact of a $2,500 fee on polymer exemption PMNs and concluded that 11.1 percent of such submissions would be foregone. Because that rate is not significantly different from either the overall foregone submission rate associated with the proposed rule (10 percent) or of the final rule (7.3 percent), and because the expected revenues involved (over $500,000) are a significant proportion of the total revenues expected from the fee program, EPA decided to retain the $2,500 fee for this category of submission.

EPA received two comments that express the concern that upcoming Agency rules for treating "new" microorganisms for PMN purposes may result in a fee burden that would have a chilling effect on innovation. The Agency had little experience with the subject of PMNs for micoorganisms (EPA has received 12 PMNs to date for microorganisms). However, the Agency has, and expects to continue, to expend considerable resources reviewing this category of submission and has received no data or compelling argument to support lowering or eliminating fees for these submissions. The Agency will be considering fee issues when it proposes rules for review of microorganisms under TSCA. EPA recommends that companies comment on the effect of fees on the innovation of new microorganisms at the time that the Agency proposes those rules.

A number of comments questioned EPA's authority to collect fees pursuant to TSCA section 26 because at the time EPA proposed its fee rule the monies were expected to go to the general Treasury and thus not directly benefit the Agency. EPA's authority to collect fees under section 26(b) is not dependent on the disposition of the funds collected. In any event, as discussed in Unit I. above, recent budget legislation (Pub. L. 100–202) establishes a special fund for all agency user fees and provides for expenditure of those funds by the Agency subject to Congressional appropriation.

One comment recommended EPA established a $100 fee for any section 5 notice that did not receive Agency review subsequent to its Chemistry Review and Search Strategy (CRSS) decision. The Agency has determined that it spends more than $2,500 on handling a submission through the CRSS decision point, and is not persuaded that a lower fee is justified for this category of submission based solely on the argument that these submissions receive less attention than submissions that are reviewed subsequent to the CRSS decision.

In response to comments requesting that the Agency refund fees collected for notices for chemical substances that, subsequent to payment, are found by the Agency to be already on the Inventory, EPA has modified the rule to provide for such refunds.

One comment suggested crediting fees against test expenses. While such crediting might promote some increase in worthwhile testing, the Agency believes that such effect is problematic; the crediting would be very difficult to administer and it probably would result in negligible fee revenues.

Concerns were expressed that EPA's review process will be unduly delayed as a result of a submitter's check going to a location different than the section 5 notice destination. EPA will review section 5 notices in the same manner that the Agency has been reviewing them provided that submitters certify on their submission that they have paid the appropriate fee. The Agency is establishing procedures to verify the receipt of the remittances that should provide adequate time to make the verification. Should EPA, subsequent to its verification effort, determine that the appropriate fee was not remitted at the time the section 5 notice was submitted, the Agency will consider the notice to be incomplete and will so notify the submitter. Note that submissions will be considered incomplete if they lack a certification that the fee has been paid.

EPA received a number of comments suggesting various changes to the Agency's interpretation of TSCA that, if adopted, would make many PMNs unnecessary, or would permit a greater number of PMN exemptions. The Agency is not addressing these comments because they are beyond the scope of this rulemaking.

A number of comments addressed the question of the international impact of the fees. One importer suggested that the fees would create a marketing advantage for companies already established in the U.S.; one domestic company suggested that because fees would adversely affect domestic innovation, domestic producers will increasingly find themselves at the mercy of innovative imports; one association and a number of domestic companies asserted that because importers likely would not pay fees for intermediate chemicals, then their "final product" chemicals would have a competitive advantage over the domestic producer who did pay fees for intermediate as well as "final product" chemicals. The Agency does not believe that the modest level of fees contained in this rule would significantly affect the competitiveness of domestic producers

vis-a-vis importers any more than it would affect innovation. The Agency's analysis of the effect of fees on decisions not to pursue PMN review suggests that fees in most instances will not affect a producer's decision to market and compete against either another domestic producer or an importer.

V. Economic Impacts

A. Introduction

In the Regulatory Impact Analysis (RIA), EPA considered the costs to society of this rule as being the sum of the direct costs to the government of administering the fee program and the net benefits that society would have realized from the new chemical substances that are foregone as a result of the fee rule. The fees themselves are not social costs, but rather transfers (the cost to industry of the fees equals the revenue received by the Agency). From the perspective of the regulated community, however, the fees are additional costs of doing business, and the RIA considers the impacts of these fees in relation to revenue from new chemical substances.

The Agency estimates that tracking and validating fees will cost the Agency approximately $29,000 to $35,000 per year. The Agency cannot quantitatively estimate the social cost of foregone activities, but it has estimated the number of foregone submissions, and has used this approach to reflect the potential for adverse effect on chemical innovation. EPA estimates that under the final rule 7.3 percent of the expected number of new chemical substance submissions would be foregone as a result of the user fee. The transfer (cost to industry and Agency revenue) is estimated to be $3.8 million.

B. Methodology

To assess fully the costs of the fees to society, the Agency would need first to estimate the impact on the expected profitability of the new chemical substance as a result of any potential fee. Since the Agency believes that at some reduced level of profitability, a firm will choose not to submit a notice for a new chemical substance rather than incur any additional costs prior to commercialization, the second step would be to translate the impact on profitability into an estimate of the number of new substances that would be foregone. The third step would be to estimate the benefits associated with those foregone new substances. The Agency cannot estimate the benefits from the foregone new substances; the RIA captures the costs of the fee rule by addressing the first two steps above, i.e., by analyzing the impact to industry in terms of the rate of foregone new substance submissions from any potential fee.

The impact is estimated by examining user fees as a portion of the present value of expected sales for a sample of new chemical substances, (potentially submitted in PMNs and exemptions). The Agency has observed a very low threshold for which companies decide to withdraw a submission rather than incur additional upfront costs. Decision criteria were developed from these observed thresholds which are used to predict the effect a user fee will have on a firm's decision to submit.

The Agency initially examined the impacts for 4 regulatory options. In addition to the categories of submissions considered in the economic analysis to support the proposed rule (small businesses, low volume exemptions and polymers), this analysis also estimates the impacts on submission of test market exemption applications and PMNs for intermediates (sequences of intermediates in the same manufacturing process).

The regulatory options are shown in Table I below.

TABLE I.—REGULATORY OPTIONS

Category description	Regulatory options			
	1	2	3	4
	(dollars per submission)			
Small business	100	100	100	100
Low volume exemption	100	100	100	100
Test market exemption	100	100	100	100
Polymer PMNs	2500	2500	100	100
Intermediate PMNs	2500	[1] 100 500 1000	2500	100
Others	2500	2500	2500	2500

[1] Regulatory Option 2 actually examines 3 alternative fees for PMNs for sequences of intermediates: $100, $500, $1000. In each case, the fee for the final PMN in the sequence is set at $2,500.

C. Impacts

The Agency estimates that 11.4 to 12.7 percent of submissions would be foregone as a result of the fees defined in these regulatory options. EPA estimates the cost of the fees (as well as agency revenue) to be between $3.28 and $3.99 million. Table II summarizes the impacts of options 1–4.

TABLE II.—IMPACTS OF INITIAL REGULATORY OPTIONS

Regulatory options	Percentage of submissions foregone	Total costs to industry (=EPA revenue) dollars million
1	12.7	3.99
2	12.2–12.5	3.87
3	11.9	3.49
4	11.4	3.28

The RIA indicates that two types of submissions are very sensitive to even low fees. Both low volume exemption notices (LVENs) and test market exemption applications (TMEAs) have high foregone submission rates (38 and 22.5 percent, respectively) at low ($100) user fee requirements. Because of the extreme sensitivity of these two types of submissions to low fees, the Agency re-evaluated the impacts of each regulatory option with a $0 fee LVENs and TMEAs. The results are shown in Table III below.

TABLE III.—IMPACTS OF MODIFIED REGULATORY OPTIONS

Regulatory option	Percentage of foregone submissions	Cost of submissions (=EPA revenue)
1 [1]	7.5	3.97
2 [1]	7.0–7.3	3.84
3 [1]	6.7	3.47
4 [1]	6.2	3.26

[1] Options are the same as options 1–4 in Table I, except that fees for low volume exemption notices and test market exemption applications are set at zero.

Providing an exemption to LVEN and TMEA submissions reduces the foregone submission rate approximately 50 percent for each regulatory option. The total cost to industry of the fee as well as the Agency revenue is reduced by less than 1.0 percent.

Under the final rule (modified regulatory option 2) the fee for submissions from small businesses is set at $100, the fee for low volume exemption notices and test market exemption applications is set at zero, the fee for sequences of intermediates is set at $1000 for each (wirh the fee for the final submission in the sequence set at $2500), and the fee for all other submissions is set at $2500. The Agency estimates that, with this fee structure, 7.3 percent of the expected number of new chemical substance submissions would be foregone as a result of the fees. This is probably an upper bound estimate of the impacts.

There are several sources of bias introduced that could result in an overestimate of the impacts. First, the

impact for the categories of submissions is based on a sample of submissions. The characteristics of some of the categories have changed since the time frame which the sample was drawn. Lower impacts would be expected if these differences could be quantitatively factored into the analysis.

Second, the decision criteria used to predict whether a firm will be choose to submit are based on the observed behavior of firms in response to a request for testing in a TSCA section 5(e) order. Thus, the firm was operating with the knowledge that the Agency had health or environmental concerns over the introduction of the new chemical substance. A given dollar amount of fee is not expected to have as great an impact on the firm's decision to submit a notice as would the same dollar amount of a testing requirement. Therefore, the decision criteria result in an overestimate of foregone submissions.

Finally, although 7.3 percent of submissions may be foregone, this does not necessarily mean that a similar percentage of the value of new chemical substance innovation will be lost. Indeed, it seems likely that the substances in those submissions which are foregone would be among the least valuable; therefore the loss to society would be significantly smaller than the seven percent estimate would imply.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–260002A). A public version of the record, without any confidential business information, is available to the public in the TSCA Public Docket Office, Rm. NE–G004, 401 M Street SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The record includes information considered by EPA in developing this rule. The record now includes the following categories of information:

1. **Federal Register** notices.
2. Support documents.
3. Public comments.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of Regulatory Impact Analysis. This rule is not major as that term is defined in section 1(b) because: The annual effect on the rule on the economy will be less than $100 million (less than $4 million); it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

This rule was submitted to the Office of Management and Budget (OMB) for review prior to publication as required by Executive Order 12291.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. (b)), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses because the fee proposed for small business concerns, although it will adversely affect the submission of some notices for new chemical substances is unlikely to have a significant impact on any firm's overall profitability.

C. Paperwork Reduction Act

The information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* have been assigned OMB control number 2070–0012 and 2070–0038.

The public reporting burden for this collection of information is estimated to average five minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

1. Chief, Information Policy Branch (PM–223), EPA, 401 M Street SW., Washington, DC 20460
2. Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503

(Attn: Desk Officer for EPA)

List of Subjects in 40 CFR Part 700

Chemicals, Environmental protection, User fees.

Dated: August 9, 1988.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR, Chapter I, Subchapter R, is amended by adding Part 700, consisting at this time of Subpart C, to read as follows:

PART 700—GENERAL

Subparts A and B—[Reserved]

Subpart C—Fees

Sec.

700.40 Purpose and applicability.
700.43 Definitions.
700.45 Fee payments.
700.49 Failure to remit fees.

Authority: 15 U.S.C. 2625.

§ 700.40 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to collect fees from manufacturers, importers, and processors who submit notices and applications to EPA under section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) to defray part of EPA's cost of administering the Act.

(b) *Applicability.* This subpart applies to all manufacturers, importers, and processors who submit certain notices and applications to EPA under section 5 of the Act.

§ 700.43 Definitions.

Definitions in section 3 of the Act (15 U.S.C. 2602), as well as definitions contained in §§ 704.3 and 720.3 of this chapter, apply to this subpart unless otherwise specified in this section. In addition, the following definitions apply:

"Consolidated premanufacture notice" or "consolidated PMN" means any PMN submitted to EPA that covers more than one chemical substance (each being assigned a separate PMN number by EPA) as a result of a prenotice agreement with EPA (*See* 48 FR 21734).

"Exemption application" means any application submitted to EPA under section 5(h)(2) of the Act.

"Exemption notice" means any notice submitted to EPA under § 723.175 of this chapter.

"Final product" means a new chemical substance (as "new chemical substance" is defined in § 720.3 of this chapter) that is manufactured by a person for distribution in commerce, or for use by the person other than as an intermediate.

"Intermediate premanufacture notice" or "intermediate PMN" means any PMN submitted to EPA for a chemical substance which is an intermediate (as "intermediate" is defined in § 720.3 of this chapter) in the production of a final product, provided that the PMN for the intermediate is submitted to EPA at the same time as, and together with, the PMN for the final product and that the PMN for the intermediate identifies the final product and describes the chemical reactions leading from the intermediate to the final product. If PMNs are submitted to EPA at the same time for

several intermediates used in the production of a final product, each of those is an intermediate PMN if they all identify the final product and every other associated intermediate PMN and are submitted to EPA at the same time as, and together with, the PMN for the final product.

"Joint submitters" means two or more persons who submit a section 5 notice together.

"Person" means a manufacturer, importer, or processor.

"Premanufacture notice" or "PMN" means any notice submitted to EPA pursuant to section 5(a)(1)(A) of the Act in accordance with Part 720 of this chapter or § 723.250 of this chapter.

"Section 5 notice" means any PMN, consolidated PMN, intermediate PMN, significant new use notice, exemption notice, or exemption application.

"Significant new use notice" means any notice submitted to EPA pursuant to section 5(a)(1)(B) of the Act in accordance with Part 721 of this chapter.

"Small business concern" means any person whose total annual sales in the person's fiscal year preceding the date of the submission of the applicable section 5 notice, when combined with those of the parent company (if any), are less than $40 million.

§ 700.45 Fee payments.

(a) *Persons who must pay fees.* Persons submitting a section 5 notice to EPA shall remit for each such notice the appropriate fee identified in paragraph (b) of this section in accordance with the procedures in paragraph (e) of this section.

(b) *Fees.* Persons shall remit fee payments to EPA as follows:

(1) *Small business concerns.* Small business concerns shall remit a fee of $100 for each section 5 notice submitted.

(2) *Others.* Persons other than small business concerns shall remit fees according to the type of section 5 notice as follows:

(i) *Premanufacture notices and consolidated premanufacture notices.* Persons shall remit a fee of $2,500 for each PMN or consolidated PMN submitted.

(ii) *Intermediate premanufacture notices.* Persons shall remit a fee of $1,000 for each intermediate PMN. However, for the PMN for the final product the person shall submit the fee in paragraph (b)(2)(i) of this section.

(iii) *Significant new use notices.* Persons shall remit a fee of $2,500 for each significant new use notice submitted.

(iv) *Exemption applications.* Persons shall remit a fee of $2,500 for each exemption application submitted under section 5(h)(2) of the Act.

(v) *Exemption notices.* Persons shall remit a fee of $2,500 for each exemption notice submitted under § 723.175 of this chapter.

(c) *No fee required.* Persons are exempt from remitting any fee for submissions under §§ 720.38 and 723.50 of this chapter.

(d) *Joint submitters.* Joint submitters of a section 5 notice are required to remit the appropriate fee identified in paragraph (b) of this section for each section 5 notice regardless of the number of joint submitters for that notice. To qualify for the fee identified in paragraph (b)(1) of this section, each joint submitter of a section 5 notice must qualify as a small business concern under § 700.43.

(e) *Remittance procedure.* (1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency, HQ Accounting Operations Board, attention: TS/PMN, P.O. 360227M, Pittsburgh, PA 15251. The remittance shall not be sent to EPA with the section 5 notice. The section 5 notice is to be sent to Document Processing Center, Office of Toxic Substances (TS–790), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(3) Persons who submit a section 5 notice shall place a unique identifying number, which must include the letters "TS" followed by a combination of 6 numbers (letters may be substituted for some numbers), on the front page of each section 5 notice submitted. The same identifying number and the submitter's name must appear on the corresponding fee remittance under this section. If a remittance applies to more than one section 5 notice, the person shall include the name of the submitter, the identifying number for each section 5 notice to which the remittance applies, and the amount of the remittance which applies to each notice. Any remittance not having the identifying name and number described above will be returned to the remitter.

(4)(i) Each person who remits the fee identified in paragraph (b)(1) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall write or type the words, "The company named in Part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b)." under "CERTIFICATION" on Page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25 (4–26–83)).

(ii) Each person who remits the fee identified in paragraph (b)(1) of this section for an exemption application under section 5(h)(2) of the Act shall include the words, "Each company identified in this application is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b)." in the exemption application.

(iii) Each person who remits the fee identified in paragraph (b)(1) of this section for an exemption notice under § 723.175 of this Chapter shall include the words, "Each company identified in this notice is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b)." in the certification required in § 723.175(i)(1)(x) of this chapter.

(5)(i) Each person who remits a fee identified in paragraph (b)(2) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall write or type the words, "The company named in Part 1, section A has remitted the fee specified in 40 CFR 700.45 (b)." under "CERTIFICATION" on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25 (4–26–83)).

(ii) Each person who remits the fee identified in paragraph (b)(2) of this section for an exemption application under section (5)(h)(2) of the Act shall include the words, "Each company identified in this application has remitted a fee of $2,500 in accordance with 40 CFR 700.45(b)." in the exemption application.

(iii) Each person who remits the fee identified in paragraph (b)(2) of this section for an exemption notice under § 723.175 of this chapter shall include the words, "Each company identified in this notice has remitted a fee of $2,500 in accordance with 40 CFR 700.45(b)." in the certification required in § 723.175(i)(1)(x) of this chapter.

(f) *Fee refunds.* EPA will refund any fee paid for a section 5 notice whenever the Agency determines:

(1) That the chemical substance that is the subject of a PMN, intermediate PMN, exemption application, or exemption notice is not a new chemical substance as of the date of submission of the notice.

(2) In the case of a significant new use notice, that the notice was not required.

(3) The notice is incomplete under § 720.65(c) of this chapter.

(Approved by the Office of Management and Budget under Control Number 2070–0012 and 2070–0038)

§ 700.49 Failure to remit fees.

EPA will not consider a section 5 notice to be complete unless the appropriate certification under § 700.45(e) is included and until the appropriate remittance under § 700.45(b) has been sent to EPA as provided in § 700.45(e) and received by EPA. EPA will notify the submitter that the section 5 notice is incomplete in accordance with § 720.65(c) of this Chapter.

[FR Doc. 88–18452 Filed 8–16–88; 8:45 am]

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary of Public and Indian Housing

Public Housing Child Care Demonstration Program; Notice of Fund Availability

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-88-1811; FR-2467]

Public Housing Child Care Demonstration Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability.

SUMMARY: HUD is announcing the availability of $5 million for fiscal year 1988 under the Public Housing Child Care Demonstration program (Sec. 117, Pub. L. 100-242, approved February 5, 1988). The demonstration is intended: (1) to provide grants to nonprofit organizations to assist in establishing child care facilities in lower income housing projects so that the parents or guardians of preschool or school-aged children may seek, retain or train for employment; and (2) to determine the extent to which the availability of child care services in lower income housing projects facilitates the employability of the parents or guardians of children residing in public housing. Grant funds may be used for the minor renovation of child care facilities and for certain operating expenses.

DATES: Submissions must be received in Room 4100 of HUD by 5:15 p.m., Eastern Standard Time, on October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Odessa Burroughs, Project Management Division Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4122, Washington, DC 20410, telephone (202) 755-7970. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, both HUD and Congress have expressed growing interest in increasing the economic mobility of public housing residents. Since 1982, HUD has initiated several demonstrations and technical assistance projects designed to improve the economic mobility and general living conditions of residents in public housing or families eligible for public or assisted housing (*e.g.*, see the Project Self-Sufficiency notice published in the **Federal Register** on May 21, 1984, 49 FR 21433).

Under Section 222(a) of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), Congress authorized the Public Housing Child Care Demonstration program ("PHCC") for the purpose of determining the feasibility of using public housing facilities to provide child care service for lower income families residing in public housing.

In enacting this demonstration program, it was Congress' belief that residents of public housing want to be employed or to enroll in training and education programs, but that many experience difficulty because they are unable to obtain convenient or affordable care for their children. In 1986, HUD completed a congressionally mandated study of child care programs in public housing projects. While the study disclosed a wide range of existing child care programs, it was unable to correlate the effect of these programs on public housing resident employment. (Copies of this study can be obtained by writing to HUD-USER, P.O. Box 280, Germantown, Maryland 20874).

On February 5, 1988, President Reagan signed the Housing and Community Development Act of 1987 ("the 1987 Act") (Pub. L. 100-242). Section 117 of the 1987 Act amends the PHCC demonstration under HURRA and provides that grants may be awarded to nonprofit organizations for the purpose of operating child care programs that enable the parents or guardians of young children to be employed or to receive employment training. The primary objective of the demonstration is to determine whether the availability of on-site child care enables public housing residents to obtain or retain jobs, or to enroll in training that might lead to employment.

Public Housing Agencies (PHAs) are encouraged to work with the nonprofit grantee to develop a comprehensive program of providing training, services, and employment for public housing residents in conjunction with the use of PHCC grant funds to establish child care facilities under this demonstration. This also applies to Indian Housing Authorities.

Program Requirements

1. Definitions

Lower Income housing project means housing developed, acquired, or assisted by a public housing agency under the United States Housing Act of 1937, other than under section 8. A project may contain one or more buildings.

Minor renovations means labor, materials, tools, and other costs related to the reconfiguration of space, installation of bathrooms, kitchens, renovations necessary to achieve compliance with physical accessibility standards for the handicapped, or that are required to meet State or local licensing and building code standards, painting and lighting. Minor renovation does *not* include cost associated with lead-based paint inspection or abatement.

Nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(a) have a voluntary board;

(b)(1) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or

(2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(c) Practice nondiscrimination in the provision of assistance under the Public Housing Child Care Demonstration program in accordance with the authorities at section 13.1 of this NOFA.

Operating expenses means expenses that a grantee incurs for planning and development costs, administration, maintenance, minor or routine repairs, security, utilities, furnishings, equipment, insurance, and staff salaries.

2. Applicants

2.1. *Eligibility.* Any nonprofit organization is eligible to receive a grant under this Demonstration. The Department wishes to encourage applications from public housing resident associations, resident councils, and resident management corporations, as well as other community-based nonprofit organizations that have proven experience in providing child care or other related services to lower income families. HUD also encourages community-based, nonprofit organizations with this experience to submit applications for a grant under this Demonstration.

2.2. *Multiple applications.* An eligible nonprofit organization may submit multiple applications under this demonstration, so long as each application requests funding to establish a child care facility located in a different lower income housing project.

3. Grant Amounts

3.1 *Maximum grant amount.* To ensure that grants are provided to the largest number of nonprofit organizations practicable, the maximum grant amount is $100,000. Applicants are advised that preference will be given to applicants demonstrating a high level of non-HUD funding and that intend to provide

continued support for the child care program following the expiration of the demonstration grant award.

3.2. *Seed money.* In making grant award determinations, HUD will give preference to those applicants that intend to use grant amounts as start-up capital or seed money to supplement funds from other sources. In this manner, the child care programs that are established under this demonstration can continue to operate without further HUD funding.

3.3. *Non-HUD Funding.* Other sources of funding that applicants should explore include: HHS Title XX; Department of Agriculture funding for meals; Job Training Partnership Act funds; State and local funding; grants from nonprofit social service agencies; and public housing authority funds, as well as the support of private voluntary and religious organizations.

4. Use of Grant Funds

Grant funds may be used for operating expenses and minor renovation of the child care facilities. HUD recommends that applicants use the grant award for start-up or one-time costs. While the Department discourages the use of grant funds for salaries, it will consider such applications if: (1) The program is of unusual merit; (2) the applicant demonstrates that there is no other source of funding available to pay these costs in the initial grant year; and (3) the applicant identifies additional sources of funds to pay for salaries in subsequent years. If major renovations are needed, they must be undertaken with other sources of funding. The guarantee of these funding sources and the timeliness of completion of the work must be demonstrated in order for the application to be approved.

5. Eligible Facilities

Applicants must demonstrate that the proposed facility:

—Will be located in a lower income housing project;
—Will be large enough to accommodate the proposed number of children;
—Will meet all State and local standards and requirements for child care facilities (including total square footage per child; adequate kitchen and bathroom facilities; accessibility for the handicapped; security); and
—Is not located in a PHA with outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings unless the PHA is implementing a HUD-approved plan or compliance agreement designed to correct the area(s) of noncompliance; or that is in violation of the compliance agreement. Applications for "Family-based" child care facilities—*i.e.*, facilities to be operated by a nonprofit organization using the homes of one or more residents of a project—may be considered for processing if they meet all of the eligibility requirements set out in this notice.

6. Staffing Guidelines

Applicants must demonstrate that the proposed child care facility will provide staff in sufficient numbers, and with adequate training, to meet applicable State and local standards. In making its grant award determinations, HUD will give preference to applicants that employ elderly public housing residents as program staff, on either a part-time or full-time basis.

7. Responsibilities of Grantees

All nonprofit organizations receiving grants under this demonstration must:

7.1. *Enrollment restrictions.* Ensure that the facility targets its enrollment to the children of lower income families residing in public housing (preference may be given to single parents). Non-PHA residents may enroll their children in the facility *only* if there are available openings in the child care facility, and there is no demand for those openings by PHA residents. Moreover, when filling vacancies, the nonprofit grantee is required to give preference to any lower income housing project residents whose names are placed on a waiting list;

7.2. *Recordkeeping.*

(A) *Budget.* Maintain accurate records of the child care facility's operation, expenditures, and revenues, and submit these records for review by HUD or the PHA, upon request;

(B) *Income and employment status of parents and guardians.* Maintain accurate records concerning the names, addresses, income and employment status of participating parents and guardians for submission to HUD. Such information shall be collected upon admission of a child to the facility, and updated thereafter on an annual basis for submission to HUD;

(C) *Participating children.* Maintain accurate records on the children participating in the program, including their ages; school grade level; any physical or emotional handicaps; child care received prior to entering the demonstration facility; and anticipating child care plans upon leaving the program. These records shall be submitted to HUD or the PHA upon request;

(D) *Annual performance report.* Provide HUD with an annual performance report on the obligation and expenditure of funds for the eligible activities described in Section 4 of this Notice, together with data concerning the level of non-HUD funding received during the grant year. The annual performance report must be submitted by the end of the fiscal year for which grant amounts are made available; and

(E) *Periodic reports.* Submit periodic reports to HUD on the operation of the child care facility, as requested.

7.3. *Insurance.* Maintain general liability insurance with a minimum limit of $500,000 per occurrence (unless obtained through the PHA), and workmen's compensation in compliance with State statute.

7.4. *Non-HUD Funding.* In order to generate income, the child care facility may charge reasonable fees for services, which may be based upon a sliding fee scale that corresponds to a family's income. Fees may be waived for good cause. However, the grantee is required to seek additional funding from non-HUD sources such as Title XX; USDA meals programs; State and local governments; the private sector; the PHA; residents of the lower income housing project; and residents of the community in order to achieve 100% non-HUD funding.

7.5. *Compliance.* Ensure compliance with all the requirements specified in this NOFA.

8. Responsibilities of the PHA

All PHAs that agree to provide facilities and to participate under this Demonstration must:

8.1. *Notify tenants of child care services.* Undertake affirmative measures to inform lower income families residing in the project in which the child care facility is to be located of the existence and fee structure of the child care facility;

8.2. *Supervise maintenance.* Ensure that all routine maintenance for the child care facility is undertaken by the nonprofit grantee;

8.3. *Identify participants and resident employees.* Assist the grantee in identifying and selecting public housing participants and potential resident employees;

8.4. *Utilities.* Provide utility services to the facility, if such services were being provided by the PHA to the facility before implementation of the demonstration program; and

8.5. *Miscellaneous assistance.* Provide other assistance to the grantee as needed, and as agreed upon by the PHA and the grantee (*i.e.*, assist the grantee in seeking non-HUD funding or in preparing reports for submission to

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HUD). While PHAs are *not* required to provide funds to grantees under this demonstration, they may elect to do so).

9. Review and Approval Process

9.1. Applications received on time will first be reviewed for eligibility. Applications which do not meet the following basic eligibility requirements will be disqualified from further processing:

—The applicant must be a nonprofit organization;
—The child care facility must be located in a lower income project;
—The project must be designed to target its enrollment to the children of lower income families residing in public housing;
—The child care program described in the application must not be in operation at the time the application is submitted;
—The application must provide assurances from the PHA that it will provide the space for the child care facility; and
—The application must demonstrate that the child care program will comply with all applicable State and local laws, regulations, and ordinances.

Applications that meet these eligibility requirements will also be reviewed for completeness. HUD reserves the right to request additional information from applicants in order to ensure completeness. If additional information is requested, it will be required to be submitted by a date to be established by HUD. If the applicant has not submitted the information by the due date, the application will be considered incomplete and disqualified from further processing.

9.2. HUD will rate all applications deemed to be eligible and complete based on the selection factors in section 11. HUD will then rank all applications based on rating scores.

9.3. In accordance with section 117 of the HUD Act of 1987, HUD may substitute one or more highly rated applications if the top rated applications under the selection criteria do not ensure equitable geographic distribution among urban and rural areas and among nonprofit organizations providing child care services in lower income housing projects of varying size.

10. Application

10.1. *Submission guidelines.* Nonprofit organizations interested in operating a child care facility in accordance with the requirements of this NOFA should submit an original plus two copies of the application materials discussed below, on 8½"×11" paper, to Robert Hundley, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4100, Washington, D.C. 20410 by October 3, 1988. Applications received after 5:15 p.m. on this date, or applications that fail to address all of the application requirements set out below, will be disqualified from receiving a grant award and returned.

10.2. *Application requirements.* The application must contain the following information:

(1) The applicant's name, address, telephone number and the name of a responsible contact person;

(2) Evidence of the applicant's nonprofit status. This evidence may include photocopies of nonprofit documentation;

(3) A description of the nonprofit organization, including the composition of its governing board, staff experience, prior experience in providing social and educational services to lower income families, and its ability to implement and manage the proposed child care program;

(4) A narrative statement identifying the need for the proposed child care facility in the designated lower income housing project, including the number of preschool and school children residing in the project, the adequacy of other child care programs and the number of residents that require the services of a child care facility in order to obtain, train, or retain employment;

(5) A description of the proposed child care facility, including the location, anticipated number, race, ethnicity and age range of the children to be served; the types of services to be provided; the anticipated number of employees that will be working on a part- or full-time basis (and whether any of these employees are expected to be elderly residents of the designated public housing project) the anticipated number of volunteers (if any); the applicant's proposed method of selecting participants; the anticipated fee structure for payment of child care services (including sliding fee scale and in-kind services);

(6) The projected opening date for the child care facility, and a description of any plans for its minor or major renovation. The applicant must provide a timetable for completing major renovations, indicating the source of its funding, and a timetable for meeting the projected opening date;

(7) A description of the applicant's proposed method of informing residents of the availability of child care services in the designated lower income housing project;

(8) A proposed budget for the grant period identifying the child care facility's projected revenues and expenses. Projected expenses must include: (1) both one-time start-up expenses and ongoing operational expenses, and (2) the total number of child/hours of care to be provided and the cost per child/hour of service;

(9) A statement of the nonprofit applicant's specific need for the HUD grant funds, and how such funds will be used (*see* discussion at section 4 regarding use of grant funds);

(10) A statement of how the nonprofit applicant intends to continue operation of the child care facility following expiration of the HUD grant. If the applicant proposes to use grant funds for salaries, the information on how this activity will be funded must be specifically provided;

(11) The length of the grant period;

(12) A letter of commitment from the PHA Board indicating:

(a) its support for the proposed child care facility; (b) its agreement to provide space for the child care facility in the designated lower income housing project; (c) that the premises designated for use as the child care facility conform to the lead-based paint requirements specified at section 13.2 of this NOFA, or that the PHA will undertake such measures before the opening of the child care facility; (d) its willingness to undertake affirmative measures to inform residents of the lower income housing project of the availability of the child care facility; (e) its agreement to provide the nonprofit grantee with information concerning the employment and training status of parents residing in the designated lower income housing project; (f) the PHA's experience with programs such as Project Self-Sufficiency, resident management, or other programs designed to provide employment and training opportunities for PHA residents; and (g) its agreement to comply with other requirements specified in this NOFA;

(13) A statement from the applicant and PHA as to how data required under this NOFA will be compiled within the confines of the PHA's existing reporting system, or otherwise;

(14) A description, including letters of commitment from agencies who will provide resources to the children to be served by the child care facility and their parent(s);

(15) Certifications that—

(a) The proposed child care facility will serve preschool children during the day, school children after school, or both, in order to permit the parents or guardians of such children to obtain,

retain, or train for employment. If the proposed child care facility serves infants, the provision of these services must also be in compliance with State or local standards;

(b) There is no child care facility in existence in the designated lower income housing project prior to the receipt of grant funds under this demonstration;

(c) The proposed child care facility will be designed to involve the participation of the parents and guardians of children utilizing the facility;

(d) The proposed child care facility will be designed to employ, on a full-time or part-time basis (to the extent practicable) elderly residents of the designated lower income housing project;

(e) The proposed child care facility and any renovations will comply with all applicable State and local laws, regulations, and ordinances;

(f) The applicant will maintain the necessary insurance coverage for the proposed child care facility in order to comply with State and local requirements (workmen's compensation and general liability);

(g) The applicant will initially and on a quarterly basis record and report statistics to HUD (a) on the employment obtained or retained and job related training employment results of the parents or guardians of children residing in the lower income housing project that participate in the child care facility, and (b) the total units of service provided to date and the cost per unit of service (A unit of service is one child for one hour. For example, 3 child/hours could be: one child for 3 hours; or 3 children for one hour; or one child for 2 hours and one child for one hour.);

(h) The applicant, in its recruitment and selection of staff, will require a declaration from all prospective employees that lists all pending and prior criminal arrests, and any charges related to child abuse, neglect or child sexual abuse, and their disposition, and all felony convictions and current criminal charges. The declaration may exclude traffic fines of $50.00 or less, any offense (other than an offense related to child abuse, child sexual abuse, or a violent felony) committed before the prospective employee's 18th birthday which was adjudicated in a juvenile court or under a youth offender law, and any conviction set aside under the Federal Youth and Corrections Act or similar State authority; and

(i) The applicant will comply with the requirements of Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and Executive Order 11063—Equal Opportunity in Housing.

11. Selective Rating Factors

Each of the following selective rating factors will be considered by the Department in evaluating an application for a grant award. These factors are listed in their order of importance:

(1) The extent of demonstrated need for a child care services program, as reflected by: (a) The number of preschool and school-aged children residing in the lower income housing project; (b) the adequacy and availability of other child care programs; and (c) the number of residents in the lower income housing project that require the services of a child care facility in order to obtain, train, or retain employment;

(2) The extent to which the applicant has obtained commitments from the PHA, social service providers and volunteer agencies for resources adequate to meet the immediate needs of the children who will be served by the child care facility and their parents. For example, training and employment assistance, diagnostic services, and volunteer aides;

(3) The ability of the applicant to obtain financial assistance from other public and private sources to be utilized in the Public Housing Child Care Demonstration Program. Provide evidence that the nonprofit grantee has the capacity to sustain the program after the expiration of the grant term. Preference will be given to those applicants that intend to: (a) use grant amounts as start-up capital or seed money to supplement funds from other sources; and (b) provide non-HUD funding at the start of the grant term, and have a strategy for achieving 100 percent non-HUD funding following the initial HUD grant;

(4) The efficiency of the provision of basic child care and other services: this will measure the total cost per child/hour of care provided;

(5) The extent to which parents and guardians of children residing in a lower income housing project, and elderly PHA residents, are encouraged to participate in the child care program;

(6) The extent to which the proposed child care facility offers a broad or unique range of services that exceed basic custodial care. These services should include hiring a director with an educational background and training in early childhood development, and offering educational instruction or programs to the parents and staff;

(7) The extent to which a grantee can become operational within a relatively brief period of time following the disbursement of funds by HUD to the grantee;

(8) The applicant's experience in providing (or ability to provide) child care services;

(9) The level of participation by the PHA in other employment-related programs serving public housing residents; and

(10) Preference may be given to public housing resident associations, resident councils, and resident management corporations, as well as other community-based nonprofit organizations that have proven experience in providing child care or other related services to lower income families.

12. Grant Administration

12.1. Except for funds necessary to finance start-up costs associated with initial staffing, minor renovation, and similar approved expenditures that may precede licensing, no grant funds may be disbursed until the grantee submits to HUD a photocopy of the appropriate license to operate the proposed child care facility.

12.2. *Grant agreement.* The grant will be made by means of a grant agreement executed by HUD and the grantee.

12.3. *Responsibility for grant administration.* Grantees are responsible for ensuring that public housing child care demonstration grants are administered in accordance with the requirements of this NOFA and other applicable laws.

12.4. *Deadlines for using grant amounts.* A nonprofit grantee must obligate all grant amounts within one year of the date on which grant amounts are awarded to the grantee by HUD.

12.5. *Method of payment.* Grantees shall be advanced grant amounts under this demonstration by the submission of a properly signed original and two (2) copies of Standard Form 270, Request for Advance or Reimbursement.

12.6. *Adjustment and deobligation of grant funds.*

(A) HUD may deobligate grant amounts awarded under this demonstration under the following circumstances:

(1) Grant amounts designated for use as operating costs may be deobligated if the proposed child care facility operations are not begun within a reasonable time following selection;

(2) If, as a result of an audit, HUD determines that the grantee has expended funds for uses that are ineligible under this demonstration, HUD may adjust or deobligate grant

amounts, as appropriate, to recover the ineligible costs; and

(3) The grant agreement will set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

(B) Upon the deobligation or adjustment of grant funds, HUD may:

(1) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability; or

(2) Reconsider applications that were submitted in response to the most recently published notice of fund availability, and select applications for funding with deobligated funds. Such selections will be made in accordance with the requirements of Section 11 of this NOFA.

13. Applicability of Other Federal Requirements

Use of public housing child care demonstration grant amounts requires compliance with the following additional requirements:

13.1. *Nondiscrimination.* The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 (Fair Housing Act) and implementing regulations issued at 24 CFR Part 105; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1; Section 504 and implementing regulations at 24 CFR Part 8; and Executive Order 11063 and implementing regulations; and all applicable State and Federal nondiscrimination statutes. HUD encourages the full participation of minority nonprofit organizations;

13.2. *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35. Structures constructed or substantially rehabilitated prior to 1978 must be inspected to determine whether defective paint surfaces exist, in accordance with the requirements of 24 CFR Part 35. In addition, all applicable surfaces in the child care facility must be tested for the presence of lead-based paint as specified under 24 CFR 965.706. If detected, abatement procedures under Part 35 must be undertaken (as revised on June 6, 1988; see 53 FR 20790). Structures that have been previously tested and abated in accordance with revised Part 35 standards are not required to be retested;

13.3. *OMB Circulars.* The requirements of OMB Circular Nos. A–110 (relating to Uniform administrative requirements for grant and agreement with Institutions of Higher Education, Hospitals and other Nonprofit organizations), and A–122 (relating to Cost Principals applicable to Institutions of Higher Education, Hospitals and other nonprofit organizations). (Copies of these circulars can be obtained from EOP Publications Office, 725 17th Street, NW., Suite 220, Washington, DC 20503);

13.4. *Use of debarred, suspended or ineligible contractors.* The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status; and

13.5. *Coastal Barriers.* In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this NOFA may be made available within the Coastal Barrier Resources System.

13.6. *Environmental review.* HUD will assess the environmental effects of each application with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Any application that HUD determines would require an Environmental Impact Statement (EIS) in accordance with 24 CFR Part 50, Subpart E will not be eligible for assistance under this NOFA. As a result of its environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. HUD will consider any anticipated time delays in the selection process.

Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget under the Paperwork Reduction Act and have been assigned OMB control number 2577–0110.

Authority: Section 222 of the Housing and Urban-Rural Recovery Act of 1983, as amended by section 117 of the Housing and Community Development Act of 1987 (Pub. L. 100–77, approved February 5, 1987); Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: July 27, 1988.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88–18597 Filed 8–16–88; 8:45 am]

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Part VII

Environmental Protection Agency

Linuron; Preliminary Determination To Conclude the Special Review; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/41B; FRL-3430-8]

Linuron; Preliminary Determination To Conclude the Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing linuron and sets forth the Agency's assessment of the risks and the benefits associated with the pesticidal uses of linuron. On September 26, 1984, the Agency issued a Notice of Special Review of Certain Pesticide Products for registrations of products containing linuron based on oncogenic concerns (49 CFR 37843). This Notice announces the Agency's intent to include the Special Review of pesticide products containing linuron.

DATE: Written comments on this Notice should be received on or before October 17, 1988.

ADDRESS:

Submit three copies of written comments, bearing the document control number "OPP-30000/41B" by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked CBI may be disclosed publicly by EPA without prior notice to the submitter. The linuron public docket, which contains all non-CBI written comments and the corresponding index, will be available for public inspection and copying in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mark T. Boodee, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Arlington, VA (703 557-7402).

SUPPLEMENTARY INFORMATION: This document presents the basis for the Agency's regulatory decision to terminate the Special Review of linuron and contains five units. Unit I contains an introductory section. Unit II describes the legal background behind the Special Review process. Unit III provides an evaluation of the risks associated with exposure to linuron. Unit IV presents the Agency's conclusions and the proposed regulatory decision. Unit V provides an opportunity for public comments and describes public docket procedures.

I. Introduction

Linuron is the common name for 3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea. Linuron is most commonly sold under the trade names Lorox, Linex, Afalon, and Sarclex. It is available as a wettable powder, a granular, and a flowable or soluble concentrate.

Linuron was first registered as a pesticide in 1960. It is a substituted urea herbicide used mainly for pre-emergence and, in some crops or sites, postemergence control of certain troublesome broadleafed weeds and annual grasses on terrestrial food and non-food sites. Food sites include soybeans, field and sweet corn, cotton, sorghum, wheat and other small grains, asparagus, carrots, celery, parsnips, and potatoes. Non-food sites include alleys, fencerows, fairways, golf tees, highway rights-of-way, sodfields, streets, and vacant lots. Linuron has limited contact action and when it is used postemergence, it is normally applied with a surfactant. Linuron is often selected for use on light to medium soil types with low organic matter, especially in soybeans, because it is less phytotoxic than its major alternative on those soils.

In the United States, EPA estimates that 4.8 million to 6.2 million pounds active ingredient are used per year. Approximately 84 percent, or approximately 5.2 million pounds, of linuron used annually in the United States is used on soybeans; the remaining 16 percent is applied to asparagus, carrots, celery, potatoes, parsnips, and other minor use sites including non-foodsites listed above. Its home garden and greenhouse uses account for less than 1 percent of all linuron usage.

E.I. du Pont de Nemours and Company, Inc., Drexel Chemical Company, and Griffin Corporation produce the technical material. Fourteen registrants hold Federal registrations for approximately 30 pesticide products containing linuron as an active ingredient.

The Registration Standard for pesticide products containing linuron was issued on June 29, 1984. The Agency reviewed information concerning the potential adverse effects associated with uses of linuron which indicated that linuron induces dose-related tumors in rats and in mice. The Registration Standard required submission of product and residue chemistry, environmental fate, toxicology, and wildlife data. Certain label restrictions were also required including a tumor warning statement regarding linuron's oncogenic effects, restricted use classification, and a requirement that protective clothing be worn during linuron application.

On September 26, 1984, the Environmental Protection Agency issued a notice of Special Review of Certain Pesticide Products for registrations of products containing linuron (49 FR 37843) which detailed the basis for the Agency's decision to initiate a Special Review. The Agency determined that pesticide products containing linuron met or exceeded the risk criterion in 40 CFR 162.11(a)(3)(ii)(A). That section provided that a Special Review, previously known as Rebuttable Presumption Against Registration (RPAR), should be conducted if the use of a pesticide "induces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation or dermal exposure * * *."

The Special Review was initiated based on laboratory data which indicated that linuron induced statistically significant dose-related tumors in rats and mice. Specifically, in a 2-year feeding study male rats developed interstitial cell testicular adenomas (benign tumors). In a 2-year mouse feeding study, a statistically significant increase in hepatocellular adenomas was observed.

II. Legal Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 *et seq.*). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the

environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel this registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR) process, is a mechanism by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. The Special Review process is currently governed by 40 CFR Part 154. At the time of initiation of the linuron Special Review, the Special Review process was governed by 40 CFR Part 162.

Through the Special Review process the Agency: (1) Announces and describes the Agency's risk concerns regarding pesticidal use based on certain risk criteria, (2) establishes a public docket, (3) proposes a regulatory decision, (4) solicits comments from the public on the proposed decision and issues concerning the Special Review, (5) responds to significant comments from the Secretary of Agriculture and the Scientific Advisory Panel, and (6) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Pursuant to 40 CFR 154.31, the Administrator is required to prepare a Notice of Preliminary Determination after the close of the comment period on the Notice of Special Review. The Notice of Preliminary Determination must respond to comments submitted in response to the Notice of Special Review, and for each use of a pesticide product that was subject of the Notice of Special Review shall include a determination whether the use satisfies the risk criteria set forth in 40 CFR 154.7. At the time of the initiation of the Special Review of linuron the risk criterion for oncogenic effects was set forth at 40 CFR 162.11(a)(3)(ii)(A). After the close of the comment period on this Notice, the Agency will publish a Notice of Final Determination.

Issuance of this Notice means that the Agency has assessed the potential adverse effects associated with the use of linuron and preliminarily determined that the risk criterion for oncogenic effects set forth in 40 CFR 154.7(a)(2) has not been exceeded. Therefore, this Notice of Preliminary Determination to conclude the Special Review of linuron is being issued pursuant to 40 CFR 154.3.

III. Risk Determinations

A. Basis for Special Review

As noted in Unit I of this Notice, the Special Review of linuron was initiated because of a study in rats and one in mice that indicated a dose-related tumor response. In the 2-year rat study, conducted at Haskell Laboratory (Kaplan, A.M. et al., 1980), researchers fed linuron to Charles River CD–1 rats. A control group and 3 dose groups of 50, 125, and 625 parts per million (ppm) linuron were used. Each group contained 80 male and 80 female rats. Male rats developed interstitial cell testicular adenomas. Most of the tumors developed at the end of the study and were not regarded as life-threatening. Rat mortality was not dose-related. The frequency of testicular adenomas increased with dose, and the increase in number was statistically significant when compared to the controls for the two highest dose groups. The incidence of interstitial cell adenoma in the testes is noted in the following Table 1:

TABLE 1.—THE INCIDENCE OF TESTICULAR ADENOMAS IN MALE RATS FED LINURON FOR TWO YEARS

Group	Dose	Number of animals with tumors/total number of animals	Percentage
1. Controls	0 ppm	4/68	5.9
2. Low dose	50 ppm	9/56	9.1
3. Mid dose	125 ppm	19/64	29.7
4. High dose	625 ppm	37/66	56.1

At the high dose group, researchers observed losses in female body weights.

In a study by Wood et al., (1982), researchers fed linuron to male and female Charles River CD–1 mice at levels of 0, 50, 150, and 1,500 ppm in the diet. Eight groups (four male and four female dose groups) of 80 mice each were used in this study. Survival was similar in control and treated groups. Female mice developed a statistically significant increase in hepatocellular adenomas in the highest dose group, and male mice developed borderline statistically significant hepatocellular adenomas only in the lowest dose group. The incidence of hepatocellular adenoma in both sexes is noted in the following Table 2:

TABLE 2.—THE INCIDENCE OF HEPATOCELLULAR ADENOMAS IN MALE AND FEMALE MICE FED LINURON FOR TWO YEARS

Group	Dose	Number of animals with tumors/total number of animals	Percentage
Males:			
1. Controls	0 ppm	9/79	11.4
2. Low dose	50 ppm	18/80	22.5
3. Mid dose	150 ppm	10/80	12.5
4. High dose	1,500 ppm	16/78	20.5
Females:			
1. Controls	0 ppm	5/79	6.3
2. Low dose	50 ppm	6/79	7.6
3. Mid dose	150 ppm	8/76	10.5

TABLE 2.—THE INCIDENCE OF HEPATOCELLULAR ADENOMAS IN MALE AND FEMALE MICE FED LINURON FOR TWO YEARS—Continued

Group	Dose	Number of animals with tumors/total number of animals	Percentage
4. High dose	1,500 ppm	20/80	25.0

Microscopic examination of mouse tissues and organs showed effects in the liver and spleen of treated male and female mice. These compound-related effects included hepatocytomegaly, hepatocellular cytoplasmic alteration, hepatocellular vacuolization, hemorrhage, and necrosis. Due to the diverse nature of the oncogenic response with respect to the dose (low dose, males; high dose, females), the presence of benign tumors with no progression toward malignancy, and the lack of a definite dose-response curve, the tumors seen in the 2-year mouse feeding study are considered to be a minimal tumorigenic response. Neither the liver tumors nor the other effects noted in this study were used by the Agency for quantitation of dietary risk.

The 2-year rat study was used as the basis for calculating a preliminary quantitative oncogenic risk assessment from dietary exposure for the general population and to farmers applying linuron to soybeans.

In the Notice of Special Review, the Agency estimated dietary exposure for three different exposure assumptions. The first estimate was based on tolerances and it was assumed that residues were at 100 percent of these levels and that 100 percent of the crop was treated. Based on actual residue levels found in the field, the second estimate used the maximum residues expected and assumed 100 percent crop treated. The final estimate was based on the maximum residues expected multiplied by an estimate of the percent crop treated. The Agency believes the most realistic estimate of dietary exposure was the third. Using the linearized multi-stage model to calculate a preliminary risk estimate for maximum expected residues and percent crop treated, upper-bound lifetime oncogenic dietary risk from exposure to linuron was estimated to be 2×10^{-6}. This value represents a 95 percent probability that the risks from dietary exposure are no greater than two people per 100,000 developing tumors from a lifetime dietary exposure. The lifetime dietary oncogenic risk ranged from 1×10^{-5} to 2×10^{-6} for the three different dietary exposure assumptions.

The Agency also evaluated potential occupational oncogenicity risk to farmers applying linuron to soybeans under three different exposure assumptions. The first estimate represented maximum exposure because it assumed the farmer was not wearing protective clothing. The second estimate assumed the farmer was wearing protective clothing which reduced exposure 80 percent. It was also assumed that some pesticide filtered in around collar edges, cuffs, etc. The third estimate assumed the farmer was wearing protective clothing and exposure was reduced 100 percent for areas covered by protective clothing. However, exposure to unprotected areas was still assumed. Average daily dermal exposure for a farmer during ground application of linuron to soybeans was calculated to be 3×10^{-3} milligrams/kilogram/day (mg/kg/day), 4×10^{-4} mg/kg/day, and 8×10^{-5} mg/kg/day for each assumption, respectively. These estimates assumed that the farmer mixed and loaded as well as applied linuron. The Agency believed the most reasonable exposure would occur under the second exposure assumption, that exposure was reduced 80 percent by protective clothing. Upper-bound estimated lifetime oncogenic risk to a soybean farmer applying linuron was calculated to be between 5×10^{-5} (1 day per year) and 3×10^{-4} (6 days per year), or 5 to 30 people at risk per 100,000. This value represents a 95 percent likelihood that non-dietary risks are not greater than those estimated above. Oncogenic risk to farmers was calculated solely for dermal exposure absorption since it is the primary mode of exposure; 100 percent dermal absorption was assumed.

In a recent report (May 1987), the National Academy of Sciences (NAS) estimated the oncogenic risks posed to consumers by pesticides. The NAS report estimated that linuron residues posed a 10^{-3} dietary risk to consumers. That estimate was based on the assumptions that 100 percent of the crop was treated and that residues were at tolerance limits (dietary exposure estimate 1 in the Notice of Special Review), two assumptions which the Agency considers to be unrealistic. Use of assumptions the Agency believes are more realistic—maximum residues expected times percent of crop treated (dietary exposure estimated 3 in the Notice of Special Review)—would result in a decrease in the NAS risk estimate of approximately two orders of magnitude (i.e., risks in the range of those presented in the Notice of special Review). However, for reasons discussed in Unit III.B.4 of this Notice, the Agency now believes the evidence of linuron's carcinogenicity is weak enough that it does not support quantification of risk and that even the 10^{-5} risk estimate is an over-estimate of risk.

B. Additional Information

Subsequent to the Notice of Special Review, EPA received additional exposure and toxicity data. These data are discussed below.

1. *Exposure Data*—a. *non-dietary exposure.* Additional data include a worker exposure study (Guinivan, R.A., 1984), a dermal penetration study (Anderson, J.J., 1984), residue data for the major uses of linuron, and environmental fate data.

The worker exposure study showed that the combined annualized daily dermal exposure (for pre-emergence use only) was approximately 1×10^{-3} mg/kg/day. For both pre- and postemergence use, the combined dermal exposure was estimated to be 2×10^{-3} mg/kg/day. These exposure levels are approximately equivalent to those calculated in the Notice of Special Review for estimate 1 (no protective clothing assumed).

After the Registration Standard was issued, Du Pont submitted a valid dermal penetration study (Anderson, J.J., 1984). Results of the study indicated that only 1 to 2 percent of linuron penetrates the skin. For the applicator risk assessment in the Notice of Special Review, the Agency had assumed 100 percent dermal penetration and a risk to mixer/loader/applicators in the 10^{-4} range. One to 2 percent dermal penetration would significantly lower the internal absorbed dose and the estimated non-dietary risk by 1 to 2 orders of magnitude. Thus, even if the Agency were to quantify applicator risk now, the risks (in the 10^{-5} to 10^{-6} range) would be considered acceptable.

b. *Dietary exposure*—i. *crop residues.* Additional residue data for the major uses of linuron have also been received from Du Pont in response to the

Registration Standard and a Data Call In notice issued on May 19, 1986. Average residue levels for soybeans, the major crop use of linuron, were approximately 0.07 ppm, compared to a tolerance level of 1.0 ppm. These additional residue data showed actual residue levels similar to those used for the dietary exposure estimates in the Notice of Special Review. Therefore, if EPA were to quantify dietary risk from the latest residue data submission, it is believed that the upper-bound lifetime risk would be no greater than 10^{-6} and possibly much lower. As noted previously, the risk estimate in the NAS report was based on residues that were at tolerance limits.

ii. *Drinking water residues.* Although not a basis for Special Review and no exposure or risk estimates were calculated, the Agency did note in the Notice of Special Review that dietary exposure through water contamination was possible. Linuron run off into rivers and leaching to aquifers could contaminate drinking water which is drawn from either surface or ground water. As stated in the Notice of Special Review, limited monitoring data from 1982 to 1984 in northwestern Ohio showed the presence of linuron at very low levels (mean concentrations ranged from 0.00 to 7.16 parts per billion (ppb)) in surface and tap water. Although the data showed that linuron was present in the surface water of northwestern Ohio, the data were presumed to represent a worst case situation since use of pesticides on soybeans and corn in this area is considered to be extremely heavy. To evaluate the potential for linuron to contaminate drinking water, product chemistry and environmental fate studies were required on an expedited basis. Data were submitted by the registrant and have been reviewed by the Agency. These data indicate that although the linuron parent compound moderately leaches, its mobility decreases as soil organic matter increases. However, the studies did not provide enough information to assess the ability of linuron's soil degradation products to contaminate drinking water. Du Pont was notified of the inadequacy and the Office of Pesticide Programs is currently reviewing information submitted by Du Pont which is intended to clarify and supplement the original data submission.

Linuron has been included in the Drinking Water Wells Survey being conducted by the Agency's Office of Drinking Water and Office of Pesticide Programs. Although not identified as a chemical thought to have a high risk potential for leaching into groundwater, linuron was included because it is detectable by the method used for testing well water. If levels are detected, a Health Advisory may be established and other regulatory measures may be considered.

The need for additional ground water data will be determined after reviewing environmental data and/or the Drinking Water Wells Survey data.

2. *Toxicity Data.* Additional toxicity data include a full battery of mutagenicity data, a multi-generation rat reproduction study, a feeding study, and a set of studies investigating the mechanism of action of tumor formation.

Du Pont submitted all required mutagenicity data representing the three general categories of mutagenicity testing (i.e., gene mutations, structural chromosomal aberrations, and direct DNA damage and repair). The Agency has reviewed the mutagenicity studies submitted by Du Pont and concluded that linuron is not a mutagen. The data showed no evidence of adverse genetic or chromosomal effects in any study.

A multi-generation rat reproduction study conducted by Du Pont was submitted in response to the Notice of Special Review and was reviewed by the Agency. Three successive generations of Charles River Crl:CD rats were fed dietary linuron at 0, 25, 125 and 625 ppm. The incidence of testicular adenoma in the F_{1b} and F_{2b} combined groups is noted in the following Table 3:

TABLE 3.—THE INCIDENCE OF TESTICULAR ADENOMAS IN F_{1b} AND F_{2b} MALE RATS

Group	Dose	Number of animals with tumors/Total number of animals	Percentage
1. Controls	0 ppm	1/19	5.0
2. Low dose	25 ppm	0/25	0
3. Mid dose	125 ppm	6/25	24.0
4. High dose	625 ppm	2/16	12.0

An increase in testicular interstitial cell adenomas was observed in F_{1b} and F_{2b} male rats at the 125 and 625 ppm dose levels and was associated with testicular hyperplasia. Although it appears that reproductive effects may have been demonstrated (reduced fertility in generations F_{2A}–F_{3A}, decreased pup survival), the study was deficient. No histological data were provided for the parental animals following their breeding or weaning of offspring. There were no gross pathology data available for the animals which died during the study and no evaluation of the possible causes of infertility was made. Though not intended to examine oncogenic effects, this reproductive study demonstrates the oncogenic effects (testicular adenomas and hyperplasia) noted in earlier studies. The test animals were sacrificed late in their life cycle, most at 2 years of age, with the earliest at 480 days.

In response to a Data Call In Notice issued to registrants on May 18, 1986, Du Pont submitted a feeding study which investigated the effects of linuron fed to aged male Charles River Crl:CD(SD)BR rats. At the beginning of the study, the average age of the rats was 12 months. The researchers exposed older rats in the last year of life (12 months before 24 months sacrifice) to either: (1) No linuron, (2) no linuron for 6 months and then linuron for 6 months, or (3) just linuron for 12 months. The incidence of hyperplasia and adenoma of the testes in aged male rats is demonstrated in the following Table 4:

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TABLE 4.—THE INCIDENCE OF TESTICULAR ADENOMA AND HYPERPLASIA IN AGED MALE RATS

Group	Linuron exposure (ppm)	Period in life exposed	Response	
			Hyperplasia	Adenomas
1	0 ppm	None	8/25 (32%)	0/25 (0%)
2	0, then 625 ppm	18 to 24 mos	8/25 (32%)	2/25 (4%)
3	625 ppm, then 625 ppm	12 to 24 mos	15/25 (60%)	6/25 (24%)

Rats which were fed a normal diet for 6 months followed by 6 months of 625 ppm dietary linuron (group 2), had a non-statistically significant increase of testicular adenomas. A statistically significant increase in testicular adenomas and hyperplasia was observed in male rats fed dietary linuron for 12 months (group 3). No malignant tumors were even observed. These results support the theory that the tumorigenic effects of exposure to linuron may be age-related-i.e., age-related alterations, perhaps of a hormonal nature, may make the testicular tissue more susceptible to an oncogenic response.

After the initiation of the Special Review, du Pont also submitted a set of studies which they believed suggested that the mechanism of action of tumor formation is influenced through the pituitary-testes "feedback loop", in effect a threshold tumorigenic response. Specifically, du Pont believes that the additional data demonstrate that the formation of testicular tumors is regulated via alterations in responsiveness of the interstitial cells of the testes to luteinizing hormone (LH—LH is a hormone released from the pituitary and is important in the regulation of the growth of testicular cells) resulting in testicular hyperplasia and adenomas.

Biochemical data submitted by du Pont examined the effects of linuron upon horse testicular microsomes, testosterone clearance, and the ability of LH to induce the secretion of testosterone in Leydig cells isolated *in vitro* from rats treated repeatably (200 mg/kg orally for 3—7 days) or treated chronically (11 or 19 months at 0, 25, 125, or 625 ppm). After review by the Agency, data from the *in vitro* study were initially suggestive of a hyperactive response of the chronically dosed rat (625 ppm) Leydig cells to LH.

To clarify the registrant's proposed mechanism of action of linuron on the hypothalamus-pituitary axis, researchers at EPA's Health Effects Research Laboratory in Research Triangle Park, North Carolina, evaluated the hormonally-regulated effects of linuron upon testicular changes in Leydig cells. Using LE-hooded male rats, linuron was administered for 4 days (0, 50, 100 or 200 mg/kg/day) with a 3-day post-dosing period. There was no evidence that the compound produced a significant effect upon blood levels of LH, follicle-stimulating hormone, or prolactin.

After evaluating the data from du Pont and its own research laboratory, the Agency has concluded that there is no convincing evidence that the oncogenic effect of linuron is secondary to an alteration in the pituitary-testes hormonal "feedback loop". Although it is possible that linuron alters levels of some testosterone-related enzymes and the responsiveness of the testes to luteinizing hormone, additional data which explore blood hormonal levels are necessary to confirm or deny the existence of a secondary mechanism for tumorigenicity.

Although not a basis for special review, EPA was aware of the potential of linuron to cause adverse blood effects. In 1962, du Pont submitted a 2-year dog feeding study (Hodge, H.C., 1962). Four groups of six beagle dogs (three males and three females) were administered diets containing 0, 25, 125, and 625 ppm for 2 years. These levels correspond to 0, 0.625, 3.125, and 15.625 mg/kg/day. Analysis of blood revealed an abnormal blood pigment (sulfhemoglobin) in dogs fed linuron down to the lowest dose tested, 25 ppm. Thus, the lowest effect (LEL) for hematotoxicity was established at 25 ppm. (0.625 mg/kg/day).

3. *Comments on the Notice of Special Review.* During the offical comment period for the Notice of Special Review, the Agency only received comments from E.I. du Pont de Nemours & Co., Inc. Du Pont stated that "the toxicological concerns expressed relative to linuron (testicular adenomas occurring in aged rats—not noted at 1-year interim sacrifice), if ranked in an accepted classification system of possible oncogens (i.e., Squires or the system which we understand that EPA is presently considering), would rank in the weakest class." This comment is discussed in the next section.

4. *Classification of the Oncogenic Potential of Linuron.* Since the intitiation of the Special Review, EPA has established Guidelines for Carcinogenic Risk Assessment (51 FR 33992, 9/24/86). These guidelines assist Agency scientists in assessing the potential for a chemical to cause cancer in humans. The guidelines categorize the overall weight of evidence for human carcinogenicity by: (1) Summarizing the weight of evidence in human and/or animal studies, (2) utilizing this information to assign a tentative category, and (3) evaluating all relevant supportive information to determine if modifications in the weight of evidence are necessary.

There are five categories of carcinogenicity. They are noted as Group A, B, C, D or E. Group A is used for those chemicals for which there is sufficient epidemiological evidence to support a causal association between human exposure and cancer.

Group B, probable human carcinogens, includes those chemicals for which there is limited human evidence of cancer (B1) and those chemicals for which there is sufficient evidence of cancer in animals but inadequate or no data of human carcinogenicity (B2).

Group C, possible human carcinogens, is used to categorize chemical agents for which there is limited evidence of carcinogenicity in animals and no human data. Within this category are chemicals with a wide range of human oncogenic potential. In some cases, the available data demonstrate a reasonable potential that the chemical is carcinogenic in humans but available data may be limited to one species. In other cases, the data set may be large but conflicting or equivocal. To distinguish those chemicals within this category where the Agency believes more data are likely to support a finding of probable human carcinogenicity, the Agency elects to classify the chemicals as Group C oncogens but to quantify their risks. Where the Agency believes the link to human carcinogenicity is weak or insufficient and that the chemical should not be regulated as a human carcinogen, it chooses not to quantify the risks. The decision regarding the strength of the link between animal and human

carcinogenicity, has to be made on a case-by-case basis. The thought process in determining whether the weight of evidence justifies quantification of its risk as a Group C carcinogen, and then whether to quantify its carcinogenic risk, is basically the same. Both decisions reflect a qualitative scientific assessment of the data and the likelihood that the effect seen in animals is indicative of human carcinogenic potential.

Group D is reserved for chemicals where available data are insufficient to assess human carcinogenic potential. Group E includes agents that show no evidence of carcinogenicity in specified animal studies.

The Office of Pesticide Programs' Peer Review Group and the Agency's Carcinogen Assessment Group reviewed the weight of evidence to determine the oncogenic potential of linuron. Both groups agree that linuron should be categorized as a Group C chemical. This conclusion is based on the following:

1. Although linuron produced a statistically significant increase in both testicular hyperplasia and adenomas in male rats and a statistically significant increase in the incidence of hepatocellular adenomas in female mice at the highest dose group tested, the tumors observed were benign in nature and showed no progession toward malignancy.

2. The tumors found in the rat oncogenicity study occurred late in the life of the test animals and were not life-threatening.

3. Linuron did not test positively in the standard battery of mutagenicity tests.

4. Historically, spontaneous formation of testicular adenomas, a relatively common type of tumor, has been observed in Charles River and Fischer rat strains. (Carcinogen Assessment Group Memorandum, J. Holder to J. Rowe, 6/2/87; Sher, S.P. et al., 1982; Huseby, R.A., 1981).

The confluence of these factors—late-forming benign testicular tumors of a relatively common tumor type in animals with a background rate of similar tumors, and lack of supporting evidence of carcinogenic potential (e.g., mutagenicity data)—all lead to a conclusion that the evidence in this case of human carcinogenic potential is weak.

Based on these factors, the Agency believes that quantification of cancer risk, and thus consideration of carcinogenicity of linuron as the endpoint of regulatory concern, is inappropriate because of linuron's low human carcinogenic potential.

On September 23, 1987, the FIFRA Scientific Advisory Panel (SAP) met to review a set of scientific issues supporting EPA's decision to classify linuron as a Group C oncogen. The SAP was requested to comment on the Agency's assessment of the weight-of-the-evidence and subsequent determination of oncogenicity according to the Agency's Guidelines for Carcinogen Risk Assessment. The SAP agreed with the Agency's categorization of linuron as a Group C chemical.

IV. Preliminary Regulatory Decision

As noted above, the Registration Standard and the Notice of Special Review for linuron were issued in 1984, before publication of the Guidelines for Carcinogen Risk Assessment. Prior to issuance of the Guidelines, the Agency routinely quantified carcinogenic risk as a matter of policy of a dose-response relationship was demonstrated. Thus, the oncogenic risk of linuron was quantified for the Registration Standard and the Notice of Special Review. Since publication of the Risk Assessment Guidelines, EPA does not always quantify carcinogenic risk for Group C chemicals but reviews each group C chemical on a case by case basis. As discussed earlier, the Agency no longer believes that linuron risk should be quantified or that linuron exceeds the oncogenicity risk criterion.

The Agency has concluded that the available data no longer support a Special review for linuron. This determination was based not only on additional toxicological information but also upon actual crop residue data which were received after the notice of Special Review was issued. Although the Agency formerly believed that the Special Review risk criterion for oncogenicity (40 CFR 162.11(a)(3)(ii)(A)) had been exceeded and subsequently initated a Special Review, the Agency now believes the evidence supporting the carcinogenicity of linuron in humans is of a limited nature and that the human carcinogenic potential resulting from exposure to linuron is low. Therefore, linuron can no longer be considered to pose unreasonable risks due to oncogenicity.

After concluding that the evidence supporting linuron's carcinogenicity in humans is not strong enough to support a Special Review of linuron, the Agency examined the other toxicological effect of possible concern, hematotoxicity. The Agency estimated the theoretical maximum residue concentration (TMRC), which is an estimation of the United States (U.S.) population's dietary exposure to linuron. The TMRC was then compared to the provisional acceptance daily intake (PADI), or the residue level conditionally thought to be toxicologically safe for daily consumption. The PADI is based on the lowest effect level (LEL) for hematotoxicity, the next effect of toxicological concern, which was established in the chronic dog feeding study with a LEL of 25 ppm (0.625 mg/kg of bodyweight), noted previously. Using a three hundredfold safety factor, the PADI is calculated to be 0.002 mg/kg/day. Using actual residue values and percent of crop treated figures, the TMRC for the U.S. population was calculated to be 0.00005 mg/kg/day, equivalent to 2.5 percent of the PADI. The most highly exposed groups are non-nursing infants (0.00024 mg/kg/day, equivalent to 12.2 percent of the PADI) and nursing infants (0.00016 mg/kg/day, equivalent to 8.0 percent of the PADI). Based on the data and information considered, the Agency concludes that the actual residue levels of linuron consumed by the U.S. population present no significant risk to public health.

The multi-generation rat reproduction study noted earlier, in addition to supporting oncogenic conclusions, raised the possibility of reproductive effects. The Agency is requiring additional reproductive effects data through a Data Call In Notice to be issued shortly. Data are also being required to resolve remaining concerns about possible hematological and contaminant risks. If any of these data demonstrate that use of linuron may pose unacceptable risk, the Agency may reinitiate a Special Review of linuron.

Based on the existing data, the Agency proposes to conclude this Special Review of registrations of pesticide products which contain linuron without further regulatory action.

V. Public Comment Opportunity

During the time allowed for submission of comments, specific comments are solicited on the preliminary determination set forth in this Notice. The Agency will review and consider any comments received during the official comment period before issuing the final determination to conclude the Special Review of linuron. Interested persons are invited to submit written comments on this proposal to conclude the Special Review of pesticide products which contain linuron. Comments must bear a notation indicating the document control number, [OPP–30000/41B]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available

for public inspection in Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

Dated: August 8, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

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Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Stomach Acidifier Drug Products for Over-the-Counter Human Use; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 79N–0176]

Stomach Acidifier Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any stomach acidifier drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective, is misbranded, and is subject to regulatory action unless it has an approved new drug application (NDA). Stomach acidifiers are drugs that add hydrochloric acid to the stomach. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final rule, and all new data and information on stomach acidifier drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFN–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 19, 1979 (44 FR 60316), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC stomach acidifier drug products as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by January 17, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by February 18, 1980.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final rule for OTC stomach acidifier drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2184). Interested persons were invited to file by May 15, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 15, 1985. New data could have been submitted until January 15, 1986, and comments on the new data until March 17, 1986. Final agency action occurs with the publication of this final rule on OTC stomach acidifier drug products.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

As discussed in the proposed regulation for OTC stomach acidifier drug products (50 FR 2184), the agency advised that the conditions under which the drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions) would be effective 6 months after the date of publication of the final rule in the **Federal Register**. Therefore, on or after February 17, 1989, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved NDA.

In response to the proposed rule on OTC stomach acidifier drug products, eight consumers submitted comments. No requests for oral hearing before the Commissioner were received. Copies of the comments received are on public display in the Dockets Management Branch. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

Six comments agreed with the agency's proposal that stomach acidifiers as a class of drugs are not generally recognized as safe and effective and are misbranded. Two comments objected to the removal of stomach acidifiers from the OTC market and presented testimonials that these drug products had provided relief from symptoms such as fainting, digestive distress, and improper "assimulation of minerals." Both comments noted that these products had been prescribed by a physician. One comment added that switching these products from OTC to prescription status would be both unncessary, inconvenient, and an added expense.

The agency acknowledges that betaine hydrochloride, glutamic acid hydrochloride, and dilute hydrochloric acid have been traditionally prescribed for use in the conditions of achlorhydria and hypochlorhydria. However, the agency is not aware of any data nor have any been submitted to demonstrate that the administration of any of these ingredients has any therapeutic value in either condition. Moreover, as discussed in the notice of proposed rulemaking for OTC stomach acidifier drug products (50 FR 2185), recent evaluations of hydrochloric acid therapy in recognized pharmacology texts conclude that there are no established indications for hydrochloric acid use. Therefore, the agency concludes that any ingredient recommended for OTC stomach acidifier use cannot be generally recognized as safe and effective.

In reference to the comment's statement on an OTC to prescription switch, it should be noted that removal

of stomach acidifier drug products from the OTC market does not mean that these products will then be made available for prescription use. Because no stomach acidifier has been shown to be safe and effective in treating achlorhydria and hypochlorhydria, neither OTC nor prescription marketing will be permitted unless a stomach acidifier drug product is the subject of an approved NDA. Currently, no stomach acidifier drug product is the subject of an approved NDA.

II. The Agency's Final Conclusions on OTC Stomach Acidifier Drug Products

The agency has determined that no stomach acidifier active ingredient has been found to be generally recognized as safe and effective and not misbranded for use in treating achlorhydria and hypochlorhydria. Therefore, all stomach acidifier ingredients, including betaine hydrochloride, glutamic acid hydrochloride, diluted hydrochloric acid, and pepsin, which were reviewed by the Panel, are considered nonmonograph ingredients and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) and are new drugs under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and Part 314 of the regulations (21 CFR Part 314) is required for marketing. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action.

Consideration of glutamic acid hydrochloride as an ingredient in digestive aid drug products was transferred to this rulemaking (see 53 FR 2711). Accordingly, this final rule constitutes final agency action for this ingredient as an OTC stomach acidifier in both rulemakings.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC stomach acidifier drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC stomach acidifier drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended to read as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049–1053 as amended, 52 Stat. 1055–1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057–1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 310.540 is added to Subpart E to read as follows.

§ 310.540 Drug products containing active ingredients offered over-the-counter (OTC) for use as stomach acidifiers.

(a) Betaine hydrochloride, glutamic acid hydrochloride, diluted hydrochloric acid, and pepsin have been present as ingredients in over-the-counter (OTC) drug products for use as stomach acidifiers. Because of the lack of adequate data to establish the effectiveness of these or any other ingredients for use in treating achlorhydria and hypochlorhydria, and because such conditions are asymptomatic, any OTC drug product containing ingredients offered for use as a stomach acidifier cannot be considered generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or promoted for use as a stomach acidifier is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act, for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted as a stomach acidifier for OTC use is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in Part 312 of this chapter.

(d) After the effective date of the final regulation, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: July 1, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 18561 Filed 8–16–88; 8:45 am]

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Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 969

Loan Forgiveness Under Section 3004, Consolidated Omnibus Budget Reconciliation Act of 1985; Continued Operation as Lower Income Housing After Completion of Debt Service, Public and Indian Housing Programs; Policy Statement

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 969

[Docket No. N-88-1836; FR-2409]

Statement of Policy—Loan Forgiveness Under Section 3004 of Consolidated Omnibus Budget Reconciliation Act of 1985; Continued Operation as Lower Income Housing After Completion of Debt Service, Public and Indian Housing Programs

AGENCY: Assistant Secretary for Public and Indian Housing, HUD.
ACTION: Policy statement.

SUMMARY: Section 3004 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, (April 7, 1986), provides for the cancellation of loans made by the Secretary of HUD under section 4(a) of the United States Housing Act of 1937. Other statutory, as well as regulatory and contractual, provisions which govern the public and Indian housing programs require that certain public housing agencies (PHAs, which term is used throughout this Statement of Policy to include Indian Housing Authorities, or IHAs) maintain the lower income nature of a public housing project after the completion of debt service on the project in the event that operating subsidy is received. HUD announces its policies regarding the administration of these requirements in the case where loans are forgiven pursuant to section 3004 prior to the originally anticipated date of retirement of the obligations. HUD also announces its policies regarding the effect of section 3004 on projects administered under various homeownership programs.

DATE: Comments due: October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph Sens, Room 4226, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (202) 755–7290. A telecommunications device for the deaf (TDD) is available at (202) 472–6725. [These are not toll free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 3004 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99–272, amended section 4 of the United States Housing Act of 1937 (USH Act) by authorizing the Secretary of HUD to cancel any loan made by the Secretary under section 4(a) of the USH Act that has any principal amount outstanding or any interest amount outstanding or accrued (other than loans the repayment of which was not to be made using annual contributions). The amendment expressly provides that "the terms and conditions of any contract, or any amendment to a contract, for such loan with respect to any promise to repay such principal and interest shall be canceled."

The amendment also provides that "such cancellation shall not affect any other terms and conditions of such contract, which shall remain in effect as if the cancellation had not occurred." This provision does not expressly mandate continued operation of the public or Indian housing project but does preserve "any other terms and conditions" of the Annual Contributions Contract (ACC) which are to "remain in effect as if the cancellation had not occurred."

There are other requirements which pertain to continued operation of projects. HUD regulations at 24 CFR Part 969 provide that PHAs which receive operating subsidy under section 9 of the USH Act must maintain the lower income nature of the public housing project for a period of ten years after the end of the last PHA fiscal year for which operating subsidy is paid with respect to the project. The requirement applies notwithstanding the completion of debt service, and the payment of annual contributions for such debt service, on the project.

II. Implementation of COBRA

The loan forgiveness legislation is not self-executing. Section 3004 authorizes the Secretary to cancel the loans. In order to facilitate an efficient, harmonious process of cancellation, the Department on August 4, 1987, issued HUD Notice PIH 87–12 captioned "Public and Indian Housing Rental Development and Modernization—Forgiveness and Excess Financing." This Notice implemented the COBRA loan forgiveness provisions by prescribing a method for determining the amount to be forgiven and by providing a form of amendment to the ACC ("Lower Income Public and Indian Housing Debt Forgiveness Amendment to Consolidated Annual Contributions Contract," hereafter "the ACC Amendment") to accomplish the cancellation of the loan. This form of amendment not only effects the cancellation of loans for applicable development and modernization projects but also addresses the disposition of public and Indian housing projects and the effects of loan cancellation on residual receipts from rental and Turnkey III projects.

While many PHAs have executed the amendment, many others have expressed concern about its effect in three respects. First, PHAs have questioned the rationale and operation of the related provisions dealing with disposition and residual receipts. Second, some PHAs have contended that where the loan is forgiven pursuant to COBRA and the PHA does not receive operating subsidy for the project, it should receive "programmatic relief" from the provisions of the ACC and, generally, from the USH Act and its regulations. Third, some PHAs and PHA organizations have inquired why any amendment of the ACC is necessary.

In response to these concerns, by memorandum of December 11, 1987, HUD advised its Field Offices that the policies in HUD Notice PIH 87–12 calling for execution of the debt forgiveness ACC Amendment were temporarily suspended. It further advised that this Statement of Policy would be issued. This Statement of Policy is principally directed to answering those three questions.

In addition, concerns have also been raised regarding the impact of COBRA on "old" mutual help homeownership projects (i.e., projects developed prior to March 9, 1976). Some interested parties contend that COBRA triggers provisions in the "old" mutual help homeownership agreement executed between the IHA and the mutual help participant providing for immediate transfer of the housing authority's interest in the homeownership unit to the participant. The homeownership agreement for the Homeownership Program for Low-Income Families, also known as the "old" Turnkey III Program (i.e., projects developed prior to October 9, 1973), contains similar language. This Statement of Policy will also address the impact of COBRA on these agreements. The *current* mutual help and Turnkey III programs use revised homeownership agreements which do not raise concerns related to transfer of the unit to the homebuyer as a result of COBRA. Nevertheless, this statement of Policy shall address implementation of loan forgiveness for these homeownership programs too. (Hereafter the terms Turnkey III "homebuyers" and mutual help "participants" shall be referred to as "homebuyers").

III. Ancillary Provisions of ACC Amendment

Specific questions have been raised with respect to two elements of the ACC

Amendment dealing with project disposition and with residual receipts.

Paragraph 6.d. of the ACC Amendment would insert a new section 308(B) of the ACC which is not based on loan forgiveness under section 3004. Instead, it implements the provisions of section 18 of the USH Act, as added by the Housing and Urban-Rural Recovery Act of 1983, being titles I through V of the Domestic Housing and International Recovery and Financial Stability Act, Pub. L. 98–181 November 30, 1983). Section 18 (which recently was further amended by section 121 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, February 5, 1988) and which amendments will be the subject of rulemaking) governs the disposition of public and Indian housing projects. The ACC Amendment essentially tracked the statutory and regulatory implementation of section 18.

Question has been raised specifically about the deletion of existing Section 308(B), which governs the disposition of "excess real property" of a PHA, and the substitution of the new text. Some PHAs have expressed concern that the ACC Amendment would make contractual requirements of what are now "only" statutory and regulatory provisions and that while HUD can waive the regulations, it might be more difficult to change the contract. The Department disagrees with this construction of the contractual provisions. First, as noted, the disposition provisions must be followed as a matter of statute under section 18. Second, if the Department were inclined to waive the regulation, presumably it would be equally amenable to modifying, or waiving, the contractual provision for the same purpose.

Concern has also been expressed about a perceived difference between the regulation and the ACC Amendment which latter provision has been read as not authorizing the use of disposition proceeds to acquire lower income housing. Section 18 authorizes among the eligible uses of net proceeds to provide housing assistance for lower income housing or the *acquisition*, development, or rehabilitation of other properties to operate as lower income housing" (emphasis added). The eligibility provisions of § 970.9(b)(2) of the regulation use the same language. The word "acquisition" was inadvertently omitted from the ACC Amendment. Although it is arguable that the term "development" embraces acquisition, the form of ACC Amendment will be changed to specify acquisition because the statute and the regulation both mention acquisition explicitly.

The second ancillary provision which some PHAs have questioned is paragraph 6.e. which would amend section 416(C) of the ACC to include a statement that—

> If no further annual contributions for either debt service or operations are payable, the Local Authority [i.e., PHA] shall deposit any residual receipts into a replacement reserve to be used to reduce the future need for annual contributions to modernize its projects.

Existing section 416(C) of the ACC implements the statutory requirement that residual receipts be applied to the reduction of annual contributions, and PHAs are required under current procedures to remit residual receipts directly to HUD. Thus, while there will no longer be debt service to pay off, still the ACC requires that residual receipts continue to flow to the Department. Section 6(e) of the USH Act requires that the ACC provide that—

> * * * whenever in any year the receipts of a public housing agency in connection with a lower income housing project exceed its expenditures (including debt service, operation, maintenance, establishment of reserve, and other costs and charges), an amount equal to such excess shall be applied, or set aside for application, to purposes which in the determination of the Secretary, will effect a reduction in the amount of subsequent annual contributions.

Note that section 6(e) does not limit the mandatory use of residual receipts for debt service, but instead relates to "purposes" generally which "will effect a reduction in the amount of subsequent annual contributions."

Existing section 416(C) has implemented the statutory requirement to date by providing that such residual receipts from rental projects and Turnkey III projects be used to reduce annual contributions for debt service. Now that the loans are forgiven, the Department is seeking to meet the requirements of section 6(e), but in a way that will benefit the specific project. Accordingly, the provision in the ACC amendment under review would provide for the dedication of residual receipts in order, in the words of the statute, to "effect a reduction in the amount of subsequent annual contributions." To make the residual receipts available to the PHA, the Department has posited the following rationale: If these funds are put into a replacement reserve, that usage will have the effect of deferring and perhaps deterring a future need for modernization assistance.

However, some PHAs have not understood the reason for this provision. They have questioned whether, if the ACC is not amended, the elimination of debt service because of loan forgiveness means that the contractual duty has expired. Further, retention of such residual receipts by the PHA, it has been argued, would not be netted out under PFS (Performance Funding System) calculations of operating subsidy. The Department believes that an exclusive focus on contractual duty, as manifested by the PHAs' position described above, ignores the statutory requirement of section 6(e), a requirement included in the United States Housing Act of 1937 long before the establishment of operating subsidy under section 9 of that Act. That is why the ACC Amendment provides for a vehicle that accomplishes two major objectives: (1) Satisfying the statutory mandate that residual receipts be used in a way that "will effect a reduction in the amount of subsequent annual contributions" and (2) allowing those funds to remain with the PHA which has generated them, when no further annual contributions are payable on its projects, rather than being remitted to HUD for reduction of annual contributions generally.

IV. "Programmatic Relief"

By "programmatic relief" is meant that proposal, advanced by some, typically smaller PHAs, which would relieve the PHA from compliance with the requirements of the ACC with respect to any project that (1) has its loan forgiven under COBRA and (2) receives no operating subsidy. This proposal has largely been limited to PHAs satisfying the foregoing two criteria because section 9(a)(2) of the USH Act provides that operating subsidy may be provided after the duration of the ACC paying off development costs only "as long as the lower income nature of such project is maintained." The Department has construed the quoted requirement to mean maintenance of lower income housing in accordance with the requirements of the Federal USH Act.

As noted in Part I, COBRA provides that the cancellation thereunder of any loan under an ACC "shall not affect any other terms and conditions of such contract, which shall remain in effect as if the cancellation had not occurred." Because this provision ensures that the ACC remains whole and in effect upon loan forgiveness, there is no statutory ambiguity as to the continued vitality of the ACC.

However, proponents of programmatic relief have pointed to what is viewed as a contractual ambiguity. Specifically,

they refer to section 518 of the ACC which provides that:

> Upon payment in full of all indebtedness of the Local Authority in connection with any Project for which annual contributions are pledged, and upon payment of any other indebtedness of the Local Authority in connection with such Project to the Government, all obligations of the Government and the Local Authority under this Contract with respect to such Project shall cease and determine except as provided in Part One of this Contract and this Contract shall terminate as to such Project.

Similar language is found in Article 14.11 of the Mutual Help ACC.

Thus, under the express terms of the ACC, its obligations cease "upon payment in full of all indebtedness." But, proponents of programmatic relief assert, by virtue of the loan cancellation under COBRA there never will be payment "in full of all indebtedness."

As the Department has explored the reach of the contractual ambiguity, we have received comments not only from interested PHAs but also from Congressional leaders who were instrumental in drafting and enacting COBRA. On March 23, 1988, the Chairman of the House Committee on Banking, Finance and Urban Affairs, and the Chairman and then Ranking Minority Member of the House Subcommittee on Housing and Community Development wrote to the Department noting their understanding that the Department had been "in the process of determining the best way to implement the statutory changes." In this context they concluded that "no other reasonable interpretation is consistent with the law and the intent of the amendment" than that the ACC continues to be applicable, whether or not operating subsidies are received. On June 8, 1988, the Ranking Minority Member and another member of the Senate Committee on Banking, Housing and Urban Affairs expressed their views favoring programmatic relief and requesting a status report.

The Department responded to all of these Congressional leaders, expressly recognizing the clarity of COBRA and the ambiguity of section 518 and concluding that the cancellation of the loan should not and could not have the effect of extending the terms of the contract in perpetuity, even though there never will be payment "in full of all indebtedness." At the same time, the Department noted that it is not aware of any explicit provision in the COBRA statute, or suggestion in its legislative history, that obligations under the ACC should be terminated upon loan cancellation on the grounds the indebtedness will never be paid in full. For these reasons, HUD's implementation of loan forgiveness steers the course between these two extremes. That is, the Department interprets the loan forgiveness legislation as providing for the ACC to run to the full term at which it otherwise would have terminated had there not been cancellation of the loan. This Statement of Policy is intended to make clear that the originally contracted for term is neither extended nor abbreviated by virtue of loan forgiveness under the ACC. Therefore, the Department does not believe programmatic relief is a viable option within HUD's administrative discretion.

V. Homeownership Projects

Generally, the definition, issues, rationale and Departmental policies regarding "programmatic relief" for the conventional public and Indian housing programs are equally applicable to the Turnkey III and mutual help homeownership programs.

However, the applicability of section 3004 to homeownership projects has raised additional issues. The Department here addresses the proposal advanced by some individuals that the loan forgiveness provisions under COBRA trigger contractual provisions in the old mutual help homeownership agreements (as well as old Turnkey III homeownership agreements) executed between the PHA and the homebuyer which provide for transfer/conveyance of the interest of the PHA in the homeownership unit to the homebuyer upon payment of the development debt on the home.

These proponents refer to section 5.c. of the "old" Mutual-Help and Occupancy Agreement (HUD–53033 July 1967) as the basis for their position. Section 17.a. of the "old" Turnkey III Homebuyers Ownership Agreement contains similar language. Section 5.c. provides:

> *When payment of the debt is complete,* the Authority will grant, assign and/or convey to the Participant the maximum interest in the Participant's house and grounds that it can give, and the Authority and the Participant will each release the other from any further obligations under this Agreement (emphasis added).

Section 17.a. provides:

> The Homebuyer will be entitled to ownership when *his share of the capital debt of the development * * * is fully paid* (emphasis added).

In addressing the impact of COBRA on the contractual language in these homeownership agreements, the Department has reviewed the Congressional intent and the express language of section 3004, as well as the program objectives, program requirements, expectations created, and express language of the homeownership agreements.

We have concluded that loan forgiveness is limited in its applicability to these homeownership projects. To the extent loan forgiveness is applicable, it does not result in immediate conveyance of the homeownership units to the homebuyers.

As noted in Part I, section 3004 amended section 4 of the 1937 Act to authorize loan forgiveness. The last sentence of new section 4(c)(1) provides exceptions to the applicability of loan forgiveness and specifically provides:

> This paragraph *shall not apply to any loan* the *repayment of which was not to be made using annual contributions,* or to any loan *all or part of the proceeds of which are due a public housing agency from* contractors or *others* (emphasis added).

The debt on these homeownership projects was not to be repaid solely with annual contributions, but with payments from the homebuyer to the PHA. In the case of old mutual help projects, section 5.a. of the Mutual Homeownership Agreement clearly provides that "the Authority will use the 'annual contributions' from the Government *and* the *Participant's payments"* to pay interest and principal on the debt (emphasis added). These homebuyer payments consist of equity payments and payments from an operating reserve. The old Turnkey III program operates in a similar manner.

As a result, it is necessary to separate and determine that portion of the debt repayable with annual contributions (which is eligible for loan forgiveness under section 3004) and that portion of the debt due to the PHA from the homebuyer and repayable from other than annual contributions (which is not eligible for loan forgiveness). According to program design, these are determinations which are based on a formula that takes into consideration several variable factors (e.g., homebuyer's annual income, the ACC loan rate, the amount of annual contributions, etc.) over the term of the ACC and homeownership agreement. Such determinations cannot be ascertained prospectively.

Accordingly, the Department has determined to implement loan forgiveness for homeownership projects incrementally on the amount of the debt repayable with annual contributions in accordance with such accounting procedures and formulas as have been established for determining the amount of annual contributions payable over the

term of the ACC and homeownership agreement. Since loan forgiveness is not applicable to that portion of the debt payable by the homebuyer to the PHA, those amounts are not eligible for loan forgiveness and are due to the authority in accordance with the terms of the homeownership agreement. Consequently, the homeownership agreements must run their entire term.

To the extent that loan forgiveness is applicable to the homeownership projects, it does not trigger immediate conveyance of the homeownership units to the homebuyers in accordance with sections 5.c. and 17.a. of the mutual help and Turnkey III agreements respectively. Under the express terms of the mutual help homeownership agreement, the IHA is to transfer its interests "when payment of the debt is complete." However, as in the case with Article 14.11 of the ACC (and as demonstrated above in the discussion of "programmatic relief" under Part IV), there will never be complete "payment of the debt" as contemplated by section 5.

As a result, the Department concludes that it would not be consistent with the objectives of these homeownership programs to continue the agreements in perpetuity or until such time as a homebuyer's payments alone (without the benefit of annual contributions) would equal the balance required to pay off the original indebtedness on the home.

Yet it appears equally inappropriate, based on program design and objectives and the original expectations of the parties, to invoke the provisions of sections 5.c. or 17.a. of the homeownership agreements to grant, assign, or convey the Authority's interest in the unit to the participant based upon a simplistic application of the loan forgiveness legislation. As indicated earlier, loan forgiveness is limited in its applicability to homeownership projects and its applicability does not resolve all the conditions precedent to conveyance of a homeowership unit.

For these reasons, and analogous to our handling of "programmatic relief" expounded at Part IV, HUD's contractual interpretation of the effect of loan forgiveness on the "old" homeowership projects steers the course between the two extremes. As in the case of section 518 and article 14.11 of the ACC, the Department interprets the effect of loan forgiveness on the homeowership agreements as providing for the agreements to run the full term at which they would otherwise have terminated had there not been forgiven of the loan. This statement of Policy is intended to make clear that the loan term originally contracted for under the ACC is neither extended nor abbreviated by virtue of loan forgiveness.

The impact of COBRA on the *current* mutual help and Turnkey III homeownership programs leads to a similar result. As in the case with "old" mutual help and Turnkey III programs, a portion of the debt is due to the PHA from the homebuyer and repayable from other than annual contributions. Accordingly, these amounts are not eligible for loan forgiveness and the homeownership agreements must run their entire term before a determination of the amounts repayable out of annual contributions and homebuyer payments can be made. Since the conveyance of units under the current programs is tied to a purchase price schedule—and not directly to project debt—issues regarding conveyance applicable to the "old" mutual help or Turnkey III programs do not arise.

VI. Amendment of ACC

Several PHAs have questioned the necessity for, and the effect of, executing the ACC Amendment in connection with cancellation of the loan. For example, the National Association of Housing and Redevelopment officials issued on "Action Alert" on September 22, 1987, referring to HUD Notice PIH 87–12 (since temporarily suspended, as noted in Part III), and asserting that "the proposed ACC amendment, in apparent violation of" the provision in COBRA that loan cancellation shall not effect any other terms in the ACC, "nullifies Section 518." Others have expressed concern that execution of the ACC Amendment concedes that the ACC remains in effect, despite the cancellation of the debt. As explained in Part IV, the Department's policy is that the ACC does remain in effect, notwithstanding the cancellation of the debt. Indeed, this policy gives meaning to the provision in COBRA that the cancellation "shall not affect any other terms and conditions of such contract which shall remain in effect."

Nevertheless, it may still be asked—and some PHAs have done so—whether there is a need to amend the ACC in order for the loan to be cancelled. As indicated earlier in this Statement of Policy, the Department's intention in drafting and submitting to PHAs a form of ACC Amendment was to effect an expeditious and harmonious cancellation of the debt and to provide a vehicle for ensuring that PHAs can retain residual receipts which would otherwise have to be returned to the Federal Government. A related purpose of the ACC Amendment was to elicit the cooperation of PHAs in establishing the amount of the debt to be cancelled. In this regard, paragraphs 2 and 3 of HUD Notice PIH 87–12 provided instructions for determining the amount of the loan to be forgiven, including submission by PHAs of Actual Development Cost Certificates (ADCCs) and Actual Modernization Cost Certificates (AMCCs), which documentation will indicate the amount of loan authority actually used in project development or modernization. Such determinations normally would be an area in which PHAs have an important self-interest in being satisfied that the appropriate amount of the loan eligible for forgiveness is identified. This is particularly so since PHAs are required to repay to HUD any excess financing provided by development or modernization loans.

There is no intrinsic legal requirement for amending the ACC in this connection. Section 405(B) of the ACC already requires the PHA to submit an ADCC/AMCC to HUD. The determination of the actual development/modernization cost contained in the certificate so approved by HUD is final and conclusive for all purposes of the ACC. But section 405(C) further provides that—

> If the Local Authority shall unduly delay in the submission of the Actual Development Cost Certificate for any Project, the Government may give notice to the Local Authority that the amount of the Development Cost of such Project incurred to the date of such notice shall be considered to be the Actual Development Cost of such Project, and such notice shall constitute the Actual Development Cost Certificate for such Project for all the purposes of this Contract.

Accordingly, if a PHA does not wish to execute the ACC amendment for loan forgiveness, it is entirely within HUD's authority under the ACC to calculate the actual development or modernization cost and to cancel the loan on that basis. This could have the effect of establishing an outstanding liability on the part of the PHA for amounts determined by HUD to be excess financing. The Department has been operating with the understanding that PHAs' self-interest would constitute an incentive for collaboration in the determination of actual development/modernization cost through the ACC Amendment process. The Department is still of this view. But in no way does HUD intent to *require* PHAs to enter into such an ACC Amendment if for their own reasons there appear to be disincentives for doing so. From HUD's standpoint, there is an administrative

disincentive in unilaterally calculating actual development/modernization costs because it would necessitate recourse to extensive calculations under old and sometimes difficult to retrieve documentation. Nevertheless, such unilateral determination is legally feasible, even if administratively burdensome to HUD.

In any event, the Department will proceed with loan forgiveness, whether or not the PHA executes the amendment.

In this connection, the Department still recommends the execution of the ACC Amendment for loan forgiveness, but such execution is not a condition for loan cancellation. (Of course, absent an amendment to the ACC, PHAs will still be bound under the provisions of section 416(c) to return residual receipts to HUD.) PHAs will be asked individually to inform HUD as to whether they elect to amend the ACC; if not, a PHA board resolution to that effect should be submitted.

Although this Statement of Policy does not constitute rulemaking or promulgation of a final rule, the Department is of course interested in any views that may be helpful in providing information or other advice with respect to the foregoing existing policy, which policy has been pursued by the Department since late 1987 and is now formally applicable immediately.

Comments regarding the advisability of executing or not executing ACC amendments or other aspect of this policy may be submitted to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Each comment should include the commentor's name and address, and should refer to the title and docket number stated in the heading of this Statement of Policy. A copy of each comment will be available for public inspection during regular business hours at the above address.

Jacqueline Aamot,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-18598 Filed 8-16-88; 8:45 am]

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Part X

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation (FAR); Examination of Records; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR); Examination of Records

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) clause at 52.215–2, Audit—Negotiation, to illustrate the type and form of contractor cost and financial information which is to be made available to auditors for conducting audits of contract costs.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 17, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–38 in all correspondence related to this issue

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Specific illustrations of the type and form that books, records, documents, etc. may take are being proposed for addition to the Audit—Negotiation clause at FAR 52.215–2. This change should help to eliminate time-consuming and inefficient access to records arguments that have occurred between auditors and contractors.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded as a result of negotiations are awarded to large businesses. Furthermore, the proposed revisions merely illustrate the nature of records Government auditors have access to and do not change existing requirements. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be sumitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule changes no recordkeeping or information collection requirements or collection of information from offerors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: August 8, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.215–2 is amended by removing in the title of the clause the date "(APR 1988)" and adding in its place the date "(JUL 1988)"; and by revising in the clause paragraphs (a) and (b) to read as follows:

52.215–2 Audit—Negotiation.

* * * * *

(a) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(b) *Cost of pricing data.* If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) of the Contractor (including computations and projections) related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

* * * * *

[FR Doc. 88–18614 Filed 8–16–88; 8:45 am]

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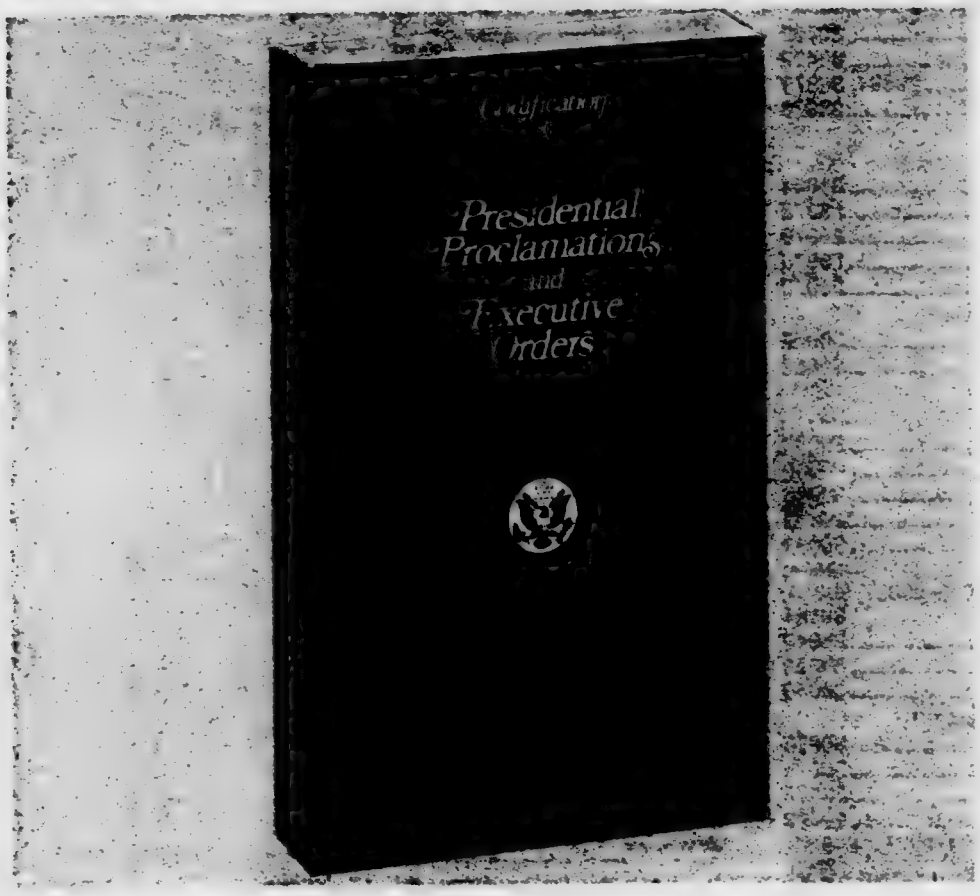

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Vol. 53, No. 160
Thursday, August 18, 1988

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for "Class I" Scotch Spearmint Oil for the 1988–89 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on increasing the quantity of "Class I" Scotch spearmint oil produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1988–89 marketing year which began June 1, 1988. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, which is the agency responsible for local administration of the order.

DATES: Interim final rule effective June 1, 1988 through May 31, 1989. Comments which are received by September 19, 1988, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5120.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 170 producers hold "Class I" oil (Scotch) allotment base and 143 producers hold "Class III" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), at its July 6, 1988, meeting, unanimously recommended that the salable quantity and allotment percentage for "class I" Scotch spearmint oil (Scotch oil) for the 1988–89 marketing year be increased. The salable quantity and allotment percentage for that class of oil was published in the March 1, 1988, issue of the **Federal Register** (53 FR 6129). This revision will increase the salable quantity from 650,131 pounds to 766,387 pounds and increase the salable percentage from 39 percent to 46 percent. This revision is issued pursuant to § 985.51(b) of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

At its August 12, 1987, meeting, the Committee estimated trade demand for the 1988–89 marketing year to be 761,063 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 761,063 pounds. The Committee estimated that 15,703 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 745,360 pounds as the salable quantity needed. This figure was further reduced by 100,000 pounds which was the amount of Far West Scotch sales estimated to be filled by production from outside the production area. This left a salable quantity needed of 645,360 pounds. This quantity, divided by the total of all allotment bases of 1,667,002 pounds, resulted in 38.7 percent which was the computed allotment percentage. This figure was adjusted to 39 percent and established as the 1988–89 Scotch allotment percentage which resulted in a 1988–89 salable quantity of 650,131 pounds.

The 1988–89 salable percentage of 39 percent, when applied to the current total allotment base of 1,666,059 pounds, gives a 1988–89 salable quantity of 649,763 pounds. Since all growers will either produce their individual salable quantity or fill any deficiencies with reserve pool oil, the total salable quantity which will be available, when this figure is combined with the actual carry-in on June 1, 1988, is 683,644 pounds, and is the total supply available

for the 1988–89 marketing year. Carry-in on June 1, 1988, was 33,881 pounds of Scotch oil, higher than the Committee had estimated.

Currently, the Midwest is experiencing a drought and estimates indicate that a maximum of 50 percent of a normal crop will be harvested there this year. The Committee expects the demand for Far West Scotch oil to increase as buyers of Midwest Scotch oil will substitute Far West oil for Midwest oil. This year, although it is early in the marketing year, a considerable amount of contracting of the 1988–89 crop has occurred. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil are required. The Committee recommended increasing the salable percentage by 7 percent, from 39 to 46 percent, thus making an additional 116,624 pounds available to the market. The basis for this recommendation was that when these additional pounds are added to the total supply available of 683,644 pounds, the resulting 800,268 pounds is between the five-year average sales of 758,682 pounds and the highest year of sales of 868,242 pounds. The Committee decided that this figure could meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 39 to 46 percent resulting in an increase in the salable quantity from 649,763 to 766,387 pounds. This figure added to the June 1, 1988, carry-in of 33,881 results in a total available supply of 800,268 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

	Original recommendation, Aug. 12, 1987	Revised recommendation, July 6, 1988
	Pounds	
(1) Carry-in	15,703	33,881
(2) Trade demand	761,063	900,268
(3) Desirable carryout		
(4) Salable quantity [1]	645,360	766,387
(5) Total allotment bases for Scotch oil	1,667,002	1,666,059
(6) Allotment percentage ((4 – 5) × 100)	39	46

[1] Salable quantity equals trade demand minus carry-in and 100,000 pounds of Scotch oil expected to be available from outside the production area.

Thus, the Department has determined an allotment percentage of 46 percent should be established for the 1988–89 marketing year. This percentage will make available 766,387 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 1, 1988, issue of the **Federal Register** (53 FR 6129), in connection with the initial establishment of the salable quantity and allotment percentage for Scotch oil, the Committee's recommendation and other information, it is found that to amend § 985.208 (53 FR 6129) so as to change the salable quantity and allotment percentage for Scotch spearmint oil, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This final action relieves restrictions on handlers by increasing the quantity of Scotch oil that may be freely marketed immediately; and (2) it should be effective as soon as possible to enable handlers to satisfy current market needs for Scotch oil.

List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—[AMENDED]

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 985.208 is amended by revising paragraph (a) to read as follows:

Note.—The following provisions will not be published in the Code of Federal Regulations.

§ 985.208 Salable quantities and allotment percentages—1988–89 marketing year.

(a) Class "I" Oil—a salable quantity of 766,387 pounds and an allotment percentage of 46 percent.

* * * * *

August 15, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–18719 Filed 8–17–88; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

Facility Form Nuclear Liability Insurance Policy; Miscellaneous Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to make several minor changes in the Facility Form nuclear liability insurance policy furnished as evidence of financial protection. The two nuclear insurance pools have submitted endorsements to the Facility Form policy that make available a single insurance policy to cover onsite worker claims. This new Master Worker Policy reflects different rating and underwriting treatment than is utilized in the Facility Form policy. The supplementary insurance provided by the new policy enhances protection to the public since payments under its provisions for routine claims by onsite nuclear workers will not reduce the financial protection for the public under the primary and secondary nuclear liability insurance policies provided as evidence of financial protection under the Price-Anderson Act.

EFFECTIVE DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1289.

SUPPLEMENTARY INFORMATION: On April 27, 1988, the Commission published a proposed rule in the **Federal Register** (53 FR 15049) requesting comments on endorsements to the Facility Form nuclear liability insurance policy and a new Facility Form Policy submitted to the Commission by two nuclear insurance pools, Nuclear Energy Liability Insurance Association (NELIA) and Mutual Atomic Energy Liability

Underwriters (MAELU). The Facility Form of insurance policy along with endorsements to these policies has been accepted by the Commission as evidence of the financial protection required under section 170 of the Atomic Energy Act of 1954, as amended. The evidence of financial protection accepted by the Commission assures the availability of funds to compensate the public for the financial consequences of a catastrophic nuclear accident.

Effective January 1, 1988, the Pools modified the manner in which coverage was made available to operators of nuclear reactors and others. The change is confined to tort claims by onsite nuclear workers that arise from circumstances unrelated to an extraordinary nuclear occurrence. Financial protection must continue to include coverage for such claims by onsite workers and the revised program the Pools are making available does so by means of a new supplementary insurance policy for tort claims from onsite nuclear workers. The new Nuclear Energy Liability Policy (Facility Worker Form) was effective as of January 1, 1988 and is a part of the Facility Form policy. The new Facility Worker Form covers only the claims of onsite workers first employed in the nuclear industry on or after January 1, 1988 ("new workers"). Claims of all other workers ("old workers") will continue to be covered under present Facility Forms for ten more years, until December 31, 1997, at which time coverage for claims from old workers could be added to the new Facility Worker Form, or be otherwise insured.

Coverage for old workers will be changed by an endorsement to Facility Forms. One such endorsement (Form NE–64) was attached to all Facility Forms issued before January 1, 1988, and Form NE–66 was attached to all Facility Forms issued on and after that date. Both forms allow coverage under the Facility Forms to which they are attached to continue for claims made by old workers on or before December 31, 1997.

The Facility Worker Form is a Master Policy that provides a single aggregate limit of liability shared by insured entities under all Certificates of Insurance issued to provide insurance under the Master Policy. The Master Worker Policy that was issued by the Pools provides a single aggregate liability limit and has been designed as a prototype for a longer term, perhaps continuous, replacement program based on experience. Because the new Master Worker Policy was designed as a prototype, a 5-year term was selected on the basis of negotiations between the Pools and their insureds. It is anticipated that before the Master Worker Policy expires, a renewal or replacement policy will be developed taking into account the additional recommendations of insureds and others. A Certificate of Insurance was issued under each policy to every facility operator desiring to purchase the coverage. The Master Worker Policy issued by NELIA has a Policy Aggregate Limit of $124 million; the MAELU Policy Aggregate Limit is $36 million.

To minimize the need for Certificate holders to apply for reinstatement of the Policy Aggregate Limit as is required by the Commission, the Pools will automatically reinstate up to the limit of $160 million. The policies can be further reinstated by agreement of the parties.

The supplementary insurance provided by the Facility Worker Form enhances protection for the public since payments under its provisions for routine claims by onsite nuclear workers will not reduce the financial protection for the public under the primary and secondary nuclear liability insurance policies provided as evidence of financial protection under the Price-Anderson Act. Conversely, payments under primary and secondary policies will not operate to reduce the coverage under the Facility Worker Form for routine claims by onsite workers.

It is important to note that the rating procedure applicable to reactors to reflect the risk of a catastrophic accident that presumably would result in a large number of offsite claims is not appropriate to the lesser, routine claims from onsite workers. The premium for the Facility Worker Form will be regulated by the "Industry Retrospective Rating Plan Premium Endorsement" (Form NE–W–1) which reflects the different kind of risk covered by the new policy.

The change in the insurance available from the Pools effective as of January 1, 1988 keeps intact the coverage that has been available to licensees with respect to claims from the public. By providing separate coverage for routine claims from new workers, and eventually from old workers as well, the protection provided to the public, to onsite workers, and to persons who may be liable is enhanced. The Facility Form has been accepted by the Commission as evidence of financial protection from licensees. The Facility Form, as modified by Forms NE–64 and NE–66, and the Facility Worker Form, with its accompanying Certificate of Insurance and premium endorsements, are acceptable to the Commission as evidence of financial protection required by the Price-Anderson Act.

Only one respondent, American Nuclear Insurers, submitted comments prior to the May 27, 1988 comment expiration date. The comments were editorial corrections to the proposed rule and have been incorporated in the effective rule.

Environmental Impact: Categorial Exclusion

The Commission has determined that this rule is the type of action described as a categorial exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget approval number 3150–0039.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission hereby certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the standards set forth for small businesses in Small Business Administration regulations in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 553, the NRC is

adopting the following amendments to 10 CFR Part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 is revised to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13 and 140.13a are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 140.91, Appendix A, is amended by adding the following endorsements immediately after the existing text to read as follows:

Amendment of Coverage Endorsement for Workers Claims

(Facility Form)

NE–64(1/1/88)

Preamble

1. The insurance and rating plan presently used by Nuclear Energy Liability Insurance Association ("NELIA") and Mutual Atomic Energy Liability Underwriters ("MAELU") do not make a distinction between workers claims arising from catastrophic events and those arising from lesser events;

2. NELIA and MAELU believe that the lack of such a distinction will adversely affect their ability to continue to attract from world markets very large amounts of nuclear energy liability insurance for the nuclear industry;

3. NELIA and MAELU want to avoid this potential loss of capacity and to continue to provide nuclear energy liability insurance for workers claims. Accordingly NELIA and MAELU desire to restructure their present insurance programs, including this policy, effective January 1, 1988.

Now, Therefore, the Named Insured and the companies do hereby agree as follows:

1. Definitions

When used in reference to this endorsement:

"This policy" means the policy of which this endorsement forms a part;

"Nuclear related employment" means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility. All of a worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

"Worker" refers to a person who is or was engaged in nuclear related employment;

"Workers claims" means claims for damages because of bodily injury to a worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the worker's nuclear related employment;

"Extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an "extraordinary nuclear occurrence" as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

2. Application of This Endorsement

This endorsement applies only to such insurance as is afforded by this policy for workers claims which do not arise in whole or in part out of an extraordinary nuclear occurrence.

3. Exclusion of New Workers Claims

This policy does not apply to bodily injury to a worker which arises in whole or in part out of nuclear related employment that begins on or after January 1, 1988.

4. Application of Policy To Workers Claims Not Excluded

With respect to such insurance as is afforded by this policy for workers claims which are not excluded, Insuring Agreement IV does not apply and the following Insuring Agreement IV–A does apply:

IV–A Application of Policy to Workers Claims. This policy applies only to bodily injury (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured not later than the close of December 31, 1997.

5. Availability of Supplemental Insurance

NELIA and MAELU are offering to make insurance under one or more Master Worker Policies available to all holders of Nuclear Energy Liability Policies (Facility Form). *This offer is contingent on sufficient support from policy holders, and may be withdrawn or modified by Nelia or Maelu as they deem necessary or appropriate.*

The Master Workers Policies will provide, under their separate terms and conditions, coverage for new workers claims. Premiums will be subject to a separate Industry Retrospective Rating Plan.

Coverage under the new master worker policies is not automatic. A written request must be submitted to Nelia or Maelu through regular market channels.

It is understood and agreed that all of the provisions of this endorsement shall remain in full force and effect without regard to this section 5, and without regard to whether or not the Named Insureds become insureds under the Master Worker Policies, or whether or not NELIA or MAELU terminate such policies or withdraw or modify their offer to underwrite such policies.

Executed for the companies

Date _____

By _____

(Signature or Authorized Officer)

_____

(Print or Type Name and Title of Officer)

Executed for the Named Insured

_____

(Named Insured—Type or Print)

Date _____

By _____

(Signature of Authorized Officer)

_____

(Print or Type Name and Title of Officer)

Effective Date of this Endorsement

_____

12:01 a.m. Standard Time

To form a part of Policy No. _____

Issued to _____

Date of Issue _____

For the subscribing companies

By _____

General Manager

Endorsement No.

Countersigned by _____

AMENDMENT OF COVERAGE ENDORSEMENT FOR WORKERS CLAIMS (Facility Form) NE–66(1/1/88)

It is agreed that:

1. Definitions

When used in reference to this endorsement:

"This policy" means the policy of which this endorsement forms a part;

"Nuclear related employment" means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility. All of a worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

"Worker" refers to a person who is or was engaged in nuclear related employment;

"Workers claims" means claims for damages because of bodily injury to a worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the worker's nuclear related employment;

"Extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an "extraordinary nuclear occurrence" as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

2. Application of This Endorsement

This endorsement applies only to such insurance as is afforded by this policy for workers claims which do not arise in whole or in part out of an extraordinary nuclear occurrence.

3. Exclusion of New Workers Claims

This policy does not apply to bodily injury to a worker which arises in whole or in part out of nuclear related employment that begins on or after January 1, 1988.

4. Application of Policy To Workers Claims Not Excluded

With respect to such insurance as is afforded by this policy for workers claims which are not excluded, Insuring Agreement IV does not apply and the following Insuring Agreement IV–A does apply:

IV–A Application of Policy To Workers Claims

This policy applies only to bodily injury (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured not later that the close of December 31, 1997.

5. Availability of Supplemental Insurance

NELIA and MAELU are offering to make insurance under one or more Master Worker Policies available to all holders of Nuclear Energy Liability Policies (Facility Form). *This offer is contingent on sufficient support from policyholders, and may be withdrawn or modified by NELIA or MAELU as they deem necessary or appropriate.*

The Master Worker Policies will provide, under their separate terms and conditions, coverage for new workers claims. Premiums will be subject to a separate Industry Retrospective Rating Plan.

Coverage under the new master worker policies is not automatic. A written request must be submitted to NELIA or MAELU through regular market channels.

It is understood and agreed that all of the provisions of this endorsement shall remain in full force and effect without regard to this Section 5, and without regard to whether or not the Named Insureds become insureds under the Master Worker Policies, or whether or not NELIA or MAELU terminate such policies or withdraw or modify their offer to underwrite such policies.

Explanation of Use of This Endorsement: This endorsement is a mandatory endorsement which is to be attached to new Facility Form Policies issued on or after January 1, 1988.

Effective Date of this Endorsement

12:01 a.m. Standard Time
To form a part of Policy No. ———
Issued to ———
Date of Issue ———
For the subscribing companies
By ———
General Manager
Endorsement No.
Countersigned by ———

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Policy

Facility Worker Form, herein called Master Worker Policy, NMWP–1(1/1/88)

The undersigned members of Nuclear Energy Liability Insurance Association, hereinafter called the "companies", each itself severally and not jointly, and in the respective proportion hereinafter set forth, agree with the insureds named in Item 1 of the Declarations of each Certificate, hereinafter called the "Named Insureds", in consideration of the payment of the premium, and subject to all of the provisions of the applicable Certificate and of this policy, as follows:

I—Relation Between the Master Worker Policy and Certificates

No insurance is provided by this policy except through a Certificate issued to form a part hereof. The insurance then applies separately to the persons and organizations who are defined in Section IV as insureds under each such Certificate, except with respect to the Amount of Insurance Available.

The Amount of Insurance Available through such a Certificate to any person or organization who is an insured thereunder is limited as provided in Section VIII of this policy.

II—Definitions

When used in reference to this policy:

"Bodily injury" means bodily injury, sickness or disease, including death resulting therefrom;

"Byproduct material" has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"Certificate", unless qualified, refers to a Certificate of Insurance (including Declarations and endorsements forming a part thereof) issued to form a part of this policy or of a MAELU Policy;

"Claims costs" means, with reference to claims or suits the companies have the right and duty to defend under this policy;

(1) Cost taxed against the insured in such suits and interest on any judgments therein;

(2) Premiums on appeal bonds and on bonds to release attachments in such suits (but the companies have no obligation to apply for or furnish such bonds;

(3) Reasonable expenses, other than loss of earnings, incurred by the insured at the companies' request;

(4) Payments for expenses incurred in the investigation, negotiation, settlement and defense of such claims or suits, including, but not limited to, the cost of such allocated claims services by employees of the companies, fees and expenses of independent adjusters, attorneys' fees and disbursements, expenses for expert testimony, examination, x-ray or autopsy or medical expenses of any kind;

(5) Payments for expenses incurred by the companies in investigating an occurrence resulting in bodily injury or in minimizing its effects;

"Discovery period" means the period defined in Section VI B hereof;

"Extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an "extraordinary nuclear occurrence" as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"Insured contract" means that part of a contract or agreement made prior to bodily injury to a new worker under which the insured assumes the tort liability of a third person to pay damages because of such bodily injury. "Tort liability" means a liability that would be imposed by law on the third person in the absence of an express assumption of liability by the third person;

"Insured facility" means a facility with respect to which insurance is provided through a Certificate;

"Insured shipment" means a shipment of source material, special nuclear material, spent fuel or waste (herein called "material"):

(1) To the facility from any location other than an insured facility, but only if the transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation; or

(2) From the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation;

"MAELU" means Mutual Atomic Energy Liability Underwriters;

"MAELU Policy" means a Nuclear Energy Liability Policy (Facility Worker Form) written by members of MAELU;

"NELIA" means Nuclear Energy Liability Insurance Association;

"New worker" refers to a person who is or was engaged in nuclear related employment that begins on or after January 1, 1988;

"New worker's claim" means a claim for damages because of bodily injury to a new worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the new worker's nuclear related employment;

"Non-ratable incurred losses" has the meaning given in Attachment 1 to this policy;

"Nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of nuclear material which is:

(1) At the facility as described in the applicable Certificate issued to form a part of this policy or has been discharged or dispersed therefrom without intent to relinquish possession of custody thereof to any other person or organization; or

(2) In an insured shipment that is away from any other insured nuclear facility and is in the course of transportation, including handling and temporary storage incidental thereto within:

(a) The territorial limits of the United States of America, its territories or possessions or Puerto Rico; or

(b) International waters or airspace, provided that:

(i) The nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above; and

(ii) There are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except to a port or place of refuge in an emergency;

"Nuclear facility" means any of the following and includes the site on which any of them is located, all operations conducted on such site and all premises used for such operations:

(1) The facility as described in any Certificate;

(2) Any nuclear reactor;

(3) Any equipment or device designed or used for:

(a) Separating the isotopes of uranium or plutonium;

(b) Processing or utilizing spent fuel; or

(c) Handling, processing or packaging waste;

(4) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total

amount of such material in the custody of the insured at the premises where such equipment of device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(5) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;

"Nuclear material" means source material, special nuclear material or byproduct material;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Nuclear related employment" means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility.

All of a new worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

"Policy period" means the period defined in Section VI A hereof;

"Ratable incurred losses" has the meaning given in Attachment 1 to this policy;

"Source material" has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof, and also includes tailings or wastes produced by the extraction of uranium or thorium from ore processed primarily for its source material content;

"Special nuclear material" has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in any nuclear reactor;

"The facility" refers to the facility described in the Declarations of a Certificate. It includes the location described in Item 3 thereof and all property and operations at such location;

"Waste" means any waste material that contains byproduct material and results from the operation by any person or organization of:

(1) Any nuclear reactor; or

(2) Any equipment or device designed or used for:

(a) Separating the isotopes of uranium or plutonium;

(b) Processing or utilizing spent fuel; or

(c) Handling, processing or packaging such waste material.

III—Coverage

In the event that a new worker's claim is made against a person or organization who is an insured under a Certificate issued to form a part of this policy:

(1) The companies shall pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury to which this policy applies, sustained by a new worker and caused by the nuclear energy hazard.

The companies shall have the right and duty to defend any suit against the insured alleging such injury and seeking damages payable under the terms of this policy. But the companies may make such investigation and settlement of any claim or suit seeking such damages as they deem appropriate.

(2) The companies shall also pay, as part of the Amount of Insurance Available under this policy, the claims costs relating to any such claim or suit.

(3) The companies' obligation to pay damages and claims costs, and to defend any claim and suit ends when the Policy Aggregate Limit has been exhausted pursuant to the provisions of Section VIII.

IV—Definition of Insured

When used in reference to a Certificate issued to form a part of this policy, the unqualified word "insured" means:

(1) each insured named in Item 1 of the Declarations of the Certificate; and

(2) any other person or organization with respect to legal responsibility for damages because of bodily injury to a new worker caused by the nuclear energy hazard applicable to the Certificate. This subsection (2) does not include as an insured the United States of America or any of its agencies except the Tennessee Valley Authority.

V—Exclusions

This policy does not apply:

(1) To any obligation for which the insured or any carrier as his insurer may be held liable under any worker's compensation, unemployment compensation or disability benefits law, or under any similar law;

(2) To bodily injury to any employee of the insured arising out of or in the course of employment by the insured; but this exclusion (2) does not apply to liability assumed by the insured under an insured contract;

(3) To liability assumed by the insured under contract, other than an insured contract;

(4) To bodily injury to a new worker due to the manufacturing, handling or use at the location designated in Item 3 of the Declarations of any Certificate, in time of peace or war, of any nuclear weapon or other instrument of war utilizing special nuclear material or byproduct material;

(5) To bodily injury to a new worker due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(6) To bodily injury to a new worker arising in whole or in part out of an extraordinary nuclear occurrence.

VI—Policy Period; Discovery Period; Application of Policy

A. Policy Period

The policy period of this policy begins at 12:01 a.m. on January 1, 1988 and ends at the close of December 31, 1992, Eastern Standard Time, or when all Certificates issued to form a part hereof have been cancelled, whichever first occurs.

B. Discovery Period

The discovery period for claims made under this policy begins at 12:01 a.m. on January 1, 1988 and ends at the close of December 31, 1997, Eastern Standard Time.

C. Application of Policy

This policy applies only to bodily injury to a new worker (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is first made against the insured within the discovery period.

VII—Other Insurance

A. This insurance is primary insurance under any insurance afforded by a Master Policy-Nuclear Energy Liability Insurance (Secondary Financial Protection) issued by NELIA or MAELU.

B. If an insured has other valid and collectible insurance, except under a MAELU Policy, for loss or expense covered by this policy, this shall be excess insurance over such other insurance. If the insured has insurance under a MAELU Policy, whether the insurance is collectible or not, the companies shall then be liable under this policy only for such proportion of loss or expense as the amount stated as the Policy Aggregate Limit in Section VIII of this policy bears to the sum of such amount and the corresponding amount stated in the MAELU Policy.

VIII—Amount of Insurance Available

A. Policy Aggregate Limit

1. The Policy Aggregate Limit is $124 million. This limit is not cumulative from year to year. The limit applies to all new worker's claims that qualify for coverage under this policy (herein called "qualified claims").

2. The Policy Aggregate Limit applies collectively to all new worker's claims. Such claims may be paid by NELIA on behalf of the companies as the claims, in NELIA's discretion, become ready for disposition, and claims costs may be paid as they become due, all without regard to the order in which such claims were made and without any obligation to maintain, reserve or use any portion of the Policy Aggregate Limit for claims reported under any particular Certificate.

B. Limitation of the Companies' Liability

1. Regardless of the number of (a) Certificates issued to form a part of this policy, (b) persons and organizations who are insureds under such Certificates, (c) qualified claims, or (d) years this policy or any such Certificates shall continue in force, the Policy Aggregate Limit is the total liability of the companies for all of their obligations under this policy, including the defense of suits and the payment of damages and claims costs.

2. This policy provides for certain automatic reinstatements of the Policy Aggregate Limit. Regardless of such provision, if, during the policy period or thereafter, the total payments of the companies for

(a) Non-ratable incurred losses, and

(b) Those ratable incurred losses for which the companies have not been reimbursed under the Industry Retrospective Rating Plan Premium Endorsement described in Attachment 1 to this policy,

equal $124 million, the Policy Aggregate Limit shall be deemed to be exhausted, and shall not be further reinstated except by an

endorsement issued to form a part of this policy for additional premium as determined by the companies.

C. Reduction and Reinstatement of the Policy Aggregate Limit

1. Each payment made by the companies in discharge of their obligations under this policy shall reduce the Policy Aggregate Limit by the amount of such payment.

2. The companies shall, however, automatically reinstate the policy aggregate limit until the total amount of such reinstatements equals $124 million, but in no event shall there be any automatic reinstatements after the Policy Aggregate Limit is exhausted pursuant to the provisions of subsection B.2. above. Thereafter, there shall be no further reinstatement of the Policy Aggregate Limit except by an endorsement issued to form a part of this policy for additional premium as determined by the companies.

3. It is a condition of this insurance that the companies shall have the right to reimburse themselves, as a matter of first priority, from funds held by NELIA in the Special Reserve Account described in Attachment 1 to this policy or from retrospective premiums received by NELIA for this insurance. The amount of reimbursement shall be equal to 95% of each payment made by the companies with respect to their obligations under this policy.

IX—Insured's Duties in Case of Claims or Suits

A. Notice of Claims or Suits

In the event of any claim or suit involving bodily injury to which a Certificate issued to form a part of this policy applies, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof shall be given by or for the insured to the companies as soon as practicable. The insured shall immediately forward to the companies every demand, notice, summons or other process received relating to claims or suits against the insured.

B. Assistance and Cooperation

The insured shall cooperate with the companies and, upon their request, shall:

(1) Attend hearings and trials; and

(2) Assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of any legal proceedings in connection with the subject matter of this insurance.

The insured shall not, except at the insured's own cost, make any payment, assume any obligation or incur any expense.

X—Subrogation

In the event of any payment through a Certificate to form a part of this policy, the companies shall be subrogated to all the insured's rights of recovery therefor against any person or organization, and the insured shall execute and deliver instruments and papers, and so whatever else is necessary to secure such rights. Prior to knowledge of bodily injury caused by the nuclear energy hazard the insured may waive in writing any or all right of recovery against any person or organization, but after such knowledge the insured shall not waive or otherwise prejudice any such right of recovery.

The companies hereby waive any right of subrogation against (1) any other insured of (2) the United States of America or any of its agencies acquired by reason of any payment under this policy.

It is a condition of this policy that if an insured makes a recovery on account of any such injury, the insured shall repay to the companies the amount to which the companies would have been entitled had the foregoing provisions, or any of them, not been included in the policy.

XI—Inspection and Suspension

The companies shall be permitted, but not obligated, to inspect at any time the facility as described in any Certificate and all books, records and operation relating thereto, both with respect to this insurance, and any other nuclear energy liability insurance and property insurance also afford with respect thereto by members of NELIA, American Nuclear Insurers, MAELU or MAERP Reinsurance Association.

If a representative of the companies discovers a condition which he or she believes to be unduly dangerous with respect to the risks insured under the Certificate, a representative of the companies may request such condition to be corrected without delay. In the event of noncompliance with the request, an officer of NELIA may, by written notice mailed or delivered to the first Named Insured, with similar notice to the United States Nuclear Regulatory Commission, suspend the insurance afforded by a Certificate issued by NELIA effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from NELIA to the first Named Insured that such condition has been corrected.

Neither the right to make such inspections or suspensions nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the Named Insureds or others to determine or warrant that the facility or operations relating thereto are safe or healthful, or are in compliance with any law, rule or regulation.

In consideration of the issuance or continuation of a Certificate, the Named Insureds agree that neither the companies nor any persons or organizations making such inspections on their behalf shall be liable for damage to the facility or any consequential damage or cost resulting therefrom, including but not limited to any such damage or cost relating to interruption of business or manufacture, arising out of the making of or failure to make any such inspection of the facility, any report thereon, or any such suspension of insurance, but this provision does not limit the companies' contractual obligations under a Certificate issued by NELIA or any policy issued by NELIA or American Nuclear Insurers affording the insured nuclear energy liability or property insurance.

XII—Cancellation of Certificates

The first Named Insured designated in a Certificate issued to from a part of this policy any cancel such Certificate by mailing to the companies and the United States Nuclear Regulatory Commission written notice stating when, not less than 30 days thereafter, such cancellation shall be effective.

The companies may cancel any such Certificate by mailing to the first Named Insured designated therein at the address shown in such Certificate and to the United States Nuclear Regulatory Commission written notice, stating when, not less than 90 days thereafter, such cancellation shall be effective; provided in the event of non-payment of premium, or if the operator of the facility, as designated in the Declarations of the Certificate, is replaced by another person or organization, such Certificate may be cancelled by the companies by mailing to the first Named Insured at the address shown therein and to the United States Nuclear Regulatory Commission written notice, stating when, not less than 30 days thereafter, such cancellation shall be effective.

The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the Certificate period. Delivery of such written notice either by the first Named Insured or the companies shall be equivalent to mailing.

Upon cancellation of a Certificate, other than as of the end of December 31 in any year, the earned standard premium for the period such Certificate has been in force since the preceding December 31 shall be computed in accordance with the following provisions:

(1) If the first Named Insured cancels, the earned standard premium for such period shall be computed in accordance with the customary annual short rate table and procedure; provided, however, that if the first Named Insured cancels after knowledge of bodily injury caused by the nuclear energy hazard, all premiums theretofore paid or payable shall be fully earned;

(2) If the companies cancel, the earned standard premium for such period shall be computed pro rata.

Premium adjustment, if any, may be made either at the time of cancellation or as soon as practicable after cancellation becomes effective, but payment of tender of unearned premium is not a condition of cancellation.

Cancellation of a Certificate shall not affect the rights and obligations of the Named Insureds under the Insureds under the Industry Retrospective Rating Plan Premium Endorsement forming a part of the Certificate.

XIII—General Conditions

A. Premium

The Named Insureds designated in a Certificate issued by NELIA shall pay the companies the premiums for the Certificate in accordance with the provisions of the *Industry Retrospective Rating Plan Premium Endorsement* described in Attachment 1 to this policy.

B. Modifications, Waiver

The provisions of this policy or a Certificate issued to form a part hereof shall not be changed or waived except by an endorsement issued by the companies to form a part of the policy or Certificate.

C. Assignment

Assignment of interest under a Certificate issued to form a part of this policy shall not bind the companies until their consent is endorsed thereon. If, however, a Named Insured shall die or be declared bankrupt or insolvent, the Certificate shall cover the Named Insured's legal representative, receiver or trustee as an insured, but only with respect to liability as such, and then only provided written notice of the appointment as legal representative, receiver or trustee is given to the companies within 10 days after such appointment.

D. Suit

No suit or action on a Certificate issued to form a part of this policy shall lie against the companies or any of them unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of the policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the companies.

Any person or organization or the legal representative thereof who has secured such judgment of written agreement shall thereafter be entitled to recover under the Certificate to the extent of the insurance afforded by this policy through the Certificate. No person or organization shall have any right under the Certificate to join the companies or any of them as parties to any action against the insured to determine the insured's liability, nor shall the companies or any of them be impleaded by the insured or the insured's legal representative.

Bankruptcy or insolvency of the insured or the insured's estate shall not relieve the companies of any of their obligations under this policy.

E. Authorization of The First Named Insured

Except with respect to compliance with the obligations imposed on the insured by the Sections of this policy entitled *"Insured's Duties in Case of Claims or Suits"*, *"Subrogation"* and *"Suit"*, the first Named Insured designated in the Declarations of a Certificate issued to form a part of this policy is authorized to act for every other insured in all matters pertaining to this insurance.

F. Insured Representation

Any notice, sworn statement of proof of Loss which may be required by the provisions of this policy may be given to any one of the companies specified in the Schedule of Subscribing Companies attached hereto. Such notice, statement or proof of Loss so given shall be valid and binding on all such companies.

In any action or suit against such companies, service of process may be made on any one of them and such service shall be valid and binding service on all such companies.

Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this policy may be given to such agent at its office at: Nuclear Energy Liability Insurance Association, The Exchange, Suite 245, 270 Farmington Avenue, Farmington, Connecticut 06032, with the same force and effect as if given directly to the companies. Any requests, demands or agreements made by such agent shall be deemed to have been made directly by the companies.

G. Changes in Subscribing Companies and Their Proportionate Liability

By acceptance of this policy the Named Insureds agree that the members of Nuclear Energy Liability Insurance Association liable under this policy, and the proportionate liability of each such member, may change from year to year, and further agree that regardless of such changes:

(1) Each company subscribing this policy upon its issuance shall be liable only for its stated proportion of any obligation assumed or expense incurred under this policy because of bodily injury to new workers caused, during the period from the effective date of this policy to the close of December 31 next following, by the nuclear energy hazard; for each subsequent calendar year, beginning January 1 next following the effective date of this policy, any change in the subscribing companies and the proportionate liability of each such company shall be stated in an endorsement issued to form a part of this policy, duly executed and attested by the President of Nuclear Energy Liability Insurance Association on behalf of each such company, and a copy of which will be mailed or delivered to the first Named Insured of each Certificate.

(2) The liability of any subscribing company shall not be cumulative from year to year.

H. Declarations

By acceptance of this Master Worker Policy, the Named Insureds designated in a Certificate agree that the statements in such Certificate are their agreements and representations, that this Master Worker Policy and such Certificate are issued in reliance upon the truth of such representations and that this Master Worker Policy and such Certificate embody all agreements between such Named Insureds and the companies or any of their agents relating to this insurance.

In Witness Whereof, the companies subscribing this policy have caused the policy to be executed and attested on their behalf by the President of Nuclear Energy Liability Insurance Association and duly countersigned by an authorized representative, but this policy shall be binding on each company only to the extent of its designated proportion of any obligation assumed or expense incurred under this policy.

For the Subscribing Companies:
Date of Issue: _____ 19____

_____

Countersigned by: (Authorized Representative)

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Policy

(Facility Worker Form) herein called the Master Worker Policy

Certificate of Insurance, NMWPC–1(1/1/88)

Certificate No. _____

This is to certify that the insured named in Item 1 of the Declarations hereof, hereinafter called the "Named Insureds", have obtained insurance under the Master Worker Policy issued by Nuclear Energy Liability Insurance Association on behalf of its members. The insurance is subject to all of the provisions of the "Certificate" and the Master Worker Policy.

1—Declarations

Item 1.—Named Insureds and Addresses:

Item 2.—Certificate Coverage Period:

Beginning at 12:01 a.m. January 1, 1988 and ending at the close of December 31, 1992, Eastern Standard Time, or at the time and date this Certificate is cancelled or terminated, whichever first occurs.

Item 3.—Description of the Facility:

Location:
Type:
Operator of the Facility:

Item 4.—Amount of Insurance Available:

The amount of insurance afforded by the Master Worker Policy through this Certificate shall be determined by Section VIII of the Master Worker Policy and all of the other provisions of the policy relating thereto.

Item 5.—Advance Premium: $

2—Application of Certificate

This Certificate applies only to bodily injury to a new worker (1) which is caused, during the Certificate Coverage Period, by the nuclear energy hazard and (2) which is discovered and for which written claim is first made against an insured under the Certificate within the discovery period of the Master Worker Policy.

3—Industry Retrospective Rating Plan

All insurance under the Master Worker Policy is subject to the Industry Retrospective Rating Plan in use by the companies. No insurance is provided under this Certificate unless and until the first Named Insured has accepted in writing the Industry Retrospective Rating Plan Premium Endorsement and a copy of the signed endorsement has been issued by the companies to form a part of this Certificate.

In Witness Whereof, the companies subscribing the Master Worker Policy have caused this Certificate to be executed and attested on their behalf by the President of Nuclear Energy Liability Insurance Association and duly countersigned by an authorized representative.

For the Subscribing Companies:
Date of Issue _____ 19 _____
Countersigned by: _____
(Authorized Representative)

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Insurance

Industry Retrospective Rating Plan Premium Endorsement, NE–W–1(1/1/88)

It is agreed that:

1. Definitions

With reference to the premium for the Certificate of which this endorsement forms a part:

"Master Worker Policy" means the Master Worker Policy issued by NELIA;

"Certificate Holder" means the first Named Insured in a Certificate issued to form a part of the Master Worker Policy;

"Advance premium", for any calendar year, is the estimated standard premium for that calendar year;

"Standard premium", for any calendar year, is the premium for that calendar year computed in accordance with the companies' rules, rates, rating plans (other than the Industry Retrospective Rating Plan), premiums and minimum premiums applicable to this insurance. Standard premium includes elements for premium taxes, expenses, profit and contingencies, guaranteed cost insurance and estimated reserve premium. The elements of standard premium, other than for premium taxes and estimated reserve premium, are not subject to retrospective adjustment;

"Reserve premium" means that portion of the premium for a Certificate (including reserve premium charges paid) that is specifically allocated under the Industry Retrospective Rating Plan for ratable incurred losses;

"Industry reserve premium", for any period, is the sum of the reserve premiums for that period for all Certificates issued to form a part of the Master Worker Policy;

"Retrospective adjustment ratio", for any period, is the ratio of the reserve premium for this Certificate for that period to the industry reserve premium for the same period;

"Incurred losses" means the sum of all:

(1) Losses and expenses paid by NELIA, and

(2) Reserves for losses and expenses as estimated by NELIA, because of obligations assumed and expenses incurred in connection with such obligations by the members of NELIA under the Master Worker Policy;

"Ratable incurred losses" means 95% of incurred losses. Ratable incurred losses are the portion of incurred losses which are not covered by the guaranteed cost insurance element of standard premiums;

"Non-ratable incurred losses" means 5% of incurred losses. Nonratable incurred losses are the portion of incurred losses which are covered by the guaranteed cost insurance element of standard premiums;

"Reserve for refunds", as of any date, is the algebraic difference between:

(1) All industry reserve premium for the period from January 1, 1988 through such date, minus

(2) The total for the same period of (a) all ratable incurred losses and (b) all industry reserve premium refunds made under the Industry Retrospective Rating Plan by members of NELIA;

"Industry reserve premium charge", for any period, means the amount determined pursuant to the provisions of Section 4 of this endorsement for payment by the Named Insureds under Certificates;

"Reserve premium charge" means the portion of an industry reserve premium charge payable by the Named Insureds under Certificates;

"Industry reserve premium refund" for any period, means the amount determined pursuant to the provisions of Section 4 of this endorsement for return to the Named Insureds under Certificates;

"Reserve premium refund" means the portion of an industry reserve premium refund returnable to the Named Insureds under this Certificate.

2. Payment of Advance and Standard Premiums

The Named Insureds shall pay the companies the advance premium stated in the declarations, for the period from the effective date of this Certificate through December 31 following. Thereafter, at the beginning of each calendar year while this Certificate is in force, the Named Insureds shall pay the advance premium for such year to the companies.

The advance premium for each calendar year shall be stated in the Advance and Standard Premium Endorsement for the year issued by the companies as soon as practicable prior to or after the beginning of the year.

As soon as practicable after the end of a calendar year or the Certificate Coverage Period, the standard premium for the preceding year shall be finally determined and stated in the Advance and Standard Premium Endorsement for that year. If the Standard Premium exceeds the Advance Premium paid for that year, the Named Insureds shall pay the excess to the companies; if less, the companies shall return to the Named Insureds the excess portion paid.

The Named Insureds shall maintain records of the information necessary for premium computation and shall send copies of such records to the companies as directed, at the end of each calendar year, at the end of the Certificate Coverage Period and at such other times as the companies may direct.

3. Special Reserve Account; Use of Reserve Premiums

NELIA shall maintain on behalf of its members a Special Reserve Account for holding collectively all reserve premiums paid for all Certificates issued to form a part of the Master Worker Policy. Such premiums, together with any undistributed net income realized thereon after taxes and investment expenses, shall be used for the following purposes only:

(1) To pay ratable incurred losses or, in the event ratable incurred losses are paid under the Master Worker Policy from funds advanced by the members of NELIA subscribing the policy, to reimburse such members as a matter of first priority for the funds advanced;

(2) To refund any amounts so held to the Named Insureds, as provided in Section 4.

No members of NELIA and no Named Insureds shall have any individual interest in or claim upon amounts held in the special Reserve Account, except to participate proportionally in any refund or reimbursement provided for above.

All reserve premiums paid or payable for this certificate may be used by NELIA to discharge the obligations of its members under the Master Worker Policy with respect to the above purposes and arising out of claims made under any Certificate issued to form a part of the Master Worker Policy.

4. Payment of Reserve Premium Charges and Refunds

As soon as practicable after each December 31 the companies will review the status of the reserve for refunds and report their findings to all Certificate Holders.

If, at any time, the companies find that there is negative balance in the reserve for refunds and that such condition is likely to prevail, they shall determine an appropriate industry reserve premium charge. Similarly, if the companies find that there is a surplus positive balance, they shall determine an appropriate industry reserve premium refund.

The portion of an industry reserve premium charge or an industry reserve premium refund that is:

(1) Payable by the Named Insureds as a reserve premium charge, or

(2) Due such insureds as reserve premium refund, shall be determined by multiplying the industry reserve premium charge or the industry reserve premium refund by the retrospective adjustment ratio applicable to this Certificate.

The amount of any reserve premium charge shall be stated in a Retrospective Reserve Premium Charge Endorsement. The charge shall be paid promptly after receipt of the endorsement.

When all claims covered by the Master Worker Policy are closed the companies shall make a final review and report, and shall determine a final industry reserve premium charge or industry reserve premium refund equal to the amount of the balance.

5. Final Premium

The final premium for this Certificate shall be (a) the sum of the standard premiums for each calendar year, or portion thereof, during which the Certificate remains in force plus (b) the sum of all reserve premiums, including all reserve premium charges, minus (c) the sum of all reserve premium refunds.

6. Reserve Premium Charge Agreement

In consideration of (a) the participation of Named Insureds in other Certificates subject to the Industry Retrospective Rating Plan, (b) the undertaking of such Named Insureds to pay their appropriate share of any industry reserve premium charge and (c) the obligations assumed by the members of NELIA under the Master Worker Policy, the Named Insureds, by acceptance of the Master Worker Policy, agree:

(1) That the insurance provided by the Master Policy applies collectively to all claims covered by the policy through any and all Certificates issued to form a part of the policy.

(2) That the right of each Named Insured under a Certificate to receive reserve premium refunds and the obligation of each such insured to pay reserve premiums charges applies to all claims covered by the Master Worker Policy and continues until all such claims are closed, whether or not such claims were before the inception of the Certificate or after its termination.

(3) To pay all reserve premium charges due promptly after receipt of the Retrospective Reserve Premium Charge Endorsement, whether or not the Certificate is terminated. Any reserve premium charge shall be overdue if not paid within 60 days of the date of the invoice for the charge.

Overdue reserve premium charges shall bear interest from the due date until paid at an annual rate equal to the sum of (a) 3% plus (b) a rate of interest equal to Moody's Average Public Utility Bond Yield described in the issue of Moody's Bond Survey current on the due date. Any reserve premium refund due to Named Insureds under a Certificate shall be used to pay any overdue reserve premium charges to such Named Insureds.

7. Reserve Premium Refund Agreement

Each member of NELIA subscribing the Master Worker Policy for any calendar year, or portion thereof, with respect to which an industry reserve premium refund is determined to be payable thereby agrees for itself, severally and not jointly, and in the respective proportion of its liability assumed under the Master Worker Policy for that calendar year, to return promptly to the Named Insureds that portion of such refund due such Insureds, as determined in accordance with the provisions of this endorsement.

Accepted and agreed by the first Named Insured in behalf of itself and every other Named Insured stated in the Declarations of the Certificate of which this endorsement forms a part.

(First Named Insured—Type or Print
Date
By
(Signature of Authorized Officer)

(Type of Print Named and Title of Officer)
Effective Date of this Endorsement
12:01 a.m. Standard Time
To form a part of Policy No
Issued to
Date of Issue
For the subscribing companies:
By
General Manager
Endorsement No:
Countersigned by

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Insurance

Advance Premium and Standard Premium Endorsement, NE–W–2(1/1/88)

Calendar Year 1988

1. Advance Premium

It is agreed that the Advance Premium due the companies for the period designated above is:
$

2. Standard Premium and Reserve Premium

In the absence of a change in the Advance Premium indicated above, it is agreed that, subject to the provisions of the Industry Retrospective Rating Plan, the Standard Premium is said Advance Premium and the estimated reserve Premium element of the Standard Premium is:
$

Explanation of Use of this Endorsement: This endorsement will be used in the first year of the Master Worker Policy. It states the Advance Premium and the estimated Reserve Premium for the year for the Certificate to which the endorsement is attached.
Effective Date of this Endorsement
12:01 a.m. Standard Time
To form a part of Policy No
Issued to
Date of Issue
For the subscribing companies:
By
General Manager
Endorsement No:
Countersigned by

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Insurance

Advance Premium and Standard Premium Endorsement, NE–W–3 (1/1/88)

Calendar Year

It is agreed that Items 1 and 2 of Endorsement No. are amended to read:

1. Advance Premium

It is agreed that the Advance Premium due the companies for the period designated above is:
$

2. Standard Premium and Reserve Premium

In the absence of a change in the advance premium indicated above, it is agreed that, subject to the provisions of the Industry Retrospective Rating Plan, the Standard Premium is said Advance Premium and the estimated Reserve Premium element of the Standard Premium is:
$

Explanation of Use of this Endorsement: This endorsement will be used for calendar years of the Master Worker Policy after the 1988 calendar year. It states the Advance Premium and the estimated Reserve Premium for the year for the Certificate to which the endorsement is attached.
Effective Date of this Endorsement
12:01 a.m. Standard Time
To form a part of Policy No
Issued to
Date of Issue
For the subscribing companies:
By
General Manager
Endorsement No.
Countersigned by

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Insurance

Retrospective Reserve Premium Charge Endorsement, NE–W–5 (1/1/88)

1. Industry Reserve Premium Charge

In accordance with Section 4 of the Industry Retrospective Rating Plant Premium Endorsement attached to each Certificate to this policy, the companies have reviewed the status of the reserve for refunds, found that there is a negative balance in the reserve for refunds and have determined that an industry reserve premium charge, as indicated below, is appropriate:
$

2. Retrospective Adjustment Ratio

The portion of the industry reserve premium charge payable by the Named Insureds under this Certificate is determined by multiplying such charge by this Certificate's retrospective adjustment ratio, which is:

3. Reserve Premium Charge

The Named Insureds' portion of the industry reserve premium charge, as calculated above, is:
$

Explanation of Use of this Endorsement: This endorsement will be issued by the companies under the Master Worker Policy after an industry reserve premium charge has been determined because there is a negative balance in the reserve for refunds. It states the reserve premium charge applicable to the Certificate to which the endorsement is attached.
Effective Date of this Endorsement
12:01 a.m. Standard Time
To form a part of Policy No.
Issued to
Date of Issue
For the subscribing companies
By
General Manager
Endorsement No.
Countersigned by 2

Dated at Rockville, Maryland, this 8th day of August, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–18743 Filed 8–17–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R–0643]

Regulation CC; Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: The Board is amending Regulation CC to conform the definition of "paying bank" to the Expedited Funds Availability Act as interpreted by a recent court decision. Other conforming amendments are also being made. The Board has adopted these changes on an interim basis to ensure they are in place when the Act takes effect on September 1, 1988. The Board is requesting comments on the interim rule pending adoption of a final rule.

DATES: The interim rule takes effect on September 1, 1988.

Comments must be received no later than September 12, 1988.

ADDRESS: Comments, which should refer to Docket No. R–0643, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B–2223 between 8:45 a.m. and 5:00 p.m. All comments received will be made available to the public, and may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m.

Comments on the changes to the information collection requirements should be sent to Mr. Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Joseph R. Alexander, Senior Attorney, Legal Division (202/452–2489); Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452–3874); Gerald P. Hurst, Senior Counsel, Division of Consumer and Community Affairs (202/452–3667). For the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

Federal Reserve Board Clearance Officer, Nancy Steele, Division of Research and Statistics (202/452–3822).

OMB Desk Officer, Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget (202/395–7340).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board issued its Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229) to implement the Expedited Funds Availability Act (the "Act") (Title VI of Pub. L. 100–86). 53 FR 19373 (May 27, 1988). In keeping with the Board's view that the Act established a clear link between the time it normally takes a check to be cleared and returned, and the time within which the depositary bank [1] must make the funds available to the depositor, the regulations provided that where a check is payable by one bank but "payable through" [2] another and sent to the payable through bank for payment or collection, the location of the payable through bank would determine whether a check is local or nonlocal vis-a-vis the depositary bank for the purposes of the funds availability schedules in the regulation.

Shortly after the Board issued Regulation CC, a trade association of credit unions and one credit union whose checks are payable through a nonlocal bank filed suit against the Board seeking to overturn the definition of paying bank to the extent that the definition included a payable through bank where the check was drawn on a credit union. Recently, the court granted the plaintiffs' motion for summary judgment and invalidated Regulation CC's definition of paying bank to the extent that it includes a payable through bank where the check is drawn on a credit union. *Credit Union National Association* v. *Board of Governors*, No. 88–1295 OG (D.D.C. July 28, 1988). The court found that the Board's regulation was inconsistent with the Act to the extent that it defined the payable through bank as the paying bank for purposes of the Act's funds availability requirements.

The Expedited Funds Availability Act takes effect on September 1, 1988. Regulation CC also takes effect on that date, except for those portions of it invalidated by the Court's order. The Board has not determined whether to appeal the court's decision. Nevertheless, in order to clarify the duties of banks and others with respect to checks in light of the court's order, temporary conforming amendments are being made to the definitions and to the disclosure rules. These amendments primarily affect the classification of checks payable by a depository institution but payable through another institution as local on nonlocal. They do not affect payable through drafts payable by nonbank payors. Further, as the payable through share draft will carry the routing number of the payable through bank, not the credit union, provisions in the regulation that allow a depositary bank to rely on the routing number to determine whether a check is local or nonlocal are also being amended.

The interim rule permits depository institutions whose initial disclosures are affected by the court's decision to send simple clarifying notices in regularly scheduled mailings to existing account customers. Institutions will be deemed to be in compliance with the disclosure requirements of the regulation as long as the disclosures are revised by December 31, 1988. Finally, depository institutions may have operational difficulties in identifying credit union payable through share drafts for availability purposes. The Commentary to § 229.21(c) concerning bona fide errors is being amended to clarify that it may be a bona fide error if a depository institution fails to identify for availability purposes a local check that is a payable through draft provided that it has procedures for identifying such drafts. If the Board decides not to appeal the court's decision or if any appeal is unsuccessful, the Board, after consideration of any comments received with regard to the interim rule, may adopt the interim rule as a final amendment to Regulation CC. In addition, the Board may also consider additional rulemaking to address operational or disclosure problems that might result because depositary banks and bank customers cannot rely on the routing number printed on a payable through draft to determine whether the check is local or nonlocal for funds availability purposes.

The Board believes that it is important to clarify these issues with an amended regulation before September 1, so that banks and other parties affected by Regulation CC are fully aware of their responsibilities under the Act by the time it takes effect. Nonetheless, there is not sufficient time for the Board to publish proposed regulations for comment before that date. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim rule effective on September 1, 1988, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Paperwork Reduction Act Notice. The Board has previously submitted the

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[1] The Act uses the term "receiving depository institution" to mean "the branch of a depository institution or the proprietary ATM in which a check is first deposited." 12 U.S.C. 4001(20). Because the term "receiving depository institution" is unique to the Act, the Board used the term "depositary bank," which, because it is used in the Uniform Commercial Code ("U.C.C.") and the Board's Regulation J (12 CFR Part 210), is familiar to the banking industry.

[2] When a check states on its face that it is "payable through" a bank, that bank is referred to as the "payable through bank." Under the U.C.C., a payable through bank is not named as the payor, but is designated as a "collecting bank to make presentment." U.C.C. 3–120. Under the Board's Regulation J, a payable through bank is the "paying bank." 12 CFR 210.2(j).

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disclosure requirements and model forms and clauses of Regulation CC to the Office of Management and Budget ("OMB") for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's Regulations for Controlling Paperwork Burdens on the Public (5 CFR Part 1320). (OMB Docket number: 7100-0234.)

The changes to Regulation CC require modifications to the disclosure requirements and two additional model forms; these are described elsewhere in this notice. These are being submitted to OMB for clearance. Additional supporting documents may be obtained from the OMB clearance officer listed above.

The Board estimates that the amended disclosure requirements will result in an increase in the one-time reporting burden of Regulation CC requirements of approximately 107,000 hours. Approximately 11,000 hours of the increase in reporting burden will be borne by state member banks and other institutions under the Board's jurisdiction.

Any comments on the collection requirements should be sent to the OMB desk officer listed above. OMB's usual practice is not to take any action on an information collection until at least 10 working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, effective September 1, 1988, Title 12, Chapter II, Part 229 of the Code of Federal Regulations is amended as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635; 12 U.S.C. 4001 *et seq.*

2. In § 229.2, paragraphs (r), (s), (z), and (dd) are revised to read as follows:

§ 229.2 Definitions.

* * * * *

(r) "Local check" means a check payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank.

(s) "Local paying bank" means a paying bank that is located in the same check processing region as the physical location of—

(1) The branch or proprietary ATM of the depositary bank in which that check was deposited; or

(2) Both the branch of the depositary bank at which the account is held and the nonproprietary ATM at which the check is deposited.

* * * * *

(z) "Paying bank" means—

(1) The bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection;

(2) The bank at which a check is payable and to which it is sent for payment or collection;

(3) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;

(4) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank;

(5) The state or unit of general local government by which a check is payable.

For purposes of Subpart C, and in connection therewith, Subpart A, "paying bank" includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

* * * * *

(dd) "Routing number" means—

(1) The number printed on the face of a check in fractional form on in nine-digit form; or

(2) The number in a bank's indorsement in fractional or nine-digit form.

* * * * *

§ 229.16 [Amended]

3. Section 229.16(b)(2) is amended by adding footnote 1 to the end of that paragraph, to read as follows:

[1] No later than December 31, 1988, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose that certain checks, such as some credit union share drafts that are payable by one bank but payable through another bank, will be treated as local or nonlocal checks based upon the location of the bank by which they are payable and not on the basis of the location of the bank whose routing number appears on the check. The statement concerning payable through checks must describe how the customer can determine whether these checks will be treated as local or nonlocal, or state that special rules apply to such checks and that the customer may ask about the availability of these checks. The statement may be in the form of an attachment or insert to the bank's existing specific policy disclosures. In addition, banks subject to this disclosure requirement must provide a similar notice concerning the payable through checks to existing account customers no later than December 31, 1988. (Even though a bank need not make a disclosure concerning payable through checks until December 31, 1988, the bank must characerize these checks correctly as local or nonlocal checks under amended § 229.2, and provide availability in accordance with §§ 229.11, 229.12, and 229.13, effective September 1, 1988.)

4. In § 229.30, paragraph (a)(1) is revised to read as follows:

§ 229.30 Paying bank's responsibility for return of checks.

(a) * * *

(1) *Two-day/four-day test.* A paying bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4:00 p.m. (local time of the depositary bank) of—

(i) The second business day following the banking day on which the check was presented to the paying bank, if the paying bank is located in the same check processing region as the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank, if the paying bank is not located in the same check processing region as the depositary bank.

If the last business day on which the paying bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the paying bank meets the two-day/four-day test if the returned check is received by the depositary bank on or before the depositary bank's next banking day.

* * * * *

5. In § 229.31, paragraph (a)(1) is revised to read as follows:

§ 229.31 Returning bank's responsibility for return of checks.

(a) * * *

(1) *Two-day/four-day test.* A returning bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4:00 p.m. (local time) of—

(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is located in the same check processing region as the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is not located in the same check processing region as the depositary bank.

If the last business day on which the returning bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the returning bank meets this requirement if the returned check is received by the depositary bank on or before the depositary bank's next banking day.

* * * * *

6. The heading and the first two introductory paragraphs of Appendix A to Part 229 are revised and the third introductory paragraph is removed to read as follows:

Appendix A—Routing Number Guide to Next-Day Availability Checks and Local Checks

Each bank is assigned a routing number by Rank McNally & Co., as agent for the American Bankers Association. The routing number takes two forms: A fractional form and a nine-digit form. A paying bank is generally identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink in a strip along the bottom of the check). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable through bank, not the payor bank.

The first four digits on the nine-digit routing number and the denominator of the fractional routing number form the "Federal Reserve routing symbol," which identifies the Federal Reserve District, the Federal Reserve office, and the clearing arrangements used by the paying bank.

* * * * *

7. Appendix C to Part 229 is amended by adding Models C–19 and C–19A to the end of the appendix to read as follows:

Appendix C—Model Forms, Clauses, and Notices

* * * * *

Model C–19—Payable through checks

In some instances we will treat checks as local or nonlocal based upon the location of the bank by which the check is payable, *not* on the routing number on the bottom of the check. For example, if a credit union share draft is payable by a credit union that is located in the same check processing region as our bank, the share draft will be treated as a local check, even if the draft is payable through a bank that is located outside of our check processing region as determined by the routing number on the check. If you have any questions about a specific check, please ask your branch manager.

Model C–19A—Payable through checks

Checks that are payable by one bank but are payable through another bank, such as credit union share drafts that are payable through a bank, are considered local or nonlocal based upon the location of the bank by which the check is payable, not the payable through bank whose routing number appears on the check. If the bank by which the payable through check is payable (the credit union in the case of a payable through credit union share draft) is located in the same check processing region as we are, the check will be considered a local check. ((Our check processing region includes * * *.) or (A map of our check processing region is (attached) (available upon request).)) If you would like to know whether a particular check falls into this category, you may ask your branch manager for assistance.

Appendix E—[Amended]

8. Appendix E—Commentary to Part 229 is amended as follows:

a. The commentary on § 229.2 (o), (r), (s), and (z) is revised to read as follows:

Section 229.2 Definitions

* * * * *

(o) *Depositary bank.* The regulation uses the term depositary bank rather than the term "receiving depository institution." "Receiving depository institution" is a term unique to the Act, while "depositary bank" is the term used in Article 4 of the U.C.C. and Regulation J.

A depositary bank includes the bank in which the check is first deposited. If a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent bank for forward collection, the U.S. correspondent is the depositary bank since foreign offices of banks are not included in the definition of bank.

If a customer deposits a check in its account at a bank, the customer's bank is the depositary bank with respect to the check. For example, if a person deposits a check into an account at a nonproprietary ATM, the bank holding the account into which the check is deposited is the depositary bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under § 229.35 the depositary bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depositary bank. For the purposes of Subpart C, the bank applying its indorsement as the depositary bank indorsement on the check is the depositary bank.)

For purposes of Subpart B, a bank may act as both the depositary bank and the paying bank with respect to a check, if the check is payable by the bank in which it was deposited, or if the check is payable by a nonbank payor and payable through or at the bank in which it was deposited. A bank is also considered a depositary bank with respect to checks it receives as payee. For example, a bank is a depositary bank with respect to checks it receives for loan repayment, even though these checks are not deposited in an account at the bank. Because these checks would not be "deposited to accounts," they would not be subject to the availability or disclosure requirements of Subpart B.

* * * * *

(r) *Local check* is defined as a check payable by or at a local paying bank, or, in the case of nonbank payors, payable through a local paying bank. A check payable by a local bank but payable through a nonlocal bank is a local check. Conversely, a check payable through a local bank but payable by a nonlocal bank is a nonlocal check. Where two banks are named on a check and neither is designated as a payable through bank, the check is considered payable by either bank and may be considered local or nonlocal depending on which bank it is sent to for payment. Generally, the depositary bank may rely on the routing number to determine whether a check is local or nonlocal. Appendix A includes a list or routing numbers arranged by Federal Reserve Bank Office to assist persons in determining whether or not such a check is local. If, however, a check is payable by one bank but payable through another bank, the routing number appearing on the check will be that of the payable through bank, not the paying bank. Many credit union share drafts and certain other checks payable by banks are payable through other banks. In such cases, the routing number cannot be relied on to determine whether the check is local or nonlocal. In a few cases, a payable through bank will be designated only by routing numbers and will not be named on the check. In such cases also, the routing number may not be relied on to determine whether the check is local or nonlocal.

(s) *Local paying bank* is defined as a paying bank located in the same check processing region as the branch or proprietary ATM of the depositary bank.

Examples

1. If a check that is payable by a bank that is located in the same check processing region as the depositary bank is payable through a bank located in another check processing region, the check is considered local or nonlocal depending on the location of the bank by which it is payable even if the check is sent to the nonlocal bank for collection.

2. The location of the depositary bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited. If the branch of the depositary bank located in one check processing region sends a check to the depositary bank's central facility in another check processing region, and the central facility is in the same check processing region as the paying bank, the check is still considered nonlocal. (See Commentary on definition of "paying bank".)

For deposits at nonproprietary ATMs, a paying bank is a local paying bank only if the paying bank is located in the same check processing region as the location of both the branch of the depositary bank at which the account is held and the nonproprietary ATM at which the check is deposited.

* * * * *

(z) *Paying bank.* The regulation uses this term in lieu of the Act's "originating depository institution." For purposes of

Subpart B, the term "paying bank" includes the payor bank, the payable at bank to which a check is sent, or, if the check is payable by a nonbank payor, the bank through which the check is payable and to which it is sent for payment or collection. For purposes of Subpart C, the term includes the payable through bank and the bank whose routing number appears on the check regardless of whether the check is payable by a different bank, provided that the check is sent for payment or collection to the payable through bank or the bank whose routing number appears on the check.

Under §§ 229.30 and 229.36(a), a bank designated as a "payable through bank" or "payable at bank" and to which the check is sent for payment or collection is responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable through or payable at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable through bank additional time to forward checks to the payor and await return or pay instructions from the payor would delay the return of these checks, increasing the risks to depositary banks. Subpart C places on payable through and payable at banks the requirements of expeditious return based on the time the payable through or payable at bank received the check for forward collection.

If a check is sent for forward collection based on the routing number, the bank associated with the routing number is a paying bank for the purposes of Subpart C requirements, including notice of nonpayment, even if the check is not drawn by a customer of that bank or the check is fraudulent.

The phrase "and to which [the check] is sent for payment or collection" includes sending not only the physical check, but information regarding the check under a truncation arrangement.

Federal Reserve Banks and Federal Home Loan Banks are also paying banks under all subparts of the regulation with respect to checks payable by them, even though such banks are not defined as banks for purposes of Subpart B.

b. The Commentary on § 229.11(c) is amended by adding a paragraph at the end immediately preceding (d) to read as follows:

Section 229.11 Temporary Availability Schedule

* * * * *

(c) * * *

A reduction in schedules may apply even in those cases where the determination that the check is nonlocal cannot be made based on the routing number on the check. For example, a nonlocal credit union payable through share draft may be subject to a reduction in schedules if the routing number of the payable through bank which appears on the draft is included in Appendix B, even though the determination that the payable through share draft is nonlocal is based on the location of the credit union and not the routing number on the draft.

* * * * *

c. The Commentary on § 229.21(c) is amended by removing the period at the end of the paragraph and adding the following language:

Section 229.21 Civil liability

* * * * *

(c) * * *

; or if it fails to identify whether a payable through check is a local or nonlocal check despite procedures designed to make this determination accurately.

* * * * *

d. The Commentary on § 229.30 is amended by revising the introductory paragraphs of (a) and the complete text of (a)(1) to read as follows:

Section 229.30 Paying Bank's Responsibility for Return of Checks

(a) *Return of checks.* This section requires a paying bank (which, for purposes of Subpart C, may include a payable through and payable at bank; see § 229.2(z)) that determines not to pay a check to return the check expeditiously. Generally, a check is returned expeditiously if the return process is as fast as the forward collection process. This paragraph provides two standards for expeditious return, the "two-day/four-day" test, and the "forward collection" test.

Under the "two-day/four-day" test, if a check is returned such that it would normally be received by the depositary bank two business days after presentment where both the paying and depositary banks are located in the same check processing region or four business days after presentment where the paying and depositary banks are not located in the same check processing region, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and payable by the depositary bank to be collected. Therefore, the Board has included a "forward collection" test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depositary banks within the two-day or four-day period.

(1) *Two-day/four-day test.* Under the first test, a paying bank must return the check so that the check would normally be received by the depositary bank within specified times, depending on whether or not the paying and depositary banks are located in the same check processing region.

Where both banks are located in the same check processing region, a check is returned expeditiously if it is returned to the depositary bank by 4:00 p.m. (local time of the depositary bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a paying bank must be returned to a depositary bank located in the same check processing region by 4:00 p.m. on Wednesday. For a paying bank that is located in a different check processing region than the depositary bank, the deadline to complete return is 4:00 p.m. (local time of the depositary bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to such a paying bank on Monday must be returned to the depositary bank by 4:00 p.m. on Friday.

This two-day/four-day test does not necessarily require actual receipt of the check by the depositary bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depositary bank within the specified time. Thus, the paying bank is not responsibile for unforeseeable delays in the return of the check, such as transportation delays.

Often, returned checks will be delivered to the depositary bank together with forward collection checks. Where the last day on which a check could be delivered to a depositary bank under this two-day/four-day test is not a banking day for the depositary bank, a returning bank might not schedule delivery of forward collection checks to the depositary bank on that day. Further, the depositary bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depositary bank, the check may be delivered to the depositary bank before the close of the depositary bank's next banking day and the return will still be considered expeditious. Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward collection checks destined for the depositary bank.

The times specified in this two-day/four-day test are based on estimated forward collection times, but take into account the particular difficulties that may be encountered in handling returned checks. It is anticipated that the normal process for forward collection of a check coupled with these return requirements will frequently result in the return of checks before the proceeds of local and nonlocal checks, other than those covered by § 229.10(c), must be made available for withdrawal under the temporary schedules in § 229.11.

Under this two-day/four-day test, no particular means of returning checks is required, thus providing flexibility to paying banks in selecting means of return. The Board anticipates that paying banks will often use returning banks (see § 229.31) as their agents to return checks to depositary banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would "normally" be returned within the required time under this two-day/four-day test, unless the paying bank has reason to believe that these schedules do not reflect the actual time for return of a check.

* * * * *

e. The Commentary on § 229.31(a) is amended by revising the paragraphs up to the examples to read as follows:

Section 229.31 Returning Bank's Responsibility for Return of Checks

(a) *Return of checks.* The standards for return of checks established by this section are similar to those for paying banks in § 229.30(a). This section requires a returning bank to return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depositary bank for the purposes of returning the check. A returning bank agrees to handle a returned check for expeditious return to the depositary bank if it:

(1) Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;

(2) Handles a returned check for return that it did not handle for forward collection; or

(3) Otherwise agrees to handle a returned check for expeditious return.

As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it meets either of two tests. Under the "two-day/four-day" test, the check must be returned so that it would normally be received by the depositary bank by 4:00 p.m. either two or four business days after the check was presented to the paying bank, depending on whether or not the paying bank is located in the same check processing region as the depositary bank. This is the same test as the two-day/four-day test applicable to paying banks. (See Commentary to § 229.30(a).) While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day/four day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentment to the paying bank, or a later time as would result from unforeseen delays.

The "forward collection" test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depositary bank for forward collection. A similar situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.

Under the forward collection tests, a returning bank must accept returned checks, including both qualified and other returned checks ("raw returns"), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.

A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but the cut-off hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at a corresponding forward collection cut-off hour that provides for the same or faster availability for checks destined for the same depositary banks.

* * * * *

f. The Commentary on § 229.36 is amended by revising the complete text of (a) and (b) to read as follows:

Section 229.36 Presentment of Checks

(a) *Payable through and payable at checks.* For purposes of Subpart C, the regulation defines a payable through or payable at bank (which could be designated the collectible through or collectible at bank) as a paying bank. The requirements of § 229.30(a) and the notice of nonpayment requirements of § 229.33, are imposed on a payable through or payable at bank and are based on the time of receipt of the forward collection check by the payable through or payable at bank. This provision is intended to speed the return of checks that are payable through or at a bank to the depositary bank.

(b) *Receipt at bank office or processing center.* This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depositary bank, and clarifies the law as to the effect of presentment by routing number. This paragraph differs from § 229.39(b) because presentment of checks differs from delivery of returned checks.

The paragraph specifies four locations at which the paying bank must accept presentment of checks. Where the check is payable through a bank and the check is sent to that bank, the payable through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

1. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This is the way most checks are presented by banks today. This provision adopts the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also U.C.C. 4–204(3).) If a bank designates different locations for the presentment of forward collection checks bearing different routing numbers, for purposes of this paragraph it only requests presentment of checks bearing a particular routing number at the location designated for receipt of forward collection checks bearing that routing number.

2. Delivery may be made at an office of the bank associated with the routing number on the check. The office associated with the routing number of a bank is found in a publication of Rand McNally, *Key to Routing Numbers*, which lists a city and state address for each routing number. Checks are generally handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink (or on the basis of the fractional form routing number if the magnetic ink characters are obliterated) on the check, rather than the printed name or address. The definition of a paying bank in § 229.2(z) includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable through bank, not that of the payor bank. As the payor bank has selected the payable through bank as the point through which presentment is to be made, it is proper to treat the payable through bank as the paying bank for purposes of this section.

There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank may generally control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

In some cases, a paying bank may have several offices in the city associated with the routing number. In such case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank would normally deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

3. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is nor readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. 3–504(2), which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. Thus, there is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.

4. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office,

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delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment. The designation of an address on the check is generally in the control of the paying bank.

This paragraph may affect U.C.C. 3-504(2)(c) to the extent that the U.C.C. requires presentment to occur at a place specified in the instrument.

* * * * *

g. The Commentary on Appendix C to Part 229 is amended as follows:

(1) Add a paragraph at the end of the text titled *"Models C-1 through C-7 generally"* and before the text beginning with *"Model C-1"*.

(2) Add Commentary on Models C-19 and C-19A to the end of the appendix.

Appendix C—Model Forms, Clauses, and Notices

* * * * *

Models C-1 through C-7 generally.* * *

In addition, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check (as set forth in model forms C-4 through C-7) must disclose that certain checks, such as credit union share drafts that are payable through a bank, will be treated as local or nonlocal based upon the location of the payor bank and not on the basis of the routing number on the check. Model C-19 or C-19A could be incorporated into model forms C-4 through C-7 to meet this requirement.

* * * * *

Model C-19 and C-19A. Either of these statements satisfies the requirements set forth in the footnote to § 229.16(b)(2) concerning payable through checks. The statements are both model clauses and notices in that they may be added to a bank's specific policy disclosure to describe how the bank treats payable through checks, and may be used as the notice that must be sent to existing customers no later than December 31, 1988, if the bank's specific policy disclosure given to the customers did not accurately reflect the treatment of payable through checks.

By order of the Board of Governors of the Federal Reserve System, August 12, 1988.

William W. Wiles,

Secretary of the Board

[FR Doc. 88-18702 Filed 8-17-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-44-AD; Amdt. 39-6005]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of final rule.

SUMMARY: This action clarifies an existing airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, equipped with General Electric engines, without a secondary cowl door latching system. The model identification of the affected engines was not specified in the applicability statement of the AD. This clarification is necessary to identify properly the affected airplanes.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On May 11, 1988, the FAA issued AD 88-11-10, Amendment 39-5931 (53 FR 18076; May 20, 1988), which requires a daily security check for each engine core cowl door, after it is open and subsequently closed, until a secondary latching system is installed. That action was prompted by several reported incidents where the engine core cowl doors have separated from airplanes equipped with this engine core cowl door design, due to failure of the latching device. This condition, if not corrected, could result in separation of the door, which, in turn, could cause structural damage to the airplane.

That AD was made effective to *all* Airbus Industrie Model A300 series equipped with General Electric engines without a secondary cowl door latching system. Since issuance of that AD, the FAA has received reports that, due to certain configurations of the engines, the required inspection is applicable only to airplanes equipped with General Electric CF6-50 engines. Accordingly, the FAA has determined that the applicability of the existing AD must be clarified to specify the engine model, and action is taken herein to make this clarification.

Since this action only clarifies information in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Clarification

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration clarifies § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By clarifying the applicability statement of AD 88-11-10, Amendment 39-5931 (53 FR 18076; May 20, 1988), as follows:

Airbus Industrie: Applies to Model A300 series airplanes, equipped with General Electric CF6-50 engines, without a secondary latching system on core cowl doors, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural damage to the airplane due to engine core cowl door separation, accomplish the following:

A. Within 10 days after the effective date of this AD, check the core cowl door latches of each engine once each day, and re-check after each core cowl door is opened and subsequently closed.

1. If the latch is open, before further flight, properly close the latch.

2. If the latch will not engage, adjust the latch, in accordance with the A300 maintenance manual.

3. If the latch cannot be properly adjusted, replace the latch prior to further flight.

B. The checks required by paragraph A., above, may be discontinued after a secondary latching system is installed, in accordance with Airbus Industrie Service Bulletin A300-71-053, Revision 2, dated January 5, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office,

9010 East Marginal Way South, Seattle, Washington.

This clarification becomes effective September 6, 1988.

Issued in Washington, DC, on August 11, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18735 Filed 8-17-88; 8:45 a.m.]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-16]

Alteration of Control Zone and Transition Area; Casper, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: These amendments change the description of the Casper, Wyoming Control Zone and Transition Area. The Casper very high frequency omni-directional radio range and tactical air navigation aid (VORTAC) is not located on the Casper Airport. According to FAA guidelines, navigational aids (NAVIDS) not located within the confines of the airport boundaries should not retain that airport's name. Therefore, the Casper VORTAC has been renamed Muddy Mountain VORTAC. This action amends the Control Zone and Transition Area descriptions where "Casper" appears to read "Muddy Mountain."

DATES: Effective date—0901 UTC, October 20, 1988.

Comments must be received on or before October 5, 1988.

ADDRESSES: Send comments on the rule to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-16, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-16, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although these actions are in the form of a final rule, which involves amending the descriptions of the Casper, Wyoming Control Zone and Transition Area that currently have "Casper" in their descriptions to read "Muddy Mountain", and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of these amendments to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the descriptions of the Casper, Wyoming Control Zone and Transition Area to read "Muddy Mountain" where "Casper" appears. The circumstances which create the need for this amendment involve matters of flight safety, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is contrary to the public interest.

Section(s) 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

By removing "Casper" wherever it appears and substituting "Muddy Mountain."

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

By removing "Casper" wherever it appears and substituting "Muddy Mountain."

Issued in Seattle, Washington, on August 5, 1988.

Francis E. Davis,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-18736 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 25675; Amdt. No. 345]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on August 11, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 345 EFFECTIVE DATE, AUGUST 25, 1988

FROM	TO	MEA

§

§95.1001 DIRECT ROUTES-U.S.95.239 RED FEDERAL AIRWAY 39

IS AMENDED TO READ IN PART

MINCHUMINA, AK NDB	ICE POOL, AK NDB	4000

§95.1001 DIRECT ROUTES-U.S.

IS AMENDED TO READ IN PART

BUFFALO, NY VORTAC	U.S. CANADIAN BORDER	3000

BAHAMA ROUTES

21V IS AMENDED BY ADDING

FREEPORT, BF VOR/DME *6000 - MRA **1300 - MOCA	*WALIK, FL FIX	**4000 MAA-45000
*WALIK, FL FIX *6000 - MRA **1600 - MOCA	PALM BEACH, FL VORTAC	**2000 MAA-45000

68V

FORT LAUDERDALE, FL VOR/DME	ABBER, FL FIX	2000 MAA-45000
ABBER, FL FIX *1200 - MOCA	MUNRO, BF FIX	*4000 MAA-45000
MUNRO, BF FIX *1200 - MOCA	FREEPORT, BF VOR/DME	*2000 MAA-45000
MARSH HARBOUR, BF NDB *1200 - MOCA	NETTA, BF FIX	*2000 MAA-45000
NETTA, BF FIX *1500 - MOCA	NASSAU, BF VOR/DME	*4000 MAA-45000

IS AMENDED TO READ IN PART

FREEPORT, BF VOR/DME *1200 - MOCA	DEERS, BF FIX	*2000 MAA-45000
DEERS, BF FIX *1200 - MOCA	TREASURE CAY, BF VOR/DME	*2000 MAA-45000
TREASURE CAY, BF VOR/DME *1200 - MOCA	MARSH HARBOUR, BF NDB	*2000 MAA-45000

69V IS AMENDED BY ADDING

FREEPORT, BF VOR/DME *1200 - MOCA	BENZI, BF FIX	*4000 MAA-45000
BENZI, BF FIX *1600 - MOCA	PALM BEACH, FL VORTAC	*4000 MAA-45000

§95.6002 VOR FEDERAL AIRWAY 2

IS AMENDED TO READ IN PART

CLUNG, NY FIX	MONCK, NY FIX	6000
ALBANY, NY VORTAC	MELRO, NY FIX	10000
MELRO, NY FIX	*GRISY, MA FIX	10000
*10000 - MCA GRISY FIX, W BND		

§95.6006 VOR FEDERAL AIRWAY 6

IS AMENDED TO READ IN PART

SELINSGROVE, PA VORTAC	ALLENTOWN, PA VORTAC	4000
ALLENTOWN, PA VORTAC	SOLBERG, NJ VORTAC	3000

§95.6012 VOR FEDERAL AIRWAY 12

IS AMENDED TO READ IN PART

WINSLOW, AZ VORTAC	ZUNI, NM VORTAC	9000
FRANC, MO FIX	COLUMBIA, MO VOR/DME	2600
COLUMBIA, MO VOR/DME *2000 - MOCA	STITH, MO FIX	*2600
STITH, MO FIX	FORISTELL, MO VORTAC	2600

§95.6014 VOR FEDERAL AIRWAY 14

IS AMENDED TO READ IN PART

FORISTELL, MO VORTAC	ST LOUIS, MO VORTAC	2600
ST LOUIS, MO VORTAC	VANDALIA, IL VORTAC	2500
ALBANY, NY VORTAC	MELRO, NY FIX	10000
MELRO, NY FIX	*GRISY, MA FIX	10000
*10000 - MCA GRISY FIX, W BND		

§95.6023 VOR FEDERAL AIRWAY 23

IS AMENDED TO READ IN PART

CLOVIS, CA VORTAC	BEREN, CA FIX	2100
BEREN, CA FIX *3000 - MOCA	WRAPS, CA FIX	*4000
WRAPS, CA FIX	LINDEN, CA VORTAC	3000

§95.6044 VOR FEDERAL AIRWAY 44

IS AMENDED TO READ IN PART

COLUMBIA, MO VOR/DME	HODGS, MO FIX	2800
HODGS, MO FIX *2200 - MOCA	FORISTELL, MO VORTAC	*2800

§95.6063 VOR FEDERAL AIRWAY 63

IS AMENDED TO READ IN PART

SPRINGFIELD, MO VORTAC *3200 - MRA	*ROACH, MO FIX	3000

FROM	TO	MEA
§95.6063 VOR FEDERAL AIRWAY 63—Continued		
BARTI, MO FIX	GIBSN, MO FIX	3000
GIBSN, MO FIX	HALLSVILLE, MO VORTAC	2700
§95.6068 VOR FEDERAL AIRWAY 68		
IS AMENDED TO READ IN PART		
TATAR, TX FIX	SAN ANTONIO, TX VORTAC	4000
INDUSTRY, TX VORTAC	SEALY, TX FIX	2000
SEALY, TX FIX	HOBBY, TX VOR/DME	2000
§95.6076 VOR FEDERAL AIRWAY 76		
IS AMENDED TO READ IN PART		
INDUSTRY, TX VORTAC	SEALY, TX FIX	2000
SEALY, TX FIX	HOBBY, TX VOR/DME	2000
§95.6155 VOR FEDERAL AIRWAY 155		
IS AMENDED TO READ IN PART		
FLAT ROCK, VA VORTAC	BROOKE, VA VORTAC	2000
§95.6175 VOR FEDERAL AIRWAY 175		
IS AMENDED TO READ IN PART		
MALDEN, MO VORTAC	BUNKS, MO FIX	*4000
*3000 - MOCA		
VICHY, MO VORTAC	ZIPUR, MO FIX	*3000
*2400 - MOCA		
ZIPUR, MO FIX	HALLSVILLE, MO VORTAC	2600
§95.6178 VOR FEDERAL AIRWAY 178		
IS AMENDED TO READ IN PART		
HALLSVILLE, MO VORTAC	BNTON, MO FIX	2800
BNTON, MO FIX	VICHY, MO VORTAC	*2800
*2200 - MOCA		
§95.6198 VOR FEDERAL AIRWAY 198		
IS AMENDED TO READ IN PART		
TATAR, TX FIX	SAN ANTONIO, TX VORTAC	4000

FROM	TO	MEA
§95.6205 VOR FEDERAL AIRWAY 205		
IS AMENDED TO READ IN PART		
BRADLEY, CT VORTAC	PUTNAM, CT VOR/DME	*3000
*2300 - MOCA		
§95.6222 VOR FEDERAL AIRWAY 222		
IS AMENDED TO READ IN PART		
INDUSTRY, TX VORTAC	SEALY, TX FIX	2000
SEALY, TX FIX	HUMBLE, TX VORTAC	2000
§95.6229 VOR FEDERAL AIRWAY 229		
IS AMENDED TO READ IN PART		
MORTN, NJ FIX	DIXIE, NJ FIX	3000
§95.6239 VOR FEDERAL AIRWAY 239		
IS AMENDED TO READ IN PART		
BNTON, MO FIX	HALLSVILLE, MO VORTAC	2800
§95.6426 VOR FEDERAL AIRWAY 426		
IS AMENDED TO DELETE		
ST LOUIS, MO VORTAC	GIFTS, IL FIX	2500
GIFTS, IL FIX	PAMER, IL FIX	*4000
*2100 - MOCA		
§95.6438 VOR FEDERAL AIRWAY 438		
IS AMENDED TO READ IN PART		
DIFER, AK FIX	FORT YUKON, AK VORTAC	
VIA E ALTER.	VIA E ALTER.	2300
§95.6504 VOR FEDERAL AIRWAY 504		
IS AMENDED TO DELETE		
NAPOLEON, MO VORTAC	*OCTAM, MO FIX	2700
*4000 - MRA		
OCTAM, MO FIX	FRANC, MO FIX	*2700
*2100 - MOCA		
FRANC, MO FIX	HYPOE, MO FIX	4000
HYPOE, MO FIX	JEFFERSON CITY, MO VOR/DME	2600
JEFFERSON CITY, MO VOR/DME	GUTHS, MO FIX	3000
GUTHS, MO FIX	RAPPE, MO FIX	4000
RAPPE, MO FIX	HEMAN, MO FIX	2600
HEMAN, MO FIX	FORISTELL, MO VORTAC	*2700
*2200 - MOCA		

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FROM	TO	MEA	MAA
§95.7030 JET ROUTE NO. 30			
	IS AMENDED TO READ IN PART		
APPLETON, OH VORTAC	BUCKO, WV FIX	20000	39000
§95.7036 JET ROUTE NO. 36			
	IS AMENDED TO READ IN PART		
DUNKIRK, NY VORTAC	MINEO, PA FIX	18000	45000
MINEO, PA FIX	LAKE HENRY, PA VORTAC	18000	23000
§95.7037 JET ROUTE NO. 37			
	IS AMENDED TO READ IN PART		
GORDONSVILLE, VA VORTAC	BROOKE, VA VORTAC	18000	45000
BROOKE, VA VORTAC	COYLE, NJ VORTAC	18000	45000
§95.7064 JET ROUTE NO. 64			
	IS AMENDED TO READ IN PART		
FARMINGTON, NM VORTAC	PUEBLO, CO VORTAC	20000	45000
PUEBLO, CO VORTAC	HILL CITY, KS VORTAC	18000	45000
§95.7082 JET ROUTE NO. 82			
	IS AMENDED TO READ IN PART		
JAMESTOWN, NY VOR/DME	ALBANY, NY VORTAC	18000	40000
§95.7102 JET ROUTE NO. 102			
	IS AMENDED TO READ IN PART		
ZUNI, NM VORTAC	GALLUP, NM VORTAC	18000	45000
GALLUP, NM VORTAC	ALAMOSA, CO VORTAC	18000	45000
§95.7142 JET ROUTE NO. 142			
	IS AMENDED TO READ IN PART		
SOCORRO, NM VORTAC	ANTON CHICO, NM VORTAC	18000	45000
ANTON CHICO, NM VORTAC	BORGER, TX VORTAC	18000	45000
§95.7186 JET ROUTE NO. 186			

FROM	TO	MEA	MAA
§95.7186 JET ROUTE NO. 186—Continued			
	IS AMENDED TO READ		
TOCCOA, GA VORTAC	SNOWBIRD, TN VORTAC	18000	45000
SNOWBIRD, TN VORTAC	APPLETON, OH VORTAC	18000	45000
§95.7197 JET ROUTE NO. 197			
	IS AMENDED TO READ IN PART		
DOVE CREEK, CO VORTAC	HUGO, CO VORTAC	#33000	45000
#MEA IS ESTABLISHED WITH GAP 95-115 NM FROM DOVE CREEK.			
HUGO, CO VORTAC	GOODLAND, KS VORTAC	18000	45000
§95.7231 JET ROUTE NO. 231			
	IS ADDED TO READ		
ST JOHNS, AZ VORTAC	ANTON CHICO, NM VORTAC	18000	45000
ANTON CHICO, NM VORTAC	LIBERAL, KS VORTAC	18000	45000

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§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-2		
	IS AMENDED TO DELETE		
BUFFALO, NY VORTAC	ROCHESTER, NY VORTAC	34	BUFFALO
	V-23		
	IS AMENDED TO READ IN PART		
CLOVIS, CA VORTAC	LINDEN, CA VORTAC	42	CLOVIS
	V-68		
	IS AMENDED BY ADDING		
JUNCTION, TX VORTAC	SAN ANTONIO, TX VORTAC	51	JUNCTION
	V-198		
	IS AMENDED BY ADDING		
JUNCTION, TX VORTAC	SAN ANTONIO, TX VORTAC	51	JUNCTION

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§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-36		
	IS AMENDED BY ADDING		
DUNKIRK, NY VORTAC	LAKE HENRY, PA VORTAC	130	DUNKIRK
	J-64		
	IS AMENDED BY ADDING		
FARMINGTON, NM VORTAC	PUEBLO, CO VORTAC	93	FARMINGTON
	J-197		
	IS AMENDED BY ADDING		
DOVE CREEK, CO VORTAC	HUGO, CO VORTAC	105	DOVE CREEK
	J-220		
	IS AMENDED TO READ IN PART		
ARMEL, VA VORTAC	STONYFORK, PA VORTAC	122	ARMEL

[FR Doc. 88-16737 Filed 8-17-88; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 97

[Docket No. 25672; Amdt. No. 1780]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective*: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedures before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on August 5, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows;

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective October 20, 1988*

Lincoln, IL—Logan Country, VOR RWY 3, Amdt. 5
Lincoln, IL—Logan Country, NDB RWY 21, Amdt. 5
Wahoo, NE—Wahoo Muni, NDB RWY 20, Amdt. 2

. . . *Effective October 6, 1988*

Bismarck, ND—Bismarck Muni, VOR–A, Amdt. 19
Bismarck, ND—Bismarck Muni, NDB RWY 31, Amdt. 30
Bismarck, ND—Bismarck Muni, ILS RWY 13, Amdt. 2
Bismarck, ND—Bismarck Muni, ILS RWY 31, Amdt. 32
Bismarck, ND—Radar-1, Amdt. 1

. . . *Effective September 22, 1988*

San Francisco, CA—San Francisco Intl, ILS RWY 28L, Amdt. 18
San Francisco, CA—San Francisco Intl, ILS RWY 28R, Amdt. 8
Cadillac, MI—Wexford County, NDB RWY 7, Amdt. 10, CANCELLED
Cadillac, MI—Wexford County, NDB RWY 7, Orig.
Cadillac, MI—Wexford County, NDB RWY 25, Amdt. 6, CANCELLED
Cadillac, MI—Wexford County, NDB RWY 25, Orig.
Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 3
Cadillac, MI—Wexford County, RNAV RWY 7, Amdt. 6
Cadillac, MI—Wexford County, RNAV RWY 25, Amdt. 5
Fremont, NE—Fremont Muni, NDB RWY 13, Amdt. 5
Plattsmouth, NE—Plattsmouth Muni, NDB RWY 34, Amdt. 3
Wayne, NE—Wayne Muni, NDB RWY 22, Amdt. 2
Shirley, NY—Brookhaven, ILS RWY 6, Orig.
Marion, OH—Marion Muni, VOR RWY 24, Amdt. 5
Marion, OH—Marion Muni, NDB RWY 12, Amdt. 3
Newport, RI—Newport State, LOC RWY 22, Amdt. 4
Greer, SC—Greenville-Spartanburg, ILS RWY 3, Amdt. 19
Brownwood, TX—Brownwood Muni, VOR RWY 17, Amdt. 10
Brownwood, TX—Brownwood Muni, VOR/DME RWY 35, Orig.
Brownwood, TX—Brownwood Muni, LOC RWY 17, Amdt. 3
Fort Worth, TX—Oak Grove VOR/DME–A, Amdt. 2, CANCELLED
Fort Worth, TX—Oak Grove, RNAV RWY 35, Orig., CANCELLED

. . . *Effective July 28, 1988*

Culpeper, VA—Culpeper Country, NDB–A, Amdt. 1

The FAA published an Amendment in Docket No. 25841, Amdt. No. 1377 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 132, Page 26234; dated Tuesday, July 12, 1988) under § 97.25 effective August 25, 1988, which is hereby amended as follows:

Roxboro, NC—Person County, LOC RWY 6, Orig., EFF August 25, 1988 is hereby rescinded.

The FAA published an Amendment in Docket No. 25888, Amdt. No. 1378 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 148, Page 29001; dated Tuesday, August 21, 1988, under § 97.27 effective September 22, 1988 which is hereby amended as follows:

Shishmaref, New Shishmaref, NDB RWY 5, Orig.
Shishmaref, New Shishmaref, NDB RWY 23, Orig., effective dates should read October 20, 1988.

[FR Doc. 88-18736 Filed 8-17-88; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9149]

Ogilvy & Mather International, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a portion of a 1983 consent order (48 FR 2316) with The Ogilvy Group, Inc., formerly Ogilvy & Mather International, Inc., the advertising agency for Thompson Medical Co., Inc., the makers of the topically applied analgesic "Aspercreme", by making two modifications in accordance with paragraph eight of the consent order so that the Ogilvy order matches the language in the Thompson order.

DATES: Consent Order issued Jan. 4, 1983. Modified Order issued May 24, 1988.

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder or Terrence Boyle, FTC/S–4631, Washington, DC 20580. (202) 326–3017 or 326–3016.

SUPPLEMENTARY INFORMATION: In the Matter of Ogilvy & Mather International, Inc. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, as set forth at 48 FR 2316, remain unchanged.

List of Subjects in 16 CFR Part 13

Advertising, Drugs, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

BEFORE FEDERAL TRADE COMMISSION

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

[Docket No. 9149]

Order Reopening the Proceeding and Modifying Cease and Desist Order

In the Matter of Ogilvy & Mather International, Inc., a corporation.

On February 5, 1981, the Commission issued its complaint in this proceeding alleging that Thompson Medical Co., Inc. ("Thompson"), and its advertising agency, Ogilvy & Mather International, Inc. ("Ogilvy"), had made false and deceptive representations in advertising materials for Thompson's over-the-counter topically applied analgesic "Aspercreme" in violation of section 5 of the F.T.C. Act, 15 U.S.C. 45 ("section 5"). On October 4, 1982, the Commission accepted from Ogilvy an "Agreement Containing Consent Order to Cease and Desist" for public comment and on January 4, 1983, issued the negotiated consent order. The litigation against Thompson continued.

Paragraph 8 of the Ogilvy consent agreement specified that:

8. No part or provision of this Order shall become binding upon respondent until the effective date of a final order to cease and desist against Thompson Medical Company, Inc. or its successors or assigns. If a final order against Thompson Medical Company, Inc. in this proceeding contains a provision different from the provision that correspond[s] to the provision in Part I(A) of this Order or contains a definition of "competent and reliable scientific or medical evidence" that differs from Part II of this Order, then this Order shall be reopened for the sole purpose of conforming said provision or said definition in this Order with the corresponding provision or definition in the Thompson Medical Company, Inc. order. In the event that the Complaint in this matter against Thompson Medical Company, Inc. is dismissed in whole, then the Commission, upon the application of respondent, shall set aside this Order.

On November 24, 1984, the Commission issued a cease-and-desist order against Thompson. 104 F.T.C. 648. Thompson petitioned for review of the order, which was affirmed by the Court of Appeals. 791 F.2d 189 (DC Cir. 1986). Thompson then petitioned for *certiorari*, and the Commission's order became final in early 1987 after the Supreme Court denied that petition. 107 S.Ct. 1289 (1987). Consistent with Paragraph 8 of the Ogilvy consent agreement, the Commission's order against Ogilvy became effective at the same time as the *Thompson* order.

On November 17, 1987, Ogilvy filed a request that the Commission reopen this proceeding and modify the 1983 consent order against Ogilvy. The request cites Paragraph 8 of the "Agreement Containing Consent Order to Cease and

Desist" ("consent agreement") as justification for certain modifications to Parts IA and II of the order and also asserts that changed conditions of fact and law and the public interest justify modification of other parts of the order.

The Commission's order against Ogilvy comprises seven parts. Part I prohibits respondent from misrepresenting the ingredients of any drug product, from misrepresenting that any drug product is new or involves any new principle, and from misrepresenting any test or study of any drug product or the effectiveness of any drug product. Part II of the order prohibits certain effectiveness and side effect claims for any topically applied drug product unless the claims are substantiated. Parts III, IV, V and VII of the order impose record-keeping requirements and mandate notification of the Commission concerning corporate changes and distribution of copies of the order and require submission of compliance reports. Part VI of the order states that the order does not apply to three named corporate subsidiaries of Ogilvy.

Ogilvy first seeks modifications of Parts IA and II of the order, which it believes should be granted on the basis of Paragraph 8 of its consent agreement, quoted above. The modification to Part IA would replace the current language banning use of the tradename "Aspercreme" for a product that does not contain therapeutically significant quantities of aspirin with language permitting use of that tradename for such a product, provided the advertising and labeling using the tradename "clearly and prominently disclose that the product does not contain aspirin." The modified language would include explicit directions concerning the permissible disclosures for television, radio and print advertising and for labels. The requested modifications to Part IA of the order will conform a portion of the order against Ogilvy covered by Paragraph 8 of Ogilvy's consent agreement to the parallel *Thompson* language, and the Commission agrees that the changes are justified.

Ogilvy also requests that the Commission modify to reflect the *Thompson* decree the language in Part II of the order requiring that clinical studies conform to the requirements set forth in 21 CFR Parts 314 and 330. Ogilvy's proposed order would require clinical studies to conform to "acceptable designs and protocols." This change too will conform a portion of the *Ogilvy* order covered by Paragraph 8 of the consent agreement to the parallel provision of the *Thompson* order, and the Commission agrees that it is justified.

Ogilvy further requests that Part VI of the order be modified. Part VI of the present order excepts from the scope of the decree "three subsidiary corporations wholly owned by respondent unless a product otherwise covered by the order is assigned or transferred from respondent to one" of them. Ogilvy seeks to except two additional subsidiaries from the scope of the order. One, Rolf Warner Rosenthal, Inc., was acquired after the order was issued and specializes in advertising of prescription drugs to health care professionals. The other, Euramerica, Inc., did not engage in advertising at the time the order was issued, but now performs some advertising activities. Ogilvy asserts that both subsidiaries are "independent" and that the "intent of Part VI is to exempt all independent Ogilvy subsidiaries." Request for Modification at 9.

Ogilvy asserts that its acquisition of Rolf Warner Rosenthal, Inc., and its conversion of Euramerica, Inc., to an advertising subsidiary constitute changed facts that under section 5 require the Commission to reopen and modify the order. Nothing in the consent agreement and order suggests that the Commission's intent to exempt "independent" subsidiaries. Ogilvy has not suggested any other reason to construe the order this way, nor does it suggest what an "independent" subsidiary is under the terms of the order. Nothing in the consent agreement or the order compels the Commission to exempt additional subsidiaries of Ogilvy simply on a showing that they exist. The acquisition of Rolf Warner Rosenthal, Inc., and the conversion of Euramerica are not, therefore, changes of fact that require granting Ogilvy's request for modification.

Absent a showing of changed fact or law, the Commission may modify its orders if it concludes that to do so would be in the public interest. To meet its burden in this respect, Ogilvy must show that if the two additional subsidiaries are not exempted from the order, it will sustain competitive harm that is greater than or different from the harm that it reasonably might have expected at the time it agreed to the consent order. *See, e.g., Damon Corp.*, 101 F.T.C. 689 (1983) (show cause order). Ogilvy has not carried this burden. Indeed, it has shown only that whatever harm the two new subsidiaries will sustain is the same as that currently being suffered by the company itself. According to Ogilvy, that alleged harm stems principally from the fact that the *Ogilvy* order is less stringent than certain orders in subsequent and unrelated Commission cases against competing advertising agencies.

Ogilvy submitted an affidavit from its Chairman stating that current clients have "expressed concern over the breadth of Ogilvy's order" (Phillips Aff. ¶ 8) and, specifically, that "the breadth of the order will chill Ogilvy's creative efforts * * * as Ogilvy seeks to avoid even the possibility of a civil penalty proceeding." Phillips Aff. ¶ 9. The company also has stated that the harm that would be suffered by the two new subsidiaries if the Commission refused to extend the current exemption would be the same as that being sustained by Ogilvy itself.

The Commission concludes that Ogilvy has provided no reason to treat the two subsidiaries differently from the company itself. Nor has Ogilvy shown that such harm as it has alleged is different from, or more severe than, it reasonably might have anticipated at the time the order issued. We therefore decline to grant the modification expanding the subsidiary exemption.

Ogilvy also seeks modification of several other portions of its order to conform it to the *Thompson* decree. These modifications are not covered by Paragraph 8 of the consent agreement because they do not appear in the parts of the order to which that paragraph is expressly directed. Ogilvy argues that these modifications are justified based on the Commission's action in *Benton & Bowles, Inc.*, 82 F.T.C. 1437 (1973), 102 F.T.C. 1837 (1983). In that case, the Commission issued similar complaints against an advertiser, Sterling Drug Co., and Benton & Bowles, one of its advertising agencies. Benton & Bowles agreed to a consent order, but Sterling continued to litigate and ultimately prevailed with respect to some of the allegations. The Commission dismissed those portions of the *Sterling* complaint and then vacated the *Benton & Bowles* consent order because it had derived from the portions of the *Benton & Bowles* complaint that were the same as the portions dismissed in *Sterling*.

This part of the company's request for modification would effect the following changes in the order:

Part IC: Deletion of bans on certain claims concerning efficacy based on the newness of drug or newness of mechanical principles, leaving in effect ban on claims concerning efficacy based on new scientific principles, adding the limiting description "over-the-counter" to modify "drug" and revising the existing geographic limitation to conform to the *Thompson* language: *i.e.*, "available for

purchase in the United States" rather than "nationally available for purchase;"

Parts IIC and D: Deletion of bans on certain claims concerning side effects;

Part IF: Deletion of ban on claims made without substantiation concerning the mode of action by which a drug treats a condition;

Parts IIA and B: Deletion of coverage in provision banning deceptive effectiveness claims of claims relating to a drug's ability to treat or relieve "any other disease or condition" in addition to "symptoms of any musculoskeletal disorder;

Parts IB and D: Deletion of redundant prohibitions concerning misrepresentations as to the presence of an ingredient and substitution of the combined provision in Part ID of the *Thompson* order; and

Part VII: Substituting the *Thompson* requirement for filing compliance reports within 60 days of service "and at such other times as the Commission may require" for the present requirement that they be filed within 60 days after the order becomes final and "annually thereafter for three years."

As in the Commission's decision vacating the *Benton & Bowles* order, the dismissal of certain allegations in the *Thompson* complaint is a change of law that requires modifying those parts of the order that relate to the complaint allegations that were dismissed. The Commission agrees, therefore, that the changes described above relating to Parts IC and IIC and D are appropriate.

The remaining modifications described above do not relate to complaint allegations that were dismissed, but rather, to allegations that resulted in less rigorous order provisions in the *Thompson* decree than those agreed to by Ogilvy. Although these modifications do not stem from dismissed complaint allegations, Ogilvy appears to argue that *Benton & Bowles* is controlling precedent. It also argues that "as a matter of fundamental fairness Ogilvy should not be punished more severely than the advertiser." Request for Modification at 20. We do not adopt either of these proffered justifications for the requested changes.

The Commission's action in *Benton & Bowles* does not compel us to conform the orders of advertising agencies and their advertisers except in the narrow circumstances in which the complaint allegations against the advertiser were replicated in the complaint against the agency, where the allegations in the advertiser's complaint were dismissed, and where the record showed no basis for imposing disparate relief on the two parties. We therefore decline to grant these modifications on the basis of that decision.

We also do not subscribe to the notion that "fundamental fairness" necessarily compels the Commission, as a general matter, to conform its orders against advertisers and their advertising agencies. Each respondent stands on its own, and the Commission may decide that it is appropriate to impose more stringent order provisions for either the advertiser or its agency. The only restriction is that the relief against any party must be reasonably related to the unlawful conduct found. *Jacob Siegel Co.* v. *FTC*, 327 U.S. 608, 611–13 (1946); *see also FTC* v. *National Lead Co.*, 352 U.S. 419, 428–31 (1957); *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952).

Paragraph 8 of Ogilvy's consent agreement specifies two portions of its consent order that were to be modified to conform to any more lenient language that subsequently might be made applicable to Thompson. The company has not shown why, at this time, the Commission should ignore the expressly limited language in Paragraph 8 and modify other provisions in the order absent a demonstration that the modifications are justified on grounds of changed fact or law or the public interest. As explained elsewhere in this order, the Commission has concluded that Ogilvy has not shown that the current order is causing it any harm that is different from or more severe than it reasonably could have anticipated when it signed the consent agreement. Therefore, we have decided to deny the company's request for these changes.

Finally, Ogilvy requests modification of the preamble to Part I of the order—language not covered by Paragraph 8 of the consent agrement—to limit the scope of its coverage even more narrowly than the scope of the order against *Thompson*. The *Ogilvy* order applies to all "drugs." The *Thompson* order applies to all "OTC drugs." Ogilvy seeks to have this language modified to cover only "OTC topically applied analgesic drugs." It argues that this request is warranted because the coverage of the orders against two of the three advertising agencies in the Commission's recent "analgesics" cases [1] and the coverage of the order against Sterling Drug, one of the advertisers, were limited to "internal analgesic drugs." [2]

The Commission's decision to limit the orders in the "analgesics" cases relied on by Ogilvy is not a change of fact or law that would require modification of the scope of the *Ogilvy* order. The order against American Home Products Corp. and its advertising agency, C.T. Clyne, which covered a more narrow range of products, was issued in September, 1981, well before the *Ogilvy* consent order. The mere fact that the Commission issues different orders in cases against different companies at different times does not justify conforming earlier orders to those issued later. The Commission decides each matter on its own merits and structures the relief mandated to fit the circumstances.

The Commission determines the product coverage in a particular order based on a number of considerations related to the facts of each specific case such as the extent of the respondent's unlawful conduct, whether the respondent knew or should have known that its conduct was improper or unlawful and the perceived need for fencing-in relief. Here, Ogilvy consented to its order, including the present product coverage, at a time when it should have known that the product coverage in that order was broader than that contained in *American Home Products*. Some months after issuance of Ogilvy's consent order, the Commission issued its orders against Bristol-Myers, Sterling Drug and certain of their advertising agencies.

The scope of product coverage is always an important question in Commission orders that prohibit deceptive advertising. The fact that the Commission chose to impose broader orders on some and more narrow orders on others indicates that the Commission decided it was appropriate to treat the companies differently. Ogilvy has presented nothing to suggest that we should go behind that determination.

The mere fact that several of those orders, like the order against American Home Products and C.T. Clyne, included more limited product coverage than that in the *Ogilvy* and *Thompson* decrees is not a change of law or fact sufficient under section 5 to require reopening of Ogilvy's consent and conforming it to the more favorable "analgesics" orders. This is particularly true in light of the different product coverage provisions in the "analgesics" cases themselves. As already noted, the product coverage in the order against Dancer in the *Sterling Drug* case is the same as that in *Thompson*, although the orders against Sterling Drug itself, and Ted Bates and

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[1] American Home Products Corp., 98 F.T.C. 136 (1981); Bristol-Myers Co., 102 F.T.C. 21 (1983); Sterling Drug, Inc., 102 F.T.C. 395 (1983).

[2] Although the order against Sterling is limited to "internal analgesic drugs," the order against its advertising agency, Dancer-Fitzgerald-Sample ("Dancer"), contains the same "all OTC drug" coverage as the order in *Thompson*. 98 F.T.C. 1 (1980). The Commission dismissed the Administrative Law Judge's order against a second advertising agency in *Sterling Drug*. 102 F.T.C. at 791.

Young & Rubicam in *Bristol-Myers*, for example, are not. *See* note 2, *supra*.

Ogilvy also has submitted the affidavit of its Chairman in support of this portion of the company's request for modification. That affidavit states that "[a]s a result of its much broader order, Ogilvy's ability to compete against those agencies has been threatened." Aff. at ¶ 7. It also states that "[a] number of Ogilvy's clients have expressed concern over the breadth of Ogilvy's order" (*Id.* at ¶ 8), and that its clients "are concerned that the breadth of Ogilvy's order will chill Ogilvy's creative efforts with respect to all drug products as Ogilvy seeks to avoid even the possibility of a civil penalty." *Id.* at ¶ 9. These statements are conclusory and self-serving. They do not demonstrate that the current order has imposed on Ogilvy significant harm that could not reasonably have been anticipated at the time the company agreed to its terms, and they offer no information relating to actual, as opposed to speculative, competitive injury. Such information would have had a bearing on the possible public interest in granting the modification.

Under the FTC Act and the Commission's rules, a Commission order need not be altered unless the respondent demonstrates a change of law or fact requiring the modification or the Commission decides that the public interest warrants the changes sought. Ogilvy has failed to carry its burden in this respect, and the Commission, therefore, declines to grant this portion of Ogilvy's request. Similarly, we decline to grant Ogilvy's request that the product scope of Ogilvy's order be modified "at a minimum" to read "OTC drugs" as to Part I and "OTC topical analgesic drugs" as to Part II.

For the reasons above, the Commission has decided that some of the modifications proposed by Ogilvy are appropriate Accordingly,

It is ordered that this proceeding be, and it hereby is, reopened and that the order therein against Ogilvy & Mather International, Inc., be modified to read as follows:

Order

Part I

It is ordered that respondent Ogilvy & Mather International, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, offering for sale, sale or distribution of any over-the-counter "drug," as that term is defined in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Employing the brand name "Aspercreme" for any such product or otherwise representing, directly or by implication, that an active ingredient of any such product is aspirin, unless such product contains aspirin in therapeutically significant quantities; *provided, however,* that the brand name "Aspercreme" may be used for such product if its advertising and labeling clearly and prominently disclose that the product does not contain aspirin.

(1) In television advertisements, an explicit and simple aspirin disclaimer statement (such as "ASPIRIN FREE") shall be superimposed on the television screen simultaneously with a vocal aspirin disclaimer statement (such as "Aspercreme does not contain aspirin") at the end of each advertisement;

(2) In radio advertisements, an explicit aspirin disclaimer statement (such as "Aspercreme does not contain aspirin") shall be made at the end of each advertisement;

(3) In print advertisements, an explicit aspirin disclaimer statement (such as "ASPERCREME DOES NOT CONTAIN ASPIRIN") shall be displayed prominently and conspicuously in relation to each such advertisement as a whole;

(4) In labeling, an explicit aspirin disclaimer statement (such as "DOES NOT CONTAIN ASPIRIN") shall be prominently and conspicuously printed in the front package panel (or in the front of the container if no package is used).

B. Representing, directly or by implication, that any such drug involves a new scientific principle, when such drug or one involving such principle has been available for purchase as an over-the-counter drug in the United States for more than one year.

Part II

It is further ordered, that respondent Ogilvy & Mather International Inc., its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any "drug," as the term is defined in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

A. Employing any trade name for any such drug which represents, directly or by implication, that such drug contains an active ingredient which it in fact does not.

B. Representing, directly or by implication, that any such drug has an ingredient when in fact it does not have that ingredient.

C. Misrepresenting the contents, validity, results, conclusions or interpretations of any test or study.

D. Representing, directly or by implication, the mode of action by which any such drug treats, mitigates, or cures any symptom, disease, or condition unless respondent possesses and relies upon a reasonable basis substantiating the representation.

Part III

It is further ordered, that respondent Ogilvy & Mather International, Inc., its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any topically applied drug, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. Representing, directly or by implication, that any such topically applied drug is effective for the treatment or relief of the symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorders), or any other disease or condition;

B. Representing, directly or by implication, that any such topically applied drug is as fast or faster, or is as effective or more effective, than aspirin in the treatment or relief of the symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorder), or any other disease or condition;

unless at the time of the dissemination of any such representation respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific or medical evidence substantiating that representation. For the purposes of this Order, competent and reliable scientific or medical evidence shall include at least two well-controlled, double blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons, independently of each other. Such persons shall be qualified by training and experience to conduct such studies. *Provided, however,* with respect to any representation covered by this Part, if the Food & Drug Administration promulgates any final standard which

establishes conditions under which such product is safe and effective, then in lieu of the above, respondent may possess and rely upon scientific evidence which fully conforms to such final standards as a reasonable basis for said respresentation. *Provided, further,* however, where the evidence relied upon by respondent was not directly or indirectly conducted or controlled by respondent, it shall be an affirmative defense to an alleged violation of this Part for respondent to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that a reasonable basis exists which meets the requirements of this Part. Such expert judgment shall be in writing signed by a person qualified by education or experience to render the opinion. The written opinion shall describe the contents of the evidence upon which the opinion is based and shall set forth the qualifications of the person to render the opinion.

Part IV

It is further ordered that respondent Ogilvy & Mather International Inc., its successors and assigns, and its officers, representatives, agents and employees, for a period of three years after respondent last disseminates the advertisements for products covered by this Order, shall retain all test results, data, and other documents or information on which it relied for its representations or any documentation which contradicts, qualifies or calls into serious question any claim included in such advertisements which were in its possession during either their creation or dissemination. Such records may be inspected by the staff of the Commission upon reasonable notice.

Part V

It is further ordered that respondent notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate Respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the Order.

Part VI

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions, and to each of its officers who are engaged in the preparation and placement of advertisements for products covered by this order

Part VII

It is further ordered that the provisions of this Order shall not apply to Scali, McCabe, Sloves, Inc.; Cole & Weber, Inc.; and Rogers, Weiss/Cole & Weber Advertising, three subsidiary corporations wholly owned by respondent, unless a product otherwise covered by this Order is assigned or transferred from respondent to one of those corporations. However, respondent shall distribute a copy of this Order to the officers of the aforementioned corporations.

Part VIII

It is further ordered that the respondent shall, within sixty (60) days after this Order becomes final and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by a responsible officer for respondent, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission.

Benjamin I. Berman,

Acting Secretary.

Statement of Chairman Daniel Oliver Concurring in Part and Dissenting in Part In the Matter of Ogilvy & Mather International, Inc., D. 9149 Petition to Reopen and Modify Consent Order

I concur in the Commission's decision to modify the Ogilvy order in accordance with Paragraph 8 of the consent agreement. I also concur in the decision to delete the portions of the order that were derived from complaint allegations later dismissed in the Thompson proceeding. I would go further, however, and grant some of Ogilvy's order requests.

Before turning to those portions of the Commission's order from which I dissent, I offer a few comments on Ogilvy's request to narrow the product coverage of Part I of the order to "any OTC topically applied analgesic drug." I find this to be a closer question than the other Commissioners find it. Ogilvy contends that its conduct was no worse than that of the ad agencies involved in the *American Home Products* and *Bristol-Myers* cases, and that the product coverage of its order should therefore be no broader than the product coverage of the order against those agencies (i.e., coverage should be limited to products of the same pharmacological class and mode of application).

I agree, and Ogilvy does not dispute, that a broader order is appropriate if Ogilvy was more culpable than the other ad agencies. I have reviewed the documents upon which the Commission relied in concluding that Thompson Medical Company, Ogilvy's client, intended to make a false "contains aspirin" claim for Aspercreme. *See* 104 F.T.C. at 836. In my view, Ogilvy's contention that there is a less sinister interpretation of the documents has some merit—enough, at least, to raise a question whether Ogilvy really acted more egregiously than its competitors.

Nevertheless, I agree with the decision not to grant Ogilvy's request. Since the issue of Ogilvy's culpability was not litigated, I cannot be certain whether Ogilvy's interpretation of the documents would have been refuted or what other evidence the parties would have presented. In addition, my review of the documents leaves me uneasy about the Commission's ability to make such a difficult factual determination on the basis of the information normally before us in an order modification proceeding.[1] Under the circumstances, I conclude that Ogilvy should not be given the benefit of a litigation victory it chose not to pursue.

I dissent from the Commission's decision not to conform Ogilvy's order to the Thompson decree except to the extent expressly required by Paragraph 8 of the consent agreement. I would allow the other changes requested by Ogilvy to conform its order to Thompson's. Ogilvy argues that denying its request for other modifications will discourage settlements since ad agencies will perceive that they can obtain a less restrictive order by litigating. I an not persuaded by this argument.[2] I am persuaded, however, that there is no basis in the record for treating Ogilvy more harshly than Thompson. The two respondents were named in a single complaint on the basis of a single set of facts. I fail to see how the public interest is served by maintaining tighter restrictions on one respondent than the other absent some factual distinction justifying disparate treatment.

I also dissent from the decision not to exempt the two additional advertising subsidiaries from the Ogilvy order.

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[1] The best course of action in this case might have been to reopen the proceeding for an evidentiary hearing to compare the conduct of Ogilvy with that of its competitors.

[2] Although in the instance the litigated order turned out to be less restrictive than the consent order, that fact became apparent only in hindsight. At the point Ogilvy was considering whether to sign the consent order, Ogilvy did not know whether the litigated order would be more restrictive or less restrictive than the consent order. Future respondents will be faced with the same uncertainty, and thus will have just as much incentive as ever to settle the Commission's charges.

Ogilvy argues, I believe correctly, that it was understood that subsidiaries would be exempted if it were shown on a case-by-case basis that the subsidiary, by virtue of its management agreement with Ogilvy, would operate independently of Ogilvy. Given this understanding, it is unreasonable to expect Ogilvy to have felt the need to seek more explicit language in the order.[3] Clearly, memorializing the understanding would have been the better course, and I would expect such understandings to be committed to writing in future orders. But in this instance, I do not think it is appropriate for the Commission to ignore the intent that guided the negotiation of the order.

The factual determination of whether the new subsidiaries qualify for exemption is a simple one. In my view, Ogilvy has presented sufficient evidence to establish that Rolf Werner Rosenthal and Euramerica, Inc. operate independently of Ogilvy. If these corporations had been advertising subsidiaries of Ogilvy at the time the order was signed, Ogilvy likely would have sought, and the Commission likely would have agreed, to treat them the same as the three subsidiaries specifically exempted in Part VI of the order. The acquisition of RWR and the conversion of Euramerica to advertising after the order was signed are changes of fact that, in my view, justify modification of the order.[4] Although the emergence of additional subsidiaries was foreseeable at the time the order was signed, Ogilvy, as noted above, had reason to believe that future subsidiaries would be considered for exemption.

[FR Doc. 88-18699 Filed 8-17-88; 8:45 am]
BILLING CODE 6750-01-M

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16 CFR Part 300, 301 and 303

Reporting and Recordkeeping Requirements for Wool Products, Fur Products and Textile Fiber Products

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission issues amendments to reduce the burden of complying with the labeling requirements of the Rules and Regulations Under the Wool Products Labeling Act of 1939, the Rules and Regulations Under the Fur Products Labeling Act and the Rules and Regulations Under the Textile Fiber Products Identification Act. Under the amendments, the recordkeeping provisions in each of the three regulations are simplified and streamlined, and the Textile Act and Wool Act regulations are clarified to ensure that affected industry members understand that required disclosures may be combined on a single label.

EFFECTIVE DATE: The amendments to these three regulations take effect on September 19, 1988.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326-3035.

SUPPLEMENTARY INFORMATION:

Background

The Wool Products Labeling Act of 1939, 15 U.S.C. 68(d), requires that all wool products bear a label showing the percentage of wool, recycled wool and non-wool fibers contained in the product and the name of the manufacturer or the distributor. The Textile Fiber Products Identification Act, 15 U.S.C 70(e), requires that each household textile product bear a label showing the percentage of each fiber contained in the product, using the appropriate generic name for the fiber, and the identity of the manufacturer or distributor. Advertisements for textile products must also show the required information if any mention of fiber content is made. Both acts require disclosure of country of origin. The Fur Products Labeling Act, 15 U.S.C. 69(f), requires the labeling, invoicing and advertising of furs and fur products to show the true name of the animal that produced the fur, whether the fur is used, dyed or imported, and the identity of the manufacturer or distributor. The three acts, as well as the Commission's rules implementing them, apply to manufacturers, distributors and retailers of textile, wool and fur products.

Paperwork Reduction Act of 1980

The Commission has estimated that the labeling and recordkeeping requirements contained in the rules implementing the Textile Fiber Products Identification Act, the Wool Products Labeling Act of 1939, and the Fur Products Labeling Act entail, in the aggregate, more than 20 million hours of paperwork burden, which is approximately fifty percent of the paperwork burden for all the rules issued by the Commission. As called for by the Paperwork Reduction Act, 44 U.S.C. 3501-3520 ("PRA"), the Commission has reviewed its activities that come within the definitions of "information collection" contained in 5 CFR 1320.7, the rules implementing the PRA. As a result, the Commission has modified several rules to accomplish their statutory or regulatory objectives at a reduced paperwork burden, which is the objective of the amendments set forth in this Notice.

The current burden estimates for the recordkeeping and labeling requirements of the three rules are based on the Commission's original submissions of the Office of Management and Budget ("OMB"), which were made in 1983 in accordance with the PRA provisions and the rules implementing them. Based on research and informal contacts with industry representatives, the Commission increased the estimates for the Textile and Wool Rules by slightly more than 16% cumulatively to reflect increases in the markets affected by the rules. The estimates for the Fur Rules were not adjusted because, according to industry representatives and market statistics, the fur market has not increased substantially since 1983.

The adjusted estimates for the combined recordkeeping and labeling burden are as follows:

Regulation	Adjusted burden hours
Textile Rules	[1] 18,600,000
Wool Rules	[2] 2,960,000
Fur Rules	[3] 138,000

[1] Recordkeeping burden = 1,500,000 hours; Labeling burden = 17,100,000 hours.
[2] Recordkeeping burden = 215,000 hours; Labeling burden = 2,745,000 hours.
[3] Recordkeeping burden = 38,000 hours; Labeling burden = 100,000 hours.

Because the amendments would modify these existing information collection requirements, the Office of the General Counsel submitted Standard Form 83 and Supporting Statement to OMB for review under the Paperwork Reduction Act and the rules implementing it. On April 25, 1988, OMB approved the Commission's request for clearance of the proposed changes and re-issued the following control numbers for the Commission's use through April 25, 1991: 3084-0053 (Wool Rules), 3084-0064 (Fur Rules) and 3084-0052 (Textile Rules).

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[3] Moreover, here there was a conscious decision *not* to include a generalized exemption in order to avoid creating a loophole by which Ogilvy could circumvent the order.

[4] Granting this modification would not enable Ogilvy to circumvent the order by steering clients to RWR and Euramerica. Part VI of the order provides that the exemption does not apply if a product otherwise covered by the order is (1) transferred by Ogilvy to an exempted subsidiary, or (2) assigned by Ogilvy to an exempted subsidiary.

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The Proposal To Review the Information Collection Requirements

On February 29, 1988, [4] the Commission published a **Federal Register** Notice that reviewed the information collection requirements contained in the above-mentioned rules. The Notice included proposed amendments to simplify and streamline the recordkeeping provisions in each of the three regulations, and to ensure that industry members affected by the Textile and Wool regulations understand that the required disclosures may be combined on any label on the garment, including the Commission's care label, as long as the location and conspicuousness requirements of the regulations are met. The Notice also sought comment on other ways to reduce the paperwork burden of the members of these industries. Four comments, which were generally favorable and supportive, were received in response to this Notice.

Comments on the Proposed Amendments

The February 29 Notice solicited comment on both the substantive and information collection aspects of the proposed changes and directed the public to send substantive comments to the Commission and paperwork comments to OMB. The amendments were intended to reduce the paperwork burden of the regulations in two ways: (1) By simplifying recordkeeping requirements; and (2) by eliminating unnecessary labels. The comments received by the Commission primarily addressed the substantive aspects of the proposals without detailed comment on the paperwork aspects.

Each proposal, the comments received that related to it, and the resulting recommended amendment are discussed separately below.[5]

1. Reducing Recordkeeping Requirements

The review of these rules for ways to reduce paperwork burden focused primarily on recordkeeping because the content of the required information disclosures is tightly tied to the requirements of the statutes and cannot be altered by the Commission. For example, the labels required by the Wool Act and Textile Act must show fiber content, name (or registered identification number) of the manufacturer or distributor, and country of origin.[6] The Commission's review indicates that each of the recordkeeping requirements contains a very specific list of categories of records that must be retained, which requires more (or more detailed) information than is necessary to demonstrate compliance with the statutes and rules. The Notices announcing the original adoption of these requirements, which were published during the period spanning the 1940's and 1950's, do not give reasons for this approach, but detailed "command and control" regulations were generally thought to be appropriate during that period. The amendments delete unnecessary specificity in the rules' enumeration of required records, and substitute a clearer performance requirements.

The record indicates that, under this simplification, records kept in the normal course of business will be sufficient to demonstrate compliance.[7] Three comments, NAHM,[8] NKMA [9] and NTA, noted that the result of the amendments would be that "a substantial amount of otherwise unnecessary recordkeeping will be eliminated for domestic manufacturers." [10] When compliance can be demonstrated by records kept in the normal course of business, the recordkeeping burden estimates are reduced. The reduction occurs because § 1320.7(b)(1) of the regulations implementing the Paperwork Reduction Act [11] excludes from burden estimates the time and effort "that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records)." Under the amendments announced today, industry members must keep records that show that the information required by the statutes and regulations has accurately been provided, and that permit tracing finished covered products back to the raw material supplier. This simplification of the recordkeeping does not affect our ability to bring enforcement actions.[12]

2. Eliminating Unnecessary Labels

The second amendment concerns the labels on garments regulated by the Textile and Wool Labeling Acts. The Textile and Wool Acts require certain disclosures and the rules for these Acts implement statutory specifications for placement or conspicuousness of the disclosures (e.g., Rule 15, Textile Rules, Rule 5, Wool Rules). For example, required, information must, by statute, be disclosed on a label located in the center of the neck of garments with necks. In addition to labels containing Textile and Wool Act information, garments must also have care labels,[13] and may contain other labels, such as brand name labels and labels describing product features.

The Rules do not prohibit combining required information on a single label (for example, Textile Act information with Care Labeling Rule information). However, while allowing additional information on the label, the Rules were written to ensure that required information would not be obscured. In achieving that end, the language of the Rules may unintentionally deter businesses from efficiently combining information on one label. For example, Textile Rule 16(c) states that if non-required information (i.e. information not required by the Textile Act) "* * * is placed on the label or elsewhere on the product, such non-required information shall be set forth separate and apart from the required information and shall not interfere with, minimize, detract from, or conflict with such required information * * *." Consequently, the original burden for the Rules was calculated on the basis that a separate label would be used to

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[4] 53 FR 6068.

[5] The comments are each filed on the public record on both of two rulemaking dockets—Docket No. 204, pertaining to the Rules and Regulations Under both the Wool Products Labeling Act of 1939 and the Fur Products Labeling Act, and Docket No. 208, pertaining to the Rules and Regulations Under the Textile Fiber Products Identification Act. They are filed chronologically in a separate category pertaining to this rulemaking under the Paperwork Reduction Act—204–20–1 through 4 for the Wool and the Fur Rules, and 208–23–1 through 4 for the Textile Rules. For simplicity's sake, this discussion refers to them as they are listed under the Textile Rules, as, for example, "AAMA, 208–23–2".

[6] Two comments touched on industry support for the statutory requirements underlying the labeling and recordkeeping provisions of the Rules. NAHM noted that compliance is "a priority concern" in the hosiery industry (208–23–1). NTA, whose members are concerned primarily with the Wool Act, lent its support to the proposed amendments as long as "neither would substantively change the requirements for manufacturers, importers and retailers of wool products to conspicuously and accurately label the fiber content of their products and keep appropriate documentation thereof." (208–23–4).

[7] The Commission's staff has informally received information from industry representatives, in addition to the comments formally submitted on the record, to the effect that apparel manufacturers often keep "fabric libraries" in the normal course of business that contain samples of fabrics used and information relating to them, such as fiber content, source, country of origin, price and other information.

[8] 208–23–1.

[9] 208–23–3.

[10] 208–23–4.

[11] 5 CFR 1320.7(b)(1) (1988).

[12] NTA contended that the recordkeeping amendments will not diminish the Wool Act's consumer protection effectiveness, "* * * nor will the amendments apparently lessen the Federal Trade Commission's enforcement ability." (208–23–4).

[13] Care Labeling of Textile Wearing Apparel and Certain Piece Goods, 16 CFR Part 423 (1988).

comply with the requirements of each of the labeling acts.

The amendments are to Rule 10 of the Wool Rules and Rule 16 of the Textile Rules (16 CFR 300.10 and 303.16) to clarify that combining information required by the Rules with other information on a single label is permitted so long as the location and conspicuousness requirements of the required information are satisfied and the combination of information is not misleading.[14] For example, the name, fiber content and country of origin information required by the Wool and Textile Acts could be combined with Care Labeling information on a single label placed in the neck of a jacket or shirt or in a conspicuous location on a skirt or a pair of trousers.

The only specific comment on whether, and to what extent, industry members are presently combining information on labels came from NKMA, who noted that they believed a large number of their members are combining information on labels as permitted by the current rules. However, NKMA noted that the added flexibility resulting from the clarification of the labeling requirements could benefit their members "in certain instances." [15] The other commenters generally believed that the package of amendments would reduce their paperwork burden. Further, other industry members, not just those in NKMA, may take advantage of label combining as a result of the clarification. Consequently, the Commission is adopting the clarifying amendments.

There is no similar amendment to the Fur Rules. Because the Care Labeling Rule does not apply to fur products, significant burden reduction through combining labels (i.e., required labels with brand labels) may be less likely. The February 29 Notice included a question on whether an amendment to the Fur Rules clarifying that required information could be combined onto other labels would reduce the labeling burden. Because the Fur Rules (unlike the Textile and Wool Rules) specify a minimum size (1¾ inches by 2¾ inches) for the label (Rule 27) and minimum type size for the disclosures (Rule 29), the Notice also included a question on whether replacing the label and type size specifications in Fur Rules 27 and 29 with a general conspicuousness standard would be desirable, and whether this would (and to what extent) reduce the paperwork burden. Because the Commission received no comment in response to these questions, it is making no changes to the Fur Rules in this area.

[14] The revisions to the Rules are printed in the "Amendments" section of the Notice. The Rules have virtually identical requirements and provisos for conspicuousness and the arrangement of information. However, the requirements appear in different subsections of each of the Rules, not all of which are printed in the "Amendments" section. Consequently, although the requirements, as viewed in the "Amendments" section, may not seem the same, that is only because other portions of the Rules are not reprinted there.

[15] 206-23-3.

Other Issues

In addition to setting out the proposed amendments to the recordkeeping and labeling requirements of the three rules, the February 29 Notice solicited comment on the following:

First, under Rule 39 of the Fur Rules, certain fur trim products that cost twenty dollars or less to the manufacturer who incorporates them into fur products are exempted from disclosure requirements. The Notice solicited comment on whether the twenty-dollar figure should be increased to account for inflation. Since no comment was received, the Commission is not changing the twenty-dollar figure.

Second, the Commission proposed to clarify the Fur Rules by moving material relating to the detection of dyestuffs from the end of Rule 41, which concerns the maintenance of records, to the end of Rule 19, which relates to the disclosure of dyes in fur products. Since this amendment will put all the information regarding dyes in one place, and will not affect the substance of the Rules, the Commission is adopting it, even though no comments on it were received.

Reduction in Paperwork Burden Hours

In the Supporting Statement that the Commission authorized the General Counsel's Office to submit to OMB to obtain clearance for the proposed amendments, there were estimates of the amount of burden hour reductions each proposed amendment would effect, if enacted. OMB has accepted these estimates, based on the assumption that the amendments will be enacted in substantially the form in which they were proposed, and has adjusted its calculation of the Commission's Information Collection Budget accordingly. Although three comments generally stated that the amendments would be helpful [16] and one stated they would probably not change the existing burden,[17] no comments provided specific data on the numbers of hours that are associated with these requirements or on the number of hours of burden reduction that could result from enactment of the proposed amendments. Consequently, the Commission is proceeding on the basis of the estimates that OMB has accepted. The rationale for the specific burden reduction calculations can be found in Section 13 of the Supporting Statement sent to OMB, which is available during business hours in the Commission's Public Reference Room at the Federal Trade Commission's main offices in Washington, DC.

The approximately 3.5 million hours worth of burden reductions by which OMB has reduced the Commission's Information Collection Budget are summarized as follows:

	Burden hour reductions
Recordkeeping:	
Textile Rules	1,350,000
Wool Rules	190,000
Fur Rules	30,000
Labeling:	
Textile Rules	1,710,000
Wool Rules	274,000

[16] NAHM, 206-23-1; AAMA, 206-23-2; NTA, 206-23-4.

[17] NKMA, 206-23-3.

Regulatory Flexibility Act

The Notice announcing the proposed amendments did not contain a regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 603-604). This analysis was not required because the Commission believed that the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission reached this conclusion because the amendments, if enacted, will impose no additional cost on small entities and will have the same effect on all business entities within the affected industries, regardless of their size. The reduced burden, with respect to both recordkeeping and labeling practices, will potentially benefit small, medium and large entities within the textile, wool and fur industries.

The February 29 Notice, however, discussed the applicability of the Regulatory Flexibility Act to the proposed amendments and requested any information that would bear on whether the proposed amendments would have a significant economic impact on a substantial number of small entities. On the basis of the above analysis and the single comment received,[18] which was to the effect that the amendments "would not appear to have" a significant economic impact on small entities, the Commission believes that the preparation of a final regulatory flexibility analysis is not warranted.

[18] NKMA, 206-23-3.

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In light of the above, the Commission certifies, under section 5 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic effect on a substantial number of small entities.

List of Subjects

16 CFR Part 300

Labeling, Textile, Trade practices, Wool.

16 CFR Part 301,

Fur, Labeling, Trade practices.

16 CFR Part 303

Labeling, Textile, Trade practices.

Amendments

For the reasons set forth in the preamble, Title 16, Chapters 300, 301 and 303 of the Code of Federal Regulations is amended as follows:

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

The authority citation for Part 300 continues to read as follows:

Authority: 15 U.S.C. 68 *et seq.* and 15 U.S.C. 70 *et seq.*)

The Commission is amending Part 300 of Title 16 of the Code of Federal Regulations by revising § 300.10(a) and 300.31 to read as follows:

§ 300.10 Arrangement of label information.

(a) The required information may appear on any label attached to the product, provided all the pertinent requirements of the Act and Regulations are met and so long as the combination of required information and non-required information is not misleading. All parts of the information required to be displayed in the label of the product shall be set forth in immediate conjunction with each other, and in type or lettering plainly legible and conspicuous, and all parts of the required fiber content information shall appear in type or lettering of equal size and conspicuousness; such as for example:

Distributed by:
John Q. Doe Co., Inc.,
New York, NY.
Made of
60% WOOL
40% RECYCLED WOOL
EXCLUSIVE OF ORNAMENTATION
Made in U.S.A.

Provided, however, that the required name or registered identification number may appear on the reverse side of the label if it is plainly legible, conspicuous and accessible, and *provided further,* that the required name or registered identification number may be conspicuously set out on a separate label which is prominently and conspicuously displayed in immediate conjunction with, or in close proximity to the label containing the other required information, in accordance with the requirements of § 300.21. Where only one end of a cloth label is sewn to the product in such a manner that both sides of the label are readily accessible to the prospective purchaser, the required fiber content information may appear on the reverse side of the label if the front side of such label clearly and conspicuously shows the wording *Fiber Content on Reverse Side.* On products as to which sectional disclosure is used, an additional non-deceptive label may be used showing the complete fiber content information with percentages as to a particular section or area of the product and specifying the section or area referred to.

* * * * *

§ 300.31 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a wool product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such wool products made by such manufacturer. Such records shall show:

(1) The fiber content of the product specified in section 4(a)(2)(A) of the Act.

(2) The maximum percentage of the total weight of the wool product of any non-fibrous loading, filling or adulterating matter as prescribed by section 4(a)(2)(B) of the Act.

(3) The name, or registered identification number issued by the Commission, of the manufacturer of the wool product or the name or registered identification number of one or more persons subject to section 3 of the Act with respect to such wool product.

(4) The name of the country where the wool product was processed or manufactured as prescribed by sections 300.25a and/or .25b.

(b) Any person substituting labels shall keep such records as will show the information on the label removed and the name or names of the person or persons from whom the wool product was received.

(c) The purpose of these records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product. The records shall be preserved for at least three years.

PART 301—RULES AND REGULATIONS UNDER THE FUR PRODUCTS LABELING ACT

The authority citation for Part 301 continues to read as follows:

Authority: 15 U.S.C. 69 *et seq.*

The Commission is amending Part 301 of Title 16 of the Code of Federal Regulations by revising § 301.19(l) and 301.41 to read as follows:

§ 301.19 Pointing, dyeing, bleaching or otherwise artificially coloring.

* * * * *

(l) Any person subject to this section who incorrectly marks or fails to mark fur pelts as provided in paragraphs (i) and (j) of this section shall be deemed to have misbranded such products under section 4(l) of the Act. Any person subject to this section who furnishes a false or misleading affidavit under paragraph (k) of this section or fails to give the notice required by paragraph (k) of this section shall be deemed to have neglected and refused to maintain the records required by section 8(d) of the Act.

(1) In connection with paragraph (h) of this section, the following method may be used for detection of parts per million of iron and copper in hairs from fur pelts including hairs from mink pelts. Procedure for detection of parts per million of iron and copper in hairs from fur pelts including mink hairs.

(2) A recommended method for preparation of samples would be:—Carefully pluck hair samples from 10 to 15 different representative sites on the pelt or garment. This can best be accomplished by using a long nose stainless steel pliers with a tip diameter of 1/16 inch. The pliers should be inserted at the same angle as the guard hairs with the tip opened to ¼ inch. After contact with the hide, the tip should be raised about ¼ inch, closed tightly and pulled quickly and firmly to remove the hair.

(3) Place an accurately weighed sample of approximately .1000 grams of mink hair into a beaker with 20 ml. concentrated nitric acid. Evaporate just to dryness on a hot plate.

(4) If there is any organic matter still present, add 10 ml. of concentrated nitric acid (see paragraph 7) and again evaporate just to dryness on a hot plate. This step should be repeated until the nitric acid solution becomes clear to light green. Add 10 ml. of 1% hydrochloric acid to the dried residue in

the beaker. Warm on a hot plate to insure complete solution of the residue.

(5) A recommended analytical procedure would be atomic absorption spectrophotometry. In testing for iron, the atomic absorption instrument must have the capability of a 2 angstrom band pass at the 2483 A line. When analyzing for iron the air-acetylene flame should be as lean as possible.

(6) A reagent blank should be carried through the entire procedure as outlined above and the final results corrected for the amounts of iron and copper found in the reagent blank.

(7) If facilities are available for handling perchloric acid, a preferred alternate to the additional nitric acid treatment would be to add 2 ml. of perchloric acid and 8 ml. of nitric acid, cover the beaker with a watch glass and allow the solutions to become clear to light green before removal of the watch glass and evaporation just to dryness.

§ 301.41 Maintenance of records.

(a) Pursuant to section 3(e) and section 8(d)(1), of the Act, each manufacturer or dealer in fur products or furs (including dressers, dyers, bleachers and processors), irrespective of whether any guaranty has been given or received, shall maintain records showing all of the required information relative to such fur products or furs in such manner as will readily identify each fur or fur product manufactured or handled. Such records shall show:

(1) That the fur product contains or is composed of natural, pointed, bleached, dyed, tip-dyed or otherwise artificially colored fur, when such is the fact;

(2) That the fur product contains used fur, when such is the fact;

(3) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

(5) The name of the country of origin of any imported furs used in the fur products;

(6) The name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture, import, sell, advertise, offer, transport or distribute the fur product in commerce.

(7) The item number assigned, or reassigned, to each fur or fur product as set out in § 301.40

(b) The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product. The records shall be preserved for at least three years.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

The authority citation for Part 303 continues to read as follows:

Authority: 15 U.S.C. 70 *(et seq.)*

The Commission is amending Part 303 of Title 16 of the Code of Federal Regulations by revising §§ 303.16(a) and 303.39(a) to read as follows:

§ 303.16 Arrangement and disclosure of information on labels.

(a) The information with respect to textile fiber products required to be shown and displayed upon the label shall be that which is required by the Act and Regulations. The required information may appear on any label attached to the textile fiber product, provided all the pertinent requirements of the Act and Regulations are met and so long as the combination of required information and non-required information is not misleading. The required information shall include the following:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of five per centum or more and any fibers disclosed in accordance with § 303.3(b) shall appear in order of predominance by weight with any percentage of fiber or fibers required to be designated as other fiber or other fibers appearing last.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured, as provided for in § 303.33.

* * * * *

§ 303.39 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a textile fiber product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such textile fiber products made by such manufacturer. Such records shall show:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of five per centum or more.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured as provided for in § 303.33.

The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product.

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-18696 Filed 8-17-88; 8:45 am]

BILLING CODE 6750-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revisions to Freedom of Information Act (FOIA) Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule redesignates the positions responsible for handling and determining initial requests and administrative appeals under the FOIA to reflect TVA organizational changes. This rule was not published in proposed form since it relates to agency organization, procedure, and practice. Since this rule is nonsubstantive, it is being made effective immediately.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Gilbert D. Francis, Jr., (615) 632-6000.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Acts.

For the reasons set forth in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for Part 1301 continues to read as follows:

Authority: 48 Stat. 58, as amended; 16 U.S.C. 831-831dd, unless otherwise noted.

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2. Section 1301.1 is amended by revising the first sentence of paragraph (b) introductory text, the second and third sentences of paragraph (c)(1)(i), the first sentence of paragraph (c)(1)(ii), the first and second sentences of paragraph (c)(2)(i), the third sentence of paragraph (c)(2)(ii), the second sentence of paragraph (c)(3)(i), the fourth sentence of paragraph (c)(3)(ii), and the third sentence of paragraph (e) as follows:

§ 1301.1 Records.

* * * * *

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the Manager, Public Affairs, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902–1499. * * *

* * * * *

(c) * * *

(1) * * *

(i) * * * Initial determinations shall be made by the Manager, Public Affairs or the Manager, Public Affairs' designee. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to the Vice President, Governmental and Public Affairs, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

(ii) For purposes of this paragraph, a request is deemed to be received by TVA only when it is physically delivered to Governmental and Public Affairs and meets all the requirements of paragraph (b) of this section. * * *

(2) * * *

(i) If the initial determination is to deny the request, the person making the request may appeal such action to the Vice President, Governmental and Public Affairs. Such an appeal must be taken within 30 days after the person's receipt of the initial determination and is taken by delivering a written notice of appeal to the Vice President, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902–1499. * * *

(ii) * * * Determinations of appeals under this section shall be made by the Vice President, Governmental and Public Affairs or the Vice President's designee. * * *

(3) * * *

(i) * * * Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the Manager, Public Affairs or the Manager, Public Affairs' designee.

(ii) * * * A decision to make an extension under this paragraph shall be made by the Vice President, Governmental and Public Affairs or the Vice President's designee.

* * * * *

(e) * * * A pricelist and order form for some of the most frequently asked for TVA publications and reports are contained in form TVA 3077, which may be obtained by writing the Manager, Public Affairs, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902–1499. * * *

Craven Crowell,

Vice President, Governmental and Public Affairs.

[FR Doc. 88–18686 Filed 8–17–88; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Cyanamid Co. providing for use of a chlortetracycline (CTC) Type A article in making free-choice cattle feeds. The free-choice cattle feed is used as an aid in the prevention of anaplasmosis.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, filed supplemental NADA 48–761 which provides for the safe and effective use of Aureomycin® Type A articles (chlortetracycline calcium complex equivalent to 10 to 100 grams per pound chlortetracycline hydrochloride) to manufacture free-choice feeds for beef and nonlactating dairy cattle such as feed blocks or salt-mineral mixes, to provide a minimum daily dose of 0.5 milligram (mg) CTC per pound of body weight for use as an aid in the prevention of anaplasmosis. The manufacture of specific free-choice formulations from Type A medicated articles must be approved under section 512(b) of the Federal Food, Drug, and Cosmetic Act (the act) and must be based on a demonstration of drug stability and consumption which is consistent with the effective dose; manufacture of individual free-choice feed formulations must be approved under an application pursuant to section 512(m) of the act. This supplemental NADA is approved and the regulations in 21 CFR 558.128 are amended accordingly. The basis for approval is discussed in the freedom of information (FOI) summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.128 is amended by revising paragraph (a), by redesignating paragraph (c)(4) as paragraph (c)(5), and by adding new paragraph (c)(4) to read as follows:

§ 558.128 Chlortetracycline.

(a) *Approvals.* Type A medicated articles: 10 to 100 grams per pound chlortetracycline to 010042 in § 510.600(c) of this chapter; 35 grams chlortetracycline with 7.7 percent (35 grams) sulfamethazine to 010042 in § 510.600(c) of this chapter.

* * * * *

(c) * * *

(4) It is used in free-choice cattle feeds such as feed blocks or salt-mineral mixes manufactured from approve Type A articles; such feeds are given to beef

cattle and nonlactating dairy cattle to provide a daily minimum intake of 0.5 milligram of chlortetracycline per pound of body weight to aid in the prevention of anaplasmosis; the use of these Type A articles to make specific free-choice feed formulations must be approved under section 512(b) of the act and be based on a demonstration of drug stability and consumption which is consistent with the effective dose; the specific free-choice feed formulations approved in this paragraph can be manufactured under section 512(m) of the act.

* * * * *

Dated: August 11, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation, Center of Veterinary Medicine.

[FR Doc. 88-18695 Filed 8-17-88; 8:45 am]

BILLING CODE 4160-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 201

[A.I.D. Regulation 1]

Miscellaneous Amendments

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: A.I.D. is amending its rules applicable to A.I.D.-financed commodity transactions to include information on OMB approval under the Paperwork Reduction Act, to specify that the Bahamas and Taiwan are ineligible source countries under A.I.D. Geographic Code 941, to revise eligibility requirements for incidental services and for air transportation under through bills of lading, to update the definition of U.S. flag air carrier and provide the correct citation for U.S. flag air carrier availability criteria, and to update office names.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Kathleen J. O'Hara, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523. Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The summary of A.I.D. Geographic Code 941 is amended to reflect the fact that Taiwan and the Bahamas are no longer eligible source countries under this code.

The $50,000 limitation on services incidental to a commodity procurement is removed; such services are now limited to 25 percent of the total purchase contract, regardless of actual dollar amount.

A change is being made in the transshipment provision for air transportation in § 201.13(b) to indicate that the total cost on a through bill of lading must be paid to an eligible carrier for initial *international* carriage on an eligible aircraft in order to be eligible for financing under the transshipment provision. A.I.D.'s current policy requires payment to an eligible carrier, but the language in Regulation 1 does not state so specifically. The requirement for initial international carriage is added to assure that the requirements of the Fly America Act are met.

Other changes being made are editorial only.

The Agency has determined that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule for purposes of Executive Order 12291 and has been submitted to OMB in accordance with the Executive Order.

The public reporting burden for this collection of information is estimated to average 30 minutes per response, except for the forms at Appendices A and D which are estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Procurement Planning, Policy and Evaluation Staff, A.I.D., Washington, DC 20523-1435, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 22 CFR Part 201

Commodity procurement, Foreign aid, Grant programs—foreign relations, Loan programs—foreign relations.

PART 201—RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY A.I.D.

1. The authority citation in Part 201 is revised to read as follows:

Authority: 22 U.S.C. 2381.

Subpart A—Definitions and Scope of This Part

2. A new § 201.03 is added to read as follows:

§ 201.03 OMB approval under the Paperwork Reduction Act.

The following information collection and recordkeeping requirements established by this Part 201 have been approved by OMB (OMB Control No. 0412-0514 expiring April 30, 1991 except where noted):

Section
201.13(b)(1)
201.13(b)(2)
201.15(c)
201.31(g)
201.32(c)
201.32(d)
201.33
201.52(a)
201.74
Appendix A (OMB No. 0412-0012, expiration 11/30/88).
Appendix D (OMB No. 0412-0004, expiration 5/31/91).

The information requested will be used to verify compliance with statutory and regulatory requirements and to assist in administration of A.I.D.-financed commodity programs. The submission of the information is required in order to receive payment for commodities or commodity-related services. The public reporting burden for this collection of information is estimated to average 30 minutes per response, except for the forms at Appendices A and D which are estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Procurement Planning, Policy and Evaluation Staff, A.I.D., Washington, DC 20523-1435, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Subpart B—Conditions Governing the Eligibility of Procurement Transactions for A.I.D. Financing

§ 201.11 [Amended]

3. In § 201.11 paragraph (b)(4), the summary of A.I.D. Geographic Code 941 is amended by inserting "Bahamas" between "Austria" and "Bahrain" and by inserting "Taiwan (Republic of China)" between "Switzerland" and "United Arab Emirates" in the list of countries not included in Code 941.

4. Section 201.12 is revised to read as follows:

§ 201.12 Eligibility of incidental services.

Incidental services may be financed under the same implementing document which makes funds available for the procurement of equipment only if:

(a) Such services are specified in the purchase contract relating to the equipment;

(b) The price satisfies the requirements of § 201.68; and

(c) The portion of the total purchase contract price attributable to such services does not exceed 25 percent.

5. In § 201.13, paragraph (b)(1)(ii) is revised to read as follows:

§ 201.13 Eligibility of delivery services.

* * * * *

(b) * * *

(1) * * *

(ii) When an eligible flag vessel is not available for shipment, a supplier may request a waiver of the eligibility requirements prior to shipment from the Office of Procurement, Transportation Division, A.I.D., Washington, DC 20523, telephone (703) 875–1300.

* * * * *

6. Section 201.13 paragraph (b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2) *International air transportation costs.* (i) A.I.D. will finance only those international air transportation costs which meet the requirements of this paragraph (b)(2). For the purposes of this paragraph, the term "U.S. flag air carrier" means one of a class of air carriers holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) authorizing operations between the U.S. or its territories and one or more foreign countries.

(ii)(*a*) Under all A.I.D. grants and under A.I.D. loans when the authorized source for procurement is Geographic Code 000, A.I.D. will finance only those costs incurred on U.S. flag air carriers unless such service is not available.

(*b*) Under A.I.D. loans when the authorized source for procurement is Geographic Code 941, A.I.D. will finance only those cost incurred on U.S., cooperating country, or Geographic Code 941 flag air carriers unless such service is not available.

(*c*) A.I.D. will finance international air transportation costs incurred on aircraft under flag registry of any free world country if the costs are part of the total cost on a through bill of lading paid to an eligible carrier for initial international carriage on an aircraft which is eligible in accordance with paragraph (b)(2)(ii) (*a*) or (*b*) of this section.

(iii)(*a*) Expenditures for international air transportation furnished by air carriers which are not eligible under the provisions of paragraph (b)(2)(ii) of this section will be financed by A.I.D. only when service by eligible air carriers is unavailable. Criteria for determining when service by eligible air carriers is unavailable are the same as those published at 48 CFR 47.403–1 for determining when U.S. flag air carriers are unavailable. Additional guidance on determining when service is unavailable may be obtained from the Office of Procurement, Transportation Division, telephone (703) 875–1300.

* * * * *

7. Section 201.13 paragraph (b)(3)(iv) is amended by removing the words "Office of Commodity Management" and inserting, in their place, the words "Office of Procurement".

Date: July 15, 1988.

John F. Owens,

Associate Assistant to the Administrator for Management.

[FR Doc. 88–18440 Filed 8–17–88; 8:45 am]

BILLING CODE 4110–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 1208

[NHTSA Docket No. 85–12; Notice 3]

RIN 2127–AB30

National Minimum Drinking Age

AGENCY: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: On April 7, 1986, the President signed into law the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272. Section 4104 of the Act amends 23 U.S.C. 158, passed in July 1984, which established twenty-one as the National Minimum Drinking Age. The amendment makes permanent the penalty for States that have failed to comply with section 158. It also provides that certain States coming into compliance with the Act will not be penalized if they enact legislation that otherwise complies, but which includes "grandfather" rights to persons between the ages of eighteen and twenty-one. The amendments made in today's final rule revise portions of the agency's regulation implementing section 158, to reflect these statutory changes. These amendments do not change the substantive requirements for States to avoid the withholding of Federal funds under the Act; they merely implement the changes mandated by section 4104.

DATES: The amendments made by this final rule are effective on August 18, 1988.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, Room 5125, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1755; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1834.

In FHWA: Mr. R. Clarke Bennett, Director, Office of Highway Safety, Room 3413, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2131; or Mr. David Oliver, Office of Chief Counsel, Federal Highway Administration, telephone (202) 366–1350.

SUPPLEMENTARY INFORMATION: On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99–272 was signed into law by the President. Section 4104 of the Act amends 23 U.S.C. 158, passed in July 1984, which established the National Minimum Drinking Age. The amendment makes permanent the penalty on States that have failed to comply with section 158. It also provides that certain States coming into compliance with the Act will not be penalized if they enact legislation that othewise complies, but which includes "grandfather" rights to persons between the ages of eighteen and twenty-one.

Background

On July 17, 1984, the President signed Pub. L. 98–363 (23 U.S.C. 158), which established the National Minimum Drinking Age. The Act strongly encouraged States to have laws prohibiting the purchase and public possession of alcoholic beverages by any person under 21 years of age by withholding a portion of Federal-aid highway funds from States without these laws. As originally enacted, section 158 required the Secretary of Transportation to withhold a portion of Federal-aid highway funds from any

State whose laws permit the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age. It provided that if a State does not enact a new law or amend its existing laws to make age 21 the legal minimum drinking age by October 1, 1986, five percent of such State's Federal-aid highway funds would be withheld from funds required to be apportioned on that date under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5), 104(b)(6), (primary system, secondary system, Interstate system (including resurfacing, restoring, rehabilitating and reconstructing or 4R funds) and urban system funds). If by October 1, 1987, no law is adopted or amendments made, ten percent of the State's Federal-aid highway funds required to be apportioned on that date under these sections would be withheld. Any funds withheld from a State's apportionment, in accordance with the Act, would be promptly apportioned to that State if it came into compliance in any succeeding fiscal year.

The constitutionality of the National Minimum Drinking Age, 23 U.S.C. 158, was challenged by the State of South Dakota and upheld by the Supreme Court of the United States in a decision rendered on June 23, 1987. *South Dakota v. Dole*, ___ U.S. ___, 97 L.ED.2d 171, 107 S.Ct. 2793 (June 23, 1987).

On March 26, 1985, the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) issued a joint rule (51 FR 10376) to implement the National Minimum Drinking Age. The regulation was codified in 23 CFR Part 1208.

In accordance with the regulation, each State was notified by March 28, 1986 of the agencies' preliminary review of its statutes, and by May 30, 1986 of the agencies final determination of the State's compliance or non-compliance with section 158 for FY 1987. Each State determined to be in non-compliance was permitted to submit substantiating documentation at any time that it amended its laws to conform to § 158. The agencies worked closely with the States to afford them an adequate opportunity to comply with the rule before any funds were withheld. To date, all fifty States and the District of Columbia have enacted conforming Age 21 laws. Only Puerto Rico has not.

At the time the COBRA was signed by the President, a number of States had included sunset clauses in their laws. Section 158 (as originally enacted) provided only for the withholding of funds required to be apportioned on October 1, 1986 and 1987. A typical sunset clause would result in the lowering of the State's minimum drinking age once the State received these apportionments. For example, the State would pass a 21 law, and receive its apportionments in FY 1987 and 1988. Then, under the sunset clause, the State's minimum drinking age would return to the age in effect prior to enactment of the complying 21 law. Congress enacted section 4104 of the COBRA, amending section 158, primarily to address this situation. Specifically, section 4104 of the COBRA:

- Made permanent the 10 percent withholding of Federal-aid highway funds from States that fail to comply with section 158;
- Permitted a noncomplying State that enacted an otherwise complying age-21 law to afford "grandfather" rights in that law to individuals who are less than 21 years of age, if they are 18 years or older on the day preceding the effective date of the State law and at that time could lawfully purchase or publicly possess any alcoholic beverage in the State. To qualify, the age-21 law containing the grandfather clause must have been in effect "before the later of (A) October 1, 1986, or (B) the tenth day following the last day of the first session the legislature of a State convene[d] after [April 7, 1986]."
- Provided that funds withheld under section 158 from apportionment *on or before* September 30, 1988 shall be restored to a State that makes a complying law effective, on the day following the law's effective date, if the funds have not lapsed, and that funds withheld under section 158 from apportionment *after* September 30, 1988 shall lapse immediately. It also described the length of time that withheld and subsequently apportioned funds would remain available before they lapse, and the disposition of sums that do lapse.

These statutory amendments, and the regulatory changes the agencies are making to implement them, are described in detail below.

Permanent Withholding of Funds

Subsection (a) of section 4104 makes permanent the annual 10 percent withholding "of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of [Title 23]" from States that fail to comply with section 158. Prior to this amendment, section 158 required the withholding of 10 percent of the apportionments under these sections on October 1, 1987, but not thereafter. The amendment did not alter the withholding of 5 percent of these funds under section 158 on October 1, 1986. Senator Lautenberg, the author of the amendment, explained:

> My amendment will make the 10 percent withholding of highway funds, scheduled to end on September 30, 1988, permanent. * * * This change will essentially establish September 30, 1988, as the date by which the Congress wants to see uniformity in minimum drinking ages across the Nation. S 15203, November 12, 1985, daily ed., Congressional Record.

The agencies note that, at this time, all fifty States and the District of Columbia have passed legislation that conforms with the National Minimum Drinking Age. Only Puerto Rico has not. As a result of the statutory amendments, Puerto Rico will be subject to a 10 percent withholding of Federal-aid highway funds every fiscal year until it does pass a conforming law. In addition, if any State currently in compliance with section 158, changes its law so that it no longer meets the National Minimum Drinking Age, the State will be subject to a 10 percent withholding of Federal-aid highway funds on the first day of the fiscal year.

This rule amends the agencies' regulation to reflect the legislative change. The word "first" will be inserted before the phrase "fiscal year" the second place it appears in 23 CFR 1208.4(a). In 23 CFR 1208.4(b), the phrase "each fiscal year after" will replace the phrase "the fiscal year succeeding".

State Grandfather Clauses

As explained by Senator Lautenberg in debates on the floor of the Senate, section 4104 also includes a "lenient provision [which] * * * allows States to phase in their 21 laws and be in compliance with Federal law provided they do so expeditiously." S18211, December 19, 1985, daily ed., Congressional Record.

Specifically, section 4104(b) permits a noncomplying State that enacts an otherwise complying age-21 law, to afford "grandfather" rights in that law to individuals who are less than 21 years of age, if they are 18 years or older on the day preceding the effective date of the State law and at that time could lawfully purchase or publicly possess any alcoholic beverage in the State. To qualify, the age-21 law containing the grandfather clause must have been *in effect* "before the later of (A) October 1, 1986, or (B) the tenth day following the last day of the first session the legislature of a State convene[d] after [April 7, 1986]."

As noted above, only Puerto Rico has yet to pass legislation which conforms with the National Minimum Drinking Age, and the agencies understand that

the legislature of this jurisdiction has convened since April 7, 1986, and that 10 days have already lapsed since the last day of its legislative session. Some of the States that passed conforming legislation in response to the Federal law included grandfather rights in their statutes. The agencies reviewed these statutes and determined that they meet the Federal requirements.

Notwithstanding the limited applicability of the change at this time, the agencies are amending their regulation in this final rule to reflect the statutory change, by adding a new § 1208.4(c).

Period of Availability for Funds

Senator Lautenberg explained, in comments preceding its enactment, that section 4104 "ends the reimbursement of withheld funds at the close of fiscal year 1988. The provision also * * * extends the availability of highway funds withheld so that States will not simply lose funds when they lapse under the normal procedures of the highway law." S 16211, December 19, 1985, daily ed., Congressional Record.

Prior to this amendment, section 158 provided that any funds withheld from a State's apportionment would be promptly apportioned to that State if it came into compliance in any succeeding fiscal year. It was silent, however, with regard to the period of time during which the funds withheld from noncomplying States would remain available before they lapsed. As we explained in the preamble to the final rule implementing the 1984 Act (51 FR 10379), the agencies determined that the funds would remain available for the standard periods of availability of the various Federal-aid highway funds.

Section 4104(c), adding subsection 158(b)(1)(B), provides instead that, "No funds withheld [under section 158] from apportionment to any State after September 30, 1988, shall be available for apportionment to such State." In other words, any State which is found to be in noncompliance with the National Minimum Drinking Age law after September 30, 1988, permanently loses any funds withheld after that date. (Funds withheld in earlier fiscal years will lapse in accordance with subsection 158(b)(1)(A), which is discussed in detail below.) Currently, this provision applies only to Puerto Rico. If Puerto Rico fails to meet the requirements of section 158 by September 30, 1988, then funds will be withheld every fiscal year until it complies, and these withholdings will be permanent. In addition, if any State currently in compliance with section 158, changes its law so that it no longer meets the National Minimum Drinking Age, then funds will be withheld on the first day of the fiscal year and the withholding will be permanent. The disposition of these funds would be made in accordance with subsection 158(b)(4), which is described in detail below.

The remainder of this discussion describes the applicability of the other statutory amendments, which focus primarily on the availability of funds withheld from states found out of compliance with section 158 on or before September 30, 1988.

To Summarize these amendments and their applicability, subsections 158(b)(1)(A) and (b)(2), as amended, identify the period of time during which funds withheld on or before September 30, 1988 remain available for apportionment, and when they are to be restored if the State comes into compliance with section 158 before the funds lapse. Since all 50 States and the District of Columbia now have passed laws which have been determined to be in compliance with section 158, these two subsections now apply only to Puerto Rico. Subsection 158(b)(3), as amended, established the period of time during which these subsequently apportioned funds remain available to a State for expenditure. Of the States initially found to be out of compliance with section 158 on April 2, 1987, seven will have had previously withheld funds restored to them after coming into compliance with section 158 before the funds lapse. This section applies to these restored funds. If Puerto Rico complies with the National Minimum Drinking Age before its funds lapse, this section would apply also to its restored funds. If the funds withheld from Puerto Rico lapse before they are restored, their disposition would be made in accordance with subsection 158(b)(4), as amended. In an effort to explain these changes as clearly as possible, the agencies will describe the amendments as they apply to the affected States.

(1) Puerto Rico

Subsection 158(b)(1)(A), as amended, identifies the period of time during which funds withheld from apportionment to a State on or before September 30, 1988 (if the funds would have been apportioned but for the State's noncompliance with section 158) remain available for apportionment. The subsection provides that these funds shall remain available for apportionment for the following periods of time:

* * * section 104(b)(5)(A) funds shall remain available until the end of the fiscal year for which the funds are authorized to be appropriated. * * * section 104(b)(1), 104(b)(2) and 104(b)(6) funds shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated [Puerto Rico does not have Interstate highways and does not receive an apportionment of section 104(b)(5)(A) funds.]

On April 2, 1987, 5% of the 1987 fiscal year apportionment was withheld from Puerto Rico based on a finding that it was not in compliance with section 158. On October 1, 1987, 10% of the 1988 fiscal year apportionment was withheld from Puerto Rico on that basis. Puerto Rico was informed that the withheld funds would not be apportioned unless it came into compliance with section 158 before the funds lapse. The funds would lapse in accordance with the periods defined in subsection 158(b)(1)(A), as amended.

In accordance with subsection 158(b)(2), as amended, if Puerto Rico makes a complying law effective before September 30, 1990 (when funds will begin to lapse under subsection 158(b)(1)(A), as amended), these withheld funds will be restored on the day following the effective date of the law. After that date, from the funds previously withheld, only those which still remain available for apportionment will be restored. Any funds that are restored to Puerto Rico shall remain available for expenditure for the periods of time defined in subsection 158(b)(3), as amended. These period of time are described in detail below.

Sums that are still being withheld from Puerto Rico at the end of their period of availability, shall lapse in accordance with section 158(b)(4), as amended, except that section 104(b)(5)(B) funds (Interstate 4R funds) shall no longer be available to Puerto Rico under that section but shall be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

(2) Colorado, Idaho, Montana, Ohio, South Dakota, Tennessee, Wyoming

On April 2, 1987, 5% of the 1987 fiscal year apportionment was withheld also from the seven States listed above, based on a finding that they were not in compliance with section 158 at that time. By October 1, 1987, five of these seven States had complied with section 158 and, therefore, of these seven, 10% of the 1988 fiscal year apportionment was withheld only from South Dakota and Wyoming. Both of these States have since passed laws that conform with section 158.

Subsection 158(b)(2), as amended, provides that any State which is found in noncompliance with the National

Minimum Drinking Age on or before September 30, 1988, and which makes a complying law effective before the last day of the period of availability for the previously withheld funds, shall be apportioned the previously withheld funds remaining available on the day following the effective date of the law. Colorado, Idaho, Montana, Ohio and Tennessee passed complying laws that became effective before September 30, 1987, and had their funds restored in accordance with this provision. South Dakota passed a complying law that became effective on April 1, 1988, and had its funds restored on April 2 of this year. Wyoming passed a complying law that is scheduled to become effective on July 1, 1988, and will have its funds restored, as the subsection provides, on the day following the effective date of this law.

The funds that have been (or will be) restored to these States shall remain available for expenditure for the periods of time defined in subsection 158(b)(3), as amended. This subsection provides that Interstate construction funds, apportioned under section 104(b)(5)(A), shall remain available for expenditure until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned. All remaining funds shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned. In their notifications of apportionment, these States have been (or will be) notified of the periods of time during which these restored funds will be available for expenditure.

Sums that have been apportioned to a State but have not been obligated at the end of their period of availability shall lapse, in accordance with section 158(b)(3), as amended, except that section 104(b)(5) (Interstate construction and 4R) funds shall no longer be available to the State under that section but shall be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

This rule amends § 1208.5 of the agencies' regulation, and adds three new subsections, numbered §§ 1208.6, 1208.7 and 1208.8 to reflect these statutory changes. As explained below, the current § 1208.6 has been deleted.

Notification of Compliance

Section 1208.6 of the current regulation prescribed the procedures for notifying each State of its compliance or non-compliance with the National Minimum Drinking Age prior to the apportionment or withholding of funds required to be apportioned on October 1, 1986 and 1987. Since these apportionments have already been made, this section is being deleted. A new § 1208.9 is being added to prescribe the procedures for notifying each State of its compliance or noncompliance with the National Minimum Drinking Age in the future. The procedural format is essentially being retained. The procedures, however, are being changed slightly, so that the notification to States of their compliance or noncompliance with the National Minimum Drinking Age can be accomplished through FHWA's normal certification of apportionments process. This change is intended to simplify the process for both the Federal government as well as for the States.

These procedures will be followed to advise Puerto Rico of the funds that will be withheld from apportionment if it does not pass legislation that conforms with the National Minimum Drinking Age law. These procedures would be followed also to advise a complying State that subsequently comes out of compliance, of the funds that would be withheld from apportionment to that State.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

Economic and Other Effects

The agencies have analyzed the effect of this action and have determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The regulatory impact is not greater than $100 million. Accordingly, a full regulatory evaluation is not necessary. Moreover, this rule merely implements the non-discretionary aspects of the new law. Thus, any economic impact that may occur will not be attributable to this regulation, but will be instead the result of the Federal statute and of State decisions on whether to conform with the Federal Statute.

Because this regulation relates to grants, the notice and comment requirements established in the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Moreover, the legislative changes addressed in this final rule involve no discretion on the part of the agencies. The revisions in this document merely reflect statutory changes mandated by section 4104 of the COBRA. These regulatory changes require no interpretation and provide the agencies with no discretion.

Because the agencies are not required to publish a notice of proposed rulemaking regarding this rule, the agencies are not required to analyze the effect of this rule on small entities, in accordance with the Regulatory Flexibility Act. The agencies have nonetheless evaluated the effects of this rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. If funds are withheld under the regulation, the withholding will be from the States which are not small entities.

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action will not have any effect on the human environment.

Effective date

Because the amendments are not covered by the Administrative Procedure Act, and since they only contain technical changes or merely implement legislative changes and do not impose any additional requirements, the amendments are effective upon publication in the **Federal Register**.

List of Subjects in 23 CFR Part 1208

Alcohol, Highway safety.

In accordance with the foregoing, Part 1208 of Title 23 of the Code of Federal Regulations is amended as follows:

PART 1208—[AMENDED]

1. The authority citation for Part 1208 is revised to read as follows:

Authority: 23 U.S.C. 158; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1208.4 [Amended]

2. In § 1208.4(a), the word "first" is added before the phrase "fiscal year" the second place it appears. In § 1208.4(b), the words "the fiscal year succeeding" are removed, and in their place is added the phrase "each fiscal year after".

3. Section 1208.4(c) is added to read as follows:

* * * * *

(c) A State that has in effect a law which permits the purchase and public possession in the State of any alcoholic beverage by a person who is less than 21 years of age, but 18 years or older on the day preceding the effective date of the State law and at that time could lawfully purchase or publicly possess any alcoholic beverage in the State, will be deemed to be in compliance with

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paragraphs (a) and (b) of this section in each fiscal year in which the law is in effect, provided:

(1) The law must be in effect before the later of (i) October 1, 1986 or (ii) the tenth day following the last day of the first session the legislature of the State convenes after April 7, 1986; and

(2) The State law otherwise makes unlawful the purchase and public possession in the State of any alcoholic beverage by a person who is less than 21 years of age.

4. Section 1208.5 is revised to read as follows:

§ 1208.5 Period of availability of withheld funds.

(a) Funds withheld under § 1208.4 from apportionment to any State on or before September 30, 1988 will remain available for apportionment as follows:

(1) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(A) but for this section, the funds will remain available until the end of the fiscal year for which the funds are authorized to be appropriated.

(2) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for this section, the funds will remain available until the end of the second fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(3) If the funds would have been apportioned under 23 U.S.C. 104(b)(1), 104(b)(2) or 104(b)(6) but for this section, the funds will remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1208.4 from apportionment to any State after September 30, 1988 will not be available for apportionment to the State.

5. Section 1208.6 is revised to read as follows:

§ 1208.6 Apportionment of withheld funds after compliance.

Funds withheld under § 1208.4 from apportionment, which remain available for apportionment under § 1208.5(a), will be apportioned to any State that makes effective a law prohibiting the purchase or public possession in the State of any alcoholic beverage by a person who is less than 21 years of age before the last day of the period of availability as defined in § 1208.5(a). The funds will be apportioned to the State on the day following the effective date of the law.

6. Section 1208.7 is added to read as follows:

§ 1208.7 Period of availability of subsequently apportioned funds.

(a) Funds apportioned pursuant to § 1208.6 will remain available for expenditure as follows:

(1) Funds apportioned under 23 U.S.C. 104(b)(5)(A) will remain available until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned.

(2) Funds apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) will remain available until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned.

(b) Sums apportioned to a State pursuant to § 1208.6 and not obligated at the end of the periods defined in § 1208.7(a), shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

7. Section 1208.8 is added to read as follows:

§ 1208.8 Effect of noncompliance.

If a State has not made effective a law prohibiting the purchase and public possession in the State of any alcoholic beverage by a person who is less than 21 years of age at the end of the period for which funds withheld under § 1208.4 from apportionment are available for apportionment to a State under § 1208.5, then such funds shall lapse or, in the case of funds withheld from apportionment under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

8. Section 1208.9 is added to read as follows:

§ 1208.9 Procedures affecting States in noncompliance.

(a) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age, based on NHTSA's and FHWA's preliminary review of its statutes for compliance or non-compliance, will be advised of the funds expected to be withheld under § 1208.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is in noncompliance with the National Minimum Drinking Age based on their preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

(c) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age, based on NHTSA's and FHWA's final determination of compliance or noncompliance, will receive notice of the funds being withheld under § 1208.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on August 12, 1988.

Robert E. Farris,

Federal Highway Administrator.

Diane K. Steed,

National Highway Traffic Safety Administrator.

[FR Doc. 88-18779 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-59-M, 4910-22-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1297-88]

Special Independent Counsel for Members of Congress

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends 28 CFR Part 0 to reflect the policy within the Department of Justice for the special handling of allegations of criminality against a Member of Congress. It is being placed in the Code of Federal Regulations so that the Department's regulations will contain an accurate description of the Attorney General's prosecutorial authority in this area.

EFFECTIVE DATE: August 11, 1988 except as to any criminal investigation certified within 30 days thereof by the Assistant Attorney General for the Criminal Division to the Attorney General as being ongoing on the effective date.

FOR FURTHER INFORMATION CONTACT: John C. Keeney, Criminal Division; telephone number: 202-633-2621. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This regulation sets forth the policy within the Department of Justice for the handling of allegations against Members of Congress. It is designed to promote confidence in the integrity of investigations and prosecutions for violations of federal criminal law and is based in part on the regulations used by the Department in connection with the Watergate Special Prosecutors. By

announcing a policy that special independent counsels will investigate any criminal law allegation against a Member of Congress, the Department will be able to remove any real or apparent concern that a particular investigation may be politically motivated. Since the decision whether to prosecute will be made by an individual who has no long-term affiliation with the Department or any branch of government, it will demonstrate to the public that neither political hostility nor political favoritism played a part in the final decision. This rule will therefore provide for nondiscretionary referral to a special independent counsel whenever the Attorney General determines that there is specific and credible evidence that any Member of Congress has violated a federal criminal law other than certain specified misdemeanors.

This is not a major rule within the meaning of Exec. Order No. 12291. This will not have an impact on a significant number of small businesses. 5 U.S.C. 901.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

By the authority vested in me including 28 U.S.C. 509, 510, 515, 516, 517, 519 and 5 U.S.C. 301 and 3101, Subpart B of Part 0 of title 28 of the Code of Federal Regulations, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 6 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 517, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11287; EO 11300.

2. Subpart B is amended by adding a new § 0.14 to read as follows:

§ 0.14 Special independent Counsel for Members of Congress.

(a) *Initial investigation.* Whenever the Attorney General receives information from any source indicating that either a United States Senator or Member of the House of Representatives has violated any federal criminal law other than a violation classified as a Class B or C misdemeanor, he shall determine within 15 days whether there are sufficient grounds to initiate a preliminary investigation. If within that 15-day period the Attorney General determines that the information is not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines that the information is specific and from a credible source, or is unable to so determine, the Attorney General shall, in either case, commence a preliminary investigation with respect to that information, except as provided in paragraph (j) of this section.

(b) *Preliminary investigation.* If a preliminary investigation is undertaken as specified in paragraph (a) of this section, the Attorney General shall conduct such preliminary investigation within 90 days to determine whether there are reasonable grounds to believe that further investigation is warranted. In conducting this investigation, the Attorney General shall not convene grand juries, enter into plea bargains, grant immunity, or issue subpoenas. If it is determined that there is no reasonable grounds to believe that further investigation is warranted, the matter shall be closed and the Attorney General shall so notify the subject of the preliminary investigation. If it cannot be determined within 90 days whether a preliminary investigation should be undertaken or if it is determined that one should be undertaken, the matter shall be referred to a special independent counsel under paragraph (c) of this section.

(c) *Appointment of a Special Independent Counsel.* The Attorney General shall appoint a special independent counsel to investigate any Member of Congress where under paragraph (b) of this section that appointment is required. The Attorney General shall define the special independent counsel's jurisdiction and may expand it whenever he deems necessary. The initial grant of jurisdiction shall be deemed to include the authority to investigate and prosecute federal crimes, other than those classified as Class B or C misdemeanors, that may arise out of the matter initially referred to the special independent counsel by the Attorney General, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses. The special independent counsel shall be an individual with appropriate experience to conduct a prompt, thorough, and efficient investigation. The Attorney General shall not appoint as a special independent counsel any person who holds any office or profit or trust in any branch of the government of the United States. The Attorney General may disclose the identity of the special independent counsel and the scope of his jurisdiction at any point after the appointment if it would be in the best interest of justice. If the special independent counsel resigns, dies, or is removed, the Attorney General may appoint a replacement to complete the investigation.

(d) *Authority of the Special Independent Counsel.* Any special independent counsel appointed under this section shall exercise, within the scope of his jurisdiction, the full power and independent authority to exercise all investigative and prosecutorial functions of the Attorney General, except for those matters that specifically require the Attorney General's personal action under 18 U.S.C. 2516. Neither the Attorney General nor any other officer or employee of the Department will countermand or interfere with any decision or action of the special independent counsel regarding the matter under investigation. Except as provided herein, the special independent counsel shall determine whether and to what extent he will inform or consult with the Attorney General or others within the Department about the conduct of his duties and responsibilities. The special independent counsel's authority includes:

(1) Conducting proceedings before grand juries and other investigations;

(2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the special independent counsel deems necessary;

(3) Appealing any decision of a court in any proceeding in which the special independent counsel participates in an official capacity;

(4) Reviewing all available documentary evidence;

(5) Determining whether to contest the assertion of any testimonial privilege;

(6) Receiving appropriate national security clearances;

(7) Making an application to any federal court for a grant of immunity to any witness, or for warrants, subpoenas, or other court orders, and for purposes of 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States Attorney or the Attorney General;

(8) Inspecting, obtaining, or using the original or a copy of any tax return, in accordance with applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States Attorney or the Attorney General;

(9) Initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing

indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

(10) Consulting with the United States Attorney for the district in which any violation of law with respect to which the special independent counsel is appointed was alleged to have occurred.

(e) *Personnel and Budget.* Any special independent counsel appointed under this section shall be authorized to request the assignment of any Department employee to assist the special independent counsel. The special independent counsel shall assign the duties of such employees while they are assigned to the special independent counsel. If necessary, the special independent counsel may request that the Attorney General hire additional personnel from outside the Department. All personnel in the Department, including United States Attorneys, shall cooperate to the fullest extent possible with the special independent counsel. The Attorney General shall determine the budget for the special independent counsel and may approve any increases that may be necessary.

(f) *Responsibilities of the Special Independent Counsel.* When the special independent counsel has completed the investigation the special independent counsel shall either:

(1) Initiate and complete a criminal prosecution of the subject Member of Congress or

(2) Issue a final statement to the Attorney General and the subject Member of Congress reporting solely that his investigation is complete and that no criminal charge will be brought. In addition, a special independent counsel may advise the House of Representatives or the Senate, as the case may be, of any substantial and credible information permitted by law to be disclosed which such special independent counsel receives in carrying out the responsibilities under this section, that may constitute grounds for expulsion or other disciplinary action.

(g) *Removal.* The special independent counsel will not be removed from office except for extraordinary improprieties.

(h) *Department Regulations.* The Department's regulations, including those governing recusal, disclosure of information, and policies, including those pertaining to the conduct of criminal investigations, shall apply to all matters arising under this section, and to the special independent counsel, all existing personnel assigned to him and all new personnel hired with the approval of the Attorney General at the special independent counsel's request.

(i) *Assistance of Assistant Attorney General for the Criminal Division.* In all matters under this section either the Attorney General or the special independent counsel may request the assistance of the Assistant Attorney General for the Criminal Division; provided however, that notwithstanding any such assistance, the Attorney General must personnally determine whether a preliminary investigation is required under paragraphs (a) and (b) of this section; appoint and define the jurisdiction of the special independent counsel under paragraph (c) of this section; determine the special independent counsel's budget under paragraph (e) of this section; and when appropriate remove the special independent counsel under paragraph (g) of this section. The special independent counsel may not delegate his function under paragraph (f) of this section.

(j) *Exception For Investigation Not Initially Involving Member of Congress.* When allegations involving criminality against a Member of Congress arise out of a criminal investigation being conducted by the Attorney General, the Attorney General may allow that ongoing investigation to continue and include said Member of Congress instead of invoking the procedures set forth in this section.

August 11, 1988.

Edwin Meese, III

Attorney General.

[FR Doc. 88-18595 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Approval of Amendment to the Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of an amendment to the Utah permanent regulatory program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment alters the criteria used in determining the significance of impacts that mining will have on alluvial valley floors (AVF's) to delete the farm income test in accordance with revisions to the corresponding Federal regulation.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. Information regarding the general background of the Utah program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the Janaury 21, 1981 **Federal Register** (46 FR 5899). Actions taken subsequent to the approval of the Utah program may be found at 30 CFR 944.15 and 944.16.

II. Discussion of the Amendment

On September 24, 1987, Utah submitted a proposed amendment to the Utah regulations for OSMRE's review and approval (Administrative Record No. UT-462). OSMRE published a notice in the November 13, 1987 **Federal Register** announcing receipt of the proposed amendment and inviting public comment on its adequacy (52 FR 43622, Administrative Record No. UT-476).

The notice stated that a public hearing would be held on December 8, 1987, only if requested. The comment period closed on December 14, 1987. Because no requests to hold a hearing were received, a hearing was not held.

After reviewing the proposed amendment and all comments received, OSMRE notified Utah on March 7, 1988 (Administrative Record No. UT-481), of a provision in the proposed amendment that appeared to be inconsistent with the Federal regulations. By letter dated April 6, 1988, Utah submitted a revised amendment (Administrative Record No. UT-483). OSMRE then published a **Federal Register** notice on June 3, 1988, to reopen the comment period and allow the public an opportunity to comment on the revised amendment (53 FR 20338, Administrative Record No. UT-491). The comment period closed on June 20, 1988.

The revised amendment to the Utah program would delete the last sentence of the Surface Coal Mining Rules/Underground Coal Mining Rules (SMC/UMC) 785.19(e)(2) that requires the use of a farm income test in determining the significance of impacts that mining

operations will have on farming operations on or near an AVF. However, the amended regulation would retain the requirement that the determination of significance of impacts be based on the effects mining would have on farm production over the life of the mine.

III. Director's Findings

The Director finds, in accordance with SMCRA, 30 CFR 732.15, and 30 CFR 732.17, that the program amendment Utah submitted on September 24, 1987, and subsequently revised on April 6, 1988, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below. The Director is approving the amendment with the provision that the rule be promulgated in identical form to the rule reviewed by OSMRE and the public.

The proposed amendment of SMC/UMC 785.19(e)(2) deletes the requirement that the effect of mining operations on farming on or near AVF lands be determined to be significant if it removed, over the life of the mine, a part of a farm's production that would decrease the farm's annual income. The effect of this amendment is to eliminate the requirement to apply a farm income test to determine effects of mining on AVF's. The remaining part of amended SMC/UMC 785.19(e)(2) requires the determination of significance of mining impacts to be based on the relative importance of the vegetation and water of developed grazed or hayed AVF lands to the farm's production over the life of the mine, or more stringent site-specific criteria.

The Federal regulations governing AVF's do not require a farm income test, rather, 30 CFR 785.19(b)(2)(ii) requires that the determination of impacts that mining operations will have on farming be based on the relative importance of affected vegetation and water of developed grazed or hayed AVF lands to the farm's production over the life of the mine.

There are only minor, nonsubstantive differences between the language in the proposed Utah amendment and the Federal regulations. Therefore, the Director finds the amended Utah regulation no less effective than the corresponding Federal regulation.

IV. Public and Agency Comments

Public Comments

The National Wildlife Federation (NWF) objected to the removal of the farm income test from SMC/UMC 785.19(e)(2). NWF stated that the overall effect of the amendment is to delete any standard for application of the statutory exclusions for AVF's. However, on April 6, 1988, Utah revised its amendment to include a "life of the mine" impact standard similar to that of the Federal regulations. Therefore, this comment is now moot.

NWF also contends that no basis exists for requiring the impact on agricultural production to be measured over the life of the mine rather than on an annual basis. The rationale for this contention is that the impact in any single year could be great enough to put a farmer out of business, whereas the same impact, averaged over a long period of time, would appear insignificant. The Director believes these circumstances are unlikely to occur; however, he notes that both SMCRA (section 510(b)(5)(A)) and the Federal regulations require evaluation of the importance of the affected area to the farm's production, not its income. The corresponding Federal rule also uses a "life of the mine" standard when evaluating the impact on farm production. This standard has been upheld by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144, October 1, 1984).

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various agencies with an actual or potential interest in the Utah program. The following agencies acknowledged receipt of the proposed amendment but did not provide any substantive comments: (1) Bureau of Mines, (2) Soil Conservation Service, (3) Mineral Management Service, (4) Bureau of Land Management, (5) National Park Service, and (6) Environmental Protection Agency (Region VIII and Headquarters).

V. Director's Decision

The Director, based on the above findings, is approving the amendments as submitted by Utah on September 24, 1987, and as revised on April 6, 1988. The Director is amending 30 CFR Part 944 to reflect approval of this State program amendment. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 11, 1988.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for Part 944 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (m) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(m) The following amendment is approved effective August 18, 1988: Revision of SMC/UMC 785.19(e)(2)

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regarding alluvial valley floors as submitted by Utah to OSMRE on September 24, 1987, and revised by Utah on April 6, 1988.

[FR Doc. 88-18751 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-88-64]

Special Local Regulations for the 1988 Power Boat Regatta, Susquehanna River, Havre De Grace, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Susquehanna Optimist Club Power Boat Regatta. This event will be held on the Susquehanna River, west of Garrett Island. The special local regulations are necessary to control vessel traffic within the immediate area of the races due to the confined nature of the waterway and the expected congestion at the time of the event. The effect will be to restrict general navigation in the regulated area for the safety of the spectators and the participants in the event.

EFFECTIVE DATES: These regulations are effective from 10:00 a.m. to 7:00 p.m., August 27 and 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking to establish permanent special local regulations for the Susquehanna Optimist Club Power Boat Regatta will be published in the **Federal Register** (53 FR 28018; July 26, 1988), and interested persons were invited to participate in the rulemaking by submitting written views, data, or arguments by September 9, 1988. However, since the 1988 Susquehanna Optimist Club Power Boat Regatta is to be held on August 27 and 28, 1988 it becomes necessary to establish temporary regulations to cover this year's event.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The area covered by these regulations is the same as that covered by special local regulations issued for years. The Optimist Club Power Boat Regatta is an annual weekend race consisting of 3 laps around an oval course. Three to twelve boats will race at one time with speeds up to 140 miles per hour. The races will continue for 3 to 4 hours. The special local regulations provide safety for the persons participating in races and control spectator craft during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0564 is added to read as follows:

§ 100.35-0564 Susquehanna River, Havre De Grace, Maryland.

(a) *Definitions*—(1) *Regulated Area.* The waters of the Susquehanna River west of Garrett Island, bounded on the south by the Conrail Railroad Bridge at latitude 39°33'34.0" North, and on the north by the B & O Railroad Bridge at latitude 39°33'57.0" North.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for vessels operated by the Susquehanna Optimist Club and participants in the Optimist Club Power Boat Regatta, no person or vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Spectator vessels may enter and anchor in the designated spectator anchorage areas without the permission of the Patrol Commander, if they proceed at a slow no wake speed.

(3) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant, or petty officer.

(c) *Effective period.* These regulations are effective from 10:00 a.m. to 7:00 p.m., August 27 and 28, 1988.

Dated: August 10, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-18776 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-88-63]

Special Local Regulations for Trump's Castle Grand National Powerboat Championship

AGENCY: Coast Guard, DOT.

ACTION: Temporary regulations with request for comments.

SUMMARY: The Coast Guard is temporarily amending the regulations in 33 CFR 100.505 for the New Jersey Offshore Grand Prix. This amendment changes the name, date, race course, spectator anchorage areas, and regulated area for this year's event. Last year the race was held on Sunday, July 26, 1987, off the southern New Jersey coast between Margate City at Great Egg Harbor Inlet and Brigantine Shoal. This year the race has been renamed the Trump's Castle Grand National Powerboat Championship, the race and regulated area has been modified slightly, and the date of the event has been changed.

EFFECTIVE DATES: These regulations are effective from 10:00 a.m. to 3:30 p.m., Saturday, September 24, 1988. In case of inclement weather requiring a postponement of the event, these regulations are effective from 10:00 a.m. to 3:30 p.m., Sunday, September 25, 1988.

ADDRESSES: Comments should be mailed or hand delivered to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of that address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking has not been published for this regulation. Following normal rulemaking procedures would have been impractical. The application for the event was received on July 22, 1988. However, the race course and spectator anchorage areas were not finalized until July 28, 1988, leaving insufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Although this regulation is published without prior notice, an opportunity for public comment is being provided to ensure that the regulation is both reasonable and workable. These regulations may be altered prior to the event based on any comments that are received. Persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in this preamble. Commenters should include their names and addresses, identify the docket number for this regulation (CGD 05–88–63), and give reasons for their remarks. Due to the limited time for comment, verbal comments may be submitted by telephone. Based upon comments received, the regulation may be changed for this and future events.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Prior to 1987, the New Jersey Offshore Grand Prix was an annual high speed powerboat race held off the Northern New Jersey coast between Asbury Park and Seaside Park, New Jersey. Because the event traditionally was held on the same day each year (the third Wednesday in July) and in the same area, the Coast Guard published a permanent rule in § 100.306 of Title 33 of the Code of Federal Regulations.

Section 100.306 was renumbered 100.505 in 1987, when the sponsor moved the race down the coast to the vicinity of Atlantic City, New Jersey and held the event on Sunday, July 26, 1987. The sponsor took this action to take advantage of the popularity of this resort area and to offer an additional recreational activity that would complement the existing attractions in Atlantic City.

This event is sponsored by the New Jersey Offshore Power Boat Racing Association and is sanctioned by the American Power Boat Association and the Union of International Motorboating. Approximately 70 powerboats ranging from 18 to 50 feet long will race 150 nautical miles in various classes over a 30 nautical mile course. Race headquarters will be located in Trump's Castle, Atlantic City, New Jersey.

Coast Guard patrol vessels will be positioned at both inlets to direct vessels to temporary spectator anchorages and to instruct transiting vessels how to proceed safely around the race course.

The sponsor will provide committee boats to lead the race vessels in a procession to an from the race course. The sponsor also will provide more than 70 vessels to assist the Coast Guard and local government agencies in patrolling this event.

The race course has been altered slightly from the one used in 1987. It is a flattened, elongated triangle within the regulated area extending along the New Jersey coastline from Great Egg Harbor Inlet to Brigantine Shoal Inner Buoy 4BS (LL 40), thence three nautical miles east, thence southwestward to Great Egg Harbor Inlet. The regulated area is the waters of the Atlantic Ocean from the shoreline at Great Egg Harbor Inlet to the tank at Brigantine, New Jersey, and extending offshore approximately two miles beyond the outer leg of the race course.

To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established two temporary spectator anchorages, at Great Egg Harbor Inlet and Absecon Inlet, for what is expected to be a large spectator fleet.

In order to publicize these regulations, the Coast Guard will publish details in the Local Notice to Mariners and the **Federal Register**, and members of the Coast Guard Auxiliary will be present in the vicinity of the race site to inform vessel operators to this regulation and other applicable laws.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding temporary § 100.35–0563 to read as follows:

§ 100.35–0563 Atlantic Ocean, off Atlantic City, New Jersey.

(a) *Definitions*—(1) *Regulated Area.* The waters of the Atlantic Ocean bounded by the shoreline and a line drawn across the outermost points of land on either side of Absecon Inlet, and by a line drawn from the shoreline at Longport, New Jersey, at latitude 39°18.2′ North, longitude 74°32.3′ West, thence to Great Egg Harbor Inlet Outer Lighted Whistle Buoy GE (LL 75/1095), at latitude 39°17.0′ North, longitude 74°30.2′ West, thence northeastward to latitude 39°22.3′ North, longitude 74°12.3′ West; thence to Brigantine Inlet Approach Wreck Lighted Buoy WR (LL 35), at latitude 39°24.8′ North, longitude 74°13.8′ West; and thence to the shoreline at latitude 39°24.8′ North, longitude 74°21.5′ West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Cape May.

(3) *September Anchorage Areas—(i) Absecon Inlet Spectator Area.* The waters bounded by a line drawn between the following points: latitude 39°22′03.6″ North, longitude 74°24′00″ West; latitude 39°21′28.6″ North, longitude 74°23′55.2″ West; latitude 39°21′54″ North, longitude 74°21′13.2″ West; and latitude 39°22′31.2″ North, longitude 74°21′27.6″ West.

(ii) *Great Egg Inlet Spectator Area.* The waters bounded by a line drawn between the following points: latitude 39°18′25.2″ North, longitude 74°30′16.8″ West; latitude 39°17′51″ North, longitude 74°30′46.8″ West; latitude 39°16′36″ North, longitude 74°28′534″ West; and latitude 39°17′14.4″ North, longitude 74°28′16.8″ West.

(b) *Special Local Regulations.* (1) Except for participants in the Trump's Castle Grand National Powerboat Championship and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer onboard a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant or petty officer.

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(3) Spectator vessels may anchor in the spectator anchorage areas specified in paragraphs 3(i) and 3(ii) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area at any time a race heat is not being run.

EFFECTIVE DATES: These regulations are effective from 10:00 a.m. to 3:30 p.m., Saturday, September 24, 1988. In case of inclement weather requiring a postponement of the event, these regulations are effective from 10:00 a.m. to 3:30 p.m., Sunday, September 25, 1988.

Dated: August 10, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-18775 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3431-4]

Approval and Promulgation of Air Quality Implementation Plans; Missouri; Approval of Variance Modification for Pea Ridge Iron Ore Pellet Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving a revision to the Missouri State Implementation Plan (SIP). The action approves a variance modification which will allow the St. Joe Minerals Corporation, Pea Ridge Iron Ore Company pellet plant to continue to emit particulate in excess of the state process weight regulation. The variance order establishes interim emission rates for the affected process equipment which will prevent violations of the National Ambient Air Quality Standards (NAAQS).

DATES: This action will become effective on October 17, 1988, unless notice is received by September 19, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Dewayne E. Durst at the EPA Regional Office (address listed below). Copies of the documents relevant to this action are available for public inspection during normal business hours at:

Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101

Missouri Department of Natural Resources, Air Pollution Control Program, 205 Jefferson Street, Jefferson City, Missouri 65101

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION: On May 21, 1987, after proper notice and public hearing, the Missouri Air Conservation Commission (MACC) granted a variance to the St. Joe Minerals Corporation for its Pea Ridge Iron Ore facility located in Washington County near Sullivan, Missouri. The variance was received by EPA on November 5, 1987. The variance allows five shaft type pelletizing furnaces to emit particulate matter in excess of Missouri Rule 10 CSR 10-3.050, Restriction of Emissions of Particulate Matter from Industrial Processes. This variance is a modification to a variance issued to the company on March 23, 1983. The interim allowable particulate matter emission rates are the same as those contained in the prior variance. The prior variance required that the plant install control equipment and demonstrate full compliance with Missouri regulations by December 31, 1988. Earlier attempts at installing and operating control equipment on the pelleting furnaces failed because of corrosion. The variance called for submittal of a final control plan by June 30, 1987. Development of the final control plan required pilot plant testing of various control equipment and construction-material options to determine what combination would be acceptable for this application. The equipment development activities did not proceed on schedule because of the severely depressed market for iron ore pellets which caused economic problems for the company. Plant curtailment and intermittent shutdowns have also delayed control equipment design. The final control plan could not be completed without the results of the pilot plant work.

Dispersion modeling of the particulate matter emissions from the plant was conducted before the prior variance was issued. That modeling was performed utilizing maximum allowable emissions during the period of the variance. The modeling also utilized version 4 of the Industrial Source Complex Short Term (ISCST) model and compared the predicted air quality to the NAAQS for total suspended particulate matter. The modeling showed that the standards would not be exceeded in the vicinity of the plant.

In preparation for developing the request for this variance extension, additional stack tests were conducted at the plant. These tests included particulate sizing to determine the PM_{10} emission rates. Using these PM_{10} emission estimates and version 6 of the ISCST model, ground-level PM_{10} concentrations were predicted. The predicted levels were well below the PM_{10} air quality standards. The plant is located in an area which is designated attainment for primary and secondary NAAQS for particulates.

The compliance schedule in this variance modification requires full and final compliance with Missouri Rule 10 CSR 10-3.050 by June 30, 1991. The economic difficulties of the company caused by the depressed market for iron ore pellets are predicted to continue for the foreseeable future and, therefore, the compliance schedule provides considerable lead time for final compliance to occur. The variance modifications as issued by the state must be renewed on an annual basis until the expiration date of June 30, 1991. However, EPA has evaluated the acceptability of the variance until the expiration date, so if implementation of the control plan proceeds according to the dates contained in the compliance schedule, EPA will take no additional action on this matter.

This approval does not provide for a permanent relaxation of the particulate matter emission rates for the five shaft type pelletizing furnaces at the Pea Ridge facility. Even though the state of Missouri has prepared a revision to its SIP to incorporate the PM_{10} air quality standards, that revision will not change the particulate matter emission regulations presently contained in the approved SIP. Those regulations, including Missouri Rule 10 CSR 10-3.050, will remain in effect even after EPA acts on Missouri's PM_{10} SIP.

Under the Clean Air Act, EPA is required to approve a SIP revision if it meets the requirements of section 110(a)(2) of the Act. One requirement of the section is that the state must demonstrate that a revision would not cause or contribute to any violations of the NAAQS. As discussed above, EPA has determined that the source, operating at the particulate emission rate allowed by the variance, will not cause or contribute to any violations of the NAAQS. In addition, EPA finds that all other relevant requirements of section 110(a)(2) have been met.

ACTION: EPA takes final action to approve the St. Joe Minerals Corporation, Pea Ridge Iron Ore facility

variance modification, adopted by the MACC on May 21, 1987.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial issue and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn and two subsequent notices wil be published. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 17, 1988.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 17, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference, Particulate matter, Sulfur dioxide.

Note: Incorporation by reference of the Missouri Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Date: August 11, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart AA—Missouri

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding a new paragraph (c)(64) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(64) A variance from Missouri Rule 10 CSR 10–3.050, Restriction of Emission of Particulate Matter from Industrial Processes, for the St. Joe Minerals Corporation, Pea Ridge Iron Ore facility, was submitted by the Missouri Department of Natural Resources on October 22, 1987.

(i) Incorporation by reference.

(A) Variance order modification dated May 21, 1987, issued to St. Joe Minerals Corporation allowing certain equipment at its Pea Ridge Iron Ore facility to operate beyond the limitations specified in Rule 10 CSR 10–3.050, Restriction of emissions of Particulate Matter from Industrial Processes, for outstate Missouri area, effective May 21, 1987.

3. Section 52.1335 is amended by removing the two existing entries to St. Joe Minerals Corp., Pea Ridge Iron Ore facility near the end of the table in § 52.1335(a) and adding a new entry at the end of the table to read as follows:

§ 52.1335 Compliance Schedules.

(a) * * *

Missouri

Source	Location	Regulation involved	Date adopted	Effective date	Final compliance date
St. Joe Minerals Corporation, Pea Ridge Iron Ore Facility.	Washington County, Missouri	10 CSR 10.–3.050	May 21, 1987	May 21, 1987	June 30, 1991.

[FR Doc. 88–18730 Filed 8–17–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[EPA Docket No. AM045–PA; FRL–3431–6]

Commonwealth of Pennsylvania; Approval Status of Odor Control Provisions of the Pennsylvania State Implementation Plan

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is today withdrawing its final rule, previously published at 51 FR 18438 (May 20, 1986) in accordance with the Court's decision in *Concerned Citizens of Bridesburg* vs. *EPA* (Court of Appeals, Third Circuit; December 18, 1987).

DATE: This action will be effective on August 18, 1988.

ADDRESSES: Copies of relevant material pertaining to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, 841 Chestnut Building, Eighth Floor, Philadelphia, PA 19107, Attn: Joseph W. Kunz.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597–9134.

SUPPLEMENTARY INFORMATION: On May 20, 1986, the Environmental Protection Agency (EPA) issued a final rule reversing its former approval of State and local odor emission control regulations as part of the Pennsylvania SIP 51 FR 18438. Two citizen groups, Concerned Citizens of Bridesburg and Delaware Valley Citizens' Council for Clean Air, petitioned for judicial review of EPA's final action in the United States Court of Appeals for the Third Circuit. On December 18, 1987, the Court of Appeals granted the citizen groups' petition and remanded the case to EPA, finding that the Agency failed to follow all the procedural steps required under the Clean Air Act. *Concerned Citizens of Bridesburg* vs. *EPA* Docket No. 86–3380 (Court of Appeals, Third Circuit; December 18, 1987).

In accordance with the Court's decision in *Bridesburg*, EPA is withdrawing its final rule, previously published at 51 FR 18438 (May 20, 1986). As a result of this action, State and local odor emission control regulations which had been approved by EPA as part of the Pennsylvania SIP prior to the May 24, 1986 rulemaking are approved provisions of the Pennsylvania SIP until further notice. The affected provisions

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are set forth in the May 20, 1986 Federal Register Notice.

Under 5 U.S.C 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action does not require review by the Office of Management and Budget under the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 12, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is as follows:

PART 52—[AMENDED]

Subpart NN—Pennsylvania

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.2023 [Amended]

2. Section 52.2023 is amended by removing paragraph (h).

[FR Doc. 88–18731 Filed 8–17–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW–FRL–3431–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 to Eli Lilly and Company, for certain wastes generated at its Clinton, Indiana facility. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify to revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 18, 1988.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–88–ELEF–FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Scott Maid, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4783.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

Eli Lilly and Company petitioned the Agency to exclude from hazardous waste control certain wastes it has generated. After evaluating the petition, on November 27, 1985, EPA proposed to exclude specific wastes generated by thirteen facilities, including Eli Lilly and Company (see 50 FR 48911, November 27, 1985) from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Final decisions were published for eleven of these facilities in earlier notices. One of the proposed exclusions will be addressed in a future notice. This notice addresses only the delisting petition for Eli Lilly and Company.

II. Disposition of Petition

Eli Lilly and Company, Clinton, Indiana

1. Proposed Exclusion

Eli Lilly and Company (ELC) petitioned the Agency to exclude from 40 CFR 261.31 its EPA Hazardous Waste Nos. F002, F003, and F005, consisting of its incinerator scrubber effluent entering and contained in its on-site surface impoundment and its settled incinerator scrubber effluent solids contained in its surface impoundment and disposed in the solids retention area. ELC based its petition on the low concentrations of the listed constituents for these wastes. In the proposed rule, the Agency concluded that data submitted by ELC substantiate their claim that the listed constituents of concern are not present in the wastes above levels of regulatory concern. Furthermore, ELC submitted data on other non-listed hazardous constituents used in the manufacturing process which would be expected to be present in the petitioned wastes. An evaluation of these data indicated that no other hazardous constituents are present in these wastes at or above levels of regulatory concern. See 50 FR 48943, November 27, 1985, for a more detailed explanation of why EPA proposed to grant ELC's petition for these wastes.

2. Agency Response to Public Comments

One commenter stated that the Agency should deny this petition because the facility did not submit ground-water monitoring data. The commenter asserted that the Agency could not evaluate adequately the potential health and environmental hazard of the wastes without these data.

At the time that ELC submitted their petition, and at the time that the Agency proposed to exclude ELC's waste, EPA was not requesting petitioners to submit ground-water monitoring data as part of their petition. Additionally, once EPA began to request ground-water monitoring data (see below), EPA did not request ELC to submit ground-water monitoring data because of an enforcement consent agreement that ELC and the State of Indiana entered into on February 25, 1986. This consent agreement stated that if EPA granted an exclusion for certain hazardous wastes, ELC would not be required to comply with ground-water monitoring requirements. If the petition were denied, ELC would be required to install ground-water monitoring wells and submit closure and post-closure plans for the units handling the petitioned wastes. Under the agreement, no wells were to be installed until EPA made a decision on the delisting petition. Thus, the Agency has not required ELC to submit ground-water monitoring data.

The Agency's vertical and horizontal spread (VHS) model was used to predict the concentration of constituents from ELC's wastes in the ground-water at a hypothetical downgradient compliance point. See 50 FR 48896 (November 27,

1985). The VHS model considers the mobility of constituents from a specified volume of the petitioned waste. That evaluation indicated that no hazardous constituents would be present at the downgradient compliance point above levels of regulatory concern. EPA believes that the evaluation of data showing low total constituent concentrations of the constituents of concern, in this particular case, provide sufficient confidence of non-hazardousness even without ground-water monitoring data to allow a final determination to be made.

However, the Agency agrees with the commenter that ground-water monitoring data are additional, useful information to aid the evaluation of delisting petitions. Facilities petitioning for exclusion of a waste managed on-site are expected to be in compliance with the ground-water monitoring requirements of 40 CFR Part 264 or 265 and EPA generally requests them to submit, as part of their petition, four consecutive rounds of ground-water monitoring data from a monitoring system determined to be adequate under Subpart F of those regulations. These data are requested in order to assess the impact of past disposal of the petitioned waste on underlying ground water.

In this case, however, EPA has concluded that it is appropriate to grant the petition without reviewing ground-water monitoring data. ELC has informed EPA that it has not installed a ground-water monitoring system because the state of Indiana signed a consent agreement waiving ground-water monitoring requirements at the facility. In these circumstances, it is appropriate to rely on the VHS modeling evaluation to conclude that ELC's wastes will not threaten human health or the environment. This result is consistent with a small number of recent decisions to grant delisting petitions without ground-water monitoring data. In each of these cases, the facility had either qualified for a monitoring waiver under EPA's Subpart F regulations or obtained a waiver from a State agency or EPA Regional Office in a signed consent agreement. We believe it is inequitable to request monitoring data as part of the delisting evaluation where a regulatory agency has granted a waiver as part of a settlement of an enforcement claim. And it is unnecessary to obtain it where a facility has demonstrated, pursuant to 40 CFR 264.90 or 265.90, that monitoring is unnecessary because it is extremely unlikely that hazardous constituents will ever migrate to ground water. In all other circumstances, however, EPA intends to continue to request ground-water monitoring data.

The commenter also stated that EPA should not make the proposed exclusion final until an appropriate methodology for evaluating the potential for ground-water contamination from surface impoundments is available.

The Agency believes that the commenter is generally correct in stating that the landfill model is not a perfect tool for evaluating the effects of impounded waste on the underlying aquifer. The Agency, however, does believe that the VHS model is the best model currently available in this case to evaluate the waste's potential effect on the underlying aquifer.

The Agency is currently developing a fate and transport model to evaluate the potential behavior of wastes managed in surface impoundments. However, this model is not ready for use in delisting evaluations, as it has not been fully documented and reviewed. When the Agency believes that the model is sufficiently developed for the purposes of delisting decision-making, it intends to announce the model's availability, describe its parameters and assumptions, and request comments on the model. Subsequent use of the model in the evaluation of specific delisting petitions would be proposed in the **Federal Register** in each instance, and comments on the appropriateness of such use would be requested and fully considered before promulgation of a final decision.

To delay petition evaluations until such time as other analytical tools (such as the surface impoundment model discussed above) are developed would result in curtailing the processing of many of the delisting petitions already submitted and does not seem equitable to those petitioners whose data were already evaluated and for whom, in some cases, proposed decisions were made, using the VHS landfill model.

In spite of this, EPA considered the key variations between landfill and surface impoundment scenarios. The primary difference between the VHS model and a surface impoundment model is expected to be the consideration in the impoundment model of hydraulic head, sorption and retardation, and clogging. Hydraulic head tends to force leachate into the aquifer, displacing ground water, resulting in potentially higher concentrations at the receptor well (*i.e.*, compliance point). Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentration of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or when fine material settles on the bottom of the impoundment. A potential result of clogging is the lowering of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

To some extent, however, the mechanisms of sorption and retardation and clogging counteract hydraulic head as measured by the impact on ground water at a receptor well. Without completing ongoing model development efforts, it is difficult to predict what impact these competing mechanisms will have on the calculation of a predicted compliance-point concentration.

EPA believes that the VHS model is currently adequate to assess reasonable worst-case disposal of wastes at surface impoundments, because the VHS model is conservative in all of its assumptions. Specifically, the VHS landfill model does not account for the likely reduction in the total concentrations of hazardous constituents occurring through volatilization and degradation, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment scenario. For these reasons, the Agency believes that the application of the VHS model, in this case, adequately protects human health.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that both the incinerator scrubber effluent entering and contained in the on-site surface impoundment, and the settled incinerator scrubber effluent solids contained in the on-site surface impoundment and disposed in the retention area, are not hazardous and, as such, should be excluded from hazardous waste control.

In further confirmation of the Agency decision, EPA re-evaluated the organic constituents detected in ELC's incinerator scrubber effluent using the VHS model. This re-evaluation was performed because the Agency had applied the Organic Leachate Model (OLM) to the liquid phase; therefore, the Agency decided to recalculate new compliance-point concentrations for those constituents detected. See 50 *FR* 48943, November 27, 1985 and 51 *FR* 27061, July 29, 1986. (The OLM is used to predict the leachable portion of an organic constituent from a solid waste.

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The Agency does not use the OLM to predict the leachable portion of an organic constituent from a liquid waste because EPA believes that the entire portion of a liquid waste is available for leaching. Therefore, it is unnecessary to use the OLM.) Table 1 presents the maximum total constituent concentrations of each of the detected constituents. Table 2 presents the results of the VHS model analysis. These results confirm the Agency's prior data demonstrating that the scrubber effluent is not hazardous.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS

[Scrubber Effluent]

Constituents	Scrubber effluent (ppm)
Benzene	[1] ND
Carbon tetrachloride	0.0007
Chloroform	0.0009
1,2-Dichloroethane	0.0003
Methylene chloride	0.122
Methyl ethyl ketone	0.215
Toluene	0.0175
1,1,1-Trichloroethane	0.0002
1,1,2-Trichloroethane	0.018
Trichlorofluoromethane	0.0001
Acetone	[2] 0.051
Bromodichloromethane	0.0011

ND: Not detected. Denotes concentrations below the following detection limit: benzene—0.0001.

[1] The Agency determined, using the Dixon extreme value test, that the maximum reported value of 0.009 ppm for benzene was a statistical outlier. This value, therefore, was not used in our analysis.

[2] The Agency determined, using the Dixon extreme value test, that the maximum reported value of 8.931 ppm for acetone was a statistical outlier. This value, therefore, was not used in our analysis.

As indicated in Table 2, the waste exhibited levels of the above organic constituents at the compliance point below levels used in delisting decision making. The Agency did not evaluate the mobility of benzene since it was not detected in the waste using the appropriate SW–846 test method.

TABLE 2.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS

[Scrubber Effluent

Constituents	Compliance-point concentrations (ppm)	Levels of regulatory concern (ppm) [1]
Carbon tetrachloride	0.00011	0.005
Chloroform	0.00014	0.0005
1,2-Dichloroethane	0.000047	0.005
Methylene chloride	0.019	0.056
Methyl ethyl ketone	0.034	1.8
Toluene	0.0028	10.5
1,1,1-Trichloroethane	0.003	0.2
1,1,2-Trichloroethane	0.0028	0.0061
Trichlorofluoromethane	0.000015	10.5
Acetone	0.008	4.0
Bromodichloromethane	0.00017	0.02

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The Agency, as stated in 51 FR 27061 (July 29, 1986), did not use the OLM/VHS model to evaluate the retention area solids because, using the appropriate SW–846 test method, none of the polynuclear aromatic hydrocarbons (PNAHs) or other constituents (detected in the scrubber effluent) were detected. Therefore, the Agency did not evaluate the non-detected constituents in the OLM/VHS model.

In support of its petition, ELC submitted analytical data characterizing the incinerator scrubber effluent and the settled incinerator scrubber effluent solids disposed of in the retention area. ELC, however did not provide analytical data characterizing the settled incinerator scrubber solids contained in its on-site surface impoundment. As a result, ELC was requested to characterize the settled incinerator scrubber effluent solids to demonstrate that the solids were of similar composition to the retention areas solids.

On September 18, 1987, ELC submitted results obtained from a modified classical stirred tank model simulating the partitioning of constituents between water and solids. ELC's model was a "worst-case" model in that it used as inputs the maximum total constituent concentrations of the constituents detected in the scrubber effluent, while assuming conservation of mass, no volatilization, no biodegradation, and a total organic carbon (TOC) content of five percent (the maximum observed TOC level of ELC's waste was 3.8 percent (see 50 FR 48943, November 27, 1985)). Table 3 presents the predicted constituent concertrations or organic constituents in ELC's settled incinerator scrubber effluent solids contained in the surface impoundment. (The Agency limited its evaluation of the settled incinerator scrubber effluent to those constituents actually detected in the scrubber effluent entering the surface impoundment.)

TABLE 3.—Predicated Total Constituent Concentrations Settle Incinerator Scrubber Effluent Solids

[Contained in the On-Site Surface Impoundment]

Constituents	Total constituent concentrations (mg/kg)
Carbon tetrachloride	1.13×10^{-1}
Chloroform	3.44×10^{-2}
1,2-Dichloroethane	1.05×10^{-2}
Methylene chloride	2.98×10^{-1}
Methyl ethyl ketone	7.36×10^{-1}
Toluene	5.70×10^{-1}
1,1,1-Trichloroethane	1.15×10^{-2}
1,1,2-Trichloroethane	1.02×10^{-1}
Trichlorofluoromethane	1.27×10^{-3}
Acetone	8.99×10^{-2}
Bromodichloromethane	5.81×10^{-3}

ELC attempted to use a mass-balance approach to model the total constituent concentration of the EP toxic metals, nickel, and cyanide in the settled incinerator scrubber effluent solids contained in the surface impoundment. The model used an experimentally derived retention factor (*i.e.*, the ratio of the concentrations of metals entering and leaving the surface impoundment). The Agency rejected ELC's model, however, because the retention factor was extremely sensitive, and any miscalculation of the smallest amount would cause the model to predict sufficient concentrations necessary to fail the VHS model analysis. EPA, therefore, requested ELC to collect representative samples of the settled incinerator scrubber effluent solids contained in the surface impoundment, and analyze for both the total constituent and EP toxicity concentrations of the EP toxic metals, nickel, and cyanide.

To collect representative samples from surface impoundments like ELC's, petitioners are normally requested to divide the unit into four quadrants and randomly collect five full-depth core, samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

On October 28, 1987, ELC collected a total of four composite samples of the settled incinerator scrubber effluent solids from its surface impoundment. The surface impoundment was divided into four sections and from each section, five full-depth core samples were randomly collected. The five full-depth core samples were composited by section.

ELC use SW–846 method numbers 3010, 3020, 6010, 7421, and 7470 to quantify the total constituent concentrations of the EP toxic metals and nickel, and SW–846 method number 1310 to quantify the EP leachable concentrations of the EP toxic metals and nickel in the settled incinerator scrubber solids contained in the surface impoundment. Additionally, ELC used EPA method number 335.2 to quantify the total constituent concentration of cyanide. See "Methods for Chemical Analysis of Water and Wastes," EPA/4–79–020. Table 4 presents the maximum total constituent and EP leachate concentrations of the EP toxic metals, nickel, and cyanide.

TABLE 4.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS SETTLED INCINERATOR SCRUBBER EFFLUENT SOLIDS

[Contained in the Surface Impoundment]

Constituents	Total constituent concentrations (mg/kg)	EP leachate concentrations (mg/l)
Arsenic	29.0	<0.098
Barium	1390.0	0.319
Cadmium	27.0	0.012
Chromium	350.0	<0.012
Lead	360.0	<0.045
Mercury	2.7	<0.015
Nickel	160.0	0.22
Selenium	5.0	<0.11
Silver	<20.0	<0.014
Cyanide	<0.5	[1] <0.025

<: Denotes that the actual value is below the detection limit specified in the table.

[1] Leachable cyanide tests were not performed. However, leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

The Agency evaluated the mobility of the inorganic constituents from ELC's waste using the VHS model. The results of the Agency's evaluation, using the waste volume of 160 cubic yards (the amount claimed by ELC to be in the surface impoundment) and the maximum EP leachate concentrations of the hazardous inorganic constituents of concern in the VHS model, are shown in Table 5. The Agency did not evaluate the mobility of arsenic, chromium, lead, mercury, selenium, silver, or cyanide from ELC's waste because they were not detected in the EP extract (see Table 4). If a constituent is not detected when using the appropriate SW–846 method, the Agency assumes that the constituent is not present.

TABLE 5.—VHS MODEL: PREDICTED COMPLIANCE-POINT CONCENTRATIONS SETTLED INCINERATOR SCRUBBER EFFLUENT SOLIDS

[Contained in the Surface Impoundment]

Constituents	Compliance-point concentrations (ppm)	Levels of regulatory concern (ppm) [1]
Barium	0.01	1.0
Cadmium	0.0004	0.01
Nickel	0.007	0.5

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The settled incinerator scrubber effluent solids exhibited barium, cadmium, and nickel levels at the compliance point below the levels used in delisting decision making.

The Agency calculated the mobile portion of the total constituent concentrations of the organics (detected in the scrubber effluent) in the settled incinerator scrubber effluent solids using the OLM. See 51 FR 41084, November 13, 1986. The leachable concentrations of the detected organic constituents were then evaluated using the VHS model. Table 6 presents the results of the OLM/VHS model analysis.

As indicated By Table 6, none of the organic constituents exhibited complicance-point concentrations at levels exceeding the health-based levels. The Agency was unable to evaluate the mobility of bromodichloromethane since a value for solubility was not available. As a matter of policy, where a compliance-point concentration cannot be calculated, EPA will not evaluate that particular constituent.

TABLE 6.—OLM/VHS MODEL: PREDICTED COMPLIANCE-POINT CONCENTRATIONS SETTLED INCINERATOR SCRUBBER EFFLUENT SOLIDS

[Contained in the Surface Impoundment]

Constituents	Compliance-point concentrations (ppm)	Levels of regulatory concern (ppm) [1]
Carbon tetrachloride	3.78×10^{-5}	5.0×10^{-3}
Chloroform	4.02×10^{-5}	5.0×10^{-4}
1,2-Dichloroethane	1.83×10^{-5}	5.0×10^{-3}
Methylene chloride	1.15×10^{-5}	5.64×10^{-3}
Methyl ethyl ketone	5.63×10^{-3}	1.8
Toluene	4.65×10^{-4}	10.5
1,1,1-Trichloroethane	1.02×10^{-5}	2.00×10^{-1}
1,1,2-Trichloroethane	3.20×10^{-6}	6.10×10^{-3}
Trichlorofluoromethane	1.00×10^{-5}	10.5
Acetone	2.21×10^{-3}	4.0
Bromodichloromethane	NC [2]	2.00×10^{-3}

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

[2] Not calculated due to the lack of a value for solubility.

Additionally, although ELC did not test the settled incinerator scrubber effluent solids contained in the surface impoundment for the characteristics of ignitability, corrosivity, and reactivity, the Agency believes that the characteristics testing previously performed on the settled incinerator scrubber solids stored in the retention area can be used to demonstrate that the settled solids contained in the surface impoundment do not exhibit the characteristics of ignitability, corrosivity, and reactivity. The retention area solids are the same waste, except for solids content (*i.e.*, the settled sludge contained in the surface impoundment has a higher percent solids content). The characteristics testing performed on the settled solids disposed in the retention area, by inference, indicates that the settled solids contained in the surface impoundment do not exhibit the characteristics of ignitability, corrosivity, and reactivity.

The Agency, therefore, is granting a final exclusion to Eli Lilly and company for both its incinerator scrubber effluent entering and contained in its on-site surface impoundment, and the incinerator scrubber effluent solids contained in its on-site surface impoundment and disposed of in the solids retention area. These wastes result from the incineratsion of waste solvents. These wastes are listed as EPA Hazardous Waste Nos. F002, F003, and F005, and are generated at ELC's Clinton, Indiana facility. The exclusion remains in effect unless the wastes vary from those originally described in the petition (*i.e.*, the wastes are altered as a result of changes in the manufacturing or treatment process). The facility would require a new exclusion if its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, under the

Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA, regulatory requirements that are more stringent that EPA's pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: August 10, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add to table 1 the following wastestreams in alphabetical order:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Eli Lilly and Company.	Clinton, Indiana	Incinerator scrubber liquids, entering and contained in their on-site surface impoundment, and solids settling from these liquids originating from the burning of spent solvents (EPA Hazardous Waste Nos. F002, F003, and F005) contained in their on-site surface impoundment and solids retention area on August 18, 1988 and any new incinerator scrubber liquids and settled solids generated in the surface impoundment and disposed of in the retention are a after August 18, 1988.
•	•	•

[FR Doc. 88-18732 Filed 8-17-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 498

[BERC-371-F]

Medicaid Program; Appeals From Cancellation of Approval of Medicaid Long-Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule corrects an oversight by setting forth time limits for new issues that may be considered by an Administrative Law Judge (ALJ) during a hearing afforded a Medicaid skilled nursing facility (SNF) or intermediate care facility (ICF) because the Secretary proposes to cancel its approval under section 1910(c)(1) of the Social Security Act (the Act).

This amendment is necessary because current rules do not take account of the fact that hearings under section 1910(c) of the Act (unlike Medicare hearings) may take place *before* the cancellation is put into effect.

The purpose is to establish time limits appropriate to section 1910(c) situations.

DATE: This rule is effective September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Pete Burdette, (301) 966-6772.

SUPPLEMENTARY INFORMATION:

Background

Final regulations with comment period, published on June 12, 1987 at 52 FR 22444, had a dual purpose:

- To update and clarify the rules on appeals from determinations that affect the participation of providers, suppliers, and practitioners in the Medicare program; and
- To redesignate those rules (previously in Subpart O of Part 405 of the Medicare rules) as a new Part 498.

As part of the updating process, we made those Medicare regulations applicable to situations in which, under section 1910(c) of the Act, the Secretary proposes to cancel the approval of a Medicaid SNF or ICF. As explained in the preamble to the June 12 rules, this is appropriate because—

- The appeals procedures in Part 498 are based on sections 205(b) and 205(g) of the Act; and
- Section 1910(c) of the Act gives the Medicaid facility affected by a proposed cancellation under that section the right to hearing and to judicial review under sections 205(b) and 205(g) of the Act.

As a means of limiting the scope of the hearing to matters directly relevant to the determination that is being appealed, § 498.56 retains the time limits (previously set forth in § 405.1542) for new issues that may be considered by the ALJ. For terminations, it provides that the ALJ may not consider any issues that arise after "the effective date

of the termination of a provider agreement".

Comments

We received two comments on the June 12 publication. One was from a law firm, recommending substantive changes in the hearings procedures and in the availability of case decisions, indices, and pleadings. These comments will be considered in developing a Notice of Proposed Rulemaking (NPRM) that will amend Part 498 to make substantive changes that could not be made by the June 12 rules for which NPRM was waived.

The other comment pointed out that the time-limit established by § 498.56(b)(1) for new issues was not appropriate for appeals under section 1910(c) of the Act.

Discussion

There is an important difference between HCFA's termination of a Medicare provider agreement and a proposal by the Secretary to cancel the approval of a Medicaid SNF or ICF under section 1910(c) of the Act. The hearing for a Medicare facility is always provided after the termination goes into effect. However, for the Medicaid facility, except when its deficiencies pose immediate and serious threat to patient health and safety, the Medicaid provider agreement remains in effect—

- Until the period for requesting a hearing has expired; or
- If a hearing is requested and granted, until the Secretary reaches a final decision after the hearing.

In developing the June 12 rules, we overlooked the need for a separate cut-off date for "pre-cancellation" hearings. The current Medicare rule (§ 498.56(b)(1)), if applied to such hearings, would make it difficult to reach a final decision within a reasonable period of time. A Medicaid facility could raise a "new issue"—that it had corrected all deficiencies after the section 1910(c) survey—and request resurvey. By repeatedly reporting compliance and requesting resurvey, the facility could prolong the appeals process indefinitely. Since the provider agreement could not be terminated until the ALJ issued a decision, the facility would continue to receive Medicaid payment—for new admissions as well as for previously admitted residents—and continue to pose a potential threat to the health and safety of all residents. We do not believe that this furthers the goals and objectives of the Medicaid program.

Since the issue before the ALJ is whether the Secretary properly determined that the facility's participation in the program ought to be terminated, and since participating facilities are required to be continuously in compliance with the conditions of participation for SNFs or the standards for payment to ICFs, the appropriate cut-off date for a pre-cancellation hearing is the completion date of the survey or resurvey that is the basis for the proposed cancellation of approval.

When the deficiencies of a Medicaid facility pose immediate and serious threat to patient health and safety, approval is cancelled without waiting for a hearing. In that situation, the appropriate cut-off date for new issues is the effective date of cancellation.

Response to Comment

This rule makes a single change responsive to the second comment received regarding the final regulations published on June 12, 1987 (52 FR 22444). In § 498.56, we have added a new paragraph (b)(5) to provide separate time limits for new issues that may be considered by the ALJ at a hearing under section 1910(c) of the Act. In the case of a pre-cancellation hearing, the cut-off date is the completion date of the survey or resurvey that was the basis for the Secretary to propose cancellation of the approval of the Medicaid SNF or ICF. In an immediate and serious threat situation, the cut-off date is the effective date of cancellation of approval.

Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

We have determined that a regulatory impact analysis is not required for these rules because this minor change will have very slight budgetary impact.

Section 1102(b) of the Act requires a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals, that is, hospitals that are located outside a metropolitan statistical area and have fewer than 50 beds.

In addition, we generally prepare an initial Regulatory Flexibility Analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 602) unless the Secretary certifies that the regulation would not have a "significant economic impact on a substantial number of small entities". A small entity is defined as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers as small entities.

We have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities or on the operation of a substantial number of small rural hospitals.

Paperwork Reduction Act

This rule contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare practitioners, Providers and suppliers, Medicaid, Nursing homes.

42 CFR Part 498 is amended as set forth below:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

1. The authority citation continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh, and 1395ii) unless otherwise noted.)

2. In § 498.56 paragraph (a)(1) and the introductory text of paragraph (b) are republished for the reader's covenience, and paragraph (b)(5) is added to read as follows:

§ 498.56 Hearing on new issues.

(a) *Basic rules.* (1) Within the time limits specified in paragraph (b) of this section, the ALJ may, at the request of either party, or on his or her own motion, provide a hearing on new issues that impinge on the rights of the affected party.

* * * * *

(b) *Time limits.* The ALJ will not consider any issue that arose on or after the following dates:

(5) With respect to Medicaid SNFs or ICFs surveyed under section 1910(c) of the Act—

(i) The completion date of the survey or resurvey that is the basis for a proposed cancellation of approval; or

(ii) If approval was cancelled before the hearings, because of immediate and serious threat to patient health and safety, the effective date of cancellation.

(Catalog of Federal Domestic Assistance Programs No. 13.714, Medical Assistance Programs)

Dated: April 12, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

BEST COPY AVAILABLE

Approved June 6, 1988.
Otis R. Bowen,
Secretary.
[FR Doc. 88-18703 Filed 8-17-88; 8:45 am]
BILLING CODE 4120-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Regulations Under Section 206(b) of the Museum Services Act

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final regulations.

SUMMARY: The Institute of Museum Services issues final regulations under section 206(b) of the Museum Services Act relating to the award of contracts and cooperative agreements to professional museum organizations. The fiscal year 1988 appropriation statute for IMS provides the necessary appropriations act authority to implement this section. IMS is issuing regulations under this authority to assist applicants and recipients and to make the most effective use of available funds.

EFFECTIVE DATE: August 16, 1988.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Director of Programs, Institute of Museum Services, Room 609, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786-0539).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and has been subsequently amended and extended.

The purpose of the Act is stated in section 202, 20 U.S.C. 961, as follows:

> It is the purpose of [the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Service (Board) and a Director. IMS is an independent agency placed under the statutory heading of the National Foundation on the Arts and the Humanities (National Foundation).

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public. During fiscal year 1988, IMS provides three types of grant assistance to museums: (1) General operating support; (2) conservation assistance; and (3) museum assessement assistance. This regulation covers a fourth type of support: contracts and cooperative agreements with professional museum associations to provide services.

2. Purpose and Scope of Regulations

Section 206(b) of the Museum Service Act, 20 U.S.C. 965(b), provides for financial assistance to professional museum organizations. Section 206(b) states:

> The Director [of IMS], subject to the policy direction of the National Museum Services Board, is authorized to enter into contracts and cooperative agreements with professional museum organizations to provide financial assistance to such organizations in order to enable such organizations to undertake projects designed to strengthen museum services, except that any contracts of cooperative agreements entered into pursuant to this subsection shall be effective only to such extent or in such amounts as are provided in appropriations Acts.

Language in the fiscal year 1988 appropriation for IMS (Pub. L. No. 100-203) contains the necessary appropriations act authority to implement this section. IMS had no regulations or guidelines governing applications for such assistance or postaward conditions. Therefore, after receiving the policy direction of the Board, IMS issued, on February 5, 1988, proposed regulations for public comment.

The proposed regulations closely track section 206(b) with respect to those matters for which there is statutory language. They include provisions regarding eligibility, applications, activities for which assistance will be made available, and conditions for receipt of funds.

Section 1180.77 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Institute of Museum Services will submit a copy of these requirements to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on these requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 30002, New Executive Office Building, Washington, DC 20503; Attn: Jim Houser.

3. Response to Comments

A. General

A number of comments were received in response to the February 5 notice of proposed rulemaking. The following paragraphs summarize these comments and the IMS response. All of the comments have been carefully studied by IMS and National Museum Services Board.

In general, commenters expressed approval of the regulations and of the manner in which IMS proposes to administer the program. Specific suggestions for improvement or clarification fall into two categories:

—Comments regarding provisions of the proposed regulations that repeat or reflect statutory requirements.

—Comments concerning provisions that were not required by statute, but which were developed by IMS to ensure effective program administration or clarify statutory requirements.

B. Regulations Governed by Statutory Provisions

IMS may not change regulatory provisions based upon the governing statute. Such comments are identified, summarized, and discussed below:

(1) *Eligibility status of public agencies and organizations.* A number of commenters expressed concern that the regulations did not permit public museum agencies or organizations to apply for assistance. The proposed regulations contained the following definition of the term "professional museum organization":

> For the purpose of this subpart, the term "professional museum organization" means a private, nonprofit professional museum services-related organization, institution, or association which engages in activities disigned to advance the well-being of museums eligible for assistance under this part and the museum profession * * *

This definition was taken from section 206(b)(4) of the Museum Services Act, 20 U.S.C. 965(b)(4), which provides:

> For purposes of this subsection, the term "professional museum organization" means a private, nonprofit professional museum-related organization, institution, or association which engages in activities

designed to advance the well-being of museums and the museum profession.

The governing statute thus limits eligibility to private nonprofit organizations. Professional museum organizations that are governmental entities are not eligible. However, private organizations that operate on a regional or state-wide basis, or that serve museums or categories of museums of a particular state, are eligible. See § 1180.77(d)(2) of the regulations. In view of the applicable statutory provisions, no change has been made in the text of the regulations.

(2) *Prohibition of use of funds for general operating support for professional museum organizations.* A number of commenters thought that general operating support should be available to professional museum organizaions under the program. The proposed regulations stated:

> No financial assistance may be provided under this subpart to pay for the operational expenses of any professional museum organization.

This provision repeats section 206(b)(2) of the Museum Services Act, 20 U.S.C. 965(b)(2)(B). It is consistent with the purpose of the program to assist projects or activities of professional museum organizations designed to strengthen museum services. Because the regulatory provision is based upon a statutory limitation, no change can be made in the regulations.

(3) *One-year duration for projects.* A number of commenters expressed concern that the one-year limitation on the duration of projects assisted under the program would be too confining. This limitation is contained in § 1180.77(1) of the regulations. It reflects a statutory limitation in section 206(b)(2)(A) of the statute, 20 U.S.C. 965(b)(2)(A), which provides:

> No financial assistance may be provided under this subsection for any project for a period in excess of one year.

Again, IMS is bound by the statutory limitations governing this program. See below for a discussion of the definition of the one year period.

(4) *Breadth of definition of "professional museum organization."* A number of commenters objected to the breadth of the definition of "professional museum organization." They were concerned that organizations might receive assistance that did not have as their purpose the strengthening of museum services for a broad range of museums. For example, an organization devoted to the financial improvement of one museum might be eligible. Dilution of the impact of a program with limited funds was a concern of these commenters.

In defining the term "professional museum organization," IMS followed the statutory language but included some clarifying language to target organizations that engage in activities to advance the well-being of museums (defined as eligible under the Act) and the museum profession. Such activities include technical assistance, dissemination of information, professional development, and professional services. In addition, IMS included funding criteria in § 1180.77(k) to further achieve this targeting. These criteria emphasize strengthening museum services and project quality. IMS believes this definition to be consistent with the statute. IMS will monitor the administration of the program to ensure that the funding criteria are adequate to carry out the statutory purpose. At this time, a change in the regulations does not appear to be necessary or appropriate.

(5) *Limitation on funds available under the program for fiscal year 1988.* A number of commenters objected to the limitation of $100,000 on the funds available for fiscal year 1988, set forth in § 1180.77(g) of the regulations. The limitation is based on the language in section 206(b) of the statute that authorizes funding only to the extent provided in appropriations acts. The FY 1988 appropriation act (Pub. L. No. 100–203) provides ** * * "$100,000 as authorized by 20 U.S.C. 965(b)."* The funding level reflects a statutory limitation not subject to change by IMS in regulations.

Upon further review, IMS determined that it is not necessary to mention the $100,000 level in the regulation. These regulations are designed to cover more than one year, and appropriations may vary from year-to-year. Each year's appropriation level will be publicized when applications are made available. Relevant clarifying language has been provided in the regulation.

(6) *Matching.* A number of commenters called for greater flexibility in the matching requirement contained in § 1180.77(h) of the regulations. This regulatory provision is based upon section 206(c) of the Museum Services Act which provides:

> Grants, contracts, and cooperative agreements under this section for any fiscal year may not exceed 50 per centum of the cost of the program for which the grant or financial assistance is made, except that no more than 20 per centum of the funds available under this section for any fiscal year may be available for grants or financial assistance in such a fiscal year without regard to such limitation.

The regulatory provision gives flexibility to IMS in applying the matching requirements. The last sentence of the regulatory provision provides:

> In exceptional circumstances applicable to a particular applicant, the Director, upon consultation with the Board, may waive the matching requirement pursuant to section 206(c) of the Act.

C. Comments on Other Provisions

(1) *Single application from an organization.* A number of commenters objected to following requirement contained in the proposed regulations:

> An applicant may submit only one application with respect to each deadline.

In view of the limited purpose of the program and the limited funds available, IMS believes that this provision will promote the effective administration of the program.

(2) *Documentation of needs.* A number of commenters called for more documentation of needs by organizations applying for assistance. Section 1180.77(k)(3) of the proposed regulations makes such documentation a factor in application review. IMS believes that this provision is responsive to the comment. Applicants can be expected to respond to it in preparing their applications. IMS will review the need for more explicit language once the program is implemented.

(3) *Clarification regarding award amount.* One commenter called for clarification of the description of the amount which an applicant might expect to receive. The proposed regulations were designed in § 1180.77(g) to indicate that, while the upward limit on the program was $100,000, IMS expected to award contracts or cooperative agreements of no more than $50,000 to a single organization. The provision was intended to guide applicants in developing their applications.

Upon review, IMS determined that it is not necessary to mention award limits in the regulations. Award amounts may fluctuate from year-to-year, due to changes in the total appropriation and in the types of projects funded. Guidance on probable award amounts will be provided in each year's application materials. Relevant clarifying language has been provided in the regulation.

(4) *Commencement of one-year duration period.* A number of commenters expressed the view that the one year project period should begin with the date of the award. IMS agrees and has made a clarifying change to the application guidelines and regulations.

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(5) *Technical changes.* A technical change has been made in § 1180.77(d), by the addition of a new subparagraph (3), in order to ensure that assistance is not made available under the professional museum organization program to organizations that could quality for assistance under other programs administered by IMS for which museums are eligible. The Institute believes that this clarification is needed in order to be certain that the program is carried out in accord with its legislative intent, to enhance museum services by assisting organizations that were comprised of museums or museum professionals but were otherwise ineligible for assistance under the Act because they were not themselves museums.

Other editorial and non-substantive technical changes have been made.

(6) *Executive Order 12291.* These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

(7) *Regulatory Flexibility Act Certification.* The Director certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these proposed regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered under the Regulatory Flexibility Act.

These regulations will affect certain organizations receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

List of Subjects in 45 CFR Part 1180

Museums, National boards.

Dated: August 10, 1988.

PART 1180—[AMENDED]

1. The authority citation for 45 CFR Part 1180 continues to read as follows:

Authority: 20 U.S.C. 961 *et seq.*

Part 1180 of Title 45 CFR is amended by adding a new Subpart E consisting of § 1180.77 to read as follows:

Subpart E—Assistance To Professional Museum Organizations

§ 1180.77 Contracts and cooperative agreements with professional museum organizations.

(a) *Scope.* The guidelines and standards in this section apply to all aspects of the Institute's program to provide financial assistance, through contracts and cooperative agreements, to professional museum organizations for the carrying out of certain projects pursuant to section 206(b) of the Act.

(b) *Definitions.* For the purposes of this subpart, the term "professional museum organization" means a private, non-profit professional museum services-related organization, institution, or association which engages in activities designed to advance the well-being of museums eligible for assistance under this part and the museum profession through such activities as technical assistance, dissemination of information, professional development activities, and professional services.

(c) *Applicability of other regulations.* The following IMS regulations apply to assistance under this subpart:

(1) Section 1180.3; § 1180.4; and § 1180.5(e) of Subpart A and

(2) Sections 1180.30–1180.33 and §§ 1180.36–1180.39 of Subpart B; and

(3) Section 1180.44, § 1180.46 and §§ 1180.51–1180.59 of Subpart C.

(d) *Applicants.* (1) A professional museum organization may apply for assistance through a contract or cooperative agreement under this subpart.

(2) A professional museum organization that serves museums or museum professionals at the national, regional, state, or local level may apply.

(3) An entity eligible for assistance under other subparts of this Part 1180 may not apply.

(e) *Types of projects.* The Institute considers applications under this subpart to carry out projects designed to strengthen museum services such as:

(1) Programs to educate professionals in improved or innovative standards of museum operations or other matters relating to museum management;

(2) Research or surveys to determine effective and innovative methods to provide museum services or conduct operations;

(3) Projects to investigate the feasibility of cooperative methods for the carrying out by museums of management, storage, and information gathering and sharing, or other museum functions; or

(4) Research projects to help museums and museum associations serve their publics more effectively.

(f) *Limitation.* No financial assistance may be provided under this subpart to pay for the operational expenses of any professional museum organization.

(g) *Amount of contract or cooperative agreement.* The amount of contracts or cooperative agreements shall be subject to the availability of appropriations. Guidance on probable award ranges will be provided with application materials each year.

(h) *Matching.* A contract or cooperative agreement under this subpart for any fiscal year may not normally exceed 50 per centum of the cost of the project for which the contract or cooperative agreement is made. In exceptional circumstances applicable to a particular applicant, the Director, upon consultation with the Board, may waive this requirement pursuant to section 206(c) of the Act.

(i) *Application requirements.* (1) An applicant under this subpart must submit an application in such time and such manner, and containing such information, as requested by the Institute.

(2) An applicant must submit with its application its financial statements for the two most recent fiscal years for which information is available. For applications requesting in excess of $20,000, the Institute requests that one of those statements be audited.

(j) *Procedures for review of applications.* To evaluate applications and determine the amount of their awards, the Institute rates competitive applications under the applicable criteria stated in paragraph (k). Normally, these applications are evaluated by field reviewers, panels of experts, or both. The Director may also use technical experts in the review of applications. Final determinations as to the award of contracts or cooperative agreements are made by the Director after consultation with the Board with respect to policy matters.

(k) *Criteria.* This paragraph sets forth the criteria that the Institute uses in evaluating and reviewing applications for contracts or cooperative agreements under this subpart. Panelists and field reviewers are instructed to use only these criteria in the evaluation and review of these applications:

(1) To what extent is the project likely to strengthen museum services?

(2) To what extent does the project hold promise of exploring or developing effective and innovative solutions to problems affecting the provision of museum services or operations?

(3) Has the need for the project been adequately documented?

(4) What is the quality of the project design?

(5) Does the project have an adequate budget to achieve its purpose?

(6) What are the qualifications of the personnel the applicant plans to utilize in the project?

(7) What are the anticipated long-term benefits of the project?

(l) *Duration.* No financial assistance may be provided under this subpart for any project for a period in excess of one year. The one year period begins with the date that the project is scheduled to commence under the applicable contract or cooperative agreement.

(m) *Limitation on number of applications.* An applicant may submit only one application with respect to each deadline.

Lois Burke Shepard,

Director, Institute of Museum Services.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

(20 U.S.C. Sec. 961–68)

[FR Doc. 88–18558 Filed 8–17–88; 8:45 am

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–302; RM–5698]

Radio Broadcasting Services; Palm Springs, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 263B1 for Channel 265A at Palm Springs, California, and modifies the Class A license of KPSI Radio Corporation for Station KPSI(FM), as requested, to specify operation on the higher class channel, thereby providing that community with an additional wide coverage area FM service. Reference coordinates for Channel 263B1 at Palm Springs are 33–56–53 and 116–24–31. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–302, adopted July 6, 1988, and released August 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM allotments for California, in the entry for Palm Springs is amended by removing Channel 265A and adding Channel 263B1.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18755 Filed 8–17–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–376; RM–5839 and RM–6154]

Radio Broadcasting Services; Dalton and Rockmart, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Dalton, Georgia as a first FM service, at the request of Calvin R. Means, at coordinates 34–46–51 and 84–53–30. Additionally, in response to a counterproposal filed in this proceeding, Channel 296C2 is substituted for Channel 296A at Rockmart, Georgia, and the license for Station WZOT(FM) modified accordingly, at the request of the licensee, Broadcast Investment Associates, Inc. Coordinates for Channel 296C2 are 34–14–47 and 84–59–18. With this action, this proceeding is terminated.

DATES: Effective September 23, 1988; the window period for filing applications on Channel 283A at Dalton will open on September 26, 1988, and close on October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–376, adopted July 12, 1988, and released August 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Georgia (1) Channel 283A is added at Dalton, and (2) Channel 296C2 is added at Rockmart, and Channel 296A removed.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18756 Filed 8–17–88; 8:45 a.m.]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–50; RM–6105]

Radio Broadcasting Services Ontonagon, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 266C2 to Ontonagon, Michigan, and modifies the license of Station WONT(FM), Channel 252A, to specify operation on Channel 266C2. This action is taken in response to a petition filed by Ontonagon County Broadcasting, Inc., licensee of Station WONT(FM). Comments were filed by the petitioner. No other comments were received. Canadian concurrence has been obtained for the allotment of Channel 266C2 at Ontonagon. The coordinates for Channel 266C2 are 46–44–49 and 89–11–27. With this action, this proceeding is terminated.

DATES: Effective September 23, 1988.

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FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–50, adopted July 12, 1988, and released August 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended in the entry of Ontonagon, Michigan, by removing Channel 252A and adding Channel 266C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18757 Filed 8–17–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–79; RM–6058]

Radio Broadcasting Services; Iuka, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 285C2 for Channel 285A at Iuka, Mississippi, in response to a petition filed by Segars Communications, Inc. In accordance with § 1.420(g) of the Commission's Rules, we have also modified the license for Station WTIB, Iuka, to specify operation on Channel 285C2 in lieu of Channel 285A, with a site restriction 8.8 kilometers northwest of the community. The coordinates used for Channel 285C2 are 34–50–17 and 88–16–56. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–79, adopted July 12, 1988, and released August 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Mississippi is amended by deleting Channel 285A and adding Channel 285C2 at Iuka.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18758 Filed 8–17–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–347; RM–5891]

Radio Broadcasting Services; Bastrop and Burnet, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at Bastrop, Texas, and modifies the license of Station KSSR(FM) to specify operation on the new frequency, at the request of Central Texas Broadcasters, Inc., as that community's first wide coverage area FM service. The petitioner's proposed site is located 22.9 kilometers (14.2 miles) west of the community, at coordinates 30–02–30 and 97–32–12. This action also substitutes Channel 295A for Channel 296A at Burnet, Texas and modifies the license of Station KHLB–FM to specify operation accordingly, in order to accomplish the Bastrop substitution. Channel 295A at Burnet requires a site restriction of 6.7 kilometers (4.2 miles) west of that community, at coordinates 30–44–15 and 98–17–39. Mexican concurrence has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–347, adopted June 20, 1988, and released August 11, 1988. This full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by removing Channel 296A and adding Channel 296C2 for Bastrop; and removing Channel 296A and adding Channel 295A for Burnet.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18759 Filed 8–17–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–258; RM–5796]

Radio Broadcasting Services; New London and Merrill, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C2 for Channel 228A at New London, Wisconsin and modifies the license of Station WNBK(FM) to specify operation on the higher class co-channel, as requested by Goetz Communications Corporation. This document also substitutes Channel 281A for Channel 228A at Merrill, Wisconsin and modifies the license of Station

WMZK(FM) to specify operation on the new frequency in order to accommodate the New London substitution. Channel 228C2 at New London requires a site restriction of 17 kilometers (10.6 miles) northeast of the community. The proposed site coordinates are 44–30–51 and 88–36–53. Canadian government has concurred to the channel changes at Merrill. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–258, adopted July 8, 1988, and released August 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended, under Wisconsin, adding Channel 281A and removing Channel 228A under Merrill; and by adding Channel 228C2 and removing Channel 228A under New London.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18760 Filed 8–17–88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392; Sub-No. 1]

Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; modification of existing rules.

SUMMARY: The Commission is clarifying its regulations governing certain exempt acquisitions and operations under 49 U.S.C. 10901 by modifying 49 CFR Part 1150 to reflect the fact that only shippers located on the transferred line must be served with an applicant's notice of intent to file a notice of exemption. This should eliminate any confusion as to which shippers must be notified of a change in ownership and operation.

DATE: This action will be effective August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

(TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: In Ex parte No. 392 (Sub-No. 1), *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C.2d 309, served February 29, 1988. we adopted revised rules at 49 CFR Part 1150, Subpart D, governing certain exempt acquisitions and operations under 49 U.S.C. 10901. Specifically, to provide affected parties in "larger" transactions with increased notice and information, we adopted revised rules establishing a separate procedure to be used in transactions creating new Class I and II rail carriers. The new procedure includes a pre-filing period of at least 14 days initiated by applicant's service on specified parties, including certain shippers on the line, of a notice of intent to file a notice of exemption, a post-filing period of at least 21 days, and expanded data requirements. The rules were published in the **Federal Register** on February 29, 1988 at 53 FR 5981 and became effective on March 30, 1988.

By separate decision, we are denying a petition filed by Patrick W. Simmons, Illinois Legislative Director for United Transportation Union, seeking reopening of our prior decision for further revision of the rules. However, with regard to the issue raised by Mr. Simmons as to which shippers using the line must be served with the notice of intent, we are clarifying our rules at 49 CFR 1150.35(c)(4) to make clear that only shippers or receivers of freight actually located on the line must be served with the notice of intent. To eliminate any confusion regarding notice to shippers, the Commission is now revising that regulation in the manner described below.

Additional information is contained in the Commission's decision. To pruchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC metropolitan area), (assistance for the hearing impaired is available through TTD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

This action does not affect significantly the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1150

Administrative practice and procedure, Railroads.

This action is taken under the authority of 49 U.S.C. 10321, 10901 and 10505, and 5 U.S.C. 553 and 559

Decided: August 1, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations Part 1150 is amended as follows:

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE OR OPERATE RAILROAD LINES

1. The authority citation for 49 CFR Part 1150 continues to read as follows:

Authority: 49 U.S.C. 10321, 10901 and 10505; 5 U.S.C. 553 and 559.

2. Section 1150.35 is amended by revising paragraph (c)(4) to read as follows:

§ 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.

* * * * *

(c) * * *

(4) Shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the line(s) in the most recent 12 months for which data is available (beginning with the largest shipper and working down).

* * * * *

[FR Doc. 88–18717 filed 8–17–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

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ACTION: Notice of record of decision.

SUMMARY: This notice makes available to the public the Record of Decision (ROD) on the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds. The ROD was prepared in accordance with National Environmental Policy Act (Council on Environmental Quality) regulations, 40 CFR 1505.2. The ROD results from recommendations of the Fish and Wildlife Service (Service) to the Assistant Secretary for Fish and Wildlife and Parks, Department of Interior, regarding a general approach to issuance of annual regulations permitting the sport hunting of migratory birds. This action results from discharge of responsibilities delegated by the Secretary of the Interior to the Service Director to protect and enhance migratory bird populations under The Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.;* 40 Stat. 755). The ROD is based primarily on information contained in The Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88). This document was filed with the Environmental Protection Agency on June 9, 1988, and announced by them on June 17, 1988, (53 FR 22727) and independently by the Service on June 16, 1988, (53 FR 22582). Comments received from the public review of the draft of SEIS 88, other available scientific and technical data, and the currently diminished status of many populations of migratory birds, especially ducks, have also influenced the ROD. The ROD selects Alternative 2 of SEIS 88 as the best alternative, i.e., framework regulations (e.g., season lengths, daily bag limits) will be stabilized for short periods of years, and use of special regulations (e.g., bonus bags, early seasons) will be subject to greater scrutiny and control.

DATE: The decision is effective on August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The ROD follows: Regulations permitting the sport hunting of migratory birds have been promulgated annually since 1918 when the Migratory Bird Treaty Act went into effect. The annual regulations, per se, are explicit. Steps leading to their promulgation are well defined, the process being prescribed by statute, regulation, and executive order, and being strongly influenced by phenological events. However, the promulgation of annual regulations has occurred largely without a basic underlying approach being formally established and elaborated. This is not to say that annual regulations have been promulgated capriciously or without thought, but rather that they have not had the benefit of guidance from a formally established approach, one that reflects philosophy, policy and intent, and one that has been developed in concert with states and other interested parties, and acknowledged by them.

Prior to 1980, a de facto approach to annual regulations existed with regulations being adjusted annually to varying degrees in an attempt to alter the annual harvest to correspond with the anticipated size of migratory bird populations. Regulations generally were liberalized when populations increased and were restricted when they decreased. The 1980–84 Stabilized Regulations Study established an experimental approach to issuing those annual regulations commonly referred to as "framework regulations," i.e., season lengths and daily bag limits were not changed during that period. The study produced valuable results. However, the final report was technical in nature and not intended to be a policy document or to provide a forum for debating new approaches to issuing annual regulations. Furthermore, the study did not concern the other large, complex portion of annual regulations, the so called "special regulations" (e.g., early seasons, bonus bags).

The 1975 Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75) provided NEPA compliance for annual regulations and assessed the overall environmental impacts of them. FES 75 affirmed that regulations would be issued annually by the Service, but it did not step down to proposing alternative approaches under which the Service might do so.

Recognizing the need to update FES 75 and to formalize a basic approach to issuing annual regulations, the Service prepared and released SEIS 88. Two approaches to issuing annual framework regulations were considered in SEIS 88. They were:

Stabilized regulations: Framework regulations would remain unchanged for a specific period of years barring significant changes in migratory bird populations. This was the approach taken to issuing annual duck hunting regulations during the Stabilized Regulations Study, 1980–84. In fact, it has been the customary approach to issuing regulations for most other groups of birds for some time. Flyway councils and other interested parties would be consulted to establish levels at which regulations would be stabilized, to establish population levels at which departures from stabilized regulations would occur, and to determine appropriate actions after such occurrences. Population data would continue to be gathered and reviewed annually through the established public process.

Annually adjusted regulations: Framework regulations would be subject to change annually in response to population changes and management goals. Regulations would be liberalized when population changes were positive and restricted when negative. This approach would be similar to approaches taken in issuing duck hunting regulations prior to 1980.

Three approaches to promulgating annual special regulations were considered also:

Expanded use of special regulations: The development of new special regulations and harvest strategies, and the expansion of existing regulations, would continue as in recent years.

Conrolled use of special regulations: Development of new special regulations and harvest strategies, and expansion of existing regulations would be subject to advance planning and feasibility assessment, and to stricter experimentation and evaluation than in the past. Use of existing special regulations would be re-evaluated periodically.

Reduced use of special regulations: Existing special regulations and harvest strategies would be evaluated with the objective of eliminating those lacking a strong biological justification. Unless special regulations and experimental harvest strategies could be demonstrated not to be detrimental, they would not be accorded operational status. Six combinations of above approaches were possible and were presented as the alternatives of SEIS 88:

Alternative 1: Stabilized regulations with expanded use of special regulations.

Alternative 2: Stabilized regulations with controlled use of special regulations. This was presented as the Service's preferred alternative.

Alternative 3: Stabilized regulations with reduced use of special regulations.

Alternative 4: Annually adjusted regulations with expanded use of special regulations. This was the No Change (No Action) alternative.

Alternative 5: Annually adjusted regulations with controlled use of special regulations.

Alternative 6: Annually adjusted regulations with reduced use of special regulations.

For the following reasons I have decided to implement Alternative 2, stabilized framework regulations with controlled use of special regulations, as the Service's basic approach to issuing annual regulations permitting the sport hunting of migratory birds:

1. Alternative 2 represents a more conservative, cautionary approach to issuing annual regulations than does the No Action (No Charge) alternative (Alternative 4). Such an approach is advisable in view of the diminished status of many migratory bird populations.

2. Alternative 2 will provide a sound basis for cooperative long-term management of migratory bird harvests. States and other interested parties will participate with the Service in developing appropriate levels of regulatory stability and criteria for departure.

3. Alternative 2 provides optimal flexibility in the use of special regulations. Improved control over special regulations will be effected without regulations being unnecessarily restrictive of harvest opportunity, and unavailable when needed as harvest management tools.

4. Alternative 2 will: Result in simpler, better understood regulations; facilitate advanced planning by wildlife agencies, hunters, and those providing goods and services to hunters; and reduce administrative burdens and costs to wildlife agencies.

5. Alternative 2, by stabilizing framework regulations and providing greater control and scrutiny of special regulations, will facilitate a better understanding of regulatory effects on harvests and migratory bird populations.

6. Those alternatives incorporating annually adjusted framework regulations (Alternatives 4, 5, and 6) lack the important advantages of stabilized framework regulations as stated in reasons 2–5.

7. Those alternatives incorporating expanded use of special regulations (Alternatives 1 and 4) would not provide adequate protection of migratory bird populations that are at low levels.

8. Those alternatives incorporating reduced use of special regulations (Alternatives 3 and 6), with its underlying objective of eliminating all but conclusively and scientifically justified special regulations, would be overly restrictive. The effects of many special regulations are not clear. These would be eliminated because a negative presumption would be applied in inconclusive cases. Thus, even benign relations might be eliminated, unnecessarily reducing hunting opportunities and management prerogatives.

9. Alternative 2 was favored by parties commenting on SEIS 88.

Alternative 6 annually adjusted regulations with reduced use of special regulations, is identified as the environmentally preferred alternative under current conditions. It would afford the greatest reduction in hunting opportunity, thus leading to the greatest reductions in harvest. Alternative 6 would also allow for a faster recovery time of populations at low levels. However, the restrictive approach of Alternative 6 would only be appropriate when migratory bird populations were low and in need of additional protection. Such situations occur; witness the present situation in which many populations are low, especially ducks. However, historically, such situations have been temporary, with most populations fluctuating normally, depending principally on habitat conditions. Thus, Alternative 6 would be appropriate only on a short-term basis.

Alternative 2 will provide adequate protection for migratory bird populations, even if populations reach short-term low levels while regulations are stable, because under stabilized regulations appropriate levels of regulation will be established and criteria for consideration of departure from those levels will be set. Annual reviews of regulations and population status will still occur under Alternative 2; and, presumably, low population levels will trigger consideration of departure from the existing level of stability. Emergency regulatory actions will still be available to the Service if needed on a short-term basis. Alternative 2, in short, allows the Service to gain the benefits of Alternative 6 when they are needed, and to avoid its disadvantages when they are not, as they likely will not be in the long-term.

In summary, I have decided that Alternative 2, stabilized framework regulations with controlled use of special regulations is the most prudent and appropriate approach to issuing annual regulations permitting the sport hunting of migratory birds. It provides adequate safeguards to the migratory bird resource, and it offers important managerial and socioeconomic benefits.

Having satisfied the requirements set forth in 40 CFR 1506.10(a) and b(2), implementaion of my decision begins immediately with publication of the ROD in today's **Federal Register**. In practice, implementation will occur gradually as appropriate levels of regulation, conditions for possible departure from them, and criteria for special regulations are developed. The Service looks forward to cooperating with states, flyway councils and other interested parties in this important endeavor.

Date: August 9, 1988.

Frank Dunkel,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 88–18728 Filed 8–17–88; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482–8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces revised quotas for coho salmon in commercial and recreational fisheries south of Cape Falcon, Oregon. The Director, Northwest Region, NMFS (Regional Director), has determined, in accordance with provisions of the preseason announcement of the 1988 ocean salmon management measures, that the coho salmon quota in the recreational fishery south of Cape Falcon, Oregon, should be reduced by 45,000 fish, and that the commercial coho salmon quota should be increased by the same amount in the same area. This action is necessary to conform to the preseason announcement of 1988 management measures and is intended to allow maximum harvest of ocean coho salmon quotas established for the 1988 season.

EFFECTIVE DATE: The inseason adjustment to commercial and recreational management measures in the exclusive economic zone (EEZ) south of Cape Falcon, Oregon, is effective at 0001 hours local time, August 15, 1988. Comments on this action will be received through August 30, 1988.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115–

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0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. In its preseason notice of 1988 management measures (53 FR 16002, May 4, 1988), NOAA announced that the overall recreational impact (hooking mortality and landings) quota would be 298,400 coho salmon from Cape Falcon, Oregon, to the U.S.-Mexico border. The commercial fishery from Cape Falcon to the U.S.-Mexico border would be managed not to exceed an impact (hooking mortality and landings) quota of 684,700 coho salmon. On or about August 1, the Pacific Fishery Management Council's Salmon Technical Team (Team) would estimate the number of coho salmon needed to complete the recreational seasons south of Cape Falcon, and that any portion of the recreational quota not needed to complete scheduled recreational seasons would be reallocated to the commercial fishery (53 FR 16010 May 4, 1988).

Members of the Team conferred on August 12 and, based on the best available information, projected that the recreational fisheries south of Cape Falcon would harvest only 253,400 coho salmon during the course of the season, leaving 45,000 coho salmon available for transfer to the commercial fishery.

Therefore, NOAA issues this notice: (1) To reduce the recreational quota for the area south of Cape Falcon from 298,400 to 253,400 coho salmon, and (2) to increase the commercial quota for the area south of Cape Falcon from 684,700 to 729,700 coho salmon, effective at midnight, August 15, 1988. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game before making these adjustments to commercial and recreational quotas for coho salmon south of Cape Falcon. The State of Oregon will manage the commercial fishery in state waters adjacent to this area of the EEZ in accordance with this federal action.

Any delay in taking this action could likely result in the premature attainment of the commercial coho quota and the unjustified disruption of the commercial salmon fishing season in the area. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 30, 1988.

Federal regulations at 50 CFR 661.21(b)(1)(i) authorize the modification of quotas if certain findings are made as described in the appendix to 50 CFR Part 661, Section III.B. Accordingly, the Regional Director has determined this inseason adjustment is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated fishing rights, and the ocean allocation scheme in the FMP. This inseason adjustment is based on consideration of the total allowable impact limitation for coho salmon south of Cape Falcon, Oregon, the amount of recreational catch of coho salmon and recreational effort in the area to date, the estimated average daily catch per recreational fisherman, and the predicted recreational fishing effort for the area to the end of the scheduled season.

Other Matters

This action is authorized by 50 CFR 661.21(b)(1)(i) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: (16 U.S.C. 1801 *et seq.*)

Dated: August 15, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–18750 Filed 8–15–88; 3:50 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 80482–8082]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of rescission of scheduled fishery opening.

SUMMARY: NOAA announces the rescission of the scheduled August 15, 1988 opening of the ocean commercial salmon fishery for all salmon except coho in the exclusive economic zone (EEZ) from Sisters Rocks to Mack Arch, Oregon. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW), and the California Department of Fish and Game (CDFG), that the commercial fishery quota of 63,000 chinook salmon through August 31, 1988 for the area between Orford Reef Red Buoy, Oregon, and Horse Mountain, California, has been attained in earlier fisheries, and that the scheduled August 15 opening must be rescinded. This action is necessary to conform to the preseason announcement of 1988 management measures and is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Rescission of the scheduled opening of the EEZ from Sisters Rocks to Mack Arch, Oregon, to commercial salmon fishing is effective at 0001 hours August 15, 1988. Comments on this adjustment will be received through August 30, 1988.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. In its preseason announcement of 1988 management measures (53 FR 16002, May 4, 1988), NOAA announced that the commercial fishery in the area between Orford Reef Red Buoy, Oregon, and Horse Mountain, California, would be managed not to exceed a quota of 63,000 chinook salmon through August 31, 1988. Three fisheries have been conducted in this area which, based on the best available information, have taken a total of 77,400 chinook salmon as outlined below:

(1) The commercial fishery for all salmon except coho in the subarea from Sisters Rocks to Chetco Point, Oregon, which closed in Federal waters on May 4, 1988 (53 FR 16415, May 9, 1988), had

actual landings totaling 8,900 chinook salmon.

(2) The State of California authorized a special commercial fishery in State waters (0–3 nautical miles) near Shelter Cove (i.e., between Horse Mountain and Cape Vizcaino, California) during May which was not accounted for when the 1988 ocean salmon seasons were established. This fishery increased the impacts on Klamath River fall chinook salmon above the levels projected in the preseason management measures. In order to account for these increased impacts, 6,200 fish were deducted from the overall chinook quota as provided by § 661.20(a)(3).

(3) The commercial fishery for all salmon in the subarea from Humbug Mountain, Oregon, to Punta Gorda, California, which closed in Federal waters on June 7, 1988 (53 FR 22000, June 13, 1988), had actual landings totaling 63,300 chinook salmon.

Actual catches exceeded the overall quota of 63,000 chinook by 14,400 fish. As announced in the preseason management measures, a commercial fishery from Sisters Rocks to Mack Arch, Oregon, for all salmon except coho was scheduled to open the later of August 15, 1988 or the end of the troll fishery from Humbug Mountain to Punta Gorda, and continue through the earlier of August 31 or the attainment of a 7,500 subarea chinook quota. This 7,500 subarea chinook quota is part of the overall quota of 63,000 chinook salmon which has been exceeded. Therefore, no fish are available to conduct this fishery.

Federal regulations at § 661.21(a)(1) specify that "When a quota for the commercial or recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached." The closure of the commercial fishery in the subarea between Humbug Mountain, Oregon, and Punta Gorda, California, on June 7, 1988 (53 FR 22000, June 13, 1988) in effect closed the entire area between Orford Reef Red Buoy, California, and Horse Mountain, California, which is being managed by an overall chinook quota. Further evaluation of landing data resulted in the finding that the overall chinook quota has been reached, thus precluding the scheduled August 15, 1988 opening of the commercial fishery in the subarea from Sisters Rocks to Mack Arch, Oregon.

Therefore, NOAA issues this notice to rescind the scheduled opening of the ocean commercial salmon fishery for all salmon except coho in the EEZ from Sisters Rocks to Mack Arch, Oregon, effective at 0001 hours local time, August 15, 1988. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Council, ODFW, and CDFG regarding the rescission of the scheduled August 15, 1988 opening of the commercial fishery from Sisters Rocks to Mack Arch, Oregon. The State of Oregon also will rescind the scheduled opening of the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 30, 1988.

Other Matters

This action is authorized by 50 CFR 661.21(a)(1) and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 15, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–18772 Filed 8–15–88; 4:36 pm]

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VOL 53 ISS 160 AG 18 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 160
Thursday, August 18, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1765

Telephone Materials, Equipment, and Construction—Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration proposed to add Part 1765, Telephone Materials, Equipment, and Construction—Telephone Program, to 7 CFR Chapter XVII. This new subpart consolidates, revises, and clarifies the policies, requirements, and procedures presently contained in various REA publications.

Part 1765 sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures for the procurement of materials and equipment and the construction of telecommunication facilities by REA telephone borrowers with REA loan funds. The primary objectives of the proposed rule are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the burden on borrowers involved in planning and construction of telecommunication facilities; and to decrease the processing time of related documents by REA.

All borrowers that are parties to the planning and construction of borrowers' telecommunication facilities and systems will be affected by this rule.

DATE: Public comments concerning this proposed rule must be received by REA no later than September 19, 1988.

ADDRESS: Comments may be mailed to William F. Albrecht, Deputy Assistant Administrator—Telephone, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments received may be inspected in Room 4056 between 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William F. Albrecht, Deputy Assistant Administrator—Telephone, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–9549. The Draft Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

Public reporting burden for this collection of information is estimated to average .7 of an hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Attn: Desk Officer for REA, Office of Management and Budget, Washington, DC 20503.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Currently, the policies and requirements for the procurement of materials and equipment and the construction of telecommunication facilities by REA telephone borrowers with REA loan funds are contained in numerous REA publications including the following existing REA Bulletins:

320–15 Equal Employment Opportunity in Construction Financed with REA Loans.
340–1 Final Payments to Contractors, Engineers, and Architects—Telephone Program.
340–2 Payments to Architects, Engineers, Contractors, and Suppliers.
340–3 Coordination of Borrowers' Activities with Connecting Systems.
340–4 Scheduling of Work and Reporting of Progress.
344–1 Methods of Purchasing Materials and Equipment for Use on Systems of Telephone Borrowers.
344–3 "Buy American" Requirement.
380–1 Right-of-way and Title Procedures—Telephone.
380–3 Weekly Progress Report of Telephone Construction and Engineering Services.
381–1 Tabulation of Bids for Contract Construction of Telephone Outside Plant Facilities.
381–2 Telephone System Construction Contract, Labor and Materials, REA Form 515.
381–4 Closeout Documents, Telephone Construction Contract, Labor and Materials (Outside Plant).
381–7 Methods of Construction of Telephone Borrowers' Initial System Outside Plant Facilities.
381–8 Contract Construction, Telephone Borrowers' Initial System Outside Plant Facilities.
381–9 Amendments to Contracts for Construction or Installation of Telephone Borrowers' Facilities.
381–10 Subcontracts Under Contracts for Construction or Installation of Telephone Borrowers' Facilities.
381–11 Changes or Corrections in Line Construction.
381–13 Bidders' Qualifications.
383–1 Preparation of Telephone System Plans and Specifications for Construction of Outside Plant.
382–1 Force Account Construction, Telephone Borrowers' Initial Systems.

382–2 Construction of Telephone System Improvements and Extensions by Work Order or Contract.
383–4 Postloan Engineering Design Requirements for Supplemental Loans.
384–1 Purchasing and Installing Central Office Equipment.
384–2 Closeout Documents for Central Office Equipment Contracts.
384–3 Central Office Equipment Contracts and Specifications.
385–2 Purchasing and Installing Special Electronic Equipment.
385–3 Closeout Documents for Special Equipment Contracts.
385–4 Special Equipment Contracts and Specifications.
387–1 Preparation of Plans and Specifications for Construction of Telephone Borrowers' Buildings.
387–2 Contract to Construct Buildings, REA Form 257.
387–3 Final Documents Required to Close Out Construction of Buildings, Telephone Program.
387–4 Presentation of Building Plans and Specifications.
387–5 Contract Construction, Telephone Borrowers' Buildings.

Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the **Federal Register.**

The Bulletins listed above contain certain policies, requirements, and procedures that will be incorporated into other CFR Parts. When that is accomplished, these Bulletins will be rescinded.

Presently a term may have different meaning when used in more than one bulletin. The proposed rule defines each term so that it has the same meaning throughout.

A postloan review is presently required of the supporting data upon which a loan was based before proceeding with detailed engineering and construction planning. The proposed rule requires a preconstruction review of the Loan Design approved by REA and clarifies the required actions if any significant changes have occurred. It also clarifies the supporting data to be submitted to obtain REA approval for special types of construction.

Presently construction is classified as "initial system" or "improvements and extensions". Classification of construction included in supplemental loans has not been well defined and causes controversy as to the required method of construction to be used. The proposed rule classifies construction as "major" or "minor" depending on the estimated cost of the construction project, major being over $100,000 and minor being $110,000 or under, labor and materials. The methods of construction, standards, specifications, general requirements, and construction documents are more clearly defined and their uses clarified.

The requirements and procedures for construction of buildings have been shortened and more clearly stated.

The rapid changes in digital and lightwave technology have rendered the present policies, requirements, and procedures for providing telecommunications switching and transmission facilities quite inadequate to meet current needs of the REA telephone borrowers. The proposed rule updates the requirements and procedures by providing for a complement of spare parts, a software license agreement, and a central office grounding system audit when procuring central office and electronic equipment. The proposed rule provides for the procurement of central office equipment by sealed competitive bidding or, with prior REA approval, by single source negotiation to replace the present two-step negotiation procedure. The proposed requirements and procurement methods for special equipment are simplified.

The proposed rule clarifies the policies and procedures for major construction of outside plant facilities. Construction may be by sealed competitive bids, negotiated bids up to $200,000, labor and materials or, with prior REA approval, by the borrower's own forces.

This proposed rule eliminates some reporting requirements and streamlines others, reducing the borrowers' burden, while permitting REA to maintain the security of the Government's loans.

7 CFR Part 1765 supersedes any sections of REA Bulletins with which it is in conflict.

List of Subjects in 7 CFR Part 1765

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR Chapter XVII by adding the following new Part 1765:

PART 1765—TELEPHONE MATERIALS, EQUIPMENT AND CONSTRUCTION—TELEPHONE PROGRAM

Subpart A—General

Sec.
1765.1 General.
1765.2 Definitions.
1765.3 Preconstruction review.
1765.4 Major and minor construction.
1765.5 Methods of major construction.
1765.6 Standards, specifications, and general requirements.
1765.7 Plans and Specifications (P&S).
1765.8 Contract construction procedures.
1765.9 Subcontracts.
1765.10 Preconstruction conference.
1765.11 Contract amendments.
1765.12–1765.14 [Reserved]

Subpart B—Construction of Buildings

1765.15 General.
1765.16 Plans and Specifications.
1765.17 Bidding procedure.
1765.18 Contract amendments.
1765.19 Force account procedures.
1765.20 Closeout procedures.
1765.21–1765.25 [Reserved]

Subpart C—Purchase and Installation of Central Office Equipment

1765.26 General.
1765.27 Plans and Specifications (P&S).
1765.28 Procurement procedures.
1765.29 Closeout documents.
1765.30–1765.35 [Reserved]

Subpart D—Outside Plant; Major Construction by Contract

1765.36 General.
1765.37 Plans and Specifications (P&S).
1765.38 Procurement procedures.
1765.39 Closeout documents.
1765.40–1765.45 [Reserved]

Subpart E—Outside Plant Major Construction by Force Account

1765.46–1765.55 [Reserved]

Subpart F—Purchase and Installation of Special Equipment

1765.56 General.
1765.57 Contracts and specifications.
1765.58 Purchasing special equipment.
1765.59–1765.65 [Reserved]

Subpart G—Methods of Minor Construction

1765.66–1765.80 [Reserved]

Subpart H—Construction Certification Program

1765.81–1765.99 [Reserved]
Appendix A—Documents Required to Closeout Construction of Buildings.
Appendix B—Documents Required to Closeout Central Office Equipment Contract.
Appendix C—Documents Required to Closeout Telephone Construction Contract REA Form 515.
Appendix D—Step-by-Step Procedure for Closing Out of Telephone Construction Contract Labor and Materials, REA Form 515.
Appendix E—Reserved.
Appendix F—Documents Required to Closeout Special Equipment Contracts.

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

Subpart A—General

§ 1765.1 General.

(a) The standard REA Loan Documents (as defined in 7 CFR Part 1758) contain provisions regarding procurement of materials and equipment and construction of telecommunication facilities by telephone borrowers. This Part 1765 implements certain of the

provisions by setting forth the requirements and procedures to be followed by borrowers for purchasing materials and equipment and construction of telecommunication facilities by contract or force account.

(b) The typical procedure followed in constructing a project financed by an REA loan begins with the prospective borrower obtaining the necessary preloan engineering and developing a complete loan application, including an LD (see 7 CFR Part 1749). If a loan is approved and all prerequisites to advance of funds are satisfied, the borrower may proceed with the purchase and installation of materials, equipment and the construction of telephone facilities pursuant to this Part 1765. Subpart A describes (1) REA's general requirements with respect to steps to be taken after the loan is approved and before construction begins (See § 1765.3), (2) REA requirements with respect to methods of construction (See §§ 1765.5 and 1765.6), (3) REA requirements regarding sealed competitive bidding and negotiated bidding of construction contracts (See §§ 1765.6 and 1765.9), (4) REA standards for materials, equipment, and construction financed with loan funds (See § 1765.7), and (5) REA requirements for subcontracts and contract amendments covering construction financed with loan funds (See §§ 1765.10 and 1765.12).

(c) Each borrower is responsible for the construction of its facilities and for the procurement of materials and equipment which are best suited to its needs.

(d) If contracts, P&S, or other methods of procurement are subject to REA approval pursuant to the provisions of the loan contract, as implemented by this part, REA will review the documents or proposals submitted and notify the borrower in writing of approval or disapproval. REA may withhold approval if, in REA's judgement:

(1) The P&S or contract will not accomplish loan purposes.

(2) Provisions of the P&S or contract will add unnecessary expense to the project.

(3) The proposal, method of procurement, or P&S will not effectively or efficiently further the extension or improvement of telephone service in rural areas, or if they present unacceptable loan security risks to REA.

(4) The P&S or contract have been modified.

(e) The requirements and procedures covering procurement of architectural and engineering services are described in 7 CFR Part 1763.

(f) Single copies of REA forms cited in this Part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500. These REA forms may be reproduced.

§ 1765.2 Definitions.

For the purpose of this Part 1765:

Alternate—A solicitation for a bid adjustment for a specified deviation from the Plans and Specifications.

Bid Guarantee—A bid bond or certified check required of contractors bidding on construction work to ensure that the bidder, if successful, will furnish a satisfactory performance bond ensuring completion of work.

Central Office Building—The facility housing the central office equipment.

Central Office Equipment—Switching and signaling equipment that performs call completion functions for subscribers.

Closeout Documents—The documents required to certify satisfactory completion of all obligations under a contract or force account proposal.

Construction—Purchase and installation of telecommunications facilities in a borrower's system using loan funds.

Contract—The agreement between the borrower and an independent contractor covering the purchase, construction, or both of telephone facilities to be included in the borrower's telephone system.

Contract Construction—Construction and installations performed using an REA contract form. See 7 CFR Part 1762.

Engineer—Also means "architect," where appropriate.

FAP (Force Account Proposal)—The borrower's detailed plans submitted to REA for force account construction.

Force Account Construction—Construction performed by the borrower's employees under an REA approved FAP, with the borrower furnishing all materials, equipment, tools and transporation.

FRS—REA Form 481 (OMB 0572–0023), Financial Requirement Statement.

GFR—REA General Field Representative.

Installation—The act of setting up or placing in position equipment for service or use in the borrower's system.

Interim Construction—The purchase of equipment or the conduct of construction under an REA-approved plan of interim financing. See 7 CFR Part 1749.

Labor and Materials—All the labor and materials required for construction.

LD (Loan Design)—Supporting data for a loan application. See 7 CFR Part 1749.

Loan—Any loan made or guaranteed by REA. See 7 CFR Part 1745.

Loan Funds—Funds provided by REA through direct or guaranteed loans. See 7 CFR Part 1754.

Major Construction—A telephone plant project estimated to cost more than $100,000, including all labor and materials.

Minor Construction—A telephone plant project estimated to cost $100,000 or less, including all labor and materials.

Minor Errors or Irregularities—A defect or variation in a seller's bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the borrower determines whether an error or irregularity is "minor."

Negotiation—Any form of purchasing or contracting other than sealed competitive bidding. Any contract awarded without using the sealed competitive bidding procedure is a negotiated contract.

Outside Plant—The facilities that conduct electrical or optical signals between the central office and the subscriber's network interface or between central offices.

Performance Bond—A surety bond on a form satisfactory to REA guaranteeing the contractor's faithful performance of a contract.

P&S (Plans and Specifications)—An REA contract form, the appropriate specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of the installations to be made or construction to be performed.

Project—The construction or installation described in the P&S.

Responsive Bid—A bid that complies with the requirements of the plans and specifications.

Sealed Competitive Bidding—A method of contracting that employs sealed competitive bids, public opening of bids, and award of the contract to the bidder submitting the lowest responsive bid. See § 1765.8.

Single Source Negotiation—Negotiating with a single source (contractor or seller).

Special Equipment—Equipment used primarily for the transmission and enhancement of voice, data, carrier, radio and light signals, and other equipment and facilities, including

incidental cable and other transmission equipment.

Subcontract—A secondary contract undertaking some of the obligations of a primary contract. Under all REA forms of contract, the primary contractor bears full responsibility for the performance of the subcontractor.

Unbalanced Bid—A bid that contains disproportionate prices between labor and materials or between various construction units.

Work Order Construction—Minor construction performed by the borrower's employees, pursuant to its work order procedure, with the borrower furnishing all materials, equipment, tools, and transportation.

§ 1765.3 Preconstruction review.

(a) Prior REA approval must be obtained for any construction that does not conform to the approved LD, such as construction of extensions to serve subscribers in areas not included in the LD (See 7 CFR Part 1749) or conform to REA standards and specifications. To obtain approval, the borrower shall submit a written proposal containing:

(1) A description of the work, indicating any deviations from the approved LD or REA standards and specifications.

(2) An engineering study covering the deviations if there are changes in the design.

(3) A cost estimate for labor, engineering, materials, and overheads.

(b) Before any construction, including interim construction, is initiated, the GRF shall meet with the borrower to review the LD to determine if any significant changes have occurred since its approval by REA. It is important that the design and construction of the proposed facilities be based on the latest information on subscriber needs.

(c) If the borrower and GFR agree that there have been no significant changes, the borrower may proceed.

(d) If the borrower and GFR agree that the data is no longer satisfactory, the borrower shall prepare an amendment to the LD (See 7 CFR Part 1749) incorporating the necessary revisions. The borrower must obtain REA approval of the LD amendment before proceeding with engineering activities on any project to be financed with loan funds.

§ 1765.4 Major and minor construction.

REA's general requirements for construction are set forth in this Subpart A. Additional requirements and procedures for different types of major construction are presented in Subparts B, C, D, E, and F. The requirements and procedures for minor construction are presented in Subpart G. Borrowers may, at their option, following the procedures in Subparts B, C, D, E, and F for any minor construction.

§ 1765.5 Methods of major construction.

(a) All major construction projects financed by loan funds shall be performed pursuant to a contract approved by REA and awarded through sealed competitive bidding unless a specific exemption is granted in Subparts B, C, D, E, or F, or written REA approval is obtained.

(b) Contract Construction. (1) Whether the contractor is selected through sealed competitive bidding or negotiation, as approved by REA, the contract may not be awarded until REA approval of the award has been obtained.

(2) The requirements and procedures for sealed competitive bidding are presented in § 1765.8(a). The requirements and procedures for negotiation are presented in § 1765.8(b).

(c) Force Account Construction. REA will approve the force account method for major construction only if the borrower can demonstrate to REA's satisfaction that it has adequate equipment and experienced personnel to perform the work and that this method will be effective and efficient and will not present unacceptable loan security risks to REA. The requirements and procedures for force account construction are presented in Subparts B, C, E, and F.

§ 1765.6 Standards, specifications, and general requirements.

(a) Materials, equipment, and construction must meet the standards and specifications established by REA. 7 CFR Part 1772 lists the REA Bulletins containing the standards and specifications for telephone facilities. Materials and equipment meeting these standards are included on the List of Material Acceptable for Use on Systems of REA Telephone Borrowers, REA Bulletin 344–2. This bulletin may be obtained by subscription from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(b) If operating conditions or requirements make the use of non-standard construction, materials, or equipment necessary, the borrower must obtain approval of the REA Area Director prior to the purchase or commencement of construction.

(c) Only new materials and equipment shall be purchased, unless otherwise approved by REA.

(d) All purchases of materials and equipment are subject to the "Buy American" provision (7 CFR Part 1790 and REA Bulletin 344–3).

§ 1765.7 Plans and Specifications (P&S).

(a) The P&S consist of an REA contract form, the appropriate REA specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of what is included in the construction.

(b) 7 CFR Part 1762 provides a list of the REA forms of telecommunications contracts for use in purchasing telephone materials and equipment and for constructing telephone facilities with loan funds. Also listed is the source where copies may be obtained.

(c) The appropriate standards and specifications listed in 7 CFR Part 1772 shall be included in the P&S. When REA has not prepared standards and specifications, the borrower shall use general engineering requirements and functional specifications prepared by the borrower's engineer and aproved by REA.

(d) The P&S shall be based on the LD approved by REA. Section 1765.3 presents the requirements and procedures for obtaining REA approval for construction that does not conform to the LD approved by REA.

(e) REA approval of the P&S is required for major construction but not for minor construction, except as noted in Subpart B.

(f) REA will approve only contracts meeting the following requirements.

(1) *Equal Employment Opportunity Provision.* If this provision is not already in the contract. REA Contract Form 270, Eaual Opportunity Addendum, shall be attached and made a part of the contract.

(2) *Liquidated Damages Provision.* (i) If not covered by the contract, an appropriate liquidated damages provision, in a form prescribed by REA, shall be included and made a part of the contract.

(ii) The liquidated damages must be based upon the borrower's best estimate of the damages it would incur as a result of the contractor's default.

(3) *Insurance and Bond Requirements.* (i) The insurance provision shall provide converage as required by 7 CFR Part 1788.

(ii) A contractor's bond shall be furnished as required by 7 CFR Part 1788.

(iii) The borrower is responsible for ensuring that its contractor complies with the insurance and bond requirements.

(4) *Software License Provision.* If the equipment being purchased involves software, the contract shall contain a software provision requiring a licensing agreement which grants the borrower

the right to use the software subject to reasonable terms and conditions.

§ 1765.8 Contract construction procedures.

(a) *Sealed Competitive Bidding*—(1) *Bid Opening Date.* Upon approval of the P&S by REA, the borrower shall schedule a bid opening date. In setting the date sufficient time should be allowed for bidders to examine the project site and prepare their bids. The GFR will usually attend the bid opening.

(2) *Invitations to Bid.* The engineer shall submit to the borrower a list of prospective bidders and a recommendation indicating which bidders are considered qualified. The borrower is responsible for sending out invitations to prospective bidders and taking any other action necessary to procure full, free, and competitive biddings. The minimum number of contractors to be invited to bid on contracts for various types of facilities is set forth in the appropriate Subparts B, C, D, or F.

(3) *Qualifying Bidders.* If the notice and instructions to bidders require that bidders show evidence of meeting certain requirements, the borrower shall qualify bidders before issuing P&S to them. Procedures for qualifying bidders are contained in Subparts B, C and D.

(4) *Receipt of Bids.* The borrower shall write on the outside envelope of any bid or bid amendment, the date and time the bid was received. Any bid received from an unqualified bidder or after the time specified for opening shall be returned promptly to the bidder unopened.

(5) *Procedure When Less Than Three Bids are Received.* If less than three bids (exclusive of bids from unqualified bidders and late bids) are received, the borrower shall consult with REA to determine whether the bids are to be opened or returned unopened. REA requires that the project be rebid if fewer than three bids are received and REA determines that the borrower could have reasonably obtained other bids.

(6) *Conduct of Bid Openings.* Bid openings shall be conducted in the presence of representatives of the borrower. The borrower should be able to contact its attorney for immediate consultation. Bidders shall be invited to attend the bid openings.

(7) *Review of Bids.* (i) At the time bids are opened, the bid guarantees shall be checked for adequacy prior to reading bids.

(ii) The borrower's engineer should review all for errors and irregularities. If it appears to the borrower that errors or irregularities were made through inadvertence, the borrower may authorize the bidder to make changes, or waive the errors or irregularities, or reject the bid as not responsive.

(iii) In the event of non-minor errors or irregularities, the bid shall be rejected and the bid price not disclosed.

(8) *Reading of Bids.* Bid prices shall not be read until the engineer has reviewed all bids to determine if there are any minor errors or irregularities that may affect the recommendation as to award. These shall be made public at the same time the bid price is announced.

(9) *Evaluating Bids.* Where alternates are included, the same alternates in all bids shall be used in determining low bid.

(10) *Rejection.* (i) All bids shall be rejected if quoted prices are not acceptable or if the specifications were ambiguous and resulted in bidders having varying interpretations of the requirements.

(ii) Any bid may be rejected if it is not responsive, incomplete, or submitted by an unqualified bidder, or unbalanced between labor and materials or other respects.

(11) *Award of Contract.* (i) The engineer, following review of the bids and determination of the lowest responsive bid, shall recommend award of the contract to the bidder making the low bid.

(ii) The borrower shall consider the engineer's recommendation and make its decision on the award, subject to REA approval.

(iii) The borrower shall send to REA for approval:

(A) Two copies of the low bid.

(B) The engineer's recommendation for acceptance of the low bid, supported by a tabulation of all bids.

(C) Evidence of acceptance of the low bid by the borrower, such as: (*1*) Certified copy of board resolution or (*2*) letter or telegram to REA signed by a properly authorized corporate official.

(12) *Execution of Contract.* (i) Upon approal of the accepted bid by REA, the borrower shall submit to REA three copies of the contract executed by the contractor and borrower.

(ii) If REA approves the contract, it shall return one copy to the borrower and send one copy to the contractor.

(b) *Negotiated Construction Contracts.* (1) For the construction of certain facilities the borrower may negotiate a contract rather than solicit sealed competitive bids. Refer to the approriate Subparts C, D, or F for specific requirements and procedures.

(2) For negotiated purchases, borrowers use the same REA contract forms and standards and specifications as for sealed competitive bidding.

(3) After a satisfactory negotiated price has been obtained, the borrower shall submit it to REA for approval, along with the engineer's recommendation, and evidence of acceptance by the borrower.

(4) Upon approval of the negotiated proposal by REA, the borrower shall submit three copies of the contract, executed by the contractor and borrower, to REA for approval.

(5) Upon approval, REA shall return one copy of the contract to the borrower and one copy to the contractor.

§ 1765.9 Subcontracts.

(a) Each REA construction contract form (From 257, 397, 515, and 525) contains provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

(b) REA Form 282, Subcontract (Under Construction or Equipment Contracts), shall be used for subcontracts under construction and installation contracts.

(1) Minor modifications or additions may be made to the subcontract form, so long as they do not change the intent of the primary contract. Any alterations to the subcontract shall be initialed and dated by the persons executing the subcontract.

(2) Subcontracts shall be prepared in quadruplicate and all copies executed by the contractor and subcontractor and consented to by the borrower and surety, if any.

(3) Four executed copies of the subcontract shall be forwarded to REA for approval. Upon approval, one copy each will be sent to the borrower, contractor, and subcontractor.

(c) As stated in each REA contract form, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is not relieved of any obligations to the borrower and to the Government under the contract.

(d) Construction shall not be performed by the subcontractor before approval of the subcontract by REA.

§ 1765.10 Preconstruction conference.

It is recommended that the borrower conduct a conference, attended by the borrower, contractor, resident engineer, and the GFR, prior to the beginning of construction to provide an opportunity to discuss and agree on responsibilities, procedures, practices, and methods before the work begins. The engineer shall provide each participant with a copy of the conference results.

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§ 1765.11 Contract amendments.

(a) Prior REA approval must be obtained by the borrower before execution of any amendment to a contract if the amendment alters the terms and conditions of the contract or changes the scope of the project covered by the contract regardless of the amount of the contract before amendment, the amendment increases the amount to be paid under the contract by 20% or more, or after amendment, the amount of the contract will be $100,000 or more.

(b) Other amendments may be executed by the contractor and borrower and submitted to REA for approval.

(c) For each amendment executed, the borrower should make certain that:

(1) The contractor's bond covers the additional work to be performed. If the amendment by itself (or together with preceding amendments) increases the original contract price by 20% or more, a bond extension will be required to bring the penal sum of the bond to the total amended contract price.

(2) If an amendment covers construction in a county or state not included in the original contract, the borrower and contractor are licensed to do business in that location.

(d) Amendments are to be submitted in triplicate to REA for approval with a copy of the board resolution or a letter signed by an authorized corporate official.

§§ 1765.12–1765.14 [Reserved]

Subpart B—Construction of Buildings

§ 1765.15 General.

(a) This subpart implements and explains the provisions of the Loan Documents (as defined in 7 CFR Part 1758) setting forth the requirements and the procedures to be followed by borrowers in constructing central office, warehouse, and garage buildings with loan funds.

(b) Terms used in this subpart are defined in § 1765.2.

(c) REA will consider applications for loans to finance central office, warehouse, or garage facilities, but does not make loans to finance headquarters facilities, except in cases of financial hardship.

(d) All plans and specifications for buildings to be constructed with loan funds are subject to the approval of REA. Refer to § 1765.16 for further instructions.

(e) REA Contract Form 257, Contract to Construct Buildings, shall be used for the construction of all central office, warehouse, and garage buildings with loan funds. Refer to § 1765.16 (b 7 c) for further instructions.

(f) Sealed competitive bids shall be required for all building construction, except for:

(1) Minor construction using Subpart G procedures.

(2) Major construction, where the borrower has received advanced approval to perform the construction by force account.

(3) Refer to §§ 1765.17 and 1765.19 for further instructions.

(g) The site location, design, and construction of the facilities must comply with all applicable laws and regulations, including:

(1) Public Law 90–480 (42 U.S.C. 4151) (Access to Physically Handicapped) requires certain buildings financed with Federal funds be designed and constructed to be accessible to the physically handicapped.

(2) Public Law 91–596 (29 U.S.C. 651) the Occupational Safety and Health Act of 1970. OSHA issues rules and regulations covering occupational safety and health standards for buildings. These regulations are codified in 29 CFR Chapter XVII.

(3) 7 CFR Part 1794 provides for compliance with the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508) implementing the procedural provisions of NEPA, as well as REA's conformance with other laws, regulations, and Executive Orders regarding environmental protection.

(h) All construction of a project shall be performed under one general contract, unless the borrower demonstrates to REA's satisfaction that it will be more economical for the borrower to execute separate contracts for planting shrubbery, electrical work, mechanical work, surfacing of roads and parking areas, and other identifiable parts of the project. These separate contracts shall also be subject to REA approval as described in this Subpart B.

(i) The borrower is responsible for submitting evidence, satisfactory to REA, establishing that clear title to the building site has been obtained. REA will not approve the construction contract until it has given title clearance. Follow the procedures in REA Bulletin 380–1, Right-of-Way and Title Procedures-Telephone.

§ 1765.16 Plans and Specifications (P&S).

(a) P&S shall be prepared for construction of all buildings. Each set of P&S shall include:

(1) REA Contract Form 257, Contract to Construct Buildings, completed to the extent explained in § 1765.16(b).

(2) Complete and detailed specifications covering materials and workmanship.

(3) A detailed building plan.

(4) A site plan for each building showing the building location and giving the legal description of the site. Sufficient information must be provided for the site so that it can be identified as the same property on which title opinion was submitted to REA. The legal description shall be typed on the site plan. The borrower shall also furnish topographical information and a description of any proposed site development work and show proposed connections for public utilities.

(b) REA Contract Form 257 shall be completed as follows:

(1) *List the Names or Kinds of Buildings and Locations*—Site plan and specifications must be identified with the appropriate building.

(2) *Alternates*—The number of alternates shall be kept to a minimum. Items for which alternates are to be taken shall be fully described on a separate sheet in the specifications and the details shown on the plans, when necessary, and identified by the alternate number. Sufficient instruction shall be provided in the Notice and Instructions to Bidders as to how bids will be evalauted with respect to alternates.

(3) *Time of Construction*—A reasonable time for completion of construction, considering local conditions, shall be determined by the borrower and inserted in the space provided. Too short a construction period may discourage bidders or influence their bids. Completion of the building, where central office equipment is involved, shall be coordinated with delivery of the equipment. The time of completion shall allow adequate drying time before the central office equipment is stored or installed in the building.

(c) Two sets of the building plans and specifications shall be prepared and submitted to the GFR.

§ 1765.17 Bidding procedure.

Upon REA approval of the P&S, the borrower shall proceed as follows:

(a) Bid documents shall consist of a copy of the approved P&S, including REA Contract Form 257, completed in accordance with the instructions on the cover of the form and the plot plans showing site development details. For contracts in amounts of $100,000 or less, the borrower must specify in the Notice and Instructions to Bidders whether the contractor will be required to furnish a performance bond or a builder's risk policy.

(b) The borrower shall determine that title to the real estate has been approved by REA before the invitations to bid are released.

(c) The borrower shall set the time for opening of bids, allowing ample time for bidders to prepare bids.

(d) The borrower shall solicit bids as set forth in § 1765.8(a)(2). Invitations shall be sent to at least six prospective bidders.

(e) The borrower shall conduct bid opening and award of contract in accordance with the procedure set forth in § 1765.8(a).

§ 1765.18 Contract amendments.

(a) The general requirements for contract amendments are set forth in § 1765.11.

(b) The borrower shall prepare construction contract amendments on REA Contract Form 238, Construction or Equipment Contract Amendments. See 7 CFR Part 1762 to obtain copies of Form 238.

§ 1765.19 Force account procedures.

(a) The procedures outlined in Subpart G may be used for minor construction of buildings.

(b) REA approval must be obtained in advance to use the force account method for major construction of buildings.

(c) P&S shall be prepared in accordance with § 1765.16.

(d) Prior to any construction activity or the purchase of materials or equipment, the borrower shall submit the FAP in duplicate to REA, accompanied by a resolution indicating approval to the board of directors of the borrower or a letter signed by an authorized corporate official. The proposal shall include:

(1) Copy of the P&S.

(2) An itemized list of all items of materials required for construction.

(3) A construction schedule showing the estimated construction period for each major construction item.

(4) An estimate of the material and labor and other costs for each major construction item eligible for REA financing.

(e) Force account construction should not be started until REA approval has been received by the borrower. See § 1765.19(b).

§ 1765.20 Closeout procedures.

(a) This section outlines the procedure to be followed to close out Contract to Contruct Buildings, REA Contract Form 257 and construction or rehabilitation performed by the force account method.

(b) *For REA Form 257 Contract.* (1) Whenever changes were made in the plans and specifications which did not require an amendment under conditions set forth in § 1765.11 a final contract amendment showing the changes shall be prepared and submitted to REA with the closeout documents.

(2) Immediately after completion of contract construction, including cleanup, the borrower shall:

(i) Arrange with its engineer, contractor, and the GFR for final inspection of the project.

(ii) Furnish the contractor a summary of corrections or additions required to complete the project in accordance with the plans and specifications and the contract and any contract amendments required to cover the corrections or additions.

(iii) Arrange, upon completion of the corrections by the contractor, to have its engineer prepare or obtain the documents listed on Appendix A which are required for closeout of contract construction.

(iv) Make distribution of the completed documents as indicated on Appendix A.

(c) Upon completion of force account construction, the borrower shall:

(1) Arrange with its architect or engineer and the GFR for final inspection of the project.

(2) Complete, upon completion of any corrections or additions, with the assistance of its engineer, the documents listed on Appendix A which are required for the closeout of force account construction.

(3) Make distribution of the completed documents as indicated on Appendix A.

(d) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.21–1765.25 [Reserved]

Subpart C—Purchase and Installation of Central Office Equipment

§ 1765.26 General.

(a) This subpart implements and explains the provisions of the Loan Documents (as defined in 7 CFR Part 1758) setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing central office equipment financed with loan funds.

(b) Terms used in this subpart are defined in § 1765.02 and REA Contract Forms 525 and 545.

(c) REA Contract Form 525, Central Office Equipment Contract (Including Installation) shall be used when the firm supplying the equipment will install it; REA Contract Form 545, Central Office Equipment Contract (Not Including Installation) shall be used when the supplier of the equipment will not be installing it. In either case the appropriate specifications shall be included in the contract.

(d) Alternates, if any, specified in the P&S shall be kept to a minimum.

(e) Sealed competitive bids shall be taken on all purchases of central office equipment to be purchased under REA Contract Form 525 or 545 using the procedure set forth in § 1765.28(a), unless REA approval to negotiate is obtained.

(f) The borrower may request permission to negotiate with a single supplier for additional central offices to standardize equipment on a system basis. REA approval to negotiate must be obtained before release of the plans and specifications to the supplier. Except for remote switching terminals associated with an existing central office, REA will not approve negotiation with a non-domestic manufacturer for the purpose of standardization because such a purchase does not meet the RE Act "Buy American" provisions.

(g) Materials and equipment must meet the standards and general specifications approved by REA. Materials and equipment included in REA Bulletin 344–2 "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers" have been accepted as meeting these requirements. If the equipment is not included in the "List of Materials" but has been approved for field trial installations, the borrower must in each instance obtain field trial approval from REA prior to entering into any agreement with a supplier.

(h) Only new equipment shall be purchased unless otherwise approved by REA in specific cases.

(i) All purchases of materials and equipment are subject to the "Buy American" requirements. Refer to REA Bulletin 344–3.

(j) If the sealed competitive bid procedure is followed, negotiations after bid opening will not be permitted.

§ 1765.27 Plans and Specifications (P&S).

(a) *General.* (1) Prior to the preparation of P&S, the borrower shall review with the GFR the current and future requirements for central office equipment.

(2) The P&S shall specify the delivery and completion time required for each exchange.

(3) The P&S shall provide for a complement of spare parts to be provided to the borrower. The quantity and type of spare parts shall be determined in accordance with the provisions in REA Form 522 "General

Specification for Digital, Stored Program Controlled Central Office Equipment."

(b) *Preparation of P&S.* (1) The P&S shall include REA Contract Form 525 or 545, Notice and Instructions to Bidders, specifications for the required equipment of each exchange, provision for spare parts, and all other pertinent data needed by the bidder to complete its proposal.

(2) Preparation of the detailed equipment specifications shall be in accordance with the appropriate sections of the Telecommunications Engineering and Construction Manual (TE&CM) which are available from REA.

(c) *Submission of P&S.* (1) Two sets of the P&S shall be submitted to the GFR for REA review.

(2) REA will review the P&S and notify the borrower of approval or disapproval by letter. REA may withhold approval of the P&S for the reasons stated in § 1765.1(d).

(3) After approval of the P&S, one copy will be returned to the borrower.

§ 1765.28 Procurement procedures.

(a) *Sealed Competitive Bidding.* Sealed bidding of central office equipment shall be in two steps: The evaluation of technical proposals presented by the suppliers, and compliance with the sealed competitive bidding procedure set forth in § 1765.8(a).

(1) *Solicitation of Bids.* (i) After REA approval of the specifications and equipment requirements, the borrower shall send "Notice and Instructions to Bidders" to suppliers selected by the borrower with central office equipment included in the current "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers." This "Notice" may also be sent to suppliers of foreign equipment currently accepted by REA as meeting REA technical standards. With REA written approval, the "Notice" may also be sent to suppliers of central office equipment accepted for field trial.

(ii) The "Notice" must set forth the method of evaluating bids and must require the submission of equipment lists and traffic calculations with the bids.

(iii) REA Contract Forms 525 or 545 shall be used, except that the "Notice" shall state that prior to the bid opening a technical session will be conducted with each supplier to resolve any questions related to the technical proposal submitted by the supplier. The suppliers' technical proposals should be requested for presentation 30 days in advance of the bid opening to enable sufficient time to make the technical evaluation.

(iv) The borrower shall solicit bids as set forth in § 1765.8(a)(2). The "Notice" shall be sent to at least three prospective bidders. A copy of the "Notice" and a list of such bidders shall be sent to REA.

(v) At the request of an invited supplier, the borrower shall provide two copies of the approved P&S.

(2) *Technical Sessions.*

(i) The borrower shall schedule individual technical sessions by the suppliers, notify each supplier of its scheduled date and time, and request the following be available at the technical session:

(A) Lists of equipment, material and software.

(B) Proposed floor plan.

(C) Power and heat dissipation calculations.

(D) List of exceptions to plans and specifications.

(E) Protection and grounding requirements.

(F) Description of how office administration, maintenance and traffic collection are handled with step-by-step examples and printouts.

(G) Explanation of processor and/or memory expansion required to meet ultimate size.

(H) Description of how special equipment such as loop tests, volunteer fire alarm circuit, line load control, etc., will function.

(I) Description of method for translating initial office administration information into machine language, and proposal as to whether it will be done by the owner or by the supplier.

(J) Proposed software license agreement, and a supplier's statement as to whether it is of a form that has previously been accepted by the borrower and approved by the Administrator.

(K) Any other items pertinent to the technical proposal.

(ii) The borrower shall review in detail all exceptions to the P&S. No exceptions will be accepted unless all bidders are notified, in writing, of the change in the specifications and permitted to incorporate the change in their proposal.

(iii) The borrower shall review the proposed software licensing agreement. If the proposed software licensing agreement has not been approved previously by REA, the borrower must obtain REA approval prior to accepting a proposal from that supplier. If prior REA approval is in doubt, REA is to be consulted. Refer to § 1765.28(c) for software license agreement requirements.

(iv) If the technical proposal is not responsive, the borrower shall notify the supplier, in writing, that its proposal will not be given further consideration and why.

(v) Changes in the P&S resulting from the technical sessions shall be subject to REA's review and approval.

(vi) After evaluation of the technical proposals, sealed bids shall be solicited from only those bidders whose technical proposals meet the P&S requirements. When fewer than three bidders are qualified to bid, REA approval must be obtained to proceed. Generally, REA will grant this approval if all suppliers currently listed in the "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers" were invited to submit technical proposals.

(vii) The borrower shall invite the GFR to attend the technical sessions.

(3) *Bidding and Award of Contract.* (i) All bids must be completed, dated, and signed prior to submission.

(ii) The bid opening and award of contract shall be conducted in accordance with the procedure set forth in § 1765.8(a).

(iii) The spare parts bid shall always be priced separately and added to the base bid when determining the low bidder.

(b) *Single Source Negotiated Procurement.* If REA has approved the borrower's request to procure central office equipment through single source negotiation in accordance with requirements contained in § 1765.26(f), the borrower shall proceed in accordance with this subsection. REA approval will be conditioned upon the borrower obtaining prices in line with current competitive prices.

(1) After REA approval of the P&S and equipment requirements, the borrower shall send two complete copies of the approved P&S to the supplier requesting that a proposal be submitted.

(2) The borrower shall schedule a time and date for a technical session by the supplier and request that the items listed in § 1765.28(a)(2)(i) be available at the technical session. In addition to these items, the supplier shall be requested to provide a description of the exact differences in hardware and software between the borrower's existing equipment and the proposed equipment so that the borrower can determine spare parts interchangeability, need for retraining, and the compatibility of administration of the old and new equipment.

(3) Changes in the P&S resulting from the technical session shall be subject to REA's review and approval.

(4) Based on the results of the technical evaluation, the supplier shall

complete, date and sign its proposal prior to submission to the borrower.

(5) The borrower's engineer shall make a detailed review of the proposal and make a recommendation to the borrower.

(6) The following shall be sent to REA for review and approval:

(i) A copy of the engineer's recommendation to the borrower, and

(ii) Evidence of acceptance of the proposal by the borrower, such as a certified copy of the board resolution, or a letter to REA signed by an authorized corporate official.

(7) Upon REA approval of the proposal, three copies of the contract shall be prepared with all specifications and proposal documents, and performance bonds, to be executed by the supplier and borrower.

(8) The three complete, executed contracts shall be sent to the REA Area Engineering Branch Chief for approval.

(9) If REA approves the contract, one copy will be returned to the borrower and one copy will be sent to the supplier.

(10) Installation of the central office equipment and materials provided under REA Contract Form 545 may be made in accordance with Subpart G, if applicable, or by an approved Force Account Proposal (FAP).

(c) *Software License Agreement.* (1) For a software licensing agreement to be made a part of an REA-financed central office equipment contract, the agreement must be accepted by the borrower and approved by REA. REA will approve only those licensing agreements which do not impair loan security or REA central office system service objectives specified by REA in REA Form 522 "General Specification for Digital, Stored Program Controlled Central Office Equipment." Therefore, licensing agreements will not be approved if they impair the borrower's ability to operate, maintain and administer the equipment within the borrower's system, or limit the borrower's or REA's ability to sell the equipment. Generally, this will require that the borrower have the following rights under the licensing agreement:

(i) The borrower may reproduce or copy the software and related material in limited quantity solely for its use in operating, maintaining, and administering the equipment, and also for training purposes.

(ii) The borrower may reuse the equipment and software at another location within its system.

(iii) The borrower and REA, or its assignees, may transfer the software licensing agreement with the equipment if the equipment is sold.

(iv) In the event the licensor becomes unwilling or unable to furnish software support, the licensor shall upon written request of the borrower provide with greatest possible dispatch all software back-up documentation, including proprietary information. The borrower shall be permitted full use of and shall become owner of all software and documentation as long as the equipment is operational.

(v) The software licensing agreement shall include a software warranty of indefinite duration against errors and incompleteness.

(d) *Contract Amendments.* (1) The general requirements for contract amendments are set forth in § 1765.11.

(2) Equipment contract amendments shall be prepared on REA Contract Form 238, Construction or Equipment Contract Amendments.

(e) *Additions.* When additions to existing central office equipment are required:

(1) A proposal shall be requested from the supplier.

(2) The borrower shall prepare a plan containing an outline of the proposed use of the equipment, the proposal from the supplier and an estimate of the installation cost, and submit it to the GFR.

(3) After REA approval of the supplier's proposal and the borrower's plan, the purchase may be made using REA Contract Form 545 or, when applicable, the procedures contained in Subpart G.

(4) If the purchase is to be made by contract, three executed copies of the contract with attachments are to be submitted to the REA.

(5) Installation of the central office equipment and materials procured by REA Contract Form 545 may be made in accordance with Subpart G, if applicable, or by an approved FAP.

(f) *Preinstallation Conference.* The borrower will arrange and conduct a preinstallation conference, if desirable, attended by the borrower, its engineer, equipment installers, and if possible the GFR, prior to the beginning of the installation of the central office equipment.

§ 1765.29 Closeout documents.

Closeout of REA Contract Form 525, Central Office Equipment Contract (Including Installation), and REA Contract Form 545, Central Office Equipment Contract (Not Including Installation), shall be conducted as follows:

(a) *Contract Amendments.* The borrower shall prepare and arrange for the execution and submission to REA of any required contract amendments so that any changes in either contract will have been approved prior to the time the closeout documents are prepared. REA Contract Form 238, Construction or Equipment Contract Amendment, shall be used for this purpose.

(b) *Taxes.* Under the terms of REA Contract Forms 525 and 545, the bid prices do not include any amounts which are or may be payable by the bidder or the owner on account of taxes imposed upon the sale, purchase or use of equipment, material and software covered by the contracts. If any such tax is paid by the bidder, the contract requires that the amount is to be stated separately on all invoices and paid by the owner.

(c) *Acceptable Tests.* The borrower will perform acceptable tests in accordance with guidelines contained in the applicable TE&CM sections, as a part of the partial closeout and final closeout of REA Contract Form 525.

(d) *Grounding System Audit.* A grounding system audit shall be performed and found acceptable, by authorized representatives of the contractor and purchaser, prior to placing a central office or remote switching terminal into full service operation. This audit is to be conducted in accordance with guidelines contained in the applicable sections of REA Form 525 "General Specification of Digital, Stored Program Controlled Central Office Equipment."

(e) *Partial Closeout Procedure.* Under conditions set forth in REA Contract Form 525, a contractor may, when approved by the borrower, receive payment in full for central offices and their respective associated remote switching terminals upon completion of the installation without awaiting completion of the project. Where the contractor is to receive such payment, the procedure contained in the applicable sections of REA Contract Form 525 shall be followed. In addition to complying with the appropriate partial closeout procedure contained in REA Contract Form 525, the borrower shall:

(1) Assemble and distribute the closeout documents specified in Appendix B.

(2) Submit one copy of Form 754 to REA with the FRS, requesting the remaining funds due the contractor on the central offices and associated remote switching terminals involved.

(3) On receipt of the advance of loan funds, make prompt payment to the contractor.

(f) *Final Contract Closeout Procedure.* The documents required for the final closeout of the central office equipment

contracts, REA Contract Forms 525 and 545, are listed in Appendix B, which also indicates the number of copies and their distribution. The procedure to be followed is outlined below:

(1) The borrower shall:

(i) Immediately following completion of the last central office equipment installation, arrange with the contractor's installer, connecting company (where necessary), and the GFR for performance of the acceptance tests of offices not previously tested. The date for testing should be established so that the installer will not be required to return to the site for the sole purpose of assisting in these tests. Acceptance tests shall be performed within 45 days of completion of the installation, unless otherwise requested in writing by the contractor and approved in writing by the borrower.

(ii) When the acceptance tests have been satisfactorily completed and the contractor has corrected all the discrepancies:

(A) Prepare and assemble the documents listed in Appendix B, Documents Required to Close Out Central Office Equipment Contracts.

(B) Notify the GFR that the project is ready for final REA inspection.

(iii) Make the documents listed in Appendix B available for GFR review on the date of final inspection.

(iv) Distribute the documents as indicated in Appendix B, including submission to the GFR of all documents required by REA.

(2) The documents required and the procedure to be used for equipment purchased and/or installation made using the method of minor construction are set forth in Subpart G.

(g) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.30–1765.35 [Reserved]

Subpart D—Outside Plant: Major Construction by Contract

§ 1765.36 General.

(a) This subpart implements and explains the provisions of the loan documents (as defined in 7 CFR Part 1758) setting forth the requirements and procedures to be followed by borrowers for outside plant major construction by contract with loan funds. Terms used in this subpart are defined in § 1765.2 and REA Contract Form 515.

(b) The contract method for major construction is described in § 1765.5(b).

§ 1765.37 Plans and Specifications (P&S).

(a) *General.* (1) Prior to the preparation of P&S for the construction project:

(i) A review shall be made of the outside plant requirements, and the Loan Design (LD) shall be revised to reflect any needed changes (See § 1765.3).

(ii) Deviations from the approved LD (7 CFR Part 1749) must be approved by REA (See § 1765.3).

(2) The standard REA specifications required for construction of outside plant facilities are:

(i) REA Form 515a (Bulletin 345–150)—Specifications and Drawings for Construction of Direct Buried Plant.

(ii) REA Form 515c (Bulletin 345–151)—Specifications and Drawings for Conduit and Manhole Construction.

(iii) REA Form 515d (Bulletin 345–152)—Specifications and Drawings for Underground Cable Installation.

(iv) REA Form 515f (Bulletin 345–153)—Specifications and Drawings for Construction of Pole Lines and Aerial Cables.

(v) REA Form 515g (Bulletin 345–154)—Specifications and Drawings for Service Entrance and Station Protector Installation.

(b) *Preparation of Plans and Specifications.* Each set of plans and specifications shall include:

(1) *REA Contract Form 515, "Telephone System Construction Contract (Labor and Materials)."*

(2) The specifications described in paragraph (a)(2) of this section as specified by the borrower in the REA Contract Form 515.

(3) Description of special assembly units and guide drawings, if any.

(4) Key, detail, and cable layout maps.

(5) REA Contract Form 787 "Supplement A to Construction Contract, REA Contract Form 515," when the borrower proposes to provide any materials to the contractor. The borrower shall not order materials for a contractor without REA approval. In such cases the borrower must attach Form 787 and a "List of Owner's Materials on Hand" and/or a "List of Materials Ordered by Owner but Not Delivered" to contract Form 515 (See § 1765.38(f)).

(c) *Submission of Plans and Specifications to REA.* (1) Two sets of the plans and specifications and one copy of the "Check List for Review of Plans and Specifications," REA Form 553, OMB No. 0572–0062, signed by the borrower's engineer, shall be furnished to the GFR.

(2) If REA approves the P&S, REA will return one set to the borrower.

§ 1765.38 Procurement procedures.

(a) *Sealed Competitive Bidding*—(1) *Qualifying Bidders.* (i) The borrower is responsible for selecting qualified contractors to bid on the project. See § 1765.8(a)(3). Questions relating to bidders' qualifications shall be resolved prior to the pre-bid conference.

(ii) REA Form 274 or its equivalent, supplemented by REA Form 276, shall be used for the submission of bidders' qualifications for all types of construction and for the required information on the bidder and subcontractors.

(2) *Invitations to Bid.* The borrower shall solicit bids as set forth in § 1765.8(a)(2). Invitations shall be sent to at least 6 prospective bidders.

(3) *Pre-Bid Conference.* (i) Representatives of the borrower and its engineer shall be present at the pre-bid conference at the time and place designated in the Notice to Bidders. The GFR will usually attend the pre-bid conference.

(ii) The purpose of the pre-bid conference is to acquaint the bidders with the scope and special considerations of the project and to clarify any concerns the bidders may have.

(iii) No proposals shall be considered from bidders that do not attend the pre-bid conference unless the bidder has been notified by the engineer that such bidder's attendance has been waived. Attendance can be waived if, in the judgment of the engineer, the bidder would gain no additional understanding of the construction project by attending the pre-bid conference.

(iv) Minutes of the pre-bid conference shall be prepared by the engineer and distributed to all potential bidders.

(v) When fewer than three bidders have been qualified to submit bids, REA written approval must be obtained to proceed with requesting bids.

(4) *Bid Openings.* (i) Bid openings and award of contract shall be conducted in accordance with § 1765.8(a).

(ii) Two copies of the assembly unit sections of the apparent lowest responsive bid accepted by the borrower shall be sent to REA.

(b) *Negotiated Bidding.* (1) Competitive bids are not required for outside plant construction that is estimated to cost less than $200,000 labor and materials. The borrower shall obtain REA approval of the plans and specifications before it selects the contractor for negotiated bidding.

(2) The procedures to be followed are

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contained in § 1765.8(b) and (3) and (4) below.

(3) *Negotiation Conference.* (i) The borrower shall schedule a conference to be attended by representatives of the engineer, the borrower and the contractor selected for negotiations. The GFR shall be invited to this conference.

(ii) The purpose of the negotiation conference is to acquaint the contractor with the scope and special considerations of the project and to answer any questions.

(iii) Notes covering the negotiation conference shall be prepared and distributed to all attendees.

(4) Two copies of the assembly unit sections of the negotiated contractor's proposal shall be sent to the GFR for approval.

(c) *Contract Amendments.* The borrower shall prepare contract amendments in accordance with § 1765.11 on REA Contract Form 526, Construction Contract Amendment.

(d) *Subcontracts.* The REA requirements for subcontracts and the procedures to be followed are set forth in § 1765.9.

(e) *Preconstruction Conference.* The borrower shall conduct a conference, attended by the borrower, contractor, subcontractors, resident engineer, and the GFR, prior to the beginning of cable placement, to resolve any questions pertaining to the construction. Results of the conference shall be provided to each conference participant (See § 1765.10).

(f) *Owner-Furnished Materials.* When the borrower furnishes materials under REA Contract Form 787, Supplement A to Construction Contract, these steps shall be followed:

(1) Materials on hand to be furnished by the borrower shall be released to the contractor at the start of construction. Materials on order but not received shall be provided to the contractor as they become available. The contractor shall give the borrower a written receipt for all such materials delivered.

(2) Materials on hand, until released to the contractor, shall be covered by fire and either wind-storm or extended coverage insurance, exclusive of materials stored in the open and not within 100 feet of any building. Poles, wherever stored, shall be covered by fire insurance. All insured values must be at least 80 percent of the cash value of the property insured.

(3) Subject to adjustment at the time of final settlement, the contractor on its monthly invoices shall credit the borrower, at the prices quoted in Form 787, Supplement A, for all materials furnished by the borrower and installed by the contractor during the preceding month.

(4) Any materials furnished by the borrower remaining as surplus at the completion of construction shall be returned to the borrower. For such materials, the borrower shall furnish a written receipt to the contractor and credit the contractor at the prices quoted in Supplement A.

(g) *Changes or Corrections in Construction.* (1) When changes or corrections in construction are necessary, and the cost of such changes or corrections is properly chargeable to the borrower, the borrower's engineer shall prepare and sign four copies of a Construction Change Order, REA Form 216, obtain borrower's approval and forward the four copies to the contractor. Receipt of the executed Construction Change Order by the contractor will constitute authorization to proceed with the changes or corrections.

(2) When the changes or corrections have been made, the contractor shall complete the form, itemizing the costs in accordance with the terms of the contract, and return three copies to the borrower's engineer. A copy of each change order shall be attached to each copy of the construction inventory required to close out the contract.

§ 1765.39 Closeout documents.

(a) *General.* The borrower shall be responsible for preparing the closeout document with, if necessary, the assistance of the GFR.

(b) *Documents Required.* Appendix C lists the documents required to closeout the Form 515 construction contract.

(c) *Closeout Procedure.* (1) After construction has been completed in accordance with the plans and specifications, and acceptance tests have been made, the borrower shall arrange the time for a final inspection to be made by the borrower's engineer, the contractor, the GFR and a representative of the borrower.

(2) After inspection, the final inventory documents shall be prepared and distributed as indicated on Appendices C and D. The documents listed for REA shall be submitted to the GFR. The approved final inventory is considered the final contract amendment. An extension to the contractor's bond is required when the total inventory price exceeds the maximum contract by more than 20 percent.

(3) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.40–1765.45 [Reserved]

Subpart E—Outside Plant Major Construction by Force Account

§§ 1765.46—1765.55 [Reserved]

Subpart F—Purchase and Installation of Special Equipment

§ 1765.56 General.

(a) This subpart implements and explains the provisions of the Loan Documents (as defined in 7 CFR Part 1758) setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing special equipment financed with loan funds.

(b) Terms used in this subpart are defined in § 1765.02 and REA Contract Forms 397 and 398.

(c) Special equipment purchased with loan funds must be included in the List of Materials Acceptable for use on telephone systems of REA borrowers (See Bulletin 344–2) and meet REA's standards and specifications (See 7 CFR Part 1772) unless otherwise approved by REA.

(d) Borrowers must obtain REA review and approval of the LD for their telephone systems. Applications of special equipment not included in an approved LD must be submitted to the GFR for REA review and approval. See § 1765.3.

(e) REA Form 397 and applicable specifications shall be used for the purchase of special equipment for major construction on a furnish and install basis.

(f) REA Form 398 and applicable specifications shall be used for the purchase of equipment for major construction on a furnish only basis. The procedures provided in Subpart G, if applicable, or a FAP approved by REA may be used for the installation of special equipment purchased with a Form 398 contract.

(g) For special equipment purchases for minor construction, the borrower may at its option use the Methods of Minor Construction procedures contained in Subpart G of the purchase procedures contained in this Subpart F.

(h) Some types of special equipment software. See Subpart C for REA software licensing requirements.

§ 1765.57 Contracts and specifications

(a) Special Equipment Contract, REA Form 397 shall be used to purchase equipment on a furnish and install basis.

(b) Special Equipment Contract, REA Form 398 shall be used to purchase equipment on a furnish only basis.

(c) The appropriate equipment specifications must accompany the selected contract form.

(1) Each specification consists of performance specifications, installation requirements (if applicable) and application engineering requirements.

(2) REA specifications for the Special Equipment Contract are listed in 7 CFR Part 1772.

(3) Where specifications are not available, general engineering requirements and functional specifications shall be prepared by the borrower and approved by REA.

§ 1765.58 Purchasing special equipment.

(a) *General.* (1) Equipment purchases are categorized as initial equipment purchase, equipment additions to existing systems and new system additions.

(i) An initial equipment purchase is a first time purchase by a borrower of a complete system of special equipment.

(ii) Equipment additions to existing systems are additions of components to complete operating systems to increase system capacity and require components made by the manufacturer of the existing system.

(iii) New system additions are purchases of complete systems of special equipment where the purpose could be accomplished either with equipment of the same type and manufacture as other complete operating systems in the borrower's system, or with complete systems of special equipment from other manufacturers.

(2) For initial equipment purchases which qualify as major construction, proposals shall be received from three or more sellers of equipment of different manufacturers.

(3) For equipment additions to increase the capacity of existing systems, the borrower may negotiate for equipment of a specific type and manufacture. The REA approval to negotiate in this instance is not required if these additions were specifically described in the LD approved by REA.

(4) For new system additions, the borrower may request REA approval to negotiate for additional equipment for the purpose of standardization on a system basis, provided REA approved the procurement method used for the initial equipment purchase. REA approval to negotiate must be obtained before release of the P&S to the seller.

(5) REA will not approve negotiation with a seller of non-domestic equipment for the purpose of standardization, because such a purchase does not meet the "Buy American" provision.

(6) REA recommends that borrowers include installation by the seller for initial installations of special equipment which qualify as major construction.

(7) Special equipment may be installed by the borrower if it has qualified personnel and test equipment available to install the equipment and make the required acceptance tests, and written approval is given by REA.

(8) Installations, whether by the borrower or the seller, must meet the installation requirements of Form 397 specifications. A copy of the appropriate acceptance tests results must be attached to the closeout documents of work order summary.

(9) Detailed considerations and guidelines for the preparation of the specifications for the various applications of special equipment can be found in appropriate REA Telecommunications Engineering and Construction manuals.

(10) The borrower must obtain authorization from the Federal Communications Commission (FCC) to construct and operate radio transmitting equipment. Evidence of FCC authorization is required for REA contract approval. Where required, the borrower must obtain approval of state regulatory bodies regarding tariffs and related matters.

(b) *Procurement Procedures*—(1) *General.* The following are the procurement procedure steps required for the purchase of special equipment by borrowers.

(2) *Initial Equipment Purchase.* (i) The borrower prepares the P&S and sends two copies to the GFR for approval.

(ii) REA approves the P&S in writing (or notifies the borrower of any reason for withholding approval).

(iii) The borrower obtains proposals from three or more sellers.

(iv) The borrower selects the proposal to be accepted and sends notification of this selection supported by a summary of all proposals and an enigneer's recommendation to REA for approval.

(v) REA approves the proposal selection in writing (or notifies the borrower of any reason for withholding approval).

(vi) The borrower sends three executed contracts including specifications to REA for approval.

(vii) After REA approval of the contract, one copy will be returned to the borrower and one copy will be sent to the seller.

(3) *Equipment Additions to Existing Systems.* Purchase procedures for equipment additions to existing systems are the same as for initial system purchase except that the borrower may negotiate for equipment of a specific type and manufacture instead of obtaining proposals from three or more sellers.

(4) *New System Additions.* (i) The borrower prepares the P&S and sends two copies to the GFR for approval. The borrower may request REA approval to negotiate for the purpose of standardization on a system basis.

(ii) REA notifies the borrower in writing of REA's decision as to whether to approve the P&S and whether to allow the borrower to negoitate for specific equipment.

(iii) The remainder of the purchase procedures for new system additions is the same as for initial equipment purchase.

(c) *Contract Amendments.* (1) The general requirements for contract amendments are set forth in § 1765.11.

(2) The borrower shall prepare, arrange for the execution by all parties, and submit to REA any required amendments to special equipment contracts, so that any changes in the contract will have been submitted prior to or simultaneously to the time closeout documents are submitted. REA Form 238, Construction or Equipment Contract Amendment shall be used for this purpose.

(d) *Closeout Procedures—(1) Acceptance Tests for Form 397.* (i) Immediately upon completion of the installation and alignment of the equipment, the borrower shall arrange with the contractor's installer and the GFR for acceptance tests.

(ii) The contractor shall perform the inspections and tests outlined in the specifications.

(iii) The contractor shall furnish to the borrower, in writing, the results of all the tests as required in the specifications. The borrower will analyze the test results and determine whether the performance of the equipment meets the contract specifications.

(2) *Acceptance Tests for Form 398.* (i) Upon completion of the installation and alignment of the equipment (under this contract the installation alignment will be by other than the seller) the borrower shall perform all the inspections and tests outlined in the specifications.

(3) *Closeout Documents.* (i) When the acceptance tests have been completed and all deficiencies found have been corrected, the borrower shall:

(A) Assemble the documents listed in Appendix F which are required for the closeout of the special equipment contract.

(B) Notify the GFR that the installation is ready for final acceptance.

(C) Make available for the GFR the documents listed in Appendix F.

(ii) The GFR reviews the final documents and distributes all the documents as indicated in Appendix F.

(iii) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.59—1765.65 [Reserved]

Subpart G—Methods of Minor Construction

§§ 1765.66—1765.80 [Reserved]

Subpart H—Construction Certification Program

§§ 1765.81—1765.99 [Reserved]

BILLING CODE 3410-15-M

VOL 53 ISS 160 AUG 18 1988 UMI

DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS

FORM FURNISHED BY REA	DESCRIPTION	USE WITH		PREPARED BY			NUMBER OF COPIES	DISTRIBUTION			
		CONTRACT	FORCE ACCOUNT	CONTRACTOR	ARCHITECT	BORROWER		BORROWER	REA	ARCHITECT	CONTRACTOR
238	CONSTRUCTION OR EQUIPMENT CONTRACT AMENDMENT (Submit to REA for approval, as required.)	x	-	-	x	-	3	-	3	-	-
181	*CERTIFICATE OF COMPLETION (Contract Construction)	x	-	-	x	-	3	1	1	-	1
181a	CERTIFICATE OF COMPLETION (Force Account Construction)	-	x	-	x	-	2	1	1	-	-
231	CERTIFICATE OF CONTRACTOR	x	-	x	-	-	2	1	1	-	-
224	WAIVER AND RELEASE OF LIEN (2 copies from each supplier)	x	-	x	-	-	2	1	1	-	-
213	CERTIFICATE (BUY AMERICAN)	x	-	x	-	-	1	1	-	-	-
284	STATEMENT OF ARCHITECT'S FEE	x	x	-	x	-	3	1	1	1	-
---	INVENTORY - LIST MATERIALS AND SERVICES FURNISHED BY BORROWER UPON WHICH ARCHITECTURAL SERVICES WERE FURNISHED. SHOW COST (See Form 284)	x	x	-	-	x	3	1	1	1	-
---	INVENTORY - LIST MATERIALS AND SERVICES FURNISHED BY BORROWER UPON WHICH ARCHITECTURAL SERVICES WERE NOT PERFORMED SHOW COST.	x	x	-	-	x	3	1	1	1	-
**	"AS-BUILT" PLANS AND SPECIFICATIONS	x	x	-	x	-	2	1	1	-	-
---	GUARANTEES, WARRANTIES, BONDS, OPERATING OR MAINTENANCE INSTRUCTIONS, ET CETERA.	x	-	x	-	-	1	1	-	-	-

* Cost of Materials and Services Furnished by Borrower not to be Included in Total Cost on Form 181.

** When only Minor Changes Were Made During Construction, Two Copies of a Statement to that Effect from the Architect Will be Accepted in Lieu of the "As-Built" Plans and Specifications.

DOCUMENTS REQUIRED TO CLOSEOUT CENTRAL OFFICE EQUIPMENT CONTRACT

FORM FURNISHED BY REA	DESCRIPTION	USE WITH		PREPARED BY		TOTAL NUMBER OF COPIES	DISTRIBUTION		
		REA FORM 525	REA FORM 545	CONTRACTOR	ENGINEER		BORROWER	CONTRACTOR	REA
238	CONSTRUCTION OR EQUIPMENT CONTRACT AMENDMENT (Submit to REA for approval, if required, before following documents.)	x	x	-	x	3	-	-	3
754	CERTIFICATE OF COMPLETION and CERTIFICATE OF CONTRACTOR and INDEMNITY AGREEMENT (If submitted, Form 744 is not required.)	x	-	x	x	4	2	1	1
517	RESULTS OF ACCEPTANCE TESTS (Prepare and distribute copies immediately upon completion of the acceptance tests of each central office.)	x	-	-	x	2	1	1	-
752a	CERTIFICATE OF COMPLETION - NOT INCLUDING INSTALLATION	-	x	-	x	3	1	1	1
744	CERTIFICATE OF CONTRACTOR and INDEMNITY AGREEMENT (Where contractor is manufacturer, this form may be submitted in lieu of REA Forms 224 and 231.)	x	-	x	-	2	1	-	1
224	WAIVER AND RELEASE OF LIEN (Two copies from each supplier)	x	-	x	-	2	1	-	1
231	CERTIFICATE OF CONTRACTOR	x	-	x	-	2	1	-	1
213	CERTIFICATE (BUY AMERICAN)	x	x	x	-	2	1	-	1
	SWITCHING DIAGRAM, as installed	x	x	x	-	3	2	-	1
	SET OF DRAWINGS (Each set to include all the drawings required under the Specification REA Form 522)	x	x	x	-	3	3	-	-

DOCUMENTS REQUIRED TO CLOSEOUT
TELEPHONE CONSTRUCTION CONTRACT
REA FORM 515

REA FORM NUMBER	DESCRIPTION	NUMBER OF COPIES	FORM AVAILABLE FROM REA	PREPARED BY		DISTRIBUTION		
				ENGINEER	CONTRACTOR	BORROWER	CONTRACTOR	REA
724	FINAL INVENTORY	4	x	x	-	1	1	*2
724a	FINAL INVENTORY	4	x	x	-	1	1	*2
	CONTRACTOR'S BOND EXTENSION (When required)	3	-	-	x	1	1	1
281	TABULATION OF MATERIALS FURNISHED BY BORROWER	4	-	x	-	1	1	*2
213	CERTIFICATE ("BUY AMERICAN")	1	x	-	x	1	-	-
	LISTING OF CONSTRUCTION CHANGE ORDERS	2	-	x	-	-	-	*2
224	WAIVER AND RELEASE OF LIEN (Two copies from each supplier)	2	x	-	x	1	-	1
231	CERTIFICATE OF CONTRACTOR	2	x	-	x	1	-	1
527	FINAL STATEMENT OF CONSTRUCTION	4	x	x	-	1	1	2
	REPORTS ON RESULTS OF ACCEPTANCE TESTS	2	-	x	-	1	1	-
	SET OF FINAL STAKING SHEETS	1	-	x	-	1	-	-
	TABULATION OF STAKING SHEETS	1	-	x	-	1	-	-
	CORRECTION SUMMARY (legible copy)	1	-	x	-	1	-	-
	TREATED FOREST PRODUCTS INSPECTION REPORTS OR CERTIFICATES OF COMPLIANCE (Prepared by inspection company or supplier)	1	-	-	-	1	-	-
	FINAL KEY MAP (when applicable)	3	-	x	-	2	-	1
	FINAL CENTRAL OFFICE AREA AND TOWN DETAIL MAPS	3	-	x	-	2	-	1

* After approval of inventory by REA, one will be returned to borrower.

STEP-BY-STEP PROCEDURE
FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT
LABOR AND MATERIALS, REA FORM 515

SEQUENCE STEP NO.	WHEN	BY	PROCEDURE
1.	Prior to completion of construction	Borrower's Engineer	Receives instructions from the GFR concerning the closeout procedure.
2.	Upon completion of construction	Borrower's Engineer	Prepares the following: 3 sets of Key Maps, when applicable, 1 of which shows work done under the construction contract marked with red pencil 3 sets of Detail Maps, 1 of which shows work done under the construction contract marked with red pencil 1 copy of Tabulation of Staking Sheets 1 copy of tentatave Final Inventory, REA Forms 724, 724a 1 copy of tentative Tabulation, REA Form 281, if borrower supplied part of the materials.
3.	After construction has been completed and acceptance tests made	Borrower's Engineer	Forwards letter to the borrower with copies to the GFR stating that the project is ready for final inspection.
4.	Upon receipt of letter from borrower's engineer	GFR	Promptly arranges with borrower, borrower's engineer, and contractor for final inspection of construction. It is contemplated that final inspections will be made on sections of line as construction is completed, leaving a minimum amount to be inspected at this time.
5.	When required	REA Field Accountant	Makes an examination of borrower's construction records, and audits REA Form 281, if borrower supplied part of the materials.

SEQUENCE STEP NO.	WHEN	BY	PROCEDURE
6.	Inspection date scheduled	Borrower's Engineer	Shall have the following documents available for the GFR: 1 set of "as constructed" Key Maps (when applicable) 1 set of "as constructed" Detail Maps 1 copy of the List of Construction Change Orders 1 set of Final Staking Sheets 1 copy of Tabulation of Staking Sheets 1 copy of Treated Forest Products Inspection Reports or Certificates of Compliance 1 copy of tentative Final Inventory REA Forms 724, 724a 1 copy of tentative Tabulation, REA Form 231, if borrower furnished part of material. 1 copy of Report on Results of Acceptance Tests
7.	During inspection	Borrower's Engineer	Issues instructions to contractor covering corrections in construction found during inspection by GFR in the company of the borrower's engineer and the contractor or his/her representative.
8.	During inspection	Contractor	Corrects defects in construction on basis of instructions from the borrower's engineer. The corrections should proceed closely behind the inspection in order that the borrower's engineer can check the corrections before leaving the system.
9.	During inspection	Borrower's Engineer	With GFR inspects and approves corrected construction.
10.	During inspection	Borrower's Engineer	Marks inspected areas on the Key Map, if available, otherwise on the Detail Maps.

SEQUENCE STEP NO.	WHEN	BY	PROCEDURE
11.	Upon completion of inspection	Borrower's Engineer	Prepares or obtains all the closeout documents listed in Appendix C Makes distribution of the copies of the documents as indicated in Appendix C. Forwards the documents for REA to the GFR
12.	After reviewing final documents	REA GFR	Reviews documents and distributes copies as indicated in Appendix C.
13.	After signing final inventory	Borrower	Prepares and submits Financial Requirement Statement, REA Form 481 requesting amount necessary to make final payment due under contract.
14.	On receipt of final advance	Borrower	Promptly forwards check for final payment to contractor.

DOCUMENTS REQUIRED TO CLOSEOUT
SPECIAL EQUIPMENT CONTRACTS

Form Furnished By REA	Description	No. of Copies		Prepared By				Distribution		
				Form 397		Form 398				
		Form 397	Form 398	Contractor	Engineer	Contractor	Engineer	Borrower	Contractor	REA
238	CONSTRUCTION OR EQUIPMENT CONTRACT AMENDMENT (If required, submit to REA for approval before other closeout documents.)	3	3	-	x	-	x	-	-	3
396	CERTIFICATE OF COMPLETION - SPECIAL EQUIPMENT CONTRACT (Including Installation)	3	-	-	x	-	x	1	1	1
396a	CERTIFICATE OF COMPLETION - SPECIAL EQUIPMENT CONTRACT (Not Including Installation)	-	3	-	x	-	x	1	1	1
744	CERTIFICATE OF CONTRACTOR AND INDEMNITY AGREEMENT	2	-	x	-	-	-	1	-	1
213	CERTIFICATE (BUY AMERICAN)	1	1	x	-	x	-	1	-	-
---	Report in writing, including all measurements and other information required under Part II of the applicable specifications	2	2	x	-	-	x	1	-	1
---	Set of maintenance recommendations for all equipment furnished under the contract	1	1	x	-	x	-	1	-	-

BILLING CODE 3410-15-C

Dated: August 9, 1988.
Harold V. Hunter,
Administrator.
[FR Doc. 88-18369 Filed 8-17-88; 8:45 am]
BILLING CODE 3410-15-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563c and 571

[No. 88-687]

Investment Portfolio Policy and Accounting Guidelines; Extension of Comment Period

Date: August 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; proposed statement of policy; extension of comment period.

SUMMARY: The Federal Home Loan Bank Board (the "Board") is extending to September 20, 1988 the comment period on its proposed rule and statement of policy regarding investment portfolio policy and accounting guidelines for insured institutions.

DATE: Comments must be received on or before September 20, 1988.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G St. NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Julie A. Gerschick, Professional Accounting Fellow, (202) 331-4583, or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 331-4585, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; or Gary Jeffers, Staff Attorney, (202) 377-6457, or Julie L. Williams, Deputy General Counsel, (202) 377-6459, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On June 9, 1988, the Board proposed to adopt a rule and a statement of policy pertaining to investment portfolio policy and accounting guidelines for institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"). 53 FR 23244 (June 21, 1988). The proposal is intended to clarify that insured institutions must account for securities held for investment, sale, and/or trading in accordance with generally accepted accounting principles ("GAAP"). The proposal was published with a sixty-day comment period which would expire on August 22, 1988.

The Board has determined, as set forth in a notice of public hearing published elsewhere in the Notices section of the **Federal Register**, to hold a public hearing on this proposal on September 13, 1988. In order to give the public adequate opportunity to respond to issues discussed at this hearing the Board is hereby extending the comment period on the proposal. The comment period will now expire on September 20, 1988. The Board notes that comments already submitted in response to the proposal need not be resubmitted during the extension of the comment period. The Board will consider all comments submitted in reaching a final decision, including the views expressed at the public hearing; it encourages all interested parties to submit their comments on all aspects of the proposed rule and statement of policy.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-18781 Filed 8-17-88; 8:45 am]
BILLING CODE 6720-01-M

12 CFR Parts 563c and 571

[Docket No. 88-686]

Investment Portfolio Policy and Accounting Guidelines

Date: August 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of public hearing.

SUMMARY: This notice announces a public hearing on the proposed rule and the proposed statement of policy issued by the Federal Home Loan Bank Board ("Board") to clarify that insured institutions must account for securities held for investment, sale and/or trading in accordance with generally accepted accounting principles ("GAAP").

DATE: The public hearing will be held Tuesday, September 13, 1988, 9:00 a.m.-5:00 p.m.

ADDRESS: Written requests to participate in the public hearing must be mailed to the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, or hand delivered to the same address between the hour of 9:00 a.m. and 5:00 p.m. Monday through Friday, and received no later than 5:00 p.m. on August 29, 1988.

HEARING LOCATION: The Federal Home Loan Bank Board's Amphitheater, 2nd Floor, 1700 G Street, NW., Washington, DC 20552.

Copies of the Notice of Proposed Rule/Proposed Statement of Policy and any comments or other materials relating to the proposed rule and proposed statement of policy will be made available in the Federal Home Loan Bank Board's reading room at 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Julie A. Gerschick, Professional Accounting Fellow, (202) 331-4583, or Barefoot Bankhead, Professional Account Fellow, (202) 331-4585, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; or Gary Jeffers, Staff Attorney, (202) 377-6457, or Julie L. Williams, Deputy General Counsel, (202) 377-6459, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On June 9, 1988, by Resolution No. 88-460, the Board proposed an amendment to its rules and proposed a statement of policy on the accounting for securities held for investment, sale and/or trading in accordance with GAAP. Based on the controversial nature of the proposed rule/proposed statement of policy, the Board wishes to hold a public hearing to permit interested persons to express their views on the proposed rule/proposed statement of policy or any aspect of the proposals. The Board proposed a 60-day comment period that is scheduled to expire on Monday, August 22, 1988. That comment period is to be extended until Tuesday, September 20, 1988. *See* Board Res. No. 88-687, published elsewhere in the *Proposed Rules* section of the Federal **Register**.

Participants in the hearings are invited to address all aspects of the proposed rule/proposed statement of policy. In addition, the Board specifically invites oral comments, as well as supplementary or independent written submissions, studies or analyses with regard to the following matters:

(1) The anticipated impact of the proposals on the investment policies and investment strategies of insured institutions;

(2) The anticipated effect on insured institutions of the documentation requirements of the proposals;

(3) The need to modify or further refine the terms "intent" and "ability" as used in the proposals;

(4) The proper role of the insured institution's board of directors in investing activities, *i.e.*, merely policy making and broad oversight versus more frequent monitoring and review of management activities.

Persons wishing to participate in the hearing should send a written request to participate in the hearings to the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, to be received no later than the close of business August 29, 1988. Requests may be hand delivered between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. This requirement is necessary in order to provide sufficient time to acknowledge receipt of the notices and inform participants of the schedule of the hearing. It will also enable alternative arrangements to be made for the hearing if more persons are expected to attend than the Amphitheater can accommodate.

The request to participate in the hearing must include the following information.

(1) The name, address, and business telephone number of the participant; (2) the entity that the participant is representing; (3) a brief summary of the participant's remarks; and (4) the preference, if any, for the time which the participant wishes to testify. While the Board will attempt to accommodate the participants as to time, it cannot guarantee that it will be able to honor all such preferences. Moreover, the Board may allocate the available time according to the various issues raised in the proposals. Participate should, therefore, be selective in identifying the topics they wish to address.

Depending on the number of requests received, participants may be limited to the length of their oral presentations; they will be advised in writing of the time scheduled for their presentation. Also, depending on the number of requests received, the Board may decide to conduct the hearing over more than one day, although it does not contemplate such an extension at this time.

The Board reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if it receives more requests for participation than may be accommodated in the time available. Additionally, the Board anticipates establishing panels of participants for presentations. If it does so, the Board will take steps to ensure that the designated witnesses or panels constitute a representative sample of the types of participants and of the views of those who wish to participate.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-18782 Filed 8-17-88; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-71-AD]

Airworthiness Directives: BFGoodrich (or Former Company Name Sargent Industries, Pico Division) 7-Man Liferaft, P/N 100102-( )

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to BFGoodrich 7-Man Liferafts, P/N 100102-( ), which would require replacement of certain inflation gas cylinders. This proposal is prompted by a report that three cylinders were found which had leaked to O psi while in the packed state. This condition, if not corrected, could lead to a situation where the raft would not be available for use in an aircraft ditching. These liferafts could be used in any type aircraft.

DATES: Comments must be received no later than October 12, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-71-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from BFGoodrich Aircraft Evacuation Systems, 3414 South Fifth Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Transport Airplane Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter S. Eierman, Aerospace Engineer, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Transport Airplane Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interest persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-71-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The FAA has received a report of three instances where P/N 630104-205 cylinders, used to inflate BFGoodrich 7-man liferafts, P/N 100102-( ), were found to have leaked to O psi while in the packed state. All three instances were discovered at the time of liferaft overhaul. The cylinders had cracks which caused the leakage to occur. The problem resulted from the high lead content of the aluminum used as the cylinder material. This condition is limited to certain lots of cylinders. The material specification has since been changed to prevent the use of high lead content aluminum.

The continued use of the cylinders from the affected lots could result in a liferaft which would not inflate properly and, therefore, may not be available in the event of an aircraft ditching.

The FAA has reviewed and approved BFGoodrich Alert Service Bulletin No. 130101-25A-203, dated March 29, 1988. This service bulletin lists serial numbers of all the cylinders which must be replaced, and provides instruction for this action.

Since this condition is likely to exist on any BFGoodrich liferaft using a cylinder from the lots manufactured from high lead content aluminum, an AD

is proposed to require replacement of the unacceptable cylinders in accordance with the service bulletin previously mentioned.

It is estimated that approximately 100 cylinders would be affected by this AD, that it would take approximately 3 manhours per cylinder to remove and replace an unsatisfactory cylinder, and that the average labor cost would be $40 per manhour. BFGoodrich will provide replacement cylinders at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per liferaft ($120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The proposed amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

BFGoodrich (Sargent Industries, Pico Division): Applies to BFGoodrich (or former company name Sargent Industries, PICO division) 7-man liferafts, P/N 100101-{ }. (This liferaft is approved under Technical Standard Order C70). Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To eliminate cylinders which may leak due to the material used in their fabrication, accomplish the following:

A. Inspect the liferafts to determine the part number (P/N). If the liferaft contains a P/N 630104-205 cylinder with a serial number listed in BFGoodrich Alert Bulletin NO. 130101-15A-203, dated March 29, 1988, the cylinder must be replaced prior to further flight, in accordance with that service bulletin.

Note: The BFGoodrich service bulletin lists the raft P/N and S/N on which the cylinders were originally installed.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Transport Airplane Office, FAA, Northwest Mountain Region.

C. Special flight permits may by issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the BFGoodrich Aircraft Evacuation Systems, 3414 South Fifth Street, Phoenix, Arizona 85040. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Washington, DC, on August 11, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18739 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-100-AD]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notive of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require ultrasonic inspection and overhaul, if necessary, of wing landing gear beam outboard end fittings. This proposal is promoted by the report of a fracture of a left wing landing gear beam outboard end fitting on one airplane. This condition, if not corrected, could result in separation of the outboard end of the landing gear beam with possible damage to control cables or hydraulic lines in the area of the landing gear beam.

DATES: Comments must be received no later than October 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-100-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of

the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-100-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One operator of a Boeing Model 747 series airplane reported a fracture of a left wing landing gear beam outboard end fitting on an airplane which had accumulated 63,700 flight hours and 15,900 flight cycles. Examination of the fractured fitting revealed that all cracks started at corrosion pits in the fitting bore, and crack propagation was caused by stress corrosion. Other operators have reported corrosion in the fitting attach bolt holes, and faying surface of the end fitting. This condition, if not corrected, could lead to separation of the outboard end of the landing gear beam, with possible damage to control cables or hydraulic lines in the area of the landing gear beam.

The FAA has reviewed and approved Boeing Service Bulletin 747-57-2244, dated March 31, 1988, which defines the specific inspection procedures to be used to check for cracks in the wing landing gear support beam outboard end fitting on certain Boeing Model 747 airplanes. The service bulletin also describes a repair and rework method that terminates the need for those inspections.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require ultransonic inspection and repair, as necessary, of the wing landing gear support beam outboard end fittings on certain Boeing Model 747 series airplanes in accordance with the service bulletin previously mentioned.

It is estimated that 192 airplanes of U.S. registry would be affected by this AD, that it would take appoximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $76,800.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-57-2244, dated March 31, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of a wing landing gear beam outboard end fitting with possible damage to control cables or hydraulic lines in the area of the landing gear beam, accomplish the following:

A. Prior to the accumulation of 30,000 flight hours, or 8 years in service, whichever occurs first, or within the next 18 months after the effective date of this AD, whichever occurs later, ultrasonically inspect the wing landing gear beam outboard end fittings for cracks or corrosion in accordance with Boeing Service Bulletin 747-57-2244, dated March 3, 1988.

B. If no cracking or corrosion is found, repeat the inspection required by paragraph A., above, at intervals not to exceed 18 months.

C. If cracking or corrosion is found, prior to further flight, remove the wing landing gear beam outboard fitting and rework in accordance with Boeing Service Bulletin 747-57-2244, dated March 31, 1988.

D. Terminating action for the inspections required by paragraphs A. and B., above, consists of rework of the wing landing gear beam outboard fittings in accordance with Boeing Service Bulletin 747-57-2244, dated March 31, 1988.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Transport Airplane Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Transport Airplane Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 11, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18740 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-12]

Proposed Alteration of Transition Area; Vernal, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to add 1,200 foot transition area at Vernal, Utah, to provide controlled airspace to encompass a new departure procedure. This action does not change the existing 700 foot transition area.

DATES: Comments must be received on or before October 3, 1988.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-12, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 88–ANM–12, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ANM–12". The pastcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & Sysem Management Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace in the vicinity of Vernal, Utah. Additional controlled airspace is required to accommodate a new departure procedure for the Vernal Airport to protect aircraft climbing in the Vernal (VFR) Very High Frequency Omnidirectional Range Station (VOR) holding pattern.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW RATES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Vernal, Utah [Revised]

That airspace extending upward from 700 feet above the surface within 9.5 miles northeast and 5 miles southwest of the Vernal VOR 157° and 337° radials, extending from 10 miles northwest to 18.5 miles southeast of the VOR; that airspace extending upward from 1,200 feet above the surface within 14.5 nautical miles northeast and 9.5 miles southwest of the Vernal VOR 157° and 337° radials, extedning from 13 miles northwest to 22 miles southeast of the VOR; excluding those portions within the VOR federal airways.

Issued in Seattle, Washington, on July 23, 1988.

F. E. Davis,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–18741 Filed 8–17–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 178 and 192

Exportation of Used Self-Propelled Vehicles

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by adding a new part concerning the exportation of used self-propelled vehicles. It sets forth the requirements for lawful exportation of such vehicles as well as the penalties and liabilities for attempted unlawful exportation. These regulations are necessary to implement certain provisions of the Motor Theft Law Enforcement Act of 1984 and the Trade and Tariff Act of 1984 dealing with the unlawful exportation of used self-propelled vehicles. A notice was published previously concerning this matter. After consideration of comments received in response to the notice, certain modifications were made. The modified proposal is being republished for further comments.

DATE: Comments must be received on or before October 17, 1988.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503.

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FOR FURTHER INFORMATION CONTACT:
Legal Aspects: Harriett D. Blank, (202) 566–5746.
Operational Aspects: Louis Razzino, (202) 566–2140.

SUPPLEMENTARY INFORMATION:

Background

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98–547), amended the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), by adding a new section 627 (19 U.S.C. 1627), relating to the unlawful importation or exportation of certain vehicles and equipment. Subsequently, the Tariff Act of 1930 was further amended by section 205 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), which also added a new section 627, similar to section 627 of Pub. L. 98–547. The amendments made by Pub. L. 98–573 are set forth as 19 U.S.C. 1627a.

The new sections provide for civil penalties of not more than $10,000 for each violation of knowingly importing, exporting, or attempting to import or export (1) any stolen self-propelled vehicle, vessel or aircraft; or (2) any self-propelled vehicle or part of a self-propelled vehicle from which the vehicle identification number (VIN) has been removed, obliterated, tampered with or altered. Also, any violation of 19 U.S.C. 1627 or 1627a subjects the vehicle, vessel, aircraft, or part thereof to seizure and forfeiture. In addition, any person attempting to export a used self-propelled vehicle must present both the vehicle and a document describing the vehicle, which includes the VIN, to Customs before lading if the vehicle is to be transported by vessel or aircaft, or before export if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with this provision subjects the violator to a civil penalty of $500 for each violation.

Public Law 98–547 and Public Law 98–573 were enacted in response to the ever-increasing incidents of the theft of motor vehicles and other conveyances and their exportation from the U.S. It is estimated that approximately 200,000 stolen vehicles are exported each year, primarily by professional thieves or people employed by them to effect the exportation. The recovery rate for stolen vehicles decreased from 86% in 1967 to 62.9% in 1984.

There is also a growing problem concerning the exportation of vehicle components. The parts are often shipped in sealed containers, making detection more difficult.

The legislation concerning the exporting and importing of self-propelled vehicles, other conveyances or parts thereof with altered vehicle identification numbers established penalties for violations and provided for the seizure and forfeiture of the vehicles, other conveyances or parts. It is expected that these sanctions will both deter the exportation of stolen vehicles and improve the recovery rate of those vehicles which are stolen. The legislation also directed that regulations by prescribed by the Secretary of the Treasury with regard to the procedures for the lawful exportation of used self-propelled vehicles.

Prior Proposal

On March 17, 1987, Customs published a notice in the **Federal Register** (52 FR 8308), proposing regulations to implement 19 U.S.C. 1627 and 1627a. It was proposed to establish a new Part 192, Customs Regulations (19 CFR Part 192).

Sections 192.1 through 192.4 of Subpart A of Part 192 would set forth the procedures for the lawful exportation of used self-propelled vehicles. They would require a person attempting to export such a vehicle to furnish documentation sufficient to prove to Customs that the vehicle is lawfully owned by the exporter. This documentation would include the vehicle identification number. Definitions of "self-propelled vehicle," "used," "ultimate purchaser," and "export," all terms used in Pub. L. 98–573, would be defined in § 192.1.

As proof of ownership of the vehicle by the exporter, Customs would accept an original certificate of title, or a memorandum of ownership, or a right of possession, or any other document sufficient to prove lawful ownership, such as a bill of sale or a sales invoice. In lieu of an original document, Customs would accept a certified copy.

It was also proposed that the exporter must present 2 facsimiles of the original document or certified copy. Customs would authenticate both facsimile documents, one of which would remain in the possession of the exporter, and the other of which will be collected by Customs for forwarding to the National Automobile Theft Bureau (NATB), on the same day. While Customs would not retain copies of the documentation relating to the exportation, the NATB would enter the VIN and other information on the exported vehicles into their database for recordkeeping purposes.

Authentication by Customs would include the stamping of the facsimile documents with the date of their presentation. As to exportations at a land border, where the vehicle is to be transported by rail, highway, or under its own power, it was proposed that the date would most likely be the date of exportation. At sea borders, where the vehicle is to be transported by vessel, or at airports, where the vehicle is to be transported by aircraft, the date of presentation of the facsimile documents could often precede the actual date of exportation.

Discussion of Comments

Ten comments were received in response to the original proposal. A discussion of these comments and our responses follow:

Comment: One commenter suggested that the proposed regulations should be included in the Export Administration Regulations (15 CFR), because the exporting public will be confused if export regulations are placed in the Customs Regulations (19 CFR).

Response: The statute on which the proposed regulations were based is concerned with both the importation and exportation of vehicles. Congress has seen fit to enact the statute in title 19 of the U.S. Code. Accordingly, Customs believes that the subject regulations properly belong in the Customs Regulations (19 CFR).

Comment: One commenter suggested that because 19 U.S.C. 1627 and 19 U.S.C. 1627a were enacted simultaneously, currently exist side by side, and cover the same subject matter, clarification is necessary as to which statute is being implemented by the proposed regulations.

Response: We do not agree. The legal effect of both statutes is identical and, therefore, regulations implementing both statutes would be identical.

Comment: A Florida-based commenter noted that there is an overlap between the subject legislation and Florida State statutes. Accordingly, the commenter believed that the Federal legislation is unnecessary.

Response: Customs disagrees. One intent of the legislation was to enable Customs, which is a presence at all points of exportation, to assume part of the responsibility for curtailing the exportation of stolen vehicles. Similar state and federal requirements may co-exist as long as state legislation does not conflict with the federal requirements.

Comment: Two commenters suggested that proposed § 192.2(a), Customs Regulations, which provided that a person attempting to export a used self-propelled vehicle, be more specific with regard to the place of presentation of the vehicle and documentation.

Response: Customs agrees. Accordingly, proposed § 192.2(a) is being amended to state that

presentation shall occur at the port of exportation.

Comment: Several commenters suggested that because all 50 states are title states with regard to automobiles, trucks, motorcycles and buses, Customs might want to require that original or certified copies of Certificates of Title be presented for these vehicles. The possibility of forgeries would be decreased if originals or certified copies were required.

Response: We agree. Accordingly, the language in proposed § 192.2(b) being amended to state that in the case of automobiles, trucks, motorcycles and buses, original or certified copies of Certificates of Title and two facsimiles of the original or certified copy shall be presented.

Comment: One commenter suggested that because not all vehicles encompassed by proposed Part 192 are assigned vehicle identification numers (VINs), the proposed regulations should not categorically require that the document which must be presented to Customs describing the vehicle include the VIN.

Response: We agree. Accordingly, language in the proposed regulation is being changed to state that the document presented to Customs may include the product identification number rather than the VIN, if the vehicle for which the document is presented does not have a VIN.

Comment: It was suggested that in order to enhance law enforcement capabilities, the regulations provide a time lag between the presentation of the documentation evidencing lawful ownership and the actual exportation of the vehicle.

Response: We agree. Proposed § 192.2(c) is, accordingly, amended to provide for presentation of documents and vehicles at the port of exportation at least three days before actual exportation, regardless of the specific mode of exportation.

Comment: One commenter suggested that proposed § 192.3, covering penalties, should be redrafted so that, in addition to attempted exportations, it also covers actual accomplished exportations in violation of the regulatory requirements.

Response: We agree. Accordingly, proposed § 192.3 is expanded to state that a $500 penalty will be assessed against both an exporter who has already exported a vehicle without complying with the requirements set forth in Part 192 and an exporter attempting to export a vehicle without complying with the regulations.

Comment: A commenter suggested that Customs be required in all cases to compare the VIN on the documentation purported to evidence lawful ownership with the number on the vehicle itself.

Response: We disagree. Such a requirement would place an impossible burden on Customs and it would not be an efficient use of our limited personnel, facilities and resources.

Comment: It was suggested that the regulations specify the contents of the authentication.

Response: Customs disagrees. We believe that the content of the authentication is basically on operational issue and that, therefore, the regulations need not set forth the specifics of the authentication.

Comment: Several commenters stated that Customs should be required to send the VIN to an agency that maintains data on stolen vehicles such as the NCIC (the FBI's National Crime Information Center) through a direct computer hook-up.

Response: Customs might do this. However, we believe that the regulations should not contain any specific requirements regarding what Customs will do with the information it obtains. It is necessary for the agency to maintain flexibility in this area.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined to republish the proposal with the modifications noted and to allow interested persons an additional opportunity to submit comments on the proposal. Commenters on the original proposal need not resubmit their comments. They will be reconsidered along with any new comments received in response to this notice.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management of Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for U.S. Customs Service, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in the regulation is in section 19 CFR 192.2. This information is required by Customs pursuant to 19 U.S.C. 1627 and 1627a to prove that used self-propelled vehicles that are being exported out of the U.S. are lawfully owned by the exporter. Customs will be providing the documentation it collects certifying the exporters' ownership of the exported vehicles to the National Automobile Theft Bureau which would maintain the records. The likely respondents are individuals exporting vehicles, business or other for-profit organizations and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 5333 hours.

Estimated average annual burden per respondent and/or recordkeepers: 2½ hours depending on the circumstances.

Estimated number of respondents and recordkeepers: 2000

Estimated annual frequency of responses: 16.

Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB would be amended accordingly if this proposal is adopted.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 178

Reporting and recordkeeping requirements.

19 CFR Part 192

Customs duties and inspection, Imports, Exports, Vehicles.

Proposed Amendments

It is proposed to amend Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I), by adding a new Part 192 to read as follows:

PART 192—EXPORT CONTROL

Sec.
192.0 Scope.

Subpart A—Exportation of Used Self-Propelled Vehicles

192.1 Definitions.
192.2 Requirements for exportation.
192.3 Penalties.
192.4 Liability of carriers.

Authority: 19 U.S.C. 66, 1624, 1627, 1627a, 1646a.

§ 192.0 Scope.

This part sets forth regulations pertaining to procedures for the lawful exportation of used self-propelled vehicles and the penalties and liabilities incurred for failure to comply with any of the procedures. This part also sets forth regulations concerning controls exercised by Customs with respect to the exportation of certain merchandise.

Subpart A—Exportation of Used Self-Propelled Vehicles

§ 192.1 Definitions.

The following are general definitions for the purposes of Subpart A:

Export. "Export" refers to the transportation of merchandise out of the U.S. for the purpose of being entered into the commerce of a foreign country.

Self-propelled vehicle. "Self-propelled vehicle" includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail.

Ultimate purchaser. "Ultimate purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

Used. "Used" refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

§ 192.2 Requirements for exportation.

(a) *Basic requirements.* A person attemtping to export a used self-propelled vehicle shall present to Customs, at the port of exportation, both the vehicle and a document describing the vehicle, which includes the Vehicle Identification Number or, when appropriate, the product identification number. Exportation of a vehicle will be permitted only upon compliance with these requirements. The person attempting to export the vehicle may employ an agent for the exportation of the vehicle.

(b) *Documentation required.* In the case of automobiles, trucks, motorcycles and buses, original or certified copies of Certificates of Title, and 2 facsimiles of the original or certified copy, shall be presented. In other cases, a certificate of title, memorandum of ownership, or right of possession, or any other document sufficient to prove lawful ownership, such as a bill of sale or a sales invoice, or a certified copy of any of these documents, as well as 2 facsimiles of the original or certified copy, shall be presented.

(c) *When presented.* If the vehicle is to be transported by vessel or aircraft, the documentation and vehicle must be presented at least 3 days prior to lading. If the vehicle is to be transported by rail, highway, or under its own power, the documentation and vehicle must be presented 3 days prior to exportation of the vehicle.

(d) *Authentication of documentation.* Customs shall authenticate both facsimile documents, one of which shall remain in the possession of the exporter and one of which shall be collected by Customs. Authentication will include the stamping of the facsimile documents with the date of presentation of the documents. The authenticated facsimile document will be the only acceptable evidence from the exporter of compliance with the requirements of this section.

§ 192.3 Penalties.

(a) A $500 penalty shall be assessed against an exporter attempting to export a vehicle without complying with the requirements set forth in this Part of the regulations.

(b) A $500 penalty shall be assessed against an exporter who has exported a vehicle without complying with the requirements set forth in this Part of the regulations.

§ 192.4 Liability of carriers.

Under the provisions of 46 U.S.C. 91, the vessel master is charged with the responsibility for presenting a true manifest. If used vehicles are not included on the manifest or are inaccurately described thereon, a liability of not more than $1,000 nor less than $500 will be incurred.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. It is proposed to amend § 178.2 by inserting the following in the appropriate numerical sequence according to the section number under the column indicated:

§ 178.2 Listing of OMB Control Numbers

19 CFR section	Description	OMB control No.
Part 192.....	Exportation of Used Self-Propelled Vehicles.	1515-0157

Michael H. Lane,
Acting Commissioner of Customs.

Approved: April 20, 1988.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 88-18560 Filed 8-17-88; 8:45 am]
BILLING CODE 4820-02-M

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31 CFR Part 103

Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Treasury is proposing sixteen enumerated amendments to the Bank Secrecy Act regulations. The proposals, if adopted as a final rule, would substantially modify the reporting and recordkeeping requirements regarding casinos.

DATES: Deadline for comments: October 17, 1988.

ADDRESS: Send comments to: Amy G. Rudnick, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: John M. Zoscak, Jr., Attorney-Adviser, Office of the Assistant General Counsel (Enforcement), Department of the Treasury, Room 2000, 1500 Pennsylvania

Avenue NW., Washington, DC 20220, (202) 566–2914.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91–508, (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311–5324), authorizes the Secretary of the Treasury to require financial institutions to file reports and keep records that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. Pursuant to 31 U.S.C. 5312(a)(2)(U), the Secretary has designated certain casinos as "financial institutions" for purposes of the Bank Secrecy Act. *See* 31 CFR 103.11(g)(7). The Secretary has imposed particular reporting and recordkeeping requirements of these casinos. *See* 31 CFR 103.22(a)(2) and 103.36, respectively.

The Internal Revenue Service, which has examination and enforcement jurisdiction over casinos in New Jersey and Puerto Rico, has found that testing for compliance with the current reporting and recordkeeping requirements is difficult because "audit trails" do not always exist.

Treasury proposes herein new rules which are designed to assure full compliance with the Bank Secrecy Act (hereinafter, "the Act") by casinos and to facilitate compliance review. The rules proposed are set forth in sixteen amendments to the Bank Secrecy Act regulations.

Amendment No. 1

Amendment No. 1 continues to cite Pub. L. No. 91–508 as the statutory authority for 31 CFR 103.

Amendment No. 2

Amendment No. 2 would slightly modify the meaning of the term "casino" in § 103.11(g)(7). The modifications are designed to: (a) Affirm that licensed casinos in Puerto Rico and the territories and possessions of the United States are subject to the Act and regulations thereunder; (b) define the concept of "gross annual gaming revenue"; and (c) clarify the point in time that a casino becomes subject to the Act and regulations, based on the amount of its gross gaming revenue.

Amendment No. 3

Amendment No. 3 would clarify the reporting requirements found in § 103.22(a)(2). New § 103.22(a)(2) makes it clear that reportable currency transactions are those that involve either total cash in or total cash out exceeding $10,000, and not a combination of cash in and cash out exceeding such amount, nor an offsetting of cash in and cash out transactions against each other, as has been mistakenly believed by some casinos. Section 103.22(a)(2) (i) and (ii) provides some examples of cash in and cash out transactions, respectively. These are to be considered examples only, and not a comprehensive or exhaustive list of all cash in and cash out transactions. They have been added in response to requests for delineations of types of currency transactions that occur at casinos. It should be noted that exchanges of currency for currency, including foreign currency, are to be treated as both cash in and cash out transactions.

New § 103.22(a)(2)(iii) restates the rule already contained in current § 103.22(a)(2) that multiple currency transactions shall be treated as a single transaction, provided that the casino (a) has knowledge that (b) they are by or on behalf of any person and (c) when aggregated, exceed $10,000 (d) during a "gaming day" (which is defined in proposed Amendment No. 16, below). Casinos have complained that, given the frequently swift and nearly frenzied activity of players on crowded casino floors, it often is very difficult to determine if and when a particular customer has engaged in multiple transactions that meet the over-$10,000 threshold. New § 103.22(a)(2)(iii) responds to this concern by clarifying that a casino will be deemed to have knowledge of multiple same-day transactions by or on behalf of the same person which when aggregated exceed $10,000, not only if (a) an employee, director, officer, sole proprietor, or partner, has knowledge of the multiple transactions, but also if (b) the various books, records, and similar documents, and information retained in a casino's automated data processing system or any existing manual system, which are maintained by the casino pursuant to any Federal, State, or local law or regulation or in the regular course of business, contain information that such multiple transactions have occurred. Because most casino players gamble at more than a single table in a gaming day, requiring casinos to check their internal information, books and records, and similar material is an effective way of assuring that multiple transactions are aggregated and reported.

The knowledge which an employee, director, officer, or partner obtains may be acquired in any manner. Thus, for example, if a casino supervisor is told by an employee that a player has purchased $6,000 in chips for cash and later the same gaming day the supervisor personally observes the same player purchase another $6,000 in chips for cash, the supervisor, and thus the casino, would have the requisite knowledge that the two currency transactions are (a) by the same person and (b) result in cash totalling more than $10,000 (c) in one gaming day. Similarly, if a casino supervisor learns from the casino's computer that a customer has purchased chips at a certain gaming table earlier in the gaming day for $6,000 in cash, and later that day observes the same customer purchase another $6,000 in chips for cash, the supervisor, and thus the casino, is deemed to have knowledge of the multiple transactions.

Amendments No. 4 and No. 5

Amendment No. 5 is intended to assure that the requirements imposed on a casino, when it learns that multiple currency transactions are to be treated as a single one, can be reasonably complied with. Under Amendment No. 4, the existing § 103.27 would become new paragraph (a), and would apply to all transactions that it currently applies to, except those set forth in new paragraph (b).

Amendment No. 5 would add new paragraph (b), which would apply only to certain multiple currency transactions in casinos. Specifically, if the amount of a cash buy in, purchase of chips, or cash bet at a casino would cause all of a customer's cash in transactions to be treated as a single transaction because the casino obtains the knowledge described in proposed § 103.22(a)(2)(iii) solely pursuant to the casino's books, records, computer information, etc., the casino would be required to verify and record the identifying information described in new paragraph (a) (i.e., name, address, social security number, etc.). However, unlike the requirement in new paragraph (a) to verify and record the information "before concluding" the transaction, this requirement would be to verify and record the information "within a reasonable period of time after" the casino acquires the knowledge that the multiple transactions must be treated as a single one. This requirement further provides that the information which is to be verified and recorded is that which is "then reasonably available." Customer information would be deemed reasonably available if the customer is reasonably available. Amendment No. 5 advises that special recordkeeping requirements (as set forth in Amendment No. 15, below) are imposed when paragraph (b) is applicable.

It is emphasized that this requirement is limited to the transactions particularly described. Therefore, all other cash in transactions that occur at areas other than the gaming floor, such as the so-

called cage, would be subject to the requirement of new paragraph (a) that the customer's information be obtained and verified "before concluding" such transactions. Also, the currency transaction that triggers the over-$10,000 reporting threshold of § 103.22(a)(2), thereby making proposed § 103.27(a)(b) applicable, can only be a buy in, chip or token purchase, or cash bet.

Amendments No. 6, No. 7, and No. 8

Nine amendments and additions are proposed to the recordkeeping requirements found in § 103.36. Amendments No. 6 and No. 7 would require that, with respect to each deposit of funds, account opened, and line of credit extended, a casino record the name and address of the person involved, in addition to the person's social security number, which is currently required in paragraph (a). Treasury finds a valid law enforcement purpose in maintaining such additional information, in that it responds to the problem of customers providing false social security numbers. Moreover, Treasury finds this requirement no more burdensome than obtaining social security numbers.

Paragraph (a) is further modified by Amendment No. 8, which would require that the name and address of the person to be recorded pursuant to Amendments No. 6 and No. 7 be verified in the same manner that such information is currently required to be verified pursuant to § 103.27. Verification in these instances is believed necessary because of the very few opportunities available to obtain verification. Having such information on hand would aid in ascertaining complete and correct information when reports are required because of the operation of Amendment No. 3, above. Moreover, Treasury sees this requirement as no more burdensome than requiring the obtaining of social security numbers. Finally, this requirement helps assure that the list described in current paragraph (a) contains accurate information.

Amendment No. 9

Amendments No. 9 through No. 12 describe additional records that casinos would be required to make and retain under § 103.36(b). Amendment No. 9 would require, under new § 103.36(b)(9), a record of each person who has bought in at, bet, or purchased chips or tokens for, $2,500 or more. Treasury recognizes that it is sometimes difficult to ascertain the point at which a player has bought in at, bet, or purchased chips for, $2,500 or more through a series of transactions. Accordingly, the casino is required to use "reasonable diligence" in determining whether the $2,500 threshold for such transactions has been met. The reasonable diligence concept takes into account that tracking multiple buy ins, bets, and chip and token purchases at times is subjective and based on approximations. Still, where a player meets the $2,500 threshold through multiple transactions at a single gaming table, or at several adjacent tables or during a single player rating period, Treasury would expect the requirements of the proposed amendment to be complied with, without exception.

The record required by Amendment No. 9 would include the player's name, permanent address, casino account number (which is defined in Amendment No. 16, below), and social security or taxpayer identification number; the date, time, and amount of the transactions; and the name or casino license number of the casino employee preparing the record. The name and address of the person must be verified, as provided in current § 103.27.

As with current § 103.36(a), a casino that has been unable to secure the social security or taxpayer identification number shall not be deemed to be in violation of the new rule if it has made a reasonable effort to secure the number and maintains a list containing the verified names and addresses of those persons from whom the number was not obtained. This list must be made available to the Secretary upon request.

Recognizing that most large casinos "rate" (i.e., monitor the gaming activity of) players at, or well below, the $2,500 threshold, new § 103.36(b)(9) would exempt from its requirements those casinos which do, indeed, rate at least at $2,500, provided the same information as required by this new rule is obtained and verified. Treasury views player rating documents, made in the normal course of business, as highly useful as a means of aggregating multiple currency transactions, to determine whether the transactions exceed $10,000 and thus are required to be reported under §103.22(a)(2). (See the Notice of Proposed Rulemaking set forth at 53 FR 11513). Treasury is concerned that casinos which do not rate their players at least at $2,500, or do not rate at all, create no documents from which it might be determined whether reports have been properly filed. Therefore, new § 103.36(b)(9) would require such documentation.

Amendment No. 10

Amendment No. 10 would add a requirement that casinos maintain a record containing a list of each customer who is known by an alias, nickname, "AKA", etc. The list would include the customer's name, aliases, nicknames, etc., permanent address, and social security or taxpayer identification number. Treasury considers such a list to be important, because customers sometimes use more than one name to identify themselves at casinos. The list would help in determining whether multiple currency transactions that occur by or on behalf of a single person, but under different names, have been aggregated as required under § 103.22 (a)(2), and it would indicate whether currency transaction reports that are filed under different names pertain to a single person or to several persons. The list must be reported to the Secretary or the Commissioner of Internal Revenue upon request.

Amendment No. 11

In conducting Bank Secrecy Act compliance examinations pursuant to § 103.46, the Internal Revenue Service has reported to Treasury that it has detected some transactions which had been accounted for as transactions involving various non-currency monetary instruments, e.g., checks or traveler's checks. However, in these instances, extensive examinations have failed to reveal any business records that are able to identify whether the transactions in question actually involved non-currency monetary instruments, as opposed to currency.

In order to assure that transactions that are accounted for as involving non-currency monetary instruments indeed do not involve currency, Amendment No. 11 would add new § 103.36(b)(11) to require that a separate record be kept chronologically listing transactions of $2,500 or more involving the following instruments: Personal checks, business checks, official bank checks, cashier's checks, third party checks, promissory notes, traveler's checks, and money orders. The list would include the type of instrument; the time, date, and amount of the transaction; the name of the drawee or issuer of the instrument; the name and address of the customer; all reference numbers (e.g., casino account number, personal check number, etc.); and the name or casino license number of the casino employee who conducts the monetary instrument transaction.

Amendment No. 12

New § 103.36(b)(12), which is proposed in Amendment No. 12, would require a record of wire transfers into or out of a casino on behalf of a customer in amounts of $2,500 or more. Each

record would list the time, date, and amount of the transaction; the outside place of origination or destination of the transfer; any device, request, or instruction regarding the transfer; the name, address, and casino account number (if any) of the customer; and the name of casino license number of the casino employee who conducted the transaction.

Amendments No. 13 and No. 14

Amendments No. 13 and No. 14 respectively would add new §§ 103.36(b)(13) and 103.36(b)(14). Section 103.36(b)(13) would require casinos to retain a copy of its compliance program (described in Amendment No. 16, below). Section 103.36(b)(14) would require casinos to retain the records made through the operation of the denominational imprest system or the system provided when the denominational imprest system is exempted (also described in Amendment No. 16, below).

Amendment No. 15

Amendment No. 15 would add new § 103.36(b)(15), which was referred to in the discussion of Amendment No. 5, above. Under this proposed rule, every casino would be required to make a record that contains a list of each person which it could not identify solely as a result of the lag time that occurs between the time information is posted, logged in, inputted into a computer, etc., and the time it is ordinarily readable.

The interplay between this amendment and Amendment No. 5 is illustrated as follows. Assume that several casino employees at various times in a gaming day input the amounts of several buy ins of a player into the casino's computer system, which is capable of aggregating the amounts of multiple transactions and displaying the total. (Using computers to aid in Bank Secrecy Act compliance is discussed in Amendment No. 16, below). The player leaves the casino before the computer aggregates these transactions, which together exceed $10,000, and the displays the total on the employee's computer screen. If a reasonable period of time elapses before a casino employee has knowledge through the computer that the buy ins have exceeded $10,000, and the casino has not already obtained or verified the name and address under § 103.27(a), compliance with Amendment No. 5 would operate to relieve the casino of civil or criminal liability resulting from the casino's inability to obtain identifying information in a timely manner.

Under Amendment No. 15, the casino would be required to include the player on the special list. The list also would have to include any information that the casino has on the player (e.g., the player's nickname or address), the specific information that was not verified or recorded, and the time, date, and amount of the transaction or transactions that caused the operation of new § 103.27(b)(2). For purposes of these amendments, information which is available includes information which may be derived through casino accounts, prior reports filed on the same person pursuant to § 103.22(a), etc. For an ongoing duty imposed on casinos to obtain information which is required to be obtained and retained, but is not, see Amendment No. 16, below.

Amendment No. 16

Amendment No. 16 would add new § 103.54, titled "Special rules for casinos." In proposed paragraph (a) thereof, the development and implementation of internal programs to assure and monitor compliance with the Bank Secrecy Act and regulations thereunder would be mandated. The compliance programs would require, at a minimum, a system of internal controls to assure ongoing compliance, independent internal or external testing for compliance, training of casino personnel, the designation of an individual or individuals to assume the responsibility of day-to-day compliance, and the use of all information that is available to determine (a) at that point in time identifying information on a person must be obtained or verified, (b) when multiple currency transactions shall be treated as a single transaction under § 103.22(a)(2), and (c) whether any records required under the regulations must be made and retained. Additionally, the compliance programs for casinos which have automated data processing systems would have to provide for the development and use of computer programs to help assure Bank Secrecy Act compliance. The compliance programs would have to be in effect not later than 60 days after publication of the final rule.

Treasury's authority to require Bank Secrecy Act compliance programs can be found at section 5318(a)(2) of title 31 of the United States Code. The first four requirements of the compliance programs are the same as those contained in the mandatory compliance programs of other financial institutions for Bank Secrecy Act purposes. *See*, eg., 12 CFR 21.21 and 12 CFR 208.14. The fifth requirement is imposed because some casinos have filed the reports required by § 103.22(a) with incomplete information, even though complete information had been maintained in the casinos' computer systems; have failed to treat multiple currency transactions as a single one, even though player rating forms, when read together, showed that players had bought in for more than $10,000 in cash during a single gaming day; and have failed to maintain complete records under § 103.36(b).

The sixth requirement merely requires casinos to use their automated data processing systems to their fullest extent to help assure compliance. It is stressed that this requirement is meant for casinos which have such systems in place and use them in the normal course of business. While casinos are not required to purchase or rent automated data processing systems for the sole purpose of enhancing their compliance with the Act and regulations, if they have a system in place that permits them to aggregate transactions, they must use that system for purposes of complying with the Act.

New § 103.54(a) concludes with the admonition that the development and implementation of compliance programs, standing alone, will not be considered a defense to any criminal or civil action under the Bank Secrecy Act or the regulations thereunder.

Amendment No. 16 would also add new § 103.54(b) to require each casino to use a "denominational imprest system" to account for certain transactions. As one facet of the denominational imprest system, each casino employee who engages in chip or currency transactions, with customers, other than those which occur at the gaming tables, would be responsible for a currency or a currency and chip inventory of a recorded dollar value and denominational composition at the beginning of his or her employment shift. The inventory at the end of the employment shift must also be recorded by dollar value and denominational composition.

Each transaction which involves the inventory must be accounted for chronologically and be recorded. The transactions would include those with another area of the casino, such as a "chip bank", or with a customer, such as a payment of credit with chips. The record will include the amounts involved, the denominations of currency involved, and a brief description of the transaction (e.g., "redemption of chips for one $50 bill and two $20 bills"). Paper tape, such as bank teller tape, can constitute the record. Also, the casino may develop a code to help expedite each transaction. By using a code, the casino can apply symbols, different

colors of ink, etc., to describe various transactions.

When a transaction with a customer involves $2,500 or more in currency, the casino would also be required to secure, verify, and record certain identifying information, including social security number or taxpayer identification number. If such number cannot be obtained, the casino will not be deemed to be in violation of the rule, provided that it has made a reasonable effort to secure the number and maintains a list, made available to the Secretary upon request, of those persons from whom it was unable to obtain the number. The name or casino license number of the employee conducting the transaction must also be recorded.

The requirement to account for customer currency or chip transactions through a denominational imprest system may be exempted by the Secretary. In order to obtain an exemption, a casino must certify to the Secretary that all of its currency and chip transactions (other than those occurring at the gaming tables) in amounts greater than $10,000 occur only at one or more stations, such as a cashier's window in the cage; that all of its currency and chip transactions in amounts between $2,500 and $10,000 inclusive occur only at one or more other stations and that certain information is recorded and verified at those stations; and that the stations handle no other transactions.

The denominational imprest system is necessary to assure that transactions accounted for as non-currency (e.g., chip transactions) are not currency transactions and to provide an audit trail presently not available for cage transactions. While significantly new requirements would be imposed for customer transactions, the added burden for internal transactions would be insignificant. Casinos already determine the denominational composition of the currency involved in the internal transactions covered by the proposed rule. The rule merely requires that a record be made of the denominational composition.

The denominational imprest system is similar to that used in banks, where a record is made of each transaction. Again, as with many banks, casinos may use a "teller tape" as the required record for each customer transaction covered by the rule. The system used by banks has proved to be greatly beneficial for Bank Secrecy Act enforcement purposes.

Amendment No. 16 would add new § 103.54(c) to define five terms which are used in the regulations and pertain to casinos. "Gaming day" would be defined to mean essentially the normal business day of a casino. Moreover, no casino would be permitted to maintain separate gaming days for its various divisions, e.g., having a 24-hour period for cage transactions which is not the same period for gaming table transactions. "Customer" is all-inclusive and refers to each person involved in a transaction with a casino, regardless of whether that person engages in the casino's gaming activity. "Business year" means the taxable year, for purposes of subtitle A of title 26 of the United States Code, of the casino. "Machine-readable" means capable of being read by an automated data processing system. "Casino account number" includes all numbers by which a casino identifies a customer.

Finally, paragraph (d), alluded to in the discussion of Amendment No. 15 above, would also be added to new § 103.54. The new rule would place casinos under an ongoing duty to secure the missing information contained in the list prescribed by proposed § 103.36(b)(15).

Executive Order 12291

This proposed rule, if adopted, would not be a major rule for purposes of Executive Order 12291. It is not anticipateda to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individuals industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on these requirements should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Departmental Offices, Department of the Treasury. Copies of such comments should also be submitted to the Department at the address previously specified.

The collections of information in this regulation are in 31 CFR 103.22, 103.33, 103.36, and proposed new § 103.54. This information is required by the Treasury Department to trace movements of large volumes of cash in casinos. The information will be used in the enforcement of Federal income tax laws and the investigation of criminal activities such as money laundering and drug trafficking. The respondents and recordkeepers are business or other for-profit institutions.

Estimated total annual recordkeeping burden: 12,254 hours.

Estimated number of recordkeepers: 23.

Estimated average annual burden per recordkeeper: 533 hours.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

Comments.

Treasury requests written comments from all interested persons concerning the proposed amendments. Oral comments will not be considered unless and until reduced to writing. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in the comments. All comments submitted will be available for public inspection during the hours that the Treasury is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Avenue NW., Washington, DC. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at (202) 566–8022 for an appointment. Treasury requests comments on all aspects of this proposal, but is particularly interested in specific information about the anticipated increased costs that each individual proposed requirement would cause.

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List of Subjects in 31 CFR Part 103

Authority delegation, Banks and banking, Currency, Foreign Banking, Investigation, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments

For the reasons set forth in the preamble, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—[AMENDED]

1. The authority citation for Part 103 would continue to read as follows:

Authority: Pub. L. No. 91–508, Title I 84 Stat. 1114 (12 U.S.C. 1829b, 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. It is proposed that § 103.11(g)(7) be revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(g) * * *

(7)(i) *Casino.* A casino or gambling casino duly licensed to do business as a casino or gambling casino in the United States and having gross annual gaming revenue in excess of $1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For the purposes of this paragraph, "gross annual gaming revenue" means the gross gaming revenue received by a casino, without regard to winnings paid to players, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of this part solely because its gross annual gaming revenue exceeds $1,000,000 during its current business year, shall not be considered a casino for purposes of this part prior to the time in its current business year that its gross annual gaming revenue exceeds $1,000,000.

* * * * *

3. It is proposed to amend § 103.22 by revising paragraph (a)(2):

§ 103.22 Reports of currency transactions.

* * * * *

(a) * * *

(2) Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than $10,000.00.

(i) Transactions in currency involving cash in include, but are not limited to:

(A) Purchase of chips and tokens,

(B) Bets of currency,

(C) Exchanges of currency for currency, including foreign currency,

(D) Currency received by a casino for wire transfer from a customer,

(E) Front money deposits,

(F) Safekeeping deposits,

(G) Payments on any form of credit, including markers and counter checks, and

(H) Purchases of a casino's check.

(ii) Transactions in currency involving cash out include, but are not limited to:

(A) Currency paid by a casino as a result of a wire transfer on behalf of a customer,

(B) Cash wins by a customer,

(C) Front money withdrawals,

(D) Safekeeping withdrawals,

(E) Redemptions of chips and tokens,

(F) Cashing of checks or other negotiable instruments,

(G) Reimbursements for customers' transportation expenses to the casino, and

(H) Exchanges of currency for currency, including foreign currency.

(iii) Multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any gaming day. For purposes of this paragraph, a casino will be deemed to have the knowledge described in the preceding sentence, if:

(A) Any employee, officer, director, sole proprietor, or partner of the casino has knowledge,

(B) Or the books, records, logs, information retained on magnetic disk, tape, or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the normal course of its business, contain information that such multiple currency transactions have occurred.

* * * * *

4. It is proposed to amend § 103.27 by designating the present §103.27 as §103.27(a), and amending newly designated (a) by adding at the beginning the following:

§ 103.27 Identifcation required.

(a) Except as provided in paragraph (b) of this section, * * *.

5. It is further proposed to amend § 103.27 by adding after the existing paragraph a new paragraph (b) to read as follows:

* * * * *

(b)(1) If a casino acquires knowledge, solely as described in § 103.22(a)(2)(iii)(B), that a cash buy in, purchase of chips or tokens, or cash bet has caused a customer's cash in transactions to be treated as a single transaction in currency under §103.22(a)(2)(iii), the casino shall obtain, verify and record, within a reasonable period of time after such knowledge is so acquired, the information described, in the manner prescribed, in § 103.27(a), which is then reasonably available. For purposes of the preceding sentence, information shall be deemed reasonably available if the customer is reasonably available.

(2) For special recordkeeping requirements regarding this rule, see § 103.36(b)(15).

6. It is proposed to amend § 103.36(a) by inserting in the first sentence of paragraph (a) the following after the words "record of the": "name, permanent address, and".

7. It is further proposed to amend § 103.36(a) by inserting the following in the second sentence after the words "shall secure the": "name, permanent address, and".

8. It is further proposed to amend § 103.36(a) by inserting the following between the second and third sentences: "The name and address of such person shall be verified by the casino. The verification shall be made by examination of a document of the type described in § 103.27(a), and the specific identifying information shall be recorded in the manner described in § 103.27(a)."

9. It is further proposed to amend § 103.36 by adding new paragraph (b)(9), to read as follows:

§ 103.36 Additional records to be made and retained by casinos.

* * * * *

(b) * * *

(9) A record of each person that the casino knows, or through reasonable diligence should know, has bought in at, bet, or purchased chips or tokens of, $2,500 or more, through one or more transactions in currency, in a single gaming day. The record shall include the name, permanent address, casino account number (if any), and social security number or taxpayer identification number of such person; the date, time, and amount of currency involved in the transaction(s); and the name or casino license number of the casino employee preparing the record.

(i) The name and address of such person shall be verified by the casino. The verification shall be made by examination of a document of the type described in § 103.27(a), and the specific identifying information shall be recorded in the manner described in § 103.27(a).

(ii) If the person is a nonresident alien, the person's passport number or a

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description of some other government document used to verify the person's identity shall be obtained and recorded.

(iii) In the event that a casino has been unable to secure the required social security number or taxpayer identification number, it shall not be deemed to be in violation of this section if it has made a reasonable effort to secure such number and it maintains a list containing the names and permanent addresses of those persons from whom it has been unable to obtain such number and makes the names and addresses of those persons available to the Secretary upon request.

(iv) If:

(A) A casino makes and retains the records described in § 103.36(b)(8) when a person buys in at, bets, or purchases chips of, at least $2,500 in currency through one or more transactions in a gaming day;

(B) Such records contain all of the information required by this paragraph (b)(9) and

(C) The customer information for such records is verified as described in (b)(9)(i) and (ii) of this section, the casino shall not be required to make the records described in this paragraph (b)(9).

10. It is further proposed to amend § 103.36 by adding new paragraph (b)(10), to read as follows:

* * * * *

(b) * * *

(10) A record containing a list of each customer who is known by the casino by more than one name. The list shall include the name of the customer, his or her permanent address, casino account number (if any), and social security or taxpayer identification number (if known by the casino), and the aliases, nicknames, and other names by which the customer is identified. The list shall be reported to the Secretary or Commissioner of Internal Revenue, upon request.

11. It is further proposed to amend § 103.36 by adding new paragraph (b)(11), to read as follows:

* * * * *

(b) * * *

(11) A separate record containing a list of each transaction between the casino and its customers of $2500 or more, involving the following types of instruments:

(i) Personal checks,

(ii) Business checks (including casino checks),

(iii) Official bank checks,

(iv) Cashier's checks,

(v) Third-party checks,

(vi) Promissory notes,

(vii) Traveler's checks, and

(viii) Money orders.

The list will contain the time, date, and amount of the transaction; the name and permanent address of the customer; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers (e.g., casino account number, personal check number, etc.); and the name or casino license number of the casino employee who conducted the transaction. Applicable transactions will be placed on the list in the chronological order in which they occur.

12. It is further proposed to amend § 103.36 by adding new paragraph (b)(12), to read as follows:

* * * * *

(b) * * *

(12) A record containing a list of wire transfers of $2,500 or more, into and out of a casino, on behalf of the customers of the casino. The record will list the time, date, and amount of the transaction; the outside place of origination or destination of the transfer; any advice, request, or instuction received or given regarding the transfer; the name, address, and casino account number (if any) of the customer; and the name of casino license number of the casino employee conducting the transaction.

13. It is further proposed to amend § 103.36 by adding new paragraph (b)(13), to read as follows:

* * * * *

(b) * * *

(13) A copy of the compliance program described in § 103.54(a).

(14) It is further proposed to amend § 103.36 by adding new paragraph (b)(14), to read as follows:

* * * * *

(b) * * *

(14) All documents and codes prepared in conjunction with the operation of the denominational imprest system, or the system to be used if the denominational imprest system is exempted by the Secretary, as described in § 103.54(b).

(15) It is further proposed to amend § 103.36 by adding new paragraph (b)(15), to read as follows:

* * * * *

(b) * * *

(15) A record that contains a list of each person on which the casino was required, solely be operation of § 103.27 (b)(1), to verify and record the information described in § 103.27(a), but the information was not reasonably available, within the meaning of § 103.27 (b)(1). The list shall contain any identifying information on the person which is available; a description of the specific information that was not obtained, verified, or recorded; and the time, date, and amount of the transaction or transactions that caused the operation of § 103.27 (b)(1).

16. It is proposed to add new § 103.54 immediately after § 103.53, to read as follows:

§ 103.54 Special rules for casinos.

(a) *Compliance programs.* (1) On or before [60 days after publication of this rule in the **Federal Register**], each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in subchapter II of chapter 53 of Title 31 of the United States Code and the regulations contained in this Part.

(2) At a minimum, each compliance program shall provide for:

(i) A system of internal controls to assure ongoing compliance,

(ii) Internal and/or external independent testing for compliance,

(iii) Training of casino personnel,

(iv) An individual or individuals to assure day-to-day compliance,

(v) Using all available information to determine:

(A) When required by this part, the name, address, social security number, and other information, and verification of the same, of a person;

(B) The point in time at which multiple currency transactions will be treated as a single transaction for purposes of § 103.22(a)(2); and

(C) Whether any record as described in Subpart C of this part must be made and retained; and

(vi) For casionos that have automated data processing systems, the development and use of automated programs to aid in assuring compliance.

(3) Compliance with the requirements of this paragraph, in and of itself, shall not be considered a defense to any criminal or civil action involving a violation of subchapter II of chapter 53 of title 31 of the United States Code or the regulations contained in this part.

(b) Denominational imprest system. (1) On or before [60 days after publication in the **Federal Register**], each casino shall develop and use a denominational imprest system to account for the following transactions:

(i) With its customers, all transactions involving chips, currency, or any combination of chips and currency other than those that occur at the gaming tables;

(ii) The segregation of currency for transfer to another financial institution;

(iii) The receipt of currency from another financial institution; and

(iv) The inventorying of currency that has been transferred from the games to the casino's central location for custody of the casino's currency.

(2)(i) For the transactions described in paragraph (b)(1)(i), each denominational imprest system shall:

(A) Provide individual imprest inventories of currency of chips and currency for each employee who is responsible for conducting such transactions;

(B) Assure the recording of the beginning and ending inventory of each individual imprest inventory by dollar value and denominational composition, and

(C) Provide for the chronological recording of (1) all such transactions and (2) all transactions involving the individual imprest inventories and any other place in the casino (e.g., a "chip bank"). The record shall contain the amount and a brief description of the transaction, including the denominational composition of all currency involved (e.g., "redemption of chips for one $50 bill and two $20 bills" or "payoff of credit with chips"). Paper tape containing the amount, denominational composition, and description meets this requirement. The description may be coded, so long as a single code is used uniformly in recording the transactions, and is made available to the Secretary upon request.

(ii) When a transaction described in paragraph (b)(1)(i) of this section involves cash in or cash out of $2,500 or more in currency, the casino shall, in addition to all other requirements of this section, prepare a record containing the customer's name, permanent address, casino account number (if any), and social security number of taxpayer identification number; the date and time of the transaction; and the name or casino license number of the casino employee conducting the transaction. The customer's name and address shall be verified as described in § 103.27(a). If the customer is a nonresident alien, the casino shall also record the customer's passport number or a description of some other government document used to verify the person's identity. In the event that a casino is unable to secure the social security number or taxpayer identification number, it shall not be deemed to be in violation of this section if it has made a reasonable effort to secure such number and maintains a list containing the names and permanent addresses of those persons from whom it has been unable to obtain such numbers and makes the names and addresses of those persons available to the Secretary upon request.

(3) For the transactions described in paragraph (b)(1) (ii), (iii), and (iv) of this section the casino must prepare and keep a record containing the following information: the type of transaction involved (e.g., a "drop count"); the number of all denominations of currency involved (eg., 10 $100 bills, 50 $50 bills, 25 $20 bills, etc.); the specific place of origination or destination of the currency (eg., the name of a commerical bank, the table number of currency transferred from a game to the cage, etc.); the time and date of the transaction; and the name of casino license number of the employee who prepares the record.

(4) The Secretary may exempt a casino from the requirements of this paragraph that relate to the transactions described in paragraph (b)(1)(i) of this section. The exemption may be granted, provided the casino certifies to the Secretary that:

(i) All of the tranactions described in paragraph (b)(1)(i), of this section, which are in a amounts in excess of $10,000, occur only at one or more stations, and such stations handle no other transactions;

(ii) All of the transactions described in paragraph (b)(1)(i) of this section, which are in amounts of $2,500 through and including $10,000, occur only at one or more stations, and such stations handle no other transactions; and

(iii) For each transaction occurring at the station or stations described in paragraph (b)(4)(ii) of this section, a record is prepared, retained, and made available to the Secretary upon request, of the name, permanent address, casino account number (if any), and social security number or taxpayer identification number of the customer involved, the passport number or a description of some other government document if the customer is a nonresident alien, the date, time, and amount of the currency involved in the transaction; a brief description of the transaction; and the name of casino license number of the casino employee conducting the transaction. The name and address of the customer shall be verifed as described in § 103.27(a). In the event that a casino is unable to secure the social security or taxpayer identification number, it shall not be deemed to be in violation of this section if it has made a reasonable effort to secure such number.

(c) *Special terms.* As used in this part, as applied to casinos:

(1) *Gaming day* means the normal business day of a casino. For a casino that offers 24 hour gaming, the term means that 24 hour period by which the casino keeps its books and records for business, accounting, and tax purposes. For purposes of the regulations contained in this part, each casino may have only one gaming day, common to all of its divisions.

(2) *Customer* includes every person who is involved in a transaction to which this part applies, with a casino, whether or not that person participates, or intends to participate, in the gaming activities offered by that casino.

(3) *Business year* means the annual accounting period, such as a calendar or fiscal year, by which a casino maintains its books and records for purposes of subtitle A of title 26 of the United States Code.

(4) *Machine-readable* means capable of being read by an automated data processing system.

(5) *Casino account number* means any and all numbers by which a casino identifies a customer.

(d) *Ongoing identification requirements.* Casinos shall be under a continuous duty to obtain and record all missing information contained in the list required by paragraph (b)(15) of § 103.36, whenever the information becomes reasonably available.

Dated: July 26, 1988.

Gerald L. Hilsher,

Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 88-18630 Filed 8-17-88; 8:45 am]

BILLING CODE 4810-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 94

[PR Docket 88-191]

Amendment of the Commission's Rules Concerning Point-to-Multipoint Use of Certain Bands and General Procedures for Filing an Application in the Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Order granting extension of time.

SUMMARY: The Private Radio Bureau has adopted an Order granting the Motion for Extension of Time to file reply comments filed by Harris Corporation.

DATE: The reply comment period is extended to August 16, 1988.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

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SUPPLEMENTARY INFORMATION:

1. On April 21, 1988, the Commission adopted a *Notice of Proposed Rule Making (Notice)* in the above-captioned matter (53 FR 23132 (June 20, 1988)). Comments on the *Notice* were due July 18, 1988, and reply comments are due on or before August 2, 1988.

2. On July 22, 1988, The Community Telecommunications Network (CTN) filed a Motion to Accept Late-Filed Comments. In order to allow all interested parties to have the full fifteen days to respond to these comments, CTN requests a four day extension of the date for submitting reply comments. The Harris Corporation (Harris) also requested the Commission extend the time for filing reply comments. Harris contends that two weeks does not allow sufficient time for thoroughly analyzing the comments. It asks that the time for filing reply comments be extended to August 16, 1988.

3. It appears that the public interest would be served by granting an additional period in order to afford interested parties a full opportunity to respond to all the comments, including CTN's. Therefore, we will extend the reply comment deadline until August 16, 1988.

4. Accordingly, it is ordered, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties have until August 16, 1988, to file reply comments in this proceeding.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 88-18782 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

49 CFR Parts 393 and 571

[NHTSA Docket No. 88-14, Notice 1]

Federal Motor Vehicle Safety Standards; Parts and Accessories Necessary for Safe Operation

AGENCY: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; Grant of petition for rulemaking.

SUMMARY: Mr. W. A. Barr submitted a petition to NHTSA concerning the devices which connect heavy truck tractors and trailers. According to the petitioner, present designs of the lock of the fifth wheel of tractors and the kingpin on trailers make it possible for the driver to obtain what is called a "high hitch," or false latch, when a trailer is connected to a tractor. Mr. Barr stated that if a high hitch occurs, the trailer may separate from the tractor during highway driving. After evaluating the petition, NHTSA has concluded that the issues raised by the petitioner should be addressed in rulemaking. This notice grants Mr. Barr's petition and requests comments on a number of issues concerning high hitches. This notice is being issued jointly with FHWA, since some of the issues relate to the possible regulation of vehicles currently in use as well as newly manufactured vehicles.

DATES: Comments must be received on or before October 17, 1988.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

NHTSA is responsible for compiling the information received in response to this notice. Written comments should be submitted only to NHTSA.

FOR FURTHER INFORMATION CONTACT: NHTSA: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5274. FHWA: Mr. Thomas Kozlowski, Office of Motor Carrier Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2981.

SUPPLEMENTARY INFORMATION: Mr. W. A. Barr submitted a petition to NHTSA concerning the devices which connect tractors and trailers. According to the petitioner, present designs of the kingpin on trailers and the lock of the fifth wheel of tractors make it possible for the driver to obtain what is called a "high hitch," or false latch, when the tractor is connected to a trailer. Mr. Barr stated that if a high hitch occurs, the trailer may separate from the tractor during highway driving. According to the petitioner, the accidents which have occurred from high hitches are not frequent, but usually are very serious when an automobile strikes an uncontrolled trailer which has separated from a tractor.

Mr. Barr characterized his petition as one requesting the agency to commence a proceeding to determine whether to issue an order concerning notification and remedy of a defect in equipment that relates to motor vehicle safety. The petitioner requested that NHTSA "require an SAE standard for the kingpin which will not permit a high hitch." The petitioner stated that this may also mean changes to the fifth wheel locks. Mr. Barr stated that one possible approach would be to make the bottom diameter of the kingpin larger than the diameter of the recess in the lock so that the hinge lock cannot be closed if the bottom of the kingpin is placed in the recess during the hitching process.

Since Mr. Barr requested a "standard" to prevent high hitches, NHTSA is treating the petition as one for rulemaking. The agency notes that it does not issue "SAE standards," but instead issues Federal motor vehicle safety standards, pursuant to the National Traffic and Motor Vehicle Safety Act. SAE standards are voluntary standards, published by the Society of Automotive Engineers (SAE).

As part of its efforts to evaluate Mr. Barr's petition, NHTSA contacted several manufacturers of fifth wheels about high hitches. The agency was advised by some manufacturer representatives that it is possible to false latch most of the designs on the market. It was generally contended, however, that it is the responsibility of the truck driver to conduct an inspection to ensure a proper connection. NHTSA believes, based on discussions with heavy truck fleet managers, that a typical estimate for high hitches is about two or three per year for a fleet of one thousand trucks, and that most separations occur before the truck reaches the public highway.

NHTSA understands that at least one fifth wheel design, produced by Fontaine Truck Equipment Company, was designed to prevent high hitches. The agency believes that the design does not cost more than other fifth wheel designs.

NHTSA also analyzed available accident data. The agency recently completed a study in which six years of accident data collected by the Office of Motor Carriers (OMC, formerly the Bureau of Motor Carrier Safety or BMCS) were screened for accidents related to coupling defects. The data showed coupling defects involved in 353 out of 188,836 accidents. Forty-three of the 353 fell in the categories of accidents which were preceded by semi-trailer separation or of accidents which may have been preceded by semi-trailer separation.

Two studies published in 1985 and 1986 by the University of Michigan Transportation Research Institute, based upon a combination of FARS and OMC data, showed tractor-trailer separation as a primary cause of the accident in 0.24 percent of the accidents studied. However, some of the accidents were not related to fifth wheels.

After evaluating Mr. Barr's petition, NHTSA has concluded that there is a reasonable possibility that the order requested in the petition will be issued at the conclusion of a rulemaking proceeding. The agency therefore grants the petition. The accident data cited above indicate that high hitches do not result in a large number of accidents. However, the separation of a trailer from a tractor during highway driving could result in serious consequences. NHTSA believes that this may be an area where safety benefits could be obtained by low cost design changes.

In order to obtain assistance in conducting further analysis of the safety issues related to high hitches, this notice requests public comments. The notice is being issued jointly with FHWA, since some of the issues relate to the possible regulation of vehicles currently in use as well as newly manufactured vehicles. (NHTSA's standards apply only to new vehicles, while FHWA's standards apply to vehicles in use.) NHTSA and FHWA are particularly interested in comments on the following questions:

1. What information is available about separation of tractors and trailers during driving, both on-the-highway and before the combination reaches the highway? What are the causes of such separations? What is the frequency of high hitches?
2. What information, including data and accident analyses, is available concerning accidents caused by separation of tractors and trailers during driving? How many of these separations are attributable to high hitches?
3. How can kingpins and fifth wheels be designed to prevent high hitches? What current designs of kingpins and fifth wheels prevent high hitches? What changes would be needed to other designs to prevent high hitches? Do current patents present any limitations in making such changes? What would be the costs of redesigns needed to prevent high hitches?
4. Should NHTSA develop requirements to prevent high hitches? What types of tests and performance requirements should be considered by the agency if it develops such requirements? Should such requirements address both kingpins and fifth wheels?
5. Should a possible requirement for preventing high hitches be applicable to vehicles currently in use as well as to newly manufactured vehicles? How could current vehicles be retrofitted to prevent high hitches? What would be the cost of retrofitting current vehicles to prevent high hitches?

The granting of this petition does not mean that a rule will necessarily be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 393 and 571

Highways and roads, Highway safety, Imports, Motor carriers, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Issued on August 12, 1988.

Robert E. Farris,

Federal Highway Administrator.

Barry Felrice,

Associate Administrator for Rulemaking, NHTSA.

[FR Doc. 88-18723 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 88-12; Notice 1]

RIN: 2127-AC50

Federal Motor Vehicle Safety Standards Hydraulic Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Standard No. 105, *Hydraulic Brake Systems,* requires vehicles to have one or more brake system indicator lamps, to warn the driver about certain types of brake failure and to indicate application of the parking brake. Section S5.3.2 of the standard requires that the brake system indicator lamps be activated automatically when the vehicle is started, to check whether the lamp bulbs are burned out. That section also provides that in vehicles equipped with an automatic transmission, the activation as a check of lamp function is not required when the transmission shift lever is in a forward or reverse drive position, since the vehicle cannot be started when the transmission shift lever is in those positions. This notice proposes to amend the standard to provide that the activation as a check of lamp function is not required under any condition in which a vehicle cannot be started due to operation of an interlock switch. This rulemaking results from a petition for rulemaking submitted by Mazda.

DATES: Comments must be received on or before October 17, 1988. The proposed requirements would be effective 30 days after publication of a final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5277).

SUPPLEMENTARY INFORMATION: Standard No. 105, *Hydraulic Brake Systems,* requires vehicles to have one or more brake system indicator lamps, to provide a warning about certain types of brake failure and to indicate application of the parking brake. Section S5.3.2 of the standard requires that the brake system indicator lamps be activate automatically when the vehicle is

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started, to provide a check of lamp function. That section reads as follows:

All indicator lamps shall be activated as a check of lamp function either when the ignition (start) switch is turned to the "on" (run) position when the enigne is not running, or when the ignition (start) switch is in a position between "on" (run) and "start" that is designated by the manufacturer as a check position. However, in vehicles equipped with an automatic transmission, the activation as a check of lamp function is not required when the transmission shift lever is in a forward or reverse drive position.

The second sentence of section S5.3.2 was not originally included in Standard No. 105. In adding the sentence, NHTSA stated the following:

* * * Toyota Motor Sales, Inc., has requested confirmation that S5.3.2 of the standard requires a check of the brake system indicator lamp function only when the transmission shift lever is in the "P" (park) or "N" (neutral) position (in the case of vehicles with automatic transmission). The literal wording of S5.3.2 requires a check of lamp function without regard to the position of the transmission shift lever, whenever the ignition switch is turned to the "on" position when the engine is not running, or when the ignition switch is in a position between "on" and "start" that is designated by the manufacturer as a check position. In the case of vehicles with an automatic transmission, however, this wording does not reflect the NHTSA's intent with respect to check function. To properly reflect this intent, the language of S5.3.2 is hereby modified in accordance with Toyota's request * * *. 40 FR 42872, September 27, 1975.

NHTSA notes that since the purpose of section S5.3.2 of Standard No. 105 was to provide an automatic check of lamp function each time the vehicle was started, it was unnecessary to require the check function in situations where the vehicle could not be started. Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, requires for vehicles equipped with automatic transmission that the engine starter be inoperative when the transmission shift lever is in a forward or reverse drive position. Since vehicle equipped with automatic transmission could not be started when the transmission shift lever is in a forward or reverse drive position, it was unnecessary to require the check function when the transmission shift lever is in either of those positions.

Mazda submitted a petition for rulemaking requesting an amendment of section S5.3.2's provision limiting the conditions under which the lamp check function must be provided. That company stated that the provision, which now applies only to vehicles equipped with automatic tranmissions, should also apply to manual tranmission vehicles which are equipped with a clutch pedal interlock switch. Mazda stated that this type of interlock switch prevents the engine from starting unless the clutch pedal is fully depressed, and is analogous to the starter interlock required by Standard No. 102 for vehicles equipped with automatic transmissions.

Mazda also asserted that overall cost effectiveness, and to a lesser degree, safety, would be enhanced by its requested amendment. According to the petitioner, the amendment would enable manufacturers to employ a single wiring harness for the brake system indicator lamp circuit for vehicles equipped with both manual and automatic transmissions. That company stated that it currently designs, produces and installs two separate brake system indicator lamp harnesses, one for manual transmission vehicles and the other for automatic transmission vehicles, which results in unnecessary additional costs. Mazda also stated that its requested amendment would provide an incentive for manufacturers to provide clutch pedal starter interlock switches for vehicles not so currently equipped. That company stated that unexpected motion of the vehicle during engine activation would be reduced as the clutch pedal would be depressed more often in a wider variety of vehicles prior to engine activation.

NHTSA agrees with the petitioner that, for purposes of section S5.3.2's provision limiting the conditions under which the lamp check function must be provided, a clutch pedal interlock switch for manual transmission vehicles is analogous to the starter interlock required by Standard No. 102 for vehicles equippped with automatic transmissions. Since the purpose of section S5.3.2 of Standard No. 105 is to provide an automatic check of lamp functions each time the vehicle is started, the agency tentatively concludes that it is unnecessary to require the check function under any condition where a vehicle cannot be started due to operation of an interlock switch. The agency therefore grants Mazda's petition and is proposing to amend Standard No. 105 accordingly. NHTSA believes that the proposed amendment would increase manufacturer flexibility without any adverse impact on safety.

Since the proposed amendment would impose no new requirements but would instead increase manufacturer flexibility by relieving a restriction, the agency is proposing that the amendment become effective 30 days after publication of a final rule.

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the proposed amendment would be so minimal that a full regulatory evaluation is not required. Since the proposed amendment would impose no new requirements but simply permit additional flexibility in the design of the wiring harnesses for brake system indicator lamps, any cost impacts would be in the nature of small, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this section on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units would be affected by the proposed amendment only to the extent that they purchase motor vehicles. For the reasons discussed above, the amendments would not significantly affect vehicle price. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this proposed rule for the purposes of the National Environmental Policy Act, and detemined that the proposed rule would not have any significant impact on the quality of the human environment.

Finally, this proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 533.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street

address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In considertion of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. S5.3.2 of § 571.105 would be revised to read as follows:

S5.3.2 (a) Except as provided in paragraph (b) of this section, all indicator lamps shall be activated as a check of lamp function either when the ignition (start) switch is turned to the "on" (run) position when the engine is not running, or when the ignition (start) switch is in a position between "on" and "start" that is designated by the manufacturer as a check position.

(b) In the case of a vehicle when has an interlock device that prevents the engine from being started under one or more conditions, the indicator lamps need not be activated under any condition in which the engine cannot be started.

Issued on August 12, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-18724 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 80476-8076]

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to revise the regulations implementing the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). This proposed rule would amend the regulations to better reflect the intent of Amendment 5 to the FMP with respect to escape vent panels and reporting requirements.

DATE: Written comments must be submitted on or before September 16, 1988.

ADDRESS: Send comments to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. A copy of Amendment 5 may be obtained from the Regional Director.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Pacific Islands Coordinator, Pacific Area, 2570 Dole St., Room 106, Honolulu, HI, 96822-2396, 808-955-8831.

SUPPLEMENTARY INFORMATION: .

Background

Amendment 5 to the FMP was submitted by the Western Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce. The final rule implementing Amendment 5 went into effect on January 14, 1988 (52 FR 47572, December 15, 1987). Several provisions contained in Amendment 5 relating to escape vent panels and reporting requirements were omitted from the proposed (52 FR 28028, July 27, 1987) and final rule. This proposed rule was developed to implement these omitted provisions.

The regulations implementing Amendment 5 require that all lobster traps used in the Northwestern Hawaiian Islands (NWHI) have a minimum of two escape vent panels that meet certain specifications. The amendment also specified that the two panels should be placed opposite each other in the trap. This latter provision was omitted from the proposed and final rules. Based on at-sea trials conducted by NMFS, escape panels of the size and configuration described in the FMP were judged by the Council to be the most compatible with the management goals and needs of the fishery. To comply fully with the intent of the FMP regarding the configuration of escape vent panels, this proposed rule would amend the regulations to require that the panels in each trap be placed opposite each other. All permit holders in the NWHI lobster fishery have been advised of the escape vent configuration recommended in the FMP and of NMFS' intent to amend the regulation accordingly.

Amendment 5 also provided for a number of changes in FMP reporting requirements. The permit application form and daily catch log report were amended to add information requests needed for management of the lobster fishery. The requirement for an annual processor's report was eliminated and the Trip Processing and Sales Report was replaced by the Lobster Report for Transshipment and Sales. All of the proposed changes in reporting requirements, as approved by the Office of Management and Budget under the Paperwork Reduction Act, were incorporated in the final rule except for the proposed Lobster Report for Transshipment and Sales. The final rule provided for collection of transshipment and sales data on the daily catch report, but did not provide for replacement of the Trip Processing and Sales Report with the Lobster Report for Transshipment and Sales as provided in Amendment 5.

The new report is structured to provide information on the amount of lobsters and their incidental catch sold or transshipped to points within or outside of the State of landing. The revenue information generated by this report is needed to define the economic profile of the fishery for future management decisions.

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The proposed new reporting form is less confusing than the original form and better reflects the current structure of the fishery. Accordingly, the proposed rule would amend the regulatory text to require use of the new Lobster Report for Transshipment and Sales, in place of the former Trip Processing and Sales Report.

An additional technical change is proposed to replace the words "Center Director" with the words "Regional Director" in §§ 681.4(b)(2)(xxi) and 681.5(b)(2)(x) to accurately reflect management responsibility.

The word "unobstructed" is proposed to be added to the description of circular holes in escape vent panels in § 681.24(c)(1) to clarify the Council's original intent in Amendment 5 to the FMP.

The measures proposed in Amendment 5 were presented at a public information meeting in Honolulu, Hawaii, on April 29, 1986 and at a public hearing in Honolulu on May 18, 1987. All lobster fishery permit holders have been kept apprised of the issues contained in Amendment 5 and have been requested to offer comments.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this measure is necessary for the conservation and management of the crustacian fishery of the western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental impact statement (EIS) for the original FMP. An environmental assessment (EA) was also incorporated into Amendment 5. The measures proposed to be implemented by this rule were included in Amendment 5, so the Assistant Administrator has concluded that this action falls within the categorical exclusion identified in the environmental review procedures in NOAA Directives Manual 02–10 at 5(b)(3)(a). Consequently, no additional environmental document has been prepared. A copy of the amendment, incorporating the EA, and the FMP's EIS can be obtained from the Regional Director at the above address.

The Under Secretary of Oceans and Atmosphere, NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. This is because the industry has already anticipated the proposed action to incorporate in the regulations requirements for escape vents and reporting which were approved under Amendment 5 but inadvertently omitted from the proposed and final rules for the amendment. There are approximately 40 permit holders in the fishery, although only a small percentage of them actually fish. All permittees were advised and were fully aware of the requirements for escape vents to be placed opposite each other during the rulemaking procedures in 1987. In addition, the sold manufacturer of traps began producing traps with vents placed opposite each other in November, 1987. As a result, a majority of the industry has already complied with the vent requirements, and most, if not all, traps now have escape vents. Conversion of those few traps which have not yet been converted would not impose a significant cost on the industry.

The burden associated with the revised reporting requirement will be the same as that reported in the final rule implementing Amendment 5 to the FMP. The replacement of the Trip Processing and Sales Report with the new Lobster Report for Transshipment and Sales will not significantly change the burden hours, while providing data essential for the management of the fishery. The annual reporting burden for all fishermen was erroneously reported as 54 hours in the classification section of the final rule to Amendment 5 but actually had been calculated and approved by OMB as 48 hours, or 4 hours per fisherman (each of the 12 vessels fishing will incur a burden of 10 minutes per report for each of their 24 trips per year).

This rule contains a collection-of-information requirement at § 681.5 subject to the Paperwork Reduction Act. This requirement has been previously approved by the Office of Management and Budget (OMB) under Control Number 0648–0193.

The Council has determined, and the appropriate State and territorial government offices have found that the measures established in Amendment 5, including the measures implemented by this proposed rule, are consistent to the maximum extent practicable with the approved coastal zone management programs of Hawaii and the territories of American Somoa and Guam.

The proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: August 15, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 681 is proposed to be amended as follows:

PART 681—[AMENDED]

1. The authority citation for 50 CFR Part 681 continues to read as follows:

Authority: 16 USC 1801 *et seq.*

2. In § 681.4 paragraph (b)(2)(xxi) is revised to read as follows:

§ 681.4 Permits.

* * * * *

(b) * * *

(2) * * *

(xxi) Any other fishery management data requested by the Regional Director.

* * * * *

3. In § 681.5, in paragraphs (a)(3), (4), and (5), the words "Trip Processing and Sales Report" are amended to read "Lobster Report for Transshipment and Sales"; paragraphs (b)(2)(x), (b)(4), (b)(5), (c)(4)(iii) and (iv) are removed; and paragraphs (b)(2)(viii) and (ix), (c) introductory text, (c)(3), (c)(4) introductory text, (c)(4)(i) and (ii) are revised to read as follows:

§ 681.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) * * *

(viii) Number of octopus and other species per trap deployment;

(ix) Any other fishery management data requested by the Regional Director.

* * * * *

(c) *Lobster Report for Transshipment and Sales.* The Lobster Report for Transshipment and Sales must contain the following information for all lobsters taken under this part:

(1) * * *

(2) * * *

(3) Sales Information—

(i) Weight and revenue from sale of spiny lobsters by product type;

(ii) Weight and revenue from sale of slipper lobster by product type;

(iii) Weight and revenue from sale of octopus by product type; and

(iv) Weight and revenue from sale of other fishery products by product type.

(4) Transshipment Information (for lobster products that have not been sold but have been placed in storage or transshipped elsewhere for future sale)—

(i) Weight of spiny lobsters by product type; and

(ii) Weight of slipper lobster by product type.

* * * * *

4. In § 681.24, paragraph (c) introductory text and (c)(1) are revised and a new paragraph (c)(3) is added to read as follows:

§ 681.24 Gear restrictions.

* * * * *

(c) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(1) Panels must have at least four unobstructed circular holes no smaller than 67 millimeters (mm) in diameter with centers at least 82 mm apart.

* * * * *

(3) Panels must be placed opposite one another in each trap.

* * * * *

[FR Doc. 88-18767 Filed 8-17-88; 8:45 am]

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Notices

Federal Register
Vol. 53, No. 160
Thursday, August 18, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

White Pass Ski Area Expansion; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to expand the White Pass Ski Area Special Land Use Permit boundary to allow for downhill and cross country skiing in the 800-acre area that was withdrawn from the Goat Rocks Wilderness by the Washington State Wilderness Act of 1984 and an additional 500 acres of National Forest administered land. This proposal is located on the Packwood Ranger District of the Gifford Pinchot National Forest in Lewis County and the area of land is administered by the Naches Ranger District of the Wenatchee National Forest through a Memorandum of Understanding. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by October 1, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Sonny J. O'Neal, Forest Supervisor, Wenatchee National Forest, 301 Yakima St., P.O. Box 811, Wenatchee, Washington 98807–0811.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Phillip D. Glass, Recreation Staff Officer, Wenatchee National Forest at the above address, telephone (509) 662–4332, or Donald Rotell, District Ranger, Naches Ranger District, Wenatchee National Forest, 10061 Highway 12, Naches, Washington 98937, telephone (509) 653–2205.

SUPPLEMENTARY INFORMATION: The EIS will be prepared in accordance with existing approved land and resource management plans. The document will discuss whether to allow expansion of the existing ski area to the area in question and what restrictions may apply to the expansion area. The proposal encompasses about 1300 acres.

In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this site. A range of alternatives will be developed and examined to deal with the significant issues developed during the scoping process. One alternative will include the no action alternative. Other alternatives will consider different intensities of development with or without special management requirements.

Sonny O'Neal, Forest Supervisor, Wenatchee National Forest, Wenatchee, Washington, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, state and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Public meetings will be held in eastern and western Washington. Notice of meeting dates and locations will be published in local newspapers and posted in public buildings.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1989. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the proposed. White Pass Ski Area expansion participate at that time.

To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by November 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the draft EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of

Decision. That decision will be subject to appeal under 36 CFR 211.18.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 88-18669 Filed 8-17-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact; Pates Creek Watershed, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pates Creek Watershed, Houston and Geneva Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, telephone (205) 821-8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Pates Creek Watershed, Alabama

Notice of a Finding of No Significant Impact

The project concerns a plan for reducing serious deterioration of the resource base caused by excessive sheet, rill, and ephemeral gully erosion on sloping cropland, reducing land erosion due to concentrated overland flow and reducing cost of road and bridge maintenance due to sediment deposition. The planned works of improvement include land use conversion on 40 acres of marginal cropland, accelerated conservation land treatment on 3640 acres of cropland, and installation of 9 grade stabilization structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency, and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Date: August 11, 1988.

Ernest V. Todd,

State Conservationist.

[FR Doc. 88-18670 Filed 8-17-88; 8:45 am]

BILLING CODE 3410-16-M

Finding of No Significant Impact; Moores Creek Watershed, AL

AGENCY: Soil Conservation Service; USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Moores Creek Watershed Project, Chambers County, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 655 Opelika Road, Auburn, Alabama 36830, telephone 205-821-8070.

SUPPLEMENTARY INFORMATION: A determination has been made by Ernest V. Todd that the proposed works of improvement for the Moores Creek Watershed Project will not be installed. The sponsoring local organizations have concurred in this determination and agreed that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Ernest V. Todd, State Conservationist at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(This activity is listed in the catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of the Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Date: August 2, 1988.

Ernest V. Todd,

State Conservationist.

[FR Doc. 88-18716 Filed 8-17-88; 8:45 am]

BILLING CODE 3410-16-M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98-375). The meeting will be held in Baltimore, Maryland and will be chaired by Commission Chairman John N. Goudie.

DATES: Thursday, September 15, 1988 at 9:30 a.m. (Closed). Friday, September 16, 1988 at 9:30 a.m. (Open).

ADDRESSES: On September 15, 1988 from 9:30 a.m. to 12:00 p.m. at the Omni International Hotel, International Ballroom A, Baltimore, Maryland. September 16, 1988 from 9:30 a.m. to 1:00 p.m. at the Omni International Hotel, International Ballroom A, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Jennifer Pease, (202) 632-1992.

SUPPLEMENTARY INFORMATION: On September 15 and 16, the Commission will meet to discuss proposals for endorsement of Quincentenary projects. The Commission will also review committee recommendations along with a financial review of the Commission, and fundraising strategies for corporate participation in the Quincentenary.

John Alexander Williams,

Director.

[FR Doc. 88-18671 Filed 8-17-88; 8:45 am]

BILLING CODE 6820-RB-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Performance Review Board; Eligibility

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the

Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Steven R. Brennen
John E. Corrigan
David Farber
Edward G. Jeep
George Muller
Charles E. Oxley
Craig M. Smith

Edward A. McCaw,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 88-18713 Filed 8-17-88; 8:45 am]

BILLING CODE 3510-BS-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certificate is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00014." A summary of the application follows.

Applicant: American Cast Metals Association (ACMA), 455 State Street, Des Plaines, Illinois 60016, Contact: Daniel Marcus, Director of Marketing, Telephone: (312) 299-9160.

Application #: 88-00014.

Date Deemed Submitted: August 5, 1988.

Members (in addition to applicant): AACCO Foundry; Abex. Corp.; Ace Foundry Co.; Advance Foundry Co.; Akron Foundry Co.; Allegheny Foundry Co.; Alloy Engineering and Castings; Alloys Non Ferrous Foundry; Aluminum Castings Corp.; Amcast Industrial Corp.; The American Brass and Iron Foundry; American Cast Iron Pipe; American Steel Foundries; American Valve and Hydrant Manufacturing Co.; Anstey Foundry; Appleton Electric Co.; Arneson Foundry, Inc.; Arrow Aluminum Castings; Arth Brass & Aluminum Castings; Arzt Foundry Co.; Atherton Foundry Products; Atlantic States Cast Iron Pipe; Atlas Foundry Co.; Gartland-Haswell Foundry Co., Inc.; Atlas Foundry and Machine Co.; Auburn Foundry Co.; Aurora Industries Inc.; Badger Foundry Co.; Bahr Brothers Manufacturing Co.; Barry Foundry; Batavia Foundry and Machine Co.; Belgium Foundry Corp.; Bell Foundry Co.; Beloit Corp.; Benton Foundry; Berlin Foundry Corp.; Bierman-Everett Foundry; Blackhawk Foundry and Machine; Bloomfield Foundry; Bodine Aluminum Inc.; Brass and Bronze Casting Co.; Briggs & Stratton Corp.; Brillion Iron Works; Bronze Co. Ltd., K.P.; Bronze Craft Corp.; Brookman Cast Industries; Brooks Foundry; Brumund Foundry, Inc.; Buck Co., Inc.; Burnham Corp.; Calhoun Foundry Co.; California Electric Steel; Calumet Brass Foundry; Campbell Foundry Co.; Canton Castings; Cast Metals Corp. of Florida; Cedar Springs Castings, Inc.; Centre Foundry and Machine Co.; Chicago Aluminum Castings Co., Inc.; Chicago-Dubuque Foundry; Christensen and Olsen Foundry Co.; Citation Carolina Corp.; Southern Ductile Casting Co.; Clark Metal; Clay & Bailey Manufacturing Co.; Clearfield Machine; Clow Corp.; Clow Water System Corp.; CMI International; Cochrane Foundry; Colonial Brass Co.; Columbian Bronze Corp.; Columbiana Foundry Co.; Consolidated Metco; Covert Iron Works; Crowe Foundry Ltd.; Curto-Ligonier Foundry Co.; Dalton Foundries; Dameron Alloy Foundries; Dayton Foundry; De Zurik Corp.; Decatur Foundry; Deere & Company; Delray Steel Castings; Dempsey Inc.; Dent Manufacturing; Detroit Non Ferrous Foundry; Dexter Co.; Didion & Sons Foundry Co.; Dix-Superior Aluminum Foundry, Inc.; Dock Foundry Co.; Dofasco Inc.; Donsco Inc.; Down River Casting Co.; Draper Corp.; Duriron Co., Inc.; East Jordan Iron Works; The Eastern Company; Eastern Foundry Co.; ECK Foundries; Electric Steel Castings Co.; Electron Corp.; Elizabeth Street Foundry Co.; Elkhart Foundry & Machine; Ellis & Vans Foundry; EMI Company; Enderlein Co., H.G.; Enterprise Brass Works; Ephrata Manufacturing Company, Inc.; Erie Bronze & Aluminum; Essex Castings; Ewing Light Metals Inc.; Excelsior Foundry Co.; Fairfield Aluminum Castings; Falcon Foundry Co.; Falk Corp.; Faunt Foundry Co.; Felton Aluminum Co.; Ferrous Technology; Kline Foundries; Fisher Cast Steel Products; Flanagan Iron Works; Flomatic Corp.; Fonderie Grand'Mere Ltee; Ford Motor Co.; Foundry Inc., The; Foundry of the Shoals; Francis and Nygren Foundry Co.; Frank Foundries Corp.; Frazer and Jones Co.; Frog, Switch & Manufacturing Co.; Frontier Foundries; G & C Foundry Co.; Gainesville Foundry; Galva Foundry Co.; Gartland Foundries, inc.; Gartland Foundry Co.; General Casting Co.; General Foundry Co.; General Housewares Corp.; General Signal; GIW Industries, Inc.; Globe Iron Foundry; Goetz Corp. of America; Golden's Foundry & Machine Co.; Great Lakes Castings Corp.; Grede Foundries; Gregg Industries; Halpen & Co.; Harmony Castings; Harrison Steel Castings Co.; Heatwole Foundry Company, Inc.; Hendrix Mfg. Co.; Charles O. Hiler and Son, Inc.; Hiler Industries; Accurate Castings, Inc.; Hitchcock Industries; HNF Inc.; Hodge Foundry; Hunstad Foundry; Hyde Park Foundry & Machine; Intermet Corp.; Interstate Castings; Iowa Iron Works; Iowa Malleable Iron Co.; Iroquois Foundry Co.; James Jones Co.; Johnstown Corp.; Joy Tech., Inc.; Kelly Foundry & Machine; Kelsey-Hayes, Inc.; Keystone Grey Iron Foundry Co.; Kirsh Foundry Inc.; Kurdziel Iron Industries; Lacy Foundries; Lancaster Malleable Castings Co.; Larson Foundries; Lattimer-Stevens; Lawran Foundry; Le Baron Foundry; Leitelt Brothers; LEMFCO Inc.; Liberty Foundry Co.; Lincoln Brass Works; Littler Diecast Corp.; Lodi Iron Works, Inc.; M & H Valve Co.; M.P. Industries, Inc.; Mackenzie Specialty Castings; Mansfield Brass & Aluminum; Martin Foundries Co.; Maynard Steel Casting

Co.; Mc Conway & Torley Corp.; Mc Donald Manufacturing Co., A.Y.; Mc Wane Cast Iron Pipe; Mereen Johnson Machine Co.; Merit Metal Products Corp.; Metal Dynamics Corp.; Mid City Foundry Co.; Midwest Foundry Co.; Midwest Metallurgical Laboratory, Inc.; Milwaukee Malleable & Gray Iron Works; Mobil Pulley & Machine Works; Modern Foundry & Manufacturing; Morrow Foundry Inc.; Motor Castings Co.; Multi-Cast Corp.; Myers Co., F.E.; National Castings Inc.; Navistar International; Neelon Castings; Neenah Brass & Aluminum; Neehan Foundry Co.; Neptune Water Meter Co.; NO AM Corp.; North American Royalties; Noblesville Casting; North Star Casteel Products; Nutmeg Steel Castings; O & H Foundry; Oil City Iron Works; Omaha Steel Castings; Opelika Foundry Co.; Orrville Bronze & Aluminum; Osco Industries; Overmyer Corp.; P.C.M. Company; Pacific States Cast Iron Pipe; Pelton Casteel; Penncast Corp.; Pennsylvania Steel Foundry & Machine; Perkins, Henry Co.; Philbrick-Booth & Spencer; Piad Precision Casting; Plymouth Foundry Inc.; Pohlman Consolidated; Pomona Die Casting Corp.; Pontiac Foundry; Process Prototype; Progressive Foundry; Prospect Foundry; Quaker Alloy Inc.; Quali-Cast Foundry, Inc.; Quality Castings Co.; R & D Pattern & Foundry; Racine Steel Castings; Reliable Castings Corp.; Reliance Electric Corp.; Richmond Casting Company; Robinson Foundry; Rochester Metal Products Corp; Rockwell International; Rodney Hunt Co.; Roloff Manufacturing Corp.; Ross Aluminum Foundries; Sawbrook Steel Casting Co.; Cushman Foundry Inc. Div.; Schneider Corp.; Scott Casting Corp.; Scott-Atwater Foundry; Seneca Foundry, Inc.; Sharon Foundry; Shumway and Sons, C.W.; Sibley Machine & Foundry; Slinger Manufacturing Co.; Sloan Valve Co.; Smith Co., H.B.; Smith Foundry Co.; Smith Steel Casting Co.; Somerset Consolidated; Soundcast Co.; Southern Alloy; Southern Cast Products Specialty Casting; Springfield Aluminum Co.; Springfield Foundry; Stahl Specialty Co.; Stainless Foundry & Eng.; Standard Foundry Co.; Standard Foundry Products; Sterling Casting Corp.; Sterling Foundry Co.; Stillman White Co.; Stockham Valves & Fittings; Sturgis Foundry Co.; St. Anne's Foundry; St. Louis Steel Casting; St. Mary's Foundry; St. Paul Brass Foundry; Swayne, Robinson & Co.; Talladega Castings & Mach Co.; Talladega Foundry & Machine; Taylor & Fenn Co.; Teledyne Casting Service; Terrecorp; Texas Foundries; Trinity Valley Iron Works; East Penn Foundry Co.; Unimatic Manufacturing Corp.; Union City Mold & Die Casting Corp.; Union Foundry Co.; United Brass Works; Universal Cast Iron Manufacturing Co.; Urick Foundry Co.; U.S. Magnet & Alloy Corp.; U.S. Pipe and Foundry; Utica Radiator Corp.; V & W Castings; Valley Brass; Varicast Northwest; Victaulic Co. of America; Wagner Castings Co.; Waterman Industries, Inc.; Waupaca Foundry; Wells Manufacturing Co.; West Michigan Steel Foundry; Western Foundry Co.; Westwick Foundry; Whitman Foundry; Whittaker Corp.; Woodland Aluminum Casting; Xenia Foundry & Machine.

Summary of the Application

Export Trade

1. Products

Any ferrous (iron or steel) or non-ferrous (e.g., aluminum, magnesium, bronze, brass, copper, and zinc) casting, whether finished or unfinished.

2. Services

Design services related to Products and related manufacturing processes; licensing of Technology Rights concerning Products and related processes.

3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works.

4. Export Trade Facilitation Services (as they relate to the export of Products, Services and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; liaison with U.S. and foreign government agencies, trade associations, and banking institutions; and taking title to goods.

Export Markets

The export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and Canada.

Export Trade Activities and Methods of Operation

1. ACMA and/or its members seek certification to:

a. Engage in joint bidding or other joint selling arrangements for Products and Services and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member suppliers to sell their Products and Services or offer their Export Trade Facilitation Services through the certified activites of ACMA and/or its Members;

f. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licences shall be determined solely by negotiations between the licensor Member and the export customer without coordination with ACMA or any other Member;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. ACMA and/or its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or non/exclusive Export Intermediary for Products or Services in that country or market. In such agreements, (i) ACMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ACMA or the Member(s) acting as exclusive intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. ACMA, when acting as an Export Intermediary, will make its services available to any Member on non-discriminatory terms.

3. ACMA and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the domestic costs, domestic output, domestic capacity, domestic inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies, or methods) that is already generally available to the trade or public;

b. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided however that exchanges of information and discussions as to Product quality, source, and delivery dates must be on a transaction by transaction basis only;

d. Information about terms and conditions of contracts for sale in Export Markets to be considered and/or bid on by ACMA and its Members;

e. Information about joint bidding, selling, or servicing agreements for Export Markets and allocations of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about ACMA's or its Members' export operations, including without limitation sales and distribution networks established by ACMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. ACMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by the ACMA itself, or by agreement with Members or other parties.

5. ACMA and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. ACMA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sale or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of ACMA, as listed in this notice, and subject to the provisions of this paragraph. New ACMA members may, from time to time, be incorporated in this certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Department of Commerce and the Department of Justice stating changes in ACMA membership, identifying all new ACMA members that desire to become a Member under this certificate pursuant to the abbreviated amendment procedure, and certifying for each new ACMA member so identified its sales of Products in its prior fiscal year. Notice of new members so identified shall be published in the **Federal Register**. However, ACMA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the certificate of the new members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the certificate of review to incorporate such new members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the certificate of review, such amendment must be sought through the nonabbreviated amendment procedure. This same procedure may be utilized by ACMA to delete one or more Members from the certificate.

Date: August 15, 1988.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 88-18747 Filed 8-17-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals: Proposed Modification of Permit; Dr. William A. Watkins (P70C)

Notice is hereby given that Dr. William A. Watkins, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543, has requested a modification of Permit No. 573 issued on November 21, 1986 (51 FR 43422), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the regulations governing endangered species permits (50 CFR Part 217-222).

The Permit Holder is requesting authorization to take twenty (20) sperm whales (*Physeter catodon*) by harassment and an additional, five (5) will be radio tagged per year.

Concurrent with the application of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data on views, or requests for a public hearing on this proposed modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular Modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modifications are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated August 15, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-18768 Filed 8-17-88; 8:45 am]

BILLING CODE 3510-22-M

DELAWARE RIVER BASIN COMMISSION

Amendment of Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

SUMMARY: At its August 3, 1988 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Water Code in relation to criteria and operations formulae for emergency operations during a lower basin drought warning and drought.

EFFECTIVE DATE: This amendment shall take effect upon approval by the Parties to the U.S. Supreme Court Decree in New Jersey v. New York, 347 U.S. 995 (1954).

ADDRESS: Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on the proposed amendment on March 23 and April 27, 1988 as noticed in the March 15 and April 20, 1988 issues of the **Federal Register.** Based upon testimony received and further deliberation, the Commission has amended its Comprehensive Plan and Water Code of the Delaware River Basin.

Background and Rationale: In February 1983, the Commission received Interstate Water Management Recommendations of the Parties to the U.S. Supreme Court Decree of 1954 to the Delaware River Basin Commission Pursuant to Commission Resolution 78-20. These recommendations were unanimously agreed to by the Governors of the Commonwealth of Pennsylvania, the States of New York, New Jersey and Delaware and the Mayor of New York City. Recommendation 4 of these "Good Faith" Recommendations called for the development of a plan for coordinated operation of existing Basin impoundments during drought periods to complement the operating formula for the New York City Delaware Basin reservoirs in order to maintain reliable supplies for essential uses, to conserve water, and to control salinity. Recommendation 4 further specified that the plan should include operating criteria for the Beltzville, Blue Marsh, Walter, Prompton and Nockamixon projects and the hydroelectric power reservoirs in the Basin of the Pennsylvania Power and Light Company and Orange and Rockland Utilities, Inc.

Article 2 of the *Water Code of the Delaware River Basin* includes Commission policy relating to the conservation, development and utilization of Basin water resources.

The Commission's Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin* are hereby amended by the addition of a new section 2.5.6 *Coordinated Operation of Reservoirs During a Lower Basin Drought Warning and Drought,* a summary of which follows.

As part of the assessment of the hydrologic condition of the lower basin, the Delaware River Master Advisory Committee will meet each spring to determine whether the New York City Delaware Basin reservoirs' excess release quantity should be saved. Normally, this excess release bank, set aside in the three New York City Delaware reservoirs under terms of the Decree, releases water over a seasonal period. Should the committee decide to save the banked water to provide drought assistance, it would be released only when needed to meet the Trenton flow objective of 3000 cfs.

The criteria for defining the three stages of lower basin hydrologic conditions of normal, drought warning and drought would be based on the storage levels in Beltzville and Blue Marsh Reservoirs. After exhausting the excess release quantity, the releases from Blue Marsh and Beltzville would maintain the flow objective at Trenton until their combined storage of 19.5 bg decreased by more than a third or about 6.5 bg, at which time a drought warning would be declared. The flow objective at Trenton would decrease and vary depending upon the location of the 250 mg/1 chloride salt front in the Estuary. Voluntary water conservation would be called for as would cutbacks in conservation releases from the lower basin reservoirs. The New Jersey Delaware and Raritan Canal Diversion would be reduced to 70 mgd from 100 mgd.

A lower basin drought emergency would be declared when the combined storage in Beltzville and Blue Marsh falls another third, or about 6 bg, thus leaving only 6 bg in those reservoirs. Mandatory conservation would be declared on nonessential water use and storage in the other lower basin reservoirs, including the power reservoirs and Lake Hopatcong, would be marshalled. The New Jersey Delaware and Raritan Canal diversion would again be reduced, at this point from 70 mgd to 65 mgd.

Once a lower basin drought emergency is declared by the Commission, the parties to the 1954 U.S. Supreme Court Decree, in consultation with the DRBC, shall consider and select one of six suggested "lower basin drought" reservoir operation plans or any other plan designed to meet then-existing conditions. The parties may, by unanimous agreement, modify or adjust any such operations plan. The Commission would then implement the agreed upon plan.

Considerations in formulating the agreed to plan include the amount of lower basin storage, the amount of New York City storage, storage in Lake Wallenpaupack, the Mongaup facilities, Lake Hopatcong as well as time of year of drought onset.

The lower basin drought would end when the storage levels in Beltzville and Blue Marsh Reservoirs exceed their respective lower basin drought storage level for 30 consecutive days or either one of these reservoirs spills, unless the Decree parties unanimously agree otherwise.

(Delaware River Basin Compact, 75 Stat. 686)

Susan M. Weisman,

Secretary.

August 10, 1988.

[FR Doc. 88-18672 Filed 8-17-88; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-33-NG]

Open Flow Gas Supply Corp.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has

issued an order to Open Flow Gas Supply Corporation (Open Flow) granting blanket authorization to import natural gas from Canada to the United States. The order issued in ERA Docket No. 88-33-NG authorizes Open Flow to import up 55 Bcf per day of natural gas over a two-year period beginning on the first date of delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, August 12, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-18783 Filed 8-17-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER84-177-000, et al.]

Duke Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 12, 1988

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER84-177-000]

Take notice that on August 3, 1988, Duke Power Company tendered for filing pursuant to Commission Opinion and Order on Initial Decision, a compliance filing which excludes the separately stated Standby Charge for Schedule 10.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Coso Energy Developers

[Docket No. QF86-591-001]

On July 28, 1988, Coso Energy Developers (Applicant), c/o California Energy Company, Inc., 601 California Street, San Francisco, California 94108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The geothermal small power production facility will be located within the Naval Weapons Center of the United States Navy at China Lake, near Ridgecrest, California. The facility will consist of three turbine generating units. The primary energy source will be geothermal fluids. The original application was filed by California Energy Company, Inc., and was granted on August 6, 1986 (36 FERC ¶ 62,150).

The recertification is requested due to transfer of ownership from China Lake Joint Venture to the Applicant; the relocation of the facility by less than a mile to the east of the originally proposed location; the inclusion of a 29.5-mile 220 kV transmission line and interconnection facilities; and increase in the net electric power production capacity of the facility from 79.5 MW to 79.6 MW. All other facility's characteristics remain unchanged.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado

[Docket No. ER88-548-000]

Take notice that on August 2, 1988, Public Service Company of Colorado (Public Service) tendered for filing a proposed change in its Power Purchase and Interchange Agreement (Agreement) with Colorado-Ute Electric Association, Inc. (Colorado-Ute). Public Service states that the proposed change is a Supplement to Public Service's Agreement with Colorado-Ute, dated April 30, 1982, on file with the Commission under Public Service's FERC Rate Schedule No. 37.

Public Service states that the Supplement to the Agreement with Colorado-Ute provides for various increases and reductions in load at various delivery points.

Public Service states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Oklahoma Gas and Electric Company

[Docket No. ER88-550-000]

Take notice that on August 1, 1988, Oklahoma Gas and Electric Company (OG&E) tendered for filing an Amended Appendix "A" dated July 14, 1988, between OG&E and Oklahoma Municipal Power Authority (OMPA).

The amendment modified the Transmission Service Agreement, Appendix "A" regarding the Points of Delivery for Power and Energy into OMPA's system. The parties request an effective date of August 1, 1988, and request a waiver of the Commission's notice requirements.

Copies of this filing have been served on OMPA, the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER88-551-000]

Take notice that on August 5, 1988, Pacific Power & Light Company, an assumed business name of PacifiCorp, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Montana and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Montana (Bonneville's Docket No. 5-A4-8701). The Revised Appendix 1 calculates the ASC for the state of Montana applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective December 4, 1987, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Montana Public Service Commission and Bonneville's Direct Service Industrial Customers.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Public Service Company

[Docket No. ER88-547-000]

Take notice that on August 2, 1988, Iowa Public Service Company (IPS) tendered for filing an executed Firm Peaking Capacity Sales Agreement dated April 29, 1988, whereby IPS will supply St. Joseph Light & Power Company (St. Joseph) with firm electric capacity and associated energy, commencing June 1, 1988 and continuing through November 30, 1988. IPS requests that the negotiated Agreement be made effective as of June 1, 1988.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER88-532-000]

Take notice that on August 4, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing a revised letter to its July 25, 1988 filing. PG&E states that it has not waived its rights

with regard to termination of this service pursuant to the City of Santa Clara Interconnection Agreement and Exhibit A–4 thereto.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER88–489–000]

Take notice that on August 5, 1988, Union Electric Company tendered for filing additional cost support data to Transmission Service Transaction 1, dated May 27, 1988, with the City of Jackson, MO providing the transmittal of power and energy from other sources.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Dayton Power and Light Company

[Docket No. ER88–549–000]

Take notice that on August 2, 1988, Dayton Power and Light Company (DP&L) tendered for filing an Amendment to its Interconnection Agreement with Ohio Power Company (OP).

The purpose of the Amendment is to update the Emergency, Short-Term and Non-Displacement Schedules which are part of the Agreement.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18752 Filed 8–17–88; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

August 12, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.
b. *Project No.:* 4026.
c. *Date Filed:* August 10, 1988.
d. *Applicant:* Androscoggin Reservoir Co. and Aziscohos Hydro Co., Inc.
e. *Name of Project:* Aziscohos.
f. *Location:* On Magalloway River, Oxford Co., ME.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* John W. Bernotavicz, Esq., Curtis Thaxter Stevens Broader and Micoleau, One Canal Plaza, Portland, ME 04112, (207) 775–2361.
i. *FERC Contact:* William Guey-Lee, (202) 376–9536.
j. *Comment Date:* August 30, 1988.
k. *Description of Transfer:* Androscoggin Reservoir Co. and Aziscohos Hydro Co., Inc. proposes to transfer the license to Androscoggin Reservoir Co., Aziscohos Hydro Co., Inc., and NYNEX Credit Company.

The proposed transfer is a sale of project equipment, an assignment of the interests of Aziscohos Hydro Company, Inc. ("Aziscohos") as lessee of certain project property, and an assignment of the interests of Aziscohos under its power contract and other project rights to NYNEX Credit Company, followed immediately by a lease of project equipment and sub-lease and re-assignment of such interests and other rights back to Aziscohos pursuant to a leveraged lease. The transfer will provide a permanent ownership and financial arrangement, after successful completion of construction by Aziscohos.

1. This notice also consists of the following standard paragraphs: B and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18704 Filed 8–17–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–205–001]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 15, 1988.

Take notice that on August 9, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Appendix A

Substitute Second Revised Sheet Nos. 62 and 63.

Appendix B

Substitute Original Sheet No. 4A.

Appendix C

Alternate Substitute Original Sheet No. 4A.

Appendix D

Revised Substitute Original Sheet No. 4A.

All of the above tariff sheets are proposed to become effective on July 1, 1988.

Alabama-Tennessee states that the foregoing tariff sheets are being filed

pursuant to the Commission's order issued on July 28, 1988 in Docket No. RP88–205–000. The tariff sheets in Appendix A are said to comply with Ordering Paragraph C of the July 28 Order, while those in Appendices B, C and D are filed pursuant to Ordering Paragraph B and reflect alternate methods of allocating take-or-pay costs. Alabama-Tennessee specifically requests that the tariff sheets contained in Appendices A and D be accepted.

Alabama-Tennessee is proposing to amortize the take-or-pay costs over a 36-month period. According to Alabama-Tennessee, that is the maximum amortization period being offered by Tennessee Gas Pipeline Company, its upstream pipeline supplier.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18753 Filed 8–17–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–135–002]

Caprock Pipeline Co.; Tariff Filing

August 12, 1988.

Take notice that on August 8, 1988, Caprock Pipeline Company (Caprock) 550 WestLake Park Blvd., Suite 170 Houston, Texas 77079, submitted its FERC Gas Tariff, Revised Original Volume No. 3. The Tariff filing sets forth rates, terms and conditions for gas transportation service.

Caprock states that its tariff filing is designed to bring Caprock's open-access transportation tariff, first filed on June 30, 1986, into compliance with the Commission's Orders dated July 30, 1986, and July 22, 1988. The revised tariff: (1) Sets out revised transportation rates which include minimum and maximum rates separately identifying cost components attributable to transportation and gathering costs, (2) includes a cost basis for rates, (3) expresses rates on an MMBtu basis, (4) omits the $2,000.00 non-refundable processing fee formerly required by Caprock, and (5) contains specific gas balancing language, all as required by the Commission's July 22, 1988 Order.

The revised tariff is filed to be made effective on July 1, 1986. Caprock has requested such waiver of the Commission's regulations as may be required in order to permit the proposed effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's regulations. All such motions or protests must be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18705 Filed 8–17–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ88–3–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

August 12, 1988.

Take notice that on August 5, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission Ninth Substitute Twenty-First Revised Sheet No. 7 of its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on August 1, 1988.

According to Granite State, the instant filing adjusts its projected purchase gas costs to reflect an unanticipated increase in the spot market supplies that it expects to purchase during the current quarter. Granite State further states that, absent the proposed adjustment, it is exposed to undercollections of its current gas costs. The instant filing, according to Granite State, reflects an increase of $0.0432 per MMBtu in purchased gas costs compared to the projected gas costs in its most recent quarterly filing, effective July 1, 1988.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18706 Filed 8–17–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RI88–30–000]

Phillips 66 Natural Gas Co.; Protest

Issued: August 12, 1988.

Take notice that on July 20, 1988, Phillips 66 Natural Gas Company (Phillips) filed a protest pursuant to § 271.1104(h)(4) of the Commission's regulations, 18 CFR 271.1104(h)(4) (1987).[1] Phillips states that it has requisite contractual authority to collect compression, delivery, and other production-related cost allowances under contracts identified by the Commission in orders issued on March

[1] This section provides procedures whereby first sellers and any others may make a showing that certain gas purchase contracts allow for recovery of compression allowances pursuant to an area rate clause.

24 and May 20, 1988 respectively in the above-captioned docket. *See* 43 FERC ¶ 61,298 (1988), *reh'g* denied 44 FERC 61,091 (1988). Phillips requests that the Presiding Administrative Law Judge summarily find that Phillips is contractually authorized to collect the production-related cost allowances it seeks. Alternatively, Phillips requests the right to make a full showing of its contract authority by submission of evidence and argument.

Any person desiring to be heard or to make any protest concerning Phillips' claim should file a protest or petition to intervene in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such filings should be made not later than 30 days following publication of this notice in the **Federal Register** and should be addressed to Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Protests will be considered by the Commission in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with Rule 214.

In addition to publishing the full text of this document in the **Federal Register** the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18709 Filed 8-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-1-55-001]

Questar Pipeline Co.; Filing

August 12, 1988.

Take notice that on August 9, 1988, Quester Pipeline Company (Questar) filed Substitute Fifteenth Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1988.

Questar states that the purpose of this filing corrects a minor technical error on the tariff sheet originally filed on July 29, 1988.

Questar states that a copy of this filing was served upon its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18707 Filed 8-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-1-56-001]

Valero Interstate Transmission Co; Filing

August 12, 1988.

Take notice that on August 8, 1988, Valero Interstate Transmission Company (Valero) filed Substitute 8th Revised Sheet No. 14.2 to Original Volume No. 1 and Substitute 13th Revised Sheet No. 6 to Original Volume No. 2 as part of its FERC Gas Tariff.

Valero states that the purpose of this filing is to corect footnote number four at the bottom of each sheet to state the average cost in the last scheduled PGA rather than the previous scheduled PGA.

Valero states that service of this filing has been made on the affected parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18708 Filed 8-17-88; 8:45 am]

BILLING CODE 6217-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3431-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and are available to the public for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Milk Cow and Population Survey (EPA ICR# 1221).

Abstract: Farms, within a 300 kilometer radius of the Nevada nuclear test site, which produce milk from cows or goats for local usage or commercial distribution, are requested to participate in this survey. Respondents are asked to provide farm identification/location information, number of cows/goats, and type of feed used.

Burden Statement: The estimated public reporting burden for this collection of information is 0.5 hour per respondent per year. This estimate includes the time for participating in a short interview.

Respondents: Farms

Estimated No. of Respondents: 565

Estimated Total Annual Burden on Respondents: 283 hours

Frequency of Collection: 1 response per year

Office of Pesticides and Toxic Substances

Title: Records of PCB Use, Storage and Disposal. (EPA ICR# 0583).

Abstract: Owners or operators of facilities that use, store or dispose of polychlorinated Biphenyls (PCBs) must prepare and maintain records on the PCBs handled at their facilities. The Agency uses these data to monitor the movement and ultimate disposal of PCBs and for compliance purposes.

Burden Statement: The estimated public reporting burden for this collection of information is 35 hours per

respondent. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the collection of information.

Respondents: Users, storers, and disposers of PCBs.

Estimated No. of Respondents: 5501
Frequency of Collection: Annually
Total Estimated Annual Burden: 192,535 hours

Send comments regarding the burden estimates, or any other aspect of these collections of information, including suggestions for reducing the burdens, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St., SW., Washington, DC 20460.

and

Nicolas Garcia (ICR# 1221) and Tim Hunt (ICR# 0583), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084).

Date: August 10, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–18733 Filed 8–17–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 11, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0347.
Title: Section 97.71, Spread spectrum logs.
Action: Extension.
Respondents: Individuals or households.
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 25 Recordkeepers; 25 Hours.

Needs and Uses: The recordkeeping requirement contained in § 97.71 is necessary to document all spread spectrum transmissions by amateur radio operators. It consists of a technical description of the transmission signal, pertinent parameters describing the transmitted signal, general description of information, method and frequencies used for station identification and date of beginning and date of ending use of each type of transmitted signal. The information is used by FCC staff during inspection and investigations to ensure compliance with applicable rules.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88–18763 Filed 8–17–88; 8:45 am]

BILLING CODE 6712–01–M

[Report No. CL–88–138]

Common Carrier Public Mobile Services Information; Dates and Filing Requirements Announced for Acceptance of Applications for Block 3 Cellular RSAs

August 4, 1988.

During the month of October, 1988 applications for Block 3 cellular RSAs will be accepted for filing. Specific filing dates and markets appear on pages 5 and 6 of this notice.

All applications for these markets must be filed in Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Cellular Telephone—Market No. (*Enter Market Number*), P.O. Box 371995M, Pittsburgh, PA 15250–7995.

Applications shipped via common carrier or hand carrier must be brought to the following address between the hours of 8:30 a.m. and 5:00 p.m.: Federal Communications Commission, Cellular Telephone Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222.

Directions to the Strip Commerce Center filing location appear on page 4 of this notice.

Note.—If the number of applications filed in the previous block of RSAs is excessive, these dates may be modified. If this is necessary a new public notice will be issued.

Acceptance of Applications for Cellular RSAs in Block 3

October 5 to October 7

Texas

652. Texas 1—Dallam
653. Texas 2—Hansford
654. Texas 3—Parmer
655. Texas 4—Briscoe
656. Texas 5—Hardeman
657. Texas 6—Jack
658. Texas 7—Fannin
659. Texas 8—Gaines
660. Texas 9—Runnels
661. Texas 10—Navarro
662. Texas 11—Cherokee
663. Texas 12—Hudspeth
664. Texas 13—Reeves
665. Texas 14—Loving
666. Texas 15—Concho
667. Texas 16—Burleson
668. Texas 17—Newton
669. Texas 18—Edwards
670. Texas 19—Atascosa
671. Texas 20—Wilson
672. Texas 21—Chambers

October 12 to October 14

Missouri

504. Missouri 1—Atchison
505. Missouri 2—Harrison
506. Missouri 3—Schuyler
507. Missouri 4—De Kalb
508. Missouri 5—Linn
509. Missouri 6—Marion
510. Missouri 7—Saline
511. Missouri 8—Callaway
512. Missouri 9—Bates
513. Missouri 10—Benton
514. Missouri 11—Moniteau
515. Missouri 12—Maries
516. Missouri 13—Washington
517. Missouri 14—Barton
518. Missouri 15—Stone
519. Missouri 16—Laclede
520. Missouri 17—Shannon
521. Missouri 18—Perry
522. Missouri 19—Stoddard

October 19 to October 21

Kansas

428. Kansas 1—Cheyenne
429. Kansas 2—Norton
430. Kansas 3—Jewell
431. Kansas 4—Marshall
432. Kansas 5—Brown
433. Kansas 6—Wallace
434. Kansas 7—Trego
435. Kansas 8—Ellsworth
436. Kansas 9—Morris
437. Kansas 10—Franklin
438. Kansas 11—Hamilton
439. Kansas 12—Hodgeman
440. Kansas 13—Edwards
441. Kansas 14—Reno
442. Kansas 15—Elk

Louisiana

454. Louisiana 1—Claiborne
455. Louisiana 2—Morehouse
456. Louisiana 3—De Soto
457. Louisiana 4—Caldwell
458. Louisiana 5—Beauregard
459. Louisiana 6—Iberville
460. Louisiana 7—West Feliciana
461. Louisiana 8—St. James
462. Louisiana 9—Plaquemines

October 26 to October 28

Arkansas

324. Arkansas 1—Madison
325. Arkansas 2—Marion
326. Arkansas 3—Sharp
327. Arkansas 4—Clay
328. Arkansas 5—Cross
329. Arkansas 6—Cleburne
330. Arkansas 7—Pope
331. Arkansas 8—Franklin
332. Arkansas 9—Polk
333. Arkansas 10—Garland
334. Arkansas 11—Hempstead
335. Arkansas 12—Ouchita

Oklahoma

596. Oklahoma 1—Cimarron
597. Oklahoma 2—Harper
598. Oklahoma 3—Grant
599. Oklahoma 4—Nowata
600. Oklahoma 5—Roger Mills
601. Oklahoma 6—Seminole
602. Oklahoma 7—Beckham
603. Oklahoma 8—Jackson
604. Oklahoma 9—Garvin
605. Oklahoma 10—Haskell

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-18764 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

Radio Broadcasting; Radio Advisory Committee Meeting

August 11, 1988.

The next meeting of the Advisory Committee on Radio Broadcasting will be held at 1:30 p.m., Tuesday, September 13, 1988, in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

The Committee will consider:

—Reports from the Allocations and Technical Subgroups;

—Possible improvements to serve on the AM band through revisions to the technical AM Broadcast Rules;

—Use of the expanded AM band (1605–1705 kHz) in the United States;

—FM Directional Antennas;

—FM Class A upgrades;

—Creation of FM Class C3;

—FM Translators; and

—Other business relating to radio broadcasting matters.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for September 13, 1988 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Mr. Larry Eads, at FCC Headquarters. His telephone number is (202) 632-6485.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-18765 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committees; Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedules and proposed agendas of the forthcoming meetings of the agency's initial review committees, national advisory councils, and a Board of Scientific Counselors in the month of September 1988. These committees will be performing initial review of applications for Federal assistance and evaluating performance of staff scientists. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 210(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Mental Health Small Grant Review Committee, NIMH
Date and Time: September 8–9: 9:00 a.m.
Place: Holiday Inn Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland 20852
Status of Meeting:
Open—September 8: 9:00–10:00 a.m.
Closed—Otherwise
Contact: Kimberly Crown/Monica Woodfork, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843
Purpose: The committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

* * * * *

Committee Name: National Advisory Council on Drug Abuse, NIDA
Date and Time: September 13–14: 9:00 a.m.
Place: Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814
Status of Meeting:
Open—September 13: 9:00 a.m.–noon; September 14: 8:30 a.m.–500 p.m.
Closed—Otherwise
Contact: Sheila Gardner, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0441
Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advise on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

* * * * *

Committee Name: National Advisory Mental Health Council, NIMH
Date and Time: September 14–16: 9:00 a.m.
Place: Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, MD 20857
Status of Meeting:
Open—September 14–15: 9:00 a.m.–5:00 p.m.
Closed—Otherwise
Contact: Rachel Townson, Room 9C–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3367
purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect approval of applications for, and amount of, these grants.

* * * * *

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism, NIAAA
Date and Time: September
Place: National Institutes of Health, Conference Room #6, Building 31C, 6th Floor, 9000 Rockville Pike, Bethesda, MD 20892

BEST COPY AVAILABLE

Status of Meeting:
Open—September 19: 10:30 a.m.–5:00 p.m.
Closed—Otherwise
Contact: James Vaughan, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375
Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

* * * * *

Committee Name: Board of Scientific Counselors, NIAAA
Date and Time: September 28–29: 9:00 a.m.
Place: Flow Building, Room 51, 12501 Washington Avenue, Rockville, MD 20852
Status of Meeting:
Open—September 28: 9:00–9:30 a.m.
Closed—Otherwise
Contact: Boris Tabakoff, National Institutes of Health, Building 10, Room 3C103, 9000 Rockville Pike, Bethesda MD 20892, (301) 496–8996
Purpose: The Board provides expert advise to the Director, DICBR, NIAAA, and through him to the Director, NIAAA, on the alcohol intramural research program. This advice is derived from periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

* * * * *

Committee Name: Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH
Date and Time: September 29–October 2: 8:30 a.m.
Place: Days Inn, 1775 Rockville Pike, Rockville, MD 20852
Status of Meeting:
Open—September 29: 8:30–9:15 a.m.
Closed—Otherwise
Contact: Irma Fisher, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of psychoneuro-immunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Substantial information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375; Ms. Camilla Holland, NIDA Committee Management Officer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: August 12, 1988.
Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 88–18694 Filed 8–17–88; 8:45 am]
BILLING CODE 4160–20–M

Centers for Disease Control

Request for Nominations of Candidates To Serve on the Mine Health Research Advisory Committee

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), is soliciting nominations for membership on the Mine Health Research Advisory Committee (MHRAC). On December 24, 1988, four vacancies will occur. The MHRAC, which is authorized by the Federal Mine Safety and Health Act of 1977, advises the Department of Health and Human Services on matters related to intramural and extramural research for the nation's miners. The direction, scope, and scientific quality of the NIOSH mine health research program are considered by the Committee.

A range of disciplines is represented on the Committee, including occupational medicine, industrial hygiene, pulmonary medicine, radiology, pathology, epidemiology, biostatistics, public health, environmental health, and ergonomics. Mining experience is desirable, but is not necessary for every position on the Committee. Emphasis is placed on scientific credentials.

The following information is requested: name, affiliation, address, telephone number, and a recent curriculum vitae. Nominations should be sent by August 29, 1988, to: Mr. Melvin L. Myers, Executive Secretary, MHRAC, NIOSH, CDC, D–37, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephones: FTS: 236–3901, Commercial: 404/639–3901.

Dated: August 12, 1988.
Elvin Hilyer,
Associate Director for Policy Coordination, Centers for Disease Control.
[FR Doc. 88–18711 Filed 8–17–88; 8:45 am]
BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 88M–0271]

Barnes-Hind, Inc.; Premarket Approval of Occucoat™

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Barnes-Hind, Inc., Sunnyvale, CA, for premarket approval, under the Medical Device Admendments, of 1976, of Occucoat™. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 12, 1988, of the approval of the application.

DATE: Petitions for administrative review by September 19, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On April 22, 1987, Barnes-Hind, Inc., Sunnyvale, CA 94086, submitted to CDRH an application for premarket approval of Occucoat™. Occucoat™ is indicated for use as a surgical aid in anterior segment procedures including cataract extraction and intraocular lens implantation.

On July 23, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 12, 1988, CDRH approved the application by

a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon wirtten request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under seciton 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 19, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 11, 1988.

Linda A. Suydam,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 88–18696 Filed 8–17–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Facilities Improvement and Repair Priority List for Fiscal Year 1989

August 10, 1988.

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of Facilities Improvement and Repair Priority List for Fiscal Year 1989.

The Facilities Improvement and Repair (FI&R) list has been prepared for Fiscal Year 1989 in accordance with House Report Number 98–886, page 52. "To avoid some of the problems experienced in the past, the Committee directs the Bureau to revise the FI&R Priority System by publishing in the **Federal Register** by October 1 of each fiscal year, the national list of projects expected to be accomplished that year within the available funds."

The notice for FY 1989 provides the approved list of FI&R projects. Construction of these projects is subject to the availability of funds. The list is based upon the Bureau's criteria for ranking projects as published in the **Federal Register**/Volume 51, Number 30/Thursday, February 13, 1986/Page 5415.

The projects for FY 1989 are:

Bureau-Wide Code Compliance (Phase 1)
Bureau-Wide Roof Repair (Phase 1)
Multi-Area Telecommunications Improvements and Repair
Navajo Area-Wide Gas Line Replacement (Phase 2)
Flandreau School (Phase 1), South Dakota
Standing Rock Community High School, North Dakota
Haskel Indian Junior College, Kansas
Dzilth-Na-O-Dith-Hle School, New Mexico
Ft. Hall Headquarters and Elementary School, Idaho

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets, NW., Mail Stop 2415, Washington, DC 20240, (202) 343–3403.

Rick Ventura,

Assistant Secretary, Policy, Budget & Administration.

[FR Doc. 88–18714 Filed 8–17–88; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Indian Affairs

School Construction Priority List, FY 1990

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of list of proposed school construction projects.

This notice is published in exercise of authority delegated by the Secretary of Interior to the Assistant Secretary-Indian Affairs by 209 DM8. The school construction priority list has been revised for FY 1990 as required by Pub. L. 95–561 (92 Stat. 2319 section 1125(O)) which requires that: "At the time any budget request for school construction is presented, the Secretary shall publish in the **Federal Register** and submit with the budget request the current list of all school construction priorities".

This notice for FY 1990 provides the current revised list of proposed construction projects. Construction of these projects is subject to the availability of funds and/or the status of currently committed construction projects approved by Congress. The Choctaw Central Elementary School is a committed project.

The current list of school construction projects applies to FY 1990 and is based upon the Bureau's criteria for ranking projects based upon "unhoused" students. A revised list will be developed and published for each succeeding fiscal year. The BIA, Contract and Previously Private School Construction Ranking-FY 1990 is:

Choctaw Central Elementary School (MS) [1]
Laguna Middle School (NM)
Coeur d'Alene Tribal School (ID)
Pine Ridge High School (SD)
Dunseith Indian Day School (ND)
Many Farms High School (AZ)
Seba Delkai Boarding School (AZ)
Lower Brule School (SD)
Cheyenne River School (SD)
Crow Creek School (SD)
Riverside Indian School (OK)
Eastern Navajo High School (NM)

[1] Congressionally Mandated Project

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department

of the Interior, 18th C Streets, NW., Mail Stop 2415, Washington, DC 20240, (202) 343–3403.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

[FR Doc. 88–18715 Filed 8–17–88; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

Intent to Prepare an EIS on Placer Mining Activities, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a drainage-wide environmental impact statement on multiple mining operations in the Tuluksak River drainage; and to request comments on the scoping of this environmental impact statement.

SUMMARY: Pursuant to section 102 (2)c of the National Environmental Policy Act of 1969, as amended, the Department of Interior, Bureau of Land Management (BLM) intends to prepare an environmental impact statement for placer mining in the Tuluksak River drainage in southwestern Alaska.

The decision to prepare an EIS should not be interpreted as a reversal of the decision of the Department of the Interior regarding Northland Gold Dredge operation. Preparation of an EIS for the Tuluksak Drainage has been prompted by proposed plans of operation submitted by other mine operators. The purpose of the EIS is to determine the direct and indirect impacts of multiple placer mining operations within the Tuluksak watershed, particularly water quality, subsistence uses, access, and fisheries impacts. The analysis will address mining operations anticipated within the reasonably foreseeable future that would occur within the Tuluksak River drainage. BLM manages and or regulates federal claims in the area encompassed by this EIS under the following:

(1) General Mining Law of 1872, 30 U.S.C. 22 *et seq,* as amended

(2) Federal Land Policy and Management Act (FLPMA) 1976

(3) 43 CFR Part 3809

(4) BLM Alaska Handbook H 3809–1, and other applicable laws and regulations relating to specific resources. Possible alternatives include: Allowing placer mining under various standards of review which modify timing, size and location of proposed actions, which would assure against unnecessary and undue degradation consistent with the requirement of 43 CFR Part 3809. BLM would review proposed and existing plans of operation according to various BLM guidelines. Other agency permitting would be done in accordance with existing standards. This is the Proposed Action. Under the No Active alternative, applications for plans of operation or notices would be processed by BLM. However, administrative, legislative and or judicial means would be employed to prevent mining. It is understood that implementation of the No Action alternative might be in conflict with existing federal and State law. However, federal regulations governing the content of EISs require an analysis of a No Action alternative. This alternative may be used as a baseline to which other alternatives can be compared. Alternatives to the Proposed Action and the No Action Alternatives will be developed during the scoping period which will run till the end of September 1988. The timeframe for public scoping will also be announced in the local newspapers and supplemented as appropriate by other means.

The purpose of scoping is to focus the analysis on significant issues and reasonable alternatives to the considered. This will be done by sending a summary of current issues, comments, and concerns to anyone requesting them. All interested parties are invited to participate in the scoping process by either writing or calling the EIS Project Manager to add additional issues, concerns, or relevant alternatives. No public meeting is planned for scoping because previous public meetings have identified numerous issues associated with placer mining proposed for previous years, including activities which would have been conducted in 1988. Federal and State agencies specifically invited to participate in the scoping includes, but is not limited to:

Alaska Department of Environmental Conservation
Alaska Department of Fish and Game
Alaska Department of Natural Resources
U.S. Army Corps of Engineers
U.S. Bureau of Indian Affairs
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
U.S. National Park Service

ADDRESSES: To be considered in the scoping process, all written comments and suggestions must be received by Anchorage District Manager, Attn. Tuluksak EIS Project Manager, Bureau of Land Management, 701 C Street, Box 13, Anchorage Alaska 99513, no later than October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Tuluksak EIS Project Manager, Bureau of Land Management, 701 C St., Box 13, Anchorage, Alaska 99513, (907) 271–3114.

John Santora,

Acting State Director.

[FR Doc. 88–18710 Filed 8–17–88; 8:45 am]

BILLING CODE 4310–JA–M

[CA–930–08–4341–09]

Availability of Final Environmental Impact Statements; California Vegetation Management Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement for the California Vegetation Management Program.

SUMMARY: Notice is hereby given of the availability of the Final Environmental Impact Statement for the California Vegetation Management Program on BLM administered lands in California and northwest Nevada. The EIS was prepared to address the impacts resulting from proposed manual, mechanical, prescribed burning and chemical control of vegetation on public lands. The EIS also includes a risk assessment and worst-case analysis of impacts on human health from using herbicides as proposed by the program.

Comments on the EIS as well as those received during the review of the Draft EIS will be considered in the decision process. A decision regarding vegetation management will be prepared and issued after September 30, 1988.

A limited number of copies of the California Vegetation Management EIS are available from: Mark Blakeslee, Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825, (916) 978–4725.

DATE: The public comment period is open for 30 days through September 30, 1988. Comments received after that date may not be considered in the Record of Decision.

ADDRESSES: Written comments may be sent to the California Vegetation Management EIS Team Leader, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mark Blakeslee, California State Office (916) 978–4725.

Dated: August 10, 1988.

Ed Hastey,

State Director.

[FR Doc. 88–18720 Filed 8–17–88; 8:45 am]

BILLING CODE 4310–40–M

[AK-975E-08-4213-22]

Change of Address for BLM-Alaska's Fairbanks Support Center, Arctic District, Kobuk District and Steese/White Mountains District

The Bureau of Land Management's Fairbanks Support Center, Arctic District, Kobuk District and Steese/White Mountains District offices in Fairbanks, Alaska will move to a new address. The former address for these offices was 1541 Gaffney Road, Fairbanks, Alaska 99703. After September 6, 1988, the address will be: 1150 University Avenue, Fairbanks, Alaska 99709. Phone (907) 474–2200.

Direct questions to: William Robertson, Bureau of Land Management, Fairbanks Support Center, 1541 Gaffney Road, Fairbanks, AK 99703, Telephone (907) 356–5309.

Date: August 8, 1988.

James S. Murray,

Manager, Fairbanks Support Center.

[FR Doc. 88–18721 Filed 8–17–88; 8:45 am]

BILLING CODE 4310-84-JA

[ID-030-08-4212-13]

Realty Action; Exchange of Public Lands in Bannock County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of Public Land in Bannock County, ID.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T.7S., R.35E., Boise Meridian

Section 23: SWSE
Section 26: N2NW, NWNE

In exchange for these lands, the Federal Government will acquire a tract of non-federal land in Bannock County from L.M. Bull, Jr., described as follows:

T.7S., R.35E., Boise Meridian

Section 26: SESW, SWSE
Section 35: NENW, NWNE

The purpose of the exchange is to acquire the non-federal lands for use in wildlife habitat and riparian management. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with county and state officials. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for road purposes as have been granted to the Federal Highway Administration under serial number I–22928.

3. Excepting and reserving the United States a perpetual right-of-way over and across a strip of land 100 feet wide along an existing trail crossing the SWSE, Section 23; NWNE, Section 26; T.7S., R.35E., for public access and future development of a road.

The publication of notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental assessment is available for review at the Idaho Falls District, Pocatello Resource Area Office, 250 South 4th Avenue, Federal Building, Room 172, Pocatello, Idaho 83201.

For a period of 45 days interested parties may submit comments to the Idaho Falls District Office, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: August 10, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88–18675 Filed 8–17–88; 8:45 am]

BILLING CODE 4310-GG-M

[ES-940-08-4520-13; (ES-039037, Group 23)]

Filing of Plats of Dependent Resurvey, Subdivisions of Section and Survey of the Rend Lake Acquisition Boundary; Illinois

August 9, 1988.

1. The plat, in four sheets, of the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the survey of the subdivision of sections 1, 2, 3, 4, 10 and 11, and the Rend Lake acquisition boundary, Township 6 South, Range 2 East, third Principal Meridian, Illinois, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 23, 1988.

2. The dependent resurvey and survey was made at the request of the Corps of Engineers.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 23, 1988.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–18676 Filed 8–17–88; 8:45 am]

BILLING CODE 4310-GJ-M

[AZ-920-08-4220-10; A-23294]

Proposed Withdrawal; Opportunity for Public Meeting; Arizona

August 10, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, recently acquired 61.356 acres of private land within the boundaries of the Coronado National Forest under the provisions of the General Exchange Act of 1922. The land is surrounded by an existing withdrawal for the Fred Lawrence Whipple Observatory (FLWO). The existing withdrawal protects the large investment in scientific research at the Observatory. The Forest Service has now filed an application to withdraw the 61.356 acres of land from mineral entry. This application will complete the protection of the facilities and research efforts at FLWO. This notice closes the land for up to 2 years from location and entry under the United States mining laws.

DATE: Comments and requests for meeting should be received on or before November 16, 1988.

ADDRESS: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, BLM, Arizona State Office, 602–241–5534.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian, Arizona

Coronado National Forest

T. 20 S., R. 14 E.,
MS 2409 lying within sections 22, 23, 26, and 27.

The area described aggregates 61.356 acres in Santa Cruz County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied, cancelled or the withdrawal is approved prior to that date. The land remains open to mineral leasing and to those laws governing management and disposition of National Forest land by the Forest Service, including lease, easement, permit and management, utilization and disposal of vegetative resources. Current administrative jurisdiction over the segregated land will not be affected by the temporary segregation.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–18677 Filed 8–17–88; 8:45 am]

BILLING CODE 4310–32–M

[CA–940–08–4220–10; CA 5200]

Termination of Segregation and Opening of Lands; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The segregative effect of a proposed withdrawal of 15 acres of land requested by the Department of the Army, Sacramento District Corps of Engineers, termianted on July 27, 1980.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4815.

SUPPLEMENTARY INFORMATION: On July 28, 1978, a notice of proposed withdrawal and reservation of land for the Department of the Army, Sacramento District Corps of Engineers, was published in the **Federal Register** at 43 FR 32881. The purpose of the application was for the preservaton and perpetuation of a unique species of harvestmen (a phalangid of the arachnid class) residing in and old mine on the land. This notice is published in accordance with the regulations at 43 CFR 2310.2–1(d) which require that a notice specifying the date and time of termination to be published in the **Federal Register** by the authorized officer.

1. The segregative effect was terminated as to the following described land:

Mount Diablo Meridian

T. 3 N., R. 14 E.,
Sec. 35, SE1/4NE1/4SE1/4 and N1/2NE1/4SE1/4SE1/4.

The area described contains 15 acres in Tuolumne County.

2. On July 27, 1980, the lands described in paragraph 1 were opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

3. On July 27, 1980, the lands were opened to location and entry under the United States mining laws.

Date: August 10, 1988.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88–81674 Filed 8–17–88; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Record of Decision for Implementing a Master Plan for Management of the Great Swamp National Wildlife Refuge; Basking Ridge, NJ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice makes available to the public the Record of Decision (ROD) on the Great Swamp National Wildlife Refuge (NWR) Master Plan. The ROD was prepared in accordance with Council on Environmental Quality Regulations, 40 CFR 1505.2. The decision of the Fish and Wildlife Service is based on information contained in: The Final Environmental Impact Statement (FEIS) which was filed with the Environmental Protection Agency in May, 1987 and became available to the public on May 20, 1987; other pertinent scientific and technical data; and public comments received on the proposal. The ROD selects the Proposed Action as the best alternative for a master plan to manage the Refuge for the next 10 to 20 years.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Laffin, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, (617) 965–5100 ext. 222.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (FWS) manages national wildlife refuges to meet the major purpose(s) for which they were established. The public is provided opportunities to enjoy natural resources found on refuges. These uses must be compatible with the purposes for which each refuge is established. Refuges are periodically analyzed to establish long-range objectives and strategies for accomplishing those objectives. Great Swamp NWR has been planned through such a process. This refuge was established in 1960 through the efforts of concerned citizens who raised funds to acquire and protect 3000 acres of important New Jersey wetland-upland habitat for migratory birds, other indigenous wildlife and their habitats. Acquisition has primarily been for migratory waterfowl and wildlife oriented recreation purposes. In addition Congress established a 3660 acre wilderness area at Great Swamp NWR in 1968. The Proposed Action Alternative selected in this ROD takes into account the significant amount of land development that has occurred in the Great Swamp watershed in recent years. Development has greatly altered the watershed and so disrupted surface water runoff that the Refuge habitats

have been adversely affected by wetter wet periods and dryer dry periods. Increased development has also brought more people closer to the Refuge, thereby greatly increasing demand for public use activities on the Refuge.

The Proposed Action Alternative addresses these and other pressures on Refuge habitats and wildlife and establishes management strategies to cope with them.

Alternatives Considered

The following four alternative master plans were considered in reaching a decision:

No Action Alternative

Provides for toxic waste clean-up on currently owned Refuge lands; precludes acquisition of other land containing toxic dump sites, and continues current management practices, outputs, and public use activities. Habitat and wildlife population protection, the annual deer hunt, water management in the Refuge's five impoundments, management of upland field and forest habitat, maintenance of climax forest, wildlife surveys, and bird banding would continue at current levels. Existing facilities, including parking lots, restrooms, boardwalk trails, an observation tower and an observation blind will be maintained. Pleasant Plains Road will be maintained as a gravel road open to through traffic. Public use activities such as birding and other wildlife observation, interpretation, wildlife education and fruit picking will continue at present levels. Great Swamp's present permanent staff of nine will continue to operate from the existing headquarters/maintenance complex.

Proposed Action Alternative

Major changes from current conditions include: Acquisition of land outside the presently approved acquisition boundary to prevent further encroachment and development of wetlands and critical upland edge habitats having high wildlife value and to prevent encroachment on and degradation of existing Refuge land.

Updating of a 1982–1984 hydrology study to determine the combination of water control modifications required to properly regulate water levels in Pools 1 and 2 and Middle Brook Pool.

Reversion of up to 1,000 acres of red maple dominated habitat to more diverse, earlier successional habitat types that will be more productive of wildlife, especially woodcock.

Regulation of public use in the Wilderness Area to assure it is managed to maintain its wilderness qualities.

Establishment of a trapping program to be instituted as needed to reduce excessive raccoon predation on nesting birds and other wildlife. Increased production of black duck, American woodcock, wood duck, red-shouldered hawk, bluebird and other sensitive species to meet Refuge wildlife production objectives.

Upgrading and expanding the public use program through the construction of a wildlife interpretive center, improvement of the existing trail system, construction of a self-guided interpretive trail, and construction of two visitor information kiosks and one wildlife observation blind. Taking action to minimize the negative effects of development within the watershed that threaten the ecological balance of the swamp through increased runoff, sedimentation and water pollution.

Pulbic Use Alternative

This alternative expands options of public access, and for wildlife education and interpretation, while maintaining wildlife habitat diversity through moderate management activities. Unique features include canoeing, fishing, horseback riding trails, additional visitor contact points and 79 additional parking spaces. Land acquisition would include floodplains of some streams which flow into the Refuge. Self-guided trails and the connection of the Refuge trail system to adjacent county environmental centers will favor relations between the Refuge and local communities.

Wildlife Management Alternative

This alternative closes Pleasant Plains Road to through traffic and intensifies most wildlife management activities, especially for woodcock and waterfowl. Raccoon control will be implemented. Major management changes include acquisition of land prone to flooding and intensified woodcock habitat management to back succession stages of upland habitat.

Basis for the Decision

The Proposed Action alternative meets refuge purposes in a comprehensive manner and minimizes the environmental, social and economic impacts as much as is practicable. An exhaustive public participation process identified concerns of interested parties and brought about plan modifications that substantially resolved controversial issues related to items such as road abandonment and closures, trapping, animal control, hunting, controlled burning, woodcock management and public use facilities. Continued public participation during project implementation will further reduce real or perceived impacts on social and natural resources. Measures to minimize impacts of the selected alternative are identified in this document and the FEIS.

The Proposed Action most effectively balances habitat protection, wildlife population management and public use opportunities to maximize the potential for Refuge benefits. Land acquisition will be expanded to acquire, from willing sellers, tracts of good wildlife habitat that have not been degraded by development. Acquisition of additional wetland and upland adjacent to wetland will also reduce the amount of private land that currently floods due to accelerated surface water runoff brought on by watershed development. In response to alteration of surface water runoff patterns, the Proposed Action includes updating the 1982–1984 hydrology study that accesses the effects of altered flows on Refuge water regimes.

This alternative includes action to control public use in the wilderness area while monitoring changes more closely to ensure that action can be taken to curb threats to the area's wilderness qualities.

The proposal to control the excessive raccoon population through trapping was opposed by many individuals and groups in their responses to the Draft EIS. However, no feasible alternative to reducing raccoon predation on nesting birds and other wildlife was presented. The adverse impact on wildlife production caused by raccoons is unacceptable so the trapping program will be developed. A similar situation exists with the annual deer hunt. If not controlled, the deer population will rapidly expand causing starvation, disease and damage to wildlife habitat and to other species. Browsing on neighboring crops and ornamental plants would increase as would the numbers of road-killed deer. The hunt will continue because there is no feasible alternative to maintain the herd at numbers compatible with available habitat.

Consistent with implementation of wildlife management actions, this alternative improves the quality of public use programs while minimizing conflicts with wildlife. The other alternatives do not provide an acceptable balance between wildlife and public use management.

The selected alternative responds to the concern that more communication is needed between the Refuge and its "neighbors." A FWS person has been assigned to work closely with the

Refuge to expand communication with surrounding communities.

The FWS considers the Proposed Action as the Preferred Alternative since it will best achieve the effective management of the Great Swamp NWR.

Terms and Conditions for Implementing Decision

The FWS will implement the Proposed Action alternative by phasing in specific actions through annual budget development as funding allows. Implementation of highly controversial actions such as trapping and controlled burning will be preceded by appropriate public review.

Conclusions

Based on a careful review and consideration of National Wildlife Refuge System Laws and Policies, the EIS and public comments, and other relevant factors, I am selecting the Proposed Action as the best alternative for the long-term management of the Great Swamp NWR.

Dale T. Coggeshall,

Acting Regional Director.

[FR Doc. 88-18673 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5440, Block 342, Vermilion Area, offshore Lousiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on August 10, 1988. Comments must be received within 15 days of the publication date of this notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Lousiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Lousiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 12, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-18678 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 274 (Sub-No. 3F)]

Abandonment of Rail Line; Use of Opportunity Costs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission finds that, in abandonment proceedings decided after the notice becomes effective, the appropriate rate of return to be used in calculating a railroad's opportunity cost or other return on investment, where use of the real pre-tax cost of capital is prescribed as the rate of return, is 12.6 percent. Other rates of return that are supported by clearly explained methodologies and evidence will be considered on a case-by-case basis.

DATE: This notice will be effective on August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: August 11, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Vice Chairman Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-18718 Filed 8-17-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Stipulation Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; American Creosote Works of Florida, Inc.

Pursuant to 42 U.S.C. 9622 (i), notice is hereby given that on August 4, 1988, a proposed Stipulation in *In re American Creosote Works of Florida, Inc.*, Case No. 82-04090, was lodged with the United States Bankruptcy Court for the Northern District of Florida, Pensocola Divison. The proposed Stipulation concerns distribution of proceeds from the sale or lease of certain land owned by American Creosote Works of Florida, Inc. (American Creosote). Under the proposed Stipulation, Savings Life Insurance Company (a creditor of American Creosote) and the United States will share equally in any proceeds from the sale or lease of the land owned by Amreican Creosote which is subject to the response and remedial action of the United States

Environmental Protection Agency at Amreican Creosote's wood-treating facility located near Pensacola, Florida.

The Department of Justice will receive comments relating to the proposed Stipulation for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistanc Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re American Creosote Works of Florida, Inc.*, D.J. No. 90-7-1-236.

The proposed Stipulation may be examined at the office of the United States Attorney for the Northern District of Florida, 100 N. Palafox Street, Room 307, Pensocola, Florida 32501 (Attn: Ben Beard, Assistant United States Attorney) and at the Region IV, Office of the United States Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The proposed Stipulation may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Stipulation may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-18679 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of A Final Judgment by Consent Pursuant to the Clean Air Act; Pittsburgh Metal Lithographing Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 9, 1988 a proposed Consent Decree in *United States v. Pittsburgh Metal Lithographing Company, Inc.*, Civil Action No. 87-8522, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The Complaint filed by the United States alleged that Pittsburgh Metal Lithographing Company, Inc. ("PML") operated three metal surface coating lines in Fallsington, Pennsyvania, in violation of the standards for emission of volatile organic compounds (VOC) contained in the Pennsylvania State Implementation Plan, 25 Pa. Admin. Code §§ 129.52 and 129.66, promulgated pursuant to the Clean Air Act, 42 U.S.C. 7413. The Complaint sought civil penalties of up to $25,000 per day of violation. Pittsburgh Metal Lithographing Company, Inc. has executed the Consent Decree and agreed to pay a penalty of $15,000.00 to the United States to resolve past violations of the SIP and the Act, stipulated penalties for any future violations of the SIP and for violations of the various deadlines and recordkeeping and reporting requirements of the consent decree, and to implement specific emission control measures which will bring the company's metal surface coating processes into compliance with the SIP requirements by August 10, 1988. PML has also agreed to shut down and discontinue operating Line 1, 2, 3, or 4 upon demand by EPA if EPA finds that PML is operating or has operated the line in violation of the terms of the decree. PML is currently undergoing reorganization under chapter 11 of the United States bankruptcy code in *In re: Pittsburgh Metal Lithographing Company., Inc.*, Bankruptcy no. 86-02978, United States District Court, Western District of Pennsylvania.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States v. Pittsburgh Metal Lithographing Co., Inc.*, Civil Action No. 87-8522, DOJ Ref. No. 90-5-2-1-1179. The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 3100 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania 19106. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC, 20044. When requesting a copy, please present or enclose a check in the amount of $4.00 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-18680 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Louis Serafini et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 3, 1988 a proposed Consent Decree in *United States v. Louis Serafini, et al.* was lodged with the United States District Court for the Middle District of Pennsylvania. The proposed Consent Decree concerns the grant of access to the Taylor Borough Superfund site, located near Scranton, Pennsylvania, by defendants who own land that adjoins the site. The proposed Decree also contains these defendants' agreement not to disturb or otherwise interfere with the remedy at the site and with the operation and maintenance activities to be undertaken there.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Louis Serafini, et al.*, D.J. Ref. 90-11-3-43.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Federal Building, Washington and Linden Streets, Scranton, Pennsylvania, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Rm. 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 for reproduction costs,

payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-18681 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; The Tanner Companies

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. The Tanner Companies,* was lodged with the United States District Court for the District of Arizona. That action was brought pursuant to the Clean Air Act for violations of the new source performance standards ("NSPS") for hot mix asphalt facilities in Arizona.

The Consent Decree requires Tanner to comply with the NSPS for the plant that it currently owns that was in violation of the NSPS, including proper operation and maintenance of the plant. Stipulatd penalties apply if violations of the NSPS occur. Tanner has sold the other two plants that were the subject of this action. Tanner must also submit results of all tests performed on the plant to the Environmental Protection Agency. In addition, Tanner will pay a civil penalty of $82,842 to the United States.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. The Tanner Companies,* D.J. Ref. 90-5-2-1-944.

The proposed Consent Decree may be examined at the office of the United States Attorney, 4000 U.S. Courthouse, 230 North First Avenue, Phoenix, Arizona 85025 and at the Region IX office of the U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $1.00 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-18682 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

Stipulation of Settlement Pursuant to the Clean Water Act; United States Steel Corp., Geneva Works

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Stipulation of Settlement in *United States* v. *United States Steel Corporation, Geneva Works,* Civil Action No. 86-C-101W, was lodged with the United States District Court for the District of Utah, on August 9, 1988. The amended complaint in this action alleged that the defendant violated certain terms and conditions of a National Pollutant Discharge Elimination System permit issued to it pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342. By the Stipulation of Settlement, the defendant agrees to pay the amount of $70,000 in settlement of this matter.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments related to the Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General, Washington, DC 20530 and should refer to *United States* v. *United States Steel Corporation, Geneva Works,* D.J. Ref. No. 90-5-1-1-2548.

The Stipulation of Settlement may be examined at the Office of the United States Attorney, District of Utah, U.S. Courthouse, Room 476, 350 S. Main, Salt Lake City, Utah, 84101; at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and the Environmental Enforcement Section, Land and Natural Resources Division, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530.

A copy of the Stipulation of Settlement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-18683 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge II Section) to the National Council on the Arts which was to have been held on August 17, 1988, from 9:00 a.m.-5:30 p.m., and on August 18, 1988, from 9:00 a.m.-4:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, has been changed. It will be held on August 31, 1988, from 9:00 a.m.-5:30 p.m. and on September 1, 1988, from 9:00 a.m.-4:30 p.m.

A portion of the meeting will be open to the public on September 1, 1988, from 3:30-4:30 p.m., for a policy discussion.

The remaining sessions of this meetng on August 31, 1988, from 9:00 a.m.-5:30 p.m., and September 1, 1988, from 9:00 a.m.-3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9) (b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-18684 Filed 8-17-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice: Applications and Amendment To Operating Licenses Involving No Significant Hazards Consideration; Correction

On May 3, 1988, the **Federal Register** published a Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing. A correction needs to be made to that notice:

On page 15755, in the first column, add "Docket No. 50–237" to the docket number already listed under the title "Nuclear Regulatory Commission." Also on page 15755, in the first column, and in the first paragraph under the title "Nuclear Regulatory Commission," add "Provisional Operating License No. 19" as being considered for issuance of an amendment and add "Unit 2" as the other applicable Dresden Nuclear Power Station unit for which operation is affected by the amendment.

On page 15755, second column, the date the licensee may file request for hearing was "June 2, 1988," it should now read "September 10, 1988.

Dated at Rockville, Maryland, this 10th day of August 1988.

For The Nuclear Regulatory Commission.

William Forney,

Acting Director, Project Directorate III–2, Division of Reactor Projects, III, IV, V, and Special Projects.

[FR Doc. 88–18744 Filed 8–17–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 6 to Facility Operating License No. NPF–62 issued to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Wester Illinois Power Cooperative, Inc., (the licensees), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

This amendment consists of a change to Technical Specification Section 4.11.2.7.2 concerning radioactivity rate of noble gases from the off-gas recombiner effluent. Specification 4.0.4 states that entry into an OPERATIONAL CONDITION or other specified applicable condition shall not be made unless the Surveillance Requirement(s) associated with the Limiting Condition for Operation have been performed within the applicable surveillance interval or as otherwise specified. Specification 4.11.2.7.2 requires the radioactivity rate of noble gases from the off-gas recombiner effluent to be determined at two specified frequencies: (1) At least once per 31 days, and (2) within 4 hours following an increase of 50% in the indicated nominal steady state fission gas release from the primary coolant (with certain provisions). The APPLICABILITY of this Specification (i.e., the applicable OPERATIONAL CONDITION) is "during operation of the main condenser air ejector."

Although it is readily apparent that Surveillance 4.11.2.7.2 cannot be performed until after entering the special applicable OPERATIONAL CONDITION, an exemption to Specification 4.0.4 has been approved for this surveillance in order to ensure compatibility between Specifications 4.0.4 and 4.11.2.7.2. The exemption formally allows the plant to enter the applicable OPERATIONAL CONDITION without having first performed the required surveillance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 16, 1988 (53 FR 4478). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated May 1982.

For further details with respect to the action see (1) the application for amendment dated October 30, 1987, (2) Amendment No. 6 to License No. NPF–62, and (3) Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC; and at Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 8th day of August 1988.

For The Nuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–18745 Filed 8–17–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Facility Operating License No. NPF–62 issued to the Illinois Power Company[1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

This amendment consists of three changes to Technical Specification Sections 3.6.1.8, 3.6.2.7, 4.6.1.8.2, and 4.6.2.7.4, Table 3.6.4–1, and Bases 3/4.6.2.7 and 3/4.6.1.8 concerning the containment building and drywell vent and purge systems. The first change consists of those changes required to delete the OPERABILITY and surveillance requirements associated with 50° stops installed for the VR/VQ system containment isolation valves on the basis that the 50° stops will now be considered to be a part of the permanent design for these valves. The second change inserts footnotes into the Limiting Conditions for Operation and applicable surveillance requirements associated with Specifications 3.6.1.8 and 3.6.2.7 to exclude the time when valves are opened for performing stroke-time testing from the cumulative system

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[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Wester Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

operation time limited by the Limiting Conditions for Operation. The third change extends the application of Note "(a)" in Table 3.6.4–1 of the Technical Specifications to include specific VR/VQ containment isolation valves which need to be opened while conducting certain local leak rate tests.

The application for the amendment complies with the standards and requirements of the Atomic Energy act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal register on February 18, 1988 (53 FR 4919). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated October 30, 1987, (2) Amendment No. 7 to License No. NPF–62, and (3) Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC; and at Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 9th day of August 1988.

For the Nuuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–18746 Filed 8–17–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322–OL–3 (Reception Centers)]

Long Island Lighting Co., Shoreham Nuclear Power Station, Unit 1; Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for the captioned phase of this operating license proceeding. As reconstituted for the phase of this proceeding (OL–3) dealing with the issue of reception centers, the Appeal Board will consist of the following members:

Thomas S. Moore, Chairman
Alan S. Rosenthal
Howard A. Wilber

Dated: August 12, 1988.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 88–18774 Filed 8–17–88; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A88–5; Order No. 795]

Postoffice Closings; Forksville, VA

Forksville, VA 23940, Abner L. Simmons, Petitioner; Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. Sec. 404(b)(5).

Issued August 11, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W. H. "Trey" LeBlanc III.

Docket Number: A88–5.

Name of Affected Post Office: Forksville, Virginia 23940.

Name(s) of Petitioner(s): Abner L. Simmons.

Type of Determination: Closing.

Date of Filing of Appeal Papers: August 9, 1988.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C))

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders:

(A) The record in this appeal shall be filed on or before August 24, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

Charles L. Clapp,

Secretary.

Appendix

Forksville, Virginia 23940

[Docket No. A88–5]

August 9, 1988—Filing of Petition
August 11, 1988—Notice and Order of Filing of Appeal
September 6, 1988—Last day for filing petitions to intervene (*see* 39 CFR 3001.111(b)).
September 13, 1988—Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b)).
October 3, 1988—Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
October 18, 1988—Petitioner's Reply Brief should Petitioner choose to file one (*see* 39 CFR 3001.115(d)).
October 25, 1988—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 7, 1988—Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 88–18697 Filed 8–17–88; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–24694]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 12, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 6, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevent applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70–7530)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its electric utility subsidiaries, Alabama Power Company ("APC"), 600 North 18th Street, Birmingham, Alabama 35291, and Georgia Power Company ("GPC"), 333 Piedmont Avenue NE., Atlanta, Georgia 30308, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45 and 86–95 thereunder.

Southern proposes to organize a new wholly owned Delaware subsidiary to be known as Southern Nuclear Operating Company, Inc., ("SONOPCO"), to consolidate the personnel of the Southern system companies involved in nuclear services into a single organization. SONOPCO's operating structure will be implemented in three phases. Initially, key nuclear operations management personnel will be shared between APC and GPC. In the second phase, which would begin upon approval by the Commission of the present application-declaration, SONOPCO will be organized as a service company that will provide APC and GPC with nuclear services, including plant operating services, fuel procurement services, administrative services and technical services, but will not own, finance or operate any nuclear or other utility assets. In the third phase, SONOPCO will become responsible, on behalf of the owners and through contract with them, for the operation and maintenance of all nuclear generating facilities owned by Southern electric system companies.

SONOPCO may apply to the Nuclear Regulatory Commission ("NRC") or its successor for facility license or permits for the Farley Nuclear Plant ("Farley"), owned and operated by APC, and for the Hatch Nuclear Plant ("Hatch") and Vogtle Nuclear Plant ("Vogtle"), each of which is jointly owned by GPC, the Municipal Electric Authority of Georgia, Oglethorpe Power Corporation, and the City of Dalton, Georgia, and for which GPC is the present licensee and operator under an existing operating agreement. Nuclear services rendered by SONOPCO to nuclear plants not wholly owned by associates of the Southern system will be pursuant to service or operating agreements that provide for billing at negotiated rates.

Accounting, treasury, and other support services, as well as personnel, may be furnished to SONOPCO at cost by Southern Company Services, Inc., APC, and GPC. SONOPCO will render service to associated companies at cost, pursuant to section 13(b) of the Act. The costs will be accounted for and billed to the owners of the subject facilities as prescribed by Rules 91 and 93 and the uniform system of accounts prescribed thereunder. In the case of SONOPCO's services rendered for the Vogtle and Hatch units, these costs will be determined, accumulated, and allocated among the owners of Vogtle and Hatch in proportion to their ownership interests.

SONOPCO will issue, and Southern will purchase for cash, all of the shares of SONOPCO's common stock for an aggregate consideration of up to $10 million. Southern proposes to make open account advances to SONOPCO from time to time, which may be converted into capital contributions or shares of common stock of SONOPCO. The rate of return on SONOPCO's equity capital will not exceed the average of the most recent rates of return allowed by the Alabama Public Service Commission and the Georgia Public Service Commission on the equity capital of APC and GPC, respectively. SONOPCO also proposes to obtain funds from third party lenders. The aggregate principal amount of advances to SONOPCO by Southern or lenders other than Southern will not exceed $50 million at any time outstanding. Interest on open account advances by Southern will accrue at a rate not to exceed the prime rate at a bank designated by Southern. Unless authorized by the Commission, loans by parties other than Southern will have maturities not to exceed ten years and will accrue interest at a rate not to exceed the lender's prime rate plus 2% for variable rate loans and the prime rate at the time of borrowing plus 3% for fixed rate loans. Loans by parties other than Southern may be secured or unsecured and may be guaranteed by Southern, APC and/or GPC. With respect to the initial capitalization of $10 million and to open account advances from Southern, it is requested that the Commission reserve jurisdiction over amounts in excess of $5,000,000 and $15,000,000 respectively, and over all advances from lenders other than Southern. Southern requests this financing authority through December 31, 1990.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–18712 Filed 8–17–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88–069]

National Boating Safety Advisory Council; Applications for Appointment

AGENCY: Coast Guard, DOT.

ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and boating organizations and the general public. Members are appointed by the Secretary of Transportation. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in boating safety. The terms of appointment are staggered so that seven vacancies occur each year.

Applications are being sought for membership vacancies that will occur as follows: Two (2) members from the recreational boat and associated equipment manufacturers; two (2) members from national recreational boating organizations and from the general public; and three (3) members from State officials responsible for State boating safety programs. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities

and women. The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

DATE: Requests for application forms should be received no later than September 30, 1988.

ADDRESS: Requests for application forms should be sent to Commandant (G–NAB/43), U.S. Coast Guard Headquarters, Washington, DC 20593–0001; telephone: (202) 267–0997.

FOR FURTHER INFORMATION CONTACT: Captain W.S. Griswold, Executive Director, National Boating Safety Advisory Council (G–NAB), Room 4302, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001; (202) 267–1077.

Dated: August 11, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88–18777 Filed 8–17–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–061]

Rules of the Road Advisory Council; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given of a meeting of the Rules of the Road Advisory council (RORAC). A meeting of the Rules of the road Advisory Council will be held Tuesday thru Thursday, October 18–20, 1988. The meeting will be held at the Holiday Inn/Crowne Plaza Hotel, 250 N. Main Street, Memphis, Tennessee, and is scheduled to begin 8:30 a.m. and end at 4:30 p.m. each day. The agenda for the meeting includes the following items.

1. Working Group meetings on Tuesday, October 18th, to discuss issues dealir.g with Lights and Shapes, COLREGS, Pilot Rules, use of a light to identify Coast Guard Auxiliary vessels operating under Coast Guard orders, and RORAC Publicity.

2. On Wednesday, October 19th, the major issue being considered by the Council will be the Vertical Sector Lighting Requirements for Unmanned Barges operating on COLREG waters.

3. Matters related to the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) recently considered by the International Maritime Organization's (IMO) Assembly of November 1987.

(a) Review of proposed COLREGS amendments and their applicability to the Inland Navigation Rules.

(b) Matters to be considered at IMO's 35th session of the Subcommittee on Safety of Navigation (SUBNAV) in February 1989.

4. Brief update on Coast Guard Status Reports and Information Items.

5. Proposals by U.S. Navy to amend the Navigation Rules and Annexes by providing the Council with the results of recent restricted in ability to maneuver light tests.

6. Any matters properly brought before the Council.

The Council is interested in hearing the advice for individual attendees and interested parties concerning the Vertical Sector Lighting Requirements for Unmanned Barges. Persons interested in addressing the Council on this issue, particularly persons with expertise and experience with the navigational lighting systems used on unmanned barges, battery power sources, barge lighting appliances, towing vesel operations, pilotage, and operation of commercial and recreational vessels, should contact the Executive Secretary prior to September 30, 1988. The technology available to meet the vertical sector light requirements of Annex I to the Navigation Rules and problems associated with meeting the requirements will be considered by the Council.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Secretary no later than the day before the meeting. Any members of the public may present a written statement to the Council at any time.

Additional information may be obtained from Mr. Peter Palmer, Executive Secretary, Rules of the Road Advisory Council, U.S. Coast Guard (G–NSR–3), Washington, DC 20593–0001, Telephone (202) 267–0362.

Dated: August 11, 1988.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88–18778 Filed 8–17–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL AVIATION ADMINISTRATION

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Santa Barbara Municipal Airport, Santa Barbara, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Santa Barbara, California for the Santa Barbara Municipal Airport under the provisions of the Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is August 17, 1988. The public comment period ended July 18, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert W. Hyatt, Environmental Protection Specialist, AWP–611.2, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297–1534.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Santa Barbara Municipal Airport, Santa Barbara, California are in compliance with applicable requirements of Part 150, effective August 17, 1988. "The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Santa Barbara Municipal Airport under Part 150, in conjunction with the noise exposure map, and that this program will be approved or disapproved on, or before February 13, 1987." This notice also announces the availability of this program for public review and comment.

Under section 103 of Title 1 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA, noise exposure maps, which meet applicable regulations which depict noncompatible land uses as of the date of submission of such maps, a description of projected aricraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed

in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title 1 of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses, and for the prevention of the introduction of additional noncompatible uses.

The city of Santa Barbara submitted to the FAA on December 15, 1986, noise exposure maps, descriptions and other documentation which were produced during Santa Barbara Municipal Airport, FAR Part 150 Noise Compatibility Study, executed Project No. 3–06–0235–02 on February 12, 1985. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Santa Barbara. The specific maps under consideration are DWG. SBA–3, DWG. SB–5, SWG. SBA–10, in the submission. The FAA has determined that these maps for Santa Barbara Municipal Airport are in compliance with applicable requirements. This determination is effective August 17, 1988. FAA's determination on the airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program, or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be coverd by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Santa Barbara Municipal Airport, also effective on August 17, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 13, 1989.

The FAA's detailed evaluation will be conducted. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested person are invited to comment on the proposed program with specific references to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Ave., SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 S. Aviation Blvd., Room 6E25, Hawthorne, California 90261

Ms. Karen Ramsdell, Deputy Airport Director, Santa Barbara Municipal Airport, 610 Firestone Road, Goleta, California 93117

"Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT."

Issued in Hawthorne, California, on August 11, 1988.

Herman C. Bliss,

Manager, Airports Division, FAA, Western-Pacific Region.

[FR Doc. 88–18742 Filed 8–17–88; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Huntington & Wabash Counties, IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed reconstruction and realignment of US 24 between SR 13 and SR 37, which may include a major bridge structure across the Wabash River, in Huntington and Wabash Counties.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Threlkeld, District Engineer, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana, 46204, Telephone 317/269–7479.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Highways, will prepare an environmental impact statement (EIS) on the proposed reconstruction and realignment of US 24 between SR 13 and SR 37 for a distance of approximately 15 miles. The proposed typical highway section will be 2–24' pavements with a 60' median within a minimum 300' right-of-way. The facility will be built with a partial access control.

The following alternatives are being considered: (1) Do Nothing; (2) Alternate #1 with slight variations this alignment follows the existing US 24 route; (3) Alternate #2 is an alignment north of and including sections of existing US 24; (4) Alternate #3 an alternate containing roadway sections north and south of the Wabash River which includes a new major bridge structure across the Wabash River; (5) Alternate #4 an alignment basically south of the Wabash River. This alignment also includes a new bridge structure across the Wabash River.

Improvement to this section of US 24 is considered necessary to efficiently accommodate the traffic demand for existing and projected levels along this corridor.

The project will be coordinated with various federal, state and local agencies to obtain and incorporate their input into the draft environmental impact statement.

No formal scoping meeting is currently planned for this project. An opportunity for a public hearing will be advertised. Public notice will be given of the time and place of the public hearing. The approved draft environmental impact statement will be available for public and agency review and comment.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Agencies, organizations and individuals interested in submitting comments and/or questions should direct them to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

James E. Threlkeld,

District Engineer.

[FR Doc. 88-18687 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Lackawanna County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lackawanna County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone: (717) 782-3461, or

Charles M. Mattei, P.E., District Engineer, Pennsylvania Department of Transportation, P.O. Box 111, Scranton, PA 18501, Telephone: (717) 963-4010.

SUPPLEMENTARY INFORMATION: The FHWA, is cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to provide a new transportation facility on the easterly side of the Lackawanna Valley in order to promote the residential, commercial and industrial development of this area and relieve traffic congestion on local roadway network. This proposed action has been designated as S.R. 3027, Section AOO, Lackawanna Valley Industrial Highway. The proposed highway will traverse the easterly side of the Lackawanna River Valley with its southern terminus being Interstate 81 and the northern terminus, U.S. Route 6 in Carbondale Township. The proposed highway will be approximately 16 miles in length.

The proposed project has been under consideration for many years and a variety of alignments have been studied. A Draft Environmental Impact Statement was submitted to the Council on Environmental Quality on February 16, 1977. The project was then placed on hold, due to funding constraints. Since the original studies are over ten years old, a new Environmental Impact Statement and Technical Basis Reports will be prepared.

Four build alternatives and a no-build alternative will be considered in the proposed EIS.

All of the current alternatives will begin at one of the following interstate interchanges:

1. I81—Exit 56 Main Avenue
2. I81—Exit 55 Blakely Street
3. I380—Exit 1 Tigue Street
4. I81/380 Interchange

All the alternatives will terminate at T.R. 6 at White's Crossing in Carbondale Township.

The alternatives will be studied in detail in the area of preliminary engineering, land use, displacement and relocation of businesses and residences, community cohesion, economy, employment and population, farmland evaluation, visual resources, water quality and aquatic biota, flood plains and flood hazard, soils and erosion analysis, ground water and hydro geology, vegetation and wildlife, endangered species, wetlands, energy consumption, mineral resources, air quality, noise, municipal industrial and hazardous waste facilities, historic resources, archaeological resources, and construction impacts.

Letters describing the proposed action, the scope of the studies, and soliciting comments will be sent to the appropriate federal, state and local agencies, and to private organizations and citizens who express interest in the proposal. Public meetings will be held in the area. Public notices of the time and place of these meetings and any required public hearings will be provided. The draft EIS will be available for public and agency review and comment prior to the public hearing.

Public involvement and inter-agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments, suggestions and questions concerning this proposed action and the EIS should be directed to FWHA or PennDOT at the address above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities apply to this Program).

George L. Hannon,

Assistant Division Administrator, Federal Highway Administration.

[FR Doc. 88-18688 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; St. Lucie County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind notice of intent.

SUMAMRY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project in St. Lucie County, Florida.

FOR FURTHER INFORMATION CONTACT: R. V. Robertson, District Engineer, Federal Highway Administration, 227 North Bronogh Street, Room 2015, Tallahassee, Florida 32201, Telephone: (904) 681-7236.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepared an Environmental Impact Statement (EIS) for a proposed highway project to improve Port St. Lucie Boulevard in St. Lucie County, Florida, was issued on May 28, 1986 and published in the June 4, 1986 Federal Register. The FHWA, in cooperation with the Florida Department of Transportation, has since determined that preparation of an EIS is not necessary for this proposed highway project and hereby rescinds the previous Notice of Intent.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation of Federal programs and activities apply to this program.)

Issued on August 9, 1988.

R. V. Robertson,

District Engineer, Tallahassee, Florida.

[FR Doc. 88-18722 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. EX88-1; Notice 2]

General Motors Corp.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

This notice grants the petition by General Motors Corporation of Warren, Michigan, for a temporary exemption from several requirements of Motor Vehicle Safety Standards Nos. 108 *Lamps, Reflective Devices, and Associated Equipment,* and 111 *Rearview Mirrors.* The basis of the petition was that requiring compliance would prevent it from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles (15 U.S.C. 1410(a)(1)(D), implemented by 49 CFR 555.5 and 555.6(d)).

Notice of receipt of the petition was published on April 12, 1988, and an opportunity afforded for comment. (53 FR 12093).

GM wishes to institute a factory delivery program for two of its passenger cars, similar to programs established by European manufacturers where Americans purchase vehicles in Europe meeting the Federal motor vehicle safety standards, drive them there on holiday, and then return to the U.S. with their vehicles. The purchasers of the vehicles for which exemptions are sought would be "European citizens who are either visiting or temporarily assigned to work in the U.S.," who would drive them in the U.S., and export them to their home countries. GM notes that these vehicles would have to be built to European safety specifications, and that this necessitates a noncompliance with two Federal motor vehicle safety standards which, absent an exemption, precludes sale and use of the cars in the United States.

The petitioner seeks a 2-year exemption to cover, as limited by 15 U.S.C. 1410, not more than 2500 vehicles each year. These vehicles are 1988–90 Cadillac Eldorado and Seville passenger cars. The vehicles would comply with all Federal motor vehicle safety standards with the exception of portions of the standards on lighting and rearview mirrors. Specifically, the headlamps will meet European (ECE R20) photometrics rather than those of Standard No. 108, the side marker lamps and reflectors will be eliminated, and the turn signals and stop lamps will meet the photometrics of ECE R7 and R6 respectively. The outside driver's side rearview mirror will be convex, and the passenger side convex mirror will not have the words "Objects in mirror are closer than they appear" etched on them.

GM argued that the noncomplying vehicles will nevertheless have an equivalent overall level of safety. The vehicles will be equipped with lamps not required by Standard No. 108, such as rear fog lamps and "side repeater (turn signal) lamps," which "will serve to improve the conspicuity of the vehicle, and in the aggregate should compensate for the photometric variances." It noted that the center highmounted stop lamp will be supplied and wired for use while the vehicles are in the U.S. Vehicles intended for use in Norway and Sweden will be equipped with daytime running lamps, while those sold to residents of Finland and Sweden will have a fluidic headlamp cleaning system. With respect to headlamp photometrics, GM stated that safety evaluation of U.S. and European specifications tends to be subjective, that each has trade offs, and that a number of countries "including Sweden, Switzerland, Canada, Japan, and the Persian Gulf States permit headlamps with either European or U.S. beam patterns." It discussed beam pattern differences. On the upper beam, minimum values for test points at 9 and 12 degrees left and right of HV will not be met but since "the primary purpose of the high beam is to provide illumination 'down the road', we do not believe that providing illumination below the minimum value at these wide test points poses a safety concern." As for the lower beam, the lamp provides only 80% of the minimum value at test point 2 D 15 R, and 67% at 1½ D 2R. But since the drivers of the cars "will be Europeans who are accustomed to the forward illumination characteristics of these vehicles" the noncompliant lighting "should provide 'equivalent safety' for these drivers compared to vehicles with headlights complying with FMVSS 108 photometrics."

As for the noncompliances with Standard No. 111, GM argued that right hand mirrors without legends are used throughout Europe. Further, many European vehicles also use convex mirrors on the driver's side. In sum, "since Europeans are more accustomed to convex mirrors than U.S. drivers, there is not safety value added by providing flat mirrors on the driver's side or the passenger side etched explanation to the users of the subject vehicles."

In addition to the supplemental lighting equipment heretofore described, the vehicles will be equipped with safety equipment not required under U.S. standards. This includes "vehicle sensitive and webbing sensitive seatbelt retractors," ECE requirements for more rounded surfaces on the inside and exterior of the vehicle, ECE requirements for antiskid braking systems, and three point seat belts at rear outboard seating positions.

GM argued that an exemption will be in the public interest in "improving the severe trade deficit currently being suffered by the U.S.," albeit in a small way. Further, the potential exists "for this type of export activity to expand in the future to include additional car models, and perhaps make a more significant contribution to reducing the deficit, provided regulatory constraints do not preclude such activity."

Four comments were received on the petition, each supporting the granting of an exemption. In the opinion of Volvo Cars of North America, a grant would help to promote international trade and the harmonization of international regulations. Volvo believes that the exempted vehicles could constitute a test fleet to "facilitate a study of the safety effectiveness of these devices." It is especially anxious that the agency study side turn signal repeaters and convex drivers's side mirrors, which, respectively it argues, enhance the conspicuity of the vehicle and eliminate blind spots. Volkswagen of America also suggests corresponding amendments to the Federal safety standards, supporting convex mirrors and arguing that differences between European and U.S. photometrics are inconsequential with respect to motor vehicle safety. Mercedes-Benz of North America argues that the ECE regulations are "*at least*" equivalent in their overall level of safety, and that any " 'perceived' but technically unsubstantiated reduction in safety is offset by improvements to overall safety by added features included on ECE version lighting and mirror systems." Specifically, it submits that the tradeoffs involved result in equivalent road illumination; the ECE systems produce less glare whereas the U.S. systems may provide better illumination of overhead non-lit road signs. It cites the experience of Canada which allows both U.S. and ECE headlamp systems to no apparent safety detriment. The amber rear turn signal lamps which would be provided

and "by NHTSA's own studies * * * have been found to provide a 14 to 15% reduction of rear-end collisions" in comparison with red ones "should offset any potential losses in rear-end accident avoidance due to a missing center highmounted stop lamp." As for the mirrors, Mercedes-Benz submits that those required by the ECE have an added safety feature in that they "fold-away" rearward and forward. The Motor Vehicle Manufacturers Association urged the Administrator to "consider actions that would allow American manufacturers to take advantage of important opportunities to increase export sales". It pointed out that many European countries allow the purchase of vehicles meeting U.S. safety and emission standards, but not meeting local ones for "temporary use" in those countries before shipment to the United States.

The agency has carefully considered the petition and the views of the commenters. In its years in interpreting the National Traffic and Motor Vehicle Safety Act, the agency has been cognizant of its anomalies and inconsistencies. For example, the Act appears to forbid without exception the importation of vehicles that do not conform to all applicable Federal motor vehicle safety standards except under such terms and conditions as may be deemed necessary to ensure that they are brought into compliance with such standards. Yet the regulations governing the importation of vehicles (19 CFR 12.80) recognize the existence of international treaties to which the United States is a party that allow entry without the legal necessity to conform of vehicles owned by certain specified classes of foreigners. Further, the terms of the Act are such that these same classes of importers cannot purchase a new American-made car in the United States unless that car meets all Federal safety standards. A vehicle that does so may not conform with the standards of the purchaser's country, requiring its purchaser either to sell the car before returning to the home country, or to pay for modifications before the vehicle is acceptable there. In the 21 years since the Act became law, not only have many countries adopted vehicle safety standards, but an international movement has grown to harmonize those standards to the extent compatible with local safety concerns. Thus today some of the differences that exist in standards could be viewed as differences more in degree than in kind.

In the instant situation, the vehicles are intended for purchase and use by persons whose countries require image-reducing mirrors and headlamps with different beam patterns. These drivers are already acclimated to the different motoring habits that use of these devices may entail, and their accident-avoidance potential should not be compromised. Nor do they appear to create safety problems for other motorists or pedestrians. Although the safety benefits of side marker lamps and reflectors will not be realized, there are other aspects of motor vehicle conspicuity not covered by Standard No. 108 which will be benefitted. Side turn signal lamps, daytime runing lamps, headlamp cleaning systems, and red rear fog lamps have no mandatory U.S. counterparts but will be fitted on exempted vehicles. In addition, the vehicles will have other safety related devices not required by the Federal safety standards, such as rear seat upper torso restraints and antilock brake systems.

In the absence of a grant, the petitioner will be unable under the Act to sell its vehicles to their intended purchasers for temporary use in the United States. In consideration of the foregoing, it is hereby found that petitioner is otherwise unable to sell a motor vehicle whose overall level of safety equals or exceeds that of nonexempted motor vehicles, in the absence of a grant, and that an exemption would be in the public interest and consistent with the objectives of the Act. Accordingly, General Motors Corporation is hereby granted NHTSA Exemption 88–1. This exemption applies to no more than 2500 Cadillac Seville and Eldorado passenger cars manufactured between August 1, 1988 and August 1, 1989, and to no more than 2500 such vehicles manufactured between August 1, 1989, and August 1, 1990. Exemption 88–1 excuses such vehicles from compliance with the requirements of 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, that they be equipped with front and rear side marker lamps and reflectors, and that their headlamps, stop lamps, and turn signal lamps meet the photometric requirements of the standard. It also excuses such vehicles from compliance with paragraphs S5.2.1 and S5.4.2 of 49 CFR 571.111 Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*.

The agency wishes to note that while it is granting this petition it does not necessarily agree with each argument presented by the commenters. Thus this notice should not be interpreted as agreement with comments that European and U.S. photometrics requirements are equivalent in terms of safety, that yellow turn signals are superior to red turn signals (contrary to the impression of Mercedes-Benz, that issue is still under review), etc. Rather, the agency's decision is based upon a finding that for the reasons given above *in toto*, the exempted vehicles provide, and will be used in a manner that provides, an equivalent overall level of safety.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on August 12, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88–18725 Filed 8–17–88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 21–88]

Treasury Notes; Series C–1998

Washington, August 11, 1988.

The Secretary announced on August 10, 1988, that the interest rate on the notes designated Series C–1998, described in Department Circular—Public Debt Series—No. 21–88 dated August 4, 1988, will be 9¼ percent. Interest on the notes will be payable at the rate of 9¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–18770 Filed 8–17–88; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series No. 20–88]

Treasury Notes; Series T–1991

Washington, August 10, 1988.

The Secretary announced on August 9, 1988, that the interest rate on the notes designated Series T–1991, described in Department Circular—Public Debt Series—No. 20–88 dated August 4, 1988, will be 8¾ percent. Interest on the notes will be payable at the rate of 8¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–18771 Filed 8–17–88; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Voluntary Service National Advisory Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the VAVS National Advisory Committee for 1987 has been issued.

The report summarizes activities of the Annual Meeting which was held in Clearwater, FL, October 23–25, 1987. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540
and
Veterans Administration, Voluntary Service (135), Room 601, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: August 10, 1988.

By the direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–18689 Filed 8–17–88; 8:45 am]

BILLING CODE 8320–01–M

Administrator's Educational Assistance Advisory Committee; Meeting

The Veterans Administration gives notice that a meeting of the Administrator's Educational Assistance Advisory Committee, authorized by 38 U.S.C. 1792, will be held in the Director's Office Conference Room, on the fourth floor of the Veterans Administration Regional Office, Federal Building, 1520 Market St., St. Louis, Missouri 63103, Thursday, September 15, 1988. The session will begin at 8 a.m. The purpose of the meeting will be to review the Montgomery GI Bill central processing operations and the Optical Disk Prototype Project.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Mary F. Leyland, Executive Secretary, Administrator's Educational Assistance Advisory Committee (phone 202–233–2152) prior to September 8, 1988.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3 p.m. on September 15, 1988.

Dated: August 9, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–18690 Filed 8–17–88; 8:45 am]

BILLING CODE 8320–01–M

Career Development Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the Lurline Room of the Fisherman's Wharf Holiday Inn, 1300 Columbus Avenue, San Francisco, California, October 5 through 7, 1988, starting at 8 a.m. October 5. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clincical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:45 a.m. to October 5, 1988, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (202–233–2317) prior to September 28, 1988. The meeting will be closed from 8:45 a.m. to 5 p.m. on October 5, 8 a.m. to 5 p.m. to October 6, 8 a.m. to 3 p.m. on October 7, for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Pub. L. 92–463 as amended, in accordance with subsection (c) (6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (phone 202–233–2317).

Dated: August 4, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–18691 Filed 8–17–88; 8:45 am]

BILLING CODE 8320–01–M

Geriatrics and Gerontology Advisory Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held in the Administrator's Conference Room on the 10th floor of the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC on September 9–10, 1988. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers established by the Department of Medicine and Surgery.

The meeting will convene at 8:30 a.m. on September 9 and adjourn at 4:30 p.m. On September 10, the meeting will convene at 8:30 a.m. and adjourn at 11:00 a.m. This will be a working session to discuss future evaluation and to develop stategies to assure that the field of geriatrics, both treatment and education, are placed in the mainstream of all VA medical activities.

The meeting is open to the public up to the seating capacity of the room. Because the capacity is limited, it will be necessary for those wishing to attend to contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care, Veterans Administration Central Office (phone 202/233–3781) prior to September 2, 1988.

Dated: August 4, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–18692 Filed 8–17–88; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010 of the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC

20420, September 20, 21 and 22, 1988. The sessions will begin at 9 a.m. The committee will be discussing case management services in the Veterans Administration. The committee encourages members of the rehabilitation community and others to comment orally or in writing on the provision of case management services.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Jeffrey Goetz, Chief, Policy and Program Development, Vocational Rehabilitation and Counseling (phone 202–233–5449) prior to September 10, 1988.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Written statements should be sent to Mr. Ronald Drach, Chairman, Veterans' Advisory Committee on Rehabilitation, c/o Disabled American Veterans, 807 Maine Avenue, SW., Washington, DC 20024. Oral statements will be heard at 2 p.m. on September 20, 1988 and at 9:30 a.m. on September 21, 1988.

Dated: August 11, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–18693 Filed 8–17–88; 8:45 am]

BILLING CODE 8320-01-M

VOL 53 ISS 160 AG 18 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 160
Thursday, August 18, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:30 a.m. October, 17, 1988.

PLACE: The Willard Intercontinental, 1401 Pennsylvania Ave., NW., Washington, DC 20004.

STATUS: Closed, pursuant to 5 U.S.C. 552 (b) (c) (1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON AND ADDITIONAL INFORMATION: Bruce D. Porter, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Mark G. Pomar,

Deputy Executive Director.

[FR Doc. 88-18820 Filed 8-16-88; 8:45 am]

BILLING CODE 6155-01-M

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VOL
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Corrections

Federal Register
Vol. 53, No. 160
Thursday, August 18, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; Department of Energy et al.

Correction

In notice document 88-18018 beginning on page 30084 in the issue of Wednesday, August 10, 1988, make the following correction:

On page 30084, in the third column, the first "*Docket Number*: 88-309" should read "*Docket Number*: 88-039".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 80736-8136]

Summer Flounder Fishery

Correction

In the issue of Friday, August 5, 1988, on page 29549 beginning in the first column, a correction to FR Doc. 88-16360 appeared. It was inaccurate and should have appeared as follows:

On page 27540, in the third column, in the file line at the end of the document, "Filed 7-20-88; 8:45 am" should read "Filed 7-18-88; 12:07 pm".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

Correction

In notice document 88-17904 appearing on page 29932 in the issue of August 9, 1988, make the following correction:

In the third column, in the table, under "Category", the first entry should read "433".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

Correction

In notice document 88-16465 beginning on page 27556 in the issue of Thursday, July 21, 1988, make the following correction:

On page 27559, in the third column, in paragraph B., in the introductory text, in the second line, "not" should read "now".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0620]

Regulation CC; Availability of Funds and Collection of Checks

Correction

In rule document 88-11267 beginning on page 19372 in the issue of Friday, May 27, 1988, make the following correction:

PART 229—[CORRECTED]

Appendix A—[Corrected]

On page 19447, in the third column, in Appendix A, under **Federal Reserve Offices**, in the first column under that heading, after the fifth entry insert "0212 0400 5".

BILLING CODE 1505-01-D

federal register

Thursday
August 18, 1988

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 256 and 281

Outer Continental Shelf Minerals and Rights-of-Way Management, General; Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf; Proposed Rule

VOL 53 ISS 160 AUG 18 1988 UMI

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 256 and 281

Outer Continental Shelf Minerals and Rights-of-Way Management, General; Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would apply to leasing minerals other than oil, gas, and sulphur in the Outer Continental Shelf (OCS) of the United States. The rule specifies leasing procedures and basic lease conditions and is intended to ensure that the affected States and the public have an early opportunity for effective participation in the leasing process. The rule would be the second in a series of three rules designed to establish a comprehensive leasing and regulatory program for OCS minerals other than oil, gas, and sulphur. The series of rules recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, permitting balanced, orderly leasing of minerals other than oil, gas, and sulphur while protecting the human, marine, and coastal environments; preserving and maintaining free enterprise competition; and minimizing or eliminating conflicts between OCS mineral activities and other uses and users of the OCS.

DATE: Comments must be hand delivered or postmarked no later than October 3, 1988.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Attention: Gerald D. Rhodes; telephone (703) 648–7816; (FTS) 959–7816.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 648–7816 or (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with prospecting for, the leasing of, and leasehold operating activities associated with the development and production of OCS minerals other than oil, gas, and sulphur. The new regulations are designed to recognize the difference between the OCS activities associated with the discovery, development, and production of oil, gas, and sulphur and those associated with the discovery, development, and production of minerals other than oil, gas, and sulphur. These regulations address issues identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees and permittees under these regulations), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the regulatory regime should be designed to do the following:

(1) Recognize the special circumstances, issues, and requirements associated with the discovery, development, and production of those OCS minerals;

(2) Assure that States, and through the States, local governments which are directly affected by OCS mineral mining activities, are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;

(3) Avoid or minimize conflicts between OCS mineral mining activities and other ocean users and uses;

(4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;

(5) Insure the public a fair and equitable return on the resources of the OCS;

(6) Preserve and maintain free enterprise competition;

(7) Encourage development of new and improved technology for OCS mineral resource development which will avoid or minimize risk of damage to the human, marine, and coastal environments; and

(8) Establish practices and procedures for wise and efficient management of the natural resources of the OCS.

This rule proposes practices and procedures specific to the activities associated with the leasing of OCS minerals other than oil, gas, and sulphur. Regulations are also being developed to govern postlease operations.

Background

On September 28, 1945, the United States declared its jurisdiction over the natural resources of the continental shelf with the Truman Proclamation, "Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed on the Continental Shelf." At the same time, President Truman placed these natural resources under the jurisdiction of the Secretary of the Interior (Secretary) by Executive Order pending the enactment of legislation. Congress passed the OCS Lands Act (OCSLA) in 1953 and delegated the administration of the OCS mineral resources of the United States to the Department of the Interior (DOI), giving legislative expression to the Truman Proclamation. Section 8(k) of the OCSLA provides the specific legal authority for leasing OCS minerals other than oil, gas, and sulphur. Section 8(k), in combination with the 20 other sections of the OCSLA which are applicable in whole or in part to OCS minerals other than oil, gas, and sulphur, provides the responsibility and authority for management of those mineral resources.

This proposed rule is an action within DOI's statutory authority and is intended to promote and encourage private enterprise in the development of economically sound and stable domestic materials industries in the United States and provides an appropraite level of protection for the human, marine, and coastal environments.

Under the National Materials and Minerals Policy, Research, and Development Act of 1980 (NMMPRDA) (30 U.S.C. 1601 *et seq.*), the President is "* * * to encourage Federal agencies to facilitate availability of domestic resources to meet critical needs." The statute further mandates that the President direct "* * * the Secretary of Interior to act immediately within the Department's statutory authority to attain the goals contained in section 21a of this title * * *." The section 21a to which the statute refers is section 21a of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) which provides the following:

> The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, * * *

President Reagan reemphasized this theme in April 1982 by stating in the National Minerals and Materials Program Plan that this country will seek to reduce its dependence on imported minerals by eliminating barriers to the development of marine minerals resources. The MMS believes that

issuance of comprehensive regulations for activities associated with OCS mineral discovery, development, and production which recognize the need for environmental protection and the avoidance of unnecessary conflict with other users of the oceans is in full accord with Federal policies. Implementation of this rule is appropriate in view of the resource potential in the areas of U.S. jurisdiction and the long lead times projected for development of certain OCS minerals other than oil, gas, and sulphur.

The lack of comprehensive regulations applicable to prospecting, leasing, and recovery of minerals other than oil, gas, and sulphur from the OCS may have inhibited interest in development of a domestic marine mining industry. This has not been the case in Europe and Asia where vigorous marine mining industries have developed with government regulation. This rule is intended to dispel uncertainty and demonstrate governmental commitment to OCS mineral development and production. Regulations in 30 CFR Parts 251 and 256 are presently applicable to OCS prelease prospecting and scientific research activities and to the leasing of all OCS minerals. However, these existing regulations were designed primarily for oil and gas and to a lesser degree sulphur, and MMS believes that there is a need for regulations specifically designed for use with OCS minerals other than oil, gas, and sulphur. For such minerals, leasing and operating criteria with respect to lease size, term, and specific operating conditions can be substantially different from those that are associated with oil, gas, and sulphur.

In the United States, industry interest in OCS mining has been focused on heavy metal placers, strategic minerals, sand and gravel, and phosphorite. Table 1 lists the permits that have been issued under existing regulations by MMS and its predecessor Agencies to prospect for OCS minerals other than oil, gas, and sulphur.

TABLE 1.—GEOLOGICAL AND GEOPHYSICAL PERMITS ISSUED TO PROSPECT FOR OCS MINERALS OTHER THAN OIL, GAS, AND SULPHUR

OCS region	Permittee	Minerals of interest	Year
Atlantic	Newport News Shipbuilding	Phosphate	1966
Pacific	Ocean Resources, Inc	Phosphorite	1967
Pacific	Bear Creek Mining Co	do	1967
Atlantic	Global Marine, Inc	Sand and gravel	1969
Atlantic	Oceans International, Inc	Heavy minerals	1969
Pacific	Global Marine, Inc	Sand and gravel	1969
Atlantic	Deepsea Ventures, Inc	Maganese nodules	1970
Gulf of Mexico	Radcliff Materials, Inc	Sand and gravel	1975
Alaska	Harding Lawson	do	1982
Alaska	Sohio	do	1982
Alaska	Tenneco	do	1982
Alaska	Geocubic	do	1983
Alaska	Geocubic	do	1983
Alaska [a]	Woodward	do	1983
Alaska [a]	Woodward	do	1983
Alaska	Sohio	do	1983
Alaska	Dames & Moore	do	1983
Alaska	Dames & Moore	do	1983
Alaska	Harding Lawson	do	1983
Alaska	Harding Lawson	do	1983
Alaska	Harding Lawson	do	1983
Alaska	McClelland	do	1983
Alaska [a]	McClelland	do	1983
Alaska [a]	Harding Lawson	do	1984
Alaska [a]	Harding Lawson	do	1984
Alaska	Ertec	do	1984
Alaska	Harding Lawson	do	1984
Alaska	Harding Lawson	do	1984
Alaska	Harding Lawson	do	1984
Alaska	MTS	do	1984
Alaska	Comap	do	1984
Alaska [a]	Comap	do	1984
Alaska	Sohio	do	1984
Alaska [a]	Sohio	do	1984
Alaska	Harding Lawson	do	1984
Alaska	Union	do	1984
Alaska	McClelland	do	1984
Alaska	McClelland	do	1984
Alaska	Harding Lawson	do	1985
Alaska	Harding Lawson	do	1986
Atlantic [b]	E.I. Du Pont de Nemours & Company, Inc.	Heavy minerals	1986
Atlantic [b]	Associated Minerals Co	do	1986
Pacific	East-West Center	Colbalt-rich crusts	1986
Alaska [b]	Inspiration Gold, Inc	Heavy minerals	1986
Atlantic	Geomarex	Carbonate sands	1987

[a] No geological or geophysical data acquisition activities were initiated under these permits.
[b] Two separate permits were issued, one for geological work and one for geophysical work.

Gold is being recoved from placer deposits in Alaska's State waters near Nome, and sand and gravel are being produced from Lake Erie and the lower bay of New York Harbor in New Jersey's and New York's State waters. Interest has been expressed in acquiring prospecting permits for sand and gravel in Federal offshore waters.

Due to the growing interest in OCS minerals, MMS is working closely with the Bureau of Mines (BOM) to assess the economic feasibility of mining OCS minerals. Two studies dealing with sand and gravel and heavy minerals were completed in early 1987: "An Economic Reconnaissance of Selected Sand and Gravel Deposits in the U.S. Exclusive Economic Zone," Open File Report 3–87, and "An Economic Reconnaissance of Selected Heavy Mineral Placer Deposits in the U.S. Exclusive Economic Zone," Open File Report 4–87. Both of these reports are available from the Bureau of Mines; Division of Minerals Availability; 2401 E Street NW.; Washington, DC 20241. Preliminary indications are that heavy mineral placers, sand and gravel, and precious metal placers in near shore waters have the nearest term potential for development. Other published studies on OCS minerals include the evaluation of cobalt-rich manganese crusts, polymetallic sulfides, and phosphorites.

The MMS is working closely with a number of coastal States through joint State/Federal task forces and other cooperative arrangements to study the engineering, economic, and environmental aspects associated with marine mining. Six such arrangements have been established involving 10 coastal States: Hawaii; Oregon and California; Georgia; North Carolina; Alabama, Louisiana, Mississippi, and Texas; and Alaska.

Most mineral production activity on the continental shelves is for sand and gravel for use as construction aggregate and fill. The most extensive marine sand mining occurs in Japan, where approximately 1,000 small dredges produce 60 to 70 million tons of sand (and some gravel) annually for use in concrete as well as for fill. This is about one-fifth of all sand and gravel mined in Japan.

The other major sand and gravel mining area in the world is northern Europe, in the North Sea and English Channel, where about 100 dredges annually produce 40 to 50 million tons of sand and gravel, largely for use as concrete aggregate. The United Kindom, the Netherlands, Denmark, and France have been the major producers. The United Kingdom obtains an estimated 15 percent of its total concrete aggregate by marine mining.

Next to sand and gravel, the largest marine mining operations are for tin in Indonesia and Thailand where significant production results from seabed dredging and where continued exploration and development can be anticipated. In Thailand, large-scale marine tin mining operations account for half of that nation's production which totaled 37,000 metric tons (tin content) in 1986.

Phosphorite deposits also hold promise for development in the near term. Some of the most promising prospects are the phosphorite deposits of the Chatham Rise east of New Zealand. A New Zealand company, Fletcher Challenge, has been exploring the deposits on the Chatham Rise in association with two West German firms, Preussag and Salzgitter. It has been reported that German mining engineers are designing mining equipment to recover these deposits which lie in 1,200 feet of water. Other prospective phosphorite deposits are located off the West Coast of Africa. These deposits have been under investigation by a French firm.

A major deep ocean mining project in the Red Sea now under consideration is the development of metalliferous muds containing zinc, copper, and silver in 6,500 feet of water. This project is now entering a pilot stage of production that will involve a 5-year investigation of mining and processing strategies. A Saudi/Sudanese joint commission is managing the project with technical assistance provided by German and French firms.

Exploration activity for manganese nodules is also continuing, at a pace significantly reduced from the 1970's, in international waters in the Clarion-Clipperton fracture zone in the northeastern equatorial region of the Pacific Ocean.

The West German firm, Preussag, in cooperation with Japanese and U.S. firms, is also conducting detailed investigations of cobalt-rich manganese crusts in the Hawaiian Archipelago and Johnston Island EEZ's as well as other mid-Pacific areas. One or more Japanese firms has been exploring for polymetallic sulfides in the Pacific basin for the past 2 years and have now added cobalt-rich manganese crusts in the mid-Pacific area to their exploration objectives.

Minerals other than oil, gas, and sulphur in the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS resource data are limited, estimated quantities of minerals associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Another strategic mineral possibility is platinum. Existing world ore reserves for these minerals are adequate in the foreseeable future, but with respect to cobalt, nickel, and manganese, they are controlled by relatively few producer countries that could potentially leverage commodity prices.

The OCS deposits that have nearer term economic potential include heavy-mineral placer containing gold, chromium, platinum-group minerals, tin, and titanium as well as sand and gravel for construction materials. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral export and an essential mineral import to many world agricultural regions.

The OCS polymetallic sulfide deposits containing zinc, copper, lead, silver, and other metals have long-term but little near-term potential as they pose new mining problems and must compete with a large number of alternative onshore domestic and foreign sources. Economic production from OCS deposits, as in onshore deposits, is ultimately dependent upon cost-competitive mining systems, ore grade, and commodity markets.

The MMS recognizes the potential for environmental impacts as a result of OCS mineral activities. These possible impacts will be identified and appropriate mitigation measures determined throughout DOI's environmental review process. Through the National Environmental Policy Act (NEPA) process, MMS's preparation of prelease environmental evaluations addressing proposals to lease in identified areas will provide a series of opportunities for public involvement in the evaluations of environmental impacts. It is anticipated that an Environmental Impact Statement (EIS) will be prepared in connection with the decision to hold the first lease sale in an area. Commodity-specific issues will be covered by specially designed lease stipulations. The mining activities and their potential impacts will be covered in more detail in the environmental evaluations carried out as part of the decisionmaking process for all phases of OCS minerals mining. Site-specific issues identified after the issuance of a lease will be addressed through the conditions of approval for operating activities.

Under this approach and based on information obtained as a result of MMS's Environmental Studies Program (ESP), MMS believes that protection of the environment can be compatible with recovery of minerals from the OCS.

Two sale-specific EIS's have been completed or are in the process of completion. They are for (1) sand and gravel in the Beaufort Sea off Alaska published as a final EIS in March 1983

and (2) cobalt-rich manganese crusts in the Hawaii and Johnston Island EEZ's published as a draft EIS. The notice of availability for the Hawaii draft EIS was published in the Federal Register on March 27, 1987 (52 FR 9958), with public comments due by June 25, 1987. The comment period was subsequently reopened from December 10, 1987, until February 8, 1988. In addition, in December 1983, MMS published a draft EIS for metalliferous sulfides in the Gorda Ridge off California and Oregon. After studies showed that industry was not interested in a lease sale in this area, the EIS was cancelled by a Federal Register Notice published March 31, 1988 (53 FR 10447).

Program History

Federal study of OCS mining began as an outgrowth of the concern with mineral shortages during and after World War II and the Korean Conflict. In the early 1950's, President Truman created the Paley Commission to investigate means to avoid shortages. This was followed by major studies by the National Academy of Sciences (NAS), the National Academy of Engineering (NAE), and others which further focused attention on the critical nature of steadily declining mineral resources in terms of U.S. and foreign supplies, U.S. vulnerability, and national goals.

During the period of 1958 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations under the OCSLA as a basis for the actions. Over $54 million were received by the Federal Government in bonuses and rents during this period (See Table 2).

TABLE 2.—MINERALS MANAGEMENT SERVICE

Lease offering	Date of offering	Location	No. of tracts offered	Acres offered	No. of tracts bid on	Total bonus high bid	No. of tracts leased	No. of bids rejected	No. of bids received
Gulf Of Mexico Salt and Sulphur Lease Offerings									
1	Oct. 23, 1954	Sul-LA	108	523,630	5	$1,233,500	5	0	5
8	May 18, 1960	Sa-LA	10	22,085	1	75,250	1	0	1
13	Dec. 14, 1965	Sul-TX	658	957,520	50	33,740,309	50	0	113
17	Sept. 5, 1967	Sa-LA	8	16,995	1	30,564	1	0	1
20	May 13, 1969	Sul-LA	120	165,695	38	3,678,045	4	34	43
S/S	Feb. 24, 1988	Sul-CGOM	51	593,971	14	15,149,327	14	0	20
Totals			955	2,279,806	109	53,906,995	75	34	183

Total amount of all bids received for all lease offerings—$82,527,068.
Total amount of all rentals for all lease offerings—$297,860.

Pacific Phosphate Lease Offering									
PH	Dec. 15, 1961	So-CA	16	80,640	6	$122,000	6	0	6

Total amount of all bids received—$122,000.
[Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.]

In 1970, in its report to Congress, the Public Land Law Review Commission concluded that the regulations associated with the OCSLA, which were designed primarily for oil and gas, were not conducive to the development of other minerals. The Commission also stated that a location system is not desirable and that where competition is known to exist, competitive bidding procedures should be utilized. The rules being proposed for leasing minerals other than oil, gas, and sulphur are consistent with the Commission's report. The benefits of leasing were reiterated in 1975 by the NAS/NAE Panel on Operational Safety in Marine Mining in its comprehensive report entitled "Mining in the Outer Continental Shelf and the Deep Ocean." This study examined basic issues including the importance and potential of OCS mining, mining technology, environmental protection and safety, regulations, and leasing. The panel recommended that operations be undertaken in representative areas.

Draft OCS hard minerals leasing and postlease operating regulations and a draft EIS were published in 1974. Following public comment, DOI undertook a series of actions culminating in the present policy of leasing on a case-by-case basis in consultation with adjacent States. A proposed long-range program for resource evaluation and lease management was drawn up by the U.S. Geological Survey (USGS) in 1974 but was not funded.

In November 1977, the Director of USGS and the Bureau of Land Management (BLM) recommended establishment of an inter-Agency task force to develop policy recommendations for leasing OCS minerals other than oil, gas, and sulphur. The resulting Program Feasibility Document, published in 1979 with 18 technical appendices, concluded that sufficient national interest and economic incentives existed to support selected commercial-scale mining in the OCS.

On January 19, 1982, DOI announced approval of the development of a leasing program for OCS minerals other than oil, gas, and sulphur on a case-by-case basis. The Secretary published a notice of interpretation in the Federal Register on December 8, 1982 (47 FR 55313), relating to DOI's jurisdiction over OCS minerals other than oil, gas, and sulphur. Further clarification was published in the Federal Register on January 19, 1983 (48 FR 2450).

The case-by-case approach to the leasing of OCS minerals other than oil, gas, and sulphur was selected to provide practical experience with the variety of potential mineral resources found in the OCS, the different potential environmental settings, and the range of potential technologies that might be used. The case-by-case approach provides for management flexibility, opportunity for effective coastal State participation, and extensive environmental review. The regulations will establish a broad regulatory framework; the subsequent lease stipulations will define site-, commodity,

and technology-specific requirements; and the appropriate public and environmental review of leasing proposals will facilitate the consultation and coordination processes authorized under Federal law.

As a first step in the preparation of regulations under this case-by-case approach, an advance Notice of proposed rulemaking to govern geological and geophysical (G&G) prospecting and scientific research relating to minerals other than oil, gas, and sulphur in the OCS was published in the **Federal Register** on December 7, 1984 (49 FR 47871); and a followup Notice of proposed rulemaking was published in the **Federal Register** on March 26, 1987 (52 FR 9758).

The MMS published an advance Notice of proposed rulemaking for leasing OCS minerals other than oil, gas, and sulphur in the **Federal Register** on April 19, 1985 (50 FR 15590).

On April 9, 1986, MMS published an advance Notice of proposed rulemaking (51 FR 12163) to govern postlease operations associated with OCS minerals other than oil, gas, and sulphur.

Public Comments and Agency Responses

The following summarizes the comments received in response to the advance Notice of proposed rulemaking. Numerous comments were received from industry, various Government Agencies (Federal, State, and local), special interest groups, and the public. Agency responses are also included.

Comment—Two commenters expressed concern that the development of lease-related mining regulations under the authority of the OCSLA at this time is both unnecessary and premature.

Response—Considerable public discussion has taken place on the necessity and timeliness of the mining regulations for the OCS. This discussion has occurred at such places as the Biennial Symposia on the U.S. Exclusive Economic Zone in 1983, 1985, and 1987 sponsored by DOI and the National Oceanic and Atmospheric Administration (NOAA); the Edwin B. Forsythe Roundtable on Ocean Hard Minerals Development sponsored by the Year of the Ocean Foundation, Oregon State University; the Ocean Mining Development and American Industry Conference in 1988 sponsored by the Center for Oceans Law and Policy, University of Virginia School of Law; and others. The OCSLA provides clear and specific authority to issue leasing regulations.

Comment—Two commenters felt that a programmatic EIS should be prepared and basic research completed before preparing leasing regulations.

Response—The heterogeneous nature of the OCS environment, coupled with the great variety of OCS mineral deposits and the numerous methods by which any one of them might be mined, leads to a conclusion that a programmatic EIS addressing all commodities and all environments would be of little value. Accordingly, MMS has decided that it could best address the environmental implications of regulations for OCS mining in a number of ways, including the following:

- Publication of OCS Report No. 87–0035, "Environmental Effects Overview: Marine Mining on the Outer Continental Shelf," to give an early overview of the nature of disturbances to be expected from OCS mining in general and to discuss what is known about the potential for environmental impacts.
- Preparation of environmental evaluations as part of DOI's consideration of an OCS minerals lease sale. These evaluations would be conducted pursuant to the NEPA process and the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508). It is anticipated that an EIS will be prepared in connection with the decision to hold the first lease sale in an area. The specific OCS mining methods to be used to produce the commodities to be developed and produced would be evaluated during the review and approval of lease operating activities. Important environmental concerns would be identified, and measures to mitigate impacts would be developed.

Comment—One commenter suggested that the law was unclear as to which Federal Agency, if any, has jurisdiction over the mining of minerals other than oil, gas, and sulphur in the OCS and that it was also unclear which Agency should have such jurisdiction.

Agency Response—The MMS believes that the law is clear as to jurisdiction for leasing OCS minerals other than oil, gas, and sulphur. Section 8(k) of the OCSLA clearly states that the "* * * Secretary is authorized to grant * * * leases of any mineral other than oil, gas, and sulphur in any area of the Outer Continental Shelf * * * upon such royalty, rental, and other terms and conditions as the Secretary may prescribe * * *." The MMS (and its predecessor Agencies) has clearly demonstrated the ability to successfully manage an OCS minerals leasing program. In addition to an active oil and gas program, MMS has issued leases for sulphur, salt, and phosphates.

Comment—The OCSLA mandates a competitive bidding system that leaves little room for alternatives. This comment was offered in the context of a suggestion that environmental considerations, including the mitigation of impacts, were not mandated as in the Deep Seabed Hard Mineral Resources Act and might, therefore, not be adequately addressed in the regulations.

Response—The MMS believes that the mandate for environmental analysis and mitigation as addressed by NEPA and reflected in the CEQ regulations found in 40 CFR Parts 1500 to 1508 applies to actions authorized under the OCSLA. Such actions are subject to the applicable provisions of the NEPA, Endangered Species Act, Clean Water Act, and other environmental protection laws and implementing regulations. Regulations are also being developed in 30 CFR Part 282 for OCS mining operations, and specific stipulations will be developed for individual lease sales. In this respect, MMS anticipates that an EIS will be prepared in connection with the decision to hold the first lease sale in an area. Additionally, all proposed lease operations will be submitted for MMS approval. Those activities will be subject to the NEPA evaluation process and the requirements of other Federal statutes. The MMS invites specific comments on the ways that these requirements are thought to be inadequate together with specific suggestions for revisions to address perceived inadequacies.

Comment—One commenter stated that industry should provide contingency plans in case of emergencies.

Response—Contingency plans which set forth actions to be taken in an emergency relate to postlease operations. Therefore, the question of a need for a contingency plan is not addressed in this proposed rule to govern leasing procedures.

Comment—One commenter recommended that lessees be required to demonstrate financial responsibility, technical capability, and integrity for the privilege of mining.

Response—The MMS agrees that it would be counterproductive for leases to be awarded to persons who lacked the ability to meet the obligations of a lessee. Under the proposed rule, financial capability would be evidenced through competitive bidding and the successful bidders' ability to secure required bond coverage. Technical capability will be evidenced by the lease operators' ability to plan and obtain approval for postlease operations.

Comment—A commenter suggested that MMS should provide for public

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participation in minerals leasing decisionmaking.

Response—The MMS is in full agreement with the suggestion. Opportunities for public involvement in minerals leasing decisions are provided through the regulatory, leasing, and NEPA processes. States in particular are being encouraged to participate jointly in planning for the development of OCS minerals. A number of coastal States have been and are actively involved in joint State/Federal task forces or other agreements that have been developed with the intent of providing better consultation and coordination as well as effective opportunities for communication and to assure a balanced consideration of Federal, State, and local concerns.

Comment—One commenter recommended that any "lease-related regulations" which MMS might issue at this time should be identified as "conditional, based on limited knowledge and subject to substantial revision."

Response—The MMS does not agree with characterization of final rules as conditional. It may be that the commenter is concerned that much still needs to be learned about the leasing of specific OCS minerals and geographical sites. The MMS proposes to address conditions relevant to specific minerals and sites in specific lease stipulations and conditions of approval for postlease operations. The regulations, on the other hand, are intended to address general requirements applicable to all OCS minerals and sites. Final regulations which emerge at the conclusion of the rulemaking process will be based on the best information available to MMS, including that obtained through public comments on this proposed rule.

Comment—One commenter suggested that the regulations require that the size and scope of offshore lease sales be specified and the specific minerals to be leased be identified.

Response—The lease notice will specify the minerals to be offered for lease, the lease size (which could range from a logical mining unit for the known minerals being offered to a vast area being offered with unknown resource potential), the time period to be covered by the lease, annual rental, royalty, including advance or minimum royalty, site- and minerals-specific protective measures to be accomplished by the lessee, and such other site- and mineral-specific lease terms and conditions as the Secretary may prescribe at the time of the offering.

Comment—One commenter stated that the regulations require analysis of the cumulative impacts of the proposed activities as well as the need for new and expanded onshore support facilities.

Response—It is not necessary or possible for the proposed regulations to analyze cumulative impacts or predict the need for or types of onshore facilities for leasing and operations not yet proposed. In complying with NEPA, cumulative impacts that could result from a proposed activity will be addressed.

Comment—One commenter suggested that the regulations provide for Federal consistency review under the Coastal Zone Management Act (CZMA) prior to leasing.

Response—The CZMA itself determines whether consistency reviews occur and, if so, when. Under the U.S. Supreme Court ruling in *Secretary of the Interior* v. *California*, 464 US 312 (1984), Federal consistency review is not applicable at the time of lease sale.

Comment—The comment was made that adequate time should be provided for exploration and production to assure the opportunity of a reasonable return on capital.

Response—The primary term of the lease generally covers that period before production during which exploration and development activities are completed. Preproduction activities for minerals on land may range from a few years for a sand and gravel pit to upward of 30 years for large and complex ore bodies in remote locations. Except for sand and gravel, the proposed rule specifies that the primary term will be for a period of not less than 20 years. The primary term specified in each leasing notice will take into consideration the economic life of a mining operation appropriate to the OCS mineral resources being leased and the location of the lease. The lease term will continue beyond the primary term for as long as the OCS minerals that are subject to the lease are being produced, or the lessee is otherwise complying with provisions of the lease and governing regulations that provide for continuance of the lease in effect.

Comment—One commenter suggested that rentals should be based on resources.

Response—The MMS expects that the mineral resources being leased will be one of the criteria considered when defining the rental that will be specified in the leasing notice.

Comment—A commenter requested that royalty rates under the leasing regulations should reflect the different cost and revenue structures for oil and gas and other minerals.

Response—The MMS recognizes that cost and revenue structures for oil and gas are different from other OCS minerals. Those differences have been taken into consideration in developing the proposed rule, and they will be considered when the royalty rate for OCS minerals is specified in a leasing notice.

Comment—One commenter suggested that the regulations provide for work commitments so as to encourage serious postlease exploration activities.

Response—The proposed rule does not specifically provide for a work commitment. However, neither does it preclude the Secretary from including such a requirement in a leasing notice.

Comment—A commenter has suggested that a bidder at a sale submit an exploration and development plan with the bid and that failure to follow the plan would result in the lease being cancelled.

Response—This suggestion was not adopted. It would be inappropriate to require such plans from the potentially multiple bidders before the award of leases. Bidders typically would not have developed all information necessary to prepare comprehensive operating plans prior to being awarded the lease. The current DOI systems of plan authorizations for onshore mineral leasing and for offshore oil and gas leasing require a lessee to submit a plan of proposed operations for MMS approval before operations can be conducted on the lease. The MMS expects to use similar procedures for the review and approval of activities to be conducted on a lease.

Comment—A State commenter pointed out that certain mineral deposits might straddle the State/Federal marine boundary which could present problems and urged that MMS join States in a cooperative approach to managing OCS minerals.

Response—To address any OCS mineral deposits which straddle State/Federal jurisdiction, DOI expects to develop an agreement with the adjacent State when joint management is needed. The agreements would assure coordination and cooperation between MMS, agencies of the adjacent State, and State and Federal lessees in order to maximize efficiency, reduce regulatory burden, and obtain the most equitable return to all parties. When a mineral deposit straddles the State/Federal boundary, the lessees of the adjoining Federal and State leases typically will negotiate an appropriate sharing agreement to cover issues that need to be addressed by owners of divided interests in a mining unit which embraces Federal and State leases.

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Comment—One commenter suggested that oil and gas regulatory models are not applicable to other minerals.

Response—The proposed rule is modeled after regulations governing solid minerals from onshore Federal leases. The MMS believes that the successful regulation of mining for OCS minerals other than oil, gas, and sulphur can be achieved better through the application of regulations designed for that purpose. However, certain principles are common to all types of leases, such as the need for appropriate environmental evaluation and protection; the opportunity for consultation and coordination with States, the public, and other Federal Agencies; fair economic return to the public on leases; and security of tenure to lessees. As a result, some similarities in the regulations are inevitable and desirable. On the other hand, there needs to be specific recognition of the unique aspects of OCS mining operations to produce minerals in a solid rather than fluid state.

Comment—One commenter was concerned with potential water quality impacts.

Response—Exploration and mining activities will be monitored to ensure the early and accurate detection of potential adverse effects on the environment. This subject will be addressed in MMS's operating regulations for OCS minerals other than oil, gas, and sulphur. In addition, the lessee will be subject to applicable laws governing water quality and to applicable regulations of other Federal Agencies.

Comment—Two commenters suggested that DOI only offer to lease tracts which have proven reserves. They asserted that DOI should know the full value of the minerals to be leased and that DOI should obtain their full value.

Response—It would be cost prohibitive and inappropriate for the Government to discover and delineate OCS mineral deposits and to evaluate those OCS mineral reserves to the extent suggested. However, it is the intent of DOI to enhance the Government's knowledge of resources through the regulatory process. The MMS will establish procedures on a sale specific basis to obtain a fair return on OCS minerals leased.

Comment—Several commenters expressed the view that the OCSLA needs to be amended to provide a legislative basis for mining in the OCS similar to the Deep Seabed Hard Minerals Resources Act.

Response—The MMS does not agree that new legislation is required. Section 8(k) of the OCSLA provides the Secretary with clear authority for the leasing of OCS minerals. Section 8(k), in combination with other provisions of the OCSLA, provides the Secretary with broad authority to prescribe appropriate terms and conditions to govern OCS mining activities. Recognizing the differences between the production of oil, gas, and sulphur and other OCS minerals, the OCSLA allows greater flexibility in the administration of a program for the development of other OCS minerals.

Comment—One commenter felt that the leasing process should be delayed until NOAA's 5-year research program is complete.

Response—The NOAA's program addresses manganese nodules in the international areas of the deep seabed which lie beyond the OCS as defined by law and the exclusive jurisdiction of the United States and, as such, will have only limited applicability to MMS's leasing program. Nevertheless, the MMS expects to utilize any of the results of that program which prove to be transferrable to OCS mineral deposits. This will be accomplished through the modification of specific provisions of individual leasing notices.

Comment—One commenter suggested that summarized resource estimates from proprietary data should be available to local governments and the public.

Response—The MMS expects to make summarized OCS resource data and information available to States and the public in a form and manner that will protect proprietary data from unauthorized disclosure.

Comment—A commenter remarked that a lessee should have no absolute right to develop and produce a lease; those rights should be contingent upon subsequently determined environmental impacts.

Response—Under the proposed regulations, lessees will obtain the exclusive right to look for, delineate, develop, mine, and process OCS minerals. The exercise of the lessee's right is contingent upon the lessee's compliance with all provisions of the lease, applicable law, and governing regulations. Compliance with the requirements of the aforementioned provisions requires that lease activities be conducted in an operationally safe and environmentally responsible manner.

Comment—One commenter suggested that Government and academic scientists should be free to conduct research on leases.

Response—Activities on a lease by anyone other than a lessee must not interfere with or endanger actual operations under any lease issued or maintained under the OCSLA. Those activities which can be conducted by scientific researchers on a lease are subject to the G&G prospecting and scientific research regulations in 30 CFR Part 280 for minerals other than oil, gas, and sulphur and 30 CFR Part 251 for oil, gas, and sulphur.

Comment—One commenter suggested that bonuses could be cash, a work commitment, or a combination of both.

Response—Section 8(k) of OCSLA specifies the Secretary grant leases for minerals other than oil, gas, and sulphur "* * * to the qualified persons offering the highest *cash* bonuses on a basis of competitive bidding * * *" (emphasis added).

Issues and Alternatives

Most of the provisions of the proposed regulations are self-explanatory. However, several of the provisions and their alternatives merit further explanation as follows. Comments are specifically invited on these issues.

(1) *Lessee Qualifications.* The MMS is committed to encouraging the rational development of mineral resources in U.S. waters. The qualification requirements set forth in 30 CFR 256.35 have served DOI's purposes well. Therefore, it is proposed that those qualifications continue to be applicable to lessees of OCS minerals other than oil, gas, and sulphur. Restrictions, if any, which might be placed upon joint bidding for a lease on OCS minerals other than oil, gas, and sulphur will be specified in the leasing notice.

(2) *Initiation of Leasing.* The leasing procedures for OCS minerals other than oil, gas, and sulphur are different from those of oil and gas in several ways. The oil and gas leasing process provides for a 5-year program for leasing; whereas, these regulations provide for leasing on a case-by-case basis. The Secretary may offer leases for OCS minerals other than oil, gas, and sulphur on DOI's initiative or when requested by an interested principal.

If DOI has not initiated the process leading to a lease sale in an area, someone who is interested in obtaining a lease covering OCS minerals could request that a lease sale be held. This is what happened in the case of the lease sale being prepared for OCS minerals off Alaska. Other interested parties, such as coastal States, could also ask the Secretary to initiate activity in an area. A State that is aware of interest in an area could recommend that a lease sale be held or that a joint State/Federal task force be formed to study the

potential of an area and initiate coordination and planning activities.

(3) *State and Other Public Participation.* Once a potential leasing area has been identified, the process would follow the procedures in the proposed rule. These leasing procedures follow many of the steps for the public participation provided for in the oil and gas regulations, but they also provide for the use of joint State/Federal task forces or other arrangements. Once a proposed leasing area is identified, leasing plans may be developed with representation from the adjacent coastal State(s) through a State/Federal task force or other mechanism as agreed upon by the Secretary and the appropriate State Governor(s). Also, under the proposed rule, adjacent State(s) will be provided other opportunities for review and comment. In addition to State opportunity to initiate activity as previously discussed, these proposed regulations also provide for public participation through scoping meetings, requests for OCS mineral information and interests, preparation of required NEPA documents for proposed lease offering, and proposed leasing notices.

Section 281.13 provides for joint State/Federal task forces and other mechanisms for coordination. These task forces and other arrangements are intended to provide for early and continued State involvement in the leasing process, to facilitate the resolution of issues of mutual interest, and to conduct other activities which the Secretary and the Governor mutually identify. Task forces of this nature have already been established in several areas and have participated in a variety of activities. For example, a task force established with the State of Oregon has conducted joint State/Federal research studies. A coordination team established with the State of Alaska will be participating in the preparation of an EIS. Another task force established with the State of Hawaii is developing a joint State/Federal EIS.

(4) *Tract Size.* Lease tracts are not planned to be limited to any predetermined size. Lease tracts for OCS minerals other than oil, gas, and sulphur may be considerably different in size as compared to oil and gas lease tracts. The size of the tracts will be determined by the OCS mineral(s) involved and by the exploration and production requirements of deposits of such minerals. For example, leases for OCS mineral deposits which occur in thin surficial layers characterized by the cobalt-rich manganese crusts off Hawaii will require a considerably larger area than a thick sand and gravel deposit or a massive sulfide deposit. In determining tract size, MMS will consider the need for a tract to be large enough to permit a volume of production sufficient to make a lease economically worth developing.

Lease tract size will also be affected by the amount of prospecting which occurs prior to a lease sale. In cases where prospecting permits are obtained and OCS minerals located prior to a lease offering, MMS will have sufficient information available to specify leases of a size which nearly approximate a logical mining unit for the OCS minerals of interest. In other cases, when there is little information on the presence of OCS minerals other than oil, gas, or sulphur, MMS may establish relatively larger tract sizes to be offered for lease as logical exploration units. When large size leases are offered to encourage the development of information and discovery of OCS minerals, the Secretary may specify a relatively low rental rate in the offer to lease.

(5) *Lease Term.* Section 281.19 indicates that except for sand and gravel, leases for OCS minerals other than oil, gas, and sulphur will be issued for a primary term of not less than 20 years as stipulated in the leasing notice. A lease term of more than 20 years may be specified when the additional time is needed to permit lessees to explore and develop the lease, taking into account the mineral resources, the environmental setting, the state-of-the-art of recovery and processing technologies, and other appropriate factors. Following commencement of production or expiration of the primary term, the lease would remain in force as long as production continues, or the lessee is otherwise complying with provisions of the lease or regulations for earning a continuance of the lease in force.

Commenters are invited to respond to the following questions.

- Is 20 years the appropriate length for the regulations to set as the minimum primary term for OCS minerals other than sand and gravel?
- Should a different minimum length be set or should no minimum be set allowing the determination to be made at the time of the leasing notice?

(6) *Leasing Notice.* A sale will be preceded by both a proposed leasing notice and leasing notice. The proposed leasing notice would propose lease sizes, duration of lease, environmental stipulations, and financial considerations which may include rentals, royalties, and bonding requirements other than those specified in the proposed rule. The proposed leasing notice will provide Federal and State agencies, industry, public interest groups, and the public an opportunity to comment on the terms and conditions proposed for specification in the leasing notice. These comments and recommendations will be considered when the Secretary decides whether the leasing notice will be developed and published or withheld.

(7) *Minimum Bid.* A minimum cash bonus bid may be specified in the leasing notice as a condition of sale. When specified, the minimum cash bonus bid would be the minimum amount which would be considered a submissible bid for the tracts being offered. The minimum bid may represent a computed value of the contained resource based on available data, or it may be based on some other criteria. It is likely that the resource data known for each tract will be different, and the following options are suggested as being available.

(a) In areas where resource data are sparse or unavailable and it is in the public interest to encourage exploration by making exclusive rights of OCS mineral discovery available to a lessee at a minimum cost, a leasing notice may omit the specification of a minimum acceptable bid. Lease tracts could be large enough (e.g., 10 blocks/58,000 acres) to allow for discovery with subsequent relinquishment of unexplored areas. Diligence and fair return could be assured through use of the special rental and royalty requirements.

(b) A minimum bid based on other criteria such as (1) a sum estimated to cover the Government's cost of the sale, (2) a sum sufficient to discourage nuisance bidding, or (3) a sum equal to an assessment per ton on MMS's estimates of recoverable resources. The latter situation might arise in the leasing of a sand and gravel tract for a specific project.

(8) *Bonus.* The proposed regulations provide that tracts be offered for lease by competitive cash bonus bids. Commenters are invited to respond to the following questions:

- Should the final rule specifically provide for deferral of a part of the cash bonus?
- If the final rule provides for deferral of a specified part of the cash bonus bid, how and when should the payment of the deferred portion be made and what mechanism should be used to assure that the deferred portion would in fact be paid?

(9) *The OCS Minerals Covered by a Lease.* Unless otherwise specified in the

leasing notice, an OCS minerals lease will include rights to all minerals, except OCS minerals already leased, oil, gas, sulphur, and reserved deposits of salt, sand, and gravel. Deposits of salt might be reserved in areas where the salt may be needed for sulphur production. Sand and gravel deposits might be reserved in areas where the sand and gravel might be needed to build gravel islands used for oil and gas or sulphur production.

The MMS believes that the option identified in the proposed rule (i.e., all minerals and all depths) encourages efficiency in the mining of OCS minerals by minimizing the environmental impacts on the leased area. To lease less than all minerals at a time would require that other OCS minerals be leased at a later time. In some cases, this would result in unnecessary repeating of environmental impacts which could be experienced once if the area is mined for all minerals at one time. In instances where limits on mineral rights are appropriate, specific limits will be identified in the proposed leasing notice allowing MMS to consider the comments of interested parties prior to publication of the leasing notice. By providing that other provisions may be specified in the leasing notice, the proposed rule retains the flexibility to permit the Secretary to issue leases limited in application to specific target mineral(s) or to specific depths below the seafloor. In cases where specific target minerals are identified in the leasing notice, the lease would also include the right to minerals produced in direct association with production of the primary minerals.

Interested parties are invited to respond to the following questions:

- Under what circumstances should MMS limit the minerals other than oil, gas, and sulphur for which mineral rights are included in a lease?
- If limits are needed for a specific lease sale, how should the limits be specified (e.g., by identifying specific minerals, by limiting depth)?

(10) *Bidding Systems.* Under the proposed rule, leases would be awarded on the basis of highest cash bonus bid as provided for in the OCSLA. Competitive cash bonus bidding provides an opportunity for more informed bidders (e.g., companies involved in prelease prospecting) to outbid their competition, thereby making economic use of the result of investments in prelease prospecting. The date, time, place, and bidding system to be used would be announced in the leasing notice. The bidding system to be used would be designed to provide a fair return to the lessor and to encourage exploration, development, and production. Two basic bidding procedures are being proposed. The leasing notice will specify which of the bidding procedures will be used at the time OCS minerals are offered for lease.

(a) *Oral Bidding*—The highest cash bonus bid at an oral auction would identify the high bidder. The leasing notice would specify conditions such as the applicable rental and royalty rates. Tract-specific minimum bids might also be specified in the leasing notice. When a minimum bid is specified in the leasing notice and a tract does not receive a bid that is equal to or greater than the specified minimum bid, the royalty rate for that tract may be sequentially reduced until a cash bonus bid equal to or greater than the specified minimum bid is received. In an oral auction, the highest bid would be accepted subject to clearance under antitrust review if it is viewed by the Secretary as representing the value of the rights to be granted under the lease. Oral bidding avoids the commitment of the winner's resources above that necessary to secure the lease. As a consequence, money which would have been "left on the table" under a sealed bidding procedure would be available to pay for future exploration and production.

(b) *Sealed bidding*—The highest cash bonus bid would identify the highest bidder. In the event the highest bids result in a tie, the winner could be determined by oral auction between or among the tied bidders. No bid would be accepted or rejected at the sale.

Subsequently, the high bidder would be notified whether the bid is accepted or rejected. Where many tracts are to be offered, sealed bidding presents certain administrative advantages. Rather than offering each tract sequentially for oral bid, sealed bids are received simultaneously and read aloud at the sale, saving considerable time.

(11) *Rentals.* The proposed rule provides that unless otherwise specified in the leasing notice, the annual rental payment specified in the lease will not apply during the first 5 years following issuance of the lease (i.e., the first payment of the annual rental specified in a lease will be due and payable on or before the fifth anniversary of a lease). The leasing notice will specify the rental payment applicable to each lease. The leasing notice may specify the escalation of rental payments.

Commenters are invited to respond to the following questions:

- Should the annual rental specified in a lease be a fixed amount (e.g., $5,000 per year) or should it be based upon the size of the area leased (e.g., $1 per acre or part thereof per year)?
- Should the regulations provide for escalating rentals?

(12) *Royalties.* Royalty is a payment to the U.S. Government of a portion of the amount or value of production saved, removed, or sold from the lease. Lease management regulations for minerals other than oil, gas, and sulphur produced from onshore Federal leases prescribed a royalty of "not less than 2 percent for sodium and potassium components and related products." The royalty that will be due under an OCS mineral lease will be specified in the leasing notice. The specified royalty is expected to be comparable to the royalty asessed on the production of similar minerals from onshore leases. The proposed rule provides that when prescribed in the leasing notice and subsequently issued lease, no royalty will be due on OCS minerals produced from a leasehold for up to any 5 years, as specified by the lessee, during the first 10 years in the life of the lease. This provision is designed to encourage early development of production.

- The MMS requests specific comments on all elements of the timing and potential effects of this proposal.

It is likely that when a fixed royalty is prescribed, the prescribed royalty will be in the range of 2 to 5 percent of the value or amount of production.

The royalty specified in the leasing notice offering an area for lease may be based on a specified percentage of the gross proceeds accruing to the lessee from the OCS minerals produced from the leasehold. A royalty based on gross proceeds accruing to the lessee results in an automatic commodity-price-adjusted return to the Government. A specified sum (e.g., $5 per ton) assessed per unit of product saved, removed, or sold from the leasehold is another form in which royalty might be specified in a leasing notice. When the royalty is expressed as a percentage of the value or amount of production or gross proceeds, MMS's Royalty Management Program regulations will be used to determine the royalty valuation basis to be used.

Commenters are invited to respond to the question of whether other royalty options should be considered.

(13) *Minimum Royalty.* Section 281.30 provides that payment of an annual minimum royalty will be required starting with the year in which OCS minerals are produced (saved, removed, and sold) from the leasehold. The leasing notice and subsequently issued lease will specify the amount of the annual minimum royalty payable under a lease. Minimum royalty payments are to be due at the beginning of and payable within 30 days following the

end of the lease year for which they are due.

(14) *Overriding Royalty.* An overriding royalty is a royalty created out of the leaseholder's interest and is in addition to that royalty paid to the U.S. Government. The proposed rule limits the total overriding royalty interest to no more than 50 percent of the royalty paid to the United States. Overrides may increase costs on a lease to the extent that they could cause premature abandonment of lease operations and may preclude the mining of marginally economic deposits which in the absence of overriding royalty costs could be produced economically. Similar curbs have been placed on overriding royalties on onshore mineral leases. These limitations preclude the development of excess overriding royalties that might discourage a new lessee from going forward with exploration, development, or production of an OCS mineral deposit.

Commenters are invited to respond to the following questions:

- Should overrides be prohibited?
- Should different limitations be provided?

(15) *Waiver, Reduction, or Suspension of Rentals or Royalties.* There may be times when a lease cannot be operated successfully under the rentals and royalties specified in a lease. This may be especially applicable in an operation such as mining OCS minerals other than oil, gas, or sulphur where costs may be especially difficult to predict. If the Secretary finds that it is in the national interest, it will result in conservation of the natural resources of the OCS, it will promote development, or the mine cannot be successfully operated under existing conditions, the Secretary may waive, reduce, or suspend the royalty specified in a lease.

(16) *Incentives.* Specific incentives to encourage the early initiation of production activities for OCS minerals other than oil and gas or sulphur have been incorporated in the proposed rule. The proposed rule provides that, unless otherwise specified in the leasing notice, there would be no rental due during the first 5 years of a lease. Also, when prescribed in the leasing notice no royalty will be due on production from a leasehold for up to any 5 years, specified by the lessee, during the first 10 years of a lease. Specification of a number of royalty-free years from the start of the lease encourages a lessee to initiate actual production at the earliest possible time.

Comments are invited concerning whether this royalty-free program is warranted to encourage early production and whether 10 years are the appropriate length of time for this royalty-free period.

Commenters are invited to provide detailed responses (including justification and proposed procedures for implementation) to the following questions:

- Should a lessee be permitted to credit part of the cost of work performed on a leasehold against future payments of rental or royalty due under a lease?
- What other specific forms of incentives should be considered for encouraging development and production of OCS minerals other than oil, gas, and sulphur?
- Should specific incentives be limited in size or application to specific OCS minerals? (Identify incentives together with the OCS minerals involved.)

(17) *Bonding.* Section 281.33 provides for the submission of a surety bond prior to the commencement of activity on a lease. The purpose of the bond is to protect the Government's financial interest in the event a lessee fails to meet royalty or other obligations under a lease.

(18) *Assignment.* Subpart D provides for assigning a lease or interests therein. When the assignment of a lease or an interest therein is approved by the Secretary, it becomes effective on the first day of the month following the month in which the request for approval is submitted to the Director unless the parties request an earlier effective date. The assignment must be accompanied by a nonrefundable filing fee. If a divided portion of a lease acreage is assigned, the assigned and retained portions become separate leases and retain the lease terms and conditions in effect at the time of the assignment.

(19) *Environmental Baseline Information.* The MMS anticipates that the first OCS mineral lease sale in an area will be preceded by the preparation of an EIS. In order to prepare an adequate document, it must contain a reasonable characterization of the environment in which the postlease activities will take place. A number of approaches will be followed in the development of the needed information.

In those instances where the MMS's Environmental Studies Program (ESP) has not and is not expected to develop needed data and information, a prospector could be required to acquire environmental information during prospecting activities under a prospecting permit so that, by the time a lease sale is being planned, all prospectors' data will collectively comprise a reasonable body of information to provide a basis for MMS's review and evaluation of the environmental impacts associated with OCS mineral development and production. Where time permits, MMS may adjust its ESP to develop the needed data and information.

Authors:

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The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that the document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The overall effect is expected to be approximately $2.2 million per year. The cost estimate is based on an expectation of two sales per year.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as the entities that engage in OCS minerals related activities are not considered small due to the technical complexity and financial resources needed to conduct those OCS activities.

The information collection requirements contained in 30 CFR Part 281 have been submitted to the Office of Management and Budget (OBM) for approval under 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB.

Public reporting burden for this collection of information is estimated to average 23.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer; Minerals Management Service; Mail Stop 631; 12203 Sunrise Valley Drive; Reston, Virginia 22091; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 281

Administrative practice and procedure, Bonds, Continental shelf, Mineral royalties, Minerals Management Service, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: July 8, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, it is proposed that 30 CFR Part 256 be amended and that a new Part 281 be added to Subchapter B of Title 30 of the CFR as follows:

PART 256—[AMENDED]

1. The authority citation for Part 256 would continue to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 131 *et seq.*, as amended, 92 Stat. 629.

§ 256.4 [Amended]

2. Section 256.4 would be amended by adding the word "and" before the word "sulphur" and by removing the words "geopressured-geothermal and associated resources, and other minerals" from the first sentence.

3. Section 256.5 would be amended by revising paragraph (k) to read:

§ 256.5 Definitions.

* * * * *

(k) "Mineral" means oil, gas, and sulphur; it includes sand and gravel and salt used to facilitate the development and production of oil, gas, or sulphur.

* * * * *

§ 256.37 [Amended]

4. Section 256.37 would be amended by removing paragraph (d).

§ 256.58 [Amended]

5. Section 256.58 would be amended by removing paragraph (d), and redesignating paragraphs (e) through (g) as paragraphs (d) through (f).

6. A new Part 281 would be added to read as follows:

PART 281—LEASING OF MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Subpart A—General

Sec.

281.0 Authority for information collection.
281.1 Purpose and applicability.
281.2 Authority.
281.3 Definitions.
281.5 Qualifications of lessees.
281.6 False statements.
281.7 Appeals.
281.8 Disclosure of information to the public.
281.9 Rights to minerals.
281.10 Jurisdictional controversies.

Subpart B—Leasing Procedures

281.11 Request for a lease sale and submission of information.
281.12 Request for OCS mineral information and interests.
281.13 Joint State/Federal coordination.
281.14 OCS mining area identification.
281.15 Tract size.
281.16 Proposed leasing notice.
281.17 Leasing notice.
281.18 Bidding system.
281.19 Lease term.
281.20 Award of leases.
281.21 Lease form.
281.22 Effective date of leases.

Subpart C—Financial Considerations

281.26 Payments.
281.27 Annual rental.
281.28 Royalty.
281.29 Royalty valuation.
281.30 Minimum royalty.
281.31 Overriding royalties.
281.32 Waiver, suspension, or reduction of rental, minimum royalty, or production royalty.
281.33 Bonds and bonding requirements.

Subpart D—Assignments

281.40 Assignment of Leases or interests therein.
281.41 Requirement for filing for transfers.
281.42 Effect of assignment on particular lease.
281.43 Effect of suspensions on lease term.

Subpart E—Termination of Leases

281.46 Relinquishment of leases or parts of leases.
281.47 Cancellation of leases.

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 131 *et seq.*, as amended, 92 Stat. 629

Subpart A—General

§ 281.0 Authority for information collection.

The information collection requirements contained in Part 281 have been submitted for approval by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number (to be added upon approval). The information is being collected to determine if the applicant for a lease on the Outer Continental Shelf (OCS) is qualified to hold such a lease or to determine if a requested action is warranted. The information will be used to make those determinations. The obligation to respond is mandatory.

§ 281.1 Purpose and applicability.

The purpose of these regulations is to establish procedures under which the Secretary of the Interior (Secretary) will exercise the authority granted to administer a leasing program for minerals other than oil, gas, and sulphur in the OCS. The rules in this part apply exclusively to leasing activities for minerals other than oil, gas, and sulphur in the OCS pursuant to the Act (43 U.S.C. 1334(a)).

§ 281.2 Authority.

The OCS Lands Act authorizes the Secretary to issue leases for any mineral other than oil, gas, and sulphur to the qualified persons offering the highest cash bonuses on the basis of competitive bidding upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease (43 U.S.C. 1337(k)) and to prescribe the rules and regulations necessary to carry out the provisions of that Act (43 U.S.C. 1334(a)).

§ 281.3 Definitions.

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.).*

"Adjacent State" means with respect to any activity proposed, conducted, or approved under this part, any coastal State—

(1) That is, or is proposed to be, receiving for processing, refining, or transshipment of OCS mineral resources commercially recovered from the seabed;

(2) That is used, or is scheduled to be used, as a support base for prospecting, exploration, testing, and mining activities; or

(3) In which there is a reasonable probability of significant effect on land or water uses from such activity.

"Director" means the Director of the Minerals Management Service (MMS) of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Governor" means the Governor or the person or entity lawfully designated to exercise the powers granted to a Governor.

"Lease" means any form of authorization which is issued under section 8 of the Act and which authorizes exploration for, and development and production of,

minerals, or the area covered by that authorization, whichever is required by the context.

"Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this chapter. The term includes all parties holding that authority by or through the lessee.

"OCS Mineral" means a mineral deposit or accretion found on or below the surface of the seabed but does not include oil; gas; sulphur; or salt, or sand and gravel intended for recovery in association with the production of oil, gas, or sulphur.

"Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Overriding royalty" means a royalty created out of the lessee's interest which is over and above the royalty reserved to the lessor in the original lease.

"Person" means a natural person, a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof and an association of such natural persons, or private, public, or municipal corporations, States, or political subdivisions of States. The term does not include Federal Agencies.

"Production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, and maintenance.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

§ 281.5 Qualifications of lessees.

(a) In accordance with section 8(k) of the Act, leases shall be awarded only to qualified persons offering the highest cash bonus bid.

(b) Mineral leases issued pursuant to section 8 of the Act may be held only by:

(1) Citizens and nationals of the United States;

(2) Aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);

(3) Private, public, or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia or territory thereof; or

(4) Associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

§ 281.6 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by up to 5 years imprisonment or a fine of $10,000, or both, for anyone knowingly and willfully to submit or cause to be submitted to any Agency of the United States any false or fraudulent statement(s) to any matters within the Agency's jurisdiction.

§ 281.7 Appeals.

Any party adversely affected by a decision of an MMS official made pursuant to the provisions of this part shall have the right of appeal pursuant to Part 290 of this title, except as provided otherwise in § 281.20 of this part.

§ 281.8 Disclosure of information to the public.

The Secretary shall make data and information available to the public in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations.

§ 281.9 Rights to minerals.

(a) Unless otherwise specified in the leasing notice, a lease for OCS minerals shall include rights to all minerals within the leased area except the following:

(1) Minerals subject to rights granted by existing leases;

(2) Oil;

(3) Gas;

(4) Sulphur;

(5) Minerals produced in direct association with oil, gas, or sulphur;

(6) Salt deposits which are identified in the leasing notice as being reserved; and

(7) Sand and gravel deposits which are identified in the leasing notice as being reserved.

(b) When an OCS mineral lease issued under this part limits the minerals to which rights are granted, such a lease shall include rights to minerals produced in direct association with the OCS mineral specified in the lease but not the rights to minerals specifically reserved.

(c) The existence of an OCS mineral, oil and gas, or sulphur lease shall not preclude the issuance of a lease(s) for other OCS minerals in the same area. However, no OCS mineral lease shall authorize or permit the lessee thereunder to unreasonably interfere with or endanger operations under an existing OCS mineral, oil and gas, or sulphur lease.

§ 281.10 Jurisdictional controversies.

In the event of a controversy between the United States and a State as to whether certain lands are subject to Federal or State jurisdiction (43 U.S.C. 1336), either the Governor or the Secretary may initiate negotiations in an attempt to settle the jurisdictional controversy. With the concurrence of the Attorney General, the Secretary may enter into an agreement with a State with respect to OCS mineral activities under the Act or under State authority and to payment and impounding of rents, royalties, and other sums; and with respect to the offering of lands for lease pending settlement of the controversy.

Subpart B—Leasing Procedures

§ 281.11 Request for a lease sale and submission of information.

(a) Any person may at any time request that OCS minerals other than oil, gas, and sulphur be offered for lease. A request that OCS minerals be offered for lease shall be submitted to the Director and shall contain the following information:

(1) The area to be offered for lease.

(2) The OCS minerals of primary interest.

(3) The available OCS mineral resource and/or environmental information pertaining to the area of interest to be offered for lease which supports the request.

(b) Within 45 days after receipt of a request submitted under paragraph (a) of this section, the Director shall either initiate steps leading to the offer of OCS minerals for lease and notify the applicant of the action taken or inform the applicant of the reasons for not initiating steps leading to the offer of OCS minerals for lease.

(c) Any interested party may at any time submit information to the Director concerning the scheduling of proposed lease sales for OCS minerals in any area of the OCS. Such information may include but not be limited to any of the following:

(1) Benefits of conducting a lease sale in an area.

(2) Costs of conducting a lease sale in an area.

(3) Geophysical hazards which could be encountered in an area.

(4) Geological information about an area.

(5) Environmental information about an area.

(6) Information about known archaeological properties in an area.

§ 281.12 Request for OCS mineral information and interests.

(a) When considering whether to offer OCS minerals for lease, the Secretary may request indications of interest in the leasing of a specific OCS mineral, a group of OCS minerals, or all OCS minerals in the area to be offered for lease. Requests for information and interest shall be published in the **Federal Register** and may be published elsewhere.

(b) States and local governments, industry, other Federal Agencies, and all interested parties (including the public) are invited to respond to a request for information and interest. All information provided to the Secretary will be considered in the decision whether to proceed with additional steps leading to the offering of OCS minerals for lease.

(c) The Secretary may request specific information concerning the offering of a specific OCS mineral, a group of OCS minerals, or all OCS minerals in a broad area for lease or the offering of one or more specified tracts which represent a minable orebody. The Secretary's request may ask for comments on OCS areas which have been determined to warrant special consideration and analysis. Requests may be for comments concerning geological conditions or historic properties on the seabed; multiple uses of the area proposed for leasing, including navigation, recreation and fisheries; and other socioeconomic, biological, and environmental information relating to the area proposed for leasing.

§ 281.13 Joint State/Federal Coodination.

(a) The Secretary may invite the adjacent State Governor(s) to join in, or the adjacent State Governor(s) may request that the Secretary join in the establishment of a State/Federal task force or some other joint planning or coordination arrangement when industry interest exists for OCS mineral leasing or geological information appears to support the leasing of OCS minerals in specific areas. Joint State/Federal task forces or other arrangements will afford adjacent States opportunities for access to available data and information about the area; knowledge of progress made in the leasing process and of the results of subsequent exploration and development activities; facilitate the resolution of issues of mutual interest; and provide a mechanism for planning, coordination, consultation, and other activities which the Secretary and the Governor may identify as contributing to the leasing process.

(b) State/Federal task forces or other such arrangements are to be constituted pursuant to such terms and conditions (consistent with Federal law and these regulations) as the Secretary and the Governor of an adjacent State(s) may agree.

(c) State/Federal task forces or other such arrangements will provide a forum which the Secretary and Governor may use for planning, consultation, and coordination on concerns associated with the offering of OCS minerals other than oil, gas, or sulphur for lease.

(d) With respect to the activities authorized under these regulations, each State/Federal task force or other such arrangement may make recommendations to the Secretary and Governor of an adjacent State concerning:

(1) The identification of areas in which OCS minerals might be offered for lease;

(2) The potential for conflicts between the exploration and development of OCS mineral resources, other users and uses of the area, and means for resolution or mitigation of these conflicts;

(3) The economic feasibility of developing OCS mineral resources in the area proposed for leasing;

(4) Potential environmental problems and measures that might be taken to mitigate these problems;

(5) Development of technical guidelines and procedures for safe, environmentally responsible exploration and development practices; and

(6) Other issues of concern to the Secretary and Governor of the adjacent States.

(e) State/Federal task forces or other such arrangements might also be used to conduct or oversee research, studies, or reports (e.g., Environmental Impact Statements).

§ 281.14 OCS mining area identification.

The Secretary, after considering the available OCS mineral resources and environmental data and information, the recommendation of joint State/Federal task forces, if any, and the comments received from interested parties, shall select the tracts to be considered for offering for lease in the leasing notice.

§ 281.15 Tract size.

The size of the tracts to be offered for lease shall be as specified in the leasing notice. The tracts offered for lease may include all or a portion of a block, two or more blocks, or portions of two or more blocks. It is intended that tracts offered for lease be sufficiently large to include potentially minable OCS mineral orebodies. When the presence of any minable orebody is unknown and additional prospecting is needed to discover and delineate OCS minerals, the size of tracts specified in the leasing notice may be substantially larger.

§ 281.16 Proposed leasing notice.

(a) Prior to offering OCS minerals in an area for lease, the Director shall assess the available information to determine lease sale procedures to be prescribed and to develop a proposed leasing notice which sets out the proposed primary term of the OCS mineral leases to be offered; special lease stipulations; and such rental, royalty, and other terms and conditions as the Secretary may prescribe in the leasing notice. Lease stipulations, terms, and conditions may include measures to mitigate potentially adverse impacts on the environment.

(b) The proposed leasing notice shall be sent to the Governor(s) of any adjacent State(s), and a Notice of its availability shall be published in the **Federal Register** at least 60 days prior to the publication of the leasing notice.

(c) Written comments of the Governor(s) submitted within 60 days after publication of the Notice of availability of the proposed leasing notice shall be considered by the Secretary.

(d) Prior to publication of the leasing notice, the Secretary shall respond in writing to the comments of the Governor of the adjacent State(s) stating the reasons for accepting or rejecting the Governor's recommendations, or for implementing any alternative mutually acceptable approach identified in consultation with the Governor(s) as a means to provide a reasonable balance between the national interest and the well-being of the citizens of the affected State.

§ 281.17 Leasing notice.

(a) The Director shall publish the leasing notice in the **Federal Register** at least 30 days prior to the date that OCS minerals will be offered for lease. The leasing notice shall state whether oral or sealed bids or a combination thereof will be used, the place, date, and time at which sealed bids shall be filed, and the place, date, and time at which sealed bids shall be opened and/or oral bids received. The leasing notice shall contain or reference a description of the tract(s) to be offered for lease; specify the mineral(s) to be offered for lease (if less than all OCS minerals other than oil, gas, and sulphur are being offered); specify the period of time the primary

term of the lease shall cover; and any special stipulation(s), term(s), and condition(s) of the offer to lease.

(b) The leasing notice shall contain a reference to the OCS minerals lease form which shall be issued to successful bidders.

(c) The leasing notice shall specify the terms and conditions governing the payment of the winning bid.

§ 281.18 Bidding system.

(a) The OCS minerals other than oil, gas, and sulphur shall be offered by competitive, cash bonus bidding under terms and conditions specified in the leasing notice and in accordance with all applicable laws and regulations.

(b)(1) When the leasing notice specifies the use of sealed bids, such bids received in response to the leasing notice shall be opened at the place, date, and time specified in the leasing notice. The opening of bids is the sole purpose of publicly announcing and recording the bids received, and no bids shall be accepted or rejected at that time.

(2) The Secretary reserves the right to reject any and all sealed bids received for any tract, regardless of the amount offered.

(3) In the event the highest bids are tie bids when using sealed bidding procedures, the tied bidders may be permitted to submit oral bids to determine the highest cash bonus bidder.

(c) When the leasing notice specifies the use of oral bids, oral bids shall be received at the place, time, and date and in accordance with the procedures specified in the leasing notice.

§ 281.19 Lease term.

An OCS mineral lease for OCS minerals other than sand and gravel shall be for a primary term of not less than 20 years as stipulated in the leasing notice. An OCS mineral lease for sand and gravel shall be for a primary term of 10 years unless otherwise stipulated in the leasing notice. The lease will continue beyond the specified primary term for so long thereafter as leased OCS minerals are being produced in accordance with an approved mining operation or the lessee is otherwise in compliance with provisions of the lease and the regulations in this chapter under which a lessee can earn continuance of the OCS mineral lease in effect.

§ 281.20 Award of leases.

(a)(1) The decision of the Secretary on bids shall be the final action of the Department with respect to such bids, subject only to reconsideration by the Secretary, pursuant to a written request within 15 days after the Secretary's decision, of the rejection of the high bid. The delegation of review authority to the Office of Hearings and Appeals shall not be applicable to decisions on high bids for leases in the OCS.

(2) Any bidder whose bid is rejected by the Secretary may file a written request for reconsideration with the Secretary within 15 days of rejection, accompanied by a statement of reasons. The Secretary shall respond in writing either affirming or reversing the decision.

(b) Written notice of the Secretary's action in accepting or rejecting bids shall be transmitted promptly to those bidders whose deposits have been held. If a bid is accepted, such notice shall transmit three copies of the lease form to the successful bidder. As provided in § 281.26 of this part, the bidder shall, not later than the 10th business day after receipt of the lease, execute the lease and pay the balance of the bonus bid. Deposits shall be refunded on high bids subsequently rejected.

(c) If the successful bidder fails to execute the lease within the prescribed time or to otherwise comply with the applicable regulations, the successful bidder's deposit shall be forfeited and disposed of in the same manner as other receipts under the Act.

(d) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, the deposit shall be refunded.

§ 281.21 Lease form.

The OCS mineral leases shall be issued on the lease form prescribed by the Secretary in the leasing notice.

§ 281.22 Effective date of leases.

Leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor except that, upon written request, a lease may be dated and become effective as of the first day of the month within which it is signed on behalf of the lessor.

Subpart C—Financial Considerations

§ 281.26 Payments.

(a) For sealed bids, a bonus bid deposit of a specified percentage of the total amount bid is required to be submitted with the bid and must be delivered to the official designated in the leasing notice. The percentage of bonus bid required to be deposited will be specified in the leasing notice. The remittance may be made in cash or by Federal Reserve check, commercial check, bank draft, money order, certified check, or cashier's check made payable to "Department of the Interior—MMS." Payment of this portion of the bonus bid may not be made by Electronic Funds Transfer.

(b) For oral bids, a bonus bid deposit of a specified percentage of the total amount bid must be delivered to the official designated in the leasing notice following the completion of the oral bidding. The percentage of bonus bid required to be deposited will be specified in the leasing notice. Payment of this portion of the bonus bid shall be made by Electronic Fund Transfer within the timeframe specified in the leasing notice.

(c) The deposit received from high bidders will be placed in a Treasury account pending acceptance or rejection of the bid. Other bids submitted under paragraph (a) of this section will be returned to the bidders. If the high bid is subsequently rejected, an amount equal to that deposited with the high bid will be returned according to applicable regulations.

(d) The balance of the winning bonus bid and all rentals and royalties must be paid in accordance with the terms and conditions of the leasing notice and Subchapter A of this chapter.

(e) For each lease issued pursuant to this subpart, there shall be one party identified per lease who shall be solely responsible for all payments due and payable under the provisions of the lease. The single responsible party shall be designated as the payor for the lease and shall be so identified on the Solid Minerals Payor Information Form (MMS–4030) in accordance with § 210.201 of this title. The designated party shall be responsible for all bonus, rental, and royalty payments.

(f) All payors must submit payments and payment information forms and maintain auditable records in accordance with the following Royalty Management regulations:

Section 202.52—Royalties.
Section 202.53—Minimum royalty.
Section 206.150—Value basis for computing royalties.
Section 210.200—Required recordkeeping.
Section 210.201—Solid minerals payor information form.
Section 210.202—Report of sales and royalty remittance—solid minerals.
Section 210.203—Special forms and reports.
Section 212.200—Maintenance of and access to records.
Section 217.250—Audits.
Section 218.40—Assessments for incorrect or late reports and failure to report.
Section 218.50—Timing of payment.
Section 218.51—Method of payment.
Section 218.52—Designated payor.
Section 218.56—Definitions.

Section 218.150—Royalties, net profit shares, and rental payments.
Section 218.151—Rentals.
Section 218.155—Method of payment.
Section 218.202—Late payment or underpayment charges.
Section 241.20—Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.

§ 281.27 Annual rental.

(a) The annual lease rental shall be due and payable in accordance with the provisions of this section. No rental shall be due or payable under a lease commencing with the first lease anniversary date following the commencement of royalty payments on leasehold production.

(b) Unless otherwise specified in the leasing notice and subsequently issued lease, no annual rental payment shall be due during the first 5 years in the life of a lease.

(c) The lessee shall pay an annual rental in the amount specified in the leasing notice and subsequently issued lease not later than the last day prior to the commencement of the rental year.

(d) A rental adjustment schedule and amount may be specified in a leasing notice and subsequently issued lease when a variance is warranted by geologic, geographic, technical or economic conditions.

§ 281.28 Royalty.

(a) The royalty due the lessor on OCS minerals produced (i.e., saved, renewed, or sold) from a lease shall be set out in a separate schedule attached to and made a part of each lease and shall be as specified in the leasing notice. The royalty due on production shall be based on a percentage of the value of the OCS minerals produced, a sum assessed per unit of product, or other such method as the Secretary may prescribe in the leasing notice. When the royalty specified is a sum assessed per unit of product, the amount of the royalty shall be subject to an annual adjustment based on changes in the appropriate price index, when specified in the leasing notice.

(b) When prescribed in the leasing notice and subsequently issued lease, royalty shall not be due on OCS minerals produced from a leasehold for up to any 5 years, as specified by the lessee, during the 1st through 10th years in the life of the lease.

§ 281.29 Royalty valuation.

The method of valuing the product from a leasehold shall be in accordance with procedures prescribed in the leasing notice and subsequently issued lease.

§ 281.30 Minimum royalty.

Unless otherwise specified in the leasing notice, each lease issued pursuant to the regulations in this part shall require the payment of a specified minimum annual royalty beginning with the year in which OCS minerals are produced (saved, removed, and sold) from the leasehold. Minimum royalty payments shall be offset by royalty paid on production during the lease year. Minimum royalty payments are due at the beginning of the lease year and payable within 30 days following the end of the lease year for which they are due.

§ 281.31 Overriding royalties.

(a) Subject to the approval of the Secretary, an overriding royalty interest may be created by an assignment. The Secretary may deny approval of an assignment which creates an overriding royalty on a lease whenever that action is determined to be in the interest of conservation, necessary to prevent premature abandonment of a producing mine, or to make possible the mining of economically marginal or low-grade ore deposits. In any case, the total of applicable overriding royalties may not exceed 2.5 percent or one-half the base royalty due the Federal Government, whichever is less.

(b) No transfer or agreement may be made which creates an overriding royalty interest unless the owner of that interest files an agreement in writing that such interest is subject to the limitations provided in § 281.30 of this part, paragraph (a) of this section, and § 281.32 of this part.

§ 281.32 Waiver, suspension, or reduction of rental, minimum royalty or production royalty.

(a) The Secretary may waive, suspend, or reduce the rental, minimum royalty, and/or production royalty prescribed in a lease for a specified time period when the Secretary determines that it is in the national interest, it will result in the conservation of natural resources of the OCS, it will promote development, or the mine cannot be successfully operated under present conditions.

(b) An application for waiver, suspension, or reduction of rental, minimum royalty, or production royalty under paragraph (a) of this section shall be filed in duplicate with the Director. The application shall contain the serial number(s) of the lease(s), the name of the lessee(s) of record, and the operator(s) or sublessee(s), if applicable. The application shall either—

(1)(i) Show the location and extent of all mining operations and a tabulated statement of the minerals mined and subject to royalty for each of the last 12 months immediately prior to filing the application;

(ii) Contain a detailed statement of expenses and costs of operating the lease, the income from the sale of any leased products, and the amount of all overriding royalties and payments out of production paid to others than the United States; and

(iii) All facts showing whether or not the mines can be successfully operated under the royalty or rental fixed in the lease; or

(2) If no production has occurred from the lease, show that the lease cannot be successfully operated under the rental, royalty, and other conditions specified in the lease.

(c) The applicant for a waiver, suspension, or reduction under this section shall file documentation that the lessee and the royalty holders agree to a reduction of all other royalties from the lease so that the aggregate of all other royalties does not exceed one-half the amount of the reduced royalties that would be paid to the United States.

§ 281.33 Bonds and bonding requirements.

Prior to the commencement of any activity on a lease(s), the lessee shall be required to submit a surety or personal bond as described in § 282.40 of this title. Prior to the approval of a Delineation, Testing, or Mining Plan, the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

Subpart D—Assignments

§ 281.40 Assignment of leases or interests therein.

(a) Subject to the approval of the Secretary, a lease may be assigned, in whole or in part, to anyone qualified to hold a lease.

(b) Any approved assignment shall be deemed to be effective on the first day of the lease month following the date that it is submitted to the Director for approval unless the parties request that an earlier effective date be specified in the Director's approval.

(c) The assignee shall be liable for all outstanding obligations under the lease and subsequent to the effective date of an assignment shall comply with all terms and conditions of the lease and applicable regulations issued under the Act.

§ 281.41 Requirement for filing for transfers.

(a) Where an assignment creates separate leases, a bond shall be furnished for each of the resulting leases in the amount precribed in § 282.40 of this title. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(b) An heir or devisee of a deceased holder of a lease or any interest therein shall be recognized as the lawful successor to such lease or interest if evidence of status as an heir or devisee is furnished in the form of—

(1) A certified copy of an appropriate order or decree of the court having jurisdiction over the distribution of the estate, or

(2) If no court action is necessary, the statements of two disinterested parties having knowledge of the fact or a certified copy of the will.

(c) The heirs or devisees shall file statements that they are the persons named as successors to the estate with evidence of their qualifications to hold such lease or interest therein.

(d) In the event an heir or devisee is unable to qualify to hold the lease or interest, the heir or devisee shall be recognized as the lawful successor of the deceased and be entitled to hold the lease for a period not to exceed 2 years from the date of death of the predecessor in interest.

(e) Each obligation under any lease and under the regulations in this part shall inure to the heirs, executors, administrators, successors, or assignees of the lease.

§ 281.42 Effect of assignment on particular lease.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions of the lease area become segregated into separate and distinct leases. In such a case, the assignee becomes a lessee of the Government as to the segregated tract that is the subject of the assignment and is bound by the terms of the lease as though the lease had been obtained from the United States in the assignee's own name, and the assignment, after its approval, shall be the basis of a new record. Royalty, minimum royalty, and annual rental provisions of the lease shall apply separately to each segregated portion.

(b) Each lease of an OCS mineral created by the segregation of a lease under paragraph (a) of this section shall continue in full force and effect for the remainder of the primary term of the original lease and so long thereafter as minerals are produced from the portion of the lease created by segregation in accordance with operations approved by the Director or the lessee is otherwise in compliance with provisions of the lease or regulations for earning the continuation of the lease in effect.

§ 281.43 Effect of suspensions on lease term.

(a) If the Director orders the suspension of either operations or production, or both, with respect to any lease in its primary term, the primary term of the lease shall be extended by a period of time equivalent to the period of the directed suspension.

(b) If the Director orders or approves the suspension of either operations or production, or both, with respect to any lease that is in force beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect.

Subpart E—Termination of Leases

§ 281.46 Relinquishment of leases of parts of leases.

(a) A lease or any part thereof may be surrendered by the record title holder by filing a written relinquishment with the Director. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to:

(1) make all payments due, including any accrued rentals and royalties; and

(2) abandon all operations, remove all facilities, and clear the land to be relinquished to the satisfaction of the Director.

(b) Upon relinquishment of a lease, the data and information acquired on the lease will no longer be held confidential and will be available to the public.

§ 281.47 Cancellation of leases.

(a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address, the Secretary may cancel the lease pursuant to section 5(c) of the Act, and the lessee shall not be entitled to compensation. Any such cancellation is subject to judicial review as provided by section 23(b) of the Act.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, the Secretary may cancel the lease only after judicial proceedings pursuant to section 5(d) of the Act, and the lessee shall not be entitled to compensation.

(c) Any lease issued under the Act, whether producing or not, may be canceled by the Secretary upon proof that it was obtained by fraud or misrepresentation and after notice and opportunity to be heard has been afforded to the lessee.

(d) The Secretary may cancel a lease in accordance with the following:

(1) Cancellation may occur at any time if the Secretary determines after a hearing that—

(i) Continued activity pursuant to such lease would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing such lease in force.

(2) Cancellation shall not occur unless and until operations under such lease shall have been under suspension or temporary prohibition by the Secretary, with due extension of any lease term continuously for a period of 5 years, or for a lesser period upon request of the lessee;

(3) Cancellation shall entitle the lessee to receive such compensation as is shown to the Secretary as being equal to the lesser of—

(i) The fair value of the canceled rights as the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, and all other costs reasonably anticipated on the lease, or

(ii) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursment) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that (a) with respect to leases issued before September 18, 1978, such compensation shall be equal to the amount specified in paragraph (d)(3)(i) of this section; and (b) in the case of joint leases which are

canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

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Part III

Department of the Interior

Minerals Management Service

30 CFR Part 282

Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur; Proposed Rule

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DEPARTMENT OF THE INTERIOR
Minerals Management Service

30 CFR Part 282

Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would establish a separate set of general regulations designed to govern postlease discovery, delineation, development, and production of minerals other than oil, gas, and sulphur within the Outer Continental Shelf (OCS) of the United States. The proposed rule recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, allowing balanced orderly postlease discovery, delineation, development, and production of minerals other than oil, gas, and sulphur, while protecting the human, marine, and coastal environments; preserving and maintaining free enterprise competition; and minimizing or eliminating conflicts between OCS mineral activities and other users and uses of the OCS. Specific requirements applicable to the specific mineral resources that are to be offered for lease would be included in the leasing notice at the time tracts on the OCS are offered for lease. The rule would be the third and final in a series of rules implementing a comprehensive leasing and regulatory program for OCS minerals other than oil, gas, and sulphur.

DATE: Comments must be hand delivered or postmarked no later than October 3, 1988.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive, Mail Stop 646, Reston, Virginia 22091; Attention: Gerald D. Rhodes, telephone (703) 648–7816, (FTS) 959–7816.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648–7816, (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with prelease prospecting, leasing, and operating activities associated with production of minerals other than oil, gas, and sulphur. The new regulations are designed in recognition of the differences between the OCS activities associated with the discovery, development, and production of oil, gas, and sulphur and those associated with minerals other than oil, gas, and sulphur. These regulations address issues identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the new regulatory regime should be designed to do the following:

(1) Recognize the special circumstances, issues, and requirements associated with the discovery, development, and production of OCS minerals other than oil, gas, and sulphur;

(2) Assure that States, and through the States local governments, which are directly affected by OCS mineral mining activities are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;

(3) Avoid or minimize conflicts between OCS mineral mining activities and other users and uses of OCS resources;

(4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;

(5) Insure the public a fair and equitable return on the resources of the OCS;

(6) Preserve and maintain free enterprise competition;

(7) Encourage development of new and improved technology for producing OCS mineral resources other than oil, gas, and sulphur which will avoid or minimize risk of damage to the human, marine, and coastal environments; and

(8) Establish practices and procedures for postlease mineral activities and wise management of the natural resources of the OCS.

This proposed rule is designed to govern postlease activities to discover, develop, produce, and process OCS minerals other than oil, gas, and sulphur.

A final rule is to be published as the first part of the regulatory regime to govern OCS mineral mining activities. It establishes practices and procedures specific to prelease activities associated with geological and geophysical (G&G) exploration and scientific research for OCS minerals other than oil, gas, and sulphur. Regulations are also being proposed to govern the leasing of such OCS minerals.

Background

On September 28, 1945, the United States declared its jurisdiction over the natural resources of the continental shelf with the Truman Proclamation, "Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed on the Continental Shelf." At the same time, President Truman placed these natural resources under the jurisdiction of the Secretary of the Interior (Secretary) by Executive Order pending enactment of legislation. Congress passed the OCS Lands Act (OCSLA) in 1953 and delegated the administration of the OCS mineral resources of the United States to the Department of the Interior (DOI), giving legislative expression to the Truman Proclamation. Section 8(k) of the OCSLA provides specific legal authority for leasing minerals other than oil, gas, and sulphur in the OCS. Used in conjunction with other applicable sections of the OCSLA and other laws, this authority provides the Secretary with adequate flexibility and guidelines to administer an OCS minerals mining program.

This proposed rule is an action within the statutory authority of DOI and is intended to promote and encourage private enterprise in the development of economically sound and stable domestic materials industries in the United States which provides the appropriate level of protection for the human, marine, and coastal environments.

Under the National Materials and Minerals Policy, Research, and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the President is "* * * to encourage Federal agencies to facilitate availability of domestic resources to meet critical needs." The statute further mandates that the President direct "* * * the Secretary of the Interior to act immediately within the Department's statutory authority to attain the goals contained in section 21a of this title * * *." Section 21a of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) provides as follows:

> The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, * * *.

President Reagan reemphasized these themes in April 1982 by stating in the National Minerals and Materials Program Plan that this country will seek

to reduce its dependence on imported minerals by eliminating barriers to the development of marine mineral resources. The MMS believes that issuance of comprehensive regulations for the guidance of activities associated with OCS mineral discovery, development, and production which recognizes the need for protection of the environment and avoidance of unnecessary conflicts with other users of the oceans is in full accord with Federal policies. Implementation of the proposed rule is appropriate in view of the resource potential in areas of U.S. jurisdiction and the long lead times projected for development of certain OCS minerals other than oil, gas, and sulphur.

The lack of comprehensive regulations applicable to the discovery, delineation, development, and production of minerals other than oil, gas, and sulphur from the OCS may have inhibited interest in development of a domestic marine mining industry. This has not been the case in Europe and Asia where vigorous marine mining industries have developed with government regulation. This proposed rule is intended to dispel uncertainty and demonstrate governmental commitment to OCS minerals development and production. Regulations in 30 CFR Parts 251 and 256 are presently applicable to prelease G&G exploration and scientific research activities and to the leasing of all OCS minerals. However, those existing regulations were designed primarily for oil and gas and to a lesser degree sulphur, and MMS believes that there is a need for regulations which are more specifically designed for use with OCS minerals other than oil, gas, and sulphur. For such minerals, leasing and operating criteria with respect to lease size, lease terms, life of a lease, rentals, royalties, and operating conditions can be substantially different from those that are associated with oil, gas, and sulphur.

In the United States, industry interest in OCS mining has been focused on gold and other heavy mineral placers, strategic minerals, sand and gravel, and phosphorite. On March 11, 1988, the MMS published a Request for Comments and Nominations for a Lease Sale in Norton Sound in the **Federal Register** (53 FR 8134). Table 1 lists the permits that have been isued under existing regulations by MMS and its predecessor Agencies to allow prospecting for OCS minerals other than oil, gas, and sulphur.

TABLE 1.—GEOLOGICAL AND GEOPHYSICAL PERMITS ISSUED BY DOI TO PROSPECT FOR OCS MINERALS OTHER THAN OIL, GAS, AND SULPHUR

OCS region	Permittee	Minerals of interest	Year
Atlantic	Newport News Shipbuilding	Phosphate	1966
Pacific	Ocean Resources, Inc	Phosphorite	1967
Do	Bear Creek Mining Co	do	1967
Atlantic	Global Marine, Inc	Sand and gravel	1969
Do	Ocean International, Inc	Heavy minerals	1969
Pacific	Global Marine, Inc	Sand and gravel	1969
Atlantic	Deepsea Ventures, Inc	Manganese nodules	1970
Gulf of Mexico	Radcliff Materials, Inc	Sand and gravel	1975
Alaska	Harding Lawson	do	1982
Do	Sohio	do	1982
Do	Tenneco	do	1982
Do	Geocubic	do	1983
Do	do	do	1983
Do[a]	Woodward	do	1983
Do[a]	do	do	1983
Do	Sohio	do	1983
Do	Dames & Moore	do	1983
Do	do	do	1983
Do	Harding Lawson	do	1983
Do	do	do	1983
Do	do	do	1983
Do	McClelland	do	1983
Do[a]	do	do	1983
Do[a]	Harding Lawson	do	1984
Do[a]	do	do	1984
Do	Ertec	do	1984
Do	Harding Lawson	do	1984
Do	do	do	1984
Do	do	do	1984
Do	MTS	do	1984
Do	Comap	do	1984
Do[a]	do	do	1984
Do	Sohio	do	1984
Do[a]	do	do	1984
Do	Harding Lawson	do	1984
Do	Union	do	1984
Do	McClelland	do	1984
Do	do	do	1984
Do	Harding Lawson	do	1985
Do	do	do	1986
Atlantic[b]	E.I. Du Pont de Nemours & Company, Inc	Heavy minerals	1986
Do[b]	Associated Minerals Co	do	1986
Pacific	East-West Center	Cobalt-rich crusts	1986
Alaska[b]	Inspiration Gold, Inc	Heavy minerals	198
Atlantic	Geomarex	Carbonate sands	1987

[a] No geological or geophysical data acquisition activities were initiated under these permits.
[b] Two separate permits were issued, one for geological work and one for geophysical work.

Gold is being recovered from placer deposits in Alaska's State waters near Nome. Sand and gravel are being produced from Lake Erie and in Long Island Sound and New York Harbor in New York's and New Jersey's State waters. Interest has been expressed in acquiring prospecting permits for sand and gravel in Federal offshore waters.

Due to the growing interest in OCS minerals, MMS is working closely with the Bureau of Mines (BOM) to assess the economic feasibility on mining OSC minerals other than oil, gas, and sulphur. Two studies dealing with sand and gravel and heavy minerals were completed in early 1987. The studies are "An Economic Reconnaissance of Selected Sand and Gravel Deposits in the U.S. Exclusive Economic Zone," Open File Report 3–87, and "An Economic Reconnaissance of Selected Heavy Mineral Placer Deposits in the U.S. Exclusive Economic Zone," Open File Report 4–87. Both of these reports are available from the Bureau of Mines, Division of Minerals Availability, 2401 E Street, NW., Washington, DC 20241. Preliminary indications are that heavy mineral placers, sand and gravel, and precious metal placers in near-shore waters have the greatest potential for near term development. Other published studies on OCS minerals include the evaluation of cobalt-rich manganese crusts, polymetallic sulfides, and phosphorites.

The MMS is working closely with a number of coastal States through joint State/Federal task forces and other arrangements to study the engineering, economic, and environmental aspects associated with marine mining. A special working group with Alaska and 5 task forces have been established involving 9 coastal States: Hawaii; Oregon and California; Georgia; North Carolina; and Alabama, Louisiana, Mississippi, and Texas.

Most mineral activity on continental shelves is for sand and gravel for use as construction aggregate and fill. The most extensive marine sand mining occurs in Japan where approximately 1,000 small dredges produce 60 to 70 million tons of sand (and some gravel) annually for use in concrete as well as for fill. This is about one-fifth of all sand and gravel mined in Japan.

The other major sand and gravel mining area in the world is northern Europe, in the North Sea and English Channel, where about 100 dredges annually produce 40 to 50 million tons of sand and gravel, largely for use as concrete aggregate. The United Kingdom, the Netherlands, Denmark, and France have been the major producers. The United Kingdom obtains an estimated 15 percent of its total concrete aggregate by marine mining.

Next to sand and gravel, the largest marine mining operations are for tin in Indonesia and Thailand where significant production results from seabed dredging and where continued exploration and development can be anticipated. In Thailand, large-scale marine tin mining operations account for half of that nation's production which totaled 37,000 metric tons (tin content) in 1986.

Phosphorite deposits also hold promise for development in the near term. One of the most promising prospects are the phosphorite deposits of the Chatham Rise east of New Zealand. A New Zealand company, Fletcher Challenge, has explored the deposits on the Chatham Rise in association with two West German firms, Preussag and Salzgitter. It has been reported that German mining engineers are designing mining equipment to recover these deposits which lie in 1,200 feet of water. Other prospective phosphorite deposits are located off the West Coast of Africa. These deposits have been under investigation by a French firm.

A major deep ocean project in the Red Sea now under consideration is the development of metalliferous muds containing zinc, copper, and silver in 6,500 feet of water. This project is now entering the pilot stage of production that will involve a 5-year investigation of mining and processing strategies. A Saudi/Sudanese joint commission is managing the project with technical assistance being provided by German and French firms.

Exploration activity for manganese nodules is also continuing, at a pace significantly reduced from the 1970's, in international waters in the Clarion-Clipperton fracture zone in the northeastern equatorial region of the Pacific Ocean.

The West German firm, Preussag, in cooperation with Japanese and U.S. firms, is also conducting detailed investigations of cobalt-rich manganese crusts in the Hawaiian Archipelago and Johnston Island Exclusive Economic Zone (EEZ) as well as other mid-Pacific areas. One or more Japanese firms have been exploring for polymetallic sulfides in the Pacific basin for the past 2 years and have now added cobalt-rich manganese crusts in mid-Pacific areas to their exploration objectives.

Minerals other than oil, gas, and sulphur in the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS resource data are limited, estimated quantities of minerals associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Existing world ore reserves of these minerals are adequate for the foreseeable future, but they are controlled by relatively few producer countries that could potentially have leverage over commodity prices.

The OCS deposits that have nearer term economic potential include heavy mineral placers containing gold, chromium, platinum-group minerals, tin, and titanium, as well as sand and gravel for construction material. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral export and an essential mineral import to many world agricultural regions.

The OCS polymetallic sulfide deposits containing zinc, copper, lead, silver, and other metals have long-term but little near-term potential as they pose new mining problems and must compete with a large number of alternative onshore domestic and foreign sources. Economic production from OCS deposits, as in onshore deposits, is ultimately dependent upon cost-competitive mining systems, ore grade, and commodity markets.

The MMS recognizes the potential for adverse environmental impacts as a result of OCS mineral activities. These possible impacts will be identified and appropriate mitigation measures determined as part of DOI's environmental review process. Some potential impacts that may be postulated now will never come to pass as experience provides added knowledge and modifies expectations and practices. Under DOI's case-by-case approach, issues common to all forms of OCS mining and all commodities will be covered by regulations governing G&G prosepcting, scientific research, leasing, and operations. Using this case-by-case approach, mitigation measures can be defined with specificity as mineral resource targets are identified and recovery methods are proposed. Commodity-specific issues will be covered by specially designed lease stipulations specified at the time the OCS minerals are offered for lease. Site-specific issues identified after the issuance of a lease will be addressed through conditions of approval for the conduct of postlease operations. Based on this approach and information obtained as a result of MMS's Environmental Studies Program (ESP), MMS believes that protection of the

environment can be compatible with the recovery of minerals from the OCS.

The MMS has prepared OCS Report No. 87–0035, "Environmental Effects Overview: Marine Mining on the Outer Continental Shelf," to provide the public with an early overview of the likely mining activities and potential impacts on the environment resulting from OCS mining operations. The likely mining activities and their potential impacts will be covered in more detail in the environmental evaluations carried out as part of the decisionmaking process for all phases of OCS mining.

Detailed coverage of potential environmental issues is not practicable at this point since may uncertainties remain at this early stage with respect to the nature, magnitude, location, and rate of future mining. Many types of ore deposits exist in a variety of environmental settings requiring a diverse set of mining technologies. This raises questions whether a meaningful assessment can be conducted at this time. However, this regulatory program is designed to ensure that environmental evaluations will be prepared prior to approval of postlease operations.

Further, through the National Environmental Policy Act (NEPA) process, MMS's preparation of prelease environmental evaluations addressing proposals to lease commodities in identified areas will provide a series of opportunities for public involvement in the evaluation of environmental impacts. It is anticipated that an Environmental Impact Statement (EIS) will be prepared in connection with the decision to hold the first lease sale in an area. The additional site-specific and technology-specific environmental evaluations which will be conducted with respect to proposed postlease operations will provide additional opportunities for public participation.

Two sale-specific EIS's have been completed or are in the process of completion. They are for (1) sand and gravel in the Beaufort Sea off Alaska published as a final EIS in March 1983, and (2) cobalt-rich manganese crusts in the Hawaii and Johnston Island EEZ's published as a draft EIS. The notice of availability for the Hawaii draft EIS was published in the **Federal Register** on March 27, 1987 (52 FR 9958), with public comments due by June 25, 1987. The comment period was subsequently reopened from December 10, 1987, until February 8, 1988. A draft EIS for metalliferous sulfides in the Gorda Ridge area off California and Oregon was published in December 1983. This EIS was cancelled in a **Federal Register** Notice dated March 31, 1988 (53 FR 10447). On March 11, 1988, the MMS published a Notice of Intent to Prepare an Environmental Impact Statement in the **Federal Register** (53 FR 8134) in association with its requests for Comments and Nominations for a Lease Sale in Norton Sound. Lease sale EIS's such as these will be augmented by additional environmental documentation prior to the approval of postlease development and production operations.

Program History

Federal study of OSC mining began as an outgrowth of the concern with mineral shortages during and after World War II and the Korean Conflict. In the early 1950's, President Truman created the Paley Commission to investigate means to avoid shortages. This was followed by major studies by the National Academy of Sciences (NAS), the National Academy of Engineering (NAE), and others which further focused attention on the critical nature of steadily declining mineral resources in terms of U.S. and foreign supplies, U.S. vulnerability, and national goals.

During the period of 1958 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations promulgated under the OCSLA as a basis for the actions. Over $54 million were received by the Federal Government in bonuses and rents during this period (see Table 2).

TABLE 2

GULF OF MEXICO SALT AND SULPHUR LEASE OFFERINGS

Lease offering	Date of offering	Location	No. of tracts offered	Acres offered	No. of tracts bid on	Total bonus high bid	No. of tracts leased	No. of bids rejected	No. of bids received
1	10/23/54	Sul–LA	108	523,630	5	$1,233,500	5	0	5
8	5/19/60	Sa–LA	10	22,085	1	75,250	1	0	1
13	12/14/65	Sul–TX	658	957,520	50	33,740,309	50	0	113
17	9/05/67	Sa–LA	8	16,995	1	30,564	1	0	1
20	5/13/69	Sul–LA	120	165,605	38	3,678,045	4	34	43
S/S	2/24/88	Sul–CGOM	51	593,971	14	15,149,327	14	0	20
Totals			955	2,279,806	109	53,906,995	75	34	183

Total Amount of All Bids Received for All Lease Offerings—$82,527,068.
Total Amount of All Rentals for All Lease Offerings—$297,860.

PACIFIC PHOSPHATE LEASE OFFERING

Lease offering	Date of offering	Location	No. of tracts offered	Acres offered	No. of tracts bid on	Total bonus high bid	No. of tracts leased	No. of bids rejected	No. of bids received
PH	12/15/61	So–CA	16	80,640	6	$122,000	6	0	6

Total Amount of All Bids Received—$122,000.
(Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.)

In its 1970 report to Congress, the Public Land Law Review Commission (Commission) concluded that the regulations associated with the OCSLA, designed primarily for oil and gas development, were not conducive to the development of other minerals. The Commission also stated that a location system is not desirable and that competitive bidding procedures should be utilized where competition is known to exist. The rules being proposed for the leasing of OCS minerals other than oil, gas, and sulphur are consistent with the Commission's report. The benefits of

leasing were reiterated in 1975 by the NAS/NAE Panel on Operational Safety in Marine Mining in its comprehensive report entitled "Mining in the Outer Continental Shelf and the Deep Ocean." This study examined basic issues including the importance and potential of OCS mining, mining technology, environmental protection and safety, regulations, and leasing. The panel recommended that operations be undertaken in representative areas.

Draft OCS hard minerals leasing and postlease operating regulations and a draft EIS were published in 1974. Following public comment, DOI undertook a series of actions culminating in the present policy of leasing on a case-by-case basis in consultation with adjacent States. A proposed long-range program for resource evaluation and lease management was drawn up by the U.S. Geological Survey (USGS) in 1974 but was not funded.

In November 1977, the Directors of the USGS and the Bureau of Land Management (BLM) recommended establishment of an inter-Agency task force to develop policy recommendations for leasing OCS minerals other than oil, gas, and sulphur. The resulting Program Feasibility Document, published in 1979 with 18 technical appendices, concluded that sufficient national interest and economic incentives existed to support selected commercial-scale mining in the OCS.

On January 19, 1982, DOI announced approval of the development of a leasing program for OCS minerals other than oil, gas, and sulphur on a case-by-case basis. The Secretary published a Notice of interpretation in the **Federal Register** on December 8, 1982 (47 FR 55313), relating to DOI's jurisdiction over minerals other than oil, gas, and sulphur. Further clarification was published on January 19, 1983 (48 FR 2450).

The case-by-case approach to the leasing of OCS minerals other than oil, gas, and sulphur was selected to provide practical experience with the variety of potentially reservable mineral resources found in the OCS, the different potential environmental settings, and the range of potential technology that might be used. The case-by-case approach provides for management flexibility, opportunity for effective coastal State participation, and comprehensive environmental review. The regulations will establish a broad regulatory framework; the subsequent lease stipulations will define site-, commodity-, and technology-specific requirements; and the appropriate public and environmental review of leasing proposals and proposed postlease operations will facilitate the consultation and coordination processes authorized under Federal law.

On April 9, 1986, MMS published an advance Notice of proposed rulemaking for regulations to govern postlease operations (51 FR 12163). Responses to the advance Notice for postlease operations are summarized in the section on Public Comments and Agency Responses.

Regulation Organization

This proposed rule covers activities conducted on a lease for minerals other than oil, gas, and sulphur in the OCS. The rule is subdivided into five subparts. The vast majority of the provisions fall under two subparts, Subpart B, Jurisdiction and Responsibilities of Director, and Subpart C, Obligations and Responsibilities of Lessees. The remaining subparts are Subpart A, General; Subpart D, Payments; and Subpart E, Appeals. While many activities are covered by the provisions of a particular subpart, some activities are subject to provisions contained in more than one subpart. For example, suspensions of operations are addressed in both Subparts B and C, because they can either be directed by MMS or requested by a lessee.

The provisions which govern lessee obligations and responsibilities for activities to be carried out on a lease are covered in Subpart C. Basically, a lessee's activities will fall into one or more of three categories: Exploration, testing, or mining and processing. Activities must be conducted in accordance with an approved plan. No activity may be conducted that is not included in the description of activities under an approved plan. An exception is made for preliminary activities; i.e., those casual-entry activities which have little or no environmental impact and which are necessary to prepare a reasonable delineation, testing, or mining plan. Requirements for the safe conduct of mining activities and environmental protection and monitoring are also in Subpart C. To aid the lessee, reporting and recordkeeping requirements other than those associated with delineation, testing, and mining plans are given in § 282.31.

Discussion of Proposed Regulations

Provisions of the proposed rule are discussed below. The explanation given is designed to avoid confusion and provide clarification. Comments are specifically invited on the issues discussed.

Public Participation. Opportunities for public participation similar to those that are part of the prospecting and the proposed leasing processes are also proposed for inclusion in the review, evaluation, and approval process for postlease activities. For example, a site-specific environmental evaluation will be made in association with the technical and environmental evaluation of activities proposed in delineation, testing, and mining plans. Members of the public who wish to review and comment on proposed plans may arrange for access to the nonproprietary portions of each plan while it is being evaluated by MMS. Where applicable, States will have additional review opportunities under the Coastal Zone Management Act.

Are there any other areas where opportunities for public participation should be provided?

Data and information to be made available to the public. The rule proposes that proprietary G&G interpretations, maps, and other data and information (including commercial and financial information) required to be submitted under the proposed rule will be protected from unauthorized release so long as the lease is held on the lands involved. The proposed provision to protect proprietary data and information from unauthorized disclosure for the duration of the lease parallels the protection that is provided for data and information submitted under onshore mineral leases for minerals other than oil, gas, and sulphur. This proposal is based upon the view that during the development phase of an offshore mineral industry proprietary data and information submitted by a lessee should be protected for at least as long as similar data and information would be protected under rules governing onshore mineral leases.

The MMS bases the determination that particular data or information are proprietary on several criteria. Should these rules detail the categories to be considered proprietary, and if so, what should the categories be?

Mining units. It is anticipated that leases for minerals other than oil, gas, and sulphur will cover an area that embraces one or more economically minable orebodies. Section 282.11(d) provides for the formation of mining units in order that orebodies which underlie portions of more than one lease may be mined in the most efficient and economical manner. Operations on any lease included in the mining unit will be considered as operations on each of the leases within the mining unit and will keep each of those leases in force even if there is no production from an individual lease. Minimum royalties paid on any Federal lease in the unit can

be credited against the royalties due on production under any Federal lease in the unit. Leases on disputed lands and State leases may be included in mining units in accordance with agreements between the Governor and the Secretary, pursuant to § 282.8. However, all payments due under State and Federal leases shall be accounted for separately.

Bonds. Section 282.40 provides for the submission of a surety or personal bond prior to the commencement of any activity on a leasehold. The purpose of the bond is to protect the Government's financial interest in the event a lessee fails to meet a royalty or other obligation under a lease.

Plans. Sections 282.21 through 282.27 require a lessee to submit and obtain the Director's approval for comprehensive delineation, testing, or mining plans, as appropriate, before significant activity can begin on a lease. The approval process may be iterative, requiring the lessee to resubmit the plans containing modified sections as necessary. Certain preliminary activities such as bathymetric and geophysical surveying which would not cause adverse environmental impacts are exempt from prior approval; however, the Director must be notified at least 30 days in advance of the initiation of preliminary activities. These activities may be necessary to supplement information developed through prelease prospecting activities in order to better identify site-specific exploration targets. Delineation, testing, and mining plans must describe in detail the activities to be conducted including exploration, mining, mineral processing methods and rates, transportation corridors, equipment, time periods, locations, and the nature and degree of any potential environmental impacts of the activities proposed. Sufficient information must be provided so that the Director will have a basis on which to make informed judgments with respect to the plan's proposed activities and MMS's responsibilities for natural resource conservation and protection of human life and the environment. Approvals of proposed activities described in a plan are contingent upon the results of MMS's technical and environmental evaluations of the lessee's ability to comply with the requirements of the lease and applicable laws and regulations while performing the activities described in the plan.

The need for plans governing exploration and testing activities will depend upon the availability of adequate data and information to develop a comprehensive mining plan. As an example, it is anticipated that most sand and gravel operations will not need a delineation or testing plan. Knowledge of the deposit and the existence of tested mining methods could allow a lessee to submit a mining plan without conducting postlease exploration or testing activities. The testing plan provides for an interim phase during which extraction technologies and equipment can be evaluated and operating experience developed. Once sufficient information is available, the lessee may prepare and submit a mining plan. Plans are to include detailed descriptions for the abandonment of lease operations including cleanup actions.

When environmental data and information are insufficient to allow impact assessment, proposed plans must include descriptions of the lessee's comprehensive plans to monitor the environmental effects of proposed operations, including the time period to be covered and the scope of the proposed monitoring program. It is anticipated that there will be some degree of environmental monitoring described in each plan submitted for MMS approval. If sufficient information is not available, the Director may require incorporation of contingency measures into a lessee's proposed plan. The contingency measures will establish procedures that employees of the lessee are to follow in the event of any equipment or procedural failure that could threaten safety or seriously harm or damage the marine, coastal, or human environment.

Proposed changes in delineation, testing, and mining plans that reflect changed conditions, new data or information, oversights, etc., must be approved by the Director prior to the initiation of those changes.

Platforms. Provisions are included to require that installations and structures placed on the OCS are designed, fabricated, installed, used, inspected, and maintained in a manner that assures their structural integrity. In those cases where a platform or other structure is fixed or bottom founded, the lessee is required to comply with the requirements of Subpart I of 30 CFR Part 250 (published in the **Federal Register** on April 1, 1988 (53 FR 10739)) which govern the design, fabrication, and installation of OCS platforms and other bottom-founded structures. This approach utilizes an existing process for approving OCS installations and structures and for assuring the structural integrity of those facilities throughout their productive life. Subpart I sets out a two-tier system which requires third-party verification and more extensive documentation when an installation or structure utilizes unique technologies. In those instances where operations will be conducted from floating platforms or vessels, there are a number of applicable U.S. Coast Guard (USCG) requirements that relate to navigational aids and the stationkeeping ability of the vessel.

Drilling. Drilling operations associated with OCS minerals exploration, testing, and mining will normally require many more drill holes of a smaller diameter to a shallower depth than is the case with oil and gas operations. For example, in the evaluation and development of a placer deposit of gold or cassiterite (tin oxide), drill holes generally will be less than 30 meters (m) deep and spaced as closely as 30 m apart. To evaluate such a deposit, containing 60 million m^3 of ore for 20 years production, some 2,000 holes each perhaps 20 centimeter (cm) diameter and 25 m deep may be required. To develop a deposit of bedded phosphorite for slurry mining through boreholes, a similar spacing of 50 cm diameter holes to depths of several hundred meters may be required. To evaluate a massive sulfide deposit, several thousand small-diameter (less than 10 cm) drill holes may be required. In each case, the drilling technology used will be quite different and not interchangeable. Drilling for hard mineral resources generally will not be done in horizons that contain oil, gas, or geothermal resources, but where this might arise, appropriate safety measures will be required. Provision is made in the proposed rules for appropriate blowout prevention equipment to be installed and operated. The procedures required will be the same as those required under normal oil and gas operations in the OCS, found in Subpart D of 30 CFR Part 250 (published April 1, 1988 (53 FR 10714)). Special attention is also given to the protection of freshwater aquifers from contamination through procedures for approved penetration and sealing of aquifers.

Disposal of Waste. The MMS recognizes that various aspects of OCS mining operations associated with minerals other than oil, gas, and sulphur will require that the lessee dispose of waste generated by mining and processing activities.

Since the nature and extent of OCS mining activities will vary widely, MMS cannot accurately project the additional environmental requirements or safeguards which may be required. Under the proposed rule, delineation,

testing, and mining plans are to include a detailed description of the cycle of all materials, the method of discharge and disposal of waste and refuse, and their chemical and physical characteristics. The MMS's evaluation of each plan will address the proposed methods of waste disposal to assure that disposal will be conducted in an environmentally responsible manner. The lessee must then follow the approved plan.

In many cases, the disposal of waste material will be governed by regulations of Environmental Protection Agency (EPA) and other Federal Agencies. The lessee must comply with the applicable requirements of those Agencies. For example, discharge of material in the OCS may require compliance with appropriate EPA or U.S. Army Corps of Engineers (COE) regulations. The MMS believes that the provisions of the proposed rule in combination with the regulations of other Agencies are the best way to address disposal of waste generated by OCS mining activities.

Environmental Protection Measures.—(1) *Plans.* As discussed earlier, MMS has prepared a general environmental overview and anticipates more detailed coverage of environmental issues during sale-specific environmental evaluations. Thus, additional opportunities for public comment on environmental issues will be made available prior to issuance of an OCS lease for minerals other than oil, gas, and sulphur. The environmental protection measures provided in the proposed operating regulations are intended to supplement the special lease stipulations required as a result of environmental evaluations conducted prior to the lease sale.

Requiring that the lessee submit plans to MMS for approval prior to conducting operations on a lease will enable MMS to evaluate operators' plans at various times during OCS mining operations. At each stage of operation, the lessee will describe the activities to be performed, the potential environmental effects, and the mitigation measures to be implemented. The MMS will approve a plan only when appropriate environmental safeguards and adequate mitigation measures are contained in the plan. In addition, no changes can be made in the operations being conducted under an approved plan without the prior approval of MMS for the specific changes, including changes in environmental safeguards and mitigation measures.

(2) *Baseline data.* A reasonable knowledge of the lease area is a prerequisite to the determination of the potential environmental effects of proposed activities on a lease. Under the proposed rule, the Director may require a lessee to collect additional data prior to approval of a planned activity. The Director may also require a lessee to monitor the approved activities for unanticipated environmental impacts in accordance with a monitoring plan (§ 282.28(b)). Some data needs are expected to be lease-specific.

The MMS expects that lessees will obtain and submit information on benthic communities and archaeological resources on the lease.

In those instances where additional information is needed, it is anticipated that the lessee will be asked to obtain and submit such information before a plan is approved.

(3) *Monitoring.* There are several objectives of monitoring, as specified in § 282.28(c)(1), but the most important is the need to ensure the early and accurate detection of environmental effects. This requirement is applicable not only to mining plans (§ 282.24) but to delineation plans (§ 282.22) and testing plans (§ 282.23) as well. The testing phase of activities should provide an excellent indication of short-term, lease-specific environmental effects. Monitoring of full-scale mining activities could still be required, even if no significant problems are detected during the test-mining phase. Monitoring during mining could also be required to verify predictions of the effects of scaling on equipment or the duration of operations and to test predictions of the environmental impacts of approved mining activities based upon test activities carried out on a reduced scale.

Monitoring requirements are expected to be more intensive during the early years of exploration, testing, and development of commercial-scale mining. As reliable data and information are collected and analyzed, the level of monitoring will be required so long as mining activities on the lease pose a threat to the environment. The MMS will utilize compliance inspectors to ensure that the approved mining and monitoring programs are being adhered to (§ 282.28(c)(3)).

The MMS is not including a generic list of parameters to be examined during monitoring in these regulations. The environmental evaluation prepared for a lease sale is expected to identify parameters of concern to the area offered for lease.

(4) *Technological Standards.* It is not possible at this stage to define specific economically feasible mining technologies as being the best available and safest technologies (BAST). Whenever failure of equipment would pose a serious threat to safety, health, or the environment, MMS's technical and environmental review of a lessee's proposed delineation, testing, or mining plan will include consideration of whether the proposed activities represent BAST. Each plan submitted for MMS approval is to identify the alternative technologies considered and the reasons for not selecting an alternative technology.

(5) *Mitigation.* The MMS recognizes the potential for adverse environmental impacts and believes that mitigation is an important component of an environmentally sound mining program. The potential for a specific impact to occur will be assessed and, where appropriate, mitigation measures will be identified. Where appropriate, lease stipulations will be used to identify specific mitigation measures to avoid or minimize adverse impacts on the environment. Site-specific issues identified after the issuance of a lease will be addressed during the review and evaluation of activities described in a proposed delineation, testing, or mining plan. All plans submitted for approval will be required to include appropriate mitigation measures to avoid or minimize adverse impacts on the environment.

(6) *Contingency strategy.* It is in the lessee's best interest to ensure that its activities are carried out in accordance with its plan of operations. Thus, it is unlikely that operational failures which pose a threat of serious harm or damage to the marine, coastal, or human environment will occur. However, MMS recognizes that operational failures can happen, and that plans for taking corrective action should be in place when the technology being used and the sensitivities of the environmental settings involved require added assurances of environmental protection. The proposed rule recognizes the need for contingency plans in §§ 228.26 and 282.28. The MMS will assess the need for contingency plans during the environmental evaluation of a proposed lease sale and during the evaluation of individual plans.

(7) *Onshore.* The MMS has no direct authority relating to onshore activities associated with OCS mining. However, the MMS's environmental evaluation of a delineation, testing, or mining plan will include an assessment of the impacts of known onshore activities associated with OCS mining activities. For example, when OCS produced minerals are to be processed onshore, MMS will seek a joint environmental evaluation to satisfy the responsibilities of Federal and State agencies for the protection of the environment. The mechanisms for consultation and

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coordination established by joint State/Federal task forces and other arrangements will facilitate the development of a joint evaluation of potential environmental impacts onshore. The lessee will be expected to consult with MMS as early as possible concerning the information it must submit to MMS regarding potential impacts of proposed mining and processing activities on the environment.

Consideration will also be given in the environmental evaluation of a plan when a lessee proposes to process minerals overseas in accordance with Executive Order 12114, which requires the environmental review of major Federal actions abroad. However, information on the socio-economic impacts of foreign processing is not required.

Reports and Records. Section 282.29 specifies the reports of postlease activities that are required and their contents and timeframes for submission. It also specifies which records are to be retained and for what period of time. The section provides that the Director may inspect or copy any of the records and may inspect or take cuts of any geological samples, cuttings, or cores that are taken from an OCS lease. These reports and records are necessary to enable MMS to assure that operations are being conducted in a safe and environmentally sound manner in accordance with an approved plan, to determine whether production is being properly measured and royalties properly paid, and to evaluate the economic potential of nearby tracts to identify areas to be offered at future lease sales.

The reports required to be submitted are:

(1) A monthly or quarterly report of production and environmental monitoring results. Submission of these reports is required beginning with the month that production begins and continuing until the lease terminates, unless the Director suspends the requirement during a suspension of production. The report shall contain the identity, quality, quantity, and value of each of the minerals produced, sold, or disposed of, and other information needed to verify royalty due the Federal Government.

Comments are requested on whether monthly or quarterly reports should be required.

(2) A quarterly report on the status of approved exploration and/or testing activities and the results of the environmental monitoring program. The report shall contain a listing of exploration and/or testing activities conducted during the calendar quarter.

(3) A final report on approved exploration and/or testing activities and the results of the environmental monitoring program. This report requires more detailed information on the activities and is required to be submitted within 3 months after completion of activities.

Maps of leases showing areas of exploration, testing, and/or mining are to be kept up to date and the accuracy of maps certified by a professional engineer or land surveyor. Maps would be submitted to the Director annually or at such other times as may be prescribed.

Methods of Royalty Calculation. The MMS will follow its Royalty Management's regulations contained in 30 CFR Chapter II, Subchapter A, for product valuation and the collection of royalties.

Specific regulations have been included in the proposed leasing rules, 30 CFR Part 281. Comments are invited on the methods for establishing product value and the procedures for collecting royalties.

Public Comments and Agency Responses

The following discussion summarizes the comments received as a result of the requests for comments and recommendations contained in the advance notice of proposed rulemaking. Agency responses are also included.

Comment—Several commenters stated that the regulations are premature, the MMS should await new legislation, and that regulations should be prepared only after offshore mining is determined to be commercially feasible and the economics of specific types of minerals can be determined. Other commenters stated that regulations are needed and timely.

Response—The MMS does not agree that the regulations are premature, that it should await new legislation, or that regulations should be prepared only after OCS mining is determined to be commercially feasible. Section 8(k) of the OCSLA states, as follows:

> The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the Outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

Thus, section 8(k) specifically and clearly authorizes the Secretary to lease minerals in the OCS other than oil, gas, and sulphur. Mining company representatives have stated on a number of occasions that without regulations in place they cannot accurately predict the economics of a mining operation nor can they raise capital for the venture unless the rules they will be working under are known. It is necessary that the regulations be in place in order that the mining industry and other interests have advance notice of the rules that will govern OCS mining activities.

Comment—Two commenters stated that the proposed regulations should follow the same framework as the oil and gas operating regulations.

Response—These proposed regulations follow the framework of regulations governing mineral activities on public lands onshore. The DOI has been regulating exploration, development, and production activities associated with minerals other than oil, gas, and sulphur for almost 70 years. The DOI recognizes that many of the operating requirements for those minerals are different from the requirements associated with oil, gas, and sulphur. The proposed rules are written in language that is familiar to the mining industry.

Comment—One commenter stated that consultation and coordination with States and other Federal Agencies should be done through MMS and that MMS should be involved in any negotiations with State authorities for onshore services and facilities needed by lessees.

Response—It is envisioned that State/Federal consultation and coordination activities will be continued from prior to the identification of areas of interest through and including abandonment of production activities. Opportunities are being provided for States and other Federal Agencies to review and provide comments and recommendations with respect to prospecting, leasing, exploration, testing, production, and abandonment proposals. However, it is not anticipated that MMS will be actively involved in the negotiations with adjacent State authorities for onshore facilities and services.

Comment—The MMS should be solely responsible for approving plans, abandonment of operations, and compliance on OCS leases.

Response—In the final analysis, the MMS will have primary responsibility for plan approval. That approval will be given after consultation with adjacent States and other Federal Agencies. Approval will be conditioned upon the lessee's compliance with applicable provisions of law and implementing regulations, for example, the National

Pollutant Discharge Elimination System (NPDES), as appropriate. The MMS will also exercise primary responsibility for approval of the lessee's proposed abandonment of operations, inspections to assure compliance, and other activities covered by these regulations. Other Federal Agencies such as the National Oceanic and Atmospheric Administration (NOAA), USCG, and EPA, which have authorities and responsibilities for offshore activities under the OCSLA or other legislation, will independently exercise those authorities and responsibilities.

Comment—One commenter states there should be no areawide sales similar to oil and gas.

Response—The MMS does not anticipate that areawide sales will be held. However, a number of tracts may be offered in order to obscure the identity of the tract or tracts of interest when a mining company has requested a lease offering. It is also anticipated that some lease offerings may offer relatively large tracts for lease. Such offerings would be designed to assure that the party who discovers an ore body earns leasehold rights to the discovered mineral.

Comment—Regulations should require that documents addressing environmental impacts specify, in detail, the mining process and the ore beneficiation process.

Response—The MMS will require that lessees submit mining plans which include sufficient detail in the descriptions of the proposed mining and ore beneficiation processes to enable MMS to verify the identity of any potential adverse environmental impacts that might result from the proposed mining and processing activities.

Comment—Regulations should describe EPA's permit-issuance process and information needs.

Response—Lessees operating under the proposed rule should be aware of the potential need to satisfy certain permit requirements of other Federal Agencies. In some instances, lessees may need to obtain an ocean dumping permit. However, it is not necessary or appropriate to include references to permit requirements of other Agencies in these regulations. The lessee is responsible for knowing and satisfying all applicable Federal, State, and local permit requirements.

Comment—An environmental report should be required with all postlease operating plans as for oil and gas.

Response—An applicant seeking permission to conduct activities authorized under the proposed rule will be required to submit environmental data and information regarding the area of activity and potential impacts that may result from the proposed activity. The MMS will evaluate the proposed activities to assure that they are technically sound, properly mitigated, and environmentally responsible.

Comment—Regulations should specify under what conditions the Secretary could cancel a lease.

Response—The conditions under which the Secretary can cancel a lease are addressed in § 282.15 which repeats the provisions of the OCSLA.

Comment—The MMS should recognize the important economic and strategic potential of the east coast offshore heavy mineral deposits for supplying the U.S. titanium dioxide and titanium metals industries. Regulations should be structured so as to encourage, not discourage, exploration and development of titanium deposits.

Response—The MMS recognizes there is as yet no adequate substitute for titanium in aircraft, space, and missile applications and no cost-effective substitute for titanium dioxide pigment. The requirements of this proposed rule are designed to encourage the discovery, delineation, and production of minerals other than oil, gas, and sulphur in a manner that balances the national need for strategic minerals with appropriate protection of the environment.

Comment—The comment was made that regulations should specify the use of mining methods that will best serve to protect the marine environment. Another commenter suggested that regulations should be based on controlling impacts on the environment, rather than on specific methods. A third commenter proposed that state-of-the-art mining technology should be required to minimize environmental damage (e.g., the use of silt curtains during dredging to restrict the turbidity plume).

Response—Section 21(b) of the OCSLA requires the use of BAST in operations for all minerals in the OCS. Appropriate mitigation measures will be required whenever a proposed mining activity is expected to have an adverse impact on the environment. Requried mitigation measures will normally be identified during the technical and environmental evaluations of a lessee's proposed plan. It will be the lessee's responsibility to demonstrate that the activities proposed in its delineation, testing, or mining plan constitute BAST. The plan will describe in detail the activities proposed by the lessee as well as any alternative sites and technologies considered by the lessee and why they were not chosen. A proposed plan would not be approved if the technical and environmental evaluations by MMS indicate that the plan does not constitute BAST and that there are unsafe conditions or an undue threat of serious harm or damage to the marine, coastal, or human environment. The MMS does not intend to specify the mining practices and procedures to be used; however, it would not approve the use of unsafe practices. It is the lessee's responsibility to assure that the methods used are appropriate to the operations being conducted taking into account the need for safety, environmental protection, and resource conservation.

Comment—A commenter stated that proposed production methods should be compatible with geologic conditions.

Response—The technical and environmental evaluations of a proposed mining plan should determine if the mining method proposed constitutes BAST and is suitable for the geologic environment. If it is determined that the plan doesn't represent BAST or that the proposed activities are not compatible with geologic conditions, the plan would not be approved.

Comment—A commenter suggested that conservation of resources for the future should be of little concern.

Response—The MMS does not share this view. It is important to conserve the Nation's mineral resources and to avoid waste. Delineation, testing, and mining plans will be evaluated to ensure against wasteful practices and to assure the taking of reasonable actions for the conservation of resources whether leased or unleased.

Comment—Proposed changes to the sea floor should be described indicating anticipated extent and depth of excavation.

Response—The plan should contain a detailed description of proposed excavation activities which would include the extent and depth of all such activities. Actual excavation activities will be governed by the approved plan. A significant departure from the excavation activities described in an approved plan must be approved before the change is implemented.

Comment—Federal regulations should allow for the control of onshore environmental impacts to be handled by the appropriate State agencies.

Response—The environmental impacts of onshore activities will be subject to applicable Federal and State requirements. Onshore processing facilities for minerals mined from the OCS are under the jurisdiction and control of State and local governments and other Federal Agencies. The proposed rule has no specific application to onshore processing

facilities other than to require that they be described in a proposed plan together with their socioeconomic implications.

Comment—Health and safety considerations in the onshore mining industry are controlled by the Mine Safety and Health Administration and the Occupational Safety and Health Administration.

Response—Health and safety considerations in the OCS mining activities will continue to be the subject of the regulations of the Federal Agencies delegated the authority and responsibility for regulation of those activities.

Comment—States should have only an advisory role in regulating mining in the OCS.

Response—While MMS is committed to early and close coordination and consultation with States on OCS mineral development, OSC propecting, discovery, delineation, development, and production activities are physically located outside the jurisdiction of any State; therefore, these are areas where States have an advisory role. Part of MMS's plan for exercising its jurisdiction and responsibility for OCS mineral resources is to provide adjacent States opportunities for participation in decisionmaking throughout the process from prelease planning to lease abandonment. In the absence of regulations, consultation and coordination with States concerning prospecting, leasing, and mining of OCS minerals have primarily been accomplished through joint State/Federal task forces established by the MMS and the Governors of adjacent States. A special work group with Alaska and five task forces have been established to date. Provision is made for the establishment of additional task forces in § 281.13 of the proposed leasing rules. The activities of each task force will depend on the areas and minerals involved and the particular concerns of the States that are represented on the task force. The proposed leasing rules provide a list of potential areas of activity for task forces, but it is not intended as an all-inclusive list. Postlease activities could include review of plans, environmental monitoring, and compliance inspections.

When a mineral deposit straddles the boundary between Federal and State jurisdiction, DOI expects to develop agreements with an adjacent State for joint management. These agreements would facilitate coordination and cooperation between MMS, agencies of the adjacent State, and State and Federal lessees in order to maximize efficiency, reduce regulatory burden, and obtain the most equitable return to all parties.

Proposed § 282.8 also anticipates agreements between the Secretary and a Governor for operations when there are jurisdictional controversies, in accordance with section 7 of the OCSLA.

Comment—Applications for mining operations as well as any update reports should be handled by a single Agency.

Response—The MMS will approve or disapprove a proposed delineation, testing, and mining plan after consultations with adjacent States and other Federal Agencies, as appropriate. Discharges of pollutants associated with approved mining activities which are subject to EPA's NPDES permits will be subject to EPA approved discharge permits. Also, OCS installations and structures will be subject to the navigational-aids requirements of the USCG.

Comment—Mining plans should provide sufficient detail on mine-site conditions to allow reasonable review.

Response—Under the proposed rule, the lessee must provide sufficient data and information to permit technical and environmental evaluations which will provide a basis for MMS to make an informed decision to approve, disapprove, or require modification of the proposed activities.

Comment—Minimum royalty should be required.

Response—Provision is made for minimum royalty in the proposed leasing regulations in proposed 30 CFR Part 281.

Comment—Not every applicant should be required to prepare a detailed environmental study on the broad environmental and economic issues.

Response—Applicants under the proposed rule are required to address site-specific issues relating to a lessee's proposed operations and the impacts of those operations. The proposed activities and potential environmental impacts will be evaluated in environmental evaluations prepared in association with MMS's technical and environmental evaluation of the applicant's proposal. Broad environmental and economic issues will be addressed in environmental documents prepared in association with the OCS mineral lease sales.

Comment—Site-by-site approval of postlease operations whether or not it includes drilling should not be required.

Response—Under the proposed rule, sampling techniques, sample size, and proposed sampling locations would be specified in the delineation, testing, and mining plans submitted for MMS review and approval. Approval of the plan would constitute approval of the sampling techniques, sample size, and sampling locations. Departures from an approved plan must be submitted for approval prior to implementing changes from the approved plan.

Comment—The type of diligence rule that protects oil, gas, and sulphur lessees from drainage by production on other properties should not be included in the postlease regulations.

Response—The diligence rules governing OCS oil and gas leases are designed to protect the lessor from loss, not the lessee. The diligence requirements of the proposed rule recognize that OCS minerals other than oil, gas, and sulphur generally do not migrate. Provisions to encourage development are addressed in proposed leasing regulations.

Comment—After approval of the mining plan, lessees should be able to mine the minerals in the most economic way (i.e., not be restricted by "high grading" rules).

Response—It is anticipated that each proposed mining plan will represent the lessee's view of the most economic way for it to mine the OCS minerals involved. Once a mining plan is approved, the lessee must comply with that plan unless and until a revision is approved. Proposed leasing regulations at 30 CFR Part 281 permit the Secretary to exercise discretion to adjust royalty rates or rentals in order to prevent premature abandonment of mining operations. However, these considerations have to be balanced with concern for the conservation of OCS natural resources and the prevention of waste.

Comment—Concerning abandonment of operations, commenters stated that the mining industry should not be saddled with open-ended liabilities.

Response—Provisions for the abandonment of operations and clearance of the lease where appropriate will be required for delineation, testing, and mining plans submitted for approval by MMS. The mining industry can protect itself from subsequent liabilities by planning for and carrying out proper cleanup and abandonment operations.

Comment—Regulations should provide environmental protection both offshore and onshore for all phases of postlease activities.

Response—The technical and environmental evaluations of any proposed activity will include consideration of measures to mitigate damage to the environment. While onshore activities are outside MMS's jurisdiction and subject to the regulations of other Federal Agencies as well as State and local agencies.

potential onshore environmental effects and mitigation measures will be addressed in the environmental evaluation of the proposal.

Comment—A commenter suggests that regulations for prelease, leasing, and postlease operations be combined.

Response—This suggestion was not adopted. Three separate sets of regulations are being prepared and are being promulgated in separate rulemakings. Each set of regulations covers a significantly different activity within a different timeframe. However, they are complementary and will be published sequentially in Chapter II of Title 30 of the Code of Federal Regulations (CFR), following the existing rules for oil, gas, and sulphur, to comprise a comprehensive set of rules reflective of MMS's authority and responsibility for administration of all OCS mineral activity under the OCSLA.

Comment—Are enough data available to assume that minimal environmental impacts would occur in deep waters?

Response—The MMS's ESP has developed considerable data and information about the OCS mining activities and their probable impacts. Under MMS's case-by-case approach, mitigation measures will be defined with specificity as mineral resource targets are identified and specific recovery methods are proposed. This proposed rule and the companion rules for prospective and leasing will enable MMS to effectively address site-specific environmental issues concerning specific commodities, technologies, and locations as the specific issues are defined. To ensure environmental protection when data are insufficient or unavailable, those activities which are authorized will be monitored to ensure the early detection of adverse impacts and the identification and implementation of effective mitigation measures to avoid or minimize adverse effects.

Comment—Postlease regulations should include program participation by States and other Federal Agencies.

Response—The proposed rule provides several opportunities for participation by representatives of State and Federal Agencies. The case-by-case approach to leasing provides for management flexibility, opportunity for effective coastal State and Federal Agency participation, and extensive environmental review. The proposed leasing regulations provide for State/Federal task forces, and the NEPA process requires Federal inter-Agency consultation and coordination. Review of leasing proposals and of delineation, testing, and mining plans will further facilitate the consultation and coordination processes authorized under other Federal laws.

Comment—A programmatic EIS should be prepared for the proposed mining program.

Response—The MMS recognizes the potential for environmental impacts as a result of OCS mineral activities. The MMS has prepared a report, "Environmental Effects Overview: Marine Mining on the Outer Continental Shelf," OCS Report No. 87–0035, to provide the public with an early overview of the likely mining activities and potential impacts on the environment resulting from prospecting and postlease activities. Detailed coverage of potential environmental issues is not practicable now since many uncertainties remain at this early stage with respect to the nature, magnitude, location, and rate of future mining. Many types of ore deposits may be mined in a variety of environmental settings using any one of a diverse set of technologies. This rasies questions whether a meaningful assessment can be conducted at this time. However, sufficient environmental safeguards are being included in these proposed rules to ensure that environmental evaluations will be prepared prior to approval of a plan of proposed operations. Possible impacts will be identified and appropriate mitigation measures determined as part of the DOI's environmental review process. Mitigation measures will be defined in lease and operating requirements. Commodity- and area-specific issues will be addressed by specially designed lease stipulations, and site- and operation-specific issues identified after the issuance of a lease will be addressed as conditions of approval for delineation, testing, and mining plans.

Comment—Two commenters suggested that DOI support the introduction of new legislation to govern the mining of minerals other than oil, gas, and sulphur since the OCSLA does not provide a clear legal basis for the promulgation of regulations.

Response—The MMS does not agree that new legislation is required to provide a clear legal basis for the promulgation of regulations to govern the mining of OCS minerals other than oil, gas, and sulphur. As previously noted, section 8(k) of the OCSLA specifically and clearly authorizes the Secretary to prescribe terms and conditions for leasing of OCS minerals other than oil, gas, and sulphur. Used in conjunction with other applicable sections of the OCSLA and other laws, this authority provides DOI with a clear legal basis for administering an OCS minerals mining program.

Comment—Several commenters recommended that regulations should provide for joint/Federal management of mineral resources and postlease operations including inspections.

Response—The MMS has primary authority and responsibility for the management of OCS mineral resources including postlease activities. The level of participation by adjacent States will vary from State to State. Where the boundary between the State and Federal jurisdictions is under dispute, leasing and postlease activities will be subject to joint approvals by the responsible Federal and State agencies pursuant to an interim agreement negotiated in accordance with § 282.8. It is anticipated that the level of participation for a specific adjacent State will be dictated by the degree to which the Governor of that State wants to participate and mutually acceptable conditions can be established. While the final rule does not discuss contracting with States, when such contracting is permissible under Federal law, it can be considered on a case-by-base basis for such activities as compliance inspections.

Comment—Several commenters expressed concern about environmental protection of fishery resources.

Response—Under the proposed rule, postlease activities will be subject to technical and environmental evaluations. To avoid or minimize adverse effects, mitigation measures can be included as conditions of approval, or a lessee may be required to modify the planned activities to ensure that those activities are conducted in an environmentally responsible manner. Necessary mitigation measures can be included as lease stipulations. Sensitive areas, where special protection is needed, can and will be withheld from leasing when appropriate.

Comment—Agencies should have a well-defined time limit for review and approval of plans.

Response—The proposed rule includes specific timeframes for review of delineation, testing, and mining plans. Those timeframes are applicable to instances involving minimal disruption of the environment. In those instances where an EIS is prepared in accordance with the practices and procedures prescribed by NEPA, those timeframes will be lengthened.

Comment—Several comments were received suggesting that postlease operating plans should be required.

Response—The proposed rule requires that postlease activities be conducted in accordance with an approved delineation, testing, and/or mining plan.

Comment—One commenter urged that hearings on the proposed rulemaking be held locally to allow public participation.

Response—The decision to hold public hearings on the proposed rule has not been made at this time. Three public hearings were held on the proposed prospecting rules in June 1987. If public hearings are to be held during the comment period of this proposed rule, it will be announced in the **Federal Register.**

Comment—Public interest groups; industry; and local, State, and Federal Agencies should be involved in the initial stages of regulation development.

Response—Meetings were held on March 7, 8, 9, 14, and 28, 1988, to receive comments and recommendations from various parties including representatives of industry, States, special interest groups, other Federal Agencies, and congressional staffs on a draft of this and the proposed leasing rules. Some of the comments were incorporated into the proposed rules.

Comment—To avoid military operational impacts, future mineral leasing programs should be handled in the same manner as the Gorda Ridge and Hawaii projects.

Response—In accordance with the Memorandum of Agreement dated July 20, 1983, that covers all mineral activities in the OCS, the MMS will consult with the various elements of the Department of Defense to avoid or minimize the impact of military operations on OCS mining activities and to minimize interference of OCS mining activities on military activities in the OCS.

Comment—Strong concerns were expressed that the mining of construction materials, placers, and phosphorite desposits could result in significant adverse environmental impacts, particularly in the marine biological community.

Response—The MMS recognizes the potential for adverse environmental impacts. Those impacts will be identified together with appropriate mitigation measures during the environmental evaluation of proposed activities. Some areas of the OCS may be found to be of such exceptional natural resource value that the advantages of maintaining those values outweigh the advantages of leasing the area.

Comment—One commenter recommended finding a means of financial assistance for affected States, so that they can function as full partners in the process, and as an incentive for locating onshore staging areas along their coasts.

Response—The finding of a means to provide financial assistance to adjacent States is outside the scope of this proposed rule. However, MMS intends to continue joint State/Federal cooperative activities including financial support for joint task forces and studies conducted through joint efforts.

Comment—One commenter recommended new legislation to provide for methods other than cash bonus bidding and for revenue sharing.

Response—If new legislation is enacted which provides for methods other than cash bonus bidding or for revenue sharing, revisions will be made in the regulations to effect required changes.

Comment—Vessels involved in postlease operations must comply with USCG regulations including workplace safety and health. Postlease vessel owners/operators must be aware of USCG accident-reporting requirements. Navigational safety and proper abandonment of operations must be conducted to satisfy USCG requirements.

Response—Vessel operators are presumed to be aware of the broad jurisdiction that USCG exercises over vessels operating in U.S. waters including the OCS. Lessees will be reminded that MMS approvals for proposed activities are conditional upon compliance with USCG and other governmental requirements for those activities which are not subject to MMS's authority.

Comment—A commenter suggested that OCS minerals production operations could be authorized by the same Corps of Engineers nationwide permit used for oil and gas explorations, production, and transportation.

Response—The applicability of the aforementioned COE nationwide permit to prelease and postlease mining activities associated with minerals other than oil, gas, and sulphur must be verified by the lessee with the COE office having jurisdiction over the area where proposed activity is to be carried out.

Comment—It was recommended that ocean disposal sites for dredged material be regulated by EPA and a specification for the sites be included in the postlease regulations.

Response—Ocean disposal associated with exploration, testing, and mining activities under an OCS mineral lease may be subject to EPA regulations. Over 125 ocean disposal areas have been designated by EPA for use as dredged material disposal sites. Disposal activities at each of these sites are regulated by the COE. It is conceivable that some of these sites could also contain subsurface deposits of economically recoverable marine minerals. However, there is no indication that any of these areas would be used as disposal areas for mining wastes.

Authors: Andrew Bailey (retired), Charles Ham, John Mirabella, Jane Roberts, and William Wolf of the MMS; Michael Cruickshank of the USGS (retired); Ransom Read of the BOM; Ronald Smith and Donal Ziehl of the BLM; John Padan of NOAA, Department of Commerce; and Joseph Wilson of COE, U.S. Army.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The overall effect is expected to be less than $1,000,000 per year. The costs are based on an expected two sales per year with three new leases per sale for a total of six new leases per year. When the program is mature, it is anticipated that there will be 10 preproduction leases and 10 leases in production.

The information collection requirements contained in 30 CFR Part 282 have been submitted to the Office of Management and Budget (OMB) for approval under 44 U.S.C. 3507. The collection of this information will not be required until it has been approved by OMB.

Public reporting burden for this collection of information is estimated to average 13.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer; Minerals Management Service; Mail Stop 631, 12203 Sunrise Valley Drive; Reston, Virginia 22091 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The DOI certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (95 U.S.C. 601 *et seq.*) as the entities that engage in OCS mineral related activities are not considered small due to the technical complexity and financial resources

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needed to successfully conduct OCS mineral related activities.

List of Subjects in 30 CFR Part 282

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mineral royalties, MMS, Mines, Public lands/ mineral resources, Reporting and recordkeeping requirements.

Dated: July 6, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set out in the preamble, it is proposed that a new Part 282 be added to Chapter II, Subchapter B of Title 30 of the Code of Federal Regulations to read as follows:

PART 282—OPERATIONS IN THE OUTER CONTINENTAL SHELF FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR

Subpart A—General

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282.0 Authority for information collection.
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282.2 Scope.
282.3 Definitions.
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Subpart B—Jurisdiction and Responsibilities of Director

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282.11 Director's authority.
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Subpart C—Obligations and Responsibilities of Lessees

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Subpart D—Payments

282.40 Bonds.
282.41 Methods of royalty calculation.
282.42 Payments.

Subpart E—Appeals

282.50 Appeals.

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. *et seq.* (1970).

Subpart A—General

§ 282.0 Authority for information collection.

The information collection requirements in this part have been submitted for approval to the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number (to be added upon approval). The information is being collected to inform the Minerals Management Service (MMS) of general mining operations in the Outer Continental Shelf (OCS). The information will be used to ensure that operations are conducted in a safe and environmentally responsible manner in compliance with governing laws and regulations. The requirement to respond is mandatory.

§ 282.1 Purpose and authority.

(a) The Act authorizes the Secretary to prescribe such rules and regulations as may be necessary to carry out the provisions of the Act. The Secretary is authorized to prescribe and amend regulations that the Secretary determines to be necessary and proper in order to provide for the prevention of waste, conservation of the natural resources of the OCS, and the protection of correlative rights therein. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary is authorized to cooperate with adjacent State and other Departments and Agencies of the Federal Government.

(b) Subject to the supervisory authority of the Secretary, and unless otherwise specified, the regulations in this part shall be administered by the Director of the MMS.

§ 282.2 Scope.

The rules and regulations in this part apply as of their effective date to all operations conducted under a mineral lease for OCS minerals other than oil, gas, or sulphur issued or maintained under the provisions of the Act.

§ 282.3 Definitions.

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*)

"Adjacent State" means with respect to any activity conducted or approved under this part, any coastal State—(1) that is, or is proposed to be, receiving for processing, refining, or transshipment OCS mineral resources commercially recovered from the seabed; (2) that is used, or is scheduled to be used, as a support base for delineation, testing, or mining activities; or (3) in which there is a reasonable probability of significant effect on land or water uses from such activity.

"Contingency Plan" means a plan for action to be taken in emergency situations.

"Data" means geological and geophysical (G&G) facts and statistics or samples which have not been analyzed, processed, or interpreted.

"Development" means those activities which take place following the discovery of minerals in paying quantities including geophysical activities, drilling, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered.

"Director" means the Director of MMS of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Exploration" means the process of searching for minerals on a lease including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals; (2) any drilling including the drilling of a borehole in which the discovery of a mineral other than oil, gas, or sulphur is made and the drilling of any additional boreholes needed to delineate any mineral deposits, and (3) the taking of sample portions of a mineral deposit to enable the lessee to determine whether to proceed with the development of production.

"Geological sample" means a collected portion of the seabed, the subseabed, or the overlying waters acquired while conducting postlease mining activities.

"Governor" means the Governor or the person or entity lawfully designated to exercise the power granted to a Governor.

"Information," means G&G data that has been analyzed, processed or interpreted.

"Lease" means one of the following, whichever is required by the context: Any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, specific minerals; or the area covered by that authorization.

"Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this chapter. The term includes all parties holding that authority by or through the lessee.

"Major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act (NEPA) (i.e., an action which will have a significant impact on the quality of the human environment requiring preparation of an Environmental Impact Statement (EIS) pursuant to section 102(2)(C) of NEPA).

"Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

"Minerals" has the same meaning as the term is defined in section 2(q) of the Act.

"OCS mineral" means any mineral found on or below the surface of the seabed but does not include oil, gas, sulphur, or salt, sand, or gravel intended for use in association with the development of oil, gas, or sulphur.

"Operator" means the individual, partnership, firm, or corporation having control or management of operations on the lease or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means a citizen or national of the United States; an alien lawfully admitted for permanent residency in the United States as defined in 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; an association of such citizens, nationals, resident aliens or private, public, or municipal corporations, States, or political subdivisions of States; or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal Agencies.

"Production" means those activities which place after the successful completion of any means for the removal of minerals including such removal, field operations, transfer of minerals to shore, operations monitoring, and maintenance.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

"Testing" means removing bulk samples for processing tests and feasibility studies and/or the testing of mining equipment to obtain information needed to develop a detailed Mining Plan.

§ 282.5 Opportunities for review and comment.

(a) In carrying out MMS's responsibilities under the regulations in this part, the Director shall provide opportunities for Governors of adjacent States, State-Federal task forces, lessees and operators, other Federal Agencies, and other interested parties to review proposed activities described in a Delineation, Testing, or Mining Plan together with analysis of potential impacts on the environment, and to provide comments and recommendations for the disposition of the proposed plan.

(b)(1) For Delineation Plans, the Governor(s) of an adjacent State(s) shall be notified by the Director within 15 days following the submission of a request for approval of a Delineation Plan. Notification shall include a copy of the proposed Delineation Plan and the accompanying environmental information. The Governor(s) of an adjacent State(s) who wishes to comment on a proposed Delineation Plan may do so within 30 days of the receipt of the proposed plan and the accompanying information.

(2) In cases where an Environmental Assessment is to be prepared, the Director's invitation to provide comments may allow the Governor(s) of an adjacent State(s) more than 30 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Delineation Plan and the accompanying environmental information within 15 days following the submission of the request. Agencies that wish to comment on a proposed Delineation Plan shall do so within 30 days following receipt of the plan and the accompanying information.

(c)(1) For Testing Plans, the Governor(s) of an adjacent State(s) shall be notified by the Director within 20 days following submission of a request for approval of a proposed Testing Plan. Notification shall include a copy of the proposed Testing Plan and the accompanying environmental information. The Governor(s) of an adjacent State(s) who wishes to comment on a proposed Testing Plan may do so within 60 days of the receipt of a plan and the accompanying information.

(2) In cases where an EIS is to be prepared, the Director's invitation to provide comments may allow the Governor(s) of an adjacent State(s) more than 60 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Testing Plan and the accompanying environmental information within 20 days following the submission of the request. Agencies that wish to comment on a proposed Testing Plan shall do so within 30 days following receipt of the plan and the accompanying information.

(d)(1) For Mining Plans, the Governor(s) of an adjacent State(s) shall be notified by the Director within 20 days following submission of a request for approval of a proposed Mining Plan. Notification shall include a copy of the proposed Mining Plan and the accompanying environmental information. The Governor(s) of an adjacent State(s) who wishes to comment on a proposed Mining Plan may do so within 60 days of the receipt of a plan and the accompanying information.

(2) In cases where an EIS is to be prepared, the Director's invitation to provide comments may allow the Governor(s) of an adjacent State(s) more than 60 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Mining Plan and the accompanying environmental information within 20 days following the submission of the request. Agencies that wish to comment on a proposed Mining Plan shall do so within 60 days following receipt of the plan and the accompanying information.

(e) When the Governor(s) of an adjacent State(s) has provided comments pursuant to paragraphs (b), (c), and (d) of this section, the Governor(s) shall be given, in writing, a list of comments which are adopted, and the reasons for rejecting any of the recommendations of the Governor(s) or for implementing any alternative means identified during consultations with the Governor(s).

§ 282.6 Disclosure of data and information to the public.

(a) The Director shall make data, information, and samples available in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations.

(b) Geophysical data, processed G&G information, interpreted G&G information, and other data and information submitted pursuant to the requirements of this part shall not be available for public inspection without the consent of the lessee so long as the lease remains in effect, unless the Director determines that earlier release of such information is necessary for effective and efficient development of a deposit.

(c) Geophysical data, processed geophysical information and interpreted geophysical information collected on a lease with high resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler and magnetometer) in compliance with stipulations or orders concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Director, unless the lessee can demonstrate to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position.

§ 282.7 Disclosure of data and information to an adjacent State.

(a) Proprietary data, information, and samples submitted to MMS pursuant to the requirements of this part shall be made available for inspection by representatives of adjacent State(s) upon request by the Governor(s) in accordance with paragraphs (b), (c), and (d) of this section.

(b) Disclosure shall occur only after the Governor has entered into an agreement with the Secretary providing that:

(1) The confidentiality of the information shall be maintained;

(2) In any action commenced against the Federal Government or the State for failure to protect the confidentiality of proprietary information, the Federal Government or the State, as the case may be, may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the proprietary information, which is the basis of the suit, was acting outside the scope of the person's employment in revealing the information;

(3) The State agrees to hold the United States harmless for any violation by the State or its employees or contractors of the agreement to protect the confidentiality of proprietary data, information, and samples; and

(c) The data, information, and samples available for inspection by representatives of adjacent State(s) pursuant to an agreement shall be related to leased lands.

§ 282.8 Jurisdictional controversies.

In the event of a controversy between the United States and a State as to whether certain lands are subject to Federal or State jurisdiction, either the Governor of the State or the Secretary may initiate negotiations in an attempt to settle the jurisdictional controversy. With the concurrence of the Attorney General, the Secretary may enter into an agreement with a State with respect to OCS mineral activities and to payment and impounding of rents, royalties, and other sums and with respect to the issuance or nonissuance of new leases pending settlement of the controversy.

Subpart B—Jurisdiction and Responsibilities of Director

§ 282.10 Jurisdiction and responsibilities of Director.

Subject to the authority of the Secretary, the following activities are subject to the regulations in this part and are under the jurisdiction of the Director: exploration, testing, and mining operations; handling, measurement, and transportation of OCS minerals; and other operations and activities conducted pursuant to a lease issued under Part 281 of this chapter, or pursuant to a right of use and easement granted under this part, by or on behalf of a lessee or the holder of a right of use and easement.

§ 282.11 Director's authority.

(a) In the exercise of jurisdiction under § 282.10, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this part; to issue either written or oral orders to govern lease operations; and to require compliance with applicable laws, regulations, and lease terms so that all operations conform to sound conservation practices and are conducted in a manner which is consistent with the following:

(1) Make such OCS minerals available to meet the Nation's needs in a timely manner;

(2) Balance OCS mineral resource development with protection of the human, marine, and coastal environments;

(3) Ensure the public a fair and equitable return on OCS minerals leased on the OCS; and

(4) Foster and encourage private enterprise.

(b)(1) The Director is to be provided ready access to all OCS mineral resource data and all environmental data acquired by the lessee or holder of a right of use and easement in the course of operations on a lease or right of use and easement and may require a lessee or holder to obtain additional environmental data when deemed necessary to assure adequate protection of the human, marine, and coastal environments.

(2) The Director is to be provided an opportunity to inspect, cut, and remove representative portions of all samples acquired by a lessee in the course of operations on the lease.

(c) In addition to the rights and privileges granted to a lessee under any lease issued or maintained under the Act, on request, the Director may grant a lessee, subject to such conditions as the Director may prescribe, a right of use and easement to construct and maintain platforms, artificial islands, and/or other installations and devices which are permanently or temporarily attached to the seabed and which are needed for the conduct of leasehold exploration, testing, development, production, and processing activities or other leasehold related operations whether on or off the lease.

(d)(1) The Director may approve the consolidation of two or more OCS mineral leases or portions of two or more OCS mineral leases into a single mining unit requested by lessees, or the Director may require such consolidation when the operation of those leases or portions of leases as a single mining unit is in the interest of conservation of the natural resources of the OCS. A mining unit may also include all or portions of one or more OCS mineral leases with all or portions of one or more adjacent State leases for minerals in a common orebody. A single unit operator shall be responsible for submission of required Delineation, Testing, and Mining Plans covering OCS mineral operations for an approved mining unit.

(2) Operations such as exploration, testing, and mining activities conducted in accordance with an approved plan on any lease or portion of a lease which is subject to an approved mining unit shall be considered operations on each of the leases that is made subject to the approved mining unit.

(3) Minimum royalty paid pursuant to a Federal lease, which is subject to an approved mining unit, is creditable against the production royalties allocated to that Federal lease during the lease year for which the minimum royalty is paid.

(4) Any OCS minerals produced from State and Federal leases which are subject to an approved mining unit shall be accounted for separately unless a method of allocating production between State and Federal leases has

been approved by the Director and the appropriate State official.

§ 282.12 Director's responsibilities.

(a) The Director is responsible for the regulation of activities to assure that all operations conducted under a lease or right of use and easement are conducted in a manner that protects the environment and promotes orderly development of OCS mineral resources. Those activities are to be designed to prevent serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(b)(1) In the evaluation of a Delineation Plan, the Director shall consider the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of the regulations prescribed under the Act;

(iv) Other applicable Federal law; and

(v) Requirements for the protection of the environment, health, and safety.

(2) Within 30 days following the release of an environmental assessment prepared pursuant to the regulations implementing NEPA or within 30 days following the comment period provided in § 282.5(b) of this part, the Director shall:

(i) Approve any Delineation Plan which is consistent with the criteria in paragraph (b)(1) of this section;

(ii) Require the lessee to modify any Delineation Plan that is inconsistent with the criteria in paragraph (b)(1) of this section; or

(iii) Disapprove a Delineation Plan when it is determined that an activity proposed in the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to natural resources of the OCS including mineral deposits (in areas leased or not leased), or to the proposed activity cannot be modified to avoid the conditions.

(3) The Director shall notify the lessee in writing of the reason for disapproving a Delineation Plan or for requiring modification of a plan and the conditions that must be met for plan approval.

(c)(1) In the evaluation of a Testing Plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of the regulations prescribed under the Act;

(iv) Other applicable Federal law;

(v) Environmental, safety, and health requirements; and

(vi) The statutory requirement to protect property, natural resources of the OCS, including mineral deposits (in areas leased or not leased), and the national security or defense.

(2) Within 60 days following the release of a final EIS prepared pursuant to NEPA or within 60 days following the comment period provided in § 282.5(c) of this part, the Director shall:

(i) Approve any Testing Plan which is consistent with the criteria in paragraph (c)(1) of this section;

(ii) Require the lessee to modify any Testing Plan which is inconsistent with the criteria in paragraph (c)(1) of this section; or

(iii) Disapprove any Testing Plan when the Director determines that exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances exist, and that (A) implementation of the activities described in the plan would probably cause serious harm and damage to life (including fish and other aquatic life), to property, to any mineral deposit (in areas leased or not leased) to the national security or defense, or the marine, coastal, or human environments; (B) that the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (C) the advantages of disapproving the Testing Plan outweigh the advantages of development and production of the OCS mineral resources.

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a Testing Plan or for requiring modification of a Testing Plan and the conditions that must be met for approval of the plan.

(d)(1) In the evaluation of a Mining Plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of the regulations prescribed under the Act;

(iv) Other applicable Federal law;

(v) Environmental, safety, and health requirements; and

(vi) The statutory requirements to protect property, natural resources of the OCS, including mineral deposits (in areas leased or not leased), and the national security or defense.

(2) Within 60 days following the release of a final EIS prepared pursuant to NEPA or within 60 days following the comment period provided in § 282.5(d) of this part, the Director shall:

(i) Approve any Mining Plan which is consistent with the criteria in paragraph (d)(1) of this section;

(ii) Require the lessee to modify any Mining Plan which is inconsistent with the criteria in paragraph (d)(1) of this section; or

(iii) Disapprove any Mining Plan when the Director determines that exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances exist, and that (A) implementation of the activities described in the plan would probably cause serious harm and damage to life (including fish and other aquatic life), to property, to any mineral deposit (in areas leased or not leased) to the national security or defense, or the marine, coastal, or human environments; (B) that the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (C) the advantages of disapproving the Mining Plan outweigh the advantages of development and production of the OCS mineral resources.

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a Mining Plan or for requiring modification of a Mining Plan and the conditions that must be met for approval of the plan.

(e) The Director shall assure that a scheduled onsite compliance inspection of each facility which is subject to regulations in this part is conducted at least once a year. The inspection shall be to determine that the lessee is in compliance with the requirements of the law; provisions of the lease; the approved Delineation, Testing, or Mining Plan; and the regulations in this part. Additional unscheduled onsite inspections shall be conducted without advance notice to the lessee to assure compliance with the provisions of applicable law; the lease; the approved Delineation, Testing, or Mining Plan; and the regulations in this part.

(f)(1) The Director shall, after completion of the technical and environmental evaluations, approve, disapprove, or require modification of the lessee's requests, applications, plans, and notices submitted pursuant to the provisions of this part; issue orders to govern lease operations; and require compliance with applicable provisions of the law, the regulations, the lease, and the approved Delineation, Testing, or Mining Plans. The Director may give oral orders or approvals whenever prior approval is required before the commencement of an operation or activity. Oral orders or approvals given

in response to a written request shall be confirmed in writing within 3 working days after issuance of the order or granting of the oral approval.

(2) The Director shall, after completion of the technical and environmental evaluations, approve, disapprove, or require modification, as appropriate, of the design plan, fabrication plan, and installation plan for platforms, artificial islands, and other installations and devices permanently or temporarily attached to the seabed. The approval, disapproval, or requirement to modify such plans may take the form of a condition of granting a right of use and easement under paragraph (a) of this section or as authorized under any lease issued or maintained under the Act.

(g) The Director shall establish practices and procedures to govern the collection of all rents, royalties, and other payments due the Federal Government in accordance with terms of the leasing notice, the lease, and the applicable Royalty Management regulations listed in § 281.26(d) of this chapter.

(h) The Director may prescribe or approve, in writing or orally, departures from the operating requirements of the regulations of this part when such departures are necessary to facilitate the proper development of a lease, to conserve natural resources, or protect life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

§ 282.13 Suspension of production or other operations.

(a) The Director may direct the suspension or temporary prohibition of production or any other operation or activity on all or any part of a lease when it has been determined that such suspension or temporary prohibition is in the national interest to:

(1) Facilitate proper development of a lease including a reasonable time to develop a mine and construct necessary support facilities, or

(2) Allow for the construction or negotiation for use of transportation facilities.

(b) The Director may also direct or, at the request of the lessee, approve a suspension or temporary prohibition of production or any other operation or activity, if:

(1) The lessee failed to comply with a provision of applicable law, regulation, order, or the lease;

(2) There is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment;

(3) The suspension or temporary prohibition is in the interest of national security or defense;

(4) The suspension or temporary prohibition is necessary for the initiation and conduct of an environmental evaluation to define mitigation measures to avoid or minimize adverse environmental impacts.

(5) The suspension or temporary prohibition is necessary to facilitate the installation of equipment necessary for safety of operations and protection of the environment;

(6) The suspension or temporary prohibition is necessary to allow for undue delays encountered by the lessee in obtaining required permits or consents, including administrative or judicial challenges or appeals;

(7) The Director determines that continued operations would result in premature abandonment of a producing mine, resulting in the loss of otherwise recoverable OCS minerals;

(8) The Director determines that continued operations would result in waste due to continued production of a surplus of minerals under adverse market conditions; or

(9) The suspension or temporary prohibition is necessary to comply with judicial decrees prohibiting production or any other operation or activity, or the permitting of those activities, effective the date set by the court for that prohibition.

(c) When the Director orders or approves a suspension or a temporary prohibition of operation or activity including production on all of a lease pursuant to paragraphs (a) or (b) of this section, the term of the lease shall be extended for a period of time equal to the period of time that the suspension or temporary prohibition is in effect, except that no lease shall be so extended when the suspension or temporary prohibition is the result of the lessee's gross negligence or willful violation of a provision of the lease or governing regulations.

(d) The Director may, at any time within the period prescribed for a suspension or temporary prohibition issued pursuant to paragraph (b)(2) of this section, require the lessee to submit a Delineation, Testing, or Mining Plan for approval in accordance with the requirements for the approval of such plans in this part.

(e)(1) When the Director orders or issues a suspension or a temporary prohibition pursuant to paragraph (b)(2) of this section, the Director may require the lessee to conduct site-specific studies to identify and evaluate the cause(s) of the hazard(s) generating the suspension or temporary prohibition, the potential for damage from the hazard(s), and the measures available for mitigating the hazard(s). The nature, scope, and content of any study shall be subject to approval by the Director. The lessee shall furnish copies and all results of any such study to the Director. The cost of the study shall be borne by the lessee unless the Director arranges for the cost of the study to be borne by a party other than the lessee. The Director shall make results of any such study available to interested parties and to the public as soon as practicable after the completion of the study and submission of the results thereof.

(2) When the Director determines that measures are necessary, on the basis of the results of the studies conducted in accordance with paragraph (e)(1) of this section and other information available to and identified by the Director, the lessee shall be required to take appropriate measures to mitigate, avoid, or minimize the damage or potential damage on which the suspension or temporary prohibition is based. When deemed appropriate by the Director, the lessee shall submit a revised Delineation, Testing, or Mining Plan to incorporate the mitigation measures required by the Director. In choosing between alternative mitigation measures, the Director shall balance the cost of the required measures against the reduction or potential reduction in damage or threat of damage or harm to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment.

(f)(1) If under the provisions of § 282.13(b) (2), (3), and (4) of this part, the Director, with respect to any lease, directs the suspension of production or other operations on the entire leasehold, no payment of rental or minimum royalty shall be due for or during the period of the directed suspension. If under the provisions of § 282.13(b) (2), (3), and (4), of this part the Director, with respect to a lease on which there has been no production, directs the suspension of operations on the entire leasehold, no payment of rental shall be due during the period of the directed suspension.

(2) If under the provisions of this section, the Director grants the request of a lessee for a suspension of production or other operations, the lessee's obligations to pay rental, minimum royalty, or royalty shall continue to apply during the period of the approved suspension.

(3) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental or royalty relief resulting therefrom.

§ 282.14 Noncompliance, remedies, and penalties.

(a)(1) If the Director determines that a lessee has failed to comply with applicable provisions of law; the regulations in this part; other applicable regulations; the lease; the approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and the Director determines that such noncompliance poses a threat of immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Director shall order the lessee to take immediate and appropriate remedial action to alleviate the threat. Any oral orders shall be followed up by service of a notice of non-compliance upon the lessee by delivery in person to the lessee or agent, or by certified or registered mail addressed to the lessee at its last known address.

(2) If the Director determines that the lessee has failed to comply with applicable provisions of law; the regulations in this part; other applicable regulations; the lease; the requirements of an approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and such noncompliance does not pose a threat of immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Director shall serve a notice of noncompliance upon the lessee by delivery in person to the lessee or agent or by certified or registered mail addressed to the lessee at the last known address.

(b) A notice of noncompliance shall specify in what respect(s) the lessee has failed to comply with the provisions of applicable law; regulations; the lease; the requirements of an approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and shall specify the action(s) which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(c) Failure of a lessee to take the actions specified in the notice of noncompliance within the time limit specified shall be grounds for a suspension of operations and other appropriate actions including but not limited to the assessment of a civil penalty of up to $10,000 per day for each violation that is not corrected within the time period specified.

(d) Whenever the Director determines on the basis of sufficient evidence that a violation of or failure to comply with any provision of the Act; or any provision of a lease, license, or permit issued pursuant to the Act; or any provision of any regulation promulgated under the Act probably occurred and that such apparent violation continued beyond notice of the violation and the expiration of the reasonable time period allowed for corrective action, the Director shall follow the procedures concerning remedies and penalties in Subpart N, Remedies and Penalties, of Part 250 of this title to determine and assess an appropriate penalty.

(e) The remedies and penalties prescribed in this section shall be concurrent and cumulative, and the exercise of one shall not preclude the exercise of the other. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

§ 282.15 Cancellation of leases.

(a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act and the default continues for a period of 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address, the Secretary may cancel the lease pursuant to section 5(c) of the Act, and the lessee shall not be entitled to compensation. Any such cancellation is subject to judicial review as provided by section 23(b) of the Act.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, the Secretary may cancel the lease only after judicial proceedings pursuant to section 5(d) of the Act, and the lessee shall not be entitled to compensation.

(c) Any lease issued under the Act, whether producing or not, may be canceled by the Secretary upon proof that it was obtained by fraud or misrepresentation and after notice and opportunity to be heard has been afforded to the lessee.

(d) The Secretary may cancel a lease in accordance with the following:

(1) Cancellation may occur at any time if the Secretary determines after a hearing that—

(i) Continued activity pursuant to such lease would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing such lease in force.

(2) Cancellation shall not occur unless and until operations under such lease shall have been under suspension or temporary prohibition by the Secretary, with due extension of any lease term continuously for a period of 5 years or for a lesser period upon request of the lessee;

(3) Cancellation shall entitle the lessee to receive such compensation as is shown to the Secretary as being equal to the lesser of—

(i) The fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, and all other costs reasonably anticipated on the lease, or

(ii) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that (A) with respect to leases issued before September 18, 1978, such compensation shall be equal to the amount specified in paragraph (d)(3)(i) of this section; and (B) in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

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Subpart C—Obligations and Responsibilities of Lessees

§ 282.20 Obligations and responsibilities of lessees.

(a) The lessee shall comply with the provisions of applicable laws; regulations; the lease; the requirements of the approved Delineation, Testing, or Mining Plans; and other written or oral orders or instructions issued by the Director when performing exploration, testing, development, and production activities pursuant to a lease issued under Part 281 of this title. The lessee shall take all necessary precautions to prevent waste and damage to oil, gas, sulphur, and OCS mineral-bearing formations and shall conduct operations in such manner that does not cause or threaten to cause harm or damage to life (including fish and other aquatic life), to property, to the national security or defense, or to the marine, coastal, or human environment. The lessee shall make all mineral resource data and information and all environmental data and information acquired by the lessee in the course of exploration, testing, development, and production operations on the lease available to the Director for examination and copying at the lease site or an onshore location convenient to the Director.

(b) In all cases where there is more than one lease owner of record, one person shall be designated payor for the lease. The payor shall be responsible for making all rental, minimum royalty, any royalty payments.

(c) In all cases where lease operations are not conducted by the exclusive owner of record, a "designation of operator" shall be submitted to and accepted by the Director prior to the commencement of leasehold operations. This designation when accepted will be recognized as authority for the designee to act on behalf of the lessees and to fulfill the lessees' obligations under the Act, the lease, and the regulations of this part. All changes of address and any termination of a designation of operator shall be reported immediately, in writing, to the Director. In the case of a termination of a designation of operator or in the event of a controversy between the lessee and the designated operator, both the lessee and the designated operator will be responsible for the protection of the interests of the lessor.

(d) When required by the Director or at the option of the lessee, the lessee shall submit to the Director the designation of a local representative empowered to receive notices, provide access to OCS mineral and environmental data and information, and comply with orders issue pursuant to the regulations of this part. If there is a change in the designated representative, the Director shall be notified immediately.

(e) Before beginning operations, the lessee(s) shall inform the Director in writing of any designation of a local representative under paragraph (c) of this section and the address of the mine office responsible for the exploration, testing, development, or production activities; the lessee's temporary and permanent addresses; or the name and address of the designated operator who will be responsible for the operations, and who will act as the local representative of the lessee. The Director shall also be informed of each change thereafter in the address of the mine office or in the name or address of the local representative.

(f) The holder of a right of use and easement shall exercise its rights under the right of use and easement in accordance with the regulations of this part.

(g) A lessee shall submit reports and maintain records in accordance with § 282.29 of this part.

(h) When an oral approval is given by MMS in response to an oral request under these regulations, the oral request shall be confirmed in writing by the lessee or holder of a right of use and easement within 72 hours.

(i) The lessee is responsible for obtaining all permits and approvals from MMS or other Agencies needed to carry out exploration, testing, development, and production activities under a lease issued under Part 281 of this title.

§ 282.21 Plans, general.

(a) No exploration, testing, development, or production activities, except preliminary activities, shall be commenced or conducted on any lease except in accordance with a plan submitted by the lessee and approved by the Director. Plans will not be approved before completion of comprehensive technical and environmental evaluations to assure that the activities described will be carried out in a safe and environmentally responsible manner. Prior to the approval of a plan, the Director will assure that the lessee is prepared to take adequate measures to prevent waste; conserve natural resources of the OCS; and protect the environment, human life, and correlative rights. The lessee shall demonstrate to the satisfaction of the Director that the lease is in good standing, the lessee is authorized and capable of conducting the activities described in the plan, and that an acceptable bond has been provided.

(b) Plans shall be submitted to the Director for approval. The lessee shall submit the number of copies prescribed by the Director. Such plans shall describe in detail the activities that are to be conducted and shall demonstrate that the proposed exploration, testing, development, and production activities will be conducted in an operationally safe and environmentally responsible manner that is consistent with the provisions of the lease, applicable laws, and regulations. The Governor of an affected State(s) and other Federal Agencies shall be provided an opportunity to review and provide comments on proposed Delineation, Testing, and Mining Plans and any proposal for a significant modification to an approved plan. Following review, including the technical and environmental evaluations, the Director shall either approve, disapprove, or require the lessee to modify its proposed plan.

(c) Lessees are not required to submit a Delineation or Testing Plan prior to submittal of a proposed Testing or Mining Plan if the lessee has sufficient data and information on which to base a Testing or Mining Plan without carrying out postlease exploration and/or testing activities. A Mining Plan may include proposed exploration or testing activities where those activities are needed to obtain additional data and information on which to base plans for future mining activities. A Testing Plan may include exploration activities when those activities are needed to obtain additional data or information on which to base plans for future testing or mining activities.

(d) Preliminary activities are bathymetric, geological, geophysical, mapping, and other surveys necessary to develop a comprehensive Delineation, Testing, or Mining Plan. Such activities are those which have no significant adverse impact on the natural resources of the OCS. The lessee shall give notice to the Director at least 30 days prior to initiating the proposed preliminary activities on the lease. The notice shall describe in detail those activities that are to be conducted and the time schedule for conducting those activities.

(e) Leasehold activities shall be carried out with due regard to conservation of resources, paying particular attention to the wise management of OCS mineral resources, minimizing waste of the leased resource(s) in mining and processing, and preventing damage to unmined

parts of the mineral deposit and other resources of the OCS.

§ 282.22 Delineation Plan.

All exploration activities shall be conducted in accordance with a Delineation Plan submitted by the lessee and approved by the Director. The Delineation Plan shall describe the proposed activities necessary to locate leased OCS minerals, characterize the quantity and quality of the minerals, and generate other information needed for the development of a comprehensive Testing or Mining Plan. A Delineation Plan at a minimum shall include the following:

(a) The OCS mineral(s) of primary interest.

(b) A brief narrative description of the activities to be conducted and how the activities will lead to the discovery and evaluation of a commercially minable deposit on the lease.

(c) The name, registration, and type of equipment to be used, including vessel types as well as their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(d) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.

(e) Maps showing the proposed locations of test drill holes, the anticipated depth of penetration of test drill holes, the locations where surficial samples were taken, and the location of proposed geophysical survey lines for each surveying method being employed.

(f) A description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution and damage to aquatic and wildlife species and their habitats; any unique or special features in the lease area; aquifers; other natural resources of the OCS; and hazards to public health, safety, and navigation.

(g) A schedule indicating the starting and completion dates for each proposed exploration activity.

(h) A list of any known archaeological resources on the lease and measures to assure that the proposed exploration activities do not damage those resources.

(i) A description of any potential conflicts with other uses and users of the area.

(j) A description of measures to be taken to monitor the effects of the proposed exploration activities on the environment in accordance with § 282.28(c) of this part.

(k) A detailed description of practices and procedures to effect the abandonment of exploration activities, e.g., plugging of test drill holes. The proposed procedures shall indicate the steps to be taken to assure that test drill holes and other testing procedures which penetrate the seafloor to a significant depth are properly sealed and that the seafloor is left free of obstructions or structures that may present a hazard to other uses or users of the OCS such as navigation or commercial fishing.

(l) A detailed description of the cycle of all materials, the method for discharge and disposal of waste and refuse, and the chemical and physical characteristics of waste and refuse.

(m) A description of the potential environmental impacts of the proposed exploration activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and affected environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of environmental impacts and the domestic socioeconomic effects of construction and operation of the associated facilities, including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and

(5) Alternative sites and technologies considered by the lessee and the reasons why they were not chosen.

(n) Any other information needed for technical evaluation of the planned activity, such as sample analyses to be conducted at sea, and the evaluation of potential environmental impacts.

§ 282.23 Testing Plan.

All testing activities shall be conducted in accordance with a Testing Plan submitted by the lessee and approved by the Director. Where a lessee needs more information to develop a detailed Mining Plan than is obtainable under an approved Delineation Plan, to prepare feasibility studies, to carry out a pilot program to evaluate processing techniques or technology or mining equipment, or to determine environmental effects by a pilot test mining operation, the lessee shall submit a comprehensive Testing Plan for the Director's approval. Any OCS minerals acquired during activities conducted under an approved Testing Plan will be subject to the payment of royalty pursuant to the governing lease terms. A Testing Plan at a minimum shall include the following:

(a) The nature and purpose of the proposed testing program.

(b) A comprehensive description of the activities to be performed including descriptions of the proposed methods for analysis of samples taken.

(c) A narrative description and maps showing water depths and the locations of the proposed pilot mining or other testing activities.

(d) A comprehensive description of the method and manner in which testing activities will be conducted and the results the lessee expects to obtain as a result of those activities.

(e) The name, registration, and type of equipment to be used, including vessel types together with their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(f) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.

(g) A schedule specifying the starting and completion dates for each of the testing activities.

(h) A list of known archaeological resources on the lease and measures to be used to assure that the proposed testing activities do not damage those resources.

(i) A description of any potential conflicts with other uses and users of the area.

(j) A description of the measures to be taken to monitor the impacts of the proposed testing activities in accordance with § 282.28(c) of this part.

(k) A detailed description of the cycle of all materials including samples and wastes, the method for discharge and disposal of such waste and refuse, and the chemical and physical characteristics of such waste and refuse.

(l) A detailed description of practices and procedures to effect the abandonment of testing activities, e.g., abandonment of a pilot mining facility. The proposed procedures shall indicate the steps to be taken to assure that mined areas do not pose a threat to the environment and that the seafloor is left free of obstructions and structures that may present a hazard to other uses or users of the OCS such as navigation or commerical fishing.

(m) A description of potential environmental impacts of testing activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and affected

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environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of potential environmental impacts of the proposed testing activities and the domestic scoioeconomic effects of construction and operation of the proposed testing facilities, including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and

(5) Alternate sites and technologies considered by the lessee and the reasons why they were not selected.

(n) Any other information needed for technical evaluation of the planned activities and for evaluation of the impact of those activities on the human, marine, and coastal environments.

§ 282.24 Mining Plan.

All OCS mineral development and production activities shall be conducted in accordance with a Mining Plan submitted by the lessee and approved by the Director. A Mining Plan shall include comprehensive detailed descriptions, illustrations, and explanations of the proposed OCS mineral development, production, and processing activities and accurately present the lessee's proposed plan of operation. A Mining Plan at a minimum shall include the following:

(a) A narrative description of the mining activities including:

(1) The OCS mineral(s) or material(s) to be recovered;

(2) Estimates of the number of tons and grade(s) of ore to be recovered;

(3) Anticipated annual production;

(4) Volume of ocean bottom expected to be disturbed (area and depth of disruption) each year; and

(5) All activities of the mining cycle from extraction through processing and waste disposal.

(b) Maps of the lease showing water depths, the outline of the mineral deposit(s) to be mined with cross sections showing thickness, and the area(s) anticipated to be mined each year.

(c) The name, registration, and type of equipment to be used, including vessel types as well as their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(d) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.

(e) A description of equipment to be used in mining, processing, and transporting of the ore.

(f) A schedule indicating the anticipated starting and completion dates for each activity described in the plan.

(g) For onshore processing, a description of how OCS minerals are to be processed and how the produced OCS minerals will be weighed, assayed, and royalty determinations made.

(h) For at-sea processing, additional information including type and size of installation or structures and the method of tailings disposal.

(i) A list of known archaeological resources on the lease and the measures to be taken to assure that the proposed mining activities do not damage the resources.

(j) Description of any potential conflicts with other uses and users of the area.

(k) A detailed description of the nature and occurrence of the OCS Mineral deposit(s) in the leased area with adequate maps and sections.

(l) A detailed description of development and mining methods to be used, the proposed sequence of mining or development, the expected production rate, the method and location of the proposed processing operation, and the method of measuring production.

(m) A detailed description of the method of transporting the produced OCS minerals from the lease to shore and adequate maps showing the locations of pipelines, conveyors, and other transportation facilities and corridors.

(n) A detailed description of the cycle of all materials including samples and wastes, the method of discharge and disposal of waste and refuse, and the chemical and physical characteristics of the waste and refuse.

(o) A detailed description of measures to be taken to monitor the impacts of the proposed mining and processing activities on the environment in accordance with § 282.28(c) of this part.

(p) A detailed description of practices and procedures to effect the abandonment of mining and processing activities. The proposed procedures shall indicate the steps to be taken to assure that mined areas on tailing deposits do not pose a threat to the environment and that the seafloor is left free of obstructions and structures that present a hazard to other users or uses of the OCS such as navigation or commercial fishing.

(q) A description of potential environmental impacts of mining activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and the affected environment (e.g., maps. land use, and layout);

(2) A description of the nature and degree of potential environmental impacts of the proposed mining activities and the domestic socioeconomic effects of construction and operation of the associated facilities including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and

(5) Alternative sites and technologies considered by the lessee and the reasons why they were not chosen.

(r) Any other information needed for technical evaluation of the proposed activities and for the evaluation of potential impacts on the environment.

§ 282.25 Modified Plan.

Approved Delineation, Testing, and Mining Plans may be modified upon the Director's approval of the changes proposed. When circumstances warrant, the Director may direct the lessee to modify an approved plan to adjust to changed conditions. If the lessee requests the change, the lessee shall submit a detailed, written statement of the proposed modifications and the justification for the proposed changes.

§ 282.26 Contingency Plan.

(a) When required by the Director, a lessee shall include a Contingency Plan as part of its request for approval of a Delineation, Testing, or Mining Plan. The Contingency Plan shall comply with the requirements of § 282.28(f) of this part.

(b) The Director may order or the lessee may request the Director's approval of a modification of the Contingency Plan when such a change is necessary to reflect any new information concerning the nature, magnitude, and significance of potential equipment or procedural failures or the effectiveness of the corrective actions described in the Contingency Plan.

§ 282.27 Conduct of operations.

(a) The lessee shall conduct all exploration, testing, development, and production activities and other operations in a safe and workmanlike

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manner and shall maintain equipment in a manner which assures the protection of the lease and its improvements, the health and safety of all persons, and the conservation of property and the environment.

(b) Nothing in this part shall preclude the use of new or alternative technologies, techniques, procedures, equipment, or activities, other than those prescribed in the regulations of this part, if such other technologies, techniques, procedures, equipment, or activities afford a degree of protection, safety, and performance equal to or better than that intended to be achieved by the regulations of this part, provided the lessee obtains the written approval of the Director prior to the use of such new or alternative technologies, techniques, procedures, equipment, or activities.

(c) The lessee shall immediately notify the Director when there is a death or serious injury; fire, explosion, or other hazardous event which threatens damage to life, a mineral deposit, or equipment; spills of oil, chemical reagents, or other liquid pollutants which could cause pollution; or damage to aquatic life or the environment associated with operations on the lease. As soon as practical, the lessee shall file a detailed report on the event and action(s) taken to control the stituation and to mitigate any damages.

(d)(1) Lessees shall provide means, at all reasonable hours either day or night, for the Director to inspect or investigate the conditions of the operation and to determine whether applicable regulations; terms and conditions of the lease; and the requirements of the approved Delineation, Testing, or Mining Plan are being met.

(2) A lessee shall, on request by the Director, furnish food, quarters and transportation for MMS representatives to inspect its facilities. Upon request, the lessee will be reimbursed by the United States for the actual costs which it incurs as a result of its providing food, quarters, and transportation for an MMS representative's stay of more than 10 hours. Requests for reimbursement must be submitted within 60 days following the cost being incurred.

(e) Mining and processing vessels, platforms, structures, artificial islands, and mobile drilling units which have helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 12 inches in height. Signs for structures without helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 3 inches in height. Signs shall be affixed at a location that is visible to approaching traffic and shall contain the following information which may be abbreviated:

(1) Name of the lease operator;

(2) The area designation based on Official OCS Protraction Diagrams;

(3) The block number in which the facility is located; and

(4) Vessel, platform, structure, or rig name.

(f)(1) Drilling.

(i) When drilling on lands valuable or potentially valuable for oil and gas or geopressured or geothermal resources, drilling equipment shall be equipped with blowout prevention and control devices acceptable to the Director before penetrating more than 500 feet unless a different depth is specified in advance by the Director.

(ii) In cases where the Director determines that there is sufficient likelihood of encountering pressurized hydrocarbons, the Director may require that the lessee comply with all or portions of the requirements in Part 250, Subpart D, of this title.

(iii) Before drilling any hole which may penetrate an aquifer, the lessee shall follow the procedures included in the approved plan for the penetration and isolation of the aquifer during the drilling operation, during use of the hole, and for subsequent abandonment of the hole.

(iv) Cuttings from holes drilled on the lease shall be disposed of and monitored with the approved plan.

(v) The use of muds in drilling holes on the lease and their subsequent disposition shall be according to the approved plan.

(2) All drill holes which are susceptible to logging shall be logged, and the lessee shall prepare a detailed lithologic log of each drill hole. Drill holes which are drilled deeper than 500 feet shall be drilled in a manner which permits logging. Copies of logs of cores and cuttings and all in-hole surveys such as electronic logs, gamma ray logs, neutron density logs, and sonic logs shall be provided to the Director.

(3) Drill holes for exploration, testing, development, or production shall be properly plugged and abandoned to the satisfaction of the Director in accordance with the approved plan and in such a manner as to protect the surface and not endanger any operation; any freshwater aquifer; or deposit of oil, gas, or other mineral substance.

(g) The use of explosives on the lease shall be in accordance with the approved plan.

(h)(1) Any equipment placed on the seabed shall be designed to allow its recovery and removal upon abandonment of leasehold activities.

(2) Disposal of equipment, cables, chains, containers, or other materials into the ocean is prohibited.

(3) Materials, equipment, tools, containers, and other items used on the OCS which are of such shape or configuration that they are likely to snag or damage fishing devices shall be handled and marked as follows:

(i) All loose materials, small tools, and other small objects shall be kept in a suitable storage area or a marked container when not in use or in a marked container before transport over OCS waters;

(ii) All cable, chain, or wire segments shall be recovered after use and securely stored;

(iii) Skid-mounted equipment, portable containers, spools or reels, and drums shall be marked with the owner's name prior to use or transport over OCS waters; and

(iv) All markings must clearly identify the owner and must be durable enough to resist the effects of the environmental conditions to which they are exposed.

(4) Any equipment or material described in paragraphs (h)(2), (h)(3)(ii), and (h)(3)(iii) of this section that is lost overboard shall be recorded on the daily operations report of the facility and reported to the Director and to the U.S. Coast Guard.

(i) Any bulk sampling or testing that is necessary to be conducted prior to submission of a Mining Plan shall be in accordance with an approved Testing Plan. The sale of any OCS minerals acquired under an approved Testing Plan shall be subject to the payment of the royalty specified in the lease to the United States.

(j) Installations and structures. (1) The lessee shall design, fabricate, install, use, inspect, and maintain all installations and structures including platforms on the OCS to assure the structural integrity of all installations and structures for the safe conduct of exploration, testing, mining, and processing activities considering the specific environmental conditions at the location of the installation of structure.

(2) All fixed or bottom-founded platforms or other structrues, e.g., artificial islands (platforms) shall be designed, fabricated, installed, inspected, and maintained in accordance with the provisions of Part 250, Subpart I, of this title.

(k) The lessee shall not produce any OCS mineral until the method of measurement and the procedures for product valuation have been instituted in accordance with the approved Testing or Mining Plan. The lessee shall enter the weight or quantity and quality

of each mineral produced with § 282.31 of this title.

(l) The lessee shall conduct OCS mineral processing operations in accordance with the approved Testing or Mining Plan and use due diligence in the reduction, concentration, or separation of mineral substances by mechanical or chemical processes, by evaporation, or other means, so that the percentage of concentrates or other mineral substances are recovered in accordance with the practices approved in the Testing or Mining Plan.

(m) Disposal of waste materials. No material shall be discharged or disposed of except in accordance with the approved disposal practice and procedures contained in the approved Delineation, Testing, or Mining Plan.

§ 282.28 Environmental protection measures.

(a) Exploration, testing, development, production, and processing activities proposed to be conducted under a lease will only be approved by the Director upon the determination that the adverse impacts of the proposed activities can be avoided, minimized, or otherwise mitigated. The Director shall take into account the information contained in the sale-specific environmental evaluation prepared in association with the lease offering as well as the site- and operation-specific environmental evaluations prepared in association with the review and evaluation of the approved Delineation, Testing, or Mining Plan.

(b) If the baseline data available are judged by the Director to be inadequate to support an environmental evaluation of a proposed Delineation, Testing, or Mining Plan, the Director may require the lessee to collect additional environmental baseline data prior to the approval of the activities proposed.

(c)(1) The lessee shall monitor activities in a manner that develops the data and information necessary to enable the Director to assess the impacts of exploration, testing, mining, and processing activities on the environment on and off the lease; develop and evaluate methods for mitigating adverse environmental effects; validate assessments made in previous environmental evaluations; and ensure compliance with lease and other requirements for the protection of the environment.

(2) Monitoring of environmental effects shall include determination of the spatial and temporal environmental changes induced by the exploration, testing, development, production, and processing activities on the flora and fauna of the sea surface, the water column, and/or the seafloor.

(3) The Director may place observers onboard exploration, testing, mining, and processing vessels; installations; or structures to ensure that the provisions of the lease, the approved plan, and these regulations are followed and to evaluate the effectiveness of the approved monitoring and mitigating practices and procedures in protecting the environment.

(4) The Director may order or the lessee may request a modification of the approved monitoring program prior to the startup of testing activities or commercial-scale recovery, and at other appropriate times as necessary, to reflect accurately the proposed operations or to incorporate the results of recent research or improved monitoring techniques.

(5) When prototype test mining is proposed, the lessee shall include a monitoring strategy for assessing the impacts of the testing activities and for developing a strategy for monitoring commercial-scale recovery and mitigating the impacts of commercial-scale recovery more effectively. At a minimum, the proposed monitoring activities shall address specific concerns expressed in the lease-sale environmental analysis.

(6) When required, the monitoring plan shall specify:

(i) The sampling techniques and procedures to be used to acquire the needed data and information;

(ii) The format to be used in analysis and presentation of the data and information;

(iii) The equipment, techniques, and procedures to be used in carrying out the monitoring program; and

(iv) The name and qualifications of person(s) designated to be responsible for carrying out the environmental monitoring.

(d) Lessees shall develop and conduct their operations in a manner designed to avoid, minimize, or otherwise mitigate environmental impacts and to demonstrate the effectiveness of efforts to that end. Based upon results of the monitoring program, the Director may specify particular procedures for mitigating environmental impacts.

(e) In the event that equipment or procedural failure might result in significant additional damage to the environment, the lessee shall submit a Contingency Plan which specifies the procedures to be followed to institute corrective actions in response to such a failure and to minimize adverse impacts on the environment. Such procedures shall be designed for the site and mining activities described in the approved Delineation, Testing, or Mining Plan.

§ 282.29 Report and records.

(a) A report of the amount and value of each OCS mineral produced from each lease shall be made by the payor for the lease for each calendar month, beginning with the month in which approved testing, development, or production activities are initiated and shall be filed in duplicate with the Director on or before the 20th day of the succeeding month, unless an extension of time for the filing of such report is granted by the Director. The report shall disclose accurately and in detail all operations conducted during each month and present a general summary of the status of leasehold activities. The report shall be submitted each month until the lease is terminated or relinquished unless the Director authorizes omission of the report during an approved suspension of production. The report shall show for each calendar month the location of each mining and processing activity; the number of days operations were conducted; the identity, quantity, quality, and value of each OCS mineral produced, sold, and disposed of; and other information as may be required by the Director.

(b) The lessee shall submit a status report on exploration and/or testing activities under an approved Delineation or Testing Plan to the Director within 30 days of the close of each calendar quarter which shall include:

(1) A summary of activities conducted;

(2) A listing of all geophysical and geochemical data acquired and developed such as acoustic or seismic profiling records;

(3) A map showing location of holes drilled and where bottom samples were taken; and

(4) Identification of samples analyzed.

(c) Each lessee shall submit to the Director a report of exploration and/or testing activities within 3 months after the completion of operations. The final report of exploration and/or testing activities conducted on the lease shall include:

(1) A description of work performed;

(2) Charts, maps, or plats depicting the area and leases in which activities were conducted specifically identifying the lines of geophysical traverses and/or the locations where geological activity was conducted and/or the locations of other exploration and testing activities;

(3) The dates on which the actual operations were performed;

(4) A narrative summary of any mineral occurrences; environmental

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hazards; and effects of the activities on the environment, aquatic life, archaeological resources, or other uses and users of the area in which the activities were conducted;

(5) Such other descriptions of the activities conducted as may be specified by the Director; and

(6) Records of all samples from core drilling or other tests made on the lease. The records shall be in such form that the location and direction of the samples can be accurately located on a map. The records shall include logs of all strata penetrated and conditions encountered, such as minerals, water, gas, or unusual conditions, and copies of analyses of all samples analyzed.

(d) The lessee shall report the results of environmental monitoring activities required in § 282.28 of this part and shall submit such other environmental data as the Director may require to conform with the requirements of these regulations.

(e)(1) All maps shall be appropriately marked with reference to official lease boundaries and elevations marked with reference to sea level. When required by the Director, vertical projections and cross sections shall accompany plan views. The maps shall be kept current and submitted to the Director annually, or more often when required by the Director. The accuracy of maps furnished shall be certified by a professional engineer or land surveyor.

(2) The lessee shall prepare such maps of the leased lands as are necessary to show the geological conditions as determined from G&G surveys, bottom sampling, drill holes, trenching, dredging, or mining. All excavations shall be shown in such manner that the volume of OCS minerals produced during a royalty period can be accurately ascertained.

(f) Any lessee who acquires rock, mineral, and core samples under a lease shall keep a representative split of each geological sample and a quarter longitudinal segment of each core for 5 years during which time the samples shall be available for inspection at the convenience of the Director who may take cuts of such cores, cuttings, and samples.

(g)(1) The lessee shall keep all original data and information available for inspection or duplication, by the Director at the expense of the lessor, as long as the lease continues in force. Should the lessee choose to dispose of original data and information once the lease has expired, said data and information shall be offered to the lessor free of costs and shall, if accepted, become the property of the lessor.

(2) Navigation tapes showing the location(s) where samples were taken and test drilling conducted shall be retained for as long as the lease continues in force.

(h) Lessees shall maintain records in which will be kept an accurate account of all ore and rock mined; all ore put through a mill; all mineral products produced; all ore and mineral products sold and to whom sold; and the inventory weight, assay value, moisture content, base sales price, dates, penalties, and price received. The percentage of each of the mineral products recovered and the percentages lost shall be shown. The records associated with activities on a lease shall be available to the Director for auditing.

(i) When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the Director.

§ 282.30 Right of use and easement.

(a) A right of use and easement that includes any area subject to a lease issued or maintained under the Act shall be granted only after the lessee has been notified by the requestor and afforded the opportunity to comment on the request. A holder of a right under a right of use and easement shall exercise that right in accordance with the requirements of the regulations in this part. A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee on its lease.

(b) Once a right of use and easement has been exercised, the right shall continue, beyond the termination of any lease on which it may be situated, as long as it is demonstrated to the Director that the right of use and easement is being exercised by the holder of the right and that the right of use and easement continues to serve the purpose specified in the grant. If the right of use and easement extends beyond the termination of any lease on which the right may be situated or if it is situated on an unleased portion of the OCS, the rights of all subsequent lessees shall be subject to such right. Upon termination of a right of use and easement, the holder of the right shall abandon the premises in the same manner that a lessee abandons activities on a lease to the satisfaction of the Director.

§ 282.31 Suspension of production or other operations.

A lessee may submit a request for a suspension of production or other operations. The request shall include justification for granting the requesting suspension, a schedule of work leading to the initiation or restoration of production or other operations, and any other information the Director may require.

Subpart D—Payments

§ 282.40 Bonds.

(a) Pursuant to the requirements for a bond in §281.33 of this title, prior to the commencement of any activity on a lease, the lessee shall submit a surety or personal bond to cover the lessee's royalty and other obligations under the lease as specified in this section.

(b) All bonds furnished by a lessee or operator shall be in a form or on a form approved by the Director. A single copy of the required form is to be executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety.

(c) Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury shall be accepted. (See Department of Treasury Circular No. 570 and any supplemental or replacement circulars.)

(d) Personal bonds shall be accompanied by a cashier's check, certified check, or negotiable U.S. Treasury bonds of an equal value to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance of full authority to the Director to sell such securities in case of default in the performance of the terms and conditions of the lease.

(e) A bond in the minimum amount of $50,000 to cover the lessee's obligations under the lease shall be submitted prior to the commencement of any activity on a leasehold. A $50,000 bond shall not be required on a lease if the lessee already maintains or furnishes a $300,000 bond conditioned on compliance with the terms of leases for OCS minerals other than oil, gas, and sulphur held by the lessee on the OCS for the area in which the lease is located. Prior to approval of a Delineation, Testing, or Mining Plan the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

(f) For the purposes of this section there are four areas:

(1) The Gulf of Mexico;

(2) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii;

(3) The area offshore the Coast of Alaska; and

(4) The area offshore the Atlantic Coast.

(g) A separate bond shall be required for each area. An operator's bond in the same amount may be substituted at any time for the lessee's bond.

(h) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

(i) After default, the principal shall, within 6 months after notice or within such shorter period as may be fixed by the Director, either post a new bond or increase the existing bond to the amount previously held. In lieu thereof, the principle may, within that time, file separate or substitute bonds for each lease. Failure to meet these requirements may result in a suspension of operations including production on leases covered by such bonds.

(j) The Director shall not consent to termination of the period of liability of any bond unless an acceptable alternative bond has been filed or until all the terms and conditions of the lease covered by the bond have been met.

§ 282.41 Method of royalty calculation.

In the event that the provisions of royalty management regulations do not apply to the specific commodities produced under regulations in this part, the lessee shall comply with procedures specified in the leasing notice.

§ 282.42 Payments.

Rentals, royalties, and other payments due the Federal Government on leases for OCS minerals shall be paid and reports submitted by the payor for a lease in accordance with § 281.26 of this title.

Subpart E—Appeals

§ 282.50 Appeals.

Orders or decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this title. The filing of an appeal with the Director shall not suspend the requirement for compliance with an order or decision other than the payment of a civil penalty.

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Part IV

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Update of Ambulatory Surgical Center Payment Rates; Notice of Proposed Rates

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-460-PN]

Medicare Program; Update of Ambulatory Surgical Center Payment Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rates.

SUMMARY: This proposed notice sets forth the updated payment rates for ambulatory surgical center services. As required by section 1833(i)(2)(A) of the Social Security Act, these revised rates would be effective July 1, 1988.

We are proposing to refine the methodology used to determine the payment rates and base the rates on the most recent survey data collected from ambulatory surgical centers. In addition, we would compute the payment rates using the HCFA hospital wage index. We are also proposing to incorporate the payment for intraocular lens implanted during cataract surgery into the facility rate as required by section 4063(b) of the Omnibus Budget Reconciliation Act of 1987, which was enacted on December 22, 1987. Finally, we are proposing changes regarding the payment policy for surgical procedures that are terminated due to medical complications that increase the surgical risk to the patient.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 17, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-460-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-460-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (301) 966-4571.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that, under Part B of Medicare (Supplementary Medical Insurance), benefits include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and that are performed in an ambulatory surgical center (ASC). As defined in 42 CFR 416.2, an ASC is any distinct entity that—

- Operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization;
- Has an agreement with HCFA to participate in the Medicare program as an ASC; and
- Meets specified conditions for coverage set forth in Subpart B of 42 CFR Part 416.

Generally, there are two elements in the total charge for a surgical procedure—a charge for the physician's professional services for performing the procedure, and a charge for the facility's services (such as use of an operating room). Before the enactment of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), if the physician agreed to accept assignment, the physician's professional services furnished in connection with these surgical procedures when performed in an ambulatory setting were paid at 100 percent of the reasonable charge (or 100 percent of the reasonable cost in the case of a health maintenance organization reimbursed under section 1876 of the Act) (42 CFR 416.110). If the physician did not accept assignment for these services, payment was made at 80 percent of the reasonable charge. The changes made to this policy by Pub. L. 100-203 are discussed below.

Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures meeting the criteria specified under section 1833(i)(l)(A) of the Act. Facility services furnished after June 30, 1987 are subject to the usual Medicare Part B 20 percent coinsurance and deductible requirements. Therefore, participating ASCs are paid 80 percent of the prospectively determined rate. The rate is intended to represent the Secretary's estimate of a fair fee that takes into account the cost of facility services provided in conjuction with a procedure. Currently, the rate is a standard overhead amount that does not include physicians' fees and other medical items and services (for example, prosthetic devices) for which separate payment may be authorized under other provisions of the Medicare program.

The Report of the Senate Committee on Finance accompanying section 934 of Pub. L. 96-499 (the legislation that added the ASC benefit to the Medicare program) states, "The overhead factor is expected to be calculated on a prospective basis * * * utilizing sample survey and similar techniques to develop reasonable estimated overhead allowances for each of the listed procedures * * *." (See S. Rep. 471, 96th Cong., 1st Sess. 35 (1979).) Section 416.140 of the regulations provides that a survey will be conducted periodically. In addition, section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate must result in substantially less Medicare expenditure than would have been paid if the same procedure was performed on an inpatient basis.

Currently, all covered ASC surgical procedures are classified into four separate payment groups for which four separate ASC payment rates apply. When two or more procedures are performed in the same operation, payment to the ASC is at the full rate for the procedure classified in the highest payment group and 50 percent of the rate for each of the other procedures (§ 416.120(c)(2)), subject to deductible and coinsurance amounts. Freestanding facilities and hospital-operated ASCs electing to participate under the ASC benefit are paid at the same rate.

On August 5, 1982, we issued two documents in the **Federal Register** to implement the ASC benefit. The first was a final rule to add to the benefits available under Part B of Medicare the services associated with certain surgical procedures provided in an ASC setting. (See 47 FR 34082.) In the second document, which was a final notice, the Secretary, after consulting with appropriate medical organizations, specified a list of surgical procedures that may be performed safely on an ambulatory basis in an ASC. (See 47 FR 34099.) Subsequently, we have revised the list of covered ASC procedures in an April 21, 1987 final notice (52 FR 13176), and proposed further revision to that list in an August 11, 1987 proposed notice (52 FR 29729). Corrections to the latter notice were published on September 15, 1987 (52 FR 34848).

In March 1983, we issued implementing instructions at sections

2266.3 and 5243.3 of the Medicare Carriers Manual (HCFA Pub. 14–3). Section 2266.3 restates the list of covered procedures published in the August 5, 1982 final notice using the specific procedure codes from the Physicians' Current Procedural Terminology, Fourth Edition (commonly referred to as CPT–4). Since the list of approximately 100 procedure codes published in the August 5, 1982 final notice generally represented two or more distinct procedures, the list as restated in specific CPT–4 codes included more than 400 procedure codes. In June 1987, the list of CPT–4 codes in the Medicare Carriers Manual was revised to include the revisions set forth in the April 21, 1987 final notice. The list now includes 1535 procedure codes.

Section 5243.3 defines the criteria for payment of multiple covered procedures performed in the same operative session. With one exception, all of the covered procedures listed in section 2266.3 and designated by a single CPT–4 code are considered single procedures. The exception, insertion of intraocular lens prosthesis with cataract extraction (initially coded as procedure code 66980 and subsequently recoded as procedure codes 66983 and 66984 to distinguish an intracapsular cataract extraction from an extracapsular extraction, respectively), is treated as two separate procedures. The manual instructs the carriers to pay this procedure at one and one-half times the applicable Group 4 payment rate.

II. Notice of Updated Payment Rates Effective July 1, 1987

A. Introduction

In a June 1, 1987 notice with comment period (52 FR 20466), we updated the ASC facility payment rates for the first time since they were first published in the August 5, 1982 final rule. The updated rates were based on the projected increase (18.7 percent) in the consumer price index for all urban consumers (CPI–U) from September 1982 (the effective date of the initial ASC payment rates) to January 1988 (the midpoint of the 12-month period beginning July 1, 1987). We used Data Resources, Incorporated (DRI) forecasts for the fourth quarter calendar year 1987 and the first quarter calendar year 1988 index levels to project the January 1988 index level.

The ASC facility services payment rates that were effective July 1, 1987 are as follows:

Group 1—$274
Group 2—$326
Group 3—$351
Group 4—$399

B. Discussion of Comments

In response to the notice, we received 75 items of correspondence. The majority of the comments were submitted by individuals who owned or operated ASCs. All of the comments dealt with two general issues, as discussed below.

Comment: A number of commenters objected to the use of an economic index to update the facility payment rates because they believed that the original rates were inadequate and were based on limited and obsolete data. They stated that the update should have been based on the ASC survey data collected in 1986.

Response: We acknowledge the limitations of our original data base and agree that it would have been preferable to update the facility rates based on the new survey data rather than on an economic index. However, as explained in the June 1987 notice (52 FR 20467), we were unable to complete our analysis of the survey data in time to meet the statutory deadline of July 1, 1987 because of delays beyond our control in completing audits of 97 sample facilities. (Section 1833(i)(2)(A) of the Act requires that the payment rates be updated not later than July 1, 1987, and annually thereafter.) Due to discrepancies observed in the unaudited data, it was imperative that the audits be completed before the results were incorporated into an updated methodology.

Comment: Commenters argued that the hospital market basket index rather than the CPI–U should have been used to account for inflation when updating the facility payment rates for July 1, 1987. They believed that the hospital market basket index is more appropriate because of the similarity between costs incurred for surgical services offered by ASCs on an outpatient basis and costs incurred for surgery performed by hospitals on an inpatient basis.

Response: After carefully considering all alternatives, we updated the payment rates using the CPI–U because it is a generalized index that reflects increases in the prices paid for a representative market basket of goods and services. Congress has mandated the use of the CPI–U for the Medicare clinical diagnostic laboratory fee schedule, and it has also been used to limit increases in allowable charges for nonphysician services.

The hospital market basket index is a specialized index specifically related to goods and services commonly associated with hospital inpatient costs. Notwithstanding similarities in surgical costs incurred by ASCs and hospitals, the mix of goods and services differ substantially. Because of this difference, we believe that use of the hospital market basket index would have distorted the ASC payment rates.

III. New Legislation

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. This new legislation includes the following provisions that affect payment for ASC services:

- Section 4084 of Pub. L. 100–203 amended section 1833(1) of the Act to add ASCs to the list of entities that can bill and be paid separately for the services of certified registered nurse anesthetists (CRNAs) who are either employed by the ASC or who have entered into a contractual arrangement to perform services for the ASC. This change applies to services furnished on or after January 1, 1989. We intend to implement this provision in a separate rulemaking document. For purposes of this proposed notice, we note our intention to continue the current practice of incorporating the costs associated with CRNA services furnished by CRNAs who are either employed directly by the ASC or who have a contractual arrangement with the ASC into the facility payment rate.
- Section 4054 of Pub. L. 100–203 limited section 1833(1) of the Act to repeal, in effect, the waiver of Medicare Part B coinsurance and deductible requirements for physicians' services furnished in connection with an ASC covered procedure effective April 1, 1988. As of that date, physicians' services are paid at 80 percent of reasonable charges and beneficiaries are responsible for a 20 percent coinsurance and the Medicare Part B deductible.
- Section 4063(b) of Pub. L. 100–203 amended section 1833(i)(2)(A) of the Act to mandate that payment for an intraocular lens (IOL) implant performed in an ASC in conjunction with cataract surgery be included in the facility payment rate effective with services furnished on or after July 1, 1988. It further requires that the payment amount for the IOL be reasonable and related to the cost of acquiring certain types of lenses.

IV. Provisions of the Proposed Notice

A. Methodology for Ratesetting

The payment methodology published in the August 5, 1982 final rule established four facility payment rate groups based on 1979 and 1980 cost and charge information obtained from approximately 40 ASCs. Using these

data, we first developed an indexing method for ranking each covered procedure based on a facility's charge for an individual procedure as compared to its average charge for all procedures offered. By indexing procedures, we were able to determine the value a particular facility places on a covered procedure in relation to other procedures it offers.

We calculated the average of the index numbers across all facilities for each procedure and then arrayed the procedures by this national average index. After determining the national average index value for each procedure, we classified the covered procedures into four groups by that value. We used interval points to establish group breaking points as follows:

Group 1—index less than .90
Group 2—index between .90 and 1.00
Group 3—index between 1.01 and 1.10
Group 4—index greater than 1.10

The index value was used exclusively for classification purposes. For determining the actual payment rate of a group, we used actual charge and cost information reported by the facilities. To establish the payment rates for each of the four groups, we used a five-step procedure, as described below.

Step 1—To remove the effects of area wage differences, we adjusted (that is, deflated) the actual charges for each procedure using the hospital wage index published on June 30, 1981 (46 FR 33641). Based on our analysis of submitted financial reports, we determined that, on the average, the labor portion is approximately one-third of the charge for each procedure. Assuming facilities' charges to be similarly related to costs, we adjusted one-third of the charge for each procedure by the wage index.

Step 2—We then calculated the average charge-per-procedure for each covered procedure by summing the wage-adjusted charge for all facilities in our data base that furnished a given procedure and dividing that result by the number of ASCs performing the same procedure.

Step 3—The procedures within each payment group were arrayed by the average charge. We identified the 60th percentile of average charges within the four payment groups.

Step 4—Based on a review of financial statements submitted by ASCs, we determiend a cost-to-charge ratio of 0.9. In order to make Medicare payments to ASCs cost-related as required under section 1833(i)(2) of the Act, we multiplied the average charge at the 60th percentile by 0.9.

Step 5—We further adjusted the average charge at the 60th percentile of each payment group to account for inflation occurring between 1980 and the effective date of the rates (September 7, 1982). The four payment group rates were set at the inflation-adjusted amounts.

As stated, above, we applied an across-the-board inflation factor to update the 1982 payment rates for services furnished on or after July 1, 1987.

For purposes of computing the ASC payment rates for services furnished on or after July 1, 1988, we are proposing to change our ratesetting methodology as described below.

1. Use of the Latest Survey Data

The payment rates proposed in this notice were developed based on the most recent survey data available on facility overhead expenses and procedure-specific charges. The data contained in our new data base were gathered through a survey of the industry conducted between May and August 1986. The survey instrument, the Ambulatory Surgical Center Payment Rate Survey (Form HCFA–452), was mailed in May 1986 to all ASCs (approximately 500) that were identified as participating facilities during March 1986. Facilities were required to complete Form HCFA–452 by July 10, 1986. Due to difficulties encountered by a large number of facilities in complying with the deadline, the due date was extended for at least 30 days upon request.

Of the approximately 500 facilities included in our mailing, about 470 of the ASCs completed Form HCFA–452. This statistic excludes 12 ASCs that had terminated their participation prior to receipt of the survey form.

The survey gathered information specific to total charges (Medicare and non-Medicare) on each procedure performed and the total number of times the procedure was performed as well as aggregate charges and cost data for each ASC's most recently completed fiscal year. The survey also obtained information on the number of Medicare patients and total patients treated by the ASC.

In preparing the 470 survey forms for data extraction, we identified forms from 333 ASCs that could potentially be used to develop the proposed rates included in this notice. We excluded those forms from ASCs that—

- Had been in operaton for less than six months;
- Could not separate operation of the ASC from operation of other entities; or
- Were unable to capture charge data from their recordkeeping systems in the manner requested.

The ASCs represented in our data base are located largely in urban areas (87 percent) and are overwhelmingly freestanding facilities (98 percent). Summary data on the national ASC survey are available upon request of HCFA.

These survey data represent a significantly broader data base than the one used in setting the current ASC rates. The new survey data base includes data from calendar years 1984, 1985, and 1986. In addition, this data base contains charge information on more than 1200 of the 1535 covered procedures.

Our initial analysis of the survey data indicated that there were flaws in the data, which we have attributed to ASCs' unfamiliarity with the new survey form and inconsistencies among ASCs in their recordkeeping systems. Preliminary review of the survey form responses indicated several problem areas (for example, underreporting of aggregate charges and commingling of receipts from a physician's private practice with the ASC operation) that prompted us to conduct a nationwide audit of a sample of ASCs for the purpose of validating the survey responses and developing from the audited data statistical measures such as the cost-to-charge ratio needed to make payments cost-related.

2. Sample Design and Audit

a. *Sample Design.* As discussed above, we conducted national audits of a sample of the survey data. To determine the appropriate sample size required to apply the audit findings to the survey responses obtained from a total population of 333 ASCs, we approximated the variance of audited costs, the variance of audited charges, and the correlation between audited costs and audited charges for a randomly selected sample of 50 unaudited Form HCFA–452s. Reported revenues were used as a proxy for charges and reported total expenses were used for costs. After reviewing a variety of precision levels with a given sampling error percentage, we determined that a random sample of 100 facilities would be appropriate to estimate audit results with adequate precision for ratesetting purposes.

To draw the sample, we identified the 333 ASCs solely by their six-digit Medicare provider number. These numbers were listed in numerical sequence. Sample ASCs were then randomly selected using appropriate statistical procedures. Of the 100 ASCs selected for audit only 97 ASCs were actually audited because 3 incorrect

provider numbers were included in the sample drawing. However, we used data from only 90 facilities because, of the 97 audited ASCs, 3 ASCs failed to report their charges correctly and 4 ASCs failed to report their Medicare and total patient statistics properly. Of the 97 ASCs actually audited, 20 percent were located in California, 9 percent in Texas, 8 percent in Arizona, and 5 percent in Florida.

b. *Audit Results.* The nationwide audit was conducted from November 1986 through March 1987 by the Medicare fiscal intermediates. Although ASCs are serviced by Medicare carriers, we had fiscal intermediaries conduct the audits because we believe their audit capabilities are better suited to conduct this type of activity. The home offices of ASC chains included in the sample were audited by the Office of the Inspector General (OIG). We instructed the auditors to determine reasonable costs of the audited facilities in accordance with Medicare principles of reimbursement.

Audits resulted in net adjustments that reduced reported costs by 9.1 percent and increased reported aggregated charges by 6.1 percent. The audit adjustments brought aggregate charges more in line with total revenue. The major cost reductions occurred in plant and property, equipment, laboratory, and other or miscellaneous costs such as travel, education, and malpractice insurance premiums. Prostheses and durable medical equipment (DME) costs were adjusted upward by nearly 13 percent while salary and supply costs were increased 1.5 and 0.8 percent, respectively.

After the audits were completed, we made the following adjustments to the audited data:

- As mentioned above, we eliminated three facilities from the aduit sample because their charges were reported improperly. We eliminated four other facilities because they either had no Medicare patients or incorrectly reported their patient statistics. Inclusion of these ASCs would have distorted the computed cost-to-charge ratio.
- We eliminated any excessive compensation paid to an administrator or to a medical director based on our audited analysis of administrative staff expenses and owner's compensation. Our analysis showed that the average salary for one full-time administrator or medical director in an ASC is $40,000. Therefore, we adjusted owner's compensation for nine audited facilities where the amount paid was in excess of $40,000 and was not related to duties performed.
- We determined that charges were not reported for prostheses and DME furnished by the ASCs even though expenses associated with these items were reflected in the cost data. Under the ASC benefit, payment for prostheses and DME is separate from the facility payment rate. Therefore, when computing the cost-to-charge ratio, we excluded those audited costs.

After completing these adjustments, we then performed the following calculations on the audited data:

- We summed each facility's salary and fringe benefits costs including owner's compensation and contractual personnel costs in order to derive the total labor-related costs for the sample.
- We summed each facility's net total costs.
- We then divided the total labor-related costs by the net total costs to derive the average labor-related percentage. The results were used to apportion the per procedure charges for the total population into their labor-related (34.45 percent) and nonlabor-related (65.55 percent) components prior to adjusting for geographic wage differences.
- We multiplied the net total costs for the facility by its ratio of Medicare patients to total patients to determine the portion of its costs attributable to Medicare patients. Similarly, we multiplied each facility's aggregate charges by its ratio of Medicare patients to total patients to determine the portion of its charges attributable to Medicare patients. We then summed each facility's Medicare costs and divided by the sum of the Medicare aggregate charges. We arrayed the resulting ratios in descending order and calculated the median Medicare cost-to-charge ratio for the sample (0.776). We then used the cost-to-charge ratio to relate each per procedure charge to cost as described below. Because the median is unaffected by extreme variations in individual facility costs and charges, we believe that use of a median rather than a mean cost-to-charge ratio is a distinct improvement over the current methodology.

3. Use of an Inflation Adjustment

The initial ASC rates that were determined in 1982 were adjusted for inflation. In addition, when we updated the rates for services furnished on or after July 1, 1987, we used the CPI–U and DRI forecasts to adjust the four basic group rates to account for inflation. This adjustment resulted in an across-the-board rate of increase and we used this approach solely to establish revised rates in the absence of a new data base. As a refinement to our ratesetting methodology, we are proposing to continue to use the CPI–U and DRI forecasts to construct inflation factors to adjust for the effects of changing price levels on ASC costs. The annual rates of increase used to derive the proposed inflation factors are shown in Table I below.

In the absence of an ASC-specific market basket, we believe that use of the CPI–U, a generalized index, is appropriate to reflect the impact of actual and projected changes in wages and prices on ASC costs occurring between the periods represented in our data base and the period covered by the revised rates. Unlike our initial data base which consisted almost entirely of data from 1980, our new data base contains survey data that are based on several calendar years of data (that is, 1984, 1985, and 1986). We are proposing this approach to ensure that the rates based on these reporting years include reasonably fair estimates of inflation that has occurred since the period covered by the survey.

We would apply the inflation adjustment on a facility by facility basis to the per procedure charge extracted from the survey forms to account for historical and projected price changes occurring between the midpoints of the periods included in our data base and the midpoint of the 12-month period to which the new rates would apply (December 31, 1988).

The annual percentage increases that were used to compute the proposed ASC rates are as follows:

TABLE I

	Percent increase[1] in the CPI–U
Calendar year:	
1984	4.3
1985	3.6
1986	1.9
1987	3.8
1988	4.6

[1] DRI fourth quarter 1987 update.

4. Deflation by Wage Index

After adjusting charges for inflation, we separated each ASC's per procedure charge into its labor-related and nonlabor-related portions. The labor-related portion (34.45 percent) was determined by calculating the average percentage of audited labor-related costs for the sample of 90 facilities. We defined labor-related costs to include salary, fringe benefits, contractual personnel expenses and owner's

compensation. We then divided the labor-related component of the per procedure charge by the wage index applicable to the ASC's location to derive a standardized labor-related portion of the charge. (The wage index is set forth in Addendum C to this proposed rule.) The effect of this calculation is to remove any variation in ASC per procedure charges that may be due solely to geographical differences in wages. We would then add the adjusted labor-related portion of the charge to the nonlabor-related portion prior to arraying and determining the weighted median charges.

5. Wage Index

Since the initial publication of the ASC facility payment rates in the August 5, 1982 final rule, we have used the 1981 Bureau of Labor Statistics' (BLS) wage index to adjust the payment rates for area wage variation. This wage index was published initially in the **Federal Register** on June 30, 1981 (46 FR 33637) and subsequently republished on November 26, 1984 (49 FR 46495). The wage index was constructed from 1979 hospital wage and employment data obtained from the BLS ES 202 Employment, Wages, and Contributions file for hospital workers, a standard reporting category. The BLS ES 202 system compiles information on employment and total wages for workers covered by unemployment insurance.

Since initial use of the BLS wage index, we have been aware of certain limitations in the BLS data, especially with regard to the lack of information on hours of employment or full-time equivalents. The BLS data provide information only on the number of workers employed at a hospital and their aggregate salaries. As a result, area wage indexes produced from these data do not distinguish between part-time and full time employees. Although we recognized these shortcomings, we used the BLS wage index in calculating the ASC facility payment rates because we believed that the advantage of using the best national data available outweighed any disadvantages.

It is important to note that when the ASC rates were established in 1982, data were not available to construct an ASC-specific wage index. Fewer than 100 ASCs were operational at that time. Therefore, we adopted the BLS hospital wage index as the best available proxy for adjusting area wage levels. While the 1986 ASC survey instrument (Form HCFA–452) included limited information on salaries and employment, such information was not presented in sufficient detail to permit the construction of an ASC industry-specific wage index from only these survey data. In addition, a significant proportion of ASCs failed to report or erroneously reported either the salary or full-time equivalent data or both.

Since we are unable to construct an ASC industry-specific wage index at this time, we are proposing to adopt the HCFA hospital wage index for use in calculating ASC payment rates. The HCFA hospital wage index was constructed in an effort to overcome the limitations of the BLS data with regard to full-time and part-time employment. We conducted a survey in 1944 that provided for the extraction of specific hospital salary and fringe benefit data from the Medicare cost report, and for the extraction from hospital records of data on paid hours worked. A complete description of the survey, as well as the survey results, can be found in the following **Federal Register** documents:

- The proposed rule published on July 3, 1984 (49 FR 27439).
- The final rule published on August 31, 1984 (49 FR 34764).
- The June 10, 1985 proposed rule (50 FR 24375).
- The September 3, 1985 final rule (50 FR 35661).

The HCFA wage index, which is currently used to set the inpatient hospital prospective payment system rates, the skilled nursing facility (SNF) cost limits, and the home health agency (HHA) cost limits, overcomes the limitations inherent in the BLS index with respect to part-time employment. The HCFA index, which is based on gross salaries and wages, measures the relative difference from area to area in gross average hourly hospital wages, that is, the wages paid to all hospital employees. Because the index is based on the average hourly wage paid in each urban or rural area, it accounts for regional differences in part-time employment.

We are proposing to adopt the HCFA wage index that was published in the September 1, 1987 hospital prospective payment final rule (52 FR 33095) (set forth as Addendum C of this document) for use in calculating the ASC facility payment rates that will be effective July 1, 1988. We believe that the use of this index would result in ASC facility payment rates that reflect more accurately the prevailing economic environment in which ASCs are located.

6. Urban and Rural Classifications

We currently use Standard Metropolitan Statistical Areas (SMSAs and non-SMSAs) and, in New England, New England County Metropolitan Areas (NECMAs and non-NECMAs) to classify urban and rural locations for purposes of applying the wage index adjustment to ASC facility payment rates. With few exceptions, urban locales consist of those counties that comprise either an SMSA or NECMA as defined in 1981 by the Executive Office of Management and Budget (EOMB). Rural areas consist of those counties within a State that lie outside an SMSA or NECMA. However, on June 30, 1983, EOMB began using Metropolitan Statistical Areas (MSAs) in lieu of SMSAs. Therefore, we are proposing to use the MSA designations for ASC ratesetting purposes for the following reasons:

- It is the classification system currently used by EOMB.
- It is the classification system applied to hospitals subject to the prospective payment system and to SNFs and HHAs for determining payments as well as in calculating their wage indexes.
- It reflects 1980 census changes in urban and rural areas.

MSAs are designated and defined following a set of standards prepared by the Federal Committee on MSAs, which advises EOMB on metropolitan area definitions. Under these standards, an area qualifies for recognition as an MSA if—

- A city of at least 50,000 population is located in the area; or
- It is an urbanized area of at least 50,000 population with a total metropolitan population of at least 100,000.

In addition to a county containing a main city, an MSA may also include additional counties that have close economic and social ties to the central county. MSAs are defined in terms of constituent counties or county equivalents, except in the six New England States. In most cases, there is little difference between the SMSA designations and the MSA designations. The MSA designations are shown in Addendum C of this document with their applicable wage index values.

Further, the HCFA wage index presented in Addendum C incorporates exceptions to the MSA classification system for certain New England counties. These exceptions, authorized under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21), require that any hospital located in New England be classified as being in an urban area if the hospital was classified as being in an urban area under the classification system in effect in 1979. This provision is intended to ensure equitable treatment under the hospital prospective payment system.

Under this authority, the following counties have been deemed to be urban areas:

- Litchfield County, CT in the Hartford-New Britain-Middleton-Bristol, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Manchester-Nashua, NH MSA.
- Newport County, RI in the Providence-Pawtucket-Woonsocket, RI MSA.

In addition, in the September 3, 1986 hospital prospective payment final rule, we provided an exception to the urban/rural classification system for hospitals in redesignated rural counties that are primarily surrounded on all sides by urban counties (51 FR 31469). We currently consider Shiawassee County, Michigan, which meets the exceptions criteria, as an urban area (in the Flint, Michigan MSA) in computing both the wage index and the payment amounts under the prospective payment system.

We propose to adopt these urban exceptions for the purpose of applying the HCFA wage index to the ASC facility payment rates. Since the ASC rates are applied also to hospital outpatient departments performing ASC covered procedures, we believe that adoption of the urban exceptions would provide for greater consistency among Medicare facilities in applying the HCFA wage index. That is, if these urban exceptions are not adopted, it would mean, for example, that a hospital located in Litchfield County, Connecticut that furnishes ASC-approved procedures in its outpatient department would be assigned two different wage index values: (1) An urban wage index value to calculate payment for the inpatient services, and (2) a rural wage index value to calculate payment for the ASC procedures. Classification of the same hospital as urban under one payment system and rural under another system and the assignment of two different wage index values is inconsistent and could be confusing, possibly resulting in payment error.

Section 4005 of Pub. L. 100-203 provides for further exceptions to the urban/rural classification system effective October 1, 1988. However, because the ASC rates proposed in this notice would be effective July 1, 1988, we do not believe it appropriate to incorporate the October 1, 1988 exceptions at this time.

7. Use of Weighted Median

In addition to collecting information on each facility's charge for a given procedure, the ASC survey collected information on the number of times the procedure was furnished in the facility during the period covered by the survey. As explained above, we are proposing to make several adjustments to each facility's charge before determining the charge for the procedure across all facilities. We are proposing to use the median charge for the procedure, weighted by the number of times the procedure was performed on Medicare patients, to determine the charge for the procedure across all facilities. The number of times the procedure was performed on Medicare patients was determined by multiplying the total number of times the procedure was performed in the facility by the ratio of the number of Medicare patients treated by the facility to the total number of patients treated by the facility. The weighted median represents the charge at or below which the procedure was furnished 50 percent of the time to Medicare patients.

We believe the use of the Medicare weighted median is a distinct improvement over the previous methodology, which used an unweighted average. Previously, each facility carried the same weight regardless of whether it performed a procedure 5 times or 100 times. Weighting by the number of times the procedure was performed on Medicare patients gives recognition to the relative importance of each facility in furnishing procedures covered by the Medicare program. In addition, the use of the median as opposed to the mean eliminates the effect any extreme variations in individual facility charges might have on the charge for the procedure across facilities.

8. Cost-to-Charge Adjustment

Section 1833(i)(2)(A) of the Act requires that Medicare payments to ASCs be cost-related. To comply with this requirement, we are proposing to use a cost-to-charge ratio of 0.776. This ratio was calculated based on Medicare costs and charges derived from the 90 ASCs in the audited sample. The Medicare costs and charges were determined by multiplying each facility's total costs and charges by its ratio of Medicare patients to total patients. We are proposing to multiply the weighted median charge of each procedure by 0.776.

9. Revised Classification System

Industry representatives have suggested that the number of payment groups should be increased in view of the large number of procedures now approved for coverage and advances in medical technology. We indicated in our April 21, 1987 notice (52 FR 13176) that we would consider changes to our current system if warranted by the new data. In this notice, we are proposing to eliminate the indexing method we currently use and develop a classification system based on fixed dollar intervals. We would expand the number of payment groups from four to six.

Additionally, because of the unique character of cataract procedures in ASCs, we solicit the advisability of classifying all cataract procedures within their own payment group. Cataract procedures account for approximately 53 percent of Medicare volume of ASC services and generate approximately 66 percent of all Medicare revenues in ASCs.

Currently, we use a four group classification system under which all procedures within the same group are paid the same rate. To develop that classification system, we used an indexing method for ranking each procedure based on a facility's charge for an individual procedure as compared to its average charge for all procedures offered. Since data were not available to permit the indexing of about 1200 new procedures added by the April 21, 1987 notice, we relied upon the medical expertise of our staff physicians to classify these procedures into the appropriate payment groups. The indexing method was intended to overcome facility bias in charging patterns related to cost and efficiency differences. Although it successfully compared a facility's charge for a given procedure to its average charge for all procedures, it did not provide a method to standardize the facility's average charge to permit comparison across facilities.

Our analysis of the per procedure charge data indicates that there are no common procedures that are offered by all facilities in our data base. Many centers perform specialty operations, for example, specializing in eye procedures only. While cataract extractions with IOL implantation tend to be the overall high volume procedure, a significant number of facilities do not perform this type of surgery. An eye specialty center performing a cataract extraction with insertion of an IOL generally would have a lower index value for that procedure than a multipurpose facility whose procedure volume is primarily associated with carpal tunnel surgery. One result was that there was a wide distribution in the costs of the procedures included in the same payment grouping. As discussed in detail, above, the data base we are using for this proposed notice is

comprised of data from the new survey form as reported in 1986 by 333 ASCs. The data base includes charge data on approximately 1200 of the more than 1500 covered procedure codes. Hence, the number of covered procedures is now four times as many as those initially subject to the indexing method.

Because of the wide variation found in types of procedures offered by ASCs represented in our data and the lack of a common procedure furnished by all ASCs, the indexing method is no longer effective in constructing a classification system. Rather, we believe that the following classification system based on $75 intervals of the weighted median per procedure cost is more appropriate. This method would classify procedures with similar costs into the same payment group.

Payment Groups: Weighted Median Per Procedure Cost

Group 1—Less than $275
Group 2—$275 through $349
Group 3—$350 through $424
Group 4—$425 through $499
Group 5—$500 through $574
Group 6—$575 and above

10. Classifying Services with Limited Data

There are a number of services that we could not classify based on the cost data derived under the rate development methodology. Although the survey was conducted in 1986, it was designed to gather charge data on procedures that we anticipated would be approved for coverage in 1987. However, such data were not furnished for 316 procedures. The majority of these surgical procedures were among those added to the list of covered procedures effective May 21, 1987. Also, another 346 procedures involved reporting by fewer than three facilities. Since the pricing patterns of these procedures were based on a small universe of ASCs, we eliminated these costs from our data base to avoid a statistically unreliable impact on the rates.

We are proposing to assign these 662 procedures to the appropriate payment groups based on the medical expertise of our staff physicians. This practice is consistent with that used in 1987 when the list of procedures was expanded and our data base did not contain sufficient charge data to classify the added procedures.

In addition, we encountered some aberrant per procedure costs in our data base that we believe are largely due to low utilization and, in part, to errors in reporting that are a result of the ASCs lack of familiarity with the new survey form. These abnormal costs affect the classification of 259 procedure codes. Of this number, 170 involve cost data reported by more than 2 facilities but fewer than 10 facilities. Analysis of these abnormal costs indicates that, in most cases, less costly procedures had higher per procedure costs than more complex ones.

For example, procedure code 26205 pertains to the removal of bone cyst or benign tumor of the metacarpal with autogenous graft that includes obtaining the graft. Procedure code 26215 is basically the same procedure but involves the proximal, middle, or distant phalanx. These two procedures are similar in terms of complexity and should be assigned to the same payment group. However, if we use reported costs to assign these procedures to the appropriate payment groups, 26205 would be assigned to payment Group 2 and 26215 would be assigned to Group 4. In this case, costs were reported by fewer than 10 ASCs.

In another instance, procedure code 11600 involves the removal of a malignant skin lesion that is less than 0.6 centimeters in diameter. Procedure code 11606 pertains to the removal of a malignant skin lesion over 4.0 centimeters in diameter. Although the latter procedure code is considered the more complex of the two, use of the new cost data would result in assignment of 11600 to a higher payment group (2) than 11606 (1). In this case, the number of facilities reporting costs for each procedure is in excess of 30. Therefore, we believe that the aberrant costs in this instance are attributable to reporting errors. Because of the number of similar procedures relating to the excision of skin lesions, we believe that reporting facilities may have failed to discriminate properly between them and may have instead combined codes when reporting.

Since these abnormal costs tend to create inconsistencies among the classification of similar procedures, we propose to eliminate costs associated with the 259 procedures from our data base. Our analysis indicates that elimination of these procedures would not affect calculation of the group rates since they are generally low-volume procedures. We propose to assign these surgical procedures to the appropriate payment groups based on the clinical judgment of our staff physicians. These proposed classifications are detailed in Addendum B to this proposed notice.

We have carefully considered the following alternatives to eliminating the anomalous per procedure costs:

a. *Not eliminate any abnormal costs.* While this approach would reduce the number of procedures that are subject to clinical judgment, we believe that it would result in classifications being determined based on costs that are not representative of the industry experience and would produce payment rates that are clinically inconsistent.

b. *Group similar procedures and aggregate associated costs.* This option would tend to overcome inconsistencies in the pricing of like procedures; however, it would require uniformity of treatment across all procedures and would require extensive clinical judgments concerning which procedures should be grouped together.

c. *Eliminate the costs for all procedures if the number of facilities performing a given service is fewer than 10.* This approach may ensure that the data base is not biased by the pricing patterns of a small universe of facilities. However, we rejected this approach for two reasons. First our review indicated that the cost data for a number of procedures reported by fewer than 10 facilities appear reasonable and result in an appropriate payment grouping. We do not believe these data should be arbitrarily excluded. Unilateral elimination of procedures reported by fewer than 10 facilities would result in an additional 216 procedures that would be classified by clinical judgment only. In addition, even if we did eliminate these procedures, we would still need to address the issue of those procedures with aberant costs that were reported by 10 or more facilities.

We invite public comment on our approach as well as cost information that would support changing any of the payment classifications we have made based on clinical judgment.

11. ASC Facility Payment Rates

To establish the payment rate for each of the six payment groups, we used a six-step procedure, as described below. We used per procedure charge data from 94 audited facilities and 239 unaudited facilities, or a total of 333 facilities. We excluded procedures that had charges reported by fewer than 3 facilities. Of the 1535 procedures, 316 procedures had no charge data and an additional 346 procedures had data reported by fewer than three facilities.

Step 1—We applied an inflation adjustment based on the CPI-U to the actual per procedure charge extracted from the survey data for each facility in order to account for historical and projected price changes occurring between the midpont of the facility's fiscal period represented in our data base and the midpoint of the 12-month period to which the new rates would apply (December 31, 1988).

Step 2—To remove the effects of area wage differences, we standardized the charge for each procedure using the HCFA hospital wage index set forth in Addendum C to this proposed notice. Based on our analysis of the audited survey data, we determined that on the average, the labor-related portion is approximately 34.45 percent. We then divided 34.45 percent of the inflated charge for each procedure by the wage index applicable to the ASC's location.

Step 3—After adding the wage adjusted labor-related portion back to the nonlabor-related portion, we calculated the median charge, weighted by the Medicare frequency, for the facilities reporting charge data for the procedure.

Step 4—We related the weighted median charge per procedure to cost as required by section 1833(i)(2) of the Act. To make this adjustment, we multiplied the weighted median charge for each procedure by 0.776.

Step 5—We arrayed procedures in descending order of median weighted cost values. We then classified the covered procedures into six payment groups based on a classification system that was developed using $75 intervals of the weighted median per procedure wage-adjusted costs.

Step 6—We then reviewed the cost for each procedure and its payment group to verify the clinical consistency in the classification of similar procedures and we identified 173 procedures with aberrant costs. We removed these procedures from the data base and assigned them to the appropriate payment group based on the clinical judgment of our staff physicians. After removing the 173 procedures, we set the payment rate at the weighted median cost of the procedures in each payment group, rounded to the nearest ten dollars.

The resulting ASC facility payment rates, as set forth below, would be effective July 1, 1988.

Group 1—$250
Group 2—$310
Group 3—$380
Group 4—$460
Group 5—$500
Group 6—$620

Addendum A to this proposed notice lists each CPT procedure code and the payment group under which we propose it would be paid, as well as the current group under which it is paid.

The proposed rates result in an estimated average increase of 5.5 percent. We are proposing these rates because they are based on the best data currently available to us, and we are required to review and update the rates by July 1, 1988.

We believe that the survey data have certain limitations that we have addressed through our rate development methodology and use of the audited sample. For example, the survey did not capture the Medicare frequency data that would allow a direct determination of a facility's Medicare costs on a procedure-specific basis. Therefore, in order to take Medicare's experience into account in establishing the payment rates, we are proposing to determine the necessary Medicare statistics by multiplying the data for all patients by the ratio of Medicare patients to total patients. Other limitations are the reliability of the reported data and their currency in view of the rapid growth in ASC services furnished to Medicare patients. For purposes of future updates, we intend to intiate a regular data collection effort that would obtain current Medicare cost information on a procedure-specific basis.

In lieu of using the survey data to establish the rates that are effective July 1, 1988, we considered updating the current rates by the increase in the CPI–U and postponing any refinements in our methodology until we obtain more complete and, presumably, more reliable information from ASCs. We considered updating the current rates by the increase in the CPI–U because of clear evidence that the current rates are adequate to ensure that Medicare beneficiaries have access to ASC services. For example, the number of ASCs participating in the Medicare program has grown from 254 in 1984 to over 900. In 1984, only 56 percent of all ASCs were Medicare-participating whereas more than 90 percent are currently participating in Medicare. In Federal fiscal year (FY) 1984, Medicare expenditures for ASCs totaled $34 million; expenditures for the first three quarters of FY 1987 (that is, the period before the July 1, 1987 update of the rates) were $150 million and exceeded total FY 1986 expenditures. Although we have concluded that the survey represents an improvement over the data base used to establish the current rates and should be used to establish the rates to be effective on July 1, 1988, we invite public comment concerning whether it would be more appropriate to update the current rates using the CPI–U increase. Use of this method for updating would result in a 4.6 percent increase in the payment rates.

12. Calculation of an Individual ASC's Payment Rates

The following is an example of how the payment would be determined for a procedure in Group 4 ($460) performed in an ASC located in Baltimore, Maryland. The appropriate HCFA wage index value is 1.0178.

Adjusted rate
= [($460 × .3445) × 1.0178] + [$460 × .6555]
= [$158.47 × 1.0178] + $301.53
= $161.29 + $301.53
= $462.82

B. Other Proposed Changes

1. Payment for Intraocular Lens Implant Procedures

Currently, when an IOL is implanted during cataract surgery performed in an ASC, separate payment for the lens is made under Medicare Part B at 80 percent of the reasonable charge. Either the ASC or the physician may bill and be paid for the prosthesis. Section 4063(b) of Pub. L. 100–203 amended section 1833(i)(2)(A) of the Act to mandate that, effective July 1, 1988, payment for ASC facility services must include a payment for the IOL that is reasonable and related to the acquisition cost of the class of lens involved.

To implement the provisions of section 4063(b) of Pub. L. 100–203, we are proposing to adopt a $200 add-on per lens to the appropriate payment group rate in which the specific cataract procedure that would require insertion of an IOL is classified. The add-on would be applicable to only the following covered procedures:

CPT–4 code	Proposed group
66983	6
66984	6
66985	4

While the amendment made by section 4063 of Pub. L. 100–203 to section 1833(i)(2)(A) of the Act requires that payment for IOLs be related to the cost of acquiring the class of lens implanted, we are proposing a single payment rate for IOLs at this time and invite public comment on the extent to which distinctions based on class are appropriate. We are doing this because our preliminary evidence is insufficient to allow for meaningful distinction in IOL pricing. We are soliciting scientific evidence that shows that one type of IOL is medically more beneficial than another to Medicare beneficiaries in order to make this distinction, if appropriate. As the choice of lens is made, generally, by the physician, it would be unreasonable to pay more for one type of lens than another unless the more expensive lens were medically

more beneficial to Medicare patients. We are interested in both information on the differences in lenses and scientific evidence regarding the medical benefits and medical reasons why some patients should require more complex and expensive lenses.

Based on information received from one industry component, eighty percent of the lenses currently used are multipiece, the basic styles being the J loop, the modifed J loop, and the wide loop. Among other types, these include plano, biconvex, ridge, and aspheric optics and may be found with holes, without holes (or tabs), or with an ultraviolet absorber. About 19 percent of the IOLs are one piece and these also come in a large selection of styles with a variety of optics. Small incision, silicone, and hydrosel lenses are used in about one percent of current implants. Some industry representations have suggested that we adopt a three-tier classification system for payment of IOLs based on whether the IOL is a multipiece, one piece, or small incision lens. We invite comments on whether such distinctions are appropriate and particularly solicit scientific studies that might support such a position.

To determine an allowance for IOLs, we analyzed the data obtained from the Medicare participating ASCs on the 1986 ASC survey form. These data represented IOLs furnished by ASCs between June 1, 1985 and December 31, 1985. The net cost of a lens was defined as the total cost of lenses minus discounts, rebates, and refunds divided by those used, less any that were returned. In the survey, we defined two classes of lens: (1) Differentiated lenses including those with an ultraviolet filter, laser-safe optic, PMMA optics, or other special features and (2) generic lenses, which were all other types. The reported net cost of differentiated lenses by 123 ASCs ranged from $126 to $463. The net cost of generic lenses ranged from $106 to $402. Difference in lens style was not consistently related to net cost.

The survey results also reveal inconsistencies in the reporting of data. Some ASCs purchased highly specialized lenses for less than other facilities paid for generic types. Further, some ASCs failed to report any revenue or expenses associated with the IOLs.

Because of these factors, we asked the Office of the Inspector General (OIG) to review a sample of the ASCs that had participated in our survey. The OIG found that lens companies regularly offer significant discounts, rebates, and other incentives as inducements to purchase their product, but that generally these savings were not passed on to the Medicare program. In view of the widespread availability of discounts and other price reductions, we believe it is appropriate in determining the reasonable payment rate for IOLs to consider only the cost incurred by ASCs that have been prudent purchasers and negotiated prices with the lens manufacturers.

Among the sample facilities visited, the OIG determined that 11 had negotiated prices with an average lens price of $200. Another four had negotiated discounts, but it was not possible to determine the discount amount because, for example, the value of credits for supplies and equipment was not reflected on the IOL invoices or in the ASC records. Because this on-site inspection examined ASC invoices for IOLs and industry marketing practices, we believe that payment for lenses based on these results would be more appropriate than basing payment on the 1986 survey data that revealed significant inconsistencies in reporting net IOL costs. (Copies of this OIG final report entitled "Medicare Certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues," (OAI-09-88-00490 issued in March 1988) can be obtained by writing to the Office of Inspector General, 330 Independence Avenue SW., Washington, DC 20201.)

In its report, the OIG also recommended a handling fee allowance. We have not accepted this recommendation because the proposed ASC facility Group 6 payment rate of $620 is already intended to fully compensate the ASC for all of its direct and indirect costs. All costs incurred in obtaining, handling and storing the lenses have been considered in setting the rate.

We invite coments on all of these studies and solicit any other information that can be provided on the reasonable acquisition cost of IOLs.

2. Payment for Terminated Surgical Procedures

We have received a number of requests for policy clarification regarding the appropriate ASC payment rate for a scheduled surgical procedure that is terminated due to medical complications that increase the surgical risk to the patient. Elevated blood pressure or eye pressure and cardiac or respiratory arrest are some of the common medical indicators that would trigger termination of a surgical procedure. We believe that termination of surgical procedures in the ASC setting should be an infrequent occurrence given the facilities' preoperative screening capabilities and the diagnostic testing that is required to ensure that patients are good candidates for outpatient surgery.

It is our policy that a denial is appropriate when an ASC submits a claim for a procedure that is terminated either for nonmedical or medical reasons before the ASC has expended substantial resources (for example, the patient on intake complains of cold or flu). We beleive that the carriers have had little trouble in making payment decisions in situations such as these. However, they have had difficulty in determining whether, or to what extent, payment should be made when surgery is terminated after the procedure has begun, for example, after anesthesia is induced.

Because we believe that ASCs incur some costs in connection with surgery that is terminated due to a sudden onset of medical complications, we are proposing that carriers pay ASCs 50 percent of the facility payment rate if the surgical procedure is terminated due to the onset of medical complications that occur after the patient has been prepped for surgery and taken to the operating room but before anesthesia has been induced (for example, the patient develops an allergic reaction to a drug administered by the ASC prior to surgery). (This, however, would not preclude the carrier from paying a different percentage of the rates if, in the individual case, documentation would support such action.)

However, if a medical complication arises after the inducement of the anesthetic agent, the carrier would pay the full applicable rate. In these cases, we believe that resources of the facility are consumed in essentially the same manner and to the same extent as they would have been had the surgery been completed as scheduled. In order for the carriers to pay ASCs a claim for terminated surgery, we are proposing that the facility be required to submit an operative report with each claim. Also, the carriers would be required to report all claims for terminated surgery to the appropriate peer review organization for quality of care review.

3. Elimination of Exception for Cataract Extraction with Insertion of Intraocular Lens

Since May 1983, Medicare payment policy has, with one exception, treated each of the ASC covered procedures designated by a single CPT-4 procedure code as a single procedure. The exception has been the insertion of an IOL prosthesis with cataract extraction (procedure codes 66983 and 66984). This cataract procedure has been paid at one

and one-half times the applicable Group 4 rate as if it were two procedures.

We instituted this exception in response to industry comments that the Group 4 rate did not take into account the additional costs associated with implanting the IOL in the same operative session in which the cataract is extracted. Then the procedure code (66980) did not distinguish between the various techniques (for example, intracapsular versus extracapsular) used in cataract surgery. Some industry representatives believed that the added costs of the IOL could vary significantly in relation to a particular technique. Because we did not have sufficient data available in 1982 that would have permitted us to determine a fair estimate of the added costs associated with these types of cataract surgery, we adopted this special exception in order to avoid penalizing ASCs for legitimate facility costs.

However, we now believe that adequate data are available that would permit us to determine a payment rate for such surgery. Therefore, we believe that an exception is no longer warranted. Cataract surgery accounts for about 53 percent of the Medicare procedure volume in our new data base. This volume represents reporting by more than one-third of the facilities.

We have compared the facilities' pricing for surgery by various techniques both with and without insertion of the IOL. Our analysis indicates that there are significant pricing differences between the extraction of a cataract and the implantation of an IOL in the same operation as compared to a procedure in which only an extraction or implant is done. Therefore, we believe that rates based on the reported per procedure charges for procedure codes 66983 and 66984 should reflect an appropriate cost level associated with performing these procedures. Under the proposed payment methodology, we also note that these cataract procedures are classified in Group 6 with procedures that have comparable costs and, because of their relatively high volume, the cataract procedures heavily influence the payment rate for the group. Under the previous methodology, these cataract procedures were classified with procedures that had a wider range of costs and, since there was no weighting, the cataract procedures had no more influence than any other procedure on the payment rate for the group. Thus, we believe a special exception for these procedures is no longer warranted and we are proposing to eliminate the payment policy exception applicable to procedure codes 66983 and 66984. We would pay for each of these procedure codes as a single procedure at the proposed Group 6 rate.

V. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E. O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed notice such as this one that meets one of the E. O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all ASCs and hospitals as small entities.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare an initial regulatory impact analysis for any proposed notice such as this one that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area or a New England County Metropolitan Area.

The following discussion, in combination with the rest of this proposed notice, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

B. Program Costs

1. Payment to ASCs

As a direct result of increasing payment rates for procedures performed in ASCs, we would expect an average increase in payments per case to ASCs of approximately 5.5 percent for the period July 1, 1988 to June 30, 1989. Individual facilities, however, may experience significant variations in total revenues as a result of several factors influencing local demand for ASC services. These factors may include—

- The concentration of ASCs in a market region;
- The number of hospital outpatient departments competing in the same market; and
- The number of Medicare beneficiaries in the market region.

The impact of the proposed rates on individual facilities would also greatly depend on a facility's case mix. Although an ASC with a typical case mix may expect the average payment per case to increase by about 5.5 percent, payments for cases falling into proposed Group 1, for example, would decrease 9 percent compared to the current payment levels for Group 1. This contrasts with proposed increases of nearly 8 percent and 15 percent in the ASC rates for cases falling into proposed Groups 3 and 4, respectively, compared to the rates for the current Groups 3 and 4. Thus, ASCs that serve a larger than average number of cases that would be classified into Groups 3 or 4 could expect to receive a larger than average increase in Medicare payments while ASCs that serve a larger than average number of cases categorized into Group 1 could expect a smaller than average increase and possibly a decrease.

It should be noted, however, that because of the proposed revision to the grouping methodology, the four current payment Groups cannot be compared directly to proposed Groups 1, 2, 3, and 4. For example, cases that are classified into Group 1 under the present payment system may fall into either Groups 1 or 2 under the proposed payment system. Thus, the only valid method of comparison would be to compare rates under the two systems for each procedure.

For the most frequently performed procedure (that is, the one-stage removal of a cataract and insertion of an intraocular lens, which would be assigned to proposed Group 6), the change in payment rate would be an increase of about 3.5 percent. The survey data indicate that cataract procedures account for about 53 percent of the Medicare volume of ASC services, and under our proposed rates, they should generate about 66 percent of all Medicare revenues.

Another factor that would affect ASC payments is the proposed replacement of the BLS wage index with the HCFA wage index that was published in the September 1, 1987 hospital prospective payment final rule for computing the ASC rates and payment amounts. Because the HCFA wage index is based

on gross hourly wages paid to hospital employees rather than on the average salary per hospital employee (which serves as the basis for the 1981 BLS wage index), application of the HCFA wage index would produce different index values for each rural and urban locality from those values in effect now. Thus, depending on an ASC's location, the effect of using the HCFA wage index in place of the BLS wage index, both in computing the ASC rates and in determining payments to ASCs, would be to slightly increase or decrease payments from the amount an ASC would receive using the 1981 BLS wage index.

Table I, below, displays the projected effects of the proposed rates over the next five fiscal years, beginning with FY 1989.

TABLE I.—PROJECTED MEDICARE COSTS AS A RESULT OF PROPOSED ASC RATES*

FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
$0	$5	$5	$5	$5

*Rounded to the nearest $5 million.

Since we are rounding our projected cost estimates to the nearest $5 million, we point out that the value entered for FY1989 signifies increased Medicare outlays of less than $2.5 million rather than no increase.

It is significant to note that the number of ASCs participating in Medicare has grown from 87 in 1983 to 838 by the end of 1987. The rapid increase in the number of ASCs, especially among proprietary facilities, indicates that few barriers to market entry exist and that most facilities have been financially successful. The only serious barriers to market entry appear to be State laws restricting licensure of ASCs or Certificate of Need restrictions on the building of ASCs. Where construction or operations of ASCs are permitted by State laws, we anticipate that the proposed rate changes would further stimulate the expansion of ASCs.

It is not clear, however, whether the rapid development of ASCs is entirely the result of the level of facility payments. Prior to April 1, 1988, physicians providing approved services in an ASC received payments equal to 100 percent of their reasonable charges if they accepted assignment. In addition, many physicians have financial interests in ASCs. The combined incentives of higher Medicare payments to physicians and physicians' proprietary interests may also have played a significant role in the rapid growth of ASCs.

Effective April 1, 1988, section 4054 of Pub. L. 100–203 required us to reduce payments to physicians accepting Medicare assignment from 100 percent of their reasonable charges for services performed in an ASC to 80 percent (leaving the Medicare beneficiary responsible for the 20 percent copayment). We are unable to determine what effects this change in physician payments, in combination with the proposed payment rates to ASCs, will have on ASC utilization or the continued growth of ASCs in Medicare participation. On the one hand, the reduction of payments from 100 percent to 80 percent of physicians' reasonable charges will reduce direct payments to physicians. On the other hand, the higher ASC rates would directly benefit ASCs and may indirectly benefit those physicians who have proprietary interests in ASCs.

We believe that the incentives created by higher ASC facility payments would stimulate physicians with proprietary interests in ASCs to provide services in an ASC setting whenever possible. To the extent that physicians would seek to shift services from either the hospital inpatient or outpatient setting to the ASC, this should result in some program savings and savings to beneficiaries in the form of lower copayments.

2. Payments for ASC Covered Procedures Performed in Hospitals on an Outpatient Basis

a. *Payment Methodology.* Section 9343(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) amended section 1833(a)(4) of the Act and added section 1833(i)(3) to the Act to provide that, for hospital cost reporting periods beginning on or after October 1, 1987, payment for services approved to be performed in ASCs, but performed in hospitals on an outpatient basis is to be based, in the aggregate, on a comparison between two amounts. The payment is to be the lesser of the following:

- The amount for the services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges for the services, reduced by deductibles and coinsurance).
- An amount based on a blend of—

—The amount that would be paid to the hospital for the services under section 1833(a)(2)(B) of the Act reduced by deductibles and coinsurance (called the hospital-specific amount); and

—The amount that would be paid to a freestanding ASC for the same procedure in the same geographic area in accordance with section 1833(i)(2)(A) of the Act, which is equal to 80 percent of the standard overhead amount net of deductibles (the ASC amount).

Section 1833(i)(3)(B) of the Act further specifies that for cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended amount is to be determined by using 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount attributable to the procedure. For cost reporting periods beginning on or after October 1, 1988, the blended payment amount is to be based on 50 percent of the ASC payment amount. This provision of the law was implemented through a final rule published on October 1, 1987 (52 FR 36765) and is set forth in regulations at § 413.118.

b. *Impact of Proposed ASC Rates on Payments for Hospital Outpatient Services.* It should be noted that although payments for IOLs provided in connection with cataract procedures performed in a hospital outpatient setting must be incorporated into the ASC portion of the hospital's blended payment (in compliance with section 4063(b) of Pub. L. 100–203), our study of hospital payments for cataract procedures does not examine the effects the proposed IOL payment of $200 would have on hospital payments. Instead we relied on data derived from several sources to arrive at an overall average payment for IOLs and compared this amount to the proposed $200 amount (See section B.3 of this impact analysis for more information.)

Our analysis did not specifically address the impact of the statutory change in the blend from the current 25 percent ASC amount and 75 percent hospital-specific amount to a 50 percent blend of each amount because this change is mandated by statute rather than by this proposed notice. To control for the effects of the statutory change in the blend, we compared current payments under current rates based on a blend of 50 percent ASC rates and 50 percent hospital-specific amounts with payments under the proposed rates and the same blend of ASC and hospital-specific amounts. Also, our results reflect only proposed changes to the ASC rates and do not reflect any changes in behavior that hospitals or physicians may adopt in response to the rate changes.

It should be noted that although our proposed rates would result in higher payments to hospitals for performing ASC-approved procedures on an outpatient basis than what they would

have received, overall payments have declined (and will continue to decline) as a result of section 1833(i)(3)(A) of the Act, which requires us to pay hospitals for these services at the lower of the hospitals aggregate cost or charges, or a blend of the hospital's cost or charges and the applicable ASC amount (whichever is less). Thus, the increase in payments being proposed must be viewed in the context of an overall reduction in payments that became effective for cost reporting periods beginning on or after October 1, 1987.

Prior to October 1, 1987, hospitals submitted claims for outpatient services using the International Classification of Diseases 9th edition, Clinical modification (ICD–9–CM). Since October 1, 1987, hospitals have been required to use the HCPCS coding system on claims for outpatient services, which is the same coding system as is used by ASCs. In order to estimate the impact of the proposed rates on payments to hospitals, we reviewed outpatient bills received from October 1, 1987 through April 1988 using the HCPCS coding system. We used the seven months of billing data to analyze the costs and payment rates for high volume ASC procedures performed in hospital outpatient departments. Based on this analysis we estimate that the proposed ASC payment rates would result in an approximate one percent increase in payments to hospitals for ASC procedures performed in hospital outpatient settings. Consequently, we believe that this notice will not have a significant impact on hospitals and on rural hospitals. For FY 1988, we project that the proposed ASC rates will produce a rise in Medicare hospital outpatient services payments in the range of $0–5 million. Over the next five fiscal years, beginning in FY 1989, we project a $140 million increase in Medicare expenditures.

Table II below shows the projected impact of the proposed rates on Medicare program expenditures over the next five fiscal years beginning with FY 1989. In arriving at these estimates, present payments under existing ASC rates, computed on the basis of the 50 percent payment blend that will become effective for hospital cost reporting periods beginning on or after October 1, 1988, were compared with proposed payments and rates computed on the basis of the same 50 percent blend. The estimates assume these payment conditions will remain in effect over the next five fiscal years. In addition, the average year-to-year increase in payments was weighted to reflect the distribution of cases falling into the six payment groups and the variation in payment increases among the proposed payment groups compared to the current payment rates and categories.

TABLE II.—ESTIMATED RANGE OF MEDICARE PROGRAM COSTS FOR HOSPITAL OUTPATIENT SERVICES RESULTING FROM PROPOSED ASC PAYMENT RATES

(in millions)

FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
$0–20	$0–20	$0–30	$0–30	$0–40

3. Impact of Changes in Payments for IOLs

In addition to proposing changes in the way we determine payment rates for ASCs and increases in those rates, we also propose to establish a single payment amount for an IOL provided to a Medicare patient in connection with the performing of a cataract procedure in an ASC (in accordance with section 4063(b) of Pub. L. 100–203 which amended section 1833(i)(2)(A) of the Act). The amount we propose to pay is $200 per IOL. (See section IV.B.1. of this notice for a full explanation of how we determined this amount.)

Under section 1833(i)(3)(A) of the Act, we are required to determine payment to a hospital that performs an ASC approved procedure in an outpatient setting on the basis of the applicable standard ASC rate (as determined under section 1833(i)(2)(A) of the Act) that would be paid to an ASC in the same geographic area when the hospital's cost or charges exceed the appropriate blend of the applicable wage adjusted ASC rate and the hospital-specific payment amount. For periods between July 1, 1988 and the hospital's next cost reporting period that begins in FY 1989, the blend is comprised of 25 percent of the wage adjusted ASC rate and 75 percent of the hospital-specific amount. For hospital cost reports that begin on or after October 1, 1988, the blend is comprised of 50 percent of the wage adjusted ASC payment rate and 50 percent of the hospital specific amount.

Since section 4063(b) of Pub. L. 100–203 amended section 1833(i)(2)(A) of the Act to include a standard payment amount of IOLs furnished in an ASC, we propose to base payments to hospitals for the furnishing of an IOL in connection with a cataract procedure on the same amount we are proposing to pay an IOL furnished in an ASC. That is, we would pay a hospital for an IOL supplied in connection with a cataract procedure a blend comprised of 25 percent of the standard IOL amount and 75 percent of the hospital's acquisition cost during the period of July 1, 1988 to the hospital's next cost reporting period that begins in FY 1989. For hospital cost reporting period beginning on or after October 1, 1988, we would pay the hospital a blend comprised of 50 percent of the standard IOL amount and 50 percent of the hospital's IOL acquisition cost.

Data derived from several sources, discussed in section IV.B.1. of this notice, indicate that the average amount we now pay both ASCs and hospitals is $350 per IOL. By setting the payment amount per IOL at $200, the Medicare program would be able to save about $50 million in FY 1989 and about $300 million over the next five fiscal years.

For the typical ASC, the combined effect of the increase in the standard payment for a cataract procedure involving the implantation of an IOL and the decrease in the payment amount for the IOL itself would result in an overall reduction of about 14 percent compared to the combined amount we now pay. For the typical hospital, the combined impact of the proposed ASC rate change and IOL payment amount would result in a five percent reduction for hospital cost reporting periods beginning in FY 1989. Here again, to control for the statutory change in the blend, we compared present payments based on a 50 percent blend of ASC and hospital-specific amounts with proposed payment using the same blend.

Table III, below, shows the annual savings to the Medicare program for the next five fiscal years, beginning with FY 1989, that would result from the proposal to establish payments for IOLs at $200 per lens.

TABLE III.—MEDICARE PROGRAM SAVINGS RESULTING FROM THE PROPOSAL TO PAY $200 PER IOL SUPPLIED IN ASCS AND IN HOSPITAL OUTPATIENT SETTINGS *

FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
−$50	−$60	−$60	−$60	−$70

* Rounded to the nearest $10 million.

C. Conclusion

In general terms, we believe the payment reduction necessitated by the statutory blend change, in combination with the increase in payments made directly to ASCs, and the incentives for doctors to take a proprietary interest in ASCs, would have the effect of shifting the furnishing of ASC-approved procedures from the hospital outpatient

setting to the ASC setting. For those ASC procedures that will continue to be performed in hospital outpatient settings, the proposed ASC rate would significantly lessen the reductions in payment for these services mandated by statute.

VI. Other Required Information

A. Paperwork Reduction Act

This proposed notice would not impose information collection requirements. Consequently, it need not be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

B. Effective Date of the Revised Payment Rates

Section 1833(i)(2)(A) of the Act requires that the ASC payment rates be reviewed and updated not later than July 1, 1988. However, we are first publishing the revised rates in proposed form to allow full public participation and comment before publication of the final rates. In addition, in accordance with the provisions of section 1871(b)(1) of the Act, we are allowing a 60-day period for public comment. Since we did not publish the final rates before the statutorily required effective date of July 1, 1988, we issued a program instruction to our Medicare contractors describing the interim payment procedures for ASCs for facility services and intraocular lenses effective July 1, 1988. As of that date, Medicare payments for intraocular lenses will no longer be made to physicians.

We plan to issue the notice of final rates as soon as possible following the end of the comment period and our evaluation and consideration of the comments we receive. When we do publish the final payment rates, they will be retroactively applied to all services furnished on or after July 1, 1988.

C. Comments

Because of the large number of items of correspondence we normally receive on a proposed notice, we are not able to acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble and respond to those comments in the preamble to that notice.

(Sections 1832(a) and 1833(i) of the Social Security Act (42 U.S.C. 1395k(a) and 1395l(i); 42 CFR 416.120)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplemental Medical Insurance)

Dated: August 4, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 8, 1988.

Otis R. Bowen,

Secretary.

Addenda

Addendum A—List of Covered Surgical Procedures.—Addendum

Note:

- Procedure codes preceded by an asterisk indicate that the procedure has been covered since August 5, 1982.
- Procedure codes without an asterisk indicate additions to the list of surgical procedures which are covered effective May 21, 1987. The covered procedures, listed by body system and payment, together with applicable CPT–4 codes, are as follows:

	Payment groups		
	Old	New	
			Integumentary system
			Skin, Subcutaneous and Areolar Tissues
Incision			
10141	2	2	Incision and drainage of hematoma; complicated.
Excision debridement			
11042	1	2	Debridement; skin, and subcutaneous tissue.
11043	1	2	Debridement; skin, subcutaneous tissue, and muscle.
11044	1	2	Debridement; skin, subcutaneous tissue, muscle, and bone.
Excision-benign lesions			
*11200	1	2	Excision, skin tags, multiple fibrocutaneous tags, any area; up to 15.
*11201	1	1	Each additional ten lesions.
*11401	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.6 to 1.0 cm.
*11402	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 1.1 to 2.0 cm.
*11403	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 2.1 to 3.0 cm.
*11404	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 3.1 to 4.0 cm.
*11406	1	2	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter over 4.0 cm.
*11421	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 0.6 to 1.0 cm.
*11422	1	2	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 1.1 to 2.0 cm.
*11423	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 2.1 to 3.0 cm.
*11424	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 3.1 to 4.0 cm.
*11426	1	2	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter over 4.0 cm.
*11441	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 0.6 to 1.0 cm.
*11442	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 1.1 to 2.0 cm.
*11443	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 2.1 to 3.0 cm.
*11444	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 3.1 to 4.0 cm.
*11446	1	2	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter over 4.0 cm.
11471	2	2	Excision of skin and subcutaneous tissue for hidradenitis, perianal, perineal, or umbilical; with other closure.
Excision—Malignant lesions			

	Payment groups		
	Old	New	
*11600	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 0.5 cm or less.
*11601	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 0.6 to 1.0 cm.
*11602	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 1.1 to 2.0 cm.
*11603	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 2.1 to 3.0 cm.
*11604	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 3.1 to 4.0 cm.
*11606	2	2	Excision, malignant lesion, trunk, arms, or legs; lesion diameter over 4.0 cm.
*11620	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 0.5 cm or less.
*11621	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 0.6 to 1.0 cm.
*11622	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 1.1 to 2.0 cm.
*11623	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 2.1 to 3.0 cm.
*11624	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 3.1 to 4.0 cm.
*11626	2	2	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter over 4.0 cm.
*11640	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 0.5 cm or less.
*11641	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 0.6 to 1.0 cm.
*11642	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 1.1 to 2.0 cm.
*11643	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 2.1 to 3.0 cm.
*11644	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 3.1 to 4.0 cm.
*11646	2	2	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter over 4.0 cm.
			Nails
*11750	1	1	Excision of nail and nail matrix, partial or complete, (e.g., ingrown or deformed nail) for permanent removal.
			Miscellaneous
*11770	3	3	Excision of pilonidal cyst or sinus; simple.
*11771	3	3	Excision of pilonidal cyst or sinus; extensive.
*11772	3	3	Excision of pilonidal cyst or sinus; complicated.
Repair-simple			
12006	2	2	Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); 20.1 cm to 30.0 cm.
12007	2	2	Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); over 30.0 cm.
12017	2	2	Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 20.1 cm to 30.0 cm.
12018	2	2	Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; over 30.0 cm.
Repair-intermediate			
12036	2	2	Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); 20.1 cm to 30.0 cm.
12037	2	2	Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); over 30.0 cm.
12046	2	2	Layer closure of wounds of neck, hands, feet and/or external genitalia; 20.1 cm to 30.0 cm.
12047	2	2	Layer closure of wounds of neck, hands, feet and/or external genitalia; over 30.0 cm.
12056	2	2	Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 20.1 cm to 30.0 cm.
12057	2	2	Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; over 30.0 cm.
Repair-complex			
13101	1	2	Repair, complex, trunk; 2.6 cm to 7.5 cm.
13121	1	3	Repair, complex, scalp, arms, and/or legs; 2.6 cm to 7.5 cm.
13132	2	3	Repair, complex, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 2.6 cm to 7.5 cm.
13152	3	3	Repair, complex, eyelids, nose, ears, and/or lips; 2.6 cm to 7.5 cm.
13300	3	4	Repair, unusual, complicated, over 7.5 cm, any area.
Adjacent tissue transfer or rearrangement			
14001	3	3	Adjacent tissue transfer or rearrangement, trunk; defect 10.1 sq cm to 30.0 sq cm.
14020	3	3	Adjacent tissue transfer or rearrangement, scalp, arms and/or legs; defect 10 sq cm or less.
14021	3	3	Adjacent tissue transfer or rearrangement, scalp, arms and/or legs; defect 10.1 sq cm to 30.0 sq cm.
14041	3	3	Adjacent tissue transfer or rearrangement, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; defect 10.1 sq cm to 30.0 sq cm.
14060	3	3	Adjacent tissue transfer or rearrangement, eyelids, nose, ears and/or lips; defect 10 sq cm or less.
14061	3	3	Adjacent tissue transfer or rearrangement, eyelids, nose, ears and/or lips; defect 10.1 sq cm to 30.0 sq cm.
14300	3	4	Adjacent tissue transfer or rearrangement, more than 30 sq cm, unusual or complicated, any area.
14350	3	3	Filleted finger or toe flap, including preparation of recipient site.
Free skin grafts			
*15000	3	2	Excisional preparation or creation of recipient site by excision of essentially intact skin (including subcutaneous tissues), scar, or other lesion prior to repair with free skin graft (list as separate service in addition to skin graft).
*15050	3	2	Pinch graft, single or multiple, to cover small ulcer, tip of digit, or other minimal open area (except on face), up to defect size 2 cm diameter.
*15100	3	2	Split graft, trunk, scalp, arms, legs, hands, and/or feet (except multiple digits); 100 sq cm or less, or each one percent of body area of infants and children (except 15050).
*15101	3	3	Split graft, trunk, scalp, arms, legs, hands, and/or feet (except multiple digits); each additional 100 sq cm, or each one percent body area of infants and children, or part thereof.
15200	3	3	Full thickness graft, free, includng direct closure of donor site, trunk; 20 sq cm or less.
15201	3	2	Full thickness graft, free, including direct closure of donor site, trunk; each additional 20 sq cm.
15220	3	2	Full thickness graft, free, including direct closure of donor site, scalp, arms, and/or legs; 20 sq cm or less.
15221	3	2	Full thickness graft, free, including direct closure of donor site, scalp, arms, and/or legs; each additional 20 sq cm.
15240	3	3	Full thickness graft, free, including direct closure of donor site, forehead, cheeks, chin, mouth, neck, axillae. genitalia, hands and/or feet; 20 sq cm or less.
15241	3	3	Full thickness graft, free, including direct closure of donor site, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; each additional 20 sq cm.
15260	3	2	Full thickness graft, free, including direct closure of donor site, nose, ears, eyelids, and/or lips; 20 sq cm or less.
15261	3	2	Full thickness graft, free, including direct closure of donor site, nose, ears, eyelids, and/or lips, each additional 20 sq cm.
15350	3	2	Application of allograft (homograft), skin.
15410	3	2	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; 100 sq cm or less.
15412	3	3	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; between 101 and 160 sq cm.

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	Payment groups		
	Old	New	
15414	3	3	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; between 161 and 230 sq cm.
15416	3	3	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; over 230 sq cm.
Repair			
Pedicle flaps (skin and deep tissues)			
15500	4	3	Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on trunk.
15505	4	3	Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on scalp, arms, or legs.
15510	4	4	Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on forehead, cheeks, chin, mouth, neck, axillae genitalia, hands, or feet.
15515	4	4	Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on eyelids, nose, ears, or lips.
15540	4	1	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to trunk.
15545	4	2	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to scalp, arms, or legs.
15550	4	2	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to forehead, cheeks, chin, mouth, neck, axillae, genitalia, or hands, feet.
15555	4	3	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to eyelids, nose, ears or lips.
15580	4	3	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; cross finger pedicle flap, including free graft to donor site.
15600	4	3	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at trunk.
15610	4	3	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at scalp, arms, or legs.
15620	4	4	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at forehead, cheeks, chin, neck, axillae, genitalia, hands (except 15625), or feet.
15625	4	3	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; section pedicle of cross finger flap.
15630	4	3	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at eyelids, nose, ears, or lips.
15650	4	5	Transfer, intermediate, of any pedicle flap (e.g., abdomen to wrist, Walking tube), any location.
15700	4	1	Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; trunk.
15710	4	2	Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; scalp, arms, or legs.
15720	4	2	Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands, or feet.
15730	4	3	Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; eyelids, nose, ears, or lips.
Other grafts			
15740	3	2	Graft; island pedicle flap.
15745	4	2	Graft; myocutaneous flap.
15750	4	2	Graft; neurovascular pedicle flap.
15755	4	3	Graft; free flap (microvascular transfer).
15760	3	2	Graft; composite (full thickness of external ear or nasal ala); including primary closure, donor area.
15770	3	3	Graft; derma-fat-fascia.
Miscellaneous procedures			
15840	4	4	Graft for facial nerve paralysis; free fascia graft (including obtaining fascia).
15841	4	4	Graft for facial nerve paralysis; free muscle graft (including obtaining graft).
15842	4	4	Graft for facial nerve paralysis; free muscle graft by microsurgical technique.
15845	4	4	Graft for facial nerve paralysis; regional muscle transfer.
Pressure ulcers (decubitus ulcers)			
15920	3	3	Excision, coccygeal pressure ulcer, with coccygectomy; with primary suture.
15922	3	4	Excision, coccygeal pressure ulcer, with coccygectomy; with local or regional skin flap closure.
15931	3	3	Excision, sacral pressure ulcer, with primary suture.
15933	3	3	Excision, sacral pressure ulcer, with primary suture; with ostectomy.
15941	3	3	Excision, ischial pressure ulcer, with primary suture; with ostectomy (ischiectomy).
15944	3	3	Excision, ischial pressure ulcer, with local or regional skin flap closure.
15945	3	4	Excision, ischial pressure ulcer, with local or regional or regional skin flap closure; with ostectomy.
15946	3	4	Excision, ischial pressure ulcer, with ostectomy, with muscle flap or myocutaneous flap closure.
15950	3	3	Excision, trochanteric pressure ulcer with primary suture.
15951	3	4	Excision, trochanteric pressure ulcer, with primary suture; with ostectomy.
15952	3	3	Excision, trochanteric pressure ulcer, with local rotation skin flap closure.
15953	3	4	Excision, trochanteric pressure ulcer, with local rotation skin flap closure; with ostectomy.
15954	3	3	Excision, trochanteric pressure ulcer, with bipedicle flap closure.
15955	3	4	Excision, trochanteric pressure ulcer, with bipedicle flap closure; with ostectomy.
15956	3	3	Excision, trochanteric pressure ulcer, with muscle or myocutaneous flap closure.
15958	3	4	Excision, trochanteric pressure ulcer, with muscle or myocutaneous flap closure; with ostectomy.
15960	3	2	Excision, heel pressure ulcer, with primary suture.
15961	3	4	Excision, heel pressure ulcer, with primary suture; with ostectomy.
15964	3	3	Excision, heel pressure ulcer, with skin flap closure.
15965	3	4	Excision, heel pressure ulcer, with skin flap closure; with ostectomy.
15966	3	4	Excision, heel pressure ulcer, with other flap closure.
15967	3	4	Excision, heel pressure ulcer, with other flap closure; with ostectomy.
15970	3	2	Excision, leg pressure ulcer, with primary suture.
15971	3	4	Excision, leg pressure ulcer, with ostectomy.
15972	3	3	Excision, leg pressure ulcer, with local skin flap(s).
15973	3	4	Excision, leg pressure ulcer, with local skin flap(s); with ostectomy.
15974	3	4	Excision, leg pressure ulcer, with muscle or myocutaneous flap closure.
15975	3	4	Excision, leg pressure ulcer, with muscle or myocutaneous flap closure; with ostectomy.
15980	3	3	Excision, knee pressure ulcer with local skin flap closure.
15981	3	4	Excision, knee pressure ulcer, with local skin flap closure; with ostectomy.
15982	3	3	Excision, knee pressure ulcer, with other flap closure.
15983	3	4	Excision, knee pressure ulcer, with other flap closure; with ostectomy.

	Payment groups		
	Old	New	
Burns, local treatment			
16015	1	2	Dressing and/or debridement, initial or subsequent; under anesthesia, medium or large, or with major debridement.
Breast			
Incision			
19020	1	2	Mastotomy with exploration or drainage of abscess, deep.
Excision			
*19101	3	3	Biopsy of breast; incisional.
*19120	3	3	Excision of cyst, fibroadenoma, or other benign or malignant tumor, aberrant breast tissue, duct lesion or nipple lesion (except 19140), male or female, on or more lesions.
*19140	4	4	Mastectomy for gynecomastia through circumareolar or other incision.
19160	4	3	Mastectomy, partial.
19180	4	4	Mastectomy, simple, complete.
19182	4	4	Mastectomy, subcutaneous.
Musculoskeletal system			
General			
Incision			
20005	1	2	Incision of soft tissue abscess (e.g., secondary to osteomyelitis); deep or complicated.
Excision			
20205	1	3	Biopsy, muscle; deep.
20225	3	2	Biopsy, bone, trocar or needle; deep (vertebral body, femur).
20240	2	2	Biopsy, excisional; superficial (e.g., ilium, sternum, spinous process, ribs, trochanter of femur).
20245	3	3	Biopsy, excisional, deep (e.g., humerus, ischium, femur).
20250	4	3	Biopsy, vertebral body, open; thoracic.
20251	4	3	Biopsy, vertebral body, open; lumbar or cervical.
Introduction or removal			
20525	2	3	Removal of foreign body in muscle; deep or complicated.
20650	2	3	Insertion of wire or pin with application of skeletal traction, including removal (separate procedure).
20660	2	2	Application of tongs or caliper, including removal (separate procedure).
20661	2	3	Application of halo; including removal cranial.
20662	2	3	Application of halo; pelvic.
20663	2	3	Application of halo; femoral.
20665	2	1	Removal of tongs or halo applied by another physician.
20680	3	3	Removal of implant; deep (e.g., buried wire, pin, screw, metal band, nail, rod or plate).
Grafts (oroimplants)			
20900	3	3	Bone graft, any donor area; minor or small (e.g., dowel or button).
20902	4	4	Bone graft, any donor area; major or large.
20912	4	4	Cartilage graft; nasal septum.
20920	4	4	Fascia lata graft; by stripper.
20922	4	3	Fascia lata graft; by incision and area exposure, complex or sheet.
20926	4	4	Tissue grafts, other (e.g., paratenon, fat, dermis, etc.).
Miscellaneous			
20955	4	4	Bone graft with microvascular anastomosis; fibula.
20960	4	4	Bone graft with microvascular anastomosis; rib.
20962	4	4	Bone graft with microvascular anastomosis; other bone graft (specify).
20969	4	4	Free osteocutaneous flap with microvascular anastomosis; other than iliac crest, rib, metatarsal, or great toe.
20970	4	4	Free osteocutaneous flap with microvascular anastomosis; iliac crest.
20971	4	4	Free osteocutaneous flap with microvascular anastomosis; rib.
20972	4	4	Free osteocutaneous flap with microvascular anastomosis; metatarsal.
20973	4	4	Free osteocutaneous flap with microvascular anastomosis; great toe with web space.
20975	2	2	Electrical stimulation to aid bone healing; invasive (operative).
Head			
Incision			
21010	3	2	Arthrotomy, temporomandibular joint; unilateral.
21011	3	3	Arthrotomy, temporomandibular joint; bilateral.
General			
Excision			
21034	4	3	Excision of malignant tumor of facial bone other than mandible.
*21040	3	2	Excision of benign cyst or tumor of mandible; simple.
21044	4	2	Excision of malignant tumor of mandible.
21050	4	3	Arthrectomy, temporomandibular joint; unilateral.
21060	4	2	Meniscectomy, temporomandibular joint; unilateral.
21061	4	2	Meniscectomy, temporomandibular joint; bilateral.
Introduction or removal			
21100	4	2	Application of halo type appliance for maxillofacial fixation, includes removal (separate procedure).
Fracture and/or dislocation			
*21310	1	2	Treatment of closed or open nasal fracture without manipulation.
*21315	1	2	Manipulative treatment, nasal bone fracture; without stabilization.
21320	1	2	Manipulative treatment, nasal bone fracture; with stabilization.
21325	3	4	Open treatment of nasal fracture; uncomplicated.
21330	4	5	Open treatment of nasal fracture; complicated, with internal and/or external skeletal fixation.
21335	4	6	Open treatment of nasal fracture; with concomitant open treatment of fractured septum.
21338	4	4	Open treatment of nasoethmoid fracture; without external fixation.
21340	4	4	Treatment of closed or open nasoethmoid complex fracture, with splint, wire or headcap fixation, including repair of canthal ligaments and/or the nasolacrimal apparatus.
*21355	2	3	Manipulative treatment of closed or open fracture or malar area, including zygomatic arch and malar tripod, towel clip technique.
*21360	2	4	Open treatment of closed or open depressed malar fracture, including zygomatic arch and malar tripod.
21365	4	5	Open treatment of closed or open complicated (e.g, multiple fractures), of malar area, including zygomatic arch and malar tripod, with internal skeletal fixation and multiple surgical approaches.

	Payment groups		
	Old	New	
21450	4	3	Treatment of closed or open mandibular fracture; without manipulation.
21451	4	4	Treatment of closed or open mandibular fracture; with manipulation, may include external fixation.
21452	4	2	Treatment of open mandibular fracture; without manipulation.
21453	4	3	Treatment of open mandibular fracture; with manipulation.
21480	2	1	Uncomplicated treatment of temporomandibular dislocation, initial or subsequent.
21485	3	2	Complicated manipulative treatment of temporomandibular dislocation, initial or subsequent.
21490	4	3	Open treatment of temporomandibular dislocation.
21494	3	4	Treatment of closed or open hyoid fracture; with manipulation.
21495	4	4	Open treatment of closed or open hyoid fracture.
			Neck (soft tissues) and thorax
Incision			
21501	1	2	Incision and drainage, deep abscess or hematoma.
21502	3	2	Incision and drainage, deep abscess or hematoma; with partial rib ostectomy.
21510	3	3	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
21555	1	2	Excision, benign tumor; subcutaneous.
Excision			
21556	2	2	Excision, benign tumor; deep, subfascial, intramuscular.
21600	3	2	Excision of rib, partial.
21610	3	2	Costotransversectomy (separate procedure).
			Abdomen
Excision			
22900	2	4	Excision, abdominal wall tumor, subfascial (e.g., desmoid).
			Shoulder
Incision			
23000	3	2	Removal of subdeltoid (or intratendinous) calcareous deposits.
23020	3	2	Capsular contracture release (Sever type procedure) for Erb's palsy.
23030	1	1	Incision and drainage; deep abscess or hematoma.
23035	2	3	Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess).
23040	4	3	Arthrotomy, glenohumeral joint, for infection, with exploration, drainage or removal of foreign body.
23044	4	4	Arthrotomy with exploration, drainage or removal of foreign body, acromicoclavicular, sternoclavicular joint.
Excision			
23066	1	2	Biopsy, soft tissues, deep.
23076	1	2	Excision, benign tumor; deep, subfascial or intramuscular.
23100	4	2	Arthrotomy for biopsy, glenohumeral joint.
23101	4	6	Arthrotomy for biopsy or for excision of torn cartilage, acromioclavicular, sternoclavicular joint.
23130	4	5	Acromionectomy, partial or total.
23140	4	4	Excision or curettage of bone cyst or benign tumor of clavicle or scapula.
23150	4	4	Excision or curettage of bone cyst or benign tumor of proximal humerus.
*23170	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), clavicle.
*23172	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), scapula.
*23174	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), humeral head to surgical neck.
23180	3	4	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), clavicle.
23182	3	4	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), scapula.
23184	3	4	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), proximal humerus.
23190	3	4	Ostectomy of scapula, partial (e.g., superior medial angle).
23195	3	5	Resection humeral head.
Introduction or removal			
23331	2	1	Removal of foreign body; deep (e.g., Neer prosthesis removal).
Repair, revision or reconstruction			
23405	3	2	Tenomyotomy; single.
23406	3	2	Tenomyotomy; multiple through same incision.
Fracture and/or dislocation			
23505	2	1	Treatment of closed clavicular fracture; with manipulation.
23515	4	3	Open treatment of closed or open clavicular fracture, with or without internal or external skeletal fixation.
23605	2	2	Treatment of closed humeral (surgical or anatomical neck) fracture; with manipulation.
23610	4	3	Treatment of open humeral (surgical or anatomical neck) fracture; with uncomplicated soft tissue closure.
23625	2	2	Treatment of closed greater tuberosity fracture; with manipulation.
23630	4	5	Open treatment of closed or open greater tuberosity fracture, with or without internal or external skeletal fixation.
23655	1	1	Treatment of closed shoulder dislocation, with manipulation; requiring anesthesia.
23658	4	3	Treatment of open shoulder dislocation, with uncomplicated soft tissue closure.
23660	4	3	Open treatment of closed or open shoulder dislocation.
23665	2	2	Treatment of closed shoulder dislocation, with fracture of greater tuberosity, with manipulation.
23670	4	3	Open treatment of closed or open shoulder dislocation, with fracture of greater tuberosity.
23675	2	2	Treatment of closed shoulder dislocation, with surgical or anatomical neck fracture, with manipulation.
23680	4	3	Open treatment of closed or open shoulder dislocation, with surgical or anatomical neck fracture.
Manipulation			
23700	2	1	Manipulation under anesthesia, including application of fixation apparatus (dislocation excluded).
			Humerus (Upper Arm) and Elbow
Incision			
23930	1	1	Incision and drainage; deep abscess or hematoma.
23935	2	2	Incision, deep, with opening of (e.g., cortex for osteomyelitis or bone abscess).
24000	2	4	Arthrotomy, elbow, for infection, with exploration, drainage or removal of foreign body.
Excision			
24075	2	2	Excision, benign tumor; subcutaneous.
24076	2	2	Excision, benign tumor; deep, subfascial or intramuscular.
24100	4	1	Arthrotomy, elbow; for synovial biopsy only.
24101	4	4	Arthrotomy, elbow; with joint exploration, with or without biopsy, with or without removal of foreign body.
*24105	3	3	Excision, olecranon bursa.
24110	3	2	Excision, or curettage of bone cyst or benign tumor, humerus.

	Payment groups		
	Old	New	
24115	4	3	Excision or curettage of bone cyst or benign tumor, humerus; with primary autogenous graft (includes obtaining graft).
24116	4	3	Excision or curettage of bone cyst or benign tumor, humerus; with homogenous or other nonautogenous graft.
24120	3	3	Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process.
24125	4	3	Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process; with primary autogenous graft (includes obtaining graft).
24126	4	3	Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process; with homogenous or other nonautogenous graft.
24130	3	3	Excision, radial head.
*24134	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), shaft or distal humerus.
*24136	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), radial head or neck.
*24138	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), olecranon process.
24140	2	3	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), humerus.
24145	2	3	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), radial head or neck.
24147	2	2	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), olecranon process.
24155	4	3	Resection of elbow joint (arthrectomy).
Introduction or removal			
24160	2	2	Implant removal; elbow joint.
24164	2	3	Implant removal; radial head.
24201	1	2	Removal of foreign body; deep.
Repair revision and reconstruction			
24301	3	4	Muscle or tendon transfer, any type, single (excluding 2430–24331).
24310	3	3	Tenotomy, open, elbow to shoulder, single, each.
*24320	4	3	Tenoplasty, with muscle transfer, with or without free graft, elbow to shoulder, single (Seddon-Brookes type procedure).
24330	4	3	Flexor-plasty, elbow, (e.g., Steindler type advancement).
24331	4	3	Flexor-plasty, elbow, (e.g., Steindler type advancement); with extensor advancement.
24340	4	3	Tenodesis for rupture of biceps tendon at elbow.
24342	4	3	Reinsertion of ruptured biceps tendon, distal, with or without tendon graft (includes obtaining graft).
*24350	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis).
*24351	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with extensor origin detachment.
*24352	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with annular ligament resection.
*24354	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with stripping.
24356	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with partial ostectomy.
24420	4	3	Osteoplasty, humerus (e.g., shortening or lengthening) (excluding 64876).
24470	4	3	Hemiepiphyseal arrest (e.g., for cubitus varus or valgus, distal humerus).
24495	3	2	Decompression fasciotomy, forearm, with brachial artery exploration.
Fracture and/or dislocation			
24505	1	1	Treatment of closed humeral shaft fracture; with manipulation.
24506	2	3	Treatment of closed humeral shaft fracture; percutaneous insertion of pin or rod.
24510	3	3	Treatment of open humeral shaft fracture, with uncomplicated soft tissue closure.
24515	4	4	Open treatment of closed or open humeral shaft fracture, with or without internal or external skeletal fixation.
24530	1	1	Treatment of closed supracondylar or transcondylar fracture, without manipulation.
24531	2	2	Treatment of closed supracondylar or transcondylar fracture, without manipulation; with traction (pin or skin).
24535	1	1	Treatment of closed supracondylar or transcondylar fracture, with manipulation.
24536	2	2	Treatment of closed supracondylar or transcondylar fracture, with manipulation; with traction (pin or skin).
24538	2	2	Treatment of closed supracondylar or transcondylar fracture, with manipulation; with percutaneous skeletal fixation.
24540	4	3	Treatment of open supracondylar or transcondylar fracture, with uncomplicated soft tissue closure.
24542	4	3	Treatment of open supracondylar or transcondylar fracture, with uncomplicated soft tissue closure; with traction (pin or skin).
24545	4	4	Open treatment of closed or open supracondylar or transcondylar fracture, with or without internal or external skeletal fixation.
24565	1	2	Treatment of closed epicondylar fracture, medical or lateral; with manipulation.
24570	3	2	Treatment of open epicondylar fracture, medial or lateral, with uncomplicated soft tissue closure.
24575	4	3	Open treatment of closed or open epicondylar fracture, medial or lateral, with or without internal or external skeletal fixation.
24577	1	1	Treatment of closed condylar fracture, medial or lateral; with manipulation.
24578	3	2	Treatment of open condylar fracture, medial or lateral, with uncomplicated soft tissue closure.
24579	4	3	Open treatment of closed or open condylar fracture, medial or lateral, with or without internal or external skeletal fixation.
24580	1	2	Treatment of closed comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), treatment with traction (pin or skin); without manipulation.
24581	1	1	Treatment of closed comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), treatment with traction (pin or skin); with manipulation.
24583	4	3	Treatment of open comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), with uncomplicated soft tissue closure.
24585	4	4	Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation.
24586	4	4	Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation; with elbow resection.
24605	1	2	Treatment of closed elbow dislocation; requiring anesthesia.
24610	3	3	Treatment of open elbow dislocation, with uncomplicated soft tissue closure.
24615	3	3	Open treatment of closed or open elbow dislocation.
24620	2	2	Treatment of closed Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head).
24625	4	3	Treatment of open Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head), with uncomplicated soft tissue closure.
24635	4	3	Open treatment of closed or open Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head), with or without internal or external skeletal fixation.
24655	1	1	Treatment of closed radial head or neck fracture; with manipulation with complicated soft tissue closure.
24665	4	4	Open treatment of closed or open radial head or neck fracture with or without internal fixation or radial head excision.

	Payment groups		
	Old	New	
24666	4	4	Open treatment of closed or open radial head or neck fracture, with or without internal fixation or radial head excision; with implant.
24675	1	1	Treatment of closed ulnar fracture; proximal end (olecranon process); with manipulation.
24680	3	2	Treatment of open ulnar fracture, proximal end (olecranon process), with uncomplicated soft tissue closure.
24685	4	3	Open treatment of closed or open ulnar fracture proximal end (olecranon process), with or without internal or external skeletal fixation.
			Forearm and Wrist
Incision			
*25000	2	3	Tendon sheath incision; at radial styloid for deQuervain's disease.
25005	2	3	Tendon sheath incision; at wrist for other stenosing tenosynovitis.
*25020	4	3	Decompression fasciotomy, flexor and/or extensor compartment.
*25023	4	3	Decompression fasciotomy, flexor and/or extensor compartment; with debridement of nonviable muscle and/or nerve.
25028	1	1	Incision and drainage, deep abscess or hematoma.
25035	2	2	Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess).
25040	2	4	Arthrotomy radiocarpal or mediocarpal joint, for infection, with exploration, drainage, or removal of loose or foreign body.
Excision			
25066	1	4	Biopsy, soft tissues; deep.
25076	1	3	Excision, benign tumor, deep, subfascial or intramuscular.
25085	3	3	Capsulotomy, wrist (e.g., for contracture).
25100	2	2	Arthrotomy, wrist joint, for biopsy.
25101	3	3	Arthrotomy, wrist joint, with joint exploration, with or without biopsy, with or without removal of foreign body.
25107	3	3	Arthrotomy distal radioulnar joint for repair of triangular cartilage complex.
25110	3	3	Excision, lesion of tendon sheath.
*25111	3	3	Excision, of ganglion, wrist (dorsal or volar); primary.
*25112	3	4	Excision of ganglion, wrist (dorsal or volar); recurrent.
25120	3	3	Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process).
25125	4	3	Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process); with primary autogenous graft (including obtaining graft).
25126	4	3	Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process); with homogenous or other nonautogenous graft.
25130	3	3	Excision or curettage of bone cyst or benign tumor of carpal bones.
25135	3	3	Excision or curettage of bone cyst or benign tumor of carpal bones; with primary autogenous graft (includes obtaining graft).
25136	4	3	Excision or curettage of bone cyst or benign tumor of carpal bones; with homogenous or other nonautogenous graft.
25145	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess).
25150	2	2	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); ulna.
25151	2	2	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); radius.
25210	3	3	Carpectomy; one bone.
25215	3	4	Carpectomy; all bones of promimal row.
25230	3	4	Radial styloidectomy (separate procedure).
25240	3	4	Excision distal ulna (Darrach type procedure).
25248	2	2	Exploration for removal of deep foreign body.
Repair, revision or reconstruction			
*25260	3	4	Repair, tendon or muscle, flexor; primary, single, each tendon or muscle.
*25263	3	2	Repair, tendon or muscle, flexor; secondary, single, each tendon or muscle.
*25265	4	3	Repair tendon or muscle, flexor; secondary, with free graft (includes obtaining graft), each tendon or muscle.
*25270	3	4	Repair, tendon or muscle, extensor; primary, single, each tendon or muscle.
*25272	3	3	Repair, tendon or muscle, extensor; secondary, single, each tendon or muscle.
25274	4	4	Repair, tendon or muscle, extensor, secondary, with tendon graft (includes obtaining graft), each tendon.
25280	3	4	Lengthening or shortening of flexor or extensor tendon, single, each tendon.
25290	3	3	Tenotomy, open, single, flexor or extensor tendon, each tendon.
25295	3	3	Tenolysis, single flexor or extensor tendon, each tendon.
25300	3	3	Tenodesis at wrist; flexors of fingers.
25301	3	3	Tenodesis at wrist; extensors of fingers.
*25310	4	3	Tendon transplantation or transfer, flexor or extensor, single; each tendon.
*25312	4	4	Tendon transplantation or transfer, flexor or extensor, single; with tendon graft(s) (includes obtaining graft), each tendon.
25315	3	3	Flexor origin slide for cerebral palsy.
25316	3	3	Flexor origin slide for cerebral palsy; with tendon(s) transfer.
25317	3	3	Flexor origin slide for Volkmann contracture.
25318	3	3	Flexor origin slide for Volkmann contracture; with tendon(s) transfer.
25320	4	3	Capsulorrhaphy or reconstruction, capsulectomy, wrist (includes synovectomy, resection of capsule, tendon insertions).
25390	4	3	Osteoplasty radius OR ulna; shortening.
25391	4	4	Osteoplasty, radius OR ulna; lengthening with autogenous bone graft.
25392	4	3	Osteoplasty, radius AND ulna; shortening (excluding 64876).
25393	4	4	Osteoplastry, radius AND ulna; lengthening with autogenous bone graft.
25450	4	3	Epiphyseal arrest by epiphysiodesis or stapling; distal radius OR ulna.
25455	4	3	Epiphyseal arrest by epiphysiodesis or stapling; distal radius AND ulna.
Fracture and/or dislocation			
25505	1	1	Treatment of closed radial shaft fracture; with manipulation.
25510	3	2	Treatment of open radial shaft fracture, with uncomplicated soft tissue closure.
25515	4	3	Open treatment of closed or open radial shaft fracture, with or without internal or external skeletal fixation.
25535	1	1	Treatment of closed ulnar shaft fracture; with manipulation.
25540	3	2	Treatment of open ulnar shaft fracture, with uncomplicated soft tissue closure.
25545	4	3	Open treatment of closed or open ulnar shaft fracture, with or without internal or external skeletal fixation.
25565	1	2	Treatment of closed radial and ulnar shaft fractures; with manipulation.
25570	3	3	Treatment of open radial and ulnar shaft fractures, with uncomplicated soft tissue closure.
25575	4	3	Open treatment of closed or open radial and ulnar shaft fractures, with or without internal or external skeletal fixation.

	Payment groups		
	Old	New	
25605	1	3	Treatment of closed distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid; with manipulation.
25610	2	3	Treatment of closed, complex, distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, requiring manipulation; without external skeletal fixation or percutaneous pinning.
25611	2	3	Treatment of closed, complex, distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, requiring manipulation; percutaneous pinning or pins and plaster technique.
25615	3	4	Treatment of open distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, with uncomplicated soft tissue closure.
25620	4	5	Open treatment of closed or open distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, with or without internal or external skeletal fixation.
25626	3	2	Treatment of open carpal scaphoid (navicular) fracture, with uncomplicated soft tissue closure.
25628	4	3	Open treatment of closed or open carpal scaphoid (navicular) fracture, with or without skeletal fixation.
25635	1	1	Treatment of closed carpal bone fracture (excluding carpal scaphoid (navicular)); with manipulation, each bone.
25640	4	2	Treatment of open carpal bone fracture (excluding carpal scaphoid (navicular)), with uncomplicated soft tissue closure, each bone.
25645	4	3	Open treatment of closed or open carpal bone fractaure (excluding carpal scaphoid (navicular)), each bone.
25660	1	1	Treatment of closed radiocarpal or intercarpal dislocation, one or more bones, with manipulation.
25665	3	3	Treatment of open radiocarpal or intercarpal dislocation, one or more bones, with uncomplicated soft tissue closure.
25670	4	3	Open treatment of closed or open radiocarpal or intercarpal dislocation, one or more bones.
25675	1	1	Treatment of closed distal radioulnar dislocation with manipulation.
25676	3	2	Open treatment of closed or open distal radioulnar dislocation, acute or chronic.
25680	1	2	Treatment of closed trans-scaphoperilunar type of fracture dislocation, with manipulation.
25685	3	3	Open treatment of closed or open trans-scaphoperilunar type of fracture dislocation.
25690	1	1	Treatment of lunate dislocation, with manipulation.
25695	3	2	Open treatment of lunate dislocation.
			Hands and Fingers
Incision			
26011	1	1	Drainage of finger abscess; complicated (e.g., felon, etc).
26020	1	2	Drainage of tendon sheath, one digit and/or palm.
26025	1	1	Drainage of palmar bursa; single, ulnar or radial.
26030	1	2	Drainage of palmar bursa; multiple or complicated.
26034	2	2	Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess).
26035	2	4	Decompression fingers and/or hand, injection injury (e.g., grease gun, etc.).
*26040	4	4	Fasciotomy, palmar, for Dupuytren's contracture; closed (subcutaneous).
*26045	4	3	Faciotomy, palmar, for Dupuytren's contracture; open, partial.
*26055	1	3	Tendon sheath incision for trigger finger.
*26060	1	2	Tenotomy, subcutaneous, single, each digit.
26070	2	2	Arthrotomy, for infection, with exploration, drainage or removal of loose or foreign body; carpometacarpal joint.
26075	2	4	Arthrotomy with exploration, drainage or removal of loose or foreign body; metacarpophalangeal joint.
26080	2	4	Arthrotomy with exploration, drainage or removal of loose or foreign body; interphalangeal joint, each.
Excision			
26100	3	2	Arthrotomy for synovial biopsy; carpometacarpal joint.
26105	3	1	Arthrotomy for synovial biopsy; metacarpophalangeal joint.
26110	3	1	Arthrotomy for synovial biopsy; interphalangeal joint, each.
26115	3	2	Excision of benign tumor; subcutaneous.
26116	3	2	Excision of benign tumor; deep, subfascial, intramuscular.
*26120	4	4	Fasciectomy, palmar, simple, for Dupuytren's contracture; partial excision.
*26122	4	3	Fasciectomy, palmar, simple, for Dupuytren's contracture; up to one-half palmar fascia, with single digit involvement, with or without Z-plasty or other local tissue rearrangement.
26124	4	4	Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); with single digit involvement.
26126	4	3	Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); each additional digit.
*26128	4	4	Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); each finger joint release.
26135	4	4	Synovectomy, metacarpophalangeal joint including intrinsic release and extensor hood reconstruction, each digit.
*26140	4	2	Synovectomy, proximal interphalangeal joint, including extensor reconstruction, each interphalangeal joint.
*26145	4	3	Synovectomy tendon sheath, radicial (tenosynovectomy), flexor, palm or finger, single , each digit.
26160	3	3	Excision of lesion of tendon sheath or capsule (e.g., cyst or ganglion).
26170	3	3	Excision of tendon, palm, flexor, single (separate procedure), each.
26180	3	3	Excision of tendon, finger, flexor (separate procedure).
26200	3	2	Excision or curettage of bone cyst or benign tumor of metacarpal.
26205	3	3	Excision or curettage of bone cyst or benign tumor of metacarpal; with autogenous graft (includes obtaining graft).
26210	3	2	Excision or curettage of bone cyst or benign tumor or proximal, middle or distal phalanx.
26215	3	3	Excision or curettage of bone cyst or benign tumor of proximal, middle or distal phalanx; with autogenous graft (includes obtaining graft).
26230	3	2	Partial excision (craterization saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis); metacarpal.
26235	3	3	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); proximal or middle phalanx.
26250	4	3	Radical resection (ostectomy) for tumor, metacapal.
26225	4	3	Radical resection (ostectomy) for tumor, metacarpal; with autogenous graft (includes obtaining graft).
26261	4	3	Radical resection (ostectomy) for tumor, proximal or middle phalanx; with autogenous graft (includes obtaining graft).
Repair, revision or reconstruction			
*26350	3	1	Flexor tendon repair or advancement, single, not in "no man's land"; primary or secondary without free graft, each tendon.
*26352	4	3	Flexor tendon repair or advancement, single, not in "no man's land"; secondary with free graft (includes obtaining graft), each tendon.
*26356	3	4	Flexor tendon repair or advancement, single, in "no man's land"; primary, each tendon.
*26358	4	4	Flexor tendon repair or advancement, single, in "no man's land"; secondary with free graft (includes obtaining graft), each tendon.
*26370	3	4	Profundus tendon repair or advancement, with intact sublimis; primary.
*26372	4	4	Profundus tendon repair or advancement, with intact sublimis; secondary with free graft (includes obtaining graft).
*26373	3	3	Profundus tendon repair or advancement, with intact sublimis; secondary without free graft.

	Payment groups		
	Old	New	
*26390	3	4	Flexor tendon excision, implantation of plastic tube or rod for delayed tendon graft.
*26392	4	3	Removal of tube or rod and insertion of tendon graft (includes obtaining graft).
*26410	3	3	Extensor tendon repair, dorsum of hand, single, primary or secondary; without free graft, each tendon.
*26412	4	3	Extensor tendon repair, dorsum of hand, single, primary or secondary; with free graft (includes obtaining graft) each tendon.
*26418	3	3	Extensor tendon repair, dorsum of finger, single, primary or secondary; without free graft, each tendon.
*26420	4	4	Extensor tendon repair, dorsum of finger, single, primary or secondary; with free graft (includes obtaining graft), each tendon.
*26426	4	3	Extensor tendon repair, central slip repair, secondary (boutonniere deformity); using local tissues.
*26428	4	3	Extensor tendon repair, central slip repair, secondary (boutonniere deformity); with free graft (includes obtaining graft).
*26432	4	3	Extensor tendon repair, distal insertion ("mallet finger"), closed, splinting with or without percutaneous pinning.
*26433	3	3	Extensor tendon repair, open, primary or secondary repair; without graft.
*26434	4	3	Extensor tendon repair, open, primary or secondary repair; with free graft (includes obtaining graft).
26440	3	3	Tenolysis, simple, flexor tendon; palm OR finger, single, each tendon.
26442	3	3	Tenolysis, simple, flexor tendon; palm AND finger, each tendon.
26445	3	3	Tenolysis, extensor tendon, dorsum of hand or finger; each tendon.
26449	4	3	Tenolysis, complex, extensor tendon, dorsum of hand or finger, including hand and forearm.
*26450	1	3	Tenotomy, flexor, single, palm, open, each.
*26455	1	3	Tenotomy, flexor, single finger, open, each.
*26460	1	3	Tenotomy, extensor, hand or finger, single, open, each.
26471	2	2	Tenodesis; for proximal interphalangeal joint stabilization.
26474	2	2	Tenodesis; for distal joint stabilization.
26476	3	1	Tendon lengthening, extensor, single, each.
26477	3	1	Tendon shortening, extensor, single, each.
*26480	4	3	Tendon transfer or transplant, carpometacarpal area.
*26483	4	3	Tendon transfer or transplant, carpometacarpal area.
*26485	4	2	Tendon transfer or transplant, palmar, single, each tendon; without free tendon graft.
*26489	4	3	Tendon transfer or transplant, palmar, single, each tendon; with free tendon graft (includes obtaining graft), each tendon.
26490	4	3	Opponens plasty; sublimis tendon transfer type.
26492	4	3	Opponens plasty; tendon transfer with graft (includes obtaining graft).
26494	4	3	Opponens plasty; hypothenar muscle transfer.
26496	4	3	Opponens plasty; other methods.
26497	4	3	Tendon transfer to restore intrinsic function; ring and small finger.
26498	4	4	Tendon transfer to restore intrinsic function; all four fingers.
26499	4	3	Correction claw finger; other methods.
26500	4	4	Tendon pulley reconstruction; with local tissues (separate procedure).
26502	4	4	Tendon pulley reconstruction; with tendon or facial graft (includes obtaining graft) (separate procedure).
26508	4	3	Thenar muscle release for thumb contracture.
26510	4	3	Cross intrinsic transfer.
26516	2	1	Capsulodesis for M–P joint stabilization; single digit.
26517	2	3	Capsulodesis for M–P joint stabilization; two digits.
26518	3	3	Capsulodesis for M–P joint stabilization; three or four digits.
*26520	3	3	Capsulectomy for contracture; metacarpophalangeal joint, single, each.
*26525	3	3	Capsulectomy for contracture; interphalangeal joint, single, each.
*26530	4	3	Arthroplasty, metacarpophalangeal joint; single, each.
*26531	4	6	Arthroplasty, metacarpophalangeal joint; with prosthetic implant, single, each.
*26535	4	4	Arthroplasty interphalangeal joint; single, each.
*26536	4	5	Arthroplasty interphalangeal joint; with prosthetic implant, single, each.
*26540	4	4	Primary repair of collateral ligament, metacarpophalangeal joint.
*26541	4	6	Reconstruction, collateral ligament, metacarpophalangeal joint; with tendon or facial graft (includes obtaining graft).
26542	4	4	Primary repair of collateral ligament, metacarpophalangeal joint; with local tissue.
*26545	4	4	Reconstruction, collateral ligament, interphalangeal joint, single, including graft, each joint.
26552	4	4	Reconstruction thumb with toe.
26555	4	3	Positional change of other finger.
26557	4	3	Toe to finger transfer; first stage.
26558	4	2	Toe to finger transfer; each delay.
26559	4	2	Toe to finger transfer; second stage.
*26567	4	4	Osteotomy for correction of deformity; phalanx.
26568	4	3	Osteoplasty for lengthening of metacarpal or phalanx.
26570	4	2	Bone graft, (includes obtaining graft); metacarpal.
26574	4	2	Bone graft, (includes obtaining graft); phalanx.
Fractures and/or dislocations			
26605	1	2	Treatment of closed metacarpal fracture, single; with manipulation, each bone.
26607	2	2	Treatment of closed metacarpal fracture, single, with manipulation, with skeletal fixation, each bone.
26610	2	4	Treatment of open metacarpal fracture, single, with uncomplicated soft tissue closure, each bone.
26645	1	1	Treatment of closed carpometacarpal fracture dislocation, thumb (Bennett fracture), with manipulation.
26650	2	2	Treatment of closed carpometacarpal fracture dislocation, thumb (Bennett fracture), with manipulation; with skeletal fixation.
26655	3	3	Treatment of open carpometacarpal fracture dislocation, thumb (Bennett fracture), with uncomplicated soft tissue closure.
26660	3	3	Treatment of open carpometacarpal fracture dislocation, thumb (Bennett fracture), with uncomplicated soft tissue closure; with skeletal fixation.
26665	3	4	Open treatment of closed or open carpometacarpal fracture dislocation, thumb (Bennett fracture), with or without internal or external skeletal fixation.
26675	1	2	Treatment of closed carpometacarpal dislocation, other than Bennett fracture, single, with manipulation; requiring anesthesia.
26676	2	2	Treatment of closed carpometacarpal dislocation, other than Bennett fracture, single, with manipulation; with percutaneous pinning.
26680	2	2	Treatment of open carpometacarpal dislocation, other than Bennett fracture, single, with uncomplicated soft closure.

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	Payment groups		
	Old	New	
26685	3	3	Open treatment of closed or open carpometacarpal dislocation, other than Bennett fracture; single, with or without internal or external skeletal fixation.
26686	3	3	Open treatment of closed or open carpometacarpal dislocation, other than Bennett fracture; complex, multiple or delayed reduction.
26705	1	2	Treatment of closed metacarpophalangeal dislocation, single, with manipulation; requiring anesthesia.
26706	2	2	Treatment of closed metacarpophalangeal dislocation, single, with manipulation; with percutaneous pinning.
26710	2	2	Treatment of open metacarpophalangeal dislocation, single, with uncomplicated soft tissue closure.
26715	3	4	Open treatment of closed or open metacarpophalangeal dislocation, single, with or without internal or external skeletal fixation.
26727	2	5	Treatment of unstable phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with manipulation, requiring traction or fixation, each.
26730	2	2	Treatment of open phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with uncomplicated soft tissue closure, each.
26735	3	4	Open treatment of closed or open phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with or without internal or external skeletal fixation, each.
26744	2	2	Treatment of open articular fracture, involving metacarpophalangeal or proximal interphalangeal joint; with uncomplicated soft tissue closure, each.
26746	3	5	Open treatment of closed or open articular fracture, involving metacarpophalangeal or proximal interphalangeal joint, each.
26765	3	4	Open treatment of closed or open distal phalangeal fracture, finger or thumb, each.
26780	2	2	Treatment of open interphalangeal joint dislocation, single, with uncomplicated soft tissue closure.
26785	3	2	Open treatment of closed or open interphalangeal joint dislocation, single.
Arthrodesis			
*26820	4	5	Fusion in opposition, thumb, with autogenous graft (includes obtaining graft).
*26841	4	4	Arthrodesis, carpometacarpal joint, thumb, with or without internal fixation.
*26842	4	4	Arthrodesis, carpometacarpal joint, thumb, with or without internal fixation; with autogenous graft (includes obtaining graft).
*26843	4	3	Arthrodesis, carpometacarpal joint, digits, other than thumb.
*26844	4	3	Arthrodesis, carpometacarpal joint, digits, other than thumb; with autogenous graft (includes obtaining graft).
*26860	4	3	Arthrodesis, interphalangeal joint, with or without internal fixation.
*26861	4	2	Arthrodesis, interphalangeal joint, with or without internal fixation; each additional interphalangeal joint.
*26862	4	4	Arthrodesis, interphalangeal joint, with or without internal fixation; with autogenous graft (includes obtaining graft).
*26863	4	3	Arthrodesis, interphalangeal joint, with or without internal fixation; with autogenous graft (includes obtaining graft), each additional joint.
Amputation			
*26910	2	3	Amputation, metacarpal, with finger or thumb (ray amputation), single, with or without interosseus transfer.
*26951	2	2	Amputation, finger or thumb, primary or secondary, any joint or phalanx, single, including neurectomies; with direct closure.
*26952	4	4	Amputation, finger or thumb, primary or secondary, any joint or phalanx, single, including neurectomies; with local advancement flaps (V-Y, hood).
			Pelvis and Hip Joint
Incision			
26990	2	1	Incision and drainage; deep abscess or hematoma.
26991	2	1	Incision and drainage; infected bursa.
26992	2	2	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
27000	3	2	Tenotomy, adductor, subcutaneous, closed (separate procedure).
27001	4	2	Tenotomy, adductor, subcutaneous, open; unilateral.
27002	4	2	Tenotomy, adductor, subcutaneous, open; bilateral.
27003	4	3	Tenotomy, adductor, subcutaneous, open, with obturator neurectomy; unilateral.
27004	4	3	Tenotomy, adductor, subcutaneous, open, with obturator neurectomy; bilateral.
27030	4	3	Arthrotomy, hip, for infection, with drainage.
27033	4	3	Arthotomy, hip, for exploration or removal of loose or foreign body.
27035	4	4	Hip joint denervation, intrapelvic or extrapelvic intra- articular branches of sciatic, femoral or obturator nerves.
Excision			
27040	4	2	Biopsy, soft tissues; superficial.
27041	4	2	Biopsy, soft tissues; deep.
27047	4	2	Excision, benign tumor; subcutaneous.
20748	4	3	Excision, benign tumor; deep, subfascial, intramuscular.
27052	4	3	Arthrotomy for biopsy; hip joint.
27065	4	4	Excision of bone cyst or benign tumor; superficial (wing of ilium, symphysis pubis, or greater trochanter of femur) with or without autogenous bone graft.
27066	4	5	Excision of bone cyst or benign tumor; deep, with or without bone graft.
27080	4	2	Coccygectomy, primary.
Introduction and/or removal			
27087	2	3	Removal of foreign body; deep.
27095	1	1	Injection procedure for hip arthrography; with anesthesia.
Fractures and/or dislocations			
27201	4	2	Treatment of open coccygeal fracture.
27202	4	2	Open treatment of closed or open coccygeal fracture.
Manipulation			
27275	2	2	Manipulation, hip joint, requiring general anesthesia.
			Femur (Thigh Region) and Knee Joint
Incision			
27301	2	3	Incision and drainage of deep abscess, infected bursa, or hematoma.
27303	2	2	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
*27305	4	2	Fasciotomy, iliotibial (tenotomy), open.
*27306	1	3	Tenotomy, subcutaneous, closed, adductor or hamstring, (separate procedure); single.
*27307	1	3	Tenotomy, subcutaneous, closed, adductor or hamstring, (separate procedure); multiple.
27310	4	4	Arthrotomy, knee, for infection, with exploration, drainage or removal of foreign body.

	Payment groups		
	Old	New	
*27315	4	2	Neurectomy, hamstring muscle.
*27320	4	2	Neurectomy, popliteal (gastrocnemius).
Excision			
27324	2	1	Biopsy, soft tissues; deep.
27327	1	2	Excision, benign tumor; subcutaneous.
27328	2	3	Excision, benign tumor; deep, subfascial, or intramuscular.
27330	4	4	Arthrotomy, knee; for synovial biopsy only.
27345	4	4	Excision of synovial cyst of popliteal space (Baker's cyst).
27350	4	4	Patellectomy or hemipatellectomy.
27355	4	3	Excision or curettage of bone cyst or benign tumor of femur.
27360	4	5	Partial excision (craterization, saucerization or diaphysectomy) of bone, (e.g., for osteomyelitis), femur, proximal tibia and/or fibula.
Introduction and/or removal			
27372	3	6	Removal foreign body, deep.
Repair, revision or reconstruction			
27390	4	1	Tenotomy, open, hamstring, knee to hip; single.
27391	4	2	Tenotomy, open, hamstring, knee to hip; multiple, one leg.
27392	4	3	Tenotomy, open, hamstring, knee to hip; multiple, bilateral.
27393	4	2	Lengthening of hamstring, tendon; single.
27394	4	3	Lengthening of hamstring, tendon; multiple, one leg.
27395	4	3	Lengthening of hamstring, tendon; multiple, bilateral.
27396	4	3	Transplant, hamstring tendon to patella; single.
27397	4	3	Transplant, hamstring tendon to patella; multiple.
27400	4	3	Tendon or muscle transfer, hamstrings to femur (Eggers type procedure).
27420	4	3	Reconstruction for recurrent dislocating patella; (Hauser type procedure).
27422	4	6	Reconstruction for recurrent dislocating patella; with extensor realignment and/or muscle advancement or release (Campbell, Goldwaite, etc., type procedure).
27424	4	3	Reconstruction for recurrent dislocating patella; with patellectomy.
27425	4	6	Lateral retinacular release (any method).
27430	4	4	Quadriceps plasty (Bennett or Thompson type).
27435	4	4	Capsulotomy, knee, posterior capsular release.
Fractures and/or dislocations			
27522	3	3	Treatment of open pateller fracture, with uncomplicated soft tissue closure.
27524	4	3	Open treatment of closed or open patellar fracture, with repair and/or excision.
Excision			
27532	1	1	Treatment of closed tibial fracture, proximal (plateau); with manipulation.
Fractures and/or dislocations			
27534	3	2	Treatment of open tibial fracture, proximal (plateau), with uncomplicated soft tissue closure.
Excision			
27552	1	1	Treatment of closed knee dislocation; requiring anesthesia.
27562	1	1	Treatment of closed patellar dislocation; requiring anesthesia.
Fractures and/or dislocations			
27564	4	2	Treatment of open patellar dislocation, with uncomplicated soft tissue closure.
27566	4	2	Open treatment of closed or open patellar dislocation, with or without partial or total patellectomy.
Manipulation			
27570	2	1	Manipulation of knee joint under general anesthesia (includes application of traction or other fixation devices).
			Leg (tibia and fibula) and ankle joint
Incision			
27603	2	2	Incision and drainage; deep abscess or hematoma.
*27605	1	1	Tenotomy, Achilles tendon, subcutaneous (separate procedure); local anesthesia.
*27606	1	1	Tenotomy, Achilles tendon, subcutaneous (separate procedure); general anesthesia.
27607	2	2	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
27610	2	2	Arthrotomy, ankle, with exploration, drainage or removal of loose or foreign body.
27612	4	3	Arthrotomy, ankle, posterior capsular release, with or without archilles tendon lengthening.
Excision			
27620	3	4	Arthrotomy, ankle, for biopsy.
27630	3	3	Excision of lesion of tendon sheath or capsule (e.g., cyst or ganglion).
27635	3	3	Excision or curettage of bone cyst or benign tumor, tibia or fibula.
27637	4	3	Excison or curettage of bone cyst, or benign tumor, tibia or fibula; with primary autogenous graft (includes obtaining graft).
27638	4	3	Excision or curettage of bone cyst, or benign tumor, tibia or fibula; with primary homogenous graft.
27640	4	2	Partial excision (craterization, saucerization, or diaphysectomy) of bone, (e.g., for osteomyelitis); tibia.
27641	4	2	Partial excision (craterization, saucerization, or diaphysectomy) of bone, (e.g., for osteomyelitis); fibula.
Repair, revision or reconstruction			
*27650	3	3	Repair, primary, open or percutaneous, ruptured Achilles tendon.
*27652	4	3	Repair, primary, open or percutaneous, ruptured Achilles tendon; with graft (includes obtaining graft).
*27654	4	3	Suture, secondary, ruptured Achilles tendon, with our without graft.
*27656	3	2	Repair, fascial defect of leg.
*27658	3	1	Repair or suture of flexor tendon of leg; primary, without free graft, single, each.
*27659	4	2	Repair or suture of flexor tendon of leg; secondary with or without free graft, single tendon, each.
*27664	3	2	Repair or suture of extensor tendon of leg; primary, without free graft, single, each.
*27665	4	2	Repair or suture of extensor tendon of leg; secondary with or without free graft, single tendon, each.
*27675	4	2	Repair for dislocating peroneal tendons; without fibular osteotomy.
*27676	4	3	Repair for dislocating peroneal tendons; with fibular osteotomy.
27680	3	3	Tenolysis, including tibia, fibula and ankle flexor; single.
27681	4	2	Tenolysis, including tibia,fibula and ankle flexor; multiple (through same incision), each.
27685	3	3	Lengthening or shortening of tendon; single (separate procedure).
27686	4	3	Lengthening or shortening of tendon; multiple (through same incision), each.

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	Payment groups		
	Old	New	
27690	4	4	Transfer or transplant of single tendon (with muscle redirection or rerouting); superficial (e.g., anterior tibial extensors into midfoot).
27691	4	4	Transfer or transplant of single tendon (with muscle redirection or rerouting); anterior tibial or posterior tibial through interosseous space.
27692	4	3	Transfer or transplant of single tendon (with muscle redirection or rerouting); each additional tendon.
Fractures and/or dislocations			
27756	4	3	Open treatment of closed or open tibial shaft fracture, with internal skeletal fixation; simple.
27758	4	4	Open treatment of closed or open tibial shaft fracture, with internal or external skeletal fixation; complicated.
27764	3	2	Treatment of open distal tibial fracture (medial malleolus), with uncomplicated soft tissue closure.
27766	3	3	Open treatment of closed or open distal tibial fracture (medial malleolus), with fixation.
27781	1	1	Treatment of closed proximal fibula or shaft fracture; with manipulation.
27782	3	2	Treatment of open proximal fibula or shaft fracture, with uncomplicated soft tissue closure.
27784	4	3	Open treatment of closed or open proximal fibula or shaft fracture, with or without internal or external skeletal fixation.
27790	3	3	Treatment of open distal fibular fracture (lateral malleolus), with uncomplicated soft tissue closure.
27792	4	3	Open treatment of closed or open distal fibular fracture (lateral malleolus), with fixation.
27802	1	1	Treatment of closed tibia and fibula fractures, shafts; with manipulation.
27804	3	3	Treatment of open tibia and fibula fractures, shafts, with uncomplicated soft tissue closure (e.g., "pins above and below").
27842	1	1	Treatment of ankle dislocation; requiring anesthesia.
27844	3	2	Treatment of open ankle dislocation, with uncomplicated soft tissue closure.
27846	4	3	Open treatment of closed or open ankle dislocation.
27848	4	3	Open treatment of closed or open ankle dislocation; with fixation.
Manipulation			
27860	1	1	Manipulation of ankle under general anesthesia (includes application of traction or other fixation apparatus).
			Foot
Incision			
28002	2	3	Deep infection, below fascia, requiring deep dissection, with or without tendon sheath involvement; single bursal space, specify.
28003	2	3	Deep infection, below fascia, requiring deep dissection, with or without tendon sheath involvement; multiple areas.
28005	2	3	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
*28008	4	3	Fasciotomy, plantar and/or toe, subcutaneous.
*28010	1	2	Tenotomy, subcutaneous, toe; single.
*28011	1	2	Tenotomy, subcutaneous, toe; multiple.
*28030	4	4	Neurectomy of intrinsic musculature of foot.
28035	4	4	Tarsal tunnel release (posterior tibial nerve decompression).
Excision			
28045	2	3	Excision, benign tumor; deep, subfascial, intramuscular.
28050	3	2	Arthrotomy for synovial biopsy; intertarsal or tarsometatarsal joint.
28062	4	3	Fasciectomy, excision of plantar fascia; radical (separate procedure).
*28072	4	3	Synovectomy; metatarsophalangeal joint, each.
*28080	3	3	Excision of Morton neuroma, single, each.
*28086	4	2	Synovectomy, tendon sheath; flexor.
*28088	4	2	Synovectomy, tendon sheath; extensor.
*28090	4	3	Excision of lesion of tendon or fibrous sheath or capsule (including synovectomy) (cyst or ganglion); foot.
*28092	4	3	Excision of lesion of tendon or fibrous sheath or capsule (including synovectomy) (cyst or ganglion); toes.
28102	4	3	Excision or curettage of bone cyst or benign tumor, talus or calcaneus; with iliac or other autogenous bone graft (includes obtaining graft).
28103	4	3	Excision or curettage of bone cyst or benign tumor, talus or calcaneus; with homogenous bone graft.
28107	3	3	Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except talus or calcaneus; with homogenous bone graft.
*28110	3	3	Ostectomy, partial excision, fifth metatarsal head (bunionette) (separate procedure).
*28111	3	3	Ostectomy complete excision; first metatarsal head.
*28112	3	3	Ostectomy; complete excision other metatarsal head (second, third, or fourth).
*28113	3	3	Ostectomy; complete excision fifth metatarsal head.
*28114	3	3	Ostectomy; complete excision all metatarsal heads, with proximal phalangectomy, excluding first metatarsal (Clayton type procedure).
28118	3	4	Ostectomy, calcaneus; partial.
28120	3	3	Partial excision (craterization, saucerization, sequestrectomy, or diaphysectomy) of bone (e.g., for osteomyelitis), talus or calcaneus.
28122	3	3	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for ostemyelitis), tarsal or metatarsal bone, except talus or calcaneus.
28140	3	3	Metatarsectomy.
28171	3	3	Radical resection for tumor; tarsal (except talus or calcaneus).
28173	3	3	Radical resection for tumor; metatarsal.
28175	3	3	Radical resection for tumor; phalanx.
Introduction and/or removal			
28193	2	4	Remove foreign body; complicated.
Repair revision or Reconstruction			
*28200	3	3	Repair or suture of tendon, foot, flexor, single; primary or secondary, without free graft, each tendon.
*28202	4	3	Repair or suture of tendon, foot, flexor, single; secondary with free graft, each tendon (includes obtaining graft).
*28208	3	3	Repair or suture of tendon, foot, extensor, single; primary or secondary, each tendon.
*28210	4	3	Repair or suture of tendon, foot, extensor, single; secondary with free graft, each tendon, (including obtaining graft).
*28222	3	1	Tenolysis, flexor; multiple (through same incision).
*28225	3	1	Tenolysis, extensor; single.
*28226	3	1	Tenolysis, extensor; multiple (through same incision).
*28230	1	1	Tenotomy, open, flexor; foot, single or multiple (separate procedure).
*28232	1	4	Tenotomy, open, flexor; toe, single (separate procedure).
*28234	1	3	Tenotomy, open, extensor, foot or toe.

	Payment groups		
	Old	New	
*28240	1	3	Tenotomy or release, abductor hallucis muscle.
28250	2	3	Division of plantar fascia and muscle ("Steindler stripping") (separate procedure).
28260	3	3	Capsulotomy, midfoot; medial release only (separate procedure).
28261	3	3	Capsulotomy, midfoot; with tendon lengthening.
*28264	3	1	Capsulotomy, midtarsal (Heyman type procedure).
*28270	3	2	Capsulotomy for contracture; metatarsophalangeal joint, with or without tenorrhaphy, single, each joint (separate procedure).
*28272	3	3	Capsulotomy for contracture; interphalangeal joint, single, each joint (separate procedure).
*28285	4	3	Hammertoe operation; one toe (e.g., interphalangeal fusion, filleting, phalangectomy) (separate procedure).
*28286	4	4	Hammertoe operation; for cock-up fifth toe with plastic skin closure, (Ruiz-Mora type procedure).
*28290	4	4	Hallux valgus (bunion) correction, with or without sesamoidectomy; simple exostectomy (Silver type procedure).
*28292	4	4	Hallux valgus (bunion) correction, with or without sesamoidectomy; Keller, McBride or Mayo type procedure.
*28293	4	5	Hallux valgus (bunion) correction, with or without sesamoidectomy; resection of joint with implant.
*28294	4	6	Hallux valgus (bunion) correction, with or without sesamoidectomy; with tendon transplants (Joplin type procedure).
*28296	4	5	Hallux valgus (bunion) correction, with or without sesamoidectomy; with metatarsal osteotomy (e.g., Mitchell, Chevron, or concentric type procedures).
28297	4	3	Hallux valgus (bunion) correction, with or without sesamoidectomy; Lapidus type procedure.
*28298	4	3	Hallux valgus (bunion) correction, with or without sesamoidectomy; by phalanx osteotomy.
*28299	4	5	Hallux valgus (bunion) correction, with or without sesamoidectomy; by other methods (e.g., double osteotomy).
*28306	4	4	Osteotomy, metatarsal, base or shaft, single, for shortening or angular correction; first metatarsal.
*28308	4	2	Osteotomy, metatarsal, base or shaft, single, for shortening or angular correction; other than first metatarsal.
*28310	4	3	Osteotomy for shortening, angular or rotational correction; proximal phalanx, first toe (separate procedure).
*28312	4	3	Osteotomy for shortening, angular or rotational correction; other phalanges, any toe.
28315	3	4	Sesamoidectomy, first toe (separate procedure).
28320	4	4	Repair of nonunion or malunion; tarsal bones (calcaneus, talus, etc).
28322	4	4	Repair of nonunion or malunion; metatarsal, with or without bone graft (includes obtaining graft).
Fracture and/or dislocation			
28405	1	2	Treatment of closed calcaneal fracture; with manipulation including Cotton or Bohler type reductions.
28406	2	2	Treatment of closed calcaneal fracture; with manipulation and skeletal fixation.
28420	4	4	Open treatment of closed or open calcaneal fracture, with or without internal or external skeletal fixation; with primary iliac or other autogenous bone graft (includes obtaining graft).
28435	1	2	Treatment of closed talus fracture; with manipulation.
28436	2	2	Treatment of closed talus fracture; with manipulation and percutaneous pinning.
28465	4	3	Open treatment of closed or open tarsal bone fracture (except talus and calcaneus), with or without internal or external skeletal fixation, each.
28485	4	4	Open treatment of closed or open metatarsal fracture, with or without internal or external skeletal fixation, each.
28500	3	3	Treatment of open fracture great toe, phalanx or phalanges, with uncomplicated soft tissue closure.
28505	3	3	Open treatment of closed or open fracture great toe, phalanx or phalanges, with or without internal or external skeletal fixation.
28520	2	3	Treatment of open fracture, phalanx or phalanges, other than great toe, with uncomplicated soft tissue closure, each.
28525	3	3	Open treatment of closed or open fracture, phalanx or phalanges, other than great toe, with or without internal or external skeletal fixation, each.
28545	1	1	Treatment of closed tarsal bone dislocation; requiring anesthesia.
28546	2	2	Treatment of closed tarsal bone dislocation, with percutaneous skeletal fixation.
28555	4	2	Open treatment of closed or open tarsal bone dislocation, with or without internal or external skeletal fixation.
28575	1	1	Treatment of closed talotarsal joint dislocation; requiring anesthesia.
28585	4	3	Open treatment of closed or open talotarsal joint dislocation, with or without internal or external skeletal fixation.
28605	1	1	Treatment of closed tarsometatarsal joint dislocation; requiring anesthesia.
28606	2	2	Treatment of closed tarsometatarsal joint dislocation, with percutaneous skeletal fixation.
28615	4	3	Open treatment of closed or open tarsometatarsal joint dislocation, with or without internal or external skeletal fixation.
28645	4	3	Open treatment of closed or open metatarsophalangeal joint dislocation.
28670	3	3	Treatment of open interphalangeal joint dislocation, with uncomplicated soft tissue closure.
28675	4	3	Open treatment of closed or open interphalangeal joint dislocation.
Arthrodesis			
*28750	4	4	Arthrodesis, great toe; metatarsophalangeal joint.
*28755	4	4	Arthrodesis, great toe; interphalangeal joint.
*28760	4	4	Arthrodesis, great toe, interphalangeal joint, with extensor hallucis longus transfer to first metatarsal neck (Jones type procedure).
Amputation			
*28810	2	2	Amputation, metatarsal, with toe, single.
*28820	2	2	Amputation, toe; metatar sophalangeal joint.
*28825	2	2	Amputation, toe; interphalanged joint.
Arthroscopy			
29870	4	2	Arthroscopy, knee, diagnostic, with or without synovial biopsy (separate procedure).
29874	4	3	Arthroscopy, knee, surgical; for removal of loose body or foreign body (e.g., osteochondritis dissecans fragmentation, chondral fragmentation).
29875	4	3	Arthroscopy, knee, surgical; synovectomy, limited (e.g., plica or shelf resection).
29876	4	3	Synovectomy, major, two or more compartments (e.g., medial or lateral).
29877	4	3	Debridement/shaving of articular cartilage (chondroplasty).
29881	4	3	Arthroscopy, knee, surgical; with meniscectomy (medial or lateral including any meniscal shaving).
29887	4	3	Drilling for intact osteochondritis dissecans lesion with internal fixation.
			Respiratory system
			Nose
Excision			
*30115	2	2	Excision, nasal polyp(s), extensive; unilateral.
30116	2	2	Excision, nasal polyp(s), extensive; bilateral.
30117	2	3	Excision, intranasal lesion; internal approach.
30118	2	2	Excision, intransal lesion; external approach (lateral rhinotomy).

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	Payment groups		
	Old	New	
30125	3	2	Excision dermoid cyst, nose; complex, under bone or cartilage.
*30130	1	3	Excision turbinate, partial or complete.
*30140	4	3	Submucous resection turbinate, partial or complete.
30150	4	3	Rhinectomy; partial.
30160	4	4	Rhinectomy; total.
Removal foreign body			
30310	1	1	Removal of foreign body, intranasal; requiring general anesthesia.
30320	2	2	Removal foreign body; by lateral rhinotomy.
Repair			
30400	4	4	Rhinoplasty, primary; lateral and alar cartilages and/or elevation of nasal tip.
30410	4	4	Rhinoplasty, primary; complete, external parts including bony pyramid, lateral and alar cartilages, and/or elevation of nasal tip.
30420	4	5	Rhinoplasty, primary; including major septal repair.
30430	4	3	Rhinoplasty, secondary; minor revision (small amount of nasal tip work).
30435	4	5	Rhinoplasty, secondary; intermediate revision (bony work with osteotomies).
30450	4	6	Rhinoplasty, secondary; major revision (nasal tip work and osteotomies).
30520	4	4	Septoplasty or submucous resection, with or without cartilage scoring, contouring or replacement with graft.
30580	4	4	Repair fistula; oromaxillary (combine with 31030 if antrotomy is included).
30600	4	4	Repair fistula; oronasal.
*30620	4	6	Reconstruction, functional, internal nose (septal or other intranasal dermatoplasty) (does not include obtaining graft).
*30630	4	6	Repair nasal septal perforations.
Other procedures			
30915	4	1	Ligation arteries; ethmoidal.
30920	4	2	Ligation arteries; internal maxillary artery, transantral.
			Accessory sinuses
Incision			
*31020	2	3	Sinusotomy, maxillary (antrotomy); intranasal, unilateral.
*31021	2	3	Sinusotomy, maxillary (antrotomy); intranasal, bilateral.
*31030	2	3	Sinusotomy, maxillary (antrotomy); radical, unilateral (Caldwell-Luc) without removal of antrochoanal polyps.
*31031	2	3	Sinusotomy, masillary (antrotomy); radical, bilateral (Caldwell-Luc) without removal of antrochoanal polyps.
31032	4	4	Sinusotomy, maxillary (antrotomy); radical unilateral (Caldwell-Luc) with removal antrochoanal polyps.
31033	4	4	Sinusotomy, maxillary (antrotomy); radical, bilateral (Caldwell-Luc) with removal antrochoanal polyps.
31070	2	2	Sinusotomy frontal; external, simple (trephine operation).
Excision			
*31200	3	2	Ethmoidectomy; intranasal, anterior.
*31201	3	5	Ethmoidectomy; intranasal, total.
*31205	3	3	Ethmoidectomy; extranasal, total.
			Larynx
Endoscopy			
*31505	1	2	Laryngoscopy, indirect (separate procedure); diagnostic.
*31510	1	2	Laryngoscopy, indirect (separate procedure); with biopsy.
*31511	1	2	Laryngoscopy, indirect (separate procedure); with removal of foreign body.
*31512	1	2	Laryngoscopy, indirect (separate procedure); with removal of lesion.
31513	2	2	Laryngoscopy, indirect (separate procedure); with vocal cord injection.
*31515	1	1	Laryngoscopy direct; for aspiration.
*31525	1	1	Laryngoscopy, direct; diagnostic, except newborn.
*31526	1	2	Laryngoscopy, indirect; diagnostic, with operating microscope.
31527	2	1	Laryngoscopy, direct; with insertion of obturator.
*31530	1	2	Laryngoscopy, direct, operative, with foreign body removal.
*31531	1	3	Laryngoscopy, direct, operative, with foreign body removal; with operating microscope.
*31535	1	2	Laryngoscopy, direct, operative, with biopsy.
*31536	1	3	Laryngoscopy, direct, operative, with biopsy; with operating microscope.
*31540	1	3	Laryngoscopy, direct, operative, with excision of tumor and/or stripping of vocal cords or epiglottis.
*31541	1	4	Laryngoscopy, direct, operative, with excision of tumor and/or stripping of vocal cords or epiglottis; with operating microscope.
*31560	1	1	Laryngoscopy, direct, operative, with arytenoidectomy.
*31561	1	2	Laryngoscopy, direct, operative, with arytenoidectomy; with operating microscope.
*31570	1	2	Laryngoscopy, direct, with injection into vocal cord(s), therapeutic.
*31571	1	2	Laryngoscopy, direct, with injection into vocal cord(s), therapeutic; with operating microscope.
31576	1	2	Laryngoscopy, flexible fiberscopic; with biopsy.
31577	1	2	Laryngoscopy, flexible fiberscopic; with removal of foreign body.
31578	1	2	Laryngoscopy, flexible fiberscopic; with removal of lesion.
			Trachea and bronchi
Incision			
31600	2	2	Tracheostomy, planned (separate procedure).
31612	1	1	Tracheal puncture, percutaneous for aspiration of mucus (transtracheal aspiration).
31613	2	2	Tracheostoma revision; simple, without flap rotation.
31614	2	2	Tracheostoma revision; complex, with flap rotation.
Endoscopy			
31615	1	1	Tracheobronchoscopy through established tracheostomy incision.
31622	1	1	Bronchoscopy; diagnostic, (flexible original), with or without cell washing or brushing.
*31625	1	2	Bronchoscopy; with biopsy.
31628	1	2	Bronchoscopy; with transbronchial lung biopsy, with or without fluoroscopic guidance.
*31630	1	2	Bronchoscopy; with tracheal or bronchial dilation or closed reduction of fracture.
31631	1	2	Bronchoscopy; with tracheal dilation and placement of tracheal stent.
*31635	1	2	Bronchoscopy; with removal of foreign body.

	Payment groups		
	Old	New	
*31640	1	2	Bronchoscopy; with excision of tumor.
31641	1	2	Bronchoscopy; with destruction of tumor or relief of stenosis by any method other than excision (e.g., laser).
*31645	1	1	Bronchoscopy; with therapeutic aspiration of tracheobronchial tree, initial (e.g., drainage of lung abscess).
31646	1	1	Bropnchoscopy; with therapeutic aspiration of tracheobronchial tree, subsequent.
31656	1	1	Bronchoscopy; with injection of contrast material for segmental bronchography (fiberscope only).
31659	1	1	Bronchoscopy; with other bronchoscopic procedures.
Introduction			
31700	1	1	Catheterization, transglottic (separate procedure).
31708	1	1	Instillation of contrast material for laryngography or bronchography, without catheterization.
31710	1	1	Catheterization for bronchography, with or without instillation of contrast material.
31715	1	1	Transtracheal injection for bronchography.
31717	1	1	Catheterization with bronchial brush biopsy.
31719	1	1	Transtracheal (percutaneous) introduction of indwelling tube for therapy (tickle tube).
31720	1	1	Catheter aspiration (separate procedure); nasotracheobronchial.
			Cardiovascular system
Repair, ligation and other procedures			
37609	1	2	Ligation or biopsy, temporal artery.
*37700	4	2	Ligation and division of long saphenous vein at saphenofemoral junction, or distal interruptions, unilateral.
*37701	4	3	Ligation and division of long saphenous vein at saphenofemoral junction, or distal interruptions, unilateral; bilateral.
*37720	4	3	Ligation and division and complete stripping of long or short saphenous veins; unilateral.
*37721	4	3	Ligation and division and complete stripping of long or short saphenous veins; bilateral.
*37730	4	3	Ligation and division and complete stripping of long and short saphenous veins; unilateral.
*37731	4	3	Ligation and division and complete stripping of long and short saphenous veins; bilateral.
37735	4	3	Ligation and division and complete stripping of long or short saphenous veins with radical excision of ulcer and skin graft and/or interruption of communicating veins of lower leg, with excision of deep fascia; unilateral.
37737	4	3	Ligation and division and complete stripping of long or short saphenous veins with radical excision of ulcer and skin graft and/or interruption of communicating veins of lower leg, with excision of deep facie; bilateral.
37760	4	3	Ligation and perforators, subfascial, radical (Linton Type), with or without skin graft.
*37780	4	3	Ligation and division of short saphenous vein at saphenopopliteal junction (separate procedure); unilateral.
*37781	4	3	Bilateral. Ligation and division of short saphenous vein at saphenopopliteal junction (separate procedure).
37785	3	3	Ligation, division and/or excision of secondary varicose veins (clusters) of leg; unilateral.
37787	3	3	Ligation, division and/or excision of secondary varicose veins (clusters) of leg; bilateral.
			Hemic and lymphatic system
			Lymph nodes and lymphatic channels
Incision			
38305	1	2	Drainage of lymph node abscess or lymphadenitis; extensive.
38308	1	2	Lymphagiotomy or other operations on lymphatic channels.
Excision			
*38500	2	2	Biopsy or excision of lymph node(s); superficial (separate procedure).
*38510	2	2	Biopsy or excision of lymph node(s); deep, cervical node(s).
*38520	2	2	Biopsy or excision of lymph node(s); deep cervical node(s) with excision scalene fat pad.
38530	3	2	Biopsy or excision of lymph node(s); internal mammary node(s) (separate procedure).
38542	3	2	Dissection; deep jugular node(s).
38550	3	3	Excision of cystic hygroma, axillary or cervical, without deep neurovascular dissection; simple.
38555	4	3	Excision of cystic hygroma, axillary or cervical, without deep neurovascular dissection; complex.
Radical lymphadenectomy (radical resection of lymph nodes)			
38700	4	2	Suprahyoid lymphadenectomy; unilateral.
38701	4	3	Suprahyoid lymphadenectomy; bilateral.
38740	3	2	Axillary lymphadenectomy; superficial.
38745	3	4	Axillary lymphadenectomy; complete.
38760	3	2	Inquinofemoral lymphadenectomy, superficial, including Cloquet's node (separate procedure); unilateral
38761	3	3	Inquinofemoral lymphadenectomy, superficial, including Cloquet's node (separate procedure); bilateral.
Introduction			
38790	1	1	Injection procedure for lymphangiography; unilateral.
38791	1	1	Injection procedure for lymphangiography; bilateral.
			Digestive system
			Lips
Excision			
*40500	2	2	Vermilionectomy (lip shave), with mucosal advancement.
*40510	3	2	Excision of lip; transverse wedge excision with primary closure.
*40520	3	2	Excision lip; V-excision with primary direct linear closure.
40525	3	2	Excision lip; full thickness, reconstruction with local flap (Estlander or fan).
40527	3	2	Excision lip; full thickness, reconstruction with cross lip flap (Abbe-Estlander).
40530	3	2	Resection of lip, more than one-fourth, without reconstruction.
Repair (cheiloplasty)			
40650	3	3	Repair lip, full thickness; vermilion only.
40654	4	3	Repair lip, full thickness; over one half vertical height, or complex.
			Vestibule of mouth
Incision			
40801	1	2	Drainage of abscess, cyst, hematoma, vestibule of mouth; complicated.
40805	1	2	Removal of embedded foreign body; complicated.
Excision, destructive			
40814	2	2	Excision of lesion of mucosa and submucosa, with complex repair.
40816	2	2	Excision of lesion of mucosa and submucosa; complex with excision of underlying muscle.

	Payment groups		
	Old	New	
40818	2	1	Excision of mucosa as donor graft.
Repair			
40831	2	1	Closure of laceration; over 2.6 cm or complex.
40840	2	2	Vestibuloplasty; anterior.
40842	2	3	Vestibuloplasty; posterior, unilateral.
40843	2	3	Vestibuloplasty; posterior, bilateral.
40844	3	5	Vestibuloplasty; entire arch.
40845	4	5	Vestibuloplasty; complex.
			Tongue, floor of mouth
Incision			
*41000	1	1	Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; lingual.
*41005	1	1	Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; sublingual, superficial.
Excision			
*41100	1	2	Biopsy of tongue; anterior two-thirds.
*41105	1	2	Biopsy of tongue; posterior one-third.
41114	2	2	Excision of lesion of tongue with closure; with local tongue flap.
41115	1	1	Excision of lingual frenum (frenectomy)
41116	1	1	Excision lesion of floor of mouth.
41120	3	5	Glossectomy; less than one-half tongue.
Repair			
41251	3	2	Repair laceration up to 2 cm; posterior one-third of tongue.
			Dentoalveolar structures
Incision			
41806	2	1	Removal embedded foreign body; from bone.
Excision, destruction			
41826	2	2	Excision of lesion or tumor (except listed above); with simple repair.
41827	3	2	Excision of lesion or tumor (except listed above); with complex repair.
			Palate, uvula
Incision			
*42000	1	2	Drainage of abscess of palate, uvula.
Excision, destruction			
42104	1	2	Excision, lesion of palate, uvula; without closure.
42106	1	2	Excision, lesion of palate, uvula; with simple primary closure.
42107	1	2	Excision, lesion of palate, uvula; with local flap closure.
42120	2	4	Resection of palate or extensive resection of lesion.
42140	2	2	Uvulectomy, excision of uvula.
Repair			
42182	1	2	Repair laceration of palate; over 2 cm or complex.
			Salivary gland and ducts
Incision			
42305	1	2	Drainage of abscess; parotid, complicated.
42320	1	1	Drainage of abscess; submaxillary external.
42325	2	2	Fistulization of sublingual salivary cyst (ranula).
42335	2	2	Sialolithotomy; submandibular (submaxillary), complicated, intraoral.
42340	2	2	Sialolithotomy; parotid, extraoral or complicated intraoral.
Excision			
42408	2	3	Excision of sublingual salivary cyst (ranula).
42410	4	3	Excision of parotid tumor or parotid gland; lateral lobe, without nerve dissection.
42440	4	2	Excision of submandibular (submaxillary) gland.
42450	4	2	Excision of sublingual gland.
Repair			
42500	3	3	Plastic repair of salivary duct, sialodochoplasty; primary or simple.
42505	4	4	Plastic repair salivary duct, sialodochoplasty; secondary or complicated.
42507	4	2	Parotid duct diversion, bilateral (Wilke type procedure).
42508	4	3	Parotid duct diversion, bilateral (Wilke type procedure); with excision of one submandibular gland.
42509	4	3	Parotid duct diversion, bilateral (Wilke type procedure); with excision of both submandibular glands.
Other procedures			
42600	1	1	Closure salivary fistula.
42665	1	1	Ligation salivary duct, intraoral.
			Pharynx, adenoids, and tonsils
Incision			
42720	1	1	Incision and drainage abscess; retropharyngeal or parapharyngeal, intraoral approach.
42725	1	2	Incision and drainage abscess; retropharyngeal or parapharyngeal, external approach.
Excision			
42806	2	2	Biopsy; nasopharynx, survey for unknown primary lesion.
42808	1	2	Excision of lesion of pharynx.
*42810	2	3	Excision branchial cleft cyst or vestige; confined to skin and subcutaneous tissues.
*42815	2	5	Excision branchial cleft cyst or vestige; extending beneath subcutaneous tissues.
42860	2	3	Excision of tonsil tags.
42870	2	3	Excision lingual tonsil (separate procedure).
42880	2	5	Excision nasopharyngeal lesion (e.g., fibroma).
Repair			

	Payment groups		
	Old	New	
42900	2	1	Suture pharnyx for wound or injury.
42950	4	2	Pharyngoplasty (plastic or reconstructive operation on pharnyx).
Other procedures			
42955	2	2	Pharyngostomy (fistulization of pharynx, external for feeding).
			Esophagus
Endoscopy			
*43200	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); diagnostic procedure.
*43202	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for biopsy and/or collection of specimen by brushing or washing.
43204	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for injection sclerosis of esophageal varices.
*43215	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for removal of foreign body.
*43217	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for removal of polypoid lesion(s).
43219	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for insertion of plastic tube or stent.
43220	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for dilation, direct.
43226	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for insertion of wire to guide dilation.
43227	1	2	Esophagoscopy, rigid or flexible fiberoptic (specify); for control of hemorrhage (e.g., electrocoagulation laser photocoagulation).
43228	1	2	Esophagoscopy, rigid or flexible fiberoptic (specify); for ablation of tumor or mucosal lesion.
43235	1	1	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; complex diagnostic.
43239	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for biopsy and/or collection of specimen by brushing or washing.
43247	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of foreign body.
43251	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of polypoid lesion(s).
43255	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
43258	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for ablation of tumor or mucosal lesion (e.g., electrocoagulation, with laser photocoagulation).
43260	2	2	Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection.
43262	2	2	Endoscopic retrograde cholangiopancreatography (ERCP) with or without specimen collection; for sphincterotomy/papillotomy.
43263	2	2	Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection; for pressure measurement of sphincter of Oddi.
43264	2	2	Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection; for removal of stone(s) from biliary and/or pancreatic ducts.
Manipulation			
43450	1	1	Dilation of esophagus, by unguided sound or bougie single or multiple passes; initial session.
43451	1	1	Dilation of esophagus, by unguided sound or bougie single or multiple passes; subsequent session.
43453	1	1	Dilation of esophagus, over guide wire or string.
43455	1	2	Dilation of esophagus, by balloon or Stark dilator.
43456	1	2	Dilation of esophagus, by balloon or Stark dilator; retrograde.
			Intestines (except rectum)
Enterostomy—external fistulization of intestines (separate procedure)			
*44340	3	3	Revision of colostomy; simple (release of superficial scar).
44345	4	4	Revision of colostomy; complicated reconstruction in depth.
44346	4	4	Revision of colostomy; with repair of paracolostomy Lernia.
Endoscopy, small bowel and stomal			
44360	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; diagnostic.
44361	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for biopsy and/or collection of specimen by brushing or washing.
44363	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for removal of foreign body.
44364	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for removal of polypoid lesion(s).
44366	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
44369	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for ablation of tumor or mucosal lesion (e.g., laser).
44380	1	1	Fiberoptic ileoscopy through stoma.
44382	1	1	Fiberoptic ileoscopy through stoma; with biopsy and/or collection of specimen by brushing or washing.
44388	1	1	Fiberoptic colonoscopy through colostomy.
44389	1	1	Fiberoptic colonoscopy through colostomy; for biopsy and/or collection of specimen by brushing or washing.
44390	1	1	Fiberoptic colonoscopy through colostomy; for removal of foreign body.
44391	1	1	Fiberoptic colonoscopy through colostomy; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
44392	1	1	Fiberoptic colonoscopy through colostomy; for removal of polypoid lesion(s).
			Rectum
Incision			
45000	3	1	Transrectal drainage of pelvic abscess..
45005	1	2	Incision and drainage of submucosal abscess, rectum.
45020	2	2	Incision and drainage of deep supralevator, pelvirectal, or retrorectal abscess.
Excision			
45170	3	2	Excision of rectal tumor, simple, transanal approach.
45180	3	3	Excision and/or electrodesiccation of malignant tumor of rectum, transanal approach; palliative.
45181	3	3	Excision and/or electrodesiccation of malignant tumor of rectum, transanal approach; therapeutic.
Endoscopy			
45355	1	1	Colonoscopy, with standard sigmoidoscope, transabdominal via colotomy, single or multiple.
45360	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; diagnostic procedure.

	Payment groups		
	Old	New	
45365	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for biopsy and/or collection of specimen by brushing or washing.
45367	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for removal of foreign body.
45368	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
45370	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for removal of polypoid lesion(s).
45378	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; diagnostic procedure.
45379	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for removal of foreign body.
45380	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for biopsy and/or collection of specimen by brushing or washing.
45382	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
45385	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for removal of polypoid lesion(s).
Repair			
45500	4	2	Proctoplastry; for stenosis.
45505	4	2	Proctoplastry; for prolapse of mucous membrane.
45521	1	1	Perirectal injection of sclerosing solution for prolapse; hospital.
45560	4	2	Repair of retocele (separate procedure).
Manipulation			
45900	1	1	Reduction of procidentia (separate procedure) under anesthesia.
*45910	1	1	Dilation of rectal structure (separate procedure) under anesthesia other than local.
45915	1	1	Removal of fecal impaction or foreign body (separate procedure) under anesthesia.
			Anus
Incision			
46000	2	3	Fistulotomy, subcutaneous.
46040	2	3	Incision and drainage of ischiorectal and/or perirectal abcess (separate procedure).
46045	2	2	Incision and drainage of intramural, intramuscular or submucosal abcess, transanal, under anesthesia.
*46060	2	2	Incision and drainage of isochiorectal or intramural abcess, with fistulectomy, submuscular.
46080	2	3	Sphincterotomy, anal, division of sphincter (separate procedure).
Excision			
46200	2	2	Fissurectomy, with or without sphincterotomy.
46211	2	2	Cryptectomy; multiple (separate procedure).
*46250	3	3	Hemorroidectomy, external, complete.
*46255	3	3	Hemorroidectomy internal and external, simple.
*46257	3	3	Hemorroidectomy internal and external, simple; with fissurectomy.
*46258	3	3	Hemorroidectomy internal and external simple; with fistulectomy, with or without fissurectomy.
46260	2	3	Hemorrhoidectomy, internal and external, complex or extensive.
46261	2	4	Hemorrhoidectomy, internal and external, complex or extensive; with fissurectomy.
*46262	2	4	Hemorrhoidectomy, internal and external, complex or extensive; with fistulectomy, with or without fissurectomy.
*46270	2	3	Fistulectomy; subcutaneous.
*46275	2	3	Fistulectomy; submuscular.
*46280	2	4	Fistulectomy; complex or multiple.
46285	2	1	Fistulectomy; second stage.
			Anus
Introduction			
46750	4	3	Sphincteroplasty, anal, for incontinence or prolapse; adult.
46753	4	3	Graft (Thiersch operation) for rectal incontinence and/or prolapse.
46754	4	2	Removal of Thiersch wire or suture.
46760	4	2	Sphincteroplasty, anal, for incontinence, adult, muscle transplant.
Destruction			
46924	1	1	Destruction of lesion(s), anus (eg, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), extensive, any method.
46937	2	2	Cryosurgery of rectal tumor; benign.
46938	2	2	Cryosurgery of rectal tumor; malignant.
			Liver
Incision			
*47000	2	1	Biopsy of liver, percutaneous needle.
			Abdomen, peritoneum, and omentum
Incision			
49000	4	4	Exploratory laparotomy, exploratory celiotomy (separate procedure).
Endoscopy			
*49300	4	2	Peritoneoscopy; without biopsy.
*49301	4	3	Peritoneoscopy; with biopsy.
49302	4	3	Peritoneoscopy with guided transhepatic cholangiography; without biopsy.
49303	4	3	Peritoneoscopy with guided transhepatic cholangiography; with biopsy.
Introduction			
49400	1	1	Pneumoperitoneum; initial.
49401	1	1	Pneumoperitoneum; subsequent.
49420	1	1	Insertion of intraperitoneal cannula or catheter for drainage or dialysis; temporary.
49421	1	1	Insertion of intraperitoneal cannula or catheter for drainage or dialysis; permanent.
49425	1	2	Peritoneal-venous shunt (e.g., Le Veen shunt).
49426	1	2	Revision of peritoneal-venous shunt.
			Hernioplasty, Herniorrhaphy, Herniotomy
Repair			
*49505	4	4	Repair inguinal hernia, age 5 or over.
*49510	4	4	Repair inguinal hernia, age 5 or over with orchiectomy, with or without implantation of prosthesis.

	Payment groups		
	Old	New	
*49515	4	5	Repair inguinal hernia, age 5 or over; with excision of hydrocele or spermatocele.
*49520	4	6	Repair inguinal hernia, any age; recurrent.
*49525	4	4	Repair inguinal hernia, any age; sliding.
49540	4	2	Repair lumber hernia.
*49550	4	4	Repair femoral hernia, groin incision.
49552	4	4	Repair femoral hernia, Henry approach.
*49555	4	5	Repair femoral hernia, recurrent, any approach.
*49560	4	4	Repair ventral (incisional) hernia (separate procedure).
*49565	4	4	Repair ventral (incisional) hernia (separate procedure); recurrent.
49570	4	4	Repair epigastric hernia, properitoneal fat (separate procedure); simple.
49575	4	4	Repair epigastric hernia, properitoneal fat (separate procedure); complex.
49581	4	4	Repair umbilical hernia; age 5 or over.
49590	4	3	Repair spigelian hernia.
			Urinary system
			Kidney
Incision			
50020	3	2	Drainage of perirenal or renal abscess (separate procedure).
50040	4	3	Nephrostomy, nephrotomy with drainage.
Excision			
50200	1	1	Renal biopsy, percutaneous by trocar or needle.
50205	4	3	Renal biopsy, percutaneous; by surgical exposure of kidney.
Introduction			
50390	1	1	Aspiration and/or injection of renal cyst or pelvis by needle, percutaneous.
50392	1	1	Introduction of intracatheter or catheter into renal pelvis for drainage and/or injection, percutaneous.
50393	1	1	Introduction of ureteral catheter or stent into ureter through renal pelvis for drainage and/or injection, percutaneous.
50394	1	1	Injection procedure for pyelography (as nephrostogram, pyelostogram, antegrade pyeloureterograms) through nephrostomy or pyelostomy tube, or indwelling ureteral catheter (separate procedure).
50396	1	1	Manometric studies through nephrostomy or pyelostomy tube, or indwelling ureteral catheter.
50398	1	1	Change of nephrostomy or pyelostomy tube.
Endoscopy			
50553	1	1	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization.
50559	1	1	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance with or without biopsy and/or fulguration.
50561	1	1	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.
50570	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
50572	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization.
50576	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration with or without biopsy.
50578	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance, with or without biopsy and/or fulguration
50580	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.
			Ureter
Introduction			
50684	1	1	Injection procedure for ureterography or ureteropyelography through ureterostomy or indwelling ureteral catheter (separate procedure).
50690	1	1	Injection procedure for visualization of ilial conduit and/or ureteropyelography, exclusive of radiologic service (separate procedure).
Endoscopy			
50953	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization.
50955	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy.
50957	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration, with or without biopsy.
50959	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance with or without biopsy and/or fulguration (not including provision of material).
50961	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.
50970	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
50972	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization.
50974	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy.
50976	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration, with or without biopsy.
50978	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance, with or without biopsy and/or fulguration (not including provision of materal).
50980	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.

	Payment groups		
	Old	New	
			Bladder
Incision			
51005...*	1	1	Aspiration of bladder; by trocar or intracatheter.
51010	1	1	Aspiration of bladder; with insertion of suprapubic catheter.
Introduction			
51600	1	1	Injection procedure for cystography or voiding urethrocystography.
51605	1	1	Injection procedure and placement of chain for contrast and/or chain urethrocystography.
51610	1	1	Injection procedure for retrograde urethrocystography.
51710	1	1	Change of cystostomy tube; complicated.
			Bladder
Repair			
51865	4	4	Cystorrhaphy, suture of bladder wound, injury or rupture; complicated.
51900	4	4	Closure of vesicovaginal fistula, abdominal approach.
			Ureter
Endocopy-cystoscopy, urethroscopy cystourethroscopy notes			
*52000	1	2	Cystourethroscopy (separate procedure).
52005	1	2	Cystourethroscopy; with ureteral catheterization, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
52007	1	2	Cystourethroscopy; with ureteral catheterization and brush biopsy of ureter and/or renal pelvis.
52010	1	2	Cystourethroscopy: with ejaculatory duct catheterization, with or without irrigation, instillation, or duct radiography, exclusive of radiologic service.
			Bladder
Transurethral surgery (urethra, and bladder)			
52204	3	2	Cystourethroscopy, with biopsy.
52214	3	2	Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) of trigone, bladder neck, prostatic fossa, urethra, or periurethral glands.
52224	3	2	Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) or treatment of MINOR (less than 0.5 cm) lesion(s), with or without biopsy.
52234	3	2	Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) and/or resection of; SMALL bladder tumor(s) (0.5 to 2.0 cm).
52235	3	3	Cystourethroscopy, with fulguration (including cryosurgery) and/or resection of; MEDIUM bladder tumor(s) (2.0 to 5.0 cm).
52240	3	3	Cystourethroscopy, with fulguration (including cryosurgery) and/or resection of; LARGE bladder tumor(s).
52250	3	4	Cystourethroscopy with insertion of radioactive substance, with or without biopsy or fulguration.
52260	3	2	Cystourethroscopy, with dilation of bladder for interstitial cystitis; general or conduction (spinal) anesthesia.
52270	3	2	Cystourethroscopy with internal urethrotomy; female.
52275	3	2	Cystourethroscopy with internal urethrotomy; male.
52276	3	2	Cystourethroscopy with direct vision internal urethrotomy.
52277	3	2	Cystourethroscopy, with resection of external sphincter (sphincterotomy).
52281	3	2	Cystourethroscopy, with calibration and/or dilation of urethral stricture or stenosis, with or without meatotomy and injection procedure for cystography, male or female.
52283	3	2	Cystourethroscopy, with steroid injection into stricture.
52285	3	2	Cystourethroscopy for treatment of the female urethral syndrome with any or all of the following: urethral meatotomy, urethral dilation, internal urethrotomy, lysis of urethrovaginal septal fibrosis, lateral incisions of the bladder neck, and fulguration of polyp(s) of urethra, bladder neck, and/or trigone.
52290	3	2	Cystourethroscopy; with ureteral meatotomy, unilateral or bilateral.
52300	3	2	Cystourethroscopy; with resection or fulguration of ureterocele(s), unilateral or bilateral.
52305	3	2	Cystourethroscopy; with incision or resection of orifice of bladder diverticulum, single or multiple.
52310	4	2	Cystourethroscopy, with removal of foreign body calculus or ureteral stent from urethra or bladder; simple.
52315	4	2	Cystourethroscopy, with removal of foreign body calculus or ureteral stent from urethra or bladder; complicated.
52317	4	1	Litholapaxy: crushing of fragmentation or calculus by any means in bladder and removal of fragments, simple; small (less than 2.5 c.m.).
52318	4	2	Litholapaxy: crushing of fragmentation of calculus by any means in bladder and removal of fragments, simple; complicated or large (over 2.5 c.m.).
52320	4	5	Cystourethroscopy (including ureteral catherization); with removal of ureteral calculus.
52330	4	2	Cystourethroscopy (including ureteral catherization); with manipulation, without removal of ureteral calculus.
52332	4	2	Cystourethroscopy, with insertion of indwelling ureteral stent (e.g., Gibbons of double-J type).
52335	3	2	Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter by any method).
Transuretheral Surgery (vesical neck and prostate)			
52340	3	3	Cystourethroscopy with incision, fulguration, or resection of bladder neck and/or posterior urethra (congenital valves, obstructive hypertrophic mucosal folds).
52500	3	3	Transurethral resection of bladder neck (separate procedure).
Transurethal surgery (uretha and bladder)			
52601	4	3	Transurethral resection of prostate, including control of postoperative bleeding, complete (vasectomy, meatotomy, cystourethroscopy, urethral calibration and/or dilation, and internal urethrotomy are included).
52606	4	1	Transurethral fulguration for postoperative bleeding occurring after the usual follow-up time.
52612	4	2	Transurethral resection of prostate; first stage of two-stage resection (partial resection).
52614	4	1	Transurethral resection of prostate; second stage of two-stage resection (resection completed).
52620	4	1	Transurethral resection; of residual obstructive tissue after 90 days postoperative.
52630	4	2	Transurethral resection; of regrowth of obstructive tissue longer than one year postoperative.
52640	4	2	Transurethral resection; of postoperative bladder neck contracture.
52650	4	2	Transurethral cryosurgical removal of prostate (postoperative irrigations and aspiration of sloughing tissue included).
52700	4	2	Transurethral drainage of prostatic abscess.
			Urethra
Incision			
53000	2	1	Urethrotomy or urethrostomy, external (separate procedure); pendulous urethra.
53010	2	1	Urethrotomy or urethrostomy, external (separate procedure); perineal urethra, external.
53020	2	1	Meatotomy, cutting of meatus (separate procedure); except infant.

	Payment groups		
	Old	New	
53040	2	2	Drainage of deep periurethral abscess
Excision			
53220	3	2	Excision or fulguration of carcinoma of urethra.
53230	3	2	Excision of urethral diverticulum (separate procedure); female.
53235	3	3	Excision of urethral diverticulum (separate procedure); male.
53240	3	2	Marsupialization of urethral diverticulum, male or female.
53265	3	2	Excision or fulguration; urethral caruncle.
53275	3	2	Excision or fulguration; urethral prolapse.
Repair			
53400	4	3	Urethroplasty; first stage, for fistula, diverticulum, or stricture, e.g., Johannsen type.
53405	4	2	Urethroplasty; second stage (formation of urethra), including urinary diversion.
53410	4	2	Urethroplasty, one-stage reconstruction of male anterior urethra.
53420	4	3	Urethroplasty, two-stage reconstruction or repair of prostatic or membranous urethra; first stage.
53425	4	2	Urethroplasty, two-stage reconstruction or repair of prostatic or membranous urethra; second stage.
53430	4	2	Urethroplasty, reconstruction of female urethra.
53440	4	2	Operation for correction of male urinary incontinence, with or without introduction of prosthesis.
53447	4	1	Removal, repair or replacement of inflatable sphincter including pump and/or reservoir and/or cuff.
53449	4	1	Surgical correction of hydraulic abnormality of inflatable sphincter device.
53450	4	1	Urethromeatoplasty, with mucosal advancement.
53460	4	1	Urethromeatoplasty, with partial excision of distal urethral segment (Richardson type procedure).
Suture			
53502	4	2	Urethrorrhaphy, suture of urethral wound or injury, female.
53510	4	2	Urethrorrhaphy, suture of urethral wound or injury; perineal.
53515	4	2	Urethrorrhaphy, suture of urethral wound or injury; prostatomembranous.
53520	4	2	Closure of urethrostomy or urethrocutaneous fistula, male (separate procedure).
Manipulation			
*53600	1	2	Dilation of urethral stricture by passage of sound or urethral dilator male; initial.
*53601	1	1	Dilation of urethral stricture by passage of sound or urethral dilator, male; subsequent.
*53605	1	2	Dilation of urethral stricture of vesical neck by passage of sound or urethral dilator, male, general or conduction (spinal) anesthesia.
*53620	1	1	Dilation of urethral stricture by passage of filiform and follower, male; initial.
*53621	1	1	Dilation of urethral stricture by passage of filiform and follower, male; subsequent.
*53660	1	1	Dilation of female urethra including suppository and/or instillation; initial.
*53661	1	1	Dilation of female urethra including suppository and/or instillation; subsequent.
*53665	1	1	Dilation of female urethra, general or conduction (spinal) anesthesia.
			Male genital system
			Penis
Incision			
54001	1	2	Slitting of prepuce, dorsal or lateral, (separate procedure); except newborn.
Excision			
54105	1	1	Biopsy of penis; deep structures.
54110	3	2	Excision of penile plaque (Peyronie disease).
54115	3	1	Removal foreign body from deep penile tissue (e.g., plastic implant).
54120	3	2	Amputation of penis; partial.
54125	4	2	Amputation of penis; complete.
54152	2	1	Circumcision, clamp procedure; except newborn.
54161	2	2	Circumcision, surgical excision other than clamp or dorsal slit; except newborn.
Introduction			
54205	1	1	Injection procedure for Peyronie disease; with surgical exposure of plaque.
54220	1	1	Irrigation of corpora cavernosa for priapism.
54230	1	1	Injection procedure for corpora cavernosography.
Repair			
54440	4	5	Plastic operation of penis for injury.
			Testis
Excision			
54505	1	3	Biopsy of testis, incisional (separate procedure); unilateral.
54506	1	3	Bilateral.
54510	1	2	Excision of local lesion of testis.
*54520	2	3	Orchiectomy, simply (including subcapsular), with or without testicular prosthesis, scrotal or inguinal approach; unilateral.
*54521	2	4	Orchiectomy, simple (including subcapsular), with or without testicular prosthesis, scrotal or inguinal approach; bilateral.
54530	3	4	Orchiectomy, radical, for tumor; inguinal approach.
Repair			
54670	2	3	Suture or repair of testicular injury.
54680	4	3	Transplantation of testis(es) to thigh (because of scrotal destruction).
			Epididymis
Excision			
54700	2	2	Incision and drainage of epididymis, testis and/or scrotal space (e.g., abscess or hematoma).
54820	1	1	Exploration of epididymis, with or without biopsy.
54830	2	3	Excision of local lesion of epididymis.
*54840	3	4	Excision of spermatocele, with or without epididymectomy.
54860	3	4	Epididymectomy; unilateral.
54861	3	5	Epididymectomy; bilateral.
Repair			
54900	3	2	Epididymovasostomy, anastomosis of epididymis to vas deferens; unilateral.
54901	3	2	Epididymovasostomy, anastomosis of epididymis to vas deferens; bilateral.
			Tunica Vaginalis

	Payment groups		
	Old	New	
Excision			
*55040	3	3	Excision of hydrocele; unilateral.
*55041	3	5	Excision of hydrocele; bilateral.
Repair			
55060	3	4	Repair of hydrocele (Bottle type).
Incision			
55120	1	2	Removal of foreign body in scrotum.
			Scrotum
Excision			
55150	3	1	Resection of scrotum.
Repair			
55175	3	1	Scrotoplasty; simple.
55180	3	2	Scrotoplasty; complicated.
			Vas Deferens
Repair			
55400	3	1	Vasovasostomy, vasovasorrhaphy; unilateral.
55401	3	5	Vasovasostomy, vasovasorrhaphy; bilateral.
			Spermatic Cord
Excision			
55500	3	3	Excision of hydrocele of spermatic cord, unilateral (separate procedure).
55520	3	4	Excision of lesion of spermatic cord (separate procedure).
*55530	4	4	Excision of varicocele or ligation of spermatic veins for varicocele (separate procedure).
55535	4	4	Excision of varicocele or ligation of spermatic veins for varicocele; abdominal approach.
55540	4	5	Excision of varicocele or ligation of spermatic veins for varicocele; with hernia repair.
			Seminal Vesicles
Incision			
55605	1	1	Vesiculotomy; complicated.
Excision			
55650	4	1	Vesiculectomy, any approach; unilateral.
55651	4	2	Vesiculectomy, any approach; bilateral.
55680	4	1	Excision of Mullerian duct cyst.
			Prostate
Incision			
*55700	1	2	Biopsy, prostate; needle or punch, single or multiple, any approach.
*55705	1	2	Biopsy, prostate; incisional any approach.
55720	1	1	Prostatotomy, external drainage of prostatic abscess, any approach; simple.
			Female Genital System
			Vagina
Perineum			
56000	2	2	Incision and drainage of perineal abscess (nonobstetrical).
			Vulva and Introitus
Incision			
56440	3	3	Marsupialization of Bartholin's gland cyst.
Destruction			
56515	3	3	Destruction of lesion(s), vulva; extensive, any method.
Excision			
56740	3	3	Excision of Bartholin's gland or cyst.
			Vagina
Incision			
57020	1	2	Colpocentesis (separate procedure).
Excision			
57105	3	2	Biopsy of vaginal mucosa; extensive, requiring suture (including cysts).
57130	3	2	Excision of vaginal septum.
Repair			
57268	4	2	Repair of enterocele, vaginal approach (separate procedure).
Manipulation			
*57400	1	2	Dilation of vagina under anesthesia.
*57410	1	2	Pelvic examination under anesthesia.
Endoscopy			
*57450	1	1	Culdoscopy, diagnostic.
			Cervix Uteri
Excision			
57520	2	2	Biopsy of cervix, circumferential (cone), with or without dilation and curettage, with or without Sturmdorff type repair.
Repair			
57720	3	3	Trachelorrhaphy, plastic repair of uterine cervix, vaginal approach.
Manipulation			
57820	2	3	Dilation and curettage of cervical stump.
			Corpus Uteri
Excision			
*58120	3	2	Dilation and curettage, diagnostic and/or therapeutic (nonobstetrical).
			Ovary

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	Payment groups		
	Old	New	
Excision			
58900	4	3	Biopsy of ovary, unilateral or bilateral (separate procedure).
Endoscopy-Laparoscopy			
*58980	4	4	Laparoscopy for visualization of pelvic viscera.
*58984	4	5	Laparoscopy for visualization of pelvic viscera; with fulguration of ovarian or peritoneal lesions.
*58985	4	4	Laparoscopy for visualization of pelvic viscera; with lysis of adhesions.
*58986	4	4	Laparoscopy for visualization of pelvic viscera; with biopsy (single or multiple).
*58987	4	4	Laparoscopy for visualization of pelvic viscera; with aspiration (single or multiple).
			Endocrine System
			Thyroid Gland
Excision			
60200	3	2	Excision of cyst or adenoma of thyroid, or transection of isthmus.
60220	4	2	Total thyroid lobectomy, unilateral.
60225	4	3	Total thyroid lobectomy, unilateral; with contralateral subtotal lobectomy, including isthmus.
60280	3	4	Excision of thyroglossal duct cyst or sinus.
			Nervous System
			Skull, Meninges, and Brain
Puncture For Injection, Drainage or Aspiration			
61020	1	1	Ventricular puncture through previous burr hole, fontanelle, suture, or implanted ventricular catheter/reservoir; without injection.
61026	1	1	Ventricular puncture through previous burr hole, fontanelle, suture, or implanted ventricular catheter/reservoir; with injection of drug or other substance for diagnosis or treatment.
61050	1	1	Cisternal or lateral cervical puncture; without injection (separate procedure).
61070	1	1	Puncture of shunt tubing or reservoir for aspiration or injection procedure.
			Spine and Spinal Cord
Puncture For Injection, Drainage, or Aspiration			
62270	1	1	Spinal puncture, lumbar, diagnostic.
62273	1	1	Injection, lumbar epidural, of blood or clot patch.
62274	1	1	Injection of anesthetic substance, diagnostic or therapeutic; subarachnoid or subdural, simple.
62276	1	1	Injection of anesthetic substance, diagnostic or therapeutic; subarachnoid or subdural, differential.
62277	1	1	Injection of anesthetic substance, diagnostic or therapeutic; subarachnoid or subdural, continuous.
62278	1	1	Injection of anesthetic substance, diagnostic or therapeutic; epidural or caudal, single.
62279	1	1	Injection of anesthetic substance, diagnostic or therapeutic; epidural or caudal, continuous.
62288	1	1	Injection of substance other than anesthetic, contrast, or neurolytic solutions; subarachnoid (separate procedure).
62289	1	1	Injection of substance other than anesthetic, contrast, or neurolytic solutions; epidural or caudal.
			Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System
Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic			
			Somatic Nerves
64408	1	1	Injection, anesthetic agent; vagus nerve.
64410	1	1	Injection, anesthetic agent; phrenic nerve.
64415	1	1	Injection, anesthetic agent; brachial plexus.
64417	1	1	Injection, anesthetic agent; axillary nerve.
64420	1	1	Injection, anesthetic agent; intercostal nerve, single.
64421	1	1	Injection, anesthetic agent; intercostal nerves, multiple, regional block.
64430	1	1	Injection, anesthetic agent; pudendal nerve.
64442	1	1	Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, single level.
64443	1	1	Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, each additional level.
			Sympathetic Nerves
64510	2	1	Injection, anesthetic agent; stellate ganglion (cervical sympathetic).
64520	2	1	Injection, anesthetic agent; lumbar or thoracic (paravertebral sympathetic).
64530	2	1	Injection, anesthetic agent; celiac plexus, with or without radiologic monitoring.
Destruction by Neurolytic Agent (E.G., Chemical, Thermal, Electrical Radiofrequency)			
			Somatic Neves

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	Payment groups		
	Old	New	
64600	2	1	Destruction by neurolytic agent, trigeminal nerve; supraorbital, infraorbital, mental, or inferior alveolar branch.
64605	2	1	Destruction by neurolytic agent, trigeminal nerve; second and third division branches at foramen ovale.
64610	2	1	Destruction by neurolytic agent, trigeminal nerve; second and third division branches at foramen ovale under radiologic monitoring.
64622	2	1	Destruction by neurolytic agent, paravertebral facet joint nerve, lumbar, single level.
64630	2	2	Destruction by neurolytic agent, pudendal nerve.
Exploration, Neurolysis or Nerve Decompression (Neuroplasty)			
*64702	3	1	Neurolysis; digital, one or both, same digit.
*64704	3	1	Neurolysis; nerve of hand or foot.
*64708	3	2	Neurolysis; major peripheral nerve, arm or leg; other than specified.
64712	3	2	Neurolysis, major peripheral nerve, arm or leg; sciatic nerve.
64713	3	2	Neurolysis major peripheral nerve, arm or leg; brachial plexus.
64714	3	2	Neurolysis, major peripheral nerve, arm or leg; lumbar plexus.
*64716	4	3	Neurolysis and/or transposition; cranial nerve (specify).
*64718	4	2	Neurolysis and/or transposition; ulnar nerve at elbow.
*64719	4	2	Neurolysis and/or transposition; ulnar nerve at wrist.
*64721	3	2	Neurolysis and/or transposition; median nerve at carpal tunnel.
64722	3	1	Decompression; unspecified nerve(s) (specify).
64726	3	1	Decompression; plantar digital nerve.
64727	4	1	Internal neurolysis by dissection, with or without microdissection (list separately in addition to code for primary neuroplasty).
Transection or Avulsion of Nerve			
64732	3	2	Transection or avulsion of; supraorbital nerve.
64734	3	2	Transection or avulsion of; infraorbital nerve.
64736	3	2	Transection or avulsion of; mental nerve.
64738	3	2	Transection or avulsion of; inferior alveolar nerve by osteotomy.
64740	3	2	Transection or avulsion of; lingual nerve.
64742	3	2	Transection or avulsion of; facial nerve, differential or complete.
64744	3	2	Transection or avulsion of; greater occipital nerve.
64772	3	2	Transection or avulsion of other spinal nerve, extradural.
Excision-Somatic Nerves			
64774	3	3	Excision of neuroma; cutaneous nerve, surgically identifiable.
64776	3	3	Excision of neuroma; digital nerve, one or both, same digit.
64778	3	2	Excision of neuroma; digital nerve, each additional digit (list separetely by this number).
*64782	3	3	Excision of neuroma; hand or foot, except digital nerve.
64784	3	3	Excision of neuroma; major peripheral nerve, except sciatic.
64786	3	3	Excision of neuroma; sciatic nerve.
64787	3	2	Insertion of plastic cap on nerve end.
64788	3	3	Excision of neurofibroma or neurolemmona; cutaneous nerve.
64790	3	3	Excision of neurofibroma or neurolemmoma; major peripheral nerve.
64795	3	2	Biopsy of nerve.
Excision-Sympathetic Nerves			
64802	4	2	Sympathectomy, cervical; unilateral.
64803	4	3	Sympathectomy, cervical; bilateral.
Nerve Repair by Suture (Neurorrhaphy)			
64830	4	5	Microdissection and/or microrepair of nerve (list separately in addition to code for nerve repair).
64831	4	4	Suture of digital nerve, hand or foot; one nerve.
64832	4	1	Suture of digital nerve, hand or foot; each additional digital nerve.
64834	4	2	Suture of one nerve, hand or foot; common sensory nerve.
64835	4	3	Suture of one nerve, hand or foot; median motor thenar.
64836	4	3	Suture of one nerve, hand or foot; ulnar motor.
64837	4	1	Suture of each additional nerve, hand or foot.
64840	4	2	Suture of posterior tibial nerve.
64856	4	2	Suture of major peripheral nerve, arm or leg, except sciatic; including transportation.
64857	4	2	Suture of major peripheral nerve, arm or leg, except sciatic; without transportation.
64872	4	2	Suture of nerve; requiring secondary or delayed suture (list separately in addition to code for primary neurorrhaphy).
64874	4	3	Suture of nerve; requiring extensive proximal mobilization, or transposition of nerve (list separately in addition to code for nerve suture).
64876	4	3	Suture of nerve; requiring shortening of bone of extremity (list separately in addition to code for nerve suture).
Neurorrhaphy With Nerve Graft			
64890	4	2	Nerve graft (includes obtaining graft), single strand, hand or foot; up to 4 cm length.
64891	4	2	Nerve graft (includes obtaining graft), single strand, hand or foot; more than 4 cm length.
64892	4	2	Nerve graft (includes obtaining graft), single strand, arm or leg; up to 4 cm length.
64893	4	2	Nerve graft (includes obtaining graft), single strand, arm or leg; more than 4 cm length.
64895	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), hand or foot; up to 4 cm length.
64896	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), hand or foot; more than 4 cm length.
64897	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), arm or leg; up to 4 cm length.
64898	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), arm or leg; more than 4 cm length.
64901	4	2	Nerve graft, each additional nerve; single strand.
64902	4	2	Nerve graft, each additional nerve; multiple strands (cable).
64905	4	2	Nerve pedicle transfer; first stage.
64907	4	1	Nerve pedicle transfer; second stage.
			Eye/Ocular Adnexa
			Eyeball
Removal of Eye			
*65091	4	3	Evisceration of ocular contents; without implant.
*65093	4	6	Evisceration of ocular contents; with implant.
*65101	4	3	Enucleation of eye; without implant.
*65103	4	4	Enucleation of eye; with implant, muscles not attached to implant.

	Payment groups		
	Old	New	
*65105	4	4	Enucleation of eye; with implant, muscles attached to implant.
65110	4	3	Exenteration of orbit (does not include skin graft), removal of orbital contents; only.
Secondary implant procedures			
65130	3	3	Insertion of ocular implant secondary; after evisceration, in scleral shell.
65135	3	2	Insertion of ocular implant secondary; after enucleation, muscles not attached to implant.
65140	3	3	Insertion of ocular implant secondary; after enucleation, muscles attached to implant.
65150	3	2	Reinsertion of ocular implant; with or without conjunctival graft.
65155	3	3	Reinsertion of ocular impant; with use of foreign material for reinforcement and/or attachment of muscles to implant.
65175	3	1	Removal of ocular implant.
Removal of ocular foreign body			
*65230	1	1	Removal of foreign body, intraocular; from anterior chamber, magnetic extraction.
*65235	1	2	Removal of foreign body, intraocular; from anterior chamber, nonmagnetic extraction.
65245	4	2	Removal of foreign body, intraocular; from lens (without extraction lens), nonmagnetic extraction.
65260	4	2	Removal of foreign body, intraocular; from posterior segment, magnetic extraction, anterior or posterior route.
65265	4	3	Removal of foreign body, intraocular; from posterior segment, nonmagnetic extraction.
Repair of Laceration of eyeball			
65272	2	2	Repair of laceration; conjunctiva, by mobilization and rearrangement, without hospitalization.
65280	4	4	Repair of laceration; cornea and/or sclera, perforating, not involving uveal tissue.
65285	4	4	Repair of laceration; cornea and/or sclera, perforating, with reposition or resection of uveal tissue.
65290	3	3	Repair of wound, extraocular muscle, tendon and/or Tenon's capsule.
			Anterior Segment—Cornea.
Excision			
65400	1	1	Excison of lesion, cornea (keratectomy, lamellar, partial), except pterygium.
65410	1	2	Biopsy of cornea.
*65420	1	2	Excision or transposition of pterygium; without graft.
65426	1	5	Excision or transposition of pterygium; with graft.
Keratoplasty			
65710	4	6	Keratoplasty (corneal transplant), lamellar; autograft.
65720	4	6	Keratoplasty (corneal transplant), lamellar; homograft, fresh.
65725	4	6	Keratoplasty (corneal transplant), lamellar; homograft, preserved.
65730	4	6	Keratoplasty (corneal transplant), penetrating (except in aphakia); autograft.
65740	4	6	Keratoplasty (corneal transplant), penetrating (except in aphakia); homograft, fresh.
65745	4	6	Keratoplasty (corneal transplant), penetrating (except in aphakia); homograft, preserved.
65750	4	6	Keratoplasty (corneal transplant), penetrating, in aphakia.
			Anterior Segment-Anterior Chamber
Incision			
65800	1	2	Paracentesis of anterior chamber of eye (separate procedure); with diagnostic aspiration of aqueous.
65805	1	2	Paracentesis of anterior chamber of eye (separate procedure); with therapeutic release of aqueous.
65810	4	2	Paracentesis of anterior chamber of eye (separation procedure); with removal of vitreous and/or discission of anterior hyaloid membrane, with or without air injection.
65815	1	2	Paracentesis of anterior chamber of eye (separate procedure); with removal of blood, with or without irrigation and/or air injection.
Other procedures			
65865	1	1	Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); goniosynechiae.
65870	1	4	Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); anterior synechiae, except goniosynechiae.
65875	1	4	Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); posterior synechiae.
65880	1	4	Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); corneovitreal adhesions.
65900	4	4	Removal of epithelial downgrowth, anterior chamber eye.
65920	4	6	Removal of implanted material, anterior segment eye.
65930	4	5	Removal of blood clot, anterior segment eye.
66020	1	1	Injection, anterior chamber (separate procedure); air or liquid.
66030	1	1	Injection, anterior chamber (separate procedure); medication.
			Anterior Segment—Anterior Sclera
Excision			
66130	4	6	Excision of lesion, sclera.
66150	4	2	Fistulization of sclera for glaucoma; trephination with iridectomy.
66155	4	2	Fistulization of sclera for glaucoma; thermocauterization with iridectomy.
66160	4	2	Fistulization of sclera for glaucoma; sclerectomy with punch or scissors, with iridectomy.
66165	4	2	Fistulization of sclera for glaucoma; iridencleisis or iridotasis.
66170	4	3	Fistulization of sclera for glaucoma; trabeculectomy ab externo.
Repair			
66220	4	2	Repair of scleral staphyloma; without graft.
66225	4	3	Repair of scleral staphyloma; with graft.
Revision operation wound			
66250	4	1	Revision or repair of operative wound of anterior segment, any type, early or late, major or minor procedure.
			Anterior segment—iris, ciliary body
Iridotomy, Iridectomy			
66500	1	1	Iridotomy by stab incision (separate procedure); except transfixion.
66505	1	1	Iridotomy by stab incision (separate procedure); with transfixion as for iris bombe.
*66600	4	3	Iridectomy, with corneoscleral or corneal section; for removal of lesion.
66605	3	3	Iridectomy with corneoscleral or corneal section; with cyclectomy.
*66625	4	3	Iridectomy, with corneoscleral or corneal section; peripheral for glaucoma (separate procedure).
*66630	4	3	Iridectomy, with corneoscleral or corneal section; sector for glaucoma (separate procedure).
*66635	4	3	Iridectomy, with corneoscleral or corneal section; "optical" (separate procedure).

	Payment groups		
	Old	New	
Repair			
66680	4	3	Repair of iris, ciliary body (as for iridodialysis).
66682	4	2	Suture of iris, ciliary body (separate procedure) with retrieval of suture through small incision (e.g., McCannel suture).
Destruction			
66700	1	1	Cyclodiathermy; initial.
66701	1	1	Cyclodiathermy; subsequent.
66720	1	2	Cyclocryotherapy; initial.
66721	3	2	Cyclocryotherapy; subsequent.
66741	3	2	Cyclodialysis; subsequent.
66762	3	1	Coreoplasty by photocoagulation (one or more sessions) (e.g., for improvement of vision).
			Anterior segment-lens
Incision			
*66800	1	1	Discission of lens capsule; incisional technique (needling of lens); initial.
*66801	1	1	Discission of lens capsule; incisional technique (needling of lens); subsequent.
66821	1	2	Discission of secondary membraneous cataract ("after cataract") and/or anterior hyaloid; laser surgery (one or more stages).
Removal cataract			
*66830	4	4	Removal of secondary membranous cataract ("after cataract"), with corneoscleral section, with or without iridectomy (iridocapsulotomy, iridocapsulectomy).
*66840	4	4	Removal of lens material; aspiration technique, one or more stages.
*66850	4	6	Removal of lens material; phacofragmentation technique (mechanical or ultrasonic, e.g., phacoemulsification), with aspiration.
66915	4	2	Expression of lens, linear, one or more stages.
*66920	4	4	Extraction of lens with or without iridectomy; intracapsular, with or without enzymes.
*66930	4	5	Extraction of lens with or without iridectomy; intracapsular, for dislocated lens.
*66940	4	5	Extraction of lens with or without iridectomy; extracapsular (other than 66840, 66850, 66915).
66945	4	5	Extraction of lens with or without iridectomy; in presence of fistulization bleb and/or by temporal, inferior or inferotemporal route, intracapsular or extracapsular.
*66983	5	6	Intracapsular cataract extraction with insertion of intraocular lens prosthesis (one stage procedure).
66984	5	6	Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or phacoemulsification technique.
*66985	4	5	Insertion of intraocular lens subsequent to cataract removal (separate procedure).
Posterior segment-vitreous			
67005	4	3	Removal of vitreous, anterior approach (open sky technique or limbal incision); partial removal.
67010	4	3	Removal of vitreous, anterior approach (open sky technique or limbal incision); subtotal removal with mechanical vitrectomy (such as VISC or Rotoextractor).
67015	2	1	Aspiration or release of vitreous, subretinal or choroidal fluid, pars plana approach (posterior sclerotomy).
67025	2	1	Injection of vitreous substitute, pars plana approach (separate procedure) excludes air or balanced salt solutions.
67030	2	1	Discission of vitreous strands (without removal), pars plana approach.
67036	4	3	Virectomy, mechanical, pars plana approach.
			Posterior segment-retinal detachment
Repair			
67101	4	3	Repair of retinal detachment, one or more sessions, same hospitalization, cryotherapy or diathermy, with or without drainage or subretinal fluid.
67107	4	3	Repair of retinal detachment (one or more stages, same hospitalization); scleral buckling (such as lamella excision, imbrication or encircling procedure), with or without implant, may include procedures 67101–67105.
67108	4	3	Repair of retinal detachment (one or more stages, same hospitalization); with vitrectomy, any method, with or without air tamponade, may include procedures 67101–67107 and/or removal of lens by same technique.
67109	4	3	Repair of retinal detachment (one or more stages, same hospitalization); by technique other than 67101–67108.
67120	4	2	Removal of implanted material, posterior segment, extraocular.
			Posterior segment-other procedures
Destruction-retina, choroid			
67208	1	1	Destruction of localized lesion of retina (e.g., maculopathy, choroidopathy, small tumors), one or more sessions; cryotherapy, diathermy.
67218	1	3	Destruction of localized lesion, retina or choroid (e.g., choroidopathy), one or more stages; radiation by implantation of source (includes removal of source).
67227	1	1	Destruction of extensive or progressive retinopathy (e.g., diabetic retinopathy), one or more sessions; cryotherapy, diathermy.
Scleral repair			
67250	4	1	Scleral reinforcement (separate procedure); without graft.
67255	4	2	Scleral reinforcement (separate procedure); with graft.
*67311	4	3	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, e.g., for A or V pattern); one muscle.
67312	4	4	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, e.g., for A or V pattern); two muscles, one or both eyes.
*67313	4	5	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, e.g., for A or V pattern); three or more muscles, and/or adjustable suture, one or both eyes.
			Ocular adnexa-extraocular muscles
67320	3	4	Transposition of extraocular muscle (e.g., for paretic muscle), one or more stages, one or more muscles, with displacement of plane of action more than 5mm.
67331	3	4	Strabismus surgery on patient previously operated on; not involving reoperation of muscles.
67332	3	4	Strabismus surgery on patient previously operated on; involving reoperation of muscles.
Other procedures			
67350	3	1	Biopsy of extraocular muscle.
			Ocular adnexa-orbit
Exploration, excision			
67400	4	2	Orbitotomy without bone flap (frontal approach); for exploration, with or without biopsy.
67405	4	3	Orbitotomy without bone flap (frontal approach); with drainage only.
67412	4	3	Orbitotomy without bone flap (frontal approach); with removal of lesion.

	Payment groups		
	Old	New	
67413	4	5	Orbitotomy without bone flap (frontal approach); with removal of foreign body.
67415	1	1	Transconjunctival or aspirational biopsy.
Other procedures			
67550	4	4	Orbital implant (implant outside muscle cone); insertion.
67560	4	2	Orbital implant (implant outside muscle cone); removal or revision.
			Ocular adnexa-eyelids
Incision			
67715	1	1	Canthotomy (separate procedure).
Excision or removal of lesion involving more than skin (i.e., involving lid margin, tarsus, and/or palpebral conjunctiva)			
*67801	1	2	Excision of chalazion; multiple, same lid.
*67808	1	2	Excision of chalazion; under general anesthesia and/or requiring hospitalization, single or multiple.
67830	3	2	Correction of trichiasis; incision of lid margin.
67835	2	2	Correction of trichiasis; incision of lid margin, with free mucous membrane graft.
Tarsorrhaphy			
67880	1	3	Construction of intermarginal adhesions, median tarsorrhaphy, or canthorrhaphy.
67882	3	3	Construction of intermarginal adhesions, median tarsorrhaphy, or canthorrhaphy; with transportation of tarsal plate.
Repair blepharoptosis, lid retraction			
67901	1	5	Repair of blepharoptosis; frontalis muscle technique with suture.
67902	3	5	Repair of blepharoptosis; frontalis muscle technique with fascial sling (includes obtaining fascia).
67903	3	3	Repair of blepharoptosis; (tarso) levator resection, internal approach.
67904	3	4	Repair of blepharoptosis; (tarso) levator resection, external approach.
67906	3	3	Repair of blepharoptosis; superior rectus technique with fascial sling (includes obtaining fascia).
67907	3	3	Repair of blepharoptosis; superior rectus tendon transplant.
67908	1	4	Repair of blepharoptosis; conjunctivo-tarso-levator resection (Fasanella-Servat type).
67909	1	3	Reduction of overcorrection of ptosis.
Repair ectropion, entropion			
*67914	3	3	Repair of ectropion; suture.
*67916	3	4	Repair of ectropion; blepharoplasty, excision tarsal wedge.
*67917	3	3	Repair of ectropion; blepharoplasty, extensive (e.g., Kuhnt-Szymanowski operation).
*67921	3	4	Repair of entropion; suture.
*67923	3	4	Repair of entropion; blepharoplasty, excision tarsal wedge.
*67924	3	4	Repair of entropion; blepharoplasty, extensive (e.g., Wheeler operation).
Reconstructive surgery, blepharoplasty involving more than skin (i.e., involving lid margin, tarsus, and/or palpebral conjunctiva)			
67935	2	1	Suture of recent wound, eyelid, involving lid margin, tarsus, and/or palpebral conjunctiva) direct closure; full thickness.
*67950	2	2	Canthoplasty (reconstruction of canthus).
67961	3	3	Excision and repair of eyelid, involving lid margin, tarsus, conjunctiva, canthus, or full thickness, may include preparation for skin graft or pedicle flap with adjacent tissue transfer or rearrangement; up to one-fourth of lid margin.
67966	3	3	Excision and repair of eyelid, involving lid margin, tarsus, conjunctiva, or full thickness, may include preparation for skin graft or pedicle flap with adjacent tissue transfer or rearrangement; over one-fourth of lid margin.
67971	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; up to two-thirds of eyelid, one stage or first stage.
67973	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; total eyelid, lower, one stage or first stage.
67974	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; total eyelid, upper, one stage or first stage.
67975	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; second stage.
			Ocular adnexa-conjunctiva
Excision, destruction			
68130	1	2	Excision of lesion, conjunctiva; with adjacent sclera.
Conjunctivoplasty			
68320	2	4	Conjunctivoplasty; with conjunctival graft or extensive rearrangement.
68325	2	4	Conjunctivoplasty; with buccal mucous membrane graft (includes obtaining graft).
68326	2	4	Conjunctivoplasty, reconstruction cul-de-sac; with conjunctival graft or extensive rearrangement.
68328	3	4	Conjunctivoplasty, reconstruction cul-de-sac; with buccal mucous membrane graft (includes obtaining graft).
Other procedures			
68360	2	2	Conjunctival flap; bridge or partial (separate procedure).
68362	2	2	Conjunctival flap; total (such as Gunderson thin flap or purse string flap).
			Ocular adnexa-lacrimal system
Excision			
68500	3	1	Excision of lacrimal gland (dacryoadenectomy), except for tumor; total.
68505	3	1	Excision of lacrimal gland (dacryoadenectomy), except for tumor; partial.
68510	3	1	Biopsy of lacrimal gland.
68520	3	3	Excision of lacrimal sac (dacryocystectomy).
Excision			
68540	4	3	Excision of lacrimal gland tumor; frontal approach involving osteotomy.
68550	4	3	Excision of lacrimal gland tumor; frontal approach.
Repair			
*68700	1	2	Plastic repair on canaliculi.
68720	3	3	Dacryocystorhinostomy (fistulization of lacrimal sac to nasal cavity).
68745	3	3	Conjunctivorhinostomy (fistulization of conjunctiva to nasal cavity); without tube.
68750	3	3	Conjunctivorhinostomy (fistulization of conjunctiva to nasal cavity); with insertion of tube or stent.
Probing and related procedures			
*68830	1	2	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; with insertion of tube or stent (without general anesthesia).
			Auditory system
			External ear
Excision			
69105	1	1	Biopsy external auditory canal.
69110	2	1	Excision external ear; partial, simple repair.

	Payment groups		
	Old	New	
69120	3	2	Excision external ear; complete amputation.
69140	2	1	Excision exostosis(es), external auditory canal.
69145	2	3	Excision soft tissue lesion, external auditory canal.
69150	4	3	Radical excision external auditory canal lesion; without neck dissection.
			Middle ear
Incision			
*69420	1	2	Myringotomy including aspiration and/or eustachian tube inflation.
69440	3	3	Middle ear exploration through postauricular or ear canal incision.
69450	3	1	Tympanolysis, transcanal.
Excision			
*69501	4	6	Transmastoid antrotomy ("simple" mastoidectomy).
Repair			
*69620	4	2	Myringoplasty (surgery confined to drumhead and donor area).
*69631	4	5	Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; without ossicular chain reconstruction.
69632	4	5	Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; with ossicular chain reconstruction, e.g., postfenestration.
69633	4	5	Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; with ossicular chain reconstruction and synthetic prosthesis (e.g., total ossicular replacement prosthesis, TORP).
69635	4	6	Tympanoplasty with antrotomy or mastoidectomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); without ossicular chain reconstruction.
69636	4	6	Tympanoplasty with antrotomy or mastoidectomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); with ossicular chain reconstruction.
69637	4	6	Tympanoplasty with antrotomy or mastoidectomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); with ossicular chain reconstruction and synthetic prosthesis (e.g., total ossicular replacement prosthesis, TORP).
69641	4	6	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); without ossicular chain reconstruction.
69642	4	6	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with ossicular chain reconstruction.
69643	4	6	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with intact or reconstructed wall, without ossicular chain reconstruction.
69644	4	6	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with intact or reconstructed canal wall, with ossicular chain reconstruction.
69645	4	6	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); radical or complete, without ossicular chain reconstruction.
69646	4	6	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); radical or complete, with ossicular chain reconstruction.
*69650	4	6	Stapes mobilization.
*69660	4	5	Stapedectomy with reestablishment of ossicular continuity, with or without use of foreign material.
69661	4	5	Stapedectomy with reestablishment of ossicular continuity, with or without use of foreign material; with footplate drill out.
69666	4	2	Repair oval window fistula.
69667	4	3	Repair round window fistula.
69670	4	3	Mastoid obliteration (separate procedure).
69676	4	3	Tympanic neurectomy; unilateral.
69677	4	4	Tympanic neurectomy; bilateral.
			External ear
Other procedures			
69700	2	3	Closure postauricular fistula, mastoid (separate procedure).
			Middle ear
Other procedures			
69720	4	2	Decompression facial nerve, intratemporal; lateral to geniculate ganglion.
69725	4	2	Decompression facial nerve, intratemporal; including medial to geniculate ganglion.
69740	4	2	Suture facial nerve, intratemporal, with or without graft or decompression; lateral to geniculate ganglion.
69745	4	2	Suture facial nerve, intratemporal, with or without graft or decompression; including medial to geniculate ganglion.
			Female genital
Gynecological and obstetrical			
*74741	2	2	Hysterosalpingography; complete procedure.

Addendum B

Proposed Reclassification of Certain Procedure Codes

The following procedure codes were reclassified from lower to higher payment groups because the cost data placed them in lower groups than similar but less complex procedures.

Procedure code	Actual group based on cost	Proposed group
11446	1	2
11606	1	2
11626	1	2
13132	2	3
13152	1	3
14061	1	3
14350	2	3
15515	3	4
15610	1	3
15630	1	3
15755	1	3
20245	2	3
20926	3	4
21338	3	4
21340	2	4
21365	4	5
23150	1	4
24160	1	2
25023	2	3
25263	1	2
25310	2	3
25320	1	3
25628	2	3
26124	3	4
26205	2	3
26474	1	2
26650	1	2
26686	1	3
27305	1	2
27792	2	3

Procedure code	Actual group based on cost	Proposed group
28011	1	2
28122	2	3
28175	1	3
28755	2	4
28760	2	4
28825	1	2
30450	5	6
31031	2	3
31535	1	2
37760	2	3
42120	3	4
43251	1	2
45020	1	2
46060	1	2
46262	3	4
49525	3	4
49575	3	4
52601	1	3
55535	3	4
65710	1	6
65745	4	5
65815	1	2
65875	1	4
66225	1	3
66630	2	3
67412	1	3
67906	1	3
67924	3	4
67966	1	3
68362	1	2
69150	1	3
69632	4	5
69637	4	6
69641	5	6

The following procedure codes were reclassified into lower payment groups because the cost data placed them in higher groups than similar but more complex procedures.

Procedure code	Actual group based on cost	Proposed group
11600	2	1
11620	3	1
11622	2	1
11624	2	1
11640	2	1
11771	4	3
12036	3	2
12056	3	2
14041	6	3
14300	5	4
15220	4	2
15221	4	2
15505	4	3
15510	5	4
15600	5	3
15720	3	2
19101	4	3
20240	3	2
20900	5	3
20902	5	4
21310	3	2
21453	6	3
21480	4	1
23000	3	2
23020	3	2
23066	3	2
23180	6	4
23515	5	3
24075	3	2
24120	4	3
24130	5	3
24340	4	3
24351	4	3
24352	6	3
24515	5	4
24575	5	3
24585	5	4
24665	5	4
25028	2	1
25100	4	2
25150	3	2
25265	4	3
25274	6	4
25312	6	4
25515	5	3
25535	2	1
25575	4	3
25605	5	3
25620	4	3
25635	6	1
26215	4	3
26230	6	2
26392	4	3
26410	4	3
26433	4	3
26434	4	3
26455	6	3
26460	4	3
26471	6	2
26480	4	3
26483	5	3
26485	5	2
26499	4	3
26516	2	1
26525	4	3
26685	5	3
26710	5	2
26730	3	2
26744	3	2
26841	5	4
26843	4	3
26860	4	3
26861	5	2
26862	5	4
27420	4	3
27635	4	3
27640	4	2
27654	6	3
27664	4	2
27675	4	2
27685	4	3
27686	6	3
27756	6	3
27766	4	3
28110	4	3
28111	4	3
28113	4	3
28173	5	3
28200	5	3
28208	5	3
28225	2	1
28240	4	3
28250	4	3
28260	4	3
28299	6	5
28405	3	2
28465	6	3
28500	4	3
28675	6	3
28820	3	2
29874	6	3
29881	6	3
30125	5	2
31070	3	2
31510	3	2
31515	3	1
31525	2	1
37700	4	2
37701	4	3
37720	4	3
37730	4	3
38731	4	3
38305	3	2
38760	4	2
40500	3	2
40510	3	2
40654	6	3
40814	3	2
40844	6	5
41000	2	1
42106	3	2
42107	6	2
42325	3	2
42665	2	1
43202	2	1
43215	3	1
46250	5	3
46260	6	3
46275	5	3
46750	6	3
46924	3	1
49300	5	2
49590	4	3
51010	3	1
52010	3	2
52224	3	2
52235	4	3
52270	5	2
52275	5	2
52285	3	2
52310	3	2
52315	3	2
52330	5	2
52340	5	3
53020	2	1
53230	4	2
53410	3	2
53520	3	2
54115	2	1
54152	2	1
55150	2	1
55400	6	1
60220	5	2
64702	3	1
64704	4	1
64708	3	2
64718	4	2
64719	3	2
64721	3	2
64722	2	1
64726	3	1
64732	4	2
64788	4	3
64832	4	1
64834	3	2
64835	6	3
64836	5	3
64872	3	2
64890	4	2
64895	6	3
65091	5	3
65101	4	3
65103	6	4
65130	6	3
65150	1	2
65280	5	4
65865	5	1
66150	3	2
66155	3	2
66160	4	2
66500	4	1
66600	5	3
66625	4	3
66635	4	3
66721	4	2
67005	6	3
67107	5	3
67320	6	4
67331	5	4
67332	5	4
67801	3	2
67830	3	2
67835	3	2
67975	6	3
68326	6	4
68750	6	3

Procedure code	Actual group based on cost	Proposed group
69661	6	5

Addendum C

TABLE A.—WAGE INDEX FOR URBAN AREAS

Urban Area (Constituent counties or county equivalents)	Wage index
Abilene, TX	0.8335
Taylor, TX	
Aguadilla, PR	.4624
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.0023
Portage, OH	
Summit, OH	
Albany, GA	.7748
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.8702
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0188
Bernalillo, NM	
Alexandria, LA	.8182
Rapids, LA	
Allentown-Bethlehem, PA-NJ	.9858
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	.9474
Blair, PA	
Amarillo, TX	.9326
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2031
Orange, CA	
Anchorage, AK	1.4619
Anchorage, AK	
Anderson, IN	.9175
Madison, IN	
Anderson, SC	.7839
Anderson, SC	
Ann Arbor, MI	1.1723
Washtenaw, MI	
Anniston, AL	.7847
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	.9792
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	.4401
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.8501
Buncombe, NC	
Athens, GA	.7710
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9196
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	.9898
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.8908
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0123
Kane, IL	
Kendall, IL	
Austin, TX	1.0409
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1114
Kern, CA	
Baltimore, MD	1.0178
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.8907
Penobscot, ME	
Baton Rouge, LA	.8665
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	.9670
Calhoun, MI	
Beaumont-Port Arthur, TX	.9394
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0368
Beaver, PA	
Bellingham, WA	1.0823
Whatcom, WA	
Benton Harbor, MI	.8436
Berrien, MI	
Bergen-Passaic, NJ	1.0299
Bergen, NJ	
Passaic, NJ	
Billings, MT	.9756
Yellowstone, MT	
Biloxi-Gulfport, MS	.8012
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9107
Broome, NY	
Tioga, NY	
Birmingham, AL	.9226
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9315
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9215
Monroe, IN	
Bloomington-Normal, IL	.9463
McLean, IL	
Boise City, ID	.9821
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.0825
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0717
Boulder, CO	
Bradenton, FL	.8796
Manatee, FL	
Brazoria, TX	.8333
Brazoria, TX	
Bremerton, WA	.9407
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1230
Fairfield, CT	
Brownsville-Harlingen, TX	.8538
Cameron, TX	
Bryan-College Station, TX	.9377
Brazos, TX	
Buffalo, NY	.9726
Erie, NY	
Burlington, NC	.7548
Alamance, NC	
Burlington, VT	.9464
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	.4001
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	.9195
Carroll, OH	
Stark, OH	
Casper, WY	.9842
Natrona, WY	
Cedar Rapids, IA	.9242
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9141
Champaign, IL	
Charleston, SC	.8467
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	.9757
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.8424
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.8822
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9165

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.8959
Laramie, WY	
Chicago, IL	1.1211
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.1145
Butte, CA	
Cincinnati, OH–KY–IN	1.0319
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN–KY	.7485
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0826
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0047
El Paso, CO	
Columbia, MO	1.0378
Boone, MO	
Columbia, SC	.8450
Lexington, SC	
Richland, SC	
Columbus, GA–AL	.7406
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	.9296
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.8801
Nueces, TX	
San Patricio, TX	
Cumberland, MD–WV	.8798
Allegany, MD	
Mineral, WV	
Dallas, TX	.9565
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.7621
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA–IL	.9739
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0107
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.8545
Volusia, FL	
Decatur, IL	.8966
Macon, IL	
Denver, CO	1.1934
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	.9824
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0911
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.7892
Dale, AL	
Houston, AL	
Dubuque, IA	.9712
Dubuque, IA	
Duluth, MN-WI	.9477
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.8903
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.8849
El Paso, TX	
Elkhart-Goshen, IN	.9142
Elkhart, IN	
Elmira, NY	.9152
Chemung, NY	
Enid, OK	.9125
Garfield, OK	
Erie, PA	.9488
Erie, PA	
Eugene-Springfield, OR	1.0353
Lane, OR	
Evansville, IN-KY	.9963
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0031
Clay, MN	
Cass, ND	
Fayetteville, NC	.7983
Cumberland, NC	
Fayetteville-Springdale, AR	.7494
Washington, AR	
Flint, MI	1.1458
Genesee, MI	
Shiawassee, MI	
Florence, AL	.7255
Colbert, AL	
Lauderdale, AL	
Florence, SC	.7472
Florence, SC	
Fort Collins-Loveland, CO	1.0252
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0424
Broward, FL	
Fort Myers-Cape Coral, FL	.8989
Lee, FL	
Fort Pierce, FL	1.0052
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.8726
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.8210
Okaloosa, FL	
Fort Wayne, IN	.9008
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.9475
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0978
Fresno, CA	
Gadsden, AL	.8394
Etowah, AL	
Gainesville, FL	.8902
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0782
Galveston, TX	
Gary-Hammond, IN	1.0415
Lake, IN	
Porter, IN	
Glens Falls, NY	.8889
Warren, NY	
Washington, NY	
Grand Forks, ND	.9462
Grand Forks, ND	
Grand Rapids, MI	1.0058
Kent, MI	
Ottawa, MI	
Great Falls, MT	.9966
Cascade, MT	
Greeley, CO	1.0174
Weld, CO	
Green Bay, WI	.9692
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.8710
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford,	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.8961
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.8869
Washington, MD	
Hamilton-Middletown, OH	.9649
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9907
Cumberland, PA	
Daulphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.0898
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8335
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1343
Honolulu, HI	
Houma-Thibodaux, LA	.8083
Lafourche, LA	
Terrebonne, LA	
Houston, TX	.9868

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9066
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8208
Madison, AL	
Indianapolis, IN	.9941
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.1630
Johnson, IA	
Jackson, MI	.9445
Jackson, MI	
Jackson, MS	.8439
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7506
Madison, TN	
Jacksonville, FL	.8923
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7358
Onslow, NC	
Janesville-Beloit, WI	.8935
Rock, WI	
Jersey City, NJ	1.0599
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.8446
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9060
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0507
Grundy, IL	
Will, IL	
Joplin, MO	.8649
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1352
Kalamazoo, MI	
Kankakee, IL	.8989
Kankakee, IL	
Kansas City, KS-MO	1.0064
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Kenosha, WI	1.0384
Kenosha, WI	
Killeen-Temple, TX	.9789
Bell, TX	
Coryell, TX	
Knoxville, TN	.8335
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9352
Howard, IN	
Tipton, IN	
LaCrosse, WI	.9629
LaCrosse, WI	
Lafayette, LA	.9261
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.8736
Tippecanoe, IN	
Lake Charles, LA	.9172
Calcasieu, LA	
Lake County, IL	1.0904
Lake, IL	
Lakeland-Winter Haven, FL	.8261
Polk, FL	
Lancaster, PA	.9866
Lancaster, PA	
Lansing-East Lansing, MI	1.0251
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.7521
Webb, TX	
Las Cruces, NM	.8362
Dona Ana, NM	
Las Vegas, NV	1.0873
Clark, NV	
Lawrence, KS	.9748
Douglas, KS	
Lawton, OK	.8579
Comanche, OK	
Lewiston-Auburn, ME	.9034
Androscoggin, ME	
Lexington-Fayette, KY	.9227
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9233
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9287
Lancaster, NE	
Little Rock-North Little Rock, AR	.9376
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8037
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	.9519
Lorain, OH	
Los Angeles-Long Beach, CA	1.2463
Los Angeles, CA	
Louisville, KY-IN	.9520
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Oldham, KY	
Shelby, KY	
Lubbock, TX	.9568
Lubbock, TX	
Lynchburg, VA	.8586
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.8287
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0167
Dane, WI	
Manchester-Nashua, NH	.9222
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	.9116
Richland, OH	
Mayaguez, PR	.4842
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission,TX	.7655
Hidalgo, TX	
Medford, OR	.9701
Jackson, OR	
Melbourne-Titusville, FL	.8862
Brevard, FL	
Memphis, TX-AR-MS	.9644
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TX	
Merced, CA	1.0727
Merced, CA	
Miami-Hialeah, FL	1.0151
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	.9837
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0576
Midland, TX	
Milwaukee, WI	1.0435
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1224
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8319
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1049
Stanislaus, CA	
Monmouth-Ocean, NJ	.9365
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.8471
Ouachita, LA	
Montgomery, AL	.8173

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TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	.9565
Delaware, IN	
Muskegon, MI	.9620
Muskegon, MI	
Naples, FL	.9919
Collier, FL	
Nashville, TN	.8878
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TX	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2359
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9352
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0639
New Haven, CT	
New London-Norwich, CT	1.0562
New London, CT	
New Orleans, LA	.9080
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3092
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.0808
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8492
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9196
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4023
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8183
Marion, FL	
Odessa, TX	.8919
Ector, TX	
Oklahoma City, OK	1.0065
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0349
Thurston, WA	
Omaha, NE-IA	.9822
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.8828
Orange, NY	
Orlando, FL	.9356
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8360
Daviess, KY	
Oxnard-Ventura, CA	1.2976
Ventura, CA	
Panama City, FL	.7882
Bay, FL	
Parkersburg-Marietta, WV-OH	.8828
Washington, OH	
Wood, WV	
Pascagoula, MS	.8929
Jackson, MS	
Pensacola, FL	.8241
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	.9879
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.0935
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0079
Maricopa, AZ	
Pine Bluff, AR	.7767
Jefferson, AR	
Pittsburgh, PA	1.0240
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	.9946
Berkshire, MA	
Ponce, PR	.5513
Juana Diaz, PR	
Ponce, PR	
Portland, ME	.9461
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1292
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9114
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	.9597
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	.9811
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	.9278
Utah, UT	
Pueblo, CO	.9920
Pueblo, CO	
Racine, WI	.9299
Racine, WI	
Raleigh-Durham, NC	.9274
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.8702
Pennington, SD	
Reading, PA	.9381
Berks, PA	
Redding, CA	1.0779
Shasta, CA	
Reno, NV	1.1202
Washoe, NV	
Richland-Kennewick, WA	.9688
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.8697
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1536
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8346
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0027
Olmstead, MN	
Rochester, NY	0.9558
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.0245
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2140
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0597
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9662
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.8811
Buchanan, MO	
St. Louis, MO-IL	1.0165
Clinton, IL	

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0416
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2211
Monterey, CA	
Salt Lake City-Ogden, UT	.9508
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8302
Tom Green, TX	
San Antonio, TX	.8377
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.2350
San Diego, CA	
San Francisco, CA	1.4946
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4323
Santa Clara, CA	
San Juan, PR	.5387
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1428
Santa Barbara, CA	
Santa Cruz, CA	1.2017
Santa Cruz, CA	
Santa Fe, NM	.9362
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2943
Sonoma, CA	
Sarasota, FL	.9166
Sarasota, FL	
Savannah, GA	.8405
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9318
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0907
King, WA	
Snohomish, WA	
Sharon, PA	.9198
Mercer, PA	
Sheboygan, WI	.9318
Sheboygan, WI	
Sherman-Denison, TX	.8285
Grayson, TX	
Shreveport, LA	.8994
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	.9248
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	.9552
Minnehaha, SD	
South Bend-Mishawaka, IN	.9605
St. Joseph, IN	
Spokane, WA	1.0823
Spokane, WA	
Springfield, IL	1.0040
Menard, IL	
Sangamon, IL	
Springfield, MO	.9074
Christian, MO	
Greene, MO	
Springfield, MA	.9758
Hampden, MA	
Hampshire, MA	
State College, PA	1.0303
Centre, PA	
Steubenville-Weirton, OH-WV	.9106
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1743
San Joaquin, CA	
Syracuse, NY	.9730
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0325
Pierce, WA	
Tallahassee, FL	.8531
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.9125
Hernando, FL	
Hillsborough, FL	
Pasco, FI	
Pinellas, FL	
Terre Haute, IN	.8090
Clay, IN	
Vigo, IN	
Texarkana, TX-Texarkana, AR	.8071
Miller, AR	
Bowie, TX	
Toledo, OH	1.1101
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	.9955
Shawnee, KS	
Trenton, NJ	1.0014
Mercer, NJ	
Tucson, AZ	.9639
Pima, AZ	
Tulsa, OK	.9346
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	.9515
Tuscaloosa, AL	
Tyler, TX	.9326
Smith, TX	
Utica-Rome, NY	.8211
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2767
Napa, CA	
Solano, CA	
Vancouver, WA	1.0772
Clark, WA	
Victoria, TX	.7993
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9580
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.1419
Tulare, CA	
Waco, TX	.8585
McLennan, TX	
Washington, D.C.-MD-VA	1.1051
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria, City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9432
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9457
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.9431
Palm Beach, FL	
Wheeling, WV-OH	.8761
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.0469
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.8221
Wichita, TX	
Williamsport, PA	.8804
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0125
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.8602
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9460
Worcester, MA	
Yakima, WA	.9850
Yakima, WA	
York, PA	.9340
Adams, PA	
York, PA	
Youngstown-Warren, OH	.9942

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Mahoning, OH Trumbull, OH Yuba City, CA Sutter, CA Yuba, CA	.9970

TABLE B—WAGE INDEX FOR RURAL AREAS

Nonurban Area	Wage index
Alabama	0.7005
Alaska	1.3922
Arizona	.8869
Arkansas	.7124
California	1.0426
Colorado	.8666
Connecticut	1.0013
Delaware	.8236
Florida	.8223
Georgia	.7385
Hawaii	.9318
Idaho	.8489
Illinois	.8186
Indiana	.8104
Iowa	.8070
Kansas	.7927
Kentucky	.7754
Louisiana	.7856
Maine	.8191
Maryland	.8112
Massachusetts	1.0033
Michigan	.9036
Minnesota	.8605
Mississippi	.7215
Missouri	.7640
Montana	.8558
Nebraska	.7751
Nevada	.9817
New Hampshire	.8784
New Jersey [1]	
New Mexico	.8359
New York	.8124
North Carolina	.7650
North Dakota	.8463
Ohio	.8609
Oklahoma	.7938
Oregon	1.0029
Pennsylvania	.8807
Puerto Rico	.5536
Rhode Island [1]	
South Carolina	.7232
South Dakota	.7668
Tennessee	.7162
Texas	.7591
Utah	.8782
Vermont	.8387
Virginia	.7833
Virgin Islands [1]	
Washington	.9806
West Virginia	.8414
Wisconsin	.8458
Wyoming	.9100

[1] All counties within the State are classified urban.

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federal register

Thursday
August 18, 1988

Part V

Environmental Protection Agency

40 CFR Parts 141 and 142

Drinking Water Regulations; Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL-3380-2]

Drinking Water Regulations; Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper

August 3, 1988.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this notice, EPA is proposing maximum contaminant level goals (MCLGs) and national primary drinking water regulations (NPDWRs) for controlling lead and copper in drinking water. These proposed regulations would control lead and copper in drinking water that is due both to their occurrence in source waters and to the corrosion of lead and copper plumbing materials by water. EPA is proposing an MCLG of zero for lead and an MCLG of 1.3 mg/l for copper. For both lead and copper, EPA is proposing an NPDWR consisting of a treatment technique requirement which would require optimal corrosion control to minimize lead and copper as corrosion by-products and public education to reduce exposure to lead as a corrosion by-product. In addition, EPA is proposing NPDWRs specifying maximum contaminant levels (MCLs) for lead and copper in water entering the distribution system, after any treatment: 0.005 mg/l for lead and 1.3 mg/l for copper. EPA is also soliciting comment on alternatives to some of these proposals related to treatment requirements, monitoring, and lead pipe replacement.

DATES: Written comments should be submitted by October 17, 1988. Public hearings will be held at the addresses indicated below under "**ADDRESSES**" on September 28 (and 29, if necessary), 1988 in Washington, DC; on October 3 (and 4, if necessary), 1988 in Chicago, IL; and on October 6 (and 7, if necessary), in Seattle, WA.

ADDRESSES: The Agency will hold public hearings on the proposal at three different locations indicated below:

1. GSA Regional Auditorium, Seventh and D Streets SW., Washington, DC 20407, September 28 (and 29, if necessary), 1988.
2. The Federal Building, Lake View Conference Center, 16th Floor, 230 S. Dearborn St., Chicago, IL 60604, October 3 (and 4, if necessary), 1988.
3. The Park Place Building, Room 12-A, 1200 Sixth Avenue, Seattle, WA 98101, October 6 (and 7, if necessary), 1988.

The hearings will begin at 9:30 a.m., with registration at 9:00 a.m. The hearings will end at 4:00 p.m., unless concluded earlier. Anyone wishing to make a statement at a hearing should notify, in writing, Lead Public Hearing Officer, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (301) 585-1597 (Juanita Bridgewater).

Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations are encouraged to have written copies of their complete comments for inclusion in the official record.

The public docket for this rulemaking, including major supporting documents and public comments on the proposal, will be available for review and copying during normal business hours at the EPA Drinking Water Docket, 401 M Street SW., Washington, DC 20460. For access to docket materials, call (202) 382-3027 between 9 a.m. and 4 p.m. Eastern time.

Send written comments on the proposed rule to Lead and Copper Comment Clerk, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gregory Helms, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7575, or one of the EPA Regional Office contacts listed in "Supplementary Information," below. Information may also be obtained from the EPA Safe Drinking Water Hotline. The toll-free number is (800) 426-4791 and the Washington, DC number is (202) 382-5533. The hotline is open from 8:30 a.m. to 4:00 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: Major documents supporting this proposal will be available at EPA Regional Offices.

EPA Regional Offices

I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 565-3610, Jerome Healey

II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264-1800, Walter Andrews

III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597-9873, Jon Capacasa

IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 347-2913, Wesley (Bo) Crum

V. 230 S. Dearborn Street, Chicago, IL 60604, Phone: (312) 353-2151, Joseph Harrison

VI. 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 655-7155, Thomas Love

VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 236-2815, Gerald R. Foree

VIII. 999 18th Street, Suite 500, Denver, CO 80202-2405, Phone: (303) 293-1424, Marc Alston

IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974-0763, William Thurston

X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 442-4092, Richard Thiel

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Glossary of Terms

Blood Lead Level or PbB Level: The concentration of lead in blood. The health effects of lead are indexed to the concentration of lead in the blood (rather than total exposure or intake), measured in micrograms of lead per deciliter of blood (ug/dl).

Corrosion: Dissolution or eroding of pipe or other plumbing material by water.

Distributed Water: Water leaving the water treatment facility and/or entering the distribution system.

Ends of The Distribution System: Those points in the water supply distribution system with low or no flow.

Fully Flushed Sample: Water collected from a tap that has been allowed to flow freely for 3–5 minutes.

Galvanic Corrosion: Corrosion of one metal accelerated by the presence of another metal with a different electrochemical potential (e.g., corrosion of lead solder is accelerated by the presence of cooper pipe).

Gooseneck or Pigtail: A short section of pipe used to connect the service line to the water main or the service line to the water meter. See Figure 1.

Lead Pipe: Any pipe containing >8 percent lead.

Lead Solder: Any solder containing >0.2 percent lead.

Morning First Draw Sample: A water sample collected at a consumer's tap that has been standing in the interior plumbing for 8–18 hours and is collected without prior flushing.

Optimal Corrosion Control Treatment: Corrosion control treatment which minimizes lead levels in targeted samples.

Random Daytime Grab Sample: A water sample collected at a consumer's tap after it has been opened at a random time of the day (standing time of the water unknown).

Service Connection: The entire connection between a building and the service main, including the service line and any gooseneck or pigtail connections between the service line and the main (See Figure 1).

Service Connection Sample: Water collected that has stood for 8–18 hours in a building service line. This sample may be collected by one of 3 methods: (1) Direct sampling of the service line; (2) tap sample collection based on a temperature change in the water; or (3) tap sample collection after flushing a volume of water equal to that contained in pipes leading from the tap to the service line.

Service Line: The section of pipe connecting the water main to the interior plumbing of a house or building. See Figure 1.

Targeted Samples: Samples which have been taken in accordance with the monitoring requirements to determine compliance with the treatment technique requirements for corrosion control.

Abbreviations

BAT: Best Available Technology
CWSS: Community Water Supply Survey
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
MDL: Method Detection Limit
MGD: Million Gallons per Day
NIRS: National Inorganics and Radionuclide Survey
NOMS: National Organics Monitoring Survey
NPDWR: National Primary Drinking Water Regulation
NSDWR: National Secondary Drinking Water Regulation
NTNCWS: Non-Transient Non-Community (Water System)
PQL: Practical Quantitation Limit
PWS: Public Water System
SDWA: Safe Drinking Water Act
VOC: Volatile Organic Chemical

I. Statutory Requirements

The Safe Drinking Water Act (42 U.S.C. 300f *et seq.)* ("SDWA" or "the Act") requires EPA to establish maximum contaminant level goals (MCLGs) and national primary drinking water regulations (NPDWRs) for contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons and which are known or anticipated to occur in public water systems. Section 1412(b)(3)(A). MCLGs and MCLs are to be proposed and promulgated simultaneously. Section 1412(b)(1).

MCLGs are Non-enforceable Health Goals

MCLGs are to be set at a level at which, in the Administrator's judgment,

"no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." Section 1412(b)(4). The House Report on the bill that eventually became the SDWA of 1974 provides Congressional guidance on developing MCLGs:

> [T]he recommended maximum contaminant level [renamed maximum contaminant level goal in the 1986 amendments to the SDWA] must be set to prevent the occurrence of any known or anticipated adverse effect. It must include an adequate margin of safety, unless there is no safe threshold for a contaminant. In such a case, the recommended maximum contaminant level should be set at the zero level. (H.R. Rep. No. 93–1185, Pg. 20, 1974)

NPDWRs Set the Enforceable Standards

NPDWRs include either MCLs or treatment technique requirements as well as compliance monitoring requirements. Section 1401(1). A treatment technique requirement can be set only if "it is not economically or technologically feasible to ascertain the level of the contaminant." Section 1412(b)(7)(A). The MCL for a contaminant must be set as close to the MCLG as is "feasible." Section 1412(b)(4). Feasible means "feasible with the use of the best technology, treatment techniques and other means, which the Administrator finds after examination for efficacy under field conditions and not solely under laboratory conditions are available (taking costs into consideration.)" Section 1412(b)(5). A treatment technique must "prevent known or anticipated adverse effects on the health of persons to the extent feasible." Section 1412(b)(7)(A).

Secondary MCLs

EPA sets national secondary drinking water regulations (NSDWRs) to control water color, odor, appearance, and other characteristics affecting consumer acceptance of water. The secondary regulations are not federally enforceable, but are considered guidelines for the States. Section 1401(2).

Amendments to the SDWA

The 1986 amendments to the SDWA established a list of 83 contaminants for which EPA is to develop MCLGs and NPDWRs. Lead and copper are among these contaminants, and this proposed rule is the first step in fulfilling this statutory requirement for lead and copper in drinking water.

II. Background

A. Regulatory Background

The current MCL for lead is 0.050 mg/l (see 40 CFR 141.11(b)). EPA promulgated this MCL as an interim drinking water regulation in 1975. For copper, there is currently a NSDWR of 1 mg/l. On November 13, 1985, EPA began the process of revising the standards for lead and copper by proposing MCLGs for them (50 FR 46936, November 13, 1985). Because the 1986 amendments to the SDWA require that MCLGs and NPDWRs be proposed and promulgated simultaneously, EPA must repropose MCLGs for contaminants for which MCLGs were originally proposed in the November 1985 notice, including lead and copper, when it proposes the corresponding NPDWRs. Accordingly, this notice, which proposes NPDWRs for lead and copper, also reproposes MCLGs for these contaminants. The MCLG proposed for lead in this notice (zero) is lower than the MCLG for lead proposed in November 1985. The MCLG proposed for copper is the same as that proposed in 1985 (1.3 mg/l).

1. Lead

The November 1985 notice proposed an MCLG for lead of 0.020 mg/l. This goal was based on an assessment of data on adverse health effects of lead on infants. The assessment concluded that blood lead levels of 15 to 20 ug/dl represented levels of concern for infants. Effects of lead found at these levels are discussed in detail in the November 1985 notice; more recent data on these and other effects are discussed below. The 1985 proposed MCLG of 0.020 mg/l for lead in water assumed that 15 ug/dl was the blood lead level of concern for infants, assumed that infants receive 100 percent of their lead exposure from drinking water, and used a factor of 0.16 ug/dl per ug/l lead to correlate water lead levels to blood lead levels (i.e., every 1 ug/l lead in drinking water was estimated to contribute about 0.16 ug/dl to a child's blood lead level). An uncertainty factor of 5 was used in the calculation to account for uncertainty in the data and provide a margin of safety.

There also are several positive carcinogenicity bioassays using different lead salts. Therefore, in the November 1985 notice, EPA classified lead as a Group B2 carcinogen (probable human carcinogen) according to the draft EPA Guidelines for Carcinogen Risk Assessment (since promulgated as final guidelines at 51 FR 33992, September 24, 1986). However, the proposed MCLG was not based on the carcinogenicity data because the doses used in the studies were much higher than the overt toxicity levels in humans, and because several epidemiology studies did not show an association between cancer and lead exposure in occupationally exposed workers.

In addition to directing EPA to revise the NPDWR for lead, the SDWA includes other provisions that affect lead contamination of drinking water. The 1986 SDWA amendments banned the use of lead solder or flux (i.e., solder or flux containing more than 0.2 percent lead) and lead-bearing pipes and fittings (i.e., pipes and fittings containing more than 8 percent lead). Section 1417. The lead ban was effective June 19, 1986. States were required to implement and enforce the lead ban as of June 19, 1988. EPA is developing a program to withhold 5 percent of Federal grants for drinking water implementation from States that fail to enforce the ban.

The SDWA also imposes special public notification requirements regarding lead in drinking water. Section 1417(a)(2). Public water systems are required to identify and provide notice to persons who may be affected by lead contamination in their drinking water, when such contamination results from either the use of lead in the construction materials of the system and/or corrosivity of the water supply sufficient to cause lead leaching from plumbing systems. This provision requires notification even if the system is in compliance with the current MCL for lead. EPA published final regulations to implement this requirement of the SDWA on October 28, 1987 (52 FR 41534). Under these regulations, systems were required to begin providing notice to consumers by June 19, 1988.

2. Copper

EPA proposed an MCLG of 1.3 mg/l for copper in the November 13, 1985 notice. This value was based on short-term effects of copper on humans at relatively high doses; no long-term effects at lower exposure levels have been predicted. No new data have become available since November 1985 that have altered EPA's evaluation of the health effects of copper.

B. Overview of Problem

1. Lead

Lead occurs in drinking water from two sources: (1) Lead in raw water supplies, i.e., source water, and (2) corrosion of plumbing materials in the water distribution system. Most of the lead in drinking water is a result of corrosion by water of plumbing materials containing lead.

EPA estimates that approximately 900 public water systems (or <1 percent of the community water systems in the country) may have water leaving the

water supply plant that has greater than 0.005 mg/l lead. In fact, some systems deliver water to customers that exceeds the current MCL of 0.050 mg/l. Because of concern about low level exposures to lead, as described in Section III.B.1. below, lead in source water even at low levels may be an important contributor to lead in drinking water in some systems.

Lead in drinking water as a by-product of corrosion results primarily from corrosion of plumbing materials in the distribution system and in buildings. The amount of lead in drinking water due to corrosion depends on a number of factors, including the amount and age of lead material present in the system to be corroded and the degree of corrosivity of the water.

As illustrated in Figure 1, potential sources of lead in drinking water distribution systems (including plumbing in buildings) include:

- Water service mains (rarely);
- Lead goosenecks or pigtails (short sections of pipe leading from the water main to the meter or main portion of the service line, and which is genrally 6–8 feet long);
- Lead service lines and interior household pipes;
- Lead solders and fluxes used to connect copper pipes; and
- Alloys containing lead, including some faucets made of brass or bronze.

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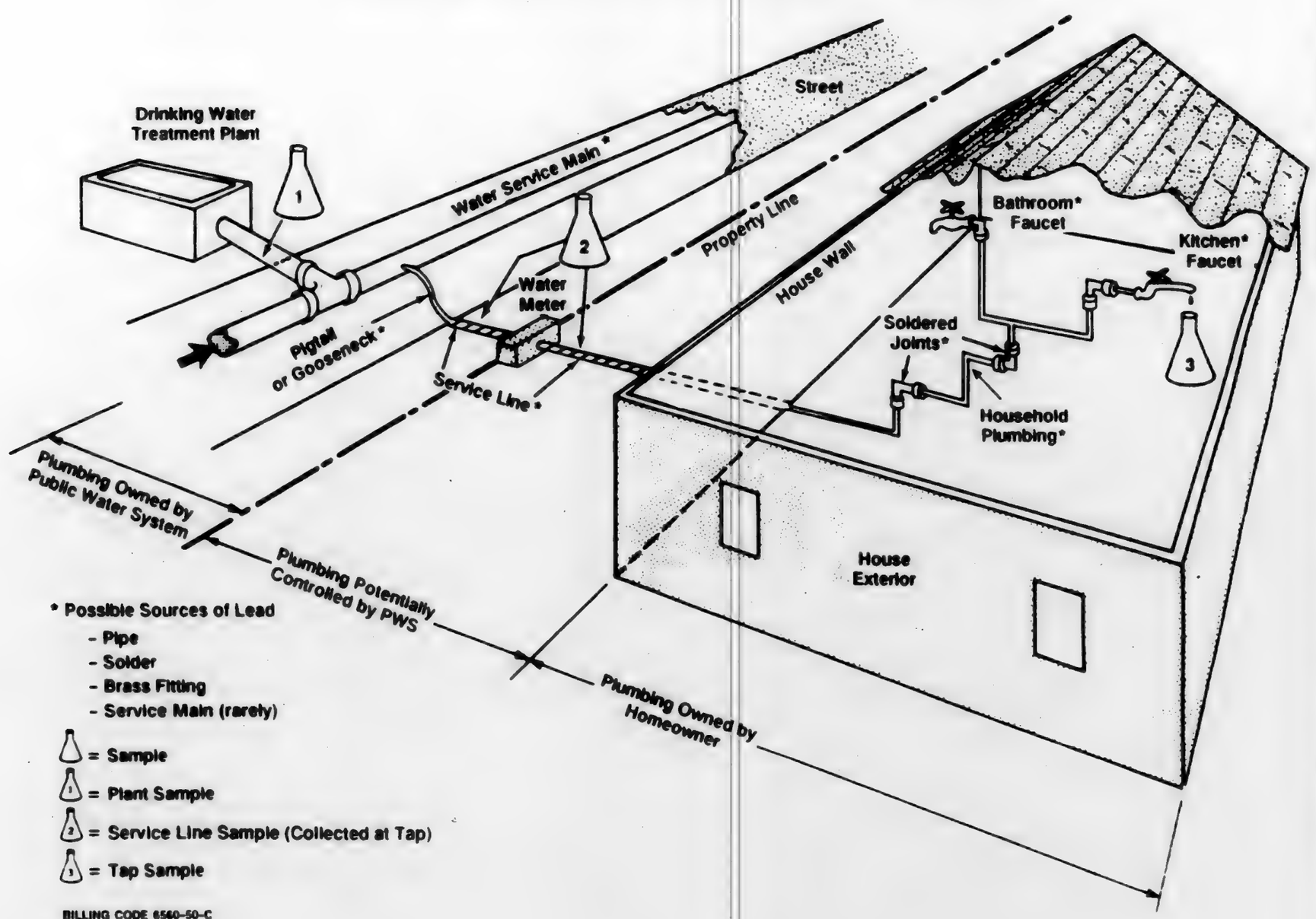
Figure 1

Public Water System and Homeowner Plumbing



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Most public water systems serve at least some buildings with lead solder and EPA estimates that there are about 4.4 million lead service lines still in use in the U.S. About 25 percent of water suppliers have some lead service lines within their distribution system (EPA, 1987a). Lead service lines and interior plumbing are significant potential sources of lead in drinking water and can contribute large amounts of lead to water for the life of the pipe. Lead solder can contribute large amounts of lead to water for up to five years after installation, and longer if exposed to corrosive water (EPA 1986a). In addition, brass and bronze in faucets and fixtures can contain lead and there is evidence that they can be an important source of lead in drinking water that stands in the fixtures.

The amount of lead in drinking water also depends on the corrosivity of the water. All water is corrosive to metal plumbing materials to some degree, even water termed non-corrosive or water treated to make it less corrosive. The corrosivity of water to lead is influenced largely by the pH and total alkalinity of the water (water with low pH and/or low alkalinity water is more corrosive to lead than water with high pH and alkalinity). Galvanic corrosion of lead into water also occurs with lead-soldered copper pipes, due to differences in the electrochemical potential of the two metals. Grounding of household electrical systems to plumbing can exacerbate galvanic corrosion. There are other factors that also may affect water corrosivity, such as water temperature (seasonal variations in lead levels are common), and levels of free chlorine, total dissolved solids, and oxygen.

Lead levels in drinking water can vary considerably from system to system, among houses supplied by the same system, among different taps in the same house, and at different times of the day at a single tap. Factors that affect lead levels in water independent of the corrosivity of water include:

- The number and age of lead-soldered joints in the building and the quality of workmanship of the joints (new solder releases high amounts of lead and sloppy solder joints have more lead available to be leached);
- The contact time between the water and the lead (longer contact time results in higher lead levels so, for instance, morning first draw water samples have higher lead levels than samples with shorter standing times or flushed water samples); and
- The length and diameter of the lead service line (longer lines generally result in higher lead levels in water at the tap since the water is in contact with more lead, while smaller diameter pipes have a greater ratio of pipe surface to water volume so there is more contact between the lead and water which can result in higher lead levels, and small diameter pipes can also result in higher lead levels because of increased velocity of the water flow which causes scouring of the sides of the pipe).

2. Copper

The primary source of copper in drinking water is corrosion of copper pipes, which are widely used throughout the U.S. for interior plumbing of residences and other buildings; copper in source water is a problem for very few water supplies. In some cases, copper is a component of additives to drinking water used by suppliers to control the growth of algae. EPA estimates that only 66 water suppliers would need to install treatment to reduce copper in source water to the MCLG (EPA, 1988a).

Like lead in drinking water, the occurrence of copper in drinking water resulting from corrosion when copper is present in the distribution system, including interior plumbing, depends on the corrosivity of the water. Also, as with lead, all water is corrosive to copper to some degree. Corrosivity toward copper depends primarily on the pH of the water, with very low pHs associated with the highest levels of copper in water due to corrosion. Free chlorine levels also affect corrosion of copper; higher chlorine residual levels increase copper corrosion (Stone et al., 1987; Reiber et al., 1987; EPA, 1987b). Dissolved carbon dioxide and oxygen can also contribute to copper corrosion (Cohen and Meyers, 1987).

Many of the other factors that affect the corrosivity of water towards lead can also be expected to affect the corrosion of copper. For instance, flow rate, standing time, water temperature, and length of copper pipe can affect copper levels in drinking water (Maessen et al., 1985). There are few data on whether age of plumbing affects copper corrosion rates (EPA, 1987b; Rieber et al., 1987).

III. MCLGs for Lead and Copper

A. Exposure

1. Exposure to Lead

a. *General.* Assessing actual human exposure to lead is difficult due to the variability of lead levels at the tap and the existence of other exposure sources. As described above, water lead levels at any one tap vary throughout the day, and vary among taps with constant standing times due to differences in the amount of available lead to which the water is exposed.

People are exposed to lead from a variety of sources in addition to water, including food, air, and dust; the proportion of total exposure attributable to drinking water varies by individual. The typical drinking water contribution to total lead exposure for an average two-year-old child is estimated to be about 20 percent (EPA, 1988b), but this varies with different levels of lead in the water and with variations in other lead exposures, and can range from about five to 30 percent of total intake. For children with extraordinary exposures, such as those exposed to deteriorating lead paint, including paint chips or leaded-paint dust, or living near lead smelters or other point sources of airborne lead, those sources predominate and drinking water contributes a much lower, although still relevant, proportion of total exposure. For residents of buildings with new lead solder served with corrosive water, drinking water can be the primary source of exposure.

b. *Exposure to Lead Through Drinking Water.* The magnitude of human exposure resulting from the ingestion of lead in drinking water depends upon many factors. Patterns of consumption may vary among individuals, from those who flush taps before drinking to those who drink first flush water. There are few actual data on individual water consumption patterns (i.e., percent consumption of standing and flushed water) and the lead exposures that result from them. EPA is conducting a pilot study of drinking water consumption patterns which may provide additional data on this question for use in developing the final MCLG and enforceable standards. However, these data are not yet available.

The problem of assessing exposure from drinking water can be addressed by bracketing exposures. Assuming that an adult consumes two liters of water (one liter for children) per day from the same water supplier, morning first draw samples (or service connection samples if the service connection is lead) will represent a case of high exposure and fully flushed samples will represent the minimum exposure. For example, in a home where fully flushed samples are consistently 0.005 mg/l and morning first draw (or service connection) samples are consistently 0.010 mg/l, the occupants will have actual lead intake from drinking water of 0.005–0.010 mg/l, or a total of 0.010–0.020 mg/day for adults.

Patterson (EPA, 1981) conducted a national study of lead levels in drinking

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water. Random daytime grab samples from taps that had been flushed for 30 seconds were collected from 580 cities in 47 states. While 30-second flushed random grab samples are not necessarily representative of actual human exposure, EPA believes that they are more representative of water consumed in the U.S. than are fully flushed samples since many people regularly consume some morning first draw water. Because these data portray neither an upper bound of exposure (morning first draw or lead service line sample levels) nor a lower bound of exposure (fully flushed) levels, they may more closely portray actual average exposure. Therefore, these data provide insight as to the magnitude of lead exposure via drinking water. In the Patterson study, which used a reporting limit of 0.010 mg/l, the national mean lead level in water was 0.029 mg/1. The midwest had the highest mean lead level (0.047 mg/l) and the south-central portion of the country had the lowest mean lead level (0.012 mg/l). The median value for the U.S. and for all of the regions of the country identified in the analysis was the reporting limit, 0.010 mg/l. An EPA analysis of the benefits of regulating lead in drinking water used these data to estimate that 42 million people in the U.S. may be exposed to lead levels in water of 0.020 mg/1 or greater (EPA, 1986a).

As discussed in Section III.B. below, the toxic effects of lead are correlated with blood lead levels rather than lead exposure levels or intake amounts. Therefore, it is important to understand the relationship between lead intake and blood lead levels. Many investigators have attempted to correlate blood lead levels with drinking water lead levels and estimate the contribution of water lead to blood lead levels. Several of these studies correlated morning first draw water lead levels with blood lead levels (U.K. Dept. of Environment, 1982; Thomas et al., 1979). Other studies correlate standing random daytime grab sample water lead levels with blood lead levels (Worth et al., 1981; Moore, 1977). While neither morning first draw nor standing random daytime grab data is a better predicator of blood lead level than the other, of the currently available data, both are better than fully flushed samples (EPA, 1986b). Duplicate diet studies by Ryu (1983) and Lacey et al. (1985) have correlated measured lead intake with blood lead levels, and can also be used to predict blood lead levels. EPA has used a correlation coefficient of 0.20 ug/dl per ug/1 derived from these last two studies to relate lead levels in drinking water to blood lead levels (EPA, 1988c).

c. *Non-Drinking Water Exposures to Lead.* There are several sources of lead exposure in addition to drinking water. Directly inhaled airborne lead and lead that settles out to dust and dirt from the air are important sources, especially for children who tend to play in the dirt and who often put their hands in their mouths. Other important sources of lead are air deposition on food crops, leaching to food from lead soldered cans, and in the case of exceptionally high exposures, lead paint.

Lead in air arises from industrial emissions and combustion of leaded gasoline in cars. EPA estimates that average urban air lead levels ranged between 0.2–0.4 ug/m^3 in 1986 (EPA, 1988d). Much higher levels are found in areas near stationary lead sources such as smelters and battery plants.

Ingestion of leaded paint chips and dust accounts for most of the reported cases of overt lead poisoning in children. Many local community health programs (especially in urban areas) screen the blood lead levels of children and identify high risk housing (i.e., those houses likely to have deteriorating lead paint) and assist with remediation of lead paint problems.

Food is also a source of lead exposure. Lead can contaminate food by uptake from soil, direct deposition on crops from the air, or use of lead solder to seal cans (especially with acidic foods such as tomatoes). The Food and Drug Administration has recommended the use of non-lead soldered cans for baby foods and encourages food processors to eliminate the use of lead-soldered cans for all foods. In the U.S., no baby foods are currently sold in lead-soldered cans and most domestic can manufacturers have voluntarily converted to lead-free cans for other foods as well. In addition, lead can contaminate food in the handling, transportation or preparation stages. Finally, food prepared with water, either in manufacturing or at home, can be contaminated by lead from the drinking water.

The Agency for Toxic Substances and Disease Registry (ATSDR) has compiled a report to Congress on lead hazards and exposures of children (ATSDR, 1988). The ATSDR report reviews the non-drinking water sources of lead exposure in greater detail than is presented here.

2. Exposure to Copper

Human exposure to copper results from a variety of sources, including drinking water. As described earlier, copper in drinking water occurs primarily as a result of the corrosion of copper plumbing pipes, although some copper occurs in raw water.

Patterson (EPA, 1981) measured copper levels in the 30-second flushed random daytime grab samples described above. In that survey, 3 percent of 772 samples exceeded 1 mg/l of copper and 19 percent exceeded 0.2 mg/l. The national average level of copper in water was 0.221 mg/l (median 0.04 mg/l), the south central U.S. had the lowest average levels (0.082, median, 0.02 mg/l), and the northeast had the highest average levels (0.526 mg/l; median, 0.06 mg/l).

Exposure to copper can also come through air and food. In a 1966 National Air Sampling Network survey, copper levels in the air were 0.01 and 0.26 $\mu g/m^3$ in rural and urban areas, respectively (U.S. Dept. of Health, Education, and Welfare, 1968). Airborne copper levels near copper smelters can range up to 2 $\mu g/m^3$, but even these high levels contribute only about 1 percent of normal daily intake. Copper is found in shellfish and organ meats, nuts, and dried legumes; dried vine and stone fruits and cocoa are especially rich in copper. Copper levels can range up to 400 $\mu g/g$ in these foods (50 FR 46967, Nov. 13, 1985).

B. Toxicity

1. Health Effects of Lead

As noted above, the health effects of lead are generally correlated with PbB levels. Lead exposure across a broad range of blood lead (PbB) levels is associated with a continuum of pathophysiological effects, including interference with heme synthesis necessary for formation of red blood cells, anemia, kidney damage, impaired reproductive function, interference with vitamin D metabolism, impaired cognitive performance (as measured by IQ tests, performance in school, and other means), delayed neurological and physical development, and elevations in blood pressure (EPA, 1986b).

At this time, it is difficult to identify clearly what PbB level is an appropriate criterion or "threshold" below which there are no or only minimal risks of adverse health effects. Although there is some uncertainty regarding the point at which subtle biochemical or other changes combine to cause a discernable adverse effect on organs or systems in the body, effects clearly become more pronounced and broaden to cause more severe disruptions of the normal functioning of many organ systems as PbB levels increase. The following

considerations are important in determining a target PbB of concern to be used in setting an MCLG.

PbB levels above 30 μg/dl in young children are associated with clearly deleterious effects in several organ systems (EPA, 1986b). These include reduced hemoglobin synthesis (at 40 μg/dl), frank anemia (at 70 μg/dl), peripheral neuropathies (at 60 μg/dl), encephalopathy (at 80–100 μg/dl), and in some cases, death.

At levels below 25–30 ug/dl, many different, less obvious effects indicate interference by lead with normal physiological processes. The onset of signs of detectable heme synthesis impairment in many different organ systems occurs at PbB levels starting around 10–15 μg/dl, along with indications of pyrimidine and vitamin D metabolism interference and signs of altered nervous system activity (EPA, 1986b).

Evidence also indicated that fetal exposure at PbB levels around 10–15 μg/dl is associated with delays in early mental and physical development (EPA, 1986b; Davis and Svendsgaard, 1987).

In adults, several studies have found a small but consistent relationship between blood lead levels and blood pressure, with some indications of a continuous relationship down to the lowest levels measured. The blood pressure increases may be associated with some increased risk for more serious cardiovascular disease events, especially if PbB levels are chronically elevated (EPA, 1986a).

Some of the important effects of low-level lead exposures are:

1. Inhibition of pyrimidine-5-nucleotidase (Py–5–N) and delta-aminolevulinic acid dehydrase (ALA–D) activity, which appears to begin at a PbB level of 10 μg/dl or below (Angle et al., 1982). Hernberg and Nikkanen (1970) found 50 percent inhibition of ALA–D activity at PbB levels above 16 μg/dl. Inhibition of erythrocyte ALA–D appears to occur at virtually all blood lead levels measured so far, with no evident threshold (EPA, 1986b). Inhibition of ALA–D activity is manifested in increased levels of aminolevulinic acid (ALA) in blood and soft tissue, which appear to occur at PbB levels of about 40 μg/dl (O'Flaherty et al., 1980) and may occur at levels as low as 18 μg/dl (Meredith et al., 1978). Several studies indicate that increases of ALA in the brain interfere with the gamma-aminobutyric acid (GABA) neurotransmitter system in various ways (EPA, 1986b).

2. Elevated levels of erythrocyte protoporphyrin (EP) in red blood cells occurs at PbB levels as low as 15 μg/dl. This probably indicates a general interference in heme synthesis throughout the body, including interference in the functioning of mitochondria (Piomelli et al., 1980). Changes in heme metabolism have been reported perinatally at blood lead levels of 8–10 μg/dl (Lauwerys et al., 1978). Some studies that accounted for iron status show that children with low iron stores are more sensitive to lead in terms of heme biosynthesis interference (e.g., Mahaffey and Annest, 1986).

3. Interference with vitamin D metabolism has been associated with lead exposure with no apparent threshold down to the lowest PbB level measured (12 ug/dl) in studies by Rosen et al. (1980) and Mahaffey et al. (1982).

4. Correlations between lead exposure and changes in electrophysiological functioning of the nervous system have also been reported. These include correlations with: Changes in slow-wave electroencephalogram (EEG) patterns, increased latencies in brainstem auditory evoked potentials (Otto et al., 1981, 1982, 1985), and slowed nerve conduction in the auditory pathway associated with PbB levels with no clearly discernable threshold apparent down to 6 ug/dl (Schwartz and Otto, 1987). Also, peripheral nerve conduction velocities have been shown to be slowed in children, with significant correlation at PbB levels above 20 ug/dl (Landrigan et al., 1976; Schwartz et al., 1988).

5. As stated in recent reviews (Davis and Svendsgaard, 1987; EPA, 1986b), evidence from longitudinal studies in several different communities consistently indicates that perinatal exposure to blood lead levels as low as 10–15 ug/dl, and possibly lower, is linked to delays in early cognitive and physical development. Four independent studies show an association between maternal or cord blood lead levels at birth and reduced performance on a standard index of infant mental development through two years of age (e.g., Bellinger et al., 1984, 1987; Dietrich et al., 1987; Baghurst et al., 1987; Wolf et al., 1985). In addition, birth weight and the length of gestation appear to be reduced in prenatally lead-exposed infants in some of these studies (e.g., Dietrich et al., 1987; Bornschein et al., 1988; McMichael et al., 1986). Analyses also suggest that growth and stature are reduced in older children with PbB levels ranging from 5 to 35 ug/dl (Schwartz et al., 1986), with supporting evidence from other studies of children at higher PbB levels (Lauwerys et al., 1986) and of experimental animals (Grant et al., 1980). Other aspects of physical development may also be disturbed by prenatal lead exposure (Davis and Svendsgaard, 1987; EPA, 1986b).

6. Recent studies of IQ effects in black children of uniformly low socioeconomic status (SES), so that SES was not a confounder, have shown a highly significant association between IQ and blood lead across a range of 6 to 47 ug/dl (Schroeder et al., 1985; Schroeder and Hawk, 1987). Other recent cross sectional studies also provide consistent evidence of IQ deficits in children at PbB levels below 25 ug/dl (Fulton et al., 1987; Hatzakis et al., 1987).

Finally, based on the weight of evidence, EPA has classified lead as a probable human carcinogen (Group B2), because some lead compounds cause real tumors in experimental animals (EPA, 1988e). EPA (1986b) noted that lead may act as a promoter or initiator of carcinogenesis and that *in vitro* studies support the genotoxic and carcinogenic role of lead. However, EPA recommends that quantitative estimates of the carcinogenic potency of lead not be used for the purpose of risk assessment, because of the considerable uncertainty in the estimates. As EPA has stated previously, "lead has been observed to increase tumorigenesis rates in animals only at relatively high concentrations, and therefore it does not appear to be a potent carcinogen." (EPA, 1986b). At low levels, the non-cancer effects of lead are of greatest concern for regulatory purposes.

In reviewing the information presented in the Agency's 1986 Air Quality Criteria Document, EPA's Clean Air Science Advisory Committee concluded that the various effects starting at PbB levels around 10–15 ug/dl or even lower in young children "may be argued as becoming biomedically adverse" (EPA, 1986c).

Although no threshold is apparent for various measures of lead toxicity, some distinction can be made between PbB levels where risks of effects appear more likely (10–15 ug/dl and higher) and levels where risks are less certain (below 10–15 ug/dl). Therefore, 10–15 ug/dl constitutes an appropriate range of concern for health effects that warrant avoidance.

2. Health Effects of Copper

The health effects of copper were discussed in detail in EPA's 1985 MCLG proposal (50 FR 46967, November 13, 1985). No new relevant information on the health effects of copper that alters the conclusions reached in that notice has become available. The information presented in the November 1985 notice is summarized here.

Copper is toxic to humans at high levels and is nutritionally essential at lower doses. Acute exposure to high copper levels in test animals and humans can cause gastrointestinal distrubances, liver damage, renal damage, hemolytic anemia, and glucose-6-phosphate dehydrogenase (G6PD) inhibition. Chronic toxicity data are limited.

Two groups are at increased risk from copper exposure. Individuals with Wilson's disease, an inborn error in copper metabolism, are at higher risk than the general public. The metabolic error in Wilson's disease allows copper to accumulate in the liver, brain, kidney, and cornea, causing hemolytic anemia, neurological abnormalities, and corneal opacity. In addition, individuals with existing G6PD deficiencies may also be at greater risk of experiencing toxic effects from copper exposure.

On the other hand, copper is regarded as nutritionally essential because it is required in many enzymatic reactions in mammals. Copper deficiency can result in decreased iron absorption and iron deficiency, and may also lead to reproductive abnormalities. The National Academy of Sciences has recommended 2-3 mg/day copper as a safe and adequate intake (NAS, 1980).

Copper is classified in EPA's Group D (insufficient data) for carcinogenic potential. Copper is generally negative in mutagenicity bioassays and copper produced equivocal results in carcinogenicity bioassays. Bioassays using oral copper were negative; subcutaneous injection of copper compounds has been reported to induce tumor formation in one sex and strain of mice.

C. Development of the MCLGs

1. MCLG for Lead

EPA is proposing to set the MCLG for lead at zero, based on subtle effects at low blood lead levels, the overall Agency goal of reducing total lead exposures, and probable carcinogenicity at very high doses. Specifically, the basis for proposing the MCLG at zero is:

1. The occurrence of a variety of low level effects for which it is currently difficult to identify clear threshold PbB levels below which there are no risks of adverse health effects;

2. The Agency policy goal that drinking water should contribute minimal lead to total lead exposures because a substantial portion of the sensitive population already exceeds acceptable blood lead levels; and

3. The classification of lead as a Group B2 (probable human) carcinogen.

As discussed above, effects of concern have been associated with blood lead levels beginning at 10-15 ug/d1 in adults, children, and fetuses. Below 10 ug/dl, biochemical and other cellular level effects of questionable health significance have been reported. Therefore, for purposes of this regulation, EPA considers 10-15 ug/dl to be an appropriate range of concern for health effects that warrant avoidance.

Lead affects a wide range of organ systems; it can adversely affect the blood, the nervous system, normal growth and development, the kidneys, the reproductive system, and the cardiovascular system. An MCLG of zero is appropriate because there are no clearly discernable thresholds for some of these effects.

Another reason for setting the MCLG at zero is the fact that a portion of the population most sensitive to lead effects already has blood lead levels above the levels that pose a risk of causing some adverse effects. Although average blood lead levels are expected to be near 4-6 ug/dl in children in 1990 when this rule would take effect (EPA, 1988f), many individual children would still have PbB levels above 10 ug/dl (excluding children with lead paint/pica exposures, whose exposure from those sources overwhelms exposure from other sources), the lower bound of the range of concern. Because many children now have blood lead levels above the level of concern, EPA's policy goal is that drinking water contribute minimal additional lead to existing body burdens of lead.

Finally, EPA reviewed data on lead's potential carcinogenicity in determining the appropriate MCLG. Although difficulties in evaluating the dose-response data for lead prevent estimation of its carcinogenic potency, the data nonetheless clearly indicate that lead is carcinogenic in test animals. As explained by EPA in adopting MCLGs for other carcinogenic contaminants, the Agency does not believe that a threshold exists for carcinogenic effects (50 FR 46894, November 13, 1985). EPA therefore believes that, for carcinogens, zero is the level at which no known or anticipated effects occur with an adequate margin of safety, and EPA has established a policy of setting MCLGs at zero for compounds classified as Group A or B carcinogens. Setting the MCLG for lead at zero is consistent with that policy.

EPA has received a request from Multinational Business Services, Inc. ("MBS") to reconsider the Agency's policy of establishing MCLGs of zero for carcinogens and instead establish MCLGs for carcinogenic contaminants at calculated negligible risk levels. EPA considered adopting finite, risk-based MCLGs when it promulgated MCLGs for five carcinogenic volatile organic chemicals in (VOCs) 1985. EPA decided that, given the nonthreshold nature of carcinogenic effects, the zero MCLG option best fulfilled the mandate of the SDWA to establish MCLGs "at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." See 49 FR 24347-24348 (June 12, 1984) and 50 FR 46895-46896 (November 13, 1985). The Agency's decision to set MCLGs of zero for these five contaminants was upheld in *Natural Resources Defense Council* v. *Thomas*, 824 F.2d 1211 (D.C. Cir., 1987).

In its request, MBS contends that the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Council* v. *EPA*, 824 F.2d 1146 (1987) ("*Vinyl Chloride*"), which construed the Agency's duties under section 112 of the Clean Air Act, applies to the establishment of MCLGs under the SDWA.

The Agency does not believe that the court's analysis in *Vinyl Chloride* must be applied to the setting of MCLGs. That decision construed the specific language of section 112 of the Clean Air Act and the legislative history of that provision. Section 1412 of the SDWA differs from section 112 of the Clean Air Act both in terms of its language and legislative history. Furthermore, the role of the MCLG as a non-enforceable health goal, the first step in the process of determining the enforceable MCL or treatment technique, is unique to the SDWA. In light of the distinctions between section 112 of the Clean Air Act and section 1412 of the SDWA, the Agency does not believe that following the *Vinyl Chloride* analysis in setting MCLGs is either necessary or appropriate. For these reasons, and the reasons described in the VOC rulemaking, EPA believes at this time that it is appropriate to set MCLGs for nonthreshold contaminants at zero. Nonetheless, the Agency has included the request submitted by Multinational Business Services in the record for this rulemaking, and the Agency intends to fully address that submission and any related comments when the Agency publishes the final MCLG for lead.

Public Comments: In 1985, a total of eight individuals and organizations commented on the proposed MCLG of 0.02 mg/l for lead. The public comments and EPA's responses are summarized below:

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Comment Summary: Some commenters stated that the proposed MCLG of 0.02 mg/l for lead was appropriate. There was some disagreement among the commenters on whether an uncertainty factor of 5 or 10 (which would yield an MCLG of 0.01 mg/l) should be used.

EPA Response: For the reasons outlined above, EPA is now proposing an MCLG of zero for lead and so a discussion of what the safety factor would be is much less relevant than when a non-zero MCLG was proposed. The National Academy of Sciences and others suggest that a safety factor of 10 should be used when extrapolating from data obtained in human epidemiology studies to the general population. This was meant to address well-defined, known toxic endpoints. The endpoints in the case of lead exposure are extremely subtle enzymic and physiologic occurrences, and are not comparable to the traditional toxic endpoints. There is considerably less uncertainty about health effects from lead than from any other chemical. Excellent human data are available. Therefore, there is less need to apply the usual uncertainty factors in this case and a lower uncertainty factor is appropriate.

Comment Summary: Some commenters disagreed with the MCLG of 0.02 mg/l proposed for lead. One maintained that it has not been proven that low level lead exposure has adverse health effects and, therefore, the present level of 0.05 mg/l is fully protective and should not be decreased. Another commenter stated that since the primary sources of lead exposure are air and dust, available funds should be spent on reducing exposure from sources such as leaded gasoline and lead-based paint rather than drinking water, and cited a study by Morse et al. (1979) in support of the contention that drinking water lead does not increase blood lead levels.

EPA Response: EPA disagrees that low level lead exposure does not pose a health risk. The literature reviewed by this commenter is cursory and very selective, and only literature supportive of the commenter's perspective was included in the comment. EPA has reviewed and evaluated all relevant literature. In the November 1985 proposal, the Agency cited the Ryu et al. (1983) study as being the appropriate study to determine the effects of low level lead exposure on blood levels in infants, the most vulnerable subpopulation. In addition, EPA has reviewed further studies, discussed above, which also support the conclusion that there are adverse health risks at low level exposure levels.

EPA agrees that lead exposure from air, dust, and paint are important. These exposures are being addressed by other agencies such as the Department of Housing and Urban Development, and within EPA by other offices such as the Office of Air and Radiation (OAR). The study by Morse, et al. (1979) concluded that increased concentrations (over source water levels) of lead in soft, acidic drinking water are transported by distribution pipes. While the authors concluded that they could determine no level of drinking water lead that would increase blood lead levels, the data base was too small to produce statistically valid results. In addition, the average blood lead level in both the control group and the case group of children six years old and younger both exceeded 15 ug/dl. The blood lead levels of the one- and two-year-olds was >20 μg/dl. When blood lead levels are high, the relationship between blood lead and water lead appears to be relatively obscured by the higher body burden, in both the study and the control groups.

2. MCLG for Copper

EPA proposed an MCLG of 1.3 mg/l for copper in the November 1985 notice. As noted above, no new data that change the conclusions presented in that notice have become available since its publication. EPA is, therefore, reproposing an MCLG of 1.3 mg/l for copper.

The proposed MCLG of 1.3 mg/l for adults and children was based on a Lowest Observed Adverse Effect Level (LOAEL) of 5.3 mg/day from human clinical case studies in which 5.3 mg was the lowest acute oral dose at which gastrointestinal effects were seen (Chuttani et al., 1965). An uncertainty factor of two was applied, and daily consumption of 2 liters of water per day by an adult was assumed. Ten-day and longer exposure values were not derived because the data were inadequate.

Public Comments: Fourteen individuals and organizations commented on the MCLG proposed for copper in 1985. Several commenters agreed that it was reasonable to use short-term toxicity data as the basis for the proposed MCLG of 1.3 mg/l.

Several commenters thought that an MCLG for copper was unnecessary and that it would be more appropriate to issue a health advisory for the contaminant. The reasons included: (1) Inadequate adverse health effects data, (2) limited occurrence of copper in drinking water, and (3) the fact that copper is present in drinking water due to corrosion of copper pipes; thus, treatment at the water supply plant would not solve the problem of elevated copper concentrations.

EPA Response: EPA does not agree that there are inadequate health effects data for regulating copper. The data indicate that copper is a health risk at levels above 1.3 mg/l in water (although it is beneficial at lower levels); acute exposure to copper has resulted in gastrointestinal effects, such as nausea and diarrhea, as discussed in the 1985 proposal and above. EPA agrees that copper is not commonly found above the proposed MCLG, but high levels of copper have occasionally been detected in drinking water supplies across the country, and high levels of copper can leach from pipes in areas with corrosive water. Thus, EPA believes an MCLG and NPDWR are justified to protect against adverse health effects. In addition, Congress listed copper as one of 83 drinking water contaminants mandated for regulation in the 1986 amendments to the SDWA. Since EPA did not substitute another contaminant in place of copper (as authorized by section 1412(b)(2) of the SDWA), it remains on the list of 83 contaminants for which EPA must promulgate an MCLG and NPDWR.

IV. National Primary Drinking Water Regulations for Lead and Copper

A. Occurrence

1. Occurrence of Lead and Copper in Source Water and Distributed Water

a. *Lead.* There are several national surveys of lead occurrence in water leaving the treatment plant and entering the distribution system (distributed water). Well water drawn for drinking water generally has very low lead concentrations. In a national drinking water survey of nearly 1000 randomly chosen groundwater supplies completed in 1987 (the National Inorganics and Radionuclides Survey or NIRS), about 5 percent of the drinking water samples collected from fully flushed taps exceeded 0.005 mg/l of lead (EPA, 1988g). However, recent samples taken to determine the effect of the measurement point on estimates of lead in distributed water indicate that lead as a by-product of corrosion may enter fully flushed tap samples and be attributed erroneously to source water. Therefore, EPA resampled the supplies in NIRS that showed positive results for lead. EPA found very few samples above 0.005 mg/l of lead when the sampling point was moved to the entry point to the distribution system. Based on these new data, EPA estimates that approximately 90[illegible] groundwater

suppliers (or 1 percent of the community and non-transient, non-community water systems) may have water leaving the treatment plant that has greater than 0.005 mg/l lead (EPA 1988a).

A significant portion of the total lead present in surface waters exists as part of the suspended solids. This portion comes from natural soil lead augmented by atmospheric deposition and discharges by industrial and municipal discharges to surface water. The level of lead in water drawn from rivers and streams is slightly lower than the concentration found in groundwater. Eighty-six percent of the raw surface water samples analyzed by Fishman and Hems (1976) contained less than 0.010 mg/l of lead and less than 1 percent contained over 0.050 mg/l. However, the concentration of lead in distributed water from these sources may be much lower due to removal by treatment, e.g., sedimentation, prior to distribution.

The National Organic Monitoring Survey (NOMS, 1976) also provided data on the quality of fully flushed water from surface water supplies. The level of lead in the samples in this survey ranged from 1–10 μg/l.

Based on this information, EPA estimates that about 99 percent of the 219 million people in the United States using public water supplies (both surface and groundwater sources) are exposed to distributed water levels between 0 and 0.005 mg/l, and that about 2 million people are served by distributed water with levels of lead greater than 0.005 mg/l.

b. *Copper.* Copper levels above the proposed MCLG are rarely found in raw drinking water supplies or in distributed water. In the NIRS study (EPA, 1988g), which surveyed 983 randomly selected groundwater supplies, 85 percent of all fully flushed tap samples had copper levels below 0.06 mg/l; and 98 percent of such samples had copper levels below 0.46 mg/l. Less than 1 percent of the samples had copper levels above 1.0 mg/l. The maximum value found was 2.37 mg/l. In the 1969 Community Water Supply Survey (CWSS), samples were taken from 678 groundwater supplies, 109 surface water supplies, and 182 supplies of unknown or mixed origin (a total of 969 systems). For the groundwater supplies, the maximum copper level found was 0.47 mg/l and the mean of the positive measurements (i.e., those exceeding the detection limit of 0.1 μg/l) was 0.075 mg/l. For the surface water supplies, the maximum copper value found was 0.304 mg/l, and the mean of the positive measurements was 0.066 mg/l. EPA estimates that only 66 water suppliers would need to install treatment to lower copper levels to the MCLG (EPA, 1988a).

2. Occurrence of Lead and Copper as By-Products of Corrosion

a. *Lead.* Even when water leaving the water treatment plant is relatively lead-free, pipes, solder, and fixtures containing lead are corroded by water resulting in contamination of the water. Lead present in plumbing materials can be mobilized, resulting in significantly higher levels at the user's tap than in the water leaving the treatment plant. Three factors are particularly important in determining the degree of corrosion. First, the combination of copper pipes with solder containing lead found in most households can result in elevated lead levels due to galvanic corrosion. Galvanic corrosion is especially important in the case of newly-installed solder, which is particularly reactive. Therefore, people living in housing with lead-soldered plumbing less than five years old are at risk of having high levels of lead in drinking water. Second, the corrosivity of the water towards lead is a major factor influencing the occurrence of lead as a corrosion by-product. Third, regardless of age, water that has been in contact with lead pipe or solder for a period of time will contain higher lead levels than flushed water from the same pipe.

While the critical factors affecting lead levels in drinking water are well recognized, there are not sufficient quantitative data available to determine the national distribution of lead levels in drinking water at the tap in much detail. EPA has some morning first draw data, but these data were not collected in a systematic fashion and are therefore not nationally representative of lead levels at the tap. For example, of the 40 individual cities which collected and provided data to EPA, some targeted new housing or other high risk taps while others took random samples. In addition, certain geographic areas are severely under-represented. These data portray lead levels in cities with several water types, including both waters considered very corrosive towards lead and those considered to be relatively noncorrosive. Thus, these data are most useful for assessing the lead levels likely to occur under specific water quality conditions and with different plumbing materials. These systems have frequently measured levels of lead in morning first draw samples as high as 1–2 mg/l. A detailed presentation and analysis of these data appears in the Treatment and Occurrence Support Document (EPA, 1988h).

As described earlier, in the Patterson (1981) study, random daytime grab samples flushed for 30 seconds were collected and analyzed for lead. Flushing for 30 seconds will tend to result in samples with lower lead levels compared with levels that might be found in morning first draw samples and random daytime grab samples, because of the lower average standing time, tend to be lower also. The Patterson data are useful because of the large number of samples taken (782 samples), and because the geographic distribution of the samples was representative of the country (58 cities in 47 States were sampled). The percentage of samples collected from each State generally reflects the State population, except for California, which was slightly under-represented, and Illinois, which was somewhat over-represented. In the study, 60 percent of all samples were less than or equal to 0.010 mg/l, 84 percent were less than 0.020 mg/l, 97 percent were less than 0.050 mg/l, and 3 percent werer greater than or equal to 0.050 mg/l. (Information on lead levels below 0.010 mg/l are not available from this study, as the reported analytic detection limit was 0.010 mg/l.)

Because lead in tap water occurs primarily as a by-product of corrosion, the extent of moderately or highly corrosive water can give an indication of the potential extent of lead in tap water. The extent of corrosive water in the U.S. has been evaluated in several studies. The U.S. Geological Survey (USGS) (Durfor and Becker, 1964, as reported by EPA, 1986a) found that 17 States had very soft (corrosive) water (less than 60 mg/l as $CaCO_3$). The first National Health and Nutrition Examination Survey (NHANES I) was conducted by the National Center of Health Statistics (Greathouse and Osborne, 1980, as reported by EPA, 1986a). It showed similar results: about one-third of the country had very soft water (under 60 mg/l as $CaCO_3$). The American Water Works Association (AWWA) has estimated that about 66 percent of public water systems deliver water with pH<8 and/or carbonate alkalinity <30 mg/l (EPA, 1988a). Also, data reported by public water supplies to the States pursuant to 40 CFR § 141.42(d) indicate that as many as 80 percent of public water systems may deliver moderately or highly corrosive water, as indicated by pH <8 and/or alkalinity <30 mg/l (EPA, 1988i).

As explained above, lead levels in tap water can be particularly high when lead solder is less than five years old, due to galvanic action between lead solder and copper pipes (Oliphant, 1982 and 1983). A recent study by EPA (1986a) estimated the extent of housing

likely to contain lead solder particularly susceptible to galvanic corrosion by estimating the number of new houses in the U.S. Based on the number of new housing starts in 1983 and 1984, EPA estimated in 1986 that there were about 3.5 million new housing units less than 2 years old. About 8.1 million people were estimated to live in new homes served by public water supplies. Using the same method, the Agency now estimates that about 4.3 million homes are three to five years old and they house about 11 million poeple served by public water supplies.

b. *Copper.* Patterson (EPA, 1981) also measured copper levels in the 30-second partially flushed samples taken at random times during the day. In that study, 3 percent of the samples had copper levels exceeding 1 mg/l and 19 percent exceeded 0.2 mg/l. The national average was 0.221 mg/l (median=0.04 mg/l). The south central U.S. had the lowest average levels (average=0.82; median=0.02 mg/l), and the northeast had the highest average levels (average=0.526 mg/l; median=0.06 mg/l).

B. Regulatory Approach

In developing a regulatory approach for controlling lead and copper in drinking water, EPA was confronted with several problems. As described in the previous section, lead and copper differ in a very basic way from other drinking water contaminants because they generally do not occur in significant amounts in source water; rather, they generally enter the water in the distribution system from the corrosive action of the water in contact with plumbing materials containing lead and copper. Thus, the traditional regulatory approach, which is based on removing drinking water contaminants at the treatment plant prior to distribution, will have little or no effect on lead and copper levels at the consumer's tap (except for systems with lead and/or copper in their source water). Second, much of the lead- and copper-bearing plumbing material is privately owned (i.e., inside of buildings) and outside the public water system's control, which, in turn, restricts the regulatory options available, since national primary drinking water regulations only apply to public water systems.

Third, the occurrence of lead and copper contamination emanating from corrosion of plumbing systems within individual residences and other buildings introduces a wide source of potential variability among lead and copper levels that will be present in water samples taken at the tap. This problem makes it difficult for EPA to set uniform numbers, i.e., MCLs, for these contaminants that can be met at taps throughout a public water system.

Today's notice proposes a two-part approach to address the two sources of lead and copper in drinking water (corrosion of plumbing in the distribution system and source water contamination): A treatment technique requiring corrosion control to reduce leaching of lead and copper and public education to reduce exposure, and MCLs applicable to water entering the distribution system. This section explains EPA's rationale for this approach.

1. Treatment Technique Considerations

As explained earlier, the Safe Drinking Water Act, as amended in 1986, requires EPA to promulgate NPDWRs for 83 contaminants including lead and copper. Section 1412(b)(1). The Act does not distinguish between the two very different ways in which contaminants can enter drinking water: As by-products of corrosion versus occurrence in source water. The Act states that an NPDWR must contain an MCL or a treatment technique, and that EPA is authorized to promulgate a treatment technique in lieu of an MCL if it finds that it is not "economically or technologically feasible to ascertain the level of the contaminant." Sections 1401(1)(C) and 1412(b)(7)(A).

In developing the proposed regulation, EPA considered whether it was feasible to adequately monitor drinking water for the parameters of concern. Although it is feasible to measure accurately the amount of lead in a given water sample down to the practical quantitation limit (PQL), 0.005 mg/l (as described below), and copper down to the MCLG, these measurements alone bear little relation to the major issue of concern—the rate and extent of corrosion of lead and copper from plumbing materials.

As explained earlier, there can be considerable variability in lead and copper levels at the tap; even under constant water conditions (e.g., pH, alkalinity, temperature, and other parameters), there will be variability depending on the age and configuration of the building's plumbing. In addition, because water suppliers begin with different source waters, after corrosion control treatment to achieve particular levels of specified water quality parameters (e.g., pH = 8) lead and copper levels can still vary (assuming there is at least some of each of these metals in the plumbing system).

Generally, application of an effective treatment technology to remove contaminants will result in predictable contaminant levels in the finished water. Thus, measuring these levels will indicate whether treatment was effectively applied. For instance, application of reverse osmosis treatment to influent water with lead and copper levels in a specified range will reliably reduce the amount of lead and copper to certain levels; thus, measuring the effluent lead and copper levels will indicate whether the treatment was effective. In contrast, a single measurement of the lead or copper level at an individual tap is not a meaningful measure of the efficacy of any corrosion control treatment that is being applied because lead and copper levels at the tap can vary for reasons other than treatment effectivness. Since the resulting lead and copper levels will vary from system to system (and even from tap to tap within a system) after corrosion control treatment is applied, it is technologically infeasible to ascertain whether the lead or copper level at a tap at a single point in time represents effective application of the best available treatment technology, assuming BAT is optimal corrosion control treatment. The only way to tell whether a given system has optimized corrosion control treatment is to determine which specific water conditions, such as pH level, result in the lowest lead or copper levels for that system.

In conclusion, because of the variability of the occurrence of lead and copper within and among water systems, the Agency is unable to select a single level of lead or copper in drinking water that indicates whether a system has implemented optimal corrosion control treatment. Unfortunately, there is no known reliable index or measure of water corrosivity towards lead and copper plumbing materials either. Therefore, EPA is proposing treatment technique requirements to control lead and copper as corrosion by-products.

2. Problems with Setting an MCL at the Tap

EPA considered whether it could set MCLs at the tap for lead and copper that were based on optimal corrosion control treatment, as well as removal of lead and copper from source water at the treatment plant. Under section 1412(b)(4) of the Act, the MCL must be set as close to the MCLG as feasible. "Feasible" means "feasible with the use of the best technology, treatment techniques and other means which the administrator finds * * * are available (taking cost into consideration)" (BAT). Section 1412(b)(5). Thus, in setting MCLs for lead and copper based on optimal

corrosion control treatment, EPA would have to determine what levels of these contaminants are "feasible" to achieve using this technology. In considering what levels are feasible to achieve, EPA must consider the range of conditions a public water system faces. Some customers may have plumbing containing only small amounts of lead and copper (so leaching is less likely), while others may have plumbing that contains large amounts of lead, possibly as new lead solder (so leaching is more likely).

In determining what is feasible, EPA also must consider the extent of the public water system's responsibility under the Safe Drinking Water Act for contaminant levels at the tap, especially for contaminants entering the water from the distribution system after any treatment, i.e., corrosion by-products. Under section 1411, NPDWRs apply to "public water systems." Section 1401(4) defines "public water system" as:

> A system for the provision to the public of piped water for human consumption * * *. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system * * * and (B) any collection or pretreatment storage facilities not under such control * * *.

It is important to note that this definition clearly distinguishes between facilities under the system's control and facilities that are not. Furthermore, the term "public water system" specifically includes "distribution facilities under control of the operator of such system"; yet "distribution facilities" are not listed among the facilities *not* under the system's control that are nonetheless included in the definition of public water system. Thus, it appears that while Congress included distribution systems within the public water system's control, it deliberately excluded distribution facilities not under the system's control, e.g., customers' plumbing, from the definition of "public water system." EPA believes this provision precludes the Agency from promulgating an NPDWR that holds a public water system liable for conditions in the parts of the distribution system that are outside its control. This is a reasonable interpretation since the public water system does not generally have control over these facilities and thus should not be held responsible for them.

Because the public water system is not responsible for distribution facilities outside its control, the question arises as to what MCLs based on corrosion control are feasible for lead and copper given that the standard must take into account the range of conditions occurring in these facilities, i.e., in customers' plumbing. In other words, in setting MCLs for lead and copper based on optimal corrosion control treatment (and any necessary technology to remove lead and/or copper in the source water), EPA would have to select levels that are feasible for large public water systems to meet, regardless of the type and age of the plumbing in its customers' homes; any more stringent MCL would hold the system liable for a violation caused by distribution facilities outside its control, which would be inconsistent with the Act's definition of public water system.

In reviewing the data available, it appears that any MCL for lead at the tap that would be feasible, i.e., achievable by systems that have installed the best available technology (assuming BAT consists of some technology that removes any lead in the source water and optimal corrosion control treatment), regardless of the condition of its customers' plumbing, would be relatively high, perhaps a maximum of 0.030–0.040 mg/l in single samples of morning first draw water, or an average of 0.015–0.020 mg/l in morning first draw samples. EPA believes these levels represent unnecessarily high exposures for large segments of the population.

It has been suggested that, rather than selecting an MCL that systems could meet regardless of homeowner plumbing, EPA should set a more stringent MCL and make variances available for systems that cannot meet it because of homeowner plumbing. Under section 1415 of the Act, variances are available to systems which cannot meet an MCL "because of characteristics of the raw water sources which are reasonably available to the systems." EPA believes Congress intended that variances should be available when levels of the regulated contaminant were so high in the source water that BAT could not remove sufficient quantities to meet the MCL, or when some other characteristic of the source water prevented the best available technology from achieving the MCL. In the case of corrosion by-products such as lead and copper, any exceedence of an MCL at the tap after application of BAT (assuming it consists of technology to remove these contaminants in the source water and installation of optimal corrosion control treatment) would not be the result of extraordinary levels of the contaminant in the source water. Rather, the exceedence would be due to the addition of lead and/or copper from leaching of materials in the distribution system including plumbing in individual houses. This rules out the first basis for the variance, i.e., levels too high for effective removal by BAT. Arguably, however, a system could get a variance on the second basis, i.e., because the nature of its raw water source is such that, even after installation of BAT (assuming BAT consists of a technology to remove any lead and/or copper in the source water and optimal corrosion control treatment), the system could not meet the MCL. At least three problems arise with this approach, however.

The first problem is that variances are temporary in nature; section 1415 assumes eventual compliance with the standard when a variance is granted. This section specifically requires that every variance be accompanied by a schedule for coming into compliance; this schedule must require compliance "as expeditiously as practicable." However, it is likely that, in cases where the MCL violation is a result of corrosion of private plumbing, there will not be sufficient measures that a public water system can take unilaterally to achieve compliance. Thus, no reasonable compliance plan (much less a schedule for implementing it) could be devised. The second problem is that many, if not all, systems would require variances because at least a few, if not many, buildings served by them are likely to have lead and/or copper plumbing that are not under the water supplier's control. The Agency does not believe it makes sense to promulgate an MCL that many systems not only cannot meet now, but also could not meet at some future time. Furthermore, the Act requires that an MCL must be feasible. In determining what is feasible, the legislative history of both the Safe Drinking Water Act of 1974 and the 1986 amendments indicates that EPA is to consider whether the technology is reasonably affordable by regional and large metropolitan public water systems (see H.R. Rep. No. 93–1185, p. 18 (1974) and statement of Senator Durenberger, 132, *Cong. Rec.* S6287 (daily ed., May 12, 1986)). Large systems are not less likely than smaller systems to serve homes with lead and/or copper plumbing; in fact, they are probably more likely to serve at least some such homes since they serve so many customers. EPA believes that an MCL that most large systems (as well as many small systems) cannot meet when they install BAT is not feasible under the Act. The third problem is that a system qualifies for a variance under section 1415 only if operation under the variance will not result in an unreasonable risk to health. Assuming there is some lead level(s) and some copper level(s) which represent an unreasonable risk to health, then any system exceeding these

levels would not qualify for a variance. Thus, the systems that "need" the variance the most (i.e., those least capable of meeting the MCL because they are the furthest from compliance) would not qualify for it.

Despite these considerations, some interested parties nonetheless have indicated that they believe MCLs at the tap are appropriate for regulating lead and copper. EPA solicits comments on the details of such a regulation, including suggestions on overcoming the difficulties associated with an MCL approach that are described above. Specifically, commenters should specify the appropriate MCL and the basis for selecting this value, what monitoring requirements should apply (e.g., whether the NPDWR should allow systems to avoid monitoring at residences with high lead and/or copper content in their household plumbing), and whether systems that have installed BAT and still cannot meet the MCL because of private plumbing should be considered permanently out of compliance (and thus subject indefinitely to public notification requirements and citizen suit enforcement actions to compel compliance).

3. MCLs Applicable to Water Entering the Distribution System

While EPA recognizes that most of the lead and copper found in drinking water from the tap is added by plumbing after the water leaves the treatment plant, as described above, in an estimated one percent of the systems, lead and/or copper may occur at high levels in the source water. Therefore, EPA evaluted the feasibility of establishing MCLs for lead and copper in distributed water, i.e., MCLs that would apply, and for which compliance could be monitored as the water enters the distribution system, after any treatment. Such MCLs would not be subject to the problems associated with establishing MCLs to control contributions of lead and copper due to corrosion and monitoring for compliance with such MCLs. These MCLs would reduce total lead and copper levels by removing these contaminants when they occur in source water.

4. Summary of Proposed Regulatory Approach

In conclusion, most of the lead and copper found in drinking water at the tap is added by plumbing after the water leaves the treatment plant. In a few systems, lead and/or copper may occur at high levels in the source water. Therefore, the most important step a public water system can take to control lead and copper levels at the tap is to install optimal corrosion control treatment. However, it is technically infeasible to set MCLs at the tap for these contaminants because no single lead or copper measurement, or any other water parameter, indicates whether treatment was effectively applied, i.e., corrosion control treatment has been optimized. Consequently, in this rule, EPA is proposing an NPDWR consisting of a treatment technique requirement that would require optimal corrosion control treatment. In addition, this MPDWR would require public education when lead levels exceed certain values even after optimal corrosion control treatment.

In addition, the Agency is proposing MCLs for lead and copper that would apply to water leaving the drinking water treatment plant (if the water is treated) and entering the distribution system. By limiting lead and copper in distributed water, this proposal would result in contaminant levels closer to the MCLGs than would be possible with the treatment technique rule alone. Together, these three NPDWRs (one for lead and copper as corrosion by-products, one for lead in source water, and one for copper in source water) would address the contamination of drinking water by lead and copper.

Today's proposal would fulfill the goal of the SDWA by requiring an important reduction in the levels of lead and copper present in consumers' water. EPA believes the resulting lead and copper levels would be as close to the MCLG as is feasible. In addition, EPA believes that these proposed NPDWRs (establishing "no-action levels" of an average lead level of 0.010 mg/l lead, 1.3 mg/l or less copper in 95 percent or more samples, and pH >8 in 95 percent or more samples to trigger treatment, and a no-action level of an average of 0.010 mg/l lead and 0.020 mg/l or less lead in 95 percent or more samples to trigger public education) would be protective of public health. The Agency expects that implementation of this proposal would result in large reductions in the number of people who experience blood lead levels above the range of concern of 10–15 ug/dl, and above 25 ug/dl, the level above which CDC recommends medical intervention. Section X.A of this notice presents estimates of the benefits associated with the proposal.

C. Treatment for Lead and Copper in Source Water

EPA evaluated technologies for treatment of lead and copper in source water to determine which are BAT. Table 1 summarizes the technologies identified by EPA for the removal of these drinking water contaminants. Table 2 lists the removal efficiencies that are attainable through the use of the identified technologies. Examination of these technologies indicates that they are capable of reducing contaminant levels from the maximum levels of occurrence in source water to the proposed MCLG for copper and down to 0.005 mg/l for lead. Table 3 shows the removal efficiencies that would be required of treatment technologies to reduce the maximum expected influent concentrations down to 1.3 mg/l for copper and 0.005 mg/l for lead (listed as "MCL-Effluent Concentration" in the table. The influent concentrations assumed correspond to maximum observed occurrence levels in drinking water sources.

TABLE 1.—CANDIDATE BEST AVAILABLE TECHNOLOGIES (BATS) FOR THE REMOVAL OF LEAD AND COPPER FROM DRINKING WATER SUPPLIES

Contaminant	Technologies			
	Coagulation/ Filtration	Ion exchange	Lime softening	Reverse osmosis
Lead	X	X	X	X
Copper	X	X	X	X

TABLE 2.—REMOVAL EFFICIENCIES OF CANDIDATE BATs[1,2]

[in percent]

Contaminant	Technologies (percent removal)			
	Coagulation/ Filtration	Ion exchange	Lime softening	Reverse osmosis
Lead	80–99	up to 95	97–99	90–99
Copper	60–95	up to 95	90–96	90–99

[1] *Source:* "Technologies and Costs for the Removal of lead from Potable Water Supplies." Office of Drinking Water, October 23, 1984. Revised Final Draft.
[2] *Source:* "Technologies and Costs for the Removal of Copper from Potable Water Supplies." Office of Drinking Water, June 15, 1985. First Draft.

TABLE 3.—REMOVAL EFFICIENCIES NECESSARY TO ACHIEVE SPECIFIED EFFLUENT CONCENTRATIONS

Contaminant	Occurrence-influent concentration	MCL—effluent concentration	Percent removal required to achieve Proposed MCL
Lead	0.100 mg/l	0.005 mg/l	95
Copper	10 mg/l	1.3 mg/l	87

The costs for the removal of these contaminants, assuming the same influent and effluent levels cited in Table 3, using various technologies, are summarized in Tables 4, 5, 6, and 7. The general assumptions used to develop the treatment costs include: Late 1986 chemical costs, capital costs amortized over 20 years at a 10 percent interest rate, late 1986 engineering fees, contractor overhead and profit, and late 1986 power and fuel costs and labor rates.

TABLE 4.—SAMPLE ESTIMATED COSTS OF REMOVAL OF CONTAMINANTS FROM SOURCE WATER BY VARIOUS TECHNOLOGIES INCLUDING WASTE DISPOSAL COST [1]

[cents/1,000 gallons, 1986 dollars]

Contaminant/technology	Population served				
	25–100	500–1000	1001–3300	3301–10,000	>1,000,000
Lead					
Ion exchange	270	100	74	69	32
Reverse osmosis	620	320	260	220	160
Lime softening	.....	230	140	180	68
Coagulation/Filtration	.....	160	91	90	24
Copper					
Ion exchange	250	94	67	60	30
Reverse osmosis	540	300	230	190	140
Lime softening	.....	43	21	9	1
Coagulation/Filtration	.....	160	90	82	23

[1] Costs derived from: "Cost Supplement to Technologies and Costs for the Removal of Lead from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; "Cost Supplement to Technologies and Costs for the Removal of Copper from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; and "Technologies and Costs for the Treatment and Disposal of Waste By-Products from Water Treatments for the Removal of Inorganic and Radioactive Contaminants." ODW. Sept. 23, 1986. Revised Draft.

TABLE 5.—SAMPLE ESTIMATED CAPITAL COSTS FOR REMOVAL OF LEAD AND COPPER [1] BY VARIOUS TECHNOLOGIES FOR SELECTED SYSTEM SIZE CATEGORIES

[millions 1986 dollars]

Contaminant/technology	Population served		
	25–100	3300–10,000	>1,000,000
Lead			
Ion exchange	0.09	1.4	170
Reverse osmosis	0.13	4.8	1,140
Lime softening	.....	1.4	310
Coagulation/Filtration	0.17	3.0	380
Copper			
Ion exchange	0.09	1.3	160
Reverse osmosis	0.11	3.4	1,060
Lime softening	.....	0.23	1.3
Coagulation/Filtration	0.20	2.3	340

[1] Costs derived from: "Cost Supplement to Technologies and Costs for the Removal of Lead from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; "Cost Supplement to Technologies and Costs for the Removal of Copper from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; and "Technologies and Costs for the Treatment and Disposal of Waste By-Products from Water Treatments for the Removal of Inorganic and Radioactive Contaminants." ODW. Sept. 23, 1986. Revised Draft.

TABLE 6.—SAMPLE ESTIMATED ANNUAL INCREASE IN HOUSEHOLD WATER BILLS DUE TO APPLICATION OF BATS FOR REMOVAL OF LEAD AND COPPER REMOVAL [1] FOR SELECTED SYSTEM SIZE CATEGORIES

[dollars household/yr; 1986 dollars]

Contaminant/technology	Population served		
	25–100	3,300–10,000	>1,000,000
Lead:			
Ion exchange	270	69	32
Reverse osmosis	620	220	160
Lime softening	.....	180	68
Coagulation/Filtration	.....	12	2
Copper:			
Ion exchange	250	60	30
Reverse osmosis	540	190	140
Lime softening	.....	9	1
Coagulation/Filtration	.....	82	23

[1] Cost derived from: "Cost Supplement to Technologies and Costs for the Removal of Lead from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; "Cost Supplement to Technologies and Costs for the Removal of Copper from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; and "Technologies and Costs for the Treatment and Disposal of Waste By-Products from Water Treatments for the Removal of Inorganic and Radioactive Contaminants." ODW. Sept. 23, 1986. Revised Draft.

TABLE 7.—WASTE BY-PRODUCT DISPOSAL COSTS FOR PUBLIC WATER SYSTEMS—ALTERNATIVES WITH LOWEST COST [1]

[cents/1,000 gallons drinking water produced; 1986 dollars]

Contaminant/Technology	Population / Flow (MGD)	25–100 / 0.013	101–500 / 0.004	501–1000 / 0.1333	1001–3300 / 0.40	3301–10K / 1.30	1,000,000 / 650
Sludges:							
Lime softening							
Dewatering and land disposal [2]	550	240	120	80	60	40	
Land application	1200	380	150	80	50	60	
Coagulation/filtration							
Sanitary sewer discharge							
—Copper	190	62	28	15	5	1	
—Lead	160	48	22	10	4	0	
Dewatering and land disposal [2]	300	120	55	30	20	7	
Brines:							
Ion exchange							
Discharge to POTW [3]	100	71	45	25	12	2	
Reverse osmosis							
Direct discharge	85	42	20	11	5	0	
Discharge to POTW	220	150	90	47	27	10	

[1] Draft, "Technologies and Cost for the Treatment and Disposal of Waste By-products from Water Treatments for the Removal of Inorganic and Radioactive Contaminants." ODW. Sept. 23, 1986. Revised Draft.
[2] Dewatering by nonmechanical methods, e.g., lagoons and drying beds.
[3] Publicly owned treatment works.

Costs for individual plants may vary from those shown, depending on local circumstances. However, based on available information, the costs in Tables 4–7 are representative of typical system costs using these technologies. Two different models have been used to calculate the costs in Tables 4–7. A small system cost model has been used for systems that serve less than 3,300 people. This model assumes that a package treatment plant would be installed to treat the water. The model used for systems serving more than 3,300 people assumes that the treatment plant would be built in the field.

Costs of treatment will be less than shown in Tables 4, 5, 6, and 7 if contaminant concentration levels encountered in the raw water are lower than the maximum occurrence levels used for the supporting calculations. EPA expects this to be the case in most instances. For example, if the contaminant level in the raw water is half of the maximum occurrence level, then treatment costs could be expected to be approximately 20 to 50 percent lower than the costs presented. However, costs of treatment could be higher if, for instance, there are additional site-specific treatment or storage requirements. The various removal technologies considered are described in more detail below.

1. Ion Exchange

This notice proposes to designate sodium cation exchange to remove lead and copper as BAT because of its demonstrated ability to reduce levels of lead and copper to 0.005 mg/l for lead and to the proposed MCLG for copper, at reasonable costs. Sodium cation exchange resins and ion exchange equipment are readily available commercially. Sodium cation exchange has been successfully used in the field, and pilot plant studies demonstrate that this technology can be used to remove up to 95 percent of lead and up to 95 percent of copper from water. Ion exchange treatment can be implemented effectively for all sizes of treatment facilities. The cost of employing ion exchange for removal of lead and copper in drinking water has been estimated for source water lead concentrations of 0.100 mg/l and source water copper concentrations of 10 mg/l and are included in Tables 4, 5, 6, and 7. Blending can significantly reduce ion exchange equipment requirements and

operating costs, since then only a portion of the raw water has to be treated. Ion exchange is adversely affected by the presence of turbidity, iron, and organic contaminants. Pretreatment may therefore be necessary in some cases. Also, ion exchange can soften water, making it more corrosive, especially if calcium breakthrough is used as the indicator for resin regeneration.

2. Reverse Osmosis

EPA also is proposing to designate reverse osmosis (RO) technology as BAT because it has been demonstrated to be effective in removing lead and copper at reasonable costs. RO has been widely used on a full scale basis for the reduction of other contaminants, and pilot plant studies demonstrate that this technology is capable of removing 95 percent of lead (when source water lead is 0.100 mg/l) and 95 percent of copper (when source water copper is 10 mg/l) from drinking water. The costs of employing RO to reduce these contaminants from these levels in drinking water are presented in Tables 4, 5, 6, and 7. A major disadvantage of RO is that in removing dissolved solids from water, and thereby softening it, RO makes the water more corrosive toward lead and copper in plumbing. Thus, source water treated by this process would require subsequent corrosion control treatment to raise pH and stabilize the water before distribution.

RO performance is adversely affected by the presence of turbidity, iron, manganese, silica, or scale-producing constituents in source water. If pretreatment is not already in place to remove these constituents, the cost to install the pretreatment technologies (e.g., pH adjustment, filtration, application of scale prevention additives) may be considerable.

In the case of contamination of source water by several contaminants, in addition to lead and/or copper, the RO process may offer an especially desirable and cost effective approach to their removal. Blending can reduce costs, as only a portion of the water may need to be treated.

3. Lime Softening

Lime softening can achieve 97 to 99 percent removal of lead at pH levels of 9.0 to 10.5 and 90 to 96 percent removal of copper at pH levels of 9.0 to 11.5, as indicated by laboratory and pilot plant studies. This technology is considered BAT because it has been demonstrated to reduce lead and copper in water to 0.005 mg/l for lead and the proposed MCLG for copper at reasonable costs. Lime softening has been widely and effectively used on a full scale basis for the reduction of hardness. The costs of installing new lime softening facilities to reduce contaminant concentrations in drinking water from 0.10 mg/l to 0.005 mg/l for lead and 10 mg/l the MCLG for copper are shown in Tables 4, 5, 6, and 7. One advantage of lime softening is that it increases the pH of the water and thus reduces its corrosivity.

4. Coagulation/Filtration

EPA is proposing coagulation/filtration technology as BAT for lead and copper removal because of its demonstrated ability to reduce levels of lead and copper to the proposed MCLG for copper and 0.005 mg/l for lead at reasonable costs.

Laboratory and pilot plant studies indicate that conventional coagulation/filtration using alum, and in some cases, ferric sulfate coagulant, can achieve 80 to 95 percent removal of lead at pH levels of 8.0 or above, and can achieve 60 to 95 percent removal of copper at these same pHs. Removal efficiencies are estimated based on source water lead levels of 0.10 mg/l and copper of 10 mg/l. Published studies (EPA, 1978) suggest that site-specific raw water quality indicators, such as pH, significantly affect the removal efficiency of alum when used to treat ground water. However, data are not available which specifically identify all optimum operating conditions of coagulation/filtration treatment for lead and copper removal.

Coagulation/filtration is very effective when ferric sulfate is used as the coagulant. In pilot-scale studies, greater than 95 percent removals have been achieved using this coagulant. When alum is used as the coagulant in doses above 20 mg/l, removal efficiencies of 95 percent have been achieved in surface water. For ground water, either much larger alum doses or pH adjustment is required to achieve 95 percent removal of lead. Coagulation/filtration has been used on a full scale basis for the reduction of other contaminants in water, including turbidity, particulate matter, and microbial contaminants (EPA, 1978). Estimated costs to reduce lead and copper using conventional coagulation/filtration are shown in Tables 4, 5, 6, and 7.

5. Selection of BAT

In conclusion, the Agency believes that, of the technologies that can remove lead and copper from source water, ion exchange, reverse osmosis, lime softening, and coagulation/filtration fulfill the requirements of the SDWA as BAT for lead and copper in source water. These treatment technologies have high efficiencies for lead and copper removal from source water, and the cost of these technologies for large public water systems is reasonable. Under the Act, other treatment technologies could be used to remove lead or copper. However, a system would be required to install one of the BATs in order to be eligible for a variance from the MCL.

All of the technologies proposed as BAT are currently available, have been installed in public water systems, and are compatible with other water treatment processes in different regions of the U.S. Furthermore, these technologies are available and effective for the reduction of these contaminants from the maximum levels of occurrence in source water to 0.005 mg/l for lead and to the proposed MCLG level for copper (1.3 mg/l).

D. Treatment for Lead and Copper as Corrosion By-products

1. Corrosion Control

All water is corrosive to metallic plumbing materials to some degree; the relative corrosivity of a given water supply depends on a variety of factors. There is no single corrosivity index that can predict water corrosivity to lead and copper, and the water of each water supplier may be minimally corrosive to these metals under slightly different finished water quality conditions.

The degree of water corrosivity toward lead and copper plumbing materials depends largely on the pH and alkalinity of the water, although a number of additional factors, such as temperature, flow rate, free chlorine levels, age of plumbing materials, and other factors are important as well. While the use of specific plumbing materials in buildings is not under the control of water suppliers, water chemistry parameters are. Therefore, adjustment of water quality parameters, especially pH and alkalinity, to minimally corrosive ranges and addition of corrosion inhibitors are the primary methods of corrosion control treatment available to public water systems to minimize lead and copper levels.

The corrosivity of acidic water toward lead plumbing materials is well documented (EPA, 1982; Hoyt et al., 1979; O'Brien et al., 1976; Lyon and Lenihan, 1977; Gregory and Jackson, 1984). Water with pH below 8.0, and especially below 7.0, tends to be more corrosive toward lead and copper than water with pH greater than 8.0, and more corrosive water tends to produce water samples with higher lead and copper levels.

The alkalinity of water, which is related to pH, is also an important factor in determining its corrosivity and, in turn, its likelihood of producing high lead and copper levels at the tap. Water contains alkalinity in several forms, including carbonate ion, bicarbonate ion, and hydroxyl ion, in equilibrium. The pH of the water largely determines which of these species predominates in the equilibrium. At pHs less than 8.3, equilibrium favors the bicarbonate form. At pHs between 8.3 and 10, equilibrium tends toward the carbonate form, and pHs above 10 favor hydroxyl.

Under certain chemical conditions (especially high pH), the carbonate in water will react with lead in the plumbing to form a film of basic lead carbonate or other relatively insoluble salt on the interior surface of the pipes and solder. This film isolates the lead metal from the water and thus slows the rate at which lead from the pipes or solder is dissolved into the water. Carbonate also limits the amount of lead the water will hold in solution.

Depending on the raw water quality, treating the water to minimize its corrosivity may require the adjustment of pH and alkalinity, individually or simultaneously. Experience in field and laboratory studies indicates that stabilization of the water can reduce corrosion and reduce levels of lead substantially (EPA, 1982; Karalekas et al., 1983; Karalekas et al., 1978; EPA, 1988h). In addition, the presence of carbonate is an important factor in stabilizing the pH of the water because it adds buffering capacity. Without the buffering capacity imparted by the carbonate water pH can decrease as it moves through the distribution system.

There are also other methods for a water supplier to reduce the corrosivity of its water. These include the use of corrosion inhibitors, such as orthophosphates, and the adjustment of free chlorine levels (EPA, 1987c). Sodium hexametaphosphate has also been used as a corrosion inhibitor, as have other chemicals, although they may not be as effective as orthophosphates.

The rate of copper corrosion is also dependent on pH. However, alkalinity appears to be a less important factor than in copper corrosion than lead corrosion. Corrosion of copper pipe is rapidly accelerated at pHs below 5.0; morning first draw samples at pHs less than 5.5 will likely exceed 1.0 mg/l. The copper concentrations will increase with decreasing pH, increasing temperature, and decreasing age of copper pipe. As pH is increased to 8.0 and above, the rate of copper corrosion is reduced. The chemical behavior of copper and lead are similar so that most treatments (such as pH and alkalinity adjustment) to lower the solubility of lead will have a similar effect on copper. For instance, the pH level for effective lead corrosion control is 8.0 or greater, and this is also an appropriate pH for control of copper corrosion. Therefore, EPA has determined that properly applied corrosion control for lead will also adequately control copper concentrations (AWWARF, 1985).

a. *Methods of pH Adjustment.* Adjustment of pH is one of the most common methods of reducing corrosion in water distribution systems. In many instances, if sufficient alkalinity is present, pH adjustment is adequate to control the corrosivity of water.

The least expensive and most commonly used chemical for pH adjustment is sodium hydroxide (NaOH, or caustic soda); potassium hydroxide may also be used in water with high sodium levels. Lime (especially in the form of calcium carbonate slurry) addition is also used commonly for pH adjustment. Experience in field, pilot plant, and laboratory tests indicates that a substantial reduction of lead and copper in drinking water may be achieved by pH adjustment. Estimated costs for pH adjustment using sodium hydroxide to control corrosion of lead and copper range from $0.67/1,000 gallons for systems serving less than 100 persons to $0.03/1,000 gallons for systems serving more than 1,000,000 persons. Estimated costs for pH adjustment using lime to control corrosion of lead and copper range from $0.85/1,000 gallons for systems serving fewer than 100 persons to $0.006/1,000 gallons for systems serving more than 1,000,000 persons (EPA, 1988h).

The Metropolitan Regional Water Authority (MRWA), which supplies water to Boston, Massachusetts, and surrounding communities, has implemented corrosion control by pH adjustment. (The MRWA used to be called the Metropolitan District Commission, or MDC.) The raw water is low in hardness, alkalinity, total dissolved solids, and pH. Prior to the start of corrosion control, treatment consisted of chlorination and ammoniation only.

The treatment program implemented by MRWA consists of adding 14 mg/l of caustic (50 percent NaOH) to treat 300 million gallons/day (MGD). The pH of the finished water is increased to 8.5 at the reservoir after treatment but before distribution. The alkalinity of the finished water is only slightly increased as a result of this treatment.

Samples were collected in from twelve to fourteen homes served by MRWA over a period of five years. The homes selected for the sampling program have lead service lines. Three samples were taken at each location representing first draw water (i.e., water in the interior plumbing), water from the service line, and water in the main (i.e., fully flushed water). The goal of the program was to reduce most samples to less than 0.050 mg/l. Since the sampling program began before the implementation of the corrosion control treatment, the effectiveness of this treatment toward its goal can be evaluated.

The results of this analysis have been published (Karalekas et al., 1983). In this article, the data from the fourteen locations were evaluated differently from the approach EPA is proposing in this rule for determining compliance. However, the effectiveness of the treatment in reducing lead levels can still be evaluated from the data. In this article, the results of all three samples from all locations sampled were averaged. The average lead concentration ranged from 0.060 mg/l to 0.128 mg/l between February 1976 and May 1977, before the use of NaOH to adjust pH began. The average lead concentration dropped substantially after the start of this treatment; except during two interruptions in the pH adjustment treatment, the average lead concentration was reduced consistently to below 0.050 mg/l (ranging from 0.010 mg/l to 0.050 mg/l), MRWA's target lead concentration.

In addition, the City of Seattle, Washington, has adjusted the pH of its Cedar River supply in an effort to control corrosion (EPA, 1988h). The treatment program implemented by Seattle in 1983 consists of adding 2 mg/l of lime as CaO to adjust the pH from 7.5 to 8.2. The total alkalinity in the raw water varies seasonally from 16.3 mg/l to 23 mg/l as $CaCO_3$.

Sampling to determine the extent of the problem began in 1979 and is still ongoing. Two samples are taken at each location. The first sample is a standing sample (not morning first draw) and the second sample is a flushed sample. The mean lead concentration for the Cedar River supply standing samples dropped from 0.0103 mg/l to 0.0038 mg/l after treatment. The percentage of standing samples with lead concentrations less than 0.010 mg/l rose from only 50 percent before treatment of 93.8 percent after treatment.

These data demonstrate that adjustment of pH can effectively reduce the corrosivity of water towards lead in interior plumbing and can greatly reduce the levels of lead in tap water.

b. *Methods of Alkalinity Adjustment.* For waters that are low in carbonate or bicarbonate alkalinity, pH adjustment alone is often insufficient to control corrosion because there are insufficient carbonate ions in the water to form a protective layer on the interior surface of the pipes or lead solder. In those low alkalinity waters, carbonate ion must be added to form the insoluble carbonates. Soda ash (Na_2CO_3) or sodium bicarbonate ($NaHCO_3$) is typically added for this purpose.

Lime (calcium oxide slurry) or sodium hydroxide, in conjunction with soda ash (sodium carbonate) and sodium bicarbonate, may be used together to adjust pH and carbonate alkalinity simultaneously. These methods are cost-effective and are practiced by many water suppliers already. Estimated costs for treating the water using these chemicals range from $1.49/1,000 gallons for systems serving 25 to 100 persons to $0.08/1,000 gallons for systems serving more than 1,000,000 persons (EPA, 1988h).

A program to control corrosion combining pH and alkalinity adjustment was implemented by the City of Bennington, Vermont, on its water supply in August 1977. The treatment program consists of adding 3 mg/l of sodium hydroxide to adjust the pH from 5.0 to 7.2 and 10 mg/l of sodium bicarbonate to adjust the alkalinity from less than 1 mg/l to 15 mg/l as $CaCO_3$. The goal of the program was to reduce average lead levels to less than 0.050 mg/l. Samples were collected periodically from nine to eleven homes from April 1977 to November 1980. Three samples were taken at each location, representing first draw water (i.e., water in the interior plumbing), water in the service line, and water in the main (i.e., fully flushed water). The mean lead concentration for the first flush samples was reduced from 0.101 mg/l to 0.0342 mg/l as a result of the treatment. The mean lead concentration in the service line samples was reduced from 0.184 mg/l to 0.0302 mg/l and the mean lead concentration in the fully flushed samples was reduced from 0.102 mg/l to 0.0167 mg/l as a result of this treatment. In addition, the number of samples with lead concentrations less than 0.010 mg/l increased as a result of the corrosion control treatment. While only 2.6 percent of the first flush samples contained less than 0.010 mg/l lead before treatment, after treatment was implemented, 20.9 percent of the first flush samples contained less than 0.010 mg/l lead (EPA, 1988h).

In 1983, the City of Seattle, Washington began adjusting pH and alkalinity of its Tolt River supply. The treatment program consists of adding 2 mg/l of lime as CaO to adjust the pH from 6.2 to 8.2 and 9 mg/l of sodium carbonate as Na_2CO_3 to adjust the total alkalinity from 4 to 12 mg/l as $CaCO_3$.

The study of the Tolt River supply was conducted at the same time as the study on Seattle's Cedar River supply, and the sampling procedure was the same as described in the discussion of the Cedar water supply above. The mean lead concentration for the standing samples from the Tolt River supply dropped from 0.0102 mg/l before treatment to 0.0041 mg/l after treatment. The percentage of standing samples with lead concentrations less than 0.010 mg/l increased as a result of treatment from 50 to 90.3 percent (EPA, 1988h).

These data show that increasing pH and alkalinity within appropriate concentration limits can effectively reduce the corrosivity of water towards lead in interior plumbing and greatly reduce the levels of lead in tap water.

c. *Corrosion Inhibitors.* Corrosion inhibitors control corrosion by accelerating or enhancing the formation of a protective film to serve as a barrier between the water and the pipe or solder surfaces. The most commonly used corrosion inhibitors include orthophosphates and silicates (although silicates may be more effective for reducing corrosion of iron or galvanized pipe than lead and copper pipe and solder). Recent data indicate that zinc orthophosphate may be the most effective corrosion inhibitor for lead pipe and solder (AWWARF, 1985).

Corrosion inhibitors have been used for years to reduce water corrosion by all sizes of water systems. Estimated costs for controlling corrosion with inhibitors range from $0.91/1,000 gallons for systems serving less than 100 persons to $0.007/1,000 gallons for systems serving more than 1,000,000 persons (EPA, 1988h).

d. *Consideration of Disinfection Needs in Designing Corrosion Control Treatment.* Use of corrosion inhibitors or adjusting the pH and alkalinity of water to reduce its corrosiveness toward lead and copper can have unintended effects on the quality of finished water. Water treatment should be carefully designed to account for the following circumstances.

Adjustment of pH can affect the effectiveness of disinfectants. For instance, if systems use chlorination for disinfection, elevation of pH should be delayed, to the extent possible, until just prior to when the water enters the distribution system. This will maximize the contact time during which disinfection with chlorine is most efficient (since chlorination is most effective at low pHs) while also optimizing corrosion control in the distribution system.

Since elevated pHs may increase trihalomethane (THM) formation in the distribution system, systems using surface water sources should assure maximum THM precursor removal by optimizing the clarification process prior to increasing the pH. Systems using groundwater sources with high concentrations of THM precursors may need to install treatment to remove such precursors (e.g., membrane filtration) or use alternative disinfectants to free chlorine (e.g., chlorine dioxide or ozone followed by chloramines) in order to achieve adequate disinfection, minimize THM formation, and control corrosion at the same time. In certain cases, THM formation and the need to remove THM precursors may be reduced if orthophosphates or another corrosion inhibitor is used, as these chemicals work best at pHs somewhat below 8.

e. *Materials Benefits of Corrosion Control Treatment.* EPA recently published an analysis of the benefits of reducing lead levels in drinking water (EPA, 1986a). This analysis included an estimate of the materials benefits (in terms of reduced pipe corrosion and failure, increased service life for water meters, etc.) that are likely to result from requiring water suppliers to install corrosion control treatment. The report estimated that the materials benefits alone of corrosion control would exceed by more than two times the costs of implementing the treatment.

Further, a National Bureau of Standards report estimated that 20 percent of the costs of reported damage from water supply corrosion costs were avoidable by the use of control measures (Bennett et al., 1979). The national annual costs of damage from corrosion in the water supply field were estimated at $700 million in 1975 (or $1,300 million in 1986 dollars). However, these costs are only for distribution systems; often far greater corrosion costs are incurred through damage to interior piping and plumbing systems within buildings (Ryder, 1980). Corrosion control by suppliers would reduce these damages as well.

2. Lead Service Connection Replacement

EPA evaluated requiring the replacement of lead service, lines, goosenecks, and other lead distribution system piping to control lead in drinking water. The Agency has estimated that there are approximately 4.4 million lead service lines in use in the U.S. and that

about 25 percent of all public water suppliers have at least some lead service lines. The number of lead service lines as a percentage of total service lines in any community with lead services varies from one percent to 80 percent (Chin and Karalekas, 1984). While most cities stopped installing lead services after about 1940, at least one large city (Chicago) continue to require their use until late 1986.

Lead service lines can contribute significantly to lead levels in tap water, especially where water is corrosive. In Karalekas et al. (1976), for example, lead levels in samples from lead service lines (called "early morning samples" in this study) averaged 0.104 mg/1 as compared to morning first draw levels (called "standing samples") in those same homes which averaged 0.053 mg/1. Similarly, Pocock (1980) and the U.K. Department of the environment (1982) found an elevation in lead levels in morning first draw samples in homes without interior lead plumbing but with lead service lines (called "communication pipe" in Pocock); these first draw levels were lower than in homes with interior lead plumbing and higher than in homes without any lead pipes (either as interior plumbing or as service lines). Because lead service lines can raise lead levels at the tap, and for reasons related to system operation and maintenance (e.g., to avoid anticipated pipe failures), several communities around the United States have already begun programs to replace lead service lines.

The studies cited above as well as unpublished data from two other cities (see Tables 8 and 9) indicate that not all houses with lead service lines have high lead levels at the tap, expecially where water is relatively non-corrosive. The reasons for this vary. One possible explanation is that over time an insoluble protective coating can build up on the interior surface of the lead pipe, preventing (or reducing) the leaching of lead into the water. The buildup of this film is subject to conditions that can vary from house to house including the age of the plumbing, the occurrence of physical disturbances such as the ground freezing or nearby road repair, fluctuations in pH or water pressure, and the length and diameter of the lead pipe. Another possible explanation is that the samples taken in some of these studies may not have fully captured the contribution from the lead service line, e.g., if morning first draw samples, rather than service line samples, were taken (morning first draw samples are not a reliable predictor of the contribution from the service line). This can be seen in the Karalekas, et al. (1976) data cited above: the service line samples, which were intended to capture the effect of the lead pipes on tap water, showed the highest lead levels. In the Pocock (1980) data as well, the presence of lead service lines raised the morning first draw lead levels only slightly. Given the available data, EPA cannot currently quantify, on a national basis, the contributions of lead service lines and other lead connections to lead levels at the tap, or the anticipated change in lead levels after corrosion control treatment is in place. EPA solicits data to help clarify this issue.

TABLE 8.—AVERAGE LEAD CONCENTRATION FOR LEAD VS NON-LEAD SERVICE LINES [1, 2]

City	Pipe type	pH	Alk [3]	Morning first draw average (Pb in µg/l)	Service line average (Pb in µg/l)	Fully flushed average (Pb in µg/l)	Number of sampes	Vol.
Chicago	Lead	8.3	109	13	15	8	201	500
	Iron	8.3	109	3		<3	73	500
Louisville	Lead	8.6		8	5	3	34	250
	Copper	8.4		9	3	2	12	250
St. Louis	Lead	9.0	50	<1	<1	<1	2	1,000
	Copper	9.0	50	4	3	<1	9	1,000

[1] Source: EPA, 1988*h*.
[2] Values are for reported sample sizes.
[3] Alk = alkalinity in mg/l as $CaCO_3$.

TABLE 9.—RANGE OF LEAD CONCENTRATION FOR LEAD VS. NON-LEAD SERVICE LINES [1, 2]

City	Pipe type	pH	Alk [3]	Morning first draw average (Pb in µg/l)	Service line average (Pb in µg/l)	Fully flushed average (Pb in µg/l)	Number of samples	Vol.
Chicago	Lead	8.3	109	<3–85	<3–127	<3–44	201	500
	Iron	8.3	109	<3–6		<3	73	500
Louisville	Lead	8.6		ND–29	ND–15	ND–15	34	250
	Copper	8.4		ND–19	ND–7	ND–5	12	250
St. Louis	Lead	9.0	50	<1	<1	<1	2	1,000
	Copper	9.0	50	<1–13	1–10	<1	9	1,000

[1] Source: EPA, 1988*h*.
[2] Values are for reported sample sizes.
[3] Alk = alkalinity in mg/l as $CaCO_3$.

A further complication of the pipe replacement issue is that ownership and/or control of the service line often is split between the public water system and the property owner. Depending on State law or regulations or local ordinances, some public water systems own and/or control service lines and other connections up to the property line, others own and/or control the service line and other connections up to the building (especially if the water meter is located inside the building), and still others own and/or control the service line and other connections only up to the curb. (See Figure 1 for a schematic drawing of the parts of the water supply and distribution system.)

EPA believes that, in general, its authority to require replacement of service lines and other connections ends where the water supplier ownership or control of the lines end. EPA has conducted a limited study of some large

cities, which indicates that these water suppliers generally limit maintenance on water pipes to those portions they own (EPA 1987d). However, several cities have authority to enter private property to perform work on water lines under special circumstances (EPA 1988j); in such cases, the property owner is generally billed for the work performed.

Several cities currently conduct programs to accelerate the replacement of portions of the lead services and goosenecks under their control. San Francisco, CA, began a program in the early 1980's, and replaces approximately 11,500 linear feet of service line per year at an average cost of $40 per linear foot. The service line from the water main to the water meter is replaced with polybutylene, copper, or ductile iron, depending on line diameter. New Haven, CT, has replaced all lead and galvanized steel service lines (from the water main to the meter) and began accelerated replacement of lead gooseneck connections in 1976–77. New Haven has replaced 15,000 of an original 30,000 lead goosenecks to date, at a rate of about 1,000 per year. Akron, OH began replacing lead and galvanized steel service lines from the water main to the curb in 1964, and has replaced about 1,000 service lines per year since then. In all of these cases, the service line replacement was funded by operating revenues paid by the customers. Washington, DC has a program under which they city will replace its portion of lead service lines provided that the building owner replaces his or her portion.

While many studies indicate that lead service connections can contribute to tap water levels of lead, EPA currently has no data to quantify the extent of reductions in lead levels that might be achievable by partial replacement (i.e., by replacing only that portion under the ownership and/or control of the PWS). One study (Britton and Richards, 1980) found temporary increases in lead levels at the tap following the replacement of part of a lead service line with copper piping. As the authors noted, this probably resulted from the dislodgement of the protective coating on the inside of the pipe, possibly aggravated by the application of new lead solder to connect the new pipe, and the occurrence of galvanic corrosion related to the introduction of a dissimilar metal. Because EPA does not have the authority to require the replacement of lead service lines owned and controlled by private property owners, the Agency is concerned that a requirement to replace lead service lines would result in only partial replacement of many such lines. EPA solicits any available data on the effect of partial and full lead service line replacement programs on lead levels at the tap. EPA also solicits information on the extent of the authority of public water systems over lead service lines and connections under State law and local ordinances.

3. Public Education About Lead in Drinking Water

EPA has conducted public education programs and has found that well designed and implemented programs can be an effective means of reducing public exposures to environmental hazards. Public education programs have effectively changed the knowledge and/or behavior of their audiences. Examples of such programs are the State and EPA radon programs and programs to educate residents near Superfund sites about the degree of hazard presented by improperly disposed chemicals at these sites.

Since 1986 EPA has sponsored a major program to educate the public about the dangers of exposure to radon. Many elements of this program have actually been carried out by State and local governments. The program has included monitoring of homes and other buildings for radon in the air, and development and testing of innovative exposure reduction methods, including both prevention and removal techniques. Information has been conveyed throughout the community through an ongoing program of pamphlets, public service announcements, television specials, public meetings, and other means. As a result of this program, many people have become aware of the effects of exposure to radon on health and have taken steps to determine their exposure and protect themselves.

A second successful public education program deals with health risks associated with specific hazardous waste disposal sites under CERCLA (Superfund). Federal, State, and local governments, together with private parties, provide intensive information to people living or working near hazardous waste sites. Using the methods discussed above, affected persons have learned about the nature of the dangers they may face and have learned appropriate steps to reduce their current and possible future exposures to contaminants at these hazardous waste sites.

All public education programs have two basic elements: the content of the program and the method of delivering the information.

a. *Content of the Program.* An effective public education program for lead in drinking water includes information about:

(a) The health reasons for concern about lead exposure, including identification of sensitive subpopulations;

(b) Sources of lead exposure (including non-drinking water sources) and a plan to identify the sources of specific problems in individual houses that are identified as having lead levels above a maximum value;

(c) Means of reducing lead exposure from drinking water, including tap flushing and suggestions for modifying water use patterns to conserve water given the benefits of flushing.

b. *Conveyance of Message.* The effectiveness of public education programs varies depending upon how the message is conveyed to the community in general and to key groups in the community. For example, bill enclosures, public service announcements, pubilic meetings, and messages on water bills will vary in effectiveness since they present the message in different ways and to different consumers.

Identification of key groups in the community can be important in improving the effectiveness of public education programs in reducing exposure to lead by targeting them for more intensive public education efforts. Key groups can include residence in areas identified as at risk for high lead levels in drinking water or houses that actually have been tested and found to have high lead levels; schools and other buildings that have a high proportion of children in their population; and institutions that may serve a high proportion of pregnant women.

Finally, the frequency and duration of the various aspects of a public education program can influence its success.

4. Selection of Treatment Technique Requirements for Controlling Corrosion By-Products

In the above discussion, EPA has reviewed three potential methods of reducing lead and copper as corrosion by-products in drinking water: Corrosion control treatment, pipe replacement, and public education. Based on its evaluation of the available information, EPA considers corrosion control and public education to be effective and feasible methods of reducing lead and copper as corrosion by-products in drinking water. Thus, they are both included as requirements of the proposed rule. Lead service line replacement was also considered. EPA believes that in many cases replacement

of lead service lines and connections may reduce the lead levels in tap water. However, there may be temporary risks associated with partial pipe replacement. Because of these potential risks, as well as uncertainty about the effectiveness of partial or complete service line replacement as a final control step after implementation of corrosion control treatment, EPA is not proposing service line replacement as BAT for controlling lead as a corrosion by-product in drinking water. However, as explained below, EPA is requesting comment and data on this subject and is considering adopting pipe replacement as a requirement of the final rule.

E. Proposed Regulation

EPA is proposing an MCL for lead in distributed water of 0.005 mg/1 and an MCL for copper in distributed water of 1.3 mg/1. Compliance would be measured at the entry point to the distribution system.

The Agency is also proposing a treatment technique requirement to control lead and copper which enters water as corrosion by-products. The proposed treatment technique consists of optimal corrosion control treatment to minimize lead corrosion, and public education. It would be triggered by three "no-action" levels, as measured in targeted samples: an average lead concentration in targeted samples of less than or equal to 0.010 mg/1, a copper concentration of 1.3 mg/1 or less in at least 95 percent of the targeted samples, and pH greater than or equal to 8.0 in at least 95 percent of the targeted samples. If all three levels are met, "no action" would be required; the PWS would be deemed in compliance with the treatment technique. If any of these three levels is not met by a system, the system would be required to install or improve its corrosion control treatment. In addition, if the average lead level of 0.010 mg/1 or a fourth "no-action" lead level of 0.020 mg/1 or less (in at least 95 percent of the targeted samples taken for compliance) was exceeded, the PWS would be required to conduct a public education program to encourage consumers to reduce their exposures to lead in drinking water.

The Agency is seeking comment on six major alternatives which are permutations of this proposal. First, EPA is considering treating the fourth no-action level, 0.020 mg/1 or less of lead in at least 95 percent of the targeted samples, the same as the first three no-action levels. Thus, a system that did not meet this fourth no-action level would be required to install or improve its corrosion control treatment. The second alternative would add an additional "no-action level" of total alkalinity greater than or equal to 30 mg/1 in 95 percent of more samples to trigger treatment. As in the first alternative, a system that did not meet this no-action level would be required to install or improve corrosion control treatment. The third alternative would eliminate the pH no-action level and rely only on lead levels measured at the tap to determine whether corrosion control treatment is required. Under the fourth alternative EPA is considering, a system would be required to replace lead service lines and connections that were found to contribute 0.005 mg/1 lead or more to lead levels in tap water even after installation of optimal corrosion control treatment. The fifth alternative under consideration is a two-tier approach to monitoring which could increase the efficiency of sampling and accuracy of determinations regarding whether additional corrosion control treatment was required. This alternative may also reduce the number of samples required of larger public water systems. A sixth alternative EPA is considering would eliminate the MCLs for lead and copper in distributed water.

This section and the following section on monitoring describe each part of the proposal and these alternatives, and explains the rationale for selecting the proposed rule provisions and for considering each alternative. EPA requests comment on the proposal itself, as well as the alternatives. In response to the public comments, EPA may promulgate any of these alternative options or any combination of these options. Persons should, accordingly, comment fully on all these options.

In its July 8, 1987 (52 FR 12876) notice promulgating NPDWRs for eight VOCs, EPA added a definition of a non-transient non-community (NTNC) water system to the general definitions section in 40 CFR §141.2. The definition of a non-transient non-community water system is as follows:

> a "non-transient non-community water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

In that rulemaking, EPA applied the NPDWRs for the VOCs to these NTNC water systems. EPA also stated in that notice its intent to apply future drinking water standards to NTNC water systems. Accordingly, EPA is proposing to apply the NPDWRs for lead and copper proposed in today's notice to NTNC water systems as well as to community water systems. EPA recognizes that some of the provisions of the proposed regulations would not easily apply to NTNC systems. Therefore, where appropriate, EPA is proposing modified provisions for NTNC water systems to better suit the special circumstances of the NTNC system. Unless otherwise noted, all requirements in this proposal would apply to community water systems and NTNC water suppliers in the same way.

1. Lead and Copper MCLs

Based on the analysis of treatment technologies in Section IV.B.3., above, and an assessment of the PQL in Section V.A., below, EPA is proposing an MCL of 0.005 mg/1 for lead in water as the water enters the distribution system. The treatment technologies proposed as BAT in Section IV.B.3., (i.e., ion exchange, reverse osmosis, lime softening, and coagulation/filtration) can reduce lead occurring in source water to 0.005 mg/1 at reasonable cost. Based on an analysis of the same treatment technologies, EPA proposes to set an MCL for copper in water entering the distribution system of 1.3 mg/1. The treatment technologies proposed as BAT in Section IV.B.3. are capable of reducing copper found in source water to this level at reasonable cost.

EPA considered making these MCLs applicable to fully flushed water at the tap, rather than to treated water entering the distribution system. However, EPA is concerned that distribution system and household plumbing materials might contribute to fully flushed lead levels at the tap as water moves through the pipes, and tap levels therefore may not reflect the effective application of treatment to reduce lead and copper occurring in source water. Although EPA has few data on such contributions, especially on contributions after application of the corrosion control treatment which would be required by this rule, the available data indicate that plumbing materials can contribute to lead and copper levels in fully flushed samples (EPA, 1988h).

Therefore, EPA is proposing to require that compliance with the MCLs for lead and copper be measured at the entry point(s) to the distribution system. Water suppliers with more than one well or entry point to the distribution system would be required to monitor at each entry point to ensure identification of all sources requiring treatment. Where several wells draw from the same aquifer, States would be allowed to identify wells representative of the aquifer for monitoring if there is no treatment; monitoring of the remaining wells would not be required. States would also be allowed to reduce the

total number of samples by the use of composite samples, described in Section V.C.1. below.

Measuring at the entry point to the distribution system would accurately reflect whether the treatment of the source water was effectively applied. While contributions to the lead and copper content of fully flushed water from plumbing materials in the distribution system may be small, even a contribution of 0.001 mg/l from corrosion could result in a violation of the lead MCL when in fact the source water has been treated to reduce lead levels in the source water to below the MCL. A larger contribution would be required for copper, but the same concern exists. EPA solicits comments on both the proposed approach and the alternative of requiring that the MCLs apply to fully flushed water at the consumer's tap.

To demonstrate compliance with the MCL for lead, water suppliers would be required to monitor lead in water entering the distribution system and maintain the lead level at or below 0.005 mg/l in all samples. To be in compliance with the MCL for copper, water suppliers would be required to monitor copper levels in water entering the distribution system and maintain the copper level at or below 1.3 mg/l in all samples. These requirements would apply to both community water systems and non-transient, non-community water systems. Monitoring would begin no later than the dates specified in Section V.C.1 (depending on system size).

It has been suggested that an MCL for contaminants entering the distribution system is a contradiction in terms because an MCL, by definition, is a standard that must be met at the tap. Proponents of this view argue that the SDWA, the legislative history of the Act, and EPA's own regulations support this interpretation.

The Safe Drinking Water Act defines an MCL as "the maximum permissible level of a contaminant in water which is delivered to any user of a public water system." Section 1401(3). It certainly could be argued that, under this definition, MCLs must be met in water that actually flows from the user's tap. Indeed, the House Report on the bill that eventually became the Safe Drinking Water Act of 1974 states that "[s]ince drinking water regulations are intended to be met at the consumer's tap, the committee anticipates that monitoring would include tap sampling." (H.R. Rep. No. 93–1185, p. 13, 1974). On the other hand, it could be argued that "water which is delivered to any user" refers to water that leaves the part of the distribution system that is owned or controlled by the public water system and enters the portion of the distribution system that is owned or controlled by the user, e.g., homeowner. This interpretation would be consistent with the definition of "public water system" in section 1401(4) of the Act which, as discussed earlier, does not include distribution facilities that are not owned or controlled by the public water system.

In determining where MCLs apply, EPA's regulations are not conclusive. In 40 CFR 141.2(c), EPA defines "maximum contaminant level" as:

> the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

The "free flowing outlet of the ultimate consumer of a public water system" apparently refers to the user's tap. Under this interpretation, all MCLs, except the MCL for turbidity, apply at the tap. However, many of the NPDWRs the Agency has promulgated appear inconsistent with this definition because they do not require monitoring, and therefore compliance, at the user's tap. For instance, the NPDWR for coliform bacteria requires that "samples * * * be taken at points which are representative of the conditions within the distribution system." 40 CFR 141.21(a). While this provision does not preclude sampling at the consumer's tap, it does not require it. Some NPDWRs actually preclude compliance monitoring at the tap. For instance, in 40 CFR 141.24(g)(1), the NPDWRs for VOCs that EPA promulgated in 1987 state that "[g]round water systems shall sample at points of entry to the distribution system representative of each well." Also, the NPDWR for fluoride requires sampling at the entry points to the distribution system. 40 CFR 141.23(g)(1). Other NPDWRs are silent; for instance, most of the NPDWRs for inorganic contaminants (other than fluoride) do not specify the sampling (or compliance) point. See 40 CFR 141.23.

Of course, for contaminants other than corrosion byproducts, sampling at the tap is not critical since water leaving a treatment plant is generally expected to remain consistent in quality throughout the distribution system, including the portion owned or controlled by the consumer. In fact, for some contaminants, the level at the tap may even be lower than the level at the entry point to the distribution system because of dilution (e.g., mixing of sources) or volatilization of contaminants from water.

Thus, EPA's regulatory definition of MCL arguably is inconsistent with both the statutory definitions of "MCL" and "public water system" and the monitoring requirements for many current MCLs. EPA believes it is important to clarify that, for all contaminants regulated under the Safe Drinking Water Act, the point of compliance is defined by the monitoring requirements of each NPDWR. Therefore, in this notice, EPA is proposing to amend the definition of "maximum contaminant level" to match the statutory definition. Then, for each NPDWR that specifies an MCL, the Agency will specify the monitoring requirements, including the sampling locations, which will in turn define the point of compliance. In the case of the lead and copper MCLs, therefore, the sampling point and point of compliance would be the entry point to the distribution system. While these levels may not necessarily be the "maximum levels delivered to any user," because lead and/or copper levels will probably increase from corrosion within the distribution system, these MCLs, measured as specified in the proposed rule, (1) would indicate whether the treatment for lead and copper in source water was effective, and (2) assess the minimum lead and copper levels that can occur at the tap.

2. Treatment Requirement for Lead and Copper as Corrosion By-Products

The treatment technique required by this rule consists of optimal corrosion control treatment (to minimize lead and copper leaching) and public education (to reduce exposure to lead). Systems could comply with the treatment technique either by installing treatment and conducting a public education program, or by meeting specified "no-action levels" for parameters of concern. Thus, under this proposal, systems that meet specified levels for lead, copper, and pH, i.e., no-action levels, would be deemed in compliance with the treatment technique requirement and would not be required to install or improve treatment of their water. Systems that do not meet the no-action levels would be required to either improve or install corrosion control treatment adequate to meet the no-action levels or else demonstrate that they have optimized treatment, i.e., that the delivered water is minimally

corrosive towards lead. In addition, if one or both lead no-action levels are exceeded, the system would be required to conduct a public education program.

EPA is proposing no-action levels as a screen to limit the total number of public water systems which would need to make a detailed demonstration that they have optimized corrosion control treatment. These limits are called "no-action levels" because no further actions are required if they are met. Thus, under this proposal, a system that meets the no-action levels, i.e., 95 percent of samples at the tap with pH 8, lead levels at the tap of 0.010 mg/l or below as an average, and 95 percent of copper levels at the tap of 1.3 mg/l or below, would be considered to have minimally corrosive water and would be considered in compliance with the corrosion control portion of the treatment technique requirement. Such a system would not be required to perform a detailed demonstration that it had installed optimal corrosion control treatment. A system that meets the average of 0.010 mg/l of lead and 95 percent or more of its samples are less than or equal to 0.020 mg/l lead would be considered to be in compliance with the public education portion of the treatment technique requirement.

To determine whether it meets the no-action levels, the water system would first take morning first draw and service connection samples from kitchen taps in targeted residences as described in Section V.B.2. below. For systems serving more than 3,300 people, the first round of monitoring (four quarters) would be required to be completed during the 15 months after promulgation of the final rule. Water suppliers serving 500 to 3,300 people would have 27 months from promulgation to complete the initial monitoring. Systems serving fewer than 500 people would be required to complete the initial monitoring 39 months after promulgation of the final regulations. Non-transient non-community water systems would be required to complete their required monitoring according to this schedule, depending on the number of people served by the system. All other time deadlines are expressed in terms of time elapsed since the deadline for completion of the initial monitoring. These requirements are summarized in Figure 2. The remainder of this section describes these requirements in more detail.

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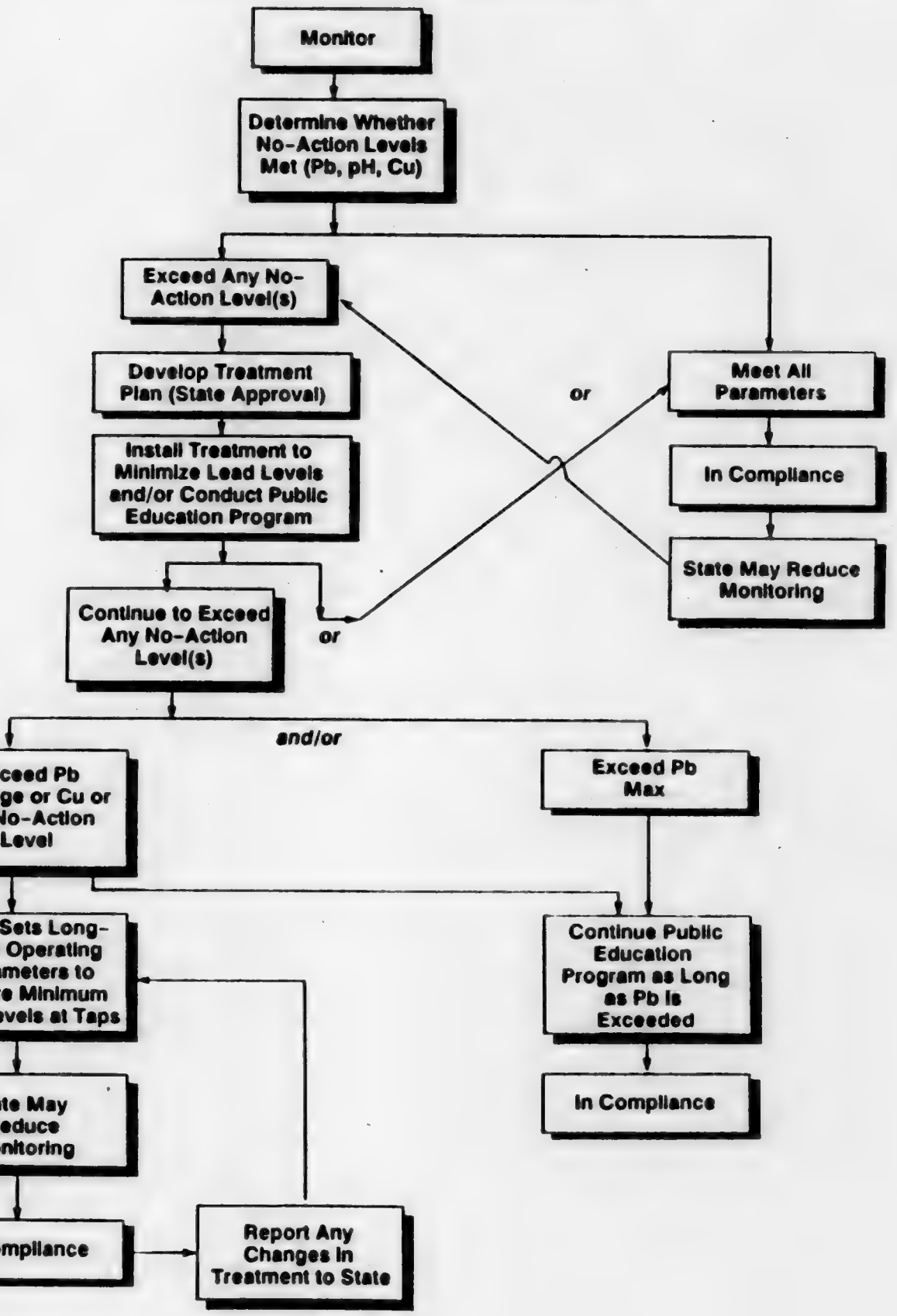
Figure 2

Treatment Technique Requirement



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Systems failing to meet the no-action levels by the deadline for completion of the initial monitoring would be required to install corrosion control treatment, and/or public education, depending on which of the no-action levels is exceeded. Corrosion control treatment and public education would be required to be implemented according to a State-approved or issued treatment plan. The treatment plan would contain specific steps that each water supplier would be required to take to ensure that either the no-action levels are met, or optimal corrosion control treatment and/or public education are implemented, on a specified schedule. All systems would be required to complete installation of any treatment required by the treatment plan within three years after approval of the plan.

Water systems serving 3,300 or more people and failing to meet anyone of the no-action levels would be required to apply for approval of a treatment plan by submitting a proposed treatment plan to the State within one year after the deadline for completion of the initial monitoring. These systems would required to include in their treatment plan the following steps: (1) Design and implementation of pipe loop, laboratory, pilot scale and/or field studies; (2) analysis of the data generated in these studies to estimate optimal operating conditions to minimize corrosion of lead; (3) installation of the treatment in the entire water supply system; (4) monitoring to evaluate the effectiveness of the treatment; (5) additional adjustment of the treatment if no-action levels continues to be exceeded; and (6) if, after installation and adjustment of treatment, any of the no-action levels continue to be exceeded, submission to the State of all data collected and an analysis demonstrating that the corrosion control treatment being applied was optimal, i.e., that lead levels were minimized.

The State would be required to review the system's analysis and determine whether treatment was optimal. Once the State determines that treatment is optimal, the State would also specify required operating parameters and values (such as pH, total alkalinity, or corrosion inhibitor dose rate or residual) to ensure that optimal treatment continues. These operating parameters may vary by season to account for seasonal variations in water corrosivity. States would be expected to periodically review and revise the specified operating parameters if long-term monitoring shows increasing average lead levels, or that different values for the specified parameters result in lower lead levels.

Water systems serving fewer than 3,300 people would be required to apply to the State for a treatment plan if any of the no-action levels is exceeded at the end of the initial monitoring period. Systems would be required to submit or apply for the plan within one year after the close of the initial monitoring period. States would specify the required corrosion control treatment in the treatment plans for these systems. The treatment plans would include a schedule for completion of Steps 3–6 described above for systems serving more than 3,300 persons. States would also specify final operating parameters for these systems after treatment is applied and follow-up monitoring conducted. EPA is proposing that States specify the appropriate treatment for these systems because most smaller systems are unlikely to have the resources and expertise necessary for determining what corrosion control treatment is appropriate. However, systems that wish to develop and submit their own treatment plan rather than request one from the State are encouraged to do so.

a. *Corrosion Control*—i. *No-Action Levels.*

As described above, if pH is 8.0 or greater (in 95 percent of targeted samples), lead levels in targeted samples have an arithmetic average of 0.010 mg/l or lower, the maximum lead level in 95 percent of targeted samples does not exceed 0.002 mg/l, and the copper levels in 95 percent of targeted samples does not exceed 1.3 mg/l, the system would be deemed in compliance with the treatment technique requirement and need not install or improve corrosion control treatment.

The value of 0.010 mg/l as an arithmetic average for lead levels is based on engineering considerations. EPA reviewed the available literature and data on lead levels in standing samples (water standing in the pipes 8–18 hours), compared with the various plumbing materials water quality factors (particularly pH and alkalinity) present. Analysis of these data indicates that, for those water suppliers having water with pH 8 and total alkalinity greater than 30 mg/l, even in the presence of some lead plumbing materials, average tap lead levels of 0.010 mg/l were achieved.

Systems with no lead problem or only a small lead problem (e.g., no lead service lines and few houses with new lead solder) would be able to meet the average of 0.010 mg/l relatively easily, especially if they meet the no-action level for pH. Some systems may have more difficulty consistently meeting the average. For example, as described above, Boston, MA and Bennington, VT have had serious lead problems in the past due to large numbers of lead service lines and residences with interior lead plumbing combined with water which was extremely corrosive before treatment, and thus have instituted corrosion control programs aimed at reducing lead to below 0.050 mg/l. Both raised their pH to above 8.0 at the treatment plant, and Bennington raised its raised their alkalinity some. Because alkalinity levels remain low, pH levels are not maintained throughout the system. Although both communities achieved substantial reductions in morning first draw lead levels, and met their own program goals of reducing tap lead levels below 0.050 mg/l, neither is meeting the 0.010 mg/l target as an average. However, the treatments developed for these cities may not be optimal for their water; additional reductions are likely to be possible.

The proposed treatment technique requirement would include a no-action level for copper equal to the MCLG, 1.3 mg/l, as a 95th percentile of the data in morning first draw water. This level is based on a review of the literature and data on copper levels in morning first draw samples. These data indicate that with good corrosion control, particularly pH adjustment, copper levels in morning first draw water can be consistently reduced to the MCLG or lower (EPA, 1988h).

ii. *Treatment Plan Requirements.* If a water supplier did not meet one or more no-action levels, it would be required to submit or apply for (depending on their size) a treatment plan. The plan would be designed to result in having the system meet the no-action levels or, if the system did not meet the pH and/or average lead level after applying optimal treatment, demonstrate that lead levels in tap water had been minimized. (The treatment plan would also include public education requirements if the average or maximum lead level is not met. This aspect of the treatment plan is discussed in a later section.) Systems must submit or apply for a treatment plan within one year after the end of the initial monitoring period showing that any no-action level has been missed.

The contents of the plan, including items such as specific schedules, studies, and installation of treatment, would become effective and enforceable upon approval or issuance of the plan by the State. Factors affecting the scope and detail necessary for successful optimization showings include: Local

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water chemistry conditions, size and complexity of the distribution system, and the presence of other water treatments which can affect the design and effectiveness of potential corrosion control measures. Compliance would be determined based on whether a system had fulfilled each step of the approved plan on time and in a manner meeting minimum Federal and State criteria.

After the system has taken all the steps required by the plan, the State would evaluate the results and specify operating conditions for future compliance. The system would be required to operate in the manner specified by the State (either meeting the no-action levels or operating under other conditions approved by the State that minimize the corrosivity of the water towards lead) to remain in compliance in future monitoring periods. Failure to meet the no-action levels or demonstrate that treatment is optimal would be a violation of the treatment technique requirement. Systems that meet all the no-action levels during the initial monitoring period, but exceed one or more of them during a subsequent monitoring period, would have one year after their monitoring data showed an exceedance of any no-action level to either meet the no-action level or submit or apply for a treatment plan.

(A) *Large and Medium Size Systems.* Systems serving more than 3,300 persons would be required to submit a proposed plan which describes the system's approach to obtaining the information necessary to install or improve treatment sufficient to achieve the no-action levels or to demonstrate that corrosion control treatment has minimized lead levels at the tap due to corrosion. EPA expects that water suppliers facing situations more complicated than average, such as large systems, would need to perform more elaborate studies to determine optimal operating conditions. A simpler than average evaluation may suffice in cases where the choice of appropriate corrosion control is fairly obvious. The treatment plan for these systems would include the following specific steps and a schedule for completing each step:

Step 1: Pipe loop, laboratory, pilot scale studies, and/or field studies demonstrating reductions in lead and copper levels in actual or simulated standing samples corresponding to application of optimal corrosion control treatment.

To identify and demonstrate to the State that water is minimally corrosive towards lead or achieve the no-action levels, water suppliers would be required to conduct pipe loop, laboratory, pilot-scale, and/or field studies investigating the effects of changes in corrosion control treatment and corresponding changes in lead dissolution. These studies should include investigations of the effects of varying pH over the range of 8.0 to 10.0, and at several total alkalinity levels.

Those ground water systems with pH below 8.0 that are saturated or nearly saturated with $CaCO_3$, and that wish to continue operating in the pH range, should demonstrate in the laboratory that precipitation problems could occur if pH adjustment is implemented. If these bench-scale studies indicate that $CaCO_3$ would precipitate at elevated pH, then these systems should concentrate their optimization analysis on the use of corrosion inhibitors such as zinc orthophosphate.

In addition, systems which prefer to operate outside the required pH range because of other water treatment considerations (such as preference for using corrosion inhibitors, which function better at lower pH, e.g., pH <8.0, so formation of trihalomethanes and other disinfection by-products is less likely) also could apply for treatment plan approval. Systems that want to operate outside the minimum pH must also describe use of any corrosion inhibitors which provide optimum protection outside the preferred pH range, and show in pipe loop or other studies approved by the State in the treatment plan that lead levels under these conditions are higher than lead levels which result under the water supplier's preferred operating conditions. The supplier must test a range of corrosion inhibitor doses and sufficient alternative operating conditions to show that the lead levels cannot be lowered using other treatments such as alternative corrosion inhibitors.

If a pipe loop study is used to evaluate different treatments, then the pipes used for the study must be representative of the plumbing in the system that is causing the lead problem. Lead pipes would be required if lead service connections are used within the system. Lead-soldered copper joints must be used if the lead problem is the result of corrosion of these joints within the system. Because of differences in conditions between residences and pipe loops, the loops will generally not predict the precise treatment necessary and resultant lead levels for a system. However, they will accurately predict trends and provide data to plan a treatment strategy and to design and test pilot and field scale studies, as part of the treatment scale-up and adjustment.

Step 2: Analysis of the data generated in Step 1 above to identify water quality conditions under which lead levels in morning first draw and service connection samples (i.e., standing samples) are expected to be minimized.

The purpose of the studies conducted under the treatment plan is to identify water quality conditions under which corrosion of lead into tap water is minimized and to demonstrate that lead levels in water have been minimized under the operating conditions for which the water supplier seeks approval (if it cannot meet the no-action levels after installing or improving treatment). The results of the studies should clearly and unambiguously show the relationship between minimal water lead content and the proposed operating conditions. That is, data gathered under both the operating conditions identified by the water supplier as optimal and alternative conditions would be required. The State would evaluate the data to assure that the chosen conditions provide the lowest possible lead levels.

In conducting these studies, there may be a period before the full effect of the pH adjustment is expected to be realized. The system would analyze standing samples from the pipe loop or other experimental set up for lead during this period to assess the effectiveness of the pH adjustment. Those systems that do not meet the average lead level at any of the pHs within the specified range (i.e., 8–10) would then analyze the generated data to determine the optimum pH, i.e., the pH which results in the lowest lead levels. The system would then adjust the pH to the optimum pH and establish permanent operating levels for pH and any other parameters specified by the State.

For systems which choose to investigate corrosion inhibitors, lead levels resulting from a range of doses would be required, and would be compared with the results of studies using pH adjustment above.

Based on these analyses, a treatment strategy and estimated operating parameters for minimizing corrosivity of water in the whole system would be identified.

Step 3: Installation and operation of corrosion control treatment in the water system as a whole.

EPA anticipates that most of the overall demonstration of optimal treatment would be completed in the laboratory or in a pilot plant as part of Step 1. Only after a PWS has determined the general requirements for treatment would EPA expect it to apply

the treatment in the distribution system. EPA believes this sequential process is important to assure that protective coatings are not accidentally disturbed during the trials, and to allow systems to make cost-efficient decisions regarding treatment strategies and the installation of new equipment.

The system would be required to scale up its laboratory treatment to install it in the system as a whole within three years of approval of the treatment plan. The goal of the scale-up would be to identify full scale treatment that would achieve in the system as a whole the operating parameters identified in Step 2 above as likely optimal operating parameters, or to meet the no-action levels.

Step 4: Monitoring to determine the efficacy of the treatment as installed.

The treatment plan must require monitoring of the full-scale implementation of the operating conditions determined from the laboratory and pilot studies. Monitoring would be required at the same sites used to evaluate compliance with the no-action levels.

Systems adjusting pH (and alkalinity) may have a several-month stabilization period before the full effect of the corrosion control treatment is realized. The pH level will stabilize first, while lead levels may continue to fall as a film builds up on the inside of the pipes. Systems should sample at the targeted sites during this period to determine the effectiveness of the corrosion control treatment. This monitoring should show lead levels decreasing and stabilizing over time as the treatment takes effect. Once the system has stabilized, samples from the targeted sites would be analyzed for lead to demonstrate the effectiveness of the treatment at full scale.

Step 5: Adjustment of the installed treatment as necessary to ensure that lead levels are minimized.

Once the general treatment steps are determined and installed to treat the full system to meet the water quality parameters identified, EPA expects that most water suppliers would need to fine-tune the treatment to account for normal differences between laboratory or pilot plant designs and full scale operations. The installed treatment must also be adjusted for seasonal variations in water quality which can greatly affect the corrosivity of the water. Water suppliers must adjust the installed treatment as necessary to account for differences between projections based on laboratory or pilot plant data and full-scale operations by performing minor adjustments or pH or other parameters to try to reduce the lead levels.

If, upon implementation of the operating parameters identified by the system in the laboratory studies, a system meets the no-action levels for four consecutive quarters, then the system has adjusted its corrosion control treatment sufficiently and no further adjustment would be required.

Note that because tap water must meet the proposed no-action levels or be shown to be minimally corrosive towards lead, water suppliers would be required to adjust corrosion control treatment to account for any blending of water from different sources. There can be significant changes in water chemistry associated with blending. Therefore, suppliers must demonstrate that each blended product meets the requirements of the regulations. A related issue is that of the division of responsibility for treatment among wholesalers and retailers of water. Retailers may add or blend sources of water provided by several wholesalers. Therefore, EPA is proposing to place ultimate responsibility for the degree of corrosivity of the water on the retailers. EPA solicits comment on this approach and requests data to support any alternative approaches suggested.

Step 6: If any no-action levels are still exceeded after installing or improving treatment and making all adjustments, systems must submit to the State an analysis of all treatment and resulting lead levels demonstrating that treatment is optimal and lead levels are minimized for the specific system.

This report would include a compilation of all the data generated in the course of study and treatment implementation. It must clearly show that additional treatment would not reduce lead levels further. Test results outside the operating parameters identified as optimal must be included. Once the State accepts the analysis and approves a set of operating conditions as optimal, those conditions would become the required operating parameters for that system for the future.

Suppliers serving more than 3,300 persons that wish to change other concurrent treatments that might reduce the effectiveness of the approved corrosion control treatment, or experience significant change in the population served or in the extent of the distribution system, would be required to submit to the State for approval new corrosion control data from studies which reflected the new conditions under which the supplier wishes to operate. These conditions must show that corrosion of lead continues to be minimized.

(B) *Small Systems.* Systems serving fewer than 3,300 persons that do not meet the no-action levels simply would be required to apply to the State for a treatment plan. States would determine what type of corrosion control treatment would result in the minimization of lead levels at the tap and specify this treatment in the plan. (Systems that preferred to develop and submit their own treatment plan would be allowed to do so.) The treatment plan would contain the same performance standard as that required from larger systems—installation of corrosion control treatment to either meet the no-action levels or minimize the corrosivity of tap water towards lead, and an effective program of public education if one or both of the no-action levels are exceeded after treatment. The activities required of small systems to meet this performance standard would be tailored to their ability to perform detailed analyses of alternative corrosion control treatments and to conduct public education programs. For example, rather than conducting pipe loop, laboratory, pilot-scale, or field studies to determine optimal treatment, the State would specify the type of treatment small systems are to install. The State would be responsible for determining what treatment is most likely to be effective in each system. Once the treatment is designated, the responsibilities of small systems would be very similar to those of larger systems. The systems would install and fine-tune the full scale treatment, monitor tap water to assure treatment effectiveness, and continue to meet the no-action levels (if achieved by the specified treatment) or to operate under conditions approved by the State.

EPA recognizes that some corrosion treatments may be difficult to implement for small water suppliers without full-time personnel to monitor and maintain operations. EPA has therefore identified technologies which may be appropriate for the smallest water suppliers, i.e., those serving fewer than 500 persons. Soda ash (sodium carbonate) may be appropriate for some of these small systems. Other systems may require treatment with lower maintenance requirements; limestone bed contactors (calcite contactors) provide a possible alternative. In a limestone contactor, water is closed to the atmosphere and flows through and dissolves a packed bed of crushed limestone or another source of calcium carbonate. Such devices can reduce lead levels in morning first draw drinking water by five-fold and copper by more than 50-

fold (EPA, 1987d). These devices need relatively low maintenance (although they require occasional backwashing), are effective and relatively low in cost, and provide a viable treatment alternative for many small systems. However, there are a few limitations associated with calcite contactors. First, this technology may not be effective for systems with source water that is already saturated with $CaCO_3$. Second, systems that do use this treatment technology may not meet the no-action level for pH, especially if the source water has low pH and low total alkalinity. This treatment technology may need to be coupled with another treatment technology to achieve the no-action levels for both pH and lead. Dolomite contactors may provide treatment similar to that of calcite contactors. While water suppliers may use any treatment to minimize water corrosivity, EPA believes the treatment methods described above may be more practical for the smallest systems, and encourages States to consider them seriously in developing treatment plans for these PWSs.

The treatment plan for systems serving 3,300 or fewer persons would include a schedule for installing and adjusting the treatment designated by the State, and would include the following specific steps, which correspond to Steps (3)–(5) for larger systems (described above):

Step 1: Installation and operation of the corrosion control treatment required by the State in the water system as a whole, within three years of issuance of the treatment plan.

Step 2: Monitoring to determine the efficacy of the treatment as installed.

Step 3: Adjustment of the installed treatment as necessary to ensure that lead levels are minimized.

Step 4: If one or more no-action levels are still exceeded after installation and adjustment of treatment by the system, the State would analyze all treatment and resulting lead levels to determine whether treatment is optimal, i.e., lead levels are minimized, for the specific system. Monitoring data supporting the conclusion that treatment is optimal must be submitted to the State.

Suppliers serving fewer than 3,300 persons that wish to change other concurrent treatments that might reduce the effectiveness of the approved corrosion control treatment, or experience significant change in the population served or in the extent of the distribution system, would be required to notify the State of the proposed changes. States may disapprove the changes and require modifications necessary to preserve the minimal corrosivity of the water.

b. *Public Education.* Under this proposal, those water suppliers (of all sizes) exceeding one or both of the no-action levels for lead (either the average or the maximum) would be required to conduct a public education program to reduce exposure to lead. The public education program would be a part of the treatment plan. Public education would begin as soon as the State approves or issues the treatment plan which includes public education program. States could approve or issue a treatment plan in two steps to allow the public education programs to begin as quickly as possible. In these cases, the State would approve the part of the treatment plan that contains the public education program first, without waiting for final analysis and approval of the corrosion control portion. Two-part approval would be especially useful when the corrosion control laboratory work and scale-up analysis is complicated.

The proposed public education program differs both from the general public notification requirements and the special lead public notification requirements under sections 1414 and 1417 of the Safe Drinking Water Act (see 52 FR 41534, October 28, 1987). First, the public education program would be an ongoing requirement of the NPDWR for lead and copper, for as long as one or both no-action level is exceeded, as opposed to the special lead notification requirement, which is basically a one-time notice. Second, the public education program under this proposal would be required to include intensive interaction between the PWS and its customers to educate them about lead in drinking water, whereas the general public notification program is passive; it simply notifies customers of violations. As explained in Section III. above, excess levels of lead in drinking water supplies can pose a risk to public health. A well designed and executed public education program can induce public water system customers to voluntarily modify their water use behavior, mitigating risks that may result from lead leaching into drinking water.

Water suppliers would be required to design public education programs to meet three performance standards, one regarding program content, a second regarding program delivery, and a third regarding program evaluation, as described below.

i. *Program Content.* The public education program would include information on health reasons for concern about lead exposure, including, in qualitative and quantitative terms, information on specific potential health effects associated with excess blood lead levels and the possible contribution of drinking water to them. As described in detail earlier, these effects include interference with heme synthesis, anemia, kidney damage, impaired reproductive function and fetal effects, interference with vitamin D metabolism, impaired cognitive performance (as measured by IQ tests, performance in school, and other means), delayed physical and neurological development, and elevations in blood pressure (EPA, 1986b). Also, the consumer would be advised that the risks associated with lead in drinking water may be aggravated by exposure to lead from other sources. Other sources include lead from paint chips or paint dust, occupational and home hobby exposures (e.g., smelting, electronics), inhalation of airborne lead, and ingestion of lead in food, especially lead that leaches into food from lead-soldered containers.

Besides identifying the nature of the problem associated with lead in drinking water, the public education program would be required to provide information that the consumer may use to evaluate the probability of excess levels of lead in his or her own household water supply. This information must include the potential for excess lead levels in the water as the water leaves the water supplier and the potential for further increases in the lead levels as a result of corrosion of water supply system components. In addition, the public education program must advise consumers to examine the service line, pipes, and soldered joints in their homes for lead, and faucets and other fixtures for brass, which may commonly contain lead; how to have their water analyzed by a commercial laboratory to determine the lead content; and to contact the PWS for additional information. The program must also include specific information on the banning of materials containing lead for use in drinking water systems. The PWS should be prepared to respond to public inquiries on any issues related to lead in drinking water. EPA solicits comment on additional information that the public education program should include.

The public education program would be required to advise consumers of the actions that may be taken to immediately reduce exposure to lead levels in drinking water that exceed the maximum no-action level, i.e., 0.020 mg/l. These actions include: Non-wasteful flushing of taps (such as dishwashing) before any water from a tap is

consumed or used for any type of cooking or other food preparation including preparation of baby formula; using only cold water for drinking or the preparation of any food or formula; possibly replacing portion of the service line owned by the consumer or landlord if it is made of lead and is contributing significant amounts of lead to the drinking water; ensuring that all plumbing repair work is performed using lead-free solder (explaining that the use of lead solder in drinking water systems is illegal); and providing an electrical ground for household wiring other than the household plumbing system if permitted by local building and electrical codes. The Agency invites comments on the effectiveness of these or any other actions that may be used to effect an immediate reduction in exposure to drinking water lead.

The public education program would require the identification of any actions already taken by any official parties within the community to evaluate, quantify, and/or reduce the levels of lead in drinking water and must publicize the results of compliance and other monitoring for lead (including results of any monitoring arranged by the PWS at the request of a consumer, as described below).

ii. *Program Delivery.* The delivery of the public education program is defined by three factors: The audience, the media used to deliver the program, and the frequency and duration with which the program is delivered.

EPA believes that often it would be appropriate to target the education program to specific segments of the public. For instance, residences with known high lead levels, lead service lines, or lead solder less than five years old would be targeted. However, if many or nearly all of the residences are at high risk, then the program should be conducted community-wide.

The Agency expects many systems already have much information regarding plumbing materials in the distribution system and in homes. Under 40 CFR 141.42(d) systems were required to identify whether lead from pipe, solder, caulking, interior lining of distribution mains, alloys and home plumbing was present, and report the results to the States by 1983. Systems are strongly encouraged to use the results of this identification to assist in the estimation of the prevalence of high risk houses and to assist the targeting of public education programs to those areas of the community most likely to have a large proportion of residences with high lead levels in their water.

Public water systems also would be required to consider whether it is appropriate to target customers on the basis of traits other than geographic location and household plumbing type. For instance, available data indicate that children and developing fetuses are more susceptible to the effects of lead in drinking water than adults are. Therefore, public water systems could target programs to customers that are associated with children and pregnant women. These customers include families, child day care providers, schools, and hospitals. Systems could also target customers with other traits or characteristics that are known to correlate with sensitivity to elevated levels of lead in drinking water supplies such as persons having occupational or other high enviromental exposure, e.g., people working in or living near lead smelters. In addition, bilingual information would be required to be disseminated to non-English speaking portions of the targeted population.

As a part of the public education program, EPA is proposing to require that water suppliers offer a program of extended monitoring, beyond the compliance monitoring requirements. The goal of the extended monitoring is to allow all customers to easily determine lead levels and sources in their own household water, especially in cases where the household was not among the residences chosen for compliance monitoring. EPA expects this provision to increase substantially the effectiveness of the public education program in reducing exposure to lead in drinking water.

Under the extended monitoring requirement, water suppliers would be required to offer all customers the opportunity to have household water tested for lead. The public water supplier would not be required to provide this service for free, but would be allowed to pass the costs of gathering and analyzing the samples on to the customers who elected to participate in the program. The supplier itself could gather, analyze, and report the results to the customer, or the supplier could make arrangements with any certified laboratory to provide the analyses to the customer. In this way, customers would gain easy access to quality water sampling services, and not be subjected to repeated trial-and-error in finding reasonably priced, qualified sampling services. At the same time, the public water supplier could minimize its burden in providing the sampling services by making arrangements with an outside laboratory.

EPA strongly recommends that water suppliers assist customers in identifying the sources of high water lead levels when they are found. The supplier could advise customers to collect samples representative of water that has stood in the service line overnight and a fully flushed sample from the tap. Comparison of the service line sample with the fully flushed sample would allow the customer to identify the source of elevated water lead levels and to take appropriate steps to effectively limit further exposure. For example, if the service line sample shows elevated lead levels, a lead service line may be present. The customer would then be able to determine the value of service line replacement as a means of reducing exposure.

If the alternative of having the public water supply remove lead service lines that it owns and/or controls and offer to remove the remainder for the customer at cost (as discussed below) is adopted, these additional samples would enable suppliers to determine which service lines must be replaced. If the fully flushed sample shows elevated lead levels, this would indicate that the lead is entering the house from the water supply either in the distributed water leaving the plant or as a result of corrosion of pipes owned or under the control of the water supplier. If only the morning first draw sample showed elevated lead levels, the customer could be fairly confident that the lead was originating within his/her residence.

EPA believes that the appropriate medium for public education and schedule for delivery of a public education program are largely a function of the target population. Thus, under this proposal, systems would be required to tailor the form of delivery of the public education program to the nature and size of the target population. For instance, if the target is all residents of a large city, a radio or television Public Service Announcement (PSA) would be appropriate. Conversely, if the target is all residents of a single neighborhood or small town, a public meeting in the neighborhood school would be appropriate. Some other possible methods for public education include preparation of pamphlets or brochures for mass distribution and setting up local telephone hotlines (if used in conjunction with other education methods). The severity of the high lead levels is another factor systems should consider in determining the appropriate medium of education and intensity of the program.

Non-transient non-community water systems serve different populations than community water systems, and thus have different public education requirements. Instead of the requirements described above, NTNC

water systems would be required to take the following actions for the duration of the period during which public education is required: (1) Publicly post informational posters in a prominent place; (2) hold at least one public meeting annually to educate water consumers about lead in drinking water and to answer questions about the subject; and (3) distribute brief informational pamphlets on lead in drinking water at least quarterly.

Public water systems serving more than 3,300 persons would be required to submit the proposed content of the public education program, as well as the manner in which the system would implement it, to the State for review and approval before implementation as a part of the treatment plan. In order to speed implementation of public education, States could approve the part of the treatment plan which covers public education before approving the rest of the treatment plan.

As with public notification requirements, public education programs are the responsibility of the water supplier. However, recognizing that not all systems would have the expertise to conduct such a program in an effective manner, EPA encourages systems to develop joint agreements with State or local public health agencies which have experience in presenting information on health hazards to the public. EPA also encourages systems to coordinate their activities with other local or State programs designed to reduce exposure to lead. For example, local childhood lead screening programs may include complementary public education activities.

Under this proposal, a public education program would include a series of events. For example, a single effort could include several public meetings, a series of PSAs, and a mailing of pamphlets. This series of events could occur over a period of time (e.g., several weeks). The public education program, consisting of each of its individual events, would be required to occur at the rate of four times per year for as long as the system is required to conduct a public education program (i.e., as long as one of the two lead no-action levels is exceeded). For example, a note could be placed on each water bill that says "Are you aware of the possible effects of lead in your drinking water? You should be. Contact _____ for more information."

iii. *Program Evaluation.* Under this proposal, a water system which serves more than 10,000 customers and conducts a public education program would be required to evaluate the program, within 12 months after the program is undertaken, to determine the extent to which it has been effective. The system must show that consumers have knowledge about lead in drinking water. The evaluation would consist of a survey of customers to determine whether they had acquired useful information that enabled them to reduce their exposures to lead in drinking water. Based on this evaluation, the system would determine if and how the program would be modified to increase the program's effectiveness if modification is determined by the State to be necessary to ensure the program's continued effectiveness.

3. Alternatives to the Proposed Treatment Technique

The SDWA requires EPA to set NPDWRs as close to the MCLG as is feasible. EPA believes the proposed rule meets this standard and also is protective of public health. However, EPA is considering several alternatives in addition to the proposed rule. They are discussed in detail below. EPA may decide to promulgate a rule which incorporates any one or more of these alternatives. For example, EPA may retain the average lead no-action level and eliminate the pH no-action level, and delete the MCL for lead in distributed water. Alternatively, EPA may modify the proposal by having the maximum lead no-action level trigger treatment, requiring replacement of those lead service connections which contribute significant amounts of lead to tap water, and/or adopt an alternative approach to monitoring. Accordingly, the Agency especially requests comments on each of these alternative approaches and combinations of alternatives.

a. *Use of Maximum Lead No-Action Level to Trigger Treatment.* EPA is considering an alternative to the proposal which would likely result in lead levels in water somewhat closer to the proposed goal of zero. This alternative is similar to the proposal except that corrosion control treatment in addition to public education would be triggered if the lead level in more than 5 percent of the samples exceeded 0.020 mg/l. Systems that did not meet this additional no-action level would be required to reduce the corrosivity of water until it no longer exceeded this level or demonstrated to the State that it had minimized the corrosivity of its water, in addition to conducting public education. (Under the proposed rule, systems failing to comply with the no-action level of 0.020 mg/l or less in 95 percent or more of samples would be subject to the public education requirement only.)

EPA expects that some systems that meet the average lead no-action level would not be able to meet the maximum. Thus, more water suppliers would be required to install or improve corrosion control treatment, and to demonstrate to the States that the treatment they had installed resulted in compliance with the no-action levels or was optimal. Two groups of water suppliers would be affected in this way. Some water suppliers that would meet the proposed no-action level average of 0.010 mg/l without any treatment or additional treatment (beyond that already in place) may fail to meet the "maximum" of 0.020 mg/l. In addition, water suppliers that would already be required under the proposal to improve water treatment to meet the average of 0.010 mg/l might have to improve their treatment more if they must try to meet both the average and the "maximum" of 0.020 mg/l. If they could not meet both levels, they would be required to demonstrate that the water is minimally corrosive. EPA is unable to precisely estimate the increased number of water suppliers that would be affected but it is likely to be several thousand.

Since more systems would be treating their water to make it less corrosive than under the proposed rule, more people would consume water with less lead than under the proposals (although precise estimates of these reductions are not available). EPA seeks comment on this alternative because this alternative would result in water lead levels closer to the MCLG of zero, thus reducing consumers' exposure to lead more than the approach proposed today. This reduced exposure would result in some additional health benefits with potential theoretical benefits under this alternative that could be substantial. However, EPA is concerned that many more water suppliers may have to demonstrate to the State that they have optimized corrosion control or that new or improved treatment results in meeting the no-action levels. It is unclear whether the States would be able to sustain a time-consuming and technical interaction with an increased number of facilities over several years while at the same time assuring effective implementation of the other drinking water regulations. Therefore actual benefits may be less than the theoretical benefits and may not be substantially different than the proposed alternative. Because of this concern, EPA is also considering two variations to this alternative which may reduce the magnitude of this implementation

problem. The first is raising the maximum no-action level to trigger corrosion control treatment to 0.030 mg/l to better assure that this alternative could be implemented while still providing additional health benefits by limiting high lead exposures. The second variation would substitute the no-action level of 0.020 mg/l or less lead in 95 percent or more sample in place of the two no-action levels in the proposal (average level of 0.010 mg/l for lead and pH >8 in 95 percent or more samples) and have only one no-action level to trigger both corrosion control treatment and public education. EPA requests comment on all of these alternatives.

b. *Use of Total Alkalinity No-Action Level to Trigger Treatment.* EPA is considering an alternative to the proposal which would likely result in lead levels in water somewhat closer to the proposed goal of zero. This alternative is similar to the proposal except that corrosion control treatment would be triggered if the total alkalinity in 95 percent or more samples was not 30 mg/l or higher. Systems would be required to reduce the corrosivity of water until it exceeded this level or demonstrated to the State that it had minimized the corrosivity.

EPA expects that some systems that meet the average lead no-action level and the no-action pH level would not be able to meet the total alkalinity no-action level. Thus, more water suppliers would be required to install or improve corrosion control treatment, and to demonstrate to the States that the treatment they had installed resulted in compliance with the no-action levels or was optimal. Two groups of water suppliers would be affected in this way. Some water suppliers that would meet the proposed no-action level average of 0.010 mg/l lead and the no-action level for pH without any new or additional treatment (beyond that already in place) may fail to meet the total alkalinity no-action level of 30 mg/l. In addition, water suppliers that would already be required under the proposal to improve water treatment to meet the average of 0.010 mg/l and/or the pH >8 might have to improve their treatment more than necessary to meet the average and the pH only to try to meet the total alkalinity of 30 mg/l. If they could not meet all three levels, they would be required to demonstrate that the water is minimally corrosive. EPA is unable to precisely estimate the increased number of water suppliers that would be affected but it may be about a thousand.

Since more systems would be treating their water to make it less corrosive than under the proposal, more people would consume water with less lead than under the proposal (although precise estimates of these reductions are not available). This alternative would result in water lead levels closer to the MCLG of zero, thus reducing consumers' exposure to lead more than the approach proposed today. EPA seeks comment on this alternative because this reduced exposure would result in some additional health benefits with potential theoretical benefits under this alternative that could be substantial. Actual benefits may be less than the theoretical benefits and may not be substantially different than the proposed alternative. However, EPA is concerned that more water suppliers may have to demonstrate to the State that they have optimized corrosion control. If average lead levels are equal to or below 0.010 mg/l, but the alkalinity fails to meet the specified level, additional treatment may not substantially reduce lead levels further. Therefore, including alkalinity may cause some systems to incur additional costs unnecessarily. EPA solicits comment on this alternative.

c. *Eliminating the pH No-Action Level.* The proposed regulation would require that water suppliers adjust the pH of their water to 8 or above, unless they demonstrate that corrosion is minimized at lower pH levels, as part of the corrosion control treatment technique. EPA believes this parameter represents the outer bound of water that is minimally corrosive to lead. However, concern with using pH as a fixed regulatory requirement has been raised. If average lead levels are equal to or below 0.010 mg/l, but the pH fails to meet the specified level, additional treatment may not substantially reduce lead levels further. Therefore, including pH may cause some systems to incur additional cost unnecessarily.

Because of this concern, EPA solicits public comment on an alternative in which the pH value is not a regulatory no-action level but only guidance. Under this alternative, determination of compliance with the treatment technique requirement would be based solely on the lead and copper levels found in the sampled residences. The MCL of 0.005 mg/l for lead in water leaving the treatment plant would still apply, as would the MCL of 1.3 mg/l for copper. If samples exceed the average of 0.010 mg/l, the PWS would be required to install corrosion control treatment and conduct a public education program as in the proposed rule. Those systems that continue to exceed the 0.020 mg/l lead no-action level in more than five percent of targeted samples must also conduct public education. Once lead was reduced to below the 0.010 mg/l average, or the water supplier demonstrated that optimal corrosion control treatment was being applied, the water supplier would be in compliance with the treatment technique requirement.

Under this alternative, suppliers would not be required to measure pH as part of compliance monitoring. However, systems that did not meet the no-action average level for lead would be required to monitor pH and examine the effects of increasing pH above 8 as part of the optimization demonstration.

This alternative could result in less public health protection because fewer systems may be required to install corrosion control treatment. The pH requirement, in conjunction with the lead average no-action level, would trigger treatment in more systems than would the lead average alone. In addition fewer small systems may be required to install treatment under this alternative because these systems are required to take fewer lead and copper samples. Because of the reduced monitoring, more of these systems are likely to have undetected lead levels above the no-action level and thus would not be required to install or improve treatment; the pH no-action level "catches" some of these systems and requires them to control corrosion. Thus final lead levels may not be as close to the proposed MCLG of zero as under the proposed approach.

Note that the actual reduction in benefit in this alternative may be somewhat smaller than the theoretical reduction because it is easier to administer. Therefore, the actual benefits may not be substantially different than the proposed approach.

Theoretically, one way to overcome this problem with this alternative would be for EPA to increase the number of lead samples required by PWSs, especially small systems. However, EPA is concerned that small systems may be unable to take the additional number of samples necessary to assure protection of public health. EPA is especially interested in comment on the trade-off between the proposal and improving this alternative by increasing the number of samples required.

d. *Lead Service Line Replacement Program.* EPA considered requiring replacement of lead service lines and connections in cases where they contribute measurable amounts of lead to the tap water, but is not now proposing this program. EPA particularly solicits public comment both on the specific alternative described below including the materials evaluation and

monitoring requirements, as well as any alternatives that might better achieve EPA's goals in a better and less burdensome way.

The program EPA is considering would require the replacement of lead service lines and connections that, after implementation of any corrosion control treatment, continue to contribute measurable amounts of lead to drinking water (0.003 mg/l or more), and that are under the ownership or control of the PWS. This alternative would have three components: (1) A full materials evaluation (i.e., identification of all buildings served by lead service lines or connections), (2) monitoring at all buildings with lead service lines or connections, and (3) the replacement of lead service lines and connections under the ownership or control of the system that are found to contribute 0.003 mg/l or more to lead levels at the tap. Obviously, no such program would be required in communities in which no lead service lines or connections have been used.

The program considered by EPA would require replacing only those pipes that contribute measurable amounts to lead levels at the tap. Communities that have residences with lead service lines in their targeted sample set (as described in Section V.C.2.) would be candidates for the lead service line replacement program. If the service line sample of any house in the targeted monitoring set exceeded 0.020 mg/l, the system would be requried to identify and take service line samples from a number of residences equal to the number of required samples for compliance monitoring. If five percent or more of the total service line samples from this expanded sample exceeded 0.020 mg/l, the service line replacement program would be triggered for that system.

Once the service line replacement program was triggered, the system would be required to take the three steps listed above: inventory all lead service lines and connections in the community, test each of them, and replace all portions of those connections owned or controlled by the system contributing measurable amounts of lead to the drinking water.

Under this program, EPA would establish two rebuttable presumptions. The first rebuttable presumption would be that lead service lines and connections contribute to lead levels at the tap. The water supplier would first be required to conduct a full inventory of the materials used in the water system and to locate all lead service lines, goosenecks, pigtails, and other lead materials. A materials evaluation should already have been conducted under the requirements of the 1980 amendments to the National Interim Primary Drinking Water Regulations (45 FR 57332, August 27, 1980, 40 CFR 141.42(d)). If not previously done, suppliers would be required to conduct a complete materials evaluation. To rebut the presumption and avoid replacing the lead service lines and other connections, the PWS would be required to monitor each home in the community with a lead service connection or pipe to determine whether the lead service contributes measureable amounts of lead to lead levels at the tap. Specifically, the PWS would have to take a service connection sample and fully flushed sample and demonstrate that the service connection sample has lead levels that are no more than the fully flushed sample from the same tap. This presumption must be rebutted for each lead connection the system wishes to avoid replacing.

The second presumption is that the water supplier owns or controls and therefore can replace, the lead components up to the wall of the building served. In this case, the PWS would be required to replace the entire length of each lead service connection contributing measurable lead to water, from the water main to the building wall, including lead goosenecks, pigtails, and any other lead connections. This presumption could be rebutted by the water supplier by citing local ordinances or State statutes, or in the case or private suppliers, the contract between the system and their customers, that might limit the extent of the PWS' control. Water supplies that rebut the second presumption would have to replace only the portion of each service line and those connections under their ownership or control that contribute a measurable amount of lead to the water.

Lead service connections would be required to be replaced on a fixed schedule as part of the system's treatment plan. No water supplier would be allowed longer than 15 years (starting when the service connection replacement program is triggered unless the system is granted an exemption under Section 1416 of the Act) to replace all lead service connections that require replacement. Water suppliers would be required to replace, or test and rebut the presumptions, for a number of lead services equal in number to at least five percent of the total service connections in the community each year until all those requiring it are replaced. EPA would set the 15-year time limit because this schedule accelerates replacement over current practice.

e. *No MCL for Distributed Water.* Instead of the proposed two-part approach consisting of MCLs for lead and copper in distributed water and a treatment technique for lead and copper as corrosion by-products, EPA considered an alternative which would establish only a treatment technique for those contaminants which can enter water from source water and as a by-product of corrosion. The alternative would resemble the proposed approach except there would be no MCL for lead and copper in distributed water. Under this alternative, systems meeting the no-action level average of 0.010 mg/l and having 0.020 mg/l or less lead in 95 percent of targeted samples, and having 1.3 mg/l or less copper in 95 percent of targeted samples would be in compliance with the treatment technique requirement.

A system not initially meeting the lead average or copper no-action levels would be allowed to employ whatever combination of corrosion control and source water treatments the system chooses to meet the no-action level. Systems still failing to meet the no-action levels by the specified date (either due to source water or corrosion problems) would be required to obtain a State-approved treatment plan. The treatment plan would contain two elements: (1) Steps to reduce lead levels to below the no-action levels or to demonstrate that source water controls and corrosion control treatment are optimal if the no-action average lead level of 0.010 mg/l were not met, and (2) a public education program if the lead average were not met or if five percent of lead samples exceeded 0.020 mg/l. Under this alternative, systems would generally be required to take the following steps to reduce the lead levels in water:

(1) Conduct a study to determine the amount of lead in morning first draw samples that originates in the source water and the amount originating as a corrosion by-product, in the residences monitored for compliance (monitoring would be conducted in targeted residences, as in the proposed rule).

(2) If lead in source water was found to be above 0.010 mg/l, the system would be required to install lead removal technology including any of those that would remove lead from source water to below 0.010 mg/l is described as BAT in Section IV.C. above.

(3) If lead as a corrosion by-product was found to be above 0.010 mg/l as an average, the system would be required to install corrosion control treatment, as described in Section IV.D.1. above.

(4) If neither source water lead nor corrosion by-product lead were individually above 0.010 mg/l (either naturally or because of treatment installed in (2) or (3) above), but the combination of them was above 0.010 mg/l, the system would be required to install either lead removal treatment as described in (2) above, or corrosion control treatment as described in (3) above, or both. The precise combination chosen would be up to the system, as long as the levels in targeted samples were reduced to 0.010 mg/l or lower as a average. If, after installation of treatment, average lead levels in targeted samples remain above 0.010 mg/l, systems would be required to install any additional treatment required by the State (either lead removal or corrosion control treatment), or if none existed, demonstrate to the State that treatment (especially corrosion control treatment) already installed was being operated in a manner that minimized lead levels.

(5) If, after installation of all the treatment described in (2)–(4) above, morning first draw lead levels remained above an average of 0.010 mg/l or if lead levels are 0.020 mg/l or less in 95 percent of targeted samples, the system would be required to conduct a public education program.

A potential advantage offered by this alternative is that it offers a PWS the opportunity to determine for themselves and implement the most efficient combination of treatments to minimize lead levels at the tap. A disadvantage of this option is that it would allow systems to distribute water at levels between 0.005 and 0.010 mg/l in cases where lower levels are possible.

V. Monitoring

A. Analytic Methods

1. Background

NPDWRs must include "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system * * * ." Section 1401(1)(D).

EPA evaluated the analytic methods for lead, copper, and pH with respect to the accuracy of recovery (lack of bias) and precision (good reproducibility) in the range of the MCLs and no-action levels being considered. The primary purpose of this evaluation was to determine:

- Whether analytic methods are technically available to measure these contaminants in drinking water;
- What are reasonable expectations of technical performance by analytic laboratories at the proposed MCL and no-action levels; and
- The costs of analysis for these contaminants.

The selection of appropriate analytic methods for compliance with these regulations includes consideration of the following factors:

- Reliability (i.e., precision/accuracy) of the analytical results;
- Specificity in the presence of interferences;
- Availability of sufficient equipment and trained personnel to implement a national monitoring program;
- Rapidity of analysis to permit routine use; and
- Cost of analysis to water supply systems.

2. Specific Analytic Methods

There are analytic methods available and approved by EPA for the determination of lead in drinking water, as listed in Table 10. There is no currently approved method for copper because there is currently no primary MCL for it. The analytic methods listed in this table have been used for many years to meet the compliance monitoring requirements specified in the interim NPDWR for lead.

TABLE 10.—CURRENTLY APPROVED METHODS FOR ANALYZING LEAD UNDER THE INTERIM REGULATIONS

Methodology	Reference (Method Number)		
	EPA [1]	ASTM [2]	SM [3]
Atomic absorption; furnace technique	239.2		
Atomic absorption; direct aspiration	239.1	D3559–78A or B	301A–II or III
Inductively coupled plasma	[4] 200.7A		

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA–600/4–79–020), March 1979. Available from ORD Publications, CERI, EPA, Cincinnati, OH 45268. (The technique applicable to total metals must be used.)
[2] Annual Book of ASTM Standards, Part 31 Water, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.
[3] "Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1975.
[4] "Inductively-Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, September 1985, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268.

Table 11 lists the analytic methods that EPA is proposing today for compliance with the copper MCL, revised lead MCL, and treatment requirements for both lead and copper described in this proposed rule. EPA is proposing to approve neither the atomic absorption direct aspiration technique nor the inductively coupled plasma technique for measuring lead to determine compliance with today's proposal because the method detection limits for these two techniques are too high to determine the low concentrations of lead in drinking water proposed in this rule.

TABLE 11.—PROPOSED METHODS FOR ANALYZING LEAD AND COPPER

Contaminant	Methodology	Reference (Method Number)			
		EPA [1]	ASTM [2]	SM [3]	Other
Lead	Atomic absorption; furnace technique	239.2	D3559–85D	304	
Copper	Atomic absorption; furnace technique	220.2	D1688–84F	304	
	Atomic absorption; direct aspiration	220.1	D1688–84D or E	303A–A or B	

TABLE 11.—PROPOSED METHODS FOR ANALYZING LEAD AND COPPER—Continued

Contaminant	Methodology	Reference (Method Number)			
		EPA [1]	ASTM [2]	SM [3]	Other
	Inductively coupled plasma	[4]200.7A			

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA-600/4-79-020), Revised March 1983. Available from ORD Publications, CERI, EPA, Cincinnati, OH 45268. (For approved analytical procedures for metals, the technique applicable to total metals must be used.)
[2] Annual Book of ASTM Standards, Vol. 11.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.
[3] "Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.
[4] "Inductively-Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, September 1985, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268.

EPA has determined that the analytic methods listed in Table 11 are technically and economically feasible for routine use in compliance monitoring for lead and copper. The costs associated with the analysis of these metals are within the economic means of water supply systems. The cost for analyzing lead and copper is estimated at about $6 to $30 per metal per sample. (The actual analytical costs may vary with the laboratory, analytical technique selected, the total number of samples, and other factors.) Also, the number of laboratories that routinely participate in EPA's Water Supply and Water Pollution performance evaluation studies indicates that there are many laboratories available that have the capability to analyze for lead and copper in drinking water using these methods.

Below is a description of each of the techniques EPA is proposing to approve for analysis of lead and copper in drinking water. EPA requests public comment on the technical adequacy as well as the economic feasibility of the proposed analytic techniques.

a. *Atomic Absorption Methods.* Levels of lead and copper in solution may be determined by atomic absorption (AA) spectroscopy. There are two techniques that may be used: Direct aspiration and the furnace technique. EPA is proposing to allow use of the direct aspiration technique only to analyze for copper because this method cannot analyze the low levels of lead specified in this proposal. In direct aspiration, the sample is aspirated into a flame and atomized. A light beam is directed through the flame into a monochromator and onto a detector that measures the amount of light absorbed by the atomized element in the flame. Because each metal has its own characteristic absorption wavelength, a source lamp composed of that element is used which makes the method relatively free from spectral or radiation interferences. The amount of energy of the characteristic wavelength absorbed in the flame from the metal being analyzed is proportional to the concentration of the element in the sample. In the furnace technique, a sample is placed in a graphite tube in a furnace, evaporated to dryness, charred, and atomized. Because the percentage of available analyte atoms vaporized and dissociated for absorption in the graphite tube is greater using this method than the percentage of available analyte atomized in the flame of the direct aspiration AA method, the furnace technique can detect lower concentrations.

Low-level analyses of lead in drinking water using atomic absorption methods must be performed with uncontaminated glassware. Retained lead is most likely to occur on the ground glass surface of volumetric glassware. EPA recommends that laboratories avoid the problem of contamination by using a separate set of glassware for low-level lead analyses. Also, particular attention should be given to glassware cleaning by ensuring that all ground glass surfaces are soaked and held in contact with cleaning acid for a minimum of two hours.

b. *Inductively Coupled Plasma (ICP)—Atomic Emission Spectrophotometric Method.* This method (also known as "EPA Method 200.7") describes a technique for the simultaneous or sequential multi-element determination of trace elements in solution. This method is applicable to the measurement of copper only; it is not yet sensitive enough to measure lead for purposes of this regulation. (Further improvement in the method may make it appropriate for measurement of lead at a later date. If so, EPA would then consider approving this method for measuring lead.) The basis of the method is the measurement of atomic emission by an optical spectroscopic technique. Samples are nebulized and the aerosol that is produced is transported to the plasma torch where excitation occurs. Characteristic line emission spectra are produced by a radio frequency inductively coupled plasma (ICP). The spectra are dispersed by a grating spectrometer and the intensities of the lines are monitored by photomultiplier tubes. The photocurrents from the photomultiplier are processed and controlled by a computer system. A background correction technique is required to compensate for variable background contributions to the determination of trace elements. Background levels must be measured adjacent to analyte lines on samples during analysis.

The appendix to EPA Method 200.7, entitled "Inductively Coupled Plasma—Atomic Emission Analysis of Drinking Water," describes a technique for concentrating the sample prior to analysis. Under this proposal, systems would be required to follow this concentration technique in processing drinking water supply samples prior to ICP emission spectrometric analysis for copper.

3. *Method Detection Limits and Practical Quantitation Limits*

Generally, EPA defines the method detection limit (MDL) as the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the true value is greater than zero. The practical quantitation limit (PQL) is the lowest concentration that can be reliably achieved by well-operated laboratories within specified limits of precison and accuracy during routine laboratory operating conditions. Differences between the MDLs and PQLs are expected; the PQL is generally about 5 to 10 times the MDL for relatively clean matrices such as finished drinking water. (See EPA 1987e, and 50 FR 46902, November 13, 1985, for a detailed discussion of MDLs and PQLs.)

The PQL may be determined through interlaboratory studies, such as performance evaluations (PE) studies. However, if data are not available from interlaboratory studies, the PQLs may be estimated. In such cases, EPA believes that a PQL set at 10 times the MDL achieved by good laboratories is generally a fair expectation for routine operation of most qualified State and

commercial laboratories. The use of "five times the MDL" instead of "10 times the MDL" to set the PQL may be appropriate when other considerations suggest that the PQL should be lower, e.g., see discussion of the PQL for vinyl chloride in the final NPDWRs for volatile organic chemicals, July 8, 1987 (52 FR 25690).

Detection limits have been estimated for the available analytical techniques for lead and copper and are summarized in Table 12. Detection limits for lead and copper traditionally have been based on a concentration that corresponds to a specified instrument signal-to-noise ratio (i.e., peak height to background). The detection limits for ICP using the concentration technique (1 μg/l for copper and 0.005 mg/l for lead) were calculated based upon MDLs. The MDL approach involves the determination of method detection limits using a procedure defined in Appendix B to 40 CFR Part 136 (analytic methods for wastewater pollutants). EPA is using the MDL concept to calculate limits of detection for analytes in all newly developed methods for determination of drinking water contaminants.

TABLE 12. DETECTION LIMITS FOR AVAILABLE ANALYTICAL METHODS FOR COPPER AND LEAD

Contaminant	Proposed MCLG (μg/l)	Analytic method	Detection limit (μg/l)
Copper	1,300	Atomic absorption; furnace.	1
		Atomic absorption; direct aspiration.	20
		Inductively coupled plasma.	*6(1)
Lead	0	Atomic absorption; furnace.	1
		†Atomic absorption; direct aspiration.	100
		†Inductively coupled plasma.	*(5)

*Using the concentration technique in Appendix A to the EPA Method 200.7.
†EPA is not proposing to approve these methods for lead because the detection limits are too high to detect low concentrations of lead in drinking water.

The PQLs for lead and copper were determined based primarily upon the detection limits and the results from PE studies. The PQL for lead was determined using EPA and State laboratory data from Water Supply (WS) PE studies #12–17. The PQL for copper was determined using EPA and State laboratory data from Water Pollution (WP) PE studies #12–16, since copper is not included in WS studies. These results are considered to be optimum since they are drawn from experienced laboratories operating under conditions where they knew they were being tested, using standard samples in distilled water and without interferences. Actual day-to-day operations in a wide variety of laboratories using "real" samples of natural tap water would be expected to produce somewhat poorer results, i.e., have wider performance ranges, especially at the lower concentrations.

EPA used the following procedure to determine the PQLs for lead and copper using the PE study data:

1. Regression equations were generated for precision and accuracy using the EPA and State laboratory data for lead and copper.

2. The percent recovery and relative standard deviation were used to estimate the 95 percent confidence limits. The percent recovery and relative standard deviation were calculated at the proposed MCLG for copper using the regression equations generated from the laboratory data for the contaminant. For lead, the percent recovery and relative standard deviation cannot be calculated at the proposed MCLG because it is zero. Therefore, another concentration must be used to calculate the 95 percent confidence limits. This value is set as close as possible to the proposed MCLG. The lowest MDL for any of the methods used to detect lead is 0.001 mg/l (for the atomic absorption furnace method). The minimum PQL for this method is "five times the MDL" or 0.005 mg/l using the "five to 10 times the MDL" criterion. This value was selected as the appropriate concentration to calculate the 95 percent confidence limits from the regression equations. The percent recovery, relative standard deviation, and the 95 percent confidence limits for lead and copper are summarized in Table 13.

TABLE 13.—95 PERCENT CONFIDENCE LIMITS FOR DETECTION OF LEAD AND COPPER

Contaminant	MCLG (mg/l)	Percent recovery	Relative standard deviation	95 percent confidence limits (percent of true value)
Lead	[1] 0.005	107	21	65–149
Copper	1.3	99	4	91–107

[1] The calculations are made assuming that 0.005 mg/l is the lowest possible PQL instead of zero. For further explanation, see the discussion above.

Sources: USEPA 1983–1985, Water Supply PE studies #12–17 and Water Pollution PE Studies #11–16.

3. EPA and State laboratory data for each contaminant were evaluated to determine the limits for the "plus or minus percent of the true value" that most closely approximated the 95 percent confidence limits. They are summarized in Table 14.

TABLE 14.—PROPOSED ACCEPTANCE LIMITS FOR LEAD AND COPPER

Contaminant	MCLG (mg/l)	Acceptance limits (plus or minus percent of true value)	PQLs (mg/l)
Lead	[1] (0)0005	30	0.005
Copper	1.3	10	0.050

[1] The calculations are made assuming a minimum possible PQL of 0.005 mg/l instead of zero. For further explanation, see the discussion above.

4. The proposed PQLs for lead and copper were set based on the available data at a concentration where at least three-quarters of the EPA and State laboratories were within the specified acceptance range. These PQLs are summarized in Table 14.

Public comments are requested on the PQLs for lead and copper.

4. pH—Electrometric Method

EPA is proposing to approve the electrometric method for measuring the pH of drinking water samples collected to determine compliance with this proposed rule. The references for this method appear in Table 15 below. Under this method, the pH of a sample is determined electrometrically using either a glass electrode in combination with a reference potential, or using a

combination electrode. The pH meter must provide accurate and reproducible results within ±1 pH unit and should be equipped with a temperature compensation unit. The pH meter may need to be adjusted to compensate for water temperature. Samples should be analyzed in the field at the time of sampling.

TABLE 15. METHODOLOGY FOR ANALYZING FOR PH AND TOTAL ALKALINITY

Parameter	Methodology	Reference (Method Number)			
		EPA [1]	ASTM [2]	SM [3]	Other
pH	Electrometric	150.1	D 1293-84	423	
Total Alkalinity (as $CaCO_3$, mg/l)	Titrimetric	310.1	D 1067-82A	403	

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA-600/4-79-020), March 1985. Available from ORD Publications, CERI, EPA, Cincinnati, OH 45268.
[2] Annual Book of ASTM Standards, Vol. 11.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.
[3] "Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.

5. Total Alkalinity—Titrimetric Method

Under the titrimetric method, total alkalinity is measured by titration to an electrochemically determined end point pH of 4.5. The sample must not be filtered, diluted, concentrated, or altered in any way. The sample would be required to be refrigerated to 40°C and run as soon as practical. The sample bottle should be air tight and should not be opened before analysis. The pH measured at the tap must be provided with this sample so that an accurate alkalinity measurement can be made.

Under this procedure, the alkalinity is calculated using the following formula:

$$\text{Alkalinity, mg } CaCO_3/l = \frac{A \times N \times 50{,}000}{\text{ml sample}}$$

where:
A = ml standard acid used.
N = normality of standard acid.

For low alkalinities, the titration is stopped at a pH in the range of 4.3 to 4.7. The volume of titrant required to reach that pH and the specific pH are recorded. The sample is next titrated to a pH exactly 0.3 pH units lower and the volume of titrant required to reach this end point is recorded. (Method 403, Standard Methods for the Examination of Water and Wastewater, 16th edition, 1985).

For low alkalinities, total alkalinity is calculated by the following formula:

$$\text{Total alkalinity, mg } CaCO_3/l = \frac{(2B - C) \times N \times 50{,}000}{\text{ml sample}}$$

where:
B = ml titrant to first recorded pH.
C = total ml titrant to reach pH 0.3 units lower.
N = normality of standard acid.

B. Laboratory Approval

EPA recognizes that the effectiveness of the proposed regulations depends upon the ability of analytical laboratories to measure lead and copper reliably at relatively low levels. pH measurements must be reliable as well. EPA's regulations specify that only approved laboratories can analyze compliance samples (40 CFR 141.28).

EPA's existing drinking water Laboratory Certification Program (LCP) has established the use of external checks of performance to evaluate the ability of laboratories to analyze samples for specific contaminants and to produce data within specific limits. For this purpose, EPA provides performance evaluation (PE) samples to laboratories on a regular basis; participation in this program is a prerequisite for a laboratory to achieve certification and to remain certified for analyzing compliance samples. Achieving acceptable performance in these studies of known test samples provides some indication that the laboratory is following proper practices. Unacceptable performance may be indicative of problems that could affect the reliability of the compliance data generated for specific contaminants.

Unacceptable performance by any laboratory may trigger an investigation to establish the possible cause(s) and to take corrective action. EPA recognizes that even a superior analytical laboratory occasionally produces data that are outside the acceptable limits for statistical reasons rather than any actual analytic problem. A provision for rapid follow-up analysis if a laboratory fails the initial determination is necessary to decrease the likelihood of statistical error and to determine if a real problem exists.

EPA's present PE sample program and the approaches used in the determination of laboratory performance requirements were discussed at 50 FR 46907 (November 13, 1985). Acceptable performance has historically been set by EPA using two different approaches: Regressions from performance of pre-selected laboratories or specified accuracy requirements. EPA requested public comment on these approaches in the November 13, 1985 notice. Most commenters on that notice supported the use of a "plus or minus percent of the true value" approach to derive acceptance limits instead of generating performance requirements from study statistics. EPA agrees with these commenters that this is the best approach and will specify accuracy requirements in the revised regulations whenever possible.

1. Laboratory Performance for Lead and Copper

EPA has evaluated performance data gathered from past PE studies to set performance requirements for lead and copper analysis. The available PE data indicate that both the precision and the accuracy attained for specific inorganic contaminants are contaminant-specific. For example, the peroent recoveries are 99 percent for copper and 107 percent for lead while the relative standard deviations are 4 percent for copper and 21 percent for lead. The "plus or minus percent of the true value" acceptance limits have been derived for each contaminant taking into consideration the expected precision and accuracy and using 95 percent confidence limits to estimate the acceptance limits. For example, the acceptance limits for copper using 95 percent confidence limits would be 99 percent ±2x (4 percent) or 91 to 107 percent of the "true value." Thus, a ±10 percent of the "true value" acceptance limit is approximately equal to the 95 percent confidence limits. The acceptance limits would apply to concentrations equal to or more than the PQL.

The acceptance limits are summarized below:

Contaminant	Acceptance limits
Copper	±10% at >0.050 mg/L
Lead	±30% at >0.005 mg/L

Public comments are requested on the acceptance limits for lead and copper.

2. Laboratory Performance for Total Alkalinity

The approval criteria for the pH analysis is different from all of the other approval criteria because pH analysis is done in the field. 49 FR 43234, Oct. 26, 1984. The pH analyses would be conducted in the targeted homes with a pH meter. The pH papers would not be permitted for this analyses. The pH meter must meet the specifications listed in the available methods (see Table 15). Under the proposal the pH analyses must be conducted by samplers who have been certified to use pH meters. This is especially necessary because exposure of the sample to air changes sample pH when the sample contains anions such as carbonate (EPA 1982). However, the analyses conducted on site may be limited by either a lack of certified samplers or a lack of pH meters. EPA requests comment on the pH approval criteria.

Therefore, EPA is proposing to allow systems which serve 3,300 persons or less collect the pH sample and send it to a certified laboratory for analysis. EPA is aware that this exception will often result in a systematic bias of the pH readings to more frequent misses of the no-action levels, and encourages systems to consider carefully the tradeoff between ease of analysis and analytical accuracy (EPA, Method 150.1, Methods for Chemical Analysis of Water and Wastes, revised March 1983). EPA requests comment on whether non-field testing of samples should be allowed for systems that serve fewer than 3,300 persons.

EPA is considering and taking comment on a requirement that water systems meet a specific alkalinity value in their water in addition to the proposed no-action levels. It is also critical to know the alkalinity of the water in order to determine the type and extent of appropriate corrosion control treatment. EPA therefore solicits public comment on the following laboratory certification requirements that would be necessary if the alkalinity requirement were adopted in the final rule.

Laboratories that meet the approval criteria for metal analyses would also be required to meet the performance requirements for total alkalinity analyses because, under the proposal, all of these analyses are required for samples taken from the targeted homes (as explained below), and EPA would require all analyses for a set of samples to be conducted at the same laboratory. EPA has evaluated performance data gathered from past PE studies to set the performance requirements for total alkalinity. However, the procedure for selecting the performance requirements is different than the procedure for the metal analyses because there is no MDL or PQL for the analysis of total alkalinity. Since laboratories must meet the approval criteria for total alkalinity in addition to the criteria for the metals, the percentage of laboratories that can achieve this criteria must be higher than that of the metals so that only a very few laboratories that pass the criteria for metals are eliminated because of a failure to meet the alkalinity criteria. Therefore, ±20 percent of the "true value" has been selected as the approved criteria for total alkalinity. In the data from the PE studies, at least 90 percent of the EPA and State laboratories are typically able to measure total alkalinity within ±20 percent of the true value when the active amount is greater than or equal to 30 mg/L.

C. Monitoring Protocols

As explained above, water suppliers would be required to monitor a variety of parameters in order to demonstrate compliance with the proposed rule. These parameters include lead and copper levels at entry points to the distribution system and at taps, and pH at taps. As described below, community and non-transient non-community water systems would have different monitoring requirements for determining compliance with the corrosion control treatment techniques of this proposal.

For the purposes of averaging, all lead levels measured between the PQL (i.e., 0.005 mg/L) and the MDL (0.001 mg/L) would be averaged for the compliance determination. All lead levels below the MDL of 0.001 mg/L would be reported as zero and averaged as such. Lead levels reported below an MDL larger than 0.001 mg/L would be reported as that MDL and averaged as such.

1. Monitoring for Compliance with the MCLs

Water suppliers would be required to sample water as it enters the distribution system after any treatment to determine compliance with the MCLs for lead and copper. Water suppliers relying solely on ground water would be required to take only one sample per year per entry point to the distribution system. Water suppliers relying on surface water as their source would be required to take one sample each quarter to account for seasonal variations in contaminant levels. Water suppliers with both surface and groundwater sources would be required to monitor quarterly all entry points to the distribution system. States would have the discretion to identify representative wells for sampling (if there is no treatment or blending) for systems with multiple wells drawing from the same aquifer.

For the first round of MCL monitoring (which would last one year), historical data meeting the monitoring requirements specified in the proposed rule could be used in lieu of new data if the historical data were collected in a manner consistent with the final regulations. The total number of samples could be reduced by the use of composite samples at the discretion of the State. Combinations of samples from up to five sources would be allowed. If the concentration in the composite sample indicates that one or more of the samples may exceed the MCL, follow-up sampling would be required at each sampling point in the composite.

Follow-up sampling would be required if the reported concentration of a five-sample composite exceeds the method detection limit. For copper, an accurate analysis of one-fifth of the MCL is not a problem. For lead, however, the method detection limit is equivalent to the detection limit for the furnace atomic absorption technique. Laboratories should determine their method detection limit for this method by the procedure listed in Appendix B to 40 CFR Part 136. Laboratories should be able to achieve a method detection limit of 0.001 mg/L and data should be reported down to this concentration. If a laboratory is unable to achieve an MDL of 0.001 mg/L or lower, then sample compositing would not be permitted.

If the result of one analysis exceeds the MCL for lead or copper, the system would be out of compliance and the procedures for public notification must be followed. However, States would have the discretion to allow one additional sample to be collected as soon as possible (not to exceed two weeks from the date of the initial sample) at the same sampling location to verify the original results. In this case, if the average of the two samples analyzed exceeds the MCL, the system would be out of compliance and procedures for public notification must be followed. If the average is less than

the MCL, the system would be in compliance, the first sample results not withstanding. Systems exceeding the MCL would be required to sample more frequently than the minimum federally mandated requirements. The State must specify the increased monitoring frequency.

For community water systems, if there have been no violations for the most recent two years of monitoring, States could reduce the standard monitoring requirements to as infrequently as once every five years for systems serving fewer than 500 persons and any system serving 500 or more persons which is supplied only by ground water. For systems using surface water sources or a combination of surface and groundwater and serving more than 500 persons, monitoring could be reduced to once per quarter for one year, repeated every five years. No reductions in monitoring would be allowed for non-transient non-community water systems.

All systems would be required to begin monitoring to determine compliance with the MCLs according to the schedule in Table 16.

Table 16.—Starting Dates for Monitoring

System size	Monitoring to begin no later than—
>3,300	3 months after publication of final rule.
500–3,300	15 months after publication of final rule.
<500	27 months after publication of final rule.

EPA is phasing in the monitoring by system size in the same manner it has in previous NPDWRs to give systems time to learn about and implement the new requirements and to ease the burden on analytic laboratories which may not be able to cope with a sudden increase in the number of samples requiring analysis.

2. Monitoring for Compliance with the Corrosion Control Treatment Technique Requirement

Compliance with the corrosion control treatment technique requirement would be determined based on pH, lead, and copper levels at the tap. All systems would be required to begin monitoring for compliance with the treatment technique according to the schedule in table 16. Monitoring for each of these parameters at a targeted set of sample sites (see Section IV.C.2.a.i. for a discussion of how sites are to be selected) would be required quarterly for systems serving more than 3,300 persons, and less frequently for smaller systems. States may reduce monitoring frequency for systems serving more than 3,300 persons once compliance is established. Because the lead and copper no-action levels are measured as average and 95th percentile values, compositing is not allowed for samples collected to determine whether the no-action levels are met.

Values for pH are not expected to vary throughout the day at any given location, although they may vary among locations. However, lead and copper levels at the tap do vary considerably depending upon a variety of factors, including the standing time of the water in the plumbing pipes. Determination of whether the no-action levels were met would be determined by morning first draw and service connection samples. A morning first draw sample is the first sample taken after water has stood in the building's plumbing overnight, or for 8–18 hours, without flushing. (Flushing means running the water without capturing the water for sampling.)

A service connection sample is a sample of water that has been standing for 8–18 hours in the building service connection (service line and other connections). Service connection samples may be collected by several methods. One is to flush the tap until there is a temperature change (decrease) in the water. The colder water is that which has stood outside the house in the service connection. Another method is to measure pipe length and diameter from the tap to the service line and flush the volume estimated to be contained in the household plumbing before the service connection. Once the house water is flushed, the service connection sample is collected. A final method of collecting a sample representative of a service connection is to insert a sampling tap in the service line. However, this last method has the disadvantage of scraping bare a portion of the metal surface. This bare surface may result in temporarily high lead levels.

Morning first draw samples and service connection samples must be one liter in volume and collected at the cold water kitchen tap of targeted residences. Systems which have lead service connections would have to collect one half the required number of samples connection.

EPA expects that for community water systems the residences sampled would generally be single-family houses, but systems could include apartments and other multiple-family housing where such housing constitutes more than 20 percent of the housing served by the community. For non-transient non-community water systems, a morning first draw sample would be required from the tap or other outlet typically used to draw water for human consumption, in each building served by the NTNC system. The rationale for these requirements is as follows:

- One of the important determinants of lead and copper levels in drinking water is the standing time of the water in plumbing pipes. Water that has not stood in the pipes (i.e., fully flushed water) will generally have the lowest lead and copper levels of any sample taken at that tap. Water that has stood in the pipes for long periods will have higher lead and copper levels; water standing in pipes 8–18 hours ("standing samples") represents the highest levels that will routinely be found in drinking water. Standing samples would be required for several reasons. First, monitoring of water standing overnight, or some other specific long standing time (i.e., 8–18 hours), provides a consistent basis for measuring the progress of corrosion control treatment towards reducing levels of lead and copper. Standing samples represent the high end of actual human exposures are variable and are not known precisely (because people drink water from a variety of sources and also water that has a variety of standing times), actual exposure to lead and copper via drinking water will generally be no higher than levels found in standing samples.
- Sample volume also has an important effect on lead and copper levels in standing samples. The first 100 milliliters or so can have high levels from leaching lead out of faucets because lead is used in the manufacture of brass and bronze, which are often used in faucets and fittings. The next 400–500 milliliters represent water standing in the pipes near the faucet, and also may have high lead levels because of the numerous lead soldered joints that can lead up to the faucet (Lassovszky, 1984). Taking a one-liter sample represents less extreme lead levels than those generally found in a smaller sample because the initial high concentrations will be diluted by the later part of the sample, which contains lower concentrations. Because of the variation in lead levels with sample volume, EPA is proposing one liter as the standard sample volume for all samples.

Although nearly all the data provided to EPA by systems has been collected from one-liter samples, the question of the cost of shipping one-liter bottles to the laboratory has been raised to EPA. One approach to reduce the weight and bulk would be to collect 500-ml samples

instead. However, 500-ml samples will generally show a higher proportion of lead concentration from the faucet and a lower proportion from far and nearby lead soldered joints, than will 1 liter samples. However, because it is unlikely that an individual would consume an entire liter of water represented by a standing sample, EPA requests comment on an alternative sample volume of 500 ml. This alternative may better reflect a typical exposure. EPA estimates that 500 ml samples will show consistently higher concentrations of lead and copper than 1 liter samples, thus increasing the relative protectiveness of the proposed rules.

An alternative approach to lower the weight would be to collect one-liter samples and transfer a 500-ml aliquot to another bottle for shipment and analysis. The Agency is reluctant to adopt this approach because lead adheres to containers very easily. This increases the probability of sampling error and would likely show a consistent, unacceptable downward bias. The Agency solicits comment on this potential problem and possible approaches for minimizing it.

a. *Location of Sampling Sites.* Because the likelihood of high lead and copper levels in drinking water is not randomly distributed among buildings served by a given public water system, EPA is proposing that monitoring for compliance with the treatment technique requirement be targeted to residences most likely to have lead problems. Targeting for copper is not necessary because, in targeting for lead, copper corrosion problems should be identified simultaneously. Lead, copper, and pH would all be measured at the same set of residences. Systems would be required to identify a sampling pool that includes 50 percent more sites than the number required for monitoring each monitoring period (which varies by system size), to ensure that systems can get access to an adequate number of sites. The specific residences to be actually sampled would be selected randomly from the targeted set of residences. Once the system monitors the minimum number of sites, it would be required to use them every monitoring period. If one or more of these initial sites is no longer accessible, the system may, with State concurrence, substitute an alternative monitoring point from its sampling pool with the same characteristics as the initial point.

i. *Targeted Monitoring and Materials Evaluation.* To ensure that systems sample residences most likely to experience elevated levels of lead in tap water due to corrosion, water suppliers first would be required to conduct a materials evaluation to identify an adequate number of these high risk residences for monitoring. High risk residences are defined to include those that are at the ends of the distribution system and either: (1) Have lead service connections and/or lead interior plumbing; or (2) have lead solder that is less than five years old. "Ends of the distribution system" means those areas of low or no flow, sometimes known as "dead-ends." In communities where lead service connections are present, the group of residences selected would be required to include an equal number of residences for morning first draw and service connection samples. By targeting high risk residences for lead sampling, EPA believes that the monitoring would be more likely to identify high lead levels in communities where they exist, thus better assuring a high degree of public health protection. Targeting also would reduce the number of samples required to provide this level of public health protection.

To conduct the materials evaluation and identify sites for targeted monitoring, each system would be required, at a minimum, to consider the information identified by the State pursuant to 40 CFR 141.42(d). As necessary, the system must consider:

(A) Plumbing codes, permits, and records in the files of the community building department that indicate the plumbing materials installed within residences, including:

- Lead in piping, solder, caulking, interior lining of distribution mains, alloys, and home plumbing;
- Copper in piping, alloys, service lines, and home plumbing;
- Galvanized piping, service lines, and home plumbing.

(B) Inspections and records of the distribution system that indicate the material composition of the distribution lines, service lines, and connections.

(C) Existing water quality information, including results of prior analyses of water in the system or from individual residences, indicating residences in which the lead level of the water may be of concern.

(D) Design plans of the distribution system indicating residences that are served by the ends of the distribution system (i.e., areas of low or no flow).

The evaluation could be conducted based on building permits and other records, inspections of the distribution system and buildings, information from customers, or other means that reliably characterize the materials used in the construction of the distribution system and plumbing in buildings served. In conducting the materials evaluation, the system would not be required to examine every building served for the presence of lead materials.

Water suppliers that assert that there are insufficient residences in either of the two targeted categories (residences at the ends of the distribution system with either (1) lead service connections and/or lead interior plumbing, or (2) lead solder less than five years old) would be required to document this assertion to the State as follows:

1. *Lead service connections and interior plumbing.* The system would document via the materials evaluation that lead services, goosenecks, pigtails, or interior lead piping were never used in portions of the community served by the ends of the system or have all been replaced. If this could not be determined by records, the system would be required to inspect the service lines and connections, and interior plumbing, of all housing and other buildings constructed before 1940 (few lead service lines were used after this date) and show that no service lines or connections, or interior plumbing, are composed of lead or lead-containing materials.

2. *Lead solder.* The system would demonstrate that the State or community has had in effect and has consistently and successfully enforced a ban on lead solder use comparable to the Federal ban for five years, or that no lead solder was ever used in construction or residences and other buildings in the community served by the ends of the distribution system.

If the public water system could not identify a sufficient number of residences that have the required characteristics, the public water system would be required to demonstrate this to the State as described above and add to the sampling pool, as equally distributed as possible, residences that either: (1) Contain lead solder that is less than five years old; or (2) are serviced by lead service connections, as appropriate. If the public water system still could not establish a sampling pool sufficiently large to meet the monitoring requirements of this section, the public water system would be required to add to the sampling pool a number of residences with lead solder (i.e., solder more than five years old) for sampling sufficiently large to meet the monitoring requirements of this section.

While State approval of monitoring plans would not be required, States would have the authority to disapprove any monitoring plan that does not meet the targeting requirements. A system with a disapproved monitoring plan

would be in violation of the regulations until the State approved a revised plan.

EPA solicits comment on the proposed criteria for selecting the targeted samples.

ii. *Non-Residential Monitoring Alternative.* As described above, EPA is proposing that compliance monitoring be conducted at targeted residences. Based on information from hundreds of water suppliers which have successfully collected standing samples from residences during the last ten years, the Agency expects that virtually all systems will be able to gain access to the required number of residences, especially since many consumers will welcome the information it provides them about the quality of their own drinking water supply. Under the extremely unlikely event that a system is unable to get access to take the required number of samples, EPA may consider allowing an exception to the requirement. Under this rare circumstance, the system would have to demonstrate to the State that it had made several good faith efforts to collect the required samples, including describing to each customer the direct benefits of the sampling. Then the system would have to provide samples from other locations with plumbing characteristics nearly identical to those encountered in targeted residences. For example, a PWS may be able to identify non-residential taps to supplement the accessible residential taps to reach the required number of monitoring sites. These non-residential taps would be required to be connected to plumbing with a configuration and daily water use patterns very similar to those found in single-family residences, to approximate lead levels that would be found in such residences. A second approach might be for a PWS to construct a plumbing system to simulate that found in a home. This simulation would need to be located at the ends of the distribution system, and have either (1) a lead service connection or lead interior plumbing (if there were any lead service connections in the system or its customers' plumbing), or (2) lead solder that is less than five years old. The system would have to assure that the water use patterns in this simulation closely resembled those found in a residence, to ensure the lead levels measured approximate those in private residences.

EPA requests comment on this and any other last-resort sampling approaches which may allow systems to obtain tap samples which represent the water quality found in targeted residences.

b. *Number of Sample Sites.* Two major factors affect the selection of a suitable number of sample sites. First is the degree of certainty that levels and prevalence of lead and copper in water have been identified accurately (more samples result in greater certainty) throughout the community. Second is the cost and ease of implementation of the sampling system (more samples are more costly and a plan requiring more samples may be more difficult to implement). In designing the sampling plan, EPA considered several important design criteria. These include: The number of samples taken per monitoring period (by system size), the length of the monitoring period, the targeted monitoring approach, and the desire to know in advance the maximum total number of samples which would be required from each supplier. Having considered these factors and criteria, EPA has developed a proposal which is relatively low in cost and easy to implement. It clearly defines the number of samples required from each system and it requires the minimum number of samples from small systems.

EPA is also considering an alternative sampling plan and may adopt it in the final rules. Compared to the proposal, this alternative would provide greater certainty about the lead and copper levels and reduce the monitoring costs for large systems, but it may increase monitoring costs for small systems. EPA solicits comment on both the proposed and the alternative sampling plans described below. EPA is interested in how it might improve the proposed approach to increase the certainty it provides regarding lead and copper levels and how it might improve the alternative to make it less costly to implement. In particular, EPA solicits comments on the proposed and alternative approaches to monitoring including the choice of standard levels, appropriate numbers of samples, frequency of sampling, methods for evaluating sample results relative to the no-action levels, and the design of compliance rules within the context of a sampling and evaluation program.

i. *Proposed Approach.* Under the approach proposed by this notice, the number of sample sites would be based on system size. Water suppliers would be required to monitor on this schedule starting by the date specified in Table 16. Under the proposed approach, the system would collect one sample from each sample site (i.e., targeted residence) according to the frequency listed in Table 17 until compliance is established by meeting all no-action levels for at least one year or by completing implementation of a State-approved treatment plan (whichever is later). Thereafter State may reduce the required monitoring frequency for systems serving more than 3,300 persons to a minimum of, one annual sample set taken during July, August, or September from each site. Systems serving 500–3,300 persons would take one sample set during July, August or September and repeat the sampling at least every two years. Systems serving fewer than 500 persons would take one sample set during July, August, or September and repeat the sampling at least five years. Non-transient non-community water systems would not be allowed to reduce their monitoring. Any additional samples taken (beyond those required by the regulation) which a system wants to use to determine whether the no-action levels are met must meet the targeting criteria discussed above.

TABLE 17.—NUMBERS OF SAMPLES AND FREQUENCY OF SAMPLING FOR THE LEAD AND COPPER CORROSION TREATMENT REQUIREMENT UNLESS REDUCED BY THE STATE

Population served	Number of samples
>100,000	50/quarter.
10,001–100,000.	30/quarter.
3,301–10,000	20/quarter.
500–3,300	10/year for 1 year, repeated every 2 years.
<500	10/year in one year, repeated every 5 years.

ii. *Alternative Sampling Plan.* EPA is also considering an alternative to the proposed sampling plan and may adopt it in the final rules. This alternative, although somewhat more complex in design, would require, for many systems, fewer or an equal number of samples than required under the proposed sampling scheme.

The alternative plan is based on a double sampling scheme developed by Dodge and Romig (1959). The plan uses a two-tier approach. A supplier would be required to obtain a relatively small number of samples in the first stage and then, based on the outcome of the initial sampling, would be either relieved of further sampling for that monitoring period or required to obtain additional samples during that monitoring period to determine whether the system was in compliance or needed to take further action. In localities where lead levels at the tap are generally either quite low or quite high, sampling would probably be limited to the first tier.

A benefit of this approach is that no system fails to meet a no-action level (or alternative approved by the State after a system has demonstrated optimization) on the basis of just one exceedance. However, this benefit comes at a cost of increased sampling in some circumstances for the smallest systems.

Table 18 specifies the number of samples to be obtained for systems serving populations of various sizes (leftmost column). The following discussion explains how the alternative sampling plan would be used to determine whether a PWS meets the no-action level for a maximum of 0.020 mg/l lead. After testing the appropriate number of samples in Stage 1, a system would "pass" and be excused from further sampling if no (zero) samples exceeded the lead maximum no-action level. If the number of such exceedances was greater than the specified allowable number (rightmost column), the system would "fail" and also be excused from further sampling, but would be required to take further actions. For example, if the system has not yet installed or improved corrosion control treatment, it would be required to do so. In cases where the number of exceedances in Stage 1 was not greater than the allowable number, systems would be required to collect the number of additional samples indicated for Stage 2. Passing or failing would depend on the total number of exceedances in the combined groups of samples. For example a system serving 100,000 persons that obtained more than a total of three samples with lead levels above the maximum no-action level in 40 samples would fail and having to undertake corrosion control treatment. Figure 3 illustrates the decision process involved in applying this scheme.

TABLE 18.—NUMBERS OF SAMPLES REQUIRED IN STAGE 1 AND STAGE 2 OF DOUBLE-SAMPLING PLAN [1]

Population size	Number of samples		Allowable exceedances
	Stage 1	Stage 2	
<500	10	5	1
500-3,300	10	10	1
3,301-10,000	20	10	1
10,001-100,000	25	15	2
>100,000	30	20	3

[1] Frequency of sampling would be the same as under the proposed approach. Stage 1 and Stage 2 samples would be taken in the same monitoring period.

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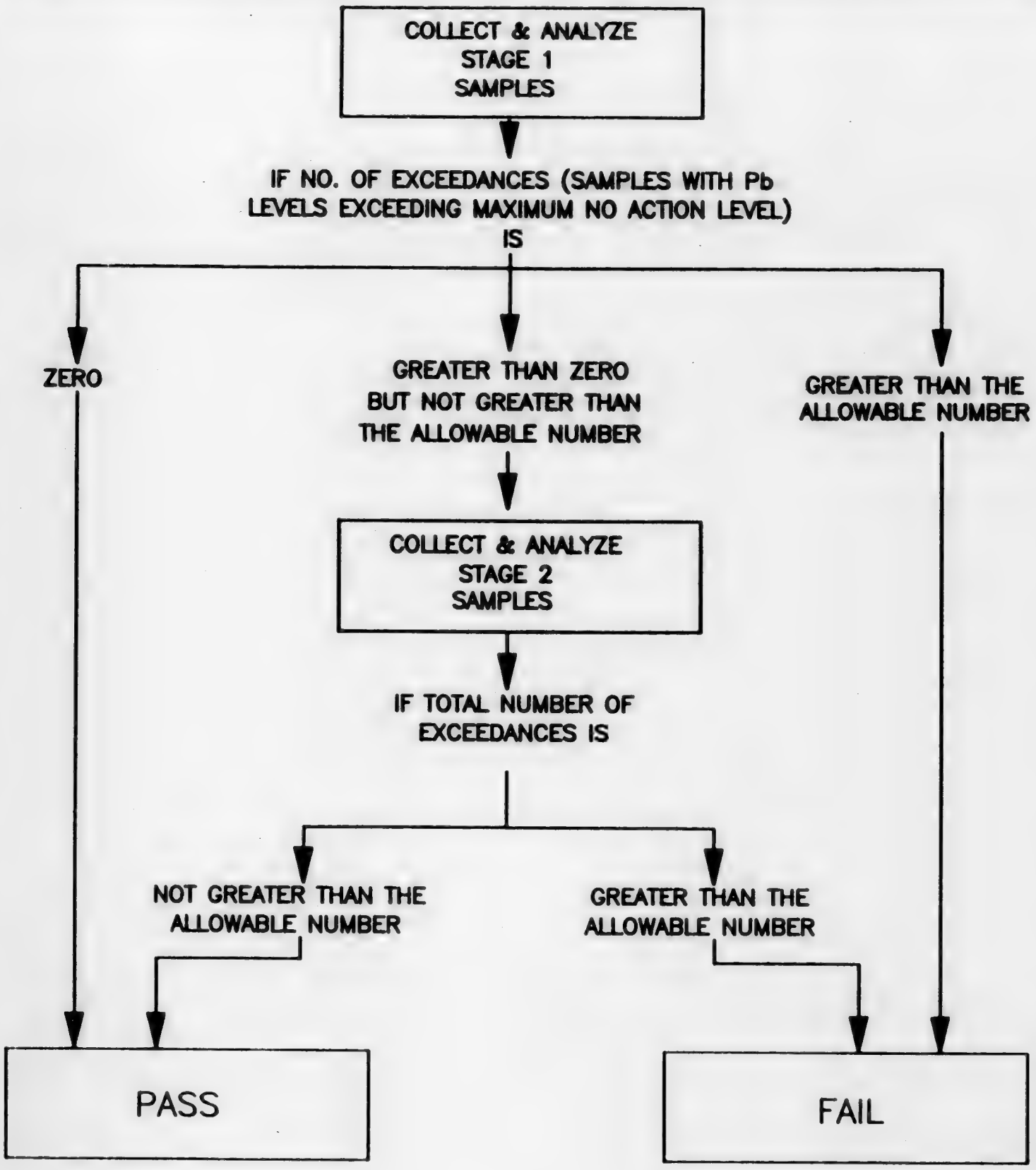

FIGURE 3 DOUBLE SAMPLING DECISION PROCESS.

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If the samples are representative of the taps under consideration, application of this scheme provides 90 percent confidence that not more than 14 percent exceedances would occur among the taps (Svensgaard, 1988).

3. Monitoring Requirements for Non-transient Non-community Water Systems

Non-transient non-community water systems would be required to monitor water entering the distribution system once every five years for compliance with the MCLs for lead and copper. To demonstrate compliance with the treatment technique requirement, NTNC water systems would be required to monitor lead, copper, and pH (in a morning first draw or service connection sample) at least one tap annually during the months of July, August, or September in each building served by the NTNC water system. The monitored tap would be required to be the tap most frequently used for water consumption, such as a kitchen tap.

4. Additional Data Collection

EPA is currently collecting additional data to support this regulation for lead and copper in drinking water, particularly data on lead service line replacement. EPA solicits any additional data on pipe replacement or any other aspect of this proposal from the public.

EPA has developed a monitoring protocol for measuring lead in drinking water and guidance for using it which is more detailed than the protocol required under the proposed regulations. This more detailed protocol is available to the public from EPA. EPA welcomes data from samples taken under this protocol which may help to answer any of the issues highlighted in this proposal.

The monitoring protocol offers a means to determine whether a shorter standing time such as 30 minutes may be successfully substituted for the 8 to 18 hour standing time that would be required for morning first draw samples. In addition, the guidance would assist water suppliers in locating the sources of lead in drinking water (i.e., water mains, service lines, or interior plumbing). This information would assist systems in establishing sampling points for targeted monitoring and for focusing public education programs.

EPA may be able to provide technical assistance to a limited number of water suppliers which are interested in conducting extensive lead monitoring, and are willing to share all data with EPA in exchange for the support. Specifically, EPA is interested in before-and-after treatment data from individual residences served by water suppliers instituting corrosion control treatment and before-and-after data from individual residences in communities replacing PWS-owned or -controlled portions of lead service lines or connections. This information also could be used to assist decisions among the various options described in this proposal, in particular. Data from various tap samples taken before and after treatment would assist the Agency in further assessing the alternative of requiring replacement of lead service lines and connections under the ownership or control of water suppliers. Collection of systematic data of this type also may allow the Agency to better estimate the costs and benefits of the rule.

VI. Public Notification

Under section 1414(c)(1) of the Act, each owner or operator of a public water system must give notice to persons served by it of (1) any violation of an MCL, treatment technique requirement, or testing provision prescribed by an NPDWR; (2) failure to comply with any monitoring requirement under section 1445(a) of the Act; (3) existence of a variance or exemption; and (4) failure to comply with the requirements of a schedule prescribed pursuant to a variance or exemption. The 1986 amendments required that within 15 months of enactment, EPA amend its current public notification regulations to provide for different types and frequencies of notice based on the differences between violations which are intermittent or infrequent and violations which are continuous or frequent, taking into account the seriousness of any potential adverse health effects which may be involved.

EPA promulgated regulations revising the public notification requirements on October 28, 1987 (52 FR 41534). The regulations require that public notices for MCL, treatment technique violations and violations of a variance or exemption ("Tier 1 violations") contain mandatory health effects language specifying concisely and in nontechnical terms what adverse health effects may occur as a result of the violation. States and water utilities remain free to add additional information to each notice, as deemed appropriate for specific situations. Community water systems (CWSs) with Tier 1 violations must notify the public by newspaper or mail or hand delivery. Community water systems which fail to comply with any monitoring or testing requirements, which are granted variances or exemptions, or are required to give newspaper notice repeated quarterly by mail or hand delivery, with additional notice required at State discretion. NTNC systems may either notify in the same manner as CWSs or post a notice continuously.

Violations of the lead or copper MCLs or the treatment technique requirements of this rule would be Tier 1 violations. Violations of the treatment technique requirement include but are not limited to any of the following:

(1) Failure to submit or apply for (depending on system size) a treatment plan by the date required, if required.

(2) Failure to implement any treatment plan requirement by the date specified in the treatment plan, including failure to implement required corrosion control treatment, failure to demonstrate to the State's satisfaction that treatment is optimal, failure to continue required treatment.

(3) Failure to design and implement a public education program, if required.

For Tier 1 violations, EPA is proposing the following mandatory health effects language:

Lead

The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Lead is a soft, dull, gray metal that has frequently been used in water supply plumbing materials, especially flux, solder, pipes, and brass and bronze fixtures. Lead usually contaminates drinking water as a result of the corrosion of these plumbing materials by the water they carry. Lead has been shown to cause a variety of adverse health effects in humans and animals. In humans, lead has been shown to interfere with the formation of red blood cells (heme synthesis), cause anemia, cause kidney damage, impair reproductive function, reduce birth weight, cause premature birth, delay physical and mental development in babies and young children, impair mental abilities in children, and increase blood pressure in adults. Many of these effects have been observed at relatively low exposure levels. Studies on animals indicate that lead may also cause cancer at high doses. EPA has set an enforceable drinking water standard at 0.005 ppm (parts per million) for lead leaving the treatment plant and entering the distribution system. EPA also requires public water systems to treat their water to minimize lead contamination resulting from the corrosion of plumbing materials when lead in tap water that has been standing overnight exceeds an average of 0.010 ppm. Drinking water that meets these standards is associated with little of this

risk and should be considered safe to drink.

Copper

The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a public health concern at certain levels. Copper is an orange metal that is commonly used for plumbing pipes in homes and other buildings. Copper generally contaminates drinking water as a result of the corrosion of copper pipes by the water they carry. When copper corrodes, the water and sink are often stained green. Copper is an essential nutrient, but at high doses it has been shown to cause stomach and intestinal distress, liver and kidney damage, and anemia. Persons with Wilson's disease may be at higher risk from copper toxicity than the general public. EPA has set an enforceable drinking water standard for copper at 1.3 ppm (parts per million) for water leaving the treatment plant and entering the distribution system. EPA also requires public water systems to treat their water to control copper contamination resulting from the corrosion of plumbing materials when copper in tap water that has been standing overnight exceeds 1.3 ppm in more than 5 percent of samples. Drinking water that meets this standard is associated with little to none of this risk and should be considered safe to drink.

VII. Variances and Exemptions

A. Variances from MCLs and Exemptions from the MCLs and Treatment Technique Requirements

Under the Safe Drinking Water Act, variances from MCLs and exemptions from MCLs and treatment technique requirements are permitted only if the granting of the variance or exemption will not result in an unreasonable risk to health (URTH). Sections 1415(a)(1)(A) and 1416(a)(3). States with primacy have authority to grant variances and exemptions.

Variances from MCLs may be granted to water suppliers that have applied BAT but which fail to meet the MCL using that technology. Section 1415(a)(1)(A). Variances from MCLs are generally designed to address cases in which the source water is so contaminated that even application of BAT is insufficient to effectively reduce contaminant levels to below the MCL. Water suppliers that obtain variances from MCLs must be placed on a schedule to come into compliance with the MCL "as expeditiously as practicable" and must implement any additional control measures in the interim prescribed by the State.

Exemptions from both MCLs and treatment technique requirements may be granted to water suppliers due to compelling factors (including economic factors). Section 1416(a). Systems granted an exemption receive additional time to install BAT or the required treatment technique. The exemption may be extended for up to 3 years if the system makes certain showings. Section 1416(b)(2) (A) and (B). Systems which serve fewer than 500 persons may obtain extendable two-year extensions under certain conditions. Section 1416(b)(2) (C). As with variances, exemptions must include a schedule for compliance and requirements for implementing any necessary interim control measures.

EPA is not now proposing to designate by rule a specific level of lead or copper in drinking water that constitutes an unreasonable risk to health. To date, the Agency has not established in regulations URTH levels for any contaminant. However, as for other contaminants, EPA intends to publish guidance regarding what drinking water contaminant levels would constitute an unreasonable risk to health for States to use in deciding whether to grant variances or exemptions to public water systems. This guidance will be available for public review and comment and will be completed by the time the final regulation for lead in drinking water becomes effective.

B. Variances From the Treatment Technique Requirements

The Act also allows variances from treatment technique requirements, but these are fundamentally different from variances from MCLs. Variances from treatment technique requirements are granted to water suppliers that do not need to implement the treatment because they have high quality source water, so treatment is unnecessary to protect the health of persons served by the water supply. Section 1415(a)(1)(B).

Because of the design of the treatment technique requirement for corrosivity proposed in this rule, EPA believes that the need for variances from the proposal treatment technique requirement would be rare. Specifically, since the proposed rule requires systems to optimize corrosion control, i.e., lower lead levels as much as technically feasible with corrosion control treatment, by definition, all public water systems could comply with the treatment technique requirements.

The only case in which application of corrosion control treatment would not be necessary or beneficial in reducing lead levels is the rare community that has no lead or copper materials in its plumbing and distribution system, including private residential plumbing. Such communities may include new trailer home parks or other developments of prefabricated housing which were constructed using all plastic piping. If a water supplier could demonstrate that no plumbing materials containing lead have been used in the construction of any homes in the community or in any distribution facilities, a variance from the treatment technique requirement could be granted.

EPA solicits comment on granting of variances from the treatment technique requirements, especially whether there are other conditions under which the treatment technique may not be necessary or beneficial for reducing lead and copper exposures via drinking water.

C. Point-of-Use (POU) and Point-of-Entry (POE) Devices and Bottled Water

EPA believes that central treatment should be the primary means of attaining MCLs and providing water equivalent to water treated as set out in an NPDWR prescribing a treatment technique, such as the corrosion control technique set out in this proposal. However, although the long-term goal for these systems is to comply with NPDWRs with centrally treated and distributed water, under this proposal EPA would allow the State to require the use of POU devices or bottled water to avoid an unreasonable risk to health, as a condition of receiving a variance or an exemption. This may be especially appropriate in the case of exemptions for small systems, i.e., systems with less than 500 connections, because their exemptions may be extended for one or more two-year periods. The goal of application of non-central treatment or bottled water is to provide water of equivalent quality to that which would be provided by a traditional well-operated central treatment facility.

In prescribing the use of POU devices, the State would be required to impose the conditions outlined below. If a PWS distributes bottled water as a control measure, the PWS must ensure that one of the following conditions is met:

(1) The bottled water must be subject to a monitoring program that provides adequate assurances that the water meets all MCLs. The public water system must monitor the bottled water for lead and copper and all other MCLs in the first quarter that it supplies water to the public, and annually thereafter. Results of the monitoring program would be provided to the State annually; or

(2) The public water system must receive a certification from the bottled water company that (a) the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); (b) the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1)–(3); and (c) the bottled water does not exceed the MCLs or quality limits set out in 21 CFR 103.35. The public water system would be fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system including delivery via a door-to-door bottled water delivery system.

These conditions constitute the minimum standards for protection of public health.

Point-of-entry devices for removal of lead or copper from drinking water would not be allowed to achieve compliance with this proposed rule because they do not prevent lead or copper from entering the water after it leaves the device. Many such devices provide reverse osmosis (RO) or ion exchange treatment, and can actually make water more corrosive, potentially resulting in higher lead levels at the tap.

VIII. State Implementation

The primary implementation agencies for drinking water regulations are the States. Fifty-four out of 57 jursidictions have applied for and received primary enforcement responsibility for the public water supply supervision program (primacy). To implement the federal regulations for drinking water contaminants, States must adopt their own regulations which are at least as stringent as the federal regulations. This section of today's proposal describes the provisions the States would be required to adopt to implement this proposed rule.

One of the deficiencies in the existing program implementation regulations in 40 CFR Part 142 which EPA plans to correct in an NPRM later this year is that the regulations do not require States with primacy to revise their programs following EPA promulgation of new or revised NPDWRs or to adopt the new or revised requirements, nor do they specify a procedure for doing so. EPA intends to propose amendments which would require States to revise their programs following the promulgation of new or revised NPDWRs to maintain primary enforcement responsibility. Under the SDWA, EPA has had a strong and continuing policy of approving only those State programs that adopted the full EPA program, e.g., all NPDWRs; States cannot obtain partial or conditional primacy. EPA intends to continue this "full primacy" policy as it implements the 1986 SDWA amendments. (Partial primacy would be confusing; the State would be implementing part of the program and EPA the other, and it would be unclear which provisions of Federal and state law applied to a given public water system.)

As part of the amendments to the primacy regulations, EPA is planning to propose procedures for revising State programs that are similar to those in Part 142 for obtaining initial primacy. The amendments would require States to meet the basic requirements for obtaining primary enforcement responsibility (see 40 CFR 142.10) for each new or revised NPDWR and any primacy requirements specific to the new or revised NPDWR which EPA has established. It is anticipated that such regulation-specific requirements would be necessary only in those situations where the NPDWR provides flexibility to the State on how to accomplish a particular requirement. If these regulation-specific requirements are needed, EPA will promulgate them at the same time it promulgates the NPDWR. Today's proposal includes regulation-specific requirements that a State would be required to include in a program revision to adopt the proposed lead and copper NPDWRs. EPA solicits comments only on these specific requirements. Comments on the broader changes to the primacy requirements in Part 142 will be solicited when those changes are proposed. Today EPA is also proposing the changes to the reporting and recordkeeping requirements needed to implement the lead and copper NPDWRs. EPA also solicits comments on these requirements. EPA's proposed changes to Part 142 are explained below.

A. Special Primacy Requirements for States To Adopt 40 CFR Part 142, Subpart I—Control of Lead and Copper

The regulations proposed at 40 CFR Part 141, Subpart I, Control of Lead and Copper, provide the State discretion with regard to how the objectives of the rule are achieved. For instance, the State must approve a system's demonstration that it has minimized the corrosivity of its water and must approve the system's final operating parameters. In these cases and other instances where the State has discretion, State regulations would be required to augment the general national regulations to establish enforceable requirements and to inform each public water system to what specific requirements it is subject.

To ensure that the State program includes all the elements necessary for an effective, enforceable program, this notice proposes that to obtain approval of a program revision to adopt the NPDWRs for lead and copper, the State's request for approval would be required to include the following:

(1) The procedure or criteria the State will use for determining the frequency with which a system must monitor, including the monitoring frequency after a system has exceeded the lead or copper MCL. The State must include a procedure for notifying the system of the new monitoring requirements with which it must comply and for enforcing these requirements.

(2) The requirement for a materials evaluation to identify monitoring locations, specifying the elements which must be included in the evaluation. Further, the State must specify how a system can demonstrate to the State that sufficient residences with the required characteristics for monitoring are not available.

(3) The procedures/criteria the State will use to evaluate treatment plans submitted by systems serving more than 3,300 persons, to develop treatment plans for systems serving fewer than 3,300 persons, to approve treatment plans, and to evaluate treatment and public education performed by systems under the treatment plans, in accordance with proposed § 141.85. The State must also specify (a) the criteria it will use to determine that corrosivity has been minimized if the system is still not meeting the no-action levels after installing or improving treatment, and (b) a method of informing the system of its new approved operating parameters.

(4) The criteria the State will use to evaluate data submitted by a system on the effectiveness of its public education program and to determine whether the system must modify subsequent public education efforts.

(5) Procedures the State will use to provide systems serving 3,300 or fewer persons with treatment plans.

B. State Reporting and Recordkeeping Requirements

In this notice, EPA is proposing changes to the existing reporting and recordkeeping requirements to implement the proposed lead and copper NPDWRs. These changes would require States to keep records of:

(1) Any system which has been allowed to reduce the frequency at which it monitors for compliance with (a) the lead and copper MCLs and/or (b) the no-action levels which trigger the

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treatment technique requirements, or other approved operating parameters.

(2) Any system which is required to perform increased monitoring and the frequency of that monitoring.

(3) Approvals of treatment plans as specified in proposed § 141.84.

(4) All determinations that systems that have finished implementing treatment plans have begun meeting the no-action levels or have minimized the corrosivity of their water.

(5) All evaluations of public education programs and of all determinations that systems are required to modify subsequent public education programs.

This proposal would also amend the State reporting requirements to implement the lead and copper NPDWRs. States would be required to provide EPA quarterly a list of systems which:

(a) May reduce their monitoring frequency in accordance with proposed § 141.86 (c) and/or (d)(4).

(b) Are required to increase their monitoring frequency in accord with § 141.86(c)(4).

(c) Have received State approval for their treatment plan, or for systems serving 3,300 or fewer persons that have received a treatment plan from the State.

(d) Have successfully demonstrated that optimal corrosion control has been installed. This report should indicate whether the system is now meeting the no-action levels or operating under other parameters approved by the State. In the latter case, the report should specify the new parameters.

States would also be required to report any evaluations of public education programs and any determinations that a system must modify subsequent public education programs. Under the existing regulations, States must provide EPA a summary of violations of primary drinking water regulations; therefore; no additional requirement for reporting violations to EPA is specified in this proposal.

EPA solicits comments on all the proposed changes, including recordkeeping, reporting, and the special primacy requirements, to Part 142 to implement the NPDWRs for lead and copper also proposed today. Comments should specifically address the appropriateness of these requirements, the effect of these new requirements on State programs, and the ability of the State to implement the requirements of the rule.

C. System Reporting and Recordkeeping Requirements

In order to facilitate implementation and enforcement of the regulations proposed today, water systems would be required to maintain records of and report to the state information relating to the proposed regulation.

Systems that serve more than 500 persons would be required to report to the State the results of all monitoring required by this subpart within 10 days of the end of each calendar quarter the system is in operation for any period of time. Systems that serve 500 or fewer persons would be required to report such results to the State within 10 days of the end of each calendar year such system is in operation for any period of time. All systems would be required to certify that the information submitted is accurate. To the extent systems perform more monitoring than required by the proposed regulations, the systems would be required to include the results of the additional monitoring in their reports to the State. Systems would be required to include the identification and location of sampling sites monitored in their reports of monitoring data.

Systems operating under an approved treatment plan would be required to, according to a schedule established by the State, report to the State the system's progress in completing the treatment plan's interim steps. All systems applying corrosion control treatment, would be required to report any changes in treatment, including changes to treatment for purposes other than corrosion control and cessation of treatment due to mechanical or operating failures, within 14 days of the change in treatment.

Systems operating under an approved treatment plan containing a public education program would be required to report the system's progress in completing the public education program requirements in the reports submitted to the State. If the public education program is being targeted to particular segments of the consumer population, a description of how this targeting is consistent with the proposed regulations would be required to provide data to the State that indicate that, as a result of the public education program, the users' knowledge about lead in drinking water enables them to alter voluntary their water use patterns to reduce consumption of lead-contaminated water.

The proposed regulations would also establish a general reporting authority, which would allow the Administrator to require a system to establish and maintain such records, reports, or information as the Administrator deems necessary to determine whether the system has acted or is acting in compliance with the proposed regulations.

IX. Review by the Science Advisory Board

As required by the SDWA, EPA's Science Advisory Board (SAB) was offered the opportunity to review this proposal. They met on June 2 and 3 1988 in Cincinnati, Ohio. The SAB's comments will be considered and factored into the final rule together with the comments from the public received during the comment period.

X. Impact of this Regulation

A. Regulatory Impact Analysis

Under Executive Order 12291, this action is a major regulatory action, because it will have a major financial or economic impact on the country. As required by the Executive Order, EPA conducted a Regulatory Impact Analysis (RIA) that is available for review as part of the docket for this rulemaking (EPA 1988a). This regulation has been reviewed by the Office of Management and Budget as required by Executive Order 12291.

Costs

EPA analyzed the economic impact of this regulation in two separate parts; The impact attributable to the control of lead and copper in source water (the "MCL impacts," in Table 19) and the impact attributed to the corrosion control requirements (also shown in Table 19).

TABLE 19.—SUMMARY COST IMPACTS OF PROPOSED LEAD AND COPPER REQUIREMENTS [1]

	Lead (5 ug/1)		Copper (1,300 ug/1)		Total [2]
MCL Impacts					
Systems Affected	880		66		950
National Cost of Treatment ($M):					
Capital	320		35		350
O&M (Annual)	30		3		30
Annualized [3]	55		5		60
Annual Cost per Family ($/yr) by System size (people served):					
Very Small (25–500)		340		380	
Small (501–3,300)		91		130	
Medium (3,301–50,000)		28		70	
Large (Over 50,000)		9		50	
Treatment Technique Requirement Impacts					
Systems Affected		53,000 [4]			
National Cost of Treatment ($M)					
Capital		630			
O&M (Annual)		160			
Annualized		210			
Optimization Demonstrations (Annual in $M)		2			
Public Education (Annual in $M)		12			
Annual Cost per Family ($/yr) by System size (people served):					
Very Small (25–500)		27.0			
Small (501–3,300)		4.6			
Medium (3,301–50,000)		2.5			
Large (Over 50,000)		0.7			
Total Cost of Rule ($M)	MCL		Corrosion control		Total
Capital	350		630		980
O&M (Annual)	37		160		200
Annualized	60		220		[5] 280

[1] Costs are expressed in 1986 Dollars. Totals may not tally due to independent rounding.
[2] Assuming no co-occurrence of lead and copper.
[3] Annual cost of capital 3% over 20 years plus 1 year of O&M.
[4] Includes double counting of some systems which will have to treat for source water contamination as well as for concentrations at the tap exceeding the no-action level. 42,978 systems are estimated to install treatment, and conduct public education programs and optimization demonstrations only.
[5] Includes annualized capital, O&M, optimization demonstration, and public education costs, but excludes state implementation costs of $16 m per year.

It is estimated that about 880 systems would exceed the proposed MCL for lead at the entry point to the distribution system and thus need to treat their source water. About 66 systems would exceed the proposed MCL for copper at the entry point to the distribution systems and thus need to treat their source water. On an annualized basis, the compliance costs for the lead and copper MCLs would be about $60 million.

There are cost impacts associated with the treatment technique (corrosion control and public education) requirements as well. These impacts have been broken into three tiers, reflecting the stepped nature of the proposal and its alternatives. Systems would incur treatment costs when they fail to meet the no-action levels. Approximately 53,000, or 66 percent of all systems would be expected to incur costs under the proposed treatment technique requirements. On an annualized basis, corrosion control treatment optimization demonstration and public education would result in costs of about $221 million.

Monitoring costs would be incurred by all of the approximately 79,000 community and non-transient, non-community systems. EPA estimates that the national annualized cost of monitoring for this proposal would be about $12 million per year (Table 20).

Table. 20.—Monitoring Costs of the Proposed Lead and Copper Requirements*

Systems Affected	79,000
National Cost ($M1988)	
Annual Monitoring	12
Cost per Family by System Size ($1988/year/Household)	
Very Small (25–500)	$0.88
Small (501–3,300)	0.30
Medium (3,301–50,000)	0.19
Large (over 50,000)	0.02
Total Annual Cost of Monitoring ($M1988)	
Very Small (25–500)	$1.60
Small (301–3,300)	2.20
Medium (3,301–50,000)	6.90
Large (over 50,000)	1.40

* Rounded to two significant digits.

The entire proposal, including both the MCL and treatment technique requirements for lead and copper, would require about 54,000 systems to add $980 million in capital equipment, and incur $200 million per year to operate and maintain it. Monitoring costs are expected to be $12 million per year. State implementation costs are estimated to increase by approximately $16 million. On an annualized basis, the cost of the rule is expected to be nearly $280 million for capital, operation and maintenance, monitoring, and State implementation.

The uncertainty in the costs, particularly for small systems, has not been fully evaluated. Based on comments and further analysis, an addendum to the draft Regulatory Impact Analysis to be completed when this rule is promulgated will evaluate these uncertainties.

Benefits

The systems that incur the costs of complying with the proposed rule are likely to be the same systems that experience the health and materials benefits. The materials benefits of this regulation may be as high as $500 million per year. These benefits would pay for the entire cost of this rule if considered on a national basis.

The Agency evaluated the expected health benefits of the proposed rule. The Agency estimated the number of children who would be expected to experience decreased blood lead levels as a result of reduced water lead levels. In particular, EPA examined the effects of changing the water lead distribution experienced by people served by systems which are expected to install or improve corrosion control treatment

after missing the no-action levels. In the first step of the analysis, EPA estimated the proportion of children expected to have their blood lead levels reduced to below 10, 15, or 25 ug/dl as a result of reductions in water lead levels (Marcus and Holtzman, 1988). EPA estimates that about 138 million people are served by PWSs that would be expected to install corrosion control treatment (EPA 1988a). Of these, about 8.8 million are children aged 6 months to 5 years. Therefore, EPA estimates that 264,000 to 704,000 children in this age group would have blood lead levels reduced to below 10 ug/dl, 88,000 to 176,000 children would have their blood lead levels reduced to below 15 ug/dl, and 3,500 to 5,300 would have blood lead levels reduced to below 25 ug/dl. The estimates are presented in a range to reflect the uncertainty regarding the water lead levels that would result from compliance with the proposal.

Other groups of the exposed public would also be expected to experience benefits from the proposed rule, including fetuses, infants, older children, and adults. The particular types of health effects that would be avoided by these persons are discussed in *Reducing Lead in Drinking Water: A Benefits Analysis* (EPA, 1986a). However, the Agency has not calculated the proportion or number of persons in each of these categories who would be brought below specified blood lead levels.

Figure 4 summarizes the health effects associated with various blood lead levels of concern. These include reduced IQ and stature decrements in children, premature birth, low birthweight, slowed mental and physical development in fetuses and infants, and hypertension in adult men.

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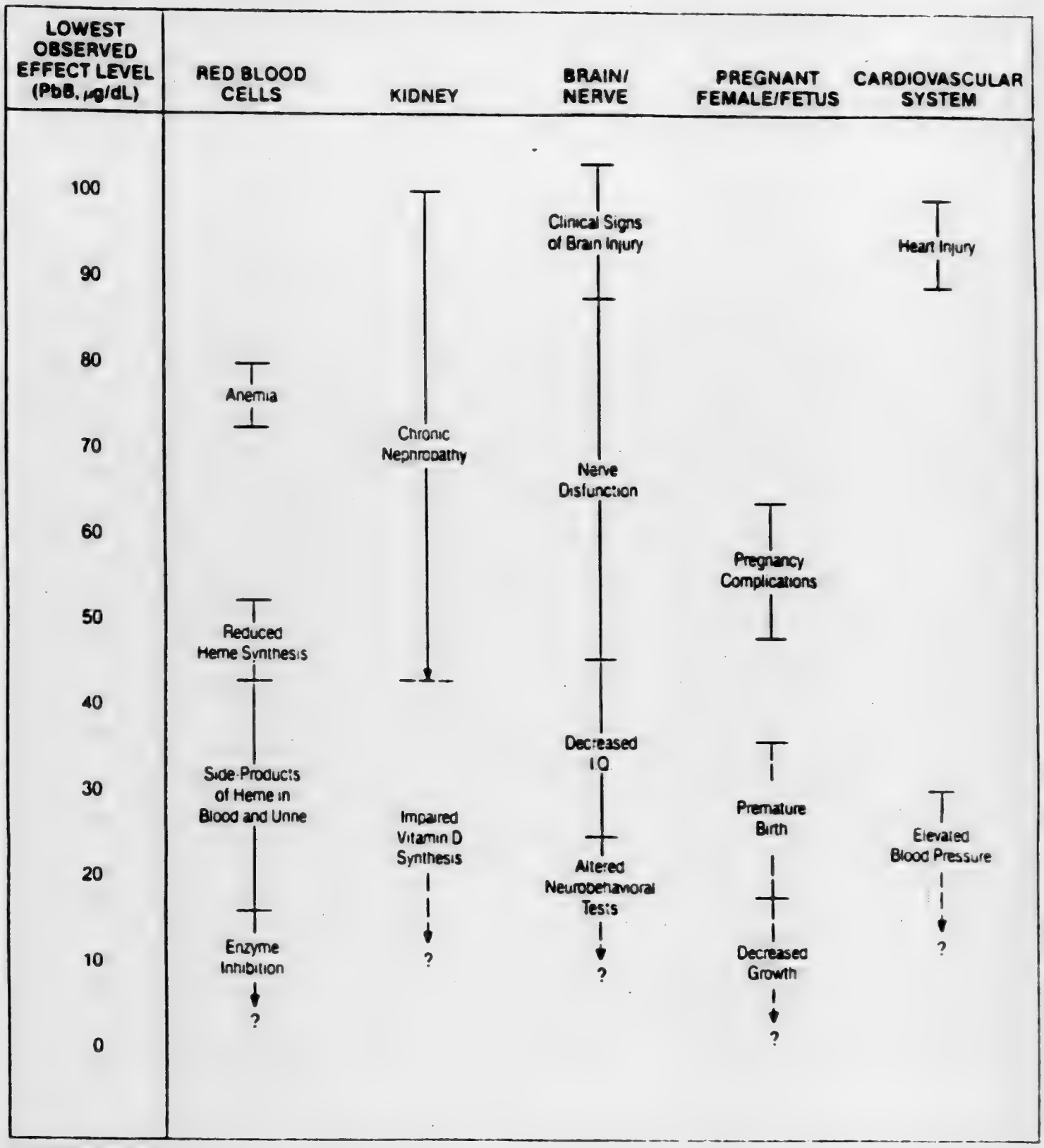
Figure 4

ADVERSE HEALTH EFFECTS OF LEAD



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The Agency also considered the relative benefits of the proposed approach compared to those which might be expected to occur if one or more of the alternatives discussed above were adopted. In each case, the actual outcome of adopting an alternative approach is uncertain. Therefore, Table 21 presents a qualitative comparison of the proposal with the alternatives. Costs, benefits, administrative complexity, and enforceability are considered. Expected net benefits are listed as the same as the proposal, less than the proposal, or greater than the proposal. For example, difficult problems of implementation could limit the reductions in water lead levels that might otherwise be expected from adoption of an alternative.

TABLE 21.—COMPARISON OF ALTERNATIVES TO THE PROPOSAL

Alternative	1			2		3	4	5
	Annual Costs			Theoretical Annual Benefits		Administrative Complexity	Enforce-ability	Expected Benefit [1]
	MCL	Corr. Ctrl	Monitrg	Reduced Mat Damages	Health			
1. National requirement for Pb service replacement.	same	inc	inc	same	inc	inc	dec	?
2. Require opt corrosion control for *additional* no-action level of 20 ug/l as maximum.[2].	same	inc	same	inc	inc	inc	same	same (?)
3. Require opt corrosion control for *additional* no-action level of 30 mg/l alkalinity.	same	inc	same	inc	inc	small increase	same	same (?)
4. Raise max to 30 ug/l to trigger trtmt	same	small increase	same	? inc ?	small increase	small increase	same	same (?)
5. Max of 20 to *replace* other no-action levels to trigger trtmt.	same	inc	dec	inc	inc	inc	inc	?
6. MCL at the tap, MCL=30 maximum	dec	dec	same	dec	dec	dec	inc	dec
7. Two-tiered sampling	same	same	inc	same	same	inc	same	same
8. Elim pH requirement, guidance assume or as Pb avg of 10 only no-action level to trigger trtmt.	same	dec	dec	dec	dec	dec	dec	same (?)

[1] Considers net effect of factors in columns 1 through 4.
[2] "Maximum" means measured as the 95th percentile of targeted samples, unless the two-tiered sampling alternative (#6) is chosen.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of regulations on small entities. If there is a significant effect on a substantial number of small systems, the Agency must seek to minimize the effects. With respect to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.*, today's action will not have a significant effect on a substantial number of small entities.

Using the Small Business Administration's definition, a small water utility is one that serves fewer than 50,000 people. There are about 78,000 such systems. Of these, approximately 53,000, or 68 percent, are likely to have contamination levels greater than the MCLs or no-action levels specified in this proposal, and thus would be required to treat their water; this represents a substantial number of systems. The approximate cost of producing water by all systems serving fewer than 50,000 people is $9 billion per year, and the maximum annualized cost of the proposal would be about $281 million, including monitoring. This amounts to 3.1 percent of water production costs for small systems. EPA believes that an increase of this magnitude does not represent a signficant economic impact. Therefore, although the rule will affect a substantial number of small systems, the average effect on small systems as defined by the Small Business Administration would not be significant.

Nevertheless, EPA recognizes that, due to their inability to benefit from economies of scale, the cost impact of regulations tends to increase as the size of a system decreases. In order to prevent these regulations from placing an onerous burden on smaller systems, EPA has included numerous provisions in the proposal which would enhance their ability to comply. Among these provisions are:

1. The monitoring requirements of the rule are phased in over an extra two to three years for small systems.

2. Fewer samples are required for compliance with both the maximum contaminant level and treatment technique parts of the rule.

3. Small systems are required to monitor less often than large systems. Instead of monitoring quarterly, systems serving less than 50,000 people may monitor annually or once every five years.

4. States may take system size into account when determining appropriate elements of the treatment plan, including corrosion control and public education requirements for a given system.

The Agency encourages States to provide technical assistance to small systems which need to install or improve corrosion control. The assistance could include tailoring the treatment plans they provide to small systems to the circumstances of individual public water systems. Further, under the Safe Drinking Water Act, exemptions are available for systems serving fewer than 500 persons if they cannot afford to install best available technology to meet the requirements of an MCL or treatment technique requirement technology, provided there is no unreasonable risk to health. These exemptions may be extended as necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq*. An Information Collection request has been prepared by EPA (ICR No 0270.12) and a copy may be obtained from Eric Strassler, Information Policy Branch; EPA 401 M Street, SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2709.

Public reporting burden for this collection of information is estimated to vary from an average of 1 to 1.4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

XI. Request for Public Comment

Throughout this proposal, EPA has requested public comment on many issues and approaches related to this regulation. Many of the major issues for comment are repeated here for the convenience of those who wish to comment on this proposed rule.

1. Should EPA control corrosion by-products with MCLs or a treatment technique?

2. Is an MCL measured at the tap to control both lead from source water and as a by-product of corrosion appropriate? What would be the basis for selecting the level? What monitoring requirements should apply? Should systems that have installed BAT and still cannot meet the MCL at the tap because of private plumbing be considered permanently out of compliance?

3. Should EPA establish national requirements for lead service line replacement?

4. EPA solicits data on contributions of lead service lines and other lead connections to lead levels at the tap, and on lead levels after corrosion control treatment is in place.

5. EPA solicits data on the effect of partial and full lead service line replacement programs on lead levels at the tap.

6. Should EPA reduce to 500 ml the sample size for determining whether a system meets the no-action levels and/or the source water MCLs for distributed water?

7. Should EPA adopt one or more of the following alternatives to this proposal: Treating the fourth no-action level, a maximum of 0.020 mg/l of lead measured as the 95th percentile of targeted samples, the same as the first four no-action levels; adding total alkalinity of 30 mg/l as an additional no-action level to trigger treatment; requiring a system to replace lead service lines and connections that are found to contribute significantly to lead in tap water even after installation of optional corrosion control; a two-tiered approach to monitoring which may increase the efficiency of sampling, so fewer samples might be required of most public water systems; and eliminating pH as a no-action level?

8. Should the MCLs for lead and copper apply at the entry points to the distribution system or to fully flushed water at the consumer tap?

9. Should EPA require water suppliers to adjust corrosion control treatment to account for any blending of water from different sources? How? Please provide any data to support any alternative approaches.

10. Should EPA raise the maximum no-action level for lead to 0.030 mg/l (if it is adopted as a no-action level that triggers treatment) to assure that this alternative could be feasibly implemented; and/or substitute the no-action level of 0.020 mg/l for lead for the average of 0.010 mg/l for lead and pH and alkalinity measures?

11. What information should be included in the public education program?

12. Would the proposed public education program and/or any other similar actions reduce exposure to potentially excessive levels of lead in drinking water?

13. Are the proposed analytical techniques technically adequate and economically feasible?

14. Are the PQL acceptance limits for copper and lead appropriate?

15. Are the proposed criteria for selecting the targeted samples appropriate?

16. EPA requests additional data on samples in accordance with EPA's lead monitoring protocol. EPA is especially interested in corrosion control treatment data which compares lead levels in morning first draw samples before treatment and levels after treatment.

17. What specific level of lead or copper in drinking water constitutes an unreasonable risk to health?

18. Should EPA allow variances and exemptions from the proposed rule? Are there other conditions (in addition to those described) under which the treatment technique may not be necessary or beneficial for reducing lead exposures via drinking water?

19. Are the requirements that a State would be required to include in a program revision to adopt the lead and copper NPDWRs proposed in this regulation appropriate?

21. What will be the effects of the proposed requirements on State programs?

XII. References

The following references are referred to in this notice and are included in the public docket together with other correspondence and information. The public docket is available as described at the beginning of this notice. All public comments received on this proposal are included in the public docket.

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List of Subjects in 40 CFR Parts 141 and 142

Chemicals, Reporting and recordkeeping requirements, Water supply, Administrative practice and procedure, Incorporation by reference.

Dated: August 9, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300g–1, 300g–3, 300g–6, 300j–4, and 300j–9.

2. Section 141.2 is amended by removing the paragraph designations and placing the definitions in alphabetical order, by revising the definitions of "maximum contaminant level," and adding the following new definitions in alphabetical order to read as follows:

§ 141.2 Definitions.

* * * * *

"Corrosion inhibitor" means a substance, such as zinc orthophosphate, capable of reducing the corrosivity of water toward plumbing materials, for example, by forming a protective film on the interior surface of the plumbing materials.

* * * * *

"Distributed water" means water entering the water distribution system after any treatment that may be applied.

* * * * *

"Ends of the distribution system" means areas of the distribution system with low or no water flow in water mains.

* * * * *

"Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to any user of a public water system.

* * * * *

"Morning first draw sample" means a sample of tap water that has been standing in plumbing pipes for 8 to 18 hours and is collected without flushing.

* * * * *

"Optimal corrosion control treatment" is corrosion control treatment which minimizes lead levels in targeted samples.

* * * * *

"pH" means the condition represented by the negative logarithm of the effective hydrogen-ion concentration or hydrogen-ion activity expressed in gram equivalents per liter. pH is used to express both acidity and basicity on a scale whose values run from 0 to 14 with 7 representing neutrality; numbers less than 7 indicate a more acidic solution, and numbers greater than 7 indicate a more basic solution.

* * * * *

"Residence," for the purpose of Subpart I of this part only, means, in the case of a community water system, a house or other dwelling unit. In the case of a non-transient non-community water system, residence means any building served by the public water system.

* * * * *

"Service connection" means the pipe, gooseneck, pigtail, and any other fitting connecting the water main to the building inlet.

"Service connection sample" means a sampling of water that has been standing for 8–18 hours in the building service connection.

* * * * *

"Targeted sample" is a sample taken in accordance with § 141.86(d).

3. Section 141.32 is amended by reserving paragraphs (e)(10)–(12) and adding paragraphs (e)(13) and (14) to read as follows:

* * * * *

§ 141.32 Public notification.

* * * * *

(e) * * *

(10)–(12)—[Reserved]

(13) *Lead.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Lead is a soft, dull, gray metal that has frequently been used in water supply plumbing materials, expecially flux, solder, pipes, and brass and bronze fixtures. Lead usually contaminated drinking water as a result of the corrosion of these plumbing materials by the water they carry. Lead has been shown to cause a variety of adverse health effects in humans and animals. In humans, lead has been shown to interfere with the formation of red blood cells (heme synthesis), cause anemia, cause kidney damage, impair reproductive function, reduce birth weight, cause premature birth, delay physical and mental development in babies and young children, impair mental abilities in children, and increase blood pressure in adults. Many of these effects have been observed at relatively low exposure levels. Studies on animals indicated that lead may also cause cancer at high doses. EPA has set an enforceable drinking water standard at 0.005 ppm (parts per million) for lead leaving the treatment plant and entering the distribution system. EPA also requires public water systems to treat their water to minimize lead contamination resulting from corrosion of plumbing materials when lead in tap water that has been standing overnight exceeds an average of 0.010 ppm. Drinking water that meets these standards is associated with little of this risk and should be considered safe to drink.

(14) *Copper.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a health concern at certain exposure levels. Copper is an orange metal that is commonly used for plumbing pipes in homes and other buildings. Copper generally contaminates drinking water as a result of the corrosion of copper pipes by the water they carry. When copper corrodes, the water and sink are often stained green. Copper is an essential nutrient, but at higher doses it has been shown to cause stomach and intestinal distress, liver and kidney damage and anemia. Persons with Wilson's disease may be at higher risk from copper toxicity than the general public. EPA has set an enforceable drinking water standard for copper at 1.3 ppm (parts per million) for water leaving the treatment plant and entering the distribution system. EPA also requires public water systems to treat their water to control copper contamination resulting from the corrosion of plumbing materials when copper in tap water that has been standing overnight exceeds 1.3 ppm in more than 5 percent of samples. Drinking water that meets this standard is associated with little to none of this risk and should be considered safe to drink.

4. A new Subpart I is added to read as follows:

Subpart I—Control of Lead and Copper

Sec.

141.80 Applicability.
141.81 MCLGs for lead and copper.
141.82 MCLs and BAT for lead and copper.
141.83 Treatment technique requirement.
141.84 Treatment plan.
141.85 Public education program.
141.86 Analytic and monitoring requirements for lead and copper MCLs and treatment technique requirements.
141.87 Reporting and recordkeeping.

Subpart I—Control of Lead and Copper

§ 141.80 Applicability.

Unless otherwise indicated, each of the provisions of this subpart applies to community water systems and non-transient non-community water systems (hereinafter referred to as "systems").

§ 141.81 MCLGs for lead and copper.

The maximum contaminant level goals (MCLGs) for lead and copper are as follows:

Contaminant	MCLG in mg/l
(1) Lead	Zero.
(2) Copper	1.3

§ 141.82 MCLs and BAT for lead and copper.

(a) The following MCLs for lead and copper apply to water entering the distribution system, after any treatment:

Contaminant	MCL in mg/l
(1) Lead	0.005
(2) Copper	1.3

(b) The Administrator, pursuant to section 1412(b)(6) of the Act, hereby identifies the following as the best technology, treatment technique, or other means available (BAT) for achieving compliance with or issuing variances from the MCLs for lead and copper:

Contaminant	BAT
(1) Lead	(1), (2), (3), (4)
(2) Copper	(1), (2), (3), (4)

Key to BATs in Table.
[1] = Coagulation/Filtration.
[2] = Ion Exchange.
[3] = Lime softening.
[4] = Reverse Osmosis.

§ 141.83 Treatment technique requirement.

(a) This rule establishes a treatment technique requirement to control lead and copper as corrosion byproducts. The treatment technique requirement consists of optimal corrosion control treatment (to minimize lead in drinking water) and public education (to reduce exposure to lead in drinking water). A system that meets the no-action levels specified in paragraphs (b)(1)(i)-(iv) of this section is deemed in compliance with the treatment technique requirement of this paragraph.

(b) The specific steps a system must take to comply with the treatment technique requirement of paragraph (a) of this section depend on the lead level, copper level, and pH measured as specified in § 141.86 (a) and (d) of this part. These steps are set out below:

(1) The no-action levels are as follows:

(i) The arithmetic average lead level of the required samples is less than or equal to 0.010 mg/l;

(ii) The lead level in at least 95 percent of the required samples is less than or equal to 0.020 mg/l;

(iii) The copper level in at least 95 percent of the required samples is less than or equal to 1.3 mg/l;

(iv) The pH is greater than or equal to 8.0 in at least 95 percent of the required samples.

(2) If a system cannot meet one or more of the no-action levels specified in paragraph (b)(1) of this section, it must obtain and implement a State-approved treatment plan, as specified below:

(i) If the arithmetic average lead level in the required samples exceeds 0.010 mg/l, the State-approved treatment plan must require the system to install optimal corrosion control treatment, as specified in § 141.84 of this part, and to conduct a public education program, as specified in § 141.85 of this part.

(ii) If the lead level exceeds 0.020 mg/l in more than five percent of the required samples, the State-approved treatment plan must require the system to conduct a public education program, as specified in § 141.85 of this part.

(iii) If the lead level exceeds 1.3 mg/l in more than five percent of the required samples, the State-approved treatment plan must require the system to install optimal corrosion control treatment, as specified in § 141.84 of this part.

(iv) If the pH is less than 8.0 in more than five percent of the required samples, the State-approved treatment plan must require the system to install optimal corrosion control treatment, as specified in § 141.84 of this part.

(c) Each system must meet the no-action levels specified in paragraph (b)(1) of this section, or submit or apply for a State-approved treatment plan as specified in § 141.84 of this part, according to the following schedule (which corresponds to one year after the monitoring required by §141.86(b) of this part is to be completed):

System size (# persons served)	Deadline
>3,300	(enter date 27 months after publication of final rule).
500-3,300	(enter date 39 months after publication of final rule).
<500	(enter date 51 months after publication of final rule).

(d)(1) A system that fulfills the treatment technique requirements of paragraph (a) of this section by meeting the no-action levels in paragraph (b)(1) of this section, by the deadline specified in paragraph (c) of this section, and fails to meet one or more of the no-action levels during a subsequent monitoring period (the length of the monitoring period, which varies by system size and system type, is specified in § 141.86 of this part), must comply with paragraph (b)(2) of this section. Such a system must submit or apply for a State-approved treatment plan under §141.84 of this part within one year after any such failure to meet the no-action level(s).

(2) A system that meets the no-action levels in paragraph (b)(1) of this section after implementing a treatment plan approved by the State under § 141.84 of this part must continue to meet the no-action levels each subsequent monitoring period.

Failure to meet one or more of the no-action levels is a violation of the treatment technique requirement.

(3) A system that does not meet the no-action levels after implementing the treatment plan approved by the State under § 141.84 of this part and demonstrating to the State that it has minimized the corrosivity of its water toward lead must operate within the parameters approved by the State as optimal for reducing corrosion of lead. Failure to operate within one or more of the parameters is a violation of the treatment technique requirement.

§ 141.84 Treatment plan.

The treatment plan describes the specific steps a system must take to comply with the treatment technique requirement in § 141.83(a) of this part and specifies a schedule for completing these steps for systems that do not meet one or more no-action levels specified in § 141.83(b) of this part. Failure to complete any step by the deadline specified in the plan for that step is a violation of the treatment technique requirement.

(a)(1) As specified in § 141.83(b)(2) of this part, the treatment plan must require optimal corrosion control treatment when:

(i) The system exceeds the no-action average lead level as specified in § 141.83(b)(1)(i) of this part;

(ii) The system exceeds the no-action copper level as specified in § 141.83(b)(1)(iii) of this part; or

(iii) The system fails to meet the no-action pH level as specified in § 141.83(b)(1)(iv) of this part.

(2) Systems serving more than 3,300 persons must develop and submit a treatment plan to the State for review and approval. The treatment plan must explain how the system will achieve the following steps, and provide a schedule for completing each step:

(i) Design and implementation of appropriate pipe loop, laboratory, pilot scale, and/or field studies demonstrating reductions of lead levels in simulated morning first draw and service connection samples that correspond to application of various corrosion control treatments, such as:

(A) pH adjustment;

(B) Alkalinity adjustment; and/or

(C) Addition of corrosion inhibitors;

(ii) Analysis of the data generated in paragraph (a)(2)(i) of this section that identifies the water quality conditions under which lead levels in morning first draw and service connection samples are expected to be minimized;

(iii) Installation and operation of corrosion control treatment in the water supply system as a whole to ensure delivery to residences of water meeting the water quality conditions identified in paragraph (a)(2)(ii) of this section within three years after the State approves the treatment plan;

(iv) Monitoring to determine the effectiveness of the corrosion control treatment by comparing lead levels in morning first draw and service connection samples at residences designated for monitoring, as specified in § 141.86 of this part, after installation of corrosion control treatment with:

(A) The no-action levels for lead specified in § 141.83(b)(1) of this part, and

(B) The lead levels in morning first draw and service connection samples predicted based on the analysis performed in paragraph (a)(2)(ii) of this section;

(v) Additional adjustment of the corrosion control treatment if the lead levels in morning first draw or service connection samples from residences designated for monitoring, as specified in § 141.86 of this part, exceed the no-action level specified in § 141.83(b)(1)(i) of this part; and

(vi) If the system is still exceeding the no-action levels after application of all treatment, an analysis of all treatment and resulting lead levels must be prepared and submitted to the State.

(3) For systems serving 3,300 or fewer persons, the system must request a treatment plan from the State. The State will specify the required treatment. The treatment plan must include the following steps, and a schedule for completing each step:

(i) Installation and operation in the water supply system of the corrosion control treatment specified by the State (such as pH control, alkalinity control, and/or use of corrosion inhibitors) within three years after the State issues the treatment plan;

(ii) Monitoring to determine the effectiveness of the corrosion control treatment by comparing lead levels in morning first draw and service connection samples at residences designated for monitoring, as specified in § 141.86 of this part, after installation of corrosion control treatment with the applicable no-action levels for lead specified in § 141.83(b)(1) of this part; and

(iii) Additional adjustment of the corrosion control treatment if the lead levels in morning first draw or service connection samples from residences designated for monitoring, as specified in § 141.86 of this part, exceed the no-action level specified in § 141.83(b)(1)(i) of this part.

(4) If lead levels in morning first draw or service connection samples continue to exceed the no-action level specified in § 141.83(b)(1)(i) of this part after completion of the steps described in paragraph (a)(2) of this section (for systems serving more than 3,300 persons) or paragraph (a)(3) of this section (for systems serving 3,300 or fewer persons), the State must evaluate the treatment and monitoring data and determine whether the corrosion control treatment applied by the system is optimal, i.e., minimizes the corrosivity of water towards lead. If the State determines that the system has minimized the corrosivity of water towards lead i.e., the treatment is optimal, the system must continue to operate within the parameters specified by the State as constituting optimal treatment. Final operating parameters specified by States must account for seasonal variations in water corrosivity and lead levels.

(5) Systems serving more than 3,300 persons that wish to change other concurrent treatments that might reduce the effectiveness of the approved corrosion control treatment, or experience significant change in the population served or in the extent of the distribution system, would be required to submit to the State for approval new corrosion control data from studies which reflect the new conditions under which the supplier wished to operate, except for temporary changes required to respond to an emergency situation. Permanent operating conditions must assure that treatment is optimal Temporary changes in treatment must be reported to the State within five days. Changes in treatment lasting more than five days are considered permanent changes in treatment.

(6) Systems serving less than 3,300 persons that wish to change other concurrent treatments that might reduce the effectiveness of the approved corrosion control treatment, or experience significant change in the population served or in the extent of the distribution system, would be required to notify the State of the proposed changes. States may disapprove the changes and require any modifications necessary to assure that treatment is optimal.

(7) States may, at their discretion, periodically review and revise approved treatment plans and final operating parameters as warranted, to ensure that no-action levels continue to be met or that treatment remains optimal.

(b)(1) The treatment plan must contain public education provisions when:

(i) A system exceeds the no-action average lead level specified in § 141.83(b)(1)(i) of this part; or

(ii) A system exceeds the no-action maximum lead level specified in § 141.83(b)(1)(i)(ii) of this part.

(2) A system must conduct a public education program in accordance with its State-approved treatment plan once the State approves it (for systems serving more than 3,300 persons) or issues it (for systems serving 3,300 or fewer persons), as long as paragraph (b)(1)(i) or (ii) of this section applies.

(3) The portion of the treatment plan that addresses the pubic education program must conform to the requirements of § 141.85 of this part.

§ 141.85 Public education program.

The public education program must be designed to provide users served by the system with information that will enable them to modify their water use behavior or take other measures to mitigate the risks to human health associated with excess levels of lead in drinking water that cannot be controlled by central water treatment.

(a) *Targeting of the public education program.* Community water systems must either:

(1) Direct the public education program required by this section to the entire population of users served by the system; or

(2) Based on the results of the materials evaluation described in § 141.86(d) of this part or any other

information available to the system, target the public education program to particular segments of the consumer population that may be receiving drinking water at the tap that exceeds the no-action levels of § 141.83(b)(1)(i) or (ii) of this part. A community water system must identify such segments on the basis of factors that include but are not limited to:

(i) Known increased potential for exposure to excess levels of lead in drinking water (e.g., areas where lead service lines are known to exist, areas where very new or very old buildings exist, areas located at the ends of the water distribution system); or

(ii) Known to be more susceptible to the adverse effects of lead (e.g., children, pregnant women, or groups of individuals exposed to additional sources of lead, including occupational exposure or other environmental exposure).

(b) *Supplemental monitoring and notification of results.* (1) As part of the public education program, community water systems must offer to sample or arrange to have sampled by a certified Laboratory the water of any customer who requests it to determine the lead content of drinking water at the customer's residence. The system is not required to pay for the sampling or analysis, nor is the system required to collect and analyze these samples itself.

(2) Each customer whose residence is sampled as part of the system's compliance monitoring, as specified in § 141.86 of this part, and each customer who requests supplemental monitoring, as specified in paragraph (b)(2) of this section, must be informed of the results of the analysis performed on his or her residence.

(c) *Content of the public education program.* The public education program required of community and non-transient non-community systems by this section must include but is not limited to the following:

(1) Information explaining the causes of excess levels of lead in drinking water. Such causes include but are not limited to:

(i) Excess levels of lead in source water;

(ii) The corrosivity of water toward plumbing materials containing lead;

(iii) The presence of lead pipes or connections;

(iv) The existence of newly-installed lead solders (generally less than five years old);

(v) Water remaining in contact with plumbing containing lead for extended periods of time;

(vi) The use of water from the hot water tap for consumption; and

(vii) Grounding of electrical systems to lead-bearing plumbing.

(2) Information explaining the potential health effects of exposure to excess levels of lead. Such effects include but are not limited to:

(i) Delayed neurological and physical development in children and infants;

(ii) Impaired cognitive performance in children (as measured by IQ tests, performance in school, and other means);

(iii) Elevations in blood pressure in adults;

(iv) Interference with heme synthesis (the ability of blood to absorb oxygen);

(v) Interference with vitamin D metabolism;

(vi) Anemia (low red blood-cell count);

(vii) Kidney damage;

(viii) Impaired reproductive function;

(ix) Complications in pregnancy and other fetal effects; and

(x) Potential carcinogenicity.

(3) Information explaining that the risks associated with lead in drinking water may be aggravated by exposure to lead from other sources. These sources include but are not limited to:

(i) Occupational or home hobby exposures (e.g., exposure from smelting, electronics, or other operations that involve the use of lead);

(ii) Inhalation of airborne lead from paint dust, leaded gasoline engine exhaust, and smelter or battery recycling; and

(iii) Ingestion of lead from lead paint chips, lead that settles out of the air as dust and dirt, and lead-contaminated crops and foodstuffs, including contamination from lead-soldered food containers and improperly glazed pottery.

(4) Actions that have been taken by the system or community to evaluate, quantify, or reduce the levels of lead in drinking water. Such actions include but are not limited to:

(i) Modifications to the applicable plumbing code to ban the use of lead solders, fluxes, and pipes, pursuant to the lead ban of Subpart E of this part;

(ii) Compliance monitoring conducted pursuant to § 141.86 of this part and any supplemental monitoring conducted pursuant to paragraph (b) of this section; and

(iii) Other actions the system has taken to evaluate, quantify, or reduce the levels of lead in drinking water.

(5) Information that the user may use to evaluate the probability that excess levels of lead exist in the user's drinking water supply. Such information must include the likelihood that excess lead levels exist in water as it leaves the system and the potential for further increases in lead levels as a result of corrosion of water distribution system components. In addition, the public education program must recommend that the user:

(i) Determine whether the user's faucets, water holding tanks, service lines, pipes, and soldered joints contain lead;

(ii) Contact the system for additional information; and

(iii) If the potential for excess levels of lead in the user's drinking water appears to be substantial, have the user's water analyzed to determine the water's lead content.

(6) Actions that the user can take to reduce short-term and long-term exposures to lead in drinking water. Such actions include but are not limited to:

(i) Flushing each water tap for at least three minutes, or until the water is as cold as it will get, before any water from that tap is consumed or used for any type of cooking or preparation of food, beverages (including ice), or baby formula;

(ii) Replacing privately-owned and privately-controlled lead service lines with pipes that are lead-free;

(iii) Ensuring that all plumbing repair work is performed using lead-free pipe, solder, and flux (as defined in Subpart E of this part); and

(iv) If allowed by the local electrical code, providing an electrical ground for the user's wiring other than the user's plumbing system.

(d) *Delivery of the public education program by community water systems.* (1) Community water systems must deliver the public education program in a form that is tailored to the nature and size of the target population, as determined under paragraph (a) of this section. The system must present all materials associated with the public education program in plain English (and in other languages where appropriate) that can be understood readily by the layperson. The means by which the system delivers the public education program may include but are not limited to:

(i) Public service announcements broadcast on radio and television stations;

(ii) Public announcements published in local newspapers;

(iii) Public meetings;

(iv) Informational notices in water utility bills;

(v) Pamphlets or brochures; and

(vi) In combination with the means specified in paragraphs (d)(1) (i) through (v) of this section, local telephone hotlines.

(2) When designing and implementing a public education program, community systems water must, to the extent practicable, coordinate with appropriate local authorities including but not limited to:

(i) The city, county, or municipal council;

(ii) The Mayor's, City Administrator's, or County Commissioners' office;

(iii) The local department of public health;

(iv) The local department of environmental protection; and

(v) The local government office responsible for administering lead-screening programs, if not listed elsewhere in this paragraph.

(3) Community water systems must repeat public education programs at least quarterly as long as the level of lead in drinking water exceed one or both no-action levels specified in § 141.83(b)(1) (i) and (ii) of this part during the previous monitoring period.

(e) *Delivery of the public education program by non-transient non-community water systems.* Non-transient non-community water systems must:

(1) Publicly post informational posters on lead in drinking water in a public place;

(2) Hold at least one public meeting annually to educate water consumer's about lead in drinking water and to answer questions on the subject; and

(3) Distribute brief informational pamphlets on lead in drinking water at least quarterly.

(f) *Evaluation of the public education program.* Community water systems serving more than 10,000 persons must, within 12 months after a public education program is undertaken, and every 24 months thereafter, evaluate the extent to which the program is effective. As part of the evaluation, the system must demonstrate to the State that, as a result of the public education program, users' knowledge about lead in drinking water enables them to alter voluntarily their water use patterns to reduce consumption of lead-contaminated water. The demonstration must be based on public survey (by mail, telephone, or in person) to evaluate the effectiveness of the public education program. Based on the results of this evaluation, the system must modify subsequent public education efforts, if such modification is determined by the State to be necessary to ensure the effectiveness of the public education program in reducing lead consumption.

§ 141.86 Analytic and monitoring requirements for lead and copper MCLs and treatment technique requirements.

(a) *Analytic provisions.* Only the analytic methods specified below, or methods otherwise approved by EPA, may be used to determine compliance with the MCLs for lead and cooper specified in § 141.82(a) of this part and to determine whether a system meets the no-action levels specified in §141.83(b)(1) of this part. Results must be reported in the units specified by the analytic method used. The following methods are incorporated by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a):

(1) Lead:

(i) Method 239.2, Atomic Absorption Furnace Technique.

"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA–600/4–79–020), March 1985. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268. (For analyzing lead and copper, the technique applicable to total metals must be used.) and;

(ii) Method D3559–85D, Atomic Absorption Furnace Technique.

Annual Book of ASTM Standards, Vol. II.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; and

(iii) Method 3043Q, Atomic Absorption Furnace Technique.

"Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Assoication, American Water Works Association, Water Pollution Control Federation, 1985.

(2) Copper:

(i) Method 220.2

"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA–600/4–79–020), March 1985. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268. (For analyzing lead and copper, the technique applicable to total metals must be used.); and

(ii) Method D1688–84F

Annual Book of ASTM Standards, Vol. II.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; or

(iii) Method 304, Atomic Absorption Furnace Technique;

"Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985; and

(iv) Method 220.1, Atomic Absorption Direct Aspiration;

"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA–600/4–79–020), March 1985. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268. (For analyzing lead and copper, the technique applicable to total metals must be used.); and

(v) Method D–1687–84D or E, Atomic Absorption Direct Aspiration;

Annual Book of ASTM Standards, Vol. II.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; and

(vi) Method 303A or B, Atomic Absorption Direct Aspiration; "Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985; and

(vii) Method 200.7A, Inductively-coupled plasma.

"Inductively-Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, September 1985, U.S. Cincinnati, Ohio 45268.

(3) pH:

(i) Method 150.1, Electrometric.

"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA–600/4–79–020), March 1985. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268.

(ii) Method D1293–84A Electrometric.

Annual Book of ASTM Standards, Vol. II.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; and

(iii) Method 423, Electrometric.

"Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.

Each analysis must be performed by a laboratory approved by EPA or the State except that analyses of pH must be conducted in the field by a technician approved by the State as specified in Part 136 of this title.

(4) Analyses under this section shall only be conducted by laboratories that have received approval by EPA or the State. To obtain approval, laboratories must:

(i) Analyze performance evaluation samples which include lead and copper provided by the EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State; and

(ii) Achieve quantitative acceptance limits as follows:

(A) Lead: ±30 percent of the actual amount in the Performance Evaluation sample when the active amount is greater than 0.005 mg/l,

(B) Copper: ±10 percent of the actual amount in the Performance Evaluation sample when the active amount is greater than 0.050 mg/l, and

(C) pH: ±0.1 pH units of the actual pH when actual pH is in the range of 0–14 pH units;

(iii) Achieve method detection limits according to the procedures in Appendix B of Part 136 of this title as follows:

(A) Lead: 0.001 mg/l; or

(iv) Be currently approved by EPA or the State to perform analyses to the specifications described in paragraph (a)(5) of this section.

(5) States have the authority to allow the use of previously collected monitoring data for purposes of compliance monitoring, if the data were collected and analyzed in accordance with the requirements of this section.

(6) All lead levels measured between the PQL of 0.005 mg/l and the MDL of 0.001 mg/l must be averaged as reported. All levels below the MDL of 0.001 mg/l must be reported as zero and average as such. Lead levels reported below an MDL larger than 0.001 mg/l must be reported as the MDL and averaged as such.

(b) *Phased-in monitoring program.* Systems must begin monitoring to determine compliance with the MCLs specified in § 141.82(a) of this part, and to determine wheter the no-action levels specified in § 141.83(b)(1) of this part are met, according to the following schedule:

System size (# of persons served)	Monitoring to being no later than	Monitoring to conclude no later than
>3,300	[enter date 3 months after publication of final rule]	[enter date 15 months after publication of final rule]
500–3,300	[enter date 15 months after publication of final rule]	[enter date 27 months after publication of final rule]
>500	[enter date 27 months after publication of final rule]	[enter date 39 months after publication of final rule]

(c) *Monitoring provisions for lead and copper MCLs.* (1) Samples must be collected at every entry point to the water distribution system, except when multiple wells draw from a single aquifer and there is no treatment, in which case, the State may designate one or more representative wells for monitoring. When multiple samples are required under this paragraph, states may allow up to 5 samples to be composited for analysis. If the lead or copper level in the composited sample exceeds one-fifth the lead or copper MCL specified in § 141.82 of this part, each of the entry points represented in the composite sample must be resampled individually for whichever contaminant exceeded one-fifth the MCL. This means that for lead, the laboratory must be able to measure levels down to 0.001 mg/l for compositing to be allowed. A composited sample that contains less than or equal to 0.001 mg/l of lead would be deemed in compliance with the MCL without sampling each well represented in the composited sample.

(2) Non-transient non-community water systems must sample water for lead and copper in at least one sample per entry point (except as specified in paragraph (c)(1) of this section) every five years. Non-transient non-community water systems are not eligible for reduced monitoring frequency.

(3) Community water systems must sample water for lead and copper in at least one sample per entry point as follows:

System size (persons served)	Minimum # Samples per Entry Point/ Monitoring Period
>500	1/Year.
>500 using ground water	1/Year.
>500 using surface water or a combination of surface water and ground water.	1/Quarter.

(4) For community water systems, if no violation of the MCL has occurred within the most recent 2 years of monitoring, the State may reduce the monitoring frequency to no less than the following:

System size (persons served)	Minimum number samples/entry point/ monitoring period
>500	1/year, every 5 years.
>500 using ground water	1/year, every 5 years.
>500 using surface water or a combination of surface water and ground water.	1/quarter for 1year, every 5 years.

(5) If the result of an analysis performed under paragraph (c) of this section indicates that the level of copper or lead at any sampling point exceeds the MCL specified in § 141.82(a) of this part, the State may allow the system to obtain and analyze one additional sample at the same sampling point within 2 weeks of the original sample.

(6) When the only analysis, or the average of the two analyses, as appropriate, made pursuant to paragraph (c)(5) of this section exceeds the MCL at any sampling point, the system is in violation of the MCL and must notify the State pursuant to § 141.31 of this part and give notice to the public pursuant to § 141.32 of this part. The system must perform increased monitoring at this sampling point at a frequency determined by the State until: (i) The MCL has not been exceeded in two successive monitoring periods of the increased monitoring program; or (ii) a monitoring schedule imposed as a condition of a variance, exemption, or enforcement action becomes effective.

(d) *Monitoring provisions for corrosion control treatment technique requirements for community water systems.*—(1) *Materials evaluation and identification of sampling group.* (i) By the applicable data specified in paragraph (b) of this section, each community water system must complete a materials evaluation in the community adequate to identify a group of residences from which samples required by this section must be taken. Systems are to select single-family houses, except that they may include apartments and other multiple-family housing where such housing constitutes more than 20 percent of the housing served by the community. This group of residences must be served by the ends of the distribution system and have plumbing systems that either contain lead solder that is less than 5 years old or have lead service connections or interior lead pipes. To the extent possible, the group of residences shall have an equal number of residences from each of these two categories. To identify these residences, systems must use the information collected by pursuant to § 141.42(d) of this part. As necessary, systems must also review the following:

(A) Plumbing codes, permits, and records in the files of the community building department that indicate the plumbing materials installed within residences;

(B) Inspections and records of the distribution system that indicate the material composition of the distribution lines, service lines, and connections;

(C) Existing water quality information, including results of prior analyses of water in the system or individual residences, indicating residences in which the lead level of the water may be of concern; and

(D) Design plans of the distribution system indicating residences that are served by the ends of the distribution system.

(ii) The number of residences in the sampling group must be no less than 50 percent greater than the number of sample points required for compliance with this section. If, based on the materials evaluation, a community water system cannot identify a sufficient number of residences with the specified characteristics, the system must demonstrate this to the State by:

(A) Submitting a report on the materials evaluation documenting that lead pipe was never used for service lines, goosenecks, pigtails, or interior plumbing pipes or that all such plumbing has been replaced, in those portions of the community that are served by the ends of the distribution system; and/or

(B) Demonstrating that the community has had in effect and successfully enforced for a minimum of five years a ban on lead solder use or that no lead solder was used in the construction of residences in those portions of the community served by the ends of the distribution system.

(iii) A system that meets either of the conditions in paragraph (d)(1)(ii) of this section must add to the sampling group, as appropriate, depending upon which of the conditions in paragraph (d)(1)(ii) of this section is met, residences located elsewhere within the distribution system that either:

(A) Are served by lead service connections; or

(B) Contain lead solder that is less than five years old. If the community water system still cannot establish a sampling group sufficiently large to meet the monitoring requirements of this section, the system must add to the sampling group the number of residences with lead solder served by the ends of the distribution system, irrespective of the lead content of the system and the age of lead solder in plumbing of the residences, that will increase the size of the sampling group sufficiently to meet the monitoring requirements of this section.

(iv) States may disapprove proposed monitoring plans. Systems with disapproved plans must revise the plans and obtain State approval before monitoring commences. A system with a disapproved monitoring plan is in violation of this section until the State approves a revised plan.

(2) *Sample collection.* Community water systems must obtain a one-liter sample of water from the cold-water kitchen tap of each residence monitored in the sampling group each monitoring period. In residences selected because they have new lead solder, the system must collect a morning first draw sample. In residences selected because they have lead service connections, the system must collect a service connection sample. The service connection sample consists of a sample from:

(i) The tap after the morning first draw water changes temperature;

(ii) The tap after flushing the water in the household plumbing (calculated based on pipe diameter and length to the tap from the connection); or

(iii) Directly from the service line itself.

In residences with both new lead solder and a lead service connection, the system may take a morning first draw sample and a service connection sample and count it as two residences in its pool. Systems must take subsequent samples from the same residences that were sampled during the initial monitoring period, except that, to the extent this is not possible, systems may, with State concurrence, take a sample from another residence remaining in the sampling group with the same characteristics as the initial site. Systems collecting only one set of samples annually must collect all samples during the months of July, August, or September.

(3) *Frequency of monitoring.* By the applicable date specified in paragraph (b) of this section, each community water system must begin monitoring in accordance with paragraph (a) of this section to determine whether its water meets the no-action levels specified in § 141.83(b)(1) of this part. Community water systems must monitor the sampling group at the following minimum frequency:

System size (persons served)	Minimum number samples/monitoring period
>100,000	50/Quarter.
10,001 to 100,000	30/Quarter.
3,301 to 10,000	20/Quarter.
500 to 3,300	10/Year, Every Other Year.
<500	10/Year, Every Five Years.

(4) *Reduced frequency of monitoring.* If, throughout the most recent four quarters, a community water system serving more than 3,300 persons has met the no-action levels specified in § 141.83(b)(1) of this part or has not departed from the operating parameters specified by the State after implementation of a State-approved treatment plan under § 141.84 of this part, the State may reduce the monitoring frequency required by this section to no less than the following minimum frequency:

System size (persons served)	Minimum number samples per monitoring period
>100,000	50/Year.
10,001 to 100,000	30/Year.
3,301 to 10,000	20/Year.

(5) Systems monitoring once per year under this schedule must do so during the months of July, August, or September.

(e) *Monitoring provisions for corrosion control treatment technique requirements for non-transient non-community water systems.*—(1) *Identification of sampling group.* By the applicable date specified in paragraph (b) of this section, each nontransient non-community water system must identify all buildings served by the system. Such buildings will comprise the sampling group.

(2) *Sample collection.* Non-transient non-community water systems must obtain a one-liter morning first draw sample from the tap or a service connection sample (if the building has a lead service connection) in each building typically used to draw water for human consumption. The service connection samples may be drawn by any of the three methods specified in paragraph (d)(2) of this section. At least one sample must be taken from every building in the sampling group each monitoring period.

(3) *Frequency of monitoring.* By the applicable date specified in paragraph (b) of this section, each non-transient non-community water system must begin monitoring in accordance with paragraph (a) of this section to determine whether its water meets the no-action levels specified in §141.83(b)(1) of this part. Non-transient non-community water systems must monitor the sampling group at least annually, during the months of July, August, or September.

(4) *Reduced frequency of monitoring.* Non-transient non-community water systems are not eligible for reduced monitoring frequency.

(f) Only samples collected in compliance with section 141.86(d)(1)(i) of this part can be used to determine whether no-action levels described in § 141.83 of this part have been met.

§ 141.87 Reporting and recordkeeping.

(a) All systems that serve more than 500 persons must report to the State the results of all monitoring required by this subpart within 10 days of the end of

each calendar quarter the system is in operation for any period of time. Systems that serve 500 or fewer persons must report such results to the State within 10 days of the end of each calendar year such system is in operation for any period of time. All systems must certify that the information submitted under this section is accurate. To the extent systems perform more monitoring in conformance with § 141.86(a) of this part than required under § 141.86 of this subpart, systems must include the results of the additional monitoring in their reports to the State.

(b) Reporting under this section must include the identification and location of sampling sites monitored under § 141.86(d) of this part and, the first time a site is sampled, the rationale for choosing the site.

(c) Systems operating under a State approved treatment plan to install or improve corrosion control must, according to a schedule established by the State in the treatment plan, report to the State the system's progress in completing the treatment plan's interim steps (see §141.84(a)(2) of this part).

(d) Systems operating under an approved treatment plan containing a public education program must detail the system's progress in completing the public education program requirements in the reports submitted to the State under paragraph (c) of this section, this report must include. As specified in § 141.85(f) of this part, this report must include data to the State that indicate that, as a result of the public education program, the users' knowledge about lead in drinking water enables them to alter voluntarily their water use patterns to reduce consumption of lead-contaminated water.

(e) EPA may require a system to establish and maintain such records, reports, or information as the Administrator deems necessary to determine whether the system has acted or is acting in compliance with this subpart.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

2. Section 142.14 is amended by revising paragraphs (a)(1)(iii) and (d)(2), reserving paragraphs (d)(4), (5), and (6), adding paragraphs (d)(7), (d)(8), (d)(9), and (d)(10), to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(1) * * *

(iii) The analytical results, set forth in a form that makes possible comparison with the limits specified in §§ 141.14, §141.71, §141.72, §141.73, § 141.82, and no-actions levels in § 141.83 of this chapter.

* * * * *

(d) * * *

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(2) Records of any State approvals, including approvals of treatment plans required by § 141.83 of this chapter, and the grounds for such approvals;

(3) * * *

(4) [Reserved]—(6)

(7) Records of any reductions in monitoring frequency authorized by § 141.86(c)(4) or § 141.86(d)(4) of this chapter, specifying the new frequency;

(8) Records of any requirements to perform increased monitoring, as required by § 141.86(c)(6) the frequency of such monitoring;

(9) Records of any determination under § 141.84 of this chapter that a system has minimized the corrosivity of its water, the evidence supporting this determination, and the final approved operating parameters.

(10) Records of a system's evaluation of its public education program, as required by § 141.85(f) of this chapter, and of any State determination that the system must modify subsequent public education efforts.

3. Section 142.15 is amended by reserving paragraphs (b) (3) and (4) and adding paragraphs (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), and (b)(11) to read as follows:

§ 142.15 Reports by States.

* * * * *

(b) * * *

* * * * *

(3)—(4) [Reserved.]

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(5) A list, including system identification numbers, of systems that have been authorized to reduce their monitoring frequencies in accordance with § 141.86(c)(4) and/or § 141.86(d)(4) of this chapter and the new monitoring frequencies;

(6) a list, including system identification numbers, of systems that are required to perform increased monitoring under § 141.86(c)(6) of this chapter and the new monitoring frequency.

(7) A list, including system identification numbers, of systems that have demonstrated to the State that an insufficient number of residences were available for sampling, as specificed by § 141.86(d)(1) of this chapter;

(8) A list, including system identification numbers, of systems that exceed one or more no-action levels and the level(s) exceeded.

(9) A list, including the system identification numbers, of systems serving 3,300 or more persons that have received State approval for their treatment plans, as specified in § 141.84 of this chapter and a list, including system identification numbers, of the system serving fewer than 3,300 persons which have received treatment plans from the State, or have recevied State approval for treatment plans submitted by the system;

(10) A list, including system identification numbers, of systems that have demonstrated that they have minimized the corrosivity of their water as required by § 141.84 of this chapter. The report must also contain for each system the new operating parameters with which the system must comply.

(11) A report of the results of the evaluations of public education programs required by § 141.85(f) of this chapter and of any State determination that the system must modify subsequent public education efforts.

4. Section 142.17 is added to read as follows:

§ 142.17 Special primacy requirements.

(a)—(b) [Reserved.]

(c) *Special primacy requirements for States to adopt 40 CFR Part 141, Subpart I, Control of Lead and Copper.* An application for approval of a State program revision that adopts 40 CFR Part 141, Subpart I, Control of Lead and Copper, must contain:

(1) The text of the State statute or regulations containing the procedures or criteria for determining increased monitoring frequency (in accordance with § 141.86(c)(4) and/or § 141.86(d)(4) of this chapter) including a procedure for notifying the system of the new monitoring requirements.

(2) The text of the State statute or regulations requiring community water systems to conduct a materials evaluation and specifying the procedures for demonstrating to the State that sufficient residence with the required characteristics are not available (in accordance with § 141.86(d)(1) of this chapter). The regulations shall include the criteria the State will use to evaluate the community water system's demonstration. Such criteria must be the same or more stringent than those specified in § 141.86(d)(1) of this chapter.

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(3) The text of the State statute or regulations specifying enforceable design and operating criteria for treatment techniques designed to control the corrosivity of water. These techniques include pH adjustment, alkalinity adjustment, and the addition of corrosion inhibitors. In addition, the regulations must contain a procedure (e.g., a permit or certification system) to ensure that the design and operating criteria are met on a continuous basis.

(4) The text of the State statute or regulations specifying the procedures and criteria the State will use to evaluate and approve a treatment plan submitted for approval by systems serving more than 3,300 persons (in accordance with § 141.84 of this chapter); the criteria the State will use to determine that corrosivity has been minimized (including the data the system must submit to show that water corrosivity has been minimized) and select approved operating parameters and a method for informing the system of its approved operating parameters.

(5) Text of the State statute or regulations specifying procedures and criteria the State will use to issue or approve treatment plans for systems serving 3,300 or fewer persons, including procedures the system must follow to request a plan, the criteria the state will use to determine that corrosivity has been minimized, and the procedures the State will use to inform the system of its new operating parameters.

(6) Procedures and criteria the State will use in evaluating the data submitted by the system on the effectiveness of its public education program and in determining if the system must modify subsequent public education efforts.

5. A new § 142.63 is added to read as follows:

§ 142.63 Variances from the maximum contaminant levels for lead and copper.

(a) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for lead and copper: Coagulation/filtration; ion exchange; lime softening; reverse osmosis.

(b) A state shall require community water systems and non-transient, non-community water systems (hereinafter referred to as "systems") to install and/or use any treatment method identified in paragraph (a) of this section as a condition for granting a variance. If, after the system's installation of the treatment method, the system cannot meet the requirements of § 141.82(a) of this chapter, that system shall not be eligible for a variance under the provisions of section 1415(a)(1)(A) of the Act unless the system demonstrates to the State that lead levels or copper levels, as appropriate, would not pose an unreasonable risk to health.

(c) The State may require a system to provide bottled water or point-of-use devices or other means as a condition of granting a variance from the requirements of § 141.82(a) of this chapter to avoid an unreasonable risk to health.

(d) Systems that use bottled water as a condition of receiving a variance from the requirements of §141.82(a) of this chapter must meet the requirements in either paragraph (d)(1) or (d)(2) of this section in addition to the requirements in paragraph (d)(3) of this section:

(1) The State must require and approve a monitoring program for bottled water. The system must develop and implement a monitoring program that provides reasonable assurances that the bottled water meets all MCLs. The system must analyze a representative sample of the bottled water for all contaminants for which MCLS are promulgated under Part 141 of this chapter during the first quarter it supplies the bottled water to the public and annually thereafter. The system must provide results of the monitoring program to the State annually.

(2) The system must receive a certification from the provider of bottled water that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 103.35, 110, and 129. The system shall provide the certification to the State the first quarter after it supplies bottled water and annually thereafter.

(3) The system is fully responsible for the provision of sufficient quantities of bottled water, for consumption but not washing purposes, to every customer of the system via door-to-door bottled water delivery.

(e) Systems that use point-of-use devices as a condition for obtaining a variance from the MCLs for lead or copper must meet the following requirements:

(1) It is the responsibility of the system to operate and maintain the point-of-use treatment device.

(2) The system must develop a monitoring plan and obtain State approval for the plan before point-of-use devices are installed for compliance. This monitoring plan must provide health protection at least equivalent to a monitoring plan for central water treatment.

(3) The system must properly apply effective technology under a plan approved by the State and must maintain the microbiological safety of the water.

(4) The system must meet all State requirements regarding adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-use devices.

(5) The design and application of the point-of-use devices must consider the tendency for increases in heterotrophic bacteria concentrations in water treated with activiated carbon. It may be necessary to use frequent backwashing, post-contactor disinfection, and heterotrophic plate count monitoring to ensure that the microbiological safety of the water is not compromised. The system must obtain any necessary right-of-entry to enable the State and EPA to inspect point-of-use devices.

(6) The system must protect all users. Every building connected to the system must have a point-of-use device installed, maintained, and adequately monitored. The system must subject every building to treatment and monitoring, and must ensure that the rights and responsibilities of the system customer convey with title upon sale of property.

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Part VI

Department of Education

34 CFR Part 74 et al.

Education Department General Administrative Regulations; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, and 762

Education Department General Administrative Regulations

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administration Regulations (EDGAR) to reduce burden by deleting unnecessary requirements and provisions; remove sections already contained in other Department of Education (Department) regulations; update financial reporting requirements and payment methods to comply with the Treasury Department's mandate to eliminate the Federal Reserve Bank letter-of-credit and reduce dependence on paper checks; and include provisions for the award and administration of cooperative agreements under 31 U.S.C. Chapter 63. The Secretary also proposes to add regulations making financial aid recipients who are not current in the repayment of debts owed to the Federal government ineligible for discretionary grants and other forms of assistance from the Department of Education.

Certain EDGAR provisions relating to preapplications would be transferred to the program regulations for the only program which currently uses preapplications; other EDGAR provisions, relating to State complaint procedures, would be transferred to the program regulations of the program from which they were derived originally, Assistance to States for Education of Handicapped Children.

Finally, the cost principles in Part 74 would be amended in order to ensure the Department's conformity with the requirements of the revised Office of Management and Budget (OMB) Circulars A–21 and A–110.

DATES: Comments must be received on or before November 16, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary Hughes, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3122, Regional Office Building No. 3), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mary Hughes. Telephone: (202) 732–7400.

SUPPLEMENTARY INFORMATION: In a continuing effort to improve the administration of Department programs and service to the public, and in order to reduce regulatory burden, the Secretary has identified certain provisions of EDGAR that should be revised or removed. These provisions are in addition to those published as final regulations in the **Federal Register** of July 24, 1987 (52 FR 27801).

As with the earlier publication, the Secretary has identified opportunities to remove sections that are obsolete or not required by law. In addition, the Secretary proposes amendments to reflect the most efficient and cost-effective method of making payments to grantees, in accordance with Treasury Circular 1075 (31 CFR Part 205) and the Treasury Department mandate to replace letter of credit and Treasury check payments with more efficient electronic funds transfers. The Secretary also proposes to make changes in the financial reporting requirements to reduce burden on grantees.

Finally, the Secretary, recognizing the increase in the number of cooperative agreements used by the Department and consistent with the rulemaking requirements of the General Education Provisions Act (GEPA) section 431, proposes to revise sections of EDGAR to establish requirements for the award and use of cooperative agreements under 31 U.S.C. Chapter 63.

The Secretary is open to further suggestions for the deregulation of EDGAR and is particularly interested in public comment on the award and administration of cooperative agreements.

The specific parts and sections proposed for revision are as follows:

Section 74.3—The Secretary proposes to continue using general grant-making procedures to enter into cooperative agreements rather than establish an entirely new selection process for cooperative agreements. The Secretary proposes to amend the definition of "grant" in § 74.3 to include, specifically, cooperative agreements rather than relying on the fact that the current definition of "grant" covers all types of assistance relationships. However, the Secretary believes that some additional procedures are necessary for the administration of cooperative agreements. Therefore, the Secretary proposes to add requirements for cooperative agreements in appropriate places throughout the regulations.

Section 74.47—The Secretary proposes to amend this section to reflect the codification of the Intergovernmental Cooperation Act of 1968 into Title 31 of the U.S. Code, Chapter 65, and to reflect amendments to OMB Circular A–110 regarding income on advances made to grantees. Under the amendments to the Circular a grantee, other than a State as defined in 31 U.S.C. 6501, is required to hold advances in an interest-bearing account. Any interest over $100 per year must be paid to the Department. The exception in § 74.47(b) regarding interest earned by States does not apply to programs subject to section 487 of the Higher Education Act of 1965, as amended (20 U.S.C. 1094).

Sections 74.73, 74.74, 74.75, 74.76, 74.91, 74.93 and 74.96—The Secretary proposes to revise these sections to reflect current procedures for financial reporting and to describe the most efficient and cost-effective method of making payments to grantees, in accordance with Treasury Circular 1075 (31 CFR Part 205) and other guidance provided by the Treasury Department. For example, the amendment to § 74.91 would change the definition of "advance by Treasury check" to "advance" to reflect the Secretary's discretion to make advances through other methods authorized by the Treasury Circular. The current regulations do not fully describe the kind of payment methods the Secretary may use to implement the requirements of the Treasury Circular.

Section 74.94—The Secretary proposes to remove this section because it is redundant with § 74.93 as revised. Proposed § 74.93 would now cover payment methods for both construction and non-construction grants.

Section 74.172—The Secretary proposes to revise this section because it is outdated. Currently, educational institutions follow the cost principles found in EDGAR, Part 74, Appendix D; these cost principles implement OMB Circular A–21, Cost Principles for Educational Institutions. However, in 1979 and again in 1982, OMB revised Circular A–21. The Department has not yet implemented these changes in EDGAR. Additionally, OMB revised Circular A–21 on June 9, 1986, at 51 FR 20908, and on December 2, 1986, at 51 FR 43487, to establish a fixed overhead allowance for the administration of federally sponsored grants and contracts at educational institutions. The fixed allowance will equal 3.6 percent of modified total direct costs, and no faculty reporting will be required to support the allowance. These regulations amend EDGAR by revising

Appendix D of Part 74 to include the current provisions of OMB Circular A–21. These changes will permit the Department to ensure consistency with the government-wide requirements of Circular A–21.

Section 74.174—In recent years Congress has passed laws that make for-profit organizations eligible for grants under some programs administered by the Secretary. The Department has no regulations that specify what cost principles apply to these organizations when they receive grants. Therefore, the Secretary proposes to apply the cost principles for commercial organizations when the Secretary makes a grant to a for-profit organization. These principles already apply, under the Federal Acquisition Regulations, to for-profit organizations that enter into contracts with the Federal government (48 CFR Part 31). The underlying principle that the Federal government should pay only for costs to assist a grant activity is not changed simply because for-profit organizations are made eligible. Thus, to ensure that the Department does not pay for costs that inure to the owners of a for-profit grantee, the proposed regulations would provide that no fee or other element above actual costs may be paid to a for-profit organization that receives a grant from the Department.

Section 74.175—The Secretary proposes to revise this section to update references that are obsolete due to legislative and regulatory changes.

Sections 75.3 and 76.3—The Education Department General Administrative Regulations in 34 CFR Part 74 are referenced in each set of applicable program regulations. Thus, it is unnecessary to include the reference again in Parts 75 and 76 of EDGAR. Therefore, the Secretary proposes to remove these two sections.

Section 75.4—The Secretary proposes to revise this section by updating the cross-reference to the regulations for contracts that will appear in Title 48 of the Code of Federal Regulations.

Sections 75.60 through 75.62—Consistent with the requirements of OMB Circular A–129, Managing Federal Credit Programs, dated May 9, 1985, the Secretary proposes to add regulations making persons who are not current in repaying debts owed to the Federal government ineligible to receive a fellowship, scholarship, or discretionary grant from the Department. In order to demonstrate the concern of the Secretary regarding the need for individuals to meet their responsibilities under the programs of this Department, § 75.60 lists the current ED programs under which an individual might owe a debt to the Department. The Department already has provisions in the regulations implementing the student financial assistance provisions of Title IV of the Higher Education Act of 1965 (Title IV), as amended, that prohibit a student whose account under certain Title IV programs is not current from receiving further financial assistance from the Department. While these procedures do not fully implement Circular A–129, they do reach a substantial portion of the debt owed to the Department. The requirement for eligibility proposed in § 75.60 would increase the Department's ability to ensure that individuals repay debts incurred under those Title IV programs and the other programs listed in that section. The Secretary believes that an essential condition for an individual receiving a fellowship, scholarship, or discretionary grant is that the individual keep his or her account current as required under prior loan or grant conditions.

This Department and twenty-six other agencies have published final and interim final Nonprocurement Debarment and Suspension regulations. These regulations permit debarment of an individual or organization that failed to pay a single substantial debt, or a number of outstanding debts, owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted. Thus, the Department does not intend to make awards to individuals debarred or suspended under Debarment and Suspension regulations.

Section 75.61 requires an applicant for a fellowship, scholarship, or direct grant to certify that he or she is eligible under § 75.60, and not debarred or suspended under regulations established under Exective Order 12549. The fact that an award is made to an individual who has provided a certification required by § 75.61 does not mean that the Secretary has concluded that the individual is eligible under § 75.60. If an individual is not current in repaying debts owed to this Department or any other Federal agency, or has been debarred or suspended by this Department or any other Federal agency, and fails to certify to those facts, the Secretary may proceed with a civil action to recover the funds made available and may take other legal actions aganst the individual.

The Secretary directly administers a number of fellowship and scholarship programs and a few programs where discretionary grants may be made to individuals. However, not all fellowship and scholarship programs are administered directly by the Secretary. In some cases an institution of higher education may make fellowships. Under other programs, a State or State educational Agency may make awards after receiving funds on a formula or other basis. Sometimes the Secretary awards a grant to the institution or organization making the awards; in other cases, the Secretary enters into an agreement with the institution or organization. Whatever the nature of the programs involving an institution of higher education, State educational agency, or other intermediate entity, § 75.62 is intended to apply to the entity, imposing minimal requirements to ensure that a fellowship or scholarship is not provided to an individual who fails to keep his or her prior commitments. Section 75.62 requires that an entity to which the section applies obtain a certification from each individual who applies for a fellowship or scholarship. The certification, made under penalty of perjury, would state that the individual is eligible under § 75.60, and not debarred or suspended under regulations established under Executive Order 12549. If an applicant failed to provide the certification or the entity is informed by the Secretary that the applicant is ineligible, the entity would be prohibited from giving the applicant a fellowship or scholarship. Section 75.62 also permits the Secretary to require that an entity subject to § 75.62 submit a list of proposed or actual fellowship or scholarship recipients to the Secretary so the Secretary may verify the eligibility of these individuals. If the Secretary determines that an individual has provided a false certification, the Secretary may take appropriate legal action, including recovery of any funds made available to the individual.

The Secretary is interested in receiving comments on whether the Secretary should also apply the § 75.60 eligibility provisions to programs where the Secretary or an intermediate entity provides stipends to individuals.

Finally, as a technical matter, the Secretary intends to have these regulations apply to all fellowship and scholarship programs of the Department. However, some of the fellowship and scholarship programs do not apply Part 75 to the program. Therefore, the Secretary is proposing in this document to amend the program regulations of those programs that do not apply Part 75 to include a direct reference to these proposed new sections. The program regulations that are being amended for this purpose are the Christa McAuliffe Fellowship Program (Part 237), the Indian Fellowship Program (Part 263),

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Handicapped Research: Research Fellowships (Part 356), Bilingual Education: Fellowship Program (Part 562), the Paul Douglas Teacher Scholarship Program (Part 653), and the Office of Educational Research and Improvement Fellows Program (Part 762).

Section 75.105(c)—The Secretary proposes to revise this section by adding language to paragraph (c)(3) that clarifies how the competitive process works when the Secretary announces absolute preference priorities.

Sections 75.107, 75.108, 75.110, 75.111, 75.113, 75.114, 75.115, 75.116, and the note following § 75.118—The Secretary proposes to remove these sections as burdensome and unnecessary. Section 75.110 is proposed for removal because it duplicates provisions in standard forms required by OMB. Sections 75.111 and 75.113–75.116 are proposed for removal because they require applicants under direct formula grant programs to provide information not essential to determine funding under a formula grant program. OMB circulars and regulations of OMB under the Paperwork Reduction Act of 1980 limit a Federal agency to collecting only that information which has practical utility to the agency in carrying out one of its functions or which is required by law. See 5 CFR 1320.4 (b) and (c). Sections 75.107 and 75.108 are proposed for removal as technical conforming amendments. The note following § 75.118 is proposed for removal because it contains a list of sections which are outdated.

Sections 75.130 through 75.134—The Secretary proposes to remove these sections, which cover how the Secretary treats preapplications, and to place them in the program regulations of the program to which they now apply—the Fund for the Improvement of Postsecondary Education (FIPSE).

Sections 75.150 through 75.154—The Secretary proposes to remove these sections as unnecessary because, at this time, there is no Department program that contains a requirement that a State must approve applications submitted to the program.

Section 75.155—Under Executive Order 12372, the Department has established regulations in Part 79 that allow States to comment on Department programs and activities. Sections 75.156–75.158, which pre-date the Executive Order, also provided a procedure for States to comment on Department programs. The procedure was designed for use by Department programs that required State input either by statute or by regulation. The Secretary proposes to revise § 75.155 to limit the applicability of §§ 75.156–75.158 to those programs that require State input by statute, and to add a cross-reference regarding 34 CFR Part 79.

Section 75.160—The Secretary proposes to remove this section as a conforming amendment to the removal of §§ 75.151 and 75.153.

Section 75.200—The Federal Grant and Cooperative Act, now codified in Title 31 of the U.S. Code, sections 6301–6309, authorizes the use of cooperative agreements. At the time EDGAR was written, cooperative agreements were not widely used by the Department, but since then the number of program requests for using this award instrument has increased significantly. The proposed change to § 75.200 implements the standards in the Act and OMB guidance, 43 FR 36860, August 18, 1978.

Under the revised § 75.200, the Secretary may decide to use a cooperative agreement if the Department will be substantially involved in the administration of a particular assistance project. The key factor is whether the Secretary can expect agency collaboration or participation in the management of the project.

Section 75.216—The Secretary proposes to revise this section so the Department no longer must return applications that are not evaluated under § 75.217 or § 75.219. The change will reduce the cost to the Department of managing grant competitions. The provision in paragraph (b) of this section, under which the Secretary informs an applicant that its application has not been evaluated, is proposed for consolidation with § 75.218 which provides for notice to unfunded applicants.

Section 75.218—The Secretary proposes to change the requirement in this section that the Department explain reasons why an applicant was not selected after evaluation of its application. The Secretary currently sends a general letter if an applicant is not selected and provides a detailed letter upon the request of the applicant. The Secretary will continue to provide detailed information to applicants upon their request for that information. This policy would also apply to applications that are not evaluated under § 75.216.

Section 75.233—This section describes the factors the Secretary uses to set the amount of a grant. The Secretary proposes to make a technical revision to this section by clarifying that the Federal share of allowable costs is subject to any applicable matching or cost-sharing requirements.

Section 75.234—The Secretary proposes to revise this section, which describes conditions for making a grant, to include conditions required for a high risk grantee, or the explicit nature of Federal involvement in a cooperative agreement.

Section 75.235—The Secretary proposes to revise paragraph (b) of this section to clarify that the Secretary includes in an award document any conditions as necessary under specific program authority or to implement high risk or cooperative agreement requirements.

Section 75.253—The Secretary proposes to clarify and strengthen the criteria for making continuation awards for multi-year projects. The current regulations, among other criteria, require the Secretary to be "satisfied that the grantee will satisfactorily complete the budget period that is about to end." The Secretary strongly believes that recipients of Federal grants should be accountable for making effective use of the funds they receive, just as local school districts should be accountable for the effectiveness of the education they provide. The proposed regulations would require that a grantee either (1) be making substantial progress toward meeting the objectives of its project, or (2) have obtained approval of changes in its project, at no additional cost to the Federal Government, that enable the grantee to meet those objectives in succeeding budget periods. Whether to approve any such proposed changes would be at the discretion of the Secretary. This revised provision should ensure that projects continued in subsequent budget periods will be successful in meeting the goals of the affected Federal programs.

Sections 75.253 and 75.261—The Secretary proposes to revise these sections to describe more fully the situations in which the Secretary has discretion to extend budget periods and project periods. Under § 75.703, a grantee may only obligate funds during the grant period. That period includes one or more approved budget periods within an authorized project period. However, if a grantee fails to receive a continuation award, the grant period ends with the last funded budget period. Thus, the grantee, in many cases, will not have obligated funds during that last budget period to prepare a final evaluation of the grant or to prepare closeout reports. The amendment to § 75.253 would permit the grantee to obligate funds for these purposes during an extension of the last budget period.

This section is also amended to clarify the procedures the Secretary uses to make a continuation award. Section 75.261 is proposed for amendment to make clear the Secretary's discretion to

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extend project periods in cases where the need for the extension is not predicated on facts pertinent solely to an individual grantee. For example, Congress may not authorize funds for a particular program until sometime after the start of the fiscal year. In such a case, a group of grantees might have to delay the start of a project or cease operations temporarily, delaying the expected completion date for the grants. In this case, the Secretary may decide to extend the project periods of these projects without receiving an individual request from each grantee.

Section 75.262—This section is added to specify the Secretary's authority to convert a grant to a cooperative agreement, or to convert a cooperative agreement to a grant, after considering the necessity to do so. The decision to make a change in the type of award would be made after considering the factors in proposed § 75.200(b) (4) and (5). This assessment would dictate the type of award necessary to complete the project.

Section 75.510—The Secretary proposes to remove this section, governing the use of project directors, to reduce the intrusion of Federal regulations in day-to-day management of the Department's grants. Given the fact that, in general, discretionary grant programs base selection of a grantee, in part, on the quality of key personnel and that any change in key personnel must be approved by ED, the Department has sufficient assurances that the concerns addressed in this section are adequately met.

Section 75.518—This section is a general reference to Federal laws that may establish the minimum wage. The Secretary proposes to remove this section because it it merely informative and has not substantive effect.

Section 75.560(a)—The Secretary proposes to revise this section to update references that are obsolete. Paragraph (a) of this section is revised to refer to the cost principles in Parts 74 and 80 which describe the differences between direct costs and indirect costs, and which include principles for determining the general indirect cost rate that a grantee may use for grants under most programs.

Section 75.563 and 76.563—These sections currently provide illustrative lists of programs that have a statutory requirement not to use Federal funds to supplant non-Federal funds. The Secretary has found that these lists have not been helpful in informing potential recipients about these statutory requirements. Therefore, the Secretary proposes to remove the lists and will inform recipients under direct grant programs through the grant approval process, including the specification of restricted indirect cost rates in approved budgets. The Secretary will inform recipients under State-administered programs through approved State plans.

Sections 75.580, 75.581, 76.580, and 76.581—The Secretary proposes to remove these sections in their entirety. Paragraphs (b) and (c) of §§ 75.580 and 76.580 were based on statutory requirements that are not obsolete. Furthermore, coordination with other activities in the same geographic area served by the project is not necessary in all types of programs and, therefore, should not be a general requirement in EDGAR.

Section 75.590—The Secretary proposes to remove the examples of persons being served by the project given in paragraph (c) of the current regulations. The grantee continues to be responsible for evaluating the effect of the project on all participants.

Section 75.608—The Secretary proposes to change the word "shall" to "may" to permit a grantee discretion in the use of its facilities.

Section 75.616—The Secretary proposes to revise the current standards for energy efficiency to incorporate the most recent standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers. This incorporation by reference was approved by the Director of the **Federal Register** pursuant to the Director's authority under 5 U.S.C. 552(a).

Section 75.617—The Secretary proposes to add a section to implement his regulatory authority as required under the Coastal Barriers Resource Act.

Section 75.622—The Secretary proposes to make a technical correction.

Section 75.625—The cross-reference preceding this section refers to regulations that specify the Department's policy on inventions and patents. The content of § 75.625, which is also a cross-reference, would be incorporated into the existing cross-reference, and § 75.625 would be removed.

Section 75.626—Paragraph (b) of this section contains a reference to regulations that no longer exist. The Secretary proposes to remove paragraph (b) of this section to be consistent with OMB Circular A–124, Patents—Small Business Firms and Nonprofit Organizations. The Department no longer has an interest, as a general matter, in retaining rights to inventions and patents of grantees of the Department. In specific cases where the Department needs to protect its rights to inventions and patents, it may do so in the grant award document.

Sections 75.681 and 76.681—The Secretary proposes to remove the cross-reference following these sections. The cross-reference refers to regulations of the Department of Health and Human Services regarding the protection of human research subjects. These regulations do not apply to Department of Education programs except as specifically provided in appropriate program regulations. Also, there is currently underway an initiative to establish government-wide regulatory guidelines regarding the protection of human research subjects. The Department will promulgate appropriate regulations after the general government-wide policy is established. See 51 FR 20204, June 1986.

Sections 75.684 and 76.684—These sections on day-care services were originally included in EDGAR as requirements of the former Department of Health, Education, and Welfare. However, the sections were used primarily to impose requirements in welfare programs where funds were used specifically to establish day care centers. The Secretary proposes to remove these sections because they are not needed under the types of programs funded by the Department.

Sections 75.690 and 76.690—These requirements regarding the inclusion of educational components on energy conservation awareness are not required by E.O. 12185. The Secretary proposes to remove these sections as a part of the Administration's regulatory burden-reduction effort. However, a grantee remains free to include these components, as appropriate, if desired under the grantee's own policies.

Sections 75.707(h) and 76.707(h)—The Secretary proposed to update these sections to refer to the sections in 34 CFR Part 74 that impose the appropriate cost principles on grantees of the Department. The Secretary also notes his intention to address, in a future rulemaking document, issues regarding the accountability of funds under section 437 of GEPA as those issues relate to this section and certain other sections of EDGAR.

Sections 75.720 and 76.720—The Secretary proposes to limit the applicability of these sections to the financial status report required under § 74.73 and performance reports required under Subpart J of Part 74. Under §§ 75.720 and 76.720, as they currently stand, the Secretary may only request financial and performance reports on an annual basis. Prior to 1980, when EDGAR became effective, the

Department exercised discretion to require both performance and financial reports on a quarterly basis. At the time EDGAR was drafted, a general policy decision was made to limit performance reports and certain financial reports (such as the financial status report) to an annual reporting cycle. However, there was no intent to limit collection of the Federal Cash Transactions Report to an annual basis. For more than a decade, this report has been collected by this Department and its predecessor agencies on a quarterly, or more frequent, basis in order to prevent excessive drawdowns by grantees. In order to clarify the Department's authority to collect these reports when necessary, the Secretary proposes to limit the applicability of §§ 75.720 and 76.720 to the financial status reports and performance reports.

Sections 75.740 and 76.740—The Secretary proposes to amend these sections to include references to the regulations protecting student rights in research, experimental programs, and testing. The requirements referenced in these sections are codified at 34 CFR Part 98 and 99.

Sections 75.750 through 75.755—The Secretary proposes to remove these sections because the Paperwork Reduction Act of 1980 changed the nature of review under the paperwork control requirements in section 400A of the GEPA. As a result, this Department currently screens documents under OMB regulations at 5 CFR Part 1320 before final review and approval by OMB.

Section 76.102—This section of EDGAR lists those documents to which the provisions governing State plans in Part 76 of EDGAR apply. Since the list in § 76.1, which contains the programs and their statutory authorities to which Part 76 applies, has been removed (52 FR 27801, July 24, 1987), the Secretary proposes to revise § 76.102 by removing the cross-reference to § 76.1 at the end of the section and, as an aid to readers, by adding a reference to the statutory authority for each covered program. The Secretary also proposes to remove obsolete programs from the list and to add new programs to the list.

Section 76.125—The table following this section is outdated. The Secretary proposes to revise and update the table to reflect the programs administered by the Department that the Secretary has determined are eligible for inclusion in the consolidated grant application process. Programs that are not presently funded are not included in this list.

Sections 76.300 and 76.305—The Secretary proposes to remove § 76.305 because it restricts the discretion of the States to establish simpler procedures for amending a subgrant than were required for the approval of the subgrant. Section 76.300 is revised to reflect this greater discretion.

Section 76.401—The Secretary proposes to revise this section to reflect more accurately the programs under which a State agency hearing is required before disapproval of an application.

Section 76.560—The Secretary proposes to make technical corrections.

Section 76.591—The Secretary proposes to make a technical correction.

Sections 76.770 and 76.771—These sections currently contain detailed instructions to the States on how to administer the programs subject to Part 76, particularly with respect to subgrantees under those programs. The Secretary proposes to simplify and consolidate these sections into a revised § 76.770, which would provide that a State must have procedures, for the administration of these programs, that are designed to ensure compliance with applicable statutes and regulations. It is not expected that the requirement being retained would impose any significant burden, since the States should already have these procedures in place for administering the programs involved.

Section 76.772—This section applies to the programs under Title IV of the Elementary and Secondary Education Act. The Title IV authority has been repealed. Therefore, the Secretary proposes to remove this section.

Sections 76.780–76.782—The Secretary proposes to remove these sections because they either do not apply to or have not been used under most programs of the Department. Most of these provisions were derived from the regulations for the State-administered program under Part B of the Education of the Handicapped Act (EHA). Those provisions of the State complaint procedure that were derived from the regulations under the EHA are proposed for transfer back to that program, which has shown the greatest need for the complaint procedure.

This action is not intended to implement the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297. The conference report for that legislation states Congress' intent that the Department apply the EDGAR complaint procedures to the Chapter 1 program under Title I of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 100–297. The regulations for the Chapter 1 program are being developed at this time and will separately address the issue concerning inclusion of complaint procedures for that program.

Part 77—The Secretary proposes to amend the definitions Part of EDGAR to include cooperative agreements within the definition of "award."

Part 300—The Secretary proposes to amend the EHA Part B regulations to include the State complaint procedures that are proposed for removal from EDGAR.

Part 630—The Secretary proposes to revise Part 630 to include modified provisions from the current § 75.130–§ 75.134 regarding preapplications. The Fund for the Improvement of Postsecondary Education is the only Department program that uses these preapplication procedures.

Executive Order 12291

The proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classifed as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. None of the proposed changes will place undue burden on small entities submitting applications. Many of the proposed changes are technical and will remove obsolete material from the regulations. Some of the proposed changes will reduce burden imposed by existing regulations. These changes, while not economically significant for individual entities, will be beneficial for all applicants.

Paperwork Reduction Act of 1980

Sections 74.73, 74.74, 75.261, and 75.720 contain information collection requirements. The Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget for its review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection during

and after the comment period in Room 3122, Regional Office Building No. 3, Seventh and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burden found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Education Department, Grant programs—education, Grants administration.

34 CFR Part 75

Education Department, Grant programs—education, Grants administration.

34 CFR Part 76

Education Department, Grant programs—education, Grants administration, Intergovernmental relations, State-administered programs.

34 CFR Part 77

Definitions.

34 CFR Part 237

Colleges and universities, Education, Elementary and secondary education, Scholarships and fellowships, Teachers.

34 CFR Part 263

Business and industry, Colleges and universities, Education, Engineers, Health professions, Indians—education, Law, Medical and dental schools, Natural resources, Scholarships and fellowships, Teachers.

34 CFR Part 300

Administrative practice and procedure, Education, Education of handicapped, Equal educational opportunity, Grant programs—education, Privacy, Private schools.

34 CFR Part 356

Education, Educational research, Fellowships.

34 CFR Part 562

Bilingual education, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

34 CFR Part 630

Colleges and universities, Education, Government contracts, Grant programs—education, Reports and recordkeeping requirements.

34 CFR Part 653

Education, Grant programs, State-administered, Student aid.

34 CFR Part 762

Education, Educational research, Fellowships, Teachers.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated: July 21, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, and 762 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS

1. The authority citation for Part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110, unless otherwise noted.

2. An authority citation is added following each section of Part 74 that does not already have such an authority citation, to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

3. Section 74.3 is amended by revising the definition of "grant" to read as follows:

§ 74.3 Definitions.

* * * * *

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal government to an eligible recipient. The term includes a cooperative agreement except where otherwise provided by regulation. The term does not include any Federal procurement subject to the Federal Acquisition Regulation in 48 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the recipient is not required to account on an actual cost basis.

* * * * *

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

4. Section 74.47 is revised to read as follows:

§ 74.47 Interest earned on advances of grant funds.

(a) Unless exempted by Federal statute (see paragraph (b) of this section for the principal exemption)—

(1) Recipients shall maintain advances of Federal funds in interest-bearing accounts;

(2) Interest earned on Federal advances deposited in those accounts must be remitted promptly, but at least quarterly, to the Department; and

(3) A recipient may retain interest income up to $100 per year to assist in the recoupment of administrative expenses.

(b) In accordance with 31 U.S.C. 6503, States are not accountable to the Federal government for interest earned by the State itself, or by its subgrantees, if this income is earned on an advance of funds made under a Department grant.

(c) Recipients are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal government for interest or other investment income earned on the advances.

(d) The following definitions apply to this section:

(1) "Interest" includes any interest or investment income earned by grantees, subgrantees, and cost-type contractors on advances of Department grant funds to the grantee.

(2) "State" includes any agency or instrumentality of a State but does not include any local government in a State.

(3) Notwithstanding the definition of "grant" in § 74.3, the word "grant" has the meaning given in 31 U.S.C. 6501.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, 31 U.S.C. Chapter 65, OMB Circular A–110)

5. In § 74.73, paragraphs (a) and (b) are revised to read as follows:

§ 74.73 Accounting basis for reports; the financial status report.

(a) Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or

accrued expenditure (accrual), that it uses in its accounting system.

(b) The Secretary may require a grantee to use Standard Form 269, Financial Status Report, to report the status of funds for nonconstruction grants.

* * * * *

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

6. In § 74.74, paragraphs (a), (c), and (d) are revised to read as follows:

§ 74.74 Federal cash transactions report.

(a) *Reporting payments.* (1) The Secretary may require a grantee to submit Standard Form 272 to report payments under a grant.

(2) This report is used by the Secretary to monitor cash advanced to the grantee and to obtain disbursement or outlay information for each grant. The Secretary may also use this form to determine the status of funds for a nonconstruction grant.

* * * * *

(c) *Cash in hands of secondary recipients.* If the submission of a report is considered necessary and feasible by the Secretary, the Secretary may require a grantee to report the amount of cash subadvances in excess of three days' need in the hands of its subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* A grantee shall submit the report on a quarterly basis. If a Department grant authorizes advances at an annualized rate of one million dollars or more, the Secretary may require submission of the report on a monthly basis.

(Authority: 20 U.S.C. 1221–3(a)(1) and 3474, OMB Circular A–110)

7. Section 74.75 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b), to read as follows:

§ 74.75 Request for advance or reimbursement.

(a) The Secretary includes in the terms and conditions of a grant—

(1) Whether the grantee will be paid by advance or reimbursement; and

(2) Instructions regarding how the grantee must request advances or reimbursements under the grant.

(b) Pursuant to any applicable regulations, the Secretary may change, at any time, the method of making payments to a grantee.

* * * * *

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

§ 74.76 [Amended]

8. Section 74.76(c) is amended by removing "by 74.73(b)" and adding in its place "by 74.73(a)".

9. Section 74.91 is amended by removing the definition "Advance by Treasury check" and by adding a definition of "Advance" in its place, to read as follows:

§ 74.91 Definitions.

* * * * *

"Advance" is a payment made by the Department to a grantee, upon its periodic request or through the use of predetermined payment schedules, before outstanding obligations are liquidated by the grantee.

* * * * *

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

10. Section 74.93 is revised to read as follows:

§ 74.93 Payment methods under Department grants.

The Department makes payments to a grantee using the most efficient and cost-effective method available in accordance with Treasury Circular 1075 (31 CFR Part 205) and any supplementary instructions prescribed by the Department of the Treasury.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

§ 74.94 [Removed]

11. Section 74.94 is removed.

12. Section 74.96 is revised to read as follows:

§ 74.96 Establishing frequency of payments.

The Secretary establishes, in the terms and conditions of a grant, the frequency of the grantee's request for payments.

(Authority): 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

13. Section 74.172 is revised to read as follows:

§ 74.172 Institutions of higher education.

Institutions of higher education shall comply with the cost principles stated in Appendix D to this Part.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circulars A–110, A–21)

14. Section 74.175 is revised to read as follows:

§ 74.175 Subgrants to commercial organizations

(a) The cost principles applicable to a subgrantee or cost-type contractor under a grant are not necessarily the same as those applicable to the grantee. For example, if a State government awards a subgrant or cost-type contract to an institution of higher education, OMB Circular A–21, as specified in § 74.172, applies to the costs incurred by the institution of higher education, even though OMB Circular A–87 applies to the costs incurred by the State.

(b) If the Secretary makes a grant to a for-profit organization, the Secretary uses the cost principles in the Federal Acquisition Regulation, 48 CFR Part 31, to determine the allowability of costs. In making a grant to such an organization, the Secretary does not pay any fee or other element above actual costs that may inure to the benefit of the owners of the organizations.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474 OMB Circular A–110)

15. Appendix D is revised to read as follows:

Appendix D—Principles for Determining Costs Applicable to Grants, Contracts, and Other Agreements With Educational Institutions

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K. Certification of Charges

A. Purpose and Scope

1. *Objective.* This Attachment provides principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements.

2. *Policy guides.* The successful application of these cost accounting principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for Federal agency and institutional participation in the financing of a research, training, or other project are properly subject to negotiation between the agency and the institution concerned, in accordance with such Government-wide criteria or legal requirements as may be applicable.

b. Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.

c. The dual role of students engaged in research and the resulting benefits to sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.

d. Each institution, in the fulfillment of its obligations, should employ sound management practices.

e. The application of these cost accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of individual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

f. Cognizant Federal agencies involved in negotiating indirect cost rates and auditing should assure that institutions are generally applying these cost accounting principles on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments should be fully considered during the rate negotiations and audit.

3. *Application.* These principles shall be used in determining the allowable costs of work performed by colleges and universities under sponsored agreements. The principles shall also be used in determining the costs of work performed by such institutions under subgrants, cost-reimbursement subcontracts, and other awards made to them under sponsored agreements. They also shall be used as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

a. Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees of an institution.

b. Capitation awards.

c. Other awards under which the institution is not required to account to the Government for actual costs incurred.

B. Definition of Terms.

1. *Major functions of an institution* refers to instruction, organized research, other sponsored activities, and other institutional activities as defined below:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in c. below, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a noncredit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) University research means all research and development activities that are separately budgeted by the institution under an internal application of institutional funds. University research, for purposes of this document, may be considered a part of the instruction function, or may be combined with sponsored research under the function, of organized research, or may be treated as a separate major function, as agreed to with the cognizant agency.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects, and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except: (1) instruction, departmental research, organized research, and other sponsored activities, as

defined above; (2) indirect cost activities indentified in Section F, and (3) specialized service facilities described in Section J38. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartment, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

d. *Other institutional activities* means all activities of an institution except: (1) instruction, departmental research, organized research, and other sponsored activities, as defined above; (2) indirect cost activities indentified in Section F, and (3) specialized service facilities described in Section J38. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartment, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

2. *Sponsored agreement,* for purposes of this circular, means any grant, contract, or other agreement between the institution and the Federal Government.

3. *Allocation* means the process of assigning a cost, or a group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship. A cost objective may be a major function of the institution, a particular service or project, a sponsored agreement, or an indirect cost activity, as described in Section F. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate costs objectives.

C. Basic Considerations

1. *Composition of total costs.* The cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in 5 below.

2. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must allocable to sponsored agreements under the principles and methods provided herein; (c) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types and amounts or costs items.

3. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution of the performance of the sponsored agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and sponsored agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, it employees, its students, the Government, and the public at large; and (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including sponsored agreements.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective (i.e, a specific function, project, sponsored agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a sponsored agreement if (1) it is incurred solely to advance the work under the sponsored agreement; (2) its benefits both the sponsored agreement and other work of the institution, in proportions that can be approximated through use of reasonable methods, or (3) it is necessary to the overall operation of the institution and, in light of the principles provided in this Circular, is deemed to be assignable in part to sponsored projects. Where the purchase of equipment or other capital items is specifically authorized under a sponsored agreement, the amounts thus authorized for such purchases are assignable to the sponsored agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular sponsored agreement under the standards provided in this Circular may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience.

5. *Applicable credits.*

a. The term applicable credits refers to those receipts or negative expenditures that operate to offset or reduce direct or indirect cost items. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnites on losses; and adjustments of overpayments or erroneous charges. This term also includes "educational discounts" on products or services provided specifically to educational institutions, such as discounts on computer equipment, except where the arrangement is clearly and explicitly identified as a gift by the vendor.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to sponsored agreements for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See Sections F8, J9a, and J38 for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.* Costs incurred or paid by State or local governments on behalf of their colleges and universities for fringe benefit programs such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the institutions are allowable costs of such institutions whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

a. The costs meet the requirements of C1 through 5 above.

b. The costs are properly supported by cost allocation plans in accordance with applicable Federal cost accounting principles.

c. The costs are not otherwise borne directly or indirectly by the Federal Government.

7. *Limitations on allowance of costs.* Sponsored agreements may be subject to statutory requirements that limit the allowance of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Circular, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements.

D. Direct Costs

1. *General.* Direct costs are those costs that can be identified specifically with a particular sponsored project, and instructional activity, or any other institutional activity; or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to sponsored agreements.* Identification with the sponsored work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of sponsored agreements. Typical costs charged directly to a sponsored agreement are the compensation of employees for performance of work under the sponsored agreement, including related fringe benefit costs to the extent they are consistently treated, in like circumstances, by the institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of the work; and other items of expense incurred for the sponsored agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of sponsored agreements, provided such items are consistently treated, in like circumstances, by the institution as direct rather than indirect costs, and are charged under a recognized method of computing

actual costs, and conform to generally accepted cost accounting practices consistently followed by the institution.

E. Indirect Costs

1. *General.* Indirect costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, and instructional activity, or any other institutional activity. At educational institutions such costs normally are classified under the following indirect cost categories: depreciation and use allowances, general administration expenses, sponsored projects administration expenses, operation and maintenance expenses, library expenses, departmental administration expenses, and student administration and services.

2. *Criteria for distribution.*

3. *Base period.* A base period for distribution of indirect costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect cost allocation process is to distribute the indirect costs described in Section F to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect cost categories referred to in E1 above. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in c below. Each such pool or cost grouping should then be distributed individually to the related cost objectives, used the distribution base or method most appropriate in the light of the guides set forth in d below.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect cost category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in E2b and d.

(2) Where any types of expense ordinarily treated as general administration or departmental administration are charged to sponsored agreements as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect costs allocable to those sponsored agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) Where activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat fringe benefits as indirect charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.*

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

(2) Where a cost grouping can be identified directly with the cost objective benefited, it should be assigned to that cost objective.

(3) Where the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than every two years, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution shall be made in accordance with the appropriate base cited in Section F., unless one of the following conditions is met: (a) it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored agreements, or (b) the institution qualifies for, and elects to use, the simplified method for computing indirect cost rates described in Section H.

e. *Order of Distribution.*

(1) Indirect cost categories consist of depreciation and use allowance, operation and maintenance, general administration and general expenses, departmental administration, sponsored projects administration, library, and student administration and services, as described in Section F.

(2) Depreciation and use allowances, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in (3) below, this order of allocation does not apply.

(3) Normally an indirect cost category will be considered closed once it has been allocated to their cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories described in Section F is required.

F. Identification and Assignment of Indirect Costs

1. *Depreciation and use allowances.*

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section J9.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated in the following manner:

(1) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(2) Depreciation or use allowances on buildings, used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the bais of usable square feet of space, excluding common areas such as hallways, stairwells, and restrooms.

(3) Depreciation or use allowances on buildings and capital improvements where

space is used jointly, and on equipment used jointly, shall be allocated to benefiting functions in proportion to the total salaries and wages applicable to the joint functions.

(4) Depreciation or use allowances on buildings, capital improvements, and equipment used predominantly for one function and only incidentally for other(s), may be assigned to the function in which it is used predominantly.

(5) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction functions of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

2. *Operation and maintenance expenses.*

a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expenses category should also include the fringe benefit costs applicable to the salaries and wages included therein, and depreciation and use allowance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated in the same manner as described in Section F1b for depreciation and use allowances.

3. *General administration and general expenses.*

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of operation and maintenance expense, and depreciation and use allowances.

General administration and general expenses shall not include expenses incurred within nonuniversity-wide deans' offices, academic departments, organized research units, or similar organizational units. (See section F.4., departmental administration expenses.)

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be grouped first, according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefited functions on the modified total cost basis. Modified total costs consist of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to $25,000 each. When an activity included in this indirect cost category provides a service or product to another institution or organization, and appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

4. *Departmental administration expenses.*

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including departmental heads), and other professional personnel conducting research and/or instruction, shall be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance shall be added to the computation of the indirect cost rate for major functions in section G; the expenses covered by the allowance shall be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in (1) and (2) above are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation and/or use allowances.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in (1) above shall be allocated to the appropriate functions of the department on the modified total cost basis.

5. *Sponsored projects administration.*

(a) The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal) special security, purchasing, personnel administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, stenographic pools and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation/use allowances. Appropriate adjustments will be made for services provided to other functions or organizations.

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment shall be made to eliminate any duplicate charges to sponsored agreements when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect cost items, such as accounting, procurement, or personnel administration.

6. *Library expenses.*

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under Section C5. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation and use allowances. Costs incurred in the purchases of rare books (museum-type books) with no value to sponsored agreements should not be allocated to them.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category shall consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category shall consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis.

(3) The other users category shall consist of all other users of library facilities.

c. Amounts allocated in b above shall be assigned further as follows: (1) The amount in the student category shall be assigned to the instruction function of the institution.

(2) The amount in the professional employee category shall be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category shall be assigned to the other institutional activities function of the institution.

7. *Student administration and services.*

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations.

The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to Student Administration is determined in accordance with Section J.6. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, and use allowances and/or depreciation.

b. In the absence of the alternatives provided for in Section E2d, the expenses in this category shall be allocated to the instruction function, and subsequently to sponsored agreements in that function.

8. *Offset for indirect expenses otherwise provided for by the Government.*

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in F1 through 7 above.

b. The items in this group shall be treated as a credit to the affected individual indirect cost category before that category is allocated to benefiting functions.

G. Determination and Application of Indirect Cost Rate or Rates

1. *Indirect cost pools.*

a. Subject to b below, the separate categories of indirect costs allocated to each major function of the institution as prescribed in Section f shall be aggregated and treated as a common pool for that function. The amount in each pool shall be divided by the distribution base described in G2 below to arrive at a single indirect cost rate for each function. The rate for each function is used to distribute indirect costs to individual sponsored agreements of that function. Since a common pool established for each major function of the institution, a separate indirect cost rate would be established for each of the major functions described in Section B1 under which sponsored agreements are carried out.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group or sponsored agreement performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the regular course of the rate determination process and the separate indirect cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect cost rate differs significantly from that which would have been obtained under a. above, and (2) the volume of work to which such rate would apply is material in relation to other sponsored agreements at the institution.

2. *The distribution basis.* Indirect costs shall be distributed to applicable sponsored agreements on the basis of modified total direct costs, consisting of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to $25,000 each. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to G1, above. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the modified total direct costs identified with such pool. Other bases may be used where it can be demonstrated that they produce more equitable results.

3. *Negotiated lump sum for indirect costs.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect services cannot be readily determined. Such negotiated indirect costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. *Predetermined fixed rates for indirect costs.* Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. *Negotiated fixed rates and carry-forward provisions.* When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to sponsored agreements for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions or prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

H. Simplified Method for Small Institutions

1. *General.*

a. Where the total direct cost of work covered by this Circular at an institution does not exceed $3,000,000 in a fiscal year, the use of the simplified procedure described in 2, below, may be used in determining allowable indirect costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable to all sponsored agreements.

b. The simplified procedure should not be used where it produces results which appear

inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular procedure.

2. *Simplified procedure.*

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of cost of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under (1) above have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in a above the amount of salaries and wages included under b above.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool, b above, by the amount of the distribution base, c above.

e. Apply the indirect cost rate to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

J. General Provisions for Selected Items of Cost

Sections 1 through 44 below provide principles to be applied in establishing the allowability of certain items involved in determining cost. These principles should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific sponsored agreement and the provisions below, the agreement should govern.

1. *Advertising costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for (1) the recruitment of personnel required for the performance by the institution of obligations arising under the sponsored agreement, when considered in conjunction with all other recruitment costs, as set forth in Section J32; (2) the procurement of goods and services for the performance of the sponsored agreement; (3) the disposal of scrap or surplus materials acquired in the performance of the sponsored agreement except when institutions are reimbursed for disposal costs at a predetermined amount in accordance with Attachment N, OMB Circular No. A–110; or (4) other specific purposes necessary to meet the requirements of the sponsored agreement.

c. Costs of this nature, if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in Sections D and E are observed.

2. *Bad debts.* Any losses, whether actual or estimated, arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institutions' premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in Section J9. Costs of local civil defense projects not on the institution's premises are unallowable.

4. *Commencement and convocation costs.* Costs incurred for commencements and convocations are unallowable, except as provided for in Section F7.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams radiograms, postage and the like, are allowable.

6. Compensation for personal services

a. *General.* Compensation for personal services covers all amounts paid currently or accrued by the institution for services of employees rendered during the period of performance under sponsored agreements. Such amounts include salaries, wages, and fringe benefits (See Section J15.). These costs are allowable to the extent that the total compensation to individual employees conforms to the established policies of the institution, consistently applied, and provided that the charges for work performed directly on sponsored agreements and for other work allocable as indirect costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems described below, provided such work and compensation are separately identified and documented in the financial management system of the institution.

b.(1) *General Principles.* (a) The distribution of salaries and wages whether treated as direct or indirect costs, will be based on payrolls documented in accordance with the generally accepted practices of colleges and universities. Institutions may include in a residual category all activities that are not directly charged to sponsored agreements, and that need not be distributed to more than one activity for purposes of identifying indirect costs and the functions to which they are allocable. The components of the residual category are not required to be separately documented.

(b) The apportionment of employee's salaries and wages which are chargeable to more than one sponsored agreement or other cost objective will be accomplished by methods which will (1) be in accordance with Sections A–2 and C above, (2) produce an equitable distribution of charges for employee's activities, and (3) distinguish the employees' direct activities from their indirect activities.

(c) In the use of any methods for apportioning salaries, it is recognized that, in an academic setting, teaching, research, service, and administration are often inextricably intermingled. A precise assessment of factors that contribute to costs is not always feasible, nor is it expected. Reliance, therefore, is placed on estimates in which a degree of tolerance is appropriate.

(d) There is no single best method for documenting the distribution of charges for personal services. Methods for apportioning salaries and wages, however, must meet the criteria specified in J.6.b.(2) below. Examples of acceptable methods are contained in J.6.c. below. Other methods which meet the criteria specified in J.6.b.(2) below also shall be deemed acceptable, if a mutually satisfactory alternative agreement is reached.

(2) *Criteria for Acceptable Methods.* (a) The payroll distribution system will (i) be incorporated into the official records of the institution, (ii) reasonably reflect the activity for which the employee is compensated by the institution, and (iii) encompass both sponsored and all other activities on an integrated basis, but may include the use of subsidiary records. (Compensation for incidental work described in J.6.a. need not be included.)

(b) The method must recognize the principle of after-the-fact confirmation or determination so that costs distributed represent actual costs, unless a mutually satisfactory alternative agreement is reached. Direct cost activities and indirect cost activities may be confirmed by responsible persons with suitable means of verification that the work was performed. Confirmation by the employee is not a requirement for either direct or indirect cost activities if other

responsible persons make appropriate confirmations.

(c) The payroll distribution system will allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify indirect costs and the functions to which they are allocable. The activities chargeable to indirect cost categories or the major functions of the institution for employees whose salaries must be apportioned (see J.6.b.1.(b) above), if not initially identified as separate categories, may be subsequently distributed by any reasonable method mutally agreed to, including, but not limited to, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.

(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.

(e) Direct and indirect charges may be made initially to sponsored agreements on the basis of estimates made before services are performed. When such estimates are used, significant changes in the corresponding work activity must be identified and entered into the payroll distribution system. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period.

(f) The system will provide for independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.

(g) For systems which meet these standards, the institution will not be required to provide additional support or documentation for the effort actually performed.

c. *Examples of Acceptable Methods for Payroll Distribution:*

(1) *Plan—Confirmation:* Under this method, the distribution of salaries and wages of professorial or professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution. A plan-confirmation system used for salaries and wages charged directly or indirectly to sponsored agreements will meet the following standards:

(a) A system of budgeted, planned, or assigned work activity will be incorporated into the official records of the institution and encompass both sponsored and all other activities on an integrated basis. The system may include the use of subsidiary records.

(b) The system will reasonably reflect only the activity for which the employee is compensated by the institution (compensation for incidental work described in J.6.a. need not be included). Practices vary among institutions and within institutions as to the activity constituting a full workload. Hence, the system will reflect categories of activities expressed as a percentage distribution of total activities. (But see Section H for treatment of indirect costs under the simplified method for small institutions.)

(c) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(d) The system will provide for modification of an individual's salary or salary distribution commensurate with an significant change in the employee's work activity. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term such as an academic period. Whenever it is apparent that a significant change in work activity which is directly or indirectly charged to sponsored agreements will occur or has occurred, the change will be documented over the signature of a responsible official and entered into the system.

(e) At least annually a statement will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, indirect cost or other categories are reasonable in relation to work performed.

(f) The system will provide for independent internal evaluation to ensure the system's integrity and compliance with the above standards.

(g) In the use of this method, an institution shall not be required to provide additional support or documentation for the effort actually performed.

(2) *After-the-fact Activity Records:* Under this system the distribution of salaries and wages by the institution will be supported by activity reports as prescribed below.

(a) Activity reports will reflect the distribution of activity expended by employees covered by the system (compensation for incidental work as described in J.6.a. need not be included).

(b) These reports will reflect an after-the-fact reporting of the percentage distribution of activity of employees. Charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences are indicated by activity records.

(c) Reports will reasonably reflect the activities for which employees are compensated by the institution. To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the reports will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed.

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(e) For professorial and professional staff, the reports will be prepared each academic term, but no less frequently than every six months. For other employees, unless alternate arrangements are agreed to, the reports will be prepared no less frequently than monthly and will coincide with one or more pay periods.

(f) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided that they meet the requirements in (a) through (e) above.

(3) *Multiple Confirmation Records:* Under this system the distribution of salaries and wages of professorial and professional staff will be supported by records which certify separately for direct and indirect cost activities as prescribed below.

(a) For employees covered by the system, there will be direct cost records to reflect the distribution of that activity expended which is to be allocable as direct cost to each sponsored agreement. There will also be indirect cost records to reflect the distribution of that activity to indirect costs. These records may be kept jointly or separately (but are to be certified separately see below).

(b) Salary and wage charges may be made initially on the basis of estimates made before the services are performed provided that such charges are promptly adjusted if significant differences occur.

(c) Institutional records will reasonably reflect only the activity fo which employees are compensated by the institution (compensation for incidental work as described in J.6.a. need not be included).

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable.

(e) To confirm that distribution of activity represents a reasonable estimate of the work performed by the employee during the period the record for each employee will include:

(1) The signature of the employee or of a person having direct knowledge of the work, confirming that the record of activities allocable as direct costs of each sponsored agreement is appropriate.

(2) The record of indirect costs will include the signature of responsible person(s) who use suitable means of verification that the work was performed and is consistent with the overall distribution of the employee's compensated activities.

These signatures may all be on the same document.

(f) The reports will be prepared each academic term, but no less frequently than every six months.

(g) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided they meet the requirements in (a) through (f) above.

d. *Salary rates for faculty members.*

(1) *Salary rates for academic year.* Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.

(2) *Periods outside the academic year.*

(a) Except as otherwise specified for teaching activity in (b) below, charges for work performed by faculty members on sponsored agreements during the summer months or other period not included in the base salary period will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates, and will be limited to charges made in accordance with other parts of this section. The base salary period used in computing charges for work performed during the summer months will be the number of months covered by the faculty member's official academic year appointment.

(b) Charges for teaching activities performed by faculty members on sponsored agreements during the summer months or other periods not included in the base salary period will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(3) *Part-time faculty.* Charges for work performed on sponsored agreements by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for the part-time assignments; e.g., an institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time to a sponsored agreement. Thus, his additional compensation, chargeable by the institution to the agreement, would be one-half of $5,000, or $2,500.

e. *Noninstitutional professional activities.* Unless an arrangement is specifically authorized by a Federal sponsoring agency, an institution must follow its institution-wide policies and practices concerning the permissible extent of professional services that can be provided outside the institution for noninstifutional compensation. Where such institution-wide policies do not exist or do not adequately define the permissible extent of consulting or other noninstitutional activities undertaken for extra outside pay, the Government may require that the effort of professional staff working on sponsored agreements be allocated between (1) institutional activities, and (2) noninstitutional professional activities. If the sponsoring agency considers the extent of noninstitutional professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events, the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. (But see also Section J16c.)

8. *Deans of faculty and graduate schools.* The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

9. *Depreciation and use allowances.* Institutions may be compensated for the use of their buildings, capital improvements, and equipment; provided that they are used, needed in the institutions' activities, and properly allocable to sponsored agreements. Such compensation shall be made by computing either depreciation or use allowance. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not computed. The allocation for depreciation or use allowance shall be made in accordance with Section F1. Depreciation and use allowances are computed applying the following rules:

a. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. For this purpose, the acquisition cost will exclude (1) the cost of land; (2) any portion of the cost of buildings and equipment borne by or donated by the Government, irrespective of where title was originally vested or where it is presently located; and (3) any portion of the cost of buildings and equipment contributed by or for the institution where law or agreement prohibit recovery. For an asset donated to the institution by a third party, its fair market value at the time of the donation shall be considered as the acquisition cost.

b. In the use of the depreciation method, the following shall be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straightline method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless appoved in advance by the cognizant Federal agency.

(3) Where the depreciation method is introduced for application to assets for which use allowance was previously charged, the aggregate amount of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets.

(4) When the depreciation method is used for buildings, a building "shell" may be treated separately from other building components, such as plumbing system and heating and air conditioning system. Each component item may then be depreciated over its estimated useful life. On the other hand, the entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life.

(5) Where the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that have outlived their depreciable lives. (But see also c(3), below.)

c. Under the use allowance method, the following shall be observed:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost.

(2) In contrast to the depreciation method, the entire building must be treated as a single asset without separating its "shell" from other building components under the use allowance method. The entire building must be treated as a single asset, and the two-percent use allowance limitation must be applied to all parts of the building. The two-percent limitation, however, need not be applied to equipment or other assets that are merely attached or fastened to the building but not permanently fixed and are used as furnishings, decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, and carpeting). Such equipment and assets will be considered as not being permanently fixed to the building if they can be removed without the need for costly or extensive alterations or repairs to the building to make the space usable for other purposes. Equipment and assets which meet these criteria will be subject to the six and two-thirds percent equipment use allowance.

(3) A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to

the utilization of the asset for the purpose contemplated.

d. Except as otherwise provided in b and c above, a combination of the depreciation and use allowance methods may not be used, in like circumstances, for a single class of assets (e.g., buildings, office equipment, and computer equipment).

e. Charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, when the depreciation method is used, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

10. *Donated services and property.* The value of donated services and property are not allowable either as a direct or indirect cost, except that depreciation or use allowances on donated assets are permitted in accordance with Section J9a. The value of donated services and property may be used to meet cost sharing or matching requirements, in accordance with OMB Circular No. A–110.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees, counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other capital expenditures.*

a. For purposes of this paragraph, the following definitions apply:

(1) *Equipment* means an article of nonexpendable tangible personal property having a useful life of more than two years, and an acquisition cost of $500 or more per unit. However, consistent with institutional policy, lower limits may be established.

(2) *Capital expenditure* means the cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective intransit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the institution's regular accounting practices.

(3) *Special purpose equipment* means equipment which is used only for research, medical, scientific, or other technical activities.

(4) *General purpose equipment* means equipment, the use of which is not limited only to research, medical, scientific or other technical activities. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and the land are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(2) Capital expenditures for special purpose equipment are allowable as direct charges, provided that the acquisition of items having a unit cost of $1,000 or more is approved in advance by the sponsoring agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(4) Capital expenditures are unallowable as indirect costs. But see Section J9 for allowability of depreciation or use allowance on buildings, capital improvements, and equipment. Also see Section J33 for allowability of rental costs on land, buildings, and equipment.

14. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with Federal, State, and local laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the sponsoring agreement, or instructions in writing from the contracting officer or equivalent.

15. *Fringe benefits.*

a. Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable, provided such costs are distributed to all institutional activities in proportion to the relative amount of time or effort actually devoted by the employees. see Section J35 for treatment of sabbatical leave.

b. Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, tuition or remission of tuition for individual employees or their families and the like are allowable, provided such benefits are granted in accordance with established institutional policies, and are distributed to all institutional activities on an equitable basis. See Section J36b for treatment of tuition remission provided to students.

c. Rules for pension plan costs are as follows:

(1) Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided (a) such policies meet the test of reasonableness; (b) the methods of cost allocation are equitable for all activities; (c) the amount of pension cost assigned to each fiscal year is determined in accordance with (2) below; and (d) the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year.

(2) The amount of pension cost assigned to each fiscal year shall be determined in accordance with generally accepted accounting principles. Institutions may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Cost" (4 CFR Part 412).

(3) Premiums paid for pension plan termination insurance pursuant to the Employee Retirement Income Security Act of 1974 (Public Law 93–406) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and prohibited transactions of pension plan fiduciaries imposed under the Employee Retirement Income Security Act are also unallowable.

d. Fringe benefit may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of the salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, if the costs in relationship to salaries and wages differ significantly for different groups of employees. Also fringe benefits related to institutional salaries and wages treated as direct costs may be treated as direct costs.

16. *Insurance and indemnification.*

a. Costs of insurance required or approve, and maintained, pursuant to the sponsored agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable, except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for a self-insurance program are allowable, to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (whether through purchased insurance or self-insurance) are unallowable, unless expressly provided for in the sponsored agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the sponsored agreement, except as provided in d above.

17. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable, except as indicated in e below.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

c. Cost of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

e. The cost of interest paid to an external party is allowable where associated with the following assets, provided the assets are used in support of sponsored agreements, and the total cost (including depreciation or use allowances, operation and maintenance costs, interest etc.,) does not exceed the rental cost of comparable assets in the same locality.

(1) Buildings acquired or completed on or after July 1, 1982.

(2) Major reconstruction and remodeling of existing buildings completed on or after July 1, 1982.

(3) Acquisition or fabrication of capital equipment (as defined in paragraph J.13, "Equipment and other capital expenditures") completed on or after July 1, 1982, costing $10,000 or more, if agreed to by the Government.

18. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including cost of labor management committees, employees' publications, and other related activities, are allowable.

19. *Losses on other sponsored agreements or contracts.* Any excess of costs over income under any other sponsored agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contribution portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

20. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

21. *Material costs.* Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the sponsored agreements, are allowable. Purchases made specifically for the sponsored agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the sponsored agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the sponsored agreement. Where Goverment-donated or furnished material is used in performing the sponsored agreement such material will be used without charge.

22. *Memberships, subscriptions and professional activity costs.*

a. Costs of the institution's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

23. *Patent costs.* Costs of preparing disclosures, reports, and other documents required by the sponsored agreement, and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the sponsored agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also Section J34.)

24. *Plant security costs.* Necessary expenses incurred to comply with security requirements, including wages, uniforms and equipment of personnel engaged in plant protection, are allowable.

25. *Preagreement costs.* Costs incurred prior to the effective date of the sponsored agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless approved by the sponsoring agency.

26. *Professional service costs.*

a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to b and c below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of sponsored agreements; (2) the impact of sponsored agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the costs, particularly where the services rendered are not of a continuing nature and have little relationship to work under sponsored agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

27. *Profits and losses on disposition of plant equipment or other capital assets.* Profits or losses arising from the sale or exchange of plant, facilities, equipment or other capital assets, including sale or exchange of either short-term or long-term investments, shall not be considered in computing the costs of sponsored agreements except for pension plans as provided in Section J15c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with Attachment N, OMB Circular No. A–110.

28. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential Government and nongovernment sponsored agreements or projects, including the development of data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable to the current period. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. *Public information services costs.* Cost of news releases pertaining to specific research or scientific accomplishment are allowable, when they result from performance of sponsored agreements.

30. *Rearrangement and alteration costs.* Cost incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency.

31. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of a sponsored agreement, fair wear and tear excepted, are allowable.

32. *Recruiting costs.*

a. Subject to b, c, and d below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating

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an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commerical rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. *Rental cost of buildings and equipment.*

a. Rental costs of buildings or equipment are allowable to the extent that the decision to rent or lease is in accord with Section C–3. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed if the institution continued to own the property.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount that would be allowed if the institution owned the property. For this purpose, a "less-than-arms-length" lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other.

d. Where significant rental costs are incurred under leases which create a material equity in the leased property, they are allowable only up to the amount that would be allowed if the institution purchased the property on the date the lease agreement was executed. For this purpose, a material equity in the property exists when the lease:

(1) is noncancelable or is cancelable only upon the occurrence of some remote contingency, and

(2) has one or more of the following characteristics:

(a) Title to the property passes to the institution at some time during or after the lease period.

(b) The term of the lease corresponds substantially to the estimated useful life of the property (i.e., the period of economic usefulness to the legal owner of the property).

(c) The initial term is less than the useful life of the property and the institution has the option to renew the lease for the remaining useful life at substantially less than fair rental value.

(d) The property was acquired by the leasor to meet the special needs of the institution and will probably be usable only for that purpose and only by the institution.

(e) The institution has the right, during or at the expiration of the lease, to purchase the property at a price which at the inception of the lease appears to be substantially less that the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargan purchase option), except for any discount normally given to educational institutions.

34. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto, necessary for the proper performance of the sponsored agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

35. *Sabbatical leave costs.* Costs of leave of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the institution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

36. *Scholarships and student aid costs.*

a. Costs of scholarships, fellowships, and other programs of student aid are allowable only when the purpose of the sponsored agreement is to provide training to selected participants and the charge is approved by the sponsoring agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that (1) there is a bonafide employer-employee relationship between the student and the institution for the work performed, (2) the tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work, and (3) it is the institution's practice to similarly compensate students in nonsponsored as well as sponsored activities.

b. Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages shall be subject to the reporting requirements stipulated in Section J6, and shall be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis.

37. *Severance pay.*

a. Severance pay is compensation in addition to regular salary and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal recurring turnover and which otherwise meet the conditions of a above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

38. *Specialized service facilities.*

a. The costs of institutional services involving the use of highly complex or specialized facilities such as electronic computers, wind tunnels, and reactors are allowable, provided the charge for the service meets the conditions of b through d below.

b. The cost of each service normally shall consist of both its direct costs and its allocable share of indirect costs with deductions for appropriate income or Federal financing as describing in Section C5.

c. The cost of such institutional services when material in amount will be charged directly to users, including sponsored agreements based on actual use of the services and a schedule of rates that does not discriminate between federally and nonfederally supported activities of the institution, including use by the institution for internal purposes. Charges for the use of specialized facilities should be designed to recover not more than the aggregate cost of the services over a long-term period agreed to by the institution and the cognizant Federal agency. Accordingly, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year as long as rates are reviewed periodically for consistency with the longterm plan and adjusted if necessary.

d. Where the costs incurred for such institutional services are not material, they may be allocated as indirect costs. Such arrangements must be agreed to by the institution and the congnizant Federal agency.

e. Where it is in the best interest of the Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

39. *Special services costs.* Costs incurred for general public relations activities, alumni activities, and similar services, are unallowable.

40. *Student activity costs.* Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the sponsored agreements

41. *Taxes.*

a. In general taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable. Payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government, and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and (2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as sponsored agreement costs, will be credited or paid to the Government in the manner directed by the Government. However, any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such casts can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the sponsored agreement, should be treated as a direct cost.

43. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to c, d, e, and f below, when they are directly attributable to specific work under a sponsored agreement or are incurred in the normal course of administration of the institution or a department or program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located outside Canada and the United States and its territories and possessions, foreign travel means travel outside that country.

f. Domestic travel costs are allowable when permitted by the sponsored agreement. Expenditures for such travel will not be allowed if they exceed the amount specified by more than 25% or $500, whichever is greater, except with an advanced approval of the sponsoring agency.

44. *Termination costs applicable to sponsored agreements.*

a. Termination of sponsored agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this Circular in the case of termination.

b. The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the agreement should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the agreement, except when the institution is reimbursed for disposals at a predetermined amount in accordance with the provisions of Circular No. A-110.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. Certification of Charges

To assure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."

PART 75—DIRECT GRANT PROGRAMS

16. The authority citation for Part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(l) and 3474, unless otherwise noted.

§ 75.3 [Removed]

17. Section 75.3 is removed.

18. Section 75.4(a)(1) is revised to read as follows:

§ 75.4 Department contracts.

(a) A Federal contract made by the Department is governed by—

(1) Chapters 1 and 34 of Title 48 of the Code of Federal Regulations (Federal Acquisition Regulation and Education Department Acquisition Regulation).

* * * * *

19. New §§ 75.60–75.62 are added and a new center heading is added preceding these sections, to read as follows:

Ineligibility of Certain Individuals To Receive Assistance

§ 75.60 Individuals ineligible to receive assistance.

(a) An individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual—

(1) Is not current in repaying a debt owed—

(i) Under a program listed in paragraph (b) of this section; or

(ii) To the Federal government under a nonprocurement transaction; and

(2) Has not made satisfactory arrangements to repay the debt.

(b) An individual who is not current in repaying a debt under a discretionary grant, scholarship, fellowship, or loan program as included in the following list is ineligible under paragraph (a) of this section:

(1) A grant awarded under the Pell Grant (20 U.S.C. 1070a, *et seq.*), Supplemental Educational Opportunity Grant (SEOG) (20 U.S.C. 1070b, *et seq.*), or State Student Incentive Grant (SSIG) 20 U.S.C. 1070c, *et seq.*) program, or a scholarship awarded under the Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d–31, *et seq.*), a fellowship awarded under the Jacob K. Javits Fellows Program (20 U.S.C. 1134h–1134k), or a fellowship awarded under the Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d–1134f).

(2) A fellowship awarded under the Christa McAuliffe Fellowship Program (20 U.S.C. 1113–1113e), the Bilingual Education Fellowship Program (20 U.S.C. 3221–3262), or the Rehabilitation Long-Term Training Program (29 U.S.C. 774(b)), or on a repayment obligation incurred under the Paul Douglas Teacher Scholarship Program (20 U.S.C. 1111, *et seq.*).

(3) A loan made under the Perkins Loan Program (20 U.S.C. 1087aa, *et seq.*), the Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, *et seq.*), the Guaranteed Student Loan (GSL), Supplemental Loans for Students (SLS), PLUS, or Consolidation Loan Program (20 U.S.C. 1071, *et seq.*), or the Cuban Student Loan Program (22 U.S.C. 2601, *et seq.*).

(4) A grant, or a loan, made under the Law Enforcement Education Program (42 U.S.C. 3775).

(5) A stipend awarded under the Indian Fellowship Program (29 U.S.C. 774(b)).

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 75.61 Certification of eligibility; effect of ineligibility.

(a) An individual who applies for a fellowship, scholarship, or discretionary grant from the Department shall provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60;

(2) That the individual has not been debarred or suspended by—

(i) This Department under the procedures in Part 85 of this title; or

(ii) Another Federal agency under procedures established under Executive Order 12549.

(b) The Secretary specifies the form of the certification required under paragraph (a) of this section.

(c) The Secretary does not award a fellowship, scholarship, or discretionary grant to an individual who—

(1) Fails to provide the certification required under paragraph (a) of this section; or

(2) Is ineligible, based on information available to the Secretary at the time the award is made.

(d) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3473)

§ 75.62 Requirements applicable to entities making certain awards.

(a) An entity that provides a fellowship, scholarship, or discretionary grant to an individual under a grant from, or an agreement with, the Secretary shall require the individual that applies for such an award to provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60;

(2) That the individual has not been debarred or suspended by—

(i) This Department under the procedures in Part 85 of this title; or

(ii) Another Federal agency under procedures established under Executive Order 12549.

(b) An entity subject to this section may not award a fellowship, scholarship, or discretionary grant to an individual if—

(1) The individual fails to provide the certification required under paragraph (a) of this section; or

(2) The Secretary informs the entity that the individual is ineligible under § 76.60.

(c) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

(d) The Secretary may require an entity subject to this section to provide a list of the individuals to whom fellowship, scholarship, or discretionary grant awards have been made or are proposed to be made by the entity.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

20. Section 75.105(c)(3) is revised to read as follows:

§ 75.105 Annual priorities.

* * * * *

(c) * * *

(3) *Absolute preference.* The Secretary may give an absolute preference to applications that meet a priority. The Secretary establishes a separate competition for applications that meet the priority and reserves all or part of a program's funds solely for that competition. The Secretary may adjust the amount reserved for the priority after determining the number of high quality applications received.

* * * * *

§§ 75.107, 75.108, 75.110, 75.111, 75.113, 74.114, 75.115, and 75.116 [Removed]

21. Sections 75.107, 75.108, 75.110, 75.111, 75.113, 75.114, 75.115, and 75.116 are removed.

§ 75.118 [Amended]

22. The note following § 75.118 is removed.

§§ 75.130 through 75.134 [Removed]

23. Sections 75.130 through 75.134, and the center heading "PREAPPLICATIONS", are removed.

§§ 75.150 through 75.154 [Removed]

24. Sections 75.150 through 75.154, and the center heading "STATE APPROVAL PROCEDURES", are removed.

25. Section 75.155 is revised and a cross-reference is added following the section to read as follows:

§ 75.155 Review procedures if State may comment on applications: purpose of §§ 75.156–75.158.

If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 75.156–75.158.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

Cross-reference: See 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372.

§ 75.160 [Removed]

26. Section 75.160 is removed.

27. Section 75.200 is amended by revising the title and adding paragraphs (b)(4) and (5) to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(4) The Secretary may award a cooperative agreement instead of a grant if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

(5) The Secretary uses the selection procedures in this subpart to select recipients of cooperative agreements.

* * * * *

28. Section 75.216 is revised to read as follows:

§ 75.216 Applications not evaluated for funding.

The Secretary does not evaluate an application if—

(a) The applicant is not eligible;

(b) The applicant does not comply with all of the procedural rules that govern the submission of the application;

(c) The application does not contain the information required under the program; or

(d) The proposed project cannot be funded under the authorizing statute or implementing regulations for the program.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

29. Section 75.218 is revised to read as follows:

§ 75.218 Applications not evaluated or selected for funding.

The Secretary informs an applicant if its application—

(a) Is not evaluated; or

(b) Is not selected for funding.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

30. Section 75.233 is revised to read as follows:

§ 75.233 Setting the amount of the grant.

(a) Subject to any applicable matching or cost-sharing requirements, the Secretary may fund up to 100 percent of the allowable costs in the applicant's budget.

(b) In deciding what percentage of the allowable costs to fund, the Secretary may consider any other financial resources available to the applicant.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

31. Section 75.234 is revised to read as follows:

§ 75.234 The conditions of the grant.

(a) The Secretary makes a grant to an applicant only after determining—

(1) The approved costs; and

(2) Any special conditions necessary for a high risk grantee subject to 34 CFR 74.7 or 80.12.

(b) In awarding a cooperative agreement, the Secretary includes conditions that state the explicit nature, character, and extent of anticipated Federal involvement.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

32. Section 75.235 is amended by revising paragraph (b) to read as follows:

§ 75.235 The notification of grant award.

* * * * *

(b) The notification of grant award sets the amount of the grant award and establishes other specific conditions, if any.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

33. Section 75.253 is amended by revising paragraph (a)(2), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 75.253 Continuation of a multi-year project after the first budget period.

(a) * * *

(2) The grantee has either—

(i) Made substantial progress toward meeting the objectives in its approved application; or

(ii) Obtained the Secretary's approval of changes in the project that—

(A) Do not increase the cost of the grant; and

(B) Enable the grantee to meet those objectives in succeeding budget periods;

* * * * *

(d)(1) If the Secretary decides, under this section, not to make a continuation award, the Secretary may authorize a no-cost extension of the last budget period of the grant in order to provide for the orderly closeout of the grant.

(2) If the Secretary makes a continuation award under this section—

(i) The Secretary makes the award under §§ 75.231–75.236; and

(ii) The new budget period begins on the day after the previous budget period ends.

* * * * *

34. Section 75.261 is revised to read as follows:

§ 75.261 Extension of a project period.

The Secretary may extend a project period if—(a) The extension does not violate any statute or regulations;

(b) The extension does not involve the obligation of additional Federal funds;

(c) The extension is to carry out the activities in the approved application; and

(d)(1)(i) Special or unusual circumstances would delay completion of the project;

(ii) The grantee requests an extension of the project at least 45 days before the end of the project period; and

(iii) The grantee provides a written statement before the end of the project period giving the reasons why the extension is appropriate under paragraph (d)(1)(i) of this section; or

(2) The Secretary determines that, due to special or unusual circumstances applicable to a class of grantees, the project periods for the grantees should be extended.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

35. A new § 75.262 is added to read as follows:

§ 75.262 Conversion of a grant or a cooperative agreement.

(a)(1) The Secretary may convert a grant to a cooperative agreement or a cooperative agreement to a grant at the time a continuation award is made under § 75.253.

(2) In deciding whether to convert a grant to a cooperative agreement or a cooperative agreement to a grant, the Secretary considers the factors included in § 75.200(b) (4) and (5).

(b) The Secretary and a recipient may agree at any time to convert a grant to a

cooperative agreement or a cooperative agreement to a grant, subject to the factors included in § 75.200(b) (4) and (5).

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 75.510 [Removed]

36. Section 75.510 is removed.

§ 75.518 [Removed]

37. Section 75.518 is removed.

38. In § 75.534, the introductory text and paragraph (a) are revised to read as follows:

§ 75.534 Automatic increases for additional dependents.

The Secretary may increase a grant to cover the cost of additional dependents not specified in the notice of award under § 75.235 if—

(a) Allowances for dependents are authorized by the program statute and are allowable under the grant; and

* * * * *

39. Section 75.560(a) is revised to read as follows:

§ 75.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) Institutions of higher education, at 34 CFR 74.172;

(2) Hospitals, at 34 CFR 74.173;

(3) Other nonprofit organizations, at 34 CFR 74.174;

(4) Commercial organizations, at 34 CFR 74.175; and

(5) State and local governments and Federally-recognized Indian tribal organizations, at 34 CFR 80.22.

* * * * *

40. Section 75.563 is revised to read as follows:

§ 75.563 Restricted indirect cost rate—programs covered.

Sections 75.564–75.568 apply to each program that has a statutory requirements not to use Federal funds to supplant non-Federal funds.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§§ 75.580 and 75.581 [Removed]

41. Sections 75.580 and 75.581, and the center heading "COORDINATION", are removed.

42. Section 75.590 is amended by revising paragraph (c) to read as follows:

§ 75.590 Evaluation by the grantee.

* * * * *

(c) The effect of the project on participants being served by the project.

* * * * *

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

43. Section 75.608 is revised to read as follows:

§ 75.608 Areas in the facilities for cultural activities.

A grantee may make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

44. Section 75.616 is revised to read as follows:

§ 75.616 Energy conservation.

(a) To the extent feasible, a grantee shall design and construct facilities to maximize the efficient use of energy.

(b) The following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) are incorporated by reference in this section:

(1) ASHRAE—90 A-1980 (Sections 1-9).

(2) ASHRAE—90 B-1975 (Sections 10-11).

(3) ASHRAE—90 C-1977 (Section 12).

Note: Incorporation by reference of these provisions has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a). The incorporated document is on file at the Office of the Federal Register. These standards may be obtained from the publication sales department at the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, Georgia 30329.

(c) A grantee shall comply with ASHRAE standards listed in paragraph (b) of this section in designing and constructing facilities built with project funds.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, 42 U.S.C. 8373(b); E.O. 12185)

45. A new § 75.617 is added to read as follows:

§ 75.617 Compliance with the Coastal Barrier Resources Act.

A recipient may not use, within the Coastal Barrier Resources System, funds made available under a program administered by the Secretary for any purpose prohibited by 31 U.S.C. Chapter 55 (§§ 3501-3510).

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, 31 U.S.C. 3504, 3505)

46. Section 75.621 is amended by revising the section heading, removing paragraph (b), and removing the paragraph designation "(a)", to read as follows:

§ 75.621 Copyright policy for grantees.

* * * * *

47. Section 75.622 is revised to read as follows:

§ 75.622 Definition of "project materials."

As used in §§ 75.620–75.621, "project materials" means a copyrightable work developed with funds from a grant of the Department.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 75.625 [Removed]

48. Section 75.625 is removed and the cross-reference preceding this section is revised to read as follows:

Cross-Reference: See 34 CFR 74.45, Program income—royalties or equivalent income earned from patents or from inventions; and 34 CFR Part 6, INVENTIONS AND PATENTS (GENERAL).

§ 75.626 [Amended]

49. Section 75.626 is revised by removing paragraph (b) and the paragraph designation "(a)".

§ 75.681 [Amended]

50. Section 75.681 is revised by removing the cross-reference following that section.

§ 75.684 [Removed]

51. Section 75.684 is removed.

§ 75.690 [Removed]

52. Section 75.690 is removed.

53. In § 75.707, Column I, paragraph (h) in the Table is revised to read as follows:

§ 75.707 When obligations are made.

* * * * *

(h) A preagreement cost that was properly approved by the Secretary under the cost principles identified in 34 CFR Part 74, Subpart Q.

* * * * *

54. Section 75.720 is revised to read as follows:

§ 75.720 Financial and performance reports.

(a) This section applies to the reports required under 34 CFR 74.73 (Financial Status Report) and 34 CFR Part 74, Subpart J (Monitoring and Reporting of Program Performance).

(b) A grantee shall submit these reports annually, unless the Secretary allows less frequent reporting. However, the Secretary may require a grantee of a grant made under 34 CFR Part 700, 706, 707 (certain programs of the Office for Educational Research and Improvement)

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to submit performance reports more often than annually.

(c) The Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (regarding grantee accounting systems), require a grantee to report more frequently than annually.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

55. Section 75.740 is amended by revising the title, designating the existing text as paragraph (a) and adding a new paragraph (b), to read as follows:

§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

* * * * *

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 439 of GEPA and its implementing regulations at 34 CFR Part 98.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1232g, 1232h, 3474)

§§ 75.750 through 75.755 [Removed]

56. Section 75.750 through 75.755, the center heading "DATA COLLECTION BY A GRANTEE", and the cross-reference following § 75.750 are removed.

PART 76—STATE-ADMINISTERED PROGRAMS

57. The authority citation for Part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

§ 76.3 [Removed]

58. Section 76.3 is removed.

59. Section 76.102 is revised to read as follows:

§ 76.102 Definition of "State plan" for Part 76.

As used in this part, "State plan" means any of the following documents:

Document	Program	Authorizing statute
State plan	Assistance to States for Education of Handicapped Children.	Part B (except section 619), Education of the Handicapped Act (20 U.S.C. 1411–1420).
Application	Preschool Grants	Section 619, Education of the Handicapped Act (20 U.S.C. 1419).
Application	Handicapped Infants and Toddlers	Part H, Education of the Handicapped Act (20 U.S.C. 1471–1485).
State plan	State Vocational Education Program	Title I, Part B, Carl D. Perkins Vocational Education Act (20 U.S.C. 2321–2325).
State plan and application	State-Administered Adult Education Program	Section 341, Adult Education Act (20 U.S.C. 1206).
Application	State Student Incentive Grant Program	Section 415C, Higher Education Act of 1965 (20 U.S.C. 1070c–2).
Basic State plan, long-range program, and annual program.	The Library Services and Construction Act State-Administered Program.	Library Services and Construction Act (20 U.S.C. 351–355e–3).
Application/written request for assistance.	Client Assistance Program	Section 112, Rehabilitation Act of 1973 (29 U.S.C. 732).
Application	Removal of Architectural Barriers to the Handicapped Program.	Section 607, Education of the Handicapped Act (20 U.S.C. 1406).
Application	Emergency Immigrant Education Program	Emergency Immigrant Education Act (20 U.S.C. 3121–3130).
Application	Transition Program for Refugee Children	Section 412(d) Immigration and Naturalization Act (8 U.S.C. 1522 (d)).
State Application	State Grants for Strengthening Instruction in Mathematics and Science.	Title II, Part A, Elementary Education Act of 1965, as amended (20 U.S.C. 2981).
Application	Paul Douglas Teacher Scholarship Program	Section 553, Higher Education Act of 1965 (20 U.S.C. 1111b).
State plan	State Vocational Rehabilitation Services Program.	Title I, Parts A–C, Rehabilitation Act of 1973 (29 U.S.C. 720–741).
State plan supplement	State Supported Employment Services Program	Title VI, Part C, Rehabilitation Act of 1973 (29 U.S.C. 795j–795r).
State plan	State Independent Living Services Program	Title VII, Part A, Rehabilitation Act of 1973 (29 U.S.C. 796–796d).
Any document that the authorizing statute for a State-administered program requires a State to submit to receive funds.	Any State-administered program without implementing regulations.	Section 408(a)(1), General Education Provisions Act and Section 414, Department of Education Organization Act (20 U.S.C. 1221e–3(a)(1) and 3474).

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

60. The table following § 76.125 is revised to read as follows:

§ 76.125 What is the purpose of these regulations?

* * * * *

CFDA No. and name of program	Authorizing statute	Implementing regulations Title 34 CFR Part
Library Programs		
84.034 Library Services	Title I, Library Services and Construction Act (20 U.S.C. 351–354).	770
84.035 Interlibrary Cooperation and Resource Sharing	Title III, Library Services and Construction Act (20 U.S.C. 351–351f; 355e–355e–3).	770
84.154 Public Library Construction	Title II, Library Services and Construction Act (20 U.S.C. 351–351f; 355a–355c).	770
Postsecondary Education Programs		
84.069 State Student Incentive Grants	Title IV, Part A, subpart 3, Higher Education Act of 1965 (20 U.S.C. 1070c–1070c–4).	692
84.185 Robert C. Byrd Honors Scholarships	Title IV, Part A, subpart 6, Higher Education Act of 1965 (20 U.S.C. 1070d–31–1070d–41).	654
84.173 Paul Douglas Teacher Scholarship Program	Title V, Part D, subpart 1, Higher Education Act of 1965 (20 U.S.C. 1111–1111h).	653

CFDA No. and name of program	Authorizing statute	Implementing regulations Title 34 CFR Part
	Vocational and Adult Education Programs	
84.002 Adult Education—State-Administered Programs	Adult Education Act, (20 U.S.C. 1201 *et seq.*)	425, 426
84.048 Vocational Education—Basic Grants to States	Title II, Carl D. Perkins Vocational Education Act (20 U.S.C. 2331–2342).	400, 401
84.049 Vocational Education—Consumer and Homemaking Education.	Title III, Part B, Carl D. Perkins Vocational Education Act (20 U.S.C. 2361–2363).	400, 401
84.053 Vocational Education—State Councils	Section 112, Carl D. Perkins Vocational Education Act (20 U.S.C. 2322).	400, 401
84.174 Vocational Education—Community-Based Organizations.	Title III, Part A, Carl D. Perkins Vocational Education Act (20 U.S.C. 2351–2352).	400, 401
* State Vocational Education—Adult Training, Retraining, and Employment Development Program.	Title III, Part C, Carl D. Perkins Vocational Education Act (20 U.S.C. 2371–2373).	400, 401
* State Vocational Education—Comprehensive Career Guidance and Counseling Program.	Title III, Part D, Carl D. Perkins Vocational Education Act (20 U.S.C. 2381–2383).	400, 401
* State Vocational Education—Industry—Education Partnership for Training in High Technology Occupations.	Title III, Part E, Carl D. Perkins Vocational Education Act (20 U.S.C. 2391–2393).	400, 401
	Education for the Handicapped Programs	
84.009 Program for Education of Handicapped Children in State Operated or Supported Schools.	Subpart 2, Part D, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2791–2796).	302
84.027 Handicapped Preschool and School Programs—State Grant Programs.	Part B (except section 619), Education of the Handicapped Act (20 U.S.C. 1411–1418 and 1420).	300
84.027 Handicapped Preschool and School Programs—Incentive Grants.	Section 619, Education of the Handicapped Act (20 U.S.C. 1419).	301
84.155 Removal of Architectural Barriers to the Handicapped.	Section 607, Education of the Handicapped Act (20 U.S.C. 1406).	304
	Other Elementary and Secondary Programs	
84.010 Educationally Deprived Children—Local Educational Agencies.	Part A, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).	200
84.011 Migrant Education Programs—State Formula Grant Program.	Subpart 1, Part D, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2781–2783).	201
84.012 Educationally Deprived Children—State Administration.	Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).	200
84.013 Educationally Deprived Children in State Administered Institutions Serving Neglected and Delinquent Children.	Subpart 3, Part D, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2801–2804).	203
84.146 Transition Program for Refugee Children	Section 412(d), Immigration and Naturalization Act (8 U.S.C. 1522(d)).	538
84.151 Federal, State, and Local Partnership for Educational Improvement.	Chapter 2, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911 *et seq.*)	298
84.162 Emergency Immigrant Education Program	Emergency Immigrant Education Act (20 U.S.C. 3121–3130).	581
84.164 State Grants for Strengthening Instruction in Mathematics and Science.	Part A, Title II, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981–2993).	208
84.186 Drug Free Schools—State and local programs	Title V, Part B, Elementary and Secondary Education Act of 1965, as amended, Sections 5121–5127 (20 U.S.C. 3191–3197).	N/A

* No CFDA Number.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

61. Section 76.300 is revised to read as follows:

§ 76.300 Contact the State for procedures to follow.

The State agency that administers a program may establish procedures that an applicant for a subgrant must follow to obtain the subgrant.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 76.305 [Removed]

62. Section 76.305 is removed.

63. Section 76.401(a) is revised to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the programs listed in the chart below, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application.

Program	Authorizing statute	Implementing regulations Title 34 CFR Part
State Grants for Strengthening Instruction in Mathematics and Science	Part A, Title II, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981–2993).	208
Assistance to States for Education of Handicapped Children	Part B, Education of the Handicapped Act (except Section 619) (20 U.S.C. 1411–1420).	300
Preschool Grants	Section 619, Education of the Handicapped Act (20 U.S.C. 1419)	301
Transition Program for Refugee Children	Section 412(d), Immigration and Naturalization Act (8 U.S.C. 1522(d))	538

Program	Authorizing statute	Implementing regulations Title 34 CFR Part
Emergency Immigrant Education Program	Emergency Immigrant Education Act (20 U.S.C. 3121–3130)	581
Financial Assistance for Construction, Reconstruction, or Renovation of Higher Education Facilities.	Section 711, Higher Education Act of 1965 (20 U.S.C. 1132b)	617

* * * * *

64. Section 76.560 is revised to read as follows:

§ 76.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) Institutions of higher education, at 34 CFR 74.172;

(2) Hospitals, at 34 CFR 74.173;

(3) Other nonprofit organizations, at 34 CFR 74.174;

(4) Commercial organizations, at 34 CFR 74.175; and

(5) State and local governments and Federally-recognized Indian tribal organizations, at 34 CFR 80.22.

(b) Section 76.563 provides restrictions on indirect cost rates under certain programs.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

65. Section 76.563 is revised to read as follows:

§ 76.563 Restricted indirect cost rate—programs covered.

A State and a subgrantee shall use a restricted indirect cost rate, computed under 34 CFR 75.564–75.568, for each program that has a statutory requirement not to use Federal funds to supplant non-Federal funds.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

§§ 76.580 and 76.581 [Removed]

66. Sections 76.580 and 76.581 and the center heading "COORDINATION" are removed.

§ 76.591 [Corrected]

67. In § 76.591, "75.591" is corrected to read "76.591".

§ 76.600 [Amended]

68. In § 76.600, paragraph (a), "75.615" is revised to read "75.617".

§ 76.681 [Amended]

69. Section 76.681 is amended by removing the cross-reference following that section.

§ 76.684 [Removed]

70. Section 76.684 is removed.

§ 76.690 [Removed]

71. Section 76.690 is removed.

72. In § 76.707, Column I, paragraph (h) in the Table is revised to read as follows:

§ 76.707 When obligations are made.

* * * * *

(h) A preagreement cost that was properly approved by the State under the cost principles identified in 34 CFR Part 74, Subpart Q.

* * * * *

73. Section 76.720 is revised to read as follows:

§ 76.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under 34 CFR 74.73 (Financial Status Report) and 34 CFR Part 74, Subpart J (Monitoring and Reporting of Program Performance).

(b) A State shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) However, the Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (regarding grantee accounting systems), require a State to report more frequently than annually.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

74. Section 76.740 is amended by revising the title, designating the existing paragraph as paragraph (a) and adding a new paragraph (b), to read as follows:

§ 76.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

* * * * *

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 439 and GEPA and its implementing regulations at 34 CFR Part 98.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1232g, 1232h, 3474)

75. Section 76.770 is revised to read as follows:

§ 76.770 A State shall have procedures to ensure compliance.

Each State shall have procedures for reviewing and approving applications for subgrants and amendments to those applications, for providing technical assistance, for monitoring and evaluating projects, and for performing other administrative responsibilities, designed to ensure compliance with applicable statutes and regulations.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 76.771 [Removed]

76. Section 76.771 is removed.

§ 76.772 [Removed]

77. Section 76.772 and the cross-reference following that section are removed.

§§ 76.780 through 76.782 [Removed]

78. The center heading preceding § 76.780 is removed and §§ 76.780–76.782 are removed.

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

79. The authority citation for Part 77 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

80. Paragraph (c) of § 77.1 is amended by revising the definition of "award" to read as follows:

§ 77.1 Definitions that apply to all Department programs.

* * * * *

(c) * * *

"Award" means an amount of funds that the Department provides under a contract, grant, or cooperative agreement.

* * * * *

PART 237—CHRISTA MCAULIFFE FELLOWSHIP PROGRAM

81. The authority citation for Part 237 continues to read as follows:

Authority: 20 U.S.C. 1113–1113e, unless otherwise noted.

82. Section 237.2 is amended by removing "and" at the end of paragraph (a)(4), substituting "; and" for the period at the end of paragraph (b), and adding a new paragraph (c) to read as follows:

§ 237.2 Who is eligible to apply under the Christa McAuliffe Fellowship Program?

* * * * *

(c) Is eligible for a fellowship under 34 CFR 75.60.

* * * * *

83. Section 237.7 is amended by revising paragraph (a), to read as follows:

§ 237.7 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61 (regarding the ineligibility of certain individuals to receive assistance) and Part 77 (Definitions that Apply to Department Regulations).

* * * * *

PART 263—INDIAN FELLOWSHIP PROGRAM

84. The authority citation for Part 263 is revised to read as follows:

Authority: 20 U.S.C. 3385b, unless otherwise noted.

85. Section 263.2 is amended by adding a new paragraph (d), to read as follows:

§ 263.2 Who is eligible to apply under the Indian Fellowship Program?

* * * * *

(d) An applicant must be eligible under 34 CFR 75.60.

* * * * *

86. A new § 263.10 is added to read as follows:

§ 263.10 Application contents: Evidence of eligibility under 34 CFR 75.60.

An applicant shall submit the certification required under 34 CFR 75.61.

(Authority: 20 U.S.C. 3385b)

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

87. The authority citation for Part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

88. Part 300 is amended by adding a center heading after § 300.653 and by adding new §§ 300.670–300.672, to read as follows:

Complaint Procedures of the State

§ 300.670 A State shall adopt complaint procedures.

A State shall adopt written complaint procedures for—

(a) Receiving and resolving any complaint that any public agency is violating a requirement in the Act or in this part;

(b) Reviewing an appeal from a decision of a public agency with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 1412(6))

§ 300.671 Minimum complaint procedures.

A State shall include the following in its complaint procedures—

(a) A time limit of 60 calendar days after the State receives a complaint—

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(Authority: 20 U.S.C. 1412(6))

§ 300.672 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that a public agency has violated a requirement in the Act or in this part; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 1412(6))

PART 356—HANDICAPPED RESEARCH: RESEARCH FELLOWSHIPS

89. The authority citation for Part 356 is revised to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

90. Section 356.2 is amended by adding a new paragraph (d), to read as follows:

§ 356.2 Who is eligible for assistance under this program?

* * * * *

(d) An applicant for a fellowship under this program must be eligible under 34 CFR 75.60.

* * * * *

91. Section 356.3 is amended by removing "and" at the end of paragraph (b), removing the period at the end of paragraph (c), adding "; and" at the end of paragraph (c), and adding a new paragraph (d), to read as follows:

§ 356.3 What regulations apply to this program?

* * * * *

(d) The regulations in 34 CFR 75.60–75.61 (regarding the ineligibility of certain individuals to receive assistance).

* * * * *

PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

92. The authority citation for Part 562 is revise to read as follows:

Authority: 20 U.S.C. 3221–3262, unless otherwise noted.)

93. Section 562.2 is amended by removing "and" after the semicolon in paragraph (b)(1)(iii), substituting "; and" for the period at the end of paragraph (b)(2), and adding a new paragraph (b)(3) to read as follows:

§ 562.2 Who is eligible to apply for assistance under the fellowship program?

* * * * *

(3) Is eligible for a fellowship under 34 CFR 75.60.

* * * * *

94. Section 562.3 is amended by adding a new paragraph (c), to read as follows:

§ 562.3 What regulations apply to the Fellowship Program?

* * * * *

(c) The regulations in 34 CFR 75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance).

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

95. The authority citation for Part 630 is revised to read as follows:

Authority: 20 U.S.C. 1135, *et seq.*, unless otherwise noted.

96. Section 630.11 is amended by revising the parenthetical phrase in the introductory text to read as follows:

§ 630.11 Types of competitions.

* * * * *

(See § 630.22)

* * * * *

97. New §§ 630.22 and 630.23 are added to read as follows:

§ 630.22 Preapplications.

The Secretary considers a preapplication under the procedures in §§ 630.21 and 630.23.

(Authority: 20 U.S.C. 1135)

§ 630.23 Consideration of a preapplication.

(a) The Secretary considers a preapplication if—

(1) The applicant complies with the procedural rules that govern submission of the preapplication; and

(2) The preapplication is submitted in response to an application notice that requires preapplications.

Cross-Reference: See Subpart N of 34 CFR Part 74.

(b) If the Secretary requires preapplications and an applicant does not preapply, the applicant may not apply for a grant.

(c) If an applicant submits a preapplication, the Secretary—

(1) Informs the applicant that it is eligible and encourages it to apply for a grant;

(2) Informs the applicant that it is eligible but does not encourage it to apply for a grant; or

(3) Informs the applicant that it is ineligible for assistance, and explains why the applicant is ineligible.

(d) An applicant may apply for a grant if the Secretary does not encourage it to apply.

(Authority: 20 U.S.C. 1135)

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

98. The authority citation for Part 653 continues to read as follows:

Authority: 20 U.S.C. 1111–1111h, unless otherwise noted.

99. Section 653.2 is amended by adding a new paragraph (c), to read as follows:

§ 653.2 Who is eligible to participate in this program?

* * * * *

(c) A high school graduate who applies for a scholarship under this program must be eligible under 34 CFR 75.60.

* * * * *

§ 653.3 [Amended]

100. Section 653.3 is amended by adding "§§ 75.60–75.62 (regarding the ineligiblity of certain individuals to receive assistance)," after "(Administration of Grants)," in paragraph (b).

PART 762—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT FELLOWS PROGRAM

101. The authority citation for Part 762 continues to read as follows:

Authority: 20 U.S.C. 1221e, unless otherwise noted.

102. Section 762.2 is amended by adding a new paragraph (d), to read as follows:

§ 762.2 Who is eligible for fellowship?

(d) An individual who applies for a fellowship under the program must be eligible under 34 CFR 75.60.

* * * * *

103. Section 762.4 is amended by designating the existing text paragraph (a) and adding a new paragraph (b), to read as follows:

§ 762.4 What regulations apply?

* * * * *

(b) The regulations in 34 CFR 75.60–75.61 (regarding the ineligibility of certain individuals to receive assistance) also apply this to this program.

* * * * *

[FR Doc. 88–18657 Filed 8–17–88; 8:45]

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Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 15

Indemnification of Publishers of Aeronautical Charts and Maps; Notice of Proposed Rulemaking

VOL 53 ISS 160 AUG 18 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 15

[Docket No. 25673; Notice No. 88-13]

Indemnification of Publishers of Aeronautical Charts and Maps

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes regulations to implement a recent amendment to the Federal Aviation Act of 1958 (FAA ACT), as amended, which provides for the execution of indemnity agreements between the United States and publishers of aeronautical charts or maps in the event the publisher is liable for tort damages arising out of such charts or maps. These regulations are necessary to implement this new provision, to facilitate the presentation of claims for indemnity, and to establish the standards by which they will be reviewed.

DATE: Comments must be received on or before October 3, 1988.

ADDRESSES: Comments on this proposal are to be marked "Docket No. 25673" and mailed in duplicate to: Federal Aviation Administration: Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25673, 800 Independence Ave. SW., Washington, DC 20591; or deliver comments in duplicate to: Room 916, 800 Independence Ave. SW., Washington, DC. Comments may be inspected in Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel, Litigation Division, AGC-400, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591. Telephone: (202) 267-3361.

SUPPLEMENTAL INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any significant environmental or economic impact that might result because of the adoption of these proposals may also be submitted. Communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A reporting summarizing each substantive public contact with FAA personnel conserned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge the receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25673." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Ave. SW., Washington, DC, or by calling (202) 267-3484. Each communication must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On December 19, 1985, Congress amended the Federal Aviation Act of 1958 by adding a new section 1118, 49 U.S.C. 1519, entitled "Aeronautical Charts and Maps". This section provides for the execution of indemnity agreements between the United States and publishers of aeronautical charts or maps. Specifically, indemnity may be available to the publisher if the publisher is liable on a claim for damages arising out of the depiction on a chart or map of any defective or deficient flight procedure, if this procedure was promulgated by the Federal Aviation Administration and was accurately depicted on the chart or map.

Indemnity is only available if the defect in the chart or map was in the information provided by the FAA, and was not obviously defective or deficient so that the error should have been perceived by the publisher. In addition, the flight procedure in question must have been depicted exactly as designed by the Government. The FAA will not agree to indemnity on any claims which do not arise out of a defect or deficiency in the procedure. A "defective or deficient" flight procedure includes any defect in the design, as well as the FAA's inclusion or omission of any feature which makes the flight procedure inherently hazardous, and the failure of the flight procedure to comply with applicable FAA standards. For purposes of agreements under section 1118 of the FA Act, the determination that a flight procedure is "defective or deficient" can only be made by the FAA itself, or by a court of competent jurisdiction.

The proposed regulations prescribe the procedures to be followed by any publisher of an aeronautical chart or map who is or may be subject to tort liability arising out of the publication of that chart or map. "Publisher" does not include any state agency or public entity, and claims by such parties shall not be considered. Claims shall be filed with the Chief Counsel of the Federal Aviation Administration, Litigation Division, 800 Independence Ave. SW., Washington, DC 20591, and must be presented to that office within 30 days of the publisher's receipt of service of a complaint in any proceeding in which it appears that indemnity may be available under section 1118 of the Act.

After review of the publisher's claim, the FAA would determine whether an agreement to indemnify is appropriate. Until the FAA determines that an indemnity agreement is appropriate, the publisher must provide the FAA with any and all information requested, and it must in good faith defend the action against it. Failure on the part of the publisher to cooperate with the FAA, or to have conducted a full and good faith defense of the action, would be grounds for the Government to refuse to indemnify the publisher for any liability.

No indemnity is available for cases in which the underlying cause of action against the publisher arose before December 19, 1985. With respect to actions arising on or after December 19, 1985, but before the effective date of these regulations, the publisher must notify the FAA within 30 days of the adoption of these regulations of any such action and the basis for claiming indemnity, in accordance with the above procedure.

A publisher who chooses to settle an action rather than defend it to judgment must also notify the FAA of its proposed settlement agreement, and submit the terms of the agreement for FAA review prior to execution of the agreement. The FAA shall have 60 days to review the proposed settlement, and if it does not concur with the terms, or does not agree that the facts of the case require or justify indemnity by the Government, no indemnity shall be available. Similarly, the publisher must provide prompt notice, within 5 days, of any judgment

rendered against it along with its claim for indemnity. The FAA shall have the option of directing the publisher to appeal any adverse verdict as a condition of the FAA agreeing to indemnity. If the FAA is satisfied that both the facts of the case and the defense of the action by the publisher justify indemnity, and if all of the requirements of this regulation have been complied with, the FAA will enter into an indemnity agreement with the publisher.

The funds for satisfaction of any indemnity agreement between the FAA and a publisher shall be appropriated by an act of Congress, at the request of the FAA. Indemnity will not include interest on the judgment, punitive damages, exemplary damages, civil or criminal fines, any other litigation sanctions, costs, or any other incidental expenses. Indemnity for attorneys' fees will only be available for costs of appeal, if the appeal is made at the direction of or with the concurrence of the FAA.

Regulatory Evaluation

Analysis of Benefits and Costs

The FAA has estimated the costs and benefits associated with this NPRM by analyzing it section by section.

These regulations would implement section 1118 of the Federal Aviation Act, which requires the United States Government to enter into agreements under certain specified conditions to indemnity applicable persons from claims arising from depictions on aeronautical charts or maps. The FAA's responsibility in this regard is to devise and promulgate a set of procedures to implement these agreements.

Each section of this NPRM would implement the statutory mandate of section 1118 and the stated intent of Congress that the implementing regulations shall protect the Government's legitimate financial and litigation interests in entering into such agreements. Accordingly, neither any costs nor benefits would derive directly from these implementing regulations. Furthermore, the financial impact of section 1118 is essentially a transfer of funds with respect to appropriate conditions of liability and fault under the law, and would not yield any financial cost or benefit upon society. Each regulation of proposed Part 15, Subpart B, is identified and explained in the detailed section by section analysis presented in Appendix A of the full Regulatory Evaluation placed in the Docket.

Regulatory Flexibility Determination

Since there is little or no cost associated with any of the proposed amendments, the FAA has determined that the proposed amendments contained in this NPRM will not have a significant economic impact on a substantial number of small entities.

Trade Impact Statement

Since this proposed Part would apply only to private publishers of aeronautical charts or maps and to the Federal Aviation Administration regarding claims for indemnity under conditions described in these proposed regulations, the Federal Aviation Administration has determined that these regulations will not have an impact on international trade.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which has been construed to preempt state laws regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

These proposed regulations will implement Congress' intent in enacting new section 1118 of the FA Act. They establish the procedures for obtaining indemnity, as well as clarifying the conditions which must be met by any publisher seeking indemnity. The proposed regulations require early notification of the FAA by a publisher as to lawsuits filed against it, in order that it may make an early assessment of the potential for liability for indemnity. By providing for early notice, both the publisher and the Government can cooperate more efficiently in the defense of the case. For reasons discussed under "Regulatory Evaluation", this proposed rule is not a "major rule" under Executive Order 12291; and it is not considered a significant rulemaking under D.O.T. Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 15

Aeronautical charts, Administrative claims, Indemnification procedures, Aircraft accident investigation information.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 15 of the Federal Aviation Regulations (14 CFR Part 15) as follows:

PART 15—ADMINISTRATIVE TORT CLAIMS UNDER FEDERAL TORT CLAIMS

1. The authority citation for Part 15 is revised to read as follows:

Authority: 49 U.S.C. 1354; 49 U.S.C. APP. 1519; 5 U.S.C. 301; 28 U.S.C. 2672, 2675; 49 U.S.C. 106(g)

(Revised, Pub. L. 97-449, Jan. 12, 1983).

§§ 15.1-15.9 [Designated as Subpart A]

2. 14 CFR 15.1 through 15.9 are designated as Subpart A—General Procedures.

3. A new Subpart B is added to read as follows:

Subpart B—Indemnity Agreements Under Section 1118 of the Federal Aviation Act

Sec.

15.10 Applicability.
15.11 Exclusions.
15.12 Claim; who may file; location of filing
15.13 Notification requirements.
15.14 Conduct of the action.
15.15 Settlements.
15.16 Judgments.
15.17 Payment on claims.

Subpart B—Indemnity Agreements Under Section 1118 of the Federal Aviation Act

§ 15.10 Applicability.

This subpart prescribes procedural requirements whereby private publishers of aeronautical charts or maps may claim indemnity from the United States under section 1118 of the Federal Aviation Act of 1958, as amended, for claims arising out of the publisher's accurate depiction on such chart of any defective or deficient FAA flight procedure or airway, under the conditions described in this part.

§ 15.11 Exclusions.

No payment for indemnity under section 1118 shall be made on a claim:

(a) In which the underlying cause of action against the publisher arose prior to December 19, 1985; or

(b) By a state agency or public entity.

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§ 15.12 Claim; who may file; location of filing.

A claim for indemnity under this part may be filed by the publisher of the chart in question, his duly authorized agent, or legal representative. The claim shall be filed with the Chief Counsel of the FAA, 800 Independence Ave. SW., Washington, DC 20591.

§ 15.13 Notification requirements.

A claim for indemnity shall not be considered by the FAA unless:

(a) The publisher notifies the Chief Counsel of the FAA, within the time limits described in paragraph (a) or (b) of this section, of the publisher's receipt of service of a complaint in any proceeding, federal or state, in which it appears that indemnity under section 1118 may be appropriate. The notice shall be accompanied by a description of the basis on which the publisher asserts that indemnity under section 1118 is appropriate.

(b) For claims in which the underlying cause of action against the publisher arose on or after December 19, 1985, and prior to the effective date of this subpart, the notice described in paragraph (a) of this section is received within 30 days of the effective date of this subpart.

(c) For claims in which the underlying cause of action against the publisher arose on or after the effective date of this subpart, the notice described in paragraph (a) of this section is received within 30 days of the publisher's receipt of service of the complaint.

§ 15.14 Conduct of the action.

(a) The publisher shall act in good faith to defend any claim or action against it that is or could become the subject of a notification described in § 15.13(a) of this part.

(b) Upon receipt of the notification described in § 15.13 of this part, the FAA, if it determines that indemnity under section 1118 is appropriate, may require the publisher, as a condition of indemnity, to implead the United States as a third-party defendant in the action, and arrange for the removal of the action to Federal Court if necessary. The publisher shall also agree to cooperate in the defense of the action with the United States, and shall promptly provide any additional information requested by the United States.

(c) If the FAA determines that the claim is one which will not require indemnity under section 1118, it shall so notify the publisher by registered mail, within 60 days of receiving either the notification or any requested additional information as described in this section, whichever is later.

§ 15.15 Settlements.

(a) Prior to settlement of a claim or an action by a publisher with another party, for which the publisher has sought, or intends to seek indemnity under section 1118, the publisher shall submit a copy of the terms of the proposed settlement to the Chief Counsel of the FAA along with a statement of its justification for the proposed settlement. The Administrator shall have 60 days to consider the proposed settlement. If the Chief Counsel does not concur with the proposed settlement terms, or does not concur that the claim is one which will require indemnity under section 1118, he shall so notify the publisher, by registered mail.

(b) In making this determination, the Chief Counsel may request the publisher to provide additional information, and will also consider whether the publisher has conducted a good faith defense of the action, and whether the proposed settlement appears to have been negotiated in good faith by the publisher. No indemnity will be available if the Chief Counsel determines that either of these conditions are not satisfied.

(c) The Chief Counsel will not approve payment on claims concerning a depiction or publication which he determines

(1) Was inaccurate within the meaning of section 1118; or

(2) Was obviously defective or deficient, within the meaning of section 1118; or

(3) Did not comply with the applicable regulatory procedure concerning that chart, map, or flight procedure.

§ 15.16 Judgments.

Within 5 days of the rendering of a judgment against the publisher in any proceeding, or within 30 days of the denial of an appeal, whichever, is later, the publisher shall notify the Chief Counsel of its claim for indemnity with respect to the judgment. The Chief Counsel shall have 30 days to review the merits of the claim for indemnity. If the Chief Counsel determines that the claim does not satisy the requirements of section 1118, he shall so inform the publisher, by registered mail. In making this determination, the Administrator will also consider whether the publisher conducted a good faith defense of the action.

§ 15.17 Payment on claims.

(a) *Source of funds.* If the Chief Counsel finds that the claim satisfies the requirements of section 1118, the FAA shall prepare an indemnity agreement concerning the claim, which shall be signed by the Chief Counsel and the publisher. The FAA shall then submit a request for an appropriation to Congress for funds to satisfy the claim. Payment shall not be effected until an appropriation is passed by Congress, and shall be made directly from the appropriated funds.

(b) *Provisions of the indemnity agreement.* The Government shall not indemnify the claimant for any punitive or exemplary damages, civil or criminal fines or any other litigation sanctions, interest on the judgment, costs, attorneys' fees, or other incidential expenses. However, the FAA will agree to indemnify for reasonable costs of appeal, including attorneys' fees, if the appeal is made at the direction of or with the concurrence of the FAA. No payment shall be recommended unless the indemnity agreement provides that the Government shall be subrogated to all claims, including third-party claims, cross-claims, and counterclaims, of the publisher.

Issued in Washington, DC on August 8, 1988.

T. Allan McArtor,

Administrator

[FR Doc. 88-18268 Filed 8-17-88; 8:45 am]

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federal register

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August 18, 1988

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special migratory bird hunting regulations to be established for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This season begins as early as September 1. This rule also makes final the guidelines employed to establish the special regulations.

EFFECTIVE DATE: This rule takes effect on September 1, 1988.

ADDRESSES: Comments received on the proposed special hunting regulations and tribal proposals are available for public inspection during normal business hours in Room 536, 1717 H Street, NW., Washington, DC. Communications regarding the documents should be addressed to: Director (FWS/MBMO), Room 536, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the July 22, 1988 **Federal Register** (53 FR 27728), the U.S. Fish and Wildlife Service (hereinafter the Service) proposed special migratory bird hunting regulations for the 1988–89 hunting season for certain Indian tribes, under the interim guidelines described in the June 4, 1988 **Federal Register** (at 50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. Tribes that desired special hunting regulations in the 1988–89 hunting season were requested in the January 21, 1988 **Federal Register** (53 FR 1645) to submit a proposal that included details on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985–86 hunting season, and they are made final in this document, as was proposed in the July 22, 1988 **Federal Register** (53 FR 27728).

In the July 22, 1988 proposed rule, the Service pointed out that duck hunting regulations for the upcoming season likely would be more restrictive than in the 1987–88 hunting season because of a reduced fall flight caused by drought. Recently completed surveys on the breeding ground have confirmed the expcctcd decline. Although duck hunting regulations not have been established yet for the late season, they can be expected to be much more restrictive than last year.

Comments and Issues Concerning Tribal Proposals

Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

In an August 8, 1988, letter, C.D. Besadny, Secretary, Wisconsin Department of Natural Resources, commented on the proposed 1988–89 migratory bird hunting regulations for Chippewa Indians on ceded lands in the State. Among other things, Mr. Besadny requested that the opening of the duck season be delayed one week (from September 19 to September 26), that the Canada goose season open on the same date as the duck season, and that the special scaup-only season be cancelled. In the July 22, 1988 **Federal Register** (53 FR 27728), the Service pointed out that the fall flight of ducks would be much lower than usual this year, and indicated that, for conservation purposes, duck harvest should be reduced. The Great Lakes Indian Fish and Wildlife Commission agreed with this request, and on August 9, 1988, notified the Service that a September 26 opening of the duck season was acceptable to the tribes. The delayed opening also will apply to coots and moorhen, and the special scaup-only season is suspended. The September 19 opening for Canada geese will proceed as proposed, with certain safeguards in place at Wisconsin's Powell Marsh.

As noted in the July 22, 1988 proposed rule, Michigan did not object to the special regulations on ceded lands in the State. However, as was the case last year, Minnesota continues to oppose special regulations for hunting by Chippewa Indians on ceded lands in the State. The Service recognizes Minnesota's concerns but for the reasons discussed in the July 22, 1988 proposed rule, believes that continued carefully regulated seasons for Chippewa Tribal members are appropriate in Minnesota, as well as in Michigan and Wisconsin. Therefore, special regulations for the 1988–89 hunting season are made final in this rule. The regulations take into account the need to reduce the harvest of ducks, and as in the past, the Great Lakes Indian Fish and Wildlife Commission will conduct a survey to monitor the migratory bird harvest by tribal members.

Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

The Confederated Salish and Kootenai Tribes and the Montana Department of Fish, Wildlife and Parks are continuing the negotiations

discussed in the July 22, 1988 **Federal Register** (53 FR 27728). The Service notes, however, that there is no disagreement over the waterfowl hunting regulations requested by the tribes for the 1988–89 season, and they are made final in this rule.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS) 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582) and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On December 14, 1987 (at 52 FR 47428), the Service proposed nontoxic shot zones for the 1988–89 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones for the 1988–89 hunting season was published on June 28, 1988 in the **Federal Register** (53 FR 24284). All of the hunting regulations covered by this final rule are in compliance with the Service's nontoxic shot restrictions.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and shall) "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season on Federal Indian reservations and ceded lands.

On August 8, 1988, the Division of Endangered Species and Habitat Conservation notified the Office of Migratory Bird Management of its concurrence with the finding that the proposed action will not affect any listed species or any critical habitat.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the March 9, 1988 **Federal Register** (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 9, 1988 (53 FR 29897).

Authorship

The primary author of this final rule is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on July 22, 1988, the Service established the longest period possible for public comments. In doing this, the Service recognized that time would be of the essence. The comment period provided the maximum amount of time possible while ensuring that a final rule was published before the beginning of the hunting season on September 1, 1988.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl. However, final Federal frameworks for the waterfowl hunting season (opening and closing framework dates, daily bag and possession limits, etc.) are planned for publication on September 13, 1988. Because it was necessary to publish this document by September 1, 1988 most waterfowl regulations for the tribes listed here are shown as "within final Federal frameworks to be established."

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule, therefore, will take effect on September 1, 1988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, 50 CFR Part 20 is amended as follows:

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, is amended as set forth below.

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migatory Bird Treaty Act sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

(Editorial Note.—The following annual hunting regulations provided for by § 20.110 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) *Jicarilla Indian Reservation, Dulce, New Mexico* (Tribal Members and Nonmembers).

(1) *Ducks (including Mergansers).*

Season Dates: Earliest opening date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily bag and possession limits: Same as permitted Pacific Flyway States

under final Federal frameworks to be announced.

(2) *Goose Season Closed on All Species.*

(3) *General Conditions*: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Jicarilla Apache Tribe also apply on the reservation.

(b) *Navajo Indian Reservation, Window Rock, Arizona* (Tribal Members and Nonmembers).

(1) *Ducks (including Mergansers).*

Season Dates: Earliest opening date and longest permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Canada Geese (Season closed on other geese).*

Season Dates: December 17–January 8.

Daily Bag and Possession Limits: 2 daily. Possession limit 4.

(3) *Coots and Common Moorhens (Gallinule).*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(4) *Common Snipe.*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

(5) *Band-tailed Pigeons.*

Season Dates: September 1–September 30.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

(6) *Mourning Doves and White-winged Doves.*

Season Dates: September 1–September 30.

Daily Bag and Possession Limits: 10 mourning and white-wing doves daily in the aggregate, of which no more than 6 may be white-winged doves.

Possession limit after opening day is 20 mourning and white-winged doves in the aggregate, of which no more than 12 may be white-winged doves.

(7) *General Conditions*: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(c) *Fort Hall Indian Reservation, Fort Hall, Idaho* (Nontribal Members Only).

(1) *Ducks (including Mergansers).*

Season Length and Dates: Begin continuous season on October 8, with longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Geese (Canada, Blue, Snow, Ross', White-fronted):*

Season Length and Dates: Begin continuous season on October 8, with longest season permitted Idaho under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Idaho under final Federal frameworks to be announced.

(3) *Common Snipe.*

Season Length and Dates: Same as for ducks.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

(4) *General Conditions*: Nontribal members will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(d) *Fort Apache Indian Reservation, Whiteriver, Arizona* (Tribal Members and Nonmembers).

(1) *Ducks (including Mergansers).*

Season Length and Dates: Latest closing date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Geese (Canada, Blue, Snow, Ross', White-fronted).*

Season Length and Dates: Latest closing date and longest season permitted Arizona under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Arizona under final Federal frameworks to be announced.

(3) *Coots and Common Moorhens (Gallinule).*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(4) *Common Snipe.*

Season Length and Dates: Same as for ducks.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

(5) *Mourning Doves.*

Season Length and Dates: September 1–11 and November 21–January 8.

Daily Bag and Possession Limits: September 1–11: Daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. Possession limit is 20, of which no more than 12 may be white-winged doves. November 21–January 8: 10 mourning doves only daily. Possession limit 20.

(6) *White-winged Doves.*

Season Dates: September 1–11.

Daily Bag and Possession Limits: 5 daily. Possession limit 12.

(7) *Band-tailed Pigeons.*

Season Dates: October 7–November 5.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

(8) *General Conditions*: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the White Mountain Apache Tribe also apply on the reservation.

(e) *Colorado River Indian Reservation, Parker, Arizona* (Tribal Members and Nonmembers).

(1) *Ducks (including Mergansers).*

Season Length and Dates: Same as Colorado River Zone in California.

Daily Bag and Possession Limits: Same as Colorado River Zone in California.

(2) *Geese (Canada, Blue, Snow, Ross', White-fronted).*

Season Length and Dates: Same as Colorado River Zone in California.

Daily Bag and Possession Limits: Same as Colorado River Zone in California.

(3) *Coots and Common Moorhens (Gallinule).*

Season Dates: Same as for ducks in Colorado River Zone in California.

Daily Bag and Possession Limits: Same as Colorado River Zone in California.

(4) *Common Snipe.*

Season Length and Dates: Same as for ducks in Colorado River Zone in California.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

(5) *Mourning Doves and White-winged Doves.*

Season Length and Dates: Same as Colorado River Zone in California.

Daily Bag and Possession Limits: Daily bag limit is 10 and possession limit is 20, singly or in the aggregate of the two species.

(6) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Colorado River Indian Tribes also apply on the reservation.

(f) *Penobscot Indian Nation, Old Town, Maine* (Tribal Members and Nonmembers).

(1) *Ducks:* Same species, season dates, season length, and daily bag and possession limits as regular duck season in Maine.

(2) *Geese:* Same species, season dates, season length, and daily bag and possession limits as regular goose season in Maine.

(3) *General Conditions:* (i) Tribal members may hunt waterfowl (ducks and geese) on Penobscot Indian Territory under special sustenance regulations during the 1988–89 hunting season. Sustenance season dates are September 17–November 30. The daily bag limit in the sustenance season is 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese is 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members is only the larger of the two daily bag limits.

(ii) Possession limits on ducks and geese during the tribal sustenance season are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's residence.

(iii) Tribal members shall comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking, except during the sustenance season, tribal members shall be permitted to hunt one-half hour before sunrise to one-half hour after sunset.

(iv) Each tribal and nontribal waterfowl hunter 16 years of age or over must possess and carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp), signed in ink across the face.

(v) Nontribal members hunting waterfowl on Penobscot Indian Territory shall comply with all Federal and State hunting regulations. Special regulations established by the Penobscot Indian Nation also apply on Penobscot Indian Territory.

(g) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin* (Tribal Members Only).

(1) *Ducks (including Mergansers).*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 26. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(2) *Canada Geese.*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 3 daily. Possession limit 6.

Michigan Zone:

Season Dates: Same opening date and season length permitted Michigan under final Federal frameworks to be announced.

Daily Bag and Possession Limits: 3 daily. Possession limit 6.

(3) *Other Geese (Blue, Snow, and White-fronted).*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final frameworks to be announced.

(4) *Coots and Common Moorhens (Gallinule).*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 26. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 20 daily, singly or in the aggregate.

Possession limit 40.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(5) *Sora and Virginia Rails.*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 25 daily, singly or in the aggregate. Possession limit 25.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(6) *Common Snipe.* Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(7) *Woodcock.*

Wisconsin and Minnesota Zones:

Season Dates: September 10-November 14.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

Michigan Zone:

Season Dates: September 15-November 14.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

(8) *General Conditions:* (i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit. (ii) Tribal members will comply with all basic Federal migratory bird hunting regulations, 50 CFR Part 20, and shooting hour regulations, 50 CFR part 20, Subpart K. If shooting hours are changed during the late season, tribal members will observe the new shooting hours after the late season begins in the affected States. Prior to the opening of the late season, however, tribal members may hunt migratory birds from one-half hour before sunrise to sunset.

(iii) Nontoxic shot will be required for all off-reservation hunting by tribal members of waterfowl, coots, moorhens, and gallinules.

(iv) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(v) *Wisconsin Zone.* Tribal members will comply with NR 10.09 (1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. NR 10.12 (1)(C), Wis. Adm. Code (shooting from structures), sec. NR 10.12 (1)(g), Wis. Adm. Code (decoys), and sec. 29.27 Wis. Stats. (duck blinds). The Canada goose season at Powell Marsh

will begin on September 19. A tribal quota of 25 Canada geese will be in effect until September 25, or until daily censuses by Great Lakes Indian Fish and Wildlife Commission or Wisconsin Department of Natural Resources employees indicate that at least 300 Canada geese are in the area, whichever comes first. If the tribal quota is reached before September 25 or before 300 Canada geese are present, Powell Marsh will be closed to tribal hunting until September 25. Thereafter, the tribal season will resume without a quota and with a daily bag limit of 3 Canada geese.

(vi) *Minnesota Zone.* Tribal members will comply with M.S. 100.29, Subd. 18 (duck blinds and decoys).

(vii) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(h) *Flathead Indian Reservation, Pablo, Montana* (Nontribal Members Only).

(1) *Ducks (including Mergansers):* Same species, season dates, season length, and daily bag and possession limits as permitted Pacific Flyway portion of Montana under final Federal frameworks to be announced.

(2) *Geese:* Same species, season dates, season length, and daily bag and possession limits as permitted Pacific Flyway portion of Montana under final Federal frameworks to be announced.

Special Exception for Geese: A special early closure for all goose hunting will begin at sunset, November 30, 1988, within the following area: Those portions of Flathead, Lake, and Sanders counties beginning at Ravalli, thence north along U.S. Highway 93 to Polson and Elmo, thence West and South on State Highway 28 to the junction of State Highway 382 near Hot Springs, and South along said highway to Perma, thence east along State Highway 200 to Ravalli, the point of origin.

(3) *General Conditions:* Nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp), signed in ink across the face. Special regulations established by the Confederated Salish and Kootenai tribes also may apply on the reservation.

Date: August 15, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Part IX

Department of Energy

Bonneville Power Administration

Proposed Model Conservation Standards Surcharge Policy Extension; Notice and Request for Comments

VOL 53 ISS 160 AUG 18 1988 UMI

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Model Conservation Standards Surcharge Policy Extension

AGENCY: Bonneville Power Administration (Bonneville or BPA), DOE.

ACTION: Notice of Proposed Model Conservation Standards (MCS) Surcharge Policy Extension and Request for Comment.

SUMMARY: Bonneville is releasing the proposed MCS Surcharge Policy Extension. The policy is designed to implement the recommendations made by the Northwest Power Planning Council (Council). The Council's recommendations are contained in their document titled "Model Conservation Standards for New Residential and Commercial Construction," issued on January 30, 1987, and published in the **Federal Register** on March 26, 1987. In accordance with the Pacific Northwest Power Act, the Council developed MCS and recommended to the Bonneville Administrator that a surcharge be imposed on those portions of a customer's loads within the region that are not covered by a Bonneville MCS Program or other conservation measures which achieve savings comparable to those programs. The Administrator's policy to implement those recommendations was issued in August 1987. That Policy described how the Policy would be applied, how utility plans would be evaluated, the calculation and collection of a surcharge, and seven ways that a utility can avoid a surcharge. Also contained in the Policy were summaries of the Policy's purposes, its statutory direction, and past and present surcharge activities.

This proposed extension of the current Policy would continue the current efforts to encourage regionwide movement towards MCS savings and help encourage the adoption of building codes at MCS levels across the region. To provide some stability in those efforts, Bonneville is proposing to extend the current Policy rather than undertake at this time a major revision of the current Policy. The proposed extension contains the same goals, requirements, and evaluation standards of the current Policy. Finally, those sections of the Policy which contain the words "No Changes" are wholly consistent with the corresponding section of the current Policy. Otherwise, changes are contained within brackets.

Bonneville is seeking comments only on those portions of the existing policy which have been changed. Other issues related to the surcharge policy will not be considered at this time.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, by September 16, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Ann C. Scott, Public Involvement Manager, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers outside of Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Ave., Suite 400, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

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  Appendix 7: Achieving Electrical Savings by Adopting an Alternative or Equivalent Utility Service Standard
  Appendix 8: Submittal and Compliance Schedule for MCS surcharge.

Note.—If a section heading includes the words "NO CHANGES," the content of that section is the same as the current surcharge Policy. Otherwise, changes are contained within brackets.

I. Background of Policy

A. Introduction

The Surcharge Policy responds to recommendations made by the Northwest Power Planning Council (Council) in its 1986 Northwest Conservation and Electric Power Plan (Plan) and its Model Conservation Standards (MCS) for New Residential and Commercial Construction (Plan Amendment). The purpose of this policy is to encourage utilities to achieve additional electrical savings through improved residential and commercial building construction which can ultimately result in regionwide adoption of the Council's MCS in codes. There are two additional policy objectives:

1. To identify what criteria will be used to evaluate a utility's proposed approach to achieving MCS level electrical savings; and

2. To identify how a surcharge would be calculated and collected.

As the Council states in its Plan Amendment. "By the end of 1989, the Council expects the region to achieve residential sector savings equivalent to at least 85 percent of those that would be achieved with full implementation of the MCS." One long-run goal is to achieve MCS level savings through code adoption.

The proposed extension of the current Surcharge Policy contains some changes in the submission and implementation dates, program name changes, and

language clarification based on our experience in implementing the Policy in 1987–1988. Bonneville proposes that the goals, plan evaluation standards, reporting requirements, and remedies of the current version of the Policy be retained.

[The policy is in effect from the date it is signed by the Administrator until it is either amended or rescinded.]

B. Statutory Direction

Section 4(e)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Act) provides for developing MCS as part of the Council's Plan. The standards, as described in section 4(f)(1) of the Act, are to include standards applicable to new and existing structures and to utility and government conservation programs. Such standards should reflect geographic and climatic differences and produce all power savings that are cost effective for the region and economically feasible for consumers.

Section 4(f)(2) of the Act provides that the Council may recommend to the Bonneville Administrator the imposition of a surcharge on customers of the Administrator for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented the standards or other conservation measures that the Administrator determines achieve energy savings comparable to the standards. Finally, section 4(e)(3)(G) of the Act mandates that the Council develop a methodology for calculating the surcharge.

II. Past and Present Surcharge Policy Development Efforts

Part A of this section summarizes past MCS and surcharge actions undertaken by the Council. Part B summarizes Bonneville's past surcharge-related activities. Part C describes the Council's 1987 surcharge recommendation as contained in its Plan Amendment of January 30, 1987.

A. Council Activities to Date—No Changes

On April 27, 1983, the Council adopted its first Plan. As required by the Act, the Council's 1983 Plan contained MCS for newly constructed residential and commercial buildings and for converting existing residential and commercial buildings to electric space heating and conditioning.

In its 1983 Two-Year Action Plan (chapter 10 of the 1983 Plan), the Council identified tasks to be undertaken by Bonneville, the Council, and other regional entities. That Plan mandated that Bonneville include in its surcharge policy a consistent procedure for certifying compliance with MCS and a procedure for reviewing and evaluating alternative plans.

In accordance with the 1983 Plan, State governments, local governments, or utilities were to adopt and enforce the MCS as building codes or utility service standards by January 1, 1986. Where such standards were not adopted, an alternative plan to achieve comparable savings should have been in place by January 1, 1986. Where neither action had occurred, the Council recommended that the Administrator impose a surcharge.

The Council voted on October 31, 1984, to adopt an amendment which greatly simplified the surcharge calculation. The Council recommended that a 10 percent surcharge be levied on the customer's power bill for that portion of its loads which were not complying with the standard.

On July 26, 1985, the Council proposed to enter rulemaking to amend the MCS. On December 4, 1985, the Council voted to amend that portion of the 1983 Plan dealing with MCS. The amended MCS thermal performance levels for both new residential and new commercial buildings were equivalent to the MCS set forth and amended by the Council in its 1983 Plan. The Council also recommended that Bonneville develop a surcharge policy based on MCS implementation and performance.

In its 1986 Action Plan, the Council identified specific actions that Bonneville should take towards regionwide implementation of the MCS. Bonneville was to: (1) Have utilities submit to Bonneville a plan declaring how they intended to comply with the MCS; (2) design a process to collect utility-specific data on the savings that would be achieved if all buildings were constructed to MCS levels; (3) continue developing and implementing a procedure to measure compliance with the MCS; (4) review alternative plans for achieving compliance with the MCS; and (5) develop a new surcharge policy.

On November 20, 1986, the Council proposed to enter further rulemaking to amend part of its 1986 Plan dealing with MCS and the surcharge. After public comment, the Plan Amendment was published on January 30, 1987. Notice of the Plan Amendment, which included the Council's 1987 MCS, was published in the **Federal Register** on March 26, 1987 (52 FR 9738, March 26, 1987).

B. Bonneville Activities to Date

Bonneville began developing a surcharge policy in early 1984 through a series of informal meetings with State government, local government, utility, and Council representatives. Bonneville staff informally discussed the various issues that might surround the development of a policy to implement the Council recommendation to impose a surcharge. These informal discussions formed the basis of a **Federal Register** Notice of Intent to Develop a Policy to Implement the Council Recommended Conservation Surcharge. The notice (49 FR 3489, September 4, 1984) was mailed to the public on August 28, 1984.

Bonneville elected to delay publishing a proposed policy until after final Council action amending the surcharge methodology. Public review and comment on the proposed policy took place between March 13, 1985, and May 17, 1985.

Bonneville suspended action on the surcharge policy when the Council entered rulemaking to amend the MCS in the summer of 1985. After the Council amended its MCS recommendation in December 1985, Bonneville developed a revised proposed policy and received public comment on that proposal during July and August 1986. As part of the Administrator's decision about whether or not to finalize the revised proposed surcharge policy, Bonneville undertook an analysis of the cost effectiveness and consumer economic feasibility of the MCS contained in the Council's 1986 Plan. Bonneville concluded that some of the recommended measures were not cost effective, and on December 19, 1986, Bonneville's MCS findings were published.

Based in part on that analysis, the Council entered rulemaking to amend its MCS and surcharge recommendations. In turn, Bonneville suspended the development of a final surcharge policy. Following publication of the Council's Plan Amendment on January 30, 1987, Bonneville undertook a second revision of the proposed surcharge policy.

On May 26, 1987, Bonneville released its proposed surcharge policy for public comment. The comment period closed on July 15, 1987. During the comment period there was one public meeting which was held on June 22, 1987. A number of changes were made in the proposed version of that policy, based on the public comment received. The final policy, issued on August 25, 1987, entitled "Model Conservation Standards Surcharge Policy," was Bonneville's response to Council recommendations to develop a surcharge policy.

[In response to the 1987 Policy, utilities submitted plans for the residential and commercial sectors within their service areas. Those plans covered calendar year 1988. Since the

Policy expires on December 31, 1988, Bonneville is now extending the Policy. This version of the Policy is substantially the same as the current version of the Policy. One difference is that this version does not contain an expiration date. Also, specific submittal dates have now been moved to Appendix B.]

C. Council's 1987 Surcharge Recommendation—No Changes

The Council's Plan Amendment of January 30, 1987, made several major changes to its 1986 Plan. The most significant change in the surcharge recommendation was a move away from a performance-based surcharge, where utilities could face a surcharge if their performance was poor relative to the performance of other utilities. A summary of the Council's 1987 surcharge recommendation appears below.

1. Residential Surcharge Recommendation

The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a deadline set by Bonneville: (a) An initial plan for implementing the Bonneville/Utility Residential MCS Program; (b) a plan for implementing an alternative program which is approved by Bonneville as being equivalent; or (c) a declaration, approved by Bonneville, that the MCS for residential buildings will be met by building codes. This surcharge would continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

2. Commercial Surcharge Recommendation

The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a date set by Bonneville: (1) An initial plan for implementing the Bonneville/Utility Commercial MCS Program; (2) a plan for implementing an alternative program which is approved by Bonneville as equivalent, or (3) a declaration, approved by Bonneville, that the MCS for commercial buildings will be met by building codes at the MCS levels. The Council recommended that the surcharge continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

3. Conversion Surcharge Recommendation

The Council's MCS for residential and commercial buildings converting to electric space heating/conditioning stated that State or local governments or utilities should take actions through codes and/or alternative programs to achieve electric power savings from buildings which convert to electric space heating/conditioning. The savings should be comparable to those savings that would be achieved if each building converting to electric space heating/conditioning were upgraded to include all cost-effective electricity conservation measures. The Council highly recommended this conversion standard, but did not recommend that a surcharge be imposed for failure to adopt the standard.

4. Combined Commercial/Residential Code

One provision of the Plan Amendment allowed for a combined residential/commercial MCS strategy by a utility. This approach allowed for less than MCS program savings to be achieved in one sector as long as the shortfall is recouped in the other sector.

This alternative was to be applicable only to the submission of alternative codes or utility service standards

5. Exemptions

The Council has determined that no exemptions are needed at this time.

6. Federal Loads and Generic MCS

The Council did not make any surcharge recommendation in these areas

III. Surcharge Policy

Section 1: Definitions

A. Administrator—No Change

Administrator of the Bonneville Power Administration or his designated representative

B. Alternative Code—No Change

Codes implemented in the residential and commercial sectors which, in aggregate, achieve total electrical savings at least as large as would have been expected had the Council's illustrative MCS been implemented in the residential and commercial sectors. The Council's illustrative MCS are contained in the Council's plan Amendment of January 30, 1987, as published in the **Federal Register** on March 26, 1987

C. Alternative Utility Plan—No Change

Any plan which either partially or wholly relies on an approach to conservation savings discussed in appendix 2, 4, 5, 6, or 7 of this policy

D. Alternative Utility Program—No Change

For the residential sector, a utility operated MCS support program designed to achieve at least the same level of total expected electrical savings, while complying with the IAQ and ventilation goals, of Bonneville's Super GOOD CENTS program. For the commercial sector, a utility MCS support program designed to promote at least the same MCS measures as contained in the Council's commercial MCS of March 26, 1987, and providing comparable design assistance services as contained in the Bonneville/Utility MCS support program as of the effective date of this policy

E. Customer—No Change

For purposes of this policy, a utility existing in the Pacific Northwest region which purchases firm power from Bonneville under a utility Metered or Computed Requirements Contract, or a utility which purchases firm capacity under a pre-Act contract, or a utility which participates in the Residential Purchase and Sales Agreement/Exchange Transmission Credit Agreement, as a active exchanger or deemer

F. Equivalent Code—No Change

In the residential sector, a code for a specific sector which can be expected to achieve at least the same level of total electrical savings within the jurisdiction as would have been achieved if the utility serving that jurisdiction implemented the Council's residential MCS. For the commercial sector, the Council's MCS of March 26, 1987, will be used

G. Jurisdiction—No Change

For purposes of this policy, any unit of government including Indian Tribes, State and local governments, and municipal corporations

H. Region—No Change

The Pacific Northwest Region, region, or regional means the area consisting of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and any contiguous areas, not in excess of 75 air miles from the area referred to above, which are part of the service area of a rural electric cooperative customer, served by the Administrator on the effective date of the Act, which has a distribution system from which it serves both within and without such region

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I. Service Area—No Change

The service area of a utility is that portion of its service territory which is both subject to the Surcharge Policy and to which the utility provides electric power service to the residential or commercial sectors.

J. Total Retail Load—Was Total System Load

The number of firm kilowatt hours (kWhs) sold at retail by a customer during the 12 month period prior to the effective date of this policy

K. Total Residential Load—New

The number of firm kWhs sold at retail by the customer to the residential sector during the 12-month period prior to the effective date of this policy

L. Total Commercial Load—New

The total number of firm kWhs sold at retail by the customer to the commercial sector during the 12-month period prior to the effective date of this policy.

Section 2: Application of the Surcharge Policy

For the residential sector, by the plan submittal date specified in Appendix 8, customers must submit either: [(a) A letter indicating that the approach being used to comply with the Policy will continue to be used to comply with the Policy for the time frame for the submission, (b) a plan to implement the Super GOOD CENTS Program, or (c) an alternative utility program, or utility service standard for Bonneville approval, or (d) a plan certifying that jurisdictions within its service area will implement and enforce the MCS via participation in the Early Adopter Program/Northwest Energy Code Program (EAP/NECP) or adoption of a Bonneville-approved building code. A utility's residential sector plan may contain any combination of these approaches. [Except as provided for in Section 3(A) of this Policy, the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.]

[A utility's residential sector plan will be evaluated on the basis of the utility's proposed efforts for the residential sector during the succeeding calendar year and its success with the approach(s) used to comply with the Policy during the previous calendar year.]

Customers who do not implement a Bonneville approved residential MCS plan by the January 1 following their submittal will be subject to a surcharge as calculated in Section 4 of this policy. Customers who have been granted a grace period, as provided for either in section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

For the commercial sector, by the plan implementation date specified in Appendix 8, customers must submit either: [(a) A letter indicating that the approach being used to comply with the Policy will continue to be used to comply with the policy for the timeframe for the submission, (b) a plan to implement Bonneville's Commercial MCS Program, (c) an alternative utility commercial program or utility service standard in the commercial sector, or (d) a plan certifying that jurisdictions within its service area have met the Council's commercial MCS through codes. A utility's commercial sector plan may contain any combination of these approaches. [Except as provided for in Section 3(A), the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.]

Customers who have not implemented a Bonneville-approved commercial MCS plan by [the implementation date specified in Appendix 8], are subject to a surcharge, as calculated in Section 4 of this policy. Customers who have been granted a grace period, as provided for in either section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

Customers of Bonneville without service areas as defined in this policy, need only submit evidence of their lack of such a service area by the [plan submission date specified in Appendix 8]. This provision exists for those customers who have voluntarily adopted a policy not to serve the residential or commercial sectors, or who are prohibited from serving the residential or commercial sector. If the customer serves one of these two sectors, then this provision will only apply to the one sector not served.

Customers who have neither submitted this information, nor a plan for achieving conservation in these sectors, will be subject to a surcharge on the January 1 following the submittal date.

Each of the appendices to this policy represents a different approach to achieve electrical savings from improved construction practices. These appendices contain more specific submission and evaluation criteria for each of the MCS plan options and are part of this policy.

Once any plan is approved and implemented, Bonneville will assume that the utility and/or jurisdiction(s) within its service areas will carry out that plan in good faith. During the period for which this policy is in effect, Bonneville reserves the right to revisit any utility's approved plan if Bonneville has reason to believe that the utility has not implemented its plan in good faith. This same provision applies to utilities who rely on jurisdictions to take actions to comply with this policy.

Section 3: Evaluation of Alternative Utility Plans

An alternative utility plan is any plan which relies wholly or in part on an approach to conservation savings presented in Appendix 2, 4, 5, 6, or 7 of this policy. These plans will be evaluated using three criteria: (1) Expected electrical savings, (2) enforcement, and (3) indoor air quality (IAQ) and ventilation. This section applies to all residential sector alternative plans and those commercial sector alternative plans relying on the adoption of commercial codes or commercial service standards.

If Bonneville concludes that the utility's proposed alternative plan cannot be accepted because of its failure to comply with any of the evaluation criteria described below, Bonneville will allow an additional grace period at least as long as Bonneville took to evaluate the utility's initial proposal. Subsequent grace period(s) may be allowed on a case-by-case basis. [Text deleted]

A. Equivalent Electrical Savings

For the residential sector, if a utility is proposing to achieve electrical savings by implementing an alternative residential utility program, Bonneville will use the prospective total electrical savings of its Super GOOD CENTS Program to determine whether the utility's proposed approach will at least meet the appropriate residential electrical savings level for the period of time covered by a utility's plan. Part of the equivalence determination procedure for an alternative residential utility program will involve a comparison between the utility's proposed marketing program and the marketing program they would have pursued had they enrolled in the Super GOOD CENTS program for the period of time [covered by utility's plan.]

Utilities which rely on jurisdictional adoption of residential building codes, or which impose a residential service standard, to achieve additional energy savings in the residential sector will have to provide evidence supporting the claim that the code (or service standard)

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can be expected to achieve at least the same level of electrical savings within the jurisdiction (or utility service area, depending on whether a code or service standard approach is used) as would have been achieved if the utility had participated in Bonneville's Super GOOD CENTS Program.

Utilities which rely on jurisdictional adoption of residential *and* commercial codes (or which impose residential and commercial service standards) to achieve additional savings beyond current practice, may "trade-off" savings achieved in one sector towards a deficit in the other sector. The utility would have to present evidence supporting its claim that the residential and commercial codes, in aggregate, can be expected to achieve at least the same total level of electrical savings as would have been achieved had the jurisdiction adopted the Council's full illustrative commercial and residential MCS for that climate zone. Such sectoral trade-offs are only allowed using enhanced building codes or service standards.

In addition, a utility may obtain equivalent savings by allocating savings achieved by advanced building codes in a jurisdiction (or jurisdictions) within its service area to its entire service area. Such "jurisdictional trade-offs" are only allowed where the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within the utility's service area.

Finally, those utilities relying on commercial code adoption by a jurisdiction within or covering their service area, or who will impose a commercial service standard, will have to provide evidence supporting their claim that the expected total electrical savings are at least equivalent to what would have been expected had the jurisdiction implemented the Council's illustrative commercial MCS. The only exception to these requirements is for utilities or jurisdictions who adopt a codified version of the Council's MCS. [Text Deleted]

[Submittals in future years may be evaluated using different standards in the event that code advancement occurs and/or the MCS are changed.] For 1989, Bonneville will analyze residential electrical savings from an alternative plan by assuming that, in the absence of MCS, a residence would have been built to one of the following: (a) in Oregon, 1983 energy code; (b) in Washington, 1986 energy code; or (c) in either Idaho or Montana, HUD Minimum Property Standards. Electrical savings in the commercial sector will be evaluated assuming: (a) 1986 code in Oregon and Washington, (b) 1983 National Energy Code in Montana, and (c) individual jurisdiction codes in Idaho.

All thermal performance evaluations will rely on good engineering practices. Bonneville will be guided by the assumptions, process, and housing prototypes contained in Bonneville's Code Equivalency Determination Procedures.

B. Enforcement

A utility will have more discretion in proposing an approach which will meet the second evaluation criterion-enforcement. Bonneville is recommending that any customer contemplating submission of an alternative utility plan refer to Bonneville's Super GOOD CENTS, Early Adopter/Northwest Energy Code, and Commercial MCS Program descriptions for guidance. Alternative utility plans, excluding an alternative utility commercial program, must contain a requirement for site inspection consistent with the effective date of the surcharge.

Referring to alternative utility programs, a utility will have to provide evidence adequate to assure Bonneville that the energy savings which are being claimed are attributable to the utility's program. Part of that evidence is some enforcement method to assure that the conservation savings the utility is claiming are attributable to the measures they are promoting and inspecting.

C. Indoor Air Quality and Ventilation

[For the residential sector, an alternative utility plan must contain information on how the utility and/or jurisdiction plans to achieve indoor air quality (IAQ) and ventilation rates at least comparable to those achieved in Super GOOD CENTS homes.] The approaches include informing the public about potential health risks from indoor pollutants, testing for selected pollutants, and [installing mitigation measures if certain pollutants are detected to be present in unreasonable levels, and maintaining appropriate levels of ventilation. For residential construction all alternative plans will be examined to determine if the construction practices being promoted or required, when combined with the comparable monitoring, information, and mitigation strategies are likely to assure that IAQ and ventilation rates are comparable to what is achieved in homes constructed to Super GOOD CENTS standards.]

[For the commercial sector, the indoor air quality requirements contained in the Council's Plan Amendment of March 1987 will be required. These same standards are contained in Bonneville's Energy Smart Design Program and the codified versions of the Council's commercial MCS.]

Section 4: Calculating a Surcharge

Only change: Substitute retail for system in surcharge calculation. Consistent with rates language * * *

A. Not less than 30 days prior to a final decision on the imposition of a residential surcharge, the Administrator shall provide written notice to the customer including determination of the amount of a customer's load not covered by a Bonneville approved MCS residential plan. The amount of the load not covered by a Bonneville-approved MCS residential plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

B. The level of the residential surcharge will be determined by dividing the customer's residential load not covered by a Bonneville-approved MCS residential plan by the customer's total [retail] load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

C. Not less than 30 days prior to a final decision on the imposition of a commercial surcharge, the Administrator shall provide written notice to the customer including a determination of the amount of the load not covered by a Bonneville-approved MCS commercial plan. The amount of the load not covered by a Bonneville-approved MCS commercial plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

D. The level of the commercial surcharge will be determined by dividing the customer's commercial load not covered by a Bonneville-approved MCS commercial plan by the customer's total [retail] load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

E. The resulting level of the residential or commercial surcharges will be applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules, using the Council's surcharge methodology, and

will be applied subsequent to any other rate adjustments.

F. At no time will a customer simultaneously be assessed a surcharge for failure to comply with the requirements in the residential sector and a surcharge for failure to comply with the requirements in the commercial sector.

G. The customer and other interested parties shall be afforded an opportunity to provide comments regarding the determinations made in sections 4(A) to 4(D). Such comments may be made in writing or orally at a public meeting convened by Bonneville at the request of the customer for this purpose. This public meeting will be held between the time of the written Notice of Intent to surcharge and the final surcharge decision. Included in the Intent to Surcharge will be an initial determination of the fraction of a customer's load subject to the surcharge, based on sections 5(A) to 4(D). Following the receipt and evaluation of comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

H. Beginning with the effective date of a surcharge, the Administrator shall review the findings made in sections 4(A) to 4(D) after the customer, or a jurisdiction served by the customer, has taken an action that affects those findings. Customers may request such review by providing evidence in accordance with this section that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

Section 5: Collecting a Surcharge—No Changes

A. Those customers receiving a final written notice of a load subject to a surcharge shall be billed for the surcharge beginning with the first full billing period following issuance of such notice.

B. Any power purchases or exchanges made on or after the effective date of the surcharge, but before receipt of final notice finding the load subject to a surcharge, may be retroactively billed to the effective date of the surcharge. Such retroactive billing shall collect the retroactive surcharge over a like number of billing periods as elapsed from the effective date of the surcharge to the receipt of final written notice of a surcharge.

C. The level of surcharge is applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules and/or exchanges pursuant to the residential Purchase and Sales Agreement/ Exchange Transmission Credit Agreement, using the Council's surcharge methodology, and is applied subsequent to any other rate adjustment.

1. For firm requirements customers purchasing firm power under the rate schedules subject to the surcharge, the surcharge shall be applied monthly to the billing charges for all power purchased under these rate schedules during the billing period.

2. For customers participating in the residential exchange program, the surcharge shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sale Agreement.

3. For those firm requirements customers that both purchase power from Bonneville and participate in the Residential Purchase and Sales Agreement or Exchange Transmission Credit Agreement, the surcharge shall be applied in the following manner to avoid surcharging the same load twice:

a. All power purchases under a utility's Power Sales Contract at rates subject to the surcharge shall include a surcharge, as calculated in the previous section, added to the billing charges for billing period; and,

b. The surcharge applied to the utility's totals exchange load shall be adjusted by multiplying the surcharge level by the percentage of a utility's exchange load served by a utility's own resources. The percentage of exchange load served by a utility's own resources shall be based on the difference between the utility's total retail load and firm power purchases from Bonneville divided by the total retail load and rounded to the nearest one-tenth of a percent. The adjustment surcharge level shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sales Agreement or in conformance with Exhibit E of the Exchange Transmission Credit Agreement.

D. If a customer participating in the Residential Exchange is currently in a deemer status, the surcharge shall be accumulated in the account established for this purpose as specified in the respective agreement and shall be included in the obligation a utility must repay prior to receiving a direct payment from Bonneville. If a customer is not in a deemer status, the surcharge shall be included in the determination of the net payment made by Bonneville.

E. The collection of the surcharge shall continue until the Administrator determines that the surcharge is no longer required under the terms of this policy.

F. Surcharges collected on purchases for periods in which loads are subsequently found to be in compliance with this policy shall be credited to the customer in the first full billing period following final written notice of such finding. Surcharges on loads which are subsequently found not to have been in compliance with the terms of this policy for specified periods shall be billed to the customer in the first full billing period following final written notice of such findings.

Appendix 1: Achieving Electrical Savings By Adopting the Bonneville/ Utility MCS Support Program

A. Residential Sector

Bonneville customers opting for this path are assured that enrollment in and subsequent implementation of the Super GOOD CENTS Program throughout their service areas will result in avoidance of a residential surcharge under the current surcharge policy. A customer which is considered a Super GOOD CENTS Program participant, but is only operating that program in a portion of its service area subject to the Policy, will have to take actions to assure that those portions of its service territory not covered by Super GOOD CENTS are covered by some combination of the other conservation strategies presented in these appendices. Those customers which implement the MCS measures contained in the Super GOOD CENTS Program, but do not implement the required incentives and/or implement a different advertising strategy will be treated as filing an Alternative Utility Plan. Those utilities should refer to Appendix 2 for a discussion of that option.

For customers which on average over the last 3 years have had no more than (a) five site-built housing starts, and (b) 2,000 residential accounts will be considered small utilities for purposes of this policy. These utilities will have the option of enrolling in Bonneville's Super GOOD CENTS Program for small utilities, referred to as the Small Utility Program. If a utility believes it qualifies for this option, the utility is encouraged to contact the nearest Bonneville Area or District Office to obtain more information on this program option.

[If a customer is currently relying on Super GOOD CENTS participation to comply with the Policy for the current calendar year, the utility's submittal for the following year can consist of a letter indicating that the utility plans to continue participation in Super GOOD

CENTS for calendar year 1989. Any customer who is either considered a Super GOOD CENTS Program participant for the purposes of this policy, or is proposing to become a program participant, shall provide Bonneville with the following information: (1) total residental load, (2) the portion of the customer's residential load covered by this conservation strategy, and (3) total retail load.]

Otherwise, those customers wishing to enroll in Super GOOD CENTS as a way of avoiding a surcharge must indicate this to Bonneville by [the plan submittal date specified in Appendix 8.] In addition, the utility shall have signed a GOOD CENTS grant agreement by [the implementation date specified in Appendix 8]. Bonneville will consider Super GOOD CENTS Program implementation to have occurred when the utility is engaging in activities, particularly marketing and promotion activities, which can be considered consistent with the utility's agreement. [Text Deleted]

Bonneville will consider offering a grace period if Bonneville has not completed the customer's Super GOOD CENTS grant award by [the implementation date specified in Appendix 8].

Any such grace period will be provided in the event that Bonneville has received a plan by [the submittal date specified in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

B. Commercial Sector

Bonneville customers opting for this path are assured that enrollment in, and subsequent implementation of, Bonneville's Smart Design Program throughout the utility's service area will result in avoiding a commercial surcharge under the current Surcharge Policy. All customers wishing to avoid a surcharge under this path must agree to comply with the IAQ and data reporting requirements and other technical specifications of that program.

[If a customer is currently relying on Smart Design participation to comply with the Policy for the current calendar year, the utility's submittal for following calendar year can consist of a letter indicating that the utility plans to continue participation in Smart Design for the following calendar year.] Any customer who is either considered a program participant, or is proposing to become a program participant, shall provide Bonneville with the following information: (1) Total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total [retail] load.

Those new customers going to participate in Smart Design to comply with the policy must agree by [the plan submission date shown in Appendix 8], to enroll in the commercial program and must have enrolled in the program no later than [the plan implementation date shown in Appendix 8]. Bonneville will consider offering a grace period if Bonneville has not completed the customer's grant award by [the plan implementation date]. Any such grace period will be provided in the event that Bonneville had received a plan by [the plan implementation date shown in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

Customers who are either new or countinuing Smart Design program participants shall provide Bonneville with the following information: (1) Total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total [retail] load.

Appendix 2: Achieving Electrical Savings by Adopting an Alternative Utility Program

[If a utility is currently relying on an approved alternative plan to comply with the Policy for the current calendar year, for either or both the residential and commercial sectors, the utility can submit a letter indicating its intentions to continue to rely on that approach for the following calendar year. The date requested in Section A(4) and B(5) shall be submitted at that time.]

A. Residential

An Alternative Utility Residential Program is the customer's proposed approach to meeting the standards of Bonneville's Super GOOD CENTS Program. In order for Bonneville to verify that the proposed program will provide equivalent savings, the information listed below must be submitted.

1. The conservation measures that will be promoted.

2. Analysis of the thermal performance of the conservation measures using Bonneville's input assumptions and Bonneville prototypes. These results will be compared to the Super GOOD CENTS illustrative path for that climate zone, using a WATTSUN analysis. If alternative assumptions or prototypes are used, the analysis should include documentation supporting their use. Acceptance of these alternative assumptions or prototypes, is at the discretion of Bonneville. [Text Deleted]

3. A list of activities to be undertaken to achieve the targeted penetration, such as: Promotion and sales, advertising, incentives (type and level), technical assistance, certification, and any other applicable information. In addition, customers will be required to submit quarterly reports listing the activities undertaken and resources utilized in the marketing effort.

4. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

b. Total number of new electrically-heated homes constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

c. Total number of new electrically-heated homes constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

5. Information on how the utility and/or jurisdiction plans to achieve indoor air quality (IAQ) and ventilation rates at least comparable to those achieved in Super GOOD CENTS homes.

6. The customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

The Alternative Utility Program path is not generally recommended for utilities without experience in operating such programs. An established track record with a well-defined package of measures will be extremely helpful, if not essential, in obtaining Bonneville approval for Alternative Utility Programs. Nonetheless, Bonneville staff will work with customers interested in pursuing this path to help explain the data submission requirements and other complexities involved in this approach.

Because of these complexities, utilities intending to use this path for policy compliance should submit their proposals to Bonneville at the earliest possible date after the final adoption of the surcharge policy. An approved program shall be implemented by [the plan implementation date contained in Appendix 8], unless a grace period, as

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provided for in Section 3 of the policy, had been granted.

B. Commercial

An alternative Utility Commercial Program is the customer's proposed approach to meeting the standards of the Bonneville/Utility Commercial MCS Program. A proposed alternative program will be evaluated relative to the: (1) Level and type of activities and services to be offered, (2) method of marketing and performing the services, (3) penetration levels expected for the proposed program activities, and (4) proposed inspection method. The types of design assistance offered in Bonneville's program will be used to evaluate the type of design assistance a utility is proposing to offer in its own commercial MCS design assistance program. The types of design assistance which Bonneville's Commercial MCS Program contains are:

—Promotion of services to commercial customers;
—Screening to determine design assistance needs;
—Depending on the size of the utility and the type of commercial construction, provision of building design handbooks, computer energy modeling, clearinghouse referral, or other building design analysis; and
—Designer recognition for specified levels of energy efficiency.

To perform the necessary review, Bonneville will require the following information:

1. A list of activities and services the customer intends to offer (i.e., modeling, design assistance, design handbook, information services, and training opportunities) to achieve the targeted penetration;

2. Management and oversight consistent with Bonneville practices;

3. A proposed method to submit to Bonneville quarterly reports listing the activities undertaken and resources used in the marketing effort.

4. The customer's total commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total [retail] load.

5. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year:

a. Total number of new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year, listed by Bonneville prototype.

b. Total number of new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year, listed by Bonneville prototype.

c. Total number of new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, listed by Bonneville prototype.

By the third year of the program, Bonneville is projecting that design assistance services will be offered to 5 percent of the new commercial building constructed in the service areas of utilities participating in Bonneville's Commercial MCS Program. Those customers intending to use this path for surcharge policy compliance shall submit their proposed plan by [the plan submission data shown in Appendix 8], and shall have implemented the approved program no later than [the plan implementation date shown in Appendix 8], unless a grace period, provided for in Section 3 of the policy has been granted.

Appendix 3: Achieving Electrical Savings by Participating in the Early Adopter Program Northwest Energy Code Program

This is a pre-approved path for avoidance of the surcharge if all the jurisdictions within the customer's service area, subject to the surcharge policy, are Early Adopter/Northwest Energy Code Program (EAP/NECP) participants. Except for the one exception noted below, if there are jurisdictions within a customer's service area which are not EAP/NECP participants, then the customer will be subject to a surcharge unless those jurisdictions have implemented a Bonneville-approved building code or the utility has implemented a Bonneville-approvd utility program or a Bonneville-approved service standard.

Customers serving areas containing jurisdictions that have adopted advanced building codes may seek to allocate savings achieved by those jurisdictional codes to portions of their service areas not covered by another approved option. This will be permitted only if the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within that utility's service area. In other words, the utility must achieve at least the same level of total electrical savings as would be achieved had the Council's full commercial and residential MCS been implemented throughout the utility's service areas.

The essential feature of the EAP/NECP is the adoption by a jurisdiction of the MCS contained in the Early Adopter Program description. Additional program features include specific activities to ensure that no degradation in IAQ results, some form of enforcement method to assure MCS construction, and some data reporting requirements.

[A customer currently relying on jurisdictional participation in the Early Adopter/Northwest Energy Code Program as at least part of its Policy compliance approach for the current calendar year, must submit a letter (the plan submission date shown in Appendix 8), indicating that it wishes to continue to rely on that program participation to comply with the Policy for the timeframe for the submission.]

A. Residential

1. Customers with jurisdictions within their service area who are currently participating in the EAP/NECP, the customer must submit a letter indicating (a) the jurisdictions who are EAP/NECP participants, (b) the award number for each jurisdiction, and (c) a copy of the ordinance adopted by each jurisdiction. In addition, customers must indicate what fraction of its residential load lies within Early Adopting jurisdictions. This information shall be submitted to Bonneville no later than [November 15, of the current calendar year].

2. Any jurisdiction considering adoption shall adopt and enforce the code by [the plan implementation date specified in Appendix 8], for the utility to avoid a surcharge, if the utility will not be operating an approved utility MCS program or residential service standard at that time.

3. Bonneville will consider offering a grace period if Bonneville has not completed the EAP/NECP grant award process by [plan implementation date specified in Appendix 8]. Any such grace period will be considered in the event that Bonneville has received a plan by [plan submission date shown in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

4. The customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

5. Finally, the utility shall collect and provide to Bonneville the following data by January 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

b. Total number of new electrically-heated homes constructed in the utility's

service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

c. Total number of new electrically-heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. Commercial

1. To avoid a surcharge, customers with jurisdictions within their service area considering enrolling in this program shall notify Bonneville by [the plan submission date specified in Appendix 8], of the jurisdiction's intent to enroll in the program and the jurisdiction shall have officially adopted and be able to enforce the MCS by [the plan implementation date specified in Appendix 8], if the utility is not operating an approved Commercial MCS Program or commercial service standard.

2. Customers with jurisdictions within their service area who are currently participating in the Early Adopter Program, the customer shall provide a copy of Bonneville's letter of approval. In addition, customers shall provide the following information: (a) The customer's total commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total [retail] load.

3. Finally, the utility shall collect and provide to Bonneville by January 30 of the following year by January of the following year:

a. Total number of new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year.

b. Total number of new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year.

c. Total number of new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

Those customers wishing to avoid a surcharge under this path shall agree by [the plan submission date specified in Appendix 8], to enroll in the commercial program and shall have enrolled in the program no later than [the plan implementation date specified in Appendix 8]. Bonneville will consider offering a grace period if Bonneville has not completed its Early Adopter Program grant award process by [implementation date specified in Appendix 8]. Any such grace period will be considered in the event that Bonneville has received a plan by [the plan submission date specified in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

EAP/NWEC application materials can be obtained by contacting your nearest Bonneville Area or District Office.

Appendix 4: Achieving Electrical Savings by Adopting A Codified Version of the MCS

[If a customer is currently relying on jurisdictional participation in the Early Adopter Program as at least part of its Policy compliance approach for of the current calendar year must submit a letter by the plan submission date specified in Appendix 8, indicating that it intends to continue to rely on program participation to comply with the Policy for the following calendar year. At that time, the information requested in Sections A(5) and B(3) shall be submitted.]

A. Residential

1. Several codified versions of the MCS contained in the Early Adopter/Northwest Energy Code Program (EAP/NECP) have been developed. These pre-approved codified versions of the Council's illustrative MCS paths. The options discussed in this appendix pertain to jurisdictions considering adopting, or who have adopted a codified version of the MCS. [Text Deleted]

2. Under this alternative, the customer must submit the codified version of the MCS which any jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods should be specified. [Text Deleted]

3. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

4. By [the plan submission date specified in Appendix 8], the customer shall submit the above information to Bonneville. The statute or ordinance shall have been adopted and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted.

5. In order to comply with the Council MCS reporting requirements as specified in their Plan Amendment, the utility shall collect and provide to Bonneville the following data by January of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

b. Total number of new electrically-heated homes constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

c. Total number of new electrically-heated buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

Customers who are operating a utility program and/or utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. Commercial

Under this alternative, the customer must submit the codified version of the MCS which a jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods must be specified. In addition, the customer must indicate what steps the jurisdiction will take to address IAQ and ventilation requirements of Bonneville's EAP/NECP. Finally, the customer shall provide the following information: (1) The customer's total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total [retail] load.

By [the plan submission date specified in Appendix 8], the customer must submit the above information to Bonneville. The statute or ordinance must be operative no later than [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted.

Finally, the utility shall collect and provide the following data to Bonneville by January 30 of the following year:

1. Total number of new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year.

2. Total number of new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year.

3. Total number of new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

Appendix 5: Achieving Electrical Savings by Adopting Alternative or Equivalent Building Codes

An alternative code is designed to achieve total electrical savings which, when both sector's savings are combined, are at least as large as the electrical savings expected had the Council's residential and commercial MCS been implemented. A jurisdiction proposing to adopt an alternative code, in which one sectors' total electrical savings is expected to exceed the target electrical savings level for that sector, can use those excess electrical savings to offset electrical savings below the target in the other sector. The alternative code path may be pursued by a jurisdiction only when the sum of each sectors' savings at least equals the aggregate electrical savings target, which itself is based on the sum of the level of savings for the two sectors calculated using the Council's MCS. Section 3 of this policy discusses how the utility should approach the electrical savings equivalency analysis.

As compared to alternative codes, equivalent codes examine each sector individually. They differ from the pre-approved codified versions mentioned earlier, but provide equivalent savings. An equivalent code must achieve at least the same level of total savings, in each sector separately, as would have been achieved by implementing Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's commercial MCS.

A customer must submit a copy of the alternative or equivalent code which a jurisdiction has proposed. In addition, the customer must indicate how the jurisdiction plans on maintaining IAQ and ventilation at 1983 levels. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) total commercial load, (c) the portion of the customer's residential load covered by this conservation strategy, (d) the portion of the customer's commercial load covered by this conservation strategy, and (e) total [retail] load. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes.

If an alternative code path is pursued, customers are encouraged to submit their alternative codes at the earliest possible date, but no later than [the plan submission date specified in Appendix 8]. Both codes would have to be implemented and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted.

Customers currently relying on jurisdictional participation in the Early Adopter/Northwest Energy Code Program as at least part of its Policy compliance approach for the current calendar year must submit a letter indicating that it intends to continue to rely on that program participation to comply with the Policy for the following calendar year. At that time, the utility shall submit all available information for the preceding calendar year, on (a) the total number of new residential dwelling constructed, and (b) the number of such dwellings which use electric heat.

For either the equivalent or alternative code approaches, the customer must submit its residential and commercial plans by [the plan submission date specified in Appendix 8]. The codes must be implemented and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the Policy, have been granted. Finally, the utility shall collect and provide to Bonneville, by January 30 of the following year:

A. Total new homes and commercial buildings (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

B. Total new electrically-heated homes and commercial buildings constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site built], and multi-family).

C. Total new electrically-heated homes and commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family; for commercial, broken out by Bonneville prototype by square footage).

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

For a more complete discussion of the data required to evaluate an alternative or equivalent code, refer to the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your nearest Bonneville Area or District Office.

Appendix 6: Achieving Electrical Savings by Adopting a Codified Version of the MCS as a Utility Service Standard [1]

[If a utility is currently relying on a utility service standard as at least part of its Policy compliance approach for the current calendar year, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the following calendar year.]

A. Residential

This path essentially involves adoption of a legally enforceable electric utility hook-up standard for new electrically-heated residential buildings. The customer would simply decline to serve new electrically-heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted. The adoption of a utility service standard may qualify the utility for participation in Bonneville's Early Adopter/Northwest Energy Code Program.

Customers wishing to avoid a surcharge with this approach shall submit a residential plan by [the plan submission date specified in Appendix 8], and the residential service standard shall be adopted and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted. A plan must contain: (1) A copy of the standard to be imposed, (2) how the customer plans on monitoring compliance with the standard, and (3) what IAQ measures and activities will be pursued to at least

[1] Many customers have questioned whether they have legal authority, under State laws, to impose such a service requirement. Bonneville has examined this question under the State laws of Oregon, Washington, Idaho, and Montana and has reached the tentative conclusion that no clear legal impediments exist in these States to conservation-oriented utility service requirements. While Bonneville does not offer legal advice to customers, particularly on questions of State law, Bonneville legal staff are available to discuss these preliminary conclusions with customers and their legal counsel. Any utility considering such a path should obtain independent legal advice on this question.

achieve IAQ and ventilation levels of Super GOOD CENTS construction. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

No surcharge will be imposed on any customer relying on such a service requirement which is subsequently enjoined or invalidated by court action. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new homes (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

2. Total new electrically-heated homes constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

3. Total new electrically-heated homes constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

B. Commercial

This path essentially involves adopting a legally enforceable electric utility hook-up standard for new electrically-heated commercial buildings at least equal to the Council's commercial MCS. The customer would simply decline to serve new electrically-heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted.

Customers wishing to avoid a surcharge with this approach shall submit a Commercial plan by [the plan submission date specified in Appendix 8], and the commercial service standard shall be adopted and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted. A plan must contain: (1) A copy of the standard to be imposed, and (2) indicate how the customer plans on monitoring compliance with the standard. Finally, the customer shall provide the following information: (1) The customer's total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total [retail] load. No surcharge will be imposed on any customer relying on such a service requirement which is subsequently enjoined or invalidated by court action. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new commercial buildings (all fuels) constructed in the utility's service area during the past calandar year;

2. Total new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year (broken out by Bonneville prototype).

3. Total new electrically-heated commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by Bonneville prototype).

Appendix 7: Achieving Electrical Savings by Adopting an Alternative or Equivalent Utility Service Standard

This path is actually two alternative paths. If an equivalent utility service standard approach is pursued, a customer may choose to adopt a utility service standard which is not one of the codified versions, but which is expected to achieve at least the same level of total electrical savings in each sector separately as would have been achieved by adopting Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's MCS for the commercial sector. Alternatively, the customer may choose to adopt utility service standards for the residential and commercial sectors which when taken together, achieves at least the same level of total electrical savings as would have been achieved had the customer adopted the Council's commercial and residential MCS. This latter option is referred to as an alternative utility service standard.

[If a utility is currently relying on a utility service standard as at least part of its Policy compliance approach for of the current calendar year, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the following calendar year.]

If an alternative or equivalent utility service standard approach is pursued, a customer shall submit to Bonneville (1) a copy of the proposed service standard(s), (2) a description of the enforcement method(s), (3) a description of the methods used to at least maintain IAQ and ventilation at 1983 levels, and (4) a copy of the analysis used to verify that the proposed service standard(s) will achieve the required total electrical savings. The customer shall also provide Bonneville with the following information: (1) Total residential load, (2) total commercial load, (3) the portion of the customer's residential load covered by this conservation strategy, (4) the portion of the customer's commercial load covered by this conservation strategy, and (5) total [retail] load. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes. This material shall be submitted by [the plan submission date specified in Appendix 8], and both service standards shall be adopted and enforced by [the plan implementation date specified in Appendix 8]. [Text Deleted]

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

A. Total new homes and commercial buildings (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

B. Total new electrically-heated homes and commercial buildings constructed in the utility's service areas during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

C. Total new electrically-heated homes and commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family [modular, HUD-code homes, site-built]; for commercial, broken out by Bonneville prototype). For a detailed description of the data required to evaluate an alternative or equivalent code, and the evaluation criteria, the customer and/or jurisdiction is advised to consult the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your local Bonneville Area or District Office.

Appendix 8: Submittal and Compliance Schedule for MCS Surcharge

Customers are to submit plans for both the residential and commercial sectors by the plan submission date of November 15, 1988. Those plans should conform with the requirements of the particular approach the customer is using for each sector, as indicated in the appropriate appendix to this policy. The plan implementation date is January 1, 1989.

James J. Jura,

Administrator, Bonneville Power Administration.

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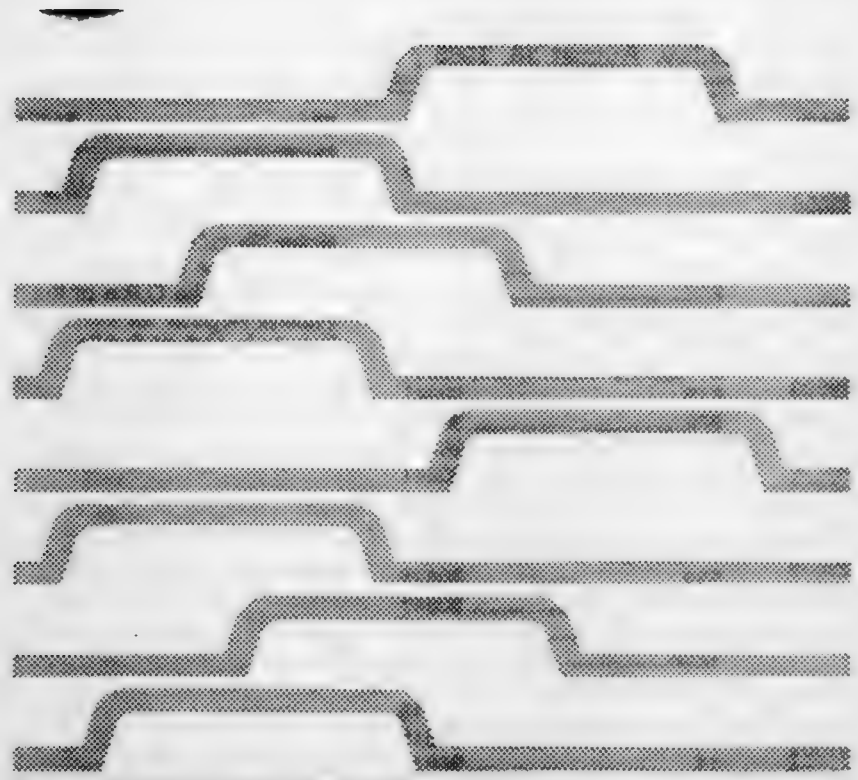

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Federal Register
Vol. 53, No. 161
Friday, August 19, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1605, 1630, 1631, and 1650

Thrift Savings Plan Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final Rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) is amending its regulations to correct its address. The Board relocated from 1717 H Street, NW., Washington, DC. to 805 Fifteenth Street, NW., Washington, DC 20005, effective January 25, 1988. This address also replaces the previous mailing address of Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

DATE: This amendment is effective August 19, 1988.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523–6367.

SUPPLEMENTARY INFORMATION:

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days.

List of Subjects

5 CFR Part 1605

Administrative practice and procedures, Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1630

Administrative practice and procedures, Privacy, Records.

5 CFR Part 1631

Administrative practice and procedures, Freedom of Information, and Records.

5 CFR Part 1650

Employee benefit plans, Government employees, Retirement, and Pensions.

Chapter VI of Title 5 of the Code of Federal Regulations is hereby amended as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for Part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351 and 8474.

2. Section 1605.8 is amended by revising paragraph (b)(2) to read as follows:

§ 1605.8 Claim procedure; agency or Board initiative; time limitation.

* * * * *

(b) * * *

(2) Within 30 days after the receipt of the Recordkeeper's decision denying a claim, an employee may appeal the decision. The appeal shall be in writing and addessed to the Executive Director, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005, and may contain any documents or comments the employee deems relevant to the claim.

* * * * *

PART 1630—PRIVACY ACT REGULATIONS

1. The authority citation for Part 1630 continues to read as follows:

Authority: 5 U.S.C. 552(a).

2. Sections 1630.4, 1630.12, 1630.14 are amended by revising paragraph (a);

3. Section 1630.17 is amended by revising paragraph (c) to read as follows:

§ 1630.4 Determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Board contains a record pertaining to them should address inquiries to the Privacy Act Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. With respect to Thrift Savings Plan records, the employee's first inquiry should be made to his or her servicing payroll office.

* * * * *

§ 1630.12 Requirements for requests to amend records.

(a) Individuals who desire to correct or amend a record pertaining to them should submit a written request to the Privacy Act Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The words "PRIVACY ACT—REQUEST TO AMEND RECORD" should be written on the letter and the envelope.

* * * * *

§ 1630.14 Procedures for review of determination to deny access to or amendment of records.

(a) Individuals who disagree with the refusal of the Board to grant them access to or to amend a record about them should submit a written request for review to the Privacy Act Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The words "PRIVACY ACT—APPEAL" should be written on the letter and the envelope. Individuals desiring assistance preparing their appeal should contact the Privacy Act Officer.

* * * * *

§ 1630.17 Fees.

* * * * *

(c) Fees shall be paid in full prior to issuance of requested copies. Payment shall be by personal check or money order payable to Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

* * * * *

PART 1631—AVAILABILITY OF RECORDS

1. The authority citation for Part 1631 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 93–502 and Pub. L. 99–570.

2. Section 1631.3 is amended by revising paragraph (b); and §§ 1631.4, 1631.6 and 1631.10 are amended by revising paragraph (a), to read as follows:

§ 1631.3 Organization and functions.

* * * * *

(b) The Board has no field organization, however, it provides for its

record keeping responsibility by contract and the contractor may be located outside of the Washington, DC area. Thrift Savings Plan records maintained for the Board by its contractor are Board records subject to these regulations. Offices are presently located at 805 Fifteenth Street, NW., Washington, DC 20005. The mailing address is the same. Regular office hours are from 9:00 am. to 5:30 am., Monday through Friday.

§ 1631.4 Public reference facilities and current index.

(a) The office maintains a public reading area located at 805 Fifteenth Street, NW., Washington, DC, and makes available for public inspection and copying a copy of all material required by 5 U.S.C. 552(a)(2), including all documents published by the Board in the **Federal Register** and currently in effect.

* * * * *

§ 1631.6 How to request records—form and content.

(a) A request made under the FOIA must be submitted in writing, addressed to: FOIA Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The words "FOIA Request" should be clearly marked on both the letter and the envelope.

* * * * *

§ 1631.10 Appeals to the General Counsel from initial denials

(a) When the FOIA Officer or his or her designee has denied a request for records in whole or in part, the person making the request may, within 30 calendar days of its receipt, appeal the denial to the General Counsel. The appeal must be in writing, addressed to the General Counsel, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005 and clearly labled as "Freedom of Information Act Appeal".

* * * * *

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THRIFT SAVINGS PLANS

Part 1650 of Title 5 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8434(a)(2)(E), 8434(b), 8435, 8436(b), 8467, 8474(b)(5), and 8474(c)(1).

2. Section 1650.26 is amended by revising paragraph (c); and § 1650.27 is amended by revising paragraph (e) to read as follows:

§ 1650.26 Alimony and/or child support court orders.

* * * * *

(c) Service of legal process brought for the enforcement of a participant's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service upon the General Counsel or any Assistant General Counsel of the Board. The address for mail delivery is: Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The address for personal service and hand delivery is: Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The telephone number is (202) 523–5066. The legal process shall be accompanied by the name, address, social security number, and employing agency of the participant involved. Receipt by an employing agency, the TSP Service Office, or any other office of the government shall not constitute receipt by the Plan.

* * * * *

§ 1650.27 Retirement benefits court orders.

* * * * *

(e) A retirement benefits court order must be received by the Federal Retirement Thrift Investment Board with accompanying information required by § 1650.28, in order to be honored. Delivery may be by ordinary, registered, certified, or overnight mail or by hand. The address for mail delivery is: Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The address for hand delivery is: Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. Receipt by an employing agency, the TSP Service Office, or any other office of the government shall not constitute receipt by the Plan. Payments made or annuities purchased by the Plan before receipt of a retirement benefits court order will not be affected by or be subject to said court order.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 88–18786 Filed 8–18–88; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act of 1986

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR Part 1d, which defines fruits, vegetables, and other perishable commodities as prescribed by section 302(a) of the Immigration Reform and Control Act of 1986, Pub. L. No. 99–603, 100 Stat. 3359 (hereinafter referred to as "the Act"). This final rule redefines the term "vegetables" promulgated at 7 CFR 1d.10, and redetermines whether the commodity sugar cane falls within the definition of the term "vegetables" and whether the commodity sugar cane meets the definition of "other perishable commodities" promulgated at 7 CFR 1d.7, in light of the decision and remand of these issues to the Secretary of Agriculture from the United States District Court for the District of Columbia in *Northwest Forest Workers Association, et al. v. Richard E. Lyng, et al.*, Civil Action No. 87–1487 (D.D.C. April 25, 1988). This rule will assist the Immigration and Naturalization Service (INS) in determining the special agricultural workers to be admitted into the United States for temporary residence.

EFFECTIVE DATE: August 19, 1988.

FOR FURTHER INFORMATION CONTACT: Al French, Special Assistant for Agricultural Labor to the Assistant Secretary for Economics, Room 227–E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250; telephone (202) 447–4737.

SUPPLEMENTARY INFORMATION:

Background

Section 302(a) of the Act states that "seasonal agricultural services" means "the performance of field work relating to planting, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." 8 U.S.C. 1160(h). This subsection requires the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing and harvesting will be considered

"seasonal agricultural services" for purposes of the Act.

On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule defining the terms "fruits," "vegetables," and "other perishable commodities," as well as several other terms that were necessary to an understanding of the definition of "fruits," "vegetables," and "other perishable commodities."

In the final rule, USDA defined the term "fruits" as "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." 7 CFR 1d.5. The term "vegetables" was defined as "the human edible leaves, stems, roots, or tubers of herbaceous plants." 7 CFR 1d.10. The term "other perishable commodities" was defined as "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." 7 CFR 1d.7. "Critical and unpredictable labor demands" was defined to mean "that the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need." 7 CFR 1d.3. USDA explained that "critical and unpredictable labor demands" was defined to make it clear that the use of alien workers is predicated upon circumstances which create the critical, yet unpredictable demand for a labor force on short notice. 52 FR 13247 (April 22, 1987). An exclusive list of those commodities that were determined to be subject to critical and unpredictable labor demands was provided within the definition of "other perishable commodities," as well as a list of examples of commodities that were determined to be not subject to critical and unpredictable labor demands. 7 CFR 1d.7. Sugar cane was listed as an example of a commodity that was not a fruit or vegetable and was determined to be not subject to critical and unpredictable labor demands. *Id.*

On July 11, 1988, at 53 FR 26076–81, USDA requested public comment on a proposed rule that redefined the term "vegetables" and reexamined whether the commodity sugar cane meets the definition of "vegetables" or the definition of "other perishable commodities," in light of the remand of those issues to the Secretary of Agriculture from the United States District Court for the District of Columbia in *Northwest Forest Workers Association, et al. v. Richard E. Lyng, et al.*, Civil Action No. 87–1487 (D.D.C. April 25, 1988) (hereinafter "*NWFWA v. Lyng*"). The comment period closed July 26, 1988. USDA received 13 comments on the proposed rule during the comment period. The comments received are discussed below.

Comments

Vegetables

USDA proposed to define "vegetables" for purposes of the Act as "the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert." 53 FR 26081 (July 11, 1988).

One commenter, while supporting the proposed definition of "vegetables" as the correct scientific definition of the term, suggested that USDA should also define the term "fruits" in horticultural terms. This commenter asserted that "fruits" and "vegetables" should be defined according to common usage on the basis of the principle of statutory construction that the common definition of a statutory term is to be presumed. Further, this commenter stated that a " 'common' or horticultural definition of *both* fruits and vegetables" would be closer to congressional intent. In addition, this commenter argued that the rationale given by USDA to retain a botanical definition of the term "fruits," *i.e.*, "in order to be more precise in distinguishing fruits from vegetables," 53 FR 26079 (July 11, 1988), is inadequate in that the crucial issue is to distinguish between activities that are within or without of the scope of "seasonal agricultural services," rather than distinguishing between fruits and vegetables. Another commenter argued the same principle of statutory construction as the previous commenter, *i.e.*, that the common meaning of a statutory term is to be presumed, but in contrast came to an opposite conclusion that instead of a horticultural definition, a botanical definition of the term "vegetables" should be used. This commenter asserted that the "common" meaning of the term "vegetables" is generally, "any plant."

One commenter argued that the original botanical definition of "vegetables" promulgated by USDA should be used, but without the "herbaceous" limitation. While the previous commenter asserted that the definition should be "any plant," this commenter asserted that the accepted botanical definition of "vegetables," is "any edible part of a plant that is not derived as a product of sexual reproduction, *i.e.*, not a fruit." *Id.* USDA notes that the phrase "a product of sexual reproduction" is not an accepted botanical definition of the term "fruits."

One commenter discussed the horticultural definition of "vegetables," asserting that it is vague and imprecise and argued that the horticultural classification of plants will vary according to where they are grown, how cultivated, and the use to which they are put. This commenter stated that it is contrary to the nature of horticultural classifications to establish rigid boundaries.

One commenter argued that horticulture was inappropriate as a source of the definition of "vegetables" because horticulture is not a pure science, and is generally restricted to those crops in which plants are grown as "individuals," *i.e.*, "garden crops," as opposed to field crops. Thus, this commenter argues, USDA implicitly has incorporated into the definition of "vegetables" limitations relating to the intensity of labor used in the production of a crop. Based on this characterization of horticulture, this commenter states that "[b]oth the legislative history and the plain language of the statutory provisions for the Special Agricultural Worker (SAW) program make clear that Congress intended that program to apply to all agricultural crops, not just select garden crops."

Several commenters argued that USDA should not mix a botanical definition of the term "fruits" with a horticultural definition of the term "vegetables." One commenter asserted that USDA failed to explain why Congress would have intended USDA to adopt two completely different conceptual approaches to defining "fruits and vegetables of every kind."

Noting that there is much overlap between the botanical definition of "fruits" and the horticultural definition of "vegetables," one commenter argued that the USDA proposed rule assumes that Congress intended to repeat itself in large measure in the phrase "fruits and vegetables of every kind." This commenter asserts that such a result is contrary to traditional principles of statutory construction. Next, this commenter asserts that the use of botanical terms to describe the plant parts that are within the scope of the term "vegetables" so as to exclude fruits is unsupported because those terms have no meaning and basis in established horticultural definitions. Finally, this commenter states that these limitations, *i.e.*, the use of botanical terms to describe the plant parts, would be unnecessary if USDA adopted a consistent approach, either botanical or horticultural.

Several commenters supported USDA's proposed definition of the term "vegetables." One commenter, a professor of soil science in the agronomy department of a state university, stated that the horticultural definition of the term "vegetables" is appropriate because the term "is of horticultural origin." Another commenter, an associate professor and certified professional agronomist and soil scientist at a state university institute of food and agricultural sciences, stated that "the botanical definition of 'fruits' and the horticultural definition of 'vegetables' recommended for use in the rule are those which correctly describe the agricultural products in question." A third commenter, the director of research and soil scientist-agronomist for the largest sugar cane producer in the United States, stated that "[t]here is no botanical definition of the term 'vegetable' and, therefore, it is reasonable to use a horticultural definition."

As the court in *NWFWA v. Lyng* noted, the Act gives the Secretary broad discretion in defining "fruits" and "vegetables." *NWFWA v. Lyng*, C.A. No. 87–1487, slip op. at 18 (D.D.C. April 25, 1988). The court found that it was reasonable to define fruits and vegetables "in scientific terms," noting that "Congress never indicated that an everyday definition of fruits and vegetables was to be used over a scientific definition," and that the plaintiffs failed "to demonstrate that a 'common' definition exists." *NWFWA v. Lyng*, C.A. No. 87–1487, slip op. at 18–19 (D.D.C. April 25, 1988). As the comments discussed above demonstrate, there is no "common" definition of the term "vegetables." The scientific definition of "vegetables" incorporated in this regulation is not a "common usage" definition; rather, it is a scientific definition.

In determining the definitions of both "fruits" and "vegetables," USDA took the same conceptual approach. Both definitions are based on the scientific literature. Thus, the distinction made by some commenters that USDA has applied two completely different conceptual approaches or that the definitions are incompatible is meritless.

Because the term "fruit" is recognized in virtually all of the scientific sources reviewed by USDA as generally the mature, sexual reproductive organ of a seed plant, 53 FR 26078 (July 11, 1988), it is appropriate to continue to define "fruits" as "the human edible parts of plants which consist of the mature ovaries and fused other parts of structures, which develop from flowers or inflorescence." 7 CFR ld.5. A review of the horticultural sources reveals that this botanical definition is recognized also in the field of horticulture as the appropriate and accepted definition of "fruits." However, a review of the scientific literature reveals that the term "vegetables" is a horticultural term. Therefore, it is appropriate to define "vegetables" on the basis of a consensus horticultural definition, with reasonable limiting factors based on the scientific literature, congressional intent, and common sense.

In response to the comment that asserted that horticulture is limited to "garden crops" and, thus, inappropriate for the source of the definition of "vegetables," USDA agrees that Congress did not intend the SAW program to be limited to "garden crops." It is clear from the legislative history and the plain language of the statute that Congress did *not* intend the SAW program to apply to *all* agricultural crops. However, the science of horticulture is not limited to "garden crops," and is in fact a science. Whatever the proper characterization of horticulture, it is clear from the scientific sources that the term "vegetables" is a horticultural term and, therefore, it is appropriate to look to horticulture for the proper and accepted scientific definition of that term.

In response to the comment that asserted that horticulture is inappropriate because the classification of a crop as a "vegetable" will vary according to where it is grown, how it is cultivated, and how it is used, USDA believes that a horticultural definition is appropriate because "vegetables" is a horticultural term. The definition of "vegetables" adopted by USDA correctly describes what is a "vegetable" as that term is recognized generally in the scientific literature. The Act relates to "seasonal agricultural services" performed by aliens in the United States during the 12-month period ending May 1, 1986. 8 U.S.C. 1160(a). The fact that a plant may be classified as a "vegetable" some time in the future is academic and irrelevant. The classification of a crop as a "vegetable" will not vary according to where it is grown; it will depend on whether it is "the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert. The classification of a plant as a "vegetable" will not vary according to how the crop is cultivated. However, for a SAW applicant to qualify under the Act, that applicant must have performed "field work" as defined in the regulations. The classification of a crop as a "vegetable" will depend on how that crop is used; it must be "eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert." Because the classification of crops must be made on a commodity-by-commodity basis, the classification of a crop based on its use will not vary generally. If a crop produces "human edible herbaceous leaves, stems, roots, or tubers . . . which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert," then that crop meets the definition of "vegetables" and the fact that the plant may be put to other uses will not disqualify the crop. On the national scope, any significant change in use or the introduction of a new plant crop, to the extent that it results in the reclassification of a crop or the addition of a new vegetable, likely will have no bearing on the SAW program because the relevant timeframe for SAW applicants is the 12-month period ending May 1, 1986, and such a change in use or introduction of a new crop on a national scope is unlikely to occur during the relevant period for replenishment special agricultural workers (beginning with fiscal year 1990 and ending with fiscal year 1993). 8 U.S.C. 1161.

In response to the comment that argued that the use of a botanical definition of "fruits" and a horticultural defintion of "vegetables" results in considerable overlap and, thus, assumes that Congress meant to repeat itself in large measure with the phrase "fruits and vegetables of every kind", USDA believes that this argument is meritless. The only generally accepted description of "vegetables" contained in the botanical sources is generally "any plant," *i.e.*, used as an adjective to describe the vegetable kingdom. The adoption of such a description as the definition of "vegetables" would result in a complete overlap between "fruits" and "vegetables." This overlap could be remedied simply by stating that any plant part which is not a fruit is a vegetable. However, this would be overly broad and inconsistent with the task given by Congress to the Secretary to define these terms. The "human edible" limitation would have to be applied, as well as other reasonable limiting factors. In any event, under any approach, there would be considerable overlap between the definitions of "fruits" and "vegetables," and various limiting factors would have to be applied. Thus, it was reasonable for USDA to look to the horticultural

definition of "vegetables" as the basis for the definition of "vegetables" because the term is a horticultural term. The description of "vegetables" as "any plant" was rejected by USDA as overbroad because it refers to the vegetable kingdom, as opposed to animal or mineral. Clearly, Congress did not intend to include all plants with the phrase "fruits and vegetables of every kind and other perishable commodities." Congress could have said simply, "all plants."

One commendter argued that the statutory phrase "fruits and vegetables of every kind," evinces a congressional intent that the definition of "vegetables" should be construed liberally, and, thus, does not allow for any of the limitations incorporated in the USDA proposed definition.

Two commenters argued that the definitions of "fruits" and "vegetables" should not be modified by the "human edible" limitation. One of these commenters cited the case of *National Cotton Council of America, et al. v. Richard E. Lyng, et al.*, Civil Action No. CA–5–87–0200 (N.D. Tex. February 8, 1988) (hereinafter *"National Cotton Council of America v. Lyng"*). This commenter argued that, either the "human edible" limitation should be eliminated or clarified to indicate that a crop is "human edible" if it is capable of being eaten by humans either before or after processing, even if its primary or sole use is for livestock feed or other agricultural uses, and not for human consumption. The decision in *National Cotton Council of America v. Lyng* is limted to the specific issue in that case, *i.e.*, whether cotton meets the definition of "fruits." Thus, USDA believes that the decision in *National Cotton Council of America v. Lyng* has no precedential value as to other commodities.

Another commenter, on the other hand, stated that USDA "is indubitably correct in its finding that 'human edible' is a necessary limitation to any of the definitions of fruit or vegetable under discussion."

The court in *NWFWA v. Lyng* found that the limiting factor of "human edible" was "explained adequately and extensively" in the notice of proposed rulemaking. *NWFWA v. Lyng*, C.A. No. 87–1487, slip op. at 16 & n.8. Thus, USDA has determined that the limiting factor of "human edible" is reasonable and necessary to the proper definition of "vegetables."

One commenter, while asserting that USDA should define "vegetables" as any edible part of a plant that is not a fruit, *i.e.*, without modfying "vegetables" by the "herbaceous" limiting factor, argued that the proper definition of a non-herbaceous or woody stem is secondary growth through a vascular cambium, and that all other plants are herbaceous. This commenter asserted that there are exceptions to this rule, but that no scientists have included sugarcane within the woody category. On the other hand, two scientists commented that the "herbaceous" limitation was reasonable because woody plant parts are indigestible by humans. Also, as one of these scientists noted, the "herbaceous" limitation is a reasonable limitation because many of the published scientific definitions of the term "vegetables" include the "herbaceous" limitation.

An examination of the scientific literature reveals that, while some scientific sources define "herbaceous" as a seed plant which develops little or no secondary woody tissue, the term "herbaceous" is defined in most scientific sources as generally a seed plant that does not develop woody tissues. Thus, USDA has determined that "herbaceous" for purposes of the definition of "vegetables" should be defined as non-woody because woody plant parts are indigestible by humans. In addition, USDA has determined that the term "herbaceous" should be applied to the specific plant part that constitutes the commodity in order to include as "vegetables" non-woody parts of woody plants that are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert.

One commenter stated that the purpose of the "principal part of a meal" clause is to include as vegetables non-sweet fruits, *e.g.*, corn, tomatoes, and cucumbers, which are eaten chiefly as the principal part of a meal. On the basis of this assertion, this commenter concludes that the "principal part of a meal" clause is superfluous because USDA has excluded fruits from the definition of "vegetables" by describing the included plant parts in botanical terms so as to exclude fruits. In addition, this commenter noted that many of the scientific sources refer to a "vegetable" as a plant part which is eaten "with" or "during" the principal part of a meal, referring to time only, while the proposed rule states that a vegetable is a plant part which is eaten "chiefly *as* the principal part of a meal, rather than as a dessert," which requires more than merely a concurrence in time. Because this commenter believes that the "principal part of a meal" clause is superfluous, this commenter concludes that there is no basis for the phrase "chiefly as the principal part of a meal, rather than as a dessert."

USDA has determined that the "principal part of a meal" clause not only delineates the time at which vegetables are eaten, it also establishes that a vegetable is a plant part that is a principal component in a main dish or side dish. It is clear from the context of the discussions of the horticultural definition of the term "vegetables" in the scientific sources that "vegetables" does not include spices, herbs, flavorings, sweeteners, condiments, medicines, or plant parts which may be eaten by only a few persons as a novelty. This approach is also dictated by common sense. Otherwise, anything that is derived from herbaceous plants that finds its way into the principal course of a meal or is consumed concurrently with the principal course of a meal would be considered a vegetable. Such a broad interpretation of the definition would be overinclusive and would lead to a number of anomalies that clearly would exceed congressional intent. Coffee, condiments, flavorings, honey, hops, molasses, oils, spices, sugar, syrup, teas, and medicines are all commodities that may be consumed during the main course of a meal, but are not considered to be vegetables. However, such is the result if common sense is not applied to the application of the definition of the term "vegetables." Furthermore, the "rather than as a dessert" element in that clause refers not only to time, but serves also to describe "vegetables" as non-sweet. It is arguable that the "rather than as a dessert" element may serve only to include as "vegetables" non-sweet fruits. However, this clause is contained in many of the published horticultural definitions and no purpose would be served by its elimination. Retaining the "rather than as a dessert" clause may serve also to distinguish plants that are used primarily as spices, herbs, flavorings, sweeteners, condiments, and medicines. Therefore, the "chiefly as the principal part of a meal, rather than as a dessert" clause is not superfluous.

Two commenters suggested that the USDA definition of "vegetables" is too narrow and restrictive in that it results in the exclusion of certain parts of certain plants that are commonly considered to be vegetables. These commenters suggested that rhubarb, cassava, onions, and parsley would fall outside of the scope of the definition of "vegetables" due to the requirement that the plant part be eaten, cooked or raw, chiefly as the principal part of a meal, rather than as a dessert. Rhubarb is frequently eaten as a stewed or steamed vegetable side dish chiefly as the principal part of a meal, rather than as a

dessert. The cassava is a starchy tuber which is used in the same ways that a potato is used, *e.g.*, boiled and used in soups or stews; sliced and fried like potato chips; or mashed and substituted for potato in recipes for baked goods. In addition, some varieties of sweet cassava may be eaten raw. Although rhubarb and cassava, like sweet potato and pineapple, may be used also for dessert does not negate the fact that these commodities meet the definition of "vegetables." Onions, served cooked or raw, clearly are eaten as the principal part of a meal, rather than as a dessert. The fact that onions also may be used as a spice or flavoring does not negate the fact that onions meet the definition of "vegetables." USDA agrees that parsley does not meet the definition of "vegetables." Parsley is a culinary herb which is not eaten chiefly as the principal part of a meal, rather than as a dessert. Although parsley may be used as a spice or a garnish with a dish eaten as the principal part of a meal, parsley is not itself eaten as the principal part of a meal. A spice, flavoring, or garnish is not a principal component of a main dish or side dish, and, thus, does not meet the definition of "vegetables."

Sugar Cane

Several commenters stated that sugar cane did not meet the definition of "vegetables," while several other commenters suggested that sugar cane did meet the definition.

Most of the comments focused on the stalk of the sugar cane in discussing whether or not it met the definition of "vegetables." Some commenters discussed the processed sugar derived from sugar cane as the commodity in question. One commenter stated:

> [T]he "vegetable" primarily under discussion is granulated cane sugar rather than whole pieces of the cane which are distributed in modest quantities through specialty food markets. This concept simplifies the discussion. To the extent that sugar cane may be woody and non-herbaceous, the granulated cane sugar is the extracted herbacious [sic] part of the cane.

Under the plain language of the Act, the SAW program is limited to "seasonal agricultural services," meaning "the performance of field work relating to planting, growing and harvesting of fruits and vegetables of every kind and other perishable commodities." The commodity in question, therefore, is the sugar cane, as opposed to the sugar which is produced from the cane, because only the cane is the product of field work. In addition; sugar is not a plant part; rather, it is a compound derived from plants.

Sugar may be any number of various water soluble compounds that vary widely in sweetness and comprise the oligosacchrides, including sucrose and fructose. Cane sugar is wholly or essentially sucrose. Sucrose is present in many plants, but is obtained commercially from sugar cane or sugar beet, and less extensively from sorghum, maples, and palms. Several commenters noted the importance of sugar cane as a crop and the importance of sugar as a component in the human diet. Some commenters noted that the per capita consumption of sugar in the United States is more than 100 pounds of sugar per year. None of these commenters noted what percentage of that sugar consumption is sugar produced from sugar cane and what percentage is from other sources. While USDA acknowledges the importance of sugar as a commodity and recognizes that Americans consume a significant amount of sugar in their diets, this is not determinative of whether sugar cane is a vegetable.

Some commenters argued that sugar cane is "human edible" because sugar cane may be chewed. USDA believes that the chewing of cane and the fact that sugar is human edible does not mean necessarily that sugar cane is "human edible" for purposes of the regulation.

One commenter, an associate professor and certified professional agronomist and soil scientist at a state university institute of food and agricultural sciences and one of the nation's leading experts on sugar cane, noted that the sugar cane stalk is not edible. This expert noted that selected soft varieties of sugar cane may be grown in gardens as "chewing" cane, but that this production is very minimal. Another commenter, stated that "[t]he minute amount of sugarcane which is 'chewed' (not eaten) as a novelty would hardly be sufficient to classify the crop as a fruit or vegetable by any reasonable standards." A third commenter, the vice president and director of research for the nation's largest sugar cane producer, stated that, while some people may suggest that sugar cane is chewed by humans, in no case is sugar cane actually eaten because the harvested part of the cane, the mature stalk, is highly fibrous and not digestible by humans.

Several commenters stated that sugar cane was herbaceous. One commenter argued that the only accepted scientific definition of "herbaceous" is secondary growth by a vascular cambium, and since grasses do not produce secondary growth through a cambium layer, sugar cane is herbaceous. This comment ignores the fact that "herbaceous" is defined generally in most of the scientific literature as "non-woody." Thus, the issue is whether sugar cane is woody.

One commenter compared sugar cane to an artichoke, described by this commenter as a woody or fibrous vegetable. This commenter stated that very little of the artichoke plant is edible and that part only after cooking, and that at least a comparable part of sugar cane is edible even without cooking.

The marketed portion of the artichoke is the herbaceous bud, which is actually an immature flower head, made up of numerous closely interlaid bracts or scales upon a receptacle. The edible portion of the artichoke consists of the tender bases of the bracts, the young flowers, and the receptacle or fleshy base upon which the flowers are borne. Although the bracts are fibrous, the edible portions of the artichoke are herbaceous modified leaves and stems which are eaten, cooked, chiefly as the principal part of a meal, rather than as a dessert. Thus, artichoke meets the definition of "vegetables."

Several commenters stated that sugar cane was not herbaceous. Those commenters who stated that sugar cane was not herbaceous noted that the stems of the sugar cane plant contain large amounts of lignin and other fibrous material which are very indigestible to humans, and that sugar cane is more like a woody plant than an herbaceous plant. An associate professor of sugar and energy crops at a state university agricultural research center, noted:

> A few varieties (those used for chewing) might have a fiber content low enough (5 to 8%) to be called herbaceous. Some sugarcane forms, however, are so fibrous (20%) that they are used as a substitute for wood in construction of fences, roofs, and wattles and partition walls. Even those varieties used for sugar production would seem woody if chewed.

The vice president of research of the nation's largest sugar company stated:

> Once the sugar and water has been extracted from the stalk, the biomass residue is actually burned as boiler fuel to run our mills, and in the past has been made into fiber board.

An examination of the scientific literature reveals that some scientists do describe sugar cane as "woody," and, thus, non-herbaceous. Because sugar cane, in the same manner as wood, is indigestible and not suitable as food, USDA has concluded that sugar cane does not have the essential characteristic of an herbaceous part of a plant.

Several commenters noted that sugar cane is not eaten, cooked or raw, chiefly as the principal part of a meal, rather than as a dessert. Other commenters stated that sugar cane is eaten as the principal part of a meal, rather than as a dessert. Some commenters noted that sugar is a significant component in many non-dessert foods, including soft drinks, non-carbonated beverages, confections, baked goods, processed foods, canned vegetables, breakfast products, and various other foods, or added directly to food eaten as the principal part of a meal. USDA has determined that such use is as a sweetener rather than as a main dish, side dish, or principal component in a main dish or side dish eaten chiefly as the principal part of a meal.

Several commenters noted that sugar cane may be chewed or sucked on and could be found in some produce markets. These commenters asserted that the chewing of sugar cane indicated that sugar cane is edible and is in fact eaten. Other commenters stated that the chewing of cane is not the "eating" of sugar cane, that sugar cane is indigestible and that the eating of sugar cane could be deleterious to human health. Eating is the process of taking into the mouth, chewing, and swallowing. While it is true that people swallow the juice from the cane, this is not the swallowing of the cane. Sugar cane marketed by a produce distributor in California and available in some East Coast supermarkets labels its packages of sugar cane with the cautionary notices: "Do not swallow;" "Not recommended for children under 5 or persons with braces." Recipes printed on the packaging suggest the use of sugar cane as a garnish only. While the juice of the sugar cane is digestible, the cane itself is not digestible by humans. USDA has determined that these facts indicate that the small amount of sugar cane which is chewed fails to establish that sugar cane is eaten raw.

Some commenters stated that sugar cane is served cooked as the principal part of a meal, rather than as a desert. One commenter included the menu of a Washington, DC, Vietnamese restaurant which serves "Blended Jumbo Shrimp wrapped around a core of fresh sugar cane (season) and grilled—Chao Tom." Upon investigation, USDA determined that such sugar cane is not eaten, but serves as a sweetener, not as a vegetable. A review of various ethnic cookbooks demonstrated that sugar cane is used as a sweetener in these dishes and may be disposed of prior to serving, after the sugar has imparted its sweetness in the dish, or the sugar cane may remain in the dish when served, but in no event is the sugar cane eaten. The sugar cane used in these dishes may be chewed on, but the cane is not swallowed.

Thus, USDA has determined that sugar cane is not a herbaceous stem which is eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert. Therefore, sugar cane is not a vegetable.

In *NWFWA v. Lyng*, the court upheld the USDA definition of "other perishable commodities" as "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." *NWFWA v. Lyng*, C.A. No. 87–1487, slip op. at 8–14 (D.D.C. April 25, 1988). The court agreed also that unpredictable labor demands meant that the period during which field work was to be initiated cannot be predicted with any certainty within 60 days in advance of need. *Id.* USDA explained that "critical and unpredictable labor demands" was defined to make it clear that the use of alien workers is predicated upon circumstances which create the critical, yet unpredictable demand for a labor force on short notice. 52 FR 13247 (April 22, 1987).

USDA determined that sugar cane did not meet the definition of "other perishable commodities" because the production of sugar cane does not involve critical and unpredictable labor demands. Labor demands with respect to the production of sugar cane are reasonably predictable more than 60 days in advance, and extreme conditions, such as severe freezes or storms, do not create a critical need for additional labor significantly above the level that is predicted months in advance.

One commenter, a professor of soil science in the agronomy department of a state university, noted that sugar cane is not a perishable commodity since it is very robust and can withstand extremes in weather such as hot or cold, wet or dry conditions with a minimum of damage. Such conditions are generally not critical for the sugar industry except under extreme circumstances in which case an additional labor force would be of little use. Normal drought conditions which would decimate vegetables such as lettuce or cabbage may reduce the growth rate of sugar cane, but would not kill it, and, in fact, would increase the sucrose content of the cane. When water was again available, the sugar cane would resume growth. Similarly, a freeze which would kill most vegetable crops and damage fruit resulting in their complete loss of marketability, may kill the leaves of sugar cane, and if the freeze was very severe, may kill the stalks. However, this would not necessarily mean that the crop would be lost since the sucrose in the stalks does not deteriorate under cool conditions and may remain harvestable for several weeks. Therefore, the sugar growers can continue harvesting the crop at the normal rate for several weeks after a freeze and may not suffer a major loss of yield. Thus, while there is a real emergency need for labor to harvest the commodity before and after a freeze with respect to fruit and vegetable crops, with respect to sugar cane, harvesting continues at the normal rate since the sugar mills have limited capacity to process cut cane. Thus, because sugar cane does not experience the critical need for a significant number of laborers in addition to anticipated levels as a result of unforeseen events, it does not experience critical and unpredictable labor demands.

Sugar cane maturity is a matter of period of growth and weather. When the cane has nearly completed its growth in the fall, the normal low temperatures that occur serve to increase the sucrose content by reducing growth and increasing sucrose storage. However, the sucrose content of the major part of the stalk has been determined by the growing conditions earlier in the crop. Therefore, fields that have attained sufficient growth may be harvested at any time in the cool months of the year without a major loss of sucrose. Other things being equal, fields that are subject to low temperatures for a longer period generally have a higher sucrose content than those that have not experienced low temperatures. Generally, fields are scheduled for harvest from the beginning of the growing cycle depending on such factors as planting, ratooning schedules, and mill capacity. This results in labor scheduling for all components of sugar cane production at the beginning of the crop which is generally maintained until the end of the harvest.

There is a clear expression of congressional intent that the SAW program was to include as "other perishable commodities" crops which "must be harvested by hand, thereby requiring a large number of workers on short notice," and not "where mechanical harvesters can be used . . ." 131 Cong. Rec. S11322 (September 12, 1985) (statement of Sen. Wilson); *see also* 131 Cong. Rec. S11325 (September 12, 1985) (statement of Sen. Hatch); 131 Cong. Rec. S11334 (September 12, 1985)

(statement of Sen. Gorton); 131 Cong. Rec. S11344 (September 12, 1985) (statement of Sen. Evans); 131 Cong. Rec. S11537 (September 16, 1985) (statement of Sen. Gorton); 131 Cong. Rec. S11606 (September 17, 1985) (statement of Sen. Wilson); 131 Cong. Rec. S11607 (September 17, 1985) (statement of Sen. Gorton); H.R. Rep. No. 99-682, 99th Cong., 2d Sess., Part 1, July 16, 1986, at p. 85. Mechanization affects labor demands in that the more mechanized the production of a particular crop is, the less critical and the more predictable the labor demands are. Highly mechanized crops do not generally experience a critical need for a labor force on short notice.

The sugar industry is highly mechanized except for some planting in some sugar producing areas and some harvesting in Florida. Machine planting is utilized in Louisiana and Texas while manual labor is preferred in Florida. Fields are replanted usually every two to six years, although sugar cane may be rattooned for decades. Mechanical harvesting is utilized in all states. In Louisiana and Texas, virtually all of the sugar cane is mechanically harvested. In Florida, on the other hand, the majority of the sugar cane is cut by manual labor. Since the planting, cultivation, cultural practices, growing and harvesting of sugar cane is mechanized for the most part, this represents further evidence that sugar cane does not meet the criteria of "other perishable commodities."

Sugar cane is harvested normally from November through March in Florida, October through March in Texas, from mid October through December in Louisiana, and almost year-round in Hawaii. Sugar yields are generally highest after January 1, but some fields must be harvested before they have reached maximum yield to allow time for processing the whole crop. Labor requirements are anticipated months or even years in advance, and can be forecast with reasonable certainty since the harvest period is generally three to six months and the commencement date is not critical. Sugar cane can stand unharvested in the field for months. In some cases, sugar cane fields have been carried over to be harvested during the following season.

Various commenters offered examples of circumstances which they believe represent critical and unpredictable labor demands. These include greater difficulty in harvesting tangled and recumbent cane following a storm; that sugar cane may be damaged by fire or freeze; freeze damaged cane requires more topping to remove trash; more freeze damaged cane must be cut to adequately supply the mill than would normally be necessary; freeze damaged cane may require substitution of manual labor for machine harvesters; the harvest may be advanced or delayed due to early maturity or by late ripening due to weather or other factors; that sugar cane should be harvested at optimum maturity; that daily temperatures during the growing season is one of the most important factors influencing the optimum harvesting of cane; that estimates of individual worker production may be inaccurate and if under-estimated could lead to an inadequate supply of labor; that adverse weather or inability to cultivate following fertilizer application could affect crop growth and maturity or lead to unanticipated weed growth; that planting may be delayed if the weather is too wet or dry; the harvest may be delayed as a result of weather related delays at planting time; processors may insist that planting be complete prior to harvest; planting may be delayed due to unsatisfactory growth of seed cane; a delay in planting may compress the planting period resulting in an increased demand for labor; the timing of planting and harvesting may be affected by the growth and maturity of the cane crop which in turn could be affected by the cultivation, pesticide applications, and fertilization during the growing season; that the timing of some cultivation, and of some fertilizer and pesticide applications, may be unpredictable 60 days in advance. USDA recognizes that all of these examples are factors that affect sugar cane production and that most of them are typical of the problems that confront farmers generally. Nevertheless, a review of the labor demands of sugar cane production indicates that the labor requirements of sugar cane are reasonably predictable more than 60 days in advance of need, and that none of the factors cited above creates a need for additional labor significantly above the levels that had been predicted months in advance.

Some commenters asserted that USDA was reaching beyond the intent of Congress in an effort to exclude H-2 sugar cane workers from the SAW program. In all issues regarding this rule, USDA has been guided by the statute and the legislative history of the Act. USDA defined "critical and unpredictable labor demands" in terms of the 60-day bright line rule based on the legislative history of the IRCA which indicated that the SAW program was intended to be a supplement to the H-2A program. The 60-day bright line cut off represents the advance time that the Department of Labor requires normally of growers who petition for temporary agricultural workers under the H-2A program. The court in *NWFWA v. Lyng* recognized that this interface between the SAW program and the H-2A program was supported by the legislative history. *NWFWA v. Lyng*, C.A. No. 87-487, slip op. at 12-13 (D.D.C. April 25, 1988). Thus, the court found the 60-day bright line rule was reasonable. *Id.* at 13. Sugar cane producers have successfully utilized the H-2 program for decades under certification procedures which required employers to forecast their labor needs 80 days in advance. USDA determined that the use of the H-2 program by sugar cane producers demonstrated that sugar cane did not experience "critical and unpredictable labor demands." The ability of sugar cane producers to forecast their labor requirements 60 days in advance under the current H-2A program demonstrates that sugar cane is not within the scope of "other perishable commodities."

USDA notes that Congress did not intend the SAW program to be remedial. The legislative history of the Act contains expressions of explicit congressional intent that the SAW program was not meant to confer legal rights to any persons or groups. *See* 132 Cong. Rec. H9870 (October 10, 1986) (Colloquy between Rep. Weaver and Rep. Schumer) (confirming that the SAW program is not remedial in nature). Thus, the SAW program was not intended by Congress to provide resident alien status to all alien agricultural workers.

Some commenters claimed an inconsistency by USDA in including tobacco as an "other perishable commodity" while excluding sugar cane since both commodities have used the H-2 program. USDA has determined that there is a substantial difference in the labor requirements between these two commodities. Tobacco experiences critical and unpredictable labor demands while sugar cane does not. USDA's knowledge is that while nearly all sugar cane harvesters have been H-2 workers, less than five percent of the tobacco workforce has been employed through this program.

There is confusion regarding a Senate colloquy which mentioned tobacco. USDA reviewed this question consistent with the labor requirements of the commodity and the context of the statement and concluded that Congress did not intend to exclude tobacco from "other perishable commodities."

A number of commenters stated that sugar cane experiences critical and unpredictable labor demands in the event of a severe freeze: "A freeze

damages the cane stalk and requires harvesting within one to two weeks to avoid crop loss." (citing James E. Irvine, *Effects of an Early Freeze on Louisiana Sugarcane*, Agricultural Research Service, USDA, Houma, Louisiana, 1968. This study examined the effects of a record November freeze for 92 days following that freeze and found no significant change in stalk weight and a reduction in sucrose from 14.31% to 12.53%. Clearly, a freeze is not necessarily a critical condition, although it is recognized that sugar yields may be affected by warm weather following a severe freeze. Following a freeze, growers do rearrange their harvesting schedule to prioritize damaged fields on a worst first basis so as to salvage the maximum possible, but the daily tonnage to be harvested and labor required is still limited by the capacity of the mill to grind the cane. Dr. Irvine's 1968 analysis did not discuss labor requirements, but in commenting on this proposed rule Dr. Irvine wrote:

> The standing crop may be damaged by fire or freezes, and the latter is a limiting factor in sugarcane production in Louisiana. Even there, freezes are anticipated and the harvest is planned with an anticipated end of harvest before freeze losses could be serious * * *.
>
> Whether damaged by fire or freeze, *the mills are usually operating at near capacity and an extra effort to crush all damaged cane by multiplying the harvest effort is generally impractical. (emphasis added).*

Several authorities, from each of the sugar cane producing states, commented that since mills operated normally at or near capacity, they would be unable to utilize additional labor to salvage damaged cane.

Several commenters cited press reports that the Florida sugar cane industry had hired additional workers in response to past freeze damage emergencies. One commenter stated:

> That sugar mills do not normally operate at full capacity is demonstrated by the article in the *Belle Glade Herald*, Feb. 3, 1977 * * *. That article notes that following the 1977 freeze, the sugar mills were able to increase their grinding output to record levels in the periods immediately following the 1977 freeze. The increased output was the result of nearly 600 additional cane harvesters who were hired after the freeze. In 1985, the lifting of weight restrictions on trucks carrying sugar cane to the mills [by the Governor's declaration of an emergency] was expected to allow the mills to increase production by "as much as *2,000 extra tons a day.*" [*Palm Beach Post*, Jan. 23, 1985]. (emphasis added).

USDA is cognizant of news articles similar to those described above. An increase of 2,000 tons under emergency conditions would represent only a 2 to 3 percent increase above the norm for the Florida sugar cane industry. USDA concludes that the cited report indicates that the sugar mills do operate at near capacity.

The news accounts of the 1977 freeze indicated that the United States Sugar Corporation brought in 300 additional workers on an emergency basis. However, the Vice President of Research for that company maintains:

> During [the past 33 years], including the ten freezes, United States Sugar Corporation *never increased the number of sugar cane cutters over what was certified by the Department of Labor months prior to the start of the harvest.* It is also interesting to note that in the four years 1981, 1983, 1984, and 1986, in which freezes occurred, the harvest continued to scheduled completion for 40, 70, 57 and 57 days after the freeze, respectively. This is dramatic proof that sugar cane is not perishable and explains why our labor needs do not vary from what we plan prior to the crop. (emphasis added).

In an effort to determine whether sugar cane growers experience critical and unpredictable labor demands, USDA queried the Department of Labor as to whether the sugar cane industry had ever requested additional workers on an emergency basis. The response stated:

> During the seventeen years that I have been handling Florida sugar cane labor certification requests, *the industry has not asked for additional labor certification on account of freeze damage.* The only exception to this occurred in January 1981, when some of the sugar cane growers asked for supplemental workers to replace U.S. workers who did not report and for which certification had been reduced. This certification did not increase the number of workers certified above the number of workers requested earlier in the season. (emphasis added).

The H–2A program regulations provide for the replacement of attrition losses for workers who return to their native countries and it is not unusual for replenishment workers to be required. 600 of a work force of approximately 10,000 would represent an attrition rate of about 6 percent. This appears to account for the apparent disparity between the news accounts and the records of the Department of Labor. In addition, this appears to explain the inconsistency between the newspaper account of the 1977 freeze that indicated that the United States Sugar Corporation brought in 300 additional workers on an emergency basis, and the comment of the Vice President of Research of that corporation who stated that his company has never asked for additional labor certification from the Department of Labor on account of freeze damage. In fact, the very same newspaper account, quoting the vice president of another large Florida sugar cane producer, states:

> William Miller, Vice President and General Manager of the Sugar Cane Growers Cooperative of Florida, said new cane cutters arrived yesterday morning but that this was not done because of the freeze. He said *the new men were brought in to make up for attrition* over the past months of the harvest since November. *Palm Beach Post*, Feb. 1, 1977.

Thus, although growers replace normally workers lost to attrition, the growers do not generally increase the number of workers in response to a freeze over what they originally anticipated.

One commenter stated that "[t]he growers had requested and received certification for more workers than they had anticipated they would need; when the freeze hit, the growers were able to bring in additional workers without certification." USDA has concluded this is a specious argument. The Department of Labor determines the employers need and limits the number of workers to be certified. In addition, growers are required to provide housing for the number of workers certified and this would be a practical obstacle to such a scheme. Moreover, surveys conducted by the Florida Department of Labor and Employment Security indicate that following the several freezes which have occurred since 1981, employment levels of sugar cane cutters have been reduced rather then increased. In contrast, the employment of citrus workers increased as much as 30 percent during efforts to salvage damaged fruit.

Comments were received stating that following a storm or freeze, more labor is necessary to harvest the same amount of cane if it is tangled and recumbent and "[h]and labor can cut off the top part of the cane and leave it in the field. A mechanical harvester cannot do that; hand harvest labor is required. (*Clewiston (Florida) News*, Jan. 27, 1977)." The cited article makes no mention of mechanical harvesting, however, other articles in the record quote sugar industry officials following a severe freeze:

> [T]he [H–2 workers] would cut as much of the damaged cane by hand as they could because of the mechanical harvester's inability to determine the proper cropping height of the cane stalks.
>
> * * * * *
>
> Vaughn said that approximately 30% of the volume of sugarcane being cut presently is being cut by harvesting machines, but added that hand cutters do a better job of cutting away freeze damaged cane than the machines." *Clewiston (Florida) News*, January 6, 1982.

Hand labor is an advantage in harvesting damaged cane, according to Yancey, because the decay starts at the top of the stalk and an experienced cutter can lop off the damaged area and leave it in the field." *Clewiston News*, (no date).

These officials did not say hand harvest labor is *required*, but that hand cut cane is better or advantageous. USDA recognizes that whether normal or damaged, hand cut cane is of better quality than machine harvested cane, but USDA recognizes also that most sugar cane growers harvest mechanically both normal and damaged cane. It is evident that the advantage of manual labor is not critical because machines are used to harvest damaged cane in Louisiana and Texas, and the Florida sugar industry has not found it necessary to apply for additional H–2 certifications in response to a freeze. Mechanical harvesters do cut off the top of the cane and leave it in the fields, and they may be adjusted to remove varying amounts. However, machines do not do this as well as manual laborers. In Hawaii, Louisiana, Texas, and to some degree, Florida, storm or freeze damaged cane is harvested with mechanical harvesters, rather than by manual labor.

Several commenters stated that sugar cane must be harvested at the optimum time and noted that various factors could cause delays in the field work performed by the sugar cane industry. They argued that such delays create critical and unpredictable labor demands.

A delay of sugar cane field work activity, while it may be undesirable, is not critical *per se*. It is necessary to look beyond the fact of the delay to determine its consequences and whether it requires a labor force on short notice. Sugar cane growers have experienced delays of 60 days or more in planting and harvesting in the past without critical labor demands; the season is extended instead. For example, in Louisiana, which is considered to have the most sensitive timing of the sugar producing states with respect to planting and harvesting because of its susceptibility to freezes, growers may accommodate delays in planting by extending the planting season by 60 days or more:

> Planting season is from early August to mid-October. August and September plantings give the highest yields. *Unfavorable weather conditions often make it necessary to plant through October and sometimes through November and December.* Harvesting of sugar cane in Louisiana begins in mid-October and ends in late December. The crop is only 7 to 8 months old when harvesting begins. It increases in value, particularly on sucrose content, during October and November. However, *the grower can't wait for his crop to reach peak maturity because he would risk losing much of it due to killing freezes.* R. Malherne, R. Breaux, and R. MacMillan, Research Agronomists, and R. Jackson, Investigation Leader, *Culture of Sugarcane for Sugar Production in the Mississippi Delta, Agriculture Handbook No. 417, Agriculture Research Service, USDA, Revised 1977.* (emphasis added).

The study quoted above demonstrates also that growers in Louisiana do not generally harvest the sugar cane at peak maturity and, therefore, the timing of the harvest is not critical. In Florida, on the other hand, delays in the harvest can be accommodated by extending the harvest into the following season:

> *Harvest may be scheduled at any time over a period of several months and in fact may be delayed until the following year.* Comment of Van Waddill, Director, and Frank J. Coale, Extension Sugarcane Specialist, Everglades Research and Education Center, University of Florida, Belle Glade, Florida. (emphasis added).

As indicated by the comment of Dr. James E. Irvine, a leading expert on sugar cane, the long harvest periods for sugar cane do not create critical and unpredictable labor demands:

> Domestic labor needs may be 3 months (Louisiana), 6 months (Florida and Texas) or all year (Hawaii). The shortest harvest employs no immigrant labor since all cane is machine harvested. The longer harvest periods give ample time to remove the cane and process it. *Labor requirements are anticipated months or even years in advance* and some areas have mechanized harvest capabilities as an expensive standby measure. Comment of *James E. Irvine, Associate Professor of Sugar and Energy Crops, Texas Agricultural Research and Extension Center, Texas A&M University, Texas* (emphasis added).

Another leading expert in sugar cane states that sugar cane is not always harvested at optimum maturity, which demonstrates that delays that result in sugar cane not being harvested at optimum maturity are not critical:

> *Cane is not always harvested at optimum maturity*, although this stage can be determined easily and accurately. The processing plant involves a great investment, and the huge variable and fixed costs for such a plant can be justified only when operation can be conducted continuously for several months. In contrast, cane of a particular variety may remain at its peak of maturity only a few weeks * * * . Even with the employment of early, middle and late maturing varieties, it still may be necessary to harvest cane beyond optimum maturity. F. LeGrand, *Production of Sugar Cane, Agronomy Monograph No. 1, Institute of Food and Agricultural Sciences, University of Florida, September 1972.* (emphasis added).

Thus, USDA has determined that delays of sugar cane field work do not create critical and unpredictable labor demands.

In considering whether the sugar cane industry had critical and unpredictable labor demands, USDA looked to the past practices of the industry following delays due to increased crop size, low sugar yields, freezes, or weather. It was determined that under such circumstances, the season has been extended. The 1976/1977 season in Texas began four months late due to weather and cane was carried over to the following season. In the 1977/1978 season, Florida experienced delay due to wet weather, while the Texas industry was shut down for over two months because of rain. Some of the Texas crop was carried over to the following season. Louisiana was late completing the 1977 season. Rainy weather caused part of the 1978 crop in Hawaii to be carried over to 1979. The 1978/1979 harvest in Texas was late following freezes in December and January. The 1979/1980 harvest was shut down for three weeks due to wet weather. Florida, Louisiana, and Texas experienced drought in 1980. The completion of the 1980/1981 season in Texas was delayed over 60 days due to wet fields, and some of the crop was carried over to the 1981/1982 season. The Louisiana harvest was late finishing in the 1981 and 1982 seasons. Because of extremely high rainfall in Hawaii, cane which would normally have been processed in 1982 was carried over into 1983. A severe Texas freeze in December damaged the 1983/84 crop so badly that output fell from a potential 110,000 tons of cane sugar to about 60,000. Virtually all of the cane was harvested and processed, but after mid-January, it was processed into cane molasses. Two hurricanes in 1985 caused Louisiana cane to be down and entangled and reduced yields and sugar content ten to twenty percent. Growers increased the harvest time by cutting cane from sunup to sundown rather than three hours each morning. However, this did not create a need for additional labor. Louisiana achieved a production increase in 1986 despite above normal rainfall and the muddiest harvest period since 1972. In the 1986/1987 season, Texas was delayed over 60 days due to rain and some of the crop was carried over to the following season. Because of the unusually large crop in the 1987/1988 season, Florida started its harvest early and extended it later than usual. USDA believes the ability to extend the harvest period and otherwise cope with extreme irregularities without an

additional labor force indicates that the sugar cane industry does not experience critical and unpredictable labor demands.

Some activities, such as the application of pesticides, fertilizer and irrigation, may become critical in a relatively short period of time. However, these are not labor intensive operations which would require a labor force on short notice, but are mechanized activities performed by the normal work complement. If delayed, the farmer may utilize the same worker which he intended to emply prior to the delay.

After thorough review of labor demands with respect to sugar cane field activities from planting through harvesting, the comments received, the authoritative sources contained in the administrative record, and the record of *NWFWA v. Lyng*, USDA determined that sugar cane field work is not subject to critical and unpredictable labor demands. Thus, USDA has determined that sugar cane does not qualify for inclusion as an "other perishable commodity."

Regulatory Impact

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. Under the framework of the Act, the Immigration and Naturalization Service (INS) will use this proposed rule to assist it in determining which special agricultural workers will be admitted into the United States for temporary residence. Thus, the primary benefits of this proposed rule are internal to the operation of the United States government.

This action, in and of itself, will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individuals, Federal, state, or local government agencies, or geographic regions; or have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule redefines the term "vegetables," and reexamines whether sugar cane meets the definition of "other perishable commodities" for purposes of clarifying the term "seasonal agricultural services" as it relates to sugar cane. The rule does not contain any compliance or reporting requirements, or any timetables. The rule will assist the INS in determining the special agricultural workers to be admitted for temporary residence. Thus, the rule, in and of itself, will have no significant effect upon small entities.

Paperwork Reduction Act

This rule does not require additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502, *et seq.*) are inapplicable.

National Environmental Policy Act

This rule will not have an impact upon the environment.

Good Cause for Making Rule Effective Less Than 30 Days After Publication

In its June 6, 1988, order, the United States District Court for the District of Columbia ordered the Secretary to issue this final rule by August 19, 1988. *NWFWA v. Lyng*, Civil Action No. 87-1487. On the basis of this order, and in light of the November 30, 1988, deadline for SAW applications, good cause is found to make this rule effective less than 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1d

Immigration, Rural labor.

Accordingly, 7 CFR Part 1d—Rural Labor—Immigration Reform and Control Act of 1986—Definitions is amended as follows:

PART 1d—[AMENDED]

1. The authority citation for Part 1d continues to read as follows:

Authority: 8 U.S.C. 1160.

2. Section 1d.10 is revised to read as follows:

§ 1d.10 Vegetables.

"Vegetables" means the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert.

Done at Washington, DC, this 17th day of August, 1988.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 88-18928 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-01-M

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7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to amend the regulations found at 7 CFR Part 26 which set forth the formula which is used by the Secretary of Agriculture to determine the adjusted world price for upland cotton. These actions are initiated under the authority of section 103A(a)(5)(E) (i)–(iii) of the Agricultural Act of 1949, as amended. Implementation of the changes made by this interim rule will improve the effectiveness of the upland cotton program.

DATES: Effective August 19, 1988. Comments must be received by September 19, 1988, in order to be assured of consideration.

ADDRESS: Mail comments to Dr. Orval G. Kerchner, Acting Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954. The Final Regulatory Impact Analysis describing the options considered in developing this interim rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these provisions will result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and numbers of the Federal Assistance Programs to which this interim rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR Part 26 was originally added to the Code of Federal Regulations adequately covers these amendments. Therefore, a new Regulatory Flexibility Analysis has not been prepared.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Producers are currently repaying upland cotton loans. Since the changes made by this rule will affect those producers, this rule will become effective on August 19, 1988. Comments, however, are requested and will be taken into consideration in developing the final rule.

Discussion of Changes

Statutory Background

Section 103A(a)(5)(E)(i) of the Agricultural Act of 1949, as amended (the "Act"), provides that the Secretary of Agriculture shall prescribe by regulation:

(i) a formula to define the prevailing world market price for cotton; and

(ii) a mechanism by which the Secretary shall announce periodically the prevailing world market price for cotton.

The Act also provides that the prevailing world market price for cotton shall be adjusted to United States quality and location (the "adjusted world price"). The regulations which set forth the formula used to determine the prevailing world market price for cotton, the mechanism for periodically announcing such prevailing world market price and the procedure for adjusting the prevailing world market price to United States quality and location are found at 7 CFR Part 26.

Adjusting The Northern Europe Price To Average Designated U.S. Spot Market Location

7 CFR 26.3(b)(1) currently provides that the Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 156-week period between:

(i) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1$\frac{3}{32}$ inch cotton C.I.F. northern Europe; and

(ii) The average price of M 1$\frac{3}{32}$ inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

Since the cost of transporting cotton has been increasing, the use of a 156-week period to calculate the adjustment in the Northern Europe price to average designated U.S. spot market location is not resulting in an adjustment reflective of current shipment costs. Use of a 52-week period would more accurately reflect current shipment costs while allowing for the adjustment of aberrations caused by week-to-week fluctuations in the difference between U.S. spot quotations and C.I.F. northern Europe quotations for U.S. growths. However, even with this adjustment there may be periods when the 52-week moving average does not represent current shipping costs. Therefore, implementation of a periodic review of the actual costs associated with shipping cotton to northern Europe would provide a basis for assessing the adequacy of the 52-week moving average.

Based on the results of this periodic review, the 52-week moving average could be further adjusted to more closely represent actual transportation costs. In order to implement these revisions, this interim rule amends 7 CFR 26.3(b)(1) by: (1) Changing the 156-week period to 52 weeks; and (2) adding a provision to allow a further adjustment in the adjustment of the Northern Europe price to average U.S. spot market location, if necessary, to more accurately reflect current costs associated with transporting U.S. cotton to northern Europe based upon periodic review of actual costs. In addition, a conforming change is made in 7 CFR 26.3(c) by removing "156-week" and inserting in lieu thereof "52-week".

Coarse Count Adjustment

7 CFR 26.3(e)(1) currently provides that the adjusted world price, as determined in accordance with paragraph (b) of such section, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 inch or shorter or for any staple length of upland cotton with a grade which has a price support loan discount of 8.0 cents per pound or higher based upon the Schedule of Premiums and Discounts for Grade and Staple Length as announced in accordance with the upland cotton price support loan program for a crop of upland cotton. Grade and staple length must be determined by an official classification issued by USDA's Agricultural marketing Service (AMS). If no such official classification is presented, the adjustment shall not be made.

7 CFR 26.3(e)(2) currently provides that the adjustment for upland cotton provided for by paragraph (e)(1) of such section shall be determined by deducting from the adjusted world price:

(i) The difference between the northern Europe price and the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count price"), minus

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1$\frac{3}{32}$ inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1-inch (micronaire 3.5 through 4.9) cotton.

7 CFR 26.3(e)(4) currently provides that if the difference determined in accordance with paragraph (e)(2)(i) of such section is not more than 1.0 cent higher than the difference determined in accordance with paragraph (e)(2)(ii) of such section, the coarse count adjustment provided for by paragraph (e) shall not be made.

The coarse count adjustment has been applicable to any grade of upland cotton with a staple length of 1 inch or shorter. Beginning on August 1, 1988, northern Europe quotations for the Orleans/Texas growth will be based on 1$\frac{1}{32}$ inch staple rather than 1-inch staple. After August 1, all northern Europe quotations for coarse count quality cotton will be available, basis 1$\frac{1}{32}$ inch. Making any grade of cotton with a staple length of 1$\frac{1}{32}$ inch or shorter eligible to receive the coarse count adjustment will maintain consistence between the quality of cotton upon which the coarse count adjustment calculation is based and the quality of cotton to which the coarse count adjustment applies.

The coarse count adjustment has been applicable to any staple length of upland cotton with a grade which has a price support loan discount of 8.0 cents per pound or higher based upon the Schedule of Premiums and Discounts for Grade and Staple Length as announced in accordance with the upland cotton price support loan program for a crop of cotton. Under the 1988-crop Schedule of Premiums and Discounts for Grade and Staple Length, a number of qualities of cotton that were eligible for the coarse count adjustment under the 1986 and 1987 Schedules of Premiums and Discounts for Grade and Staple Length was excluded. In 1987, less shorter staple, lower quality cotton was produced, resulting in higher prices for these qualities and, in turn, smaller discounts applicable for these cotton qualities under the 1988 Schedule of Premiums and Discounts for Grade and

Staple Length. Specifying the grades of cotton with a staple length of 1 1/16 inch or longer that are eligible to receive the coarse count adjustment will ensure that approximately the same qualities that were eligible under the 1986 and 1987 programs will be eligible under the 1988 program and that these same qualities will continue to be eligible under the 1989 and 1990 programs.

The coarse count adjustment provided for in 7 CFR 26.3(e)(1) has been determined by deducting from the adjusted world price the difference between the Northern Europe price and the Northern Europe coarse count price, minus the difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1-inch (micronaire 3.5 through 4.9) cotton. Beginning on August 1, 1988, no northern Europe quotations for 1-inch staple upland cotton will be available. Instead, all northern Europe quotations for coarse count quality cotton will be available, basis 1 1/32 inch. For consistency, the coarse count adjustment will be calculated by deducting from the adjusted world price the difference between the Northern Europe price and the Northern Europe coarse count price, minus the difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 1/32 inch (micronaire 3.5 through 4.9) cotton.

The coarse count adjustment has not been applicable whenever the calculation is less than 1.0 cent per pound. Elimination of the 1.0-cent per pound minimum will, in combination with the other provisions, enhance the competitiveness of coarse count qualities of U.S. cotton.

Accordingly, this interim rule amends 7 CFR 26.3(e)(1) by providing that the adjusted world price, as determined in accordance with such section, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 1/32 inch or shorter, and to the following grades of upland cotton with a staple length of 1 1/16 inch or longer: *White Grades*—Strict Good Ordinary Plus, Strict Good Ordinary, Good Ordinary Plus and Good Ordinary; *Light Spotted Grades*—Low Middling and Strict Good Ordinary; *Spotted Grades*—Middling, Strict Low Middling, Low Middling and Strict Good Ordinary; *Tinged Grades*—Strict Middling, Middling, Strict Low Middling and Low Middling; *Yellow Stained Grades*—Strict Middling and Middling; *Light Gray Grades*—Strict Low Middling; *Gray Grades*—Middling and Strict Low Middling. Conforming technical amendments are also made in 7 CFR 26.3(e)(2)(ii) by removing "SLM 1-inch" and inserting in lieu thereof "SLM 1 1/32 inch", and by removing 7 CFR 26.3(e)(4).

Interested persons are invited to submit written comments on the interim rule changes. Comments must be received by September 19, 1988, in order to be assured of consideration.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Interim Rule

Accordingly, this interim rule amends the regulations found at Part 26 of Title 7, Subtitle A of the Code of Federal Regulations as follows:

PART 26—[AMENDED]

1. The authority citation for Part 26, Subpart A, continues to read as follows:

Authority: Sec. 103A(a)(5)(E), Pub. L. 81-439, 639 Stat. 1031, as amended, (7 U.S.C. 1444-1(a)(5)(E)).

2. Section 26.3(b)(1) is revised to read as follows, (b) introductory text is republished.

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(b) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with § 26.2, adjusted to average U.S. quality and location as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by:

(i) Deducting the average difference in the immediately preceding 52-week period between:

(A) The average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe; and

(B) The average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

(ii) Based upon period estimates of actual costs associated with transporting U.S. cotton to northern Europe, if it is determined that the adjustment determined in accordance with § 26.3(b)(1)(i) inadequately reflects current actual shipping costs, the adjustment to average designated U.S. spot market location may be adjusted further.

3. Section 26.3(c) introductory text is amended by removing "156-week" and inserting in lieu thereof "52-week".

4. Section 26.3(e)(1) is revised to read as follows:

* * * * *

(e)(1) The adjusted world price, as determined in accordance with paragraph (b) of this section, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 1/32 inch or shorter and the following grades of upland cotton with a staple length of 1 1/16 inch or longer: *White Grades*—Strict Good Ordinary Plus, Strict Good Ordinary, Good Ordinary Plus and Good Ordinary; *Light Spotted Grades*—Low Middling and Strict Good Ordinary; *Spotted Grades*—Middling, Strict Low Middling, Low Middling and Strict Good Ordinary; *Tinged Grades*—Strict Middling, Middling, Strict Low Middling and Low Middling; *Yellow Stained Grades*—Strict Middling and Middling; *Light Gray Grades*—Strict Low Middling; *Gray Grades*—Middling and Strict Low Middling. Grade and staple length must be determined by an official classification issued by USDA's Agricultural Marketing Service (AMS). If no such official classification is presented, the adjustment shall not be made.

5. Section 26.3(e)(2)(ii) is amended by removing "SLM 1 inch" and inserting in lieu thereof "SLM 1 1/32 inch".

6. Section 26.3(e)(4) is removed.

Signed at Washington, DC on August 2, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-18787 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 278]

Food Stamp Program; Voluntary Quit Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On October 1, 1986 the Department published a rulemaking at 51 FR 35152 which proposed extensive changes in the work related provisions of the Food Stamp Program. Most of the proposed rulemaking was based upon amendments to the Food Stamp Act of 1977 made through the Food Security

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Act of 1985 (Pub. L. 99–198), but there were a number of changes to and clarifications of the rules to be followed when certain food stamp recipients voluntarily quit jobs of 20 hours a week or more. A procedure to address overissuances to households containing workfare participants was also in the proposed rule.

In order to expedite final publication of the statutorily mandated portion of the proposed rule, the voluntary quit and workfare overissuance sections of the rule were omitted when the October 1, 1986 proposed rule was finalized on December 31, 1986. This final rulemaking addresses the provisions which were proposed on October 1, 1986 but never finalized. This rule elaborates on the procedure to be followed by State agencies when the head of household designee changes after an employment and training (E & T) or voluntary quit sanction has been imposed, and it clarifies a provision in the December 31, 1986 final rule regarding the number of hours an individual may devote to an employment and training program.

DATES: The provisions of this rulemaking are effective October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Director, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3414.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as non-major.

The effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice of 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this final action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the program. Potential and current participants will be affected because they will have to abide by the requirements established by the guidance set forth in this rulemaking.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under that Act. The OMB approval number for these requirements is 0584–0339.

Background

This rule puts into final regulatory form a number of changes to the food stamp regulations governing sanctions for voluntarily quitting employment. These changes clarify Department policy in an area in which we have received numerous questions from State agencies.

The provisions of this rule were published in proposed form on October 1, 1986 in a rulemaking which made sweeping changes to the work requirements of the Food Stamp Program. Over one hundred letters of comment were received in response to the proposal. Voluntary quit or workfare overissuances were mentioned in thirty-five letters of comment. All of the comments were read and considered in the formulation of this rulemaking. In response to concerns raised in letters of comment, this rulemaking elaborates on the sanction and cure procedures proposed in the October 1, 1986 rulemaking. The rule also clarifies the provision found in § 273.7 (f)(3)(ii) which reflects the statutory requirement that the required hours of participation by an individual in an E & T program in any month, together with any hours worked in a workfare program and any hours worked for compensation shall not exceed 120.

Additional Cure Provisions

The Food Security Act of 1985 added to the Food Stamp Act of 1977 procedures to be followed when the head of a household fails to comply with an employment and training requirement or voluntarily quits a job without good cause and then leaves the household during the period of ineligibility. The Food Stamp Act, as amended, provides that the original household shall no longer be subject to sanction for the violation, if it is otherwise eligible, may resume food stamp participation. The Act goes on to specify that "any other household of which such person thereafter becomes the head of the household shall be ineligible for the balance of the period of ineligibility." 7 U.S.C. 2015(d)(1). This provision was implemented by the Department on December 31, 1986. The specificity in the Food Stamp Act on this point indicates to the Department that it is the intent of Congress that if a new person joins a household while either the household or individual is disqualified for an E & T or voluntary quit violation, and that person is determined to be the head of that household as defined in § 273.1(d), that head of household status shall take precedence over the head of household status another household member may have held. For instances of voluntary quit § 273.(l) defines the head of household to be the principal wage earner in the two months prior to the violation. There is no requirement that the individual be a member of the household at the time of the quit. Since a new individual may join a household as its head and cause the entire household to lose eligibility, the Department believes that the inverse should be true. If a household is disqualified because the head of the household failed to comply with employment and training requirements or voluntarily quit a job without good cause, the period of ineligibility should be terminated if a new person, who has not committed any violation, joins the household as its head, as defined in § 273.1(d)(2). This regulation includes such a provision, which applies to both employment and training and voluntary quit violations. The sanctions which apply when an individual joins a new household in a capacity other than the head of household are discussed elsewhere.

Voluntary Quit Changes

Public Law 99–198 mandated two provisions affecting households which have been disqualified because the head of the household voluntarily quit a job

without good cause. One is that food stamp eligibility may be reestablished during a period of disqualification for voluntary quit if the member who caused the sanction (the head of household) complies with the requirement which was violated. In the final rule published December 31, 1986 the Department interpreted compliance with the requirement to be acceptance of employment comparable in salary or hours to the job which was quit. That final rule also specified that eligibility for the household may be reestablished if the violator leaves the household or becomes exempt from the work registration requirements through § 273.7(b), other than through paragraphs (b)(1)(iii) or (b)(1)(v) which pertain to participation in Title IV–A or unemployment compensation work requirements.

The December 31, 1986 rule also finalized the mandated provision that when a household determined to be noncompliant due to a voluntary quit splits into more than one household, the sanction shall follow the member who caused the disqualification. If that person joins a new household as its head, the new household will be ineligible for the balance of the period of ineligibility and the sanction is lifted from the first household. In response to comments, this final rulemaking further specifies that if the violator joins a new household and is not the household head, the sanction will end. This differs from the treatment received by a head of a household who fails to comply with an employment and training requirement. If an E & T violator joins another household not as its head, of household, the violator would remain disqualified but the remainder of the new household could be eligible. The Food Stamp Act provides authority to deny food stamp benefits to an entire household if the head of that household has voluntarily quit a job without good cause. Unlike the provisions related to E & T violations, however, the Act does not provide authority to deny benefits to an individual household member who is not the household head because he or she has quit a job.

Since October 3, 1984 food stamp rules have provided that when a household leaves the program before the voluntary quit sanction can be levied, the sanction should not be imposed until the household returns to the program. The Department received a number of comments supporting its proposal to begin a voluntary quit sanction the first of the month after all normal procedures for taking adverse action have been taken and running it without interruption for 90 days or until it is cured. This rule finalizes that proposal. Voluntary quit sanctions shall no longer be held in abeyance if a household leaves the program. This change is consistent with the procedure used for failure to comply with work registration and employment and training requirements. It will also relieve States of the burden of tracking households who have left the program.

Current rules provide that persons who are exempt from the work registration provisions of § 273.7(b) are also exempt from the voluntary quit provisions. The proposed rule removed the voluntary quit exemption for persons who are not required to work register because they are enrolled or self-employed and working a minimum of 30 hours weekly. The Department received a variety of comments on the change. Some commenters contend that applying the voluntary quit provisions to persons working 30 hours a week or more will prevent those persons from making a change to employment which might entail fewer hours or a lower salary but offer greater chances to improve job skills or to achieve future advancements. This is not the intent of the change. On the contrary, the Department recognizes that such job changes will occur and allows a head of household to avoid a voluntary quit penalty by accepting employment of *comparable* hours or salary. Although the Department has not defined "comparable," we would not expect State agencies to reject a new job as not comparable simply because the number of hours or the salary of that job is lower than the job which was quit. Some commenters believe that the Department should specify that the net salary of the new job must be no less than that of the job which was quit. This was intentionally not done in order to prevent recipients from being locked into dead end jobs. The Department believes that the intent of the voluntary quit provisions in the Food Stamp Act is to deter recipients from leaving gainful employment without having other comparable employment to replace it. It should be clear that these provisions apply to all able-bodied heads of households who leave employment without good cause, including those who are working 30 hours a week or more. The proposed change to § 273.7(n)(2) is included in this final rulemaking.

Current rules are silent on the procedure to be followed when a voluntary quit occurs before certification but is not discovered until after certification. The October 1, 1986 regulation proposed procedures to follow for two situations where the quit is not discovered until after certification. The proposed rule would have treated the household whose quit was between application and certification as a participating household if the quit was discovered prior to certification. The Department did not receive any comment on this proposal.

The proposed rule also detailed procedures to follow when the household is certified under expedited service procedures and the quit is not discovered until after certification. The Department proposed that State agencies impose a sanction for the expedited service household from the date of the quit, and file a claim against the household for any benefits received in the 90 days following the quit. The Department received several comments on this proposal, including several which supported it. One commenter objected to utilizing the claims process to recoup the benefits which were improperly issued to expedited service households. The commenter contended that the claim process is administratively cumbersome and will be ineffective. Another commenter suggested that the Department consider such households as participating households and begin the 90 day sanction the first of the month after all adverse action procedures have been taken, but shorten the period of sanction by the number of days between the quit and the date of application. This mechanism, although easy to administer, appears to give an unfair advantage to households which do not disclose a quit at the time of application.

Whether or not the head of an applicant household has voluntarily quit a job without good cause within 60 days of application is a criterion for program eligibility. A question to determine whether such a quit has taken place should appear on all food stamp application forms, whether for expedited service or normal processing. The Department feels a distinction can and should be made between households whose pre-certification quit is discovered prior to certification and those whose quit is discovered after certification. Different notice and appeal procedures exist for applicants and recipients and once the household becomes a participating household it is entitled to the same rights as any other participating household, even if it was improperly certified.

For this reason the Department is finalizing the provisions from the proposed rule and imposing them upon all households, including those certified under expedited service procedures. All

households whose voluntary quit without good cause is discovered prior to certification are considered to be applicant households. Their application for benefits shall be denied and they shall remain ineligible for 90 days from the date of the quit, or until the quit is cured. Households whose quit is not discovered until after certification shall be considered participating households and the 90 day sanction shall be imposed the month after all Notice of Adverse Action procedures have been exhausted. This treatment is consistent with that received by households whose head of household voluntarily quit without good cause during food stamp participation. The sanction, in all cases, will be the full 90 days or until the violation is cured. This procedure eliminates involvement of the claims process.

Currently, the voluntary quit provisions apply only if the job quit was the most recent job held. The December 31, 1986 rule added language to § 273.7(n) providing that a voluntary quit violation could be cured by acceptance of new employment which is comparable in hours or salary to the job which was quit. This makes obsolete the reference in § 273.7(n)(1)(ii) to penalties for quitting only the "most recent" job. This rule applies the voluntary quit provisions to any job of 20 hours or more when no comparable position is secured. In response to a number of comments, the Department is also specifying in this rule that if an individual quits a job of 20 hours a week or more, secures new employment at comparable wages or hours, and is then laid off or, through no fault of his own, loses the new job, the earlier quit will not form the basis for a disqualification.

Quit During Last Month of Certification

The October 31, 1986 rule proposed that if a quit occurred in the last month of certification and is discovered during the recertification process, the household would be treated as an applicant household and be ineligible for benefits for 90 days from the date of the quit. It proposed that a claim be established for benefits received after the date of the quit. A number of commenters objected to this procedure contending that it was cumbersome and that establishing claims in such cases would be ineffective. Several commenters said it was unfair to abruptly terminate a certification period. Commenters also pointed out that the Proposed rule made no provision for how a State agency should proceed if a quit occurs prior to the last month of certification but is discovered too late in the certification period for the State to impose an adverse action.

In response to comments, the Department has changed the procedure it proposed. Through this rule, households whose quit occurred in the last month of the certification period and those whose quit is determined too late in the certification period to follow adverse action procedures, will be denied recertification for a period of 90 days beginning with the day after the old certification period has ended. This will be the procedure followed in the great majority of cases. However, in those instances where the household does not apply for recertification by the end of the certification period, a claim shall be filed by the State agency for benefits received during the 90 days subsequent to the first day of the month following the month of the quit. If benefits were received for fewer than 90 days from the first of the month following the month in which the quit occurred, a claim shall be established for benefits received, and the 90 day period of ineligibility shall be prorated accounting for the number of days for which a claim was established and imposed. By imposing a claim against households who do not reapply for benefits, the Department is ensuring that the quit does not go unacknowleged.

Workfare or Work Component Benefit Overissuances

The October 1, 1986 regulation proposed a procedure for State agencies to follow when a benefit overissuance is paid and the household has already fulfilled its workfare or work component obligation. The procedure would be applicable to workfare operated under section 20 of the Food Stamp Act as well as to any work component of a State employment and training program. This final rule does not change the procedure specified in the proposed rule. That rule provided that when the household's work requirement continues, State agencies would attempt to recover the entire overissuance and give the household a credit of workfare hours in a subsequent month(s) for extra hours worked during the month(s) of overissuance. It the work requirement does not continue, the State agency would consider whether the overissuance was the result of an intentional program violation, inadvertent household error, or a State agency error. If the overissuance resulted from an intentional program violation, a claim for the entire amount of overissuance would be established and pursued in accordance with § 273.18. In effect, the hours worked beyond those which would have been worked had the correct benefit level been used in calculating the work obligation would be forfeited. If the overissuance was caused by an inadvertent household error or a State agency error, a claim would be established for the amount of the overissuance which was not worked off. To determine the amount of the claim, the State should subtract from the amount of the overissuance the number of hours worked multiplied by the minimum wage. For example, a household was incorrectly issued a benefit of $150 in a month when $100 would have been the proper benefit. The household, based on the $150 allotment worked 44 hours ($150 divided by the minimum wage, currently $3.35). Had the allotment been correctly calculated the household could have been assigned no more than 29 hours in that month. The State should establish a claim for the amount of the overissuance which was not "worked off" (i.e., any hours between 29 and 44 which were not "worked off.") If the household worked the entire 44 hours, no claim would be established. If the household worked 35 hours, the minimum wage times nine (the number of hours not worked off) or $30.15, would have to be recovered.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamp, Fraud, Grant programs—Social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 a new paragraph (g)(97) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * * * *

(g) *Implementation.* * * *

(97) Amendment No. 278. State agencies shall implement the provisions of this amendment no later than October 18, 1988.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.1 a new sentence is added to the end of paragraph (d)(2) to read as follows:

§ 273.1 Household concept.

* * * * *

(d) *Head of household.* * * *

(2) * * * The designation of head of household through the circumstances of this paragraph shall take precedence over a previous designation of head of household at least until the period of ineligibility is ended.

* * * * *

4. In § 273.7 a new paragraph (c)(11) is added to read as follows:

§ 273.7 Work requirements.

* * * * *

(c) *State agency responsibilities.*

* * *

(11) If a benefit overissuance is discovered for a month or months in which a mandatory E & T participant has already fulfilled a work component requirement, the State agency shall follow the procedure specified in § 273.22(f)(9) for a workfare overissuance.

* * * * *

5. In § 273.7 paragraph (f)(3)(ii) is amended by removing the words "non-work" from the last sentence.

6. In § 273.7 paragraph (g)(1) is amended by adding a new sentence between the third and fourth sentences. The new sentence reads as follows:

* * * * *

(g) *Failure to comply.* (1) Noncompliance with Food Stamp Program work regulations. * * *

A household determined to be ineligible due to failure to comply with the provisions of this section may reestablish eligibility if a new and eligible person joins the household as its head of household, as defined in § 273.1(d)(2). * * *

* * * * *

7. In § 273.7 introductory text of paragraph (n) is revised; a new sentence is added at the end of paragraph (n)(1)(i); in the first sentence of paragraph (n)(1)(ii) the words "or who is exempt through § 273.7(b)(1)(vii)" are added between the words "work" and "has" and the words "most recent" are removed from the first sentence; paragraph (n)(1)(iii) is revised; paragraph (n)(1)(vi) is revised; paragraph (n)(2) is revised; a new sentence is added between the first and second sentences in paragraph (n)(5)(iii); and a new paragraph (n)(5)(iii) is added.

* * * * *

(n) *Voluntary quit.* No household whose head of household, as defined in § 273.1(d)(2), voluntarily quit a job of 20 hours a week or more without good cause 60 days or less prior to the date of application or at any time thereafter shall be eligible for participation in the program as specified below. At the time of application, the State agency shall explain to the applicant the consequences of the head of household quitting a job without good cause, and of the consequence of a person joining the household as its head if that individual has voluntarily quit employment.

(1) Determining whether a voluntary quit occurred and application processing.

(i) * * * If an individual quits a job, secures new employment at comparable wages or hours and is then laid off or, through no fault of his own loses the new job, the earlier quit will not form the basis of a disqualification.

* * * * *

(iii) The State agency shall determine whether any household member voluntarily quit his or her job while participating in the Program, within 60 days prior to applying for participation, or in the time between application and certification. If a household is already participating when a quit which occurred prior to certification is discovered, the household shall be regarded as a participating household and the 90 day sanction shall be imposed in accordance with § 273.7(n)(1)(vi).

* * * * *

(vi) If the State agency determines that the head of a participating household voluntarily quit his or her job while participating in the program or discovers a quit which occured within 60 days prior to application for benefits or between applicant and certification, the State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a quit. Such notification shall contain the particular act of noncompliance committed, the proposed period of ineligibility, the actions which may be taken to end or avoid the disqualification, and shall specify that the household may reapply at the end of the disqualification period. Except as otherwise specified in this paragraph, the period of ineligibility shall run continuously for three months or 90 days, beginning with the first of the month after all normal procedures for taking adverse action have been followed. The 90 day disqualification period may be converted to a three calendar month period only for participating households. If a voluntary quit occurs in the last month of a certification period or is determined in the last 30 days of the certification period the household shall be denied recertification for a period of 90 days beginning with the day after the last certification period ends. If such household does not apply for food stamp benefits by the end of the certification period, a claim shall be established for the benefits received by the household for up to 90 days beginning the first of the month after the month in which the quit occurred. If there are fewer than 90 days from the first of the month after the month in which the quit occurred to the end of the certification period, a claim shall be imposed, and the household shall remain ineligible for benefits for a prorated number of days, with the end result that a claim was established or the household was ineligible for a full 90 day period. Each household has a right to a fair hearing to appeal a denial or termination of benefits due to a determination that the head of household voluntarily quit his or her job without good cause. If the participating household's benefits are continued pending a fair hearing and the State agency determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered. Persons who have been disqualified for quitting a job as head of one household will carry their sanction with them if they join a new household as its head. The new household will remain ineligible for the remainder of the sanction period unless the person who cause the disqualification ends it in a manner prescribed in § 273.7(n)(5). If an individual who voluntarily quit joins a new household and is not the household head the sanction shall be terminated.

* * * * *

(2) Exemptions from voluntary quit provisions. Persons who are exempt from the work registration provisions in § 273.7(b) at the time of the quit, with the exception of those exempted by § 273.7(b)(1)(vii) shall be exempt from the voluntary quit provisions.

* * * * *

(5) Ending a voluntary quit disqualification. * * *

(ii) * * * Comparable employment may entail fewer hours or a lower net salary than the job which was quit.

* * *

(iii) A household determined ineligible due to a voluntary quit without good cause may reestablish eligibility if a new and otherwise eligible member

joins as its head of household as defined by § 273.1(d)(2).

* * * * *

8. In § 273.22 paragraph (b)(1) is revised and paragraph (f)(9) is added. The revision and addition read as follows:

§ 273.22 Optional Workfare Program.

* * * * *

(b) *Program administration.* (1) A food stamp workfare program may be operated as part of a State's employment and training program, required in § 273.7(f) or may be operated independent of such a program. If the workfare program is part of the State's employment and training program it shall be included as a component in the State's employment and training plan in accordance with the requirements of § 273.7(c). If it is operated independent of the E&T program, the State must submit a workfare plan to FNS for its approval in accordance with the requirements of this section. For the purpose of this section, a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State workfare or employment and training plan.

* * * * *

(f) *Other program requirements.* * * *

(9) Benefit overissuances. If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare or work component requirement, the State agency shall follow claim recovery procedures specified below.

(i) If the person who performed the work is still subject to a work obligation, the State shall determine how may extra hours were worked because of the improper benefit. The participant should be credited that number of hours toward future work obligations.

(ii) If a workfare or work component requirement does not continue, the State agency shall determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance. If the overissuance was caused by an inadvertent household error or State agency error, the State agency shall determine whether the number of hours worked in workfare are more than the number which could have been assigned had the proper benefit level been used in calculating the number of hours to work. A claim shall be established for the amount of the overissuance not "worked off," if any. If the hours worked equal the amount of hours calculated by dividing the overissuance by the minimum wage, no claim shall be established. No credit for future work requirements shall be given.

* * * * *

Anna Kondratas,

Administrator.

Date: August 11, 1988.

[FR Doc. 88-18801 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Parts 272 and 278

[Amdt. No. 291]

Food Stamp Program; Sales Tax Provision Clarifications; Sequencing/ Allocation of Food Stamp Transactions and Compliance Enforcement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rulemaking.

SUMMARY: This final rule provides guidance to States regarding taxation of food purchases when both food stamps and cash are used to pay for taxable and nontaxable food items. Implementing these changes will simplify food stamp transactions under the sales tax provision (i.e., section 4(a)) of the Food Stamp Act (7 U.S.C. 2013(a)). This rule also clarifies the method that will be used to enforce compliance with the sales tax provision. Proposed regulations were published in the **Federal Register** of May 26, 1987 at 52 FR 19514. Comments on the proposal were solicited through July 27, 1987. This final rulemaking takes the comments received into account. Readers are referred to the proposed regulations for a more complete understanding of this rule.

DATE: All provisions are effective September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be directed to Mr. Thomas O'Connor, Chief, Administration and Design Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3385.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this final rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has classified it as "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. The rule would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets.

Although this rule will affect the business community, its impact is not expected to be significant. One provision which addresses the sequencing (proper tax allocation of food stamps) of purchased items, may affect approximately 100,000 approved retail stores, but the change in operating procedures it requires is minor. Potential penalties will affect only those stores that fail to comply with the sales tax exemption requirement.

Executive Order 12372

The Food Stamp Program is listed in the *Catalog of Federal Domestic Assistance* under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983 or 48 FR 54317, December 1, 1983, as appropriate and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has also been reviewed with regard to the requirements of Pub. L. 96-354 and Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The rule will simplify the procedures stores use in the acceptance of food stamps and clarify the manner in which compliance with the sales tax provision will be enforced.

Paperwork Reduction Act

There are no reporting or recordkeeping provisions included in this proposed rule.

Background

After issuing rules on April 1, 1986 at 51 FR 11009 that implemented the provision of section 1505 of Pub. L. 99–198 prohibiting the collection of sales tax on food purchases made with food stamps, the Department became aware that problems in implementing the law at the point of grocery sales were likely to occur in "partial-tax" States. A "partial-tax" State is one in which some but not all eligible food items are taxed.

A problem identified as sequencing occurs when a customer purchases both taxable and non-taxable food items with a combination of cash and food stamps. Since sales tax cannot be charged on the value of items bought with food stamps it is important to know toward which of the food items, taxable or non-taxable, the food stamps are to be applied. This decision affects the ability of stores to process the purchase.

Sequencing is particularly troublesome in those stores without sophisticated electronic grocery check-out devices. Currently, when a customer in such stores buys both eligible and non-eligible items during the same transaction, clerks must physically separate or sort the items purchased before ringing up the transaction. In a partial-tax State an additional separation of eligible items into taxable and non-taxable piles will be required to ensure that tax is not charged on food purchased with food stamps. This "double-sorting" can be time-consuming for the affected retailers.

On May 26, 1987 the Department published a notice of a proposed rulemaking at 52 FR 19514 to help resolve this added burden on retailers. The Department accepted comments on this proposal through July 27, 1987. Fourteen letters were received. The major concerns raised by the commenters are discussed below.

Choice of Sequencing Options

The proposed rule offered States a choice between two options. Under the first option there would be no tax on any transaction in which any amount of food stamps was used. Under the second option food stamps would first be allocated to taxable eligible items. The commenters were almost equally divided over the choice of options, with slightly more favoring the first. Two commenters recommended making option one mandatory while two others asked that it not be made mandatory. One State agency commented that the Federal governnent had no legal authority to involve itself in State fiscal matters by proposing any option. An advocate group believed that applying food stamps first to taxable items did not legally implement the statute.

The Department acknowledges the sensitivity of States toward Federal actions which affect State revenue and accounting. As a consequence, FNS has decided to modify the proposal in this final rule. States may select option one (no tax when food stamps used), option two (allocate stamps first to taxable items), or any other sequencing method that best serves their individual needs and circumstances and conforms with the legal guidelines discussed herein.

States will not be permitted to allocate stamps first to non-taxable eligible items. The Department's Office of General Counsel believes this approach violates section 4(a) of the Food Stamp Act since it would require food stamp customers to pay a sales tax on the taxable eligible items which might have been purchased with food stamps but are instead purchased with cash as a result of program sequencing and allocation rules. This would reduce the purchasing power of food stamp recipients by indirectly taxing benefits and in doing so undermine the intent of the Food Stamp Act. When food stamps are allocated to taxable items first, no tax is collected on the dollar value of the food stamps and no diminution of coupon purchasing power occurs. Allocating food stamps first against non-taxable eligible items acts to diminish the sales tax offset value otherwise "available to" the customer's food stamps. Allocating first against taxable items, by comparison, maximizes the offset; which is merely the choice that any rational consumer would make and thus comports with the goal of the sales tax statute. Likewise, any other method which directly or indirectly charges a sales tax on food purchased with food stamps will not be allowed.

Although it was recommended in the proposed rule that a State apply one sequencing/allocation method for all retail outlets in the State, the final rule allows States to opt for or permit more than one method, so along as all methods allowed meet the legal requirements discussed here. This approach offers States maximum choice with minimum Federal involvement. Although States are free to choose their own sequencing methods, the option chosen must not limit the purchasing power of food stamp customers.

Other Possible Methods for Compliance With the Sales Tax Provision

A number of commenters proposed other methods besides the two identified in the proposed rule, that could conceivably be used to comply with the sales tax provision. One commenter suggested making it optional as to whether a State had to choose any methods at all. This suggestion was evaluated but was rejected because it would not have adequately implemented the legislative provision of section 4(a) of the Act. Another State agency proposed that we evaluate compliance with the sales tax provision under the legal approach known as "de minimus". The rationale offered was that since most partial-tax States taxed only a few eligible food items (perhaps amounting to as little as three percent of a recipient's monthly food stamp purchases) it could be argued that these States were "substantially" in compliance. Part of this argument included the concept that the cost to the retail establishment of this one-time implementation would probably exceed one year's State tax of eligible foods. The Department rejected this suggestion. Section 4(a) requires actual, not substantial compliance. Moreover, since the sales tax prohibition provision is permanent and since the amount of food stamp benefits allowed to be taxed under this approach would have accumulated over time, this "de minimus" approach was legally suspect.

Another State agency recommended that we redefine "eligible food" under the Food Stamp Act and develop regulations to exclude "junk food" such as soda, candy, and gum. This option might result in some partial-tax States being automatically defined as in compliance since these are the primary items that are taxed in these States. This approach was also considered prior to issuance of the proposed rule. There are a number of serious problems with this approach. Earlier attempts to redefine food to exclude so-called "junk food" have encountered formidable obstacles. All States have differing lists of so-called junk or non-nutritive foods which they tax, on the basis of their view of these items as "non-food" or as "luxury" food items. Any attempt to define which out of potentially hundreds or even thousands of food items and brands are to be labelled "junk" food would be extremely difficult because of the varying viewpoints of States, nutritionists, and food industry representatives. Moreover, "food" is defined in the Food Stamp Act (Sec. 3(g), 7 U.S.C. 2012(g)) in very broad terms. Thus, it is not altogether clear that FNS has authority to narrow the definition in the manner suggested.

Implementation Problems

A number of State agencies were of the opinion that this proposed rule was issued too late in the implementation

cycle for changes in State rules and retailer software revision to be effective October 1, 1987. Several State agencies stated that they needed more implementation time because our proposed rule would require them to go back to their State legislatures for new legislation and require their retailers to make additional software changes. FNS recognizes this concern and consequently clarified and simplified the requirements for compliance.

A commenter noted that the proposal would require an additional software change by retailers in addition to their original software change effected to comply with the April 1, 1986 sales tax rule. Since the proposed rule would have required a particular allocation/sequencing method to be used, its finalization could have resulted in the additional software change noted by the commenters. By changing the rule so that a range of methods are available for use, the need of additional software changes is greatly diminished. Such software changes would be needed only if the proscribed allocation/sequencing method had been implemented or if a State decides to require one particular method to be implemented statewide and it differs from that which retailers had adopted. The Department expects the first situation will not arise since the method proscribed in this rule was also proscribed in the proposal. Moreover, since the application of coupons to non-taxable eligible items first is contrary to the statutory purpose, the Department is not at liberty to alter the rule on this point. The frequency with which the second situation will be faced is unknown since it depends on whether States will require the implementation of a uniform method.

It is important to again note that a State would be in compliance with this final sequencing/allocation rule if the sequencing/allocation method prohibited by this rule is also prohibited by the State. While written guidelines issued by State revenue departments would be definitive indicators of implementation, State policy precluding the proscribed sequencing option need not be written in order to meet initial compliance.

Miscellaneous Comments

One State agency recommended that FNS develop, print, and make available posters regarding the sales tax provision. FNS believes that since implementation methods and the actual operational effects of this provision will vary from State to State, each individual State through its Revenue department or other appropriate agency may wish to explain the sales tax provision in its own way.

One commenting agency from a full-tax State, unaffected by the proposed provisions, offered the opinion that option one, described above, would cause a serious loss of State tax revenue and allow severe abuse. This is a misunderstanding of that option. This entire rule is addressed only to partial-tax States and not to full-tax States. Option one, if implemented in a full-tax State, would have the effect the commenter noted and could cause serious program abuse and a very large and unnecessary loss of State tax revenue. However, neither of these result in a partial-tax State since it is only a very small percentage of a food stamp recipient's monthly purchases that are typically taxed in such a State and therefore there is virtually no measurable tax loss.

Compliance With the Sales Tax Provision (272.1(b)(3); 278.1(l)(1)(iv) and (2); 278.6(e)(7)

One commenter indicated a concern that food stamp recipients in a State about to be removed from the Food Stamp Program should have some warning or protection to allow them to use up previously issued food stamps. Should an entire State be sanctioned for non-compliance with the sales tax provision, State agencies would be required, under § 273.12(e)(4), to ensure that advance notification of termination of benefits be provided to food stamp recipients.

Another State agency voiced concern that with the sales tax provision FNS was turning over to States the retail store monitoring functions which FNS field offices have traditionally performed. Although we assume States will monitor their own State laws in a responsible manner, FNS will continue its historial authorization and compliance review of retail stores. Monitoring retailer implementation of the terms of the sales tax prohibition and of this clarifying rule are added to existing responsibilities.

The proposed change § 287.6(e)(7) regarding the issuance of warning letters was deleted. Comments convinced us that the language of existing section 278.6 provided sufficient authority for enforcement. Deleting this proposed provision leaves FNS offices more administrative leeway on how monitoring and compliance enforcement is to be conducted. FNS officials may issue an individualized warning letter for each occurrence, but may choose not to do so. FNS offices may use other compliance methods found to be practical and effective.

Implementation

All provisions of this rule are effective September 19, 1988.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reports and recordkeeping requirements.

7 CFR Part 278

Administrative practice and procedure, Banks, banking, Claims, Food Stamps, Groceries—retail, Groceries, general line—wholesaler, Penalties.

Accordingly, Parts 272 and 278 are amended as follows:

1. The authority citation for Parts 272 and 278 continues to read:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1:

(a) The text of paragraph (b) is redesignated (b)(1);

(b) New paragraphs (b)(2) and (b)(3) are added;

(c) A new paragraph (g)(101) is added. The additions read as follows:

§ 272.1 General terms and conditions.

* * * * *

(b) *No tax on food stamp purchases* * * *

(2) State and/or local law shall not permit the imposition of tax on food paid for with coupons. FNS may terminate the issuance of coupons and disallow administrative funds otherwise payable pursuant to Part 277 in any State where such taxes are charged. Action to disallow administrative funds shall be taken in accordance with the procedures set forth in § 276.4.

(3) A State or local area which taxes some, but not all, eligible food items shall ensure that retail food stores in that locale sequence purchases of eligible foods paid for with a combination of coupons and cash so as to not directly or indirectly charge or assign a tax to food stamp recipients on eligible food items purchased with coupons. Prohibited methods include, but are not limited to, the allocation of coupons first to non-taxable eligible items, and the application of cash, rather than coupons, to taxable eligible food.

* * * * *

(g) *Implementation.* * * *

(101) *Amendment No. 291.* The provisions of Amendment No. 291 are effective September 19, 1988.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

3. In § 278.1, paragraph (l) is revised to read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(l) *Withdrawing authorization.* (1) FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.

(i) The firm's continued participation in the program will not further the purposes of the program;

(ii) The firm fails to meet the specifications of paragraphs (b), (c), (d), or (e) of this section;

(iii) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership; or

(iv) The firm is required under State and/or local law to charge tax on eligible food purchased with coupons or to sequence or allocate purchases of eligible foods made with coupons and cash in a manner inconsistent with 272.1 of these regulations.

(2) The FNS officer in charge shall issue a notice to the firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FNS shall remove the firm from the program if the firm does not request review within the period specified in § 279.5.

* * * * *

4. In § 278.2, the first sentence of paragraph (b) is revised. The revision reads as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(b) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with coupons. * * *

* * * * *

Date: August 11, 1988.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 88-18857 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 627]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 627 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,575 cartons during the period August 21 through August 27, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 627 (§ 910.927) is effective for the period August 21 through August 27, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order than small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The committee met publicly on August 16, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.927 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.927 Lemon Regulation 627.

The quantity of lemons grown in California and Arizona which may be handled during the period August 21, 1988, through August 27, 1988, is established at 330,575 cartons.

Dated: August 17, 1988

Charles P. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-18975 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 947

[FV-88-114]

Irish Potatoes Grown in Modoc and Siskiyou Counties, CA, and all Counties in Oregon, Except Malheur County; Amendment to Relax Requirements for High Quality Red-Skinned Varieties of Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule and opportunity to file comments.

SUMMARY: This interim final rule eliminates the minimum size requirement for high quality red-skinned potatoes (also known as round red potatoes), and relieves such potatoes from special purpose shipment requirements. Currently, red-skinned potatoes must meet a minimum size of 2 inches in diameter or 4 ounces in weight. Under a special purpose provision initiated for market expansion purposes, red-skinned potatoes meeting a minimum size of 1½ inches may be shipped if they grade at least U.S. No. 1. Also, handlers of these potatoes are required to obtain a certificate of privilege from the committee, meet a 50-pound minimum pack requirement and report the shipment, grade and usage of such potatoes to the committee. The intent of this action is to meet current consumer demand for smaller, high quality round red potatoes, meet the industry's need for a smaller container and relieve handlers from safeguard requirements that are no longer necessary.

DATES: Interim rule effective August 19, 1988; comments which are received by September 19, 1988, will be considered prior to issuance of the final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-5610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 947 (7 CFR Part 947), as amended, regulating the handling of potatoes grown in Modoc and Siskiyou counties, California, and in all counties in Oregon, except Malheur county. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orderes issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Oregon-California potatoes subject to regulation under the marketing order, and approximately 470 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

Red-skinned potatoes represent less than one percent of the total potato crop in the production area. This estimate is based on red-skinned potato acreage and the national average potato yield. Red-skinned potatoes are utilized mainly in the fresh market.

While in the past consumer demand has been stronger for larger sized potatoes, there currently exists a market for small red-skinned potatoes. Potatoes produced in other areas are competing for this market. These potatoes are being merchandised as a gourmet or specialty item.

The handling requirements for fresh Oregon-California potatoes are specified in § 947.340 (53 FR 2996, February 3, 1988). The current requirements for red-skinned potatoes specify that they must grade at least U.S. No. 2 and, if shipped within the continental United States, must have a minimum diameter of 2 inches or weigh at least 4 ounces. Red-skinned potatoes for export and those shipped domestically under special purpose provisions must have a minimum diameter of 1½ inches. For red-skinned potatoes to be shipped under the special purpose provision, they must grade at least U.S. No. 1, except for size, and be packed in containers of at least 50 pounds. This interim final rule eliminates the minimum size requirement for U.S. No. 1 round red potatoes. This rule also deletes the special purpose shipment requirements for such potatoes. These changes were recommended by the Oregon-California Potato Committee on a nine to one vote.

The elimination of the size requirement will afford producers and handlers the opportunity to meet current market demand for small, high quality red-skinned potatoes. This change is expected to benefit consumers by providing them with a product they desire, and producers and handlers by increasing sales. This relaxation should not adversely affect the market for larger potatoes.

To research markets for expansion possibilities, the committee initiated a special purpose shipment provision during the 1986-87 season. This provision allows the shipment of high quality red-skinned potatoes that measure at least 1½ inches in diameter and that are packed in quantities of 50 pounds or more. Also, handlers of such potatoes must obtain a Certificate of Privilege from the committee prior to each season and report the shipment, grading and usage of the potatoes to the committee. The certificate and reporting requirements aided the committee is discerning the market for such potatoes.

The deletion of the special purpose requirements for red-skinned potatoes is necessary to allow shippers to meet the industry's need for a smaller container (e.g. one-pound bag). Furthermore, the certification and reporting requirements have served their purpose and are no longer necessary.

While small red-skinned potatoes are currently in high demand, this apparently does not extend to other

varieties of potatoes. For this reason, the committee recommended retaining the special purpose shipment requirements for non-red-skinned potatoes. These requirements could be eliminated at some point in the future if experience indicates that there is a viable market for these small potatoes.

An editorial change is being made regarding the special purpose requirements for other than red-skinned potatoes. While the current regulation specifies that handlers apply for a "special purpose certificate," the proper term is "Certificate of Privilege." This is the term used elsewhere in the regulation, and this revision is made in the interest of consistency.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. Because the import requirements for red-skinned potatoes are based on the marketing orders covering Washington potatoes (M.O. 946) and Colorado Area No. 2 potatoes (M.O. 948), these changes in the handling requirements for Oregon-California potatoes will have no effect on the potato import regulation.

The information collection requirements contained in the provisions of the regulations to be revised by this interim final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0112. This action reduces the current information collection burden by eliminating the reporting requirements applicable to shipments of small, high quality red-skinned potatoes.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** for the following reasons: (1) The harvest and shipment of red-skinned potatoes has begun, and this relaxation of requirements should apply to as many shipments as possible; (2) potato handlers are aware of this action which was recommended by the committee at a public meeting, and they will not need additional time to comply with the changed requirements; (3) this rule facilitates the handling of red-skinned potatoes to meet current consumer demand, and expediting its effective date will be advantageous to producers and consumers alike; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to the finalization of the rule.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31. as amended; 7 U.S.C. 601–674.

2. Section 947.340 is amended by revising paragraph (b) to read as follows:

Note.—This section will appear in the Code of Federal Regulations.

§ 947.340 Handling regulation.

* * * * *

(b) *Size requirements.* (1) Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1⅛ inches in diameter.

(2) Red-skinned varieties of potatoes may be shipped without regard to any minimum size requirement, if they otherwise grade at least U.S. No. 1.

(3) All non-red-skinned varieties of potatoes that measure less than 1⅛ inches in diameter may be shipped if such potatoes otherwise grade at least U.S. No. 1 and are packed in quantities of 50 pounds or more per container: *Provided,* That any person who desires to handle such potatoes shall each season prior to shipment apply for and obtain a Certificate of Privilege from the committee authorizing shipment of the potatoes for market expansion purposes: *Provided further,* That any person who so handles potatoes for market expansion purposes shall promptly report the shipment, grading, and usage of the potatoes to the committee.

* * * * *

Dated: August 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–18875 Filed 8–18–88; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 51, 70, 72, 73, 75 and 150

Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Waste Policy Act of 1982, as amended (NWPA) requires that monitored retrievable storage facilities (MRS) for spent nuclear fuel and high-level radioactive waste (HLW) be subject to licensing by the Nuclear Regulatory Commission (NRC). The NRC is adding language to its regulations in 10 CFR Part 72 to provide for licensing the storage of spent nuclear fuel and HLW in an MRS. The Commission intends to have the appropriate regulation to fulfill the requirements of the NWPA in place in a timely manner. The rule would also clarify certain issues that have arisen since Part 72 was made effective on November 28, 1980 and incorporate other changes resulting from public comments received.

EFFECTIVE DATE: September 19, 1988.

ADDRESSES: Copies of NUREG–0575, NUREG–1092, and NUREG–1140 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 22161. A copy of each NUREG is also available for public

inspection and/or copying at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith G. Steyer or C.W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)492–3824 or 492–3834, respectively.

SUPPLEMENTARY INFORMATION: On May 27, 1986, following Commission approval, the proposed revision to 10 CFR Part 72 relating to MRS licensing was published in the Federal Register (51 FR 19106) for comment. The comment period expired on August 25, 1986.

The NRC received 195 comment letters from utilities, engineering companies, State offices, environmental groups, private citizens, and a member of the U.S. House of Representatives. The comment letters from private citizens numbered about 145. (Some of these were signed by several individuals or were submitted on behalf of private business firms.) From the comment letters received, the staff identified 27 separate topics to which specific responses were directed. Comments were also received which addressed the original rule, not the proposed amendment. In response to the comments, several changes have been made to the proposed rule. The majority of these changes are mainly clarifying in nature.

In order to provide sufficient space to accommodate possible future amendments to Part 72, the sections of the final rule have been renumbered. To aid the reader in following the discussion of comments in the preamble of the final rule, each reference to a specific section of the final rule is followed by a bracketed reference to the parallel section of the proposed rule.

A compilation of the issues raised as a result of public comment and the accompanying Commission response follow:

1. Backfitting

Comment: Several commenters indicated that the proposed rule should incorporate the sense of the reactor backfitting rule set out in 10 CFR 50.109.

Response: Although these storage facilities are not like reactors but are, for the most part, static by nature with very little need for design changes, the staff has revised the backfitting requirements of 10 CFR 72.62 (§ 72.42). The change is being made to conform § 72.62 (§ 72.42) more closely to § 50.109 as modified by the court decision in *Union of Concerned Scientists, et al.*, v. *U.S. Nuclear Regulatory Commission, et al.*, Nos. 85–1757 and 86–1219, 824 F.2d 108 (U.S.C.A.D.C. August 4, 1987).

2. Opportunity for Hearing Prior to the First Receipt of Spent Fuel or High-Level Radioactive Waste (HLW)

Comment: A new proposed § 72.46(c) (§ 72.34(c)) was added to 10 CFR Part 72 specifically providing that the Commission may, upon its own initiative, issue a notice of opportunity for hearing prior to the first receipt of spent fuel or high-level radio-active waste at an MRS if it finds this to be in the public interest. In the supplementary information in the May 27, 1986 Proposed Rule, the Commission indicated its own considerations on this topic and expressed particular interest in receiving public comment on (1) the need to make a finding before MRS operation that construction conforms to the license application, (2) provisions for second stage hearing rights to address specific new issues which could not have been litigated at the first stage and/or new information which has been revealed since issuance of the license, and (3) the format of the hearing, if held. Of the comment letters that addressed these points, some expressed no preference, some favored the provisions, some thought the provisions were unnecessary.

The principal reasons given by proponents of these provisions are that the public will have more confidence that the MRS will be operated safely and that there should be a clear opportunity to examine new issues which could be raised. Other comments of proponents were that the Department of Energy has had poor public performance in the past, that the degree of hazard is similar to nuclear power reactors which require a two-stage process, and that the opportunity for a second hearing could be an appropriate time to examine technical/financial information. Additional comments suggested that the rule require a second mandatory hearing and that funding be provided for nonprofit groups to participate in a second hearing.

On the topic of a finding it was suggested that (1) criteria be set forth for any finding the Commission may make, and (2) the NRC inspections should certify quality assurance and completeness of construction in an inspection report prior to initiation of operation. One comment suggested that start-up of the MRS should be linked to the repository authorization as an issue at a second hearing.

The principal reasons given by those opposed to the new provisions for a second hearing were that (1) it would cause unnecessary delay, (2) the Commission's regulations in 10 CFR Part 2 were sufficient to examine any new issues, (3) the NRC's normal systematic inspections are adequate to assure that construction was proper, (4) the nature of the MRS is such that all issues could be covered by the opportunity for public review prior to issuing a license and starting construction, and (5) the backfitting provision (§ 72.62 (§ 72.42)) provides additional assurance that significant issues may be raised by staff after the license is issued. Other reasons offered in objection to the new provisions were that (6) there was no basic difference between an MRS and an Independent Spent Fuel Storage Installation (ISFSI), (7) the small amount of solidified high-level waste which could be received could not justify any change in procedure from an ISFSI, and (8) the Safety Analysis Report (SAR) update procedure will assure that any new issue will be known and understood by NRC staff.

Response: The Commission specifically added the new provision and requested comments in order to obtain as complete an understanding as possible of whether or not any benefits would accrue to the public from such a procedure. This was done with full knowledge that the Atomic Energy Act of 1954, as amended, only requires one hearing and that under the procedures in 10 CFR Part 2 the opportunity always exists for any member of the public to bring any new issues to the Commission's attention.

In the comments received from the public there was no indication that there were likely to be any new safety issues brought forward which could not have been fully addressed on the occasion of the hearing held prior to issuance of the license. The licensing process of Part 72 supports one-stage licensing as it requires that all information needed for the licensing action be available and complete before a license is issued, i.e., final design, quality assurance/control procedures, operator training procedures, operating technical specifications, etc. Unlike a reactor license where a construction permit is issued prior to final design, an MRS application for license contains a final and complete design and therefore one-stage licensing is achievable. As to conformance of construction with the application and license, the Commission believes that, unlike reactors, construction of Part 72 type facilities will be simple and straightforward. Accordingly, in the Commission's judgment, there will be no need, as part of the safety review prior to license issuance, to require an applicant to

"prove" conformance of the as-built facility with the application. NRC would audit construction progress and, in the event some problems were found, enforcement action could be taken to correct them and, if necessary, halt the receipt of spent fuel until they were corrected. In this regard, § 72.82(c)(3) (§ 72.56(c)(3)) provides for establishing an NRC resident inspection program if warranted.

3. Interaction with States

Comment: Comments were received concerning providing of information to State and local governments and their interaction in the licensing process with DOE and the Commission.

Response: Under § 72.200 (§ 72.310) of the proposed rule, the Governor and legislature of any State in which a monitored retrievable storage installation may be located and the governing body of any affected Indian tribe will be provided timely and complete information regarding determinations or plans made by the Commission with respect to siting, development, design, licensing, construction, operation, regulation or decommissioning of such monitored retrievable storage facility. In response to the comment, the Commission will change § 72.200 (§ 72.310) "Provision of MRS Information" to require that the above information will also be provided to each affected unit of local government and to the Governors of any contiguous States. The definition of "affected unit of local government" which has been added to § 72.3 tracks the definition used in the Nuclear Waste Policy Amendments Act of 1987. (Sec. 5002, Pub. L. 100–203, 101 Stat. 1330–227 (42 U.S.C. 10101 (31)).) Participation by persons, including States, in license reviews is as provided for in 10 CFR Part 2, Subpart G.

4. High Burn-Up Fuel

Comment: In response to a 1980 petition for rulemaking, the Commission agreed (51 FR 23233, June 26, 1986) to prepare an environmental assessment on high burn-up fuel. The Commission's response concerning impacts of high burn-up fuel should be provided.

Response: The Commission issued an environmental assessment addressing the subject of high burn-up fuel in February 1988 "Assessment of the Use of Extended Burnup Fuel in Light Water Power Reactors" (NUREG/CR–5009). The assessment concluded "Environmentally, this burnup increase would have no significant impact over normal burnup."

5. Emergency Planning

Comment: As discussed in supplementary information to the proposed revisions to 10 CFR Part 72 the rule was rewritten to set forth explicit requirements appropriate to an ISFSI or an MRS, rather than refer to Appendix E to CFR Part 50, which is specific to nuclear power reactors. Responders commented on this change. Several thought that there should be a wider dissemination of the emergency plan which an applicant would have to prepare pursuant to the rewritten § 72.32 (§ 72.19), as well as a comment period longer than the specified 60 days. Another responder thought that 60 days was adequate. Other comments were that (1) sabotage of casks and terrorism, sabotage and military attack scenarios should be considered in an emergency plan, (2) a fully developed and tested offsite emergency plan should be developed, (3) the new version of § 72.32 (§ 72.19) implies a need for offsite protective actions which is incorrect, (4) the supplementary information which will accompany the issuance of the final rule should discuss worldwide experience and previous reviews and studies as support for the new emergency planning provisions, and (5) the emergency plan should continue to be the same as that for nuclear power reactors.

Response: The basic concept of emergency planning in § 72.32 (§ 72.19) has not been changed. None of the respondents provided any additional information to the staff or questioned the staff analyses such as to change the basis for the staff's approach to emergency planning for an ISFSI or an MRS. Moreover, in view of the relatively passive nature of facilities for the receipt, handling and storage of spent fuel and high-level radioactive waste, as compared to operating power reactors, emergency plans for ISFSI and MRS need not be equivalent to emergency plans for reactors.

Since the proposed revision of Part 72 was published for comment on May 27, 1986, the NRC has published proposed amendments to 10 CFR Parts 30, 40, and 70 [1] which would require certain NRC fuel cycle and other radioactive materials licensees that engage in activities that may have the potential for a significant accidental release of NRC-licensed materials to establish and maintain approved emergency plans for responding to such accidents. Although applicable to persons licensed under different parts of the Commission's regulations, the proposed requirements for emergency plans in Parts 30, 40, and 70 contain substantially identical provisions because they are designed to protect the public against similar radiological hazards. The proposed revision of Part 72 as published for comment also requires applicants for an ISFSI or MRS license to submit an emergency plan (see § 72.32 (§ 72.19).) Although the texts of proposed § 72.19 (redesignated § 72.32) and the parallel provisions of the proposed Emergency Preparedness rule are not identical, these provisions have the same purpose and use the same approach. In both cases, the proposed regulations require onsite emergency planning with provisions for offsite emergency response in terms of coordination and communication with offsite authorities and the public. It is therefore appropriate that in both cases these requirements should be expressed in the same way.

Until the Commission promulgates the Emergency Preparedness rule in final form, it is not possible to ascertain exactly the language that should be used. In view of these circumstances and since there is every expectation that this period of uncertainty will be of relatively short duration, we believe the prudent course of action is to reserve § 72.32 (§ 72.19), Emergency plan, in the final rule with the understanding that the text of this section will be promulgated in final form as a conforming amendment when the Commission adopts and promulgates the final Emergency Preparedness rule or shortly thereafter. We should point out that the temporary absence from Part 72 of requirements respecting emergency plans does not present any difficulties from a regulatory standpoint. To date, only three licenses have been issued under Part 72. Two licensees also hold Part 50 licenses and are required to comply with the provisions respecting emergency plans set out in the Part. The Part 72 license held by the third licensee contains conditions relating to emergency planning with which that licensee must comply.

Sabotage, terrorism, and military attacks are not treated as emergency preparedness issues. The Commission's established practice with respect to dangers of enemy action is that the protection of the United States against hostile enemy acts is a responsibility of the nation's defense establishment and the various agencies having internal security functions. Acts other than military are covered under a planning system included in Subpart H of Part 72,

[1] Proposed rule on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees, 52 FR 12921, April 20, 1987.

which contains requirements respecting physical security and safeguards contingency plans that are specifically designed to preclude the occurrence of such acts. The primary purpose of an emergency response plan is to prescribe measures to be taken to mitigate the effects of accidental releases of radioactivity, irrespective of their cause. Thus, in the unlikely event that there should be an accidental release of radioactivity by reason of an act of terrorism or an act of sabotage, protective actions would be taken as prescribed in the emergency response plan, just as they would be taken in the case of accidental release arriving from other causes.

6. Department of Energy as Licensee for the MRS

Comment: Respondents commented on several aspects of the licensing of the Department of Energy for the MRS. One commenter requested that in every instance in which there would be a difference in requirement between the Department and other licensees, that that difference should be specifically defined in Part 72. Other commenters pointed out that the funding for the MRS was from the Nuclear Waste Fund as stipulated in the NWPA and, therefore, the Department should be required, through Part 72, to show how these funds will be adequate for operation and decommissioning. A further commenter questioned the Department's authority pursuant both to Part 72 and its own orders to delegate quality assurance responsibilities to its contractor(s). One commenter suggested that Part 72 should permit revocation or suspension of the Department's license for the MRS since the NRC could not impose civil penalties for license violations.

Response: As discussed in the supplementary information to the proposed revisions to Part 72, the Department of Energy is exempted from certain financial reports, creditor information and financial plans for decommissioning. As pointed out in the comment above, funding for the MRS will be from the Nuclear Waste Fund, separately accountable from public funds. Consistent with the principle of full cost recovery in section 302 of the NWPA (96 Stat. 2257, 42 U.S.C. 10222) this fund will provide all financial resources for the MRS, i.e., licensing, construction, operation and decommissioning. Since DOE is a federal agency and the status of the NWPA waste fund is reported to and reviewed by the Congress yearly, the Commission believes that Congress will assure that adequate funds are available and appropriated for DOE to carry out its statutory responsibility. Under these circumstances additional NRC oversight is unnecessary and inappropriate.

As to possible conflicts in the licensing and regulatory process between orders and procedures of the Department of Energy and NRC requirements, two government agencies, the commenter provided no specifics and the Commission is not aware of any such conflict. The Department will be provided the same latitude as any other licensee pursuant to § 72.142 (§ 72.101) wherein it is stated that "the licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, but shall retain responsibility for the program."

The Energy Reorganization Act of 1974, as amended, and the Nuclear Waste Policy Act of 1982, as amended, provide that upon authorization by Congress an MRS shall be subject to licensing by the Commission. Accordingly, no exemptions from the provisions of § 72.60 (§ 72.41), "Modification, revocation, and suspension of licenses" and § 72.84 (§ 72.57), "Violation" are shown for the Department. In the exercise of this broad statutory authority and consistent with its customary practice in regulating other Federal licensees, the Commission may impose penalties on the Department if there is sufficient justification. The Commission knows of no other differences between the Department and other licensees for which a change in Part 72 is warranted. (The commenters recommended no specific changes in this area.)

7. Minimum Decay Period (Age) for Receipt of Spent Fuel

Comment: It was noted that there is a seeming discrepancy between the minimum decay period (age) of spent fuel as specified in § 72.2 (one year) and a reference to the environmental analysis in NUREG–1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees" (five-year decay assumed).

Response: The minimum one-year decay period in § 72.2 is based on assuring the decay of radioisotopes having half-lives on the order of a few days or less. In actuality, the decay periods are likely to be much longer than one year. Accordingly, the NUREG-1140 analyses were based on the more realistic, but still conservative, assumption that five or more years of decay would have taken place for the spent fuel for which an accident in a dry cask was assumed. This is not a discrepancy since different purposes are being served in each instance. In choosing a nominal decay period of 10 years and a five-year minimum decay period in the design parameters for the MRS the Department of Energy (DOE) is merely exercising its own prerogative to use a longer decay criterion for purposes of fuel receipt. Selection of a five-year minimum decay period also reflects DOE's understanding that the spent fuel to be received at the MRS will already have decayed for periods of time likely to be even much greater than five years at individual power reactor sites. The original analysis for Part 72 was based on one-year decay.

8. Physical Security Plan

Comment: A few commenters were concerned about the proposed change in the requirements of the physical security plan for the Department of Energy in that the Department must provide a certification that it will provide at the MRS "such safeguards as it requires at comparable surface DOE facilities to promote the common defense and security." The concerns were that this was an added requirement imposed only on the Department and that there was no definition of what a "comparable" DOE facility would consist of.

Response: For all licensees physical security plans are designed for two purposes: (1) To protect against sabotage and (2) to promote the common defense and security. The change in the requirements of the physical security plan is intended to be consistent with 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories," wherein it is recognized that the Department already carries these responsibilities for all of its facilities.

The Department in carrying out its responsibility to promote the common defense and security of all its facilities can best identify the surface DOE facilities to which the MRS is most comparable for purposes of physical security without the unnecessary burden of an NRC definition of "Comparable." Comparability in this context is a function of the kinds and quantities of nuclear materials held at the facilities and the potential consequences of theft or sabotage. However, the NRC staff believes that the Receiving Basin for Off-Site Fuel at the Savannah River Plant may be an appropriately comparable facility.

9. Continous Cask Monitoring Provision

Comment: Several commenters pointed out that the wording of the provision in § 72.122(h)(4) (§ 72.92(h)(4)) for monitoring of storage confinement

systems was inconsistent with section 141(b)(1)(B) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)(B)) wherein it is required that an MRS facility shall be designed to permit continous monitoring. Another commenter suggested that the State should participate in the monitoring.

Response: The difference in wording between section 141(b)(1)(B) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)(B)) and § 72.122(h)(4) (§ 72.92(h)(4)) was inadvertent. The staff has corrected the wording of § 72.122(h)(4) (§ 72.92(h)(4)) in the final rule to agree with the NWPA. As to State participation in monitoring, this is a matter to be resolved with the Department or as indicated in Response Number 3.

10. Inspection and/or Monitoring

Comment: In § 72.44(c)(3) (§ 72.33(c)(3)) the words "inspection and monitoring" have been changed to "inspection or monitoring."

Response: The proposed change serves no useful purpose. The degree and method of inspection and monitoring will be dependent upon design and operational limits for specific cases. The words "inspection and monitoring" will be reinstated.

11. Foreign Fuel

Comment: One commenter expressed objection to the processing and storage of foreign spent fuel or HLW at the MRS and stated that it should be specifically prohibited.

Response: The reference to foreign fuel in § 72.78 (§ 72.54) of the proposed rule was limited to material transfer report requirements and was not intended either to restrict or to permit such processing or storage. Section 302(a) of the NWPA (96 Stat. 2257, 42 U.S.C. 10222(a)) does specify only "high-level radioactive waste, or spent nuclear fuel of domestic origin" and therefore the reference to foreign fuel at an MRS will be removed.

12. Tornado Missile

Comment: Commenters have disagreed with the deletion of the exemption regarding protection against tornado missile impact, that is, as expressed in the existing rule, "* * * An ISFSI need not be protected from tornado missiles * * *". Another commenter who favors the deletion concerning protection from tornado missiles would also have the restriction limiting its scope to "* * * structures, systems, and components important to safety" deleted.

Response: The explanation of the exemption for tornado missiles, set out in the preamble of the existing rule (45 FR 74693, November 12, 1980) states that radionuclide releases from spent fuel which has undergone at least a year of radioactive decay would not be significant in the event of tornado missile impact, citing an accident evaluation from NUREG–0575 "Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuels" with gaseous radionuclide releases from water pool storage. With the continuing development of dry storage technologies, which include metal casks, concrete silos, dry wells, and air-cooled vaults, the Commission decided the designs should take into account tornado missile protection, unless it is shown that tornado missiles will not have any effect on structures, systems and components important to safety. While offsite gaseous release impacts from fuel rod rupture due to a tornado missile incident would remain insignificant, it is important to assure that design criteria for dry storage designs continue to address maintaining confinement of particulate material. All safety reviews for storage licensed under Part 72, both water pool and dry storage, have evaluated designs with respect to tornado missile impact. Since safety considerations drive the concern with respect to the tornado missile phenomenon, it is not necessary to expand that concern beyond "structures, systems, and components important to safety."

13. Use of Part 50 Criteria

Comment: To expedite the licensing process for facilities proposed on sites which currently possess a 10 CFR Part 50 license, it was proposed that the applicable siting evaluation factors and general design criteria which have been reviewed and approved by the NRC for the Part 50 license be directly adopted for the Part 72 facility without additional review, hearings or approvals. Adequate reviews and approvals have been completed, and any change to those previously approved should be treated as a backfit.

Response: The storage of an increased amount of spent fuel on a reactor site, over that covered under an existing Part 50 license, requires staff action through safety and environmental reviews. In taking this action to authorize additional storage capacity for spent fuel, the staff will apply criteria from Part 50 or Part 72, depending on the type of licensing action being sought. Licensing action for an ISFSI would use criteria contained in Part 72 and Part 50 would be used for amending an existing reactor license. Storage of spent fuel on a reactor site outside of an existing reactor basin is already regulated under the criteria of Part 72 and these criteria have been used in reviewing applications for additional fuel storage at reactor sites.

14. Cladding

Comment: Opposition is expressed to any lowering of fuel cladding protection, as provided for in the existing § 72.122(h)(1) (§ 72.92(h)(1)).

Response: The revision of this provision (i.e., § 72.122(h)(1) (§ 72.92(h)(1))) addressed confinement of fuel material, which is the purpose of protecting the fuel cladding. The revised provision specifically provides for additional alternative means of accomplishing this objective. This serves to enhance confinement protection capability rather than diminish it.

15. Rod Consolidation

Comment: Comments were received concerning the Department of Energy's plan to consolidate rods from spent fuel assemblies into sealed packages. One commenter suggested inserting the word "chemically" after the word "separated" in the definition of spent nuclear fuel. Another comment suggested that a separate environmental impact statement be prepared on rod consolidation. It was suggested that the NRC give rod consolidation special consideration and that it is not clear at present what requirements the NRC will use for rod consolidation.

Response: Rod consolidation is the most elaborate operation contemplated for the MRS. The Department of Energy in its proposal and elsewhere has indicated its intention to fully develop the rod consolidation process for installation and operation. The rod consolidation system must meet all applicable portions of the general design criteria. There is no precedent for the preparation of an environmental impact statement in connection with a single system of a facility for which a complete environmental impact statement will be prepared. The aspect of rod consolidation will be covered in that statement, as well as in the safety review and evaluation by the staff in connection with the application for an MRS. The NRC does expect to be kept informed by the Department of its developmental activities prior to receipt of an application.

The insertion of the word "chemically" as suggested has been accepted by the staff for the final rule.

16. Accident Analysis For Two Barriers

Comment: A comment was received regarding engineered barriers such as canisters, "* * * the design basis accident scenario (i.e., release of gap activity from all fuel contained in a dry cask) should be revised to account for cases in which canister or other engineered barriers are incorporated."

Response: Most cask designs do not incorporate canistering of spent fuel assemblies. Therefore, for purposes of this rulemaking, choice of a lesser accident scenario assuming canistering is not appropriate for a bounding analysis. In a safety review involving a specific design, which incorporates an additional engineered barrier, the design basis accident scenario should, of course, consider this addition in the review analysis.

17. Records

Comment: Comments were received concerning archiving of records; by whom and how long?

Response: The proposed rule is consistent with current NRC policy concerning retention periods for records. The specific details of their physical storage is action taken at time of licensing.

18. Operator Safety

Comment: Comments were received concerning design for ALARA.

Response: The licensee is responsible for meeting the requirements of 10 CFR Part 20 "Standards for Protection Against Radiation," and all its provisions for maintaining ALARA. In addition § 72.24 (§ 72.15) Contents of Application: Technical Information requires applicants for a license to supply information for maintaining ALARA for occupational exposure.

19. MRS Collocation with Waste Repository

Comment: Commenter suggested expanding limitation for collocation with repository to include other facilities.

Response: The collocation restrictions in § 72.96 (§ 72.75) are specifically included in order to comply with sections 141(g) and 145(g) of the NWPA (96 Stat. 2243, 42 U.S.C. 10161(g); 101 Stat. 1330–235, 42 U.S.C. 10165(g)). (See also section 135(a)(2), 96 Stat. 2232, 42 U.S.C. 10155(a)(2).)

20. MRS Collocation with Other Nuclear Facilities

Comment: Commenter was concerned about other nuclear facilities that are not licensed.

Response: The licensing process considers all activities and facilities, licensed or unlicensed, that could increase the probability or consequences of safety significant events at licensed facilities.

21. Definition of High-Level Radioactive Waste

Comment: Some commenters noted that the definition of "high-level radioactive waste" used in Part 72 was not the same as the definition used in 10 CFR Part 60 and expressed the view that the two definitions should be consistent.

Response: Since it was first promulgated in November 1980 for the purpose of establishing licensing requirements for the storage of spent fuel in an independent spent fuel storage installation, Part 72, unlike Part 60, has always contained a separate definition of spent fuel. In revising Part 72 to provide for licensing the storage of spent fuel and high-level radioactive waste in an MRS, the Commission has revised the definition of spent fuel to conform more closely to the definition set out in section 2(23) of the Nuclear Waste Policy Act of 1982, as amended (96 Stat. 2204, 42 U.S.C. 10101(23)). The Commission has also amended § 72.3 by adding a definition of "high-level radioactive waste" which conforms to the language used in section 2(12) of that Act (42 U.S.C. 10101(12)). The definitions of spent fuel and high-level radioactive waste used in Part 72, though not identical to the definition of high-level radioactive waste used in 10 CFR Part 60 which encompasses "irradiated reactor fuel," are not inconsistent with that definition. It should be noted, however, that as explained in the Commission's advance notice of proposed rulemaking relating to the definition of high-level radioactive waste (52 FR 5992, February 27, 1987), the definition of high-level radioactive waste used in Part 60 serves a jurisdictional function, specifically identification of the class of Department of Energy facilities that, under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842) are subject to the licensing and related regulatory authority of the Commission.

22. High Level Liquid Waste

Comment: Several commenters were concerned about the storage of liquid High-Level Waste (HLW).

Response: The MRS will be designed and licensed for the storage of irradiated fuel and solidified waste from the processing of fuel. The MRS will not receive liquid HLW and the form of the solid waste stored will be that which is compatible with the requirements for permanent disposal in a repository.

Any liquid wastes generated at the MRS will be handled in accordance with existing regulations.

23. Quality Assurance—Quality Control

Comment: Comments were associated with the apparent difference between the quality assurance criteria proposed and the previous quality assurance criteria.

Response: The proposed rule quality assurance subpart was written to incorporate the previously referenced 10 CFR Part 50, Appendix B quality assurance criteria specifically into Part 72. There was no intent to change the criteria. Minor conforming changes have been made in the final rule.

24. Criticality

Comment: A comment was received concerning the removal of the requirement for verifying continued efficacy of solid neutron poisons.

Response: Several changes have been made to the criticality section of the final rule to make it correspond to other Parts of the Commission's regulations and standard criticality review practices. Verification of solid neutron poisons has been retained. Double contingency criteria and requirements for criticality monitors have been added. It is not the intent of the revision concerning criticality monitors to require monitors in the open areas where loaded casks are positioned for storage as that system is static. Monitors are required where the systems are dynamic.

25. MRS Storage Capacity

Comment: Commenters questioned the MRS storage capacity as stated in the proposed rule in §§ 72.1 and 72.96 (§§ 72.1 and 72.75).

Response: In the proposed rule, MRS storage capacity values are based on the NWPA, as approved by Congress. (See section 135(a)(1)(A), 96 Stat. 2232, 42 U.S.C. 10155(a)(1)(A) and section 114(d), 96 Stat. 2215 as amended by 101 Stat. 1330–230, 42 U.S.C. 10134(d) and section 141(g), 96 Stat. 2243, 42 U.S.C. 10161(g)). In addition, the Nuclear Waste Policy Amendments Act of 1987 provides that the MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) shall be subject to the storage capacity limits specified in sections 148(d) (3) and (4) (101 Stat. 1330–236, 42 U.S.C. 10168(d) (3) and (4)). These requirements have been incorporated in new § 72.44(g) which has been added to the final rule.

26. The Term—"Temporary Storage"

Comment: Comments objected to the removal of the term "Temporary Storage" from § 72.3 Definitions and the removal of the word "temporary" from § 72.2 Scope.

Response: In making these changes, the Commission does not intend to change the scope of Part 72 which relates to the licensing of ISFSI and MRS for the purpose of storage only. Part 72 does not nor is it intended to cover permanent disposal. Accordingly, use of the word "temporary" in the rule is non-definitive and unnecessary.

27. MRS Rule Making

Comment: Many commenters (approximately 150), through the use of form letters or paraphrasing, did not want the MRS in Tennessee, did not support any form of rulemaking until Congress had authorized the MRS through funding appropriation, and made reference to "license it twice."

Response: The Nuclear Waste Policy Amendments Act of 1987 authorizes the Department of Energy to site, construct and operate one MRS and prescribes procedures for the selection of an appropriate site. The Act expressly annuls and revokes the Department's proposal "to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee * * *" (Section 142(a), 101 Stat. 1330–232, 42 U.S.C. 10162(a)). The Commission's regulations are promulgated to permit the Commission to carry out its mandate of providing for the health and safety of the public. Except for the siting limitations in § 72.96 (§ 72.75) of the final rule, which, among other things, prohibits an MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) from being constructed in Nevada, the Commission's regulations are silent on the location of an MRS. The "license it twice" concept is addressed in Response Number 2.

28. Increase of Licensing Period for the MRS

Comment: Comments questioned the Commission's basis, as described in the statement of considerations for the proposed changes to Part 72, for providing a longer license term for an MRS (40 years) than for an ISFSI (20 years). Comments also included (1) the term should start with the receipt of spent fuel, and (2) ISFSI should also have a 40-year license term. Further explanation of the basis for the license term was also requested. All of the commenters seemed to concentrate on a license for the spent fuel rather than a license covering a facility for storage.

Response: An MRS as described in the NWPA is intended for storage, but nor necessarily for the same fuel since fuel will continually be moved in and out over the life of the facility in concert with operation of a repository. A longer license term is therefore appropriate for an MRS considering the purpose and mode of operation of the facility.

In contrast to the MRS, the spent fuel stored in an ISFSI at reactor sites or elsewhere will be collected until the Department of Energy waste disposal system is ready for its receipt. The current schedule indicates that this transfer from reactor sites to an MRS could begin to occur within about 10 years. The Commission has in place a license renewal process for ISFSI storage which provides an opportunity for extension of the 20-year license term, with staff reevaluation of safety and environmental aspects of the operation. In any event the systematic inspection program of the Commission wherein the licensee's adherence to all license conditions and technical specifications is continually being examined applies to both MRS and ISFSI storage over the entire period of a license. The Commission will provide a 40-year license term for an MRS in the final rule.

On December 22, 1987, the Nuclear Waste Policy Amendments Act of 1987 (Subtitle A of Title V of the Omnibus Budget Reconciliation Act for Fiscal Year 1988; Pub. L. 100–203, 101 Stat. 1330–227) was approved by the President and became public law. The 1987 amendments authorized the Secretary of the Department of Energy to site, construct and operate one monitored retrievable storage facility subject to certain statutory conditions (sec. 142(b), 101 Stat. 1330–232, 42 U.S.C. 10162(b)). As a result of these changes in the statute, it has been necessary to make certain conforming changes in the text of the final rule. Most of the changes are minor in nature. For example, references have been added to the authority section and conforming changes have been made in the following sections of the rule: §§ 72.22(d)(5), 72.40(b), 72.90(e) and 72.96(d) (§§ 72.14(d)(5), 72.31(b), 72.70(e) and 72.75(d)). A new paragraph (g) has been added to § 72.44 (§ 72.33), License conditions, to incorporate into the Commission's regulations the specific statutory conditions (*see* sec. 148(d) of the NWPA, 101 Stat. 1330–236, 42 U.S.C. 10168(d)) which must be included in a Commission license for the monitored retrievable storage installation authorized pursuant to section 142(b) of the NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)). For an explanation of these conditions, *see* 133 Cong. Rec. H11973-75 and S18683–84 (daily ed. December 21, 1987).

Having considered all of the above, the Commission has determined that a final rule be promulgated. The text of the final rule has some changes as noted from the proposed rule.

Finding of No Significant Environmental Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments to 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste."

NUREG–0575, "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," August 1979, was issued in support of the final rule promulgating 10 CFR Part 72. "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation ISFSI)," which became effective November 28, 1980. On January 7, 1983, the Nuclear Waste Policy Act of 1982 was signed into law. On December 22, 1987, the Act was amended by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100–203, Title V, Subtitle A, 101 Stat. 1330–227). Section 142(b) of the amended Act (101 Stat. 1330–232, 42 U.S.C. 10162(b)) authorized the Secretary of the Department of Energy to site, construct and operate one MRS. NWPA also established procedures which a State or an Indian tribe may use to negotiate an agreement with the Federal Government under which the State or Indian tribe would agree to host an MRS within the State or reservation. Following enactment of legislation to implement the negotiated agreement, the Secretary of the Department of Energy could proceed to evaluate appropriate sites. As in the case of the MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)), DOE must also obtain an NRC license for an MRS authorized by Congress pursuant to a negotiated agreement. The NRC staff has concluded that although existing 10 CFR Part 72 is generally applicable to the design, construction, operation, and decommissioning of MRS, additions are necessary to explicitly cover the licensing of spent nuclear fuel and high-level radioactive waste storage in an MRS. In August 1984, the NRC published

an environmental assessment for this proposed revision of Part 72, NUREG–1092, "Environmental Assessment for 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste." NUREG–1092 discusses the major issues of the rule and the potential impact on the environment. The findings of the environmental assessment are "(1) past experience with water pool storage of spent fuel establishes the technology for long-term storage of spent fuel without affecting the health and safety of the public, (2) the proposed rulemaking to include the criteria of 10 CFR Part 72 for storing spent nuclear fuel and high-level radioactive waste does not significantly affect the environment, (3) solid high-level waste is comparable to spent fuel in its heat generation and in its radioactive material content on a per metric ton basis, and (4) knowledge of material degradation mechanisms under dry storage conditions and the ability to institute repairs in a reasonable manner without endangering the health [and safety] of the public shows dry storage technology options do not significantly impact the environment." The assessment concludes that, among other things, there are no significant environmental impacts as a result of promulgation of these revisions of 10 CFR Part 72.

Based on the above assessment the Commission concludes that the rulemaking action will not have a significant incremental environmental impact on the quality of the human environment.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget approval number 3150–0132.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this final rule. The analysis examines the benefits and alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from C.W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–492–3834).

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of independent spent fuel storage installations and of monitored retrievable storage installations. The owners of these installations, nuclear power plant utilities or DOE, do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act or within the definition of "small business" in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 19

Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 552 and 553, and the Nuclear Waste Policy Act of 1982, as amended, the NRC is adopting the following revision to 10 CFR Part 72 and related conforming amendments to 10 CFR Parts 2, 19, 20, 21, 51, 70, 73, 75, and 150

1. 10 CFR Part 72 is revised to read as follows:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

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72.204 Notice to States.
72.206 Representation.

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44 (a) (b) (1), (4), (5), (c), (d) (1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72 (b), (c), 72.74 (a) (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10 (a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (a), (b) (1), (4), (5), (c), (d) (1), (2) (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90 (a)–(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102 (c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (b)(3), (c)(5), (d)(3), (e), (f), 72.48 (b), (c), 72.50(b), 72.54 (a), (b), (c), 72.56, 72.70, 72.72, 72.74 (a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140 (b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154 (a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 72.1 Purpose.

The regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) and the terms and conditions under which the Commission will issue such licenses, including licenses to the U.S. Department of Energy (DOE) for the provision of not more than 1900 metric tons of spent fuel storage capacity at facilities not owned by the Federal Government on January 7, 1983 for the Federal interim storage program under Subtitle B—Interim Storage Program of the Nuclear Waste Policy Act of 1982 (NWPA). The regulations in this part also establish requirements, procedures, and criteria for the issuance of licenses to DOE to receive, transfer, package, and possess power reactor spent fuel, high-level radioactive waste, and other radioactive materials associated with the spent fuel and high-level radioactive waste storage, in a monitored retrievable storage installation (MRS).

§ 72.2 Scope.

(a) Except as provided in § 72.6(b), licenses issued under this part are limited to the receipt, transfer, packaging, and possession of:

(1) Power reactor spent fuel to be stored in a complex that is designed and constructed specifically for storage of power reactor spent fuel aged for at least one year, and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI); or

(2) Power reactor spent fuel to be stored in a monitored retrievable storage installation (MRS) owned by DOE that is designed and constructed specifically for the storage of spent fuel aged for at least one year, high-level radioactive waste that is in a solid form, and other radioactive materials associated with spent fuel or high/level radioactive waste storage.

The term "Monitored Retrievable Storage Installation" or "MRS," as defined § 72.3, is derived from the NWPA and includes any installation that meets this definition.

(b) The regulations in this part pertaining to an independent spent fuel storage installation (ISFSI) apply to all persons in the United States, including persons in Agreement States. The regulations in this part pertaining to a monitored retrievable storage installation (MRS) apply only to DOE.

(c) The requirements of this regulation are applicable, as appropriate, to both wet and dry modes of storage of (1) spent fuel in an independent spent fuel storage installation (ISFSI) and (2) spent fuel and solid high-level radioactive waste in a monitored retrievable storage installation (MRS).

(d) Licenses covering the storage of spent fuel in an existing spent fuel storage installation shall be issued in accordance with the requirements of this part as stated in § 72.40, as applicable.

(e) As provided in section 135 of the Nuclear Waste Policy Act of 1982, Pub. L. 97–425, 96 Stat. 2201 at 2232 (42 U.S.C. 10155) the U.S. Department of Energy is not required to obtain a license under the regulations in this part to use available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, for the storage of spent nuclear fuel from civilian nuclear power reactors.

§ 72.3 Definitions.

As used in this part:

"Act" means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

"Affected Indian tribe" means any Indian tribe—

(1) Within whose reservation boundaries a monitored retrievable storage facility is proposed to be located;

(2) Whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided,* That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

"Affected unit of local government" means any unit of local government with jurisdiction over the site where an MRS is proposed to be located.

"As low as is reasonably achievable" (ALARA) means as low as is reasonably achievable taking into account the state of technology, and the economics of improvement in relation to—

(1) Benefits to the public health and safety,

(2) Other societal and socioeconomic considerations, and

(3) The utilization of atomic energy in the public interest.

"Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

"Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

"Commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site, but does not mean:

(1) Changes desirable for the temporary use of the land for public recreational uses, necessary borings or excavations to determine subsurface materials and foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values;

(2) Construction of environmental monitoring facilities;

(3) Procurement or manufacture of components of the installation; or

(4) Construction of means of access to the site as may be necessary to accomplish the objectives of paragraphs (1) and (2) of this definition.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Confinement systems" means those systems, including ventilation, that act as barriers between areas containing radioactive substances and the environment.

"Controlled area" means that area immediately surrounding an ISFSI or MRS for which the licensee exercises authority over its use and within which ISFSI or MRS operations are performed.

"Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

"Design bases" means that information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be restraints derived from generally accepted "state-of-the-art" practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. The values for controlling parameters for external events include: (1) Estimates of severe natural events to be used for deriving design bases that will be based on consideration of historical data on the associated parameters, physical data, or analysis of upper limits of the physical processes involved and (2) estimates of severe external man-induced events to be used for deriving design bases that will be based on analysis of human activity in the region taking into account the site characteristics and the risks associated with the event.

"Design capacity" means the quantity of spent fuel or high-level radioactive waste, the maximum burnup of the spent fuel in MWD/MTU, the curie content of the waste, and the total heat generation in BTU per hour that the storage installation is designed to accommodate.

"DOE" means the U.S. Department of Energy or its duly authorized representatives.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands. Areas subject to a one percent or greater chance of flooding in any given year are included.

"High-level radioactive waste" or "HLW" means (1) the highly radioacive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations;

and (2) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

"Historical data" means a compilation of the available published and unpublished information concerning a particular type of event.

"Independent spent fuel storage installation" or "ISFSI" means a complex designed and constructed for the interim storage of spent nuclear fuel and other radioactive materials associated with spent fuel storage. An ISFSI which is located on the site of another facility may share common utilities and services with such a facility and be physically connected with such other facility and still be considered independent: Provided, that such sharing of utilities and services or physical connections does not: (1) Increase the probability or consequences of an accident or malfunction of components, structures, or systems that are important to safety; or (2) reduce the margin of safety as defined in the basis for any technical specification of either facility.

"Indian Tribe" means an Indian tribe as defined in the Indian Self Determination and Education Assistance Act (Pub. L. 93–638).

"Monitored Retrievable Storage Installation" or "MRS" means a complex designed, constructed, and operated by DOE for the receipt, transfer, handling, packaging, possession, safeguarding, and storage of spent nuclear fuel aged for at least one year and solidified high-level radioactive waste resulting from civilian nuclear activities, pending shipment to a HLW repository or other disposal.

"NEPA" means the National Environmental Policy Act of 1969 including any amendments thereto.

"NWPA" means the Nuclear Waste Policy Act of 1982 including any amendments thereto.

"Person" means—

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department of Energy (DOE), except that the DOE shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974, as amended (88 Stat. 1244), and Sections 131, 132, 133, 135, 137, and 141 of the Nuclear Waste Policy Act of 1982 (96 Stat. 2229, 2230, 2232, 2241);

(2) Any State, any political subdivision of a State, or any political entity within a State;

(3) Any foreign government or nation, or any political subdivision of any such government or nation, or other entity; and

(4) Any legal successor, representative, agent, or agency of the foregoing.

"Population" means the people that may be affected by the change in environmental conditions due to the construction, operation, or decommissioning of an ISFSI or MRS.

"Region" means the geographical area surrounding and including the site, which is large enough to contain all the features related to a phenomenon or to a particular event that could potentially impact the safe or environmentally sound construction, operation, or decommissioning of an independent spent fuel storage or monitored retrievable storage installation.

"Reservation" means—

(1) Any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18, United States Code; or

(2) Any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

"Site" means the real property on which the ISFSI or MRS is located.

"Source material" means—

(1) Uranium or thorium, or any combination thereof, in any physical or chemical form or

(2) Ores that contain by weight one-twentieth of one percent (0.05%) or more of:

(i) Uranium,

(ii) Thorium, or

(iii) Any combination thereof.

Source material does not include special nuclear material.

"Special nuclear material" means—

(1) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing but does not include source material.

"Spent Nuclear Fuel" or "Spent Fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

"Structures, systems, and components important to safety" mean those features of the ISFSI or MRS whose function is:

(1) To maintain the conditions required to store spent fuel or high-level radioactive waste safely,

(2) To prevent damage to the spent fuel or the high-level radioactive waste container during handling and storage, or

(3) To provide reasonable assurance that spent fuel or high-level radioactive waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

§ 72.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Communications, reports, and applications may be delivered in person at the Commission's Offices at 11555 Rockville Pike, Rockville, Maryland, or at 1717 H Street NW., Washington, DC.

§ 72.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 72.6 License required; types of licenses.

(a) Licenses for the receipt, handling, storage, and transfer of spent fuel or high-level radioactive waste are of two types: general and specific. Any general license provided in this part is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. A specific license is issued to a named person upon application filed pursuant to regulations in this part.

(b) A general license is hereby issued to receive title to and own spent fuel or high-level radioactive waste without regard to quantity. Notwithstanding any other provision of this chapter, a general licensee under this paragraph is not authorized to acquire, deliver, receive,

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possess, use, or transfer spent fuel or high-level radioactive waste except as authorized in a specific license.

(c) Except as authorized in a specific license issued by the Commission in accordance with the regulations in this part, no person may acquire, receive, or possess—

(1) Spent fuel for the purpose of storage in an ISFSI; or

(2) Spent fuel, high-level radioactive waste, or radioactive material associated with high-level radioactive waste for the purpose of storage in an MRS.

§ 72.7 Specific exemptions.

The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

§ 72.8 Denial of licensing by Agreement States.

Agreement States may not issue licenses covering the storage of spent fuel in an ISFSI or the storage of spent fuel and high-level radioactive waste in an MRS.

§ 72.9 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150–0132.

(b) The approved information collection requirements contained in this part appear in §§ 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72,98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176 72.180 through 72.186, and 72.192.

§ 72.10 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities are established in section 210 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act.

(1) The protected activities include but are not limited to—

(i) Providing the Commission information about possible violations of requirements imposed under either of the above statutes;

(ii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements; or

(iii) Testifying in any Commission proceeding.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in the protected activities specified in paragrph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 30 days after an alleged violation occurs by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant shall post Form NRC–3, "Notice to Employees," on its premises. Posting must be at location sufficient to permit employees protected by this section to observe all copy on the way to or from their place of work. Premises must be posted no later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of Form NRC–3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix A, Part 73 of this chapter or the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

§ 72.11 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

Subpart B—License Application, Form, and Contents

§ 72.16 Filing of application for specific license.

(a) *Place of filing.* Each application for a license, or amendment thereof, under

this part should be filed with the Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Applications, communications, reports, and correspondence may also be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, Maryland, or at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

(b) *Oath or affirmation.* Each application for a license or license amendment (including amendments to such applications), except for those filed by DOE, must be executed in an original signed by the applicant or duly authorized officer thereof under oath or affirmation. Each application for a license or license amendment (including amendments to such applications) filed by DOE must be signed by the Secretary of Energy or the Secretary's authorized representative.

(c) *Number of copies of application.* Each filing of an application for a license or license amendment under this part (including amendments to such applications) must include, in addition to a signed original, 15 copies of each portion of such application, safety analysis report, environmental report, and any amendments. Another 125 copies shall be retained by the applicant for distribution in accordance with instruction from the Director or the Director's designee.

(d) *Fees.* The application, amendment, and renewal fees applicable to a license covering the storage of spent fuel in an ISFSI are those shown in § 170.31 of this chapter.

(e) *Notice of docketing.* Upon receipt of an application for a license or license amendment under this part, the Director, Office of Nuclear Material Safety and Safeguards or the Director's designee will assign a docket number to the application, notify the applicant of the docket number, instruct the applicant to distribute copies retained by the applicant in accordance with paragraph (c) of this section, and cause a notice of docketing to be published in the **Federal Register.** The notice of docketing shall identify the site of the ISFSI or the MRS by locality and State and may include a notice of hearing or a notice of proposed action and opportunity for hearing as provided by § 72.46 of this part. In the case of an application for a license or an amendment to a license for an MRS, the Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee, in accordance with § 72.200 of this part, shall send a copy of the notice of docketing to the Governor and legislature of any State in which an MRS is or may be located, to the Chief Executive of the local municipality, to the Governors of any contiguous States and to the governing body of any affected Indian tribe.

§ 72.18 Elimination of repetition.

In any application under this part, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission: Provided, That such references are clear and specific.

§ 72.20 Public inspection of application.

Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with provisions of the regulations contained in Parts 2 and 9 of this chapter.

§ 72.22 Contents of application: General and financial information.

Each application must state:

(a) Full name of applicant;

(b) Address of applicant;

(c) Description of business or occupation of applicant;

(d) If applicant is:

(1) An individual: Citizenship and age;

(2) A partnership: Name, citizenship, and address of each partner and the principal location at which the partnership does business;

(3) A corporation or an unincorporated association:

(i) The State in which it is incorporated or organized and the principal location at which it does business; and

(ii) The names, addresses, and citizenship of its directors and principal officers;

(4) Acting as an agent or representative of another person in filing the application: The identification of the principal and the information required under this paragraph with respect to such principal.

(5) The Department of Energy:

(i) The identification of the DOE organization responsible for the construction and operation of the ISFSI or MRS, including a description of any delegations of authority and assignments of responsibilities.

(ii) For each application for a license for an MRS, the provisions of the public law authorizing the construction and operation of the MRS.

(e) Except for DOE, information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the license is sought. The information must state the place at which the activity is to be performed, the general plan for carrying out the activity, and the period of time for which the license is requested. The information must show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary; funds or that by a combination of the two, the applicant will have the necessary funds available to cover the following:

(1) Estimated construction costs;

(2) Estimated operating costs over the planned life of the ISFSI; and

(3) Estimated decommissioning costs, and the necessary financial arrangements to provide reasonable assurance prior to licensing that decommissioning will be carried out after the removal of spent fuel and/or high-level radioactive waste from storage.

§ 72.24 Contents of application: Technical information.

Each application for a license under this part must include a Safety Analysis Report describing the proposed ISFSI or MRS for the receipt, handling, packaging, and storage of spent fuel or high-level radioactive waste, including how the ISFSI or MRS will be operated. The minimum information to be included in this report must consist of the following:

(a) A description and safety assessment of the site on which the ISFSI or MRS is to be located, with appropriate attention to the design bases for external events. Such assessment must contain an analysis and evaluation of the major structures, systems, and components of the ISFSI or MRS that bear on the suitability of the site when the ISFSI or MRS is operated at its design capacity. If the proposed ISFSI or MRS is to be located on the site of a nuclear power plant or other licensed facility, the potential interactions between the ISFSI or MRS and such other facility must be evaluated.

(b) A description and discussion of the ISFSI or MRS structures with special attention to design and operating characteristics, unusual or novel design features, and principal safety considerations.

(c) The design of the ISFSI or MRS in sufficient detail to support the findings in § 72.40, including:

(1) The design criteria for the ISFSI or MRS pursuant to Subpart F of this part, with identification and justification for any additions to or departures from the general design criteria;

(2) the design bases and the relation of the design bases to the design criteria;

(3) Information relative to materials of construction, general arrangement, dimensions of principal structures, and descriptions of all structures, systems, and components important to safety, in sufficient detail to support a finding that the ISFSI or MRS will satisfy the design bases with an adequate margin for safety; and

(4) Applicable codes and standards.

(d) An analysis and evaluation of the design and performance of structures, systems, and components important to safety, with the objective of assessing the impact on public health and safety resulting from operation of the ISFSI or MRS and including determination of:

(1) The margins of safety during normal operations and expected operational occurrences during the life of the ISFSI or MRS; and

(2) The adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents, including natural and manmade phenomena and events.

(e) The means for controlling and limiting occupational radiation exposures within the limits given in Part 20 of this chapter, and for meeting the objective of maintaining exposures as low as is reasonably achievable.

(f) The features of ISFSI or MRS design and operating modes to reduce to the extent practicable radioactive waste volumes generated at the installation.

(g) An identification and justification for the selection of those subjects that will be probable license conditions and technical specifications. These subjects must cover the design, construction, preoperational testing, operation, and decommissioning of the ISFSI or MRS.

(h) A plan for the conduct of operations, including the planned managerial and administrative controls system, and the applicant's organization, and program for training of personnel pursuant to Subpart I.

(i) If the proposed ISFSI or MRS incorporates structures, systems, or components important to safety whose functional adequacy or reliability have not been demonstrated by prior use for that purpose or cannot be demonstrated by reference to performance data in related applications or to widely accepted engineering principles, an identification of these structures, systems, or components along with a schedule showing how safety questions will be resolved prior to the initial receipt of spent fuel or high-level radioactive waste for storage at the ISFSI or MRS.

(j) The technical qualifications of the applicant to engage in the proposed activities, as required by § 72.28.

(k) A description of the applicant's plans for coping with emergencies, as required by § 72.32.

(l) A description of the equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal operations and expected operational occurrences. The description must identify the design objectives and the means to be used for keeping levels of radioactive material in effluents to the environment as low as is reasonably achievable and within the exposure limits stated in § 72.104. The description must include:

(1) An estimate of the quantity of each of the principal radionuclides expected to be released annually to the environment in liquid and gaseous effluents produced during normal ISFSI or MRS operations;

(2) A description of the equipment and processes used in radioactive waste systems; and

(3) A general description of the provisions for packaging, storage, and disposal of solid wastes containing radioactive materials resulting from treatment of gaseous and liquid effluents and from other sources.

(m) An analysis of the potential dose equivalent or committed dose equivalent to an individual outside the controlled area from accidents or natural phenomena events that result in the release of radioactive material to the environment or direct radiation from the ISFSI or MRS. The calculations of individual dose equivalent or committed dose equivalent must be performed for direct exposure, inhalation, and ingestion occurring as a result of the postulated design basis event.

(n) A description of the quality assurance program that satisfies the requirements of Subpart G to be applied to the design, fabrication, construction, testing, operation, modification, and decommissioning of the structures, systems, and components of the ISFSI or MRS important to safety. The description must identify the structures, systems, and components important to safety. The program must also apply to managerial and administrative controls used to ensure safe operation of the ISFSI or MRS.

(o) A description of the detailed security measures for physical protection, including design features and the plans required by Subpart H. For an application from DOE for an ISFSI or MRS, DOE will provide a description of the physical security plan for protection against radiological sabotage as required by Subpart H. An application submitted by DOE for an ISFSI or MRS must include a certification that it will provide at the ISFSI or MRS such safeguards as it requires at comparable surface DOE facilities to promote the common defense and security.

(p) A description of the program covering preoperational testing and initial operations.

(q) A description of the decommissioning plan required under § 72.30.

§ 72.26 Contents of application: Technical specifications.

Each application under this part shall include proposed technical specifications in accordance with the requirements of § 72.44 and a summary statement of the bases and justifications for these technical specifications.

§ 72.28 Contents of application: Applicant's technical qualifications.

Each application under this part must include:

(a) The technical qualifications, including training and experience, of the applicant to engage in the proposed activities;

(b) A description of the personnel training program required under Subpart I;

(c) A description of the applicant's operating organization, delegations of responsibility and authority and the minimum skills and experience qualifications relevant to the various levels of responsibility and authority; and

(d) A commitment by the applicant to have and maintain an adequate complement of trained and certified installation personnel prior to the receipt of spent fuel or high-level radioactive waste for storage.

§ 72.30 Decommissioning planning, including financing and recordkeeping.

(a) Each application under this part must include a proposed decommissioning plan that contains sufficient information on proposed practices and procedures for the decontamination of the site and facilities and for disposal of residual radioactive materials after all spent fuel or high-level radioactive waste has been removed, in order to provide reasonable assurance that the decontamination and decommissioning of the ISFSI or MRS at the end of its useful life will provide adequate protection to the health and safety of the public. This plan must identify and discuss those design features of the ISFSI or MRS that facilitate its decontamination and

decommissioning at the end of its useful life.

(b) The decommissioning funding plan must contain information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI or MRS. This information must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (c) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the ISFSI or MRS.

(c) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission withing 30 days after receipt of notification or cancellation.

(ii) The surety method or insurance must be payable to a trust established for decomissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund establishing and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provision must be as stated in paragraph (c)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning, and indicating that funds for decommissioning will be obtained when necessary.

(5) In the case of electric utility licensees, the methods of § 50.75(e) (1) and (3) of this chapter.

(d) Each licensee shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

§ 72.32 Emergency plan.

(a) [Reserved]

(b) [Reserved]

(c) For an ISFSI that is located on the site of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be deemed to satisfy the requirements of this section.

§ 72.34 Environmental report.

Each application for an ISFSI or MRS license under this part must be accompanied by an Environmental Report which meets the requirements of Subpart A of Part 51 of this chapter.

Subpart C—Issuance and Conditions of License

§ 72.40 Issuance of license.

(a) Except as provided in paragraph (c) of this section, the Commission will issue a license under this part upon a determination that the application for a license meets the standards and requirements of the Act and the regulations of the Commission, and upon finding that:

(1) The applicant's proposed ISFSI or MRS design complies with Subpart F;

(2) The proposed site complies with the criteria in Subpart E;

(3) If on the site of a nuclear power plant or other licensed activity or facility, the proposed ISFSI would not pose an undue risk to the safe operation of such nuclear power plant or other licensed activity or facility;

(4) The applicant is qualified by reason of training and experience to conduct the operation covered by the regulations in this part;

(5) The applicant's proposed operating procedures to protect health and to minimize danger to life or property are adequate;

(6) Except for DOE, the applicant for an ISFSI or MRS is financially qualified to engage in the proposed activities in

accordance with the regulations in this part;

(7) The applicant's quality assurance plan complies with Subpart G;

(8) The applicant's physical protection provisions comply with Subpart H. DOE has complied with the safeguards and physical security provisions identified in § 72.24(o);

(9) The applicant's personnel training program complies with Subpart I;

(10) Except for DOE, the applicant's decommissioning plan and its financing pursuant to § 72.30 provide reasonable assurance that the decontamination and decommissioning of the ISFSI or MRS at the end of its useful life will provide adequate protection to the health and safety of the public;

(11) The applicant's emergency plan complies with § 72.32;

(12) The applicable provisions of Part 170 of this chapter have been satisfied;

(13) There is reasonable assurance that: (i) The activities authorized by the license can be conducted without endangering the health and safety of the public and (ii) these activities will be conducted in compliance with the applicable regulations of this chapter; and

(14) The issuance of the license will not be inimical to the common defense and security.

(b) Grounds for denial of a license to store spent fuel in the proposed ISFSI or to store spent fuel and high-level radioactive waste in the proposed MRS may be the commencement of construction prior to (1) a finding by the Director, Office of Nuclear Materials Safety and Safeguards or designee or (2) a finding after a public hearing by the presiding officer, Atomic Safety and Licensing Board, Atomic Safety and Licensing Appeal Board, or the Commission acting as a collegial body, as appropriate, that the action called for is the issuance of the proposed license with any appropriate conditions to protect environmental values. This finding is to be made on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter or in the case of an MRS on the basis of evaluations made pursuant to sections 141(c) and (d) or 148(a) and (c) of NWPA (96 Stat. 2242, 2243, 42 U.S.C. 10161(c), (d); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168(a), (c)), as appropriate, and after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives.

(c) For facilities that have been covered under previous licensing actions including the issuance of a construction permit under Part 50 of this chapter, a reevaluation of the site is not required except where new information is discovered which could alter the original site evaluation findings. In this case, the site evaluation factors involved will be reevaluated.

§ 72.42 Duration of license; renewal.

(a) Each license issued under this part must be for a fixed period of time to be specified in the license. The license term for an ISFSI must not exceed 20 years from the date of issuance. The license term for an MRS must not exceed 40 years from the date of issuance. Licenses for either type of installation may be renewed by the Commission at the expiration of the license term upon application by the licensee and pursuant to the requirements of this rule.

(b) Applications for renewal of a license should be filed in accordance with the applicable provisions of Subpart B at least two years prior to the expiration of the existing license. Information contained in previous applications, statements, or reports filed with the Commission under the license may be incorporated by reference: Provided, that such references are clear and specific.

(c) In any case in which a licensee, not less than two years prior to expiration of its existing license, has filed an application in proper form for renewal of a license, the existing license shall not expire until a final decision concerning the application for renewal has been made by the Commission.

§ 72.44 License conditions.

(a) Each license issued under this part shall include license conditions. The license conditions may be derived from the analyses and evaluations included in the Safety Analysis Report and amendments thereto submitted pursuant to § 72.24. License conditions pertain to design, construction and operation. The Commission may also include additional license conditions as it finds appropriate.

(b) Each license issued under this part shall be subject to the following conditions, even if they are not explicitly stated therein;

(1) Neither the license nor any right thereunder shall be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and give its consent in writing.

(2) The license shall be subject to revocation, suspension, modification, or amendment in accordance with the procedures provided by the Atomic Energy Act of 1954, as amended, and Commission regulations.

(3) Upon request of the Commission, the licensee shall, at any time before expiration of the license, submit written statements, signed under oath or affirmation if appropriate, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

(4) Prior to the receipt of spent fuel for storage at an ISFSI or the receipt of spent fuel and high-level radioactive waste for storage at an MRS, the licensee shall have in effect an NRC-approved program covering the training and certification of personnel that meets the requirements of Subpart I.

(5) The license shall permit the operation of the equipment and controls that are important to safety of the ISFSI or the MRS only by personnel whom the licensee has certified as being adequately trained to perform such operations, or by uncertified personnel who are under the direct visual supervision of a certified individual.

(6)(i) Each licensee shall notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title II (Bankruptcy) of the United States Code by or against:

(A) The licensee;

(B) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(C) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(ii) This notification must indicate:

(A) The bankruptcy court in which the petition for bankruptcy was filed; and

(B) The date of the filing of the petition.

(c) Each license issued under this part must include technical specifications. Technical specifications must include requirements in the following categories:

(1) *Functional and operating limits and monitoring instruments and limiting control settings.*

(i) Functional and operating limits for an ISFSI or MRS are limits on fuel or waste handling and storage conditions that are found to be necessary to protect the integrity of the stored fuel or waste container, to protect employees against occupational exposures and to guard against the uncontrolled release of radioactive materials; and

(ii) Monitoring instruments and limiting control settings for an ISFSI or MRS are those related to fuel or waste handling and storage conditions having significant safety functions.

(2) *Limiting conditions.* Limiting conditions are the lowest functional capability or performance levels of equipment required for safe operation.

(3) *Surveillance requirements.* Surveillance requirements include:

(i) Inspection and monitoring of spent fuel or high-level radioactive waste in storage;

(ii) inspection, test and calibration activities to ensure that the necessary integrity of required systems and components is maintained;

(iii) confirmation that operation of the ISFSI or MRS is within the required functional and operating limits; and

(iv) confirmation that the limiting conditions required for safe storage are met.

(4) *Design features.* Design features include items that would have a significant effect on safety if altered or modified, such as materials of construction and geometric arrangements.

(5) *Administrative controls.* Administrative controls include the organization and management procedures, recordkeeping, review and audit, and reporting necessary to assure that the operations involved in the storage of spent fuel in an ISFSI and the storage of spent fuel and high-level radioactive waste in an MRS are performed in a safe manner.

(d) Each license authorizing the receipt, handling, and storage of spent fuel or high-level radioactive waste under this part must include technical specifications that, in addition to stating the limits on the release of radioactive materials for compliance with limits of Part 20 of this chapter and the "as low as is reasonably achievable" objectives for effluents, require that:

(1) Operating procedures for control of effluents be established and followed, and equipment in the radioactive waste treatment systems be maintained and used, to meet the requirements of § 72.104;

(2) An environmental monitoring program be established to ensure compliance with the technical specifications for effluents; and

(3) An annual report be submitted to the appropriate regional office specified in Appendix A of Part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 60 days after January 1 of each year, specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation and such other information as may be required by the Commission to estimate maximum potential radiation dose commitment to the public resulting from effluent releases. On the basis of this report and any additional information the Commission may obtain from the licensee or others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate.

(e) The licensee shall make no change that would decrease the effectiveness of the physical security plan prepared pursuant to § 72.180 without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the license pursuant to § 72.56. A licensee may make changes to the physical security plan without prior Commission approval, provided that such changes do not decrease the effectiveness of the plan. The licensee shall furnish to the Commission a report containing a description of each change within two months after the change is made, and shall maintain records of changes to the plan made without prior Commission approval for a period of 3 years from the date of the change.

(f) A licensee shall follow and maintain in effect an emergency plan that is approved by the Commission. The licensee may make changes to the approved plan without Commission approval only if such changes do not decrease the effectiveness of the plan. Within six months after any change is made, the licensee shall submit a report containing a description of any changes made in the plan to the appropriate NRC Regional Office specified in Appendix A to Part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Proposed changes that decrease the effectiveness of the approved emergency plan must not be implemented unless the licensee has received prior approval of such changes from the Commission.

(g) A license issued to DOE under this part for an MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) must include the following conditions:

(1) Construction of the MRS may not begin until the Commission has authorized the construction of a repository under section 114(d) of NWPA (96 Stat. 2215, as amended by 101 Stat. 1330–230, 42 U.S.C. 10134(d)) and Part 60 of this chapter;

(2) Construction of the MRS or acceptance of spent nuclear fuel or high-level radioactive waste at the MRS is prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) The quantity of spent nuclear fuel or high-level radioactive waste at the site of the MRS at any one time may not exceed 10,000 metric tons of heavy metal until a repository authorized under NWPA and Part 60 of this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) The quantity of spent nuclear fuel or high-level radioactive waste at the site of the MRS at any one time may not exceed 15,000 metric tons of heavy metal.

§ 72.46 Public hearings.

(a) In connection with each application for a license under this part, the Commission shall issue or cause to be issued a notice of proposed action and opportunity for hearing in accordance with § 2.105 or § 2.1107 of this chapter, as appropriate, or, if the Commission finds that a hearing is required in the public interest, a notice of hearing in accordance with § 2.104 of this chapter.

(b)(1) In connection with each application for an amendment to a license under this part, the Commission shall, except as provided in paragraph (b)(2) of this section, issue or cause to be issued a notice of proposed action and opportunity for hearing in accordance with § 2.105 or § 2.1107 of this chapter, as appropriate, or, if the Commission finds that a hearing is required in the public interest, a notice of hearing in accordance with § 2.104 of this chapter.

(2) The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee may dispense with a notice of proposed action and opportunity for hearing or a notice of hearing and take immediate action on an amendment to a license issued under this part upon a determination that the amendment does not present a genuine issue as to whether the health and safety of the public will be significantly affected. After taking the action, the Director or the Director's designee shall promptly publish a notice in the **Federal Register** of the action taken and of the right of interested persons to request a hearing on whether the action should be rescinded or modified. If the action taken amends an MRS license, the Director or the Director's designee shall also inform the appropriate State and local officials.

(c) The notice of proposed action and opportunity for hearing or the notice of hearing may be included in the notice of docketing required to be published by § 72.16 of this part.

(d) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice of proposed action and opportunity for hearing, the Director, Office of Nuclear Material Safety and Safeguards or the Director's designee may take the proposed action, and thereafter shall promptly inform the appropriate State and local officials and publish a notice in the **Federal Register** of the action taken. In accordance with § 2.764(c) of this chapter, the Director, Office of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an ISFSI or an MRS until expressly authorized to do so by the Commission.

§ 72.48 Changes, tests, and experiments.

(a)(1) The holder of a license issued under this part may:

(i) Make changs in the ISFSI or MRS described in the Safety Analysis Report,

(ii) Make changes in the procedures described in the Safety Analysis Report, or

(iii) Conduct tests or experiments not described in the Safety Analysis Report, without prior Commission approval, unless the proposed change, test or experiment involves a change in the license conditions incorporated in the license, an unreviewed safety question, a significant increase in occupational exposure or a significant unreviewed enviromental impact.

(2) A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question—

(i) If the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report may be increased;

(ii) If a possibility for an accident or malfunction of a different type than any evaluated previously in the Safety Analysis Report may be created; or

(iii) If the margin of safety as defined in the basis for any technical specification is reduced.

(b)(1) The licensee shall maintain records of changes in the ISFSI or MRS and of changes in procedures made pursuant to this section if these changes constitute changes in the ISFSI or MRS or procedures described in the Safety Analysis Report. The licensee shall also maintain records of tests and experiments carried out pursuant to paragraph (a) of this section. These records must include a written safety evaluation that provides the bases for the determination that the change, test, or experiment does not involve an unreviewed safety question. The records of changes in the ISFSI or MRS and of changes in procedures and records of tests must be maintained until the Commission terminates the license.

(2) Annually, or at such shorter interval as may be specified in the license, the licensee shall furnish to the appropriate regional office, specified in Appendix A of Part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report containing a brief description of changes, tests, and experiments made under paragraph (a) of the section, including a summary of the safety evaluation of each. Any report submitted by a licensee pursuant to this paragraph will be made a part of the public record pertaining to this license.

(c) The holder of a license issued under this part who desires—

(1) To make changes in the ISFSI or MRS or the procedures as described in the Safety Analysis Report, or to conduct tests or experiments not described in the Safety Analysis Report, that involve an unreviewed safety question, a significant increase in occupational exposure, or significant unreviewed environmental impact, or

(2) To change the license conditions shall submit an application for amendment of the license, pursuant to § 72.56.

§ 72.50 Transfer of license.

(a) No license or any part included in a license issued under this part for an ISFSI or MRS shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

(b)(1) An application for transfer of a license must include as much of the information described in §§ 72.22 and 72.28 with respect to the identity and the technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The application must also include a statement of the purposes for which the transfer of the license is requested and the nature of the transaction necessitating or making desirable the transfer of the license.

(2) The Commission may require any person who submits an application for the transfer of a license pursuant to the provisions of this section to file a written consent from the existing licensee, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right—subject to the licensing requirements of the Act and these regulations—to possession of the radioactive materials and the storage installation involved.

(c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for the transfer of a license, if the Commission determines that:

(1) The proposed transferee is qualified to be the holder of the license; and

(2) Transfer of the license is consistent with applicable provisions of the law, and the regulations and orders issued by the Commission.

§ 72.52 Creditor regulations.

(a) This section does not apply to an ISFSI or MRS constructed and operated by DOE.

(b) Pursuant to section 184 of the Act, the Commission consents, without individual application, to the creation of any mortgage, pledge, or other lien on special nuclear material contained in spent fuel not owned by the United States that is the subject of a license or on any interest in special nuclear material in spent fuel; Provided:

(1) That the rights of any creditor so secured may be exercised only in compliance with and subject to the same requirements and restrictions as would apply to the licensee pursuant to the provisions of the license, the Atomic Energy Act of 1954, as amended, and regulations issued by the Commission pursuant to said Act; and

(2) That no creditor so secured may take possession of the spent fuel pursuant to the provisions of this section prior to either the issuance of a license from the Commission authorizing possession or the transfer of the license.

(c) Any creditor so secured may apply for transfer of the license covering spent fuel by filing an application for transfer of the license pursuant to § 72.50(b). The Commission will act upon the application pursuant to § 72.50(c).

(d) Nothing contained in this regulation shall be deemed to affect the means of acquiring, or the priority of, any tax lien or other lien provided by law.

(e) As used in this section, "creditor" includes, without implied limitation, the trustee under any mortgage, pledge, or

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lien on spent fuel in storage made to secure any creditor; any trustee or receiver of spent fuel appointed by a court of competent jurisdiction in any action brought for the benefit of any creditor secured by such mortgage, pledge, or lien; any purchaser of the spent fuel at the sale thereof upon foreclosure of the mortgage, pledge, or lien or upon exercise of any power of sale contained therein; or any assignee of any such purchaser.

§ 72.54 Application for termination of license.

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission the ISFSI or MRS. This application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the license. Each application for termination of license must be accompanied, or preceded, by a proposed final decommissioning plan.

(b) The proposed final decommissioning plan must include—

(1) The choice of the alternative for decommissioning with a description of activities involved. An alternative is acceptable if it provides for completion of decommissioning without significant delay. Consideration will be given to an alternative which provides for delayed completion of decommissioning only when necessary to protect the public health and safety. Factors to be considered in evaluating an alternative which provides for delayed completion of decommissioning include unavailability of waste disposal capacity and other site specific factors affecting the licensee's capability to carry out decommissioning safely, including presence of other nuclear facilities at the site.

(2) A description of controls and limits on procedures and equipment to protect occupational and public health and safety;

(3) A description of the planned final radiation survey; and

(4) An updated detailed cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning including means for adjusting cost estimates and associated funding levels over any storage or surveillance period.

(5) A description of technical specifications and quality assurance provisions in place during decommissioning.

(c) For final decommissioning plans in which the major dismantlement activities are delayed by first placing the ISFSI or MRS in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of such activities.

(d) If the final decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to such conditions and limitations as it deems appropriate and necessary and issue an order authorizing the decommissioning.

(e) The Commission will terminate the license if it determines that—

(1) The decommissioning has been performed in accordance with the approved final decommissioning plan and the order authorizing decommissioning; and

(2) The terminal radiation survey and associated documentation demonstrates that the ISFSI or MRS and site are suitable for release for unrestricted use.

§ 72.56 Application for amendment of license.

Whenever a holder of a license desires to amend the license, an application for an amendment shall be filed with the Commission fully describing the changes desired and the reasons for such changes, and following as far as applicable the form prescribed for original applications.

§ 72.58 Issuance of amendment.

In determining whether an amendment to a license will be issued to the applicant, the Commission will be guided by the considerations that govern the issuance of initial licenses.

§ 72.60 Modification, revocation, and suspension of license.

(a) The terms and conditions of all licenses are subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954, as amended, or by reason or rules, regulations, or orders issued in accordance with the Act or any amendments thereto.

(b) Any license may be modified, revoked, or suspended in whole or in part for any of the following:

(1) Any material false statement in the application or in any statement of fact required under section 182 of the Act;

(2) Conditions revealed by the application or statement of fact or any report, record, inspection or other means which would warrant the Commission to refuse to grant a license on an original application;

(3) Failure to operate an ISFSI or MRS in accordance with the terms of the license;

(4) Violation of, or failure to observe, any of the terms and conditions of the Act, or of any applicable regulation, license, or order of the Commission.

(c) Upon revocation of a license, the Commission may immediately cause the retaking of possession of all special nuclear material contained in spent fuel held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission prior to following any of the procedures provided under sections 551–558 of Title 5 of the United States Code, may cause the taking of possession of any special nuclear material contained in spent fuel held by the licensee.

§ 72.62 Backfitting.

(a) As used in this section, "backfitting" means the addition, elimination, or modification, after the license has been issued, of:

(1) Structures, systems, or components of an ISFSI or MRS, or

(2) Procedures or organization required to operate an ISFSI or MRS.

(b) The Commission will require backfitting of an ISFSI or MRS if it finds that such action is necessary to assure adequate protection to occupational or public health and safety, or to bring the ISFSI or MRS into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by a licensee.

(c) The Commission may require the backfitting of an ISFSI or MRS if it finds:

(1) That there is a substantial increase in the overall protection of the occupational or public health and safety to be derived from the backfit, and

(2) That the direct and indirect costs of implementation for that ISFSI or MRS are justified in view of this increased protection.

(d) The Commission may at any time require a holder of a license to submit such information concerning the backfitting or the proposed backfitting of an ISFSI or MRS as it deems appropriate.

Subpart D—Records, Reports, Inspections, and Enforcement

§ 72.70 Safety analysis report updating.

(a) The design, description of planned operations, and other information submitted in the Safety Analysis Report shall be updated by the licensee and

submitted to the Commission at least once every six months after issuance of the license during final design and construction, until preoperational testing is completed, with final Safety Analysis Report completion and submittal to the Commission at least 90 days prior to the planned receipt of spent fuel or high-level radioactive waste. The final submittal must include a final analysis and evaluation of the design and performance of structures, systems, and components that are important to safety taking into account any pertinent information developed since the submittal of the license application.

(b) After the first receipt of spent fuel or high-level radioactive waste for storage, the Safety Analysis Report must be updated annually and submitted to the Commission by the licensee. This submittal must include the following:

(1) New or revised information relating to applicable site evaluation factors, including the results of environmental monitoring programs.

(2) A description and analysis of changes in the structures, systems, and components of the ISFSI or MRS, with emphasis upon:

(i) Performance requirements,

(ii) The bases, with technical justification therefor upon which such requirements have been established, and

(iii) Evaluations showing that safety functions will be accomplished.

(3) An analysis of the significance of any changes to codes, standards, regulations, or regulatory guides which the licensee has committed to meeting the requirements of which are applicable to the design, construction, or operation of the ISFSI or MRS.

§ 72.72 Material balance, inventory, and records requirements for stored materials.

(a) Each licensee shall keep records showing the receipt, inventory (including location), disposal, acquisition, and transfer of all spent fuel and high-level radioactive waste in storage. The records must include as a minimum the name of shipper of the material to the ISFSI or MRS, the estimated quantity of radioactive material per item (including special nuclear material in spent fuel), item identification and seal number, storage location, onsite movements of each fuel assembly or storage canister, and ultimate disposal. These records for spent fuel at an ISFSI or for spent fuel and high-level radioactive waste at an MRS must be retained for as long as the material is stored and for a period of five years after the material is disposed of or transferred out of the ISFSI or MRS.

(b) Each licensee shall conduct a physical inventory of all spent fuel and high-level radioactive waste in storage at intervals not to exceed 12 months unless otherwise directed by the Commission. The licensee shall retain a copy of the current inventory as a record until the Commission terminates the license.

(c) Each licensee shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for material in storage. The licensee shall retain a copy of the current material control and accounting procedures until the Commission terminates the license.

(d) Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records. Records of spent fuel transferred out of an ISFSI or of spent fuel or high-level radioactive waste transferred out of an MRS must be preserved for a period of five years after the date of transfer.

§ 72.74 Reports of accidental criticality or loss of special nuclear material.

(a) Each licensee shall notify the NRC Operations Center [1] within one hour of discovery of accidental criticality or any loss of special nuclear material.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or any other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour. The exemption of § 73.21(g)(3) of this chapter applies to all telephonic reports required by this section.

(c) Reports required under § 73.71 of this chapter need not be duplicated under the requirements of this section.

§ 72.76 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete and submit to the Commission (on DOE/NRC Form-742, Material Balance Report) material status reports in accordance with the printed instructions for completing the form. These reports must provide information concerning the special nuclear material contained in the spent fuel possessed, received, transferred, disposed of, or lost by the licensee. Material status reports must be made as of March 31 and September 30 of each year and filed within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit material status reports at other times.

(b) Any licensee who is required to submit routine material status reports pursuant to § 75.35 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section instead of as provided in paragraph (a) of this section.

§ 72.78 Nuclear material transfer reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives spent fuel, the licensee shall complete and distribute a Nuclear Material Transaction Report on DOE/NRC Form-741 in accordance with printed instructions for completing the form. Each ISFSI licensee who receives spent fuel from a foreign source shall complete both the supplier's and receiver's portion of DOE/NRC Form-741, verify the identity of the spent fuel, and indicate the results on the receiver's portion of the form.

(b) Any licensee who is required to submit inventory change reports on DOE/NRC Form-741 pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section instead of as provided in paragraph (a) of this section.

§ 72.80 Other records and reports.

(a) Each licensee shall maintain any records and make any reports that may be required by the conditions of the license or by the rules, regulations, and orders of the Commission in effectuating the purposes of the Act.

(b) Each licensee shall furnish a copy of its annual financial report, including the certified financial statements, to the Commission.

(c) Records that are required by the regulations in this part or by the license conditions must be maintained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified, the above records must be maintained until the Commission terminates the license.

(d) Any record that must be maintained pursuant to this part may be either the original or a reproduced copy by any state of the art method provided

[1] Commercial telephone number of the NRC Operations Center is (301)951-0550.

that any reproduced copy is duly authenticated by authorized personnel and is capable of producing a clear and legible copy after storage for the period specified by Commission regulations.

§ 72.82 Inspections and tests.

(a) Each licensee under this part shall permit inspection by duly authorized representatives of the Commission of its records, premises, and activities and of spent fuel or high-level radioactive waste in its possession related to the specific license as may be necessary to effectuate the purposes of the Act, including section 105 of the Act.

(b) Each licensee under this part shall make available to the Commission for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, packaging, or transfer of spent fuel or high-level radioactive waste.

(c)(1) Each licensee under this part shall upon request by the Director, Office of Nuclear Material Safety and Safeguards or the appropriate NRC Regional Administrator provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air conditioning, light, electrical outlets and janitorial services shall be furnished by each licensee. The office shall be convenient to and have full access to the installation and shall provide the inspector both visual and acoustic privacy.

(2) For a site with a single storage installation the space provided shall be adequate to accommodate a full-time inspector, a part-time secretary, and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 sq. ft., either within the site's office complex or in an office trailer, or other onsite space, is suggested as a guide. For sites containing multiple facilities, additional space may be requested to accommodate additional full-time inspectors. The office space that is provided shall be subject to the approval of the Director, Office of Nuclear Material Safety and Safeguards or the appropriate NRC Regional Administrator. All furniture, supplies and Commission equipment will be furnished by the Commission.

(3) Each licensee under this part shall afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Administrator as likely to inspect the installation, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

(d) Each licensee shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administrator of the regulations in this part.

(e) A report of the preoperational test acceptance criteria and test results must be submitted to the appropriate Regional Office specified in Appendix A of Part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at least 30 days prior to the receipt of spent fuel or high-level radioactive waste.

§ 72.84 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or title II of the Energy Reorganization Act of 1974, as amended, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Atomic Energy Act for violation of sections 53, 57, 62, 63, 81, or 82 of the Atomic Energy Act, or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Atomic Energy Act. Any person who willfully violates any provision of the Atomic Energy Act, or any regulation or order issued thereunder, may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Subpart E—Siting Evaluation Factors

§ 72.90 General considerations.

(a) Site characteristics that may directly affect the safety or environmental impact of the ISFSI or MRS must be investigated and assessed.

(b) Proposed sites for the ISFSI or MRS must be examined with respect to the frequency and the severity of external natural and maninduced events that could affect the safe operation of the ISFSI or MRS.

(c) Design basis external events must be determined for each combination of proposed site and proposed ISFSI or MRS design.

(d) Proposed sites with design basis external events for which adequate protection cannot be provided through ISFSI or MRS design shall be deemed unsuitable for the location of the ISFSI or MRS.

(e) Pursuant to Subpart A of Part 51 of this chapter for each proposed site for an ISFSI and pursuant to sections 141 or 148 of NWPA, as appropriate (96 Stat. 2241, 101 Stat. 1330–235, 42 U.S.C. 10161, 10168) for each proposed site for an MRS, the potential for radiological and other environmental impacts on the region must be evaluated with due consideration of the characteristics of the population, including its distribution, and of the regional environs, including its historical and esthetic values.

(f) The facility must be sited so as to avoid to the extent possible the long-term and short-term adverse impacts associated with the occupancy and modification of floodplains.

§ 72.92 Design basis external natural events.

(a) Natural phenomena that may exist or that can occur in the region of a proposed site must be identified and assessed according to their potential effects on the safe operation of the ISFSI or MRS. The important natural phenomena that affect the ISFSI or MRS design must be identified.

(b) Records of the occurrence and severity of those important natural phenomena must be collected for the region and evaluated for reliability, accuracy, and completeness. The applicant shall retain these records until the license is issued.

(c) Appropriate methods must be adopted for evaluating the design basis external natural events based on the characteristics of the region and the current state of knowledge about such events.

§ 72.94 Design basis external man-induced events.

(a) The region must be examined for both past and present man-made facilities and activities that might endanger the proposed ISFSI or MRS. The important potential man-induced events that affect the ISFSI or MRS design must be identified.

(b) Information concerning the potential occurrence and severity of such events must be collected and evaluated for reliability, accuracy, and completeness.

(c) Appropriate methods must be adopted for evaluating the design basis external man-induced events, based on the current state of knowledge about such events.

§ 72.96 Siting limitations.

(a) An ISFSI which is owned and operated by DOE must not be located at any site within which there is a

candidate site for a HLW repository. This limitation shall apply until such time as DOE decides that such candidate site is no longer a candidate site under consideration for development as a HLW repository.

(b) An MRS must not be sited in any State in which there is located any site approved for site characterization for a HLW repository. This limitation shall apply until such time as DOE decides that the candidate site is no longer a candidate site under consideration for development as a repository. This limitation shall continue to apply to any site selected for construction as a repository.

(c) If an MRS is located, or is planned to be located, within 50 miles of the first HLW repository, any Commission decision approving the first HLW repository application must limit the quantity of spent fuel or high-level radioactive waste that may be stored. This limitation shall prohibit the storage of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal, or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel, in both the repository and the MRS until such time as a second repository is in operation.

(d) An MRS authorized by section 142(b) of NWPA (101 Stat. 1330-232, 42 U.S.C. 10162(b)) may not be constructed in the State of Nevada. The quantity of spent nuclear fuel or high-level radioactive waste that may be stored at an MRS authorized by section 142(b) of NWPA shall be subject to the limitations in § 72.44(g) of this part instead of the limitations in paragraph (c) of this section.

§ 72.98 Identifying regions around an ISFSI or MRS site.

(a) The regional extent of external phenomena, man-made or natural, that are used as a basis for the design of the ISFSI or MRS must be identified.

(b) The potential regional impact due to the construction, operation or decommissioning of the ISFSI or MRS must be identified. The extent of regional impacts must be determined on the basis of potential measurable effects on the population or the environment from ISFSI or MRS activities.

(c) Those regions identified pursuant to paragraphs (a) and (b) of this section must be investigated as appropriate with respect to:

(1) The present and future character and the distribution of population,

(2) Consideration of present and projected future uses of land and water within the region, and

(3) Any special characteristics that may influence the potential consequences of a release of radioactive material during the operational lifetime of the ISFSI or MRS.

§ 72.100 Defining potential effects of the ISFSI or MRS on the region.

(a) The proposed site must be evaluated with respect to the effects on populations in the region resulting from the release of radioactive materials under normal and accident conditions during operation and decommissioning of the ISFSI or MRS; in this evaluation both usual and unusual regional and site characteristics shall be taken into account.

(b) Each site must be evaluated with respect to the effects on the regional environment resulting from construction, operation, and decommissioning for the ISFSI or MRS; in this evaluation both usual and unusual regional and site characteristics must be taken into account.

§ 72.102 Geological and seismological characteristics.

(a)(1) East of the Rocky Mountain Front (east of approximately 104° west longitude), except in areas of known seismic activity including but not limited to the regions around New Madrid, MO, Charleston, SC, and Attica, NY, sites will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g.

(2) For those sites that have been evaluated under paragraph (a)(1) of this section that are east of the Rocky Mountain Front, and that are not in areas of known seismic activity, a standardized design earthquake (DE) described by an appropriate response spectrum anchored at 0.25 g may be used. Alternatively, a site-specific DE may be determined by using the criteria and level of investigations required by Appendix A of Part 100 of this chapter.

(b) West of the Rocky Mountain Front (west of approximately 104° west longitude), and in other areas of known potential seismic activity, seismicity will be evaluated by the techniques of Appendix A of Part 100 of this chapter. Sites that lie within the range of strong near-field ground motion from historical earthquakes on large capable faults should be avoided.

(c) Sites other than bedrock sites must be evaluated for their liquefaction potential or other soil instability due to vibratory ground motion.

(d) Site-specific investigations and laboratory analyses must show that soil conditions are adequate for the proposed foundation loading.

(e) In an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred. Sites with unstable geologic characteristics should be avoided.

(f) The design earthquake (DE) for use in the design of structures must be determined as follows:

(1) For sites that have been evaluated under the criteria of Appendix A of 10 CFR Part 100, the DE must be equivalent to the safe shutdown earthquake (SSE) for a nuclear power plant.

(2) Regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

§ 72.104 Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS.

(a) During normal operations and anticipated occurrences, the annual dose equivalent to any real individual who is located beyond the controlled area must not exceed 25 mrem to the whole body, 75 mrem to the thyroid and 25 mrem to any other organ as a result of exposure to:

(1) Planned discharges of radioactive materials, radon and its decay products excepted, to the general environment,

(2) Direct radiation from ISFSI or MRS operations, and

(3) Any other radiation from uranium fuel cycle operations within the region.

(b) Operational restrictions must be established to meet as low as is reasonably achievable objectives for radioactive materials in effluents and direct radiation levels associated with ISFSI or MRS operations.

(c) Operational limits must be established for radioactive materials in effluents and direct radiation levels associated with ISFSI or MRS operations to meet the limits given in paragraph (a) of this section.

§ 72.106 Controlled area of an ISFSI or MRS.

(a) For each ISFSI or MRS site, a controlled area must be established.

(b) Any individual located on or beyond the nearest boundary of the controlled area shall not receive a dose greater than 5 rem to the whole body or any organ from any design basis accident. The minimum distance from

the spent fuel or high-level radioactive waste handling and storage facilities to the nearest boundary of the controlled area shall be at least 100 meters.

(c) The controlled area may be traversed by a highway, railroad or waterway, so long as appropriate and effective arrangements are made to control traffic and to protect public health and safety.

§ 72.108 Spent fuel or high-level radioactive waste transportation.

The proposed ISFSI or MRS must be evaluated with respect to the potential impact on the environment of the transportation of spent fuel or high-level radioactive waste within the region.

Subpart F—General Design Criteria

§ 72.120 General considerations.

(a) Pursuant to the provisions of § 72.24, an application to store spent fuel in an ISFSI or to store spent fuel or high-level radioactive waste in an MRS must include the design criteria for the proposed storage installation. These design criteria establish the design, fabrication, construction, testing, maintenance and performance requirements for structures, systems, and components important to safety as defined in § 72.3. The general design criteria identified in this subpart establish minimum requirements for the design criteria for an ISFSI or MRS. Any omissions in these general design criteria do not relieve the applicant from the requirement of providing the necessary safety features in the design of the ISFSI or MRS.

(b) The MRS must be designed to store either spent fuel or solid high-level radioactive wastes. Liquid high-level radioactive wastes may not be received or stored in an MRS. If the MRS is a water-pool type facility, the solidified waste form shall be a durable solid with demonstrable leach resistance.

§ 72.122 Overall requirements.

(a) *Quality Standards.* Structures, systems, and components important to safety must be designed, fabricated, erected, and tested to quality standards commensurate with the importance to safety of the function to be performed.

(b) *Protection against environmental conditions and natural phenomena.* (1) Structures, systems, and components important to safety must be designed to accommodate the effects of, and to be compatible with, site characteristics and environmental conditions associated with normal operation, maintenance, and testing of the ISFSI or MRS and to withstand postulated accidents.

(2) Structures, systems, and components important to safety must be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, lighting, hurricanes, floods, tsunami, and seiches, without impairing their capability to perform safety functions. The design bases for these structures, systems, and components must reflect:

(i) Appropriate consideration of the most severe of the natural phenomena reported for the site and surrounding area, with appropriate margins to take into account the limitations of the data and the period of time in which the data have accumulated, and

(ii) Appropriate combinations of the effects of normal and accident conditions and the effects of natural phenomena.

The ISFSI or MRS should also be designed to prevent massive collapse of building structures or the dropping of heavy objects as a result of building structural failure on the spent fuel or high-level radioactive waste or on to structures, systems, and components important to safety.

(3) Capability must be provided for determining the intensity of natural phenomena that may occur for comparison with design bases of structures, systems, and components important to safety.

(4) If the ISFSI or MRS is located over an aquifer which is a major water resource, measures must be taken to preclude the transport of radioactive materials to the environment through this potential pathway.

(c) *Protection against fires and explosions.* Structures, systems, and components important to safety must be designed and located so that they can continue to perform their safety functions effectively under credible fire and explosion exposure conditions. Noncombustible and heat-resistant materials must be used wherever practical throughout the ISFSI or MRS, particularly in locations vital to the control of radioactive materials and to the maintenance of safety control functions. Explosion and fire detection, alarm, and suppression systems shall be designed and provided with sufficient capacity and capability to minimize the adverse effects of fires and explosions on structures, systems, and components important to safety. The design of the ISFSI or MRS must include provisions to protect against adverse effects that might result from either the operation or the failure of the fire suppression system.

(d) *Sharing of structures, systems, and components.* Structures, systems, and components important to safety must not be shared between an ISFSI or MRS and other facilities unless it is shown that such sharing will not impair the capability of either facility to perform its safety functions, including the ability to return to a safe condition in the event of an accident.

(e) *Proximity of sites.* An ISFSI or MRS located near other nuclear facilities must be designed and operated to ensure that the cumulative effects of their combined operations will not constitute an unreasonable risk to the health and safety of the public.

(f) *Testing and maintenance of systems and components.* Systems and components that are important to safety must be designed to permit inspection, maintenance, and testing.

(g) *Emergency capability.* Structures, systems, and components important to safety must be designed for emergencies. The design must provide for accessibility to the equipment of onsite and available offsite emergency facilities and services such as hospitals, fire and police departments, ambulance service, and other emergency agencies.

(h) *Confinement barriers and systems.* (1) The spent fuel cladding must be protected during storage against degradation that leads to gross ruptures or the fuel must be otherwise confined such that degradation of the fuel during storage will not pose operational safety problems with respect to its removal from storage. This may be accomplished by canning of consolidated fuel rods or unconsolidated assemblies or other means as appropriate.

(2) For underwater storage of spent fuel or high-level radioactive waste in which the pool water serves as a shield and a confinement medium for radioactive materials, systems for maintaining water purity and the pool water level must be designed so that any abnormal operations or failure in those systems from any cause will not cause the water level to fall below safe limits. The design must preclude installations of drains, permanently connected systems, and other features that could, by abnormal operations or failure, cause a significant loss of water. Pool water level equipment must be provided to alarm in a continuously manned location if the water level in the storage pools falls below a predetermined level.

(3) Ventilation systems and off-gas systems must be provided where necessary to ensure the confinement of airborne radioactive particulate materials during normal or off-normal conditions.

(4) Storage confinement systems must have the capability for continuous monitoring in a manner such that the

licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions.

(5) The high-level radioactive waste must be packaged in a manner that allows handling and retrievability without the release of radioactive materials to the environment or radiation exposures in excess of Part 20 limits. The package must be designed to confine the high-level radioactive waste for the duration of the license.

(i) *Instrumentation and control systems.* Instrumentation and control systems must be provided to monitor systems that are important to safety over anticipated ranges for normal operation and off-normal operation. Those instruments and control systems that must remain operational under accident conditions must be identified in the Safety Analysis Report.

(j) *Control room or control area.* A control room or control area, if appropriate for the ISFSI or MRS design, must be designed to permit occupancy and actions to be taken to monitor the ISFSI or MRS safely under normal conditions, and to provide safe control of the ISFSI or MRS under off-normal or accident conditions.

(k) *Utility or other services.* (1) Each utility service system must be designed to meet emergency conditions. The design of utility services and distribution systems that are important to safety must include redundant systems to the extent necessary to maintain, with adequate capacity, the ability to perform safety functions assuming a single failure.

(2) Emergency utility services must be designed to permit testing of the functional operability and capacity, including the full operational sequence, of each system for transfer between normal and emergency supply sources; and to permit the operation of associated safety systems.

(3) Provisions must be made so that, in the event of a loss of the primary electric power source or circuit, reliable and timely emergency power will be provided to instruments, utility service systems, the central security alarm station, and operating systems, in amounts sufficient to allow safe storage conditions to be maintained and to permit continued functioning of all systems essential to safe storage.

(4) An ISFSI or MRS which is located on the site of another facility may share common utilities and services with such a facility and be physically connected with the other facility; however, the sharing of utilities and services or the physical connection must not significantly:

(i) Increase the probability or consequences of an accident or malfunction of components, structures, or systems that are important to safety; or

(ii) Reduce the margin of safety as defined in the basis for any technical specifications of either facility.

(l) *Retrievability.* Storage systems must be designed to allow ready retrieval of spent fuel or high-level radioactive waste for further processing or disposal.

§ 72.124 Criteria for nuclear criticality safety.

(a) *Design for criticality safety.* Spent fuel handling, packaging, transfer, and storage systems must be designed to be maintained subcritical and to ensure that, before a nuclear criticality accident is possible, at least two unlikely, independent, and concurrent or sequential changes have occurred in the conditions essential to nuclear criticality safety. The design of handling, packaging, transfer, and storage systems must include margins of safety for the nuclear criticality parameters that are commensurate with the uncertainties in the data and methods used in calculations and demonstrate safety for the handling, packaging, transfer and storage conditions and in the nature of the immediate environment under accident conditions.

(b) *Methods of criticality control.* When practicable the design of an ISFSI or MRS must be based on favorable geometry, permanently fixed neutron absorbing materials (poisons), or both. Where solid neutron absorbing materials are used, the design shall provide for positive means to verify their continued efficacy.

(c) *Criticality Monitoring.* A criticality monitoring system shall be maintained in each area where special nuclear material is handled, used, or stored which will energize clearly audible alarm signals if accidental criticality occurs. Underwater monitoring is not required when special nuclear material is handled or stored beneath water shielding. Monitoring of dry storage areas where special nuclear material is packaged in its stored configuration under a license issued under this subpart is not required.

§ 72.126 Criteria for radiological protection.

(a) *Exposure control.* Radiation protection systems must be provided for all areas and operations where onsite personnel may be exposed to radiation or airborne radioactive materials. Structures, systems, and components for which operation, maintenance, and required inspections may involve occupational exposure must be designed, fabricated, located, shielded, controlled, and tested so as to control external and internal radiation exposures to personnel. The design must include means to:

(1) Prevent the accumulation of radioactive material in those systems requiring access;

(2) Decontaminate those systems to which access is required;

(3) Control access to areas of potential contamination or high radiation within the ISFSI or MRS;

(4) Measure and control contamination of areas requiring access;

(5) Minimize the time required to perform work in the vicinity of radioactive components; for example, by providing sufficient space for ease of operation and designing equipment for ease of repair and replacement; and

(6) Shield personnel from radiation exposure.

(b) *Radiological alarm systems.* Radiological alarm systems must be provided in accessible work areas as appropriate to warn operating personnel of radiation and airborne radioactive material concentrations above a given setpoint and of concentrations of radioactive material in effluents above control limits. Radiation alarm systems must be designed with provisions for calibration and testing their operability.

(c) *Effluent and direct radiation monitoring.* (1) As appropriate for the handling and storage system, effluent systems must be provided. Means for measuring the amount of radionuclides in effluents during normal operations and under accident conditions must be provided for these systems. A means of measuring the flow of the diluting medium, either air or water, must also be provided.

(2) Areas containing radioactive materials must be provided with systems for measuring the direct radiation levels in and around these areas.

(d) *Effluent control.* The ISFSI or MRS must be designed to provide means to limit to levels as low as is reasonably achievable the release of radioactive materials in effluents during normal operations; and control the release of radioactive materials under accident conditions. Analyses must be made to show that releases to the general environment during normal operations and anticipated occurrences will be within the exposure limit given in § 72.104. Analyses of design basis accidents must be made to show that releases to the general environment will be within the exposure limits given in

§ 72.106. Systems designed to monitor the release of radioactive materials must have means for calibration and testing their operability.

§ 72.128 Criteria for spent fuel, high-level radioactive waste, and other radioactive waste storage and handling.

(a) *Spent fuel and high-level radioactive waste storage and handling systems.* Spent fuel storage, high-level radioactive waste storage, and other systems that might contain or handle radioactive materials associated with spent fuel or high-level radioactive waste, must be designed to ensure adequate safety under normal and accident conditions. These systems must be designed with—

(1) A capability to test and monitor components important to safety,

(2) Suitable shielding for radioactive protection under normal and accident conditions,

(3) Confinement structures and systems,

(4) A heat-removal capability having testability and reliability consistent with its importance to safety, and

(5) means to minimize the quantity of radioactive wastes generated.

(b) *Waste treatment.* Radioactive waste treatment facilities must be provided. Provisions must be made for the packing of site-generated low-level wastes in a form suitable for storage onsite awaiting transfer to disposal sites.

§ 72.130 Criteria for decommissioning.

The ISFSI or MRS must be designed for decommissioning. Provisions must be made to facilitate decontamination of structures and equipment, minimize the quantity of radioactive wastes and contaminated equipment, and facilitate the removal of radioactive wastes and contaminated materials at the time the ISFSI or MRS is permanently decommissioned.

Subpart G—Quality Assurance

§ 72.140 Quality assurance requirements.

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, modification of structures, systems, and components, and decommissioning that are important to safety. As used in this subpart, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(b) *Establishment of program.* Each licensee [2] shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subpart, and satisfying any specific provisions which are applicable to the licensee's activities. The licensee shall execute the applicable criteria in a graded approach to an extent that is commensurate with the importance to safety. The quality assurance program must cover the activities identified in § 72.24(n) throughout the life of the licensed activity, from the site selection through decommissioning, prior to termination of the license.

(c) *Approval of program.* Prior to receipt of spent fuel at the ISFSI or spent fuel and high-level radioactive waste at the MRS, each licensee shall obtain Commission approval of its quality assurance program. Each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, with the Director, Office of Nuclear Material and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(d) *Previously approved programs.* A Commission-approved quality assurance program which satisfies the applicable criteria of Appendix B to Part 50 of this chapter and which is established, maintained, and executed with regard to an ISFSI will be accepted as satisfying the requirements of paragraph (b) of this section. Prior to first use, the licensee shall notify the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of its intent to apply its previously approved Appendix B program to ISFSI activities. The licensee shall identify the program by date of submittal to the Commission, docket number, and date of Commission approval.

§ 72.142 Quality assurance organization.

The licensee shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, but shall retain responsibility for the program. The licensee shall clearly establish and delineate in writing the authority and duties of persons and organizations performing activities affecting the functions of structures, systems and components which are important to safety. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions. The quality assurance functions are:

(a) Assuring that an appropriate quality assurance program is established and effectively executed and

(b) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed. The persons and organizations performing quality assurance functions must have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions.

The persons and organizations performing quality assurance functions shall report to a management level that ensures that the required authority and organizational freedom, including sufficient independence from cost and schedule considerations when these considerations are opposed to safety considerations, are provided. Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom. Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to this section are being performed must have direct access to the levels of management necessary to perform this function.

§ 72.144 Quality assurance program.

(a) The licensee shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program which complies with the requirements of this subpart. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with these procedures

[2] While the term "licensee" is used in these criteria, the requirements are applicable to whatever design, construction, fabrication, assembly, and testing is accomplished with respect to structures, systems, and components prior to the time a license is issued.

throughout the period during which the ISFSI or MRS is licensed. The licensee shall identify the structures, systems, and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(b) The licensee, through its quality assurance program, shall provide control over activities affecting the quality of the identified structures, systems, and components to an extent commensurate with the importance to safety, and as necessary to ensure conformance to the approved design of each ISFSI or MRS. The licensee shall ensure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee shall take into account the need for special controls, processes, test equipment, tools and skills to attain the required quality and the need for verification of quality by inspection and test.

(c) The licensee shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the structures, systems, or components:

(1) The impact of malfunction or failure of the item on safety;

(2) The design and fabrication complexity or uniqueness of the item;

(3) The need for special controls and surveillance over processes and equipment;

(4) The degree to which functional compliance can be demonstrated by inspection or test; and

(5) The quality history and degree of standardization of the item.

(d) The licensee shall provide for indoctrination and training of personnel performing activities affecting quality as necessary to ensure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall regularly review the status and adequacy of that part of the quality assurance program which they are executing.

§ 72.146 Design control.

(a) The licensee shall establish measures to ensure that applicable regulatory requirements and the design basis, as specified in the license application for those structures, systems, and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to ensure that appropriate quality standards are specified and included in design documents and that deviations from standards are controlled. Measures must be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the functions of the structures, systems, and components which are important to safety.

(b) The licensee shall establish measures for the identification and control of design interfaces and for coordination among participating design organizations. These measures must include the establishment of written procedures among participating design organizations for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures must provide for verifying or checking the adequacy of design, by methods such as design reviews, alternate or simplified calculational methods, or by a suitable testing program. For the verifying or checking process, the licensee shall designate individuals or groups other than those who were responsible for the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, the licensee shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. The licensee shall apply design control measures to items such as the following: criticality physics, radiation, shielding, stress, thermal, hydraulic, and accident analyses; compatibility of materials; accessibility for inservice inspection, maintenance, and repair; features to facilitate decontamination; and delineation of acceptance criteria for inspections and tests.

(c) The licensee shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the license require NRC approval.

§ 72.148 Procurement document control.

The licensee shall establish measures to assure that applicable regulatory requirements, design bases, and other requirements which are necessary to assure adequate quality are included or referenced in the documents for procurement of material, equipment, and services, whether purchased by the licensee or by its contractors or subcontractors. To the extent necessary, the licensee shall require contractors or subcontractors to provide a quality assurance program consistent with the applicable provisions of this subpart.

§ 72.150 Instructions, procedures, and drawings.

The licensee shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions, procedures, and drawings be followed. The instructions, procedures, and drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

§ 72.152 Document control.

The licensee shall establish measures to control the issuance of documents such as instructions, procedures, and drawings, including changes, which prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy, approved for release by authorized personnel, and distributed and used at the location where the prescribed activity is performed. These measures must ensure that changes to documents are reviewed and approved.

§ 72.154 Control of purchased material, equipment, and services.

(a) The licensee shall establish measures to ensure that purchased material, equipment and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These mesaures must include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery.

(b) The licensee shall have available documentary evidence that material and equipment conform to the procurement specifications prior to installation or use of the material and equipment. The licensee shall retain or have available this documentary evidence for the life of ISFSI or MRS. The licensee shall ensure that the evidence is sufficient to identify the specific requirements met by the purchased material and equipment.

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(c) The licensee or designee shall assess the effectiveness of the control of quality by contractors and subcontractors at intervals consistent with the importance, complexity, and quantity of the product or services.

§ 72.156 Identification and control of materials, parts, and components.

The licensee shall establish measures for the identification and control of materials, parts, and components. These measures must ensure that identification of the item is maintained by heat number, part number, serial number, or other appropriate means, either on the item or on records traceable to the item as required, throughout fabrication, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective materials, parts, and components.

§ 72.158 Control of special processes.

The licensee shall establish measures to ensure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

§ 72.160 Licensee inspection.

The licensee shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected. Examinations, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If direct inspection of processed material or products cannot be carried out, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work should not proceed without the consent of its designated representative, are required, the specific hold points must be indicated in appropriate documents.

§ 72.162 Test control.

The licensee shall establish a test program to ensure that all testing required to demonstrate that the structures, systems, and components will perform satisfactorily in service is identified and performed in accordance with written test procedures that incorporate the requirements of this part and the requirements and acceptance limits contained in the ISFSI or MRS license. The test procedures must include provisions for assuring that all prerequisites for the given test are met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. The licensee shall document and evaluate the test results to ensure that test requirements have been satisfied.

§ 72.164 Control of measuring and test equipment.

The licensee shall establish measures to ensure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified periods to maintain accuracy within necessary limits.

§ 72.166 Handling, storage, and shipping control.

The licensee shall establish measures to control, in accordance with work and inspection instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

§ 72.168 Inspection, test, and operating status.

(a) The licensee shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the ISFSI or MRS. These measures must provide for the identification of items which have satisfactorily passed required inspections and tests where necessary to preclude inadvertent bypassing of the inspections and tests.

(b) The licensee shall establish measures to identify the operating status of structures, systems, and components of the ISFSI or MRS, such as tagging valves and switches, to prevent inadvertent operation.

§ 72.170 Nonconforming materials, parts, or components.

The licensee shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements in order to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

§ 72.172 Corrective action.

The licensee shall establish measures to ensure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures must ensure that the cause of the condition is determined and corrective action is taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

§ 72.174 Quality assurance records.

The licensee shall maintain sufficient records to furnish evidence of activities affecting quality. The records must include the following: design records, records of use and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses. The records must include closely related data such as qualifications of personnel, procedures, and equipment. Inspection and test records must, at a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any noted deficiencies. Records must be identifiable and retrievable. Records pertaining to the design, fabrication, erection, testing, maintenance, and use of structures, systems, and components important to safety shall be maintained by or under the control of the licensee until the Commission terminates the license.

§ 72.176 Audits.

The licensee shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the

effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action, including re-audit of deficient areas, must be taken where indicated.

Subpart H—Physical Protection

§ 72.180 Physical security plan.

The licensee shall establish a detailed plan for security measures for physical protection. The licensee shall retain a copy of the current plan as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the plan is superseded, retain the superseded material for three years after each change. This plan must consist of two parts. Part I must demonstrate how the applicant plans to comply with the applicable requirements of Part 73 of this chapter and during transportation to and from the proposed ISFSI or MRS and must include the design for physical protection and the licensee's safeguards contingency plan and guard training plan. Part II must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

§ 72.182 Design for physical protection.

The design for physical protection must show the site layout and the design features provided to protect the ISFSI or MRS from sabotage. It must include:

(a) The design criteria for the physical protection of the proposed ISFSI or MRS;

(b) The design bases and the relation of the design bases to the design criteria submitted pursuant to paragraph (a) of this section; and

(c) Information relative to materials of construction, equipment, general arrangement, and proposed quality assurance program sufficient to provide reasonable assurance that the final security system will conform to the design bases for the principal design criteria submitted pursuant to paragraph (a) of this section.

§ 72.184 Safeguards contingency plan.

(a) The requirements of the licensee's safeguards contingency plan for dealing with threats and radiological sabotage must be as defined in § 73.40(b) of this chapter. This plan must include Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix, the first four categories of information relating to nuclear facilities licensed under Part 50 of this chapter. (The fifth category of information, Procedures, does not have to be submitted for approval.)

(b) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C to 10 CFR Part 73 for effecting the actions and decisions contained in the Responsibility Matrix of the licensee's safeguards contingency plan. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

§ 72.186 Change to physical security and safeguards contingency plans.

(a) The licensee shall make no change that would decrease the safeguards effectiveness of the physical security plan, guard training plan or the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in the licensee safeguards contingency plan without prior approval of the Commission. A licensee desiring to make a change must submit an application for a license amendment pursuant to § 72.56.

(b) The licensee may, without prior Commission approval, make changes to the physical security plan, guard training plan, or the safeguards contingency plan, if the changes do not decrease the safeguards effectiveness of these plans. The licensee shall maintain records of changes to any such plan made without prior approval for a period of three years from the date of the change and shall furnish to the Regional Administrator of the appropriate NRC Regional Office specified in Appendix A of Part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report containing a description of each change within two months after the change is made.

Subpart I—Training and Certification of Personnel

§ 72.190 Operator requirements.

Operation of equipment and controls that have been identified as important to safety in the Safety Analysis Report and in the license must be limited to trained and certified personnel or be under the direct visual supervision of an individual with training and certification in the operation. Supervisory personnel who personally direct the operation of equipment and controls that are important to safety must also be certified in such operations.

§ 72.192 Operator training and certification program.

The applicant for a license under this part shall establish a program for training, proficiency testing, and certification of ISFSI or MRS personnel. This program must be submitted to the Commission for approval with the license application.

§ 72.194 Physical requirements.

The physical condition and the general health of personnel certified for the operation of equipment and controls that are important to safety must not be such as might cause operational errors that could endanger other in-plant personnel or the public health and safety. Any condition that might cause impaired judgment or motor coordination must be considered in the selection of personnel for activities that are important to safety. These conditions need not categorically disqualify a person, if appropriate provisions are made to accommodate such defect.

Subpart J—Provision of MRS Information to State Governments and Indian Tribes

§ 72.200 Provision of MRS information.

(a) The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee shall provide to the Governor and legislature of any State in which an MRS authorized under the Nuclear Waste Policy Act of 1982, as amended, is or may be located, to the Governors of any contiguous States, to each affected unit of local government and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made by the Commission with respect to siting, development, design, licensing, construction, operation, regulation or decommissioning of such monitored retrievable storage facility.

(b) Notwithstanding paragraph (a) of this section, the Director or the Director's designee is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

(c) Copies of all communications by the Director or the Director's designee under this section shall be placed in the

Commission's Public Document Room and shall be furnished to DOE.

§ 72.202 Participation in license reviews.

State and local governments and affected Indian tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter.

§ 72.204 Notice to States.

If the Governor and legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and the legislature separately.

§ 72.206 Representation.

Any person who acts under this subpart as a representative for a State (or for the Governor or legislature thereof) or for an affected Indian tribe shall include in the request or other submission, or at the request of the Commission, a statement of the basis of his or her authority to act in such representative capacity.

The following conforming amendments are also made to other parts of the Commission's regulations in Chapter 1, Title 10 of the Code of Federal Regulations.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

2. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 544. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1859 (42 U.S.C. 2021j).

3. In § 2.104, paragraph (e) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(e) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a license for a production or utilization facility, for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under Part 61 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, and for a license under Part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be so located or conducted within an Indian reservation). The Secretary will transmit a notice of hearing on an application for a license under Part 72 of this chapter to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS) to the same persons who received the notice of docketing under § 72.16(e) of this chapter.

4. In § 2.105, paragraph (a) is amended by deleting the word "or" at the end of paragraph (6), by redesignating paragraphs (7), (8) and (9) as paragraphs (9), (10) and (11) and by adding new paragraphs (7) and (8) to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(7) A license under Part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) or to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS);

(8) An amendment to a license specified in paragraph (a)(7) of this section when such an amendment presents a genuine issue as to whether the health and safety of the public will be significantly affected; or

* * * * *

5. In § 2.764, paragraph (c) is revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

* * * * *

(c) An initial decision directing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS) under 10 CFR Part 72 shall become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) under 10 CFR Part 72 until expressly authorized to do so by the Commission.

* * * * *

6. In Appendix C, Table 1A, is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

TABLE 1A—BASE CIVIL PENALTIES

	Plant operations, construction, health physics and an EP	Safeguards	Transportation	
			Greater than Type A quantity [1]	Type A quantity or less [2]
a. Power reactors	$100,000	$100,000	$100,000	$5,000
b. Test reactors	10,000	10,000	10,000	2,000
c. Research reactors and critical facilities	5,000	5,000	5,000	1,000
d. Fuel fabricators and industrial processors [3]	25,000	[4] 100,000	25,000	5,000
e. Mills and uranium conversion facilities	10,000	—	5,000	2,000
f. Industrial users of material [5]	10,000	—	5,000	2,000
g. Waste disposal licensees	10,000	—	5,000	2,000
h. Academic or medical institutions [6]	5,000	—	2,500	1,000
i. Independent spent fuel and monitored retrievable storage installations	25,000	100,000	25,000	5,000
j. Other material licensees	1,000	—	2,500	1,000

[1] Includes irradiated fuel, high level waste, unirradiated fissile material and any other quantities requiring Type B packaging.
[2] Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.
[3] Large firms engaged in manufacturing (or distribution of byproduct, source, or special nuclear material.
[4] This amount refers to Category 1 licensees (or defined in 10 CFR 73.2(bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of $50,000.
[5] Includes industrial radiographers, nuclear pharmacies, and other industrial users.
[6] This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

7. The authority citation for Part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11(a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in Parts 30 through 35, 39, 40, 60, 61, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

9. In § 19.3, paragraph (d) is revised to read as follows:

§ 19.3 Definitions.

* * * * *

(d) "License" means a license issued under the regulations in Parts 30 through 35, 39, 40, 60, 61, 70, or 72 of this chapter, including licenses to operate a production or utilization facility pursuant to Part 50 of this chapter. "Licensee" means the holder of such a license.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

10. The authority citation for Part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 68 Stat. 930, 933, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 20.101, 20.102, 20.103 (a), (b) and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b) and 20.409 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

11. Section 20.2 is revised to read as follows:

§ 20.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed pursuant to the regulations in Parts 30 through 35, 39, 40, 60, 61, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

12. In § 20.408, paragraph (a)(5) is revised to read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

(a) This section applies to each person licensed by the Commission to:

* * * * *

(5) Possess spent fuel in an independent spent fuel storage installation (ISFSI) or possess spent fuel or high level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter; or

* * * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

13. The authority citation for Part 21 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Sec. 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 21.6, 21.21(a) and 21.31 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 21.21, 21.41 and 21.51 are isused under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. Section 21.2 is revised to read as follows:

§ 21.2 Scope.

The regulations in this part apply, except as specifically provided otherwise in Parts 31, 34, 35, 39, 40, 60, 61, 70, or 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the

regulations in this chapter to possess, use, and/or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high-level radioactive waste, or to construct, manufacture, possess, own, operate and/or transfer within the United States, any production or utilization facility, or independent spent fuel storage installation (ISFSI) or monitored retrievable storge installation (MRS), and to each director (see § 21.3(f)) and responsible officer (see § 21.3(j)) of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization that constructs (see § 21.3(c)) a production or utilization facility licensed for manufacture, construction or operation (see § 21.3(h)) pursuant to Part 50 of this chapter, an independent spent fuel storage installation (ISFSI) for the storage of spent fuel licensed pursuant to Part 72 of this chapter or a monitored retrievable storage installation (MRS) for the storage of spent fuel or high-level radioactive waste licensed pursuant to Part 72 of this chapter, or supplies (see § 21.3(1)) basic components (see § 21.3(a)) for a facility or activity licensed, other than for export, under Parts 30, 39, 40, 50, 60, 61, 70, 71, or 72 of this chapter. Nothing in these regulations should be deemed to preclude either an individual or a manufacturer/supplier of a commerical grade item (see § 21.3(a-1)) not subject to the regulations in this part from reporting to the Commission a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure.[1]

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[1] NRC Regional Officers will accept collect telephone calls from individuals who wish to speak to NRC representatives concerning nuclear safety-related problems. The location and telephone numbers (for nights and holidays as well as regular hours) are listed below:

Region:		
I	(Philadelphia)	(215) 337-5000
II	(Atlanta)	(404) 331-4503
III	(Chicago)	(312) 790-5500
IV	(Dallas)	(817) 860-8100
IV	Uranium Recovery Field Office (Denver)	(303) 236-2805
V	(San Francisco)	(415) 943-3700

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

15. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

16. In § 51.20, paragraph (b)(9) is revised to read as follows:

§ 51.20 Criteria for an identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) The following types of actions require an environmental impact statement or a supplement to an environmental impact statement:

* * * * *

(9) Issuance of a license pursuant to Part 72 of this chapter for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at a site not occupied by a nuclear power reactor, or for the storage of spent fuel or high-level radioactive waste in a monitored retrievable storage installation (MRS).

* * * * *

17. In § 51.30, a new paragraph (c) is added to read as follows:

§ 51.30 Environmental assessment.

* * * * *

(c) An environmental assessment for a proposed action regarding a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the Nuclear Waste Policy Act of 1982 (96 Stat. 2242, 42 U.S.C. 10161(b)(1)).

18. In § 51.60, paragraphs (a), (b)(1)(iii) and (b)(4) are revised to read as follows:

§ 51.60 Environmental report—materials licenses.

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 32, 33, 34, 35, 39, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1) through (b)(6) of this section, shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66, of a separate document, entitled "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate. The "Applicant's Environmental Report" shall contain the information specified in § 51.45. If the application is for an amendment to or a renewal of a license or other form of permission for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities. If the applicant is the U.S. Department of Energy, the environmental report may be in the form of either an environmental impact statement or an environmental assessment, as appropriate.

(b) * * *

(1) * * *

(iii) Storage of spent fuel in an independent spent fuel storage installation (ISFSI) or the storage of spent fuel or high-level radio-active waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter.

* * * * *

(4) Amendment of a license to authorize the decommissioning of an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter.

* * * * *

19. Section 51.61 is revised to read as follows:

§ 51.61 Environmental report—independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS) license.

Each applicant for issuance of a license for storage of spent fuel in an independent spent fuel storage installation (ISFSI) or for the storage of spent fuel and high-level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document entitled "Applicant's Environmental Report—ISFSI License" or "Applicant's

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Environmental Report—MRS License," as appropriate. If the applicant is the U.S. Department of Energy, the environmental report may be in the form of either an environmental impact statement or an environmental assessment, as appropriate. The environmental report shall contain the information specified in § 51.45 and shall address the siting evaluation factors contained in Subpart E of Part 72 of this chapter. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), no discussion of the environmental impact of the storage of spent fuel at an ISFSI beyond the term of the license or amendment applied for is required in an environmental report submitted by an applicant for an initial license for storage of spent fuel in an ISFSI, or any amendment thereto.

20. In § 51.80, paragraph (b) is revised to read as follows:

§ 51.80 Draft environmental impact statement—materials license.

* * * * *

(b)(1) *Independent spent fuel storage installation (ISFSI).* Unless otherwise determined by the Commission and in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a draft environmental impact statement on the issuance of an initial license for storage of spent fuel at an independent spent fuel storage installation (ISFSI) or any amendment thereto, will address environmental impacts of spent fuel only for the term of the license or amendment applied for.

(2) *Monitored retrievable storage installation (MRS).* As provided in sections 141 (c), (d), and (e) and 148 (a) and (c) of the Nuclear Waste Policy Act of 1982, as amended (NWPA) (96 Stat. 2242, 2243, 42 U.S.C. 10161 (c), (d), (e); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168 (a) and (c)), a draft environmental impact statement for the construction of a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)) but may consider alternative facility designs which are consistent with these design criteria.

21. In § 51.97, a new paragraph (b) is added to read as follows:

§ 51.97 Final environmental impact statement-materials license.

* * * * *

(b) *Monitored retrievable storage facility (MRS).* As provided in sections 141 (c), (d), and (e) and 148 (a) and (c) of the Nuclear Waste Policy Act of 1982, as amended (NWPA) (96 Stat. 2242, 2243, 42 U.S.C. 10161 (c), (d), (e); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168 (a), (c)) a final environmental impact statement for the construction of a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)) but may consider alternative facility designs which are consistent with these design criteria.

§ 51.101 [Amended]

22. The references to §§ 72.11, 72.20 and 72.31(b) in the second sentence of paragraph (a)(2) of § 51.101 are redesignated respectively as §§ 72.16, 72.34 and 72.40(b).

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

23. The authority citation for Part 70 is revised to read as follows:

Authority: Sections 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b) (d)-(k), 70.24 (a) and (b), 70.32 (a)(3), (5) and (6), (d) and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)-(g)(3), and (h)-(j) are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57 (b) and (d), 70.58 (a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat 950, as amended (42 U.S.C. 2201(o)).

24. In § 70.1, paragraph (c) is revised to read as follows:

§ 70.1 Purpose

* * * * *

(c) The regulations in Part 72 of this chapter establish requirements, procedures, and criteria for the issuance of licenses to possess:

(1) Spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI), or

(2) Spent fuel, high-level radioactive waste, and other radioactive materials asociated with the storage in a monitored retrievable storage installation (MRS), and the terms and conditions under which the Commission will issue such licenses.

25. In § 70.20a, paragraph (b) is revised to read as follows:

§ 70.20a General license to possess special nuclear material for transport.

* * * * *

(b) Notwithstanding any other provision of this chapter, the general license issued under this section does not authorize any person to conduct any activity that would be authorized by a license issued pursuant to Parts 30 through 35, 39, 40, 50, 72, 110, or other sections of this part.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

26. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); secs. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Sec. 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 73.21, 73.37(g) and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.57, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26 (b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40 (b) and (d), 73.46 (g)(6) and (h)(2), 73.50 (g)(2), (3)(iii)(B) and (h), 73.55 (h)(2), and (4)(iii)(B), 73.57, 73.70, 73.71 and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

27. In § 73.1, paragraph (b)(6) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(6) This part prescribes requirements for the physical protection of spent fuel stored in either an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) licensed under Part 72 of this chapter.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

28. The authority citation for Part 75 is revised to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, as amended, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), the provisions of this part are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

29. In § 75.4, paragraph (k)(4) is revised to read as follows:

§ 75.4 Definitions.

As used in this part:

* * * * *

(k) "Installation" means:

* * * * *

(4) An independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) as defined n § 72.3 of this chapter; or

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

30. The authority citation for Part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2201, 2021); sec. 201, as amended, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b) (2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16–150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

31. In § 150.15, paragraph (a)(7) is revised to read as follows:

§ 150.15 Persons not exempt.

(a) * * *

(7) The storage of:

(i) Spent fuel in an independent spent fuel storage installation (ISFSI) or

(ii) Spent fuel and high level radioactive waste in a monitored retrievable storage installation (MRS) licensed pursuant to Part 72 of this chapter.

* * * * *

Dated at Rockville, Maryland, this 12th day of August, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–18773 Filed 8–18–88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0635]

Home Mortgage Disclosure; Revisions to Regulation C

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a revised Regulation C (Home Mortgage Disclosure). The revised regulation incorporates recent amendments to the Home Mortgage Disclosure Act that were contained in the Housing and Community Development Act of 1987. These statutory amendments permanently extend the act and expand its coverage to include mortgage banking subsidiaries of bank and savings and loan holding companies, and savings and loan service corporations that originate or purchase mortgage loans. Other revisions stem from a review made in accordance with the Board's Regulatory Improvement Program.

The HMDA–1 form, which is used by banks, thrifts, and other depository institutions for reporting loan data, remains essentially unchanged. The Board has adopted a separate form HMDA–2 for use by mortgage banking subsidiaries of holding companies and newly covered service corporations, because these institutions are required to exclude FHA loans from their reports.

EFFECTIVE DATES: September 19, 1988, except that the provisions in § 203.2 (f) and (g) related to the reporting of mobile and manufactured home loans will take effect on January 1, 1989. Mortgage banking subsidiaries of bank and savings and loan holding companies and savings and loan service corporations will be required to report data for calendar year 1988 in March of 1989.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Senior Attorney, or Thomas J. Noto or Linda Vespereny, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–2412 or 202–452–3667; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202–452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). It requires depository institutions that have over $10 million in assets, and have offices in metropolitan statistical areas (MSAs) or primary metropolitan statistical areas (PMSAs), to disclose annually their originations and purchases of mortgage and home improvement loans. Data must be itemized by census tract (or by county, in some instances) and also by type of loan. A statement covering the data on a calendar year basis must be made available to the public and reported to the institution's federal supervisory agency by March 31 following the calendar year for which the data are compiled.

When originally passed in 1975, HMDA contained a "sunset" provision under which the act was to expire in 1980. A number of temporary extensions were enacted and, in the Housing and Community Development Act of 1987 (Pub. L. 100–242, section 565, 101 Stat. 1815, 1945), the Congress permanently extended HMDA by striking the sunset provision from the act. The statutory amendments were signed into law on February 5, 1988. In addition to the permanent extension, these amendments expanded the coverage of HMDA to include mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, as well as savings and loan service corporations.

On May 13, 1988, the Board published for public comment an amended Regulation C to implement these and other changes (53 FR 17061). With some changes that are identified in the

sections that follow, the Board is now adopting the revised regulation in final form.

(2) Regulatory Review

The Board's Regulatory Improvement Program calls for periodic review of each of the Board's regulations to determine whether the regulation can be simplified. The Board conducted such a review of Regulation C and made a number of changes. The text of the regulation was revised to improve its clarity. Obsolete provisions were deleted, footnotes eliminated, and a detailed appendix regarding state exemptions replaced by a brief reference in the regulation. In addition, the instructions to the reporting forms were significantly reworked and should be easier to follow.

(3) Availability of Aggregated Data

As required by the Home Mortgage Disclosure Act, the Federal Financial Institutions Examination Council (with support from the Federal Reserve Board and the other financial regulators) aggregates loan data received from all reporting institutions in each MSA. The Examination Council also produces tables for each MSA showing lending patterns according to demographic characteristics such as income level and age of housing stock. These tables, together with data on the individual institutions, are sent to central data depositories in each MSA. The act specifies that the aggregated data and related tables shall be available no later than December 31 following the calendar year to which they relate. Typically, the Examination Council has released these reports by late November or early December.

The conference report accompanying the HMDA amendments indicates Congressional interest in having the HMDA data available at the central data depositories earlier than is now the case. Member agencies of the Examination Council are implementing changes to data processing procedures in order to facilitate the earlier availability of the data. The Board believes that the revision of Regulation C, together with the expanded instructions for reporting, will serve this purpose by enhancing compliance and by reducing errors that require editing following data submission.

Several commenters on the proposal suggested ways in which the aggregation and presentation of aggregated data might be improved. Since the aggregation process is not governed by Regulation C, these suggestions will be brought to the attention of the Examination Council.

(4) Section-by-Section Summary

The changes made to each section of the revised regulation are discussed below.

Section 203.1 Authority, purpose, and scope.

A reference has been added in § 203.1(a) to reflect the approval of information collection requirements under the Paperwork Reduction Act. A reference to HMDA has been added to the purpose statement in § 203.1(b). Now that the term "depository institution" is no longer used in the regulation (eliminating the possibility of confusion), the term "depositories" has replaced the term "repositories" in § 203.1(d), referring to the facilities where data is available in each MSA.

Section 203.2 Definitions.

Section 203.2 contains definitions of terms used in the regulation, and has been revised as follows.

Act. The definition of "act" in § 203.2(a) has been updated.

Branch office. What qualifies as a branch office has several consequences for an institution. First, institutions that do not have a home or branch office in an MSA or PMSA are exempt from HMDA. Second, HMDA data must be itemized by census tract for loans on property located in any MSA or PMSA in which the institution has a home or branch office. For loans on property located in other MSAs or PMSAs (or not located in an MSA or PMSA at all), the data are reported as an aggregate sum without geographic itemization. Third, the data must be made available to the public at one branch office (or home office) in each MSA or PMSA where the institution has home or branch offices. Finally, the institution must post notices in all branch offices located in MSAs or PMSAs to inform the public of the availability of the HMDA data.

The revised definition set forth in § 203.2(b) takes account of the difference between the branch office structure of the newly covered mortgage banking firms and that of depository institutions such as banks and thrift institutions. While depository institutions must obtain approval from federal or state regulatory agencies to establish branch offices, mortgage banking firms generally are not required to obtain such approval.

Accordingly, the definition of branch office differs for the two classes of institutions. The definition in revised § 203.2(b)(1)(i) applies to banks, thrifts, and other depository institutions; it is the same as in the current regulation and is based on the approval process.

For other covered institutions, the Board defines "branch office" in § 203.2(b)(1)(ii) as an office of the institution that takes applications from the public for home purchase or home improvement loans. In response to comments, the words "of the institution" were added to make clear that branch offices include only facilities of the institution itself, not offices of affiliates or other third parties. This branch office definition will apply to mortgage banking subsidiaries of holding companies and saving and loan service corporations (except for those that are majority owned by a single thrift institution).

The definition of the term "financial institution" in the May proposal would have resulted in the application of the new branch office definition to majority-owned subsidiaries of depository institutions. As discussed below, the final rule does not incorporate that change. Accordingly, majority-owned subsidiaries of depository institutions (including majority-owned service corporations) will continue to be governed by the current rule, which focuses on the branch locations of the parent institution.

Federally related mortgage loan. Banks and other depository institutions are subject to HMDA only if they make "federally related mortgage loans." The definition of that term, currently in footnote 1, has been restated more concisely and incorporated in the text of the regulation as § 203.2(d).

Financial institution. Section 203.2(e) defines the institutions covered by the regulation; the term "financial institution" replaces the term "depository institution." This change is designed to avoid the confusion that might arise from the fact that, in ordinary usage, the term depository institution signifies institutions such as banks and thrifts, not mortgage banking firms and other institutions that do not take deposits. The new definition encompasses both the traditional depository institutions and the new class of covered institutions: Savings and loan service corporations and mortgage banking subsidiaries of bank holding companies and savings and loan holding companies.

As noted above, depository institutions are subject to HMDA only if they make federally related mortgage loans. The statutory amendments do not condition coverage of the newly covered institutions on the making of federally related mortgage loans. The regulatory definition of "financial institution" parallels the statute.

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A number of commenters asked the Board to clarify the term "mortgage banking subsidiary." Many expressed concern that, without further elaboration, the term might be construed to cover consumer finance subsidiaries of holding companies. The Board believes that the use of the qualifying term "mortgage banking" in the statutory amendments suggests that the Congress did not intend to expand coverage to institutions that make only a limited number of mortgage loans. Section 203.2(e)(1)(ii) of the final regulation defines a mortgage banking subsidiary as an institution that makes home purchase loans in an amount greater than 10% of its total loan volume, measured in dollars. This cutoff is intended to ensure that any holding company subsidiary whose line of business is other than mortgage banking, but that makes a small number of home purchase loans, will not be required to report.

The May proposal treated majority-owned subsidiaries of depository institutions as financial institutions in their own right. Consequently, these institutions would have been considered to have branch offices in any MSA where they have offices for taking loan applications from the public. A number of commenters opposed this requirement because of the significant increase in the reporting burden for subsidiaries that have offices in MSAs other than the MSAs in which the parent institution has branches. Moreover, a regulatory agency expressed concern that some of the data presently reported by these subsidiaries would no longer be reported in itemized form. Upon further analysis, the Board has decided to retain the current rule which treats majority-owned subsidiaries as part of the parent institution.

A parallel issue arises regarding the treatment of savings and loan service corporations. Although the statutory amendments brought savings and loan service corporations specifically within the coverage of HMDA, service corporations that are majority-owned subsidiaries of thrift institutions already were covered by Regulation C. Because of the statute's specific reference to service corporations, however, the Board considered whether a majority-owned savings and loan service corporation should continue to be treated as the subsidiary of its parent institution or characterized as a "savings and loan service corporation" under the new definition in the regulation.

If treated as a majority-owned subsidiary the service corporation would continue to report, as it does now, on a consolidated basis with its parent; its data would be itemized for MSAs where its parent has offices, and would include FHA lending. If the institution were treated as a "savings and loan service corporation," however, significantly different rules would apply. The institution would itemize data only for MSAs where it has offices for taking loan applications, rather than where its parent has branch offices, and it would be required to exclude FHA loans from its reports.

The Board believes that the intent of the Congress in enacting the statutory amendments was to extend HMDA coverage to institutions that are not already covered. Until now, only those service corporations that are majority-owned subsidiaries of thrifts have been reporting (in conjunction with their parent). Other service corporations were not subject to the regulation (for example, a corporation established by multiple thrifts, none holding a majority interest). The Board believes that the amendments were intended to apply to these latter institutions. Accordingly, under § 203.2(e)(1)(iii) and (e)(2) in the revised definition of "financial institution," majority-owned savings and loan service corporations are deemed to be part of their parent institution.

The Board also has proposed to amend the definition of financial institution to cover industrial banks, which in recent years have taken on many of the characteristics of commercial and savings banks. Based on the comments and further analysis, the Board has decided not to include industrial banks within the definition of financial institution.

Home improvement and home purchase loans. The definitions of "home improvement loan" and "home purchase loan" are set forth in § 203.2(f) and (g).

The definition of "home improvement loan," though revised for clarity, is substantively unchanged. The revised definition omits the reference to refinancings found in the current regulation because home improvement loans are generally not refinanced. the provision (footnotes 2 and 3 in the current regulation) permitting any first-lien loan to be reported as a home purchase loan now appears in the instructions rather than the regulatory text.

The definition of home purchase loan currently is limited to loans for the purchase of "residential real property." In contrast, a home improvement loan is defined in terms of "residential dwelling," and may include residential structures such as mobile homes that are not classified as real property in some states. In publishing the proposed regulation, the Board requested comment on whether dwelling units such as mobile or manufactured homes should specifically be covered under the home improvement or the home purchase loan definition, or both.

Although some commenters preferred that they be excluded, a majority believed that it was appropriate for loans on such property to be disclosed, given that they are an important source of housing in some areas. Accordingly, the definitions of home purchase and home improvement loans specifically include mobile and manufactured homes, whether or not these dwellings are considered real property under state law. This provision becomes effective on January 1, 1989, and therefore will not require a change in the reporting of loan data for 1988.

Several commenters requested that the disclosure requirements for home equity lines be clarified. The instructions to the reporting forms, contained in Appendix A, specify that the data for home improvement loans may include that portion of a home equity line of credit which the borrower indicates, when the line is established, will be used for home improvement purposes.

Commenters also requested clarification on the treatment of assumptions. The Board believes that if an institution expressly agrees in writing with a new party to accept that party as the obligor on an existing home purchase loan, the transaction should be treated as a new home purchase loan. But if a new party takes over an existing obligation without a written agreement, the loan is not reportable under HMDA.

Section 203.3 Exempt institutions.

Section 203.3 excludes from the coverage of the regulation small institutions, institutions without offices in MSAs, and institutions that are subject to a similar state law and have been granted an exemption from the federal law.

The provisions of this section have been reorganized and the language clarified; the substantive rules remain unchanged. Material relating to state law exemptions has been grouped together in § 203.3(b). A new § 203.3(b)(2) has been added to indicate that a state or a financial institution may apply to the Board for an exemption from the regulation based on the existence of a similar state disclosure law. This reference replaces

the detailed discussion in current Appendix B (which the Board has deleted) about the filing of applications for state exemptions.

The Board has received questions about how data should be reported in cases where a merger of two or more financial institutions occurs. In some cases, the merger of two institutions that previously were both exempt, because of their asset size, may produce a successor institution whose assets exceed the $10 million cutoff. In other cases, a covered institution may merge with one that was previously exempt because of asset size or location outside an MSA.

In the case of two exempt institutions, the successor institution that becomes subject to HMDA will be required to disclose loan data for the calendar year following the year in which the merger took place.

If two institutions merge and only one of them was previously covered, the successor institution is required to report loan data, for the covered instituton, for the calendar year in which the merger took place. That report may, but need not, also include loan data for the previously exempt institution. Beginning with the following calendar year, the institution will file a consolidated report that includes all loan data.

A similar reporting question arises when the institutions that merge are both covered institutions. If two covered institutions merge, the successor institution may file a consolidated report for the calendar year in which they merge, but has the option of filing separate reports for that year. Beginning with the following calendar year, the institution will file a consolidated report that includes all loan data.

Section 203.4 Compilation of loan data.

Section 203.4 sets forth the requirements for itemization of loan data by census tract or county and by type of loan, and is the basis for the detailed instructions that accompany the reporting forms contained in the revised Appendix A. Substantive changes are noted below. Revised § 203.4(a) incorporates material from current § 203.4(a) and (b). Section § 203.(4)(b) has been restructured for readability, and also incorporates the rules on MSAs and census tracts presently found in § 203.4(d).

With regard to census tracts, the revised regulation refers to "the most recent census tract series" issued by the Census Bureau. The most recent series is currently the 1980 series. Use of the 1980 series is necessary because 1980 census data is used by the Federal Financial Institutions Examination Council in preparing tables illustrating lending patterns in each MSA.

Section 203.4(c) lists types of loans to be excluded from the disclosures. The six listed in paragraph (c)(1) apply both to depository institutions and to the newly covered institutions. The exclusions for loans made in a fiduciary capacity, loans on unimproved land, and certain refinancings are drawn from current § 203.4(c). The final rule specifies that a refinancing between the original parties should not be reported if the only increase in the principal results from closing costs or unpaid finance charges that are being financed.

Two of the remaining three exclusions (temporary financing and the purchase of an interest in a pool of loans) were moved into revised § 203.4 from the definition of "home purchase loan" in current § 203.2(f).

The sixth exclusion relates to loan servicing rights. The purchase of servicing rights in secondary market transactions is a practice common among mortgage bankers. When loans are sold, for example, the buyer may issue securities backed by a pool of loans that it has acquired. The right to service the loans, however, may be retained by the seller/originator of the mortgages. These servicing rights may later be transferred from one institution to another for a purchase price that is usually a small percentage (such as 1 or 2 percent) of the value of the underlying loans.

The act and regulation require institutions to report data on mortgage loans that they purchase. The Board believes that a covered institution's purchase of these servicing rights does not accurately reflect the extent to which an institution has made mortgage credit available in a community. Accordingly, the regulation excludes from the reporting requirement the purchase solely of servicing rights to mortgage loans.

Section 203.4(c)(2) applies only to mortgage banking subsidiaries and savings and loan service corporations that are not majority-owned. It excludes from the reporting requirement loans that are insured under Title I or II of the National Housing Act (that is, FHA-insured home improvement and home purchase loans), implementing new section 304(g) of HMDA, which expressly provides for their exclusion. (Under section 311 of HMDA, data on FHA-insured loans made by these types of lenders are to be collected by the U.S. Department of Housing and Urban Development.) As discussed under Appendix A, the Board has provided an optional form HMDA–2A that may be used by these institutions to disclose their FHA lending activity.

Section 203.5 Disclosure and reporting.

Section 203.5 relates to making loan data available at offices of an institution and reporting the data to supervisory agencies. As under the current provisions, disclosure statements for a given calendar year are due by the following March 31.

This section also requires institutions to post notices regarding the availability of HMDA data. Posters that may be used to meet the notice requirement are available from federal supervisory agencies. The revised section clarifies that an institution may, in its notice, give the location where disclosure statements are available.

Section 203.6 Enforcement.

Section 203.6 sets forth rules relating to administrative enforcement and bona fide errors. The language and structure of this section have been revised to clarify its provisions.

Appendix A Forms and instructions.

Appendix A of the current regulation, which lists supervisory agencies, is designated Appendix B in the revised regulation; and the current Appendix C, containing the mortgage disclosure forms, is now Appendix A.

The revised Appendix A contains two reporting forms and accompanying instructions, plus an optional form. Institutions must use the prescribed format of the HMDA–1 or HMDA–2 form, as appropriate, but are not required to use the form itself. An institution may, for example, choose to produce a computer printout of its disclosure statement instead.

The HMDA–1 reporting form continues to be the prescribed form for use by commercial banks, savings banks, savings and loan associations, building and loan associations, homestead associations (including cooperative banks), and credit unions. The instructions for completing the form have been expanded significantly to facilitate compliance; the form itself is unchanged except for minor revisions. Column headings have been changed to read "total dollar amount" instead of "principal amount," but the data to be reported in these columns remain the same. Accordingly, institutions will not have to make changes in their data processing procedures for compiling the data. A signature line has been added, calling for an officer of the reporting institution to certify to the accuracy of the report.

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A new form HMDA–2 and accompanying instructions have been added for use by savings and loan service corporations and mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, which will not report FHA loans. The provision of a new form is intended to minimize confusion for reporting institutions. The Board has provided an optional form, HMDA–2A, that may be used by institutions that wish to maintain a public record of their FHA lending activity. Use of the form is optional; the form will not be submitted to supervisory agencies, but could be made available to the public (along with the required HMDA data) at the institution's own offices.

Notice of the changes to the HMDA–1 reporting form and of the Board's adoption of a new HMDA–2 and HMDA–2A is being published elsewhere in this issue of the **Federal Register**, to comply with the requirements of the Paperwork Reduction Act.

Appendix B Federal supervisory agencies

Appendix B of the current regulation, relating to applications for state exemptions, has been deleted. In its place, a reference to the availability of state exemptions has been added to § 203.3.

Current Appendix A, which lists enforcement agencies, has been designated Appendix B. The Board has amended the appendix to incorporate references specifying that mortgage banking subsidiaries of bank holding companies shall submit HMDA reports to the Federal Reserve System, and that savings and loan service corporations and mortgage banking subsidiaries of savings and loan holding companies shall submit theirs to the Federal Home Loan Bank System. These reporting arrangements are appropriate in view of the Federal Reserve's general supervisory responsibility for non-bank subsidiaries of bank holding companies, and the Federal Home Loan Bank System's parallel responsibility for savings and loan service corporations and mortgage banking subsidiaries of savings and loan holding companies.

(5) *Effective dates.* Mortgage banking subsidiaries of holding companies, and savings and loan service corporations that are not majority-owned by any one thrift institution, will be required to report data on loan originations and purchases for calendar year 1988. Their first report will be due on March 31, 1989. A number of commenters asked that these institutions not be required to report data for 1988. However, because the statutory amendments specify the effective data for coverage, the Board is unable to delay the reporting requirements.

Changes related to reporting of mobile and manufactured home loans, whether or not these dwellings are characterized as realty under state law, will take effect on January 1, 1989 (to be reported on statements filed in March of 1990).

(6) *Economic impact statement.* The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation C. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3245.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

For the reasons set out in this notice and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), 12 CFR Part 203 is revised to read as follows:

PART 203—HOME MORTGAGE DISCLOSURE

Sec.

203.1 Authority, purpose, and scope.
203.2 Definitions.
203.3 Exempt institutions.
203.4 Compilation of loan data.
203.5 Disclosure and reporting.
203.6 Enforcement.
Appendix A Forms and instructions.
Appendix B Federal supervisory agencies.

Authority: 12 U.S.C. 2801–2810.

§ 203.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*). The information collection requirements have been approved by the U.S. Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0090.

(b) *Purpose.* (1) This regulation carries out the purposes of the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities; and

(ii) To assist public officials in distributing public sector investments so as to attract private investment to areas where it is needed.

(2) Neither the act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This regulation applies to financial institutions, as defined in § 203.2(e), and requires them to disclose loan data at their home and certain branch offices and to report the data to supervisory agencies.

(d) *Central data depositories.* Loan data are available to the public at central data depositories located in each metropolitan statistical area. The Federal Financial Institutions Examination Council aggregates loan data for all institutions in each metropolitan statistical area, showing lending patterns by location, age of housing stock, income level, and racial characteristics. A listing of central data depositories can be obtained from the U.S. Department of Housing and Urban Development, Washington, DC 20410, or from any of the agencies listed in Appendix B.

§ 203.2 Definitions.

In this regulation:

(a) *Act* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*)

(b) *Branch office* means: (1)(i) Any office of a financial institution that is approved as a branch by a federal or state supervisory agency; or

(ii) For a financial institution that is not required to obtain approval for a branch office, any office of the institution that takes applications from the public for home purchase or home improvement loans.

(2) The term excludes free-standing automated teller machines and other electronic terminals.

(c) *Federal Housing Administration (FHA), Farmers Home Administration (FmHA), or Veterans (VA) loans* mean mortgage loans insured under Title II of the National Housing Act or Title V of the Housing Act of 1949 or guaranteed under Chapter 37 of Title 38 of the United States Code.

(d) *Federally related mortgage loan* means any loan (other than temporary financing such as a construction loan) secured by a first lien on a 1-to-4 family dwelling (including a condominium, a cooperative, or a mobile or manufactured home):

(1) That is originated by a federally insured or regulated institution;

(2) That is insured, guaranteed, or supplemented by any federal agency; or

(3) That the originator intends to sell to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

(e) *Financial institution* means: (1)(i) A commercial bank, savings bank, savings and loan association, building and loan association, homestead association (including a cooperative bank) or credit union that originates federally related mortgage loans;

(ii) A mortgage banking subsidiary of a savings and loan holding company, or a mortgage banking subsidiary of a bank holding company; however, a subsidiary is not a "mortgage banking subsidiary" under this section unless, in the preceding calendar year, ten percent or more of its loan volume, measured in dollars, consisted of home purchase loans; or

(iii) A savings and loan service corporation that originates or purchases mortgage loans, other than a savings and loan service corporation identified in paragraph (e)(2) of this section.

(2) A majority-owned subsidiary of a financial institution, including a majority-owned savings and loan service corporation, is deemed to be part of the parent institution for purposes of this regulation.

(f) *Home improvement loan* means any loan that: (1) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a residential dwelling (including a condominium, cooperative, or mobile or manufactured home) located in a state; and

(2) is classified by the financial institution as a home improvement loan.

(g) *Home purchase loan* means any loan secured by and made for the purpose of purchasing, or refinancing the purchase of, a residential dwelling (including a condominium, cooperative, or mobile or manufactured home) located in a state.

(h) *Metropolitan statistical area or MSA* means a metropolitan statistical area or a primary metropolitan statistical area, as defined by the U.S. Office of Management and Budget.

(i) *State* means any state of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 203.3 Exempt institutions.

(a) *Exemption based on asset size or location.* A financial institution is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31:

(1) Its total assets were $10,000,000 or less; or

(2) It had neither a home office nor a branch office in an MSA.

(b) *Exemption based on state law.* (1) A state-chartered financial institution is exempt from the requirements of this regulation if the Board determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this regulation and contains adequate provisions for enforcement.

(2) Any state, state-chartered financial institution, or association of such institutions may apply to the Board for an exemption under this paragraph.

(3) An institution that is exempt under this paragraph shall submit the data required by the state disclosure law to its state supervisory agency, for purposes of aggregation.

(c) *Loss of exemption.* (1) An institution losing an exemption that was based on asset size or location under paragraph (a) of this section shall compile loan data in compliance with this regulation beginning with the calendar year following the year in which it lost its exemption.

(2) An institution losing an exemption that was based on state law under paragraph (b) of this section shall compile loan data in compliance with this regulation beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

§ 203.4 Compilation of loan data.

(a) *Data to be included.* A financial institution shall compile data on the number and total dollar amount of home purchase and home improvement loans originated or purchased (by the institution and any majority-owned subsidiary) at any time during the calendar year, whether or not the loans are later sold. The institution shall compile the loan data in the format prescribed in Appendix A of this regulation.

(b) *Itemization of data.* A financial institution shall present the loan data separately for originations and purchases, itemizing the data by census tract or county and by type of loan, as prescribed below. It shall use the MSA boundaries (defined by the U.S. Office of Management and Budget) that were in effect on January 1 of the calendar year for which the data are compiled, and shall use the census tract maps from the most recent census tract series prepared by the U.S. Bureau of the Census.

(1) *Geographic itemization.*—(i) *Itemization by census tract or county.* For each MSA in which the institution has a home or branch office, the institution shall itemize the loan data:

(A) By the census tract in which the property purchased or improved is located, or

(B) By the county in which the property purchased or improved is located, if the property is located in an area not assigned census tracts or in a county with a population of 30,000 or less.

(ii) *Property located elsewhere.* The institution shall list the loan data as an aggregate sum for loans on property located outside an MSA, or located in an MSA where the institution has neither a home nor a branch office.

(2) *Type-of-loan itemization.* The financial institution shall further itemize the loan data within each geographic unit by loan category as follows:

(i) FHA, FmHA, and VA home purchase loans on 1-to-4 family dwellings (except as provided in paragraph (c)(2) of this section);

(ii) Conventional home purchase loans on 1-to-4 family dwellings;

(iii) Home improvement loans on 1-to-4 family dwellings;

(iv) Loans on dwellings for 5 or more families (including both home purchase and home improvement loans); and

(v) Loans reported in the 1-to-4 family categories that are made to nonoccupant borrowers, except for loans on property located outside an MSA, or located in an MSA where the institution has neither a home nor a branch office.

(c) *Data to be excluded.* (1) A financial institution shall not report:

(i) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(ii) Loans on unimproved land;

(iii) Refinancings, between the original parties, involving no increase in the outstanding principal aside from closing costs and accrued finance charges;

(iv) Temporary financing (such as bridge or construction loans);

(v) The purchase of an interest in a pool of mortgage loans (such as mortgage participation certificates); or

(vi) The purchase solely of the right to service loans.

(2) Mortgage banking subsidiaries of holding companies and savings and loan service corporations (as defined in § 203.2(e)(1)) shall not report FHA loans insured under Title I or II of the National Housing Act.

§ 203.5 Disclosure and reporting.

(a) *Time requirements.* By March 31 following the calendar year for which the loan data are compiled, a financial institution shall:

(1) Make a complete loan data disclosure statement available to the public, and continue to make it available for five years from that date; and

(2) Send two copies of its complete loan disclosure statement to the agency office specified in Appendix B of this regulation.

(b) *Availability to the public.* (1) A financial institution shall make a complete loan disclosure statement available at its home office.

(2) If it has branch offices in other MSAs, the financial institution shall also make a statement available in at least one branch office in each of those MSAs; the statement at a branch office need only contain data relating to property in the MSA where that branch office is located.

(3) A financial institution shall make its disclosure statement available for inspection and copying during the hours the office is normally open to the public for business. A financial institution that provides photocopying facilities may impose a reasonable charge for this service.

(c) *Notice of availability.* A financial institution shall post a general notice about the availability of its disclosure statement in the lobbies of its home office and any branch offices located in an MSA. Upon request, it shall promptly provide the location of the institution's offices where the disclosure statement is available. At its option, an institution may include the location in its notice.

§ 203.6 Enforcement.

(a) *Administrative enforcement.* A violation of the act or this regulation is subject to administrative sanctions as provided in section 305 of the act. Compliance is enforced by the agencies listed in Appendix B of this regulation.

(b) *Bona fide errors.* An error in compiling or disclosing loan data is not a violation of the act or this regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

Appendix A—Forms and Instructions

HMDA–1, "MORTGAGE LOAN DISCLOSURE STATEMENT"

Public reporting burden for this collection of information is estimated to vary from 2 to 50 hours per response, with an average of 30 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

INSTRUCTIONS TO COMMERCIAL BANKS, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, CREDIT UNIONS AND OTHER DEPOSITORY INSTITUTIONS

A. Who Must Use This Form

1. A commercial bank, savings bank, savings and loan association, building and loan association, homestead association (including a cooperative bank) or credit union must complete this HMDA–1 form to disclose loan data for a given calendar year if on the preceding December 31 the institution:

a. Had assets of more than $10 million, and

b. Had a home or a branch office in a metropolitan statistical area (MSA) or a primary metropolitan statistical areas (PMSA).

Example: If on December 31, 1987, your home office was located in an MSA and your assets exceeded $10 million, you must compile data and complete a disclosure statement for all home purchase and home inprovement loans that you originate or purchase during calendar year 1988.

2. However, your institution need not complete a disclosure statement—even though it meets the tests for asset size and location—if it makes *no* first-lien mortgage loans on 1-to-4 family dwellings in the calendar year for which the data are compiled.

3. Any majority-owned subsidiary is deemed to be part of the parent institution. Consequently, you should consolidate into your disclosure statement loan data relating to originations and purchases by all of your institution's majority-owned subsidiaries (including a majority-owned service corporation, in the case of a savings and loan association). To comply with the requirements described under section G (Geographic Itemization) below, itemize loan data for MSAs or PMSAs where *the parent institution* has a home or branch offices.

Example: If you have a home and branch offices in New York City, and your subsidiary's loan offices are in Philadelphia, itemize data by census tract (or county) only for the New York PMSA. Report loan data on loans relating to property located anywhere outside the New York PMSA (including loans in Philadelphia) as an aggregate sum in section 2 (Loans on property not located in MSAs/PMSAs where institution has home or branch offices).

B. Who Must Use Other Forms

1. Mortgage banking subsidiaries of bank holding companies, mortgage banking subsidiaries of savings and loan holding companies, and savings and loan service corporations that originate or purchase mortgage loans (other than service corporations that are majority-owned by a single savings and loan association) must use the HMDA–2 form instead of the HMDA–1.

2. Institutions that have been exempted by the Federal Reserve Board from complying with federal law because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

C. Format

1. You must use the format of the HMDA–1 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead. But you must give all the identifying information asked for at the top of the form, use the prescribed column headings, provide the signature of a certifying officer, etc.

2. If your report on loan originations or purchases consists of more than one page, number the pages and include the name of your institution and the MSA number at the top of each page. Enter the totals for the MSA on the final page; do not give subtotals on earlier pages. Report the section 2 data (Loans or property not located in MSAs/PMSAs) on the final page. If your report contains itemized data for more than one MSA, report the section 2 data only once for Part A and once for Part B—do not repeat the data on the report for each MSA.

D. When and Where Statement is Due

1. You must send two copies of your disclosure statement to the office specified by your federal supervisory agency no later than March 31 following the calendar year for which the loan data are compiled.

2. The completed disclosure statement must be signed by an officer of your institution (for both Part A and Part B, on the final page of each) certifying to the accuracy of the data and indicating whether the statement includes data of a majority-owned subsidiary. (See paragraph 3 of section A above.)

3. You also must make your disclosure statement available no later than March 31 for inspection by the public at your home office and, if you have branch offices in other MSAs, at one branch office in each of these MSAs.

E. Data To Be Shown

1. *Originations and purchases.* Show the data on home purchase and home improvement loans that you originated or purchased during the calendar year covered by the disclosure statement. Report the data on loan originations on Part A of the form and the data on loan purchases on Part B of the form even if the loans were subsequently sold. If you have no loans to report in one of the two parts, enter "none" in the column provided for census tract numbers and enter zeros in Columns A through E; this helps to show that no part of an institution's report has been lost.

2. *Number and total dollar amount.* Show the number of loans and the total dollar amount of loans for each category on the statement. For home purchase loans that you originate, "total dollar amount" means the original principal amount of the loan. For home purchase loans that you purchase, "total dollar amount" means the unpaid principal balance of the loan at time of purchase. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

3. *Rounding.* Round all dollar amounts to the nearest thousand ($500 should be rounded up), and show in terms of thousands.

F. Data to Be Excluded

Do not report the following types of loans:

1. Loans that, although secured by real estate, are made for purposes other than for home purchase or home improvement (for example, do not report a loan secured by residential real property for purposes of financing education, a vacation, or business operations);

2. Loans made or purchased in a fiduciary capacity (for example, by your trust department);

3. Loans on unimproved land;

4. Refinancings that involve no increase in the outstanding principal, aside from closing costs and unpaid finance charges;

5. Construction loans and other temporary financing;

6. Purchase of an interest in a pool of mortgage loans such as mortgage participation certificates; or

7. Purchases solely of the right to service loans.

G. Geographic Itemization (breakdown of loan data for each MSA or PMSA by census tract or county and of loan data in the outside-MSA/PMSA category)

1. *MSA/PMSA.* You must compile loan data geographically for each MSA or PMSA in which you have a home or branch office. (See item 6 below for treatment of loans on property outside MSAs/PMSAs). Start a new page for each MSA or PMSA, if you itemize data for more than one MSA/PMSA. You must use the MSA/PMSA boundaries (defined by the U.S. Office of Management and Budget) that were in effect on January 1 of the calendar year for which the loan data are compiled.

2. *Census tract or county.* For loans on property that is located within one of these MSAs or PMSAs, itemize the data by the census tract in which the property is located, except that you must itemize the data by county *instead* of census tract when the property:

a. Is located in an area that is not divided into census tracts on the U.S. Census Bureau's census tract outline maps (see item 3 below); or

b. Is located in a county with a population of 30,000 or less.

To determine population, use the Census Bureau's PC80–1–A population series even if the population has increased above 30,000 since 1980.

3. *Census tract maps.* To determine census tract numbers, consult the U.S. Census Bureau's census tract outline maps. You may use the maps of the appropriate MSAs/PMSAs in the Census Bureau's PHC80–2 series for the 1980 census, or use equivalent census data from the Census Bureau (such as GBF/DIME files) or from a private publisher. Use the maps in the 1980 series even if more current maps are available.

4. *Compilation.* Enter the data for all loans made in a given census tract on the same line, listing the number and total dollar amount in the appropriate columns (as described below in section H) and listing the census tracts in numerical sequence. Do the same for loans made in a given county.

5. *Duplicate census tract numbers.* If you have a home or branch office in the New York, NY PMSA, note that there are duplicate census tract numbers in New York City. When reporting, you must indicate the county (by name or number) in addition to the tract number for these census tracts.

6. *Outside-MSA/PMSA.* If the loans are for property that is located outside those MSAs or PMSAs in which you have a home or branch office (or outside any MSA or PMSA), report the loan data as an aggregate sum in section 2 of the form. You do not have to itemize these loans by census tract or county. (But you will have to itemize the data by type of loan, as described in section H below.)

H. Type-of-Loan Itemization (Breakdown of each geographic grouping into loan categories—Columns A–E)

Column A: FHA, FmHA, and VA loans on 1-to-4 family dwellings.

1. Report in Column A loans made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loan is secured by a lien and if it is insured or guaranteed by FHA, FmHA, or VA.

2. At your option, you may include loans that are made for home improvement purposes but are secured by a first lien, if you normally classify first-lien loans as purchase loans.

3. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs or unpaid finance charges.

4. Include any nonoccupant FHA, FmHA, or VA loans in this column as well as in Column E.

5. Do not report any FHA Title I (home improvement) loans in Column A; these loans are to be entered in Column C.

Column B: Conventional home purchase loans on 1-to-4 family dwellings.

1. Report in Column B conventional loans (all loans other than FHA, FmHA, and VA loans) made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loans are secured by a lien.

2. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs of unpaid finance charges.

3. Include any nonoccupant conventional loans in this column as well as in Column E.

4. At your option, you may include loans that are made for home improvement purposes but that are secured by a first lien, if you normally classify first-lien loans as purchase loans.

Column C: Home improvement loans on 1-to-4 family dwellings.

1. Report in Column C only loans that:

a. The borrowers have said are to be used for repairing, rehabilitating, or remodeling residential dwellings, and

b. Are recorded on your books as home improvement loans.

2. For home equity lines of credit, you may include in Column C that portion of the line of credit that the borrower indicates will be used for home improvement, at the time the account is opened. Report only in the year the line is established.

3. Include both secured and unsecured loans.

4. You may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

5. Include any nonoccupant home improvement loans in this column as well as in Column E.

Column D: Loans on multifamily dwellings (5 or more families).

1. Report in Column D loans on dwellings for 5 or more families, including both loans for home purchase and loans for home improvement.

2. Do not report loans on individual condominium or cooperative units in Column D; report such loans in Columns A, B, or C.

Column E: Nonoccupant loans on 1-to-4 family dwellings.

1. Report in Column E any home purchase and home improvement loans on 1-to-4 family dwellings (listed in Columns A, B, and C) that were made to borrowers who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling.

2. In completing Column E of Part B, you may assume that a purchased loan does not fall within this "nonoccupant" category unless your documents contain information to the contrary.

3. Do not complete Column E for loans that you report under section 2 (Loans on property not located in MSAs/PMSAs), in either Part A (Originations) or Part B (Purchases).

BILLING CODE 6210-01-M

VOL 53 ISS 161 AUG 19 1988 UMI

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-1

FOR USE BY DEPOSITORY INSTITUTIONS

OMB No. 7100-0098 Approval expires June 1990.
This report is required by law (12 USC 2801-2810 and 12 CFR 203).

Control number (agency use only)

Part A—Originations Report for loans made in 19___

Reporting institution

Name

Address

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical sequence) or COUNTY (name or number)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement) D		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C E	
	Home Purchase Loans				Home Improvement Loans C					
	FHA, FmHA, and VA A		Conventional B							
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-1

FOR USE BY DEPOSITORY INSTITUTIONS

Control number (agency use only)

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Part B—Purchases Report for loans made in 19___

Reporting institution

Name

Address

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical sequence) or COUNTY (name or number)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FHA, FmHA, and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.
The report includes ☐ does not include ☐ loan data for majority-owned subsidiaries.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (include Area Code and Extension)

BILLING CODE 6210-01-C

FORM HMDA–2, "MORTGAGE LOAN DISCLOSURE STATEMENT"

Public reporting burden for this collection of information is estimated to vary from 30 to 100 hours per response, with an average of 60 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

INSTRUCTIONS TO MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES AND TO SAVINGS AND LOANS SERVICE CORPORATIONS

A. Who Must Use This Form

1. A mortgage banking subsidiary of a bank holding company, a mortgage banking subsidiary of a savings and loan holding company, or a savings and loan service corporation that originates or purchases mortgage loans (other than a service corporation that is majority-owned by a single savings and loan association) must complete this HMDA–2 form to disclose loan data for the current calendar year if on the preceding December 31 the subsidiary or service corporation:

a. Had assets of more than $10 million, and

b. Had a home or branch office in a metropolitan statistical area (MSA) or a primary metropolitan statistical area (PMSA).

Example: If on December 31, 1987, your home office was in an MSA and your assets exceeded $10 million, you must compile data and complete a disclosure statement for all home purchase and home improvement loans that you originate or purchase during calendar year 1988.

2. For purposes of loan disclosure requirements (including geographic se purchase, itemization under section G below), a branch office means any office of your institution (not of an affiliate) that takes applications from the public.

3. You must use the format of the HMDA–2 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead. But you must be sure to include all of the identifying information asked for at the top of the form, to use the prescribed column headings, to provide the signature of the certifying officer, etc.

B. Who Must Use Other Forms

1. Commercial banks, savings and loan banks, savings and loan associations, building and loan associations, homestead associations (including cooperative banks) and credit unions must use the form HMDA–1, instead of HMDA–2.

2. A service corporation that is majority-owned by a single savings and loan association is deemed to be part of the parent institution, and its loan data will be reported on a consolidated basis with the parent's data on the HMDA–1.

3. Institutions that have been exempted by the Federal Reserve Board from complying with the federal law because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

C. Format

1. You must use the format of the HMDA–2 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead. But you must give all the identifying information asked for at the top of the form, use the prescribed column headings, provide the signature of a certifying officer, etc.

2. If your report on loan originations or purchases consists of more than one page, number the pages and include the name of your institution and the MSA number at the top of each page. Enter the totals for the MSA on the final page; do not give subtotals on earlier pages. Report the Section 2 data (Loans on property not located in MSAs/PMSAs) on the final page. If your report contains itemized data for more than one MSA, report the Section 2 data only once for Part A and once for Part B—do not repeat the data on the report for each MSA.

D. When and Where Statement is Due

1. You must send two copies of your disclosure statement to the office specified by your federal supervisory agency no later than March 31 following the calendar year for which the loan data are compiled.

2. The completed disclosure statement must be signed by an officer of your institution (for both Part A and Part B on the final page of each), certifying to the accuracy of the data.

3. You also must make your disclosure statement available no later than March 31 for inspection by the public at your home office and, if you have branch offices in other MSAs, at one branch office in each of these MSAs.

E. Data to Be Shown

1. *Originations and purchases.* Show the data on home purchase and home improvement loans that you originated or purchased during the calendar year covered by the disclosure statement. Report the data on loan originations on Part A of the form and the data on purchases on Part B of the form even if the loans were subsequently sold. If you have no loans to report in one of the two parts, enter "none" in the column provided for census tract numbers and enter zeros in Columns A through E; this helps to show that no part of an institution's report has been lost.

2. *Number and total dollar amount.* Show both the number of loans and the total dollar amount of loans for each category on the statement. For home purchase loans that you originate, "total dollar amount" means the original principal amount of the loan. For home purchase loans that you purchase, "total dollar amount" means the unpaid principal balance of the loan at time of purchase. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

3. *Rounding.* Round all dollar amounts to the nearest thousand ($500 should be rounded up), and show in terms of thousands.

F. Data to Be Excluded

Do not report the following types of loans:

1. Loans that, although secured by real estate, are made for purposes other than for home purchase or home improvement (for example, do not report a loan secured by residential real property for purposes of financing education, a vacation, or business operations);

2. Loans made or purchased in a fiduciary capacity;

3. Loans on unimproved land;

4. Refinancings of loans that involve no increase in the outstanding principal, aside from closing costs and unpaid finance charges;

5. Construction loans and other temporary financing;

6. Purchase of an interest in a pool of mortgage loans such as mortgage participation certificates;

7. Purchases solely of the right to service loans; or

8. FHA home purchase and home improvement loans (at your option, you may record FHA Loans on form HMDA–2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans").

G. Geographic Itemization (breakdown of loan data for each MSA or PMSA by census tract or county, and aggregation of loan data for the outside-SA/PMS category)

1. *MSA/PMSA.* You must compile loan data geographically for each MSA or PMSA in which you have a home or branch office. (See item 6 below for treatment of loans on property outside such MSAs/PMSAs). Start a new page for each MSA or PMSA if you itemize data for more than one MSA/PMSA. You must use the MSA/PMSA boundaries (defined by the U.S. Office of Management and Budget) that were in effect on January 1 of the calendar year for which the loan data are compiled.

2. *Census tract or county.* For loans on property that is located within one of these MSAs or PMSAs, itemize the data by the census tract in which the property is located, except that you must itemize the data by county *instead* of census tract when the property:

a. Is located in an area that is not divided into census tracts on the U.S. Census Bureau's census tract outline maps (see item 3 below); or

b. Is located in a county with a population of 30,000 or less.

To determine population, use the Census Bureau's PC80–1–A population series even if the populations has increased above 30,000 since 1980.

3. *Census tract maps.* To determine census tract numbers, consult the U.S. Census Bureau's census tract outline maps. You may use the maps of the appropriate MSAs/PMSAs in the Census Bureau's PHC80–2 series for the 1980 census, or use equivalent census data from the Census Bureau (such as GBF/DIME files) or from a private publisher. Use the maps in the 1980 series even if more current maps are available.

4. *Compilation.* Enter the data for all loans made in a given census tract on the same line, listing the number and total dollar amount in the appropriate columns (as described below in section H) and listing the census tracts in numerical sequence. Do the same for loans made in a given county.

5. *Duplicate census tract numbers.* If you have a home or branch office in the New York, NY PMSA, note that there are duplicate census tract numbers in New York City. When reporting, you must indicate the county (by name or number) in addition to the tract number for these census tracts.

6. *Outside-MSA/PMSA.* If the loans are for property that is located outside those MSAs or PMSAs in which you have a home or branch office (or outside any MSA or PMSA), report the loan data as an aggregate sum in Section 2 of the form. You do not have to itemize the loans by census tract or county. (But you will have to itemize the data by type of loan, as described in section H below.)

H. Type-of-Loan Itemization (breakdown of each geographic grouping into loan categories—Columns A–E).

Column A: FmHA and VA loans on 1-to-4 family dwellings.

1. Report in Column A loans made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loan is secured by a lien and if it is insured or guaranteed by FmHA or VA.

2. At your option, you may include loans that are made for home improvement purposes but are secured by a first lien, if you normally classify first-lien loans as purchase loans.

3. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs or unpaid finance charges.

4. Include any nonoccupant loans in this column as well as in Column E.

5. Do not include FHA loans in Column A. At your option, you may record FHA loans on the form HMDA–2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans."

Column B. Conventional home purchase loans on 1-to-4 family dwellings.

1. Report in Column B conventional loans (all loans other than FmHA and VA loans) made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loan is secured by a lien.

2. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs or unpaid finance charges.

3. Include any nonoccupant conventional loans in this column as well as in Column E.

4. At your option, you may include loans that are made for home improvement purposes but that are secured by a first lien, if you normally classify first-lien loans as purchase loans.

Column C. Home improvement loans on 1-to-4 family dwellings.

1. Report in Column C only loans that:

a. The borrowers have said are to be used for repairing, rehabilitating, or remodeling residential dwellings, and

b. Are recorded on your books as home improvement loans.

2. For home equity lines of credit, you may include in Column C that portion of the line of credit that the borrower indicates will be used for home improvement, at the time the account is opened. Report only for the year in which the line is established.

3. Include both secured and unsecured loans.

4. You may include upaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

5. Include any nonoccupant home improvement loans in this column as well as in Column E.

6. Do not report FHA loans in Column C. At your option, you may report FHA loans on form HMDA–2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans."

Column D: Loans on multifamily dwellings (5 or more families).

1. Report in Column D all loans on dwellings for 5 or more families, including both loans for home purchase and loans for home improvement.

2. Do not report loans on individual condominium or cooperative units; report such loans in Columns A, B, or C.

3. Do not report FHA loans in Column D. At your option, you may report FHA loans on form HMDA–2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans."

Column E: Nonoccupant loans on 1-to-4 family dwellings.

1. Report in Column E any home purchase and home improvement loans on 1-to-4 family dwellings (listed in Columns A, B, and C) that were made to borrowers who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling.

2. In completing Column E of Part B, you may assume that a purchased loan does not fall within this "nonoccupant" category unless your documents contain information to the contrary.

3. Do not complete Column E for loans that you report under section 2 (Loans on property not located in MSAs/PMASs where institution has home or branch offices), in either Part A (Originations) or Part B (Purchases).

BILLING CODE 6210-01-M

VOL 53 ISS 161 AG 19 1988 UMI

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-2

OMB No. 7100-0080 Approval expires June 1990
This report is required by law (12 USC 2801-2810 and 12 CFR 203)

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

Control number (agency use only)

Part A—Originations Report for loans made in 19___

Reporting institution

Name

Address

Name of Parent Company

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical sequence) or COUNTY (name or number)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FmHA and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-2

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

Control number (agency use only)

Part B—Purchases Report for loans made in 19___

Reporting institution

Name

Address

Name of Parent Company

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical sequence) or COUNTY (name or number)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FmHA and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (Include Area Code and Extension)

BILLING CODE 6210-01-C

FORM HMDA–2A, "MORTGAGE LOAN STATEMENT FOR OPTIONAL DISCLOSURE OF FHA LOANS"

This collection of information is not required. Mortgage banking subsidiaries of holding companies and certain savings and loan associations may record their FHA loans on this form if they wish to make that data available to the public. Public reporting burden for this collection of information is estimated to vary from 10 to 50 hours per response, with an average of 20 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

INSTRUCTIONS TO MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES AND TO CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

A. Who May Use This Form

If you are the mortgage banking subsidiary of a bank holding company or of a saving and loan holding company, or if you are a savings and loan service corporation that files the HMDA–2 form, *you are required to exclude* data on FHA Title I (home improvement) and FHA Title II (home purchase) loans from your form HMDA–2. At your option, however, you may record FHA loans on form HMDA–2A and make the form available to the public along with your HMDA–2 disclosure statement.

B. Data to be Shown

1. For loans that you originate, see the instructions that are provided for the HMDA–2 form under section G (Geographic Itemization). Report the number and total dollar amount of FHA home purchase loans in Column 1 and FHA home improvement loans in Column 2. Include loans on both 1-to-4 family dwellings and multifamily dwellings for 5 or more families.

2. For loans that you purchase, see the instructions that are provided for the HMDA–2 form under section G (Geographic Itemization). Report the number and total dollar amount of FHA home purchase loans in Column 3 and FHA home improvement loans in Column 4. Include loans on both 1-to-4 family dwellings and multifamily dwellings for 5 or more families.

BILLING CODE 6210-01-M

OMB No. 7100-0080 Approval expires June 1990.
This report authorized by law (12 USC 2801-2810 and 12 CFR 203).

MORTGAGE LOAN STATEMENT FOR OPTIONAL DISCLOSURE OF FHA LOANS, FORM HMDA-2A

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

Record of FHA loans made in 19___

Institution

Name

Address

Name of Parent Company

Enforcement agency for this institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical sequence) or COUNTY (name or number)	FHA Loans Originated				FHA Loans Purchased			
	Home Purchase Loans 1		Home Improvement Loans 2		Home Purchase Loans 3		Home Improvement Loans 4	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)

Appendix B—Federal Supervisory Agencies

The following list indicates which federal agency is responsible for enforcing compliance by each class of covered institutions. Questions should be directed, and copies of your disclosure statements should be sent, to the office specified below. You may also obtain posters from these agencies that you can use to inform the public of the availability of your disclosure statement.

National Banks

Comptroller of the Currency regional office serving the district in which the national bank is located.

State Member Banks and Mortgage Banking Subsidiaries of Bank Holding Companies

Federal Reserve Bank serving the district in which the state member bank or mortgage banking subsidiary is located.

Nonmember Insured Banks (except for Federal Savings Banks)

Federal Deposit Insurance Corporation Regional Director for the region in which the bank is located.

Savings Institutions Insured by FSLIC, Mortgage Banking Subsidiaries of Savings and Loan Holding Companies, Savings and Loan Service Corporations, and Members of the FHLB System (except for State Savings Banks insured by FDIC)

Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Credit Unions

Office of Examination and Insurance, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

Other Financial Institutions

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

By order of the Board of Governors of the Federal Reserve System, August 11, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-18701 Filed 8-18-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88-683]

Transactions With Affiliates of Subsidiary Insured Institutions

Date: August 10, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or the "Corporation"), is amending its regulations pertaining to transactions between institutions whose accounts are insured by the FSLIC ("insured institution") and affiliates of those insured institutions. The proposed amendments provide, in effect, that the conflict of interest provisions of the Board's regulations will not be applicable to transactions between holding company subsidiary insured institutions and their affiliates (other than officers, directors and natural persons that are controlling persons of the institution).

EFFECTIVE DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Steven J. Gray, Attorney (202) 377-7506; V. Gerard Comizio, Director, (202) 377-6411, Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6549; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, created a new statutory scheme to govern transactions between subsidiary insured institutions and their affiliates. Among the provisions contained in the CEBA are Sections 104(d) and 110, which amend section 408 of the National Housing Act ("NHA"), 12 U.S.C. 1730a, by adding new subsections (p) and (t) respectively.

New subsection (p) provides, in effect, that the limitations and prohibitions on transactions with affiliates applicable to subsidiary insured institutions of savings and loan holding companies prior to the enactment of the CEBA will not apply to transactions between a subsidiary insured institution and its affiliates engaged in activities permissible for a bank holding company under section 4(c) of the Bank Holding Company Act ("BHCA"), 12 U.S.C. 1843(c). Those transactions will, instead, be subject to the limitations and prohibitions of sections 23A and 23B of the Federal Reserve Act ("FRA"), 12 U.S.C. 371c and 371c-1. Subsection (p) further provides that the Corporation may prescribe regulations for the purpose of defining and clarifying the applicability of the provisions of Sections 23A and 23B of the FRA.[1] The Conference Report to the CEBA ("Conference Report") indicates that the intended effect of new subsection (p) is to provide "[p]arity between a bank and a thrift holding company with respect to dealings between the depository institution and affiliates engaged in activities permitted under section 4(c)(8)." [2]

New subsection 408(t) of the NHA exempts transactions between certain insured institutions (and certain of their subsidiaries) from the provisions of subsection 408(d) of the NHA restricting certain transactions between a subsidiary insured institution and its affiliates. Specifically, new subsection 408(t) provides, in pertinent part, that "an insured institution that is a subsidiary of an insured institution or insured institutions the voting stock of which is 80 percent owned by the same company shall not be subject * * * to the provisions of [408(d) of the NHA] as to transactions with such parent insured institution or affiliate insured institutions (and their subsidiaries) * * *." In addition, new subsection (t) prohibits an insured institution (or its subsidiaries) from purchasing a low quality asset (as defined in section 23A of the FRA) from another insured institution (or its subsidiaries) in any transaction exempted by the subsection. Transactions exempted by 408(t) must be on terms and conditions that are consistent with safe and sound financial practices.

Transactions not subject to either 408(p) or 408(t) remain subject to 408(d) of the NHA and regulations adopted thereunder.[3] Section 408(d) contains a list of transactions with affiliates that are strictly prohibited and a list of transactions with affiliates that are permitted with prior written approval of the Corporation. In addition, it has been the longstanding position of the Board's Office of General Counsel that the limitations and prohibitions contained in 12 CFR 563.41 and 563.43 (the "Conflicts Rules") governing transactions between or involving an insured institution and its affiliated persons are applicable to all insured institutions, including an insured institution that is a subsidiary of a savings and loan holding company.[4]

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[1] The Board expects to implement that authority in the near future and, in that regard, has solicited public comment on proposed amendments to Part 584 of its regulations. *See*, Board Res. No. 88-454, 53 FR 21838 (June 10, 1988).

[2] Conference Committee Report, H.R. 27, Competitive Equality Banking Act of 1987, H.R. Conf. Rep. No. 261, 100th Cong., 1st Sess., 138.

[3] 12 CFR 584.3.

[4] *See*, e.g. Letter from Rosemary Stewart, Associate General Counsel to W. Michael Herrick, Esq. (June 23, 1982); Letter from Thomas Vartanian, General Counsel to Richard J. Perry, Jr., Esq. (April 20, 1983); and Letter from Harry Quillian, Acting General Counsel to William B. O'Connell (June 2, 1986).

Transactions with affiliates involving holding company subsidiary institutions are also subject to regulation pursuant to the NHA, however, and the two sets of rules conflict in certain respects. For example, despite the language in section 408(d)(6) of the NHA, which provides that certain transactions shall be approved by the FSLIC unless the transaction would be detrimental to the insured institution's depositors or the FSLIC, the Conflicts Rules flatly prohibit some of these transactions.[5] That position has been based on the Board's findings, as expressed in the preamble to the Conflicts Rules "that certain types of transactions should be prohibited altogether based on the need to prevent conflicts of interest for the safety and soundness of the thrift industry." [6]

In response to the new statutory provisions and the directive of the Conference Report discussed above, the Board proposed to amend the Conflicts Rules to provide, in effect, that the Conflicts Rules would not be applicable to transactions between holding company subsidiary insured institutions and their affiliates (other than natural persons that are controlling shareholders). Board Res. No. 88–287, 53 FR 15230 (April 28, 1988) (the "Proposal"). The comment period on the Proposal closed on June 13, 1988. The Board received eighteen comment letters in response to the Proposal; thirteen from insured institutions or their holding companies, three from law firms and two from national trade associations. All of the commenters supported the Proposal. Thirteen of the eighteen commenters strongly supported the Proposal without qualification.

Two commenters, a mutual association and a trade association, supported the Board's attempt to clarify the application of the Conflicts Rules but expressed some concern over the unequal treatment of transactions involving insured institutions owned by a holding company as compared to transactions involving insured institutions that are not owned by a holding company. The Board shares this commenter's concern and expects, in the near future, to solicit public comment on proposed amendments to the Conflicts Rules. It is expected that such proposed amendments will, to the extent practicable and subject to supervisory considerations, address the issue of unequal regulatory treatment of similar transactions.

Another commenter, a law firm, noted that the Proposal did not address whether the Conflicts Rules would remain applicable to transactions between subsidiaries of insured institution subsidiaries of savings and loan holding companies and affiliates of such insured institutions. The issue of the appropriate manner in which to regulate such transactions has been raised in the Board's proposal to amend its regulations governing transactions with affiliates under a holding company structure.[7] The Board believes it appropriate to address the issue raised by this commenter after it has received other comments regarding the appropriate treatment of transactions involving subsidiaries of holding company subsidiary insured institutions in response to the June 10, 1988, proposal. Accordingly, the Board is deferring action on this issue at this time.

Two commenters, a law firm and a trade association, suggested that the Proposal be clarified by defining the term "controlling shareholder". These commenters noted that, since the term is used in the context of persons who are affiliates under Section 408 of the NHA, an appropriate definition would be a shareholder who held "control" of an insured institution within the meaning of 12 CFR 583.26. The Board intended that the Proposal would not affect the applicability of the Conflicts Rules to transactions between subsidiary insured institutions and natural persons that are affiliated persons as defined in 12 CFR 561.29. To indicate more clearly that intent the Board has deleted all references to "controlling shareholder" from the final rule and has instead explicitly provided that an institution's officers, directors, and natural persons that are controlling persons (as defined in 12 CFR 561.28) remain subject to the Conflicts Rules regardless of whether such individuals are affiliates under 12 CFR 583.15.

One commenter, a law firm, suggested that the Board should amend 12 CFR 563.45 to provide an exemption from the transactional reporting requirements of Form AR for transactions involving subsidiary insured institutions. This commenter indicated its belief that subsidiary insured institutions may effectively be barred from engaging in transactions that are permissible under Section 408 of the NHA as a result of the burdens associated with preparation of Form AR. As noted above, the Board expects, in the near future, to solicit public comment on a broader range of proposed amendments to the Conflicts Rules. The Board believes it appropriate to, and expects that it will, solicit additional comment regarding this commenter's concerns at that time.

Another commenter, an insured institution, requested that the Board clarify that the problem of overlapping regulatory provisions which the Proposal is designed to address exists only if the holding company affiliate involved in a particular transaction is also an "affiliated person" as defined in 12 CFR 561.29. The Board had and has no intention of extending the application of the Conflicts Rules to holding company affiliates of insured institutions, such as a service corporation subsidiary of such insured institution, that are not also affiliated persons. Footnote 5 above, has been modified to clarify this intent by explicitly referring to holding company affiliates that are also affiliated persons.

Finally, one commenter, a savings and loan holding company, suggested that the Board amend 12 CFR 563.40 to remove the prohibition against the payment of a loan procurement fee by a subsidiary insured institution to an affiliate that is also an affiliated person. As with the suggestions regarding other substantive amendments to the Conflicts Rules discussed above, the Board believes it appropriate to, and expects that it will, solicit comment regarding this commenter's concern when it proposes additional amendments to the Conflicts Rules.

Having considered the comments summarized above, the Board is adopting amendments to the Conflicts Rules to exclude transactions between a holding company subsidiary insured institution and such insured institution's affilaites (other than officers, directors, and natural persons that are controlling persons pursuant to 12 CFR 561.28) from the coverage of those rules and expressly to provide that those transactions are exclusively subject to the prohibitions and limitations contained in section 408 of the NHA, and the Board's regulations thereunder.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis.

1. *Need for and objectives of the rules.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION.**

[5] This overlapping of regulatory provisions has been particularly troublesome regarding the purchase of mortgages and participation interests in mortgages by a subsidiary institution from one of its holding company affiliates that is also an affiliated person as defined in 12 CFR 561.29. Those transactions have been prohibited under 12 CFR 563.43(c)(2) even though they would be approvable under 408(d)(6) of the NHA and 12 CFR 584.3(a)(7) thereunder.

[6] 41 FR 35819 (1976).

[7] 53 FR 21838 (June 10, 1988).

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternative minimizing small-entity impact and agency response.* The amendments will allow smaller institutions greater certainty as to which set of transactions with affiliates rules apply to them than exists under the present rules. There are no alternatives that would be less burdensome than the amendments in addressing the concerns expressed above in **SUPPLEMENTARY INFORMATION.**

List of Subjects in 12 CFR Part 563

Bank deposits insurance, Investment, Reporting and recordkeeping requirements, Savings and Loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.41 by revising the heading of the section and paragraph (a) to read as follows:

§ 563.41 Restrictions on real and personal property transactions with affiliated persons.

(a) *Scope of section.* Section 408 of the National Housing Act, as amended (12 U.S.C. 1730a), and the Corporation's regulations thereunder, shall be controlling with respect to transactions between an insured institution subsidiary of a savings and loan holding company and such insured institution's affiliates (other than officers, directors, and natural persons that are controlling persons pursuant to § 561.28 of this chapter) as such term is defined in § 583.15 of this chapter.

* * * * *

3. Amend § 563.43 by revising paragraph (a) to read as follows:

§ 563.43 Restrictions on loans and other investments involving affiliated persons.

(a) *Scope of section.* Section 408 of the National Housing Act, as amended (12 U.S.C. 1730a), and the Corporation's regulations thereunder, shall be controlling with respect to transactions between an insured institution subsidiary of a savings and loan holding company and such insured institution's affiliates (other than officers, directors, and natural persons that are controlling persons pursuant to § 561.28 of this chapter) as such term is defined in § 583.15 of this chapter.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-18878 Filed 8-18-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 389

[Docket No. RM87-5-000; Order No. 497]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

Issued: August 12, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB control number.

SUMMARY: The Federal Energy Regulatory Commission, on June 1, 1988, issued a final rule (Order No. 497) in Docket No. RM87-5-000, 53 FR 22139 (June 14, 1988). The rule established standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation service. This notice states that the Office of Management and Budget has approved the information collection requirements in Order No. 497.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1988), require that OMB approve certain information collection requirements imposed by agency rules. On August 11, 1988, the OMB approved the information collection requirements of 18 CFR Parts 161 and 250 as amended by this rule under Control Number 1902-0157.

Accordingly, Part 389, Chapter I, Title 18, Code of Federal Regulations is amended as set forth below.

Lois D. Cashell,

Acting Secretary.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "161.3" below "161.1" in the Section Column and inserting "0157" in the corresponding OMB Control Number Column and by inserting "250.16" below "250.15" in the Section Column and inserting "0157" in the corresponding OMB Control Number Column.

[FR Doc. 88-18866 Filed 8-18-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355-7127]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service, (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for giant Atlantic bluefin tuna conducted by permitted vessels in the Harpoon Boat category. Closure of this fishery is necessary because the annual quota for this category will be attained by the effective date. The intent of this section is to prevent overharvest of the quota established for this segment of the fishery and thereby ensure that the overall U.S. quota is not exceeded.

EFFECTIVE DATE: 0001 hours local time August 21, 1988, through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-3600, extension 324.

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SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(b) of the regulations provides for an annual quota of 60 short tons (st) of giant Atlantic bluefin tuna to be harvested by vessels permitted in the Harpoon Boat category from the regulatory area. This quota was subsequently increased to 75 st effective August 11, 1988, through an inseason adjustment allocation of 15 st (53 FR 30845, August 16, 1988). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22.The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessel subject to the quotas. The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna of 67 st, and the recent catch rate, that the annual quota of giant Atlantic bluefin tuna allocated to permitted vessels in the Harpoon Boat category will be attained by the effective date. Fishing for, and retention of, any Atlantic bluefin tuna by these vessels must cease at 0001 local time on August 21, 1988.

Other Matters

Notice of this action will be mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: August 16, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–18923 Filed 8–17–88; 11:44 am]

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Proposed Rules

Federal Register
Vol. 53, No. 161
Friday, August 19, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 926

California Tokay Grapes; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule regarding California Tokay grapes would authorize expenses and establish an assessment rate under Marketing Order 926 for the 1988–89 fiscal period. Authorization of this budget would allow the Tokay Industry Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATE: Comments must be received by August 29, 1988.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 926 (7 CFR Part 926), regulating the handling of Tokay grapes grown in San Joaquin County, California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 9 handlers of California Tokay grapes under this marketing order, and approximately 390 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable grapes handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recomended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Tokay Industry Committee met on July 25, 1988, and unanimously recommended a 1988–89 budget of $73,125 and an assessment rate of $0.175 per 23-pound lug. Last season's budget was $55,050 with an assessemnt rate of $0.16. Major expense items are market development, $44,200 (as compared to $26,125 for 1987–88) and administrative expenses, $28,925. The assessment rate, when applied to anticipated shipments of 400,000 lugs would yield $70,000 in assessment revenue. This amount along with interest income and reserve funds would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 926

Marketing agreements and orders, Tokay grapes (California).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 926 be amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 926 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 926.227 is added to read as follows:

§ 926.227 Expenses and assessment rate.

Expenses of $73,125 by the Tokay Industry Committee are authorized and an assessment rate of $0.175 per 23-pound lug of grapes is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: August 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-18876 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 113

[Docket No. 88-084]

Viruses, Serums, Toxins, and Analogous Products; Amendment of the Standard Requirement Concerning the Determination of Moisture Content in Desiccated Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) proposes to amend the standard requirement for determining the moisture content in desiccated veterinary biological products. New methods and test procedures are now available for controlling and monitoring residual moisture content which are equally acceptable and more efficient than the test procedure specified in the current standard requirement. Manufacturers would be allowed to establish and test for moisture content using approved procedures contained in a filed Outline of Production.

DATE: Consideration will be given only to comments postmarked or received on or before October 18, 1988.

ADDRESS: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Specifically refer to Docket No. 88-084. You may review these comments at Room 1141 of the South Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6332.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed action has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as a "Nonmajor Rule."

The proposed action would not have a significant effect on the economy and would not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local Government agencies, or geographic regions. It would also not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic markets. This action would provide for flexibility in methods used to monitor moisture content of desiccated veterinary biological products by not requiring a specific test procedure.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action would not result in adverse economic impact on a substantial number of small entities. Its purpose is to update the Standard Requirements for the production of veterinary biological products.

Background

The moisture content of a desiccated biological product is related to the stability of that product during its dating period. In order to provide a uniform method of determining moisture content in desiccated products, a test procedure was published in § 113.29 of the regulations in 1973. This test procedure was considered the most accurate and reproducible test method available at that time. All manufacturers of such products are currently required to determine moisture content of live desiccated products using this procedure. The procedure takes 2 days to complete and requires special laboratory equipment not normally used in other tests. The veterinary biologics industry and APHIS have gained much knowledge and experience testing products during the past 15 years. Other means of determining moisture content during the production process have been developed which are more rapid and less expensive than the test in the regulations. Lypholizers installed in some manufacturing facilities are equipped with highly sophisticated sensors and modules that monitor temperature, air, time, and vacuum pressure at shelf level. Some are equipped to measure temperature of selected vials during the drying process. Most are equipped to stopper and seal vials before internal vacuum is broken thus preventing the introduction of external moisture. Each product is unique and an acceptable range for moisture has been established by manufacturers for each of their products. The desiccating cycles can be adjusted to the criteria established for each product.

Other assurances are also employed by the manufacturer and APHIS to determine the stability of biological products. Eligibility for release of a serial requires that the product have predetermined titers at release and throughout the dating period. These titers are confirmed by the manufacturer and the National Veterinary Services Laboratories. Section 114.13 of the regulations requires the expiration period to be confirmed by satisfactory potency test on a significant number of serials at the end of the expected dating period. In few instances when the miosture content exceeds the stated requirement, serials can be released provided that the potency is shown to be satisfactory at mid-dating and at the end of the dating period.

For the reasons stated above, the Agency finds that the standard requirement in § 113.29 could be deleted without affecting the Agency's ability to ensure the stability of desiccated products. Procedures employed by manufacturers to determine moisture content would be specified on a product-by-product basis in the Outline of Production as an in-process test in accordance with § 114.9(d). Accordingly, the Agency is proposing to amend § 113.29 and delete § 113.64(e)(2) and § 113.135(e)(2).

List of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Accordingly, 9 CFR Part 113 would be amended as follows:

1. The authority citation for Part 113 is revise to read as follows:

Authority: 21 U.S.C. 151–159; 37 FR 28477, 28646; 38 FR 19141.

2. Part 113 would be amended by revising § 113.29 to read as follows:

§ 113.29 Determination of moisture content in desiccated biological products.

A minimum moisture content shall be determined for each serial of desiccated product. The moisture content and an acceptable method used to determine moisture content shall be described in an Outline of Production approved and filed by APHIS for the product.

§ 113.64 [Amended]

3. In § 113.64, paragraph (e)(2) would be removed and the designation for paragraph (e)(1) would be removed.

§ 113.135 [Amended]

4. In § 113.135, paragraph (e)(2) would be removed and the designation for paragraph (e)(1) would be removed.

Done in Washington, DC, this 16th Day of August, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–18877 Filed 8–18–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 8

[Docket No. 88–13]

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is seeking public comment on a proposed increase of 14 percent in its semiannual assessment schedule for national banks, District of Columbia banks and federally licensed branches and agencies of foreign banks.

This action is necessary to avoid OCC revenue shortfalls. It is intended to ensure that OCC can continue to fulfill its statutory, regulatory and supervisory responsibilities. National bank fees will be raised only to the extent necessary to support OCCs's increasing and evolving supervisory responsibilities.

To the extent possible under existing statutory provisions, the proposed assessment schedule reaffirms the OCC's philosophy that the assessments paid by a bank should reflect the costs of supervising it. On a per-collar-of-assets basis, those costs decline as bank size increases. Therefore, in the proposed schedule, like the present one, the marginal assessment rate of an individual bank decreases as its assets increase. The proposed assessment schedule maintains asset brackets indexed annually to changes in the general price level. This proposal, if adopted, will replace the current schedule for payments due January 31, 1989 and beyond.

DATE: All comments should be received by the OCC no later than September 19, 1988.

ADDRESS: Comments should be directed to Docket No. 88–13, Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., 5th Floor, Washington, DC 20219, *Attention:* Anne Smith. Comments will be available for inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Roger Tufts, Financial Economist, Economic and Policy Analysis Division, (202) 447–1924), or Ferne Fishman Rubin, Attorney, Legal Advisory Services Division, (202) 447–1880.

SUPPLEMENTARY INFORMATION:

Background

The OCC was created by Federal legislation for the purpose of supervising and regulating the national banking system. Under the National Bank Act, 12 U.S.C. 1 *et seq.*, the OCC has a responsibility to take every necessary and appropriate step to ensure that all national banks comply with the various laws enacted by Congress and the States.

The OCC is authorized by 12 U.S.C. 482 and 12 U.S.C. 3102 to assess national banks, District of Columbia banks and federally licensed branches and agencies of foreign banks to recover its supervision costs. Section 482 requires that these assessments be made in proportion to bank assets or resources and that the rate of such assessments be the same for all banks. This protects small banks from having to pay more than large banks and protects all banks of whatever size from discrimination in the matter of charges. The statute also provides that the general assessment recovers the costs of up to two examinations of a national bank per calendar year. Banks are charged special examination fees for third, and subsequent examinations.

Assessment Schedule Tied to Supervision Costs

In the bank supervision process, the cost per dollar of assets supervised declines as bank asset size increases. There are several reasons for this result. Fixed costs of supervision, such as basic preparatory tasks, do not vary proportionately from small to large banks. Further, statistical techniques used in the examination process permit larger institutions to be examined with proportionately fewer resources. For example, a larger proportion of the asset portfolio of a small bank must be reviewed by the examiner to judge asset quality than in a larger bank. Basic off-site analysis procedures also display falling average cost per dollar of assets.

The current assessment schedule reflects those economies, since the marginal assessment rate of an individual bank decreases as its assets increase. This type of schedule, originally implemented in 1976 and modified in 1984, was adopted so that the assessment levied on each bank would more closely reflect the cost of supervising it. The philosophy underlying this type of schedule is the relative cost coverage principle, whereby banks in asset size brackets are assessed in relation to the costs attributable to supervising banks in that bracket.

Milaca Decision

The principle of relative cost coverage is incorporated in the assessment schedule to the extent permissible under 12 U.S.C. 482, as interpreted by the United States Court of Appeals for the Eighth Circuit in *First National Bank of Milaca v. Heimann*, 572 F.2d 1244 (8th Cir. 1978) ("*Milaca*"). The *Milaca* court held that the OCC's 1976 revision to its assessment schedule complied with the two requirements of section 482. First, the assessments must be "in proportion to" the assets of the bank being examined. Second, the assessment rate must be the same for all national banks, except that banks which are examined more than twice in a single calendar year must pay for the additional examination. 572 F.2d at 1246. The court stated that when Congress geared supervision charges to asset size, its goal was to prohibit discrimination. In particular, according to the *Milaca* court, Congress wanted to protect small banks from having to pay more in terms of money than large banks, and to protect individual banks of whatever size from discrimination in the matter of charges. 572 F.2d at 1249.

In addition to the anti-discrimination goal of the statutory assessment scheme, the *Milaca* court agreed that the OCC may consider other factors, in addition to asset size, when arriving at an assessment, and that the charges need not be in "exact, direct, and mathematical proportion to the values of

assets of particular banks or categories of banks." *Id.* The OCC's position, adopted by the Eighth Circuit, was that the 1976 schedule met the requirements of section 482 "because the schedule is related directly to asset size and because asset size is the determining factor in the equation." *Id.* In conclusion, the *Milaca* court noted that the value of a bank's assets determines the amount of the charge, and that both the fixed fees and percentage rates set forth in the 1976 schedule were "in proportion to" asset value. "As to the fixed fees, the proportion is direct; as to the percentage rates, the proportion is inverse. That fact, however, does not destroy the proportional relationships between the amount of charge and asset size." 572 F.2d at 1250.

Well-Run Banks Subsidize Problem Banks

Commenters on the last revision to the assessment schedule in 1984 (49 FR 50601 (December 31, 1984)) suggested that current assessment methodology requires well-run banks to pay some of the costs of special supervisory attention given to problem banks. The OCC recognizes that this is true.

However, section 482, as interpreted by the court in *Milaca*, does not allow the OCC to charge higher assessments to banks which are experiencing difficulties. While a schedule based on the supervisory costs associated with a particular bank would further the goal of improved relative cost coverage, it would lead to discrimination between banks of the same asset size, because the rate of assessment would no longer be the same for all banks in a particular asset size category. In other words, a schedule based on supervisory costs is not directly related to asset size, and asset size is not the "determining factor in the equation." *Milaca*, 572 F.2d at 1249. In sum, the proportional relationship between asset size and assessment amount, required by the provisions of section 482, would be lost.

Asset-Size Brackets

The proposed revisions do not alter the basic characteristics of the 1976 assessment schedule approved by the *Milaca* court or of the current assessment schedule, *i.e.*, the use of asset-size brackets, the use of asset size to determine the amount assessed, the use of marginal assessment rates that decrease as the asset size increases, or the cost/revenue relationships. The revisions address the problems caused by assessment shortfalls brought on by changes in the industry and increased costs since 1984.

Despite successful efforts to control costs, the OCC's expenses have been rising at a faster rate than revenues. Indeed, since the last assessment schedule revision in 1984, expense growth has outpaced revenue growth. Moreover, the OCC believes that the current schedule will be inadequate to meet the resource requirements in the future.

OCC's Inadequate Resources

The OCC is proposing to increase its assessment schedule in 12 CFR 8.2 to provide the minimum amount of additional revenue needed to ensure that its supervisory responsibilities are not compromised. The OCC's inadequate resources are attributable to several factors. Revenue shortfalls occur as a result of the continued consolidation of the banking industry and decreased growth in national bank assets. Cost increases occur from the deteriorated condition of the national banking system, the increased complexity of the financial industry, and the increased responsibilities mandated by Congress.

Consider the following example.

Assume:

(i) Bank A has $500 million in assets and lends extensively to both the agriculture and the energy sectors of the economy.

(ii) Bank B has $500 million in assets and lends heavily to both the agriculture and the real estate sectors of the economy.

(iii) Bank A and Bank B merge to form Bank C to take advantage of a change in the state banking law.

(iv) Subsequent to the merger of Bank A and Bank B, it is recognized that the loan portfolio of Bank C contains loans attributable to each of the banks (A,B,C) that are "weak" as a result of deteriorated economic conditions.

(v) Bank C increases its loan loss reserves and reduces its assets by 10 percent.

Prior to the merger, Bank A and Bank B each paid $68 thousand annually for a total OCC assessment of $136 thousand. After the merger, the resulting Bank C pays an OCC assessment of $122 thousand, a decline of 10 percent. Ordinarily, this reduction in OCC assessment income is offset by economies in supervision, and the supervision of Bank C would require less of the OCC's resources than did the supervision of Bank A and Bank B. However, as troubled loans develop in Bank C's loan portfolio, Bank C may require additional supervision and, if so, the magnitude of the OCC's resources consumed in supervising Bank C rises. As a result of the deterioration in its loan portfolio, Bank C increases its loan loss reserves, thereby reducing its assets by 10 percent. After the reduction of assets, Bank C pays an OCC assessment of $112 thousand, a further decrease of eight percent. This example illustrates how the on-going trends in the consolidation of national banks and in the deteriorating condition of those banks have affected the OCC's assessment income and costs of supervision.

Bank Consolidations Reduce Revenue

The current assessment schedule is regressive, *i.e.*, the amount assessed per dollar of asset declines as the assets increase. When banks merge, the resulting bank's assets are assessed at a lower rate on average.

Since 1984, the number of national banks has declined by four percent as a result of consolidations and failures. Further consolidations are expected. Anticipated changes in banking laws in several states could result in a further decline in the number of national banks. While these reductions may result in some resource savings to the OCC, a portion of those potential savings has already been recognized through supervisory procedures. For example, national banks that are members of multibank holding companies are supervised differently, using a method that concentrates supervisory efforts on the lead bank and reduces the efforts directed toward the holding company's other national banks. Should the holding company's banks become branches, as opposed to separately chartered banks, the lost revenue may not be matched by corresponding decreases in resource requirements. This will lead to continued cost/revenue imbalances as the OCC strives to meet its supervisory requirements.

Decreased Bank Asset Growth Increases Revenue Shortfalls

As a result of trends in the financial industry and economic conditions affecting the national banking system, the current growth rate of national bank assets is less than that of the 1970s and early 1980s. The growth rate assumed in the formulation of the current assessment schedule has not been realized.

The OCC's assessments are based on national bank assets. When the national bank asset growth rate is consistent with the growth in the OCC's resource requirements, then the OCC's revenues and expenses will remain in balance. If assets grow at a slower rate than assumed or demanded by resource

requirements, revenue shortfalls will result.

Slower asset growth results from several factors. First, capital ratios are an increasingly important measure of strength within the financial industry. To improve capital ratios, banks must either increase capital, decrease assets or both.

Second, asset growth has slowed because many banks have increased their reserves for possible loan losses. This factor has been particularly prevalent over the last eighteen months as banks increased their reserves for certain international loans. These increased reserves decrease assets.

As a result, between December 1986 and December 1987, asset growth was less than two percent. This is the lowest rate since 1948. The OCC's projections indicate continued low asset growth for the next several years. Last year's reduced asset growth resulted in an assessment shortfall for the OCC. Unless the current assessment schedule is changed, current projections indicate significant future revenue shortfalls.

Increased Workload Limits OCC's Response

The OCC has sought to mitigate the impact of these revenue shortfalls through reducing expenses, improving productivity, and increasing effectiveness. However, the OCC must serve the public interest and maintain a safe and sound national banking system. This limits OCC's response to revenue shortfalls because of increased supervisory responsibilities and workloads, many of which result from external factors. Some of these factors are:

- First, the condition of the national banking system has deteriorated. Bank profits are at their lowest levels in a decade. Bank failures and the number of problem banks continue at post-Depression highs. Nearly 25 percent of the national banking system's assets and 27 percent of the national banks are receiving special supervisory attention. Weaknesses in the energy, agriculture and real estate sectors, as well as continued difficulties with foreign debt exposure, indicate continued difficulties for national banks.
- Second, since 1984, new OCC supervisory responsibilities have been mandated by the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552), the Government Securities Act of 1986 (Pub. L. 99–571, 100 Stat. 3208), the Money Laundering Control Act of 1986 (Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. 99–570, 100 Stat. 3207), and the Bank Bribery Amendments Act of 1985 (Pub. L. 99–370, 100 Stat. 779).
- Third, the deregulation of depository institutions and the entry of banks into new financial activities have created a more complex banking environment that requires new skills on the part of the OCC's staff and increased OCC technological capabilities.

OCC Initiatives Have Mitigated Cost Increases

The OCC's staff and resource levels have been inadequate to meet the increased statutory, supervisory and regulatory requirements. Resource shortages resulted in bank supervision that, while adequate, was not as thorough as the OCC desired.

To fulfill the requirements of prudent supervision, the OCC has increased its staff from 2,850 to approximately 3,200. In 1989, the staffing target will be 3,246. The staff increase coupled with high turnover has also reduced the OCC's average experience level. This has necessitated additional training for examiners, both formally and on-the-job.

The OCC has developed two key operating strategies to utilize its resources more efficiently. These strategies improve the OCC's ability to achieve its mission of ensuring a safe and sound national banking system. These strategies are: (1) Performing more continuous off-site monitoring of bank performance, which mitigates the demand for as many highly labor intensive periodic on-site supervisory presences; and (2) focusing and allocating supervision resources on those components of the national banking system that present the greatest risk to the system.

These strategies are evident in the OCC's current supervisory approach. This approach is more dynamic, shifting focus from a bank's current to its prospective condition. Included in this approach are supervisory strategies tailored to individual banks. These strategies are continually developed and implemented based upon a risk hierarchy. Supervisory strategies are prepared by examiners who are familiar with the institution and consider a variety of bank characteristics, not just asset size and bank composite rating, to determine the prospective risk that a particular bank presents to the national banking system and the nation's financial industry. These strategies are designed to allocate OCC's limited supervisory resources.

Implementation of the revised supervisory approach required that the OCC increase its investment in data processing systems and office facilities. These investments were required to facilitate and improve OCC's off-site supervision capabilities to fulfill its supervisory approach. Thus, the OCC's savings from the revised supervisory approach are partially offset by the OCC's increased fixed costs.

Results Indicate Assessment Increase is Necessary

Nevertheless, all of the OCC's efforts to utilize its resources fully cannot offset the revenue shortfalls which result from bank consolidations and reduced bank asset growth. Cost pressures continue unabated due to statutory, supervisory and regulatory responsibilities. Further, staff turnover, recruitment and training expenses are factors which continually challenge the OCC's ability to meet its mission. If the OCC is to continue to fulfill its mission, an assessment increase is required.

Proposal

Because of these factors, OCC will operate in 1988 at breakeven or at a small deficit. Unless the assessment schedule is revised, OCC faces larger deficits in 1989 and beyond as a result of slower asset growth, the deteriorated condition of the national banking system, and the costs of maintaining OCC's supervisory mission. To avoid the projected deficits and ensure that supervisory resources are available, the OCC proposes revising the assessment schedule in 12 CFR Part 8.

The OCC proposes to revise the marginal assessment rates to generate additional revenue. The marginal rates for each bracket will be increased by 14 percent. The effective date of this proposed amendment to 12 CFR 8.2 would be for the semiannual assessment period, January 1, 1989, through June 30, 1989, with the semiannual assessment due on or before January 31, 1989. The following table shows the proposed assessment schedule.

PROPOSED SEMIANNUAL ASSESSMENT SCHEDULE FOR JANUARY 1989

If the bank's total assets (consolidated domestic and foreign subsidiaries) are—		The semiannual assessment is—		
Over—	But not over—	This amount—	Plus	Of excess over—
Million	Million			Million
0	$1.7	0	0.0011400	0
$1.7	15	$1,938	.0001425	$1.7
15	85	3,834	.0001140	15
85	185	11,814	.0000741	85
185	915	19,224	.0000627	185

PROPOSED SEMIANNUAL ASSESSMENT SCHEDULE FOR JANUARY 1989—Continued

If the bank's total assets (consolidated domestic and foreign subsidiaries) are—		The semiannual assessment is—		
Over—	But not over—	This amount—	Plus	Of excess over—
915	1,825	64,995	.0000513	915
1,825	5,470	111,678	.0000456	1,825
5,470	18,240	277,859	.0000388	5,470
18,240	36,485	772,824	.0000365	18,240
36,485		1,438,402	.0000239	36,485

Special Studies

Executive Order 12291

The OCC certifies that this proposed rule does not meet any of the conditions set forth in Executive Order 12291 for designation as a major rule. Consequently, a Regulatory Impact Analysis has not been prepared.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164), it is certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks or other small entities.

List of Subjects in 12 CFR Part 8

National banks, Banking, Assessments, Fees.

Authority and Issuance

For the reasons set forth above, Chapter I of Part 8 of Title 12 Code of Federal Regulations is proposed to be amended as follows:

PART 8—[AMENDED]

1. The authority citation for 12 CFR Part 8 is revised to read as follows:

Authority: 12 U.S.C. 481, 482 and 3102, and 26 D.C. Code 102.

2. Section 8.1 is revised to read as follows:

§ 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 481, 482 and 3102 and in 26 D.C. Code 102.

3. The table in § 8.2 is revised to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

If the bank's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
		This amount—	Plus	Of excess over—
Over—	But not over—	Column C	Column D	Column E
Column A	Column B			
Million	Million			Million
0	X_1	0	.0011400	0
SX_1	X_2	Y_1	.0001425	X_1
X_2	X_3	Y_2	.0001140	X_2
X_3	X_4	Y_4	.0000627	X_4
X_5	X_6	Y_5	.0000513	X_5
X_6	X_7	Y_6	.0000456	X_6
X_7	X_8	Y_7	.0000388	X_7
X_8	X_9	Y_8	.0000365	X_8
X_9		Y_9	.0000239	X_9

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Date: August 16, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88–18802 Filed 8–18–88; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket Nos. C–626 and C–2075]

The Reader's Digest Association, Inc.; Reopening of Public Comment Period on Supplemental Petition

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen the proceeding and modify the order.

SUMMARY: The Reader's Digest Association, Inc., the respondent in the orders in Docket Nos. C–626 and C–2075, filed a petition on March 30, 1988, requesting that the Commission reopen the proceeding and modify in certain respects the 1963 and 1971 consent orders against The Reader's Digest Association, Inc., requiring disclosure of the terms and conditions of offers of free merchandise and of merchandise for sale. A supplemental request to reopen the proceeding has been filed on August 2, 1988. This document announced the public comment period on the supplemental petition.

DATE: The deadline for filing comments in this matter is September 12, 1988.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Terrence J. Boyle, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3016.

SUPPLEMENTARY INFORMATION: The order against The Reader's Digest Association, Inc., in Docket No. C–626 was published at 29 FR 399 on January 16, 1964. The order in Docket No. C–2075 was published at 36 FR 22824 on December 1, 1971. The petitioner, The Reader's Digest Association, Inc., is a magazine and book publisher. The original request to reopen the proceeding was published at 53 FR 12534 on April 15, 1988. The order in Docket C–626 prohibits The Reader's Digest Association, Inc., from employing words like "free" for merchandise offered to consumers unless all the conditions for receipt and retention of such merchandise are clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms might be misunderstood. The order in Docket C–2075 prohibits The Reader's Digest Association, Inc., from offering any product for sale when all the terms and conditions of the offer are not explained fully and clearly and set forth conspicuously on the order

form or, in the case of offers in catalogues, either on the order form or elsewhere in the catalogue, with a clear and conspicuous disclosure on the order form of the location in the catalogue of the disclosures. The supplemental request to modify was placed on the public record on August 2, 1988.

List of Subjects in 16 CFR Part 13

Magazines and books.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-18808 Filed 8-18-88; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25998, File No. S7-17-88]

Exemption of Certain Foreign Government Securities Under the Securities Exchange Act of 1934 for Purposes of Futures Trading

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and solicitation of public comments.

SUMMARY: The Commission proposes for comment a rule amendment that would designate debt securities issued by Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, and West Germany as "exempted securities" for purposes of the marketing and trading in the United States of futures contracts on those countries' securities.

DATE: Comments should be submitted by September 19, 1988.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7-17-88, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Underhill, Esq., 202/272-2375, Division of Market Regulation, Securities and Exchange Commission, Room 5186 (Mail Stop 5-1), 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), futures trading on individual securities is prohibited unless the underlying security is an exempted security under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). The Securities and Exchange Commission ("SEC" or "Commission"), however, adopted and later amended Rule 3a12-8 ("Rule") under the Exchange Act to designate sovereign debt issued by Great Britain, Canada, Japan, Australia, France, and New Zealand (the "six designated countries") as exempted securities under the Exchange Act solely for purposes of marketing and trading futures on those securities in the U.S.[1] In effect, the designation of those securities as "exempted securities" removes the CEA's prohibition against marketing or trading futures on those securities in the U.S., so long as the other terms of the Rule are satisfied.

The Commission today proposes an amendment that would add the debt securities of several additional countries to those exempted by the Rule. The proposed amendment would add the debt securities of Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, and West Germany (the "eight proposed countries") to the list of those countries the debt obligations of which are exempted by the Rule. Under the proposal, to qualify for the exemption, future contracts on a country's securities would have to meet all the other existing requirements of the Rule.

II. Background

The CEA, as amended by the Futures Trading Act of 1982,[2] prohibits the trading of futures contracts on individual securities unless those securities qualify as exempted securities under section 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[3] Because foreign government securities are not exempted securities under either of these sections, the CEA prohibition against trading futures on individual securities prevents the marketing and trading of futures on such foreign government securities in this country. Section 3(a)(12) of the Exchange Act, however, provides that the term "exempted security" includes such other securities * * * as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

In March 1984, pursuant to section 3(a)(12) of the Exchange Act, the Commission promulgated Rule 3a12-8.[4] The Rule currently designates British, Canadian, Japanese, Australian, French, and New Zealand government debt securities that meet certain conditions as "exempted securities" under the Exchange Act.[5] The purpose of the Rule is to permit certain foreign, exchange-traded futures contracts on the designated securities to be marketed and traded in the U.S.[6] Under the Rule, debt securities issued by the six designated countries are considered exempted securities under the Exchange Act only with respect to futures trading on those securities and provided that: (1) The securities are not registered in the U.S.; (2) the futures contracts require delivery outside the U.S.; and (3) the futures contracts are traded on a board of trade.[7]

III. Discussion

Rule 3a12-8 was promulgated in response to Congress' understanding, in approving the 1982 amendments to the CEA, that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar U.S. marketing of British government debt futures [8] and that administrative

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[1] Under the Rule, trading in the U.S. of futures on government securities exempted by the Rule is permitted only on or through a board of trade.

[2] Pub. L. No. 97-444, 96 Stat. 2294, 7 U.S.C. 1 *et seq* (1982).

[3] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v) (1982), provides that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act * * * or section 3(a)(12) of the * * * Exchange Act.* * *

[4] *See* Securities Exchange Act Release Nos. 20708 ("Adopting Release"), March 2, 1984, 49 FR 8595 and 19811 ("Proposing Release"), May 25, 1983, 48 FR 24725.

[5] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Adopting Release, *supra* note 4. The Rule first was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423, July 11, 1986, 51 FR 25998. The Rule later was amended to include debt securities issued by Australia, France, and New Zealand. *See* Securities Exchange Act Release No. 25072, October 29, 1987, 52 FR 42277.

[6] As discussed above, without this designation the U.S. trading of futures on these securities would be prohibited by section 2(a)(1)(B)(v) of the CEA.

[7] A requirement that the board of trade be located in the country that issued the underlying securities was eliminated last year. *See* Securities Exchange Act Release No. 24209, March 12, 1987, 52 FR 8875.

[8] *See* Proposing Release, *supra* note 4, 48 FR at 24725 [citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

action would be taken to allow the sale of such futures contracts in the U.S.[9] By promulgating the Rule, the Commission implemented Congress' intent without abandoning the longstanding policy of subjecting foreign government securities marketed and traded in the U.S., for most purposes, to the requirements of the federal securities laws. Accordingly, the conditions set forth in the Rule are designed to ensure that a domestic market in unregistered foreign government securities does not develop and that futures markets in these instruments are not used to avoid the registration requirements and other provisions of the federal securities laws.

At the time the Commission originally proposed Rule 3a12–8, it recognized that, should the securities of additional governments become subject to futures trading, it could become necessary to amend the Rule to include those securities.[10] Subsequently, the Commission amended the Rule to include debt securities issued by Japan, Australia, France, and New Zealand. Currently, the London International Financial Futures Exchange ("LIFFE") is developing a West German government bond futures contract scheduled to begin trading on September 29, 1988. The Commission has been informed that U.S. citizens, especially institutional investors, are interested in trading this new product and has received a request that Rule 3a12–8 be amended accordingly.[11]

As the world's securities markets become increasingly internationalized, the Commission expects to receive additional petitions for exemptive relief. As an alternative to continuing to amend the Rule on a country-by-country basis, the Commission today is proposing to amend subsection (a)(1) of Rule 3a12–8 by adding to the list of designated foreign government securities under the Rule the unregistered debt obligations of the eight proposed countries.

The eight countries proposed to be added to Rule 3a12–8 are those not covered currently by the Rule but which would have qualified pursuant to an amendment proposed by the Commission last year. Specifically, the proposal, which is still outstanding and on which the Commission solicits any further comments, would exempt debt securities issued by any country with outstanding long-term sovereign debt rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations.[12] The Commission received varied comments regarding incorporation of a generic rating standard into the Rule,[13] and determined that an interim approach would be to amend the Rule to include debt securities issued by countries in which futures exchanges had petitioned the Commission to amend the Rule, *i.e.*, Australia, France, and New Zealand.[14]

Although the generic rating standard proposed last year by the Commission may not provide a precise measure of those sovereign debt issues for which there is adequate secondary trading interest and therefore potential hedging interest, the Commission believes that the countries not included currently in the Rule but which would have qualified under the rating standard proposal should be added to the Rule. In particular, in proposing to extend to the debt securities of the eight proposed countries the exemption afforded by the Rule, the Commission believes that there are no major differences between the sovereign debt securities of the eight proposed countries and the debt securities of the six designated countries so as to justify a different regulatory response. In addition, there are no readily apparent legal or policy reasons for denying U.S. investors the ability to trade futures contracts on debt securities issued by West Germany and the other proposed countries. Indeed, the availability of new hedging vehicles should allow investors to take advantage of the growing globalization of the securities markets. Although it is possible that other countries may have sovereign debt outstanding that justifiably should be designated as exempt under the Rule, the Commission would undertake to make such a determination when it received a request to do so.

It also is important to note that under the proposal, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the U.S., that the futures contracts require delivery outside the U.S., and that the contracts be traded on a board of trade) would continue to apply. This should ensure that a domestic market in unregistered foreign sovereign debt of newly-designated countries does not develop.[15]

The Commission seeks comments on a number of issues related to its proposal. First, the Commission encourages comments on the desirability of adding the eight proposed countries to the Rule's list of eligible countries. In addition, the Commission requests comments on whether the information available in English regarding the newly-eligible futures contracts [16] and

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[9] In extending the exemption to cover futures on Canadian, Japanese, Australian, French, and New Zealand government debt, the Commission noted that there did not appear to be any legal or regulatory reasons to treat such futures contracts differently from British sovereign debt futures contracts.

[10] *See* Proposing Release, *supra* note 4, 48 FR at 24726–27.

[11] *See* letter from Brooksley Born, Arnold & Porter, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated June 3, 1988..

[12] For a discussion of this proposal, see Securities Exchange Act Release No. 24428, May 5, 1987, 52 FR 8237. The Commission is aware that some of the ratings on which it would have relied under the rating standard proposal and on which it relies implicitly today are not on direct debt issues of the sovereign issuers. This is due to the fact that some countries have not issued foreign currency-denominated debt, which is the type of foreign sovereign debt commonly rated by U.S. rating agencies. In addition, some countries that have issued foreign currency-denominated debt have not asked a U.S. rating agency to rate such debt. Accordingly, some sovereign ratings by U.S. rating agencies actually are ratings of debt guaranteed by the central government or merely are ceilings for ratings of long-term debt issued by institutions located in the particular country. The Commission understands, however, that the rating of the direct sovereign debt of any such country would be at least as high as the rating assigned to debt guaranteed by the central government or issued by institutions. The exemption provided by the Rule only would apply, however, to direct debt issues of the sovereign issuer.

[13] In general, commentators' concerns related to the proper functioning of the Rule in the event that a government issuer's rating were to fall below the two highest rating categories and the validity of relying on rating standards as a measure of the depth and liquidity of the secondary market for government issuers' securities. The Commission notes that the Chicago Board of Trade ("CBT"), in its comment letter, recommended an amendment very similar to that being proposed today. In particular, the CBT urged the Commission to amend the Rule to include specifically debt issued by all the countries that would qualify under the proposed rating standard. *See* letter form Thomas R. Donovan, President and Chief Executive Officer, CBT, to Jonathan G. Katz, Secretary, SEC, dated June 15, 1987, at 2.

[14] *See* Securities Exchange Act Release No. 25072, October 29, 1987, 52 FR at 42277. The Commission noted that it would "continue to assess the feasibility of such an amendment or other alternatives in light of the comments received." *Id.*

[15] The marketing and trading of foreign futures contracts also is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, while Rule 30.02 (17 CFR 30.02), promulgated under section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale of futures contracts executed on foreign exchanges. In addition, the CFTC recently adopted a series of regulations governing the domestic offer and sale of futures and options contracts traded on foreign boards of trade. The rules, which became effective on January 4, 1988 but which have not been fully implemented pending CFTC review of petitions for exemption, require, among other things, that the domestic offer and sale of foreign futures be effected through CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 52 FR 28980 (August 5, 1987).

[16] The Commission notes that the only futures contract likely to be eligible immediately for sale in

Continued

underlaying sovereign debt would be adequate to permit U.S. investors to make informed investment decisions.[17] Commentators also may wish to discuss whether there are any legal or policy reasons for determining that the sovereign debt futures that would qualify under the proposed amendment should not be accorded the same treatment in the U.S. under Rule 3a12–8 as futures on sovereign debt issued by the six designated countries.

The Commission also solicits comments on possible procedures or standards pursuant to which it could exempt the debt securities of additional countries without having to do so on a country-by-country basis and solicits any further comments on the rating standard approach proposed originally in May 1987.[18] As Standard & Poor's Corp. ("S&P") noted in its comment letter on the proposed generic rating standard, there are sovereign debt issuers other than the eight proposed countries that have substantial amounts of actively-traded debt outstanding.[19] Would a standard based on volume and depth of trading in a sovereign issuer's debt be a viable and accurate standard? If so, what sources of information are readily available to obtain reliable measurements of such trading activity?[20]

the U.S. if the proposed amendment were adopted is the West German bond futures contract proposed to be traded on LIFFE.

[17] In adopting Rule 3a12–8 the Commission decided not to require, as a condition to the exemption, that such information be available. *See* Adopting release, *supra* note 4, 49 FR at 8597–98. At the time Rule 3a12–8 was adopted, both the United Kingdom and Canada had government debt issues registered in the U.S. As a result, although those particular issues were not the subject of futures trading, U.S. investors had relevant disclosure materials concerning the issuers, *i.e.*, the governments of Canada and the United Kingdom. In addition, Australia and New Zealand had government debt issues registered in the U.S. when they were added to the Rule's list of eligible issuers. The Japanese and French governments, however, had not registered any securities in the U.S. when they were added to the Rule. Of the new countries that would become eligible under the current proposal, only Austria, Denmark, and Norway currently have government debt issues registered in the U.S.

[18] *See supra* note 12 and accompanying text.

[19] *See* letter from Kurt D. Steele, Vice President & General Counsel, S&P, to Jonathan G. Katz, Secretary, SEC, dated June 15, 1987, at 2. Three such countries were mentioned specifically in the letter: Belgium, Ireland, and Italy. Because the sovereign debt securities of these three countries are rated by only one rating orginization, those securities could not have qualified under the generic rating standard.

[20] The Commission made a similar request for comments in connection with its proposal to adopt a generic rating standard. No comments on this issue were received.

IV. Cost/Benefit Analysis

There do not appear to be any costs associated with the proposed amendment. The amendment is designed to protect U.S. investors by preventing unregistered bonds issued by the eight proposed countries from entering the country and by requiring that futures on those bonds be traded on boards of trade. In addition, the amendment would impose no recordkeeping or compliance burden in itself and merely would provide an exemption under the federal securities laws. The principal benefit associated with the amendment is that it would allow U.S. boards of trade to offer, and investors to trade, a greater range of futures contracts on foreign government debt. The Commission solicits comments on the costs and benefits of the proposed amendment to Rule 3a12–8.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

VI. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Proposed Amendment

The Commission is proposing to amend Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.3a12–8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

2. Section 240.3a12–8 is amended by removing the word "or" from (a)(1)(v), replacing the period with a semi-colon at (a)(1)(vi), and adding paragraphs (a)(1)(vii) through (xiv) as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(vii) Austria;

(viii) Denmark;

(ix) Finland;

(x) the Netherlands;

(xi) Norway;

(xii) Sweden;

(xiii) Switzerland; or

(xiv) West Germany.

* * * * *

By the Commission.

Dated: August 16, 1988.

Shirley E. Hollis,

Assistant Secretary.

Regulatory Flexibility Act Certification

I, David Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 3a12–8 set forth in Securities Exchange Act Release No. *25998*, which would define government securities of Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, and West Germany as exempted securities under the Securities Exchange Act of 1934 for purposes of futures trading on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of foreign futures contracts on government securities described above. Second, because futures contracts on British, Canadian, Japanese, Australian, French, and New Zealand debt, which already can be traded and marketed in the U.S., still will be eligible for trading under the proposed amendment, the proposal would not affect any entity currently engaged in trading such futures contracts. Third, because the level of interest presently evident in this country in the futures trading covered by the proposed rule amendment is modest and those primarily interested are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 17 CFR 240.0–10 and to the extent that it

is defined for futures market participants at 47 FR 18618.

David Ruder,

Chairman.

Dated: August 16, 1988.

[FR Doc. 88-18862 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-06, Notice 3]
RIN 2127-AB85

Federal Motor Vehicle Safety Standards; Side Impact Protection—Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this advance notice is to announce that the National Highway Traffic Safety Administration is considering the proposal of requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and other crashes where the side protection of the vehicle is a relevant factor, and to request comments to assist the agency in developing the proposal. The contemplated requirements would be part of the agency's efforts to address the serious problem of side impact crashes, which account for an average of almost 8,000 fatalities and more than 23,000 serious injuries annually. As another part of those efforts, the agency earlier this year proposed requirements for passenger cars intended to reduce the risk of injuries to the thorax and pelvis in side impact crashes between vehicles. This notice also requests comments on whether additional requirements should be considered to address side impacts with fixed objects like poles and trees.

DATE: Comments must be received on or before October 18, 1988.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and the submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2264.

SUPPLEMENTARY INFORMATION: The agency is engaged in a series of efforts to address the serious problem of side impact crashes, which account for an average of almost 8,000 fatalities and more than 23,000 serious injuries annually. These figures represent 30 percent of all passenger car occupant fatalities and 34 percent of the serious injuries that occur annually in passenger cars.

As part of those efforts, on January 27, 1988, NHTSA published in the **Federal Register** (53 FR 2239) a notice of proposed rulemaking (NPRM) to upgrade Safety Standard No. 214, *Side Door Strength*, by adding dynamic test procedures and performance requirements for passenger cars. That standard currently measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door. The agency's Janaury 1988 proposal would require an additional test in which a passenger car must provide protection in a full-scale crash test in which the car (known as the "target" vehicle) is struck in the side by a moving barrier simulating another vehicle. Newly-developed instrumented test dummies would be positioned in the target car to measure the potential for injuries to the thorax and pelvis of occupants in the front and rear seats. Also, the doors of the target car would be required to remain closed during the side impact, to reduce the number of persons that are ejected from a car through a door.

This notice represents another part of the effort to reduce side impact deaths and injuries. NHTSA believes that it may be possible to develop effective requirements in the following crucial areas: (1) Injuries to the head, (2) ejection through the door, and (3) ejection through windows. Comments are requested on these areas and on whether additional requirements should be considered to address side impacts with fixed roadside objects like poles and trees.

To aid the agency in obtaining useful comments, this notice discusses a variety of issues which are being considered by NHTSA in developing a possible proposal, and asks a number of questions and makes a number of requests for data. For easy reference, the questions or requests are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to test data, statistical and cost data, and the source of such information.

Head Injuries

Almost one-half of all fatalities in passenger car side impacts occur as a result of head injuries. Moreover, non-fatal head/face injuries are the largest source of occupant impairment due to vehicle crashes. While many head injuries occur as a result of ejection from the vehicle, a high percentage occur due to head/face impacts with vehicle interior components, such as the pillars and other structures supporting the roof.

(The pillars at the front of the passenger compartment, on both sides of the windshield, are called A-pillars. The pillars along the sides of the car, by the back of the front seat, are called B-pillars. The pillars at the rear of the passenger compartment, on both sides of the rear window, are called C-pillars. Other structures supporting the roof include the headers, which are horizontal bars located above the windshield and rear window, and side rails, which are horizontal bars located above the windows along the sides of the car. The frames around the windows are referred to as window frames.)

Data from the National Accident Sampling System (NASS) show that face and head injuries from contact with the pillars and other structures cited above represent seven percent of all injuries, 8.3 percent of serious injuries (AIS 3 or greater), and 10.6 percent of fatalities.

NHTSA believes that various techniques, including the use of padding and reducing the stiffness of impacted surfaces, may be able to reduce the severity of, and in some cases prevent, many head injuries. The agency believes the following three techniques are of particular promise: (1) Padding the A, B and C pillars, roof rail components and window frames with hard rubber or high density foam materials, (2) eliminating sharp angle, thin edge design features in the component areas where head impacts are most likely to occur, and (3) reducing the local stiffness of the component areas where head impacts are most likely to occur (although the overall structural integrity of the roof-pillar structures must, of course, be maintained).

NHTSA notes that many tests on the use of padding have been carried out for instrument panel studies. The tests have used three to four inch thick samples of various low density foam materials.

However, the agency does not believe that the results of these studies are directly applicable to A-pillar and roof rail components. Due to space limitations, including the need to maintain good driver visibility, only a thin layer of padding could be placed in those areas.

Given the limited amount of padding that could be placed on the A-pillar, the agency believes that characteristics other than energy absorption capacity may be crucial in determining the performance of the padding material during an impact. In particular, NHTSA believes that the force penetration characteristics, i.e., how the padding distributes force, may be significant. For example, the padding may be able to reduce injury potential in a head impact by prolonging impact duration, enlarging the contact area, and mitigating localized load concentration. It appears that an ideal padding material would have a low resilient, elasto-plastic force-penetration property, i.e., a softening effect.

As discussed in the Preliminary Regulatory Impact Analysis (PRIA), NHTSA has conducted some tests of the effectiveness of bonding a molded pad onto the A-pillar of a car. The results of the tests indicate that this technique shows promise in reducing head injuries.

In addition to the conventional countermeasures cited above, the agency is aware of a number of possible innovative concepts to upgrade head impact protection. For example, it may be possible to extend the windshield over the roof header and/or A-pillar areas, or to eliminate the A-pillars and roof rails by use of a molded plastic and glass roof. Head impacts with the windshield have less injury potential than impacts with pillars and headers, since the windshield helps to cushion the impact.

NHTSA believes that there are a number of possible approaches to expressing performance requirements. Various devices could be used to measure the forces that would be experienced by the head during specified component tests or crash tests. One possible performance requirement, for example, would place limits on head acceleration during specified component tests using a headform impactor. The headform impactor could be placed in the vehicle in a manner which permits the impactor to coast freely into, and to rebound from, the vehicle component being tested. However, there are also many other possible approaches.

NHTSA notes that the potential safety benfits of the countermeasures discussed above go beyond side impact crashes, since head/face impacts with vehicle interior components such as A, B and C pillars, window frames, and side roof rails occur in other types of crashes. The agency also notes that Standard No. 201, *Occupant Protection in Interior Impact*, currently covers only five vehicle interior components: front instrument panels, seat backs, compartment doors, sun visors and armrests.

As an aid in analyzing issues related to developing possible requirements for improved head protection, NHTSA requests information or comments on the following questions:

1. What current crash data and crash analyses are available for head impacts with the vehicle interior? In responding to this question, please separately address, to the extent possible, side impacts and other types of crashes.

2. What tests/studies have been done concerning head impacts with the A, B and C pillars, window frames and roof rail components of current production vehicles? What are the baseline performance levels of those vehicles for head impacts with the vehicle interior?

3. Please provide estimates for cost and leadtime of padding A, B and C pillars, roof rails, and window frames, and estimates of potential safety benefits.

4. What types of performance criteria and test procedures (including vehicle component tests and crash tests) should be considered by NHTSA in developing a possible proposal? Is a measure of maximum headform acceleration response appropriate? Should a head injury criterion (HIC) along the lines of that used in Standard No. 208 be specified? If so, why? If not, why not?

5. Please provide information concerning padding materials and possible new design concepts for pillar/roof rail structures. What tests/studies have been conducted on padding for those structures? How do force intensity distribution pattern and peak force during impacts differ for alternative padding materials? How are these differences relevant to the effectiveness of the padding in reducing injury, particularly head injury?

6. Please provide information concerning new roof/windshield/window design concepts incorporating structural glass or other techniques to reduce head impact severity.

7. Please provide information concerning A-pillar design specification and the angles of the driver's forward vision obscured by A-pillars. Would adding padding to A-pillars enlarge the angle of obscured vision and thereby adversely affect the driver's fields of view? How could any such problems be overcome?

8. Should NHTSA consider rulemaking to address all head interior impacts not addressed by present standards or only those head interior impacts associated with side impact crashes?

9. Please provide information about whether the tracks used for motorized automatic safety belts present any potential interior impact problems that could be mitigated by padding or by making the tracks softer.

10. What would be the effect of increased safety belt use, in terms of head injury severity reduction?

Ejections

A significant number of side impact fatalities and serious injuries involve the partial or complete ejection of occupants through the doors or side windows. A large number of ejections through the doors or side windows also occur in crashes other than side impacts. Data from the Fatal Accident Reporting System (FARS) for 1982–85 show that almost a quarter of all passenger car occupant fatalities involved ejection (19.5 percent involved total ejection and 4.3 percent involved partial ejection). Data from the National Crash Severity Study (NCSS) show that for passenger car occupant fatalities involving ejection, 52 percent were ejected through the doors and 34 percent through the side windows. Several studies have shown that ejection increases the probability of an occupant fatality or serious injury by several times over that for non-ejected occupants.

NHTSA is aware that some researchers have suggested that if a crash is sufficiently severe to eject the occupants, then it is capable of causing serious injuries even if the occupants remain inside the vehicle compartment. However, the agency believes that many occupant ejections may occur in crashes that are not very high crash severity. Moreover, given the trend toward more "friendly" interiors, the advantages of occupants remaining inside the vehicle should be increasing. The agency requests comments on the following question:

11. What studies, including current data and crash analyses, are available concerning the benefits of ejection reduction? What impact does the trend toward more "friendly" interiors have on such benefits? What are the severities of the various types of crashes in which ejection occurs?

NHTSA believes that it may be possible to develop effective requirements to reduce the risk of ejections. Occupant ejections through

the door opening can be prevented if the door remains closed in the latched position during a crash sequence. Standards No. 206, *Door Locks and Door Retention Components*, requires that door locks/striker assemblies and hinges not separate during specified tests, and that door latches not engage from the fully latched position during specified tests. However, many occupant ejections occur through the side door opening despite those requirements. NHTSA is concerned that the quasi-static tests specified by Standard No. 206 may not adquately represent the twisting and bending forces at work during a severe side impact.

NHTSA believes that stronger side door latches may reduce the risk of ejections. In considering developing performance requirements, the agency believes that a number of approaches are possible. One approach would be to add additional strength and/or deformation requirements to Standard No. 206. For example, a combined axial/moment loading test might be added to address latch failure caused by the door being subjected to torsion. Another approach would be to develop a dynamic test for the entire door assembly. Such a test procedure could be quite different from that proposed in the January 1988 NPRM, which would only require that doors not open during the test.

To aid in analyzing issues related to developing possible upgraded requirements to reduce the risk of ejections through side doors, NHTSA requests information or comments on the following questions:

12. What tests/studies have been done concerning side door ejections and associated door latch/lock failure mechanisms?

13. How do different vehicle body styles and door mechanism designs affect the risk of ejection?

14. What testing/measuring techniques are there for evaluating door latch performance in relation to the potential for reducing side door ejection?

15. Please provide information concerning alternative approaches for reducing the risk of side door ejections.

16. Please provide estimates for the cost and leadtime of improved side door latches, and estimates of potential safety benefits.

17. What types of performance criteria and test procedures should be considerd by NHTSA in developing a possible proposal?

18. What would be the effect of increased safety belt use, in terms of side door ejection reduction?

As indicated above, a significant number of fatal ejections from passenger cars are through the side window opening. The tempered glass inside door windows breaks easily and offers essentially no resistance to ejection.

NHTSA believes that new side window designs, incorporating different glazing/frames, may be able to reduce the risk of ejections. The agency notes that vehicle windshields typically incorporate a middle plastic layer which is sufficiently strong to prevent many occupant ejections. NHTSA believes that it might be possible to use variations on this approach for side windows. One possibility would be to affix an extra sheet of plastic to the inside surface of existing glazing. In addition to adding the plastic layer, it would be necessary to anchor the plastic in order to prevent complete separation of the glazing assembly after the glass is broken. One problem of particular concern is how to anchor the plastic in a manner that permits the window to be opened. For essentially rectangular windows, it may be possible to use glazing whose front and rear edges have a T-shape when viewed in cross section. The head or top of the T would interlock with a T-shaped track in the outer window frame and still allow vertical window movement. NHTSA recognizes, however, that there are difficulties associated with anchoring current side windows, given their shapes, and is particularly interested in comments on the design changes needed to anchor the glazing in a manner that permits the windows to be opened. The agency notes that, in addition to preventing ejection, glass-plastic glazing could also absorb impact energy.

NHTSA believes that there are a number of possible approaches to testing the performance of windows in preventing ejection. For example, one approach would be to use a 40 pound glazing test device (representing the combined head/thorax mass that would impact the glazing), requiring that the device not penetrate the plastic layer of a side window at 20 mph (an estimate of the typical contact speed when an occupant's head contacts the glazing), while permitting a bulge within specified limits. Requirements might also be developed to test side window retention capability.

To aid in analyzing issues related to developing possible requirements to reduce the risk of ejections through side windows, NHTSA requests information or comments on the following questions:

19. What current crash data and crash analyses are available for side window ejections, including partial occupant ejections?

20. What tests/studies have been done concerning side glazing performance in preventing ejections? Please address this question for windows in both the fully and partially closed positions.

21. What testing/measuring techniques are there for evaluating side glazing system performance in preventing ejections?

22. What problems are there in bonding a layer of plastic to glass and attaching it to the frame, while permitting the side windows to be movable? How can these problems be solved?

23. What would be the effectiveness of the approach discussed above and alternative approaches in retaining occupants during crashes, including consideration of HIC values and laceration potential? What thicknesses of glass and plastic would be optimum, particularly with regard to HIC mitigation?

24. Please provide information concerning fabricating, manufacturing, installing, using and repairing T-edge and similar glazing mechanisms, including methods of treating edges to ensure compatibility with other aspects of automotive design, the stability of the plastic as a function of time and temperature, the care and maintenance of glass-plastic side windows, and other issues which may be relevant.

25. Please provide estimates for cost, weight, and leadtime. Please also provide estimates for the cost of repair and replacement.

26. What types of performance criteria and test procedures should be considered by NHTSA in developing a possible proposal? Should in-vehicle tests be specified (as opposed to testing glazing samples) in evaluating the likelihood of occupant ejection? Would an approach along the lines of specifying that a 40 pound glazing test device not penetrate the plastic layer at 20 mph, while permitting a bulge of between 10 and 20 inches, be appropriate?

27. What other innovative concepts are there which could be used to modify, improve, or replace the concept discussed above?

28. What would be the effect of increased safety belt use, in terms of side window ejection reduction?

Side Impacts with Poles, Trees and Other Similar Fixed Objects

The January 1988 proposal and the possible requirements discussed above would address several significant aspects of the side impact problem. NHTSA is also considering whether

separate requirements should be developed to address side impacts with poles, trees and similar fixed objects. Many fatalities and injuries occur in these types of side impacts. NHTSA requests comments on the following questions:

29. What current crash data and analyses are available regarding side impacts with poles/trees?

30. What tests/studies have been done concerning side impacts with poles/trees and injuries to the thorax, pelvis, and/or head, and occupant ejections?

31. What information is available to determine how high the underside of a car should be or to determine how high significant remains of a breakaway device's stub should be to prevent snagging and resulting sudden velocity changes to an impacting car?

32. What vehicle countermeasures are currently available to address side impacts with poles/trees? Please provide estimates of the costs, benefits and leadtime for such countermeasures.

33. Please provide information concerning alternative approaches and innovative concepts for protecting occupants in side impacts with poles/trees.

34. To what extent is occupent compartment intrusion a major injury producing mechanism in side impacts with poles, trees and other fixed roadside objects? What countermeasures are available or are conceivable to mitigate, or prevent, such intrusions?

35. What factors should be considered by NHTSA in deciding whether to develop possible requirements to address side impacts with poles/trees? What types of performance criteria and test procedures should be considered? Is the test proposed in the January 1988 NPRM, using a moving deformable barrier, an effective test for providing occupant protection against poles, trees and other fixed objects?

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with requirements addressing the areas discussed above: head injuries, ejection through side doors, ejection through windows, and side impacts with poles and trees. This advance notice of proposed rulemaking is not subject to Executive Order 12291, since that only applies to notices of proposed rulemaking and final rules. However, NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The advance notice concerns a matter in which there is substantial public interest. Also, depending on the scope and precise requirements of any NPRM that may be issued, there is the potential for a substantial positive impact on a major transportation safety problem, and potential annual costs of $100 million or more. The agency has prepared a PRIA which addresses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. (The PRIA also covers a separate advance notice of proposed rulemaking being published elsewhere in this issue of the **Federal Register** that addresses side impact protection for light trucks, vans and multipurpose passenger vehicles.) The analysis is available in the docket.

It is difficult to develop quantified estimates of the burdens associated with the potential actions on which this notice seeks public comment, because the precise requirements have not been developed. Additionally, changes may be made to any of these courses of action in response to comments received on this notice. Therefore, the cost figures cited below are very preliminary.

In the area of improving head protection, the PRIA estimates the cost of padding all pillars, the front rear headers, and the side roof rails at about $25 to $31 for a four door passenger car. With respect to reducing occupant ejection through the side windows, the cost of using laminated glass instead of tempered glass for the front and rear side windows is estimated to be about $15 for a four-door passenger car, and $17 for a two-door passenger car. The agency does not have sufficient information to estimate the costs associated with anchoring the glazing to the window frame. In the area of reducing occupant ejection through the doors, the cost of improving door latches is estimated to be about $1.00 per door. The above estimates do not take into account the cost of any secondary weight or fuel cost penalties. The agency has not sufficiently developed countermeasures for side impacts with poles and trees to estimate potential costs.

NHTSA does not have sufficient information at this time to quantify the benefits associated with the courses of action addressed in this notice. However, the agency believes that there may be a potential for substantial benefits in terms of reduced fatalities and serious injuries.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does nto have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

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List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued date: August 16, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-18795 Filed 8-16-88; 10:52 am]

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49 CFR Part 571

[Docket No. 88-06, Notice 4]
RIN 2127-AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Vans, and Multipurpose Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this advance notice is to announce that the NHTSA is considering the proposal of requirements for light trucks, vans and multipurpose passenger vehicles intended to reduce the risk of fatalities and injuries in side impacts and other crashes where the side protection of the vehicle is a relevant factor, and to request comments to assist the agency in developing the proposal. The contemplated requirements would be part of the agency's efforts to address the serious problem of side impacts. As another part of those efforts, the agency earlier this year proposed requirements for passenger cars intended to reduce the risk of injuries to the thorax and pelvis in side impact crashes between vehicles.

DATE: Comments must be received on or before October 18, 1988.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2264.

SUPPLEMENTARY INFORMATION: On January 27, 1988, NHTSA published in the **Federal Register** (53 FR 2239) a notice of proposed rulemaking (NPRM) to upgrade Safety Standard No. 214, *Side Door Strength*, by adding dynamic test procedures and performance requirements for passenger cars. That standard, which applies only to passenger cars, currently measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door. The agency's January 1988 proposal would require an additional test in which a passenger car must provide protection in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier simulating another vehicle. Newly-developed instrumented test dummies would be positioned in the target car to measure the potential for injuries to an occupant's thorax and pelvis. Also, the doors of the car would be required to remain closed during the side impact, to reduce the number of persons ejected from a car through a door.

NHTSA's January 1988 proposal is one part of the agency's efforts to address the serious problem of side impact crashes. A second part or those efforts has been the development of an advance notice of proposed rulemaking (ANPRM) concerning requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and other crashes where the side protection of the vehicle is a relevant factor. That notice also seeks comments on whether additional requirements should be considered to address side impacts with poles and trees.

This notice represents a third part of NHTSA's efforts to reduce side impact deaths and injuries. As indicated above, the existing Standard No. 214 and the rulemaking actions discussed above concern passenger cars. NHTSA believes that it may be possible to develop effective side impact requirements for trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less (light trucks, vans and multipurpose passenger vehicles, hereafter referred to as "LTV's").

Annual LTV side impact fatalities have averaged about 1,200 in recent years. The agency believes that it may be possible to develop a dynamic side impact test requirement for LTV's, similar to the one proposed for cars, to reduce the risk of injuries to the thorax and pelvis. The agency also believes that it may be possible to develop requirements to address injuries to the head and ejections through the doors and windows. Requirements in these areas could potentially result in substantial benefits in terms of reduced LTV fatalities and serious injuries. Comments are requested on these areas, on whether the existing requirements of Standard No. 214 or similar requirements should be extended to LTV's, and on whether additional requirements should be considered to address side impacts with fixed objects like poles and trees.

To aid the agency in obtaining useful comments, this notice discusses a variety of issues which are considered by NHTSA in developing a possible proposal, and asks a number of questions and makes a number of requests for data. For easy reference, the questions or requests are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to test data, statistical and cost data, and the source of such information.

Before proceeding with a discussion of the specific types of requirements the agency is considering developing, NHTSA notes its recognition of the fact that possible new safety standards or new applications of current standards must be analyzed to determine the appropriateness of applying them to specific vehicle types. Although many of the issues raised by this notice are similar to those being raised in connection with passenger cars, the differences in physical characteristics and use between LTV's and passenger cars would likely warrant differences in possible test procedures and/or performance requirements. NHTSA requests that comments specifically consider whether particular requirements are appropriate for LTV's, and whether different requirements may be needed for different types of LTV's.

Thorax and Pelvis Protection

As indicated by the Protection Regulatory Impact Analysis (PRIA), each year there may be 1,350 serious injuries (AIS 3 or greater) to LTV occupants resulting from contact between the side interior of the vehicle and the abdomen, chest, pelvis and upper extremities. Approximately 190 of these serious injuries result in fatalities. As discussed in the January 1988 NPRM, NHTSA's research has shown for passenger cars that the use of structural modifications in combination with padding or the use of padding alone can

reduce the probability of these types of injuries. The agency believes that the same types of countermeasures may provide benefits for LTV occupants. The agency also believes that the January 1988 NPRM's approach of requiring a vehicle to protect its occupants in a full-scale side impact crash test, utilizing a moving deformable barrier and instrumented test dummies, may also be appropriate for LTV's. (For additional information, see the January 1988 NPRM, whose citation is provided above, the Preliminary Regulatory Impact Analysis prepared for that rulemaking (available in Docket 88-06, under Notice 1), and a related NPRM on the side impact test dummy (53 FR 2254, January 27, 1988)).

While NHTSA believes that it may be possible to apply these basic approaches to improving and testing side impact performance to both passenger cars and LTV's, the agency also believes that differences between those vehicle types and their crash experiences would likely warrant some differences in possible test procedures and/or performance requirements.

NHTSA noted in the January 1988 NPRM that in multiple vehicle crashes resulting in serious injuries and fatalities to passenger car occupants, trucks are about equally as likely as cars to be the striking vehicle. The agency therefore tentatively concluded that the moving deformable barrier in testing cars should in some respects be more like light trucks than cars.

In testing the side impact performance of LTV's, it appears to be even more important than the moving deformable barrier be representative of light trucks. Crash data indicate that in two vehicle side impact collisions, more LTV occupants are killed by other LTV's and medium/heavy trucks than by passenger cars. The agency also notes that a passenger car striking the side structure of a vehicle does not constitute as much of a threat to the occupants of LTV's as it does to occupants of passenger cars. This is because most LTV's are stronger and heavier than typical cars, and the door sill height matches better with the passenger car bumper. Also, since LTV seats are relatively high as compared with passenger car seats, LTV occupants are less likely to be struck directly.

NHTSA also notes that the differences between passenger cars and LTV's and their crash experiences must also be taken into account in evaluating the effectiveness of potential countermeasures.

In analyzing issues related to developing possible requirements for improved thorax and pelvis protection, NHTSA requests information and comments on the following questions:

1. What current crash data and crash analyses are available for injuries to the thorax and pelvis of LTV occupants in side impact crashes between vehicles?
2. What tests/studies have been done concerning the performance of current production LTV's in preventing injuries to the thorax and pelvis in side impacts?
3. What countermeasures are available to reduce injuries to the thorax and pelvis in side impacts? Please provide estimates of the costs and benefits associated with possible countermeasures. To what extend do the available countermeasures, costs, and benefits differ for different types of LTV's?
4. What types of performance criteria and test procedures should be considered by NHTSA in developing a possible proposal? Is the approach of the January 1988 passenger car NPRM appropriate for LTV's? If so, why? If not, why not? If the agency uses that approach, what characteristics should the moving deformable barrier have? What impact test speeds and angles should be considered?

Head Injuries

A large number of LTV side impact fatalities occur due to head/face impacts with vehicle interior components, such as the pillars and other structures supporting the roof. Moreover, non-fatal head/face injuries are a large source of occupant impairment due to vehicle crashes.

(The pillars at the front of the passenger compartment, on both sides of the windshield, are called A-pillars. Other structures supporting the roof include the headers, which are horizontal bars located above the windshield and read window, and side rails, which are horizontal bars located above the windows along the sides of the vehicle.)

Data from the National Accident Sampling Sysem (NASS) show that face and head injuries from contact with the pillars, headers, roof rails, and window frames represent 5.8 percent of all injuries, 5.4 percent of serious injuries (AIS 3 or greater), and 11 percent of fatalities.

NHTSA believes that various techniques, including the use of padding and reducing the stiffness of impacted surfaces, may be able to reduce the severity of, and in some cases prevent, many head injuries. In particular, the agency believes the following three techniques are of particular promise: (1) Padding the A pillars and roof rail components with hard rubber or high density foam materials, (2) eliminating sharp angle, thin edge design features in the component areas where head impacts are the most likely to occur, and (3) reducing the local stiffness of the component areas where head impacts are most likely to occur (although the overall structural integrity of the roof-pillar structures must, of course, be maintained).

NHTSA notes that many tests on the use of padding have been carried out for instrument panel studies. The tests have used three to four inch thick samples of various low density foam materials. However, the agency does not believe that the results of these studies are directly applicable to A-pillar and roof rail components. Due to space limitations, including the need to maintain good driver visibility, only a thin layer of padding could be placed in those areas.

Given the limited amount of padding that could be placed on the A-pillar, the agency believes that characteristics other than energy absorption capacity may be crucial in determining the performance of the padding material during an impact. In particular, NHTSA believes that the force penetration characteristics, i.e., how the padding distributes force, may be significant. For example, the padding may be able to reduce injury potential in a head impact by prolonging impact duration, enlarging the contact area, and mitigating localized load concentration. It appears that an ideal padding material would have a low resilient, elasto-plastic force-penetration property, i.e., a softening effect.

As discussed in the PRIA, NHTSA has conducted some tests of the effectiveness of bonding a molded pad onto the A-pillar of a car. The results of the tests indicate that this technique shows promise in reducing head injuries.

In addition to the conventional countermeasures cited above, the agency is aware of a number of possible innovative concepts to upgrade head impact protection. For example, it may be possible to extend the windshield over the roof header and/or A-pillar areas, or to eliminate the A-pillars and roof rails by use of a molded plastic and glass roof. Head impacts with the windshield have less injury potential than impacts with pillars and headers, since the windshield helps to cushion the impact.

NHTSA believes that there are a number of possible approaches in expressing performance requirements. Various devices could be used to measure the forces that would be experienced by the head during specified component tests or crash tests.

One possible performance requirment, for example, would place limits on head acceleration during specified component tests using a headform impactor. The headform impactor could be placed in the vehicle in a manner which permits the impactor to coast freely into, and to rebound from, the vehicle component being tested. However, there are also many other possible approaches.

NHTSA notes that the potential safety benefits of the countermeasures discussed above go beyond side impact crashes, since head/face impacts with vehicle interior components such as pillars and side roof rails occur in other types of crashes. The agency also notes that Standard No. 201, *Occupant Protection in Interior Impact*, currently covers only five vehicle interior components; front instrument panels, seat backs, compartment doors, sun visors and armrests.

To aid in analyzing issues related to developing possible requirements for improved head protection, NHTSA requests information or comments on the following questions:

5. What current crash data and crash analyses are available for head impacts with the vehicle interior? In responding to this question, please separately address, to the extent possible, side impacts and other types of crashes.

6. What tests/studies have been done concerning head impacts with the A-pillar/roof rail components of current production vehicles? What are the baseline performance levels of those vehicles for head impacts with the vehicle interior?

7. Please provide estimates for cost and leadtime of padding A-pillars and/or roof rails, and estimates of potential safety benefits.

8. What types of performance criteria and test procedures (including vehicle component tests and crash tests) should be considered by NHTSA in developing a possible proposal? Is a measure of maximum headform acceleration response appropriate? Should a head injury criterion (HIC) along the lines of that used in Standard No. 208 be specified? If so, why? If not, why not?

9. Please provide information concerning padding materials and possible new design concepts for pillar/roof rail structures. What tests/studies have been conducted on padding for those structures? How do force intensity distribution pattern and peak force during impacts differ for alternative padding materials? How are these differences relevant to the effectiveness of the padding in reducing injury, particularly head injury?

10. Please provide information concerning new roof/windshield/window design concepts incorporating structural glass or other techniques to reduce head impact severity.

11. Please provide information concerning A-pillar design specifications and the angles of the driver's forward vision obscured by A-pillars. Would adding padding to A-pillars enlarge the angle of obscured vision and thereby adversely affect the driver's fields of view? How could any such problems be overcome?

12. Should NHTSA consider rulemaking to address all head interior impacts not addressed by present standards or only those head interior impacts associated with side impact crashes?

13. What would be the effect of increased safety belt use, in terms of head injury severity reduction?

Ejections

A large number of LTV occupant fatalities and serious injuries involve the partial or complete ejection of occupants through the doors or side windows. While some of these ejection occur in side impact crashes, a much larger number occur in crashes other than side impacts. Data from the Fatal Accident Reporting System (FARS) for 1982–85 show that that more than 40 percent of all LTV fatalities involved ejection (35.5 percent involved total ejection and 6.4 percent involved partial ejection). Data from the National Accident Sampling Study (NASS) show that for LTV occupant fatalities involving ejection, 46 percent were ejected through the doors and 15 percent were ejected through the side windows. Several studies have shown that the ejection of a vehicle occupant in a crash increases the probability of a fatality or serious injury by several times. The agency notes that crash data indicate that LTV occupants are considerably more likely to be ejected from a vehicle in a crash than passenger car occupants.

NHTSA believes that it may be possible to develop effective requirements to reduce the risk of ejections. Occupant ejections through the door opening can be prevented if the door remains closed in the latched position during a crash sequence. Standard No. 206, *Door Locks and Door Retention Components*, requires that door locks/striker assemblies and hinges not separate during specified tests, and that door latches not disengage from the fully latched position during specified tests. However, many occupant ejections occur through the side door opening despite those requirements. NHTSA is concerned that the quasi-static tests specified by Standard No. 206 may not adequately represent the twisting and bending forces at work during a severe side impact.

NHTSA believes that stronger side door latches may reduce the risk of ejections. In considering developing performance requirements, the agency believes that a number of approaches are possible. One approach would be to add additional strength and/or deformation requirements to Standard No. 206. For example, a combined axial/moment loading test might be added to address latch failure caused by the door being subjected to torsion. Another approach would be to develop a dynamic test for the entire door assembly. Such a test procedure could be quite different from that proposed in the January 1988 passenger car NPRM, which would only require that doors not open during a side impact crash test.

To aid in analyzing issues related to developing possible upgraded requirements to reduce the risk of ejections through side doors, NHTSA requests information or comments on the following questions:

14. What current crash data and crash analyses are available regarding side door ejections?

15. What tests/studies have been done concerning side door ejections and associated door latch/lock failure mechanisms?

16. How do different vehicle body styles and door mechanism designs affect the risk of ejection?

17. What testing/measuring techniques are there for evaluating door latch performance in relation to the potential for reducing side door ejection?

18. Please provide information concerning alternative approaches for reducing the risk of side door ejections.

19. Please provide estimates for the cost and leadtime of improved side door latches, and estimates of potential safety benefits.

20. What types of performance criteria and test procedures should be considered by NHTSA in developing a possible proposal?

21. What would be the effect of increased safety belt use, in terms of side door ejection reduction?

As indicated above, a significant number of fatal ejections from LTV's are through the side window opening. The tempered glass in side door windows breaks easily and offers essentially no resistance to ejection.

NHTSA believes that new side window designs, incorporating different glazing/frames, may be able to reduce the risk of ejections. The agency notes that vehicle windshields typically

incorporate a middle plastic layer which is sufficiently strong to prevent many ejections. NHTSA believes that variations on this approach could be used for side windows. One possibility would be to affix an extra sheet of plastic to the interior surface of the existing glazing. In addition to adding the plastic layer, it would be necessary to anchor the plastic in order to prevent complete separation of the glazing assembly after the glass is broken. One problem of particular concern is how to anchor the plastic in a manner that permits the window to be opened. For essentially rectangular windows, it may be possible to use glazing whose front and rear edges have a T-shape when viewed in cross section. The head or top of the T would interlock with a T-shaped track in the outer window frame and still allow vertical window movement. NHTSA recognizes, however, that there are difficulties associated with anchoring many current side windows, given their shapes, and is particularly interested in comments on the design changes needed to anchor the glazing in a manner that permits the windows to be opened. The agency notes that, in addition to preventing ejection, glass-plastic glazing could also be absorb impact energy.

NHTSA believes that there are a number of possible approaches to testing performance. For example, one approach would be to use a 40 pound glazing test device (representing the combined head/thorax mass that would impact the glazing), requiring that the device not penetrate the plastic layer of a side window at 20 mph (an estimate of the typical contact speed when an occupant's head contacts the glazing), while permitting a bulge within specified limits. Requirements might also be developed to test side window retention capability.

To aid in analyzing issues related to developing possible requirements to reduce the risk of ejections through side windows, NHTSA requests information or comments on the following questions:

22. What current crash data and crash analyses are available for side window ejections, including partial occupant ejections?

23. What tests/studies have been done concerning side glazing performance in preventing ejections? Please address this question for windows in both the fully and partially closed positions.

24. What testing/measuring techniques are there for evaluating side glazing system performance in preventing ejections?

25. What problems are there in bonding a layer of plastic to glass and attaching it to the frame, while permitting the side windows to be moveable? How can these problems be solved?

26. What would be the effectiveness of the approach discussed above and alternative approaches in retaining occupants during crashes, including consideration of HIC values and laceration potential? What thickness of glass and plastic would be optimum, particularly with regard to HIC mitigation?

27. Please provide information concerning fabricating, manufacturing, installing, using and repairing T-edge and similar glazing mechanisms, including methods of treating edges to ensure compatibility with other aspects of automotive design, the stability of the plastic as a function of time and temperature, the care and maintenance of glass-plastic side windows, and other issues which may be relevant.

28. Please provide estimates for costs, weight, and leadtime. Please also provide estimates for the cost of repair and replacement.

29. What types of performace criteria and test procedures should be considered by NHTSA in developing a possible proposal? Should in-vehicle tests be specified (as opposed to testing glazing samples) in evaluating the likelihood of occupant ejection? Would an approach along the lines of specifying that a 40 pound glazing test device not penetrate the plastic layer at 20 mph, while permitting a bulge of between 10 and 20 inches, be appropriate?

30. What other innovative concepts are there which could be used to modify, improve, or replace the concept discussed above?

31. What would be the effect of increased safety belt use, in terms of side window ejection reduction?

Extension of Standard No. 214's Existing Requirements

As indicated above, Standard No. 214 currently applies only to passenger cars. The standard specifies performance requirements for each side door in a passenger car to mitigate occupant injuries in side impacts. The standard seeks to do this by reducing the extent to which the side structure of a car is pushed into the passenger compartment during a side impact. The standard requires each door to resist crush forces that are applied by a piston pressing a steel cylinder inward against the door's outside surface in a laboratory test. The standard does not attempt to regulate directly the level of crash forces experienced by an occupant when striking the car interior in such an impact. Since the standard became effective on January 1, 1973, vehicles manufacturers have generally chosen to meet the performance requirements of the standard by reinforcing the side doors with metal beams.

The agency's analysis of real-world crash data has shown that the strengthening of the doors with the beams is indeed effective, but primarily in single car side impacts. See NHTSA's November 1982 study "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard 214."

NHTSA requests comment on the following question:

32. Are side beams an appropriate countermeasure to reduce side impact injuries in LTV's? Should NHTSA consider extending Standard No. 214's existing test requirements to LTV's? Please estimate the costs and benefits associated with such an approach.

Side Impacts with Poles, Trees and Other Similar Fixed Objects

NHTSA is also considering whether separate requirements should be developed to address side impacts with fixed objects like poles and trees. Many fatalities and injuries occur in these types of side impacts. NHTSA requests comments on the following questions:

33. What current crash data and analysis are available regarding side impacts with poles/trees?

34. What tests/studies have been concerning side impacts with poles/trees and injuries to the thorax, pelvis, and/or head, and occupant ejections?

35. What information is available to determine how high the underside of an LTV should be or to determine how high significant remains of a breakaway device's stub should be to prevent snagging and resulting sudden velocity changes to an impacting LTV?

36. What vehicle countermeasures are currently available to address side impacts with poles/trees? Please provide estimates of the costs, benefits and leadtime for such countermeasures.

37. Please provide information concerning alternative approaches and innovative concepts for protecting occupants in side impacts with poles/trees.

38. To what extent is occupant compartment intrusion a major injury producing mechanism in side impacts with poles, trees and other fixed roadside objects? What countermeasures are available or are conceivable to mitigate, or prevent, such intrusions?

39. What factors should be considered by NHTSA in deciding whether to

develop possible requirements to address side impacts with poles/trees? What types of performance criteria and test procedures should be considered? Is the test proposed in the January 1988 NPRM for passenger cars, using a moving deformable barrier, an effective test for providing occupant protection against poles, trees and other fixed objects?

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with requirements addressing the areas discussed above: injuries to the thorax and pelvis, head injuries, ejection through side doors, ejection through windows, and side impacts with poles and trees. This advance notice of proposed rulemaking is not subject to Executive Order 12291, since that only applies to notices of proposed rulemaking and final rules. However, NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The advance notice concerns a matter in which there is substantial public interest. The agency has prepared a PRIA which addresses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. (The PRIA also covers a separate advance notice of proposed rulemaking being published elsewhere in this issue of the **Federal Register** that addresses side impact protection for passenger cars.) The analysis is available in the docket.

It is difficult to develop quantified estimates of the burdens associated with the potential actions on which this notice seeks public comment, because the precise requirements have not been developed. Additionally, changes may be made to any of these courses of action in response to comments received on this notice. Therefore, the cost figures cited below are very preliminary.

The PRIA estimates the costs of countermeasures to provide improved thorax and pelvis protection as follows: front door padding, 0 to $20; changed structure, 0 to $75; padding and changed structure, 0 to $95; and increased door thickness, 0 to $5. In the area of improving head protection, the PRIA estimates the cost of padding all pillars, the front and rear headers, and the side roof rails at about $20 to $25 for an LTV. With respect to reducing occupant ejection through the side windows, the cost of using laminated glass instead of tempered glass for the side windows is estimated to be about $10 for an LTV. The agency does not have sufficient information to estimate the costs associated with anchoring the glazing to the window frame. In the area of reducing occupant ejection through the doors, the cost of improved door latches is estimated to be about $1.00 per door. With respect to extending the existing requirements of Standard No. 214 to LTV's, the cost of reinforcing the side doors with metal beams is estimated to be approximately $16 per door. The estimates included in this paragraph do not take into account the cost of any secondary weight or fuel cost penalties. The agency has not sufficiently developed countermeasures for side impacts with poles and trees to estimate potential costs.

NHTSA does not have sufficient information at this time to quantify the benefits associated with the courses of action addressed in this notice. However, the agency believes that there may be a potential for substantial benefits in terms of reduced fatalities and serious injuries.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued Date: August 16, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-18794 Filed 8-16-88; 11:15 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. 290 (Sub-No. 6)]

Amendments to Rail Carrier Cost Recovery Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is instituting this proceeding to consider whether 49 CFR Part 1312 should be revised to change our regulations governing the form and volume of supplemental matter to rail carrier cost recovery tariffs filed pursuant to Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* Present regulations provide that such tariffs be published with expiration dates and they may be maintained without regard to the amount of

supplemental matter in effect. Informal criticisms have been received by the Commission which indicate that the tariffs have become extremely cumbersome to follow and to apply. In view of these criticisms, the Commission is concerned that the tariffs are not being published in a manner which is consistent with the public interest. Comments dealing with problems encountered by users of the rail carrier cost recovery tariffs are solicited as well as suggestions for rule changes.

DATE: Comments must be submitted by October 18, 1988.

ADDRESS: Send an original and 10 copies of any comments, referring to Ex Parte No. 290 (Sub-No. 6) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275–7358 or Charles E. Langyher (202) 275–7739. TDD for hearing impaired (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Secretary's Office, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428, (assistance for the hearing impaired is available through TDD services (202) 275–1721).

List of Subjects in 49 CFR Part 1312

Railroads.

This action will not significantly affect the quality of the human environment or energy conservation and it will not have a significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321 and 10762, 5 U.S.C. 553)

Decided: August 12, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–18810 Filed 8–18–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Petitions To List Mono Lake Brine Shrimp and Edgewood Blind Harvestman

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on petitions.

SUMMARY: The U.S. Fish and Wildlife Service announces two 90-day petition findings for petitions to amend the List of Endangered and Threatened Wildlife and Plants. Petitioners have presented substantial information that petitions to list the Mono Lake brine shrimp and the Edgewood blind harvestman may be warranted. Formal review of the status of the Edgewood blind harvestman is initiated herewith.

DATES: The findings announced in this notice were made in October 1987 and March 1988. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding either of these two petitions may be submitted to the Field Supervisor, Endangered Species, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich, Field Supervisor, at the above address (telephone 916/978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION: .

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 *et seq.),* requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service has received and made 90-day findings on the following two petitions:

A petition from Dr. Dennis Murphy was dated June 23, 1987, and received by the Service on June 19, 1987. The petition requested the Service to list the Mono Lake brine shrimp, *Artemia monica,* as an endangered species. Status review for the Mono Lake brine shrimp was initiated by a notice of review published May 22, 1984 (49 FR 21664).

The petition stated that the Mono Lake brine shrimp is restricted in distribution to Mono Lake in Mono County, California. The petition and accompanying documentation indicated that the survival of the species is threatened by increased salinity due to the lowering of the lake surface level. After a review of the petition, accompanying documentation and references cited therein, the Service found that the petition presented substantial information that the action may be warranted. Within one year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

A partial petition from Thomas S. Briggs of California Academy of Sciences was received by the Service October 16, 1987, and completed with additional information on December 21, 1987. The petition requested the Service to list the Edgewood blind harvestman, *Sitalcina minor,* as a threatened or endangered species.

The petition stated that the Edgewood blind harvestman is restricted in distribution to two known populations. One is in Edgewood County Park and the other has probably been eliminated. The petition and accompanying documentation stated that the survival of the species is threatened at Edgewood County Park by habitat modification that will result if a proposed large golf course that is being planned is developed. The other population was probably eliminated due to the construction of an eight-lane freeway near the place where it was last seen in 1966.

After a review of the petition, accompanying documentation, and references cited therein, the Service found that the petition presented substantial information that the action requested may be warranted. Status review of the species is required to determine whether listing the Edgewood blind harvestman is actually warranted. A formal status review of the Edgewood blind harvestman is initiated herewith. Within one year from the date the completed petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

The Service would appreciate any additional data, comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of the Edgewood blind harvestman, *Sitalcina minor.*

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Author

This notice was prepared by Ms. Robyn Thorson and Dr. Andrew F. Robinson, Jr., U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6150 or FTS 429-6150).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-18882 Filed 8-18-88; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Technical Amendments to the Sea Otter Translocation Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service is proposing to amend the Translocation Regulations for southern sea otters, a threatened species of marine mammal, which were published in the **Federal Register** on August 11, 1987. Regulations were promulgated for the translocation of southern sea otters to San Nicolas Island pursuant to Pub. L. 99-625.

The proposed changes, which would address certain technical problems identified during the first year of the translocation project, concern the age and number of animals released at any one time, the number of animals with radio transmitters to be captured, the season for capture, and the retainment of animals is temporary holding pens. The changes are expected to promote survival and reduce dispersal of the translocated otters.

DATE: Comments must be received on or before September 29, 1988.

ADDRESS: Comments may be mailed to the Ventura Endangered Species Recovery Office, 2140 Eastman Avenue, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Joseph J. Dowhan, at the above address (805-644-1766, FTS 983-8039).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Public Law 99-625, the regulations found at 50 CFR 17.84 (d) provide for a three-state plan for the translocation of southern sea otters (*Enhydra lutris nereis*) from a parent population on the central California coast to a Translocation Zone around San Nicolas Island, California. The process described in the regulations includes techniques for capture, transport, holding, and release. During the first year of translocation, under the existing regulations, it has become apparent that these techniques can be improved to enhance survival and reduce dispersal of the translocated otters, and that improved techniques can be expected to have a lesser impact on the parent population.

The Service is limiting the public comment period for this proposal to 10 days because of special reasons that require prompt decisionmaking in this case. The most favorable weather for capture and translocation of otters generally occurs during late summer and early autumn. It is the Service's attention to make a final decision on this proposal as early as possible so that the most favorable weather conditions can be available to maximize the chances for a successful translocation in 1988. Simultaneously with publication of this proposal rule, actual notice of the proposed amendments has been furnished to individuals and organizations that participated on the Service's Interagency Project Review Team for the initial southern sea otter translocation proposal. (A list of these individuals and organizations is provided in the Final Environmental Impact Statement, Translocation of Southern Sea Otters (May 1987), at pages VII-12 to VII-14.) By providing for actual notice to the key parties described above, the Service believes that the public will have a meaningful opportunity to comment on these proposed technical amendments within the period provided.

According to the existing regulations, the U.S. Fish and Wildlife Service may translocate up to 70 otters a year, totaling no more than 250 otters in a 5-year period. Of the animals translocated each year up to 20 are to be adults; the remainder will be weaned, immature otters. The capture is restricted to the period between August and mid-October, during which time the weather is mostly passive.

After capture, the animals are to be inspected by veterinarians and tagged for identification. Each year up to thirty otters are to be captured prior to translocation and surgically implanted with radio transmitters. They are then released back into the parent population. Of the thirty previously radioed otters up to fifteen are to be among those recaptured and translocated to San Nicolas Island.

All animals to be translocated are transported from their place of capture to be held and observed in specially constructed holding facilities. A minimum of 20 otters must be translocated at each time; therefore the otters are held in captivity until at least 20 have been captured. After each otter is determined to be fit-to-travel, the group will be transported by truck, then flown by airplane to San Nicolas Island.

Once at the island, the otters are to be transferred to a stationary floating pen, where they are held for up to 5 days. Male and female otters are to be held separately, and no more than ten otters are to be held in any pen. After allowing time for the otters to acclimatize to their new surroundings, the nets are to be removed from the pens and the animals allowed to leave at will.

The translocated otters are monitored to determine their growth rate, behavior, impact on the marine environment, and dispersal tendencies. Otters from either population are restricted to their current range on the mainland coast north of Point Conception or to the Translocation Zone around San Nicolas Island. Any otter found in the "no otter" Management Zone is captured using non-lethal means and transported back to the Translocation Zone or the current mainland range.

Problems arose with the translocation during the first year of the project. The difficulties occurred primarily because otters became wary and increasingly difficult to capture after exposure to capture activities in their home territories. This affected the ability of the U.S. Fish and Wildlife Service to select specific individuals for translocation. It also affected the time needed to obtain the correct number and composition of otters. As a result the age ratio of translocated otters was very difficult to predetermine, as was the recapture of otters with radio transmitters. In addition, the stress imposed upon the animals while awaiting translocation in holding pens on the mainland resulted in several mortalities.

Another problem arose when the otters were held in floating pens at the translocation site. Instead of calming the

animals and allowing them time to adjust to the new environment, the additional holding period increased stress and unduly agitated the otters. As a result, three otters died.

The following proposed amendments to the regulations are designed to improve otter survival by minimizing stress, thereby enhancing the establishment of the population at San Nicolas Island. The changes would: (1) Provide more flexibility in selecting the ages of otters for translocation, (2) eliminate the restriction to capture otters only within the August to mid-October time-frame, (3) eliminate the requirement to surgically implant up to thirty otters with radio transmitters, (4) provide flexibility to either immediately transport otters or hold them on the mainland before release at San Nicolas Island, and (5) eliminate the restriction to translocate a minimum of 20 otters at a time.

The U.S. Fish and Wildlife Service intends that any final action resulting from this proposal be as accurate and effective as possible. Therefore, the Service is asking for comments from other government agencies, individuals, the fishing community, conservation organizations, and any other interested parties concerning any aspect of this proposal.

Final action on this proposal will take into consideration these comments and any additional information received by the Service, and may lead to a final regulation that differs from this proposal.

Executive Order 12291, Paperwork Reduction Act and Regulatory Flexibility Act

The Service has determined that this is a not a major rule as defined by Executive Order 12291, that the rule will not have a signficant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and that the rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These conclusions were reached after an analysis that is documented in a Determination of Effects of Rules, which is on file and available for public review at the address listed under **ADDRESSES**, above.

The effects of the amendments would not be significantly greater than those of the rule now in effect. Because the establishment of the otter population at San Nicolas is not proceeding as rapidly as had been originally expected, effects to commercial and sport fishing will occur later than had been projected, and projected increases in commercial kelp harvest will also be delayed.

National Environmental Policy Act

A draft Environmental Assessment pertaining to this proposal has been prepared and is available for inspection at: Ventura Endangered Species Recovery Office, (see **ADDRESSES** above). A determination will be made at the time of the final rule as to whether or not this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969.

Author

The principal author of this proposed rule is Teresa Nichols, Ventura Endangered Species Recovery Office (see **ADDRESSES** above).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

§ 17.84 [Amended]

2. It is proposed to amend § 17.84(d)(2) by removing the last three sentences and adding the following in place thereof:

* * * * *

(d) * * *

(2) * * * The majority of animals translocated each year will be weaned, immature otters with a sex ratio of about 4 to 1, females to males. Of the adult otters selected for translocation, approximately 3 out of every 4 animals will be female.

* * * * *

3. It is proposed to revise the second sentence of § 17.84(d)(3)(i) to read as follows:

* * * * *

(d)* * *

(3) * * * Sea otters will be captured using diver-held devices, dip nets, surface entangling nets or other methods which may be proven to be safe and effective in the future.

* * * * *

4. It is proposed to further amend § 17.84(d)(3)(i) by removing the last two sentences.

5. It is proposed to revise the first sentence of § 17.84(d)(3)(ii) to read as follows:

* * * * *

(d) * * *

(ii) All animals to be translocated will be transported direcly to the translocation zone or held in specially constructed holding facilities prior to their movement to the translocation zone. * * *

* * * * *

6. It is further proposed to amend § 17.84(d)(3)(ii) by removing the last sentence.

7. It is proposed to revise § 17.84(d)(3)(iii) to read as follows:

* * * * *

(d) * * *

(3) * * *

(iii) *Release.* The animals will be released directly into the wild from their transport cages, or held for up to 5 days in secured floating pens at the release site. No more than 10 individuals will be held in any pen, and adult males will be held separately. When held in floating pens the animals will be released passively by opening the floating pens and allowing animals to leave at will.

Dated: August 11, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–18668 Filed 8–18–88; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Findings on Petitions to List the Louisiana Black Bear, Lower Keys Marsh Rabbit, and Sherman's Fox Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on petition.

SUMMARY: The Service announces two 90-day petition findings and two 12-month petition findings for petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. Petitioners have presented substantial information that petitions to list the Louisiana black bear and Sherman's fox squirrel may be warranted. One-year findings are announced on the petitions to list the Louisiana black bear and the lower Keys marsh rabbit. The Service has determined that the actions requested are warranted but precluded by other actions to amend the lists.

DATES: The findings announced in this notice were made during the period from June 1987 to May 1988. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the Louisiana black bear petition may be submitted to the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213 (telephone 601/965–4900, FTS 490–4900). Information, comments, or questions regarding the lower Keys marsh rabbit or Sherman's fox squirrel petitions may be submitted to the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (telephone 904/791–2580, FTS 96–2580). The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James Stewart at the Jackson, Mississippi, Field Office or Mr. David Wesley at the Jacksonville, Florida, Field Office (telephone numbers are listed above under "**ADDRESSES**").

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. All species mentioned here were already under review by the Service when petitioned, and all were listed in a notice of review published September 18, 1985 (50 FR 37958), in category 2 as under consideration for possible addition to the List of Endangered and Threatened Wildlife and Plants.

Section 4(b)(3)(B) of the Act, as amended, requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e. requiring a subsequent finding to be made within 12 months. Such 2-month findings are to be published promptly in the **Federal Register**.

The Service has received and made 90-day findings on the following two petitions:

A petition from Mr. Reed F. Noss was dated November 21, 1987, and received by the Service on November 27, 1987. It requested the Service to list Sherman's fox squirrel, *Sciurus niger shermani*, as a threatened species with critical habitat. Status review for Sherman's fox squirrel was initiated by a notice of review published December 30, 1982 (47 FR 58454). The petition cited a listing in category 2 of the most recent vertebrate notice of review, some status work conducted by the petitioner, and some additional data in the possession of Florida Natural Areas Inventory in support of the action requested.

The petition to list Sherman's fox squirrel was examined by the Service. On the basis of the best scientific and commercial information presently available, the Service determined that this petition presented substantial information indicating that the action requested may be warranted.

A petition dated March 6, 1987, from Mr. Harold Schoeffler was received by the Service on March 23, 1987. It requested the Service to list *Ursus americanus luteolus*, the Louisiana black bear. The Service had previously initiated review of the status of the Louisiana black bear in a notice published December 30, 1982 (47 FR 58454). The petition gave a summary of evidence that this subspecies is still extant in two restricted areas in the Tensas River Basin and in the lower Atchafalaya Basin of Louisiana. This range was described as a contraction from an area once covering most of Louisiana and extending into eastern Texas and western Mississippi. A number of threats were indicated to exist, including the threat of interbreeding with black bear stocks introduced within the historic range from Minnesota between 1964 and 1967.

In July 1987 the Service determined that the action requested by this petitioner may be warranted. Notice of the administrative 90-day finding has not previously been published. A 12-month finding has subsequently been made, that the action requested in respect to the Louisiana black bear is warranted but is precluded by work on other species having higher priority for listing. Both findings are reported herewith. The Service wishes to develop further information about the existence and exact status of the subspecies in order to support a rule to propose it for addition to the list of Endangered and Threatened Wildlife and Plants. There is sufficient evidence to justify active continuation of surveys to answer the necessary questions about its status. The Tensas River National Wildlife Refuge has agreed to conduct a survey in the Tensas River basin; and the Louisiana Cooperative Fish and Wildlife Research Unit at Baton Rouge will assist the Service by surveying the remainder of the known current range in the Atchafalaya River basin. Dates for completion of the surveys have not yet been established.

A recent 12-month petition finding has been made on a petition from Ms. Joel L. Beardsley, Mariposa, Florida. Dated April 11, 1985; and received by the Service on April 27, 1985; this petition requested endangered listing for the lower (Florida) Keys marsh rabbit (*Sylvilagus palustris hefneri*). This rabbit is known to occur only in a few locations in the lower (or western) Florida Keys and was stated to have become very scarce in recent years. The petitioner indicated that the limited area it inhabits is jeopardized by development. A 90-day determination that the action requested may be warranted was reported in the **Federal Register** of August 30, 1985 (50 FR 35272), with a notice of review of the status of the marsh rabbit. Previous 12-month findings that the action was considered warranted but precluded by other listing activity were made in 1986 and 1987. The most recent finding is again that the action requested is warranted, but precluded by work on other species having higher priority for listing. The priority in respect to this species has increased, however, with the recent completion of a survey to determine its status.

Section 4(b)(3)(B)(iii) of the Act states that petitioner actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the **Federal Register**. The most recent progress report was published on July 7, 1988 (53 FR 25511).

Author

This notice was prepared by Dr. George Drewry, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC. 20240 (703/235–1975 or FTS 235–1975).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–18832 Filed 8–18–88; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 80732–8132]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to establish the basic living accommodations acceptable for observers employed by the Federal Government on U.S. tuna vessels and further to establish the minimum adjustments in living arrangements that will be required to accommodate a female observer on a vessel with an all-male crew. NOAA has determined it is necessary to implement minimal standards to address problems that have arisen in the past with the placement of observers and to avoid problems that may arise with the placement of female observers on tuna boats with all-male crews.

DATE: Comments on this proposed rule must be postmarked on or before October 3, 1988.

ADDRESS: Comments should be addressed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Regional Director, 213–514–6196.

SUPPLEMENTARY INFORMATION:

Background

Federal employees commonly called "tuna/porpoise observers" serve as biological technicians aboard privately-owned U.S. flag tuna purse seine vessels in the eastern Pacific Ocean which hold certificates of inclusion under the tuna porpoise regulatory program. Fishing trips for these vessels usually range between 500 and 3000 miles from San Diego and last from 45 to 120 days at sea with few or no port stops. These observers are college graduates with majors in biology and an emphasis in marine science or fisheries. They are trained to record data on porpoise safety gear, marine mammals observed in the wild, fishing operations involving porpoise, and the dissection of porpoise that are killed incidentally during fishing.

Since 1976 more than 400 persons have been hired as observers, trained, and placed on more than 950 purse seine fishing trips. In August 1986, NOAA decided not to continue seeking waivers from the Office of Personnel Management which allowed the hiring of only males for positions as observers. This decision was prompted by a complaint alleging sex discrimination by the NMFS Tuna/Porpoise program for not hiring females and a recommendation from NOAA's Office of Civil Rights to hire and place female observers. From the beginning of the tuna/porpoise observer program in the mid-1970s, only men had been hired and placed as observers. The basis for this limited hiring policy stemmed from the nature of the observer's living and work environment, including the fact that all vessels had all-male crews. These conditions persist; but, NOAA believes that, with reasonable adjustments by tuna vessels, women can be placed as observers without violating the personal privacy of either the crew members or the observer.

Objections Raised by the Tuna Fishermen and NMFS Responses

NMFS attempted to place qualified and trained female observers aboard tuna vessels in January 1987. Two women successfully completed trips collecting the data necessary for the porpoise program. After these two placements, preliminary injunctions, issued by the United States District Court in San Diego, enjoined NMFS from placing other female observers. During the placement meetings, in letters, over the telephone, and in the lawsuits filed in court, vessel owners, captains, and crew members raised the following objections to carrying female observers to sea.

1. *Objection:* Due to the shared sleeping and toilet accommodations on board the fishing vessels, the presence of a woman would be an unreasonable invasion of the all-male crew's privacy.

Response: NMFS asserts that the experience to date supports its view that, with reasonable accommodation, a female observer would not invade the personal privacy of crew members, but would, in fact, integrate into the tunaboat routine. This experience consists of two tuna vessel trips which carried NMFS female observers, as well as many observer trips aboard foreign flag fishing vessels conducting operations within the U.S. Exclusive Economic Zone.

2. *Objection:* The protection and indemnity (P&I) insurance would not cover the additional risk of having a woman on the fishing trip.

Response: NMFS already reimburses vessel owners for any additional insurance premiums necessary for P&I insurance covering the observers. Any risks not covered by P&I insurance, such as intentional torts, cannot properly be used as a basis to discriminate against female observers.

3. *Objection:* The presence of a woman on a long fishing trip would be disruptive to the discipline of the crew and would cause friction between crew members.

Response: Experience to date shows that female observers are not disruptive. Furthermore, potentially negative attitudes on the part of male crewmen, male captains, and male owners cannot properly be used as a basis for discrimination.

4. *Objection:* The presence of a women on the vessel would disrupt the social order of the fishermen's families at home.

Response: This assertion is speculative and, if accepted as a concept to justify discrimination, might bar women and individuals of other groups from many jobs they hold throughout society.

5. *Objection:* Ship's officers would be required to relinquish the room they earned as a privilege of their office to a female observer and this degrading of the officers would adversely affect discipline on the vessel.

Response: The vessel owner or the captain has the option to assign an officer's cabin to the observer and berth

the officer elsewhere, but this is not required by the Government and is only one of the options open to the owner. Sharing a one- or divided two-person cabin would be acceptable as would the modification of another area of the vessel to provide sleeping accommodations for the observer. The assertion that displacing an officer from his normally assigned cabin would jeopardize discipline on the vessel has not been substantiated by the experience of the one vessel on which a female observer was given the navigator's cabin for the duration of the trip.

6. *Objection:* The presence of a female observer would alter the crews' practice of showering and changing clothes on the deck after the day's fishing or would invade the crew members' privacy if they continue this practice.

Response: Observers in the past have uniformly stated that crew members have always been either fully or partially clothed while on deck and that they never saw crew members taking showers on the open deck. If this practice does occur on some vessels, it is clearly not a common practice and could be modified.

7. *Objection:* The presence of a female observer cannot help but unduly interfere with commercial fishing operations.

Response: The mere presence of a woman aboard the vessel on an extended trip with an all-male crew has been addressed in response to Objection 3. Regarding the research and observation duties of a female observer, the conduct of these duties will not differ from that of a male observer. All observers are required by regulation (50 CFR 216.24(f)(2)) to carry out their duties in such a manner as to minimize interference with commercial fishing operations. The two vessels that have carried female observers to date did not report any interference with their operations.

Description of the Vessels in the Fleet, Including General Information on the Living Accommodations

There are currently 36 active U.S. flag tuna seiners that hold certificates of inclusion under the American Tunaboat Association General Permit, issued under the Marine Mammal Protection Act, that allow fishing for tuna associated with porpoise in the eastern Pacific Ocean. According to the Federal marine mammal regulations at 50 CFR 216.24(f), all vessels that hold certificates of inclusion are required to accept observers when assigned by the Southwest Regional Director, NMFS.

The vessels vary in size, age, and in configuration of the living accommodations. The smallest certificated vessel has a carrying capacity of about 500 tons and the largest vessels have capacities of between 1200 and 1400 tons. Crew size also varies, ranging from 15 to 23 officers and crew.

Crew bunks are commonly arranged in four-person cabins, although some vessels have two-, six- or eight-person cabins. Typically, each bunk is equipped with a reading light and curtains, which can be pulled for privacy. Crew members sleep and dress in the cabin to which they are assigned. Shower and toilet facilities may be available to each crew cabin or may be shared by two or more cabins, depending on the vessel layout.

The captain has his own cabin, which usually includes a private front room, bedroom, and bathroom with a shower and toilet. Navigators and chief engineers usually also have a one person sleeping room with separate shower and toilet facilities, though the shower and toilet facilities may be shared with other cabins. Some vessels have several semi-private cabins, many of which are equipped with private showers and toilets.

Living Arrangements Afforded Observers in the Past

Most of the vessels provide standard crew accommodations for the assigned observer. That accommodation is a bunk in a two-, four-, six-, or eight-bunk cabin. A few vessels have not provided regular crew accommodations, but have assigned the observer to sleep on the floor of a shared one bunk cabin or in the ship's card room on a padded bed or "futon" that folds up into a chair during the day. Among the more than 950 trips made by observers, a few observers have slept on a futon on the floor of a multiple bunk cabin, but this arrangement provides the observer with no privacy and crowds the crew's cabin. At least one male observer has had private use of an owner's stateroom with a living room, bedroom and private bathroom.

Two female observers made trips aboard tuna vessels early in 1987. Both observers were successful in completing all their data collection duties and neither reported any difficulties with the ship's crew of officers. One of the women shared a cabin and adjacent toilet and shower with the navigator, sleeping on a futon on the floor, which was the same arrangement that had been made for male observers in the past on that vessel. The manager of the vessel carrying the other female observer chose to move the vessel's navigator out of his cabin, which included a private toilet and shower. That cabin was designated as private and for exclusive use of the observer for the duration of the voyage.

Proposed Requiremens for Living Accommodations for Government Observers Aboard U.S. Flag Tuna Vessels

In order to ensure that Government observers aboard U.S. flag tuna vessels are provided suitable living accommodations that will not hinder them in their performance of official duties nor unduly disrupt vessel operations, NMFS proposes to amend 50 CFR 216.24(f) to set minimum standards for such accommodations. The proposed amendment would require that all observers be provided sleeping, toilet and eating accommodations at least equivalent to a full crew member. A mattress or futon on the floor or a cot would not be acceptable replacement for a regular bunk. Meals and other galley privileges must be the same for the observer as for other crew members.

NMFS believes that it is not unreasonable to require standard crew member accommodations for observers because the program has been requiring that these vessels carry observers on a sample of their fishing trips since 1976. Further, the schedule for placing observers is announced well in advance of the actual trip and, under the current schedule, a vessel owner can predict that an observer will be placed on each alternate trip of his vessel. Finally, NMFS reimburses the vessel owner for the costs of providing the observer with living accommodations and food during the trip. For these reasons, the vessel owner is expected to plan for adequate space and provisions for the assigned observer.

For female observers, additional adjustments to toilet, shower, and sleeping accommodations would be required under the proposed regulation. Female observers on a vessel with an all-male crew must be provided a bunk either in a single-person cabin or in a two-person cabin shared with a licensed officer of the vessel if reasonable privacy can be ensured by installing a curtain or other temporary room divider. If the cabin assigned to the female observer does not have attached toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS and must be adhered to during the entire

trip. In the event there are one or more female crew members, the female observer may be provided a bunk in a cabin shared solely with female crew members, and provided toilet facilities shared solely with these female crew members.

The proposed amendment to the regulations also provides vessel owners with an all-male crew a procedure for seeking an exemption from carrying female observers, under explicit criteria. Under the proposal, the Southwest Regional Director of NMFS may grant an exemption from the requirement to carry female observers if the vessel owner demonstrated the following:

1. The vessel will have an all-male crew; and

2. The vessel has fewer than two private (single-person) and semi-private (two-person) cabins in total, excluding the captain's cabins; and

3. A curtain or other temporary room divider cannot be installed in any of the private or semi-private cabins (excluding the captain's cabin) to provide reasonable privacy; and

4. There are no other areas (excluding the captain's cabin) that can be converted to a sleeping room without either significant expense or significant sacrifice to the crew's quarters. A vessel with two or more private or semi-private cabins, in addition to the captain's cabin, cannot qualify for an exemption and must carry an assigned observer regardless of gender. The exemption criteria do provide that the vessel certificate of inclusion holder can qualify for the exemption without having to provide the captain's cabin for the observer.

Application for an exemption must be made by the vessel certificate of inclusion holder (or the owner in the case of a new applicant for a vessel certificate of inclusion) in writing to the Southwest Regional Director when applying for the vessel certificate of inclusion. An accurate diagram of the vessel's living area, and other areas possibly suitable for sleeping, is required to be provided. Additional documents, such as conversion cost estimates, and an inspection of the vessel may be required to substantiate that the vessel does meet the criteria for granting an exemption. An exemption, once granted, is valid for the calendar year which coincide with the period that the certificate of inclusion is valid. Exemptions must be renewed annually to remain valid. The vessel certificate of inclusion holder is responsible for reporting to the Regional Director any modifications to the vessel which may affect the continued eligibility for an exemption. Upon reasonable notice, NMFS may inspect a vessel holding an exemption to determine whether the critieria for an exemption are still satisfied. The Regional Director will revoke an exemption if the exemption criteria are no longer met.

Alternative Accommodation Requirements Considered But Not Proposed

Before arriving at the proposed requirements for accommodating observers. NMFS considered several other options which are discussed below.

1. Continue the current policy of requiring no special arrangements for female observers beyond those for males. This policy has left to the vessel owner and captain the full range of options for adapting their vessel and crew to the presence of male or female observers. The Government has suggested, but not required, some minor adjustments to shipboard life that would avoid conflict that might arise from having a female observer aboard a vessel with an all male crew. Two women were placed as observers under this policy. One was given a private cabin with toilet and shower facilities that was customarily assigned to the navigator. The navigator shared a cabin with another crew member. The other female observer slept on a futon in the navigator's cabin and shared the adjacent toilet and shower facilities with the navigator. Neither trip resulted in any problematic incidents and the observers successfully performed their data collection duties. NMFS is not proposing to establish this current policy in the regulations because it leaves too much uncertainly among vessel owners and operators regarding the agency's expectations for accommodating observers on the vessels. The current policy also does not provide a structured procedure or explicit criteria for obtaining an exemption from taking a female observer.

2. Require that the female observer must be provided a private cabin or a two-person cabin shared only by another woman. The question has been raised whether it is appropriate to require female observers to share sleeping accommodations with male crew members as a condition of employment and vice versa. This alternative rule would provide the observer and crew with the greatest privacy. Such a requirement would afford female observers equivalent living accommodations to male observers because neither would be expected to share sleeping or toilet/shower areas with the opposite sex. The privacy of crew members would likewise be preserved as much as possible. Under this approach, at least one officer of the vessel would be displaced from the cabin, which is customarily assigned to that office. All vessels in the fleet have separate cabins for the captain. It was not considered that the captain be required to surrender his cabin to an observer. Many vessels also have one- or two-person cabins for the navigator and chief engineer. Under this option, these cabins would be subject to being assigned to a female observer. A few vessels have a cabin reserved for the vessel owner and these cabins could be assigned to a female observer when the owner does not accompany the vessel. This policy would reduce the available sleeping spaces on some vessels.

3. Require only vessels with unassigned private cabins to carry female observers. This alternative would reduce the number of vessels to one or two that would be required to accept female observers. Essentially only those vessels that have an owner's cabin would be considered. If two vessels were so equipped and made an average of four trips per year, we would expect to place observers on half of the trips which would be four observed trips. Even if these vessels were required to carry female observers exclusively, that would provide jobs for only about two women in the program at a time. Further, the sampling plan for estimating porpoise mortality calls for observers to be cycled through the fleet and not returned to the same vessel if possible to avoid bias in our estimate.

4. Require that the vessel construct a new private sleeping area for the observer if space does not exist currently on the vessel which can be modified at a reasonable cost for use by the observer. This alternative has been researched by inquiring of a local marine surveyor what the approximate cost of a secure seaworthy cabin addition to an existing vessel would be. The estimated significant expense of adopting this option dissuaded NMFS from requiring construction of new space.

Classification: NMFS has prepared an environmental assessment (EA) as a part of developing this proposed rule and initially determined that there will be no significant impact on the environment as a result of this rule. A copy of the EA is available upon request (see ADDRESS).

The Under Secretary of NOAA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant

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adverse effects on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small businesses. There are currently 36 tuna purse seine vessels that would be subject to this rule and the individual business's cost to comply with the proposed requirements would be minimal. For the most part, the cost would involve placement of a temporary room divider or, at most, the installation of one additional bunk on some vessels. Therefore, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). Information will be required to be submitted by vessel certificate of inclusion holders who choose to apply for an exemption that would allow them to carry only male observers. The information collection requirements in this rule have been submitted for review to the Office of Management and Budget under section 3504(h) of the PRA.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR1), Washington, DC 20235; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Date: August 16, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR Part 216 as follows:

PART 216—[AMENDED]

1. The authority citation for 50 CFR Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361–1407.

2. Section 216.24 is amended by adding new paragraphs (f)(6) and (f)(7) to read as follows:

§216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(f) * * *

(6)(i) All observers must be provided sleeping, toilet, shower, and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meals and other galley privileges must be the same for the observer as for other crew members.

(ii) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured, by installing a curtain or other temporary divider in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS and must be followed during the entire trip.

(iii) In the event there are one or more female crew members, the female observer may be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(7)(i) A vessel certificate of inclusion holder (or vessel owner in the case of a new application) may seek an exemption from carrying a female observer on a vessel by applying to the Southwest Regional Director when applying for the vessel certificate of inclusion (or in 1988 within 30 days of the effective date of these regulations) and establishing the following:

(A) The vessel will have an all-male crew; and

(B) The vessel has fewer than two private (one-person) and semi-private (two-person) cabins in total (excluding the captain's cabin); and

(C) A temporary divider such as a curtain cannot be installed in the private or simi-private cabin (excluding the captain's cabin) to provide reasonable privacy; and

(D) There are no other areas (excluding the captain's cabin) that can be converted to a sleeping room without either significant expense or significant sacrifice to the crew's quarters.

(ii) The exemption criteria can be met without having to provide the captain's cabin for the observer.

(iii) The application for an exemption must also include an accurate diagram of the vessel's living areas, and other areas possibly suitable for sleeping. Additional documentation to support the application may also be required, as may an inspection of the vessel.

(iv) The exemption, once granted, is valid for the same calendar year as the vessel certificate of inclusion, and the exemption must be renewed annually to remain valid.

(v) The vessel certificate of inclusion holder is responsible for reporting to the Regional Director any changes aboard the vessel within 15 days of the change which might affect the continued eligibility for an exemption. The Regional Director will revoke an exemption if the criteria for an exemption are no longer met.

* * * * *

[FR Doc. 88-18843 Filed 8-16-88; 3:16 pm]
BILLING CODE 5510-22-M

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50 CFR Part 672

[Docket No. 80745-8145]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that the definition for directed fishing in the regulations at § 672.2 is inappropriate to the sablefish hook-and-line fishery in the Gulf of Alaska. The Secretary proposes, therefore, to amend this definition to define such fishing more accurately. Three other regulatory changes are proposed, which remove unnecessary material and also improve regulatory implementation. The intent of this rule is to clarify the regulations.

DATE: Comments are invited until September 19, 1988.

ADDRESS: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of

the environmental assessment/regulatory impact review (EA/RIR) may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Gulf of Alaska are managed under the Fishery management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611, Subpart A and § 611.92, and for the U.S. fishery at 50 CFR Part 672.

This rule proposes the following four changes to regulations that implement the FMP: (1) The definition of directed fishing for sablefish with hook-and-line gear would be amended to reduce the percentage criterion for directed fishing from 20 percent to 4 percent; (2) definitions of the Central Southeast Outside and Southeast Inside Districts would be deleted; (3) the reference to the component of domestic annual processing (DAP) that is designated as domestic non-processed (DNP) fish in the processor and purchaser reporting requirements would be eliminated, and (4) a starting time of 12:00 noon would be established for the sablefish hook-and-line fishery. Reasons for the changes are as follows:

1. The definition of directed hook-and-line sablefish fishing would reduce the percentage criterion for directed fishing from 20 percent to 4 percent.

One of the groundfish species managed under the FMP is sablefish, which is important to U.S. fishermen. The annual harvest quota, or total allowable catch (TAC), for this species is further allocated among fishermen using trawl, pot, and hook-and-line gear. Most of the sablefish TAC is allocated to fishermen using hook-and-line gear. Sablefish are also caught incidentally in other target fisheries.

Incidental catches are commonly referred to as bycatches. As with other groundfish species, bycatches of sablefish up to 20 percent of the total amount of groundfish catch have been allowed during times when the directed fishery was closed as long as the definition of directed fishing § 672.2 was not violated. Directed fishing is defined as fishing that is intended or can be reasonably expected to result in the catching, taking, or harvesting of quantities of any groundfish that amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. However, NMFS has found that the actual bycatch rate of sablefish in other groundfish fisheries is less than 4 percent and that the definition of directed fishing should be amended to reflect actual fishing practices. As a result of a recommendation made by the Council at its January 20–22, 1988, meeting, the Secretary published an emergency rule (53 FR 7938, March 11, 1988) and later extended it through September 5, 1988 at 53 FR 21649, (June 9, 1988) that redefined directed fishing with respect to sablefish in the hook-and-line fishery. The emergency rule defined directed fishing for sablefish caught with hook-and-line gear as the harvest of quantities of sablefish that amounted to 4 percent, rather than 20 percent, of the total groundfish harvest. The Council made the recommendation because allowance of up to 20 percent bycatch of high-valued sablefish could encourage fishermen to target on sablefish in other hook-and-line fisheries during periods when the directed sablefish fishery is closed. Covert targeting is inconsistent with the Council's intention for the management of sablefish. Full explanation underlying the Council's recommendation and the Secretary's action is provided in the preamble to the emergency rule.

When the Council made its recommendation, it reflected on whether it had intended that sablefish should be retained as bycatch by hook-and-line gear prior to a directed fishing season when it adopted the April 1 starting date for this fishery and when it made assignments of sablefish to gear types in Amendment 14 to the FMP (see 50 FR 43193, October 24, 1985). Although the Council determined that it had not specifically addressed whether sablefish should be retained as bycatch at all in other hook-and-line fisheries, it did affirm, after receiving recommendations from NMFS, that a bycatch between 1 and 5 percent was realistic, and that it did not intend that the bycatch should be as high as was permissible prior to the emergency rule.

At that time, the Council also requested the Secretary to replace the emergency rule with a regulatory amendment to remedy this problem in future seasons. At its April 13–15, 1988, meeting, the Council reviewed the draft regulatory amendment that NMFS had prepared, adopted the NMFS recommendation that 4 percent criterion be used to define fishing for sabelfish in the hook-and-line fishery, and voted to recommend that the Secretary implement the regulatory amendment.

The Secretary, in reviewing this problem, has determined that the original definition for directed fishing in the regulations should be amended as requested. He therefore proposes to amend § 672.2 to redefine directed fishing for sablefish with hook-and-line gear.

To take no action would undermine NMFS's intended management of the hook-and-line sablefish fishery, as authorized under § 672.24(3)(i). Under this paragraph, NMFS intends to limit the directed hook-and-line sablefish harvest to an amount that would leave an appropriate amount as bycatch to support other hook-and-line fisheries when the directed sablefish season in each of the management areas of the Gulf of Alaska is closed. If fishermen are allowed to continue to harvest up to 20 percent of sablefish as a bycatch when the directed fishing season is closed, it is unlikely that sufficient bycatch amounts would last for the remainder of the year. Then, under § 672.24(3)(ii), any additional amounts of sablefish would have to be treated as a prohibited species and discarded at sea for the remainder of the year. Such treatment is a waste of a valuable resource, which otherwise could be landed in a future year's fishery, to the benefit of the industry.

A more realistic bycatch rate was determined by NMFS following a review of 1987 domestic fishing data. Actual catches (see Table 1 in the EA/RIR) with hook-and-line gear of sablefish, Pacific cod, and various rockfish species were examined for the period prior to April 1, when the directed sablefish fishery opened, and after September 30, after sablefish from the September 21–23 opening in the Southeast Outside/East Yakutat District (SE/EYK) had been landed. These periods were selected to exclude landings from the directed sablefish fishing seasons. The overall sablefish bycatch rate was less than 1 percent in all cases except for an overall rate of 14.2 percent in the SE/EYK district after September 30. NMFS finds that the true bycatch rates are small, usually less than 1 percent, and contends that the high rate of 14.2 percent was the result of covert targeting on sablefish.

Since fishermen will have opportunity to harvest sablefish during the open sablefish season, their potential earnings will not be adversely affected. Even though a bycatch percentage less than 1 percent could probably be justified empirically, the Secretary

proposes 4 percent to accommodate those occasions when a fisherman might inadvertently catch a few more sablefish as a true bycatch, and allow retention rather than waste such a minor catch; this accommodation is in the public interest and is still in keeping with Council objectives.

2. The definitions of the Central Southeast Outside and Southeast Inside Districts would be deleted.

Definitions at § 672.2 for the Central Southeast Outside District (CSEO) and the Southeast Inside District exist but serve no purpose. Alaska uses three divisions of the Southeast Outside District, of which the CSEO district is one, for purposes of managing demersal shelf rockfish as provided for by the FMP. Its present inclusion is not needed for Federal management. Since the Southeast Inside District lies entirely within the waters of the State of Alaska, its definition is not needed in Federal regulations at § 672.2.

3. Reference to the component of domestic annual processing (DAP) that is referred to as domestic non-processed (DNP) fish in the processor and purchaser reporting requirements would be eliminated.

The FMP had included bait as a component of DAP, referred to as "domestic non-processed" or DNP. Amendment 11 (48 FR 43044, September 21, 1983) to the FMP deleted this component, combining its numerical equivalents with DAP, because DNP served no worthwhile purpose. Reference to this component still appears at § 672.5(b)(3)(v), which pertains to information requested of processors and purchasers of fish. This rule proposes to eliminate the references to DNP in that section. This is a technical amendment.

4. A starting time of 12:00 noon would be established for the sablefish hook-and-line fishery.

The current starting time for the hook-and-line sablefish fishery is 0001 hours, i.e., one minute after midnight. A nighttime starting time imposes unacceptable problems for fishermen. Aggregations of boats working in close proximity to each other in the dark create gear conflicts and unsafe working conditions. Also, a few fishermen may elect to fish early under cover of darkness prior to the official starting time, and thus take an unfair advantage over those fishermen who obey the regulations. The Secretary, therefore, proposes to set 12:00 noon local time as the official starting time, thereby preventing the above problems.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the sablefish fishery in the Gulf of Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this rule and the Assistant Administrator for Fisheries concluded that no significant MRM impact on the environment will occur as a result of this rule. You may obtain a copy (see **ADDRESS**).

The Under Secretary for NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Recent scientific research indicates that a 4 percent sablefish bycatch rate would better conform to actual fishing experience than the existing 20 percent rate, and would not, therefore, significantly affect industry operations or catch rates for those who targeted sablefish, only when directed fishing was authorized. The adjustment would help assure that a maximum amount of fish is available for directed fishing on other species. All other management actions proposed are housekeeping in nature and would have no effect on fishing operations or costs to industry.

This rule does not contain a collection information requirement subject to the Paperwork Reduction act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated August 16, 1988.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 672 is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, in the introductory text of the definition for MRM *Regulatory District*, the word "four" is revised to read "the three', paragraphs (1) and (2) are removed, and paragraphs (3), (4), and (5) are redesignated (1), (2), and (3), respectively; also in § 672.2, the definition for *Directed fishing* is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Directed fishing means (1) with respect to any species, stock, or other aggregation of fish, other than sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish, or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent, or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for such fish; or

(2) With respect to sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of sablefish that amount to 4 percent or more of the catch, take, or harvest, or 4 percent or more of the total amount of groundfish or groundfish products on board at any time. It will be a rebuttable presumption that, when sablefish comprises 4 percent, or more of the catch, take, or harvest, or 4 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for sablefish.

* * * * *

§ 672.5 [Amended]

3. In § 672.5(b)(3)(v), the words "and domestic non-processed fish (DNP)" are removed.

4. Section 672.23 is amended by revising paragraph (b) to read as follows:

§ 672.23 Seasons.

* * * * *

(b) Directed fishing for sablefish in the regulatory areas and districts of the Gulf of Alaska is authorized for hook-and-line gear from 12:00 noon Alaska local time on April 1 through December 31 and for pot gear from MRM April 1, through December 31, subject to other provisions of this part.

[FR Doc. 88-18809 Filed 8-16-88; 12:47 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 161
Friday, August 19, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to the 1989 Program for Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1989 crop of extra long staple (ELS) cotton: (a) Whether an acreage reduction program should be implemented and, if so, the percentage reduction under such acreage reduction program and (b) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended, (the "1949 Act").

DATE: Comments must be received on or before September 19, 1988, in order to be assured of consideration.

ADDRESS: Director, Commodity Analysis Division, USDA–ASCS, Rm. 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations is available on request from the aforementioned individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "non major" since the proposed provisions are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It is necessary that the determinations for the 1989 crop of ELS cotton be made in sufficient time to permit ELS cotton producers to make plans for the production of their crop. Therefore, comments with respect to the following proposed determinations must be received by September 19, 1988, in order to allow the Secretary an adequate period to consider the comments before making the program decisions.

Proposed Determinations

a. *Acreage Reduction Program.* Section 103(h)(8)(A) of the 1949 Act provides that, with respect to the 1989 crop of ELS cotton, if the Secretary determines that the total supply of ELS cotton, in the absence of an acreage reduction program (ARP), will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency, the Secretary may provide for an ARP. Such reduction shall be achieved by applying a uniform percentage reduction of the acreage base for each ELS-cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted ELS cotton acreage shall be ineligible for ELS cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of an ARP shall be the average acreage planted on the farm to ELS cotton for harvest in the three crop years immediately preceding the year prior to the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to ELS cotton for harvest shall include any acreage which producers were prevented from planting to ELS cotton or other nonconserving crops in lieu of ELS cotton because of drought, flood, or other natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines necessary to establish a fair and equitable base. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of ELS cotton times the number of acres actually planted to ELS cotton, by (b) the number of acres authorized to be planted to ELS cotton in accordance with the acreage reduction established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an ARP is in effect for the 1989 crop of ELS cotton, the national program acreage, program allocation factor, and voluntary reduction provisions of section 103(h) of the 1949 Act will not be applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to ELS cotton for harvest within the permitted ELS cotton acreage established for the farm under the ARP.

The need for an ARP for the 1989 crop of ELS cotton will depend upon the projected level of ending stocks for the 1988–89 marketing year and the likely demand for ELS cotton in 1989–90. Estimates as of July 1988 indicate that production may slightly exceed utilization in 1988–89, resulting in ending stocks of an estimated 60,000 bales. Demand for the 1989–90 season is projected to increase primarily due to a

strong export market and producers' response to prices. As of July 1988, the production increase is projected to outweigh the increase in use; therefore, some reduction in production may be needed to keep stocks from increasing above the desirable level of 65,000 bales. Options under consideration at this time include a 5-percent ARP and a 10-percent ARP. However, future developments in weather conditions, market trends and projections of supply and use could affect the suitability of various production adjustment programs. Options considered at the final determination stage may vary depending upon conditions in existence and information available at that time.

Interested persons are encouraged to comment on whether an ARP should be implemented for the 1989 crop of ELS cotton, and, if so, the appropriate percentage level of such reduction.

b. *Other Related Provisions.* A number of other determinations must be made in order to carry out the ELS cotton loan program such as: (1) Commodity eligibility; (2) micronaire discounts; (3) loan levels for the individual qualities of 1989-crop ELS cotton; and (4) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

Authority: Sec. 103(h) of the Agricultural Act of 1949, as amended, 97 Stat. 494 (7 U.S.C. 1444(h)).

Signed at Washington, DC on August 9, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-18788 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Proposed Extension, Rio Verde Drive; Tonto National Forest, Maricopa County, AZ; Environmental Impact Statement Cancellation Notice

Maricopa County Highway Department Officials have withdrawn their proposal to study highway access routes across National Forest Lands linking the Phoenix Metropolitan Area with Arizona State Highway 87.

The Notice of Intent, published in the **Federal Register** on February 5, 1987, is hereby rescinded (45 FR 54386).

For further information contact: Berwyn L. Brown, Environmental Coordinator, Tonto National Forest, P.O. Box 5348, Phoenix, Arizona 85010; telephone 602-255-5200.

Dated: August 10, 1988.

James L. Kimball,

Forest Supervisor.

Dated: August 10, 1988.

[FR Doc. 88-18815 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-11-M

Supplement to Draft Environmental Impact Statement for Land and Resource Management Plan of the Wallowa-Whitman National Forest of Pacific Northwest Region

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare supplement to draft environmental impact statements for Wallowa-Whitman National Forest.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare a supplement to the draft environmental impact statement (EIS) on Land and Resource Management Plan for Wallowa-Whitman National Forest in Pacific Northwest (Oregon and Washington). The purpose of the supplement is to present for public review and comment additional information that was not included in the draft EISs and proposed plan. The agency invites written comments on the scope of this supplemental analysis. In addition, the agency gives notice of this analysis that will occur so that interested and affected people are aware of how they may participate and contribute to the final decision.

FOR FURTHER INFORMATION CONTACT: Questions and comments about these supplements should be directed to Tom Nygren, Director of Planning, P.O. Box 3623, Portland, OR 97208; Phone (503) 221-2387.

SUPPLEMENTARY INFORMATION: The supplement to the draft EIS for the Wallowa-Whitman National Forest is expected to be published in September 1988. The information to be presented in a supplement includes a "No Change Alternative" and the background and analysis of management requirements used in developing the alternatives. Also included will be information on the Upper Grande Rhonde and Beaver Creek Roadless Areas. The information was developed because of needs identified since the draft EISs were published and in response to decisions regarding two administrative appeals by the Northwest Forest Resource Council. (1) Filed on May 19, 1986 centered on direction by the Regional Forester to require inclusion of management requirements for protection and management of natural resources such as wildlife habitat, in the No Action Alternative for each forest plan. (2) Filed on September 18, 1986 centered on direction from Regional Forester to incorporate management requirements into forest plan alternatives.

Dated: August 8, 1988.

James F. Torrence,

Regional Forester.

[FR Doc. 88-18816 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Delaware Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:15 p.m. on September 15, 1988, in Conference Room A of the Carvel State Office Building, 820 North French Street, Wilmington, Delaware. The purpose of the meeting is to orient the new members of the Committee, enable the Committee to discuss and act upon the draft of a summary report, Legal Assistance Available to Minority Prisoners, hear a Committee member discuss the status of special education, and decide upon a project for its next activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Henry A. Heiman (302/658-1800) or John I. Brinkley, Director of the Eastern Regional Division at (202/523-5264; TDD 202/376-8117.) Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 15, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-18817 Filed 8-18-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Members of the Bureau of the Census Performance Review Board

The following individuals will serve as members of the Bureau of the Census Performance Review Board:

(1) Bryant Benton
(2) William P. Butz
(3) Charles D. Jones
(4) C.L. Kincannon
(5) Roland H. Moore
(6) Charles A. Waite
(7) Katherine K. Wallman

Date: August 15, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-18831 Filed 8-18-88; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Ad Hoc Committee will convene a public meeting on September 1, 1988, at 10 a.m., at the National Marine Fisheries Service, Northwest Region Conference Room, 7600 Sand Point Way, NE., Seattle, WA, to review its report to the Pacific Council. The report will present options to unsettled Committee issues, and will respond to the Pacific Council's advisory entities' comments.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metrol Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221-6352.

Date: August 15, 1988.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18881 Filed 8-18-88; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Senior Executive Service: Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Dennis R. Connors
Larry Eads
David Farber
William D. Gamble
Harold G. Kimball
Robert J. Mayher
Richard D. Parlow
Charles M. Rush
Roger K. Salaman
Neal B. Seitz
William F. Utlaut

Edward A. McCaw,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 88-18784 Filed 8-18-88; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 19, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 10, June 17, June 24, and July 1, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 21885, 22688, 23782, 24992) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1988:

Commodities

Filter, Air Conditioning
4130-00-870-8796
4130-00-720-4143
4130-00-542-4482
4130-00-756-0978
4130-00-541-3220
4130-00-203-3318
4130-00-859-4734
4130-00-851-1208
(GSA Regions 1, 2, 3, W, 6, 7, 8, 9, and 10)
4130-00-274-7800
4130-00-249-0966
4130-00-756-1840
4130-00-203-3321
(GSA Region 1 only)
Cover, Generator Set
6115-00-960-2703
6115-00-945-7545

Services

Janitorial/Custodial, National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio
Janitorial/Custodial, U.S. Courthouse and Customhouse, 1716 Spielbusch Avenue, Toledo, Ohio.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-18851 Filed 8-18-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions and Deletion

AGENCY: Committee for Purschase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: September 19, 1988.

ADDRESS: Committee for Purschase from the Blind and Other Severely

Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1988, December 0, 1987 (52 FR 46926).

Commodities

Frame, Picture, Walnut
7105–01–282–0630
7105–01–282–0631
7105–01–282–0632
7105–01–282–0633
Cloth, Lint Free
7930–00–NSH–0003 (w/o Lanyard)
7930–00–NSH–0004 (w/ Lanyard)
Requirements for Charleston Naval Supply Center, Charleston, South Carolina only)
Case, Map and photograph; 8460–00–368–4281

Services

Janitorial/Custodial U.S. Courthouse, 300 Ala Moana Boulevard, Honolulu, Hawaii
Mailing Service, Department of the Treasury, Bureau of Public Debt, Parkersburg, West Virginia
Mailroom Service, Defense Logistics Agency—DCASR, 496 Summer Street, Boston, Massachusetts

Deletion

It is proposed to delete the following service from Procurement List 1988, December 10, 1987 (52 FR 46928): Janitorial/Custodial, Officer's Open Mess, Building 542 and NCO Open Mess, Building 956, Robins Air Force Base, Georgia.

E.R. Alley, Jr.
Acting Executive Director.
[FR Doc. 88–18852 Filed 8–18–88; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

National Guard Bureau; Availability of an Environmental Impact Statement (EIS)

AGENCY: National Guard Bureau, DOD/ Idaho Military Division, Idaho National Guard.

ACTION: Notice of availability of an environmental impact statement; proposed mission expansion/multiple construction at Orchard Training Area, Idaho.

Background

Orchard Army National Guard Training Area is located on public domain land under the control of the Bureau of Land Management (BLM). It is a federally funded, state operated installation under a Memorandum of Understanding between the Governor of Idaho and the Boise District BLM. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Guard Bureau and the Idaho Military Division have, acting as co-lead agencies, prepared a Final Environmental Impact Statement (EIS) on the proposed master plan construction and mission expansion at Orchard Training Area, Idaho. On December 11, 1986, a Notice of Intent to prepare an Environmental Impact Statement was published in the Federal Register. A scoping meeting (in accordance with the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508)) was conducted on January 7, 1987, at Gowen Field, Idaho, to identify significant issues related to the proposed master plan construction/ mission expansion at Orchard Training Area. A Draft EIS was prepared and a Notice of Availability was published in the Federal Register on March 4, 1988. Public comments were received between March 4, 1988 and May 23, 1988. The public hearing was held on March 22, 1988 at Gowen Field, Idaho. Comments and responses are included in the Final EIS.

Action

The proposed action includes renovation and rehabilitation of existing facilities, construction of new facilities, range improvements, development of new ranges, and associated maneuver areas, and a potential for increased training site utilization. The Final EIS addresses direct and indirect environmental impacts, both beneficial and detrimental. Environmental impacts addressed include those affecting air quality, noise, physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and social and economic resources.

In addition to the proposed actions, three alternatives were considered in the Final EIS:

(a) No Action (Status Quo).

(b) Modification/Alteration of Proposed Action.

(c) Conduct actions at another location.

Document Availability

The identification of preferred alternatives in the Final Environmental Impact Statement does not constitute a final decision. The Final EIS and any comments received will be used by the Army National Guard to prepare a Record of Decision. Copies of the Final EIS may be obtained from: COL Richard Brown, The Adjutant General's Office, Idaho Military Division, P.O. Box 45, Boise, Idaho 83707–4507, or (208) 385–5286.

Lewis D. Walker,
Deputy for Environment, Safety, and Occupational Health, OASA (I&L).

[FR Doc. 88–18790 Filed 8–18–88; 8:45 am]
BILLING CODE 3710–08–M

Office of the Secretary

Dissemination of Unclassified Information Concerning Physical Protection of Special Nuclear Material

ACTION: Notice.

SUMMARY: Section 1123 of Pub. L. 100–180 amended Chapter 3 of Title 10, United States Code by inserting a new Section entitled, "Physical protection of special nuclear material: limitation on dissemination of unclassified information." This new authority affects the Department's Freedom of Information Act Program as it is a statute within the meaning of 5 U.S.C. 552(b)(3).

In accordance with the foregoing authority, the Deputy Secretary of Defense hereby prohibits the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material. This prohibition shall be applied by Department of Defense personnel to prohibit the dissemination of any such information only if and to the extent that it is determined that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of: Illegal production of nuclear weapons; or theft, diversion, or

sabotage of special nuclear materials, equipment, or facilities.

In making a determination in accordance with the foregoing, DoD personnel may consider what the likelihood of an illegal production, theft, diversion, or sabotage would be if the information proposed to be prohibited from dissemination were at no time available for dissemination.

DoD personnel shall exercise the foregoing authority to prohibit the dissemination of any information described: To apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and upon determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons or theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

DoD employees shall not utilize this authority to withhold information from the appropriate committees of Congress.

The Assistant Secretary of Defense (Public Affairs), shall prepare, or cause to be prepared, on a quarterly basis, a report to be made available upon the request of any interested person, detailing the application during that period of this order or subsequent regulation. In particular, this report shall: (1) Identify any information protected from disclosure pursuant to this order or subsequent regulation; and (2) specifically state the justification for determining that unauthorized dissemination of the information protected from disclosure under this order of subsequent regulation could reasonable be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons or the theft, diversion, or sabotage of special nuclear materials, equipment, or facilities, as specified above, and (3) provide justification that this order or subsequent regulation has been applied so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

FOR FURTHER INFORMATION CONTACT: Mr. D. Whitman, Office of the Deputy Under Secretary of Defense (Policy), telephone (202) 695–2289 or autovon 225–2686.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Dated: August 15, 1988.

[FR Doc. 88–18813 Filed 8–18–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 19, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collecton requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 15, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Education Research and Improvement

Type of Review: Revision.
Title: Teacher Status Information for the Teacher Follow-up Survey.
Affected Public: State or local governments; businesses or for-profit; non-profit institutions; small businesses or organizations.
Frequency: On occasion.
Reporting Burden:
Responses: 11,459
Burden Hours: 2,865
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: The Teacher Follow-up Survey is a follow-up to the Schools and Staffing Survey, to be conducted one year after the base year survey. The sample consists of a subset of teachers that were in the Schools and Staffing Survey. This survey will be used to obtain teacher status information.

[FR Doc. 88–18823 Filed 8–18–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003Z]

Notice Inviting Applications for New Awards Under the Bilingual Education Training Development and Improvement Program for Fiscal Year 1989

Purpose: Provides awards to institutions of higher education to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.
Deadline for Transmittal of Applications: October 14, 1988.
Deadline For Intergovernmental Review Comments: December 12, 1988.
Applications Available: August 29, 1988.
Available Funds: The President's Budget for fiscal year 1989 includes approximately *$600,000* for new awards under this program. The Congress has not yet completed action on the 1989 appropriation. The estimates below

assume passage of the President's Budget.

Estimated Range of Awards: $50,000–$100,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 8.

Project Period: 36 months.

Applicable Regulations: (a) The Bilingual Education: Training Development and Improvement Regulations, 34 CFR Part 573, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications of Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5628, Mary E. Switzer Building), Washington, DC 20202–6642. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3321(a)(3).

Dated: August 15, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18828 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.003A]

Notice Inviting Applications for New Awards Under the Program of Transitional Bilingual Education for Fiscal Year 1989

Purpose: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve programs of transitional bilingual education.

Deadline for Transmittal of Applications: October 7, 1988.

Deadline for Intergovernmental Review Comments: December 6, 1988.

Applications Available: August 26, 1988.

Available Funds: The Bilingual Education Act reserves at least 75 percent of the Part A appropriation for the Transitional Bilingual Education, Developmental Bilingual Education, Academic Excellence, Family English Literacy and Special Populations Programs. Assuming enactment of the President's 1989 Budget, the Department estimates that at least $14 million will be available for Transitional Bilingual Education grants and perhaps as much as $22 million.

Estimated Range of Awards: $40,000–$500,000.

Estimated Number of Awards: 75–120.

Project Period: 36 months.

Applicable Regulations: (a) The Program of Transitional Bilingual Education Regulations, 34 CFR Parts 500–501, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, 79, and 80.

Additional Factors: In accordance with 34 CFR 501.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 501.32(a) as follows: (1) Historically underserved (4 points); (2) relative need (4 points); (3) geographic distribution (3 points); (4) relative number and proportion of children from low-income families (4 points).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5086, Mary E. Switzer Building), Washington, DC 20202–6641. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a)(1).

Dated: August 12, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18829 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.003R]

Notice Inviting Applications for New Awards Under the Bilingual Education Educational Personnel Training Program for Fiscal Year 1989

Purpose: Provides grants to institutions of higher education to meet the needs for additional or better trained educational personnel for programs for limited English proficient persons.

Deadline for Transmittal of Applications: October 28, 1988.

Deadline for Intergovernmental Review Comments: December 28, 1988.

Applications Available: August 29, 1988.

Available Funds: The President's Budget for fiscal year 1989 includes approximately *$5,000,000* for new awards under this program. The Congress has not yet completed action on the 1989 appropriation. The estimates below assume passage of the President's Budget.

Estiated Range of Awards: $40,000–$210,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 40.

Project Period: 36 months.

Applicable Regulations: (a) The Bilingual Education Educational Personnel Training Program Regulations (34 CFR Part 561), and (b) the Education Department General Administrative Regulations, (34 CFR Parts 74, 75, 77, 78, and 79).

Additional Factors: In accordance with 34 CFR 561.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 10 points among the factors listed in § 561.32(a) as follows: (1) Job placement and development (4 points); (2) evidence of prior participant's success in serving LEP children in projects previously funded (2 points); (3) evidence of demonstrated capacity and cost-effectiveness (4 points).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5628, Mary E. Switzer Building), Washington, DC 20202–6642. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3321(a)(1).

Dated: August 15, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18824 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.003V]

Notice Inviting Applications for New Awards Under the Bilingual Education Short-Term Training Program for Fiscal Year 1989

Purpose: Provides awards to eligible applicants to improve the skills of educational personnel and parents participating in programs for limited English proficient persons.

Deadline for Transmittal of Applications: October 14, 1988.

Deadline for Intergovernmental Review Comments: December 12, 1988.

Applications Available: August 29, 1988.

Priorities: The Secretary will give a competitive preference in accordance with 34 CFR 75.105(c)(2)(ii), to projects which provide training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient persons as stated in 34 CFR 574.10(a) and 574.30.

Available Funds: The President's Budget for fiscal year 1989 includes approximately *$1,900,000* for new awards under this program. The Congress has not yet completed action on the 1989 appropriation. The estimates below assume passage of the President's Budget.

Estimated Range of Awards $150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 15.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Bilingual Education: Short-Term Training Program Regulations, 34 CFR Part 574, and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 80.

Additional Factors: In accordance with 34 CFR 574.31(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 10 points among the factors listed in § 574.33(a) as follows: (1) Evidence of prior participant's success in projects previously funded (5 points); (2) evidence of demonstrated capacity and cost effectiveness (5 points).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5628, Mary E. Switzer Building), Washington, DC 20202–6642. Telephone: (202) 732–1843).

Program Authority: 20 U.S.C. 3321(a)(4).

Dated: August 15, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18825 Filed 8–18–88; 8:45am]

BILLING CODE 4000–01–M

[CFDA No. 84.003L]

Notice Inviting Applications for New Awards Under the Bilingual Education Special Populations Program for Fiscal Year 1989

Purpose: Provides awards to local educational agencies, institutions of higher education and private nonprofit organizations to establish, operate, or improve preparatory or supplemental preschool, special education, and gifted and talented programs for limited English proficient children.

Deadline for Transmittal of Applications: October 14, 1988.

Deadline for Intergovernmental Review Comments: December 12, 1988.

Applications Available: August 29, 1988.

Available Funds: The President's Budget for fiscal year 1989 includes approximately *$1,700,000* for new awards under this program. The Congress has not yet completed action on the 1989 appropriation. The estimates below assume passage of the President's Budget.

Estimated Average Size of Awards: $125,000.

Estimated Range of Awards: $100,000—$150,000.

Estimated Number of Awards: 14.

Project Period: 36 months.

Applicable Regulations: (1) The Bilingual Education: Special Populations Program Regulations, 34 CFR Part 526, (b) the Education Department General Administration Regulations, 34 CFR Parts 74, 75, 77, 78, 79, and 80.

Additional Factors: In accordance with 34 CFR 526.31(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 525.32 as follows: (1) Historically underserved (4 points); (2) geographic distribution (4 points); (3) need (4 points); (4) relative number and proporation of children from low-income families (3 points).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5628, Mary E. Switzer Building), Washington, DC 20202–6642. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a)(6).

Dated: August 15, 1988.

Alicia Coro,

Director, Office of Bilingual Education, Minority Languages Affairs.

[FR Doc. 88–18826 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFA No. 84.003E]

Notice Inviting Applications for New Awards Under the Special Alternative Instructional Program for Fiscal Year 1989

Purpose: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve special alternative instructional programs.

Deadline for Transmittal of Applications: October 7, 1988.

Deadline for Intergovernmental Review Comments: December 6, 1988.

Applications Available: August 26, 1988.

Available Funds: The Bilingual Education Act permits up to 25 percent of the Part A appropriation to be used for Special Alternative Instructional projects. Assuming enactment of the President's 1989 Budget the maximum amount available for new Special Alternative Instructional grants is estimated to be $22,000,000. The Department estimates that at least $14,000,000 will be available for new Special Alternative Instructional projects in 1989.

Estimated Range of Awards: $60,000–$90,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 180–190.

Project Period: 36 months.

Applicable Regulations: (a) The Special Alternative Instructional Program Regulations, 34 CFR Parts 500–501, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, 79, and 80.

Additional Factors

In accordance with 34 CFR 501.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 501.32(a) as follows: (1) Historically underserved (4 points); (2) Relative need (4 points); (3) Geographic distribution (3 points); (4) Relative number and proportion of children from low-income families (4 points). In addition, in accordance with 34 CFR 501.33(b), the Secretary awards 5 points on the factors listed in § 501.33 (a) as follows: (1) Administrative impracticability of establishing a bilingual education program (3 points); (2) Unavailability of qualified personnel (1 point); (3) Presence of a small number of LEP students in the LEA's schools and the LEA's inability to obtain native language teachers because of isolation or regional location (1 point).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 5086, Mary E. Switzer Building), Washington, DC 20202–6641. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a) (3)

Dated: August 12, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18867 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA Nos. 84.016, 84.017, and 84.153]

Notice Inviting Applications Under the International Education Programs for Fiscal Year 1989 New Awards

AGENCY: Department of Education.

ACTION: Combined Notice Inviting Applications Under the International Education Programs: Undergraduate International Studies and Foreign Language, International Research and Studies, and Business and International Education for Fiscal Year 1989 New Awards.

Purpose: Applications are invited for new awards for Fiscal Year 1989 under Title VI of the Higher Education Act of 1965, as amended, for the following programs: The Undergraduate International Studies and Foreign Language Program (84.016); the International Research and Studies Program (84.017); and the Business and International Education Program (84.153).

The Undergraduate International Studies and Foreign Language Program provides grants to institutions of higher education, combinations of those institutions, and public and private nonprofit agencies and organizations, including professional and scholarly associations, to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

The International Research and Studies Program provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and related fields.

The Business and International Education Program provides grants to institutions of higher education to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Deadlines For Transmittal of Applications: For the Undergraduate International Studies and Foreign Language Program—November 4, 1988;

For the Business and International Education Program—November 9, 1988;

For the International Research and Studies Program—November 18, 1988.

Applications Available: September 15, 1988.

Eligible Applicants: For the Undergraduate International Studies and Foreign Language Program, eligible applicants are institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

For the International Research and Studies Program, eligible applicants are public and private agencies, organizations, institutions, and individuals.

For the Business and International Education Program, eligible applicants are institutions of higher education.

Priorities: The Secretary selects the following priorities from § 660.10 and § 660.34 of the regulations governing the International Research and Studies Program for Fiscal Year 1989. The priorities will be implemented for that program only in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(2)(ii).

(1) Research and studies on more effective methods of instruction, including competency-based instruction, in the modern foreign languages of the Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa and Latin America. (34 CFR 660.34(a)(2) and 34 CFR 660.34(a)(3)).

(2) Research and studies on foreign language proficiency testing with emphasis on the languages of the Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa and Latin America. (34 CFR 660.34(a)(2) and 34 CFR 660.34(a)(3)).

(3) The development of specialized materials for providing instruction in the languages of the Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa and Latin America. (34 CFR 660.10(c); 34 CFR 660.34(a)(1); and 34 CFR 660.34(a)(2)).

INTERNATIONAL EDUCATION PROGRAMS

Title and CFDA Number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Undergraduate International and Foreign Language Program (CFDA No. 84–016)	$1,642,000	$20,000 to $70,000	$48,000	34	24 to 36
International Research and Studies Program (CFDA No. 84.017)	864,248	23,000 to 123,000	66,000	13	12 to 36
Business and International Education Program (CFDA No. 84.153)	1,225,000	40,000 to 135,000	65,000	16	24

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Undergraduate International Studies and Foreign Language Program, 34 CFR Parts 655 and 658;

(b) International Research and Studies Program, 34 CFR Parts 655 and 660;

(c) Business and International Education Program, 34 CFR Part 661; and

(d) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For applications or information contact:

Ralph Hines (Undergraduate International Studies and Foreign Language Program), Telephone (202) 732–3290;

Jose L. Martinez (International Research and Studies Program), Telephone (202) 732–3297;

Susanna C. Easton (Business and International Education Program), Telephone (202) 732–3302, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB–3, Mail Stop 3308, Washington, DC 20202.

Program Authority: Undergraduate International Studies and Foreign Language Program (20 U.S.C. 1124); International Research and Studies Program (20 U.S.C. 1125); and Business and International Education Program (20 U.S.C. 1130–1130b).

Dated: August 3, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–18827 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

Meeting of the National Advisory Council on Indian Education

AGENCY: National Advisory Council on Indian Education, Evaluation

ACTION: Notice of Executive Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed Executive Committee meeting of the National Advisory Council on Indian Education. This notice also describes the function

of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2. This document is intended to notify the general public of their opportunity to partially attend.

DATE: September 3, 1988, 8:30 a.m. until conclusion of business.

ADDRESS: Clarion Hotel, 1345 28th Street, Boulder, Coloredo 80302 (303/443–3850).

FOR FURTHER INFORMATION CONTACT: Gloria Duus, Acting Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Switzer Building, Washington, DC 20202–7556 (202/732–1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). Among other things, the Council is established to assist the Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The Executive Committee will meet in closed session beginning at 8:30 a.m. to discuss personnel matters that will reflect confidential information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemption (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–049; 5 U.S.C. 552b(c)(6)). The open portion of the meeting will start at the conclusion of the closed meeting at approximately 3:00 p.m. on September 3rd to discuss other Executive Committee matters and will end at the conclusion of business.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b, shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street, SW., Room 4072, Switzer Bldg., Washington DC 20202–7556 (202/732–1353).

Date: August 10, 1988. Signed at Washington DC.

Gloria Duus,

Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88–18849 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Atlantic Council of the United States

AGENCY: Department Of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: In accordance with 10 CFR 600.7(b), eligibility for award of a grant, resulting from Procurement Request No. 01–88IE10668.000, will be restricted to the Atlantic Council of the United States. The DOE is conducting negotiations with the Atlantic Council of the United States, for the support of two U.S.-Japan Energy Policy Dialogue conferences. These negotiations are expected to result in the issuance of Grant Number DE–FG01–88IE10668, in which the DOE will provide $50,000 of the total estimated cost of $250,505, for a performance period of twenty-four months, estimated to begin September 1, 1988.

PROJECT SCOPE: The grant will provide assistance for two conferences entitled, "U.S.-Japan Energy Policy Dialogue." The first conference will be a bilateral executive session, between Japan and the United States, that will jointly plan the 1989 plenary conference in Japan. The second conference will explore jointly, rigorously, and regularly the issues related to energy demand, supply, use and financing in the United States, Japan, among the member developed nations and among the member developing and newly industrializing nations.

The Atlantic Council of the United States is a nonprofit organization that has a solid reputation; is well established in this continuing project; and has support and members from private industry, the academic communities and from international financial communities. These national and international relationships make the Atlantic Council of the United States uniquely qualified to perform these conferences.

FOR FURTHER INFORMATION CONTACT: Stanley T. Colt, MA–453.1, Office of Procurement Operations, 1000 Independence Avenue SW., Washington DC 20585, (202) 586–5645.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88–18685 Filed 8–18–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA C&E 88–17; Certification Notice 22]

Filing of Certification of Compliance: Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Mid-Set Cogeneration Company, Bakersfield, CA	8–11–88	Cogen Simple Cycle	33	Kern County, CA

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC., on August 12, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-18785 Filed 8-18-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-46-NG]

Access Energy Corp.; Application To Extend Blanket Authorization To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 5, 1988, of an application filed by Access Energy Corporation (Access) requesting that the blanket authorization, previously granted in DOE/ERA Opinion and Order No. 147 (Order No. 147), issued September 26, 1986, be amended to extend its term for two years beginning October 1, 1988, the expiration of its current authorization, through the period ending September 30, 1990.

Quarterly reports filed with the ERA indicate that Access has exported approximately 3.5 Bcf of gas under Order No. 147 as of July 1, 1988.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 19, 1988.

FOR FURTHER INFORMATION:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Order No. 147 was originally issued to Yankee International Company (Yankee) on September 26, 1986; subsequent to the February 8, 1988, purchase by Access of Yankee's business assets, the ERA, on February 24, 1988, approved the transfer of this authority to Access. The existing blanket authorization allows Access to export to Canada a daily maximum of 200 MMcf of domestic natural gas, up to a total of 146 Bcf over a two-year term that ends September 30, 1988.

Access, a Delaware corporation, with its principal office in Dublin, Ohio, intends to continue exporting gas on a short-term and spot basis, for its own account or as agent for suppliers or purchasers, from a variety of U.S. suppliers for resale to Canadian purchasers, including commercial and industrial end-users and local distribution companies. The terms of each transaction would be negotiated in response to market conditions. Existing facilities of U.S. pipelines would continue to be used to transport the gas. The delivery points where the gas would exit the U.S. would be established during sales contract negotiations and may vary for different transactions. Access contemplates that some of the gas may be exported and re-imported back into the U.S. for delivery to its customers under its current blanket import authorization granted by the ERA in DOE/ERA Opinion and Order No. 107 issued January 29, 1986. That import authorization was also transferred to Access from Yankee on February 24, 1988.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate by the Administrator, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that the gas to be exported will be incremental to current U.S. demand and that this export arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the ERA approves this request to amend a blanket export, it may designate a total amount of authorized volumes for the term without any daily limit, in order to provide the applicant with maximum flexibility of operation. In addition, the ERA may permit the export of the gas at any existing point of exit and through any existing transmission system.

Access requests that an authorization be granted on an expedited basis. An ERA decision on Access' request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures:

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., September 19, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures by provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially

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advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Access' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 16, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-18896 Filed 8-17-88; 10:17 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-553-000 et al.]

Sierra Pacific Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Sirerra Pacific Power Company

[Docket No. ER88-553-000]

August 15, 1988.

Take notice that on August 8, 1988, Sierra Pacific Power Company (Sierra) tendered for filing as a change in rates pursuant to 18 CFR 35 *et seq.* the "General Transfer Agreement executed by the United States of America Department of Enegy acting by and through the Bonneville Power Administration and Sierra Power Company" (hereafter "Transfer Agreement").

The above-referenced agreement principally concerns transportation service by Sierra to Bonneville Power Administration (BPA) on behalf of Wells Rural Electric Company (Wells). The agreement also provides for related interconnection services. The agreement would supersede a January 24, 1985 transmission and interconnection agreement for similar services to BPA on behalf of Wells.

Sierra Proposes February 26, 1988 as the effective date for the rates, terms, and conditions of the Transfer Agreement. Sierra requests waiver of the Commission's notice requirements in connection with its proposed effective date.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company of Indiana, Inc.

[Docket No. ER88-531-000]

August 15, 1988.

Take notice that on July 25, 1988, a Consent Settlement Agreement executed by the Commission Trial Staff (Staff) Commonwealth Edison Company of Indiana, Inc. (formerly Chicago District Generating Corporation and hereafter referred to as "Chicago District"), and Commonwealth Edison Company (Edison) was filed with the Commission. The Consent Settlement Agreement provides for a decrease in rates under the Electric Service Agreement (dated July 1, 1941, as amended) and the Transmission Service Agreement (dated May 1, 1958, as amended) between Chicago District and Edison.

The signatories request an effective date of January 1, 1988.

Copies of this filing were served upon Chicago District and Edison.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Generating Company

[Dockt No. ER85-204-000]

August 15, 1988.

Take notice that on August 9, 1988, South Carolina Generating Company tendered for filing, pursuant to Commission Opinion No. 280 and Opinion No. 280-A, a refund summary showing refunds and a computation of interest on refunds for sales by GENCO to South Carolina Electric & Gas Company under a Unit Power Sales Agreement dated December 18, 1984.

Comment date: August 29, 1988, in accordance with Standard Paragraph E. at the end of this notice.

4. Cliffs Electric Service Company

[Docket No. ER88-555-000]

August 15, 1988.

Take notice that on August 2, 1988, Cliffs Electric Service Company (Service Company) tendered for filing a notice of cancellation with respect to FERC rate Schedule No. 17, its Hydro Energy Purchase Agreement with Upper Peninsula Power Company (Power Company). In view of the fact that the hydro facilities in question have been sold by Service Company to Power Company, Service Company requests that the notice be allowed to become effective on February 16, 1988, the date of the conveyance of the facilities.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Connecticut Yankee Atomic Power Company

[Docket No. EL87-23-003]

August 15, 1988.

Take notice that on May 23, 1988, Connecticut Yankee Atomic Power Company tendered for filing, in compliance with Commission Order (Opinion No. 258A), changes to the Connecticut Yankee 1987 Supplementary Power Contract in order to revise that rate schedule.

Comment date: August 22, 1988, in accordance with Standard Paragraph E at the end of this document.

6. Niagara Mohawk Power Corporation

[Docket No. ER88-554-000]

August 16, 1988.

Take notice that on August 5, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing as an initial rate schedule, an Agreement between Niagara Mohawk and the City of Syracuse (Public Body) dated August 1, 1988. Niagara Mohawk proposes an effective date of October 4 for the Agreement.

This Agreement provides for Niagara Mohawk to allow the use of such portions of its electric system and facilities as are required for the delivery of Preference Power to Eligible Customers of the Public Body. The Public Body's agent purchases the Preference Power from the Power Authority of the State of New York.

Niagara Mohawk states that the Agreement is an initial rate schedule because it is a new service to a new customer. Niagara Mohawk further states that the proposed rate is the rate per kWhr charged under Niagara Mohawk's applicable, residential rate tariff, minus the cost of fuel included in the retail rates, plus additional A&G expenses incurred by Niagara Mohawk as a result of the services provided the Agency under the Agreement. Niagara Mohawk states that the rate was arrived at through arms-length negotiations between the parties, and that the proposed rate is intended to produce a return to Niagara Mohawk essentially equivalent to which Niagara Mohawk would have received had it supplied at its residential retail rates the amount of power delivered as Preference Power.

Copies of this filing were served upon the Public Service Commission of the State of New York and the City of Syracuse.

Comment date: August 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Power and Light Company

[Docket No. ER88-538-000]

August 16, 1988.

Take notice that on July 29, 1988, Iowa Power and Light Company (Iowa Power), on its own behalf and on behalf of IowaIllinois Gas and Electric Company, Iowa Public Service Company, and Iowa Southern Utilities Company, tendered for filing a rate schedule change identified as Amendment No. 1 to Operating Agreement, Neal 3 Transmission, dated December 18, 1987 (Amendment).

Iowa Power states the purpose of the Amendment is to revise the fixed charge rate contained in Exhibit C to the Neal 3 Transmission Operating Agreement to reflect the lower 34 percent federal income tax rate of the Tax Reform Act of 1986. Iowa Power further states the Amendment also modifies certain provisions of the Operating Agreement to facilitate operation of Neal 3 Transmission by the joint owners as tenants in common, rather than as individual owners of segments of the Transmission as had been originally contemplated by the parties. Other minor revisions to the Operating Agreement are also made by the Amendment.

Iowa Power and the concurring parties request waiver of the Commission's regulations so as to permit the rate schedule change to become effective July 1, 1987. The parties further request waiver of Part 33 of the Commission's regulations in the event the Commission determines a filing under Section 203 of the Federal Power Act is required.

Copies of the filing were served upon the Iowa State Utilities Board; Illinois Commerce Commission; Minnesota Public Utilities Commission; South Dakota Utilities Commission; Corn Belt Power Cooperative; and the Iowa municipalities of Algona, Bancroft, Coon Rapids, Cedar Falls, Graettinger, Laurens, Milford, Spencer, Webster City, and Waverly.

Comment date: August 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. New England Hydro-Transmission Electric Company Inc., New England Hydro-Transmission Corporation, New England Power Company, Boston Edison Company

[Docket No. ER88-556-000]

August 16, 1988.

Take notice that on August 5, 1988, New England Hydro-Transmission Electric Company Inc. (New England Hydro), New England Hydro-Transmission Corporation (New Hampshire Hydro), New England Power Company (NEP), Boston Edison Company (Edison) tendered for filing amendments to certain of the contracts that govern participation by utilities in New England in Phase II of the interconnection arrangement between those utilities and Hydro-Quebec.

The amendments are technical changes to the Support Agreements for the AC and DC transmission and interconnection facilities and would authorize (1) the transfer of shares among participants prior to the effective date of the Support Agreements (currently anticipated in October, 1988) and modification of the date by which the initial computation of participant share is to be made; (2) the extension of certain deadlines by which participants are to provide documentation evidencing their obligations under the Support Agreements; (3) the modification of the procedure by which NEP and Public Service Company of New Hampshire will be compensated for the loss of transmission capacity; and (4) the update of certain schedules to reflect revised participating shares.

The Applicants have requested waiver of the requirement to file cost data and of the notice requirement so that the Amendments may become effective at the earliest possible date to allow financing to proceed expeditiously.

Comment date: August 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. L&J Energy Systems, Inc.

[Docket No. QF88-480-000]

August 16, 1988.

On August 2, 1988, L&J Energy Systems Inc. (Applicant), of 16401 Shagbark Place, Tampa, Florida 33618, submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Kraft plant in Lowville, New York. The facility will consist of a combustion turbine generator, a waste heat recovery steam generator, and an extraction/condensing steam trubine generator. Thermal energy recovered from the facility will be used in the processing of milk and refrigeration of dairy products. The net electric power production capacity of the facility will be 40,502 KW. The primary source of energy will be natural gas. Construction of the facility will begin April, 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18864 Filed 8-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-489-000 et al.]

ARCO Oil and Gas Co. et al.; Natural Gas Certificate Filings

August 15, 1988.

Take notice that the following filings have been made with the Commission:

1. ARCO Oil and Gas Company, Division of Atlantic Richfield Company:

[Docket No. CI88-489-000]

Take notice that on June 13, 1988, ARCO Oil and Gas Company, Division of Atlantic Richfield Company (ARCO) of P. O. Box 2819, Dallas, Texas 75221, filed an application pursuant to section 7 of the Natural Gas Act and § 157.23 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a certificate of public convenience and necessity to authorize the sale of natural gas to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the application

which is on file with the Commission and open for public inspection.

ARCO states that on July 13, 1953, Sinclair Oil & Gas Company (Sinclair), a predecessor of ARCO, and the Pacific Northwest Pipeline Corporation (Pacific), a predecessor of Northwest entered into an agreement by which Sinclair conveyed to Pacific its right, title and interest in gas and gas rights under oil and gas leases, and options for oil and gas leases, in the San Juan Basin of New Mexico, from the surface down to and including the Mesaverde formation. Sinclair reserved a so-called special overriding royalty interest in the gas produced therefrom. This agreement is known as PLA–2.

Since 1973 ARCO and Northwest have been involved in litigation to determine whether the amount of the special overriding royalty under PLA–2 and similar agreements was subject to regulation by the Commission. In 1984 the Supreme Court denied petitions for certiorari and made final the Fifth Circuit's determination that the special overriding royalties paid under PLA–2 and similar agreements were not subject to Commission jurisdiction.

On May 4, 1988, ARCO and Northwest entered into a settlement agreement which, according to ARCO, when ultimately effective will constitute a complete and final settlement and release of all of ARCO's and Northwest's claims and causes of action arising out of PLA–2. ARCO states that, among other things, the settlement agreement provides for the assignment to ARCO of the PLA–2 properties, the extinguishment of the special overriding royalty payable under PLA–2, and the execution of a Gas Purchase Contract between ARCO and Northwest for the production from the PLA–2 properties. ARCO's application seeks certificate authorization for the gas sale under the May 4, 1988, contract between ARCO and Northwest executed pursuant to the settlement agreement.

Comment date: August 31, 1988, in accordance with Standard Paragraph J at the end of the notice.

2. Pennzoil Exploration and Production Company (Successor to Pennzoil Company)

[Docket No. CI88–94–000, *et al.*]

Take notice that on July 12, 1988, Pennzoil Exploration and Production Company (PEPCO) of P. O. Box 2967, Houston, Texas 77252–2967, filed an application pursuant to section 7 of the Natural Gas Act and § 154.92 and 157.24, *et seq.* of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for certificates of public convenience and necessity to continue the service previously rendered by Pennzoil Company (Pennzoil) under the certificates listed in Exhibit A hereto. PEPCO also requests that Pennzoil's rate schedules listed in Exhibit A hereto be redesignated as those of PEPCO, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

PEPCO states that by Deed, Assignment and Conveyance executed and effective March 31, 1988, Pennzoil assigned all of its natural gas interests to PEPCO and PEPCO assumes all of the obligations of Pennzoil under the certificates and rate schedules listed in Exhibit A hereto.

Comment date: August 31, 1988, in accordance with Standard Paragraph J at the end of the notice.

Exhibit A

Pennzoil Co. rate schedule No.	FERC docket No.	Purchaser
13	CI66–94	Northern Natural Gas Co.
15	CI67–662	Transwestern Pipeline Co.
16	CI68–1229	Natural Gas Pipeline Co.
22	CI69–803	Do.
23	CI69–970	Do.
29	CI71–668	Do.
30	CI71–871	Do.
31	CI72–331	Do.
32	CI72–553 (CI74–264)	Panhandle Eastern Pipe Line Co.
35	CI73–22	Transwestern Pipeline Co.
36	CI73–23	Do.
37	CI73–202	Northern Natural Gas Co.
41	CI75–26	Transwestern Pipeline Co.
42	CI75–142	El Paso Natural Gas Co.
43	CI75–367	Do.
45	CI77–685	Williston Basin Interstate Pipeline Co.
46	CI78–401	Natural Gas Pipeline Co. of America
49	CI82–387	Northern Natural Gas Co.
50	CI79–676	Tennessee Gas Pipeline Co.
51	CI84–430	MGPC, Inc.
52	CI85–10	El Paso Natural Gas Co.
55	G–13633	Arkla Energy Resources, a division of Arkla, Inc.
57	G–13633	Trunkline Gas Co.
58	G–13633	Do.
59	G–13633	Val Gas Co.
62	G–13633	Southern Natural Gas Co.
63	G–13633	Do.
67	CI85–488	Primos Gathering System
68	G–13633	Kerr-McGee Corp.
69	G–13633	Texas Eastern Transmission Corp.
78	G–15077	Southern Natural Gas Co.
80	G–17087	Valero Interstate Transmission Co.
83	G–18193	Texas Gas Transmission Corp.
85	G–19450	Arkla Energy Resources, a division of Arkla, Inc.
87	CI60–344	Southern Natural Gas Co.
95	CI61–318	ANR Pipeline Co.
96	CI62–639	Natural Gas Pipeline Co. of America
97	CI63–714	Texas Eastern Transmission Corp.
101	G13633	Arkla Energy Resources, a division of Arkla, Inc.
102	CI66–106	Natural Gas Pipeline Co. of America
103	CI67–18	Southern Natural Gas Co.
104	CI67–713	Do.
109	CI70–577	Do.
110	CI70–629	Tennessee Gas Pipeline Co.
111	CI70–767	Texas Gas Transmission Corp.
113	CI72–425	Arkla Energy Resources, a division of Arkla, Inc.
123	CI75–217	Texas Eastern Transmission Corp.
135	CI80–45	ANR Pipeline Co.
138	CI81–460	Do.
139	CI82–356	Tennessee Gas Pipeline Co.
140	CI83–32	ANR Pipeline Co.
141	CI84–487	Transcontinental Gas Pipe Line Corp.
142	CI85–379	Natural Gas Pipeline Co. of America
147	CI77–702 *et al.* (CI78–767)	Southern Natural Gas Co.
148	CI85–295	Texas Gas Transmission Corp.
162	CI78–93 (CI84–126)	Southern Natural Gas Co.
168	CI78–93 (CI84–126)	Do.
173	CI79–429	Do.
185	CI80–50	ANR Pipeline Co.
188	CI81–461	Do.
195	CI83–320	Do.
197	CI85–247	Texas Gas Transmission Corp.
206	CI84–407–001	Tennessee Gas Pipeline Co.
207	CI85–443	Do.
209	CI66–447	ANR Pipeline Co. .
210	CI74–84	Arkla Energy Resources, a division of Arkla, Inc.
211	CI73–671	Natural Gas Pipeline Co. of America

3. National Fuel Gas Supply Corporation

[Docket No. CP88–663–000]

Take notice that on August 8, 1988, National Fuel Gas Supply Corporation (Applicant), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88–663–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity

authorizing the sale of gas on a firm basis to the Town of Rushford, New York, under Applicant's Rate Schedule RQ, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to serve the Town of Rushford with the natural gas requirements of the Rushford Kiln and Milling Ltd. (The Rushford Kiln) which are expected to be 234 dth per day. Applicant asserts that such sales would be made pursuant to its Rate Schedule RQ and the terms of an executed service agreement between Applicant and the Town of Rushford, which has a primary term of five years.

Applicant would establish a single delivery point between the facilities of Applicant and Rushford Pipeline Company located in the Town of Canadea, Allegany County, New York. Applicant asserts that Rushford Pipeline Company has been authorized by the Public Service Commission of the State of New York to transport the gas sold by Applicant to the Rushford Kiln.

Applicant proposes to replace an existing purchase meter station with a 2-inch regulatory, relief and meter setting, at an estimated cost of $10,700, in order to establish a delivery point to the Rushford Pipeline.

Comment date: September 6, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88-670-000]

Take notice that on August 10, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-670-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Tenngasco Corporation (Tenngasco), a marketer, acting as agent for Tenngasco Exchange Corporation, under the certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated May 10, 1988, it proposes to transport up to 1,000,000 dekatherms per day equivalent of natural gas on an interruptible basis for Tenngasco from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system in Louisiana, Offshore Louisiana, Texas, Offshore Texas, New York, New Jersey, New Hampshire, Connecticut, Massachusetts, Rhode Island, Pennsylvania, West Virginia, Ohio, Mississippi, Alabama, Kentucky, and Arkansas, and that it would transport and redeliver the gas to Tenngasco in Louisiana.

Tennessee advises that service under § 284.223(a) commenced May 18, 1988, as reported in Docket No. ST88-4337 (filed June 21, 1988).

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18799 Filed 8-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-661-000 et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

August 12, 1988.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP88-661-000]

Take notice that on August 8, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP88-661-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales taps for the

delivery of natural gas to four end-users, under the blanket authorization issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N proposes to construct and operate four sales taps in order to serve end-users located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on K N's peak day and annual deliveries. K N states that it would serve the following customers from the herein proposed sales taps:

1. Gary McBee, Lane County, Kansas (2 Mcf/peak day and 120 Mcf/annum);
2. Stan Sommerfeld, Wallais County, Kansas (30 Mcf/peak day and 1,000 Mcf/annum);
3. Ray Brock, Custer County, Nebraska (2 Mcf/peak day and 120 Mcf/annum);
4. Spencer Land Company, Kearney County, Nebraska (24 Mcf/peak day and 1,000 Mcf/annum).

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88-672-000]

Take notice that on August 11, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-672-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Ashton Energy Company (Ashton), a marketer, under the certificate issued in Docket No. CP87-115-000, on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated June 16, 1988, as amended on June 29 and June 30, 1988, it proposes to transport up to 100,000 dekatherms per day equivalent of natural gas on an interruptible basis for Ashton from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system Offshore Louisiana, and in the states of Louisiana and Texas, and that it would transport and redeliver the gas to Ashton at various points in multiple states.

Tennessee advises that service under § 284.223(a) commenced June 30, 1988, as reported in Docket No. ST88-4815 (filed July 21, 1988).

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP88-684-000]

Take notice that on August 8, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 filed in Docket No. CP88-684-000 a request pursuant to § 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.212) for authorization to add a new delivery point to New York State Electric and Gas Corporation (NYSEG), its existing jurisdictional customer, and to construct and operate appurtenant facilities, all as more fully set forth in the request on file with the Commission and open to public inspection.

CNG indicates that it proposes to add the new delivery point on its existing 12-inch Line No. 551, near the City of Geneva, in Seneca County, New York, to be known as the Millard Road Connection. CNG also indicates that it will construct and operate the facilities necessary to deliver the gas to NYSEG, including mesurement and pressure regulating facilities. The estimated cost for all delivery facilities required is $567,000.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP88-671-000]

Take notice that on August 10, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302, filed in Docket No. CP88-671-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for various shippers under the certificate issued in Docket No. CP86-311-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for the shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily, and annual volumes, as well as the docket number related to the 120-day transportation service initiated by CNG (see attached appendix).

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

Exhibit "A" Part 284, Subpart G, Transportation Transactions for the Period 5-01-88 Through 7-15-88

Docket No.	Shipper customer	Commence date	Max. daily DT, avg. daily DT, est. annual DT,	Receipt point	LDC
ST88-4924	1. Landmark Petroleum	6/15/88	2,250 3,000 821,250	C	EOG
ST88-4925	2. Cuyahoga County Hospital	6/01/88	2,000 1,233 730,000	B	EOG
ST88-4912	3. Clinton Gas Marketing	6/02/88	27,000 1,695 9,855,000	A	EOG
ST88-4939	4. IESCO	6/20/88	15,000 49 5,475,000	D	EOG
ST88-4938	5. End Users Supply System	6/18/88	10,000 659 3,650,000	D	HOPE
ST88-4944	6. Consolidated Fuel	6/02/88	4,000	A	PNG

Docket No	Shipper customer	Commence date	Max. daily DT, avg. daily DT, est. annual DT.	Receipt point	LDC
ST88-4943	7. Manufacturer's Fuel	6/02/88	348 1,460,000 200 65	B	NFG
ST88-4931	8. Anheuser-Busch	6/04/88	73,000 7,500 1,074	A	NIMO
ST88-4913	9. James River Corp. #2	6/15/88	2,737,500 1,000 136	A	NIMO
ST88-4942	10. Access Energy	6/10/88	365,000 50,000 189	B	NIMO
ST88-4915	11. Entrade	6/09/88	18,250,000 150.000 1,668	D	NIMO
ST88-4922	12. End Users Supply	6/18/88	54,750,000 20,000 665	D	NIMO
ST88-4941	13. North Atlantic	6/25/88	7,300,000 10,000 201	A	NIMO
ST88-4929	14. Unicorp (H & H)	6/10/88	3,650,000 100.000 2,190	D	NIMO
ST88-4928	15. CNG Trading Company	6/11/88	36,500,000 140,000 467	A	NYSEG
ST88-4926	16. Ohio Gas Marketing	6/01/88	51,100,000 900 900	A	Transco
ST88-4919	17 JDS Energy	5/01/88	328,500 4,000 3,645	C	EOG
ST88-4918	18. LTV Steel	5/01/88	1,460,000 100,000 2,450	B	EOG
ST88-4940	19. Riley Natural Gas Co.	7/15/88	36,500,000 10,000 5,000 3,650,000	B	Corgas

Legend of Local Distribution Companies (LDC) or Delivery points: HGI—Hope Gas, Inc.; NYSEG—New York State Electric & Gas Corporation; RGE—Rochester Gas & Electric Corporation; EOG—East Ohio Gas Company; PNG—Peoples Natural Gas Company; NIMO—Niagara Mohawk Power Corporation; NFG—National Fuel Gas Supply Corporation; Transco—Transcontinent Gas Pipeline Corporation; Corgas—Corgas Pipeline Company (Intrastate).

Legend of Receipt Points: A—Various interconnects between Tennessee Gas Pipeline Company and CNG; B—Various receipt points in WV/PA/NY; C—Various interconnects between Texas Gas Transmission Corporation and CNG; D—Various interconnects between Texas Eastern Transmission Corporation and GNG.

5. Williams Natural Gas Company

[Docket No. CP88-669-000]

Take notice that on August 10, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-669-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim 800 feet of 12-inch pipeline, measuring, regulating and appurtenant facilities and construct 420 feet of 6-inch pipleine, measuring, regulating and appurtenant facilities all in Cherokee County, Kansas, for the sale and delivery of gas to Empire District Electric Company (Empire), under the certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that Empire is replacing obsolete equipment at its Riverton power plant which would enable WNG to replace and relocate existing facilities to allow for better operation. The cost to reclaim is $2,490 with an estimated salvage value of $4,297 and the cost of construction is estimated to be $86,020, would be paid from treasury cash, it is stated.

WNG states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers. WNG further states that the estimated peak day volume of 51,120 MMBtu of natural gas equivalent will not exceed the total volume authorized in Docket No. C 298.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice

6. United Gas Pipe Line Company

[Docket No. CP88-654-000]

Take notice that on August 1, 1988, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP88-654-000 a request pursuant to § 157.216(b) of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon facilities formerly being used to serve Exxon Pipeline Company (Exxon) at its Gilmer Pump Station located in Upshur County, Texas, under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United indicates that the metering facilities (including a bypass, and miscellaneous appurtenances) to be abandoned were certificated under

Docket No. CP86–724 and that such abandonment would be accomplished without detriment or disadvantage to its existing customers.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Granite State Transmission, Inc.

[Docket No. CP88–667–000]

Take notice that on August 9, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, filed in Docket No. CP88–667–000 a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to establish two new off-system delivery points for sales service to its affiliated distribution company customer, Bay State Gas Company (Bay State), under Granite State's blanket certificate issued in Docket No. CP82–515–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Granite State proposes to establish a new off-system delivery points to Bay State at Mahwah, New Jersey and Mendon, Massachsuetts, where the pipeline facilities of Tennessee Gas Pipeline Company (Tennessee) and Algonquin Gas Transmission Company (Algonquin Gas) interconnect. Granite State states that Tennessee, which is Granite State's largest supplier, was recently authorized to establish delivery points to Granite State at the Mahwah and Mendon interconnections with Algonquin Gas in Docket No. CP86–732–000 for sales deliveries on an interruptible basis [1] (43 FERC ¶ 61,041, April 6, 1988). According to Granite State, Algonquin Gas is providing interruptible transportation service to its customers pursuant to section 311 of the Natural Gas Policy Act and Part 254 of the Commission's Regulations. Bay State, an Algonquin Gas customer, is eligible for such interruptible transportation service and has designated Mahwah and Mendon as receipt points for gas to be transported by Algonquin Gas to Bay State's Brockton, Massachusetts division, it is stated. It is explained that the new delivery points would be used only for interruptible sales service, and that deliveries for Granite State's account by Tennessee at the new delivery points would not increase Bay State's presently authorized daily contract demand or annual purchase entitlements with Granite State and that no other customer of Granite State would be adversely affected by the proposal. Finally, according to Granite State, no construction is required to establish the new delivery points.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Chattanooga Gas Company, a Division of Jupiter Industries, Inc. and Chattanooga Gas Company

[Docket No. CP88–660–000]

Take notice that on August 5, 1988, Chattanooga Gas Company, a Division of Jupiter Industries, Inc. (CGC–Jupiter), 811 Broad Street, Chattanooga, Tennessee 37402, and Chattanooga, Gas Company (CGC-Atlanta), 235 Peachtree Street, Atlanta, Georgia 30303, jointly filed in Docket No. CP88–660–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act requesting (1) authorization for CGC-Atlanta to acquire the gas liquefaction facility owned by CGC-Jupiter, and (2) authorization for CGC-Jupiter to abandon the services provided by the LNG facility and certificate in Docket Nos. CP73–329 and CP80–487 by transfer of the certificates to CGC-Atlanta, all as more fully described in the application which is on file with the Commission and open to public inspection.

The joint applicants state that the request stems from the April 5, 1988, agreement between CGC-Jupiter and CGC-Atlanta whereby CGC-Atlanta would acquire substantially all of the assets of CGC-Jupiter for a cash purchase price of approximately 35 million dollars. It is indicated that closing of the transaction is subject to various governmental approvals. It is also indicated that on May 6, 1988, the joint applicants submitted an application to the Tennessee Public Service Commission requesting authorization for the sale of CGC-Jupiter's assets to CGC-Atlanta.

The joint applicants note that the certificates in Docket Nos. CP73–329 and CP80–487 authorize CGC-Jupiter to (1) sell LNG produced in the LNG facility to various customers for resale and (2) provide a storage service for LNG. The joint applicants state that CGC-Jupiter is not currently providing any service pursuant to the certificates and CGC-Jupiter's LNG facility has reverted to its original, peak-shaving function. The joint applicants state the requested authorization is needed (1) to reflect the April 5, 1988, agreement by CGC-Jupiter to sell the LNG facility and (2) to ensure that CGC-Atlanta can provide LNG service as the successor to CGC-Jupiter. The joint applicants ask that if the Commission addresses this application before the Tennessee Public Service Commission (PSC) addresses the companion application, the authorization be conditioned on approval by the Tennessee PSC of the companion petition. In addition the joint applicants ask for any waiver which may be needed in order to grant the requested authorization.

Comment date: September 2, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Midwestern Gas Transmission Company

[Docket No. CP88–659–000]

Take notice that on August 4, 1988, Midwestern Gas Transmission Company (Midwestern) filed in Docket No. CP 88–659–000 an application pursuant to sections 7(c) of the Natural Gas Act for authorization to transport up to 125,000 dt equivalent of natural gas per day for DeKalb Petroleum Corporation (DeKalb), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern explains that the gas would be received at Emerson, Manitoba, on the Canadian border, and that equivalent volumes would be delivered to DeKalb at an existing interconnection with ANR Pipeline Company near Marshfield, Wisconsin, pursuant to a transportation agreement signed June 10, 1988. It is asserted that the transportation service would be performed on an interruptible basis and would require no construction of new facilities. It is stated that Midwestern would charge the rates established in its Rate Schedule IT–2.

Comment date: September 2, 1988, in accordance with Standard Paragraph F at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP88–666–000]

Take notice that on August 9, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP88–666–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap for the delivery of natural gas, for resale, under the certificate authorization issued in Docket No. CP82–430–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file

[1] Deliveries for Granite State's account by Tennessee are limited to 20,000 Dt a day on an interruptible basis under the certificate authorization in Docket No. CP86–732–000, *supra*.

with the Commission and open to public inspection.

United proposes to construct and operate a one-inch sales tap on its 16-inch Jackson-Mobile Main Line near Magee, Simpson County, Mississippi. United states that the new sales tap would enable it to supply an estimated average of 2 Mcf per day of natural gas under United's Rate Schedule DG–N to Entex Inc. for resale for commercial use to the James N. Griffith's Chicken Farm. United further states that the estimated peak daily and annual quantities would be 9 Mcf and 800 Mcf, respectively.

United states that it would construct and operate the proposed sales tap in compliance with 18 CFR Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18800 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD88170I7T]

Designation of Tight Formation, Duval County, TX; Tight Formation Determination

August 16, 1988.

Take notice that on August 3, 1988, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that the Hagist Ranch (Wilcox Reagan, Wilcox K Middle, Wilcox House C, and Wilcox Basal House) Fields located in Duval and McMullen Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued July 18, 1988, finding that the formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1988)). All such comments should be filed within 20 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18868 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88–678–000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

August 15, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88–678–000]

Take notice that on August 12, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–678–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Citizens Gas Supply Corporation (Citizens), a marketer, under the certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated July 14, 1988, and amended July 20, 1988, it proposes to transport up to 150,000 dekatherms per day equivalent of natural gas on an interruptible basis for Citizens from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system Offshore Louisiana, and in the states of Louisiana, Mississippi, Texas, Alabama, Kentucky, New Jersey, Massachusetts, New York, and that it would transport and redeliver the gas to Citizens at various points in multiple states.

Tennessee advises that service under § 284.223(a) commenced July 28, 1988, as reported in Docket No. ST88–5146 (filed August 9, 1988).

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88–677–000]

Take notice that on August 12, 1988, Tennessee Gas Pipeline Company,

(Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–677–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Tejas Power Corporation (Tejas), a marketer, under the certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated July 7, 1988, and amended July 7, 1988, it proposes to transport up to 20,000 dekatherms per day equivalent of natural gas on an interruptible basis for Tejas from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system Offshore Louisiana, Offshore Texas, and in the states of Louisiana, Mississippi and Texas, and that it would transport and redeliver the gas to Tejas at various points in the states of Kentucky, Louisiana, Mississippi, Tennessee, West Virginia, Indiana, Illinois, Texas and Arkansas.

Tennessee advises that service under § 284.223(a) commenced July 7, 1988, as reported in Docket No. ST88–5123 (filed August 5, 1988).

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88–668–000]

Take notice that on August 9, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–668–000 a request pursuant to § 1457.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Arco Oil & Gas Company, a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 100,000 MMBtu/day for Arco Oil & Gas Company from one point of receipt in Offshore Texas to one point of delivery in Texas. Northern states that construction of facilities would not be required to provide the proposed service.

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88–675–000]

Take notice that on August 12, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–675–000 a request pursuant to § 1157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Maxus Exploration Company, (Maxus), under the authorization issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Maxus, a producer of natural gas, pursuant to an executed interruptible transportation agreement. The term of the transportation agreement is for one year and month to month thereafter unless terminated upon 30 days prior written notice by one party to the other party. Northern proposes to transport on a peak day up to 20,000 MMBtu; on an average day up to 15,000 MMBtu; and on an annual basis 7,300 MMBtu of natural gas for Maxus. Northern proposes to receive the subject gas from two receipt points in Texas and Oklahoma. Northern would then transport and redeliver such volumes to Maxus at eighteen delivery points located in Texas. Northern avers that construction of facilities would not be required to provide the proposed service.

Northern states that it would perform such transportation service for Maxus pursuant to its Rate Schedule IT–1, or any effective superseding rate schedule on file with the FERC or any successor thereof. It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on June 1, 1988, as reported in Docket No. ST88–5172–000.

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88–676–000]

Take notice that on August 12, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–676–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Mobile Natural Gas, Inc. (Mobil), a marketer, under the certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated July 25, 1988, it proposes to transport up to 100,000 dekatherms per day equivalent of natural gas on an interruptible basis for Mobile from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system Offshore Louisiana, Offshore, Texas, and in the states of Louisiana and Texas, and that it would transport and redeliver the gas to Mobil at various points in West Virginia.

Tennessee advises that service under § 284.223(a) commenced August 1, 1988, as reported in Docket No. ST88–5145 (filed August 9, 1988).

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 18865 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88–433–000]

Central Louisiana Electric Company, Inc.; Filing

August 16, 1988.

Take notice that on July 27, 1988, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing additional data in support of its filing and an amendment to the proposed fuel adjustment clause contained in its May 27, 1988 filing for a rate increase for firm power service provided to the Towns of Boyce and Elizabeth, Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18869 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88–44–010 and RP88–184–003]

El Paso Natural Gas Co.; August 15, 1988.

Take notice that on August 10, 1988, El Paso Natural Gas Company (El Paso) filed First Substitute Original Sheet No. 1–D.3, First Revised Sheet No. 1–D.3, Second Revised Sheet No. 1–D.3 and Substitute Second Revised Sheet No. 1–D.3 to its FERC Gas Tariff, Third Revised Volume No. 2.

El Paso states that the purpose of this filing is to insert the "San Juan Triangle Facilities Demand Charge" which had been omitted from earlier filings, including compliance filings made on July 14 and August 1, 1988. El Paso requests that these tariff sheets be substituted for their previously filed counterparts.

El Paso states that a copy of this filing is being served upon all parties of record in Docket Nos. RP88–44–000 and RP88–184–000 and upon all interstate pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18870 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88–2–15–001]

Mid Louisiana Gas Co.; Proposed Change of Rates

August 15, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on August 9, 1988, tendered for filing as a part of First Revised Volume No. of its FERC Gas Tariff, Substitute Sixty-Fourth Revised Sheet No. 3a to become effective September 1, 1988.

Mid Louisiana states that the purpose of the filing of Substitute Sixty-Fourth Revised Sheet No. 3a is to reflect the correction of mathematical error contained in the calculation of the Purchased Gas Cost Surcharge in its filing of July 1, 1988.

Mid Louisiana states this filing is made in accordance with Section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not have to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18871 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88–94–000; RP88–94–001]

Natural Gas Pipeline Co. of America; Notice of Technical Conference

August 15, 1988.

Pursuant to the Commission order issued on April 29, 1988, a second technical conference will be held to address issues in the above-captioned proceeding. The conference will be held on Thursday, September 8, 1988, at 1:00 p.m. in a room to be designated at the office of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20423.

All interested parties are permitted to attend.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18872 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G–4579–051 et al.]

OXY USA Inc., Successor to Cities Service Oil and Gas Corp.; Redesignation

August 16, 1988.

Take notice that on June 3, 1988, OXY USA Inc. of P.O. Box 300, Tulsa, Oklahoma 74102, filed an application pursuant to § 157.23(b) of the Federal Energy Regulatory Commission's Regulations to amend certificates of public convenience and necessity to substitute OXY USA Inc. for Cities Service Oil and Gas Corporation. OXY USA Inc. also requests that the FERC Gas Rate Schedules of Cities Service Oil and Gas Corporation be redesignated as those of OXY USA Inc. and that OXY USA Inc. be substituted for Cities Service Oil and Gas Corporation in any related proceedings presently pending before the Commission. The related certificates and rate schedules are listed in the attached Exhibit A. The application is on file with the

Commission and open for public inspection.

Effective April 1, 1988, the corporate name of Cities Service Oil and Gas Corporation was changed to OXY USA Inc.as evidenced by a Certificate of Amendment of Certificate of Incorporation dated February 22, 1988.

Notice is hereby given that all certificates and related rate schedules as listed in the attached Exhibit A are hereby redesignated to reflect the corporate name change from Cities Service Oil and Gas Corporation to OXY USA Inc. and that OXY USA Inc. is substituted for Cities Service Oil and Gas Corporation in all pending proceedings.

Lois D. Cashell,

Acting Secretary.

EXHIBIT A

R.S. No.	Purchaser	Certificate Docket
1*	Trunkline Gas Company	G-4579
18	El Paso Natural Gas Company.	G-4579
19*	...do...	G-4579
20	...do...	G-4579
21	...do...	G-4579
23	...do...	G-4579
24	...do...	G-4579
25	...do...	G-4579
27	...do...	G-4579
28	...do...	G-4579
31	...do...	G-4579
32	Northern Natural Gas Company.	G-4579
38	El Paso Natural Gas Company.	G-4579
39	...do...	G-4579
40	...do...	G-4579
41	...do...	G-4579
50	Texas Gas Transmission Corp..	G-4579
51	El Paso Natural Gas Company.	G-4579
53	Northern Natural Gas Company.	G-4579
57	El Paso Natural Gas Company.	G-4579
58	...do...	G-4579
59	...do...	G-4579
60	...do...	G-4579
61	...do...	G-4579
62	...do...	G-4579
63	...do...	G-4579
64	...do...	G-4579
65	...do...	G-4579
66	...do...	G-4579
69	Lone Star Gas Company	G-4579
90	K N Energy, Inc.	G-4579
91	Colorado Interstate Gas Company.	G-4579
96	Northern Natural Gas Company.	G-11636
		G-16997
99*	Colorado Interstate Gas Company.	G-12149
100*	...do...	G-12150
107	Phillips 66 Natural Gas Company.	G-14532
108	K N Energy, Inc.	G-4579
111	Phillips 66 Natural Gas Company.	G-14533
		G-14525
		G-14526
		G-14530
		G-14524
		G-14522
		G-14523
120	Philips 66 Natural Gas Company.	G-14529
121	K N Energy, Inc.	G-4579
124	West Texas Gathering Company.	G-14437
125*	Colorado Interstate Gas Company.	G-4579
126	...do...	G-4579
127	Northern Natural Gas Company.	G-17451
129	Natural Gas Pipeline Co. of America.	G-18352
130	El Paso Natural Gas Company.	G-18456
133	Colorado Interstate Gas Company.	G-19549
134	Trunkline Gas Company	G-19559
135	El Paso Natural Gas Company.	G-4579
137	Transwestern Pipeline Company.	G-18235
140*	Northern Natural Gas Company.	CI60-830
142	Transwestern Pipeline Company.	G-18236
146	Colorado Interstate Gas Company.	CI61-1123
147	Transwestern Pipeline Company.	CI61-1100
150	Ringwood Gathering Company and Pioneer Gas Products Company.	CI61-1664
152	Natural Gas Pipeline Co. of America.	CI62-72
153	...do...	CI62-506
158	Colorado Interstate Gas Company.	CI63-76
160	Northern Natural Gas Company.	CI63-316
162	ANR Pipeline Company	CI63-647
164	Natural Gas Pipeline Co. of America.	CI63-710
165	Colorado Interstate Gas Company.	CI63-1307
166*	Northern Natural Gas Company.	G-4579
167*	...do...	G-4579
168*	...do...	G-4579
169*	...do...	G-4579
170*	...do...	G-4579
171*	...do...	G-4579
172	Arkla Energy Resources, a division of Arkla, Inc..	CI64-136
175	Colorado Interstate Gas Company.	CI64-664
176	Columbia Gas Transmission Corp..	G-2721
177	El Paso Natural Gas Company.	G-4579
180	Tennessee Gas Pipeline Company.	G-11046
182*	ANR Pipeline Company	G-13228
185	Southern Natural Gas Company.	CI60-20
186	Tennessee Gas Pipeline Company.	G-19707
187	...do...	CI62-135
190	Northern Natural Gas Company.	CI64-752
191	...do...	CI64-773
193	Tennessee Gas Pipeline Company.	CI64-1110
199*	El Paso Natural Gas Company.	CI64-1451
200	Williams Natural Gas Company.	G-9792
201	Northern Natural Gas Company.	CI61-385
203	El Paso Natural Gas Company.	G-3566
205	...do...	G-3567
210	...do...	CI66-636
217	Northern Natural Gas Company.	CI67-1566
218	Transwestern Pipeline Company.	CI67-930
220	Texas Eastern Transmission Corp..	CI68-311
223	Southern California Gas Company.	CI68-824
224	Tennessee Gas Pipeline Company.	CI67-864
225	Transwestern Pipeline Company.	CI68-1276
226	Tennessee Gas Pipeline Company.	CI69-57
231	Texas Gas Transmission Corp..	G-4560
233	Kentucky West Virginia Gas Co..	G-7008
234	Columbia Gas Transmission Corp..	G-7009
235	...do...	G-7009
236	Oklahoma Gas Pipeline Company.	G-7011
237	K N Energy, Inc.	G-7012
238	Northern Natural Gas Company.	G-7014
239	...do...	G-7015
240	...do...	G-7015
241	Colorado Interstate Gas Company.	G-7016
242	Northern Natural Gas Company.	G-7017
243	Oklahoma Gas Pipeline Company.	G-7018
244*	Colorado Interstate Gas Company.	G-8994
245	Northern Natural Gas Company.	G-9864
246	Colorado Interstate Gas Company.	G-10802
248	Columbia Gas Transmission Corp..	G-12487
249	Northern Natural Gas Company.	G-12508
253	Colorado Interstate Gas Company.	G-7006
		G-7010
255	Colorado Interstate Gas Company.	CI60-169
261	CNG Transmission Corporation.	G-7074
262	...do...	G-7075
264	...do...	G-7077
267	Columbia Gas Transmission Corp..	G-7080
269	...do...	G-7081
270	Equitable Transmission Company.	G-7083
271	Columbia Gas Transmission Corp..	G-7084
272	...do...	G-7085
274	CNG Transmission Corporation.	G-11120
277	...do...	G-13074
279	Columbia Gas Transmission Corp..	G-11648
280	CNG Transmission Corporation.	CI60-139
281*	Columbia Gas Transmission Corp..	CI62-458

EXHIBIT A—Continued

R.S. No.	Purchaser	Certificate Docket
282..	CNG Transmission Corporation.	CI62-498
285..	Equitable Transmission Company.	CI63-1312
286..	Texas Gas Transmission Corp..	CI63-1317
288..	Northern Natural Gas Company.	CI64-425
292..	Columbia Gas Transmission Corp..	CI66-351
297..	...do...	CI68-212
299..	CNG Transmission Corporation.	CI68-736
300..	...do...	CI68-891
302..	ANR Pipeline Company	CI68-1322
304..	Transwestern Pipeline Company.	CI69-394
305..	Natural Gas Pipeline Co. of America.	CI69-406
310..	ANR Pipeline Company	CI69-443
311..	...do...	CI69-1086
313..	...do...	CI69-1236
314..	Texas Eastern Transmission Corp..	CI69-1235
315..	Tennessee Gas Pipeline Company.	CI69-1117
316*	Northern Natural Gas Company.	CI70-80
317..	Transwestern Pipeline Company.	CI70-176
318..	CNG Transmission Corporation.	CI70-129
319..	Mountain Fuel Resources, Inc..	CI70-481
322..	Tennessee Gas Pipeline Company.	CI70-598
323..	...do...	CI70-660
325..	ANR Pipeline Company	CI70-941
327..	Columbia Gas Transmission Corp..	CI70-982
329..	ANR Pipeline Company	CI70-1080
330..	Texas Eastern Transmission Corp..	CI71-237
331..	Tennessee Gas Pipeline Company.	CI70-1008
332..	Transcontinental Gas Pipe Line Corp..	CI71-207
333..	Columbia Gas Transmission Corp..	CI71-295
334..	Arkla Energy Resources, a division of Arkla, Inc..	CI71-324
335..	El Paso Natural Gas Company.	CI71-435
337..	CNG Transmission Corporation.	CI71-492
338..	Phillips 66 Natural Gas Company.	G-14531 G-14527 G-14258 G-14521
339..	Columbia Gas Transmission Corp..	CI71-559
344..	Williams Natural Gas Company.	CI72-69
345*	Transwestern Pipeline Company.	CI72-78
347..	Columbia Gas Transmission Corp..	CI72-160
348..	Arkla Energy Resources, a division of Arkla, Inc..	G-2712
351*	Southern Natural Gas Company.	G-2712
355..	Texas Eastern Transmission Corp..	G-3031
358..	Mobil Oil Corporation	G-3031
362..	Arkla Energy Resources, a division of Arkla, Inc..	G-3031
364..	Tennessee Gas Pipeline Company.	G-6713

EXHIBIT A—Continued

R.S. No.	Purchaser	Certificate Docket
365*	Arkla Energy Resources, a division of Arkla, Inc..	G-2712
368*	Texas Transmission Corp.	G-9789
370*	...do...	G-10188
373*	...do...	G-16204
375..	...do...	G-19716
376..	Tennessee Gas Pipeline Company.	CI60-198
377..	Texas Eastern Transmission Corp..	CI61-1131
379..	Arkla Energy Resources, a division of Arkla, Inc..	G-2712
380..	Trunkline Gas Company	CI72-231
383..	Arkla Energy Resources, a division of Arkla, Inc..	CI72-600
384..	Transwestern Pipeline Company.	CI72-635
389..	ANR Pipeline Company	CI72-840
391..	CNG Transmission Corporation.	CI73-118
392..	ANR Pipeline Company	CI73-38
394..	CNG Transmission Corporation.	CI73-206
398..	Tennessee Gas Pipeline Company.	CI73-468
399..	Columbia Gas Transmission Corp..	CI73-635
400..	Tennessee Gas Pipeline Company.	CI73-728
403..	Southern Natural Gas Company.	CI73-845
406..	Transwestern Pipeline Company.	CI74-194
407..	Northern Natural Gas Company.	CI74-435
410..	Trunkline Gas Company	CI75-161
411..	K N Energy, Inc.	CI75-227
415..	Tennessee Gas Pipeline Company.	CI75-489
417..	Northern Natural Gas Company.	CI75-539
418..	Texas Gas Transmission Corporation.	CI75-558
419*	El Paso Natural Gas Company.	CI75-605
420..	Transwestern Pipeline Company.	CI75-606
424..	...do...	CI76-38
425..	Trunkline Gas Company	CI76-18
426..	Tennessee Gas Pipeline Company.	CI76-58
429..	...do...	CI76-220
430..	...do...	CI76-805
431..	Colorado Interstate Gas Company.	CI76-333
434..	Northern Natural Gas Company.	CI76-381
436..	Tennessee Gas Pipeline Company.	CI76-620
437..	El Paso Natural Gas Company.	CI77-16
440..	Colorado Interstate Gas Company.	CI77-188
441*	Natural Gas Pipeline Co. of America.	CI77-99
442..	El Paso Natural Gas Company.	CI77-327
443..	Transco Gas Supply Company.	CI77-402
445..	Natural Gas Pipeline Co. of America.	CI77-174
446..	El Paso Natural Gas Company.	CI77-491
447..	...do...	CI77-512
448..	Tennessee Gas Pipeline Company.	CI77-579
449..	Transco Gas Supply Company.	CI77-594
450..	...do...	CI77-616

EXHIBIT A—Continued

R.S. No.	Purchaser	Certificate Docket
451..	El Paso Natural Gas Company.	CI77-634
453..	ANR Pipeline Company	CI77-693
454..	Northern Natural Gas Company.	CI77-822
455..	ANR Pipeline Company	CI77-699
456..	Panhandle Eastern Pipe Line Co..	CI77-770
457..	ANR Pipeline Company	CI78-6
458..	K N Energy, Inc.	CI78-99
459..	Natural Gas Pipeline Co. of America.	CI78-156
460..	Panhandle Eastern Pipe Line Co..	CI78-211
462..	ANR Pipeline Company	CI78-392
467..	Northern Natural Gas Company.	CI78-615
469..	ANR Pipeline Company	CI78-688
473..	K N Energy, Inc.	CI78-838
476..	Northern Natural Gas Company.	CI78-1048
478..	...do...	CI78-693
479..	Colorado Interstate Gas Company.	CI78-1217
480..	El Paso Natural Gas Company.	CI79-426
481..	ANR Pipeline Company	CI79-462
482..	Tennessee Gas Pipeline Company.	CI79-508
483..	ANR Pipeline Company	CI79-470
490..	...do...	CI80-422
492..	Southern Natural Gas Company.	CI81-5
494..	Tennessee Gas Pipeline Company.	CI81-202
495..	Transcontinental Gas Pipe Line Corp..	CI81-300
497..	Texas Eastern Transmission Corp..	CI81-44
498..	Williams Natural Gas Company.	CI78-210
499..	Trunkline Gas Company	CI82-204
500..	...do...	CI82-217
501..	Northern Natural Gas Company.	CI82-302
503..	El Paso Natural Gas Company.	CI82-434
505..	Tennessee Gas Pipeline Company.	CI83-168
507..	Transcontinental Gas Pipe Line Corp..	CI84-435
508..	Northern Natural Gas Company.	CI85-262
511..	Williston Basin Interstate Pipeline Co..	CI85-638
512..	ANR Pipeline Company	CI86-183
513..	Amoco Gas Company	CI85-623
514..	Northern Natural Gas Company.	CI86-133
515..	Tennessee Gas Pipeline Company.	CI86-268
516..	ANR Pipeline Company	CI86-365
518..	...do...	CI86-362
520..	Columbia Gas Transmission Corp..	CI86-360
521..	...do...	CI86-358
522..	Northern Natural Gas Company.	CI86-366
523..	Northwest Pipeline Corporation.	CI86-363
525..	Southern Natural Gas Company.	CI86-356
526..	Texas Eastern Transmission Corp..	CI86-343
527..	Texas Gas Transmission Corporation.	CI86-342
528..	Transco Gas Supply Company.	CI86-357
529..	...do...	CI86-355

EXHIBIT A—Continued

R.S. No.	Purchaser	Certificate Docket
530	...do...	CI86-354
531	...do...	CI86-341
532	...do...	CI86-352
533	...do...	CI86-351
535	Transcontinental Gas Pipe Line Corp..	CI86-346
536	...do...	CI86-353
537	...do...	CI86-349
538	Trunkline Gas Company...	CI86-348
544	Columbia Gas Transmission Corp..	CI73-122
545	Northern Natural Gas Company.	CI87-105
546	Transco Gas Supply Company.	CI81-490
547	Transcontinental Gas Pipe Line Corp..	CI87-255
548	Texas Eastern Transmission Corp..	CI87-624
549	...do...	CI87-775
550	Trunkline Gas Company...	CI87-885
551	...do...	CI87-886
552	Colorado Interstate Gas Company.	CI88-152
553	Texas Eastern Transmission Corp..	G-17239-001

*Operator, *et al.*

[FR Doc. 88-18873 Filed 8-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-155-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 15, 1988.

Take notice that on August 9, 1988, Southern Natural Gas Company (Southern) tendered for filing the following original and revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1 to become effective June 1, 1988:

Substitute Sixth Revised Sheet No. 45B
Substitute Fifth Revised Sheet No. 45C
Substitute Seventh Revised Sheet No. 45D
Substitute Eighth Revised Sheet No. 45E
Substitute First Revised Sheet No. 45E.1
Substitute First Revised Sheet No. 45E.2
Substitute First Revised Sheet No. 45E.3
Substitute First Revised Sheet No. 45E.4
Substitute Original Revised Sheet No. 45E.5
Substitute Original Revised Sheet No. 45E.6
Substitute Original Revised Sheet No. 45E.7
Substitute Original Revised Sheet No. 45E.8

Southern states that the proposed tariff sheets reflect certain changes to the Purchased Gas Adjustment (PGA) clause of Southern's tariff in compliance with the July 8, 1988 order issued by the Director of the Office of Pipeline and Producer Regulation in Docket No. RP88-155-000.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions and upon the parties to Docket No. RP88-155-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.212 or 385.214) All such motions or protests should be filed on or before August 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18874 Filed 8-18-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of May 23 Through May 27, 1988

During the week of May 23 through May 27, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Glen Milner, 5/23/88, KFA-0188

Glen Milner filed an Appeal from a denial by the Senior Information Officer, Albuquerque Operations Office, of a Request for Information which he had submitted under the Freedom of Information Act. The document that was the subject of the Appeal was a page of a technical manual concerning the characteristics of containers for nuclear weapons. In considering the Appeal, the DOE found that the document sought might be exempt from mandatory release pursuant to Exemption 2 of the FOIA, but that the determination letter did not contain sufficient information to enable the DOE to make a decision regarding the exemption's application in the case. Accordingly, the matter was remanded for release of the document or a new determination letter explaining in more detail why the document was exempt from release under Exemption 2.

Jeff Nesmith, 5/24/88, KFA-0184

Jeff Nesmith filed an Appeal from a determination by the Chairman of the Superconducting Super Collider (SSC) Task Force of a request which he had submitted under the Freedom of Information Act. Nesmith sought copies of the contents of sealed envelopes, containing voluntary offers of financial assistance, that were submitted with the SSC site proposals. In considering the Appeal, the DOE found that the contents of the sealed envelopes do not constitute agency records, and therefore are not subject to the FOIA. Accordingly, Nesmith's Appeal was denied.

Office of Scientific & Technical Information, 5/26/88, KFA-0158

The DOE's Office of Scientific and Technical Information (OSTI) filed a Motion for Clarification of a Decision and Order that had been issued to the National Security Archive on December 18, 1987. That Decision required OSTI to search its computerized database for information that was sought by the NSA. The DOE found that while it is clear that the FOIA does not require agencies to make computations or manipulate data contained in computerized records, when an agency already has software capable of retrieving the information sought by a requester, the FOIA requires that the agency utilize its computer capabilities to retrieve the information.

Request for Exception

Pro Oil, 5/27/88, KEE-0164

Pro Oil filed an Application for Exception in which it sought relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the firm's request, the DOE found that the firm failed to demonstrate that it was experiencing a significantly greater hardship than other reporting firms. Accordingly, exception relief was denied.

Motion for Discovery

Ozark County Gas, Inc., Charles Luna, 5/25/88 KRD-0239, KRH-0239

The OHA issued a Decision and Order denying a Motion for Discovery and Motion for Evidentiary Hearing filed by Ozark County Gas, Inc. and Charles Luna in connection with a Remedial Order issued to them. In denying the Motion for Discovery, the

OHA found that the information sought by Luna and Ozark was irrelevant to the final resolution of the case. OHA also denied the PRO respondents' request for an evidentiary hearing, finding that Luna and Ozark had not shown that convening such a hearing would in any way advance the resolution of the factual disputes in the case.

Refund Applications

Aminoil U.S.A., Inc./Orland LP-Gas, Inc., Orland L.P. Gas Co., 5/27/88, RF139-1, RF139-2

The DOE issued a Decision and Order concerning two Applications for Refund filed by the previous and current owners of Orland LP-Gas, Inc. (Orland) in the Aminoil U.S.A., Inc. special refund proceeding. The DOE first found that Orland had demonstrated that it experienced injury in connection with its Aminoil purchases. The DOE then found that by virtue of complete ownership of the corporation's stock, the current owner was the proper party to receive the corporation's refund. The DOE concluded that the firm should receive a refund of $22,361, representing $12,786 in principal and $9,575 in interest.

Augustus Bros., Inc., 5/27/88, RF272-6283

The DOE issued a Decision and Order considering an application for a crude oil overcharge refund filed by Augustus Bros. Inc., a gasoline retailer during the period August 19, 1973 through January 27, 1981. Because Augustus did not demonstrate that it was injured due to the crude oil overcharges, the application was denied.

BAK Ltd./Amoco Corporation, Supreme Petroleum Co., of New Jersey, 5/27/88, RF303-1, RF303-2

The DOE issued a Decision and Order concerning Applications for Refund filed by Amoco Corporation, an integrated petroleum refiner, and Supreme Petroleum Co., of New Jersey, a petroleum products reseller. Both applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Bernard A. Krouse, Krouse Fuel Co., Allan Fuel Co., Kealy Fuel Co., and Walter T. Hoff & Son (BAK). The DOE found that Amoco was injured by BAK's alleged No. 2 heating oil overcharges. Using the competitive disadvantage methodology, the DOE determined that Amoco was entitled to receive its maximum potential refund of $32,347 plus $30,245 in accrued interest. Accordingly, Amoco was granted a total refund of $62,592. The DOE denied the Supreme refund claim because the firm, a spot purchaser of BAK heating oil, failed to demonstrate that it was injured by BAK's pricing practices.

Beacon Oil Company/E.B. Johnstone, Inc., Redwood Tree Service Stations, Inc., Wallace Transport, 5/26/88, RF238-15, RF238-28, RF238-76

The DOE issued a Decision and Order concerning the Applications for Refund filed by E.B. Johnstone, Inc. (Johnstone), Redwood Tree Service Stations, Inc. (Redwood), and Wallace Transport (Wallace) in the Beacon Oil Company special refund proceeding. Since Wallace, and end-user of Beacon products, failed to provide adequate purchase volume information, its claim was denied. Johnstone and Redwood were retailers that provided purchase volume information demonstrating that they were each entitled to refunds of less than $5,000. Accordingly, the two firms were granted refunds totaling $10,299, representing $4,862 in principal and $5,437 in accrued interest.

Charles Fudge, et al., 5/23/88, RF272-5499, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 23 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $506.

Conoco Inc./Thornhill Oil Company, Inc., Piasa Motor Fuels, Inc., Nebraska-Iowa Supply, 5/23/88, RF220-245, RF220-246, RF220-247

The DOE issued a Decision and Order granting Applications for Refund filed by three resellers of Conoco, Inc. refined petroleum products. The DOE concluded that the annual cost bank data submitted by the applicants was an inadequate basis for demonstrating injury and therefore limited each applicant's refund to the $5,000 small claims threshold. The total amount of refunds approved in the Decision was $21,558, representing $15,000 in principal and $6,558 in accrued interest.

David Hoffman, 5/23/88, RF272-2154

The DOE issued a Decision and Order considering an Application for Refund from crude oil overcharge funds filed by David Hoffman, an end-user of gasoline, diesel fuel, motor oil, grease, and propane. Mr. Hoffman demonstrated the volumes of all refined petroleum products that he purchased, except for propane, for which he only had records of the dollar amount spent. Using information developed by the Energy Information Administration and *Platt's Oil Price Handbook*, OHA derived an estimated national weighted average price for propane sold on the retail level during the crude oil price control period of $.4017 per gallon. Since he was an end-user, Mr. Hoffman was presumed injured as a result of his purchases of refined petroleum products and was granted a refund of $13.

Day Farm, et al., 5/25/88, RF272-4265, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 49 applicants, based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured as a result of the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $1,099.

Daystrom Furniture Inc., Bituminous Material & Supply, 5/25/88, RF272-1165, RF272-1257

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two applicants, based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision is $3,911.

Dorchester Gas Corporation/Fowler Oil Company, 05/25/88, RF253-45

The DOE issued a Decision and Order considering an Application for Refund filed by Fowler Oil Company in the Dorchester Gas Corporation refund proceeding. Fowler demonstrated that it purchased approximately 587,333 gallons of propane indirectly from Dorchester through Champlin Petroleum Company during the consent order period. Since Champlin had not filed a claim in the Dorchester proceeding, the DOE determined that Fowler's claim should be treated in a manner similar to those filed by direct purchasers. Because Fowlers limited its claim to $5,000, it was not required to demonstrate injury. Accordingly, Fowler was granted a refund of $5,000 in principal and $1,857 in interest.

Dudley S. Tyler, 5/23/88, RF272-5350

The DOE issued a Decision and Order considering a refund application for crude oil overcharge funds filed by Dudley S. Tyler, based on his purchases of refined petroleum products during the

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period August 19, 1973, through January 27, 1981. As an end-user of the products involved, Tyler was presumed injured by the alleged crude oil overcharges. The refund granted in this Decision is $21.

Farmers Union Oil Co., 5/25/88, RF272–1143

The DOE issued a Decision and Order considering a refund application filed by Farmers Union Oil Company (FUOC), an agricultural cooperative, in the DOE's Supert V crude oil refund proceedings. Since FUOC established that it would disburse the refund to its members, the application was granted. The total amount of refund approved in this Decision and Order is $1,920.

Gulf Oil Corporation/Harley Goldston's Gulf, 5/24/88, RF40–3707

The DOE issued a Decision and Order concerning duplicate Applications for Refund filed by Energy Watch, Inc. (EWI), and Energy Refunds, Inc. (ERI) on behalf of Harley Goldston's Gulf (Goldston) in the Gulf Oil Corporations special refund proceeding. In a search for duplicate applications, the DOE discovered that Goldston had received two refunds from the Gulf escrow account. Since the ERI application was both received and granted after that of EWI, the DOE ordered ERI to return $869, the amount of Goldston's refund approved through the ERI application, plus $74 in interest.

Larson Products, Inc., et al., 5/27/88, RF272–5289, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $434.

Leonard E. Belcher, Inc./Somers Oil Service, 5/26/88, RR227–1

The DOE issued a Decision and Order regarding a Motion for Modification of a refund previously granted to Somers Oil Service from a consent order fund made available by Leonard E. Belcher, Inc. In the Motion, Somers contended that it was an error not to grant it a refund for several months in which Belcher's prices were higher than average terminal prices in its area, since Somers was injured in those months. The DOE noted that the listing Somers referred to in its Motion was actually a cargo lot price listing, which was not reflective of Somers' operations. The DOE found that terminal prices were the appropriate comparative prices upon which to measure Somers' injury level. The DOE then determined that Somers should have already received a refund for those months in which Belcher's prices were higher than the relevant terminal price, and that no additional refund was warranted. Accordingly, the Motion was denied.

Madison Water Utility, et al., 5/27/88, RF272–3853, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to ten applicants, based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $33,162.

Minnkota Power Cooperative, Inc., Southern Mississippi Electric Power Association, 5/25/88, RF272–98, RF272–121

The DOE issued a Decision and Order granting refunds to Minnkota Power Cooperative, Inc. and Southern Mississippi Electric Power Association, two electricity generation and transmission cooperatives which had submitted Applications for Refund in OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products it purchased during the period August 19, 1973 through January 27, 1981 and certified that it would pass through the refund to its member distribution cooperatives. Using the rationale adopted in cases involving refund requests of investor-owned utilities, the DOE found that the two cooperatives would serve as appropriate conduits and provide the most direct possible restitution to their member customers. The refunds granted totaled $41,611.

Mobil Oil Corporation/Middletown Oil Company, 5/25/88, RR225–18, RR225–20, RR225–30, RR225–31

The DOE issued a Decision and Order regarding a Motion for Reconsideration filed by Middletown Oil Company in the Modil Oil Corporation special refund proceeding. Middletown's original refund claim was dismissed because it was filed after the deadline for Mobil refund applications. Because the applicant showed good cause for its late filing in its Motion, and because Mobil refund applications were still being processed, the Motion was granted and a total refund of $5,798 was approved.

Mobil Oil Corp./Moore Oil Co., Henry Ricci, 5/25/88, RF225–9262, RF225–9374

The DOE issued a Decision and Order considering Applications for Refund from the Mobil Oil Corporation escrow account filed by Moore Oil Co. and Henry Ricci, resellers of Mobil refined petroleum products. The claimants elected to submit documentation that they were injured by Mobil's pricing practices rather than to rely on the applicable presumptions of injury. The DOE determined that the motor gasoline purchased by each firm during the consent order period was purchased at prices higher than the market average price and therefore concluded that both applicants were eligible to receive full volumetric refund amounts for their purchases from Mobil. The refunds granted to the firms totaled $897, respresenting $720 of principal and $177 of interest.

Mobil Oil Corporation/Morris Oil Services, Inc., 5/23/88, RF225–08752, RF225–10807

The DOE issued a Decision regarding an Application for Refund from the Mobil Oil Corporation escrow account filed by Morris Oil Services, Inc., a reseller of Mobil refined petroleum products during the Mobil consent order period. Since the firm did not submit the detailed evidence of injury needed to establish its eligibility for a claim larger than $5,000, the DOE limited Morris' refund to that amount, plus $1,231 interest.

Mobil Oil Corporation/Southern Illinois University/Air Institute and Services 5/26/88, RF225–6236

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Southern Illinois University/Air Institute and Services (SIU), a reseller and end-user of Mobil refined petroleum products. The DOE granted SIU a refund based on its purchases of 4,665,597 gallons of aviation fuel. However, the DOE denied the allocation claim filed by SIU because it had not sought redress contemporaneous to the alleged allocation violation. The total refund granted to SIU was $2,338, representing $1,876 in principal and $462 in interest.

Mobil Oil Corporation/Trancas Mobil, 5/23/88, RF225–253

The DOE issued a Decision granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Trancas Mobil, a retailer of Mobil refined petroleum products. Trancas elected to apply for a refund based upon the applicable presumptions

of injury. After determining that Trancas' estimates of its purchase volumes reasonably reflected its actual purchases from Mobil, the DOE granted Trancas a refund of $662, representing $531 in principal plus $131 in interest.

Northeast Research & Extension Center, et al., 5/27/88, RF272-2864, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six claimants, based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. As an end-user of the products involved, each applicant was presumed injured by the alleged crude oil overcharges. The refunds granted in this Decision total $573.

Red Owl Stores, Inc., 5/25/88, RF272-1269

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds to Red Owl Stores, Inc., based on its purchases of refined petroleum products during the period Agust 19, 1973 through January 27, 1981. As an end user of the products involved, Red Owl was presumed injured by the alleged crude oil overcharges. The refund granted in this Decision was $3,296.

Roberts Farms, Inc., et al., 5/26/88, RF272-4195, et al.

The DOE issued a Decision and Order granting crude oil overcharge refunds to 48 applicants, based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each claimant was an end-user of the products involved and therefore presumed to have been injured by the crude oil overcharges. The refunds granted totalled $2,785.

Standard Oil Co., (Indiana)/Illinois, 5/27/88, RQ251-447

The DOE issued a Decision and Order regarding an Application for Refund filed by the State of Illinois in the Standard Oil Co. (Indiana) (Amoco II) second-stage refund proceeding. In its application, Illinois proposed to spend $4,455,082 of its Amoco II monies on ten programs. In reviewing Illinois' application, the DOE determined that six of the proposed programs, including a rural energy management program and three programs involving energy conservation measures in low income residences, met the restitutionary criteria used to evaluate second-stage refund applications. The DOE also determined that several parts of a public information program proposed by Illinois would effect restitution and therefore should be approved, but that other parts of the information program were too vague to determine their restitutionary impact. Finally, the DOE did not approve three of Illinois' proposed projects—a transportation study project, an energy planning project, and an electric utility brokerage project—because they did not effect restitution. The DOE granted Illinois $3,433,854 for the approved projects.

Tyler Farms, Inc., et al., 5/25/88, RF272-6355, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 133 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. As an end-user of the products involved, each applicant was presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $3,631.

Vickers Energy Corporation/Michigan, 5/25/88, RQ1-453

The DOE issued a Decision and Order approving a second-stage refund application submitted by the State of Michigan in the Vickers Energy Corporation special refund proceeding. Since the pending Vickers litigation was resolved, the DOE determined that the Vickers funds previously granted to Michigan could now be disbursed to the State. Accordingly, the DOE granted Michigan a total of $85,100 ($47,070 in principal, plus $38,030 in interest) for use in a previously-approved traffic signal synchronization project and ridesharing program.

Dismissals

The following submissions were dismissed:

Name	Case No.
Albert A. Entz	RF272-40059.
Charles Gulf Services	RF300-1712.
Charles Gulf	RF330-1568.
Contishipping Division, Continental Grain.	RF272-25299.
Doug Hollowell	RF272-27261.
Franklin A. Weymiller	RF272-10012.
Jenkins Gulf Service	RF300-436.
Jones Petroleum	RF225-9439, RF225-9440, RF225-9441.
Larry Winter	RF272-33418.
Louisville Water Company	RF272-8248.
Montrose Community Schools	RF272-30972.
Robert Herhasselt	RF272-8037.
State of Washington	RM3-95.
Sunny Slope Ranch, Inc	RF272-35617.
Wilson Brothers	RF272-36586.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

August 12, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-18883 Filed 8-18-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of May 30 Through June 3, 1988

During the week of May 30 through June 3, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

U.A. Local Union No. 412, 6/3/88, KFA-0185

The DOE issued a Decision and Order denying the Freedom of Information Act (FOIA) request made by U.A. Local Union No. 412 (Union). The Union appealed a determination by the DOE's Albuquerque Field Office to withhold the names of the employees in the payroll records of a government contractor which the Union alleged to have violated federal wage laws. The DOE found that Exemption 6 of the FOIA covered this request, as the privacy interest in the employees' personnel records outweighed the public interest in their release. The DOE found that the Union had failed to produce enough evidence of the alleged wage violations which would tip the scales in favor of disclosure. Accordingly, the DOE denied the Union's Appeal.

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Refund Applications

Aminoil U.S.A., Inc./Terhune L.P. Gas Company, Wilder & Son, Inc., 6/1/88, RF139–43, RF139–47

The DOE issued a Decision and Order concerning Applications for Refund filed by Terhune L.P. Gas Company (Terhune) and Wilder & Son, Inc. (Wilder) in the Aminoil U.S.A., Inc. special refund proceeding. Both firms submitted a market price comparison and information which allowed the DOE to approximate their cost banks. The reconstructed cost banks show that the firms passed through all but $3,151 and $5,969, respectively of their increased product costs, including the alleged overcharges. The market price data indicated that the firms were forced to absorb the alleged overcharges and, thus, were injured. After examining the firms' application and supporting documentation, the DOE concluded that Terhune and Wilder should be granted refunds of $4,962 ($3,151 in principal and $1,811 in interest) and $9,400 ($5,969 in principal and $3,431 in interest).

Cloverleaf Local School District, et al., 6/3/88, RF272–7212, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to three applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the petroleum products in operating educational facilities and relied on actual purchase records from the crude oil price control period. Each applicant was an end-user of the products it claimed. Accordingly, based upon the end-user presumption of injury, the DOE found that the applicants were injured as a result of the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $950.

Dorchester Gas Corp./Home Oil Company, Inc., Williams Brothers Supply Company, Gruver Oil & Gas Company, Inc., 6/2/88, RF253–15, RF253–35, RF253–40

The DOE issued a Decision and Order granting three Applications for Refund in the Dorchester Gas Corporation refund proceeding. Each of the claimants demonstrated that it was a direct purchaser of Dorchester covered products during the consent order period. Each applicant elected to limit its claim to the volumes contained in the *Dorchester* Appendices. Because each of the three claimants elected to limit its claim to the established $5,000 threshold amount, none of the claimants was required to submit a detailed demonstration of injury. The total amount of refunds granted in this Decision is $20,604, representing $15,000 in principal and $5,604 in accrued interest.

Herb Glassman, et al., 6/3/88, RF272–991, et al.

The DOE issued a Decision and Order granting 16 Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981, and used the products for various agricultural, manufacturing or service activities. Each applicant determined the volume of its fuel purchases by using a reasonable estimation technique. As an end-user, each applicant was presumed injured and, therefore, entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $5,013.

L.G. Vanderwork, 6/1/88, RF272–46868

The DOE issued a Decision and Order rescinding a refund that was granted to L.G. Vanderwork in *Goldfawn Farms and Dairy*, 16 DOE ¶ 85,674 (1987) (*Goldfawn*). In *Goldfawn*, the DOE granted refunds from crude oil overcharge funds to 50 claimants based on their purchases of refined petroleum products between August 19, 1973, and January 27, 1981. The DOE subsequently determined, however, that Vanderwork resold the gallons listed in its crude oil refund application and therefore, that the end-user presumption was applied erroneously in approving Venderwork's crude oil refund claim. Since Vanderwork was unable to demonstrate that it was injured by crude oil overcharges as a reseller, this Decision and Order requires the firm to repay $421 to the DOE.

Lee Beverage Co. Inc., et al., 6/2/88, RF272–62, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds. The DOE found that the applicants had provided sufficient evidence of the volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that, as end-users of petroleum products, the applicants were injured as a result of the crude oil overcharges. The sum of the refunds granted was $397.

Lockhart Iron & Steel Company, et al., 6/2/88, RF272–1896, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 17 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $4,709.

Mobil Oil Corp./John L. Williams Co. Shotmeyer Brothers Petroleum Corp., 6/2/88, RF225–8763, RF225–8772, RF225–8773, RF225–8774

The DOE issued a Decision and Order concerning Applications for Refund filed by two reseller/retailers of refined petroleum products in the Mobil Oil Corporation special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Both applicants attempted to rebut the level-of-distribution presumptions for their purchases of Mobil motor gasoline. After analyzing the cost bank and purchase price data submitted by each applicant, the DOE granted John L. Williams Co. a refund of $7,974 ($6,398 in principal plus $1,576 in interest) on its purchases of Mobil motor gasoline and granted Shotmeyer Brothers Petroleum Corp. a refund of $37,555 ($30,134 in principal plus $7,421 in interest) on its Mobil motor gasoline purchases. Shotmeyer also claimed a refund on its distillate purchases from Mobil. The firm, however, did not attempt to demonstrate injury with regard to its distillate purchases. Therefore, that portion of its claim was denied. The total amount of refunds approved in the Decision and Order was $45,529, representing $36,532 in principal and $8,997 in interest.

Mobil Oil Corporation/The Hertz Corporation, 6/2/88, RF225–10558, RF225–10750

The DOE issued a Decision and Order regarding an Application for Refund from the Mobil Oil Corporation escrow account filed by The Hertz Corporation, a nationwide car rental company. In its Application, Hertz contended that it acted as an end-user of Mobil products and therefore was eligible to receive the full volumetric refund on its purchases from Mobil. However, the DOE determined that Hertz, like other car rental companies, acted as a retailer of Mobil products and therefore was eligible to receive a refund based upon the 30 percent level-of-distribution presumption. Accordingly, Hertz was granted a refund of $3,015, representing $2,491, in principal plus $614 in interest.

Plaquemines Oil Sales Corp./Defelice Marine Ocean Drilling & Exploration Co., 6/3/88, RF305–7, RF305–10

The DOE issued a Decision and Order approving two Applications for refund filed by purchasers of No. 2 diesel fuel from Plaquemines Oil Sales Corp. (POSC). Each firm applied for a refund as an end-user based on the procedures outlined in *Plaquemines Oil Sales Corp.*, 17 DOE ¶ 85,059 (1988). DeFelice Marine (DeFelice) and Ocean Drilling and Exploration Company (ODECO), were identified as overcharged purchasers of No. 2 diesel fuel in the *POSC* decision. After examining the Applications and supporting information, the DOE issued a refund of $4,909 ($3,467 principal plus $1,442 interest) to DeFelice and $2,138 ($1,510 principal plus $628 interest) to ODECO. The total amount of refunds approved in this decision is $7,047, representing $4,997 in principal and $2,070 in interest. Due to a current enforcement proceeding involving ODECO, the refund for the firm was placed in an interest-bearing escrow account pending a decision in that proceeding.

Dismissal

The following submission was dismissed:

Name and Case No.

J&K Service—Bainton's Gulf, RF300–442

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

August 12, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–18884 Filed 8–18–88; 8:45 am]

BILLING CODE 6540–1–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3432–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Title III Emergency Planning and Emergency Release Notification. (EPA ICR# 1395).

Abstract: Title III of the Superfund Amendments and Reauthorization Act (SARA) requires that facilities provide local planning committees with the information necessary for the preparation of emergency plans. Facilities must also immediately report to State and local commissions about release of hazardous substances, and provide written information about these releases.

Burden Statement: Public reporting burden for this collection of information is estimated to average 18 to 19 hours for facilities reporting on hazardous substances. The total burden for Local Emergency Planning Committees (LEPCs) is estimated to average 140 to 150 hours, and includes the receipt of facility reports and the revision of emergency response plans. Annual burden to the States Emergency Response Commission (SERC) is estimated to be between 2000 and 2100 hours. This includes receiving facility release reports and the development of a records system.

Respondents: Facilities that produce, use or store hazardous substances. LEPCs and SERCs also have the responsibilities for development and review of emergency response plans, and the receipt of facility chemical release notifications.

Estimated No. of Respondents: 46,123 (including 41,937 facilities, 4,133 LEPCs and 53 SERCs).

Frequency of Collection: On occasion.

Total Estimated Annual Burden: Facilities: 786,438; LEPCs: 605,687; SERCs: 109,907=1,501,832 hours.

Estimated No. of Respondents: 46,123 (including 41,937 facilities, 4,133 LEPCs and 53 SERCs).

Frequency of Collection: On occasion.

Total Estimated Annual Burden: Facilities: 786,438; LEPCs: 605,687; SERCs: 109,907=1,501,832 hours.

Send comments regarding the burden estimates, or any other aspect of these collections of information, including suggestions for reducing the burdens, to:

Carla Levesque, Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St. SW, Washington, DC 20460
and
Nicolas Garcia (ICR# 1221) and Tim Hunt (ICR# 0583), Marcus Peacock (ICR# 1395), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

Date: August 12, 1988.

Paul Lapsley, *Director, Information and Regulatory Systems Division.*

[FR Doc. 88–18833 Filed 8–18–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3432–4DRR]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075. Availability of Environmental Impact Statements Filed August 8, 1988 Through August 12, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880251, Draft, COE, TX, Brooke Army Medical Center Replacement Facility Construction, Implementation, Fort Sam Houston, Bexar County, TX, Due: October 3, 1988, Contact: Mr. Strimel (512) 221–4930.

EIS No. 880252, Draft, FHW, NM–516/ Santa Fe-Los Alamos Corridor Construction, Phase C, Funding, Santa Fe and Los Alamos Counties, NM, Due: October 3, 1988, Contact: W.L. Taylor (505) 827–5253.

EIS No. 880253, Final, REA, GA, ADOPTION-Rocky Mountain Pumped Storage Hydroelectric Project, Loan Guarantee, Floyd County, GA, Due: September 19, 1988, Contact: Robert Quigel (202) 382–8437. The U.S. Department of Agriculture, Rural Electrification Administration has adopted the Federal Power Commission's (FPC) FEIS #760735, filed 5–18–76 and the Federal Energy Regulatory Commission's (formally the FPC) FSEIS #810439, filed 6–4–81.

EIS No. 880254, Final, FHW, NC, US 311 Bypass Improvement, US 311 North of High Point to US 311 South of Archdale, High Point East Belt, Funding and 404 Permit, Guilford and Randolph Counties, NC, Due: September 19, 1988, Contact: Kenneth L. Bellamy (919) 856–4346.

EIS No. 880255, DSuppl, AFS, CO, Rock Creek Reservior, Routt National Forest or Muddy Creek Reservior, Kremmling Resource Area,

Construction, Special Use and 404 Permits, Routt and Grand Counties, CO, Due: November 25, 1988, Contact: Ed Ryberg (303) 879–1722. US Department of Agriculture, Forest Service and US Department of the Interior, Bureau of Land Management are joint Lead Agencies on this project.

EIS No. 880256, Final, BLM, CA, NV, California Vegetation Management Program, Implementation, Orange, Riverside, Kern, Inyo, and Modoc Counties, CA and NV, Due: September 30, 1988, Contact: Carl Rountree (916) 978–4722.

EIS No. 880257, Final, EPA, CA, Los Angeles/Long Beach (LA–2) Ocean Dredged Material Disposal Site, Permenant Designation for Material Dredged from the Ports of Los Angeles and Long Beach, Los Angeles County, CA, Due: September 19, 1988, Contact: Dr. Wendy Wiltse (415) 974–9812.

EIS No. 880258, Draft, FHW, PA, Airport Parkway-Southern Expressway Construction, US 22/30 and PA–60 Interchange to PA–60/Beaver Valley Expressway, Funding, Allegheny County, PA, Due: October 3, 1988, Contact: Manuel A. Marks (717) 872–3461.

EIS No. 880259, Final, USA, ID, Orchard Training Area Facilities Development Project, Construction and Improvements, Implementation, Ada County, ID, Due: September 19, 1988, Contact: Richard Brown (208) 389–5286.

Dated: August 16, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–18894 Filed 8–18–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3432–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 1, 1988 through August 5, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amedned. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–BLM–L67021–AK, Rating EO2, Minto Flats Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, AK.

Summary: EPA feels signfiicant impacts to water quality, fish and wildlife habitat, vegetation, wetland functional values, and subsistence uses would occur under the proposed action. EPA's rating reflects primarily concerns regarding the lack of restrictions and mitigations incorporated into the proposed action and a range of alternatives.

ERP No. D–CDB–F85071–MI, Rating EC2, Ambassador Bridge Border Station Expansion and Hubbard-Richard Housing Project Development, Urban Development Action and Community Development Block grants, Wayne County, MI.

Summary: EPA expresses that additional noise abatement alternatives should be studied and documented, and a commitment should be made to provide adequate noise mitgation measures to impacted residents. The final EIS should indicate whether proposed development is addressed in the State implementation Plan. EPA should also be notifed prior to beginning any work in areas containing asbestos. In addition, EPA would like to review the plan for regulatory compliance regarding removal of equipment containing PCB's.

ERP No. D–FHW–F40298–OH, Rating EC2, OH–297/Whipple Avenue Improvement, US-30 Interchange at Raff Road/Whipple Avenue/OH–297 to I–77 Interchange at Everhard Road, Funding, Stark County, OH.

Summary: EPA feels the final EIS should provide details on how the noise measurements were taken. A noise analysis should be undertaken for a church located near the south end of Whipple Avenue. The numbers of residence and people exposed to substantial adverse noise impacts should also be specified. In addition, the final EIS should consider other types of noise abatement, and a commitment should be made to provide noise mitigation to those people negatively impacted by traffic noise.

ERP No. DB–NRC–A06162–PA, Rating LO, Three Mile Island Nuclear Power Station, Decontamination/Disposal of Radioactive Waste Resulting from the March 28, 1979 Accident, Post Defueling Monitored Storage (PDMS), Londonderry Township, Dauphin County, PA.

Summary: EPA believes either proposed action is satisfactory from an environmental viewpoint.

ERP No. D–SCS–E36161–MS, Rating LO, Town Creek Watershed Flood Protection Plan, Funding and Implementation, Lee, Pontotoc, Prentiss and Union Counties, MS.

Summary: EPA believes that the environmental ramifications of these flood control measures are within acceptable limits.

ERP No. D–USN–E10006–NC, Rating EC2, Mid-Atlantic Electronic Warfare Range (MAEWR) Within Restricted Airspace R–5306A Establishment, Beaufort, Carteret Craven, Hyde and Pamlico Counties, NC.

Summary:

EPA is concrned about the overall wetland loss attendant to operating the current facility as well as implementing the enlarged training capabilities. However, increased noise levels associated with upgrading the range, water quality consequences of enlarging the physical operation, and offshore dredging to improve access also figured in EPA's review.

(Note.—The above the summary should have appeared in the 8–12–88 FR Notice.)

Final EISs

ERP No. F–BOP–E81028–KY, Manchester Federal Correctional Institution Complex, Construction and Operation, Clay County, KY.

Summary: EPA finds this document adequately addresses comments on the draft EIS. However, since the stormwater management and site plans are not yet complete copies of these plans were requested for review at the design phase.

ERP No. F–FRC–B03003–00, Ocean State Power Project, Natural Gas Fired Combined-Cycle Power Plant and Pipeline Construction and Operation, Licenses and Section 10 and 404 Permits, Providence County, RI; Erie, Livingston, Onondaga, Niagara, Rensselaer and Wyoming Counties, NY and Hampden and Worcester Counties, MA.

Summary: EPA concludes that the proposed project will cause substantial water quality, wetlands, and noise impacts which could be largely avoided through: Implementation of the environmentally preferable alternative "Ironstone" site located in Uxbridge, MA; use of dry cooling technology to protect the water quality of the Blackstone River; routing of pipelines around critical wetlands; and stringent ncise mitigation measures.

Regulations

ERP No. R–NRC–A 22112–00, 10 CFR Part 61; Disposal of Radioactive Wastes (53 FR 17706).

Summary: EPA expressed some concerns that the approach in this rulemaking could lead to implementation problems. EPA offered

to address these concerns in its ongoing rulemakings for radiation protection standards. The following is a correction to the summary published in the 8–12–88 FR Notice.

Amended Notices

The following is a correction to the summary published in the 8–12–88 FR Notice

ERP No. D–FRC–D05122–00, Rating E02, Upper Ohio River Basin Hydroelectric Development, Construction, Operation and Maintenance, Licenses, Belmont, Gallia, Jefferson, Mohoning and Washington Cos., OH; Hancock Co., WV and Butler, Beaver, Allegheny, Armstrong, Fayette, Washington and Westmoreland Cos., PA.

Summary: EPA suggested that FERC investigate additional alternatives. EPA expressed concerns over entrainment of fish, dissolved oxygen in the water, and the presence of toxics in the water.

Dated: August 16, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–18895 Filed 8–18–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. 88–685]

Regulatory Capital Maintenance Obligations of Acquirors of Insured Institutions

Date: August 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation (the "FSLIC") is publishing a statement of policy setting forth its views on the extent to which savings and loan holding companies and other controlling persons of institutions the accounts of which are insured by the FSLIC ("insured institutions") should be required to contribute financial assistance to the insured institutions. The Board is taking this action to set before potential acquirors and the public its views on this issue.

EFFECTIVE DATE: August 19, 1988.

FOR FURTHER INFORMATION CONTACT: John Robinson, Director, Policy Analysis, Office of Regulatory Activities, (202) 778–2509, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20552; Stuart Feldstein, Staff Attorney, Corporate and Securities Division, (202) 377–6476, or Julie L. Williams, Deputy General Counsel, (202) 377–6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board recently has had the opportunity to revisit its policies regarding the extent to which savings and loan holding companies and other controlling persons of insured institutions should be required to contribute financial assistance to the insured institutions. The Board is aware that the open-ended, unlimited in duration regulatory capital maintenance obligation that is customarily imposed in connection with approvals of applications to acquire insured institutions may deter potential acquirors from considering such acquisitions. In reviewing its practices in this area, the Board has concluded that other approaches to the issue of an acquiror's obligations to financially support its insured institution would be effective in attaining the goals of protecting the insured institution and the FSLIC, with less deterrence to potential acquirors than the current form of obligation.

The Board believes that it is important for potential applicants and the public to be informed of the Board's views on this issue and accordingly has determined to issue the following policy statement:

Policy Statement on Regulatory Capital Maintenance Obligations of Insured Institution Acquirors

This policy statement expresses the Board's views regarding the imposition of conditions, incident to approval of holding company, change in control, or other applications, that require an applicant to agree to maintain the regulatory capital of the acquired insured institution at specified levels.

As a general matter, the Board continues to believe that savings and loan holding companies that control the practices of their insured subsidiaries and enjoy the benefits of such control, including FSLIC insurance of accounts, should support such institutions during periods of financial weakness or instability. Providing financial assistance to subsidiary institutions enhances the institution's capital base and helps to promote its continued viability, which, in turn, protects the FSLIC fund from loss. The overall effect of such action is to help to maintain a safe and sound financial system and to promote depositor confidence.

The Board has concluded, however, that the Board's expectation that an acquiror should play a positive role with respect to its insured institution should not continue to be implemented via a practice of conditioning approvals of holding company and certain change in control applications upon an open-ended requirement that the acquiror agrees to maintain the regulatory capital of the institution. The Board believes that such an approach may have had the effect of deterring qualified acquirors from making investments in the thrift industry.

Accordingly, the Board has determined that the imposition of open-ended regulatory capital maintenance obligations upon acquirors in connection with acquisitions of insured institutions should be discontinued. Nevertheless, the Board will generally require acquirors to make a commitment to the insured institution that will provide the acquiror with sufficient incentive to prudently manage the insured institution and will provide the FSLIC with a reasonable amount of protection against adverse events and the uncertainty and time lags inherent in a regulatory capital and accounting system based on historical costs.

The Board will, as a general rule, require a "net worth maintenance agreement" or a "prenuptial agreement" to satisfy this requirement. In a net worth maintenance agreement, which shall be limited or capped, the acquiror agrees that the Board can require the infusion of additional equity capital if, during the term of the agreement, the insured institution fails to meet its regulatory capital requirement or the institution's regulatory capital declines below a predetermined amount. The aggregate amount of infusion that could be required, at a single time or in multiple infusions, would be limited or capped at a specified amount in the agreement.

A prenuptial agreement permits an officer of the FSLIC the right to vote the securities of the institution held by the acquiror respecting certain actions, to remove and replace the board of directors of the institution, or to dispose of any or all of the securities of the institution owned by the acquiror in the event the institution's regulatory capital declines below a specified percentage of an institution's liabilities or assets.

The Board will generally require one of these two forms of agreements. The acquiror may negotiate the form of agreement; however, it may select the net worth maintenance agreement only if the Board is satisfied that the acquiror has adequate resources to satisfy its obligations under the net worth agreement.

The Board itself will also consider other approaches to meeting the objectives identified above. In all cases, the requirements will be evidenced by a

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separate agreement that the acquiror will be required to execute before acquisition of the insured institution.

The above-described treatment of acquirors' regulatory capital maintenance obligations will be applied prospectively, in connection with applications approved after this policy goes into effect. With regard to holding companies and other acquirors that are subject to other forms of obligations, such obligations shall remain in full force and effect except to the extent that the Board agrees in writing to the modification of any such obligation.

Guidelines may be issued to assist in the implementation of this policy, including determining aspects of such agreements that would present significant issues of law or policy warranting consideration by the Board itself of the holding company application or change in control notice.

Finally, the Board notes that in all cases, regardless of whether an explicit agreement is required or not, should the insured institution's capital level fall below that required by the Board's regulations, or otherwise be deemed inadequate by the institution's Prinicipal Supervisory Agent, the Board retains the ability to establish individual minimum capital requirements for the institution pursuant to 12 CFR 563.14, or to issue a capital directive pursuant to 12 CFR 563.14–1 to require the institution to increase capital, or both.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–18879 Filed 8–18–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Survey of Marine Terminal Operators

The Federal Maritime Commission recently sent surveys to marine terminal operators seeking their views as to the impact of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"). The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, which directed the Federal Maritime Commission to "collect and analyze information concerning the impact of this Act upon the international ocean shipping industry," and to present its findings to an Advisory Commission on Conference in Ocean Shipping, to be convened five and one-half years after enactment of the 1984 Act. The surveys are the third in a series to be distributed on an annual basis through 1989. Substantial revisions have been made to the 1988 survey based upon responses to the 1987 surveys and recommendations of the section 18 Study Advisory Committee.

The Federal Maritime Commission would like its survey to have the widest possible distribution. All interested marine terminal operators who have *not* received a copy of the survey are urged to contact: Robert M. Blair; Bureau of Economic Analysis; Federal Maritime Commission; 1100 L Street NW., Washington, DC 20573; telephone (202) 523–5870.

Joseph C. Polking,

Secretary.

[FR Doc. 88–18853 Filed 8–18–88; 8:45 am]

BILLING CODE 6730–01–M

Survey of Ocean Common Carriers

The Federal Maritime Commission recently sent surveys to ocean common carriers seeking their views as to the impact of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"). The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, which directed the Federal Maritime Commission to "collect and analyze information concerning the impact of this Act upon the international ocean shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one-half years after enactment of the 1984 Act. The surveys are the third in a series to be distributed on an annual basis through 1989.

The Federal Maritime Commission would like its survey to have the widest possible distribution. All interested ocean common carriers who have *not* received a copy of the survey are urged to contact: Sandra L. Kusumoto; Bureau of Economic Analysis; Federal Maritime Commission; 1100 L Street NW., Washington, DC 20573; telephone (202) 523–5870.

Joseph C. Polking,

Secretary.

[FR Doc. 88–18854 Filed 8–18–88; 8:45 am]

BILLING CODE 6730–01–M

Survey of Ports

The Federal Maritime Commission recently sent surveys to ports seeking their views as to the impact of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"). The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, which directed the Federal Maritime Commission to "collect and analyze information concerning the impact of this Act upon the international ocean shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one-half years after enactment of the 1984 Act. The surveys are the third in a series to be distributed on an annual basis through 1989. Substantial revisions have been made to the 1988 survey based upon responses to the 1987 surveys and recommendations of the Section 18 Study Advisory Committee.

The Federal Maritime Commission would like its survey to have the widest possible distribution. All interested marine terminal operators who have *not* received a copy of the survey are urged to contact: Robert M. Blair; Bureau of Economic Analysis; Federal Maritime Commission; 1100 L Street NW., Washington, DC 20573; telephone (202) 523–5870.

Joseph C. Polking,

Secretary.

[FR Doc. 88–18855 Filed 8–18–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340).

Proposal to approve under OMB delegated authority the implementation of the following report:

1. *Report title:* Mortgage Loan Disclosure Statement.
Agency form number: FR HMDA–2.
OMB Docket number: 7100–0090.
Frequency: Annual.
Reporters: Mortgage subsidiaries of bank holding companies.
Annual reporting hours: 40,000.
Estimated average hours per response: 80.

Number of respondents: 500.

Small businesses are not affected.

General description of report:

This information collection is mandatory [12 U.S.C. 2801–2810] and is not given confidential treatment.

This new form collects data from mortgage subsidiaries of bank holding companies under the Home Mortgage Disclosure Act, 12 U.S.C. 2801–2810 (HMDA), as implemented by the Board's Regulation C, 12 CFR Part 203. The act requires respondents to make annual disclosures that show a geographic breakdown of their purchased and originated mortgage and home improvement loans. However, FHA loans are not reported.

Board of Governors of the Federal Reserve System, August 12, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–18796 Filed 8–18–88; 8:45 am]

BILLING CODE 6210–01–M

Agency Forms Under Review

August 15, 1988

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340).

Final approval under OMB delegated authority of the extension, without revision, of the following:

1. *Report title:* Applications for the Issuance and Cancellation of Federal Reserve Stock—National Bank, Nonmember Bank, Member Bank.

Agency form number: FR 2030, 2030a, 2056, 2086a, 2086b, and 2087.

OMB Docket number: 7100–0042.

Frequency: On occasion.

Reporters: National, State Member and Nonmember Banks.

Annual reporting hours: 1,134 (FR 2030: 155; FR 2030a: 32; FR 2056: 889; FR 2086a: 12; FR 2086b: 13; FR 2087: 33).

Number of Reporters: 2,268 (FR 2030: 309; FR 2030a: 64; FR 2056: 1,778; FR 2086a: 24; FR 2086b: 26; FR 2087: 67).

Average Number of Hours per Response: 0.5 (for each form). Small businesses are affected.

General description of report:

This information collection is mandatory [12 U.S.C. 222, 35, 287, 321, and 288 (1982)] and is not given confidential treatment. These Federal Reserve Bank Stock application forms are required to be submitted to the Federal Reserve System by any National Bank, State Member Bank, or nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank Stock holdings, or cancel such stock.

Board of Governors of the Federal Reserve System, August 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–18797 Filed 8–18–88; 8:45 am]

BILLING CODE 6210–01–M

Fleet/Norstar New York, Inc.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Fleet/Norstar Financial Group, Inc., Providence, Rhode Island, and Fleet/Norstar New York, Inc., Albany, New York (together, "Applicant"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through their wholly owned subsidiary, Adams, McEntee & Co., Inc., New York, New York ("Company"), in the activities of underwriting and dealing in, to a limited degree, municipal revenue bonds (including "public ownership" industrial development bonds) and commercial paper (together, "ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Fleet National Bank, with a firm that is "engaged principally" in the "underwriting, pubic sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of the restrictions on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary.

Applicant has applied to underwrite and deal in ineligible securities in accordance with virtually all of the limitations set forth in the Board's Order approving those activities for a number of bank holding companies. *See Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) (underwriting and dealing in commercial paper, municipal revenue bonds and mortgage-related securities) ("*Citicorp/Morgan/Bankers Trust*"). In that Order, the Board determined that a member bank affiliate would not be "engaged principally" in the above ineligible securities underwriting activity if, over any two-year period, its gross revenues from that activity did not exceed a range of between 5 and 10 percent of its total gross revenues. The Board determined, however, that at that time the lower end of the range—5 percent—was the appropriate level to be applied.

Applicant proposes to engage in ineligible securities underwriting and dealing up to 10 percent of Company's gross revenues based on a five year average. Applicant submits that this is appropriate for several reasons. First, Applicant argues that, because of the small absolute size of Company's activities (relative to the businesses at issue in the *Citicorp/Morgan/Bankers Trust* Order), a 5 percent limitation would prevent Company from conducting sufficient ineligible securities activity to make such business profitable. Applicant submits that a 5 percent limitation would effectively close the ineligible securities underwriting and dealing business to all but the largest bank holding companies that own primary dealers or otherwise have large bases of eligible securities business. Applicant asserts that this would reduce competition in the relevant markets, in conflict with the Bank Holding Company Act's pro-competitive goals. Moreover, Applicant argues that the absence of small competitors such as Company from the municipal underwriting industry could have an especially harmful effect on small municipal issuers.

Applicant submits that basing the gross revenue limitation on a five-year, rather than a two-year, average will provide a more reliable indication of the trend of Company's revenues from eligible securities activities, given that 1987 was aberrational in terms of gross revenues generated. Applicant argues that basing its revenue limitation on the past two-years' earnings would

effectively preclude Company from commencing ineligible securities underwriting activities.

In connection with its underwriting activities, Company also proposes to advise issuers as to the terms of the proposed offerings.

In publishing Applicant's proposal for comment, the Board does not take any position on the differences between Applicant's proposal and the Board's prior ineligible securities underwriting orders. Notice of the proposal is published solely in order to seek the views of interested persons and does not represent a determination by the Board that the proposal is consistent with the Board's prior orders.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 13, 1988.

Board of Governors of the Federal Reserve System, August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18798 Filed 8-18-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0001, Application of Eleemosynary Institution. This form is used by GSA National Capital Region to determine an institution's eligibility to participate in the forfeited distilled spirits donation program and to match an institution's needs with the beverages that become available.

AGENCY: Property Management Division (FBP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 25; responses, 1 per year; average hours per response, .25; burden hours, 6.

For Further Information Contact: A.L. Harris, 703/557-1234.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202/535-7074.

Dated: August 12, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-18816 Filed 8-18-88; 8:45 am]

BILLING CODE 6820-24-M

General Services Administration Advisory Committee on the FTS2000 Procurement; Meeting Cancellation

Notice is hereby given that the meeting of the General Services Administration Advisory Committee on the FTS2000 Procurement tentatively scheduled for August 24 will not be held.

Questions regarding this cancellation should be directed to John J. Landers (202) 523-5308.

Dated: August 11, 1988.

John J. Landers,

Director of Administration, Information Resources Management Service.

[FR Doc. 88-18819 Filed 8-18-88; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-4212-13; NM NM 68419]

Realty Action—Exchange of Public Lands; San Juan and Dona Ana Counties, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 206 of the Federal Land Policy Act of 1976 (43 U.S.C. 1716), the following described lands have been determined to be suitable for disposal by exchange:

New Mexico Principal Meridian, New Mexico

T. 23 S., R. 3 E.,
Sec. 28: All.

In exchange for these lands, the Federal Government will acquire two parcels of non-Federal land in San Juan County from Wayne G. and Barbara J. Wallace. These lands are described as follows:

New Mexico Principal Meridian, New Mexico

T. 25 N., R. 7 W.,
Sec. 3: Lot 4, SW/4NW/4;
Sec. 4: Lots 1, 2, 3, S/2NE/4, SE/4NW/4, NE/4SW/4, NW/4SE/4.
T. 26 N., R. 7 W.,
Sec. 22: W/2;
Sec. 33: S/2NE/4, SE/4.
T. 27 N., R. 5 W.,
Sec. 3: SE/4NE/4, SW/4, N/2SE/4;
Sec. 4: Lot 3, S/2NE/4, SE/4NW/4, SE/4;
Sec. 10: NW/4NW/4.
T. 27 N., R. 6 W.,
Sec. 6: Lots 2, 3, 4.
T. 28 N., R. 5 W.,
Sec. 29: W/2NE/4, NE/4NE/4, W/2, NW/4SE/4;
Sec. 32: Lots 1, 2, 3, 4, N/2, N/2S/2;
Sec. 33: W/2NE/4, E/2NW/4;
Sec. 34: Lots 3, 4, N/2SW/4.
T. 28 N., R. 6 W.,
Sec. 7: Lots 1, 2, 3, 4, 5, SE/4SW/4, S/2SE/4;
Sec. 13: NW/4SW/4;
Sec. 14: SW/4SW/4, NE/4SW/4, N/2SE/4;
Sec. 15: S/2SE/4;
Sec. 22: E/2;
Sec. 23: W/2NW/4, NW/4SW/4, SE/4SW/4, S/2SE/4;
Sec. 24: S/2SW/4, SW/4SE/4;
Sec. 25: N/2NE/4, SW/4;
Sec. 26: N/2, SW/4;
Sec. 27: S/2SE/4;
Sec. 29: W/2SE/4;
Sec. 31: E/2SE/4, SW/4SE/4;
Sec. 32: NE/4, E/2NW/4, N/2SW/4;
Sec. 33: N/2, NE/4SW/4;
Sec. 34: N/2.
T. 28 N., R. 7 W.,
Sec. 12: Lot 1, SE/4SE/4;
Sec. 13: NE/4NE/4, N/2NW/4, SE/4NW/4, E/2SW/4;
Sec. 14: N/2NE/4, NE/4NW/4;
Sec. 24: W/2NE/4, E/2NW/4, NE/4SW/4, NW/4SE/4.
T. 29 N., R. 6 W.,
Sec. 31: SW/4, SW/4SE/4.

The areas described amount to 7,256.59 acres.

The purpose of this exchange is to enable BLM to consolidate public land on Superior and Delgadito Mesas in Rio Arriba County, enhancing the opportunities to improve wildlife, range, recreation and cultural management. The selected lands are located in the designated disposal area in Dona Ana County. The exchange would be consistent with the Bureau's land use plan in both areas. The public interest would be well served by making this exchange.

The values of the lands to be exchanged are approximately equal. If an adjustment is necessary the values can be equalized by the addition of lands and/or cash payment.

Publication of this notice segregates the public lands from the operation of the public land laws including the mining laws, but excluding the mineral leasing laws. Duration of the segregation

is for a period of two years from the date of first publication or completion of the exchange, whichever occurs first.

The terms and conditions applicable to the exchange are:

When the patent is issued it will be subjected to all existing valid rights.

Detailed information concerning the exchange, including the environmental analysis is available for review at the Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico 87401 and the Albuquerque District Office, 435 Montano Road NE., Albuquerque, New Mexico 87107.

For a period of 45 days interested parties may submit comments to the Albuquerque District Manager, 435 Montano Road NE., Albuquerque. New Mexico 87107. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Date: August, 15, 1988.

Robert T. Dale,

District Manager.

[FR Doc. 88-18789 Filed 8-18-88; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Chattahoochee River National Recreation Area; Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Chattahoochee River National Recreation Area Advisory Commission will be held at 1:00 p.m. at the following location and date.

DATE: September 22, 1988.

ADDRESS: The Chattahoochee River National Recreation Area, Johnson Ferry Unit, Concession Building, Cobb County, Georgia.

FOR FURTHER INFORMATION CONTACT: Warren D. Beach, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350. Telephone (404) 394-7912.

SUPPLEMENTARY INFORMATION: The purpose of the Chattahoochee River National Recreation Area Advisory Commission is to consult and advise the Secretary of the Interior regarding the management and operation of the area, protection of resources within the area, and the priority of lands to be acquired within the area. The members of the Advisory Commission are as follows:

Mr. J. Neal Shepard, Jr.
Mr. Robert A. Meadows
Mrs. Delouris J. West
Mr. Benjamin H. West
Mr. Howard D. Zeller
Mr. Larry B. Thompson
Mrs. Lillian Webb
Mr. David O. Eldridge
Mr. H. Edwin Schultz
Ms. Evelyn H. Hopkins
Mr. Michael Bennett
Mr. James O. Watson, Jr.

The meeting will be a forum to share information on the Chattahoochee River National Recreation Area and discuss current issues.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: August 10, 1988.

C. W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18850 Filed 8-18-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity for Guatemala; Correction

This is a correction of the Notice of Investment Opportunity for Guatemala originally published on August 15, 1988 in the Federal Register (53 FR 30729). The individuals and telephone, telex, and telefax numbers for communication to the Government of Guatemala in that notice need correction. Also the telefax number for RHUDO/Tegucigalpa is incorrect and the telephone number for Michael G. Kitay/Barton Veret, Agency for International Development needs to be added. The corrections are as follows:

Government of Guatemala

Project: 520-HG-004—$10,000,000,
Attention: Lic. Fernando Figueroa Amado, General Manager, Banco de Guatemala, 7a Avenida 22-01, Zona 1, Guatemala, Guatemala, C.A., Telex No.: 6072/6073/5231/5461 (answer back GUABAN-GU), Telefax No.: 502/(2)28509, Telephone No.: 502/(2)534053

Mr. Fabian B. Pira A., Deputy Manager, Banco de Guatemala, 7a Avenida 22-01, Zona 1, Guatemala, Guatemala, C.A., Telex No.: 6072/6073/5231/5461 (answer back GUABAN-GU), Telephone No.: 502/(2)535927

Mr. Carlos E. Echeverria Salas, Director International Department, Banco de Guatemala, 7a Avenida 22-01, Zona 1, Guatemala, Guatemala, C.A., Telex No.: 6072/6073/5231/5461 (answer back GUABAN-GU), Telephone No.: 502/(2)535995

Mr. Mario Pita, Assistant Director, Central America, RHUDO/Tegucigalpa, USAID/Tegucigalpa, APO Miami 34022, (street address: Edificio Castillo Poujol, Colonia Palmira, 4 Calle, #2401, Tegucigalpa, D.C. Honduras), Telephone No.: 504/323120, Telefax No.: 504-312778

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N.S., Washington, DC 20523, Telephone: 202/647-8235, Telex No.: 892703 AID WSA, Telefax No.: 202/647-4958 (preferred communication)

For any further information, please contact: Fredrik A. Hansen, Deputy Director, Office of Housing and Urban Programs, Agency for International Development, Room 315, SA-18C, Washington, DC 20523, Telephone: 703/875-4842.

Fredrik A. Hansen,

Deputy Director, Agency for International Development Office of Housing and Urban Programs.

Date: August 16, 1988.

[FR Doc. 88-18814 Filed 8-18-88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Philips Industries Inc., an Ohio Corporation, P.O. Box 943, 4801 Springfield Street, Dayton, HO 45401.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(1) Air Damper Manufacturing Corp. (New York)
(ii) Philips Industrial Components, Inc. (Ohio)
(iii) Hytec, Inc. (Washington)
(iv) Frenkin Corporation (Washington)
(v) Shelby Advanced Automotive Technology, Inc. (Texas)
(vi) Dearborn Fabricating & Engineering Company (Michigan)
(vii) Unified Industries Inc. (Michigan)
(viii) Arrowhead Conveyor Co., Inc. (Delaware)
(ix) Baker Erection Company Inc. (Missouri)
(x) Mayfran International, Inc. (Delaware)
(xi) Mid-West Conveyor Company, Inc. (Delaware)
(xii) Stearns Airport Equipment Company, Inc. (Delaware)
(xiii) Versa Corporation (Ohio).

Noreta R. McGee,
Secretary.

[FR Doc. 88-18812 Filed 8-18-88; 8:45 am]
BILLING CODE 7035-01-M

Clarification of Filing Fee for Form BOC-3, Designation of Agents, Motor Carriers and Brokers

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to clarify that a separate $8.00 filing fee is not required when a person submits a form BOC-3, Designation of Agents—Motor Carriers and Brokers, to the Interstate Commerce Commission.

By the decision, *Regulations Governing Fees For Services*, 2 I.C.C. 2d 23 (1985) and 50 FR 40024 (October 1, 1985) the Commission revised its user fee schedule by merging the filing fee for the form BOC-3, Designation of Agents—Motor Carriers and Brokers, with the application fee for motor carriers and broker operating authority. The separate filing fee for the BOC-3 filing was removed from the fee schedule in that decision. The current filing fee for motor carrier or broker operating authority includes the fee for the BOC-3 filing. Separate filing fees submitted will be returned to the sender.

EFFECTIVE DATE: August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202-275-7428.

By the Commission.

Noreta R. McGee,
Secretary.

[FR Doc. 88-18844 Filed 8-18-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 219)]

Chicago and North Western Transportation Co.; Abandonment and Discontinuance of Trackage Rights; Between Casper and Riverton in Natrona and Fremont Counties, WY; Findings

August 16, 1988.

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided August 19, 1988, a finding, which is administratively final, was made by the Administrative Law Judge stating that, the present or future public convenience and necessity permit the abandonment by the applicant of Chicago and North Western Transportation Company of its line of railroad between milepost 607.8 just west of Casper Air Base and milepost 615.1 near Illco in Natrona County, WY; and discontinue its trackage rights and operations over an 86.5 mile line of railroad owned and operated by the Burlington Northern Railroad ("BN") between BN milepost 217.5 near Illco, and BN milepost 304.0 near Shobon in Natrona and Fremont Counties, WY subject to: (1) The employee protective conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979); and (2) the condition that C&NW maintain any historic structures intact and not sell or dispose of any portion of the abandoned right of way where historic structures are located until the requirements of section 106 of the National Historic Preservation Act have been met. Pursuant to the decision, a certificate for abandonment is granted, effective 30 days from the date of service.

Noreta R. McGee,
Secretary.

[FR Doc. 88-18845 Filed 8-18-88; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 1165 (Sub-No. 1)]

Application of the New York Central Railroad Co. for Approval of Purchase of Stock, Lease of Property, and Option To Purchase Stock or Property

AGENCY: Interstate Commerce Commission.

ACTION: Proceeding reopened and modified procedure schedule adopted.

SUMMARY: By petition filed April 27, 1988, Consolidated Rail Corporation (Conrail), successor in interest to the properties of the New York Central Railroad Company, seeks to reopen this proceeding to remove the 17 conditions imposed on the transaction in 1922 (71 I.C.C. 631). Conrail specifically discusses certain of the conditions designed to ensure the neutrality of both the Chicago River and Indiana Railroad Company (CRI) and the Chicago Junction Railway Company (CJ) with respect to the terminal switching services they performed for linehaul carriers and to ensure that linehaul carriers could continue to operate their own livestock trains over the CJ line.

DATES: Comments are due on October 3, 1988, and any rebuttal by Conrail is due on October 24, 1988.

ADDRESSES: Send an original and 10 copies of any pleadings referring to Finance Docket No. 1165 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Petitioner's representatives: John A. Daily, Deborah J. Somers, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: With CRI and CJ now part of its system, Conrail contends that the protective conditions should be removed because of changed circumstances. Specifically, it contends that: (1) The carriers originally intended to be protected have been absorbed by other railroads; (2) livestock traffic has long since ceased; (3) only six shippers have required terminal switching in the past 3 years; (4) the total volume of traffic moving subject to the protective conditions is a fraction of what moved when the conditions were imposed; and (5) a substantial portion of this traffic has been exempted from regulation. Conrail states that, if the conditions are removed, terminal switching service will remain available for those carriers that require it and that trackage rights will be offered to any carriers interested in this type of arrangement.

As to the other conditions, Conrail argues that they should be removed as well. It contends that they are either outmoded or no longer serve any useful purpose. Comments are requested on whether it is appropriate to retain all or any of the 17 conditions.

This action will not significantly affect either the quality of the human environment or energy conservation. However, comments regarding environmental and energy issues, if any, should be included in the statements filed with the Commission.

A copy of Conrail's petition may be obtained from its representatives or may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business hours (assistance for the hearing impaired is available through TDD services (202 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: August 11, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88–18811 Filed 8–18–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

August 16, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act before the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewers, Mr. Sam Fairchild, on (202) 395–7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633–4312.

New Collection

(1) Petition for Attorney General recognition to provide courses of study for legalization; Phase II.

(2) I–803, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals and households, State and local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations. Needed to allow INS to certify qualified educational programs to ensure there are adequate programs available nationwide to eligible, legalized aliens.

(5) 40,000 respondents at one hour each.

(6) 40,000 estimated annual public burden hours.

(7) Submitted for expedited review within thirty days. Copies of the form accompany this notification.

BILLING CODE 4410-10-M

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U.S. Department of Justice
Immigration and Naturalization Service

Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II

INS USE ONLY - DO NOT WRITE IN THIS BLOCK

Approval for attendance by aliens adjusting to permanent resident status under Section 245A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, by satisfactorily pursuing a course of study recognized by the Attorney General.

Signature of the Director of Outreach	
Signature of the District Director	
District Office	Date of Approval

This section is to be **COMPLETED BY THE PETITIONER.** If you need more space to answer any items on this form, use a separate sheet of paper. Identify each answer with the number and letter of the corresponding item.

TO THE IMMIGRATION AND NATURALIZATION SERVICE:

Petition is made to the (check one) ☐ Director of Outreach ☐ District Director of the _____ District Office for approval of this institution or organization as a course(s) of study recognized by the Attorney General for attendance by temporary resident aliens who wish to comply with the basic citizenship requirements of Section 245A(b)(1)(D)(i)(II) of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, by satisfactorily pursuing a course of study to achieve a minimal understanding of ordinary English and a knowledge and understanding of the history and Government of the United States.

1. Name of School	2. Address of School	3. Telephone Number

4. Mailing Address *(If different than box 2)*	5. Name and Address of Responsible Official *(Or owner)*

6. Applicant organization is:

- ☐ National organization
- ☐ Local government agency
- ☐ Community organization
- ☐ Non-profit organization providing educational services
- ☐ Church, synagogue, or other religious communal center
- ☐ Farm labor organization
- ☐ Association of agricultural employers
- ☐ Proprietary school
- ☐ Other *(Explain)*

7. The organization operates under the following authorization:

- ☐ Non-profit status issued by IRS or State certifying agency
- ☐ Proprietary *(Attach appropriate licensing and a certified copy of accountant's last statement of school's net worth, income, and expenses)*
- ☐ Volunteer *(Attach evidence of affiliation with recognized non-profit organization, i.e. religious community, literacy organization, State or local educational authority)*
- ☐ Local government agency
- ☐ Other *(Explain)*

8. This organization offers:

- ☐ English as a second language (ESL) and citizenship preparation
- ☐ English as a second language
- ☐ Citizenship preparation

9. The type of course(s) proposed has been offered by this organization since *(Enter date)*:

_____
(Mo./Day/Year)

10. Average class size and intensity of instruction:

When offered	Average class size & intensity
Day: _____	Number classes per week: _____
Evening: _____	Period of instruction per class: _____
Both: _____	Average class size: _____

11. Levels of instruction *(Attach a copy of the curriculum proposed, including levels taught):*

- ☐ ESL/Citizenship
  - ☐ Literacy
  - ☐ Beginner
  - ☐ Intermediate
  - ☐ Advanced
- ☐ Citizenship Preparation Only

12. Brief description of student assessment process *(Describe pre-placement and progress testing. Indicate whether it is written or oral or both):*

13. Brief description of physical facilities where instruction will be held:

14. Type of training and technical assistance provided for teachers:

15. Describe how classes will be advertised or promoted:

16. Teacher qualifications *(Include qualifications of the Administrator and Supervisor(s)):*

- ☐ State teachers certificate
- ☐ Specific training in Teaching English to Speakers of Other Language (TESOL)
- ☐ Other *(Explain)*

17. Instructional fee *(If any):*

a. Per hour of instruction per student: _____

b. For a 100-hour course of instruction: _____

c. Materials fee *(If any)*: _____

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IF THE APPLICATION IS APPROVED, THE PETITIONER AGREES TO:

1. Meet all INS requirements for courses of study approved by the Attorney General including:

   a. Providing evidence of certification by the Attorney General.
   b. Use of Federal Citizenship Text series.
   c. Use of a curriculum.
   d. Maintenance of student records and formal assessment process.
   e. Adherence to the fee structure established by the Director of Outreach or the District Director.
   f. Monitoring by the INS.
   g. Appointment of "Designated Official(s)" with samples of their original signatures.
   h. Issuance of "Satisfactorily Pursuing" certificates.

2. Provide 30-days advance written notice to the INS Director of Outreach or District Director, if petitioner chooses to withdraw as a recognized program during the Phase II period for adjustment of status.

I Certify that I am authorized to execute this petition. I understand that unless this institution fully complies with all terms described on this form, approval may be withdrawn. Notification of withdrawal shall be issued in writing and shall be preceeded by a 30-day corrective action period.

Dated at _____, this _____ day of _____, 19 _____

Signature _____

Title _____

Penalities for False Statements in Petitions

Whoever files a petition for approval as a course of study recognized by the Attorney General under 8 CFR 245a.3(b)(5), and who knowingly and willfully falsifies, misrepresents, conceals or covers up a material fact or makes any false statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry will be subject to criminal prosecution.

Authority for Collecting this Information

The authority to prescribe this form is contained in the "Immigration Reform and Control Act of 1986". The information is necessary to determine whether the petitioner is eligible for Attorney General recognition to provide course of study for Legalization Phase II. All questions must be answered. Failure to do so may result in the denial of the application petition.

Reporting Burden

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

BILLING CODE 4410-10-C

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in TGHE Method of Collection

(1) Supplemental Qualification Statement Immigration Inspector, GS–1816–5.

(2) G–777, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. Used by individuals concerning their accomplishments in various areas as the basis for the rating they receive under the Immigration Inspector Examination.

(5) 4,000 annual respondents at one hour each.

(6) 4,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88–18830 Filed 8–18–88; 8:45 am]

BILLING CODE 4410–10–M

Joint Newspaper Operating Agreement

Notice is hereby given that the Attorney General has received an application for approval of a joint operating agreement involving the two newspapers in Manteca, California. The application was filed on July 15, 1988 by the Manteca *News* and the Manteca *Bulletin.* The proposed arrangement provides that the printing and commercial operations of both newspapers be handled by the Manteca Newpaper Agency, a limited partnership created by the newspapers. According to the application all the editorial and reporting functions and policies of each newspaper would remain separate.

The Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.,* requires that joint newspaper operating arrangements such as that proposed by the Manteca newspapers have the prior written consent of the Attorney General of the United States in order to qualify for the antitrust exemption provided by the Act. Before granting his consent, the Attorney General must find that one of the publications is a failing newspaper and that approval of the arrangement would effectuate the policy and purpose of the Act.

In accordance with the Newspaper Preservation Act Regulations, published at 28 CFR Part 48, copies of the proposed arrangement and other materials filed by the newspapers ix support of the application are available for public inspection in the main offices of the newspapers involved and in Room 6332 of the Department of Justice, 601 D Street, NW., Washington, DC 20530.

Any person with views about the proposed arrangement may file written comments stating the reasons why approval should or should not be granted, or requesting that a hearing be held on the application. A request for hearing must set forth the issues of fact to be determined and the reason that a hearing is believed necessary to determine them. Comments shall be filed by mailing or delivering five copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, and must be received by September 19, 1988.

Replies to any comments filed on or before that date may be filed on or before October 18, 1988.

FOR INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, 202–633–3452.

Date: August 16, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 88–18858 Filed 8–18–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Act; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS"), filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on July 11, 1988, disclosing the identities of additional parties that have become members of NCMS since May 5, 1988. The additional members are:

Advanced Material Process Corporation
Dravo Automation Sciences, Inc.
Metal Improvement Company, Inc.

The additional written notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The NCMS is a nonprofit public benefit corporation organized under the laws of the State of California to undertake research in the areas of production equipment design, analysis, testing and control, manufacturing data and factory control, manufacturing processes and materials, manufacturing operations, information and technology transfer and strategic issues. Its principal place of business is at 900 Victors Way, Ann Arbor, Michigan 48108.

On February 20, 1987, the NCMS filed its original notification pursuant to section 6(a) of the Act, in response to which the Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987, 52 FR 8375. On April 15, 1988 and May 5, 1988, the NCMS filed additional written notifications concerning clarification of its research agenda and the identities of parties that had become members of the NCMS. In response to these additional notifications, the Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 2, 1988, 53 FR 20194.

With the addition of the three parties listed above, the NCMS membership comprises the following:

Advanced Controls, Inc.
Advanced Material Process Corporation
Airborn, Incorporated
Aircraft Engines Engineering Division
  General Electrice Company
Amphion, Inc.
Aries Technology, Inc.
American Telephone & Telegraph Co.
Automation Intelligence, Inc.
The Bodine Corporation
The Cincinnati Gilbert Machine Tool
  Company
Consilium, Inc.
Control Technology, Inc.
The Cross Co.
DeVlieg Machine Company
Digital Equipment Corporation
Dravo Automation Sciences, Inc.
Erie Press Systems (an EFCO Company)
Extrude Hone Corporation
Fabreeka Products Company
Ford Motor Company
Gearhart Industries, Inc.
General Motors Corporation
Gilbert/Commonwealth, Inc. of Michigan
The Gleason Works
Hardinge Brothers, Inc.
Haworth, Inc.
Hougen Manufacturing Company, Inc.
Hufcor, Inc.
S.E. Huffman Corp.
Hurco Companies, Inc.
International Cybernetics Corporation
Kasper Machine Co.
Kayex Spitfire, a unit of General Signal
  Corporation
Kinefac Corporation
Kingsbury Machine Tool Corp.
H.R. Krueger Machine Tool, Inc.
The M.D. Larkin Company
Len Industries, Inc.
Litton Industrial Automation Systems, Inc.
Manuflex Corporation
Masco Machine, Inc.
Master Chemical Corporation
Mattison Machine Works
Mayday Manufacturing Co.

Measurex Automation Systems, Inc.
Mechanical Technology, Incorporated
Medar, Inc.
Metal Improvement Company, Inc.
Met-Coil Systems Corporation
Microfab Technologies, Inc.
Modern Engineering Service Company
Moore Special Tool Co. Inc.
Murdock Engineering Company
The National Machinery Company
Newcor Bay City, Division of Newcor, Inc.
Parker-Majestic, Inc.
Perceptron, Inc.
Plainfield Tool and Engineering, Inc. (d/b/a/ Plaintifled Stamping-Illinois Incorporated)
Radian Corporation
R&B Machine Tool Company
Raycon Textron, Inc.
Recognition Equipment Incorporated
RF Monolithics, Inc.
Rockwell International Corporation
Savoir
Sheffield Machine Tool Company
SpeedFam Corporation
Sybase, Inc.
The Taft-Pierce Manufacturing Company
Technology Integration, Inc.
Teledyne Inc.
Texas Instruments Incorporated
Transform Logic Corporation
Turchan Enterprises, Inc.
United Technologies Corporation
Valisys Corporation
The Vulcan Tool Company
Walker Magnetics Group, Inc.
The Warner & Swasey Co.
Weldon Machine Tool, Inc.
Wizdom Systems, Inc.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 88-18821 Filed 8-18-88; 8:45 am]
BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Fabric Softner Quats Joint Venture

Notice is hereby given, pursuant to section 6(a) of the National Cooperative Reseach Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), that Sherex Chemical Company for the Fabric Softner Quats Joint Venture ("Joint Venture") has filed on July 25, 1988, written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Joint Venture and (2) the nature and objectives of the Joint Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activity are given below.

The parties to the Joint Venture are Sherex Chemical Company, Dublin, OH; Capital City Products, Columbus, OH; Croda Incorporated, New York, NY; Chemical Specialties Manufacturers Association, Washington, DC.

The purpose of the Joint Venture is to collect and submit appropriate data on Imidazolium quaternary ammonium compounds and Ethoxylated quaternary ammonium compounds as required by the 22nd ITC Report.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 18-18859 Filed 8-18-88; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Virginia:
VA88-23 ..... pp. 1160q-1160r.
VA88-24 ..... pp. 1160s-1160t.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA88-9 (Jan. 8, 1988)..... p. 234.
GA88-10 (Jan. 8, 1988)..... p. 236.
GA88-11 (Jan. 8, 1988)..... p. 238.
GA88-12 (Jan. 8, 1988)..... p. 240.
GA88-24 (Jan. 8, 1988)..... p. 264.
GA88-25 (Jan. 8, 1988)..... p. 266.
GA88-26 (Jan. 5, 1988)..... p. 268.
GA88-27 (Jan. 8, 1988)..... p. 270.
GA88-28 (Jan. 5, 1988)..... p. 272.
GA88-29 (Jan. 8, 1988)..... p. 274.
GA88-30 (Jan. 8, 1988)..... pp. 275-276.
Pennsylvania:
PA88-14 (Jan. 8, 1988) ..... pp. 944-947.
Virginia:
VA88-3 (Jan. 8, 1988)..... p. 1124.
VA88-5 (Jan. 8, 1988)..... p. 1128.
VA88-14 (Jan. 8, 1988)..... p. 1150.
VA88-15 (Jan. 8, 1988)..... pp. 1154-1155.
VA88-17 (Jan. 5, 1988)..... p. 1160b.
VA88-18 (Jan. 8, 1988)..... pp. 1160e-1160f.
Listing by Location (index)..... pp. xliv-xlvi.
Listing by Decision (index)..... p. lx.

Volume II

Illinois:
IL88-6 (Jan. 8, 1988) ..... p. 142.
IL88-18 (Jan. 8, 1988) ..... p. 229.
Indiana:
IN88-1 (Jan. 8, 1988) ..... pp. 234-237.
IN88-2 (Jan. 8, 1988) ..... pp. 248-252, pp. 262-264b.
Indiana:
IN88-3 (Jan. 8, 1988) ..... pp. 266-267.
IN88-4 (Jan. 8, 1988) ..... pp. 278-281,287.
IN88-5 (Jan. 8, 1988) ..... pp. 290-292.
IN88-6 (Jan. 8, 1988) ..... pp. 300,302,306.
Nebraska
NE88-1 (Jan. 8, 1988) ..... p. 670.

Volume III

Washington:
WA88-3 (Jan. 8, 1988) ..... pp. 398-399, pp. 401-402.
WA88-8 (Jan. 8, 1988) ..... p. 420.
Wyoming:
WY88-1 (Jan. 8, 1988)..... p. 432.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 12 day of August 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-18616 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-20,792]

Termination of Investigation; Belltex Inc.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on July 11, 1988 which was filed on behalf of workers at Belltex Incorporated, Bergenfield, New Jersey.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of August 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-18892 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-30-M

Job Corps Advisory Committee; Meeting

A public meeting of the Job Corps Advisory Committee will be held on September 13, 1988, commencing at 9:00 a.m., at the National Housing Center, 15th and M Streets, NW., Washington, DC.

The purposes of the meeting are to:

1. Conduct final review of Committee's Report to Secretary McLaughlin on the center assessment system.

2. Review and discuss paper synthesizing results of Utah meeting as background for subsequent discussion.

3. Consider what a Job Corps of the future should look like. Committee will discuss in detail the qualities, characteristics, structure and results which should be expected of a 'model' future center and will identify and categorize issues and obstacles associated with achieving that status.

4. Discuss Work Plan—September 1988—September 1989—Committee will formulate a plan which specifies the products and process of its major work for ensuing year.

Individuals or organization wishing to submit written statements pertaining to Job Corps center assessment should send 20 copies to Peter E. Rell, Director, Office of Job Corps, U.S. Department of Labor, Room N–4508, Washington, DC 20210, telephone (202) 535–0550. Papers will be accepted and included in the record of the meeting if received on or before September 12, 1988.

Roberts T. Jones,

Assistant Secretary of Labor-Designate.

Signed at Washington, DC, this 12th day of August 1988.

[FR Doc. 88–18891 Filed 8–18–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–140–C]

Bare Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bare Mining, Inc., Route 3, Box 84, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 2 (I.D. No. 15–16310) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies would limit the operator's visibility, due to the decrease in the mining height. The canopies could strike and dislodge roof supports, creating the possibility of roof falls. The canopies could also cut electrical cables, creating the possibility of an electrical shock.

3. Petitioner further states that if canopies are used, ventilation could be disrupted because face curtains could be torn down due to the operator's limited visibility.

4. For these reasons, petitioner requets a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 12, 1988.

[FR Doc. 88–18887 Filed 8–18–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–126–C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (deluge-type water spray systems) to its McClure No. 1 Mine (I.D. No. 44–04251), its Splashdam Mine (I.D. No. 44–00269), its Lambert Fork No. 2 Mine (I.D. No. 44–06175), its Kilgore Creek Mine (I.D. No. 44–04445), its Triple C No. 1 Mine (I.D. No. 44–06375), its Moss No. 4 Mine (I.D. No. 44–01644), its Moss No. 4A Mine (I.D. No. 44–04817), its Laurel Mountain Mine (I.D. No. 44–06444), and its Maple House Branch Mine (I.D. No. 44–04937) all located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that nozzles attached to the branch lines be provided with blow-off dust covers.

2. Petitioner states that the covers allow corrosion and dust to accumulate in the branch lines which would cause the system to be inoperative upon

actuation, thus, causing a diminution of safety to the miners.

3. As an alternate method, petitioner proposes that—

(a) A weekly functional test would be conducted on each deluge-type spray system by a qualified person;

(b) A date board would be provided at each belt conveyor drive and the date, time and the qualified person's initials would be recorded upon completion of the weekly functional test; and

(c) The results of the weekly functional test would be recorded in a book kept on the surface and made accessible to all interested parties.

4. In support of this request, petitioner states that a weekly functional test for deluge-type spray systems provided at underground belt conveyor drives would keep branch lines and nozzles free of debris and thus would enhance a more dependable system.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affeced as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 672, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 12, 1988.

[FR Doc. 88-18888 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-141-C]

Eastern Associated Coal Corp.; Petition for Modification of Mandatory Safety Standard

Eastern Associated Coal Corporation, Route 85, P.O. Box 29, Wharton, West Virginia 25208 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Lightfoot No. 2 Mine (I.D. No. 46-04955) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On June 20, 1986, petitioner was granted a modification of 30 CFR 75.326 to use belt haulage air in the active working faces of the longwall development sections and to install an early warning fire detection system in all belt entries used as intake aircourses (docket number M-85-133-C).

2. This petition concerns paragraph 7 of the Decision and Order which states that the carbon monoxide monitoring system shall be examined visually at least once each coal-producing shift and tested for functional operation at intervals not exceeding 7 days to ensure the monitoring system is functioning properly and that required maintenance is being performed. The monitoring system shall be calibrated with known concentrations of carbon monoxide and air mixtures at intervals not exceeding 30 calendar days. A record of all inspections shall be maintained on the surface. The inspection record shall show the time and date of each weekly inspection, monthly calibration, and all maintenance performed on the system.

3. Petitioner states that the belt conveyor system is totally idle and the power source to the belt drives will be locked out. MSHA will be notified prior to start up of any belt drive, and the CO monitoring system will be checked in its entirety to ensure proper functioning of the system.

4. For these reasons, petitioner requests an amendment to the previously granted petition modifying the application of 30 CFR 75.326.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 12, 1988.

[FR Doc. 88-18889 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-148-C]

Scarlett Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Scarlett Coal Company, Inc., H.C. 87, Box 192, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-15734) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The hydraulic scoops are permissible DC powered machines, approximately 30-40% of the coal is hand loaded. Approximately 20% of the time the scoop is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on hydraulic scoops. In further support of this request, petitioner states that:

(a) Each hauling hydraulic scoop will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading scoop in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure the detection of any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery scoops immediately. Production will cease and will not resume until the methane level is lower than one percent.

(d) A spare continuous monitor will be available to assure that all coal hauling scoops will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 12, 1988.

[FR Doc. 88-18890 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

American Nuclear Society Executive Workshop on the Utility/NRC Interface

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of conference.

SUMMARY: NRC staff will participate in an Executive Workshop sponsored by the American Nuclear Society on the subject of the Utility/NRC Interface.

DATE: September 25–27, 1988.

LOCATION: Holiday Inn Crowne Plaza, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Information on conference fees and registration procedures may be obtained by writing or calling the American Nuclear Society, Meetings Department, 555 North Kensington Avenue, LaGrange Park, IL 60525; (312) 352–6611.

SUPPLEMENTARY INFORMATION: The Workshop to be held in Rockville, MD, September 25–27, 1988, will provide information to improve communications and the overall effectiveness of the operations-related interface between utilities and the NRC.

Dated at Bethesda, Maryland, this 15th day of August, 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88-18835 Filed 8-18-88; 8:45 am]

BILLING CODE 7590-01-M

Cleveland Electric Illuminating Co. et al. Request To Suspend the Perry and Davis-Besse Nuclear Power Plant Antitrust License Conditions: Time for Filing Comments Extended

On May 2, 1988, the Cleveland Electric Illuminating Company (CEI) and the Toledo Edison Company (TE) requested the Director of the Office of Nuclear Reactor Regulation to amend the antitrust license conditions that are attached to the Perry Nuclear Power Plant (Perry), Facility Operating License No. NPF-58, and the Davis-Besse Nuclear Power Station (Davis-Besse), Facility Operating License No. NPF-3. The Perry operating license was issued to CEI, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and TE. the Davis-Besse operating license was issued to TE and CEI. The CEI and TE application for amendment requested suspension of the antitrust license conditions from both the Perry and Davis-Besse plants as they apply to CEI and TE.

Notification of receipt of this amendment request was published in the **Federal Register** (53 FR 22589) on June 16, 1988 and comments were sought from the public within 30 days. By motion dated July 7, 1988, the City of Cleveland, Ohio (Cleveland) requested a 60-day extension of time in which to file comments. In light of the fact that Cleveland has shown good cause for its request to extend the filing period in this proceeding and both CEI and TE have not opposed the request, staff hereby grants Cleveland's request and extends the time period for filing comments on the captioned amendment request until September 13, 1988.

Any person who wishes to express views pursuant to the antitrust issues raised in this amendment request should submit said views by September 13, 1988 to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 11th day of August 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-18838 Filed 8-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-1]

General Electric Co.; Issuance of Amendment To Materials License SNM-2500

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 5 to Materials License No. SNM-2500 held by the General Electric Company for the receipt and storage of spent fuel at the Morris Operation, located at 7555 East Collins Road, Morris, Illinois. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications making organizational changes redefining the Plant Safety Committee and reflecting restructuring within the General Electric Company. These administrative changes do not affect fuel receipt, handling, and storage safety.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated July 21, 1988, and (2) Amendment No. 5 to Materials License No. SNM-2500, and (3) the Commission's letter to the licensee dated August 11, 1988. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Rockville, Maryland, this 11th day of August 1988.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88-18834 Filed 8-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Kansas Gas and Electric Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-42, issued to Kansas Gas and Electric Company, Kansas City Power & Light Company, and Kansas Electric Power Cooperative, Inc., (the licensees), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The amendment would revise the heatup, cooldown, and Cold Overpressure Mitigation System Power Operated Relief Valve setpoint pressure/temperature limits in accordance with the requirements of 10 CFR Part 50, Appendix H and Technical Specification 4.4.9.1.2. These revisions are based on the results of the analysis of surveillance capsule "U" removed from the Wolf Creek reactor vessel during the first refueling outage. In addition, the amendment would also limit the reactor coolant system heatup rate to less than or equal to 60 °F/Hr for indicated reactor coolant system temperatures less than 200 °F.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 19, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 20, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, and the Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland, this 10th day of August, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-18839 Filed 8-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-3 (Emergency Planning)]

Long Island Lighting Co.; Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of August 12, 1988, oral argument

on the joint appeal of Suffolk County, the State of New York and the Town of Southampton from the Licensing Board's May 9, 1988, partial initial decision on suitability of reception centers (LBP–88–13) will be heard at 2:00 p.m. on Wednesday, September 14, 1988, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For The Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: August 15, 1988.

[FR Doc. 88–18840 Filed 8–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322–OL–5 (EP Exercise)]

Long Island Light Co.; Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of July 29, 1988, oral argument on the appeal Long Island Lighting Company (LILCO) from the Licensing Board's February 1, 1988, initial decision (LBP–88–2) will be heard at 9:30 a.m. on Wednesday, September 14, 1988, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For The Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: August 15, 1988.

[FR Doc. 88–18841 Filed 8–18–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Maintenance Practices and Procedures; Meeting

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a meeting on September 7, 1988, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 7, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will discuss and review the maintenance rule and associated NUREG.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1413) until August 26 and after August 29 (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: August 15, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–18836 Filed 8–18–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Pilgrim Restart; Meeting

The ACRS Subcommittee on Pilgrim Restart will hold a meeting on August 26, 1988, at the Memorial Hall, 83 Court Street, Plymouth, MA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, August 26, 1988—8:00 a.m. until the conclusion of business

The Subcommittee will review the proposed restart of the Pilgrim plant.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 7:15 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: August 11, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–18837 Filed 8–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co., et al.[1]; Issuance of Amendments to Construction Permits

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Construction Permit No. CPPR–126 and Amendment No. 8 to Construction Permit No. CPPR–127 for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, to show a change in ownership interest.

By letter dated March 4, 1988, as supplemented on March 31, 1988, Texas Utilities Electric Company (TU Electric) requested amendment of Construction Permit Nos. CPPR–126 and CPPR–127 for the CPSES, Units 1 and 2, to reflect a

[1] The current Construction Permit holders for the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company, Brazos Electric Power Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

transfer of 6.2% interest in CPSES ownership from Texas Municipal Power Authority to TU Electric. These amendments will become effective as of the date of completion of the transfer of the ownership interest.

The issuance of these amendments to Construction Permit Nos. CPPR–126 and CPPR–127 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which is set forth in Amendments No. 9 and No. 8. Prior public notice of Amendments No. 9 and No. 8 was not required, since the amendments do not involve a significant hazards consideration.

For further details with respect to this action see (1) the application for amendment, dated March 4, 1988, and supplemental information dated March 31, 1988, (2) Amendments No. 9 and No. 8 to Construction Permit Nos. CPPR–126 and CPPR–127, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room at the Somervell County Public Library on the Square, P.O. Box 1417, Glen Rose, Texas 76043.

In addition, a copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Comanche Peak Project Division, Office of Special Projects.

Dated at Rockville, Maryland, this 10th day of August 1988.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division Office of Special Project.

[FR Doc. 88–18842 Filed 8–18–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25996; File No. SR–Amex–87–26]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Expansion of the Amex Auto-Ex System

I. Introduction

On October 13, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand its automatic execution system ("AUTO-EX") to all equity options on a permanent basis.

The proposed rule change was noticed in Securities Exchange Act Release No. 25056 (October 23, 1987), 52 FR 42164. No comments were received on the proposed rule change.

II. Background

In December 1985, the Exchange implemented a pilot program to initiate the AUTO-Ex system for the automatic execution of options on the Major Market Index ("XMI").[3] AUTO-EX is an automated system that executes public customer market and marketable limit orders [4] in options at the best bid or offer displayed at the time the order is entered into the Automatic Amex Options Switch ("AUTOAMOS") system.[5] If the best bid or offer is on the specialist's limit order book, the incoming order is routed to the specialist's post where it is executed against the book order, thus assuring that public customer orders on the book retain priority over orders in the crowd. If the best bid or offer is not on the specialist's limit order book, the contra-side of the AUTO-EX trade is assigned on a rotation basis to either one of the Registered Options Traders ("ROTs")[6] who have signed on to the system or to the specialist.

Each specialist in an AUTO-EX eligible option is automatically signed on to the system from the moment it is activated and remains a participant until the system is turned off, while ROTs participate on a voluntary basis. Prior to signing on to the AUTO-EX system, however, ROTs must sign an agreement with the Exchange undertaking to satisfy the following requirements prior to and during their participation on the system. A ROT:

1. Must be in good standing at the Amex;

2. Must have the written concurrence of his or her clearing firm to participate on the system;

3. Once signed on to the system for a particular option class, must remain in the trading crowd for that option. The ROT may, however, sign on to one additional AUTO-EX option class so long as the ROT can be considered in the crowd for both options;

4. May sign on the system at any time during the day, but only may sign off and back on to the system one additional time during the day;

5. While signed on to the system in a particular option class, may not place orders on the specialist's book for that option; and

6. Must accept Exchange-mandated price adjustments when a trade is automatically executed at an incorrect price.

Since its implementation in selected series of XMI options in August 1986, AUTO-EX has been extended to: (1) Use during periods of extremely high order flow in stock options,[7] (2) use in selected competitively traded stock options,[8] and (3) use in 40 equity options on a pilot program basis.[9] These three circumstances represent approximately 1.36% of Amex options order flow. Amex represents that member firms have been supportive of these various applications of AUTO-EX. The Exchange's Member Firm Advisory Committee, representing the major retail firms, has urged the Amex to make AUTO-EX more generally available for stock options.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] The pilot was approved on a permanent basis in August 1986. Securities Exchange Act Release No. 23544 (August 27, 1986), 51 FR 30601.

[4] A market order is an order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the trading crowd. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price or at a better price if obtainable, after the order is represented in the trading crowd, entered at a time when the market is trading at or better than the specified price.

[5] AUTOAMOS is an electronic order routing system which transmits market and marketable limit orders of up to 20 contracts and related administrative messages from member firms directly to the specialist on the Exchange floor via printers at each trading post. After arriving at the appropriate specialist's post, the order must be executed either automatically through AUTO-EX, or printed out and executed manually against an order on the book, the specialist as principal, or one or more brokers or traders in the crowd. *See* Securities Exchange Act Release No. 22447 (September 24, 1985), 50 FR 40093. When the order is executed the system transmits related execution reports and responses to administrative inquiries directly back to the member firm from the specialist via mark sense card input.

[6] Amex ROTs trade on the floor for their own accounts and are provided favorable margin treatment in return for making markets in one or more options classes. ROTs must engage in a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market. *See* Amex Rule 958.

[7] *See* Securities Exchange Act Release Nos. 24228 (March 18, 1987), 52 FR 9601, 25487 (March 18, 1988), 53 FR 9721, and 25873 (June 30, 1988), 53 FR 25557.

[8] Options that can be traded on more than one exchange, such as options on over-the-counter stocks, are considered competitively traded options. *See* Securities Exchange Act Release Nos. 24714 (July 17, 1987), 52 FR 28396 and 25056 (October 23, 1987), 52 FR 42164.

[9] *See* Securities Exchange Act Release No. 25630 (April 29, 1988), 53 FR 16328.

Due to the sucessful operation of the AUTO-EX system in the aforementioned categories, the Amex, on October 13, 1987, filed a proposal to expand the AUTO-EX system to all equity options on a full-time, permanent basis. The Amex states that the proposed rule change is designed to promote just and equitable principles of trade and to protect the investing public because it will permit the Exchange to provide member firms and their customers with the execution efficiencies inherent in the AUTO-EX system to orders in all equity options. The Amex beleives the expansion of the AUTO-EX system to all equity options is a necessary and appropriate step for it to continue to offer the level of service that member firms and their customers require, while remaining competitive with other markets.[10] The Amex believes further that this expansion of AUTO-EX is necessary for it to attract sufficient order flow to enable the maintenance of viable markets. Finally, as explained more fully below, the Amex represents that the operation of AUTO-EX in all equity options will have no adverse impact on the Exchange's order routing system capacity.[11]

III. Discussion

The Commission finds that the proposed rule change permitting the use of the AUTO-EX system in all equity options on a permanent basis is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, the requirements of Section 6 and the rules and regulations thereunder. Specifically, the Cmmission believes that the proposed rule change will benefit public customers by affording them a more efficient method of executing small market and marketable limit orders in all equity options. The Commission previously has approved on a pilot basis the use of AUTO-EX in equity options during emergency or "breakout" situations. The Amex's experience during these periods has been that AUTO-EX's availability enhances order execution and brings operational efficiencies to the trading post during these emergencies.[12] Extension of the AUTO-EX system to all equity options would provide the Exchange's trading posts with enhanced order execution and other operational efficiencies not only during emergencies but during normal day-to-day trading as well.

The Commission believes that the efficiency of the AUTO-EX system would be greatly enhanced if ROTs participated in the system during periods of volatile market movements. Although Amex specialists are required to be on the system at all times, periods of excessive trading volume and volatility, like those experienced during the October market break, demonstrate that the participation of additional market makers on the system would help spread the risks imposed from acting as buyer or seller of last resort and, thus, contribute to a more deep, liquid, and efficient market for those options classes. Because the specialist is required to participate in AUTO-EX at all times, however, the Commission believes that a specific requirement obligating ROTs to remain on AUTO-EX for a full trading session or longer is not necessary. The current requirement permitting a ROT that has signed on to AUTO-EX in an options class to sign off and back on only once in a trading session should help ensure that ROTs stay on the system during the majority of any trading day they sign on. Moreover, other ROT obligations, such as the requirement that they remain in the trading crowd while participating in AUTO-EX for an option, that they agree to accept any Exchange ordered price adjustments, and the potential for Exchange disciplinary action for breaching their obligations, will help to assure that ROTs will be available to supplement the specialist's required participation in AUTO-EX. Nevertheless, in light of the problems AUTO-EX experienced during the October 1987 Market Break,[13] the Amex should consider whether more stringent ROT participation requirements should be imposed.

The Amex has indicated that the AUTO-EX system will remain in continuous operation during the trading day absent operational failure, trading halts, or trading suspensions in underlying securities, and would be turned off only in the interest of maintaining fair and orderly markets and investor protection. Moreover, the Amex has proposed that if a situation arose tht necessitated shutting the AUTO-EX system off in a specific options class, two Floor Governors (both members of the Exchange's Board of Governors) would have to concur. Before the system could be shut off floorwide during a trading day, however, a Senior Exchange Official, in addition to the two Floor Governors, would have to determine that such action was necessary to maintain fair and orderly markets or protect investors. Similarly, before a decision could be made not to activate AUTO-EX in a given options class or floorwide before trading commences, a Senior Exchange Official and two Floor Governors would have to concur that such action was appropriate to ensure fair and orderly markets and investor protection.[14]

The Commission believes that continued operation of automatic execution systems in all market conditions is appropriate. Investors who have relied on prompt order execution through AUTO-EX during normal markets also should be confident that these systems will be available in volatile markets as well.[15] In this regard, the Commission believes that the Amex's proposed standards for shutting off AUTO-EX either in a particular option or floorwide, *i.e.*, The maintenance of fair and orderly markets or the protection of investors, coupled with its proposed procedural safeguards, should ensure that AUTO-EX will continue to be available for execution of small retail orders at all appropriate times. Nevertheless, in light of the general unavailability of AUTO-EX in one options class—XMI—during the volatile week of October 19, 1987 the Amex should examine more carefully how the extension of AUTO-EX to over 100 stock options would affect the availability of the AUTO-EX system during periods of increased volatility.

The Commission also believes, based on Amex data, that the use of AUTO-EX will not increase the number of messages being processed through the Amex's automated options order routing systems to such an extent that those systems will become unable to handle additional order flow related messages. These systems have a capacity to

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[10] For example, the Chicago Board Options Exchange ("CBOE") has a small order execution system for options.

[11] *See* Letter from Paul Stevens, Executive Vice President, Amex, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated April 8, 1988.

[12] *See* Division of Market Regulation, *The October 1987 Market Break* (February 1988) ("Division Report") at 8–8 through 8–10.

[13] During the week of October 19–23 the Amex experienced a decline in ROT AUTO-EX participation. Approximately 2 to 4 ROTs, in addition to the specialist, participated in AUTO-EX each day of that week while 6 ROTs were on AUTO-EX each day, in addition to the specialist, during the week of October 12. *See* Division Reprot at 8–10.

[14] *See* Letter from Claire P. McGrath, Esq., Amex Options Division, to Joseph Furey, Esq., Branch Chief, Division of Market Regulation, SEC, dated June 22, 1988.

[15] In the Division's Report it noted that on October 19 and 20, 1987, the Amex and CBOE made their automatic execution systems largely inoperable. *See* Division Report, *supra* note 12, at 8–8.

process 18 messages per second (4½ times the peak one second message traffic received on an average day and 3½ times the traffic experienced on the busiest trading day ever experienced at the Exchange).[16] However, in light of the volume-related problems during October 1987 experienced by the small order routing and execution systems at the various stock exchanges, the Amex should consider whether increasing the volume of trades handled by AUTO-EX through AUTOAMOS may lead to similar problems in Amex options trading during periods of extreme volatility and excessive volume.[17]

IV. Conclusion

Based upon the aforementioned factors the Commission finds that the proposed rule change permitting the use of the AUTO-EX system in all equity options on a permanent basis is consistent with the requirements of section 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Dated: August 15, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-18860 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25995; File Nos. SR-CBOE-87-35 and SR-CBOE-87-47]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc; Order Approving Proposed Rule Changes Relating to the Retail Automatic Execution System ("RAES")

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on July 27, 1987, a proposed rule change (SR-CBOE-87-35) to make the CBOE's Retail Automatic Execution System ("RAES") permanent in such classes of equity options as designated by the Exchange.[3] On October 19, 1987, the CBOE filed a related proposal, SR-CBOE-87-47, describing the RAES eligibility requirements that would be applicable to market makers electing to participate in RAES, and that also may be imposed in certain circumstances on members of the trading crowd.[4]

II. Background

In August 1986 the commission approved a CBOE proposal to pilot RAES in six classes of individual equity options, including International Business Machines ("IBM"), by volume the largest option class traded on the CBOE.[5] All CBOE trading rules regarding priority of order execution were honored in connection with the use of RAES in each of the piloted equity classes except IBM; *i.e.*, public customer orders placed in the limit order books of the pilot classes were guaranteed executions in the event orders entered through RAES were executed at the same price as limit orders on the book.[6] RAES' use in IBM operated as an exception due to the impracticability, from the CBOE's viewpoint, of performing the manual integration functions necessary to maintain book priority in a high volume option at that time.[7]

During the past two years the pilot has been expanded to include all CBOE equity option classes.[8] The CBOE believes it is now appropriate to approve the floorwide use of RAES on a permanent basis because the pilot has demonstrated the System's ability to handle small public customer orders efficiently and to operate without technical or other difficulties. Moreover, the Exchange believes the proposed amendments to its market maker RAES participation standards, discussed herein, will ensure the continued functioning of the system, including during periods of unusual market volatility.

III. Description of Proposals

A. System Operation (SR-CBOE-87-35)

Currently RAES accepts public customer market and marketable limit orders of ten or fewer contracts.[9] Pursuant to the proposed rule change the Exchange, in its discretion, may utilize RAES on a permanent basis in any of the equity options traded on its floor.[10] The CBOE, however, may restrict eligible orders by, for example, limiting RAES to market orders, and may lower contract limits.[11] It also will have discretion to place on the system such series in the eligible classes of options as it determines are appropriate.[12]

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[16] On an average day, during the peak one minute period, there are approximately 4 messages per second sent through the system; the largest number of messages sent, as of April 1988, was 5½ messages per second on January 23, 1987, which exceeded those sent on any trading day in October 1987. *Supra* note 11.

[17] *Supra* note 10, at 7-24 through 7-26.

[18] 15 U.S.C. 78s(b)(2) (1982).

[19] 17 CFR 200.30-3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] RAES automatically executes public customer market and marketable limit orders of a certain size (typically ten contracts or fewer) against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE quotation system. SR-CBOE-87-35 was published for comment in Securities Exchange Act Release No. 24916 (September 11, 1987), 52 FR 35508. No comments were received on the proposed rule change.

[4] SR-CBOE-87-47 and Amendment No. 1 to the proposed rule change were published for comment, respectively, in Securities Exchange Act Release No. 25173 (December 4, 1987), 52 FR 47470, and in Securities Exchange Act Release No. 25620 (April 27, 1988), 53 FR 15934. Two commentators submitted letters, discussed *infra*, concerning the proposal.

[5] *See* Securities Exchange Act Release No. 23490 (August 1, 1986), 51 FR 28788 ("Equities Pilot Approval Order"). In addition to IBM, RAES was piloted in Eastman Kodak ("EK"), American Telephone & Telegraph ("AT&T"), General Motors ("GM"), Sears ("S"), and General Electric ("GE").

[6] CBOE priority rules accord public customer book orders time priority over any other orders at the same price. See CBOE Rule 6.45.

[7] The Commission simultaneously approved the use of RAES on a permanent basis for options on the Standard & Poor's 100 ("OEX") index. RAES' use in OEX was exempted from CBOE priority rules due to the liquidity of the option contract and the inability of the CBOE to protect OEX book orders without significantly degrading the efficiencies of RAES. In approving RAES on a permanent basis, the Commission accepted the Exchange's good faith representation to continue to explore the development of an electronic limit order book that would allow for the full integration of the limit order book with RAES. *See, e.g.*, letter from Charles I. Henry, President and Chief Operating Officer, CBOE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 2, 1987.

[8] *See, e.g.*, Securities Exchange Act Release No. 25571 (April 11, 1988), 53 FR 12840.

[9] A market order is an order to buy or sell a stated number of option contracts at the best price obtainable when the order reaches the post at which the option is traded. CBOE Rule 5.53(a). Marketable limit orders are limit orders (*i.e.*, orders to sell or buy at a specified price or better) which are immediately executable because the market is at or better than the limit price.

[10] At the current time, all but approximately 10 of the 178 equity options listed for trading on the CBOE are utilizing RAES. Those classes not utilizing RAES generally are thinly traded and have little market maker participation.

[11] In the event the CBOE elects to decrease or increase the size of orders eligible for RAES execution, or modify the types of orders that are eligible, the Exchange must file a proposed rule change with the Commission pursuant to section 19(b) of the Act.

[12] During the pilot period, the three closest to the money put and call series were accessible through RAES. The Exchange intends to make announcements concerning eligible series daily by memoranda and taped telephone messages.

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The proposed rule change generally provides that, if approved on a permanent basis, RAES will operate in the same manner as it has during the pilot period. For example, firms currently on the Exchange's Order Routing System ("ORS") automatically will have their small public customer market orders routed into RAES.[13] Firms not on ORS will be provided access to RAES from terminals at their booths on the floor. Participating market makers will be assigned as the contra parties to RAES trades on a rotating basis, with the first market maker each day selected randomly. Market makers will be obligated to trade at the displayed market quote at the time an order enters the system through ORS,[14] thus providing the public customers generating the order a firm quote for up to the maximum number of RAES guaranteed contracts.

To preserve limit order book priority (in all options classes except IBM), if a RAES order would be executed at the price of one or more orders on the limit order book, the RAES order will be rerouted on ORS to either the entering firm's floor broker in the crowd (via printers located in the trading crowd), or the firm's floor booth. The order then would be represented, executed, and reported in the normal manner.[15] The proposed rule change also provides that the Exchange may suspend limit order book protection in RAES in any equity options class upon a declaration of unusual market conditions. This declaration only may by called by the Exchange's Vice Chairman and Preident (or their respective nominees) when, due to unusually active market conditions, the printer in the trading crowd becomes unavailable, or market operations "do not otherwise allow for the prompt and efficient handling of RAES orders which would be rerouted * * *." [16]

[13] ORS is a CBOE computer-driven support system that distributes customer orders received from member firms to designated destinations on the CBOE floor.

[14] RAES orders to buy are executed at the lowest offering price; RAES orders to sell receive executions at the highest bid price.

[15] This provision of the proposed rule change would codify certain system enhancements implemented by the CBOE in August 1987. Prior to that time, in the event a limit order on the book represented the best bid or offer and an order entered through RAES was executed at that price, the market maker who was the contra party to the RAES trade also would trade with the book order. The CBOE found that certain inefficiencies resulted from this system, and accordingly undertook the proposed modifications explained in the text above. *See Report on RAES Pilot in Equity Options for the Period September 1986—June 1987*, filed as an exhibit to File No. SR–CBOE–87–35 ("Report on RAES Pilot").

[16] *See* letter to Holly H. Smith, Special Counsel, Division of Market Regulation, SEC, from Frederic M. Krieger, Associate General Counsel, CBOE, dated May 10, 1988.

B. Market Maker Participation Requirements (SR–CBOE–87–47)

In connection with its request that the Commission approve the use of RAES on a permanent basis for all CBOE-trade equity options, the Exchange filed a proposed rule change to amend its market maker RAES eligibility standards on a six month pilot basis. The amendments would alter the administration of the eligibility standards and provide the Exchange with additional authority to both encourage and require market maker participation in RAES.

First, the proposed rule change would authorize the CBOE Market Performance Committee ("MPC") to exempt participating market makers from the joint account participation and trading in-person restrictions currently applicable. The market maker participation standards presently in effect limit participation to market makers trading in person in the trading crowd, and provide that only one member of a joint account may participate in RAES at a time in the same option class. The proposed rule would clarify the MPC's authority under existing Exchange rules and interpretations to allow the multiple participation of a joint account, and would delegate to the MPC authority currently vested solely in the Exchange's Floor Procedure Committee to grant exemptive relief from any of the rule's provisions in unusual market conditions.

Second, the proposed rule change would provide the MPC discretion to designate option classes in which any market maker who logs onto RAES in that class at any time during an expiration month would be required to participate in RAES whenever he is present in that trading crowd until the next expiration.[17] This change is intended to address the problem, identified during the RAES equity options pilot, of inadequate market maker RAES participation at expiration, typically at times of larger volume and increased market maker exposure. The Exchange believes this new provision will assure the existence of an adequate number of market makers on RAES through an expiration cycle.

Third, the proposed rule change provides that, in the event there is inadequate RAES participation in an options class at any time, the MPC may require market makers who are members of the trading crowd to sign onto RAES "absent reasonable justification or excuse for non-participation." Members may be fined pursuant to CBOE Rule 6.20 [18] and further disciplinary action may be taken by the Business Conduct Committee ("BCC") for their failure to comply with any of the requirements of the rule. In addition, the MPC may suspend a member's RAES participation eligibility and also is authorized to take remedial action pursuant to Chapter VIII of the Exchange's Rules.[19]

[17] The proposed rule change provides that market makers will be given notice of the imposition of this obligation prior to signing on the system at the beginning of an expiration month.

[18] Rule 6.20 provides that two Floor Officials, upon a finding that a market maker has impaired the maintenance of a fair and orderly market or impaired public confidence in the operations of the Exchange, may fine the market maker a maximum of $1000. The imposition of this fine may be appealed to the Exchange's Appeals Committee, which must appoint a hearing panel of no fewer than three persons and create a record of its proceedings.

[19] *See*, for example, CBOE Rule 8.12 specifying remedial actions available to the MPC upon a determination that market makers (either individually or collectively as members of a trading crowd) have failed to meet minimum performance standards. The MPC may suspend, terminate or restrict a market maker's registration or appointment to one or more options classes; restrict appointments to additional option classes; relocate options classes; and prohibit a member from trading at a particular station. Any action taken by the MPC is reviewable by the CBOE Board of Directors or a panel composed of at least three Board members. The review panel or the Chairman of the Board may grant or deny a stay of the Committee's action. *See also* CBOE Rule 8.2.

IV. Discussion

A. System Operation

In 1986 when the Commission approved the start-up of RAES in a select group of equity options, it recognized the importance and potential efficiencies of an automatic execution system for options, and noted the benefits it could provide public customers—notably, nearly instantaneous execution of small orders at a guaranteed price and the assurance of liquidity for orders entered through the system. The Commission also noted that public customers who choose to place orders on the book would, with the exception of IBM, generally not be disadvantaged by the operation of RAES.[20] The Commission stated its concern, however, over any possible reduction in public protection, and requested that the CBOE monitor during the pilot period the operational efficiencies of RAES, its impact on

[20] The Commission noted that if limit order protection was not guaranteed, public customers might become discouraged from entering limit orders, a phenomenon which could negatively affect the pricing efficiency of the market, particularly in less active option classes.

equity options limit order books, and its operation in IBM.

In August 1987 the Exchange submitted a report to the Commission detailing the operation of the pilot from September 1986 to June 1987.[21] This report generally supports the CBOE's assertion that RAES has functioned smoothly from a technical standpoint throughout the pilot period, and, moreover, has not operated to a significant degree to the detriment of customers entering orders in the IBM book. The CBOE report discloses that in those five classes in which limit order protection was assured, RAES orders "touched" the book, *i.e.*, were executed at the price of the highest bid on the limit order book in the case of a sell order, or the lowest offer in the case of a buy order, an average of 13.1% of the time. In individual classes this percentage ranged from a low of 8.7% in Sears, to a high of 27.8% in AT&T.[22]

In IBM, the Exchange found that between April-June, 1987, in those instances when a RAES execution touched the book, book orders at that price were removed before a price change or the end of the trading day in 94.5, 87.2, and 94.9 percent of the instances. When these statistics were calculated for the most active day each month, the percentages rose to 95.2% (on April 21), 100% (on May 20), and 98.9% (on June 24).[23] The CBOE found that in most instances booked orders were filled within one minute of the RAES execution. The median (*i.e.*, mid-point correction number) was between 2 and 6 minutes, and the average (dividing total minutes of all corrections by number of corrections) was between 13 and 24 minutes. The CBOE believes these statistics support a finding that RAES has not resulted in materially disadvantaging a statistically significant number of orders on the limit order book in IBM.[24]

The Exchange also submitted data indicating that the expansion of RAES to all CBOE listed equity options would not in its estimation place any stress from an operational standpoint on the capacity of CBOE computer systems.[25] The CBOE estimates that when RAES is expanded to all equity options, the consolidated utilization rate of CBOE computer systems would be only 71.6% on a three million contract day. RAES utilization would represent 9% of the total projected supportable capacity.[26] Based on these estimates, the CBOE believes that even assuming volume of unprecedented magnitude, response times for orders entered through RAES would remain sub-second.

In addition to considering this data, the Commission also has considered the performance of RAES during the October 1987 market break. The Commission examined the performance of each of the options markets during this time in connection with the staff's preparation of a market break study.[27] The Commission's Division of Market Regulation ("Division") found that during the week of October 1987 and for some time thereafter, the CBOE elected to limit (in some time periods severely) the use of RAES by making only far term, out-of-the-money series eligible for RAES execution. By taking this action the CBOE deleted from RAES those option contracts which may have been most in demand by public customers. The Division found that the CBOE's action was prompted in large part by an unwillingness on the part of its market makers to participate in RAES during a period of unusual market volatility.[28] The Division recommended in its report that the CBOE and other exchanges operating systems similar to RAES re-examine their rules governing market maker participation in these systems.[29]

B. Commission Findings

The Commission, upon careful consideration of the above cited data, believes that permanent approval of the system's use in CBOE listed equity options is appropriate. The Commission continues to believe that the development and expansion of automatic execution systems for options will help improve market efficiency and contribute to the smooth handling of small public customer orders. Although systems such as RAES have in the past been subject to decreased market maker participation during periods of market stress, the Commission believes this problem is properly addressed by revisions to the exchange market maker participation rules, not changes in the technology of the system itself. Moreover, systems such as RAES provide public customers with substantial benefits whose significance increases during periods of market volatility and price uncertainty. Specifically, RAES provides options customers with one of the limited means at present to lock-in the price of a trade, and provides significant benefits to both member firm users and their customers in terms of the speed with which orders can be executed and executions confirmed.[30]

Regarding the issue of limit order book protection, the Commission continues to be concerned that these orders receive timely executions and not be materially disadvantaged by the operation of a system that does not

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[21] *See* Report on RAES Pilot, *supra* note 15. *See also Discussion of the RAES Pilot in Equity Options* (Supplement to Report on RAES Pilot in Equity Options), enclosed in letter to Holly H. Smith, Special Counsel, Division of Market Regulation, SEC, from Frederic M. Krieger, Associate General Counsel, CBOE, dated August 20, 1987. The CBOE found that a moderate percentage of customer order flow was handled by RAES; during the period studied, an average of 8% of customer orders in each pilot class were executed through RAES (representing 1.9% of total customer contracts).

[22] In July 1987 AT&T was replaced by an over-the-counter option traded on the CBOE, Battle Mountain Gold ("BMG"). The CBOE represented that it made this change because of insufficient market maker participation in RAES in AT&T. The Exchange believes that AT&T market makers were unwilling to participate in RAES because of the frequency with which they were required to trade with the book in order to guarantee book order protection.

[23] In calculating these statistics, when a RAES trade occurred at the price of a book order, the Exchange assumed an equal number of contracts on the book, and then tracked the book order until it was fully satisfied or the trading day ended. In addition, the CBOE did not consider book bids and offers satisfied unless and until *all* the trading interest on the book at that price was taken out, even though the number of orders executed through RAES at a particular price may have been less than the number of orders on the book.

[24] The CBOE also monitored the number of times when so-called "fast market" conditions were declared, thus enabling the Exchange to suspend book protection. To date, book priority in a pilot class has been suspended only once, for a two hour time period.

[25] *See* letter to Howard Kramer, Assistant Director, SEC, from Nancy R. Crossman, Associate General Counsel, CBOE, dated April 6, 1988 (enclosing Memorandum from CBOE Systems Division to Nancy Crossman).

[26] On October 16, 1988, approximately 2 million contracts were executed on the CBOE, making it the most active trading day in CBOE history. On this date the consolidated utilization rate of CBOE's computer system was 47.8% of available capacity. RAES, if fully expanded to all equity options, would have represented 6% of that utilization.

[27] *See The October 1987 Market Break*, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (February 1988) ("Division Report").

[28] *Id.* at 8–8 through 8–10; 8–22.

[29] RAES' use was further limited by the fact that the system cannot be used while an option is in trading rotation, a condition that prevailed throughout much of October 19 and 20.

[30] At present, among the option exchanges only the American Stock Exchange ("Amex") has developed an execution system similar to RAES. Called "AUTO–EX," the Amex system guarantees executions at the market quote for public customer orders up to 10 contracts in the Amex's Major Market Index ("XMI") and in forty equity options. Although neither the Pacific Stock Exchange or the Philadelphia Stock Exchange have yet developed automated execution systems, both exchanges require their market makers to fill public customer orders in certain option series to a minimum depth of 10 contracts. *See* PSE Rule VI, Secs. 48 and 79; Phlx Rule 1033(A).

directly interface with limit order books. We believe, however, that in the present circumstance the benefits of RAES and the unique trading characteristics of IBM options (*i.e.*, generally high volume and deep markets) warrant the continuation of the IBM exception to limit order protection. The Commission finds support for this exception in the data compiled by the CBOE regarding the number of book orders that may have been disadvantaged by RAES executions. Nevertheless, the Commission expects the CBOE to continue monitoring RAES' impact on the IBM book, and, in the event a high number of book orders do not receive executions before a price change or the end of the trading day on a frequent basis, to take such action as appropriate to modify RAES' interaction with IBM limit orders. The Commission also expects that the Exchange will continue to develop an electronic limit order book that would allow the full integration of the CBOE's limit order books with RAES.

For the reasons set forth above, the Commission finds that the CBOE's proposal seeking permanent approval of RAES' use in equity options is consistent with the Act.

C. Market Maker Participation Standards

1. Comments Received

The Commission received three letters from two commentators concerning the CBOE's proposed market maker standards. One commentator, a CBOE market maker and floor broker, stated that allowing the MPC to require RAES participation by trading crowd members could "destabiliz[e] the market and provide inadequate safeguards against abuse and trauma during volatile trading periods." [31] The commentator also objected, for reasons not stated, to the disciplinary action provision of the rule.

The second commentator, a CBOE market making firm, the Fossett Corporation ("Fossett"), supports the objectives of the rule but believes that voluntary participation by market makers currently excluded from RAES by the in-person trading requirement is preferable to coercing participation by in-crowd market makers.[32] Fossett believes that the in-person eligibility requirement should be waived "to allow other market makers the opportunity to log on the system disdained by those present in the crowd."[33] As an alternative to the Exchange proposal, Fossett proposes a two-phase approach. First, if RAES participation is determined to be inadequate in a given equity option class, market makers not physically present in that trading crowd would be allowed to log on RAES in that option class if they so desire, provided that they agree to remain on the system until the next expiration. Second, if the level of participation is still insufficient or if immediate action is required in order to make RAES available, then the MPC could require market makers in the trading crowd to sign on.

Fossett believes this alternative is preferable to the system proposed by the Exchange because it is more likely to result in continuous, adequate participation by market makers in all equity classes; introduce additional capital into the system by non-trading crowd members; and ensure the continued viability of RAES. It believes the proposal put forward by the Exchange, on the other hand, would impose unjustifiable burdens on competition in the equity options market in violation of sections 6(b)(5) and 6(b)(8) of the Act.[34] Specifically, Fossett believes that the proposal will have anti-competitive effects on the trading crowd and the Exchange. Finally, Fossett asserts that the proposal may chill market making by in-crowd trading members by presenting them with the possibility of forced, involuntary RAES participation, while it prohibits outside market makers from competing on RAES when RAES in-crowd participation is insufficient.

Fossett also commented on the disciplinary action provision of the proposal, suggesting that the maximum potential penalty for violating participation requirements should be explicitly stated in the rule, so that members have notice of their potential liability and to ensure that penalties are commensurate with the significance of the violation. Fossett believes it is unfair for the Exchange to present its members with the possibility of unlimited fines, suspension of market maker appointments, and expulsion from RAES, and proposes instead that a fine not exceeding $1000 ($5000 for multiple violations) and a three month suspension from RAES participation (1 year for multiple violations) be established as the maximum penalties that the MPC may impose.

In response to the comments of the Fossett Corporation, the CBOE notes in a letter to the Commission that its proposed rule does in fact authorize the MPC to waive the in-person requirement as and when it deems appropriate, thereby providing for participation by non-trading crowd members when determined to be appropriate by the MPC.[35] The Exchange believes, however, that the ability of the MPC to require participation in the first instance by in-crowd members is consistent with the Exchange Act. With respect to the comment regarding the establishment of a maximum fine, the Exchange notes that pursuant to the proposed rule change the CBOE's Business Conduct Committee (BCC), rather than the MPC, has the authority to level fines, that the BCC does not have a maximum fine limit, and that it would be inappropriate to establish such a limit in Chapter XVII (Discipline) of the Exchange Rules.

2. Commission Findings

The CBOE's proposed rule change is expressly intended to address problems identified during the pilot period with the current eligibility criterion. The chief problem, highlighted most significantly during the market crash in October 1987 and discussed above, [36] concerns the willingness of individual market makers to participate voluntarily on a continuous basis in RAES during periods of unusual and unpredicted market volatility. As was seen during the October market break, market makers participating in an automatic execution system during a market downturn may find themselves acting as buyers of last resort, and in turn may have difficulty hedging their positions in either the options or underlying equity markets. Under these circumstances an exchange may be forced by market maker defections from its small order execution system to discontinue its operation, thereby contributing to

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[31] *See* letter to Ann Taylor, Associate General Counsel, CBOE, from Leon A. Greenblatt, Geldermann Securities, Inc., dated April 27, 1988. Copies of the two comment letters received in response to the proposed rule change are available in the Commission's Public Reference Room in Washington, DC, in File No. SR–CBOE–87–47.

[32] *See* letter from J. Stephen Fossett, President, Fossett Corporation, to Jonathan G. Katz, Secretary, SEC, dated May 24, 1988 ("Fossett Letter I") and letter to Holly Smith, SEC, dated June 27, 1988 ("Fossett Letter II").

[33] Fossett Letter I, *supra* note 32, at 4. The commentator states that in its experience there have been "pockets of resistance" to the use of RAES in some option classes for a variety of reasons, including capital charges and the use of discouraging tactics by other members of the trading crowd. *Id.* at 3.

[34] Sections 6(b)(5) and 6(b)(8) require, respectively, that the rules of a national securities exchange "remove impediments to and perfect the mechanisms of a free and open market," and "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act."

[35] *See* letter from Frederic M. Kreiger, Associate General Counsel, CBOE, to Jonathan G. Katz, Secretary, SEC, dated June 8, 1988.

[36] *See* discussion at pages 12–13 *supra*.

investor uncertainty and market instability.[37] The CBOE proposal discussed herein is designed to ensure the continued operation of RAES, including during periods of increased market volatility, by requiring market maker participation during expiration months (periods historically associated with volatility increases) and on occasions when the Exchange determines there is inadequate RAES participation in any equity options class.

The Commission believes the proposed rule change is a positive step in strengthening the integrity of the RAES system. The Commission has considered carefully the opinions of the commentators but for several reasons is not persuaded that the rule change, which generally assists in ensuring sufficient levels of market maker participation under all trading circumstances, is inconsistent with the Act. In reaching this conclusion, the Commission has borne in mind that the CBOE has requested approval of this proposal on a six-month basis only, thereby allowing the Commission to determine, based on the operation of the pilot, if the rule should be modified thereafter.

a. *Market Maker Participation.* First, the Commission notes the relatively narrow degree of dissimilarity between the Fossett proposal and the Exchange proposal. The CBOE has chosen to provide the MPC with discretion to act in a variety of ways to alleviate inadequate market maker participation. The MPC may require in the first instance in-crowd market maker participation, or it may first respond by waiving the in-person requirement, or it may take both actions simultaneously. In contrast, Fossett believes it is preferable to require the MPC in almost every instance to try to attract non-crowd participation prior to requiring RAES participation by trading crowd members. Notably, under both proposals trading crowd members could be required to participate in RAES.

The Commission does not believe that the CBOE's grant of authority and discretion to the MPC to demand participation by a certain group of CBOE members prior to, or instead of, voluntary participation by another group is inconsistent with the purposes of the Act. We believe an exchange reasonably may differentiate for certain purposes between those broker-dealers who regularly accommodate customer order flow and perform other market making responsibilities in a particular options class—*i.e.*, crowd market makers—from those who do not regularly perform these functions for that class. It is consistent with the Act for an exchange to accord to, and demand from, the former group certain privileges and responsibilities such as access to and trading with, orders entered through its automatic execution facilities, when there is a legitimate goal to be furthered thereby. In the present case we find such a purpose in the Exchange's need to ensure levels of in-person market maker participation sufficient to accommodate customer order flow in its RAES system.

Second, the Commission notes that it is not required to approve the least anti-competitive means of achieving a regulatory objective, but rather must weigh competing regulatory goals and ensure that the means selected is not inconsistent with the Act.[38] Although Fossett's suggested modification may indeed be a viable alternative consistent with the Act's goals, we cannot find for that reason alone that the CBOE's proposed rule is inconsistent with those same goals. Moreover, we believe that the rule change as proposed by the CBOE may have benefits not contemplated by the Fosset proposal. The rule change may have a positive impact on options pricing by providing in-crowd market makers with an incentive to ensure that quotations are updated on a timely basis. We also note that the CBOE's proposal offers more financial protection to the Exchange community. Under the Fossett proposal it is possible for a market maker to be signed on to RAES in dozens of classes and thus could be financially jeopardized under volatile conditions. The CBOE proposal would, in most instances, limit a market maker's exposure to the few classes traded in his crowd.

Third, although not an issue raised by the commentators, the Commission wishes to emphasize its belief that it is consistent with the Act for an exchange to require participation by trading crowd market makers in an exchange's small order execution system. To find otherwise would be inconsistent with the investor protection goals of the Act and give insufficient weight to the experience of some options exchanges during the market crash, when market maker defections from execution systems such as RAES resulted in their virtual shutdown. Indeed, in its study of market behavior in October, the Commission's Division of Market Regulation suggested that the "performance of small order execution systems during the week of October 19 evidences the need for the CBOE and the Amex [American Stock Exchange] to revisit their rules governing market maker and registered options trader ("ROT") [39] participation in these systems." [40] The Division recommended that both the CBOE and the Amex consider adopting more stringent policies with respect to market maker participation, including obligations similar to those proposed by the National Association of Securities Dealers, Inc. ("NASD") following the market crash. The NASD rule change, recently approved by the Commission, makes participation in the NASD's Small Order Execution System ("SOES") mandatory for all market makers in NASDAQ/NMS Securities.[41]

b. *Disciplinary Sanctions.* The Fossett Corporation has argued that possible disciplinary sanctions for violation of the new market maker participation requirements should be specifically enumerated in the rule. The Commission disagrees because of our belief that it is in the public interest for both the MPC and the BCC to have some degree of flexibility in fashioning remedies, and because we do not believe that the requirements imposed on market makers by the proposed rule are so unique or onerous as to require the establishment of maximum penalties. On the contrary, we believe that a determination regarding the severity of a market maker's violation of this rule by, for example, refusing to participate in RAES, and the nature of the remedy, is best left to the discretion of committees which are required to consider the totality of the circumstances. We note that other rules of the CBOE and other exchanges do not contain maximum or fixed penalties for rule violations.[42]

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[37] For example, on October 20, 1987, the day following a 508 point decline in the Dow Jones Industrial Average, only one market maker signed onto RAES in GE, as compared to an average of 11 market makers per day in September, and 5 per day in November 1987. Similarly, no market makers signed onto RAES in BMG, EK, or GM on October 20th.

[38] *See* Senate Report No. 94–75, 94th Cong. 1st Sess. (April 14, 1975) at 13–14.

[39] Like CBOE market makers, Amex ROTs trade on the floor for their own accounts and are provided favorable margin treatment in return for making markets in one or more option classes. ROTs must engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. *See* Amex Rule 958.

[40] *See* Division Report, *supra* note 27, at Chapter 8.

[41] *See* Securities Exchange Act Release No. 25791 (June 9, 1988).

[42] *See, e.g.*, Amex Rule 114(e) (Registered Equity Market Makers may be suspended in addition to or in lieu of penalties that may be imposed pursuant to the Exchange's general disciplinary rules); NYSE Rule 476 (in disciplinary proceedings the Hearing Panel may impose their choice of a wide range of disciplinary sanctions).

Indeed, the Commission recently approved proposals by the New York and American Stock Exchanges to eliminate the maximum limit on fines that may be imposed in connection with an exchange disciplinary action.[43]

We also do not agree with the Fossett Corporation that it is inappropriate to delegate to the MPC authority to suspend or restrict a market maker's registration in one or more option classes for failure to comply with the requirements of the proposed rule.[44] The Commission believes that these sanctions and others provided for in Chapter VIII of the Exchange Rules legitimately may be imposed for a failure to comply with the rule so long as the Exchange provides minimum standards of due process to the parties involved. The Commission has carefully reviewed the CBOE's disciplinary process as codified in XVII of its rules, and believes that it is consistent with the due process requirements of the Act.[45]

V. Conclusion

The Commission has concluded after careful review that the proposed rule changes discussed herein are consistent with the requirements of the Act and the rules and regulations thereunder, in particular, the requirements of sections 6[46] and 11A.[47] Accordingly, the Commission is approving both proposed rule changes as amended. The proposal relating to market maker RAES participation standards is approved for a six month period to run from the date of this order.

It is therefore ordered, pursuant to section 19(b)(2)[48] of the Act, that the proposed rule changes be, and hereby are, approved.

By the Division of Market Regulation, pursuant to delegated authority.

Dated: August 15, 1988.

Shirley E. Hollis,

Assistant Secretary.

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[43] *See* Securities Exchange Act Release No. 25276 (January 20, 1988).

[44] *See* Fossett Letter II, *supra* note 32, at 7.

[45] *See* Section 6(b)(7), 6(d)(1) and 19(e)(2) of the Act. Moreover, any broker-dealer sanctioned in a disciplinary proceeding by the CBOE for violating an Exchange rule has a right to appeal the Exchange's decision to the Commission. 15 U.S.C. 78s(d)(2) (1982).

[46] 15 U.S.C. 78s(b)(2) (1982).

[47] 15 U.S.C. 78K-1 (1982).

[48] 17 CFR 200.30-3(a)(12) (1985).

[Rel. No. 34-25997; File No. SR-NASD-88-30]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment to Definition of Qualified Independent Underwriter

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend the definition of the term "qualified independent underwriter" at section 2(1) of Schedule E to the NASD By-Laws ("Schedule E"). The following is the text of the proposed rule change. New language is underlined, deleted language is in brackets.

SCHEDULE E

* * * * *

Section 2—Definitions

* * * * *

(1) Qualified independent underwriter*—a member which:

* * * * *

(4) has actively engaged in the underwriting of public offerings of securities *of a similar size and type* for at least the five-year period immediately preceding the filing of the registration statement. *For purposes of this section, the above requirement shall be satisfied if the member:*

(a) With respect to a proposed debt offering, has acted as manager or co-manager of public offerings of debt securities within the previous five years, including offerings each with gross proceeds of not less than 25% of the anticipated gross proceeds of the proposed offering,

(b) with respect to a proposed equity offering, has acted as manager or co-manager of public offerings of equity securities (or of securities covertible into equity securities) within the previous five years, including offerings each with gross proceeds of not less than 50% of the anticipated gross proceeds of the proposed offering, or

(c) has acted as manager or co-manager of public offerings of securities within the previous five years, including offerings each with gross proceeds of not less than $50 million, or

(d) demonstrates that it has acquired experience within the previous five years involving the pricing and due diligence functions comparable to that of a manager or co-manager of public offerings of securities in the above amounts;

(5) *no person associated with the member in a supervisory capacity responsible for organizing, structuring or performing due diligence with respect to corporate public offerings of securities:*

(a) has been convicted within five years prior to the filing of the registration statement of a violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder, in connection with the distribution of a registered or unregistered offering of securities;

(b) is subject to any order, judgment, or decree of any court of competent jurisdiction entered within five years prior to the filing of the registration statement permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder in connection with the distribution of a registered or unregistered offering of securities; or

(c) has been suspended or barred from association with any member by an order or decision of the Securities and Exchange Commission, any state, the Corporation or any other self-regulatory organization within five years prior to the filing of the registration statement for any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules, or regulations promulgated thereunder, or the anti-fraud rules of the self-regulatory organization in connection with the distribution of a registered or unregistered offering of securities; or

(6) [(5)] is not an affiliate of the entity issuing securities pursuant to Section 3 of this Schedule *and does not beneficially own five percent or more of the outstanding voting securities of such entity which is a corporation or beneficially own a partnership interest in five percent of more of the distributable profits or losses or such entity which is a partnership;* and

(7) [(6)] (No change).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD adopted Schedule E in 1972 to address the conflicts of interest present in a public distribution by a member of its own securities or those of an affiliate. A conflict of interest arises, *inter alia,* when the member participates in establishing the public offering price of the securities and when the member conducts due diligence with respect to the registration statement. Schedule E addresses these conflicts by requiring that a member independent of the issuer, with a background in underwriting and a track record of profitable operations and experienced management, conduct due diligence, participate in the preparation of the offering document, and provide an opinion that the price of an equity issue is no higher or the yield of a debt issue is no lower than it would recommend.[1] Such member is denominated a "qualified independent underwriter" and must come within the definition of that term included at Section 2(l) of Schedule E.[2]

The current criteria contained in the definition in Section 2(l) were intended to ensure that only those members that are independent of the issuer, with significant investment banking experience and demonstrated knowledge of federal securities law requirements in the context of public offerings of securities would act as qualified independent underwriters. The NASD has determined that it is necessary to clarify and enhance the current criteria to ensure that the purposes of the definition will be achieved. Therefore, the NASD is proposing to amend the definition of qualified independent underwriters included at Section 2(l) of Schedule E.[3]

Experience Requirement

The NASD is concerned that the current criterion in Subsection 2(l)(4) of Schedule E does not specify the type or kind of experience necessary to meet the requirement that the member have been "actively engaged in the underwriting of public offerings of securities." The NASD believes that the lack of specificity undermines the intent of this criterion to ensure that the qualified independent underwriter is sufficiently experienced to perform the due diligence and pricing functions with respect to a public offering of securities. The NASD is proposing to amend subsection (4) of Section 2(l) of Schedule E to require that the member have experience in managing or co-managing public offerings of a size and type similar to the proposed offering. The "manager or co-manager" requirement is intended to ensure that the member has experience in performing the functions of due diligence and pricing. Such functions are not performed by the underwriting or selling group members. The similar "type and size" requirement is intended to prevent, for example, a member with experience as an underwriter of small equity offerings from acting as a qualified independent underwriter for a large firm-commitment offering of high-risk, high-yield debt.

Subprovisions (a) and (b) to Subsection 2(l)(4) include specific parameters on the size and type of offerings managed or co-managed by a member that would permit a member to act as qualified independent underwriter. In the case of debt offerings, a member must have managed or co-managed other debt offerings each with gross proceeds of not less than 25% of the gross proceeds of the proposed offering in the prior five-year period. With respect to equity offerings, the member must have managed or co-managed other equity offerings in the prior five-year period each with gross proceeds of not less than 50% of the gross proceeds of the proposed offering.

In addition, subprovisions (c) and (d) include two alternative criteria that would permit the member to demonstrate that it has substantial due diligence and pricing expertise, even though the member cannot demonstrate compliance with the first two criteria. First, a member can satisfy the size and type requirement if the member has acted as manager or co-manager of public offerings each with gross proceeds of $50 million. It is believed that members with demonstrable experience acting as a manager or co-manager of medium-to-large offerings have the type of experience in performing the due diligence and pricing functions that is applicable to any type or size offering.

Second, a member can satisfy the size and type requirement if the member can demonstrate that it has acquired experience within the previous five years involving the pricing and due diligence functions comparable to that of a manager or co-manager of public offerings of securities of the size set forth in the first three criteria. This provision was intended to be less specific in order to permit those members with extensive experience comparable to that of a manager or co-manager of offerings comparable to that being filed to act as a qualified independent underwriter. Thus, members with extensive experience, for example, in performing due diligence and rendering a fairness opinion in connection with mergers and acquisitions would be permitted to demonstrate that the member has experience comparable to that of a manager or co-manager of a public offering similar in size and type to that filed. The gross dollar value of the transactions or of the entities for which the fairness opinions were issued by the member would be required to be (1) not less than 25% of the anticipated gross proceeds of a proposed equity offering; or (2) not less than 50% of the anticipated gross proceeds of a proposed debt offering; or (3) at least $50 million.

Disciplinary History Requirement

The NASD believes that it is inappropriate to permit a member which has associated with it persons with a disciplinary history related to practices in connection with an underwriting to be

[1] Where the offering is of equity securities with a bona fide independent market, as defined in Section 2(c) of Schedule E, or of a class of securities rated investment grade, a qualified independent underwriter is not required.

[2] Recently adopted amendments to Schedule E changed the subsection designations in Section 2 thereof. Current Section 2(l) was formerly Section 2(k). *See,* Notice to Members 88–63 (May 12, 1988); SR–NASD–87–21.

[3] The proposed rule change will also amend the criteria for qualified independent underwriters under the Venture Capital Restrictions and Proceeds Directed to Members provisions of the interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the NASD Rules of Fair Practice, NASD *Manual* (CCH) ¶ 2151.02. The Venture Capital Restrictions permit a qualified independent underwriter as defined in Section 2(l) to Schedule E to address the conflicts of interest present when a member acts as both a selling shareholder and distributor in connection with an initial public offering. The Proceeds Directed to Members provision permits a qualified independent underwriter as defined in Section 2(l) of Schedule E to address the conflicts of interest present when more than 10 percent of the net proceeds of an offering are directed to members participating in the distribution.

a qualified independent underwriter. Therefore, the NASD is proposing to adopt new Subsection (5) of Section 2(l) of Schedule E to preclude a member from acting as a qualified independent underwriter if any person associated with the member in a supervisory capacity responsible for structuring corporate public offerings or conducting due diligence has been convicted, enjoined, suspended or barred within the previous five years for a violation of federal, state or self-regulatory organization antifraud rules in connection with a distribution of securities. Thus, disqualification based on disciplinary history is restricted to those persons associated with a member responsible for performing the functions required of a qualified independent underwriter under Schedule E.

Subprovision (a) to Subsection 2(l)(5) of Schedule E would disqualify a member where any of the enumerated persons has been convicted within five years prior to the filing of the registration statement of a violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulated thereunder, in connection with the distribution of a registered or unregistered offering of securities. Subprovision (b) to Subsection 2(l)(5) would disqualify a member where any of the enumerated persons is subject to any order, judgment, or decree of any court of competent jurisdiction entered within five years prior to the filing of the registration statement permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder, in connection with the distribution of a registered or unregistered offering of securities. Subprovision (c) to Subsection 2(l)(5) would disqualify a member where an enumerated person has been suspended or barred from association with any member by an order or decision of the Securities and Exchange Commission, any state, the NASD or any other self-regulatory organization within five years prior to the filing of the registration statement for any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder, or the anti-fraud rules of any self-regulatory organization in connection with the distribution of a registered or unregistered offering of securities.

Equity Ownership Requirement

Current Subsection 2(l)(5) of Schedule E provides that the qualified independent underwriter may not be an affiliate of the issuer. The definition of "affiliate" contained in Section 2(a) of Schedule E involves the concept of control of the issuer. Control is generally not presumed unless a member owns at least ten percent of the voting stock of the issuer. Further, the presumption of control can be rebutted by a member. Therefore, under the current provision, a qualified independent underwriter could, for example, own 8% of the outstanding securities of the issuer and meet the qualified independent underwriter requirement. Further, a member that had rebutted the presumption of control would technically meet the definition in Section 2(l) and could act as qualified independent underwriter, even though the member owned 10% or more of the outstanding securities of the issuer. The NASD, however, has consistently interpreted this provision to not permit a member with a 10% or greater equity interest in the issuer to act as a qualified independent underwriter.

The NASD is concerned that the current definition does not ensure that the qualified independent underwriter is fully objective and independent of conflicts of interest as a result of its equity interest in the issuer. The NASD believes that a significant percentage equity interest in the issuer is inconsistent with the intent of the requirement to establish objectivity and independence in the pricing and due diligence functions.

Therefore, the NASD is proposing to redesignate Subsection (5) as Subsection (6) of Section 2(l) of Schedule E and amend the provision to prohibit a member from acting as a qualified independent underwriter if the member beneficially owns five percent or more of the outstanding voting securities of a corporate issuer or beneficially owns a partnership interest in five percent or more of the distributable profits or losses of an issuer which is a partnership. The provision will also retain the current requirement that a qualified independent underwriter may not be affiliated with the issuer.

In arriving at the 5% level, the NASD has relied on the standard set forth in Section 13(d) of the Securities Exchange Act of 1934, which requires reports to be filed with the SEC when any person owns 5% or more of a public company. It is not believed that a less-than-5% interest will affect the objectivity and independence of the qualified independent underwriter. Thus, the level of 5% appears to be an appropriate one in the context of the obligations of a qualified independent underwriter.

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, as the proposed rule change will enhance the protection of investors who purchase securities in a public offering by a member of its own securities or those of an affiliate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change presents no burden on competition not necessary in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The initial version of the proposed rule change was published for comment in Notice to Members 87–87 (December 30, 1988). The NASD received 18 comments.

In general, 11 of the commentators (61%) opposed the amendments in the form published for comment and seven (39%) supported them. The proposed rule change incorporate many of the commentators' suggested modifications to the initial published version.

Experience Requirement

Eleven of the commentators addressed the proposed requirement that a qualified independent underwriter have experience managing or co-managing public offerings of a size and type similar to the proposed offering. The two commentators were in support of the proposed requirement. The nine commentators opposed to the proposed requirement objected to both the management requirement and the size and type requirement. In general the commentators viewed the management requirement as unduly restrictive and urged that it would preclude otherwise competent members from acting as qualified independent underwriters.

In response to the comments received, the NASD determined to include new subprovision (d) to Subsection 2(1)(4) of Schedule E to permit a member to demonstrate that it has acquired experience within the previous five years involving the pricing and due diligence functions comparable to that of a manager or co-manager of public offerings of securities in the amounts referenced in subprovisions (a) through (c).

In response to comments that the size and type requirement was too vague, the NASD determined that the proposed

rule change should be more specific as to the criteria that would be utilized to establish sufficient experience. The NASD modified the initial published version so Subsection 2(1)(4) to include in new subprovisions (a) through (c) specific parameters on the size and type of offerings managed or co-managed by members which would permit to act qualified independent underwriters.

Disciplinary History Requirement

Thirteen of the commentators addressed the disciplinary history disqualification provisions, which was initially proposed to preclude a member from acting as a qualified independent underwriter if the member or certain of its senior associated persons or controlling shareholders had been convicted or enjoined for violations of the securities laws or had been the subject of serious disciplinary action taken by the Commission, NASD, or other self-regulatory organization during the five years prior to the filing of the registration statement. Of the 13 commentators, six supported adoption of the proposal, while seven opposed it.

In response to comments received from the Securities Commissions for the States of Pennsylvania, Wisconsin and New Mexico, the NASD determined to modify the initial published version to specifically reference in subprovisions (5) (a), (b), (c) Section 2(1) violations of the anti-fraud provisions of state securities laws in connection with the distribution of a registered or unregistered offering of securities.

In addition, several of the commentators opposed to adoption of the proposal indicated that the range of offenses or misdeeds covered by the proposal was too broad and, as a result, the proposal failed to address the issue of whether a member or senior associated person lose their ability to be objective and independent in the due diligence and pricing functions required of a qualified independent underwriter. Other commentators objected to the broad nature of term "senior officer" and indicated that the term "senior officer" is not defined under the Act or the NASD By-Laws. Commentators also pointed out that if a sister subsidiary or parent of a member were enjoined from violating the proxy rules of the Act, the member would be disqualified from acting as a qualified independent underwriter under the initial proposed version.

In response to the foregoing comments, the NASD determined that the disciplinary history disqualification provisions should only be applicable to persons associated with a member in a supervisory capacity responsible for structuring public offerings or performing due diligence.

Commentators also suggested limiting the scope of the provision related to a court order, judgement, or decree to those situations that involve a violation of the antifraud provisions of the securities laws, any orders, judgements, or decrees of a criminal nature or orders, judgments or decrees intended to prevent the unlawful sale of securities. The NASD determined to modify the initial proposed version to more narrowly focus the proposed disciplinary history disqualification provision on violations of any federal, state, or self-regulatory organization anti-fraud provision in connection with a public or private offering of securities.

Equity Ownership Requirement

Six commentators offered specific comments on the proposal that would limit a qualified independent underwriter's equity interest in an issuer to less than five percent. Three of the six commentators supported adoption of the proposal while three of the commentators opposed adoption of the stock ownership limitation. Of the commentators opposed, one commentator argued it would be extremely difficult to judge whether independence is lost at five percent or ten percent and, thus, felt it was unclear how the proposed reduction would facilitate an underwriter's objectivity.

The NASD determined that it should rely on the special requirements for reporting pursuant to section 13(d) of the Act, which requires reports to be filed with the Commission when any person aggregates an ownership interest of five percent or more in a public company. While the NASD agrees it is difficult to judge whether independence is lost at five or ten percent, the NASD believes it should set a standard to insure that a qualified independent underwriter has sufficient independence to perform its pricing and due diligence functions in all cases. Therefore, the NASD determined to retain the proposal, but to modify the initial published version to clarify that the limitation on stock ownership of the issuer by the qualified independent underwriter is based on the outstanding voting securities of an issuer which is a corporation

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing. Persons making written submissions should file six copies thereof with the Secretary Securities and Exchange Commission 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated August 15, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 18863 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25992; File No. SR-DTC-88-15]

Self Regulatory Organizations; Depository Trust Co.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("the Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1988, the Depository Trust Company ("DTC") filed a proposed fee change that revised the fee for the Change of Mode of Payment Service ("CMOPS"). The

Commission is publishing this notice to solicit comment on the rule change.

CMOPS enables DTC participants to choose the frequency with which they receive dividend payments on certain investment company and corporate preferred securities. CMOPS fees were initially set at the same rate as the fee charged for conversions, i.e. two deliver order charges plus $20.00 minimum for a transaction of 400 shares or less, $.05 per share for transactions over 401 shares, up to a maximum of $100 per transaction. Based on unit service costs during the pilot operation, DTC has found that the service fees should be reduced to reflect estimated unit service costs. This proposed rule change revises CMOPS fees to $11.00 per CMOPS instruction plus two deliver order fees, effective July 1, 1988.

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(D) of the Act in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule changes at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. § 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–88–15.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 12, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–18805 Filed 8–18–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25990; File No. SR–MCC–88–02]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Approving Proposed Rule Change

The Midwest Clearing Corporation ("MCC") on May 5, 1988, submitted a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). the proposal would terminate one of MCC's current securities withdrawal procedures. Notice of the proposal appeared in the **Federal Register** on July 12, 1988, to solicit public comment.[1] No comments were received. This order approves the proposed rule change.

I. Description of the Proposal

The proposal would amend MCC Article 3, Rule 3 to discontinue the service known as "demand street requests.' By related conforming changes, the term "demand street requests" would be excised from all of MCC's Rules.[2]

An MCC "demand street request," also known as a "demand street withdrawal request," is a request by a participant to MCC for the withdrawal of street-name securities from MCC's offices for physical delivery or pick-up.[3] MCC currently processes such requests ahead of the more routine "street withdrawal requests" but at a higher charge to its participants.

II. MCC's Rational for the Proposal

MCC states that recent improvements to its electronic systems have expedited the processing of routine withdrawal requests. MCC notes that, consequently, the volume of requests for demand street requests, at their premium prices, has diminished significantly.

MCC states that it proposes to terminate "demand street requests" because, in its business judgment, the declining use of that service does not justify the inefficiences of continuing two parallel services that provide essentially the same product. MCC believes that the proposal is consistent with Section 17A of the Act in that the proposal would provide MCC with uniform security withdrawal procedures that would improve both cost effectiveness and the safeguarding of securities in the custody or control of MCC.

III. Discussion of the Proposal

The Commission believes that this proposal is consistent with the Act, particularly Section 17A of the Act. MCC has reported that, due to systems enhancements its participants have shown significantly reduced interest in using the more expensive withdrawal procedure that this proposal would eliminate. Moreover, MCC has represented that a uniform system for its participants' withdrawal of street name securities would be more efficient in terms of: (1) Cost effectiveness, and (2) custodial techniques for safeguarding securities. Accordingly, the Commission believes that the proposal will facilitate more efficient and safe procedures for the prompt and accurate clearance and settlement of transactions in securities.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the above-mentioned proposed rule change (SR–MCC–88–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 12, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–18806 Filed 8–18–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25993; File No. SR–NASD–88–36]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Listing Criteria for NASDAQ National Market System Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 5, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission

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[1] *See* Securities Exchange Act Release No. 25884 (July 5, 1988), 53 FR 26349.

[2] The Commission recently approved an identical rule proposal by an MCC affiliate, the Midwest Securities Trust Company ("MSTC"). *See* Securities Exchange Act Release No. 25900 (July 12, 1988), 53 FR 27250 (File No. SR–MSTC–88–03). MCC and MSTC are both wholly-owned subsidiaries of the Midwest Stock Exchange, Inc.

[3] According to MCC's current Article III, Rule 3(a), a "demand street request" ordinarily results in delivery of the security in the morning, and a "street request" ordinarily results in delivery of the security in the afternoon.

is publishing this notice to solicite comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment would modify the quantitative designation criteria for NASDAQ National Market System ("NASDAQ/NMS") securities contained in Part III of Schedule D to the NASD By-Laws and would add to the non-quantitative criteria in that Part a requirement for shareholder approval of certain corporate transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes would amend Parts I and III of Schedule D to the NASD's By-Laws relating to qualification standards for NASDAQ/NMS issuers. The proposed rule changes are derived primarily out of discussions among representatives of the Commission, the NASD, certain of the registered securities exchanges, and the North American Securities Administrators Association ("NASAA"), which were directed toward developing a set of minimum quantitative and non-quantitative listing criteria that would provide a basis for a uniform exemption from state securities registration requirements for all securities traded in markets with such listing criteria. The minimum listing criteria and terms of the uniform marketplace exemption are set forth in a memorandum of understanding executed on March 16, 1988 by the presidents of NASAA and the NASD. The proposed rule changes reflect the terms of the memorandum of understanding.

The quantitative criteria in the proposed rule change would amend the existing NASDAQ/NMS designation criteria to make them substantially equivalent to the criteria imposed by the American Stock Exchange prior to February 1987. The NASD believes that such levels are consistent with designating securities in which there is a national level of interest among investors and which would therefore most greatly benefit from exemption from the state registration of securities provisions while providing sufficient safeguards to investors to warrant such an exemption.

The proposed amendment to Section 5(b) of Part III would modify the requirements imposed upon issuers with respect to interim reports by removing the requirement that such reports be distributed to shareholders and substituting the requirement that such reports be made available to shareholders. The NASD notes that many issuers routinely distribute interim reports to shareholders but believes that in some instances a mandatory distribution of such reports may be unduly burdensome and costly to issuers. The NASD also notes that neither the New York nor the American Stock Exchange require mandatory distribution of interim reports to shareholders. The NASD therefore believes that if issuers make such reports available to shareholders upon request, the purpose of keeping investors informed will be served without undue burden upon the issuer.

The proposed new provision to Section 5 of Part III would impose upon NASDAQ/NMS issuers the requirement to obtain shareholder approval of certain significant corporate transactions. The purpose of this proposal is to provide to shareholders of NASDAQ/NMS issuers a greater level of participation in corporate affairs by enhancing the non-quantitative requirement for NASDAQ/NMS designation which were first implemented after Commission approval in August of 1987. The NASD believes that implementation of the shareholder approval requirement, is another important step in the continuing development of the National Market System segment of the NASDAQ system and that such a requirement provides further shareholder protections concomitant with the stature of the issuers comprising that market. Some of the registered securities exchanges currently impose similar shareholder approval requirements. In addition, the NASD notes that the Commission, in its recent release adopting Rule 19c–4, in its discussion of the possible applicability of that rule to "lock-up" plans noted the existence of the shareholder approval requirements of the exchanges and suggested that the NASD consider adopting a similar rule as a part of its implementation of Rule 19c–4. The proposed rule change will accomplish this purpose.

The NASD believes that the proposed rule changes are consistent with Section 15A(b)(6) of the Act which requires that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors in the public interest. The NASD believes that the proposed rules protect investors and are consistent with the purposes of the Act in permitting greater participation in corporate affairs by those investors. The NASD also believes that the proposed rule changes are consistent with the provisions of section 11A(a) (1) and (2) of the Act in that such changes will help to assure fair competition among marketplaces and in general will serve to enhance the development of the national market system mandated by Congress in that the standards will assure that issuers traded in the NASDAQ National Market System will meet quantitative criteria consistent with the national interest in those securities and to the degree that such securities are exempted from state securities registration, the proposed rule changes will serve to remove impediments to the development of a national market system in securities. The NASD also believes that the proposed rule changes are consistent with section 19(c) of the Securities Act of 1933 which seeks cooperation among the Commission and representatives of the state governments and maximum uniformity of federal and state regulatory standards in that the amendments should facilitate a national standard for granting of exemptions from state securities regulation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule changes do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule changes were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approved such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12)

Jonathan G. Katz,

Secretary.

Dated: August 12, 1988.

[FR Doc. 88–18807 Filed 8–18–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16525; 812–6322]

ML Venture Partners I, L.P., et al.; Notice of Application

August 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: ML Venture Partners I, L.P. ("MLVP I") ML Venture Partners II, L.P. ("MLVP II") (collectively, "BDC Partnerships"), Merrill Lynch KECALP Growth Investments Limited Partnership 1983, Merrill Lynch KECALP L.P. 1984, Merrill Lynch KECALP L.P. 1986, and Merrill Lynch KECALP L.P. 1987 (collectively, "KECALP Partnerships").

Relevant 1940 Act Sections: Order requested under Sections 6(c) and 17(d) and Rule 17D–1 thereunder permitting certain joint transactions otherwise prohibited by Sections 57(a)(4) and 17(d).

Summary of Application: Applicants seek an order, on a prospective basis, under Sections 6(c) and 17(d) of the 1940 Act and Rule 17d–1 permitting the purchase of securities by the BDC Partnerships in joint transactions, otherwise prohibited by Sections 57(a)(4) and 17(d) of the 1940 Act, in which the BDC Partnerships and the KECALP Partnerships are participants.

Filing Dates: The application was filed on March 21, 1986, and amended on May 5, 1987, February 18, April 29, and August 9, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any reguests must be received by the SEC by 5:30 p.m., on September 2, 1988. Reguest a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. MLVP I and II, 717 Fifth Avenue, New York, New York 10022, and KECALP Partnerships, North Tower, World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Richard Pfordte, Special Counsel, (202) 272–2811, or Karen L. Skidmore, Branch Chief, (202) 272–3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial Copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. MLVP I, a limited partnership organized in 1982 under the laws of Delaware, has elected to be regulated as a business development company under the 1940 Act. The investment objective of MLVP I is to seek long-term capital appreciation by making venture capital investments. MLVP I has five general partners, four of whom are individuals ("Individual General Partners"). In accordance with section 56(a) of the 1940 Act, a majority of the Individual General Partners are persons who are not "interested persons" of MLVP I within the meaning of section 2(a)(19) of the 1940 Act ("Independent General Partners"). *See In re ML Venture Partners I, L.P. et al.* (Investment Company Act Release No. 12601, August 12, 1982). The managing general partner for MLVP I, Merrill Lynch Venture Capital Co. L.P., is responsible for identification and management of MLVP I's venture capital investments. The general partner of the managing general partner is Merrill Lynch Venture Capital Inc. ("MLVC"), which is also the management company for MLVP I. MLVC is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co.").

2. MLVP II is a Delaware limited partnership that has elected to be regulated as a business development company under the 1940 Act. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments. MLVP II has five general partners, four of whom are individuals ("Individual General Partners"). A majority of the Individual General Partners are persons who are not "interested persons" of MLVP II within the meaning of section 2(a)(19) of the 1940 Act. A majority of the Independent General Partners also have no affiliation with MLVP I. See *In re ML Venture Partners II, L.P., et al.* (Investment Company Act Release No. 15652, March 30, 1987). The managing general partner for MLVP II is MLVP II Co., L.P., which is responsible for MLVP II's venture capital investments. MLVP II Co., L.P., is a limited partnership controlled by MLVC, which is also the management company for MLVP II. At September 30, 1987, MLVP II had net assets of approximately $111.4 million.

3. The KECALP Partnerships, each a Delaware limited partnership, are non-diversified, closed-end investment companies of the management type under the 1940 Act. The investment objective of each KECALP Partnership is to seek long-term capital appreciation. Under the terms of the offerings, as set forth in the registration statements of

the KECALP Partnerships, Units are being offered exclusively to employees of ML & Co. and its subsidiaries and to nonemployee directors of ML & Co. Each KECALP Partnership is an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act, and operates in accordance with the terms of an exemptive order issued pursuant to section 6(b) of the 1940 Act, the general exemptive provision for employees' security companies. (Investment Company Act Release No. 12363, April 8, 1982) ("KECALP Exemptive Order"). The general partner for the KECALP Partnerships is KECALP Inc. ("KECALP"), a Delaware corporation that is a wholly-owned subsidiary of ML & Co. KECALP is responsible for managing and making investment decisions for the KECALP Partnerships. The KECALP Exemptive Order permits KECALP to organize new limited partnerships for employees of ML & Co. and its subsidiaries each year.

4. Each of the KECALP Partnerships and BDC Partnerships (collectively, "Partnerships") will make venture capital investments. It is expected that, given the nature of their investment objectives and the close affiliation of management of the Partnerships, a significant number of investment opportunities will come to the attention of management of the Partnerships that will be appropriate investments for more than one Partnership. The Partnerships may be considered under common control within the meaning of the 1940 Act. Thus, MLVP I and MLVP II may not make "joint investments" with any one of the other Partnerships unless an order is issued by the Commission under Sections 17(d) and 57 of the 1940 Act. ("Joint investment" in this context refers broadly to any "joint enterprise or other joint arrangement or profit-sharing plan" under Rule 17d–1(c) under the 1940 Act.)

Under the terms of the KECALP Exemptive Order, the KECALP Partnerships are permitted to engage in transactions in which certain affiliated persons may also be participants; specifically, the KECALP Partnerships may invest in:

(i) Any other partnerships or other investment vehicles which are sponsored or managed by ML & Co. or its affiliates or

(ii) Investments in which a partnership described in clause (i) is a participant or plans to become a participant and which would not be prohibited investments except that ML & Co. or any of its subsidiaries, or one or more officers, directors or employees of KECALP have a partnership interest in, or compensation arrangement with the partnership described in clause (i).

Thus, while the KECALP Partnerships may co-invest with the BDC Partnerships under the terms of the KECALP Exemptive Order, the BDC Partnerships may not co-invest with the KECALP Partnerships or with each other without an order of the Commission permitting such a transaction.

5. MLVP I and certain of the KECALP Partnerships have filed a number of applications for orders of the Commission under the 1940 Act, summarized in the application. Applicants have obtained requested orders of the Commission permitting various joint transactions. Applicants state, however, that the application process has been expensive to MLVP I and the other Applicants. Accordingly, Applicants seek an order on a prospective basis, pursuant to sections 6(c) and 17(d) of the 1940 Act and Rule 17d–1 thereunder, permitting the BDC Partnerships to enter into joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the 1940 Act on the terms and conditions set forth below. Applicants request an order only with respect to the BDC Partnerships because the KECALP Partnerships may co-invest under the terms of the KECALP Exemptive Order.

6. The requested exemption is intended to permit prospective relief, generally consistent with the BDC Partnerships' past co-investment history with affiliates. The BDC Partnerships do not seek to make co-investments with other Partnerships a comprehensive part of their investment programs nor will the BDC Partnerships made such comprehensive co-investments unless they have obtained a separate exemptive order or an amendment to the order requested in the application with respect to such comprehensive program of co-investments among the Partnerships. In this regard, each BDC Partnership will not have more than 45% of its assets invested jointly with all affiliates, except as a higher percentage may result from appreciation rather than acquisition of assets.

Conditions For Co-Investment

Co-investment by the Partnerships under the order requested by Applicants will be subject to the following conditions:

(1) The Independent General Partners of each BDC Partnership that has funds available for investment or is otherwise considering new investments will be provided with periodic information listing all venture capital investments made by each Partnership. The managing general partner of each BDC Partnership will be responsible for providing such information to the Independent General Partners of their respective BDC Partnership. The BDC Partnership will not have more than 45% of its assets invested jointly with all affiliates, except as a higher percentage may result from appreciation rather than acquisition of assets.

(2)(a) To the extent that a BDC Partnership has funds available for investment or is otherwise considering new investments, the BDC Partnership's managing general partner will review investment opportunities. The managing general partner will make a preliminary determination as to whether each particular investment opportunity meets applicable investment criteria and is consistent with the existing composition of the BDC Partnership's portfolio in terms of diversification of investments. If the managing general partner makes a favorable determination with respect to a particular investment, such investment will be deemed eligible for investment by the BDC Partnership. The managing general partner will maintain at the BDC Partnership's office written records of the factors considered in any preliminary determination.

(b) Following the making of the determination referred to in (a), information concerning the proposed investment will be distributed to the Independent General Partners of each BDC Partnership and to KECALP, except that such information need not be distributed to the Independent General Partners of any BDC Partnership that, at that time, either does not have funds available for investment or is not otherwise considering new investments. Such information will be presented in written form and will include the name of each Partnership that proposes to make the investment and the amount of each proposed investment.

(c) Information regarding the managing general partner's preliminary determinations will be reviewed by the Independent General Partners of the BDC Partnership. If a majority of the Independent General Partners determine that the amount proposed to be invested by the BDC Partnership is not sufficient to obtain an investment position they consider appropriate in the circumstances, that BDC Partnership will not participate in the joint investment unless the proposed amount to be invested by each Partnership is proportionately reduced. Such a proportionate reduction will be based on a ratio derived by comparing the total funds available for investment by each participating Partnership. Similarly, a BDC Partnership will not participate in a joint investment if a majority of the Independent General Partners determine

that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate in the circumstances. A BDC Partnership will only make a joint investment with another Partnership if a majority of the Independent General Partners of the BDC Partnership prior to making the investment conclude, after consideration of all information deemed relevant, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the BDC Partnership and do not involve overreaching of the BDC Partnership or such partners on the part of any person concerned;

(ii) The transaction is consistent with the interests of the limited partners of the BDC Partnership and is consistent with the BDC Partnership's investment objectives and policies as recited in filings made by the BDC Partnership under the Securities Act of 1933, as amended, its registration statement and reports filed under the Securities Exchange Act of 1934, as amended, and its reports to partners;

(iii) The investments by one or more other Partnerships would not disadvantage the BDC Partnership in the making of such investment, maintaining its investment position or disposing of such investment; and

(iv) The proposed investment by the BDC Partnership will not benefit, directly or indirectly, ML & Co. or any entity affiliated with ML & Co. other than the other Partnership(s) making the proposed joint investment, except to the extent permitted pursuant to sections 17(e) and 57(k) of the 1940 Act.

The Independent General Partners will maintain at the BDC Partnership's office written records of the factors considered in any decision regarding the proposed investment.

(3) Purchases of securities by a BDC Partnership made jointly with another Partnership shall consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, and be purchased at the same price and the approval of such transactions, including determination of the terms of the transactions, by a BDC Partnership's Independent General Partners and/or KECALP shall be made in the same time period.

(4) Neither the Independent General Partners of a BDC Partnership nor any other Merrill Lynch affiliate, with the exception of KECALP Partnerships, shall co-invest with another Partnership unless a separate exemptive order with respect to such transaction has been obtained.

(5) If one Partnership elects to sell a security that is also held by another Partnership(s), notice of the proposed sale will be given to the Partnership(s) at the earliest practical time and the other Partnership(s) will be given the opportunity to participate in such sale on a proportionate basis. The managing general partner of a BDC Partnership, upon receiving notification, will formulate a recommendation as to participation by such BDC Partnership in such a sale, and provide the recommendation to the Independent General Partners of such BDC Partnership. Each BDC Partnership will participate in such sale if its Independent General Partners determine that such action is in the best interest of the BDC Partnership. Each Partnership will bear its own expenses associated with the sale of a portfolio security. The Independent General Partners of each BDC Partnership will record in their records the managing general partner's recommendation and their decision as to whether to participate in such sale, as well as the basis for their decision that such action is in the best interest of the BDC Partnership.

(6) If a majority of a BDC Partnership's Independent General Partners, with respect to the BDC Partnerships, or KECALP, with respect to the KECALP Partnerships, determines that a Partnership should make a "follow-on investment (i.e., an additional investment in the same entity) in a particular portfolio company whose securities are held by one or more other Partnerships or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to such Partnership(s) at the earliest practical time. The managing general partner of a BDC Partnership, upon receiving notification, will formulate a recommendation as to the proposed participation by a BDC Partnership in a follow-on investment, and provide the recommendation to the Independent General Partners of the BDC Partnership along with notice of the total amount of the follow-on investment. Each BDC Partnership's Independent General Partners will make their own determination with respect to follow-on investments. Assuming that the amount of a follow-on investment available to a Partnership is not based on the amount of such Partnership's initial investment, the relative amount of investment by each Partnership participating in a follow-on investment will be based on a ratio derived by comparing the total funds available for investment by each such participating Partnership with the total amount of the follow-on investment. Each Partnership will participate in such investment if the Independent General Partners, with respect to the BDC Partnerships, or KECALP, with respect to the KECALP Partnerships, determine that such action is in the best interests of their Partnership. The Independent General Partners of each BDC Partnership shall record in their records the managing general partner's recommendation and their decision as to whether to engage in a follow-on transaction with respect to that portfolio company, as well as the basis for such decision.[1]

(7) The Independent General Partners of a BDC Partnership will be provided quarterly for review, all information concerning co-investments made by the BDC Partnerships, including co-investments in which one or more BDC Partnership declined to participate, so that they may determine whether all investments made during the preceding quarter, including those investments they declined, complied with the conditions set forth above. In addition, at least annually, as well as during any quarter in which a co-investment was made, the Independent General Partners will consider the continuing appropriateness of the standards established for investments by a BDC Partnership. The Independent General Partners will consider whether use of such standards continues to be in the best interests of the BDC Partnership and the limited partners and does not involve overreaching of the BDC Partnership or its limited partners on the part of any party concerned.

The Individual General Partners of each BDC Partnership will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with the provisions of section 57(h) of the 1940 Act, and each of the Applicants will otherwise maintain all records required by the 1940 Act, all of which will be available for inspection by the limited partners of each respective Partnership. All records referred to or required under these conditions will be available for inspection by the Commission.

(9) The Partnerships will make no changes in conditions (1)–(8) until an amendment of any order issued pursuant to this application is obtained from the Commission.

[1] This condition permits BDC Partnerships to co-invest in follow-on investments. With respect to the KECALP Partnerships, this condition is not intended to expand the relief granted to the KECALP Partnerships in the KECALP Exemptive Order, but rather merely permits the BDC Partnerships to make co-investments with the KECALP Partnerships, which otherwise would be prohibited by Section 57(a)(4) of the 1940 Act.

Applicants' Legal Conclusions

1. The Applicants submit that the conditions set forth above provide an effective control on potential conflicts of interest, and thus participation by the BDC Partnerships in joint transactions with affiliated persons will be consistent with the protection of investors and the provisions, policies and purposes of the 1940 Act. Applicants also submit that, on the basis of the information set forth in the application and the terms of the proposed order, such co-investments are appropriate and beneficial to the respective Partnerships and that given the practical difficulties of obtaining a separate exemptive order for each transaction, the requested prospective exemptive relief satisfies the standards of Section 6(c).

2. Applicants believe the legislative history of the Small Business Investment Incentive Act of 1980 and the policy underlying such Act with respect to business development companies support relief of the types requested for the BDC Partnerships. In this regard, the Applicants state that the relief sought is limited to the BDC Partnerships and not to registered investment companies since the KECALP Partnerships (the only Partnerships which are registered under the 1940 Act) have previously received prospective relief (KECALP Exemptive Order) pursuant to section 6(b) of the 1940 Act granting exemption from, in part, section 17(d). Applicants also state that the relief sought does not extend to co-investments with ML & Co. or its subsidiaries.

3. The requested order will permit MLVP I and MLVP II to co-invest with other Partnerships on the terms set forth in the application. Applicants submit that these terms and conditions will ensure that co-investments by MLVP I and MLVP II with another Partnership are consistent with the protection of the BDC Partnership's limited partners and the purposes and policies of the 1940 Act.

4. Applicants also submit that, in addition to providing potential investment opportunities to the BDC Partnerships, the inclusion of the KECALP Partnerships as potential co-investors will not subject any BDC Partnership to overreaching by such other Partnerships or otherwise disadvantage the BDC Partnerships.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-18803 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16524; 812-7012]

Alex. Brown Cash Reserve Fund, et al.; Notice of Application

August 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Alex. Brown Cash Reserve Fund ("Cash Reserve"), Flag Investors Corporate Cash Trust ("Corporate Cash"), Flag Investors Telephone Income Trust ("Telephone"), Flag Investors International Trust ("International"), Tax Free Investments Trust ("Tax Free"), and all investment companies which may in the future be advised, administered or distributed by Alex. Brown & Sons Incorporated ("Alex. Brown") or its affiliates.

Relevant 1940 Act Sections: Exemption is requested pursuant to Section 6(c) of the 1940 Act from provisions of Section 32(a)(1) of the 1940 Act.

Summary of Application: Applicants seek an order to permit them and any future funds advised, administered or distributed by Alex. Brown & Sons Incorporated or its affiliates to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of trustees or directors meeting held not more than 90 days before or after the beginning of their respective fiscal years.

Filing Dates: The Application was filed on March 24, 1988 and an amendment thereto was filed on August 9, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 6, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 135 East Baltimore Street, Baltimore Maryland 21202, Attention: Edward J. Veilleux, Vice President.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney at (202) 272-3024 or Karen Skidmore, Branch Chief at (202) 272-3023.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Applicants is an open-end management investment company registered under the 1940 Act. Each of the Applicants is organized as a corporation under the laws of the State of Maryland or a business trust under the laws of the Commonwealth of Massachusetts. Therefore, each of the Applicants, pursuant to its charter, declaration of trust, bylaws and applicable provisions of state law, is not typically required to hold annual shareholders' meetings.

2. The principal underwriter for each of the Applicants is Alex. Brown. Alex. Brown or its affiliates also act as advisor or administrator of certain of the Applicants.

3. Cash Reserve and Tax-Free have a fiscal year end of March 31. International has a fiscal year end of October 31. Corporate Cash and Telephone have fiscal years ending on December 31.

4. The membership of each board of directors/trustees is very similar, with each board having the same four disinterested directors/trustees. In addition, the audit committee of each of the Applicants is identical. It is the usual practice of the Applicants to have the board of directors/trustees consider an issue that affects more than one of the Applicants at the same meeting. Regularly scheduled meetings of the board of directors/trustees of each Applicant normally are held on the same day of March, June, September and December of each year.

5. The selection of independent public accountants for the Applicants is based on the recommendation of each Applicant's audit committee. The audit committee meets with the accountants each year in a systematic and organized manner and discusses the scope and estimated cost of each Applicant's audit and the procedures to be followed in respect of such audits. The audit committee also meets to review the results of all of the audits, including among other things, accounting practices, qualifications and independence of accountants, actual

accountant's fees and cooperation by the Applicants' management. Based on these reviews, the audit committee makes its recommendation to the boards of each of the Applicants with respect to the selection of the independent public accountant for each such Applicant.

Applicants' Legal Conclusions

1. Expanding the 30-day period under section 32(a)(1) of the 1940 Act to 90 days will permit a regular and structural consideration of the independent accountant for complexes at a meaningful interval of time. Moreover, expansion of the period is consistent with the purpose of the 1940 Act and the position of the SEC that the selection of the accountant should occur close to the beginning of a fund's fiscal year.

2. By expanding the 30-day period within which the Applicants must select their independent accountant to 90 days, the Applicants can institute a review procedure ensuring that the selection of the Applicants' independent accountant is considered on an economical and systematic basis that will provide for detailed and systematic review by the Applicants' audit committee of the services furnished to the Applicants by their independent accountants and result in consideration by the directors/trustees of all information developed by the audit committee.

3. The proposed process will more effectively meet the current logistical needs of the industry, which is comprised of complexes having a substantial number of funds rather than funds operated on an individual basis or in small groups.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-18804 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council Meeting Public Meeting; California

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 12:00 noon on Thursday, September 8, 1988, at 211 Main Street, 5th Floor, Conference Room 543, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael R. Howland, District Director, U.S. Small Business Administration, 211 Main Street, 4th Floor, San Francisco, California 94105, (415) 974-0642.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 12, 1988.

[FR Doc. 88-18791 Filed 8-18-88; 8:45 am]

BILLING CODE 8025-01-M

National Small Business Development Center Advisory Board; Public Meeting; Kentucky

The National Small Business Development Center Advisory Board will hold a public meeting in Lexington, Kentucky on Monday, September 12th from 8:00 a.m. to 12:00 noon and on Tuesday, September 13, from 8:00 a.m. to 11:00 a.m. at the Radisson Plaza Hotel—the room designation will be posted on the hotel directory in the main lobby.

The purpose of the meetings is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6315.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-18792 Filed 8-18-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 15, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0047
Form Number: Form 990; Schedule A (Form 990)
Type of Review: Revision
Title: Return of Organization Exempt from Income Tax Under section 501(c) (except black lung benefit trust or private foundation) of the Internal Revenue Code or section 4947(a)(1) trust
Description: Form 990 is needed to determine that Internal Revenue Code section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.
Respondents: Non-profit institutions
Estimated Number of Respondents: 554,753
Estimated Burden Hours Per Response: 17 hours and 28 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 8,712,143 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-18846 Filed 8-18-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 15, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8743
Type of Review: New Collection

Title: Information on Fuel Inventories and Sales
Description: Form 8743 is used to provide information on fuel inventories and sales. This form enables IRS to monitor the excise tax liability for all taxable fuels. (Internal Revenue Code sections 4081, 4091 and 4041). The form will be filed by refiners, wholesalers, and retailers of fuel.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 16,000
Estimated Burden Hours Per Response: 41 minutes
Frequency of Response: Quarterly
Estimated Total Reporting Burden: 43,777 hours
OMB Number: 1545–0020
Form Number: 709
Type of Review: Revision
Title: United States Gift (and Generation-Skipping Transfer) Tax Return
Description: Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. IRS uses the information to enforce these taxes and to compute the estate tax
Respondents: Individuals or households
Estimated Number of Respondents: 70,500
Estimated Burden Hours Per Response: 4 hours and 46 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 356,683 hours
OMB Number: 1545–0051
Form Number: 990–C
Type of Review: Revision
Title: Farmers' Cooperative Association Income Tax Return
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS Uses the information to determine whether the tax is being properly reported.
Responents: Farms, Businesses or other for-profit
Estimated Number of Respondents: 6,000
Estimated Burden Hours Per Response: 11 hours and 53 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 71,974 hours
OMB Number: 1545–0118
Form Number: 1099–PATR
Type of Review: Extension
Title: Statement for Recipients (Patrons) of Taxable Distributions Received from Cooperatives
Description: Form 1099-PATR is used to report patronage dividens paid by cooperatives (Internal Revenue Code Section 6044). The information is used by IRS to verify reporting compliance on the part of the recipient.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 4,480
Estimated Burden Hours Per Response: 6 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 165,597 hours
OMB Number: 1545–0128
Form Number: 1120–L
Type of Review: Revision
Title: U.S. Life Insurance Company Income Tax Return
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,440
Estimated Burden Hours Per Response: 10 hours and 20 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 36,791 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–18847 Filed 8–18–88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 15, 1988.

The Department of Treasury had made revisions and resubmitted the following public informaton collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., DC 20220.

Internal Revenue Service

OMB Number: 1545–0085
Form Number: 1040A
Type of Review: Revision
Title: U.S. Individual Income Tax Return
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form are correct and are also for statistics use.
Respondents: Individuals or households
Estimated Number of Respondents: 21,447,413
Estimated Burden Hours per Response: 1 hour and 9 minutes
Frequency of Response: Annually
Estimated Average Reporting Burden: 21,752,052 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–18848 Filed 8–18–88; 8:45 am]
BILLING CODE 4810-25-M

Internal Revenue Service (IRS)

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on September 14 & 15, 1988. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:00 a.m. on Wednesday, September 14 and 8:00 a.m. on Thursday, September 15, 1988. The agenda will include the following topics:

Wednesday, September 14, 1988

Penalties
State Tax Resources/Initiatives
Information Reporting
Relationships with Practitioners

Thursday, September 15, 1988

Compliance Strategies of the 1990's
Correspondence
General Discussion

Note.—Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

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The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, no later than September 8, 1988.

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution Avenue, NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, [202] 566–4143 [Not toll-free].

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88–18856 Filed 8–18–88; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study; Meeting

In accordance with Pub. L. 92–463, the Veterans Administration gives notice that a meeting of the Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study will be held in the Days Inn, Research Triangle Park, NC, on September 6, 1988, beginning at 9 a.m. The purpose of this meeting is to review the progress, to date, of the National Vietnam Veterans Readjustment Study, mandated by Pub. L. 98–160, and provide recommendations as the Committee deems appropriate.

The meeting will be open to the public (to the seating capacity of the room) at the start of the meeting on September 6th for approximately one hour to cover administrative matters and to discuss the general status of the study. During the closed session, the Committee will be reviewing preliminary research findings and survey research procedures. Disclosure of these findings and specific survey techniques could serve as a source of sample contamination that could invalidate the total research effort. In addition, the qualifications and performance of involved staff will be open to review. Disclosure of such information would be a clearly unwarranted invasion of personal privacy. Thus, the closing is in accordance with section 552b, subsections (c)(6) and (c)(9)(B), 5 U.S.C., and the determination of the Administrator of Veterans Affairs under section 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Dr. Thomas L. Murtaugh, Project Officer, National Vietnam Veterans Readjustment Study, 1521 A South Edgewood St., Baltimore, MD 21227 (Phone—301/646–5604) at least 5 days before the meeting.

Dated: August 12, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–18793 Filed 8–18–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 161
Friday, August 19, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:26 a.m. on Tuesday, August 16, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) A recommendation concerning an administrative enforcement proceeding; and (2) matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Ms. Judith A. Walter, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 16, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-18903 Filed 8-17-88; 10:13 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, August 24, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18897 Filed 8-17-88; 10:13 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 3:05 p.m., Tuesday, August 16, 1988.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Report of the operations review of the Office of the Secretary.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Date: August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18898 Filed 8-17-88; 10:13 am]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors; Meeting

TIME AND DATE: The open meeting of the Board of Directors will commence on Friday, August 26, 1988, at 11:30 a.m., or immediately following the previous meeting, and continue until all official business is completed. An Executive Session will be held during the luncheon break, from 12:00 p.m. until 1:30 p.m.

PLACE: The Sheraton Grand Hotel, Ballroom Eastroom East, 525 New Jersey Ave., NW., Washington, DC 20001.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b (c)(2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g) and (h)].

MATTERS TO BE CONSIDERED:

Executive Session (Closed)

1. Personnel and Personal Matters
2. Litigation and Investigatory Matters

Board of Directors Meeting (Open)

1. Approval of Agenda
2. Approval of Minutes
   —July 1, 1988
   —March 25, 1988
3. Discussion of LSC Monitoring Procedures
4. Discussion of Clients' Ideas for Effective Representation and Training
5. Discussion of LSC Grantee Funding Applications

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Dated Issued: August 17, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-19013 Filed 8-17-88; 3:59 am]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Voucher Subcommittee of the Committee for the Provision for the Delivery of Legal Services

TIME AND DATE: The meeting will commence on Friday, August 26, 1988, at 8:00 a.m. and continue until 9:30 a.m.

PLACE: The Sheraton Grand Hotel, Ballroom East, 525 New Jersey Ave., NW., Washington, DC 20001.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —April 9, 1988
3. Discussion on the Status of the San Antonio Voucher Project Draft Report

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: August 17, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-19014 Filed 8-17-88; 3:59 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting

TIME AND DATE: The meeting will commence on Friday, August 26, 1988, at 9:30 a.m. or immediately following the previous meeting, and continue until 11:00 a.m.

PLACE: The Sheraton Grand Hotel, Ballroom East, 525 New Jersey Ave., NW., Washington, DC 20001.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —March 25, 1988
3. Review of FY 1988 Monthly Expenditures through June 30, 1988
4. Preliminary Discussion of FY 1990 Budget

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: August 17, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-19015 Filed 8-17-88; 3:59 pm]

BILLING CODE 7050-01-M

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Corrections

Federal Register
Vol. 53, No. 161
Friday, August 19, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3409-9]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants

Correction

In proposed rule document 88-16751 beginning on page 28496 in the issue of Thursday, July 28, 1988, make the following corrections:

1. On page 28559, in the third column, in the first complete paragraph, in the fourth line from the bottom, "0.004"should read "0.0004".

2. On page 28568, in the first column, in the first complete paragraph, in the fifth line, after "tank," and preceding "light-oil", insert "tar storage tank, flushing-liquor circulation tank,".

3. On the same page, in the same column, in the third complete paragraph, in the 13th line, after "concentration" and preceding "would" insert "of more than 500 ppm by volume above a background concentration".

PART 61—[CORRECTED]

§ 61.115 [Corrected]

4. On page 28574, in the second column, in § 61.115(a)(1), in the third line, "§ 61.113" should read "§ 61.13".

5. On the same page, in the table of contents for Subpart L, in the entry for "61.138", in the second line, "amendments" should read "requirements".

§ 61.133 [Corrected]

6. On page 28576, in the second column, in § 61.133(a)(2), in the 2nd and 3rd lines, "maintain a vent on the" should read "maintain an access hatch on each".

§ 61.134 [Corrected]

7. On the same page, in § 61.134(b), in the third line, "mixer-organic liquid" should read "mixer-settler is used to separate naphthalene by means of tar or another organic liquid".

§ 61.135 [Corrected]

8. On page 28577, in the first column, in § 61.135(e)(5), in the fourth line, "paragraph (e)(r)(ii)" should read "paragraph (e)(4)(ii)".

§ 61.139 [Corrected]

9. On page 28581, in the second column, in § 61.139(j), in the fourth line from the bottom, "§ 651.10" should read "§ 61.10".

§ 61.276 [Corrected]

10. On page 28590, in the first column, in § 61.276(b), in the fourth line from the bottom, "39 cubic" should read "38 cubic".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[BQC-59-P]

Medicaid Program; Medicaid Management Information System: Revised Definition of "Mechanized Claims Processing and Information Retrieval System"

Correction

In proposed rule document 88-18149 beginning on page 30317 in the issue of Thursday, August 11, 1988, make the following correction:

§ 433.122 [Corrected]

On page 30322, in the third column, in § 433.122(b), in the seventh line, after "quarter" insert "before the fourth quarter".

BILLING CODE 1505-01-D

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federal register

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Part II

Environmental Protection Agency

40 CFR Part 799

Testing Consent Orders on Aniline and Seven Substituted Anilines; Final Rule

40 CFR Part 799

Termination of Rulemaking for Certain Chemicals in the Anilines Category; Notice of Termination of Rulemaking

VOL 53 ISS 161 AG 19 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42054B; FRL-3431-9]

Testing Consent Orders on Aniline and Seven Substituted Anilines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces that EPA has signed enforceable testing consent orders both with manufacturers (including importers) who have agreed to perform certain health and environmental effects tests on aniline and with manufacturers who have agreed to perform certain health and/or environmental effects tests on seven substituted anilines that they manufacture. These chemical substances were designated by the Interagency Testing Committee (ITC) for priority testing. Elsewhere in this issue of the **Federal Register**, the Agency announces its decision to terminate rulemaking for certain other category members for health and environmental effects and chemical fate.

EFFECTIVE DATE: Effective on August 19, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street, SW., Washington, DC., (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This rule adds aniline (CAS No. 62-53-3), 2-chloroaniline (CAS No. 95-51-2), 4-chloroaniline (CAS No. 106-47-8), 3,4-dichloroaniline (CAS No. 95-76-1), 2-nitroaniline (CAS No. 88-74-4), 4-nitroaniline (CAS No. 100-01-06), 2,4-dinitroaniline (CAS No. 97-02-9), and 2,6-dichloro-4-nitroaniline (CAS No. 99-30-9) to the list of chemical substances and mixtures ("chemicals") subject to testing consent orders in 40 CFR 799.5000.

I. ITC Recommendation

In its Fourth Report to EPA, published in the **Federal Register** of June 1, 1979 (44 FR 31866), the ITC recommended that all chemicals in the category defined as "aniline and anilines substituted in one or more positions with a chloro, bromo, or nitro group, or any combination of one or more of these substituent groups" be considered for health effects, chemical fate and environmental effects testing. The ITC recommended testing for chronic health effects with emphasis on blood and nervous system disorders, teratogenicity, carcincogenicity, mutagenic effects, and epidemiology studies. The ITC also recommended chemical fate and environmental effects testing.

In response to the ITC, EPA published an Advance Notice of Proposed Rulemaking (ANPR) for the anilines category (49 FR 108, January 3, 1984). In the ANPR, EPA identified 20 individual chemicals in production in 1982, reviewed the available health and environmental effects information on the chemicals, indicated tentative data gaps in available health and environmental effects information, and requested public comments on a scheme to test representative category members rather than all category members. The ANPR named six subcategories (aniline, monochloroanilines, polychloroanilines, mononitroanilines, polynitroanilines, and halo-nitroanilines) and seven representative subcategory members (aniline; 4-chloroaniline; 3,4-dichloroaniline; 4-nitroaniline; 2,4-dinitroaniline; 2-chloro-4-nitroaniline; and 2-bromo-4,6-dinitroaniline) for possible health and environmental effects testing consideration under section 4(a)(1)(A) of TSCA. In response to the ANPR, EPA received comments and new information from the Aniline Association and the Substituted Anilines Task Force (SATF), an industry group organized as a special project of the Synthetic Organic Chemical Manufacturers Association, whose members manufacture or import one or more of the substituted anilines (Refs. 1 and 2). Comments were also received from Sodyeco Inc., Eastman Kodak, and Upjohn Company (Refs. 3 through 5). The Aniline Association and SATF provided results of surveys of processors to determine the potential for human exposure and environmental release. The exposure and release data supplied by the SATF and some of the data supplied by the Aniline Association were submitted as Confidential Business Information (CBI) (Refs. 6 and 7).

II. Testing Consent Order Negotiations

In the **Federal Register** of August 11, 1986 (51 FR 28758) and in accordance with the procedures established in 40 CFR 790.28, EPA requested that persons interested in participating in or monitoring testing negotiations on aniline and seven substituted anilines contact the Agency. EPA held public meetings on August 12, 1986; October 14, 1986; January 15, 1987; and February 19, 1987 to discuss testing appropriate for these eight chemicals. On or before July 7, 1988, five manufacturers of aniline and four manufacturers of substituted anilines signed eight separate Testing Consent Orders with EPA. Under one Order, the five manufacturers of aniline agreed to conduct or provide for the conduct of the following tests: *In vivo* mouse micronucleus assay, grammarid acute effects test, and daphnid chronic effects test. Under seven separate Orders, the manufacturers of the seven substituted anilines agreed to conduct or provide for the conduct of the following tests for each of the substituted anilines they manufacture: *In vivo* cytogenetics (*in vivo* mouse micronucleus assay) for 2-chloroaniline, 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, 4-nitroaniline, 2,4-dinitroaniline; gammarid acute effects, daphnid chronic effects, and rainbow trout acute effects (with trigger to rainbow trout early-life stage) for 2-chloroaniline; and algae acute effects, daphnid acute effects (with trigger to grammarid acute and daphnid chronic effects), and rainbow trout early life-stage test for 2,6-dichloro-4-nitroaniline. The test standards to be followed and the testing schedule for each test are specified in each Order. Procedures for submitting study plans, modifying the Order, monitoring the testing, and other provisions were also included in each Order.

The following table presents the disposition by EPA of the 20 anilines

category members reported to be in production in 1982.

ANILINES CATEGORY MEMBERS DISPOSITION

CAS No.	Chemical name	Disposition
62-53-3	Aniline	(1)
95-51-2	2-Chloroaniline	(1)
108-42-9	3-Chloroaniline	(2)
106-47-8	4-Chloroaniline	(2)
608-27-5	2,3-Dichloroaniline	(2)
554-00-7	2,4-Dichloroaniline	(2)
95-82-9	2,5-Dichloroaniline	(2)
95-76-1	3,4-Dichloroaniline	(2)
634-93-5	2,4,6-Trichloroaniline	(2)
1817-73-8	2-Bromo-4,6-dinitroaniline	(2)
88-74-4	2-Nitroaniline	(2)
99-09-2	3-Nitroaniline	(2)
100-01-6	4-Nitroaniline	(2)
97-02-9	2,4-Dinitroaniline	(2)
121-87-9	2-Chloro-4-nitroaniline	(2)
6282-25-6	2-Chloro-5-nitroaniline	(2)
89-63-4	4-Chloro-2-nitroaniline	(2)
635-22-3	4-Chloro-3-nitroaniline	(2)
99-30-9	2,6-Dichloro-4-nitroaniline	(4)
827-94-1	2,6-Dibromo-4-nitroaniline	(2)

[1] Consent Order: health and aquatic effects testing.
[2] Decision to terminate rulemaking found elsewhere in this issue of **Federal Register**.
[3] Consent Order: health effects testing.
[4] Consent Order: aquatic effects testing.

III. Technical Summary

A. Manufacture, Use And Release

Aniline is produced by five manufacturers (DuPont, First Mississippi Corp., Rubicon, Mobay Chemical Corp., and U.S.S. Chemical Corp.) at five locations in the United States. Production was about 790 million pounds in 1984 (Ref. 1). The production volumes for substituted anilines range from less than 1000 pounds to 10 million pounds. The manufacturers of the substituted anilines have provided EPA with exact production volumes for 1982 as CBI (Ref. 8). The TSCA section 8(b) confidential chemical inventory update reports that there has not been a significant increase in production of these chemicals from levels reported in 1982.

The manufacturers and processors of aniline and substituted anilines report that the chemicals are used consumptively as chemical intermediates (Refs. 7 and 9). Aniline is used to produce isocyanates, rubber processing chemicals, dyes, and hydroquinone, for drug manufacture, and for other uses including production of herbicides, synthetic fibers, and photographic chemicals. The primary use for most of the substituted anilines is as intermediates in dye and pigment production. 3,4-Dichloroaniline and 2-chloroaniline are used primarily as pesticide intermediates. 4-Nitro-aniline and 2-nitroaniline are used solely as intermediates for phenylenediamines.

Manufacturers of aniline report that approximately 2.5 million pounds were disposed of by deep well injection, 2.5 million pounds were incinerated, 130,000 pounds went to regulated landfills, 49,500 pounds were released to air, and 14,700 pounds were released to water. The manufacturers of aniline have provided to EPA site-specific aquatic release volumes for 1984 as CBI (Ref. 10). Total estimated aquatic release of aniline by processors was 85,155 pounds at 22 locations with the range of location-specific release between 22,000 pounds (3 locations) and 1,000 pounds or less (14 locations) (Ref. 11). Both manufacturers and processors of substituted anilines have provided EPA with release volumes for 1982 as CBI.

B. Human Exposure

1. *Occupational exposure.*—a. *Aniline.* The Aniline Association has provided EPA with information on potential occupational exposure from aniline manufacturing and processing operations (Refs. 1 and 7). The Association reports that there is little or no occupational exposure to aniline because: Few workers are potentially exposed for short periods; production occurs in an enclosed, continuous process mostly in open-design plants (plant not enclosed in a building); and rigorous workplace controls and industrial hygiene practices are used to protect workers from the known acute toxic effects of aniline. Also, most manufacturers and processors require that employees wear rubber suits and gloves for protection in potential exposure situations such as reactor entry, special work procedures, and sampling and maintenance operations, because the greatest potential for exposure is through dermal contact (aniline is absorbed very rapidly through the skin). Air monitoring and medical surveillance results show control practices are effectively preventing exposures to aniline (Ref. 1). Aniline has excellent acute indicator properties; the olfactory detection level is 0.5 to 1 ppm, and acute exposure causes cyanosis, a condition evidenced by bluish skin discoloration due to deficient blood oxygenation.

The Aniline Association survey data reported that 487 workers involved in manufacturing are potentially exposed to airborne aniline concentration levels between 0.001 to 1.4 ppm, with 97 percent of workers below 1 ppm. An additional 1,524 workers involved in internal and outside processing of aniline are potentially exposed to levels ranging from 0.001 to 5 ppm with 99.9 percent of total worker hours at exposures below 2 ppm. The Occupational Safety and Health Administration's (OSHA) inspection summary data time-weighted averages (TWA) were all below 0.25 ppm and serve to support the Association's conclusions (Ref. 12). The OSHA permissible exposure limit (PEL) for aniline is 5 ppm (Ref. 13). The American Conference of Governmental Industrial Hygienists (ACGIH) TWA recommended exposure limit is 2 ppm for aniline (Ref. 14).

b. *Substituted anilines.* The SATF has provided EPA with confidential information on potential occupational exposure from manufacturing and processing operations of substituted anilines (Refs. 6 and 8). The SATF also reports that there is little or no occupational exposure to the substituted anilines currently in production because very few employees are potentially exposed. The SATF reports that production occurs over short time periods in a closed continuous process during which the chemical is consumed; that workplace controls and industrial hygiene practices are used to protect workers from the known or suspected acute toxic effects of the substituted anilines, and that air monitoring and medical surveillance results show control practices are effectively preventing exposures to the substituted anilines. Some substituted anilines also have excellent acute effects indicator properties like those of aniline.

A study by one manufacturer/processor to evaluate the effects of potential airborne exposure of manufacturing workers to 4-chloroaniline on various biological (blood) parameters reported that: (1) All the methemoglobin levels measured fall within what has been traditionally regarded as a normal range, (2) a small statistically significant elevation in methemoglobin following the work shift was observed among employees involved in 4-chloroaniline manufacture and the matched comparison group suggesting the observed increase in methemoglobin among workers may not be work-related, and (3) there was no correlation between post-exposure methemoglobin and 4-chloroaniline air sampling data within the narrow range of low level exposures typical in this work setting (Ref. 15). A major manufacturer/processor of chloro- and nitroanilines reports an average of 3 cases per year or methemoglobinemia, defined as oxygen saturation below 90 percent, observed at the their main plant over the last 10 years (Ref. 16). Over the

last 5 years, no methemoglobinemia was observed.

2. *Consumer exposure.* There is no known or suspected consumer exposure to any of the aniline category members as a result of TSCA-covered activities because they are wholly consumed chemical intermediates.

C. Environmental Exposure

There are few monitoring data available for aniline and the substituted anilines in wastewater of sediment. Ewing et al. in 1977 sampled surface waters from 204 sites near heavily industrialized areas across the U.S. Aniline and substituted anilines were not detected at concentrations above 1 ppb (Ref. 17). In another study wastewater, receiving waters and sediments near a plant manufacturing a broad range of chemicals were analyzed for organic pollutants (Ref. 18). One sample of wastewater contained 0.02 ppm of aniline. Aniline was not detected in river water or sediments. Chloroaniline (isomers unspecified) was not detected in wastewater or river water but was found in sediment at 1 to 2 ppm. Plant and sampling locations were not reported.

Games and Hites in 1977 measured organic compounds in untreated and treated effluent originating from a dye manufacturing plant (Ref. 19). Results showed the presence of six aniline compounds. The compounds included aniline, chloroaniline, dichloroaniline, nitroaniline, tribromoaniline and bromodinitroaniline. The concentrations ranged from 36 to 480 ppb for raw wastewater to 7 to 96 ppb for treated effluent.

USEPA data in the STORET system include a total of 46 data points or observations on environmental levels of aniline in streams, and 42 data points or observations on levels of 2-nitroaniline in streams (Ref. 20) The mean residual level of aniline was 9.47 ppb, with maximum and minimum values of 13 and 1 ppb, respectively; the STORET data were collected between August 1978 and August 1980. The mean residual level for 2-nitroaniline was 0.39 ppb with maximum and minimum values of 1.7 and 0.1 ppb, respectively; the STORET data were collected between January 1983 and May 1985.

D. Physicochemical Properties

1. *Water solubility, vapor pressure, and octanol/water partition coefficient.* EPA has estimated water solubilities, vapor pressures, and the log octanol/water partition coefficients (log P) of aniline and six representative substituted anilines, and these data are presented in the following table:

PHYSICAL AND CHEMICAL PROPERTIES OF ANILINE AND SIX SUBSTITUTED ANILINES

Chemical	CAS Number	Empirical formula	Molecular weight	Water solubility (mg/L)	Log octanol/water partition coefficient (Log KOW)	Soil sorption coefficient (KOC)	Vapor pressure	Henry's law constant
Aniline	62-53-3	C_6H_7N	93.13	[1] 35,000	[1] 0.90	47	0.473 25° C	0.17×10^{-5}
2-Chloroaniline	95-51-2	C_6H_6C1N	127.57	3,900	1.91	261	0.22 25° C	0.95×10^{-5}
4-Chloroaniline	106-47-8	C_6H_6C1N	127.57	[1] 3,900	1.83	236	9.8×10^{-2} 25° C	0.54×10^{-5}
3,4-Dichloroaniline	95-76-1	$C_6H_5C1_2N$	162.02	[1] 51	2.69	691	5.8×10^{-3} 25° C	0.24×10^{-4}
2-Nitroaniline	88-74-4	$C_6H_6N_2O_2$	138.13	1,200	1.69	198	3.8×10^{-3} 25° C	0.55×10^{-6}
4-Nitroaniline	100-01-6	$C_6H_6N_2O_2$	138.13	800	1.39	136	2.9×10^{-4} 25° C	0.66×10^{-7}
2,6-Dichloro-4-Nitroaniline	99-30-9	$C_6H_4C1_2N_2O_2$	207.02	49	2.45 to 3.29	1,000	1.45×10^{-6} 25° C	0.81×10^{-7}

[1] = Measured value.

Experimental values of some parameters are available for aniline, 4-chloroaniline, and 3,4-chloroaniline (Refs. 21 through 24). The calculated and experimental values indicate that, under equilibrium conditions, aniline, the chloroanilines, and the nitroanilines will remain in the water compartment, although other data suggest that anilines will bind chemically to sediment (see Unit III.D.3).

2. *Soil mobility.* The adsorption properties of aniline and some substituted anilines have been reported and EPA has estimated soil organic-carbon sorption coefficients (Koc) from calculated log P values using equations developed by Kenaga, and Kenaga and Goring (Refs. 25 and 26). (See table for these values.) The measured and estimated Koc values indicate that aniline and substituted anilines adsorb weakly to moderately to organic matter in soil and sediment and therefore can be considered moderately to highly mobile. However, there are experimental data to indicate that 4-chloroaniline and 3,4-chloroaniline and other aromatic amines chemically bind to organics in soil and sediment; therefore these and possibly other category members may be much less mobile in soil and sediment than predicted by the Koc (Refs. 27 through 31).

3. *Presistence.* Chemical fate data on aniline indicate that it is readily biodergradable and oxidizable in surface water and sewage sludge (Refs. 32 through 35). The overall experimental degradation half-life in surface water is less than 1 day (Refs. 36 and 43).

Data on 2-chloroaniline, 4-chloroaniline, and 3,4-dichloroaniline (DCA) indicate the major reaction in soil is chemical binding with the humic acid fraction (Refs. 27 through 31). After binding, the chloroaniline are not extractable as such. As the concentration of the chemicals in the soil increases, polymerization of these chemicals also occurs. The humic adsorption properties of the chloroanilines are believed to correlate with the organic content and pH of the soil (Ref. 37). Microbial metabolism occurs slowly in soil because the chloroanilines bind to soil organics (Refs. 38 through 42). The chloroanilines have relatively low log P values and are therefore not likely to bioconcentrate in fatty tissue of aquatic organisms, although their lower water solubilities and higher log P values indicate they are more likely to do so than aniline.

Photodegradation is likely to be a primary route of aquatic degradation of the chloroanilines (Refs. 43 through 45). The experimental half-life of DCA in distilled water, natural sea water, and Instant Ocean is less than 1 day (Ref. 43). The rates of biodegradation of monochloroanilines are estimated to be slower than aniline in the aquatic environment (Ref. 46). In aerobic environments 4-chloroaniline biodegrades faster than DCA. In anaerobic environments the reverse is true (Ref. 47). Some monochloroanilines

are reported to be degraded in activated sludge (Refs. 33 and 47).

Available data on the chemical fate of the nitroanilines and halogenated nitroanilines are limited. In semicontinuous activated sludge testing, 4-nitroaniline has been described as readily degradable and 2-nitroaniline as resistant to degradation (Ref. 48). 4-nitroaniline and 2,6-dichloro-4-nitroaniline (DCNA) undergo microbial degradation in pure culture (Refs. 49 and 50). The relatively low log P values indicate the nitroanilines and halogenated nitroanilines are not likely to bioconcentrate in aquatic organisms. The nitroanilines and halogenated nitroanilines may, like other aromatic amines, chemically bind to organics in soils and sediments, although there are no data to confirm this effect for these chemicals.

IV. Testing Program

A. Environmental Effects

In its Fourth Report to the EPA, published in the **Federal Register** of June 1, 1979 (44 FR 31866), the ITC recommended chemical fate testing because of suspected environmental effects and also because there were conflicting reports on the ability of animals, plants, and microbes to metabolize and tolerate these chemicals. The ITC recommended environmental effects testing because reports of occurrences of residues and their persistence in water and soil suggested a highly dispersive discharge into the environment and available data raised a concern that category members may produce adverse effects.

Using CBI supplied by manufacturers and processors and information from the open literature, EPA has calculated worst-case aquatic predicted environmental concentrations (PECs) for aniline, 2-chloroaniline, and 2,6-dichloro-4-nitroaniline, which were the category members judged to be released in significant amounts (Ref. 51). Because the Agency has few data on the fate of the substituted anilines in the environment, calculation of their PECs was based on the worst-case assumption that none of the substituted anilines are affected by physical or biological processes other than dilution in the discharge environment. For aniline, PECs were calculated using a measured overall degradation half-life of 17.5 hours (¾ day) which includes biodegradation, oxidation, photolysis, and hydrolysis in natural waters (Ref. 52). In addition, the concentration in the discharge environment was conservatively based on the lowest river flow rate that would not be exceeded 5 percent of the time. The PECs for aniline and the substituted anilines judged to be released in significant amounts are not described here because they are derived from CBI data.

The Agency has reviewed the available data on environmental effects and the potential for environmental exposure to other anilines category members currently in production (see Notice of Termination of Rulemaking for Certain Anilines Category Members appearing elsewhere in this issue of the **Federal Register**). The Agency has determined that, given the low anticipated and observed exposure to these chemicals and in the light of the environmental effects data available for this category, these chemicals do not reach levels in the environment that raise a concern for adverse effects.

EPA has estimated the potential for releases of anilines category members to adversely affect aquatic organisms by examining available aquatic toxicity data and by comparing acute vertebrate and invertebrate LC50's to the site-specific PECs calculated as described in Unit IV.A.2.

EPA has determined that concentrations of aniline, 2-chloroaniline, and DCNA in the aquatic environment resulting from manufacturing and processing could reach levels which may be harmful to aquatic organisms (i.e., LC50's of sensitive aquatic species of aniline, 2-chloroaniline, and DCNA are likely to be less than or equal to 1000 × the predicted environmental concentrations or less than or equal to 1 mg/L). Therefore, additional acute toxicity testing is needed to determine the effects of: Aniline on daphnids, 2-chloroaniline on gammarids and rainbow trout, and DCNA on algae and daphnids with trigger to gammarids. Testing to determine the chronic effects of aniline on dephanids, 2-chloroaniline from acute trigger to daphnid or gammarid and rainbow trout early life stage, and DCNA early life stage in rainbow trout is also needed to assess the potential long-term hazard of these chemicals to aquatic organisms.

The following is a summary of available aquatic effects information the Agency has considered in its decision to issue a Consent Order for aquatic effects testing of aniline, 2-chloroaniline, and 2,6-dichloro-4-nitroaniline. The 96-hour EC50 for aniline in freshwater algae (*Selenastrum capricornutum*) is 19 mg/L and the 48-hour EC50 for 2-chloroaniline in freshwater algae (*Scenedesmus pannonicus*) is 32 mg/L (Refs. 53 and 54). The 48-hour LC50 for aniline in *Daphnia magna* is 0.65 mg/L and the 48-hour EC50 for 2-chloroaniline in Daphnia magna is 0.46 mg/L (Refs. 55 and 54). The 96-hour LC50's for aniline and 2-chloroaniline in fathead minnows are 134 mg/L and 5.8 mg/L, respectively (Ref. 56). The 96-hour LC50 for aniline in rainbow trout is 8 mg/L (Ref. 57). The 96-hour LC50's for 2,6-dichloro-4-nitroaniline in bluegill sunfish and rainbow trout are 1.08 mg/L and 0.56 mg/L, respectively (Refs. 58 and 59).

B. Health Effects

In its Fourth Report 44 FR 31866, the ITC recommended that all chemicals in the anilines category be tested for chronic health effects with emphasis on blood and nervous system disorders, teratogenicity, caricinogenicity, mutagenic effects, and epidemiology studies. The ITC based its recommendations for chronic health effects (with emphasis on blood and nervous system disorders), for teratogenic effects testing, and for epidemiology studies on the potential for some category members to cause methemoglobinemia in humans. The ITC recommended mutagenic and carcinogenic effects testing because some category members were reported to cause mutagenic and/or carcinogenic effects, and the results raise a suspicion of these effects in untested members. The Agency in its ANPR for the aniline category, 49 FR 106, proposed testing for reproductive effects based on the potential for some category members to cause methemoglobinemia in humans.

The Agency has reviewed the available data on health effects and the potential for human exposure to the seven anilines category members named in the Consent Orders and the other anilines category members currently in production (see Notice of Termination of Rulemaking for Certain Anilines Category Members appearing elsewhere in this issue of the **Federal Register**). The Agency has determined that, given the low anticipated and observed exposure to these chemicals and in light of the health effects data available for the category, these chemicals do not reach levels in the workplace environment that raise a concern for chronic, developmental, and reproductive effects.

However, potential human exposure to aniline, 2-chloroaniline, 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, 4-nitroaniline, and 2,4-dinitroaniline resulting from manufacturing and processing is sufficient to raise a concern for effects on human health through adverse heritable mutagenic effects. Therefore, additional testing to characterize the

mutagenicity for seven category members is necessary.

This additional testing is necessary as part of a tiered testing approach which involves a program review to follow the development of the in vivo cytogenetics data and considers all available mutagenic and health effects data to determine the need for further mutagenic effects or other health effects testing. EPA is deferring any decision as to the need for carcinogenicity testing of the substituted anilines until it has received the results from all the mutagenicity testing to be performed under the Consent Orders. Data on the carcinogenic potential of aniline has been evaluated and judged to be adequate. The Agency will announce its decision on further mutagenicity or carcinogenicity testing needs in a separate rulemaking.

The following is a summary of available health effects information the Agency has considered in its decision to issue Consent Orders only for mutagenic effects testing of seven anilines category members.

1. *Acute effects.* The primary acute effect in mammals associated with exposure to aniline and some substituted anilines is an increase in methemoglobin levels in blood (Ref. 60). However, a recent study sponsored by American Hoechst shows that not all substituted anilines readily cause increased levels of methemoglobin in rats (Ref. 61). The study was designed to rate the methemoglobin-inducing potency of category members relative to aniline, using high doses to maximize the amount of methemoglobin produced. Doses were equimolar to 100 and 400 mg/kg of aniline. When test compounds induced the formation of methemoglobin above vehicle controls in a dose-dependent manner they were considered positive. For compounds classified as positive, the results of the 100 mg/kg equimolar does at 1 hour were then statistically compared with the 100 mg/kg aniline results to determine if the test compound was more potent, equipotent, or less potent than aniline. Test compounds that failed to induce methemoglobinemia at either time point (1 hour and 6 hours) or dose were considered negative.

Only 3-chloroaniline and 4-chloroaniline were significantly more potent methemoglobin producers than aniline. Four chemicals were equipotent to aniline: 3-nitroaniline, 4-nitroaniline, 2,4-dinitroaniline, and 3,4-dichloroaniline; and four were less potent than aniline: 2-chloroaniline, 4-chloro-3-nitroaniline, 2,3-dichloroaniline, and 3,5-dichloroaniline. The other eleven chemicals were negative.

Numerous reports and studies describe secondary effects from acute human and animal exposure to aniline, 4-chloroaniline, and 4-nitroaniline related to methemoglobinemia and resulting anoxia (Ref. 62). The secondary effects include cyanosis, and central nervous system symptoms which result from the decreased oxygen-carrying capacity of methemoglobic blood. Changes in blood chemistry and development of Heinz bodies also occur. Removal from exposure usually allows a normalization of hematologic conditions, followed by amelioration of secondary abnormalities.

2. *Metabolism.* Studies on the disposition and metabolism of aniline, 4-chloroaniline, 4-nitroaniline, 2,4-dinitroaniline, 2-bromo-4,6-dinitroaniline, 2,6-dichloro-4-nitroaniline, and 4-chloro-2-nitroaniline in rats indicate these chemicals are rapidly metabolized and excreted (Refs. 63 through 68). For example, the whole body half-life of these chemicals ranges from 1 to 7 hours; and within 2 to 3 days, clearance of chemical-derived radioactivity from the body was almost complete.

Aniline and some of the substituted members of the category (2-chloroaniline, 3-chloroaniline, 4-chloroaniline, 2,3-dichlororaniline, 2,4-dichloroaniline, 3,4-dichloroaniline, 3-nitroaniline, 4-nitroaniline, and 4-chloro-3-nitroaniline) are biotransformed in rats and other mammals into intermediates which initiate the formation of methemoglobin from hemoglobin (Ref. 60). There are two metabolic pathways involved in the metabolism of aniline and the other methemoglobin-forming members: (1) The hydroxylation of the aromatic ring carbons to produce phenols which are the precursors for conjugated products excreted in urine or bile or (2) the hydroxylation of the nitrogen atom to form phenylhydroxylamine and nitrosobenzene which convert hemoglobin to an oxidized form, methemoglobin, an irreversible oxygen carrier. However, the sensitivity to methemoglobin-forming anilines varies among mammals. Cats are the most sensitive and produce the highest and most sustained levels of methemoglobin. Humans, dogs, rats, and rabbits are less sensitive (order of decreasing sensitivities). The variation in sensitivity could be due to the extent to which the chemical is metabolized to phenylhydroxylamine or to the differences in the activities of enzymes that promote the reduction of methemoglobin in the red cell back to hemoglobin.

3. *Subchronic and chronic effects.* Results from prechronic or subchronic and chronic (oncogenicity) oral studies in rats or rats and mice for three methemoglobin-inducing chemicals (aniline, 4-chloroaniline, and 4-nitroaniline) have been reported (Refs. 69 through 75). Some common effects that result from long term exposure to aniline and 4-chloroaniline at doses (10 to 100 mg/kg/day) that induce significant methemoglobin include: Anemia, red blood cell Heinz bodies, dose-related increase in spleen weight and size, dose-related congestion of splenic pulp, increased red blood cell turnover rate, and dose-related increased pigment (hemosiderin engorgement) in spleen and in kidney and liver at high doses (> 10 mg/kg/day). At higher doses (30 to 100 mg/kg/day), a dose-dependent increased incidence of primary splenic sarcomas, principally in male rats, was reported for aniline and 4-chloroaniline (Refs. 69 and 75).

Results of a chronic oral study in rats using 4-nitroaniline indicate the administration of 4-nitroaniline at levels up to 9 mg/kg/day for 2 years did not cause any treatment-related oncogenic effects (Ref. 74). The study was designed to determine whether chronic or oncogenic effects occur from long-term exposure to 4-nitroaniline at doses that induce increased levels of methemoglobin in rats. Methemoglobin levels were increased over controls at mid (1.5 mg/kg/day) and high (9.0 mg/kg/day) dosage levels. Slight anemia was observed mainly at the high dosage level. At the low (0.25 mg/kg/day) dosage level, the only treatment-related change was slight brown pigment in splenic reticuloendothelial cells. The only treatment-related change at the mid and high dosage levels was accumulation of brown pigment in sinusoidal macrophages in the liver and in reticuloendothelial cells in the spleen. Results of an oral 90-day subchronic study in mice using 4-nitroaniline have been reported. Effects in both sexes given 30 and 100 mg/kg/day include: Methemoglobinemia, Heinz bodies, increased red blood cell turn over rate, increased spleen and liver weight, and pigment deposition within phagocytic cells of spleen, bone marrow and liver (Ref. 74). The National Toxicology Program (NTP) is sponsoring an oral chronic effects-oncogenicity study of 4-nitroaniline in mice at dose levels of 0, 3, 30, and 100 mg/kg/day (Ref. 76).

Subchronic inhalation studies using rats and mice with the methemoglobin inducers 3-chloroaniline, 3,4-dichloroaniline, and 4-nitroaniline report

the same type of effects that occur at lower doses and over shorter exposure periods in oral studies in rats and mice (Refs. 77 through 81). Subchronic oral exposure of rats to 4-chloro-3-nitroaniline resulted in reduced testes-weight-to-brain-weight ratio at 18 mg/kg/day and testicular atrophy along with other toxic effects at 90 mg/kg/day (Ref. 82). No treatment-related effects were observed at or below 100 ppm in the diet in two chronic/oncogenicity studies in rats and dogs for 2,6-dichloro-4-nitroaniline (DCNA), which does not induce significant methemoglobinemia in mammals (Ref. 83). An oncogenicity study of DCNA in mice is in progress (Ref. 84).

Because there is evidence from studies on the metabolism of methemoglobin-producing anilines for a non-genotoxic mechanism for the induction of hemangio- and fibrosarcomas in the spleen of rats from dietary exposure at high concentrations, and because EPA wants to review all relevant data on all the anilines before making a determination as to the need for oncogenicity testing, the Agency is deferring its decision on the need for additional data on oncogenic effects of substituted anilines until the results of the in vivo mutagenicity tests are available (Ref. 85). The available data on the oncogenic effects of aniline are adequate for TSCA risk assessment purposes.

Also, after reviewing the available reports and studies on the acute and chronic health effects of the anilines category the Agency has found no evidence of adverse hematologic or central nervous system effects that are not likely to be related to the decreased oxygen-carrying capacity of methemoglobic blood. The data provide no basis to believe that these chemicals may present an unreasonable risk of adverse hematologic or central nervous system effects at anticipated exposure levels as manufacturers and processors control potential human exposure below the threshold for methemoglobinemia. Therefore, the Agency has concluded that additional information on hematologic or central nervous system effects of aniline and substituted anilines is not necessary at this time.

4. *Developmental toxicity.* Aniline, a potent methemoglobin producer, was observed not to be developmentally toxic in rats at levels (100 mg/kg) that produced maternal and fetal toxicity commonly caused by methemoglobinemia (Ref. 86). Timed pregnant mice treated with aniline (500 mg/kg/day) during days 7 through 14 of gestation revealed no apparent effect on numbers of litters produced; however, offspring viability through the first three postpartum days was significantly lower than for the control group. Also, reductions in birth weight and weight gain were seen in aniline-treated litters (Ref. 87). No treatment-related maternal or embryotoxicity was observed below 125 mg/kg/day (oral administration) of 4-nitroaniline in New Zealand rabbits (Ref. 88). 4-Nitroaniline administered by gastric intubation to pregnant rats at a dose of 25 mg/kg/day from day 6 to 19 of gestation was not maternally or developmentally toxic (Ref. 89). At 85 mg/kg/day some maternal toxicity (increased spleen weight) and fetotoxicity (reduced fetal weight) were evident; however, no developmentally toxic effects were observed. At 250 mg/kg/day, 4-nitroaniline produced maternal toxicity, embryotoxicity and terata. No treatment-related maternal or developmental toxicity was observed at or below 300 mg/kg/day of 2-nitroaniline to pregnant rats after gavage administration on days 6 to 15 of gestation. Significant evidence of maternal toxicity was observed at 2-nitroaniline dosages of 600 mg/kg with a single malformation in one fetus each from two litters at that dosage (Ref. 90). Pregnant rats exposed to 1.1 and 1.7 mg/m^3 of 2,4-dinitroaniline developed maternal and embryotoxicity, but no other developmental toxic effects were observed (Ref. 91). Pregnant rabbits exposed to DCNA showed no maternal toxicity or developmental toxicity at 1,000 ppm in diet (Ref. 92). A second teratology study of DCNA in rats is in progress (Ref. 84).

The data provide no basis to believe that these chemicals may present an unreasonable risk of adverse developmental effects at anticipated exposure levels, as available data show no developmental effects that occur at exposure levels at which some category members cause methemoglobinemia and manufacturers and processors control potential human exposure below the threshold for methemoglobinemia. Therefore, the Agency has concluded that additional information on the developmental effects of aniline and the substituted anilines is not necessary for risk assessment purposes at this time.

5. *Reproductive effects.* Aniline administered subcutaneously in female rats (average weight 150 grams) for seven days at 50 mg/day caused alterations in steroidal hormone levels of the *corpora luteum* (Ref. 93). 4-Nitroaniline administered by gastric intubation at dose levels of 0.25, 1.5 and 9.0 mg/kg/day to the F0 and F1 generation of male and female rats during pre-mating growth and through ensuing mating, gestation, and lactation intervals showed no significant adverse effect on mortality rates or body weights in the F0 and F1 generations (Ref. 94). In the F0 generation, the male fertility index and pregnancy rate for the high dose group were lower than control data; however, only for the pregnancy rate was this difference from the control group statistically significant. In the F1 generation, mating, pregnancy, and fertility indices were comparable between control and treated groups. No adverse effects of treatment were indicated during either generation in parturition or litter size data, pup weight date, pup survival, or sex distribution data or dead pup observations. Likewise, gross and histopathological evaluation of selected tissues from F1 and F2 pups or adults to include testes/epididymides of F0 males (high dose group) did not reveal an adverse effect. The recent chronic study using aniline has no mention of long-term effects on reproductive organs (Ref. 69). Chronic studies on 4-chloroaniline and 4-nitroaniline have no mention of effects on reproductive organs (Ref. 70 and 74). 4-Chloro-3-nitroaniline caused testicular effects in rats after subchronic oral exposure at 90 mg/kg/day, but the animals showed other toxicities as well (Ref. 82). The NOEL was reported as close to but below 3.6 mg/kg/day. The 3.6 mg/kg/day dose produced a minimal toxic response. A sperm morphology vaginal cytology (SMVCE) study of 4-nitroaniline reported no effects of the chemical on mouse estrous cycles but reduced sperm motility in mice at 100 mg/kg/day (Ref. 95). An SMVCE study of 4-chloro-2-nitroaniline reported no effects on reproductive parameters in male rats; however, the chemical appeared to interfere with the relative frequency of estrous stages (600 and 1,200 mg/kg/day) (Ref. 96). This effect is likely to be caused by alteration in hormonal activity. A three generation reproductive study of DCNA reported no effects on reproductive parameters in male or female rats at 100 ppm and 10 ppm in diet (Ref. 97).

The data provide no basis to believe that these chemicals may present an unreasonable risk of adverse reproductive effects at anticipated exposure levels, as available reproductive effects data show no reproductive effects that occur at exposure levels at which some category members cause methemoglobinemia and manufacturers and processors control potential human exposure below the threshold for methemoglobinemia. Therefore, the Agency has concluded

that additional information on the reproductive effects of aniline and the substituted anilines is not necessary for risk assessment purposes at this time.

6. *Mutagenic effects.* The following data were considered by EPA for evaluating the risk of mutagenic injury to human health from exposure to seven category members.

a. Aniline is reported to have negative results in the following gene mutation assays: *Salmonella, E. coli,* WP2 uvr A, and *Aspergillus* (Refs. 98 through 101). Aniline is positive for the L5178Y TK, ± mouse lymphoma gene mutation assay and negative for the *Drosophila* sex linked recessive lethal assay (SLRL) (Refs. 102 through 104). Aniline is negative for sister chromatid exchange in human lymphocytes, and negative for chromosomal aberrations in cultured Chinese hamster ovary cells (Refs. 105 and 106). Aniline caused an increased frequency of sister chromatid exchange (SCE) *in vivo* in mouse bone marrow cells and *in vitro* with Chinese hamster ovary cells (Refs. 107 and 108). Aniline also caused a slight increase in frequency of SCE's in cultured human fibroblasts (Ref. 109). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

b. 2-Chloroaniline is negative in the *Salmonella* gene mutation assay, and there are no data on cytogenetic effects of 2-chloroaniline (Ref. 110). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

c. 4-Chloroaniline is reported to have positive results in the following gene mutation assays; *Salmonella, E. coli* pol A, *Aspergillis* and L5178Y TKI± mouse lymphoma (Refs. 101 and 111 through 113). 4-Chloroaniline is positive for sister chromatid exchange and chromosomal aberration effects *in vitro* (Ref. 114). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

d. 3,4-Dichloroaniline is reported to have negative results in the *Salmonella* gene mutation assay and positive results in the *Aspergillus* gene mutation assay (Refs. 99 and 115). There are no data on the cytogenetic effects of 3,4-dichloroaniline. EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

e. 2-Nitroaniline is reported to have positive results in the *Salmonella* gene mutation assay; there are no data available on the cytogenetic effects of 2-nitroaniline (Ref. 116 and 118). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

f. 4-Nitroaniline is reported to have positive results in the *Salmonella* and L5178Y TK± mouse lymphoma assays and negative results in the *Drosophila* SLRL assay (Refs. 117, 119 and 122). 4-Nitroaniline is weakly positive for sister chromatid exchange and chromosomal aberration effects *in vitro* (Ref. 120). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

g. 2,4-Dinitroaniline is reported to have positive effects in the *Salmonella* gene mutation assay and is negative in the *Drosophila* SLRL assay (Refs. 116, 121, and 123). 2,4-Dinitroaniline is also being tested for *in vitro* cytogenetics effects (Ref. 120). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

V. Export Notification

The issuance of these Consent Orders subject any person who exports or intends to export aniline, 2-chloroaniline, 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, 4-nitroaniline, 2,4-dinitroaniline, and 2,6-dichloro-4-nitro-aniline to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR Part 707. EPA added and reserved subpart C of 40 CFR 799.5000 for a list of testing consent orders issued by EPA. This listing serves as notification to persons, who export or who intend to export chemical substances or mixtures which are the subject of testing consent orders, that 40 CFR Part 707 applies.

VI. Rulemaking Record

EPA has established a record for these Consent Orders (docket number OPTS-42054B). This record contains the basic information considered by the Agency in developing these Testing Consent Orders.

A. Supporting Documentation

(1) Testing Consent Orders between the five manufacturers/importers of aniline and the Agency.

(2) Testing Consent Orders between the four manufacturers/importers of seven substituted anilines and the Agency.

(3) **Federal Register** notices pertaining to this notice consisting of:

(a) Notice containing the designation of the Anilines Category to the Priority List (44 FR 107; June 1, 1979).

(b) Advance Notice of Proposed Rulemaking for the Anilines Category (49 FR 108; January 3, 1984).

(c) Notice soliciting interested parties for developing a Consent Order for Aniline and Seven Substituted Anilines (51 FR 28758; August 11, 1986).

(d) Notice of interim final rule on procedures for developing enforceable consent agreements (51 FR 23706; June 30 1986).

(4) Communications consisting of:

(a) Written letters.

(b) Contact reports telephone conversations.

(c) Meeting summaries.

(5) Reports—published and unpublished factual materials.

B. References

(1) LaRoe, Winn and Moerman, Counsel for Aniline Association. Comments of the Aniline Association on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Aniline Under section 4 of TSCA. (1984).

(2) Cleary, Gottlieb, Steen and Hamilton, Counsel for Substituted Anilines Task Force. Comments on Advance Notice of Proposed Rulemaking for Chloro-, Bromo-, and/or Nitroanilines, for the Substituted Anilines Task Force of Synthetic Organic Chemical Manufacturers Association. (1984).

(3) Sodyeco Inc. Comments of Sodyeco Inc. on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Anilines Under section 4 of TSCA. Letter of March 2, 1984 from B.W. Drum to TSCA Public Information Office.

(4) Eastman Kodak Company. Comments of Eastman Kodak on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Aniline Under section 4 of TSCA. Letter of March 2, 1984 from R.F. Brothers to TSCA Public Information Office.

(5) Upjohn Company. Aniline and Chloro-, Bromo- and/or Nitroanilines; Response to the Interagency Testing Committee by Upjohn Company. Letter of February 28, 1984 from J.S. Mehring to TSCA Public Information Office.

(6) Cleary, Gottlieb, Steen and Hamilton. Comments on Advance Notice of Proposed Rulemaking for Chloro-, Bromo-, and/or Nitroanilines (Appendix A. Confidential Business Information) for the Substituted Anilines Task Force of the Synthetic Organic Chemical Manufacturers Association. (1984).

(7) LaRoe, Winn and Moerman. Comments of the Aniline Association on the need for additional testing of aniline under section 4 of TSCA. From: Aniline Association, August 26, 1983.

(8) Cleary, Gottlieb, Steen and Hamilton. Information relevant to EPA's determination of whether to require additional health or environmental effects testing of the substituted anilines under section 4 of TSCA. From: Substituted Anilines Task Force of the Synthetic Organic Chemical Manufacturers Association, July 18, 1983. (Appendix A. Confidential Business Information).

(9) Cleary, Gottlieb, Steen and Hamilton. Information relevant to EPA's determination of whether to require additional health or environmental effects testing of the substituted anilines under section 4 of TSCA. From: Substituted Anilines Task Force of the Synthetic Organic Chemical Manufacturers Association, July 18, 1983

(10) SOCMA. Synthetic Organic Chemical Manufacturers Association. Letter from A. Rautio of Synthetic Organic Chemical Manufacturers Association to M. McCommas, Office of Toxic Substances. USEPA. (Confidential Business Information). (1985).

(11) SOCMA. Letter from A. Rautio of Synthetic Organic Chemical Manufacturers Association to M. McCommas, Office of Toxic Substances, USEPA. (1985).

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Confidential Business Information, while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Room. NE–G004, 401 M Street., SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 799

Testing, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 8, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 40—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding the following chemical substances in Chemical Abstract Service (CAS) Registry Number order to the table, to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS No. and substance or mixture name	Testing	Federal Register citation
62–53–3 Aniline	Health effects	(Insert FR date)
	Environmental effects.	Do.
88–74–4 2-Nitroaniline.	Health effects	Do.
95–51–2 2-Chloroaniline.	Health effects	Do.
	Environmental effects.	Do.
95–76–1 3,4-Dichloroaniline.	Health effects	Do.
97–02–9 2,4-Dinitroaniline.	Health effects	Do.
99–30–9 2,6-Dichloro-4-nitro-aniline.	Environmental effects.	Do.
100–01–6 4-Nitroaniline.	Health effects	Do.
106–47–8 4-Chloroaniline.	Health effects	Do.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42054A; FRL-3431-8]

Termination of Rulemaking for Certain Chemicals in the Anilines Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of termination of rulemaking.

SUMMARY: This notice announces EPA's decision to terminate rulemaking for certain members of the anilines category (aniline, and chloro-, bromo-, and/or nitro-anilines) designated by the Interagency Testing Committee (ITC) for priority testing. EPA, at this time, is terminating rulemaking proceedings for health effects testing of 13 member chemical substances ("chemicals") because there is no basis for a finding that any of these chemicals may present an unreasonable risk of injury to human health and because there is no substantial or significant human exposure to these chemicals. EPA is terminating rulemaking for environmental effects testing of 17 member chemicals because there is no basis for a finding that the chemicals may present an unreasonable risk of injury to the environment, because there is no substantial release to the environment of these chemicals, or because adequate data are available. However, elsewhere in this issue of the **Federal Register**, EPA is announcing that eight additional category members are being tested for health and/or environmental effects, under Testing Consent Orders.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 3, 1984 (49 FR 108), EPA issued an Advance Notice of Proposed Rulemaking under section 4(a) of TSCA to obtain data to help determine the potential risk of the anilines category to human health and the environment. The Agency is now issuing a decision not to require testing of 13 category members for health effects testing and 17 category members for environmental effects testing.

I. Background

Section 4(a) of TSCA authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances and mixtures in order to develop data necessary to determine the risk chemicals present to human health and the environment. Section 4(e) of TSCA established the Interagency Testing Committee (ITC) to recommend chemicals to the Administrator of EPA for consideration for test rules under section 4(a).

In the ITC's Fourth Report to the Administrator, published in the **Federal Register** of June 1, 1979 (44 FR 31866), the Committee designated the anilines category for consideration of human health and environmental effects testing. The ITC defined the anilines category as: "Aniline and aniline substituted in one or more positions with a chloro, bromo, or nitro group or any combination of one or more of these substituent groups."

The ITC listed 19 chemicals in the category but instructed that the category not be limited to the 19 listed. EPA identified 20 chemicals within the ITC's category definition that were in production in 1982.

The ITC recommended human health and environmental effects testing in general because the high production volumes of category members suggested a potential for significant human exposure and environmental release. The ITC recommended testing for chronic health effects with emphasis on blood and nervous system disorders because most category members probably have the ability to induce methemoglobinemia and because humans are particularly sensitive to compounds that induce methemoglobinemia. The ITC recommended testing for teratogenicity because sustained methemoglobinemia may have adverse effects on the fetus and embryo of exposed pregnant women. The ITC recommended testing for carcinogenicity because aniline has been reported to be carcinogenic in male rats and other category members have a high suspicion of carcinogenicity. The ITC recommended testing for mutagenic effects because some members have been reported to be mutagenic and these results raise a suspicion for untested members. The ITC also recommended epidemiology studies to assess the possible adverse, chronic health effects, where there is or has been significant human exposure, because there is no information on the chronic effects produced in humans exposed to members of the category.

The ITC recommended environmental effects testing because occurrences of residues and persistence in soil and water for some category members suggested a continuous and highly dispersive discharge into the environment and available data raised a concern for the ability of members to produce adverse environmental effects. The ITC recommended chemical fate testing because of suspected environmental effects and because there are conflicting reports of the ability of animals, plants, and microbes to metabolize and tolerate these chemicals.

EPA's response to this designation was published in the **Federal Register** of January 3, 1984 (49 FR 108) as an Advance Notice of Proposed Rulemaking (ANPR) for the anilines category. In the ANPR, EPA: (1) Identified 20 individual chemicals in production in 1982, (2) presented a profile of the available health and environmental effects information on the chemicals, (3) indicated tentative gaps in the available health and environmental effects information, and (4) proposed for public comment an approach by which tests would be performed on category members chosen to represent small groups (subgroups) of category members instead of considering testing all category members. The ANPR named six subcategories (aniline, monochloroanilines, polychloroanilines, mononitroanilines, polynitroanilines, and halonitroanilines) and seven representative subcategory members (aniline; 4-chloroaniline; 3,4-dichloroaniline; 4-nitroaniline; 2,4-dinitroaniline; 2-chloro-4-nitroaniline; and 2-bromo-4,6-dinitroaniline) for possible health and environmental effects testing consideration.

II. Public Response to ANPR

EPA received comments and information from the Aniline Association (AA) and the Substituted Anilines Task Force (SATF) of the Synthetic Organic Chemical Manufacturers Association, and comments from Sodyeco Inc., Eastman Kodak, and the Upjohn Company (Refs. 1 through 5). The AA and SATF provided results of surveys of processors and users to determine the potential for human exposure and environmental release. The AA and SATF also provided additional data from manufacturers and processors on biological and workplace monitoring for human worker exposure. The exposure, release, and monitoring data were supplied by the SATF as confidential business information. The summary conclusions of the SATF and other comments were that: (1) The available data on potential human exposure, environmental release, and health and environmental effects of aniline and

substituted anilines would support neither a TSCA section 4(a)(1)(A) nor a section 4(a)(1)(B) finding to require further testing of anilines category members and, (2) the proposed testing will have such an adverse economic impact as to force the manufacturers of the dyes and pigments made from these intermediates to stop production in the United States. Industry toxicologists for the SATF commented that the substituted anilines should not be considered a single category for purposes of determining the need to test because the category members share no common health effect, and the category should include only those members for which a section 4(a) finding could be made. The SATF commented that structural and biological similarities among the members of three chemical groups—nitroanilines, chloroanilines, and halonitroanilines—may be sufficient to permit the selection of a representative test substance, the toxicity of which might be used to characterize other members of the group.

III. Decision Not To Continue Rulemaking

A. Environmental Effects

EPA has decided at this time not to continue rulemaking proceedings to require chemical fate or environmental effects testing of the 17 anilines category members listed in the following Table 1:

TABLE 1.—ANILINES CATEGORY MEMBERS DROPPED FROM CHEMICAL FATE OR ENVIRONMENTAL EFFECTS TESTING

CAS No.	Chemical name	Reason for dropping
108-42-9	3-Chloroaniline	(1)
106-47-8	4-Chloroaniline	(2)
608-27-5	2,3-Dichloroaniline	(1)
554-00-7	2,4-Dichloroaniline	(1)
95-82-9	2,5-Dichloroaniline	(1)
95-76-1	3,4-Dichloroaniline	(2)
634-93-5	2,4,6-Trichloroaniline	(1)
88-74-4	2-Nitroaniline	(2)
99-09-2	3-Nitroaniline	(1)
100-01-6	4-Nitroaniline	(2)
97-02-9	2,4-Dinitroaniline	(1)
121-87-9	2-Chloro-4-nitroaniline	(1)
6283-25-6	2-Chloro-5-nitroaniline	(1)
89-63-4	4-Chloro-2-nitroaniline	(1)
635-22-3	4-Chloro-3-nitroaniline	(1)
827-94-1	2,6-Dibromo-4-nitroaniline	(1)
1817-73-8	2-Bromo-4,6-dinitroaniline	(1)

[1] Little or no production and release.
[2] Using available data, EPA finds no indication of potential unreasonable risk.
[3] Data are adequate to reasonably determine or predict the potential for risk of injury to the environment.

Thirteen category members are not being proposed for testing at this time, because there is little or no production or importation of some of the compounds, and because the reported environmental release is judged to be insignificant for all 13 chemicals.

Because there is some manufacture and release of 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, and 4-nitroaniline, EPA has estimated the environmental risk potential of these chemicals, by comparing available aquatic vertebrate or invertebrate LC50's to site-specific predicted environmental concentrations (PECs) (Refs. 6 through 14). In general, if the median lethal concentration (LC50) for a chemical exceeds its predicted or measured environmental concentration by 3 orders of magnitude or exceeds 1 mg/L and the potential for the substance to bioconcentrate in tissues of aquatic organisms is low, i.e. Kow < 100, the Agency considers the substance to be of low priority for further aquatic toxicity testing or assessment. The factor of 3 orders of magnitude between the LC50 and PEC takes into account uncertainties related to interspecies variability and acute-to-chronic or lab-to-field effects extrapolations. Because the LC50's for 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, and 4-nitroaniline exceed the site-specific PECs for these category members by 3 orders of magnitude, or exceed 1 mg/L and the Kow values of these anilines are <100, EPA finds no indication of potential unreasonable risk. Furthermore, EPA believes that factors used in calculating the predicted environmental concentrations, such as assuming low flow conditions of a river and assuming that no biodegradation or adsorption occurs to remove these chemicals from the aquatic environment, are very conservative and provide an additional margin of confidence that current releases of these four category members present no unreasonable risk of injury to the environment. In addition, EPA finds that data on the environmental effects of 3,4-dichloraoniline are sufficient to reasonably determine or predict the potential for risk of injury to the environment (Refs. 7 through 10).

In summary, the ITC recommended chemical fate and environmental effects testing of the anilines category because high production volumes of some members suggested a potential for significant environmental exposure and a concern for potential persistence in soil and water and for members to produce adverse environmental effects. However, EPA concludes that available environmental effects data and confidential release data provided by manufacturers and processors of these substances do not support a TSCA section 4(a)(1)(A) finding that the anilines category members listed in Table 1 may present an unreasonable risk of injury to the environment. EPA also concludes on the basis of this information, some of which was unavailable to the ITC, that there is not sufficient environmental release to support a TSCA section 4(a)(1)(B) finding of substantial production and substantial release to the environment. Therefore, the Agency is not proposing chemical fate or environmental effects testing of the anilines category members, listed in Table 1, at this time.

EPA will monitor future manufacturing of these 17 chemicals through the section 8(b) TSCA Inventory Update Rule, 40 CFR 710, published in the **Federal Register** of June 12, 1986 (51 FR 21438), because some of the anilines category members for which testing is not being required cause toxic effects in aquatic organisms.

B. Health Effects

EPA has decided at this time not to continue rulemaking proceedings to require human health effects testing of the 13 anilines category members listed in the following Table 2:

TABLE 2.—ANILINES CATEGORY MEMBERS DROPPED FROM HEALTH EFFECTS TESTING

CAS No.	Chemical name
108-42-9	3-Chloroaniline
608-27-5	2,3-Dichloroaniline
554-00-7	2,4-Dichloroaniline
95-82-9	2,5-Dichloroaniline
634-93-5	2,4,6-Trichloroaniline
99-09-2	3-Nitroaniline
121-87-9	2-Chloro-4-nitroaniline
6283-25-6	2-Chloro-5-nitroaniline
89-63-4	4-Chloro-2-nitroaniline
635-22-3	4-Chloro-3-nitroaniline
99-30-9	2,6-Dichloro-4-nitroaniline
827-94-1	Dibromo-4-nitroaniline
1817-73-8	2-Bromo-4,6-dinitroaniline

EPA has assessed the potential risk of injury to human heatlh from exposure to chemicals in the anilines category, and EPA's evaluation indicates that a TSCA section 4(a)(1)(A) finding of "may present an unreasonable risk" cannot be supported for these 13 chemicals (Refs. 14 through 23).

The ITC based its recommendations for chronic health effects (with emphasis on blood and nervous system disorders) and teratogenic effects testing and for epidemiology studies of the anilines catgegory on the potential for some category members to cause methemoglobinemia in humans. The ITC recommended mutagenic and oncogenic

effects testing because some category members were reported to be oncogenic and/or mutagenic and these results raise a suspicion of these effects for untested members.

On the basis of information not available to the ITC on the number of workers potentially exposed, duration of potential exposure, and measured or estimated exposure levels, EPA has determined that there is no basis, at this time, to believe that these 13 chemicals may present an unreasonable risk for any of the effects recommended by the ITC because: (1) Very few workers are potentially exposed and the period for potential exposure is brief, (2) available health effects data for the anilines category members, listed in Table 2, report no chronic (including hematologic and neurotoxic), teratologic, or reproductive effects that occur below exposure levels that cause methemoglobinemia (concern for reporductive effects was raised by EPA in the ANPR), and (3) the manufacturers and processors control human exposure below the threshold for methemoglobinemia (and therefore for known chronic, teratologic, and reproductive health effects of the anilines category) (Refs. 14 and 16). Epidemiology studies are not necessary at this time because reported worker exposure levels are below the concentrations that are likely to cause health effects from exposure to methemoglobinemia-producing compounds. In addition, EPA finds the data (currently available or required under an EPA Office of Pesticide Programs Registration Standard) on the chronic, teratologic, and reproductive effects of 2,6–dichloro–4–nitroaniline are sufficient to determine or predict the risk of injury to human health for these effects (Ref. 17).

In summary, the ITC recommended testing of anilines for chronic effects, and teratologic, oncogenic, and mutagenic effects, and EPA raised a possible concern for reproductive effects; however, EPA concludes that available health effects and confidential occupational exposure information provided by manufacturers and processors of substituted anilines, some of which was not available to the ITC, does not support a TSCA section 4(a)(1)(A) finding that the 13 category members, listed in Table 2, may present an unreasonable risk of injury to human health. EPA also concludes on the basis of this information that there is not sufficient human exposure to support a TSCA section 4(a)(1)(B) finding for health effects. Therefore, the Agency is not proposing health effects testing for the substituted anilines listed in Table 2 at this time.

EPA will monitor future manufacturing of these 13 chemicals through the section 8(a) TSCA Inventory Update Rule, 40 CFR Part 710, published in the **Federal Register** of June 12, 1986 (51 FR 21438), because some of the anilines category members for which testing is not being required cause toxic effects in laboratory animals.

IV. Public Record

EPA has established a public record for this decision not to test under section 4 of TSCA (docket number OPTS–42054A). This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notice designating the Anilines category to the priority list (44 FR 107; June 1, 1979), and all comments received thereon.

(2) Advance Notice of Proposed Rulemaking for the Anilines Category (49 FR 108; January 3, 1984).

(3) Partial Update of TSCA Inventory Database; Production and Site Reports. Final Rule. (51 FR 21438; June 12, 1986).

(4) Communications consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(5) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) LaRoe, Winn and Moerman, Counsel for Aniline Association. Comments of the Aniline Association on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Aniline Under Section 4 of TSCA. (1984).

(2) Cleary, Gottlieb, Steen and Hamilton, Counsel for Substituted Anilines Task Force. Comments on Advance Notice of Proposed Rulemaking for Chloro-, Bromo-, and/or Nitroanilines, for the Substituted Anilines Task Force of Synthetic Organic Chemical Manufacturers Association. (1984).

(3) Sodyeco Inc. Comments of Sodyeco Inc. on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Anilines Under Section 4 of TSCA. Letter of March 2, 1984 from B.W. Drum to TSCA Public Information Office.

(4) Eastman Kodak Company. Comments of Eastman Kodak on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Aniline Under Section 4 of TSCA. Letter of March 2, 1984 from R.F. Brothers to TSCA Public Information Office.

(5) Upjohn Company. Aniline and Chloro-, Bromo- and/or Nitroanilines; Response to the Interagency Testing Committee by Upjohn Company. Letter of February 28, 1984 from J.S Mehring to TSCA Public Information Office.

(6) Monsanto Chemical Company. "Acute toxicity of 4-chloroaniline to *Daphnia magna.*" Conducted by Analytical Biochemistry Laboratories. Unpublished company data. (1979).

(7) Adema, D.M. and Vink, G.J. "A comparative study of the toxicity of 1,1,2-trichloroethane, dieldrin, pentachlorophenol, and 3,4-dichloro-aniline for marine and freshwater organisms." *Chemosphere* 10: 533–554. (1981).

(8) Crossland, N.O. and Hillaby, J.M. "3,4-Dichloroaniline: Chronic toxicity to *Daphnia magna.*" Shell Research Limited, Sittingbourne Research Center, Sittingbourne, Kent, England. Unpublished company data. (1983).

(9) Hillaby, J.M. and Crossland, N.O. "3,4–Dichloroaniline: Acute toxicity to *Daphnia magna* and *Selenastrum capricornutum.*" Shell Research Limited, Sittingbourne Research Center, Sittingbourne, Kent, England. Unpublished company data. (1983).

(10) USEPA. U.S. Environmental Protection Agency. Testing results report of USEPA Environmental Research Laboratory, Duluth, MN. (1985).

(11) Schulz, T.W. and Applehans, F.M. "Correlations for the acute toxicity of multiple nitrogen substituted aromatic molecules." *Ecotoxicology and Environmental Safety* 10: 75–85. (1985).

(12) Monsanto Chemical Company. "Acute toxicity of 3,4–dichloroaniline to *Daphnia magna.*" Conducted by Analytical Biochemistry Laboratories. Unpublished company data. (1979).

(13) USEPA. Predicted environmental concentrations for selected substituted anilines. Confidential Business Information, prepared by M. McCommas, Test Rules Development Branch, Office of Toxic Substances. (1985).

(14) Cleary, Gottlieb, Steen and Hamilton. Comments on Advance Notice of Proposed Rulemaking for Chloro-, Bromo-, and/or Nitroanilines (Appendix A. Confidential Business Information) for the Substituted Anilines Task Force of the Synthetic Organic Chemical Manufacturers Association. (1984).

(15) Reynolds, W.P., Roell, M.G. and Fleming, J.J. "Methemoglobin inducing potential of various substituted anilines in rats." Toxicology Section of Hoechst-Roussel Pharmaceuticals Incorporated) Somerville, NJ. Unpublished company data. (1984).

(16) OSHA. Occupational Safety and Health Administration. OHDS-4 Health Sampling Report for Aniline (Substance Code 0220) for Period June 1979 through May 1983. U.S. Department of Labor, Washington, DC. (1979).

(17) USEPA. Office of Pesticides Programs. Registration Standard for 2,6-Dichloro-4-nitroaniline. (1984).

(18) Donoghue, J.L. "Subchronic oral toxicology of 4-chlor-3-nitroaniline in the rat." Toxicological Sciences Health and Environmental Laboratories, Eastman Kodak Company, Rochester, NY. Unpublished company data. (1983).

(19) Chopade, H.M. and Matthews, H.B. "Disposition and metabolism of 4-chloro-2-nitroaniline in the male F344 rat." *Journal of Toxicology and Environmental Health* 12:267-282. (1983).

(20) Chopade, H.M. and Matthews, H.B. "Disposition and metabolism of 2-bromo-4, 6-

dinitroaniline in the male F344 rat." *Journal of Toxicology and Environmental Health.* (1984).

(21) Weisburger, E.K., Russfield, A.B., Homburger, F. et al. "Testing of 21 environmental aromatic amines or derivatives for long term toxicity or carcinogenicity." *Journal of Environmental Pathology and Toxicology* 2:235-256. (1978).

(22) NIEHS. National Institute of Environmental Health Sciences. SMVCE report on 4-chloro-2-nitroaniline. Conducted by Litton Bionetics for N. Lamb, Environmental Health Research and Testing Laboratory, Durham, NC. (1984).

(23) NTP. Status of Chemicals in NTP Toxicological studies. (1985).

This record includes basic information considered by the Agency in developing this notice. Confidential business information (CBI), while part of the record, is not available for public review. A public version of the record from which CBI has been deleted is available for inspection in the TSCA Public Docket Office, Room, Rm. NE-G004, 401 M St., SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Agency will supplement the record periodically with additional relevant information received.

Authority: 15 U.S.C. 2603.

Dated: August 8, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

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Part III

Department of Education

34 CFR Part 31

Salary Offset for Federal Employees Who are Indebted to the United States Under Programs Administered by the Secretary of Education; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 31

Salary Offset for Federal Employees Who are Indebted to the United States Under Programs Administered by the Secretary of Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education (Secretary) amends regulations governing the use of offset against current pay accounts of Federal employees and payments due from the accounts of former employees under Civil Service Retirement System or the Federal Employees Retirement System to recover amounts owed on debts arising under programs administered by the Secretary. The amendments simplify the procedure used to provide the employee notice of the proposed offset, as well as the procedures used to permit an employee to inspect records relating to the debt, to secure a hearing on the debt or proposed offset schedule, and to enter into a repayment agreement for the debt in order to avoid collection by offset.

EFFECTIVE DATES: These regulations take effect September 19, 1988, pursuant to 5 U.S.C. 553. The provisions of §§ 31.6 through 31.10 of these final regulations apply to any employee who, on the effective date of these regulations, had not yet received a hearing requested in accordance with the requirements of 34 CFR 31.6(a) of current regulations.

FOR FURTHER INFORMATION CONTACT: Jim Nielson, U.S. Department of Education, Office of Management, Room 3017, FOB 6, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone number (202) 732–4194.

SUPPLEMENTARY INFORMATION: The Secretary amends the rules governing the collection of debts arising under programs administered by the Department of Education by offset against payments of salary of a Federal employee, or against amounts payable to a former Federal employee or the beneficiary of such an employee from an account under the Civil Service Retirement System or Federal Employee Retirement System, referred to generally in the rules as the Federal retirement account of the employee. These rules simplify and expedite the current salary offset procedures by making them more consistent with those used under Part 30 for collection by offset against Federal income tax refunds. The revised regulations are consistent with the requirements of the Debt Collection Act and of government-wide regulations issued by the Office of Personnel Management (OPM), except that employees are given 65 days to respond to the pre-offset notice, rather than the 30 days required under the Act and under OPM rules.

The rationale for the adoption of these rules is stated in the preamble to the Notice of Proposed Rulemaking, at 53 FR 15336–15337. With minor exceptions, the final regulations are those rules described in the NPRM; that rationale is therefore adopted here by reference.

Only one written comment was received in response to the NPRM. The commenter, an institution participating in the Perkins Loan Program under title IV part E of the Higher Education Act of 1965, as amended, suggested that the Secretary assist institutions of higher education in collecting defaulted Perkins loans held by the institutions by salary offset under these rules. Perkins loans are made by institutions from a fund composed of Federal and institutional capital contributions, and the Department has an equitable interest in these loans; however, the loans are payable to the institution, and the United States has no right to payment on its own account unless the institution relinquishes its interest in the loan and assigns the loan to the Department. Because the statute authorized salary offset only to collect debts to which the United States is entitled to be repaid, 5 U.S.C. 5514(a)(1), the Secretary declines to adopt the suggested use of salary offset for loans not yet assigned to the Department.

The Secretary has revised §§ 31.4(c), 31.5(a)(2), and 31.10(c) slightly to clarify the effect of a failure by the employee to meet deadlines in this part. First, these changes clarify that the Department provides the documents, hearing, or opportunity to resolve payment of the debt by agreement to any employee who so requests, whether or not the request is made within the deadlines in this part. Second, consistent with 5 CFR 550.1104(d)(9), if the employee makes a request for a hearing after the deadlines in these regulations, the Department delays the start of an offset, or suspends an offset already commenced, only if the employee provides proof satisfactory to the Department that the employee lacked notice of the proposed offset, or that factors beyond the control of the employee prevented him or her from making the request for a hearing, until the deadline had passed. However, the Department will routinely send pre-offset notices both to the residence and the work address of the employee. Therefore, a debtor currently employed by a Federal agency who claims lack of notice must demonstrate more than a mere change of home address in order to show that delay or suspension of the offset is justified. The Secretary has adopted a sixty-five day period for requesting a hearing, more than twice as long as that mandated in the statute and in OPM rules, in order to minimize the likelihood that factors over which the employee may lack control, including misrouted or delayed mail, illness, or absence from one's residence on travel or vacation, would significantly prejudice the ability to make a timely request for a hearing. The Secretary therefore expects that only in the most unusual circumstances will he exercise this discretion to defer or suspend an offset for an employee who does not request relief in a timely manner under these rules.

The Secretary reconsidered the provision of § 31.5.(d) of the NPRM that would have required employees who were offered oral hearings to confirm within ten days of the date of the offer that they would appear for a scheduled hearing; this period has been lengthened in this final rule to allow 15 days for employees to confirm their intention to appear. 34 CFR 31.5(d). In addition, the Secretary has adopted, for consistency, the definition of agency used in the OPM regulations, 5 CFR 550.1103, and made conforming revisions to the definitions of agency and employee in these rules. 34 CFR 31.2.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities, because they would affect only individuals, who are not included within the definition of "small entities" in the Regulatory Flexibility Act.

List of Subjects in 34 CFR Part 31

Claims, Debt collection.

Dated: July 1, 1988.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 31 of Title 34 of the Code of Federal Regulations to read as follows:

PART 31—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES UNDER PROGRAMS ADMINISTERED BY THE SECRETARY OF EDUCATION

Sec.

31.1 Scope.
31.2 Definitions.
31.3 Pre-offset notice.
31.4 Request to inspect and copy documents relating to a debt.
31.5 Request for hearing on the debt or the proposed offset.
31.6 Location and timing of oral hearing.
31.7 Hearing procedures.
31.8 Rules of decision.
31.9 Decision of the hearing official.
31.10 Request for repayment agreement.
31.11 Offset process.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3716.

§ 31.1 Scope.

(a) *General.* The Secretary establishes the standards and procedures in this part that apply to the offset from disposable pay of a current or former Federal employee or from amounts payable from the Federal retirement account of a former Federal employee to recover a debt owed the United States under a program administered by the Secretary of Education.

(b) *Exclusions.* This part does not apply to—

(1) Offsets under 34 CFR Part 32 to recover for overpayments of pay or allowances to an employee of the Department;

(2) Offsets under 34 CFR Part 30; or

(3) Offsets under Sec. 124 of Pub. L. 97–276 to collect debts owed to the United States on judgments.

(c) *Reports to consumer reporting agency.* The Secretary may report a debt to a consumer reporting agency after notifying the employee, in accordance with 34 CFR 30.35, of the intention to report the debt, and after providing the employee an opportunity to inspect documents, receive a hearing, and enter into a repayment agreement under this part.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3711; 31 U.S.C. 3716)

§ 31.2 Definitions

As used in this part:

"Agency" means—

(1) An Executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court in the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Any other independent establishment that is an entity of the Federal Government.

"Days" refer to calendar days.

"Department" means the Education Department.

"Disposable pay" means the amount that remains from an employee's pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for basic life insurance and health insurance benefits; and such other deductions that are required by law to be withheld.

"Employee" means a current or former employee of an agency. In the case of an offset proposed to collect a debt owed by a deceased employee, the references in this part to the employee shall be read to refer to the payee of benefits from the Federal retirement account or other pay of the employee.

"Federal retirement account" means an account of an employee under the Civil Service Retirement System or the Federal Employee Retirement System.

"Offset" means a deduction from the pay of an employee, or a payment due from the Federal retirement account of an employee, to satisfy a debt.

"Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay, including severance pay or lump sum payments for accrued annual leave, and amounts payable from the Federal retirement account of an employee.

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 30.3 Pre-offset notice.

(a) At least 65 days before initiating an offset against the pay of an employee, the Secretary sends a written notice to the employee stating—

(1) The nature and amount of the debt;

(2) A demand for payment of the debt;

(3) The manner in which the Secretary charges interest, administrative costs, and penalties on the debt;

(4) The Secretary's intention to collect the debt by offset against—

(i) 15 percent of the employee's current disposable pay; and

(ii) If the debt cannot be satisfied by offset against current disposable pay, a specified amount of severance pay, a lump sum annual leave payment, a final salary check, or payments from the Federal retirement account of the employee;

(5) The amount, frequency, approximate beginning date and duration of the proposed offset;

(6) The employee's opportunity to—

(i) Inspect and copy Department records pertaining to the debt;

(ii) Obtain a pre-offset hearing before a hearing official who is not under the control or supervision of the Secretary regarding the existence or amount of the debt, or the proposed offset schedule; and

(iii) Enter into a written agreement with the Secretary to repay the debt;

(7) The date by which the employee must request an opportunity set forth under paragraph (a)(6) of this section;

(8) The grounds for objecting to collection of the debt by offset;

(9) The applicable hearing procedures and requirements;

(10) That the Secretary grants any request for access to records, for a hearing, or for a satisfactory repayment agreement made by an employee;

(11) That the Secretary does not delay the start of the proposed offset, or suspend an offset already commenced, unless—

(i) An employee makes the request for access to records or for a hearing, or enters into a repayment agreement that is acceptable to the Secretary, before the deadlines described in this part; or

(ii) An employee requests a hearing after the deadlines established in § 31.5(a), but submits evidence satisfactory to the Secretary that the request was not made in a timely manner because the employee did not have notice of the proposed offset, or was prevented from making the request by factors beyond his or her control, until after the deadlines had passed;

(12) That a final decision on the hearing will be issued not later than 60 days after the date on which the employee files a request for a hearing under § 31.5, unless a delay in the proceedings is granted at the request of the employee;

(13) That submission by the employee of knowingly false statements, representations or evidence may subject the employee to applicable disciplinary procedures, or civil or criminal penalties; and

(14) That any amounts paid or collected by offset on a debt later determined to be unenforceable or canceled will be refunded to the employee.

(b)(1) In determining whether an employee has requested an opportunity set forth under paragraph (a)(6) of this

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section in a timely manner, the Secretary relies on—

(i) A legibly dated U.S. Postal Service postmark for the employee's request; or

(ii) A legibly stamped U.S. Postal Service mail receipt for the employee's request.

(2) The Secretary does not rely on either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

(c) Payment by offset under this part of all or part of a debt does not constitute an acknowledgment of the debt or a waiver of rights available to the employee under this part or other applicable law if the employee has not agreed in writing to the offset.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.4 Request to inspect and copy documents relating to a debt.

(a) The Secretary makes available for inspection and copying before offset under this part those Department documents that relate to the debt, if the employee—

(1) Files a written request to inspect and copy the documents within 20 days of the date of the pre-offset notice under § 31.3, and

(2) Files the request at the address specified in that notice.

(b) A request filed under paragraph (a)(1) of this section must contain—

(1) All information provided to the employee in the pre-offset notice under § 31.3 that identifies the employee and the debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections of that identifying information; and

(2) A reasonably specific identification of the documents that the employee wishes to have available for inspection and copying.

(c) The Secretary makes available documents for inspection and copying upon request by the employee. However, the Secretary may initiate an offset before making the requested documents available if the employee fails to request inspection and copying in accordance with this section.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.5 Request for hearing on the debt or the proposed offset.

(a) *Deadlines.* (1) The Secretary provides a hearing before offset on the existence, amount, or enforceability of the debt described in the pre-offset notice provided under § 31.3, or on the amount or frequency of the offsets as proposed in that notice, if the employee—

(i) Files a request for the hearing within the later of—

(A) 65 days after the date of the pre-offset notice provided under § 31.3; or

(B) 15 days after the date on which the Secretary makes available to the employee the relevant, requested documents if the employee had requested an opportunity to inspect and copy documents within 20 days of the date of the pre-offset notice provided under § 31.3; and

(ii) Files a request at the address specified in that notice.

(2) The Secretary provides a hearing upon request by the employee. However, if the employee does not submit, within the deadlines in paragraph (a)(1) of this section, a request that meets the requirements of paragraphs (b) and (c) of this section, the Secretary does not delay the start of an offset, or suspend an offset already commenced, unless the employee submits evidence satisfactory to the Secretary that the request was not made in a timely manner because the employee did not have notice of the proposed offset, or was otherwise prevented from making the request by factors beyond his or her control, until after the deadlines had passed.

(b) *Contents of request for a hearing.* A request for a hearing must contain—

(1) All information provided to the employee in the pre-offset notice under § 31.3 that identifies the employee and the particular debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections needed with regard to that identifying information;

(2) An explanation of the reasons why the employee believes that—

(i) The debt as stated in the pre-offset notice is not owing or is not enforceable by offset; or

(ii) The amount of the proposed offset described in the pre-offset notice will cause extreme financial hardship to the employee;

(3) If the employee contends that the amount of the proposed offset will cause extreme financial hardship under the standards set forth in § 31.8(b)—

(i) An alternative offset proposal;

(ii) An explanation, in writing, showing why the offset proposed in the notice would cause an extreme financial hardship for the employee; and

(iii) Documents that show for the employee and for the spouse and dependents of the employee, for the one-year period preceding the Secretary's notice and for the repayment period proposed by the employee in his or her offset schedule—

(A) Income from all sources,

(B) Assets,

(C) Liabilities,

(D) Number of dependents,

(E) Expenses for food, housing, clothing, and transportation,

(F) Medical expenses, and

(G) Exceptional expenses, if any; and

(4) Copies of all documents that the employee wishes to have considered to support the objections raised by the employee regarding the enforceability of the debt or the claim of extreme financial hardship.

(c) *Request for oral hearing.* (1) If the employee wants the hearing to be conducted as an oral hearing, the employee must submit a request that contains the information listed in paragraph (b) and must include with the request—

(i) An explanation of reasons why the employee believes that the issues raised regarding the enforceability of the debt or a claim of extreme financial hardship cannot be resolved adequately by a review of the written statements and documents provided with the request for a hearing;

(ii) An identification of—

(A) The individuals that the employee wishes to have testify at the oral hearing;

(B) The specific issues about which each individual is prepared to testify; and

(C) The reasons why each individual's testimony is necessary to resolve the issue.

(2) The Secretary grants a request for an oral hearing if—

(i) The employee files a request for an oral hearing that meets the requirements of paragraphs (b) and (c) of this section; and

(ii) The Secretary determines that the issues raised by the employee require a determination of the credibility of testimony and cannot be adequately resolved by a review of the written statements and documents submitted by the employee and documents contained in the Department's records relating to the debt.

(3) The Secretary may decline a request for an oral hearing if the Secretary accepts the employee's proffer of testimomy made in the request for an oral hearing under paragraph (c)(1) of this section, and considers the facts at issue to be established as stated by the employee in the request.

(4) If the Secretary grants a request for an oral hearing, the Secretary—

(i) Notifies the employee in writing of—

(A) The date, time, and place of the hearing;

(B) The name and address of the hearing official;

(C) The employee's right to be represented at the hearing by counsel or other representatives;

(D) The employee's right to present and cross-examine witnesses; and

(E) The employee's right to waive the requested oral hearing and receive a hearing in the written record; and

(ii) Provides the hearing official with a copy of all written statements submitted by the employee with the request for a hearing, and all documents pertaining to the debt or the amount of the offset contained in the Department's files on the debt or submitted with the request for a hearing.

(d) *Employee choice of oral hearing or hearing on written submissions.* An employee who has been sent notice under paragraph (c)(4) that an oral hearing will be provided must, within 15 days of the date of that notice, state in writing to the hearing official and the Secretary—

(1) Whether the employee intends to proceed with the oral hearing, or wishes a decision based on the written record; and

(2) Any changes in the list of the witnesses the employee proposes to produce for the hearing, or the facts about which a witness will testify.

(e) *Dismissal of request for hearing.* The Secretary considers the employee to have waived the request for a hearing of any kind—

(1) If an employee does not provide the hearing official in a timely manner the written statement required under paragraph (d) of this section; or

(2) If the employee does not appear for a scheduled oral hearing.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.6 Location and timing of oral hearing.

(a) If the Secretary grants a request for an oral hearing, the Secretary selects the time, date, and location of the hearing. The Secretary selects, to the extent feasible, the location that is most convenient for the employee.

(b) For a current military employee, the Secretary selects the time, date, and location of the hearing after consultation with the Secretary of Defense.

(c) For a current Coast Guard employee, the Secretary selects the time, date, and location of the hearing after consultation with the Secretary of Transportation.

(d) For an employee not described in paragraph (a) or (b) of this section, the hearing will be held in Washington, DC, or in one of the following cities: Boston, Philadelphia, New York, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, or Seattle.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.7 Hearing procedures.

(a) *Independence of hearing official.* A hearing provided under this part is conducted by a hearing official who is neither an employee of the Department nor otherwise under the supervision or control of the Secretary.

(b) *Lack of subpoena authority or formal discovery.* (1) Neither the hearing official nor the Secretary has authority to issue subpoenas to compel the production of documents or to compel the attendance of witnesses at an oral hearing under this part. The Secretary will attempt to make available during an oral hearing the testimony of a current official of the Department if—

(i) The employee had identified the official in the request for a hearing under § 31.5(b) and demonstrated that the testimony of the official is necessary to resolve adequately an issue of fact raised by the employee in the request for a hearing; and

(ii) The Secretary determines that the responsibilities of the official permit his or her attendance at the hearing.

(2) If the Secretary determines that the testimony of a Department official is necessary, but that the official cannot attend an oral hearing to testify, the Secretary attempts to make the official available for testimony at the hearing by means of a telephone conference call.

(3) No discovery is available in a proceeding under this part except as provided in § 31.4.

(c) *Hearing on written submissions.* If a hearing is conducted on the written submissions, the hearing official reviews documents and responses submitted by the Secretary and the employee under § 31.5.

(d) *Conduct of oral hearing.* (1) The hearing official conducts an oral hearing as an informal proceeding. The official—

(i) Administers oaths to witnesses;

(ii) Regulates the course of the hearing;

(iii) Considers the introduction of evidence without regard to the rules of evidence applicable to judicial proceedings; and

(iv) May exclude evidence that is redundant, or that is not relevant to those issues raised by the employee in the request for hearing under § 31.5 that remain in dispute.

(2) An oral hearing is generally open to the public. However, the hearing official may close all or any portion of the hearing if doing so is in the best interest of the employee or the public.

(3) The hearing official may conduct an oral hearing by telephone conference call—

(i) If the employee is located in a city outside the Washington, D.C. Metropolitan area.

(ii) At the request of the employee.

(iii) At the discretion of the hearing official.

(4) No written record is created or maintained of an oral hearing provided under this part.

(e) *Burden of proof.* In any hearing under this part—

(1) The Secretary bears the burden of proving, by a preponderance of the evidence, the existence and amount of the debt, and the failure of the employee to repay the debt, as the debt is described in the pre-offset notice provided under § 31.3; and

(2) The employee bears the burden of proving, by a preponderance of the evidence—

(i) The existence of any fact that would establish that the debt described in the pre-offset notice is not enforceable by offset; and

(ii) The existence of any fact that would establish that the amount of the proposed offset would cause an extreme financial hardship for the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.8 Rules of decision.

(a) *Enforceability of debt by offset.* In deciding whether the Secretary has established that the debt described in the pre-offset under § 31.3 is owed by the employee, or whether the employee has established that the debt is not enforceable by offset, the hearing official shall apply the principles in this paragraph.

(1) The statutes and Department regulations authorizing and implementing the program under which the debt arose must be applied in accordance with official written interpretations by the Department.

(2) The principles of res judicata and collateral estoppel apply to resolution of disputed facts in those instances in which the debt or material facts in dispute have been the subject of prior judicial decision.

(3) The act or omission of an institution of higher education at which the employee was enrolled does not constitute a defense to repayment of an obligation with regard to a grant or loan under a program authorized under Title IV of the Higher Education Act or similar authority, except to the extent that—

(i) The act or omission constitutes a defense to the debt under applicable Federal or State law;

(ii) The institution owed the employee a refund under its refund policy and failed to pay that refund to the employee or to a lender holding a loan made to the employee; or

(iii) The institution ceased teaching activity while the employee was in

attendance and during the academic period for which the grant or loan was made, and failed to refund to the employee or holder of a loan to the employee a proportionate amount of the grant or loan funds used to pay tuition and other institutional charges for that academic period.

(4)(i) A debt otherwise established as owed by the employee is enforceable by offset under this part if the Secretary sends the pre-offset notice for the debt within the ten year period following the later of—

(A) The date on which the Secretary acquired the debt by assignment or referral, or

(B) The date of a subsequent partial payment reaffirming the debt.

(ii) Periods during which the statute of limitations applicable to a lawsuit to collect the debt has been tolled under 11 U.S.C. 108, 28 U.S.C. 2416, 50 U.S.C. App. 525, or other authority are excluded from the calculation of the ten year period described in paragraph (a)(4)(i) of this section.

(b) *Extreme financial hardship.* (1) In deciding whether an employee has established that the amount of the proposed offset would cause extreme financial hardship to the employee, the hearing official shall determine whether the credible, relevant evidence submitted demonstrates that the proposed offset would prevent the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his or her spouse and dependents.

(2) For purposes of this determination, essential subsistence expenses include costs incurred only for food, housing, clothing, essential transportation and medical care.

(3) In making this determination, the hearing official shall consider—

(i) The income from all sources of the employee, and his or her spouse and dependents;

(ii) The extent to which the assets of the employee and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses;

(iii) Whether these essential subsistence expenses have been minimized to the greatest extent possible;

(iv) The extent to which the employee and his or her spouse and dependents can borrow to satisfy the debt to be collected by offset or to meet essential expenses; and

(v) The extent to which the employee and his or her spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.9 Decision of the hearing official.

(a) The hearing official issues a written opinion within sixty days of the date on which the employee filed a request for a hearing under § 31.5, unless a delay in the proceedings has been granted at the request of the employee. In the opinion, the hearing official states his or her decision and the findings of fact and conclusions of law on which the decision is based.

(b) If the hearing official finds that a portion of the debt described in the pre-offset notice under § 31.3 is not enforceable by offset, the official shall state in the opinion that portion which is enforceable by offset.

(c) If the hearing official finds that the amount of the offset proposed in the pre-offset notice will cause an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time without producing an extreme financial hardship for the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.10 Request for repayment agreement.

(a) The Secretary does not initiate an offset under this part if the employee agrees in writing to repay the debt under terms acceptable to the Secretary and makes the first payment due under the agreement on or before the latest of—

(1) The seventh day after the date of the decision of the hearing official, if the employee timely requested a hearing under § 31.5 (a) and (d);

(2) The sixty-fifth day after the date of the pre-offset notice under § 31.3 if the employee did not timely request either a hearing in accordance with § 31.5 (a) and (d) or an opportunity to inspect and copy documents related to the debt under § 31.4; or

(3) The fifteenth day after the date on which the Secretary made available documents related to the debt, if the employee filed a timely request for documents under § 31.4.

(b) In the agreement, the Secretary and the employee may agree to satisfaction of the debt from sources other than an offset under this part, or may modify the amount proposed to be offset in the pre-offset notice or estimated in the decision of the hearing official.

(c) If the employee does not enter into a repayment agreement acceptable to the Secretary within the deadlines in this section, the Secretary may initiate an offset under this part. The Secretary continues to collect by offset until an employee enters in a satisfactory repayment agreement for the debt. The Secretary suspends an offset already commenced under circumstances described in § 31.5(a)(2).

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.11 Offset process.

(a) The Secretary attempts to collect debts under this part within the shortest time authorized under—

(1) The offset schedule proposed in the pre-offset notice, unless modified by agreement or by the decision of a hearing official;

(2) A written repayment agreement with the employee; or

(3) The offset schedule established in the decision of the hearing official.

(b) In proposing an offset schedule under § 31.3 or establishing a repayment agreement under § 31.10, the Secretary also considers the expected period of Federal employment of the employee.

(c) Unless the Secretary determines, in his discretion, to delay or suspend collection, the Secretary effects an offset under this part—

(1) According to the terms agreed to by the employee pursuant to a timely request under § 31.10 to enter into a repayment agreement; or,

(2) After the deadlines in § 31.10(b) for requesting a repayment agreement with the Secretary.

(d) If the employee retires, resigns, or leaves Federal employment before the debt is satisfied, the Secretary collects the amount necessary to satisfy the debt by offset from subsequent payments of any kind, including a final salary payment or a lump sum annual leave payment, due the employee on the date of separation. If the debt cannot be satisfied by offset from any such final payment due the employee on the date of separation, the Secretary collects the debt from later payments of any kind due the employee in accordance with the provisions of 4 CFR 102.4.

(e) The Secretary effects an offset under this part against payments owing to an employee of another Federal agency after completion of the requirements of this part, in accordance with the provisions of 5 CFR 550.1108.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Doc. No. 5770S]

General Administrative Regulations; Standards for Approval; Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith amends the General Administrative Regulations; Standards for Approval; Standard Reinsurance Agreement (7 CFR Part 400, Subpart L), effective for the 1988 and succeeding crop years, by providing a time frame in which to file a request for a reconsideration of any dispute arising under this Subpart and the Standard Reinsurance Agreement entered into by the Reinsured Company and FCIC prior to a final decision on such dispute, and by delegating the authority for such decisions to the Deputy Manager, FCIC. The intent of this rule is to: (1) Provide forty five days in which a Company may file a request for reconsideration of an initial determination by FCIC which the Company disputes, before a final decision is made in the matter; and (2) delegeting authority for decisions in these matters to the Deputy Manager, FCIC.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1991.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the prior provisions of 7 CFR 400.149, any dispute arising between the company and the Corporations under the provisions of the Standards for Approval of the Reinsurance Agreement or the Agreement itself, must be submitted for decision to the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. The Manager's decision in matters of dispute is final unless the Company requests reconsideration in writing within forty five days of the receipt of the decision.

This provision makes no allowance for the Company to review a determination by FCIC which the Company disputes *prior* to the decision by the Manager. Disputes should be resolved in a timely fashion following review and reconsideration. Under the present provision, excessive delays are being experienced prior to the decision made by the Manager.

In order for the Company to be able to review any finding by FCIC which has the potential of becoming a dispute, FCIC has determined that this provision should be amended to provide the Company forty five days from the date of notification to the Company of the finding being disputed in which to file a request for reconsideration. Further, when FCIC advises the Company of its final determination, the letter of advice will state that the Company has forty five days in which to file such a request, and to whom the request should be addressed. If the Company fails to file a request for reconsideration within forty five days, FCIC will presume the Company agrees with the determination and does not seek review.

In addition, FCIC has determined that, under the authority of the Manager to redelegate authority, requests for reconsideration will be addressed to the Deputy Manager, FCIC, and that the decision of the Deputy Manager in these matters will be final.

On Thursday, May 24, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 18571, proposing to amend the General Administrative Regulations; Standards for Approval; Standard Reinsurance Agreement (7 CFR Part 400, Subpart L), effective for the 1988 and succeeding crop years, by providing a time frame in which to file a request for a reconsideration of any dispute arising under this Subpart and the Standard Reinsurance Agreement entered into by the Reinsured Company and FCIC prior to a final decision on such dispute, and by delegating the authority for such decisions to the Deputy Manager, FCIC.

The public was given 30 days in which to submit written comments, data, and opinions on the rule, but none were received. Therefore, FCIC hereby adopts the rule published at 53 FR 18571 as a final rule.

List of Subjects in 7 CFR Part 400

Crop Insurance, Reinsurance agreement, Standards for approval.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance

Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR Part 400), effective for the 1988 and succeeding contract years, in the following instances:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for 7 CFR Part 400 continues to read as follows:

Authority: 7 U.S.C. 1501–1520, as amended.

2. 7 CFR Part 400, Subpart L, is amended by revising § 400.149 to read as follows:

Subpart L—Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract Years

* * * * *

§ 400.149 Disputes.

Initial findings under this Subpart and the Reinsurance Agreement will be made by the Corporation. The Corporation will advise the Company of those findings and request their input within 45 days of the determination. This time may be extended at the request of the Company if the Corporation agrees to the extension. At the expiration of the time period or, after receipt of the Company's input, the Corporation will issue a final determination denominated as "the determination of the Corporation." That determination will advise the Company of its rights under this section. The Company, if it disputes the Corporation's determination, must appeal that determination in writing, within forty-five days of the receipt of the determination, to the Deputy Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. The decision of the Deputy Manager will be final.

Any hearing provided by the Corporation will be of an informal nature and the rules of evidence will not apply. Pending final decision of the dispute, the company will proceed diligently with the performance of the Agreement, as required by the Corporation. Failure to appeal the Corporation determination within the time allowed, may result in Corporation offset of any amount found to be due the Corporation from funds which may otherwise be due the Company.

Done in Washington, DC, on August 16, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-18991 Filed 8-19-88; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 456

[Doc. No. 5507S]

Macadamia Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) adds a new Part 456 in Chapter IV of Title 7, Code to Federal Regulations to be known as the Macadamia Tree Crop Insurance Regulations (7 CFR Part 456), effective for the 1988 and succeeding crop years. The intended effected effect of this rule is to: (1) Prescribed procedures for insuring macadamia trees in counties approved by the Board of Directors of FCIC; and (2) provide for codification of the Macadamia Tree Crop policy of insurance in 7 CFR Part 456 in the Code of Federal Regulations.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those precedures. The sunset review date established for these regulations is October 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On October 9, 1986, the Board of Directors of FCIC approved a resolution to authorize the introduction of crop insurance programs in the State of Hawaii for marketing by private insurance companies under an FCIC reinsurance agreement or an Agency Sales and Service Contract.

Hawaii is the only state without a crop insurance program and the Board, in authorizing the introduction of crop insurance protection to macadamia nut proceducers in the islands, is responding to a long standing interest in providing Hawaiian producers protection against loss of production from natural hazards.

On March 1, 1988, FCIC published a final rulemaking in the **Federal Register** at 53 FR 6115, prescribing regulations for insuring macadamia nuts. The provisions contained herein, applicable to macadamia trees, a completes the insurance plan for macadamia producers.

On Thursday, February 11, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 4030, to prescribe procedures for insuring macadamia trees in counties approved by the Board of Directors of FCIC and provide for codification of the Macadamia Tree Crop policy of insurance at Title 7, Part 456 of the Code of Federal Regulations (CFR).

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC adopts the rule published at 53 FR 4030 as a final rule with minimum changes for clarification, as set our herein.

Because the 1988 crop year for Macadamia tree insurance in already

well underway, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 456

Crop insurance, Macadamia trees.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby issues a new Part 456 in Chapter IV of Title 7, Code of Federal Regulations, to be known as 7 CFR Part 456—Macadamia Tree Crop Insurance Regulations, effective for the 1988 and succeeding crop years, to read as follows:

PART 456—MACADAMIA TREE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1988 and Succeeding Crop Years

Sec.

456.1 Availability of macadamia tree crop insurance.
456.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
456.3 OMB control numbers.
456.4 Creditors.
456.5 Good faith reliance on misrepresentation.
456.6 The contract.
456.7 The application and policy.

Authority: 7 U.S.C. 1506, 1516.

Subpart—Regulations for the 1988 and Succeeding Crop Years

§ 456.1 Availability of macadamia tree crop insurance.

Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled. The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

An insured whose contract with the Corporation or with a Company reinsured by the Corporation under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing at the time of application, of any previous applications for a Contract under the Act and the present status of the applications or contracts.

§ 456.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for macadamia trees which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§ 456.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 456.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 456.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the macadamia tree insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 456.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation (or by a Company reinsured by the Corporation) of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the macadamia tree crop as provided in the policy. The contract shall consist of the application, the policy and the county actuarial table. This contract is not continuous. Application must be made annually for the macadamia tree contract on or prior to the sales closing date established by the actuarial table. The forms referred to in the contract are available at the applicable service offices.

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§ 456.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the macadamia tree crop as landlord or owner-operator if the person wishes to participate in the program. The application must be submitted to the Corporation (or the Company reinsured by the Corporation) at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will be in effect as a macadamia tree contract applicable for one year. A new application must be submitted for each subsequent crop year.

(d) The application for the 1988 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Macadamia Tree Crop Insurance Policy for the 1988 and succeeding crop years are as follows:

Macadamia Tree Crop Insurance Policy

(This is not a continuous contract. Refer to Section 15)

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable damage to macadamia trees resulting from the following causes occurring within the insurance period:

(1) Fire;

(2) Volcanic eruption; or

(3) Wind;

Unless those causes are excepted, excluded, or limited by this policy or the actuarial table.

b. We will not insure against any loss due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove;

(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good macadamia nut orchard practices; or

(4) Any cause not specified in subsection 1.a. as an insured cause of loss.

2. Crop, acreage, and share insured.

a. The crop insured will be all macadamia trees grown for the production of macadamia nuts on insurable acreage which has been annually inspected and accepted by us and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be all macadamia tree acreage designated as insurable by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord or owner-operator in the insured macadamia trees at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share at the time of loss.

d. We do not insure any macadamia trees:

(1) If the orchard maintenance practices carried out are not the same as those for which the guarantee and premium rate have been established;

(2) Of a type or variety not established as adapted to the area or excluded by the actuarial table;

(3) Interplanted with another crop;

(4) Which we consider not acceptable; or

(5) That are less than one year of age when the insured period begins.

e. We may limit the insurable acreage to any acreage limitation, established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of acreage, share, variety, and practice.

You must report on our form by unit:

a. all the acreage of macadamia trees in the county in which you have a share;

b. your share at the time insurance attaches;

c. the types of trees;

d. the number of trees set out;

e. the dates on which the trees were set out or grafted; and

f. If more than 10 percent of the trees on any unit has been replaced in the previous five crop years, the date of replacement.

You must designate separately any acreage that is not insurable. This report must be submitted annually prior to the time insurance attaches. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good macadamia orchard irrigation practice. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report within 15 days after the time insurance attaches, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. If, at the time insurance attaches, the number of bearing trees over five years old on a unit is less than 90 percent of the number of trees that would comprise a complete planting pattern, the amount of insurance will be reduced 1 percent for each percent below 90 percent.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agenices.

7. Insurance period.

Insurance attaches on insurable acreage for each crop year on January 1. However, if we accept your application for insurance after January 1, insurance does not attach until the tenth (10th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage determined by us, after inspection, to be unacceptable. Insurance ends at the earlier of:

a. Total destruction of the macadamia trees; or

b. December 31 of the crop year.

8. Notice of damage or loss.

a. You must give us written notice without delay if damage resulting in probable loss occurs at any time during the insurance period. Such notice must include the dates and causes of damage.

b. If you are going to claim an indemnity on any unit, we must be allowed to inspect all insured trees before any pruning or tree removal.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than sixty (60) days after the earlier of:

(1) Total destruction of the trees on the unit; or

(2) December 31 of the crop year.

b. We will not pay any indemnity unless you:

(1) Furnish all records we require concerning all trees on the unit;

(2) Show that any damage to the trees has been directly caused by one or more of the insured causes during the insurance period; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre;

(2) Multiplying this result by the applicable percent of loss, which is determined for:

(a) Coverage level 3 by subtracting 25 percent from the actual percent of damage and dividing the result of 75 percent.

(b) Coverage level 2 by subtracting 35 percent from the actual percent of damage and dividing the result by 65 percent; or

(c) Coverage level 1 by subtracting 50 percent from the actual percent of damage and dividing the result by 50 percent; and

(3) Multiplying the result for the applicable coverage level by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information you reported, but all of the insurable acreage planted, whether or not reported as insurable, will count against the amount of insurance.

e. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) Any grove with over 80 percent actual damage will be determined to be 100 percent damaged.

(2) Any percentage of damage by uninsured causes will not be included in the percent of damage.

(3) If you elect to exclude fire as an insured cause of loss and the macadamia trees are damaged by fire, appraisals will be made in accordance with Form FCI–78–A, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. It is our policy to pay your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. However, we will pay simple interest computed on the net indemnity ultimately found to be due to you if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. Interest due will be paid from and including the 61st day after the date you sign, date, and submit to us the properly completed claim-for-indemnity form.

The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the trees on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us, if at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to an indemnity-insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation (Recovery of loss from a third party).

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay for your loss, then your right of recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to orchard.

You must keep, for three years after the time of loss, records of the trees destroyed or damaged on each unit, including separate records showing the same information for any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply or a determination that no indemnity is due. Any person designated by us will have access to such records and the orchard for purposes related to the contract.

15. Life of contract.

a. This contract will be in effect for the crop year specified on the application.

b. The term of this contract begins and ends as shown in Section 7 of this policy. We are under no obligation to send you any renewal notice or other notice that the contract term is ending, and the receipt by you of any such notice is not a waiver of this provision.

c. This contract will not be renewed for any successive contract term if any amount due us on this or any other contract with you is not paid on or before the termination date. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. Since the premium must be paid prior to insurance attaching, the termination date is the date insurance attaches.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. This contract will automatically terminate at the end of the current contract period.

16. Meaning to terms.

For the purposes of macadamia tree crop insurance:

a. *"Age"* means the number of years after the later of when the trees have been set out or grafted. Age determination will be made for the unit on January 1 of each crop year.

b. *"Actuarial table"* means the forms and related materials for the crop year approved by us. The actuarial table is available for public inspection in your service office and shows the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding macadamia tree insurance in the county.

c. *"County"* means the county shown on the application.

d. *"Crop year"* means the period beginning with the date insurance attaches and extending through December 31 of the same calendar year and will be designated by the calendar year in which insurance attaches.

e. *"Destroyed"* means damage to trees to the extent that we determine that replacement is required.

f. *"Grafting"* means to unite a macadamia tree shoot to an established macadamia tree root stock for future production of macadamia nuts.

g. *"Insurable acreage"* means the land classified as insurable by us and shown as such by the actuarial table.

h. *"Insured"* means the person who submitted the application accepted by us.

i. *"Person"* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision, or agency of a state.

j. *"Planting Pattern"* means the spacing trees on a uniform geometrical basis so that each tree is a uniform distance from other trees and resulting in a specific number of trees per acre.

k. *"Service office"* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. *"Unit"* means all insurable acreage of macadamia trees in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) In which you are a joint owner.

Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

17. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

18. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of, or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400, Subpart J).

19. Notices.

All notices required to be given by you must in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC on August 16, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-18992 Filed 8-19-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 989

[FV-88-195]

Raisins Produced From Grapes Grown in California; Changes to the Supplementary Rules and Regulations (Deletion of the Weight Adjustment (Moisture) System) and Revision of the Schedule of Payments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule invites comments on changes to the supplementary rules and regulations and the schedule of payments to the California raisin marketing order. The changes delete the weight adjustment (moisture) system for Natural (sun-dried) Seedless and Monukka raisins, make conforming changes to reflect such deletion and make a conforming change under the schedule of payments. These changes were recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the marketing order. These changes would improve the operation of the marketing order.

DATES: Interim final rule effective August 22, 1988. Comments which are received by September 21, 1988, will be considered prior to any finalization of this interim final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085-S, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins subject to regulation under the raisin marketing order, and approximately 5,000 raisin producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be classified as small entities.

This interim final rule invites comments on changes to the supplementary rules and regulations and the schedule of payments of the raisin marketing order. These changes were recommended by the Committee and delete the weight adjustment (moisture) system for Natural (sun-dried) Seedless and Monukka raisins, make conforming changes to other order provisions to reflect the deletion of the system and make an additional conforming change in Subpart—Schedule of Payments.

The first amendment deletes the weight adjustment (moisture) system for Natural (sun-dried) Seedless and Monukka raisins. This system was established on September 4, 1985 (50 FR 35769). The weight adjustment (moisture) system encourages Natural (sun-dried) Seedless and Monukka raisin producers to deliver lower moisture raisins (i.e., in the 10 to 14 percent moisture range) to handlers for processing. The industry had found that higher maturity raisins of these varietal

types with a moisture level in excess of 14 percent tended to sugar if held in storage for extended periods of time. Sugaring is an undesirable condition in raisins because the raisins feel gritty, rather than soft and pliable, when eaten.

Under this system, producers delivering raisins in the lower percentage range (i.e., 13.9 percent and lower) receive a weight credit to their lots of raisins. In turn, producers that deliver raisins in the higher percentage range (i.e., 14.1 to 16 percent) receive a weight reduction on such lots. There is no dockage or adjustment on raisins containing 14 percent moisture. Raisins above the 16 percent moisture level are considered off-grade and are returned to the producer or reconditioned by the handler to bring the lot up to acceptable quality standards.

Producers receive payments on their deliveries of raisins based on the creditable fruit weight of each lot. Therefore, producers that have received a weight credit for delivering drier raisins receive a larger payment per lot than those producers delivering raisins in a higher percent moisture range.

As mentioned above, the industry had found that higher maturity Natural (sun-dried) Seedless and Monukka raisins with a moisture level in excess of 14 percent tended to sugar if held in storage for extended periods of time. However, since the advent of the program in 1985, the average moisture level of such lots of Natural (sun-dried) Seedless and Monukka raisins delivered to handlers has dropped 1.2 percent from 11.71 to 10.52 percent. In addition, an average of only 5.01 percent of the lots of such raisins delivered since the onset of this program have been in the 14 to 16 percent moisture range. Thus, producers are delivering drier raisins.

The Committee has therefore recommended that the weight adjustment (moisture) system be discontinued and deleted from the rules and regulations. The weight adjustment (moisture) portion of the system is not considered necessary as it was in 1985, since producers are delivering drier raisins. The Committee has also determined that the current program is cumbersome and difficult to administer. This action also makes conforming changes to other provisions in the regulations to reflect the deletion of the weight adjustment (moisture) system (§§ 989.210, 989.212 and 989.213).

The second amendment changes § 989.401(a)(1) to reflect the use of "creditable weight" as the basis of payment for receiving, storing, fumigating and handling costs paid to handlers rather than the "natural condition weight" at the time of acquisition as currently stated in the regulations. This is a conforming change which should have been implemented when the weight dockage and adjustment (moisture) systems were originally established (50 FR 35769, September 4, 1985).

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee and other available information, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the crop year for raisins began August 1, 1988, and this rule should be in place as soon as possible to apply to as much of the crop year as possible.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

Note: These sections will appear in the Code of Federal Regulations.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Supplementary Regulations

2. Section 989.210 is revised to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(a) *General.* A handler may acquire as standard raisins lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Sultana, Zante Currant and Muscat (including other raisins with seeds) raisins under the weight dockage provisions described in §§ 989.212 and 989.213. The creditable weight of each lot of raisins acquired in this manner shall be that obtained by multiplying the net weight of the raisins in the lot by the appropriate factor(s) from the appropriate dockage table(s) included in those sections.

(b) *Free and reserve tonnage percentages.* Whenever free and reserve percentages are designated for raisins of the varietal types specified in paragraph (a) of this section for a crop year, such percentages shall be applicable to the creditable weight of any lot of such raisins acquired by a handler pursuant to a weight dockage system.

(c) *Reserve tonnage.* A handler may hold as reserve tonnage raisins, any lot, or portion thereof, of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage system: *Provided,* That only the creditable weight of such lot, or portion thereof, may be applied by the Committee against the handler's reserve tonnage obligation.

(d) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the free tonnage portion of the creditable weight of such lot.

(e) *Payments for services on reserve tonnage.* Payment to a handler for services performed by such handler with respect to reserve tonnage raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage system shall be made on the basis of the creditable weight of such lot and at the applicable rate specified for such services in § 989.401 of *Subpart—Schedule of Payments.*

(f) *Identification.* Any lot of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage system shall be so identified by the inspection service affixing to one container on each pallet, or to each bin, in such lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed to the container or bin until the raisins are processed or disposed of as natural condition raisins. The control card shall only be removed by, or under the supervision of an inspector of the inspection service, or authorized Committee personnel.

(g) *Application of dockage factors.* A lot of raisins acquired which may be subject to both a substandard and maturity dockage factor shall have only the highest of the two dockage factors applied to determine the creditable weight.

§ 989.211 [Removed]

3. Section 989.211 is removed.

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4. Section 989.212 is amended by revising paragraph (a) to read as follows:

§ 989.212 Substandard dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless and Monukka raisins containing from 5.1 through 10.0 pecent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing more than 12 percent, by weight, of substandard raisins under a dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

* * * * *

5. Section 989.213 is amended by revising paragraph (a) to read as follows:

§ 989.213 Maturity dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins containing from 40.0 through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. The creditable weight of each lot of raisins acquired under the maturity dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the dockage table prescribed in paragraph (b) of this section.

* * * * *

Subpart—Schedule of Payments

6. Section 989.401 is amended by revising paragraph (a)(1) to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition.* (1) *Receiving, storing, fumigating, and handling.* Each handler shall, beginning August 1, 1983, be compensated at the rate of $38.75 per ton (creditable weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Raisin Administrative Committee during all or any part of the same crop year, and released after February 13, 1984.

* * * * *

August 17, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-18945 Filed 8-19-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F-0363]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the use of a membrane component. The membrane component is composed primarily of a cross-linked polyetheramine, identified as the copolymer of epichlorohydrin, 1,2-ethanediamine, and 1,2-dichloroethane, although the surface of this membrane component is the reaction product of the cross-linked polyetheramine with 2,4-toluenediisocyanate. The membrane component is used as the food-contact surface of a reverse osmosis membrane that is used in the processing of liquid food. This action responds to a petition filed by Fluid Systems, Division of UOP, Inc.

DATES: Effective August 22, 1988; objections and requests for a hearing by September 21, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-335), 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 29, 1986 (51 FR 34503), FDA announced that a petition (FAP 6B3955) had been filed by Fluid Systems, Division of UOP, Inc., San Diego, CA 92131, proposing that § 177.2550 *Reverse osmosis membranes* (21 CFR 177.2550) be amended to provide for the safe use of a cross-linked polyetheramine, identified as the copolymer of epichlorohydrin, 1,2-ethanediamine and 1,2-dichloroethane, whose surface is the reaction product of this copolymer with 2,4-toluenediisocyanate. The membrane component is used as the food-contact surface of reverse osmosis membranes used in processing liquid food.

FDA, in its evaluation of the safety of this additive, has reviewed the safety of both the additive itself and the starting materials used to manufacture the additive. Although the additive itself has not been found to cause cancer, it may contain minute amounts of three starting materials (epichlorohydrin, 1,2-dichloroethane, and 2,4-toluenediisocyanate) as byproducts of its production. These chemicals have been shown to cause cancer in test animals. In addition, 2,4-toluenediamine, formed by the hydrolysis of 2,4-toluenediisocyanate, has been shown to cause cancer in test animals and may be present in the additive. Residual amounts of reactants and manufacturing aids, such as epichlorohydrin, 1,2-dichloroethane, 2,4-toluenediisocyanate, and 2,4-toluenediamine, are commonly found as contaminants in chemical products, including food additives

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the food additive amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis. An additive that has not been shown to cause cancer but that contains a carcinogenic impurity may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of the additive (a cross-linked polyetheramine, manufactured using epichlorohydrin, 1,2-ethanediamine and 1,2-dichloroethane, whose surface is the reaction product of this polyetheramine with 2,4-toluenediisocyanate) will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily intake of the additive based on several factors, including the migration of the additive under the most severe intended conditions of use and the probable concentration of the additive in the daily diet from its use in contact with food. The estimated daily dietary exposure to the polyetheramine component of the additive is 0.1 parts per billion (0.3 micrograms per person per day for a 60 kilogram person) while the exposure to the polyurethane cross-linked surface layer of the additive is 0.01 parts per billion (0.03 micrograms per person per day for a 60 kilogram person).

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here.

As stated above, the additive may contain epichlorohydrin, 1,2-dichloroethane, 2,4-toluenediisocyanate, and 2,4-toluenediamine, substances that have been shown to cause cancer in test animals. These impurities may be present as a result of manufacturing procedures used to produce the additive. Because the additive itself has not been shown to cause cancer, the Delaney anticancer clause (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) does not apply to it.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 and 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,2-Dichloroethane

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive, as well as the level of 1,2-dichloroethane that may be present in the additive, FDA estimated the hypothetical worst-case exposure to 1,2-dichloroethane from the use of the additive to be 2.0 picograms per person per day (Ref. 3). The agency used data from a National Cancer Institute (NCI) carcinogenesis bioassay (Ref. 4) on 1,2-dichloroethane fed to rats to estimate the upper bound level of lifetime human risk from the proposed use of the additive. The results of the bioassay on 1,2-dichloroethane indicated that the material was carcinogenic for rats under the conditions of the study. The test material caused significantly increased incidences of carcinomas at multiple sites in the rats, which included the stomach, mammary gland, and circulatory system.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,2-dichloroethane. The Committee further concluded that the NCI bioassay provided the appropriate basis on which to calculate an estimate of the upper bound level of lifetime risk from potential exposure to 1,2-dichloroethane stemming from the proposed use of the additive.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the food additives.

Based on a worst-case exposure of 2.0 picograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 1,2-dichloroethane from the use of the subject additive is 3.5×10^{-13} or less than 1 in 2.9 trillion (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,2-dichloroethane is expected to be substantially less than the estimated daily intake and, therefore, the calculated upper bound limit of risk would be less. Thus the agency concludes that there is a reasonable certainty of no harm from the exposure to 1,2-dichloroethane that might result from the proposed use of the additive.

B. Epichlorohydrin

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive, as well as the level of epichlorohydrin that may be present in the additive, FDA estimated the hypothetical worst-case exposure to epichlorohydrin from the use of this additive to be 4.0 picograms per person

per day (Ref. 3). The agency used data from a Japanese carcinogenesis bioassay (Ref. 6) on epichlorohydrin fed to rats via their drinking water to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of this additive. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic for rats under the conditions of the study. The test material caused significantly increased incidences of stomach papillomas and carcinomas in the rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on epichlorohydrin. The committee further concluded that an estimate of the upper bound level of lifetime human risk from potential exposure to epichlorohydrin stemming from the proposed use of the additive could be calculated from the bioassay.

Based on a worst-case exposure of 4.0 picograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to epichlorohydrin resulting from the use of the additive is 1.8×10^{-13} or less than 1 in 5.6 trillion (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to epichlorohydrin is expected to be substantially less than the estimated daily intake and, therefore, the calculated upper bound limit of risk would be less. Thus the agency concludes that there is a reasonable certainty of no harm from the exposure to epichlorohydrin that might result from the proposed use of the additive.

C. 2,4-Toluenediisocyanate and 2,4-Toluenediamine

Although 2,4-toluenediisocyanate is one of the starting materials used in the manufacture of the membrane component and may remain in the additive after its manufacture, any reacted 2,4-toluenediisocyanate would be hydrolyzed to 2,4-toluenediamine when the membrane component is exposed to water. Therefore, the agency's risk assessment was carried out only for 2,4-toluenediamine.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive, as well as the level of 2,4-toluenediamine that may be present in the additive, FDA estimated the hypothetical worst-case exposure to 2,4-toluenediamine from the use of the additive to be 4 nanograms per person per day (Ref. 3). The agency used data from a National Cancer Institute carcinogenesis bioassay (Ref. 7) on 2,4-toluenediamine fed to Fischer 344 rats and hybrid $B6C3F_1$ mice to estimate the upper bound level of lifetime human risk from the proposed use of this membrane. The results of the study indicated that female rats are the most sensitive to the carcinogenic effects of this compound, which induced neoplasms of the liver and mammary gland.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed the bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 2,4-toluenediamine. The Committee further concluded that an estimate of the upper bound level of lifetime human risk from potential exposure to 2,4-toluenediamine stemming from the proposed use of the additive could be calculated from the bioassay.

Based on a worst-case exposure of 4.0 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 2,4-toluenediamine resulting from the use of additive is 1.2×10^{-10} or less than 1 in 83 million (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 2,4-toluenediamine is expected to be substantially less than the estimated daily intake and, therefore, the calculated upper bound limit of risk would be less. Thus the agency concludes that there is a reasonable certainty of no harm from the exposure to 2,4-toluenediamine that might result from the proposed use of the additive.

D. Need for Specifications

The agency has also considered whether specifications are necessary to control the amounts of 1,2-dichloroethane, epichlorohydrin and 2,4-toluenediamine in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which 1,2-dichloroethane, epichlorohydrin, and 2,4-toluenediamine may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 1 in 2.9 trillion for 1,2-dichloroethane, less than 1 in 5.6 trillion for epichlorohydrin and less than 1 in 83 million for 2,4-toluenediamine.

E. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that the regulation in § 177.2550(a) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

III. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 21, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the

objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs," *in* "Food Safety: Where are we?" Committee on Agriculture, Nutrition, and Forestry, United States Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulation and Compliance," Edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, dated September 1, 1987, "FAP 6B3955—Fluid Systems Division of UOP, Inc., Reverse Osmosis Membranes."

4. "Bioassay of 1,2-dichloroethane for Possible Carcinogenicity," National Cancer Institute, NTP Technical Report No. 55, 1978.

5. Memorandum from the Quantitative Risk Assessment Committee to Dr. W. Gary Flamm, dated February 2, 1988, "Epichlorohydrin, 1,2-Dichloroethane and 2,4-Toluenediamine in Reverse Osmosis Membranes".

6. Konishi, Y., et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wister Rats," Gann, 71: 922–923, 1980.

7. "Bioassay of 2,4-Diaminotoluene for Possible Carcinogenicity," National Cancer Institute, NTP Technical Report No. 162, 1979.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Polymers.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2550 is amended by revising paragraph (a) to read as follows:

§ 177.2550 Reverse osmosis membranes.

* * * * *

(a) *Identity.* For the purpose of this section, reverse osmosis membranes may consist of either of the following formulations:

(1) A cross-linked high molecular weight polyamide reaction product of 1,3,5-benzenetricarbonyl trichloride with 1,3-benzenediamine (CAS Reg. No. 83044–99–9) or piperazine (CAS Reg. No. 110–85–0). The membrane is on the food-contact surface, and its maximum weight is 62 milligrams per square decimeter (4 milligrams per square inch) as a thin film composite on a suitable support.

(2) A cross-linked polyetheramine (CAS Reg. No. 101747–84–6), identified as the copolymer of epichlorohydrin, 1,2-ethanediamine and 1,2-dichloroethane, whose surface is the reaction product of this copolymer with 2,4-toluenediisocyanate (CAS Reg. No. of the final polymer is 99811–80–0) for use as the food-contact surface of reverse osmosis membranes used in processing liquid food. The composite membrane is on the food-contact surface and its maximum weight is 4.7 milligrams per square decimeter (0.3 milligrams per square inch) as a thin film composite on a suitable support. The maximum weight of the 2,4-toluenediisocyanate component of the thin film composite is 0.47 milligrams per square decimeter (0.03 milligrams per square inch).

* * * * *

Dated: August 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–18972 Filed 8–19–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 178

[Docket No. 83F–0409]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a sanitizing solution composed of decanoic acid, octanoic acid, lactic acid, phosphoric acid and a mixture of: (1) The sodium salt of naphthalenesulfonic acid; (2) the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalenesulfonic acid; and (3) a mixture of the sodium salt of naphthalenesulfonic acid, and the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalenesulfonic acid alkylated at 3 percent by weight with C_6–C_9 linear olefins. This sanitary solution is used on food processing equipment and utensils. This action responds to a petition filed by Economics Laboratory, Inc.

DATES: Effective August 22, 1988; objections and requests for a hearing by September 21, 1988.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of April 26, 1984 (49 FR 18044), FDA announced that a petition (FAP 3H3756) has been filed by Economics Laboratory, Inc., Osborn Bldg., St. Paul, MN 55102 (the name and address of the company have been changed to EcoLab, Inc., Ecolab Center, St. Paul, MN 55102), proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended in paragraphs (b)(27) and (c)(22) to provide for the safe use of sodium mono- and dimethylnaphthalenesulfonates for use on food-contact surfaces. Subsequently, FDA published an amended filing notice in the Federal Register of April 1, 1987 (52 FR 10412), that made clear that the chemical names of the components of the sanitizing solution are decanoic acid, octanoic acid, and a mixture of: (1) The sodium salt of naphthalenesulfonic acid; (2) the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalenesulfonic acid; and (3) a mixture of the sodium salt of naphthalenesulfonic acid and the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalenesulfonic acid alkylated at 3 percent by weight with C_6–C_9 linear olefins. The amended filing notice also made clear that the methyl and dimethyl substituted derivatives (described in (2) above) constitute no less than 70 percent by weight of the mixture of naphthalenesulfonates and corrected the previous filing notice by omitting the proposed specific amendments in § 178.1010 (b)(27) and (c)(22).

FDA has reviewed the safety of the individual food additives that are components of the sanitizing solution, including phosphoric acid and lactic acid, which for the reasons explained below, were not listed in the original or amended notice of filings.

i. Safety of Petitioned Use of the Additives

Sanitizing solutions are mixtures of ingredients. Each listed component in a sanitizing solution has a functional effect. The subject sanitizing solution contains two short chain fatty acids (decanoic acid and octanoic acid) which function as antimicrobial agents; phosphoric and lactic acid which assist in controlling the pH and stabilizing the sanitizing solution, respectively, and a mixture of: (1) The sodium salt of naphthalenesulfonic acid; (2) the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalenesulfonic acid; and (3) a mixture of the sodium salt of naphthalenesulfonic acid and the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalenesulfonic acid alkylated at 3 percent by weight with C_6–C_9 linear olefins which functions as an emulsifier.

A. *Short Chain Fatty Acids.* The two short chain fatty acids, decanoic acid and octanoic acid, are antimicrobial agents in the subject sanitizing solution and are used in a currently regulated sanitizing solution listed in 21 CFR 178.1010 (b)(27) and (c)(22). On the basis of the data submitted in support of these regulated uses, and of the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of these fatty acids in the subject sanitizing solution is safe and effective.

B. *Phosphoric Acid and Lactic Acid.* Phosphoric acid functions as a pH stabilizer, and lactic acid assists in stabilizing the sanitizing solution formulation in the subject sanitizing solution. Phosphoric acid is used in many currently regulated sanitizing solutions listed in 21 CFR 178.1010. Phosphoric and lactic acid are listed as generally recognized as safe (GRAS) in 21 CFR 182.1073 and 184.1061, respectively.

Neither compound was specifically listed in § 178.1010 *Sanitizing solutions.* They were not listed in the April 26, 1984, filing notice (49 FR 18044) or the April 1, 1987, amended filing notice (52 FR 10412) because the petitioner did not list these substances in the proposed amendment. The petitioner believed that the use of phosphoric acid and lactic acid in sanitizing solutions was GRAS, and that the use of GRAS substances in such solutions was authorized under 21 CFR 178.1010(b). However, FDA includes GRAS ingredients in food additive regulations for sanitizing solutions when the agency considers the use of these ingredients to be essential in the formulation.

On the basis of data submitted in support of these current regulated uses and safety and efficacy data contained in the food additive petition, FDA concludes that the use of phosphoric acid and lactic acid in the sanitizing solution is safe. Because they assist in controlling the pH and stabilizing the sanitizing solution, respectively, they are essential ingredients in the sanitizing formulation. Therefore, in accord with its general policy of listing substances that are essential in sanitizing solutions, even if they are GRAS, the agency is including phosphoric acid in this regulation.

C. A mixture of: (1) the Sodium Salt of Naphthalenesulfonic acid; (2) the Methyl, Dimethyl, and Trimethyl Derivatives of the Sodium Salt of Naphthalenesulfonic Acid; and (3) a Mixture of the Sodium Salt of Naphthalenesulfonic Acid, and the Methyl, Dimethyl, and Trimethyl Derivatives of the Sodium Salt of Naphthalenesulfonic Acid Alkylated at 3 percent by Weight with C_6–C_9 Linear Olefins (NSA Mixture).

The NSA mixture functions as a emulsifier in the subject sanitizing solution. The methyl and dimethyl derivatives of the sodium salt of naphthalenesulfonic acid constitute no less than 70 percent by weight of the NSA mixture. The NSA mixture is not listed under 21 CFR 178.1010. However, the methyl and dimethyl derivates of the sodium salt of naphthalenesulfonic acid are listed under 21 CFR 173.315 and 172.824 (as "sodium mono- and dimethyl naphthalenesulfonates") for direct food contact use. On the basis of the data submitted in support of these currently regulated uses of components of the NSA mixture and of the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of this mixture in the subject sanitizing solution is safe and effective.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations in 21 CFR 178.1010 should be amended by adding paragraphs (b)(35) and (c)(30) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

II. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the amended notice of filing for FAP 3H3756 (April 1, 1987; 52 FR 10412). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

III. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before September 21, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.1010 is amended by adding paragraphs (b)(35) and (c)(30) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(35) An aqueous solution containing decanoic acid (CAS Reg. No. 334–48–5), octanoic acid (CAS Reg. No. 124–07–2), lactic acid (CAS Reg. No. 050–21–5), phosphoric acid (CAS Reg. No. 7664–38–2) and a mixture of the sodium salt of naphthalenesulfonic acid (CAS Reg. No. 1321–69–3); the methyl, dimethyl, and trimethyl dervatives of the sodium salt of naphthalenesulfonic acid; and a mixture of the sodium salt of naphthalenesulfonic acid, and the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalenesulfonic acid alkylated at 3 percent by weight with C_6–C_9 linear olefins, as components of a sanitizing solution to be used on food-processing equipment and utensils. The methyl and dimethyl substituted derivatives (described within this paragraph (b)(35)) constitute no less than 70 percent by weight of the mixture of naphthalenesulfonates.

(c) * * *

(30) Solutions identified in paragraph (b)(35) of this section shall provide, when ready for use, at least 117 parts per million and not more than 234 parts per million of total fatty acids and at least 166 parts per million and not more than 332 parts per million of a mixture of naphthalenesulfonates. The adjuvants phosphoric acid and lactic acid, used with decanoic acid, octanoic acid, and sodium naphthalenesulfonate and its alkylated derivatives, will not be in excess of the minimum amounts required to accomplish the intended technical effects.

* * * * *

Dated: July 28, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–18974 Filed 8–19–88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 444

[Docket No. 79N–0155]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate For Compounding Oral Products; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the antibiotic drug regulations which describe standards for nonsterile neomycin sulfate for prescription compounding (53 FR 12644; April 15, 1988). The amendatory language inadvertently stated that only the introductory text of paragraph (3) was revised in § 444.942a. The amendatory language for § 444.942a should have stated that the entire paragraph (3) was revised. This document corrects that error.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Regulations Editorial Staff (HFS–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 88–8189, appearing on page 12658 in the **Federal Register** of Friday, April 15, 1988, in the first column, under the heading (corrected 53 FR 16615; May 10, 1988) "PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS", amendatory paragraph 2. is corrected to read as follows:

PART 444—[AMENDED]

§ 444.942a [Amended]

2. Section 444.942a is amended by revising the section heading and by revising the introductory text of paragraph (a)(1), and paragraph (a)(3), and paragraph (a)(4)(i), to read as follows:

Dated: August 12, 1988.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 88–18973 Filed 8–19–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances

CFR Correction

In the April 1, 1988 revision of Title 21 (Part 1300 to End) of the Code of Federal Regulations, on page 88, column two, paragraph (f)(2) of § 1308.12 was published incorrectly.

§ 1308.12 [Corrected]

The chemical "Nabiline" should read "Nabilone" in the first and second lines.

BILLING CODE 1505-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8219]

Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under The Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to qualified joint and survivor annuities required to be provided under certain retirement plans under section 401(a)(11) prior to its amendment by the Retirement Equity Act of 1984 (REA 1984). The pre-REA 1984 regulations are changed to conform them to *BBS Associates, Inc. v. Commissioner of Internal Revenue.*

This document also provides final regulations relating to the qualified joint and survivor and qualified preretirement survivor annuity requirements and the notice, election and consent rules enacted by REA 1984 and relating to the effective dates, transitional rules, restrictions on distributions from employee plans, and other issues arising under REA 1984. The final regulations also reflect certain provisions in the Tax Reform Act of 1986 (1986 Act) that affect the REA 1984 provisions. The regulations will generally affect sponsors of, and participants in, pension, profit-sharing and stock bonus plans, and provide plan sponsors with guidance to comply with the law.

DATES: The regulations are effective August 22, 1988. The pre-REA 1984 regulations are applicable for plan years beginning after December 31, 1974. The REA 1984 regulations are generally applicable for plan years beginning after December 31, 1984 except as otherwise specified in REA 1984, or in the 1986 Act.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs of the Employee

BEST COPY AVAILABLE

Benefits and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention CC:LR:T) (202–377–9372) not a toll-free number).

Background—Pre-REA 1984 Regulations

On October 27, 1982, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 401(a)(11) of the Internal Revenue Code of 1954. The amendments were proposed to conform the regulations to *BBS Associates, Inc. v. Commissioner of Internal Revenue*, 74 T.C. 1118 (1980), *aff'd mem.*, 661 F.2d 913 (1981).

No hearing was requested on these pre-REA regulations and none was held.

Explanation of Provisions

Section 401(a)(11), prior to REA 1984, provided that if a trust provides for the payment of benefits in the form of an annuity, such trust must provide for the payment of annuity benefits in a form having the effect of qualified joint and survivor annuity in order for the trust to be qualified under section 401.

Regulations under section 401(a)(11) published prior to REA 1984 interpret this provision to mean that a plan offering a life annuity as a benefit option must provide that the automatic form of benefit payment is a qualified joint and survivor annuity.

The Tax Court and the Court of Appeals for the Third Circuit rejected the interpretation of section 401(a)(11) expressed in the regulations in *BBS Associates, Inc. v. Commissioner of Internal Revenue*, 74 T.C. 1118 (1980), *aff'd mem.*, 661 F.2d 913 (1981). The Court held that sections 401(a)(11)(A) and 401(a)(11)(E) (prior to REA 1984) do not require that the automatic form of benefit distribution be a qualified joint and survivor annuity merely because a plan offers a life annuity as an optional form of benefit. The Court held that *Example (1)* of § 1.401 (a)-11 (a)(3), was invalid.

In Notice 82–4, 1982–1 C.B. 358, the Internal Revenue Service stated that it would not file a petition for a writ of certiorari in the *BBS* case and that the invalidated regulations would be amended.

The pre-REA 1984 regulations, § 1.401(a)–11, are amended to conform to the *BBS* decision. The regulations provide that in order for a plan offering benefits payable as a life annuity to qualify under section 401(a), such life annuity benefits must be paid in the form of a qualified joint and survivor annuity unless the participant elects otherwise.

Actions Taken

Proposed Treas. Reg. § 1.401(a)-11(c)(2)(i)(C)(3) allowed defined benefit plans to satisfy the requirement for the early survivor annuity election by providing a survivor benefit at least equal in value to the present value of the vested portion of the participant's accrued benefit (determined immediately prior to death). Under the proposed regulations, present value must be "determined in accordance with actuarial assumptions or factors specified in the plan".

As suggested by commentators, the requirement with respect to specification of actuarial factors or assumptions for determining present value is conformed to the requirements of Rev. Rul. 79–90, 1979–1 C.B. 155. Thus, certain defined benefit plans must state either assumptions or factors or a variable standard independent of employer discretion determining the present value of a participant's accrued benefit.

The pre-REA 1984 regulations are also amended to reflect the amendment to section 401(a)(11) by REA 1984. However, the rules in the pre-REA regulations, to the extent not inconsistent with the statute and the new regulations, continue to apply to plan years governed by the REA 1984 amendment to section 401(a)(11).

Background—REA 1984 Regulations

On July 19, 1985, the **Federal Register** published proposed and temporary amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401(a)(11) and (13), 402(f), 410(a)(5), 411(a)(6), (7) and (11), 411(d)(3), 414(p), and 417. The text of the temporary regulations served as the text for the proposed regulations. The amendments were proposed to conform the regulations to the Internal Revenue Code provisions of Titles II and III of REA 1984. Amendments under the Paperwork Reduction Act were also proposed. (26 CFR Part 602). A public hearing was held on these REA 1984 proposed regulations on December 9, 1985.

On October 22, 1986, the Tax Reform Act of 1986 (1986 Act) (Pub. L. 99–514, 100 Stat. 2085) was enacted. Sections 1139, 1145 and 1898 of the 1986 Act amended certain Internal Revenue Code provisions affected by REA 1984. The final regulations which are the subject matter of this Treasury decision reflect those provisions. Further, certain provisions of REA 1984 that were not reflected in the proposed regulations are reflected in the final regulations.

After consideration of all written comments and the comments made at the REA 1984 hearing regarding the proposed amendments, the proposed regulations under the applicable Code sections are adopted as revised by this Treasury decision.

Explanation of Provisions

For an explanation of the proposed regulations, see the following preambles to the proposed and temporary REA 1984 regulations in the July 19, 1985 **Federal Register**: (1) EE–3–85 (*see* the cross-referenced temporary regulations, T.D. 8037) 50 FR 29436; (2) EE–35–85 (*see* the cross-referenced temporary regulations, T.D. 8038), 50 FR 29436; (3) T.D. 8037 (OMB Control Numbers under the Paperwork Reduction Act; Notice, Election, and Consent Rules under REA 1984), 50 FR 29376; and (4) T.D. 8038 (Effective Dates, Transitional Rules, Restrictions on Plan Distributions, and Other Issues Arising Under REA 1984), 50 FR 29371.

Matters Relating to Reporting (T.D. 8037)

The principal reporting change in the final regulations, § 1.402(f)–1, relates to the safe harbor notice that may be given recipients of certain plan distributions to satisfy the reporting requirement of section 402(f). The safe harbor notice provided by § 1.402(f)–1T(b) (the temporary regulations superseded by this Treasury decision) is obsolete because of the changes to the distribution rules since its publication.

The final regulations provide the Commissioner with authority to provide new safe harbor notices. The Service intends to publish a notice that reflects the various changes to the taxation of distributions under sections 402 and 403 made by sections 1122 and 1124 of the 1986 Act. Any such notice would cease to be effective upon any change in the applicable law effect by a statute, regulation, revenue ruling or other general guidance that is inconsistent with such notice.

Title I of ERISA

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has jurisdiction over the subject matter addressed in the REA 1984 regulations. Therefore, under section 104 of the Reorganization Plan, these regulations apply when the Secretary of Labor exercises authority under Title I of the Employee Retirement Income Security Act of 1974 (as amended, including the amendments made by Title I of REA and

the subsequent amendments by the 1986 Act) ("ERISA"). Thus, the requirements also apply to employee plans subject to Title I of ERISA.

No Spousal Consent Needed for Commencement of Qualified Joint and Survivor Annuity

The proposed and temporary regulations required that the spouse of a participant consent to the distribution of a qualified joint and survivor annuity (QJSA) before the participant attains the later of age 62 or normal retirement age. Section 1.417(e)–1(b) of the final regulations removes this requirement and permits plans subject to section 417 to provide that a married participant who retires may elect, without the consent of the participant's spouse, to begin receiving a QJSA before attaining the later of age 62 or normal retirement age. The Service announced this position on October 2, 1985 (see News Release 85–89, also published in 1985–43 I.R.B. 29 (October 28, 1985)).

Section 417(b) defines a QJSA. In general, a QJSA is an immediate annuity for the life of the participant, with a survivor annuity for the life of the participant's spouse. A plan may have more than one joint and survivor annuity satisfying the QJSA requirements. If so, the plan must designate which one is the QJSA and therefore the automatic form of payment. The QJSA for a married participant must be at least equal to the most valuable optional form of benefit payable to the participant at the time of the election. The amount of the survivor annuity may not be less than 50 percent, and not more than 100 percent, of the amount of the annuity payable during the time when the participant and spouse are both alive. (*See also* pre-REA 1984 section 401(a)(11) and § 1.401(a)–11(b)(2) for the pre-REA 1984 definition of a QJSA which is still generally applicable.)

Plan Amendments

Under the proposed and temporary regulations, plan amendments reequired by REA 1984 were generally required to be adopted not later than the end of the first plan year to which the statutory provisions apply (generally the first plan year beginning in 1985).

Since the publication of the regulations, technical corrections to REA 1984 (technical corrections) were enacted in Title XVIII of the 1986 Act. In Notice 87–28, published in 1987—14 I.R.B. 46 (April 6, 1987), the Service generally extended the date by which plans must be amended to satisfy the proposed and temporary REA regulations and the technical corrections. Under the Notice, plan amendments generally are not required until the time section 1140 of the 1986 Act would require other plan amendments, generally the 1989 plan year, as long as there is compliance in operation with the proposed and temporary regulations and the technical corrections.

The time for making plan amendments to comply with REA would also be extended to the time permitted by section 401(b) for plans to be amended to comply with the 1986 Act. In general, plans can continue to follow Notice 87–28 until that time, except that the plan must satisfy the retroactive compliance requirements of section 401(b). Thus, in general, most plans must satisfy these final regulations as of the first day of the first plan year beginning after December 31, 1988.

Use of PBGC Interest Rate

The proposed and temporary regulations required that plans subject to the survivor annuity requirements of sections 411(a)(11) and 417(e) satisfy two basic rules. First, for purposes of determining whether a distribution may be made without obtaining the applicable consents (the "threshold rule"), a participant's benefit must be valued by using an interest rate no greater than the Pension Benefit Guaranty Corporation's (PBGC) immediate interest rate for trusteed single-employer plans. Second, the actual single sum that the participant (or beneficiary) receives under the plan must be calculated using an interest rate no greater than the immediate PBGC rate (the "amount rule") for trusteed single-employer plans. The same interest rate must be used for both the threshold and amount rules. Many commentators objected to the amount rule.

Section 1139 of the 1986 Act ratified the threshold and amount rules set forth in the proposed and temporary regulations and sections 411(a)(11) and 417 with certain changes. The final regulations adopt these rules to reflect section 1139 of the 1986 Act. The Service issued guidance on these rules in Notice 87–20, 1987–6 I.R.B. 17 (February 9, 1987). The rules in Notice 87–20 are adopted in these final REA 1984 regulations, except as otherwise indicated. For plans that did not satisfy the interest rate restrictions of the proposed and temporary regulations, Notice 87–20 requires retroactive adjustments using the interest rates set forth in the Notice. Increased distributions resulting from these adjustments were required to be made by August 9, 1987. The time to distribute required increases due to recalculation of benefits using the appropriate interest rate is extended until the end of the first plan year beginning after December 31, 1988.

Some of the principal changes in the final regulations resulting from the 1986 Act are discussed below. First, plan provisions must use the PBGC applicable interest rate rather than the PBGC immediate interest rate for both the threshold rule and the amount rule. The PBGC immediate interest rate is a single interest rate used to value an immediate annuity that is determined at the date of plan termination of an insufficient trusteed single-employer plan. The PBGC applicable interest rate (referred to in the final REA 1984 regulations as the "section 417 interest rate") is the immediate interest rate where an immediate annuity is being valued and is a set of interest rates computed for varying time periods where a deferred annuity is being valued. *See also*, final PBGC regulations under section 29 CFR Part 2619 (Appendix B) which are discussed in more detail in Notice 87–20.

Second, the final regulations reflect the amendments to the threshold and amount rule in sections 411(a)(11)(B) and 417(e)(3) made by section 1139 of the 1986 Act. There is a two-tier test for valuing single sum distributions using $25,000 (unindexed) as the breakpoint. The section 417(e) interest rate for vested accrued benefits equal to or less than $25,000 is the PBGC applicable interest rate and for vested accrued benefits greater than $25,000 is 120 percent of such PBGC rate. If a participant or beneficiary would receive a single sum distribution of less than $25,000 if the interest rate used to calculate the distribution were 120 percent of the PBGC applicable interest rate then 100 percent of such PBGC rate must be used to calculate the amount of the benefit. This two-tier test is set forth in §§ 1.411(a)–11(d) and 1.417(e)–1(d)(2).

Finally, in order to retain its qualification under section 401(a) or 403(a), a plan must contain provisions reflecting the section 417(e) interest rate limitations used in the threshold and amount rules, even if the provisions that are currently in the plan currently result in greater single sum distributions than the distributions that would result from use of the section 417(e) interest rate. This provision is required because, in the future, use of the section 417(e) rate rather than the plan rate may result in larger distributions due to the variable nature of PBGC rates. These rules are discussed in more detail in Notice 87–20.

The proposed and temporary regulations were unclear as to how the

interest rate limitations applied to benefits under plans in situations in which plan benefits in the form of single sum distributions include subsidies. The final regulations apply the interest rate limitations to value all benefits, including subsidies such as early retirement and survivor subsidies, effective for distributions commencing on or after the first day of the first plan year beginning after December 31, 1988. Prior to such date, a plan will be considered to satisfy the interest rate limitation rules with respect to subsidies if under the plan a reasonable interpretation of the temporary regulations was applied on a consistent basis.

Loan Rules

The proposed and temporary REA 1984 regulations provided rules governing the reduction of an accrued benefit to satisfy a participant's loan obligation to the plan. Because such a reduction is treated as a distribution from the plan, it is generally subject to the applicable consent requirements of sections 411(a)(11) and 417(e). Nevertheless, the proposed and temporary regulations provided that a plan may obtain the consent of the participant and the participant's spouse within the 90-day period before a loan is secured by the accrued benefit.

The loan rules of sections 401(a)(11)(B)(iii) and 417 (a)(4) and (c)(3) were revised by the 1986 Act. Section 1.401(a)–20, Q&A 24, reflects these amendments, which closely approximate the rules in the proposed and temporary regulations.

The Department of Labor has interpretive authority over the prohibited transaction rules of section 4975. It has indicated that a loan secured by an accrued benefit subject to REA 1984 may not be adequately secured under section 4975(d)(1) if consent to a reduction in the accrued benefit is not obtained before a loan is so secured, and, therefore, may be a prohibited transaction.

DEC Benefits and Employee Contributions

The final regulations, § 1.401(a)–20, Q&As 14(b) and 39(c), contain rules applying the consent requirements to plans holding Qualified Voluntary Employee Contributions (Accumulated DECs). Accumulated DECs are plan benefits attributable to employee contributions deductible under section 219. Because the consent requirements were not applied to Accumulated DECs under the proposed and temporary regulations, these rules will not apply to distributions made before the first day of the first plan year beginning after December 31, 1988.

Further, a transitional rule is provided for plans that paid benefits attributable to employee contributions to employees who were not vested in employer contributions. Under this transitional rule, distribution of these employee contributions prior to October 22, 1986, will generally not be treated as violating sections 401(a)(11) and 417.

Annuity Starting Date

The final regulations clarify the meaning of annuity starting date. In the case of payment of a benefit as an annuity, the annuity starting date is the first day of the first period for which an annuity is paid. For example, if an annuity is paid retroactive to January 1, the annuity stating date is January 1 even though the actual payment is not made until a later date. Similarly, in the case of a payment not in an annuity form, the annuity starting date is the first day of the first period for which the benefit form is paid.

The annuity starting date is important for purposes of determining when QPSA coverage ends and, therefore, when a QJSA must be provided and when participant and spousal consent must be provided. Further, the annuity starting date is the distribution date under sections 411(a)(11) and 417(e) for purposes of determining the applicable PBGC interest rate.

Participant and spousal consent must be obtained within 90 days prior to the annuity starting date. For example, if the plan offers a deferred annuity option starting five years hence, in order for the plan to pay the deferred annuity option, participant and spousal consent to waive the QJSA and take the annuity must be obtained 90 days before the start of the period five years hence. Thus, the plan may only receive consent with respect to benefits that commence within 90 days (*i.e.*, annuity starting date is within 90 days). Any delayed payment form alternative to the QJSA requires consents at the time of commencement of the delayed payments.

Accrued Benefit, Cash-Out Rules

A plan may have more than one optional form of benefit under which benefits may be paid. There is no requirement that each form of benefit be the actuarial equivalent of all other benefit forms. Thus, a plan could have a QJSA benefit form that has a larger actuarial value than a benefit payable as a single life annuity and the amount of a single sum optional form could be determined based on the single life annuity. Similarly, a plan may provide for a retirement subsidy or an early retirement benefit that applies to the payment of a specific optional form. Whether these subsidies must be valued when calculating the amount of the single sum distribution depends on the plan provisions. The present value required by sections 411(a)(11) and 417(e) and § 1.417(e)–1(a) applies to the particular optional form of benefit as determined under the plan. The definitely determinable requirement and the requirements of section 411(c)(3) also apply in determining the amount of any optional form of benefit. Thus, a plan may satisfy such requirements even though it has a subsidized joint and survivor annuity and determines a single sum distribution based on an unsubsidized single life annuity.

The final regulations, §§ 1.411(a)–7(d)(2)(ii) (C) and (D) and (d)(4) (i) and (iv), change the existing cash-out rules under section 411(a)(7) to reflect REA 1984. Generally, a plan must permit a participant to repay any plan distribution that is less than the present value of the participant's accrued benefit. The determination of the present value of the accrued benefit is based on the form of benefit distributed to the participant. A plan distributing a participant's entire accrued benefit is not required to take into account benefit subsidies described in section 411(d)(6)(B)(i) to which the participant is not currently entitled but to which the participant could subsequently be entitled. For example, if a participant receives a distribution of his entire accrued benefit at a time when he has not yet satisfied the conditions for a subsidized benefit, the plan is not required to permit the participant to repay the distribution of his benefit. If the plan does not distribute the entire accrued benefit, however, and the participant both repays the distribution and later satisfies the conditions for the subsidy, the participant must be entitled to the subsidy in order for the plan to satisfy section 411.

Executive Order 12291 and Regulatory Flexibility Act

The Treasury Department has determined that this final rule is not a major rule as defined in Executive Order 12291 and that, therefore, a regulatory impact analysis is not required.

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to

the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0928. The estimated average burden associated with the collection of information in this final rule is 35 minutes per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Washington, DC 20224, *Attention:* IRS Reports Clearance Office, TR:FP and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for Internal Revenue Service.

Temporary Regulations Superseded

The following table indicates sections in the temporary regulations that are superceded, the sections of the corresponding final regulation that replaces the temporary regulation and the subject matter for the regulation section:

Temporary regulation section	Final regulation section	Subject matter
Section 1.401(a)–11T.	Section 1.401(a)–20.	Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.
Section 1.401(a)–13T.	Section 1.401(a)–13.	Assignment of alienation of benefits; special rules for qualified domestic relations orders.
Section 1.402(f)–1T.	Section 1.402(f)–1.	Required explanation of rollovers, capital gains, and special averaging.
Section 1.410(a)–5T.	Section 1.410(a)–8.	Five consecutive 1-year breaks in service, transitional rules under the Retirement Equity Act of 1984.
Section 1.410(a)–7T.	Section 1.410(a)–9.	Elapsed time method; maternity and paternity absence.
Section 1.411(a)(11)–1T.	Section 1.411(a)–11.	Restrictions and valuations of distributions.
Section 1.411(d)–3T.	Section 1.411(d)–3.	Class year plan—pre-1986 year.
	Section 1.411(d)–4.	Class year plans—post-1986 year.
Section 1.417(e)–1T.	Section 1.417(e)–1.	Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

Drafting Information

The principal authors of these final regulations are William D. Gibbs and Richard J. Wickersham, of the Employee Benefit and Exempt Organizations Division of the Office of the Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department also participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.401–0—1.425–1

Income taxes, Employee benefit plans, Pensions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

Income Tax Regulation

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805.

Par. 2. Section 1.401(a)–(11) is amended by—

1. Striking out in paragraphs (a)(1) (i), (ii) and (iii) "such benefits" and adding in lieu thereof "life annuity benefits".
2. Revising paragraph (a) (3) *Example* (1).
3. Revising paragraph (c)(2) (i)(C).
4. Revising the first two sentences of paragraph (c)(3) (ii).
5. Revising paragraph (d)(1) and adding a new paragraph (d)(5).
6. Adding a new paragraph (g).

These revised and added provisions read as follows:

§ 1.401 (a)–11 Qualified joint and survivor annuities.

(a) *General rule*—* * *

(3) *Illustration* * * *

Example (1). The X Corporation Defined Contribution Plan was established in 1960. As in effect on January 1, 1974, the plan provided that, upon the participant's retirement, the participant may elect to receive the balance of his account in the form of (1) a single-sum cash payment, (2) a single-sum distribution consisting of X Corporation stock, (3) five equal annual cash payments, (4) a life annuity, or (5) a combination of options (1) through (4). The plan also provided that, if a participant did not elect another form of distribution, the balance of his account would be distributed to him in the form of a single-sum cash payment upon his retirement. Assume that section 401(a)(11) and this section became applicable to the plan as of its plan year beginning January 1, 1976, with respect to persons who were active participants in the plan as of such date (see paragraph (f) of this section). If X Corporation Defined Contribution Plan continues to allow the life annuity payment option after December 31, 1975, it must be amended to provide that if a participant elects a life annuity option the life annuity benefit will be paid in a form having the effect of a qualified joint and survivor annuity, except to the extent that the participant elects another form of benefit payment. However, the plan can continue to provide that, if no election is made, the balance will be paid as a single-sum cash payment. If the trust is not so amended, it will fail to qualify under section 401(a).

* * * * * *

(c) *Election.* * * *

(2) *Election of early survivor annuity*—(i) *In general.* * * *

(C) A plan is not required to provide an election under this subparagraph if—

(*1*) The plan provides that an early survivor annuity is the only form of benefit payable under the plan with respect to a married participant who dies while employed by an employer maintaining the plan,

(*2*) In the case of a defined contribution plan, the plan provides a survivor benefit at least equal in value to the vested portion of the participant's account balance, if the participant dies while in active service with an employer maintaining the plan, or

(*3*) In the case of a defined benefit plan, the plan provides a survivor benefit at least equal in value to the present value of the vested portion of the participant's normal form of the accrued benefit payable at normal retirement age (determined immediately prior to death), if the participant dies while in active service with an employer maintaining the plan. Any present values must be determined in accordance with either the actuarial assumptions or factors specified in the plan, or a variable standard independent of employer discretion for converting optional benefits specified in the plan.

* * * * * *

(3) *Information to be provided by plan administrator.*

* * * * * *

(ii) The method or methods used to provide the information described in subdivision (i) of this subparagraph may vary. Posting which meets the requirements of § 1.7476–2(c)(1) may be used; see § 1.7476–2(c)(1) for examples of other methods which may be used. * * *

(d) *Permissible additional plan provisions*—(1) *In general.* A plan will not fail to meet the requirements of section 401(a)(11) and this section merely because it contains one or more of the provisions described in paragraphs (d)(2) through (5) of this section.

* * * * *

(5) *Benefit option approval by third party.* (i) A plan may provide that an optional form of benefit elected by a participant is subject to the approval of an administrative committee or similar third party. However, the administrative committee cannot deny a participant any of the benefits required by section 401(a)(11). For example, if a plan offers a life annuity option, the committee may deny the participant a qualified joint and survivor annuity only by denying the participant access to all life annuity options without knowledge of whether the participant wishes to receive a qualified joint and survivor annuity. Alternatively, if the committee knows which form of life annuity the participant has chosen before the committee makes its decision, the committee cannot withhold its consent for payment of a qualified joint and survivor annuity event though it denies all other life annuity options. This subparagraph (5) only applies before the effective date of the amendment made to section 411(d)(6) by section 301 of the Retirement Equity Act of 1984. See section 411(d)(6) and the regulations thereunder for rules limiting employer discretion.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. In 1980 plan M provides that the automatic form of benefit is a single sum distribution. The plan also permits, subject to approval by the administrative committee, the election of several optional forms of life annuity. On the election form that is reviewed by the administrative committee the participant indicates whether any life annuity option is preferred, without indicating the particular life annuity chosen. Thus, the committee approves or disapproves the election without knowledge of whether a qualified joint and survivor annuity will be elected. The administrative committee approval provision in Plan M does not cause the plan to fail to satisfy this section. On the other hand, if the form indicates which form of life annuity is preferred, committee disapproval of any election of the qualified joint and survivor annuity would cause the plan to fail to satisfy this section.

* * * * *

(g) *Effect of REA 1984*—(1) *In general.* The Retirement Equity Act of 1984 (REA 1984) significantly changed the qualified joint and survivor annuity rules generally effective for plan years beginning after December 31, 1984. The new survivor annuity rules are primarily in sections 401(a)(11) and 417 as revised by REA 1984 and §§ 1.401(a)–20 and 417(e)–1.

(2) *Regulations after REA 1984.* (i) REA and the regulations thereunder to the extent inconsistent with pre-REA 1984 section 401(a)(11) and this section are controlling for years to which REA 1984 applies. See *e.g.*, paragraphs (a)(1) and (2) of this section, relating to required provisions and certain cash-outs, respectively and (e), relating to costs of providing annuities, for rules that are inconsistent with REA 1984 and, therefore, are not applicable to REA 1984 years.

(ii) To the extent that the pre-REA 1984 law either is the same as or consistent with REA 1984 and the new regulations hereunder, the rules in this section shall continue to apply for years to which REA 1984 applies. (See, *e.g.*, paragraph (c) (relating to how information is furnished participants and spouses) and paragraph (b) (defining a life annuity) for some of the rules that apply to REA 1984 years.) The rules in this section shall not apply for such year to the extent that they are inconsistent with REA 1984 and the regulations thereunder.

(iii) The Commissioner may provide additional guidance as to the continuing effect of the various rules in this section for years to which REA applies.

§ 1.401(a)–11T [Removed]

Par. 3. Section 1.401(a)–11T is removed. New § 1.401(a)–20 is added in its place immediately after § 1.401(a)–19 to read as follows:

§ 1.401(a)–20 Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.

Q–1: What are the survivor annuity requirements added to the Code by the Retirement Equity Act of 1984 (REA 1984)?

A–1: REA 1984 replaced section 401(a)(11) with a new section 401(a)(11) and added section 417. Plans to which new section 401(a)(11) applies must comply with the requirements of sections 401(a)(11) and 417 in order to remain qualified under sections 401(a) or 403(a). In general, these plans must provide both a qualified joint and survivor annuity (QJSA) and a qualified preretirement survivor annuity (QPSA) to remain qualified. These survivor annuity requirements are applicable to any benefit payable under a plan, including a benefit payable to a participant under a contract purchased by the plan and paid by a third party.

Q–2: Must annuity contracts purchased and distributed to a participant or spouse by a plan subject to the survivor annuity requirements of sections 401(a)(11) and 417 satisfy the requirements of those sections?

A–2: Yes. Rights and benefits under section 401(a)(11) or 417 may not be eliminated or reduced because the plan uses annuity contracts to provide benefits merely because (a) such a contract is held by a participant or spouse instead of a plan trustee, or (b) such contracts are distributed upon plan termination. Thus, the requirements of sections 401(a)(11) and 417 apply to payments under the annuity contracts, not to the distributions of the contracts.

Q–3: What plans are subject to the survivor annuity requirements of section 401(a)(11)?

A–3: (a) Section 401(a)(11) applies to any defined benefit plan and to any defined contribution plan that is subject to the minimum funding standards of section 412. This section also applies to any participant under any other defined contribution plan unless all of the following conditions are satisfied—

(1) The plan provides that the participant's nonforfeitable accrued benefit is payable in full, upon the participant's death, to the participant's surviving spouse (unless the participant elects, with spousal consent that satisfies the requirements of section 417(a)(2), that such benefit be provided instead to a designated beneficiary);

(2) The participant does not elect the payment of benefits in the form of a life annuity; and

(3) With respect to the participant, the plan is not a transferee or an offset plan. (See Q&A 5 of this section.)

(b) A defined contribution plan not subject to the minimum funding standards of section 412 will not be treated as satisfying the requirement of paragraph (a)(1) unless both of the following conditions are satisfied—

(1) The benefit is available to the surviving spouse within a reasonable time after the participant's death. For this purpose, availability within the 90-day period following the date of death is deemed to be reasonable and the reasonableness of longer periods shall be determined based on the particular facts and circumstances. A time period longer than 90 days, however, is deemed unreasonable if it is less favorable to the surviving spouse than any time period under the plan that is applicable to other distributions. Thus, for example, the availability of a benefit to the surviving spouse would be unreasonable if the distribution was required to be made by the close of the plan year including the

participant's death while distributions to employees who separate from service were required to be made within 90 days of separation.

(2) The benefit payable to the surviving spouse is adjusted for gains or losses occurring after the participant's death in accordance with plan rules governing the adjustment of account balances for other plan distributions. Thus, for example, the plan may not provide for distributions of an account balance to a surviving spouse determined as of the last day of the quarter in which the participant's death occurred with no adjustments of an account balance for gains or losses after death if the plan provides for such adjustments for a participant who separates from service within a quarter.

(c) For purposes of determining the extent to which section 401(a)(11) applies to benefits under an employee stock ownership plan (as defined in section 4975(e)(7)), the portion of a participant's accrued benefit that is subject to section 409(h) is to be treated as though such benefit were provided under a defined contribution plan not subject to section 412.

(d) The requirements set forth in section 401(a)(11) apply to other employee benefit plans that are covered by applicable provisions under Title I of the Employee Retirement Income Security Act of 1974. For purposes of applying the regulations under sections 401(a)(11) and 417, plans subject to ERISA section 205 are treated as if they were described in section 401(a). For example, to the extent that section 205 covers section 403(b) contracts and custodial accounts they are treated as section 401(a) plans. Individual retirement plans (IRAs), including IRAs to which contributions are made under simplified employee pensions described in section 408(k) and IRAs that are treated as plans subject to Title I, are not subject to these requirements.

Q–4: What rules apply to a participant who elects a life annuity option under a defined contribution plan not subject to section 412?

A–4: If a participant elects at any time (irrespective of the applicable election period defined in section 417(a)(6)) a life annuity option under a defined contribution plan not subject to section 412, the survivor annuity requirements of sections 401(a)(11) and 417 will always thereafter apply to all of the participant's benefits under such plan unless there is a separate accounting of the account balance subject to the election. A plan may allow a participant to elect an annuity option prior to the applicable election period described in section 417(a)(6). If a participant elects an annuity option, the plan must satisfy the applicable written explanation, consent, election, and withdrawal rules of section 417, including waiver of the QJSA within 90 days of the annuity starting date. If a participant selecting such an option dies, the surviving spouse must be able to receive the QPSA benefit described in section 417(c)(2) which is a life annuity, the actuarial equivalent of which is not less than 50 percent of the nonforfeitable account balance (adjusted for loans as described in Q&A 24(d) of this section). The remaining account balance may be paid to a designated nonspouse beneficiary.

Q–5: How do sections 401(a)(11) and 417 apply to transferee plans which are defined contribution plans not subject to section 412?

A–5: (a) *Transferee plans.* Although the survivor annuity requirements of sections 401(a)(11) and 417 generally do not apply to defined contribution plans not subject to section 412, such plans are subject to the survivor annuity requirements to the extent that they are transferee plans with respect to any participant. A defined contribution plan is a transferee plan with respect to any participant if the plan is a direct or indirect transferee of such participant's benefits held on or after January 1, 1985, by:

(1) A defined benefit plan,

(2) A defined contribution plan subject to section 412

or

(3) A defined contribution plan that is subject to the survivor annuity requirements of sections 401(a)(11) and 417 with respect to that participant.

If through a merger, spinoff, or other transaction having the effect of a transfer, benefits subject to the survivor annuity requirements of sections 401(a)(11) and 417 are held under a plan that is not otherwise subject to such requirements, such benefits will be subject to the survivor annuity requirements even though they are held under such plan. Even if a plan satisfies the survivor annuity requirements, other rules apply to these transactions. See, *e.g.*, section 411(d)(6) and the regulations thereunder. A transfer made before January 1, 1985, and any rollover contribution made at any time, are not transactions that subject to the transferee plan to the survivor annuity requirements with respect to a participant. If a plan is a transferee plan with respect to a participant, the survivor annuity requirements do not apply with respect to other plan participants solely because of the transfer. Any plan that would not otherwise be subject to the survivor annuity requirements of sections 401(a)(11) and 417 whose benefits are used to offset benefits in a plan subject to such requirements is subject to the survivor annuity requirements with respect to those participants whose benefits are offset. Thus, if a stock bonus or profit-sharing plan offsets benefits under a defined benefit plan, such a plan is subject to the survivor annuity requirements.

(b) *Benefits covered.* The survivor annuity requirements apply to all accrued benefits held for a participant with respect to whom the plan is a transferee plan unless there is an acceptable separate accounting between the transferred benefits and all other benefits under the plan. A separate accounting is not acceptable unless gains, losses, withdrawals, contributions, forfeitures, and other credits or charges are allocated on a reasonable and consistent basis between the accrued benefits subject to the survivor annuity requirements and other benefits. If there is an acceptable separate accounting between transferred benefits and any other benefits under the plan, only the transferred benefits are subject to the survivor annuity requirements.

Q–6: Is a frozen or terminated plan required to satisfy the survivor annuity requirements of sections 401(a)(11) and 417?

A–6: In general, benefits provided under a plan that is subject to the survivor annuity requirements of sections 401(a)(11) and 417 must be provided in accordance with those requirements even if the plan is frozen or terminated. However, any plan that has a termination date prior to September 17, 1985, and that distributed all remaining assets as soon as administratively feasible after the termination date, is not subject to the survivor annuity requirements. The date of termination is determined under section 411(d)(3) and § 1.411(d)–2(c).

Q–7: If the Pension Benefit Guaranty Corporation (PBGC) is administering a plan are benefits payable in the form of a OPSA or QJSA

A–7: Yes, the PBGC will pay benefits in such forms.

Q–8: How do the survivor annuity requirements of sections 401(a)(11) and 417 apply to participants?

A–8: (a) If a participant dies before the annuity starting date with vested benefits attributable to employer or employee contributions (or both), benefits must be paid to the surviving spouse in the form of a QPSA. If a participant survives until the annuity

starting date with vested benefits attributable to employer or employee contributions (or both), benefits must be provided to the participant in the form of a QJSA.

(b) A participant may waive the QPSA or the QJSA (or both) if the applicable notice, election, and spousal consent requirements of section 417 are satisfied.

(c) Benefits are not required to be paid in the form of a QPSA or QJSA if at the time of death or distribution the participant was vested only in employee contributions and such death occurred, or distribution commenced, before October 22, 1986.

(d) *Certain mandatory distributions.* A distribution may occur without satisfying the spousal consent requirements of section 417 (a) and (e) if the present value of the nonforfeitable benefit does not exceed $3,500. See § 1.417(e)–1.

Q–9: May separate portions of a participant's accrued benefit be subject to QPSA and QJSA requirements at any particular point in time?

A–9: (a) *Dual QPSA and QJSA rights.* One portion of a participant's benefit may be subject to the QPSA and another portion to the QJSA requirements at the same time. For example, in order for a money purchase pension plan to distribute any portion of a married participant's benefit to the participant, the plan must distribute such portion in the form of a QJSA (unless the plan satisfies the applicable consent requirements of section 417 (a) and (e) with respect to such portion of the participant's benefit). This rule applies even if the distribution is merely an in-service distribution attributable to voluntary employee contributions and regardless of whether the participant has attained the normal retirement age under the plan. The QJSA requirements apply to such a distribution because the annuity starting date has occurred with respect to this portion of the participant's benefit. In the event of a participant's death following the commencement of a distribution in the form of a QJSA, the remaining payments must be made to the surviving spouse under the QJSA. In addition, the plan must satisfy the QPSA requirements with respect to any portion of the participant's benefits for which the annuity starting date had not yet occurred.

(b) *Example.* Assume that participant A has a $100,000 account balance in a money purchase pension plan. A makes an in-service withdrawal of $20,000 attributable to voluntary employee contributions. The QJSA requirements apply to A's withdrawal of the $20,000. Accordingly, unless the QJSA form is properly waived such amount must be distributed in the form of a QJSA. A's remaining account balance ($80,000) remains subject to the QPSA requirements because the annuity starting date has not occurred with respect to the $80,000. (If A survives until the annuity starting date, the $80,000 would be subject to the QJSA requirements.) If A died on the day following the annuity starting date for the withdrawal, A's spouse would be entitled to a QPSA with a value equal to at least $40,000 with respect to the $80,000 account balance, in addition to any survivor benefit without respect to the $20,000. If the $20,000 payment to A had been the first payment of an annuity purchased with the entire $100,000 account balance rather than an in-service distribution, then the QJSA requirements would apply to the entire account balance at the time of the annuity starting date. In such event, the plan would have no obligation to provide A's spouse with a QPSA benefit upon A's death. Of course, A's spouse would receive the QJSA benefit (if the QJSA had not been waived) based on the full $100,000.

Q–10: What is the relevance of the annuity starting date with respect to the survivor benefit requirements?

A–10: (a) *Relevance.* The annuity starting date is relevant to whether benefits are payable as either a QJSA or QPSA, or other selected optional form of benefit. If a participant is alive on the annuity starting date, the benefits must be payable as a QJSA. If the participant is not alive on the annuity starting date, the surviving spouse must receive a QPSA. The annuity starting date is also used to determine when a spouse may consent to and a participant may waive a QJSA. A waiver is only effective if it is made 90 days before the annuity starting date. Thus, a deferred annuity cannot be selected and a QJSA waived until 90 days before payments commence under the deferred annuity. In some cases, the annuity starting date will have occurred with respect to a portion of the participant's accrued benefit and will not have occurred with respect to the remaining portion. (See Q&A–9.)

(b) *Annuity starting date*—(1) *General rule.* For purposes of sections 401(a)(11), 411(a)(11) and 417, the annuity starting date is the first day of the first period for which an amount is paid as an annuity or any other form.

(2) *Annuity payments.* The annuity starting date is the first date for which an amount is paid, not the actual date of payment. Thus, if participant A is to receive annuity payments as of the first day of the first month after retirement but does not receive any payments until three months later, the annuity starting date is the first day of the first month. For example, if an annuity is to commence on January 1, January 1 is the annuity starting date even though the payment for January is not actually made until a later date. In the case of a deferred annuity, the annuity starting date is the date for which the annuity payments are to commence, not the date that the deferred annuity is elected or the date the deferred annuity contract is distributed.

(3) *Administrative delay.* A payment shall not be considered to occur after the annuity starting date merely because actual payment is reasonably delayed for calculation of the benefit amount if all payments are actually made.

(4) *Forfeitures on death.* Prior to the annuity starting date, section 411(a)(3)(A) allows a plan to provide for a forfeiture of a participant's benefit, except in the case of a QPSA or a spousal benefit described in section 401(a)(11)(B)(iii)(I). Once the annuity starting date has occurred, even if actual payment has not yet been made, a plan must pay the benefit in the distribution form elected.

(5) *Surviving spouses, alternate payees, etc.* The definition of "annuity starting date" for surviving spouses, other beneficiaries and alternate payees under section 414(p) is the same as it is for participants.

(c) *Disability auxiliary benefit*—(1) *General rule.* The annuity starting date for a disability benefit is the first day of the first period for which the benefit becomes payable unless the disability benefit is an auxiliary benefit. The payment of any auxiliary disability benefits is disregarded in determining the annuity starting date. A disability benefit is an auxiliary benefit if upon attainment of early or normal retirement age, a participant receives a benefit that satisfies the accrual and vesting rules of section 411 without taking into account the disability benefit payments up to that date.

(2) *Example.* (i) Assume that participant A at age 45 is entitled to a vested accrued benefit of $100 per month commencing at age 65 in the form of a joint and survivor annuity under Plan X. If prior to age 65 A receives a disability benefit under Plan X and the payment of such benefit does not reduce the amount of A's retirement benefit of $100 per month commencing at age 65, any disability benefit payments made to A between ages 45 and 65 are auxiliary benefits. Thus, A's annuity starting date does not occur until A attains age 65. A's surviving spouse B would be entitled to receive a QPSA if A died before age 65. B would be entitled to receive the survivor portion of a QJSA (unless waived) if A died after age 65. The QPSA payable to B upon A's death prior to age 65 would be computed by reference to the QJSA that would have been payable to A and B had A survived to age 65.

(ii) If in the above example A's benefit payable at age 65 is reduced to $99 per month because a disability benefit is provided to A

prior to age 65, the disability benefit would not be an auxiliary benefit. The benefit of $99 per month payable to A at age 65 would not, without taking into account the disability benefit payments to A prior to age 65, satisfy the minimum vesting and accrual rules of section 411. Accordingly, the first day of the first period for which the disability payments are to be made to A would constitute A's annuity starting date, and any benefit paid to A would be required to be paid in the form of a QJSA (unless waived by A with the consent of B).

(d) *Other rules*—(1) *Suspension of benefits.* If benefit payments are suspended after the annuity starting date pursuant to a suspension of benefits described in section 411(a)(3)(B) after an employee separates from service, the recommencement of benefit payments after the suspension is not treated as a new annuity starting date unless the plan provides otherwise. In such case, the plan administrator is not required to provide new notices nor to obtain new waivers for the recommenced distributions if the form of distribution is the same as the form that was appropriately selected prior to the suspension. If benefits are suspended for an employee who continues in service without a separation and who never receives payments, the commencement of payments after the period of suspension is treated as the annuity starting date unless the plan provides otherwise.

(2) *Additional accruals.* In the case of an annuity starting date that occurs on or after normal retirement age, such date applies to any additional accruals after the annuity starting date, unless the plan provides otherwise. For example, if a participant who continues to accrue benefits elects to have benefits paid in an optional form at normal retirement age, the additional accruals must be paid in the optional form selected unless the plan provides otherwise. In the case of an annuity starting date that occurs prior to normal retirement age, such date does not apply to any additional accruals after such date.

Q–11: Do the survivor annuity requirements apply to benefits derived from both employer and employee contributions?

A–11: Yes. The survivor annuity benefit requirements apply to benefits derived from both employer and employee contributions. Benefits are not required to be paid in the form of a QPSA or QJSA if the participant was vested only in employee contributions at the time of death or distribution and such death or distribution occurred before October 22, 1986. All benefits provided under a plan, including benefits attributable to rollover contributions, are subject to the survivor annuity requirements.

Q–12: To what benefits do the survivor annuity requirements of sections 401(a)(11) and 417 apply?

A–12: (a) *Defined benefit plans.* Under a defined benefit plan, sections 401(a)(11) and 417 apply only to benefits in which a participant was vested immediately prior to death. They do not apply to benefits to which a participant's beneficiary becomes entitled by reason of death or to the proceeds of a life insurance contract to the extent such proceeds exceed the present value of the participant's nonforfeitable benefits that existed immediately prior to death.

(b) *Defined contribution plans.* Sections 401(a)(11) and 417 apply to all nonforfeitable benefits which are payable under a defined contribution plan, whether nonforfeitable before or upon death, including the proceeds of insurance contracts.

Q–13: Does the rule of section 411(a)(3)(A) which permits forfeitures on account of death apply to a QPSA or the spousal benefit described in section 401(a)(11)(B)(iii)?

A–13: No. Section 411(a)(3)(A) permits forfeiture on account of death prior to the time all the events fixing payment occur. However, this provision does not operate to deprive a surviving spouse of a QPSA or the spousal benefit described in section 401(a)(11)(B)(iii). Therefore, sections 401(a)(11) and 417 apply to benefits that were nonforfeitable immediately prior to death (determined without regard to section 411(a)(3)(A)). Thus, in the case of the death of a married participant in a defined contribution plan not subject to section 412 which provides that, upon a participant's death, the entire nonforfeitable accrued benefit is payable to the participant's spouse, the nonforfeitable benefit is determined without regard to the provisions of section 411(a)(3)(A).

Q–14: Do sections 411(a)(11), 401(a)(11) and 417 apply to accumulated deductible employee contributions, as defined in section 72(o)(5)(B) (Accumulated DECs)?

A–14: (a) *Employee consent, section 411.* The requirements of section 411(a)(11) apply to Accumulated DECs. Thus, Accumulated DECs may not be distributed without participant consent unless the applicable exemptions apply.

(b) *Survior requirements.* Accumulated DECs are treated as though held under a separate defined contribution plan that is not subject to section 412. Thus, section 401(a)(11) applies to Accumulated DECs only as provided in section 401(a)(11)(B)(iii). All Accumulated DECs are treated in this manner, including Accumulated DECs that are the only benefit held under a plan and Accumulated DECs that are part of a defined benefit or a defined contribution plan.

(c) *Effective date.* Sections 401(a)(11) and 411(a)(11) shall not apply to distributions of accumulated DECs until the first plan year beginning after December 31, 1988.

Q–15: How do the survivor annuity requirements of sections 401(a)(11) and 417 apply to a defined benefit plan that includes an accrued benefit based upon a contribution to a separate account or mandatory employee contributions?

A–15: (a) *414(k) plans.* In the case of a section 414(k) plan that includes both a defined benefit plan and a separate account, the rules of sections 401(a)(11) and 417 apply separately to the defined benefit portion and the separate account portion of the plan. The separate account portion is subject to the survivor annuity requirements of sections 401(a)(11) and 417 and the special QPSA rules in section 417(c)(2).

(b) *Employee contributions*—(1) *Voluntary.* In the case of voluntary employee contributions to a defined benefit plan, the plan must maintain a separate account with respect to the voluntary employee contributions. This separate account is subject to the survivor annuity requirements of sections 401(a)(11) and 417 and the special QPSA rules in section 417(c)(2).

(2) *Mandatory.* In the case of a defined benefit plan providing for mandatory employee contributions, the entire accrued benefit is subject to the survivor annuity requirements of sections 401(a)(11) and 417 as a defined benefit plan.

(c) *Accumulated DECs.* See Q&A 14 of this section for the rule applicable to accumulated deductible employee contributions.

Q–16: Can a plan provide a benefit form more valuable than the QJSA and if a plan offers more than one annuity option satisfying the requirements of a QJSA, is spousal consent required when the participant chooses among the various forms?

A–16: In the case of an unmarried participant, the QJSA may be less valuable than other optional forms of benefit payable under the plan. In the case of married participant, the QJSA must be at least as valuable as any other optional form of benefit payable under the plan at the same time. Thus, if a plan has two joint and survivor annuities that would satisfy the

requirements for a QJSA, but one has a greater actuarial value than the other, the more valuable joint and survivor annuity is the QJSA. If there are two or more actuarially equivalent joint and survivor annuities that satisfy the requirements for a QJSA, the plan must designate which one is the QJSA and, therefore, the automatic form of benefit payment. A plan, however, may allow a participant to elect out of such a QJSA, without spousal consent, in favor of another actuarially equivalent joint and survivor annuity that satisfies the QJSA conditions. Such an election is not subject to the requirement that it be made within the 90-day period before the annuity starting date. For example, if a plan designates a joint and 100% survivor annuity as the QJSA and also offers an actuarially equivalent joint and 50% survivor annuity that would satisfy the requirements of a QJSA, the participant may elect the joint and 50% survivor annuity without spousal consent. The participant, however, does need spousal consent to elect a joint and survivor annuity that was not actuarially equivalent to the automatic QJSA.

Q–17: When must distributions to a participant under a QJSA commence?

A–17: (a) *QJSA benefits upon earliest retirement.* A plan must permit a participant to receive a distribution in the form of a QJSA when the participant attains the earliest retirement age under the plan. Written consent of the participant is required. However, the consent of the participant's spouse is not required. Any payment not in the form of a QJSA is subject to spousal consent. For example, if the participant separates from service under a plan that allows for distributions on separation from service or if a plan allows for in-service distributions, the participant may receive a QJSA without spousal consent in such events. Payments in any other form, including a single sum, would require waiver of the QJSA by the participant's spouse.

(b) *Earliest retirement age.* (1) This paragraph (b) defines the term "earliest retirement age" for purposes of sections 401(a)(11), 411(a)(11) and 417.

(2) In the case of a plan that provides for voluntary distributions that commence upon the participant's separation from service, earliest retirement age is the earliest age at which a participant could separate from service and receive a distribution. Death of a participant is treated as a separation from service.

(3) In the case of a plan that provides for in-service distributions, earliest retirement age is the earliest age at which such distributions may be made.

(4) In the case of a plan not described in subparagraph (2) or (3) of this paragraph, the rule below applies. Earliest retirement age is the early retirement age determined under the plan, or if no early retirement age, the normal retirement age determined under the plan. If the participant dies or separates from service before such age, then only the participant's actual years of service at the time of the participant's separation from service or death are taken into account. Thus, in the case of a plan under which benefits are not payable until the attainment of age 65, or upon attainment of age 55 and completion of 10 years of service, the earliest retirement age of a participant who died or separated from service with 8 years of service is when the participant whould have attained age 65 (if the participant had survived). On the other hand, if a participant died or separated from service after 10 years of service, the earliest retirement age is when the participant would have attained age 55 (if the participant had survived).

Q–18: What is a qualified preretirement survivor annuity (QPSA) in a defined benefit plan?

A–18: A QPSA is an immediate annuity for the life of the surviving spouse of a participant. Each payment under a QPSA under a defined benefit plan is not to be less than the payment that would have been made to the survivor under the QJSA payable under the plan if (a) in the case of a participant who dies after attaining the earliest retirement age under the plan, the participant had retired with a QJSA on the day before the participant's death, and (b) in the case of a participant who dies on or before the participant's earliest retirement age under the plan, the participant had separated from service at the earlier of the actual time of separation or death, survived until the earliest retirement age, retired at that time with a QJSA, and died on the day thereafter. If the participant elects before the annuity starting date a form of joint and survivor annuity that satisfies the requirements for a QJSA and dies before the annuity starting date, the elected form is treated as the QJAS and the QPSA must be based on such form.

Q–19: What rules apply in determining the amount and forfeitability of a QPSA?

A–19: The QPSA is calculated as of the earliest retirement age if the participant dies before such time, or at death if the participant dies after the earliest retirement age. The plan must make reasonable actuarial adjustments to reflect a payment earlier or later than the earliest retirement age. A defined benefit plan may provide that the QPSA is forfeited if the spouse does not survive until the date prescribed under the plan for commencement of the QPSA (*i.e.*, the earliest retirement age). Similarly, if the spouse survives past the participant's earliest retirement age (or other earlier QPSA distribution date under the plan) and elects after the death of the participant to defer the commencement of the QPSA to a later date, a defined benefit plan may provide for a forfeiture of the QPSA benefit if the spouse does not survive until the deferred commencement date. The account balance in a defined contribution plan may not be forfeited even though the spouse does not survive until the time the account balance is used to purchase the QPSA. See Q&A–17 of this section for the meaning of earliest retirement age.

Q–20: What preretirement survivor annuity benefits must a defined contribution plan subject to the survivor annuity requirements of sections 401(a)(11) and 417 provide?

A–20: A defined contribution plan that is subject to the survivor annuity requirements of sections 401(a)(11) and 417 must provide a preretirement survivor annuity with a value which is not less than 50 percent of the nonforfeitable account balance of the participant as of the date of the participant's death. If a contributory defined contribution plan has a forfeiture provision permitted by section 411(a)(3)(A), not more than a proportional percent of the account balance attributable to contributions that may not be forfeited at death (for example, employee and section 401(k) contributions) may be used to satisfy the QPSA benefit. Thus, for example, if the QPSA benefit is to be provided from 50 percent of the account balance, not more than 50 percent of the nonforfeitable contributions may be used for the QPSA.

Q–21: May a defined benefit plan charge the participant for the cost of the QPSA benefit?

A–21: Prior to the later of the time the plan allows the participant to waive the QPSA or provides notice of the ability to waive the QPSA, a defined benefit plan may not charge the participant for the cost of the QPSA by reducing the participant's plan benefits or by any other method. The preceding sentence does not apply to any charges prior to the first plan year beginning after December 31, 1988. Once the participant is given the opportunity to waive the QPSA or the notice of the QPSA is later, the plan may charge the participant for the cost of the QPSA. A charge for the

QPSA that reasonably reflects the cost of providing the QPSA will not fail to satisfy section 411 even if it reduces the accrued benefit.

Q–22: When must distributions to a surviving spouse under a QPSA commence?

A–22: (a) In the case of a defined benefit plan, the plan must permit the surviving spouse to direct the commencement of payments under QPSA no later than the month in which the participant would have attained the earliest retirement age. However, a plan may permit the commencement of payments at an earlier date.

(b) In the case of a defined contribution plan, the plan must permit the surviving spouse to direct the commencement of payments under the QPSA within a reasonable time after the participant's death.

Q–23: Must a defined benefit plan obtain the consent of a participant and the participant's spouse to commence payments in the form of a QJSA in order to avoid violating section 415 or 411(b)?

A–23: No. A defined benefit plan may commence distributions in the form of a QJSA without the consent of the participant and spouse, even if consent would otherwise be required (see § 1.417(e)–1(b)), to the extent necessary to avoid a violation of section 415 or 411(b). For example, assume a plan has a normal retirement age of 55. A is a married participant, age 55, and has accrued a $75,000 joint and 100 percent survivor annuity that satisfies section 415. If an actuarial increase would be required under section 411 because of deferred commencement and the increase would cause the benefit to exceed the applicable limit under section 415, the plan may commence payment of a QJSA at age 55 without the participant's election or consent and without the spouse's concent.

Q–24: What are the rules under sections 401(a)(11) and 417 applicable to plan loans?

A–24: (a) *Consent rules.* (1) A plan does not satisfy the survivor annuity requirements of sections 401(a)(11) and 417 unless the plan provides that, at the time the participant's accrued benefit is used as security for a loan, spousal consent to such use is obtained. Consent is required even if the accrued benefit is not the primary security for the loan. No spousal consent is necessary if, at the time the loan is secured, no consent would be required for a distribution under section 417(a)(2)(B). Spousal consent is not required if the plan or the participant is not subject to section 401(a)(11) at the time the accrued benefit is used as security, or if the total accrued benefit subject to the security is not in excess of $3,500. The spousal consent must be obtained no earlier than the beginning of the 90-day period that ends on the date on which the loan is to be so secured. The consent is subject to the requirements of section 417(a)(2). Therefore, the consent must be in writing, must acknowledge the effect of the loan and must be witnessed by a plan representative or a notary public.

(2) Participant consent is deemed obtained at the time the participant agrees to use his accrued benefit as security for a loan for purposes of satisfying the requirements for participant consent under sections 401(a)(11), 411(a)(11) and 417.

(b) *Change in status.* If spousal consent is obtained or is not required under paragraph (a) of this Q&A 24 at the time the benefits are used as security, spousal consent is not required at the time of any setoff of the loan against the accrued benefit resulting from a default, even if the participant is married to a different spouse at the time of the setoff. Similarly, in the case of a participant who secured a loan while unmarried, no consent is required at the time of a setoff of the loan against the accrued benefit even if the participant is married at the time of the setoff.

(c) *Renegotiation.* For the purposes of obtaining any required spousal consent, any renegotiation, extension, renewal, or other revision of a loan shall be treated as a new loan made on the date of the renegotiation, extension, renewal, or other revision.

(d) *Effect on benefits.* For purposes of determining the amount of a QPSA or QJSA, the accrued benefit of a participant shall be reduced by any security interest held by the plan by reason of a loan outstanding to the participant at the time of death or payment, if the security interest is treated as payment in satisfaction of the loan under the plan. A plan may offset any loan outstanding at the participant's death which is secured by the participant's account balance against the spousal benefit required to be paid under section 401(a)(11)(B)(iii).

(e) *Effective date.* Loans made prior to August 19, 1985, are deemed to satisfy the consent requirements of paragraph (a) of this Q&A 24.

Q–25: How do the survivor annuity requirements of sections 401(a)(11) and 417 apply with respect to participants who are not married or to surviving spouses and participants who have a change in marital status?

A–25: (a) *Unmarried participant rule.* Plans subject to the survivor annuity requirements of sections 401(a)(11) and 417 must satisfy those requirements applicable to QJSAs with respect to participants who are not married. A QJSA for a participant who is not married is an annuity for the life of the participant. Thus, an unmarried participant must be provided the written explanation described in section 417(a)(3)(A) and a single life annuity unless another form of benefit is elected by the participant. An unmarried participant is deemed to have waived the QPSA requirements. This deemed waiver is null and void if the participant later marries.

(b) *Marital status change.*—(1) *Remarriage.* If a participant is married on the date of death, payments to a surviving spouse under a QPSA or QJSA must continue even if the surviving spouse remarries.

(2) *One-year rule.* (i) A plan is not required to treat a participant as married unless the participant and the participant's spouse have been married throughout the one-year period ending on the earlier of (A) the participant's annuity starting date or (B) the date of the participant's death. Nevertheless, for purposes of the preceding sentence, a participant and the participant's spouse must be treated as married throughout the one-year period ending on the participant's annuity starting date even though they are married to each other for less than one year before the annuity starting date if they remain married to each other for at least one year. See section 417(d)(2). If a plan adopts the one-year rule provided in section 417(d), the plan must treat the participant and spouse who are married on the annuity starting date as married and must provide benefits which are to commence on the annuity starting date in the form of a QJSA unless the participant (with spousal consent) elects another form of benefit. The plan is not required to provide the participant with a new or retroactive election or the spouse with a new consent when the one-year period is satisfied. If the participant and the spouse do not remain married for at least one year, the plan may treat the participant as having not been married on the annuity starting date. In such event, the plan may provide that the spouse loses any survivor benefit right; further, no retroactive correction of the amount paid the participant is required.

(ii) *Example.* Plan X provides that participants who are married on the annuity starting date for less than one year are treated as unmarried participants. Plan X provides benefits in the form of a QJSA or an optional single sum distribution. Participant A was married 6 months prior to the annuity starting date. Plan X must treat A as married and must commence payments to A in the form of a QJSA unless another form of benefit

is elected by A with spousal consent. If a QJSA is paid and A is divorced from his spouse S, within the first year of the marriage, S will no longer have any survivor rights under the annuity (unless a QDRO provides otherwise). If A continues to be married to S, and A dies within the one-year period, Plan X may treat A as unmarried and forfeit the QJSA benefit payable to S.

(3) *Divorce.* If a participant divorces his spouse prior to the annuity starting date, any elections made while the participant was married to his former spouse remain valid, unless otherwise provided in a QDRO, or unless the participant changes them or is remarried. If a participant dies after the annuity starting date, the spouse to whom the participant was married on the annuity starting date is entitled to the QJSA protection under the plan. The spouse is entitled to this protection (unless waived and consented to by such spouse) even if the participant and spouse are not married on the date of the participant's death, except as provided in a QDRO.

Q–26: In the case of a defined contribution plan not subject to section 412, does the requirement that a participant's nonforfeitable accrued benefit be payable in full to a surviving spouse apply to a spouse who has been married to the participant for less than one year?

A–26: A plan may provide that a spouse who has not been married to a participant throughout the one-year period ending on the earlier of (a) the participant's annuity starting date or (b) the date of the participant's death is not treated as a surviving spouse and is not required to receive the participant's account balance. The special exception described in section 417(d)(2) and Q&A 25 of this section does not apply.

Q–27: Are there circumstances when spousal consent to a participant's election to waive the QJSA or the QPSA is not required?

A–27: Yes. If it is established to the satisfaction of a plan representative that there is no spouse or that the spouse cannot be located, spousal consent to waive the QJSA or the QPSA is not required. If the spouse is legally incompetnent to give consent, the spouse's legal guardian, even if the guardian is the participant, may give consent. Also, if the participant is legally separated or the participant has been abandoned (within the meaning of local law) and the participant has a court order to such effect, spousal consent is not required unless a QDRO provides otherwise. Similar rules apply to a plan subject to the requirements of section 401(a)(11)(B)(iii)(I).

Q–28: Does consent contained in an antenuptial agreement or similar contract entered into prior to marriage satisfy the consent requirements of sections 401(a)(11) and 417?

A–28: No. An agreement entered into prior to marriage does not satisfy the applicable consent requirements, even if the agreement is executed within the applicable election period.

Q–29: If a participant's spouse consents under section 417(a)(2)(A) to the participant's waiver of a survivor annuity form of benefit, is a subsequent spouse of the same participant bound by the consent?

A–29: No. A consent under section 417(a)(2)(A) by one spouse is binding only with respect to the consenting spouse. See Q&A–24 of this section for an exception in the case of plan benefits securing plan loans.

Q–30: Does the spousal consent requirement of section 417(a)(2)(A) require that a spouse's consent be revocable?

A–30: No. A plan may preclude a spouse from revoking consent once it has been given. Alternatively, a plan may also permit a spouse to revoke a consent after it has been given, and thereby to render ineffective the participant's prior election not to receive a QPSA or QJSA. A participant must always be allowed to change his election during the applicable election period. Spousal consent is required in such cases to the extent provided in Q&A 31, except that spousal consent is never required for a QJSA or QPSA.

Q–31: What rules govern a participant's waiver of a QPSA or QJSA under section 417(a)(2)?

A–31: (a) *Specific beneficiary.* Both the participant's waivers of a QPSA and QJSA and the spouse's consents thereto must state the specific nonspouse beneficiary (including any class of beneficiaries or any contingent beneficiaries) who will receive the benefit. Thus, for example, if spouse B consents to participant A's election to waive a QPSA, and to have any benefits payable upon A's death before the annuity starting date paid to A's children, A may not subsequently change beneficiaries without the consent of B (except if the change is back to a QPSA). If the designated beneficiary is a trust, A's spouse need only consent to the designation of the trust and need not consent to the designation of trust beneficiaries or any changes of trust beneficiaries.

(b) *Optional form of benefit*—(1) *QJSA.* Both the participant's waiver of a QJSA (and any required spouse's consent thereto) must specify the particular optional form of benefit. The participant who has waived a QJSA with the spouse's consent in favor of another form of benefit may not subsequently change the optional form of benefit without obtaining the spouse's consent (except back to a QJSA). Of course, the participant may change the form of benefit if the plan so provides after the spouse's death or a divorce (other than as provided in a QDRO). A participant's waiver of a QJSA (and any required spouse's consent thereto) made prior to the first plan year beginning after December 31, 1988, is not required to specify the optional form of benefit.

(2) *QPSA.* A participant's waiver of a QPSA and the spouse's consent thereto are not required to specify the optional form of any preretirement benefit. Thus, a participant who waives the QPSA with spousal consent may subsequently change the form of the preretirement benefit, but not the nonspouse beneficiary, without obtaining the spouse's consent.

(3) *Change in form.* After the participant's death, a beneficiary may change the optional form of survivor benefit as permitted by the plan.

(c) *General consent.* In lieu of satisfying paragraphs (a) and (b) of this Q&A 31, a plan may permit a spouse to execute a general consent that satisfies the requirements of this paragraph (c). A general consent permits the participant to waive QPSA or QJSA, and change the designated beneficary or the optional form of benefit payment without any requirement of further consent by such spouse. No general consent is valid unless the general consent acknowledges that the spouse has the right to limit consent to a specific beneficiary and a specific optional form of benefit, where applicable, and that the spouse voluntarily elects to relinquish both of such rights. Notwithstanding the previous sentence, a spouse may execute a general consent that is limited to certain beneficiaries or forms of benefit payment. In such case, paragraphs (a) and (b) of this Q&A 31 shall apply to the extent that the limited general consent is not applicable and this paragraph (c) shall apply to the extent that the limited general consent is applicable. A general consent, including a limited general consent, is not effective unless it is made during the applicable election period. A general consent executed prior to October 22, 1986 does not have to satisfy the specificity requirements of this Q&A 31.

Q–32: What rules govern a participant's waiver of the spousal benefit under section 401(a)(11)(B)?

A–32: (a) *Application.* In the case of a defined contribution plan that is not

subject to the survivor annuity requirements of sections 401(a)(11) and 417, a participant may waive the spousal benefit of section 401(a)(11)(B)(iii) if the conditions of paragraph (b) are satisfied. In general, a spousal benefit is the nonforfeitable account balance on the participant's date of death.

(b) *Conditions.* In general, the same conditions, other than the age 35 requirement, that apply to the participant's waiver of a QPSA and the spouse's consent thereto apply to the participant's waiver of the spousal benefit and the spouse's consent thereto. See Q&A–31. Thus, the participant's waiver of the spousal benefit must state the specific nonspouse beneficiary who will receive such benefit. The waiver is not required to specify the optional form of benefit. The participant may change the optional form of benefit, but not the nonspouse beneficiary, without obtaining the spouse's consent.

Q–33: When and in what manner, may a participant waive a spousal benefit or a QPSA?

A–33: (a) *Plans not subject to section 401(a)(11).* A participant in a plan that is not subject to the survivor annuity requirements of section 401(a)(11) (because of subparagraph (B)(iii) thereof) may waive the spousal benefit at any time, provided that no such waiver shall be effective unless the spouse has consented to the waiver. The spouse may consent to a waiver of the spousal benefit at any time, even prior to the participant attaining age 35. No spousal consent is required for a payment to the participant or the use of the accrued benefit as security for a plan loan to the participant.

(b) *Plans subject to section 401(a)(11).* A participant in a plan subject to the survivor annuity requirements of section 401(a)(11) generally may waive the QPSA benefit (with spousal consent) only on or after the first day of the plan year in which the participant attains age 35. However, a plan may provide for an earlier waiver (with spousal consent), provided that a written explanation of the QPSA is given to the participant and such waiver becomes invalid upon the beginning of the plan year in which the participant's 35th birthday occurs. If there is no new waiver after such date, the participant's spouse must receive the QPSA benefit upon the participant's death.

Q–34: Must the written explanations required by section 417(a)(3) be provided to nonvested participants?

A–34: Such written explantions must be provided to nonvested participants who are employed by an employer maintaining the plan. Thus, they are not required to be provided to those nonvested participants who are no longer employed by such an employer.

Q–35: When must a plan provide the written explanation, required by section 417(a)(3)(B), of the QPSA to a participant?

A–35: (a) *General rule.* A plan must provide the written explanation of the QPSA to a participant within the applicable period. Except as provided in paragraph (b), the applicable period means, with respect to a participant, whichever of the following periods ends last:

(1) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(2) A reasonable period ending after the individual becomes a participant.

(3) A reasonable period ending after the QPSA is no longer fully subsidized.

(4) A reasonable period ending after section 401(a)(11) first applies to the participant. Section 401(a)(11) would first apply when a benefit is transferred from a plan not subject to the survivor annuity requirements of section 401(a)(11) to a plan subject to such section or at the time of a election of an annuity under a defined contribution plan described in section 401(a)(11)(B)(iii).

(b) *Pre-35 separations.* In the case of a participant who separates from service before attaining age 35, the applicable period means the period beginning one year before the separation from service and ending one year after such separation. If such a participant returns to service, the plan must also comply with pragraph (a).

(c) *Reasonable period.* For purposes of applying paragraph (a), a reasonable period ending after the enumerated events described in paragraphs (a) (2), (3) and (4) is the end of the one-year period beginning with the date the applicable event occurs. The applicable period for such events begins one year prior to the occurrence of the enumerated events.

(d) *Transition rule.* In the case of an individual who was a participant in the plan on August 23, 1984, and, as of that date had attained age 34, the plan will satisfy the requriement of section 417(a)(3)(B) if it provided the explanation not later than December 31, 1985.

Q–36: How do plans satisfy the requirements of providing participants explanations of QPSAs and QJSAs?

A–36: Section 417(a)(3) sets forth the requirements for providing plan participants written explanations of QPSAs and QJSAs. The requirement that the terms and conditions of the QJSA or QPSA, as the case may be, be furnished to participants is not satisfied unless the written explanation complies with the requirements set forth in § 1.401(a)–11(c)(3). Also, for plan years beginning after December 31, 1988, participants must be furnished a general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the plan (*e.g.*, the extent to which optional forms are subsidized relative to the normal form of benefit or the interest rates used to calculate the optional forms).

Q–37: What are the consequences of fully subsidizing the cost of either a QJSA or a QPSA in accordance with section 417(a)(5)?

A–37: If a plan fully subsidizes a QJSA or QPSA in accordance with section 417(a)(5) and does not allow a participant to waive such QJSA or QPSA or to select a nonspouse beneficiary, the plan is not required to provide the written explanation required by section 417(a)(3). However, if the plan offers an election to waive the benefit or designate a beneficiary, it must satisfy the election, consent, and notice requirements of section 417(a) (1), (2), and (3), with respect to such subsidized QJSA or QPSA, in accordance with section 417(a)(5).

Q–38: What is a fully subsidized benefit?

A–38: (a) *QJSA*—(1) *General rule.* A fully subsidized QJSA is one under which no increase in cost to, or decrease in actual amounts received by, the participant may result from the participant's failure to elect another form of benefit.

(2) ***Examples.***

Example (1). If a plan provides a joint and survivor annuity and a single sum option, the plan does not fully subsidize the joint and survivor annuity, regardless of the actuarial value of the joint and survivor annuity because, in the event of the participant's early death, the participant would have received less under the annuity than he would have received under the single sum option.

Example (2). If a plan provides for a life annuity of $100 per month and a joint and 100% survivor benefit of $99 per month, the plan does not fully subsidize the joint and survivor benefit.

(b) *QPSA.* A QPSA is fully subsidized if the amount of the participant's benefit is not reduced because of the QPSA coverage and if no charge to the participant under the plan is made for the coverage. Thus, a QPSA is fully

subsidized in a defined contribution plan.

Q–39: When do the survivor annuity requirements of sections 401(a)(11) and 417 apply to plans?

A–39: Sections 401(a)(11) and 417 generally apply to plan years beginning after December 31, 1984. Sections 302 and 303 of REA 1984 provide specific effective dates and transitional rules under which the QJSA or QPSA (or pre-REA 1984 section 401(a)(11)) requirements may be applicable to particular plans or with respect to benefits provided to (as amended by REA 1984) particular participants. In general, the section 401(a)(11) (as amended by REA 1984) survivor annuity requirements do not apply with respect to a participant who does not have at least one hour of service or one hour of paid leave under the plan after August 22, 1984.

Q–40: Are there special effective dates for plans maintained pursuant to collective bargaining agreements?

A–40: Yes. Section 302(b) of REA 1984 as amended by section 1898(g) of the Tax Reform Act of 1986 provides a special deferred effective date for such plans. Whether a plan is described in section 302(b) of REA 1984 is determined under the principles applied under section 1017(c) of the Employee Retirement Income Security Act of 1974. See H.R. Rep. No. 1280, 93d Cong., 2d Sess. 286 (1974). In addition, a plan will not be treated as maintained under a collective bargaining agreement unless the employee representatives satisfy section 7701(a)(46) of the Internal Revenue Code after March 31, 1984. See § 301.7701–17T for other requirements for a plan to be considered to be collectively bargained. Nothing in section 302(b) of REA 1984 denies a participant or spouse the rights set forth in sections 303(c)(2), 303(c)(3), 303(e)(1), and 303(e)(2) of REA 1984.

Q–41: What is one hour of service or paid leave under the plan for purposes of the transition rules in section 303 of REA 1984?

A–41: One hour of service or paid leave under the plan is one hour of service or paid leave recognized or required to be recognized under the plan for any purpose, *e.g.*, participation, vesting percentage, or benefit accrual purposes. For plans that do not compute hours of service, one hour of service or paid leave means any service or paid leave recognized or required to be recognized under the plan for any purpose.

Q–42: Must a plan be amended to provide for the QPSA required by section 303(c)(2) of REA 1984, or for the survivor annuities required by section 303(e) of REA 1984?

A–42: A plan will not fail to satisfy the qualification requirements of section 401(a) or 403(a) merely because it is not amended to provide the QPSA required by section 303(c)(2) or the survivor annuities required by section 303(e). The plan must, however, satisfy those requirements in operation.

Q–43: Is a participant's election, or a spouse's consent to an election, with respect to a QPSA, made before August 23, 1984, valid?

A–43: No.

Q–44: Is spousal consent required for certain survivor annuity elections made by the participant after December 31, 1984, and before the first plan year to which new sections 401(a)(11) and 417 apply?

A–44: Yes. Section 303(c)(3) of REA 1984 provides that any election not to take a QJSA made after December 31, 1984, and before the date sections 401(a)(11) and 417 apply to the plan by a participant who has 1 hour of service or leave under the plan after August 23, 1984, is not effective unless the spousal consent requirements of section 417 are met with respect to such election. Unless the participant's annuity starting date occurred before January 1, 1985, the spousal consent required by section 417 (a)(2) and (e) must be obtained even though the participant elected the benefit prior to January 1, 1985. The plan is not required to be amended to comply with section 303(c)(3) of REA 1984, but the plan must satisfy this requirement in operation.

Q–45: Are there special rules for certain participants who separated from service prior to August 23, 1984?

A–45: Yes. Section 303(e) of REA 1984 provides special rules for certain participants who separated from service before August 23, 1984. Section 303(e)(1), which applies only to plans subject to section 401(a)(11) of the Code (as in effect on August 22, 1984), provides that participants whose annuity starting date did not occur before August 24, 1984, and who had one hour of service on or after September 2, 1974, but not in a plan year beginning after December 31, 1975, may elect to receive the benefits required to be provided under section 401(a)(11) of the Code (as in effect on August 22, 1984). Section 303(e)(2) provides that certain participants who had one hour of service in a plan year beginning on or after January 1, 1976, but not after August 22, 1984, may elect QPSA coverage under new sections 401(a)(11) and 417 in plans subject to these provisions. Section 303(e)(4)(A) requires plans or plan administrators to notify those participants of the provisions of section 303(e).

Q–46: When must a plan provide the notice required by section 303(e)(4)(A) of REA 1984?

A–46: The notice required by section 303(e)(4)(A) must be provided no later than the earlier of:

(a) The date the first summary annual report provided after September 17, 1985, is distributed to participants; or

(b) September 30, 1985.

A plan will not fail to satisfy the preceding sentence if the plan provides a fully subsidized QPSA with respect to any participant described in section 303(e) who dies on or after July 19, 1985, and before the notice is received. If the plan ceases to fully subsidize the QPSA, the cessation must not be effective until the notice is given. For this purpose, an annuity payable to a nonspouse beneficiary elected by the participant, in lieu of a spouse, shall satisfy the QPSA requirement, so long as the survivor benefit is fully subsidized. The notice required by this paragraph must be in writing and sent to the participant's last known address.

Q–47: Is there another time when plans must provide notice of the right, described in section 303(e)(1) of REA '84, to elect a pre-REA 1984 qualified joint and survivor annuity?

A–47: Yes. Notice of this right must also be provided to a participant at the time the participant applies for benefit payments.

§ 1.401(a)–13T [Removed]

Par. 4. Section 1.401(a)–13T is removed. Section 1.401(a)–13 is amended by adding a new paragraph (g) to read as follows:

§ 1.401(a)–13 Assignment or alienation of benefits.

* * * * *

(g) *Special rules for qualified domestic relations orders*—(1) *Definition.* The term "qualified domestic relations order" (QDRO) has the meaning set forth in section 414(p). For purposes of the Internal Revenue Code, a QDRO also includes any domestic relations order described in section 303(d) of the Retirement Equity Act of 1984.

(2) *Plan amendments.* A plan will not fail to satisfy the qualification requirements of section 401(a) or 403(a) merely because it does not include provisions with regard to a QDRO.

(3) *Waiver of distribution requirements.* A plan shall not be treated as failing to satisfy the requirements of sections 401 (a) and (k) and 409(d) solely because of a payment

to an alternate payee pursuant to a QDRO. This is the case even if the plan provides for payments pursuant to a QDRO to an alternate payee prior to the time it may make payments to a participant. Thus, for example, a pension plan may pay an alternate payee even though the participant may not receive a distribution because he continues to be employed by the employer.

(4) *Coordination with section 417*—(i) *Former spouse.* (A) *In general.* Under section 414(p)(5), a QDRO may provide that a former spouse shall be treated as the current spouse of a participant for all or some purposes under sections 401(a)(11) and 417.

(B) *Consent.* (*1*) To the extent a former spouse is treated as the current spouse of the participant by reason of a QDRO, any current spouse shall not be treated as the current spouse. For example, assume H is divorced from W, but a QDRO provides that H shall be treated as W's current spouse with respect to all of W's benefits under a plan. H will be treated as the surviving spouse under the QPSA and QJSA unless W obtains H's consent to waive the QPSA or QJSA or both. The fact that W married S after W's divorce from H is disregarded. If, however, the QDRO had provided that H shall be treated as W's current spouse only with respect to benefits that accrued prior to the divorce, then H's consent would be needed by W to waive the QPSA or QJSA with respect to benefits accrued before the divorce. S's consent would be required with respect to the remainder of the benefits.

(*2*) In the preceding examples, if the QDRO ordered that a portion of W's benefit (either through separate accounts or a percentage of the benefit) must be distributed to H rather than ordering that H be treated as W's spouse, the survivor annuity requirements of sections 401(a)(11) and 417 would not apply to the part of W's benefit awarded H. Instead, the terms of the QDRO would determine how H's portion of W's accrued benefit is paid. W is required to obtain S's consent if W elects to waive either the QJSA or QPSA with respect to the remaining portion of W's benefit.

(C) *Amount of the QPSA or QJSA.* (*1*) Where, because of a QDRO, more than one individual is to be treated as the surviving spouse, a plan may provide that the total amount to be paid in the form of a QPSA or survivor portion of a QJSA may not exceed the amount that would be paid if there were only one surviving spouse. The QPSA or survivor portion of the QJSA, as the case may be, payable to each surviving spouse must be paid as an annuity based on the life of each such spouse.

(*2*) Where the QDRO splits the participant's accrued benefit between the participant and a former spouse (either through separate accounts or percentage of the benefit), the surviving spouse of the participant is entitled to a QPSA or QJSA based on the participant's accrued benefit as of the date of death or the annuity starting date, less the separate account or percentage that is payable to the former spouse. The calculation is made as if the separate account or percentage had been distributed to the participant prior to the relevant date.

(ii) *Current spouse.* Under section 414(p)(5), even if the applicable election periods (*i.e.*, the first day of the year in which the participant attains age 35 and 90 days before the annuity starting date) have not begun, a QDRO may provide that a current spouse shall not be treated as the current spouse of the participant for all or some purposes under sections 401(a)(11) and 417. A QDRO may provide that the current spouse waives all future rights to a QPSA or QJSA.

(iii) *Effects on benefits.* (A) A plan is not required to provide additional vesting or benefits because of a QDRO.

(B) If an alternative payee is treated pursuant to a QDRO as having an interest in the plan benefit, including a separate account or percentage of the participant's account, then the QDRO cannot provide the alternate payee with a greater right to designate a beneficiary for the alternate payee's benefit amount than the participant's right. The QJSA or QPSA provisions of section 417 do not apply to the spouse of an alternate payee.

(C) If the former spouse who is treated as a current spouse dies prior to the participant's annuity starting date, then any actual current spouse of the participant is treated as the current spouse, except as otherwise provided in a QDRO.

(iv) *Section 415 requirements.* Even though a participant's benefits are awarded to an alternate payee pursuant to a QDRO, the benefits are benefits of the participant for purposes of applying the limitations of section 415 to the participant's benefits.

§ 1.402(f)–1T [Removed]

Par. 5A. Section 1.402(f)–1T is removed. New § 1.402(f)–1 is added in its place immediately after § 1.402(e)–1 to read as follows:

§ 1.402(f)–1 Required explanation of rollovers, capital gains, and the separate tax on lump sum distributions.

(a) *General rules.* Section 402(f) requires plan administrators to give recipients of certain distributions a written explanation of the rules relating to the taxation of certain amounts as capital gains under section 402(a)(2), the separate tax on the ordinary income portion of lump sum distributions under section 402(e), and the exclusion from gross income under section 402(a)(5) for amounts rolled over into eligible retirement plans. This notice must be provided to the recipient of any qualified total distribution or any partial distribution satisfying section 402(a)(5)(D)(i) that is made after December 31, 1984, not later than two weeks after the distribution is made.

(b) *Future safe-harbor notices.* The Commissioner may publish safe-harbor notices to aid plan administrators in complying with the section 402(f) requirements.

§ 1.410(a)–5T [Removed]

Par. 6. Section 1.410(a)–5T is removed. New § 1.410(a)–8 is inserted in its place immediately after § 1.410(a)–7 to read as follows:

§ 1.410(a)–8 Five consecutive 1-year breaks in service, transitional rules under the Retirement Equity Act of 1984.

Sections 410(a)(5)(D) and 411(a)(6)(D), as amended by the Retirement Equity Act of 1984 (REA 1984), permit a plan to disregard years of service that were disregarded under the plan provisions satisfying those sections (as in effect on August 22, 1984) as of the day before the REA amendments apply to the plan. Under section 302(a) of REA 1984, the new break-in-service rules generally apply to plan years beginning after December 31, 1984. Thus, for example, assume a plan has a calendar plan year and disregarded years of service as permitted by sections 410(a)(5)(D) and 411(a)(6)(D) as in effect on August 22, 1984. An employee completed two years of service in 1981 and 1982, and then incurred two consecutive 1-year breaks in service in 1983 and 1984. The plans may disregard the prior years of service even though the employee did not incur five consecutive 1-year breaks in service. On the other hand, assume the employeer completed three consecutive years of service beginning in 1980, and incurred two 1-year breaks in service in 1983 and 1984. Because, as of December 31, 1984, the years of service credited before 1983 could not be disregarded, whether the plan may subsequently disregard those years of service would

be governed by the rules enacted by REA 1984.

§ 1.410(a)–7T [Removed]

Par. 7. Section 1.410(a)–7T is removed. New § 1.410(a)–9 is added in its place immediately after § 1.410(a)–8 to read as follows:

§ 1.410(a)–9 Maternity and paternity absence.

(a) *Elapsed time*—(1) *Rule.* For purposes of applying the rules of § 1.410(a)–7 (relating to the elapsed time method of crediting service) to absences described in sections 410(a)(5)(E) and 411(a)(6)(E) (relating to maternity or paternity absence), the severance from service date of an employee who is absent from service beyond the first anniversary of the first day of absence by reason of a maternity or paternity absence described in section 410(a)(5)(i)(E) or 411(a)(6)(i)(E) is the second anniversary of the first day of such absence. The period between the first and second anniversaries of the first day of absence from work is neither a period of service nor a period of severance. This rule applies to maternity and paternity absences beginning on or after the first day of the first plan year in which the plan is required to credit service under sections 410(a)(5)(E) and 411(a)(6)(E).

(2) *Example.* The rules of this section are illustrated by the following example:

Assume an individual works until June 30, 1986; is first absent from employment on July 1, 1986, on account of maternity or paternity absence; and on July 1, 1989, performs an hour of service. The period of service must include the period from employment commencement date until June 30, 1987 (one year after the date of separation for any reason other than a quit, discharge, retirement, or death). The period from July 1, 1987, to June 30, 1988, is neither a period of service nor a period of severance. The period of severance would be from July 1, 1988, to June 30, 1989.

(b) *Other methods.* This paragraph provides a safe harbor for plans that compute years of service under the hours of service methods or permitted equivalencies. Such a plan will be treated as satisfying the requirements of sections 410(a)(5)(E) and 411(a)(6)(E) if the plan increases the minimum period of consecutive 1-year breaks required to disregard any service (or deprive any employee of any right) by one. Thus, a plan will satisfy sections 410(a)(5)(E) and 411(a)(6)(E) without having to compute service for maternity or paternity and sections 410(a)(5)(D) and 411 (a)(4)(D) and (a)(6)(C), by increasing the period of consecutive breaks in service from 5 to 6.

Par. 8. Section 1.411(a)–7 is amended by revising paragraph (d)(2)(ii) (C), (D) and (E) and paragraph (d)(4) (i)(B) and (iv) to read as follows:

§ 1.411(a)–7 Definitions and special rules.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(C) In the case of both defined benefit plans and defined contribution plans, the plan repayment provision described in this subparagraph may provide that the employee must repay the full amount of the distribution in order to have the forfeited benefit restored. The plan provision may not require that such repayment be made sooner than the time described in paragraph (d)(2)(ii)(D) of this section.

(D)(*1*) If a distribution is on account of separation from service, the time for repayment may not end before the earlier of—

(*i*) 5 years after the first day the employee is subsequently employed, or

(*ii*) The close of the first period of consecutive 1-year breaks in service commencing after the distribution.

If the distribution occurs for any other reason, the time for repayment may not end earlier than 5 years after the date of distribution. Nevertheless, a plan provision may provide for a longer period in which the employee may repay. For example, a plan could allow repayments to be made at any time before normal retirement age.

(*2*) In the case of a plan utilizing the elapsed time method, described in § 1.410(a)–7, the minimum time for repayment shall be determined as in paragraph (d)(2)(ii)(D)(*1*) of this section except as provided in this subdivision. The 5 consecutive 1-year break periods shall be determined by substituting the term "1-year period of severance" for the term "1-year break in service". Also, the repayment period both commences and closes in a manner determined by the Commissioner that is consistent with the rules in § 1.410(a)–7 and the substitution in section 411(a)(6) (C) and (D) of a 5-year break in service rule for the former 1-year break in service rule.

(E) A defined benefit plan using the break in service rule described in section 410(a)(5)(D) or a defined contribution plan using the break in service rule described in section 411(a)(6)(C) for determining employees' accrued benefits is not required to provide for repayment by an employee whose accrued benefit is disregarded by reason of a plan provision using these rules.

* * * * *

(4) * * *

(i) * * *

(B) The requirements of section 411(a)(11) are satisfied at the time of the distribution. See § 1.411(a)(11)–1.

* * * * *

(iv) *Plan repayment provision.* (A) A plan repayment provision satisfies the requirements of this subdivision if, under the provision, the accrued benefit of an employee that is disregarded by a plan under this subparagraph is restored upon repayment to the plan by the employee of the full amount of the distribution. An accrued benefit is not restored unless all of the optional forms of benefit and subsidies relating to such benefit are also restored. A plan is not required to provide for repayment of an accrued benefit unless the employee—

(*1*) Received a distribution that is in a plan year to which section 411 applies (see § 1.411(a)–2), which distribution is less than the amount of his accrued benefit determined under the same optional form of benefit as the distribution was made, and

(*2*) Resumes employment covered under the plan.

(B) *Example.* Plan A provides a single sum distribution equal to the present value of the normal form of the accrued benefit payable at normal retirement age which is a single life annuity. Plan A also provides a subsidized joint and survivor annuity and a subsidized early retirement annuity benefit. A participant who is fully vested and receives a single sum distribution equal to the present value of the single life annuity normal retirement benefit is not required to be provided the right under the plan to repay the distribution upon subsequent reemployment even though the participant received a distribution that did not reflect the value of the subsidy in the joint and survivor annuity or the value of the early retirement annuity subsidy. This is true whether or not the participant had satisfied at the time of the distribution all of the conditions necessary to receive the subsidies. However, if a participant does not receive his total accrued benefit in the optional form of benefit under which his benefit was distributed, the plan must provide for repayment. If the employee repays the distribution in accordance with section 411(a)(7), the plan must restore the employee's accrued benefit which would include the right to receive the subsidized joint and survivor annuity and the subsidized early retirement annuity benefit.

(C) A plan may impose the same conditions on repayments for the restoration of employer-derived accrued benefits that are allowed as conditions for restoration of employer-derived accrued benefits upon repayment of mandatory contributions under

paragraphs (d)(2)(ii) (B), (C), (D) and (E) of this section.

* * * * *

§ 1.411(a)(11)–1T [Removed]

Par. 9. Section 1.411(a)(11)–1T is removed. New § 1.411(a)–11 is added in its place after § 1.411(a)–9 to read as follows:

§ 1.411(a)–11 Restriction and valuation of distributions.

(a) *Scope*—(1) *In general.* Section 411(a)(11) restricts the ability of a plan to distribute any portion of a participant's accrued benefit without the participant's consent. Section 411(a)(11) also restricts the ability of defined benefit plans to distribute any portion of a participant's accrued benefit in optional forms of benefit without complying with specified valuation rules for determining the amount of the distribution. If the consent requirements or the valuation rules of this section are not satisfied, the plan fails to satisfy the requirements of section 411(a).

(2) *Accrued benefit.* For purposes of this section, an accrued benefit is valued taking into consideration the particular optional form in which the benefit is to be distributed. The value of an accrued benefit is the present value of the benefit in the distribution form determined under the plan. For example, a plan that provides a subsidized early retirement annuity benefit may specify that the optional single sum distribution form of benefit available at early retirement age is the present value of the subsidized early retirement annuity benefit. In this case, the subsidized early retirement annuity benefit must be used to apply the valuation requirements of this section and the resulting amount of the single sum distribution. However, if a plan that provides a subsidized early retirement annuity benefit specifies that the single sum distribution benefit available at early retirement age is the present value of the normal retirement annuity benefit, then the normal retirement annuity benefit is used to apply the valuation requirements of this section and the resulting amount of the single sum distribution available at early retirement age.

(b) *General consent rules.* A plan must satisfy the participant consent requirement with respect to the distribution of a participant's nonforfeitable accrued benefit with a present value in excess of $3,500. See paragraphs (c) (3) and (4) for situations where no consent is required.

(c) *Consent, etc. requirements*—(1) *General rule.* If an accrued benefit is immediately distributable, section 411(a)(11) permits plans to provide for the distribution of any portion of a participant's nonforfeitable accrued benefits only if the applicable consent requirements are satisfied.

(2) *Consent.* (i) No consent is valid unless the participant has received a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the plan in a manner that would satisfy the notice requirements of section 417(a)(3). *See* § 1.401(a)–20 Q&A–36. In addition, so long as a benefit is immediately distributable, a participant must be informed of his right, if any, to defer receipt of the distribution. Furthermore, consent is not valid if a significant detriment is imposed under the plan on any participant who does not consent to a distribution. Whether or not a significant detriment is imposed shall be determined by the Commissioner by examining the particular facts and circumstances.

(ii) A plan must provide participants with notice of their rights specified in this subparagraph no less than 30 days and no more than 90 days before the annuity starting date. Written consent of the participant to the distribution must not be made before the participant receives the notice and must not be made more than 90 days before the annuity starting date. See § 1.401(a)–20 Q&A–10 for the definition of annuity starting date.

(iii) See § 1.401(a)–20 Q&A–24 for a special rule applicable to consents to plan loans.

(3) *$3,500.* Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than $3,500. The consent requirements are deemed satisfied if such value does not exceed $3,500 and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see § 1.417(e)–1(d). If the present value determined at the time of a distribution to the participant exceeds $3,500, then the present value at any subsequent time shall be deemed to exceed $3,500.

(4) *Immediately distributable.* Participant consent is required for any distribution while it is immediately distributable, *i.e.*, prior to the later of the time a participant has attained normal retirement age (as defined in section 411(a)(8)) or age 62. Once a distribution is no longer immediately distributable, a plan may distribute the benefit in the form of a QJSA in the case of a benefit subject to section 417 or in the normal form in other cases without consent.

(5) *Death of participant.* The consent requirements of section 411(a)(11) do not apply after the death of the participant.

(6) *QDROs.* The consent requirements of section 411(a)(11) do not apply to payments to an alternate payee, defined in section 414(p)(8), except as provided in a qualified domestic relations order pursuant to section 414(p).

(7) *Section 401(a)(9), etc.* The consent requirements of section 411(a)(11) do not apply to the extent that a distribution is required to satisfy the requirements of section 401(a)(9) or 415. See section 401(a)(9) and the regulations thereunder and § 1.401(a)–20 Q&A 23 for guidance on these requirements. Notwithstanding any provision to the contrary in section 401(a)(14) or § 1.401(a)–14, a plan may not distribute a participant's nonforfeitable accrued benefit with a present value in excess of $3,500 while the benefit is immediately distributable unless the participant consents to such distribution. The failure of a participant to consent is deemed to be an election to defer commencement of payment of the benefit for purposes of section 401(a)(14) and § 1.401(a)–14.

(d) *Distribution valuation requirements.* In determining the present value of any distribution of any accrued benefit from a defined benefit plan, the plan must take into account specified valuation rules. For this purpose, the valuation rules are the same valuation rules for valuing distributions as set forth in section 417(e); see § 1.417(e)–1(d). This paragraph (d) applies both before and after the participant's death regardless of whether the accrued benefit is immediately distributable. This paragraph also applies whether or not the participant's consent is required under paragraphs (b) and (c) of this section.

(e) *Special rules*—(1) *Plan termination.* The requirements of this section apply before, on and after a plan termination. If a defined contribution plan terminates and the plan does not offer an annuity option (purchased from a commercial provider), then the plan may distribute a participant's accrued benefit without the participant's consent. The preceding sentence does not apply if the employer or any entity within the same controlled group as the employer maintains another defined contribution plan, other than an employee stock ownership plan (as defined in section 4975(e)(7)). In such a case, the participant's accrued benefit may be transferred without the participant's consent to the other plan if the participant does not consent to an

immediate distribution from the terminating plan. See section 411(d)(6) and the regulations thereunder for other rules applicable to transferee plans and plan terminations.

(2) *ESOP dividends.* The requirements of this section do not apply to any distribution of dividends to which section 404(k) applies.

(3) *Other rules.* See § 1.401(a)–20 Q&As 14, 17 and 24 for other rules that apply to the section 411(a)(11) requirements.

§ 1.411(d)–3 [Amended]

Par. 10. Section 1.411(d)–3 is amended by adding the following new sentence at the end of paragraph (a)(1): "See § 1.411(d)–4A for rules that apply to class year plans for contributions made for plan years beginning after October 22, 1986."

§ 1.411(d)–3T [Removed]

Par. 11. Section 1.411(d)–3T is removed. New § 1.411(d)–4 is added in its place immediately after § 1.411(d)–3 to read as follows:

§ 1.411(d)–4 Class year plans; plan years beginning after October 22, 1986.

(a) *Plan years beginning prior to 1989.* (1) The requirements of section 411(a)(2) shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

(2) For purposes of paragraph (a)(1) of this section if—

(i) Any contributions are made on behalf of a participant with respect to any plan year, and

(ii) Before such participant meets the requirements of paragraph (a)(1) of this section, such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year, then the plan may provide that the participant forfeits any right to or derived from the contributions made with respect to such plan year.

(3) This paragraph (a) applies to contributions made for plan years beginning after October 22, 1986.

(b) *Plan years beginning after 1988.* (1) The special class year vesting rule in section 411(d)(4) was repealed by section 1113(b) of the Tax Reform Act of 1986 (1986 Act). The repeal is generally effective for plan years beginning after December 31, 1988. See section 1111(e) of the 1986 Act for a special effective date rule applicable to certain plans maintained pursuant to collectively bargaining agreements.

(2)(i) This subparagraph (2) provides a special rule for class year plans that were in compliance with section 411(d)(4) immediately before the first plan year beginning after section 411(d)(4) is repealed. These plans are not required to retroactively compute years of service under the general section 411(a)(2) rules. Instead, a participant must receive a year of service for each such prior plan year if the employee was performing services on the last day of such year. Similarly, if the participant was not performing services on the last day of such years, the participant will be treated as if a one-year break in service occurred for such plan year. This subdivision (i) applies to plan years to which this section applies.

(ii) In the case of a plan year to which § 1.411(d)–3 applied, a class year plan must compute years of service and breaks in service in a manner consistent with the rules in this paragraph (b)(2)(i), giving appropriate regard to the statutory changes made to section 411(d)(4).

§ 1.417(e)–1T [Removed]

Par. 12. Section 1.417(e)–1T is removed. New § 1.417(e)–1 is added in its place after § 1.416–1 to read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

(a) *Scope*—(1) *In general.* A plan does not satisfy the requirements of sections 401(a)(11) and 417 unless it satisfies the consent requirements, the determination of present value requirements and the other requirements set forth in this section. See section 401(a)(11) and § 1.401(a)–11A for other rules regarding the survivor annuity requirements.

(2) *Additional requirements.* See § 1.411(a)(11)–1(c)(6) for other rules applicable to the consent requirements.

(3) *Accrued benefit.* The definition of "accrued benefit" in § 1.411(a)(11)–1 applies when that term is used in this section.

(b) *Consent, etc. requirements*—(1) *General rule.* Generally plans may not commence the distribution of any portion of a participant's accrued benefit in any form unless the applicable consent requirements are satisfied. No consent of the participant or spouse is needed for distribution of a QJSA or QPSA after the benefit is no longer immediately distributable (after the participant attains (or would have attained if not dead) the later of normal retirement age (as defined in section 411(a)(8)) or age 62). No consent of the spouse is needed for distribution of a QJSA at any time. After the participant's death, a benefit may be paid to a nonspouse beneficiary without the beneficiary's consent. A distribution cannot be made at any time in a form other than a QJSA unless such QJSA has been waived by the participant and such waiver has been consented to by the spouse. A QJSA is an annuity that commences immediately. Thus, for example, a plan may not offer a participant separating from service at age 45 a choice only between a single sum distribution at separation of service and a joint and survivor annuity that satisfies all the requirements of a QJSA except that it commences at normal retirement age rather than immediately. To satisfy this section, the plan must also offer a QJSA (*i.e.*, an annuity that satisfies all the requirements for a QJSA including the requirement that it commences immediately).

(2) *Consent.* (i) Written consent of the participant and, if the participant is married at the annuity starting date and the benefit is to be paid in a form other than a QJSA, the participant's spouse (or, if either the participant or the spouse has died, the survivor) is required before the commencement of the distribution of any part of an accrued benefit if the present value of the nonforfeitable benefit is greater than $3,500. No consent is valid unless the participant has received a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the plan in a manner which would satisfy the notice requirements of section 417(a)(3). *See* § 1.401(a)–20 Q&A 36. No consent is required before the annuity starting date if the present value of the nonforfeitable benefit is not more than $3,500. If the present value of the accrued benefit at the time of any distribution exceeds $3,500, the present value of the accrued benefit at any subsequent time will be deemed to exceed $3,500.

(ii) In determining the present value of any nonforfeitable accrued benefit, a defined benefit plan is limited by the interest rate restriction as set forth in paragraph (d) of this section.

(3) *Time of consent.* A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) no less than 30 days and no more than 90 days before the annuity starting date. Written consent of the participant and the participant's

spouse to the distribution must be made not more than 90 days before the annuity starting date.

(c) *Permitted distributions.* A plan may not require that a participant or surviving spouse begin to receive benefits without satisfying paragraph (b) of this section while such benefits are immediately distributable (see paragraph (b)(1) of this section). Once benefits are no longer immediately distributable, all benefits that the plan requires to begin must be provided in the form of a QJSA and QPSA unless the applicable written explanation, election and consent requirement of section 417 are satisfied.

(d) *Present value requirement*—(1) *Requirements.* For purpose of determining the present value of any accrued benefit and for purposes of determining the amount (subject to sections 411(c)(3) and 415) of any distribution including a single sum, a defined benefit plan is subject to the interest rate limitations described in subparagraph (2) of this paragraph (d) at the time set forth in subparagraph (3) of this paragraph (d). A plan amendment that changes the rate described in this paragraph (d) is subject to section 411(d)(6). The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with this paragraph.

(2) *Section 417 interest rate.* The section 417 interest rate is (i) the rate or rates that would be used by the Pension Benefit Guaranty Corporation (PBGC) for a trusteed single-employer plan to value the participant's (or beneficiary's) vested benefit ("applicable interest rate") if the present value of such benefit does not exceed $25,000 and (ii) 120 percent of the applicable interest rate, as determined in accordance with (i) above, if such present value exceeds $25,000. In no event shall the present value determined by use of 120 percent of the applicable interest rate result in a present value less than $25,000. The applicable interest rate may be a series of interest rates for any given date. For example, the applicable rate could be X percent for the first 5 years over which the benefits are valued, Y percent for the next succeeding 10 years and Z percent for the following years. In such case, 1.20 percent of the applicable interest rate would be 1.20 times X percent, 1.20 times Y percent and 1.20 times Z percent over the years described above. The applicable interest rates are the interest rates that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficient trusteed single-employer plan. Except as otherwise provided by the Commissioner, the applicable interest rates are determined by PBGC regulations. See 29 CFR Part 2619 for the applicable PBGC rates.

(3) *Time for determining interest rate.* (i) Except as provided in subdivision (ii), the section 417 interest rate limitations are determined on either the annuity starting date or the first day of the plan year that contains the annuity starting date. The plan must provide which date is applicable.

(ii) The plan may provide for the use of any other time for determining the interest rate provided that such time is not more than 120 days before the annuity starting date if such time is determined in a consistent manner and is applied uniformly to all participants.

(iii) The Commissioner may in revenue rulings, notices or other documents of general applicability prescribe other times for determining the section 417 interest rate limitations.

(iv) If a plan amendment changes the time for determining the section 417 interest rate, the amendment will not be treated as reducing an accrued benefit if the conditions of this subdivision (iv) are satisfied. Any distribution in the one-year period commencing at the time the plan amendment is effective (if the amendment is effective on or after the adoption date) must use the rate determined under the plan, either before or after the amendment, that results in the larger accrued benefit. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the rate resulting in the larger accrued benefit for the period beginning with the effective date and ending one year after the adoption date.

(4) *Determination of interest rates.* (i) In the case of a defined benefit plan that uses a rate or rates in addition to the section 417 interest rate, the rate producing the greatest benefit must be used.

(ii) The same interest rate that is required to be used by the plan under this paragraph (d) to determine the amount of benefit must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(iii) *Example.* A qualified defined benefit plan provides that single sum distributions received on or before normal retirement age are to be determined using the lower of the rate(s) of interest guaranteed under a particular annuity contract of an unrelated insurance company or the applicable section 417 rates. The rates of interest guaranteed under the annuity contract are 10% for the first 5 years, 7.5% for the next 10 and 5% thereafter while the applicable section 417 interest rates would be 8% and 120% of such rate would be 9.6%. Because in some years over which a benefit is valued the interest rate under the PBGC rates would be the lower rate while in other years it would be the higher rate, the rate that must be used is the one that results in the greater plan benefit.

(5) *Exceptions.* This paragraph (d) (other than the reference to section 411(d)(6) requirements) does not apply to the amount of a distribution under a nondecreasing annuity payable for a period not less than the life of the participant or, in the case of a QPSA, the life of the surviving spouse. A nondecreasing annuity includes a QJSA, QPSA and an annuity that decreases merely because of the cessation or reduction of Social Security supplements or qualified disability payments (as defined in section 411(a)(9)).

(6) *Defined contribution plans.* Because the accrued benefit in a defined contribution plan equals the account balance, such plans are not subject to the interest rate requirements of this paragraph (d), even though they are subject to section 401(a)(11).

(e) *Special rules for annuity contracts*—(1) *General rule.* Any annuity contract purchased by a plan subject to section 401(a)(11) and distributed to or owned by a participant must provide that benefits under the contract are provided in accordance with the applicable consent, present value, and other requirements of sections 401(a)(11) and 417 applicable to the plan.

(f) *Effective dates*—(1) *Annuity contracts.* (i) Paragraph (e) of this section does not apply to contracts distributed to or owned by a participant prior to September 17, 1985, unless additional contributions are made under the plan by the employer with respect to such contracts.

(ii) In the case of a contract owned by the employer or distributed to or owned by a participant prior to the first plan year beginning after December 31, 1988, paragraph (e) of this section shall be satisfied if the annuity contracts described therein satisfy the requirements in §§ 1.401(a)–11T and 1.417(e)–1T. The preceding sentence shall not apply if additional contributions are made under the plan by the employer with respect to such contracts on or after the beginning of the first plan year beginning after December 31, 1988.

(2) *Interest rates.* (i) A plan that uses the PBGC immediate interest rate as required by § 1.417(e)–1T(e) for

distributions commencing in plan years beginning before January 1, 1987, shall be deemed to satisfy paragraph (d) of this section for such years.

(ii) For a special exception to the requirements of section 411(d)(6) for certain plan amendments that incorporate applicable interest rates, see section 1139(d)(2) of the Tax Reform Act of 1986.

(3) *Other effective dates and transitional rules.* (i) Except as otherwise provided, a plan will be treated as satisfying sections 401(a)(11) and 417 for plan years beginning before the first plan year that the requirements of section 410(b) as amended by TRA 86 apply to such plan, if the plan satisfied the requirements in §§ 1.401(a)–11T and 1.417(e)–1T.

(ii) See § 1.401(a)–20 for other effective dates and transitional rules that apply to plans subject to sections 401(a)(11) and 417.

OMB Control Numbers Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 13. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 14. Section 602.101(c) is amended by inserting the appropriate places in the table "§ 1.401(a)–20 * * * 1545–0928" and § 1.402(f)–1 * * * 1545–0928.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: May 12, 1988.

O. Donaldson Chapoton,

Assistant Secretary of Tax Policy.

[FR Doc. 88–18886 Filed 8–19–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 88–09]

Special Local Regulations; San Diego, CA 1988 America's Cup Challenge Competition

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the 1988 America's Cup Challenge Competition which will be held off the Coast of San Diego, California. The Competition is a best two-out-of-three racing event between the sailing vessels "Stars and Stripes" and "New Zealand." The races are scheduled for September 7, 9 and 11, 1988. September 13 and 15 are alternate days in the event a race is cancelled. These regulations are needed to provide for the safety of life on navigable waters prior to, during and after each racing event.

EFFECTIVE DATE: These regulations will be effective on the 7 and 9 of September, 1988, unless conditions require postponement of a race. These regulations may be effective on 11, 13 and 15 September depending on the outcome of the first two races and on the need for postponement.

FOR FURTHER INFORMATION CONTACT: LT K. S. Gregory, Eleventh Coast Guard District (bb), 400 Oceangate, Long Beach, California 90822–5399, Telephone: (213) 499–5318.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The race dates were not finalized until August 5, 1988, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT T. S. Orzech, Project Officer, Marine Safety Office San Diego, LT K. S. Gregory, Eleventh Coast Guard District, Boating Safety Officer, and LT G. R. Wheatley, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulations

The 1988 America's Cup Challenge Competition will attract large numbers of spectator craft. On race days the San Diego Bay Entrance Channel at Ballast Point is expected to be a "choke-point" for vessels from the bay proceeding to and returning from the race area. In addition there will be a need to control spectator vessels in the area of the race course and around the Start/Finish line. These regulations are required to minimize navigational dangers, and for the safety of participants, official craft and spectators.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–11–88–05 is added to read as follows:

§ 100.35–11–88–05 San Diego Bay.

(a)(1) *Regulated area.* These regulations pertain to the following area within San Diego Bay: A line drawn from the north end of Shelter Island to North Island through buoys 18 and 19 then southward to the Bay Entrance.

This area is bounded by the following coordinates:
32–40–01.0N 117–13–20.0W to
32–39–54.0N 117–14–30.0W along the shore to
32–43–10.7N 117–13–10.0W to
32–42–39.2N 117–12–55.6W along the shore back to
32–40–01.0N 117–13–20.0W.

(2) *Special Local Regulations.* (i) A Patrol Commander shall be designated by the Commander, Eleventh Coast Guard District. The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area and may terminate the event at any time it is deemed necessary for the protection of life and property. The Patrol Commander for the Bay area may be reached on VHF/FM Channel 22 (157.1 MHZ) by calling "Captain of the Port".

(ii) All vessels not registered with the race sponsor as participants or official patrol vessels are considered spectator craft. Official patrol vessel are all Coast Guard, Coast Guard Auxiliary, and state and local law enforcement vessels assigned or approved by the Patrol Commander.

(iii) On the days these regulations are in effect, the following requirements will be enforced within the regulated area between the hours of 8:30 a.m. and 11:30 a.m. and in the late afternoon for a period of time to be announced by Broadcast Notice to Mariners:

(A) No spectator craft drawing more than 10 feet or under tow may enter the area.

(B) Spectator craft may only enter the area if operating under power. Auxiliary sail vessels must not be under sail.

(C) During the morning period, spectator craft may only transit the area in a southerly direction, proceeding out to sea.

(D) During the afternoon period, spectator craft may only transit the area in a northerly direction, proceeding into port.

(E) Spectator craft may not exceed 15 knots while transmitting the area and must not exceed 10 knots while passing the Navy Submarine Base. Slower traffic should stay to the right of the channel so as not to impede traffic flow.

(F) Spectator craft shall not loiter in the area or impede the through transit of the participants or official patrol vessels.

(G) When hailed and/or signalled by an official patrol vessel, spectator craft shall immediately comply with all directions given.

(b) *Race Area.*—(1) *Start/Finish Regulated Area.* The Start/Finish line is a 1500 foot line perpendicular to the wind direction at the start of the race. This line will be oriented around the position: 32-42.4N, 117–18.5W. The regulated area is comprised of a 13 linear mile area marked by inflatable pyramid-shaped buoys anchored at ½ mile intervals. Coast Guard and Coast Guard Auxiliary vessels will be stationed between the buoys. The area will extend 1½ miles to leeward of the Start/Finish line for four miles (i.e. approx. 2 miles on either side of the center point of the Start/Finish line). At each windward end of this area, radials will extend out for 3 miles at an angle of approximately 55 degrees to the right and 55 degrees to the left of a line directly into the wind.

(2) *Course Regulated Area.* Races 1 and 3 will be a course 20nm, in length from the Start/Finish line to windward and return. Race 2 will be a 39nm equilateral triangle with the first 13nm leg directly into the wind from the Start/Finish line and the second and third legs a starboard and port reach respectively. The regulated area will be the water areas on and around the course being transitted by the competitors. In addition, the "windward" mark, for the first and third races, and the "windward" and "reach" marks, for the second race, will have ½ mile safety areas outside the course enforced by the U.S. Coast Guard.

(3) *Special Local Regulations.* (i) Spectators shall keep clear of the Regulated Areas.

(ii) Spectators shall remain at least 100 yards outside the line of patrol vessels marking the Start/Finish Regulated Area.

(iii) There will be a U.S. Coast Guard vessel and a small fleet of race sanctioned escort vessels following each contestant during these races. Each escort vessel will be identified by a special "Americas Cup" flag flying from its mast and will always remain to leeward and behind the competitors, and the competitors "chase" boats. Spectator or other craft not involved in this event, must remain behind and to leeward of this "escort" fleet.

(iv) For the safety of the competitors, and for the fairness of this competition, it is essential that spectator, or other vessels not involved in this event, remain clear of the participant's forward movement, and especially not create a wake on the course.

(v) All persons and/or vessels not registered with the sponsor as participants or "Official Patrol Vessels" are considered spectators. "Official Patrol Vessels" consist of Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessels assigned or approved by the Patrol Commander.

(A) When hailed and/or signaled by an official patrol vessel a spectator shall immediately comply with all directions given. Failure to do so may result in a citation for failure to comply.

(B) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the District Commander, Eleventh Coast Guard District. He may terminate the event at any time he deems it necessary for the protection of life and property. In the race area he may be reached on VHF Channel 22 (157.1 MHZ) when required, by the call sign "PATROL COMMANDER". In emergencies, he may be contacted on VHF Channel 6 (156.3 MHZ).

(c) *Effective dates.* These regulations will be effective on September 7 and 9, 1988 unless wheather or other conditions require postponement of the races. These regulations may be effective on September 11, 13, and 15, 1988 depending on the outcome of the first two races and on the need for postponement due to weather or other conditions.

Dated: August 12, 1988.

Terry Lucas,

Captain, United States Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 88–18987 Filed 8–19–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–88–10]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Lauderdale-by-the-Sea, the Coast Guard is changing the regulations governing the Commercial Boulevard (SR 870) drawbridge at Lauderdale-by-the-Sea, Florida, by extending the hours of the existing regulation. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION: On May 19, 1988, the Coast Guard published proposed rules (53 FR 17961) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated June 2, 1988. In each notice, interested persons were given until July 5, 1988, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Brodie Rich, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

No comments were received. The final rule is unchanged from the proposed rule published on May 19, 1988.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; CFR 1.46 and 33 CFR 1.05–1(g).

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2. Section 117.261(ee) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo

* * * * *

(ee) *Commercial Boulevard bridge, mile 1059.0 at Lauderdale-by-the-Sea.* The draws shall open on signal; except that, from November 1 through May 15 from 8 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: August 8, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88-18984 Filed 8-19-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 88-010]

Safety Zone; Rhode Island Sound, Narragansett Bay, Providence River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a permanent Safety Zone in Rhode Island Sound, Narragansett Bay, and the Providence River. This permanent Safety Zone will only be in effect while Liquefied Petroleum Gas (LPG) vessels are anchored, transitting, transferring, or moored in Rhode Island Sound, Narragansett Bay, or the Providence River. This action is necessary to protect the Public from potential hazards associated with the transport and transfer of Liquefied Petroleum Gas. The intended effect of this regulation is to protect the port and the resources therein from harm resulting from destruction or loss of an LPG vessel. Entry into this zone is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

EFFECTIVE DATE: September 21, 1988.

FOR FURTHER INFORMATION CONTACT: LT. J.A. Gabrielson, USCG, C/O Capital Of The Port, U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg., Providence, R.I. 02903-1790, telephone (401) 528-5335.

SUPPLEMENTARY INFORMATION: On May 12, 1988 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (Volume 53 FR (16883). Interested persons were requested to submit comments and 2 comments were received.

Drafting Information

The drafters of this regulation are Lieutenant J.A. Gabrielson, project officer for the Captain of the Port, and Commander R.A. Brunell, project attorney, for the First Coast Guard District Legal Office.

Discussion of Comments

At a Coast Guard sponsored Industry Day on May 24, 1988, a verbal comment was received from the Northeast Pilots Association regarding anchorage areas for the LPG vessels. It was stated that a safety zone at the proposed western anchorage would impede vessel traffic transitting the area. After evaluating these anchorage areas, the Captain of the Port concurred with the comment and decided to eliminate the western anchorage (Latitude 41-25N., Longitude 71-25W), and maintain the eastern anchorage, near Brenton Reef Tower (Latitude 41-25N., Longitude 71-23W). Another comment from a representative of the Woods Hole Oceanographic Institute pointed out that not all mariners are familiar with radio frequencies and may not know which channel is used for Marine Safety Information Broadcasts. The Captain of the Port has decided to add the frequency and channel to the Marine Safety Information Broadcast as follows: Channel 22 (157.1 MHz).

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The requirements for this permanent safety zone are presently being implemented utilizing emergency rules which effect larger commercial vessel traffic.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.121 is added to read as follows:

§ 165.121 Safety Zone: Rhode Island Sound, Narragansett Bay, Providence River.

(a) *Location.* The following areas are established as safety zones:

(1) For Liquefied Petroleum Gas (LPG) vessels while at anchor in the waters of Rhode Island Sound; in position Latitude 41-25N., Longitude 71-23W., a Safety Zone with a radius of one-half mile around the LPG vessel.

(2) For Liquefied Petroleum Gas (LPG) vessels while transitting Narragansett Bay and the Providence River; a moving Safety Zone from a distance of two (2) miles ahead to one (1) mile astern to the limits of the navigable channel around the LPG vessel.

(3) For Liquefied Petroleum Gas (LPG) vessels while moored at the LPG facility, Port of Providence; a Safety Zone within 50 feet around the vessel. No vessel shall moor within 400 feet from the LPG vessel. All vessels transitting the area are to proceed with caution to minimize the effects of wake around the LPG vessel.

(4) For Liquefied Petroleum Gas (LPG) vessels while moored with manifolds connected at the LPG Facility, Port of Providence; a Safety Zone within a 100 foot radius around the shoreside manifold while connected. This is in addition to the requirements for LPG vessels while moored at the LPG Facility, Port of Providence.

(b) The Captain of the Port Providence will notify the maritime community of periods during which this safety zone will be in effect by providing advance notice of scheduled arrivals and departures of LPG vessels via Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: July 27, 1988.

E.J. Williams III,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 88-18983 Filed 8-19-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP MEMPHIS, TN Regulation 88-14]

Safety Zone Regulations; Lower Mississippi River Mile 882.7 to 507

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Mississippi River from mile 882.7 to mile 507. This safety zone supersedes Captain of the Port, Memphis, TN Regulation 8-10. The safety zone is needed to protect commercial vessels from safety hazards associated with record low water conditions including extensive shoaling and numerous low water areas in the navigational channel. This low water has made normal navigation on this section of the Mississippi River extremely hazardous. During the safety zone, the Captain of the Port in Memphis, Tennessee, has limited tow sizes to 1,000 feet in length and 105 feet in width, or 800 feet in length and 165 feet in width. Barges will be limited to 8.5 foot drafts except barges at 9.0 feet which were loaded prior to 23 June 1988. Barges at 9.0 feet, draft loaded prior to 23 June 1988, may enter the safety zone, but operators must contact the Captain of the Port prior to entry into the safety zone for transit instructions. Also, the Captain of the Port may be required to close sections of the Mississippi River in order to allow emergency dredging operations by the U.S. Army Corps of Engineers. Consistent with accomplishing these dredging operations in changing river conditions, information regarding river closures and other transit requirements in this safety zone will be specified in the daily Coast Guard Local Notice to Mariners broadcasts. Variations to these tow sizes and draft limitations will only be authorized by the Captain of the Port. Entry of vessels and tows into the zone not meeting the specific restrictions of the safety zone are prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 02 July 1988 at 8:00 a.m. and will terminate at 12:00 noon 30 October 1988, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lt. A. Buancore, Coast Guard Marine Safety Office, Memphis, TN (901) 521-3941.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is Lieutenant A. Buancore, project officer for the Captain of the Port.

Discussion of the Regulation

The hazard requiring this regulation is extreme low water conditions on the Lower Mississippi River. This low water has resulted in numerous shoals and a restricted navigational channel. In order to facilitate the movement of commercial vessel traffic and to prevent potentially hazardous groundings of vessels and tows in this waterway, minimize degradation of the dredged navigation channel, and the destruction of aids to navigational buoys on the Lower Mississippi River, the Captain of the Port is required to impose tow and draft size limitations of tows transiting the Lower Mississippi River. Tows sizes are limited to 1,000 feet in length and 105 feet in width, or 800 feet in length and 165 feet in width. Barges in all tows will be limited to 8.5 foot drafts except barges at 9.0 feet draft which were loaded prior to 23 June 1988. Barges at 9.0 feet draft loaded prior to 23 June 1988 may enter the safety zone, but operators must contact the Captain of the Port, prior to entry into the safety zone, for instructions. Also, emergency dredging operations by the U.S. Army Corps of Engineers to maintain the navigational channel may require additional channel closures and restrictions of vessel navigation on the Lower Mississippi River. The most effective and expedient means to disseminate the information regarding short term river closures and other transit restrictions involving dredging operations is by broadcasts in the daily Coast Guard Local Notice to Mariners. Variations to these tow sizes and draft limitations and transit restrictions can only be authorized by the Captain of the Port in Memphis, TN.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T242 is added to read as follows:

§ 165.T242 Safety Zone: Mississippi River From Mile 882.7 to Mile 507.

(a) *Location:* The following area is a safety zone: From mile 882.7 to mile 507 on the Mississippi River.

(b) *Regulation:* (1) Tows sizes are limited to 1,000 feet in length and 105 feet in width, or 800 feet in length and 165 feet in width. Barges in all tows will be limited to 8.5 foot drafts. Barges will be limited to 8.5 drafts except barges at 9.0 feet draft which were loaded prior to 23 June 1988. Barges at 9.0 feet draft loaded prior to 23 June 1988 may enter the safety zone, but operators must contact the Captain of the Port, prior to entry into the safety zone, for transit instructions. Tows may be restricted or prohibited from transiting sections of the river when emergency dredging operations are being conducted by the U.S. Army Corps of Engineers.

(2) In accordance with the general regulations in Section 165.23 of this Part, entry into this zone is prohibited unless authorized by the Captain of the Port, Memphis, TN.

(3) This safety zone is in effect from 8:00 a.m. 02 July 1988 until 12:00 noon 30 October 1988.

(c) *Effective date:* This regulation becomes effective on 02 July 1988 at 8:00 a.m. It terminates on 30 October 1988 at 12:00 noon.

Dated: June 30, 1988.

M.J. Donohoe,

Captain of the Port, Memphis, Tennessee.

[FR Doc. 88-18985 Filed 8-19-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP MEMPHIS, TN Regulation 88-15]

Safety Zone Regulations; Lower Mississippi River, Memphis Harbor, Wolf River Chute

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Memphis Harbor, Wolf River Chute in the Port of Memphis, TN. This safety zone supersedes Captain of the Port, Memphis, TN Regulation 88-08. The

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safety zone is needed to protect commercial vessels from a safety hazard associated with low water conditions in Wolf River Chute. During the safety zone, commercial tows will be limited to one barge tows with a draft of no more six feet up to mile one of Wolf River Chute and a draft of no more than five feet above mile one. Entry into this zone by tows not meeting the above restrictions is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 15 July 1988 at 8:00 A.M. and will terminate at 12:00 noon 15 October 1988, or if terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lt. A. Buancore, Coast Guard Marine Safety Office, Memphis, TN (901) 521–3941.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for makintg it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is Lieutenant A. Buancore, project officer for the Captain of the Port.

Discussion of the Regulation

The hazards requiring this regulation is the present low water in Memphis Harbor, Wolf River Chute in Memphis, TN. The Coast Guard has deemed it necessary for the enforcement of the draft and tow size restrictions to prevent groundings and to limit damage to the channel.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5

2. A new § 165.T243 is added to read as follows:

§ 165.T243 Safety Zone: Mississippi River, Memphis Harbor, Wolf River Chute

(a) *Location:* The following area is a safety zone: Memphis Harbor, Wolf River Chute in Memphis, TN.

(b) *Regulation:* (1) Commercial tows will be limited to one barge tows with a draft of no more than six feet up to mile one of Wolf River Chute and a draft of no more than five feet above mile one.

(2) In accordance with the general regulations in Section 165.23 of this Part, entry into this zone is prohibited unless authorized by the Captain of the Port Memphis, TN.

(3) This safety zone is in effect from 8:00 p.m. 15 July 1988 until 12:00 noon 15 October 1988.

(c) *Effective date:* This regulation becomes effective on 15 July 1988 at 8:00 a.m. It terminates on 15 October 1988 at 12:00 noon.

Dated: 15 July 1988.

M.J. Donohoe,

Captain of the Port, Memphis, Tennessee.

[FR Doc. 88–18986 Filed 8–19–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3433–3]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Kansas Department of Health and Environment (KDHE) submitted revised regulations to incorporate by reference the "Guidelines on Air Quality Models (Revised)" (1986).

EPA is taking final action to approve this revision to establish consistency with EPA's requirement on air quality models.

Also, KDHE has submitted revised regulations to add two new definitions, to make minor changes in other definitions, and to reletter some definitions. These changes in the definitions are acceptable and do not conflict with EPA's regulations. The modifications also do not delete requirements already contained in the approved SIP.

DATES: This action will be effective October 21, 1988, unless notice is received by September 21, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the submittal are available for public inspection at:

U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Bureau of Air Quality and Radiation Control, Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 236–2893 (FTS 757–2893).

SUPPLEMENTARY INFORMATION: On January 6, 1988, KDHE submitted regulations revising K.A.R. 28–19–17(f), *Air Quality Models* (a) and (b). The state has revised this regulation to satisfy EPA's modeling requirements by incorporating by reference EPA's "Guidelines on Air Quality Models (Revised)" (1986).

Also, the state has adopted three new definitions. EPA is deferring action on the definition at K.A.R. 28–19–7(g), *Emission limitation and standard,* pertaining to the state's stack height rules; EPA is preparing a separate rulemaking on the state's stack height provisions. The other two definitions that are being added are K.A.R. 28–19–7(q), *Person,* and K.A.R. 28–19–7(w), *Waste.* Minor changes in definitions K.A.R. 28–19–7 (a), (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (s), (t), (u), and (v) are being made to make the definitions clearer. The relettering is done because of the addition of the new definitions.

The state's definitions are consistent with EPA's definitions. Also.The state has adopted the changes in the air quality models and the definitions regulations and has met the public hearing and notification requirements (see 40 CFR 51.102).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 21, 1988, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that

this action will be effective October 21, 1988.

Action

EPA is approving amended rules 28–19–17(f) and 28–19–7 (a) through (w), but is deferring action on 28–19–7(g).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit October 21, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the state of Kansas was approved by the Director of the Federal Register on July 1, 1982.

Date: August 15, 1988.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

Subpart R—Kansas

1. The authority citation for Part 52 continues to read as follows:

Authority: U.S.C. 7401–7642.

2. Section 52.870 is revised by adding paragraph (C)(21) to read as follows:

§ 52.870 Identification of Plan.

* * * * *

(c) * * *

(21) Revised Kansas regulations applicable to air quality models and definitions were submitted by the Kansas Department of Health and Environment on January 6, 1988.

(i) Incorporation by reference

(A) Kansas Administrative Regulations (K.A.R.) 28–19–17(f) and 28–19–7 (a) through (f) and (h) through (w) which because effective December 16, 1987. EPA is deferring action on 28–19–7(g), *Emission Limitation and Standard.*

[FR Doc. 88–18948 Filed 8–19–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3419–8]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is today approving a revision to the Michigan State Implementation Plan (SIP) for volatile organic compounds (VOC) as it applies to Consent Order No. 8–1982 and its alteration for the General Motors Corporation (GMC) Buick Motor Division located in Flint, Michigan.

USEPA proposed approval of Consent Order No. 8–1982, as altered, on April 22, 1985 (50 FR 15761). No comments were received during the 30-day public comment period. The alteration of Consent Order No. 8–1982 submitted by the State of Michigan on September 6, 1984, accelerates the final compliance dates contained in the Michigan SIP with respect to VOC limits for the prime and prime-surfacer coating operations. This alteration also extends by one year an interim compliance date for topcoat operations, but reduces the interim emission limit during that period and final compliance remains December 31, 1987. USEPA believes this revision will not jeopardize attainment of the Ozone National Ambient Air Quality Standards (NAAQS).

DATE: This action is effective September 21, 1988.

ADDRESSES: Copies of the State submittal and other materials relating to this rulemaking are available for inspection at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 W. Allegan, Lansing, Michigan 48909

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Michigan Regulatory Specialist, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On July 6, 1983 (48 FR 31022), USEPA approved a Stipulation for Entry of Consent and Final Order, SIP No. 8–1982, submitted September 2, 1982, between GMC and the Michigan Air Pollution Control Commission (MAPCC) as a revision to the Michigan SIP. That rulemaking approved the extended compliance date for surface coating operations until December 31, 1987. The approved Consent Order concerned VOC emissions from the surface coating lines at Buick Motor Division Plant in Flint, Michigan.

The Buick Motor Division Plant assembles and paints automobiles and is located in Genesee County, which is classified as a primary nonattainment area for Ozone. The coating operations affected by Consent Order No. 8–1982 are the prime operations, the prime-surfacer operations and the small parts topcoat operations. All these operations are classified as the surface coating of automobiles and light-duty trucks, and are subject to the VOC control requirements of Michigan Rules 336.1603 and 336.1610.

On September 6, 1984, the State of Michigan submitted a revision in the form of an Alteration of Stipulation for Entry of Consent Order and Final Order, SIP No. 8–1982, between GMC and MAPCC concerning VOC emissions form the surface coating lines at the Buick Motor Division's Plant in Flint, Michigan.

On April 22, 1985 (50 FR 15761), USEPA proposed approval of the GMC Buick Motor Division Consent Order No. 8–1982, as altered. The Original Consent Order No. 8–1982 (approved by USEPA July 6, 1983), extended the interim and final compliance dates for meeting the VOC limits in Michigan Rule 336.1610 from those set forth in the regulation for the Buick Motor Division Plant. Consent Order No. 8–1982, as amended, provides for the following schedule and emission limitations:

Prime Operations

Until December 31, 1985, VOC emission shall not exceed 36.8 pounds per gallon of applied coating solids. After December 31, 1985, VOC emissions shall not exceed 1.43 pounds per gallon of applied coating solids.

Prime-Surfacer Operations

After December 31, 1984, VOC emissions shall not exceed 14.9 pounds per gallon of applied coating solids.

Topcoat Operations

Until December 31, 1985, VOC emissions shall not exceed 48.1 pounds per gallon of applied coating solids. After December 31, 1985, and until December 31, 1987, VOC emissions shall not exceed 27.1 pounds per gallon of applied coating solids.

Consent Order No. 8–1982, as amended, accelerates final compliance with VOC limits for the prime coating operations from December 31, 1987, to December 31, 1985. This alteration also

requires primer surfacer operations to be in compliance with final VOC limits after December 31, 1984, instead of December 31, 1987. Compliance with the topcoat and trim limit of 33.1 pounds per gallon of applied coating solids as required in the original order, would be delayed by 1 year from December 31, 1984, to December 31, 1985, however, the interim limit for that period is reduced to 27.1 pounds per gallon of applied coating solids. Even though a one year extension is granted, the source must meet the interim compliance limit. Final compliance for the topcoat and repair operations remains at December 31, 1987.

USEPA reviewed Consent Order No. 8–1982, as amended, in conjunction with USEPA's October 20, 1981, Federal Register policy statement (46 FR 51386) entitled "Approval of Revisions to Compliance Schedules for Control of Volatile Organic Compounds from Automobile Assembly Plant Paint Shop Operations." That notice explained that extensions of the compliance dates for auto coating sources must be consistant with attainment as expeditiously as practicable and reasonable further progress (RFP) in the interim. On August 7, 1986, USEPA issued a memorandum from Assistant Administrator J. Craig Potter, reiterating these prerequisites to approval of compliance date extensions.

USEPA's proposed rulemaking to approve Consent Order No. 8–1982, as altered, on April 22, 1985 (50 FR 15761), provided a 30-day comment period, during which no public comments were received. USEPA's memorandum of (August 7, 1986) prompted the agency to re-examine the GMC Buick revision. Upon such re-examination, USEPA finds that Consent Order No. 8–1982, as altered, is still approvable.

It should be noted first that approval of this revision does not change the final compliance date of December 31, 1987. USEPA previously approved that final compliance date as the most expeditious date practicable for this source. Beyond that, the revision would not significantly interfere with RFP in the Genesee County ozone nonattainment area before December 31, 1987. The State believes that, based on the Buick Motor Plant's 1983 production, the effect of the alterations of the Consent Order would be to allow 1800 tons of VOC emissions in 1985.

The original Consent Order which was federally approved on July 6, 1983 (48 FR 31022) allowed 1485 tons of VOC emissions in 1985. However, for 1986 and 1987 the alteration allows VOC emissions of 647 tons each year, which is 810 tons less than the VOC emissions allowed in the existing Order.

Thus, while the revision would increase emissions in 1985 over what would otherwise have been required, it would produce a substantially greater reduction in emissions below what would otherwise have been required in 1986 and 1987. USEPA believes that this adjustment would result in greater overall progress in the interim years before final compliance at the end of 1987.

USEPA is today approving the alteration to Consent Order No. 8–1982 for the GMC, Buick Motor Divison Plant as submitted by the State of Michigan as a SIP revision. USEPA believes the extension of the interim compliance dates for topcoat and repair operations are as expeditious as practicable, and will not interfere with the attainment and maintenance of the Ozone National Ambient Air Quality standards in Genesee County. USEPA's approval of this alteration does not change the final compliance date of December 31, 1987.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Intergovernmental Relations.

Note. Incorporation by reference of the State Implementation Plan for the State of Michigan was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 19, 1988.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended as follows:

PART 52—APPROVAL PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 and 7642.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(78) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(78) On September 6, 1984, the State of Michigan submitted a revision to the Michigan State Implementation Plan for the General Motors Corporation Buick Motor Division in the form of an Alteration of Stipulation for Entry of Consent Order and Final Order, No. 8–1982. The original Consent Order No. 8–1982 was federally approved on July 6, 1983. This alteration revises Consent Order No. 8–1982, in that it accelerates the final compliance dates for prime and prime-surfacer operations and extends an interim compliance date for topcoat operations.

(i) Incorporation by reference.

(A) State of Michigan, Air Pollution Control Commission, Alteration of Stipulation for Entry Consent Order and Final Order SIP No. 8–1983, which was approved by the Air Pollution Control Commission on April 2, 1984.

(B) Letter of September 6, 1984, from the State of Michigan, Department of Natural Resources, to EPA.

* * * * *

[FR Doc. 88–18637 Filed 8–19–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 62

[FRL 3433–2; NC–034]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Carolina; Revision to 111(d) Plan for Total Reduced Sulfur From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 14, 1987, the North Carolina Division of Environmental Management submitted a regulatory amendment to be incorporated into their federally approved 111(d) plan for total reduced sulfur (TRS). The changes were proposed for approval on December 7, 1987 (52 FR 46380). The comment period ended January 6, 1988, and no comments were received. This notice finalizes the approval of the change, making it part of the federally approved plan. The regulation is being amended to raise one of its standards to the level allowed by Federal New Source Performance Standards.

DATES: This rule will become effective on September 21, 1988.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Air Quality Section, Division of Environmental Management, North

Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Air Programs Branch, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gregg Worley of the EPA Region IV Air Programs Branch, at the above address and the following phone: (404) 347–2864 or (FTS) 257–2864.

SUPPLEMENTARY INFORMATION: On April 14, 1987, the State of North Carolina submitted a revision to their 111(d) plan for total reduced sulfur (TRS) from Kraft Pulp Mills. A 111(d) plan is a plan under section 111(d) of the Clean Air Act which establishes emission standards for designated pollutants from facilities constructed before the applicability date of federal New Source Performance Standards (NSPS) under 40 CFR Part 60 that emit pollutants regulated by NSPS. The revision was adopted by the Environmental Management Commission on April 9, 1987, after a public hearing held on January 20, 1987. The change to regulation 2D.0528, TRS from Kraft Pulp Mills, allows an emission increase of TRS from: 0.0168 pounds per ton of black liquor solids (dry weight) (lbs TRS/ton BLS) from any smelt dissolving tank to 0.032 lbs TRS/ton BLS.

This change brings North Carolina's rule into agreement with the latest revision of 40 CFR Part 60, Subpart BB, promulgated on May 20, 1986 (51 FR 18538). That revision of Subpart BB (Standards of Performance for New Stationary Sources: Kraft Pulp Mills) promulgated several revisions to the standards. One of the revisions changed the existing TRS standard for smelt dissolving tanks from 0.0084 grams of TRS (expressed as H_2S) per kilogram of black liquor solids (g TRS as H_2S/kg BLS) to 0.016 g TRS as H_2S/kg BLS. This revision in English units would be from 0.0168 lbs TRS as H_2S/ton BLS to 0.032 lbs TRS as H_2S/ton BLS. The change to 2D.0528 incorporates the new standard into North Carolina's rule, allowing the same relaxation for existing sources as the revision to 40 CFR Part 60 allows for new sources. It must be noted, however, that a source owner who modifies any affected facility in order to take advantage of the new TRS limit may be subject to 40 CFR Part 60 (New Source Performance Standards), including all parts of those regulations, not just the emission limit.

Final Action

EPA is approving the above regulation change that was submitted to EPA on April 14, 1987.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed with the United States Court of Appeals for the appropriate circuit by October 21, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Air pollution control, Paper and paper products industry, Intergovernmental relations.

Dated: August 15, 1988.

Lee M. Thomas,

Administrator.

PART 62—[AMENDED]

Part 62 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart II—North Carolina

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 62.8350 is amended by adding paragraph (b)(5) to read as follows:

§ 62.8350 Identification of plan.

* * * * *

(b) * * *

(5) A change to regulation 15 NCAC 2D.0528, Total Reduced Sulfur from Kraft Pulp Mills, was submitted to EPA April 14, 1987, following adoption by the North Carolina Environmental Management Commission on April 9, 1987.

[FR Doc. 88–18949 Filed 8–19–88; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–56

Salary Offset for Indebtedness of General Services Administration Employees to the United States

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) recently proposed regulations implementing the salary offset provisions of the Debt Collection Act of 1982. The proposed regulations establish rules and procedures for the General Services Administration to collect, compromise or terminate collection action on claims owed to the U.S. from activities arising under GSA jurisdiction. In particular, procedures were set forth by which GSA can collect debts owed by Federal employees through the use of administrative offset from the employee's disposable pay.

GSA received one comment on the proposed regulations. The writer proposed that certain time limits on employee responses be extended, and that the procedural requirement of requesting reconsideration of a debt prior to requesting a hearing be eliminated. These comments have been reviewed, and GSA is now adopting a modified rule which responds to the suggestions received.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Jr., Senior Assistant General Counsel, Office of General Counsel, General Services Administration, 18th and F Streets, NW., Washington, DC 20405, 202–566–1460.

SUPPLEMENTARY INFORMATION: On October 2, 1986 (51 FR 35245), GSA published for comment in the **Federal Register** a proposed rule based on guidelines and standards published by the Office of Personnel Management (49 FR 27470, July 3, 1984) implementing amendments made by the Debt Collection Act of 1982, Pub. L. 97–365, to 5 U.S.C. 5514. The amendments expanded the authority of Federal agencies to offset debts owed to the United States from the salaries of its employees. The intention of Congress in passing these amendments was to minimize the cost to the Government of recovery of the debts. In addition, the amendments imposed more stringent procedural requirements to protect the interests of Federal employees who have been determined to be indebted to the U.S.

GSA received one response to the proposed rule. The commenter made three points:

1. While 5 U.S.C. 5514(a)(2) requires that an individual request a hearing on the debt or repayment schedule on or before the fifteenth day following the receipt of the agency's notice of intent to collect the debt, it does not require furnishing all the facts, evidence and names of witnesses with the request, as required in § 105–56.006(b) of the proposed regulations;

2. In a similar fashion, § 105–56.005(c) provides for a seven day limit for an

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initial request for reconsideration, which may be insufficient time to obtain additional facts in support of the reconsideration request;

3. Finally, the commenter noted that § 105–56.006(a) of the proposed regulations required that a request for reconsideration be made prior to any request for a hearing, a procedure not strictly required by 5 U.S.C. 5514(a)(2).

The commenter suggested that 20 days would be appropriate time for an employee to gather facts, evidence, or witnesses in support of his petition for hearing or request for reconsideration under items 1 and 2, above.

After review, GSA has concluded that the additional time requested for an employee to obtain facts, evidence, or witnesses (5 days for item 1, 13 days for item 2) would have little or no real effect on the speedy processing and collection of the debt, and insures that employees will have a fair opportunity to present their case. GSA has therefore determined to adopt the suggestion. The regulations have been amended at § 105–56.005 and § 105–56.006 to provide the employee additional time to prepare his response.

Likewise, GSA has concluded that a request for reconsideration should be a permissive, and not a mandatory, prerequisite to a pre-offset hearing. The regulations have been amended at § 105–56.006 to eliminate the requirement of a reconsideration request prior to a request for a hearing.

Paperwork Reduction Act of 1980

Under section 3518 of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the information collection provisions contained in these regulations are not subject to the Office of Management and Budget review and approval.

Executive Order 12291

These regulations have been reviewed in accordance with E.O. 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

For the reasons set out in the preamble, Title 41 of the Code of Federal Regulations is amended as follows:

Part 105–56 is added to read as follows:

PART 105–56—SALARY OFFSET FOR INDEBTEDNESS OF GENERAL SERVICES ADMINISTRATION EMPLOYEES TO THE UNITED STATES

Sec.

105–56.001 Scope.
105–56.002 Excluded debts or claims.
105–56.003 Definitions.
105–56.004 Pre-offset notice.
105–56.005 Employee response.
105–56.006 Petition for pre-offset hearing.
105–56.007 Pre-offset oral hearing.
105–56.008 Pre-offset "paper hearing."
105–56.009 Written decision.
105–56.010 Deductions.
105–56.011 Non-waiver of rights.
105–56.012 Refunds.
105–56.013 Coordinating offset with another Federal agency.

Authority: 5 U.S.C. 5514; Pub. L. 97–365, 96 Stat. 1754.

§ 105–56.001 Scope.

(a) This part covers both internal and Government-wide collections under 5 U.S.C. 5514. It applies when certain debts to the U.S. are recovered by administrative offset from the disposable pay of an employee of the U.S. Government, except in situations where the employee consents to the recovery.

(b) The collection of any amount under this section shall be in accordance with the standards promulgated pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) or in accordance with any other statutory authority for the collection of claims of the U.S. or any Federal agency.

§ 105–56.002 Excluded debts or claims.

This part does not apply to:

(a) Debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (41 U.S.C. 301 *et seq.*), or the tariff laws of the United States.

(b) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute, such as travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108. Debt collection procedures under other statutory authorities, however, must be consistent with the provisions of FCCS, defined below..

(c) An employee election of coverage or of a change of coverage under a Federal benefits program which requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

§ 105–56.003 Definitions.

The following definitions apply to this part:

"Administrator" means the Administrator of the General Services or the Administrator's designee.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources.

"Disposable pay" means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions that are required by law to be withheld.

"Employee" means a current employee of the General Services Administration, or other executive agency.

"FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 *et seq.*

"Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

"Program official" means a supervisor or management official of the employee's service or staff office.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 105–56.004 Pre-Offset notice.

The employee is entitled to written notice from an appropriate program officer in his or her employing activity at least 30 days in advance of initiating a deduction from disposable pay informing him or her of:

(a) The nature, origin and amount of the indebtedness determined by the General Services Administration or another agency to be due;

(b) The intention of the agency to initiate proceedings to collect the debt through deductions from the employee's current disposable pay;

(c) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(d) GSA's policy concerning how interest is charged and penalties and administrative cost assessed, including a statement that such assessments must

be made unless excused under 31 U.S.C. 3717 and the FCCS, 4 CFR 101.1 *et seq.*;

(e) The employee's right to inspect and copy Government records relating to the debt if Government records of the debt are not attached, or if the employee or his or her representative cannot personally inspect the records, the right to receive a copy of such records. Any costs associated therewith shall be borne by the debtor. The debtor shall give reasonable notice in advance to GSA of the date on which he or she intends to inspect and copy the records involved;

(f) A demand for repayment providing for an opportunity, under terms agreeable to GSA, for the employee to establish a schedule for the voluntary repayment of the debt by offset or to enter into written repayment agreement of the debt in lieu of offset;

(g) The employee's right to request a waiver from the General Accounting Office if a waiver of repayment is authorized by law;

(h) The employee's right to pre-offset hearing conducted by a hearing official arranged by the appropriate program official of his or her employing activity if a petition is filed as prescribed by § 105–56.005. Such hearing official will be either an administrative law judge or a hearing official not under the control of the head of the agency and will be designated in accordance with the procedures established in 5 CFR 550.1107;

(i) The method and time period for petitioning for a hearing, including a statement that the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(j) The issuance of a final decision on the hearing, if requested, at the earliest practicable date, but no later than 60 days after the petition is filed unless a delay is requested and granted;

(k) The risk that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR Part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority;

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority.

(l) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made.

(m) The employee's right to a prompt refund if amounts paid or deducted are later waived or found not owed, unless otherwise provided by law;

(n) The specific address to which all correspondence shall be directed regarding the debt.

§ 105–56.005 Employee response.

(a) *Voluntary repayment agreement.* An employee may submit a request to the official who signed the demand letter to enter into a written repayment agreement of the debt in lieu of offset. The request must be made within 7 days of receipt of notice under § 105–56.004. The agreement must be in writing, signed by both the employee and the program official making the demand and a signed copy must be sent to the regional finance division serving the program activity. Acceptance of such an agreement is discretionary with the agency. An employee who enters into such an agreement may nevertheless seek a waiver under paragraph (b) of this section.

(b) *Waiver.* Where a waiver of repayment is authorized by law, the employee may request a waiver from the General Accounting Office.

(c) *Reconsideration.* (1) An employee may seek a reconsideration of the Agency's determination regarding the existence or amount of the debt. The request must be submitted to the official who signed the demand letter within 7 days of receipt of notice under § 105–56.004. Within 20 days of receipt of this notice, the employee shall submit a detailed statement of reasons for reconsideration which must be accompanied by supporting documentation.

(2) An employee may request a reconsideration of the proposed offset schedule. The request must be submitted to the program official who signed the demand letter within 7 days of receipt of notice under § 105–56.004. Within 20 days of receipt of this notice, the employee shall submit an alternative repayment schedule accompanied by a detailed statement supported by documentation evidencing financial hardship resulting from the agency's proposed schedule. Acceptance of the request is discretionary with the agency. The agency must notify the employee in writing of its decision concerning the request to reduce the rate of an involuntary deduction.

§ 105–56.006 Petition for pre-offset hearing.

(a) The employee may petition for a pre-offset hearing by filing a written petition with the program official who signed the demand letter within 15 days of receipt of the written notice. The petition must state why the employee believes the agency's determination concerning the existence or amount of the debt is in error, and set forth objections to the involuntary repayment schedule. The timely filing of a petition will suspend the commencement of collection proceedings.

(b) The employee's petition or statement must be signed by the employee.

(c) Petitions for hearing made after the expiration of the 15 day period may be accepted if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit.

(d) If the employee timely requests a pre-offset hearing or the timeliness is waived, the program official must:

(1) Notify the employee whether the employee may elect an oral hearing or whether he or she may have only a "paper hearing," i.e., a review on the written record (see 4 CFR 102.3(c)). In either case, the program official will arrange for a hearing official; and

(2) The program official will provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(e) An employee who elects an oral hearing must notify the hearing official and the program official in writing within 5 days of receipt of the notice under paragraph (d)(1) of this section and within 20 days of receipt of the notice under (d)(1) the employee shall fully identify and explain with reasonable specificity all the facts, evidence and witnesses which the employee believes support his or her position.

(f) The hearing official shall notify the program official and the employee of the date, time and location of the hearing.

(g) If the employee later elects to have the hearing based only on the written submissions, notification must be given to the hearing official and the program official at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause.

(h) Failure of the employee to appear at the oral hearing can result in dismissal of the petition and affirmation of the agency's decision.

§ 105–56.007 Pre-offset oral hearing.

(a) Oral hearings are informal in nature. The agency, represented by a program official or a representative of the Office of General Counsel, and the employee, or his or her representative, shall explain their case in the form of an oral presentation with reference to the documentation submitted. The employee

may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify where the hearing official determines the testimony to be relevant and not redundant.

(b) The hearing official shall—

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person at the hearing. The employee may not be represented by a person who creates an actual or apparent conflict of interest.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing when doing so is in the best interests of the employee or the public.

(e) Oral hearings may be conducted by conference call at the request of the employee or at the discretion of the hearing official.

§ 105–56.008 Pre-offset "paper hearing."

If a hearing is to be held only upon written submissions, the hearing official shall issue a decision based upon the record and responses submitted by both the agency and the employee.

§ 105–56.009 Written decision.

Within 60 days of filing of the employee's petition for a pre-offset hearing, the hearing official will issue a written decision setting forth: The facts supporting the nature and origin of the debt; the hearing official's analysis, findings and conclusions as to the employee's or agency's grounds, the amount and validity of the debt and the repayment schedule.

§ 105–56.010 Deductions.

(a) *When deductions may begin.* If the employee filed a petition for hearing with the program official before the expiration of the period provided for in § 105–56.006, then deductions will begin after the hearing official has provided the employee with a hearing, and the final written decision is in favor of the agency. It is the responsibility of the employee's program official to issue the pre-offset notice to the employee and to instruct the National Payroll Center to begin offset in accordance with the final written decision.

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before collection of the amount of the indebtedness is completed, the remaining indebtedness will be offset from any subsequent payments of any nature. If the debt cannot be satisfied from subsequent payments, then the debt must be collected according to the procedures for administrative offset pursuant to 31 U.S.C. 3716.

(c) *Types of collection.* A debt may be collected in one lump sum or in installments. Collection will be by lump-sum unless the employee is able to demonstrate to the program official who signed the demand letter that he or she is financially unable to pay in one lump-sum. In these cases, collection will be by installment deductions.

(d) *Methods of collection.* If the debt cannot be collected in one lump sum, the debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the program official agree to an alternative repayment schedule. The alternative arrangement must be in writing and signed by both the employee and the program official.

(1) *Installment deductions.* Installment deductions will be made over the shortest period possible. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. The installment payment will be sufficient in size and frequency to pay the debt over the shortest period possible and never to exceed three years. Installment payments of less than $100 per pay period will be accepted only in the most unusual circumstances.

(2) *Sources of deductions.* GSA will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

(e) Interest, penalties and administrative costs on debts under this part will be assessed according to the provisions of 4 CFR 102.13.

§ 105–56.011 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 105–56.012 Refunds.

GSA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) GSA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 105–56.013 Coordinating offset with another Federal agency.

(a) *When GSA is owed the debt.* When GSA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until GSA provides the agency with a written certification that the debtor owes GSA a debt and that GSA has complied with these regulations. This certification shall include the amount and basis of the debt and the due date of the payment.

(b) *When another agency is owed the debt.* GSA may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Any such request must be accompanied by a certification from the requesting agency that the person owes the debt, the amount of the debt and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K.

Dated: April 13, 1988.

Raymond A. Fontaine,

Comptroller, General Services Administration.

[FR Doc. 88–18911 Filed 8–19–88; 8:45 am]

BILLING CODE 6820–BN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3130, 3150, 3180, and 3200

[AA–620–88–4111–01; Circular No. 2606]

Oil and Gas Leasing, Geothermal Resources Leasing; Clarifying Amendments; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking, correction.

SUMMARY: This document corrects typographical and editorial mistakes made in the final rulemaking on oil and gas leasing and geothermal leasing published in the Federal Register on May 16, 1988 (53 FR 17340). Also, Additional corrections may be found in a document published by the Federal Register elsewhere in this issue.

EFFECTIVE DATE: June 15, 1988.

ADDRESS: Inquires or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 653–2190.

In the corrections listed below, the item numbers correspond to the item numbers in the original final rulemaking. The following corrections are made in the final rulemaking on Oil and Gas Leasing and Geothermal Resources Leasing, published in the Federal Register on May 16, 1988 (53 FR 17340):

34. On page 17355, first column, at the end of this item, add the words, " and by removing from where it appears the word 'condition' and replacing it with the word 'conditions' ".

67. On page 17359, first column, in paragraph E. of this time, at line 3 thereof, change "assignor" to "assignee".

72. On page 17361, third column, in § 3154.3, insert the word "have" between "permit" and "been" at line 5 thereof, so that the line reads: "notice of intent or permit have been met."

110. On page 17365, third column, in paragraph B, remove the word "that" from the third line from the end, so that the phase being removed reads: "by a working interest owner obtains".

117. On page 17367, second column, in line 13 of § 3200.2, change "estate" to "estates", and in the next to last line of § 3200.2, insert the word "Act" between "Management" and "of".

145. On page 17369, second column, the last sentence of § 3206.1–2, "For unit bond forms see subpart 3284 of this title.", is removed.

154. On page 17370, first column, in line 1 insert the word "on" between the quotation mark and the word "unleased".

August 9, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88–18906 Filed 8–19–88; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280

[AA–620–88–4111–01–24–10; Circular No. 2508]

Minerals Management; General: Oil and Gas Leasing: Noncompetitive Leases: Competitive Leases: Oil and Gas Leasing—National Petroleum Reserve—Alaska: Onshore Oil and Gas Operations: Onshore Oil and Gas Unit Agreements—Unproven Areas: Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction; interpretation.

SUMMARY: This document corrects typographical and editorial errors in the final rulemaking implementing the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (the Reform Act), published in the Federal Register on June 17, 1988 (53 FR 22814). This document also provides further interpretation of that rulemaking with regard to (1) the need for consent of a surety for an operator to be covered by a lessee's statewide or nationwide bond, and (2) whether a future interest lessee who holds the present interest lease and assigns or loses it also assigns or loses the future interest lease.

EFFECTIVE DATE: June 17, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Judith I. Reed, (202) 653–2190.

SUPPLEMENTARY INFORMATION: In addition to the correction made below, this document responds to public inquiries requesting clarification of certain provisions of the final rulemaking published in the Federal Register on June 17, 1988, implementing the Reform Act. Further corrections of printing errors may also be found in a notice published by the Federal Register elsewhere in this issue.

Since promulgation of the final rulemaking on June 17, 1988, the Bureau of Land Management has been requested to clarify whether the provision of the last sentence of § 3104.2, which states that the "operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond", applies with equal force to statewide and nationwide bonds provided for in § 3104.3.

Because a statewide or nationwide bond is a substitute form of bond allowing lessees and sublessees to proceed without multiple individual lease bonds, the requirement that operators provide a consent of surety to conduct operations under coverage of another party's bond applies equally to both individual lease bonds and statewide or nationwide bonds.

The Bureau has also been requested to clarify the portions of §§ 3110.9–4(a)(2) and 3120.7–2(a)(2) that require Federal future interest lessees who also are present interest lessees of the same lands to lose their future interest leases to the same extent that their interest in the present interest lease is lost through expiration, termination, cancellation, and relinquishment.

Prior to this rulemaking, future interest lessees have been required, as a condition precedent to issuance of their lease, to subscribe to a supplemental agreement providing that the loss of the present interest lease, to the extent that the lessee held any such present interest, would cause the loss of the future interest lease to the same extent. While the rulemaking eliminated the old supplemental agreement, whose primary function was to prescribe rentals and royalties due prior to the vesting of the interest of the United States, the other provisions of the agreements governing assignments remain in effect.

From the viewpoint of the lessor, it is advantageous and in the public interest the assure that there is a smooth transition between the present interest lessee and the future interest lessee at the time the basic ownership vests in the United States. This is done by ensuring that the present interest lessee is also the future interest lessee. However, in a competitive situation, the United States cannot ensure that that transition would be smooth when the present interest owner fails to become the high bidder and, as a result, the future interest owner. Even so, it remains in the public interest to provide, whenever possible, for a smooth transition that does not threaten production and the royalty income stream. Accordingly, it has always been and remains policy that when a future interest lessee holding the present interest lease assigns or loses the present interest lease, he/she also assigns or loses the future interest lease.

The Bureau of Land Management expects that the prudent present interest lessee will logically acquire the future interest lease to protect any investment

in production. The present interest lessee can obtain the future interest lease by outbidding others present at the oral auction. A common, if not universal, provision of the present interest fee leases is for continuation of the lease so long as the lease is producing. Most present interest lessees should logically seek to develop their present lease once they have obtained the future interest lease.

In short, the future interest regulations promote two policy objectives: competitiveness and continuity. The destruction of this continuity is sufficient reason to cause the loss of the future interest lease and to allow the United States to expose the future interest to competitive bidding again, where the new present interest owner has a fair opportunity to acquire the future interest lease and thus reestablish the continuity.

Accordingly, the Department of the Interior has no present plans to amend §§ 3110.9 or 3120.7, as they currently accomplish these policy objectives.

The following corrections are made in the final rulemaking implementing the Reform Act that was published on June 17, 1988 (53 FR 22814):

1. On page 22840, middle column, the amendatory language of Item 37 is corrected by revising it to read as follows:

37. Section 3108.3 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (d), removing paragraph (c), and adding new paragraphs (b) and (c), to read as follows:

2. In line 1 of § 3110.5–5 (page 22843, first column), change "variations" to "variation".

August 9, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88–18905 Filed 8–19–88; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6933]

Changes in Flood Elevation Determinations; Maryland and New Jersey

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maryland: Prince George's	Unincorporated areas	Aug. 2, 1988 and Aug. 9, 1988. *Prince George's Journal*	The Honorable Parris N. Glendening, County Executive, Prince George's County, County Administrative Building, Upper Marlboro, Maryland 20772.	July 22, 1988	245208
New Jersey: Bergen	Borough of Ramsey	July 29, 1988 and Aug. 5, 1988. *Ramsey-Mahwah Reporter*	The Honorable Nicholas Saros, Ramsey Borough Administrator, 33 North Central Avenue, Ramsey, New Jersey 07446.	July 22, 1988	340064B

Issued: August 12, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-18926 Filed 8-19-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 67

Final Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for Part 67 continues to read as follows:

PART 67—[AMENDED]

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ARIZONA	
Coconino County (Unincorporated Areas) (FEMA Docket No. 6929)	
Oak Creek:	
Approximately 0.8 mile upstream of Route 179	*4,239
Approximately 0.9 mile upstream of Route 179	*4,245
Approximately 1.0 mile upstream of Route 179	*4,256
Approximately 1.1 miles upstream of Route 179	*4,263
Maps are available for inspection at the Coconino County Department of Community Development, County Administrative Center, 219 East Cherry Avenue, Flagstaff, Arizona.	
MASSACHUSETTS	
Fitchburg (City), Worcester County (FEMA Docket No. 6929)	
North Nashua River:	
At downstream corporate limits	*333
Approximately 1,300 feet upstream of corporate limits	*335
Maps available for inspection at the Conservation Commission and the Planning Office, Second Floor, City Hall, 718 Main Street, Fitchburg, Massachusetts.	
NEW YORK	
Wheatfield (Town), Niagara County (FEMA Docket No. 6929)	
Niagara River:	
At downstream corporate limits	*569
At upstream corporate limits	*570
Maps available for inspection at the Building Inspector's Department, Town Hall, North Tonawanda, New York.	

Issued: August 12, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-18925 Filed 8-19-88; 8:45 am]

BILLING CODE 6718-21-M

VOL 53 ISS 162 AUG 22 1988 UMI

44 CFR Part 67

Final Flood Elevation Determinations; Idaho

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Jonh L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

PART 67—[AMENDED]

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
IDAHO	
Caldwell (City), Canyon County (FEMA Docket No. 6927)	
Boise River:	
Approximately 300 feet downstream of Union Pacific Railroad	*2,348
Just upstream of Chicago Street	*2,352
Just downstream of U.S. Highway 84	*2,355
Approximately 2,800 feet upstream of Plymouth Street at corporate limit	*2,365
Approximately 6,225 feet upstream of Plymouth Street	*2,367
Maps are available for review at the City Engineers Office, City of Caldwell, 621 Cleveland Street, Caldwell, Idaho.	

Issued: August 16, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88–18927 Filed 8–19–88; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 382

[Docket No. R–107]

Procedures for Determining Fair and Reasonable Rates for Bulk Cargo Vessels

AGENCY: Maritime Administration, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Maritime Administration (MARAD) is continuing to review the establishment and implementation of regulations governing the determination of fair and reasonable guideline rates for bulk preference cargoes shipped in U.S.-flag bulk vessels. To further evaluate this procedure and to elicit facts and opinions on this matter, MARAD has decided to hold a public hearing.

DATES: This hearing is to be held September 8, 1988, beginning at 9:00 a.m.

ADDRESS: Room 3442, Nassif Building, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, Tel. (202) 366–2323. Anyone desiring to participate in this hearing should notify the contact person by September 2, 1988, and indicate the amount of time that they will need to present their views. Prepared statements and comments may be submitted by interested parties unable to participate in the hearing, provided that they are received by MARAD by September 2, 1988, and so that they may be reproduced and made available at the hearing.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act of 1936 (the Act), as amended (46 U.S.C. 1241(b)), requires that at least 50 percent of any equipment, materials or commodities purchased by the United States for its own account or for the account of any foreign nation without provision for reimbursement, or acquired as the result of an advance of funds or credits or a guarantee from the United States Government, should be transported on privately owned United States-flag commercial vessels to the extent that such vessels are available at fair and reasonable rates. Upon request, the Maritime Administration provides guideline rates to agencies to assist in the determination of fair and reasonable

rates. Section 901(b)(2) of the Act provides the authority for the Maritime Administration (by delegation from the Secretary of Transportation) to issue regulations governing the administration of section 901(b)(1).

MARAD published an initial Notice of Proposed Rulemaking (NPRM) on August 6, 1985 (50 FR 31735) that proposed data submission requirements and a methodology for determining fair and reasonable rates for full shiploads of dry and liquid bulk preference cargoes on U.S.-flag commercial bulk cargo vessels.

MARAD received nine comments and concluded that the methodology was generally unsatisfactory. Accordingly, MARAD issued a Supplemental Notice of Proposed Rulemaking (SNPRM) on December 17, 1986 (51 FR 45136), that proposed and requested public comments on a cost-based methodology for calculating fair and reasonable guideline rates that would be based on each vessel's actual or constructed costs.

After reviewing the responses to the first SNPRM, MARAD issued a second SNPRM on June 22, 1988. The revised methodology of the second SNPRM proposed the use of aggregate averages to determine all operating costs, except fuel, using the historical data submitted by the operators, and divided the ships into competitive groupings based on size and type.

As a result of communications received after the publication of the second SNPRM, MARAD has decided to hold a public hearing. MARAD requests that interested parties participate by presenting their comments, views and opinions on matters that concern them and by providing knowledgeable witnesses and other pertinent information. MARAD received many similar comments in response to the three foregoing notices. To avoid time-consuming duplication in presentations at the hearing, MARAD suggests that prospective participants, with identical or substantially similar views or interests, coordinate and consolidate their presentations or submissions for the record. MARAD also requests that witnesses be prepared to present detailed information to justify their position(s).

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

Date: August 17, 1988.

[FR Doc. 88-18993 Filed 8-19-88; 8:45 am]
BILLING CODE 4910-81-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1505 and 1506

[FRL-3431-3]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document establishes a final rule regarding the Environmental Protection Agency's (EPA) procurement procedures for contracting for expert services. The Superfund Amendments and Reauthorization Act of 1986 authorizes the use of other than competitive procedures in acquiring the services of experts. The expert services would be used in preparing or prosecuting a civil or criminal action under the Act. The intended effect of this rule is to implement the provisions of the Act by an amendment to the EPA Acquisition Regulation.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers, Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street, SW., Washington, DC 20460, Telephone 202/382-5028.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation (FAR) 6.1 requires full and open competition, with certain limited exceptions, in soliciting offers and awarding Government contracts.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) Section 109(e) authorizes the use of other than competitive procedures, i.e. other than full and open competition, in procuring the services of experts for use in preparing or prosecuting a civil or criminal action under SARA.

The purpose of this final rule is to recognize the provisions of SARA and provide procedures to be employed when the exception applies.

B. Executive Order 12291

The Office of Management and Budget (OMB) Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for OMB review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Public Comments

The EPA published a proposed rule for public comment in the **Federal Register** on April 7, 1988, 53 FR 11519. The EPA received no public comments. No revisions have been made to the proposed rule.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply. This final rule contains no information collection requirements requiring the approval of OMB under 44 U.S.C. 3501 *et seq.*

E. Regulatory Flexibility Act

The EPA certifies that this rule does not have a significant impact on a substantial number of small entities. The rule permits the EPA to use other than full and open competition in acquiring the services of experts in preparing or prosecuting a civil or criminal action under the authority of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The method of contracting for such services must necessarily be the same for both small and large entities.

List of Subjects in 48 CFR Parts 1505 and 1506

Government procurement, Publicizing contract actions and competition requirements.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for 48 CFR Parts 1505 and 1506 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

PART 1505—[AMENDED]

2. Section 1505.202 is revised to read as follows:

1505.202 Exceptions.

(a) The contracting officer need not submit the notice required by FAR 5.201 when the contracting officer determines in writing that the contract is for the services of experts for use in preparing or prosecuting a civil or criminal action under the Superfund Amendments and Reauthorization Act of 1986.

(b) The Head of the Contracting Activity (HCA) is delegated the authority to make the written determination in FAR 5.202(b).

PART 1506—[AMENDED]

3. Subpart 1506.3 is amended by adding section 1506.302-5 to read as follows:

1506.302-5 Authorized or required by statute.

(a) *Authority.* Section 109(e) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) is cited as authority.

(b) *Application.* (1) The contracting officer may use other than full and open competition to acquire the services of experts for use in preparing or prosecuting a civil or criminal action under SARA whether or not the expert is expected to testify at trial. The contracting officer need not prepare the written justification under FAR 6.303 when acquiring expert services under the authority of section 109(e) of SARA. The contracting officer shall document the official contract file when using this authority.

(2) The contracting officer shall give notice to the Agency's Competition Advocate whenever a contract award is made using other than full and open competitition under this authority. The notice shall contain a copy of the contract and the summary of negotiations.

Date: August 10, 1988.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 88-18729 Filed 8-19-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening.

SUMMARY: NOAA announces the reopening of the ocean recreational salmon fishery within the exclusive economic zone (EEZ) between the U.S.-Canada border and Leadbetter Point, Washington (46°38'10" N. latitude). The fishery from the Queets River to Leadbetter Point, which closed at midnight, July 31, 1988, will reopen for 24 hours on August 18, 1988. The fishery from the U.S.-Canada border to the Queets River, which closed at midnight, August 2, 1988, will reopen for 24 hours on August 19, 1988. Evaluation of landing data subsequent to the closures indicates that the closures were based on overestimates of actual catch, and that sufficient coho and chinook salmon remain to allow an additional day of fishing. The daily recreational bag limit will be 2 fish of any species with no area restrictions. This action is intended to maximize the harvest of coho and chinook salmon in these subareas without exceeding the ocean share of salmon allocated to the recreational fishery.

EFFECTIVE DATES: Reopening of the EEZ to recreational salmon fishing: (1) Between the Queets River and Leadbetter Point, Washington, is effective from 0001 hours to 2400 hours local time August 18, 1988, and (2) between the U.S.-Canada border and the Queets River, Washington, is effective from 0001 hours to 2400 hours local time August 19, 1988. For each open period, the daily bag limit will be 2 fish of any species, and no area restrictions will apply. Comments on this action will be received through September 2, 1988.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The recreational fishery from the Queets River to Leadbetter Point, Washington, was closed at midnight, July 31, 1988 (53 FR 29338, August 4, 1988), and the recreational fishery from the U.S.-Canada border to the Queets River, Washington, was closed at midnight, August 2, 1988 (53 FR 29479, August 5, 1988). Both closures were based on the projected attainment of subarea quotas of 50,000 and 20,000 coho salmon, respectively. Subsequent evaluation of landings indicates that these projections were based on overestimates of actual catch.

According to the best available information, recreational catches of coho salmon to date totaled 48,300 and 18,100 fish in the subareas of Queets River to Leadbetter Point, WA and U.S.-Canada border to Queets River, respectively, leaving 1,700 and 1,900 coho salmon unharvested in each subarea quota. Furthermore, 10,100 chinook salmon are available for harvest in the overall recreational chinook quota for the area north of Cape Falcon, Oregon. (The commercial fishery north of Cape Falcon exceeded its overall commercial chinook quota by 1,100 fish. This quota overage has been subtracted from the 11,200 chinook salmon which remained unharvested when the recreational fishery north of Cape Falcon closed.)

These amounts of available coho and chinook salmon have been determined to be sufficient for an additional open period of 24 hours in each subarea. This action is being taken in as timely a manner as possible for a part of the remaining original seasons which would have ended no later than September 5, 1988. Reopening of the recreational fishery in these two subareas is consistent with the management objectives for coho and chinook salmon in these subareas.

Therefore, NOAA issues this notice to reopen the recreational fishery in the EEZ: (1) Between the Queets River and Leadbetter Point, Washington (46°38'10" N. latitude) from 0001 hours to 2400 hours local time August 18, 1988, and (2) between the U.S.-Canada border and the Queets River, Washington, from 0001 hours to 2400 hours local time August 19, 1988. A closed area which was established between Leadbetter Point and Klipsan Beach, Washington, at midnight, July 24, 1988, is not affected by this notice and remains in effect (53 FR 28227, July 27, 1988). This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding these reopenings. The State of Washington also will reopen the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action.

Because of the need for immediate action to reopen the recreational fishery, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15

days after the effective date, through September 2, 1988.

Other Matters

This action is authorized by 50 CFR 661.21(a)(2) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18970 Filed 8-17-88; 2:15 pm]

BILLING CODE 3510-22-M

VOL 53 ISS 162 22 1988 A G UMI

Proposed Rules

Federal Register
Vol. 53, No. 162
Monday, August 22, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 2; Doc. No. 5742S]

General Administrative Regulations—Standards for Approval; Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Administrative Regulations—Standards for Approval; Standard Reinsurance Agreement to remove a word appearing at the end of one of the subsections outlining qualifications for an agreement by an applicant with less than eight of the Investment Regulatory Information System (IRIS) ratios in the usual range, which significantly changes the intent of the qualifying criteria set out in this subsection. The intent of this rule is to remove this word and provide the correct continuity of criteria in this subsection.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than September 21, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1991.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other purposes.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Monday, May 11, 1987, FCIC published a Final Rule in the **Federal Register** at 52 FR 17540, issuing a new Subpart L in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) to contain the Standards for Approval; Reinsurance Agreement (7 CFR Part 400, Subpart L), effective for the 1988 contract year, beginning July 1, 1988.

In § 400.152, titled "Qualifying with less than eight IRIS ratios in the usual range" (appearing at 52 FR 17545), paragraph (b) ends with the word "and" which significantly changes the intent of the qualifying criteria set out in this subsection, outlining the criteria for an insurer with less than eight of the Insurance Regulatory Information System (IRIS) ratios in the usual range. The IRIS ratios were developed by the National Association of Insurance Commissioners (NAIC). Their primary use is to assist State Insurance Departments to oversee the financial condition of insurers. FCIC uses them to evaluate the financial strength of applicants for reinsurance.

An insurer with less than eight of the IRIS ratios in the usual range, may qualify for a reinsurance agreement if any *one* of the criteria itemized in 7 CFR 400.152 is met. The word "and" at the end of § 400.152(b) has the effect of combining paragraphs (b) and (c). Paragraphs (b) and (c) are separate criteria. For this reason, FCIC proposes to remove the word "and" from the end of 7 CFR 400.152(b).

Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

General administrative regulations, Standards for approval, Reinsurance agreement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Administrative Regulations; Standards for Approval; Reinsurance Agreement (7 CFR Part 400, Subpart L), proposed to be effective for the 1989 contract year, as follows:

PART 400—[AMENDED]

1. The authority citation for 7 CFR Part 400, Subpart L, continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

§ 400.152 [Amended]

2. 7 CFR 400.152(b) is amended by removing the word "and" at the end thereof.

Done in Washington, DC, on August 16, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-18990 Filed 8-19-88; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 405

[Amdt. No. 2; Doc. No. 5783S]

Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Apple Crop Insurance Regulations (7 CFR Part 405), effective for the 1989 and succeeding crop years, by revising and reissuing the Apple Fresh Fruit Option and the Pilot Apple Sunburn Option. The intended effect of this rule is to: (1) Reduce the add back percentage of cull production to be counted as production for the purposes of loss adjustment, and to incorporate minor grammatical changes in the Fresh Fruit Option; and (2) replace the Pilot Apple Sunburn Option, previously only available in Washington State with a revised Apple Sunburn Option.

DATE: Written comments, data, and options on this proposed rule must be submitted not later than September 21, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is April 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small business, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to amend the Apple Crop Insurance Regulations (7 CFR Part 405), to: (1) Revise and reissue the Apple Fresh Fruit Option (7 CFR 405.8(c)) to reduce the percentage of cull production added back to production to count for purposes of loss adjustment from 30 percent to 15 percent, and to incorporate minor grammatical changes; and (2) replace the Pilot Apple Sunburn Option (7 CFR 405.9), previously only available in Washington State with a revised Apple Sunburn Option available outside of Washington State.

Under the present provisions of § 405.8(c), the Apple Fresh Fruit Option, apples which are knocked to the ground by wind, or frozen to the extent that they can be harvested but not packed or marketed as fresh apples are considered 100 percent cull production. Thirty (30) percent of all such cull production is added back as production to count for loss adjustment purposes.

FCIC herein proposes to reduce the percentage of cull production add back from 30 percent to 15 percent to provide a more equitable determination in loss adjustment by more nearly reflecting the normal percentage of cull production. FCICD also proposes to make minor grammatical changes.

FCIC is also proposing to issue a new § 405.9 Apple Sunburn Option, replacing the Pilot Apple Sunburn Option, published in the **Federal Register** at 52 FR 1467, January 20, 1988. These programs are designed to blend together to provide a broader base of protection for insured apple producers.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 405

Apple crop insurance regulations.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Apple Crop Insurance Regulations (7 CFR Part 405), proposed to be effective for the 1989 and succeeding crop years, as follows:

1. The authority citation for 7 CFR Part 405 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 405 is amended by revising and reissuing § 405.8(c) and § 405.9 to read as follows:

PART 405—APPLE CROP INSURANCE REGULATIONS

* * * * *

§ 405.8 Apple Fresh Fruit Option.

* * * * *

(c) The Option reads as follows:

U.S. Department of Agriculture

Federal Crop Insurance Corporation

Apple Fresh Fruit Option

This is a continuous amendment (see section 15 of the basic policy).

Insured's Name _____

Contract No. _____

Address _____

Crop Year _____

Identification No:

SSN _____

Tax _____

It is hereby agreed to amend the basic Federal Crop Insurance Apple Policy under the following terms and conditions:

1. This Option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your apples under this Option.

2. You must have an apple policy in force.

3. You must insure all the acreage of apples in the county in which you have a share regardless of the intended use (fresh-market or processing).

4. In addition to section 8 of the apple policy, inspection and grading of the fruit

must be done by us prior to harvest or no quality adjustment will be made.

5. Separate line entries according to intended use (fresh-market or processing) must be included on the acreage report required under section 3 of the apple policy.

6. Your apples intended for processing will be insured under the quality provisions of A only (See below).

7. Your apples intended for fresh-market will be insured under the quality provisions of either A or B, whichever you select.

8. If you select A only, A will apply to all of your apples intended for processing and fresh-market.

9. If you select B, those provisions will apply to all of your apples intended for fresh-market and the provisions of A will apply to all of your apples intended for processing.

10. a.

You must select either A or B by marking the appropriate space below.

A____

In addition to section 9.e. and in lieu of 17.q. of the Apple Policy, your production to count for any acreage designated for processing or fresh-market will be adjusted when your apples are damaged by hail to the extent that such applies will not grade U.S. No. 1 (processing), (7 CFR 51.430 *et seq.*)). The adjustment factor (not to exceed 1) will be the ratio of the average market price (received by you or determined by us, whichever is larger) for your damaged production to the average market price for U.S. No. 1 (processing) apples. There will be no adjustment for quality if the apples do not grade U.S. No. 1 because of size, color, or russeting.

B ____

In lieu of sections 9.e.(1), 9.e.(2), 17.1, and 17.q of the Apple Policy, the total production to be counted for a unit must include all harvested and appraised production. Harvested apple production which, due to hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards (7 CFR 51.300 *et seq.*), will be adjusted as follows:

(1) Production with 21 through 40 percent not grading U.S. Fancy or better due to hail damage will be reduced 2 percent of each percent in excess of 20 percent. The difference between the reduced production and the total production will be considered cull production.

(2) Production with 41 through 50 percent not grading U.S. Fancy or better due to hail damage will be reduced 40 percent plus an additional 3 percent for each percent in excees of 40 percent. The difference between the reduced production and the total production will be considered cull production.

(3) Production with 51 through 64 percent not granting U.S. Fancy or better due to hail damage will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent. The difference between the reduced production and the total production will be considered cull production.

(4) Production with 65 percent or more not grading U.S. Fancy or better due to hail damage will be considered 100 percent cull production.

b. Apples which are knocked to the ground by wind or frozen to the extent that they can be harvested but not packed or marketed as fresh apples will be considered 100 percent cull production.

c. Fifteen (15) percent of all cull production will be counted as production.

No reduction in grade will be applied to any apple grading less than U.S. Fancy due solely to shape, russeting, or color.

d. Appraised production to be counted must include:

(1) Potential production lost due to uninsured causes and failure to follow recognized good apple management practices; and

(2) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed without our consent.

e. Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is;

(1) Harvested;

(2) Further damaged by an insured cause and reappraised by us; or

(3) In whole or part knocked to the ground by wind or hail or frozen on the tree to the extent that harvest is not practical.

11. Your premium rate for Apples under either A or B, as elected by you, will be established by the actuarial table.

12. All provisions of the apple policy not in conflict with this option are applicable.

13. All determinations under this option will be made by us.

14. This Option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the policy, preceding such crop year.

Insured's Signature ____
Date ____
Corporation Representative's Signature and Code Number ____
Date ____

§ 405.9 Apple Sunburn Option.

U.S. Department of Agriculture

Federal Crop Insurance Corporation

Apple Sunburn Option

This is not a continuous option.

Applications for this option must be made prior to the sale closing date if you want this optional coverage. Upon our approval this option is applicable *only* for the 19____ crop year.

Insured's Name ____
Contract No. ____
Address ____
Crop Year ____

Identification No:
SSN ____
Tax ____

It is hereby agreed to amend the Federal Crop Insurance Apple Policy in accordance with the following terms and conditions:

1. This option must be submitted to us on or before the final date for accepting applications for each crop year in which you wish to insure apples under this option.

2. You must have an apple policy and the Apple Fresh Fruit Option B in force.

3. You must insure all the acreage of apples in the county to which the Apple Fresh Fruit Option B applies and in which you have a share.

4. In additon to the causes of loss specified in paragraph 1.a. of the Apple Crop Insurance policy, excess sun is an insurable cause of loss.

5. In lieu of sections 9.e.(1), 9.e.(2), 17.1, and 17.q. of the Apple Policy, the total production to be counted for a unit must include all harvested and appraised production. Harvested apple production which, due to excessive sun damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

a. Production with 21 thru 40 percent not grading U.S Fancy or better due to excessive sun damage will be reduced 2 percent for each percent in excess of 20 percent. The difference between the reduced production and the total production will be considered cull production.

b. Production with 41 thru 50 percent not grading U.S. Fancy or better due to excessive sun damage will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40 percent. The difference between the reduced production and the total production will be considered cull production.

c. Production with 51 thru 64 percent not grading U.S. Fancy or better due to excessive sun damage will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent. The difference between the reduced production and the total production will be considered cull production.

d. Production with 65 percent or more not grading U.S. Fancy or better due to excessive sun damage will be considered 100 percent cull production.

Fifteen (15) percent of all cull production, will be counted as production.

6. The premium for this sunburn option will be established by the acturial table.

7. All provisions of the apple policy and the Fresh Fruit Option-B not in conflict with this option are applicable.

8. All determinations under this option will be made by us.

10. a. *"Excessive sun"* is defined as the exposure of the unharvested apples to direct or indirect sun sufficient to cause the apples to grade less than U.S. Fancy due to sunburn.

b. *Sunburn"* is defined in accordance with applicable U.S.D.A. Standards.

Insured's Signature ____
Date ____
Corporation Representative's Signature and Code Number ____
Date ____

Done in Washington, DC, on August 16, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-18988 Filed 8-19-88; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 441

[Amdt. No. 1; Doc. No. 5833S]

Table Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Table Grape Crop Insurance Regulations (7 CFR Part 441), effective for the 1989 and succeeding crop years, by adding a calendar date for the end of the insurance period for Arizona grape producing counties. The intended effect of this rule is to add the calendar date for the end of the insurance period for those counties in Arizona recently approved for table grape crop insurance.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than September 21, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutions a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1991.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 291115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Enviornmental Impact Statement is needed.

FCIC herewith proposes to amend the Table Grape Crop Insurance Regulations (7 CFR Part 441), by adding a calender date for the end of the insurance period for table grape crop insurance in Arizona (7 CFR 441.7.g.).

The Board of Directors of FCIC approved the expansion of table grape crop insurance to include Arizona at a meeting held on June 8, 1988. This action makes it possible to carry out that directive.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 441

Crop insurance, Table grapes.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Table Grape Crop Insurance Regulations (7 CFR Part 441), proposed to be effective for the 1989 and succeeding crop years, as follows:

PART 441—[AMENDED]

1. The authority citation for 7 CFR Part 441 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 441.7(d)7.g. is added to read as follows:

* * * * *

(d) * * *

7. Insurance Period.

* * * * *

g. The following applicable date of the calendar year in which the grapes are normally harvested:

State and county(ies)	Variety	Date
Arizona:		
All Counties	Perlette	June 15.
	Flame Seedless.	July 15.
	All others	July 31.
California:		
Fresno, Kern, Kings, Madera, and Tulare.	Perlette	August 15.
	Cardinal	August 15.
	Exotic	August 31.
	Flame Seedless.	August 31.
	Superior Seedless.	August 31.
	Red Malaga	September 15.
	Queen	September 15.
	Thompson Seedless.	September 15.
	Black Rose	September 30.
	Italia	September 30.
	White Malaga	October 15.
	Ribier	October 15.
	Ruby Seedless	October 15.
	All others	October 31.
Merced, Stanislaus, and San Joaquin.	Flame Seedless.	September 15.
	Thompson Seedless.	September 30.
	Ribier	October 15.
	Flame Tokay	October 15.
	All others	October 31.
Riverside, and San Bernadino.	Beauty Seedless.	July 15.
	Perlette	July 15.
	All others	July 31.

Done in Washington, DC on August 16, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–18989 Filed 8–19–88; 8:45 am]

BILLING CODE 3410-08-M

Rural Electrification Administration

7 CFR Part 1754

Advance and Disbursement of Funds; Telephone Loan Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration proposes to add Part 1754, Advance and Disbursement of Funds—Telephone Loan Progam, to 7 CFR Chapter XVII. This new subpart

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consolidates, revises, and clarifies the policies, requirements, and procedures now contained in several REA publications pertaining to the advance and disbursement of REA loan funds for the planning and construction of telephone facilities and systems and other approved loan purposes.

Part 1754 sets forth the administrative policies, requirements, and procedures for the advance and disbursement of REA telephone loan and other funds to and from the REA Construction Fund. The primary objectives of the proposed rule are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the burden on borrowers involed in planning and construction of telephone facilities; and to decrease the time required to process advances and disbursements.

All borrowers will be affected by this rule.

DATE: Public comments concerning this proposed rule must be received by REA no later than September 21, 1988.

ADDRESS: Comments may be mailed to William F. Albrecht, Deputy Assistant Administrator—Telephone, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments received may be inspected in Room 4056 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: William F. Albrecht, Deputy Assistant Administrator—Telephone, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–9549. The Draft Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarntees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Public reporting burden for this collection of infomation is estimated to average 1.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Attn: Desk Officer for REA, Office of Mangagement and Budget, Washington, DC 20503.

Background

Currently, the policies and requirements concerning the advance and disbursement of telephone loan funds are contained in numerous REA Bulletins and internal REA Staff Instructions. Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the Federal Register.

This proposed rule eliminates the semi-annual Financial Requirement Statement (FRS) reporting requirement and streamlines other requirements reducing the borrower's burden, while permitting REA to maintain the security of the Government's loans.

7 CFR Part 1754 supersedes any sections of REA Bulletins with which it is in conflict.

List of Subjects in 7 CFR Part 1754

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR Chapter XVII by adding the following new Part 1754:

PART 1754—ADVANCE AND DISBURSEMENT OF FUNDS—TELEPHONE LOAN PROGRAM

Sec.

1754.1 General.
1754.2 Definitions.
1754.3 Introduction.
1754.4 The Telephone Loan Budget.
1754.5 Budget adjustment.
1754.6 The construction fund.
1754.7 The Financial Requirement Statement (FRS).
1754.8 Temporary excess construction funds.
1754.9 Order and method of advances of telephone loan funds.
1754.10–1754.99 [Reserved]

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

§ 1754.1 General.

(a) The standard loan documents (as defined in 7 CFR Part 1758) contain provisions regarding advances and disbursements of loan funds by telephone borrowers. This part implements certain of the provisions by setting forth requirements and procedures to be followed by borrowers in obtaining advances and making disbursements of loan and nonloan funds.

(b) This part supersedes any sections of REA Bulletins with which it is in conflict.

§ 1754.2 Definitions.

As used in this part:

(a) "Administrator" means the Adminsitrator of REA. See 7 CFR Part 1745.

(b) "Advance" means transferring funds from REA or FEB to the borrower's construction fund.

(c) "Borrower" means any organization that has an outstanding loan made or guaranteed by REA, or that is seeking such financing. See 7 CFR Part 1745.

(d) "Construction Fund" means the REA Construction Fund Account required by section 2.4 of the Loan Contract into which all REA loan funds are advanced.

(e) "Disbursement" means the paying of money by the borrower out of the construction fund for approved loan purposes.

(f) "FFB" means the Federal Financing Bank.

(g) "FRS" means REA Form 481, (OMB–No. 0572–0023) Financial Requirement Statement.

(h) "Interim Construction" means the purchase of equipment or the conduct of construction under an REA-approved plan of interim financing. See 7 CFR Part 1749.

(i) "Interim financing" means funding for a project the borrower desires to be financed by an REA loan but for which no REA loan funds have been made available. See 7 CFR Part 1749.

(j) "Loan" ("REA Loan") means any loan made or guaranteed by REA. See 7 CFR Part 1745.

(k) "Loan Documents" means the loan contract, note and mortgage between the borrower and REA and any associated document pertinent to a loan.

(l) "Loan Funds" ("REA Loan Funds") means funds provided by REA through direct or guaranteed loans.

(m) "RIB" means the Rural Telephone Bank.

§ 1754.3 Introduction.

REA is under no obligation to make or approve advances of loan funds unless the borrower is in compliance with all terms and conditions of the loan documents. The borrower shall use funds in its construction fund only to make disbursements approved by REA.

§ 1754.4 The Telephone Loan Budget.

When the loan is made, REA provides the borrower a Telephone Loan Budget, REA Form 493. This budget divides the loan into budget accounts such as "Engineering." When a contract or other document is approved by REA, funds are encumbered from the appropriate budget account. See 7 CFR Part 1765.

§ 1754.5 Budget adjustment.

(a) If more funds are required than are available in a budget account, the borrower may request REA's approval of a budget adjustment to use funds from another account. The request shall include an explanation of the change, the budget account to be used, and a description of how the adjustment will affect loan purposes. REA will not approve a budget adjustment that affects other loan purposes unless the borrower satisfies REA that the additional funds are available from another source, requests a deficiency loan, or scales back the project.

(b) REA may make a budget adjustment without a formal request by the borrower when a budget account is insufficient to encumber funds for a contract which could otherwise be approved by REA. See 7 CFR Part 1765.

§ 1754.6 The construction fund.

(a) The construction fund is used by the borrower primarily to hold advances until disbursed.

(b) All advances shall be deposited in the construction fund.

(c) REA may require that other funds be deposited in the construction fund. These may include equity or general fund contributions to construction costs, service termination payments, proceeds from the sale of property, amounts recovered from insurance for losses during the construction period, and interest received on loan funds in savings or interest bearing checking accounts, and similar receipts. Deposit slips for any deposit to the construction fund shall show the source and amount of funds deposited and be executed by an authorized representative of the bank.

(d) Funds shall be disbursed only up to the amount approved for advance on the FRS as described in § 1754.7. No funds may be withdrawn from the fund except for loan purposes approved by REA.

(e) The disbursement of non-loan funds requires the same REA approvals as loan funds.

(f) Disbursements must be evidenced by canceled checks. The invoices and supporting documentation needed for construction contracts are specified in the contracts and in 7 CFR Part 1765. Disbursements to reimburse the borrower's general fund shall be documented by a reimbursement schedule that lists the construction fund check number, date, and an explanation of amounts reimbursed by budget account.

§ 1754.7 The Financial Requirement Statement (FRS).

(a) To request advances, the borrower must submit to REA an FRS, a description of the transaction desired, and other information when required by REA.

(b) The FRS is used by REA and the borrower to record and control transactions in the construction fund. Approved contracts and other items are shown on the FRS under "Approved Purposes." Except as noted below, the amount approved for advance is 100 percent of the amount encumbered for that item. Funds are approved for advance as follows:

(1) *Construction*—(i) *Construction Contracts and Force Account Proposals.* Ninety percent of the encumbered amount (95 percent for outside plant). See § 1754.4. The final 10 percent (5 percent), when REA approves the closeout documents. When a contract contains supplement "A" (See 7 CFR Part 1765), 90 percent (95 percent) of the contract less materials supplied by the borrower. For the Supplement "A" materials, which are a separate entry on the FRS, 100 percent of the material cost.

(ii) *Work Orders.* The portion of the work order summary (See 7 CFR Part 1765) determined by REA to be for approved loan purposes.

(iii) *Work Order Fund.* Based on a borrower's request as described in 7 CFR Part 1765.

(iv) *Real Estate.* Upon request by the borrower after REA has determined that the borrower has submitted title evidence in compliance with REA Bulletin 380–1, Right-of-Way and Title Procedure—Telephone, or succeeding regulations.

(v) *Right of Way Procurement.* Based on the borrower's itemized costs.

(vi) *Joint Use Charges.* Based on copies of invoices from the other utility.

(2) *Engineering*—(i) *Preloan Engineering.* Based on a final itemized invoice from the engineer.

(ii) *Postloan Engineering Contracts.* The amount shown on the engineering estimate, REA Form 506, less the amount estimated for construction contract closeouts. The balance, when the engineering contract is closed.

(iii) *Force Account Engineering.* Ninety percent of the total amount of the REA approved force account engineering proposal. The balance, when the force account engineering proposal is closed.

(3) *Office Equipment, Vehicles and Work Equipment.* Based on copies of invoices for the equipment.

(4) *General*—(i) *Organization and Loan Expenditures.* Based on an itemized list of requirements prepared by the borrower.

(ii) *Construction Overhead.* Based on an itemized list of expenditures. If funds are required for employee salaries, the itemization shall include the employee's position, the period covered, total compensation for the period, and the portion of compensation attributable to the itemized construction.

(iii) *Legal Fees.* Based on itemized invoices from the attorney.

(iv) *Bank Stock.* Based on the amount of Class "B" Rural Telephone Bank stock established in the loan.

(5) *Operating Expenses*—(i) *Working Capital—New System.* Based on the borrower's itemized estimate.

(ii) *Current Operating Deficiencies.* Based on a current and projected balance sheet submitted by the borrower.

(6) *Debt Retirement and Refinancing.* Upon release of the loan, based on the amount in the approved budget.

(7) *Acquisitions.* Based on final itemized costs, but limited to the amount in the approved loan budget.

(c) Funds other than loan funds deposited in the construction fund, which shall include proceeds from the sale of property on which REA has a lien, (lines 10 and 11 on the FRS) are reported as a credit under total

disbursements. Disbursements of these funds are subject to the same REA approvals as loan funds.

(d) The borrower shall request advances as needed to meet its obligations promptly. Generally, REA does not approve an advance requested more than 60 days before the obligation is payable.

(e) Funds should be disbursed for the item for which they were advanced. If the borrower needs to pay an invoice for which funds have not been advanced and disbursement of funds for another item has been delayed, the latter may be disbursed to pay the invoice up to the amount approved for advance for that item on the FRS. The borrower shall make erasable entries on the next FRS showing the changes under "Total Advances to Date" and shall explain the changes in writing before REA will process the next FRS.

(f) Advances will be rounded down to the nearest thousands of dollars except for final amounts.

(g) The certification on each of the three copies of the FRS sent to REA shall be signed by a corporate officer or manager authorized by resolution of the board of directors to sign such statements. At the time of such authorization, a certified copy of the resolution and one copy of REA Form 675, Certificate of Authority, shall be submitted to REA.

(h) The documentation required for the FRS transactions are the deposit slips, the canceled construction fund checks and the supporting invoices or reimbursement schedules. These shall be kept in the borrower's files for periodic audits by REA.

§ 1754.8 Temporary excess construction funds.

(a) When unanticipated events delay disbursement of advances, the funds other than funds lent by FFB can be returned as a refund of an advance or can be used as follows depending on their source.

(1) With REA funds, the borrower may invest the funds in 5% Treasury Certificates of Indebtedness—R.E.A. Series.

(2) With FFB or RTB funds, the following apply:

(i) The borrower can invest the funds in short term securities issued by the United States Treasury.

(ii) If permitted by State law, the borrower may deposit the funds in savings accounts, including certificates of deposit, of federally insured savings institutions.

(3) Funds advanced by a guaranteed lender other than the FFB may, if so permitted by such lender, be invested under the terms and conditions described above for FFB advances.

(4) Any security or investment made under this authorization shall identify the borrower by its corporate name followed by the words "Trustee, Rural Electrification Administration."

(5) All temporary investments and all income derived from them shall be considered part of the construction fund and be subject to the same controls as cash in that account.

(6) Securities and other investments shall have maturity dates or liquidating provisions that ensure the availability of funds as required for the completion of projects and the payment of obligations.

(7) Any instrument evidencing a security or other investment herein authorized to be purchased or made, may not be sold, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

(8) The Administrator may, at his sole discretion, require a borrower to pledge as additional security for loans to the borrower any security or other evidence of investment authorized hereby by forwarding to him all pertinent instruments and related documentation as he may reasonably require.

(9) Borrowers shall be responsible for the safekeeping of redeemable and negotiable securities and other investments.

(b) All interest and income received from investments of temporary excess funds as described in this section shall be deposited in the Construction Fund.

(c) The borrower shall account for investment proceeds on the next FRS submitted to REA. REA will make the necessary adjustments on budgetary records.

(d) The Administrator reserves the right to suspend any borrower's authorization to invest temporary excess funds contained herein.

§ 1754.9 Order and method of advances of telephone loan funds.

(a) Generally, advances are made against the oldest note not fully advanced. Exceptions include a special note issued in connection with a particular application of funds such as for an acquisition or refinancing. When a borrower has received more than one loan, any unadvanced funds from prior loans normally are advanced first. When a borrower has concurrent loans from the RTB and REA, the RTB funds are advanced first, unless specifically authorized in writing by REA.

(b) When a borrower has obligations related to interim construction, the first advance is generally limited to the amount required to retire those obligations.

(c) Normally, only one payment is made by the Automatic Clearing House (ACH) for an advance of funds.

(d) Borrowers of REA funds may request advances by wire service only for amounts greater than $500,000. FFB advances in any amount over $100,000 can be sent by wire service.

(e) The following information shall be included with the FRS:

(1) Name and address of borrower's bank.

(2) If borrower's bank is not a member of the Federal Reserve System, the name and address of its correspondent bank that is a member of the Federal Reserve System.

(3) American Bankers Association (ABA) nine digit identifier of the receiving banks (routing number and check digit).

(4) Borrower's bank account title and number.

(5) Any other necessary identifying information.

§§ 1754.10—1754.99 [Reserved]

Dated: August 16, 1988.

Jack Van Mark,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 88-19018 Filed 8-19-88; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

Reasserting NRC's Authority for Approving Onsite Low-Level Waste Disposal in Agreement States

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend its regulations to reassert NRC's jurisdiction for onsite low-level waste disposal for waste generated onsite at all reactors licensed by NRC in Agreement States. For facilities licensed pursuant to Part 70 of this chapter for special nuclear material activities, the Commission believes it prudent to clarify and to establish in the regulations that the onsite disposal of non-critical waste quantities of special nuclear material remains an NRC licensing function in order to retain control over the decommissioning process. The proposed rule is necessary to: (1) Provide a more centralized and consistent regulatory review of all onsite waste management activities and (2)

avoid duplication of regulatory effort by the NRC and Agreement States. The uniform review procedures which will accrue from the proposed rule are intended to provide greater assurance that onsite radioactive material will not present a health hazard at a later date after the site is decommissioned.

DATES: Comment period expires October 21, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can be given only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland. Copies of comments received may be examined to the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John C. Stewart, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3618.

SUPPLEMENTARY INFORMATION:

Background

The Commission believes that jurisdiction for onsite disposal in Agreement States of low-level waste generated onsite at NRC-licensed reactors should be vested in the Commission. For facilities licensed pursuant to Part 70 of this chapter for special nuclear material activities, the Commision believes it prudent to clarify and to establish in the regulations that the onsite disposal of non-critical waste quantities of onsite special nuclear material remains an NRC licensing function in order to retain control over the decommissioning process. In non-Agreement States there is no jurisdictional issue; the NRC licenses and regulates the onsite handling, storage and disposal of low-level radioactive waste. However, in Agreement States, the NRC licenses and regulates only onsite handling and storage of low-level radioactive waste for reactor licensees. Onsite disposal of low-level radioactive waste is regulated by the state regulatory agencies in Agreement States. In Agreement States, the Atomic Energy Commission did not reserve jurisdiction under 10 CFR 150.15(a) for onsite low-level waste disposal at NRC licensed facilities. The Statement of Considerations accompanying that regulation when it was promulgated states that "the states will have control over land burial of low level wastes," and that the Commission decided against "control over land burial of waste" in Agreement States by relinquishing jurisdiction of onsite disposal of low-level waste to the states while retaining AEC jurisdiction of high-level waste disposal (27 FR 1351; February 14, 1962).

In 1981, in revoking 10 CFR 20.304 (which previously allowed for the disposal of certain small quantities of radionuclides without prior NRC approval), the Commission determined that case-by-case regulation of onsite low-level waste disposal was needed because these materials could potentially cause significant radiation exposures if mishandled, improperly buried, or disturbed after disposal (45 FR 71761; October 30, 1980). Under current law Agreement States have the authority to regulate the disposal of low-level waste products onsite. In order for the NRC to retain control over the entire decommissioning process, it is necessary to amend 10 CFR 150.15(a) to return jurisdiction over onsite disposal to the NRC.

Proposed Rule

The Commission is proposing to amend 10 CFR 150.15 to reassert NRC jurisdiction over onsite low-level waste disposal generated onsite in Agreement States at NRC-licensed reactors and 10 CFR Part 70 facilities. The two new paragraphs below would be added to 10 CFR 150.15(a):

(8) The disposal, within the protected and exclusion areas of a nuclear reactor licensed by the Commision, of radioactive wastes generated at the reactor site.

(9) The disposal, within restricted areas and contiguous property established for activities carried out under licenses issued pursuant to Part 70 of this Chapter, of special nuclear material waste generated at the licensee's facility.

The terms restricted areas, protected areas, and exclusion areas have the same meanings as defined in §§ 20.3(a)(14), 73.2(g), and 100.3(a), respectively.

Environmental Impact: Categorical Exclusion

Under the Commission's regulations in 10 CFR Part 51, this proposed rule is within the categorical exclusions in § 51.22(c)(1) and therefore neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0032.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternative considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from John C. Stewart, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3618.

The NRC requests comment on the draft regulatory analysis. Comments on the draft analysis may be submitted as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule clarifies jurisdiction for disposal of radioactive waste at nuclear reactors and Part 70 facilities operating under licenses issued pursuant to the Atomic Energy Act of 1954, as amended, and Title II of the Energy Reorganization Act of 1974. Generally, the operators of nuclear reactors and Part 70 facilities do not fall within the definition of a small business adopted by the NRC (50 FR 50241; December 9, 1985). Accordingly, there is no significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

1. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114).

Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152), Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b)(2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16–150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 150.15 is amended by adding paragraphs (a) (8) and (9) to read as follows:

§ 150.15 Persons not exempt.

(a) * * *

(8) The disposal, within the protected and exclusion areas of a nuclear reactor licensed by the Commission, of radioactive wastes generated at the reactor site. The terms protected areas and exclusion areas have the same meanings as defined in § 73.2(g) and § 100.3(a), respectively.

(9) The disposal, within restricted areas and contiguous property established for activities carried out under licenses issued pursuant to Part 70 of this chapter, of special nuclear material waste generated at the licensee's facility. The term restricted areas has the same meaning as defined in § 20.3(a)(14).

* * * * *

Dated at Rockville, Maryland, this 16th day of August, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–18965 Filed 8–19–88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 38, 292, 293 and 382

[Docket Nos. RM88–4–000, RM88–5–000 and RM88–6–000]

Regulations Governing Independent Power Producers and Bidding Programs; Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities

Issued August 10, 1988

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; order granting requests for extension of time and denying other related requests.

SUMMARY: On March 16, 1988, the Federal Energy Regulatory Commission (Commission) issued three notices of proposed rulemaking in Docket Nos. RM88–4–000, "Regulations Governing Independent Power Producers" (53 FR 9327 (March 22, 1988)), RM88–5–000, "Regulations Governing Bidding Programs" (53 FR 9324 (March 22, 1988)) and RM88–6–000 "Administrative Determination of Full Avoided Costs, Sales of Power To Qualifying Facilities, and Interconnection Facilities" (53 FR 9331 (March 22, 1988)).

In this order, the Commission is extending the time for filing reply comments in Docket Nos. RM88–4–000, RM88–5–000, and RM88–6–000 (including reply comments on the *Orange & Rockland Utilities, Inc.* issue) to September 14, 1988. Related requests to remove the page limitation established for reply comments in these dockets and to provide opportunity for oral presentations of comments on the Draft Environmental Impact Statement (DEIS) are denied. The dates for filing responses to the Commission's questions raised at the public hearing and for filing written comments on the DEIS are also extended to September 14, 1988.

DATES: The date of this order is August 10, 1988.

Reply comments should be filed on or before September 14, 1988.

Responses to the Commission's questions raised at the public hearing and written comments on the DEIS should be filed on or before September 14, 1988.

ADDRESS: All filings should refer to Docket Nos. RM88–4–000, RM88–5–000 and RM88–6–000, and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Gilda Rodriguez, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, (202) 357–9155.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dailing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order granting extension of time will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Order Granting Requests for Extension of Time and Denying Other Related Requests

Issued August 10, 1988

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

In response to certain requests for extension of time in these proceedings,[1]

[1] Request of Maine Public Utilities Commission for Extension of Deadline for Filing Supplemental Comments, filed July 18, 1988; Request for Extension of Time to Submit Written Comments on the Draft Environmental Impact Statement and for Opportunity to make an Oral Presentation, on behalf of the Operating Companies of the American Electric Power System, filed July 29, 1988; and Joint Motion of American Public Power Association, Edison Electric Institute, National Rural Electric Cooperative Association, National Association of Regulatory Utility Commissioners and the Consumer Owned Systems for Enlargement of Time and Removal of Page Limitation, filed August 2, 1988.

the following procedural schedule is established:

The date for filing reply comments in Docket Nos. RM88–4–000, RM88–5–000 and RM88–6–000 is extended to September 14, 1988.

The date for filing replies to the supplemental comments (*i.e.*, reply comments on the *Orange and Rockland, Inc.*, issue) in Docket No. RM88–6–000 is extended to September 14, 1988.

The date for filing responses to Commission questions raised at the public hearing in these dockets is extended to September 14, 1988.

The date for filing written comments on the Draft Environmental Impact Statement (DEIS) issued in Docket Nos. RM88–4–000 and RM88–5–000 is extended to September 14, 1988.

Related requests to remove the page limitation established for reply comments in these dockets and to provide opportunity for oral presentation of comments on the DEIS are denied.

The Commission orders:

The procedural schedule in these proceedings is altered as described above. The related requests described above are denied.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Issued August 10, 1988.

Concurring Opinion of Commissioner Charles A. Trabandt

I concur in this order with two reservations.

First, I would grant the request of the Operating Companies of the American Electric Power System filed July 29, 1988, for an opportunity to make an oral presentation on the Draft Environmental Impact Statement. As discussed in my concurring opinion on the Notices of Proposed Rulemaking (NOPR) in these dockets, the Commission has failed in several important respects to satisfy the letter, let along the spirit, of the National Environmental Policy Act in its consideration of these NOPRs. That point was reiterated in many of the initial public comments filed in these dockets. The Commission, therefore, would be well advised to seek to recover from those failings by providing a full and complete opportunity for public participation in the NEPA process at this stage of the proceedings. Once again, however, the Commission has adopted the unfortunate posture of attempting to "muddle through" its NEPA responsibilities by foreclosing such opportunity for additional public participation. That attempt ultimately will be doomed to failure on procedural grounds, in my judgment.

Second, I would grant the Joint Motion filed August 2, 1988, for Removal of Page Limitation. The 15 page limitation for reply briefs was absurd on its face when first issued in the context of the three NOPRs totaling several hundred pages. It was consistent then with the many procedural flaws on public comment and participation I noted in my concurring opinion. Now, with literally fifteen thousand pages of original comments filed, the page limitation has become utterly ridiculous and quite embarrassing for the Commission. Perhaps, as a practical matter, appendices to the comments, or separate discussion in response to the Commissioners' questions at the public conference, can serve to provide sufficient pages for related argumentation. Nevertheless, the Commission should not force the practicing bar to adopt such tactics to avoid the page limitation.

More fundamentally, the Commission has proposed in its several hundred pages NOPRs a fundamental restructuring of the electric utility industry with sweeping Federal pre-emptive effect in great detail, and that proposal has elicited literally thousands of pages or original comment. Thus, the 15 page limitation at this point will not allow development of a full record, will discourage parties from filing joint comments and will only serve to delay presentation of the arguments to the rehearing stage. Surely, common sense and any notion of due process would dictate removal of the page limitation for thoroughly prepared and argued reply comments. In any event, one would suspect that the Commission sooner or later at least is going to have to pretend that it is interested in the views of others on these NOPRs, whatever the facts really are. Removal of the page limitation might just have given such an impression, but, as they say in Peoria, the institutional body language of our denial here will be all bad—again.

I support granting the requests for extension of time in this order, but concur because of the two reservations.

Charles A. Trabandt,

Commissioner.

[FR Doc. 88–19000 Filed 8–19–88; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 37

[Docket No. RM88–25–000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

August 5, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is instituting a fifth annual proceeding concerning generic determination of the rate of return on common equity for public utilities. The Commission has established a discounted cash flow (DCF) formula to determine the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to calculate benchmark rates of return. In this proceeding, the Commission proposes to determine the growth rate and flotation cost adjustment factors to be used in the quarterly indexing procedure during the year beginning February 1, 1989. The Commission proposes that these benchmark rates of return remain advisory, as were those resulting from the previous four annual proceedings.

DATE: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by October 6, 1988.

ADDRESS: All filings should refer to Docket No. RM88–25–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a

modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) institutes a fifth annual proceeding concerning generic determination of the rate of return on common equity for public utilities.[1] The Commission has established a discounted cash flow (DCF) formula to determine the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to calculate benchmark rates of return.[2] In this proceeding, the Commission proposes to determine the growth rate [3] and flotation cost adjustment [4] factors to be used in the quarterly indexing procedure during the year beginning February 1, 1989. The Commission proposes that these benchmark rates of return remain advisory, as were those resulting from the previous four annual proceedings.[5]

[1] The annual proceedings were established by Order No. 389, Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29946 (July 25, 1984), FERC Stats. and Regs., Regulations Preambles 1982–1985, ¶ 30,582 (July 18, 1984) and Order No. 389–A, 49 FR 46351 (November 26, 1984) (order denying rehearing).

[2] *See* Order No. 489, Generic Determination of Rate of Return on Common Equity for Public Utilities, 53 FR 3342 (February 5, 1988), III FERC Stats. & Regs. ¶ 30,795 (January 29, 1988). This was the fourth annual proceeding and in it the Commission readopted the DCF formula it had used in the first three annual proceedings.

[3] The growth rate is the expected annual rate of growth of dividends on common stock. The growth rate for the electric utility industry is a factor in the constant growth rate DCF model that the Commission adopted in Order No. 420 to determine the average cost of common equity and to calculate the quarterly benchmark rate of return for public utilities.

[4] Flotation costs include underwriters' compensation and legal and printing fees incurred by utilities when they sell new shares of their common stock. An adjustment for flotation costs is another factor in the formula for calculating the benchmark rate of return.

[5] The first annual proceeding resulted in Order No. 420, 50 FR 21802 (May 29, 1985), FERC Stats. and Regs., Regulations Preambles 1982–1985 ¶ 30,644 (May 20, 1985) and Order No. 420-A, 50 FR 34086 (August 23, 1985) (order denying rehearing). The second annual proceeding resulted in Order No. 442, 51 FR 343 (January 6, 1986), III FERC Stats. & Regs. ¶ 30677 (December 26, 1985) and Order No. 442–A, 51 FR 22505 (June 20, 1986), III FERC Stats. & Regs. ¶ 30,702 (June 11, 1986) (order on rehearing). The third annual proceeding resulted in Order No. 461, 52 FR 11 (January 2, 1987), III FERC Stats. & Regs. ¶ 30,722 (December 24, 1986), and Order No. 461–A, 52 FR 5757 (February 26, 1987) (order denying rehearing).

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable." [6] In the exercise of this statutory responsibility, the Commission seeks to set rates of return on common equity that are fair to both utility ratepayers and utility stockholders. The allowed rate of return is now determined individually for each utility on a case-by-case basis. In July 1984, the Commission adopted procedures for the generic determination of a benchmark rate of return on common equity and for its application in individual cases.[7] The Commission has conducted four prior annual proceedings to determine the average cost of common equity for the jurisdictional operations of public utilities and has made those rates advisory. In that advisory status, benchmark rates are intended to provided guidance to parties in rate proceedings and to serve as a reference point for the Commission in setting allowed rates of return.

III. Discussion

The Commission has established a discounted cash flow methodology for estimating the rate of return on common equity. Specifically, that formula is:

$$k = (1 + .5g)\, y + g$$

where:

k = market required rate of return
y = current dividend yield (current annual dividend rate divided by current market price)
g = expected annual dividend growth rate
(1 + .5g) = dividend adjustment factor for quarterly dividend payments

The dividend yield used in this DCF formula is the median of the dividend yields of those companies that remain in a sample of utilities after application of certain screening criteria. The Commission begins with a group of approximately 100 publicly traded electric utilities or combination companies that meet the following standards:

(1) The utility is predominantly electric;

(2) The stock of the utility is traded on either the New York or American Stock Exchange;

(3) The utility is included in the Utility Compustat II data base; and

(4) The utility is not excluded by the Commission based on a case-by-case determination that its data is unavailable or inappropriate.

The Commission excludes companies from the sample if:

(1) The company's common stock is no longer publicly traded due to merger or other action;

(2) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(3) The Commission determines on a case-by-case basis that some other occurrence has caused the dividend yield for that company to be substantially misleading and to bias the resulting quarterly average.

The quarterly dividend yield for each company is computed by dividing the dividend rate by the price. The dividend rate is the "indicated dividend rate," which is the last declared quarterly dividend multiplied by four. The price used in calculating the quarterly dividend yield is the simple average of the three monthly high and low prices for the quarter. The dividend yield used in the quarterly indexing procedure is the average of the two most recent quarterly median yields.

As required by § 37.4 of the Commission's regulations, the Commission is proposing to establish the growth rate and flotation cost adjustment to be used in the quarterly indexing procedure for the year beginning February 1, 1989.

A. Growth Rate

To estimate the expected annual dividend growth rate, the Commission proposes to rely primarily on a fundamental analysis approach and a two-stage growth model, as it did in the most recent annual proceeding.[8] In the fundamental analysis approach, the two underlying components of expected annual dividend growth, growth from retention of earnings and growth from sales of new common stock, are evaluated. Growth from retention of earnings, or internal growth, is a function of expected return on common equity (r) and the expected retention ratio (b). Growth from sales of new common stock, or external growth, is a function of the amount of stock expected to be sold (s) and the expected price of those sales relative to book value (v). The formula for estimating the growth rate based on this fundamental analysis is g = br + sv. The two-stage growth

[6] 16 U.S.C. 824d (1982).

[7] *See* Order No. 389, 49 FR 29946.

[8] *See* Order No. 489, 53 FR at 3350.

analysis involves separate evaluation of near-term and long-term growth expectations.

The Commission also proposes to consider other data and methods for estimating the expected growth rate, butr primarily as a check on the reasonableness of its growth rate determination based on the fundamental and two-stage growth analyses.

B. Flotation Cost Adjustment

Flotation costs are incurred by utilities when they sell new shares of their common stock and include issuance costs, such as underwriters' compensation and legal and printing fees. Although relatively small, flotation costs are not accounted for elsewhere in a company's cost of service and are therefore included in the calculation of the cost of common equity.

The Commission proposes to continue its existing policy on flotation costs by calculating an industry average adjustment to the required rate of return to compensate utilities for issuance costs only.[9] The Commission proposes to estimate the adjustment to the required rate of return for flotation costs using the following formula:

$$k^* = \frac{fs}{(1+s)}$$

where:

K^* = Flotation cost adjustment to required rate of return

f = industry average flotation cost as a percentage of offering price

s = proportion of new common equity expected to be issued annually to total common equity

This formula determines an increment to the cost of common equity which reflects the average annualized amount of flotation costs incurred by the utility industry.

IV. Written Comment Procedure

The Commission invites all interested persons to submit written data, views, and other information concerning the proposals in this Notice. All comments in response to this Notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM88–25–000. An original and fourteen copies should be filed with the Commission on or before October 6, 1988.

Written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, Room 1000, 825 North Capitol Street, NE., Washington, DC, during regular business hours.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [10] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Nearly all of the jurisdictional utilities which would be affected by the proposed rule are too large to be considered "small entities" within the meaning of the Act.[11] Accordingly, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[12] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[13] The Commission has found that matters affecting rates for the purchase or sale of electricity are not major federal actions that have a significant environmental impact.[14] The generic rate of return is a factor to be considered in the determination of electric rates. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this Notice of Proposed Rulemaking.

VII. Paperwork Reduction Act

The Paperwork Reduction Act [15] and the Office of Management and Budget's (OMB) regulations [16] require that the OMB approve certain information collection requirements imposed by agency rule. The proposed rule in this proceeding does not impose any information collection requirements. Therefore, the Commission is not submitting this rule to the OMB for review or approval.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19001 Filed 8–19–88; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Parts 284 and 385

[Docket No. RM88–13–000]

Brokering of Interstate Natural Gas Pipeline Capacity

Issued: August 15, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of time.

SUMMARY: On April 4, 1988, the Commission issued a proposed rule to allow holders of firm transportation rights on an interstate natural gas pipeline to sell or assign those rights. (53 FR 15061, April 27, 1988). On August 15, 1988, an extension of time was granted at the request of various interested groups for the filing of supplemental comments on the proposed rule.

DATES: The time for filing supplemental comments is extended from September 2, 1988 to September 16, 1988.

ADDRESS: Office of the Secretary, 825 North Capitol Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Acting Secretary, (202) 357–8400.

SUPPLEMENTARY INFORMATION:

Extension of Time

On August 5, 1988, Associated Gas Distributors, American Gas Association, Interstate Natural Gas Association of America, and United Distribution Companies (Parties) filed a motion for

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[9] The Commission adopted this flotation cost policy in Order No. 420 and reaffirmed it in Order Nos. 442, 461, and 489.

[10] 5 U.S.C. 601–612 (1982).

[11] The Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction. 5 U.S.C. 601(b) (1982). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 6.32(a) (1982).

[12] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 F.R. 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987), codified at 18 CFR Part 380.

[13] *Id.*, codified at § 380.4.

[14] *Id.*, codified at § 380.4(a)(15).

[15] 44 U.S.C. 3301–3520 (1982).

[16] 5 CFR 1320.13 (1987).

an extension of time for the filing of supplemental comments in response to the Commission's Notice issued July 1, 1988, in the above-docketed proceeding. The motion states that due to the complexity of the issues raised in this proceeding, more time is needed within which to analyze these issues and to coordinate the filing of supplemental comments.

Upon consideration, notice is hereby given that an extension of time for the filing of supplemental comments is granted to and including September 16, 1988.

Lois D. Cashell,

Acting Secretary.

Statement of Commissioner Charles A. Trabandt Regarding Notice of Extension of Time

Issued: August 16, 1988.

I am pleased that the Commission has granted the consensus request from several segments of the natural gas industry for an extension of time to file supplemental comments on the Notice Of Proposed Rule (NOPR) in this docket. I attended the morning session of the staff technical conference held on July 28, 1988, and I was struck by the obvious conceptual and skeletal nature of the discussion, very much similar to that of a Notice of Inquiry Conference, rather than a so-called technical conference on a four-month old NOPR. (Also, please see my separate opinion in *CNG Transmission Corporation,* Docket No. RP88–217–000, *et al.,* for other observations about third party capacity allocation).

It is abundantly clear now that the primary focus throughout the industry still is on the fundamental issue of *what* specifically might be brokered and not *how* and *when* it should be brokered. It also is clear now that the "right" to be brokered, be it called a firm transportation right or a capacity right, or anything else, probably will be a direct function of definition to be accomplished in pending and future cases addressing the conversion of firm sales to firm transportation service under the Order No. 436 and Order No. 500 series of rules. Under those circumstances, as the representative for the Independent Petroleum Association of America aptly noted, it is virtually impossible to know how capacity brokering will work and potentially affect the interests of any interested party; that is, unless and until there is a much more specific definition of what, in fact, is going to be brokered on individual pipelines and the impact of such proposed brokering can be assessed more concretely.

Also, the most recent quarterly report on transportation carriage by INGAA documents that in the first quarter of 1988, the vast majority of nationwide transportation of natural gas was under NGPA section 311 authority (77% vs. 13% under NGA Section 7 and 8% under Order No. 436 blanket certificates) in the form of interruptible services (89% vs. 11% firm transport). Consequently, the Commission and the industry must proceed with caution in fashioning a more definitive proposal for capacity brokering before any form of generic program is implemented. I, therefore, reiterate again my recommendation to all interested parties that the Commission should analyze carefully the public comments in this docket and then re-notice in a new NOPR a much more specific and well-reasoned proposal for any generic form of "capacity" or other transportation right brokering on a nationwide basis. That is, if a majority remains persuaded to proceed at this time with any form of generic capacity brokering, as distinguished from third party capacity re-allocation and an experiment.

In the meantime, the Commission must allow the third party re-allocation of unused transportation services/capacity, as I called for in my separate opinion in the *CNG* case, and as did many participants in the staff technical conference. Finally, there may be merit in some form of capacity brokering experiment on one or two pipelines, as discussed at the July 27 Commission meeting. Nevertheless, third party re-allocation should commence immediately—and not be held hostage to the experiment and an eventual rule—and there must be a new NOPR to re-notice capacity brokering on any proposed generic basis before any consideration of a final rule in this docket for nationwide implementation of the capacity brokering concept.

I look forward with great interest to the supplemental comments to be filed in mid-September, with the additional time providing a more reasonable opportunity for analysis and comment regarding the NOPR, in the aftermath of/fallout from the technical conference. It appears to me, at least, that the Commission's direction is much clearer now and should become more apparent on the face of the forthcoming comments.

Charles A. Trabandt,

Commissioner.

[FR Doc. 88–18933 Filed 8–19–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Treatment of Old-Age, Survivors, and Disability Insurance Payments in the Aid to Families with Dependent Children Program (AFDC)—Direct Payment to Beneficiaries Under Age 18

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to revise 20 CFR 404.2040 which prescribes the use of benefit payments by a representative payee. The proposed regulation covers our existing policy on the treatment of all title II benefits (retroactive lump sum and monthly) when paid to a representative payee on behalf of a beneficiary who is a member of an Aid to Families with Dependent Children AFDC) assistance unit. We propose to clarify existing policy to state that we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit.

DATE: Your comments will be considered if we receive them no later than October 21, 1988.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7452.

SUPPLEMENTARY INFORMATION: The purpose of the proposed regulation is to provide a needed clarification of our policy concerning the treatment of all title II benefits (retroactive lump-sum and monthly) when paid to a representative payee on behalf of a beneficiary who is a member of an AFDC assistance unit by stating that we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit.

Section 402(a)(17) of the Social Security Act (the Act), which was amended by section 2304 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), provides that when a person in an AFDC assistance unit receives an amount of income that, together with other countable income in the month of receipt not excluded under section 402(a)(8) of the Act, exceeds the State's standard of need, the assistance unit is ineligible for AFDC for a prescribed period of time. This period (in months) is determined by dividing the total of the lump-sum and other countable income received in the month by the State's monthly needs standard applicable to the family unit. The Senate Committee on the Budget, in addressing this provision, specifically identified retroactive Social Security benefits as the kind of lump-sum payments that should be considered available to meet the ongoing needs of an AFDC family (Senate Rep. No. 97–139, 97th Cong., 1st Sess. (1931) at p. 504, printed in (1981) U.S. Code Cong. and Admin. News 771).

Section 402(a)(38) of the Act, as amended by section 2640 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), generally requires that parents and brothers and sisters of a dependent child who are living in the same household as the dependent child and who meet the age and deprivation requirements must also be included in the assistance unit. Thus, it is no longer possible, as under prior law, for a caretaker relative to exclude a potentially eligible child who is, or will be receiving other income (e.g., title II benefits) from the AFDC assistance unit.

AFDC interim final regulations published on September 10, 1984, at 49 FR 35586 provide that income and resources of all the individuals required to be included in the assistance unit must be considered in determining eligibility and payment for the assistance unit. In this connection, the statute specifically provides for the inclusion of title II benefits, notwithstanding the authority for payment of such benefits to representative payees which is found in section 205(j). Under the AFDC policy, when title II benefits are paid to a representative payee on behalf of a member of the assistance unit and the payee lives in the same household as the assistance unit, the title II benefits must be counted as income. When the representative payee does not live in the household, the title II benefits are included only to the extent that the payee makes them available for the support of the beneficiary. This is consistent with our permitting the benefits to be used for other members of the unit.

Because of the above changes in the Act, we are proposing to revise 20 CFR 404.2040, which prescribes the use of benefit payments by a representative payee, by adding a paragraph to this section that covers our policy concerning the treatment of all title II benefits (retroactive lump-sum and monthly) when paid to a representative payee on behalf of an AFDC recipient. We propose to clarify existing policy by stating that we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit.

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in negligible administrative costs or savings. It has no affect on the amount of benefit payments or existing operating procedures under the Old-Age, Survivors and Disability Insurance program. The provision for direct payment to beneficiaries under age 18 will have no cost impact. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because these rules only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no additional reporting/recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivors Insurance; 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors, Disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

Dated: April 15, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: June 28, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subpart U of Part 404 and Subpart F of Part 416 of 20 CFR Chapter III are proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for Subpart U continues to read as follows:

Authority: Secs. 205 (a), (j), and (k), and 1102 of the Social Security Act; 42 U.S.C. 405 (a), (j), (k), and 1302.

§ 404.2010 [Amended]

2. Section 404.2010 is amended by changing "4" to "7" in paragraph (b)(6).

3. Paragraph (a) of § 404.2040 is revised to read as follows:

§ 404.2040 Use of benefit payments.

(a) *Current maintenance.* (1) We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

Example: An aged beneficiary is entitled to a monthly Social Security benefit of $400. Her son, who is her payee, disburses her benefits in the following manner:

Rent and utilities	$200
Medical	25
Food	60
Clothing (coat)	55
Savings	30
Miscellaneous	30

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary is a member of an Aid to Families With Dependent Children (AFDC) assistance unit, we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit.

* * * * *

4. Section 404.2045 is amended by striking the first sentence of paragraph (a) and replacing it by the following:

§ 404.2045 Conservation and investment of benefit payments.

(a) *General.* After the representative payee has used benefit payments consistent with the guidelines in this subpart (see § 404.2040 regarding use of benefits), any remaining amount shall be conserved or invested on behalf of the beneficiary.* * *

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for Subpart F continues to read as follows:

Authority: Secs. 1102 and 1631(a)(2) and (d)(1) of the Social Security Act; 42 U.S.C. 1302 and 1383 (a)(2) and (d)(1).

§ 416.610 [Amended]

2. Section 416.610 is amended by changing "4" to "7" in paragraph (b)(3).

[FR Doc. 88–18930 Filed 8–19–88; 8:45 am]
BILLING CODE 4190–11–M

Health Care Financing Administration

42 CFR Parts 405 and 413

[BERC–429–P]

Medicare Program; Changes Concerning Suspension of Medicare Payments, Interest Rates Charged on Overpayments and Underpayments, and Determinations of Allowable Interest Expense

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to the Medicare regulations to provide for the following:

- Elimination of the requirement that, in cases of overpayments to health care providers and suppliers, the contractor must make a determination before the payment can be suspended that a suspension of payment is needed to protect the program against financial loss. In addition, we would clarify that suspended funds are used to repay overpayments and the remaining balance, if any, would be returned to the health care provider or supplier.
- Assessment of the higher of the private consumer rate or the current value of funds rate of interest on overpayments and underpayments to providers and suppliers.
- Modification of the requirement that investment income of providers from gifts and grants, if commingled, be offset against otherwise allowable interest expense to permit the pooling of such funds for investment purposes.
- Extension of the list of exceptions to the interest expense reduction provision to include investment income from deferred compensation plans and self-insurance funds.

This proposed rule is intended to conform the regulations with law and established policy, to provide necessary clarification, and to protect the Government's interest.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 21, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–429–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

In commenting, please refer to file code BERC–429–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT:

Don Novitski (Suspension of Payments), (301) 966–7496

Paul Krieger (Interest Rates on Overpayments), (301) 966–7518

Ward Pleines (All Other Provisions), (301) 966–4528

SUPPLEMENTARY INFORMATION:

I. Suspension of Medicare Payments

A. Background

Regulations at 42 CFR 405.370 provide that payments authorized to be made to providers and suppliers of health care services and supplies under the Medicare program may be suspended, in whole or in part, by an intermediary or a carrier, when it has been determined that the provider or supplier has been overpaid, and reliable evidence shows that an overpayment exists or that the payments to be made may not be correct. Section 405.370 does not specify the disposition of suspended payments.

Sections 1815 (a) and (d) and 1833(j) of the Social Security Act (the Act), the Federal Claims Collection Act of 1966, as amended, (31 U.S.C. 3711), and 42 CFR 401.607 (a)(2) and (d) and 405.1803(c) allow contractors that have the opportunity to offset an overpayment to do so. However, regulations at § 405.370(b) provide that in order to proceed with a suspension of payment in overpayment situation, the contractor must have determined that "the suspension of the payments, in whole or in part, is needed to protect the program against financial loss."

B. Proposed Changes

We are proposing to eliminate the requirement that, prior to suspension of payments, the intermediary or carrier make a determination that suspension of payments to providers or suppliers is needed to protect the program against financial loss.

It is apparent that, when an overpayment has been identified, the program is already losing interest on the funds overpaid. We believe that it is not necessary to make a separate determination that suspension is needed to protect the program from financial loss. It can be assumed that there is financial loss when the contractor has complied with recovery procedures in § 405.371 and § 405.372 and the provider or supplier has not voluntarily refunded the overpayment.

In addition, requiring contractors to make a determination on every overpayment causes additional administrative costs and delays the recovery process further. Accordingly, we are proposing to eliminate the requirement, located in § 405.370(b), that "the intermediary or carrier has determined that the suspension of payments, in whole or in part, is needed to protect the program against financial loss." In addition, as part of the proposal, we would correct cross-references in § 405.370(a).

We believe that this policy is in accordance with the provisions of the Federal Claims Collection Standards (4 CFR Parts 101–105). Section 102.1 states that each Federal agency is to take aggressive action, on a timely basis, to collect overpayments. Section 102.3 requires collection by offset and does not require a determination that offset is needed to protect the program against financial loss.

We are also proposing to clarify HCFA's policy regarding the disposition of suspended payments. Suspended funds would first be applied to liquidate, in whole or in part, overpayments that are the basis for the suspension. Any remaining suspended funds would be applied to any other determined Medicare overpayments. In the absence of a further obligation to the Department of Health and Human Services or other legal requirement (such as an IRS levy), the excess would be refunded to the provider or supplier. In this regard, the overpayment would include any interest assessed under § 405.376 or other applicable provision.

II. Interest Rates Charged on Overpayments and Underpayments

A. Background

Section 117 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), which added sections 1815(d) and 1833(j) to the Act, gave the Secretary the authority to assess interest charges on delinquent Medicare overpayments or underpayments. These provisions of the law require that once a final determination is made that a provider or supplier of services has received an overpayment or underpayment from Medicare and payment of the excess or deficit is not made within 30 days of the date of the final determination, interest charges will be applied to the balance due to or from the provider or supplier. These sections provide, in part "* * * interest shall accrue on the balance of such excess or deficit * * * at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments." Prior to the passage of Pub. L. 97–248, HCFA had relied on common law authority to charge interest on these overpayments.

The regulations implementing these provisions were published in the **Federal Register** on December 6, 1982 (47 FR 54814) and are set forth at § 405.376. Section 405.376 specifies the rules for assessing and paying interest on Medicare overpayments and underpayments. Section 405.376(d) states that the interest rate on overpayments and underpayments is the prevailing interest rate specified in Treasury bulletins issued under section 8020.20 of the Treasury Fiscal Requirements Manual (now section 8025.40 of the Treasury Financial Manual). We adopted this rate, known as the current value of funds (CVF) rate, in the December 6, 1982 final rule because at that time, it was the only rate falling within the statutory language.

Since we implemented the provisions of § 405.376, the CVF rate has consistently been lower than the prime rate or any other commercial lending rate. As a result, HCFA has been at a disadvantage since there has been less incentive for overpaid providers and suppliers to repay promptly any overpayments due HCFA. Since most providers and suppliers have to borrow funds at the market rate or higher, there is little incentive under our current regulations to refund any Medicare overpayment since they can retain program funds at the much lower CVF rate of interest. The result is that the Medicare program provides a below-market rate loan to these providers and suppliers.

Also, the CVF rate changes only when the annual average investment rate of the Treasury loan account fluctuates by more than two percent. This reduces responsiveness to the market place. For example, since October 1983, HCFA has not been able to charge more than nine percent per annum on outstanding overpayments. The nine percent rate remained in effect through December 1985. For the calendar years 1986, 1987, and 1988, the CVF rate was eight, seven, and six percent, respectively.

Subsequent to the passage of the Debt Collection Act of 1982 (Pub. L. 97–365), the Federal Claims Collection Standards were modified to provide for rates of interest in addition to the CVF rate. (See 4 CFR 102.13(c).) The Secretary of the Treasury has revised his regulations, setting forth a higher rate, that is, the private consumer rate (PCR), which may be revised quarterly. Furthermore, section 8025.40 of the Treasury Financial Manual permits a higher rate of interest to be assessed if it is determined that a higher rate is necessary to protect the Government's interest.

The Departmental Federal Claims Collection regulations (45 CFR 30.13), published January 5, 1987 (52 FR 260), allow HCFA to assess the higher private consumer rate (PRC) of interest on delinquent overpayments in contexts outside the scope of § 405.376. The Departmental regulations have adopted the PCR for application to many types of debts owed to the Department. As of December 31, 1987, the PCR was 14.625 percent. This is more than double what is charged under the existing regulations for overpayments due the Medicare program.

B. Proposed Changes

We are proposing to amend § 405.376(d) to allow a higher interest rate on overpayments and underpayments to providers and suppliers under the Medicare program. The proposed change would permit us to assess the higher of the rate as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of final determination or the CVF rate. Because we believe that the PCR is a rate determined in accordance with the regulations of the Secretary of the Treasury, the use of the PCR as an alternative interest rate satisfies the statutory requirements of sections 1815(d) and 1833(j) of the Act. It would also create uniformity with the Departmental interest assessment regulation at 45 CFR 30.13.

Assessing interest at the higher of these two rates should reduce the time providers and suppliers are taking to repay overpayments. It should also decrease the number of repayment schedules and the number of delinquent cost reports by eliminating the financial advantage the providers and suppliers enjoy by not paying promptly.

We are also proposing to revise the regulations to indicate the change in the citation of 8020.20 of the Treasury Fiscal Requirements Manual to 8025.40 of the Treasury Financial Manual.

III. Determination of Allowable Interest Expense

A. Background

Under the Medicare program, health care providers not subject to the prospective payment system are reimbursed generally for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Section 1861(v)(1)(A) of the Act defines reasonable cost as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services. Section 1861(v)(1)(A) of the Act also provides that reasonable costs be determined in accordance with regulations that establish the methods to be used and the items to be included for purposes of determining which costs are allowable for various types or classes of institutions, agencies, and services.

Providers may generally include interest expense (the cost incurred for the use of funds borrowed for patient

care-related purposes) in allowable costs, but, under § 413.153(b)(2)(iii), allowable interest expense must be reduced by investment income. Moreover, this section of the regulations provides that investment income from gifts and grants (whether restricted or unrestricted) is not used to reduce interest expense if the gift and grant funds are held separate and not commingled with other funds. This prohibition against the commingling of funds was intended to ensure that providers maintain the discrete nature of the grant funds and to facilitate the proper reimbursement treatment of the resulting investment income by intermediaries.

Section 1134 of the Act, which was added by section 901 of the Omnibus Budget Reconciliation Act of 1980 (Pub. L. 96-499), precludes the offset against interest expense of investment income of nonprofit hospitals from grants, gifts, or endowments not designated by the donor to defray specific operating costs. This prohibition effectively permits the pooling or combining of funds from various sources for investment purposes of nonprofit hospitals.

The provisions of section 901 of Pub. L. 96-499, as well as our established position on commingling of funds, were incorporated in Transmittal No. 279, published in January 1983, which revised section 202.6 of the Provider Reimbursement Manual (HCFA Pub. 15-1) to permit the pooling of funds for investment purposes provided adequate records are maintained to enable the proper identification of funds and investment income applicable to each.

In addition to investment income from separately held and noncommingled gifts and grants, § 413.153(b)(2)(iii) currently excludes investment income from a provider's funded depreciation, qualified employee pension funds, and interest received as a result of judicial review by a Federal court from the interest expense offset requirement. Under our current operating policy, investment income from a provider's deferred compensation funds and self-insurance funds that meet the program's qualifying criteria are implicitly excluded from interest expense offset. The qualifying criteria for deferred compensation plans provided in section 2140 of HCFA Pub. 15-1 and the qualifying criteria for self-insurance funds described in subsection 2162.7 of HCFA Pub. 15-1 require that investment income earned on a deferred compensation fund or a self-insurance fund must become part of those funds and, as such, is unavailable for offset against interest expense.

B. Proposed Changes

As stated above, section 1134 of the Act precludes the offset against interest expense of investment income from grants, gifts, or endowments not designated by the donor to defray specific operating costs of nonprofit hospitals. Thus, the pooling or combining of funds from various sources for investment purposes by nonprofit hospitals is permitted under law. We believe that this statute serves to affirm our policy position that it is permissible to pool funds for investment purposes.

In this rule, we are proposing to revise § 413.153(b)(2)(iii) to modify the restriction against commingling (that is, to permit the pooling of grant, gift, or endowment funds for investment purposes) for all providers, not only for the nonprofit hospitals referenced in section 1134 of the Act. This change would conform the regulations to our current operating policy as set forth in section 202.6 of HCFA Pub. 15-1. We rely on the general statutory authority in section 1861(v)(1)(A) of the Act, which defines reasonable cost, to make this change, because we believe that the prohibition against the commingling of grant and gift funds is not necessary to ensure that only the provider's reasonable cost is reimbursed.

As a conforming change, we are also proposing to remove the regulations text located at § 413.5(c)(3). This section contains an outdated statement concerning offsetting of restricted grants, gifts, and income from endowments and ceased being effective with cost reporting periods beginning on or after October 1, 1983.

We are proposing further clarification to § 413.153(b)(2)(iii) by adding to the exclusions from interest expense offset, investment income on—

- A provider's deferred compensation plans; and
- Self-insurance trust funds.

Because established program policy has always required that investment income earned on a provider's deferred compensation fund (HCFA Pub. 15-1, section 2140 ff.) or self-insurance fund (HCFA Pub. 15-1, section 2162.7) must become part of those funds, it is unavailable for offset against interest expense. We are simply adding these exclusions from interest expense offset to the regulations text to conform it to the established policy.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (FRA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers, practitioners, and suppliers as small entities.

Elimination of the requirement at § 405.370(b), that an intermediary or carrier make a prior determination that a suspension of payment is needed to protect the Medicare program against financial loss, may have an adverse economic effect on some providers and suppliers. However, we do not believe that this policy would affect a significant number of providers and suppliers. We also believe that providers and suppliers would be spared the administrative costs of making repayment to the Medicare program for overpayments.

We are proposing to amend § 413.153 only to bring it into conformity with section 1134 of the Act and with current operating policy, as set forth in HCFA manuals.

Our proposal to revise § 405.376(d) to allow the option of assessing whichever interest rate is higher on Medicare overpayments would increase program savings and have an adverse effect on providers and suppliers when the rates are first implemented. However, we expect these savings to be offset by a reduction in the number of providers and suppliers delinquent in repayments. Since there are a minimal number of underpayments that are not paid timely to the provider or supplier, we expect that payment of a higher interest rate by the Medicare program would result in little or no economic effect.

For the reasons set forth above, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and we have therefore not

prepared a regulatory flexibility analysis.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

V. Other Required Information

A. Paperwork Burden

This proposed rule does not impose information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

B. Public Comment

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the **DATES** section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV would be amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Programs

A. Part 405, Subpart C is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for Subpart C continues to read as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

Authority: Sec. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

2. Section 405.370 is revised to read as follows:

§ 405.370 Suspension of payments to providers of services and other suppliers of services.

(a) Payments authorized to be made to providers and suppliers of services in accordance with Subpart A of this part or in accordance with Parts 409 and 410 of this chapter (but excluding payments to entitled individuals and payments under Subpart P of Part 405 may be suspended, in whole or in part, by an intermediary or a carrier if the intermediary or carrier—

(1) Has determined that the provider or other supplier to whom such payments are to be made has been overpaid under Medicare; or

(2) Possesses reliable evidence, although additional evidence may be needed for a determination, that such overpayment exists or that the payments to be made may not be correct.

(b) A suspension of payment is made by the intermediary or carrier only after it has complied with §§ 405.371 and 405.372, which set forth procedural requirements for suspensions.

(c) Payments suspended under the authority of this section are applied to reduce or eliminate any overpayments determined by the intermediary or carrier, including any interest assessed under the provisions of § 405.376. In the absence of a legal requirement that the excess be paid to another entity, the excess is refunded to the provider or supplier.

3. In § 405.376, paragraph (d)(1) is revised to read as follows:

§ 405.376 Interest charges on overpayments and underpayments to providers and suppliers.

* * * * *

(d) *Rate of interest.* (1) The interest rate on overpayments and underpayments is the higher of—

(i) The rate as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of final determination as defined in paragraph (c) of this section; or

(ii) The rate specified in bulletins issued under section 8025.40 of the Treasury Financial Mutual, known as the current value of funds rate.

* * * * *

B. Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT: PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 13951(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

§ 413.5 [Amended]

2. In Subpart A, § 413.5, paragraph (c)(3) is removed, and the paragraph is reserved.

Subpart G—Capital Related Costs

3. In Subpart G, § 413.153 is amended by revising paragraph (b)(2) to read as follows:

§ 413.153 Interest expense.

* * * * *

(b) * * *

(2) *Necessary.* Necessary interest is interest that meets the following requirements:

(i) It is incurred on a loan made to satisfy a financial need of the provider. Loans that result in excess funds or investments would not be considered necessary.

(ii) It is incurred on a loan made for a purpose reasonably related to patient care.

(iii) It is reduced by investment income except income from—

(A) Gifts, grants, and endowments (whether held separately or pooled with other funds);

(B) Funded depreciation;

(C) The provider's qualified pension funds;

(D) the provider's deferred compensation funds that meet the program's qualifying criteria; and

(E) The provider's self-insurance trust funds that meet the program's qualifying criteria.

(iv) It is not reduced by interest received as a result of judicial review by a Federal court (as described in § 413.64(j)).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13773, Medicare-Hospital

Insurance; No. 13774, Medicare-Supplementary Medicare Insurance)

Dated: June 23, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 19, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-18994 Filed 8-19-88; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6934]

Proposed Flood Elevation Determinations; Colorado et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solictited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980 which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determination, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Colorado	Jefferson County (unincorporated areas).	Bear Creek (at Idledale	Approximately 1,580 feet downstream of Shady Lane.	*6,374	*6,373
			Approximately 1,360 feet upstream of Shady Lane.	*6,429	*6,428
			Approximately 3,780 feet upstream of Shady Lane.	*6,469	*6,467
		Bear Creek (Kittredge to Evergreen).	Approximately 5,060 feet downstream of South Myers Gulch Road.	*6,756	*6,754
			Approximately 20 feet upstream of South Myers Gulch Road.	*6,818	*6,817
			Approximately 790 feet upstream of Welch Avenue.	*6,846	*6,845
			Approximately 4,280 feet downstream of State Highway 74.	*6,933	*6,929
			Approximately 30 feet downstream of the confluence with Bear Creek Tributary No. 1.	*7,003	*7,000
			Approximately 630 feet upstream of County Highway 73.	*7,051	*7,049
		Upper Bear Creek (above Evergreen Lake).	Approximately 1,420 feet downstream of Check Dam.	*7,198	*7,194
			Approximately 2,820 feet upstream of Check Dam.	*7,266	*7,263

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2,590 feet downstream of Meadow Brook Lane (just upstream of Upper Bear Creek Road crossing).	*7,305	*7,302
			Approximately 1,910 feet upstream of Meadow Brook Lane.	*7,344	*7,341
			Approximately 5,990 feet upstream of Meadow Brook Lane.	*7,410	*7,406
		North Turkey Creek	Just downstream of Danks Drive	*7,583	*7,580
			Just upstream of Malamute Drive	*7,695	*7,692
			Approximately 2,130 feet upstream of Gray Fox Drive near Grizzly Way.	*7,761	*7,759
			Just upstream of County Highway 73 (Turkey Creek Road).	*7,915	*7,913
			Approximately 1,400 feet upstream of Shadow Mountain Drive.	*8,062	*8,060
			Approximately 5,740 feet upstream of Conifer Drive.	*8,299	*8,297

Maps are available for inspection at the Jefferson County Mapping Department, 18301 West 10th Avenue, Golden, Colorado.

Send comments to the Honorable John Stone, Chairman, Jefferson County Board of Commissioners, 1700 Araphahoe Street, Golden, Colorado 80419.

Georgia	City of Bainbridge, Decatur County.	Big Slough Tributory	About 1,400 feet downstream of U.S. Highway 84.	None	*105
			About 0.89 mile upstream of Twin Lakes Drive	None	*108

Maps available for inspection at the City Hall, Building Inspection Department, 1001 South Broad Street, Bainbridge, Georgia.

Send comments to The Honorable Bill Reynolds, Mayor, City of Bainbridge, City Hall, 1001 South Broad Street, P.O. Box 158, Bainbridge, Georgia 31717.

Missouri	City of Berkeley, St. Louis County.	Coldwater Creek	About 1,850 feet downstream of Norfolk Southern Railway.	None	*520
			About 1,350 feet upstream of Norfolk Southern Railroad.	None	*521

Maps available for inspection at the City of Berkely, Engineering Department, 6140 North Hanley Street, Berkeley, Missouri.

Send comments to The Honorable Larry Birkla, City Manager, City of Berkeley, 6140 North Hanley Street, Berkeley, Missouri 63134.

North Carolina	City of Durham, Durham County.	Sandy Creek	At mouth	*253	*253
			About 1,000 feet upstream of Garrett Road	*256	*258
			Just upstream of U.S. Highways 15 and 501	*267	*267

Maps available for inspection at the City Hall, Planning and Community Development, 101 City Hall Plaza, Durham, North Carolina.

Send comments to The Honorable Wilbur P. Gulley, Mayor, City of Durham, City Hall, 101 City Hall Plaza, Durham, North Carolina 27701.

North Carolina	Unincorporated areas of Pender County.	Atlantic Ocean/ Northeast Cape Fear River.	From the mouth of the Cape Fear River to State Route 210.	None	*8
		Atlantic Ocean/Futch Creek	Along Futch Creek from about 6,000 feet downstream of SR 1002 to about 2,500 feet upstream of SR 1571.	None	*11
		Island Creek	Just upstream of SR 1571	None	*8
			About 1.3 miles upstream of SR 1002	None	*12

Maps available for inspection at the County Administration Annex, P.O. Box 444, 300 East Fremont, Burgaw, North Carolina.

Send comments to The Honorable Michael Lords, County Administrator, Pender County, P.O. Box 5, 300 East Fremont, Burgaw, North Carolina 28425.

Oklahoma	Moorce, City, Cleveland County.	North Fork River	Approximately 1,050 feet downstream of NE. 12th Street.	*1,212	*1,211
			Approximately 100 feet upstream of N.E. 12th Street.	*1,221	*1,220
		Stream D	Approximately 5,116 feet upstream of SE. 19th Street.	None	*1,196
			Approximately 10 feet upstream of N.W. 3rd Street.	None	*1,239
		Tributary of Stream D	At the confluence with Stream D	None	*1,233
			At the Limit of Detail Study	None	*1,240

Maps available for inspection at the Department of Community Development, 301 North Broadway, Moore, Oklahoma.

Send comments to The Honorable Jim Simpson, Mayor of the City of Moore, 301 North Broadway, P.O. Box 7248, Moore, Oklahoma 73153.

Oklahoma	Rogers County unincorporated areas.	Cat Creek	Backwater for a tributary of Cat Creek 2,000 feet south of Lowry and west of Owalla Road.	*615	*611

Maps available for inspection at the Rogers County Courthouse, 219 S. Missouri, Suite 1-102, Claremore, Oklahoma.

Send comments to Mr. Glenn Sweet, Chairman of the Rogers County Commissioners, Rogers County Courthouse, 219 S. Missouri, Claremore, Oklahoma 74017.

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Texas	Benbrook, City, Tarrant County.	Stream 26	Downstream corporate limits	*600	*594
			Upstream corporate limits	*612	*602
Maps available for inspection with the Director of Community Development, City Hall, 911 Winscott Road, Benbrook, Texas.					
Send comments to The Honorable Jerry J. Dunn, Mayor of the City of Benbrook, City Hall, P.O. Box. 26569, Benbrook, Texas 76126					
Texas	Leon Valley, City, Bexar County.	Zarzamora Creek	Approximately 1,150 feet downstream of Bandera Road.	*804	*803
			Upstream side of Bandera Road	*811	*812
		Tributary A to Zarzamora Creek.	Downstream corporate limits	None	*814
			Upstream corporate limits	None	*817
		Drain 4, Zarzamora Creek	Confluence with Zarzamora Creek	*815	*812
			Approximately 900 feet upstream of the confluence of Zarzamora Creek.	*825	*824
Maps available for inspection at 6400 El Verde Road, San Antonio, Texas.					
Send comments to The Honorable Irene Baldridge, Mayor of the City of Leon Valley, Bexar County, 6400 El Verde Road, San Antonio, Texas 78238.					
Texas	Mesquite, City, Dallas County.	South Mesquite Creek	At Cross Road	*461	*460
			At U.S. Route 80	*469	*468
		Stream 288	Approximately 200 feet upstream from confluence with South Mesquite Creek.	*461	*462
			Approximately 280 feet downstream of Interstate 20 and 635.	*462	*463
Maps available for inspection at the Municipal Building, 711 N. Galloway, Mesquite, Texas.					
Send comments to The Honorable George Venner, Mayor of the City of Mesquite, Dallas County, P.O. Box 137, Mesquite, Texas 75149.					
Texas	Watauga, City, Tarrant County.	Bunker Hill Creek	Approximately 950 feet downstream of Starnes Road.	*650	*651
			Approximately 700 feet upstream of Northpark Drive.	*671	*667
Maps available for inspection at 7101 Whitley Road, Watauga, Texas.					
Send comments to The Honorable Virgil Anthony, Sr., Mayor of the City of Watauga, Tarrant County, 7101 Whitley Road, Watauga, Texas 76148.					

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: August 12, 1988.

[FR Doc. 88-18924 Filed 8-19-88; 8:45 am]
BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-742; FCC 88-212]

Broadcast Service; License Renewal Process and Abuses of That Process

AGENCY: Federal Communications Commission.

ACTION: Second further notice of inquiry and notice of proposed rule making.

SUMMARY: This action seeks further comment on the comparative renewal process and makes several proposals concerning elimination of possible abuses of that process. Specifically, it considers the appropriateness and legal feasibility of placing limits on the amount of consideration that may be received in return for the withdrawal of a competing application or a petition to deny that has been filed against an incumbent licensee's renewal application for a radio or television station. In addition, the Commission proposes to clarify the standards for determining when an incumbent licensee is entitled to a renewal expectancy and to refine or modify certain other comparative factors used in comparative renewal hearings.

DATES: Comments must be filed on or before October 7, 1988, and reply comments on or before November 7, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 632-7792 or Tatsu Kondo, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Inquiry and Notice of Proposed Rule Making* in BC Docket 81-742, adopted June 23, 1988, and released August 16, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC. 20037.

Summary of Second Further Notice of Inquiry and Notice of Proposed Rule Making

1. In 1981, the Commission commenced an inquiry looking towards ways of improving the comparative renewal process (published November 9, 1981, 46 FR 55279). As currently administered, this process permits individuals or entities to file competing applications against an incumbent licensee's renewal application, necessitating a comparative hearing to determine which applicant is the best qualified to operate on the frequency in question. This entails utilizing criteria similar to those used in comparative hearings for new broadcast stations and also, for equitable and policy reasons, according an incumbent licensee credit for what is termed its renewal expectancy if its past programming

service to its community of license has been "meritorious."

2. Although this proceeding was initially intended to clarify the standards used for determining when a renewal expectancy is warranted and to refine the other comparative criteria used, the Commission believes that it may be useful to expand the scope of this proceeding to attempt to curtail opportunities for abuse that may be inherent in the comparative renewal process. In particular, now that the Commission has begun a new cycle of broadcast renewal proceedings after a hiatus created by the statutory lengthening of license terms, assertions and criticism have been voiced that unscrupulous parties may be using the renewal process for private gains unrelated to any public interest aims thereunder. The Commission believes that parties may be filing competing applications or petitions to deny for the primary purpose of entering into settlement agreements for profit rather than for the purposes of operating a broadcast station or informing the Commission about legitimate issues related to an incumbent's qualifications.

3. Because curtailing abuses is integrally related, and essential, to meaningful reformation of the comparative renewal process, the Commission believes that the breadth of this proceeding should be widened to consider possible remedies to abuses that arise in the comparative renewal context. For example, the *Notice* asks commenters to consider the appropriateness and legal feasibility of placing limits on payments for the withdrawal of competing applications and petitions to deny and granting waiver requests to these limits in appropriate circumstances.

4. With respect to settlement agreements involving the withdrawal of competing applications, the Commission noted that in 1981 Congress enacted section 311(d), which permitted comparative renewal applicants to enter into settlement agreements for valuable consideration not limited to the actual expenditures of the parties in prosecuting the renewal challenge. This legislation represented a departure from the Commission's prior practice of not approving settlement agreements in comparative renewal cases, absent compelling circumstances, and only approving settlement agreements limited to the actual expenses incurred by the applicant in prosecuting the renewal challenge.

5. In light of this legislative change, the *Notice* seeks comment on the statutory and other public interest authority of the Commission to remedy settlement agreement abuses. Specifically, the Commission questions whether statutory provisions in the Communications Act of 1934, as amended, 47 U.S.C. 311(d)(3) overrode prior Commission policy generally not to approve settlement agreements in comparative renewal proceedings, and if not, whether public interest considerations warrant reinstating such prior Commission policy or otherwise circumscribing such agreements. One such approach, upon which comment is requested, would be to limit consideration that may be paid for the withdrawal of a competing application to legitimate and prudent out of pocket expenses in filing and prosecuting the application. Another approach would be to prohibit altogether settlement payments for the dismissal of a competing application.

6. In addition, since current rules simply require that the parties entering into a settlement agreement file a copy of the agreement and certify that their applications were not filed for the purpose of entering into the settlement, the *Notice* also requests comment on methods for establishing the *bona fides* of an applicant. For example, the Commission could strengthen financial and ownership disclosure requirements, or require applicants to certify at the application, rather than at the settlement stage, that the application was filed for the purpose of securing Commission authorization to operate a broadcast facility.

7. The *Notice* also discusses proposals for deterring abuses which may arise in the context of petitions to deny where consideration is paid for withdrawal of petition to deny or a promise to refrain from filing a petition to deny. The Commission does not wish to inhibit or otherwise discourage the legitimate exercise or use of the petition to deny process by members of the public. However, it seeks public comment on whether limiting payment for withdrawal of petitions to deny to legitimate and prudent expenses incurred in the preparation and filing such petitions in an appropriate method of ensuring that renewal applicants are not threatened with coercive petitions to deny filed solely to extract financial or other consideration from the licensee.

8. As a related matter, the *Notice* addresses potential abuses that arise in the context of citizens agreements entered into with licensees. Since such agreements may involve the withdrawal of a petition to deny or a promise to refrain from filing a petition, the *Notice* proposes limiting such payments to reasonable and prudent out of pocket expenses but also solicits comment on possible waiver criteria. In additon, the *Notice* requests comment on whether it is appropriate for the Commission to enforce programming obligations agreed to by broadcast licensees in citizen agreements. Although these petition to deny and citizens agreement proposals were recently made in a separate proceeding involving abuse of process, the Commission decided that, in view of the somewhat limited response in that proceeding, it would advance those proposals in this *Notice* insofar as they relate to the comparative renewal process.

9. In the area of comparative renewal criteria one main focus will be on whether or not to modify the structural criteria (particularly diversification of ownership and spectrum efficiency) used to compare challengers and incumbents. The Commission specifically requested comment on:

- The option of reducing the importance of diversification factor in the comparative renewal process, *e.g.*, whether or not an otherwise fully qualified incumbent licensee would be penalized for its other media interests as long as (1) they are in compliance with the Commission's ownership rules and policies and (2) there have been no adjudicated instances of antitrust or anticompetitive misconduct;
- The proposal to continue using the integration of ownership and managment citerion (that is, giving an applicant a comparative preference if its owners will participate full-time in the management of the station) as currently administered. However, the Commission indicated that it will not entertain any proposals which would alter the Commission's enhancement policies regarding females and minorities.
- Whether the Commission should modify or eliminate the current presumption that competing applicants who prevail in renewal hearings will be able to acquire the transmitter sites of the incumbents;
- Any additional or alternative criteria commenters believe may serve as a better guide for selecting a licensee than those currently in use.

10.The final area considered in this action concerns how the Commission should define the standard that should be used to determine when an incumbent licensee is entitled to a renewal expectancy. The proceeding presents two major approaches to defining renewal expectancy: a programming-based standard relying on a concept of providing "meritorious" broadcast service, and a less programming-instrusive approach that is based on substantial compliance with

the Communications Act and the Commission's Rules and policies. The Commission denotes the following issues for possible comment;

- Whether commenters believe the public interest is best served by continuing or modifying the present programming-based renewal expectancy under which an incumbent is given significant credit if its past program service has been "meritorious" in meeting the needs and interests of viewers and listeners in its community of license and service area;
- What standards should be utilized for determining when a past broadcast record is meritorious;
- Whether programming review should be limited to nonentertainment programming or should include any programming which addresses community needs and interests;
- Whether the definitions of meritious service proposed in S. 1277 and H.R. 3493 would be helpful in enabling the Commission to clarify when a renewal expectancy is warranted;
- Whether or not commenters agree with described deficiencies of a programming-based renewal expectancy, including practical administrative problems and evidence this approach may chill speech or present other first amendment problems.

11. As an alternative to retaining and modifying the meritorious service standard, the *Notice* proposed two less programming-intrusive bases for determining renewal expectancy. One such approach would be to utilize a substantive test similar to that set forth in H.R. 1140. Under this test, a renewal expectancy would be warranted if an incumbent has (1) broadcast material responsive to matters of concern to the residents of its service area; and (2) there have been no serious violations of the Communications Act or Commission rules or no other violations, which taken together, would constitute a pattern of abuse. The first prong of this test, which essentially codifies the obligation under our radio and television deregulation orders for stations to broadcast programming responsive to community needs, eliminates the need for the Commission to place subjective labels—such as superior, meritorious, or minimal—on an incumbent's past programming and, instead, would focus upon whether a licensee has been reasonable in selecting issues to address and airing programming responsive to these community needs. The second prong would ensure that there have been no serious statutory or regulatory violations.

12. A second approach—which may be even less intrusive from a programming standpoint—would be to grant a renewal expectancy based upon a licensee's *overall* record of compliance with the Communications Act and the Commission's rules and policies. Under this alternative, a licensee would obtain a renewal expectancy based upon the licensee's demonstration of good faith compliance with the Commission's rules and regulations and statutory requirements. This would include the various program-related obligations discussed above of providing issue-responsive programming. However, unlike the preceding option, programming need not automatically be an issue in every comparative renewal hearing. Rather, violations of the issue-responsive program obligation, as well as any other type of rule or policy violation, would only be considered when raised by a petition to deny or by a complaint.

13. With respect to these less programming intrusive bases for determining renewal expectancy, commenters are asked to consider:

- What types of violations of the Communications Act or FCC rules or policies are so serious as to diminish a licensee's renewal expectancy;
- What process should be used to determine whether or not a violation of the Act or Commission rules or policies has occurred;
- What level of compliance with statutory and regulatory requirements warrants a renewal expectancy;
- Whether these approaches are preferable to the present meritorious service standard;
- Whether these approaches are consistent with the hearing requirements of Section 309(d) of the Communications Act.

14. The Commission believes, for several reasons, that this further inquiry into the comparative renewal process will serve the public interest. By considering how we can deter abuses of the renewal process in this docket, we will be able to ensure the integrity of that process. In addition, the Commission hopes that, with the aid of the updated record provided though this action, we will be able to refine or modify standards for determining a renewal expectancy so that regulatees, the industry, and the public will more clearly understand the obligations of broadcast licensees. At the same time, by re-evaluating the other comparative factors, we will be able to make the comparative process more meaningful and fair to both challengers and incumbents.

Authority Citation

15. Authority for this proceeding is contained in sections 1, 4(i) and (j), 303, and 403 of the Communications Act of 1934 as amended.

Ex Parte Information

16. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Comment Information

17. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 7, 1988, and reply comments on or before November 7, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Paperwork Reduction Act Statement

18. The proposal contained herein has been analyzed with respect to the paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Initial Regulatory Flexibility Statement

19. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, adoption of the abuse of process proposals involving settlement agreements would benefit entities of all sizes because it would reduce or eliminate the number of competing applications or petitions to deny filed in bad faith. As a result, the number of comparative renewal hearings may be further reduced as well as the number of participants in such hearings. This may be particularly beneficial to small entities with limited financial resources because it may obviate the need for costly comparative renewal hearings or may reduce substantially the amount of money that could be paid as part of a settlement, enabling such small licensees to use the saved resources for other purposes.

20. Likewise, modifying or refining the comparative criteria utilized in comparative renewal hearings—including renewal expectancy—would be beneficial to broadcasters of all sizes because the basis for comparison would be streamlined and clarified. As a result, hearings could be simpler and less costly. The latter benefit would be

particularly helpful to small licensees, who may not have sufficient resources for a prolonged comparative renewal hearing and appeal process.

21. The Secretary shall send a copy of this *Further Notice of Inquiry and Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

List of Subjects in 47 CFR Part 73

Television broadcasting, Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster, III

Acting Secretary.

[FR Doc. 88-19005 Filed 8-19-88; 8:45 am]

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Notices

Federal Register
Vol. 53, No. 162
Monday, August 22, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Special Volunteer Programs, Availability of Funds; Demonstration Grants

The Program Demonstration and Development Division of ACTION announces the anticipated availability of funds during fiscal year 1989 for demonstration grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part C; 42 U.S.C. 4992).

The purpose of this program is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to human and social concerns such as illicit drug use by youth, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs.

As most recently documented by the White House Conference for a Drug-Free America, the best strategy to combat illegal drug use is to prevent it from starting. Effective prevention requires the involvement of every segment of the community, recognizing that no single approach will work in every locale. Comprehensive approaches assure that clear, consistent "no use" mesage are delivered and reinforced by a variety of community sources. America's youth, who are so often confronted by peer pressure and other encouragement to use illegal drugs, are perhaps the most important targets for such anti-drug programming, yet drug-free youth also constitute a tremendous resource for a community's drug prevention effort. Despite impressive progress in the prevention of drug use—particularly among youth—there is a critical need for such programs in every part of the country.

A. Preventing the Use of Illicit Drugs by Youth

Consideration will be limited to innovative proposals using volunteers in one of the following two strategies for preventing the use of illicit drugs by youth:

1. The development of a state-wide network to create and support broad-based local coalitions that may include volunteer groups, service organizations, schools, government agencies (especially law enforcement and social service agencies), religious organizations, media, business and youth groups to more effectively engage in the prevention of illicit drug use by youth.

2. The mobilization and coordination of community youth serving organizations such as parents' groups, neighborhood associations, commmunity organizations, businesses, religious institutions, schools and local government agencies into effective community-based prevention councils or coalitions to prevent the use of illicit drugs by youth. Coalitions and organizations targetting youth in low-income communities are particularly encouraged to apply.

The following examples of strategies carried out by local coalitions and youth-service organizations have been supported and endorsed by ACTION. They include:

Adding a drug-free prevention and education component to existing youth development or recreational activity;

Organizing and supervising drug-free positive recreational alternatives for youth in schools and in community recreational facilities and activities—particularly for after-school and weekend periods;

Recognizing youth who have chosen to be drug-free;

Using youth who maintain drug-free life styles as peers to be emulated by other youth and reverse the peer pressure to use illicit drugs;

Conducting follow-up activities to one-time drug use prevention awareness-raising events for youth and others to reinforce the positive changes in community attitudes toward illicit drug use;

Providing technical assistance and current information on the harmful consequences to health stemming from the use of illicit drugs;

Incorporating drug use prevention and education strategies as an integral component of community youth recreational facilities and activities; and

Expanding the involvement of parents and parents' groups in prevention and educational activities and events for youth.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies will be considered. Any applicant who does not adhere to a policy of the strict non-use of illicit drugs will not be eligible for consideration. Furthermore, an application will be ineligible if it refers to philosophy, proposed activities, or training or educational materials implying that the initial or responsible use of any illicit drug, or the illicit use of any legal drug, will be tolerated by the applicant.

C. Available Funds and Scope of the Grant

ACTION anticipates awarding, subject to the availability of FY 1989 funds, grants averaging $38,000 but not exceeding $50,000.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate any specific amount of money for demonstration grants.

Projects funded under this announcement will receive funds for one time and are not renewable.

D. General Criteria for Grant Selection

Grant applications will be reviewed and evaluated based on the criteria outlined below, as appropriate, as well as conformance to the instruction included in the application. Grant applicants with a demonstrated competence in using volunteers to prevent the use of illicit drugs by youth, and applicants which have not received ACTION Demonstration Program funds previously will be given preference.

1. Potential to recruit, train and utilize volunteers in area of priority.

2. Promise of developing innovations or knowledge in mobilizing and sustaining State and local volunteer efforts to prevent illicit drug use by youth.

3. Potential for replication of the project model including: plans for implementation and dissemination or results of the project including any products such as reports and manuals for use by others.

4. Plans for continuation of the activities and self-sufficiency of the program following the completion of the project supported by ACTION funds.

5. Extent to which youth representing the target population of the project are involved in planning, developing and conducting project activities.

6. Carefully formulated schedule for achieving objectives, including self-sufficiency, and feasibility of methods for meeting those objectives.

7. Capability of proposed staff.

8. Likelihood of completion of project within proposed timetable.

9. Feasibility of proposed budget.

10. Adequacy of plans for data gathering and evaluation.

11. Letters of support from collaborating agencies and organizations and intent to participate in the project where such could be expected to contribute to the value or success of the project.

12. Samples of current materials to be disseminated to the participants, or used to train volunteers.

13. While specific levels of matching funds are not a requirement for grants, evidence of local public and private sector support (financial and in-kind) is strongly encouraged and will be considered in the decision making process. Applicants capable of such contributions should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements and be supported by a detailed budget narrative listing the source of that support and the formula used to compute those costs.

E. Application Review Process

ACTION's Program Demonstration Branch, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State Office no later than 5:00 p.m. local standard time on October 17, 1988. Only those applications that are received at the appropriate ACTION State Office by 5:00 p.m. local standard time on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form No. A–1036) with a narrative budget justification and a narrative of project goals and objectives, and assurances.

b. CPA certification of accounting capability.

c. Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

e. Current resume of candidates for the position of project director, if available, or the current resume of the director of the applicant agency or project.

f. Organization chart of the applicant organization showing how the project is related to the organization.

g. List of the current board of directors showing their names, addresses and organizational or community affiliation.

To receive an application kit, please contact your ACTION State Office. Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region

Mr. John F. Torian, ACTION Regional Director, 10 Causeway Street Rm 473, Boston, MA 02222–1039, (617) 565–7000

Mr. Romero A. Cherry, ACTION State Program Director, Abraham Ribicoff Federal Bldg., 450 Main Street, Room 524, Hartford, CT 06103–30002, (203) 240–3237

Mr. Thomas E. Endres, ACTION State Program Director, Federal Bldg., Room 305, 76 Pearl Street, Portland, ME 04101–4188, (207) 780–3414

Mr. Malcolm Coles, ACTION State Program Director, 10 Causeway Street, Room 473, Boston, MA 02222–1038, (617) 565–7015

Mr. Peter Bender, ACTION State Program Director, Federal Post Office & Courthouse, 55 Pleasant Street, Room 316, Concord, NH 03301–3939, (603) 225–1450

Mr. Vincent Marzullo, ACTION State Program Director, John E. Fogarty Bldg., Room 200, 24 Weybosset Street, Providence, RI 02903–2882, (401) 528–5424

Region II

Mr. Herbert W. Stupp, ACTION Regional Director, 6 World Trade Center, Room 758, New York, NY 10048–0206

Mr. Stanley Gorland, ACTION State Program Director, 402 East State Street, District III, Room 422, Trenton, NJ 08608–1507, (609) 989–2243

Mr. Bernard A. Conte, ACTION State Program Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, (212) 466–4471

Mr. Ruben Nazario, ACTION State Program Director, Federico DeGetau Fedeal Ofc Bldg, Carlos Chardon Avenue, Suite G–49, Hato Rey, PR 00918–2241, (809) 766–5314 & 766–5188

Region III

Ms. Maryann Urban, ACTION Regional Director, U.S. Customs House, 2nd and Chestnut Street, Room 108, Philadelphia, PA 19106–2912

Mr. Benjamin L Cheney, Jr., ACTION State Program Director, Federal Building Room 372–D, 600 Federal Place, Louisville, KY 40202–2230, (502) 582–6384

Mr. Paul Schrader, ACTION State Program Director, Federal Bldg., Room 500, 85 Marconi Blvd., Columbus, OH 43215–2888, (614) 469–7441

Ms. Sally W. Yurchuck, ACTION State Program Director, U.S. Customs House, Room 108, 2nd and Chestnut Streets, Philadelphia, PA 19106–2998, (215) 597–3543

Mr. Lindsay B. Scott (Virginia and the District of Columbia), ACTION State Program Director, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1832, (804) 771–2197

Mr. Jerry E. Yates, ACTION State Program Director, Federal Bldg., 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814, (301) 962–4443

Ms. Jean Taylor-Brown, ACTION State Program Director, 603 Morris Street—2nd Floor, Charleston, WVA 25301–1409, (304) 347–5246

Region IV

Mr. Henry L Jibaja, Acting ACTION Regional Director, 101 Marietta Street, N.W.—Suite 1003, Atlanta, GA 30323–2301

Mr. John D. Timmons, ACTION State Program Director, 2121–8th Avenue North, Room 722, Birmingham, AL 35203–2307, (205) 254–1906

Ms. Betsy Wells, Acting ACTION State Program Director, 930 Woodcock Road—Suite 221, Orlando, FL 32803–3750, (305) 648–6117

Mr. David A. Dammann, ACTION State Program Director, 75 Piedmont Avenue, NE., Suite 412, Atlanta, GA 30303–2587, (404) 331–4646

Mr. Alfred E. Johnson, ACTION State Program Director, U.S. Bldg./Federal Bldg., 801 Broadway, Room 246, Nashville, TN 37203–3889, (615) 251–5561

Mr. Robert L. Winston, ACTION State Program Director, Federal Building, P.O. Century Station, 300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601–1739, (919) 856–4731

Mr. Arthur E. Brown, III, ACTION State Program Director, Federal Bldg., Room 1005–A, 100 West Capital Street, Jackson, MS 39269–1092, (601) 965–5664

Mr. Jerome J. Davis, ACTION State Program Director, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430, (803) 765–5771

Region V

Mr. Alan A. Drazek, ACTION Regional Director, 10 West Jackson Blvd.—6th Floor, Chicago, IL 60604–3964

Mr. James E. Braxton, ACTION State Program Director, 10 West Jackson Blvd.—6th Floor, Chicago, IL 60604–3964, (312) 353–8383

Mr. Thomas L. Haskett, ACTION State Program Director, 46 East Ohio Street—Room 457, Indianapolis, IN 46204–1922, (317) 269–6724

Mr. Joel H. Weinstein, ACTION State Program Director, Federal Building, Room 339, 210 Walnut St., Des Moines, IA 50309–2195, (515) 284–4816

Mr. Stanley M. Stewart, ACTION State Program Director, Federal Bldg., Room 658, 231 West Lafayette Blvd., Detroit, MI 48226–2799, (313) 226–7848

Mr. Peter A. Marks, ACTION State Program Director, Old Federal Bldg.—Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596, (612) 334–4063

Mr. Michael P. Murphy, ACTION State Program Director, 517 East Wisconsin Avenue, Rm. 601, Milwaukee, WI 53202–4507, (414) 291–1118

Region VI

Ms. Paulette E. Standefer, ACTION Regional Director, 1100 Commerce Street, Room 6B11, Dallas, TX 75242–0696

Mr. John J. McDonald, ACTION State Program Director, Federal Office Bldg., 911 Walnut, Room 1701, Kansas City, MO 64106–2009, (816) 426–5256

Mr. Jerry G. Thompson, ACTION State Program Director, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747, (512) 482–5671

Mr. Robert J. Torvestad, ACTION State Program Director, Federal Bldg., Room 2506, 700 West Capitol Street, Little Rock, AR 72201–3291, (501) 378–5234

Mr. James M. Byrnes, ACTION State Program Director, Federal Bldg., Room 248, 444 SE Quincy, Topeka, KS 66603–3501, (913) 295–2540

Mr. Willard L. Labrie, ACTION State Program Director, 628 Main Street, Suite 102, Baton Rouge, LA 70801–1910, (504) 389–0471

Mr. Ernesto Ramos, ACTION State Program Director, Old Federal Bldg., Catedral Place, Room 129 Sante Fe, NM 87501–2026 (505) 988–6577

Mr. Zeke Rodriquez, ACTION State Program Director, 200 NW 5th Street, Suite 912, Oklahoma City, OK 73102–6093, (405) 231–5201

Region VIII

Ms. Naomi L. Bradford, ACTION Regional Director, Executive Tower Bldg., 1405 Curtis Street, Suite 2930, Denver, CO 80202–2349

Mr. Ben Knopp, ACTION State Program Director, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203–1167, (303) 866–1070

Mr. Ben Knopp, ACTION State Program Director, Federal Bldg., Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649, (303) 866–1070

Mr. Joe R. Lovelady, ACTION State Program Director, Federal Office Bldg., Drawer 10051, 301 South Park, Room 192, Helena, MT 59626–0101, (406) 449–5404

Ms. Anne C. Johnson, ACTION State Program Director, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896, (402) 471–5493

Ms. Naomi Bradford, Acting, ACTION State Program Director (North/South Dakota), Federal Bldg. Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452, (605) 224–5996

Mr. Gary S. O'Neal, ACTION State Program Director, U.S. Post Office & Courthouse, 350 South Main Street, Room 484, Salt Lake City, UT 84101–2198, (801) 524–5411

Region IX

Ms. Teresa Keeshan, ACTION Regional Director, 211 Main Street, Room 530, San Francisco, CA 94105–1914

Mr. Ricardo Gerakos, ACTION State Program Director, Federal Bldg. Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671, (213) 209–7421

Mr. Michael J. Gale, ACTION State Program Director, Federal Bldg., P.O. Box 50024, Honolulu, HI 96850–0001, (808) 541–2832

Mr. Steven P. Gordon, ACTION State Program Director, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–1208, (702) 784–5314

Mr. Jess A. Sixkiller, ACTION State Program Director, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190, (602) 261–4825

Region X

Mr. John Keller, ACTION Regional Director, Suite 3039 Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103

Mr. Stephen Neal Stivers, ACTION State Program Director, Federal Bldg. Room 647, 511 N.W. Broadway, Portland, OR 97209–3416, (503) 221–2261

Mr. Jack R. Nunn, ACTION State Program Director, Alaska State Office, Suite 3039 Federal Office Bldg., 909 First Street Avenue, Seattle, WA 98174–1103, (206) 442–4975

Mr. Wilford E. Overgaard, ACTION State Program Director, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745, (208) 334–1707

Mr. John A. Miller, ACTION State Program Director, Suite 3039 Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103, (206) 442–4975

Signed at Washington, DC, this 12th day of August, 1988.

Donna M. Alvarado,

Director.

[FR Doc. 88–18929 Filed 8–19–88; 8:45 am]

BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Advisory Committee on Procedures under the United States-Canada Free Trade Agreement; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Advisory Committee on Administrative Procedures under the U.S.-Canada Free Trade Agreement of the Administrative Conference of the United States. The Committee has scheduled this meeting to discuss certain administrative and procedural issues arising from implementation of the proposed Free Trade Agreement.

DATE: Friday, August 26, at 1:30 p.m.

Location: Administrative Conference of the US, Library, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Public Participation

Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United

States, 2120 L Street, NW., Suite 500 (202) 254–7020.

August 17, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88–19021 Filed 8–19–88; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Impact Statement; Grassy Gap and Wesser Timber Sales

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to harvest and regenerate timber on the Cheoah Ranger District, Nantahala National Forest, Graham and Swain Counties, North Carolina. The Agency invites written comments and suggestions on the scope of the analysis. In addition, the Agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis should be received by October 1, 1988 to receive timely consideration.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Steve Rickerson, District Ranger, National Forests in NC, Route 1, Box 16–A, Robbinsville, NC 28771.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Steve Ricerson, Cheoah Ranger District, Route 1, Box 16–A, Robbinsville, NC 28771, phone 704–479–6431.

SUPPLEMENTARY INFORMATION: The Land and Resource Management Plan for the Nantahala and Pisgah National Forests was issued in April 1987. In the Forest Plan, timber harvest and reforestation is scheduled within the Cheoah Bald area. This area was previously inventoried during the Roadless Area and Review Evaluation (RARE II, 1979) and recommended as non-wilderness. The North Carolina Wilderness Act of 1984 released the Cheoah Bald area for "* * * the purpose of determining their [the] suitability for inclusion in the National Wilderness Preservation System" until a revision of the Forest Plan.

Public participation is especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service began the scoping process in 1984 for the Grassy Gap Timber Sale and in 1985 for the Wesser Timber Sale. One significant issue was identified in each project relating to the impact of each timber sale on Appalachian National Recreation Trail users. Both projects lie adjacent to the Appalachian Trail.

The environmental assessments for both timber sales were completed; mitigation measures were identified to avoid impacts on trail users; and decision notices were issued to proceed with Grassy Gap Timber Sale in 1985 and the Wesser Timber Sale in 1987. Both projects called for road construction to access the area. The road construction was contracted by the Forest Service in 1986 for the Grassy Gap Timber Sale and the construction is completed. The road construction was contracted in 1987 for the Wesser Timber Sale and is now complete. Each project involves additional road construction of approximately 1.5 miles to be constructed by the timber sale purchaser. These roads were scheduled for short-term use only and the area impacted by road construction would be restored to vegetative cover after the timber sale. The additional road construction would occur within the boundary of the Cheoah Bald RARE II-released area and adjacent to the Appalachian National Recreation Trail.

The Forest Plan was issued in April 1987 and the decision to implement the Plan resulted in 6 appeals, one of which relates to the RARE II-released areas. An issue emerged regarding impacts on the roadless character of the area and how these impacts should be assessed. This issue had not been previously considered in the environmental analysis; therefore, the Grassy Gap and Wesser Timber Sales were withdrawn in 1988 for further analysis.

A new scoping process began in April 1988 for these sales. Approximately 60 individual letters were received and several interviews were conducted. A significant issue was identified which relates primarily to those publics who want to proceed with the sale to maintain the local economy and those who want to preserve the existing environment for future wilderness consideration.

Another significant issue was identified pertaining to the possible visual impact on Appalachian National Recreation Trail users. Each timber sale taken individually may have little impact on trail users. However, when both timber sales are considered collectively, the actions may have cumulatively significant impacts.

Additional comments from other Federal, State or local agencies, Indian tribes and other interested persons or organizations will be considered to identify significant issues. Comments should be received by October 1, 1988 to receive timely consideration.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this area. One of these alternatives will be no harvesting and regeneration of timber in the area. Other alternatives will consider various locations of harvesting and regeneration units within the area to reduce visual impacts and reduce or eliminate further road construction.

Steve Rickerson, District Ranger, Cheoah Ranger District, National Forests in North Carolina, is the responsible official.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 1988. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency's notice of availability in the **Federal Register**. It is very important that those interested in the management of the Cheoah Bald area participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this to

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ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by November 1988. In the final environmental impact statement, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal.

Date: August 3, 1988.

Stephen R. Rickerson,

District Ranger.

[FR Doc. 88-18914 Filed 8-19-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact; Willow Creek-Cravens Creek Watershed, MO

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Willow Creek-Cravens Creek Watershed, Ray and Lafayette Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Russell C. Mills, State Conservationist, Soil Conservation Service, 555 Vandiver Drive, Columbia, Missouri 65202, telephone (314) 875-5212.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Russell C. Mills, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include four (4) pumping plants, five (5) gravity outlets, 3.4 miles of outlet channel and raise 2.7 miles of dike.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Russell C. Mills, State Conservationist, Missouri.

No Administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: August 10, 1988.

Russell C. Mills,

State Conservationist.

[FR Doc. 88-18913 Filed 8-19-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Survey of Income and Program Participation—1988 Panel Wave 4.
Form Number: SIPP 8400 Wave 4 Questionnaire, SIPP 84/7703 Reminder Card, SIPP 84/7705(L) Introductory Letter.
Type of Request: Revision.
Burden: 12,180 hours.
Average Hours Per Response: 30 minutes.
Needs and Uses: This survey will provide statistics on income, employment and household composition, taxes, assets, in-kind income, and related subjects to estimate the effects of Executive and Legislative decisions.
Affected Public: Individuals or households.
Frequency: One time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 15, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19008 Filed 8-19-88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: 1990 Decennial Census—Block Splits.
Form Number: D110A Address Listing Page.
Type of Request: New.
Burden: 6,267 hours.
Average Hours Per Response: 1.8 minutes.
Needs and Uses: This data is used by the Census Bureau to assign correct tabulation codes for political jurisdictions and related boundaries for statistics published from data collected during the 1990 decennial census.
Affected Public: Individuals or households States or local governments Federal agencies or employees Non-profit institutions Small businesses or organizations.
Frequency: One time per address.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance

Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 15, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–19009 Filed 8–19–88; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Survey of Income and Program Participation, 1989 Panel Core, Waves 1–8.
Form Number: SIPP 9100–9800, Waves 1–8 Core Questionnaires, 9001 Control Card, 9105 Introductory Letter.
Type of Request: Revision.
Burden: 24,360 hours.
Average Hours Per Response: 30 minutes.
Needs and Uses: This survey provides statistics on income, employment and household composition, taxes, assets, in-kind income, and related subjects to estimate the effects of Executive and Legislative decisions.
Affected Public: Individuals or households.
Frequency: Three times a year.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commece, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 15, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–19010 Filed 8–19–88; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Current Industrial Reports Program—Wave I Mandatory.
Form Number: M20H, M20M, MA28C, MA28F, MA32C, MA33A, MA33E, MA36F, MA36R.
Type of Request: Revision.
Burden: 9,784 hours.
Average Hours Per Response: Varies with each form.
Needs and Uses: This program collects and publishes 7-digit product information from 44,000 manufacturing firms on over 5,000 manufactured products. Survey results are available monthly, quarterly, and annually and are used by Government agencies to analyze specific commodities and industries..
Affected Public: Business and other for-profit.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 15, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–19011 Filed 8–19–88; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Current Industrial Reports Program—Wave I Voluntary.
Form Number: M22D, M28B, M28B1, M28B2, M28C, M28F, M32D, M37G, MQ34H, MQ34K, MQ36B, MQ36C, MA22M, MA25H, MA30B, MA30C, MA35U.
Type of Request: Revision.
Burden: 9,198 hours.
Average Hours Per Response: Varies per form.
Needs and Uses: This program collects and publishes 7-digit product information from 44,000 manufacturing firms on over 5,000 manufactured products. Survey results are available monthly, quarterly, and annually and are used by Government agencies to analyze specific commodities and industries.
Affected Public: Businesses and other for-profit.
Frequency: Monthly, Quarterly, and Annually.
Respondent's Obligation: Voluntary/Mandatory.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 15, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–19012 Filed 8–19–88; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–307–701]

Antidumping Duty Order; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce (the

Department) determined that certain electrical conductor aluminum redraw rod (redraw rod) from Venezuela is being sold at less than fair value within the meaning of the antidumping duty law. In a separate investigation, the U.S. International Trade Commission (ITC) determined that imports of redraw rod from Venezuela threaten material injury to a U.S. industry.

When the ITC finds threat of material injury, the "Special Rule" provision of section 736(b)(2) of the Tariff Act of 1930, as amended (the Act), [19 U.S.C. 1673e(b)(2)], applies. Therefore, all unliquidated entries, or warehouse withdrawals, for consumption of redraw rod from Venezuela made on or after August 11, 1988, the date of publication in the **Federal Register** of an affirmative determination of threat of material injury by the International Trade Commission (ITC), will be liable for the assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all entries of redraw rod from Venezuela entered or withdrawn from warehouse, for consumption, on or after the date of publication of the above-mentioned ITC determination in the **Federal Register.**

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, or Bernard Carreau, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377–2438 (Tillman) or 202/377–2786 (Carreau).

SUPPLEMENTARY INFORMATION: The product covered by this investigation is certain electrical conductor aluminum redraw rod, which is wrought rod of aluminum, electrically conductive and containing not less than 99 percent of aluminum by weight. Redraw rod is currently classified under item numbers 618.1520 and 618.1540 of the *Tariff Schedules of the United States, Annotated* and under item numbers 7604.10.30 and 7604.29.30 of the Harmonized System.

In accordance with section 735(d) of the Act (19 U.S.C. 1673d(a)), on June 30, 1988, the Department published its final determination that redraw rod from Venezuela is being sold at less than fair value (53 FR 24755). On August 5, 1988, in accordance with section 735(d) of the Act, the ITC notified the Department of its determination that such imports threaten material injury to a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of redraw rod from Venezuela. These antidumping duties will be assessed on all unliquidated entries of redraw rod from Venezuela entered or withdrawn from warehouse, for consumption, on or after August 17, 1988, the date on which the ITC published its affirmative determination of threat of material injury in the **Federal Register,** in accordance with the "Special Rule" provision of section 736(b)(2) of the Act, (19 U.S.C. 1673e(b)(2)).

Because the ITC determined that imports of redraw rod from Venezuela only threaten material injury to, rather than materially injure, a U.S. industry, Customs field offices are being directed to terminate the suspension of liquidation, release any bond or other security and refund any cash deposit made on entries of redraw rod to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption, before the ITC final determination publication date in the **Federal Register.**

On and after the date of publication of the above-mentioned ITC notice, U.S. Customs Service must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping duty margin of 5.80 percent.

This determination constitutes an antidumping duty order with respect to redraw rod from Venezuela pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Bernard Carreau (202) 377–2786.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e) and 19 CFR 353.48.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

August 16, 1988.

[FR Doc. 88–18997 Filed 8–19–88; 8:45 am]

BILLING CODE 3510–DS–M

[C–307–702]

Countervailing Duty Order: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that exports of certain electrical conductor aluminum redraw rod (redraw rod) from Venezuela are receiving benefits which constitute subsidies within the meaning of the countervailing duty law. In a separate investigation, the U.S. International Trade Commission (ITC) determined that imports of redraw rod from Venezuela threaten material injury to a U.S. industry.

When the ITC finds threat of material injury, the "Special Rule" provision of section 706(b)(2) of the Tariff Act of 1930, as amended (the Act), [19 U.S.C. 1671e(b)(2)], applies. Therefore, all unliquidated entries, or warehouse withdrawals, for consumption of redraw rod from Venezuela made on or after August 17, 1988, the date of publication in the **Federal Register** of an affirmative determination of threat of material injury by the International Trade Commission (ITC), will be liable for the assessment of countervailing duties. Further, a cash deposit of estimated countervailing duties of 38.40 percent *ad valorem* must be made on all entries of the subject merchandise from Venezuela, or withdrawals from warehouse, for consumption, made on or after the date of publication of the above-mentioned ITC determination in the **Federal Register.**

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, or Bernard Carreau, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: 202/377–2438 (Tillman) or 202/377–2786 (Carreau).

SUPPLEMENTARY INFORMATION: The product covered by this investigation is certain electrical conductor aluminum redraw rod, which is wrought rod of aluminum electrically conductive and containing not less than 99 percent of aluminum by weight. Redraw rod is currently classified under item numbers 618.1520 and 618.1540 of the *Tariff Schedules of the United States, Annotated* and under item numbers 7604.10.30 and 7604.29.30 of the Harmonized System.

In accordance with section 705(d) of the Act (19 U.S.C. 1671d), on June 30, 1988, the Department published its final determination that manufacturers, producers, or exporters of redraw rod in Venezuela received benefits which constitute subsidies within the meaning of the countervailing duty law (53 FR 24763).

On August 5, 1988, in accordance with section 705(d) of the Act (19 U.S.C. 1671d), the ITC notified the Department of its determination that subsidized imports of redraw rod from Venezuela threaten material injury to a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act [19 U.S.C. 1671e and 1675], the Department directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act (19 U.S.C. 1671e(a)(1) and 1675), countervailing duties equal to the amount of the estimated net subsidy on all entries of redraw rod from Venezuela. These countervailing duties will be assessed on all unliquidated entries of redraw rod from Venezuela which are entered, or withdrawn from warehouse, for consumption, on or after August 17, 1988, the date on which the ITC published its affirmative determination of threat of material injury in the **Federal Register**, in accordance with the "Special Rule" provision of section 706(b)(2) of the Act, (19 U.S.C. 1671e(b)(2)).

Because the ITC determined that imports of redraw rod from Venezuela only threaten material injury to, rather than materially injure, a U.S. industry, Customs field offices are being directed to release any bond or other security and refund any cash deposit made on entries of redraw rod to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption, before the ITC final determination publication date in the **Federal Register**.

On and after the date of publication of the above-mentioned ITC notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 38.40 percent *ad valorem* for all entries of redraw rod from Venezuela.

This determination constitutes a countervailing duty order with respect to redraw rod from Venezuela pursuant to section 706(a)(1) of the Act [19 U.S.C. 1671e(a)(1)] and § 355.36 of the Commerce Regulations (19 CFR 355.36). We have deleted from the Commerce Regulations Annex III of 19 CFR Part 355, which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Bernard Carreau (202) 377–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

August 16, 1988.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–18998 Filed 8–19–88; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review; North Dakota Export Trading Co.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application #87–A0010.

SUMMARY: The Department of Commerce has issued an amendment to the export trade certificate of review of The North Dakota Export Trading Company granted on October 5, 1987 (52 FR 37816, October 9, 1987). The amendment was deemed submitted on May 18, 1988, and a summary of the application was published in the **Federal Register** on June 3, 1988 (53 FR 20355). This notice summarizes the revisions made to the original certificate.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b) which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate:

Export Trade Certificate of Review No. 87–00010, issued on October 5, 1987, is amended by:

1. Adding the following additional companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Minn-Dak Grower's Association, Grand Forks, ND, and North Central Commodities, Grand Forks, ND and its controlling entity, Johnstown Bean Company, Johnstown, ND.

2. Expanding the list of examples of Products to be covered by the certificate. The revised listing is as follows: Agricultural products, including, but not limited to, wheat, durum, corn soybeans, edible beans, sunflower seeds, crude and refined sunflower oil, seed and commercial potatoes, livestock, barley, buckwheat, mustard, flaxseed, millet, field peas, triticale, safflower, processed pasta products, rapeseed, oats, honey, semolina, wheat flour, wheat by-products, and processed forms of these agricultural products; and agricultural machinery, equipment, and supplies.

3. Revising the "Export Trade Activities and Methods of Operation" section of the certificate to better reflect the interactions among the NDETC and its Members, and to include new activities, items (10) and (11) below. The revised section is as follows:

The NDETC and its Members may:

(1) Enter into joint discussions and negotiations with foreign buyers concerning:

a. Standardized production specifications and commodity quality standards, quantities, prices, timing,

shipping, packing, credit and banking terms necessary to meet the needs of the foreign buyer, the NDETC, and its Members and Suppliers;

b. Standardized tender terms in a manner which will allow the NDETC and its Members to compete; and

c. Standardize bidding procedures acceptable to foreign buyers.

(2) Act jointly to negotiate charges and other terms and to negotiate contracts with providers of transportation services, including advantageous freight contracts with individual carriers and carrier conferences, including chartering of vessels for the NDETC and any or all of its Members and Suppliers, and including negotiations for inland transportation of Products in the course of being exported.

(3) Enter into agreements among themselves and with individual Suppliers on the terms of Supplier participation in the negotiation and fulfillment of transportation contracts, including participation in inland transportation negotiations for Products in the course of being exported.

(4) Refuse to deal with an individual or company with respect to the export of any Product to a foreign buyer.

(5) Refuse to deal with any Member or Supplier, with respect to the export of any Product to a foreign buyer not complying with the standards or other terms of export trade set by the NDETC and/or its Members.

(6) Exchange information among themselves and with individual Suppliers concerning the extent of individual Member and Supplier participation in specific export transactions in which the NDETC participates. The information to be exchanged for this purpose includes:

(a) Information that is already available to the trade or to the general public;

(b) Information (such as selling strategies, prices, projected demand, customary terms of sale) solely about the Export Markets;

(c) Information on costs specific to selling to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

(d) Information about U.S. and foreign legislation and regulations affecting sales to Export Markets;

(e) Information about price, quality, quantity, source, and delivery dates of Products available from Members and Suppliers for export; and

(f) Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by the NDETC, its Members, and/or Suppliers.

(7) Enter into exclusive or nonexclusive agreements with Export Intermediaries to act for the NDETC and its Members and Suppliers, whereby each Export Intermediary agrees not to represent the NDETC's competitors in the sale of Products in any Export Market and not to buy any Products from any of the NDETC's competitors for resale in any Export Market.

(8) Enter into exclusive or nonexclusive agreements with foreign customers, whereby each customer agrees not to purchase Products from the NDETC's competitors.

(9) Act as an Export Intermediary for individual Suppliers and enter into exclusive or nonexclusive agreements with Suppliers, international banks, and other Export Intermediaries, for the provision of Export Trade Facilitation Services.

(10) Enter into discussions and negotiations and make agreements with Members or with an individual Supplier regarding the price at which the NDETC determines the Member or Supplier will sell exported Products to a foreign buyer.

(11) Enter into exclusive or non-exclusive agreements with Members and Suppliers, whereby the Member and Supplier agrees not to sell a specified product for export to the NDETC's competitors.

(12) Limit eligibility to participate as a shareholder in the NDETC to businesses operating in North Dakota and to North Dakota residents.

(13) Enter into joint ventures with and to purchase Products from individual Members and Suppliers that meet quality, quantity, and price specifications for transactions. When taking title to Products, the NDETC will engage in price, quantity, quality, and other negotiations directly with the foreign buyer.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: August 17, 1988.

John D. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-18999 Filed 8-19-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Salmon Plan Team will convene a public meeting on August 25, 1988, at 9 a.m., at the National Marine Fisheries Service, Alaska Regional Office, 709 West 9th Street, Juneau, AK, to review an updated draft of the High Seas Salmon Fishery Management Plan. The public meeting will adjourn on August 26, 1988.

For further information contact Denby Lloyd, Plan Coordinator, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: August 17, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18971 Filed 8-19-88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Notice of Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Date and Time: Wednesday, August 31, 1988; Beginning 10:00 a.m.

Place: South Auditorium, Henry Jackson Federal Building, 915 2nd Avenue, Seattle, Washington.

Type of Meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: Commissioners Edward E. Carlson and Shannon J. Wall will receive and consider statements of individuals and groups in Washington and neighboring states about the problems and prospects of the nation's maritime industries, particularly the merchant marine and shipbuilding industries. In particular, Mr. Carlson and Mr. Wall desire reactions to the Commission's first two reports and its recommendations, views about the contributions of the maritime industries to the national security, and suggestions for actions that would help to address current and projected shortages of merchant marine and shipyard capability to meet defense requirements. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing or by telephone by August 26, 1988, and are requested to provide two copies of their written statements to the Commission and to have copies available for the press. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions. Questions about the nature and content of testimony, scheduling, and related matters should be directed to Captain Wayne I. Humphreys, USN, the Commission's Chief of Staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be delivered to the Commissioners at the public hearing or received at the Commission's office by the close of business on September 1, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. Submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-18995 Filed 8-19-88; 8:45 am]

BILLING CODE 3820-01-M

Notice of Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Date and Time: Thursday, July 23, 1988; Beginning 10:00 a.m.

Place: Walter E. Hoffman Court House Building, 600 Granby Street, Norfolk, Virginia.

Type of Meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: Commissioner James L. Holloway, III (Admiral, USN, Ret.), will receive and consider statements of individuals and groups in Washington and neighboring states about the problems and prospects of the nation's maritime industries, particularly the merchant marine and shipbuilding industries. In particular, Admiral Holloway desires reactions to the Commission's first two reports and its recommendations, views about the contributions of the maritime industries to the national security, and suggestions for actions that would help to address current and projected shortages of merchant marine and shipyard capability to meet defense requirements. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing or by telephone by August 19, 1988, and are requested to provide two copies of their written statements to the Commission and to have copies available for the press. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions. Questions about the nature and content of testimony, scheduling, and related matters should be directed to Captain Wayne I. Humphreys, USN, the Commission's Chief of Staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be delivered to Admiral Holloway at the public hearing or received at the Commission's office by the close of business on August 24, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. Submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-18996 Filed 8-19-88; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: September 12-13, 1988.

Time of Meetings: 0800-1700 hours, each day.

Place: TITAN, San Diego, California.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet for the purpose of refining the final draft of their report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-18941 Filed 8-19-88; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Implementation of OMB Circular A-125, "Prompt Payment, Attachment 2" and Other Revisions to Circular

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: The Defense Logistics Agency (DLA) announces the decision to phase out the use of fast pay procedures for routing stateside depot shipments in order to complete the Agency implementation of OMB Circular A-125, Attachment 2. Therefore, as of December 31, 1988, DLA will cease to issue contracts with fast pay provisions where the first destination is a stateside depot.

EFFECTIVE DATE: December 31, 1988.

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FOR FURTHER INFORMATION CONTACT: James C. O'Laughlin, Accounting and Finance Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria Virginia, 22304–6100: (202) 274–6224.

SUPPLEMENTARY INFORMATION: Since 1982, the DoD Inspector General and the General Accounting Office (GAO) continued to highlight shortcomings in ensuring receipts of material under expedited payment methods. Subsequently, OMB revised the fast pay procedures and issued Attachment 2, to OMB Circular A–125 in April 1985. The revised circular limits the use of "fast pay" procedures to unusual circumstances, and eliminates fast pay use for delivery of depot stocks and other instances where timely payment can be made because receipt and acceptance is routinely communicated to the purchasing activity.

In February 1988, the GAO issued report NSIAD–88–113, "INTERNAL CONTROLS: Controls Over Expedited Payments to Defense Suppliers Need Improvement". The report concluded that DLA had not implemented Attachment 2 to OMB Circular A–125.

Although the regulatory change for fast pay is effective on August 19 1988, DLA will not implement until December 31, 1988 because of the required revisions to computer systems and internal procedures.

For the Director:

Charles R. Coffee,

Acting Chief, Accounting and Finance Division, Office of Comptroller.

[FR Doc. 88–18912 Filed 8–19–88; 8:45 am]

BILLING CODE 3820–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88–45–006]

Arkla Energy Resources; Compliance Filing

August 17, 1988.

Take notice that on August 10, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., filed as part of its FERC Gas Tariff, the following tariff sheets, proposed to be effective July 1, 1988:

First Revised Volume No. 1

Third Substitute 47th Revised Sheet No. 4
Original Sheet No. 4C

Original Volume No. 1–A

Second Substitute Fifth Revised Sheet No. 5
Second Substitute Fifth Revised Sheet No. 6
Second Substitute Fifth Revised Sheet No. 7
Original Sheet No. 9
Original Sheet No. 9A
Original Sheet No. 9B
Original Sheet No. 9C
Original Sheet No. 9D
Original Sheet No. 9E

Original Volume No. 3

Third Substitute 46th Revised Sheet No. 185
Original Sheet No. 186B
First Substitute Original Sheet No. 185.1

AER states that its filing is in compliance with the Commission's suspension order of January 2, 1988, its order on rehearing of May 20, 1988 and its order of July 18, 1988 rejecting AER's earlier compliance filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19002 Filed 8–19–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–187–003]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 17, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 12, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

To Be Effective June 4, 1988

Second Substitute Twelfth Revised Sheet No. 16B.
Second Substitute Second Revised Sheet No. 16B1.
Second Substitute Second Revised Sheet No. 16B2.

To Be Effective July 29, 1988

Substitute Thirteenth Revised Sheet No. 16B.
Substitute Third Revised Sheet No. 16B1.
Substitute Third Revised Sheet No. 16B2.

Columbia states that the foregoing tariff sheets relate to Columbia's July 28, 1988 filing, in which it revised its initial filing in this docket pursuant to the Federal Energy Regulatory Commission's July 1, 1988 Order and supplemented the initial filing to permit Columbia to flow through additional take-or-pay and contract reformation costs to be billed to it by certain of its pipeline suppliers.

Columbia states that its July 28, 1988 filing allocated the subject pipeline supplier take-or-pay and contract reformation costs among Columbia's customers on the basis of cumulative purchase deficiencies. Since the date of that filing, Columbia states that it has determined that the average base and deficiency period volumes reflected therein for certain Columbia customers were incorrect due to inadvertent clerical errors. Specifically, the errors consist of a computer input error for volumes applicable to Dayton Power and Light Co. and Orange & Rockland Utilities, Inc. relating only to Transcontinental Gas Pipe LineCorporation flow through calculations. Such error affects the above indicated tariff sheets to the extent that those sheets reflect allocation of Fixed Monthly Demand Surcharges from Transco to Columbia.

Columbia states these tariff sheets with the instant filing reflect the revised allocation factors and Fixed Monthly Demand Surcharges resulting from the adjustments to the average base and deficiency period volumes. Upon acceptance of this filing, Columbia states that it will adjust the prior billings to its customers to reflect the revised allocation factors and Fixed Monthly Demand Surcharges.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88–187–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing

are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18935 Filed 8-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-207-002 and RP87-55-007]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Traiff

August 17, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 12, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 16B3.
Substitute Original Sheet No. 16B4.
Substitute Original Sheet No. 16B5.
Substitute Fourth Revised Sheet No. 46E.
Substitute Original Sheet No. 68D.
Substitute Original Sheet No. 68E.
Original Sheet No. 68F.

Columbia states that the foregoing traiff sheets relate to Columbia's July 1, 1988 filing in Docket No. RP88-207-000, et al., in which Columbia established procedures pursuant to Order No. 50 to recover from its customers the take-or-pay and contract reformation costs paid by Columbia to reform certain of its gas purchase contracts with Southwest producers. Specifically, Columbia proposes to:

(A) Revise section 26 of the General Terms and Conditions of Columbia's FERC Gas Tariff, Original Volume No. 1, pursuant to Ordering Paragraph (E) of the Federal Energy Regulatory Commission's July 29, 1988 Order in Docket No. RP88-207, et al. to clarify that the proposed volumetric surcharge for each year of the five-year amortization period reflects one-fifth of the amount allocated for volumetric surcharge recovery, plus levelized interest, divided by the volumetric determinants underlying Columbia's then-effective rates. The revised language clarifies that Columbia will not reflect any under-recoveries or over-recoveries from the prior year's amortization in any revised annual volumetric surcharge calculation; and

(B) Revise tariff sheets to reflect corrections of certain inadvertant clerical errors in certain base and deficiency period volumes reflected for Columbia's customers in the July 1, 1988 filing. The tariff sheets submitted with the instant filing reflect the revised allocation factors and Fixed Monthly Demand Surcharges resulting from the adjustments to the base and deficiency period volumes.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88-207, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18934 Filed 8-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-387-000]

Consolidated Edison Co. of New York, Inc.; Filing

August 17, 1988.

Take notice that on July 5, 1988, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing additional exhibits relating to the filing, as an initial rate schedule, of an agreement to sell capacity to Long Island Lighting Company (LILCO). The agreement provides for a capacity charge of $75.00 per megawatt per day for 250 megawatts and an energy charge based upon incremental costs of generation.

Con Edison has heretofore requested waiver of the notice requirements of Section 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of April 28, 1988.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18936 Filed 8-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-193-003]

Midwestern Gas Transmission Co.; Tariff Filing

August 17, 1988.

Take notice that on August 15, 1988, Midwestern Gas Transmission Company (Midwestern) hereby files ten copies of the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1988:

Fifteenth Revised Sheet No. 7
Second Revised Sheet No. 192

Midwestern states that this filing complies with the July 15, 1988, Commission Order in Docket No. RP88-193. Midwestern has filed Fifteenth Revised Sheet No. 7 and Second Revised Sheet No. 192 to reflect a thirty-six month amortization period consistent with Midwestern's election of a thirty-six month amortization period of Tennessee's Take-or-Pay Demand Surcharge.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19003 Filed 8-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-34-004]

Northwest Alaskan Pipeline Co.; Petition For Clarification of Settlement

August 17, 1988.

Take notice that on August 8, 1988, United Gas Pipe Line Company (United) filed a petition for clarification of (1) certain terms of a settlement agreement (settlement), specifically, section 10 of the Twentieth Amending Contract and section 10 of the Tenth Amendment and (2) the Commission's orders issued February 26 and June 16, 1987 approving such settlement (38 FERC ¶ 61,214 and 39 FERC ¶ 61,302 (1987)). United states that the settlement relates to sales of Canadian gas by Pan-Alberta Gas Ltd. (Pan-Alberta) to Northwest Alaskan Pipeline Company (Northwest Alaskan), the resale of said gas by Northwest Alaskan to United, and the related provisions in Northwest Alaskan's tariff.

United requests that the Commission clarify whether the settlement and its orders accepting the settlement provide Pan-Alberta with the exclusive option during the term of the settlement to assume or assign United's purchase and capacity rights so as to foreclose United from also undertaking efforts to arrange a reasonable disposition of such rights to a third party. United states that clarification that Pan-Alberta does not have such exclusive rights would ensure that the settlement operates in a manner which is just and reasonable and in the public interest.

Any pesons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18938 Filed 8-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-206-001]

Tarpon Transmission Co., Tariff Filing

August 17, 1988.

Take notice that on August 11, 1988, Tarpon Transmission Company ("Tarpon") tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Substitute Original Sheet No. 2A.
First Revised Sheet No. 2B.
Second Revised Sheet No. 35.
Second Revised Sheet No. 36.
Second Revised Sheet No. 50.
Second Revised Sheet No. 51.
First Revised Sheet No. 96A.

Tarpon states that the purpose of its tariff filing is to reinstate the one-part maximum and minimum comodity rates for Part 284 firm transportation service previously accepted by the Commission in lieu of the capacity reservation charge proposed by Tarpon on June 30, 1988, and effectively rejected by the Commission. Tarpon requests an effective date of July 1, 1988.

Tarpon states that copies of the filing were served upon all parties in Docket No. RP88-206-000.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceeding. Any person desiring to become a party must file a Motion to Intervene. Copies of their filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18937 Filed 8-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-170-001]

Western Gas Interstate Co.; Filing of Corrected Tariff Sheets

August 17, 1988.

Take notice that Western Gas Interstate Company ("Western"), on August 12, 1988, tendered for filing certain changes to tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1.

Western states that tariff sheets reflect: (1) Corrections that are in compliance with the Commission's Order of July 8, 1988 in this proceeding regarding provisions to Western's new Purchased Gas Adjustment Clause provisions to the General Terms and Conditions of FERC Gas Tariff, First Revised Volume No. 1 filed in compliance with the Commission's Order No. 483; and (2) corrections to minor typographic errors.

Copies of Western's filing were served on its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 24, 1988. Protests will be considered by the Commission in determining the apprpriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18939 Filed 8-19-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals; Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $715,420.48 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with MCO Holdings Inc. and its

wholly owned subsidiary, McCulloch Gas Processing Corporation. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration

DATE AND ADDRESS: Application for Refund from this consent order fund must be filed in duplicate and must be received by November 21, 1988. All applications should refer to Case Number KEF-0108 and should be addressed to: MGPC Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision related to a consent order entered into by the DOE and MCO Holdings Inc. (MCO) and its wholly-owned subsidiary, McCulloch Gas Processing Corporation (MGPC), which settles all matters regarding the firms' compliance with the Federal Petroleum Price and Allocation Regulations in its sales of natural gas liquids, natural gas liquid products and crude oil condensate during the period January 1, 1973, through the relevant decontrol date for each product (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the MGPC consent order fund was issued on June 8, 1988. 53 FR 22723 (June 17, 1988).

The Decision sets forth procedures and standards which the Office of Hearings and Appeals (OHA) of the DOE has formulated to distribute the MCO/MGPC consent order fund. The OHA has decided to accept Applications for Refund from firms and individuals that purchased natural gas liquids and natural gas liquid products sold by MCO/MGPC during the consent order period. Each claimant will be required to submit a schedule of its monthly purchases from MCO/MGPC. In addition, a reseller claimant, except for a firm that uses one of the presumptions of injury set forth in the Decision, will be required to make a detailed showing that it was injured by the firms' alleged overcharges. The specific information required in an Application for Refund is set forth in the following Decision and Order. Applications for Refund will now be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Date: August 16, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Name of Firm: MCO Holdings, Inc., MGPC, Inc.

Date of Filing: March 25, 1988.

Case Number: KEF–0108.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on March 25, 1988. In the Petition, the ERA requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a consent order between the DOE and MCO Holdings, Inc., and its wholly owned subsidiary MGPC, Inc., formerly McCulloch Gas Processing Corporation (collectively referred to hereinafter as MGPC).

I. Background

MGPC was a refiner and natural gas processor which produced and sold natural gas liquids (NGLs), natural gas liquid products (NGLPs), and crude oil condensate. On the basis of an audit of the firm's pricing practices, the ERA alleged that MGPC overcharged its customers in sales of NGLs, NGLPs, and crude oil condensate.

Subsequently, the DOE and MGPC entered into a consent order which settled all issues pertaining to MGPC's operations during the period January 1, 1973 through January 28, 1981 (the consent order period). Under the terms of the consent order, MGPC remitted $715,420.48 to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained by the Department of the Treasury pending a determination regarding their proper distribution.

On June 8, 1988, the OHA issued a Proposed Decision and Order (PD&O) which tentatively set forth procedures for the disbursement of the MGPC consent order fund. 53 FR 22723 (June 17, 1988). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of MGPC's pricing practices during the January 1, 1973 through January 28, 1981 consent order period. A copy of the PD&O was published in the **Federal Register** on June 17, 1988, and comments were solicited regarding the proposed refund procedures. We have received no comments regarding those procedures. This Decision sets forth final procedures for the distribution of the MGPC consent order funds.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement,* 9 DOE ¶ 82,553 (1982); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the MGPC consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Final Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those refund procedures should be adopted.

A. Consent Order Fund

The consent order fund will be distributed to customers of MGPC who were adversely affected by the firm's alleged overcharges. While the consent order states that it settles, *inter alia,* an enforcement proceeding involving MGPC's sales of crude oil condensate, for the following reasons the entire consent order amount will be made available for distribution to eligible MGPC, NGL, and NGLP purchasers. In the crude oil proceeding, a Remedial Order was issued to MGPC on February 16, 1983 in which the DOE found that the firm overcharged its customers by $124,310.81 in sales of crude oil

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condensate.[1] See MGPC, Inc., 10 DOE ¶ 83,021 at 86,211 (1983). However, that Remedial Order was appealed to the Federal Energy Regulatory Commission, which vacated the Remedial Order and remanded the case to the OHA for further consideration. *See MGPC, Inc.*, 32 FERC ¶ 61,443 (1985). During the period subsequent to the remand and prior to the finalization of the consent order, no further action was taken by either party in that proceeding. Although the consent order does not state how the settlement amount was arrived at, according to the ERA, MGPC's alleged violations in sales of crude oil condensate were not taken into consideration in the negotiation of that amount. *See* Memorandum of April 12, 1988 telephone conversation between Jeffrey Whieldon, ERA staff attorney, and Chris Ashley, OHA staff analyst. Therefore, despite the fact that the remanded crude oil proceeding, Case No. KCK–0005, was resolved by the consent order, the consent order amount is based solely upon MGPC's alleged violations in sales of NGLs and NGLPs. We therefore make the entire consent order fund available to eligible MGPC, NGL, and NGLP purchasers.

B. Eligibility for Refunds

We will accept refund applications from purchasers of MGPC, NGLs, and NGLPs who can show that they were injured as a result of MGPCs pricing practices. The Appendix to this Decision lists the firms who were indentified in the ERA audit file as purchasers of MGPC, NGLs, and NGLPs during the period August 1973 through March 1975 (the audit period). Based upon this audit information, we expect that most eligible refund claimants will be resellers (including retailers and refiners) of MGPC, NGLs, and NGLPs. However, because the audit file does not contain an exhaustive list of all of MGPC's transactions and because the consent order period is much longer than the audit period, we will accept refund applications from any MGPC customer, including end-users (ultimate consumers) and regulated entities, who can show that it was injured as a result of MGPC's pricing practices.

In order to be eligible for a refund, each claimant will be required to submit a monthly schedule of its purchases of MGPC, NGLs, and NGLPs during the period June 13, 1973 through the relevant decontrol date for each product.[2] If the product was not purchased directly from MGPC, the claimant must explain why it believes that the product originated with MGPC.

In addition, a reseller claimant, except a firm that uses one of the two reseller presumptions of injury set forth below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, the claimant will be required to show that it maintained "banks" of unrecouped increased product costs in excess of the refund claimed. Second, because a showing of banks alone is not sufficient to establish injury, the claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from MGPC. *id.*

1. *End-users.* As in many other refund proceedings, we will adopt the presumption that end-users or ultimate consumers of MGPC, NGLs, and NGLPs whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges covered by the consent order. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983). Therefore end-users of MGPC, NGLs, and NGLPs need only document their purchase volumes from MGPC during the regulatory period to make a sufficient showing that they were injured by the alleged overcharges.

2. *Regulated Firms.* In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a government agency, e.g., a public utility, or by the terms of a cooperative agreement, needs only to submit documentation of purchase volumes used by itself, or in the case of a cooperative, sold to its members. However, a regulated firm or cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. *See Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). This latter requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refund received would be passed through to its customers. With respect to a cooperative, in general, the applicable cooperative agreement would ensure that the alleged overcharges and similarly, refunds would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.

3. *Applicants Seeking Refunds of $5,000 or Less.* We will adopt a presumption that a firm who resold MGPC, NGLs, and NGLPs and requests a refund of $5,000 or less was injured by the alleged overcharges. Making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of product from MGPC. For example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove the existence of banked costs, or that they did not pass through the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. Therefore, any reseller claiming a refund of $5,000 or less need only document its purchase volumes in order to be eligible to receive a refund.

4. **Medium-Range Claimants.** In lieu of making a detailed showing of injury, a reseller claimant whose allocable share

[1] Crude oil condensate, a group of heavy hydrocarbons separable from a wet natural gas stream, was treated as crude oil under the DOE price regulations. *See* Ruling 1975–18, 2 Fed. Energy Guidelines ¶ 16,058 at 16,057.

[2] Applicants are only eligible to receive refunds based upon NGLs and NGLPs purchased during the period in which each product was subject to federal price controls. Therefore, an applicant will not be eligible to receive a refund based upon butane and natural gasoline purchased after December 31, 1979, or ethane purchased after March 31, 1974. *See Gulf Oil Corp./E.I. du Pont de Nemours*, 14 DOE ¶ 85,027 (1986). In addition, although the consent order period begins January 1, 1973, the relevant period for the determination of refunds begins June 13, 1973, the effective date of the Cost of Living Council Freeze Regulations, 28 FR 15788 (June 15, 1973).

of the consent order fund exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 60 percent of its allocable share up to $50,000. The use of this presumption reflects our conviction that these claimants were likely to have experienced some injury as a result of the alleged overcharges. In other cases involving NGLs and NGLPs, we have determined that a 60 percent presumption for medium-range purchasers of those products accurately reflected the amount of their injury as a result of those purchasers. *See Sauvage Gas Co.*, 17 DOE ¶ 85,304 (1988); *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987). For the reasons set forth in those Decisions, we have established a 60 percent presumptive level of injury for medium-range claimants in this proceeding. Consequently, a claimant in this group will only be required to provide documentation of its purchase volumes of MGPC, NGLs, and NGLPs in order to be eligible to receive a refund of 60 percent of its total volumetric share.

5. *Spot Purchasers.* We also will adopt the rebuttable presumption that resellers which made only spot purchases of MGPC products, even those claiming refunds below the small claims threshold, were not injured by the alleged overcharges. Spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot purchases of MGPC product at increased prices unless they were able to pass though the full amount of the overcharges to their own customers. *See Vickers*, 8 DOE at 88,396–7. Accordingly, any spot purchaser claimant must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured by the spot purchase(s).[3]

C. Calculation of Refund Amounts

We will use a volumetric method to apportion the MGPC escrow account. This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of NGLs and NGLPs sold by MGPC during the regulatory period. Use of this presumption promotes efficiency, both for the applicants preparing claims and for the agency, and, in the absence of better information, it is reasonable because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[4]

Under the volumetric approach, a claimant will be eligible to receive a refund equal to the number of gallons of MGPC, NGLs, and NGLPs that it purchased during the period June 13, 1973 through the appropriate date of decontrol of each product multiplied by $0.00133, the per gallon volumetric refund amount for this proceeding. We derived this figure by dividing the $715,420.48 received from MGPC by the total volume of NGLs and NGLPs sold by the firm during the regulatory period.[5] In addition, a portion of the interest which has accrued on the consent order fund since its remittance to the DOE will be added to the refund of each successful claimant in proportion to the size of its refund.

As in previous cases, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims of $15 or less outweights the benefits of restitution in those situations. *See Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

IV. Distribution of Funds Remaining after Consideration of All Refund Applications

Any funds that remain after all refund applications have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986 (PODRA), 15 U.S.C.A. 4501–4507. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA section 4502(c) and (d). The Secretary has delegated these responsibilities to the OHA, and any funds in the MGPC consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured MGPC customers will be distributed in accordance with the provisions of PODRA.

V. Applications For Refund

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the MGPC consent order fund. Accordingly, we will now accept Applications for Refund from purchasers of NGLs and NGLPs from MGPC between June 13, 1973 through the applicable decontrol date. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included on all Applications for Refund:

(1) A conspicuous reference to "MGPC Refund Proceeding—Case No. KEF–0108" and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the refund check should be sent.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The manner in which the applicant used the MGPC product, e.g., whether the applicant was a refiner, wholesaler, reseller, retailer or ultimate consumer.

(4) Monthly schedules of the applicant's purchases of each NGL or NGLP that it purchased from MGPC from June 13, 1973 through the date of decontrol of that product (see footnote 2). The applicant must indicate the source of this volume information and, if estimates were used, the estimation method must be explained.

(5) The applicant must state whether it was supplied directly or indirectly by MGPC. If the applicant was an indirect purchaser, it must submit the name and address of its immediate supplier and indicate why it believes that the covered product originated from MGPC.

(6) If the applicant is a reseller or retailer whose allocable share exceeds $5,000, it must indicate whether it elects to receive as its refund the larger of $5,000 or 60 percent of its allocable share up to $50,000. If it does not elect to use the presumptions, it must submit a detailed showing that it was injured by the alleged overcharges.

(7) A statement whether the applicant, or a related firm has filed, or authorized an individual to file on its behalf any other refund application in the MGPC

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[3] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases; and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

[4] Because we realize that the impact on an individual claimant may have been greater than its full volumetric share, a claimant may submit evidence detailing the specific overcharge that it allegedly incurred in order to be eligible for a large refund. *See Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[5] Based upon the information contained in the MGPC audit file, we estimate that the firm sold approximately 536 million gallons of NGLs and NGLPs in the period during which each of those products was controlled. We arrived at this estimate by extrapolating detailed sales volume information compiled by the ERA during its audit of MGPC. Accounding to MGPC, the firm's sales volumes during the audit period are representative of the firms's sales volumes throughout the entire consent order period.

proceeding, and if so, an explanation of the circumstances surrounding the filing or authorization.

(8) If the applicant is, or was entirely or partly owned by MCO Holdings, or its entirely owned subsidiary, MGPC, it must explain the nature of the affiliation.

(9) If the applicant has been involved in an enforcement proceeding brought by DOE or private action under section 210 of the Economic Stabilization Act of 1970, it should describe the action and its current status. If the applicant is party to any such action that is no longer pending, it should indicate how that action was resolved. The applicant must keep the OHA informed of any change in status during the pendency of its Application for Refund.

The Application should also contain the following statement signed by the individual applicant or a responsible official of the business or organization applying for a refund:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both pursuant to 18 U.S.C. 1001. I understand that the information contained in this entire application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA public reference room.

All Applications should be sent to: MGPC Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All Applications must be filed in duplicate and postmarked no later than 90 days after the publication of this Decision and Order in the **Federal Register**. Any applicant who believes its Application contains confidential information must so indicate on the first page of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by MGPC pursuant to the Consent Order finalized on September 11, 1986, may now be filed.

(2) All Applications must be filed no later than 90 days after the publication of this Decision and Order in the **Federal Register**.

Date: August 16, 1988.

George Breznay,

Director, Office of Hearings and Appeals.

Appendix—Identified Purchasers of MGPC NGLs and NGLPs

Arrow Gas Service, P.O. Box 530, Upton, WY 82701

Atlantic Richfield Company, Attn: Michael B. Green, Legal, P.O. Box 2679–T.A., Los Angeles, CA 90051

Black Hills Oil Marketers, Eighty-eight Oil Co., Attn: Dwain Park, P.O. Drawer 2360, Casper, WY 82602

Butane Power & Equipment Co., Attn: John Edmonson, P.O. Box 2639, Casper, WY 82602

Cal Gas, UGI, Attn: Robert Knauss, Box 858, Valley Forge, PA 19482

Conoco, Inc., Attn: Janet S. Nelson, Legal Dept., P.O. Box 2197

Farmers Union Central Exchange, Inc., Attn: Robert E. Plett, Washington Office, 1745 Jefferson Davis Hwy., Suite 404, Arlington, VA 22202

Fuel Distributors, Inc., P.O. Box 6117, Temple, TX 76503–6117

McPherson Propane, P.O. Box 126, Sturgis, SD 57785

Murphy Oil Co., Inc., Highway 99, P.O. Box 145, Olpe, KS 66865

Montana-Dakota Utilities Co., MDU Resources Group, Inc., Attn: Lester H. Lowle II, 400 N. Fourth St., Bismark, ND 58501

Petrolane, Inc., Petrolane Gas Services, Inc., Attn: E.R. Milligan, P.O. Box 1410, Long Beach, CA 90801

[FR Doc. 88–19004 Filed 8–19–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59262A; FRL–3432–6]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–88–15. The test marketing conditions are described below.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202–382–7800).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–88–15. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–88–15:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be dermally exposed to the substance shall use:

a. Gloves determined by the Company to be impervious to the substance under the conditions of exposure, including the duration of exposure. The Company shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the PMN substance and associated chemical substances;

b. Clothing which covers any other exposed areas of the arms, legs, and torso; and

c. Chemical safety goggles or equivalent eye protection.

3. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement: WARNING: Contact with skin may be harmful. Chemicals similar in structure to (insert appropriate name) have been found to cause liver toxicity, kidney toxicity, and neurotoxicity. To protect yourself, you must wear protective gloves, clothing, and goggles.

4. The applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the labels affixed to containers of the substance or formulations containing the substance.

d. Copies of the bill of lading that accompanies each shipment of the substance.

e. Copies of any determination under paragraph 2.a. above that the protective gloves used by the Company are impervious to the substance.

T-88-15

Date of Receipt: July 1, 1988.

Notice of Receipt: August 2, 1988 (53 FR 29088).

Applicant: R.T. Vanderbilt Company, Inc.

Chemical: (G) Tolutriazole compound.

Use: Antioxidant for hydraulic oil system.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year, commencing on first day of manufacture.

Risk Assessment: EPA identified concerns for liver toxicity, kidney toxicity, neurotoxicity, severe skin irritation, mild eye irritation, and chronic toxicity based on an analogous chemical substance. However, during manufacturing, processing, and use, inhalation exposure to workers is not expected and dermal exposure to workers will be prevented by protective gloves, clothing, and goggles. Therefore, the test market substance will not present any unreasonable risk of injury to health. EPA identified no significant environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 12, 1988.

Wendy Cleland-Hamnett,

Deputy Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 88-18954 Filed 8-19-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51710; FRL-3433-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of one hundred five such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1159, 88-1160, July 8, 1988.

P 88-1616, September 24, 1988.

P 88-1617, September 25, 1988.

P 88-1618, 88-1619, 88-1620, 88-1621, 88-1622, 88-1623, September 24, 1988.

P 88-1624, 88-1625, 88-1626, 88-1627, 88-1628, 88-1629, 88-1630, 88-1631, 88-1632, September 25, 1988.

P 88-1633, September 17, 1988.

P 88-1634, 88-1635, 88-1636, September 26, 1988.

P 88-1637, 88-1638, 88-1639, 88-1640, 88-1641, September 28, 1988.

P 88-1642, 88-1643, 88-1645, 88-1646, 88-1647, 88-1648, 88-1649, 88-1650, 88-1651, October 2, 1988.

P 88-1652, 88-1653, 88-1654, October 3, 1988.

P 88-1656, 88-1657, 88-1658, 88-1659, 88-1660, October 4, 1988.

P 88-1661, 88-1662, 88-1663, 88-1664, 88-1665, 88-1666, 88-1667, 88-1668, 88-1669, 88-1670, 88-1671, October 5, 1988.

P 88-1672, 88-1673, October 8, 1988.

P 88-1674, October 9, 1988.

P 88-1675, October 10, 1988.

P 88-1676, 88-1677, 88-1678, 88-1679, 88-1680, 88-1681, 88-1682, 88-1683, 88-1684, 88-1685, October 9, 1988.

P 88-1686, 88-1687, October 10, 1988.

P 88-1688, October 16, 1988.

P 88-1689, 88-1690, 88-1691, 88-1692, 88-1693, October 10, 1988.

P 88-1694, 88-1695, 88-1696, October 11, 1988.

P 88-1697, 88-1698, October 12, 1988.

P 88-1699, October 15, 1988.

P 88-1700, 88-1701, 88-1702, 88-1703, 88-1704, October 16, 1988.

P 88-1705, October 17, 1988.

P 88-1706, 88-1707, 88-1708, 88-1709, 88-1710, 88-1711, October 16, 1988.

P 88-1712, 88-1713, October 18, 1988.

P 88-1714, 88-1715, 88-1716, 88-1717, October 19, 1988.

P 88-1718, October 22, 1988.

P 88-1719, October 19, 1988.

P 88-1720, October 22, 1988.

Written comments by:

P 88-1159, 88-1160, June 6, 1988.

P 88-1616, August 25, 1988.

P 88-1617, August 26, 1988.

P 88-1618, 88-1619, 88-1620, 88-1621, 88-1622, 88-1623, August 25, 1988.

P 88-1624, 88-1625, 88-1626, 88-1627, 88-1628, 88-1629, 88-1630, 88-1631, 88-1632, August 26, 1988.

P 88-1633, August 18, 1988.

P 88-1634, 88-1635, 88-1636, August 27, 1988.

P 88-1637, 88-1638, 88-1639, 88-1640, 88-1641, August 29, 1988.

P 88-1642, 88-1643, 88-1645, 88-1646, 88-1647, 88-1648, 88-1649, 88-1650, 88-1651, September 2, 1988.

P 88-1652, 88-1653, 88-1654, September 3, 1988.

P 88-1656, 88-1657, 88-1658, 88-1659, 88-1660, September 4, 1988.

P 88-1661, 88-1662, 88-1663, 88-1664, 88-1665, 88-1666, 88-1667, 88-1668, 88-1669, 88-1670, 88-1671, September 5, 1988.

P 88-1672, 88-1673, September 8, 1988.

P 88-1674, September 9, 1988.

P 88-1675, September 10, 1988.

P 88-1676, 88-1677, 88-1678, 88-1679, 88-1680, 88-1681, 88-1682, 88-1683, 88-1684, 88-1685, September 9, 1988.

P 88-1686, 88-1687, September 10, 1988.

P 88-1688, September 16, 1988.

P 88-1689, 88-1690, 88-1691, 88-1692, 88-1693, September 10, 1988.

P 88-1694, 88-1695, 88-1696, September 11, 1988.

P 88-1697, 88-1698, September 12, 1988.

P 88-1699, September 15, 1988.

P 88-1700, 88-1701, 88-1702, 88-1703, 88-1704, September 16, 1988.

P 88-1705, September 17, 1988.

P 88-1706, 88-1707, 88-1708, 88-1709, 88-1710, 88-1711, September 16, 1988.

P 88–1712, 88–1713, September 18, 1988.

P 88–1714, 88–1715, 88–1716, 88–1717, September 10, 1988.

P 88–1718, September 22, 1988.

P 88–1719, September 19, 1988.

P 88–1720, September 22, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS–51710)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88–1159

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyurethane thermoplastic resin.

Use/Production. (S) Molding of plastic articles. Prod. range: Confidential.

P 88–1160

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyurethane thermoplastic resin.

Use/Production. (S) Molding of plastic articles. Prod. range: Confidential.

P 88–1616

Manufacturer. Confidential.

Chemical. (G) Carboxylated novolak acrylate.

Use/Production. (G) Radiation-curable coatings. Prod. range: Confidential.

P 88–1617

Manufacturer. Arizona Chemical Company.

Chemical. (G) Terpene resin.

Use/Production. (G) Chewing gum base resin for additional use in adhesives. Prod. range: Confidential.

P 88–1618

Importer. Confidential.

Chemical. (G) Alkoxysilyl organotin compound.

Use/Import. (S) Hardening catalyst for industrial coatings. Import range: Confidential.

Toxicity Data. Skin irritation: strong species (Rabbit). Mutagenicity: negative.

P 88–1619

Importer. Confidential.

Chemical. (G) Alkoxysilyl organotin compound.

Use/Import. (S) Hardening catalyst for industrial coatings. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD 50>2,000 mg/kg species(Rat). Acute dermal doxicity: LD50>2 mg/kg species(Rabbit). Eye irritation: Slight species(Rabbit). Skin irritation: Slight species(Rabbit). Mutagenicity: negative.

P 88–1620

Importer. Confidential.

Chemical. (G) Silane coupling agent.

Use/Import. (S) Coupling agent for industrial coatings. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50>2,000 mg/kg species(Rabbit). Acute dermal toxicity: LD50>2ml/kg. Eye irritation: Slight species(Rabbit). Skin irritation: Slight species(Rabbit). Mutagenicity: negative.

P 88–1621

Importer. Confidential.

Chemical. (G) Silane coupling agent.

Use/Import. (S) Coupling agent for industrial coatings. Import range: Confidential.

Toxicity Data. Eye irritation: Strong species(Rabbit). Mutagenicity: negative.

P 88–1622

Importer. Confidential.

Chemical. (G) Silane coupling agent.

Use/Import. (S) Coupling agent for industrial coatings. Import range: Confidential.

Toxicity Data. Eye irritation: Strong species(Rabbit). Mutagenicity: negative.

P 88–1623

Manufacturer. Arizona Chemical Company.

Chemical. (G) Polyterpene resin.

Use/Production. (G) Resin for use in adhesives; open, nondispersive use nondispersive. Prod. range: Confidential.

P 88–1624

Manufacturer. Confidential.

Chemical. (G) Alkylheteromonocyclic derivatives of Dialkyl-dihalo-heteropolycyclicphenodioxazine.

Use/Production. (S) Paper dye intermediate used in further manufacture of dye. Prod. range: Confidential.

P 88–1625

Importer. Confidential.

Chemical. (G) Modified polyacrylic acid.

Use/Import. (S) Dispersant. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50>10,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–1626

Manufacturer. Lithium Corporation of America.

Chemical. (G) Compositions of methyllithium and dimethylmagnesium.

Use/Production. (S) Methylating agent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 1,400 mg/kg species (Rat). Acute dermal toxicity: LD50 12.3 ml/kg species (Rabbit). Inhalation toxicity: LC50 39,000 mg/m3 species (Rat). Skin irritation: moderate species (Rabbit).

P 88–1627

Manufacturer. Lithium Corporation of America.

Chemical. (G) Composition of lithium diisopropylamide and magnesium bis-diisopropylamide.

Use/Production. (S) Reagent for pharmaceutical & agricultural products synthesis. Prod. range: Confidential.

P 88–1628

Manufacturer. Confidential.

Chemical. (G) Di(substituted) alkyl hydrogen acid phosphite.

Use/Production. (G) Petroleum product additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50>2 g/kg species (Rat). Skin irritation: Slight species (Rabbit).

P 88–1629

Importer. Mitsubishi International Corporation.

Chemical. (S) Caster oil, hydrogenated, ethoxylated, trilaurate.

Use/Import. (S) Emulsifier of spinfinish for polyester filament yarn. Import range: 500–5,000 kg/yr.

P 88–1630

Importer. Confidential.

Chemical. (G) Acrylic silicon polymer.

Use/Import. (S) Raw material coatings. Import range: 500–1,000,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50>5,000 mg/kg species (Rat). Eye

irritation: Moderate species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 88–1631

Importer. Confidential.
Chemical. (G) Acrylic silicon polymer.
Use/Import. (S) Raw material coatings. Import range: 500–1,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50>5,000 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: Negative.

P 88–1632

Importer. Confidential.
Chemical. (G) Acrylic silicon polymer.
Use/Import. (S) Raw material coatings. Import range: 500–1,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50>5,000 mg/kg species (Rat). Eye irritation: Moderate species (Rabbit). Skin irritation: Slight species (Rabbit). Mutagenicity: Negative.

P 88–1633

Importer. Tonen Petrochemical Co., Ltd.
Chemical. (G) Isomeric mixture of diphenylbutanes.
Use/Import. (S) A dye solvent for carbonless copy paper. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>5,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Moderate species (Rabbit). Mutagenicity: Negative.

P 88–1634

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted malononitrile.
Use/Production. (G) Chemical intermediate. Prod. range: 9,000 kg/yr.

P 88–1635

Manufacturer. Eastman Kodak Company.
Chemical. (G) N-substituted benzenesulfonamide.
Use/Production. (G) Chemical intermediate. Prod. range: 14,000 kg/yr.
Toxicity Data. Eye irritation: Moderate species (Rabbit). Skin irritation: Slight species (guine pig).

P 88–1636

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aromatic/aliphatic polyurea polyamine.
Use/Production. (G) Elastomer additive. Prod. range: Confidential.

P 88–1637

Manufacturer. Confidential.
Chemical. (G) (heteropolycyclic)heteropolycyclicsulfonamide potassium salt.
Use/Production. (S) Organic synthesis intermediate. Prod. range: 1,000–3,000 kg/yr.

P 88–1638

Manufacturer. Confidential.
Chemical. (G) Di(heteropolycyclicsulfonamido)heteropolycyclic.
Use/Production. (G) Contained use in consumer product. Prod. range: 1,000–3,000 kg/yr.

P 88–1639

Manufacturer Confidiential.
Chemical. (G) (Heteropolycyclic)heteropolycyclicsulfonamide.
Use/Production. (s) Organic synthesis intermediate. Prod. range: 1,000–3,000 kg/yr.

P 88–1640

Importer. Confidential.
Chemical. (G) Heteropolycyclic sulfonamide.
Use/Import. (S) Organic synthesis intermediate. Import range: 1,000–2,000 kg/yr.

P 88–1641

Importer. Hitachie Chemical Company.
Chemical. (G) Tricyclodecyl methacrylate acrylic copolymer.
Use/Import. (S) Molding material for optical components. Import range: 900–9,000 kg/yr.
Toxicity Data. Mutagenicity: Negative.

P 88–1642

Manufacturer. 3M (the Mining and Manufacturing Company).
Chemical. (G) Perfluoroalkyl substituted acrylate polymer.
Use/Production. (G) Soil and stein repellent surface treatment. Prod. range: confidential.
Toxicity Data. Skin irritation: slight species (Rabbit). Mutagenicity: Negative. Skin sensitization: negative species (Guinea pig).

P 88–1643

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane.
Use/Import. (S) General laminating adhesive. Import range: Confidential.

P 88–1645

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyurethane thermoplastic resin.
Use/Production. (S) Extrusion and injection molding of plastic article for use in chemical processing and automotive ind. Prod. range: Confidential.

P 88–1646

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyurethane thermoplastic resin.
Use/Production. (S) Extrusion and injection molding of plastic article for use in processing and automative industries. Prod. range: Confidential.

P 88–1647

Manufacturer. Confidential.
Chemical. (G) Branched hydrocarbon.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 88–1648

Manufacturer. Confidential.
Chemical. (G) Branched hydrocarbon.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 88–1649

Manufacturer. Confidential.
Chemical. (G) Substituted phthalocyanine.
Use/Production. (G) Nondispersive use in a formulation. Prod. range: 800–2900 kg/yr.
Toxicity Data. Acute dermal toxicity: LD50 >2000 MG/KG species (Rat). Eye irritation: Modernate species (Rabbit). Skin irritation: Slight species (Rabbit).

P 88–1650

Manufacturer. Confidential.
Chemical. (G) Citric acid polyester, mono-, and triesters.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1651

Importer. Confidential.
Chemical. (G) Chromium, substituted hetermonocycle azo substituted phenol, substituted sulfohetermonocycle azo substituted phenol, salt, complex.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg species (Rat). Skin irritation: Negligible species (Rabbit). Skin sensitization: Negative species (Rabbit).

P 88–1652

Importer. Em Science.
Chemical. (G) (None; chemical identify is not being claimed as confidential).

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Use/Import. (S) An enzyme for isolation of high molecular weight nucleic acids. Import range: Confidential.
Toxicity Data. Skin irritation: Negligible species (Rabbit). Mutagenicity: Negative.

P 88–1653

Manufacturer. Confidential.
Chemical. (G) Phosphoric acids, partially esterfied, alkamine salts.
Use/Production. (S) Leather finishing. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >10 g/kg species (Rat).

P 88–1654

Manufacturer. Confidential.
Chemical. (G) Acid catalyzed reaction product of alkylidene bicycloalkene with alkyl alcohol.
Use/Production. (S) Site-limited intermediate for chemical production. Prod. range: Confidential.

P 88–1656

Importer. Confidential.
Chemical. (G) Polymer of: Aliphatic diisocyanate and a poly (oxyalkylene) polyal per submitter 7/7/88.
Use/Importer. (S) One component moisture-curing polyisocyanate for sealants. Import range: 250–2, 800 kg/yr.

P 88–1657

Importer. C. I. Specialty Chemicals, Inc.
Chemical. (G) Urethaner prepolymer (isophorone diisocyanate, hexamethylene carbonate diol, hydroxy pivalic acid neopentylgyl ester, hydroxy propyl acrylate).
Use/Import. (S) UV-curable varnish and adhesive.
Import range: 500–1,200 kg/yr.

P 88–1658

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate power coating curing agent.
Use/Production. (S) Power coating curing agent. Prod. range. Confidential.

P 88–1659

Manufacturer. Sybron Chemicals Inc.
Chemical. (G) Copolymer of aliphatic of 2-propenoic acid with homocyclic aromatic vinly compounds, reaction production with alphatic polyamine.
Use/Production. (G) Aqueous and non-aqueous waste and process water purification. Prod. range: Confidential.

P 88–1660

Importer. Mitsui and Co. (U.S.A.), Inc.
Chemcial. (G) Spiro (isobenzofuran–1 (3h) ,9'-(9h)-xathen)-3-one, 6'-(dibutylamino)-3'-methyl-2'-(phenylamino)-.
Use/Import. (S) Color precursor for heat sensitive paper. Import range: 25,000–100,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >10 g/kg species (Rat). Acute dermal toxicity; LD50 >10g/kg species (Rabbit). Eye irritation: None species (Rabbit). Skin irritation: Negligible species (<Rabbit). Mutagenicity: Negative. Skin sensitization: Negative species (Guinea pig).

P 88–1661

Manufacturer. Confidential.
Chemical. (G) Alkoxysilane terminated polyether polymer.
Use/Production. (S) Polymer for adhesives and sealants. Prod. Range: 200,000–750,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat).

P 88–1662

Importer. Confidential.
Chemical. (G) Fatty acids esters with glycol.
Use/Import. (S) Detegent for fine fabrics. Import range: Confidential.

P 88–1663

Importer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Acrylic lactone co-polymer.
Use/Import. (g) Open, nondispersive, Import range: Confidential.

P 88–1664

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemcial. (G) Substituted acetonitrile.
Use/Production. (S) Site-limited intermediate. Prod. Range: Confidential.
Toxicity Data. Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Rabbit). Mutagenicity: Negative.

P 88–1665

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Disubstituted heterocycle.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

P 88–1666

Manufacturer. E.I. du Pont de Nemours & Co., Inc
Chemcial. (G) Disubstituted heterocycle.
Use-Production. (S) Site-limited intermediate. Prod. range. Confidential.

P 88–1667

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Disubstituted heterocycle.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 88–1668

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Disubstituted heterocycle.
Use/Production. (G) Industrial intermediate. Prod. range: Confidential.
Toxicity Data. Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit). Mutagenicity: Negative.

P 88–1669

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemcial. (G) Disubstituted heterocycle-salt.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Eye irritation: strong species (Rabbit). Skin irritation: Moderate species (Rabbit). Mutagenicity: Negative.

P 88–1670

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Disubstituted 2,4-pentadienenitrile.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Eye irritation: strong species (Rabbit). Skin irritation: Slight species (Rabbit). Mutagenicity: Negative.

P 88–1671

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemcial. (G) Substituted acetonitrile.
Use/Production. (S) Site-limited intermediate. Prod range: Confidential.
Toxicity Data. Eye irritation: Moderate species (Rabbit). Skin irritation: Slight species (Rabbit). Mutagenicity: Negative.

P 88–1672

Manufacturer. Confidential.
Chemical. (G) Alkoxylated dialkyl-diethylene triamine, alkyl sulfate salt.
Use/Production. (S) Textile finishing agent. Prod. range: 13,500–45,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (Rat).

P 88–1673

Importer. Orient Chemcial Corporation.
Chemical. (G) Bis azo triarylmethane.
Use/Import. (S) Oil base ink. Import range: 1,000–3,000 kg/yr.

P 88–1674

Importer. Rembrandtin USA, Inc.
Chemical. (G) Water soluble phenol formaldehyde resin.
Use/Import. (S) Varnish intermediate for electrical. Import Range: Confidential.

P 88–1675

Importer. Rembrandtin USA, Inc.
Chemical. (G) Water soluble phenol formaldehyde resin.
Use/Import. (S) Varnish intermediate for electrical grade street. Import Range: Confidential.

P 88–1676

Importer. E.I. Dupont De Neumours & Co., Inc.
Chemical. (G) Acrylic lactone copolymer.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 88–1677

Importer. Hoechst Celanes Corporation.
Chemical. (G) Heterocyclic substituted sulfon amide.
Use/Import. (S) Additive for pigments. Import range: 20,000–30,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >169 g/kg species (Mice). Mutagenicity: Negative.

P 88–1678

Manufacturer. Confidential.
Chemical. (G) Acid catalyzed reaction product of alkelidene bicyucloalkene with alkyl alcohol — hydrogenated.
Use/Import. (S) Fragrance component, open use. Prod. range: Confidential.

P 88–1679

Importer. Nuodex Inc.
Chemical. (G) Unsaturated hydrocarbon resin from cyclooctane.
Use/Import. (S) Coatings. Import range: 10,000–200,000 kg/ yr.
Toxicity Data. Acute oral toxicity: LD50>3,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 88–1680

Manufacturer. American Hyperform, Inc.
Chemical. (G) Silica filled polysiloxane.
Use/Production. (G) Transpalent Abrasive resistant coating. Prod. range: Confidential.

P 88–1681

Manufacturer. Confidential.
Chemical. (G) Alkoxylated glycol ether.
Use/Production. (G) Coatings. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 6,400 mg/kg species (Rat).

P 88–1682

Importer. Confidential.
Chemical. (G) Carbopolycyclicolazo-alkylaminoalkylcarbomomocyclic ester, halogen acid salt.
Use/Import. (S) Paper dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (Rat). Static acute toxicity: LC50>1.8 mg/1 time 96 h species (Rainbow trout). Eye irritation: Strong species (Rabbit). Mutagenicity: Negative.

P 88–1683

Manufacturer. Fairmont Chemical Co., Inc.
Chemical. (G) Phenythiourea.
Use/Production. (S) Intermediate. Prod. range: Up to 1,000 kg/yr.

P 88–1684

Manufacturer. Confidential.
Chemical. (G) Acid functional substituted aromatic polyether.
Use/Production. (G) Specialty coating; open use. Prod. range: 15,000–75,000 kg/ yr.

P 88–1685

Importer. Ferro Corporation-Bedford Chemical Div.
Chemical. (G) Perchlorate compound.
Use/Import. (S) Plastic stablizer. Import range: 13,000–25,000 kg/yr.

P 88–1686

Importer. Confidential.
Chemical. (G) Dialkylheteroplycyclic-azocarbomono cyclic-dial kylamine, alkylsulfate.
Use/Import. (S) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD 1800 mg/kg species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (rat). Eye irritation: Strong species (Rabbit). Skin irritation: Moderate species (Rabbit).

P 88–1687

Manufacturer. Confidential.
Chemical. (G) Alkoxysilane terminated polyether polymer.
Use/Production. (S) Adhesive, sealant coating. Prod. range: 200,000–756,000 kg/ yr.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (rat).

P 88–1688

Importer. Goldscchmidt Chemical Corporation
Chemical. (S) Siliconacrylate.
Use/Import. (G) Coating. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2117 mg/kg species (Rat). Eye irritation: None species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 88–1689

Manufacturer. Confidential.
Chemical. (G) Unsaturated aliphatic ester.
Use/Production. (G) Coating. Prod. range: 20,000–100,000 kg/yr.

P 88–1690

Manufacturer. Confidential.
Chemical. (G) Alkoxylated ether acrylate.
Use/Production. (G) Coatings, inks. Prod. range: Confidential.

P 88–1691

Manufacturer. Confidential.
Chemical. (G) Alkyl ether acrylate.
Use/Production. (G) Coatings, inks. Prod. range: Confidential.

P 88–1692

Manufacturer. E.I. Dupont De Neumours & Co., Inc.
Chemical. (G) Acrylic polymer
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1693

Importer. Dow Corning Corporation.
Chemical. (G) Silicic acid, tetraethyl ester reaction products with disiloxane, hexamethyl, and disiloxane, 1,3-dietheny 1-1,1,3,3-tetramethyl.
Use/Import. (S) Adhesive, coating. Import range Confidential.

P 88–1694

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) 2-Bromomethy 1-1,3-dioxolane.
Use/Production. (S) Site-limiting intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 117 mg/kg species (Rat). Acute dermal toxicity: LD50 319 mg/kg species (Rabbit). Inhalation toxicity: LC50 0.8 mg/l species (Rat). Eye irritation: None species (Rabbit). Skin irritation: Negligible species (Rabbit). Mutagenicity: Negative.

P 88–1695

Importer. Raschig Corporation.
Chemical. (G) Sulfoalkylated polyalkoxylated naphthol, alkali-salt or -sulfoalkyl-napathyl-alkylenglycol.
Use/Import. (G) Electroplating. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 10,000 mg/kg species (Rat).

P 88–1696

Manufacturer. Daicel (U.S.A.), Inc.

Chemical. (G) Photo-sensitive direct emulsion

Use/Production. (S) Photo-sensitive emulsion. Prod. range: 1,440-7,200 kg/yr.

P 88-1697

Manufacturer. Confidential.

Chemical. (G) Quaternary salt.

Use/Production. (S) Monomer. Prod. range: 28,000-42,000 kg/yr.

P 88-1698

Manufacturer. Confidential.

Chemical. (G) Quaternary salt.

Use/Production. (S) Monomer. Prod. range: 2,000-3,000 kg/yr.

P 88-1699

Manufacturer. Confidential.

Chemical. (G) Alkyl alkanolamine salts.

Use/Production. (S) Gas scrubbing solution (additive). Prod. range: Confidential.

P 88-1700

Manufacturer. Confidential.

Chemical. (S) Amides from dibasic acid and fatty amine.

Use/Production. (G) Confidential. Prod. range: 34,000-136,000 kg/yr.

P 88-1701

Importer. Roure, Inc.

Chemical. (G) Pentanal, 4-(4-Methyl-e-cyclohexen-ylidene)-(e) & (z) in a ratio of 40/60 or 60/40.

Use/Import. (S) Fragrance ingredient. Import range: 100-500 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,500 mg/kg species (Rat). Eye irritation: None species (Rabbit). Phototoxicity: Negative species (Guinea pig). Photoallergenicity: Negative species (Guinea pig).

P 88-1702

Manufacturer. General Electric Company, GE Plastics.

Chemical. (G) Aryl alkyl polyamide resin.

Use/Production. (S) Theroplastic resin. Prod. range: Confidential.

P 88-1703

Manufacturer. Confidential.

Chemical. (G) Modified polyester amino alkyl silane, hydrohalidesalt.

Use/Production. (G) Processing aid for fitness materials. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 16 g/kg species (Rat). Acute dermal toxicity: LD50 > 16 g/kg species (Rabbit). Skin irritation: Negligible species (Rabbit). Mutagenicity: Negative.

P 88-1704

Manufacturer. Confidential.

Chemical. (G) Polyester amino alkyl alkoxy silane, hydrohalide salt.

Use/Production. (G) Processing aid. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 16 g/kg species (Rat). Mutagenicity: Negative.

P 88-1705

Manufacturer. Confidential.

Chemical. (G) Polyester amino alkyl silane.

Use/Production. (G) Intermediate. Prod. range: Confidential.

Toxicity Data. Mutagenicity: Negative.

P 88-1706

Manufacturer. Confidential.

Chemical. (G) Polyester amino alkyl silane.

Use/Production. (S) Intermediate. Prod. range: Confidential.

Toxicity Data. Mutagenicity: Negative.

P 88-1707

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Open, nondispersive. Prod. range: 22,000-60,000 kg/yr.

P 88-1708

Manufacturer. Confidential.

Chemical. (G) Polymer of butyl acrylate with mixed alkyl methacrylates and alkyl maleate.

Use/Production. (G) Open, nondispersive. Prod. range: 45,000-90,000 kg/yr.

P 88-1709

Importer. Cray Valley Products, Inc.

Chemical. (G) Castor oil hydrogenerated polymer with ethylenediamine 12, hydroctanoic acid and adipic acid.

Use/Import. (S) Paint additive. Import range: Confidential.

P 88-1710

Importer. Cray Valley Products, Inc.

Chemical. (G) Castor oil hydrogenerated polymer with ethyenediamine 12, hydroxyoctadecanoic acid, and sebicic acid.

Use/Import. (S) Paint additive. Import range: Confidential.

P 88-1711

Manufacturer. Cray Valley Product.

Chemical. (G) Castor oil hydrogenerated polymer with ethylendiamine 12, hydroxyocanoic acid.

Use/Production. (S) Paint additive. Prod. range: Confidential.

P 88-1712

Manufacturer. Eastman Kodak Company.

Chemical. (S) Butyl acrylate; 2-Hydroxyethyl methacrylate; 2-Aminoethyl methacrylate; 2,2'-azobis(2-methyl propionamidine)dihydrochloride.

Use/Production. (G) Contained use. Prod. range: 300-3,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 g/kg species(Rat). Acute dermal toxicity: LD50 > 20 ml/kg species(Guinea pig). Eye irritation: Slight species(RABBIT). Skin irritation: Slight species(Rabbit). Skin sensitization: Negative species(Guinea pig).

P 88-1713

Manufacturer. Confidential.

Chemical. (G) Acrylated polyamine.

Use/Production. (G) Coating. Prod. range: 40,000-250,000 kg/yr.

P 88-1714

Manufacturer. Ciba-Geigy Corporation.

Chemical. (S) 2,2,2-trifluor-4'-chloro-acetophenone.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >500-5,050 mg/kg species(Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species(Rabbit). Eye irritation: Slight spcies(RABBIT). Skin irritation; Moderate species(Rabbit). Mutagenicity: Negative.

P 88-1715

Importer. Confidential.

Chemical. (G) Carboxy functional acrylic resin.

Use/Import. (S) Temporary coatings. Import range: Confidential.

P 88-1716

Manufacturer. Confidential.

Chemical. (G) Ammonium salt of carboxy functional acrylic polymer.

Use/Production. (S) Terminated coating. Prod. range: Confidential.

P 88-1717

Manufacturer. The Upjohn Company.

Chemical. (G) Naphtyl acid chloride.

Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-1718

Manufacturer. Confidential.

Chemical. (G) p-Menthadienes and m-menthadienes mixture plus 3-carene, para-cymene, and camphene.

Use/Production. (S) Degreaser. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species(Rat). Acute

dermal toxicity: LD50 > 2,000 mg/kg species(Rabbit).

P 88-1719

Manufacturer. Confidential.
Chemical. (G) Amino alkyl alkanamide adduct with urea, alkysulfate salt.
Use/Production. (G) Cellulose softener. Prod. range: Confidential.

P 88-1720

Manufacturer. Confidential.
Chemical. (G) Sulfurized polyolefin.
Use/Production. (G) Dispersive. Prod. range: Confidential.

Date: August 9, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-18955 Filed 8-19-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 202-010270-029

Title: Gulf-European Freight Association.
Parties:
Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Hapag-Llyod AG
Sea-Land Service, Inc.
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.
Synopsis: The proposed modification would clarify the description of the neutral body authority of the members and provide for cooperation between them and other carriers to discuss procedures and administrative matters concerning self-policing.

Agreement No: 202-010714-008

Title: Trans-Atlantic American Flag Liner Operators.
Parties:
Farrell Lines Incorporated
Sea-Land Service, Inc.
Lykes Bros. Steamship Co., Inc.
Synopsis: The proposed modification would further define relevant cargo to include all cargo.

Agreement No: 202-010776-033

Title: Asia North America Eastbound Rate Agreement
Parties:
American President Line, Ltd.
Japan Line, Ltd. ("JL")
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Lines, Inc.
Sea-Land Service, Inc.
Yamashita-Shinnihon Steamship Co., Ltd. ("YSL")
Synopsis: The proposed modification would provide that as part of their name change to Nippon Liner System, Ltd., JL and YSL shall continue to be bound by and parties to applicable agreement tariffs and service contracts until completion of all voyages in the trade conducted under their individual names.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

August 17, 1988.

[FR Doc. 88-19016 Filed 8-19-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Creditanstalt-Bankverein, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Creditanstalt-Bankverein,* Vienna, Austria; to engage *de novo* through its subsidiary, C.A.W.T. Trade Finance Company, San Francisco, California, in making, acquiring, or servicing commercial loans or other extensions of credit principally in connection with international trade pursuant to § 225.25(b)(1); and leasing personal or real property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted worldwide.

2. *The Long-Term Credit Bank of Japan, Ltd.,* Tokyo, Japan; to engage *de novo* through one or more of its subsidiaries, in arranging commercial real estate equity financing pursuant to § 225.25(b)(14); real estate appraising pursuant to § 225.25(b)(13); real estate portfolio investment advice pursuant to § 225.25(b)(14); making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1); and providing securities clearing and settling, accounting and ancillary services in respect of securities other than those that state member banks of the Federal Reserve System may be authorized to underwrite and deal in pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *G.N. Bankshares, Inc.*, Girard, Kansas; to engage *de novo* through its subsidiary, Progressive Financial Services, Inc., Girard, Kansas, in making and acquiring loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *PNB Financial Group, Inc.*, Newport Beach, California; to engage *de novo* through its subsidiary, Pacific National Realty Finance, Newport Beach, California, in making, acquiring, and servicing loans and other extensions of credit for the account of company or for the account of others, such as would be made by a mortgage company pursuant to § 225.25(b)(1)(iii); performing real estate and personal property appraisal services pursuant to § 225.25(b)(13); and arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y. Comments on this application must be received by September 9, 1988.

Board of Governors of the Federal Reserve System, August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18899 Filed 8-19-88; 8:45 am]

BILLING CODE 6210-01-M

Hazard Bancorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 9, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Hazard Bancorp*, Hazard, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank & Trust Company of Hazard, Hazard, Kentucky.

2. *Heartland Bancorp*, Grove City, Ohio; to become a bank holding company by acquiring 69 percent of the voting shares of The Croton Bank company, Johnstown, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Security National Corporation*, Maitland, Florida; to acquire 100 percent of the voting shares of Security National Bank of Seminole, Altamonte Springs, Florida, a *de novo* bank.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Affiliated Banc Group, Inc.*, Morton Grove, Illinois; to acquire 100 percent of the voting shares of Affiliated Bank/Chicago, Chicago, Illinois, a *de novo* bank. Comments on this application must be received by September 8, 1988.

2. *American Central Financial Group, Inc.*, Springfield, Illinois, formerly Charleston Bancorp, Inc.; to merge with Meredosia Bancorporation, Inc., Springfield, Illinois, and thereby indirectly acquire Farmers and Traders State Bank, Meredosia, Illinois, and Farmers & Merchants State Bank of Virden, Virden, Illinois. Comments on this application must be received by September 7, 1988.

3. *Bosshard Financial Group, Inc.*, La Crosse, Wisconsin; to acquire 89.9 percent of the voting shares of Grand Marsh State Bank, Grand Marsh, Wisconsin; and 92.3 percent of the voting shares of Farmers State Bank—Hillsboro, Hillsboro, Wisconsin.

4. *F.W.S.B. Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of St. Anthony Bancorporation, Inc., Omaha, Nebraska, and thereby indirectly acquire St. Anthony National Bank, St. Anthony, Minnesota.

5. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Commercial National Bank & Trust Co., Iron Mountain, Michigan. Comments on this application must be received by September 7, 1988.

6. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of St Anthony Bancorporation, Inc., Omaha, Nebraska, and thereby indirectly acquire St. Anthony National Bank, St. Anthony, Minnesota.

7. *Great Lakes Financial Resources, Inc.*, Blue Island, Illinois; to acquire 100 percent of the voting shares of Homewood Buildings, Inc., Homewood, Illinois, and thereby indirectly acquire Bank of Homewood, Homewood, Illinois.

8. *Manufacturers National Corporation*, Detroit, Michigan; to acquire 100 percent of the voting shares of Affiliated Bank/Chicago, Chicago, Illinois. Comments on this application must be received by September 6, 1988.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of Pickett County Bancshares, Inc., Byrdstown, Tennessee, and thereby indirectly acquire Pickett County Bank and Trust Company, Byrdstown, Tennessee.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Bank of New Mexico Holding Company*, Albuquerque, New Mexico; to acquire 98 percent of the voting shares of Western Bank of Springer, Springer, New Mexico. Comments on this application must be received by September 6, 1988.

2. *Dickinson Financial Corporation*, Chillicothe, Missouri; to merge with Chillocthe Bancshares, Inc., Chillicothe, Missouri, and thereby indirectly acquire Community Bank, Chillicothe, Missouri; Community Bancshares, Inc., Chillicothe, Missouri, and thereby indirectly acquire Citizens Bank of Shelbyville, Shelbyville, Missouri; First Bancshares of Kirksville, Inc., Chillicothe, Missouri, and thereby indirectly acquire First National Bank of Kirksville, Kirksville, Missouri; Fort Knox Bancshares, Inc., Chillicothe, Missouri, and thereby indirectly acquire Fort Knox National Bank, Fort Knox, Kentucky; and Maryville Bancshares, Inc., Chillicothe, Missouri, and thereby indirectly acquire Citizens State Bank of Maryville, Maryville, Missouri. Comments on this application must be received by September 6, 1988.

3. *Morrill Bancshares, Inc.*, Sabetha, Kansas; to acquire 28.93 percent of the

voting shares of Morrill and Janes Bancshares, Inc., Hiawatha, Kansas, and thereby indirectly acquire Morrill and Janes Bank and Trust Co., Hiawatha, Kansas. Comments on this application must be received by September 6, 1988.

Board of Governors of the Federal Reserve System, August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18900 Filed 8-19-88; 8:45 am]

BILLING CODE 6210-01-M

Sterling Financial Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 9, 1988.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Sterling Financial Corporation,* Lancaster, Pennsylvania; to acquire Sterling Mortgage Services, Inc., Lancaster, Pennsylvania, and thereby engage in conducting a full range of mortgage services pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Lancaster County, Chester County, and Lehigh County.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota, and its subsidiaries, Norwest Financial Services, Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to engage in operating a credit bureau pursuant to § 225.25(b)(24) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18901 Filed 8-19-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Boards Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The facts that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 6, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Robert G. Wilmers,* Buffalo, New York; to acquire up to 20 percent of the voting shares of First Empire State Corporation, Buffalo, New York, and thereby indirectly acquire Manufacturers & Traders Trust Company, Buffalo, New York, and thereby indirectly acquire First National Bank of Highland, Highland, New York.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ellis L. Clark,* Hiawatha, Kansas; to acquire an additional 9.69 percent of the voting shares of Morrill and Janes Bancshares, Inc., Hiawatha, Kansas, and thereby indirectly acquire Morrill and Janes Bank and Trust Co., Hiawatha, Kansas.

2. *George L. Kremer,* Zug, Switzerland; to acquire 100 percent of the voting shares of Membancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Memorial Bank, N.A., Oklahoma City , Oklahoma.

3. *W.C. Payne,* Oklahoma City, Oklahoma, and Charles V. Wheeler, Tulsa, Oklahoma; to each acquire 16.4 percent of the voting shares of Charter Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Charter National Bank, Oklahoma City, Oklahoma.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Sunwestern Financial Corporation,* Dallas, Texas; to acquire up to 24.9 percent of the voting shares of Provident Bancorp of Texas, Inc., Dallas, Texas, and thereby indirectly acquire The Security State Bank of Commerce, Commerce, Texas; Provident Bank-Dallas, Dallas, Texas; Provident Bank-Denton, Denton, Texas; DeSoto State Bank, DeSoto, Texas; and First State Bank, Wylie, Texas.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Richard J. Meyer,* Fullerton, California; to acquire a maximum of 23.26 percent of the voting shares of Pacific Inland Bancorp, Anaheim, California, and thereby indirectly acquire Pacific Inland Bank, Anaheim, California.

Board of Governors of the Federal Reserve System, August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18902 Filed 8-19-88; 8:45 am]

BILLING CODE 6210-01-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 12, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301–965–4149 for copies of package)

1. Employment Relationship Questionnaire—0960–0040—The information collected by use of the form SSA–7160 is needed and used to determine employer-employee relationships in questionable situations so that the Social Security Administration can maintain accurate earnings records. The affected public is comprised of individuals and small businesses. Respondents: Individuals or households; Small business or organizations. Number of Respondents: 50,000; Frequency of Response: On occasion; Estimated Annual Burden: 20,833 hours.

2. Statement Regarding Contributions—0960–0020—The information collected by this form is used by the Social Security Administration to make a determination of one-half support, which is a requirement for entitlement to certain kinds of benefits. Respondents: Individuals or households; Number of Respondents: 30,000; Frequency of Response: On occasion; Estimated Annual Burden: 7,500 hours.

OMB Desk Officer: Shannah Koss-McCallum

Health Care Financing Administration

(Call Reports Clearance Officer on 301–966–2088 for copies of package)

1. Information Collection Requirements at 42 CFR 476.105, 476.116 and 476.134—0938–0426—The Peer Review Improvement Act authorized PRO's to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. These requirements are on the PRO to provide notices to the affected parties when disclosing information. Respondents: Business or other for-profit, Small businesses or organizations. Number of Respondents: 54; Frequency of Response: On occasion; Estimated Annual Burden: 37,691 hours.

2. Quarterly Medicaid Statement of Expenditures—0938–0067—The HCFA–64 is submitted by state medicaid agencies to report their actual program and administrative expenditures. Respondents: State of local governments. Number of Respondents: 57; Frequency of Response: Quarterly; Estimated Annual Burden: 9,462 hours.

3. Medicaid Program Budget Report—0938–0101—This report is prepared by the State Medicaid agencies and is used by HCFA to develop the national budget estimates. Respondents: State of local governments; Number of Respondents: 57; Frequency of Response: Quarterly; Estimated Annual Burden: 7,011 hours.

OMB Desk Officer: Allison Herron

Office of the Secretary

(Call Reports Clearance Officer on 202–245–0652 for copies of package)

Office of General Counsel

1. Federal Claims Collection—45 CFR 30.15(1), 30.19—0990–0148—The information submitted under 45 CFR 30.15(1) and 30.19 is used to evaluate a debtor's request for a hearing on the existence, amount of debt to the Government, or offset schedule proposed by HHS, or to evaluate an alternative repayment schedule proposed by the debtor. Respondents: Individuals or households, State or local governments, Business or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 500; Frequency of Response: Once; Estimated Annual Burden: 500 hours.

OMB Desk Officer: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–966–2088
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Shannah Koss-McCallum.

Date: August 16, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–18931 Filed 8–19–88; 8:45 am]

BILLING CODE 4150–04–M

Advisory Commission; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following national advisory body scheduled to meet during the month of August 1988:

Name: Secretary's Commission on Nursing.

Date and Time: Friday, September 16, 1988—8:30 a.m. to 4:30 p.m.; and Saturday, September 17, 1988—8:30 a.m. to 12:30 p.m.

Place: Room 727A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda: The bulk of the agenda for the September 16–17 meeting will be devoted to discussions about potential recommendations for inclusion in the Commission's final report. A brief presentation on the American Medical Association's "Registered Care Technologist" proposal will be given on September 16.

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission at least one week before the scheduled meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 600E, 200 Independence Avenue, SW.,

Washington, DC, 20201, telephone 202/245–0409.

Lillian K. Gibbons,

Executive Director, Secretary's Commission on Nursing.

[FR Doc. 88–18940 Filed 8–19–88; 8:45 am]

BILLING CODE 4150–04–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on September 23, 1988, from 8:30 a.m. to 1 p.m., at the Bethesda Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814, (301) 657–1234.

The entire meeting is open to the public. The Coordinating Committee is meeting to define priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institute of Health, Building 31, Room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: August 16, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 88–18957 Filed 8–19–88; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the National Arthritis Advisory Board

Pursuant to Pub. l. 92–463, notice is hereby given of the meeting of the National Arthritis Advisory Board on October 16 and 17, 1988. The subcommittees will meet October 16, 7:30 p.m. to approximately 10 p.m., and the full board will meet October 17, 8:30 a.m. to approximately 5 p.m., at the Crytal City Marritott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meetings, which will be open to the public, are being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

Mr. John R. Abbott, Executive Secretary, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–0801, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 15, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–18958 Filed 8–19–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. I–88–149]

Office of Environment and Energy; Environmental Statements; Availability, etc.: San Antonio, TX

Combined Notice: Intent to issue a finding of no significant impact and compliance with Executive Order 11988.

The Department of Housing and Urban Development gives notice concerning the Westcreek Villages Development located in the western portion of Bexar County, Texas, but within the extraterritorial jurisdiction of the City of San Antonio, that: (1) It intends to issue a Finding of No Significant Impact (FONSI) based upon an Environmental Assessment (EA) for the project; and (2) a notification that the proposed action is proposed to be partially located in the floodplain as required by Executive Orders 11988 on Floodplain Management. Comments are solicited before the Regional Administrator of the Fort Worth HUD Office makes a fnal determination whether to proceed without preparing an Environmental Impact Statement (EIS).

Description: The San Antonio Savings Association, San Antonio, Texas, has filed with the San Antonio Office of HUD an application to accept the single family subdivision portion of the development for mortgage insurance under section 203(b) of Title II of the National Housing Act of 1934, as amended. The Westcreek Villages subdivision is located west of Loop No. 1604, north of Potranco Road. The total development comprises 1,235 acres of land. Of this acreage, 626 acres will be devoted to single family residential use, 49 acres to duplexes, and 133 acres to multifamily housing use. Commercial land use will require 174 acres and a school site will occupy 26.7 acres. Easements, floodplains and streets will utilize the balance of land area. The total development will provide a total of 7,410 dwelling units, which will provide housing for approximately 23,700 persons. The project is now under construction and Phase 1 is to be completed within 5 years. Phase 2 development is beyond 5 years and as the market demands.

Purpose of FONSI Notice: Pursuant to HUD environmental regulations at 24 CFR Part 50, an EA has been prepared by HUD's San Antonio Office to determine whether or not an EIS is required. It is the finding of the EA that there would be no significant impact on the human environment and that the project is in compliance with the National Environmental Policy Act and related environmental laws and authorities cited at 24 CFR 50.4. Therefore, in accordance with the applicable regulations a proposed FONSI has been prepared, and a Notice to that effect is hereby published. Pursuant to 40 CFR 1502.4(e)(2) of the Council on Environmental Quality regulations, there will be a thirty (30) day comment period before HUD makes its final determination on the FONSI. Interested individuals, Governmental agencies, and private organizations are invited to comment on the FONSI by the date and to the address set forth below.

Purpose of Floodplain Notice: As required by Executive Order 11988, Floodplain Management, this also gives notice that HUD is considering this proposed action which is partially located in a floodplain. Interested individuals, governmental agencies, and private organizations are invited to also comment on the floodplain implications of the development by the date and to the address set forth below.

Additional Information and Comments: In preparing the environmental assessment for the proposed subdivision, considerable coordination and special analyses were undertaken on such issues as historic preservation and archeology, endangered species and aquifers. A special study, which included a series of archeological and historical investigations, was made in the fall of 1987 testing several sites for eligibility to the National Register of Historic Places. These issues were resolved to the satisfaction of the appropriate Federal and State agencies.

The EA which serves as the basis for the FONSI and supporting documentation are available for review until the close of the comment period at the HUD Fort Worth Regional Office

during regular business hours. Contacts concerning review should be made with I. J. Ramsbottom, Regional Environmental Officer, HUD Fort Worth Regional Office, 1600 Throckmorton, Fort Worth, Texas 76113–2905; telephone: Commercial (817) 885–5482 or FTS 728–5482 (the commercial number is not toll free).

Written comments should be submitted to Sam R. Moseley, Regional Administrator, Department of Housing and Urban Development, 1600 Throckmorton, Post Office Box 2905, Fort Worth, Texas 76113–2905 (Attention: Regional Environmental Officer) within thirty (30) days of the publication of this Notice.

Dated: August 12, 1988.

Dorothy S. Williams,

Deputy Director, Office of Environment and Energy.

[FR Doc. 88–18977 Filed 8–19–88; 8:45 am]

BILLING CODE 4210–29–M

Office of the General Counsel

[Docket No. N–88–1822; FR–2522]

Implementation of Executive Order 12612, Federalism

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Executive Order 12612, *Federalism*, is designed to ensure that Federal agencies take federalism concerns into account when developing and implementing agency policy initiatives that have substantial, direct effects on States or their political subdivisions, or on the relationship or distribution of power among the various levels of government. The Order requires agencies to analyze their proposed policy initiatives to determine whether they will have these effects and, if so, whether there are alternative ways of structuring the initiatives to achieve the Federal objective, with the least possible adverse effects on the operations and functions of State or local governments. The Order also contains special requirements for the preemption of State law by Federal statutes and regulations, and for the submission of proposed legislation to Congress. This Notice implements Executive Order 12612 for the policy formulation and implementation functions of HUD.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Edward Murphy; Associate General Counsel for Legislation and Regulations; Room 10282; Department of Housing and Urban Development; 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–7093. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Overview of the Order

How the Parts Fit Together

Executive Order 12612, *Federalism* (52 FR 41685, published October 30, 1987) has three principal elements. The main body of the Order—Sections 1 through 3, and 6 and 7—is designed to ensure that agencies take federalism concerns into account when developing and implementing expressions of agency policy that have "federalism implications." Section 4 of the Order prescribes special requirements for the preemption of State law by Federal statutes and regulations. Section 5 contains special and requirements for the submission of proposed legislation to Congress.

These three elements interact in the following ways. Section 5 establishes a threshold requirement for policy initiatives that are expressed in proposed legislation. Legislative proposals that meet this threshold, and all other policies covered by the Order (except preemptions subject to Section 4), are subject to review and analysis under the "federalism implications" provisions of the main body of the Order. Section 4 establishes requirements that are independent of the rest of the Order: If the issue involves statutory or regulatory preemption, only Section 4's special requirements apply.

The Main Body of the Order

For purposes of the main body of the Order, policies that have "federalism implications" are those that have "substantial direct effects" on States or their political subdivisions, or on the relationship or distribution of power among the various levels of government. All forms of agency policy statements and policy actions may be subject to the Order, but its greatest effect will be on regulations and proposed legislation—agencies' most visible ways of implementing policy initiatives. An agency policy initiative that does not meet the "federalism implications" threshold of applicability is not subject to the main body of the Order. (See Sections 1 through 3, and 6 and 7 of the Order.)

The Order requires that agencies take steps to identify policies that have "federalism implications" during the policy development stage, before a final decision is made to proceed with the policy. This timing is designed to ensure that the Order's provisions are taken into account at the earlier stages of the process, when policies are still sufficiently open that federalism concerns may have genuine effect on the policy's course. To the extent practicable, agencies are required to consult with affected States or their political subdivisions as part of the process for developing proposals with "federalism implications." In appropriate cases, agencies may have to modify or abandon the proposed policy initiative to comply with the Order's requirements. The controlling inquiries in this analysis are whether the proposed policy has "federalism implications" and if it does, whether there are alternative ways of structuring the policy to achieve the Federal objective with the least possible negative effects on the operations and functions of the States and their political subdivisions. (See sections 2 and 3 of the Order.)

The Office of Management and Budget (OMB) will assess an agency's performance under the main body of the Order when the agency submits its regulatory and legislative initiatives for OMB review under existing Executive Orders and OMB Circulars. (See section 7(b) of the Order.) Where the agency determines that the proposed policy's "federalism implications" are sufficient, the agency will prepare a "Federalism Assessment." The "Assessment" will be used for the agency's internal use, including review by the agency head, in determining whether to proceed with the proposal. It will also be used by OMB in determining the consistency of the proposed policy with the Order's provisions. (See section 6 of the Order.)

As noted above, any proposed legislation that falls within the Order's special requirements for legislation may not be transmitted to the Congress. (See section 5 of the Order.) With this one exception, the Order does not specifically prohibit implementation of a proposed policy, even where the policy is not consistent with the "federalism implications" of the main body of the Order.

The Order does, however, contemplate a continuing dialogue on proposals that have "federalism implications," through consultation with affected governmental entities; internal agency discussion; review by OMB; and, where a "Federalism Assessment" is required, personal review by the agency head. Thus, even if the Order itself imposes no bar to proceeding with a given policy initiative, these consultation and review features may result in the elimination or modification

of the proposal involved. (See sections 3, 6, and 7 of the Order.)

Section 5.

Section 5 of the Order prohibits agencies from sending proposal legislation to Congress that falls within its proscriptions. Specifically, proposed legislation may not directly regulate the States in areas of essential State autonomy; attach conditions that are not directly related to the proposal's purpose; or preempt State law, unless the preemption is necessary to achieve a valid Federal purpose. Section 5 applies to all proposed legislation—irrespective of whether the proposal meets the "federalism implications" threshold of applicability under the main body of the Order.

Section 4.

Section 4 of the Order contains special provisions governing the preemption of State law by Federal statutes and regulations. These provisions generally track current Supreme Court precedent governing such preemptions, but impose a "firm and palpable evidence" test for assessing the degree of congressional intent required to justify a regulatory preemption or a statutory preemption where congressional intent to preempt is inferred.

Implementation of the Order

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I. Definitions

(Section 2 of the Order)

As used in this Notice:

Benefit program means any program administered by the Department involving grants, loans, interest or rental assistance, mortgage or loan insurance, or any other kind of assistance.

Circular A–19 means OMB Circular A–19, *Rev., Legislative Corrdination and Clearance* (1979).

Congress means the Speaker of the House or the President of the Senate; any Member of Congress; the staff of any Member of Congress or of any committee, subcommittee, or other establishment of Congress; or any other officer or employee of Congress.

Designated Official means the HUD official under Section 6(a) of the Order whom the Secretary designates as responsible for ensuring the implementation and operation of the Order in accordance with its provisions. On January 4, 1988, the Secretary designated HUD's General Counsel as the Designated Official.

Executive Order or *Order* means Executive Order 12612, *Federalism* (52 FR 41685, published October 30, 1987).

Executive Order 12291 means Executive Order 12291, *Federal Regulation,* 3 CFR 127 (1981), *reprinted in* 5 U.S.C. app. 601 at 136 (Supp. v 1981).

Federalism implications means the effects referred to in the definition of *policies with federlism implications,* below.

Formulation and implementation means, with respect to a policy initiative, the entire policy development process, during which the identification and analysis of policies with federalism implications under the Order take place.

HUD or *Department* means the United States Department of Housing and Urban Development.

Legislation comment means any written expression of official HUD views on proposed or pending legislation (other than legislation proposed by HUD) that is prepared for (a) Transmission to Congress or OMB, (b) presentation as testimony before a congressional committee, or (c) release to any person or entity outside the Executive Branch. The term includes: (1) Any comment or recommendation on pending legislation included in any annual or special report that HUD proposes to transmit to Congress, or to release to any study group, commission, or member of the public; and (2) OMB requests for HUD views on the proposed legislative comments of other agencies and on enrolled enactments. The term does not include requests from Congress for technical advice and other technical services in connection with proposed or pending legislation.

This definition is patterned after the one contained in Circular A–19. The Department has adopted this approach, since Section 7(b) of the Order requires agenices to identify and discuss federalism concerns in their Circular A–19 submissions. Ensuring that OMB and the Department are working from essentially the same definition will facilitate both the Department's compliance with the Order and OMB's review of the Department's performance under the Order.

The definition differs from Circular A–19 in several respects. It subjects to the Order's requirements letters prepared for OMB or for release to the public that contain HUD's position or proposed or pending legislation. It also excludes from its coverage technical drafting services and technical comments on HUD-proposed bills.

OMB requests for HUD comments are added, since they fit squarely within the term, "legislative comments," and represent a large share of the Department's legislative reporting activity. Release of HUD's views on proposed or pending legislation to the public is covered, since such action can clearly have significant "federalism implications."

Circular A–19 now exempts from its coverage technical *drafting* services performed by Federal agencies at Congress' request. This Notice extends the exemption to specifically include situations in which the Department is asked to provide technical *reviews* of, and *comments* on, draft legislative language prepared *by Congress.* The Department believes that there is no

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need to invoke the Order's requirements for technical advice, because, as Circular A–19 recognizes for agency technical drafting services, technical services by definition do not involve the "policy" issues with which the Order is concerned.

Moreover, technical review of pending legislation services a genuinely important function: Technical problems can be identified and resolved *before* the legislation is enacted. This not only ensures that the law reflects congressional intent, but also permits the Department to invest limited time and resources in implementing the legislation after its enactment, rather than diverting resources in an attempt to resolve the technical problems. Since many congressional technical services requests require immedicate "turn-around," subjecting these services to the Order's requirements could often prevent HUD from making meaningful comments and having the desired effect on congressional consideration of the legislation involved.

Main body of the Order means sections 1 through 3 and 6 and 7 of the Order.

OMB means the Office of Management and Budget.

Pending legislation means any bill or resolution that has been introduced in the Senate of the House of Representatives, any amendment to a bill or resolution while in a committee of Congress or when proposed for House or Senate consideration during debate, or any proposal placed before the conferees on a bill that has passed both Houses.

This definition is substantively the same as that contained in Circular A–19.

Policies that have federalism implications means all or part of any regulation, legislative comment, proposed legislation, or other policy statement or policy action, that has (or will have, when implemented) substantial, direct effects on: (a) The States, or (b) the relationship between the Federal government and the States, or (c) the distribution of power and responsibilities among the various levels of government.

As noted later, this definition is central to the implementation and operation of the main body of the Order: It establishes the threshold for determining whether individual HUD policy initiatives are subject to the Order's requirements for the identification and review of federalism issues under sections 2,3,6, and 7 of the Order.

In determining whether a policy's effects on States will be "substantial" and "direct," the Department will use a functional approach: do all the facts and circumstances of the policy proposal reach the level of importance and immediacy contemplated by the Order generally, and by the terms "substantial" and "direct," as defined below? The Department believes that attempting to fashion a detailed, a *priori* definition would result in a test that would be both too rigid and too loose, and that would lack the necessary flexibility to be adequately sensitive to the Order's objectives. The functional approach will permit the full and fair assessment of the "federalism implications" of all HUD's policy proposals that is contemplated by the Order.

Finally, the Department believes that the Order is primarily, of not exclusively, concerned with preserving and enhancing the *institutional* aspects of States and their political subdivisions in their *role* or *status* as governmental entities. Thus, the Order requires agencies to focus upon the effects of agency policies *on* States, or *on* the *relationship* or the *distribution of power and responsibility among* the various levels of government. It does not appear that just any "effect" on States—even if it is "substantial" and "direct" (within the Order's meaning)—would be adequate to trigger the Order's applicability. For example, a new grant program may affect States—perhaps even in significant ways—but not bring into question the *role* of the States vis-a-vis the national government or other governmental entities.

Thus, to be subject to the Order, the agency policy initiative must affect the role or status of States or their political subdivisions in direct and substantial ways. Examples could include a proposal to impose a Federal requirement in an area formerly left to State discretion, or a proposal to require States to impose sanctions on their political jurisdictions for violation of mandatory Federal standards.

As noted above, the determination of whether a given policy initiative has the requistie effects on the institution of the States will be made on a functional basis, taking into consideration all the facts and circumstances of the policy involved.

Policy action means an identifiable event in the policy development and implementation process: (a) That occurs when the essential elements of the policy are settled and (b) that is undertaken as a significant step toward implementation of the policy.

This definition does not attempt to identify the nature of an "action" with exactitude. Instead, it recognizes that for purposes of the Order, a "policy action" may take many form, depending on the facts of each case, and it provides general guidance that should be useful across the many circumstances that may give rise to a "policy action" under the Order.

The definition also attempts to identify the general place in the policy formulation/implementation continuum in which an "action" of significance to the Order is likely to occur: After most of the "thinking" is over and the remaining steps to effectuate the policy are primarily ones of implementation. Spotlighting this place in the policy *formulation* phase of the process is true to the implicit and explicit concern throughout the Order, that policy matters be identified and assessed while the policy is being developed—while the policy issues are sufficiently unsettled that the policy's federalism implications may receive a full and fair hearing, and the Order's precepts will have a chance of altering the policy.

Focusing on the early stages of the *implementation* phase of the process—the point at which the remaining steps primarily involve execution—ensures that the "action" will be identified early on the road to implementing the policy, thus also providing assurance that the Order's provisions will be applied at a meaningful point in the process.

Thus, a "policy action" occupies an analogous place in HUD's policy formulation and implementation process as the publication of a regulation or the dispatch of legislative comments or proposed legislation to their intended audiences: It is the point by which any of the Order's requirements that apply to the policy must be met.

It also is important to specify that an "action" must be "significant." This will permit the Department to focus on meaningful implementation steps, without having to sort through the many, relatively unimportant, "action" that typically make up the policy formulation and implementation process in order to identify "the action" that has significance under the Order.

The types of policies that might be of interest under the Order may include the following: Litigation policy; the imposition and enforcement of sanctions against individual State and local governmental entities, such as Public Housing Agencies (PHAs) in the Public and Indian Housing program (42 U.S.C. 1437, *et seq.*), and States and Entitlement communities in the CDBG program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*); information dissemination; certain HUD research decisions; Federal Budget decisions that

do not require legislative or regulatory implementation; and the oral transmission of legislative comments or proposed legislation, to the extent their written counterparts are subject to the Order.

Considering litigation policy as a "policy action" under the Order raises special issues. By its nature, litigation does not admit of the free interchange of views among affected parties that the Order contemplates. In addition, many of the policy options that arise during the pendency of litigation must be assessed primarily in terms of what the "other side" is arguing, and is likely to argue during the rest of the suit; how the court will react; and what effect any given course may have on the ultimate outcome of the action. Often, decisions must be made in accordance with exceedingly short, court-imposed deadlines. Although the Order applies to litigation policy as a type of "policy action," the Department believes that special care must be taken to ensure that the Order operates in a way that does not jeopardize the Department's litigation objectives.

The Department engages in two general types of litigation: Affirmative litigation, in which the Department pursues a claim against a party, and defensive litigation, in which another party pursues a claim against the Department. For affirmative litigation, the Department will comply with the Order's requirements to the extent practicable when determining whether to commence litigation: *i.e.*, the Department will take the Order's precepts into account in determining whether to sue, whom to sue, the legal theories to be used, and the type of relief to be requested. Since the Department is the plaintiff and, thus, will frame the issues in the litigation, this initial review under the Order will generally cover all the federalism concerns that are likely to arise in the matter. In the unlikely event that the litigation turns in ways that raise new federalism concerns, the Department will comply with the Order's requirements at that time to the extent feasible.

In defensive litigation, the Department has very little freedom to frame the scope of the litigation, and is generally in the position of responding to the plaintiff's arguments. Thus, defensive litigation—unlike affirmative litigation—does not offer a single point where review of the litigation issues in light of the Order can be effectively carried out.

There are, however, two instances in which review under the Order may be possible. First, where settlement of the litigation is under consideration, the Department would have at least some room to assess the proposal in light of the Order's precepts. Second, issues of preemption of State law occasionally arise in the course of defensive litigation. These issues could be reviewed in light of Section 4 of the Order as they are encountered.

Because of the essentially "reactive" posture of the Department in defensive litigation, it is doubtful that other points along the defensive litigation spectrum will involve the kind of policy discretion contemplated by the Order. If, however, such a situation arises, the Department will comply with the Order's requirements to the extent feasible.

Finally, as noted above, many aspects of litigation policy do not fit comfortably with the Order's precepts. One area that may raise serious issues is the Order's frequent reference to advance consultation with affected parties. (See the consultation provisions under the Federalism Policymaking Criteria in Sections III.B. and C.(3)(iv), and the speical requirements for preemption under Section V.D.) Depending on the nature of the litigation, the Department may have the opportunity, and may find it appropriate, to engage in some form of consultation before the litigation is commenced. Indeed, this would often be done in the case of affirmative litigation, where discussions with the entities involved would routinely precede any decision to proceed with litigation. Even defensive litigation may afford the opportunity for this type of advance consultation.

However, as the Department's consideration begins to turn away from informal methods of achieving its objectives, and the likelihood of a litigated resolution of the case becomes greater, the need to develop the litigation's policy without discussing it in public—especially with those entities most directly affected by it, the other parties to the action—will render further consultation infeasible in the vast majority of cases. Again, it should be noted that the Order itself recognizes the need for flexibility in providing advance consultation, by permitting the agencies to determine whether such action is feasible and, if so, of what the "consultation" should consist.

Considerations similar to affirmative litigation attend the imposition of administrative sanctions against States. Thus, the Department will comply with the Order to the extent feasible in determining whether to invoke an administrative sanction. Since the Department frames the sanction issue, it is reasonable to expect that review of the issue under the Order will reach all the federalism issues involved. If, however, changed circumstances warrant a fresh review of the action's federalism impacts, the Department will comply with the Order's requirements to the extent feasible at the appropriate stage of the proceeding.

Policy proposal or *policy initiative* means any HUD regulation, legislative comment, legislative proposal, or other policy statement or policy action.

Policy statement means a statement of HUD policy, other than a substantive regulation, that must be published in the **Federal Register** under 24 CFR Part 10. The term includes Notices and Notices of Funding Availability that must be published in the **Federal Register**. The term does not include less formal means of policy communication, such as HUD Handbooks, Notices to the Field, Notices to Public Housing Agencies (PHAs), or Mortgagee Letters, that are not subject to publication under Part 10.

Proposed legislation means draft legislative language—both authorizing and appropriating—or any supporting document (*e.g.*, a "Speaker letter," section-by-section analysis, or statement of purpose and justification) that HUD sends to OMB for review under Circular A–11 or A–19 for transmission to Congress, or for release to any person or entity outside the Executive Branch. The term includes any proposal for, or endorsement of, Federal legislation included in any annual or special report prepared by the Department or in other written form which the Department proposes to transmit to Congress, or to make available to any study group, commission, or the public. The term does not include requests from Congress for technical drafting and other technical services with respect to proposed legislation.

This definition follows the definition of "proposed legislation" in Circular A–19. The exception for technical drafting services is based on a similar exception in the Circular. The definition includes both authorizing and appropriating legislation, since the Order's use of the term, "proposed legislation," is clearly broad enough to encompass both, and both can have the types of federalism effects that the Order is designed to reach.

Regulation means all or part of any departmental statement of general or particular applicability and future effect designed: (a) To implement, interpret, or prescribe law or policy; or (b) to describe the Department's organization, or its procedure or practice requirements.

This definition is taken from 24 CFR Part 10, HUD's "rule making"

regulations. The definition governs the Department's regulatory functions, and is essentially the same as that used for determining the necessity for OMB review or regulatory documents under Executive Order 12291. Since sections 6(c) and 7 of the Order contemplate OMB review of agency rules and federalism assessments, use of the Part 10 definition will satisfy both HUD's and OMB's requirements for the production and review of rules.

Secretary means the Secretary of Housing and Urban Development.

States means the several States of the United States of America, individually or collectively and, where relevant, State governments, including units of local government and other political subdivisions established by the States; the Commonwealth of Puerto Rico; the District of Columbia; the Virgin Islands, Guam, the Northern Mariana Islands, and American Somoa, and any political subdivisions established by them; and the Trust Territory of the Pacific Islands.

The term includes governmental entities that have general governmental powers (such as city or county) and those that have limited or special powers (such as PHAs).

Although the Order does not explicitly include as "States" Puerto Rico, the District of Columbia, the Insular Areas, or other Territories and Possessions of the United States, these entities are considered to be "States" or "units of general local government" for many of the Department's programs. These include the Community Development Block Grant (CDBG) program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*), the public housing program under the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*), FHA mortgage and loan insurance under the National Housing Act (12 U.S.C. 1702, *et seq.*), and the homeless housing initiatives in title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361, *et seq.*). The Department believes that it is appropriate to include these entities within the Order's coverage, since many of the same "federalism" issues inhere in their relationship with the Department and it is important to foster uniformity of treatment among the many types of governmental jurisdictions that participate in the Department's programs.

Substantial direct effects means effects that are: (a) Significant or important (not minor or insignificant) and (b) immediate (not incidental, or derived or received from or through another entity).

II. Applicability

(Sections 1(a) and 2 through 7 of the Order)

A. In General

The Order is divided into three principal elements. The main body of the Order—Sections 1 through 3, and 6 and 7—provides guidance on the formulation and implementation of policies that have "federalism implications." Section 5 (Section IV. of this Notice) prohibits agencies from transmitting to Congress proposed legislation that falls within its proscriptions. Section 4 (Section V. of this Notice) contains special requirements for the preemption of State law by Federal statutes and regulations.

These elements interact as follows. Section 5 establishes a threshold requirement for agency policy initiatives that are expressed in proposed legislation, without regard to their "federalism implications." Legislative proposals that meet this threshold, and all other policy proposals covered by the Order (except preemptions under section 4), are subject to review and analysis under the "federalism implications" provisions of the main body of the Order. Where a potential statutory or regulatory preemption is involved, *only* section 4 of the Order applies: *i.e.*, the "federalism implications" of these types of preemptions will *not* be assessed under the main body of the Order.

B. Policies with Federalism Implications

(Section 1(a) of the Order)

(1) *In general.* The main body of the Order applies to "policies that have federalism implications." Thus, the threshold for the main body of the Order is reached when the HUD policy proposal involved has (or will have, when implemented) substantial, direct effects on: (a) The States, (b) the relationship between the Federal government and the States, or (c) the distribution of power and responsibilities among the various levels of government.

In determining whether the requisite effects are present, the Department will consider the initiative as a whole, as well as any parts of it that may have federalism implications.

(2) *Limitations upon compliance with the Order.* There are circumstances that may render full (or even any) compliance with the Order's "federalism implications" requirements impossible or unnecessary, despite the presence of policies that meet this threshold. As noted earlier, the Order is designed to ensure that federalism concerns are taken into account in agency policy making. The *sine qua non* of achieving this end is the existence of a policy that is susceptible to influence. Where the policy involved is not amendable to change, or where review under the Order is impracticable or unnecessary, compliance with the Order will not be required.

It should be noted that the Department will take these considerations into account only if the policy involved has been determined to meet the Order's "federalism implications" threshold of applicability. These limitations do not affect the presence of "federalism implications" in a given policy proposal; they merely serve to modify the extent to which the Order's prescriptions must be followed.

Examples where the type of agency "discretion" contemplated by the Order is not present include, but are not limited to, the following:

(i) *Further analysis is redundant.* Where, for example, (A) the Order was complied with at an earlier stage in the policy development process and the policy proposal in question is the same; or (B) it has been changed, but without significantly altering its "federalism implications" or changing its purpose to such an extent that a new look at the proposal's relationship to the Order would be warranted.

Examples include moving a rule from proposed to final, where the proposal's "federalism implications" were assessed at the proposed rule stage; and reproposing to Congress legislation that originally complied with the Order. In these cases, HUD will review the initial work under the Order, and determine whether another round of review under the Order is necessary.

(ii) *Policies with little or no discretion.* Examples include regulations implementing "self-executing" laws or statutory authorities whose implementation is within the statutory text or legislative history of the provision involved, thereby involving little or no discretion on the part of HUD in areas that may involve federalism issues. These types of regulatory situations will often arise in connection with proposals that are being implemented by informal communication, such as interim instructions, or by final rule without prior notice and comment, where lack of implementing discretion is cited in the preamble as a reason for skipping notice and comment. This exception also covers such items as litigation policy that the Department must carry out under court order, and congressionally

mandated research projects or Budget actions.

(iii) *Analysis is not feasible.* Examples include regulations that are emergency in nature or that contain congressionally or OMB-imposed deadlines that make full compliance with the Order impossible, or legislative proposals and comments that carry expedited deadlines from OMB or the Congress. In such cases, the Department will comply with the Order in as full a fashion as possible, given the time contraints.

(iv) *Technical matters.* Examples include proposed legislation and legislative comments that do not involve substantive issues, such as technical legislative amendments or technical comments on pending legislation or simple extensions of authority.

In determining whether any of the above conditions is present in a given policy initiative, the Department will limit its consideration to the aspects of the proposal that exhibit the "federalism implications." It also should be noted that more than one exception may apply to a given policy initiative. Thus, part of the initiative may have undergone review under the Order at a previous time, and another part of the proposal may be implementing a statutory mandate that permits little or no discretion in its promulgation. In such an instance, neither part of the proposal requires review and analysis under the Order.

(3) *Effect of applicability.* If a given policy initiative is determined to meet the "federalism implications" threshold under paragraph B.(1) of this Section, and if review under the Order is not subject to exception under paragraph B.(2) of this Section, the formulation and implementation of the initiative must be guided by the Fundamental Federalism Principles contained in Section III.B. of this Notice, and the initiative must be analyzed under the Federalism Policymaking Criteria of Section III.C. In addition, the need for a Federalism Assessment under Section III.D. of the notice must be determined, and the policy must be highlighted for OMB in the agency's submissions under Circular A–19 and Executive Order 12291.

A policy proposal that does not have the requisite "federalism implications" need not be assessed under the main body of the Order.

C. *Legislative proposals.* Section IV. of this Notice establishes a threshold for all proposed legislation. The threshold applies irrespective of whether the proposal has "federalism implications" for purposes of the main body of the Order. Any proposal that falls within the provision's proscriptions may not be sent to Congress. Proposals that meet the threshold may be subject to further "federalism implications" review and analysis under the main body of the Order.

D. *Preemption of State law by Federal statutes or regulations.* Section V. of this Notice applies to all proposed preemptions of State law by Federal statutes or regulations. Policies that are within this Section's coverage are not subject to review under the other provisions of the Order. This conclusion rests on two bases.

First, as noted earlier, analysis of a policy initiative's "federalism implications" under the Order presumes the existence of agency discretion in developing and implementing the initiative. The absence of this discretion renders review and analysis under the main body of the Order unnecessary, since the Order does not have the ability to achieve its purpose of ensuring that federalism concerns may influence the initiative's development and implementation.

In determining whether a statutory or regulatory preemption meets section 4's standards, the only issue is whether there is sufficient evidence that Congress intended to preempt the State law. This inquiry does not provide the necessary agency discretion to permit meaningful "federalism implications" analysis. Establishing congressional intent does not involve federalism considerations, and a determination that Congress intended to preempt State law leads the agency to do precisely that, irrespective of any federalism or other policy considerations that might be present.

Second, section 4 contains additional provisions requiring that the extent of preemption be the minimum necessary to accomplish the Federal purpose, that affected officials and organizations be consulted when a preemption issue arises, and that affected States in rule making proceedings involving preemption be given opportunity for appropriate participation in the action. These features are analogous to those provided elsewhere in the Order, and seem to demark a "complete system" for preemption subject to section 4 that is separate from the "federalism implications" provisions of the main body of the Order.

Finally, it should be noted that section 4 only applies to statutory or regulatory preemption. Other forms of preemption, such as a legislative proposal seeking to preempt State law, are subject to review under other provisions of the Order, as appropriate.

E. *Exemption for activities under the Inspector General Act.* The activities of the Department's Inspector General under the Inspector General Act (42 U.S.C. 1404a) are exempt from the Order. The Department has consistently interpreted the Inspector General Act as establishing an exclusive statutory charter that is not subject to interference or dilution by administrative factors external to the Act.

In this instance, the very purpose of the Order is to require that an external factor—federalism concerns—be taken into account in the exercise of agency discretion. Application of the Order could affect a number of the Inspector General's activities under the Act, including the requirement that is central to the Inspector General's mission: That the Inspector General identify and seek corrective action for fraud, waste, and abuse by participants in HUD programs, including State or local governments.

Consistent with its previous interpretations of the inviolability of the Inspector General Act, the Department believes that the best approach is simply to exempt the Inspector General's functions under the Act from the Order's provisions.

It should be noted that the Order recognizes the possibility of such an interpretation, by explicitly stating that the Order's requirements are to apply "to the extent permitted by law."

III. Review and Analysis of Policies that Have Federalism Implications

A. Constitutional Considerations. (Sections 2, 3(a) and (b), 5(a), and 6(c)(4) of the Order)

A number of the Order's provisions refer to its constitutional underpinnings and the principles that are to guide agencies in implementing it. Thus, sections 3(a) and (b) of the Order (Section III.C.(2) of this Notice) call for strict adherence to "constitutional principles;" Section 3(b)(2) requires that agency policy initiatives not "encroach upon authority reserved to the States;" sections 2(b), (c), and (g) of the Order (see Appendix A to this Notice) refer to federalism in terms of State "sovereignty" that is protected by the Tenth Amendment to the Constitution; and section 5(a) (Section IV.A. of this Notice) prohibits proposed legislation that would:

> * * * interfere with functions essential to the States' separate and independent existence or operate to directly displace the States' freedom to structure integral operations in areas of traditional government functions.

Thus, the Order appears to view federalism from the perspective that there are relatively fixed areas in which

States enjoy clear constitutional protection from Federal action.

Some of the older Supreme Court cases—especially *National League of Cities v. Usery*, 426 U.S. 833 (1976)—seem to be in particular agreement with the Order's approach. The *National League of Cities* case involved Federal attempts to impose Federal wage and hour provisions on a city public transportation agency. The Court framed the issue before it as whether the wage and hour determinations sought to be imposed were "functions essential to the separate and independent existence" of the State (at 845). In ruling against Federal regulation, the Court found that these determinations would:

> * * * significantly alter or displace the States' ability to structure employer-employee relationships in such areas as fire prevention, police protection, sanitation, public health, and parks and recreation. These activities are typical of those performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services. Indeed, it is functions such as these which governments are created to provide, services such as these which the States have traditionally afforded their citizens. If Congress may withdraw from the States the authority to make those fundamental employment decisions upon which their systems for performance of these functions must rest, we think there would be little left of the States' separate and independent existence. (at 851)

The Court stated its constitutional prescription as applying to any Federal action that "operates to directly displace the States' freedom to structure integral operations in areas of traditional government functions." (at 852)

National League of Cities, however, was overruled by *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). Garcia involved the same issues as *League of Cities*. The approach adopted by the Court in *Garcia* was that the States' continuing role in the Federal system is primarily guaranteed not by externally imposed limits, but by the structure of the Federal Government itself. That is, the Federal political *process* is the primary means for ensuring the role of States in the Union, not efforts to identify "traditional governmental functions" or other tests for determining the specific boundaries of Federal/State powers.

The *Garcia* doctrine was recently amplified in *State of South Carolina v. Baker*, U.S. , 108 S.Ct. 1355 (April 28, 1988). *South Carolina* involved the constitutionality of an Internal Revenue Code provision denying Federal income tax exemption for interest earned on unregistered long-term State and local government bonds. In discussing the federalism aspects of the issue, the Court stated,

> *Garcia* holds that the [Tenth Amendment] limits are structural, not substantive—*i.e.*, that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity. (at 1360)

In response to South Carolina's argument that the political process failed because the statute in question was enacted on the basis of insufficient credible evidence, the Court stated:

> Although *Garcia* left open the possibility that some extraordinary defects in the national political process might render congressional regulations of state activities invalid under the Tenth Amendment, the Court in *Garcia* had no occasion to identify or define the defects that might lead to such invalidation * * * Nor do we attempt any definitie articulation here. It suffices to observe that South Carolina has not even alleged that it was deprived of any right to participate in the national political process or that it was singled out in a way that left it politically isolated and powerless. Cf. *United States v. Carolene Products Co.*, 304 U.S. 144, 152, n. 4 (1938). Rather, South Carolina argues that the political process failed here because § 310(b)(1) was "imposed by the vote of an uninformed Congress relying upon incomplete information." * * * But nothing in *Garcia* or the Tenth Amendment authorizes courts to second-guess the substantive basis for congressional legislation. Cf. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464, 101 S.Ct. 715, 724, 66 L.Ed. 2d 659 (1981). Where, as here, the national political *process* did not operate in a defective manner, the Tenth Amendment is not implicated. (at 1360–1361) (emphasis in original)

Although the approaches adopted by the Order and *Garcia/South Carolina* appear to embody two different constitutional standards, the Department sees no inherent conflict in using these tests for purposes of giving content to the Order. The *Garcia/South Carolina* analysis expresses the current constitutional interpretation of how far the Federal government may go in affecting States' actions. The Order, on the other hand, counsels a *voluntary* limit on the exercise of Federal power. Provided that the Federal action is within the *Garcia/South Carolina* standard, the approach taken by the Order is without constitutional objection.

Three provisions of the Order require constitutional analysis along the lines of *National League of Cities*. Section 3(b)(2) of the Order requires agencies, in assessing the constitutional basis for policy initiatives, to ensure that the initiative does not "encroach upon authority reserved to the States." Section 5(a) of the Order prohibits the submission to Congress of proposed legislation that directly regulates States "in ways that would interfere with functions essential to the States' separate and independent existence or operate to directly displace States' freedom to structure integral operations in areas of traditional governmental functions." Section 6(c)(4) requires agencies to identify the (extent to which a policy proposal would affect the States' "ability to discharge traditional governmental functions, or other aspects of State sovereignty.

In devising a test that would faithfully implement these concepts, the Department shares the Supreme Court's frustration over fashioning constitutional standards that can be applied over a wide range of factual situations. Thus, for purposes of implementing these provisions, the Department believes the best approach is to base its analysis on the test described above in *National League of Cities:* Does the policy initiative operate to directly displace the States' freedom to structure integral operations in areas of traditional government functions? This test appears to be a good starting point for analyzing the various "constitutional" concepts used in the Order, and has the further advantage of having been used to decide the federalism implications of actual fact situations by the highest court in the land.

In applying this test, the Department will consider all the facts and circumstances of the policy proposal. Among the factors that the Department may consider are the following: (1) Whether the function involves an area over which States have historically and typically had (or have been recognized as having) governmental autonomy; (2) how central the function is to the State's operation as a State; (3) whether the Federal action would directly displace or interfere with State discretion and, if so, to what extent would it do so; and (4) whether the State discretion that would be displaced involves important areas that are necessary to attainment of the State function or to the ability of the State to function as a State.

B. Fundamental Federalism Principles

(Section 2 of the Order, Appendix A of this Notice)

In formulating and implementing HUD policy initiatives that have federalism implications, the Department will be guided by the series of Fundamental Federalism Principles that are contained in section 2 of the Order. These principles call upon Federal agencies to recognize the unique and important role

that States and their political subdivisions play in the Federal system, and to fashion their policy initiatives in ways that encourage the diversity and creativity of States and localities in addressing issues of concern to them. In their consideration of policy initiatives, Federal agencies are admonished to use a presumption in favor of State action and against Federal regulation, unless Federal action is required by law or there is some other demonstrable justification for Federal action.

A full listing of the Fundamental Federalism Principles appears at the end of this Notice, as Appendix A.

C. Federalism Policymaking Criteria

(Section 3 of the Order)

(1) *In general.* Section 3 of the Order contains a number of criteria against which the federalism aspects of agency policy initiatives are to be measured. As noted in Section II.B.(1), above, these criteria apply only to policies that have met the Order's "federalism implications" threshold under section II.B.(1) of this Notice, and are not otherwise excepted from Order review under Section II.B.(2) of this Notice.

It should also be noted that paragraphs C. (2) and (3) of this section frame their provisions in terms of analyses and determinations that "should" be made. The Department intends to carefully and fully follow these provisions as a general matter, except where some countervailing consideration counsels otherwise: that is, we will consider the "should" as the equivalent of "to the maximum extent practicable." The Department believes that this approach gives effect to the Order's objective: It preserves the general applicability of the Order, while giving agencies some room to work out problem areas, without the "straight jacket" of a series of "shall" imperatives.

Thus, in addition to being guided by the Fundamental Federalism Principles described in Section III.B. and Appendix A of this Notice, HUD will, to the extent permitted by law and to the maximum extent practicable, adhere to the criteria in the following provisions of this Section when formulating and implementing policies that have "federalism implications."

(2) *Policy initiatives that would limit the policymaking discretion of the States.* (Sections 3 (a) and (b) of the Order) If the policy proposal would "limit the policymaking discretion of the States," the Order specifies a number of prescripts that should be followed. The quoted phrase is not defined in the Order, and is susceptible to several interpretations.

Viewed in a more narrow sense, "limit the policymaking discretion of the States" includes situations in which the Federal action is intended to *actually* reduce or remove State authority in areas in which the State has *already acted* or has the legal capacity to act *in the future.* This reading primarily includes matters of "pure regulation," in which the primary purpose and direct effect of the policy initiative is to regulate some aspect of State interest. This type of regulation may require the preemption of State law to accomplish its objective. A good example of this type of "limit" on State policy making discretion is the Federal attempt to impose the wage and hour requirements that were at issue in the *National League of Cities* and *Garcia* cases.

This interpretation of "limit the policymaking discretion of States," however, does not include policy actions involving HUD benefit programs. These programs are intended to convey some benefit on the public, and any "limit" on State policy making discretion is only incidental to achievement of this overall purpose. Stated differently, HUD "regulation" of State and local governments in the context of benefit programs is not principally intended to affect these governmental entities *qua* governmental entities, but merely enlists their assistance in carrying out the programs' purposes.

The exclusion of benefit programs from paragraph C. of this Section draws support from the Order's rendition of the type of situation that may justify "limiting" State discretion: Where "national activity is necessitated by the presence of a problem of national scope." This language clearly requires a Federal "policy action" that is primarily intended to address a national problem. As noted above, however, to the extent benefit programs affect State interests, they do so only as an incident to achievement of the Federal purpose involved.

On the other hand, under a more expansive reading, "limit the policymaking discretion of the States" could include situations in which the agency policy could have less clear effects, for example, by moving into an area where *no* State policymaking has occurred, and the only "limit" on future State policymaking would be the putative "chilling" effect of the Federal activity in the area. Thus, in determining whether to propose the Housing Voucher program—the centerpiece of the Administration's rental housing assistance strategy—this reading of the Order would have required the Department to consider whether the existence of the new program would act to prevent or discourage States from experimenting with and establishing their own form of voucher assistance. It is generally fair to assume that enactment of a new Federal benefit program will "discourage" State and local governments from entering into the same area, since the availability of the Federal money will prompt the governmental entity to use its resources for other priorities. If this projection of the proposal's effects prevented the Department from recommending enactment of the program, the result would have been doubly detrimental: Not only would the public have been deprived of a preferable way of delivering rental housing subsidy, but also the States and localities would not have been provided a subsidy model that a number of these entities have in fact seen fit to replicate with their own resources.

On balance, the Department believes that the more narrow reading is preferable. A broader interpretation would apply to a host of HUD benefit programs, and would subject them to the constitutional and "problem of national scope" criteria in sections 3(a) and (b) of the Order. Most, if not all of these programs, and even amendments to them, arguably could not have been transmitted to Congress, if this reading of the Order applied to them in their policy development stage. This result would follow despite the fact that any "regulation" of States and localities is merely an incident to the programs' overall purposes. The Department doubts that the Order was intended to have such dramatic effects on existing or future Federal benefit programs.

Thus, for purposes of the Order, the provisions of this paragraph C. apply to any policy initiative that is intended to actually reduce or remove State authority in areas in which the State has already acted or in which the State has the legal capacity to act in the future. This will be limited to situations involving matters of "pure regulations," and legislative preemption designed to effectuate "pure regulation," in which the primary purpose and direct effect of the policy initiative is to affect areas of State interest.

This paragraph C. does not cover policy initiatives involving HUD benefit programs, since such programs generally affect State interests only as an incident to their benefit purpose. It also does not reach preemptions of State law by Federal statutes or regulations or incident to a HUD benefit program.

Policies that fall short of this paragraph C.(2)'s standard may be covered under other provisions of the Order, but need not be assessed under this paragraph C.

The precepts that the Order specifies should be followed for policy proposals that would "limit the policymaking discretion of the States" and, therefore, are subject to this paragraph, are as follows.

(i) *Constitutional and statutory basis.* There should be strict adherence to constitutional principles. The constitutional and statutory authority for the proposed policy should be closely examined. No policy action should be taken, unless the constitutional authority is "clear and certain." Authority is "clear and certain," only when (A) the authority for the policy may be found in a specific provision of the Constitution, (B) there is no provision in the Constitution prohibiting Federal action, and (C) the action does not encroach upon authority reserved to the States.

For guidance on how the Department will interpret the phrase, "authority reserved to the States," see Section C. of this Notice.

In determining whether the authority for a policy initiative "may be found in a specific provision of the Constitution," or whether there is any constitutional provision "prohibiting Federal action," the Department will not require that the action be *explicitly* referred to in the actual language of the Constitution. The constitutional authority for an action will be determined on the basis of the specific provisions of the Constitution, as interpreted by current Supreme Court precedent. The Department believes that this approach will be more than adequate to ensure the achievement of the Order's mandate that agency policy proposals have a "clear and certain" Constitutional basis.

(ii) *Problem of national scope.* No policy action should be taken, unless national activity is necessitated by the presence of a problem of national scope.

The Order does not define "problem of national scope." Section 3(b)(1) does, however, point out "importance of recognizing the distinction between problems of national scope (which may justify Federal action) and problems that are merely common to the States (which will not justify Federal action because individual States, acting individually or together, can effectively deal with them)."

The only guidance the Order offers to distinguish between these categories is that the States have the ability to deal with "common" problems. The ability of a State "to effectively deal with a problem" may turn on an analysis of its actual fiscal strength and managerial capacity, or an assumption that States can handle "common" problems, irrespective of their actual capabilities. Attempting to establish States' actual capacities would be time-consuming and probably not very politically feasible, not to mention informative. On the other hand, use of an *a priori* judgment about States' capabilities would be inadequate to account for the wide range of differences among governmental entities.

The Department believes that the best approach is to focus on whether States have the *legal* capacity to address these "common" problems, not whether they *in fact* have the capacity to do so. The language of the Order does not suggest use of a facts-based test for defining "common" problems. Indeed, use of "national" and "common" seems to establish a textbook polarity that ought not turn on the facts of individual cases.

Thus, in assessing whether a HUD policy initiative addresses a "problem of national scope," the Department will determine whether the affected States and local governments have the *legal capacity* to deal with the problem effectively, acting either alone or in concert. For purposes of the Order, "legal capacity" will include situations in which the State *both* has full legal ability to take effective action *and* the State does not have such ability, but could obtain it through appropriate enabling legislation or other action at the State level.

In any case in which the States involved have the requisite legal capacity, the "problem" will not be considered to be one of national scope for which Federal action is permitted.

For purposes of section 3(b) of the Order, the Department will give the word, "problem," its dictionary meaning: A matter involving difficulty in solving or handling. As noted above, the existence of a "problem" is a threshold requirement for Federal action under that Section. Thus, HUD action under section 3(b) must be directed toward resolving or otherwise dealing with an articulable, demonstrable difficulty requiring Federal intervention.

Finally, "national activity" will mean action at the Federal level to address the problem. "National scope" will be defined as a nationwide problem.

Thus, for purposes of this paragraph C.(3)(ii), a "policy action" subject to the Order may only be taken if action at the Federal level is required to address a demonstrable, nation-wide problem that States, acting alone or in concert, do not have, or cannot obtain, the legal capacity to handle effectively.

(iii) *Need for the policy action.* The necessity for the policy action should be carefully assessed.

In making this assessment, the Department will review not only the overall policy proposal, but also each of its aspects, to ensure conformity with the objectives of the Order.

(iv) *Consultation.* To the extent practicable, the States should be consulted before any action under this paragraph C. is implemented.

In determining whether consultation is "practicable" in a given case, the Department will consider whether consultation is feasible in all the circumstances. Situations that might affect the feasibility of consulting with the States include the number of State and local governments and officials involved, and timing considerations for the HUD action.

Consultation encompasses a wide spectrum of possibilities. At the "full" end, consultation could include personal contact with all State officials involved at the earliest stages of the policy development process, and could accord these officials a controlling voice in the content of the proposal. On the other end of the spectrum, consultation could include "bouncing the proposal off" a small number of officials late in the process or soliciting views on the proposal in **Federal Register** documents, when the fundamental policy proposal has relatively clear definition.

Given the accordion-like quality of "consultation," the Department believes that the best approach is to permit the content of the consultation to vary with the proposed policy action. This approach is very much in keeping with the "should" nature of the provision, and makes sense as a way of tailoring the degree of consultation to the specific action involved. In making this determination, factors that would affect the degree of consultation include: The seriousness of the Federal intrusion into State affairs, the seriousness of the Federal action proposed to be taken, the timing considerations involved in the proposed Federal action, and how much discretion HUD has in developing and implementing the policy.

In fashioning the nature of the consultation with State officials, the Department will be mindful of the Advisory Committee Act. This Act requires consultations that meet its criteria to be conducted in a formal way, including providing notice of meetings and holding meetings on the record. The Department will determine on a case-by-case basis whether this degree of formality is warranted.

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The Department also wishes to note that the consultation referred to in the Order should not be confused with "negotiated rule making." Under "negotiated rule making," Federal agencies would identify individuals and entities, and groups representing them, that fairly represent the issues and viewpoints that are likely to arise in connection with the rule making. These individuals and groups would work with the agency to decide upon the content of the rule before it is published in the Federal Register. The Department does not consider the consultation provision of the Order as requiring, or even suggesting, a move to "negotiated rule making," and will instead integrate the consultation that is to be accorded in each case into the Department's existing rule making procedures.

(3) *National policies administered by the States.* With respect to national policies administered by the States, the agency should give the States the maximum administrative discretion possible. Intrusive, Federal oversight of State administration is neither necessary nor desirable.

This requirement has the potential for considerable effect upon the Department's policy initiatives, since many of the Department's programs involve the use of States or their political subdivisions to carry out national policies. Examples of such programs include the Public and Indian Housing program (administered by PHAs) and the Community Development Block Grant (CDBG) program (administered by States and Entitlement grantees).

(4) *Undertaking to formulate and implement policies.* Before the policy development process begins, or as soon thereafter as possible:

(i) *Encouragement of States.* HUD will encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States.

As in the case of consultation, the form and degree of encouragement that HUD will give will vary with the facts of the individual case.

(ii) *Uniform, national standards.* HUD will refrain, to the maximum extent possible, from establishing uniform, national standards for its programs and activities and, when possible, will defer to the States to establish such standards.

Under this criterion, HUD will set uniform, national standards only where it determines, on the basis of all the facts of a given policy initiative, that such action is necessitated by factors such as the requirements of Federal law, or that providing for variations in the statutory or regulatory scheme is necessary to the achievement of some other Federal purpose. The term, "standards," will be interpreted broadly, to include Federal program requirements that States and their political jurisdictions must meet.

(iii) *Consultation.* When HUD establishes uniform, national standards under this paragraph C.(5), it will consult with appropriate officials and organizations representing the States in developing the standards. See the discussion of what constitutes "consultation" in section C.(3)(iv) of this Notice.

D. Agency Implementation

(Section 6 of the Order)

(1) *Designated Official.* (Section 6(a) of the Order)

As noted earlier, on January 4, 1988, the Secretary designated the General Counsel as the Designated Official.

(2) *Federalism Assessment—*

(i) *Determination to prepare Assessment.* (Section 6(b) of the Order) The Designated Official will review each HUD policy initiative that is subject to review under the Order (as provided by Section II.B.(1) of this Notice), and will determine which (if any) have sufficient "federalism implications" to warrant preparation of a Federalism Assessment. A Federalism Assessment will be prepared for each initiative for which the Designated Official makes the determination.

In making this determination, the Designated Official will consider all the facts and circumstances of the initiative, including (but not limited to) (A) the strength and nature of the "federalism implications" that the policy would have on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the varius levels of government; (B) how widespread the initiative's effects would be; (C) the extent of HUD's discretion in undertaking the initiative; and (D) the extent to which a Federalism Assessment would be a useful tool in elucidating the issues involved and positioning the initiative for internal HUD review, including review by the Secretary.

(ii) *Content of Assessment.* (Section 6(c) of the Order) Each Federalism Assessment will:

(A) Contain the Designated Official's certification that the policy initiative has been assessed in light of the Fundamental Federalism Principles under Section III.B. and Appendix A. of this Notice, the Federalism Policymaking Criteria under Section III.C. of this Notice, the special requirements for legislative proposals under Section IV. of this Notice, and the special requirements for preemption of State law by Federal statutes or regulations under Section V. of this Notice.

(B) Identify any provision or element of the policy initiative that is inconsistent with the provisions of these Sections.

(C) Identify the extent to which the policy initiative imposes additional costs or burdens in the states, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy.

(D) Identify the extent to which the policy would affect the States' ability to discharge traditional State governmental functions, or other aspects of State sovereignty. See Section C. of this Notice for the meaning of the terms in this paragraph (D).

It should be noted that a finding that a policy initiative is inconsistent with the Order's precepts does not (except as provided for proposed legislation by Section IV. of this Notice) automatically operate to prevent a proposal form proceeding forward. Instead, the initiative may proceed with internal HUD review, OMB analysis, and even implementation, in appropriate circumstances.

(iii) *Review by Secretary.* (Section 6(b).)

The Secretary will personally consider Federalism Assessments at any decisional point in the policy formulation and implementation process that the Secretary deems appropriate, but no later than any step in the process at which a significant decision is made to further the proposal's eventual implementation.

Consistent with this guidance, the final point at which the Secretary will review Federalism Assessments for each of the policy initiatives subject to the Order, is as follows:

(A) *Regulations and policy statements:* Before the regulation or statement is sent to OMB for review under Executive Order 12291.

(B) *Legislative comments and proposed legislation:* Before the comment or proposal is transmitted to its intended recipent.

(C) *Policy actions:* At the final stage in the policy formulation and implementation process at which a significant decision is made to further the proposal's eventual implementation.

E. Federalism Impact Statement

Each regulation preamble, statement of policy, letter transmitting proposed legislation or legislative comments, and

other appropriate document expressing HUD policy will contain a "Federalism Impact Statement." The "Statement" will be similar to that currently required for the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1165 (1980) (*codified at* 5 U.S.C. 601-612 (Supp. V 1981)). The "Statement" will discuss the proposal's federalism impacts, irrespective of whether the proposal meets the Order's threshold of applicability under Section II.B.(1) of this Notice. Its length, and the depth in which the federalism issues will be discussed, will depend on the number, complexity, and weight of the federalism issues involved.

F. OMB Review

(Sections 6(c) and 7(b) of the Order.)

In submissions to OMB under Executive Order 12291 and Circular A-19, HUD will identify any proposed regulatory and statutory provision that contains policies with federalism implications, will include any current Federalism Assessment prepared for the initiative under Section III.D.(2) of this Notice, and will address any federalism concerns that HUD determines to be substantial.

IV. Special Requirements for Legislative Proposals

(Section 5 of the Order.)

A. In General

HUD will not transmit to Congress, formally or informally, proposed legislation that meets any of the criteria of this Section. As noted in Section B. of this Notice, this section establishes a threshold for policy initiatives contained in proposed legislation, that operates irrespective of the "federalism implications" involved. Proposals that do not pass this threshold may not be transmitted to Congress.

Proposals that do meet this threshold are subject to further review under main body of the Order. This conclusion is clear in the case of paragraphs B. and C. of this Section. Each of these provisions involves an "up or down" determination. If the proposal passes applicable test, the Department only knows that the initiatives does not have the offending characteristics; these provisions shed no light on the suitability of the proposal from the federalism perspective, and thus, must have their "federalism implications" reviewed under the main body of the Order.

Paragraph D. of this Section involves a slightly different situation. This provision not only indicates what may be proscribed—preemption of State law—but also supports to establish a test for determining what type of preemption will be acceptable—that which is consistent with the Fundamental Federalism Principles in Section III.B. and has a "clearly legitimate national purpose." As noted in greater detail below, this provision's test of acceptability is essentially the same as the requirement in section III.C.(3)(ii) of this Notice, that the policy action be "necessitated by the presence of a problem of national scope."

The Department does not believe that a proposal that meets this test should be exempted from further review of its "federalism implications" under the Order. The provision's test focuses on a limited aspect of the proposal's federalism acceptability. It fails to address many of the other significant features of the Order, including consultation with affected governmental entities; limiting the preemption to the minimum necessary to achieve the Federal objective; giving States the greatest administrative discretion possible; and refraining from establishing uniform, national standards for Federal programs. As noted earlier, the presence of some of these additional provisions in the preemption requirements of Section V. of this Notice lends support to the conclusion that that Section should be considered a "complete system," separate and apart from the other elements of the Order.

In this case, the Department believes that the *absence* of these additional provisions leads to the conclusion that paragraph D. of this Section should be viewed as affording a "first cut" at proposed preemptive legislation: An initial threshold that if met, depends upon the remainder of the Order to ensure its overall consistency with the Order's precepts. Thus, proposed legislation that meets the threshold under any of the provisions of this Section is subject to further review and analysis under the main provisions of the Order.

B. Direct regulation of States

HUD may not directly regulate the States in ways that would interfere with functions essential to the States' separate and independent existence or operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions.

The Department believes that the term, "directly regulate," is best interpreted as reaching only instances of "pure regulation" of the States: *viz.*, where the purpose and direct effect of the Federal action is to control some aspect of State policy making, such as in the case of the wage and hour standards requirements under *National League of Cities* and *Garcia*. Thus, this provision will not affect the vast majority of HUD policy initiatives that deal with benefit programs. As noted earlier, although benefit programs may impose conditions on their receipt and use, any such conditions—however significant—are merely an *incident* to achieving the purpose of the program involved, and cannot be said to be an attempt to "directly regulate" the State.

The types of "direct regulation" that Section 5(a) proscribes—that which interferes with essential State functions or displaces State policy making prerogatives—is discussed more fully in Section III.A. of this Notice.

It should be noted that if a policy initiative that falls within this paragraph B. involves the preemption of State law, the initiative must meet the thresholds under *both* this paragraph *and* paragraph D. of this Section.

C. Conditions on Assistance

HUD may not attach to its legislation proposals conditions that are not directly related to the purpose of the proposal.

The Order limits the coverage of this provision to "grants." The Department believes that "grants" is unduly narrow. HUD administers a number of programs offering a wide range of "assistance," such as grants, loans, loan guarantees, interest or rental assistance, and mortgage and loan insurance. The concern expressed in the Order—that any conditions be directly related to the policy initiative—is valid across all HUD programs. Therefore, in implementing this provision, the limit on conditions will apply to all HUD legislative proposals, irrespective of the nature of the form of assistance involved.

The Department will consider "conditions" broadly, to mean statutory requirements associated with a legislative proposal. In determining whether a condition is "directly related" to the proposal's purpose, the Department will consider all the circumstances of the proposal, particularly the extent to which the condition has a direct and important effect on the proposal's ability to carry out one or more of its objectives.

D. Preemption.

HUD may not preempt State law, unless (i) preemption is consistent with the Fundamental Federalism Principles referred to in Section D. and Appendix A of this Notice, and (ii) a clearly legitimate national purpose, consistent with the Federalism Policymaking

Criteria described in Section E. of this Notice, cannot otherwise be met.

The Department believes that the requirement that a permissible preemption involve a "clearly legitimate national purpose that cannot otherwise be met" states a clear standard: the Department is to examine the purpose of the proposal and examine whether the preemption is necessary to its effectuation. This requirement would apply to all types of proposed preemptions, whether they involved "pure regulation" or benefit programs.

However, the meaning of the requirement that the "national purpose" be "consistent with" the Federalism Policymaking Criteria is not entirely clear. The only reference in the Criteria pertaining to national policies is the "problem of national scope" requirement of Section III.C.(2)(ii) of this Notice. As noted in that Section, the Department believes that this requirement pertains to areas of "pure regulation" in which Federal action is required to address a demonstrable, nation-wide problem that the States, acting alone or in concert, do not have, or cannot obtain, the legal capacity to handle effectively.

To give full meaning to the "national purpose" language and the requirement for consistency with the Federalism Policymaking Criteria, the Department will use a two-part test. All proposed preemptions will have to demonstrate that they involve a clearly legitimate national purpose that cannot otherwise be met. In addition, preemptions involving "pure regulation" will have to meet the "problem of national scope" standard described above.

V. Special Requirements for Preemption

A. In general

As noted above, this Section establishes a complete system for the review and analysis of preemptions of State law by Federal statutes and regulations. This Section operates independently from the remainder of the Order, and is the sole determinant of the suitability under the Order of any matter involving statutory or regulatory preemption.

B. Statutory preemption

(Section 4(a) of the Order.)

To the extent permitted by law, HUD will construe (in regulations, legal opinions, and otherwise) a Federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

The doctrine of Federal preemption of State law recently summarized by the United States Supreme Court, as follows:

It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that "interfere with, or are contrary to" federal law. *Gibbons v. Ogden*, 9 Wheat. I, 211 (1824) (Marshall, C.J.). Under the Supremacy Clause, federal law may supersede state law in several different ways. First, when acting within constitutional limits, Congress is empowered to preempt state law by so stating in express terms. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). In the absence of express pre-emptive language, Congress' intent to pre-empt all state law in a particular area may be inferred where the scheme of Federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Pre-emption of a whole field also will be inferred where the field is one in which "the federal interest is so dominant that the Federal system will be assumed to preclude enforcement of state laws on the same subject." *Ibid;* see *Hines v. Davidowitz*, 312 U.S. 52 (1941).

Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with Federal law. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz, supra*, at 67. [*Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712–13 (1985)].

Section 4(a) appears to track closely the Supreme Court's tests for determining when a Federal statute may be interpreted as preempting State law. It should be noted, however, that the Order's call for "firm and palpable evidence compelling the conclusion that Congress intended preemption of State law" seems somewhat more stringent than the Supreme Court's tests of when preemption will be inferred in the absence of express preempting language or a direct conflict between the State and Federal law. As noted above, the Supreme Court's tests for determining when preemption will be inferred are (1) "where the scheme of federal regulation is sufficiently comprehensive to make *reasonable the inference* that Congress left no room" for State regulation and (2) "where the field is one in which the federal interest is so dominant that the federal system will be *assumed* to preclude enforcement of state laws on the same subject." (Emphasis added.) Both of these tests may be satisfied by a lesser degree of intent to preempt than the Order's "firm and palpable evidence" test.

In many cases, determining whether a preemption will be inferred under Section 4(a) of the Order and the Supreme Court's approach will yield the same conclusion. Section 4(a)'s requirement for "firm and palpable evidence" of congressional intent can be met by a Federal statutory provision that contains sufficiently strong evidence that Congress intended to "leave no room" for State law or to preclude State regulation. In these cases, the analysis of legislative intent satisfies both the Supreme Court's tests and Section 4(a)'s "firm and palpable evidence" standard. There may well be circumstances, however, where a given proposed preemption may pass muster under the Supreme Court's "reasonable inference" and "assumed prohibition of enforcement" tests, but not meet the requirement for "firm and palpable evidence."

In administering Section 4(a) of the Order, the Department will consider the "firm and palpable evidence" test not as creating a *new standard* for the preemption of State law, but rather as specifying the *strength of congressional intent* needed to justify a preemption. Thus, the Department will apply the "firm and palpable" evidence test to the Supreme Court's framework for determining whether a Federal statute should be considered preemptive. Specifically, the Department will infer preemption where (1) the scheme of Federal regulation is sufficiently comprehensive to provide firm and palpable evidence that Congress intended to leave no room for State regulation or (2) the field is one in which the Federal interest is sufficiently dominant to provide firm and palpable evidence that Congress intended to preclude enforcement of State laws on the same subject.

C. Regulatory Preemption

(Section 4(b) of the Order.)

Where a Federal statute does not preempt State law, HUD will construe any authorization in the statute for the issuance of regulations as authorizing

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preemption of State law by rule making only if the statute expressly authorizes issuance of preemptive regulations or there is some other firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the Department the authority to issue regulations preempting State law.

Current case law dealing with regulatory preemption requires a comparison between State law and the Federal law being implemented by regulation, and a rational determination by the agency that the State law imposes an obstacle to the Federal objective, considered as a whole. In the words of *Capital Cities Cable* v. *Crisp*, 467 U.S. 691, 699 (1984), "compliance with the State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (See also *Fidelity Federal Savings and Loan* v. *de la Cuesta*, 458 U.S. 141 (1982), the FHLBB "due on sale" case.)

As in the case of statutory preemption under Section 4(a) of the Order, the Department interprets Section 4(b)'s reference to "firm and palpable evidence compelling the conclusion that Congress intended to delegate * * * the authority to issue" preemptive regulations, as requiring a higher standard of intent for sanctioning regulatory preemption than that found in case law. The Department will treat this issue in the same way as statutory preemption (discussed in the preceding paragraph). Specifically, in determining whether grounds for regulatory preemption exist, the Department will consider whether there is firm and palpable evidence that compliance with the State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the Congress.

D. Minimum Preemption Necessary

(Section 4(c) of the Order.)

Any regulatory preemption of State law will be limited to the minimum necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

This provision contains the classic "minimum necessary to achieve ends" test. In making determinations under this provision, the Department will closely examine all the circumstances surrounding the proposed preemption, including the objectives of the Federal statutory and regulatory provisions, the State provisions affected, the degree of Federal intrusion into the State law, and how the Federal regulation can be devised to minimize the effect on State law.

E. Consultation

(Section 4(d) of the Order.)

When HUD foresees the possibility of a conflict between State law and federally protected interests within its area of regulatory responsibility, HUD will consult, to the extent practicable, with appropriate officials and organizations representing the States to avoid the conflict.

HUD construes the phrase "federally protected interests within [the agency's] area of regulatory responsibility" as any legislative or regulatory proposal that may have preemptive effect.

F. Notice and Opportunity For Participation

(Section 4(e) of the Order.)

When HUD proposes to preempt State law through adjudication, or rule making under 24 CFR Part 10, HUD will, to the maximum extent practicable, provide all affected States notice and an opportunity for appropriate participation in the proceedings.

For informal rule making, which makes up the vast majority of the Department's regulatory activity, this requirement will generally involve publication of the proposal in the **Federal Register**, with reasonable opportunity for affected States and others to provide written comment on the proposal. In appropriate cases, HUD may provide for alternative means of notifying affected parties and securing their participation in the process.

In rule makings subject to this paragraph F., HUD will generally not proceed by interim rule or by final rule (without prior notice and opportunity for participation), even where such proceedings would otherwise be justifiable. However, if the rule making involves an emergency matter, or congressional-, OMB-, or court-ordered deadlines that make advance notice and opportunity to comment impracticable, the Department will provide alternative means of securing participation of interested parties in the proceeding to the greatest extent possible, consistent with the circumstances involved.

VI. Judicial Review

(Section 8 of the Order.)

The Order and this Notice are intended only to improve the internal management of the Executive Branch, and are not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

VII. Intergovernmental Review of Federal Programs

(Section 3(a) of the Order.)

Executive Order 12372, *Intergovernmental Review of Federal Programs*, remains in effect for the programs and activities to which it applies.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Dated: August 9, 1988.

J. Michael Dorsey,

General Counsel.

Appendix A

Sec. 2. Fundamental Federalism Principles

In formulating and implementing policies that have federalism implications, Executive departments and agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government.

(b) The people of the United States created the national government when they delegated to it those enumerated government powers relating to matters beyond the competence of the individual States. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) In most areas of governmental concern, the States uniquely possess the constitutional authority, the resources, and the competence to discern the sentiments of the people and to govern accordingly. In Thomas Jefferson's words, the States are "the most

competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies."

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local government, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) In the absence of clear constitutional or statutory authority, the presumption of sovereignty should rest with the individual States. Uncertainties regarding the legitimate authority of the national government should be resolved against regulation at the national level.

Appendix B—Implementation of Executive Order 12812, Federalism

Appendix B contains a form that should be filled out for each HUD policy initiative that is subject to Executive Order 12812. The form is based upon the guidance set forth in the rest of this notice.

The form has three sections:

1. *Section I.* Governs the preemption of State law by Federal statutes and regulations. (Section 4 of the Order and Sections II.D. and V. of the Notice.)

2. *Section II.* Contains special requirements for proposed legislation. (Section 5 of the Order and Sections II.C. and IV. of the Notice.)

3. *Section III.* Prescribes standards for the review and analysis of initiatives that have policies with federalism implications. (Sections 1 through 3 and 6 and 7 of the Order, and Sections II.B. and III. of the Notice.)

In filling out this form, each of the sections, and the questions in each of the sections, should be answered in numerical order. The following overall guidance should be noted:

(A) If the proposal involves the preemption of State law by Federal statutes or regulations, *only* Section I. should be filled out.

(B) If the proposal involves proposed legislation, Section II. should be answered.

(C) If the proposal involves:

(i) Proposed legislation that is not barred from transmission to Congress under Section II., or

(ii) Any other policy initiative, other than a preemption under Section I.

Section III. Should be addressed.

Each section contains specific guidance for answering its paragraphs.

I. PREEMPTION OF STATE LAW BY FEDERAL STATUTES OR REGULATIONS

DESCRIPTION OF INITIATIVE:
NATURE OF INITIATIVE:

——— Regulation.
——— Proposed legislation.
——— Legislative comment.
——— Policy statement.
——— Other policy action (specify):

A. APPLICABILITY: Does the proposed preemption involve the preemption of State law by a Federal statute or regulation —— YES —— NO

IF THE ANSWER IS NO, PROCEED TO SECTIONS II AND III

IF THE ANSWER IS YES, PROCEED WITH THE REST OF THIS SECTION ONLY: WHEN THIS SECTION IS COMPLETED, PROCEED NO FARTHER WITH THIS FORM.

B. STATUTORY OR REGULATORY PREEMPTION:

1. What is the nature of the preemption:
By statute? —— YES —— NO
By regulation? —— YES —— NO
Explain:

2. Does the proposed preemption meet the guidance provided in Section V.B. OR C. of the Notice for statutory OR regulatory preemption, as appropriate?
—— YES —— No (This determination and explanation will be made by the Office of Legislation and Regulations.) Explain:

C. *MINIMUM PREEMPTION NECESSARY—REGULATORY PREEMPTION.* For preemption by regulation only, is the preemption limited to the minimum necessary to achieve the objectives of the authority under which the regulation is promulgated?
—— YES —— NO Explain:

D. *CONSULTATION.* Explain the steps that have been taken, or are planned, to consult with appropriate officials and organizations to avoid preemption:

II. SPECIAL REQUIREMENTS FOR PROPOSED LEGISLATION.

DESCRIPTION OF INITIATIVE:
NATURE OF INITIATIVE:

——— Regulation.
——— Proposed legislation.
——— Legislative comment.
——— Policy statement.
——— Other policy action (specify):

A. *APPLICABILITY.* Does the proposal involve proposed legislation? —— YES —— NO.

IF THE ANSWER IS NO, PROCEED TO SECTION III

IF THE ANSWER IS YES, CONTINUE WITH THE REST OF THIS SECTION

B. *DIRECT REGULATION OF STATES.* Does the proposal involve "pure regulation," in which the primary purpose and direct effect of the proposal is to regulate States in certain significant areas and ways? (If the proposal involves a grant, loan, interest or rental assistance, mortgage or loan insurance, or other assistance program, the answer is NO.)
—— YES —— NO. (The Office of Legislation and Regulations will make this determination and provide the explanation.) Explain:

C. *CONDITIONS ON ASSISTANCE.* Does the proposal involve conditions that are not directly related to its purpose?
—— YES —— NO. (The Office of Legislation and Regulations will make this determination and provide the explanation.) Explain:

D. *PREEMPTION.*

1. *In general.* Does the proposal involve preemption of State law (other than a preemption under Section I.)?
—— YES —— NO. Explain:

2. *Threshold.* If the answer is YES, (a) is the proposed preemption consistent with the Fundamental Federalism Principles in Appendix A of the Notice and (b) does the proposed preemption involve a clearly legitimate national purpose that cannot otherwise be met, and in the case of "pure regulation," is the Federal preemption necessary to address a demonstrable, nationwide problem that States, acting alone or in concert, do not have, or cannot obtain, the legal capacity to handle effectively?
—— YES —— NO (The Office of Legislation and Regulations will make this determination and provide the explanation.) Explain:

IF THE ANSWER TO EITHER QUESTION B. OR C. IS YES, OR IF THE ANSWER TO QUESTION D.2. (a) OR (b) IS NO, THE PROPOSAL MAY NOT BE SENT TO CONGRESS. OTHERWISE, PROCEED TO SECTION III

III. POLICIES THAT HAVE FEDERALISM IMPLICATIONS

DESCRIPTION OF INITIATIVE:
NATURE OF INITIATIVE:

——— Regulation.
——— Proposed legislation.
——— Legislative comment.
——— Policy statement.
——— Other policy action (specify):

A. *APPLICABILITY OF ORDER.* Does the Order apply to the policy initiative?

1. *Effects on States.* Does the initiative have "federalism implications:" does it have, or will it have when implemented, substantial direct effects on the States (including their political subdivisions), or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government?

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—— YES —— NO. Explain:

IF THE ANSWER TO THIS QUESTION IS NO, PROCEED NO FARTHER WITH THIS FORM

IF THE ANSWER IS YES, PROCEED TO PARAGRAPH 2. OF THIS SECTION

2. *Need for review under Order.*

a. *Lack of HUD discretion.* Do the elements of the initiative that have "federalism implications" involve little or no HUD discretion?

—— YES —— NO. If YES, explain:

b. *Review is unnecessary.* Would review of the elements of the initiative that have "federalism implications" be unnecessary, because review is not feasible, further review would be redundant, or otherwise?

—— YES —— NO. If YES, explain:

c. *Inspector General.* Does the initiative involve a function of the Inspector General under the Inspector General Act of 1978?

—— YES —— NO. If YES, explain:

IF THE ANSWER TO PARAGRAPH 2.a., b., OR c. is YES PROCEED NO FARTHER WITH THIS FORM. OTHERWISE, PROCEED TO THE REST OF SECTION III

B. *FUNDAMENTAL FEDERALISM PRINCIPLES.* Has the formulation and implementation of the policy initiative been guided by the Fundamental Federalism Principles referred to in Section III.B. and Appendix A of the Notice?

—— YES —— NO

C. *FEDERAL POLICYMAKING CRITERIA.*

1. *Limit the policymaking discretion of States.*

a. *Applicability.* Does the policy initiative involve matters of "pure regulation," in which the primary purpose and direct effect of the policy is to regulate some aspect of State interest? (If the policy initiative involves a grant, loan, interest or rental assistance, mortgage or loan insurance, or other assistance program, the answer is NO.)

——YES ——NO Explain:

IF THE ANSWER TO THIS QUESTION IS YES, PROCEED WITH THE REST OF PARAGRAPH C.1. OF THIS SECTION. IF THE ANSWER IS NO, PROCEED TO PARAGRAPH C.2. OF THIS SECTION

b. *Statutory authority.* Indicate the statutory authority for the policy initiative:

c. *Constitutional authority.* Is the constitutional authority for the policy initiative clear and certain?

—— YES —— NO. (This answer will be provided and explained by the Office of Legislation and Regulations.) Explain:

d. *Problem of national scope.* Is action at the Federal level required to address a demonstrable, nation-wide problem that States (acting alone or in concert) do not have, or cannot obtain, the legal capacity to handle effectively? (This answer will be provided and explained by the Office of Legislation and Regulations.)

—— YES —— NO. Explain:

e. *Need for the initiative.* State the need for the policy initiative:

f. *Consultation.* State the consultation with States that has taken place, or that is planned, for the policy initiative:

2. *National policies administered by the States.* For national policies administered by the States, does the initiative give the States the maximum administrative discretion possible?

—— YES —— NO. Explain:

3. *Undertaking to formulate and implement policies.* At the earliest point in the policy development process possible, has the Department:

a. *Encouragement of States.* Encouraged States to develop their own policies to achieve program objectives and to work with appropriate officials in other States?

—— YES —— NO. Explain:

b. *Uniform national standards.* Refrained from establishing uniform, national standards and, when possible, deferred to the States to establish the standards?

—— YES —— NO. Explain:

c. *Consultation.* Consulted with the States in developing such standards?

—— YES —— NO. Explain the nature of the consultation that either has taken place or that is planned:

4. *Federalism Assessment.* Does the proposal have sufficient federalism implications to warrant the preparation of a Federalism Assessment?

—— YES —— NO. (The Office of General Counsel will determine the need for an Assessment and, if needed, will prepare it.) Explain:

[FR Doc. 88-18976 Filed 8-19-88; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of the Alaska Land Use Council

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980, section 1201, Paragraph (h), the Alaska Land Use Council will meet at 9:00 a.m., Tuesday, September 20, 1988, at the Fairbanks North Star Borough Assembly Chamber, 809 Pioneer Road, Fairbanks, Alaska.

The tentative agenda for the Council will include consideration of:

National Park Service Wilderness Recommendations
- Bering Land Bridge National Preserve
- Kenai Fjords National Park
- Yukon-Charley Rivers National Preserve
- Gates of the Arctic National Park & Preserve
- Lake Clark National Park & Preserve
- Wrangell/St. Elias National Park & Preserve
- Aniakchak National Monument & Preserve
- Cape Krusenstern National Monument
- Glacier Bay National Park & Preserve
- Noatak National Preserve
- Denali National Park & Preserve
- Katmai National Park & Preserve
- Kobuk Valley National Park

U.S. Fish & Wildlife Service Wilderness Recommendations
- Alaska Peninsula National Wildlife Refuge
- Becharof National Wildlife Refuge
- Kenai National Wildlife Refuge

U.S. Fish & Wildlife Service Comprehensive Conservation Plans
- Arctic National Wildlife Refuge
- Alaska Maritime National Wildlife Refuge

BLM Utility Corridor RMP

BLM ANILCA 1001 Report

Steller Sea Lion-Northern Fur Seal Cooperative Planning Zone

Alaska Land Use Council 1987-88 Work Program

NPS Draft Management Policies.

Briefing on the Tongass Land Management Plan Revision Process.

Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or other matters of general concern to the Council should contact either Cochairman's office before the close of business Thursday, September 1, 1988.

The public is invited to attend.

FOR FURTHER INFORMATION CONTACT:

Alaska Land Use Council, Office of the Federal Cochairman, 1689 C Street, Suite 100, Anchorage, Alaska 99501, (907) 272-3422, (FTS) 271-5485.

Alaska Land Use Council, Office of the State, Cochairman Designee, P.O. Box AW, Juneau, Alaska 99811, (907) 465-3562.

or

2600 Denali Street, Suite 700, Anchorage, Alaska 99503, (907) 274-3528.

August 16, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-18919 Filed 8-19-88; 8:45 am]
BILLING CODE 4310-10-M

Bureau of Land Management

[OR-030-08-4322-02-GP8-222]

Vale District Grazing Advisory Board; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting, Vale District Grazing Advisory Board.

SUMMARY: Notice is given in accordance with Pub. L. 92–463 that a meeting of the Vale District Grazing Advisory Board will be held September 29, 1988.

The agenda for the meeting will include: an update on BLM activities in the Trout Creek Mountains, BLM's response and policy in dealing with the current drought, the District's riparian management program, and range improvement projects. Range improvement projects will include fiscal year 1988 accomplishments, projects which will extend into fiscal year 1989, and possible future projects.

The meeting is open to the public. Interested persons may make oral statements to the Board or may file written statements for the Board's consideration. Anyone wishing to make oral statements may do so at 1:30 p.m. the day of the meeting.

Summary minutes of the Board's meeting will be maintained in the district office and will be available during regular business hours for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days following the meeting.

DATES: The meeting will begin at 8:00 a.m. September 29, 1988.

ADDRESSES: The meeting will begin at the conference room of the District Office, 100 Oregon Street, Vale, OR 97918. The meeting will continue at Poall Creek, near Brogan, Oregon, until noon. The meeting will reconvene at the Vale District Office conference room at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, OR 97918.

David Lodzinski,

Acting District Manager.

[FR Doc. 88–18942 Filed 8–19–88; 8:45 am]

BILLING CODE 4310–33–M

[OR–030–08–4322–02–GP8–221]

Vale District Multiple-Use/Council Advisory Board; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting, Vale District Multiple-Use Advisory Council.

SUMMARY: Notice is given in accordance with Pub. L. 92–463 that a meeting of the Vale District Multiple-Use Advisory Council will be held September 16, 1988.

The agenda for the meeting will include: an update on activities in the Trout Creek Mountains, actions taken on the proposed National Historic Oregon Trail Interpretive Center, the Recreation 2000 report, Wild Horse Program update, fire season summary, Council input on the district's riparian program, response to the 1988 drought, purposes and roles of the Advisory Council, and selection of future issues for the Council's input.

The meeting is open to the public. Interested persons may make oral statements to the Council or may file written statements for the Council's consideration. Anyone wishing to make oral statements may do so at 1:15 p.m. the day of the meeting.

Summary minutes of the Council's meeting will be maintained in the district office and will be available during regular business hours for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days following the meeting.

DATE: The meeting will begin at 9:00 a.m. September 16, 1988.

ADDRESSES: The meeting will take place in the conference room of the District Office, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, OR 97918.

David Lodzinski,

Acting District Manager.

[FR Doc. 88–18943 Filed 8–19–88; 8:45 am]

BILLING CODE 4301–33–M

National Park Service

Abandoned Shipwreck Act; Public Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: This is to provide notice to Federal, State and local agencies, Indian tribes, sport divers, diveboat operators, salvors, archeologists, historic preservationists, fishermen and other interests that the National Park Service will be holding public meetings prior to developing and publishing the advisory guidelines required under the Abandoned Shipwreck Act of 1987 (Pub. L. 100–298). The guidelines are to assist State and Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. The Act requires that the Director of the National Park Service, acting on behalf of the Secretary of the Interior, develop the guidelines after consulting with appropriate public and private sector interests. The public meetings are designed to provide maximum opportunity for input and advice from public and private sector interests on the development of the guidelines.

DATES: Written comments are invited and should be submitted on or before October 31, 1988. Participation is invited at public meetings to be held September 7, 1988; September 13, 1988; September 14, 1988; September 19, 1988; and October 6, 1988. See **SUPPLEMENTARY INFORMATION** below for details.

ADDRESSES: Written comments should be addressed to Dr. Bennie C. Keel, Departmental Consulting Archeologist, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, or delivered to Room 4127C, 1100 L Street NW., Washington, DC, between 8:00 a.m. and 4:30 p.m. Public meetings will be held in Washington, DC; San Francisco, California; Seattle, Washington; Austin, Texas; and Beaufort, North Carolina. See **SUPPLEMENTARY INFORMATION** below for details.

FOR FURTHER INFORMATION CONTACT: Michele C. Aubry, Office of the Departmental Consulting Archeologist, National Park Service, Washington, DC, at 202–343–1879 or FTS 343–1879. For specific meeting location information contact:

Patricia C. Knoll, Archeological Assistance Division, National Park Service, P.O. Box 37127, Washington, DC, 20242, at 202–343–4110 or FTS 343–4410

Holly Bundock, Office of Public Affairs, Western Region, National Park Service, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102, at 415–556–5560 or FTS 556–5560

James Thomson, Regional Archeologist, Pacific Northwest Region, National Park Service, 83 South King Street, Suite 212, Seattle, Washington 98104, at 206–442–0791 or FTS 399–0791

J. Barto Arnold, III, Texas Underwater Archeologist, Texas Historical Commission, P.O. Box 12276, Capitol Station, Austin, Texas 78711, at 512–463–6098

Rodney Barfield, Director, North Carolina Maritime Museum, 315 Front Street, Beaufort, North Carolina 28516, at 919–728–7317.

SUPPLEMENTARY INFORMATION: The National Park Service wishes to afford an opportunity for direct public input regarding the various provisions of Pub. L. 100–298 prior to developing and publishing proposed advisory guidelines. It is the intent of the National Park Service to seek out ideas, comments and suggestions from public

and private interest groups. Accordingly, five public meetings have been scheduled as follows:

Washington, D.C.—September 7, 1988, 7:00 p.m. to 10:00 p.m. Anacostia Substation, Special Operations-Park Police Facility, Anacostia Park, between South Capitol & 11th Streets. Host: National Capital Region, National Park Service

San Francisco, California—September 13, 1988, 7:00 p.m. to 10:00 p.m. Golden Gate National Recreation Area, Fort Mason, Headquarters Building 201, General Meeting Area (1st floor). Host: Western Region, National Park Service

Seattle, Washington—September 14, 1988, 6:30 p.m. to 10:30 p.m. Federal Office Building, South Auditorium Conference Room, 909 First Avenue (entrance on 1st Ave. side). Host: Pacific Northwest Region, National Park Service

Austin, Texas—September 19, 1988, 6:30 p.m. to 10:30 p.m. Stephen F. Austin State Office Building, Room 118, 17th & Congress. Hosts: Texas Historical Commission and Texas Antiquities Committee

Beaufort, North Carolina—October 6, 1988, 12:00 p.m. to 2:00 p.m. North Carolina Maritime Museum, Auditorium, 315 Front Street. Hosts: North Carolina Maritime Museum and North Carolina Historic Preservation Office

Because of limited monetary and human resources, the National Park Service has selected the locations for public meetings based on the following criteria:

(1) Offers from States and others to host public meetings;

(2) The ability of the National Park Service to combine public meetings with other program related travel;

(3) The size of the local diving community;

(4) The amount of tourist related diving activity;

(5) The proximity to large numbers of historic shipwrecks; and

(6) The availability of public transportation, including commercial air transportation, to the location.

Additional public meetings are being considered for Montpelier, Vermont; Sault Ste. Marie, Michigan; New Orleans, Louisiana; Orlando, Florida; Savannah, Georgia; and Philadelphia, Pennsylvania. Any additional meetings would be scheduled to take place during the month of October, with comments due on or before October 31, 1988. A separate notice would appear in the Federal Register to announce any additional meetings.

Public Meeting Procedures

Any individual may appear and speak on his or her own behalf or, if so authorized, on behalf of a Federal, State or local Government, Indian tribe, civic group, business, club, association or private group, subject to the rules provided below. Each organization may have one authorized speaker. The Moderator will announce any specific rules to govern the meeting as required at the beginning of the hearing.

Individuals desiring to speak at the public meeting are encouraged to pre-register by writing to or calling the appropriate contact person above. Before the hearing begins, individuals also may register to speak by notifying the Court Reporter, who will be making a transcript of the meeting.

Elected and other public and tribal officials will be heard first, followed by representatives of other organizations. Persons registered to speak on their own behalf will then be called in the order in which they registered.

Speakers should give their name and address or, if representing an organization, their name and the organization's name and address.

Speakers representing organizations will be limited to ten (10) minutes, and individuals to five (5) minutes. Additional prepared statements pertaining to the subject may be submitted to the Court Reporter at the public meeting or to Dr. Bennie C. Keel at the above address.

The National Park Service has identified the following issues to be of major interest and in need of discussion at the public meetings:

1. How should an historic shipwreck be defined?

2. Should the States retain title to all artifacts and materials recovered from abandoned historic shipwrekcs? If not, what portion should be retained?

3. What, if any, restrictions should be placed on sport divers, salvors, fishermen, scientific researchers, and others desiring access to abandoned historic shipwreck sites?

4. What, if any, restrictions should be placed on sport divers, salvors, fishermen, scientific researchers, and others on removal of artifacts from abandoned historic shipwreck sites?

5. What, if any, penalties or fines should be assessed against sport divers, salvors, fishermen, scientific researchers, and others who violate provisions in a State's program to manage historic shipwrecks?

6. Should monctary rewards or other incentives be made available for reporting the discovery of historic shipwreck sites or the violation of provisions in a State's program?

7. Should the States provide training courses to sport divers on archeological methods that would lead to paraprofessional certification?

8. Should the States encourage and use sport diver volunteers during the conduct of archeological surveys and excavations of historic shipwreck sites?

Background

Upon enactment of the Abandoned Shipwreck Act of 1987 (the Act, 43 U.S.C. 2101 *et seq.*), the United States immediately asserted title to three classes of abandoned shipwrecks that are located in or on the submerged lands of a State. Specifically, the United States asserted title to any abandoned shipwreck that is:

(1) Embedded in a State's submerged lands;

(2) Embedded in coralline formations protected by a State on its submerged lands; or

(3) On a State's submerged lands and included in or determined eligible for inclusion in the National Register of Historic Places.

The Act removes the three classes of abandoned shipwrecks from the jurisdiction of the law of salvage and the law of finds.

With two exceptions, simultaneously with the U.S. assertion of title, the United States transferred title of the three classes of abandoned shipwrecks to the State in or on whose submerged lands the shipwreck is located. The exceptions relate to any abandoned shipwreck that is located in or on public (meaning Federal) lands or Indian lands. The Act states that any abandoned shipwreck that is located in or on public lands remains the property of the United States Government while any abandoned shipwreck that is located in or on Indian lands remais the property of the Indian tribe owning such lands.

In transferring title of the three classes of abandoned shipwrecks to the States, the Act states that it is the intent of the Congress that the States manage shipwrecks in a manner that will:

(1) Protect natural resources and habitat areas;

(2) Guarantee recreational exploration of shipwreck sites; and

(3) Allow for appropriate public and private sector recovery of shipwrecks, consistent with the protection of historical values and the environmental integrity of the shipwrecks and the sites.

In addition, States are encouraged to establish underwater parks or areas to provide additional protection for shipwreck sites. States also are directed to make funds available, in accordance with the provisions of the National

Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), from the Historic Preservation Fund for the study, interpretation, protection and preservation of historic shipwrecks.

Section 5 of the Act directs the Secretary of the Interior, acting through the Director of the National Park Service, to prepare and publish guidelines to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. The Act states that the guidelines shall seek to:

(1) Maximize the enhancement of cultural resources;

(2) Foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) Facilitate access and utilization by recreational interests; and

(4) Recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

The Act stipulates that the guidelines are to be developed after consultation with appropriate public and private sector interests, including the Secretary of Commerce, the Advisory Council on Historic Preservation, State Historic Preservation Officers, sport divers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen. It also stipulates that the guidelines are to be published in the **Federal Register** within nine months after the date of enactment of the Act.

The National Park Service has prepared a plan and schedule to develop the advisory guidelines. The major components of the pan are to:

(1) Examine existing State programs for the management of abandoned shipwrecks that are located in State waters;

(2) During the fall of 1988, hold a series of public meetings at key locations nationwide so that all public and private interests have an opportunity to present their views;

(3) By January 28, 1989, draft and publish in the **Federal Register** proposed guidelines for public comment; and

(4) Revise and publish final advisory guidelines shortly thereafter.

Dated: August 17, 1988.

Denis P. Galvin,

Acting Director, National Park Service.

[FR Doc. 88-18947 Filed 8-19-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-19190]

Adirondack Transit Lines, Inc., And Pine Hill-Kingston Bus Corp.—Pooling—Greyhound Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of pooling application.

SUMMARY: By application filed June 22, 1988, Adirondack Transit Lines, Inc., and Pine Hill-Kingston Bus Corp. (collectively, Adirondack) and Greyhound Lines, Inc. (Greyhound), jointly request approval of a pooling arrangement under 49 U.S.C. 11342(a) to pool portions of their services between Albany, NY and New York, NY over Interstate Highway 87. Under the proposed pooling arrangement, Adirondack and Greyhound will coordinate schedules and pool package express. During the period covered by the agreement, the petitioners will coordinate and whenever appropriate consolidate their scheduled bus operations over the involved route. Petitioners will not unilaterally change the number or share of schedules operated over all or any segment of the involved route.

By entering into a service pooling agreement, the carriers seek to increase the number of passengers per bus and spread their schedules more evenly through the day. The petitioners do not intend to pool revenues or to share expenses arising from operations of the schedules governed by their agreement. If other intercity bus carriers operating between the pooled points wish to be included in the service pooling agreement, Adirondack and Greyhound are prepared to negotiate their participation.

DATE: Comments on the proposed agreement may be filed with us in the form of verified statements on or before September 21, 1988. Petitioners' rebuttal statements are due on or before October 11, 1988.

ADDRESSES: Send verified statements to:

(1) Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioners' representatives:

Lawrence E. Lindeman, Suite 400, 805 King Street, Alexandria, VA 22314.

George W. Hanthorn, Esq., Greyhound Lines, Inc., 901 Main Street, Suite, 2400, Dallas, TX 75202.

Fritz R. Kahn, Esq., 1660 L Street, NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Judy Ann Barnes, (202) 275-7962. Richard Felder, (202) 275-7691. [TDD for hearing impaired (202) 275-1721]

SUPPLEMENTARY INFORMATION: The involved service encounters competition from other modes of transportation. Albany and New York City are served by Amtrak, American Eagle, Continental Express, Delta Connection, Eastern Express, Mall Airways, Pan Am Express, and Piedmont Regional Airline. Albany is served by Interestate Highway 87 and 90, and New York City by Interstate Highway 78, 80, 87, and 95. Bonanza Bus Lines, Inc., another intercity bus line, also operates between Albany and New York City.

Please refer to the pooling application, which may be obtained free of charge by contacting petitioners' representatives. In the alternative, the pooling application may be inspected at the offices of the Interstate Commerce Commission, Room 1221, during usual business hours, (assistance for the hearing impaired is available through TDD service (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission Headquarters).

Decided: August 15, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-18959 Filed 8-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-279 (Sub-No. 2X)]

Canadian National Railway Co.; Exemption Abandonment in Portland, ME

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Canadian National Railway Company of approximately 11,555 feet of track including 15 turnouts, in Portland, ME, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 21, 1988. Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49

[1] *See Exemption of Rail Line Abandonments or Discontinuance Offers of Financial Assistance.* 4

Continued

CFR 1152.27(c)(2) must be filed by September 1, 1988 and petitions for reconsideration must be filed by September 12, 1988. Requests for a public use condition must be filed by September 1, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-279 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles A. Spitulnik, Hamel & Park, Suite 700, 888-16th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area). (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: August 15, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,
Secretary.

[FR Doc. 88-18960 Filed 8-19-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 233X)]

Exemption; CSX Transportation, Inc.—Abandonment Exemption—in Warren, Simpson, and Logan Counties, KY

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 9.66-mile line of railroad between milepost LF-118.34 near Memphis Junction, KY and milepost LF-128.0 near South Union, KY in Warren, Simpson, and Logan Counties, KY.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 21, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 29, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 6, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio*.

Applicant has filed an environmental report which addressed environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 22, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 9, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 88-19061 Filed 8-19-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 10:00 a.m., Sunday, September 18, 1988.

Place: Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia.

Status: Open.

Matters to be Considered: New Advisory Board members' orientation.

Contact Person For More Information: Larry Solomon, Assistant Director, (202) 724-3106.

Raymond C. Brown,
Director.

[FR Doc. 88-19061 Filed 8-19-88; 11:59 am]
BILLING CODE 4410-36-M

Advisory Board Meeting

Time and Date: 8:00 a.m., Monday, September 19, 1988.

Place: Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, VA.

Status: Open.

Matters To Be Considered: Site selection update, Congressional bills that impact NIC, FY 1988 and 1989 budget review, and technology transfer program with NASA.

Contact Person for More Information: Larry Solomon, Assistant Director, (202) 724-3106.

Raymond C. Brown,
Director.

[FR Doc. 88-19060 Filed 8-19-88; 11:59 am]
BILLING CODE 4410-36-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

I.C.C. 2d 104 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[1] A stay will be routinely issued by the Commission in these proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552 of Title 5, United States Code.

1. Date: September 9, 1988

Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications for the U.S. Newspaper Program, submitted to the Office of Preservation Programs,for projects beginning after January 1, 1989.

2. Date: September 12–13, 1988

Time: 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications for Preservation Projects, submitted to the Office of Preservation, for projects beginning after January 1, 1989.

3. Date: September 14, 1988

Time: 8:00 a.m. to 4:00 p.m.
Room: 315
Program: This meeting will review applications for Elementary and Secondary Teacher—Scholar, submitted to the Division of Education Programs, for projects beginning after August 31, 1989.

4. Date: September 15, 1988

Time: 8:00 a.m. to 4:00 p.m.
Room: 315
Program: This meeting will review applications for Elementary and Secondary Teacher—Scholar, submitted to the Division of Education Programs, for projects beginning after August 31, 1989.

5. Date: September 16, 1988

Time: 8:00 a.m. to 4:00 p.m.
Room: M–14.
Program: This meeting will review applications for Elementary and Secondary Teacher—Scholar, submitted to the Division of Education, for projects beginning after August 31, 1989.

6. Date: September 19, 1988

Time: 8:00 a.m. to 4:00 p.m.
Room: M–14.
Program: This meeting will review applications for Elementary and Secondary Teacher—Scholar, submitted to the Division of Education, for projects beginning after August 31, 1989.

Susan Metts,
Advisory Committee Management Officer.
[FR Doc. 88–18944 Filed 8–19–88; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Reliability Assurance; Meeting

The ACRS Subcommittee on Reliability Assurance will hold a meeting on September 16, 1988, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, September 16, 1988—8:00 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the Equipment Qualification-Risk Scoping Study with special emphasis on the peer review comments.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opoortunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) until August 26 and after August 29 (telephone 301/492–8109) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: August 16, 1988.
Morton W. Libarkin,
Executive Director for Project Review.
[FR Doc. 88–18966 Filed 8–19–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–440 and 50–441]

Cleveland Electric Illuminating Co.; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition under 10 CFR 2.206 filed by David Poch and Donald L. Schlemmer on behalf of Energy Probe and Western Reserve Alliance (Petitioners) on January 9, 1987, and amended on April 1, 1987. The Petitioners had requested an immediate shutdown and suspension of the operating license for the Perry plant, the establishment of an independent design review to address alleged pipe clamp deficiencies, assembly of a special independent inspection team to review issues raised in the Petition including alleged quality assurance/quality control (QA/QC) deficiencies at the General Electric facility in San Jose, California, removal of affected parts from the Perry facility, and withdrawal of an earlier Director's Decision because

of alleged NRC fraudulent behavior in connection with that Decision.

The relief requested by the Petitioners is denied. The reasons for this decision are more fully described in the "Director's Decision Under 10 CFR 2.206" (DD–88–13), which is available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555 and in the local public document room for the Perry plant at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

A copy of the Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute final action of the Commission twenty-five (25) days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 14th day of August 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, and V and Special Projects.

[FR Doc. 88–18967 Filed 8–19–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. STN 50–312]

Sacramento Municipal Utility District et al. (Rancho Seco Nuclear Generating Station); Exemption

I

Section 50.71(e)(4) of 10 CFR Part 50 requires licensees of nuclear power reactors to revise the Updated Safety Analysis Report (USAR) at least once a year. The USAR revisions shall reflect all changes up to a maximum of 6 months prior to the date of filing the revision.

By letter dated April 22, 1988, the Sacramento Municipal Utility District (SMUD), owner and operator of the Rancho Seco Nuclear Generating Station, requested a six-month extension for submitting the next revision to the USAR. The next revision, Amendment 6, was due no later than July 22, 1988. The SMUD request would extend the due date to no later than January 22, 1989. Subsequent revisions would be due on an annual schedule beginning on January 22, 1989.

II

The request for extension of the submittal date for the USAR revision is based on the timing of a major Rancho Seco systems modification outage which ended on March 30, 1988. Most of the systems modified during the outage are addressed in the USAR. From March 30, 1988 to approximately September 1988, the licensee will conduct tests on the modified systems. In an effort to include all the plant modifications in the next USAR revision, the licensee requested a six-month extension of the submittal due date.

The Rancho Seco Nuclear Generating Station had been shutdown from December 26, 1985 to March 30, 1988. During this period extensive plant modifications were completed. The plant restarted and a scheduled six-month power ascension program began on March 30, 1988. The plant modifications will be tested under operating conditions during the power ascension period. Problems which may surface during the test phase may result in additional plant modifications. A revised USAR submitted on the date requested by the licensee should contain system descriptions and evaluations in final form.

Under the existing USAR revision schedule, a licensee submittal was required no later than July 22, 1988. Plant modifications, in place six months prior to the due date, are required to be included in the submittal. As a result, a revised USAR submittal on July 22, 1988, would have included a plant description and safety evaluation which were current through January 22, 1988. The first three months of 1988 were a period of rapid change at Rancho Seco and a USAR version current through January 1988 would describe transient system status at the plant. Plant modifications completed during the shutdown are evaluated and described in detail in NUREG–1286, the Rancho Seco Restart Safety Evaluation Report. A USAR, current through January 1988, would not be useful as a document to describe plant systems nor as a comprehensive safety evaluation of plant changes.

Based on the timing of the Rancho Seco plant modifications outage, the staff finds that there is good cause for the licensee's request for extension of the next USAR revision. A revised USAR submitted on January 22, 1989 will address plant changes through July 1988 and should include the final versions of all recent modifications. The staff finds that the requested extension is acceptable.

For the reasons, the staff finds that the licensee has shown good cause for the requested extension for submittal of Amendment 6 to the USAR. Therefore, the requested extension to January 22, 1989 is acceptable.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present to justify the exemption. The referenced special circumstances pertain to exemptions to regulations which do not alter the underlying purpose of the regulations. Extending the due date for the next USAR update, under the circumstances described, does not alter the underlying purpose of the requirement to maintain the USAR current.

Accordingly, the Commission hereby grants an exemption as described in section II above from § 50.71(e)(4) of 10 CFR Part 50 to extend the date for submittal of the next USAR revision to January 22, 1989.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (53 FR 23322).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 4th day of August, 1988.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–18968 Filed 8–19–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 65 to Facility Operating License No. NPF–10 and Amendment No. 54 to Facility Operating License No. NPF–15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear

Generating Station, Units 2 and 3, located in San Diego County, California.

The amendments were effective as of the date of issuance.

These amendments revise Technical Specification Section 3.1.3.4, "CEA Drop Time" in response to an appliction for amendments designated as PCN–263.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on July 8, 1988 (53 FR 25711). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated June 14, 1988 and supplemental letters dated July 13 and July 25, 1988, (2) Amendment No. 65 to License No. NPF–10 and Amendment No. 54 License No. NPF–15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 10th day of August 1988.

For the Nuclear Regulatory Commission.

D.E. Hichman,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–18969 Filed 8–19–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26000; File No. SR–DTC–88–16]

Self Regulatory Organizations; Depository Trust Company; Notice of Filing and Accelerated Temporary Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("the Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1988, the Depository Trust Company ("DTC") filed a proposed rule change concerning segregation of fully-paid-for customer securities. The Commission is publishing this notice to solicit comment on the rule change and to grant temporary approval for a 60 day pilot program.

The proposal would authorize DTC to establish a new method for participants, particularly broker-dealer participants, to segregate fully-paid-for customer securities against unintended delivery by creating a "memo" position within a participant's free account. This "memo" position allows participant's to protect from unintended delivery a designated quantity of customer fully-paid for securities that are in the participant's free account or that may be received during the daily processing cycle. Securities would remain in the memo position until the participant provides DTC with new instructions to remove them from the memo position or until the participant reduces the position by executing eligible transactions that are normally customer transactions. Withdrawals-by-transfer, certificate-on-demand withdrawals, and free deliver orders that are not identified as stock loan or stock loan returns would be considered eligible transactions which would be used to reduce the securities in both the memo position and the free account position.[1]

DTC developed the memo segregation service in response to participant and industry organization requests to design a system to assist broker-dealers to comply with commission Rule 15c3–3 by providing a better mechanism for the protection of customer fully-paid-for securities.[2] This service is in addition to segregated accounts and conduit accounts currently available to protect customer fully-paid-for securities.[3]

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act in that it is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. DTC has requested that this rule change be approved on a temporary basis as a pilot program. DTC believes that the immediate implementation of this service will assist broker-dealers in complying with Rule 15c3-3 and improve broker-dealers' ability to safeguard customer securities within DTC's custody or control.

The Commmission preliminarily believes that the proposal is consistent with the Act, and in particular, section 17A. The Commission agrees with DTC that the memo segregation service, as proposed, potentially could improve broker-dealers' ability to safeguard customer securities and thus comply with Rule 15c3–3. Because of the potential enhanced ability of broker-dealers to safeguard customer securities at DTC afforded by this service, the Commission believes there is good cause for approving the proposal on a temporary basis prior to the thirtieth day after publication in the **Federal Register**. This will permit DTC and pilot users to assess the safety and efficiency of this new program.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**.[4] Persons desiring to make written comments should refer to File No. SR–DTC–88–16 and file six copies of their comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

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[1] DTC presumes that these activities are customer transactions and, therefore, once satisfied from a participant's free account position, are no longer anticipated customer securities that need protection.

[2] Rule 15c3–3 requires, among other things, that a broker-dealer obtain and thereafter maintain possession or control of all fully-paid-for or excess margin securities held for the accounts of customers. See 17 CFR 240.15c3–3. Broker-dealers may deposit these securities with registered clearing agencies, such as DTC, for safekeeping.

[3] Currently, to protect customer fully-paid-for securities, broker-dealers must segregate customer fully-paid-for securities in a segregated account which prevents these securities from being used for any transactions while they are held in the segregated account. Securities in a segregated account may not be delivered out until those securities are transferred to the participant's free account. A participant also may open a conduit account to receive certain securities (*e.g.*, stock-loan deliveries). A participant issues instructions to DTC to deliver securities out of this account rather than the participant's free account. Participants usually use a conduit account to make a delivery from securities it expects to receive that day.

[4] The Commission encourages interested persons to submit written views concerning the proposed rule change, notwithstanding the Commission's approval of the proposed rule change today. The Commission will consider any comments it receives when it considers approving memo segregation as a permanent service.

Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-88-16.

It Is Therefore Ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR-DTC-88-16) be, and hereby is, approved on a temporary basis through October 14, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 16, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-18922 Filed 8-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25999; File No. SR-NASD-88-18]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Removal of Fine Ceilings

The National Association of Securities Dealers, Inc. ("NASD") submitted on May 23, 1988, and amended on June 30, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposed rule change amends Article V, section 1 of the NASD's Rules of Fair Practice to remove the $15,000 limitation of fines could be imposed in disciplinary proceedings against members and their associated persons for each violation of the Rules of Fair Practice.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25883, July 5, 1988) and by publication in the **Federal Register** (53 FR 26699, July 14, 1988). One letter of comment was received, which supports approval of the proposed rule change.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Assistant Secretary.

Dated: August 16, 1988.

[FR Doc. 88-18920 Filed 8-19-88; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-26002; File No. SR-NASD-88-25)

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Concerning Amendments to Procedures for the Imposition of Remedial Business Limitations for Member Firms In or Approaching Financial or Operational Difficulty

On June 24, 1988, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to amend section 5(c) and 6 to clarify that District Surveillance Committee action taken pursuant to Article V, Part A, sections 5(c) constitutes final action of the NASD which is reviewable by the Securities and Exchange Commission in contrast to written decisions issued pursuant to section 5 (a) and (b) of Article V, Part A. Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25889, July 7, 1988) and by publication in the **Federal Register** (53 FR 26545, July 13, 1988). The Commission did not receive any comment letters with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulation thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Assistant Secretary.

Dated: August 16, 1988.

[FR Doc. 88-18921 Filed 8-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26001; File No. SR-NYSE-88-21]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Options Reallocations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 28, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed rule change consists of new Rule 750A concerning option specialist reallocations. The proposed rule is based on recently-revised Exchange Rule 103A ("Revised Rule 103A")[1] and contains both procedures and criteria to be used in determining whether to reallocate options. These procedures and criteria are discussed in more detail in Item II.A. below.

II. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

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[1] Letter from James B.G. Hearty, Chairman, Municipal Securities Rulemaking Board, to Jonathan G. Katz, Secretary, SEC, July 25, 1988.

[1] *See* Securities Exchange Act Release No. 25681, May 9, 1988 53 FR 17287 ("Rule 103A Filing")

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*

Rule 750 incorporates by reference into the option rules several of the Dealings and Settlements rules, including the specialist reallocation provisions of Rule 103A. Upon the Commission's approval of the proposed rule changes in the Rule 103A Filing, Revised Rule 103A automatically became incorporated into the option rules. Because Revised Rule 103A has been drafted to apply by its terms only to NYSE equities, however, incorporating that rule in the form proposed into the options market is not appropriate.

Therefore, the Exchange is proposing that an options companion rule to Revised Rule 103A be adopted for a pilot period that runs concurrently with the pilot period of Revised Rule 103A. Proposed Rule 750A is substantially similar to Revised Rule 103A, but tailors it in a number of respects to the unique aspects of the Exchange's options market.

Proposed Rule 750A retains the procedural framework of Revised Rule 103A. The proposal requires the Market Performance Committee ("MPC") to initiate a Performance Improvement Act when an option specialist's performance falls below specified standards (except in highly unusual or extenuating circumstances). The conduct of the Performance Improvement Action is the same in Proposed Rule 750A as it is in Revised Rule 103A.

With respect to the performance standards by which the MPC will measure option specialist performance, the standards included as part of Revised Rule 103A are generally inapplicable to the options market. Accordingly, the standards included as part of Proposed Rule 750A are focused particularly on the options market and include both specific numerical standards based on the option specialist general information questionnaire ("Options SPEQ"), and the more general standard that the option specialist be in compliance with the rules and regulations governing options specialists. The Exchange believes that these standards will provide sufficient flexibility in administering the proposed rule while the Exchange gains further experience in measuring option specialist performance during the two-year pilot. The Exchange will consider the development of more specific option specialist performance standards during the pilot.

(b) Statutory Basis

The statutory basis for this proposed rule change is section 6(b)(5) of the Act, as amended which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to securities transactions, to facilitate securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-21 and should be submitted by September 12, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 16, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19006 Filed 8-19-88; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26003; File No. SR-NYSE-88-17]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Concerning Bond Trading Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), on June 22, 1988, filed with the Securities and Exchange Commission ("Commission") a proposed rule change concerning bond trading procedures.

The proposal was published for comment in Securities Exchange Act Release No. 25897 (July 11, 1988), 53 FR 26916. No comments were received on the proposed rule change.

The proposal amends NYSE rules governing trading in debt securities. Specifically, Rule 61 defining recognized quotations in equities and bonds is amended to reduce the minimum size bond lot from 50 to 25 for all or none orders in cabinet bonds. Amendments to Rule 72 clarify that bonds dealt in by cabinet are governed by Rule 85, not Rule 72. Rule 79A clarifies the definition of transactions at wide variances which would require approval of a Floor Official; such transactions are those that occur two or more points away or 30 or more days from the last transaction. Rule 85, which governs trading in

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 U.S.C. 240.19b-4 (1987).

cabinet bonds and includes bonds traded via the Automated Bond System ("ABS"), is amended to delete all reference to month and week orders which no longer exist, and to provide the Exchange with the flexibility to designate types of orders for particular issues. Additionally, the proposed revisions eliminate confusing references to "free bonds," "free crowd" and "Bond Crowd," substituting the term "Bond Floor" instead. The revisions also delete specific references to floor clerks and quota cards, thereby providing for flexibility in the quote capture process. Finally, Rule 124 dealing with trading of odd-lot equity orders substitutes the word "stock" for the more ambiguous term "security."

The proposal also amends Rules 55, 191 and 251 to clarify the Exchange's practice with respect to trading foreign currency denominated bonds on the Exchange. Amendments to Rule 55 defining the units of trading for stocks and bonds would allow the Exchange to designate units of trading other than $1,000 for U.S. dollar and foreign currency denominated bonds. Rule 191, which currently specifies that foreign currency bond contracts shall be made and settled on the basis of U.S. currency equivalents set by the Exchange, is amended to allow the parties to agree on the currency for contract settlement in foreign currency denominated bonds. Rule 251 governing cash adjustment for coupons is deleted because such situations are adequately covered by other Exchange rules.

Finally, the proposed rule change provides a reinterpretation of Rule 85(e)(1) with respect to the crossing procedure on ABS. Currently, the rule provides that when a member files a bid or offer in the cabinets as agent and then receives an order in the same security on the opposite side, he can "cross" the orders without making any further bids or offers provided that the first bid or offer has been in the cabinets for a "reasonable" period of time and that the member announces his intention to cross before he does so. Although a "resonable period of time" is not defined, a floor practice of 15 minute had evolved and was programmed into ABS. Bids and offers on ABS are updated automatically, unlike bids and offers stored in physical cabinets that have to be updated manually. Therefore, for crosses effected on ABS, 15 minutes exposure is not "reasonable." The new interpretation of Rule 85(e)(1) establishes two minutes as a "reasonable" time in ABS.

The Exchange states that the purpose of the proposed rule change is to eliminate outdated bond rules, refine rules to address current bond trading procedures, and narrow the language of certain rules that do not apply to trading in bonds or in certain types of bonds.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[3] The Commission believes it is appropriate for the NYSE, in connection with its recent review of its bond rules, to revise those rules to reflect current bond trading procedures.

Specifically, the Commission believes it is appropriate for the NYSE to reduce the minimum size lot for all or none orders in cabinet bonds because these smaller orders now can be executed on the ABS. Also, the Commission believes it is logical for the NYSE to amend its rules to codify long-standing practice, such as by defining transactions at wide variations which require the approval of a Floor Official, and to eliminate references to types of orders which no longer exist, such as month and week orders. Additionally, the Commission believes it appropriate that the Exchange eliminate confusing terminology in the bond rules, substituting instead the single term "Bond Floor" where appropriate. Also, the Commission recognizes that, for the most part, the quote capture process is automated and so it is appropriate to delete references to individuals and cards.

The Commission also believes it appropriate that the Exchange clarify its rules dealing with foreign currency denominated bonds so as to permit the parties involved to agree on the currency for contract settlement in foreign currency bonds. Moreover, the Commission also recognizes that certain provisions, such as accounting for cash adjustments to reflect coupon interest paid after a trade but before settlement occurs, are already covered in existing NYSE Rules. Finally, the Commission agrees that, because quotes are updated automatically in ABS, a two minute exposure allows other members an adequate chance to trade at the bid and offered prices, and so is a "reasonable period of time" before which a member can cross orders.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act. In particular, the Commission finds that the proposed rule change is consistent with Section 6 and the rules and regulations applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-88-17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: August 16, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-19007 Filed 8-19-88; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78f (1982).

[4] 17 CFR 200.30-3(a)(12) (1988).

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended Augsut 12, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45745

Date Filed: August 9, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 1988.

Description:

Application of Sun Country Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations requests permanent authority to engage in foreign charter air transportation of persons, property and mail on a permissive basis: Between a point or points in the United States and a point or points in (a) Australia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing; and (b) Greenland, Iceland, the Azores, Europe,

Africa, and Asia as far east as, and including, India.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-18979 Filed 8-19-88; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. 88-09; Notice No. 1]

Periodic Motor Vehicle Inspection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice to solicit public comment, and notice of public hearings.

SUMMARY: This notice is being issued to solicit public comments on a study to evaluate the effectiveness of State motor vehicle inspection (PMVI) programs. This action is in response to Congressional direction and NHTSA interest in addressing the effectiveness of State periodic motor vehicle inspection programs. The notice announces two public hearings and invites submission of written comments to the public docket on this subject.

DATES: The public hearings will be held on September 27 and October 5, 1988. All written comments should be received by October 27, 1988.

ADDRESSES: The September 27, 1988 hearing will be held in Room 2230 of the Nassif Building, U.S, Department of Transportation, 400 Seventh Street, SW., Washington, DC. The October 5, 1988, hearing will be held in Conference Rooms A and B of the Lehigh Building, 555 Zang Street, Lakewood, Colorado. Each hearing will be scheduled from 9 a.m. to 12 noon and from 1:30 p.m. to 5 p.m. or until the final witness has been heard. Written comments should refer to the docket number and the number of this notice, and be submitted (preferably in ten copies) to: Docket Section, Room 5109, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address during docket hours. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Grillo, or Sam Luebbert, Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Grillo, Room 5119, (202) 366-1770; Mr. Luebbert, Room 5119, (202) 366-2676.

SUPPLEMENTARY INFORMATION: The Conference Report on the Continuing Resolution for fiscal year 1988 (Pub. L. 100-202) directs that NHTSA conduct a comprehensive evaluation of the effectiveness of State motor vehicle safety inspection programs in (1) reducing highway accidents that result in injuries and deaths, and (2) limiting the number of defective or unsafe motor vehicles on the highways. The conferees expect NHTSA to solicit, evaluate and document the views of States, user groups, and other highway safety organizations.

Additionally, NHTSA was to submit a plan describing the study methodology and timetable to appropriate Congressional committees. The plan was submitted in April 1988. The plan provides for a review of the literature; analysis of crash data; assessment of current PMVI programs; and the publication of this notice, including public hearings, in order to solicit the widest range of information from all possible sources. Copies of the plan and a listing of the literature under review for the study are available upon request. Contact Mr. Joseph P. Grillo at the above address and telephone number.

Comments are solicited relative to the PMVI issues that follow in this notice, as well as other issues that may be pertinent to the PMVI study.

Following the public hearings and closing of the docket under this notice, NHTSA will prepare a draft study report. NHTSA then intends to issue a notice requesting comments on this draft study report. The final study report is scheduled for submission to Congress in March 1989.

Background

All motor vehicles deteriorate with time due to normal wear and tear, abuse, improper maintenance or other factors. With the deterioration of critical safety components such as brakes, steering and tires, the chances of vehicles becoming involved in a crash increase. This observation is supported by an in-depth study which was conducted by the Institute for Research in Public Safety, Indiana University to determine the relationship between vehicle mechanical failures and vehicle crashes. The report, published in 1973, found that 4.5 to 12.6 percent of crashes investigated were caused by or were contributed to by mechanical failures. Thus, the purpose of a periodic motor vehicle inspection (PMVI) program is to ameliorate deterioration by regularly inspecting vehicles for failures, detecting these failures and requiring owners to correct them.

As of December 31, 1966, three months after the Highway Safety Act of 1966 and the National Traffic and Motor Vehicle Safety Act of 1966 were enacted, 21 States and the District of Columbia had inspection laws requiring periodic inspection of motor vehicles. In June 1967, under the authority of the Highway Safety Act of 1966, the Department issued, among other standards, the Periodic Motor Vehicle Inspection Highway Safety Program Standard [1] which required that all registered vehicles be inspected at least once a year in accordance with criteria issued or endorsed by NHTSA. The standard also included provisions covering inspector training, facilities, equipment and evaluation. Under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, on August 29, 1973, NHTSA issued Vehicle in Use Inspection Standards covering brakes, tires and wheels, and steering and suspension (39 FR 23949, now codified on 49 CFR Part 570). These standards are incorporated in the PMVI Highway Safety Program Standard in 23 CFR 1204.4. Highway Safety Program Standard No. 1, which provide that States should have inspection procedures that equal or exceed criteria issued or endorsed by NHTSA.

To further address concerns about safety of vehicles in use, in 1972 Congress enacted Title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1961 *et seq.*). This Title provided for demonstration projects designed, established and operated to conduct periodic safety and emission inspections and to provide specific technical diagnosis of each vehicle inspected, in order to facilitate correction of any component failing inspection. The demonstration showed that diagnostic motor vehicle inspection benefited consumers by providing them information on the condition of vehicles which, if used properly, could result in greater safety, lower pollution, improved gas mileage, and lower overall repair and maintenance costs.

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[1] Until 1976, the agency's Highway Safety Program was principally directed towards achieivng State and local compliance with the 18 Highway Safety Program Standards, which were considered "mandatory" requirements for States to implement, with financial sanctions available against the States for noncompliance. Under the Highway Safety Act of 1976, Congress provided for a more flexible implementation of the program so that the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the PMVI and other standards have over the years become more like guidelines for use by the States. Management of the program has shifted from enforcing standards to one of problem identification, countermeasure development and evaluation, using the standards as a framework for the State programs. This approach was formalized in section 206(a) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, and the 18 standards were officially renamed "guidelines."

As of June 30, 1975, 32 States and the District of Columbia had enacted PMVI laws. At the same time, twelve non-PMVI States had conducted trial substitute motor vehicle inspection programs to determine the effectiveness of alternative inspection programs compared to PMVI. Eleven States repealed their PMVI laws from 1976 to 1982, leaving a total of 21 States and the District of Columbia with PMVI laws as of March 31, 1988.

NHTSA is one of three Federal agencies concerned with the condition of the nation's motor vehicle fleet. The Federal Highway Administration (FHWA) administers Federal rules and regulations covering inspection, maintenance and repair of commercial motor vehicles as one part of its safety program affecting the motor carrier industry and the public. It administers the Motor Carrier Safety Assistance Program with the States to increase the level of enforcement activity for commercial motor vehicles, and to increase the likelihood that safety problems will be detected and corrected. FHWA has also proposed to expand existing Federal motor carrier inspection requirements to include mandatory periodic inspection of commercial motor vehicles at least once a year. The Environmental Protection Agency (EPA), under the authority of the Clean Air Act, as amended in 1970 and 1977, requires States and the District of Columbia to meet applicable Federal ambient air quality standards. For those States designated as having ozone or carbon monoxide nonattainment air quality areas, compliance in those areas involves the States' instituting motor vehicle emissions inspection programs. Thirty-three States and the District of Columbia have instituted such programs as of December 31, 1987. EPA and NHTSA recently entered into a Memorandum of Understanding whereby the two Federal agencies formally agreed to coordinate in matters of mutual interest. Accordingly, EPA, together with FHWA, have been and will be coordinated with throughout the completion of the final study report.

Under the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), Congress directed the Secretary of transportation to determine those programs most effective in reducing accidents, injuries and fatalities. This action resulted from a concern that the funds provided to the States under the State and Community Highway Safety Program, which is administered by the National Highway Traffic Safety Administration and the Federal Highway Administration, were not being used for programs with the highest payoff in terms of reducing crashes, deaths and injuries. It was also believed that many continuing programs, such as PMVI, were more properly the responsibility of the States, and Federal funding should be used for start-up or "seed money" for new initiatives.

In a final rule issued on April 1, 1982 (47 FR 15116), which considered the extensive input from the highway safety community, six National Priority Program Areas were identified, including one administered by the Federal Highway Administration (Safety Construction and Operational Improvements), and five administered by NHTSA (Alcohol Countermeasures, Police Traffic Services, Occupant Protection, Traffic Records, and Emergency Medical Services). These program areas continued to be eligible for section 402 dollars under expedited funding procedures established in the final rule. Although PMVI was not included as a priority area, the rule provided that it (and other non-emphasis areas) could receive funding in accordance with non-emphasis area funding procedures established in the rule, and now codified in 23 CFR 1205.5. As directed by Congress in section 206(d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, NHTSA and FHWA conducted another rulemaking process to determine the programs currently most effective in reducing accidents, injuries and fatalities.

A final rule, issued April 1 and published April 6, 1988 (53 FR 11256), amended the April 1, 1982 rule, changing Alcohol Countermeasures to "Alcohol and Other Drug Countermeasures." A sixth priority program area was added to those administered by NHTSA, titled "Motorcycle Safety." The priority program area administered by FHWA, Safety Construction and Operational Improvements, was retitled "Roadway Safety."

NHTSA is interested in soliciting views, comments, reports and data on the relationship of mechanical problems to crash causation and on the technical, administrative, evaluative and public policy factors connected with PMVI programs. We are interested in hearing from State and local, public and private agencies, user groups and other highway safety organizations, affected industries and consumer organizations, the automobile insurance industry, and experts in such fields as highway safety research, vehicle safety performance, inspection equipment and techniques, PMVI program administration, emissions inspection and enforcement. To assist the commenters, NHTSA has prepared a list of issues we believe should be addressed. Commenters are free to address all or any number of the issues listed, or to raise additional issues not included on this list.

This notice applies only to those vehicles with a gross vehicle weight of less than 10,000 lbs. FHWA, under the Motor Carrier Safety Act of 1984, is in the process of issuing a rule for periodic motor vehicle inspection for commercial motor vehicles, which will address the status of truck inspections.

PMVI Issues

1. Information is needed on the cost-effectiveness, or benefits and costs of vehicle inspection. Comments are requested on this issue directly, or as a part of addressing the other listed issues. Discussion should include inspection costs both to individuals and to the State. Studies and evaluation reports are especially requested to support the cost-effectiveness or benefit/cost comments. Benefit discussions should include estimates of safety benefits, both to the vehicle owner and other drivers, as well as other benefits from the program.

2. Of all vehicles which make up the national fleet (numbering approximately 182 million), roughly 38 percent are subject to State mandatory periodic motor vehicle inspection programs. The Institute for Research in Public Safety, Indiana University conducted an accident investigation study for NHTSA in the early 1970s. It found at that time that mechanical failures cause or contribute to 4.5–12.6 percent of all motor vehicle crashes.

Are any additional and more current data available regarding the issue of involvement of vehicle mechanical failures in crashes?

As the number of motor vehicles and associated mechanical failures increase, and the number of PMVI States remain the same, is this serious enough to warrant renewed emphasis establishing and improving motor vehicle inspection programs? If yes, who should take the lead role and what should this role be?

3. Currently, 21 States and the District of Columbia have periodic motor vehicle inspection programs. Several other States have varying requirements, such as random or spot inspection or inspection at time of transfer of ownership.

Comments are requested as to whether the movement of vehicles between States is a sufficient reason for all States to have periodic motor vehicle inspection laws. If so, how should this result be encouraged, e.g., Federal

involvement, national association efforts, or some other means?

4. An issue that has been raised by researchers and others involves the accurate detection of faulty vehicle components before they cause or contribute to a possible crash. Very limited information is available on this issue. Periodic inspection programs may not eliminate sudden mechanical failures, and may pass rather than fail a number of marginal components with the potential to contribute to crashes.

Comments are requested regarding any reports or information available which can provide further understanding and insights about: (1) Sudden mechanical failures that occur between inspections, (2) mechanical problems of components that have the potential of contributing to crashes that may or may not be covered in State inspection criteria, and (3) mechanical failures of components that have been found and corrected, or mechanical failures of components that have not been found although they were required to be inspected under the State inspection criteria.

5. Some past studies have been conducted to examine the effectiveness of inspections in improving the safety related mechanical condition of vehicles and reducing crashes, indicating that the mechanical condition of vehicles is better in PMVI States than in non-PMVI States; however, this is not true for all safety components. There is a lack of data on inspection, and the crash reduction studies do not provide enough information and insights to measure the effectiveness of inspections in preventing crashes.

Comments are requested concerning current studies or information available which can provide understanding about the effectiveness of inspection programs in detecting mechanical failures, in improving the safety related mechanical condition of vehicles or in reducing crashes. Are evaluations available, with data and information in sufficient detail to provide for comparisons between various types of inspection programs? Do any of these studies include a cost-effectiveness or benefit/cost analysis?

Is it feasible to inspect vehicles only after a certain number of miles and/or age? If so, after how many miles and at what age? If so, what are the estimated cost savings? What effect would this have on safe vehicle condition and crash reduction?

Related to the above, could there be alternative inspection schedules, depending on miles and/or age? Could there be differing levels of inspection, including spot or random? What would be the effectiveness and costs of such various levels and schedules of inspection?

6. Emissions inspection is required in nonattainment air quality areas in many States, and safety inspections are required in a number of these same States. As part of the emissions inspection program. States use either government operated facilities, a private garage system or a contractor operated system.

Some have argued that it would be more cost effective introducing a safety inspection program in a non-PMVI State by adding it to the State's emissions inspection program, since vehicles would already be required to stop at the inspection facility for emissions inspection.

Comments are requested regarding information on the cost and benefits of combining emissions and safety inspection in a government operated, private garage or a contractor system. What are the advantages and disadvantages of combining safety and emissions inspection in each type of system? Should the non-PMVI States with emissions inspection programs be encouraged to adopt safety inspection? If so, how?

7. Vehicle inspection standards and procedures can be rigorous, exacting and costly. For example, Federal inspection guidelines for testing service brake performance include use of either roller-type, drive on platform, or road tests. The Federal guideline for examining disc and drum condition requires removal of one front and one rear wheel.

Describe any guidelines and procedures that would be practical and not costly for inspecting motor vehicles, including the braking system. Which type of inspection system, such as private garage, government operated, contractor or a combination of these would lend itself best to a cost-effective inspection system?

8. Random or spot inspection programs have been used in several States as an alternative for periodic motor vehicle inspection programs. This approach assumes that these programs will encourage motorists to maintain their vehicles because of the likelihood of having their vehicles inspected.

Comments are requested on the effectiveness and costs of random or spot inspection programs in comparison to those of PMVI programs in maintaining the safe condition of vehicles. Comments are requested comparing the cost-effectiveness of random or spot inspection programs to those of no inspection programs. Should random or spot inspection be used in lieu of or to supplement a PMVI program?

9. There have been significant technological vehicle improvements that have an impact on safety. Comments are requested on how these improvements might affect the frequency of PMVI, as well as the equipment and procedures needed for inspection. Some of these technological improvements are:

- Newly designed headlights.
- Anti-lock brakes.
- Airbags and automatic belts.
- Four wheel steering.
- Traction control systems.
- Active suspension systems.
- Computerized safety checks—brakes, lights, etc.
- On-board diagnostics—regarding on-board diagnostics, some vehicles have sophisticated on-board emissions control monitoring, electronic computer controlled subsystems, and various "safety" subsystems monitoring. Comments are requested regarding how this technology may affect the conduct of, or be integrated with, PMVI programs.

10. Under current warranty programs, some extend to 7 years or 70,000 miles, others have shorter periods and lower mileages, as well as varying vehicle components covered. Comments are requested on the feasibility of providing for PMVI as a part of the warranty program. If feasible, comments are requested on the criteria and procedures that might be used.

Public Hearings

Public hearings will be held on September 27 and October 5, 1988. The September 27, 1988 hearing will be held in Room 2230 of the Nassif Building; U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC. The October 5, 1988 hearing will be held in Conference Rooms A and B of the Lehigh Building, 555 Zang Street, Lakewood, Colorado. Each hearing will be scheduled from 9 a.m. to 12 noon and from 1:30 p.m. to 5 p.m., or until the final witness has been heard. The agency invites interested members of the public to participate in these hearings and to comment on all issues raised by this notice. Because of the parallel involvement with PMVI programs, EPA officials have been invited to participate in the public hearings. Commenters are encouraged to address issues on periodic emissions inspections, as well as safety inspections.

Persons wishing to make an oral presentation at the public hearing should contact Mr. Joseph P. Grillo (whose address and telephone number are provided near the beginning of this

notice) no later than seven days before the hearing. Oral statements should be limited to 5 minutes or less. Oral or written clarification on issues raised in the oral statements or in the docket submissions may be requested by agency representatives conducting these hearings. As time permits, the formal statements may be followed by an open discussion, and persons who have not requested time but would like to make a statement, may be afforded an opportunity to do so at the end of each day's schedule.

Persons making oral presentations are requested but not required to submit 25 written copies of the full text of their presentation to Mr. Grillo, no later than two days before each hearing begins. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of each public hearing will be prepared and also placed in the public docket as soon as possible after the hearing. A schedule of the persons making oral presentations at each hearing will be available at the designated meeting area at the beginning of each public hearing.

Written Comments

Interested persons are invited to submit comments on this notice. It is requested but not required that 10 copies be submitted.

Written comments to the public docket should be received by October 27, 1988. Comments should not exceed 15 pages in length. Necessary attachments may be added to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise manner.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all written comments and statements will be placed in Docket 88-09; Notice 1 of the Docket Section in Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued on August 17, 1988.

George L. Reagle,

Associate Administrator, Traffic Safety Programs.

[FR Doc. 88-18978 Filed 8-17-88; 4:35 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 16, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 8806.
Type of Review: New collection.
Title: Computation of communication taxes.
Description: Form 8806 is used to compute the excise tax on local telephone service, toll telephone service, and teletypewriter exchange service. This form enables IRS to monitor the excise tax liability on these services. (Internal Revenue Code section 4251).
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 1,950 hours.

OMB Number: New.
Form Number: 8807.
Type of Review: New collection.
Title: Computation of certain manufacturers and retailers excise taxes.
Description: Form 8807 is used to compute the excise tax on fishing equipment, bows and arrows, pistols and revolvers, other firearms, shells and cartridges, tires, and trucks and trailer chassis and bodies and tractors. This form enables IRS to monitor the excise tax liability on these articles. (Internal Revenue Code sections 4161, 4181, 4051, and 4071).
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 7,250.
Estimated Burden Hours Per Response: 37 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 18,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-18918 Filed 8-19-88; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 88-50]

Revocation of Commercial Gauger Approval of Captain G. McKay & Sons Marine, Inc., of Galveston, TX

AGENCY: U.S. Customs Service, Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the commercial gauger approval of Captain G. McKay & Sons Marine, Inc., of Galveston, Texas, has been revoked at McKay's request. The decision was effective on August 15, 1988.

Dated: August 16, 1988.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 88-18909 Filed 8-19-88; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 88-49]

Revocation of Commercial Gauger Approval of Marintech, Inc., of LaMarque, TX

AGENCY: U.S. Customs Service, Treasury.

ACTION: General rule.

SUMMARY: Notice is hereby given that pursuant to § 151.13(k) of the Customs

Regulations, as amended (19 CFR 151.13), the commercial gauger approval of Marintech, Inc., of LaMarque, Texas, has been revoked with prejudice. The decision was effective on August 15, 1988.

Dated: August 16, 1988.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 88-18908 Filed 8-19-88; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 88-51]

Revocation of Commercial Gauger Approval of PKB Scania (USA), Inc., of New Orleans, LA

AGENCY: U.S. Customs Service, Treasury.

ACTION: General rule.

SUMMARY: Notice is hereby given that pursuant to § 151.13(k) of the Customs Regulations, as amended (19 CFR 151.13), the commercial gauger approval of PKB Scania (USA), Inc., of New Orleans, Louisiana, has been revoked with prejudice. The decision was effective on August 15, 1988.

Dated: August 16, 1988.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 88-18910 Filed 8-19-88; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 88-48]

Revocation of Commercial Gauger Approval of Transcan Marine Consultants and Surveyors, Inc., of Houston, TX

AGENCY: U.S. Customs Service, Treasury.

ACTION: General rule.

SUMMARY: Notice is hereby given that pursuant to § 151.13(k) of the Customs Regulations, as amended (19 CFR 151.13), the commercial gauger approval of Transcan Marine Consultants and Surveyors, Inc., of Houston, Texas, has been revoked with prejudice. The decision was effective on August 15, 1988.

Dated: August 16, 1988.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 88-18907 Filed 8-19-88; 8:45 am]

BILLING CODE 4820-02-M

United States Mint

Determination as to U.S. Mint Procurement Relating to Coin Production

As required by section 3 of Pub. L. 100-274, notice is hereby given that on August 12, 1988, I determined it to be inconsistent with the public interest to decline to award a contract to ArrowHead Metals, Inc., of Canada, for the fabrication of nickel coinage strip for the U.S. Mint. Failure to do so could have been considered a violation of the Agreement on Government Procurement of the General Agreement on Tariffs and Trade, of which the United States is a signatory. Additionally, it would not be in the national interest to reduce competition in an area in which competition has proven very beneficial.

M. Peter McPherson,

Deputy Secretary of the Treasury.

[FR Doc. 88-19017 Filed 8-19-88; 8:45 am]

BILLING CODE 4810-37-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393), July 2, 1985), I hereby determine that the objects to be included in the exhibit "German Expressionism 1915-1925: The Second Generation" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Los Angeles County Museum of Art, Los Angeles, California, beginning on or about October 2, 1988 to on or about December 31, 1988, and at the Modern Art Museum of Fort Worth, Texas, beginning on or about February 12, 1989 to April 9, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Date: August 18, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-19124 Filed 8-19-88; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485-8827, and the address is Room 700, U.S. Information Agency, 301-4th Street, SW., Washington, DC 20547.

VETERANS ADMINISTRATION

Advisory Committee on Native American Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that the fifth meeting of the Advisory Committee on Native American Veterans will be held on September 20 through 22, 1988, at the Northern Lights Inn, 598 West Northern Lights Boulevard, Anchorage, Alaska 99503-9990.

The purpose of the meeting is to address issues related to the accessibility and delivery of health care services and benefits to Native Alaskan veterans and to review the status of recommendations contained in the report of the Committee submitted on February 1, 1988. All meetings will begin at 8:30 a.m. and continue until 4:30 p.m. All sessions will be open to the public up to the seating capacity of the room.

To assure adequate accommodations those who plan to attend should contact Mr. John R. Fulton, MSW, Committee Manager, Advisory Committee on Native American Veterans, at (202) 233-2614.

Dated: August 11, 1988.

By direction of the Administrator

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-18915 Filed 8-19-88; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 162
Monday, August 22, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1406]

TIME AND DATE: 10 a.m. (CDT), Wednesday, August 24, 1988.

PLACE: Legislative Plaza, Senate Hearing Rooms 12–14, Capitol Boulevard, Nashville, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on July 20, 1988.

Action Items

Old Business

1. Final Rate Review.

New Business

A—Budget and Financing

A1. Fiscal Year 1989 Capital Budget Financed from Power Proceeds and Borrowings, Comprising Expenditures for Ongoing and New Projects During the Fiscal Year and the Estimated Total Project Cost for Those Projects.

A2. Fiscal Year 1988 Operating Budget Financed from Power Revenues.

[1] A3. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Construction of a Double-Circuit, 161 kV Transmission Line from Collinsville to Leesburg, Alabama.

[1] A4. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Safety Improvements on Overhead Cranes—Sequoyah Nuclear Plant.

[1] A5. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Final Safety Analysis Report Verification.

[1] A6. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Develop a Qualified Component List (Q-List)—Sequoyah Nuclear Plant.

A7. Proposed Increase in Borrowing Commitment with Seven States Energy Corporation and the Federal Financing Bank Under the Nuclear Fuel Leasing Arrangements.

B—Purchase Awards

B1. Negotiation GB–06284A—Electrostatic Fly Ash Collectors and Auxiliary Equipment for Colbert Fossil Plant.

C—Power Items

C1. Contract with Individual Power Distributors for Repair of Major Electrical Equipment at Power Service Shops.

D—Personnel Items

[1] D1—Supplement to Consulting Contract TV–74236A with Bishop, Cook, Purcell and Reynolds to Provide Advice and Consultation with Respect to Legal Matters.

E—Real Property Transactions

[1] E1. Option to NASA for Yellow Creek Site.

E2. Filing of Condemnation Cases.

E3. Resolution for the Waste Bar Reservoir Land Management Plan.

E4. Proposed Land Exchange Affecting Fontana Reservoir Land Transferred by TVA to the U.S. Department of Agriculture, Forest Service, Under Contract TV–1721A.

E5. Grant of a Permanent Easement for an Access Road Affecting Approximately 0.13 Acres of Douglas Reservoir Land Located in Jefferson County, Tennessee.

E6. Proposed Sale of Three Noncommercial, Nonexclusive Permanent Recreation Easements Affecting 0.30 Acres of Tellico Reserve Shoreline in Monroe County, Tennessee.

F—Unclassified

[1] F1. Changes in Composition of List of Agency Officials Authorized to Certify Vouchers.

F2. Proposed Modification in Procurement Code to Allow for Increased Competitive Negotiation.

F3. Supplement to Memorandum of Agreement No. TV–64520A Between TVA and U.S. Environmental Protection Agency to Finalize External Peer Review of the National Precipitation Assessment Program 1985 Emissions Inventory.

F4. Supplement to Contract No. TV–75239A with U.S. Department of Army, Lexington-Blue Grass Army Depot, for Continuing the Production of a Digital Data Base.

F5. Supplement to Contract No. TV–67038A with U.S. Department of Agriculture, Forest Service, to Continue the Collection of Data From its Whitetop Mountain Monitoring Site.

F6. Agreement Between TVA and U.S. Department of the Army, Corps of Engineers, Memphis District, for Relocation and Report Preparation on Endangered Mussel Species in the St. Francis River Basin.

F7. Revision to TVA Code Relating to Employee Recognition.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 245–0101.

Dated: August 17, 1988.

William L. Osteen, Jr.,

Associate General Counsel and Assistant Secretary.

[FR Doc. 18–19059 Filed 8–18–88 11:59 am]

BILLING CODE 8120–01–M

[1] Items approved by individual Board members. This would give formal ratification to the Board's action.

BEST COPY AVAILABLE

Corrections

Federal Register
Vol. 53, No. 162
Monday, August 22, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1405 and 1421

Loans, Purchases and Other Operations; Grains and Similarly Handled Commodities

Correction

In proposed rule document 88-18160 beginning on page 30068 in the issue of Wednesday, August 10, 1988, on page 30071, in the second column, in the file line at the end of the document, "FR Doc. 88-16160" should read "FR Doc. 88-1816".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-24-NG]

Western Gas Marketing U.S.A. Ltd.; Order Granting Blanket Authorization To Import and Export Natural Gas

Correction

In notice document 88-18399 appearing on page 30711 in the issue of Monday, August 15, 1988, the Docket Number in the heading should read as it appears above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3160, and 3200

[AA-620-88-4111-01-24-10, Circular No. 2608]

Minerals Management; General Oil and Gas Leasing; Noncompetitive Leases; Competitive Leases; Oil and Gas Leasing—National Petroleum Reserve—Alaska; Onshore Oil and Gas Operations; Onshore Oil and Gas Unit Agreements—Unproven Areas; Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

Correction

In rule document 88-13680 beginning on page 22814 in the issue of Friday, June 17, 1988, make the following corrections:

PART 3000—[CORRECTED]

1. On page 22835, in the second column, in amendatory instruction 2, in the first line, "2000.0-5" should read "3000.0-5".

PART 3100—[CORRECTED]

2. On the same page, in the third column, in amendatory instruction 5, in the seventh line, "(b)92)(vi)" should read "(b)(2)(vi)".

§ 3100.0-3 [Corrected]

3. On page 22836, in the first column, in § 3100.0-3(a)(2)(x), in the third line, "Executive" was misspelled.

4. On the same page, in the same column, in amendatory instruction 6, in the last line "U.S.C. 6506" should read "U.S.C. 6508".

§ 3101.1-4 [Corrected]

5. On the same page, in the third column, in § 3101.1-4, in the sixth line, "require" should read "required"; and in the next to last line, "a least a" should read "at least a".

§ 3103.2-1 [Corrected]

6. On page 22837, in the third column, in § 3103.2-1(a), in the eighth line, "years" should read "year's".

§ 3104.3 [Corrected]

7. On page 22839, in the first column, in § 3104.3(a), in the first line, after "lessees" insert a comma; and in the next to last line, "covering" was misspelled.

§ 3107.2-3 [Corrected]

8. On page 22840, in the first column, in § 3107.2-3, in the last line, "to so. * * *" should read "to do so. * * *".

PART 3110—[CORRECTED]

9. On page 22840, in the third column, in the third line from the bottom, in the "Authority", "supplemental" should read "supplemented".

§ 3110.1 [Corrected]

10. On page 22841, in the first column, in § 3110.1(b), in the 11th line, "§ 3120.23-1" should read "§ 3120.3-1".

§ 3110.3-1 [Corrected]

11. On the same page, in the second column, in § 3110.3-1, in the second line, "days" should read "years".

§ 3110.4 [Corrected]

12. On page 22842, in the first column, in § 3110.4(a), in the second line, "§ 3109.9" should read "§ 3110.9"; and in the fifth line, "remittance" should read "remittances"; and in the sixth line, "shall obtain" should read "shall not obtain".

PART 3120—[CORRECTED]

§ 3120.3-2 [Corrected]

13. On page 22844, in the third column, in § 3120.3-2, introductory text, in the last line, "director" should read "Director".

PART 3160—[CORRECTED]

§ 3162.3-1 [Corrected]

14. On page 22846, in the second column, in § 3162.3-1(e), in the fifth line, after "location" insert a comma.

PART 3200—[CORRECTED]

§ 3206.1-1 [Corrected]

15. On page 22847, in the third column, in § 3206.1-1(c)(5)(iii), in the eighth line, "conditions of" should read "conditions or".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3130, 3150, 3160, 3180, 3200, and 3220

[AA-620-88-4111-01, Circular No. 2606]

Oil and Gas Leasing, Geothermal Resources Leasing

Correction

In rule document 88-10808 beginning on page 17340 in the issue of Monday, May 16, 1988, make the following corrections:

PART 3130—[CORRECTED]

§ 3135.1-3 [Corrected]

1. On page 17359, in the second column, in § 3135.1-3, in the heading, "Separating" should read "Separate".

PART 3150—[CORRECTED]

§ 3150.0-5 [Corrected]

2. On page 17360, in the first column, in § 3150.0-5(b), in the next to the last line, remove "and".

§ 3152.7 [Corrected]

3. On page 17361, in the first column, in § 3152.7, the second paragraph should be designated "(1)".

PART 3160—[CORRECTED]

§ 3162.3 [Corrected]

4. On page 17363, in the second column, in § 3162.3(b), in the seventh line, insert a comma after "NTL's".

5. On page 17365, in the first column, in amendatory instruction "C.", in the second line, "paragraph" was misspelled.

PART 3180—[CORRECTED]

§ 3186.1 [Corrected]

6. On page 17365, in the third column, in § 3186.1, in the paragraph following amendatory instruction A. to Section 9, in the second line, "participating" was misspelled.

7. On page 17366, in amendatory instruction "E.", in the ninth line, "If" should read "If the".

PART 3200—[CORRECTED]

§ 3200.1 [Corrected]

8. On page 17367, in the first column, in § 3200.1(c), in the fourth line, after "by" insert "the"; and in the seventh line from the bottom, "other" should read "another".

§ 3206.2 [Corrected]

9. On page 17369, in the second column, in § 3206.2, in the seventh line, "principals" was misspelled.

PART 3220—[CORRECTED]

§ 3220.2-2 [Corrected]

10. On page 17370, in the second column, in § 3220.2-2, in the second line, "information" was misspelled.

§ 3220.3 [Corrected]

11. On the same page, in the same column, in § 3220.3, in the seventh line, "appropriate" was misspelled.

PART 3100—[CORRECTED]

Group 3100—[Corrected]

12. On page 17375, in the second column, under "**Group 3100**", in the note, in the seventh line, "1104-0074" should read "1004-0074".

BILLING CODE 1505-01-D

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federal register

Monday
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Part II

Department of Agriculture

Forest Service

Department of the Interior

Bureau of Land Management

Deferral of Payments on High-Priced Timber Sales; Notices of Interim Policy and Request for Comments

VOL 53 ISS 162 22 1988 AG UMI

DEPARTMENT OF AGRICULTURE

Forest Service

Deferral of Payments on High-Priced Timber Sales

AGENCY: Forest Service, USDA.

ACTION: Notice of interim policy; request for comments.

SUMMARY: This policy will revise agency procedures to permit timber sale contract modifications for high-priced timber sales bid prior to January 1, 1982. The primary objective of the new procedures is to encourage purchasers to perform the high-priced sales rather than to default them. The intended effect is to avoid the adverse economic impacts and Forest management disruptions that would occur if these sales were defaulted. Because a number of effected sales are scheduled to default between now and March 30, 1989, it is essential to effect this policy by September 1, 1988, to allow payment deferral procedures during the current operating season. However, the agency is requesting comments on this interim policy for consideration prior to adopting a final policy on deferred payment.

EFFECTIVE DATE: This policy is effective September 1, 1988. Comments on policy must be received by October 21, 1988.

ADDRESS: Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this interim policy in the office of the Director, Timber Management Staff, Room 3207 South Agriculture Building, 14th and Independence, SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Allan B. McCombie, Timber Management Staff, (202) 447–6862.

SUPPLEMENTARY INFORMATION:

Background and Need for Policy

During the late 1970's, the timber industry vigorously competed for available National Forest timber sales. The competition resulted from a combination of strong demand for timber, predicted price trends based on levels of inflation at that time, and predictions of a softwood timber supply shortage. These factors resulted in unprecedented high-priced sales, particularly in California, Oregon, and Washington. Before this timber could be harvested, lumber prices fell dramatically in response to a collapse in the housing market precipitated by a general economic recession.

The Government took a number of actions to alleviate the default potential of the high-priced pre-1982 sales. Contract extension policies announced by the Forest Service from 1980 thru 1983 (16 U.S.C. 472a), and the subsequent relief provided by the Federal Timber Contract Payment Modification Act of 1984 ("buy-out") (16 U.S.C. 618), together with somewhat improved Forest products markets, have eased the financial burden of many timber purchasers and lessened the risk of default on remaining high-priced contracts.

However, some purchasers, particularly in the West, still hold substantial numbers of high-priced sales bid prior to 1982 in Forest Service Regions 5 (California) and 6 (Oregon and Washington). An analysis of pre-1982 sales in these Regions, dated May 1988, shows that there is about 1.6 billion board feet of high-priced timber under contract in 350 sales. This volume remains under contract, primarily because the amounts held by purchasers at the time of buy-out application exceeded the volume entitlement under the Federal Timber Contract Payment Modification Act. These purchasers have extended these sales under the Multi-Sale Extension Program and other extension authorizations for periods of up to 5 years. As a result, these sales are now scheduled to terminate between September 30, 1988, and December 31, 1992. The majority of the high-priced volume is contained in sales that are scheduled to terminate in 1989 and 1990. Most of the high-priced volume is in Oregon, Washington, and California.

The current value of the remaining volume under contract is $600 million. The amount of damages due the Government if these sales are defaulted is estimated at $200 million.

It is important that the agency have procedures in place to try to avoid significant default, especially if market conditions deteriorate. When a contract is defaulted, the harvest of that timber is delayed until the timber can be resold and cut under a new contract. Default-delayed harvest may result in adverse economic, resource management, and environmental effects. The economies of many communities, particularly in the West, are heavily dependent upon the employment generated by the harvest and manufacture of timber from the National Forests. Timber sale defaults interrupt the flow of timber and, thereby, interrupt employment. Employment impacts of default affect not only loggers and mill workers, but also affect others dependent upon the income of timber workers. Defaults also reduce receipts to the Federal Treasury and the revenue sharing payments to local counties that are based on those receipts. County funding of roads and schools is heavily dependent on these payments.

The liability for damages due the Government arising from default, estimated at $200 million, could result in a number of firms seeking bankruptcy. Under bankruptcy procedures, the United States would become an unsecured creditor. Usually little or no assets are available for payment after all the secured creditors are satisfied in the proceedings. Even if the firms do not declare bankruptcy, default collection activities are expensive and often result in small dollar returns compared to the amount of damage payment due. In short, contract performance of these high-priced sales provides the best economic return and protection to Federal, State, and local governments as well as to timber dependent communities. Accordingly, the Forest Service is implementing a procedure to encourage holders of high-priced pre-1982 volume to perform contracts rather than defaulting them.

Interim Policy

This interim policy will provide guidance to Contracting Officers in the exercise of their existing authorities to administer Forest Service timber sale contracts. Current law provides that Contracting Officers may make modifications on unexecuted portions of a contract that will not be injurious to the United States. Modification of specified high-priced sales to implement the deferred payment policy will not be injurious to the United States and will be in the public interest. In accordance with the contract terms, the Government will receive full contract value. The current holder of a timber sale contract determined by the Forerst Service to be a high-priced contract will pay for timber under that contract at the contract price. Under this policy, the terms of payment will be modified allowing the Government to defer an amount of payment equal to the difference between the current average bid value for the Forest at time of modification, plus $50 and the average current contract value per thousand board feet (MBF). The deferred amount will be paid with interest, over a 5-year period under the terms of a fully secured promissory note. Thus, only the contract terms necessary to change the timing of payment to the Government will be modified. The procedure will only be authorized for high-priced sales bid

prior to January 1, 1982. The deferred payment modification will only be authorized after receipt of a properly prepared and executed promissory note, on a form provided by the Forest Service, for the total amount of the deferred stumpage value. The note will be fully secured by a form of security acceptable to the Forest Service on a form approved by the Forest Service, and allow for the unconditional payment upon demand by the Forest Service. The promissory note will require quarterly payments to amortize the amount of the note. Interest will be assessed against the accrued deferred amount or the remaining note balance whichever is less. Interest will be paid quarterly. The note period will generally be for a maximum of 5 years. A note with a longer term may be approved by the Regional Forester.

Key Features of the Policy

Sales Eligible For Modification

To be eligible for payment deferral modifications, timber sale contracts must meet the following criteria:

1. The bid date must be prior to January 1, 1982;

2. The remaining stumpage must have an average value per thousand board feet (MBF) that exceeds the average bid value for the previous 6-calendar months on the National Forest where the sale is located, plus $50 per MBF.

3. The contract must have sufficient contract period remaining to allow for removal of the remaining timber prior to expiration of the contract.

To make a payment deferral modification, the Contracting Officer must find that such a modification to unexecuted portions of the contract will not be injurious to the United States.

The January 1, 1982, cutoff date was selected because, in the Federal Timber Contract Payment Modification Act, Congress has already identified the period immediately prior to this date as a bidding period when cumulative market effects resulted in excessive bidding for Federal timber.

High-priced sales are defined as sales with an average current contract value per MBF, that exceeds the average bid value for sales sold in the previous 6-calendar months on the National Forest where the qualifying sale is located, plus $50 per MBF. The average bid value for the individual Forest was selected because it reflects values for the market area where the sale is located.

Authorized officials of current holders of qualifying contracts must request payment deferral in writing. The current holder is the firm currently recognized by the Forest Service as being legally responsible for contract performance. The Forest Service is not limiting the procedure to companies who bid the sales.

Requests for modification of a qualifying contract will be accepted at anytime during the sale period.

Modification of Payments

Under the interim policy, the payments for stumpage will be reduced by a deferred amount covered by a promissory note. The deferred payment rate per thousand board feet (MBF) will be determined at the time of modification. The deferred value will be the difference between the current average bid value of the Forest sales, plus $50 per MBF and the average current contract value in MBF. The Contracting Officer will use the average for the 6-calendar months immediately prior to the request for modification in determining the amount of the payment deferred. Only the species rates above the average bid rate plus $50 per MBF would be subject to payment deferral. The amount of deferral of an individual species rate, above the average bid value plus $50 would be weighted in proportion to the amount that the remaining value of a particular species represents of the total remaining value of all species above the average bid rate, plus $50 per MBF. The weighting of species values above the floor rate to determine the amount of payment deferral by species will develop a payment rate that reflects original bid values.

The determination of the amount subject to deferral will be calculated using advertised volumes at the time the sale was offered adjusted by any subsequent contract modification.

Modification of the contract will be contingent on the prior execution of a promissory note for the amount of the payment estimated by the Forest Service as being deferred. More than one note per sale, executed annually, may be considered for individual sales. The amount of harvest volume included in the note will be in accordance with the Forest Service approved plan of operation. The average current contract value for the estimated volume to be removed will be used to determine the amount of payment deferral for the multiple note procedure. This will allow the note and interest amount to reflect estimated seasonal removal volumes. This will preclude having to charge for the principal on large volumes that have to be scheduled for logging in successive years. The multiple notes may be consolidated for billing and payment purposes.

These modifications will not change current contract rates which are used for determining Removal Schedule Payments established pursuant to the Multi-Sale Extension Policy of 1983. Purchaser Credit effectiveness will be calculated using current contract rates under the terms of the contract.

Modification of the Payment Guarantee Requirements of the Contract

The requirements of the contract related to advance deposits and payment guarantees in lieu of deposits will be satisfied by deposits equal to the revised current payment amounts as established under the formula for calculating deferred payments. The Government is protected as to the amount of the deferred payment by the fully secured promissory note. In the event of an overcut, an advance cash deposit or payment guarantee in lieu of deposit must equal the total stumpage value for cut timber that is not covered by the promissory note. This requirement will insure that the value of the volume harvested above the estimated volumes is covered by payment guarantee. Full payment or revision of the promissory note, must be made for the deferred value associated with the overcut.

Limitation on Application of Deferred Payment Modifications

Retroactive payment deferrals will not be allowed for previously harvested volumes under the proposal. The performance bond amount will not be reduced under the deferred payment procedures.

Breach

Failure to make a note payment will result in suspension of operations and breach of the provision for deferred payment. A defaulted note could result in contract termination.

Promissory Note Procedures

Under the interim policy, the promissory note will be for the amount of the payment deferred, as estimated by the Forest Service. The contract holder may select the promissory note term, generally up to 5 years. Regional Forester authorization will be required for note periods in excess of 5 years. The maximum note period is 10 years. Authorization for the additional period will be based on a determination that the purchaser has a compelling need. Purchasers will provide financial information to the Regional Forester to support the need for the additional note period. The Regional Forester will coordinate the granting of additional

term with the State Director of the Bureau of Land Management. The note principal amount will be due in equal quarterly payments. The initial principal payment will be due on January 1 of the year following the date of note execution. The remaining payments will be due April 1, July 1, October 1, and January 1. Interest will begin to accrue on the amount of deferral at the time stumpage payment for deferred timber is due. Interest will be calculated on the accrued amount of the deferral or the outstanding remainder of the note whichever is less. Interest will be billed quarterly. The note must be executed and presented to the Forest Service prior to modification of contract terms. The interest rate will be adjusted at each payment and will be equal to the average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years.

Payment of the note must be secured by an acceptable form of security. Acceptable forms of security are specified in the Forest Service Finance and Accounting Handbook (FSH 6509.11k, Chapter 80). The Handbook is available at all Forest Supervisor Offices. Examples of acceptable forms of security include bonds by an acceptable surety, irrevocable letters of credit, or securities of the United States. The security amount must be sufficient to cover the entire amount of the note. The contract holder or surety where applicable may make pre-payment of all or a portion of the outstanding remainder of the note on the date of any quarterly payment.

The amount of the deferred payment value used for the note will be initially calculated using the original advertised contract volumes as adjusted by any subsequent contract modification. The actual principal amount will be recalculated at the completion of harvest of the volume covered by the note, when the exact amount of the deferred value is known. The note will be revised to reflect actual obligations. Actual Forest Service scaled or payment unit volume will be used to determine the note value.

The amount of bond security may be reduced to reflect the current amount of the promissory note obligation during the note period.

The note payments may be assumed by the surety if the principal is unable to make the quarterly payments.

If contract term adjustment for 30 days or more is granted, after the contract modification, the note obligation will be revised to reflect adjusted harvest volumes resulting from approved delays.

Alternatives Considered

In considering the need to avoid default on these high-priced sales, the Forest Service has considered alternative approaches. Those alternatives are: (1) To do nothing; (2) to allow harvest of these sales at rates reduced from current contract rates but higher than current market rates; (3) to allow purchasers to harvest sales at a reduced rate with the difference between the reduced rate and current rates due at the termination date of the contract. The final amount due at the end of the contract would be negotiable based on sample case litigation.

The first alternative—to take no action—will create serious economic impacts on the timber dependent communities in the West where these high-priced sales are located, will substantially reduce receipts to the Federal Treasury and affected counties that otherwise would be generated, and will have adverse impacts on the planned management of the National Forests where these sales have been sold. Current timber prices simply are not adequate for the holders of these contracts to operate these sales without a substantial loss.

The second approach was rejected because it would result in purchasers paying less than the full contract value for harvested timber, negating the fundamental principle that a contract is binding on the parties who enter it.

The third alternative was rejected because it would result in allowing the harvesting of timber without payment in advance of cutting and without satisfactory payment guarantee as required by law. This alternative also includes an expectation of settlement for a value less than the contract requires. Moreover, alternatives (2) and (3) would require new statutory authorization to enable the agency to collect less money than it is entitled to under a contract or to allow removal of timber without advance payment. Because of the deliberative nature of the legislative process, it is doubtful that such legislation could be enacted in sufficient time to prevent default of those high-priced sales coming due in 1989.

In contrast to a legislative remedy, the policy and procedures being implemented are within the agency's existing authority and will be adopted in sufficient time to provide an alternative to default of most of these sales. The policy requires full contract payment; the modification affects only the timing of payment. It encourages the purchaser to operate eligible sales by giving them the ability to spread losses over a period of time. Purchasers will be allowed to defer a portion of the payment for up to 5 years, paying interest and providing additional security as consideration for the Government's willingness to modify contract terms to defer receipt of full payment.

Implementation and Public Comment Requested

This general statement of policy is issued by the Forest Service to advise the public prospectively of the manner in which the agency proposes to exercise its discretion to modify contracts and to receive and analyze comments before preparing the final policy direction in the Forest Service Manual. As such, this notice is exempt from the requirements of 5 U.S.C. 553(b) and (d).

The interim policy is being implemented on September 1, 1988, to allow purchasers of qualifying sales the earliest possible opportunity to begin harvesting under the deferred payment procedures. Many of the qualifying sales will terminate and become defaulted if harvesting is not completed by March 31, 1989. Harvesting operations are seasonal, the best operating conditions are experienced during the summer and early fall periods. The interim policy is needed to allow an additional 2 months operations, September and October for the qualifying sales. Rapid implementation is critical to encourage operation and lessen the potential for default. The early implementation will provide full coordination with the Bureau of Land Management which is promulgating a similar policy.

In accordance with 36 CFR 216.6, the public is invited to submit written comments on the interim policy which will be analyzed and considered in adoption of final policy. The new policy will be issued in Forest Service Manual, Chapter 2450, and Forest Service Handbook 2409.15, Chapter 30.

Regulatory Impact

This act has been reviewed under U.S. Department of Agriculture policy and procedures as well as submitted to the Office of Management and Budget for review pursuant to Executive Order (E.O.) 12291. It has been determined that this policy does not have the effects of a major rule as defined in E.O. 12291. The procedure implemented by this policy will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State, or local government agencies or geographic regions, and will not have significant adverse effects on the ability of United States-based

industries to compete with foreign-based enterprises in domestic or export markets. It does not change the total amount a purchaser will pay for National Forest timber, although it will affect the timing of when a purchaser will have to pay the full price for stumpage under a Forest Service contract. The deferred payment will be made under the terms of a fully secured promissory note. The note will require interest charges as consideration for payment deferral.

The timing of payments to the Government will be delayed but the note interest will compensate for the deferral. The risk of nonpayment will be avoided by requiring a fully secured promissory note. Counties who share in revenues generated from Federal timber sales will experience a short-term deferral in receipts. However, the short-term effects are likely to have far less adverse impact than if these sales were defaulted. Since purchasers will eventually pay the full contract value, the long term receipts to affected counties will be far greater than would be received if the sales were defaulted and resold. The procedures will contribute to the economic well-being of timber-dependent communities, the orderly flow of timber to market and receipts to Treasury, strengthen the orderly accomplishment of resource management objectives, and reduce administrative costs associated with collection of claims against defaulting purchasers.

It has also been determined that this policy will not have significant economic impact on a substantial number of small entities. The policy works to preserve the long range revenues to affected counties and to maintain employment in the area and, thus, reduces the certain adverse economic impacts these entities would experience in the event of default and bankruptcy of purchasers of these high-priced sales.

Based on both past experience and environmental analysis, the policy will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4). Furthermore, the policy would not result in additional procedures or paperwork not already required by law. Therefore, the provisions of the 5 CFR Part 1320 relating to controlling paperwork burdens on the public do not apply.

Date: August 2, 1988.

George M. Leonard,

Associate Chief, Forest Service.

[FR Doc. 88-18893 Filed 8-19-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-230-08-6310-02]

Deferral of Payments on High-Priced Timber Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of interim policy; request for comments.

SUMMARY: This interim policy revises agency procedures to permit modifications of high-priced timber sale contracts that were bid prior to January 1, 1982. The primary objective of this action is to encourage purchasers to perform the high-priced sales rather than to default them. The intended effect is to avoid the adverse economic impacts and forest management disruptions that would occur if these sales were defaulted.

The need for an interim policy is based on the anticipated default of sales due to expire on December 31, 1988. It is essential to put this policy into effect by September 1, 1988, to allow payment deferral procedures that would permit all harvest activities, including road construction, to be completed in a timely manner. However, the agency is requesting comment which will be considered in adoption of final policy.

EFFECTIVE DATE: September 1, 1988. Comments should be submitted by October 21, 1988. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on the issuance of a final policy.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Department of the Interior, 1800 'C' Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lyndon Werner (202) 653-8864.

SUPPLEMENTARY INFORMATION:

Background and Need for Policy

Bidding on timber contracts during 1979–1980 in Oregon rose to record high levels. When interest rates rose in the early 1980's, timber markets collapsed and the industry could not complete the contracts without incurring substantial losses. Recognizing the dilemma, the Department of the Interior granted grace period extensions beginning in November 1981; further extensions were granted in August 1983 on contacts bid prior to January 1, 1982, under the President's 5-year extension program, which extended the currently uncompleted contracts to 1988 and 1989. Also, the Timber Contract Payment Modification Act was passed in 1984 permitting the return to the Government of 274 Bureau of Land Management contracts totaling 1.28 billion board feet valued at $430 million.

Of the remaining volume 0.43 billion board feet valued at $127 million are in uncompleted contracts as of July 1988. The majority of these remaining contracts are due to expire on December 31, 1989. A small number of contracts were further extended into 1990 through the purchase of extension-credit fire salvage sales.

The objectives of these efforts to assist the timber industry were: To recognize the legislative directive to ensure community stability; to minimize disruptions to the Bureau of Land Management forest management program; to maintain the availability of commercial timber in the market place; and to hold purchasers responsible for outstanding high priced timber sale contracts.

Indications are that current and future market conditions will not support meeting these objectives through economical harvest of the majority of the remaining contracts. The probable consequence will be contract defaults. This is not in the best interest of the government not only because of the failure to meet the aforementioned objectives but also the high cost to the Government of reoffering contracts and collecting damages.

When a contract is defaulted, the harvest of that timber is delayed until the timber can be resold and cut under a new contract. Default-delayed harvest may cause adverse economic, forest management, and environmental impacts. The economies of many communities in Oregon are significantly dependent upon the employment generated by the harvest and manufacture of timber from Bureau of Land Management-administered forest land. Timber sale defaults interrupt the flow of timber and, thereby, interrupt employment. Employment impacts of default affect not only loggers and mill workers, but also others dependent upon the income of timber workers. Defaults also reduce receipts to the Federal Treasury and the revenue sharing payments to local counties that are based on those receipts.

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The liability for damages due the Government arising from default could result in a number of firms seeking bankruptcy. Under bankruptcy procedures, the United States would become an unsecured creditor. Usually few or no assets are available for payment after all the secured creditors are satisfied in the proceedings. Even if the firms do not declare bankruptcy, default collection activities are expensive and often result in smaller dollar returns compared to the amount of damage payments due. In short, contract performance of these high-priced sales provides the best economic return and protection to Federal and local governments as well as to timber-dependent communities. Accordingly, the Bureau of Land Management is implementing a procedure to encourage holders of high-priced pre-1982 volume to perform contracts rather than defaulting them.

Key Features of the Interim Policy

Sales Eligible for Modification

To be eligible for payment deferral modifications, timber sale contracts must meet the following criteria:

1. The bid date must be prior to January 1, 1982;

2. The remaining stumpage must have an average value per thousand board feet that exceeds the average bid value for the previous 6 calendar months for the Bureau of Land Management District in which the sale is located, plus $50 per thousand board feet.

3. The contract must have sufficient contract period remaining to allow for removal of the remaining timber prior to expiration of the contract.

The January 1, 1982, date was selected because Congress has already identified in the Federal Timber Contract Payment Modification Act the period immediately prior to this date as a bidding period when cumulative market effects resulted in excessive bidding for Federal Timber.

Authorized officials of current holders of qualifying contracts must request payment deferral in writing. The current holder is the entity currently recognized by the Bureau of Land Management as being legally responsible for contract performance. The Bureau of Land Management is not limiting the procedure to companies that bid the sales.

Requests for modification of a qualifying contract must be submitted prior to the commencement of harvest on timber volume to be covered by the modification. The modification, additional securities, and note must be fully executed prior to the cutting and removal of covered timber.

Interim Policy and Promissory Note Procedures

The interim policy for existing high-priced sales will provide guidance to Authorized Officers in the exercise of their existing authorities to administer Bureau of Land Management timber sale contracts. Modification of specified high-priced sales to implement this proposed deferred payment policy will be in the public interest. In accordance with the contract terms, the Government will receive full contract value. The current holder of a timber sale contract determined by the Bureau of Land Management to be a high-priced contract will pay for timber under that contract at the contract price. Under this policy, the terms of payment will be modified allowing the Government to defer an amount of payment equal to the difference between the current average bid value at time of modification for the Oregon Bureau of Land Management District in which the sale is located, plus $50 and the average current contract value per thousand board feet. The difference between the average bid value and the current contract value (deferred payment) will be paid with interest, over a maximum of 10 years, under the terms of a fully secured promissory note. In most cases note terms will be 5 years or less and will be approved by the Authorized Officer. Application for note terms from 6 to 10 years must show evidence of need based on compelling circumstances and must be approved by the State Director after consultation with the Forest Service Regional Forester.

Interest payments on the harvest-level-based accruing increments of deferred payment shall be paid quarterly after commencement of harvest. The full amount of deferred payment specified in the promissory note, as estimated by the Bureau of Land Management, will require quarterly payments to amortize the amount of the note with payments to commence the first January 1 following the execution of the note. Prior to the completion of harvest, interest paid will be calculated on the amount of harvest-level-based accruing increments of deferred payment or the remaining balance of the note, whichever is less. Upon completion of harvest, interest paid will be calculated on the remaining balance of the note. Thus, only the contract terms necessary to change the timing of payment to the Government will be modified. The deferred payment modification will be authorized only after receipt of a properly prepared and executed promissory note, on a form approved by the Bureau of Land Management, for the total amount of the deferred stumpage value. The note must be fully secured by a form of security acceptable to the Bureau of Land Management and allow for unconditioned payment upon demand by the Bureau of Land Management.

The security amount must be sufficient to cover the entire amount of the note. The contract holder or surety, where applicable, may make pre-payment of all or a portion of the outstanding remainder of the note on the date of any quarterly payment. The amount of the bond security may be reduced to reflect the current amount of the promissory note obligation during the note period. The note payments may be assumed by the surety if the principal is unable to make the quarterly payments.

The interest rate will be adjusted at each payment and will be equal to the average market yield of outstanding Treasury obligations with 5 years remaining to maturity.

Modification of Payments

Under this policy, the payments for stumpage will be reduced by a deferred amount covered by a promissory note. The deferred payment rate per thousand board feet will be determined at the time of modification. The deferred value will be the difference between the current average bid value for the Oregon Bureau of Land Management District in which the sale is located, plus $50 per thousand board feet, and the average current contract value in thousand board feet. The current 6 month average bid value for the five western Oregon Bureau of Land Management Districts plus the $50 differential value produces the following rate reduction floors per thousand board feet: Salem—$239.08; Eugene—$204.52; Roseburg—$169.27; Coos Bay—$190.87; and Medford—$174.43. The authorized officer will use the average for the 6 full calendar months immediately prior to the request for modification in determining the amount of the payment deferred. Only the rates bid for particular species that are above the average bid rate plus $50 per thousand board feet will be subject to payment deferral. The amount of deferral of an individual species rate above the average bid value plus $50 will be weighted in proportion to the amount that the remaining value of a particular species represents of the total remaining value of all species above the average bid rate, plus $50 per thousand board feet. The weighting of species values above the floor rate to determine the amount of payment deferral by species will develop a payment rate that

reflects original bid values. The determination of the amount subject to deferral will be calculated based on the unhauled volume on the contract area at the time of modification.

More than one per sale, executed annually, will be considered for sales expected to require more than one year for harvest. For the multiple note procedure, the amount of the note will be based on the volume scheduled for removal in an approved logging plan. The average current contract value for the estimated volume to be removed will be used to determine the amount of payment deferral for the multiple note procedure. This will allow the note and interest amount to reflect estimated seasonal removal volumes. This will preclude having to charge for principal and interest on large volumes that have to be scheduled for logging in successive years. For billing purposes, multiple notes can be consolidated.

Modification of the Payment Guarantee Requirements of the Contract

The requirements of the contract related to advance installments and payment guarantees in lieu of deposits will be satisfied by installments or payment guarantees equal to the revised current payment amounts as established under the formula for calculating deferred payments. The Government is protected as to the amount of the deferred payment by the fully secured promissory note. In the event of an overcut, advance cash installments or payment guarantee in lieu of installments must equal the total stumpage value for cut timber that is not covered by the promissory note. This requirement will assure that the value of the volume harvested above the estimated volumes is covered by payment guarantee. Full payment or revision of the promissory note must be made for the deferred value associated with the overcut.

Limitation on Application of Deferred Payment Modifications

Retroactive payment deferrals will not be allowed for previously harvested volumes under the policy. The performance bond amount will not be reduced under the deferred payment procedures.

Breach

Failure to make a note payment is a breach of the provision for deferred payment and could result in suspension of operations. A defaulted note could result in contract cancellation.

Alternatives Considered

In considering the need to avoid default on these high-priced sales, the Bureau of Land Management has considered other approaches. Those alternatives are: (1) No action; (2) allow harvest of these sales at rates reduced from current contract rates; (3) allow purchasers to harvest sales at a reduced rate with the difference between the reduced rate and current rates due at the termination date of the contract. The final amount due at the end of the contract will be negotiable based on sample test litigation.

The first alternative—no action—would create serious economic impacts on the timber dependent communities in Oregon where these high-priced sales are located, would substantially reduce receipts to the Federal Treasury and affected counties that otherwise would be generated, and would have adverse impacts on the planned management by the Bureau of Land Management where these sales have been sold. Current timber prices are not adequate for the holders of these contracts to operate these sales without a substantial loss, and economic forecasts do not predict a return to the high prices in effect when these sales were originally bid.

The second approach was rejected because it would result in purchasers paying less than the full contract value for harvested timber, negating the fundamental principle that a contract is binding on the parties who enter it.

The third alternative was rejected because it would result in allowing the harvest of timber without payment in advance of cutting and without satisfactory payment guarantees. This alternative also includes an expectation of settlement for a value less than the contract requires.

The policy and procedures being proposed are within the agency's existing authority and can be adopted in sufficient time to provide an alternative to default for the majority of the sales in question.

The interim policy being adopted requires full contract payment; the modification affects only the timing of payment. It encourages the purchaser to operate eligible sales by giving him/her the ability to spread losses over a period of time. Purchasers will be allowed to defer a portion of the payment for up to 10 years, paying interest and providing additional security as consideration for the Government's willingness to modify contract terms to defer receipt of full payment.

Implementation and Public Comment Requested

The public is invited to submit written comments on this interim policy which will be analyzed and considered in adoption of final policy. In particular, comment is requested on the limits of eligibility. The interim policy will become effective September 1, 1988, in recognition of the anticipated default of sales due to expire on December 31, 1988, and the need to complete road construction on some sales due to expire on December 31, 1989.

Regulatory Impact

This action has been reviewed under U.S. Department of the Interior policy and procedures as well as submitted to the Office of Management and Budget for review pursuant to Executive Order (E.O.) 12291. It has been determined that this policy does not have the effects of a major rule as defined in E.O. 12291. The procedure implemented by this policy will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State, or local government agencies or geographic regions, and will not have significant adverse effects on the ability of United States-based industries to compete with foreign-based enterprises in domestic or export markets. It does not change the total amount a purchaser will pay for Bureau of Land Management timber, although it will affect the timing of when a purchaser will have to pay the full price for stumpage under a Bureau of Land Management contract. The deferred payment will be made under the terms of a fully secured promissory note. The note will require interest charges as consideration for payment deferral.

The timing of payments to the Government will be delayed but the note interest will compensate for the deferral. The risk of nonpayment will be avoided by requiring a fully secured promissory note. Counties that share in revenues generated from Bureau of Land Management timber sales will experience a short-term deferral in receipts. However, the short-term effects are likely to have far less adverse impact than if these sales were defaulted. Since purchasers will eventually pay the full contract value, the long term receipts to affected counties will be far greater than will be received if the sales are defaulted and the timber resold. The proposed procedures will contribute to the economic well-being of timber-dependent communities, and the orderly

flow of timber to market and receipts to the Treasury will strengthen the orderly accomplishment of forest management objectives, and reduce administrative costs associated with collection of claims against defaulting purchasers.

It has also been determined that this policy will not have a significant economic impact on a substantial number of small entities. The policy works to preserve the long range revenues to affected counties and to maintain employment in the area and, thus, reduces the certain adverse economic impacts these entities will certainly experience in the event of default and bankruptcy of purchasers of these high-priced sales.

Based on both past experience and environmental analysis, the interim policy will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from analysis in an environmental assessment or an environmental impact statement (40 CFR 1508.4). Furthermore, the policy will not result in additional procedures or paperwork not already required by law. Therefore, the provisions of the 5 CFR Part 1320 relating to controlling paperwork burdens on the public do not apply.

Tom Allen,

Acting Deputy Director.

[FR Doc. 88-18904 Filed 8-19-88; 8:45 am]

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federal register

Monday
August 22, 1988

Part III

Congressional Budget Office

Sequestration Report for Fiscal Year 1989 to Office of Management and Budget and Congress; Transmittal

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CONGRESSIONAL BUDGET OFFICE

Sequestration Report to Office of Management and Budget and Congress; Transmittal

AGENCY: Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the initial sequestration report for Fiscal Year 1989 to the Office of Management and Budget and the Congress in accordance with the new procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. 100–119.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

BILLING CODE 1450-01-M

INITIAL SEQUESTRATION REPORT FOR FISCAL YEAR 1989

A Congressional Budget Office
Report to the Congress
and the Office of Management and Budget

August 20, 1988

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NOTES

All years referred to in this report are fiscal years, unless otherwise noted.

Details in the text and tables of this report may not add to totals because of rounding.

The Balanced Budget and Emergency Deficit Control Act of 1985 (commonly known as Gramm-Rudman-Hollings) is also referred to in this report more briefly as the Balanced Budget Act. The amendments to this act made by Public Law 100-119, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, are also referred to in this report more briefly as the Reaffirmation Act.

The source for all data in this report is the Congressional Budget Office, unless otherwise noted.

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CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, DC 20515

August 20, 1988

Honorable James C. Miller III
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Miller:

I herewith submit to you my *Initial Sequestration Report for Fiscal Year 1989*, as required by Public Law 100-119, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

Based on our appraisal of the economic and budgetary outlook, the Congressional Budget Office estimates that the budget deficit in fiscal year 1989 will reach $153 billion, which exceeds by $17 billion the $136 billion target specified in the act.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide you with any assistance that you may require in preparing your own initial sequestration report.

Sincerely yours,

James L. Blum

James L. Blum
Acting Director

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, DC 20515

August 20, 1988

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

I herewith submit to the Congress my *Initial Sequestration Report for Fiscal Year 1989*, as required by Public Law 100-119, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

The act specifies a 1989 deficit target of $136 billion. An across-the-board reduction of budgetary resources will be triggered if the deficit estimate made by the Office of Management and Budget exceeds the target by more than $10 billion. Based on an independent appraisal of the economic and budgetary outlook, the Congressional Budget Office estimates that the budget deficit in fiscal year 1989 will reach $153 billion, which exceeds the target by $17 billion.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the initial report by the Director of the Office of Management and Budget to be issued on August 25, 1988.

Sincerely yours,

James L. Blum

James L. Blum
Acting Director

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CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, DC 20515

August 20, 1988

Honorable James C. Wright, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I herewith submit to the Congress my *Initial Sequestration Report for Fiscal Year 1989*, as required by Public Law 100-119, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

The act specifies a 1989 deficit target of $136 billion. An across-the-board reduction of budgetary resources will be triggered if the deficit estimate made by the Office of Management and Budget exceeds the target by more than $10 billion. Based on an independent appraisal of the economic and budgetary outlook, the Congressional Budget Office estimates that the budget deficit in fiscal year 1989 will reach $153 billion, which exceeds the target by $17 billion.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the initial report by the Director of the Office of Management and Budget to be issued on August 25, 1988.

Sincerely yours,

James L. Blum
Acting Director

INITIAL SEQUESTRATION REPORT FOR FISCAL YEAR 1989

A CONGRESSIONAL BUDGET OFFICE REPORT TO THE CONGRESS AND THE OFFICE OF MANAGEMENT AND BUDGET

August 20, 1988

SUMMARY

Under the Balanced Budget and Emergency Deficit Control Reaffirmation Act (Public Law 100-119), the Congressional Budget Office (CBO) is charged with providing--on an advisory basis--estimates of the federal budget deficit and related aggregates to the Office of Management and Budget (OMB) and the Congress. CBO's current appraisal of the economic and budgetary outlook, following the specifications of the Reaffirmation Act, projects a fiscal year 1989 federal budget deficit that will exceed the $136 billion target by $17 billion. An independent, and binding, estimate of the projected deficit will be made by the Director of OMB, and that estimate will determine the necessity and magnitude of sequestration. Based on the Administration's *Mid-Session Review of the 1989 Budget* and laws enacted since July 8, 1988, it appears that OMB's initial estimate--due on August 25, 1988--will exceed the target by about $8 billion; this excess, however, is less than the $10 billion margin-of-error specified by the act for 1989 and would not trigger sequestration.

INTRODUCTION

The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 set out deficit targets to be met by the federal government over the next five years and provided a procedure--known as sequestration--to cut federal spending automatically when the Administration projects an excess deficit. The act provides a $10 billion margin-of-error for 1989 through 1992, but none for 1993, since the act specifies a balanced budget by that year. The deficit targets specified by the act are:

Fiscal Year	Maximum Deficit (In billions of dollars)
1989	136
1990	100
1991	64
1992	28
1993	0

The sequestration of budgetary resources would be triggered automatically under the following conditions:

- For 1989, if the deficit estimated by the Office of Management and Budget exceeds $146 billion (the deficit target of $136 billion plus the $10 billion margin) and if the amount of net deficit reduction achieved through laws enacted and regulations promulgated since January 1, 1988, is less than $36 billion.
- For 1990 through 1992, if the estimated deficit at the beginning of each fiscal year exceeds the deficit target by more than $10 billion.
- For 1993 only, if there is any estimated deficit on October 15, 1992.

Sequestration involves the permanent cancellation of new budget authority and other authority to obligate and expend funds, except for special and trust funds, where the sequestered amounts of spending authority remain in the funds. The sequestration of budgetary resources is designed to achieve outlay reductions sufficient to reach the annual deficit targets, except for 1989, when the outlay reductions that can be achieved through sequestration are limited to $36 billion.

The Reaffirmation Act specifies roles for the Congressional Budget Office, the Office of Management and Budget, and the Comptroller General. CBO's role is to advise OMB and the Congress, while the Director of OMB must determine whether or not sequestration is necessary and the magnitude of sequestration. Each year, CBO and OMB are required to prepare independently two sets of sequestration reports. The CBO reports are transmitted to the Director of OMB and to the Congress, and they provide a benchmark against which the Congress and others may assess the OMB reports. The OMB reports are made to the President and to the Congress, and they provide the basis for sequestration orders to be issued by the President. The timetable

for the agency reports and sequestration orders is shown below.

The initial CBO and OMB sequestration reports are to be based on laws that are enacted and regulations that are final at the time of a common snapshot date. The revised reports, however, must be based on laws enacted and regulations promulgated by the latest possible date before they are issued. Therefore, because the snapshot date may be different in the two agencies' final reports, some legislation and regulations reflected in one report may not be reflected in the other.

The role of the Comptroller General under the Reaffirmation Act is threefold: to prepare a report each year to the Congress and the President that certifies whether the final sequestration order issued by the President complies with the requirements of the Balanced Budget Act; to assess the compliance and accuracy of the OMB sequestration reports; and to make recommendations for improving sequestration procedures. The Comptroller's report is due on November 15.

This document is the initial CBO report for 1989. The report:

- o Estimates budget baseline levels as of January 1, 1988, and August 15, 1988, the amount of net deficit change that has occurred between the two dates, and the outlay reductions required for 1989;
- o Provides CBO economic assumptions used for the two baseline estimates, including the estimated rate of real economic growth for fiscal year 1989 by quarter; and
- o Calculates the amounts and percentages by which various budgetary resources must be sequestered in order to achieve the required outlay reductions.

Snapshot date for initial CBO and OMB reports	August 15
Initial CBO report	August 20
Initial OMB report	August 25
Initial sequestration order	August 25
Revised CBO report	October 11[a]
Revised OMB report	October 15
Final sequestration order	October 15

a. The statutory date for the revised CBO report is October 10, which is a legal holiday in 1988. The report will therefore be submitted on the following day, as prescribed by the Reaffirmation Act.

BUDGET BASELINE TOTALS

The CBO budget baseline estimates of total revenues, outlays, and the deficit for fiscal year 1989 are shown in Table 1. These estimates are made in accordance with the specifications set forth in the Reaffirmation Act. Two sets of budget baseline estimates are provided--one for laws and regulations in effect on January 1, 1988, and the other for laws and regulations in effect on August 15, 1988. The economic and technical assumptions used for the August 15 budget baseline estimates are identical to those used for the January 1 estimates. The differences between the two sets of estimates, therefore, result only from laws enacted and final regulations promulgated since January 1.

Table 1. CBO ESTIMATES OF BUDGET BASELINE TOTALS FOR FISCAL YEAR 1989
(In billions of dollars)

Budget Aggregates	As of January 1	As of August 15	Difference
Revenues	979.5	979.8	0.3
Outlays	1,127.0	1,132.8	5.8
Deficit	147.5	153.0	5.5

The specifications for the budget baseline were altered by the Reaffirmation Act to approximate more closely the concepts that have been used by OMB in its current services estimates and by CBO in its baseline projections--primarily in the treatment of annual appropriations. When appropriations for the new fiscal year have not been enacted, the CBO and OMB budget baseline estimates under the act are to be based on the appropriations enacted for the previous year with an adjustment for inflation and increased pay costs. The act specifies the inflation factor as the estimated annual increase in the gross national product implicit price deflator, estimated by CBO to be 4.2 percent. For 70 percent of personnel costs, this inflation factor is increased to allow for higher agency retirement costs, and is reduced to account for 22 percent historical pay absorption.

For nonappropriated spending accounts and revenues, the baseline estimates assume that current laws and regulations will continue unchanged, and that expiring provisions of law will terminate as scheduled. The Reaffirmation Act, however, provides an exception to the general treatment of expiring provisions in the cases of excise taxes dedicated to a trust fund, Commodity Credit Corporation agricultural price support programs, and contract authority for transportation trust funds. As required by the act, the budget baseline estimates include the receipts and outlays of the Social Security trust funds, even though they are legally off-budget.

The Reaffirmation Act provides that asset sales and loan prepayments shall neither be included in the budget baseline estimates nor count toward any net deficit reduction. The act makes an exception for asset sales and loan prepayments that are routine and ongoing according to fiscal year 1986 practices and for asset sales mandated by law as of September 17, 1987. The budget baseline estimates may not, however, assume or reflect an acceleration of routine asset sales and loan prepayments. Table 2 lists the prepayments excluded from the CBO baseline for fiscal year 1989.

The act also prohibits the inclusion of savings resulting from the transfer of outlays, receipts, or revenues from one year to an adjacent year, except for certain types of transfers identified in law. No such savings apply to fiscal year 1989.

Under these specifications, CBO's estimate as of August 15, 1988, of the budget baseline deficit for 1989 is $153.0 billion.

Table 2. ADJUSTMENTS TO FISCAL YEAR 1989 DEFICIT FOR ASSET SALE AND LOAN PREPAYMENT EXCLUSIONS
(In billions of dollars)

Baseline deficit estimate[a]	147.8
Adjustments:	
Asset sales	0
Prepayments	
Foreign Military Sales credits	4.7
Rural Electrification loans	0.5
Total adjustments	5.2
Reaffirmation Act deficit estimate	153.0

a. Congressional Budget Office, *The Economic and Budget Outlook: An Update* (August 1988), adjusted for the enactment of the Dire Supplemental Appropriations Act of 1988 (P.L. 100-393).

Table 3 shows the estimated budget effect of laws enacted and final regulations promulgated since January 1, 1988. The estimated net deficit change that has occurred since January 1 is an increase of $5.5 billion. The increase stems primarily from the enactment of the Disaster Assistance Act of 1988 (Public Law 100-387), which compensates farmers for the effects of this year's drought; other laws enacted between January 1 and August 15, 1988, have little effect on the budget baseline deficit for 1989, as shown in Table 3.

CBO's final sequestration report will be issued on October 11, 1988, and will take into account legislation enacted since August 15. Before Congress recessed last week, several additional spending measures were cleared and sent to the President. If signed, these bills would have the following effects on the 1989 deficit:

- The Omnibus Trade and Competitiveness Act (H.R. 4848) would increase the deficit by $0.4 billion;
- The Housing and Independent Agencies Appropriations Act for Fiscal Year 1989 (H.R. 4800) would increase the deficit by $0.5 billion;
- The Hunger Prevention Act (S. 2560) would increase the deficit by $0.3 billion.

Table 3. CBO ESTIMATES OF DEFICIT CHANGES FOR FISCAL YEAR 1989 (In billions of dollars)

Budget Baseline Deficit as of January 1, 1988	147.5
Effect of New Laws and Regulations:	
Medicare Catastrophic Coverage Act (P.L. 100-360)	-0.2
Energy and Water Appropriations Act (P.L. 100-371)	a
Disaster Assistance Act (P.L. 100-387)	5.1
Dire Emergency Supplemental Appropriations Act (P.L. 100-393)	0.3
Other	0.1
Debt service costs	0.2
Net Deficit Change	5.5
Budget Baseline Deficit as of August 15, 1988	153.0

a. Less than $50 million.

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ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the CBO budget baseline estimates for fiscal year 1989 are shown in Table 4.

The Balanced Budget Act requires the Directors of OMB and CBO to estimate the rate of real economic growth for the fiscal year covered by their reports, for each quarter of the fiscal year, and for the last two quarters of the preceding fiscal year. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than 1 percent for two consecutive quarters, the Congress and the President may suspend many of the provisions of the act. Table 4 cites the CBO estimates for the rate of real economic growth for fiscal year 1989; Table 5 shows the quarterly estimates. CBO does not project real economic growth to be less than zero in any quarter during fiscal year 1989.

Table 4. CBO ECONOMIC ASSUMPTIONS FOR FISCAL YEAR 1989

Gross National Product:	
Billions of current dollars	5,102
Percent change, year over year	7.0
Bilions of constant (1982) dollars	4,072
Percent change, year over year	2.6
GNP Implicit Price Deflator (Percent change, year over year)	4.2
CPI-W (Percent change, year over year)	4.8
Civilian Unemployment Rate (Percent, fiscal year average)	5.5
Interest Rates (Fiscal year average):	
91-day Treasury bills	7.0
10-year Treasury notes	9.1

REQUIRED OUTLAY REDUCTIONS

Sequestration of budgetary resources will be necessary for 1989 if the deficit estimated by OMB exceeds the $136 billion target by more than the $10 billion margin-of-error amount. Once sequestration is triggered, budget outlays must be reduced by the entire amount by which the deficit exceeds $136 billion. The reduction is subject to a ceiling (for 1989 only) of $36 billion, adjusted for the net deficit reduction, if any, since January 1. One-half of the required outlay reduction must be taken from defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half from nondefense programs. CBO's deficit projection of $153.0 billion would call for outlay reductions of $17 billion in 1989. Table 6 shows how budget outlays in defense and nondefense programs would be cut back to achieve these reductions.

All savings from eliminating automatic spending increases in three programs--the National Wool Act, the special milk program, and vocational rehabilitation--are applied to the required reduction in outlays for nondefense programs. According to CBO estimates, this would produce $48 million in outlay savings in 1989. The outlay savings to be obtained by applying four special rules are also credited to the required spending reductions in nondefense programs. These special rules are for guaranteed student loans, foster care and adoption assistance, Medicare, and certain health programs, and are described in a later section of this report. Outlay savings for these programs under the special rules would be $1.7 billion.

The outlay reductions of $8.5 billion in defense programs and the remaining reductions of $6.8 billion in nondefense programs must be taken on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The required outlay

Table 5. REAL ECONOMIC GROWTH RATES FROM PREVIOUS QUARTER
(Percentage growth at annual rates)

Fiscal Year 1988	
Actual[a]	
January-March 1988	3.4
April-June 1988	3.1
Estimated	
July-September 1988	1.7
Fiscal Year 1989	
Estimated	
October-December 1988	2.3
January-March 1989	3.4
April-June 1989	2.8
July-September 1989	2.5

a. As reported by the Department of Commerce (July 27, 1988).

savings to be achieved through across-the-board reductions are divided by the estimated outlays from sequesterable budgetary resources in each category. The resulting uniform reduction percentages are then applied to all of the sequesterable budgetary resources (budget authority, credit authority, and other spending authority) for defense and nondefense programs.

According to CBO estimates, the 1989 outlays associated with sequesterable budgetary resources for defense programs are $115.5 billion. This amount excludes $76 billion in 1989 outlays for military personnel accounts that the President has chosen to exempt from sequestration, which he is permitted to do under the Reaffirmation Act. The Director of OMB, acting for the President, notified the Congress of this exemption on August 12, 1988. Outlays from obligated defense balances in 1989 are also excluded by law from the sequesterable outlay base. The uniform percentage to be applied to sequesterable defense budgetary resources is 7.4 percent, as shown in Table 6. Without the exemption for military personnel accounts, the defense outlay base would be higher, and the uniform percentage reduction would be smaller--by 3 percentage points--since the total required defense outlay reduction of $8.5 billion is unchanged by the President's action.

Table 6. CBO SEQUESTRATION CALCULATIONS FOR FISCAL YEAR 1989
(Outlays in millions of dollars)

	Defense Programs	Nondefense Programs
Total Required Outlay Reductions	8,506	8,506
Savings from Eliminating Automatic Spending Increases	0	48
Savings from the Application of Special Rules:		
Guaranteed student loans	0	26
Foster care and adoption assistance	0	4
Medicare	0	1,457
Other health programs	0	188
Remaining Reductions Required	8,506	6,783
Estimated Sequestration Outlay Base [a]	115,454	115,451
Uniform Reduction Percentage	7.4	5.9

a. Excludes $75,815 million in estimated military personnel outlays that have been exempted from sequestration by the President. Includes $6,466 million in estimated 1990 outlays for the Commodity Credit Corporation that can be affected by a 1989 sequestration (see discussion of special rule for the CCC). Also includes an estimated $2,492 million in outlays from the spending of offsetting collections.

A number of nondefense programs are exempted by law from the sequestration process, and are listed in Table 7. The largest are Social Security benefits, net interest payments, certain low-income programs, most federal retirement and disability benefits, veterans compensation and pensions, and regular state unemployment insurance benefits. Outlays from appropriations for nondefense programs made in previous years are also not subject to sequestration. The 1989 outlays associated with sequesterable budgetary resources for nondefense programs subject to the uniform percentage reduction are estimated to be $115.5 billion. The estimated uniform percentage to be applied to these remaining nondefense programs is 5.9 percent.

The calculations in this report generally assume that all nonexempt budgetary resources can be sequestered in order to produce outlay savings, including entitlement programs and other mandatory spending programs where the spending authority is not controlled through the annual appropriation process. An exception is made for the administrative expenses of the Postal Service. While more than $1 billion of budgetary resources of the Postal Service are sequesterable under CBO estimates, no outlay savings are attributed by CBO to sequestration because the Administration appears to have no mechanism for enforcing a sequestration order on the Postal Service. The Congress is currently considering legislation (S. 2449) which would remove the Postal Service from federal budget totals and exempt it from sequestration calculations.

AUTOMATIC SPENDING INCREASES

The three programs with automatic spending increases currently subject to sequestration by the Balanced Budget Act, as amended, are listed in Table 8. The scheduled percentage increases are shown as well as the amount of estimated outlay savings to be gained by eliminating these increases.

SPECIAL RULES

The Balanced Budget Act provides special rules for the sequestration of budgetary resources for certain federal programs. This section describes these special rules and their application to the 1989 sequestration calculations. The estimated outlay

Table 7. COMPOSITION OF BASELINE OUTLAYS FOR FISCAL YEAR 1989

Category	Estimate (In billions of dollars)	Percentage of Total
Defense Programs [a]		
Subject to across-the-board reduction	115.5	10.2
Exempt from sequestration [b]	184.0	16.2
Subtotal, defense programs	299.5	26.4
Nondefense Programs		
Subject to sequestration:		
Certain programs with automatic spending increases [c]	1.5	0.1
Certain special rule programs [d]	112.3	9.9
Subject to across-the-board reduction [e]	109.0	9.6
Subtotal	222.8	19.7
Exempt from sequestration:		
Social Security	231.8	20.5
Federal Retirement, disability, and workers compensation	59.0	5.2
Earned income tax credit	3.8	0.3
Low-income programs [f]	77.7	6.9
Veterans compensation and pensions	14.8	1.3
State unemployment benefits	14.5	1.3
Offsetting receipts	-60.9	-5.4
Net interest payments	163.3	14.4
Other	106.6	9.4
Subtotal	610.5	53.9
Subtotal, nondefense programs	833.3	73.6
Total	1,132.8	100.0

a. Budget function 050, excluding Federal Emergency Management Agency programs.
b. Outlays from obligated balances plus military personnel.
c. National Wool Act, special milk program, and vocational rehabilitation program.
d. Guaranteed student loans, foster care and adoption assistance, and Medicare, veterans medical care, and other health programs.
e. Excludes fiscal year 1990 outlays for the Commodity Credit Corporation.
f. Family Support payments, child nutrition, Medicaid, Food Stamps, Supplemental Security Income, the Women, Infants, and Children's program, Commodity Supplemental Food program, and Nutrition Assistance to Puerto Rico.

savings derived from the first four rules are shown separately in Table 6. Any outlay savings resulting from the remaining special rules are included in the amount to be obtained from the uniform percentage reductions.

Guaranteed Student Loan Program

The Balanced Budget Act requires two changes in the guaranteed student loan (GSL) program to occur automatically under sequestration. First, the statutory factor for calculating the quarterly special allowance payments to lenders will be reduced by the lesser of 0.40 percentage point or the amount by which the statutory factor exceeds 3 percent for the first four quarters after the loan is made. Under the current program, the reduction will be 0.25 percentage point. Second, a student's origination fee will increase by 0.50 percentage point. In both cases, sequestration affects only GSL loans disbursed during the applicable fiscal year, but after the order is issued. For 1989, these changes are estimated by CBO to reduce outlays by $26 million.

Table 8. AUTOMATIC SPENDING INCREASES FOR FISCAL YEAR 1989 SUBJECT TO SEQUESTRATION

Program	Scheduled Increase (In percent)	Outlay Reduction (In millions of dollars)
National Wool Act	a	a
Special Milk Programs [b]	2.6	0.1
Vocational Rehabilitation [c]	4.5	47.8
Total		47.9

a. No 1989 payment increase is expected for this program, based on declining wool support price levels in marketing year 1988.
b. Benefits are indexed to the producer price index for fresh processed milk.
c. This program is indexed to the change in the consumer price index (CPI-U) from October of the previous year.

Foster Care and Adoption Assistance Programs

The Balanced Budget Act limits the amount to be sequestered in the foster care and adoption assistance programs to increases in foster care maintenance payment rates or adoption assistance payment rates taking effect during the current fiscal year. Moreover, the amounts are limited to the extent that the reduction can be made by reducing federal matching payments by a uniform percentage across states. The increases in payment rates for these programs are made by the states and localities. Any increases planned by the states for fiscal year 1989 were included in the CBO calculations for sequestration reductions. The estimated outlay savings in 1989 from sequestration are $4 million.

Medicare

The sequestration reductions in the Medicare program are to be achieved by reducing payment amounts for covered services. No changes in coinsurance or deductible amounts are to be made, and covered services are unaffected under a sequestration order. Under such an order, each payment amount for services provided during the fiscal year would be reduced by a maximum of 2 percent relative to whatever level of payment would otherwise be made under Medicare laws and regulations. According to CBO estimates, the outlay savings to be achieved in 1989 by applying this special rule are $1.5 billion.

Veterans Medical Care and Other Health Programs

The Balanced Budget Act limits reductions in budget authority for the nonadministrative expenditures for veterans medical care, community and migrant health centers, and Indian health services and facilities to 2 percent in 1989 and any subsequent year. The estimated outlay savings to be achieved in 1989 by applying this special rule to these programs are $188 million.

Child Support Enforcement Program

In the child support enforcement (CSE) program, the Balanced Budget Act provides that sequestration of entitlement payments to states, including grants to states for interstate projects from the Family Support Administration's program administration account, is to be accomplished by reducing the federal matching rates for state administrative expenses. For 1989, the federal matching rate on most expenditures under CBO estimates would be reduced from 68 percent to 62.9 percent, and the rate for computer-related expenditures would be reduced from 90 percent to 83.3 percent. These reductions in the matching rates are necessary to achieve the same 5.9 percent reduction applied to other nondefense programs.

If states increase their share of CSE spending to maintain total program spending at the expected 1989 level, this reduction in the federal matching rate will lower federal outlays by the same percentage as other nondefense programs. If states do not increase their 1989 budgeted amounts to compensate for lower matching rates, however, the lower federal matching rate would result in a larger percentage reduction in federal spending than the act requires. The estimated outlay savings that are to be achieved in 1989 by applying this special rule are $69 million.

Unemployment Compensation Programs

The Balanced Budget Act provides that the following items are not to be sequestered: regular state unemployment benefits, the state share of extended unemployment benefits, unemployment benefits paid to former federal employees and former members of the armed services, and loans and advances to the state and federal unemployment accounts. The federal share of extended benefits, unemployment insurance for railroad employees, other federally paid benefits, and state and federal administrative expenses are sequesterable.

Both the federal and state shares of extended unemployment benefits are paid from the Unemployment Trust Fund--the federal share from a federal account and the state share from each state's account. State law sets the amount of each weekly extended benefit. The Balanced Budget Act permits any state to reduce the weekly extended benefit amount by a percentage equal to the uniform reduction in the federal share. If states do not change their laws to provide for such a reduction, the weekly benefit payments will not be reduced, the state share will increase by the amount of the decrease in the federal share, and total budget outlays that include both federal and state benefits will not be changed by the sequestration. No states are currently paying extended benefits.

Commodity Credit Corporation

Under the Balanced Budget Act, payments and loan eligibility under any contract entered into by the Commodity Credit Corporation (CCC) after a sequestration order has been issued for a fiscal year are subject to a percentage reduction. The act requires that reductions for all farm commodities supported by the CCC be made in a uniform manner, including all noncontract programs, projects, and activities within the CCC's jurisdiction. The act further stipulates that outlay reductions in the post-sequestration year that are the result of contract adjustments in the sequestration year should be credited to the overall outlay reduction required in the sequestration year. The outlay savings to be achieved by applying this special rule are estimated by CBO to be $0.6 billion in 1989, and $0.4 billion in 1990. The actual amount of savings realized in each year will depend upon how the sequestration is carried out for the various CCC programs. In accordance with the act, however, all $1.0 billion of these estimated outlay savings are credited toward the $8.5 billion reduction required for 1989 in nondefense spending.

Federal Pay

The Balanced Budget Act provides that rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances, and basic quarter allowances for members of the uniformed services), or any scheduled pay increases, may not be reduced following a sequestration order. Budgetary resources available for federal pay, however, will be subject to sequestration as part of the reduction of administrative expenses, which include travel, printing, supplies, and other services. The total amount of government-wide savings to be achieved in 1989 from employee compensation cannot be estimated because program managers are expected to be urged not to resort to personnel furloughs and reductions in force until other administrative expenses are reduced as much as possible.

SEQUESTRATION REDUCTIONS

A summary of CBO's calculations for the sequestration of budgetary resources and the estimated outlay savings for 1989 is provided for national defense programs in Table 9 and for nondefense programs by function in Table 10. The tables show CBO's budget baseline estimates for new budget authority and outlays, reductions in outlays caused by sequestration, and post-sequestration spending levels. In most instances, additional outlay savings would be gained in 1990 and later years as a result of the cancellation of 1989 budget authority. The 1990 savings have not been estimated for this report. A detailed list of the sequestration base and reductions by agency and budget account by type of spending authority is provided as an appendix to this report.

The CBO sequestration calculations and post-sequestration spending levels are advisory only. OMB will determine whether a sequestration is triggered, and, if so, the actual sequestration amounts. OMB's initial determination will be issued on August 25.

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TABLE 9. DEFENSE PROGRAM SEQUESTRATIONS FOR FISCAL YEAR 1989
(In billions of dollars)

Budget Function 050	August Baseline [a]	CBO Estimated Sequestration [b]	Post-Sequestration
Department of Defense-Military:			
Military personnel			
Budget authority	79.4	[c]	79.4
Outlays	79.3	[c]	79.3
Operation and maintenance			
Budget authority	84.3	6.2	78.1
Outlays	85.1	5.0	80.1
Procurement			
Budget authority	87.9	6.5	81.4
Outlays	81.7	1.2	80.5
Research, development, test, and evaluation			
Budget authority	38.6	2.9	35.7
Outlays	36.0	1.6	34.3
Military construction and other			
Budget authority	9.2	0.7	8.5
Outlays	9.3	0.4	9.0
Subtotal, DoD--military			
Budget authority	299.5	16.3	283.2
Outlays	291.3	8.1	283.2
Atomic Energy Defense Activities			
Budget authority	8.1	0.6	7.5
Outlays	7.9	0.4	7.5
Other Defense-related Activities [d]			
Budget authority	0.5	[e]	0.5
Outlays	0.5	[e]	0.5
Total			
Budget authority	308.1	16.9	291.2
Outlays	299.8	8.6	291.3

a. Does not include an estimated $39.9 billion in unobligated balances subject to sequestration.

b. Does not include $3.0 billion in unobligated balances that would be sequestered.

c. The President has exempted the military personnel accounts from sequestration in 1989.

d. Includes the function 050 portion of Federal Emergency Management Agency budget accounts, which are reduced at the same rate as nondefense programs.

e. $50 million or less.

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TABLE 10. NONDEFENSE PROGRAM SEQUESTRATIONS FOR FISCAL YEAR 1989 BY FUNCTION (In billions of dollars)

Budget Function		August Budget Baseline	CBO Estimated Sequestration	Post-Sequestration
150	International Affairs			
	Budget authority	17.0	1.1	15.9
	Outlays	16.6	0.6	16.0
250	General Science, Space, and Technology			
	Budget authority	11.3	0.7	10.6
	Outlays	11.6	0.4	11.2
270	Energy			
	Budget authority	5.6	0.4	5.2
	Outlays	4.8	0.2	4.6
300	Natural Resources and Environment			
	Budget authority	16.0	1.1	14.9
	Outlays	16.0	0.7	15.3
350	Agriculture [a]			
	Budget authority	23.8	0.7	23.1
	Outlays	20.8	0.8	20.0
370	Commerce and Housing Credit			
	Budget authority	16.7	0.2	16.4
	Outlays	13.8	0.2	13.6
400	Transportation			
	Budget authority	28.6	1.7	27.0
	Outlays	28.1	0.6	27.5
450	Community and Regional Development			
	Budget authority	7.5	0.3	7.1
	Outlays	6.3	0.1	6.2
500	Education, Training, Employment, and Social Services			
	Budget authority	37.5	1.8	35.7
	Outlays	36.5	0.7	35.8
550	Health			
	Budget authority	50.0	0.9	49.1
	Outlays	49.2	0.4	48.8
570	Medicare			
	Budget authority	106.4	0	106.4
	Outlays	86.4	1.6	84.9
600	Income Security			
	Budget authority	177.9	0.9	177.0
	Outlays	137.3	0.4	136.8
650	Social Security			
	Budget authority	285.0	0	285.0
	Outlays	233.3	0.1	233.2
700	Veterans Benefits and Services			
	Budget authority	29.3	0.4	28.9
	Outlays	28.9	0.3	28.6
750	Administration of Justice			
	Budget authority	8.8	0.6	8.3
	Outlays	8.7	0.5	8.2
800	General Government			
	Budget authority	9.9	0.6	9.3
	Outlays	9.5	0.5	9.0
900	Net Interest [b]			
	Budget authority	163.3	0.7	162.6
	Outlays	163.3	0.7	162.6
950	Undistributed Offsetting Receipts			
	Budget authority	-38.2	0	-38.2
	Outlays	-38.2	0	-38.2
	Total			
	Budget authority	956.5	12.1	944.3
	Outlays	833.0	8.9	824.1

a. Excludes $0.4 billion in estimated 1990 outlay savings for programs of the Commodity Credit Corporation that are credited toward the 1989 sequestration (see discussion of special rule for the CCC).

b. Includes $0.7 billion savings in debt service costs as result of 1989 outlay reductions through sequestration.

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APPENDIX

SEQUESTRATION REDUCTIONS

BY AGENCY AND BUDGET ACCOUNT

(Fiscal year 1989, in thousands of dollars)

Percentages used:

Defense	7.4 percent
Nondefense	5.9 percent

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Legislative Branch			
Senate			
Mileage of the Vice President and Senators			
00 0101 0 1 801	Budget Authority	63	4
	Outlays	50	3
Expense allowances of the Vice President, President Pro Tempore, Majorit			
00 0107 0 1 801	Budget Authority	58	3
	Outlays	58	3
Representation allowances for the Majority and Minority Leaders			
00 0108 0 1 801	Budget Authority	21	1
	Outlays	21	1
Salaries, officers and employees			
00 0110 0 1 801	Budget Authority	208,950	12,328
	Outlays	196,413	11,588
Miscellaneous items			
00 0123 0 1 801	Budget Authority	10,845	640
	Outlays	10,845	640
Secretary of the Senate			
00 0126 0 1 801	Budget Authority	709	42
	Outlays	659	39
Sergeant at Arms and Doorkeeper of the Senate			
00 0127 0 1 801	Budget Authority	70,878	4,182
	Outlays	63,790	3,764
Inquiries and investigations			
00 0128 0 1 801	Budget Authority	60,876	3,592
	Outlays	57,832	3,412
Expenses of United States Senate Caucus on International Narcotics Contr			
00 0129 0 1 801	Budget Authority	346	20
	Outlays	312	18
Stationery (revolving fund)			
00 0140 0 1 801	Budget Authority	14	1
	Outlays	14	1
Office of Senate Legal Counsel			
00 0171 0 1 801	Budget Authority	674	40
	Outlays	506	30
Expense allowances of the Secretary of the Senate, Sergeant at Arms, and			
00 0172 0 1 801	Budget Authority	13	1
	Outlays	8	0
Senate policy committees			
00 0182 0 1 801	Budget Authority	2,346	138
	Outlays	1,994	118
Office of the Legislative Counsel of the Senate			
00 0185 0 1 801	Budget Authority	1,879	111
	Outlays	1,785	105
House of Representatives			
Mileage of Members			
00 0208 0 1 801	Budget Authority	219	13
	Outlays	110	6
Salaries and expenses			
00 0400 0 1 801	Budget Authority	544,372	32,118
	Outlays	512,798	30,255
Congressional use of foreign currency, House of Representatives			
00 0488 0 1 801	401(C) Authority	3,360	198
	Outlays	3,360	198
Joint Items			
Capitol Guide Service			
00 0170 0 1 801	Budget Authority	1,211	71
	Outlays	1,090	64
Joint Committee on Printing			
00 0180 0 1 801	Budget Authority	1,104	65
	Outlays	995	59
Joint Economic Committee			
00 0181 0 1 801	Budget Authority	3,386	200
	Outlays	3,217	190
Office of the Attending Physician			
00 0425 0 1 801	Budget Authority	1,556	92
	Outlays	624	37
Joint Committee on Taxation			
00 0460 0 1 801	Budget Authority	4,469	264
	Outlays	4,246	251
General expenses, Capitol police			
00 0476 0 1 801	Budget Authority	1,807	107
	Outlays	1,534	91
Statements of appropriations			
00 0499 0 1 801	Budget Authority	20	1

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Official mail costs			
00 0825 0 1 801	Budget Authority	85,614	5,051
	Outlays	85,614	5,051
Congressional Budget Office			
Salaries and expenses			
08 0100 0 1 801	Budget Authority	18,923	1,116
	Outlays	17,031	1,005
Architect of the Capitol			
Office of the Architect of the Capitol: Salaries			
01 0100 0 1 801	Budget Authority	6,310	372
	Outlays	5,748	339
Contingent expenses			
01 0102 0 1 801	Budget Authority	50	3
	Outlays	50	3
Capitol buildings			
01 0105 0 1 801	Budget Authority	13,530	798
	Outlays	10,892	643
Capitol grounds			
01 0108 0 1 801	Budget Authority	3,609	213
	Outlays	3,003	177
Senate office buildings			
01 0123 0 1 801	Budget Authority	24,638	1,454
	Outlays	18,134	1,070
House office buildings			
01 0127 0 1 801	Budget Authority	32,308	1,906
	Outlays	22,971	1,355
Capitol Power Plant			
01 0133 0 1 801	Budget Authority	25,701	1,516
	401(C) Authority - Off. Coll.	135	8
	Outlays	22,238	1,312
Structural and mechanical care, Library buildings and grounds			
01 0155 0 1 801	Budget Authority	7,148	422
	Outlays	5,747	339
Library of Congress			
Salaries and expenses			
03 0101 0 1 503	Budget Authority	146,880	8,666
	401(C) Authority - Off. Coll.	4,828	285
	Outlays	124,401	7,340
Copyright Office: Salaries and expenses			
03 0102 0 1 376	Budget Authority	11,809	697
	401(C) Authority - Off. Coll.	6,992	413
	Outlays	17,797	1,050
Congressional Research Service: Salaries and expenses			
03 0127 0 1 801	Budget Authority	45,631	2,692
	Outlays	41,250	2,434
Books for the blind and physically handicapped: Salaries and expenses			
03 0141 0 1 503	Budget Authority	37,801	2,230
	Outlays	18,901	1,115
Furniture and furnishings			
03 0146 0 1 503	Budget Authority	6,067	358
	Outlays	3,434	203
Gift and trust fund accounts			
03 9971 0 7 503	401(C) Other - incl. ob. limit	288	17
	Outlays	288	17
Government Printing Office			
Office of Superintendent of Documents: Salaries and expenses			
04 0201 0 1 808	Budget Authority	20,051	1,183
	Outlays	12,452	735
Congressional printing and binding			
04 0203 0 1 801	Budget Authority	73,314	4,326
	Outlays	58,651	3,460
Government Printing Office revolving fund			
04 4505 0 4 808	401(C) Authority - Off. Coll.	29,000	1,711
	Outlays	29,000	1,711
General Accounting Office			
Salaries and expenses			
05 0107 0 1 801	Budget Authority	348,944	20,588
	Outlays	321,028	18,941
United States Tax Court			
Salaries and expenses			
23 0100 0 1 752	Budget Authority	28,958	1,709
	Outlays	23,166	1,367
Tax courts independent counsel, U.S. Tax Court			
23 5023 0 2 752	401(C) Authority	100	6
	Outlays	100	6

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Other Legislative Branch Agencies			
Commission on Security and Cooperation in Europe: Salaries and expenses			
09 0110 0 1 801	Budget Authority	743	44
	Outlays	668	39
Botanic Garden: Salaries and expenses			
09 0200 0 1 801	Budget Authority	2,361	139
	Outlays	2,125	125
Copyright Royalty Tribunal: Salaries and expenses			
09 0310 0 1 376	Budget Authority	136	8
	Outlays	121	7
Biomedical Ethics: Salaries and expenses			
09 0400 0 1 801	Budget Authority	106	6
	Outlays	106	6
International conferences and contingencies: House and Senate expenses			
09 0500 0 1 801	401(C) Authority	290	17
	Outlays	290	17
Office of Technology Assessment: Salaries and expenses			
09 0700 0 1 801	Budget Authority	17,849	1,053
	Outlays	13,387	790
Payment to the Congressional Award Board			
09 0980 0 1 801	Budget Authority	197	12
	Outlays	197	12
TOTAL FOR Legislative Branch			
	Budget Authority	1,874,494	110,596
	401(C) Authority	3,750	221
	401(C) Authority - Off. Coll.	40,955	2,417
	401(C) Other - incl. ob. limit	288	17
	Outlays	1,721,051	101,542
The Judiciary			
Supreme Court of the United States			
Salaries and expenses			
10 0100 0 1 752	Budget Authority	15,028	887
	Outlays	11,797	696
Care of the building and grounds			
10 0103 0 1 752	Budget Authority	2,216	131
	Outlays	2,039	120
United States Court of Appeals for the Federal Circuit			
Salaries and expenses			
10 0510 0 1 752	Budget Authority	6,551	387
	Outlays	5,902	348
United States Court of International Trade			
Salaries and expenses			
10 0400 0 1 752	Budget Authority	7,272	429
	Outlays	6,908	408
Courts of Appeals, District Courts, and other Judicial Services			
Salaries and expenses			
10 0920 0 1 752	Budget Authority	1,039,019	61,302
	Outlays	960,054	56,643
Defender services			
10 0923 0 1 752	Budget Authority	89,108	5,257
	Outlays	53,465	3,154
Fees of jurors and commissioners			
10 0925 0 1 752	Budget Authority	45,514	2,685
	Outlays	42,328	2,497
Court security			
10 0930 0 1 752	Budget Authority	42,581	2,512
	Outlays	30,445	1,796
Administrative Office of the United States Courts			
Salaries and expenses			
10 0927 0 1 752	Budget Authority	32,943	1,944
	Outlays	29,220	1,724
Federal Judicial Center			
Salaries and expenses			
10 0928 0 1 752	Budget Authority	11,094	655
	Outlays	8,842	522
TOTAL FOR The Judiciary			
	Budget Authority	1,291,326	76,189
	Outlays	1,151,000	67,908
Executive Office of the President			
The White House Office			
Salaries and expenses			
11 0110 0 1 802	Budget Authority	27,894	1,646
	Outlays	25,105	1,481

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Executive Residence at the White House			
Operating expenses			
11 0210 0 1 802	Budget Authority	7,826	462
	401(C) Authority - Off. Coll.	729	43
	Outlays	8,164	482
Official Residence of the Vice President			
Operating expenses			
11 0211 0 1 802	Budget Authority	270	16
	Outlays	238	14
Special Assistance to the President			
Salaries and expenses			
11 1454 0 1 802	Budget Authority	2,278	134
	Outlays	2,005	118
Council of Economic Advisers			
Salaries and expenses			
11 1900 0 1 802	Budget Authority	2,644	156
	Outlays	2,300	136
Council on Environmental Quality and Office of Environmental Quality			
Council on Environmental Quality and Office of Environmental Quality			
11 1453 0 1 802	Budget Authority	874	52
	Outlays	830	49
Office of Policy Development			
Salaries and expenses			
11 2200 0 1 802	Budget Authority	3,171	187
	Outlays	2,759	163
National Security Council			
Salaries and expenses			
11 2000 0 1 802	Budget Authority	5,278	311
	Outlays	4,222	249
National Critical Materials Council			
Salaries and expenses			
11 0111 0 1 802	Budget Authority	369	22
	Outlays	336	20
Office of Administration			
Salaries and expenses			
11 0038 0 1 802	Budget Authority	16,811	992
	Outlays	12,104	714
Office of Management and Budget			
Office of Federal Procurement Policy: Salaries and expenses			
11 0201 0 1 802	Budget Authority	2,434	144
	Outlays	2,193	129
Salaries and expenses			
11 0300 0 1 802	Budget Authority	41,211	2,431
	Outlays	36,637	2,162
Office of Science and Technology Policy			
Salaries and expenses			
11 2600 0 1 802	Budget Authority	1,990	117
	Outlays	1,194	70
Office of the United States Trade Representative			
Salaries and expenses			
11 0400 0 1 802	Budget Authority	16,053	947
	Outlays	13,645	805
White House Conference for a Drug Free America			
Salaries and expenses			
11 0212 0 1 551	Budget Authority	2,626	155
	Outlays	2,274	134
TOTAL FOR Executive Office of the President			
	Budget Authority	131,729	7,772
	401(C) Authority - Off. Coll.	729	43
	Outlays	114,006	6,726
Funds Appropriated to the President			
Unanticipated Needs			
Unanticipated needs			
11 0037 0 1 802	Budget Authority	1,045	62
	Outlays	1,005	59
International Security Assistance			
Peacekeeping operations			
11 1032 0 1 152	Budget Authority	33,020	1,948
	Outlays	22,784	1,344
Economic support fund			
11 1037 0 1 152	Budget Authority	3,334,729	196,750
	Outlays	1,864,114	109,982
Military assistance			
11 1080 0 1 152	Budget Authority	730,652	43,108
	Outlays	189,970	11,208

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
International military education and training			
11 1081 0 1 152	Budget Authority	49,391	2,914
	Outlays	22,226	1,311
Foreign military sales credit			
11 1082 0 1 152	Budget Authority	4,219,058	248,924
	Direct Loan Limitation	4,219,058	248,924
	Guaranteed Loan Limitation	4,404,400	259,860
	Outlays	1,895,377	111,827
Multilateral Assistance			
Contribution to the Inter-American Development Bank			
11 0072 0 1 151	Budget Authority	61,098	3,605
	Outlays	1,894	112
Contribution to the International Development Association			
11 0073 0 1 151	Budget Authority	953,430	56,252
Contribution to the Asian Development Bank			
11 0076 0 1 151	Budget Authority	44,865	2,647
	Outlays	6,276	370
Contribution to the International Bank for Reconstruction and Developmen			
11 0077 0 1 151	Budget Authority	41,863	2,470
	Outlays	4,186	247
Contribution to the International Finance Corporation			
11 0078 0 1 151	Budget Authority	21,153	1,248
	Outlays	21,153	1,248
Contribution to the African Development Fund			
11 0079 0 1 151	Budget Authority	78,150	4,611
Contribution to the African Development Bank			
11 0082 0 1 151	Budget Authority	9,377	553
	Outlays	9,377	553
Contribution to Multilateral Investment Guarantee Agency			
11 0084 0 1 151	Budget Authority	46,268	2,738
	Outlays	23,134	1,365
International organizations and programs			
11 1005 0 1 151	Budget Authority	254,923	15,040
	Outlays	167,747	9,897
Agency for International Development			
Operating expenses Agency for International Development			
11 1000 0 1 151	Budget Authority	428,057	25,255
	Outlays	321,043	18,942
Operating expenses of the Agency for International Development Office of			
11 1007 0 1 151	Budget Authority	25,233	1,489
	Outlays	18,925	1,117
American schools and hospitals abroad			
11 1013 0 1 151	Budget Authority	41,680	2,459
	Outlays	10,628	627
Sub-Saharan Africa, development assistance			
11 1014 0 1 151	Budget Authority	573,100	33,813
	Outlays	70,491	4,159
Functional development assistance program			
11 1021 0 1 151	Budget Authority	1,201,449	70,886
	Outlays	147,779	8,719
International disaster assistance			
11 1035 0 1 151	Budget Authority	29,176	1,721
	Outlays	7,236	427
Housing and other credit guaranty programs			
72 4340 0 3 151	401(C) Authority - Off. Coll.	6,760	399
	Guaranteed Loan Limitation	130,250	7,685
	Outlays	6,605	390
Private sector revolving fund			
72 4341 0 3 151	Budget Authority	7,294	430
	Direct Loan Limitation	12,504	738
	Outlays	1,206	71
Trade and Development Program			
Trade and development program			
11 1001 0 1 151	Budget Authority	26,077	1,539
	Outlays	5,398	318
Peace Corps			
Peace Corps			
11 0100 0 1 151	Budget Authority	153,777	9,073
	401(C) Authority - Off. Coll.	200	12
	Outlays	126,415	7,459
Overseas Private Investment Corporation			
Overseas Private Investment Corporation			
71 4030 0 3 151	401(C) Authority - Off. Coll.	11,748	693
	Direct Loan Limitation	23,966	1,414
	Guaranteed Loan Limitation	208,400	12,296
	Outlays	14,097	831

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Inter-American Foundation			
Inter-American Foundation			
11 4031 0 3 151	Budget Authority	13,575	801
	401(C) Authority - Off. Coll.	9,083	536
	Outlays	9,063	534
African Development Foundation			
African Development Foundation			
11 0700 0 1 151	Budget Authority	7,321	432
	Outlays	4,393	259
Military Sales Programs			
Special defense acquisition fund			
11 4116 0 3 155	Obligation Limitation	246,813	14,562
	Outlays	2,468	146
Foreign military sales trust fund			
11 8242 0 7 155	401(C) Authority - Off. Coll.	340,000	20,060
	Outlays	316,200	18,656
Special Assistance for Central America			
Assistance to the Nicaraguan democratic resistance			
11 1090 0 1 054	Budget Authority	7,427	550
	Outlays	7,427	550
TOTAL FOR Funds Appropriated to the President			
	Budget Authority	12,393,188	731,310
	401(C) Authority - Off. Coll.	367,791	21,700
	Direct Loan Limitation	4,255,528	251,076
	Guaranteed Loan Limitation	4,743,050	279,841
	Obligation Limitation	246,813	14,562
	Outlays	5,298,617	312,728
Department of Agriculture			
Office of the Secretary			
Office of the Secretary			
12 0115 0 1 352	Budget Authority	6,044	356
	Outlays	5,742	339
Departmental Administration			
Rental payments and building operations			
12 0117 0 1 352	Budget Authority	72,663	4,287
	Outlays	68,013	4,013
Advisory committees			
12 0118 0 1 352	Budget Authority	1,373	81
	Outlays	898	53
Departmental administration			
12 0120 0 1 352	Budget Authority	26,485	1,563
	Outlays	23,519	1,388
Hazardous waste management			
12 0500 0 1 304	Budget Authority	2,084	123
	Outlays	1,042	61
Working capital fund			
12 4609 0 4 352	Budget Authority	5,988	353
	Outlays	5,910	349
Office of Governmental and Public Affairs			
Office of Governmental and Public Affairs			
12 0130 0 1 352	Budget Authority	9,172	541
	Outlays	7,246	428
Office of the Inspector General			
Office of the Inspector General			
12 0900 0 1 352	Budget Authority	51,584	3,043
	Outlays	44,156	2,605
Office of the General Counsel			
Office of the General Counsel			
12 2300 0 1 352	Budget Authority	19,869	1,172
	Outlays	19,690	1,162
Agricultural Research Service			
Agricultural Research Service			
12 1400 0 1 352	Budget Authority	569,672	33,611
	401(C) Authority - Off. Coll.	3,350	198
	Outlays	458,518	27,053
Buildings and facilities			
12 1401 0 1 352	Budget Authority	60,243	3,554
	Outlays	11,627	686
Cooperative State Research Service			
Cooperative State Research Service			
12 1500 0 1 352	Budget Authority	319,655	18,859
	401(C) Authority	2,600	153
	Outlays	209,739	12,374

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Extension Service			
Extension Service			
12 0502 0 1 352	Budget Authority	373,178	22,018
	401(C) Authority - Off. Coll.	495	29
	Outlays	294,559	17,379
National Agricultural Library			
National Agricultural Library			
12 0300 0 1 352	Budget Authority	12,837	757
	Outlays	9,307	549
National Agricultural Statistics Service			
Salaries and expenses			
12 1801 0 1 352	Budget Authority	64,462	3,803
	401(C) Authority - Off. Coll.	1,007	59
	Outlays	53,479	3,155
Economic Research Service			
Salaries and expenses			
12 1701 0 1 352	Budget Authority	50,943	3,006
	Outlays	42,843	2,528
World Agricultural Outlook Board			
World agricultural outlook board			
12 2100 0 1 352	Budget Authority	1,831	108
	Outlays	1,395	82
Foreign Agricultural Service			
Foreign Agricultural Service			
12 2900 0 1 352	Budget Authority	96,774	5,710
	Outlays	53,322	3,146
Office of International Cooperation and Development			
Scientific activities overseas (foreign currency program)			
12 1404 0 1 352	Budget Authority	1,563	92
	Outlays	782	46
Salaries and expenses			
12 3200 0 1 352	Budget Authority	5,570	329
	Outlays	4,573	270
Foreign Assistance Programs			
Expenses, Public Law 480, foreign assistance programs, Agriculture			
12 2274 0 1 151	Budget Authority	1,160,444	68,466
	Direct Loan Limitation	809,842	47,781
	Obligation Limitation	1,544,244	91,110
	Outlays	1,405,262	82,910
Agricultural Stabilization and Conservation Service			
Salaries and expenses			
12 3300 0 1 351	Budget Authority	47,335	2,793
	Outlays	47,335	2,793
Dairy indemnity program			
12 3314 0 1 351	Budget Authority	95	6
	Outlays	95	6
Agricultural conservation program			
12 3315 0 1 302	Budget Authority	184,366	10,878
	Outlays	84,808	5,004
Emergency conservation program			
12 3316 0 1 453	Budget Authority	1,042	61
	Outlays	469	28
Colorado river basin salinity control program			
12 3318 0 1 304	Budget Authority	5,110	301
	Outlays	2,555	151
Conservation reserve program			
12 3319 0 1 302	Budget Authority	1,129,190	66,622
Water Bank program			
12 3320 0 1 302	Budget Authority	8,723	515
	Outlays	1,300	77
Forestry incentives program			
12 3336 0 1 302	Budget Authority	12,390	731
	Outlays	4,783	282
Federal Crop Insurance Corporation			
Administrative and operating expenses			
12 2707 0 1 351	Budget Authority	209,038	12,333
	Outlays	122,078	7,203
Commodity Credit Corporation			
Temporary emergency food assistance program			
12 3635 0 1 351	Budget Authority	52,100	3,074
	Outlays	35,636	2,103
Commodity Credit Corporation Fund			
12 4336 0 3 351	401(C) Authority	16,443,000	970,137
	Direct Loan Limitation	7,671,381	452,611
	Guaranteed Loan Limitation	5,731,000	338,129
	Outlays	16,443,000	970,137

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Rural Electrification Administration			
Salaries and expenses			
12 3100 0 1 271	Budget Authority	32,685	1,928
	Outlays	29,482	1,739
Reimbursement to the Rural electrification and telephone revolving fund			
12 3101 0 1 271	Budget Authority	341,437	20,145
Purchase of Rural Telephone Bank capital stock			
12 3102 0 1 452	Budget Authority	29,916	1,765
	Outlays	29,916	1,765
Rural electrification and telephone revolving fund			
12 4230 0 3 271	Direct Loan Limitation	1,293,864	76,338
	Direct Loan Floor	897,475	52,951
	Guaranteed Loan Limitation	2,188,841	129,142
	Guaranteed Loan Floor	970,398	57,253
	Outlays	89,748	5,295
Rural telephone bank			
12 4231 0 3 452	Direct Loan Limitation	219,383	12,944
	Direct Loan Floor	184,481	10,884
	Outlays	7,661	452
Farmers Home Administration			
Salaries and expenses			
12 2001 0 1 452	Budget Authority	431,741	25,473
	Outlays	392,884	23,180
Rural housing for domestic farm labor			
12 2004 0 1 604	Budget Authority	9,913	585
	Outlays	397	23
Mutual and self-help housing			
12 2006 0 1 604	Budget Authority	8,336	492
	Outlays	667	39
Very low income housing repair grants			
12 2064 0 1 604	Budget Authority	13,025	768
	Outlays	12,374	730
Rural development grant program			
12 2065 0 1 452	Budget Authority	6,773	400
	Outlays	6,434	380
Rural water and waste disposal grants			
12 2066 0 1 452	Budget Authority	113,990	6,725
	Outlays	2,280	135
Rural community fire protection grants			
12 2067 0 1 452	Budget Authority	3,221	190
	Outlays	1,449	85
Rural housing preservation grants			
12 2070 0 1 604	Budget Authority	19,944	1,177
	Outlays	1,197	71
Compensation for construction defects			
12 2071 0 1 371	Budget Authority	743	44
	Outlays	743	44
Agricultural credit insurance fund			
12 4140 0 3 351	401(C) Authority - Off. Coll.	115,000	6,785
	Direct Loan Limitation	1,693,413	99,911
	Guaranteed Loan Limitation	2,910,306	171,708
	Outlays	1,722,742	101,642
Rural housing insurance fund			
12 4141 0 3 371	401(C) Authority - Off. Coll.	17,000	1,003
	Direct Loan Limitation	1,922,480	113,426
	Obligation Limitation	286,873	16,926
	Outlays	913,850	53,917
Rural development insurance fund			
12 4155 0 3 452	401(C) Authority - Off. Coll.	2,000	118
	Direct Loan Limitation	443,975	26,195
	Guaranteed Loan Limitation	99,719	5,883
	Outlays	16,764	989
Self-help housing land development fund			
12 4222 0 3 371	Direct Loan Limitation	521	31
	Outlays	340	20
Rural development loan fund			
12 4233 0 3 452	Direct Loan Limitation	14,588	861
	Outlays	1,479	87
Soil Conservation Service			
Conservation operations			
12 1000 0 1 302	Budget Authority	469,490	27,700
	401(C) Authority - Off. Coll.	8,681	512
	Outlays	441,551	26,051
Resource conservation and development			
12 1010 0 1 302	Budget Authority	26,452	1,561
	401(C) Authority - Off. Coll.	1,920	113
	Outlays	17,738	1,046

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Watershed planning			
12 1066 0 1 301	Budget Authority	9,162	541
	401(C) Authority - Off. Coll.	396	23
	Outlays	8,330	491
River basin surveys and investigations			
12 1069 0 1 301	Budget Authority	12,760	753
	401(C) Authority - Off. Coll.	191	11
	Outlays	12,134	716
Watershed and flood prevention operations			
12 1072 0 1 301	Budget Authority	184,338	10,876
	401(C) Authority - Off. Coll.	18,607	1,098
	Outlays	142,482	8,407
Great plains conservation program			
12 2268 0 1 302	Budget Authority	21,484	1,268
	Outlays	9,732	574
Miscellaneous contributed funds (Water resources)			
12 8210 0 7 301	401(C) Authority	502	30
	Outlays	502	30
Miscellaneous contributed funds (Conservation and land management)			
12 8210 0 7 302	401(C) Authority	100	6
Animal and Plant Health Inspection Service			
Salaries and expenses			
12 1600 0 1 352	Budget Authority	346,765	20,459
	401(C) Authority - Off. Coll.	27,768	1,638
	Outlays	324,599	19,151
Buildings and facilities			
12 1601 0 1 352	Budget Authority	2,340	138
Federal Grain Inspection Service			
Salaries and expenses			
12 2400 0 1 352	Budget Authority	7,413	437
	Outlays	6,190	365
Inspection and weighing services			
12 4050 0 3 352	401(C) Authority - Off. Coll.	36,856	2,175
	Outlays	36,856	2,175
Agricultural Marketing Service			
Marketing services			
12 2500 0 1 352	Budget Authority	34,252	2,021
	401(C) Authority - Off. Coll.	31,701	1,870
	Outlays	49,067	2,895
Payments to States and possessions			
12 2501 0 1 352	Budget Authority	982	58
	Outlays	27	2
Perishable Agricultural Commodities Act fund			
12 5070 0 2 352	401(C) Authority	5,329	314
	Outlays	4,842	286
Funds for strengthening markets, income, and supply (section 32)			
12 5209 0 2 605	401(C) Authority	406,000	23,954
	Outlays	275,000	16,225
Milk market orders assessment fund			
12 8412 0 8 351	401(C) Authority - Off. Coll.	36,865	2,175
	Outlays	36,865	2,175
Miscellaneous trust funds			
12 9972 0 7 352	401(C) Authority	85,979	5,073
	Outlays	72,205	4,260
Office of Transportation			
Office of Transportation			
12 2800 0 1 352	Budget Authority	2,534	150
	Outlays	2,073	122
Food Safety and Inspection Service			
Salaries and expenses			
12 3700 0 1 554	Budget Authority	414,812	24,474
	401(C) Authority - Off. Coll.	46,384	2,737
	Outlays	432,159	25,498
Expenses and refunds, inspection and grading of farm products			
12 8137 0 7 352	401(C) Authority	825	49
	Outlays	575	34
Food and Nutrition Service			
Special milk program			
12 3502 0 1 605	401(C) Authority - Spec. Rules	139	139
	Outlays	97	97
Cash and commodities for selected groups			
12 3503 0 1 605	Budget Authority	202,261	11,933
	Outlays	163,831	9,666
Food stamp program			
12 3505 0 1 605	401(C) Authority	60,000	3,540
	Outlays	24,000	1,416

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Food program administration			
12 3508 0 1 605	Budget Authority	90,891	5,363
	Outlays	83,620	4,934
Supplemental feeding programs			
12 3510 0 1 605	Budget Authority	3,000	177
	Outlays	3,000	177
Child nutrition programs			
12 3539 0 1 605	401(C) Authority	3,033	179
	Outlays	3,033	179
Human Nutrition Information Service			
Salaries and expenses			
12 3501 0 1 352	Budget Authority	9,058	534
	Outlays	3,904	230
Packers and Stockyards Administration			
Packers and Stockyards Administration			
12 2600 0 1 352	Budget Authority	9,951	587
	Outlays	8,936	527
Agricultural Cooperative Service			
Salaries and expenses			
12 3000 0 1 352	Budget Authority	4,867	287
	Outlays	2,803	165
Forest Service			
Construction			
12 1103 0 1 302	Budget Authority	224,629	13,253
	401(C) Authority - Off. Coll.	1,505	89
	Outlays	132,464	7,816
Forest research			
12 1104 0 1 302	Budget Authority	139,692	8,241
	401(C) Authority - Off. Coll.	738	44
	Outlays	105,926	6,250
State and private forestry			
12 1105 0 1 302	Budget Authority	79,984	4,719
	Outlays	58,948	3,478
National forest system			
12 1106 0 1 302	Budget Authority	1,310,471	77,318
	Outlays	1,153,700	68,068
Land acquisition			
12 5004 0 2 303	Budget Authority	51,163	3,019
	Outlays	20,465	1,207
Range betterment fund			
12 5207 0 2 302	Budget Authority	3,782	223
	Outlays	3,026	179
Acquisition of lands for national forests, special acts			
12 5208 0 2 302	Budget Authority	1,008	59
	Outlays	850	50
Acquisition of lands to complete land exchanges			
12 5216 0 2 302	Budget Authority	335	20
	Outlays	297	18
Operations and maintenance of quarters			
12 5219 0 2 302	401(C) Authority	5,761	340
	Outlays	4,626	273
Cooperative work trust fund			
12 8028 0 7 302	401(C) Authority	267,748	15,797
	Outlays	225,979	13,333
Gifts, donations and bequests for forest and rangeland research			
12 8034 0 7 302	Budget Authority	90	5
	Outlays	90	5
Other appropriations			
12 9911 0 1 302	Budget Authority	38,554	2,275
	Outlays	35,470	2,093
Forest Service permanent appropriations			
12 9921 0 2 806	401(C) Authority	304,403	17,960
	Outlays	228,302	13,470
Forest Service permanent appropriations			
12 9922 0 2 302	401(C) Authority	91,733	5,413
	Outlays	68,854	4,063
Reforestation trust fund			
20 8046 0 7 302	401(C) Other - incl. ob. limit	30,000	1,770
	Outlays	30,000	1,770
TOTAL FOR Department of Agriculture			
	Budget Authority	9,276,067	547,287
	401(C) Authority	17,677,013	1,042,945
	401(C) Authority - Off. Coll.	350,464	20,677
	401(C) Other - incl. ob. limit	30,000	1,770
	401(C) Authority - Spec. Rules	139	139
	Direct Loan Limitation	14,069,447	830,098
	Direct Loan Floor	1,081,956	63,835
	Guaranteed Loan Limitation	10,929,866	644,862

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
	Guaranteed Loan Floor	970,398	57,253
	Obligation Limitation	1,831,117	108,036
	Outlays	26,929,236	1,588,920
Department of Commerce			
General Administration			
Salaries and expenses			
13 0120 0 1 376	Budget Authority	41,380	2,441
	Outlays	39,642	2,339
Grants and loans administration			
13 0125 0 1 452	Budget Authority	26,126	1,541
	Outlays	22,939	1,353
Economic development assistance programs			
13 2050 0 1 452	Budget Authority	189,673	11,191
	Guaranteed Loan Limitation	195,375	11,527
	Outlays	18,967	1,119
Bureau of the Census			
Salaries and expenses			
13 0401 0 1 376	Budget Authority	100,340	5,920
	401(C) Authority - Off. Coll.	8,000	472
	Outlays	97,303	5,741
Periodic censuses and programs			
13 0450 0 1 376	Budget Authority	365,171	21,545
	Outlays	280,086	16,525
Economic and Statistical Analysis			
Salaries and expenses			
13 1500 0 1 376	Budget Authority	33,909	2,001
	401(C) Authority - Off. Coll.	395	23
	Outlays	30,574	1,804
Information products and services			
13 8546 0 7 376	401(C) Authority	49,000	2,891
	Outlays	31,850	1,879
International Trade Administration			
Operations and administration			
13 1250 0 1 376	Budget Authority	170,199	10,042
	401(C) Authority - Off. Coll.	10,319	609
	Outlays	130,309	7,688
Export Administration			
Operations and administration			
13 0300 0 1 376	Budget Authority	39,452	2,328
	Outlays	27,814	1,641
Minority Business Development Agency			
Minority business development			
13 0201 0 1 376	Budget Authority	41,564	2,452
	Outlays	13,051	770
United States Travel and Tourism Administration			
Salaries and expenses			
13 0700 0 1 376	Budget Authority	12,311	726
	401(C) Authority - Off. Coll.	2,500	148
	Outlays	11,918	704
National Oceanic and Atmospheric Administration			
Operations, research, and facilities			
13 1450 0 1 306	Budget Authority	1,206,993	71,212
	401(C) Authority - Off. Coll.	14,778	872
	Outlays	835,533	49,296
Coastal energy impact fund			
13 4315 0 3 452	401(C) Authority - Off. Coll.	7,280	430
	Outlays	7,280	430
Federal ship financing fund, fishing vessels			
13 4417 0 3 376	401(C) Authority - Off. Coll.	1,160	68
	Guaranteed Loan Limitation	85,000	5,015
	Outlays	1,160	68
Fisherman's contingency fund			
13 5120 0 2 376	Budget Authority	750	44
	Outlays	713	42
Foreign fishing observer fund			
13 5122 0 2 376	Budget Authority	2,018	119
	Outlays	1,939	114
Fisheries promotional fund			
13 5124 0 2 376	Budget Authority	2,738	161
	Outlays	1,507	89
Promote and develop fishery products and research pertaining to American			
13 5139 0 2 376	401(C) Other - incl. ob. limit	9,445	557
	Outlays	5,136	303
Aviation weather services program			
13 8105 0 7 306	Budget Authority	29,479	1,739
	Outlays	29,479	1,739

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Patent and Trademark Office			
Salaries and expenses			
13 1006 0 1 376	Budget Authority	126,179	7,445
	401(C) Authority - Off. Coll.	160,476	9,468
	Outlays	229,874	13,562
National Bureau of Standards			
Scientific and technical research and services			
13 0500 0 1 376	Budget Authority	148,382	8,754
	Outlays	115,683	6,825
Working capital fund			
13 4650 0 4 376	Budget Authority	4,205	248
	Outlays	2,103	124
National Telecommunications and Information Administration			
Salaries and expenses			
13 0550 0 1 376	Budget Authority	14,595	861
	Outlays	11,676	689
Public telecommunications facilities, planning and construction			
13 0551 0 1 503	Budget Authority	22,201	1,310
	Outlays	2,575	152
TOTAL FOR Department of Commerce			
	Budget Authority	2,577,662	152,080
	401(C) Authority	49,000	2,891
	401(C) Authority - Off. Coll.	204,908	12,090
	401(C) Other - incl. ob. limit	9,445	557
	Guaranteed Loan Limitation	280,375	16,542
	Outlays	1,949,111	114,996
Department of Defense--Military			
Operation and Maintenance			
Operation and maintenance, Marine Corps			
17 1106 0 1 051	Budget Authority	1,905,486	141,006
	Outlays	1,619,663	119,855
Operation and maintenance, Marine Corps Reserve			
17 1107 0 1 051	Budget Authority	72,598	5,372
	Outlays	46,680	3,454
Operation and maintenance, Navy			
17 1804 0 1 051	Budget Authority	24,838,856	1,838,075
	Outlays	18,877,531	1,396,938
Operation and maintenance, Navy Reserve			
17 1806 0 1 051	Budget Authority	970,424	71,811
	Outlays	747,226	55,295
National Board for the Promotion of Rifle Practice, Army			
21 1705 0 1 051	Budget Authority	4,290	317
	Outlays	4,183	310
Operation and maintenance, Army			
21 2020 0 1 051	Budget Authority	22,072,125	1,633,337
	Outlays	17,657,700	1,306,670
Operation and maintenance, Army National Guard			
21 2065 0 1 051	Budget Authority	1,947,268	144,098
	Outlays	1,723,526	127,541
Operation and maintenance, Army Reserve			
21 2080 0 1 051	Budget Authority	899,946	66,596
	Outlays	792,402	58,638
Operation and maintenance, Air Force			
57 3400 0 1 051	Budget Authority	20,732,760	1,534,224
	Outlays	16,171,553	1,196,695
Operation and maintenance, Air Force Reserve			
57 3740 0 1 051	Budget Authority	1,050,213	77,716
	Outlays	927,338	68,623
Operation and maintenance, Air National Guard			
57 3840 0 1 051	Budget Authority	2,053,348	151,948
	Outlays	1,893,187	140,096
Operation and maintenance, Defense agencies			
97 0100 0 1 051	Budget Authority	7,502,461	555,182
	Outlays	6,452,116	477,456
Court of Military Appeals, Defense			
97 0104 0 1 051	Budget Authority	3,425	253
	Outlays	2,946	218
Foreign currency fluctuations, Defense			
97 0801 0 1 051	Unobligated Balances - Defense	281,905	20,861
Environmental restoration, Defense			
97 0810 0 1 051	Budget Authority	10,420	771
	Outlays	7,868	583
Humanitarian assistance			
97 0819 0 1 051	Budget Authority	10,426	771
	Outlays	6,133	454

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Procurement			
Coastal defense augmentation			
17 0380 0 1 051	Budget Authority	20,840	1,542
	Unobligated Balances - Defense	4,000	296
	Outlays	2,410	179
Procurement, Marine Corps			
17 1109 0 1 051	Budget Authority	1,350,014	99,901
	Unobligated Balances - Defense	304,981	22,569
	Outlays	112,540	8,328
Aircraft procurement, Navy			
17 1506 0 1 051	Budget Authority	9,922,236	734,245
	Unobligated Balances - Defense	2,174,692	160,927
	Outlays	1,088,723	80,565
Weapons procurement, Navy			
17 1507 0 1 051	Budget Authority	6,214,508	459,874
	Unobligated Balances - Defense	1,765,556	130,651
	Outlays	877,806	64,958
Shipbuilding and conversion, Navy			
17 1611 0 1 051	Budget Authority	16,833,880	1,245,707
	Unobligated Balances - Defense	9,736,176	720,477
	Outlays	1,381,642	102,242
Other procurement, Navy			
17 1810 0 1 051	Budget Authority	5,078,146	375,783
	Unobligated Balances - Defense	1,909,045	141,269
	Outlays	705,707	52,222
Aircraft procurement, Army			
21 2031 0 1 051	Budget Authority	2,832,579	209,611
	Unobligated Balances - Defense	547,687	40,529
	Outlays	517,181	38,271
Missile procurement, Army			
21 2032 0 1 051	Budget Authority	2,430,191	179,834
	Unobligated Balances - Defense	624,671	46,226
	Outlays	232,169	17,180
Procurement of weapons and tracked combat vehicles, Army			
21 2033 0 1 051	Budget Authority	3,341,889	247,300
	Unobligated Balances - Defense	1,058,842	78,354
	Outlays	202,434	14,980
Procurement of ammunition, Army			
21 2034 0 1 051	Budget Authority	2,369,083	175,312
	Unobligated Balances - Defense	179,121	13,255
	Outlays	637,051	47,142
Other procurement, Army			
21 2035 0 1 051	Budget Authority	5,312,342	393,113
	Unobligated Balances - Defense	1,704,258	126,115
	Outlays	406,963	30,116
Aircraft procurement, Air Force			
57 3010 0 1 051	Budget Authority	13,487,897	998,104
	Unobligated Balances - Defense	6,102,810	451,608
	Outlays	1,287,432	95,270
Missile procurement, Air Force			
57 3020 0 1 051	Budget Authority	7,599,588	562,370
	Unobligated Balances - Defense	3,035,208	224,605
	Outlays	2,648,065	195,957
Other procurement, Air Force			
57 3080 0 1 051	Budget Authority	8,347,282	617,699
	Unobligated Balances - Defense	2,452,839	181,510
	Outlays	5,292,059	391,612
Procurement, Defense agencies			
97 0300 0 1 051	Budget Authority	1,319,446	97,639
	Unobligated Balances - Defense	410,951	30,410
	Outlays	378,957	28,043
National guard and reserve equipment			
97 0350 0 1 051	Budget Authority	1,250,400	92,530
	Unobligated Balances - Defense	463,723	34,316
	Outlays	102,847	7,611
Defense production act purchases			
97 0360 0 1 051	Budget Authority	13,546	1,002
	Unobligated Balances - Defense	18,200	1,347
Chemical agents and munitions destruction, Defense			
97 0390 0 1 051	Budget Authority	206,837	15,306
	Unobligated Balances - Defense	31,751	2,350
	Outlays	124,089	9,183
Research, Development, Test, and Evaluation			
Research, development, test, and evaluation, Navy			
17 1319 0 1 051	Budget Authority	9,894,384	732,184
	Unobligated Balances - Defense	485,396	35,919
	Outlays	5,397,485	399,414

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Research, development, test, and evaluation, Army			
21 2040 0 1 051	Budget Authority	4,901,792	362,732
	Unobligated Balances - Defense	333,913	24,710
	Outlays	2,931,995	216,967
Research, development, test, and evaluation, Air Force			
57 3600 0 1 051	Budget Authority	15,644,016	1,157,657
	Unobligated Balances - Defense	1,739,669	128,736
	Outlays	9,213,354	681,788
Research, development, test, and evaluation, Defense agencies			
97 0400 0 1 051	Budget Authority	7,882,570	583,310
	Unobligated Balances - Defense	589,149	43,597
	Outlays	4,490,012	332,260
Developmental test and evaluation, Defense			
97 0450 0 1 051	Budget Authority	189,765	14,043
	Unobligated Balances - Defense	32,192	2,382
	Outlays	66,587	4,928
Operational test and evaluation, Defense			
97 0460 0 1 051	Budget Authority	73,170	5,415
	Unobligated Balances - Defense	14,044	1,039
	Outlays	38,593	2,856
Military Construction			
Military construction, Navy			
17 1205 0 1 051	Budget Authority	1,483,300	109,764
	Unobligated Balances - Defense	706,591	52,288
	Outlays	635,068	46,995
Military construction, Naval Reserve			
17 1235 0 1 051	Budget Authority	76,834	5,686
	Unobligated Balances - Defense	23,383	1,730
	Outlays	15,032	1,113
Military construction, Army			
21 2050 0 1 051	Budget Authority	1,099,019	81,327
	401(C) Authority	214,000	15,836
	Unobligated Balances - Defense	431,691	31,945
	Outlays	523,413	38,733
Military construction, Army National Guard			
21 2085 0 1 051	Budget Authority	192,150	14,219
	Unobligated Balances - Defense	13,137	972
	Outlays	24,634	1,823
Military construction, Army Reserve			
21 2086 0 1 051	Budget Authority	99,179	7,339
	Unobligated Balances - Defense	19,102	1,414
	Outlays	29,570	2,188
Military construction, Air Force			
57 3300 0 1 051	Budget Authority	1,264,274	93,557
	Unobligated Balances - Defense	734,068	54,321
	Outlays	579,518	42,884
Military construction, Air Force Reserve			
57 3730 0 1 051	Budget Authority	82,631	6,115
	Unobligated Balances - Defense	30,439	2,252
	Outlays	12,664	937
Military construction, Air National Guard			
57 3830 0 1 051	Budget Authority	157,645	11,666
	Unobligated Balances - Defense	40,758	3,016
	Outlays	19,840	1,469
Military construction, Defense agencies			
97 0500 0 1 051	Budget Authority	576,628	42,671
	Unobligated Balances - Defense	264,985	19,609
	Outlays	235,653	17,439
North Atlantic Treaty Organization infrastructure			
97 0804 0 1 051	Budget Authority	402,212	29,764
	Unobligated Balances - Defense	183,839	13,604
	Outlays	46,884	3,469
Family Housing			
Family housing, Navy and Marine Corps			
17 0703 0 1 051	Budget Authority	801,932	59,343
	Unobligated Balances - Defense	96,266	7,124
	Outlays	502,991	37,221
Family housing, Army			
21 0702 0 1 051	Budget Authority	1,677,884	124,164
	Unobligated Balances - Defense	105,341	7,795
	Outlays	998,606	73,896
Family housing, Air Force			
57 0704 0 1 051	Budget Authority	878,260	64,991
	Unobligated Balances - Defense	79,137	5,856
	Outlays	536,142	39,674

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Family housing, Defense agencies			
97 0706 0 1 051	Budget Authority	21,569	1,596
	Unobligated Balances - Defense	1,481	110
	Outlays	12,908	955
Revolving and Management Funds			
Navy stock fund			
17 4911 0 4 051	Budget Authority	343,235	25,399
	Outlays	260,859	19,304
Army stock fund			
21 4991 0 4 051	Budget Authority	201,322	14,898
	Outlays	153,005	11,322
Air Force stock fund			
57 4921 0 4 051	Budget Authority	235,499	17,427
	Outlays	178,980	13,245
ADP equipment management fund			
97 3910 0 4 051	Unobligated Balances - Defense	56,479	4,179
	Outlays	9,151	677
National defense stockpile transaction fund			
97 4550 0 3 051	Budget Authority	19,798	1,465
	Unobligated Balances - Defense	423,501	31,339
	Outlays	31,017	2,295
Defense stock fund			
97 4961 0 4 051	Budget Authority	138,169	10,225
	Outlays	105,009	7,771
TOTAL FOR Department of Defense--Military			
	Budget Authority	220,341,987	16,305,306
	401(C) Authority	214,000	15,836
	Unobligated Balances - Defense	39,210,977	2,901,612
	Outlays	109,977,097	8,138,308
Department of Defense--Civil			
Cemeterial Expenses, Army			
Salaries and expenses			
21 1805 0 1 705	Budget Authority	9,631	569
	Outlays	7,183	424
Corps of Engineers--Civil			
Inland waterways trust fund			
20 8861 0 7 301	Budget Authority	77,467	4,571
	Outlays	51,903	3,062
Flood control, Mississippi River and tributaries			
96 3112 0 1 301	Budget Authority	337,980	19,941
	401(C) Authority - Off. Coll.	250	15
	Outlays	277,394	16,366
General investigations			
96 3121 0 1 301	Budget Authority	142,405	8,402
	Outlays	98,829	5,831
Construction, general			
96 3122 0 1 301	Budget Authority	1,107,268	65,329
	401(C) Authority - Off. Coll.	160	9
	Outlays	686,666	40,513
Operation and maintenance, general (Water resources)			
96 3123 0 1 301	Budget Authority	1,184,714	69,898
	401(C) Authority - Off. Coll.	4,565	269
	Outlays	987,878	58,284
Operation and maintenance, general (Recreational resources)			
96 3123 0 1 303	Budget Authority	15,000	885
	Outlays	11,700	690
General expenses			
96 3124 0 1 301	Budget Authority	120,000	7,080
	Outlays	96,000	5,664
Flood control and coastal emergencies			
96 3125 0 1 301	Budget Authority	20,000	1,180
General regulatory functions			
96 3126 0 1 301	Budget Authority	60,427	3,565
	Outlays	50,154	2,959
Rivers and harbors contributed funds			
96 8862 0 7 301	401(C) Authority	162,323	9,577
	Outlays	100,640	5,938
Harbor maintenance trust fund			
96 8863 0 7 301	Budget Authority	171,000	10,089
	Outlays	141,930	8,374
Permanent appropriations (Water resources)			
96 9921 0 2 301	401(C) Authority	3,126	184
	Outlays	2,013	119
Permanent appropriations (Other general purpose fiscal assistance)			
96 9921 0 2 806	401(C) Authority	6,000	354
	Outlays	6,000	354

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Soldiers' and Airmen's Home			
Operation and maintenance			
84 8931 0 7 705	Budget Authority	37,938	2,238
	401(C) Authority - Off. Coll.	144	8
	Outlays	33,340	1,967
Capital outlays			
84 8932 0 7 705	Budget Authority	16,094	950
	Outlays	322	19
Forest and Wildlife Conservation, Military Reservations			
Forest products program			
21 5285 0 2 302	401(C) Authority	2,000	118
	Outlays	2,000	118
Wildlife conservation			
97 5095 0 2 303	401(C) Authority	2,050	121
	Outlays	1,792	106
TOTAL FOR Department of Defense--Civil			
	Budget Authority	3,299,924	194,697
	401(C) Authority	175,499	10,354
	401(C) Authority - Off. Coll.	5,119	301
	Outlays	2,555,744	150,788
Department of Health and Human Services, except Social Security			
Food and Drug Administration			
Program expenses			
75 0600 0 1 554	Budget Authority	508,104	29,978
	Outlays	442,051	26,081
Buildings and facilities			
75 0603 0 1 554	Budget Authority	1,511	89
	Outlays	982	58
Revolving fund for certification and other services			
75 4309 0 3 554	401(C) Authority - Off. Coll.	3,187	188
	Outlays	3,187	188
Health Resources and Services Administration			
Health resources and services (Health care services)			
75 0350 0 1 551	Budget Authority	960,883	56,692
	Budget Authority - Spec. Rules	8,898	8,898
	401(C) Authority - Off. Coll.	375	22
	Direct Loan Limitation	995	59
	Outlays	543,452	36,753
Health resources and services (Education and training of health care wor			
75 0350 0 1 553	Budget Authority	217,952	12,859
	Outlays	65,386	3,858
Indian Health Service			
Tribal and Federal health services			
75 0390 0 1 551	Budget Authority	73,113	4,314
	Budget Authority - Spec. Rules	18,351	18,351
	401(C) Authority - Spec. Rules	772	772
	Outlays	72,090	18,427
Indian health facilities			
75 0391 0 1 551	Budget Authority - Spec. Rules	1,304	1,304
	Outlays	326	326
Centers for Disease Control			
Disease control, research, and training (Health care services)			
75 0943 0 1 551	Budget Authority	734,467	43,334
	401(C) Authority - Off. Coll.	1,005	59
	Outlays	449,030	26,492
Disease control, research, and training (Health research)			
75 0943 0 1 552	Budget Authority	72,879	4,300
	Outlays	53,202	3,139
National Institutes of Health			
National Library of Medicine (Health research)			
75 0807 0 1 552	Budget Authority	23,019	1,358
	Outlays	14,732	869
National Library of Medicine (Education and training of health care work			
75 0807 0 1 553	Budget Authority	48,157	2,841
	Outlays	30,820	1,818
John E. Fogarty International Center			
75 0819 0 1 552	Budget Authority	16,358	965
	Outlays	9,324	550
Buildings and facilities			
75 0838 0 1 552	Budget Authority	49,881	2,943
	Outlays	13,967	824
National Institute on Aging (Health research)			
75 0843 0 1 552	Budget Authority	194,464	11,473
	Outlays	64,173	3,786

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
National Institute on Aging (Education and training of health care work			
75 0843 0 1 553	Budget Authority	8,809	520
	Outlays	4,140	244
National Institute of Child Health and Human Development (Health researc			
75 0844 0 1 552	Budget Authority	397,681	23,463
	Outlays	135,212	7,978
National Institute of Child Health and Human Development (Education and			
75 0844 0 1 553	Budget Authority	16,279	960
	Outlays	1,628	96
Office of the Director (Health research)			
75 0846 0 1 552	Budget Authority	59,294	3,498
	Outlays	29,054	1,714
Office of the Director (Education and training of health care work force			
75 0846 0 1 553	Budget Authority	5,579	329
	Outlays	5,300	313
Research resources (Health research)			
75 0848 0 1 552	Budget Authority	381,378	22,501
	Outlays	179,248	10,576
Research resources (Education and training of health care work force)			
75 0848 0 1 553	Budget Authority	2,338	138
	Outlays	117	7
National Cancer Institute (Health research)			
75 0849 0 1 552	Budget Authority	1,498,667	88,421
	401(C) Authority - Off. Coll.	10	1
	Outlays	629,450	37,138
National Cancer Institute (Education and training of health care work fo			
75 0849 0 1 553	Budget Authority	34,501	2,036
	Outlays	690	41
National Institute of General Medical Sciences (Health research)			
75 0851 0 1 552	Budget Authority	588,909	34,746
	Outlays	223,785	13,203
National Institute of General Medical Sciences (Education and training o			
75 0851 0 1 553	Budget Authority	70,472	4,158
	Outlays	7,752	457
National Institute of Environmental Health Sciences (Health research)			
75 0862 0 1 552	Budget Authority	215,598	12,720
	Outlays	122,891	7,251
National Institute of Environmental Health Sciences (Education and train			
75 0862 0 1 553	Budget Authority	9,701	572
	Outlays	2,328	137
National Heart, Lung and Blood Institute (Health research)			
75 0872 0 1 552	Budget Authority	963,629	56,854
	Outlays	366,179	21,605
National Heart, Lung and Blood Institute (Education and training of heal			
75 0872 0 1 553	Budget Authority	43,230	2,551
	Outlays	1,729	102
National Institute of Dental Research (Health research)			
75 0873 0 1 552	Budget Authority	126,135	7,442
	Outlays	60,545	3,572
National Institute of Dental Research (Education and training of health			
75 0873 0 1 553	Budget Authority	5,771	340
	Outlays	3,174	187
National Institute of Diabetes and Digestive and Kidney Diseases (Health			
75 0884 0 1 552	Budget Authority	535,093	31,570
	Outlays	171,230	10,103
National Institute of Diabetes and Digestive and Kidney Diseases (Educat			
75 0884 0 1 553	Budget Authority	22,712	1,340
	Outlays	4,542	268
National Institute of Allergy and Infectious Diseases (Health research)			
75 0885 0 1 552	Budget Authority	652,767	38,513
	Outlays	221,941	13,095
National Institute of Allergy and Infectious Diseases (Education and tra			
75 0885 0 1 553	Budget Authority	13,613	803
	Outlays	1,906	112
National Institute of Neurological and Communicative Disorders and Strok			
75 0886 0 1 552	Budget Authority	542,554	32,011
	401(C) Authority - Off. Coll.	12	1
	Outlays	184,480	10,885
National Institute of Neurological and Communicative Disorders and Strok			
75 0886 0 1 553	Budget Authority	15,235	899
	Outlays	4,418	261
National Eye Institute (Health research)			
75 0887 0 1 552	Budget Authority	228,460	13,479
	Outlays	75,392	4,448

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
National Eye Institute (Education and training of health care work force			
75 0887 0 1 553	Budget Authority	6,143	362
	Outlays	1,536	91
National Institute of Arthritis and Musculoskeletal and Skin Diseases (H			
75 0888 0 1 552	Budget Authority	147,800	8,720
	Outlays	47,296	2,790
National Institute of Arthritis and Musculoskeletal and Skin Diseases (E			
75 0888 0 1 553	Budget Authority	6,181	365
	Outlays	1,236	73
National Center for Nursing Research (Health research)			
75 0889 0 1 552	Budget Authority	21,373	1,261
	Outlays	1,710	101
National Center for Nursing Research (Education and training of health c			
75 0889 0 1 553	Budget Authority	3,017	178
	Outlays	1,368	80
Alcohol, Drug Abuse, and Mental Health Administration			
Federal subsidy for Saint Elizabeths Hospital			
75 1300 0 1 551	Budget Authority	68,384	4,035
	Outlays	68,384	4,035
Alcohol, drug abuse, and mental health (Health care services)			
75 1361 0 1 551	Budget Authority	825,537	48,707
	Outlays	544,854	32,146
Alcohol, drug abuse, and mental health (Health research)			
75 1361 0 1 552	Budget Authority	565,016	33,336
	Outlays	502,864	29,669
Alcohol, drug abuse, and mental health (Education and training of health			
75 1361 0 1 553	Budget Authority	42,448	2,504
	Outlays	33,534	1,979
Office of Assistant Secretary for Health			
Public health service management (Health care services)			
75 1101 0 1 551	Budget Authority	40,861	2,411
	401(C) Authority - Off. Coll.	25	1
	Outlays	24,133	1,423
Public health service management (Health research)			
75 1101 0 1 552	Budget Authority	71,323	4,208
	Outlays	48,500	2,862
Health Care Financing Administration			
Federal supplementary medical insurance trust fund			
20 8004 0 7 571	401(C) Other - incl. ob. limit	66,384	3,916
	401(C) Authority - Spec. Rules	460,000	460,000
	Obligation Limitation	1,112,753	65,653
	Outlays	1,545,047	524,018
Federal hospital insurance trust fund			
20 8005 0 7 571	401(C) Other - incl. ob. limit	255,693	15,086
	401(C) Authority - Spec. Rules	997,000	997,000
	Obligation Limitation	854,704	50,428
	Outlays	1,936,471	1,852,430
Program management (Health care services)			
75 0511 0 1 551	Budget Authority	92,578	5,462
	Outlays	78,691	4,643
Program management (Health research)			
75 0511 0 1 552	Budget Authority	10,000	590
	Outlays	8,000	472
Social Security Administration			
Supplemental security income program			
75 0406 0 1 609	401(C) Authority	827,283	48,810
	Outlays	827,283	48,810
Special benefits for disabled coal miners			
75 0409 0 1 601	401(C) Authority	6,749	398
	Outlays	6,749	398
Family Support Administration			
Program administration			
75 1500 0 1 609	Budget Authority	83,819	4,945
	Outlays	69,570	4,105
Family support payments to States			
75 1501 0 1 609	401(C) Authority	1,153,000	68,027
	Outlays	1,153,000	68,027
Low income home energy assistance			
75 1502 0 1 609	Budget Authority	1,596,177	94,174
	Outlays	1,452,521	85,699
Refugee and entrant assistance			
75 1503 0 1 609	Budget Authority	361,504	21,329
	Outlays	231,363	13,650
Community services block grant			
75 1504 0 1 506	Budget Authority	398,346	23,502
	Outlays	274,062	16,170

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Work incentives			
75 1505 0 1 504	Budget Authority	96,438	5,690
	Outlays	90,652	5,348
Interim assistance to States for legalization			
75 1508 0 1 506	401(C) Other - incl. ob. limit	665,000	39,235
	Outlays	335,000	19,765
Human Development Services			
Social services block grant			
75 1634 0 1 506	401(C) Authority	2,700,000	159,300
	Outlays	2,589,300	152,769
Human development services			
75 1636 0 1 506	Budget Authority	2,559,644	151,019
	Outlays	1,458,997	86,081
Payments to States for foster care and adoption assistance			
75 1645 0 1 506	401(C) Authority - Spec. Rules	5,132	5,132
	Outlays	3,968	3,968
Departmental Management			
General Departmental management			
75 0120 0 1 609	Budget Authority	71,563	4,222
	Outlays	53,672	3,167
Policy research			
75 0122 0 1 609	Budget Authority	5,084	300
	Outlays	3,050	180
Office of the Inspector General			
75 0128 0 1 609	Budget Authority	37,838	2,232
	Outlays	28,379	1,674
Office for Civil Rights			
75 0135 0 1 751	Budget Authority	17,301	1,021
	Outlays	15,225	898
Office of Consumer Affairs			
75 0137 0 1 506	Budget Authority	1,758	104
	Outlays	1,635	96
TOTAL FOR Department of Health and Human Services, except So			
	Budget Authority	16,469,326	971,687
	Budget Authority - Spec. Rules	28,553	28,553
	401(C) Authority	4,687,032	276,535
	401(C) Authority - Off. Coll.	4,614	272
	401(C) Other - incl. ob. limit	987,077	58,237
	401(C) Authority - Spec. Rules	1,462,904	1,462,904
	Direct Loan Limitation	995	59
	Obligation Limitation	1,967,457	116,081
	Outlays	17,637,893	2,434,579
Department of the Interior			
Bureau of Land Management			
Management of lands and resources			
14 1109 0 1 302	Budget Authority	448,691	26,473
	Outlays	381,659	22,518
Construction and access			
14 1110 0 1 302	Budget Authority	3,595	212
	Outlays	899	53
Payments in lieu of taxes			
14 1114 0 1 806	Budget Authority	109,410	6,455
	Outlays	109,410	6,455
Oregon and California grant lands			
14 1116 0 1 302	Budget Authority	61,628	3,636
	Outlays	45,605	2,691
Special acquisition of lands and minerals			
14 1117 0 1 302	401(C) Authority	1,300	77
	Outlays	1,300	77
Service charges, deposits, and forfeitures			
14 5017 0 2 302	Budget Authority	6,000	354
	Outlays	4,248	251
Land acquisition			
14 5033 0 2 302	Budget Authority	9,268	547
	Outlays	4,597	271
Operation and maintenance of quarters			
14 5048 0 2 302	401(C) Authority	261	15
	Outlays	217	13
Range improvements			
14 5132 0 2 302	Budget Authority	8,506	502
	Outlays	5,376	317
Miscellaneous permanent appropriations (Conservation and land management			
14 9921 0 2 302	401(C) Authority	6,773	400
	Outlays	6,529	385

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Miscellaneous permanent appropriations (Other general purpose fiscal ass			
14 9921 0 2 806	401(C) Authority	76,936	4,539
Miscellaneous trust funds			
14 9971 0 7 302	Budget Authority	100	6
	401(C) Authority	625	37
	Outlays	369	21
Minerals Management Service			
Leasing and royalty management			
14 1917 0 1 302	Budget Authority	177,667	10,482
	Outlays	115,484	6,814
Payments to States from receipts under Mineral Leasing Act			
14 5003 0 2 806	401(C) Authority	435,094	25,671
	Outlays	398,981	23,540
Office of Surface Mining Reclamation and Enforcement			
Regulation and technology			
14 1801 0 1 302	Budget Authority	107,043	6,316
	Outlays	62,406	3,682
Abandoned mine reclamation fund			
14 5015 0 2 302	Budget Authority	215,360	12,706
	Outlays	64,008	3,776
Bureau of Reclamation			
Loan program			
14 0667 0 1 301	Budget Authority	26,022	1,535
	Direct Loan Limitation	27,766	1,638
	Outlays	16,004	944
Construction program			
14 0684 0 1 301	Budget Authority	712,305	42,026
	401(C) Authority - Off. Coll.	3,000	177
	Outlays	601,336	35,479
Lower Colorado River Basin development fund			
14 4079 0 3 301	401(C) Authority - Off. Coll.	98,296	5,799
	Outlays	98,296	5,799
Upper Colorado River Basin fund			
14 4081 0 3 301	401(C) Authority - Off. Coll.	30,150	1,779
	Outlays	30,150	1,779
Working capital fund			
14 4524 0 4 301	Budget Authority	4,000	236
	Outlays	3,200	189
Emergency fund			
14 5043 0 2 301	Budget Authority	1,000	59
	Outlays	605	36
General investigations			
14 5060 0 2 301	Budget Authority	14,250	841
	401(C) Authority - Off. Coll.	75	4
	Outlays	9,252	545
Operation and maintenance			
14 5064 0 2 301	Budget Authority	187,731	11,076
	401(C) Authority - Off. Coll.	8,313	490
	Outlays	154,180	9,096
General administrative expenses			
14 5065 0 2 301	Budget Authority	48,313	2,850
	Outlays	43,482	2,565
Colorado River dam fund, Boulder Canyon project			
14 5656 0 2 301	401(C) Other - incl. ob. limit	38,347	2,262
	Outlays	19,033	1,123
Reclamation trust funds			
14 8070 0 7 301	401(C) Authority	50,016	2,951
	Outlays	47,215	2,786
Miscellaneous permanent appropriations (Other general purpose fiscal ass			
14 9922 0 2 806	401(C) Authority	299	18
	Outlays	134	8
Geological Survey			
Surveys, investigations and research			
14 0804 0 1 306	Budget Authority	472,203	27,860
	401(C) Authority	250	15
	401(C) Authority - Off. Coll.	76,507	4,514
	Outlays	523,043	30,860
Operation and maintenance of quarters			
14 5055 0 2 306	401(C) Authority	75	4
	Outlays	30	2
Bureau of Mines			
Mines and minerals			
14 0959 0 1 306	Budget Authority	154,250	9,101
	Outlays	104,890	6,189

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Helium fund			
14 4053 0 3 306	401(C) Authority - Off. Coll.	3,730	220
	Outlays	3,730	220
United States Fish and Wildlife Service			
Resource management			
14 1611 0 1 303	Budget Authority	357,988	21,121
	401(C) Authority - Off. Coll.	1,000	59
	Outlays	286,800	16,921
Construction			
14 1612 0 1 303	Budget Authority	36,954	2,180
	Outlays	14,419	850
Land acquisition			
14 5020 0 2 303	Budget Authority	64,790	3,823
	Outlays	33,481	1,975
Operation and maintenance of quarters			
14 5050 0 2 303	401(C) Authority	1,727	102
	Outlays	1,209	71
National wildlife refuge fund			
14 5091 0 2 806	Budget Authority	5,882	347
	401(C) Other - incl. ob. limit	6,040	356
	Outlays	8,304	490
Migratory bird conservation account			
14 5137 0 2 303	Budget Authority	1,046	62
	401(C) Authority	29,378	1,733
	Outlays	21,611	1,275
Sport fish restoration			
14 8151 0 7 303	401(C) Authority	194,760	11,491
	Outlays	77,904	4,596
Contributed funds			
14 8216 0 7 303	401(C) Authority	140	8
	Outlays	140	8
Miscellaneous permanent appropriations			
14 9923 0 2 303	Budget Authority	2,950	174
	401(C) Authority	119,200	7,033
	Outlays	62,550	3,690
National Park Service			
Operation of the national park system			
14 1036 0 1 303	Budget Authority	759,825	44,829
	401(C) Authority - Off. Coll.	2,294	135
	Outlays	569,525	33,601
John F. Kennedy Center for the Performing Arts			
14 1038 0 1 303	Budget Authority	5,146	304
	Outlays	3,860	228
Construction			
14 1039 0 1 303	Budget Authority	125,788	7,421
	401(C) Authority - Off. Coll.	10,000	590
	Outlays	48,959	2,888
National recreation and preservation			
14 1042 0 1 303	Budget Authority	13,661	806
	Outlays	12,295	725
Illinois and Michigan canal national heritage-corridor Commission			
14 1043 0 1 303	Budget Authority	262	15
	Outlays	131	8
Land acquisition			
14 5035 0 2 303	Budget Authority	95,017	5,606
	401(C) Authority	30,000	1,770
	Outlays	49,080	2,896
Operation and maintenance of quarters			
14 5049 0 2 303	401(C) Authority	8,829	521
	Outlays	5,915	349
National park system visitor facilities fund			
14 5078 0 2 303	Budget Authority	0	0
Historic preservation fund			
14 5140 0 2 303	Budget Authority	29,437	1,737
	Outlays	15,160	894
Miscellaneous permanent appropriations			
14 9924 0 2 303	401(C) Authority	1,069	63
	Outlays	428	25
Bureau of Indian Affairs			
Operation of Indian programs (Conservation and land management)			
14 2100 0 1 302	Budget Authority	127,200	7,504
	Outlays	101,270	5,975
Operation of Indian programs (Area and regional development)			
14 2100 0 1 452	Budget Authority	614,061	36,230
	401(C) Authority - Off. Coll.	3,000	177
	Outlays	502,232	29,632

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Operation of Indian programs (Elementary, secondary, and vocational educ			
14 2100 0 1 501	Budget Authority	251,048	14,812
	Outlays	204,604	12,072
Construction			
14 2301 0 1 452	Budget Authority	113,044	6,670
	Outlays	46,198	2,726
Miscellaneous payments to Indians			
14 2303 0 1 452	Budget Authority	13,914	821
	Outlays	12,690	749
Road construction			
14 2364 0 1 452	Budget Authority	1,045	62
	401(C) Authority - Off. Coll.	1,000	59
	Outlays	1,941	115
Revolving fund for loans			
14 4409 0 3 452	Direct Loan Limitation	13,000	767
	Outlays	13,000	767
Indian loan guaranty and insurance fund			
14 4410 0 3 452	Budget Authority	1,916	113
	Guaranteed Loan Limitation	34,907	2,060
	Outlays	1,916	113
Operation and maintenance of quarters			
14 5051 0 2 452	401(C) Authority	7,366	435
	Outlays	1,576	93
Miscellaneous permanent appropriations (Area and regional development)			
14 9925 0 2 452	401(C) Authority	55,779	3,291
	Outlays	31,906	1,882
Miscellaneous permanent appropriations (Other general government)			
14 9925 0 2 808	401(C) Authority	2,000	118
	Outlays	2,000	118
Territorial and International Affairs			
Administration of territories			
14 0412 0 1 808	Budget Authority	45,748	2,699
	Outlays	25,253	1,490
Trust Territory of the Pacific Islands			
14 0414 0 1 808	Budget Authority	43,701	2,578
	Outlays	38,894	2,295
Compact of free association			
14 0415 0 1 808	Budget Authority	18,047	1,065
	401(C) Authority	14,880	878
	Outlays	32,927	1,943
Office of the Secretary			
Salaries and expenses			
14 0102 0 1 306	Budget Authority	50,145	2,959
	Outlays	42,623	2,515
Construction management			
14 0103 0 1 306	Budget Authority	1,903	112
	Outlays	1,715	101
Office of the Solicitor			
Office of the Solicitor			
14 0107 0 1 306	Budget Authority	24,395	1,439
	Outlays	21,956	1,295
Office of Inspector General			
Office of Inspector General			
14 0104 0 1 306	Budget Authority	18,785	1,108
	Outlays	16,907	998
TOTAL FOR Department of the Interior			
	Budget Authority	5,591,040	329,870
	401(C) Authority	1,036,757	61,170
	401(C) Authority - Off. Coll.	237,365	14,003
	401(C) Other - incl. ob. limit	44,387	2,618
	Direct Loan Limitation	40,766	2,405
	Guaranteed Loan Limitation	34,907	2,060
	Outlays	5,167,047	304,853
Department of Justice			
General Administration			
Salaries and expenses			
15 0129 0 1 751	Budget Authority	93,108	5,493
	Outlays	83,425	4,922
United States Parole Commission			
Salaries and expenses			
15 1061 0 1 751	Budget Authority	12,309	726
	Outlays	10,586	625
Legal Activities			
Salaries and expenses, Foreign Claims Settlement Commission			
15 0100 0 1 153	Budget Authority	527	31
	Outlays	382	23

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Salaries and expenses, General Legal Activities			
15 0128 0 1 752	Budget Authority	250,215	14,763
	Outlays	217,687	12,844
Fees and expenses of witnesses			
15 0311 0 1 752	Budget Authority	55,242	3,259
	Outlays	38,725	2,285
Salaries and expenses, Antitrust Division			
15 0319 0 1 752	Budget Authority	47,367	2,795
	Outlays	38,841	2,292
Salaries and expenses, United States Attorneys			
15 0322 0 1 752	Budget Authority	401,816	23,707
	Outlays	353,598	20,862
Salaries and expenses, United States Marshals Service			
15 0324 0 1 752	Budget Authority	197,156	11,632
	401(C) Authority - Off. Coll.	4,000	236
	Outlays	181,440	10,705
Independent counsel			
15 0327 0 1 752	401(C) Authority	6,000	354
	Outlays	6,000	354
Salaries and expenses, Community Relations Service			
15 0500 0 1 752	Budget Authority	35,408	2,089
	Outlays	30,097	1,776
Support of United States prisoners			
15 1020 0 1 752	Budget Authority	101,122	5,966
	Outlays	60,673	3,579
Assets forfeiture fund			
15 5042 0 2 752	Budget Authority	167,356	9,874
	Outlays	66,942	3,950
United States trustees system fund			
15 5073 0 2 752	Budget Authority	49,903	2,944
	Outlays	44,913	2,650
Federal Bureau of Investigation			
Salaries and expenses			
15 0200 0 1 751	Budget Authority	1,481,199	87,390
	401(C) Authority - Off. Coll.	40,211	2,372
	Outlays	1,225,170	72,285
Drug Enforcement Administration			
Salaries and expenses			
15 1100 0 1 751	Budget Authority	520,690	30,721
	401(C) Authority - Off. Coll.	1,500	89
	Outlays	392,018	23,130
Immigration and Naturalization Service			
Salaries and expenses			
15 1217 0 1 751	Budget Authority	768,845	45,362
	401(C) Authority - Off. Coll.	695	41
	Outlays	615,771	36,331
Immigration legalization			
15 5086 0 2 751	401(C) Authority	89,786	5,297
	Outlays	78,620	4,639
Immigration user fee			
15 5087 0 2 751	401(C) Authority	92,000	5,428
	Outlays	82,800	4,885
Federal Prison System			
Buildings and facilities			
15 1003 0 1 753	Budget Authority	210,210	12,402
	Outlays	21,021	1,240
National Institute of Corrections			
15 1004 0 1 754	Budget Authority	10,033	592
	Outlays	4,013	237
Salaries and expenses			
15 1060 0 1 753	Budget Authority	804,498	47,466
	401(C) Authority - Off. Coll.	11,825	698
	Outlays	758,399	44,746
Federal Prison Industries, Incorporated			
15 4500 0 4 753	Obligation Limitation	2,374	140
	Outlays	2,374	140
Office of Justice Programs			
Justice assistance			
15 0401 0 1 754	Budget Authority	238,860	14,093
	Outlays	88,378	5,214
Crime victims fund			
15 5041 0 2 754	401(C) Other - incl. ob. limit	85,000	5,015
	Outlays	42,500	2,508

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
TOTAL FOR Department of Justice			
	Budget Authority	5,445,864	321,305
	401(C) Authority	187,786	11,079
	401(C) Authority - Off. Coll.	58,231	3,436
	401(C) Other - incl. ob. limit	85,000	5,015
	Obligation Limitation	2,374	140
	Outlays	4,444,373	262,222
Department of Labor			
Employment and Training Administration			
Program administration			
16 0172 0 1 504	Budget Authority	74,867	4,417
	Outlays	59,894	3,534
Training and employment services			
16 0174 0 1 504	Budget Authority	3,965,907	233,989
	Outlays	122,943	7,254
Community service employment for older Americans			
16 0175 0 1 504	Budget Authority	345,173	20,365
	Outlays	69,035	4,073
State unemployment insurance and employment service operations (Training			
16 0179 0 1 504	Budget Authority	23,344	1,377
	Outlays	5,229	309
Federal unemployment benefits and allowances			
16 0326 0 1 603	401(C) Authority	134,000	7,906
	Outlays	132,000	7,788
Advances to the unemployment trust fund and other funds (Unemployment co			
16 0327 0 1 603	Budget Authority	22,000	1,298
	Outlays	22,000	1,298
Unemployment trust fund (Training and employment)			
20 8042 0 7 504	Obligation Limitation	1,015,954	59,941
	Outlays	405,774	23,960
Unemployment trust fund (Unemployment compensation)			
20 8042 0 7 603	401(C) Other - incl. ob. limit	148,000	8,732
	Obligation Limitation	1,777,137	104,851
	Outlays	1,925,137	113,583
Labor-Management Services			
Salaries and expenses			
16 0104 0 1 505	Budget Authority	80,887	4,772
	Outlays	70,533	4,161
Pension Benefit Guaranty Corporation			
Pension Benefit Guaranty Corporation fund			
16 4204 0 3 601	Obligation Limitation	40,900	2,413
	Outlays	40,900	2,413
Employment Standards Administration			
Salaries and expenses			
16 0105 0 1 505	Budget Authority	219,294	12,938
	Outlays	188,154	11,101
Special workers' compensation expenses			
16 9971 0 7 601	Obligation Limitation	486	29
	Outlays	486	29
Black lung disability trust fund			
20 8144 0 7 601	401(C) Authority	54,083	3,191
	Outlays	54,083	3,191
Occupational Safety and Health Administration			
Salaries and expenses			
16 0400 0 1 554	Budget Authority	247,520	14,604
	Outlays	215,342	12,705
Mine Safety and Health Administration			
Salaries and expenses			
16 1200 0 1 554	Budget Authority	169,451	9,998
	Outlays	154,200	9,098
Bureau of Labor Statistics			
Salaries and expenses			
16 0200 0 1 505	Budget Authority	185,253	10,930
	Outlays	165,431	9,760
Departmental Management			
Office of the Inspector General			
16 0106 0 1 505	Budget Authority	39,066	2,305
	Outlays	29,534	1,743
Salaries and expenses			
16 0165 0 1 505	Budget Authority	121,385	7,162
	Outlays	105,848	6,245

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
TOTAL FOR Department of Labor			
	Budget Authority	5,494,147	324,155
	401(C) Authority	188,083	11,097
	401(C) Other - incl. ob. limit	148,000	8,732
	Obligation Limitation	2,834,477	167,234
	Outlays	3,766,523	222,225
Department of State			
Department of State			
FMS interest buydown			
11 8882 0 1 152	401(C) Authority	270,000	15,930
Administration of Foreign Affairs			
Salaries and expenses			
19 0113 0 1 153	Budget Authority	1,780,623	105,057
	Outlays	1,406,692	82,995
Protection of foreign missions and officials			
19 0520 0 1 153	Budget Authority	9,378	553
	Outlays	3,751	221
Emergencies in the diplomatic and consular service			
19 0522 0 1 153	Budget Authority	4,168	246
	Direct Loan Limitation	729	43
	Outlays	2,859	169
Payment to the American Institute in Taiwan			
19 0523 0 1 153	Budget Authority	11,462	676
	Outlays	9,651	569
Acquisition and maintenance of buildings abroad			
19 0535 0 1 153	Budget Authority	326,710	19,276
	401(C) Authority - Off. Coll.	3,300	195
	Outlays	63,415	3,742
Representation allowances			
19 0545 0 1 153	Budget Authority	4,689	277
	Outlays	4,028	238
International Organizations and Conferences			
Contributions for international peacekeeping activities			
19 1124 0 1 153	Budget Authority	30,635	1,807
	Outlays	30,635	1,807
International conferences and contingencies			
19 1125 0 1 153	Budget Authority	6,254	369
	Outlays	4,253	251
Contributions to international organizations			
19 1126 0 1 153	Budget Authority	500,160	29,509
	401(C) Authority - Off. Coll.	862	51
	Outlays	476,014	28,085
International Commissions			
Salaries and expenses, IBWC			
19 1069 0 1 301	Budget Authority	10,848	640
	Outlays	9,329	550
Construction, IBWC			
19 1078 0 1 301	Budget Authority	3,306	195
	Outlays	661	39
American sections, international commissions			
19 1082 0 1 301	Budget Authority	4,542	268
	Outlays	3,070	181
International fisheries commissions			
19 1087 0 1 302	Budget Authority	10,991	648
	Outlays	10,980	648
Other			
United States emergency refugee and migration assistance fund			
11 0040 0 1 151	Budget Authority	25,008	1,475
International narcotics control			
11 1022 0 1 151	Budget Authority	102,987	6,076
	Outlays	36,045	2,127
Anti-terrorism assistance			
19 0114 0 1 152	Budget Authority	10,253	605
	Outlays	4,614	272
Soviet-East European research and training			
19 0118 0 1 153	Budget Authority	4,793	283
	Outlays	575	34
Payment to the Asia Foundation			
19 0525 0 1 153	Budget Authority	14,275	842
	Outlays	12,134	716
Migration and refugee assistance			
19 1143 0 1 151	Budget Authority	352,779	20,814
	Outlays	236,362	13,945
U.S. bilateral science and technology agreements			
19 1151 0 1 153	Budget Authority	1,980	117
	Outlays	1,980	117

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Fishermen's protective fund			
19 5116 0 2 376	Budget Authority	999	59
	Outlays	999	59
Fishermen's guaranty fund			
19 5121 0 2 376	Budget Authority	1,799	106
	Outlays	1,349	80
International Center, Washington, D.C.			
19 5151 0 2 153	401(C) Authority	410	24
	Outlays	410	24
TOTAL FOR Department of State			
	Budget Authority	3,218,639	189,898
	401(C) Authority	270,410	15,954
	401(C) Authority - Off. Coll.	4,162	246
	Direct Loan Limitation	729	43
	Outlays	2,319,806	136,869
Department of the Treasury			
Departmental Offices			
Salaries and expenses			
20 0101 0 1 803	Budget Authority	58,698	3,463
	401(C) Authority - Off. Coll.	4,342	256
	Outlays	55,116	3,252
International affairs			
20 0171 0 1 803	Budget Authority	24,359	1,437
	Outlays	21,071	1,243
Federal Law Enforcement Training Center			
Salaries and expenses			
20 0104 0 1 751	Budget Authority	30,821	1,818
	Outlays	27,739	1,637
Financial Management Service			
Salaries and expenses			
20 1801 0 1 803	Budget Authority	277,688	16,384
	Outlays	241,589	14,254
St Lawrence Seaway toll rebate program			
20 8865 0 7 808	Budget Authority	10,298	608
	Outlays	10,298	608
Federal Financing Bank			
Federal Financing Bank			
20 4521 0 4 803	401(C) Authority - Off. Coll.	2,000	118
	Outlays	2,000	118
Bureau of Alcohol, Tobacco and Firearms			
Salaries and expenses			
20 1000 0 1 751	Budget Authority	229,766	13,556
	Outlays	206,789	12,201
United States Customs Service			
Salaries and expenses			
20 0602 0 1 751	Budget Authority	1,019,802	60,168
	401(C) Authority	96,100	5,670
	Outlays	948,517	55,962
Operation and maintenance, air interdiction program			
20 0604 0 1 751	Budget Authority	148,485	8,761
	Outlays	81,667	4,818
Payments to the Government of Puerto Rico			
20 0606 0 1 751	Budget Authority	8,128	480
	Outlays	8,128	480
Customs forfeiture fund			
20 5693 0 2 803	Budget Authority	10,451	617
	Outlays	10,451	617
Customs services at small airports			
20 5694 0 2 808	Budget Authority	514	30
	Outlays	514	30
Refunds, transfers and expenses, unclaimed, abandoned and seized goods			
20 8789 0 7 803	401(C) Authority	17,778	1,049
	Outlays	17,778	1,049
Bureau of Engraving and Printing			
Bureau of Engraving and Printing fund			
20 4502 0 4 803	401(C) Authority - Off. Coll.	327,823	19,342
	Outlays	327,823	19,342
United States Mint			
Salaries and expenses			
20 1616 0 1 803	Budget Authority	44,367	2,618
	401(C) Authority - Off. Coll.	109,957	6,487
	Outlays	147,669	8,712
Bureau of the Public Debt			
Administering the public debt			
20 0560 0 1 803	Budget Authority	225,421	13,300
	Outlays	180,337	10,640

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Payment of Government losses in shipment			
20 1710 0 1 803	401(C) Authority	960	57
	Outlays	960	57
Internal Revenue Service			
Salaries and expenses			
20 0911 0 1 803	Budget Authority	91,877	5,421
	Outlays	71,664	4,228
Processing tax returns			
20 0912 0 1 803	Budget Authority	1,815,081	107,090
	Outlays	1,452,065	85,672
Examinations and appeals			
20 0913 0 1 803	Budget Authority	1,879,146	110,870
	Outlays	1,728,814	102,000
Investigation, collection and taxpayer service			
20 0914 0 1 803	Budget Authority	1,555,702	91,786
	Outlays	1,400,132	82,608
Federal tax lien revolving fund			
20 4413 0 3 803	401(C) Authority - Off. Coll.	6,780	400
	Outlays	6,780	400
United States Secret Service			
Contribution for annuity benefits			
20 1407 0 1 751	401(C) Authority	18,000	1,062
	Outlays	18,000	1,062
Salaries and expenses			
20 1408 0 1 751	Budget Authority	386,808	22,822
	Outlays	309,446	18,257
TOTAL FOR Department of the Treasury			
	Budget Authority	7,817,412	461,229
	401(C) Authority	132,838	7,838
	401(C) Authority - Off. Coll.	450,902	26,603
	Outlays	7,275,347	429,247
Department of Health and Human Services, Social Security			
Social Security			
Federal old-age and survivors insurance trust fund			
20 8006 0 7 651	Obligation Limitation	1,596,524	94,195
	Outlays	1,155,488	68,174
Federal disability insurance trust fund			
20 8007 0 7 651	Obligation Limitation	458,741	27,066
	Outlays	368,583	21,747
TOTAL FOR Department of Health and Human Services, Social Se			
	Obligation Limitation	2,055,265	121,261
	Outlays	1,524,071	89,921
Department of Education			
Office of Elementary and Secondary Education			
Indian education			
91 0101 0 1 501	Budget Authority	69,151	4,080
	Outlays	10,096	596
Impact aid			
91 0102 0 1 501	Budget Authority	738,232	43,556
	Outlays	588,371	34,714
Compensatory education for the disadvantaged			
91 0900 0 1 501	Budget Authority	4,518,678	266,602
	Outlays	542,241	31,992
School improvement programs			
91 1000 0 1 501	Budget Authority	1,084,005	63,956
	Outlays	130,081	7,675
Office of Bilingual Education and Minority Languages Affairs			
Bilingual, immigrant, and refugee education			
91 1300 0 1 501	Budget Authority	199,805	11,788
	Outlays	23,977	1,415
Office of Special Education and Rehabilitative Services			
Education for the handicapped			
91 0300 0 1 501	Budget Authority	1,947,518	114,904
	Outlays	241,492	14,248
Rehabilitation services and handicapped research			
91 0301 0 1 506	Budget Authority	219,335	12,941
	401(C) Authority - Spec. Rules	62,078	62,078
	Outlays	216,688	57,764
Payments to institutions for the handicapped (Elementary, secondary, and			
91 0600 0 1 501	Budget Authority	5,487	324
	Outlays	5,487	324
Payments to institutions for the handicapped (Higher education)			
91 0601 0 1 502	Budget Authority	32,921	1,942
	Outlays	32,921	1,942

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Payments to institutions for the handicapped (Higher education)			
91 0602 0 1 502	Budget Authority	64,807	3,824
	Outlays	60,919	3,594
Promotion of education for the blind			
91 8893 0 7 501	401(C) Authority	10	1
	Outlays	5	0
Office of Vocational and Adult Education			
Vocational and adult education			
91 0400 0 1 501	Budget Authority	1,047,790	61,820
	401(C) Authority	7,148	422
	Outlays	126,592	7,469
Office of Postsecondary Education			
Student financial assistance			
91 0200 0 1 502	Budget Authority	5,777,673	340,883
	Outlays	1,074,647	63,404
Higher education			
91 0201 0 1 502	Budget Authority	556,919	32,858
	Outlays	82,981	4,896
College construction loan insurance			
91 0210 0 1 502	Budget Authority	19,952	1,177
	Outlays	19,952	1,177
Guaranteed student loans			
91 0230 0 1 502	401(C) Authority - Spec. Rules	41,510	41,510
	Outlays	26,450	26,450
College housing and academic facilities loans			
91 0242 0 1 502	Direct Loan Limitation	64,845	3,826
	Outlays	1,675	99
Howard University			
91 0603 0 1 502	Budget Authority	179,436	10,587
	Outlays	171,003	10,089
College housing loans			
91 4250 0 3 502	401(C) Authority - Off. Coll.	753	44
	Outlays	678	40
Office of Educational Research and Improvement			
Libraries			
91 0104 0 1 503	Budget Authority	140,763	8,305
	Outlays	49,408	2,915
Education research and statistics			
91 1100 0 1 503	Budget Authority	70,362	4,151
	Outlays	30,256	1,785
Departmental Management			
Office for civil rights			
91 0700 0 1 751	Budget Authority	42,768	2,523
	Outlays	35,497	2,094
Program administration (Research and general education aids)			
91 0800 0 1 503	Budget Authority	254,153	14,995
	Outlays	210,947	12,446
Office of the Inspector General			
91 1400 0 1 751	Budget Authority	18,530	1,093
	Outlays	15,380	907
TOTAL FOR Department of Education			
	Budget Authority	16,988,285	1,002,309
	401(C) Authority	7,158	423
	401(C) Authority - Off. Coll.	753	44
	401(C) Authority - Spec. Rules	103,588	103,588
	Direct Loan Limitation	64,845	3,826
	Outlays	3,697,744	288,035
Department of Energy			
Atomic Energy Defense Activities			
Atomic energy defense activities			
89 0220 0 1 053	Budget Authority	6,660,925	492,908
	Unobligated Balances - Defense	660,309	48,863
	Outlays	4,539,165	335,898
Atomic energy defense activities			
89 0221 0 1 053	Budget Authority	1,439,075	106,492
	Outlays	892,227	66,025
Energy Programs			
Geothermal resources development fund			
89 0206 0 1 271	Budget Authority	75	4
	Outlays	75	4
Federal Energy Regulatory Commission			
89 0212 0 1 276	Budget Authority	108,760	6,417
	Outlays	38,066	2,246
Fossil energy research and development			
89 0213 0 1 271	Budget Authority	341,326	20,138
	Outlays	136,530	8,055

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Energy conservation			
89 0215 0 1 272	Budget Authority	335,756	19,810
	401(C) Authority	45,424	2,680
	Outlays	76,236	4,498
Energy information administration			
89 0216 0 1 276	Budget Authority	64,437	3,802
	Outlays	41,884	2,471
Economic regulation			
89 0217 0 1 276	Budget Authority	22,747	1,342
	Outlays	14,331	846
Strategic petroleum reserve			
89 0218 0 1 274	Budget Authority	171,177	10,099
	Outlays	94,147	5,555
Naval petroleum and oil shale reserves			
89 0219 0 1 271	Budget Authority	166,453	9,821
	Outlays	91,549	5,401
General science and research activities			
89 0222 0 1 251	Budget Authority	922,116	54,405
	Outlays	700,808	41,348
Energy supply, R&D activities			
89 0224 0 1 271	Budget Authority	2,142,326	126,397
	Outlays	1,071,163	63,199
Uranium supply and enrichment activities			
89 0226 0 1 271	Budget Authority	1,133,080	66,852
	Outlays	981,498	57,908
SPR petroleum			
89 0233 0 1 274	Budget Authority	457,171	26,973
	Outlays	301,600	17,794
Emergency preparedness			
89 0234 0 1 274	Budget Authority	6,512	384
	Outlays	5,210	307
Clean coal technology			
89 0235 0 1 271	401(C) Authority	525,000	30,975
	Outlays	52,500	3,098
Payments to states under Federal Power Act			
89 5105 0 2 806	401(C) Authority	1,909	113
	Outlays	1,909	113
Nuclear waste disposal fund			
89 5227 0 2 271	Budget Authority	369,832	21,820
	Outlays	184,916	10,910
Power Marketing Administration			
Operation and maintenance, Southeastern Power Administration			
89 0302 0 1 271	Budget Authority	1,165	69
	Outlays	1,025	60
Operation and maintenance, Southwestern Power Administration			
89 0303 0 1 271	Budget Authority	5,210	307
	Outlays	4,585	271
Operation and maintenance, Alaska Power Administration			
89 0304 0 1 271	Budget Authority	765	45
	Outlays	673	40
Bonneville Power Administration fund			
89 4045 0 3 271	401(C) Authority - Off. Coll.	47,500	2,803
	Outlays	41,800	2,466
Colorado river basins power marketing fund, Western Area Power Administr			
89 4452 0 3 271	401(C) Authority - Off. Coll.	7,668	452
	Outlays	6,748	398
Construction, rehabilitation, operation and maintenance, Western Area Po			
89 5068 0 2 271	Budget Authority	37,151	2,192
	Outlays	32,693	1,929
Departmental Administration			
Departmental administration			
89 0228 0 1 276	Budget Authority	403,665	23,816
	Outlays	242,199	14,290
TOTAL FOR Department of Energy			
	Budget Authority	14,789,724	994,093
	401(C) Authority	572,333	33,768
	401(C) Authority - Off. Coll.	55,168	3,255
	Unobligated Balances - Defense	660,309	40,863
	Outlays	9,553,537	645,130
Environmental Protection Agency			
Environmental Protection Agency			
Hazardous substance superfund			
20 8145 0 7 304	Budget Authority	1,177,105	69,449
	401(C) Authority - Off. Coll.	13,200	779
	Obligation Limitation	190,426	11,235
	Outlays	248,621	14,669

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Leaking underground storage tank trust fund			
20 8153 0 7 304	Budget Authority	15,029	887
	Obligation Limitation	5,011	296
	Outlays	2,254	133
Construction grants			
68 0103 0 1 304	Budget Authority	2,400,768	141,645
	Outlays	84,027	4,958
Research and development (Energy supply)			
68 0107 0 1 271	Budget Authority	52,363	3,089
	Outlays	15,185	896
Research and development (Pollution control and abatement)			
68 0107 0 1 304	Budget Authority	141,814	8,367
	Outlays	41,126	2,426
Abatement, control, and compliance			
68 0108 0 1 304	Budget Authority	631,652	37,267
	Direct Loan Limitation	17,662	1,042
	Outlays	284,243	16,770
Buildings and facilities			
68 0110 0 1 304	Budget Authority	24,487	1,445
	Outlays	4,163	246
Salaries and expenses			
68 0200 0 1 304	Budget Authority	807,283	47,630
	401(C) Authority - Off. Coll.	1,800	106
	Outlays	687,991	40,591
Payment to the hazardous substance superfund			
68 0250 0 1 304	Budget Authority	249,614	14,727
	Outlays	249,614	14,727
TOTAL FOR Environmental Protection Agency			
	Budget Authority	5,500,115	324,506
	401(C) Authority - Off. Coll.	15,000	885
	Direct Loan Limitation	17,662	1,042
	Obligation Limitation	195,437	11,531
	Outlays	1,617,224	95,416
Department of Transportation			
Federal Highway Administration			
Access highways to public recreation areas on certain lakes			
69 0503 0 1 401	Budget Authority	1,861	110
	Outlays	372	22
Motor carrier safety			
69 0552 0 1 401	Budget Authority	24,056	1,419
	Outlays	20,448	1,206
Railroad-highway crossings demonstration projects			
69 0557 0 1 401	Budget Authority	2,706	160
	Outlays	541	32
Waste isolation pilot project			
69 0562 0 1 401	Budget Authority	16,155	953
	Outlays	3,231	191
Expressway gap closing demonstration project			
69 0563 0 1 401	Budget Authority	7,969	470
	Outlays	1,594	94
Trust fund share of other highway programs			
69 8009 0 7 401	Budget Authority	5,411	319
	Outlays	1,082	64
Baltimore-Washington Parkway			
69 8014 0 7 401	Budget Authority	14,849	876
	Outlays	2,970	175
Highway safety research and development			
69 8017 0 7 401	Budget Authority	6,929	409
	Outlays	1,386	82
Highway-related safety grants			
69 8019 0 7 401	401(C) Authority	10,000	590
	Obligation Limitation	9,800	578
	Outlays	1,960	116
Motor carrier safety grants			
69 8048 0 7 401	401(C) Authority	60,000	3,540
	Obligation Limitation	48,966	2,889
	Outlays	17,138	1,011
Federal-aid highways			
69 8083 0 7 401	401(C) Authority	13,754,000	811,486
	401(C) Authority - Off. Coll.	1,500	89
	Obligation Limitation	12,278,000	724,402
	Outlays	2,117,500	124,933
Right-of-way revolving fund (trust revolving fund)			
69 8402 0 8 401	Direct Loan Limitation	47,366	2,795

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Miscellaneous appropriations			
69 9911 0 1 401	Budget Authority	12,473	736
	Outlays	2,495	147
Miscellaneous highway trust funds			
69 9972 0 7 401	Budget Authority	43,753	2,581
	Outlays	8,751	516
National Highway Traffic Safety Administration			
Operations and research			
69 0650 0 1 401	Budget Authority	65,589	3,870
	Outlays	42,633	2,515
Operations and research (trust fund share)			
69 8016 0 7 401	Budget Authority	31,803	1,876
	Outlays	20,672	1,220
Highway traffic safety grants			
69 8020 0 7 401	401(C) Authority	162,467	9,586
	Obligation Limitation	133,879	7,899
	Outlays	53,552	3,160
Federal Railroad Administration			
Northeast corridor improvement program			
69 0123 0 1 401	Budget Authority	27,717	1,635
	Outlays	2,772	164
Office of the Administrator			
69 0700 0 1 401	Budget Authority	23,983	1,415
	Outlays	18,520	1,093
Railroad safety			
69 0702 0 1 401	Budget Authority	29,539	1,743
	Outlays	23,631	1,394
Grants to National Railroad Passenger Corporation			
69 0704 0 1 401	Budget Authority	605,194	35,706
	Outlays	544,675	32,136
Railroad safety research and development			
69 0745 0 1 401	Budget Authority	9,689	572
	Outlays	5,813	343
Regional rail reorganization program			
69 4100 0 3 401	401(C) Authority	540	32
	Outlays	540	32
Urban Mass Transportation Administration			
Administrative expenses			
69 1120 0 1 401	Budget Authority	33,696	1,988
	Outlays	30,326	1,789
Research, training, and human resources			
69 1121 0 1 401	Budget Authority	12,730	751
	Outlays	3,819	225
Interstate transfer grants-transit			
69 1127 0 1 401	Budget Authority	128,687	7,593
	Outlays	19,303	1,139
Washington metro			
69 1128 0 1 401	Budget Authority	188,081	11,097
	Outlays	9,404	555
Formula grants			
69 1129 0 1 401	Budget Authority	1,809,384	106,754
	Outlays	689,549	40,683
Discretionary grants			
69 8191 0 7 401	401(C) Authority	1,250,000	73,750
	Obligation Limitation	1,177,981	69,501
	Outlays	105,649	6,233
Federal Aviation Administration			
Operations			
69 1301 0 1 402	Budget Authority	2,455,381	144,867
	401(C) Authority - Off. Coll.	9,100	537
	Outlays	2,198,195	129,694
Headquarters administration			
69 1302 0 1 402	Budget Authority	37,576	2,217
	Outlays	31,940	1,884
Aircraft purchase loan guarantee program			
69 1399 0 1 402	Budget Authority	1,373	81
	Outlays	1,373	81
Trust fund share of FAA operations			
69 8104 0 7 402	Budget Authority	873,187	51,518
	401(C) Authority	750	44
	Outlays	873,887	51,559
Grants-in-aid for airports (Airport and airway trust fund)			
69 8106 0 7 402	401(C) Authority	1,700,000	100,300
	Obligation Limitation	1,322,011	77,999
	Outlays	198,302	11,700

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Facilities and equipment (Airport and airway trust fund)			
69 8107 0 7 402	Budget Authority	1,155,991	68,203
	401(C) Authority - Off. Coll.	2,821	166
	Outlays	95,300	5,622
Research, engineering and development (Airport and airway trust fund)			
69 8108 0 7 402	Budget Authority	160,565	9,473
	401(C) Authority - Off. Coll.	400	24
	Outlays	104,767	6,182
Coast Guard			
Operating expenses			
69 0201 0 1 403	Budget Authority	1,865,174	110,045
	401(C) Authority - Off. Coll.	4,000	236
	Outlays	1,583,109	93,404
Acquisition, construction, and improvements			
69 0240 0 1 403	Budget Authority	257,623	15,200
	Outlays	28,339	1,672
Retired pay			
69 0241 0 1 403	401(C) Authority	37,817	2,231
	Outlays	34,035	2,008
Reserve training			
69 0242 0 1 403	Budget Authority	66,620	3,931
	Outlays	57,959	3,420
Research, development, test, and evaluation			
69 0243 0 1 403	Budget Authority	19,930	1,176
	Outlays	6,776	400
Alteration of bridges			
69 0244 0 1 403	Budget Authority	979	58
	Outlays	225	13
Offshore oil pollution compensation fund			
69 5167 0 2 304	Obligation Limitation	59,394	3,504
Pollution fund			
69 5168 0 2 304	401(C) Authority	5,300	313
	Outlays	1,590	94
Deepwater port liability fund			
69 5170 0 2 304	Obligation Limitation	49,495	2,920
Boat safety			
69 8149 0 7 403	Budget Authority	46,193	2,725
	Outlays	30,485	1,798
Maritime Administration			
Operations and training			
69 1750 0 1 403	Budget Authority	79,288	4,678
	Outlays	67,395	3,976
Federal ship financing fund			
69 4301 0 3 403	401(C) Other - incl. ob. limit	3,820	225
	Outlays	3,438	203
Saint Lawrence Seaway Development Corporation			
Saint Lawrence Seaway Development Corporation			
69 4089 0 3 403	401(C) Authority - Off. Coll.	800	47
	Obligation Limitation	2,117	125
	Outlays	2,831	167
Operations and maintenance			
69 8003 0 7 403	Budget Authority	11,351	670
	Outlays	11,351	670
Office of the Inspector General			
Salaries and expenses			
69 0130 0 1 407	Budget Authority	29,518	1,742
	Outlays	25,504	1,505
Research and Special Programs Administration			
Research and special programs			
69 0104 0 1 407	Budget Authority	13,501	797
	Outlays	8,911	526
Pipeline safety			
69 5172 0 2 407	Budget Authority	8,954	528
	Outlays	8,891	525
Office of the Secretary			
Salaries and expenses			
69 0102 0 1 407	Budget Authority	38,017	2,243
	Outlays	34,215	2,019
Transportation, planning, research and development			
69 0142 0 1 407	Budget Authority	5,238	309
	Outlays	2,079	123
Payments to air carriers, DOT			
69 0150 0 1 402	Budget Authority	24,827	1,465
	Outlays	19,862	1,172

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Working capital fund			
69 4520 0 4 407	Budget Authority	1,884	111
	Outlays	1,884	111
TOTAL FOR Department of Transportation			
	Budget Authority	10,255,424	605,070
	401(C) Authority	16,980,874	1,001,872
	401(C) Authority - Off. Coll.	18,621	1,099
	401(C) Other - incl. ob. limit	3,820	225
	Direct Loan Limitation	47,366	2,795
	Obligation Limitation	15,081,643	889,817
	Outlays	9,182,969	541,798
General Services Administration			
Real Property Activities			
Federal buildings fund			
47 4542 0 4 804	401(C) Authority - Off. Coll.	13,254	782
	Outlays	13,254	782
Personal Property Activities			
Federal supply service			
47 0116 0 1 804	Budget Authority	73,489	4,336
	Outlays	71,284	4,206
Expenses of transportation audit contracts			
47 5246 0 2 804	401(C) Other - incl. ob. limit	15,000	885
	Outlays	15,000	885
Information Resources Management Service			
Operating expenses, information resources management service			
47 0900 0 1 804	Budget Authority	32,911	1,942
	Outlays	27,974	1,650
Federal Property Resources Activities			
Operating expenses, federal property resources service			
47 0533 0 1 804	Budget Authority	12,671	748
	Outlays	8,046	475
Real property relocation			
47 0535 0 1 804	Budget Authority	5,210	307
	Outlays	2,605	154
Expenses, disposal of surplus real and related personal property			
47 5254 0 2 804	401(C) Other - incl. ob. limit	3,960	234
	Outlays	2,376	140
General Activities			
Allowances and office staff for former Presidents			
47 0105 0 1 802	Budget Authority	1,256	74
	Outlays	1,130	67
Office of Inspector General			
47 0108 0 1 804	Budget Authority	25,752	1,519
	Outlays	23,434	1,383
General management and administration, salaries and expenses			
47 0110 0 1 804	Budget Authority	129,258	7,626
	Outlays	103,406	6,101
Consumer information center fund			
47 4549 0 3 376	Budget Authority	1,337	79
	401(C) Authority - Off. Coll.	382	23
	Obligation Limitation	1,727	102
	Outlays	577	35
TOTAL FOR General Services Administration			
	Budget Authority	281,884	16,631
	401(C) Authority - Off. Coll.	13,636	805
	401(C) Other - incl. ob. limit	18,960	1,119
	Obligation Limitation	1,727	102
	Outlays	269,086	15,878
Department of Housing and Urban Development			
Housing Programs			
Housing counseling assistance			
86 0156 0 1 506	Budget Authority	3,501	207
Subsidized housing programs (Community development)			
86 0164 0 1 451	Budget Authority	214,341	12,647
	Outlays	20,840	1,230
Subsidized housing programs (Housing assistance)			
86 0164 0 1 604	Budget Authority	8,090,390	477,333
	Outlays	17,780	1,049
Congregate services program			
86 0178 0 1 604	Budget Authority	4,401	260
Supportive housing demonstration program			
86 0188 0 1 604	Budget Authority	66,850	3,944
	Outlays	1,340	79
Nonprofit sponsor assistance			
86 4042 0 3 604	Direct Loan Limitation	1,000	59
	Outlays	236	14

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Federal Housing Administration fund			
86 4070 0 3 371	401(C) Authority - Off. Coll.	541,682	31,959
	401(C) Other - incl. ob. limit	373,174	22,017
	Direct Loan Limitation	82,601	4,873
	Guaranteed Loan Limitation	100,032,000	5,901,888
	Outlays	956,983	56,461
Housing for the elderly or handicapped fund			
86 4115 0 3 371	Direct Loan Limitation	589,540	34,783
Interstate land sales			
86 5270 0 2 376	401(C) Authority	625	37
	Outlays	625	37
Manufactured home inspection and monitoring			
86 5271 0 2 376	401(C) Authority	5,602	331
	Outlays	3,877	229
Public and Indian Housing Programs			
Payments for operation of low income housing projects			
86 0163 0 1 604	Budget Authority	1,510,900	89,143
	Outlays	695,010	41,006
Government National Mortgage Association			
Guarantees of mortgage-backed securities			
86 4238 0 3 371	401(C) Authority - Off. Coll.	18,785	1,108
	Guaranteed Loan Limitation	150,040,000	8,852,832
	Outlays	16,363	965
Community Planning and Development			
Community development grants			
86 0162 0 1 451	Budget Authority	3,000,960	177,057
	Guaranteed Loan Limitation	150,048	8,853
	Outlays	120,038	7,082
Urban development action grants			
86 0170 0 1 451	Budget Authority	225,072	13,279
Urban homesteading			
86 0171 0 1 451	Budget Authority	15,005	885
	Outlays	15,005	885
Assistance for solar and conservation improvements			
86 0179 0 1 272	Budget Authority	1,768	104
	Outlays	35	2
Emergency shelter grants program			
86 0181 0 1 604	Budget Authority	8,340	492
	Outlays	4,170	246
Rehabilitation loan fund			
86 4036 0 3 451	401(C) Authority - Off. Coll.	33,046	1,950
	Direct Loan Limitation	65,000	3,835
	Outlays	52,546	3,101
Policy Development and Research			
Research and technology			
86 0108 0 1 451	Budget Authority	17,206	1,015
	Outlays	5,162	305
Fair Housing and Equal Opportunity			
Fair housing assistance			
86 0144 0 1 751	Budget Authority	5,002	295
	Outlays	2,001	118
Management and Administration			
Salaries and expenses, Including transfer of funds (Community developmen			
86 0143 0 1 451	Budget Authority	184,907	10,910
	Outlays	154,397	9,109
Salaries and expenses, Including transfer of funds (Housing assistance)			
86 0143 0 1 604	Budget Authority	108,893	6,425
	Outlays	94,410	5,570
Salaries and expenses, Including transfer of funds (Federal law enforcem			
86 0143 0 1 751	Budget Authority	31,528	1,860
	Outlays	25,222	1,488
TOTAL FOR Department of Housing and Urban Development			
	Budget Authority	13,489,064	795,856
	401(C) Authority	6,227	368
	401(C) Authority - Off. Coll.	593,513	35,017
	401(C) Other - incl. ob. limit	373,174	22,017
	Direct Loan Limitation	738,141	43,550
	Guaranteed Loan Limitation	250,230,048	14,763,573
	Outlays	2,186,040	128,976
National Aeronautics and Space Administration			
National Aeronautics and Space Administration			
Research and program management (Space flight)			
80 0103 0 1 253	Budget Authority	898,332	53,002
	401(C) Authority - Off. Coll.	5,000	295
	Outlays	740,734	43,703

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Research and program management (Space science, applications, and techno			
80 0103 0 1 254	Budget Authority	550,588	32,485
	Outlays	497,732	29,366
Research and program management (Supporting space activities)			
80 0103 0 1 255	Budget Authority	68,084	4,017
	Outlays	49,020	2,892
Research and program management (Air transportation)			
80 0103 0 1 402	Budget Authority	337,564	19,916
	Outlays	303,808	17,925
Space flight, control, and data communications			
80 0105 0 1 250	401(C) Authority - Off. Coll.	8,368	494
	Outlays	8,368	494
Space flight, control, and data communications (Space flight)			
80 0105 0 1 253	Budget Authority	3,046,806	179,762
	Outlays	2,041,361	120,440
Space flight, control, and data communications (Supporting space activit			
80 0105 0 1 255	Budget Authority	921,545	54,371
	Outlays	478,282	28,219
Construction of facilities (Space flight)			
80 0107 0 1 253	Budget Authority	17,922	1,057
	Outlays	1,721	102
Construction of facilities (Space science, applications, and technology)			
80 0107 0 1 254	Budget Authority	8,961	529
	Outlays	547	32
Construction of facilities (Supporting space activities)			
80 0107 0 1 255	Budget Authority	114,278	6,742
	Outlays	9,599	566
Construction of facilities (Air transportation)			
80 0107 0 1 402	Budget Authority	44,598	2,631
	Outlays	223	13
Research and development (Space flight)			
80 0108 0 1 253	Budget Authority	927,067	54,697
	401(C) Authority - Off. Coll.	5,781	341
	Outlays	456,905	26,957
Research and development (Space science, applications, and technology)			
80 0108 0 1 254	Budget Authority	1,993,815	117,635
	Outlays	939,087	55,406
Research and development (Supporting space activities)			
80 0108 0 1 255	Budget Authority	18,652	1,100
	Outlays	11,135	657
Research and development (Air transportation)			
80 0108 0 1 402	Budget Authority	376,214	22,197
	Outlays	215,947	12,741
TOTAL FOR National Aeronautics and Space Administration			
	Budget Authority	9,324,428	550,141
	401(C) Authority - Off. Coll.	19,149	1,130
	Outlays	5,754,469	339,513
Office of Personnel Management			
Office of Personnel Management			
Salaries and expenses			
24 0100 0 1 805	Budget Authority	107,572	6,347
	Outlays	102,193	6,029
Government payment for annuitants, employees health benefits			
24 0206 0 1 551	401(C) Authority	2,374,414	140,090
Revolving fund			
24 4571 0 4 805	401(C) Authority - Off. Coll.	1,051	62
	Outlays	1,051	62
Civil service retirement and disability fund			
24 8135 0 7 602	Obligation Limitation	61,400	3,623
	Outlays	61,400	3,623
Employees life insurance fund			
24 8424 0 8 602	401(C) Other - incl. ob. limit	1,050	62
	Outlays	1,050	62
Employees health benefits fund			
24 8440 0 8 551	Obligation Limitation	11,183	660
	Outlays	10,650	628
Retired employees health benefits fund			
24 8445 0 8 551	Obligation Limitation	132	8
	Outlays	126	7
TOTAL FOR Office of Personnel Management			
	Budget Authority	107,572	6,347
	401(C) Authority	2,374,414	140,090
	401(C) Authority - Off. Coll.	1,051	62
	401(C) Other - incl. ob. limit	1,050	62
	Obligation Limitation	72,715	4,291
	Outlays	176,470	10,411

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Small Business Administration			
Small Business Administration			
Salaries and expenses			
73 0100 0 1 376	Budget Authority	238,193	14,053
	Outlays	174,357	10,288
Pollution control equipment contract guarantee revolving fund			
73 4147 0 3 376	Guaranteed Loan Limitation	78,000	4,602
Disaster loan fund			
73 4153 0 3 453	Direct Loan Limitation	326,000	19,234
	Outlays	147,000	8,673
Business loan and investment fund			
73 4154 0 3 376	Budget Authority	105,664	6,234
	Direct Loan Limitation	88,000	5,192
	Guaranteed Loan Limitation	3,890,000	229,510
	Outlays	69,379	4,093
Surety bond guarantees revolving fund			
73 4156 0 3 376	Guaranteed Loan Limitation	1,301,000	76,759
TOTAL FOR Small Business Administration			
	Budget Authority	343,857	20,287
	Direct Loan Limitation	414,000	24,426
	Guaranteed Loan Limitation	5,269,000	310,871
	Outlays	390,736	23,054
Veterans Administration			
Veterans Administration			
Construction, major projects			
36 0110 0 1 703	Budget Authority	419,822	24,769
	Outlays	8,816	520
Construction, minor projects			
36 0111 0 1 703	Budget Authority	121,578	7,173
	Outlays	47,397	2,797
Readjustment benefits			
36 0137 0 1 702	401(C) Authority	559,606	33,017
	Outlays	524,857	30,967
Grants to the Republic of the Philippines			
36 0144 0 1 703	Budget Authority	500	30
General operating expenses			
36 0151 0 1 705	Budget Authority	818,563	48,295
	Outlays	753,078	44,432
Medical administration and miscellaneous operating expenses			
36 0152 0 1 703	Budget Authority	49,223	2,904
	Outlays	36,917	2,178
Burial benefits and miscellaneous assistance			
36 0155 0 1 701	401(C) Authority	123,000	7,257
	Outlays	122,835	7,247
Medical care			
36 0160 0 1 703	Budget Authority	909,034	53,634
	Budget Authority - Spec. Rules	196,039	196,039
	401(C) Authority - Spec. Rules	477	477
	Outlays	989,133	215,394
Medical and prosthetic research			
36 0161 0 1 703	Budget Authority	203,699	12,018
	Outlays	166,218	9,807
Grants for construction of state extended care facilities			
36 0181 0 1 703	Budget Authority	42,013	2,479
Parking garage revolving fund			
36 4538 0 3 703	Budget Authority	4,101	242
	401(C) Authority - Off. Coll.	875	52
	Outlays	1,080	64
TOTAL FOR Veterans Administration			
	Budget Authority	2,568,533	151,544
	Budget Authority - Spec. Rules	196,039	196,039
	401(C) Authority	682,606	40,274
	401(C) Authority - Off. Coll.	875	52
	401(C) Authority - Spec. Rules	477	477
	Outlays	2,650,331	313,406
Other Independent Agencies			
ACTION			
Operating expenses			
44 0103 0 1 506	Budget Authority	170,715	10,072
	Outlays	103,795	6,124
Administrative Conference of the United States			
Salaries and expenses			
95 1700 0 1 751	Budget Authority	1,969	116
	Outlays	1,575	93

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Advisory Committee on Federal Pay			
Salaries and expenses			
95 1800 0 1 805	Budget Authority	211	12
	Outlays	169	10
Advisory Council on Historic Preservation			
Salaries and expenses			
95 2300 0 1 303	Budget Authority	1,817	107
	Outlays	1,744	103
American Battle Monuments Commission			
Salaries and expenses			
74 0100 0 1 705	Budget Authority	13,116	774
	Outlays	9,444	557
Architectural and Transportation Barriers Compliance Board			
Salaries and expenses			
95 3200 0 1 751	Budget Authority	1,995	118
	Outlays	1,476	87
Arms Control and Disarmament Agency			
Arms control and disarmament activities			
94 0100 0 1 153	Budget Authority	31,676	1,869
	Outlays	21,091	1,239
Barry Goldwater Scholarship and Excellence in Education Foundation			
Barry Goldwater Scholarship and Excellence in Education Foundation			
95 8281 0 7 502	401(C) Other - incl. ob. limit	1,085	64
	Outlays	720	42
Board for International Broadcasting			
Grants and expenses			
95 1145 0 1 154	Budget Authority	192,786	11,374
	Outlays	185,075	10,919
Israel relay station			
95 1146 0 1 154	Budget Authority	35,432	2,090
	Outlays	25,582	1,509
Commission of Fine Arts			
Salaries and expenses			
95 2600 0 1 451	Budget Authority	468	28
	Outlays	429	25
National capital arts and cultural affairs			
95 2602 0 1 503	Budget Authority	4,689	277
	Outlays	4,689	277
Commission on Civil Rights			
Salaries and expenses			
95 1900 0 1 751	Budget Authority	6,016	355
	Outlays	5,114	302
Committee for Purchase from the Blind and other Severely Handicapped			
Salaries and expenses			
95 2000 0 1 505	Budget Authority	897	53
	Outlays	851	50
Commodity Futures Trading Commission			
Commodity Futures Trading Commission			
95 1400 0 1 376	Budget Authority	34,689	2,047
	Outlays	30,179	1,781
Consumer Product Safety Commission			
Salaries and expenses			
61 0100 0 1 554	Budget Authority	34,553	2,039
	401(C) Authority - Off. Coll.	10	1
	Outlays	29,380	1,734
Corporation for Public Broadcasting			
Public broadcasting fund			
20 0151 0 1 503	401(C) Authority	228,000	13,452
	Outlays	228,000	13,452
District of Columbia			
Federal payment to the District of Columbia			
20 1700 0 1 806	Budget Authority	573,100	33,813
	401(C) Authority	20,008	1,180
	Outlays	574,857	33,869
Equal Employment Opportunity Commission			
Salaries and expenses			
45 0100 0 1 751	Budget Authority	189,936	11,206
	Outlays	167,713	9,895
Export-Import Bank of the United States			
Export-Import Bank of the United States			
83 4027 0 3 155	Budget Authority	114,628	6,763
	Direct Loan Limitation	718,980	42,420
	Guaranteed Loan Limitation	10,420,000	614,780
	Obligation Limitation	20,630	1,217
	Outlays	125,630	7,412

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Farm Credit Administration			
Revolving fund for administrative expenses			
78 4131 0 3 351	Obligation Limitation	37,022	2,184
	Outlays	37,022	2,184
Federal Communications Commission			
Salaries and expenses			
27 0100 0 1 376	Budget Authority	105,376	6,217
	Outlays	98,527	5,813
Federal Election Commission			
Salaries and expenses			
95 1600 0 1 808	Budget Authority	14,979	884
	Outlays	13,481	795
Federal Emergency Management Agency			
Salaries and expenses (Defense-related activities)			
58 0100 0 1 054	Budget Authority	75,092	4,430
	Outlays	67,582	3,987
Salaries and expenses (Disaster relief and insurance)			
58 0100 0 1 453	Budget Authority	57,964	3,420
	Outlays	52,168	3,078
Emergency management planning and assistance (Defense-related activities			
58 0101 0 1 054	Budget Authority	256,657	15,143
	Outlays	141,162	8,329
Emergency management planning and assistance (Disaster relief and insura			
58 0101 0 1 453	Budget Authority	27,284	1,610
	Outlays	15,006	885
Emergency food distribution and shelter program			
58 0103 0 1 605	Budget Authority	118,788	7,008
	Outlays	118,788	7,008
Disaster relief			
58 0104 0 1 453	Budget Authority	125,040	7,377
	Outlays	50,016	2,951
Federal Labor Relations Authority			
Salaries and expenses			
54 0100 0 1 805	Budget Authority	18,588	1,097
	Outlays	17,101	1,009
Federal Maritime Commission			
Salaries and expenses			
65 0100 0 1 403	Budget Authority	14,357	847
	Outlays	12,921	762
Federal Mediation and Conciliation Service			
Salaries and expenses			
93 0100 0 1 505	Budget Authority	25,928	1,530
	Outlays	23,776	1,403
Federal Mine Safety and Health Review Commission			
Salaries and expenses			
95 2800 0 1 554	Budget Authority	4,130	244
	Outlays	3,882	229
Federal Trade Commission			
Salaries and expenses			
29 0100 0 1 376	Budget Authority	70,052	4,133
	Outlays	64,098	3,782
TOTAL FOR Other Independent Agencies			
	Budget Authority	2,322,920	137,053
	401(C) Authority	248,000	14,632
	401(C) Authority - Off. Coll.	10	1
	401(C) Other - incl. ob. limit	1,085	64
	Direct Loan Limitation	718,980	42,420
	Guaranteed Loan Limitation	10,420,000	614,780
	Obligation Limitation	57,652	3,401
	Outlays	2,232,153	131,695
Other Independent Agencies			
Harry S Truman Scholarship Foundation			
Harry S Truman memorial scholarship trust fund			
95 8296 0 7 502	401(C) Other - incl. ob. limit	3,010	178
	Outlays	3,010	178
Christopher Columbus Quincentennary Jubilee Commission			
Salaries and expenses			
76 0800 0 1 376	Budget Authority	224	13
	Outlays	201	12
Commission on the Bicentennial of the U.S. Constitution			
Salaries and expenses			
76 0054 0 1 808	Budget Authority	21,959	1,296
	Outlays	4,392	259

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Franklin Delano Roosevelt Memorial Commission			
Salaries and expenses			
76 0700 0 1 808	Budget Authority	29	2
	Outlays	24	1
Intelligence Community Staff			
Intelligence community staff			
95 0400 0 1 054	Budget Authority	24,327	1,800
	Outlays	15,812	1,170
Advisory Commission on Intergovernmental Relations			
Salaries and expenses			
55 0100 0 1 808	Budget Authority	1,453	86
	Outlays	1,237	73
Appalachian Regional Commission			
Appalachian regional development programs			
46 0200 0 1 452	Budget Authority	110,700	6,531
	Outlays	7,976	471
Delaware River Basin Commission			
Salaries and expenses			
46 0100 0 1 301	Budget Authority	205	12
	Outlays	191	11
Contribution to Delaware River Basin Commission			
46 0102 0 1 301	Budget Authority	263	16
	Outlays	263	16
Interstate Commission on the Potomac River Basin			
Contribution to Interstate Commission on the Potomac River Basin			
46 0446 0 1 304	Budget Authority	379	22
	Outlays	379	22
Susquehanna River Basin Commission			
Salaries and expenses			
46 0500 0 1 301	Budget Authority	192	11
	Outlays	181	11
Contribution to Susquehanna River Basin Commission			
46 0501 0 1 301	Budget Authority	262	15
	Outlays	262	15
International Trade Commission			
Salaries and expenses			
34 0100 0 1 153	Budget Authority	36,651	2,162
	Outlays	31,557	1,862
Interstate Commerce Commission			
Salaries and expenses			
30 0100 0 1 401	Budget Authority	46,873	2,766
	Outlays	42,186	2,489
James Madison Memorial Fellowship Foundation			
James Madison Memorial Fellowship Foundation			
95 0200 0 1 502	401(C) Authority	10,000	590
	Outlays	10,000	590
James Madison Memorial Fellowship Trust Fund			
95 8282 0 7 502	401(C) Other - incl. ob. limit	250	15
	Outlays	250	15
Japan-United States Friendship Commission			
Japan-United States friendship trust fund			
95 8025 0 7 154	Budget Authority	1,253	74
	Outlays	1,253	74
Legal Services Corporation			
Payment to the Legal Services Corporation			
20 0501 0 1 752	Budget Authority	318,331	18,782
	Outlays	277,266	16,359
Marine Mammal Commission			
Salaries and expenses			
95 2200 0 1 302	Budget Authority	1,006	59
	Outlays	893	53
Merit Systems Protection Board			
Salaries and expenses			
41 0100 0 1 805	Budget Authority	22,170	1,308
	Outlays	18,845	1,112
Office of the Special Counsel			
41 0101 0 1 805	Budget Authority	4,944	292
	Outlays	4,544	268
National Archives and Records Administration			
Operating expenses			
88 0300 0 1 804	Budget Authority	122,019	7,199
	Outlays	97,615	5,759
National archives trust fund			
88 8436 0 8 804	401(C) Authority - Off. Coll.	4,343	256
	Outlays	4,343	256

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
National Capital Planning Commission			
Salaries and expenses			
95 2500 0 1 451	Budget Authority	3,118	184
	Outlays	2,869	169
National Commission on Libraries and Information Science			
Salaries and expenses			
95 2700 0 1 503	Budget Authority	758	45
	Outlays	674	40
National Council on the Handicapped			
Salaries and expenses			
95 3500 0 1 506	Budget Authority	940	55
	Outlays	726	43
National Endowment for the Arts			
National endowment for the arts: Grants and administration			
59 0100 0 1 503	Budget Authority	174,980	10,324
	Outlays	58,968	3,479
National Endowment for the Humanities			
National endowment for the humanities: Grants and administration			
59 0200 0 1 503	Budget Authority	146,543	8,646
	Outlays	67,556	3,986
Institute of Museum Services			
Institute of Museum Services: Grants and administration			
59 0300 0 1 503	Budget Authority	22,878	1,350
	Outlays	5,903	348
National Institute of Building Sciences			
National Institute of Building Sciences trust fund			
95 8222 0 7 376	401(C) Other - incl. ob. limit	521	31
	Outlays	521	31
National Labor Relations Board			
Salaries and expenses			
63 0100 0 1 505	Budget Authority	140,904	8,313
	Outlays	132,591	7,823
National Mediation Board			
Salaries and expenses			
95 2400 0 1 505	Budget Authority	7,415	437
	Outlays	5,902	348
National Science Foundation			
Research and related activities			
49 0100 0 1 251	Budget Authority	1,515,247	89,400
	Outlays	754,593	44,521
Science and engineering education activities			
49 0106 0 1 251	Budget Authority	145,046	8,558
	Outlays	21,612	1,275
U.S. Antarctic program			
49 0200 0 1 251	Budget Authority	130,042	7,672
	Outlays	64,371	3,798
National Transportation Safety Board			
Salaries and expenses			
95 0310 0 1 407	Budget Authority	25,356	1,496
	Outlays	22,820	1,346
Neighborhood Reinvestment Corporation			
Payment to the Neighborhood Reinvestment Corporation			
82 1300 0 1 451	Budget Authority	19,506	1,151
	Outlays	19,506	1,151
Nuclear Regulatory Commission			
Salaries and expenses			
31 0200 0 1 276	Budget Authority	420,000	24,780
	Outlays	126,000	7,434
TOTAL FOR Other Independent Agencies			
	Budget Authority	3,465,973	204,857
	401(C) Authority	10,000	590
	401(C) Authority - Off. Coll.	4,343	256
	401(C) Other - incl. ob. limit	3,781	224
	Outlays	1,807,292	106,868
Other Independent Agencies			
Occupational Safety and Health Review Commission			
Salaries and expenses			
95 2100 0 1 554	Budget Authority	6,218	367
	Outlays	5,783	341
Panama Canal Commission			
Panama Canal revolving fund			
95 4061 0 3 403	Obligation Limitation	50,287	2,967
	Outlays	47,773	2,819

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER
Pennsylvania Avenue Development Corporation			
Salaries and expenses			
42 0100 0 1 451	Budget Authority	2,657	157
	Outlays	2,152	127
Public development			
42 0102 0 1 451	Budget Authority	3,126	184
	Outlays	2,345	138
Land acquisition and development fund			
42 4084 0 3 451	401(C) Authority - Off. Coll.	3,000	177
	Outlays	3,000	177
Postal Service			
Payment to the Postal Service fund			
18 1001 0 1 372	Budget Authority	538,714	31,784
Postal Service			
18 4020 0 3 372	401(C) Authority	1,101,803	65,006
Railroad Retirement Board			
Railroad social security equivalent benefit account			
60 8010 0 7 601	Obligation Limitation	31,899	1,882
	Outlays	31,899	1,882
Rail Industry Pension Fund			
60 8011 0 7 601	Obligation Limitation	28,768	1,697
	Outlays	28,768	1,697
Supplemental Annuity Pension Fund			
60 8012 0 7 601	Obligation Limitation	2,309	136
	Outlays	2,309	136
Securities and Exchange Commission			
Salaries and expenses			
50 0100 0 1 376	Budget Authority	142,860	8,429
	Outlays	130,003	7,670
Selective Service System			
Salaries and expenses			
90 0400 0 1 054	Budget Authority	26,916	1,992
	Outlays	22,107	1,636
Smithsonian Institution			
Salaries and expenses			
33 0100 0 1 503	Budget Authority	212,714	12,550
	Outlays	187,826	11,082
Construction and improvements, National Zoological Park			
33 0129 0 1 503	Budget Authority	8,492	501
	Outlays	3,821	225
Repair and restoration of buildings			
33 0132 0 1 503	Budget Authority	20,063	1,184
	Outlays	8,025	473
Construction			
33 0133 0 1 503	Budget Authority	1,370	81
	Outlays	548	32
Salaries and expenses, National Gallery of Art			
33 0200 0 1 503	Budget Authority	39,428	2,326
	Outlays	33,790	1,994
Salaries and expenses, Woodrow Wilson International Center for Scholars			
33 0400 0 1 503	Budget Authority	4,230	250
	Outlays	2,597	153
Endowment challenge fund			
33 8188 0 7 503	401(C) Authority	60	4
	Outlays	60	4
Canal Zone biological area fund			
33 8190 0 7 503	401(C) Authority	150	9
	Outlays	117	7
TOTAL FOR Other Independent Agencies			
	Budget Authority	1,006,788	59,805
	401(C) Authority	1,102,013	65,019
	401(C) Authority - Off. Coll.	3,000	177
	Obligation Limitation	113,263	6,682
	Outlays	512,923	30,593
Other Independent Agencies			
Other Temporary Commissions			
State Justice Institute: Salaries and expenses			
48 0052 0 1 752	Budget Authority	11,450	676
	Outlays	3,092	182
Navajo and Hopi Indian Relocation Commission: Salaries and expenses			
48 1100 0 1 808	Budget Authority	26,373	1,556
	Outlays	16,615	980
Interagency Council on the Homeless			
48 1300 0 1 604	Budget Authority	792	47
	Outlays	792	47

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Commission for the Study of International Migration and Cooperative Econ			
48 1400 0 1 153	Budget Authority	914	54
	Outlays	823	49
National Commission to Prevent Infant Mortality			
48 1500 0 1 808	Budget Authority	769	45
	Outlays	749	44
Tennessee Valley Authority			
Tennessee Valley Authority fund (Energy supply)			
64 4110 0 3 271	401(C) Authority - Off. Coll.	94,900	5,599
	Outlays	83,512	4,927
Tennessee Valley Authority fund (Area and regional development)			
64 4110 0 3 452	Budget Authority	103,000	6,077
	Outlays	25,338	1,495
United States Holocaust Memorial Council			
Holocaust Memorial Council			
95 3300 0 1 808	Budget Authority	2,280	135
	Outlays	1,803	106
United States Information Agency			
Salaries and expenses			
67 0201 0 1 154	Budget Authority	653,085	38,532
	Outlays	515,284	30,402
East West Center			
67 0202 0 1 154	Budget Authority	20,840	1,230
	Outlays	19,694	1,162
Radio broadcasting to Cuba			
67 0208 0 1 154	Budget Authority	13,440	793
	Outlays	10,752	634
Educational and cultural exchange programs			
67 0209 0 1 154	Budget Authority	156,342	9,224
	Outlays	71,136	4,197
National Endowment for Democracy			
67 0210 0 1 154	Budget Authority	17,584	1,037
	Outlays	7,034	415
United States Institute of Peace			
United States Institute of Peace			
95 1300 0 1 153	Budget Authority	4,507	266
	Outlays	4,507	266
United States Sentencing Commission			
Salaries and expenses			
10 0938 0 1 752	Budget Authority	5,394	318
	Outlays	4,849	286
TOTAL FOR Other Independent Agencies			
	Budget Authority	1,016,770	59,990
	401(C) Authority - Off. Coll.	94,900	5,599
	Outlays	765,980	45,192
REPORT TOTAL			
	Budget Authority	376,684,142	25,651,870
	Budget Authority - Spec. Rules	224,592	224,592
	401(C) Authority	46,605,793	2,752,956
	401(C) Authority - Off. Coll.	2,545,259	150,170
	401(C) Other - incl. ob. limit	1,706,067	100,657
	401(C) Authority - Spec. Rules	1,567,108	1,567,108
	Direct Loan Limitation	20,368,459	1,201,740
	Direct Loan Floor	1,081,956	63,835
	Guaranteed Loan Limitation	281,907,246	16,632,529
	Guaranteed Loan Floor	970,398	57,253
	Obligation Limitation	24,459,940	1,443,138
	Unobligated Balances - Defense	39,871,286	2,950,475
	Outlays	232,627,876	17,077,797

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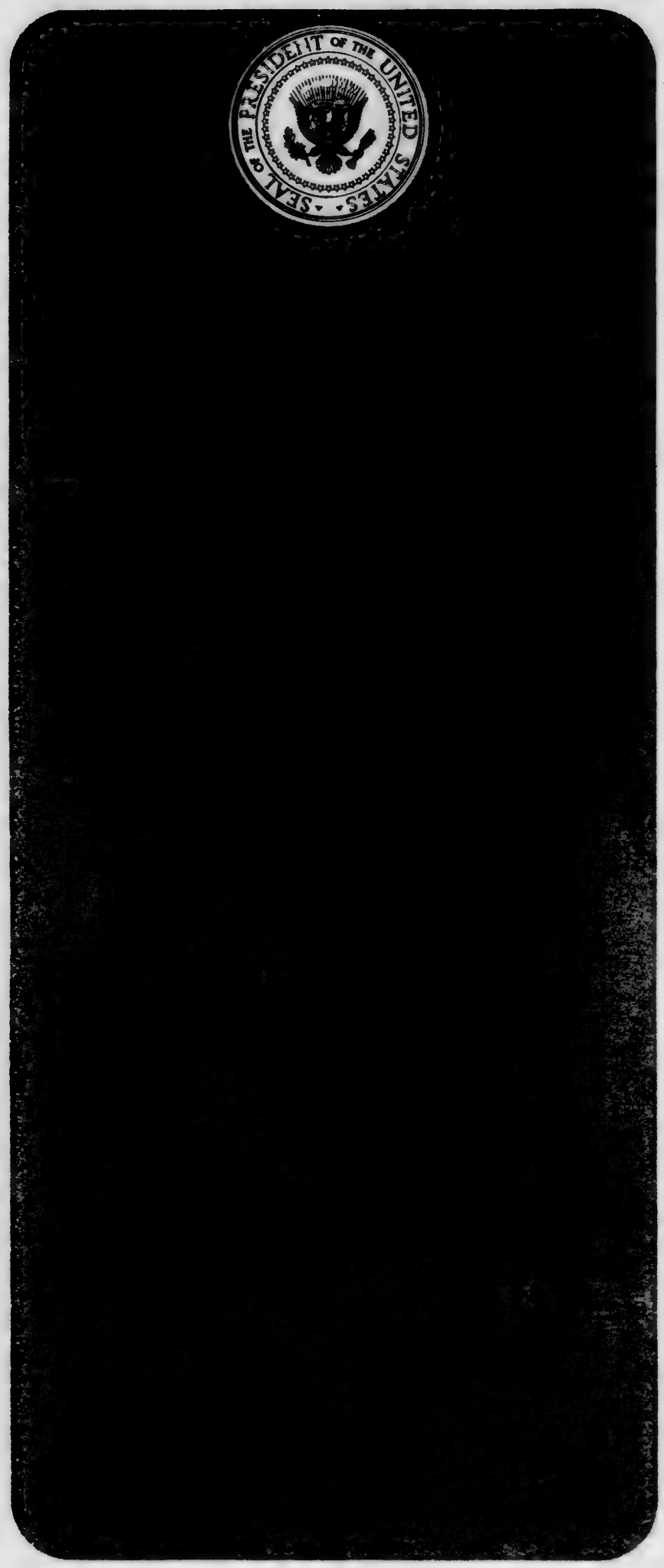

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Rules and Regulations

Federal Register
Vol. 53, No. 163
Tuesday, August 23, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and the general officers of the Department to reflect the delegation of certain functions relating to the USDA Drug-Free Workplace Program.

EFFECTIVE DATE: August 23, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Wilson, Director, Office of Finance and Management, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–8345.

SUPPLEMENTARY INFORMATION: The Department of Agriculture has instituted a Drug-Free Workplace Program which calls for the designation of certain positions within USDA to be included in a group from which random selections will be made for drug testing. Employees holding these positions so designated will be notified and given the opportunity to appeal the inclusion of their position in the drug-testing category. A USDA official is to be designated as the final appeal officer in such cases. This document delegates to the Assistant Secretary for Administration the authority to designate the final appeal officer and designates the Director of the Office of Finance and Management as the final appeal officer. It also delegates to the Assistant Secretary for Administration and the Director, Office of Finance and Management the authority to administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program.

This rule releates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 97–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government Agencies).

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise stated.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by adding a new paragraph (b)(23) to read as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration

* * * * *

(b) *Related to finance and management.* * * *

(23) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and designate the final appeal officer for that Program.

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.75 is amended by adding a new paragraph (a)(24) to read as follows:

§ 2.75 Director, Office of Finance and Management.

(a) *Delegations.* * * *

(24) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and serve as the final appeal officer for the Program.

For Subpart C:

Date: August 17, 1988.

Peter C. Myers,
Acting Secretary of Agriculture.

For Subpart J:

Date: August 17, 1988.

John J. Franke, Jr.,
Assistant Secretary for Administration.

[FR Doc. 88–19120 Filed 8–22–88; 8:45 am]
BILLING CODE 3410–90–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88–085]

Brucellosis; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Technical amendment.

SUMMARY: We are correcting an error in the brucellosis quarantine regulations concerning restrictions on the interstate movement of sows and boars for breeding purposes.

EFFECTIVE DATE: August 23, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. R.D. Hobbs, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8135.

SUPPLEMENTARY INFORMATION:

Background

The provisions of 9 CFR Part 78 *et seq.* (referred to below as the regulations) restrict the interstate movement of cattle, bison, and swine to prevent the

spread of brucellosis. Subpart D of the regulations (§§ 78.30 through 78.34) contains provisions that are specific to swine. Paragraph (b) of § 78.33 restricts the interstate movement of sows and boars, when transported for breeding purposes.

On January 13, 1987, we published a proposal in the **Federal Register** (52 FR 1336–1338, Docket No. 85–049) to amend the regulations. The final rule was published in the September 8, 1987, **Federal Register** (52 FR 33798–33800, Docket No. 87–050).

The final rule differed in certain respects from the original proposal. Most of these differences were explained in the "Supplementary Information" portion of the final rule as being the result of changes made in response to comments from the public. The one exception involved the amendatory language for § 78.33(b). Our proposal included asterisks indicating that paragraph (2) of § 78.33(b) was to remain unchanged. These asterisks were inadvertently omitted from the final rule, resulting in the deletion of paragraph (2).

The provisions that were unintentionally deleted required that any sows and boars moved interstate for breeding purposes be accompanied by a certificate containing certain statements and be:

1. From a validated brucellosis-free herd or state; or

2. Negative to an official test within a certain timeframe.

This correction reinserts these provisions in the regulations, where they are needed to assure that only brucellosis-free sows and boars will be moved interstate for breeding purposes. To accomplish this correction, we are also redesignating current § 78.33(b) as paragraphs (b) and (b)(1) of § 78.33. This redesignation is only a formatting change and does not amend any language currently in the regulations.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, 9 CFR Part 78 is correctly amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51 and 371.2(d).

2. Paragraph (b) of § 78.33 is revised to read as follows:

§ 78.33 Sows and boars.

* * * * *

(b) Sows and boars may be moved in interstate commerce for breeding only if the sows and boars are:

(1) Individually identified by an official eartag, or by ear notching or an ear tattoo that has been recorded in the book of record of a purebred registry association. This identification must be accomplished before movement in interstate commerce and before the sows and boars are mixed with swine from any other source; and

(2) (i) From a validated brucellosis-free herd or a validated brucellosis-free state and accompanied by a certificate which states, in addition to the items specified in § 78.1, that the swine originated in either a validated brucellosis-free herd or a validated brucellosis-free state; or

(ii) Negative to an official test within 30 days prior to interstate movement and accompanied by a certificate which states, in addition to the items specified in § 78.1, the dates and results of the official tests.

* * * * *

Done at Washington, DC, this 18th day of August 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–19118 Filed 8–22–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–13–AD; Amdt 39–6007]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes certified for operation above 35,000 feet, which requires replacement of cabin pressure safety relief valves. This amendment is prompted by reports of cabin pressure safety relief valves becoming inoperative due to accumulated moisture freezing in the valves. This condition, if not corrected, could lead to excessive pressure buildup in the airplane in the event of a pressurization system malfunction.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Transport Airplane Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of cabin pressure safety relief valves on Boeing Model 737 series airplanes, was published in the **Federal Register** on March 18, 1988 (53 FR 8928).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its members, commented that the proposed rule addressed airplanes certificated up to 37,000 feet, which could be interpreted to cover *all* Model 737 airplanes. It requested that the proposed applicability statement be clarified to read "certified for operation above 35,000 feet." The FAA concurs with the recommendation. The intent of this AD action was to address only to those airplanes certificated to the higher altitudes. The final rule has been revised accordingly. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

ATA questioned whether the proposed modification would address the problem of "sticky sensors" which the FAA is attempting to solve, and also asked how icing was identified as the problem. It suggested that sticky sensors in these valves have been causing problems for years and requested that the AD permit periodic checking and cleaning of the valves as an alternate means of compliance with the AD. The FAA notes that the testing used to identify the source of the problem was accomplished in the Boeing laboratory and showed clearly that airplanes equipped with pressurization systems certificated for altitudes above 35,000 feet operate at a higher cabin differential pressure when flying at altitudes above 28,000 feet. This higher pressure differential results in the safety valves functioning with the sensor

poppet operating off its seat, thereby passing air and moisture, which condenses and eventually freezes, rendering the valve inoperative. This specific problem is only present on airplanes certificated to operate above 35,000 feet. Therefore, the FAA does not concur with the commenter that the problem is caused by contamination and that periodic cleaning would be a solution.

The ATA also noted that its affected operators will have to modify all their airplanes to maintain safety valve interchangeability with their other Model 737 airplanes, and requested that the FAA change the economic analysis to reflect this increased cost. The FAA does not concur. Since the rule does not require modification of Model 737 airplanes certificated for operation at the lower altitude, such modifications are solely at the option of the operator, and therefore, the associated costs are not attributable to the rule.

Another commenter, the Air Line Pilots Association (ALPA), requested that the FAA verify that the problem with the cabin safety relief valves only occurs on aircraft certificated to 37,000 feet. This commenter recommended that if any doubt exists, the rule should be expanded to require modification of all Model 737 airplanes. For the reasons already discussed, the FAA does not concur with the commenter's recommendation, and the final rule has not been revised.

The final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph B.

After a careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule, with the changes previously noted.

It is estimated that 312 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $49,920.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, which have been approved for operation above 35,000 feet, certificated in any category. Compliance required within the next 15 months after the effective date of this AD, unless previously accomplished.

To prevent fuselage pressures in excess of design limits due to freezing of cabin pressure safety relief valves if pressurization malfunctions occur, accomplish the following:

A. Replace the cabin pressure safety relief values (2) in accordance with Boeing Service Bulletin 737-21-1006, dated December 10, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Transport Airplane Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Transport Airplane Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the rework required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Transport Airplane Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 3, 1988.

Issued in Washington, DC, on August 16, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19027 Filed 8-22-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-08-AD; Amdt. 39-6004]

Airworthiness Directives; Cessna Models 402B, 402C, 404, F406, 421C, and 441 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Models 402B, 402C, 404, F406, 421C, and 441 airplanes, which requires structural reinforcement of Enviroform type passenger seats. Reports have been received of seats separating from the seat base. The actions specified in this AD will reinforce this interface, preclude failure of the seats, and help prevent severe injury or fatalities to the occupants in the event of a minor crash.

DATES: *Effective Date:* September 22, 1988.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: Cessna Service Bulletins CAB87-16 and CQB87-5, both dated

December 4, 1987, and MEB87-9, Rev. 1, dated February 19, 1988, applicable to this AD may be obtained from Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277, or may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Wichita Aircraft Certification Office, FAA, Central Region, ACE-120W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring structural reinforcement of Enviroform type passenger seats used in certain Cessna Models 402B, 402C, 404, F406, 421C, and 441 airplanes was published in the **Federal Register** on April 8, 1988 (53 FR 11674). The proposal resulted from reports that have been received of seat tops separating from the seat base. The Enviroform type passenger seats are constructed from two parts of molded composite; consisting of the seat, back and bottom, bonded to the pedestal (bottom) at their interfaces. A failure of the bond causes separation of the seat and pedestal. Such failures resulted in Cessna issuing Service Letter ME77-30, and Service Kits SK 421-72 and SK 421-78, that provided fasteners and a doubler to reinforce the bond. AD 78-06-03, Amendment 39-3162 (43 FR 11969, March 23, 1978) was, in turn, issued to require compliance with the Cessna Service instructions as applicable to those Models 402B, 421B and 421C airplanes equipped for air taxi operation. Cessna did not incorporate the reinforcement in new production seats because the bonding process and acceptance tests had been altered to correct the previous discrepancies. Subsequently, Cessna began production of the Models 402C, 404, F406 and 441 airplanes. These airplanes were not covered by AD 78-06-03. The FAA has learned that there have been three seat failures on the models not covered by AD 78-06-03, all of which were on seats that did not have the interface fasteners. These failures have been attributed in part to tandem mounting which imposes loads on the pedestal-seat interface that are not provided for in Airworthiness Standards. Since failure of these seats can cause severe or even fatal injury to the occupant, Cessna responded by issuing Service Bulletins CAB87-16 and CQB87-5, both dated December 4, 1987, and MEB87-9, Rev. 1, dated February 19, 1988, which provide instructions for the installation of Service Kit SK 421-135 on Enviroform seats. Since the condition described herein is likely to exist or develop in other Models 402B, 402C, 404, F406, 421C and 441 airplanes of the same design, an AD was proposed that would require modification of the seat per the above applicable service bulletins.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation only involves 771 airplanes (approximately 5400 seats). The cost of modifying these seats as required by the AD is estimated to be $929.60 per airplane. The total cost is estimated to be $716,722 to the private sector. Few, if any small entities own more than 5 affected airplanes; therefore, the total cost of this inspection is less than the threshold for a significant economic impact.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to the following models and serial numbered airplanes certificated in any category:

Model and Serial Numbers

402—402B1047 through 402C1020
404—404-0001 through 404-0859
F406—F406-0001 through F406-0021
421—421C0055 through 421C1807
441—441-0001 through 441-0362

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure structural integrity of the bond between the seat and seat back assembly (upper part) to the seat pedestal assembly (bottom part) of Enviroform type passenger seats, accomplish the following:

(a) Install the structural reinforcement provided with Cessna Service Kit SK 421-135, dated December 4, 1987, on each Enviroform type passenger seat in accordance with the applicable Cessna Service Bulletin CAB87-16, or CQB87-5, both dated December 4, 1987, or MEB87-9, Rev. 1, dated February 19, 1988.

(b) The 100 hour compliance time for paragraph (a) of this AD may be extended up to an additional 10 hours time-in-service to allow compliance at previously scheduled maintenance periods.

(c) Airplanes may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(d) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 22, 1988.

Issued in Washington, DC, on August 12, 1988.

Thomas E. McSweeny,
Acting Director, Office of Airworthiness.

[FR Doc. 88-19025 Filed 8-22-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANE-11]

Proposed Control Zone for Boire Field, Nashua, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a control zone to encompass airspace surrounding the airport of Boire Field, Nashua, NH. The action will allow positive control of aircraft operations in the vicinity of the airport during instrument meteorological conditions. Airspace affected by designation of the control zone extends upward from the surface of the ground within a five-mile radius of the airport, with an extension needed to contain IFR arrival and departure operations. The control zone is planned on a part time schedule as follows:

October 1-April 30, from 8:00 a.m. local to 6:00 p.m. local.

May 1-September 30, from 7:00 a.m. local to 9:00 p.m. local.

EFFECTIVE DATE: August 23, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist; Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 12 New England Executive Park; Burlington, MA. 01803; Telephone 617-270-2428.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to designate a control zone to encompass airspace surrounding Boire Field, Nashua, NH. This action will allow for positive control of aircraft operations in the vicinity of the airport during instrument meteorological conditions and enhance aviation safety in that area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received as a result of the Notice of Proposed Rulemaking. The commenter objected to positive control at this field. The FAA believes this designation of a control zone will provide necessary protection to aircraft executing instrument approaches which have been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect aircraft utilizing the instrument approach. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment of Part 71 of the Federal Aviation Regulations designates a control zone to encompass airspace surrounding Boire Field, Nashua, NH. This action will allow for positive control of aircraft operations in the vicinity of the airport during instrument meteorological conditions and enhance aviation safety in that Area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034); February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 7

Aviation safety, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) 1354(a), 1510; Executive Order 10854, 49 U.S.C. 106.(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Nashua, NH [New]

Within a 5 mile radius of Boire Field, Nashua, NH (lat. 42°46'54" N., Long. 71°30'55" W) and within 4 miles each side of the Manchester VORTAC 249° radial, extending from the 5-mile radius zone to 3 miles southwest of the VORTAC, excluding that portion within the Manchester Control Zone, and within 3 miles each side of 303° T (319° M) bearing from the Lowis NDB (lat. 42°49'24", long. 71°36'10" W.) extending from the 5-mile radius zone to 8 miles northwest of the airport. This control zone is effective during the specific days and time established in advance by a Notice to Airmen. The effective days will thereafter be continuously published in the Airport/Facility Directory.

Issued in Burlington, Massachusetts, on August 9, 1988.

James I. Lucas,

Manager, Air Traffic Division.

[FR Doc. 88-19026 Filed 8-22-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Rel. No. IA-1135; File No. S7-34-87]

Recordkeeping by Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments.

SUMMARY: The Commission is adopting amendments to the recordkeeping rule under the Investment Advisers Act of 1940. The amendments require registered investment advisers to keep for Commission inspection all of their advertisements and to make and keep all records necessary to form the basis for performance information in their advertisements. The rule amendments permit Commission staff to examine advisers' advertisements and the basis for performance information in their advertisements for compliance with the antifraud provisions of the Investment Advisers Act of 1940.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy M. Donohue, Attorney, or Robert E. Plaze, Special Counsel, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-2, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is amending Rule 204-2 (17 CFR 275.204-2) under the Investment Advisers Act of 1940 ("Advisers Act") (15 U.S.C. 80b-1 *et seq.*). The amendments, among other things, require an adviser that advertises performance to maintain records substantiating any performance figure.

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Discussion

On November 5, 1987, the Commission proposed amendments to the investment adviser recordkeeping rule that would require registered investment advisers ("advisers") to keep all of their advertisements and all documents necessary to form the basis for performance information in advertisements ("supporting records"). The proposed amendments would require advertisements and supporting records to be kept for five years from the end of the fiscal year in which the advertisement was last published or otherwise disseminated.[1] The Commission received letters from four commenters, all of whom supported the purpose of the proposed rule amendments—to deter the use of false or misleading performance information by advisers.[2] The commenters also suggested specific modifications to the proposed recordkeeping requirements. The Commission has decided to adopt the proposed amendments to the recordkeeping rule substantially as proposed, but modified to reflect several of the comments received.

In the release proposing the amendments, the Commission explained that they were designed to permit examination of adviser advertisements for compliance with Rule 206(4)–1 (17 CFR 275.206(4)–1) under the Advisers Act which, among other things, prohibits false or misleading advertisements by advisers. None of the commenters objected to the requirement that advisers substantiate advertised performance information; three, however, were concerned that the proposed amendments might require advisers advertising the performance of managed accounts to keep all documents of original entry from which information is inputted into an adviser's client accounting system. They asserted that this would require an adviser to retain a considerable amount of paper, the storage of which would be very expensive. To alleviate these concerns, the Commission has clarified the recordkeeping requirement for advisers advertising the performance of managed accounts. Rule 204–2(a)(16), as adopted, permits an adviser to substantiate advertised performance by retaining all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts ("worksheets") and by retaining all account statements, if the statements reflect all debits, credits, and other transactions in a client's account ("account statements").[3] The Commission believes that account statements prepared for clients contemporaneously with the period reported will ordinarily be sufficient to substantiate advertised performance of managed accounts when accompanied by worksheets that transform the account information into performance figures.

If advertised adviser performance consists of performance other than that of managed accounts,[4] the adviser is required to prepare and retain whatever documents are necessary to substantiate performance data.[5] For example, under the rule as adopted, an adviser advertising the performance of written recommendations is required to document the nature of the recommendations, when they were made, and any assumptions made to compute performance, *e.g.*, that the customer acted on the recommendations at a given time.[6]

Three commenters argued that adoption of the amendments requiring advisers to substantiate their advertised performance would, in effect, preclude advisers who have not retained the required documentation from advertising performance data for periods prior to adoption of the amendments. One pointed out that advisers are only required to keep the type of records necessary to substantiate the performance of managed accounts for the most recent five years.[7] Three commenters pointed out, however, that most advisers keep account statements. The Commission believes, therefore, that advisers should be able to meet the revised rule requirements for managed accounts.

Finally, one commenter pointed out that the proposed amendments would require advisers to retain and substantiate performance information in documents not distributed to the public. The Commission has modified the rule amendments to require an adviser to keep all of its advertisements but to except from the recordkeeping and substantiation requirements communications distributed solely to persons connected with the adviser.[8]

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Advisers Act Release No. 1093. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Dorothy M. Donohue, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–2, Washington, DC 20549.

List of Subjects in 17 CFR Part 275

Investment Advisers, Reporting and recordkeeping requirements.

Test of Rule

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is amended by adding the following citation:

Authority: Sec. 203, 15 U.S.C. 80b–3; Sec. 204, 15 U.S.C. 80b–4; Sec. 206A, 15 U.S.C. 80b–6A; Sec. 211, 15 U.S.C. 80b–11 * * * Sec. 275.204–2 is also issued under Sec. 206, 15 U.S.C. 80b–6.

2. Section 275.204–2 is amended by revising paragraphs (a)(11) and (e)(1),

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[1] Investment Advisers Act Rel. No. 1093 (Nov. 5, 1987) (52 FR 43343 (Nov. 12, 1987)).

[2] The comment letters and a summary of comments prepared by the Commission staff are contained in File No. S7–34–87.

[3] An adviser complying with paragraph (a)(16) by retaining account statements must retain all account statements, whether or not a particular account is included in the computation of a performance figure.

[4] Under the rule, of course, an adviser must be able to substantiate each performance figure advertised.

[5] Investment companies have been able to comply with rule 31a–1(a) (17 CFR 240.31a–1(a)), a similar provision requiring investment companies to retain all "documents * * * which constitute the record forming the basis for financial statements." Rule 31a–1(a) is almost identical to Section 31(a) (15 U.S.C. 80a–31(a)) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*). Paragraph (a)(16) of rule 204–2, as proposed and adopted, is patterned after rule 31a–1(a).

[6] Supporting records for advertised performance must be made contemporaneously with the recommendations or assumptions made. However, data published or generated subsequently but accumulated contemporaneously with the events could be used to compute and substantiate advertised adviser performance (*e.g.*, Standard and Poor Corporation's *Daily Stock Price Record* could be used to document stock prices at which the adviser's recommendations were made or the closing positions of market indices).

[7] *See* Rule 204–2: paragraph (a)(3) (memoranda of orders and instructions relating to purchases and sales of securities by adviser); paragraph (a)(7) (written communications relating to securities recommendations and purchase and sale orders by adviser); paragraph (a)(10) (written agreements between adviser and clients); paragraph (a)(11) (certain advertisements distributed by adviser that recommend the purchase or sale of specific securities); paragraphs (b) (1), (2), and (3) (journals, ledger accounts, and copies of confirmations relating to purchase or sale of certain securities by adviser); and paragraph (c)(1) (records relating to purchase and sale of certain clients' securities by adviser).

[8] *See* Rule 204–2(a)(11) (17 CFR 275.204–2(a)(11)).

and adding paragraphs (a)(16) and (e)(3) as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

* * * * *

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser); *provided, however,* that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1), inclusive, of this rule (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

(3) Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication.

* * * * *

By the Commission.

August 17, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–19067 Filed 8–22–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM87–24–000; Order No. 502]

Procedures for the Assessment of Civil Penalties Under Section 31 of the Federal Power Act

Issued August 17, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule to establish procedures for the assessment of civil penalties under section 12 of the Electric Consumers Protection Act of 1986 (ECPA).

Under the final rule, hydroelectric licensees, permittees and exemptees, or any persons who should have a license under or exemption from the Federal Power Act but do not, are subject to civil penalties of up to $10,000 per day for each violation of Part I of the Act, any rule or regulation issued under Part I of the Act, any term or condition of a license or permit issued under, or exemption issued from, Part I of the Act, or a compliance order issued under section 31(a).

EFFECTIVE DATE: This final rule is effective October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

FINAL RULE

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing final rules establishing procedures for the assessment of civil penalties under section 12 of the Electric Consumers Protection Act of 1986 (ECPA).[1]

II. Background

ECPA was enacted on October 16, 1986. Section 12 of ECPA amended the Federal Power Act (Act) by adding a new section 31.[2] Section 31 [3] now authorizes the Commission to assess civil penalties in certain circumstances. The Commission issued a notice of proposed rulemaking (NOPR) establishing procedures for the assessment of civil penalties on August 3, 1987. The NOPR was published in the **Federal Register** on August 6, 1987.[4] Comments were to be received by October 5, 1987. Eight comments were filed.[5] The Commission has reviewed

[1] Pub. L. No. 99–495, 100 Stat. 1243 (1986).

[2] Codified at 16 U.S.C. 823b.

[3] Section references are to sections of the Act unless otherwise indicated.

[4] 52 FR 29,216 (1987).

[5] Comments were received from Alabama Power Co. (Alabama Power), American Public Power Association (APPA), Consumers Power Co. (Consumers Power), Edison Electric Institute (EEI), National Hydropower Association (NHA), Niagara Mohawk Power Corporation (Niagara Mohawk), Orange and Rockland Utilities, Inc. (Orange & Rockland) and Pacific Gas and Electric Co. (PG&E).

these comments and is issuing the rules substantially as proposed. A discussion of the comments with minor clarifications of the rule is provided below.

III. Summary of the Final Rule

Under the Commission's regulations, licensees, permittees and exemptees, or any persons who should have a license under or exemption from the Act but do not, are subject to civil penalties of up to $10,000 per day for each violation of Part I of the Act, any rule or regulation issued under Part I of the Act, any term or condition of a license or permit issued under, or exemption issued from, Part I of the Act, or a compliance order issued under section 31(a).[6] The amount of the penalty will reflect the nature and seriousness of the violation and the timely remedial efforts of the person against whom the penalty is proposed. The Commission will consider the person's compliance history, whether the person possessed actual or constructive knowledge of the violation, whether the violation resulted in loss of life, and whether persons, property or the environment were damaged or endangered. In accordance with ECPA, no penalty will be assessed where a license or exemption is revoked.[7]

The Commission will provide notice of the proposed penalty and, where applicable, of the person's right to make an election between the Commission's administrative procedures under section 31(d)(2) and trial court procedures in United States District Court under section 31(d)(3). The person will then have 30 days to elect in writing the procedural course to be followed. An election may be revoked only with the consent of the Commission.

If an election is not made, or if an election is not applicable, then the Commission's administrative procedures will apply. After an opportunity for a hearing, the Commission may issue a civil penalty assessment order. The person against whom the penalty is assessed may appeal to the appropriate United States Court of Appeals within 60 days.[8] If a person fails to pay the civil penalty assessment after a decision by the Court of Appeals, the Commission will institute an action to recover the penalty plus interest.[9]

If an election is made in favor of the trial court procedures, the Commission will promptly assess the penalty and, if the penalty is not paid within 60 days, initiate an action in United States District Court for an order affirming the civil penalty. If the penalty is not paid within 60 days after the District Court has entered a final judgment in favor of the Commission, the Commission will use applicable court procedures to collect on the judgment plus interest. Finally, the regulations also provide that, in certain circumstances, the Commission may modify a civil penalty.

IV. Comments

A. Scope of the Rule.

Some commenters dispute the Commission's authority to assess civil penalties to persons who, without Commission authorization, construct or operate a hydropower project that requires authorization or who otherwise violate Part I of the Act.[10] They argue that ECPA limited the scope of the civil penalty provision only to those who are licensees, permittees or exemptees. The Commission disagrees. In enacting ECPA, Congress intended to apply the civil penalty provision not only to those who have a license, permit or exemption, but also to those who are required to have a license or exemption.

By strengthening the enforcement provisions of the Federal Power Act, Congress sought to provide the Commission with additional authority to compel operators of hydropower projects to comply with the law and Commission regulations and orders. The legislative history indicates that Congress intended civil penalties to apply not only to authorized operators of hydropower projects but also to those who are required to have a license or exemption but have failed to secure one. The ECPA enforcement provisions originated in the House of Representatives. The House Committee on Energy and Commerce, which drafted the enforcement section, explained that the purpose of the section was to buttress and improve the Commission's enforcement capability in dealing with certain concerns. The very first concern highlighted by the House Report was the problem of unlicensed hydroelectric projects. The report quoted Edward G. Horn, chief ecologist for the New York State Department of Environmental Conservation, as follows:

> *At the present time, numerous hydroelectric stations throughout the country, particularly in the Northeast, are being operated without licenses or exemptions from licensing.* Many of these operations are adversely affecting the fulfillment of state and/or federal objectives related to resource enhancement which are embodied as conditions attached to newly-licensed, exempted, or relicensed developments within the same basin. For example, provisions for adequate minimum downstream releases, minimum turbine mortality to fish, construction and operation of upstream and downstream fish passage facilities, water quality, public safety and recreational access to project lands and waters are essential to the completion of ongoing natural resource programs designed to project and enhance indigenous fishery resources and to permit the reestablishment of historic anadromous fisheries. (emphasis in original)[11]

The Committee further emphasized that it expected "FERC to locate projects that are being operated without legal authority and to enforce the law."[12] In enforcing the law, the new civil penalty tool was clearly intended to be available for any problem covered by subsection (a) of the ECPA enforcement section.[13] The House Committee specified that civil penalties could be applied "for failure or refusal to comply with a subsection (a) order or any matter referenced in subsection (a) or for violations of such matters or orders."[14] There is therefore no support for an argument that Congress reflected its concern about unlicensed operations in subsection (a) but not in subsection (c), the civil penalty provisions. In short, the legislative history shows that Congress was concerned about unlicensed operations, expected the Commission to assure compliance with the licensing structure, and gave the Commission enhanced authority, in the form of civil penalty powers, to enforce the law.

Furthermore, to interpret the civil penalty provision in a manner other than applying to those who have or should have a license as well as those who violate Part I of the Act would not only be contrary to Congressional intent but could lead to the result of encouraging operators of hydropower projects to violate the FPA and operate without a license when they are required to have one. For example, a licensee who constructed a project but

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[6] Violations include failures or refusals to comply, as these terms are used interchangeably in section 31.

[7] Codified at 16 U.S.C. 823b (1982).

[8] The rehearing provisions of section 313 remain applicable. Repeals by implication are not favored. St. Martin Evangelical Lutheran Church v. South Dakota, 451 U.S. 772, 788 (1981); Posadas v. National City Bank, 296 U.S. 497, 503 (1936).

[9] The Commission will collect interest pursuant to the Debt Collection Act, 31 U.S.C. 3717 (1982).

[10] *See* NHA, Niagara Mohawk and Orange & Rockland.

[11] H. R. Conf. Rep. No. 99-507, 99th Congress, 2nd Sess., at 38 (1986).

[12] *Id.*

[13] *See* note 2.

[14] *Id.* note 11.

who then violated a Commission order and damaged the environment would be subject to civil penalties, while a person who committed the same acts resulting in the same damage but who, in violation of the law, did not have a license, would not be subject to a civil penalty.

The Commission is not compelled by the literal reading of the Act to reach such a result. As the Supreme Court declared in *American Trucking*,

> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words.[15]

Congress did not intend to favor those who do not comply with the law over those who do. The commenters have been unable to cite any legislative history to support their narrow reading of a licensee, permittee or exemptee to exclude those who should have licenses or exemptions. At no point during the hearings that preceded ECPA or during the Committee consideration or floor statements was there any discussion of intent to limit the applicability of the ECPA civil penalty provisions in the manner suggested by the commenters. The Commission's interpretation reflects the Congressional purpose.[16]

B. Authority and Identification of Section 31(a) Compliance Orders.

Some commenters assert that orders issued pursuant to delegated authority by technical staff should be clearly identified as compliance orders if the violation of these orders may serve as the basis for civil penalties.[17] These commenters believe there must be a clear distinction between compliance orders and the more informal correspondence between Commission technical staff and the public.

The Commission or Commission staff will clearly identify any "compliance order". This compliance order will indicate that the order is issued pursuant to section 31(a).

C. Consideration of Additional Factors

PG&E argues that the total picture of license activities should be factored into a penalty decision, with both aggravating and mitigating circumstances evaluated. The Commission notes that nothing in the rule precludes the Commission from considering any information submitted to it. The person receiving a notice of proposed penalty has the opportunity to make a submission in its answer.[18] In addition, the Commission's Rules Relating to Investigations also provide for submissions.[19] The list of factors in Rule 1505 is not intended to be exclusive. This will allow the Commission to exercise its discretion whether or not to consider other factors in assessing civil penalties.

EEI asserts that the Commission should not consider past violations when determining a proposed civil penalty amount. EEI argues that the Commission does not have the legal authority to consider past violations and that consideration of these violations contradicts the Commission's decision that it will not assess civil penalties for violations ending prior to the enactment of ECPA. The Commission disagrees. In considering the nature of a present violation, the Commission intends to take into account the violator's compliance history. The Commission believes that an increased penalty is necessary for a repeat violator in order to adequately encourage compliance and to protect the environment and provide greater public safety. The Commission also recognizes that a first-time violator should not necessarily be penalized as severely as a repeat violator.

NHA asserts that the Commission should formally add a criterion to reflect the ability of the licensee or exemptee to pay a proposed penalty.[20] The Commission declines to do this. Congress did not require the Commission to take ability to pay into account. The Commission notes, however, that the final rule does not preclude the Commission from considering a violator's ability to pay. The Commission merely declines to make this a formal requirement. The Commission's regulations are revised to provide that the Commission may consider other factors in assessing civil penalties. The Commission is simply declining to specify any additional factors as formal factors that must be considered in assessing civil penalties.

D. Knowing Violations

PG&E would have the Commission assess penalties only for knowing violations and would exclude violations that a licensee did not know of and could not reasonably be expected to know. The Commission declines to implement such a narrow implementation of section 31. Where Congress intended a "knowing" standard as a limiting condition to the imposition of sanctions under ECPA, it stated so explicitly.[21] It has not done so here. However, in assessing a civil penalty, the Commission will take into account whether the violation was a knowing one. As stated in the proposed and final rule, a knowing violation will generally result in a greater penalty.[22]

E. Opportunity to Correct Conduct and Resolve Jurisdictional Disputes

NHA requests that the Commission issuse a notice of noncompliance, with an opportunity for the licensee or exemptee either to change its conduct or to contest the issue of noncompliance, prior to triggering liability for civil penalties. Alabama Power and EEI believe that the Commission should resolve all legal and jurisdictional disputes and provide the project operators the opportunity to bring the project into compliance before enforcing the civil penalty provisions.

APPA argues that assessment of civil penalties is an action to which the Commission should only resort when efforts on the Commission's part that are reasonable relative to the nature of the violation involved have failed to produce constructive response on the part of the licensee. APPA believes that civil penalties should not be peremptorily imposed in cases of minor or inadvertent violations.

While the Commission may initially contact persons in an effort to resolve

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[15] U.S. v. American Trucking Associations Inc. *et al.*, 310 U.S. 534, 543 (1940).

[16] In a similar situation, the Court of Appeals for the Ninth Circuit has interpreted the phrase "registered under this Act" in the Commodity Exchange Act, 7 U.S.C. § 60(1) (1982), as applying not only to those actually registered but also to those engaged in activities which require registration. The court stated that "[t]he purpose of the statute supports this interpretation of congressional intent. It would be anomalous indeed if an advisor could escape the fiduciary duties of section 40 by avoiding required registration. This would frustrate a principal purpose of the Act." Commodity Futures Trading Commission v. Savage, 611 F.2nd 270, 282 (9th Cir. 1980).

[17] *See* Alabama Power, EEI, Niagara Mohawk and PG&E.

[18] *See* Rule 1507(a).

[19] *See* 18 CFR §§ 1b.18–19 (1987).

[20] NHA states that proposed Rule 1505 "provides an appropriate set of considerations for the amount of civil penalties", with the exception of the absence of an explicit "ability to pay" criterion.

[21] *See* section 31(b)(1).

[22] *See* Rule 1506.

instances of noncompliance, the Commission declines to institute this approach as a necessary condition before assessing civil penalties. Section 31 does not require this step and the Commission declines to limit its enforcement authority. If the Commission limited the assessment of civil penalties to violations which continued after the person received a notice from the Commission that the person's conduct constituted a violation, this would have the practical effect of limiting the application of civil penalties only to knowing violations. Even knowing violations would be free of civil penalty if the violator later agreed to bring a project into compliance. These results are contrary to the intent of Congress in strengthening the Commission's enforcement powers. The final rules, however, do provide that the Commission will issue a notice of proposed penalty prior to actually assessing a civil penalty.[23] The Commission will also consider timely remedial efforts in all civil penalty assessments.[24]

The Commission notes that it has the discretion to decide not to assess civil penalties. Any determination not to assess civil penalties will be made on a case-by-case basis. The Commission also notes that in most instances the Commission may likely seek compliance prior to issuing a notice of proposed penalty, but it will not be mandatory for the Commission to proceed in this manner. The Commission, therefore, declines to bind itself in a rule to never assessing a civil penalty for so-called "minor" violations.

NHA argues that civil penalties are only legally authorized for failure to comply with compliance orders. The Commission disagrees. The statute does not limit civil penalties to this single type of violation. Section 31(c) clearly indicates that a violation of a compliance order is merely one type of violation which may result in a civil penalty. By its terms, section 31(c) applies to violations of "any rule or regulation * * * any term, or condition of a license, permit, or exemption * * * *or* any [compliance] order * * *" (emphasis added).

F. Informal Discussions.

EEI argues that implementation of section 31 should not adversely affect the ability of licensees and exemptees to work with Commission staff to discuss perceived problems and to develop creative and workable solutions. The Commission agrees and encourages such dialogues to avoid violations in the first instance as well as to expeditiously remedy violations when they occur. The Commission believes that the potential for civil penalties will encourage early informal discussions as persons seek advice from the Commission or staff where they previously may not have been inclined to seek such advice.

G. Coercion.

EEI is concerned that the Commission could use civil penalties to coerce project owners into the Commission's jurisdiction, and that the effect of imposing liability on those who operate unlicensed projects "raises the stakes" in any contest over jurisdiction. Civil penalties do give the Commission greater enforcement authority than before, and the Commission believes that this authority will encourage greater compliance. This is what Congress intended. Because the stakes are now higher, the Commission believes persons will be more inclined to request a determination from the Commission as to whether a project is jurisdictional prior to commencing construction or operation of a hydropower project.

H. Exhaustion of Remedies.

EEI and Niagara Mohawk argue that the Commission should not be allowed to assess civil penalties until a party has exhausted appellate remedies before the Commission and the courts. The Commission notes that when Rule 1509 district court procedures are followed, the assessment of civil penalites by the Commission merely triggers the process leading to a *de novo* trial. In the alternative, when Rule 1508 administrative procedures are followed, the civil penalties can only be collected after a decision by the Court of Appeals. The Commission, therefore, does not believe it should delay assessing a civil penalty until appellate remedies before the Commission and the courts are exhausted.

Additionally, while the Commission has the discretion to grant a stay of its orders, and a court may likewise stay the effect of Commission orders, orders are effective in accordance with their terms.[25] Moreover, Rule 713(e) of the Commission's Rules of Practice and Procedure clearly states that the filing of a request for rehearing does not itself operate to stay an order.[26] In effect, commenters would have the Commission modify existing Rule 713(e) to stay the effect of its orders, including orders finding jurisdiction, until appellate remedies have been exhausted. The Commission declines to do this on a generic basis. Rather, the Commission will exercise its administrative discretion to stay its orders on a case-by-case basis.

I. Necessity for Evidentiary Hearing.

Niagara Mohawk argues that when the Commission proceeds under 31(d)(2) it must provide a trial-type hearing unless there are exceptional circumstances. Section 31(d) of the Act requires the Commission to provide an opportunity for an evidentiary hearing before assessing a civil penalty.

Consumers Power argues that the Commission must provide an opportunity for an evidentiary hearing before an administrative law judge before it can issue a compliance order under section 31(a). EEI further argues that the Commission should construe "notice and opportunity for public hearing" in section 31(c) as extending, as a minimum requirement, the right to a hearing in which the licensee's facts can be put into the record prior to the issuance of a compliance order issued pursuant to section 31(a). The Commission disagrees. The Commission does not propose to require an evidentiary hearing prior to issuing a section 31(a) compliance order. Congress did not intend cumbersome procedures at this preliminary stage of the civil penalty assessment process.[27] A compliance order issued by the Commission or its delegate pursuant to section 31(a) will be proceeded by an opportunity to respond in writing, with written submissions placed into the public record, to satisfy the notice and hearing requirement of the preliminary stage of the compliance process. The Commission also notes that a person will have an opportunity, as required by section 31(c) and (d)(2)(A), for a trial-type hearing later in the proceeding

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[23] *See* Rule 1508.

[24] *See* Rule 1508. The Commission may also modify a civil penalty. *See* Rule 1510.

[25] Section 309 of the FPA provides that orders of the Commission will be effective on the date and in the manner the Commission prescribes. Section 313(c) of the FPA provides that the filing of an application for rehearing will not, unless specifically ordered by the Commission, operate as a stay of the Commission order.

[26] 18 CFR 385.713(e) (1987).

[27] *See, e.g.*, U.S. v. Florida East Coast Railway, 410 U.S. 224, 234 (1973), and Commodity Exchange, Inc. v. CFTC, 543 F. Supp. 1340 (S.D.N.Y. 1982). For statutes enacted after the Administrative Procedure Act, inclusion of the precise phrase "on the record after opportunity for an agency hearing" is evidence of the need for more formal trial-type proceedings. The Commission notes that this phrase appears only in section 31(d) for assessing civil penalties, and not in section 31(a) for issuing compliance orders.

before the Commission assesses the civil penalty.

J. Pursuit of Appeal Rights.

EEI asserts that pursuit of appeal rights should not be construed as conduct which is subject to civil penalties or which increases the amount of civil penalties. The Commission does not intend to punish persons because they have filed an appeal. At the same time, the mere filing of an appeal does not free any person from liability for engaging in unlawful conduct that is subject to civil penalty. For example, unless a compliance order is stayed, a violation of that order may serve as the basis for a civil penalty. While the Commission intends to review expeditiously appeals and requests for stay of compliance orders, persons are on notice that they are at substantial risk if they continue to violate a compliance order that is ultimately upheld. The Commission fully expects persons to obey its orders.

K. Collection Actions.

Niagara Mohawk and Consumers Power assert that the Commission is precluded by section 31(d)(5) from initiating a collection action in U.S. District Court at the same time it institutes a *de novo* action in U.S. District Court to affirm a civil penalty assessment. When filing an action in district court, the Commission will include in that pleading a request to the district court to order the defendant to pay a civil penalty. District courts permit applicants to incorporate into one pleading both a petition affirming a civil penalty assessment and a petition ordering the recovery of the civil penalty assessment.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) requires a description and analysis of final rules that will have a "significant economic impact on a substantial number of small entities." [28] An agency is not required to make an RFA analysis, however, if it certifies that the rule will not have such an impact.

For the reasons discussed in the NOPR, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. The National Environmental Policy Act Statement

The Commission concludes that promulgating this rule does not represent a major Federal action having significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[29] The Commission believes this rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations.[30] Consequently, neither an environmental impact statement nor an environmental assessment are required.

VII. Effective Date

This final rule is effective October 24, 1988.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 385, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Commissioner Trabandt dissented with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791–825r (1982) as amended by Electric Consumers Protection Act; Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

2. Subpart O is added to Part 385 to read as follows:

Subpart O—Procedures for the Assessment of Civil Penalties Under Section 31 of the Federal Power Act

Sec.

385.1501 Scope (Rule 1501).
385.1502 Persons subject to civil penalties (Rule 1502).
385.1503 Actions subjecting persons to civil penalties (Rule 1503).
385.1504 Maximum civil penalty (Rule 1504).
385.1505 Determination of proposed penalty amount (Rule 1505).
385.1506 Notice of proposed penalty (Rule 1506).
385.1507 Election of procedures and answer (Rule 1507).
385.1508 Commission administrative procedures (Rule 1508).
385.1509 District court procedures (Rule 1509).
385.1510 Modification of civil penalty (Rule 1510).
385.1511 Collection of civil penalties (Rule 1511).

Subpart O—Procedures for the Assessment of Civil Penalties Under Section 31 of the Federal Power Act

§ 385.1501 Scope (Rule 1501).

The rules in this subpart apply to and govern proceedings for the assessment of civil penalties pursuant to section 31 of the Federal Power Act, 16 U.S.C. 823b.

§ 385.1502 Persons subject to civil penalties (Rule 1502).

(a) Any licensee or permittee under the Federal Power Act, or exemptee from any requirement of Part I of the Federal Power Act, may be subject to civil penalties; and

(b) Any person who must have a license under, or exemption from, the Federal Power Act, but does not, may be subject to civil penalties.

§ 385.1503 Actions subjecting persons to civil penalties (Rule 1503).

(a) The actions that subject persons to civil penalties are violations of:

(1) Any rule or regulation issued under Part I of the Federal Power Act;

(2) Any term or condition of a license or permit issued under Part I of the Federal Power Act or an exemption issued from any provision of Part I of the Federal Power Act;

(3) Any compliance order issued under section 31(a) of the Federal Power Act; or

(4) Any requirement of Part I of the Federal Power Act.

(b) Only actions occurring on or after October 16, 1986, may subject a person to civil penalties.

§ 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to $10,000 for each day that the violation continues.

(b) No civil penalty may be assessed where a license or exemption is ordered revoked.

§ 385.1505 Determination of proposed penalty amount (Rule 1505).

(a) In determining the amount of a proposed penalty, the Commission will consider the nature and seriousness of

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[28] 5 U.S.C. §§ 601–612 (1982).

[29] 52 FR 47,897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

[30] 18 CFR 380.4(a)(2)(ii) (1987).

the violation, and the efforts of the licensee, exemptee, permittee or one who should possess appropriate authority but does not, to remedy the violation in a timely manner.

(b) In making its determination under paragraph (a), the Commission will consider the following factors:

(1) Whether the person had actual knowledge of the violation;

(2) Whether the person had constructive knowledge of the violation deemed to be possessed by a reasonable individual acting under similar circumstances;

(3) Whether the person has a history of previous violations;

(4) Whether the violation caused loss of life or injury to persons;

(5) Whether economic benefits were derived because of the violation;

(6) Whether the violation caused damage to property or the environment;

(7) Whether the violation endangered persons, property or the environment;

(8) Whether there were timely remedial efforts;

(9) Whether there were untimely remedial efforts;

(10) Whether there were no remedial efforts; and

(11) Whether there are any other pertinent considerations.

§ 385.1506 Notice of proposed penalty (Rule 1506).

(a) Before issuing an order assessing a civil penalty under this subpart against any person, the Commission will provide to the person notice of the proposed penalty.

(b) The notice of proposed penalty will:

(1) Include the amount of the proposed penalty;

(2) Include a statement of the material facts constituting the alleged violation; and

(3)(i) Inform the person of the opportunity to elect in writing within 30 days of receipt of the notice to have the procedures of Rule 1509 (in lieu of those of Rule 1508) apply with respect to the assessment, or,

(ii) If a final compliance order is issued under section 31(a) of the Federal Power Act, no notice of election will be provided for a violation of, or a failure or refusal to comply with, the final order.

§ 385.1507 Election of procedures and answer (Rule 1507).

(a) If the respondent receiving the notice of proposed penalty wishes to have the procedures of Rule 1509 apply, then the respondent must file with the Commission, within 30 days of receipt of the notice, a notification of the election in accordance with Subpart T, Part 385 of this chapter. The notification may include an answer setting forth factual or legal reasons why the proposed assessment order should not be issued, should be reduced in amount, or should otherwise be modified. If a person fails to file an answer within the 30-day time limit, all material facts stated in the Commission's notice will be deemed admitted.

(b) Any election to have the procedures of Rule 1509 apply may not be revoked after the 30-day election period in paragraph (a) of this section, without the consent of the Commission.

§ 385.1508 Commission administrative procedures (Rule 1508).

(a) If the respondent is not entitled to an election pursuant to Rule 1506(b)(3)(ii) or does not timely elect to have the procedures of Rule 1509 apply, the Commission will commence a proceeding in accordance with the provisions of Subpart E of this chapter.

(b) The Commission's Rules of Practice and Procedure in Part 385 of this chapter will apply, as appropriate, to any evidentiary proceeding to assess a civil penalty.

(c) An assessment order under this section shall include the administrative law judge's findings and the basis for such assessment.

§ 385.1509 District court procedures (Rule 1509).

(a) After receipt of the notification of election to apply the provisions of this section pursuant to Rule 1507, the Commission will promptly assess the penalty it deems appropriate, in accordance with Rule 1505.

(b) If the civil penalty is not paid within 60 calendar days after the assessment order is issued under paragraph (a) of this section, the General Counsel, unless otherwise directed by the Commission, will institute an action in the appropriate United States District Court for an order affirming the assessment of the civil penalty.

§ 385.1510 Modification of civil penalty (Rule 1510).

(a) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty (with leave of court if necessary).

(b) In exercising its authority under paragraph (a) of this section, the Commission may consider the nature and seriousness of the violation, and the efforts of the licensee, exemptee, permittee, or one who should possess appropriate authority but does not, to remedy the violation in a timely manner.

(c) The Commission's authority to compromise, modify or remit a civil penalty may be exercised at any time prior to a final decision by the United States Court of Appeals if Rule 1508 procedures are utilized, or prior to a final decision by the United States District Court if Rule 1509 procedures are utilized.

§ 385.1511 Collection of civil penalties (Rule 1511).

If any person fails to pay a civil penalty assessment, the Commission will seek to recover the amount of the penalty plus interest in any appropriate District Court of the United States. Interest will begin to accrue on the date the Commission issues a final order under Rule 1508 or the date on which the appropriate District Court enters final judgment in favor of the Commission under Rule 1509.

[Editorial Note: The following dissenting opinion will not appear in the Code of Federal Regulations]

Dissenting Opinion of Commissioner Charles A. Trabandt

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Dissenting Opining of Commissioner Charles A. Trabandt

I dissent strongly to the provisions of this Final Rule which apply civil

penalties to those parties who are not licensees, permittees or exemptees under the Federal Power Act (FPA), as amended by the Electric Consumers Protection Act of 1986 (ECPA), and other features of the rule. It is unambiguously clear by any current standard of statutory construction that ECPA only grants the Commission the legal authority to apply the civil penalty provisions to parties who are licensees, permittees or exemptees. Furthermore, the majority's claim that Congress intended to apply those provisions not only to licensees, permittees or exemptees, but also to those who are required to have a license or exemption, is pure unadulterated fiction fashioned out of legislative history whole cloth.

1. *Kamargo* and apples vs. oranges: Commission exceeds FPA authority again by "banning oranges."

The U.S. Court of Appeals for the District of Columbia Circuit in *Kamargo Corporation, et al. v. FERC*, No. 87-1352, Decided August 9, 1988, may have characterized best the result here in its discussion of the Commission's similarly failed attempt in that case to fabricate non-existent legal authority under another provision of ECPA to prohibit certain new permits. The Court stated as follows, at pages 12 to 14 of the slip opinion.

> Of course, an agency is entitled to considerable deference in interpreting a statute it is authorized to administer, *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 31–32 (1981), and we therefore may not quarrel with its interpretation so long as it is reasonable. *Chevron U.S.A. Inc., v. NRDC*, 467 U.S. 837, 843–45 (1984). But in this case, we are hard put to see much merit in FERC's construction of ECPA. The statute does not even purport to deal with original licenses or preliminary permits. * * * * * * * * * *
>
> [N]either the language nor the legislative history permits the construction FERC adopts: that ECPA precludes granting preliminary permits to develop excess capacity at or near an existing project at a time close to relicensing. Since ECPA did not address this point either explicitly or implicitly, the Commission has, it seems to us, pushed beyond the outer limits of *Chevron* by making a policy choice supposedly supported by provisions of a statute that do not apply to the issue. *If Congress, for example, banned only the importation of apples, an agency charged with carrying out this hypothetical statute would be unjustified if, based on the statute, it decided to ban the importation of oranges as well.* (Emphasis added, footnote ommitted).

At bottom, the Commission in this final rule (using the example of the Court) has decided to ban the importation of oranges (civil penalties for those who are *not* licensees, permittees, or exemptees) based on purported authority in ECPA, even though Congress only banned the importation of apples (with penalties only for those who are licensees, permittees or exemptees). Any objective review of the statute and the relevant legislative history would reach that conclusion, just as surely as apples are different from oranges. ECPA, as a matter of fact, did not address either expressly or implicitly civil penalties for those not licensees, permittees or exemptees, and the statute does not even purport to deal with the issue, to paraphrase the *Kamargo* court. Consequently, here, as in *Kamargo*, the Commission again has pushed beyond the outer limits of *Chevron* by making a policy choice supposedly supported by provisions of ECPA that clearly do not apply to the issue. And, as a result, any reviewing court would be hard put, as in *Kamargo* to see much merit here in FERC's construction of ECPA. Or, put another way, apples are no more oranges in this case than they were in *Kamargo*, and the Commission has no legal authority under ECPA to apply civil penalties to parties who are not licensees, permittees or exemptees. It is very unfortunate, if not more disturbing, that the majority in this case has chosen to ignore completely the Court's analysis in *Kamargo* and proceed anyway to attempt blatantly again to seize authority not delegated by Congress—this time to impose civil penalties of up to $10,000 per violation per day on parties beyond the scope of the statute.

2. The statutory scheme: The plain meaning is obvious.

We should begin our analysis with a review of the statutory language at issue. Section 12 of ECPA amended the Federal Power Act by adding a new "Section 31. Enforcement," at the end of the Act. Section 31 has the following provision in subsection (c).

> (C) CIVIL PENALTY.—Any *licensee, permittee,* or *exemptee* who violates or fails or refuses to comply with any rule or regulation under this part, any term, or condition of a license, permit or exemption under this part, or any order issued under subsection (a) shall be subject to a civil penalty in an amount not to exceed $10,000 for each day that such violation or failure or refusal continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure, or refusal and the efforts of the *licensee* to remedy the violation, failure, or refusal in a timely manner. No civil penalty shall be assessed where *revocation* (or a license, permit or exemption) is ordered. (Emphasis added; parenthetical added to last sentence.)

Section 18 of ECPA, entitled "Effective Date," provides in pertinent part that:

> The amendments made by sections 6 and 12 of this Act shall apply to *licenses, permits,* and *exemptions* without regard to when issued. (Emphasis added.)

New subsection 31(c) is quite clear and unambiguous as to its scope of authority. A "*licensee, permittee* or *exemptee* * * * shall be subject to a civil penalty * * * *". And, "the Commission shall take into consideration * * * the efforts of the *licensee* to remedy the violation, failure or refusal in a timely manner." And, further, "[n]o civil penalty shall be assessed where *revocation* [of a license, permit or exemption] is ordered." The provision contains four sentences and three of them expressly refer to licensees, permittees, exemptees or the revocation of their respective licenses, permits or exemptions. Section 18 of ECPA expressly refers to the application of Section 12 to all licenses, permits and exemptions. There is no express mention nor implied reference to any other parties being subject to civil penalties on the face of subsection 31(c) of the FPA or Section 18 of ECPA. The plain meaning of the statute could not be more plain in this case: to wit, civil penalties apply only to licensees, permittees and exemptees (the apples, as it were, in the *Kamargo* opinion).

It is well settled under *current* standards of statutory construction that the plain meaning of a statute must control its interpretation in the absence of an ambiguity or unreasonable result, even where the Congressional Conference Report expressly calls for a contrary result from the statutory provision. Here the Conference Report, other than a passing reiteration of the Section 18 Effective Date for Section 12, is silent on the civil penalty provision in subsection 31(c).

3. Statutory construction: the plain meaning controls.

The applicable case law on the central statutory construction issue in this case is clear and unambiguous. The U.S. Court of Appeals for the District of Columbia Circuit has ruled repeatedly on this issue in support of the plain meaning doctrine. "We find no mandate in logic or in case law for reliance on legislative history to reach a result *contrary* to the plain meaning of a statute, particularly where that plain meaning is in no way unreasonable." *United Air Lines, Inc. v. CAB*, 569 F.2d 640, 647 (D.C. Cir. 1977), (emphasis in the original). The Supreme Court has ruled that a court interpreting a statute is bound by the "literal or usual meaning

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of its words" unless this would lead to "absurd results * * * or would thwart the obvious purpose of the statute * * *". *Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978) quoting *Commissioner of Internal Revenue v. Brown*, 380 U.S. 563, 571 (1965).

The District of Columbia Circuit Court of Appeals has been confronted with arguably analogous situations in several recent cases. In *National Small Shipments Traffic Conference Inc. v. CAB*, 618 F.2d 819 (D.C. Cir. 1980), the Court sustained the plain meaning of the statute, explaining that "[t]his case does not present an instance in which a literal interpretation of the language leads to an absurd result or conflicts with the obvious purpose of the Act." In that case, the CAB had acted in a manner that was directly contrary to an express statement in the Conference Report that the Managers did not contemplate that the Board would take such action under the new Public Law (exempting certain air carriers from the requirement of filing tariffs). The Court quoted the statement above from the *United Air Lines* opinion and went on to note "that interest groups who fail to persuade a majority of the Congress to accept particular statutory language often are able to have inserted in the legislative history of the statute statements favorable to their position, in the hope that they can persuade a court to construe the statutory language absent *clear contrary evidence* of legislative intent."

The Court analyzed further that there the plain language of the statute should control because there was no "*clear contrary evidence* of legislative intent," citing to *National Railroad Passenger Corp. v. National Association of Railroad Passengers*, 414 U.S. 452 (1974), (emphasis added). The Court concluded that the statement in the Conference Report that the Managers did not contemplate such action, was "not the type of clear indication of legislative intent that can justify a decision to disregard the plain language of a statute," and "[w]e must assume that if Congress had intended" that result "it would have said so in unmistakable language," i.e. in the statute itself, 618 F.2d 819, 828 (footnote omitted).

The same Court more recently in *Eagle-Picher Industries v. United States E.P.A.*, 759 F.2d 922 (D.C. Cir. 1985) was confronted with a statutory provision which appeared to have been drafted inconsistent with an express statement in the Senate Report as to the intended definition of a "hazardous substance". The Court there made several comments which are relevant to the instant case. In a footnote to the applicable discussion, the Court noted that although the definition originated in the Senate, did not come from the Conference Report "and thus should be accorded more weight than an ordinary Senate report * * * [sic] [n]evertheless, it is section 101(14), not the report of one body, that was passed by the entire Congress." The Court emphasized that the statute could have been drafted to achieve the result stated in the Senate Report "[i]f a rational draftsman had indeed intended that" result, but the statute there did not achieve that result. The Court stated:

> We thus are faced with a conflict between the language and structure of the statute on the one hand, and one portion of its legislative history on the other. It is clear to us that when such a conflict exists, the statute must control. It was, after all, section 101(14) that was enacted by Congress and became law.

759 F.2d 922, 929.

Also applicable to this case is *Montgomery Charter Service Inc. v. Washington Metropolitan Area Transit Commission*, 325 F.2d 230, 233 (D.C. Cir 1963), where the Court said " '[i]t is elementary in the law of statutory construction that, absent ambiguity or unreasonable result, the literal language of a statute controls and resort to the legislative history is not only unnecessary *but improper*.' " (quoting *Elm City Broadcasting Corp. v. United States*, 235 F.2d 811, 816 (D.C. Cir. 1956) (emphasis added). *See also* Sutherland, *Statutes and Statutory Construction § 46.01 (4th Ed.)*.

4. Final Rule: fictional Congressional intent drawn from fabricated legislative history.

The majority attempts vainly to fabricate a different analytical result by highly selective and misleading citations to various portions of the legislative history of the civil penalties provision in the bill passed by the House of Representatives. At the outset, it must be noted that the House-passed civil penalties provision was modified in the House-Senate Conference in a manner that re-emphasized the express limitation to licensees, permittees and exemptees. Nevertheless, the Final Rule, in discussion beginning at 5 of the Slip Opinion, attempts to avoid that result by making much of a wholly unrelated discussion in the House Committee Report about "[t]he *very first concern* highlighted by the House Report was the problem of unlicensed hydroelectric projects" (emphasis added) and a quote of a House witness on that subject. The discussion, at page 6, notes that "[t]he Committee further emphasized that it expected 'FERC to locate projects that are being operated without legal authority and to enforce the law,' " but fails to indicate that the quote was from another section of the report.

The discussion then emphasizes that the House report called for use of civil penalties for violations of orders and matters referenced in subsection (a). The discussion conveniently fails to explain that subsection (a) calls for the monitoring and investigation of compliance with each *license, permit* and *exemption* and to issue orders to require compliance with the *terms and conditions* of such *licenses, permits* and *exemptions*. Furthermore, the discussion ignores completely subsection (b), which provides for *revocation* of a *license or exemption*, where any *licensee* or *permittee* is found by the Commission *inter alia* to have knowingly violated an order under subsection (a) requiring compliance with the *terms and conditions* of the *license or exemption*. *See* subsections 31 (a) and (b) of ECPA for the full text of these provisions.

Thus, the statutory scheme of Section 31 is quite clear beginning with (1) subsection (a) monitoring, investigation and compliance orders; (2) subsection (b) revocation orders; and (3) subsection (c) civil penalties—all for enforcement of licenses, permits and exemptions. The Final Rule, at page 6, ignores all of this related statutory language and accurate legislative history in grandly pronouncing that Congress gave the Commission civil penalty authority to address its concern about unlicensed operations. A fitting retort could be that the partial testimony of one Congressional witness and a couple of spurious citations do not create a brand new civil penalty authority for the Commission. Of course, the Congress is well aware that the Commission under other provisions of the FPA has authority to make and enforce jurisdictional determinations for unlicensed operations in any event, without resort to the use of civil penalties under subsection (c). To argue that the cited portions of the House legislative history require application of civil penalties to unlicensed operations under these facts is completely farcical and unpersuasive.

The discussion, thus having failed miserably as a matter of law, turns next to the policy argument that having civil penalties only for licensees, permittees and exemptees "could lead to the result of encouraging operators to violate the FPA and operate without a license when they are required to have one." And so, the argument runs, "Congress did not intend to favor those who do not comply with the law over those who do."

Necessarily, then, civil penalties have to apply to unlicensed operations to prevent (1) favoritism to those who must not have complied with the law (or they seemingly would be licensed) and (2) encouragement of those unlicensed operators to continue to violate the FPA. The order also rebuts opposing public comments on the grounds that they have not been able to cite any specific legislative history to support their literal reading of the statute and its plain meaning. That is a nifty shifting of the burden of analytically showing the plain meaning is unacceptable, which would mean more generally that the plain meaning of a statute only controlled when there was express legislative history to support it. Such a result would turn upside down the entire current body of judicial opinion on statutory construction discussed above.

Finally, as the statutory construction *coup de grace*, the order reaches deep into legal annals to pull out *U.S. v. American Trucking Associations Inc. et al.*, 310 U.S. 534, 543 (1940) for the proposition that the Commission is not compelled by the literal reading of the Act to reach a result contrary to the aforementioned policy argument, because that would be plainly at variance with the policy of the legislation as a whole—as established by the thoroughly discredited legislative history analysis. This effort to pull a precedential "rabbit out of a hat" is another nifty analytical trick. It is no secret, however, that there have been a series of Supreme Court cases in the 48 years since *American Trucking*, which have sharpened the focus on the plain meaning of the statute, as discussed above.

The last gasp analytically, as it were, appears in footnote 16, at page 8 of the Slip Opinion, where the order cites to *Commodity Future Trading Commission v. Savage*, 611 F.2nd 270, 282 (9th Cir. 1980). The order argues that there was a similar situation under an interpretation of the term "registered under this Act" in the Commodity Exchange Act, wherein the term was held to include those not registered, but engaged in the activities requiring registration. The Court found that the broader interpretation was necessary to effectuate Congressional intent, while the narrower interpretation would frustrate a principal purpose of the Act. The discussion fails to describe the factual circumstances surrounding the Court opinion, particularly the fact that Congress amended the law to codify the broader interpretation in the statute at the time of the judicial proceedings. Also, that Act in several important ways is not analogous to the structure of the FPA, its licensing provisions, and its enforcement provisions. Thus, the asserted similarity is of little analytical significance or value in this case and is not persuasive for the proposition that, as arguably occurred in *Savage*, the terms "licensees, permittees and exemptees" really includes all other parties who are not licensees, permittees and exemptees. That result in *Savage*, as a practical matter, was the product of Congressional amendment of the law, and not a new theory of statutory construction or analysis.

5. The real legislative history: express support for the plain meaning and a report to the House Committee on the *alleged* unlicensed project problem.

The highly selective and misleading nature of the discussion about the House legislative history becomes apparent upon more careful review of the House and Senate legislative histgory for Section 31. Section 5 of the House legislation included new "Section 31. ENFORCEMENT." The section included: (1) subsection (a) on monitoring and investigation of compliance with licenses, permits and exemptions and issuance of orders requiring such compliance; (2) subsection (b) on revocation of licenses, permits and exemptions for knowing violators of orders issued under subsection (a); and (3) subsection (c) on civil penalties for licensees, permittees and exemptees. Not surprisingly, the House report explains that "Section 5 adds new Section 31 to the Federal Power Act that provides the Commission with additional enforcement authority *to ensure that license, exemption or permit conditions are met.*" (Emphasis added). The report continues, "the amendments are not intended to reduce, restrict, or limit the authority of the Commission under other sections of the Act * * * [i]t supplements that authority including Section 309 of the Federal Power Act." Thus, the much vaunted House Committee report on its face confirms that Section 31 Enforcement, including civil penalty authority, is for the *sole* purpose of supplementing existing authority to ensure that license, exemption or permit conditions are met. Where is the clear legislative intent that civil penalties also must or should apply to unlicensed hydroelectric operations? It's quite simply not there, because it obviously does not exist as a matter of fact.

The House Committee Report does quote from the witness in the hearing, Mr. Horn. Strikingly, however, the quotation in this order is only partial and off the main point of the full quotation in the report. The full quotation focuses directly on the need perceived by the witness for FERC to "aggressively monitor *compliance* with the *terms and conditions* attached to a *license or exemption.*" (Emphasis added.) His key recommendation, emphasized in italics by the Committee, was that *"therefore, the FERC should be directed by Congress to upgrade its current monitoring and compliance program, in cooperation with the states, to ensure full compliance with the conditions established in a license or an exemption."*

The Committee Report in the next paragraph makes absolutely clear that "subsection (a) requires that FERC monitor and investigate compliance, not just with regard to large projects or those under construction [but] [a]ll projects, including those exempted from licensing, must be watched to ensure compliance (i.e., with terms and conditions of licenses, permits and exemptions) * * * The subsection authorizes FERC to issue, after notice and an opportunity for public hearing, orders, subject to judicial review, *to require compliance with license, permit and exemption terms and conditions.*" (Emphasis added.) "Subsection (c) provides a new enforcement tool in the form of civil penalties for failure or refusal to comply with a subsection (a) order or any matter referenced in subsection (a) or for violations of such matter or orders" (i.e., FERC actions requiring compliance with license, permit and exemption terms and conditions).

There is not one reference to unlicensed hydroelectric operations, because that clearly was not the intent of the House Committee. In fact, the intent of the House Committee with regard to unlicensed hydroelectric operations was made abundantly clear in two sentences found in the middle of the paragraph discussing subsection(a). The Committee stated its intent as follows, "the Committee *also* expects FERC to locate projects that are being operated without legal authority [i.e. licensing or exemption under the FPA] and to enforce the law [which would be by making jurisdictional determinations under existing authority] [and] [t]he Committee expects FERC to *report* to the Committee within six months about this *alleged problem.*" (Emphasis added.) The Committee's admonition *also* to locate projects operated without legal authority and enforce the law and the requirement to make a report about the *alleged problem* are a far, far cry from the obviously fabricated

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Congressional intent in the order based on the highly selective and misleading citations and quotation from the Committee Report. The Committee categorically did *not* grant authority for civil penalties applicable to unlicensed hydro projects. All the Committee did was to note in passing the allegations in witness Horn's testimony about unlicensed operations, to admonish FERC to address the issue, and, in the penultimate directive to the Commission, *to make a report to the Committee in six months on the "alleged problem."* To attempt to bootstrap that relative crumb of Congressional interest all the way into a demonstrated, affirmative Congressional intent to apply civil penalties to unlicensed hydroelectric projects is akin to fabricating a new NASA Space Shuttle out of a paper airplane—it just won't fly. Or, as they reportedly say in Texas, that dog just don't hunt.

The companion Senate provision was contained in Section 12 of the Senate bill, which would add new subsections 26(b) and 26(c) to the FPA. Those subsections would provide the Commission with authority to revoke for significant violation of its terms any permit, license or exemption and also to issue orders to ensure compliance, with enforcement of orders by proceedings in Federal district courts. The Senate Committee Report, as did the House Report, makes clear that the new authority is exclusively for the purpose of issuing orders requiring compliance and revoking a permit, exemption or license for a significant violation of its terms. There is no suggestion of any kind that the new authority is intended by the Committee to have any application to parties other than licensees, permittees or exemptees. The exclusive focus of the discussion is on ensuring compliance with the terms and conditions of licenses, permits and exemptions, and the Committee emphasized that it "would expect FERC to give the licensees, exemptee, or permittee a reasonable time to remedy any violations which may occur."

And, of course, the Conference Report was silent on the substance of the new Section 31. ENFORCEMENT which melded together the companion provisions of the House and Senate bills. The respective Floor Statements of Chairman Dingell in the House of Representatives and Chairman McClure in the Senate with regard to the Conference Report only reiterated the positions of each body, without a single reference of any kind to the "alleged problem" of unlicensed hydroelectric operations. There can be absolutely no doubt, therefore, that the sole and exclusive focus of the Congressional intent in Section 31 was compliance by licensees, permittees and exemptees with the terms and conditions of their licenses, permits and exemptions, and the necessary enforcement authority for the Commission to ensure that compliance occurs—and nothing more.

6. The NOPR public comments: civil penalties as a cudgel to coerce unlicensed projects *in terrorem* to accept FERC jurisdiction.

The public comments filed in response to the Notice of Proposed Rulemaking (NOPR) in this docket add great weight to these concerns. For example, the Edison Electric Institute points out, at page 4, that there could be "serious negative consequences" from the rule's application of civil penalties to unlicensed operators. The jurisdictional question is often complex and difficult with tough factual issues. Thus, the effect of imposing civil penalties and imposing potential liability back to the date of enactment of ECPA would raise the stakes immensely in a jurisdictional dispute at the rate of $10,000 per day over several years. As EEI points out, "[t]his will almost assuredly have a chilling effect on the owner's willingness to pursue his [legal] rights * * * [because], in effect, the Commission could use the civil penalty provisions as a cudgel to coerce project owners into the Commission's Section 23 jurisdictional fold despite reasonable grounds to contest such jurisdiction." And, I would note, that is just exactly what the objective of the Commission is in this Final Rule—to seize unlawfully the cudgel to coerce project owners to accept jurisdictional status. Interestingly, EEI also notes in footnote 4 that the citation in the NOPR from the legislative history in the House Committee Report has been misconstrued, as discussed above. There is no question, therefore, that the Commission has been notified of that fatal flaw, which is perpetuated in the Final Rule.

The National Hydropower Association comment bluntly stated, "the statute means what it says" and "the Commission's attempt to amend the statute to include, in the words of the notice, a person who engages in conduct requiring a license or exemption but fails to obtain one is unlawful and inappropriate." NHA, at pages 5 and 6, disposes effectively with the woefully misbegotten claim of Congressional intent in the NOPR supporting application of civil penalties to unlicensed operators. NHA continues importantly to address the perceived rationale for such an effort, at page 7, as follows.

> [T]he Commission's claim to civil penalty authority over the owners/operators of unlicensed projects would give the Commission an unwarranted, coercive weapon with which to threaten such project owners who might otherwise contest the Commission's jurisdiction in good faith. It is clear, NHA believes, that the Commission has recently embarked on a program to expand hither to accepted limits of its Part I jurisdiction. Confronted with the possibility of as much as $10,000 per day in payments to the federal government for continued operation, an owner may decide to submit to FERC jurisdiction, even with substantial doubt as to the legitimacy of the Commission's assertion of jurisdiction. The coercive effect, in such a case, violates due process considerations to the extent that the threat of civil penalties would preclude project owner's contesting FERC jurisdiction, by appeal or otherwise.

I believe that NHA, as did EEI, has identified correctly the Commission management's objective in this Final Rule. I also would note that the rule provides for a civil penalty of $10,000 per day per violation, which could be even more coercive in its practical effect. I also agree with NHA's belief about the Commission's effort to expand the limits of its jurisdiction, as set forth in my separate opinions in the *Fairfax County Water Authority* case and the Delegation Rule, discussed below.

Niagara Mohawk Power Corporation, at page 6, opposes the NOPR proposal to include unlicensed hydro operators within the scope of civil penalties. Niagara Mohawk cites to the "creative bit of statutory construction" in the notice where, as in the Final Rule, the House report's suggestion that FERC "enforce the law" with regard to projects operated without legal authority is bootstrapped into expansion of the civil penalty coverage of the statute. Niagara Mohawk points out that the "plain meaning of the statute limits its application to licensees, permittees and exemptees" and "[a] passing reference in a Committee Report * * * cannot expand the coverage of the statute." Niagara Mohawk also notes that the NOPR "seeks to justify this leap by claiming that a Congressional intent to omit those who have 'ignored licensing requirements' would be 'irrational' [but] such an omission would be less irrational than the approach taken by the Notice. . . .". Niagara Mohawk explains that the NOPR could result in the imposition of "massive civil penalties," with a penalty exceeding $3 million already accrued against an unlicensed party by the time the comments were filed in October 1987—

and another $3 million in the intervening ten months since then. Niagara Mohawk continues, "Congress could not have meant the Commission to subject to civil penalties persons who in good faith question jurisdiction over them, and the language of the statute itself bears out this conclusion."

Niagara Mohawk importantly then addresses the statutory scheme of the FPA, beginning at page 7, footnotes omitted.

> An amendment to an existing statute must be read in the context of the statute. The Notice takes the remarkable position, however, that the enactment of Section 31 silently swept away the half century of history represented by such provisions as Section 4(g) of the Act, which authorizes FERC to investigate unlicensed projects and to issue "such order(s) as it may find appropriate, expedient, and in the public interest;" Section 314, which authorizes FERC to seek an injunction against any violation of the Act or FERC rules, regulations or orders; and Section 316, which establishes criminal-penalties for violations of the Act. These provisions amply equip the Commission to compel those who should be licensed to secure licenses, while permitting respondents to assert their rights free from the *in terrorem* effect that the proposed rule would impart to Section 31. The position of the Notice that civil penalties may be imposed on those who should be licensed, but are not, is at odds with the face of the statute, the limited Congressional intent that can be discerned and the overall enforcement scheme of the Act.

Niagara Mohawk has covered well the salient arguments in opposition to the position adopted in the Final Rule. It is noteworthy that the Final Rule did not directly address these arguments, other than the reiteration of the legislative history and the passing citation in footnote 10, at page 4.

Orange and Rockland joined the chorus of opposition to the NOPR's expansion of the statutory scope to include unlicensed operators. In an expansive and well-reasoned review of *recent* court opinions on statutory construction (rather than the Final Rule's reliance on the 1940 *American Trucking* decision), Orange and Rockland proceeds to dismember analytically the NOPRs' flimsy attempt to invoke statutory construction principles to overturn the plain meaning of the statute. Orange and Rockland establishes conclusively that Congress did not intend to subject parties other than licensees, permittees or exemptees to civil penalties "and the Commission may not substitute its judgment for that of Congress with respect to the scope of the statute's enforcement provisions." Orange and Rockland points out that Congress expressly included parties in section 23(b) who should have licenses. So it is clear that "Congress clearly knew how to and did in fact subject persons who 'should have' licenses to the Commission's jurisdiction when it so desired, [but] it did not choose to do so with respect to the imposition of civil penalties, and the Commission may not appropriate to itself such authority." (Citing also to another illustration in Sec. 23(b), in footnote 4, at page 5.)

Orange and Rockland next persuasively dismisses the House Committee's general statement of "concern" about unlicensed projects as entirely inadequate to justify regulations which exceed the statutory mandate, noting that such concern was not addressed by Congress otherwise nor even discussed in the Conference Report. (As discussed separately, the House Committee, in fact, called for a report from the Commission on the "alleged problem" in six months.) Orange and Rockland correctly opines that FERC is not authorized to regulate on the basis of what Congress "should have done" or "meant to do" but rather is limited to the mandate of Congress expressed in the statute itself.

Orange and Rockland next analyzes the impact of the Court of Appeals decision in *American Mining Congress* v. *EPA*, 824 F.2d 1177 (D.C. Cir. 1987) on the NOPR, because it involved a similar attempt by EPA to expand the coverage of its statutory jurisdiction over certain categories of solid waste. Orange and Rockland asserts persuasively that application of the holding and the rationale of *American Mining Congress* to the facts here, establishes that FERC cannot under any circumstances apply civil penalties to unlicensed projects and "the holding of *American Mining Congress* incontrovertibly supports the proposition that the Commission will impermissibly exceed the scope of its statutory authority if it attempts to promulgate § 385.1501(b) as currently proposed," which the Final Rule of course does.

Orange and Rockland buttresses strongly its argument by analysis of the Supreme Court decision in *Board of Governors* v. *Dimension Financial Corporation*, 474 U.S. 361, 106 S. Ct. 681 (1986), where "the Supreme Court cautioned that the 'plain purpose' of legislation should not be invoked at the expense of the actual terms of the statute," Orange and Rockland concludes that, "the Court's admonition applies with particular force to the Commission's attempt to extend its jurisdiction despite the clear limitations set forth in the statute itself (and) [a]ccordingly the Commission is not authorized to promulgate § 385.1502(b) as proposed (which it now has) unless and until Congress explicitly confers on the agency the authority to enforce the statute's provisions against persons who 'should be' licensees or exemptees." I could not agree more with that analysis and that conclusion.

The public comments discussed above provide a powerful and persuasive—and for the Commission, extremely embarrassing—rebuttal of the arguments in the NOPR, which have been reiterated with nothing new or more in the Final Rule. The original public comments for all practical purposes have the analytical effect of preemptively negating the hollow response in the Final Rule. Those comments also add great weight to my modest analysis of the legislative history and complement very well the analysis of the *Kamargo* court. Taken together in the aggregate, these separate analytical pieces build an absolutely overwhelming case for the fatally flawed nature of the Final Rule adopted here. There cannot be a shadow of a doubt here that the Commission is attempting again to ban the importation of oranges, in the words of the *Kamargo* court's illustration.

7. SCPSA and harmony vs. false note: the Commission's false note exceeding its FPA authority again.

I should also note in passing the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in *South Carolina Public Service Authority v. FERC*, No. 871146, Decided July 5, 1988 (*SCPSA*). The Commission in that case attempted to use general conditioning power under the FPA to require that the State agree to provide compensation for all foreseeable property damage caused by any seismically induced dam failure, as an alternative to requiring the State to rebuild the impoundment structure found to be susceptible potentially to earthquake induced failure. The Court, "agreed with the State that the licensing authority granted to the Commission under the Act does not include the power to displace existing State tort law with its own rules of liability for damages caused by licensees," even under the unique facts of the *SCPSA* case. (Slip opinion, at 2).

The Court noted that, Acting Chairman Sousa dissented on the ground that "a license condition requiring SCPSA to compensate property owners for damages caused by dam failure [is] a usurpation of authority left to the States by Congress, beyond the Commission's authority." (Slip opinion, at 5). The Court effectively agreed and stated, "[t]hus there is no need to believe that Congress intended

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its words to have anything but their 'obvious meaning' in order for the Act to work in conformance with its declared purposes [and] [w]here means and ends sing in such harmony, the Commission's false note sounds false indeed." The Court concluded that, "when examined in light of traditional principles of statutory construction, the Federal Power Act reveals that Congress did not intend to authorize the Commission to displace State tort laws applicable to licensees. (Slip opinion, at 12).

Later, under the heading "III. Conclusion," the Court summarized as follows:

> In sum, the clear import of the statute is at one with its legislative history: while the Commission may require its licensees to abide by rules and regulations promoting safety, the liability of those licensees for damages caused by their projects is a matter left by Congress to State law. The Commission therefore exceeded its authority under the Act when it attempted to replace the tort law of South Carolina with its own principle of compensation, which it considered to be the more "fair and equitable." (Slip opinion, at page 16; footnote omitted).

I believe *SCPSA* and *Kamargo* are both relevant to this order, because they point out serious flaws in the statutory construction of the Federal Power Act by the Commission in recent cases. In both *SCPSA* and *Kamargo*, the Court of Appeals for the District of Columbia Circuit has found that the Commission exceeded its authority under the FPA, respectively, by imposing its own rules of liability displacing State tort law and by precluding preliminary permits authorized by the statute. These cases, coupled now with this order, point out there seems to be a developing pattern of the Commission "singing a false note" as to the relevant Congressional intent, as in *SCPSA*, to claim authority not found in the FPA by the courts to carry out its own self-initiated policy objectives. That is a practice which, beginning with this case, must be halted by the Commission. Now is the time to bring to an immediate halt the Commission's recurring efforts, seemingly at any time and in any case, to exceed its statutory authority under the FPA, whenever the Commission deems it appropriate.

8. Final Rule rationale: FERC's institutional obsession with unlicensed hydroelectric operations.

ECPA, therefore, does not grant the Commission any authority to apply civil penalties to parties other than licensees, permittees and exemptees. Here, as in *Kamargo*, the majority has pushed beyond the outer limits of *Chevron* by making a policy decision supposedly supported by provisions of ECPA that do not apply to the issue. And, there really can be no reasonable doubt about that conclusion, notwithstanding the arguments to the contrary in the Final Rule. Why then does the majority here, as did the majority in *Kamargo*, legally attempt to turn apples into oranges (so to speak) and find such authority? The answer is plain and simple, but probably not quite obvious. The Commission and its management are institutionally obsessed with the issue of unlicensed hydroelectric project operations. The discussion in the Final Rule reviewed above focused on that issue.

The Commission orders in *Fairfax County Water Authority*, 43 FERC 61,062 (1988) and the *Regulations Delegating Authority*, Order No. 492, FERC Statutes and Regulations (April 5, 1988) are examples of that obsession, as I documented at length in my separate opinions in those cases. The saga of the unlicensed hydro program set forth in those two orders is a hallmark of legally unauthorized activity by the Commission staff at the direction of the Commission management. Briefly, the Commission staff was directed in early 1987, without any knowledge of the Full Commission, to begin an exhaustive nationwide investigative program of existing, but Federally unlicensed, hydroelectric projects across the country to determine if they were jurisdictional. The Full Commission only became aware of the program this spring, when the Fairfax County Water Authority appealed illegal staff action to require licensing of its project. The Commission found out then that the Commission staff had already investigated about 100 projects in various parts of the country and without any legal authority issued 38 unauthorized jurisdictional determinations, of which the Fairfax County Authority was one.

Budget documents submitted to the Office of Management and Budget by Commission management document that the Commission staff has concluded that there are at least 500 projects that require jurisdictional determinations nationwide. Current plans call for the Commission staff to assert new Federal jurisdiction over 92 additional non-Federal projects in Fiscal Year 1989, beginning October 1, 1988, leading to a six-fold increase in the number of applications for constructed projects between Fiscal Year 1987 and Fiscal Year 1989. Outside contractors will be funded to assist the staff in conducting research and investigation and making jurisdictional findings as part of an overall increase of at least five percent in the current workload.

The staff at the March 30, 1988, Commission meeting conceded that there had not been a single instance where a project under investigation constituted an immediate threat to human life, health, property or the environment, which required emergency action without the knowledge or prior action of the Commission, otherwise required by the then-effective Commission regulations. To date, there has not been any persuasive justification for the initiation of this program, particularly without the knowledge of the Full Commission, let alone the concerted efforts to prevent the Full Commission from finding out about it. The program, however, will divert substantial staff and budget resources from high priority activity in the areas of hydroelectric relicensing and environmental assessment to support licensing, again without any systematic analysis of the costs and benefits of the program. The program was initiated by Commission management fiat with no underlying justification and that situation continues today.

Correspondence from the Commission to the Chairman of the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce in response to inquiries resulting from the *Fairfax County Water Authority* case have attempted to paint a more moderate picture of this program. The correspondence indicates that the rationale for the program is dam safety of projects which now should be licensed under current case law and further that the scope of the program is being reduced to a lower number of projects. Nevertheless, the correspondence acknowledges that it is anticipated that 70% of the reviews will lead to jurisdictional determinations requiring licensing of existing projects. Many of these older projects were legally constructed when FPA jurisdiction was more limited in scope, but now arguably may be subject to jurisdiction because of later court rulings or certain post-1935 construction activities.

Notwithstanding protestations to the contrary in the correspondence, it is clear on the basis of the sorry record of this program, that the underlying objective is largely, if not solely, jurisdictional in nature. There has not been any systematic and objective analysis of either safety or environmental problems, in the context of the 1986 House Committee report's identification of an *alleged* problem. At the very heart of this program remains nothing more than the fiat of

Commission management unsupported by analysis or fact. That is the context in which the unauthorized application of civil penalties to unlicensed projects in this Final Rule must be considered, as urged by the several public comments filed in this docket. The past history of the unlicensed hydroelectric program lends strong credence to the concerns of the commenters about the intended coercive use of the civil penalty authority as a cudgel to force unlicensed operators *in terrorem* to accept FERC jurisdiction without good faith challenge or protest.

The Commission here is desperately seeking a legitimized authority to impose civil penalties on unlicensed hydroelectric project operators and the desperation of the effort demonstrates that this is not an academic exercise. In fact, the Commission staff apparently plans to initiate civil penalty proceedings against a significant number of unlicensed project operators as soon as this order has issued. Originally, in that same spirit, the draft Final Rule also would have delegated civil penalty authority to the staff, but that was removed at my request. In my opinion, it would be a fundamental miscarriage of justice for the Commission to assess civil penalties against unlicensed operators under the provisions of the Final Rule. The situation with jurisdictional determinations already has reached unacceptable proportions and application now of the civil penalty provisions would only complicate and worsen the situation for no good public policy purpose and without any statutory authority from Congress.

Why should this Commissioner, or others for that matter, really be concerned about the unauthorized application of civil penalties to unlicensed hydroelectric operations in any event? The answer is straightforward and very simple. I believe strongly that an essential factor in the consideration of this Final Rule is that the Commission did not have civil penalty authority under the Federal Power Act prior to enactment of ECPA. The courts held in a succession of cases that the Federal Power Act did not grant the Commission any other civil penalty authority. Thus, Congress in ECPA granted the Commission civil penalty authority for the first time, but subject to expressly limited scope (e.g. licensees, permittees, and exemptees) and with expressly required due process administrative safeguards for the processing of alleged violations.

The NOPR on the face of the proposed regulations and the associated preamble discussion virtually ignored both the expressly limited scope and the due process administrative safeguards mandated by Congress in ECPA. In effect, the Commission figuratively proposed to take the new civil penalty authority from ECPA and promptly discard the scope limitations and due process procedures, as if the Federal Power Act now contained unlimited and largely unconstrained authority to impose civil penalties at the institutional whim of the Commission. As discussed separately, the plain meaning of the statute and the legislative history will not support that result. Clearly, the Commission has only that express authority granted in ECPA, and it can not, as proposed in the NOPR, blithely appropriate unto itself the far broader authority. The Final Rule, with certain modest procedural improvements, still suffers from the fundamental and legally fatal flaw that the Commission effectively is misappropriating such broader authority unto itself, which it cannot do here any more than it could in *Kamargo*.

Congress did not affirmatively intend that unlicensed hydroelectric operators would be subject to civil penalties of up to $10,000 per day per violation. And, unless and until Congress by statute expressly enacts such civil penalty authority for the Commission, it is patently unlawful for the Commission to assess one dollar of civil penalty against any unlicensed hydroelectric operator. Furthermore, it is obvious that the Commission management has every current intention upon issuance of this Final Rule of almost immediately invoking the new regulations to assess civil penalties against a number of existing unlicensed operators, as part of the institutional crusade described above. Commission staff has acknowledged that fact publicly in the Commission meeting of June 29, 1988, and privately since that meeting. In effect, the issuance of this fatally flawed rule will lead directly and immediately to the institution of civil penalty proceedings and the assessment thereafter of civil penalties against parties clearly not within the scope of Section 31. That result should offend every interested party committed to the rule of law in our democratic system, as it surely does this Commissioner.

9. Final Rule: a stay is justified and necessary.

That result also must be reversed as soon as possible to avoid very serious and potentially irreparable harm to unlicensed hydroelectric operators across the nation, who will be subject to the obviously intended coercive effect of the cudgel of illegal application of the civil penalties provision, in the context of the unlicensed hydroeletric program. Under these circumstances, such parties and the commenters would have grounds for seeking a stay of the Final Rule, pending further consideration of this issue by the Commission on rehearing and pending judicial review of the clearly illegal provision. The public comments have made abundantly and unambiguously clear the immediate threat the Final Rule constitutes in terms of due process rights and potential coercion by Commission staff in jurisdictional dispute cases, as well as the enormous financial burden represented by such civil penalties. There clearly is the present danger of irreparable harm as a result. And, there is little doubt on the basis of this analysis that any petitioner should prevail on the merits of a challenge to the legality of the Final Rule. And, further, there certainly would be no prospect of any harm to others if a stay was granted. Finally, under these facts, such a stay would be demonstrated as being in the public interest, thus satisfying the three pronged tests for a stay articulated in *Virginia Petroleum Jobbers v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

The Final Rule, at page 13 of the Slip Opinion under *G. Coercion*, responds briefly to the concern expressed by EEI (as well as several others, as discussed elsewhere) "that the Commission could use civil penalties to coerce project owners into the Commission's jurisdiction and that the effect of imposing liability on those who operate unlicensed projects raises the stakes in any contest over jurisdiction." Astonishingly, the order acknowledges that fact with amazing candor, as follows:

> Civil penalties do give the Commission greater enforcement authority than before, and the Commission believes that this authority will encourage greater compliance. *This is what Congress intended.* Because the stakes are now higher, the Commission believes persons will be more inclined to request a determination from the Commission as to whether a project is jurisdictional prior to commencing construction or operation of a hydropower project. (Emphasis added.)

Several comments are in order with regard to this response. First, this dissenting opinion has established that Congress, in fact, did not by any stretch of the imagination intend the use of civil penalties for unlicensed projects in the first instance, let alone the use of such penalties as a cudgel to raise the stakes higher in order to coerce unlicensed hydroelectric operators *in terrorem* to

accept FPA jurisdiction, rather than to contest it in good faith. For all practical purposes, the majority in the quoted passage has laid its cards on the table and exposed the intended use of civil penalties as a coercive tool or cudgel, claiming that's what Congress intended. Also, of course, the primary focus of the unlicensed hydroelectric program is *existing* projects—projected by the staff in budget materials submitted to the Office of Management and Budget to be in excess of 500 such projects nationwide which will be subjected to FERC investigation and review. Those projects, much more so than new projects, apparently are the target of the Commission's intended coercive use of the threat of civil penalties to force acceptance of jurisdictional status.

10. Other features of the Final Rule: harsh avoidance of the statutory due process requirements.

I also dissent on several other features of the rule. Generally, the Final Rule is unnecessarily harsh and overbearing in its current form, consistent with the approach taken to the unlicensed hydroelectric operations. The Final Rule, at page 9 of the Slip Opinion, for example, includes Commission disagreement to the argument that the Commission does not have the legal authority to consider past violations in reviewing the nature of a present violation. Here, again, the majority is attempting to bootstrap the new authority to use it as a *de facto* penalty for past allegations of compliance violations. Any such allegations have not been the subject of any form of formal evidentiary record keeping or review. There was no due process for informal complaints or staff concerns about compliance and certainly nothing like the stringent formal requirements that are mandated by Congress for processing proposed civil penalties. Ignoring all of these important legal considerations the Commission responds, as follows:

> In considering the nature of a present violation, the Commission intends to take into account the violator's compliance history. The Commission believes that an increased penalty is necessary for a repeat violator in order to adequately encourage compliance and to protect the environment and provide greater public safety. The Commission also recognizes that a first-time violator should not be penalized as severely as a repeat violator.

The majority's position would be acceptable if a so-called "repeat violator" had compliance violations that had been documented and processed in accordance with the new rules. That, however, is not the case now and it appears that past informal allegations and complaints, never formally considered by the Commission, can and will be used against a violator.

The Final Rule also declines to adopt a "knowing" standard, which would exclude violations that a licensee did not know of and could not reasonably be expected to know. (Slip Opinion at page 10). The order explains that Congress did not explicitly adopt such a limitation on the imposition of civil penalties in ECPA and, therefore, the Commission will only take that factor into account in determining the size of the penalty, with knowing violations resulting in a greater penalty. Certainly, it would be refreshing to see the Commission pay such attention to the plain meaning of the statute as to application of civil penalties to unlicensed hydroelectric operators, except once again the majority is wrong because Congress did, in fact, explicitly indicate that violations had to be knowing. Nevertheless, the "knowing" standard appears to be obvious on the face of the statutory scheme, with subsection (a) compliance orders required prior to the institution of civil penalty or revocation proceedings. The Senate Committee Report, in discussing the companion provision on enforcement, states that, "in the normal course of events the Committee would expect FERC to give the licensees, exemptee or permittee a reasonable period of time to remedy any violations which may occur." I believe that admonition is directly applicable as well to the issue of whether violations are "knowing" in the first instance in order to be subject to civil penalties. Further, subsection (c) expressly requires the Commission to take into consideration, "the efforts of the licensee to remedy the violation, failure or refusal in a timely manner," in determining the amount of the proposed penalty. There simply could not be a prior compliance order and an opportunity for remedy of the violations, unless it was, in fact, a knowing violation prior to the institution of civil penalties.

The Commission next compounds the error by refusing the reasonable requests of several petitioners to provide affirmative notice of non-compliance and opportunity to correct its conduct before civil penalties liability is triggered. The Final Order does not contain any prior notice requirements nor an affirmative opportunity for remedial action. The Commission states only that it *"may* initially contact persons in an effort to resolve instances of non-compliance, [but] declines to institute this approach as a necessary condition before assessing civil penalties." (Emphasis added). Later, "[t]he Commission also notes that in most instances the Commission *may likely* seek compliance prior to issuing a notice of proposed penalty, but it will not be mandatory for the Commission to proceed in this manner." (Emphasis added). This position of the majority is directly contrary to the express provision of subsection (c) requiring the Commission to consider the efforts of the party to remedy the violation in a timely way, which could only occur if there was (1) notice and (2) an opportunity to correct its conduct. Again, the underlying objective of the majority appears to be use of the civil penalty provisions in ways contrary to Congessional intent generally, and specifically so with regard to unlicensed projects. The pattern of negative responses to the public comments demonstrates that objective.

I would highlight other portions of this order that implement the administrative procedures of Section 31 of the Electric Consumers Protection Act of 1986. The hearing requirements of Section 31 are quite straightforward and were obviously included in the statute to protect the due process rights of all existing licensees, exemptees, and permittees. The Rule addresses the hearing requirements of the statute in several key places. The two most important places are the sections dealing with the issuance of compliance orders and assessment of civil penalty orders.

First, concerning the issuance of compliance orders, on page 16 of the slip opinion, the Commission, albeit inartfully, acknowledges that a licensee, exemptee, and permittee has the right to "respond in writing, with written submissions placed into the public record, to satisfy the notice and hearing requirement," which must occur *prior* to the Commission's issuance of a compliance order. This latter point, although not expressly stated in the

preamble or regulatory text, is clearly required by the statute and, therefore, must occur *at a minimum* under the operation of the Rule.

Second, it is also clear in my opinion that an assessment order issued by the Commission for civil penalties under Section 31 must include the administrative law judges' findings and the basis for such assessment. Again, the express language to that effect in the Rule is not a matter of any discretion for the Commission, but rather is a direct implementation of the clear requirement expressed in the statute.

11. Conclusion: Final Rule is egregious in its arrogance and pernicious in its effect.

In summary, this Final Rule is fatally flawed in a number of respects, most notably with regard to the application of the civil penalty provisions to parties other than licensees, permittees and exemptees. The Final Rule, unfortunately, follows earlier extralegal activity in the area of unlicensed hydroelectric projects, which has no basis in ECPA or other Congressional direction. Consequently, it comes as no surprise that the Commission here would exceed its statutory authority in several respects in the Final Rule. In my judgment, adoption of such a Final Rule, with application of civil penalties to parties never contemplated, let alone expressly intended, by Congress and with administrative procedures so plainly contrary to the statutory scheme and the intent of Congress, constitutes a flagrant violation of the Commission's independent regulatory authority and responsibilities. The intended imposition of civil penalties of $10,000 per day per violation on parties excluded by Congress is nothing short of raw federal regulatory arrogance, which can never be supported. Here, there simply is not even a scintilla of legislative history evidence or statutory construction analysis to support the conclusion of the majority with regard to unlicensed hydroelectric operations.

In many respects, I believe this Final Order is far more egregious in its arrogance and far more pernicious in its effect than the *Kamargo* case, which at least involved some colorable policy considerations under ECPA, although I dissented vigorously there. In the instant case, there are no such colorable considerations on any objective basis. The majority has chosen with absolutely no statutory or other legal foundation to misappropriate the civil penalty authority and harshly apply it well beyond ECPA's legal scope. That result cannot be acceptable and, therefore, I dissent.

Charles A. Trabandt,

Commissioner.

[FR Doc. 88-19054 Filed 8-22-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Amendment to the Alabama Abandoned Mine Land Reclamation Plan; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule, correction.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is correcting an error on the final rule approving the Alabama Abandoned Mine Land Reclamation (AMLR) plan amendment, which was published on Thursday, July 7, 1988 (53 FR 25486–25487). The correction will clarify in § 901.25 the name and address of the Alabama agency where the approved amendment is available.

EFFECTIVE DATE: August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 228 West Valley Avenue, Birmingham, Alabama 35209, Telephone (205) 731–0953.

SUPPLEMENTARY INFORMATION: The following correction is made to the Alabama Abandoned Mine Land Reclamation (AMLR) plan amendment, which was published on Thursday, July 7, 1988 (53 FR 25486–25487):

§ 901.25 [Corrected]

In § 901.25, on page 25487, second column, replace lines 9 through 12, with the following:

Alabama Department of Industrial Relations, 649 Monroe Street, Montgomery, Alabama 36130.

Date: August 16, 1988.

Brent Walquist,

Assistant Director, Program Policy, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-19082 Filed 8-22-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3422-7; TN-055]

Approval and Promulgation of Implementation Plans, Tennessee; Revisions to the Nashville TSP Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 17, 1987, the State of Tennessee submitted Board Order 1–87, revisions to the "Legally Enforceable Limits and Schedules" section of the Metropolitan Nashville and Davidson County Total Suspended Particulate (TSP) Implementation Plan. This 1979 TSP plan provided Reasonably Available Control Technology (RACT) for existing sources within the nonattainment area. The maximum allowable particulate mass emission and visible emission standards based on RACT were included in the plan as permit conditions. The permit conditions also included restrictions on hours of operation. Over the past seven years minor revisions have been made in 81 of the original permits and 32 of the original permits have been deleted because the permitted sources have ceased operation. Today, EPA is approving these revisions.

DATE: This action will be effective on October 24, 1988 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Such notice may be submitted to Ms. Rosalyn Hughes at the EPA Regional Office address listed below.

ADDRESSES: Copies of the material submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On February 17, 1987, the State of Tennessee submitted Board Order 1–87, revisions to the Metropolitan Nashville and Davidson County Total Suspended Particulate Plan (TSP), a part of the Tennessee State Implementation Plan (SIP). The revisions involve the "Legally Enforceable Limits and Schedules" section of the plan.

Processing of this revision was delayed until EPA promulgated the revised particulate matter standard (52 FR 24634) which eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, EPA will continue to process TSP SIP revisions which were in process at the time the new PM_{10} standard was promulgated. In the policy published on July 1, 1987, EPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceeding the approval of state plans specifically aimed at PM_{10}. If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, EPA's general policy would be to approve it. It is EPA's judgement that the regulations in this action would increase the stringency of the TSP plan and are therefore likely to result in better control of PM_{10} as well. Thus EPA is approving this TSP SIP revision.

The maximum allowable particulate emission standards, visibile emissions standards, and operating schedules based on Reasonably Available Control Technology for fifty-seven point sources were incorporated into 161 conditional operating permits which were included in Appendix A of the June 1979 Metropolitan Nashville and Davidson County portion of the Tennessee SIP revision for TSP. Chapter Four, Subchapter One, "Air Pollution Control" of the Metropolitan Code of Law specifies the allowable emission standards for all other sources. Over the past seven years, several minor changes have been made in 81 of the operating permits included in Appendix A and 32 of the permits have been deleted. The permit revisions and the deleted permits represent a decrease of over 130 tons per year of allowable emissions inside the 1963 Urban Services area of Metropolitan Nashville and Davidson County, Tennessee.

Air quality dispersion modeling was not necessary for approval of this SIP revision. Only two sources had increased their emissions by more than 25 tons per year. EPA considers increases of less than 25 tons per year to have a sufficiently small air quality impact that a modelling analysis is not necessary. These two sources are limestone rock quarries. The increases in emissions in the submittal were fugitive emissions from stockpiling, wind erosion, etc. These emissions were not covered by permit conditions in the 1979 SIP. The actual emissions in 1979 were greater than the allowables in this submittal. Therefore, the increased emissions at these sources do not constitute a relaxation of the existing SIP. Both of these sources are quarrying operations and at this time there are no emission factors available for PM_{10} emissions from quarrying operations. Therefore, modeling was not required for these sources. A technical support document giving further details on EPA's analysis is available for inspection at the EPA office whose address is listed above.

Final Action: Since Board Order 1–87 is consistent with EPA policy and requirements, it is hereby approved. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for Tennessee was approved by the Director of the **Federal Register** on July 1, 1982.

Date: July 28, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(81) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(81) Board Order 1–87 concerning Legally Enforceable Limits and Schedules for the Metropolitan Nashville and Davidson County portion of the Tennessee State Implementation Plan for Total Suspended Particulates, was submitted on February 17, 1987, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Board Order 1–87, and amendments to § 2.12.1.D.8, "Legally Enforceable Limits and Schedules", of the Metropolitan Nashville and Davidson County portion of the Tennessee State Implementation Plan for Total Suspended Particulates, approved on January 21, 1987.

(ii) Other material—none.

[FR Doc. 88–17245 Filed 8–22–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 32, 72, 92, and 190

[CGD88–062]

Ventilation Penetrations of Fire Rated Boundary Bulkheads

AGENCY: Coast Guard, DOT.

ACTION: Interpretation of rules.

SUMMARY: This notice clarifies existing Coast Guard and international regulations concerning ventilation penetrations in fire rated boundary bulkheads. Various appeals from vessel construction requirements have revealed that the regulations are being misinterpreted by portions of the domestic shipbuilding industry. The intended effect of this Notice is to demonstrate that return air ducts which

are not connected to the ventilation system, called balancing or jumper ducts, which penetrate fire rated boundary bulkheads, are prohibited. The result will be a savings in time and costs associated with correcting the impermissible penetrations.

FOR FURTHER INFORMATION CONTACT: Commander Gordon D. Marsh, Chief, Ship Design Branch (G–MTH–4), Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, U.S Coast Guard, 2100 St. SW., Washington, DC 20593–0001; telephone 202/267–2997.

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard regulations and the International Convention for the Safety of Life at Sea, as amended (SOLAS 74/83) regulations prohibit unconnected ventilation openings in fire rated boundaries except louvered openings in the lower half of doors. The purpose is to prevent the passage of flame, smoke, hot gases, and toxic gases from the space where the fire originates to other locations in the vessel. In particular, the regulations are intended to prevent the spread of smoke and gases into escape routes, such as corridors and stairways, that would prevent escape, rescue, and fire fighting.

Title 46, Code of Federal Regulations, § 32.57–10(d)(1) for tank vessels, § 92.07–10(d)(1) for cargo and miscellaneous vessels, and § 190.07–10(d)(1) for oceanographic research vessels, require all corridor bulkheads within accommodation spaces to be A- and B-Class fire rated, intact deck to deck. However, stateroom doors in these bulkheads are permitted to have a louver in the lower half of the door. For passenger vessels, 46 CFR 72.05–10(c)(1) requires A-Class bulkheads made intact with the main structure of the vessel. For B-Class bulkheads, 46 CFR 72.05–10(c)(2) requires the bulkhead to be intact deck to deck, or to a continuous B-Class ceiling, which is functionally equivalent. For passenger vessels, doors in B-Class bulkheads are permitted by 46 CFR 72.05–25(c)(3) to have a vent grille or louver not to exceed 2 square feet (288 square inches) (0.186 square meters) in area in the lower half of the door. The Coast Guard's position is that vent grilles or louvers in the lower half of stateroom doors will not immediately jeopardize an escape route. The openings explained above are the only unconnected ventilation openings in fire rated boundaries permitted by Coast Guard regulations.

The openings discussed above have traditionally been used by marine design engineers as return air ducts to help balance ventilation system air flow. For spaces where the vent grille or louvered opening in the lower half of doors is adequate to balance ventilation air flow, this system design is still acceptable. However, design engineers have found that for large spaces, or spaces where large masses of air must be balanced, a return duct in addition to those discussed above is needed. Recently several vessel designs have incorporated openings in the bulkheads unconnected to the ventilation system ductwork, to provide a return air path in addition to that provided by louvered door openings. Even if equipped with automatic or manual dampers, these openings, referred to as balancing or jumper ducts, provide a path for flame and smoke to travel from the overhead in one space to another and are impermissible. The ventilation system must not jeopardize the integrity of the boundary or furnish a direct path for smoke and combustion gases to spread to escape routes or from high risk spaces to low risk spaces.

For those vessels which must comply with SOLAS requirements, the return air system is further complicated. First, for passenger vessels, Chapter II–2, Regulations 31.1 of SOLAS 74/83 permits only a ventilation opening in or under the lower half of doors in B-Class boundary bulkheads in accommodation and service spaces. The opening is not to exceed 77.5 square inches (0.05 square meters). Sceond, for non-passenger vessels, Chapter II–2, Regulation 47.3 of SOLAS 74/83 permits only a ventilation opening not to exceed 77.5 square inches (0.05 square meters) in or under the lower half of corridor doors of cabins and public spaces. The marine industry is reminded that in order to qualify for a SOLAS Safety Construction Certificate, vessels must meet the more restrictive SOLAS requirement. On 1 October 1984, the Coast Guard published an Advance Notice of Proposed Rulemaking (CGD83–026) in the **Federal Register**, 49 FR 38672, notifying the public that a project was being undertaken to amend Coast Guard regulations to be compatible with the SOLAS 74/83 fire protection requirements.

Dated: August 15, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–18982 Filed 8–22–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

Indefinite Extension of Interim Provisions for Cordless Telephones

AGENCY: Federal Communications Commission.

ACTION: Errata.

SUMMARY: This action concerning the extension of interim provisions for cordless telephones corrects the dates cited in the final rule.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph P. Husnay, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION: *See Order*, RM–5320, FCC 87–335, December 10, 1987; 53 FR 1781, January 22, 1988. The **Federal Register** summary of an *Order* concerning cordless telephones cited incorrect dates. Specifically, the summary stated that, "Current rules require the manufacturing and importation of cordless telephones to end by February 15, 1988, while, marketing is to end by February 15, 1989." The dates are hereby corrected to February 15, 1989 and February 15, 1990, respectively.

Federal Communications Commission.
Office of Engineering and Technology.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 88–19094 Filed 8–22–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 71146–8001]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: Domestic fishermen delivering fish to foreign processors (JVP) must cease fishing in the Gulf of Alaska with trawl gear other than pelagic trawl gear effective August 18, 1988, through the remainder of 1988. This action limits the prohibited species

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catch (PSC) for Pacific halibut to that applicable to JVP and permissible under Federal regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: This notice is effective at 12:00 noon, Alaska Daylight Time (a.d.t.) on August 18, 1988, until midnight, Alaska Standard Time, December 31, 1988. Public comments will be accepted for 15 days from the effective date, through September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Peacock, Fishery Management Specialist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fisheries in the U.S. exclusive economic zone under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.92 and Part 672.

Special consideration is given to the conservation of Pacific halibut, a valuable species taken as bycatch in the groundfish fishery. Pacific halibut are managed under authority of the International Pacific Halibut Commission; however, bycatches by domestic fishermen delivering groundfish either to domestic processors (DAP) or to JVP are controlled through PSC limits (50 CFR 672.20(b)). The current Pacific halibut PSC limit for the Gulf of Alaska that is applicable to JVP is 240 metric tons (mt) (53 FR 890, January 14, 1988).

The Regional Director had determined that the JVP PSC in the Gulf of Alaska for Pacific halibut has been reached. Therefore, according to § 672.20(f)(1), this notice prohibits the fishing with trawl gear other than pelagic trawl gear for the remainder of 1988 by JVP vessels in the Gulf of Alaska, subject to § 672.20(f)(2)(iv). Pelagic trawl gear is defined at § 672.2.

Classification

Unless this notice takes effect promptly, the Pacific halibut PSC applicable to JVP will be exceeded, and the amount of Pacific halibut available to domestic fishermen who target on this species will be decreased. NOAA, therefore, finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. Therefore, this notice will be effective at 12:00 noon, ADT on August 18, 1988 and public comments on this closure will be accepted by the Regional Director for a period of 15 days after the effective date of this notice, through September 2, 1988. During the comment period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which the closure was based. If written comments are received during the 15-day period that oppose the closure, the Secretary will reconsider the necessity of the closure and, as soon as practicable after that reconsideration, will either publish in the Federal Register a notice of continued closures, responding to comments received, or rescind the closure. This action is taken under § 672.20 and 50 CFR 611.13 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–19062 Filed 8–18–88; 1:21 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 163
Tuesday, August 23, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

Government Use of Commercial Recruiting Firms and Nonprofit Employment Services

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to issue regulations permitting agencies to use commercial recruiting firms and nonprofit employment services to locate candidates for Federal civil service positions. Candidates identified in this way must then be considered for Federal employment through regular civil service procedures.

DATE: Written comments will be considered if received no later than October 24, 1988.

ADDRESS: Send or deliver written comments to Chief, Staffing Policy Division, Career Entry Group, Office of Personnel Management, Room 6504, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ellen Russell, (202) 653–8399.

SUPPLEMENTARY INFORMATION: In accordance with instructions in the Federal Personnel Manual, agencies have traditionally relied on their own resources to recruit candidates for Federal positions. OPM has carefully reexamined these institutions as part of its efforts to update and streamline the Federal personnel system and has concluded that certain changes are necessary to enhance the Government's ability to attract high quality talent now and in the years to come. OPM believes additional recruiting flexibilities are of particular importance to agencies with positions for which candidates are in short supply. In authorizing agency use of commercial recruiting firms and nonprofit employment services, OPM is also setting the conditions necessary to protect merit principles. These conditions are designed to ensure the following:

—The use of commercial recruiting firms and nonprofit employment services does not conflict with statutory appointment requirements

—Candidates referred by the commercial recruiting firms or nonprofit employment services are treated no differently than candidates referred from other sources

—The public knows it is not necessary to go through a commercial recruiting firm or nonprofit employment service in order to be considered for Federal employment

—Individuals have not paid any fees to commercial recruiting firms or nonprofit employment services in order to be referred to Federal agencies. (Under contract, Federal agencies would bear the entire cost of using the commercial recruiting firm or nonprofit employment service.)

OPM will closely monitor the use of this new authority and will require reports from agencies on at least a yearly basis. Within three years of the date of final regulations, OPM will evaluate the authority and determine whether it should be continued.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 300

Administrative practice and procedures, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Part 300 is revised as set forth below.

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Secs. 300.401 through 300.407 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

2. Subpart D is added to read as follows:

Subpart D—Use of Commercial Recruiting Firms and Nonprofit Employment Services

Sec.

300.401 Definitions.
300.402 Coverage.
300.403 When commercial recuriting firms may be used.
300.404 Use of fee-charging firms prohibited.
300.405 Requirement for contract.
300.406 Agency responsibilities.
300.407 Documentation.

Subpart D—Use of Commercial Recruiting Firms and Nonprofit Employment Services

§ 300.401 Definitions.

For purposes of this subpart:

(a) A "commercial recruiting firm" is a profit-making entity which, by contract, supplies Federal agencies with the names of individuals for employment consideration in accordance with requirements set by the Federal agency.

(b) A "nonprofit employment service" is one legally established as nonprofit under State law and may be sponsored by such groups as professional societies, organizations of college graduates, or social agencies.

§ 300.402 Coverage.

These regulations apply to positions in the competitive service, positions in the excepted service under Schedules A, B, and C, and positions in the Senior Executive Service.

§ 300.403 When commercial recruiting firms may be used.

(a) Agency use of commercial recruiting firms is appropriate when likely to provide candidates who would otherwise not be available.

(b) Except when the agency head or designee has determined that candidates are known to be in short supply, an agency may not use a commercial recruiting firm until the agency has conducted its own recruitment through regular staffing procedures.

§ 300.404 Use of fee-charging firms prohibited.

(a) Federal agencies are prohibited from using commercial recruiting firms and nonprofit employment services which charge fees to individuals.

(b) The prohibition in paragraph (a) of this section does not apply to registration fees paid by individuals to nonprofit employment services sponsored by professional organizations when the registration fee is imposed regardless of whether the registrant is referred for employment or placed.

§ 300.405 Requirement for contract.

(a) A written contract is required between the Federal agency and a commercial recruiting firm or nonprofit employment service. As a minimum, the contract must include:

(1) A request for the recruitment services (as required by 18 U.S.C. 211);

(2) The qualifications requirements of the position for which candidates are being sought;

(3) The total costs to the agency; and

(4) The conditions of payment.

(b) The contract must also provide that the firm or service will:

(1) Screen candidates only against the qualification requirements specified in the agreement and refer to the agency all candidates who meet those basic requirements;

(2) Recruit and refer candidates without regard to race, color, religion, national origin, sex, marital status, age, handicapping condition, or other factors prohibited under law, rule, or regulation;

(3) Refer to the Federal agency only those applicants from whom the firm or service has not accepted fees other than those permitted under § 300.404(b) of this part; and

(4) Not imply that it is the sole or primary avenue for employment with the Federal Government or a specific Federal agency.

§ 300.406 Agency responsibilities.

(a) In order to use commercial recruiting firms or nonprofit employment services, agencies are required to:

(1) Publicize the fact that applicants may apply directly to the Government and need not apply through the commercial recruiting firm or nonprofit employment service;

(2) Give the same consideration to candidates who have applied directly and candidates referred from the commercial recruiting firm or nonprofit employment service; and

(3) Follow all requirements for appointment. The purpose of a commercial recruiting firm or nonprofit employment service is to serve as an additional source of applicants. Once recruited, applicants must be evaluated and appointed through regular civil service employment procedures.

(i) For an excepted service position, an individual must be appointed in accordance with the terms of the applicable appointing authority.

(ii) For a Senior Executive Service position filled by career appointment, an individual must be appointed in accordance with the competitive process described in 5 U.S.C. 3393.

§ 300.407 Documentation.

(a) Agencies are required to maintain records necessary to determine that using commercial recruiting firms or nonprofit employment services is cost effective and has not resulted in the violation of merit system principles or the commission of any prohibited personnel practice.

(b) In order for OPM to evaluate the authority granted under this subpart, agencies must submit reports in accordance with its instructions. Reports will be submitted on at least an annual basis and, as a minimum, will provide information on the kinds of jobs for which recruiting firms were used, the costs to the agency, and the results in terms of candidates referred and selected. Reports will also provide comparative data to show the effect of using a recruiting firm on the agency's ability to locate qualified candidates.

(c) Upon evidence that an agency is not complying with these regulations, OPM may, pursuant to its authority, order appropriate corrective action.

[FR Doc. 88-19046 Filed 8-22-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV-AO-88-3; FV-88-108]

Proposed Georgia Vidalia Onion Marketing Agreement and Order; Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed marketing agreement and order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement and order to cover Vidalia onions grown in Georgia. The proposed program would authorize production and marketing research and promotion projects including paid advertising. The proposal was submitted by a group of Vidalia onion growers and handlers known as FAVOR (Farmers Allied for the Vadalia Onion Referendum). FAVOR represents approximately 75 percent of the Vadalia onion industry. The program would be financed by assessments levied on handlers of Vidalia onions grown in twelve designated counties and portions of seven other counties in southeastern Georgia. The assessment rate would be established by the Secretary of Agriculture, based on the recommendation of a committee that would administer the program. The committee would be composed of eight growers. At least four members must also be handlers.

DATES: The hearing will be held in Lyons, Georgia, beginning on September 20, 1988, at 9:00 a.m. Additional sessions, if necessary, will be held on September 21, and 22, beginning at 9:00 a.m. at the same location.

ADDRESS: The hearing will be held in the Toombs County Courthouse, Highway 280 East, Lyons, Georgia 31206.

FOR FURTHER INFORMATION CONTACT: Copies of this Notice of Hearing may be obtained from:

(1) John R. Toth, Officer-in-Charge, Southeast Marketing Field Office, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone (813) 299-4770.

(2) Kenneth G. Johnson, Marketing Specialist, Market Order Administration Branch, Fruit and Vegetable Division, Room 2525-S, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone number (202) 447-5331.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12291. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 "Act", as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and reporting requirements of the program are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the reporting requirements and probable economic impact of the proposal on small businesses.

Proponents of the order that a marketing order is needed with the

authority to conduct research and promotion projects to enable the Georgia Vidalia onion industry to better compete with other onion producing areas. The industry believes that an effective promotion program, including paid advertising, can be implemented to expand its markets, improve grower returns, and increase consumer awareness.

This proposal has been widely discussed within the Georgia Vidalia onion industry but has not yet received approval by the Secretary of Agriculture.

The hearing will be held for the purposes of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of Vidalia onions produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement and order for Vidalia onions;

(d) Determining the economic impact of the proposed marketing agreement and order on the industry in the production area and on the public affected by such a program;

(e) Determining whether the proposed marketing agreement and order or any appropriate modification of them will tend to effectuate the declared policy of the Act.

A pre-notice of hearing press release was issued on June 7, 1988 to announce the receipt of this proposal and to provide the opportunity for interested parties to submit comments or alternative proposals through July 6, 1988. Eighty-eight comments were received. While all expressed general support of the proposal, one questioned the need for production research and two implied that quality control provisions would be beneficial. No specific alternate proposals were received.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and are proposed by the Agricultural Marketing Service.

List of Subjects in 7 CFR Part 955

Marketing agreements and orders, Vidalia onions, Georgia.

The marketing agreement and order proposed by Farmers Allied for the Vidalia Onion Referendum would add a new Part 955 to read as follows:

PART 955–VIDALIA ONIONS GROWN IN GEORGIA

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Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Definitions

§ 955.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or who may hereafter be delegated, the authority to act for the Secretary.

§ 955.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 955.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 955.4 Production area.

"Production area" means that part of the State of Georgia enclosed by the following boundaries: Beginning at a point in Laurens County where U.S. Highway 441 intersects Highway 16; thence continue southerly along U.S. Highway 441 to a point where it intersects the southern boundary of Laurens County; thence southwesterly along the border of Laurens County to a point where it intersects the county road known as Jay Bird Springs Road; thence southeasterly along Jay Bird Springs Road to a point where it intersects U.S. Highway 23; thence easterly to a point where U.S. Highway 23 intersects the western border of Telfair County; thence southwesterly following the western and southern border of Telfair County to a point where it intersects with Jeff Davis County; thence following the southern border of Jeff Davis County to a point where it intersects with the western border of Bacon County; thence southerly and easterly along the border of Bacon County to a point where it intersects Georgia State Road 32; thence easterly along Georgia State Road 32 to Seaboard Coastline Railroad; thence northeasterly along the tracks of Seaboard Coastline Railroad to a point where they intersect Long County and Liberty County; thence northwesterly

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and northerly along the southwestern border of Liberty County to a point where the border of Liberty County intersects the southern border of Evans County; thence northeasterly along the eastern border of Evans County to the intersection of the Bulloch County border; thence northeasterly along the Bulloch County border to a point where it intersects with the Ogeechee River; thence northerly along the main channel of the Ogeechee River to a point where it intersects with the southeastern border of Screven County; thence northeasterly along the southeasterly border of Screven County to the main channel of the Savannah River; thence northerly along the main channel of the Savannah River to a point where the northwestern boundary of Hampton County, South Carolina intersects the Savannah River; thence due west to a point where State Road 24 intersects Brannen Bridge Road; thence westerly along Brannen Bridge Road to a point where it intersects with State Road 21; thence westerly along State Road 21 to the intersection of State Road 17; thence westerly along State Road 17 to the intersection of State Road 56 and southerly to the northern border of Emanuel County; thence westerly and southerly along the border of Emanuel County to a point where it intersects the Treutlen County border; thence southerly to a point where the Truetlen County border intersects Interstate Highway 16; thence westerly to the point of beginning in Laurens County.

§ 955.5 Vidalia onion.

"Vadalia onion" means all varieties of Allium cepa of the hybrid yellow granex, granex parentage or any other similar variety recommended by the committee and approved by the Secretary, that are grown in the production area.

§ 955.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of Vidalia onions owned by another person) who handles Vidalia onions, or causes Vidalia onions to be handled.

§ 955.7 Handle.

"Handle" or "ship" means to package, load, sell, transport, or in any way to place Vidalia onions, or cause Vidalia onions to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of field-run Vidalia onions to a registered handler for the purpose of having such Vidalia onions prepared for market.

§ 955.8 Registered Handler.

"Registered handler" means any person with adequate facilities within the production area for preparing Vidalia onions for commercial market, who customarily does so, and who is so recorded by the committee, or any person who has access to such facilities within the production area, and has recorded with the committee the ability and willingness to assume customary obligations of preparing Vidalia onions for commercial market.

§ 955.9 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of Vidalia onions for market.

§ 955.10 Producer-Handler.

"Producer-Handler" means a producer who handles Vidalia onions self-produced, and those produced by others.

§ 955.11 Varieties.

"Varieties" means and includes all classifications, subdivisons, or types of Vidalia onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee and approved by the Secretary.

§ 955.12 Committee.

"Committee" means the Vidalia Onion Committee, established pursuant to § 955.20.

§ 955.13 Fiscal period.

"Fiscal period" means the 12 month period beginning on January 1 and ending on December 31 of each year or such other period that may be recommended by the committee and approved by the Secretary.

Committee

§ 955.20 Establishment and membership.

The Vidalia Onion Committee, consisting of eight producer members, of which at least four are producer-handlers, is hereby established. Each member shall have an alternate who shall have the same qualifications as the member.

§ 955.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for two fiscal periods. The terms shall be so determined that one-half of the total committee membership shall terminate each year. Members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, or until their successors are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. As determined by lot drawn at the committee's first meeting, one-half of the initial members and alternates shall serve for a one-year term and one-half shall serve for a two-year term.

(c) The consecutive terms of office of members shall be limited to three 2-year terms.

§ 955.22 Nominations.

(a) Initial members. For nominations to the initial committee, a meeting or meetings of producers and producer-handlers shall be held by the Secretary or by any agency or group requested to do so by the Secretary.

(b) Successor members. (1) For succeeding members and alternates on the committee, the committee shall conduct nominations or cause them to be conducted prior to October 15 of each year, or by such other date as may be specified by the Secretary.

(2) The committee may conduct nominations either by producer and producer-handler nomination meetings or by mail ballot. At least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

(3) Nominations for members and alternates shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than November 1 of each year, or by such other date as may be specified by the Secretary.

(c) Each producer is entitled to cast only one vote on behalf of such producer and such producer's agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote shall be construed to permit a voter to cast one vote for each position to be filled.

§ 955.23 Selection.

From the nominations made pursuant to § 955.22 or from other qualified persons, the Secretary shall select members and alternate members of the committee.

§ 955.24 Acceptance.

Any person selected by the Secretary as a member or alternate member of the committee shall qualify by filing a written acceptance with the Secretary after being notified of such selection.

§ 955.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence or when designated to do so by such member. In the event of the death, removal, resignation or disqualification of a member, that member's alternate shall serve until a successor to such member is selected and has qualified.

§ 955.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member of alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 955.22, from previously unselected nominees on the current nominee list, or from other eligible persons.

§ 955.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 955.22, the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 955.20.

§ 955.28 Procedure.

(a) Five members of the committee shall constitute a quorum, and five concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meetings by telephone, telegraph, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided,* that if an assembled meeting is held, all votes shall be cast in person.

§ 955.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 955.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 955.31 Duties.

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members or alternates, and to adopt such rules and regulations for the conduct of its business as it deems necessary;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each such person, and to protect the handling of committee funds;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Vidalia onions;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examine at any time by the Secretary or the Secretary's authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(g) Prior to the beginning of each fiscal period, to prepare and submit to the Secretary and budget of its projected income and expenses for such fiscal period, together with a report thereon and a recommendation as to the rate of assessment for such period;

(h) To cause its books to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each report shall be furnished to the Secretary. A copy shall also be made available at the principal office of the committee for inspection by producers and handlers provided that confidential information shall be removed;

(i) To give the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members.

Expenses and Assessments

§ 955.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §§ 955.42 and 955.45.

§ 955.41 Budget.

Prior to each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 955.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Vidalia onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers, at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase shall be applicable to all Vidalia onions which were handled by the handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect

irrespective of whether particular provisions of this part are suspended or become inoperative.

(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.

(f) The committee may impose a late payment charge or an interest charge or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 955.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, such person shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, pertaining to the committee's activities for which such person was responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 955.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(a) The committee, with the approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately one fiscal period's budgeted expenses. If a project involving marketing promotion and advertising is established, the reserve may be maintained at a level not to exceed three years' average budgeted expenses. Such reserve funds may be used—

(1) To defray any expenses authorized under this part,

(2) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses,

(3) To cover deficits incurred during any fiscal period when assessment income is less than expenses,

(4) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and

(5) To cover necessary expenses of liquidation in the event of termination of this part.

Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid.

§ 955.45 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 955.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 955.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Vidalia onions. Any such project for the promotion and advertising of Vidalia onions may utilize an identifying mark which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The expense of such projects shall be paid from funds collected pursuant to § 955.42 or § 955.45.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:

(1) The expected supply of Vidalia onions in relation to market requirements;

(2) The supply situation among competing areas and communities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) Other relevant factors.

(c) If the committee should conclude that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to § 955.42 or § 955.45;

(2) Its recommendation as to any research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.

(e) All marketing promotion activity engaged in by the committee, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity.

Reports and Recordkeeping

§ 955.60 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the

committee to perform its duties under this part.

(a) Such reports may include, but are not limited to, the following:

(1) The quantities of Vidalia onions received by a handler;

(2) The quantities disposed of by the handler;

(3) The date of each such disposition; and

(4) The identification of the carrier transporting such Vidalia onions.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of an individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Vidalia onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 955.71 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this subpart whenever it is found that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Vidalia onions: *Provided,* That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Vidalia onions produced for market, but such termination shall be announced before September 30 of the then current fiscal period.

(d) Within six years of the effective date of this subpart the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of onions in the production area. Such termination shall be announced on or before the end of the fiscal year.

(e) The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 955.72 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 955.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of my amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 955.80 Compliance.

No handler shall handle Vidalia onions except in conformity to the provisions of this part.

§ 955.81 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 955.82 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 955.83 Agents.

The Secretary may, be designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 955.84 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 955.85 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts,

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either of commission on omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 955.86 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 955.87 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

***§ 955.90 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 955.91 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 955.92 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia onions in the same manner as is provided for in this agreement.

Dated: August 19, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-19158 Filed 8-22-88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 86-031R]

Prohibition on Movement of Imported Product Prior to Reinspection; Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period; correction.

SUMMARY: On May 13, 1988, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat and poultry products inspection regulations by prohibiting the transportation of imported meat and poultry products prior to their reinspection. The proposal would require that imported products be reinspected at the port of first arrival. FSIS also proposed to eliminate the official import seal and current sealing requirements for imported products which are transported prior to reinspection. The comment period closed on July 12, 1988. FSIS has received requests to reopen the comment period so that additional information may be provided to FSIS. FSIS is granting these requests and is reopening the comment period for an additional 30 days. This document also corrects a statement in the preamble to the proposal concerning the percentage of total imports that may be affected by this proposal. It was stated that only 7 percent of total imports would be affected; the correct figure is 14.6 percent of total imports.

DATE: Comments must be received on or before September 22, 1988.

ADDRESS: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, (202) 447-3473.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3473.

SUPPLEMENTARY INFORMATION: On May 13, 1987, FSIS published a proposed rule (53 FR 17059) to amend the Federal meat and poultry products inspection regulations by removing current provisions that permit the transportation of imported products prior to reinspection by FSIS. Instead FSIS proposed to require that imported products be reinspected at the port of first arrival. In addition, FSIS proposed to eliminate the official import seal and sealing requirements for product that is transported prior to reinspection by FSIS. This action resulted from an audit of the import inspection program conducted by the Department's Office of the Inspector General (OIG). The OIG recommended that FSIS "require that foreign meat products entering the United States be inspected * * * only at the point of first arrival." OIG stated that this action would enable FSIS to maintain control over meat products entering the United States.

FSIS has received requests to reopen the comment period so that additional information can be gathered and submitted to FSIS. FSIS is interested in receiving additional information and is, therefore, reopening the comment period for an additional 30 days.

This document also corrects a mathematical error in the computation of the percentage of pounds of product which may be affected by this proposal as compared to total imports. In the preamble to the proposal, it was stated that only 7 percent of total imports may be affected; the correct figure is 14.6 percent of total imports. This percentage is based on the amount of product moved after unloading in one district and presented for reinspection in another district—361,473,786 pounds during calendar year 1985. This amount of product is 14.6 percent of total imports—2,478,643,236 pounds—for calendar year 1985.

Done at Washington, DC, on August 18, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-19076 Filed 8-22-88; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering adding a new Part to its regulations which would provide for issuance of early site permits, standard design certifications, and combined construction permits and conditional operating licenses for nuclear power reactors. The proposed rule sets out the review procedures and licensing requirements that would apply to applications for these new licenses and certifications. The proposed action is intended to achieve the early

resolution of licensing issues, thereby enhancing the safety and reliability of nuclear power plants, and reducing the complexity and uncertainty of the licensing process.

DATES: The comment period expires October 24, 1988. Comments received after this date will be considered if practical to do so, but only those comments received on or before this date can be assured of consideration.

ADDRESSES: Comments may be sent to the Secretary of the Commission, Attention: Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered to One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 am and 4:15 pm weekdays. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC, between the hours of 7:45 am and 4:15 pm weekdays.

FOR FURTHER INFORMATION CONTACT: Steven Crockett, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–1600.

SUPPLEMENTARY INFORMATION:

Public Meeting

The NRC staff will conduct a public meeting to answer questions on the meaning and intent of any of the provisions of this proposed rule, and to hear and, if appropriate, respond to preliminary views on any of the provisions of this proposed rule. It is hoped that such a meeting would be helpful to persons who intend to submit written comments on the proposed rule. The meetings will begin at 9:00 am, on September 16, 1988, in the Conference Theater of the Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852, telephone (301) 468–1100.

I. Background

The Nuclear Regulatory Commission has long believed that standardized nuclear power plant designs and other means of achieving early resolution of licensing issues could significantly enhance the safety and reliability of nuclear plants, and could likewise enhance public participation in the licensing process while reducing the complexity and uncertainty of that process. The considerable variation in the design, construction, operation and maintenance of nuclear plants has led to an operating reactor population of great variability and diversity, even among reactors from the same vendor. While giving freedom to innovation during the early years of the industry, when innovation was most needed, the "one-of-a-kind" approach may also have hindered the growth of significant economies of scale of benefit to safety and to the efficiency and predictability of regulation. Standardization of reactor designs should result in greater accumulation of construction and operating experience with a given design, easier transfer of that experience from one reactor to another, and more easily maintained qualified vendor support, all of which should advance safe and reliable operation. Moreover, by permitting early identification and resolution of safety issues, standardization and other means of achieving early resolution of licensing issues should afford public participants in the licensing process an earlier entry into that process, greatly reduce the number and importance of safety issues which are decided late in the process, and permit a speedy, yet thorough, NRC staff review whenever an application incorporates a certified standardized design. Thus, early resolution of issues should lead to a simpler and more predictable licensing process.

Through such devices as early site reviews, final design approvals, and reviews of duplicate and replicate plants, the NRC has for some time offered applicants the means to achieve a degree of standardization and to reach early resolution of issues. The NRC will continue to offer these means.[1] However, it is the opinion of the Commission that the nuclear power industry is now sufficiently advanced in technology and organization to enable applicants to submit essentially complete designs or major portions thereof for certification by rulemaking before construction and thus secure the benefits of a greater degree of standardization and early resolution of issues. Moreover, the NRC now has under review several designs which are amenable to standardization, and the industry is showing increasing interest in these designs. For the past several years, the Commission has pursued Congressional affirmation of the goals of standardization in the form of a Nuclear Power Plant Standardization and Licensing Act. However, much of what this proposed legislation would provide can be put into effect now, under the Commission's existing statutory authority. The Commission therefore proposes to add to its regulations a new Part, which is described in Sections II–V below.

The Commission announced its intention to pursue rulemaking on standardization in its recent Policy Statement on Nuclear Power Plant Standardization (52 FR 34884; September 15, 1987). The Policy Statement, now superceded by this proposed rule and preamble, described the Commission's experience with standardization, set out the Commission's reasons for pursuing a greater degree of standardization, and outlined some of the crucial elements the Commission would seek to embody in a rule. The Policy Statement provided for a sixty-day comment period and gave notice that a public workshop would be held during the comment period so that the NRC and interested parties could have a more thorough discussion of the Policy Statement and the pending rulemaking than written comments alone would permit. The workshop was held in Bethesda on October 20, 1987, with representatives of the NRC staff, the Department of Energy, and the industry participating. During the Workshop, the NRC outlined the proposed rule and answered preliminary questions about it. A transcript of the workshop may be found in the Commission's public document room, 1717 H Street, NW., Washington, DC 20555.

During the comment period, the Commission received comments from six organizations and two individuals. Chief among the comments were the highly detailed ones submitted by the Nuclear Management and Resources Council (NUMARC), which were endorsed, or at least reflected to a large degree, by the comments submitted by the other organizations, among them two engineering firms and three reactor manufacturers. These comments also may be found in the Commission's Public Document Room in Washington, DC. This proposed rule incorporates many of the suggestions made in the comments. For instance, the rule provides for certification of "advanced" designs, establishes a rulemaking process which goes beyond notice and comment, provides that a design certification remains in effect during the proceeding on a request for renewal of the certification, and does not make the granting of a combined license dependent upon State and local government certification of willingness to participate in emergency planning, although it does seek the earliest possible resolution of emergency planning issues.

[1] The NRC's current policy on replication appears in this Federal Register notice after this Supplementary information. The Commission welcomes comment on this policy, in particular on whether the NRC should continue to offer the option of replication.

In some instances, the proposed rule does not incorporate suggestions made in the comments. These suggestions and our reasons for not including them are discussed in the appropriate places in Sections III, IV, and V below. In Section VI we raise certain questions on which we would appreciate comment. Some of these questions have to do with suggestions we have not incorporated in the proposed rule.

Although many intervenors have long supported standardization, even to the point of arguing that the Commission should make standardization mandatory, some of the comments on the Policy Statement opposed standardization. In particular, one individual claimed that standardization will stifle engineering ingenuity, close the public out of the licensing process, spread the safety problems of a given design to a large number of reactors, and eventually meet defeat at the hands of a multitude of site-specific changes to a certified design. This individual also claimed that it was not the proper role of the Commission to "enhance the availability of nuclear plants", as the Commission had put it in its Policy Statement on Standardization, or to "give priority" to standardization rather than the safety problems of present plants.

To the contrary, the Commission believes that competition among designers will more than adequately encourage ingenuity, that the public will be better able to participate in the licensing process if it is given an essentially complete design even before any plant of that design is built, that good design, thorough regulatory review, and long experience with nuclear power should together go a long way to preclude significant safety problems in certified designs, and that the proposed rule's restrictions on changes in certified designs should assure a lasting and high degree of standardization. Under the Energy Reorganization Act of 1974, the Commission is not permitted to develop nuclear power plants and then regulate what it has developed, but it may nonetheless do what it can by way of sound procedural mechanisms and appropriate distribution of resources to encourage and enable others to develop better designs and build better plants. The principal aim in such "enhancement" is, as always, public health and safety. In the light of this overarching aim, the Commission's statement that it intends to give priority to standardized designs and the like must not be misread to mean that the safety of the presently operating plants will become less important than the review of standardized designs. This is not the case now and will not become so. The Commission means only to give priority among applicants to those proffering or referencing standardized designs and early site permits.

II. General Scope and Structure

Part 52 is intended to improve the licensing of nuclear power plants by the use of three procedural innovations, two of which have been in partial use by the Commission for several years. The first of these is the early site permit or site-bank concept, already in partial use through the procedures of Appendix Q to 10 CFR Part 50. Subpart A of Part 52 formalizes the early site approval process, allowing a prospective applicant to obtain a permit for one or more pre-approved sites on which future nuclear power stations can be located. Subpart B carries forward the standard design approval process of Appendix O to Part 50 in much the same way, allowing a prospective applicant, vendor, or other interested party to obtain Commission approval of a design of a complete nuclear power plant or a major portion of such a plant. Subpart C establishes procedures for the issuance of a combined construction permit and conditional operating license (hereafter referred to as a combined license) for a nuclear power plant. The combined license is essentially a construction permit which also requires consideration and resolution of many of the issues currently considered at the operating license stage. It does not authorize operation. Operation will be authorized only after the Commission has decided that the relevant license conditions have been met. The procedures also provide an opportunity for a hearing on carefully-defined issues before operation is authorized. Although a pre-approved site and certified standard design need not be referenced for the combined license, maximum efficiency will result if site-related issues, as well as design-related issues, have been resolved before commencement of the combined license proceeding.

This structure reveals the overall purpose of Part 52: to improve reactor safety and to streamline the licensing process by encouraging the use of standard designs and by permitting early resolution of environmental and safety issues related to the reactor site and design. As a result, the scope of the combined license proceeding for a facility can be far more limited than the scope of the two-step licensing process currently in use. Similarly, after the combined license proceeding, the regulatory matters which would remain for resolution before authorization to operate under the combined license would be much more limited and well-defined than are the issues which remain to be resolved in an operating license proceeding under the current practice.

All three subparts of the proposed Part 52 draw heavily on existing provisions in 10 CFR Part 50 and its appendices. Reference to pre-existing sections obviates the need to repeat identical provisions. In addition, most of the provisions of Part 50 have been in use for many years and are commonly understood by applicants, intervenors, and the NRC staff. Finally, Part 50 should remain intact because licensing under it may be expected to continue for some time in parallel with licensing under the improved procedures of Part 52. If, in the future, all licensing is conducted under Part 52, the two parts can be combined into a single part containing all provisions applicable to the licensing of production and utilization facilities.

III. Definitions—Section 52.3

This section contains largely self-explanatory definitions of "combined license," "early site permit," "standard design," and "standard design certification". The omnibus provision in paragraph (e) incorporates other useful definitions from Part 50 and the Atomic Energy Act.

IV. Subpart A—Early Site Permits

This subpart allows any prospective applicant for a construction permit or a combined license under Subpart C to apply for an early site permit, notwithstanding the fact that an application for a construction permit or combined license for a facility has not been filed. Filing requirements are set out in §§ 52.15 and 52.17. The application should describe, among other things, the number, type, and thermal power level of the facilities for which the site may be used. Section 52.17(b) requires that the application contain a plan for redress of the site for use in the event that site preparation activities are performed under the permit and the permit expires without having been referenced in an application for a construction permit or a combined license under Subpart C of Part 52. Finally, § 52.17(c) requires the application to demonstrate that the area surrounding the site is amenable to emergency planning which would provide reasonable assurance that adequate protective measures could be taken in the event of a radiological emergency at the site. This last

paragraph of § 52.17 also requires the application to include a description of contacts and arrangements made with local, state, and federal agencies with responsibility for coping with emergencies.

Section 52.19, along with conforming amendments to 10 CFR Part 170 which are currently being made as part of a general revision of Part 170, establish a new procedure for collection of fees associated with the review of an application for an early site permit or a renewal thereof. The applicant for the permit will be assessed these fees only when an application referencing the early site permit is filed while the permit is valid. If no application referencing the early site permit is filed, the permit holder must pay these fees at the end of the initial twenty-year period. Fees for a renewed permit will be assessed in the same manner. However, if an application for an early site permit or renewal is denied or withdrawn, any outstanding fees will be immediately due and payable by the applicant for the permit or renewal.

Section 52.21 states that an early site permit is a Commission license, and is subject to the applicable procedural requirements of 10 CFR Part 2.

The issues presented in an early site permit proceeding are to a considerable extent environmental, but because they also involve significant safety issues, a report by the Advisory Committee on Reactor Safeguards (ACRS) on the permit application is required by § 52.23.

Section 52.25 provides that issuance of an early site permit allows the holder of the permit to conduct site preparation activities without having to seek prior NRC approval. The holder possesses what is commonly referred to as an "LWA–1" for the site and may perform the activities permitted in 10 CFR 50.10(e)(1). Section 52.25 also requires redress of the site if the permit is not renewed and not referenced in an application.

An early site permit is valid for an initial period of twenty years (§ 52.27) and may, upon application, be extended for periods of up to twenty years each (§ 52.29), provided certain criteria are met (§ 52.31). Section 52.29 provides that any person whose interests may be affected by renewal of the permit may request a hearing.

An early site permit for which a timely application for renewal has been filed remains in effect until the Commission has determined whether to renew the permit. If an early site permit is not renewed, it continues to be valid in any proceeding on an application for a construction permit or a combined license which references the early site permit and was docketed prior to the expiration of the early site permit (§ 52.29(c)). An application for renewal must be filed not less than twelve nor more than thirty-six months prior to the expiration date (§ 52.29(a)).

An approved site may be used for purposes not related to the construction of a nuclear power facility (for example, a fossil-fueled station or a park) provided that the Commission is informed of all significant non-nuclear uses prior to actual construction or site modification activities (§ 52.35). A permit may be revoked if a non-nuclear use would interfere with a nuclear use, or would so alter the site that important assumptions underlying issuance of the permit were called into question.

Section 52.39(a) provides that, notwithstanding the provision in 10 CFR 50.109 for backfits aimed at substantial increases beyond adequate protection, during the initial or renewal period in which an early site permit is in effect, the Commission may not impose more stringent requirements on the early site permit or the site for which the permit was issued unless the Commission determines either that significant new information shows that more stringent requirements are necessary to bring the site or the permit into compliance with the Commission's regulations and orders in effect at the beginning of the initial or renewal period, or that more stringent requirements are necessary for adequate protection of the public health and safety. Section 52.39(b) provides that an applicant for a construction permit, operating license, or combined license, or an amendment to such a license, who has filed an application referencing an early site permit may request a variance from one or more elements of the permit.

V. Subpart B—Certified Standard Designs

The Commission's existing rules regarding standard designs are found in Appendices M, N, and O, to 10 CFR Part 50. Appendix M concerns licenses to manufacture one or more nuclear power reactors to be installed and operated at sites not identified in the license application. Appendix N concerns licenses to construct and operate nuclear power reactors of duplicate design at multiple sites. Appendix O governs the staff review and approval of standard designs for an entire nuclear power reactor or a major portion thereof, and includes a provision for Commission approval of a standard design in a rulemaking proceeding. This Subpart concerns only the latter provision of Appendix O. Subpart B is intended to set forth the procedures and requirements for Commission approval of standard designs by rulemaking. The term "certification" is used for this approval to distinguish it from the preliminary and final staff approval of standard designs as set forth in Appendix O.

Section 52.43 addresses the relationship of Subpart B to Appendices M, N, and O of 10 CFR Part 50, as described in the preceding paragraph. These Appendices represent different approaches to standardization and will remain in effect, as will the replicate plant approach to standardization. Appendices M and N may be used independently of Subpart B unless the applicant also wishes to use a certified standard design. A final design approval under Appendix O is a prerequisite for certification of a standard design under this Subpart. An application for a final design approval must state whether the applicant intends to seek certification of the design, because staff review of a design for which certification is sought may be different from staff review of a design for which only a final design approval is sought. For the same reason, anyone who holds a final design approval on the effective date of this rule and wishes to apply for certification of the design must obtain a new final design approval. However, the application in this case may simply update and supplement the application which was filed for the original final design approval, and the staff's review of the new application need not revisit issues settled in the original review.

Sections 52.45 and 52.47 contain the requirements for filing and contents of applications for certifications of designs. These sections are drafted in general terms so that Part 52 will not have to be amended every time the information and safety criteria in 10 CFR Parts 20, 50, 73, and 100 undergo some further development. The NRC staff is currently developing safety criteria for application in the review of advanced reactor designs. These criteria will define minimum safety requirements for advanced reactors and will provide for assessment and documentation of the enhanced safety the Commission expects these reactor designs to embody. Part 52 deals only with procedural aspects of the certification of reactor designs. The staff will advise the prospective applicant for certification on precisely what information is required for the staff's consideration of the application.

Certification of a reactor design which differs significantly from a reactor design which has been built and operated may be granted only after the design has been shown to be sufficiently

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mature. There is a presumption in § 52.45 of the proposed rule that this maturity will have to be demonstrated through comprehensive testing of a prototype. The same section of the rule sets forth the criteria which must be satisfied if the presumption is to be overcome. The same criteria must be satisfied by any applicant proposing to demonstrate the maturity of a design by means of a prototype of only part of the design. If an applicant for a construction permit or combined license under this Part chooses to reference a final design approval for a design whose maturity must be demonstrated by prototype and has not yet been so demonstrated, the applicant will be subject to the requirements of § 50.34(a)(8) regarding research and development to confirm the adequacy of the design.

Ideally, designs for which certification is sought will be for an essentially complete plant. The designs would make more straightforward the preparation of a probabilistic risk assessment and safety analysis and would help minimize the extent of the staff's review of the license applications which reference a single design. The designs would also help assure that no two plants of the same design would vary significantly from each other. For these reasons, the NRC will give priority in allocation of resources to support review and approval of applications for essentially complete designs. However, the NRC will entertain applications for certification of a major portion of a plant if, and only if, that portion contains all buildings, structures, systems, and components that can significantly affect the safe operation of the plant. See § 52.45(d) below.

Applications for certification of any design must contain a level of detail comparable to that required for a final design approval under Appendix O and sufficient to enable the staff to judge the applicant's proposed means of assuring that construction conforms to design, and to reach a final conclusion on all matters which must be decided before the certification can be granted. See § 52.47 below.

Section 52.49 parallels § 52.19 with regard to fees. Conforming amendments are being made to Part 170 as part of the general revision of that Part. One engineering firm argued that fees would be a substantial disincentive to potential applicants for certification. And, of course, any fee the NRC charges is to some degree a disincentive. However, the agency is now legally bound to charge fees which account for a substantial part of its budget. Design review will require substantial resources which, under a series of statutes going back to the Independent Offices Appropriations Act, the agency must recoup at least in part.

However, the Commission is free under current law to lessen the disincentive effect of the fees it must charge for review of standardized designs. Therefore, in addition to not charging an application fee, the NRC will defer any fees associated with review of the application, pending the filing of applications for construction permits or combined licenses referencing the certified standard design. Any outstanding fees will become due and payable by the holder of the design certification at the end of the initial period of the certification. Fees for the renewal of a standard design certification will be assessed in the same manner.

Section 52.51 provides that a standard design certification is a rule that will be issued in accordance with the provisions of Subpart H of 10 CFR Part 2. Subpart H of 10 CFR Part 2 implements section 553 of the Administrative Procedure Act for NRC rulemaking proceedings. 10 CFR 2.805(b) provides that the Commission may hold informal hearings and may structure them as the Commission determines will best serve the purposes of the proceeding. In addition to notice of an application for a design certification, and an opportunity to provide written comments on the application, the Commission will provide an opportunity to request an informal hearing on the application before an Atomic Safety and Licensing Board. Any hearing held will provide an opportunity for written presentations made under oath or affirmation, and for oral presentations and questioning if the Board finds them either necessary for the creation of an adequate record, or the most expeditious way to resolve controversies. Ordinarily, the questioning will be done by members of the Board, using the Board's questions or questions submitted to the Board by the parties. The Board may also request authority to use additional procedures such as discovery, or may request that the Commission convene a formal adjudication on discrete issues involving substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in formal adjudication. The staff will be a party in any informal hearing, and the decision in the hearing will be based only on information on which all parties to the hearing have had an opportunity to comment.

The major issues associated with the review of an application for a certified standard design concern the safety features of the design. Section 52.53 therefore provides for mandatory ACRS review of the application. Review by the ACRS will be limited to issues on which the ACRS has not made findings and recommendations in any earlier review of the design. The Commission may, of course, ask the ACRS to report on any matter within its expertise.

The certified standard design will initially be valid for ten years (§ 52.55), but it may be renewed, upon application, for periods of an additional five to ten years each (§ 52.57). The procedures to be used for a rulemaking proceeding on the application for renewal must be those required for rulemakings on applications for initial certification of designs. A design certification for which a timely application for renewal has been filed remains in effect until the Commission has determined whether to renew the certification. If the certification is not renewed, it continues to be valid in any proceeding ultimately based on an application which references the certified design and was docketed prior to the expiration of the certification (§ 52.57(b)).

Section 52.59 contains the criteria for evaluating an application for renewal. The initial burden is on the applicant to show that the design complies with the Atomic Energy Act and all the Commission's regulations other than the design certification itself. During the rulemaking on the application for renewal, the Commission may, in addition to requiring that the design conform to current regulations and orders, impose more stringent safety requirements on the certification, but only if the Commission determines that there is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the more stringent requirements and that the direct and indirect costs of implementation of those requirements are justified in view of this increased protection. If a renewal application is denied, the applicant may revise the design and file a new application for a standard design certification. See § 52.59(b).

The stability of a certified standard design is essential to the concept of standardization. For this purpose, § 52.63 contains provisions whose purpose is to preserve design stability against three possible sources of change. First, 52.63(a), which parallels § 52.39 for early site permits, provides that, during the initial or renewal period in which a design certification is in effect, the

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Commission will not require design changes unless the Commission determines, in a notice and comment rulemaking, that significant new information shows that the changes are necessary to bring the design or the plants referencing it into compliance with the Commission's regulations and orders in effect when the certification was issued or renewed, or that the changes are necessary for adequate protection of public health and safety. Of course, as the Atomic Energy Act requires, the Commission will make such determinations without regard to economic costs. Modifications to a design certification rule will be applied to all plants referencing the certified design.

The Commission believes that carrying out modifications by way of rulemaking will not hamper the Commission's ability to act quickly in the event that plants referencing a certified design pose undue risks. There is no reason why such a rulemaking should proceed less quickly than a license amendment proceeding for the same purpose. Indeed, the procedures for rulemaking would appear to be simpler than those for license amendment. Moreover, the Commission has the authority to issue immediately effective interim rules, pending completion of final rulemaking resolutions of undue risk issues.

Members of the public may challenge a design certification rule by means of petitions for rulemaking and, during licensing proceedings on applications which reference a standardized design, only by claims that adequate protection of public health and safety, or compliance with the Commission's regulations and orders, requires modification of the rule. NUMARC urged that a design certification rule be subject to challenge by a member of the public only in a rulemaking proceeding. However, members of the public cannot be barred from making claims in a proceeding that the criteria by which the Commission is to make its decision on the application are not met. Moreover, paragraph 7 of Appendix O to 10 CFR Part 50, of which Subpart B of the proposed rule is an elaboration, provides for challenge to the design certification rule outside of rulemaking.

Second among the provisions aimed at maintaining stability for certified designs, § 52.63(b) provides that the holder of a design certification may request an amendment to the design by way of notice and comment rulemaking. The Commission will grant the amendment if it complies with the Atomic Energy Act and the Commission's regulations and orders. An amendment to a design certification initiated by the holder of the certification will be applied to all plants referencing the design only if the amendment is necessary for adequate protection of the public health and safety.

Third and last, § 52.63(c), which parallels 52.39(b) for early site permits, provides that a licensee or an applicant for a facility license or amendment which references a certified standard design may request an exemption from one or more elements of the design certification rule. The Commission will grant the request if it complies with the requirements of 10 CFR 50.12(a). NUMARC suggested that a lesser standard than § 50.12 be applied to a request for an exemption, namely, that the request for an exemption simply meet the Commission's regulations (except, of course, for the particular design certification regulation itself). However, the Commission believes that the benefits of standardization will not be fully achieved unless significant site-specific variation among plants referencing a given certified design is kept to an irreducible minimum. In harmony with the aim of keeping variation to a minimum, § 52.63(d) permits the licensee of a plant built according to a standardized design to make a change to the standardized portion of the plant, without prior Commission approval, only if the change does not involve changes to the design as described in the rule certifying the design, or in the certifying rule together with any exemption which may have been granted the licensee under § 52.63(c).

VI. Subpart C—Combined Construction Permits and Conditional Operating Licenses

Section 161h of the Atomic Energy Act and 10 CFR 50.52 provide that the Commission may issue a single license for several activities which could otherwise be licensed separately. However, this provision has not been applied to construction permits and operating licenses for nuclear power plants. Indeed, the current licensing process has not changed substantially since it was originally enacted. In the early years of the nuclear power industry, there were many first-time nuclear plant applicants, designers, and consultants, and many novel design concepts. Accordingly, the process was structured to allow licensing decisions to be made while design work was still in progress and to focus on case-specific reviews of individual plant and site considerations. Construction permits were commonly issued with the understanding that open safety issues would be addressed and resolved during construction, and that issuance of a construction permit did not constitute Commission approval of any design feature. Consequently, the operating license review was very broad in scope. Now that the nuclear industry has matured, it is possible to describe and evaluate plant designs on a generic basis, to have designs essentially complete in scope and level of detail prior to construction, and to propose and evaluate plant sites without plant design details. These circumstances make it possible to combine the construction permit proceeding with much of the operating license proceeding into a single proceeding for the issuance of a combined construction permit and conditional operating license. Full-power operation can then be authorized under the combined license following an opportunity for a hearing on a more limited set of carefully defined issues.

The application for a combined license may, but need not, reference a standard design which has been certified under Subpart B, or a site for which an early site permit has been issued under Subpart A (§ 52.73). If the facility is to be of a design which has been certified, the scope of the proceeding on the application for a facility license is narrowed, the major safety questions having been resolved in the earlier rulemaking on the design. Similarly, if the facility is to be located on a site for which an early site permit has been issued, the scope of the facility license proceeding is further narrowed. If an early site permit is not referenced, the early site review procedures of 10 CFR Part 2 remain available to expedite the environmental review. Obviously, the efficiency and effectiveness of the combined licensing process is maximized if both a certified standard design and a pre-approved site are referenced. For this reason, the Commission anticipates that this will be the preferred approach, particularly with regard to standard designs. In order to encourage standardization, the Commission will give priority among applications to those which reference certified standard designs and pre-approved sites.

Sections 52.75 through 52.79 contain the requirements for filing and contents of applications. It should be noted that an environmental report is not required if a pre-approved site is proposed for the facility (§ 52.77). The applicant must make good faith efforts to obtain certifications from responsible State and

local governmental agencies that the proposed emergency plans are practicable and that the responsible agencies are committed to execution of their responsibilities under the plans. If the certifications cannot be obtained, the applicant must nonetheless demonstrate that the proposed plans provide reasonable assurance that adequate protective measures will be taken in the event of a radiological emergency at the plant (§ 52.79(d)). The antitrust review will be conducted as it has been done in the past for construction permit applications. Because the antitrust review can proceed in parallel with the technical review, the antitrust review should not affect the efficiency of the combined license proceeding.

Sections 52.81 and 52.83 incorporate, where appropriate, the technical standards and requirements of Part 50 as they would be applied to power plant license applicants and licensees under the existing system. That is, applications for a combined license will be reviewed according to the Part 50 standards for construction permits and operating licenses, where appropriate (§ 52.81), and holders of Part 52 combined licenses will be held to the appropriate Part 50 standards for plants under construction or, upon authorization for operation, in operation (§ 52.83). All limitations contained in the Part 50 provisions (for example, requirements for plants receiving operating licenses after a certain date) carry forward to Part 52.

The combined license hearing will be governed by the appropriate sections of 10 CFR Part 2 (§ 52.85). ACRS review of the application is mandatory (§ 52.87), although the scope of the report will be much narrower if the application references a certified standard design or a pre-approved site that the ACRS has previously reviewed. Section 52.89 provides that, if the application references an approved site or a certified standard design, the environmental review must focus on the suitability of the site for the design and any other significant environmental issue not considered in any previous proceeding on the site or the design. It should be noted that because both the early site permit and the standard design certification require the preparation of an environmental impact statement, only an environmental assessment need be prepared in connection with the application for a combined license. If the application does not reference a pre-approved site, the usual Part 51 procedures must be followed for review of the environmental part of the application.

As noted above in the discussion of Subpart A, once the application for a combined license has been docketed, an applicant who plans to use a site for which an early site permit has been issued may perform "LWA–1" activities (see § 50.10(e)(1)) without prior NRC approval. If the application does not reference an approved site, the applicant must request this authorization before performing "LWA–1" activities (§ 52.91). If the activities are carried out and the application is withdrawn or denied, redress of the site will, in some cases, be required. To perform "LWA–2" activities, all applicants must seek authorization from the Licensing Board under § 50.10(e)(3)(i), which allows further construction activities at the site prior to issuance of a construction permit or combined license.

Section 52.93 governs the extent to which a certified standard design or an early site permit may be modified by the applicant during a proceeding on an application for a combined license. As provided in § 52.93(a), the applicant may request an exemption from one or more elements of the design for that particular facility. The Commission will grant the request if it complies with the requirements of 10 CFR 50.12(a). As provided in § 52.93(b), if the application for the combined license references an early site permit, the applicant may also request a variance from some element of the permit.

Section 52.97 provides that the Commission may issue a combined license for a facility if the applicable requirements of §§ 50.40, 50.42, 50.43 and 50.50 have been met and there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations. In addition to technical specifications, the license will include the inspections, tests, and analyses that the licensee shall perform and the acceptance criteria therefor which will provide reasonable assurance that the facility has been constructed and will be operated in accordance with those requirements. The Commission will verify the licensee's compliance those requirements through its inspection program (§ 52.99).

Section 105c. of the Atomic Energy Act requires that the Commission determine whether "significant changes" have taken place with respect to the antitrust situation during the review of an application for an operating license. This is done because the competitive circumstances could alter markedly between the issuance of the construction permit and the completion of the facility. The proceeding on the application for a combined license includes consideration of the antitrust situation. However, because operation under a combined license cannot be authorized until the plant is constructed, § 52.101 provides for possible further antitrust review at the stage when authorization of operation is being considered. If significant changes have occurred since issuance of the combined license, the statutory antitrust review must precede commercial operation of the facility and could result in the imposition of additional license conditions. However, because most issues will be decided prior to issuance of a combined license, and because the scope of the proceeding authorizing operation under the license will be correspondingly narrowed, the time between issuance of the combined license and the authorization of operation should be short enough to make significant changes in the antitrust situation unlikely.

Before the facility may operate, the holder of the combined license must apply for authorization of operation under the combined license. The Commission will publish a notice of the proposed authorization in the **Federal Register** pursuant to 10 CFR 2.105. Within 30 days, any person whose interests may be affected by the authorization may request a hearing on the basis (1) that there has been a nonconformance with the license, the licensee's written commitments, the Atomic Energy Act, or the Commission's regulations and orders, which has not been corrected and which could materially and adversely affect the safe operation of the facility; or (2) that some modification to the site or the design is necessary to assure adequate protection of public health and safety or the common defense and security. The petitioner must set forth with reasonable specificity the facts and arguments which form the basis for the request. These provisions are designed to accord finality to the Commission's earlier decisions regarding the facility and to assure that the operating license proceeding is focused on significant safety issues.

VII. Commission Questions

The Commission will, of course, appreciate receiving comment on any aspect of this proposed rule. However, the Commission will be particularly

appreciative of comment on the following questions:

1. In implementing by rulemaking the Commission's legislative proposals on standardization, does this proposed rule take full advantage of the Commission's authority under the Atomic Energy Act? Does it in any way exceed the Commission's authority?

2. Should a design certification take the form of a license rather than a rule? Does the Commission have the authority under existing law to license a design? NUMARC believes that the rights and obligations which attach to a license may be more clearly understood than those which would attach to a certification which took the form of a rule. The proposed rule accords with paragraph 7 of Appendix O to 10 CFR Part 50 in treating the certification as a rule. Rulemaking may provide greater procedural flexibility than a license proceeding does, and certification by rule would be open to a wider pool of applicants than certification by license (see 10 CFR 50.38).

3. What procedures are appropriate for design certification by rulemaking?

4. Should the Commission require, as part of a certified standard design, the standardization of construction practices, operation and maintenance practices, quality assurance, and personnel training?

5. Section 52.45(d) of the proposed rule says that the NRC will entertain an application for certification of a design of only a major portion of a plant only if that portion contains all buildings, structures, systems, and components that can "significantly affect the safe operation of the plant". The intent of this language is to rule out of consideration for certification any incomplete design in which events in the balance of plant could have an adverse impact on the safety of that portion of the plant for which certification is sought. Would some phrase other than "significantly affect the safe operation of the plant" better serve as a standard by which to determine whether to accept an application for certification of an incomplete design? Should the NRC, in addition, require of any such application a showing of good cause, or the like, for seeking certification of a design of less than full scope?

On the other hand, should the language of § 52.45(d) be more lenient and permit an application for certification of a design of a major portion of a plant, as long as the application contains the requirements for the interface between the portion for which certification is sought and all buildings, structures, systems, and components which can "significantly affect the safe operation of the plant," but does not contain the detailed design for such buildings, structures, systems, and components? Such an approach would be more consistent with the legislation the Commission proposed in March of 1987. Section 104 of the proposed legislation would entertain an application for certification of "any major subsystem which represents a discrete element" of a nuclear power facility.

6. What are the appropriate standards to apply to a request by a holder of a design certification to amend the certification? If the amendment is granted, should all plants which reference the certification be required to backfit to comply with the amended certification, or only some, as required by the proposed rule?

7. In order to prevent continual regression from standardization among plants initially built according to the same design, should stricter standards than those in 10 CFR 50.12 be applied to requests for exemptions from a design certification rule?

8. The proposed rule generally permits the NRC to impose modifications on site permits and design certifications only for the sake of compliance or adequate protection. Under the proposed rule, only when an early site permit or a design certification comes up for renewal would the NRC be able to impose modifications which went beyond requiring adequate protection. Does the proposed rule provide a reasonable degree of finality to early site permits and design certifications?

9. The proposed rule places a term of twenty years on early site permits and allows for an unlimited number of renewals of up to twenty years each. Should a longer or shorter term be placed on the permit? What should the respective burdens of the permit holder and the NRC be at renewal?

10. How might the proposed rule provide for a "sign-as-you-go" process of NRC inspection of a plant being constructed according to a certified design? NUMARC suggested instituting such a process in order to secure the earliest possible resolution of quality assurance and design conformance questions. The NRC encourages the earliest possible resolution of these questions. To this end, the rule requires applications for design certifications and combined licenses to propose for inclusion in the certification or license inspections, tests, analyses, and related acceptance criteria which will help provide reasonable assurance that the facility has been well constructed. See §§ 52.47 and 52.79 of the proposed rule. Moreover, the NRC would, during construction authorized by this part, devote the resources necessary to achieve the earliest possible staff-level identification and resolution of quality assurance and design conformance questions. However, the NRC does not see how Commission-level finality can be afforded the resolution of such questions without risking an almost continual hearing on the construction of the plant.

11. The National Governors' Association adopted the following Recommendation, among others, at its 79th annual meeting, July 26–28, 1987: "In the future, emergency plans should be approved by the NRC before it issues the construction permit for any new nuclear power plant." To what extent should approval of emergency plans be required before an early site permit or a combined license is issued? Are the provisions of the proposed rule adequate in this regard? See §§ 52.17(c) and 52.79(d).

12. The staff is considering whether there is a need for further rulemaking or guidance for future reactors, both light-water reactors and other types, to assure that future license applications adequately address the Commission's Safety Goal Policy Statement (51 FR 30028; August 21, 1986), and the licensing criteria set forth in the Commission's Severe Accident Policy Statement (50 FR 32138; August 8, 1985), particularly the criteria that call for demonstration of compliance with the applicable parts of 10 CFR 50.34(f) and completion of a probabilistic risk assessment (PRA) together with a systematic consideration of any severe accident vulnerabilities the PRA might expose. Is the language in §§ 52.47(a) and 52.47(b) sufficient to assure that future applications adequately address these matters? Given the Commission's guidance, in its Policy Statement on Safety Goals for the Operation of Nuclear Power Plants, that the Safety Goals should not be used to make individual licensing decisions (51 FR at 30031–32), should the rule contain the requirement in § 52.47(b)(3) that an applicant provide "a realistic assessment of the degree to which the design conforms to the Commission's Safety Goals"?

Replicate Plant Concept

The replicate plant concept involves an application by a utility for a license to construct or operate one or more nuclear power plants of essentially the same design as one already licensed.

The design of the plant already licensed (termed the base plant design) may be replicated at both the

construction permit and operating license stages, and in applications for combined construction permits and operating licenses in a one-step licensing process. Replication of an approved base plant design at the construction permit stage is a prerequisite for its replication at the operating license stage. Although replication of the base plant design at the operating license stage is not mandatory, that is, the operating license application may be submitted as a custom plant application, it is strongly recommended.

An application for a replicate plant must demonstrate compliance with the four licensing requirements for new plant designs as set forth in the Commission's Severe Accident Policy Statement (50 FR 32138; August 8, 1985).

Each application proposing to replicate a previously licensed plant will be subjected to a qualification review to determine the acceptability of the base plant for replication and to define specific matters that must be addressed in the application for the replicate plant. A further requirement for qualification is that the application for a replicate plant must be submitted within five years of the date of issuance of the staff safety evaluation report for the base plant. The qualification review will consider the following information:

(1) The arrangement made with the developers of the base plant design for its replication;

(2) The compatibility of the base plant design with the characteristics of the site proposed for the replicate plant;

(3) A description of any changes to the base plant design, with justification for the changes;

(4) The status of any matters identified for the base plant design in the safety evaluation report, or subsequently identified by the ACRS or during the public hearings on the base plant application as requiring later resolution;

(5) Identification of the major contractors, with justification for the acceptability of any that are different than those used by the base plant applicant; and

(6) A discussion of how the replicate plant design will conform to any changes to the Commission's regulations which have become effective since the issuance of the license for the base plant.

Environmental Impact: Categorical Exclusion

The proposed rules would amend the procedures currently found in Part 50 and its appendices for the filing and reviewing of applications for construction permits, operating licenses, early site reviews, and standard design approvals. As such they meet the eligibility criteria for the categorical exclusion set forth in 10 CFR § 51.22(c)(3). That section applies to "[a]mendments to * * * Part[] 50 * * * which relate to (i) procedures for filing and reviewing applications for licenses or construction permits or other forms of permission * * *." As the Commission explained in promulgating this exclusion, "[a]lthough amendments of this type affect substantive parts of the Commission's regulations, the amendments themselves relate solely to matters of procedure. [They] * * * do not have an effect on the environment." (49 FR 9352, 9371, col. 3; March 12, 1984) (final environmental protection regulations).[2] Accordingly, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with these proposed rules.[3]

Paperwork Reduction Act Statement

The proposed rule contains information requirements that are subject to the Paperwork Reduction Act of 1980 ("the Act") (44 U.S.C. 3501 et seq.). This proposed rule will be submitted to the Office of Management and Budget (OMB) for review and approval under the requirements of the Act. When the proposed rule is submitted to OMB, the Commission, in compliance with section 3507(a)(2)(B) of the Act, will publish a notice in the Federal Register stating that the Commission has submitted the rule to OMB and setting forth the information which section 3507(a)(2)(B) requires the agency to set forth in the notice.

Pending submission of the proposed rule to OMB, it may be useful to commenters to note three aspects of the information collection requirements in this proposed rule. First, most of them rely on information collection requirements already approved by OMB for promulgation in other parts of 10 CFR, particularly Part 50. Second, the rule is expected to reduce the reporting burden on applicants for construction permits and operating licenses for nuclear plants, because any person seeking a Part 52 combined license which references a Part 52 early site permit and a Part 52 design certification will, simply by referencing the permit and certification, be relieved of the burden of providing much of the information Part 50 requires of applicants for construction permits and operating licenses. Third, the public reporting burdens which would be imposed by Part 52 are estimated to range from a low for an early site permit (which would require only part of the information required for a construction permit) to a high for certification of an advanced reactor design (which probably would involve the licensing under Part 50 of a full-size prototype).

The Commission welcomes any suggestions for reducing the burdens which would be imposed by the information collection requirements in the proposed rule. The numbers of the sections of the proposed rule which set forth the information requirements are listed in § 52.8 of the proposed rule.

Regulatory Analysis

As presently constituted, the American population of nuclear power reactors consists largely of one-of-a-kind designs. Experience has shown that the highly individualistic character of this population has consumed enormous resources in the processes of design, construction, and safety review. Because, typically, design of a plant was not complete when construction of it began, many safety questions were not resolved until late in the licensing proceeding for that plant. This late resolution of questions introduced great uncertainty into proceedings, because the process of resolution often entailed lengthy safety reviews, construction delays, and backfits. Moreover, the low incidence of duplication among designs has meant that experience gained in the construction and operation of a given plant has often not been useful in the construction and operation of any other

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[2] It makes no substantive difference for the purpose of the categorical exclusion that the proposed amendments will be placed in Part 52 rather than in Part 50. The amendments are, in fact, amendments to the Part 50 procedures and could have been placed in that Part.

[3] The requirements concerning testing of full-size prototypes of advanced reactors, see § 52.45(c) of the proposed rule, may appear not to fit into the category excluded by § 51.22(c)(3), since to comply with the requirement, an applicant most likely will have to build and test a prototype plant, an act clearly with an environmental impact. Nonetheless, § 52.45(c) is eligible for exclusion under § 51.22(c)(3). Unlike, for instance, the promulgation of a safety rule which applies to operating plants, the formal action of promulgating § 52.45(c) will have only a potential impact on the environment. That impact becomes actual only if a designer chooses to pursue certification of an advanced design. Under the present circumstances, no meaningful environmental assessment or impact statement can be made. Cf. 49 FR at 9372, cols. 2–3 (entering into an agreement with a State under Section 274 of the Atomic Energy Act has no immediate or measurable environmental impact and therefore warrants a categorical exclusion). The issuance of the construction permit and operating license for a prototype plant would, of course, be a major federal action with a significant impact on the environment, and would entail the preparation of an environmental impact statement. Cf. id., col. 3 (the States must prepare detailed environmental analyses before they license certain activities).

plant, and has made the generic resolution of continuing safety issues more complicated.

In the face of this experience with a population of unique plants, there have long been fundamentally only three alternatives for Commission action, the last two of them not mutually exclusive: either make no effort to bring about an increased degree of standardization, or propose legislation on standardization, or enact by rulemaking as much of a scheme for promoting standardization as the Commission's current statutory authority permits. The Commission has for some time concluded against the first alternative, having decided that a substantial increase in standardization would enhance the safety and reliability of nuclear power plants and require fewer resources in safety reviews of plants, and that the Commission should have in place provisions for the review of standardized designs and other devices for assuring early resolution of safety questions. The Commission has therefore pursued standardization both by proposing legislation—without success—and by promulgating rules, in particular Appendices M, N, and O to Part 50 of 10 CFR. Lacking legislation on standardization, the Commission believes that the most suitable alternative for encouraging further standardization is to fill out and expand the Commission's regulatory scheme for standardization and early resolution of safety issues.

Therefore, the Commission now proposes to promulgate a new set of regulations, to be placed in a new Part, 10 CFR Part 52. This new Part facilitates the early resolution of safety issues by providing for pre-construction-permit approval of power plant sites, Commission certification of standardized designs, and the issuance of licenses which combine permission to construct a plant with a conditional permission to operate it once construction of it has been successfully completed.

Ideally, a future applicant will reference an approved site and a certified design in an application for a combined license, thus obviating the need for an extensive review of the application and construction. The provision in Part 52 for Commission certification of designs has the additional objective of encouraging the use of standardized designs, thereby adding to the benefits of early resolution the safety benefits of accumulated experience and the economic benefits of economies of scale and transferable experience.

Quantification of the costs and benefits of this rulemaking is probably not possible. Much depends on the extent to which the industry pursues standardization. Clearly, if the Commission and the industry spend the resources necessary to certify a score of designs and then no applicant references any of them, those resources will have been largely wasted. On the other hand, it is just as clear that if a score of plants uses a single certified design, there will have been a great saving of the resources of the industry, the agency, and the interested public alike. To be added to the uncertainties surrounding the industry's response, there are also uncertainties concerning the costs of the certification process, and the costs of developing the designs themselves, especially the advanced designs, which, it is presumed, will require testing of prototypes. However, if the industry finds it in its interest to proceed with the development of nuclear power, there is every reason to expect that the safety and economic benefits of standardization will far outweigh the upfront costs of design and Commission certification: Review time for applications for licenses will be drastically reduced, the public brought in to the process before construction, construction times shortened, economies of scale created, reliability of plant performance increased, maintenance made easier, qualified vendor support made easier to maintain, and, most important, safety enhanced.

Thus, the rationale for proceeding with this rulemaking: There is no absolute assurance that certified designs will in fact be used by the utilities; however, it is certain that if the reasonably expected benefits of standardization are to be gained, then the Commission must have the procedural mechanisms in place for review of applications for early site approvals, design certifications, and combined licenses. The most fundamental choice is, of course, the industry's, to proceed or not with standardization, according to its own weighing of costs and benefits. But the Commission must be ready to perform its review responsibilities if the industry chooses standardization.

Regulatory Flexibility Act Certification

The proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule will reduce the procedural burden on NRC licensees by improving the reactor licensing process. Nuclear power plant licensees do not fall within the definition of small businesses in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administration in 13 CFR Part 121, or the Commission's Size Standards published at 50 FR 50241 (Dec. 9, 1985). The impact on intervenors or potential intervenors will be neutral. For the most part, the proposed rules will affect the timing of hearings rather than the scope of issues to be heard. For example, many site and design issues will be considered earlier, in connection with the issuance of an early site permit or standard design certification, rather than later, in connection with a facility licensing proceeding. Similarly, a combined license proceeding will include consideration of many of the issues that would ordinarily be deferred until the operating license proceeding. Thus, the timing rather than the cost of participating in NRC licensing proceedings will be affected. Intervenors may experience some increased preparation costs if they seek to reopen previously decided issues because of the increased showing that will be required. Once a hearing commences, however, an intervenor's costs should be decreased because the issues will be more clearly defined than under existing practice. Therefore, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared.

Backfit Analysis

If this proposed rule becomes final, it will not modify or add to the systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to construct or operate a facility. However, it could be argued that this rule will modify and add to the procedures or organization required to design a facility, because the rule would add to, or else at least spell out, the requirements for applicants for design certifications. Moreover, the rule, if made final, will, at the very least, substantially modify the expectations of anyone who had hoped to apply for a design certification under the existing paragraph 7 of Appendix O, particularly of any such who presently hold preliminary or final design approvals under that Appendix.

Nonetheless, the Commission believes that the backfit rule does not apply to this proposed rule and, therefore, that no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule. The backfit rule was not intended to apply to every action which

substantially changes settled expectations. Clearly, the backfit rule would not apply to a rule which would impose more stringent requirements on all future applicants for construction permits, even though such a rule arguably might have an adverse impact on a person who was considering applying for a permit but had not done so yet. In this latter case, the backfit rule protects the construction permit holder, not the prospective applicant, or even the present applicant. The proposed rule below is of the character of such a hypothetical rule. The proposed rule arguably imposes more stringent requirements for design certification and thereby may have an adverse impact on some persons. However, the effects of any final rule based on this proposed rule will be largely prospective, and such a final rule will not require any present holder of a design approval (no person holds a design certification) to meet new standards in order to remain in possession of such an approval.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Commission is proposing to add to 10 CFR Chapter I a new Part 52:

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

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52.10 Pre-operational antitrust review.
52.103 Authorization to operate under a combined license.

Authority: Secs. 103, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

General Provisions

§ 52.1 Scope.

This part governs the issuance of early site permits, standard design certifications, and combined construction permits and conditional operating licenses for nuclear power facilities under the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242).

§ 52.3 Definitions.

(a) As used in this part—

"Combined license" means a combined construction permit and conditional operating license for a nuclear power facility issued pursuant to Subpart C of this part.

"Early site permit" means a Commission approval, issued pursuant to Subpart A of this part, for a site or sites for one or more nuclear power facilities.

"Standard design" means a design which is sufficiently detailed and complete to support licensing of a nuclear power facility or approval of a major portion of such a facility when referenced in an application for a construction permit, combined construction and conditional operating license, or standard design certification, as appropriate, and which is usable for a multiple number of units or at a multiple number of sites without reopening or repeating the review.

"Standard design certification" means a Commission approval, issued pursuant to Subpart B of this part, of a standard design for a nuclear power facility, or a major portion of such a facility. A design so approved may be referred to as a "certified standard design".

(b) All other terms in this part have the meaning set out in 10 CFR 50.2, or Section 11 of the Atomic Energy Act, as applicable.

§ 52.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). OMB has approved the information collection requirements contained in this part under control number 3150(b)—

(b) The approved information collection requirements contained in this part appear in §§ 52.15(b), 52.17, 52.29(a), 52.35, 52.37, 52.39(b), 52.45, 52.47, 52.57(a), 52.63(b), 52.63(c), 52.75, 52.77, 52.79, 52.83, 52.91(a), 52.93, 52.99, 52.101, and 52.103.

Subpart A—Early Site Permits

§ 52.11 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of early site permits for approval of a site or sites for one or more nuclear power facilities separate from and prior to the filing of an application for a construction permit or combined license for such a facility.

§ 52.13 Relationship to Subpart F of 10 CFR Part 2.

The procedures of this subpart do not replace those set out in Subpart F of 10

CFR Part 2. Subpart F applies only when early review of site suitability issues is sought in connection with a forthcoming application for a permit to construct certain power facilities. This subpart applies when any person who may apply for a construction permit under 10 CFR Part 50 or for a combined license under 10 CFR Part 52 seeks an early site permit separately from and prior to an application for a construction permit for a facility. This subpart may not be used once an application has been docketed pursuant to 10 CFR 2.603.

§ 52.15 Filing of applications.

(a) Any person who may apply for a construction permit under 10 CFR Part 50, or for a combined license under 10 CFR Part 52, may file with the Director of Nuclear Reactor Regulation an application for an early site permit. An application for an early site permit may be filed notwithstanding the fact that an application for a construction permit or a combined license has not been filed in connection with the site or sites for which a permit is sought.

(b) The application must comply with the filing requirements of 10 CFR 50.30 (a), (b), and (f).

§ 52.17 Contents of applications.

(a)(1) The application must contain the information required by 10 CFR 50.33 (a)–(d) and 50.34(a)(1). In particular, the application should describe the following:

(i) The number, type, and thermal power level of the facilities for which the site may be used;

(ii) The boundaries of the site;

(iii) The proposed general location of each facility on the site;

(iv) The anticipated maximum levels of radiological and thermal effluents each facility will produce;

(v) The type of cooling systems, intakes, and outflows that may be associated with each facility;

(vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site (see Appendix A to 10 CFR Part 100); and

(vii) The existing and projected future population profile of the area surrounding the site.

(2) A complete environmental report as required by 10 CFR 51.45 and 51.50 must be included in the application.

(b) The application must propose a plan for redress of the site in the event that the activities permitted by § 52.25(a) are performed and the site permit expires before it is referenced in an application for a construction permit or a combined license issued under Subpart C of this part. The application must demonstrate that there is reasonable assurance that redress carried out under the plan will achieve a self-maintaining, environmentally stable, and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

(c) The application must demonstrate that the area surrounding the site is amenable to emergency planning which would provide reasonable assurance that adequate protective measures could be taken in the event of a radiological emergency at the site. The application must include a description of contacts and arrangements made with local, state, and federal governmental agencies with responsibility for coping with emergencies.

§ 52.18 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR Part 50 and its appendices as they apply to applications for construction permits for nuclear power plants. In particular, the Commission shall prepare an environmental impact statement during review of the application, and the Commission shall determine, after consultation with the Federal Emergency Management Agency in accord with the applicable portions of 10 CFR 50.47(a)(2), whether the information required of the applicant by § 52.17(c) demonstrates that the area surrounding the site is amenable to emergency planning which would provide reasonable assurance that adequate protective measures could be taken in the event of a radiological emergency at the site.

§ 52.19 Permit and renewal fees.

The fees charged for the review of an application for the initial issuance or renewal of an early site permit are those for special projects, as defined in 10 CFR 170.3 and set forth in 10 CFR 170.21. There is no application fee. All fees for the review of an application are deferred as follows:

(a) If an application is filed for a construction permit or combined license for a facility to be located at a site for which an early site permit has been issued, the permit holder shall pay the applicable fees for the permit at the time the facility application referencing the early site permit is filed. If, at the end of the initial period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(b) If the permit is renewed, the permit holder shall pay any outstanding fees for the renewal at the time a facility application referencing the early site permit is filed. If, at the end of the renewal period, no facility application referencing the permit has been filed, the permit holder shall pay any outstanding fees for the renewal.

(c) If an application for the issuance or renewal of an early site permit is denied or withdrawn, any outstanding fees associated with the review of the application are due immediately and payable by the applicant for the permit or renewal.

§ 52.21 Hearings.

An early site permit is a partial construction permit and is therefore subject to all procedural requirements in 10 CFR Part 2 which are applicable to construction permits, including the requirements for docketing in §§ 2.101(a)(1)–(4), and the requirements for issuance of a notice of hearing in §§ 2.104 (a), (b)(1) (iv) and (v), (b)(2) to the extent it runs parallel to (b)(1) (iv) and (v), and (b)(3). All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in Part 2.

§ 52.23 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety.

§ 52.25 Extent of activities permitted.

(a) The holder of an early site permit may perform the activities at the site allowed by 10 CFR 50.10(e)(1) without first obtaining the separate authorization required by that section.

(b) If the activities permitted by paragraph (a) of this section are performed at a given site and the permit is not renewed for that site and not referenced in an application for a construction permit or a combined license issued under Subpart C of this part, then the permit remains in effect solely for the purpose of site redress, and the holder of the permit shall redress the site in accord with the terms of the site redress plan required by § 52.17(b). If, before redress is complete, a use not envisaged in the redress plan is found for the site or parts thereof, the holder of the permit shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.27 Duration of permit.

An early site permit issued under this subpart is valid for twenty years from the date of issuance. An applicant for a

construction permit or combined license may, at its own risk, reference in its application a site for which an early site permit application has been docketed but not granted.

§ 52.29 Application for renewal.

(a) Not less than twelve nor more than thirty-six months prior to the end of the initial twenty-year period, or any later renewal period, the permit holder may apply for a renewal of the permit. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.

(b) Any person whose interests may be affected by renewal of the permit may request a hearing on the application for renewal. The request for a hearing must comply with 10 CFR 2.714. If a hearing is granted, notice of the hearing will be published in accord with 10 CFR 2.703.

(c) An early site permit, either original or renewed, for which a timely application for renewal has been filed, remains in effect until the Commission has determined whether to renew the permit. If the permit is not renewed, it continues to be valid in proceedings on an application for a construction permit or combined license referencing the permit and docketed before the end of the initial period of the permit, or a later renewal period. An unrenewed permit also continues to be valid in proceedings on an application for an operating license which is based on a construction permit referencing the permit and docketed prior to expiration of the permit or renewal.

(d) The application for renewal must be forwarded to the Advisory Committee on Reactor Safeguards (ACRS), which shall review the application and report its findings and recommendations to the Commission. The ACRS need not reconsider issues on which it has made findings and recommendations in any earlier review of the site which is the subject of the application.

§ 52.31 Criteria for renewal.

(a) The Commission shall grant the renewal if the Commission determines that the site complies with the Atomic Energy Act and the Commission's regulations and orders in effect at the time of the renewal and any more stringent requirements the Commission may wish to impose after a determination that there is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the more stringent requirements and that the direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

(b) A denial of renewal on this basis does not bar the permit holder or another applicant from filing a new application for the site which proposes changes to the site or the way in which it is used which correct the deficiencies cited in the denial of the renewal.

§ 52.33 Duration of renewal.

Each renewal of an early site permit will be for not less than ten nor more than twenty years.

§ 52.35 Use of site for other purposes.

A site for which an early site permit has been issued under this subpart may be used for purposes other than those described in the permit, including the location of other types of energy facilities. The permit holder shall inform the Director of Nuclear Reactor Regulation of any significant non-nuclear activities for which the site is to be used. The information about the activities must be given to the Director in advance of any actual construction or site modification for the activities. If the Director finds that a particular non-nuclear use may have a significant adverse effect on the suitability of the site for the purposes described in the early site permit, the Director may issue an order to show cause why the permit should not be revoked or modified.

§ 52.37 Reporting of defects and noncompliance; revocation, suspension, modification of permits for cause.

For purposes of Part 21 and 10 CFR 50.100, an early site permit is a construction permit.

§ 52.39 Finality of early site permit determinations.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, during the initial period in which a permit issued under this subpart is in effect, the Commission may not impose more stringent requirements, including more stringent emergency planning requirements, on the early site permit or the site for which it was issued unless the Commission determines either that

(i) Significant new information shows that a modification is necessary to bring the permit or the site into compliance with the Commission's regulations and orders in effect at the time the permit was issued; or

(ii) A modification is necessary to assure adequate protection of the public health and safety or the common defense and security.

(2) Similarly, notwithstanding any provisions in CFR 50.109, during any renewal period in which an early site permit issued under this subpart is in effect, the Commission may not impose more stringent requirements, including more stringent emergency planning requirements, on the permit or the site for which it was issued unless the Commission determines either that

(i) Significant new information shows that a modification is necessary to bring the permit or the site into compliance with the Commission's regulations and orders in effect at the time the permit was renewed; or

(ii) A modification is necessary to assure adequate protection of the public health and safety or the common defense and security.

(b) An applicant for a construction permit, operating license, or combined license, or any amendment to this type of license, who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission shall be guided by the considerations set forth in 10 CFR 50.92, which guide the Commission's determinations on applications for amendments to construction permits.

Subpart B—Standard Design Certifications

§ 52.41 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of rules granting standard design certifications for nuclear power facilities, or major portions thereof, separate from the filing of an application for a construction permit or combined license for such a facility.

§ 52.43 Relationship to 10 CFR Part 50, Appendices M, N and O.

(a) Appendix M to 10 CFR Part 50 governs the issuance of licenses to manufacture nuclear power reactors to be installed and operated at sites not identified in the manufacturing license application. Appendix N governs licenses to construct and operate nuclear power reactors of duplicate design at multiple sites. These appendices may be used independently of the provisions in this subpart unless the applicant also wishes to use a certified standard design approved under this subpart.

(b) Appendix O governs the staff review and approval of preliminary and final standard designs. These designs may be challenged in individual licensing proceedings. This subpart

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governs Commission approval, or certification, of standard designs by rulemaking, as set forth in paragraph 7 of Appendix O. A final design approval under Appendix O is a prerequisite for certification of a standard design under this subpart. An application for a final design approval must state whether the applicant intends to seek certification of the design. If the applicant does so intend, the application for the final design approval must, in addition to containing the information required by Appendix O, comply with the applicable requirements of 10 CFR Chapter I, particularly §§ 52.45 and 52.47.

§ 52.45 Filing of applications.

(a)(1) Any person may seek a standard design certification for an essentially complete nuclear power facility, or a major portion of such a facility. An application for certification may be filed notwithstanding the fact that an application for a construction permit or combined license for such a facility has not been filed. Applications for certification of less than a complete facility must meet the criteria set forth in paragraph (d) of this section.

(2) Because a final design approval under Appendix O of 10 CFR Part 50 is a prerequisite for certification of a standard design, a person who seeks such a certification and does not hold, or has not applied for, a final design approval, shall file with the Director of Nuclear Reactor Regulation an application for certification. Any person who seeks certification but already holds, or has applied for, a final design approval, also shall file with the Director of Nuclear Reactor Regulation an application for certification, because the NRC staff may require that the information before the staff in connection with the review for the final design approval be supplemented for the review for certification.

(b) The applicant shall comply with the filing requirements of 10 CFR 50.30 (a) and (b) as they would apply to an application for a nuclear power plant construction permit.

(c) The NRC will entertain an application for certification of a reactor design which differs significantly from reactor designs which have been built and operated. However, certification of such a design will be given only after the design has been shown to be sufficiently mature.

(1) The maturity of such a design must be demonstrated by means of an appropriately sited, full-size, prototype reactor, unless the following criteria are satisfied:

(i) The performance of each safety feature of the design has been demonstrated through either previous experience or full-scale testing;

(ii) Interdependent effects among the safety features of the plant have been found acceptable by analysis, testing, or previous experience; and

(iii) Sufficient data exist on the performance of the safety features of the plant to assess analytical tools used for safety analyses over a full range of operating and accident conditions, including equilibrium core conditions and the response of the safety features over the lifetime of the plant.

(2) The Appendix O final design approval of such a design must identify the specific testing required for certification of the design.

(d) Designs should be essentially complete in scope. The NRC will entertain an application for certification of a design of only a major portion of a plant only if that portion contains all buildings, structures, systems, and components that can significantly affect the safe operation of the plant and are not fixed by site-specific considerations or parameters. In any case, site-specific elements, such as the service water intake structure or the ultimate heat sink, may be excluded from the scope of the design. However, excluded site-specific elements that can significantly affect safe operation must be addressed by the application in the technical information which §§ 52.47(b) and 52.47(d) require the application to provide on the site parameters and interface requirements for the design.

§ 52.47 Contents of applications.

The application must contain a level of design information equivalent to that required for a final design approval under Appendix O. The information submitted for a design certification must include performance requirements and design specifications sufficiently detailed to permit the preparation of procurement specifications and acceptance and inspection requirements. The information must also be sufficient to enable the staff to judge the applicant's proposed means of assuring that construction conforms to design and to reach an final conclusion on all matters which must be decided before the certification can be granted. In particular,

(a) The application must contain the technical information which is required of applicants for construction permits or operating licenses by Part 20, Part 50 and its appendices, and Parts 73 and 100, and which is not site-specific or irrelevant to the design for which the applicant is seeking certification. In particular, the application must demonstrate compliance with any applicable portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f). The staff shall advise the prospective applicant for certification on whether the information required by the listed portions of 10 CFR Chapter I is appropriate to the staff's consideration of the application, and on whether any additional technical information on the design is required.

(b) The application must also include

(1) The site parameters postulated for the design, and an analysis and evaluation of the design in terms of such parameters;

(2) Proposed technical resolutions of the Unresolved Safety Issues and medium- and high-priority Generic Safety Issues applicable to the desion;

(3) A design-specific probabilistic risk assessment ("PRA"), together with a consideration of any severe accident vulnerabilities that the PRA exposes and a realistic assessment of the degree to which the design conforms to the Commission's Safety Goals for plant operations; and

(4) Proposed tests, analyses, inspections and acceptance criteria which are necessary to provide reasonable assurance that a plant which references the design is built and operated within the specifications of the design.

(c) An application seeking certification of a modular design must describe the various options for the configuration of the plant and site, including variations in common systems, interface requirements, and system interactions. The final safety analysis and the probabilistic risk assessment should, when necessary, take into account differences among the various options, and the analysis should set forth any restrictions which will be necessary during the construction and startup of a given module to ensure the safe operation of any module already on line.

(d) An application for a design certification must meet the following criteria:

(1) The application must contain interface requirements to be met by those portions of the plant for which the application does not seek certification. These requirements must be sufficiently detailed to allow completion of the final safety analysis and design-specific probabilistic risk assessment required by paragraph (b) of this section.

(2) The application must demonstrate that compliance with these interface requirements is verifiable through inspection, testing (either in the plant or elsewhere), previous experience, or analysis. Compliance with interface

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requirements dealing with reliability of components must be verifiable through previous experience or testing.

(3) The application must also contain a representative design for those portions of the plant for which the application does not seek certification. The representative design must illustrate how the interface requirements can be met, so as to aid the staff in its review of the final safety analysis and probabilistic risk assessment required by paragraph (b) of this section.

§ 52.49 Fees for design certification and certification renewal.

The fees charged for the review of an application for the initial issuance or renewal of a standard design certification are set out in 10 CFR Part 170, together with a schedule for their phased recovery as the certified standard design is referenced. There is no application fee. All fees for review of an application are deferred as follows:

(a) Each time an application is filed for a construction permit or combined license for a facility referencing the design for which a standard design certification has been issued, the holder of the design certification shall pay the specified portion of the applicable fees for the approval at the time the facility application referencing the certified standard design is filed. If, at the end of the initial period of the certification, no facility application referencing the certified standard design has been filed, the holder of the design certification shall pay any outstanding fees for the certification.

(b) If the standard design certification is renewed, the holder of the design certification shall pay the specified portion of any outstanding fees for the renewal each time a facility application referencing the certified standard design is filed. If, at the end of the renewal period, a facility application referencing the certified standard design has not been filed, the holder of the design certification shall pay any outstanding fees for the renewal.

(c) If an application for the issuance or renewal of a certified standard design is denied or withdrawn, any fees associated with the review of the application are immediately due and payable by the applicant for the design certification or renewal.

§ 52.51 Administrative review of applications.

A standard design certification is a rule that will be issued in accordance with the provisions of Subpart H of 10 CFR Part 2. The Commission shall initiate the rulemaking after an application has been filed under § 52.45(a) and shall specify in detail the procedures to be used for the rulemaking. The rulemaking procedures must provide notice and comment and an informal hearing before an Atomic Safety and Licensing Board. The procedures for the hearing must include the opportunity for written presentations made under oath or affirmation and for oral presentations and questioning if the Board finds them either necessary for the creation of an adequate record or the most expeditious way to resolve controversies. Ordinarily, the questioning will be done by members of the Board, using either the Board's questions or questions submitted to the Board by the parties. The Board may also request authority to use additional procedures, such as discovery, or may request that the Commission convene a formal adjudication on discrete issues involving substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in formal adjudication. The staff will be a party in the hearing. During the rulemaking, the treatment of proprietary information will be governed by 10 CFR 2.790 and applicable Commission case law. The decision in such a hearing will be based only on information on which all parties have had an opportunity to comment.

§ 52.53 Referral to the ACRS.

The Commission shall forward the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall review the application and report its findings and recommendations to the Commission. The ACRS need not reconsider issues on which it has made findings and recommendations in any earlier review of the design which is the subject of the application.

§ 52.55 Duration of certification.

A standard design certification issued pursuant to this subpart is valid for ten years from the date of issuance. An applicant for a construction permit or combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted.

§ 52.57 Application for renewal.

(a) Not less than twelve nor more than thirty-six months prior to expiration of the initial ten-year period, or any later renewal period, the holder of the design certification may apply for renewal of the certification. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application. The procedures to be used for a rulemaking proceeding on the application for renewal must be those required by § 52.51 for rulemakings on applications for initial certification of a design.

(b) A design certification, either original or renewed, for which an application for renewal has been timely filed remains in effect until the Commission has determined whether to renew the certification. If the certification is not renewed, it continues to be valid in proceedings on an application for a construction permit, combined license, or operating license referencing the certified design and docketed prior to expiration of the certification or renewal.

(c) The Commission shall forward application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall review the application and report its findings and recommendations to the Commission. The ACRS need not reconsider issues on which it has made findings and recommendations in any earlier review of the design which is the subject of the application.

§ 52.59 Criteria for renewal.

(a) The Commission shall issue a rule granting the renewal if the design, either as originally certified or as modified during the rulemaking on the renewal, complies with the Atomic Energy Act and the Commission's regulations and orders in effect at the time of the renewal, and any more stringent safety requirements the Commission may wish to impose after a determination that there is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the more stringent requirements and that the direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

(b) Denial of renewal does not bar the holder of the design certification or another applicant from filing a new application for certification of the design which proposes design changes which correct the deficiencies cited in the denial of the renewal.

§ 52.61 Duration of renewal.

Each renewal of certification for a standard design will be for not less than five nor more than ten years.

§ 52.63 Finality of standard design certifications.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, during the initial period in which a design certification issued under this Subpart is in effect, the

Commission may not impose more stringent safety requirements on the certification unless the Commission determines in a rulemaking either that significant new information shows that a modification is necessary to bring the certification or the referencing plants into compliance with the Commission's regulations and orders in effect at the time the certification was issued, or that a modification is necessary to assure adequate protection of the public health and safety or the common defense and security.

(2) Similarly, notwithstanding any provision in 10 CFR 50.109, during any renewal period in which a design certification issued under this Subpart is in effect, the Commission may not impose more stringent safety requirements on the certification unless the Commission determines in a rulemaking either that significant new information shows that a modification is necessary to bring the certification or the referencing plants into compliance with the Commission's regulations and orders in effect at the time the certification was renewed, or that a modification is necessary to assure adequate protection of the public health and safety or the common defense and security.

(3) Any modification the NRC imposes on a design certification rule under paragraphs (a)(1) and (a)(2) of this section will be applied to all plants referencing the certified design.

(b) The holder of a standard design certification issued under this Subpart may file a request for an amendment to the design certification by way of notice and comment rulemaking. The Commission shall grant the amendment request if it determines that the amendment will comply with the Atomic Energy Act and the Commission's regulations. The amendment will be applied to all plants referencing the design only if the amendment is necessary for adequate protection of the public health and safety or the common defense and security. Any other amendment will apply only to plants referencing the design after the amendment is granted.

(c) An applicant for a construction permit, operating license, or combined license, or a licensee whose license references a certified standard design issued under this subpart, may request an exemption from one or more elements of the design certification. The Commission shall grant such a request if it determines that the exemption complies with the Atomic Energy Act, the Commission's regulations and orders, and the requirements of 10 CFR 50.12(a). Exemptions apply only to the license for which the exemption was requested.

(d) The licensee of a plant built according to a standardized design may make a change to the standardized portion of the plant, without prior Commission approval, only if the change does not involve changes to the design as described in the rule certifying the design, or in the certifying rule together with any exemption which may have been granted the licensee under § 52.63(c).

Subpart C—Combined Licenses

§ 52.71 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of combined construction permits and conditional operating licenses ("combined licenses") for nuclear power facilities.

§ 52.73 Relationship to Subparts A and B.

An application for a combined license under this subpart may, but need not, reference a standard design certification issued under Subpart B of this part or an early site permit issued under Subpart A of this part.

§ 52.75 Filing of applications.

Any person except one excluded by 10 CFR 50.38 may file an application for a combined license for a nuclear power facility with the Director of Nuclear Reactor Regulation. The applicant shall comply with the filing requirements of 10 CFR 50.4 and 50.30 (a) and (b) as they would apply to an application for a nuclear power plant construction permit. The fees associated with the filing and review of the application are set out in 10 CFR Part 170. The applicant shall include an environmental report with the application if it does not reference an early site permit.

§ 52.77 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33 and 50.33a as those sections would apply to an applicant for a nuclear power plant construction permit. In particular, the applicant shall comply with the requirement of § 50.33a(b) regarding the submission of antitrust information.

§ 52.79 Contents of applications; technical information.

(a) The application must contain the final safety analysis report required by 10 CFR 50.34(b). The report may incorporate by reference the final safety analysis report for a certified standard design, but must be supplemented to include, as appropriate, the information required of applicants for operating licenses by 10 CFR Part 50. In particular, an application referencing a certified design must describe those portions of the design which are site-specific, such as the service water intake structure or the ultimate heat sink. An application referencing a certified design must also demonstrate compliance with the interface requirements established for the design under § 52.47(d) of this part. If the application does not reference a certified design, the application must comply with the requirements of § 52.47 of this part for level of design information, and shall contain the technical information required by §§ 52.47(a), 52.47(b)(2) and (3), and, if the design is modular, 52.47(c). The application must also include proposed technical specifications prepared in accordance with the requirements of 10 CFR Part 50.

(b) The application for a combined license must include the proposed inspections, tests, and analyses which the licensee shall perform and the acceptance criteria therefor which will provide reasonable assurance that the facility has been constructed and will operate in conformity with the application, the provisions of the Atomic Energy Act, and the Commission's regulations.

(c) If the application references an early site permit, the application must demonstrate the suitability of the site for the design and must discuss any other significant environmental issue not considered in any previous proceeding on the site or the design. If the application does not reference an early site permit, then the application must contain the information required by § 52.17(b) of this part on redress of the site in the event that the activities permitted by § 52.91(a) of this subpart are performed.

(d) The application must contain emergency plans which provide reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency at the site.

(1) The applicant shall make good faith efforts to obtain certifications by the responsible local and State governmental agencies that:

(i) The proposed emergency plans are practicable;

(ii) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(iii) These agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(2) The application must contain any certifications that have been obtained. If these certifications cannot be obtained, the application must demonstrate that the proposed plans nonetheless provide reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency at the site.

§ 52.81 Standards for review of applications.

Applications filed under this subpart will be reviewed according to, as appropriate, the pertinent standards set out in 10 CFR Part 50 and its appendices as they apply to applications for construction permits and operating licenses for nuclear power plants.

§ 52.83 Applicability of Part 50 provisions.

Unless otherwise specifically provided in this subpart, all provisions of 10 CFR Part 50 and its appendices applicable to holders of construction permits for nuclear power reactors also apply to holders of combined licenses issued under this subpart. Similarly, all provisions of 10 CFR Part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses issued under this subpart who have received written authorization for full-power operation under § 52.103. However, any limitations contained in Part 50 regarding applicability of the provisions to certain classes of facilities continue to apply.

§ 52.85 Administrative review of applications.

A combined license is subject to all applicable procedural requirements contained in 10 CFR Part 2, including the requirments for docketing (§ 2.101) and issuance of a notice of hearing (§ 2.104). All hearings on combined licenses are governed by the procedures contained in Part 2.

§ 52.87 Referral to the ACRS.

The Commission shall forward the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall review the application and report its findings and recommendations to the Commission. The ACRS need not reconsider issues on which it has made findings and recommendations in any earlier review of the site or the design which is the subject of the application.

§ 52.89 Environmental review.

If the application references an early site permit or a certified standard design, the environmental review must focus on the suitability of the site for the design and any other significant environmental issue not considered in any previous proceeding on the site or the design. The results of this limited review must be presented at the hearing on the application. However, the Commission may not modify any final determination on an issue that has been considered and decided in any earlier proceeding on the referenced site or design, except as provided in § 52.39 and 52.63 regarding finality of early site permit determinations and finality of standard design certifications, respectively. If the application does not reference an early site permit or a certified standard design, all of the environmental review procedures set out in 10 CFR Part 51 must be followed, including the issuance of a final environmental impact statement.

§ 52.91 Authorization to conduct site activities.

(a) If the application references an early site permit, the applicant may perform the site preparation activities authorized in § 52.25 after the application for a combined license has been docketed. Otherwise, the applicant shall request authorization to conduct site preparation activities pursuant to 10 CFR 50.10(e)(1) and (2). In either case, authorization to conduct the activities described in 10 CFR 50.10(e)(3)(i) may be granted only after the presiding officer in the combined license proceeding makes the additional finding required by 10 CFR 50.10(e)(3)(ii).

(b) If, after an applicant for a combined license has performed the activities permitted by paragraph (a) of this section, the application for the license is withdrawn or denied, and the early site permit referenced by the application expires or the holder of the early site permit so requests, then the applicant shall redress the site in accord with the terms of the site redress plan required by § 52.17(b). If, before redress is complete, a use not envisaged in the redress plan is found for the site or parts thereof, the applicant shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.93 Exemptions and variances.

(a) Applicants for a combined license under this subpart, or any amendment to a combined license, may include in the application a request, under 10 CFR 50.12, for an exemption from one or more of the Commission's regulations, including any part of a design certification rule. The Commission shall grant such a request if it determines that the exemption will comply with the Atomic Energy Act, the Commission's regulations, and the requirements of 10 CFR 50.12(a).

(b) An applicant for a combined license, or any amendment to a combined license, who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission will be guided by the considerations set forth in 10 CFR 50.92, which guide the Commission's determinations on applications for amendments to construction permits.

§ 52.97 Issuance of combined licenses.

(a) The Commission may issue a combined license for a nuclear power facility upon finding that the applicable requirements of §§ 50.40, 50.42, 50.43, 50.47, and 50.50 have been met, and that there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations.

(b) The Commission shall identify in the license the inspections, tests, and analyses that the licensee shall perform and the acceptance criteria therefor which provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations.

§ 52.99 Inspection during construction.

After issuance of a combined license, the Commission shall assure through inspections, tests, and analyses that construction of the facility is completed in conformity with the combined license, the provisions of the Atomic Energy Act, and the Commission's regulations. The Commission shall apply to holders of combined licenses the same inspection program applied to holders of nuclear power plant construction permits. Holders of combined licenses shall comply with the provisions of §§ 50.70 and 50.71.

§ 52.101 Pre-operational antitrust review.

Prior to conversion of a combined license to an operating license, the NRC staff shall conduct an antitrust review pursuant to § 50.42(b) to determine whether significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission in connection with the issuance of the combined license. If the Commission determines that significant changes have occurred, the antitrust review required by section 105c(1) of the Atomic Energy

Act must be completed prior to commencement of commercial operation of the facility. Upon completion of this review, and following receipt of the advice of the Attorney General, the Director of Nuclear Reactor Regulation may impose any additional license conditions needed to avoid creating or maintaining a situation inconsistent with the antitrust laws as specified in section 105a of the Atomic Energy Act.

§ 52.103 Authorization to operate under a combined license.

(a) Before the facility may operate, the holder of the combined license shall apply for authorization of operation under the combined license. If the combined license is for a modular design, each module is the subject of a separate authorization. The Commission shall publish a notice of the proposed authorization in the *Federal Register* under 10 CFR 2.105. Within 30 days, any person whose interests may be affected may request a hearing on the basis either (1) that there has been a nonconformance with the license, the licensee's written commitments, the Atomic Energy Act, or the Commission's regulations and orders, which has not been corrected and which could materially and adversely affect the safe operation of the facility; or (2) that significant new information shows that some modification to the site or the design is necessary to assure adequate protection of public health and safety or the common defense and security. The petitioner shall set forth with reasonable specificity the facts and arguments which form the basis for the request.

(b) If a hearing is not requested, or if all requests are denied, the Commission may authorize operation under the combined license, as provided in § 50.56, upon making the findings in § 50.57.

Dated at Rockville, MD, this 17th day of August 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-18964 Filed 8-22-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-88-9]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 24, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 16, 1988.

Deborah E. Swank,

Acting Manager, Program Management Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24969	National Rifle Association of America	14 CFR § 108.11	To add a new paragraph to read that no certificate holder shall place upon, or in any way attach to, the outside of checked baggage or any other checked parcel any markings of any kind which would indicate that the baggage or parcel contained a firearm. Denied: August 8, 1988.

[FR Doc. 88-19028 Filed 8-22-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-97-AD]

Airworthiness Directives; Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require replacement of both spoiler wheel command units. This proposal is prompted by reports that a potential failure mode exists which could cause uncommanded deployment of three flight spoilers on one wing to their full up position. This condition, if not corrected, could result in a sudden large rolling moment and, after recovery by the pilot, diminished roll capability and a significant loss of lift.

DATES: Comments must be received no later than October 17, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-97-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information

may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulation docket number and be submitted in duplicate to the address specific above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-87-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The FAA has been advised by Boeing Commercial Airplanes, the manufacturer of Model 757 series airplanes, that a potential failure mode has been identified in the spoiler wheel command unit, which would occur as a result of separation of the input gear from the input shaft. Although no occurrences of this problem in service have been reported, this failure could cause uncommanded deployment of three flight spoilers on one wing to their full up position. This condition, if not corrected, could result in a sudden large rolling moment and, after recovery by the pilot, diminished roll capability and a significant loss of lift.

The FAA has reviewed ad approved Boeing Service Bulletin 757-27-0076, dated May 19, 1988, which describes replacement of both spoiler wheel command units with improved units, and test and adjustment of the units after replacement.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the spoiler wheel command units in accordance with the service bulletin previously mentioned.

It is estimated that 104 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,800.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-27-0076, dated May 19, 1988, certificated in any category. Compliance required within the next 24 months after the effective date of this AD, unless previously accomplished.

To prevent uncommanded extension of three flight spoilers on one wing, due to failure of a spoiler wheel command unit, accomplish the following:

A. Replace both spoiler wheel command units, in accordance with Boeing Service Bulletin 757-27-0076, dated May 19, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Transport Airplane Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Transport Airplane Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 16, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19023 Filed 8-22-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-91-AD]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Fokker Model F–28 series airplanes, which would require a visual inspection of the flap track beam support bracket and rear spar web and boom, and repair, if necessary. This proposal is prompted by reports of cracks detected in the rear spar web. This condition, if not corrected, could lead to structural failure in the flap and rear spar web, and fuel leakage.

DATES: Comments must be received no later than October 17, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–91–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft U.S.A., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, telephone (206) 431–1967; or Mr. John Varoli, Manager, FAA, Brussels Aircraft Certification Office, AEU–100, FAA, c/o American Embassy, APO New York 09667–1011, telephone 32–2–230–0534.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–91–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: The Rijksluchtvaartedienst (RLD), which is the airworthiness authority of the Netherlands, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Fokker Model F–28 series airplanes. During a recent inspection of a Model F–28 airplane, prompted by a fuel leak, one operator discovered a long crack in the wing rear spar web at wing station 5280. The operator found a smaller crack in this same area on one other airplane. Further investigation revealed that the cracks appear to have been caused by misalignment of the flap track beam support bracket and subsequent bolt seating deficiencies. This condition, if not corrected, could lead to structural failure in the flap and rear spar web, and could result in fuel leakage.

Fokker B.V. has issued Service Bulletin F28/57–81, dated May 27, 1988, which describes procedures for a visual inspection, repetitive inspection, and repair, if necessary, of the flap track beam support bracket and rear spar web. The RLD has classified this service bulletin as mandatory and has issued Netherlands Airworthiness Directive Number 88–30, dated May 20, 1988, addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this same type design registered in the United States, an AD is proposed that would require inspection of the flap beam support bracket and rear spar web and boom and repair, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, that it would take approximately 56 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $124,240.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F–28 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F–28 series airplanes, Serial Numbers 11003 to 11241 inclusive, 11991, and 11992, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure in the flap or rear spar web and fuel leakage, accomplish the follow:

A. Prior to the accumulation of either 10,000 flight hours or 20,000 flight cycles (landings), or within 500 flights cycles (landings) after

the effective date of this AD, whichever is later: Conduct an external visual inspection of the flap track beam support bracket for position in accordance with Part 1 of Fokker Service Bulletin F28/57–81, dated May 27, 1988.

B. If the flanges of the flap track beam support bracket are found during the inspection specified in A., above, to be parallel to the rear spar, no further action is required.

C. If the flanges of the flap track beam support bracket are found during the inspection specified in A., above, not to be parallel to the rear spar, inspect for cracks in the web of the rear spar, in accordance with Part 2 of Service Bulletin F28/57–81, dated May 27, 1988, before further flight.

1. If no cracks are found, repeat the inspection every 1,000 flight cycles (landings) until an internal inspection is conducted in accordance with Part 3 of Service Bulletin F28/57–81, dated May 27, 1988.

2. If, during the inspections in accordance with Part 3 of Service Bulletin F28/57–81, dated May 27, 1988, it is determined that the bolts are installed properly, a spotface is not found, and cracking does not exist, reseal or reinstall the bolts in accordance with Part 3 of that service bulletin. No further action, other than restoration to normal, is required.

3. If cracks are found during the inspections required by paragraph C., C.1., or C.2., above, or if a spotface is found during the inspections required by paragraph C.1., or C.2., above, prior to further flight, repair in a manner approved by the Manager, FAA, Brussels Aircraft Certification Office, AEU–100. Under conditions noted in the Service Bulletin F28/57–81, dated May 27, 1988, temporary repairs may be made in accordance with Part 4 and the associated table and figures of that service bulletin.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft U.S.A., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 16, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–19022 Filed 8–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–101–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require the inspection and, if necessary, repair and/or modification of certain areas of the main landing gear (MLG) wheel well pressure floor. This proposal is prompted by recent reports of cracking of the MLG wheel well pressure floor, that resulted in the loss of cabin pressurization. Cracks in this area, if not detected and corrected, could lead to loss of cabin pressurization.

DATES: Comments must be received no later than October 17, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–101–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–101–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

There have been several reported incidents involving cracking of certain portions of the main landing gear (MLG) wheel well pressure floor on Boeing Model 727 series airplanes. One recent cracking incident resulted in the loss of cabin pressurization. The cracking has been attributed to fatigue. Such cracking, if not detected and corrected could lead to loss of cabin pressurization.

The FAA has reviewed and approved Boeing Service Bulletin 727–53–149, Revision 2, dated March 20, 1981, which describes procedures for inspection, repair, and modification of the MLG wheel well pressure floor.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require periodic inspections and, if necessary, repair or modification of the MLG wheel well pressure floor, in accordance with the service bulletin previously mentioned.

It is estimated that 1,000 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required inspection, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $80,000.

The regulations set forth in this notice would be promulgated pursuant to the

authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects: 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes listed in Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking of the main landing gear (MLG) wheel well pressure floor adjacent to body stations (BS) 880, 890, 930, and 940, accomplish the following:

A. Prior to the accumulation of 30,000 flights or within the next 2,500 flights, whichever occurs later, and thereafter at intervals not to exceed 4,000 flights, perform a close visual, eddy current, or dye penetrant inspection for cracks in the pressure floor, in accordance with Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981.

B. If cracks are detected that do not exceed the limits listed in Table II in Section III of Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981, prior to further flight, repair in accordance with the interim repair described in paragraph C. of Section III, or the permanent repair described in paragraph D. of Section III of the service bulletin. The interim repair must be replaced within 600 flights with the permanent repair.

C. If cracks are found that exceed the limits listed in Table II, of Section III of Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981, prior to further flight, accomplish the permanent repair described in paragraph D. of Section III of the service bulletin prior to further flight. A repair accomplished using blind fasteners must be reinspected at intervals not to exceed 2,000 flights until the blind fasteners are replaced with the fasteners specified in paragraph 4. of Section III of the service bulletin.

D. Incorporation of the repairs in accordance with paragraph B. or C., above, terminates the repetitive inspection requirements of paragraph A., above, for that area. Incorporation of the preventative modification in paragraph E. of Section III of Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981, terminates the repetitive inspection requirement of paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Transport Airplane Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Transport Airplane Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 16, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19024 Filed 8-22-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[AD-FRL-3433-5; Docket No. A-88-04]

Conference on Air Quality Modeling

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of conference.

SUMMARY: The EPA announces the Fourth Conference on Air Quality Modeling. Such a conference is required by section 320 of the Clean Air Act (CAA) to be held every 3 years. The purpose of the fourth conference is to advise the public on new modeling techniques and to solicit comments to guide EPA's consideration of any rulemaking needed to revise the "Guideline on Air Quality Models (Revised)", EPA-450/2-78-027R (1986) and Supplement A (1987). A more detailed discussion of these new modeling techniques will be given by EPA during the conference.

DATES: The fourth conference will be held on October 12 and 13, 1988, from 9:00 a.m. to 5:00 p.m. Requests to speak at the conference must be submitted to the individuals listed below by October 3, 1988. All written comments must be submitted by December 15, 1988.

ADDRESSES: Conference: The conference will be held in the Thomas Jefferson Auditorium, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC.

Comments: Written statements or comments not presented at the conference should be submitted (in duplicate if possible) to: Central Docket Section (South Conference Center, Room 4), Attention: Docket A-88-04, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Documents referenced in this notice as well as comments received may also be inspected at this address. A reasonable fee may be charged for copying. This is a new docket established for the conference and for consideration of any further revision of the "Guideline on Air Quality Models (Revised)" and Supplement A. Prior material relevant to the development of the modeling guideline and Supplement A may be found in Docket A-80-46.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch (MD-14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone

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(919) 541–5562 or Jawad S. Touma, telephone (919) 541–5381.

SUPPLEMENTARY INFORMATION:

Background

Section 320 of the CAA states that a conference on air quality modeling is to be held every 3 years to address appropriate air quality modeling necessary for carrying out prevention of significant deterioration (PSD) requirements, thereby fostering the standardization of air quality modeling practices. Such models are also used for evaluating State implementation plans for existing sources, making new source reviews, and otherwise estimating source receptor relationships. The first conference, held in December 1977, addressed EPA's proposed modeling guideline. The result was the "Guideline on Air Quality Models" (EPA–450/2–78–027) which provides guidance on the selection and application of air quality models. The second conference in August 1981 was an open forum to address model accuracy and the incorporation of model uncertainty in regulatory decision-making. The third conference, held in January 1985, provided a forum for public review and comment on proposed revisions to the modeling guideline. As a result of public comment during that conference EPA issued the "Guideline on Air Quality (Revised)", EPA–450/2–78–027R, (51 FR 32176). Revisions responding to issues raised during that conference are included in Supplement A to the guideline (53 FR 392).

The Fourth Conference on Air Quality Modeling will address EPA's modeling guidance. Substantial new knowledge concerning modeling analyses has become available since the guideline and Supplement A were issued. Future revisions to the guideline are needed to improve the basis for air quality impact assessments and to insure that it reflects the state-of-the-art with respect to air quality models and data bases. As a basis for possible revisions of the modeling guideline and for holding this fourth conference, EPA has assembled a list of recent developments in modeling techniques and related methods developed by EPA, other Federal agencies, or the private sector. These techniques and related methods are briefly described below. Topics are arranged to coincide with the organization of the modeling guideline.

The EPA requests comments on the general issues of technical validity, relevant accuracy, merits and limitations of the models and methods listed here compared to current techniques in the modeling guideline, and comments on other more specific issues listed below. Comments related to air quality modeling of general interest to the public may also be made. The issues raised at the conference and in the comment period will be considered in development of a notice proposing to revise the "Guideline on Air Quality Models (Revised)" and Supplement A.

Modeling Activities

A. Complex Terrain Dispersion Model (CTDM)

The EPA has completed the CTDM project, EPA/600/3–88/006 (Docket Item II–I–2). One major output is the development and evaluation of the CTDM. This is a refined air quality model for determining pollutant concentrations from sources in "complex terrain" areas (where the height of the nearby terrain exceeds the height of the source being modeled). The CTDM is designed for situations where plume impingement on the windward side of terrain features during stable to neutral atmospheric conditions is believed to cause air quality problems. The user's guide documenting the scientific assumptions used in CTDM is available as EPA/600/8–87/058a and 058b (Docket Item II–I–1). Because CTDM was designed for neutral to stable flow conditions, the model does not predict concentrations during unstable atmospheric conditions when a plume is within the mixed layer. Thus, in order to adequately estimate concentrations during all averaging periods of concern for regulatory applications, it will be necessary to merge the output from CTDM with output from another model that can handle the convectively unstable atmospheric conditions. Other issues that need to be resolved for any regulatory application include meteorological data requirements, receptor grid spacing, the choice of model options, and a consistent approach to terrain characterization.

The EPA is currently studying the performance of CTDM and has completed several additional model evaluation and sensitivity studies (Docket Items II–I–3 and 4). The EPA solicits comments on: (1) Whether CTDM is a technically valid model; (2) whether use of an additional algorithm for modeling convective atmospheric conditions is suitable; (3) whether the validation and sensitivity studies warrant the adoption of CTDM as a refined model in complex terrain; (4) how data requirements should be specified given that CTDM requires an extensive set of meteorological data input not routinely collected in most current measurement programs; (5) whether EPA should recommend the use of CTDM in a screening mode with assumed "worst case" meteorological conditions if more sophisticated on-site data are not available; and (6) whether limitations should be placed on the use of CTDM for regulatory applications.

The CTDM does not address all situations involving complex terrain where concentrations of possible concern can occur, e.g., on the lee side of hills. During the public comment period on the supplemental proposal (Docket A–80–46, Item VI–C–1), several commenters suggested that high concentrations may result at such locations and that the highly conservative nature of the existing complex terrain screening models compensates to some extent for not addressing any of these phenomena. The EPA solicits public comment on how to take such situations into account in setting emission limits for sources which use CTDM.

B. Ozone Precursor Point Source Modeling

The EPA's regulations require a demonstration that a proposed source (or modification) will not cause or contribute to a violation of any National Ambient Air Quality Standards. The modeling guideline does not, however, recommend a technique for predicting the impact on ambient ozone concentrations due to point sources of ozone precursor emissions, i.e., volatile organic compounds or nitrogen oxides. The EPA has developed a screening technique based on the Reactive Plume Model (RPM–II), (Docket Item II–I–5) and solicits comments on the technical validity of this screening technique.

C. Mobile Source Modeling at Signalized Intersections

The EPA is reviewing the most appropriate traffic and emissions components of intersection models for air quality analyses because high carbon monoxide concentrations occur near signalized intersections. In addition, the EPA guidance contained in Worksheet 2 of the "Guideline for Air Quality Maintenance Planning and Analysis, Volume 9", EPA–450/4–75–001, cannot adequately model overcapacity situations at these intersections. The EPA has been working with the Federal Highway Administration (FHWA) to determine how an intersection analysis should be performed and what emissions/traffic model to use. As a result of this joint effort recommendations on these issues and a

workplan for accomplishing them have been developed (Docket Items II–I–6 and 7). The EPA solicits comments on the adequacy of the technical approaches in the recommendations and workplan.

D. Emissions and Dispersion Modeling System for Airports

The U.S. Air Force and the FAA are jointly developing the Emissions and Dispersion Modeling System (EDMS) to provide an integrated assessment of pollution from multiple sources (e.g., aircraft, motor vehicles, and power plants) at airports and air bases. The model makes use of a modern microcomputer data base system through which an inexperienced layperson can enter data and initiate an emissions or dispersion modeling activity. This model has been submitted to EPA in accordance with EPA provisions for soliciting new models (45 FR 20157). A description of the model and a User's Guide have been prepared (Docket Item II–I–8).

The EPA solicits comments on: (1) Whether EDMS is a technically valid model; (2) whether the performance evaluations warrant the adoption of this model as a preferred model to estimate pollutant concentrations at airports; and (3) whether any limitations should be placed on the use of the EDMS model for regulatory applications.

E. Long-Range Transport Models

The EPA has been evaluating the performance of several long-range transport models. These models are needed to estimate pollutant concentrations at distances beyond about 50 km, the conventional limit for straightline Gaussian models. Estimates of concentrations at distances greater than 50 km may be required in certain applications, e.g., Class I PSD areas. Eight long-range transport models, submitted to EPA in accordance with EPA provisions for soliciting new models (45 FR 20157), have been evaluated by testing the models against two sets of field data. The eight models submitted can be used to predict short-term averages (3 to 24 hours) of SO_2 and primary particulates over distances of 20–2,000 km from single or a cluster of multiple sources. The study is described in the document titled "Evaluation of Short-Term Long-Range Transport Models", Volumes 1 and 2, EPA–450/4–86–016a and 016b (Docket Item II–I–9). The American Meteorological Society has completed a peer review report for this study (Docket Item II–I–10).

The EPA solicits comments on: (1) Whether EPA should adopt one of these eight models as a preferred long-range transport model; (2) whether any limitations should be placed on model use for regulatory applications; (3) whether the model estimates are appropriate for averaging times and source receptor distances of regulatory concern; (4) whether the model use should be limited to concentrations of SO_2 and primary particulates; (5) whether consideration should be given to availability, complexity and the detail/content of input data bases in determining which model is recommended; and (6) how data collection and processing requirements could be minimized.

The modeling guideline currently states that selection of a long-range transport model is on a case-by-case basis. The EPA is developing an example guidance protocol to illustrate how to apply a long-range transport model to regulatory problems. This document contains recommendations for model input and options and an example application (Docket Item II–I–11). The EPA solicits comments on the technical approach used therein.

F. Models for Estimating Visibility Impact of Specific Sources

The modeling guideline lists two models which may be used on a case-by-case basis for refined analysis to estimate short-term impact assessment of the type of visibility impairment known as "plume blight" which can be attributed to a specific source. The EPA Office of Research and Development has provided recommendations of acceptable plume blight models (Docket Item II–I–12). The EPA solicits comments on whether to adopt the recommendations of this document and whether any limitations shoud be placed on the use of these models for regulatory applications.

The modeling guideline also references a document titled "Workbook for Estimating Visibility Impairment", EPA–450/4–80–031. A revision of this document has been prepared to reflect current technical information and experience (Docket Item II–I–13). It contains procedures and a visibility model that can be used for screening purposes to estimate visibility impairment from specific sources. The EPA solicits comments on the technical validity of the revised visibility workbook, and whether to adopt the techniques in this document.

G. Model for Shoreline Dispersion

The modeling guideline recommends the Offshore and Coastal Dispersion model for simulating plume dispersion and transport from offshore point sources to receptors on land or water. The modeling guideline also indicates the need for predicting plume dispersion and fumigation under the unique meteorological conditions that affect elevated sources located on the coastline. There, a convective boundary layer capped by an inversion, becomes established when winds are onshore and sufficient overland heat flux and land-water temperature differences exist. Although models have been developed to address this problem, previous evaluations were not sufficient to allow EPA to recommend a specific technique. The EPA has not completed a performance evaluation entitled "Analysis and Evaluation of Statistical Coastal Fumigation Models", EPA–450/4–87–002, (Docket Item II–I–14). The EPA has also developed a method to incorporate shoreline dispersion conditions in EPA regulatory models using readily available data (Docket Item II–I–15).

The EPA solicits comment on: (1) Whether the performance evaluation study warrants the adoption of a preferred model for predicting plume dispersion and fumigation for elevated sources located on the coastline; (2) whether the methods to approximate certain input parameters from readily available data are adequate; and (3) whether any limitations should be placed on the use of the model in regulatory applications.

H. Valley Stagnation

The modeling guideline addresses the issues of wind stagnation but does not recommend any specific modeling techniques. Concerns about PM_{10} violation violations in valley basins have led many State and local agencies to request a simple modeling technique for simulating stagnation and wind recirculation conditions. Stagnation conditions tend to occur more frequently and persist for a longer time in well defined valleys; however, periods of persistent very low winds can also occur in broad shallow velleys. Simply Gaussian models are not adequate during these conditions. The WYNDvalley model (developed by WYNDsoft, Inc.) appears to have technical merit and to be relatively simple to apply. However, model evaluation results based on a comparison between model estimates and air quality data are limited (Docket Item II–I–16).

The EPA solicits comments on: (1) Whether WYNDvalley is a technically valid model; (2) whether additional data bases exist to evaluate this model; (3) what guidance EPA should provide for users of the model; (4) whether any limitations should be placed on its use

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for regulatory applications; and (5) whether there are any other models applicable to these stagnation conditions.

I. On-Site Meteorological Program Guidance

The use of on-site meteorological data to support air quality impact analyses has grown steadily over recent years. The EPA has published a document titled "On-site Meteorological Program Guidance for Regulatory Modeling Applications", EPA–450/4–87–013 (Docket Item II–I–17). The purpose of this document is to consolidate into a single document specific guidance on the collection and use of on-site meteorological data for air quality modeling analyses. While this document has undergone extensive external peer review by State agencies, meteorological instrument manufacturers, and other Federal agencies, it has not been subject to formal public comment. The EPA, therefore solicits comments on the on-site meteorological guidance document and on whether to adopt the recommendations of this document.

In response to the need for consistency in the processing of on-site meteorological data, EPA has developed a Meteorological Processor for Regulatory Models (MPRM), Docket Item II–I–18). This computer algorithm is designed to process on-site meteorological data following the procedures recommended in the on-site meteorological guidance document and produces output necessary to run the EPA regulatory dispersion models. The MPRM can also process National Weather Service surface and upper air data. It is designed to provide considerable flexibility to users in terms of imput data formats, and also is structured to be easily expanded to accommodate data requirements of future models. The EPA, therefore, also solicits comments on whether to adopt MPRM as the standard processor of meteorological data imput for modeling applications.

J. Method for Evaluating Models

The modeling guideline describes a number of actions to be taken to allow a judgment to be made as to what model is most appropriate for a given application and specifically refers to the document titled "Interim Procedures for Evaluation Air Quality Models", EPA–450/4–84–023. The Agency continues to work on refining these methods and has made advances in the statistical methodology needed for determining which model performs better than other competing models. With this newer methodology, it is feasible to combine results from different averaging periods and different data bases into a probabilistic framework. This methodology is described in an EPA report titled "Protocol for Determining the Best Performing Model" (Docket Item II–I–19). An Appendix to this report provides examples of applying the protocol to compare the performance of two rural air quality models. The EPA solicits comments on the technical approach used in this report and whether to adopt the procedure in judging the best performing models for regulatory applications.

K. Other Issues

The modeling guideline references a document titled "Guidelines for Air Quality Maintenance Planning and Analysis, Volume 10 (Revised)", EPA–450/4–77–001. This document has been revised to incorporate additions to the technical approach and changes so that the techniques now can easily be executed on an IBM–PC compatible microcomputer (Docket Item II–I–20). The EPA solicits comments on the technical validity of these screening techniques.

The EPA has under development and evaluation two regional scale models: the Regional Oxidant Model and the Regional Acid Deposition Model (Docket Items II–I–21 and 22). These models can treat complex chemical interactions associated with emissions from a large number of widely distributed sources (e.g., a metropolitan area) and can account for comprehensive physical and chemical processes important in the transport, transformation, and deposition of pollutants on a regional scale. These models are designed to evaluate policy implications of alternative control strategies for groups of sources encompassing a region. They are not designed to set emission limits for specific sources. The EPA solicits comments on the potential usefulness to regulatory programs of regional scale models to assess transport, chemical interactions and dispersion of multiple pollutants.

Finally, air quality dispersion models are taking on increasing importance as tools for analyzing air emissions in connection with toxics and hazardous waste pollutants. The EPA solicits comments on what modeling techniques to consider in developing air pathway analyses for such pollutants.

Public Participation

The Fourth Conference on Air Quality Modeling will be open to the public; no admission fee is charged. The morning of the first day will include briefings by EPA officials and others on the modeling issues discussed above. In the afternoon, the conference will continue with statements from representatives of APCA's Meteorology Committee, the American Meteorological Society, the National Academy of Sciences, appropriate Federal agencies including the National Science Foundation, the National Oceanic and Atmospheric Administration, the National Bureau of Standards, the FAA, and others. The day will conclude with statements by representatives of State and local air pollution control agencies. On the second day, the conference will be opened to statements and comments from the general public.

Persons wishing to speak at the conference should contact EPA at the address given in the "FURTHER INFORMATION" section no later than 10 days prior to the conference date. Such persons should identify the organization (if any) on whose behalf they are speaking and the length of presentation. If a presentation is projected to be longer than 15 minutes, the presenter should also state why a longer period is needed. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the conference and will be scheduled on a time-available basis.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be made and placed in the docket. Speakers should bring extra copies of their presentation for inclusion in the docket, for the convenience of the reporter and the Agency panel. Speakers will be permitted to enter into the record any additional written comments that are not presented orally. Additional written statements or comments should be sent to the Central Docket Section (see ADDRESSES section). A transcript of the proceedings and a copy of all written comments will be maintained in Docket A–88–04 which will remain open for 60 days following the conference for the purpose of receiving additional comments.

Date: August 15, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88–18951 Filed 8–22–88; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-2, 201-23, 201-24

Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Regarding Automatic Data Processing Equipment; Correction

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking on the Paperwork Reduction Reauthorization Act of 1986, that appeared at page 30706 in the **Federal Register** of Monday, August 15, 1988, (53 FR 30706). This action is necessary to incorporate changes that resulted from the Office of Management and Budget's regulatory review under Executive Order 12291 of February 17, 1981.

This proposed rule will implement certain selected portions of the Paperwork Reduction Reauthorization Act of 1986. Among other changes, the amendment will clarify the applicability of the Federal Information Resources Management Regulation (FIRMR) in FIRMR Part 201–1 to the management, acquisition, and use of various information resources by Federal agencies. FIRMR Part 201–2 will be revised to establish an umbrella term for ADP and telecommunications resources—Federal information processing (FIP) resources. The term and related definitions will be an efficient means for prescribing uniform programs, policies, and procedures for ADP and telecommunications resources. The amendment will also prescribe policies and procedures in FIRMR Part 201–24 for use in determining whether any particular procurement must be conducted under GSA's exclusive procurement authority.

In addition, the amendment will streamline the Delegations Program by establishing uniform procedures, uniform blanket delegations of procurement authority, and uniform Agency Procurement Requests (APRs) for all FIP resources. The effect of these changes to FIRMR 201–23 will be to set a single competitive regulatory blanket delegation of procurement authority of $2.5 million for most ADP and telecommunications resources.

The change will allow GSA to focus review activities on agencies' overall IRM programs under the Procurement Management Review Program and on the most significant agency acquisitions under the Delegations Program.

The amendment will also adopt continuing relevant portions of FIRMR Temporary Regulation 13 (51 FR 45887) that immediately addressed the impact of the same statute, and consolidate or eliminate certain portions of that rule. This amendment will supersede and cancel FIRMR Part 201–39, Major Changes and New Installations of Telecommunication Resources. [Note.—It will also supersede Subpart 201–38.2 of a proposed FIRMR rule, Revisions of FIRMR Telecommunications Policies, (Project No. 86.75) that was announced in a notice of proposed rulemaking appearing in the **Federal Register** on September 23, 1987 (52 FR 35736).]

DATE: Comments are due September 22, 1988.

ADDRESSES: Comments should be submitted to the General Services Administration, (Project KMP–87–7), Regulations Branch (KMPR), Office of Information Resources Management Policy, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William R. Loy or Margaret Truntich, telephone (202) 566–0194 or FTS, 566–0194. The full text of the proposed rule is available upon telephone request.

SUPPLEMENTARY INFORMATION: (1) On December 23, 1986, FIRMR Temporary Regulation 13 was published in the **Federal Register** and was effective that day. It implemented applicable portions of the Paperwork Reduction Reauthorization Act of 1986 by incorporating the statutory definition of ADPE in the FIRMR. All of the amendments of Title VIII, the Paperwork Reduction Reauthorization Act of 1986, regarding automatic data processing equipment were effective on the date of enactment, October 18, 1986, except for the establishment of the Information Technology Fund. The fund was established on January 1, 1987. In particular, the delegations of authority provisions of FIRMR Temporary Regulation 13 were effective retroactively to October 18, 1986. It further provided blanket regulatory delegations of procurement authority for those cases where the amended Brooks Act became applicable to the acquisition. This amendment will codify relevant portions of FIRMR Temporary Regulation 13 and incorporate additional changes from the aforementioned statutory change as described in the succeeding paragraphs.

(2) Explanation of the changes being made by this issuance are shown below:

(a) In Part 201–1, the following changes will be made.

(i) Section 201–1.000–1 will be amended by revising paragraph (c) by removing language from the Paperwork Reduction Act of 1980 identifying "information management activities" and substituting the definition of "information resources management" that was provided in Pub. L. 99–500 (the Paperwork Reduction Reauthorization Act of 1986).

(ii) Section 201–1.102–2 will be amended by removing outdated language that reflected the prior review function of the Office of Management and Budget under Pub. L. 89–306.

(iii) Section 201–1.102–3 will be amended by removing the language included in that section. Exclusions from the Paperwork Reduction Reauthorization Act of 1986 that reflected the exclusion set forth in Pub. L. 97–86 (10 U.S.C. 2315) will now be more appropriately addressed in § 201–1.103, Applicability.

(iv) Section 201–1.103 will be amended by revising the section completely. This section will set forth in much greater detail the extent of the FIRMR's applicability to Federal agencies. It will address management and use of records by Federal agencies, management, acquisition, and use of Federal information processing (FIP) resources by Federal agencies, and management, acquisition, and use of radio equipment. The statutory exceptions to Pub. L. 99–500 will be stated. All previous regulatory exclusions for telecommunications are removed.

(b) In Part 201–2, the following changes will be made.

(i) A new definition of "Federal information processing resources" will be added.

(ii) A new definition of "Federal information processing equipment" will be added.

(iii) A new definition of "Federal information processing software" will be added.

(iv) A new definition of "Federal information processing services" will be added.

(v) A new definition of "Federal information processing support services" will be added.

(vi) A new definition of "Federal information processing related supplies" will be added.

(vii) A new definition of "Federal information processing system" will be added.

(viii) A new definition of "Telecommunications resources" will be added.

(ix) A new definition of "Radio equipment" will be added which attempts to recognize the merging of

technologies used to move and process information.

(x) A new definition of "Information" will be added.

(xi) A new definition of "Data" will be added.

(xii) A new definition of "Television equipment" will be added.

(xii) A new definition of "Radar equipment" will be added.

(xiv) A new definition of "Sonar equipment" will be added.

(xv) A new separate definition of "Executive agency" will be added.

(c) In Part 201–23, the following changes will be made.

(i) Section 201–23.000 will be amended and revised to more fully describe the scope of the part.

(ii) Subpart 201–23.1 will be amended and revised to address delegations of GSA's exclusive procurement authority for FIP resources.

(iii) Section 201–23.100 will be amended and revised to more accurately describe the scope of the subpart.

(iv) Section 201–23.101 will be amended and revised to prescribe newly established policies regarding GSA's exclusive procurement authority for FIP resources.

(v) Section 201–23.102 will be amended and revised to set forth the policies and procedures regarding accountability for acquisition of FIP resources delegated under GSA's exclusive procurement authority.

(vi) Section 201–23.103 will be amended and revised to describe the methods for obtaining delegations of GSA's exclusive procurement authority for FIP resources.

(vii) Section 201–23.103–1 will be amended and revised to describe the policies and procedures regarding regulatory blanket delegations of GSA's exclusive procurement authority for FIP resources. Coverage for custom-developed FIP equipment will be revised. GSA will continue to develop improved procedures for the procurement of FIP resources.

(viii) Section 201–23.103–2 will be amended and revised to provide policies and procedures regarding the establishment of agency blanket delegations of GSA's exclusive procurement authority for FIP resources.

(ix) Section 201–23.103–3 will be amended and revised to provide a single method for submitting an agency procurement request and obtaining a delegation of procurement authority for acquiring FIP resources.

(x) Subpart 201–23.2 will be amended and revised to address delegations of GSA's multi-year contracting authority for telecommunications resources.

(xi) Section 201–23.200 will be amended and revised to more accurately describe the scope of the subpart.

(xii) Section 201–23.201 will be amended and revised to describe GSA's authority to enter into multi-year contracts for telecommunications resources.

(xiii) Section 201–23.202 will be amended and revised to set forth more accurately the agency's accountability for acquisitions made under delegation of GSA's multi-year contracting authority for telecommunications.

(xiv) Section 201–23.203 will be amended and revised to more accurately prescribe policies and procedures relating to GSA's blanket multi-year contracting authority for telecommunications resources delegated to Executive agencies.

(d) In Part 201–24, the following changes will be made.

(i) Section 201–24.107 will be added to prescribe new policies and procedures regarding FIP resources that are included within general procurement requirements. It is designed to ensure that FIP resources will be acquired under FIRMR provisions unless such provisions are clearly inappropriate. It will further provide a procedure so that a Federal agency may request a deviation to conduct a procurement outside the provisions of the FIRMR even though the requirement is within the limitations set forth in § 201–1.103(c)(2)(i)(B).

(ii) Section 201–24.202 will be retitled and modified to incorporate the policy that was in § 201–1.103(b)(2). This addition will require Federal agencies to include in solicitations and resultant contracts terms, conditions, and clauses which apply the full and open competition objective to the procurement of ADP resources by Federal contractors in certain situations.

(3) This amendment will supersede and cancel FIRMR Temporary Regulation 13 upon its effective date.

(4) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA actions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide regulation that will have little or no net cost effect on society. The rule is not likely to have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

List of Subjects in 41 CFR Part 201–1, 201–2, 201–23, and 201–24

Computer technology, Government procurement, Government property management, Telecommunications, Information resources activities, Government records management, Hearing and appeal procedures, Competition.

Dated: August 17, 1988.

Fred L. Sims,

Acting Deputy Commissioner for Federal Information, Resources Management.

[FR Doc. 88–19043 Filed 8–22–88; 8:45 am]

BILLING CODE 6820–25–M

Notices

Federal Register
Vol. 53, No. 163
Tuesday, August 23, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-120]

Contagious Equine Metritis Program; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: We are giving notice of a meeting between members of the Animal and Plant Health Inspection Service, United States Department of Agriculture, and members of the public, to discuss the Contagious Equine Metritis Program.

Place, dates, and time of meeting: The meeting will be held in Room 107-A of the Administration Building, 14th Street and Independence Avenue, NW., Washington, DC 20250, September 27-28, from 9:00 a.m. to 5:00 p.m. on both days. Those attending the meeting must obtain a pass from building security personnel before proceeding to the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Chester A. Gipson, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8321.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, the horse industry, and other members of the public to discuss the Contagious Equine Metritis Program.

The meeting will be open to the public. Written comments concerning the Contagious Equine Metritis Program should be sent to Dr. Chester A. Gipson at the address listed in this document. Written comments may also be presented at the meeting. Please refer to Docket Number 88-120 when submitting comments.

Done in Washington, DC this 18th day of August, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-19119 Filed 8-22-88; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Hard Red Spring Wheat, Protein Equipment Calibration

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Beginning September 6, 1988, the Federal Grain Inspection Service will implement an up-dated calibration for NIR instruments for Hard Red Spring wheat protein determinations.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., USDA/FGIS/Resources Management Division, Room 0628-S, P.O. Box 96454, Washington, DC 20090-6454; telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: An up-dated Hard Red Spring (HRS) calibration for near infrared reflectance instruments will be implemented for protein determinations. The calibration was developed with the assistance of the USDA Agricultural Research Service Instrumentation Research Laboratory and the Agricultural Marketing Service Statistics Branch. New NIR values for the national standard reference samples will be used to detect instrument drift and keep the NIR's aligned with the Kjeldahl laboratory at the FGIS Technical Center in Kansas City.

Beginning Tuesday September 6, 1988, the up-dated calibration will be implemented in FGIS field offices and the official agencies in their circuits in the following sequence:

1. Grand Forks, ND; Moscow, ID;
2. Kansas City, MO; Omaha, NE; St. Louis, MO; Wichita, KS;
3. Duluth, MN; Minneapolis, MN; Portland, OR; Olympia, WA;
4. Destrehan, LA; Lutcher, LA; Pasadena, TX;
5. Beaumont, TX; Belle Chasse, LA; Sacramento, CA; Montreal, CAN.

A technical review of the updated calibration indicates that the effect on the national system should be minimal. However, the precise impact of the up-dated calibration at any given location cannot be accurately predicted.

To ensure that the HRS calibration reflects the new varieties being grown by producers and, is, therefore as precise as possible, FGIS has up-dated the HRS calibration using this year's data and the previous year's calibration data, the earliest data available. FGIS plans to update the calibration annually using a five year rollover of data, as such date becomes available, rather than the three year rollover of data as previously announced.

Dated: August 18, 1988.

D.R. Galliart,

Deputy Administrator.

[FR Doc. 88-19117 Filed 8-22-88; 8:45 am]

BILLING CODE 3410-EN-M

Foreign Agriculture Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agriculture Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1989 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1989 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $58.00 per license.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616—South Building, U.S. Department of Agriculture, Washington, DC 20250-1000 or telephone at (202) 447-5270.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20-6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a

person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

Regulations at 7 CFR 6.33(a) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total cost to the Department of Agriculture of administering the licensing system during the calendar year preceding the year for which the fee is to be charged divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

Regulations at 7 CFR 6.33(b) provide that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be filed with the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 1989 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1988 has been determined to be $203,322. Of this amount, $137,322 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1988 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $109,771; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled $27,551); $41,000 represents the cost of the computer on-line entry system used to monitor the use of licenses during 1988; and $25,000 represents other miscellaneous costs, including travel, postage, and an in-house computer system. The average number of licenses issued per year for the three years immediately preceding 1989 has been determined to be 3,541.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1989 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $58.00 per license.

Issued at Washington, DC, the 29th day of July, 1988.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 88–19063 Filed 8–22–88; 8:45 a.m.]

BILLING CODE 3410-10-M

Forest Service

Mt. Graham Astrophysical Proposal; Intent to Prepare Environmental Impact Statement

AGENCY: Forest Service.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement.

SUMMARY: As announced on July 16, 1985, and later amended on May 30, 1986, and October 10, 1987, the Department of Agriculture, Forest Service is preparing an environmental impact statement for a proposed astrophysical area on the Safford Ranger District, Coronado National Forest, Graham County, Arizona.

The draft environmental impact statement was released for public comment in October 1986. The public comment period ended on January 20, 1987. The previous schedule for releasing the final environmental impact statement was August 1, 1988. Because of the need to incorporate new information, the revised schedule for releasing the final environmental impact statement is now October 28, 1988. There will be a 60 day public comment period on the new information in the environmental impact statement.

A range of alternatives for future management of this area is being considered. Several alternatives include no astrophysical development. Other alternatives include different levels of astrophysical development and different locations for support facilities.

Sotero Muniz, Regional Forester of the Southwest Region in Albuquerque, New Mexico is the responsible official.

FOR FURTHER INFORMATION CONTACT: Questions concerning the analysis and schedule should be addressed to Robert Tippeconnic, Forest Supervisor, Coronado National Forest, 300 W. Congress, Tucson, Arizona 85701; telephone 602–629–6483.

Date: August 12, 1988.

Sotero Muniz,

Regional Forester.

[FR Doc. 88–19044 Filed 8–22–88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 392]

Transfer of Subzone Designation for Foreign-Trade Subzone 53A, General Motors Corp. Auto Assembly Plant, Oklahoma City, OK

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the request with supporting documents (Docket 26–87, filed September 18, 1987) from the City of Tulsa-Rogers County Port Authority, grantee of Foreign-Trade Zone 53, Tulsa, Oklahoma, for a transfer of the grant of authority for Subzone 53A at the General Motors Corporation auto assembly plant in Oklahoma City to the Oklahoma City Port Authority, grantee of Foreign-Trade Zone 106, which has concurred in the request, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied and that the proposal is in the public interest, approves the request and recognizes the Oklahoma City Port Authority as the new grantee of the General Motors subzone. The designation of the site is changed from Subzone 53A to Subzone 106A.

Signed at Washington, DC this 15th day of August 1988.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration, Chairman, Committee of Alternates.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 88–19109 Filed 8–22–88; 8:45 am]

BILLING CODE 3510-DS-M

Office of Inspector General

Membership of the Office of Inspector General, Performance Review Board

In conformance with the Civil Service Reform Act of 1978, 5 USC 4314(c)(4), the Office of Inspector General (OIG) announces the appointment of persons to serve as members of its Performance Review Board (PRB). The OIG PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointment authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The names of all

Commerce OIG Senior Executives will be placed on a register from which Boards will be established; the register will be established on September 16, 1988. The appointment of the members of the OIG PRB from outside of the OIG will be for a period of two years beginning September 16, 1988.

The names and titles of the OIG PRB membership follow. All are OIG employees, except where noted.

Charles M. Hall, Assistant Inspector General for Planning, Evaluation and Inspections
Franklyn J. Howatt, Deputy Assistant Inspector General for Investigations
Bryan B. Mitchell, Acting Deputy Inspector General (Department of Health and Human Services)
John D. Newell, Assistant Inspector General for Automated Information Systems
J. Steven Sadler, Deputy Assistant Inspector General for Auditing
Frederick J. Pinciaro, Assistant Inspector General for Investigations
Linda G. Sundro, Acting Deputy Inspector General
John R. Szpanka, Assistant Inspector General for Auditing

FOR FURTHER INFORMATION: Contact Marie Van Wyk, Director for Administration, Department of Commerce, Office of Inspector General, 14th & Constitution NW. Room 7713, Washington, DC 20230, (202) 377–4948.

Date: August 15, 1988.

Francis D. DeGeorge,

Inspector General.

[FR Doc. 88–19081 Filed 8–22–88; 8:45 am]

BILLING CODE 3510-DP-M

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate From France; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise to the U.S., Rhone Poulenc Chimie de Base ("Rhone Poulenc"), and the period January 1, 1987 through December 31, 1987. There were no known shipments of this merchandise to the United States by Rhone Poulenc during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 23, 1988.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 9785) the final results of its last administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The respondent, Rhone Poulenc Chimie de Base, requested in accordance with section 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on March 2, 1988 (53 FR 6681). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. Anhydrous sodium metasilicate is currently classifiable under item number 421.3400 of the *Tariff Schedules of the United States Annotated* and item numbers 2839.11.00 and 2839.19.00 of the *Harmonized System.*

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the period January 1, 1987 through December 31, 1987. There were no known shipments of this merchandise by Rhone Poulenc to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

Because there were no shipments during this reveiw, we based our margin determination on the last margin found in this proceeding and we preliminarily determine that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Rhone Poulenc	1/87–12/87	*60

*No shipments during the period.

Interested parties may request disclosure and/or an administratrive protective order within 5 days of the date of publication of this notice, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments may be submitted not later than 25 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

As provided for by § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties of 60 percent for Rhone Poulenc. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1987 and who is unrelated to the reviewed firm, a cash deposit of 60 percent shall be required. These deposit requirements are effective for all shipments of French anhydrous sodium mestasilicate entered, or withdrawn from warehouse, for consumption or or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

Date: August 16, 1988.

[FR Doc. 88–19107 Filed 8–22–88; 8:45 am]

BILLING CODE 3510-DS-M

Petroleum Wax Candles From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

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SUMMARY: In response to a request by an importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China. The review covers one third-country reseller of this merchandise to the United States and the period February 19, 1986 through July 31, 1987. The review indicates the existence of dumping margins for the firm during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

We used the best information available for the firm because it failed to respond to our request for information.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 23, 1988.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 30686) an antidumping duty order on petroleum wax candles from the People's Republic of China. One importer requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initation of the antidumping duty administrative review on September 21, 1987 (52 FR 35466). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of petroleum wax candles. Petroleum wax candles are currently classifiable under Tariff Schedules of the United States item number 755.25 and Harmonized System item number 3406.00.00.

The review covers one third-country reseller of petroleum wax candles from the People's Republic of China and the period February 19, 1986 through July 31, 1987.

The third-country reseller, P & C Enterprises (Hong Kong), did not respond to our questionnaire. Therefore, the Department used the best information available for this firm, which was the rate for all firms published in the antidumping duty order (51 FR 30686, August 28, 1986).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 54.21 percent exists for P&C Enterprises (Hong Kong) for the period February 19, 1986 through July 31, 1987.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by 19 CFR 353.48(b), a cash deposit of estimated antidumping duties based on the above margin shall continue to be required for all manufacturers/exporters. This deposit requirement is effective for all shipments of Chinese petroleum wax candles entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

Dated: August 16, 1988.

[FR Doc. 88–19106 Filed 8–22–88; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 4, and Related Clauses; DD Forms 2051, 2051–1, and 2139; and OMB Control Number 0704–0225.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 7 minutes.

Frequency of Response: On occasion.

Number of Respondents: 136,201.

Annual Burden Hours: 27,057.

Annual Responses: 196,013.

Needs and Uses: This request concerns information collection requirements related to administrative matters (e.g., Duns numbers) and to collect socioeconomic data to comply with Presidential Executive Order 12138.

Affected Public: Businesses and other for profit.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from: Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 18, 1988.

[FR Doc. 88–19064 Filed 8–22–88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 27, Patents, Data and Copyrights; DD Form 882; and OMB Control Number 0704–0240.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 84 hours.

Frequency of Response: Monthly.

Number of Respondents: 16,743.

Annual Burden Hours: 2,382,416.

Annual Responses: 18,756.

Needs and Uses: This request concerns information collection and recordkeeping requirements related to technical data, software copyrights, patents, and contracts.

Affected Public: Businesses and other for profit.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rescoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 17, 1988.

[FR Doc. 88–19065 Filed 8–22–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Revised Record System

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice of a revision of a DLA system of records for public comment.

SUMMARY: The Defense Logistics Agency of the Department of Defense proposes to revise an existing system of records subject to the Privacy Act of 1974.

DATE: The proposed action will be effective without further notice on September 22, 1988 unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, Telephone: 202–274–6234, Autovon: 284–6234.

SUPPLEMENTARY INFORMATION: This existing record system was published at 50 FR 22902, May 29, 1985. The revision includes various modifications to the basic text. The Defense Logistics Agency systems of records as prescribed by the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22897) May 29, 1985 (DoD Compilation)
FR Doc. 85–30123 (50 FR 51898) December 20, 1985
FR Doc. 86–17259 (51 FR 27443) July 31, 1986
FR Doc. 86–19035 (51 FR 30104) August 22, 1986
FR Doc. 87–21654 (52 FR 35304) September 18, 1987
FR Doc. 87–22481 (52 FR 37495) October 7, 1987
FR Doc. 88–03220 (53 FR 04442) February 16, 1988
FR Doc. 88–06658 (53 FR 09965) March 28, 1988
FR Doc. 88–12863 (53 FR 21511) June 8, 1988
FR Doc. 88–15473 (53 FR 26105) July 11, 1988

This notice is not within the purview of subsection (o) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 17, 1988.

S160.50 DLA–1

SYSTEM NAME:

Criminal Incidents/Investigations File.

SYSTEM LOCATION:

Primary System—case files on all incidents of known or suspected criminal activity or other serious incidents: Office of Command Security and Office of General Counsel, Headquarters Defense Logistics Agency (HQ DLA) and field extension offices. Decentralized segments—above described files and files of minor nature: DLA Primary Level Field Activities (PLFAs) and six Secondary Level Field Activities (SLFAs).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reports of investigation, messages, statements of witnesses, subjects and victims, photographs, laboratory reports, data collection reports, and other related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21, Internal Security of 1950 (Pub. L. 831, 81st Congress). DoD Directive 5105.22. Defense Logistics Agency, DoD Instruction 5240.4, Reporting of Counterintelligence and Criminal Violations, DoD Directive 5105.42, Defense Investigative Service, and DoD Instruction 5505.2, Criminal Investigations of Fraud Offenses.

PURPOSE(S):

Information is maintained for the purpose of monitoring the progress of investigations, identification of crime conducive conditions, crime and loss prevention, and preparation of statistical data required by higher authority. Information is used by: DLA Security and General Counsel personnel—to monitor progress of cases, develop non-personal statistical data on crime and crime investigative support for the future. DLA General Counsel—review of all available remedies. DLA supervisors and managers—to determine appropriate action against DLA employees in cases of their involvement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be referred to local, state, or Federal law enforcement agencies when the information indicates a violation of local, state or federal laws. See also blanket routine uses set forth at the beginning of this agency's listing of records system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in combination of paper and automated files.

RETRIEVABILITY:

Hardcopy records filed chronologically by DLA case number and cross indexed to a card index file. Indexed by name of the individual or firm involved. Automated records are retrievable by name of the individual or firm, DLA case number, PLFA number or activity code.

SAFEGUARDS:

Records, as well as computer terminals, are maintained in areas accessible only to DLA Security and Office of General Counsel personnel. In addition, access to a retrieval from computerized files is limited to

authorized users and is password protected.

RETENTION AND DISPOSAL:

Paper records from external law enforcement and investigative organizations are destroyed 5 years after the receipt of a final report in each case, or when no longer needed, whichever is later. Criminal investigative reports generated by DLA investigators/detectives are retained for 25 years, either in hard copy or microfiche, as recommended by the DIS Defense Central Investigation Index (DCIL). Automated records are retained for 10 years in the on-line mode and then transferred to magnetic tape with retention of 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Command Security, DLA; Heads of PLFAs and SLFAs.

NOTIFICATION PROCEDURE:

Written or personal requests for information may be directed to the SYSMANAGER.

RECORD ACCESS PROCEDURE:

Official mailing addresses of the SYSMANAGERS are in the Department of Defense Directory in the appendix to the DLA systems notice. Written requests for information should contain the full name, current address and telephone numbers of the individual. For personal visits, the individial should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that could be verified with the file.

CONTESTING RECORD PROCEDURES:

DLA's rules for contesting contents as well as appealing initial determinations by the individual concerned may be obtained from the SYSMANAGERS.

RECORD SOURCE CATEGORIES:

Reports of investigations by DLA investigators, Security Officer, Federal, State, and local law enforcement and investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under Title 5 U.S.C. 552a(k)(2) as applicable. Agency rules pertaining to this exemption are set forth both in Appendix C of 32 CFR Part 1286 and DLA Regulation 6400.21. For additional information, contact the System Manager.

[FR Doc. 88–19066 Filed 8–22–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 22, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB Invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 18, 1988.

Carlos U. Rice,

Director for Office of Information Resources Mangement.

Office of Postsecondary Education

Type of Review: Revision
Title: Financial Status and Performance Report Forms for the Veterans Education Outreach Program (VEOP)
Affected Public: Non-profit institutions
Frequency: Annually
Reporting Burden:
Responses: 600
Burden Hours: 1,200
Recordkeeping:
Recordkeepers: 600
Burden Hours: 600
Abstract: Institutions of higher education that have participated in the Veterans Education Outreach Program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Extension
Title: Performance Report under the Law School Clinical Experience Program
Affected Public: Non-profit institutions
Frequency: Annually
Reporting Burden:
Responses: 66
Burden Hours: 198
Recordkeeping:
Recordkeepers: 66
Burden Hours: 198
Abstract: Accredited law schools that have participated in the Law School Clinical Experience Program are to submit this report to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 88–19115 Filed 8–22–88; 8:45 am]

BILLING CODE 4000–01–M

Office of Elementary and Secondary Education; Intent To Repay to the New Jersey State Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education

(Secretary) intends to repay to the New Jersey State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of final audit determinations. This notice describes the SEA's plan, submitted on behalf of the Paterson School District (PSD), the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before September 22, 1988.

ADDRESS: All comments should be addressed to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, MS–6276), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732–4692.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $93,247, plus accrued interest, from the New Jersey SEA in satisfaction of claims arising from two separate audits conducted by the Department's Office of Inspector General.

The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I) and Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), programs that addressed the special educational needs of educationally deprived children in areas with high concentration of children from low-income families. Specifically, the Department's March 12, 1985 final audit determination found that during fiscal years (FYs) 1981 and 1982 Title I funds had been spent in PSD in violation of the supplement, not supplant requirement of section 126(c) of Title I. The requirement provided that Title I funds supplement, and not supplant, State and local funds and be expended to meet needs left unmet by funds available from those sources.

In a July 23, 1986 final audit determination, the Department found that the 1983–84 financial report of PSD contained excess claims against Chapter 1 in the amount of $36,987. This was in violation of 34 CFR 200.56 (1983), which provided that an LEA could receive Title I funds only if it used fiscal control and funds accounting procedures to ensure proper disbursement of and accounting for Chapter 1 funds.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $69,935 and has submitted a plan on behalf of PSD for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981. 20 U.S.C. 3801 *et seq.* The first final audit determination against the SEA resulted from improper expenditures of Title I funds, whereas the second audit determination involved excess claims against Chapter 1, which has superseded Title I. The SEA's proposal reflects the requirements in Chapter 1—a program similar to Title I, designed to serve educationally deprived children in low-income areas.

The SEA's plan proposes that the PSD will use the grantback funds to provide concentrated, computer-assisted instruction for 300 currently participating Chapter 1 students who are the most severely deficient in reading and writing and/or mathematics, after school for two hours a day four days a week. While the program will focus on computer-assisted instruction, teachers will also provide direct instruction to small groups according to identified deficiencies. According to the plan, $42,210 of the grantback will be used to purchase 20 computers, and the remaining $27,725 will be used to pay for teachers' salaries and benefits. Students will participate in motivational activities to improve attendance and strengthen self-esteem. The program will be provided for eight weeks in September and October 1988. The computers that will be purchased with grantback funds will also be used by eligible students in PSD's regular school year 1988–89 Chapter 1 program. Eligible Chapter 1 students from nonpublic schools will be provided the opportunity and will be encouraged to participate in the after-school program.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the New Jersey SEA under a grantback arrangement. The grantback award would be in the amount of $69,935, which is 75 percent—the maximum percentage authorized by the statute—of the amount paid by the State (less interest) to the Department as a result of the audits.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) In accordance with section 456(c) of GEPA and the SEA's plan, the funds received under the grantback arrangement for the purchase of computers ($42,210) must be obligated by September 30, 1988, and the remaining $27,725 must be obligated by September 30, 1989.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1989, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: August 17, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 88–19112 Filed 8–22–88; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education; Intent To Repay to the New York State Education Department Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Edcuation Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the New York State Education Department, the State educational agency (SEA), $768,600 of the $1,110,718 recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of the New York City Board of Education, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before September 22, 1988.

ADDRESS: All comments should be addressed to Dr. James Spillane, Director, Division of Program Support, Compensatory Edcuation Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, MS–6276), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732–4694.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $1,110,718 from the New York SEA in satisfaction of claims arising from an audit covering fiscal years (FYs) 1980 through 1982.

The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the Department's final audit determination found that contrary to the provisions of 20 U.S.C. 2736(b), the LEA used $85,918 of Title I funds to pay more than the excess costs of guidance counselor services that the LEA provided as a substitute for regular counselor services that Title I children would have otherwise received. The Department's final audit determination also found that contrary to the provisions of 20 U.S.C. 2734(a) and the cost principles in Appendix C of 34 CFR Part 74, the LEA improperly used $1,372,000 to pay the salaries of high school educational assistants who did not devote full time to the Title I program.

The refund demand of $1,427,918 ($85,918 + $1,372,000) was reduced to $1,110,718 as a result of additional information provided by the SEA. The SEA has repaid the full $1,110,718 owed in this matter.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final aduit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the aduit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the aduit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were orginally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $768,600 and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981. 20 U.S.C. 3801 et seq. The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 superseded Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The SEA's plan proposes that the LEA would use the grantback funds to purchase instructional materials and supplies for the school year 1988–89 regular Chapter 1 program. As a result, the regular Chapter 1 funds could be used by the LEA to employ 15 additional teachers to meet reading and writing remedial needs of approximately 2,550 educationally disadvantaged children. The grantback funds would make it possible to provide vital compensatory education assistance to eligible Chapter 1 students who in the absence of such funds would not receive Chapter 1 assistance.

The instructional materials and supplies purchased with grantback funds would augment the Chapter 1 Reading/Writing Program in 65 Chapter

1 high schools. These materials and supplies have been identified as the resources necessary to implement the school year 1988–89 regular Chapter 1 program. Through Chapter 1, high school students identified as in need of remediation are provided with the basic skills to allow them to experience success in the regular high school program and, ultimately, to function in society as productive citizens.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determinations concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the New York SEA under a grantback arrangement. The grantback award would be in the amount of $766,600, which is within the range authorized by the statute.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1988, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1989, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: August 17, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistant Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 88–19111 Filed 8–22–88; 8:45 am]

BILLING CODE 4000–01–M

Notice Inviting Applications for New Awards Under the Research in Education of the Handicapped Program for Fiscal Year 1989

CFDA No.: 84.023

Purpose: To assist research and related purposes, and to conduct research, surveys, or demonstrations, relating to the education of, and early intervention services for, infants, toddlers, children and youth with handicaps.

Applications Available: August 31, 1988.

Applicable Regulations: (a) The Research in Education of the Handicapped Program Regulations, 34 CFR Part 324, as amended by 52 FR 43482–43483 (November 12, 1987); and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

General: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference under the Research in Education of the Handicapped program for Fiscal Year 1989 to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities. The Secretary has selected these priorities from the list of authorized projects set forth in 34 CFR 324.10. All applications submitted will be evaluated using the selection criteria at § 324.31 for research projects.

Priority 1—Field-Initiated Research Projects

This priority provides support for a broad range of field-initiated research projects focusing on the education of, and early intervention services for, infants, toddlers, children, and youth with handicaps consistent with the purposes of the program as stated in 34 CFR 324.1. This priority allows projects to address problems identified by researchers/investigators in the field.

Priority 2—Student-Initiated Research

The priority provides support for a broad range of student-initiated research projects focusing on the education of, and early intervention services for, infants, toddlers, children, and youth with handicaps consistent with the purposes of the program as stated in 34 CFR 324.1.

The Secretary particularly encourages applications for short term projects (up to 18 months) that will develop research skills in post-secondary students. The Secretary further encourages applications that, while developed by the student, will identify a principal investigator who will serve as a mentor to the student/researcher. However, in accordance with 34 CFR 75.105(c)(1), applications that meet the criteria discussed in this paragraph will not be given a competitive or absolute preference over other applications.

RESEARCH PRIORITIES FOR FISCAL YEAR 1989

Title and CFDA Number	Deadline for transmittal of applications	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Field-Initiated Research Projects (CFDA No. 84.023C)	Oct. 17, 1988	$1,200,000	$30,000–$130,000	$108,000	12	Up to 60.
Student-Initiated Research Projects (CFDA No. 84.023B)	Mar. 3, 1988	$125,000	$3,000–$12,000	$8,000	15	Up to 18.

Contact Person: Linda Glidewell, U.S. Department of Education, Office of Special Education Programs, Division of Innovation and Development, 400 Maryland Avenue SW. (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202, Telephone: (202) 732–1099.

Program Authority: 20 U.S.C. 1441–1444.

Dated: August 18, 1988.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88–19113 Filed 8–22–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Availability of Environmental Assessment and Finding of No Significant Impact Incorporating Floodplain Statement of Findings; Remedial Action at the Green River Uranium Mill Tailings Site, Green River, UT

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) incorporating Floodplain Statement of Findings.

SUMMARY: The DOE has published an Environmental Assessment of Remedial Action at the Green River Uranium Mill Tailings Site, Green River, Utah (DOE–EA–0343), for the proposed remedial action on residual radioactive materials at the inactive uranium mill site near Green River, Utah. On the basis of the analyses in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and has issued a FONSI which appears immediately following this notice. The DOE has also prepared a Floodplain Assessment as part of the EA. The EA is available for public review.

Background

The Green River tailings site is in Grand County, Utah, 0.5 miles southeast of the town of Green River. The uranium mill tailings were produced from processing uranium ore for sale to the Atomic Energy Commission, a predecessor of the DOE, by the Union Carbide Corporation, which built and operated the mill from 1958–1961. The tailings remaining from the operations now rest in a pile covering approximately 8 acres of the 48-acre designated site.

In 1978, the U.S. Congress passed the Uranium Mill Tailings Radiation Control Act, Pub. L. 95–604. In this Act, the Congress found that uranium mill tailings may pose a potential radiation health hazard. It authorized the DOE to carry out remedial action at each site in cooperation with other Federal agencies and with the States or Indian tribes affected by the action. It gave to the Nuclear Regulatory Commission (NRC) responsibility for consulting with the DOE over a range of subjects concerning conduct of remedial action, for concurring with the selected remedial action and with any cooperative agreement with a State or Indian tribe, and for licensing the maintenance of each tailings disposal site after the remedial action is completed. In addition, the Environmental Protection Agency (EPA) was given the responsibility to set standards to protect public health, safety, and the environment at the disposal sites.

In accordance with Pub. L. 95–604, the DOE designated 24 sites for remedial action. One of these sites is the inactive processing site near Green River, Utah. The EPA issued standards (40 CFR Part 192) for remedial actions at inactive uranium processing sites on January 5, 1983 (48 FR 590).

Scope of EA

The EA evaluates the no-action alternative and two alternatives for minimizing the potential public health hazards associated with the Green River site: (1) Decontaminate the buildings at the mill site and relocate the radioactive wastes from the existing tailings pile and other contaminated material to an area 600 feet south of the existing tailings pile for permament stabilization on site—(the proposed action); (2) and stabilize the wastes on the site at the existing tailings site location. The impacts of these three alternatives are assessed in terms of effects on radiation levels, health effects, air quality, soils and mineral resources, surface water and groundwater resources, ecosystems, land use, sound levels, cultural resources, population and employment, housing and community services, economic structures, energy and water consumption, transporation networks, and non-radiological accidents.

Availability of the EA and FONSI

Copies of the EA and FONSI have been distributed to Federal, State, Tribal and local agencies and to organizations and individuals known to be interested in the Green River remedial action project. Additional copies may be obtained from the Project Manager, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 5301 Central Avenue NE., Suite 1720, Albuquerque, New Mexico, 87108. Phone: (505) 844–3941.

Copies of the EA and FONSI are available for public inspection at the following locations:

College of Eastern Utah, 451 East 400 North, Price, UT 84501
Bringham Young University Library, 1368 HBLL, Provo, UT 84602
Utah State University Library, 2159 South 300 West, Salt Lake City, UT 84115
University of Utah, Marriott Library, Salt Lake City, UT 84112
Freedom of Information Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Library, Oak Ridge Operations Office, Federal Building, Oak Ridge, TN 37830
Green River Library, 85 South Long Street, Green River UT 84525
Utah State University, Merrill Library, Logan, UT 84322
Grand County Library, 37 South 100 East, Moab, UT 84532
University of Illinois, 1408 West Gregory Drive, Document Library, Room 2000, Urbanana, IL 61801
Stewart Library—2901, Weber State College, 3750 Harrison Blvd., Ogden, UT 84408
Library, Richland Operations Office Federal Building, Richland, WA 99352
Library, Savannah River Operations, Savannah River Plant, Aiken, SC 29801
U.S. Department of Energy, Grand Junction Library, P.O. Box 2567, Grand Junction, CO 81502
Library, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
Library, Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401

Issued in Washington, DC July 27, 1988.

John E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.

[FR Doc. 88–19121 Filed 8–22–88; 8:45 am]

BILLING CODE 6450-01-M

Finding of No Significant Impact and Floodplain Statement of Findings for the Remedial Action at the Green River Uranium Mill Tailings Site, Green River, UT

AGENCY: U.S. Department of Energy.

ACTION: Finding of No Significant Impact (FONSI) and Floodplain Statement of Findings.

SUMMARY: The U.S. Department of Energy (DOE) has prepared an environmental assessment (EA) (DOE/EA–0343) on the proposed remedial action at the inactive uranium mill tailings site near Green River, Utah. Based on the analyses in the EA, which is available upon request, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, the preparation of an environmental impact statement (EIS) is not required. The DOE has also prepared a Floodplain Assessment as part of the EA. This assessment is prepared pursuant to Executive Orders 11988 and 11990, and 10 CFR Part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements.

Under authority granted by the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 (Pub. L. 95–604 dated November 8, 1978), the U.S. Department of Energy (DOE) proposes to clean up the residual radioactive wastes and other contaminated materials at the inactive uranium mill tailings site located at Green River, Utah. The proposed action will move and stabilize the radioactive wastes according to a plan to be concurred in by the U.S. Nuclear Regulatory Commission (NRC) and the State of Utah.

Background

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95–604 (PL95–604), was enacted in order to address a Congressional finding that uranium mill tailings located at inactive processing sites may pose a potential and significant radiation health hazard to the public. Title I of the UMTRCA authorized the DOE to enter into cooperative agreements with affected states or Indian tribes to clean up those inactive sites contaminated with uranium mill tailings and required the Secretary of the DOE to designate sites to be cleaned up. On November 8, 1979, DOE designated 24 inactive processing sites for remedial action under Title I of the UMTRCA including the inactive uranium mill tailings site near Green River, Utah (44 FR 74892).

The UMTRCA also required the U.S. Environmental Protection Agency (EPA) to promulgate standards for remedial action at all inactive mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and nonradiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR Part 192) were published on January 5, 1983, and became effective on March 7, 1983. However, on September 3, 1985, the U.S. 10th Circuit Court of Appeals remanded groundwater standards 40 CFR 192.2(a)(2)–(3). Proposed standards were issued by EPA on September 23, 1987. Under UMTRCA, the DOE must comply with the proposed standards until standards are promulgated in final form. As a result, remedial action taken with regard to the Green River site would not preclude subsequent design enhancements if needed to achieve compliance and would not limit the selection of reasonable groundwater restoration methods that may be necessary when final standards are promulgated. When the final EPA standards are promulgated, the DOE will evaluate the groundwater protection requirements and undertake such action as is necessary to ensure that the final standards are met. The need for and extent of aquifer restoration will be evaluated in a separate NEPA process.

Under the UMTRCA, all remedial actions must be selected and performed with the concurrence of the NRC. The NRC has not and does not intend to issue regulations applicable to the Title I remedial actions at the inactive uranium mill tailings sites but will issue a license applicable to the 24 inactive sites for long-term surveillance and maintenance after the remedial actions are complete. On May 15, 1980, the DOE and the State of Utah entered into a cooperative agreement under Title I of the UMTRCA. The cooperative agreement set forth the terms and conditions for the DOE and Utah cooperative remedial action efforts including the DOE's development of a remedial action plan (concurred in by the State of Utah), the DOE's preparation of an appropriate environmental document, real estate responsibilities, and other concerns. The DOE and the State of Utah will provide 90 and 10 percent, respectively, of the engineering and construction costs.

Project Description

The Green River uranium mill tailings site covers 48 acres in Grand County, Utah, 0.5 mile southeast of the town of Green River. The mills was built in 1957 by Union Carbide Corporation and operated from 1958 through 1961, as an upgrader for ores from the Temple Mountain uranium mines approximately 40 miles to the southwest. When the Green River mill was shut down in 1961, the plant equipment was disamantled but the buildings were left intact. Union Carbide (now UMETCO) still owns the site and buildings, which are currently vacant but leased for use to the city of Green River.

The 48-acre designated site consists of the tailings pile (eight acres), the mill yard and ore storage area (21 acres), four main buildings, a water tower, and several small buildings. The total volume of contaminated materials, including the tailings and underlying soils, is estimated to be 185,000 cubic yards (cy). The buildings are structurally sound and are marginally contaminated. Access to the mill yard is restricted by a six-foot-high security fence with locked gates. The tailings pile is also fenced to restrict vehicles and livestock access; pedestrian traffic is not restricted. The remainder of the designated site is not fenced and access is not restricted. Radiation warning signs are posted on the fences at the site. Dispersion of the tailings by wind and water erosion has contaminated approximately 64 acres of which 40 (including the area of the former ore storage and mill yard) and 24 acres are within and outside of the designated site, respectively.

The principal feature of the proposed action is the relocation of the tailings and other contaminated materials to a disposal area 600 feet south of the existing tailings pile. The tailings and other contaminated materials would be consolidated in a below-grade area; the resulting disposal cell would be contoured to have 10 percent (10 horizontal to one vertical) sideslopes and a gently sloping top of five percent. To ensure compliance with the EPA standards, the tailings and contaminated materials would be covered with 1.0 foot of compacted earth (radon/infiltration barrier) to inhibit the emanation of radon and the infiltration of water. The topslope and sideslopes of the disposal cell would be covered with a five-foot-thick layer of sand, gravel, and select fill to protect the radon/infiltration barrier from frost action, and small rock erosion protection. This layer would also protect against penetration by animals and prevent human intrusion. Various other erosion control measures would be taken to assure the long-term stability of the stabilized disposal cell.

The stabilized disposal cell would cover approximately eight acres, and would be approximately 600 feet along each side. After remedial action the area of the existing tailings pile would be backfilled, graded to promote surface drainage, and revegetated. All other

areas disturbed at the site by remedial action would be backfilled and graded to promote surface drainage. All on-site buildings would be decontaminated and left intact for unrestricted use after the remedial action. Forty-five acres of the 48-acre designated tailings site would be released for any use consistent with existing land use controls following completion of remedial action. A fence would be constructed around the disposal site. The final restricted area would cover nine acres; this would require six acres of land outside the designated site boundary. The conceptual design is subject to change during the final design process.

The DOE examined three alternatives for the remedial action in its Environmental Assessment of Remedial Action at the Green River Uranium Mill Tailings Site, Green River, Utah. The DOE's proposed action is to decontaminate the buildings at the mill site and to relocate the radioactive wastes from the existing tailings pile and other contaminated material to an area 600 feet south of the existing tailings pile for permanent stabilization on site. The other alternatives analyzed in the EA included taking no action and stabilizing the waste on site at the existing tailings site location. Each of the remedial action alternatives involves activity in a floodplain.

Finding

The DOE has considered the concerns that have been expressed during public meetings and government agency reviews about the environmental and health impacts from the proposed remedial action. In general, these concerns relate to the impacts from radiation released during remedial action, air quality impacts, impacts on the surface water, and impacts from the contaminated groundwater.

The EA discusses the environmental impacts resulting from the proposed remedial action and identifies mitigation measures that would be implemented to assure that the effects are not significant. The FONSI for stabilization on site at the Green River tailings site is based on the following findings which are supported by the information and analyses in the EA.

• *Radiation release*—The increased radiation exposure above background levels ot the general population at and in the vicinity of the Green River site during the remedial action would be extremely low. The total estimated excess health effects for the general population and remedial action workers were projected to be 0.0006 additional cancer deaths due to radiation from the tailings during the remedial action period. The total estimated excess health effects for remedial action workers were projected to be 0.0005 additional cancer deaths due to radiation from the tailings during the remedial action period.

The no action alternative would result in 0.0001 total estimated excess health effects per year. This number is not directly comparable to the total estimated excess health effects mentioned above for the general population because the excess health effects estimated for the proposed action are for the duration of tailings disurbance and account for increased radon levels due to tailings disturbance. In addition, the total estimated excess health effects for the no action alternative do not consider factors such as dispersion or unauthorized removal and use of the tailings which could lead to greater excess health effects than those calculated.

The DOE would closely monitor the release of radon and airborne radioactive particulates during the remedial action. The release of radon and airborne radioactive particulates would be reduced by dampening contaminated material with water or chemical dust suppressants, by limiting the handling of contaminated material during adverse weather conditions, and by using trucks with tightfitting tailgates and covers when the materials are to be moved. Drainage controls and waste-water retention pounds would be constructed to prevent contaminated water from leaving the site.

Human exposure to residual radioactive material would be reduced further by restricting access, by providing worker training programs, and by the use of necessary monitoring and protective equipment by the remedial action workers.

The total excess health effects at and in the vicinity of the Green River tailings site after 10 and 1000 years of no action are estimated to be 0.001 and 0.1, respectively. The calculations for the no action alternative do not consider the dispersal of the tailings by natural erosion or by man; thus, the total excess health effects may be greater.

Based on the above, it was determined that the radiation impacts from the proposed action would not be significant.

• *Air quality*.—An inventory of emissions due to remedical action indicated that fugitive dust emissions would be much higher than combustion emissions. Both combustion and fugitive dust emissions would be temporary and endure only for the 14-month period of remedial action. Appropriate air quality permits will be obtained from the State of Utah. No Federal permits will be required.

The fugitive dust emissions were used in a computer simulation model to determine the total suspended particulates (TSP) concentrations downwind from the various work sites. Results of the modeling indicate that the TSP concentrations at the Green River mill tailings site and the two borrow sites would exceed the Federal secondary and the State of Utah 24-hour TSP standards. However, this impact would be temporary and short-term, lasting only for the length of the remedial process. The maximum exceedance of the 24-hour TSP standards would occur over a four-month period (months six through nine) during peak remedial action activity. Dust suppression measures, such as water sprays or chemical dust suppressors, will be implemented at the construction site to minimize fugitive particulate emissions.

For these reasons, it was determined that the air-quality impacts of the proposed action would be temporary and would not be significant.

• *Surface-water quality*.—Surface-water runoff as a result of the cleanup and consolidation of the tailings and contaminated material would be minimum because the remedial action design includes the construction of drainage and erosion controls. This includes waste-water retention ponds constructed during site preparation to prevent the discharge of contaminated water from the site. The contaminated water would be retained for evaporation or use in the compaction of the tailings and contaminated materials, and any sediments from the ponds would be consolidated with the tailings during the final reshaping of the disposal cell.

Surface-water runoff created by excessive precipitation would not cause erosion of the stabilized disposal cell and carry contaminants into local surface waters because erosion control features such as sideslopes design and rock barriers were incorporated into the remedial action design.

On this basis, it was determined that the impacts on surface-water resources would not be significant.

• *Groundwater quality*.—Major groundwater aquifers at the Green River site are referred to in the EA as the top, upper-middle, lower-middle, and bottom hydrostratigraphic units. Percolation of tailings seepage into the groundwater system beneath the tailings pile has adversely impacted the water quality in both the top and upper-middle hydrostratigraphic units. Gross alpha activity, molybdenum, nitrate, selenium,

and uranium concentrations in the top and upper-middle hydrostratigraphic units exceed background levels, the proposed EPA maximum concentration limits, and state of Utah groundwater standards beneath and downgradient of the existing tailings pile. The vertical extent of contamination is confined to these two shallow units by strong, vertically upward hydraulic gradients between the upper-middle unit and the underlying units. The maximum depth of contamination beneath the surface of the present tailings pile is about 65 feet.

The disposal cell design incorporates many natural, durable components that would minimize infiltration and leachate generation. Compliance with the proposed standards would be aided by the following:

- Below-grade disposal of the tailings that will lessen percolation of precipitation through the tailings by limiting the exposed area of the stablilized pile.
- Emplacement of a cover system consisting of filter layers, erosion protection, and a layer to protect the radon/infiltration barrier from frost action to reduce infiltration and promote surface runoff and evaporation.
- Minimization of tailings seepage by the use of a low hydraulic conductivity radon/infiltration barrier to reduce infiltration.
- Consistent, uniform, vertical fracturing of the foundation bedrock that will prevent ponding ("bathtubbing") in the tailings and promote drainage of runoff water from the toe of the cell.
- Natural geochemical attenuation of contaminants in the tailings seepage by adsorption and precipitation reactions within the Cedar Mountain Formation fractured bedrock beneath and downgradient of the disposal cell.
- Strong, upward, vertical hydraulic gradients in the saturated bedrock downgradient of the disposal site that will inhibit downward migration of contamination.
- Natural dilution (mixing) of the tailings seepage by groundwater underflow in the Cedar Mountain Formation.
- Limitation of the lateral extent of any future contamination from tailings seepage from the disposal cell due to the prevailing flow of the shallow groundwater toward the existing contaminant plume of the mill site.

Groundwater protection at the Green River site would be consistent with the proposed EPA standards for inactive sites (40 CFR Part 192) and would be accomplished in accordance with the remedial action plan prepared by the DOE and approved by the NRC. The generic impacts of the EPA standards were addressed in an EIS published by the EPA (EPA 521/1–83–008–1 and 2).

Based on the above, it was determined that the impacts on groundwater resources would not be significant.

- There are no endangered or threatened species or archaeological resources in the area that would be affected by the remedial action.
- No wetlands would be affected by the remedial action of the Green River tailings site.

In summary, based on the analyses in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (423 U.S.C. 4321 et seq.). Therefore, the preparation of an EIS is not required.

Floodplain Statement of Findings

This is a Statement of Findings prepared pursuant to Executive Orders 11988 and 11990, and 10 CFR Part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. Under authority granted by the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, the DOE propses to clean up the residual radioactive wastes and other contaminated materials at the inactive uranium mill tailings site in Green River, Utah, and relocate these materials to an area 600 feet south of the existing tailings pile where they would be permanently stabilized. Radioactively contaminated materials are located with the 100-year floodplain of Brown's Wash. On the basis of the floodplain assessment in the Environmental Assessment (EA), Appendix F, the DOE has determined that there is no practicable alternative to the proposed activites and that the proposed action has been designed to minimize potential harm to or within the floodplain of Brown's Wash.

The proposed remedial action for the Green River tailings is stabilization on site. All of the tailings and other contaminated materials would be consolidated in a below-grade area 600 feet south of the existing pile. The tailings pile would be contoured to have 10 percent sideslopes and gently sloping top. The pile would be covered with 1.0 foot of compacted earth to inhibit radon emanation and water infiltration and to assure compliance with the EPA standards. The top and sides of the pile would be covered with a five foot-thick layer of sand, gravel, select fill and rock for erosion and frost protection. This layer would also protect against penetration by animals and inadvertent human intrusion. A below-grade rock apron would be constructed around the pile to protect the pile against gully intrusion. The top of the stabilized pile would have an average height of 14 feet with a maximum height of 33 feet. The area of the existing tailings pile would ge backfilled, graded to promote surface drainage, and revegetated. All other areas at the site disturbed by remedial action would be backfilled and graded to promote surface drainage. All on-site buildings would be decontaminated and left intact. A fence would be constructed around the stabilized tailings pile. A map showing the location of the affected floodplain can be found in the EA, Figure E.2.1.

Specific construction activities related to the floodplain area include (1) the disturbance of approximately 12.5 acres of tailings and other contaminated materials within the 100-year floodplain of Brown's Wash; (2) grading and revegetating the floodplain where excavated, including adding any necessary soil conditioners, and (3) use of water bars, mulch, riprap, or other soil erosion controls, if necesssary, to minimize erosion.

The DOE examined three alternatives for the remedial actions in the EA. The DOE's proposed action is to decontaminate the Green River uranium mill tailings site and to relocate the wastes 600 feet south of the existing tailings pile for permanent stabilization on site. The other alternatives analyzed in the EA included taking no action and stabilizing the wastes inplace at the Green River uranium mill tailings site.

During the action alternatives (stabilization on site or stabilization in pace) at the Green River tailings site, 12.5 acres within the Brown's Wash 100-year floodplain would be disturbed by removing 20,500 cy of tailings and other contaminated materials. The majority of the disturbance would occur outside the tailings pile boundary, downstream of the tailings pile, and along both banks of the wash. These areas constitute 12 acres of the total disturbed area and contain 16,500 cy of tailings and other contaminated materials. The depths of excavation required in these areas would be one foot or less. Excavation ranging from six to nine feet would be required in an 0.5-acre area of the tailings pile within the 100-year floodplain in order to remove 4,000 cy of contaminated materials.

The no action alternative, which entails leavings the site in its present condition, would not be consistent with the intent of Congress in Pub. L. 95–604 and would not result in compliance with the EPA standards.

Potential impacts during remedial action would be mitigated by use of the following measures:

- Contaminated materials in the floodplain would be excavated during the period that the wash is dry.
- Berms, riprap or other erosion control measures would be used to minimize erosion along the banks of the wash.
- Riparian vegetarian adjacent to areas subject to excavation would be left undisturbed as much as possible to reduce river velocities and associated erosion during flood events.
- Revegetation would begin as soon as practical after removal of contaminated materials.

The remedial action has been designed to conform to applicable Federal and state regulations. Before construction begins, all applicable permits and approvals, such as those required under Section 404 of the Clean Wate Act, would be obtained from the U.S. Army Crops of Engineers. Utah state agencies, and other agencies having jurisdiction. Initial consultation with the agencies has taken place.

Single Copies of the EA are Available From

W. John Arthur, III, UMTRA Project Manager, U.S. Department of Energy, UMTRA Project Office, 5301 Central Avenue NE., Suite 1720, Albuquerque, New Mexico 87108, (505) 844–3941.

FOR FURTHER INFORMATION, CONTACT: Carol Borgstrom, Acting Director, Office of NEPA Project Assistance, Office of the Assistant Secretary for Environment, Safety, and Health, Room 3E–080, Forrestal Building, Washington, DC, 20585, (202) 586–4600.

Issued at Washington, DC, May 26, 1988.

Ernest C. Baynard, III,

Assistant Secretary, Environment, Safety, and Health.

[FR Doc. 19122 Filed 8–22–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–559–000 et al.]

Niagara Mohawk Power Corporation et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER88–559–000]

August 16, 1988.

Take notice that on August 11, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 142, an agreement between Niagara Mohawk and the Long Island Lighting Co. (LILCO).

Rate Schedule No. 142 provides for the wheeling of certain loads by Niagara Mohawk to LILCO. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1988 and requests waiver of the Commission's notice requirements. In support thereof, Niagara Mohawk states that LILCO has consented to this proposed effective date.

Copies of this filing were served upon the Public Service Commission of the State of New York and the Long Island Lighting Company.

Comment date: September 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Power & Light Company

[Docket No. ER88–557–000]

August 16, 1988.

Take notice that on August 8, 1988, Puget Sound Power & Light Company (Puget) tendered for filing, pursuant to the Commission's regulations, 18 CFR Part 35, a wholesale for resale contract between Puget and Port of Kingston. Puget states that this filing is for the renewal of an existing contract only and therefore represents no change in rate or revenues to the Company.

Comment date: September 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas City Power & Light Company

[Docket No. ER88–50–000]

August 17, 1988.

Take notice that on August 9, 1988, Kansas City Power & Light Company filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to Section 204 of the Federal Power Act, to issue, from time to time, up to $750 million aggregate amount of short-term debt instruments, with maturity dates of not later than June 30, 1991.

Comment date: September 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Empire Energy-Niagara Cogeneration, Inc.

[Docket No. QF88–376–000

August 17, 1988.

On July 27, 1988, Empire Energy-Niagara Cogeneration, Inc. (Applicant), of 2548 Vestal Parkway East, P. O. Box 797, Vestal, New York, 13851–0797, amended its application, filed May 10, 1988, for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the site of the existing Harrison Radiator Division of General Motors Corporation in the Town of Lockport, New York. The facility will consist of three combustion turbine generators, three heat recovery steam generators (HRSG's), and one extraction/condensing steam turbine generator. The thermal output of the facility, in the form of extraction steam, will be used by the Harrison Radiator Division for process use and space heating. The primary energy source will be natural gas. The electric power production capacity of the facility will be 166.7 MW. The facility is expected to be operational in the third quarter of 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. GWF Power Systems Company, Inc.

[Docket No. QF85–496–002]

August 17, 1988.

On August 8, 1988, GWF Power Systems Company (Applicant), of 17780 Fitch Street, Irvine, California 92714 submitted for filing application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at 20200 Van Ness Boulevard, Torrance, Los Angeles County, California. The facility will consist of a fluidized bed combustion system providing steam to a turbine-generator. Applicant states that the primary energy source will be waste in the form of petroleum coke. The maximum net electric power production capacity of the facility will be 11.477 MW.

Comment date: Thirty days from publication in the **Federal Register**, in

accordance with Standard Paragraph E at the end of this notice.

6. GWF Power Systems Company, Inc.

[Docket No. QF85-498-002 *et al.*]

August 17, 1988.

On August 1, 1988 GWF Power Systems Company, Inc. (Applicant) of 17780 Fitch Street, Irvine, California 92714 submitted for filing 5 applications for certification of a facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that any of the submittals constitutes a complete filing.

The docket numbers and locations of the 5 small power production facilities are listed below. Each facility will consist of a fluidized bed combustion system providing steam to a turbine generator. Applicant states that the primary energy source of the facilities will be waste in the form of petroleum coke. The maximum net electric power production capacity of each facility will be 17.365 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19104 Filed 8-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-679-009 et al.]

Interstate Power Company et al.; Natural Gas Certificate Filings

August 17, 1988.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. CP86-679-009]

Take notice that on August 11, 1988, Interstate Power Company (Petitioner), 1000 Main Street, Dubuque, Iowa 52001, filed in Docket No. CP86-679-009 a petition to amend the order issued October 7, 1987, in Docket No. CP86-679-008 pursuant to section 7 of the Natural Gas Act so as to authorize the transportation of natural gas on a firm basis for Hawkeye Chemical Company (Hawkeye) for an extended term ending October 7, 1989, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP86-679-008 it was authorized to transport up to a maximum of 22.0 billion Btu of natural gas per day for Hawkeye for a term expiring on October 7, 1988. Petitioner indicates that pursuant to the transportation gas service agreement dated October 27, 1987, it seeks to extend the transportation service authorized in Docket No. CP86-679-008 until October 7, 1989. Petitioner also requests approval of provisions related to imbalances of gas deliveries by Hawkeye to Petitioner. No other changes are proposed.

Comment date: September 7, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Carnegie Natural Gas Company

[Docket No. CP88-662-000]

Take notice that on August 5, 1988, Carnegie Natural Gas Company (Carnegie) 800 Regis Avenue, Pittsburgh Pennsylvania 15236, filed in Docket No. CP88-662-000 an application pursuant to section 7(b) of the Natural Gas Act to abandon a transportation service for United States Steel Corporation under a contract which has now expired, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: September 7, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP84-7-006]

Take notice that on August 9, 1988, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume Nos. 1 and 2, the following tariff sheets:

First Revised Volume No. 1

Fourth Substitute Sixth Revised Sheet No. 4
Second Substitute Original Sheet No. 26
Second Substitute Original Sheet No. 27
Substitute Original Sheet No. 28
Substitute First Revised Sheet No. 28
Second Revised Sheet No. 28
Substitute First Revised Sheet No. 100
Substitute Original Sheet Nos. 101-104

First Revised Volume No. 2

Seventh Revised Sheet No. 1-B
Tenth Revised Sheet No. 1-C
First Revised Sheet No. 450
First Revised Sheet No. 460
First Revised Sheet No. 470
First Revised Sheet No. 481
First Revised Sheet No. 492
First Revised Sheet No. 502
Second Revised Sheet No. 513

National states that the purpose of this filing is to comply with the Commission's order issued in Docket Nos. CP84-7-004 and CP84-7-005 on January 2, 1987.

National's filing is said to revise certain provisions of its Rate Schedule CD to more closely conform those provisions to similar provisions under its full requirements sales Rate Schedule RQ. Specifically, National's filing reflects changes to section 7.2 of Rate Schedule CD.

The proposed effective date of these tariff sheets is August 1, 1988, except for the following:

Sheet No.	Proposed effective date
Substitute First Revised Sheet No. 28 (Vol. No. 1).	Nov. 1, 1988.
Second Revised Sheet No. 28 (Vol. No. 1).	Nov. 1, 1987.
Seventh Revised Sheet No. 1-B (Vol. No. 2).	Aug. 1, 1988.
Tenth Revised Sheet No. 1-C (Vol. No. 2).	Aug. 1, 1988.
First Revised Sheet No. 460 (Vol. No. 2).	Nov. 1, 1988.

Copies of National's filing were served on National's jurisdictional customers and on interested State Commissioners.

Comment date: August 24, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural

Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19105 Filed 8-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10120-001]

Adirondack Hydro Development Corp.; Surrender of Preliminary Permit

August 17, 1988.

Take notice that the Adirondack Hydro Development Corporation, permittee for the Independence River Project No. 10120 located on the Independence River in Lewis County, New York has requested that its preliminary permit be terminated. The preliminary permit was issued on May 6, 1987, and would have expired on April 30, 1990. The permittee states that analysis of the Independence River Project did not indicate feasibility for development.

The permittee filed the request on November 4, 1987, and the preliminary permit for Project No. 10120 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19055 Filed 8-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-25-002]

Mississippi River Transmission Corp.; Rate Change

August 17, 1988.

Take notice that on July 5, 1988 Mississippi River Transmission Corporation ("MRT") tendered for filing, to be effective June 1, 1988, the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Twenty-Third Revised Sheet No. 4
Ninth Revised Sheet No. 4A
Substitute Alternative Original Sheet No. 4A.1
Tenth Revised Sheet No. 42
Seventh Revised Sheet No. 50
Substitute Third Revised Sheet No. 62
Substitute Second Revised Sheet No. 63

MRT states that the filing is being submitted to comply with the Commission's June 1, 1988 order concerning MRT's June 1 annual PGA filing, and to amend that filing for certain modifications as described below.

MRT states that the revised tariff sheets reflect: (1) Lower Base Tariff Rates as submitted by MRT in its Docket No. RP86-170 compliance filing dated June 6, 1988; (2) revised D-1 and D-2 Demand Charge Current Adjustments resulting from rate changes by a pipeline supplier; (3) revised ACA and GRI Adjustments to reflect such charges on an MMBtu basis rather than an Mcf basis; and (4) minor pagination changes.

MRT states the combined impact of the purchased gas and base rate adjustments contained herein on MRT's Rate Schedule CD-1 is an increase of $.003 per Mcf in Demand Charge D-1, a decrease of $.0087 per Mcf in Demand Charge D-2, and a decrease in the commodity charge of $.0009 per Mcf. The single part rate under Rate Schedule SGS-1 reflects a decrease of $.0093 per Mcf. The quarterly cost impact of such changes on MRT's jurisdictional customers is a decrease of approximately $.1 million when compared to the original June 1, 1988 PGA.

MRT states that the filing also contains tariff sheets reflecting revisions to the Fixed Take-or-Pay Charges applicable to each of its jurisdictional customers resulting from lower monthly amounts billed to MRT by its upstream pipeline suppliers, and a reconciliation of amounts paid compared to amounts collected as of May 31, 1988. The quarterly cost impact of such changes on MRT's jurisdictional customers is a decrease of approximately $.2 million.

MRT states that the filing also contains revision to MRT's Fixed Take-or-Pay flow through tariff provisions necessary to address the specific upstream pipeline supplier proposals on file with the Commission.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19056 Filed 8-22-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3433-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and are available to the public for review and comments. The ICRs describe the nature of the information collection and their expected cost and burden; where

appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Information Requirements for Facilities Petitioning for Hazardous Waste Delisting. (EPA ICR #1189).

Abstract: EPA requires facilities wishing to have a waste removed from the Agency's list of hazardous waste to file a petition for delisting. For a delisting, information is necessary to establish that the waste does not exhibit the characteristics for which it was listed, or any additional factors which may cause the waste to be hazardous. The Agency reviews this information to determine whether to grant or deny the petition.

Burden Statement: Public reporting burden for this collection of information is estimated to average 627 hours for a delisting petition. This estimate includes the time for reviewing instructions, analyzing and describing the waste, the facility, and testing and handling procedures. Where required, he annual recordkeeping burden is 4 hours per petition.

Respondents: Businesses and other facilities generating solid waste.

Estimated No. of Respondents: 50.

Estimated Total Annual Burden: 31,418 hours.

Estimated Frequency of Collection: On occasion.

Office of Pesticides and Toxic Substances

Title: Notice of Arrival of Pesticides and Devices. (EPA ICR# 0152).

Abstract: To ensure that imported pesticides and pesticide devices are not adulterated or mislabeled or otherwise violative of FIFRA, importers or their agents must submit a "Notice of Arrival of Pesticides and Devices" (EPA Form No. 3540–1) to the Agency prior to importation to the U.S.

Burden Statement: Pubic reporting burden for this collection of information is estimated to average 20 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the collection of information.

Respondents: Importers of pesticides and pesticide devices.

Estimated No. of Respondents: 3,500.

Total Estimated Annual Burden: 2,100 hours.

Estimated Frequency of Collection: One-time only.

Send comments regarding these burden estimates, or any other aspects of these collections of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460

and

Marcus Peacock (ICR# 1189) Tim Hunt (ICR# 0152), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

OMB Response to Agency PRA Clearance Request

EPA ICR# 1250; Request for Contractor Access to TSCA Confidential Business Information; was approved 08/02/88; OMB# 2070–0075; expires: 08/31/91.

Date: August 15, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–19071 Filed 8–22–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

August 18, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0061

Title: Annual Report of Cable Television Systems
Scheduel 1—Community Unit Data
Schedule 2—Physical System Data

Form No.: FCC 325.

The approval has been extended through 4/30/91. The current edition of the computer-generated form with a previous expiration date of 5/31/88 will be updated accordingly.

OMB No.: 3060–0073

Title: Application for and Certification of Overtime Service Involving Inspection of Ship Radio Equipment

Form No.: FCC 808.

The approval has been extended through 7/31/91. The December 1985 edition with a previous expiration date of 7/31/88 will remain in use until updated forms are available.

OMB No.: 3060–0127

Title: Assignment of Authorization

Form No.: FCC 1046.

The aprpoval has been extended through 6/30/91. Current editions with a previous expiration date of 7/31/88 will remain in use until updated forms are available.

OMB No.: 3060–0141

Title: Renewal Notice and Certification in the Private Operational Fixed Microwave Radio Service

Form No.: FCC 402–R.

The approval has been extended through 6/30/91. The current edition of the computer-generated form with a previous expiration date of 7/31/88 will be updated accordingly.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–19095 Filed 8–22–88; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 17, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW; Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0068

Title: Application for Consent to Assignment of Radio Station Construction Permit or License (For stations in services other than broadcast)

Form Number: FCC 702

Action: Extension

Respondents: Businesses including small businesses

Frequency of Response: On occasion

Estimated Annual Burden: 400 Responses; 2,000 Hours

Needs and Uses: FCC Form 702 is filed to request Commission approval of assignment of radio station

BEST COPY AVAILABLE

construction permit or license. Without this information, the Commission would not be able to effectively carry out its statutory obligations. The data will be used by the Commission staff to determine the financial, legal and technical qualifications of the applicant.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-19096 Filed 8-22-88; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee on Advanced Television Service Steering Committee; Meeting

Released: August 17, 1988.

A meeting of the Steering Committee of the Advisory Committee on Advanced Televsion Service will be held on: September 8, 1988, 4:30 p.m., Commission Meeting Room (Room 856), 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Approval of the last meeting's minutes
3. Progress reports by Subcommittee chairmen
4. Discussion of future work plans and schedule
5. Report on budget and funding
6. Discussion of private sector testing facilities
7. Date and location of next Steering Committee meeting
8. Other business
9. Adjournment.

All interested persons are invited to attend. All attendees must enter the building before its normal closing at 5:30 p.m. or make arrangements for late entry by contracting David Siddall at the below telephone number prior to the meeting. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Steering Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or David R. Siddal at (202) 632-7792.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-19099 Filed 8-22-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Submission of Bank Call Reports

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Final action.

SUMMARY: The FFIEC has approved two proposals relating to the submission of Reports of Condition and Income (Call Reports) that were issued for public comment from April 7, 1988 through June 15, 1988. The approved proposals relate to the Call Reports of FDIC-insured commercial banks and FDIC-insured state-chartered savings banks.

As approved by the FFIEC, the term "submission date" in the Call Report instructions is now defined as the date by which a bank's completed Call Report must be received by the banking agencies (or their collection agent if the report is submitted electronically).

A filing will be considered timely, regardless of when it is received, if it is mailed first class and postmarked no later than the third calendar day preceding the submission deadline. If an overnight delivery service is used, entry of the report into the delivery system on the day before the submission deadline will constitute timely submission.

The FFIEC also approved requiring those banks with more than one foreign office (other than a shell branch or an international banking facility) that use any of the additional 15 calendar days allowed for the completion of their reports to submit their Call Reports electronically via the electronic data transmission system that was implemented with the March 31, 1988 Call Report.

The implementation of the term "submission date" will become effective with the September 30, 1988 Call Report. The mandatory use of the electronic transmission system by banks using any of the additional 15 calendar days for report submission will be implemented as of the June 30, 1989 report date.

EFFECTIVE DATES: September 30, 1988 for the definition of the term Call Report "submission date", and June 30, 1989 for the requirement that certain banks file their Call Reports electronically.

ADDRESS: Federal Financial Institutions Examination Council, 1776 G Street NW., Suite 701, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

OCC: David C. Motter, Special Assistant to the Chief National Bank Examiner, (202/447-1587), Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

Board: Rhoger H Pugh, Manager, Division of Banking Supervision and Regulation, (202/728-5883), Board of Governors of the Federal Reserve System, 20th & Constitution Avenue NW., Washington, DC 20551.

FDIC: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, (202/898-6905), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: In recent years, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and state banking authorities have increased their use of data from the quarterly Reports of Condition and Income (Call Reports) for bank supervisory and surveillance purposes. The greater reliance on these reports as a means of identifying, at an early stage, those banks which are experiencing deterioration in their financial condition has prompted efforts to achieve more timely availability of these data. The agencies have made and are continuing to make every effort to shorten the time required to process the reports. In order to improve the timeliness of the Call Report data, the banking agencies proposed to define the term "submission date" and require banks with foreign offices that use any of the additional 15 calendar days that they may use to complete their Call Reports to submit their reports electronically.

The proposals were published for public comment in the **Federal Register** on April 7, 1988. The comment period ended on June 15, 1988. Ninety-four comment letters were received. Commenters included five major trade associations, three state bankers' associations, four bank holding companies and 82 commercial and savings banks.

The New York Clearing House (NYCH) supported the proposal to define "submission date" as the date by which the Call Report must be received by the agencies. However, the NYCH suggested that the mandatory use of electronic submission for banks utilizing some portion of the additional 15 days be phased in over the period to June 1989, since some of these banks may not be ready to submit electronically by September, 1988. Two banks made the same suggestion. The NYCH stated that, during the phase-in period, reports from these banks should be in the hands of the agencies at least by the 45th day.

The Bank Administration Institute (BAI) also supported the definition of "submission date" contained in the proposals. BAI said: "Differing interpretations of this term resulting in a range of receipt dates by the banking agencies are incompatible with achieving the Council's goals of expeditiously processing Call Reports and preparing Uniform Bank Performance Reports."

In addition, the BAI recommended that the electronic submission requirements for banks with foreign offices be deferred until December 31, 1988. The American Bankers Association opposed the "compression of Call Report submission time," lauded the move toward electronic submission of Call Reports, and urged the agencies to develop methods that would reduce the period required for processing the Call Reports. The latter point was also made by a number of bank commenters.

A number of commenters observed that, in return for requiring completed Call Reports to be received not later than the 30th calendar day after the Call Report date, the banking agencies should also complete their report processing earlier than at present and thereby increase the timeliness with which Call Report data in general and Uniform Bank Preference Reports (UBPRs) in particular are available to banks and others. In response to this suggestion, the banking agencies have committed themselves to completing the production of the Call Report file, used to generate UBPRs, by the 40th calendar day after the submission date. Currently, this file is completed by the 45th calendar day after the submission date.

The Independent Bankers Association of America (IBAA) opposed any changes in the definition of submission date. However, they stated that "* * * the bankers believe an earlier submission date would be feasible. Requiring call reports to be postmarked for submission on the 20th calendar day would not cause any undue hardships for the March, June, and September reporting periods." It is the view of the IBAA that 30 days would still be required for the December report because of the plethora of other reports due at the same time.

The United States League of Savings Institutions stated that the FFIEC proposals did not go far enough indicating that savings institutions are able to meet a 20-day deadline when submitting their quarterly Thrift Financial Reports, which are more complex and cumbersome than the commercial bank Call Report.

Among the 86 bank holding company and commerical and savings bank commenters, eight supported the redefinition of "submission date" and 78 opposed it. Many bankers who opposed the submission date proposals stated that they would not be able to complete their Call Reports within the "required" 27 days, perhaps not realizing that, if they were to use commercially available Call Report preparation software and submit their data electronically, they would still have the full 30 calendar days to complete their reports.

August 18, 1988.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

Accordingly, effective with the September 30, 1988 Call Report, the term "submission date" will be defined as the date by which a bank's completed Call Report must be received by the banking agencies (or their collection agent if the report is submitted electronically). Effective with the June 30, 1989 Call Report, all banks with more than one foreign office using any of the additional 15 calendar days for report submission will be required to submit their Call Reports electronically via the approved electronic data transmission system.

[FR Doc. 88-19116 Filed 8-22-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

County Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842)(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 14, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *County Bancorporation, Inc.,* Jackson, Missouri; to acquire 100 percent of the voting shares of Century State Bancshares, Inc., Columbia, Missouri, and thereby indirectly acquire Century State Bank, Columbia, Missouri. In connection with this application, Merger Company, Inc., Jackson, Missouri, has applied to become a bank holding company by merging with Century State Bancshares.

Board of Governors of the Federal Reserve System, August 17, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19047 Filed 8-22-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Miller M. Pettey,* Bells, Tennessee; to acquire 15.49 percent of the voting shares of Crockett County Bancshares, Inc., Bells, Tennessee, and thereby indirectly acquire Bells Banking Company, Bells, Tennessee.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Jon D. Hoffmaster,* Omaha, Nebraska, to acquire 25.3 percent, and David C. Melena, Omaha, Nebraska, to acquire 5.1 percent of the voting shares of Nebraska National Corporation, and

thereby indirectly acquire Nebraska National Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, August 17, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19048 Filed 8-22-88; 8:45 am]

BILLING CODE 6210-01-M

Southern Michigan Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Southern Michigan Bancorp, Inc.*, Coldwater, Michigan; to acquire Lease Pack Incorporated, Mason, Michigan, and thereby engage in leasing personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 17, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19049 Filed 8-22-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 14.375% for the quarter ended June 30, 1988. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Date: August 18, 1988.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 88-19106 Filed 8-22-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88N-0300]

Drug Export; Recombigen® HIV EIA Test Kits

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cambridge BioScience has filed an application requesting approval for the export of the biological product Recombigen® HIV EIA test kits to Canada, West Germany, Italy, Sweden, The Netherlands, Norway, Finland, Austria, France, United Kingdom, Japan, Switzerland, Spain, Belgium, Denmark, Ireland, and Australia.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8095.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cambridge BioScience, 365 Plantation Street, Biotechnology Research Park, Worcester, MA 01605, has filed an application requesting approval for the export of the biological product Recombigen® HIV EIA test kits, to Canada, West Germany, Italy, Sweden, The Netherlands, Norway, Finland, Austria, France, United Kingdom, Japan, Switzerland, Spain, Belgium, Denmark, Ireland, and Australia. The Recombigen® HIV EIA test kit is an in-vitro qualitative enzyme immunoassay for the detection of antibody to human immunodeficiency virus (HIV), which is also known as human T-lymphotropic virus type III (HTLV-III) or lymphadenopathy virus (LAV), in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on

July 13, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 2, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: August 4, 1988.

Thomas S. Bozzo,

Director, Office of Compliance Center for Biologics Evaluation and Research.

[FR Doc. 88-19042 Filed 8-2-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before EPA's advisory committee.

Meeting: The following advisory committee meeting is announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. September 15 and 16, 1988, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.

Type of meeting and contact person. Open public hearing, September 15, 1988, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5:30 p.m.; open committee discussion, September 16, 1988, 9 a.m. to 5:30 p.m., Joan C. Standaert, Center for Drug Evaluation and Research (HFD-180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0479 or 419-259-6211.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of gastrointestinal disorders and diseases and makes recommendations regarding the appropriate clinical development of such products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Cytotec (misoprostol) new drug application (NDA) 19-268, Searle and Co., for prevention of nonsteroidal anti-inflammatory drug (NSAID) peptic ulceration; and (2) Dipentum (olsalazine) NDA 19-715, Pharmacia, Inc., for prolongation of remission between acute attacks of ulcerative colitis (relapse prevention), treatment of mild attacks of ulcerative colitis, and adjunctive treatment of moderate to severe ulcerative colitis.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meeting announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever long period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be asssured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral pesentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: August 15, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-19040 Filed 8-2-88; 8:45 am]

BILLING CODE 4160-01-M

VOL 53 ISS 163 AUG 23 1988 UMI

Public Conferences; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming public conferences scheduled by the Food and Drug Administration (FDA), Center for Biologics Evaluation and Research. The conferences are planned (1) to foster an exchange of information and opinion concerning screening and diagnostic uses of serologic tests for human T-lymphotropic virus, type I (HTLV–I), and (2) to discuss the significance of the human response to monoclonal antibodies as it relates to human anti-murine antibody (HAMA) formation and subsequent doses of similar or different monoclonal antibodies.

Meetings: The following public conferences are announced:

Serologic Testing For HTLV–I in Blood and Plasma Derivatives

Date, time, and place. September 15, 1988, 8 a.m. to 5 p.m., National Institutes of Health, Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person: FDA's Center for Biologics Evaluation and Research has planned a public conference to foster an exchange of information and opinion concerning screening and diagnostic uses of serologic tests for human T-lymphotropic virus, type I (HTLV–I) open public meeting; no preregistration required; Hilda Kopit, Center for Biologics Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

Agenda—Open public conference. Among the topics to be discussed are: (1) basic epidemiology of HTLV–1 and HTLV–II, (2) experience with serologic tests for HTLV–I in various population groups, (3) approach to donor screening and confirmatory testing, and (4) notification and counseling of seropositive donors.

Significance of the Human Response to Monoclonal Antibodies

Date, time, and place. September 26 and 27, 1988, 9 a.m. to 5:30 p.m., Gaithersburg Marriot Hotel, 620 Lakeforest Blvd., Gaitherburg, MD.

Type of meeting and contact persons. FDA's Center for Biologics Evaluation and Research has planned a public conference to discuss the significance of the human response to monoclonal antibodies as it relates to human anti-murine antibody (HAMA) formation and subsequent doses of similar or different monoclonal antibodies; open public meeting; registration is open; papers and comments solicited for presentation; Curtis L. Scribner (HFB–230), 301–443–4864, for information on biological investigational new drugs, or Thomas Hoffman (HFN–838), 301–496–4538, for information on blood and blood products, Center for Biologics Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Agenda—Open public conference. Among the topics to be discussed are: (1) prognostic factors for HAMA development, (2) methods of detection and quantitation of HAMA, (3) significance of HAMA in the subsequent use of monoclonal antibodies and (4) strategies for the prevention of HAMA.

Dated: August 17, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–19041 Filed 8–22–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Center for Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Nursing Research scheduled for September 15–16, 1988, in Building 37, Room 6–B23, NIH, Bethesda, Maryland, which was published in the Federal Register on July 29, 1988 (53 FR 28703).

This Council was in have convened at 9:00 a.m. on September 15, 1988, and 8:30 a.m. on September 16, 1988, in Room 6B23 on Building 37 on the NIH campus, but the location has been changed to the Crowne Plaza Holiday Inn, Rockville Pike, Rockville, Maryland.

The meeting will be open to the public on September 15, from 9 a.m. to 1:30 p.m. and on September 16 from 8:30 a.m. to adjournment.

Dated: August 17, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19066 Filed 8–22–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases, National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on September 18–19, 1988, from 8:15 a.m. to approximately 5 p.m., at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, Virginia 22209. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 17, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–19069 Filed 8–22–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Deletion of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records a notice describing records formerly maintained by the Government of the Trust Territory of the Pacific Islands (TTPI). The system of records notice being abolished is entitled "Trust Territory of the Pacific Islands Employee Records—Interior, Office of the Secretary—95" and was previously published in the Federal Register on January 26, 1984 (49 FR 3274). Due to changes that have occurred in the administration of the TTPI, the records, as described in the notice, are no longer maintained.

This change shall be effective on August 23, 1988. Additional information regarding this action may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: August 10, 1988.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

[FR Doc. 88–19058 Filed 8–22–88; 8:45 am]

BILLING CODE 4310–03–M

Bureau of Indian Affairs

San Carlos Irrigation Project, Arizona; Fiscal Year Operation and Maintenance Charge

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: General Notice.

SUMMARY: The purpose of this general notice is to change the per acre assessment rate for the operation and maintenance of the irrigation facilities of the Joint Works of the San Carlos Irrigation Project to properly reflect the cost of labor, materials, equipment and services. The change is from $31.16 per acre to $29.63 per acre per year.

EFFECTIVE DATE: This general notice shall become effective when published for FY 1990.

FOR FURTHER INFORMATION CONTACT: Project Engineer, San Carlos Irrigation Project, P.O. Box 250, Coolidge, Arizona 85228, telephone (602) 723–5439.

SUPPLEMENTARY INFORMATION:

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This general notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3 and pursuant to 171.1(e) of Part 171, Subchapter H, Chapter 1, Title 25 of the Code of Federal Regulations.

Determination Under E.O. 12291: Pursuant to E.O. 12291 of February 17, 1981 (46 FR 13193, February 19, 1981), each agency is to determine whether a rule it intends to issue is a major rule. The Bureau of Indian Affairs has determined that for the purpose of E.O. 12291, the proposed rate change is not a major rule and does not require preparation of Regulatory Impact Analysis because;

1. It will not have annual effect on the economy of $100 million or more; or

2. It will not result in major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

3. It will not have significant adverse effects on competition, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign markets-based enterprises in domestic or export markets.

Regulatory Flexibility Analysis: Pursuant to the Regulatory Flexibility Act of 1980 and 43 CFR Part 14, each agency is required to prepare and make available for public comment on regulatory flexibility analysis of a proposed rule will have a significant economic effect on a substantial number of small entities. The Bureau of Indian Affairs has determined that,

(1) A substantial number of small entities will not be effected as the proposed rate change will have effect upon one entity, the San Carlos Irrigation Drainage District, organized and existing under the laws of the State of Arizona; and

(2) The impacts of the proposed rate change will not cause an adverse economic impact upon a substantial number of small entities.

Basis of Proposal: A Preliminary FY 1990 Irrigation O&M Rate study was made of operation, maintenance and replacement costs of the Joint Works of the San Carlos Irrigation Project. On April 11, 1988, the study was presented to the Fact Finding Committee made up of representatives from the Gila River Indian community, the San Carlos Irrigation and Drainage District (SCIDD), Pima Agency, San Carlos Irrigation Project (SCIP), and Phoenix Area Office.

A proposed FY 1990 Irrigation O&M Rate was developed based on the data presented at the Fact Finding Committee meeting and suggestions made by the committee members. This proposed O&M rate study was provided to the Pima Agency, Gila River Indian Community, and the San Carlos Irrigation and Drainage District. Written comments (italic) were received on from the San Carlos Irrigation and Drainage District. A summary of these comments and the Project's responses follow:

(1) SCIDD questioned why the rate study included 80 employees when only 42 currently work for the Project. SCIDD also requested information on number of employees and cost for the past three to five years.

The rate study used payroll cost for pay period three of current employees and projected the cost forward using a three percent per year cost increase. The information requested by SCIDD will be made available.

(2) SCIDD suggested that the Project is projecting too much equipment and that the $330,000 is excessive since $250,000 has been requested in FY 88 & 89. SCIDD feels that $200,000 is adequate.

The $330,000 used is approximately 70% of the replacement cost of equipment list used in the rate study. The listed equipment will be evaluated to determined what equipment can be eliminated in future rate studies.

(3) SCIDD objected to the power rate of 3.66 cents/KWH used in the O&M, rate study and proposed that 2.14 cents/KWH would be more reasonable.

The 3.66 cents/KWH was developed in a study conducted by the Project and presented at the Fact Finding Committee meeting and is believed to be appropriate.

SCIDD accepted the assessment rate adjustment of $29.63 per acre, however they requested that for future rates the final rate study be given at least one month in advance for analysis and discussion. No comments were received from Pima Agency or Gila River Indian Community. The Project Engineer submitted his recommendation to the Phoenix Area Director for a change in the per acre assessment rate for operation and maintenance of the irrigation facilities of the Joint Works of the San Carlos Irrigation Project for Fiscal Year 1990 and subsequent years thereafter, until further notice, at a rate of 29.63 per acres for land under the Project. The revenue to be derived from the assessment would provide for the projected costs of all labor, materials, equipment replacement and power for irrigation pumps required for operation and maintenance of the project.

Principal Author: The principal author of this document is Thomas W. Neumann, P.E., Bureau of Indian Affairs, San Carlos Irrigation Project, P.O. Box 250, Coolidge, Arizona 85228, telephone (602) 723–5439.

The general notice shall read as follows:

San Carlos Irrigation Project O&M Assessment, Joint Works

Pursuant to the Act of Congress approved June 7, 1924 (43 Stat. 476) and supplementary acts, and Repayment Contract of June 8, 1931, as amended, between the United States and San Carlos Irrigation and Drainage District, and in accordance with applicable provision of the Order of the Secretary of the Interior of June 15, 1938, the cost of the operation and maintenance of the Joint Works of the San Carlos Irrigation Project for Fiscal Year 1990 is estimated to be $3,285,528 and the rate of assessment for the said fiscal year and subsequent fiscal years until further notice is hereby fixed at $29.63 for each assessable acre of land.

James H. Stevens,

Phoenix Area Director.

[FR Doc. 88–19082 Filed 8–22–88; 8:45 am]

BILLING CODE 4310-02-M

VOL 53 ISS 163 AUG 23 1988 UMI

Bureau of Land Management

[AK-968-4213-15; AA-60708]

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Cook Inlet Region, Inc. for approximately 11 acres. The lands involved are in the vicinity of Fort Richardson, Alaska. The parcel is a portion of lot 1, Sec. 18, T. 13 N., R. 2W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or a regional corporation shall have until September 22, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ramona Chinn,

Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 88-19073 Filed 8-22-88; 8:45 am]

BILLING CODE 4310-JA-M

[AK-964-4213-15; AA 8103-2]

Alaska Native Claims Selection; Doyon Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Doyon, Limited, notice of which was published in the Federal Register, 44 FR 25937 to 25939, on May 3, 1979, is modified by limiting the season of use on easement EIN 8 L to winter use.

A Notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the modified DIC may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 22, 1988, to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given May 3, 1979, is final.

Stanley H. Bronczyk,

Chief, Branch of Doyon Adjudication.

[FR Doc. 88-19074 Filed 8-22-88; 8:45 am]

BILLING CODE 4310-JA-M

[WY-920-08-4121-11; W-111732]

Invitation for Coal Exploration License; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for Coal Exploration License.

SUMMARY: Powder River Coal Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell and Converse Counties, Wyoming:

T. 41 N., R. 70 W., 6th P.M., WY.,
Sec. 2: Lots 5 through 16 inclusive;
Sec. 3: Lots 5 through 16 inclusive;
Sec. 4: Lots 5 through 15 inclusive; SW¼NE¼;
Sec. 5: Lots 5 through 18 inclusive;
Sec. 6: Lots 8 through 23 inclusive;
Sec. 7: Lots 5 through 20 inclusive;
Sec. 18: Lots 5 through 20 inclusive;
Sec. 19: Lots 5 through 20 inclusive;
Sec. 20: Lots 1 through 16 inclusive;
Sec. 28: Lots 2 through 7, 10 through 15, NE¼SW¼.
T. 41 N., R. 71 W., 6th P.M., WY.,
Sec. 25: Lots 1 through 14 inclusive.
T. 42 N., R. 70 W., 6th P.M., WY.,
Sec. 21: Lots 1 through 16 inclusive;
Sec. 27: Lots 1 through 16 inclusive;
Sec. 31: Lots 5 through 20 inclusive;
Sec. 34: Lots 1 through 16 inclusive;
Sec. 35: Lots 1 through 16 inclusive;
Containing 8,527.67 acres.

All of the coal in the above land consists of unleased Federal coal, within the Powder River Basin known coal leasing area. The purpose of the exploration is to construct ground water monitoring sites and to establish cropline and thickness of the Wyo-Dak Anderson coal seam in the area.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W-111732): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82003; and Bureau of Land Management, 1701 East 'E' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in a newspaper once each week for two consecutive weeks beginning the week of August 22, 1988, and in the Federal Register. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and to Powder River Coal Company no later than 30 days after publication of this invitation in the Federal Register. The written notice should be sent to the following addresses: Mr. Ronald J. Braig, Powder River Coal Company, P.O. Box 3034, Gillette, Wyoming 82717 and the Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003-1828.

The foregoing is published in the Federal Register pursuant to Title 43 Code of Federal Regulations, Section 3410.2-1(c)(1).

Gary W. Horton,

Acting State Director.

[FR Doc. 88-19075 Filed 8-22-88; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-43-7122-08-D063]

California Desert District; Intent To Prepare Environmental Impact Statement and Notice of Availability of Preplanning Analysis for Proposed Expansion of Army National Training Center at Fort Irwin, CA

AGENCY: Bureau of Land Management, Interior. Cooperating Agency: National Training Center, Army.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management and the

Army will prepare an environmental impact statement (EIS) for the proposed expansion of the Army National Training Center, Fort Irwin, California (NTC). Expansion would involve withdrawal of public lands managed by the Bureau of Land Management (BLM), and acquisition of private and state of California lands.

This Notice of Intent (NOI) is an amendment to the NOI published by the Department of the Army on February 24, 1988.

On June 10, 1986, the Army proposed to the BLM that BLM consider a withdrawal of some portion of a study area of approximately 390,000 acres of public lands adjacent to the existing facility at the NTC for military use. These public lands and intermingled state and private lands would be acquired by the National Training Center upon the approval of Congress. The EIS would result in a recommendation by BLM to the Secretary of the Interior regarding the appropriateness of the additional withdrawal of public lands for Army use.

Dates: Following are scheduled dates for public scoping meetings:

Location	Date	Time
Holiday Inn, Crown Room A, 1200 University Ave., Riverside, California.	9/12/88	1:00 p.m. 7:00 p.m.
County Board of Supervisors Chambers, 385 N. Arrowhead Ave., San Bernardino, California.	9/13/88	7:00 p.m.
Green Tree Inn, Crystal A Room, 14173 Green Tree Blvd., Victorville, California.	9/14/88	7:00 p.m.
Barstow Station Inn, 1511 E. Main St., Barstow, California.	9/15/88	7:00 p.m.
Baker Community Hall, 100 Community Lane.	9/22/88	7:00 p.m.

Scoping comments will be accepted at these meetings or, if received in writing, on or before September 26, 1988. Mail scoping comments to: Karla Swanson, Bureau of Land Management, Barstow Resource Area, 150 Coolwater Land, Barstow, CA 92311.

A Preplanning Analysis (PPA) containing preliminary planning issues (public land uses, natural and cultural resources, and social and economic considerations) and decision criteria is available at this time for public comment. Copies of the Preplanning Analysis can be obtained from the address above. Comments on this document are also due on or before September 26, 1988.

SUPPLEMENTAL INFORMATION: The expansion of the National Training Center would allow for brigade level training, for which the existing NTC at Fort Irwin was established in 1961, but which existing area within the NTC cannot accommodate.

Five preliminary alternatives have been identified, including No Action. The alternatives that would allow for the expansion of the National Training Center (NTC) include:

Alvord Mountain Alternative—Approximately 230,000 acres east and south of existing NTC boundaries, including portions of the South Avawatz Mountains, Soda Mountains, and Alvord Mountain. The boundary would reach to within one mile of I–15 and south of I–15 to encompass the Manix siding. All alternatives for expansion would also include the area south of Goldstone and north of the Paradise Range.

Coyote Basin Alternative—Approximately 305,000 acres east and south of existing NTC boundaries. Includes all of the Alvord Alternative plus the Coyote Basin south to the Calico Mountains.

Superior Valley Alternative—Approximately 300,000 acres mostly west and south of existing NTC boundaries. The expansion area would be west to include the Superior Lake area and south the Mud Hills. The area east of the Boulder Utility Corridor would be excluded as would the Manix railroad siding. Coyote Basin and a portion of the South Avawatz Mountains would be a part of this alternative.

WSA Exclusion Alternative—Approximately 280,000 acres strictly south and west of the existing NTC boundaries to avoid the three BLM wilderness study areas.

FOR FURTHER INFORMATION CONTACT: Karla Swanson, Bureau of Land Management, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, (619) 256–3591.

Date: August 12, 1988.

Gerald Hillier,

District Manager.

[FR Doc. 88–19052 Filed 8–22–88; 8:45 am]

BILLING CODE 4310–40–M

Meeting of Miles City District Advisory Council; Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior—(MT–020–08–4410–02).

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Miles City District Advisory Council will be held Thursday, October 6, 1988, at 8 a.m. in the Banquet Room of Jorgenson's Restaurant, 1720 Eleventh Avenue, Helena, Montana. The meeting is being held in Helena to allow the District Advisory Council to participate in a field tour to be conducted by the Butte District Office of the Bureau of Land Management on October 5. Following the meeting, there will be a round table discussion of multiple use issues with members of the Lewistown and Butte District Advisory councils.

The agenda is as follows:

1. Approve minutes of last meeting.
2. Update on selected District programs.
3. Wild Horse Sanctuary Program.
4. Budget outlook for FY89.
5. Status of Advisory Council nominations.
6. New Business.
7. Opportunity for public comment.
8. Adjourn.

The meeting is open to the public. The public may make oral statements before the Advisory Council or file written statements for the Council's consideration. Depending upon the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Date: August 15, 1988.

Sandra E. Sacher,

Acting District Manager.

[FR Doc. 88–19053 Filed 8–22–88; 8:45 am]

BILLING CODE 4310–DN–M

[OR–020–08–4321–12: GP8–220]

Oregon; Wild Horse Gathering Schedule Meeting Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Burns District Office: Statewide wild horse gathering schedule public meeting.

SUMMARY: In accordance with Pub. L. 92–195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horses and the proposed gathering schedule in Oregon for FY 89 and 90.

DATE: September 15, 1988, 3: P.M. to 4:30 P.M.

ADDRESS: The meeting will take place at the BLM Burns District Office in Hines, Oregon.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Burns District, Bureau of Land Management, HC 74–12533 Hwy. 20 West, Hines, Oregon 97738—Telephone (503) 573–5241.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout southeastern Oregon in Fiscal Year 1989 and 1990 will be discussed along with other aspects of the program and adoption process. Information concerning the gathering of all Oregon wild horse herds will be presented at the meeting. The total number of horses expected to be gathered will be between 1,250 and 1,500 depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, HC 74–12533 Hwy. 20 West, Hines, Oregon, 97738 by September 8, 1988. Written statements must be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: August 5, 1988.

Joshua L. Warburton,

District Manager.

[FR Doc. 88–19057 Filed 8–22–88; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Huffco Petroleum Corporation has submitted a DOCD describing the activities is proposes to conduct on Leases OCS–G 4405 and 4407, Blocks 518 and 523, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Pelican Island, Texas.

DATE: The subject DOCD was deemed submitted on August 15, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service make information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 15, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–19051 Filed 8–22–88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 13, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 7, 1988.

Beth Boland,

Acting Chief of Registration, National Register.

ALASKA

Ketchikan Gateway Borough-Census Area

McKay Marine Ways, 1935 Tongass Ave., Ketchikan, 88001569

COLORADO

San Juan County

Cascade Boy Scout Camp, Adjacent to Lime Creek Rd., San Juan National Forest, Durango vicinity, 88001529

CONNECTICUT

Hartford County

Robbins, John, House, 262 Old Main St., Rocky Hill, 88001526

New Haven County

Riverside Cemetery, Riverside St., from Sunnyside to Summit Sts., Waterbury, 88001525

NEW MEXICO

Bernalillo County

Art Annex (New Mexico Campus Buildings Built 1906—1937 TR), NE corner of Central Ave. and Terrace St., UNM, Albuquerque, 88001540

Carlisle Gymnasium (New Mexico Campus Buildings Built 1906—1937 TR), UNM campus W of Yale Blvd., Albuquerque, 88001541

Estufa (New Mexico Campus Buildings Built 1906—1937 TR), SE corner of University Blvd. and Grand Ave., UNM, Albuquerque, 88001542

President's House (New Mexico Campus Buildings Built 1906—1937 TR), NE corner of Roma Ave. and Yale Blvd., UNM, Albuquerque, 88001543

Raynolds, Sara, Hall (New Mexico Campus Buildings Built 1906—1937 TR), UNM campus on Terrace St. north of Central Ave., Albuquerque, 88001544

Scholes Hall (New Mexico Campus Buildings Built 1906—1937 TR), UNM campus S of Roma Ave., Albuquerque, 88001545

Dona Ana County

Air Science (New Mexico Campus Buildings Built 1906—1937 TR), NE corner of N.

Horseshoe and Espina St., NMSU, Las Cruces, 88001546
Foster Hall (New Mexico Campus Buildings Built 1906—1937 TR), SE corner of S. Horseshoe and Sweet, NMSU, Las Cruces, 88001547
Goddard Hall (New Mexico Campus Buildings Built 1906—1937 TR), S. Horseshoe between Espina and Sweet, NMSU, Las Cruces, 88001548
University President's House (New Mexico Campus Buildings Built 1906—1937 TR), S of University Ave. between Espina and Solano, NMSU, Las Cruces, 88001549

Grant County

Bowden Hall (New Mexico Campus Buildings Built 1906—1937 TR), NE of Light Hall and SW of Heating Plant, WNMU, Silver City, 88001552
Fleming Hall (New Mexico Campus Buildings Built 1906—1937 TR), 10th St. NE of Bowden Hall, WNMU, Silver City, 88001553
Graham Gymnasium (New Mexico Campus Buildings Built 1906—1937 TR), Florida St., WNMU, Silver City, 88001554
Heating Plant (New Mexico Campus Buildings Built 1906—1937 TR), 10th St. NE of Bowden Hall, WNMU, Silver City, 88001555
Light Hall (New Mexico Campus Buildings Built 1906—1937 TR), N side of College Ave. at B St., WNMU, Silver City, 88001556
Ritch Hall (New Mexico Campus Buildings Built 1906—1937 TR), 10th St. SE of Fleming Hall, WNMU, Silver City, 88001557

Otero County

Administration Building (New Mexico Campus Buildings Built 1906—1937 TR), 1900 N. White Sands Blvd., NMSUH, Alamogordo, 88001564
Auditorium and Recreation Building (New Mexico Campus Buildings Built 1906—1937 TR), 1900 N. White Sands Blvd., NMSUH, Alamogordo, 88001565
Central Receiving Building (New Mexico Campus Buildings Built 1906—1937 TR), 1900 N. White Sands Blvd., NMSUH, Alamogordo, 8001566
Infirmary Building (New Mexico Campus Buildings Built 1906—1937 TR), 1900 N. White Sands Blvd., NMSUH, Alamogordo, 88001567

Roosevelt County

Administration Building (New Mexico Campus Buildings Built 1906—1937), S side of University Pl. and campus green., ENMU, Portales, 8001558

San Miguel County

Rogers Administration Building (New Mexico Campus Buildings Built 1906—1937 TR), National Ave., NMHU, Las Vegas, 88001550

Santa Fe County

Connor Hall (New Mexico Campus Buildings Built 1906—1937 TR), 1060 Cerrillos Rd., NMSD, Santa Fe, 88001561
Hospital (New Mexico Campus Buildings Built 1906—1937 TR), 1060 Cerrillos Rd., NMSD, Santa Fe, 88001562
School Building Number 2 (New Mexico Campus Buildings Built 1906—1937 TR), 1060 Cerrillos Rd. NMSD, Santa Fe, 88001560
Superintendent's Residence (New Mexico Campus Buildings Built 1906—1937 TR), 1060 Cerrillos Rd., NMSD, Santa Fe, 88001563

Socorro County

Brown Hall (New Mexico Campus Buildings Built 1906—1937 TR), New Mexico Institute of Mining and Technology, Socorro, 88001550
Fitch Hall (New Mexico Campus Buildings Built 1906—1937 TR), New Mexico Institute of Mining and Technology, Socorro, 88001551

NEW YORK

Westchester County

Austin, Richard, House, 196 Croton Ave., Ossining, 88001527

OREGON

Clackamas County

Hall—Chaney House, 10200 SE Cambridge La., Milwaukie, 88001522

Clatsop County

Warren, Daniel Knight, House, 107 Skipanon Rd., Warrenton, 88001521

Coos County

Abernethy, Edwin and Ethel, House, Box 103, Sitkum Route, Myrtle Point vicinity, 88001532

Klamath County

Valley Hospital, 405 Pine St., Klamath Falls, 88001524

Lane County

Pacific Cooperative Poultry Producers Egg-Taking Station, 506 Olive St., Eugene, 88001523

Multnomah County

Lipman—Wolfe and Company Building, 521 SW Fifth Ave., Portland, 88001531

Union County

Anthony, John, House, 1606 Sixth St., La Grande, 88001530

SOUTH DAKOTA

Fall River County

Camp Collier (39FA413), Address Restricted, Edgemont vicinity, 88001533

TENNESSEE

Sullivan County

Bristol Virginia—Tennessee Slogan Sign, E. State St., Bristol, 88001568

WASHINGTON

Pend Oreille County

Metaline Falls School, 302 Park, Metaline Falls, 88001518

Thurston County

Rice, L. N., House (Thurston County MRA), 12247 Vail Rd., SE, Velm vicinity, 88001520

Whitman County

Canyon Grain Bin and Chutes (Grain Production Properties in Eastern Washington MPS), E of County Rd. 7030, 2 mi. NE of jct. County Rds. 7030 and 7010, Hay vicinity, 88001539
Heilsberg, Gustave, Farm (Grain Production Properties in Eastern Washington MPS), Rt. 2, Colfax vicinity, 88001534
Interior Grain Tramway (Grain Production Properties in Eastern Washington MPS), Snake River Canyon, 2 mi. N of Wawawai, Pullman vicinity, 88001538
McGregor Ranch (Grain Production Properties in Eastern Washington MPS), 6 mi. S of Hooper, Hooper vicinity, 88001535
Steinke, Max, Barn (Grain Production Properties in Eastern Washington MPS), Rt. 1, Box 130, St. John vicinity, 88001536
Tekoa Grain Company Elevator & Flathouse (Grain Production Properties in Eastern Washington MPS), 4 mi. W of Tekoa, Lone Pine vicinity, 88001537

Yakima County

Holtzinger, C. M., Fruit Company Building, N. Second Ave. and W. Yakima Ave., Yakima, 88001517
Union Pacific Freight Building, 104 W. Yakima Ave., Yakima, 88001519

[FR Doc. 88-19083 Filed 8-22-88; 8:45 am]
BILLING CODE 4310-70-M

Management Policies; Criteria for Parklands

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of proposed revised management policies on Criteria for Parklands with request for review and comments.

SUMMARY: The National Park Service is proposing revised management policies for new area studies and criteria for determining national significance. These policies, in their final form, will be incorporated in the revised National Park Service Management Policies as a part of chapter 2.

DATE: Written comments will be accepted until September 23, 1988.

ADDRESS: Comments should be directed to: Chief, Office of Policy, National Park Service, P.O. Box 37127, MIB–MS1226, Washington, DC 20013–7127.

Single copies of the draft management policies may be requested from National Park Service, Office of Policy, 18th & C Streets NW., MIB–MS1226, Washington, DC 20013–7127. Copies are available for review in the National Park Service Washington Office and all regional offices. Addresses of the Washington Office and regional offices are:

National Park Service, 18th & C Streets NW, Main Interior Building, Room 1226, Washington, DC 20013–7127
Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503

Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, PA 19106
Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, NE 68102
National Capital Parks, National Park Service, 1100 Ohio Drive SW., Washington, DC 20242
North Atlantic Regional Office, National Park Service, 15 State Street, Boston, MA 02109–3572
Pacific Northwest Regional Office, National Park Service, 83 South King Street, Suite 212, Seattle WA 98104
Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Lakewood, CO 80225
Southeast Regional Office, National Park Service, 75 Spring Street SW, Atlanta, GA 30303
Southwest Regional Office, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728
Western Regional Office, National Park Service, 450 Golden Gate Ave., Box 36063, San Francisco, CA 94102

FOR FURTHER INFORMATION CONTACT: Office of Policy, 202/343–4298 or 7456.

SUPPLEMENTARY INFORMATION: The proposed policies for studying potential additions to the national park system reflect revised criteria for national significance adopted since 1978 for National Historic Landmarks and National Natural Landmarks. This statement updates the policy in effect since 1978 to more clearly distinguish significance considerations from questions of suitability, feasibility, and management alternatives. The proposed policy outlines four basic significance factors that apply to natural, cultural, and recreation resources and provides examples for each category of resource. This approach replaces the separate criteria for national recreation areas that appeared in the 1978 policies. The revised policy outlines criteria for new national park system units, but does not address what designation (park, monument, seashore, recreation area) would be most appropriate. Introductory material in the 1978 policy has been condensed to avoid duplication with other chapters in the new management policies. The new policy statement also includes a definition and criteria for affiliated areas, responding to directions from Congress in Pub. L. 100–336.

The Service is hereby soliciting comment from any and all interested groups or individuals on these policies. We urge you to be specific as to how the policy might be changed or strengthened. All comments will be reviewed and, where appropriate, incorporated. The policies will remain on review for 30 days. The revised final policy and an explanation of how comments were addressed will be published in the **Federal Register**. These policies, in final form, will become a part of chapter 2 of the National Park Service Management Policies.

Denis P. Galvin,
Acting Director.
August 17, 1988.

New Area Studies and Criteria

The National Park Service (Park Service) plays a broad role in identifying nationally significant natural, cultural, and recreational resources and assisting in their preservation both inside and outside the national park system. The areas managed by the National Park Service are only one part of a broader national system of special and protected areas managed by innumerable federal, state, and local agencies and the private sector, and addition to the national park system is only one of many alternatives for ensuring the preservation of significant national resources for public enjoyment and benefit. A great variety of specially designated areas, including natural landmarks, historic landmarks, wild and scenic rivers, trails, wilderness areas, areas of critical environmental concern, biosphere reserves, and recreation areas, managed by the U.S. Forest Service, Fish and Wildlife Service, Bureau of Land Management, other federal, state, county, and local agencies, Indian tribes, and the private sector, complete the broader national inventory.

As directed by Congress, the National Park Service will study and monitor areas to determine if they are nationally signficant and if so, do they have potential for inclusion in the national park system. Planning for the future of the national park system is guided by a framework of themes representing all the aspects of America's natural and cultural heritage. Additions to the system recognize new understanding of natural resources and biological diversity, national recreational trends, and the continuing progress of history. New area studies may be initiated within the Service or may be conducted in response to requests from Congress, other federal, state, or local agencies, or the private sector. The Service will review all proposals and provide advice about planning, studies, or other appropriate actions. Where formal new area studies are appropriate, the Service will establish priorities and conduct studies as funds are available.

To be eligible for favorable consideration as a unit of the national park system, an area must (1) possess nationally significant natural, cultural, or recreational resources, (2) be a suitable and feasible addition to the system, and (3) require direct Park Service management instead of alternative protection by other agencies or the private sector. These criteria are designed to ensure that the national park system includes the most outstanding examples of the nation's natural, cultural, and recreational resources. They also recognize that inclusion in the national park system is not the only option for preserving the nation's outstanding resources.

Criteria for National Significance

A natural, cultural, and recreational resource will be considered nationally significant if it meets all of the following criteria:

It is an outstanding example of a particular type of resource.

It possesses exceptional value or quality in illustrating or interpreting the natural or cultural themes of our nation's heritage.

It offers opportunities for recreation, public use, and enjoyment or for scientific study superior to other resources of the same type.

It retains integrity as a true, accurate, and relatively unspoiled example of a resource.

Examples of nationally significant natural resources include:

An outstanding site that illustrates the characteristics of a geologic landform or biotic area that is still widespread.

A rare remnant geologic landform or biotic area of a type that was once widespread but is now vanishing due to human settlement and development.

A geologic landform or biotic area that was extremely uncommon in the region or nation prior to European settlement.

A site possessing exceptional diversity of ecological components (species, communities, habitats) or geologic features (landforms, observable manifestations of geologic processes).

A site containing biotic species or communities whose natural distribution at that location makes them unusual (a relatively large population at the limit of its range, or an isolated population).

A site harboring a concentrated population of a rare plant or animal species, particularly one officially recognized as threatened or endangered.

A critical refuge necessary for the continued survival of a species.

A site containing rare or unusually abundant fossil deposits.

An area with outstanding scenic qualities, such as dramatic topographic

features, unusual contrasts in landforms or vegetation, spectacular vistas, or other special landscape features.

A site that is an invaluable ecological or geological benchmark due to an extensive and long-term record of research and scientific discovery.

Nationally significant cultural resources include districts, sites, buildings, structures, or objects that possess exceptional value or quality in illustrating or interpreting our heritage and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association. Examples are resources that:

Are associated with events that have made a significant contribution to and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained.

Are associated importantly with the lives of persons nationally significant in the history of the United States.

Represent some great idea or ideal of the American people.

Embody the distinguishing characteristics of an architectural type specimen, exceptionally valuable for study of a period, style, or method of construction or that represent a significant, distinctive, and exceptional entity whose components may lack individual distinction.

Are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture.

Have yielded or may be likely to yield information of major scientific importance by revealing new cultures or by shedding light upon periods of occupation over large areas of the United States.

Ordinarily cemeteries, birthplaces, graves of historic figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, and properties that have achieved significance within the past 50 years are not considered appropriate for addition to the national park system unless they have transcendent importance, unless they possess inherent architectural or artistic significance, or unless no other site associated with that theme remains.

Examples of nationally significant recreation resources include:

A natural or cultural feature providing a special setting for a variety of recreational activities different from those available at the local or regional level.

A spacious area located near a major population center with the potential to provide exceptional recreational opportunities and to serve visitors from around the nation rather than solely from the immediate vicinity.

An area that protects a unique recreation resource that is scarce and disappearing in a multi-state region, such as an outstanding recreational river, a unique maritime environment or coastline, or a unique scenic area.

A unique combination of natural, cultural, and recreational resources that collectively offer outstanding opportunities for public use and enjoyment even though each feature might not individually be considered nationally significant.

Suitability and Feasibility

To be suitable for addition to the national park system an area must represent a theme or type of recreational resource that is not already adequately represented in the national park system. Adequacy of representation will be determined on a case-by-case basis by evaluating the proposed addition in relation to other units in the national park system.

To be feasible as a new unit of the national park system an area must be of sufficient size and appropriate configuration to ensure long-term protection of resources and to accommodate public use, and it must have potential for efficient administration at a reasonable cost. Important feasibility factors include landownership, acquisition costs, access, threats to the resource, and staff or development requirements.

Management Alternatives

Studies of potential new park units will evaluate an appropriate range of management alternatives, which may include:

Continued management by states, local governments, Indian tribes, the private sector, or other federal agencies.

Technical or financial assistance to others through established NPS programs or special projects.

Management by others as a designated national natural landmark, national historic landmark, national wild and scenic river, national trail, biosphere reserve, state or local park, or other specially designated and protected area.

Cooperative management, including designation as an affiliated area.

New additions to the national park system will not usually be recommended if other arrangements can provide adequate protection for the resource and opportunities for public enjoyment.

Affiliated Areas

Congress and the Secretary of the Interior have given special recognition to a small group of nationally significant areas that are affiliated with but not technically part of the national park system. These affiliated areas are protected and managed by other organizations and agencies, but they have some formal financial or legal relationship with the National Park Service, often including technical or financial assistance beyond what is normally available to national landmarks.

To be for eligible for affiliated status, areas must meet the same criteria for national significance as national landmarks or potential units of the national park system. However, affiliated areas are not necessarily suitable or feasible as new units of the system. Designation as an affiliated area is a management alternative appropriate for nationally significant resources that can be most effectively protected by others through a cooperative arrangement with the National Park Service. Although the National Park Service does not have direct management responsibility for affiliated areas, the Service usually maintains oversight responsibilities to assure that management and operations meet Park Service standards.

[FR Doc. 88-19072 Filed 8-22-88; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Flat Fork Creek Watershed Lands Unsuitable for Mining Petition

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to resume the petition review process and to prepare a combined petition evaluation document/environmental impact statement and notice of scoping meeting/comment period for the petition to designate certain lands in the Flat Fork Creek watershed in Morgan County, Tennessee, as unsuitable for surface coal mining operations.

SUMMARY: On November 25, 1985, the Office of Surface Mining Reclamation and Enforcement (OSMRE) acknowledged the receipt of a petition filed by the Legal Environmental

Assistance Foundation on behalf of the petitioners.

On February 12, 1986, OSMRE suspended processing of the petition. The suspension resulted from an appeal filed on December 19, 1985, by the Legal Environmental Assistance Foundation on behalf of the petitioners with the U.S. Department of the Interior, Board of Land Appeals (IBLA). The IBLA rules at 43 CFR 4.21 provide that an appeal suspends the effect of a decision until IBLA rules on the appeal. On April 7, 1988, a decision on the appeal was made in favor of the Secretary of the Interior, and OSMRE has, therefore, resumed the petition review process.

Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSMRE) intends to prepare a combined petition evaluation document/environmental impact statement (PED/EIS) for the decision on this petition to designate certain lands within the Flat Fork Creek watershed in Morgan County, Tennessee, as unsuitable for surface coal mining pursuant to section 522(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

OSMRE has identified four alternatives that the combined PED/EIS would evaluate as described in the supplementary information of this notice. OSMRE requests that other agencies and the public submit written comments or statements on the need for an IES on the petition and the scope of the issues which should be analyzed in the combined document.

DATES: Written comments must be received by 5 p.m. local time, October 24, 1988. Oral comments may be presented at the scoping meeting to be held at the Central Elementary School, Wartburg, Tennessee, on September 22, 1988.

ADDRESS: Written comments must be received at, or hand-delivered to, the Office of Surface Mining Reclamation and Enforcement, Division of Tennessee Permitting, attention of Willis Gainer, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902. Copies of the petition are available upon request from the Office of Surface Mining Reclamation and Enforcement at the above address. The public record on the petition is available for review during normal working hours at the OSMRE office listed above.

FOR FURTHER INFORMATION CONTACT: Bruce Klein at the OSMRE office listed above, telephone: (615) 673–4330.

SUPPLEMENTARY INFORMATION: On September 27, 1985, the Frozen Head State Park Association, Inc., Tennessee Citizens for Wilderness Planning, the Sierra Club, and three citizens, filed a petition with OSMRE requesting, in accordance with Section 522(c) of Public Law 95–87, that certain lands within the Flat Fork Creek watershed in Morgan County, Tennessee, be designated as unsuitable for surface coal mining operations. The Federal Program for Tennessee, as administered by OSMRE, applies to all surface coal mining operations in Tennessee including the processing of lands unsuitable petitions (49 FR, 38874 October 1, 1984). The petition was declared administratively complete on January 24, 1986. The 21-page petition and 217 pages of exhibits were submitted by Carol S. Nickle, Attorney for the petitioners. Ms. Nickle's address is Legal Environmental Assistance Foundation, 531 South Gay Street, Suite 810, Knoxville, Tennessee 37902. A copy of the petition is available for public inspection at the County Assessor's Office in Wartburg, Tennessee, and at the OSMRE Knoxville Field Office listed above. In addition, the public record on the petition is available for review during normal working hours at the OSMRE office listed above.

On February 12, 1986, OSMRE suspended processing of the petition. The suspension resulted from an appeal filed on December 19, 1985, by the Legal Environmental Assistance Foundation on behalf of the petitioners with the U.S. Department of the Interior, Board of Land Appeals (IBLA). The appeal resulted from a decision of the Director, Office of Surface Mining Reclamation and Enforcement, holding that an unsuitability determination made by the Commissioner of the Tennessee Department of Health and Environment would no longer be recognized. The IBLA rules at 43 CFR 4.21 provide that an appeal suspends the effect of a decision until IBLA rules on the appeal. On April 7, 1988, a decision on the appeal was made upholding the Director's decision and OSMRE has, therefore, resumed the petition review process.

The major allegations of the petition are:

1. Reclamation is not technologically and economically feasible.
2. Mining the area would be incompatible with State and local land-use plans or programs.
3. Mining could result in significant damage to important historic, cultural, scientific, and esthetics values and natural systems.
4. Mining could result in substantial loss or reduction of the water supply.

The several alternatives available to OSMRE for evaluation in the combined document range from not designating any of the lands in the area as unsuitable to designating all the lands in the petition area as unsuitable. The alternatives are as follows:

Alternative 1—Designate the entire petition area as unsuitable for all surface coal mining operations.

Alternative 2—Not designate any of the area as unsuitable for all surface coal mining operations.

Alternative 3—Designate parts of the petition area as unsuitable for surface coal mining operations.

A. Designate as unsuitable for all or certain types of surface coal mining operations those parts of the petition area in which such operations would be incompatible with existing State or local land-use plans or programs.

B. Designate as unsuitable for all or certain types of surface coal mining operations those parts of the petition area in which such operations would result in significant damage to important historic, cultural, scientific, and esthetics values and natural systems.

C. Designate as unsuitable for all or certain types of surface coal mining operations those parts of the petition area in which such operations could result in substantial loss or reduction of the water supply.

Alternative 4—Designate the entire petition area as unsuitable for surface coal mining but allow underground mining with or without certain restrictions.

A scoping comment period is intended to raise the relevant issues to be addressed by the combined document. The scoping meeting will be held at the Central Elementary School in Wartburg, Tennessee, on September 22, 1988, at 7:00 p.m. (EDT). The comment period will close on October 24, 1988, at 5:00 p.m. (EDT) local time. OSMRE seeks public comments in relation to the scope of issues to be addressed by the impact evaluation, including impacts and alternatives that should be addressed. Written comments submitted should be specific and confined to issues pertinent to the petition. The public comments received during the scoping period will assist OSMRE in making a decision on the petition evaluation and in preparing the environmental impact statement. OSMRE believes that the proposed action is a major Federal action that may significantly affect the quality of human environment and may require the preparation of an EIS.

OSMRE additionally gives notice here that, should information or analyses show that the proposed action does not require an EIS, it will terminate the environmental impact statement process

through an appropriate notice in the Federal Register.

Date: August 15, 1988.

Robert H. Gentile,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-19093 Filed 8-22-88; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-304 (Sub-No. 1X)]

Mid-Louisiana Rail Corp.—Exemption for Discontinuance of Trackage Rights Between Winnfield and Alexandria, LA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue its trackage rights over a line of the Louisiana & Arkansas Railway Company (L&A) between milepost 25.00 near Winnfield, LA and milepost 73.00 near Alexandria, LA, and to terminate its trackage rights agreement with L&A. L&A will continue to operate over the line.

Applicant has certified (1) that no local traffic has moved over the line under the trackage rights agreement for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 22, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 29, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 7, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Mark M. Levin, Esq., Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Ave., NW., Suite 800, Washington, DC 20005-4797.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 23, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7216.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Abandonment or Discontinuance—Offers of Financial Assistance,* 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[Finance Docket No. 31295; Directed Service Order No. 1504; Supplemental Order No. 3]

The New York, Susquehanna and Western Railway Corp.; Directed Service; The Delaware and Hudson Railway Co., Debtor (Francis P. Dicello, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Directed Service Order No. 1504, Supplemental Order No. 3.

SUMMARY: The Commission has concluded that cause exists to extend the directed service period and is extending for 180 days the authority for The New York, Susquehanna and Western Railway Corporation (NYS&W) to act as a directed rail carrier without federal subsidy or compensation under 49 U.S.C. 11125 over the lines of the Delaware and Hudson Railway Company, Debtor (Francis P. Dicello, Trustee) (D&H), and in doing so to use D&H equipment (under a private compensation agreement). Should D&H be able to resume operations or NYSW desire to terminate operations before the 180-day period runs out, the directed service authority of the NYS&W will expire on the 10th day following notice to the Commission of D&H's intention to resume operations or of NYSW's intention to cease operations.

DATES: *Effective Date and Duration:* Supplemental Order No. 3 shall be effective on August 17, 1988, and shall continue in force and effect until February 13, 1989, unless otherwise modified or terminated by further order of the Commission.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 or Bernard Gaillard (202) 275-7849. [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: NYS&W's authorization to provide service on the D&H system is due to expire August 17, 1988. In a notice served July 20, 1988 (53 FR 27773, July 22, 1988) the Commission sought comments from interested and affected parties (including the D&H trustee in bankruptcy) on several issues concerning service over the D&H system. We have reviewed the comments and conclude that, for the same reasons explained in our initial directed service order, cause exists to extend NYS&W's authorization under 49 U.S.C. 11125(b)(1).[1] Accordingly, we will extend for 180 days NYS&W's authorization to provide service on the D&H system without subsidy or compensation under 49 U.S.C. 11125(b)(5).

The D&H Trustee, in his comments, indicates that he recognizes that D&H has not been relieved of its obligation to

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[1] While in its comments NYS&W originally requested that further directed service be ordered under 49 U.S.C. 11123, it subsequently asked that the authorization under 49 U.S.C. 11125 be continued subject to clarification regarding its employee protection liability. That matter is discussed *infra.*

operate its lines, and that, while D&H cannot begin service immediately, it may be possible for D&H to resume operations in the near future. The Trustee, therefore, supports continued interim operations of the D&H lines. Moreover, the Trustee supports continued operations by NYS&W, which he describes as the ideal interim operator. The Trustee contends that the NYS&W maintains the competitive balance that is necessary for the region and that was intended by Congress.[2]

Extension of the directed service order for 180 days will not interfere with the possible resumption of D&H operations by the D&H trustee. Because the directed service authorization is based on the D&H's discontinuance of transportation service, if the D&H trustee resumes service before the 180-day extension period runs out, the NYS&W's directed service authorization would expire upon D&H's resumption of service.

Conrail expresses a view that the authorization for an interim operator to use the D&H trackage rights over its line would constitute an assignment of those rights which is not permitted without Conrail's approval. We disagree. The use of lines and trackage rights by a carrier as a substitute for D&H, with the permission of D&H so as to carry out D&H's common carrier obligation, does not effect an assignment. NYS&W is simply operating for D&H and stands in D&H's shoes vis-a-vis trackage rights over Conrail.

The majority of the other comments received (from shippers, other railroads, the U.S. Department of Transportation, several States, affected Counties, and others) also support NYS&W's continued operation of the D&H for reasons ranging from the belief that service has been improved during the interim period to the view that the present temporary arrangement protects the competitive balance in the region. Most parties believe these interim operations are essential.

While some labor interests express reservations about the property of the past NYS&W interim operations with respect to employees, labor generally supports continued interim operations of the D&H. It should be noted that, by providing service under this order, NYS&W does not become liable for any employee protection obligations that would otherwise be the responsibility of D&H. Nor does NYS&W become responsible for any employee protection obligations of D&H which have accrued prior to initiation of directed service or which may accrue subsequent thereto.

Finally it should be assumed that, just as the Trustees may determine that D&H is able to resume rail service operations, so too may the NYS&W, as the directed rail carrier (DRC) determine that it is no longer able to continue to provide directed rail service prior to the 180-day expiration of this order. Accordingly we will also provide that, in the event the parties reach such decision, this order will expire on the 10th day following the Commission's receipt of written notice of any such decision(s) from the parties. Upon receipt of such notice an appropriate supplemental order will automatically be entered terminating directed service.

This notice will be served on all parties to this proceeding including those listed in our June 22, 1988 decision, as well as the trustee in bankruptcy and the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88–342).

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. NYS&W is authorized for an additional 180 days to continue to operate D&H's lines under the terms and conditions previously established.

2. This decision and order shall be effective on August 17, 1988, and shall continue in force and effect until February 13, 1989, unless otherwise modified or terminated by further order of the Commission.

Decided: August 17, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–19102 Filed 8–22–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–290 (Sub-No. 40X)]

Southern Railway Co.—Abandonment Exemption Between Sheffield And Florence, AL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.7–mile line of railroad between milepost 4.3–MF, at Sheffield, AL, and milespost 7.0–MF, at Florence, AL.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant with the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 22, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues[1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[2] must be filed by August 29, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 7, 1988 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 23, 1988. Other interested

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[2] The Consolidated Rail Corporation (Conrail) does not seek to replace the NYS&W as an interim operator, but indicates that, should the NYS&W not seek, or be found unsuitable by the Commission, to continue directed rail service operations, Conrail would be willing to serve D&H's customers, but only under the framework of 49 U.S.C. 11123 and 11124 (rerouting of traffic), and only upon specified terms.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines*, (not printed), served March 8, 1988.

[2] *See Exemption of Rail Abandonments of Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164, (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–18963 Filed 8–22–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–301 (Sub–No. 2X)]

Southrail Corp.; Exemption for Abandonment Between Laurel and Bay Springs, MS, in Jones and Jasper Counties, MS

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon approximately 21.8 route miles in Jones and Jasper Counties, MS, between milepost 111.20 at or near Laurel not including active shipper sidings, and milepost 133.00 at or near Bay Springs.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the, Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 22, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matter that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 29, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 7, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Mark M. Levin; Weiner, McCaffrey, Brodsky & Kaplan, P.C. 1350 New York Avenue, NW., Suite 800, Washington, DC 20005–4797.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 23, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 18, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–19100 Filed 8–22–88; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C. 2d 164, 400 (1988).

[2] *See Exem. of Rail Line Aband. or Discont.—Offers of Financial Assistance,* 4 I.C.C. 2d 164,

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 2, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 2, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 15th day of August 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

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served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

APPENDIX

Petitioner: (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Atlantic Fuels Marketing Corp. (Company)	Montvale, NJ	8-15-88	8-2-88	20,866	Crude oil.
Biolectron, Inc. (Workers)	Hackensack, NJ	8-15-88	7-29-88	20,867	Bone growth stimulator.
Fabric Masters (ILGWU)	Carlstadt, NJ	8-15-88	7-29-88	20,868	Coats.
Devon Apparel, Inc. (ILGWU)	Philadelphia, PA	8-15-88	8-2-88	20,869	Ladies' sportswear.
M&D Coat Co. (ILGWU)	Hoboken, NJ	8-15-88	7-27-88	20,870	Coats.
Magnetek Universal Mfg (Workers)	Paterson, NJ	8-15-88	8-2-88	20,871	Ballasts and starters for lights.
N&J Originals (ILGWU)	Hoboken, NJ	8-15-88	7-29-88	20,872	Coats.
Newcor, Inc. (Workers)	Bay City, MI	8-15-88	8-1-88	20,873	Automated welding machinery.
P.V.S. Chemicals, Inc. (Workers)	Copley, OH	8-15-88	8-3-88	20,874	Sulfuric acid.
Phillips Petroleum Co. (Workers)	Denver, CO	8-15-88	8-2-88	20,875	Oil and gas.
Precision Materials (Workers)	Mine Hill, NJ	8-15-88	8-1-88	20,876	Irradiation of products.
Reichhold Chemicals, Inc. (OCAW)	Ferndale, MI	8-15-88	8-5-88	20,877	Alkyd resins.
U.S. Can Co. Plant #23 (Company)	Passaic, NJ	8-15-88	7-29-88	20,878	Metal containers.
Wilshire Knitting Mills (ILGWU)	Philadelphia, PA	8-15-88	8-3-88	20,879	Ladies and mens' sweaters.

[FR Doc. 88-19127 Filed 8-22-88; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-134-C]

The Ohio Valley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

The Ohio Valley Coal Company, 56854 Pleasant Ridge Road, Alledonia, Ohio 43902 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Powhatan No. 6 Mine (I.D. No. 33-01159) located in Belmont County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to continued deterioration of roof conditions the old Main Return from the West Seals to the No. 1 Fan cannot be safely traveled, and rehabilitation of these entries would create a diminution of safety to the examiners and miners.

3. As an alternate method, petitioner proposes to establish input and output evaluation stations in lieu of traveling the aircourse in its entirety.

4. In support of this request, petitioner states that—

(a) The input station would be established immediately outby the No. 1 West seal;

(b) The output station would be established at the No. 1 Fan;

(c) Air measurement stations and approaches to them would be maintained in a safe and traveled condition;

(d) These entries are not used as an escapeway, and no miners or matierals will pass through them;

(e) The return aircourse in question is located in a noncoal producing area of the mine;

(f) Weekly methane and air quality/quantity readings would be taken by a certified individual;

(g) A date board would be located at each checkpoint for the purpose of recording initials, date, and time of each examination; and

(h) Methane or other harmful, noxious, or poisonous gases would not be permitted to accumulate in the airways. An increase of 0.5% methane or a reduction of 10% in air quantity when compared to the last readings at any check station would be cause for immediate investigation and appropriate action.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 22, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 16, 1988.

[FR Doc. 88-19126 Filed 8-22-88; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Wednesday, August 31, 1988. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, VA. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.

B. Administrative remarks.

C. Briefings on industry and Government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Terrence N. Danner,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 88-19091 Filed 8-22-88; 8:45 am]
BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting Notice

The Advisory Committee on Nuclear Waste (ACNW) will hold an open meeting on September 13-14, 1988, 8:30 a.m., Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

Low-Level Waste and Decommissioning Division (Open)—estimated time: 1.5 hrs.—The Committee will be briefed by the Director of the Division of Low-Level Waste and Decommissioning on plans for FY 1989.

Regulatory Responsibility (Open)—estimated time: 1.5 hrs.—The Committee will be briefed on an ASME paper on proposed regulatory responsibilities for mixed waste.

Low-Level Waste Handling Processes (Open)—estimated time: 1.5 hrs.—The Committee will be briefed by the NRC Staff on cement-based LLW forms.

High Density Polyethylene HICs (Open/Closed)—estimated time: 2 hrs.—The Committee will be briefed by the NRC Staff on High Density Polyethylene HICs.

Below Regulatory Concern (Open)—estimated time: 1 hr.—The Committee will continue its review of the Below Regulatory Concern (BRC) issue with the goal of developing a position which could be incorporated in an NRC policy statement before the International Meeting on BRC is held in Washington, DC, in October 1988.

Decommissioning Rule (Open)—estimated time: 0.5 hr.—The Committee will be briefed on the rulemaking on "General Requirements for Decommissioning Nuclear Facilities.

DOE's Dry Spent Fuel Storage Cask Study (Open)—estimated time: 45 mins.—The Committee will be briefed by the NMSS/IMNS staff on the DOE study on dry cask design and use.

Committee Activities (Open)—estimated time: 2 hrs.—The Committee will discuss anticipated and proposed Committee activities, future meeting schedule, and administrative matters, as appropriate.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or writtten statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond Fraley (telephone 202/634–3265) until August 26 and after August 29 (telephone 301/492–8049), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Date: August 17, 1988.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 88–19084 Filed 8–22–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Notice of Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published July 26, 1988 (53 FR 28085). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the September 1988 ACNW and the September 1988 ACRS full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) until August 26 and after August 29 (telephone 301/492–8049) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Pilgrim Restart, August 26, 1988, Plymouth, MA. The Subcommittee will review the proposed restart of the Pilgrim plant.

Safety Philosophy, Technology, and Criteria, September 1, 1988, Bethesda, MD. The Subcommittee will discuss the Staff's proposed implementation plan for the Safety Goal Policy Statement.

Maintenance Practices and Procedures, September 7, 1988, Bethesda, MD. The Subcommittee will discuss and review the maintenance rule and associated NUREG document.

Advanced Pressurized Water Reactors, September 15, 1988, Bethesda, MD. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the WAPWR RESAR SP/90 design.

Reliability Assurance, September 16, 1988, Bethesda, MD. The Subcommittee will continue its review of the Equipment Qualification-Risk Scoping Study with special emphasis on the peer review comments.

Mechanical Components, October 26–27, 1988, Bethesda, MD. The Subcommittee will discuss recent work related to valve reliability, including: isolating high energy line tests at Wyle Laboratory, compressed air systems and valves, seismic tests on an aged Shippingport valve, etc.

Advanced Boiling Water Reactors, November 15–16, 1988, Bethesda, MD. The Subcommittee will continue its FDA review of this standard plant. Detailed ACRS questions will be covered on review module 1. An overview of the second review module is planned.

Babcock & Wilcox Reactor Plants, November 30–December 1, 1988, Sacramento, CA. The Subcommittee will meet to study the lessons learned from the approximately 2-year shutdown of Rancho Seco that occurred following the December 16, 1985 overcooling event. Topics include monitoring extended start-up program as well as plant and organization changes as a result of the restart effort.

Advanced Pressurized Water Reactors, Date to be determined (September), Bethesda, MD. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Reports-Design Certification (CESSAR–DC).

Advanced Reactor Designs, Date to be determined (September), Bethesda, MD. The Subcommittee will review the draft SERs for the liquid metal reactors (LMRs).

Occupational and Environmental Protection Systems, Date to be determined (September/October), Bethesda, MD. The Subcommittee will review: (1) The "hot particle" problem, (2) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (3) the emergency planning rule, (4) the control room habitability report by ANL, and (5) other related matters.

Peach Bottom Restart (Ad Hoc), Date to be determined (September/October), York City, PA. The Subcommittee will review the proposed restart plan for the Peach Bottom Plant.

Advanced Pressurized Water Reactors, Date to be determined (October), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Thermal Hydraulic Phenomena, Date to be determined (October), Bethesda, MD. The Subcommittee will review: (1) The final report of the Technical Program Group on the Code Scaling, Applicability and Uncertainty (CSAU) Methodology and (2) the status of the B&W MIST and OTSG follow-on research programs.

Decay Heat Removal Systems, Date to be determined (October), Bethesda, MD. The Subcommittee will review the proposed resolutions of Generic Issue 23, "RCP Seal Failures."

Joint Core Performance/Thermal Hydraulic Phenomena, Date to be determined (October/November), Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

Containment Systems, Date to be determined (October/November), Bethesda, MD. The Subcommittee will review the NRC Staff's document on final recommendations for containment performance and improvements (BWR Mark I only).

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of bleed and feed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC Staff to review the Chilled Water Systems design.

Auxiliary Systems, Date to be determined, Bethesda, MD. The Subcommittee will review the adequacy of the Staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

ACRS Full Committee Meetings

September 8–10, 1988—Items are tentatively scheduled.

*A. *Hydrogen Control Requirements (Open)*—Review and report on NRC Staff proposed resolution of USI A–48, Hydrogen Control Measures and Effects of Hydrogen Burns on Safety Equipment.

*B. *Testing of Motor-Operated Valves (Open)*—Briefing regarding proposed changes in the requirements for in-situ testing of MOVs.

*C. *Maintenance of Nuclear Plants (Open)*—Briefing and comment on the proposed NRC rule regarding maintenance of nuclear power plants.

*D. *Severe Accident Management (Open)*—Briefing by NRC representatives regarding the status of work on management of severe nuclear power plant accidents.

*E. *Pilgrim Nuclear Plant (Open)*—Briefing and comment regarding proposed restart of the Pilgrim Nuclear Plant.

*F. *NRC Regulatory Guides (Open)*—Briefing and comment regarding proposed publication of revised NRC Regulatory Guide 1.106, Revision 2, Thermal Overload Protection for Motor-Operated Valves for Nuclear Power Plants.

*G. *USI A–45, Decay Heat Removal (Open)*—Discuss proposed ACRS report on the proposed resolution of USI A–45, Shutdown Decay Heat Removal Requirements for Nuclear Power Plants.

*H. *Generic Issue–99, Loss of RHR Capability During Plant Shutdown (Open)*—Review and report on the proposed resolution of GI–99, Loss of Residual Heat Removal Capability in PWRs During Shutdown Conditions.

*I. *High Temperature Gas Cooled Reactors (Open)*—Discuss proposed ACRS report regarding proposed HTGR standard design by DOE.

*J. *TVA Nuclear Power Plant Management, Reorganization and Operations (Open)*—Discuss recent TVA reduction in force and reorganization, lessons learned by the NRC Staff from TVA operational and construction problems, and briefing regarding proposed restart of the Browns Ferry Nuclear Power Plant.

*K. *NRC Safety Goal Implementation Plan (Open)*—Review and comment on proposed NRC plan for implementation of its safety goals on risk to the public from nuclear power plant operation.

*L. *International Operating Experience (Open)*—Discuss lessons learned regarding design and operation of U.S. power reactors from the Chernobyl nuclear power plant accident.

*M. *Important Safety Related Issues (Open)*—Discuss proposed hierarchical structure for important safety related issues identified by ACRS members.

*N. *Nuclear Power Plant Operator Qualifications (Open)*—Briefing regarding lessons learned from implementation of the revised operator qualification methodology of Examiner Standard 601.

*O. *ACRS Subcommittee Activities (Open/Closed)*—Hear and discuss the reports of ACRS subcommittees and members regarding assigned activities including thermal hydraulic phenomena, use of nuclear power plant operating experience, etc.

P. *Appointment of ACRS Members (Closed)*—Discuss qualifications of candidates proposed for appointment to the ACRS and members considered for reappointment to the Committee.

*Q. *ACRS Future Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*R. *ACRS Practice and Procedures (Open)*—Discuss ACRS practices and procedures such as proposed meeting dates for CY–1989, appointment of nominating panel for ACRS Officers for CY–1989, etc.

*S. *IAEA International Symposium (Open/Closed)*—Report of IAEA International Symposium on the Operational Safety Experience from Nuclear Power Plants.

October 6–8, 1988—Agenda to be announced.

November 17–19, 1988—Agenda to be announced.

ACNW Full Committee Meetings

September 13 and 14, 1988.

Low-Level Waste and Decommissioning Division (Open)—The Committee will be briefed by the Director of the Division of Low-Level Waste and Decommissioning on plans for FY 1989.

Regulatory Responsibility (Open)—The Committee will be briefed on an ASME paper on proposed regulatory responsibilities for mixed waste.

Low-Level Waste Handling Processes (Open)—The Committee will be briefed by the NRC Staff on cement-based LLW forms.

High Density Polyethylene HICs (Open/Closed)—The Committee will be briefed by the NRC Staff on High Density Polyethylene HICs.

Below Regulatory Concern (Open)—The Committee will continue its review of the Below Regulatory Concern (BRC) issue with the goal of developing a position which could be incorporated in an NRC policy statement before the International Meeting on BRC is held in Washington, DC, in October 1988.

Decommissioning Rule (Open)—The Committee will be briefed on the rulemaking on "General Requirements for Decommissioning Nuclear Facilities."

DOE's Dry Spent Fuel Storage Cask Study (Open)—The Committee will be briefed by the MNSS/IMNS staff on the DOE study on dry cask design and use.

Committee Activities (Open)—The Committee will discuss anticipated and proposed Committee activities, future meeting schedule, and administrative matters, as appropriate.

November 3–4, 1988—Agenda to be announced.

Date: August 17, 1988.

Andrew L. Bates,

Acting Advisory, Committee Management Officer.

[FR Doc. 88–19085 Filed 8–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–155]

Consumers Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–6 issued to the Consumers Power Company (the licensee), for operation of the Big Rock Point Plant located in Charlevoix County, Michigan.

In accordance with the licensee's application for amendment dated July 7, 1988, the proposed amendment would modify Big Rock Point Technical Specifications by replacing the requirement to partial-stroke test the Reactor Depressurization System depressurizing valves quarterly with a requirement to full-stroke test all four depressurizing valves each refueling outage.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 22, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public

BEST COPY AVAILABLE

comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 7, 1988, which is available for public inspection at the Commission's Public Documents Room, 1717 H Street, NW., Washington, DC 20555, and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 12th day of August 1988.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–19087 Filed 8–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Facility Operating License No. NPF–62 issued to the Illinois Power Company * (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. (the licensees), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

This amendment consists of a proposed change to Technical Specification Section 4.8.2.1 concerning emergency DC battery loads. During the review of a plant modification, the licensees determined that the emergency DC battery loads had changed. As a result, changes were made to the low power operating license Technical Specifications in order to reflect the revised loading. Based upon subsequent review by the licensees, it has been determined that a Division II load (Fire Protection distribution panel) had not originally been taken into account. Thus a change to Specification 4.8.2.1.d.2.b was required in order to accurately reflect the 4-hour Division II battery emergency loading profile.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 16, 1988 (53 FR 4476). No request for a hearing or petition of leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated October 30, 1987, (2) Amendment No. 8 to License No. NPF–62, and (3) Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW.; and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this 15th day of August 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 88–19090 Filed 8–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21, issued to Northeast Nuclear Energy Company (the licensee), for operation of Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut. The application for amendment is dated June 24, 1988.

The proposed amendment would revise the Technical Specifications Section 5.5 by adding a new section, Section 5.5.C, to reflect the maximum number of spent fuel assemblies authorized in the spent fuel pool. Currently there is no restriction in the Technical Specifications regarding a limiting number of spent fuel assemblies in the spent fuel pool. This amendment has been proposed by the licensee in conjunction with their proposed expansion of the capacity of the spent fuel pool. The proposed expansion of the pool will increase the capacity from 2184 to 3229 fuel assemblies. This expansion is to be accomplished by the removal of the seismic restraint devices from the existing spent fuel racks, movement of these racks to the southwest corner of the spent fuel pool, and the installation of ten new spent fuel pool racks. The new spent fuel pool racks will have the same storage density as the current racks. The licensee's proposal does not include plans for fuel assembly consolidation. This expansion of the spent fuel pool will provide full core off land capability until approximately 1999.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 22, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition

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* Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Gerald Garfield, Esq., Day Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions). The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart 6 apply.

For further details with respect to this action, see the application for amendment dated June 24, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 11th day of August 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–19088 Filed 8–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No.: 9999004; License No.: General License EA 87–223]

Wrangler Laboratories, Larsen Laboratories, Orion Chemical Company, and John P. Larsen, Provo, Utah; Order Revoking Licenses

I

Wrangler Laboratories, Larsen Laboratories, and Orion Chemical Company (the licensees) are firms using source material under general licenses granted by the Nuclear Regulatory Commission (the Commission/NRC) pursuant to 10 CFR 40.22. The general license granted by 10 CFR 40.22 authorizes the use or transfer of not

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more than 15 pounds of source material at one time and the receipt of not more the 150 pounds of source material in any one calendar year.

II

Mr. John P. Larsen has been doing business as (dba) Wrangler Laboratories, Larsen Laboratories, and Orion Chemical Company and is the owner and sole proprietor of these firms. Mr. Larsen's companies are all involved in the chemical processing of depleted uranium (DU). The licensees receive slugs of DU, dissolve the material in boiling nitric acid, precipitate uranyl acetyl acetate (UAA) using 2,4 pentanedione, dissolve the UAA precipitate in benzene to produce recrystallized UAA, and subsequently dry, grind, filter, package and ship the pure UAA product. The UAA product is ultimately used as a catalyst in the production of Department of Defense munitions.

On August 23, 1982, an inspection was conducted at Orion Chemical Company. During the inspection, NRC determined that the licensee was in violation of several regulatory requirements. These violations included possession of source material at one time in excess of the 15-pound limitation on such material, refusal to make records available to NRC, unauthorized disposal of DU, and failure to maintain complete records. Subsequently, on September 3, 1982, the NRC issued an Order to Show Cause and Order Temporarily Suspending License (Effective Immediately). On October 25, 1982, the NRC issued an Order Rescinding Order to Show Cause and Order Temporarily Suspending License. This action was taken following the licensee's corrective measures to bring the operatons into compliance. On December 15, 1982, the NRC issued a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty for the above violations. The amount of the Civil Penalty was $500. March 16, 1983, the licensee responded to the NOV and paid the Civil Penalty.

As a result of the August 1982 inspection, the NRC determined that Mr. Larsen's chemical processing activity should be conducted under a specific license, due to the potential for contamination of workers and the environment. A specific license (SUB/1436) was issued by the NRC in December 1983 to Larsen Laboratories of Provo, Utah. The responsibility for overseeing this specific license was transferred to the State of Utah upon its becoming an Agreement State. On May 13, 1985, Utah reissued to Larsen Laboratories specific Radioactive Material License UT2500183, which authorizes possession of up to 150 kilograms of DU at one time.

On April 15, 1986, NRC received an allegation of improper activities being conducted by Larsen Laboratories. The allegation was transferred to the State of Utah, which performed inspections and found numerous violations. In all, the State of Utah found five contaminated facilities in which Mr. Larsen had conducted activities.

At one of these facilities, contaminated liquids were leaking from drums that had been stored on a truck for approximately 2 years. On November 5, 1986, the State of Utah issued an Order Suspending License (Effective Immediately) and Order Imposing Civil Monetary Penalties in the amount of $13,000. The Order, which is still in effect, required, among other specified actions, that the licensee: (1) Not receive or use source material except to secure or transfer such source material in its possession, (2) dispose of radioactive wastes, (3) decontaminate two facilities in the Orem area, (4) move to production facilities that have been approved through license amendment procedures, and (5) obtain a qualified Radiation Protection Officer. On January 15, 1987, a Settlement Agreement between the State of Utah and Larsen Laboratories was signed. The Agreement required that the specified activities in the Order be completed by April 15, 1987, and that $8,000 of the Civil Penalties would be suspended. The licensee paid the remaining $5,000 Civil Penalties but has not complied with items (4) and (5) of that Order.

On October 28, 1987, the State of Wyoming informed the NRC of an allegation that it had received concerning improper activities at Wrangler Laboratories in Evanston, Wyoming. On November 4–5 1987, NRC inspected Wrangler Laboratories and found that Mr. Larsen, dba Wrangler Laboratories, was conducting chemical operations in a temporary facility and appeared to have exceeded uranium possession limits. As a result of NRC concerns, an enforcement conference was held with Mr. Larsen on December 2, 1987, in Salt Lake City. Subsequent to the November 4–5, 1987, inspection of the Evanston, Wyoming, facility, NRC Region IV also obtained agreements with Mr. Larsen for certain corrective measures intended (1) to terminate licensed activities at the Evanston facility, which was considered inadequately equipped for the chemical processing of depleted uranium, (2) to provide followup monitoring for certain individuals who had previously shown elevated uranium in their urine, and (3) to safely remove all licensed material, waste, and contamination from the facility so that it could be returned to unrestricted use. These actions were specified in Confirmation of Action Letters (CALs) issued on November 12, December 8, and 31, 1987 and March 18 and April 1, 1988.

NRC Region IV also began an investigation of Mr. Larsen's NRC licensed activities. This action was taken in response to questions raised during the NRC inspection and the enforcement conference concerning Mr. Larsen's previous activities in acquiring, processing, and transferring DU, and questions surrrounding bioassay samples and Mr. Larsen's compliance with the CALs. The results of the investigation have not been issued as of the date of this Order. However, the investigative results available substantiate the NRC staff's concerns that Mr. Larsen's activities under the general license were conducted with a significant disregard for the safety of himself and his employees, and for the public health and safety. This was indicated by the uranium levels in the employee bioassay samples.

Due to the questions surrounding Mr. Larsen's activities, the apparent use of inadequate controls that resulted in contamination exceeding NRC guidelines, evidence of internal contamination of workers, and Mr. Larsen's apparent inability to strictly comply with Confirmation of Action Letters, an NRC Order dated February 25, 1988, issued to Mr. Larsen and the companies he represents suspended the general licenses. The Order also allowed the licensees and Mr. Larsen to show cause why the Order should not have been issued by filing a written answer under oath or affirmation setting forth the matters of fact and law on which the licensees and Mr. Larsen rely. Mr. Larsen's response to the Order, which was not under oath or affirmation, was sent by letter dated March 18, 1988. That response is addressed below and in the Appendix to this Order.

Mr. Larsen's March 18, 1988, reply to the NRC Order confirmed the following information:

(1) That he exceeded the 15-pound limit for transfer of source material under a general license issued pursuant to 10 CFR 40.22 by originating shipments from Wyoming of 16.7 and 16.3 pounds of DU on June 1 and December 20, 1987, respectively. He also confirmed that he transferred DU from his Utah facility to his customer on five dates (December 9, 1986; February 2, 9, and 17, and March 3, 1987) that were well after the State of Utah's November 3, 1986 Order

suspending his specific license and requiring, among other things, that he *immediately* place all source material in his possession in locked storage or transfer such material to an authorized recipient.

(2) That he exceeded the annual limit of 150 pounds for receipt of source material under a general license at his Evanston, Wyoming, facility. The amount received was at least 155.8 pounds in 1987.

(3) That, in deviation from Item 1 of the CAL dated November 12, 1987, Mr. Larsen failed to obtain baseline urine samples from two individuals who worked in the final processing and cleanup of the Evanston, Wyoming, facility. According to Mr. Larsen, "their baseline levels were assumed to be zero," and he "was trying to keep expenses down."

(4) That, in deviation from Item 2 of the CAL dated December 31, 1987, Mr. Larsen failed to submit with the workers' urine samples a background sample. The employee samples that were submitted showed high uranium values that Mr. Larsen later attributed to contamination within the sample containers and/or the fact that the samples were damaged in transit to the laboratory.

(5) That, in deviation from Item 3 of the CAL dated December 31, 1987, Mr. Larsen stopped collecting urine samples from two individuals every 3 days, as committed to, before he had received confirmation that results from two consecutive samples were less than 30 micrograms per liter.

(6) That, in deviation from Item 4 of the CAL dated December 31, 1987, the results of certain urine bioassay results that showed a high uranium concentration were not submitted to the Region IV office when they were received by Mr. Larsen. In his letter of March 18, 1988, Mr. Larsen claims the results were not sent to Region IV because "the samples were questionable." In addition to the above, the NRC had determined by inspection or by other information provided by Mr. Larsen that his activities in Wyoming involved the following:

• Mr. Larsen stated in the March 18, 1988 reply to the Order Suspending License that when he moved his operation from Utah to Wyoming he started with "a new understanding and resolve for absolute confinement of source material and waste materials," and "on the whole, we were much improved in our work operation." Despite this claim, the NRC found that Mr. Larsen's Wyoming facility was inadequate for the purpose it was being used. For example, prudent engineering controls such as those that Mr. Larsen was committed to under the terms of his Utah license for the same activity—ventilation and air filtration units or filtered fume hoods—were not in place in Larsen's Wyoming facility. There was no plumbing in the facility, and few contamination surveys or air samples had been documented by Mr. Larsen.

• The personnel bioassay samples obtained by Mr. Larsen have shown unacceptably high uranium concentrations. Since February 1987, samples have been submitted on a total of four individuals who have worked at the Evanston facility. All four have, on at least one occasion, exceeded levels at which action is recommended by NRC. Of all the sample results reported, 50 percent exceeded the action level (30 ug/1). Mr. Larsen has suggested reasons for the high values, including contaminated sample containers, samples damaged and found leaking in transport, the consumption of food in his facility which may have been contaminated, and questionable analytical results by the contractor laboratory. Many, if not all, of these reasons could have been confirmed or ruled out if Mr. Larsen had complied with the CALs by collecting samples in containers known to be free of contamination, by submitting baseline and background samples, and by collecting samples according to the committed schedule.

III

Aside from Mr. Larsen's enforcement history and previous noncompliance under his specific licenses in Utah, the activities conducted in Wyoming under an NRC general license have raised serious concerns within the NRC. The activities have taken place in a facility which was inadequate, with no assurance that similar activities in the future would be conducted in a more suitable facility. The activities, which have involved the chemical processing of significant amounts of source material, are of such a nature that the radiation safety, chemical safety, and waste disposal aspects of the operation should not be conducted under a general license. Moreover, activities of this nature were not anticipated by the AEC at the time of 10 CFR 40.22 rulemaking. The exemption in 10 CFR 40.22(b) from the requirements of 10 CFR Parts 19 and 20 clearly indicates that activities under the general license were seen as not involving an occupational radiation hazard. Finally, the specific conduct of Mr. Larsen's Wyoming operation with respect to compliance with source material possession limits and Confirmation of Action Letters has established a record of performance unacceptable to the NRC.

In consideration of the collective conclusions stated above, I lack the requisite reasonable assurance that Mr. Larsen, individually, and his companies will comply with Commission requirements in the future. Therefore, I have determined that the public health, safety, and interest require that the general license authorization for Mr. Larsen, as well as the named licensees, to receive and use NRC licensed material, under their respective general licenses, should be revoked.

IV

Accordingly, in view of the foregoing and pursuant to Sections 62, 63, 81, 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 40, *it is hereby ordered* that:

The general license authority of 10 CFR 40.22 with respect to Wrangler Laboratories, Larsen Laboratories, Orion Chemical Company, and Mr. John P. Larsen is revoked and the foregoing licensees and Mr. Larsen shall not receive or use source material under the auspices of a general license in locations under MRC jurisdiction.

V

Upon consent of Mr. Larsen or the licensees to the provisions set forth in Section IV of this Order, the provisions specified in Section IV above shall be final without further Order.

VI

Pursuant to 10 CFR 2.202(b), Mr. Larsen, either one or more of the licensees, or any other person adversely affected by this Order, may request a hearing within 20 days of this Order. Any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than Mr. Larsen dba the licensees, requests a hearing, that person shall set forth, with particularity, the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to request a hearing within the specified time, this Order shall be final without further proceedings.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 15th day of August 1988.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88-19069 Filed 8-22-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Invitation for Public Comment

AGENCY: Office of Management and Budget.

ACTION: Request for comments on proposed revision of OMB Circular No. A-76, "Performance of Commercial Activities".

SUMMARY: This Notice contains proposed Transmittal Memorandum No. 7, dated August 8, 1988, to Circular No. A-76, "Performance of Commercial Activities."

This Transmittal Memorandum updates the retirement cost factors and other fringe benefit cost factors for federal employees, and the tax rates used for commercial firms, deletes material mark-up rates applied for General Services Administration (GSA) items, and revises material mark-up rates applied to Defense Logistics Agency (DLA) items, used by Executive Branch agencies in cost comparison studies under OMB Circular No. A-76.

This Memorandum rescinds Transmittal Memorandum No. 4, dated October 29, 1986, which implemented the requirements of the Federal Employees Retirement System Act of 1986 (FERS) to exclude the employers' costs of social security (OASDI) and thrift plans from A-76 cost comparisons. Public Law 100-366, signed on July 13, 1988, requires all retirement costs to be included in A-76 cost comparisons. This Memorandum also deletes the requirement for agencies to publish their schedules for conducting cost comparison studies in the *Commerce Business Daily* and the **Federal Register**. Summary reports on the implementation of OMB Circular No. A-76 to be submitted by all agencies to the Office of Federal Procurement Policy, OMB, are deleted; future information will be contained in the A-76 Management Information System.

The updated standard retirement cost factor represents the Government's share of the full dynamic normal costs of the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). This is a composite factor based on the percentage of payroll costs participants in each system represent. The Government's contributions to Social Security (OASDI) and thrift savings plan costs are also included.

The revised fringe benefit cost factors represent the amount the Government contributes to Medicare and to other fringe benefits for employees (workmen's compensation, bonuses and awards and unemployment programs). These revised cost figures were provided by the Office of Personnel Management. Originally, prices paid by the agencies for GSA material did not include all the costs of the acquisition and storage functions performed by GSA, and these costs were added through the use of a standard factor. Public Law 100-202, section 619 now requires inclusion of these costs in the GSA prices, therefore, it is no longer necessary to apply a mark-up rate to GSA prices.

The revised mark-up rates to be applied to DLA prices show full acquisition and supply costs were provided by DLA.

The Tax Rate Table provides by types of industry the appropriate tax rates in relation to business receipts. The tax rates have been revised by the Internal Revenue Service to reflect the latest rates as of 1984.

The deletion of the requirement for agencies to publish their schedules once per year in the *Commerce Business Daily* and the **Federal Register** is a result of Executive Order 12615, Performance of Commercial Activities, dated November 19, 1987, which required OMB to publish the schedules.

The annual reporting requirements in Chapter 4 of the Supplement to OMB Circular No. A-76, are deleted. The data will be obtained from the A-76 Management Information System on a quarterly basis.

The revision does not require any agency to (1) create or maintain a duplicative control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with the Federal Acquisition Regulations (FAR).

DATE: September 2, 1988.

Comments should be submitted to the Director, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Mesaros, Office of Federal Procurement Policy, Office of Management and Budget, (202) 395-3300.

James C. Miller III,

Director.

August 8, 1988.

[Circular No. A-76, Revised Transmittal Memorandum No. 7]

Memorandum For Heads Of Executive Departments And Agencies

From: James C. Miller, III, Director

Subject: Performance of Commercial Activities

This Transmittal Memorandum revises the treatment of retirement costs for both government and contractors and updates certain other cost factors. Public Law 100-366 amends the "Federal Employees' Retirement System Act of 1986" to require that all employer paid retirement costs for the Federal Employees Retirement System and the contractor be included in the A-76 cost comparison process. Transmittal Memorandum No. 4 is rescinded by this memorandum. Therefore, all renumbered lines, added lines on the cost comparison forms at Illustrations 1-1 and 5-1, and added paragraphs introduced by Transmittal Memorandum No. 4 are hereby deleted. In addition, this Memorandum updates two fringe benefit cost factors, deletes the mark-up rates applied to General Services Administration (GSA) materials, revises the mark-up rates applied to Defense Logistics Agency (DLA) materials, and revises contractor tax rates. This Memorandum also changes the instructions for publication of inventories and study schedules, and deletes all of Chapter 4, "Annual Reporting Requirement" in Part I of the Supplement.

Paragraph C.1.b, Chapter 1, Part I, of the Supplement

The requirement in this paragraph for agencies to publish their schedules for conducting cost comparison studies in the *Commerce Business Daily* and the **Federal Register** is deleted. Executive Order 12615 requires the Office of Management and Budget to publish the schedules.

Chapter 4, Part I, of the Supplement

This chapter is deleted. Quarterly reporting is required by Executive Order 12615. It will be accomplished through the A-76 Management Information System.

Illustration, 1-1, Chapter 1, Part IV, of the Supplement

Lines 13 through 17 of the cost comparison form for in-house vs.

contract performance should be changed back to the original nomenclature and format specified in the Supplement, dated August, 1983. Delete the Line—Social Security (OASDI) and Savings Plan Costs (Deduct), which was added by Transmittal Memorandum No. 4. Lines 13 through 17 should be as follows:

Total Contract Costs.....Line 13
Conversion Differential.....Line 14
Total (Line 13 & 14).....Line 15
Cost Comparison (Line 15 minus Line 6).....Line 16
Cost Comparison Decision.....Line 17

Paragraph D.3.g(1)(a), Chapter 2, Part IV, of the Supplement

The revised standard retirement cost factor to be used is 21.7 percent for all agencies except the Department of Medicine and Surgery (DM&S) within the Veterans Administration (VA). The factor for DM&S is 11.4 percent. The standard factor represents the Government's share of the full dynamic normal costs of the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). This factor also includes the Government's contributions to the Old Age, Survivors and Disability Insurance (OASDI) portion of Social Security and thrift savings plan costs.

The revised retirement cost factors for special class employees are 26 percent for air traffic controllers and 25.5 percent for law enforcement and fire protection employees, except for fire fighters within DM&S. The factor for DM&S is 15.6 percent.

Paragraphs D.3.g(1)(b), and D.3.g(1)(c). Chapter 2, Part IV, of the Supplement

Revised standard fringe benefit cost factors to be applied under paragraph D.3.g. in the Supplement to the Circular are as follows:

Fringe benefit factor	Revised cost
FICA (Medicare)	2.17
Federal employee miscellaneous fringe benefits (workmen's compensation, bonuses and awards and unemployment programs)	1.70

The factor for Federal employee insurance remains at 4.7 percent.

Paragraph D.3.g(2), Chapter 2, Part IV, of the Supplement

Add the following paragraph at the end of D.3.g(2) to Chapter 2, Part IV of the Supplement: (The original paragraph was deleted by Transmittal Memorandum No. 4)

"The Federal Insurance Contributions Act (FICA) cost factor listed below, will be applied to civilian employees not covered by either of the two civilian retirement systems (normally intermittent and temporary employees). Be careful to apply the FICA rate only to wages and salaries subject to the tax; there is an annual salary limitation for FICA tax (See Transmittal Memorandum No. 6). Costs for employees covered by FICA are as follows:

FY 1989.....8.23
FY 1990.....8.34
FY 1991.....8.37
FY 1992.....8.37
FY 1993.....8.37

Paragraphs E.3.a(1), (2), and (3), Chapter 2, Part IV of the Supplement

The material mark-up rates which are applied for GSA material and supply services under paragraph E.3.a.(1), (2), and (3) are deleted. Public Law 100–202, Section 619 provides for the inclusion of acquisition and storage costs in the price charged by GSA.

Paragraph E.3.b.(1) and (2), Chapter 2, Part IV, of the Supplement

The material mark-up rate which are applied for DLA material and supply services are revised as follows:

Material	Percent
Wholesale Stock Fund	13.6
Direct Delivery	6.2

Paragraphs H and I, Chapter 3, Part IV, of the Supplement

Delete these paragraphs which were added by Transmittal Memorandum No. 4. Add the following paragraph H as originally contained in Chapter 3, Part IV of the Supplement dated August, 1983; this paragraph had been deleted by Transmittal Memorandum No. 4:

"H. TOTAL—LINE 13

Add lines 7, 8, 9 and 10. If there is a number in parenthesis; i.e., a deduction, in line 11, add to line 12 and subtract this total from the total of lines 7 through 10 and enter the difference on line 13. If the number in line 11 is not in parenthesis, it should be added to the total of lines 7 through 10, and then subtract line 12 from the total of lines 7 through 11 and enter the difference on line 13."

Chapter 4, Part IV, of the Supplement

Delete the renumbering of line numbers referenced by Transmittal Memorandum No. 4. Proper numbering is the original numbering contained in Chapter 4, Part IV of the Supplement dated August, 1983.

Illustration 5–1, Chapter 5, Part IV, of the Supplement

Lines 15 through 19 of the "Cost Comparison Form for Expansions, New Requirements and Conversion to In-House Performance" should be changed back to the original nomenclature and format specified in the Supplement, dated August, 1983. Delete the Line-Social Security (OASDI) and Savings Plan Costs (Deduct), which was added by Transmittal Memorandum No. 4. Lines 5 through 19 should be as follows:

TOTAL CONTRACT COSTS.....Line 15
CONVERSION DIFFERENTIAL (For Expansions, note net difference, Chapter V, E.).....Line 16
TOTAL (Line 6 & 16).....Line 17
COST COMPARISON (Line 17 minus line 15).....Line 18
COST COMPARISON DECISION.....Line 19

Appendix D, Part IV, of the Supplement

A revised Tax Rate Table, Appendix D, with new tax rates is attached. This tax table will be substituted for the Appendix D found in Part IV of the Supplement to the Circular.

This revision is effective as follows: all changes affecting retirement costing procedures shall be effective as of July 13, 1988 and shall apply to all cost comparisons in process where the Government's in-house cost estimate had not been opened before that date. All other changes in the Transmittal Memorandum are effective upon publication.

Attachment

PART IV.—COST COMPARISON HANDBOOK, APPENDIX D, TAX RATE TABLE [1]

Code No.	Industry	Tax rate (percent)
	Extractive Industries	
10–01–0400	Agriculture Production	0.9
10–01–0600	Agricultural Services	0.6

PART IV.—COST COMPARISON HANDBOOK, APPENDIX D. TAX RATE TABLE [1]—Continued

Code No.	Industry	Tax rate (percent)
20-02-1010	Mining Iron Ores	2.7
20-02-2070	Mining Copper, Lead, Zinc, Gold and Silver Ores	0.6
20-02-1098	Mining Other Metals	0.7
20-03-1150	Coal Mining	0.9
20-05-1430	Sand, Gravel, Dimension, Crushed and Broken Stone	1.8
	Construction	
30-06-1510	General building (construction)	0.5
30-06-1531	Operative builders (construction)	1.2
30-07-1600	Heavy construction	0.7
30-06-1711	Plumbing, heating, air conditioning	0.5
30-06-1731	Electrical work	0.5
30-06-1798	Other special trades	0.6
	Manufacturing	
40-09-2010	Meat products	0.7
40-09-2020	Dairy products	1.2
40-09-2030	Preserved fruits and vegetables	1.8
40-09-2040	Grain mill products	1.3
40-09-2050	Bakery products	2.0
40-09-2060	Sugar and confectionery products	2.3
40-09-2089	Bottled soft drinks and flavorings	1.9
40-09-2096	Other food and kindred products	1.2
40-12-2315	Men's and boy's clothing	1.5
40-12-2345	Women's and children's clothing	1.2
40-12-2386	Other apparel and accessories	1.3
40-12-2390	Other fabricated textile products	1.2
40-13-2415	Logging, sawmills and planing mills	1.1
40-13-2430	Millwork, plywood, related products	1.4
40-13-2498	Other wood products	1.0
40-14-2500	Furniture and fixtures	2.4
40-15-2625	Pulp, paper and board mills	1.6
40-15-2699	Other paper products	3.0
40-16-2710	Newspapers (printing and publishing)	4.5
40-16-2720	Periodicals (printing and publishing)	1.9
40-16-2735	Books, greeting cards and miscellaneous publishing	4.1
40-16-2799	Commercial and other printing and printing trade services	1.4
40-17-2815	Industrial chemicals, plastics materials and synthetics	2.4
40-17-2830	Drugs	0.7
40-17-2840	Soap, cleaners and toilet goods	2.0
40-17-2850	Paints and allied products	1.8
40-17-2898	Agricultural and other chemical products	2.7
40-18-2998	Petroleum and coal products, not elsewhere classified	0.8
40-19-3050	Rubber products; plastics, footwear, hose and belting	2.0
40-19-3070	Miscellaneous plastics products	1.5
40-20-3140	Leather footwear	1.8
40-20-3198	Leather and leather products not elsewhere classified	0.7
40-21-3225	Glass products	1.6
40-21-3240	Cement, hydraulic	0.8
40-21-3270	Concrete, gypsum and plaster products	2.4
40-21-3298	Other nonmetallic mineral products	2.5
40-22-3370	Ferrous metal industries; miscellaneous primary metal products	0.6
40-22-3380	Nonferrous metal industries	0.7
40-23-3410	Metal cans and shipping containers	1.9
40-23-3428	Cutlery, hand tools and hardware; screw machine products, bolts and similar products	3.4
40-23-3430	Plumbing and heating, except electric and warm air	3.2
40-23-3440	Fabricated structural metal products	1.4
40-23-3460	Metal forgings and stampings	1.4
40-23-3470	Casting, engraving and allied services	1.5
40-23-3480	Ordnance and accessories, except vehicles and guided missiles	3.0
40-23-3490	Miscellaneous fabricated metal products	1.9
40-24-3520	Farm machinery	0.6
40-24-3530	Construction and related machinery	0.8
40-24-3540	Metal working machinery	1.4
40-24-3550	Special industry machinery	1.5
40-24-3570	Office and computing machines	7.0
40-24-3598	Other machinery, except electrical	2.0
40-25-3665	Radio, television, communication equipment	1.3
40-25-3670	Electronic components and accessories	2.2
40-25-3698	Other electronic equipment	2.7
40-26-3710	Motor vehicles and equipment	2.4
40-27-3725	Aircraft, guided missiles and parts	1.2
40-27-3730	Ship and boat building and repairing	1.3
40-27-3798	Other transportation equipment, except motor vehicles	2.5
40-28-3815	Scientific instruments and measuring devices, watches and clocks	3.3
40-28-3845	Optical, medical and ophthalmic goods	3.1
40-28-3860	Photographic equipment and supplies	3.3

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PART IV.—COST COMPARISON HANDBOOK, APPENDIX D, TAX RATE TABLE [1]—Continued

Code No.	Industry	Tax rate (percent)
40-29-3998	Miscellaneous manufacturing and manufacturing not allocable	1.9
	Transportation and Utilities	
50-30-4000	Railroad transportation	1.3
50-30-4100	Local and interurban passenger transit	1.7
50-30-4200	Trucking and warehousing	1.1
50-30-4400	Water transportation	0.9
50-30-4500	Transportation by air	1.4
50-30-4600	Pipe lines, except natural gas	1.5
50-30-4700	Transportation services not elsewhere classified	0.5
50-31-4825	Telephone, telegraph and other communication services	3.1
50-31-4830	Radio and Television broadcasting	3.8
50-32-4910	Electric services	3.7
50-32-4920	Gas production and distribution	1.5
50-32-4930	Combination utility services	3.8
50-32-4990	Water supply and other sanitay services	3.6
	Wholesale Trade	
61-33-5004	Groceries and related products	0.4
61-34-5008	Machinery, equipment and supplies	0.8
61-35-5010	Motor vehicles and automotive equipment	1.9
61-35-5030	Lumber and construction materials	0.6
61-35-5050	Metals and minerals, except petroleum and scrap	0.4
61-35-5060	Electrical goods	0.9
61-35-5070	Hardware, plumbing and heating	0.8
61-35-5098	Other durable goods	0.7
61-35-5110	Paper and paper products	0.5
61-35-5129	Drugs, chemicals and allied products	0.9
61-35-5130	Apparel, piece goods and notions	0.6
61-35-5150	Farm-product raw materials	0.1
61-35-5170	Petroleum and petroleum products	0.3
61-35-5180	Alcoholic beverages	0.7
61-35-5190	Miscellaneous nondurable goods; wholesale trade not allocable	0.6
	Retail Trade	
62-36-5220	Building materials dealers	0.9
62-36-5251	Hardware stores	0.7
62-36-5265	Garden supplies and mobile home dealers	0.5
62-37-5300	General merchandise stores	1.2
62-38-5400	Food stores	0.5
62-39-5541	Gasoline service stations	0.2
62-39-5598	Other automotive dealers	0.6
62-40-5600	Apparel and accessory stores	1.3
62-41-5700	Furniture and home furnishings stores	1.1
62-42-5800	Eating and drinking places	1.0
62-43-5912	Drug stores and proprietary stores	1.1
62-43-5921	Liquor stores	0.3
62-43-5995	Other retail stores	0.7
63-44-5997	Wholesale and retail trade not allocable	0.6
	Services	
80-52-7000	Hotels and other lodging places	1.1
80-53-7200	Personal services	1.3
80-54-7310	Advertising services	1.1
80-54-7389	Business services, except advertising	1.2
80-55-7500	Auto repair and services	0.8
80-55-7600	Miscellaneous repair services	0.7
	Services	
80-52-7000	Hotels and other lodging places	1.1
80-53-7200	Personal services	1.3
80-54-7310	Advertising services	1.1
80-54-7389	Business services, except advertising	1.2
80-55-7500	Auto repair and services	0.8
80-55-7600	Miscellaneous repair services	0.7
80-56-7812	Motion picture production, distribution and services	0.9
80-56-7830	Motion picture theatres	2.0
80-56-7900	Amusement and recreation services, except motion pictures	1.0
80-57-8015	Physicians' services	0.5
80-57-8021	Dentists' services	0.3
80-57-8050	Nursing and personal care facilities	0.7
80-57-8071	Medical Laboratories	1.4
80-57-8099	Other medical services	1.7

PART IV.—COST COMPARISON HANDBOOK, APPENDIX D, TAX RATE TABLE [1]—Continued

Code No.	Industry	Tax rate (percent)
80-57-8111	Legal services	0.5
80-57-8200	Educational services	1.2
80-57-8599	Miscellaneous services, not elsewhere classified	0.8

[1] Tax Rates are in relation to business receipts. Does not reflect revisions contained in the 1987 Standard Classification Manual.

[FR Doc. 88-18350 Filed 8-22-88; 8:45 am]
BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 26, 1988 (53 FR 143). Individual authorities established or revoked under Schedule A, B, or C between July 1, 1988, and July 31, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A athorities were established or revoked during July.

Schedule B

No Schedule B authorities were established or revoked during July.

Schedule C

Department of Agriculture

One Private Secretary to the Deputy Secretary. Effective July 1, 1988.

One Private Secretary to the Under Secretary for International Affairs and Commodity Programs. Effective July 26, 1988.

One Confidential Assistant to the Assistant Secretary for Special Services. Effective July 28, 1988.

Department of the Army

One Secretary (Stenography) to the Under Secretary of the Army. Effective July 15, 1988.

Department of Commerce

One Special Assistant to the Director General for the U.S. and Foreign Commercial Service. Effective July 1, 1988.

One Special Assistant to the Director General for the U.S. and Foreign Commercial Service. Effective July 6, 1988.

One Confidential Assistant to the Director General for the U.S. and Foreign Commercial Service. Effective July 1, 1988.

One Confidential Assistant to the Assistant Secretary for Trade Development. Effective July 6, 1988.

One Private Secretary to the Deputy General Counsel for the Office of the Secretary. Effective July 8, 1988.

One Deputy Director to the Deputy Assistant Secretary for Congressional Affairs. Effective July 12, 1988.

One Congressional Liaison Assistant to the Deputy Director for Congressional Affairs. Effective July 13, 1988.

One Confidential Assistant to the Director for Executive Programs. Effective July 15, 1988.

One Confidential Assistant to the Director for the Office of Business Liaison. Effective July 15, 1988.

One Confidential Assistant to the Deputy Under Secretary for Export Administration. Effective July 15, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Development. Effective July 15, 1988.

One Confidential Assistant to the Director for the Office of Public Affairs. Effective July 15, 1988.

One Deputy Director to the Director for Executive Programs. Effective July 20, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Capital Goods and International Construction. Effective July 28, 1988.

Department of Defense

One Special Assistant to the Assistant Secretary of Defense for Legislative Affairs. Effective July 5, 1988.

Department of Education

One Confidential Assistant to the Director for Public Affairs Service. Effective July 26, 1988.

One Executive Secretary to the Chief of Staff/Counselor to the Secretary. Effective July 28, 1988.

One Special Assistant to the Secretary. Effective July 28, 1988.

Department of Energy

One Staff Assistant to the Under Secretary of Energy. Effective July 14, 1988.

One Senate Liaison Specialist to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective July 19, 1988.

Department of Health and Human Services

One Special Assistant to the Director for Policy Development Staff. Effective July 1, 1988.

One Executive Assistant to the Assistant Secretary for Legislation. Effective July 6, 1988.

One Senior Executive Assistant to the Deputy Commissioner for Policy and External Affairs. Effective July 27, 1988.

Department of Housing and Urban Development

One Confidential Assistant to the Special Assistant to the Secretary for Public Affairs. Effective July 1, 1988.

One Staff Assistant to the Deputy Assistant Secretary for Research. Effective July 12, 1988.

Department of the Interior

One Special Assistant to the Deputy Assistant Secretary for Policy and Analysis. Effective July 1, 1988.

One Special Assistant to the Director for Bureau of Mines. Effective July 6, 1988.

One Special Assistant to the Deputy Assistant Secretary for Policy and Analysis. Effective July 4, 1988.

One Special Assistant to the Director of Security and Drug Enforcement. Effective July 28, 1988.

One Staff Assistant to the Assistant to the Secretary and Director for External Affairs. Effective July 28, 1988.

One Special Assistant to the Solicitor. Effective July 28, 1988.

Department of Justice

One Executive U.S. Marshal to the U.S. Marshal, Western District Texas. Effective July 1, 1988.

One Confidential Assistant to the Deputy Attorney General for Offices, Boards and Divisions. Effective July 1, 1988.

One Chief of Staff to the Director for Community Relations Service. Effective July 19, 1988.

Department of Labor

One Deputy Liaison Officer to the Assistant Secretary for Congressional Affairs. Effective July 8, 1988.

One Staff Assistant to the Assistant Secretary for Employment and Training. Effective July 15, 1988.

Department of State

One Foreign Affairs Officer to the Assistant Secretary for the Bureau of International Organization Affairs. Effective July 8, 1988.

Department of Transportation

One Director to the Federal Highway Administrator for the Office of Public Affairs. Effective July 27, 1988.

Department of Treasury

One Legislative Manager to the Assistant Secretary for Legislative Affairs. Effective July 27, 1988.

Arms Control and Disarmament Agency

One Congressional Affairs Specialist to the Director of Congressional Affairs. Effective July 28, 1988.

One Secretary (Typing) to the Assistant Director for Strategic Programs Bureau. Effective July 28, 1988.

Commodity Futures Trading Commission

One Special Assistant to the Commissioner. Effective July 7, 1988.

General Services Administration

One Senior Advisor to the Regional Administrator Region 9. Effective July 14, 1988.

International Trade Commission

One Staff Assistant to the Commissioner. Effective July 1, 1988.

One Staff Assistant (Legal) to the Commissioner. Effective July 5, 1988.

One Staff Assistant (Economics) to the Commissioner. Effective July 6, 1988.

National Archives and Records Administration

One Presidential Diarist to the Archivist of the United States. Effective July 7, 1988.

Office of Management and Budget

One Public Affairs Specialist to the Assistant Director of Public Affairs. Effective July 7, 1988.

Office of Personnel Management

One Special Assistant to the Director for the Office of Public Affairs. Effective July 1, 1988.

One Confidential Assistant to the Chief of Staff for the Office of the Director. Effective July 28, 1988.

Pension Benefit Guaranty Corporation

One Secretary (Typing) to the Principal Deputy Executive Director. Effective July 1, 1988.

United States Tax Court

One Trial Clerk to the Judge. Effective July 27, 1988.

One Trial Clerk to the Judge. Effective July 28, 1988.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-18916 Filed 8-22-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-18446]

Application and Opportunity for Hearing; Fleet/Norstar Financial Group, Inc.

August 18, 1988.

Notice is hereby given that Fleet/Norstar Financial Group, Inc. (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A. ("Bank") under an indenture dated as of February 15, 1986 ("February Indenture") between the Company, Bank and Bankers Trust Company which was heretofore qualified under the Act and the trusteeship of the Bank as successor trustee under indentures dated as of October 1, 1981 ("October Indenture"), September 1, 1983 ("September Indenture"), April 1, 1984 ("April Indenture"), August 1, 1984 ("August Indenture") and August 1, 1984 ("August 1984 Indenture"), each supplemented as of January 1, 1988, between Norstar Bancorp Inc. ("Norstar") and Morgan Guaranty Trust Company of New York ("Morgan"), as Trustee, which were heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the October Indenture, Norstar has issued $36,250,000 aggregate principal amount of its 10% Non-Assignable Debentures (The Oneida National Bank and Trust Company of Central New York Series) ("Oneida Series"). The Oneida Series was registered under the Securities Act of 1933 ("1933 Act") and the October Indenture was qualified under the Act.

(2) Pursuant to the September Indenture, Norstar has issued $42,335,716 aggregate principal amount of its 10% Non-Assignable Debentures (Security New York State Corporation Series) ("Security Series"). The Security Series was registered under the 1933 Act and the September Indenture was qualified under the Act.

(3) Pursuant to the April Indenture, Norstar has issued $60,000,000 aggregate principal amount of its 13⅜% Debentures due May 1, 2014 and $65,000,000 aggregate principal amount of its 9⅜% 7-Year Notes ("Debt Securities"). The Debt Securities were registered under the 1933 Act and the April Indenture was qualified under the Act.

(4) Pursuant to the August Indenture, Norstar has issued $9,226,875 aggregate principal amount of its 12% Non-Assignable Debentures (Bank of Long Island, N. A. Series) ("Long Island Series"). The Long Island Series was registered under the 1933 Act and the August Indenture was qualified under the Act.

(5) Pursuant to the August 1984 Indenture, Norstar has issued $13,750,000 aggregate principal amount of its 12% Non-Assignable Debentures (Banc of Maine Corporation Series) ("Banc Maine Series"). The Banc Maine Series was registered under the 1933 Act

and the August 1984 Indenture was qualified under the Act.

(Each of the Indentures under which Norstar is an obligor will be referred to herein collectively as the "Norstar Indentures".)

(6) Pursuant to the February Indenture, the Company has issued $75,000,000 aggregate principal amount of its 8.25% Notes due March 1, 1991; $50,000,000 aggregate principal amount of its 8.00% Notes due January 20, 1997; $125,000,000 aggregate principal amount of its 8.625% Notes due July 15, 1992; and $50,000,000 aggregate principal amount of its 8.9% Notes due September 1, 1992 ("Notes"), for all of which series the Bank was designated as trustee. The Notes were registered under the 1933 Act and the February Indenture was qualified under the Act.

(7) The Company, Norstar and Morgan entered into a Supplemental Indenture dated as of January 1, 1988 for each of the five Norstar Indentures to evidence the succession of the Company to Norstar and the assumption by the Company of the covenants of Norstar in the Norstar Indentures.

(8) On March 30, 1988, Morgan gave notice of the Company of its resignation as trustee under the Norstar Indentures, such resignation to be effective upon appointment by the Company of a successor trustee and the acceptance by the successor trustee of such appointment. The Company desires to appoint the Bank as successor trustee.

(9) The Company is not in default under the February Indenture, the Norstar Indentures or any other indenture.

(10) The obligations of the Company under the February Indenture and the Norstar Indentures are unsubordinated, wholly unsecured, and rank *pari passu inte se*. The provisions of the February Indenture and the Norstar Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank form acting as Trustee under any of such Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specifiy procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than September 6, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of fact or law raised by the application that he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-19123 Filed 8-22-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Resumption of Consideration of Disaster Declaration Requests

On Monday, June 10, 1988, the Small Business Administration published a Notice in the **Federal Register** (53 FR 21959) stating that, due to a severe shortage of operating funds, beginning June 3, 1988, the Agency was forced to cease to consider any requests for disaster declarations in order to avoid the unlawful expenditure of funds which have not been appropriated. The Notice provided that this action would remain in effect until either a supplemental appropriation for the current fiscal year or an appropriation for the fiscal year beginning October 1, 1988 is approved.

On August 14, 1988 the President signed into law a supplemental appropriation which provides additional operating funds for the Agency's disaster program (Pub. L. 100-393, 102 Stat. 969).

Accordingly, SBA will resume consideration of requests for disaster declarations, including those not considered since June 3, 1988. Any requests for disaster declarations received will be processed and if found to meet regulatory requirements (13 CFR Part 122 for physical disaster loans and *id.* § 123.41(c) for economic injury disaster loans), appropriate notices will be published in the **Federal Register** and announced through local media.

The June 10, 1988 Notice also cautioned that the shortage of operating funds could impair ongoing disaster operations and processing. With the receipt of additional operating funds, this caution is no longer applicable.

Date: August 15, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-19035 Filed 8-22-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 6626]

California; Declaration of Disaster Loan Area

The City of Redondo Beach and Orange County in the State of California constitute an Economic Injury Disaster Loan Area as a result of damage from a severe storm, with heavy rain, strong winds and high tides, which occurred on January 17, 1988. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 15, 1989, at the address listed below: Disaster Area 4 Office, Small Business Administration, 1825 Bell Street, Suite 206, P.O. Box 13795, Sacramento, California 95825, or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: August 15, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-19030 Filed 8-22-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 6628]

California; Declaration of Disaster Loan Area

The City of Redondo Beach, California, constitute an Economic Injury Disaster Loan Area as a result of damage from a fire which occurred on May 27, 1988. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 15, 1989, at the address listed below: Disaster Area 4 Office, Small Business Administration, 1825 Bell Street, Suite 206, P.O. Box 13795, Sacramento, California 95825, or other locally announced locations. The

interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: August 15, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-19031 Filed 8-22-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2316]

California; Declaration of Disaster Loan Area

The City of Downey, California, constitutes a disaster areas as a result of damages from a fire which occurred on March 31, 1988 at 7157 and 7207 Stewart-and-Gray Road. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on October 14, 1988, and for economic injury as a direct result of this fire until the close of business on May 15, 1989, at the address listed below: Disaster Area 4 Office, Small Business Administration, 1825 Bell Street, Suite 208, P.O. Box 13795, Sacramento, CA 95853, or other locally announced locations.

The interest rates are:

Homeowners With Credit Available Elsewhere—*8.000%*
Homeowners Without Credit Available Elsewhere—*4.000%*
Businesses With Credit Available Elsewhere—*8.000%*
Businesses Without Credit Available Elsewhere—*4.000%*
Businesses (EIDL) Without Credit Available Elsewhere—*4.000%*
Other (Non-Profit Organizations Including Charitable and Religious Organizations)—*9.000%*.

The number assigned to this disaster is 231605 for physical damage and for economic injury the number is 664000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: August 15, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-19032 Filed 8-2-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 6627]

Illinois; Declaration of Disaster Loan Area

DuPage County, Illinois, constitutes an Economic Injury Disaster Loan Area as a result of damage from a fire which occurred at the Illinois Bell Telephone switching facility at Hinsdale on May 8, 1988. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 15, 1989 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308,

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Date: August 15, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-19033 Filed 8-22-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 6644]

New York; Declaration of Disaster Loan Area

The City of Mt. Vernon, New York, constitutes an Economic Injury Disaster Loan Area as a result of damages from a fire which occurred on June 8, 1988. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 15, 1989 at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fairlawn, NJ 07410,

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Progam No. 59002.)

Date: August 15, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-19034 Filed 8-22-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5355]

Wilshire Capital, Inc.; Notice of License Surrender

Notice is hereby given that Wilshire Capital, Inc., 3932 Wilshire Blvd., Los Angeles, California 90010, has surrendered its license to operate as a small business investment company under Section 301(d) of the Small Business Investment Act of 1958, as amended (the Act). Wilshire Capital, Inc. was licensed by the Small Business Administration on February 15, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on July 5, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: Augsut 12, 1988.

[FR Doc. 88-19036 Filed 8-22-88; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting Public Meeting; Massachusetts

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Massachusetts, will hold a public meeting at 1:00 p.m., on Tuesday, September 19, 1988, at the Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, in the Conference Room 265, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John J. McNally, District Director, U.S. Small Business Administration, 10 Causeway Street, Room 265, Boston, Massachusetts, (617) 835-5561.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 15, 1988.

[FR Doc. 88-19039 Filed 8-22-88; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-D; Amdt. 1]

Supervisory Loan Officer; Delegation of Authority; Correction

Delegation of Authority No. 12-D (48 FR 9981) is hereby amended to correct the title of delegee in paragraph I.D.

Delegation of Authority No. 12–D is amended to read as follows:

* * * * *

I.

D. Supervisory Loan Officer

* * * * *

Effective Date: August 23, 1988.

Dated: August 16, 1988.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88–19038 Filed 8–22–88; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 02/02–5512]

Trusty Capital Inc.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Trusty Capital Inc., for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Title of relationship	Percentage of shares owned
Yungduk Hahn, 995 Hart Street, Brooklyn, New York 11237.	President/ director.	20
Bokhee Hahn, 995 Hart Street, Brooklyn, New York 11237.	Secretary	0
June W. Lee, 13 Oak Neck Lane, West Islip, New York 11795.	Director	20
Charles R. Chung, 1017 Overhill Drive, Brooklyn, New York 11237.	...do	20
Harry H. Pak, 2 Bay Club Drive, Bayside, New York.	...do	20
Yuh C. Yim, 98 Revere Road, Manhasset, New York 11030.	...do	20

The Applicant will conduct its operations in the State of New York. As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the New York area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 25, 1988.

[FR Doc. 88–19037 Filed 8–22–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–88–32]

Petition for Exemption; Receipt and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 12, 1988.

ADDRESS: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 16, 1988.

Deborah E. Swank,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24056	Aviation Methods, Inc.	14 CFR 61.58(c)	To allow petitioner's pilots to complete 100 percent of their required pilot-in-command 24-month biennial proficiency check requirements in an FAA-approved simulator for the F-27/227 aircraft.
25579	Erwin Siebzehnrubl	14 CFR 65.91	To allow petitioner to obtain inspection authorization without fulfilling the 3-year requirement to hold an airframe and powerplant rating.
24237	USAF	91.119(a)(2) and 91.121(b)(1)	Petitioner requests expansion of an existing exemption (No. 4371) to § 91.119(a)(2), minimum IFR altitude, and § 91.121(b)(1), selection of IFR altitude direction of flight. The current exemption limits operations under the exemption to 25-mile segments. The request is to eliminate this limit, thereby enhancing the ability for the petitioner (MAC) to meet its training requirements.
24187	Florida Department of Law Enforcement (FDLE).	91.79(c), 91.85(b), 91,109(a)	To allow petitioner to continue its statutory mission in conducting law enforcement air support for drug traffic interdiction.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
25160	Volpar Aircraft Corporation	14 CFR 21.19(b)(1)	To allow petitioner to modify its Boeing 727-200 aircraft from its present three-engine configuration to a two-engine configuration utilizing the General Electric CM56 engine. *Grant, August 4, 1988, Exemption No. 4970.*
23495	Department of the Army	91.73(a) and (b)	On March 26, 1984, the Federal Aviation Administration (FAA) granted an exemption from § 91.73(a) and (b) of the Federal Aviation Regulations (FAR) to the Department of the Army to conduct certain night flight military training operations without lighted aircraft position lights. By letter dated September 23, 1985, U.S. Army Air Traffic Control Activity, Aeronautical Services Office, Cameron Station, Alexandria, Virginia, petitioned the FAA for an amendment exemption in order to conduct operations on a continuing basis. This petition was granted on June 26, 1986, by issuance of Exemption No. 3946A. During a subsequent review of Exemption NO. 3946A, the FAA identified as unnecessary a conditional provision which required 24-hour advance issuance of a notice to airmen (NOTAM). *Amended Grant: August 11, 1988.*
25431	Helicopter Association International	14 CFR 21.181(a)(1) and 135.143(b)	To amend Exemption No. 4952 to delete the requirement that single-engine aircraft operated under that exemption be maintained under a continuous maintenance program in accordance with § 135.411(a)(2). *Grant, August 5, 1988, Exemption No. 4952A.*
25560	Lake Mead Air, Inc.	14 CFR 21.181 and 135.143	To allow petitioner and all other single-engine Part 135 operators to operate in accordance with an approved minimum equipment list based upon a master minimum equipment list for single-engine aircraft. *Grant, August 5, 1988, Exemption No. 4968.*

[FR Doc. 88-19029 Filed 8-22-88; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-88-33]

Petition for Exemption; Receipt and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 12, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 18, 1988.

Deborah E. Swank,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
15590	Embry-Riddle Aeronautical University	14 CFR 141.65	To extend Exemption No. 3859C, which allows petitioner to recommend graduates of its certified flight instructor courses for certification without taking the FAA practical test.
23492	United States Hang Gliding Association, Inc.	14 CFR 103.1 (a) and (b)	To extend Exemption No. 4721 that allows petitioner to operate two-place unpowered ultralight vehicles for the purpose of sport, recreation, or other purposes. Exemption No. 4721 will expire on October 31, 1988.
24515	United Airlines	14 CFR 121.434(c)(1)(iii)	To allow petitioner to substitute a United FAA-designated pilot examiner to complete the observation of an initial operating experience (IOE) flight leg, including takeoff and landing. This substitution would occur *only* when the FAA is unable to schedule one of its own inspectors during IOE.
25610	Dowty Defence and Air Systems Ltd., Fuel Systems Division.	14 CFR 145.71 and 145.73	To allow petitioner to perform maintenance and warranty work on engine parts of U.S.-registered aircraft which it has manufactured, without limitations as to where these aircraft operate.
25623	United States Skyships	14 CFR 61.135	To allow petitioner's pilots to obtain a commercial pilot certificate with airship rating without meeting the requirements of: (1) 10 hours of night flight in airships; and (2) 10 hours of instrument time in airships.
25628	Moody Aviation Flight School	14 CFR Part 141, Appendix A, paragraph 3(c)(9).	To allow petitioner to omit the night flying requirement from the curriculum of its Pilot Certification Course.
25634	Volvo Flygmotor AB	14 CFR 145.71 and 145.73	To allow petitioner to perform maintenance work on JT15D engines operated on U.S.-registered aircraft.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
24805	World Jet Corporation	14 CFR 91.191(a)(4) and 135.165(b)	To extend and amend Exemption No. 4703, which allows operation of certain aircraft in extended overwater operations using one long-range navigation system and one high-frequency communications system. The amendment to the exemption would add an additional type of aircraft to operate under the exemption. *GRANT, July 13, 1988, Exemption No. 4961.*
25589	Bolivar Aviation	14 CFR 141.65	To allow petitioner to add examining authority to its Approved School Certificate for the issuance of flight instructor certificates and ratings without taking the FAA's flight test. *GRANT, August 2, 1988, Exemption No. 4967.*

[FR Doc. 88-19020 Filed 8-22-88; 8:45 am]
BILLING CODE 4910-13-M

Maritime Administration

Approval of Applicant as Trustee; MTrust Corp.

Notice is hereby given that MTrust Corp., National Association, with offices at 1717 Main Street, 12th Floor, Dallas, Texas, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

Dated: August 18, 1988.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 88-19077 Filed 8-22-88; 8:45 am]
BILLING CODE 4910-81-M

Request for Removal, Without Disapproval, From Roster of Approved Trustees; Rhode Island Hospital Trust National Association

Notice is hereby given, pursuant to 46 CFR 221.28, that Rhode Island Hospital Trust National Association, with offices at One Hospital Trust Plaza, Providence, Rhode Island, has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, Rhode Island Hospital Trust National Association stated it no longer engages in activities which necessitate the Bank's certification as an approved trustee.

Dated: August 18, 1988.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 88-19078 Filed 8-22-88; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 17, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0008
Form Number: None
Type of Review: Extension
Title: Pools and Associations—Annual Letter
Description: The information is collected for the determination of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 59
Estimated Burden Hours Per Response: 1 hour and 30 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 89 hours
Clearance Officer: Rita Franklin, (301) 436–5300, Programs Section, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 88–19079 Filed 8–22–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 17, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0717
Form Number: IRS Form W–4S
Type of Review: Extension
Title: Request for Federal Income Tax Withholding from Sick Pay
Description: Section 3402(o) of the Internal Revenue Code extends income tax withholding to sick pay payments made by third parties upon request of the payee. The information is used to determine the amount to be withheld from the third-party sick pay payments.
Respondents: Individual or households
Estimated Number of Respondents: 500,000
Estimated Burden Hours Per Response: 11 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 88,400 hours
OMB Number: 1545–1010
Form Number: IRS Form 1120–RIC
Type of Review: Revision
Title: U.S. Income Tax Return for Regulated Investment Companies
Description: Form 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,050
Estimated Burden Hours Per Response: 5 hours and 51 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 11,991 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 88–19080 Filed 8–22–88; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Masterpieces from the Von der Heydt-Museum

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Masterpieces from the Von der Heydt-Museum" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Philbrook Museum of Art, Tulsa, Oklahoma, beginning on or about January 3, 1989, to on or about April 2, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,
Acting General Counsel.

Date: August 18, 1988.

[FR Doc. 88–19125 Filed 8–22–88; 8:45 am]
BILLING CODE 8230–01–M

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The House of Timur: Princely Arts in Fifteenth Century Iran and Central Asia" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution in Washington, DC, beginning on or about April 14, 1989, to on or about July 6, 1989, and at the Los Angeles County Museum of Art, Los Angeles, California, beginning on or about August 13, 1989, to on or about November 5, 1989, is in the national interest.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7988, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

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The United States Information Agency understands that subject exhibit objects will enter the United States in compliance with applicable U.S. laws and the Iranian Transactions Regulations.

Public notice of this determination is ordered to be published in the Federal Register.

R. Wallace Stuart,

Acting General Counsel.

Date: August 11, 1988.

[FR Doc. 88-19050 Filed 8-22-88; 8:45 am]

BILLING CODE 8230-01-M

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 163
Tuesday, August 23, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 29, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR. Doc. 19207 Filed 8-19-88; 3:45 pm]

BILLING CODE 6210-01-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 19, 1988.

PLACE: On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88-19208 Filed 8-19-88; 3:45 pm]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 23, 1988.

PLACE: On board MV MISSISSIPPI at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88-19209 Filed 8-19-88; 3:45 pm]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 21, 1988.

PLACE: On board MV MISSISSIPPI at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88-19210 Filed 8-19-88;3:45pm]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 20, 1988.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88-19211 Filed 8-19-88;3:45pm]

BILLING CODE 3710-GX-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 22, 29, September 5, and 12, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 22

There are no meetings scheduled for the Week of August 22.

Week of August 29—Tentative

There are no meetings scheduled for the Week of August 29.

Week of September 5—Tentative

Wednesday, September 7

10:00 a.m.
Briefing on Proposed Rule on Degreed Operators (Public Meeting).

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Thursday, September 8

2:00 p.m.

Briefing on Final Rule on Emergency Planning and Preparedness Requirements for Nuclear Power Plant Fuel Loading and Initial Low Power Operations (Public Meeting).

Week of September 12—Tentative

Monday, September 12

2:00 p.m.

Briefing on Service Accident Policy for Future Light Water Reactors (Public Meeting).

Friday, September 16

10:00 a.m.

Briefing on Policy Paper on Radiation Risks Which Are Below Regulatory Concern (Public Meeting).

11:30 a.m.

Affirmation/Decision and Vote (Public Meeting) (if needed).

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means no item has yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

August 18, 1988.

[FR Doc. 88–19171 Filed 8–19–88; 2:25 pm]

BILLING CODE 7590–01–M

VOL 53 ISS 163 AUG 23 1988 UMI

federal register

Tuesday
August 23, 1988

Part II

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

BEST COPY AVAILABLE

VOL 53 ISS 163 23 1988 AG UMI

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1988, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c) further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedules A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Operations Division, Room 6A12, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, or by calling (202) 632-0728. The following exceptions were current on June 30, 1988:

Schedule A

Section 213.3102 Entire executive civil service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) [Reserved]

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS-3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., position excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by (1) appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent grade level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion, or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (1) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Agency, and in the International Boundary and Water Commission; or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional, or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS-7, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be (1) bona fide high school science or mathematics teachers; or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No one shall be employed under this

provision in routine clerical positions, routine trades and labor positions—unless such employment clearly relates to a scientific, professional, or technical curriculum—or in excess of 1040 working hours a year. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)–(s) [Reserved]

(t) Positions when filled by mentally retarded persons in accordance with written agreements executed between an agency and the OPM. Provisions to be included in such agreements are specified in the Federal Personnel Manual. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v) Between May 13 and September 30 only, temporary Summer Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by OPM; or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1983, as amended.

(w) Part-time or intermittent positions, the duties of which involve routine work up to and including the GS–4 level of difficulty or equivalent under the Federal Wage System, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met: (1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full time during any period in which their school is officially closed and during any school vacation period.

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. *However,* such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed one additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) Positions at grade GS–2 and below for summer employment as defined in § 213.3101(d), of assistants to scientific, professional, and technical employees, when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc) Positions at GS–15 and below when filled by persons identified as Interchange Executives by the President's Commission on Personnel Interchange. Appointments made under this authority may not extend beyond 2 years.

(dd)–(ee) [Reserved]

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Pub. L. 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) [Reserved]

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Interm Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements

published in the Federal Personnel Manual.

(jj) Legal interm positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(1) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–13 through –15 on the staff of the Council.

(d)–(f) (Reserved)

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2)–(5) [Reserved]

(b) *American Embassay, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) [Reserved]

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrumentation, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any one calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) [Reserved]

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the office.

(h) *Bureau of Administration.* (1) One Presidential Trip Specialist. No new appointments may be made under this authority after June 11, 1981.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) [Reserved]

(3) Positions of part-time, intermittent, or temporary Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS–9 and for not more than 130 working days in a service year.

(4) [Reserved]

(5) Positions at GS–9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer, Customs Aid (sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his/her service year. An individual appointed under this exception may not be employed in the Bureau of Customs under a combination of this and any other exception for more than 700 hours in his/her service year.

(6) Twenty-five positions of Criminal Investigator for special assignments.

(7)–(8) [Reserved]

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years.

(d) [Reserved]

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(2) Two positions of Senior Visiting Pension Actuary, GS–1510–14/15. Appointments to these positions must be for periods not to exceed 24 months.

(f) [Reserved]

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) [Reserved]

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceeed 1 year.

Section 213.3106 Department of Defense.

(a) *Office of the Secretary.* (1) Not to exceed 30 positions at grades GS–7/15 in the defense Mobilization Systems Planning Activity, Office of the Deputy Assistant Secretary of Defense (Mobilization Planning and Requirements.) No new appointments may be made under this authority after March 31, 1989.

(2)–(5) [Reserved]

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force.)* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the Staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists approved under pertinent directives administered

by the Director of Defense Research and Engineering of the Department of Defense when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or the separation of a dependent's sponsor: *Provided,* that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to one additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Fifteen secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1040 working hours a year. Children of DOD employees may be appointed to these positions notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, or estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of Dean, Associate Dean, Assistant Dean, faculty members, postdoctoral fellows, research associates, senior research associates, and visiting scientists.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, Va.*

(1) The Provost and professors in grades GS–13 through 15.

Section 213.3107 Department of the Army

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) [Reserved]

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG–6 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, chapel organist and choir-master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.* (1) Positions of Translator (Typing), GS–1040–5/9, and Supervisory Translator, GS–1040–11. No new appointments may be made under this authority after December 31, 1985.

(f) *Central Identification Laboratory.* (1) One position of Scientific Director, GM–190–15, and four positions of Forensic Scientist, GM–190–14. Initial appointment to these positions is NTE 3–5 years, with provision for indefinite numbers of renewals in 1-, 2-, or 3-year increments.

(g) *Defense Language Institute.* (1) All positions on the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language Specialist series, and the GS–303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, Pa.* (1) Five positions of Educational Specalist for employment of not to exceed 1 year: Provided, that such employment may, with the prior

approval of OPM, be extended for not to exceed one additional year.

(2) Nine senior policy analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(3) Five research oriented faculty positions, GS–14/15, with the U.S. Army War College, at Carlisle Barracks, Pennsylvania, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) [Reserved]

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head and Instructor.

Section 213.3108 Department of the Navy

(a) *General.* (1) [Reserved]

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed one year.

(3) [Reserved]

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from non-federal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) [Reserved]

(6) Positions of Student Operating Room Technician for temporary, part-time or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating non-Federal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided*, that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a non-Federal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) [Reserved]

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in non-Federal institutions. Employment under this authority may be filled on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of medical intern at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating non-Federal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating non-Federal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval dental centers, clinics, and departments, when filled by students who are enrolled in an approved dental assistant program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) [Reserved]

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.*

(1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) [Reserved]

(g) *Office of Naval Research.* (1) Not to exceed five positions of Liaison Scientists, GS–13/15, in the Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period not to exceed 2 years. With the prior approval of OPM, total employment under this authority may be for as long as 3 years.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Sixty-five positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education,

Instructors in Music (choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists (Athletic Trainers).

(e) Not to exceed five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia, which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authority is not to exceed May 30, 1988.

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 250 positions of Criminal Investigators/ Intelligence Research Specialists, GS–5 through GS–15.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Materiel Management, Office of Special Activities, Wright Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) [Reserved]

(i) *Air Force Institute of Technology, Wright-Paterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) [Reserved]

(3) U.S. Marshal in the Virgin Islands.

(b) *Immigration and Naturalization Service.* (1) Not to exceed 3,500 positions at grades GS–15 and below engaged in planning for and implementing the processing of claims for resident status which may be submitted by aliens already in the United States as authorized by immigration control and reform legislation. New appointments under this authority may not be made after December 31, 1990.

(c) *Drug Enforcement Administration.* (1) (Reserved)

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

Section 213.3112 Department of the Interior.

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or season positions at GS–7 or below in Alaska, as follows: Positions in non-professional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved)

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) [Reserved]

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) [Reserved]

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) [Reserved]

(4) Special Assistant to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS–2 through GS–5 to perform practical and technical work supporting the management of Park Service areas and resources in the functional areas of interpretation, resources management, visitor protection, and visitor services; and positions at salaries equivalent to grades GS–6 and GS–7 in which the duties are supervisory or consist of highy specialized technical work in support of National Park Service operations in the functional areas

delineated above. The total number of Park Ranger and Park Technician positions at salaries equivalent to GS–6 and GS–7 excepted under this paragraph shall not exceed 200. Employment under this paragraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by OPM and the Department. These standards include as a minimum the following number of previous seasons' experience at a salary equivalent to the next lower grade or equivalent experience in a Federal, State, or local park:

(i) For IGS–7: Two seasons at IGS–6 level in the National Park Service.

(ii) For IGS–6: Two seasons at IGS–5 level in the National Park Service.

(iii) For IGS–5: One season at IGS–4 level or its equivalent in experience.

(iv) For IGS–4: One season at IGS–3 level or its equivalent in experience.

(v) For IGS–3: One season at IGS–2 level or its equivalent in experience.

Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) [Reserved]

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Pub. L. 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values or conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural Commodity grader (grain) and (meat), (poultry), and (dairy) agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) [Reserved]

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; forest workers engaged primarily for fire prevention or suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (l) and (m) of § 213.3102.

(6) [Reserved]

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b) [Reserved]

(c) *Forest Service.* (1) [Reserved]

(2) Positions in Alaska of Laborers, Boat Operators, Mechanics, Equipment Operators, and Carpenters whose duties require the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stabilization and Conservation Service.*

(1) Not to exceed 24 positions of Agricultural Program Specialist, GS–1145–7/12, engaged in conversion of ASCS' directives and information system to a completely automated format. Appointments to these positions may be made initially at the GS–7/11 levels and may not exceed September 30, 1989.

(2) Members of State Committees: *Provided,* that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Farmers Home Administration.* (1) (Reserved)

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM, be further extended for additional periods not to exceed 1 year each.

(4)–(5) [Reserved]

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural

Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1280 hours or 180 days in a service year. (Until December 31, 1987, Meat Acceptance Specialists engaged in work required by the Food Security Act of 1985 may be employed without regard to the hour limitation.)

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of Milk Market Administrators.

(g)-(i) [Reserved]

(j) *Food and Nutrition Service.* (1) (Reserved)

(2) Three hundred fifty positions of food assistance program specialist, GS–5/7, under the Child Nutrition Summer Feeding Program, for temporary employment not to begin before March 1 and not to exceed September 30 of each year, on a full-time, part-time, or intermittent basis.

(k) (Reserved)

(l) *Food Safety and Inspection Service.* (1)-(2) [Reserved]

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at indefinite employment for the duration of each decennial census for key employees located at the Master District offices (MDO) and Processing Offices (PO): *Provided,* That temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)-(h) [Reserved]

(i) *Office of the Under Secretary for International Trade.* (10 Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions for Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) [Reserved]

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) (Reserved)

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) (Reserved)

(3) All civilian positions on vessels operated by the National Ocean Survey.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Survey. Appointment to such positions shall not exceed 8 months in any one calendar year.

(k) [Reserved]

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) [Reserved]

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of supervisory manpower development specialist and manpower development specialist, GS–7/15, in the

Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) [Reserved]

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) All positions in the Public Health Service Hospital, Carville, La.

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the cooperating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year.

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(c) [Reserved]

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(e) [Reserved]

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants, The President's Council on Physical Fitness.

(g)–(i) [Reserved]

(j) *Health Care Financing Administration.* (1) (Reserved)

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) [Reserved]

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Veterans Administration

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) [Reserved]

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Veterans Administration Vietnam Era Veterans Readjustment Counseling Program. No one may serve under this authority after September 30, 1989.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and

GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3130 Securities and Exchange Commission

(a)–(b) [Reserved]

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows:

(1) Five positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year terms; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointment.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2).

(e) Not to exceed 10 positions of accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years.

Section 213.3131 Department of Energy

(a) [Reserved]

(b) *Bonneville Power Administration.*

(1) Five Area Managers.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 6 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation.

(a) All Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks, of liquidating loans to banks, or of paying the depositors of closed insured banks. New appointments may be made under this authority only during the 5-year period following a bank closing and/or establishment of a consolidated liquidation site.

Section 213.3136 U.S. Soldiers' and Airmen's Home.

(a) All positions.

Section 213.3137 General Services Administration.

(a) [Reserved]

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

Section 213.3141 National Labor Relations Board.

(a) Election Examiners for temporary, part-time or intermittent employment in connection with elections under the Labor-Management Relations Act.

Section 213.3142 Export-Import Bank of the United States.

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System.

(a) State Directors.

(b)–(c) [Reserved]

(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.

(c)–(e) [Reserved]

(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office

(a) Not to exceed three positions of Research Associate at grades GS–15 and below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed one additional year.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3154 Federal Home Loan Bank Board

(a) One Secretary, Federal Home Loan Bank Board.

(b) [Reserved]

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(c) Positions in the Federal Savings and Loan Insurance Corporation concerned with the work of liquidating the assets of closed insured institutions or the liquidation of loans or the handling of contributions to insured institutions and the purchase of assets therefrom; and positions of the Federal Savings and Loan Insurance Corporation the work of which is concerned with paying the depositors of closed insured institutions. Appointments under this authority may not exceed 3 years.

Section 213.3156 Commission on Civil Rights

(a) Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Pub. L. 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3174 Smithsonian Institution

(a) Not to exceed 25 positions at grades GS–11 and below which support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connection with any one Festival.

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, and one West European Program Administrator.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.* (1) Until September 30, 1990, one position of Assistant Director, Artists-in-Education Programs, Office for Partnership, GS–301–14.

(2) Until September 30, 1990, one position of Assistant Director for State Programs.

(3) Until September 30, 1990, one position of Director of Literature Programs.

(4) Until September 30, 1990, one position of Assistant Director of Theatre Programs.

(5) Until September 30, 1990, one position of Director of Folk Arts Programs.

(6) Until September 30, 1990, one position of Director, Opera/Musical Theatre Programs.

(7) Until September 30, 1990, one position of Assistant Director of Opera/Musical Theatre Programs.

(8) Until September 30, 1990, one position of Assistant Director of Literature Programs.

(9) Until September 30, 1990, one position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.

(10) Until September 30, 1990, one position of Deputy Chairman for Public Partnership.

(11) Until September 30, 1990, four Project Evaluators.

(12) Until September 30, 1990, one position of Director of Museum Programs.

(13) Until September 30, 1990, one position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.

(14) Until September 30, 1990, one position of Assistant Director of Music Programs.

(15) Until September 30, 1990, one position of Director of Expansion Arts Programs.

(16) Until September 30, 1990, one position of Director of Media Arts Programs.

(17) Until September 30, 1990, one position of Director, Challenge and Advancement Grant Program.

(18) Until September 30, 1990, one position of Assistant Director, Challenge and Advancement Grant Programs.

(19) [Reserved]

(20) Until September 30, 1990, one position of Director of Inter Arts Program.

(21) Until September 30, 1990, one position of Assistant Director of Expansion of Arts Programs.

(22) Until September 30, 1990, one position of Assistant Director of Media Arts Programs.

(23) Until September 30, 1990, one position of Assistant Director of Design Arts Program.

(24) Until September 30, 1990, one position of Assistant Director of Dance Programs.

(25) Until September 30, 1990, one position of Assistant Director of Visual Arts Programs.

(26) Until September 30, 1990, one position of Assistant Director of Museum Programs.

(27)–(29) [Reserved].

(30) Until September 30, 1990, one position of Director of Education Programs.

(31) Until September 30, 1990, one position of Director of Music Programs.

(32) Until September 30, 1990, one position of Director of Theater Programs.

(33) Until September 30, 1990, one position of Director of Dance Programs.

(34) Until September 30, 1990, one position of Director of Visual Arts Programs.

(35) Until September 30, 1990, one position of Director of Design Arts Programs.

(36) [Reserved]

(37) Until September 30, 1990, one Director for State Programs.

(38) Until September 30, 1990, one Director for Artists-in-Education Programs.

Section 213.3184 Department of Housing and Urban Development.

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.

Section 213.3191 Office of Personnel Management.

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.

(b)—(c) [Reserved]

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation.

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS–11 and below for temporary, intermittent or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) [Reserved]

(c) *Federal Highway Administration.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS–5 for subprofessional engineering aide work on the highway surveys and construction projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) [Reserved]

(e) *Maritime Administration.* (1)—(2) [Reserved]

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)—(5) [Reserved]

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency.

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary organizations.

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s) does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire executive civil service.

The provisions established under paragraphs (a) through (i) are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with a least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for formally arranged schedules of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy the requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected

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occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S. Truman Foundation Scholarship Program under the provisions of Pub. L. 93–642 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the Harry S. Truman Scholarship Foundation and the employing agency and provide the experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Student positions established in support of the Cooperative Education (Vocational Education) Programs for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of Executive Order 12015.

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(h)—(i) [Reserved].

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding three years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans' Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pursuant to this authority. The appointment authority agreement will remain in effect with respect to particular GS–5 and GS–7 PAC positions only so long as there is no competitive examination available to fill those positions. Establishment of a register under an alternative competitive examination for any PAC position(s) at grades GS–5 and GS–7 will immediately terminate all agreements permitting new Schedule B appointments to such position(s) under this authority. Individuals appointed before termination of the agreements, however, may continue to serve under those appointments at grades GS–5 and GS–7 until they are appointed to a competitive position in accordance with applicable civil service laws, rules, and regulations. An incumbent of a Schedule B PAC position may be converted to a career or career-conditional appointment under the provisions of Executive Order 12596, subject to the conditions set out in § 315.710 of this chapter.

Section 213.3203 Executive Office of the President

(a) [Reserved]

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)—(c) [Reserved]

(d) Twelve positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 and GS–12 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 1 year.

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Pub. L. 99–190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contracts for the Corporation, or as an

employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employments under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever occurs first.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) [Reserved]

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) [Reserved]

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(c) *National Defense University.* (1) Twenty-one positions of professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency programs. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

Section 213.3209 Department of the Air Force.

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) [Reserved]

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(d) Seven positions of professor or associate professor at the Air University, Maxwell Air Force Base, Ala., for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3210 Department of Justice.

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 200 positions at grades GS–7 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) Until September 30, 1987, positions, other than those providing routine clerical and administrative support, on the staff of the offices of United States Trustees. Terms of service under this authority shall be established in accordance with provisions of the Bankruptcy Reform Act of 1978 and subsequent applicable legislation.

Section 213.3213 Department of Agriculture.

(a) *Office of International Cooperation and Development.*

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 2 years on a single project for any individual. No more than 20 new appointments may be made under this authority in any 12-month period.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to two additional years.

Section 213.3214 Department of Commerce.

(a) *Bureau of the Census.* (1) (Reserved)

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b) [Reserved]

(c) *Minority Business Development Agency.* (1) One position of minority business opportunity specialist at grades GS–9 through GS–15. This authority may not be used for new appointments after December 31, 1977.

(d) *Office of Telecommunications.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor.

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

Section 213.3216 Department of Health and Human Services

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Centers for Disease Control, Atlanta, Georgia.

(b)—(c) [Reserved]

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–7, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Veterans Administration

(a) Not to exceed 800 principal investigatory, scientific, professional and technical positions at grades GS–11 and above in the medical research program. Employment under this authority may not exceed 7 years for any individual.

Section 213.3228 U.S. Information Agency

(a) *Voice of America.* (1) Not to exceed 150 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, D.C. Appointments under this authority shall not exceed 3 years.

Section 213.3234 Federal Trade Commission

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years.

Section 213.3237 General Services Administration

(a) One position of Deputy Director of Network Services.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3254 Federal Home Loan Bank Board

(a) Positions of Accounting Policy Analyst, GS–13/14/15, in the Office of Examinations and Supervision filled in connection with a fellowship program. Appointments under this authority may not exceed 2 years. No more than three new appointments may be made under this authority during any consecutive 12-month period.

(b) Up to 569 positions at GS–15 and below in the Federal Home Loan Bank Board engaged in exploring methods to promote stability in the thrift industry, restore the industry to profitability, and protect individual savers. No additional appointments may be made under this authority after September 30, 1990.

Section 213.3257 National Credit Union Administration

(a) *Central Liquidity Facility.* (1) All managerial and supervisory positions at pay levels greater than the equivalent of GS–13.

Section 213.3259 ACTION

(a) *Office of Domestic and Anti-Poverty Operations.* (1) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15.

(b) *Office of Voluntary Liaison.* (1) Three positions of Program Specialist at grades GS–7 through GS–15.

Section 213.3264 U.S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3272 Administrative Office of the U.S. Courts

(a) Not to exceed 18 positions of Federal Probation System Administrator in the Division of Probation, when filled by Federal Probation Officers and/or Pretrial Services Officers on active service in the U.S. Courts.

(b) [Reserved]

(c) Six positions of Clerks Liaison Officer in the Division of Clerks of Court.

Section 213.3274 Smithsonian Institution

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) [Reserved]

(b) *National Endowment for the Humanities.* (1) Until September 30, 1990, Humanities Administrator, Reference Materials Programs, Division of Research Programs.

(2) Until September 30, 1990, Humanities Administrator (Assistant Director), Humanities Projects in Higher Education Program, Division of Education Programs.

(3) Until September 30, 1990, Deputy Director, Division of Education Programs.

(4) Until September 30, 1990, Director, Division of Research Grants.

(5) Until September 30, 1990, one position of Director, GS–1701–15, one position of Deputy Director, GS–1701–14, and six positions of Humanities Administrator, GS–1701–13, Division of State Programs.

(6) Until September 30, 1990, one Director and one Deputy Director, Division of Fellows and Seminars.

(7) Until September 30, 1990, one Humanities Administrator, Fellowships for College Teachers, Division of Fellowships.

(8) Until September 30, 1990, four positions of Humanities Administrator, Media Program, Division of General Programs.

(9) Until September 30, 1990, one position of Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(10) Until September 30, 1990, one position of Assistant Director for the Elementary and Secondary Education Program, Division of Education Programs.

(11) Until September 30, 1990, one position of Assistant Director for the Museums and Historical Organizations Program, Division of General Programs.

(12) Until September 30, 1990, three positions of Humanities Administrator, Museums and Historical Organizations Program, Division of General Programs.

(13) Until September 30, 1990, four positions of Humanities Administrator, Elementary and Secondary Education Program, Division of Education Programs.

(14) Until September 30, 1990, Director of General Programs.

(15) Until September 30, 1990, one Assistant to the Director, General Programs.

(16) Until September 30, 1990, one Humanities Administrator, Younger Scholars Programs, Division of General Programs.

(17) Until September 30, 1990, one Humanities Administrator, Public Humanities Projects, Division of General Programs.

(18) Until September 30, 1990, one position of Director, Division of Education Programs.

(19) Until September 30, 1990, one Humanities Administrator (Assistant Director), Texts Programs, Division of Research Programs.

(20) Until September 30, 1990, one Humanities Administrator, Centers for Advanced Study, Division of Research Programs.

(21) Until September 30, 1990, one Challenge Grants Officer.

(22) Until September 30, 1990, one Assistant Director, Media Program, Division of General Programs.

(23) Until September 30, 1990, one position of Humanities Administrator, Publications Program, Division of Research Grants.

(24) Until September 30, 1990, one Deputy Director, Division of Research Grants.

(25) Until September 30, 1990, one Humanities Administrator, Summer Seminars for College Teachers, Division of Fellowships and Seminars.

(26) Until September 30, 1990, two positions of Humanities Administrator, Humanities Libraries Projects, Division of General Programs.

(27) Until September 30, 1990, one position of Humanities Projects Assessment Officer, GM–15, Office of the Assistant Chairman for Programs.

(28) Until September 30, 1990, one Humanities Administrator, Public Humanities Projects, Division of General Programs, GS–14.

(29) Until September 30, 1990, two positions of Humanities Administrator, GS–1701–14, in the Research Resources Programs and in the Basic Research Programs, Division of Research Programs.

(30) Until September 30, 1990, one Humanities Administrator, Office of Challenge Grants.

(31)–(33) (Reserved).

(34) Until September 30, 1990, one Humanities Administrator, GS–1701–12, Humanities Projects in Higher Education Program, Division of Education Programs.

(35) Until September 30, 1990, one Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(36) Until September 30, 1990, three Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(37) Until September 30, 1990, two Humanities Administrators, Summer Seminars for Secondary School Teachers, Division of Fellowships and Seminars.

(38) Until September 30, 1990, one Humanities Administrator, Summer Stipends, Division of Fellowships and Seminars.

(39) Until September 30, 1990, one Humanities Administrator, Travel to Collections, Division of Fellowships and Seminars.

(40) Until September 30, 1990, one Humanities Administrator, Translation Program, Reference Works Program, Division of Research Programs.

(41) Until September 30, 1990, one Humanities Administrator, Editions Program, Reference Works Program, Division of Research Programs.

(42) [Reserved].

(43) Until September 30, 1990, one Humanities Administrator, Foundations of American Society Program, Division of Fellowships and Seminars.

(44) Until September 30, 1990, one Humanities Administrator, Humanities Projects in Museums and Historical Organizations, Division of General Programs.

(45) Until September 30, 1990, two Humanities Administrators, Office of Preservation.

(46) Until September 30, 1990, one Director, Office of Preservation.

(47) Until September 30, 1990, one Humanities Administrator (Program Officer), Regrant Programs, Division of Research Programs.

(48) Until September 30, 1990, one Director, Office of Planning and Budget.

(49) Until September 30, 1990, one Humanities Administrator, Tools Program, Reference Materials Program, Division of Research Programs.

(50) Until September 30, 1990, one Humanities Administrator, Access Program, Reference Materials Program, Division of Research Programs.

(51) Until September 30, 1990, one Humanities Administrator, Project Research, Interpretive Research Program, Division of Research Programs.

(52) Until September 30, 1990, one Humanities Administrator, Humanities, Science, and Technology Program, Interpretive Research Program, Division of Research Programs.

Section 213.3285 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3294 Department of Transportation

(a) *Federal Railroad Administration.*
(1) Regional Director of Railroad Safety, Fort Worth, Texas.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisors
- CEA 4—Secretary to the Council Member.
- CEA 5—Secretary to the Council Member.

Council on Environmental Quality
- CEQ 2—Executive Assistant to a Council Member.
- CEQ 3—Confidential Assistant to the Chairman.
- CEQ 4—Confidential Assistant to the Chairman.

Office of Management and Budget
- OMB 8—Special Assistant to the Deputy Director.
- OMB 10—Secretary to the Associate Director.
- OMB 11—Secretary to the Associate Director, National Security and International Affairs.
- OMB 12—Administrative Assistant to the Associate Director, Human Resources, Veterans, and Labor.
- OMB 16—Secretary to the Associate Director for Management.
- OMB 21—Confidential Assistant to the Director.
- OMB 25—Legislative Assistant to the Assistant Director for Legislative Affairs.
- OMB 30—Special Assistant to the Assistant Director for Legislative Affairs.
- OMB 38—Confidential Secretary to the General Counsel.
- OMB 46—Legislative Assistant to the Assistant Director for Legislative Affairs.
- OMB 50—Legislative Assistant to the Assistant Director for Legislative Affairs.
- OMB 52—Secretary to the Director.
- OMB 56—Secretary to the Director.
- OMB 60—Confidential Secretary to the Associate Director for Legislative Affairs.
- OMB 62—Confidential Assistant to the Executive Assistant to the Director.
- OMB 64—Writer to the Director.
- OMB 65—Legislative Assistant to the Associate Director for Legislative Affairs.
- OMB 66—Secretary to the Associate Director for Economic Policy.
- OMB 67—Secretary to the Associate Director for Privatization.
- OMB 68—Secretary to the Director.

Office of Science and Technology Policy
- OSTP 1—Confidential Secretary to the Director.
- OSTP 8—Confidential Secretary to the Director.

President's Commission on Executive Exchange
- PCEE 1—Confidential Assistant to the Executive Director.
- PCEE 2—Special Assistant to the Executive Director.
- PCEE 4—Secretary (Typing) to the Executive Director.
- PCEE 5—Public Affairs Specialist to the Executive Director.
- PCEE 6—Staff Assistant (Typing) to the Executive Director.
- PCEE 7—Staff Assistant (Typing) to the Executive Director.
- PCEE 8—Secretary (Typing) to the Executive Director.

Office of the United States Trade Representative
- USTR 10—Confidential Assistant to the United States Trade Representative.
- USTR 13—Confidential Assistant to the General Counsel.
- USTR 14—Confidential Secretary to the United States Trade Representative.
- USTR 20—Deputy Assistant United States Trade Representative.
- USTR 21—Confidential Assistant to the Deputy United States Trade Representative.
- USTR 24—Public Affairs Specialist to the Assistant United States Trade Representative for Public, Private, and Intergovernmental Affairs.
- USTR 27—Public Affairs Specialist to the Assistant United States Trade Representative for Public Affairs.
- USTR 28—Congressional Affairs Officer to the Assistant United States Trade Representative for Congressional Affairs.
- USTR 29—Director, Office of Private Sector Liaison, to the Assistant United States Trade Representative for Public and Intergovernmental Affairs
- USTR 30—Confidential Assistant to the Deputy United States Trade Representative—Geneva.

Section 213.3304 Department of State

- ST 8—Staff Assistant to the Secretary.
- ST 38—Staff Assistant to the Under Secretary.
- ST 59—Secretary (Steno) to the Under Secretary for Economic Affairs.
- ST 67—Secretary (Steno) to the Director, Bureau of Politico-Military Affairs.
- ST 79—Special Assistant to the United States Representative to the United Nations.
- ST 81—Secretary (Steno) to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs.
- ST 83—Foreign Affairs Officer to the Chief of Protocol.
- ST 90—Foreign Affairs Officer to the Chief of Protocol.
- ST 99—Secretary (Typing) to the Ambassador and United States Representative to the Organization of American States.
- ST 100—Secretary (Steno) to the United States Representative to the United Nations.
- ST 102—Special Assistant to the Under Secretary.
- ST 106—Protocol Officer to the Chief of Protocol.
- ST 107—Secretary (Typing) to the Assistant Secretary, Bureau of Economic and Business Affairs.
- ST 117—Confidential Clerk to the Secretary.
- ST 120—Special Assistant to the Spokesman, Office of the Spokesman.
- ST 122—Staff Assistant to the Under Secretary for Management.
- ST 124—Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
- ST 132—Secretary (Typing) to the Assistant Secretary, Bureau of International Organization Affairs.
- ST 134—Secretary (Steno) to the Deputy Secretary.
- ST 137—Foreign Affairs Officer to the Assistant Secretary, Policy Planning Staff.
- ST 139—Protocol Officer (Visits) to the Chief of Protocol.
- ST 149—Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
- ST 154—Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs.

ST 156—Member, Policy Planning Staff to the Chairman, Policy Planning, Council.
ST 161—Secretary (Steno) to the Under Secretary for Management.
ST 162—Secretary (Steno) to the Assistant Secretary, Bureau of Consular Affairs.
ST 168—Staff Assistant to the Legal Adviser.
ST 172—Staff Assistant to the Under Secretary for Management.
ST 173—Special Assistant to the Under Secretary for Management.
ST 174—Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs.
ST 175—Congressional Relations Officer to the Principal Deputy Assistant Secretary for Congressional Relations.
ST 177—Special Assistant to the Chairman, International Joint Commission.
ST 178—Secretary (Steno) to the Assistant Secretary for International Narcotics Matters.
ST 179—Congressional Relations Officer to the Assistant Secretary, Office of Congressional Relations.
ST 180—Director of Programs to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 181—Director/Coordinator of Intergovernmental Affairs to the Assistant Secretary, Bureau of Public Affairs.
ST 182—Special Assistant to the Assistant Secretary, Bureau of Consular Affairs.
ST 183—Public Affairs Advisor to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 184—Special Assistant to the Assistant Secretary, Office of African Affairs.
ST 187—Secretary (Steno) to the Chairman, International Joint Commission.
ST 188—Staff Assistant to the Assistant Secretary for International Narcotics Matters.
ST 189—Legislative Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs.
ST 190—Special Assistant to the Ambassador-at-Large and Special Advisor to the Secretary.
ST 191—Secretary (Steno) to the Executive Secretary/Special Assistant to the Secretary.
ST 192—Staff Assistant to the Deputy Secretary.
ST 195—Staff Assistant to the Assistant Secretary for Congressional Relations.
ST 200—Staff Assistant to the Deputy Secretary.
ST 201—Staff Assistant to the Ambassador on Space and Defense Arms and Head of the U.S. Delegation to Geneva.
ST 202—Special Assistant to the Ambassador-at-Large.
ST 203—Special Assistant to the Counselor.
ST 209—Protocol Officer to the Assistant Chief of Protocol.
ST 211—Senior Protocol Officer (Visits) to the Chief of Protocol.
ST 213—Staff Assistant to the Assistant Secretary for Human Rights and Humanitarian Affairs.
ST 217—Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 221—Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs.
ST 222—Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs.
ST 226—Special Assistant to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs.
ST 229—Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 233—Staff Assistant to the Ambassador and U.S. Negotiator on Strategic Nuclear Arms.
ST 236—Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 238—Staff Assistant to the Ambassador on Space and Defense Arms and Head of the U.S. Delegation to Geneva.
ST 239—Protocol Assistant to the Chief of Protocol.
ST 240—Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 242—Special Assistant to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 243—Program Specialist to the Chief of Protocol.
ST 246—Secretary (Steno) to the Ambassador at Large for Cultural Affairs.
ST 247—Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 248—Special Assistant to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 249—Staff Assistant to the Deputy Secretary.
ST 250—Public Information Officer to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 251—Special Assistant to the Deputy Assistant Secretary for Policy and Counter Terrorism, Bureau of Diplomatic Security.
ST 252—Protocol Officer to the Chief of Protocol.
ST 253—Secretary (Steno) to the Ambassador-at-Large for Counter Terrorism.
ST 254—Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 256—Policy and Press Advisor to the U.S. Permanent Representative to the U.S. Mission to the Organization of American States.
ST 257—Public Affairs Specialist to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 258—Secretary (Steno) to the Inspector General.
ST 259—Special Assistant to the Legal Adviser.
ST 260—Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 261—Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.

Section 213.3305 Department of the Treasury

TREA 27—Executive Assistant to the Secretary.
TREA 28—Special Assistant to the Director of the Mint.
TREA 56—Confidential Assistant to the Assistant Secretary for Legislative Affairs.
TREA 61—Special Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 74—Confidential Assistant to the Assistant Secretary for Policy, Planning and Communications.
TREA 92—Director, Consumer Affairs, to the Assistant Secretary for Business and Consumer Affairs.
TREA 94—Executive Assistant to the Commissioner of Customs.
TREA 102—Staff Assistant to the Commissioner of Customs.
TREA 113—Executive Assistant to the Sepcial Assistant to the Commissioner of Customs.
TREA 115—Staff Assistant to the Deputy Assistant Secretary for Financial Systems.
TREA 120—Special Assistant to the Assistant Secretary for Policy, Planning and Communications.
TREA 122—Public Affairs Specialist to the Assistant Secretary for

Policy, Planning and Communications.
TREA 123—Public Affairs Specialist to the Treasurer.
TREA 125—Congressional Liaison Specialist to the Commissioner of Customs.
TREA 126—Staff Assistant to the Director of the Mint.
TREA 132—Deputy Assistant Secretary for Public Liaison to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 135—Staff Assistant to the Deputy Assistant Secretary for Management.
TREA 139—Director of Scheduling to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 141—Staff Assistant to the Deputy Assistant Secretary for Public Affairs and Public Liaison.
TREA 144—Staff Assistant to the Deputy Assistant Secretary for Policy, Planning, and Communications.
TREA 145—Travel Clerk to the Deputy Assistant Secretary for Administration.
TREA 146—Legislative Aid to the Assistant Secretary for Legislative Affairs.
TREA 147—Travel Clerk to the Deputy Assistant Secretary for Administration.
TREA 148—Director, Special Operations Division, to the Deputy Assistant Secretary for Administration.
TREA 150—Special Assistant to the Deputy Assistant Secretary for Developing Nations, Office of the Assistant Secretary for International Affairs.
TREA 152—Confidential Assistant to the Deputy Assistant Secretary for Public Liaison.
TREA 153—Legislative Specialist to the Assistant Secretary for Legislative Affairs.
TREA 157—Congressional Liaison Officer to the Associate Commissioner of Customs for Congressional Affairs.
TREA 160—Confidential Secretary to the Secretary.
TREA 165—Special Assistant to the Deputy Assistant Secretary for Public Liaison.
TREA 166—Travel Assistant to the Deputy Assistant Secretary for Administration.
TREA 167—Special Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 168—Staff Assistant to the Director of the Mint.
TREA 169—Confidential Assistant to the Deputy Assistant Secretary for Administration.
TREA 171—Executive Assistant to the Deputy Secretary.
TREA 173—Staff Assistant to the Deputy Assistant Secretary for Departmental Finance and Management.
TREA 174—Senior Assistant to the Deputy Assistant Secretary for Law Enforcement.
TREA 176—Senior Legislative Manager to the Deputy Assistant Secretary for Legislative Affairs.
TREA 177—Special Assistant to the Executive Director, U.S. Savings Bonds Division.
TREA 178—Legislative Manager to the Deputy Assistant Secretary for Legislative Affairs.
TREA 179—Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 180—Travel Assistant to the Deputy Assistant Secretary for Administration.
TREA 182—Staff Assistant to the Deputy Assistant Secretary for Departmental Finance and Management.
TREA 183—Staff Assistant to the Director of the Mint.
TREA 184—Special Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 185—Legislative Manager to the Assistant Secretary for Legislative Affairs.

Section 213.3306 Department of Defense

DOD 3—Private Secretary to the Secretary.
DOD 5—Private Secretary to the Deputy Secretary.
DOD 14—Private Secretary to the Assistant Secretary for International Security Affairs.
DOD 18—Private Secretary to the Assistant Secretary (Comptroller).
DOD 19—Personal and Confidential Assistant to the Director, Program Analysis and Evaluation.
DOD 20—Private Secretary to the General Counsel.
DOD 22—Private and Confidential Secretary to the Assistant to the Secretary (Atomic Energy).
DOD 23—Private Secretary to the Military Assistant to the Secretary.
DOD 24—Chauffeur to the Secretary.
DOD 30—Secretary (Steno) to the Defense Advisor to U.S. NATO.
DOD 31—Personal and Confidential Assistant to the Assistant Secretary for Legislative Affairs.
DOD 32—Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 33—Personal Secretary to the Deputy Secretary.
DOD 34—Private Secretary to the Principal Deputy Assistant Secretary for International Security Affairs.
DOD 35—Confidential Assistant to the Executive Secretary.
DOD 51—Private Secretary to the Assistant Secretary for Reserve Affairs.
DOD 54—Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 55—Private Secretary to the Chief Judge, U.S. Court of Military Appeals.
DOD 56—Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 62—Management Officer to the Chairman, President's Intelligence Oversight Board.
DOD 66—Private Secretary to the Physician to the President, White House Support Group.
DOD 73—Private Secretary to the Assistant Secretary for Health Affairs.
DOD 89—Secretary (Typing) to the Principal Deputy Assistant Secretary (Public Affairs).
DOD 101—Personal and Confidential Assistant to the Director of Net Assessment.
DOD 112—Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 119—Private Secretary to the Principal Deputy Director, Program Analysis and Evaluation.
DOD 133—Public Affairs Specialist to the Assistant Secretary (Public Affairs.)
DOD 148—Private Secretary to the Deputy Under Secretary (Policy).
DOD 171—Special Assistant to the Deputy Assistant Secretary (Reserve Affairs).
DOD 174—Private Secretary to the Under Secretary for Policy.
DOD 175—Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 178—Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 194—Private Secretary to the Assistant Secretary (International Security Policy).
DOD 205—Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 209—White House Director of Television Services to the Assistant to the President/Director of Support Services.
DOD 212—Private Secretary to the Deputy Under Secretary, Research

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and Engineering (International Programs and Technology).
DOD 216—Private Secretary to the Principal Deputy Assistant Secretary for International Security Policy.
DOD 217—Private Secretary to the Assistant Secretary (Command, Control, Communications, and Intelligence).
DOD 220—Assistant to the Director for Emergency Planning.
DOD 226—Special Assistant to the Assistant Secretary (Health Affairs).
DOD 229—Special Assistant to the Assistant Secretary for International Security Policy.
DOD 236—Special Assistant to the Assistant Secretary for Public Affairs.
DOD 250—Speechwriter to the Assistant Secretary for Public Affairs.
DOD 252—Confidential Assistant to the Secretary.
DOD 254—Special Assistant for Emergency Planning to the Assistant Secretary (Acquisition and Logistics).
DOD 255—Personal and Confidential Assistant to the Deputy Secretary.
DOD 259—Deputy Associate Director for Public Liaison to the Special Assistant to the President, White House Support Group.
DOD 261—Special Assistant for European Security and Political Affairs to the Deputy Assistant Secretary (European and NATO Policy).
DOD 262—Special Assistant to the Assistant Secretary (International Security Affairs.)
DOD 265—Special Assistant to the Deputy Assistant Secretary for East Asian and Pacific Affairs.
DOD 268—Private Secretary to the Senior Judge, U.S. Court of Military Appeals.
DOD 270—Private Secretary to the Director Strategic Defense Initiative Organization.
DOD 274—Security Advisor to the Deputy Assistant to the President, White House Support Group.
DOD 275—Assistant for European Security Negotiations to the Deputy Assistant Secretary (Negotiations Policy).
DOD 279—Personal and Confidential Assistant to the Director, Operational Testing and Evaluation.
DOD 280—Staff Assistant to the Principal Deputy Assistant Secretary for Public Affairs.
DOD 282—Assistant for Multilateral Negotiations to the Deputy Assistant Secretary (Negotiations Policy).
DOD 283—Special Assistant to the Assistant Secretary for Public Affairs.
DOD 284—Special Assistant to the Director, Office of Civilian Health and Medical Programs of the Uniformed Services.
DOD 286—Special Assistant for East African Affairs to the Deputy Assistant Secretary for African Affairs.
DOD 287—Special Assistant for Strategic Defense and Space Arms Control Policy to the Deputy Assistant Secretary (Nuclear Forces and Arms Control Policy).
DOD 288—Special Assistant to the Deputy Assistant Secretary for Near Eastern and South Asian Affairs.
DOD 290—Public Affairs Specialist to the Principal Deputy Assistant Secretary for Public Affairs.
DOD 294—Staff Specialist to the Deputy Director, Strategic Defense Initiative Organization.
DOD 295—Special Assistant to the Assistant Secretary (Force Management and Personnel).
DOD 297—Staff Assistant to the Assistant Secretary for Legislative Affairs.
DOD 298—Confidential Assistant to the Under Secretary for Acquisition.
DOD 299—Family Program Coordinator to the Deputy Assistant Secretary (Family Support, Education, and Safety).
DOD 300—Special Assistant for Foreign Intelligence Programs to the Assistant Secretary (Command, Control, Communications, and Intelligence).
DOD 303—Special Assistant for Strategic Defense Initiative to the Assistant Secretary for Legislative Affairs.
DOD 304—Assistant for External Affairs and Communications to the Deputy Director for Policy, External Affairs, and Special Programs.
DOD 305—Special Assistant to the Director, Strategic Defense Initiative Organization.
DOD 306—Attorney Adviser (Military) to the Judge, U.S. Court of Military Appeals.
DOD 307—Staff Assistant to the Associate Director, Office of Presidential Personnel.
DOD 308—Director, Low-Intensity Conflict, to the Deputy Assistant Secretary for Low-Intensity Conflict.
DOD 309—Speechwriter to the Assistant Secretary for Public Affairs.
DOD 310—Staff Assistant to the Chairman, Joint Chiefs of Staff.
DOD 311—Staff Assistant to the Assistant to the Chairman, Joint Chiefs of Staff.
DOD 312—Special Assistant to the Director, Strategic Defense Initiative Organization.
DOD 313—Staff Assistant to the Deputy Assistant Secretary (Family Support, Education, and Safety).
DOD 314—Personal and Confidential Assistant to the Under Secretary for Acquisition.
DOD 315—Archives Technician to the Director, White House Television Office.
DOD 317—Personal and Confidential Assistant to the Director of Defense Research and Engineering.
DOD 318—Private Secretary to the Assistant Secretary for Special Operations/Low-Intensity Conflict.

Section 213.3307 Department of the Army

ARMY 1—Staff Assistant to the Secretary.
ARMY 3—Secretary (Steno) to the Assistant Secretary for Manpower and Reserve Affairs.
ARMY 5—Secretary (Steno) to the Assistant Secretary for Installations and Logistics.
ARMY 6—Secretary (Typing) to the Assistant Secretary, Research, Development, and Acquisition.
ARMY 21—Secretary (Steno) to the General Counsel.
ARMY 38—Plans Coordinator to the Chief of Public Affairs.
ARMY 41—Assistant Director to the Chairman and Executive Director of the President's Foreign Intelligence Advisory Board.
ARMY 51—Confidential Staff Assistant to the Deputy Director, Office of Private Sector Initiatives.
ARMY 55—Secretary (Steno) to the Assistant Secretary, Financial Management.

Section 213.3308 Department of the Navy

NAV 2—Staff Assistant to the Secretary.
NAV 5—Private Secretary to the Assistant Secretary for Financial Management.
NAV 7—Private Secretary to the Assistant Secretary for Research and Engineering.
NAV 20—Special Assistant to the Military Assistant to the President.
NAV 23—Special Assistant to the Military Assistant to the President.
NAV 24—Private Secretary to the Assistant Secretary for Manpower and Reserve Affairs.
NAV 25—Special Assistant to the

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Director, White House Military Office.
NAV 27—Special Assistant for Emergency Planning to the Military Assistant to the President.
NAV 30—Staff Assistant to the Deputy Under Secretary.
NAV 31—Staff Assistant to the Under Secretary.
NAV 32—Private Secretary to the Assistant Secretary for Shipbuilding and Logistics.
NAV 38—Private Secretary to the Under Secretary
NAV 40—Special Assistant to the Deputy Under Secretary (Policy).

Section 213.3309 Department of the Air Force

AF 1—Secretary (Steno) to the Secretary.
AF 3—Secretary (Steno) to the Assistant Secretary for Manpower, Reserve Affairs, and Installations.
AF 5—Secretary (Steno) to the Assistant Secretary for Research and Development Logistics.
AF 6—Secretary (Steno) to the Assistant Secretary for Financial Management.
AF 8—Secretary (Steno) to the General Counsel.
AF 17—Administrative Officer to the Assistant to the Vice President for National Security Affairs.
AF 18—Special Assistant to the Assistant to the Vice President for National Security Affairs.
AF 20—Secretary (Steno) to the Military Assistant to the President.
AF 21—Special Assistant to the Military Assistant to the President.
AF 22—Secretary (Steno) to the Assistant to the Vice President for National Security Affairs.
AF 26—Special Assistant to the Assistant Secretary for Manpower, Reserve Affairs, and Installations.
AF 28—Special Assistant to the General Counsel.
AF 29—Staff Assistant to the Secretary.
AF 30—Special Assistant to the Assistant to the President/Director of the White House Military Office.

Section 213.3310 Department of Justice

JUS 21—Confidential Assistant (Private Secretary) to the Assistant Attorney General, Antitrust Division.
JUS 25—Confidential Assistant (Private Secretary) to the Assistant Attorney General, Criminal Division.
JUS 70—Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 83—Confidential Assistant to the Attorney General.
JUS 85—Special Assistant to the Director, Community Relations Service.
JUS 93—Secretary (Typing) to the Associate Attorney General.
JUS 100—Confidential Assistant to the Director of Congressional and Public Affairs, Immigration and Naturalization Service.
JUS 122—Special Assistant to the Director, Office of Public Affairs.
JUS 135—Staff Assistant to the Assistant Attorney General, Antitrust Division.
JUS 152—Secretary and Confidential Assistant to the U.S. Attorney.
JUS 158—Secretary (Stenographer) to the U.S. Attorney.
JUS 162—Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 167—Special Assistant to the Attorney General.
JUS 183—Attorney-Advisor (General) to the Assistant Attorney General, Land and Natural Resources Division.
JUS 190—Staff Assistant to the Assistant Attorney General, Office of Legal Policy.
JUS 200—Secretary and Confidential Assistant to the U.S. Attorney.
JUS 208—Confidential Assistant to the Director, Office of Public Affairs.
JUS 221—Special Assistant to the Director, Bureau of Justice Statistics.
JUS 224—Special Assistant to the Deputy Attorney General.
JUS 227—Staff Assistant to the Director, Community Relations Service.
JUS 240—Special Assistant to the Deputy Assistant Attorney General, Civil Rights Division.
JUS 241—Confidential Assistant and Private Secretary to the Chairman, Foreign Claims Settlement Commission.
JUS 242—Special Assistant to the Assistant Attorney General, Civil Division.
JUS 244—Special Assistant to the Director, National Institute of Justice.
JUS 246—Special Assistant to the Administrator, Office of Justice Assistance, Research, and Statistics.
JUS 247—Special Assistant to the Commissioner, Immigration and Naturalization Service.
JUS 248—Missing Children Program Coordinator to the Administrator, Office of Juvenile Justice and Delinquency Prevention.
JUS 249—Staff Assistant to the Attorney General.
JUS 262—Staff Assistant to the Director, Bureau of Justice Statistics.
JUS 266—Public Affairs Specialist to the Deputy Director, Office of Public Affairs.
JUS 268—Attorney-Advisor (General) to the Assistant Attorney General, Antitrust Division.
JUS 270—Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 271—Confidential Assistant to the Assistant Attorney General, Office of Legal Policy.
JUS 277—Staff Assistant to the Assistant Attorney General/Chief of Staff.
JUS 279—Confidential Assistant to the Deputy Assistant Attorney General, Office of Legislative Affairs.
JUS 281—Congressional and Public Liaison Officer to the Deputy Assistant Attorney General, Office of Justice Programs.
JUS 283—Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 292—Confidential Assistant to the Director, Office of Liaison Services.
JUS 293—Confidential Assistant to the Associate Deputy Attorney General.
JUS 294—Special Assistant to the Assistant Attorney General, Tax Division.
JUS 296—Confidential Assistant to the Associate Deputy Attorney General.
JUS 300—Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 301—Attorney-Advisor (Special Assistant) to the Principal Deputy Assistant Attorney General.
JUS 302—Staff Assistant (Speechwriter) to the Director, Office of Public Affairs.
JUS 303—Research Associate to the Director, Office of Public Affairs.
JUS 304—Confidential Assistant to the Director, Bureau of Justice Statistics.
JUS 306—Assistant Director, Office of Public Affairs.
JUS 307—Attorney-Advisor to the Assistant Attorney General, Civil Division.
JUS 309—Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 310—Special Assistant to the Director, Bureau of Justice Assistance.
JUS 311—Special Assistant to the Director, Office of Public Affairs.
JUS 312—Assistant Director, Asylum Policy and Review Unit, Office of Legal Policy.
JUS 314—Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 315—Confidential Assistant to the

Director, National Obscenity Enforcement Unit, Criminal Division.
JUS 316—General Attorney to the Director, Office for Victims of Crime.
JUS 318—Staff Assistant to the Assistant to the Attorney General and Chief of Staff.
JUS 319—Supervisory Attorney-Advisor (Associate Director), National Obscenity Enforcement Unit, Criminal Division.
JUS 320—Special Assistant to the Assistant Attorney General, Antitrust Division.
JUS 324—Special Assistant to the Assistant Attorney General, Office of Legislative Affairs.
JUS 326—Special Assistant to the Assistant Attorney General, Civil Division.
JUS 327—Special Assistant to the Assistant Attorney General, Office of Justice Programs.
JUS 328—Special Assistant to the Attorney General.
JUS 329—Confidential Assistant to the Deputy Director, Office of Justice Programs.
JUS 330—Confidential Assistant to the Director, Office of Legal Policy.
JUS 331—Special Assistant to the Director, National Institute of Justice.
JUS 332—Special Assistant to the Deputy Assistant Attorney General, Civil Rights Division.
JUS 333—Confidential Assistant to the Deputy Director, Office of Liaison Services.
JUS 335—Special Assistant to the Assistant Attorney General, Civil Division.
JUS 336—Public Affairs Officer to the Director, Office of Congressional and Public Affairs.
JUS 337—Special Counsel to the Associate Attorney General.

Section 213.3311 Federal Judicial Center

FJC 2—Staff Assistant to the Director.

Section 213.3312 Department of the Interior

INT 3—Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 25—Steward to the Secretary.
INT 73—Staff Assistant to the Executive Assistant to the Secretary.
INT 92—Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 111—Staff Assistant to the Secretary.
INT 141—Executive Assistant to the Commissioner of Reclamation.
INT 143—Special Assistant to the Assistant Secretary, Fish, Wildlife, and Parks.
INT 152—Special Assistant to the Deputy Director, National Park Service.
INT 155—Confidential Assistant to the Director, Office of Surface Mining.
INT 165—Special Assistant to the Director, Bureau of Land Management.
INT 171—Director, Office of Public Affairs, to the Commissioner of Reclamation.
INT 191—Special Assistant to the Director, Bureau of Land Management.
INT 194—Staff Assistant to the Under Secretary.
INT 196—Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 202—Special Assistant to the Director, National Park Service.
INT 205—Special Assistant to the Assistant Secretary, Indian Affairs.
INT 208—Congressional Liaison Officer to the Director, Minerals Management Service.
INT 212—Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 214—Confidential Assistant to the Director, Fish and Wildlife Service.
INT 215—Confidential Assistant to the Executive Assistant to the Secretary.
INT 220—Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 225—Special Assistant to the Director, Office of Surface Mining.
INT 231—Special Assistant to the Assistant to the Secretary and Director, Office of Public Affairs.
INT 232—Staff Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 235—Confidential Assistant to the Director, Fish and Wildlife Service.
INT 243—Confidential Assistant to the Secretary.
INT 246—Public Affairs Specialist to the Director, Minerals Management Service.
INT 248—Congressional Liaison Officer to the Director, Bureau of Mines.
INT 250—Special Assistant to the Chief, Office of Congressional Liaison, Bureau of Mines.
INT 256—Staff Assistant to the Associate Director, Bureau of Land Management.
INT 264—Confidential Assistant to the Speical Assistant (Field Representative) to the Secretary.
INT 265—Special Assistant to the Director, Bureau of Land Management.
INT 272—Special Assistant to the Assistant to the Secretary and Director, Office of External Affairs.
INT 274—Congressional Liaison Specialist to the Director, Office of Surface Mining and Reclamation.
INT 278—Special Assistant to the Assistant Secretary for Fish, Wildlife, and Parks.
INT 280—Special Assistant to the Director, Fish and Wildlife Service.
INT 281—Confidential Assistant to the Inspector General.
INT 282—Confidential Assistant to the Solicitor.
INT 283—Deputy Assistant Secretary for Water.
INT 285—Special Assistant to the Commissioner of Reclamation.
INT 287—Assistant to the Director, Bureau of Land Management.
INT 292—Special Assistant to the Director, Bureau of Land Management.
INT 294—Special Assistant to the Director, Fish and Wildlife Service.
INT 297—Confidential Assistant to the Deputy Solicitor.
INT 298—Special Assistant to the Assistant to the Secretary and Director, Office of External Affairs.
INT 302—Special Assistant to the Assistant Secretary for Water and Science.
INT 307—Public Affairs Specialist (Speechwriter) to the Director, Office of Public Affairs, Bureau of Reclamation.
INT 309—Special Assistant to the Director, Fish and Wildlife Service.
INT 312—Confidential Assistant to the Secretary.
INT 313—Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 314—Congressional Affairs Officer to the Assistant to the Secretary and Director, Office of External Affairs.
INT 315—Staff Assistant to the Commissioner of Reclamation.
INT 316—Confidential Assistant to the Deputy Under Secretary.
INT 317—Special Assistant to the Assistant Director of External Affairs, Fish and Wildlife Service.

Section 213.3313 Department of Agriculture

AGR 1—Confidential Assistant (Speech Writer) to the Secretary.
AGR 3—Confidential Assistant to the Secretary.

AGR 8—Chauffeur to the Secretary.
AGR 13—Private Secretary to the Assistant Secretary for Food and Consumer Services.
AGR 19—Private Secretary to the Administrator, Rural Electrification Administration.
AGR 26—Staff Assistant to the Administrator, Farmers Home Administration.
AGR 27—Private Secretary to the Administrator, Farmers Home Administration.
AGR 28—Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 29—Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 30—Private Secretary to the Manager, Federal Crop Insurance Corporation.
AGR 31—Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 32—Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 33—Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 34—Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 35—Private Secretary to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 44—Private Secretary to the Assistant Secretary for Economics.
AGR 48—Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 56—Private Secretary to the Assistant Secretary for Governmental and Public Affairs.
AGR 61—Private Secretary to the Assistant Secretary for Natural Resources and Environment.
AGR 62—Confidential Assistant to the Under Secretary for Small Community and Rural Development.
AGR 64—Confidential Assistant to the Under Secretary for Small Community and Rural Development.
AGR 74—Private Secretary to the Deputy Assistant Secretary for Food and Consumer Services.
AGR 75—Private Secretary to the Deputy Under Secretary for Small Community and Rural Development.
AGR 81—Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 96—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 102—Confidential Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 103—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 105—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 106—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 109—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 110—Confidential Assistant to the General Counsel.
AGR 114—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 118—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 128—Private Secretary to the Administrator, Federal Grain Inspection Service.
AGR 129—Private Secretary to the Assistant Secretary, Marketing and Inspection Service.
AGR 135—Confidential Assistant to the Administrator, Food Safety and Inspection Service.
AGR 137—Confidential Assistant to the Assistant Secretary for Economics.
AGR 139—Staff Assistant to the Secretary.
AGR 140—Special Assistant to the Assistant Secretary for Economics.
AGR 141—Confidential Assistant to the Administrator, Food Safety and Inspection Service.
AGR 143—Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 151—Executive Assistant to the Administrator, Agricultural Marketing Service.
AGR 154—Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 159—Special Representative to the Administrator, Foreign Agricultural Service.
AGR 162—Confidential Assistant to the Administrator, Federal Grain Inspection Service.
AGR 164—Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 175—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 177—Special Assistant to the Director, Office of Transportation.
AGR 184—Office Assistant (Receptionist) to the Executive Assistant to the Secretary.
AGR 186—Confidential Assistant to the Deputy Secretary.
AGR 188—Northeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 189—Southeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 190—Mideast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 191—Northwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 192—Southeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 193—Confidential Assistant to the Deputy Secretary
AGR 194—Private Secretary to the Under Secretary for Small Community and Rural Development.
AGR 196—Confidential Assistant to the Administrator, Office of International Cooperation and Development.
AGR 201—Confidential Assistant to the Special Assistant to the Secretary.
AGR 203—Staff Assistant to the Special Assistant to the Secretary.
AGR 206—Director, Office of the Consumer Advisor to the Assistant Secretary for Food and Consumer Services.
AGR 207—Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 208—Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 209—Confidential Assistant to the Chief, Soil Conservation Service.
AGR 210—Staff Assistant to the Administrator, Office of International Development and Cooperation.
AGR 212—Special Assistant to the Assistant Secretary for Administration.
AGR 218—Staff Assistant to the Assistant Secretary for Administration.
AGR 220—Private Secretary to the Deputy Assistant Secretary for Administration.
AGR 222—Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 224—Director, Congressional and Public Affairs Division, to the Manager, Federal Crop Insurance Corporation.
AGR 225—Confidential Assistant to the Manager, Federal Crop Insurance Corporation.

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AGR 226—Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 228—Confidential Assistant to the Inspector General.
AGR 229—Staff Assistant/ Correspondence Review Officer to the Director, Executive Secretariat.
AGR 231—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 232—Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 233—Staff Assistant to the Special Assistant to the Secretary.
AGR 234—Confidential Assistant to the Administrator, Office of International Cooperation and Development.
AGR 235—Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 236—Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service.
AGR 237—Private Secretary to the Administrator, Agricultural Marketing Service.
AGR 238—Staff Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 242—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 243—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 244—Confidential Assistant to the Chief, Soil Conservation Service.
AGR 247—Private Secretary to the Inspector General.
AGR 250—Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs.
AGR 257—Administrator, Human Nutrition Information Service, to the Assistant Secretary for Food and Consumer Services.
AGR 258—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 259—Director, Legislative and Public Affairs, to the Administrator, Animal and Plant Health Inspection Service.
AGR 260—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 261—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 262—Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 263—Confidential Assistant to the Assistant Secretary for Natural Resources and Environment.
AGR 265—Staff Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 266—Staff Assistant to the Administrator, Food and Nutrition Service.
AGR 267—Staff Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 268—Confidential Assistant for Legislative Affairs to the Deputy Administrator, Policy and Program Support, Rural Electrification Administration.
AGR 271—Press Secretary to the Secretary.
AGR 273—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 275—Private Secretary to the Deputy Secretary.
AGR 276—Confidential Assistant to the Administrator, Agricultural Research Service.
AGR 277—Confidential Assistant to the Chief, Soil Conservation Service.
AGR 279—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 282—Confidential Assistant to the Administrator, Foreign Agricultural Service.

Section 213.3314 Department of Commerce

COM 1—Confidential Assistant to the Secretary.
COM 2—Confidential Assistant to the Chief of Staff.
COM 4—Confidential Assistant to the Secretary.
COM 5—Confidential Assistant to the Special Assistant to the Secretary.
COM 6—Confidential Assistant to the Chief of Staff.
COM 12—Confidential Assistant to the Deputy Secretary.
COM 19—Chauffeur to the Secretary.
COM 20—Confidential Assistant to the Deputy Assistant Secretary for Administration.
COM 22—Deputy Director, Congressional Affairs, to the Deputy Assistant Secretary for Congressional Affairs.
COM 73—Congressional Liaison Specialist to the Director, Office of Congressional Relations.
COM 114—Private Secretary to the Director, Minority Business Development Agency.
COM 156—Confidential Assistant to the Assistant Secretary, Economic Development Administration.
COM 159—Deputy Director, Office of Public Affairs.
COM 160—Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations.
COM 162—Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration.
COM 175—Congressional Liaison Specialist to the Assistant Secretary for Congressional Affairs.
COM 181—Confidential Assistant to the Assistant Secretary for Communications and Information.
COM 184—Confidential Assistant to the Director, National Bureau of Standards.
COM 190—Director, Office of Congressional Affairs, to the Assistant Secretary for Communications and Information.
COM 192—Legislative Director to the Director, Office of Congressional Affairs.
COM 198—Congressional Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs.
COM 200—Congressional Liaison Officer to the Assistant Secretary for Congressional Affairs.
COM 201—Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 202—Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 203—Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Operations.
COM 204—Special Assistant to the Chief Scientist, National Oceanic and Atmospheric Administration.
COM 217—Special Assistant to the Director, Office of Public Affairs.
COM 218—Special Assistant to the Assistant Secretary, National Oceanic and Atmospheric Administration.
COM 220—Confidential Assistant to the Deputy Assistant Secretary for East Asia and the Pacific, International Trade Administration.
COM 214—Confidential Assistant to the Under Secretary, International Trade Administration.
COM 225—Director, Congressional Affairs Staff, to the Under Secretary for Export Administration.
COM 236—Special Assistant to the Secretary.
COM 237—Confidential Assistant to the Under Secretary, International Trade Administration.
COM 252—Confidential Assistant to the Secretary.
COM 254—Supervisory Public Affairs Specialist to the Director, Minority Business Development Agency.

COM 259—Director of Congressional Affairs to the Under Secretary, International Trade Administration.
COM 263—Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 264—Special Assistant to the Deputy Assistant Secretary, Economic Development Administration.
COM 265—Confidential Assistant to the Deputy Assistant Secretary for Export Administration, International Trade Administration.
COM 267—Confidential Assistant to the Deputy Assistant Secretary for Export Administration, International Trade Administration.
COM 272—Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 273—Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration.
COM 275—Confidential Assistant to the Director, Office of Business Liaison.
COM 277—Special Assistant to the Director, Office of Public Affairs.
COM 285—Deputy Director, Office of Intergovernmental Affairs, to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 288—Confidential Assistant to the Director, Office of Business Liaison.
COM 289—Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 290—Confidential Assistant to the Director, Office of Business Liaison.
COM 291—Special Assistant to the Director of Public Affairs.
COM 293—Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 295—Confidential Assistant to the Special Assistant to the Secretary.
COM 297—Confidential Assistant to the Assistant Secretary for Administration.
COM 298—Special Assistant to the Assistant Secretary for Communications and Information.
COM 300—Confidential Assistant to the Deputy Under Secretary for International Trade, International Trade Administration.
COM 303—Confidential Assistant to the Assistant Secretary for Administration.
COM 305—Private Secretary to the Under Secretary for Travel and Tourism.
COM 306—Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 309—Confidential Assistant to the Director, Minority Business Development Agency.
COM 310—Private Secretary to the Deputy Under Secretary for Travel and Tourism.
COM 314—Confidential Assistant to the Special Assistant to the Secretary.
COM 316—Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration.
COM 321—Director, Office of Public Affairs to the Under Secretary for International Trade.
COM 324—Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy, International Trade Administration.
COM 329—Congressional Liaison Specialist to the Director, Congressional Affairs, International Trade Administration.
COM 331—Confidential Assistant to the Assistant Secretary for Tourism Marketing.
COM 335—Congressional Liaison Officer to the Deputy Assistant Secretary for Congressional Affairs.
COM 336—Confidential Assistant to the Deputy Assistant Secretary for Export Enforcement.
COM 340—Special Assistant to the Administrator, National Oceanic and Atmospheric Administration.
COM 342—Confidential Assistant to the Special Assistant to the Deputy Secretary.
COM 343—Confidential Assistant to the Deputy Assistant Secretary, U.S. and Foreign Commercial Service.
COM 344—Congressional Liaison Specialist to the Confidential Assistant, Congressional Affairs, International Trade Administration.
COM 346—Confidential Aide to the Special Assistant to the Secretary.
COM 348—Special Assistant to the Director, Office of Public Affairs.
COM 350—Deputy Director to the Director, Office of Business Liaison.
COM 353—Confidential Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service, International Trade Administration.
COM 356—Confidential Assistant to the Director, Minority Business Development Agency.
COM 360—Director, Congressional Affairs, to the Under Secretary for Economic Affairs.
COM 362—Congressional Affairs Specialist to the Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration.
COM 363—Congressional Affairs Specialist to the Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration.
COM 368—Congressional Affairs Specialist to the Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration.
COM 370—Congressional Affairs Officer to the Assistant Director for External Affairs, Minority Business Development Agency.
COM 371—Confidential Assistant to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 372—Deputy Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.
COM 374—Congressional Affairs Specialist to the Director, Bureau of the Census.
COM 376—Confidential Assistant to the Special Assistant to the Deputy Secretary.
COM 378—Congressional Liaison Specialist to the Under Secretary for Economic Affairs.
COM 380—Confidential Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration.
COM 382—Confidential Aide to the Special Assistant to the Secretary.
COM 384—Special Assistant to the Director, Minority Business Development Agency.
COM 386—Confidential Assistant to the Deputy Under Secretary for Travel and Tourism.
COM 390—Confidential Assistant to the Under Secretary for Economic Affairs.
COM 392—Confidential Assistant to the Deputy Assistant Secretary for Basic Industries, International Trade Administration.
COM 396—Congressional Affairs Specialist to the Director of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 397—Congressional Affairs advisor to the Director, Bureau of the Census.
COM 398—Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations, International Trade Administration.
COM 399—Special Assistant to the Deputy Assistant Secretary for Domestic Operations, Economic Development Administration.

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COM 406—Associate Director, National Oceanic and Atmospheric Administration.
COM 408—Confidential Assistant to the General Counsel.
COM 410—Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration.
COM 411—Secretary to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration.
COM 412—Confidential Assistant to the Deputy Assistant Secretary for Services, International Trade Administration.
COM 414—Congressional Affairs Specialist to the Legislative Director, National Oceanic and Atmospheric Administration.
COM 415—Congressional Affairs Specialist to the Legislative Director, National Oceanic and Atmospheric Administration.
COM 417—Special Assistant to the Assistant Secretary for Administration.
COM 419—Confidential Assistant to the Deputy Under Secretary for International Trade.
COM 421—Confidential Assistant to the Deputy Assistant Secretary for Trade Development, International Trade Administration.
COM 422—Confidential Assistant to the Director, Commercial Space Programs.
COM 423—Director of Congressional Affairs to the Assistant Secretary and Commissioner, Patent and Trademark Office.
COM 424—Congressional Liaison Specialist to the Under Secretary for International Trade.
COM 428—Congressional Liaison Specialist to the Director, Congressional Staff, Bureau of Export Administration.

Section 213.3315 Department of Labor

LAB 7—Private Secretary to the Under Secretary.
LAB 17—Senior Liaison Officer to the Deputy Under Secretary for Legislative Affairs.
LAB 45—Executive Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 49—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 55—Staff Assistant to the Deputy Under Secretary for Congressional Affairs.
LAB 64—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 91—Confidential Staff Assistant to the Deputy Under Secretary for Congressional Affairs.
LAB 93—Special Assistant to the Secretary.
LAB 100—Special Assistant to the Deputy Under Secretary for International Labor Affairs.
LAB 103—Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 104—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 105—Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 107—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 109—Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 110—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 111—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 112—Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 115—Secretary (Typing) to the Secretary's Representative.
LAB 116—Secretary (Typing) to the Secretary's Representative.
LAB 118—Secretary (Typing) to the Secretary's Representative.
LAB 122—Secretary (Typing) to the Secretary's Representative.
LAB 127—Staff Assistant to the Director, Office of Workers' Compensation Programs.
LAB 129—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 130—Special Assistant to the Secretary.
LAB 133—Special Assistant to the Director, Women's Bureau.
LAB 137—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 145—Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 146—Staff Assistant to the Solicitor.
LAB 152—Special Assistant to the Deputy Director, Women's Bureau.
LAB 154—Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 171—Special Assistant to the Secretary.
LAB 179—Executive Assistant to the Assistant Secretary, Employment Standards Administration.
LAB 180—Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 182—Associate Deputy Under Secretary for Labor-Management Relations and Cooperative Programs.
LAB 184—Special Assistant for Public Affairs to the Deputy Under Secretary for Employment Standards.
LAB 186—Special Assistant to the Director, Women's Bureau.
LAB 187—Special Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 190—Special Assistant to the Assistant Secretary for Policy.
LAB 192—Staff Assistant to the Assistant Secretary for Pension and Welfare Benefits Programs.
LAB 196—Executive Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 199—Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 204—Special Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 205—Legislative Analyst to the Deputy Under Secretary for Congressional Affairs.
LAB 209—Confidential Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 212—Staff Assistant to the Secretary.
LAB 215—Staff Assistant to the Director, Women's Bureau.
LAB 217—Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 219—Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 220—Special Assistant to the Deputy Under Secretary for Public Intergovernmental Affairs.
LAB 224—Confidential Staff Assistant to the Special Assistant to the Assistant Secretary, Mine Safety and Health Administration.
LAB 227—Special Assistant to the Deputy Assistant Secretary, Mine Safety and Health Administration.
LAB 228—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 231—Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 232—Special Assistant to the Director, Office of Federal Contract Compliance Programs.

LAB 233—Staff Assistant to the Director, Office of Federal Contract Compliance Programs.
LAB 234—Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 238—Assistant to the Secretary's Representative.
LAB 239—Staff Assistant to the Deputy Secretary.
LAB 240—Assistant to the Secretary's Representative.
LAB 241—Special Assistant to the Director, Office of Information and Public Affairs.
LAB 242—Assistant to the Secretary's Representative.
LAB 243—Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 245—Assistant to the Secretary's Representative.
LAB 246—Assistant to the Secretary's Representative.
LAB 248—Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 249—Assistant to the Secretary's Representative.
LAB 250—Executive Assistant to the Assistant Secretary for Labor-Management Standards.
LAB 251—Staff Assistant to the Deputy Assistant Secretary for Mine Safety and Health.
LAB 252—Director, Intergovernmental Affairs, to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 253—Staff Assistant to the Secretary.
LAB 254—Associate Assistant Secretary for Congressional Affairs.
HHS 5—Writer to the Secretary.
HHS 14—Special Assistant to the Executive Secretary.
HHS 17—Director, Scheduling, Security, and Protection, to the Secretary.
HHS 26—Special Assistant to the Executive Secretary.
HHS 55—Confidential Assistant to the Assistant Secretary for Legislation.
HHS 120—Assistant to the General Counsel.
HHS 167—Executive Director, Federal Council on Aging, to the Assistant Secretary for Human Development Services.
HHS 171—Special Assistant/Advisory Committee Officer to the Under Secretary.
HHS 187—Special Assistant to the Deputy Assistant Secretary for Legislation (Health).
HHS 213—Steward to the Secretary.
HHS 259—Special Assistant to the Assistant Secretary for Human Development Services.
HHS 264—Writer to the Secretary.
HHS 267—Special Initiatives Coordinator to the Secretary.
HHS 273—Special Assistant to the Deputy Assistant Secretary for Legislation.
HHS 290—Director, Office of Public Affairs, to the Assistant Secretary for Human Development Services.
HHS 293—Special Assistant to the Commissioner, Administration for Children, Youth and Families, Office of Human Development Services.
HHS 306—Special Assistant to the Director, Office of Policy and Legislation.
HHS 329—Executive Assistant to the Commissioner of Social Security.
HHS 331—Special Assistant to the Administrator, Health Care Financing Administration.
HHS 332—Executive Assistant to the Assistant Secretary for Human Development Services.
HHS 336—Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services).
HHS 339—Confidential Assistant to the Deputy Assistant Secretary, Office of Legislation.
HHS 350—Special Assistant to the Surgeon General.
HHS 354—Associate Commissioner, Administration for Children, Youth and Families, Office of Human Development Services.
HHS 359—Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation.
HHS 361—Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation.
HHS 363—Special Assistant to the Director, Office of Public Affairs, Office of Human Development Services.
HHS 376—Confidential Secretary to the Regional Director.
HHS 383—Special Assistant to the Assistant Secretary for Public Affairs.
HHS 387—Confidential Secretary to the General Counsel.
HHS 393—Special Assistant to the Director, Office of Community Services.
HHS 394—Confidential Assistant to the Executive Secretary.
HHS 395—Special Assistant to the Director, Office of Community Services.
HHS 400—External Affairs Specialist to the Director, Office of Community Services.
HHS 408—Confidential Staff Assistant to the Director, Office of Community Services.
HHS 414—Director, Division of Legislative Services and Congressional Affairs to the Director of Legislation and Policy, Health Care Financing Administration.
HHS 415—Confidential Assistant to the Secretary.
HHS 424—Staff Assistant to the Secretary.
HHS 427—Executive Director, President's Committee on Mental Retardation.
HHS 436—Associate Commissioner for Family and Youth Services Bureau, Administration for Children, Youth and Families.
HHS 439—Director, Office of Family Planning, to the Deputy Assistant Secretary for Population Affairs.
HHS 440—Confidential Assistant to the Associate Administrator for External Affairs, Health Care Financing Administration.
HHS 442—Director, Office of Adolescent Pregnancy Programs, to the Deputy Assistant Secretary for Population Affairs.
HHS 446—Special Assistant to the Chief of Staff.
HHS 448—Staff Assistant to the Associate Commissioner for Governmental Affairs, Social Security Administration.
HHS 452—Special Assistant for Advisory Committees to the Special Assistant/Advisory Committee Officer.
HHS 457—Special Assistant to the Under Secretary.
HHS 458—External Affairs Advisor to the Senior Advisor for External Affairs, Social Security Administration.
HHS 462—Special Assistant for Liaison Activities to the Administrator, Alcohol, Drug Abuse and Mental Health Administration, Public Health Service.
HHS 463—Executive Assistant to the Associate Commissioner, Office of Family Assistance.
HHS 466—Special Assistant to the Executive Assistant to the Secretary.
HHS 468—Deputy Director, Office of Community Services, Family Support Administration.
HHS 469—Director, Office of Communications Technology, Social Security Administration.
HHS 473—Director, Office of Policy, Planning and Legislation, to the Assistant Secretary for Human Development Services.
HHS 474—Special Assistant to the Deputy Commissioner, Social Security Administration.
HHS 475—Special Assistant to the

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Director, Office of Policy, Planning and Legislation, Office of Human Development Services.
HHS 477—Special Assistant for Policy Development to the Director, Policy Development Staff, Social Security Administration.
HHS 479—Special Assistant for Public Affairs to the Associate Commissioner for Public Affairs, Food and Drug Administration.
HHS 481—Director, Office of Congressional/External Affairs, Social Security Administration.
HHS 483—Special Assistant to the Commissioner of Social Security.
HHS 484—Confidential Assistant to the Director, Office of Legislation and Policy, Health Care Financing Administration.
HHS 487—Confidential Assistant to the Administrator, Health Care Financing Administration.
HHS 491—Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families.
HHS 493—Executive Assistant to the Under Secretary.
HHS 495—Confidential Staff Assistant to the Associate Administrator, Office of Communications, Family Support Administration.
HHS 497—Special Assistant to the Director, Office of Community Services.
HHS 498—Special Assistant for the National Drug Policy Board to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, Public Health Service.
HHS 499—Speech Writer to the Secretary.
HHS 501—Confidential Assistant to the Counselor to the Under Secretary.
HHS 503—Special Assistant to the Commissioner of Social Security.
HHS 504—Special Assistant to the Commissioner of Social Security.
HHS 505—Confidential Assistant to the Commissioner of Social Security.
HHS 506—Congressional Relations Specialist to the Deputy Commissioner for Policy and External Affairs, Social Security Administration.
HHS 507—Special Advisor to the Commissioner of Social Security.
HHS 508—Special Assistant to the Associate Commissioner, Office of Disability, Social Security Administration.
HHS 509—Director, Youth 2000 Program, to the Assistant Secretary for Human Development Services.
HHS 510—Deputy Director, Office of Public Liaison, Health Care Financing Administration.
HHS 511—Special Assistant to the Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families.
HHS 512—Special Assistant to the Deputy Assistant Secretary for Human Development Services.

Section 213.3317 Department of Education

EDU 3—Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 5—Confidential Assistant to the Under Secretary.
EDU 6—Special Assistant to the Executive Secretary.
EDU 7—Special Assistant to the Secretary.
EDU 8—Confidential Assistant to the Assistant Secretary, Office of Civil Rights.
EDU 9—Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education.
EDU 12—Confidential Assistant to the Assistant Secretary, Office of Vocational and Adult Education.
EDU 14—Special Assistant to the Deputy Under Secretary for Management.
EDU 16—Confidential Assistant to the General Counsel.
EDU 20—Steward to the Executive Assistant.
EDU 21—Confidential Assistant to the Deputy Assistant Secretary for Legislation.
EDU 37—Special Assistant to the Secretary.
EDU 38—Special Assistant to the Assistant Secretary, Office of Postsecondary Education.
EDU 44—Director of Policy Planning to the Assistant Secretary for Elementary and Secondary Education.
EDU 46—Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 49—Confidential Assistant to the Deputy Assistant Secretary for Legislation.
EDU 50—Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 54—Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 63—Special Assistant to the Under Secretary.
EDU 66—Special Assistant to the Secretary.
EDU 72—Special Assistant to the Assistant Secretary for Legislation.
EDU 74—Executive Assistant to the Assistant Secretary for Legislation.
EDU 77—Executive Assistant to the Assistant Secretary for Civil Rights.
EDU 78—Special Assistant to the Assistant Secretary for Civil Rights.
EDU 79—Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 86—Confidential Assistant to the Commissioner, Rehabilitative Services Administration.
EDU 87—Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 91—Special Assistant to the Assistant Secretary for Civil Rights.
EDU 93—Confidential Assistant to the Assistant Secretary for Postsecondary Education.
EDU 94—Confidential Assistant to the Assistant Secretary for Postsecondary Education.
EDU 96—Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 99—Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement.
EDU 100—Staff Assistant to the Deputy Under Secretary for Management.
EDU 101—Special Assistant to the Deputy Under Secretary for Management.
EDU 105—Secretary's Regional Representative.
EDU 106—Secretary's Regional Representative.
EDU 107—Secretary's Regional Representative.
EDU 108—Secretary's Regional Representative.
EDU 109—Secretary's Regional Representative.
EDU 111—Secretary's Regional Representative.
EDU 113—Special Assistant to the Director, Division of Adult Education, Office of Vocational and Adult Education.
EDU 115—Special Assistant to the Deputy Assistant Secretary for Higher Education Programs.
EDU 116—Special Assistant to the Assistant Secretary for Postsecondary Education.
EDU 117—Director, Historically Black Colleges and Universities Staff, Office of Postsecondary Education.
EDU 118—Confidential Assistant to the Counselor to the Secretary/Chief of Staff.
EDU 121—Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.

EDU 123—Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 124—Secretary's Regional Representative.
EDU 125—Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 128—Staff Assistant to the Deputy Under Secretary for Management.
EDU 131—Secretary's Regional Representative.
EDU 132—Staff Assistant to the Deputy Under Secretary for Management.
EDU 133—Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation.
EDU 135—Confidential Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 142—Special Assistant to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 144—Special Assistant to the Comptroller, Office of the Deputy Under Secretary for Management.
EDU 146—Special Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services.
EDU 147—Secretary's Regional Representative.
EDU 149—Special Assistant to the Under Secretary.
EDU 151—Special Assistant to the Assistant Secretary for Civil Rights.
EDU 152—Special Assistant to the Deputy Under Secretary for Management.
EDU 153—Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 154—Executive Director, Intergovernmental Advisory Council on Education, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 156—Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 158—Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 162—Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 167—Director, Operations Support Services, to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 171—Director, Legislative Liaison Staff, to the Deputy Assistant Secretary for Legislation.
EDU 177—Special Assistant to the Assistant Secretary, Office of Legislation and Public Affairs.
EDU 179—Special Assistant to the Executive Assistant to the Secretary for Private Education.
EDU 180—Confidential Assistant to the Counselor to the Secretary.
EDU 185—Staff Assistant to the Secretary's Regional Representative.
EDU 186—Staff Assistant to the Secretary's Regional Representative.
EDU 188—Staff Assistant to the Secretary's Regional Representative.
EDU 190—Staff Assistant to the Deputy Under Secretary for Management.
EDU 192—Deputy Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 193—Executive Secretary to the Chief of Staff.
EDU 194—Confidential Assistant to the Executive Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 195—Special Assistant to the Comptroller, Office of the Deputy Under Secretary for Management.
EDU 196—Special Assistant to the Director, Special Education Programs, Office of Special Education and Rehabilitative Services.
EDU 204—Deputy Secretary's Regional Representative.
EDU 211—Special Assistant to the Secretary's Regional Representative.
EDU 214—Special Assistant to the Secretary's Regional Representative.
EDU 216—Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 218—Special Assistant to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education.
EDU 219—Special Assistant to the Director, Office of Legislative Liaison.
EDU 221—Confidential Assistant to the Under Secretary.
EDU 225—Confidential Assistant to the Director of Public Affairs, Office of Planning, Budget and Evaluation.
EDU 230—Confidential Assistant to the Executive Secretary.
EDU 232—Special Assistant to the Special Assistant to the Secretary.
EDU 233—Executive Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 234—Special Assistant to the Executive Assistant to the Secretary for Private Education.
EDU 236—Confidential Assistant to the Executive Director, Intergovernmental Advisory Council on Education, Office of Intergovernmental and Interagency Affairs.
EDU 237—Special Assistant to the Assistant Secretary for Civil Rights.
EDU 239—Staff Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 240—Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 242—Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 244—Special Assistant to the Senior Special Assistant to the Secretary.
EDU 245—Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 246—Special Assistant to the Director, Public Affairs Service, Office of Planning, Budget and Evaluation.
EDU 248—Executive Assistant to the Assistant Secretary Secretary for Postsecondary Education.
EDU 249—Staff Assistant to the Director, Programs for the Improvement of Practice, Office of Educational Research and Improvement.
EDU 250—Special Assistant to the Secretary's Regional Representative.
EDU 251—Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 254—Director, Postsecondary Relations Staff, to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education.
EDU 257—Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 258—Special Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 260—Special Assistant to the Administrator for Management Services.
EDU 263—Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 266—Special Assistant to the

Assistant Secretary for Postsecondary Education.
EDU 267—Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 268—Director, Program Information and Coordination Staff, to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 271—Staff Assistant to the Deputy Under Secretary for Management.
EDU 272—Confidential Assistant to the Deputy Under Secretary for Management.
EDU 273—Special Assistant to the Deputy Assistant Secretary for Higher Education Programs, Office of Postsecondary Education.
EDU 274—Director, Recognition Division, to the Director, Programs for the Improvement of Practice, Office of Educational Research and Improvement.
EDU 275—Staff Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 277—Special Assistant (Typing) to the Director, Scheduling and Briefing Staff, Office of the Secretary.
EDU 280—Executive Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 281—Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 282—Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 284—Confidential Assistant to the Director, Office of Special Education Programs, Office of Special Education and Rehabilitative Services.
EDU 285—Confidential Assistant to the Assistant Secretary for Legislation.
EDU 286—Executive Assistant to the Under Secretary.
EDU 288—Special Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services.
EDU 289—Confidential Assistant to the Senior Special Assistant to the Secretary for Scheduling and Briefing.
EDU 290—Confidential Assistant to the Deputy Assistant Secretary for Policy and Planning, Office of Educational Research and Improvement.
EDU 291—Confidential Assistant to the Senior Special Assistant to the Secretary for Scheduling and Briefing and Private Sector Initiatives Staff.
EDU 292—Confidential Assistant to the Chief of Staff/Counselor to the Secretary.

Section 213.3318 Environmental Protection Agency

EPA 5—Confidential Assistant to the Deputy Administrator.
EPA 19—Program Advisor to the Assistant Administrator for Water.
EPA 52—Special Assistant to the Executive Assistant to the Administrator.
EPA 58—Congressional Liaison Specialist to the Director, Office of Congressional Liaison.
EPA 61—Special Assistant to the Assistant Administrator for Administration and Resource Management.
EPA 69—Deputy Director, Office of Congressional Liaison.
EPA 70—Congressional Relations Officer to the Director, Office of Congressional Liaison.
EPA 86—Special Assistant to the Regional Administrator.
EPA 89—Special Assistant to the Assistant Administrator for Water.
EPA 93—Staff Assistant to the Executive Assistant to the Administrator.
EPA 94—Special Assistant to the Regional Administrator.
EPA 106—Special Assistant to the Director, Office of Public Affairs.
EPA 109—Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response.
EPA 111—Special Assistant to the Director of Public Affairs.
EPA 112—Staff Assistant to the General Counsel.
EPA 113—Special Assistant to the Assistant Administrator for Policy, Planning and Evaluation.
EPA 115—Special Assistant to the Assistant Administrator for Research and Development.

Section 213.3319 Administrative Conference of the United States

ACUS 2—Secretary (Steno) to the Chairman.
ACUS 3—Senior Special Assistant to the Chairman.
ACUS 4—Staff Assistant to the Chairman.

Section 213.3322 Interstate Commerce Commission

ICC 1—Confidential Assistant to a Commissioner.
ICC 2—Confidential Assistant to a Commissioner.
ICC 3—Confidential Assistant to a Commissioner.
ICC 6—Confidential Assistant to a Commissioner.
ICC 8—Confidential Assistant to the Chairman.
ICC 20—Staff Advisor (Economics) to the Director, Office of Public Assets.
ICC 25—Attorney-Advisor (Transportation) to a Commissioner.
ICC 45—Congressional Liaison Representative to the Director, Office of Legislative and Public Affairs.

Section 213.3323 Overseas Private Investment Corporation

OPIC 1—Chauffeur to the President.

Section 213.3325 Tax Court of the United States

TCOUS 40—Secretary and Confidential Assistant to the Judge.
TCOUS 41—Secretary and Confidential Assistant to the Judge.
TCOUS 42—Secretary and Confidential Assistant to the Judge.
TCOUS 43—Secretary and Confidential Assistant to the Judge.
TCOUS 44—Secretary and Confidential Assistant to the Judge.
TCOUS 45—Secretary and Confidential Assistant to the Judge.
TCOUS 46—Secretary and Confidential Assistant to the Judge.
TCOUS 47—Secretary and Confidential Assistant to the Judge.
TCOUS 50—Secretary and Confidential Assistant to the Judge.
TCOUS 51—Secretary and Confidential Assistant to the Judge.
TCOUS 52—Secretary and Confidential Assistant to the Judge.
TCOUS 53—Secretary and Confidential Assistant to the Judge.
TCOUS 54—Secretary and Confidential Assistant to the Judge.
TCOUS 55—Secretary and Confidential Assistant to the Judge.
TCOUS 56—Secretary and Confidential Assistant to the Judge.
TCOUS 57—Secretary and Confidential Assistant to the Judge.
TCOUS 58—Secretary and Confidential Assistant to the Judge.
TCOUS 59—Secretary and Confidential Assistant to the Judge.
TCOUS 60—Secretary and Confidential Assistant to the Judge.
TCOUS 61—Secretary and Confidential Assistant to the Judge.
TCOUS 62—Secretary and Confidential Assistant to the Judge.
TCOUS 63—Secretary and Confidential Assistant to the Judge.
TCOUS 64—Secretary and Confidential Assistant to the Judge.
TCOUS 65—Secretary and Confidential Assistant to the Judge.
TCOUS 66—Trial Clerk to the Judge.
TCOUS 67—Trial Clerk to the Judge.
TCOUS 68—Trial Clerk to the Judge.

TCOUS 69—Trial Clerk to the Judge.
TCOUS 70—Trial Clerk to the Judge.
TCOUS 71—Trial Clerk to the Judge.
TCOUS 72—Trial Clerk to the Judge.
TCOUS 73—Trial Clerk to the Judge.
TCOUS 75—Trial Clerk to the Judge.
TCOUS 76—Trial Clerk to the Judge.
TCOUS 77—Trial Clerk to the Judge.
TCOUS 78—Trial Clerk to the Judge.

Section 213.3327 Veterans Administration

VA 6—Confidential Assistant to the Administrator.
VA 10—Confidential Assistant to the Administrator.
VA 15—Confidential Assistant to the Administrator.
VA 34—Director, Congressional Affairs, to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs.
VA 40—Confidential Assistant to the Executive Officer to the Administrator.
VA 41—Confidential Assistant to the Associate Deputy Administrator for Public Affairs.
VA 42—Confidential Assistant to the Director, Congressional Affairs.
VA 48—Confidential Assistant to the Administrator.
VA 49—Confidential Assistant to the Administrator.

Section 213.3328 United States Information Agency

USIA 2—Special Assistant to the Director.
USIA 14—Special Assistant to the Associate Director for Programs.
USIA 21— Staff Assistant to the Director.
USIA 22—Director, New York Foreign Press Center, to the Associate Director for Programs.
USIA 29—Public Affairs Specialist to the Deputy Counselor for Press and Public Affairs, United States Mission to the United Nations.
USIA 30—Staff Assistant to the Special Assistant to the Director.
USIA 33—Staff Assistant to the Director, Office of Public Liaison.
USIA 34—Staff Assistant to the Director, Office of Private Sector Programs.
USIA 37—Staff Assistant to the Special Assistant, Private Sector Liaison.
USIA 42—Secretary (Typing) to the Associate Director for Management.
USIA 56—Staff Specialist to the Director, Office of Private Sector Liaison.
USIA 57—Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 58—Special Assistant to the Deputy Director.
USIA 59—Special Assistant to the Deputy Director.
USIA 60—Special Assistant to the Director, Voice of America.
USIA 67—Chief, Voluntary Visitor Division, to the Associate Director for Educational and Cultural Affairs.
USIA 73—Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 75—Special Assistant to the General Counsel.
USIA 77—Special Assistant to the Associate Director for Management.
USIA 80—Special Assistant (Media Relations) to the Director, Office of Public Liaison.
USIA 81—Special Assistant to the Associate Director for Programs.
USIA 87—Staff Assistant to the Director, Office of Public Liaison.
USIA 91—Program Officer to the Coordinator, U.S.-Soviet Exchange Initiative.
USIA 93—Program Officer to the Coordinator, U.S.-Soviet Exchange Initiative.
USIA 98—Special Assistant to the Director.
USIA 100—Editorial Writer to the Director, Office of Policy.
USIA 101—Program Officer to the Director, New York Foreign Press Center.
USIA 102—Special Assistant (Private Sector Committees) to the Director, Private Sector Committees.

Section 213.3330 Securities and Exchange Commission

SEC 2—Executive Aide (Typing) to the Executive Assistant to the Chairman.
SEC 4—Confidential Assistant to a Commissioner.
SEC 5—Confidential Assistant to a Commissioner.
SEC 6—Confidential Assistant to a Commissioner.
SEC 8—Secretary (Steno) to the Chief Accountant.
SEC 9—Secretary to the General Counsel.
SEC 11—Confidential Assistant to the Chairman.
SEC 12—Public Information Officer to the Chairman.
SEC 14—Secretary (Typing) to the Director of Economic Policy Research.
SEC 15—Secretary (Steno) to the Director, Division of Market Regulation
SEC 16—Secretary to the Director, Division of Enforcement.
SEC 18—Secretary (Steno) to the Director, Division of Investment Management.
SEC 19—Secretary (Typing) to the Director, Division of Corporate Finance.

Section 213.3331 Department of Energy

DOE 2—Secretary (Confidential Assistant) to the Secretary.
DOE 15—Confidential Assistant (Secretary) to the Administrator, Energy Information Administration.
DOE 34—Special Assistant to the Administrator, Bonneville Power Administration.
DOE 40—Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 41—Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 47—Technical Advisor to a Member, Federal Energy Regulatory Commission.
DOE 59—Staff Assistant to the Director, Office of Energy Research.
DOE 60—Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 63—Staff Assistant to the Special Assistant to the Secretary.
DOE 68—Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 75—Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 77—Staff Assistant to the Administrative Assistant to the Secretary and Chief of Staff.
DOE 85—Special Assistant for Legislation to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 87—Staff Assistant to the Associate Director, Office of Resource Management.
DOE 95—Staff Assistant to the General Counsel.
DOE 105—Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 106—Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 110—Private Secretary to a Member, Federal Energy Regulatory Commission.
DOE 111—Staff Assistant to the Chairman, Federal Energy Regulatory Commission.
DOE 172—Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 174—Staff Assistant to the Assistant Secretary for Fossil Energy.

DOE 178—Legislative Affiars Specialist to the Director, Office of Congressional Affairs.
DOE 184—Confidential Assistant (Secretary) to the Assistant Secretary for Defense Programs.
DOE 190—Staff Assistant to the Secretary.
DOE 195—Staff Assistant to the Director, Minority Economic Impact.
DOE 198—Director, Senate Liaison Branch, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 200—Staff Assistant to the Deputy Secretary.
DOE 201—Staff Assistant to the Under Secretary.
DOE 204—Director, Division of Public Liaison, to the Director, Office of Communications.
DOE 206—Executive Assistant to the Director, Office of Energy Research.
DOE 210—Confidential Assistant (Secretary) to the Assistant Secretary for Fossil Energy.
DOE 215—Special Assistant to the Assistant Secretary for Nuclear Energy.
DOE 218—Ombudsman to the Director, Office of External Affairs, Federal, Energy Regulatory Commission.
DOE 221—Deputy Director, Office of Public Liaison.
DOE 229—House Liaison Specialist to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 231—Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 235—Special Assistant to the Director, Office of Policy Planning and Analysis.
DOE 238—Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 243—Staff Assistant to the Assistant Secretary for International Affairs.
DOE 244—Director, Office of Consumer Affairs, to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 246—Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 247—Director, Division of Public Affairs, Federal Energy Regulatory Commission.
DOE 248—Administrative Assistant to the Chairman, Federal Energy Regulatory Commission.
DOE 249—Staff Assistant to the Administrator, Economic Regulatory Administration.
DOE 252—Supervisory Intergovernmental Affairs Specialist to the Director, Office of Communications.
DOE 259—Private Secretary to the Chairman, Federal Energy Regulatory Commission.
DOE 264—Staff Assistant to the Administrator, Energy Information Administration.
DOE 265—Executive Assistant to the Secretary.
DOE 269—Deputy Assistant Secretary to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs.
DOE 274—Staff Assistant to the Special Assistant to the Secretary.
DOE 276—Secretary (Confidential Assistant) to the Special Assistant to the Secretary.
DOE 282—Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 288—Special Assistant to the Deputy Assistant Secretary for Breeder Reactor Programs.
DOE 292—Chauffeur of the Secretary.
DOE 294—Special Programs Liaison Specialist to the Director, Division of Public Liaison, Office of Congressional, Intergovernmental and Public Affairs.
DOE 296—Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 299—Legislative Affairs Assistant to the Director, Program Liaison Division, Office of Congressional, Intergovernmental and Public Affairs.
DOE 300—Staff Assistant to the Assistant Secretary for Environment, Safety, and Health.
DOE 301—Secretary (Confidential Assistant) to the Associate Director for Geological Repositories, Office of Civilian Radioactive Waste Management.
DOE 304—Deputy Director of Congressional Affairs, Office of Congressional, Intergovernmental, and Public Affairs.
DOE 306—Special Assistant to the Assistant Secretary for Defense Programs.
DOE 307—Staff Assistant to the Assistant Secretary for Environment, Safety and Health.
DOE 308—Public Affairs Specialist to the Director, Division of Public Affairs.
DOE 310—Secretary (Confidential Assistant) to the Deputy Secretary.
DOE 314—Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 318—Director, Division of Press Services, to the Director, Office of Communications.
DOE 319—Staff Assistant to the Director, Office of Energy Research.
DOE 320—Special Assistant to the Assistant Secretary for Management and Administration.
DOE 321—Staff Assistant to the Director, Division of Public Liaison, Office of Congressional, Intergovernmental and Public Affairs.
DOE 323—Special Assistant to the Assistant Secretary for Fossil Energy.
DOE 324—Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies.
DOE 325—Staff Assistant to the Deputy Assistant Secretary for Security Affairs.
DOE 326—Staff Assistant to the Director, Office of Communications.
DOE 327—Congressional Affairs Advisor to the Assistant Secretary for Defense Programs.
DOE 328—Staff Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 329—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 330—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 331—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 333—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 334—Secretary (Confidential Assistant) to the Assistant Secretary for Defense Programs.
DOE 335—Special Assistant for Superconducting Super Colliding Coordination to the Under Secretary.
DOE 336—Staff Assistant to the Deputy Secretary.
DOE 337—Special Assistant to the Assistant Secretary for Management and Administration.
DOE 338—Director, Division of Congressional Affairs, Federal Energy Regulatory Commission.
DOE 339—Special Assistant to the Deputy Assistant Secretary for Energy Emergencies.
DOE 340—Confidential Assistant (Secretary) to the Assistant

Secretary for Fossil Energy.
DOE 341—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 343—Senior Policy Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs.
DOE 344—Senior Policy Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs.
DOE 345—Staff Assistant to the Director, Office of External Affairs, Office of Congressional, Intergovernmental, and Public Affairs.
DOE 346—Confidential Assistant (Secretary) to the Assistant Secretary for Fossil Energy.

Section 213.3332 Small Business Administration

SBA 4—Special Assistant to the Administrator.
SBA 11—Deputy Assistant Administrator for Congressional and Legislative Affairs.
SBA 18—Special Assistant to the Administrator.
SBA 43—Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs.
SBA 45—Special Assistant to the Associate Administrator for Procurement Affairs.
SBA 46—Special Assistant to the Administrator.
SBA 52—Special Assistant to the Administrator.
SBA 58—Confidential Assistant to the Chief of Staff.
SBA 65—Special Assistant to the Regional Administrator.
SBA 66—Special Assistant to the Regional Administrator.
SBA 69—Special Assistant to the Regional Administrator.
SBA 70—Special Assistant to the Regional Administrator.
SBA 71—Special Assistant to the Regional Administrator.
SBA 72—Special Assistant to the Regional Administrator.
SBA 73—Special Assistant to the Regional Administrator.
SBA 76—Executive Assistant to the Director of Women's Business Ownership.
SBA 91—Special Assistant to the Assistant Administrator for Public Communications.
SBA 96—Special Assistant to the Associate Administrator for Management Assistance.
SBA 97—Confidential Assistant to the General Counsel.
SBA 99—Special Assistant to the Regional Administrator.
SBA 100—Special Assistant to the Regional Administrator.
SBA 101—Special Assistant to the Associate Deputy Administrator for Management Assistance.
SBA 103—Confidential Assistant to the Administrator.
SBA 106—Director, Office of Private Sector Initiatives, to the Associate Deputy Director for Private Sector Initiatives.
SBA 112—Special Assistant to the Deputy Administrator.
SBA 121—Special Assistant to the Regional Administrator.
SBA 124—Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs.
SBA 127—Special Assistant to the Director of Veterans Affairs.
SBA 128—Director of Women's Business Ownership to the Associate Administrator for Business Development.
SBA 132—Special Assistant to the Regional Administrator.
SBA 133—Director of Veterans Affairs to the Associate Administrator for Business Development.
SBA 134—Special Assistant to the Associate Administrator for Business Development.
SBA 135—Special Assistant to the Regional Administrator.
SBA 138—Special Assistant to the Director, Office of Private Sector Initiatives.
SBA 139—Special Assistant to the Associate Administrator for Business Development.
SBA 140—Special Assistant to the Regional Administrator.
SBA 141—Staff Assistant to the Associate Deputy Administrator for Special Programs.

Section 213.3333 Federal Deposit Insurance Corporation

FDIC 2—Secretary to a Member.
FDIC 7—Special Assistant to the Director, Congressional Liaison Staff.
FDIC 9—Legislative Attorney and Advisor to the Director, Office of Congressional and Public Information.
FDIC 10—Legislative Advisor to the Director of Legislative Affairs.

Section 213.3334 Federal Trade Commission

FTC 5—Director of Congressional Relations to the Chairman.
FTC 7—Deputy Director, Office of Congressional Relations.
FTC 11—Staff Assistant to a Commissioner.
FTC 14—Congressional Liaison Specialist to the Chairman.

Section 213.3337 General Services Administration

GSA 16—Confidential Assistant to the General Counsel.
GSA 24—Special Assistant to the Commissioner, Public Building Service.
GSA 52—Confidential Assistant to the Commissioner, Public Building Service.
GSA 63—Director, Office of Business and Industry Affairs, to the Associate Administrator for Congressional Affairs and Industry Relations.
GSA 64—Deputy (External Affairs) to the Associate Administrator for Operations.
GSA 69—Confidential Assistant to the Associate Administrator for Congressional Affairs.
GSA 70—Special Assistant to the Associate Administrator for Public Affairs.
GSA 72—Confidential Assistant to the Assistant Administrator for Federal Supply and Services.
GSA 79—Confidential Assistant to the Regional Administrator.
GSA 83—Confidential Assistant to the Regional Administrator.
GSA 86—Confidential Assistant to the Regional Administrator.
GSA 89—Confidential Assistant to the Director of Congressional Affairs.
GSA 90—Special Assistant to the Associate Administrator for Congressional Affairs.
GSA 93—Executive Assistant to the Administrator for Operations.
GSA 97—Confidential Assistant to the Commissioner, Federal Property Resources Service.
GSA 106—Special Assistant to the Associate Administrator for Public Affairs.
GSA 107—Special Assistant to the Executive Director, Office of Information Resources Management.
GSA 109—Confidential Assistant to the Regional Administrator.
GSA 113—Confidential Assistant to the Regional Administrator.
GSA 114—Confidential Assistant to the Regional Administrator.
GSA 116—Special Assistant to the General Counsel.
GSA 117—Special Assistant to the Associate Administrator for Operations.
GSA 118—Confidential Assistant to the Regional Administrator.

GSA 119—Special Assistant to the Regional Administrator.
GSA 120—Confidential Assistant to the Associate Administrator for Congressional Affairs and Industry Relations.

Section 213.3338 Federal Communications Commission

FCC 9—Confidential Assistant to the Chief of Staff.
FCC 11—Special Assistant to the Director, Office of Public Affairs.
FCC 13—Congressional Liaison Specialist to the Legislative Affairs Officer, Office of Congressional and Public Affairs.
FCC 15—Chief, Press and News Media Division, Office of Congressional and Public Affairs.
FCC 17—Confidential Staff Assistant to the Chief, Office of Plans and Policy.
ITC 18—Confidential Staff Assistant to the Director, Office of Legislative Affairs.

Section 213.3339 U.S. International Trade Commission

ITC 1—Confidential Assistant to a Commissioner.
ITC 3—Staff Assistant (Economics) to a Commissioner.
ITC 5—Confidential Assistant to a Commissioner.
ITC 7—Special Assistant (Economics) to a Commissioner.
ITC 9—Confidential Assistant to the Chairman.
ITC 13—Staff Assistant (Legal) to a Commissioner.
ITC 14—Staff Assistant (Legal) to a Commissioner.
ITC 15—Confidential Assistant to a Commissioner.
ITC 17—Saff Assistant (Legal) to a Commissioner.
ITC 18—Confidential Assistant to a Commissioner.
ITC 19—Staff Assistant (Economics) to a Commissioner.
ITC 20—Staff Assistant (Legal) to a Commissioner.
ITC 22—Staff Assistant (Legal) to a Commissioner.
ITC 24—Staff Assistant (Legal) to a Commissioner.
ITC 25—Staff Assistant (Legal) to a Commissioner.
ITC 27—Congressional Liaison to the Chairman.
ITC 30—Confidential Assistant to a Commissioner.
ITC 31—Staff Assistant (Legal) to a Commissioner.
ITC 33—Staff Assistant to a Commissioner.
ITC 34—Staff Assistant (Legal) to a Commissioner.

Section 213.3340 National Archives and Records Administration

NARA 1—Congressional Relations Specialist to the Archivist of the United States.

Section 213.3341 National Labor Relations Board

NLRB 3—Confidential Assistant to a Board Member.
NLRB 5—Confidential Assistant to a Board Member.
NLRB 6—Confidential Assistant to a Board Member.
NLRB 9—Confidential Staff Assistant to the General Counsel.

Section 213.3342 Export-Import Bank of the United States

EXIM 2—Private Secretary to the First Vice President and Vice Chairman.
EXIM 3—Administrative Assistant to a Director.
EXIM 5—Administrative Assistant to a Director.
EXIM 12—Secretary (Steno) to the Senior Vice President.
EXIM 15—Aministrative Assistant (Typing) to the President and Chairman.
EXIM 16—Aministrative Assistant to the General Counsel.
EXIM 29—Special Assistant to the President and Chairman.

Section 213.3343 Farm Credit Administration

FCA 1—Special Assistant to the Chairman.
FCA 2—Private Secretary to a Board Member.
FCA 3—Executive Assistant to the Chairman.
FCA 4—Deputy Director for Public Affairs to the Director, Office of Congressional and Public Affairs.
FCA 5—Confidential Assistant to the Director, Office of Congressional and Public Affairs.
FCA 6—Executive Assistant to a Board Member.
FCA 7—Private Secretary to a Board Member.
FCA 8—Secretary to the Chairman.
FCA 9—Executive Assistant to a Board Member.

Section 213.3346 Selective Service System

SSS 9—Assistant Director of Congressional and Intergovernmental Affairs.
SSS 14—Deputy Director for Congressional Affairs.

Section 213.3347 Federal Mediation and Conciliation Service

FMCS 2—Executive Assistant to the Director.
FMCS 3—Public Affairs Director to the Director.

Section 213.3348 National Aeronautics and Space Administration

NASA 1—Secretary (Steno) to the Administrator.
NASA 2—Secretary (Steno) to the Deputy Administrator.
NASA 18—Special Assistant to the Administrator.

Section 213.3351 Federal Mine Safety and Health Review Commission

FM 1—Secretary (Steno) to a Commissioner.
FM 3—Confidential Secretary to a Commissioner.
FM 4—Confidential Secretary to a Commissioner.
FM 7—Attorney-Advisor (General) to a Commissioner.
FM 8—Attorney-Advisor (General) to a Commissioner.
FM 9—Attorney-Advisor (General) to a Commissioner.

Section 213.3352 Government Printing Office

GPO 6—Administrative Assistant to the Public Printer.
GPO 7—Confidential Assistant to the Deputy Public Printer.
GPO 15—Special Assistant to the Public Printer.

Section 213.3354 Federal Home Loan Bank Board

FHLB 4—Secretary (Typing) to a Board Member.
FHLB 5—Staff Assistant to the Chairman.
FHLB 6—Assistant to a Board Member.
FHLB 7—Assistant to a Board Member.
FHLB 19—Congressional Liaison to the Executive Staff Director.
FHLB 33—Special Assistant to the Chairman.
FHLB 35—Deputy Director, Office of Congressional Liaison.
FHLB 36—Deputy Chief of Staff to the Executive Director and Chief of Staff.
FHLB 40—Assistant to a Board Member.
FHLB 41—Staff Assistant to the Executive Director, Federal Savings and Loan Insurance Corporation.
FHLB 42—Secretary (Typing) to the Deputy Executive Director, Federal Savings and Loan Insurance Corporation.

Section 213.3356 Commission on Civil Rights

CCR 12—Confidential Assistant to a

Commissioner.
CCR 13—Confidential Assistant to the Chairman.
CCR 14—Deputy General Counsel to the General Counsel.
CCR 15—Special Assistant to a Commissioner.
CCR 23—Special Assistant to a Commissioner.
CCR 28—Special Assistant to a Commissioner.
CCR 29—Special Assistant to a Commissioner.
CCR 31—Special Assistant to the Staff Director.
CCR 32—Special Assistant to a Commissioner.

Section 213.3357 National Credit Union Administration

NCUA 9—Staff Assistant to the Chairman.
NCUA 15—Secretary (Typing) to the President, Central Liquidity Facility.
NCUA 16—Confidential Assistant to a Board Member.
NCUA 18—Special Assistant to the Chairman.
NCUA 19—Writer-Editor to the Executive Director.
NCUA 20—Executive Assistant to a Board Member.

Section 213.3359 ACTION

ACT 31—Executive Assistant to the Director.
ACT 32—Confidential Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 44—Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 45—Director of Public Affairs to the Director.
ACT 51—Special Assistant to the Assistant Director for Volunteer Liaison.
ACT 56—Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 58—Special Assistant to the Director.
ACT 84—Staff Assistant to the Associate Director for Legislative, Public, and Intergovernmental Affairs.

Section 213.3360 Consumer Product Safety Commission

CPSC 7—Special Assistant (Legal) to a Commissioner.
CPSC 16—Director, Office of Congressional Relations, to the Chairman.
CPSC 20—Special Assistant (Legal) to a Commissioner.
CPSC 23—Special Assistant to a Commissioner.
CPSC 25—Staff Assistant to a Commissioner.
CPSC 28—Staff Assistant to a Commissioner.
CPSC 37—Supervisory Public Affairs Specialist to the Executive Director, Office of Public Affairs.
CPSC 38—Staff Assistant to the Chairman.
CPSC 41—Special Assistant to the Chairman.
CPSC 42—Public Affairs Specialist to the Chairman.
CPSC 48—Secretary (Steno) to the Chairman.

Section 213.3364 U.S. Arms Control and Disarmament Agency

ACDA 1—Secretary (Steno) to the Director.
ACDA 2—Secretary (Steno) to the Deputy Director.
ACDA 4—Private Secretary to the Assistant Director for Vertification and Intelligence.
ACDA 5—Secretary (Steno) to the Assistant Director for Nuclear and Weapons Control.
ACDA 10—Deputy Director for Congressional Affairs to the Director.
ACDA 11—Congressional Affairs Specialist to the Director, Office of Congressional Affairs.
ACDA 15—Secretary to the Chairman, General Advisory Committee.
ACDA 17—Secretary (Typing) to the Director.
ACDA 20—Special Assistant to the Deputy Director for Public Affairs.
ACDA 22—Private Secretary to the Assistant Director for Multilateral Affairs.
ACDA 23—Staff Assistant to the Assistant Director for Multilateral Affairs.
ACDA 28—Staff Assistant to the Director.
ACDA 30—Secretary (Steno) to the Special Representative for Arms Control and Disarmament.

Section 213.3367 Federal Maritime Commission

FMC 2—Confidential Assistant to a Commissioner.
FMC 3—Confidential Assistant to a Commissioner.
FMC 4—Confidential Assistant to a Commissioner.
FMC 5—Confidential Assistant to a Commissioner.
FMC 7—Secretary (Steno) to a Commissioner.
FMC 8—Secretary (Steno) to a Commissioner.
FMC 23—Secretary (Steno) to the Counsel to the Chairman.

Section 213.3368 Agency for International Development

AID 22—Special Assistant to the Assistant Administrator, Bureau for Asia and the Near East.
AID 35—Special Assistant to the Director, Office of Private and Voluntary Cooperation.
AID 38—Director, Office of Interbureau Affairs and Special Projects, to the Deputy Assistant Administrator for External Affairs.
AID 43—Special Assistant to the Deputy Administrator.
AID 45—Deputy Assistant to the Administrator for Public Affairs to the Assistant Administrator, External Affairs.
AID 48—Special Assistant to the Director of Policy Development and Program Review.
AID 57—Special Assistant to the Director, Office of Private and Voluntary Cooperation.
AID 58—Special Assistant to the Coordinator, Office of Public Diplomacy for Latin America and the Caribbean.
AID 64—Special Assistant to the Deputy Assistant Administrator for Management.
AID 65—Supervisory Public Affairs Specialist to the Deputy Assistant Administrator for External Affairs.
AID 68—Special Assistant to the Assistant Administrator for Private Enterprise.
AID 70—Special Assistant to the Assistant Administrator for Latin America and the Caribbean.
AID 71—Special Assistant to the Deputy Administrator.
AID 73—Special Assistant to the Assistant Administrator for External Affairs.
AID 76—Public Affairs Specialist to the Director, Public Liaison.
AID 78—Program Operations Assistant to the Director, Office of Policy Development and Program Review.
AID 79—Special Operations Assistant to the Assistant Administrator for External Affairs.

Section 213.3372 Administrative Office of the United States Courts

AOUSC 4—Supervisory Attorney-Advisor (Legislative) to the Legislative Affairs Officer.
AOUSC 5—Secretary (Steno) to the Deputy Legislative Affairs Officer.
AOUSC 7—Attorney-Advisor (Legislative) to the Deputy Legislative Affairs Officer.
AOUSC 8—Attorney-Advisor (Legislative) to the Legislative and

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Public Affairs Officer.
AOUSC 9—Public Information Officer to the Legislative and Public Affairs Officer.

Section 213.3376 Appalachian Regional Commission

ARC 8—Legislative and Policy Advisor to the Federal Co-Chairman.

Section 213.3377 Equal Employment Opportunity Commission

EEOC 2—Special Assistant to the Chairman.
EEOC 5—Confidential Assistant to a Member.
EEOC 9—Special Assistant to a Member.
EEOC 12—Media Contact Specialist to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 15—Research Specialist to the Chairman.
EEOC 17—Special Assistant to a Member.
EEOC 18—Special Assistant to the Chairman.
EEOC 22—Director, Legislative Affairs, to the Director, Office of Communications and Legislative Affairs.
EEOC 23—Special Assistant to a Member.
EEOC 25—Media Contact Specialist to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 29—Director, Communications Staff, to the Director, Office of Communications and Legislative Affairs.
EEOC 33—Legislative Affairs Specialist to the Director, Office of Communications and Legislative Affairs.
EEOC 37—Social Science Research Specialist to the Director, Office of Program Research.
EEOC 38—Legislative Affairs Specialist to the Director, Office of Congressional Affairs.
EEOC 40—Legislative Affairs Specialist to the Director, Office of Communications and Legislative Affairs.
EEOC 41—Confidential Assistant to the Director, Office of Communications and Legislative Affairs.

Section 213.3379 Commodity Futures Trading Commission

CFTC 1—Administrative Assistant to the Chairman.
CFTC 3—Administrative Assistant to a Commissioner.
CFTC 4—Administrative Assistant to a Commissioner.
CFTC 5—Administrative Assistant to a Commissioner.
CFTC 6—Administrative Assistant to a Commissioner.
CFTC 7—Supervisory Public Affairs Specialist to the Chairman.
CFTC 12—Special Assistant to a Commissioner.
CFTC 14—Special Assistant to a Commissioner.
CFTC 21—Governmental Affairs Officer to the Chairman.

Section 213.3382 National Foundation on the Arts and the Humanities

National Endowment for the Arts
NEA 9—Congressional Liaison Officer to the Chairman.
NEA 45—Special Assistant to the Chairman.
NEA 49—Associate Deputy Chairman for Programs.
National Endowment for the Humanities
NEH 28—Public Affairs Officer to the Deputy Chairman.
NEH 47—Special Assistant to the Chairman.
NEH 48—Congressional Liaison Officer to the Chairman.
NEH 54—Confidential Assistant to the Assistant Director, Institute of Museum Services.

Section 213.3384 Department of Housing and Urban Development

HUD 35—Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 37—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 39—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 41—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 45—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 60—Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs.
HUD 78—Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 87—Special Assistant to the General Counsel.
HUD 114—Special Assistant/Director, Executive Secretariat to the Secretary.
HUD 120—Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs.
HUD 126—Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 135—Special Assistant to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 137—Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 143—Special Assistant to the Director, Executive Secretariat.
HUD 151—Staff Assistant to the President, Government National Mortgage Association.
HUD 153—Executive Assistant to the President, Government National Mortgage Association.
HUD 160—Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 170—Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 174—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 175—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 176—Special Assistant to the Secretary.
HUD 177—Special Assistant for Special Projects to the Secretary.
HUD 184—Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Legislation and Congressional Relations.
HUD 192—Special Assistant to the Secretary.
HUD 198—Special Assistant to the Secretary.
HUD 203—Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 206—Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 208—Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 209—Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 215—Executive Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs.
HUD 218—Executive Assistant to the Regional Administrator.
HUD 224—Special Assistant to the Regional Administrator.
HUD 227—Executive Assistant to the

Regional Administrator.
HUD 228—Executive Assistant to the Regional Administrator.
HUD 245—Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 247—Executive Assistant to the Assistant Secretary for Housing.
HUD 259—Special Assistant to the Secretary.
HUD 261—Special Assistant to the Secretary.
HUD 268—Executive Assistant to the Deputy Assistant Secretary for Policy, Finanical Management, and Administration.
HUD 274—Special Assistant to the Secretary.
HUD 275—Special Assistant to the Under Secretary.
HUD 280—Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 281—Special Assistant to the Regional Administrator.
HUD 285—Legislative Officer to the Deputy Assistant Secretary for Legislation and Congressional Relations.
HUD 288—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 289—Associate Deputy Assistant Secretary for Program Policy Development and Evaluation.
HUD 292—Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 293—Staff Assistant to the President, Government National Mortgage Association.
HUD 312—Special Assistant to the Regional Administrator.
HUD 314—Confidential Assistant to the Under Secretary.
HUD 315—Special Assistant to the General Deputy Assistant Secretary for Community Planning and Development.
HUD 316—Special Assistant to the Regional Administrator.
HUD 318—Executive Assistant to the General Deputy Assistant Secretary for Public and Indian Housing.
HUD 322—Special Assistant to the Regional Administrator.
HUD 324—Special Assistant to the Regional Administrator.
HUD 325—Executive Assistant to the Assistant to the Secretary for Business Relations/Director, Office of Small and Disadvantaged Business Utilization.
HUD 329—Special Assistant to the Assistant Secretary for Labor Relations.
HUD 335—Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 336—Special Assistant (Advance) to the Assistant Secretary for Public Affairs.
HUD 337—Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs.
HUD 338—Special Assistant to the Assistant Secretary for Housing.
HUD 340—Special Assistant to the Secretary.
HUD 341—Special Assistant to the Secretary.
HUD 345—Special Assistant to the Deputy Assistant Secretary for Single Family Housing.
HUD 348—Special Assistant to the Deputy Assistant Secretary for Operations and Management.
HUD 350—Special Assistant to the Regional Administrator.
HUD 356—Executive Assistant to the Regional Administrator.
HUD 359—Special Assistant to the Regional Administrator.
HUD 363—Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 366—Special Assistant to the Assistant Secretary-Federal Housing Commissioner.
HUD 367—Special Assistant to the Regional Administrator.
HUD 370—Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 373—Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs.
HUD 374—Executive Assistant to the Deputy Under Secretary for Field Coordination.
HUD 376—Special Assistant to the Regional Administrator.
HUD 377—Special Assistant to the Regional Administrator.
HUD 379—Assistant Director for Executive Secretariat Operations to the Executive Assistant to the Secretary.
HUD 382—Staff Assistant to the Deputy Under Secretary for Intergovernmental Relations.
HUD 383—Special Assistant to the Regional Administrator.
HUD 385—Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs.
HUD 389—Associate Deputy Assistant Secretary for Policy Development and Research to the Assistant Secretary for Policy Development and Research.
HUD 390—Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 392—Special Assistant for Community Relations to the Regional Administrator.
HUD 393—Associate Deputy Assistant Secretary for Demonstration Projects to the Deputy Assistant Secretary for Policy Development.
HUD 395—Special Assistant to the Regional Administrator.
HUD 396—Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
HUD 399—Special Assistant to the Executive Vice President, Government National Mortgage Association.
HUD 402—Special Assistant to the Deputy Assistant Secretary for Single Family Housing.
HUD 404—Special Assistant to the Regional Administrator.
HUD 407—Executive Assistant to the Regional Administrator.
HUD 408—Special Projects Coordinator to the Deputy Assistant Secretary for Policy, Financial Management, and Administration.
HUD 413—Associate Deputy Assistant Secretary to the General Deputy Assistant Secretary for Public and Indian Housing.
HUD 414—Associate Deputy General Counsel.

Section 213.3388 President's Commission on White House Fellows

PCWHF 2—Associate Director.
PCWHF 3—Confidential Assistant to the Director.
PCWHF 4—Special Assistant to the Director.

Section 213.3389 National Mediation Board

NMB 49—Special Assistant to the Chairman.
NMB 52—Confidential Assistant to a Member.
NMB 53—Confidential Assistant to a Member.
NMB 54—Confidential Assistant to the Chairman.

Section 213.3391 Office of Personnel Management

OPM 4—Deputy Director, Office of Congressional Relations.
OPM 8—Confidential Assistant to the Director.
OPM 9—Confidential Assistant (Typing) to the General Counsel.
OPM 10—Staff Assistant to the Assistant Director for Public Affairs.
OPM 11—Confidential Assistant to the Director, Office of Executive Administration.
OPM 17—Special Assistant to the Associate Director for

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Administration.
OPM 19—Special Assistant to the Associate Director for Administration.
OPM 21—Special Assistant to the Director, Office of Public Affairs.
OPM 25—Special Assistant to the Director, Office of Congressional Relations.
OPM 26—Confidential Assisant (Typing) to the Director, Office of Government Ethics.
OPM 29—Special Assistant to the Director.
OPM 31—Staff Assistant to the Counselor to the Director.
OPM 33—Confidential Assistant to the Assistant Director for Congressional Relations.
OPM 34—Special Assistant to the Director, Office of Public Affairs.
OPM 36—Staff Assistant to the Director, Office of Executive Administration.
OPM 37—Executive Assistant to the Director, Office of Government Ethics.
OPM 38—Confidential Assistant to the Associate Director for Administration.
OPM 39—Special Assistant to the Deputy Director.
OPM 40—Special Assistant to the Associate Director for Administration.

Section 213.3392 Federal Labor Relations Authority

FLRA 1—Staff Assistant (Steno) to the Chairman.
FLRA 9—Special Assistant to the General Counsel.
FLRA 13—Special Assistant to the General Counsel.

Section 213.3393 Pension Benefit Guaranty Corporation

PBGC 1—Staff Assistant to the Executive Director.

Section 213.3394 Department of Transportation

DOT 1—Staff Assistant to the Secretary.
DOT 14—Chauffeur to the Secretary.
DOT 20—Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 43—Confidential Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 54—Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 55—Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 56—Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 57—Confidential Assistant to the Assistant Secretary for Governmental Affairs.
DOT 69—Public Affairs Officer to the Administrator, Federal Railroad Administration.
DOT 70—Special Assistant to the Assistant Secretary for Governmental Affairs.
DOT 77—Special Assistant to the Assistant Secretary for Public Affairs.
DOT 100—Supervisory Public Affairs Specialist to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration.
DOT 114—Special Assistant to the Administrator, Federal Highway Administration.
DOT 121—Deputy Director, Office of Congressional Affairs.
DOT 122—Special Assistant to the Director, Executive Secretariat.
DOT 123—Intergovernmental Liaison Officer to the Director, Office of Intergovernmental Affairs.
DOT 127—Special Assistant to the Assistant Secretary for Budget and Programs.
DOT 128—Special Assistant to the Administrator, Federal Highway Administration.
DOT 147—Staff Assistant to the Assistant Secretary for Public Affairs.
DOT 148—Director, Office of Media Relations, to the Assistant Secretary for Public Affairs.
DOT 150—Special Assistant to the Administrator, National Highway Traffic Safety Administration.
DOT 153—Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 157—Secretary (Steno) to the Associate Administrator for Policy and International Aviation, Federal Aviation Administration.
DOT 175—Special Assistant to the Assistant Secretary for Policy and International Affairs.
DOT 192—Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
DOT 197—Staff Assistant to the Secretary.
DOT 203—Special Assistant to the Assistant Secretary for Governmental Affairs.
DOT 204—Executive Assistant to the Administrator, Federal Railroad Administration.
DOT 207—Staff Assistant to the Inspector General.
DOT 208—Director, Executive Secertariat, to the Administrator, Urban Mass Transportation Administration.
DOT 209—Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 216—Confidential Special Assistant to the Administrator Federal Aviation Administration.
DOT 225—Special Assistant to the Regional Representative.
DOT 229—Staff Assistant to the Administrator, Maritime Administration.
DOT 231—Policy Advisor to the Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration.
DOT 232—Special Assistant to the Regional Administrator, Urban Mass Transportation Administration.
DOT 233—Staff Assistant to the General Counsel.
DOT 235—Staff Assistant to the Secretary.
DOT 236—Special Assistant to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration.
DOT 237—Special Assistant to the Assistant Secretary for Public Affairs.
DOT 239—Executive Assistant to the Administrator, Maritime Administration.
DOT 240—Special Assistant to the Assistant Administrator for Public Affairs, Federal Aviation Administration.
DOT 244—Deputy Executive Secretary for Management to the Director, Executive Secretariat.
DOT 250—Staff Assistant to the Assistant Secretary for Governmental Affairs.
DOT 251—Staff Assistant to the Administrator, Maritime Administration.
DOT 252—Director, Executive Secretariat, to the Administrator, National Highway Traffic Safety Administration.
DOT 254—Special Assistant to the Secretary.
DOT 263—Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 268—Staff Assistant to the Assistant Secretary for Public Affairs.
DOT 270—Special Assistant to the Administrator, Federal Aviation Administration.
DOT 272—Executive Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
DOT 274—Special Assistant to the Assistant Secretary for Public

Affairs.
DOT 276—Special Assistant to the Administrator, Research and Special Program Administration.
DOT 278—Staff Assistant to the Deputy Secretary.
DOT 281—Special Assistant for Intergovernmental Relations to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 287—Staff Assistant to the Deputy Secretary.
DOT 297—Special Assistant to the Deputy Administrator, Urban Mass Transportation Administration
DOT 299—Associate Director for Program Affairs to the Director, Office of Commercial Space Transportation.
DOT 300—Staff Assistant to the Deputy Administrator, Federal Railroad Administration.
DOT 301—Legislative Research Officer to the Assistant Secretary for Governmental Affairs.
DOT 304—Staff Assistant to the Press Secretary to the Secretary.
DOT 305—Special Assistant to the Deputy Assistant Secretary for Governmental Affairs.
DOT 306—Special Assistant to the External Affairs Officer, Federal Aviation Administration.
DOT 307—Director, Office of Intergovernmental and Consumer Affairs, to the Deputy Assistant Secretary for Intergovernmental and Consumer Affairs.
DOT 308—Deputy Director (Intergovernmental) to the Director, Office of Intergovernmental and Consumer Affairs.
DOT 309—Special Assistant to the Administrator, Federal Aviation Administration.
DOT 310—Public Information Specialist to the Deputy Administrator, Urban Mass Transportation Administration.

Section 213.3395 Federal Emergency Management Agency

FEMA 3—Director of Congressional Affairs.
FEMA 29—Special Assistant to the Associate Director, State and Local Programs and Support Directorate.
FEMA 33—Director, Office of Regional Operations, to the Director.
FEMA 34—Executive Assistant to the Deputy Director.
FEMA 35—Confidential Staff Assistant to the Director, Office of External Affairs.
FEMA 36—Confidential Assistant to the Associate Director, Emergency Operations Directorate.
FEMA 38—Confidential Assistant to the Associate Director, External Affairs Directorate.

Section 213.3396 National Transportation Safety Board

NTSB 1—Special Assistant to a Board Member.
NTSB 2—Secretary (Typing) to the Chairman.
NTSB 25—Special Assistant to a Board Member.
NTSB 30—Confidential Assistant to the Chairman.
NTSB 31—Confidential Assistant to a Board Member.
NTSB 32—Confidential Assistant to a Board Member.
NTSB 33—Confidential Assistant to a Board Member.
NTSB 34—Confidential Assistant to a Board Member.
NTSB 92—Government and Public Affairs Officer to the Managing Director.
NTSB 98—Special Assistant to the Vice-Chairman.
NTSB 102—Special Assistant and Counsel to the Chairman.
NTSB 104—Special Assistant to a Board Member.
NTSB 105—Special Assistant to the Chairman.

Office of Personnel Management.

Constance Horner,

Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

[FR Doc. 88–18917 Filed 8–22–88; 8:45 am]
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August 23, 1988

Part III

Department of Transportation

Research and Special Programs Administration

City of New York Regulations Governing Routing and Time Restrictions on Transportation of Hazardous Materials; Public Notice and Invitation To Comment

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Appeal of Inconsistency Ruling No. IR-23; Docket No. IRA-40B]

City of New York Regulations Governing Routing and Time Restrictions on Transportation of Hazardous Materials; Invitation To Comment

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The City of New York (the City) has appealed to the Administrator of the Research and Special Programs Administration (RSPA) the May 5, 1988 decision of the Director, Office of Hazardous Materials Transportation (IR-23; 53 FR 16840, May 11, 1988), finding the City's routing and time restrictions for the transportation of certain hazardous materials inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) adopted thereunder. Comments are invited on the merits of the appeal.

DATES: Comments received on or before September 22, 1988 and rebuttal comments received on or before October 24, 1988, will be considered before an administrative ruling is issued by the Administrator. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The appeal and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments and rebuttal comments must be submitted to the Dockets Unit at the above address and include the Docket Number IRA-40B. Three copies are requested. A copy of each comment and rebuttal comment also must be sent to Clifford J. Harvison, President, NTTC, 2200 Mill Road, Alexandria, Virginia 22314; Daniel R. Barney, Director, ATA Litigation Center, 2200 Mill Road, Alexandria, Virginia 22314; and Peter L. Zimroth, Esq., Corporation Counsel, City of New York, 100 Church Street, Room 6C-37, N.Y., NY 10017 (Attn: Grace Goodman, Esq., Assistant Corporation Counsel); and that fact certified to at the time the comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Harvison, Barney, and Zimroth at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone 202-366-4400.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA at section 112(a) (49 App. U.S.C. 1811(a) expressly preempts any requirement of a State or political subdivision thereof which is inconsistent with any requirement of the HMTA or the HMR. Section 107.209(c) of Title 49, CFR, sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent: (1) Whether compliance with both the State or political subdivision requirement and the HMTA or HMR is possible; and (2) the extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR.

The American Trucking Associations, Inc. (ATA) and the National Tank Truck Carriers, Inc. (NTTC) filed an application for an administrative ruling seeking a determination that certain of the City of New York Fire Department's Bureau of Fire Prevention's hazardous materials routing and time of transit regulations are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA.

2. The Inconsistency Ruling (IR-23)

On May 5, 1988, the Director, Office of Hazardous Materials Transportation (OHMT) issued Inconsistency Ruling 23 (IR-23), which was published at 53 FR 16840 on May 11, 1988. The Director determined that certain of the City's routing and time of transit regulations for transportation of certain hazardous materials are inconsistent with the HMTA and the HMR and, therefore, preempted.

First, the Director, reaffirming his earlier decision in IR-22, 52 FR 46574 (Dec. 8, 1987), found inconsistent with the HMTA and the HMR a City regulation exempting City-permitted vehicles from the City's routing, time and escort requirements and requiring exclusively the use of such vehicles for deliveries for storage or use or for pickups in the City. These provisions were determined to be inextricably linked to the City's equipment-related requirements previously found inconsistent in IR-22, *supra*. (The City also has appealed the IR-22 decision; see Public Notice and Invitation To Comment, 53 FR 5538 (Feb. 24, 1988).)

Second, the Director found certain City hazardous materials routing requirements inconsistent with the HMTA and the HMR because they were not preceded by a determination of effect on overall safety or consultations with other affected jurisdictions. This same rationale was applied to find inconsistent a City ban on fueling or stopping of hazardous materials through-traffic.

Third, the Director similarly found certain City time restrictions on hazardous materials transportation inconsistent with the HMTA and the HMR because the City had failed to demonstrate an adequate safety justification for, and substantive consultation with other affected jurisdictions concerning, those restrictions.

3. The Appeal of IR-23

On June 20, 1988, the City filed an appeal of IR-23 with the Research and Special Programs Administration. The City filed a memorandum of law and numerous exhibits in support of its appeal, which was contained in its letter of June 16, 1988. The City indicated that in a related court action in the U.S. District Court for the Eastern District of New York, *National Paint & Coatings Assn. v. City of New York*, 84 Civ. 4525 (ERK), the Court has indicated it will reserve its ruling on a motion for summary judgment until DOT completes its rulings on the inconsistency application involved in IR-22 and IR-23. The City, therefore, has withdrawn its request that DOT abstain and instead urges a prompt resolution of the appeals of both IR-22 and IR-23.

In its appeal, the City argues that promulgation of its routing and time regulations was preceded by a request for comments from local, state and Federal governmental bodies, including the Port Authority of New York and New Jersey. It states that its prohibition on stopping for fueling or otherwise leaving prescribed routes is intended to move traffic through the City as rapidly as possible. It also contends that it made its time restrictions less onerous and adequately publicized them, and that shippers and trucking companies have adjusted to them. It further asserts that any hazardous material accident occurring in the City exposes twice as many persons to potential fire or explosion as an accident on highways in adjacent counties.

The City argues that its routing and time restrictions are not inconsistent with the HMTA or the HMR because there are no direct HMR provisions on these topics. It also contends that there is no "unnecessary delay," which is prohibited by 49 CFR 177.853(a). The City asserts that IR–23 contains no evidence that the City's regulations actually cause delays and that any such delays would be justifiable rather than unnecessary.

Furthermore, the City argues that IR–23 erroneously relied upon *dicta* in IR–2, 44 FR 75566 (Dec. 20, 1979); IR–3, 46 FR 18918 (Mar. 26, 1981); and IR–3 (Appeal), 47 FR 18457 (Apr. 29, 1982) in finding a need for a safety analysis and a consultation process with affected neighboring jurisdictions. Reliance instead should have been placed, the City contends, on two U.S. District Court decisions involving Ritter Transportation, Inc. and the City, which were affirmed in *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982). The City argues that those cases authoritatively rejected the rationale and requirements set forth in IR–23.

In addition, the City contends that IR–23 erroneously found that its time and routing restrictions are invalid because they are inextricably related to the City's equipment requirements found inconsistent in IR–22, *supra*. The City says that the routing regulations are not based on the equipment regulations but that the equipment rules are an exception to the routing rules. It states that even if the equipment specifications were finally determined to be inconsistent, the time and routing regulations would still apply (with no City-approved equipment exception). The City further contends that its safety rationale for its time and route restrictions is not diminished by its exception for City-approved trucks because the latter trucks are safer than those meeting HMR requirements.

Finally, the City asserts that IR–23 erroneously found the City's prohibition on stopping for refueling or other purposes to be a prohibited ban on transportation. It argues that this provision is consistent with 49 CFR 397.9 and [177.853(a)].

In summary, the City concludes that the ruling in IR–23 that the City's routing and time restrictions are inconsistent with the HMR should be reversed and the challenged regulations found consistent in their entirety.

4. Public Comment

Comments should particularly address the issue of whether the challenged City's routing and time restrictions on hazardous materials transportation are inconsistent with the HMTA or the regulations issued thereunder under the "obstacle" and "dual compliance" tests. Persons intending to comment should examine the complete appeal documents in the RSPA Dockets Unit and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC on August 8, 1988.

[FR Doc. 88–19110 Filed 8–22–88; 8:45 am]

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federal register

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Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for Fiscal Year 1989

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for Fiscal Year 1989

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal year 1989.

SUMMARY: The Secretary of Education proposes funding priorities for some of the research activities to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1989.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before September 22, 1988.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue, SW., Room 3070, Switzer Building, Mailstop 2305, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the Research and Training Centers program of NIDRR is contained in Section 204(b)(1) of the Rehabilitation Act of 1973, as amended. Under the RRTC program, awards are made to institutions of higher education, or to public and private organizations, including Indian tribes and tribal organizations, that are affiliated with institutions of higher education.

RRTCs conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. NIDRR's regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 352.32). The following four proposed priorities represent areas of research in which NIDRR has a long-standing interest.

NIDRR invites public comment on the merits of the proposed priorities, including suggested modifications to the proposed priorities. The final priorities will be established on the basis of public comment, the availability of funds, and any other relevant Departmental considerations, and will be announced in a notice in the Federal Register. A closing date notice will be published at that time, after which application packages will be available. This Notice of Proposed Priorities does not solicit applications, and Department of Education staff will not review concept papers or pre-applications. The publication of these proposed priorities does not bind the Federal Government to fund projects in any of these areas, except as otherwise directed by statute. Funding of particular projects depends on final priorities, the availability of funds, and on the quality of the applications that are received.

A program of Rehabilitation Research and Training Centers has been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination and training must be accessible to individuals with a range of handicapping conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers must also conduct state-of-the-art studies in relevant aspects of their priority areas. Each RRTC must also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

Priorities (4)—Rehabilitation for Persons With Long-Term Mental Illness

There are over two million persons with long-term, severe mental illness. Improved rehabilitation interventions and service delivery models are needed to afford better opportunities for this population to remain out of institutions and to attain satisfactory lives in their communities. While the population of adults with severe psychiatric disabilities spans all ages, there is particular concern with young adults whose education and vocational preparations have been interrupted by severe mental illness. Service systems have not addressed adequately the transition from school to work or independent living for young adults.

The configuration of Federal financial supports, third-party payers, and State and local policies has led many service systems toward a case management approach that links clients with needed services and provides continuity of care. However, there is a range of approaches to case management, with no reliable information about which components are most important or most effective in various situations.

There has been a significant emphasis on consumer involvement in rehabilitation programs for persons with severe psychiatric disabilities, including peer self-help groups and consumer-managed programs. However, little is known about the most effective approaches to organizing and managing these programs, and to developing consumer capacity to operate successful programs.

Results of research and practice indicate that specialized rehabilitative interventions can increase the likelihood of community adjusttment for persons with long-term mental illness. It is important to continue to develop and test more effective rehabilitative interventions, including especially those that contribute to improvements in education, vocational status, and general health care.

NIDRR, with the cooperation of the National Institute of Mental Health, intends to fund an RRTC to address these issues. Any Center to be funded under this priority must involve persons with long-term mental illness and their family members in the planning, conduct, and evaluation of the research and training activities.

An absolute priority is proposed for an RRTC to:

- Identify and assess existing case management systems for persons with long-term mental illness, including goals, organization, staffing, functions, and

outcomes, and develop and test model approaches to case management;

• Develop and evaluate model approaches to train consumers to administer programs, represent their interests in program development, and address issues of systems change;

• Evaluate the impact of client involvement in program planning and implementation on program content, participation and use, and outcomes;

• Study the experiences and problems confronting young adults, aged 18–22 years, who are completing their special education programs under Pub. L. 94–142, and develop model service interventions for this group, including services to facilitate their transition from school to work or postsecondary education;

• Develop and test models to use existing community resources to meet client needs for postsecondary education;

• Develop and evaluate rehabilitative interventions to enhance the rehabilitation of individuals with long-term mental illness; and

• Develop and test models for the efficient delivery of technical assistance to consumer self-help and other community-based programs for persons with mental illness; and

• Develop and implement a program to disseminate the findings of the Centers' research to appropriate practitioner, consumer, and research constituencies.

Rehabilitation of Severely Emotionally Disturbed (SED) Children and Youth (Two Priorities)

There are an estimated three million children with emotional disturbances, and they are among the most underserved of all disabled populations. (*Unclaimed Children,* Children's Defense Fund, 1982.) A background paper issued by the Office of Technology Assessment (OTA) indicates that, while there is convincing evidence that severely emotionally disturbed children can benefit from mental health services, there is a need for more reliable early assessment, better matching of children with services and interventions, and more community-based services. (*Children's Mental Health,* 1986.) That report further notes that the Federal Government is virtually the only source of funds for research and training in this area.

Children with emotional disturbances often do not receive any attention to their problems until they require services from other system components—juvenile justice, corrections, social services, or drug abuse agencies, for example. The most readily available form of help for these children contiues to be in-patient hospitalization—the most restrictive and costly form of intervention.

NIDRR has identified two different programmatic areas of research, training, and knowledge dissemination and is proposing two RRTCs in this area, each focusing on one of the sets of specific elements outlined below. The target population includes children from birth to age 21 years who have serious emotional impairments. The target population of families must include single-parent families, families with teen-aged parents, and minority families. The National Institute of Mental Health (NIMH) intends to contribute support to these Centers. Any Center to be funded in this area must involve severely emotionally disturbed youth and members of their families in planning, conducting, and evaluating the research program. Each Center must conduct all research and training activities in community-based settings, and must establish communications with RRTCs in related areas, with the Child and Adolescent Service System Program (CASSP) directors, the National Parent Network, and other relevant organizations concerned with the improvement of children's mental health.

Each Center may elect to establish satellite activities through agreements with other institutions of higher education for the purpose of replicating research studies or providing additional training sites. Specific priority requirements are:

Improving Service Systems for Seriously Emotionally Disturbed Children and Youth

An absolute priority is proposed for an RRTC to:

• Develop instruments and classification systems that will provide profiles of the functional abilities and deficits of children with serious emotional disorders;

• Develop, evaluate, and disseminate model programs, involving interagency and interdisciplinary collaboration, to assist transition from school to work for this population;

• Assess the efficacy and cost-effectiveness of alternatives to residential treatment, identify incentives and disincentives to community and home-based treatment, and develop models to address the disincentives;

• Assess the financing options that could be applied to meet the multiple service needs of this population and their families;

• Provide information to the RRTC on Improving Services for Families of Children and Youth With SED for inclusion in a clearinghouse;

• Conduct at least one study of the state-of-the-art in a selected topic in this research area.

Improving Service for Families of Children and Youth with Serious Emotional Disturbances (SED)

• An absolute priority is proposed for an RRTC to:

• Investigate patterns of family use of community-based resources and services;

• Investigate patterns of successful family coping among families with SED children;

• Analyze the perceptions of SED among minority families and the impact of those perceptions on service utilization, and develop and evaluate culturally sensitive information and service delivery models for minority families;

• Develop and test strategies to facilitate the involvement of families in the development and evaluation of community-based services at the individual, community, and State levels;

• Identify exemplary graduate level training courses and curricula used in the cross-disciplinary training of professionals and families who plan, provide, and coordinate services and programs for this population of children and youth, and develop materials to replicate best practices;

• Develop a national, clearinghouse, including a parent-operated resource center component, that can provide technical assistance to parents, family members, and professionals on service systems and on options for family support; and

• Conduct at least one national conference on the state-of-the-art in supportive resources for families with children with serious emotional disturbances.

Less Restrictive Housing Environments

The provision of appropriate housing for the lifespan of disabled and aging persons is a major undertaking, involving accommodation to a complex array of physical limitations. An RRTC is needed in this area to develop a variety of housing options and innovative approaches to challenges of designing, financing, and administering models of adaptive housing. A convergence of knowledge from the fields of architecture, engineering, construction, rehabilitation, independent living, and related areas is required to create appropriate housing environments in which disabled persons and aging persons can live

independently. The knowledge base must include information about modifications to existing structures and equipment, as well as design concepts that can be used to build facilities for the entire lifespan. The knowledge base must be developed from the results of research, needs assessments, and analysis of the physical capabilities of individuals with disabilities.

One immediate objective is to conduct new programmatic research into the needs of disabled and aging persons for accessible housing environments. A second need is to improve the utilization of available research-based information on accessibility and independent living, including data on human performance, models of accessible building adaptations, and standards and guidelines that have been developed for construction. Over the longer term it is important to develop better building designs, based on field and laboratory research, and tested by disabled persons in regular use.

A prerequisite to improving design of housing environments in a permanent and comprehensive way is to make those who design, build, adapt, maintain, manage, finance, and use housing aware of the potential for creating more accessible environments for independent living. A center to be funded in response to this priority must maintain liaison with the Architectural and Transportation Barriers Compliance Board (ATBCB), as well as with NIDRR-supported research projects and Centers in such areas as independent living, aging, and community integration. The RRTC must maintain liaison with the Rehabilitation Engineering Centers, especially those in the area of quantification of human performance. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for an RRTC to:

- Identify and assess housing environments that promote independent living for disabled and aging persons and the specific housing environment needs of persons with physical, sensory, and cognitive impairments;
- Analyze the legal, regulatory, commercial, social, psychological, business, design, and financial aspects of developing suitable living environments for disabled and aging persons and develop strategies to address problems in these areas;
- Develop and disseminate recommendations for new designs and for adaptations to existing housing that are appropriate for persons with physical, sensory and cognitive impairments;
- Incorporate new research knowledge from NIDRR-funded projects and other sources in products, housing design and information and training materials to enhance accessibility and independent living;
- Develop, acquire, maintain, and disseminate both graphic and text databases on standards, design criteria, plans, building products, costs, funding sources, and performance evaluations of accessible housing, and serve as a national information resource;
- Design training materials to increase awareness of the housing needs of disabled and aging persons, concepts of accessibility, and techniques to increase the availability of accessible housing, and conduct training for a range of involved populations, including persons with disabilities, architects and home builders, designers and manufacturers of furnishings and equipment, housing managers, and city planners and engineers;
- Promote concepts of accessible housing, including ideas from abroad, in graduate and undergraduate education and professional practice in a wide range of academic disciplines and applied professions; and
- Conduct at least one state-of-the-art study on a significant aspect of accessible housing.

Authority: U.S.C. 760–762.

Dated: August 5, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.133B, National Institute on Disability and Rehabilitation Research)

[FR Doc. 88–19114 Filed 8–22–88; 8:45 am]

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federal register

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Part V

The President

Proclamation 5847—National Senior Citizens Day, 1988

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Title 3—

The President

Proclamation 5847 of August 19, 1988

National Senior Citizens Day, 1988

By the President of the United States of America

A Proclamation

Throughout our history, older people have achieved much for our families, our communities, and our country. That remains true today, and gives us ample reason this year to reserve a special day in honor of the senior citizens who mean so much to our land.

With improved health care and more years of productivity, older citizens are reinforcing their historical roles as leaders and as links with our patrimony and sense of purpose as individuals and as a Nation. Many older people are embarking on second careers, giving younger Americans a fine example of responsibility, resourcefulness, competence, and determination. And more than 4.5 million senior citizens are serving as volunteers in various programs and projects that benefit every sector of society. Wherever the need exists, older people are making their presence felt—for their own good and that of others.

For all they have achieved throughout life and for all they continue to accomplish, we owe older citizens our thanks and a heartfelt salute. We can best demonstrate our gratitude and esteem by making sure that our communities are good places in which to mature and grow older—places in which older people can participate to the fullest and can find the encouragement, acceptance, assistance, and services they need to continue to lead lives of independence and dignity.

The Congress, by House Joint Resolution 138, has designated August 21, 1988, as "National Senior Citizens Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 21, 1988, as National Senior Citizens Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of August, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-19261
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Wednesday
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Rules and Regulations

Federal Register
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Wednesday, August 24, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Revision 2]

Surety Bond Guarantee

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the Agency's surety bond guarantee regulations in their entirety, with the predominant purpose of clarification, in order to minimize the number of instances in which the Agency is forced to deny liability to a participating surety. We believe that these new regulations will encourage greater participation in this program by the private sector.

DATES: This rule is effective October 24, 1988. Comments are due on or before September 23, 1988.

ADDRESSES: Comments may be sent to James W. Parker, Jr., Acting Director, Office of Surety Guarantees, Small Business Administration, 4040 N. Fairfax Drive, Suite 500, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: James W. Parker, Jr., Tel. (703) 235–2900.

SUPPLEMENTARY INFORMATION: SBA's Surety Bond Guarantee regulations were last revised September 17, 1981 (46 FR 46113). On August 19, 1983, SBA published an Advance Notice of Proposed Rulemaking (48 FR 37658). After consideration of the voluminous comments, we published a Notice of Proposed Rulemaking (NPRM) on August 21, 1985 (50 FR 33766), which discussed the comments received, the changes made and the reasons therefor. The Notice again yielded extensive comments, most of which are discussed below. Sections not discussed below have been discussed in the earlier Notices, have not been commented on this time and remain unchanged. These discussions are not repeated here. General comments, either praising or condemning SBA's surety bond guarantee program and the current revision as a whole, are not referred to or commented upon.

The considerable lapse of time since the publication of the NPRM has necessitated several changes, identified hereafter, for which no public comments have been obtained. In each such instance SBA requests comments now. Such comments will be carefully considered, and—if accepted—will be the subject of early amendments to this revision.

The NPRM had proposed two new guarantee agreements, instead of the former single agreement. One was to be "national," reserved for the most active participants, the other for all others. The intent was to offer preferred treatment under the "national" agreement. See advance notice of proposed rulemaking, 48 FR 37658 (Aug. 19, 1983). Since then, congressional efforts to reduce the deficit, such as the so-called Gramm-Rudman-Hollings law, and paralled efforts towards budgetary restraints by the national Administration, have so reduced SBA's flexibility that a meaningful difference between the two agreements is no longer possible. Accordingly, the proposal has been abandoned, and a single Form 990, in revised form, adopted (see Appendix A, below).

With the simplification, it has also become possible to eliminate a requirement of accounting for premiums and losses, previously contained in Art. IX of the National Surety Bond Guarantee Agreement. SBA invites comments on this change.

The new regulation also redefines "Loss" and other terms (§ 115.4), tightens application procedures (§§ 115.5 through 115.9) and audit requirements (§ 115.17). SBA will no longer regulate premiums [§ 115.11(a)] or impose a "deductible" (see discussion under § 115.14). SBA invites comments on this change.

Section 115.3(a) Policy—Congressional Intent.

A comment stated the need for flexibility in the statutory ceiling when bids are adjusted upwards or awarded contracts are changed, in view of the requirement of many obligatory governmental bond forms of a waiver of notice to or consent of the surety to such change. The statute, however, limited SBA's authority to contracts up to $1,000,000 and SBA was without authority to guarantee bonds for contracts which exceeded that amount. Since the publication of the prior notice the statutory limit has been increased to $1,250,000 [Pub. L. 99–272, approved April 7, 1986]. Accordingly, the statutory limit has been changed throughout this publication. Regarding flexibility, see "Loss After Excess Contract Amount" in discussion under § 115.4.

Section 115.3(b). Policy—Types of Bonds.

A paragraph, inadvertently omitted in the Notice of Proposed Rulemaking, restores to these regulations a part of former paragraph § 115.2(c) which limits the guarantee eligibility of bonds to those listed in the "Contract Bonds" section of the Rating Manual of the Surety Association of America, excepting therefrom bonds in the nature of a financial guarantee.

Section 115.3(c). Policy—Guarantee Agreement.

The name of SBA's office in charge of this program has been changed to "Office of Surety Guarantees" throughout this rule.—A well reasoned comment pointed out that the criteria proposed for the division of premiums and losses between the Surety and SBA contained several subjective elements (*e.g.*, "adequacy of the Surety's underwriting and credit analysis"); that there were other subjective criteria of equal importance omitted; and that the most important criterion, in which the subjective criteria are objectively reflected, is the "bottom line," the relevant loss experience. Accordingly, SBA has revised its criteria to focus on a Surety's Loss rate and its rating by recognized authority. Two new elements, in line with the program's basic purpose, have been added: (1) The average dollar penalty per bond, reflecting the targeting of SBA's bond guarantee toward the smaller contracts, and (2) the ratio of bid to final bonds, reflecting the cost of acquisition of business. We believe that the greatest need for bond guarantees is for the smaller (under $100,000) contracts, where the acquisition cost in relation to the premium is highest, and that a

Surety's volume of bid bonds which do not ripen into final bonds is a good indication of the Surety's concern for small business.—SBA has determined that, given the available budget authority and the demand for surety bond guarantees, the maximum guarantees should be administratively limited to 80%, in order to satisfy a greater portion of such demand. (For a fuller explanation, see 51 FR 20922; June 9, 1986.)

Section 115.3(e). Premium and Guarantee Fee.

This subsection has been revised and moved to § 115.11, Fees and Premiums, so that both fees charged by SBA to the Surety and the Principal, and fees charged by the Surety to the Principal will be found in the same section.

Section 115.3(e). Timeliness.

This subsection specifies in what circumstances SBA will issue a guarantee after work under the contract to be bonded has begun. One comment objected to SBA ever guaranteeing a bond after work had started, because the odds are that the job is in trouble. SBA rejects this suggestion, because there are legitimate possibilities why work may have started without the SBA's guarantee. A new form, SBA Form 991, elicits information in these cases which would disclose whether or not a belated application is legitimate—Another comment proposed a 30 or 60 day period [from the time of the award] after which SBA would refuse to guarantee the bond. This proposal is not adopted either, because in many cases the work may be completed in less than 30 (or 60) days, or the work may be delayed by seasonal factors.—Several comments objected to the timeliness requirement, as such, on the grounds that it is an underwriting consideration which should depend on information available to Surety. SBA views this issue as one of statutory eligibility: Since the statute commands that the bond be required for the contractor to serve on a contract, and be unavailable to the contractor without an SBA guarantee, it follows that if the contractor was allowed to serve without a bond, the bond was not required, and if the contractor has obtained a bond without SBA's guarantee, it follows that it was available without such guarantee. SBA cannot accept liability for a bond which does not meet the express conditions of the statute. If SBA purported to guarantee such a bond, it did so without statutory authority, and consequently the guarantee would be void.

Section 115.4. Definitions. "Amount of Contract."

This definition distinguishes between eligible and ineligible "phased" projects. SBA's standard operating procedure, SOP 50 45 1 (May 13, 1983) explains as follows:

A phased project is a total work project divided into two or more parts. For each part (or phase) of the project, there must be a separate and identifiable contract and bond. The first phase must be completed and the surety and SBA released before the second phase is begun; and so on until all phases are completed, to avoid adding the amount of the first contract to the second in order to determine the [$1,250,000] eligibility limitation.

An example of a properly phased project would be a single building project divided/phased into (1) grading, (2) construction of the building, and (3) landscaping. Each phase would require a separate and identifiable contract and bond, and the first phase contract could be completed and surety and SBA released before the second phase is begun. An example of an unacceptable phased project would be one which provided separate contracts and bonds for walls, flooring, wiring, plumbing, roof, etc., but lacked the requirement of a definitive release after completion of the first phase before the next phase is begun. Much of the work, in this example of an unacceptable phased project, must go on simultaneously.

A comment questions whether this policy is to be changed and went on to pose specific hypothetical questions: Renovation of several schools for one school district; one site with several owners (*e.g.*, fairground); consecutive contracts for work on a single site; multi-year contracts, *e.g.*, janitorial or supply contracts renewable at the sole option of the obligee); cost overruns and change orders which may or may not bring the contract amount above the statutory limit. In response, SBA has rewritten this definition and replaced the undefined term "integral project" with the defined term "single project." The rule now provides that phased projects at the same locality with the same obligee are eligible if the bond on the preceding phase is released before performance of the succeeding phase begins. In this view most of the above hypothetical situations are eligible if this single condition is met. The hypothetical case of multiple obligees (*e.g.*, fairground) is outside the purview of the definition which is limited to a single obligee; the cost overrun/change order case is governed by § 115.15(c) and the Loss definition "after excess contract amount" in § 115.4 of this Part. Section 115.15(c) permits an increase up to the lesser of $50,000 or 25% in the bond liability without SBA approval, to conform to the Federal Acquisition Regulation, 48 CFR Ch. I, 28.106–5(a)(2)(ii).—Further, the definition of "Contract amount" has been made more precise in measuring the contract amount as of the time of issuance of the executed (guaranteed) bond, instead of the date of SBA's guarantee. The reason for this change is that SBA's guarantee becomes effective with the Surety's issuance of the executed bond and the award of the contract; until then the Surety and SBA have the right to cancel.

Section 115.4. Definitions: "Bid Bond."

A new clause sets an automatic expiration for a bid bond guarantee one year after issuance. The reason therefor is the budgetary restraint referred to before: It is undesirable to tie up budgetary authority indefinitely. In almost all cases a bid bond will be moot within a year, but if it is necessary to keep it active, a new bid bond guarantee should be requested. SBA invites comments on this change.

Section 115.4. Definitions: "Contract."

Several comments pointed out that the proposed definition of "contract" excludes many contract warranties which are customarily required in certain industries, and thus excludes a large proportion of small business contracts from eligibility of this program. In response, SBA has amended the definition to include warranties of materials and workmanship up to two years, and to include, in SBA's descretion, other ancillary and coterminous warranties (by a separate writing) on a showing that such warranties are customarily required in the relevant trade or industry. Contracts of warranty not ancillary and coterminous to an otherwise eligible contract remain ineligible. It was further represented that release of lien bonds sometimes are the best and least expensive way to handle a contract bond claim. SBA does not dispute the usefulness of such bonds. However, a release of lien (or stop notice) bond is acceptable to SBA only if issued against a claim under an SBA guaranteed bond, but not otherwise.

Section 115.4. Definitions.

"Issuance" or "issued" has been defined to make clear that the SBA guarantee and the execution by the Surety of a bond do not create, of themselves, an obligation on SBA's part. For SBA's guarantee to become effective, Surety must release the bond beyond its ability to retrieve it, the Contract must be awarded to the Principal and the Surety must be bound to the Contract. Of course, all other

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statutory and regulatory requirements must also be met.

Section 115.4. Definitions: "Loss under Bid Bond."

Several comments pointed out that forfeiture bonds, barred by the proposed definition, are required by law on public works contracts in some States, and that the proposed definition disqualifies small business contractors in such cases from guarantee eligibility. In response, SBA has enlarged the definition to accommodate such forfeiture bid bonds.

Section 115.4. Definitions: "Loss under Payment Bond."

Three comments pointed out that the proposed definition was at once too broad and too restrictive. It was too broad in that it would have covered non-contract claims such as job-site accidents. It was too narrow in that it did not allow for possible interest and legal cost (of opposing attorney) which the Surety may have to pay in addition to the penal sum. The definition now limits claims against the principal to those for unpaid labor and supplies and allows for interest and legal expenses of the claimant in addition to the penal sum.

Section 115.4. Definitions: "Loss under Performance Bond."

Comments received explained that the clause "Sums necessary to perform" did not allow for completion cost incurred by third parties (*e.g.*, the obligee), and that the definition did not allow for expenses additional to the penal sum, as in the preceding comment. The definition now provides "sums necessary to meet the cost of fulfilling the terms of the Contract" and adds legal expenses to the penal sum, as in the preceding definition.

Section 115.4. Definitions: "Loss adjustment expenses."

This paragraph generated more comments than any other because it seemed to disallow all "external" and unallocated "internal" claims adjustment expenses. This was not SBA's intent, since SBA's principal reliance in cost control matters will be the "bottom line" loss experience, which reflects all expenses. Accordingly, the definition now distinguishes between allocated and unallocated expenses, instead of between internal and external expenses, and requires that the allocation method follow generally accepted accounting principles. One comment pointed out, moreover, that the limitations to expenses "resulting from the breach" did not allow for expenses of successful resistance to a claimed breach. In response, SBA recognizes expenditures resulting from defenses against an "asserted" breach, whether or not successfully asserted.

Section 115.4. Definitions: "Loss from litigation cost."

The prior SBA consent requirement for suits by the surety against the United States attracted unfavorable comments. It was pointed out that such suits would probably be brought for contract balances, or asserted as counter claims or cross claims. The proposed definition spoke of "suits filed against" the U.S. The final version makes explicit that cross and counter claims are not considered "suits filed." SBA, however, does not want to give up its right to consent to suits filed against the U.S., for the reason stated in the proposal: "in such suits the major share of such expense might be borne by the Federal Government" (50 FR, *supra*, at 33767). If SBA is unable to bring about a settlement of such claims, permission to file suit would be expeditiously granted by the Office of Surety Guarantees. If such suits were filed by the surety without SBA's consent, the surety would not be entitled to reimbursement of the guaranteed percentage, but would be entitled to deduct the entire related litigation expense from judgment proceeds before sharing the recovery with SBA pursuant to § 115.14 of this Part.

Section 115.4. Definitions: "Loss from attorney's fees and damages."

Several comments objected to the exclusion of legal expenses of sureties in suits by a principal against the surety. They stressed that suits by principals could stem from the surety's subrogation to the principal's claims, or from the principal's resistance to indemnification. Thus, the exclusion would discourage the surety from protecting its own and SBA's interest and relying instead on SBA's guarantee. In response, SBA has retained the exclusion only for original suits sounding in tort (*e.g.*, bad faith or negligence), but not for counterclaims sounding in tort, since it would be difficult to separate the legal costs of the defense from the counterclaim.

Section 115.4. Definitions: "Loss after Excess Contract Amount."

In response to comments that SBA should accommodate contracts where the face amount was below the statutory limit ($1,250,000) at the time of issuance of the guaranteed bond, but was increased beyond that limit by permissible change orders, SBA has adopted a loss liability limit which reflects both the excess of the contract amount over the statutory limit, and the agreed guarantee percentage.

Section 115.4. Definitions: "Obligee."

This definition was criticized as mislabelling the beneficiaries of a payment bond as obligees, thereby creating inadvertently semantic confusion with the obligee-owner. The definition now tracks the statutory language, 15 U.S.C. 694a(5). The meaning here is that the obligation of the payment bond to deliver a lien-free job runs to the obligee-owner, while labor and materialmen are the beneficiaries of that obligation.—The co-obligee restriction has been clarified to make clear (1) that a co-obligee must share fully the obligations of the original obligee to the principal and (2) to allow agencies like HUD or FHA to be named without being bound to the Principal.

Section 115.4. Definitions: "Payment Bond."

A comment explained that under the law of certain states (*e.g.*, Washington) a bond "conditioned" on payment is not a payment bond, but a performance/indemnity bond, unless the bond or a statute expressly gives a right of action to third-party payment claimants. SBA has replaced the words "persons under contract with the principal" to include all suppliers of labor and materials to the job who have a right of action against the bond. This definition of "payment bond" now harmonizes with that under "Loss."

Section 115.4. Definitions: "Performance Bond."

This definition ("completion * * * of a Contract") was criticized as too broad, because a contract may only call for a part of the work (*e.g.*, the construction work) called for under the contract. The definition is a statutory one [15 U.S.C. 694a(3)], and does not, in SBA's opinion, exclude a bond for a contract which only calls for the completion of a partial job if such completion releases the bond.

Section 115.4. Definitions: "Premium."

This definition is new. It was added in response to a comment explaining that in certain States (*e.g.*, Washington) all charges by a Surety to a principal are statutorily defined as "premium," including extra charges for extra services (*e.g.*, title reports, substitution of collateral). To accommodate this problem, "premium" is now defined as the approved rate applied to the contract or bond amount, excluding charges for extra services. SBA expects that this definition will assure nationwide uniformity of interpretation.

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Section 115.4. Definitions: "Surety."

The definition was amended in response to a comment pointing out that in certain States under a typical public works bond the surety may be liable to lower tier persons even if the principal has properly paid the first tier person, *e.g.*, the unpaid supplier to a properly paid subcontractor of the principal. The definition now includes all persons having a right of action against the payment bond under local law, and harmonizes with both definitions of "payment bond" under "loss" and under "payment bond."—Another comment proposed to narrow the definition as to agents, underwriters and other persons empowered to act for the surety by describing them further as having "written authority to approve bonds, evidenced in writing to SBA." SBA rejects this proposal which would unduly restrict the statutory definition which this definition tracks, see section 410(4) of the Small Business Investment Act of 1958, 15 U.S.C. 694a(4). For example, an independent agent may be empowered to act for a surety by presigned bonds.—An oversight in the NPRM has been remedied. The rule now includes a Surety determined by SBA to be eligible. This clause, contained in former § 115.3(b)(2), "grandfathers in" a participant of long standing not on the Treasury list. SBA no longer admits such Sureties to participation.

Section 115.5(b). Character.

Several comments complained that requiring good character of each owner of 10% or more of the equity of the principal places an unreasonable burden on the surety which, to substantiate a thorough investigation and underwriting, would have to check the records of as many as ten equity holders. They further pointed out that personal history statements are required only of the holders of 20% or more of the equity [§115.6(a)] and that these two provisions should be consistent. In deference to these comments, SBA has raised the threshold to 20%. It should also be noted that the determination of good character lies with SBA, and that it is not reasonable to suppose that SBA (in the works of one comment) would expect the "impossible."—In response to a comment discussed under § 115.12 below, SBA has added a third element which disqalifies a Principal, *i.e.*, fraud, material misrepresentation or failure to meet the contractural requirement under a bonding line commitment to inform surety of unbonded contracts. Such fairlure amounts to a material misrepresentation since it disables the surety from properly monitoring its commitment.

Section 115.5(e). Partial Subcontract.

In order to exclude from bond guarantee eligiblity those contractors who are essentially brokers or packagers, SBA requires a certification of the percentage of the contract to be performed by the bonded principal iteself. A comment warned that a principal may subcontract a substantial percentage of the contract to suppliers of materials, see definition of "Contract" in 115.4, and that such percentage should not be counted against the principal. In response, SBA has added words which make clear that it is the percentage of the "work under" the contract which is to be measured, as distinguished from all other subcontracts, including those for materials.

Section 115.6(a). Application procedure.

The filing of a guarantee application by surety is deemed to represent a certification by such surety that the statutory requirements with respect to the underwriting risk would be met when the bond is issued. The regulation also requires that surety furnish SBA in true copy of its agent's power-of-attorney (including any limitation thereon) before or with such agent's first request for a guarantee, and a renewal notice of or before the expiration date of such power.—Several comments questioned the cost/benefit ratio of requiring Personal History Statements (SBA Form 912) from a Contractor. These comments stressed that no money passes to the contractors, as it does in the loan program, that on default money passes to the Surety, and through the Surety to the claimants, from whom no such form is required. They further correctly pointed out that, in contradistinction to the loan program, little or not time is available for a check on these forms before SBA is committed, that the paperwork burden is the principal obstacle to private sector participation in the program, and that in actual experience the form has made a difference in less than ten out of 160,000 or more guaranteed bonds (and many times as many guarantee applications). SBA nevertheless feels that its fiduciary obligation to the public purse requires it to inform itself on the character of those contractors for whose benefit SBA issues its guarantees.—A comment proposed to establish criteria for financial statements of applicants, along the lines of those adopted by the American Institute of Certified Public Accountants, graduated according to the contract amount from "compilation" to "fully audited" statements. These regulations, however, do not require financial statements. Accordingly, SBA can set no standards. Financial statements are received with the underwriting review (SBA Form 994B) and are discussed in SBA's underwriting guidelines which have no regulatory force, and therefore cannot bind applicants.—One comment queried whether the disclosure requirement regarding business or family relationships between the surety and its agent on the one hand, and the contractor on the other, also called for a negative statement if no such relationship exists. SBA will not require such negative statement and will deem a failure to make such disclosure equivalent to a negative statement.

Section 115.7. Approval or decline procedures.

Subsection (b) has been stricken and proposed subsections (c) and (d) renumbered (b) and (c), respectively. SBA has determined that the imposition of "special conditions" on Form 990 leads to misunderstandings, and that careful underwriting requires the compliance with a condition before, rather than after, a guarantee is executed. Accordingly, new Form 990 does not provide for a special condition. Where a special condition cannot be met before SBA's execution of Form 990 (as where it can only be met after award of the contract), a special writing will be prepared, signed by Surety and SBA will constitute a supplemental agreement. If the supplemental agreement requires something of the principal, it will be incumbent upon Surety to ensure compliance. Violation of such supplemental agreement will void SBA's guarantee. SBA invites comments on this change.—Former subsection (c)—now (b)—has been amended to reflect the concentration of the surety bond program in the field to regional SBA offices. Paragraph (b) establishes an appeal procedure for rejected guarantee applications, available to Sureties but not to their clients, with the final Agency decision lodged in the Associate Administrator for Finance and Investment at the Central Office. This provision is patterned after former § 115.8(b).—A new paragraph (c) has been added, to require the Surety to submit to SBA within 45 days of the effective date of SBA's guarantee of the final bonds, the contractor's fee and contract specifics, failing which SBA's guarantee shall be void from its inception, unless the Surety can show that the contract is not then in default and the failure has a valid reason. This

provision parallels that under the bonding line provision [§ 11512(f) and (g)] and is necessary to enable SBA to utilize its budget authority without encumbering it with provision for final bonds that may not have been issued. SBA invites comments on this provision.

Section 115.8. Underwriting standards.

Two comments questioned the requirement that sureties adhere to standards set forth in SBA's Standard Operating Procedure 50–45, as amended, because a surety could never be certain that their copy reflected the latest amendment. This apprehension is not justified, because SBA's recommended underwriting considerations are well known to the industry, and are communicated routinely to sureties doing business with the SBA. Sureties planning to do business with SBA for the first time are put on notice by this regulation that they should obtain a copy for their guidance. It is reproduced below as Appendix B.

Section 115.9. SBA review of surety's underwriting.

It was proposed that sureties should present to SBA in writing their underwriting policies and procedures. This proposal is rejected on the grounds that it would tend to eliminate competition among sureties.

Section 115.10. Reinstatement after default or failure to pay guarantee fee.

This proposed section has been rewritten because it was found to be at variance with SBA's actual practice. SBA has not and will not reinstate a defaulting contractor before such contractor has undertaken to reimburse both Surety and SBA for their loss caused by such default.—Clarification was requested by a comment as to when a "claim filed" triggers transfer of the contractor's file to the Central Office, thus preventing further SBA surety bond guarantees. The final regulation makes clear that it is (1) the filing of a suit against the bond, or (2) the establishment of a claim reserve by the Surety, (3) a request from the Surety for payment by SBA, or (4) failure by the principal to pay its guarantee fee, which triggers the transfer. This gives the contractor more time to work out difficulties without incurring effective disbarment from SBA assistance. Moreover, the final rule reserves the right to SBA not to transfer the file to Central Office, if in SBA's and the Surety's judgment the issuance of further bond guarantees would help in the mitigation of loss.—The same comment also reflected an understanding that the requirement of monthly claims reporting precludes a surety from making a claim for loss later if the Surety forbears making a timely claim (in the interest of the work-out discussed above). This understanding is not SBA's intent. Section 115.14 (Claims for losses) leaves to the surety the decision when to request reimbursement (see discussion under § 115.14). The Standard Operating Procedure 50–45 elaborates on the notice requirements for anticipated claims as distinguished from claims for reimbursement.—Another comment criticized the provision of paragraph (a)(3) that a contractor may be reinstated after discharge in bankruptcy. The comment views this provision as inviting an easy way out of the consequences of prior default. This comment misapprehends the purpose of the bankruptcy laws, which is the rehabilitation of the debtor. It also overlooks the provisions of subsection (b) of this section, which emphasizes past experience as an underwriting factor.

Section 115.11(a). Surety's Premium.

This subsection has been moved from § 115.3(e) of the proposed rule, to assemble all fee and premium provisions in the same section. It has also been revised in response to comments that the word "premium" has different meanings in some States as compared to others. For example, Texas permits charging rates in excess of those of the Surety Association of America, if consented to by the Principal (the "consent to rate"). With this exception, Surety Association rates are mandatory in Texas and Louisiana. Accordingly, the final rule avoids the word "premium" (defined in § 115.4) and limits charges to those authorized by the appropriate insurance department, and allows for a "consent to rate."—Several comments objected to the removal of a maximum or "cap" on charges sureties are allowed to make to contractors. SBA has determined that this policy, while it may lead to increased premiums for small concerns, is necessary in view of the continued attrition in the bonding industry. In December 1985, the Surety Association of America (SAA), representing the standard (as distinguished from the high risk) sureties, filed for a 20% premium increase to compensate for greater losses. As of June 1987, this increase was cleared in all jurisdictions where it was filed, excepting only South Carolina where it was temporarily withdrawn. On June 5, 1987, SAA made a new filing, on grounds of a worsened crisis in the industry, proposing a further rate increase of 20.4%. In addition, SAA introduced a special graduated rate for smaller jobs, beginning at $25 per thousand dollars for jobs under $100,000 [$100,000 is the average job size for the SBG program]. These rate increases will raise the standard surety contract bond rate to a level greater than that permitted by SBA until now in its high risk program. In view of the continuing rate escalation in the standard risk industry, SBA's deregulation of premiums (which remain subject to State regulation) seems the best way to keep the high risk industry (and the SBG program) viable.—One comment criticized the prohibition against an agent's requirement that a contractor purchase casualty insurance or other services as a condition of bonding. This prohibition was termed unrealistic and unenforceable. It was said that the decision where and what insurance to buy should be left to the businessman, and "not to the heavy hand of governmental regulations," SBA has nevertheless determined to protect its program from such possible overreaching, while at the same time leaving the freedom of decision to the small business. The regulation does not prohibit the simultaneous purchase of various services; it merely prohibits making such purchase a condition of the sale of bonding.—Another comment proposed a regulatory minimum rate which would preempt certain State maximum rates which are too low to justify issuing bonds. SBA rejects this proposal to interfere with State regulation.—One writer queried whether the Principal's guarantee fee "to be remitted to SBA by Surety or Principal" is to be submitted by the agent or the home office. Since the definition of "Surety" in the statute [see 15 U.S.C. 694a(4)] and the regulation (see § 115.4) does not distinguish between the bonding company and its agent(s), either many remit the fee to SBA with the application on SBA Form 994.

Section 115.11(b). Formerly 115.11(a).

SBA Charge to Principal. The requirement of adjusting the contractor's guarantee fee in consequence of changes in the contract or bond amount, contained in Article VIII of Appendix A of the NPRM, has been dropped for the reason stated under paragraph (c) of this section (lack of cost-effectiveness).

Section 115.11(c). SBA charge to Surety.

In the NPRM it was proposed to express SBA's guarantee fee to Surety as a percentage of the bond premium. Given the volatility of the surety bond market and the need to adjust promptly to changes, SBA has determined that the

guarantee charge should be expressed in dollars and calculated on the same basis (contract or bond amount) as the Surety's own premiums. The dollar amount will be stated on the face of the guarantee agreement, SBA Form 990. This paragraph now also provides that SBA must be advised of contract changes of $10,000 or more. SBA will neither charge nor refund to the Surety a proportionate part of the guarantee fee in the event of an increase or decrease in the contract amount. A study has shown that over the past five years (1983–1987) the difference between premium increases and decreases due to premium adjustments of more than $15 (the former trigger point) amounted to 30¢ in surety fees and to $2.90 in contractor fees per bonding—a difference making such remittances not cost-effective. Changes in contract or bond amount in excess of 25% or $50,000 require SBA approval—see § 115.15(c) of this Part.

Section 115.12(b). Bonding line underwriting.

Subsection (b) asks of the surety that it require the principal benefiting from a bonding line to keep the surety informed of all contracts, both bonded and unbonded. The obvious reason is that unbonded contracts can contribute to a default under a bonded contract, *e.g.*, because the principal is overextended. A comment asked what the effect would be of a failure by the principal to keep the Surety informed. In the first instance, SBA would expect the Surety to cancel the bonding line in such event. Second, SBA would honor its guarantee if the surety in good faith met its obligation to require the principal to furnish the information. Thirdly, SBA has added a third disqualification to the "good character" requirement of § 115.5(b) equating failure to keep the surety informed of unbonded contracts with a material misrepresentation. Accordingly, a contractor who violated the requirement would be disbarred from any further SBA bonding assistance.

Section 115.12(f). Submission of forms of SBA.

A comment proposed that the requirement of submission within 45 calendar days of Forms 994 showing the issuance of bonds under the bonding line be broadened to include other required forms. In response, SBA has broadened the requirement to "forms prescribed by SBA" which will be set forth in SBA's commitment letter. Another comment requested relief for "pure oversight" if a surety failed to submit the required forms within 45 days of issuance of bonds under the bonding line, since such failure voids SBA's guarantee of the bond from its inception. SBA cannot accept this request, which would render the management of SBA's budget authority unduly precarious. A surety must adopt procedures that will prevent such oversight from lasting even 45 days. A similar regulation was part of the prior revision, § 115.10(e)(2) (1985), and has not produced undue hardships. The difference between this final regulation and the earlier version is that the final version spells out what SBA requires to reinstate a guarantee in these circumstances. SBA invites comment on this provision.

Section 115.12(b). Cancellations.

A clause has been added to this subsection requiring the cancellation of the bonding line upon a default, in the surety's opinion, by the contractor on either a bonded or unbonded contract. The reason for this addition is plain: SBA's commitment to the surety is based on its pre-qualification of the principal. A default destroys this premise. And thereafter new underwriting determinations are necessary.

Section 115.13(b). Salvage and recovery.

This item has been transferred from former SBA Form 990, with the addition that SBA may consent to a discontinuance by Surety of its efforts to reduce loss. A further addition provides that a dispute between two or more participating sureties should be referred to SBA's Central Office for possible resolution without litigation, since most of the cost of such litigation by the parties would have to be borne by SBA.

Section 115.14. Claims for losses.

This section has been rewritten in response to the criticism that the word "claim" in the context of the surety bond guarantee program has two meanings: It covers claims made against a surety by an obligee or other beneficiary of a bond, as well as claims made by a surety against SBA for reimbursement of losses paid out. The rule now speaks of "claim for reimbursement on account of losses which the surety has paid."—A comment criticized the vagueness of the clause under which SBA may request "additional information" before honoring such requests. This vagueness is unavoidable, since SBA cannot foretell in what respects such filings will be deficient. It requires no argument that SBA cannot make payment on inadequate information; by the same token, the deadline for SBA's payment must be tolled by the length of time that it takes to secure the necessary information.—Another comment requested a time limit within which such requests could be filed. Such a time limit is not practical, since losses may occur and be paid even after the surety has advised SBA to close its file.—The regulation now also sets up receipt by SBA, rather than the "time of filing," as the beginning of the 90-day period for payment. The reason for this change is the ambiguity of the term "time of filing."—Former SBA form 990, in ¶ 9 of Part II, set up a "deductible" of the lesser of $500 or the gross premium. This "deductible" has been abolished. SBA's experience shows that this requirement creates accounting problems for SBA and participating sureties which are disproportionate to the savings effected, in view of the insignificant number of claims or reimbursements below this threshold.—The reporting requirement (Art. IX of the Guarantee Agreement in the NPRM) has been transferred to this section, and reduced to a semi-annual status report. SBA invites comments on this provision.

Section 115.15. Defenses of SBA.

Three comments expressed concern with the provision equating with a misstatement by the surety the adoption by the surety of a misstatement which, with due diligence, surety should have known to be false. In response, SBA has added generally accepted underwriting standards as the test whether or not the surety was justified in adopting a misstatement by a third party. SBA cannot go beyond this general rule, since the variety of errors of commission and omission is infinite, and prudent underwriting must adapt the general rule to the particular facts of a file. One commenter suggested that SBA review the sureties' questionnaires for adequacy of disclosure. SBA does not believe that any form can solve all underwriting problems automatically; the prudent underwriter will develop his own questions on a case-by-case basis. The same comment suggested that the "red flags" listed in SOP 50 45 (p. 49) be the test of diligent underwriting. These "red flags" are merely examples; the SOP stresses that the surety must "adhere to the surety industry's general principles and practices used in evaluating the credit, capacity and character of a principal, taking into consideration the reason an SBA guarantee is needed."—One comment asked who determines whether the surety "should have known" of a misrepresentation by others. This clause is commonly interpreted in the law to

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preclude a willful ignorance, or ignorance resulting from negligence.—A comment pointed out that "statement of personal history forms" are only required from the holders of equity positions in the surety of 20% or more, while this section requires disclosures of equity positions in a contractor by owners of 10% or more. In response, SBA has raised the disclosure threshold to 20%.—SBA has also revised subsection (a), excess contract amount, to provide that the contract amount may not exceed the statutory limit at the time of issuance of the executed bond, instead of the proposed "time of execution of the guarantee." The reason therefore is stated in the comment on the definition of "Amount of Contract" under § 115.4, *supra*.—A comment also emphasized the difficulty for a major surety company to monitor all its officers, directors or partners for a possible interest in the contractor to be bonded. In response, SBA has limited this requirement to persons empowered to act for the surety, in conformity with the statutory definition of surety, 15 U.S.C. 694a(4).—A commenter asked who in SBA would make the decision to deny liability on the grounds of excessive contract amount or misrepresentation. Denials of liability under all SBA financial programs are made by the Administrator of SBA personally, as the final agency decision. Recourse from these decisions can only be sought in the courts. Section 134.3(i) of this Chapter confers authority on the Office of Hearings and Appeals to hear only cases of termination of participation in the surety bond program, and not also denials of liability.—A new subsection (c) transfers to the regulation from former SBA Form 990 the exoneration of SBA from liability if surety agrees to a material alteration of the bonded contract or the contract bond, without obtaining prior written approval from SBA (excepting change orders not exceeding 25% or $50,000 of the contract amount or bond liability in the aggregate). The former 20% limit on change orders is raised to conform to the Federal Acquisition Regulation, 48 CFR Ch. I, 28.106–5(a)(2)(ii).

Section 115.16(a). Improper SBG practice.

A comment proposed, and SBA agrees, that the phrase "other sanctions" was unnecessarily imprecise, when the only sanction intended is the renegotiation of the loss percentage. The rule now so states. This comment also rightly criticized the use of "penalized" instead of "sanctioned." The rule now avoids the former word.—Another comment criticized the term "unacceptable underwriting and/or claims practice" as vague and ambiguous. The rule now omits this term as unnecessary, because the same subsection establishes the standard for acceptable practices: Underwriting or claims practices must meet industry standards, as compared to other sureties participating in the program, including standards and practices established and communicated by SBA to program participants from time to time.

Section 115.16(b). Business integrity.

This regulation has been expanded to include the requirements, previously proposed to be included in the proposed SBA Forms 1427 and 1428, that the controlling persons of a Surety must also meet the business integrity qualifications required of the Surety and its agents.—A comment pointed out correctly that the denial of a surety bonding license by a regulator to a first time applicant need not have serious cause. Such denial may occur, for example, because the applicant's latest examination by its home state is not recent enough. Accordingly, SBA has dropped such denial from the list of events triggering proceedings to deny, suspend or revoke the right to participate in the SBG program. The same comment asked whether upon the lifting of a suspension by the licensing authority a participant could be readmitted. This is SBA's intent, and is made clear in the final rule. Similarly, an indictment may or may not trigger a suspension, depending on the relevance of the charges to the participant's fitness to participate in the program, always in a proceeding pursuant to Part 134 of the regulations. Accordingly, this subsection has been rewritten in its entirety.—The final rule also gives the Administrator the right to suspend a surety, pending a hearing and decision under Part 134, for any of the causes listed in subsection (b).—In response to a comment, the final rule makes clear that a bond guarantee issued by SBA before a suspension or termination remains in effect.

Section 115.17(a). Audit.

Several comments claimed that access for SBA auditors to surety attorneys and their files might operate as a waiver of the attorney-client privilege, leading possibly to compulsory disclosure to the adversary in a law suit. SBA points out that this provision has been in its regulation since September 17, 1981 (46 FR 46113), without any such adverse consequence. At the time SBA pointed out that it had such authority under its legislation, as well as the Inspector General Act of 1978 (5 U.S.C. App. 1).—One comment also questioned a Surety's power to make available to SBA auditors the records of the completion contractor. Since SBA is sharing in the completion cost, it is a legitimate requirement that both the surety and its guarantor (SBA) should have access to the relevant records.

Section 115.17(e). Cost principles (omitted)

The proposed introduction of the cost principles of the federal procurement regulations (Federal Acquisition Regulations—"FAR") into the claims auditing process was condemned by all three applicable comments. It was pointed out that the government procurement regulations bear no rational relationship to the surety business, because the government is not acquiring, procuring or buying anything. It was also stressed that these regulations provide no useful guidelines to the determination of professional fees or completion costs on a bond claim. The inclusion of such a provision would make claims handling unduly complicated, bureaucratic and burdensome. A comment questioned particularly the application of federal rules to non-federal projects. In response, SBA has omitted the reference in the final rule, leaving SBA auditors free to apply whatever cost principles are appropriate.

Appendix A.—Surety Bond Agreements

Instead of the proposed two separate and quite lengthy Surety bond guarantee agreements (proposed Forms 1427 and 1428), SBA has decided to use one short form, SBA Form 990. The front of this form will resemble Part I of former Form 990 quite closely, and will contain all the information required to identify the contract, the surety, the principal, etc. The reverse side of this form is reproduced below as Appendix A.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

SBA considers this revision of the Surety Bond Guarantee (SBG) regulations, taken as a whole, to be both a major rule for the purposes of Executive Order 12291, and a rule which will, for the purposes of the Regulatory Flexibility Act, have a significant economic impact on a substantial number of small entities. Therefore, we offer the following Regulatory Impact/Regulatory Flexibility Analysis for the purpose of compliance with the pertinent requirements of these two measures.

1. *Description of the potential benefits of the rule.* This revision will provide

SBA, the surety companies participating in its SBA program, and the small contractors seeking surety bonds with SBA's guarantee from participating sureties, with clearer guidance as to how SBA guarantees are obtained, who may apply and/or qualify for such guarantees and who is not eligible, and how both sureties and contractors may continue to benefit from the SBG program. We believe that the revision will benefit SBA since it will clarify the regulatory framework with considerable input from the public, following two earlier publications seeking such comments. As pointed out above, the program will be made available with fixed premium shares. Moreover, the discontinuance of premium regulation, coupled with the loss guarantee percentage not to exceed 80%, should enable more contractors to obtain SBA guaranteed bonds, because more surety companies will participate with SBA, and our budget authority will cover a greater number of bonds. The repeal of the "deductible" (§ 115.14), together with the permitted increase in contract price from 20% to 25% (up to an increase of $50,000) without SBA approval permitted by § 115.15(c), should combine to reduce the paperwork involved, and give greater leeway to sureties and their clients.

2. *Description of potential costs of the rule.* Contractors may experience a rise in their bonding cost, due to the lifting by SBA of the cap on the premium, but it is SBA's expectation that the deregulation of premiums will increase bond availability while the former cap had a depressing effect on such availability.

3. *Description of the net benefits of this revision.* This revision should provide for an expansion of the SBG program within SBA's budget authority.

4. *Description of reasons why this action is taken.* This revision is made with considerable public participation, to reflect both SBA's experience since the prior revision, and the comments received in the course of this revision. Simplification of procedures is expected to attract more sureties to the SBG program, and thus provide required bonds to more small businessmen.

5. *Statement of objectives and legal basis for this final revision.* The purpose of this revision of the SBG rules is to simplify the paperwork, to facilitate the issuance of more bond guarantees to sureties for their small business clients, and to increase the scope of SBA's budget authority. The legal basis of this revision is section 411(d) of the Small Business Investment Act, 15 U.S.C. 694b(d).

6. *Description of entities to which final rule will apply.* This revision will apply to surety companies seeking guarantees from SBA for their small business surety bonds, and will also affect indirectly the small business clients of such sureties requiring SBA guarantees because of their inability to obtain bonds without such guarantees.

7. *Description of the reporting, recordkeeping and compliance requirements of the revision.* On balance, this revision will impose fewer reporting and recordkeeping requirements on sureties, than did the prior revision.

8. *Federal rules.* There are no relevant Federal rules which duplicate or overlap this revision.

9. *Analysis of public participation.* A detailed analysis of the public comments received in response to the proposed revision, and of SBA's efforts to conform this revision to these comments, has been provided above. An equally detailed analysis of the comments received in response to the advance notice of proposed rule making was furnished with the Notice of Proposed Rule Making on August 21, 1985 (50 FR 33766).

SBA submits that it has rejected no alternative to this revision which would minimize the economic impact of this rule on small entities without giving its reason therefor. In this regard, the regulations affect primarily participating sureties, which are not necessarily small entities, while they benefit primarily small contractors, with whom SBA has not direct relationship under this program. In preparing this revision, we have sought, for the sake of continuity, to adhere closely to the prior regulatory frame work in establishing participation requirements for this program. We do not believe that any of the rejected alternatives would have more consistently accomplished the stated objectives of our statute than those which we have adopted.

These regulations contain no reporting requirements which have not been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. Ch. 35. Such approval is noted in each appropriate place.

While this rule is final, effective sixty days from publication, comments are nevertheless invited and will be considered for possible amendment of this revision.

List of Subjects in 13 CFR Part 115

Small businesses, Surety bonds.

Pursuant to the authority contained in section 411(d) of Title IV, Part B, Small Business Investment Act of 1958, as amended [15 U.S.C. 694b(d)], Title 13, Code of Federal Regulations, Chapter I, Part 115, is hereby revised as follows:

PART 115—SURETY BOND GUARANTEE

Secs.

115.1 Statutory provisions.
115.2 Headings.
115.3 Policy.
115.4 Definitions.
115.5 Eligibility of principal.
115.6 Procedure for surety bond guarantee assistance.
115.7 Approval or decline of Surety's application.
115.8 Underwriting standards.
115.9 SBA's review of Surety's underwriting.
115.10 Reinstatement for underwriting purposes.
115.11 Fees and premiums.
115.12 Surety bonding line.
115.13 Minimization of loss.
115.14 Claims for losses.
115.15 Defenses of SBA.
115.16 Refusal to issue further guarantees.
115.17 Audit and investigation.
115.18 Savings clause.
Appendix A—Surety Bond Guarantee Agreement
Appendix B—Underwriting Considerations.

Authority: Title IV, Part B of the Small Business Investment Act of 1958 (15 U.S.C. 694a, 694b) and the Inspector General Act of 1978 (5 U.S.C. App. 1).

§ 115.1 Statutory provisions.

The relevant statutory provisions will be found at 15 U.S.C. 694a, *et seq.*

§ 115.2 Headings.

Headings are explanatory (for reference ease) and are not regulatory.

§ 115.3 Policy.

(a) *Congressional intent.* It is the intent of Congress to strengthen the competitive free enterprise system by assisting qualified small business concerns to obtain on a prudent and economically justifiable basis bid, payment, or performance bonds which are otherwise unobtainable without a Small Business Administration (SBA) guarantee. Consequently, Congress has authorized SBA to guarantee (upon such terms and conditions as SBA may prescribe) sureties participating in the Surety Bond Guarantee (SBG) program up to 90 percent of the losses incurred as a result of a principal's breach of the terms of a bid bond, payment bond, performance bond, or bonds which are ancillary to and coterminous with such bonds, on any contract not exceeding $1,250,000 in face value.

(b) *Types of bonds.* The Administration has determined that only bid, performance, and payment bonds (other than bonds in the nature of a

financial guarantee) issued in connection with a contract and of a type listed in the "Contract Bonds" section of the current Rating Manual of the Surety Association of America [1] will be eligible for an SBA guarantee. In addition, the SBA guarantee may be extended to such coterminous "ancillary" bonds as are incidential to the Contract and essential for its performance. See definition of "Contract" in § 115.4.

(c) *Guarantee agreement.* A surety company participating in this program shall be listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts, or a corporation determined by SBA to be a surety eligible to participate in this program. The terms and conditions of SBA's bond guarantee agreements may vary from surety to surety, depending on SBA's experience with a particular surety. In determining the division of losses, the Office of Surety Guarantees will consider, among other things, surety's loss rate in this program in comparision to other sureties participating with SBA to a comparable degree, the rating or ranking designation assigned to the surety by recognized authority, the average dollar amount of bond penalty per bond written in this program and the ratio of bid bonds to final bonds written in this program. SBA shall not guarantee more than 80% of losses as defined herein.

(d) *Appeal of surety.* Any surety which deems itself adversely affected as a result of the guarantee agreement negotiation process outlined above to determine the division of losses may file an appeal within 30 days of the determination pursuant to paragraph (c) of this section, with SBA's Associate Administrator for Finance and Investment. That Officer will review the division of losses proposed by the Office of Surety Guarantees and will render the final Agency decision.

(e) *Timeliness.* A guarantee issued by SBA, whether pursuant to a surety bonding line (see § 115.12) or otherwise (see § 115.7(a)) will be honored only if issued (as that term is defined in § 115.4) before the executed bonds and before the work under the contract has actually begun. An SBA official having delegated authority to approve the bond in question may consent, but only by a separate writing, to the guarantee of a bond or bonds to be issued after work under the contract has actually begun, upon receipt of all of the following from the Surety:

(1) Evidence (certified copy of contract or sworn affidavit) from the principal that the surety bond requirement was contained in the original job contract, or documentation satisfactory to SBA, as to why a surety bond was not previously secured and is now being required.

(2) A certification by the principal listing all suppliers and indicating that they are paid to date, attaching a waiver of lien from each; that all taxes and labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each, or an explanation satisfactory to SBA why such documentation cannot be produced.

(3) A certification by obligee that all payments due under the contract to present status have been made and that the job has been satisfactorily completed to present status.

§ 115.4 Definitions.

This section includes terms defined at 15 U.S.C. 694a and provides definitions of other terms.

"Affiliate" is defined in § 121.3(a) of this Chapter.

"Amount of Contract." The amount of the contract to be bonded shall be established as of the later time of (a) issuance of the executed and guaranteed bond or bonds or (b) award of the bonded contract to the principal. The contract amount shall not exceed $1,250,000 in face value. The amounts of two or more contracts for a single project, to be performed in phases, shall not be aggregated if the prior bond is released (other than for maintenance or warranty—see definition of contract in this section) before the beginning of each succeeding phase. A "single project" means one represented by two or more contracts of one principal or its affiliates with one obligee or its affiliates for performance at the same locality, irrespective of job title or nature of the work to be performed.

"Ancillary and Coterminous Bond" means a bond incidental and essential to performance of the bonded contract and coextensive in scope and duration with the related principal bond.

"Bid Bond" means a bond conditioned upon the bidder on a contract entering into the contract, if bidder receives the award thereof, and furnishing the prescribed payment bond and performance bond. A bid bond guarantee shall expire twelve months after issuance.

"Contract" means an obligation of the principal requiring the furnishing of services, supplies, labor, materials, machinery, equipment or construction (including a warranty up to two years only if such warranty is limited to defective materials or workmanship). The contract shall not be a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee, warranty of performance or efficiency, warranty of fidelity, or release of lien (other than for claims under a guaranteed bond) nor shall a contract prohibit a surety from performing a contract upon default of the principal. A warranty in excess of two years or for other than materials or workmanship shall not be covered by SBA's guaranty unless SBA, by a separate writing signed by surety and SBA, agrees to a warranty in excess of two years from completion, ancillary to an otherwise eligible contract, limited to materials and workmanship, if such warranty is the immediate contractual responsibility of the principal, upon a showing that such warranty is customarily required in the relevant trade or industry.

"Contractor" means the person with whom the obligee has contracted to perform the contract.

"Issuance" or *"issued"* means the release of the SBA-guaranteed executed bond by the surety, which binds surety to the contract if such contract is awarded to the principal.

"Loss" shall have the following meanings:

(a) Loss Under Bid Bond. In the case of a bid bond, the lesser of the penal sum or the sum which is the difference between the bonded bid and the next higher responsive bid, less any amounts recovered by reason of the principal's defenses against the obligee's demand for performance by the principal and less any sums recovered from indemnitors and other salvage. Only in jurisdictions where statute or settled decisional law requires forfeiture bid bonds for public works contracts, forfeitures on such bonds shall be deemed "Loss."

(b) Loss Under Payment Bond. In the case of a payment bond, at the surety's option, the sums necessary to pay all just and timely claims against the principal which are for the value of labor, materials or equipment furnished for use in the performance of the contract, or the penal sum of the payment bond, with interest and related court cost and attorney's fees, if any, less any amounts recovered (through offset or otherwise) by reason of the principal's claims against laborers, materialmen, subcontractors or suppliers and less any sums recovered from indemnitors and other salvage.

(c) Loss Under Performance Bond. In the case of a performance bond, at the Surety's option, the sums necessary to meet the cost of fulfilling the terms of a

[1] 100 Wood Avenue South, Iselin, New Jersey 08830.

contract, or the penal sum of the bond, with interest and related court costs and attorneys fees, if any, less amounts recovered (through offset or otherwise) by reason of the principal's defenses or causes of action against the obligee and less any sums recovered from indemnitors and other salvage.

(d) Loss Adjustment Expense. Amounts actually paid, specifically allocable to the investigation, adjustment, negotiation, compromise, settlement of or resistance to a given claim (including court costs and reasonable attorney's fees) for loss resulting from the asserted breach of the terms of any guaranteed bond, but excluding all unallocated or overhead expenses of Surety. Any allocation method must be reasonable and in accord with generally accepted accounting principles.

(e) Loss From Litigation Cost. Expenses shall also include court costs and reasonable attorney's fees incurred in suits to enforce mitigation of loss as defined in paragraphs (a) through (c) of this definition, including suits to obtain sums due from obligees, indemnitors, principals and others, but no such expense shall be paid for any such suits filed against the United States of America or any of its agencies, officers or employees unless the surety has, prior to filing such suit, received written concurrence from SBA that such suit may be filed, or unless such claim is asserted as a cross-claim or counterclaim.

(f) Loss From Attorneys' Fees and Damages. "Loss" shall not include attorney's fees and court costs incurred by a surety in a suit by or against SBA or its Administrator, and shall not include such costs or payments (*e.g.*, tort damages) arising out of a successful suit sounding in tort initiated under the bond by a principal or any other person against such surety.

(g) Loss After Excess Contract Amount. Where the contract amount, through change orders or otherwise, within the limits permitted by § 115.15(c), is increased after Issuance of the executed guaranteed bond beyond the statutory limit of $1,250,000, SBA's share of the loss shall be limited to that percentage of the increased contract amount, which the statutory limit represents, multiplied by the guarantee percentage approved by SBA pursuant to § 115.3(c). Thus, if a contract amount has been increased to $1,375,000, SBA's share of the loss under an 80% guarantee would be limited to 72.73% [90.91%×80%].

"Obligee" means (a) in the case of a bid bond, the person requesting bids for the performance of a contract, or (b) in the case of a payment bond or performance bond, the person who has contracted with a Principal for the completion of the contract and to whom the primary obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond. No person shall be named co-obligee on the bond unless such person (including a lender to the original obligee) is bound to the principal to the same extent as the original obligee or unless such co-obligee is a Federal department or agency.

"Payment Bond" means a bond conditioned upon the payment by the Principal of money to persons who furnish labor, materials and equipment for use in the performance of the contract and who have a right of action against such bond.

"Performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms. Such bond shall not prohibit a surety from performing the contract upon default of the principal.

"Premium" means an amount determined by applying an approved rate to the bond or contract amount, and does not include surcharges for extra services whether or not considered part of the "premium" under local law.

"Principal" means (a) in the case of a bid bond, a person bidding for the award of a contract, or (b) in the case of final bonds, the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance or payment the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

"Surety" means the person which is listed by the U.S. Treasury, see § 115.3(c), or a corporation determined by SBA to be a Surety eligible to participate in this program, which has entered into a Surety Bond Guarantee Agreement with SBA and (a) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond; (b) under the terms of a performance bond, undertakes to pay a sum of money or to incur the cost of fulfilling the terms of a Contract in the event the principal breaches the conditions of the contract; or (c) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work under the contract and who have a right of action against the bond under local law, or (d) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

§ 115.5 Eligibility of principal.

In order to be eligible for a bond guaranteed by SBA, the principal must:

(a) *Size.* Qualify as a small business under Part 121 of this Chapter;

(b) *Character.* Possess good character and reputation, as determined by SBA. A Principal will be deemed to meet this standard if each owner of twenty percent or more of its equity, and each of its offices, directors, or partners possesses good character and reputation. Good character and reputation shall be presumed absent when any such person (1) has been indicted (pending disposition of such indictment) for or convicted of a felony, or has suffered an adverse final civil judgment that he or she has committed a breach of trust or the violation of a law or regulation protecting the integrity of business transactions or business relationships; or (2) a regulatory authority has revoked, cancelled or suspended the license of such person necessary to perform the contract; or (3) has obtained a bond guarantee by fraud or material misrepresentation (as these terms are defined in § 115.15), or has failed to keep Surety informed of unbonded contracts as required by a bonding line commitment pursuant to § 115.12.

(c) *Need for bond.* Certify that a bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor thereon;

(d) *Availability of bond.* Certify that a bond is not obtainable on reasonable terms and conditions without SBA's bond guarantee assistance; and

(e) *Partial subcontract.* Certify the percentage of work under the contract to be subcontracted. SBA will not guarantee bonds for contractors who are primarily brokers or packagers, see § 124.109(a), Part 124 of this title.

§ 115.6 Procedure for surety bond guarantee assistance.

(a) *Application.* By submitting an application for an SBA guarantee, surety shall be deemed to certify that the bonds to be issued are appropriate to the contract requiring them, that there is a reasonable expectation that the principal, if awarded the contract, will perform the contract with respect to which the bond is required, but that, since such principal does not meet surety's normal underwriting standard, surety will not issue such bonds without SBA's guarantee. Application for an SBA guarantee (including a bonding line application) is made by the contractor

and the surety on the SBA Application for Surety Bond Guarantee Assistance, SBA Forms 994 and 994B (Underwriting Review), respectively (OMB Approval No. 32450007). Except for premiums, contractor shall itemize on SBA Form 994 (Application for Surety Bond Assistance) all payments made, or to be made, by contractor to surety (as defined in § 115.4) for whatever purpose as a condition of, or in connection with, the issuance of the bond(s) to be guaranteed by SBA. Contractor and surety shall disclose, by separate attachment to SBA Forms 994 and 994B or C respectively, to the best of their knowledge any business and close family relationship between them (for definition of "close relative," see § 120.2–2(d) of this chapter). No negative statement is required. The Contractor shall be required to execute and file SBA Form 1261 (Statements Required by Law or Executive Order) (no OMB Approval No. required) with the initial application. In addition, the contractor shall complete and provide SBA Form 912, Statement of Personal History (OMB Approval No. 32450178), for each owner of 20% of its equity and each officer, director and partner, for submission with contractor's initial application and on subsequent applications will either certify that the information provided in the initial SBA Forms 912 remains complete and accurate, or will submit updated SBA Forms 912. The completed application, together with the surety's report of underwriting review on SBA Form 994B or 994C (OMB Approval No. 32450007), shall be submitted to SBA only by a person empowered and authorized by the surety in writing to issue the bond applied for. A surety shall furnish SBA a true copy of its agent's power-of-attorney (including any dollar or other limitation thereon) before or with such agent's initial request for a guarantee, notice of any subsequent modification thereof, and a renewal notice on or before the expiration date of such power.

(b) *Fees.* SBA makes no charge for reviewing an application for a bid bond guarantee. The application for a final bond shall be accompanied by the Contractor's guarantee fee (see § 115.11).

§ 115.7 Approval or decline of surety's application.

(a) *Approval.* SBA's approval or decline action will be made in writing by the SBA officer having delegated authority to take final action (see Part 101 of this Chapter). This subsection does not prohibit telephone notice by such office to a surety of SBA's execution of the guarantee in advance of surety's receipt of such approval (pending receipt by surety of written approval): *Provided, however,* That the written approval shall be controlling, as against such telephone notice.

(b) *Reconsideration—appeal.* A request by a surety for reconsideration of a decline shall be directed to the appropriate SBA officer who made the decision to be reconsidered. If the decision on reconsideration is negative, the surety may make a further appeal to the Regional Administrator. If the decision is again adverse, surety may direct an appeal to the Associate Administrator for Finance and Investment, who shall make the final Agency decision.

(c) *Notice to SBA.* When surety has issued the final bonds, surety shall complete Items 19 to 26 on SBA Forms 990 or 994C, as the case may be, and submit the form, together with the principal's guarantee fee (see § 115.11(b)) to SBA within 45 days after the later date of the award of the bonded contract or the issuance of the bond(s). If surety fails to submit such information and fee in a timely fashion, SBA's guarantee of the bond shall be void from its inception, but may be reinstated, at SBA's discretion, upon a showing that the contract is not in default and a valid reason exists why a timely submission was not made.

§ 115.8 Underwriting standards.

The surety shall adhere to SBA's general principles and practices used in evaluating the credit, capacity, and character of a contractor as set forth in SBA's Surety Bond Guarantee Program Standard Operating Procedure (SPO 50–45), as amended from time to time,[2] as supplemented by generally accepted standards of the surety business, to assure that the contract meets the requirements for feasibility of successful completion, reasonableness of cost and that the terms and conditions of the proposed bond are reasonable in light of the risks involved.

§ 115.9 SBA's review of surety's underwriting.

The SBA office referred to in § 115.7 shall review the Surety's underwriting of a bond, taking into consideration the standards specified in § 115.8 for the purpose of making SBA's determination that the principal and the proposed bond(s) are eligible for SBA's guarantee, that the principal will perform the covenants and conditions of the contract under consideration, that the cost of the contract is reasonable and that completion thereof by the small business is feasible.

§ 115.10 Reinstatement for underwriting purposes.

(a) *Conditions for reinstatement.* When legal action against the bond has been instituted, or when surety establishes a claim reserve, or when surety requests reimbursement of loss from SBA, or a principal has failed to pay SBA the fee required by § 115.11(b), the principal's file shall be transferred to SBA's Office of Surety Guarantees, unless that office, in its discretion and with the surety's recommendation, determines that further bond guarantees will assist in the prevention or elimination of loss to SBA. The application file will be retained in that office and the principal, including any affiliates, will not be considered for guarantees of bonds until principal pays the fee or surety has repaid SBA in full for all payments due to principal's default, as the case may be, or one of the following circumstances exists:

(1) Surety has settled its claim with principal for a cash payment of not less than half the amount of loss; principal paid surety amount as settled, and has given a note for the balance to surety.

(2) Principal is presented with a claim which it contests and principal provides collateral acceptable to surety which has a liquidation value of not less than the amount of the claim including related expenses.

(3) The principal's indebtedness to the surety is discharged by operation of law as in bankruptcy or any judicial or quasi-judicial process.

(b) *Underwriting after reinstatement.* A guarantee application after default is subject to the most stringent underwriting review, taking into account the previous default, past work experience, present and future financial and work capability, and SBA's budgetary guidelines. While a settlement, as described above, permits reinstatement, prudent underwriting must take into consideration all past experience. Where, however, surety with full knowledge of past experience is willing to bond the principal again, and states its belief that the principal can complete the proposed contract successfully and without another loss, SBA will give careful consideration to the surety's guarantee application.

§ 115.11 Fees and Premiums.

(a) *Surety's Premium.* A surety shall charge no amount greater than that

[2] The SOP may be obtained from SBA's Office of Surety Guarantees. The current Chapter relevant here, "Underwriting Considerations," is reprinted in the Appendix to these regulations as Appendix "B".

authorized by the appropriate insurance department. A surety shall make no requirement of a principal that it purchase casualty or other insurance or any other services from the surety or any affiliate or agent of the surety. A surety shall not make non-premium charges to a principal except where other services are performed and the additional charge or fee is permitted by the appropriate State law or regulation and agreed to by the principal.

(b) *SBA charge to principal.* No application or bid bond guarantee fee shall be charged to the small business by SBA. No bid bond guarantee fee shall be charged by SBA to the surety. If SBA guarantees a payment and/or performance bond, the principal shall pay to SBA a guarantee fee of $6 (six dollars) per thousand dollars of the contract or bond amount (calculated as in paragraph (c) of this section), to be remitted to SBA by surety together with the notice required under § 115.7(c).

(c) *SBA charge to surety.* The surety shall pay SBA the guarantee fee expressed as a dollar amount per one thousand dollars (rounded off to the nearest one thousand dollars)—of bond or contract amount, according to the surety's own premium base, as stated on the Surety Bond Guarantee Agreement (SBA Form 990) between SBA and the surety. SBA shall not receive any portion of a Surety's non-premium charges. Surety shall notify SBA of any increase or decrease in such contract or bond amount of ten thousand dollars ($10,000) or more; however, no related adjustment in the guarantee fee shall be made. But see § 115.15(c).

§ 115.12 Surety bonding line.

(a) *General.* A surety bonding line is a written commitment by SBA to a Surety which allows the issuance of multiple bonds to a specified small business within pre-approved terms, conditions and limitations. A bonding line shall not exceed one year's duration. In addition to the other limitations and provisions set forth in this part 115, the following conditions apply to each surety bonding line (OMB Approval No. 32450007).

(b) *Underwriting.* A bonding line may be issued by SBA for a small business if SBA's underwriting evaluation is satisfactory and the surety recommends the bonding line. The surety shall require the principal to keep it informed of all its contracts, bonded or unbonded, during the time limit of the bonding line.

(c) *Application for bonding line.* Upon requesting a bonding line, the surety shall provide SBA with:

(1) In addition to the forms required pursuant to § 115.6, information about the small business deemed necessary by SBA.

(2) A recommendation regarding the limit on the number of contracts with SBA guaranteed bonds under the bonding line which the small business may undertake.

(3) A recommendation regarding the maximum dollar amount of any single bonded contract the small business can reasonably be expected to perform.

(4) A recommendation concerning the limit of the total value of all outstanding bids plus uncompleted contracts ("work on hand," bonded and unbonded) which the small business can reasonably be expected to perform simultaneously.

(5) A recommendation whether the small business' bonds should be restricted to a specific type or specialty of work or should be restricted to a geographical area.

(d) *Bonding line commitment conditions.* In the event a bonding line is approved, SBA's written commitment will be conditioned to limit the following: (1) The time period of the bonding line not to exceed one year, subject to renewal in writing; (2) the total dollar amount of the small concern's bonded and unbonded work on hand during the period of the bonding line; (3) the number of such contracts during the period of the bonding line; (4) the maximum dollar amount of any single guaranteed bonded contract; and (5) any other limitation related to type, specialty of work, geographical area or credit.

(e) *Excess bonding.* If, after a bonding line is committed, the principal desires a bond and the Surety desires a guarantee exceeding a limitation of the bonding line, an application may be made under regular procedures.

(f) *Submission of forms to SBA.* Within 45 calendar days after the later date of either the award of the bonded contract or the issuance of any final bonds under a bonding line, the surety shall submit notice to SBA on forms prescribed by SBA (OMB Approval No. 32450007) showing that the bond or bonds have been issued. Surety may use SBA Form 994C (OMB Approval No. 32450007) when a completed Form 994B is on file with SBA, except when new financial statements are received from the principal. If the surety fails to submit such form and fee to SBA in a timely fashion, SBA's guarantee of the bond shall be void from its inception, but may be reinstated, at SBA's discretion, upon a showing that the contract is not in default—see § 115.3(e) (2) and (3)—and a valid reason exists why the timely submission was not made.

(g) *Fees.* With the information required under paragraph (e) of this section, surety shall remit the principal's guarantee fee [see § 115.11(b)] and any additional data deemed necessary by SBA.

(h) *Cancellation.* Upon the occurrence of a default, in the opinion of the surety, whether under a bonded or unbonded contract, the surety shall cancel the bonding line commitment. SBA or the surety may cancel a bonding line commitment at any other time upon written notice to the other party. In either event surety shall promptly notify the principal in writing. Cancellation by SBA will be effective upon receipt of such notice by the surety: *Provided, however,* That bonds issued before the effective date of cancellation shall remain guaranteed by SBA.

§ 115.13 Minimization of loss.

(a) *Indemnification agreements and collateral.* Surety shall take all reasonable action to minimize risk of loss, including, but not limited to, securing from each bonded principal a written indemnification agreement secured by such collateral as the surety and SBA may deem appropriate. Other indemnity agreements from other persons or entities, secured by collateral or unsecured, may also be required by the surety and SBA. All SBA requirements concerning collateral and indemnity from parties other than the principal shall be communicated to the Surety in the written commitments issued pursuant to §§ 115.7(a) and 115.12(d).

(b) *Salvage and recovery.* Surety shall pursue all possible sources of recovery, until SBA consents to discontinuance of such efforts: *Provided,* That in any dispute between two or more sureties which are guaranteed against loss by SBA, such dispute shall first be brought to the attention of SBA's Office of Surety Guarantees for an attempt at mediation and settlement.

§ 115.14 Claims for losses.

Claims for reimbursement on account of losses which surety has paid shall be submitted to SBA's Office of Surety Guarantees, on SBA Form 994H (OMB Approval No. 3245–0007). Loss will be determined as of the date of receipt by SBA of such claim for reimbursement, or as of such later date as additional information requested by SBA is received. Surety shall further submit semi-annual status reports on each claim, six months after the initial default notice and in six-month intervals thereafter. SBA may request additional information. Subject to part 140 of this chapter, SBA shall pay its share of loss within ninety (90) days of receipt of the

requisite information. Surety shall reimburse or credit SBA (in the same proportion as SBA's share of loss) within ninety (90) days of any recovery or salvage by surety. Claims for reimbursement and any additional information provided are subject to review and audit by SBA.

§ 115.15 Defenses of SBA.

In addition to equitable and legal defenses and remedies afforded by the general law of contracts and these regulations, SBA shall be relieved of all liability under any Surety Bond Guarantee Agreement, if:

(a) *Excess Contract Amount.* The total contract amount at the time of issuance of the bond or bonds exceeds $1,250,000 in face value; or

(b) *Misrepresentation.* The surety obtained the guarantee agreement or applied for reimbursement for losses by fraud or material misrepresentation. Material misrepresentation includes (but is not limited to) both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made, and includes the adoption by the surety of a material misstatement made by others which the surety knew or under generally accepted underwriting standards should have known to be false or misleading. Failure by the surety (as defined in § 115.4) to disclose its ownership (or the ownership by any owner of twenty percent or more of its equity) of an interest in a principal or an obligee shall be deemed the omission of a statement of material fact; or

(c) *Alteration.* Surety agrees to any material alteration in the terms, conditions or provisions of the contract or bond(s), including but not limited to the following acts, without obtaining prior written approval from SBA: (1) Name as an obligee on the bond(s) any party (other than a Federal department or agency) which is not bound by the contract to the principal; or (2) make any alterations in such bond(s) or make or alter any other instrument which would increase the contract amount or bond(s) liability by more than either 25 percent, or $50,000 in the aggregate, whichever is less. See also §§ 115.3(e), 115.6(a), 115.7(c), 115.11(c) and 115.12(f) of this part.

§ 115.16 Refusal to issue further guarantees.

(a) *Improper surety bond guarantee practices.* SBA at its sole discretion may refuse to issue further guarantees to a surety where SBA finds that the surety, in its underwriting of surety bonds guaranteed by SBA, or in its efforts to minimize loss, or in its claims practices, or its documentation related to such bonds, has failed to adhere to prudent underwriting standards or other practices, as compared to those of other sureties participating in the SBA Bond Guarantee Program, including any standards or practices required and communicated by SBA. Acts of wrongdoing such as fraud or material misrepresentation (as defined in § 115.15) shall constitute adequate grounds for refusal to issue further guarantees. SBA may also require the renegotiation of the percentage of its loss guarantee with a surety which experiences excessive losses on SBA-guaranteed bonds, relative to those of other Sureties participating in the program to a comparable degree. Such refusals or sanctions will be issued by SBA's Associate Administrator for Finance and Investment. Any surety that has been so sanctioned may file a petition in accordance with § 134.11(a) of this Chapter. Proceedings concerning such petition shall be conducted in accordance with the provisions of Part 134 of this Chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34 of this Chapter.

(b) *Business integrity.* Any person qualifying as a surety, including any officer, director, individual partner, other individual holding twenty or more percent of the surety's voting securities, and any agent, independent agent, underwriter or individual empowered to act on behalf of such person shall be presumed to have good character and (subject to § 115.6(a) be entitled to present applications for guarantees of bonds, except in the following circumstances:

(1) When a State or other authority regulating insurance (including the surety industry) has revoked or cancelled the license required of such person to engage in the surety business, the right of such person to participate in the program may be denied or terminated as applicable. When such authority has suspended such license, the right to participate may be suspended for the duration of such suspension.

(2) When such person has been indicted or otherwise formally charged with a misdemeanor or felony bearing on such person's fitness to participate in the program, the participation of such person may be suspended until the charge is disposed of. Upon conviction, participation may be denied or terminated.

(3) When such person has suffered an adverse final civil judgment holding that such person has committed a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, participation may be denied or terminated.

(4) When such person has made a material misrepresentation or willfully false statement within the meaning of § 115.15(b) in the presentation of oral or written information to SBA in connection with an application for a surety bond guarantee or the presentation of a claim thereon, the participation may be denied or terminated.

(c) *SBA proceedings.* Surety shall notify SBA if and when any of the above mentioned persons does not, or ceases to, qualify as a surety under this section. SBA may require submission of SBA Form 912, Statement of Personal History (OMB Approval No. 32450178) from any of these individuals. All proceedings for suspensions, terminations from and reinstatements to participation in the surety bond guarantee program shall be conducted in the manner described in paragraph (a) of this section. The Administrator may, pending a hearing and decision pursuant to Part 134 of this Chapter, suspend the participation of any surety for any of the causes listed in paragraphs (b)(1) through (4) of this section. A guarantee issued by SBA before a suspension or termination under this section shall remain in effect.

§ 115.17 Audit and investigation.

(a) *Audit.* At all reasonable times, SBA may audit in the office of either a participating surety, its attorneys, or the contractor or subcontractor completing the contract all documents, files, books, records, tapes, disks and other material relevant to the Administration's surety bond guarantee, commitments to guarantee a surety bond, or agreements to indemnify the surety. Failure of a surety to consent to such audit or maintain such records will be grounds for SBA to refuse to issue further surety bond guarantees or to honor claims until such time as the surety consents to such audit; *Provided, however,* That when SBA has so refused to issue further guarantees the surety may file a petition in accordance with § 134.11(a) of this chapter. Proceedings concerning such appeal shall be conducted in accordance with the provisions of Part 134. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34 of this chapter.

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(b) The relevant records within the meaning of paragraph (a) of this section shall be maintained for a period of three years beyond the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery and shall include the following records:

(1) The bond agreement;

(2) All documentation submitted by the principal in applying for the bond;

(3) All information gathered by the surety in reviewing the principal's application;

(4) All documentation of any breach by the principal;

(5) All records of any transactions for which the surety makes payment pursuant to the bond, including, but not limited to, copies of all claims, bills, judgments, settlement agreements and court or arbitration decisions, contracts and receipts;

(6) All documentation relating to efforts to mitigate losses; and

(7) Records of any accounts into which fees and funds obtained in mitigation of losses have been paid, and from which payments have been made pursuant to the bond.

(c) *Investigation.* SBA may conduct such investigations as it deems necessary to inquire into the possible violation by any person of the Small Business Investment Act of 1958, as amended, or of any rule or regulation under the Act, or of any order issued under that Act, or any Federal law relating to programs and operations of the SBA.

(d) *Authority.* Authority for paragraphs (a), (b) and (c) of this section is contained in sections 310(a) and 411(g) of the Small Business Investment Act of 1958, as amended [15 U.S.C. 687b(a) and 694b(g)], and in the Inspector General Act of 1978 (5 U.S.C., App. I).

§ 115.18 Savings clause.

The legality of transactions, including the issuance by SBA of bond guarantees, pursuant to provisions of SBA regulations in effect before amendment, shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement with respect to any transaction consummated or bond guarantees issued in violation of provisions applicable at the time, but no longer in effect. If any section or part of a section of these regulations should be adjudged invalid, only that section or part shall be invalid, and no other part or section shall be affected thereby.

Appendix A—Surety Bond Guarantee Agreement; U.S. Small Business Administration

By the signature of its authorized representative on the reverse side of this form (Blocks 16–18), the U.S. Small Business Administration guarantees the Surety named in Item 2 against loss resulting from the breach by the Principal of the terms of the bond(s) described in Blocks 11, 12, 13, 22 and 24, pursuant and subject to 15 U.S.C. 694 a and b, the regulations thereunder (13 CFR Part 115) and the conditions and representations stated below, in reliance on the declarations made on the reverse side hereof, and on the several forms submitted and signed by surety as applicable. This guarantee shall become effective upon the issuance (as defined in said regulations) of the SBA-guaranteed bond by the Surety.

1. Surety represents that it has determined the accuracy and completeness of the information in the Forms submitted by Surety which relate to this agreement, in accordance with generally accepted surety industry underwriting practices. Said Forms are incorporated herein by this reference.

2. Surety shall, conditional on the execution of this guarantee by SBA, if the Surety determines that the contract price is reasonable and the contract amount does not exceed $1,250,000, become Surety on bid, performance, payment, and other ancillary and coterminous bond(s) required for the award of the Contract. Surety may withdraw its decision to issue such bond(s) if prescribed underwriting conditions are not met or if additional information comes to the attention of Surety of a nature so as to change its underwriting determination, and notice is given to SBA.

3. The terms and conditions of such bond(s) will be in accord with those generally established and accepted by the surety industry for the type of contract for which such bond(s) are required to be furnished by Principal, and Surety represents that such bonds would not be provided for Principal on this Contract without this SBA guarantee.

4. If any suit or claim is filed against Surety upon said bond(s), Surety shall inform SBA of the same within 30 days of receipt of notice thereof in the Surety's home office. Unless SBA decides otherwise, and so notifies Surety, Surety shall take charge of all suits or claims arising under said bond(s) and compromise, settle or defend such suit or claim until so notified. Surety shall take all steps necessary to mitigate any loss resulting from Principal's default. Surety shall not join SBA in any lawsuit to which Surety is a party unless SBA has denied liability or has agreed to such joinder in writing.

5. No employee of SBA has authority to waive, change or alter the terms of this Agreement, unless such alterations are separately attached hereto and both the SBA and Surety's authorized representatives have signed and dated their assent thereto.

6. This Agreement is made exclusively for the benefit of SBA and the Surety, and does not confer any rights or benefits on any other party, such as any right of action against SBA by any person claiming under SBA-guaranteed bonds or otherwise. In the event of the Surety's insolvency, SBA shall not be liable to the receiver or other representative of the Surety except for any loss incurred and monies actually paid by such representative under the bonds guaranteed by SBA.

7. If any provision of this Agreement is in conflict with any SBA regulation, such regulation shall prevail in construing or applying this Agreement.

8. Any intentionally false statement or willful misrepresentation in connection with the procurement of the Guarantee or claim for payment pursuant to this Agreement is a violation of federal law, subject to criminal and civil prosecution under 18 U.S.C. 287, 371, 1001, 15 U.S.C. 645, or 31 U.S.C. 231, carrying fines up to $10,000 and imprisonment of up to five years.

Appendix B—Underwriting Considerations [From SOP 50–45]

21. *Surety Underwriting*

Surety underwriting must include the following information for a surety bond guarantee, to be updated if and when changes occur:

a. *Copy of Surety Company's Qualification Questionnaire*

b. *Copies of General Indemnity Agreements (Completed, Signed, Notarized)*

c. *SBA Form 994B, "Surety Bond Guarantee Underwriting Review"*, or SBA Form 994C, "Surety Bond Guarantee Underwriting Review Update."

(1) *Uses of Forms 994B and 994C*

(a) The intent of the SBA Forms 994B and 994C is threefold: (1) To clearly place the underwriting responsibility upon the participating sureties; (2) to provide the participating sureties with a uniform format on which to present their underwriting data; and (3) to provide SBG personnel with a simplified mechanism by which they satisfy legislative and administrative requirements for performing their underwriting review functions.

(b) Surety is required to adhere to those rules, principles, and practices published from time to time by SBA's Office of Surety Guarantees. In underwriting an SBA-guaranteed bond, the surety is also expected to adhere to the surety industry's general principles and practices used in evaluating the credit, capacity, and character of a principal, taking into consideration the reason an SBA guarantee is needed.

(c) A supply of SBA Form 994B, "Surety Bond Guarantee Underwriting Review" or the SBA Form 994C, "Surety Bond Guarantee Underwriting Review Update" will be distributed to all participating surety companies as needed. Either the 994B or 994C is mandatory for all applications. The SBA Forms 994B or 994C should be completed only in the original and become an integral part of the applicant's case folder.

(2) *Failure of Surety to Complete SBA Form 994B or 994C*

Where surety has failed to fill in one or more items on Form 994B or 994C, SBA's surety bond personnel should return the

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entire application package to surety for completion.

On SBA Form 994B the following "red flag" signals should alert SBA's surety bond personnel:

(a) "Yes" answer in blocks: 6(c), 8(d), 20(a), 21(a), (b);

(b) "No" answer in blocks: 4, 5, 7 (b), (e) or (h), 8(i), 9 (a), (b), (c); 10 (a), (c), 11(d), 20(b), 22(a), 23, 24;

(c) No response whatever in blocks: 7 (c), (d), (f), or (g); or when the bid spread shown in item 2(c) appears to be excessive for the size of the contract.

On SBA Form 994C the following "Red Flag" signals should alert SBA's surety bond personnel:

(d) "Yes" answer in block 1(d), 6(c);

(e) "No" answer in block 5; or when the bid spread shown in item 2(c) appears to be excessive for the size of the contract.

d. *Essential Information*

The following information must be submitted on SBA Form 994B or 994C, 994F, or as an attachment:

(1) Brief description of the job, including location, obligee, and contract term. (on Forms 994B or 994C)

(2) For all work on hand, whether jobs have started or not, give the total number and dollars of contracts on hand and the total dollars to be completed. (on Form 994F)

(3) With each request, but not more often than quarterly, work on hand shall be submitted on Form 994F or comparable surety company form. More frequent submissions may be required by the field office in individual cases. (on Form 994F)

(4) The submitting surety or agent/broker is to provide the SBG staff with the specifics on any previous bond default/claim(s) involving the subject contractor, and the present status of the default.

22. *SBA Underwriting Review*

(See also "Surety Bond Guarantee Underwriting Reference Guide")

No application for surety bond guarantee assistance shall be approved unless the following conditions have been met:

a. *Eligibility*—The applicant must meet the standards of eligibility (13 CFR 115.5), and must satisfy the Administration that there is reasonable expectation that the applicant will perform the covenants and conditions of the contract with respect to which a bond is required. The Administration's evaluation will consider the applicant's experience and reputation, and its present and projected financial condition and needs.

b. *Cost and Feasibility*—SBA must be satisfied as to the reasonableness of cost and feasibility of successful completion of the contract. The SBA's determination will take into account the standards and principles of the surety industry.

c. *Indemnity*—The surety must have received the corporate and personal indemnity(s) of the applicant(s) who are either active in the concern's management or have at least *20* percent ownership thereof.

d. *Experience*—SBA must have a narrative of the contractor's work history, type of jobs previously undertaken, largest previous ,ob, etc. SBA's approving official may request bank, obligee and/or suppliers reference letters in addition to the narrative.

e. *Other SBA Assistance*—If the contractor has received other SBA assistance, e.g., 7(a), 8(a), the file is to include the specifics on such assistance. For instance, if the contractor has received a 7(a) loan, the file should include the original amount of the loan, date authorized, copy of the authorization, disbursement date, loan balance at time of SBA Form 994B or 994C submission, status, etc.

f. *Status of Contracts*—The file is to reflect the current status of *all* contracts in process (bonded and unbonded) by the subject contractor. Likewise, the file is to show subject contractor. Likewise, the file is to show the status of all contractor's previous SBG contracts, if any, whether completed or in process, and the percentage of completion.

23. *Underwriting Cases Exceeding $500,000—Cash Flow*

Cash flow projections for both the job in question, and for the contractor itself, during the term of the job would be most helpful. These projections are not mandatory though they might be required in specific cases. The initial SBG recommending representive will make this decision.

24. *Credit Factors—Collateral*

There are no statutory requirements with respect to collateral or security for surety bond guarantees. However, refusal of a contractor to pledge collateral when available may be sufficient reason for decline. (The contractor should be as willing to demonstrate its faith in its own abilities as a contractor as it expects the surety and SBA to do.)

25. *Surety Bonding Line*

A surety bonding line is a commitment to a surety company by the SBA that allows the surety to issue bid, payment and performance bonds to a specified eligible small contractor within preapproved terms, conditions, and limitations.

a. *Eligibility*—SBA, in its discretion, may issue a surety bonding line for a particular applicant with a specified surety if SBA's prior experience with the requesting surety has been satisfactory.

b. *Applications for Surety Bonding Lines*—A request for SBA to establish a surety bonding line for a particular applicant must be made by the surety and may include all of the following as appropriate:

(1) SBA Form 912, "Statement of Personal History"; SBA Form 994, "Application For Surety Bond Guarantee Assistance"; updated SBA Form 994B, "Surety Bond Guarantee Underwriting Review"; updated General Indemnity Agreement (GIA); updated financial statements; bank letter, if bank line of credit is available.

(2) Recommended single contract dollar limitation.

(3) Recommended total dollar and number limitation of all outstanding bids plus bonded and unbonded uncompleted work on hand simultaneously.

(4) Restriction to specific type of work.

(5) Restriction to specific geographic area.

c. *Surety Bonding Line Limitations*—In addition to any limitations of this SOP, which are generally applicable to the Surety Bond Guarantee Program, the restrictions found in 13 CFR Section 115.12 apply.

d. *Bid Bonds Issued Under Bonding Lines*—For each Bid Bond issued under a bonding line, the surety must submit a Form 994C.

e. *Final Bonds Issued Under Bonding Lines*—If the final bond is issued, surety must notify SBA, on SBA Form 990, within 45 calendar days after the later date of, (1) the award of the bonded contract or, (2) the issuance of any final bonds under a bonding line, failing which SBA may void its guarantee. The applicant's guarantee fee must accompany such notice.

26. *Bid Bonds*

SBA, having guaranteed the bid bond, might refuse to guarantee the required payment and performance bonds, for example, when the actual contract price exceeds 25% or $50,000, whichever is greater, more than the original bid, or is more than 25% less or $50,000 less, whichever is greater, less than the next bidder, and SBA doubts the contractor's ability to complete the project at amount bid. In such an instance, surety would either issue the payment and performance bond without SBA's guarantee or suffer default in fulfilling the bid bond, which could result in claims against the surety and surety's claim against SBA.

26.5 *Underwriting Guidelines*

Underwriting Guidelines are promulgated periodically, in SBA Notice format, to all Regional Surety Bond Officers. These guidelines must be consulted for information, guidance and additional underwriting considerations.

James Abdnor,

Administrator.

Date: April 20, 1988.

[Catalog of Federal Domestic Assistance Programs No. 59.011, Bond Guarantee assistance for Surety Companies.]

[FR Doc. 88-19168 Filed 8-23-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-41]

Removal of Transition Area; Carnegie, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

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ACTION: Final rule.

SUMMARY: This amendment will remove the transition area located at Carnegie, OK. The amendment is necessary since the proposed standard instrument approach procedure (SIAP) to the Carnegie Municipal Airport, Carnegie, OK, has been canceled, thus negating the need for a 700-foot transition area. The amendment will release controlled airspace established for the SIAP. Coincident with this amendment, the airport status will change from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 UTC, January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On August 24, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Carnegie, OK (53 FR 17724).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations removes the transition area located at Carnegie, OK. This amendment is necessary since the proposed SIAP to the Carnegie Municipal Airport is being canceled. The SIAP was to have been based on a nondirectional radio beacon (NDB) to be located at the airport. The NDB will not be installed as previously planned; therefore, cancellation of the SIAP and the associated 700-foot transition area is required. Coincident with this action, the status of the airport will change from IFR to VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Carnegie, OK [Removed]

Issued in Fort Worth, TX, on August 8, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–19132 Filed 8–23–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–ASW–57]

Removal of Transition Area; Foraker, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will remove the transition area located at Foraker, OK. The cancellation of the standard instrument approach procedure (SIAP) serving the McKinney Ranch Airport has made this amendment necessary. The intended effect of this amendment is to return that controlled airspace no longer required due to cancellation of the SIAP. Coincident with this action, the status of the McKinney Ranch Airport will change from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 UTC, December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On April 14, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Foraker, OK (53 FR 14816).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the transition area located at Foraker, OK. The cancellation of the existing SIAP to the McKinney Ranch Airport, thus negating the need for a 700-foot transition area, has necessitated this amendment. The intended effect of this amendment is to release that controlled airspace no longer required due to cancellation of the SIAP. Coincident with this action, the status of the McKinney Ranch Airport will change from IFR to VBR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Foraker, OK [Removed]

Issued in Fort Worth, TX, on August 8, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-19133 Filed 8-23-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-6]

Revision of Transition Area; Athens, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Athens, TX. The development of a new VOR/DME-A standard instrument approach procedure (SIAP) to the Athens Municipal Airport, utilizing the Frankston Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), and the subsequent cancellation of the current NDB RWY 35 SIAP to the airport when the new VOR/DME-A becomes effective, have made this amendment necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the new VOR/DME-A SIAP to the Athens Municipal Airport and to return that controlled airspace no longer required due to the cancellation of the NDB RWY 35 SIAP.

EFFECTIVE DATE: 0901 UTC, January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On May 4, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Athens, TX (53 FR 17957).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

The amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Athens, TX. The development of a new VOR/DME-A SIAP to the Athens Municipal Airport, utilizing the Frankston VORTAC, and the subsequent cancellation of the current NDB RWY 35 SIAP to the airport, when the new VOR/DME-A SIAP becomes effective, have necessitated this amendment. The existing controlled airspace developed for the SIAP serving the Lochridge Ranch Airport will not be changed. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the new VOR/DME-A SIAP to the Athens Municipal Airspace, to return that controlled airspace no longer required due to the cancellation of the NDB RWY 35 SIAP to the Athens Municpal Airport, and provide adequate controlled airspace to aircraft executing the SIAP serving the Lochridge Ranch Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 Amended]

2. Section 71.181 is amended as follows:

Athens, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Athens Municipal Airport (latitude 32°09'43" N., longitude 95°49'40" W.), and within 2 miles each side of the 289° radial of the Frankston VOR (latitude 32°04'28" N., longitude 95°31'50" W.), extending from the 6.5-mile radius area to 9 miles east of the Athens Municipal Airport; and within an 8.5-mile radius of the Lochridge Ranch Airport (latitude 31°59'21" N., longitude 95°57'03" W.), and within 4.5 miles each side of the 356° bearing of the Lochridge Ranch NDB (latitude 32°03'48" N., longitude 95°57'27" W.), extending from the 8.5-mile radius area to 10.5 miles north of the Lochridge Ranch NDB.

Issued in Fort Worth, TX, on August 8, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-19134 Filed 8-23-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-56]

Revision of Transition Area; Brownwood, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at

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Brownwood, TX. The development of a new standard instrument approach procedure (SIAP) to Runway 35 at the Brownwood Municipal Airport, utilizing the Brownwood Very High Frequency Omnidirectional Radio Range (VOR), has made this amendment necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing all SIAP's serving the airport.

EFFECTIVE DATE: 0901 UTC, September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On April 21, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Brownwood, TX (53 FR 16291).

Interested persons were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

The amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Brownwood, TX. The development of a new SIAP to Runway 35 at the Brownwood Municipal Airport, utilizing the Brownwood VOR, has necessitated this amendment. The existing 700-foot transition area will remain the same, but a new arrival extension will be added south of the airport. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the Brownwood Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brownwood, TX [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Brownwood Municipal Airport (latitude 31°47'37" N., longitude 98°57'22" W.) and within 5.5 miles each side of the 179° radial of the Brownwood VOR (latitude 31°53'33" N., longitude 98°57'26" W.), extending from the 8.5-miles radius area to 16 miles south of the Brownwood Municipal Airport.

Issued in Fort Worth, TX, on August 8, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–19135 Filed 8–23–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ASO–6]

Designation of Transition Area, Jasper, Georgia.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Jasper, Georgia, transition area to accommodate instrument flight rule (IFR) operations at the Pickens County Airport. This action lowers the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations. Due to mountainous terrain, north, east, and southwest of the airport, the transition area is enlarged to accommodate departing IFR aircraft.

EFFECTIVE DATE: 0901 u.t.c., September 22, 1988.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On July 12, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Jasper, Georgia, transition area (53 FR 26275). This proposed action was for the purpose of providing additional controlled airspace to accommodate a new instrument approach procedure under development for the Pickens County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Jasper, Georgia, transition area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Jasper, Georgia [New]

That airspace extending upward from 700 feet above the surface within an 18.5-mile radius of Pickens County Airport (Lat. 34°27'09"N, Long. 84°27'25"W), excluding those portions that coincide with the Dalton and Rome, Georgia, transition areas.

Issued in East Point, Georgia, on August 12, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–19130 Filed 8–23–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–56]

Revision of Transition Area: Brenham, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Brenham, TX. The development of a new standard instrument approach procedure (SIAP) to the Brenham Municipal Airport, utilizing the College Station Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this amendment necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing all SIAP's serving the airport.

EFFECTIVE DATE: 0901 u.t.c., February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On April 21, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Brenham, TX (53 FR 16290).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Brenham, TX. The development of a new SIAP to the Brenham Municipal Airport, utilizing the College Station VORTAC, has necessitated this amendment. The transition area will increase from the present 5-mile radius of the airport to a 6.5-mile radius of the airport. The existing northwest arrival extension will remain the same. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 7

Aviation safety, transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.1181 [Amended]

2. Section 71.181 is amended as follows:

Brenham, TX [Revised]

That airspace extending upwrd from 700 feet above the surface within a 6.5-mile radius of the Brenham Municipal Airport (latitude 30°13'00" N., longitude 96°22'25" W.) and within 3 miles each side of the 341° bearing from the Brenham NDB (latitude 30°13'20" N., longitude 96°22'22" W.), extending from the 6.5-mile radius area to 8 miles northwest of the Brenham Municipal Airport.

Issued in Fort Worth, TX, on August 8, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–19131 Filed 8–23–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–59]

Revision of Transition Area: San Marcos, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at San Marcos, TX. The development of a new standard instrument approach procedure (SIAP) to the Lockhart Municipal Airport, Lockhart, TX, utilizing the Austin Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this amendment necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing this new SIAP. Coincident with this action, the status of the Lockhart Municipal Airport will change from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On May 6, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at San Marcos, TX (53 FR 17958).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at San Marcos, TX. The development of a new SIAP to the Lockhart Municipal Airport, utilizing the Austin VORTAC, has necessitated this amendment. This amendment will expand the existing San Marcos, TX, Transition Area to include the Lockhart Municipal Airport. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the new SIAP to the Lockhart Municipal Airport. Coincident with this action, the status of the Lockhart Municipal Airport will change from VFR to IFR.

The FAA has determined that this regulations only involves an established body of technical regulation for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

San Marcos, TX [Amended]

By adding to the end of the legal description: and within a 6.5-mile radius of the Lockhart Municipal Airport (latitude 29°50'58" N., longitude 97°40'20" W.)

Issued in Fort Worth, TX, on August 8, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–19136 Filed 8–23–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 88–AGL–2]

Alteration of Jet Route—OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the alignment of Jet Route J–186 located in the vicinity of Appleton, OH. Restricted Areas R–5503 A and B have been relocated eastward and the alignment of J–186 must be realigned via an east dogleg to ensure adequate separation from military aircraft operations within the restricted areas. This action realigns J–186 to improve air safety in that area.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88–14938, published on July 5, 1988, described the realignment of J–186 in part as a direct route between Appleton, OH, and Snowbird, TN (53 FR 25143). The relocation of Restricted Areas R–5503 A and B eastward allows only 2.51 nautical miles from J–186. This action will realign that jet route via an east dogleg, which allows 4.26 nautical miles from R–5503 A and B. This action improves safety for that jet route segment.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, jet routes.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 88–14938, as published in the **Federal Register** on July 5, 1988 (53 FR 25143), is corrected to read as follows.

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–186 [Revised]

From Toccoa, GA; Snowbird, TN; INT Snowbird 007° and Appleton, OH, 183° radials; to Appleton.

Issued in Washington, D.C., on August 11, 1988.

Sholomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-19129 Filed 8-23-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F-0164]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a polyaramide identified as 2,4-diaminobenzenesulfonic acid, calcium salt (2:1), polymer with 1,3-benzenediamine, 1,3-benzenedicarbonyl dichloride, and 1,4-benzenedicarbonyl dichloride as a polymer membrane forming the food-contact surface of a semipermeable membrane for repeated use in contact with food. This action responds to a petition filed by E.I. du Pont de Nemours & Co., Inc.

DATES: Effective (August 24, 1988); written objections and requests for a hearing by September 23, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food and Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 15, 1987 (52 FR 22686), FDA announced that a petition (FAP 7B3972) had been filed by E.I. du Pont de Nemours & Co., Inc., 1007 Market St., Wilmington, DE 19898, proposing that the food additive regulations be amended to provide for the safe use of a polyaramide identified as benzenesulfonic acid, 2,4-diamino-, calcium salt (2:1), polymer with 1,3-benzenediamine, 1,3-benzenedicarbonyl dichloride, and 1,4-benzenedicarbonyl dichloride as a polymer membrane forming the food-contact surface of a semipermeable membrane for repeated use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the polyaramide is safe for food-contact use. Therefore, the agency is revising paragraph (a) of 21 CFR 177.2550 to include an entry that identifies the polyaramide and prescribes a maximum weight level for its safe use in contact with food. FDA has modifed the name of the substance from that which appeared in the filing notice to reflect accepted terminology.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action has considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 23, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2550 is amended by adding new paragraph (a)(3) to read as follows:

§ 177.2550 Reverse osmosis membranes.

* * * * *

(a) * * *

(3) For the purpose of this section, the reverse osmosis membrane consists of a polyaramide identified as 2,4-diaminobenzenesulfonic acid, calcium salt (2:1) polymer with 1,3-benzenediamine, 1,3-benzenedicarbonyl dichloride, and 1,4-benzenedicarbonyl dichloride (CAS Reg. No. 39443-76-0). The membrane is the food contact surface and may be applied as a film on a suitable support. Its maximum weight is 512 milligrams per square decimeter (33 milligrams per square inch).

* * * * *

Dated: August 11, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-19194 Filed 8-23-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 646

[FHWA Docket No. 85-4, Notice No. 2]

Railroad-Highway Projects

AGENCY: Federal Highway Administation (FHWA), DOT.

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ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation prescribing policies and procedures for advancing Federal-aid and direct Federal highway projects involving railroad facilities. The final rule clarifies existing FHWA policy on participation with Federal-aid highway funds in providing specified horizontal and vertical clearances for railroad overpass and underpass structures at highways.

EFFECTIVE DATE: October 24, 1988.

FOR FURTHER INFORMATION CONTACT: James A. Carney, Office of Engineering, 202–366–4652; or Michael J. Laska, Office of Chief Counsel, 202–366–1383; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA's current regulation prescribing policies and procedures for advancing Federal-aid highway projects is contained in 23 CFR Part 646, Subpart B. Within § 646.212 reference is made to eligibility criteria, periodically agreed to between the FHWA, the highway community, and the railroad industry, that determine the extent Federal-aid funds may participate in the costs of providing certain horizontal and vertical clearances for both highway bridges over railroads and railroad bridges over highways. The specific clearance eligibility criteria have not been included in the existing regulation, but rather, have been published in Attachment 1 to Volume 6, Chapter 6, Section 2, Subsection 1, Railroad-Highway Projects, of the Federal-Aid Highway Program Manual.

The clearance eligibility criteria are used by the FHWA to help establish limits for which Federal-aid highway funds can be used to pay for certain clearance design features for bridges between highways and railroads. The criteria generally reflect clearance standards that the railroad industry has adopted for its own use. Some latitute is provided so that bridges may be properly designed to reflect special conditions of individual sites.

Background

On February 20, 1985, the FHWA issued a notice of proposed rulemaking (NPRM) published at 50 FR 7087, FHWA Docket No. 85–4. Its purpose was to propose amendments to FHWA's regulation prescribing policies and procedures for advancing Federal-aid and direct Federal highway projects involving railroad facilities. The FHWA proposed to include the clearance eligibility criteria within the regulation. In doing so, it proposed to adopt many of the clearance eligibility criteria that the FHWA was currently using although some modifications were presented. By soliciting public comments and publishing the clearance provisions as an appendix to the existing regulation, current FHWA policy would be clarified and a more uniform and up-to-date description of clearance eligibility criteria would be presented.

Discussion of Comments and Revisions

There were 23 comments to the docket: 15 from State highway agencies, four from local highway authorities, three from railroad companies, and one from the Association of American Railroads (AAR).

General Comments

Five State highway agencies specifically stated their endorsement of the overall requirements. Additionally, several other State highway agencies and one railroad presented generally favorable comments on most topics and raised only a few minor issues.

Two State highway agencies did indicate opposition to the overall proposed requirements unless there was some indication that the railroad industry would accept the criteria. The AAR also endorsed the idea of the highway and railroad communities reaching agreement on the various criteria.

In response to these comments the FHWA asked the Joint American Association of State Highway and Transportation Officials (AASHTO)/AAR Committee to reach mutual agreement on the clearance requirements. The Joint Committee agreed to undertake this task and in a November 21, 1986, letter to the FHWA presented a proposal to revise the clearance eligibility criteria to rely more upon individual railroad standards and practices. The proposal recommended significant changes to the dimensions of lateral clearances that would in effect lengthen a typical overcrossing structure by 16 feet. The proposal also recommended additional vertical clearances for rail routes that carry 30 million tons or more annually because these routes would be apt candidates for future electrification. These recommendations are discussed in more detail under the separate headings that follow. It is noted that in response to the Joint Committee recommendations, the FHWA by letter of January 8, 1987, requested more information from the Committee to clarify and support its proposed changes. No response from the Committee providing this information was received.

Another general comment regarded the statement in the preamble to the NPRM that the economic impact of the regulation is minimal. A State highway agency objected to this statement. The statement was made in light of the overall highway program and the economic impacts of this action. Taken in this context, the impacts are minimal and an extensive economic evaluation study is not necessary.

Three other commenters (local highway authorities) made general statements on the application of the eligibility criteria. In response to these comments the FHWA wants to clarify that the horizontal and vertical clearance eligibility provisions are solely for the purpose of providing limitation on the extent of Federal-aid participation. While the clearances are patterned after accepted industry practices, there is no intent to establish them as standards or rigid criteria for the design of structures. Judgment may warrant greater clearances under special circumstances and these will be reviewed on a case-by-case basis.

Another concern was the application of the clearance eligibility criteria to reconstruction or rehabilitation of existing structures. The FHWA policy established in this final rule applies to the initial design of new structures. It is not the intent of this rule to require adherence to the clearance limits on bridge reconstruction or rehabilitation projects. In such cases clearances are a matter for case-by-case analysis considering the extent of the structural reconstruction and the social, economic and environmental impacts of obtaining specified clearances.

Lateral Geometrics

Existing FHWA participation policy basically sets fixed lateral clearance dimensions that apply to all Federal-aid bridge projects regardless of site conditions. The final rule sets out the limits of participation for normal situations. However, as proposed in the NPRM and adopted in the final rule, the States will also have the flexibility to justify greater lateral clearance dimensions for Federal participation where justified to meet special conditions at individual bridge sites. The clear intent of this rule is to provide Federal-aid funding for bridge designs which address site conditions in accord with standard and generally accepted bridge engineering procedures and practices.

Only two State highway agencies objected to the increased flexibility

provided by the NPRM, mainly because they envision this would result in additional conflicts with the railroads over deciding what offsets are appropriate at specific locations. Another State highway agency also felt that this section would result in delays as the railroads will generally insist on greater clearances. One railroad endorsed the NPRM on this topic. Two other railroads presented arguments as to why they should be entitled to greater lateral clearances on a routine, system-wide basis. The FHWA recognizes that additional flexibility may create more conflicts between the States and the railroads. However, the flexibility should allow proper engineering design decisions to be made at each bridge site considering the unique conditions at the particular location. The design should not be constrained by rigid application of clearance criteria promulgated to limit Federal-aid participation.

The Joint AASHTO/AAR Committee recommended that the 20-foot lateral dimension to face of slope be measured from a point 4 feet below the lowest rail. Its recommendation is based on the fact that the current measurement of 20 feet of lateral clearance to face of slope from top of lowest rail created a drainage problem in the ballast when the cross-section is built with these dimensions.

Application of the Committee's recommendation to a typical separation structure would result in additional span length of 8 feet on each end of the structure (assumes use of a 2:1 embankment slope). While the additional length could be accommodated in many designs there would be some additional cost (estimated to be approximately $30,000 to $40,000 per bridge). Considering this added cost and the fact that the final rule being adopted allows for greater lateral clearance at individual structure locations to allow for drainage or special conditions such as heavy snow, the Committee recommendation is not adopted as a general policy for participation in all structures.

Under the final rule, lateral clearances greater than the 20-foot distance must be justified by the railroad. The fact that a railroad has a policy or practice of routinely providing lateral clearances greater than 20 feet does not, in itself, provide adequate justification for using Federal-aid funds for providing these greater lateral clearances for a railroad's structures on Federal-aid projects. Rather, it is expected the justification will be based on an examination of the specific needs and requirements of an individual site. The final rule should provide for designs adequate to properly address individual site conditions. Should a railroad desire additional clearances other than necessary to meet these site conditions, such additional costs are not eligible for Federal-aid funding.

The Committee also recommended that the reference to 2:1 embankment slope as a standard be removed. The FHWA agrees and this reference is not included in the final rule. However, it is noted that regardless of the embankment slope used, the extent of Federal-aid participation is still governed by the horizontal clearance criteria established in the final rule.

A railroad and two State highway agencies noted that the minimum American Railway Engineering Association (AREA) clearance to an obstruction was revised from 8 feet to 9 feet. The final rule reflects this revision. Several commenters noted that railroads were routinely using designs in which the piers were placed beyond the toe of the backslope which resulted in greater than 9-foot clearances. There was a concern as to whether the FHWA would participate in the costs of such designs. It is FHWA's intent under this provision of the final rule to recognize and encourage the use of greater clearances to piers and the final rule recommends that piers typically be placed beyond the drainage ditches.

Vertical Clearances (Nonelectrified)

For the most part, the proposed 23-foot criterion was acceptable to the commenters. However, several commenters noted the possible need for additional clearance (6 to 12 inches) for future ballasting. It is FHWA's belief that the 23-foot dimension includes some allowance for future ballasting which should be sufficient. There appears to be no compelling reason at this time to provide added vertical clearance for additional future ballasting.

The Joint AASHTO/AAR Committee recommended that clearances greater than 23 feet be allowed when standard railroad clearance practices would warrant. The FHWA prefers to establish uniform criteria for participation limits that can be applied nationwide and the final rule incorporates this concept. However, in recognition that operational or other special site characteristics could justify increased clearances, provision is made for such on a case-by-case basis.

Vertical Clearance (Electrification)

Several States endorsed the proposal to return to the pre-1977 criteria. However, three western States raised the issue that the justification may be difficult to secure from the railroads. When this happens, the States feel they may be held hostage to railroad demands with the State likely having to pay for the added costs of additional clearance in order to be able to advance a project.

One railroad indicated it favored the tonnage criterion but could, if required, furnish the information needed for the pre-1977 criteria. The AAR strongly objected to returning to the older criteria and felt the tonnage standard should be retained since it was established after extensive discussions between the States, DOT, and the railroads.

The Joint AASHTO/AAR Committee also recommended use of system or route designations based on minimum annual gross tonnage of 30 million tons as a basis for approving vertical clearances in excess of 23 feet. The Committee recommended this criterion because such routes are the likely candidates for future electrification.

Recent experience indicates that very few railroads are seriously considering plans to electrify major routes because of the very high costs for providing the power and revamping equipment. The use of a system carrying a certain annual gross tonnage as a minimum criterion for providing additional clearance based on the eventual electrification does not appear warranted at this time. The FHWA analyzed several systems or rail lines which have been reported as carrying in excess of 30 million gross tons annually and found considerable discontinuities. The data upon which the routes are identified is currently out of date and would be difficult to maintain on a systematic basis with current reporting procedures. The FHWA has not been able to determine the potential for electrification as a function of tonnage.

Therefore, the FHWA will rely on an individual rail system or route justification to support clearances in excess of 23 feet for electrification. Under this process a railroad may establish a rail route as a candidate for electrification by developing a specific plan to accomplish the electrification. The plan should clearly identify those rail routes to be electrified and the proposed time schedule for implementing the plan. It must be a formal railroad plan adopted by the railroad as a clear and positive expression of its intent to electrify the route in question. The period of time for electrification is not spelled out. However, it should be reasonable and within acceptable business planning parameters. It is recognized that such a plan is not considered to be a binding

commitment by a railroad as conditions often change and cannot be predicted with complete accuracy.

In the future if electrification becomes more certain or its potential more clear, the FHWA will consider revising its policy.

Structure Width

The primary issue raised was that the clearance width should be updated to the latest AREA requirement of 9 feet. The final rule incorporates the 9-foot dimension.

Other Issues

The docket commenters mentioned certain issues such as cost sharing, pedestrian fencing, and other items, most of which are beyond the scope of the present rulemaking activity. None of these issues are considered to be of such magnitude to require further action as part of this effort.

Regulatory Impact

The FHWA has determined that this document is neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory procedures. The economic impact of this rulemaking has been found to be minimal. The revisions are generally incorporating existing policy into the regulation. Accordingly, a full regulatory evaluation is not required. For these reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 646

Grant programs—transportation, Highways and roads, Railroads.

In consideration of the foregoing, Part 646, Subpart B to Chapter I of Title 23, Code of Federal Regulations, is amended as set forth below.

Issued on August 18, 1988.

Lowell B. Jackson,

Deputy Administrator.

PART 646—RAILROADS

Subpart B—Railroad-Highway Projects

1. The authority citation for Part 646 is revised to read as follows:

Authority: 23 U.S.C. 109(e), 120(d), 130, 315 and 405; 49 CFR 1.48(b).

2. In § 646.212, paragraph (a)(3) is revised to read as follows:

§ 646.212 Federal share.

(a) * * *

(3) The Federal share of the cost of a grade separation project shall be based on the cost to provide horizontal and/or vertical clearances used by the railroad in its normal practice subject to limitations as shown in the Appendix or as required by a State regulatory agency.

* * * * *

Appendix to Subpart B [Added]

3. Part 646, Subpart B is amended by adding an Appendix to read as follows:

Appendix to Subpart B—Horizontal and Vertical Clearance Provisions for Overpass and Underpass Structures

The following implements provisions of 23 CFR 646.212(a)(3).

a. *Lateral Geometrics.* A cross section with a horizontal distance of 20 feet, measured at right angles from the centerline of track at the top of rails, to the face of the embankment slope, may be approved. The 20-foot distance may be increased at individual structure locations as appropriate to provide for drainage if justified by a hydraulic analysis or to allow adequate room to accommodate special conditions, such as where heavy and drifting snow is a problem. The railroad must demonstrate that this is its normal practice to address these special conditions in the manner proposed. Additionally, this distance may also be increased up to 8 feet as may be necessary for off-track maintenance equipment, provided adequate horizontal clearance is not available in adjacent spans and where justified by the presence of an existing maintenance road or by evidence of future need for such equipment. All piers should be placed at least 9 feet horizontally from the centerline of the track and preferably beyond the drainage ditch. For multiple track facilities, all dimensions apply to the centerline of the outside track.

Any increase above the 20-foot horizontal clearance distance must be required by specific site conditions and be justified by the railroad to the satisfaction of the State highway agency (SHA) and the FHWA.

b. *Vertical Clearance.* A vertical clearance of 23 feet above the top of rails, which includes an allowance for future ballasting of the railroad tracks, may be approved. Vertical clearance greater than 23 feet may be approved when the State regulatory agency having jurisdiction over such matters requires a vertical clearance in excess of 23 feet or on a site by site basis where justified by the railroad to the satisfaction of the SHA and the FHWA. A railroad's justification for increased vertical clearance should be based on an analysis of engineering, operational and/or economic conditions at a specific structure location.

Federal-aid highway funds are also eligible to participate in the cost of providing vertical clearance greater than 23 feet where a railroad establishes to the satisfaction of a SHA and the FHWA that it has a definite formal plan for electrification of its rail system where the proposed grade separation project is located. The plan must cover a logical independent segment of the rail system and be approved by the railroad's corporate headquarters. For 25 kv line, a vertical clearance of 24 feet 3 inches may be approved. For 50 kv line, a vertical clearance of 26 feet may be approved.

A railroad's justification to support its plan for electrification shall include maps and plans or drawings showing those lines to be electrified; actions taken by its corporate headquarters committing it to electrification including a proposed schedule; and actions initiated or completed to date implementing its electrification plan such as a showing of the amounts of funds and identification of structures, if any, where the railroad has expended its own funds to provide added clearance for the proposed electrification. If available, the railroad's justification should include information on its contemplated treatment of existing grade separations along the section of its rail system proposed for electrification.

The cost of reconstructing or modifying any existing railroad-highway grade separation structures solely to accommodate electrification will not be eligible for Federal-aid highway fund participation.

c. *Railroad Structure Width.* Nine feet of structure width outside of the centerline of the outside tracks may be approved for a structure carrying railroad tracks. Greater structure width

may be approved when in accordance with standards established and used by the affected railroad in its normal practice.

In order to maintain continuity of off-track equipment roadways at structures carrying tracks over limited access highways, consideration should be given at the preliminary design stage to the feasibility of using public road crossings for this purpose. Where not feasible, an additional structure width of 8 feet may be approved if designed for off-track equipment only.

[FR Doc. 88-19161 Filed 8-23-88; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[T.D. 8222]

Income Taxes; Earned Income Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations imposing a requirement that employers notify certain employees whose wages are not subject to income tax withholding that they may be eligible for the refundable earned income credit. These final regulations provide guidance to the employers that must comply with this requirement.

DATES: The regulations contained in this document are effective with respect to remuneration paid after December 31, 1988, for services performed after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Joel S. Rustein of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T LR-99-86). Telephone 202-566-3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 111(e) of the Tax Reform Act of 1986 directs the Secretary to require, under regulations, employers to notify any employee who has not had any tax withheld from wages (other than an employee whose wages are exempt from withholding pursuant to section 3402(n) of the Internal Revenue Code of 1986) that the employee may be eligible for a refund because of the earned income credit. On June 11, 1987, the **Federal Register** published temporary regulations (T.D. 8142, 52 FR 22301) and a cross-referencing notice of proposed rule making (52 FR 22345). Those regulations imposed such a requirement and specified the procedures by which employers are to notify their employees. The proposed regulations are adopted as revised by this Treasury decision, and the temporary regulations are withdrawn.

Comments

Three substantive issues were raised by the comments received on the notice of proposed rulemaking. First, two commentators questioned the authority for imposing the notification requirement and objected to the burden imposed on employers. However, Congress clearly directed the Secretary to impose such a requirement in section 111(e) of the Tax Reform Act of 1986. Second, one commentator requested additional guidance on the question of to whom the required notice must be furnished. The Service believes, however, that the final regulations are sufficiently clear. Finally, one commentator suggested that the regulations allow inter-office mail as a means of furnishing the required notice. The Service continues to believe, however, that, for some employers, first class mail is likely to be more reliable.

Explanation of Provisions

The final regulations adopt the proposed regulations with four revisions. First, the question and answer format has been replaced with a narrative format. Second, the final regulations are under Code section 6051. The temporary regulations were under Code section 32. The final regulations' location makes clear the parallel authority for such regulations under Code section 6051(c) and section 111(e) of the Tax Reform Act of 1986. Section 6051(c) provides that the Secretary may prescribe by regulations additional requirements with respect to the statements required to be furnished to employees pursuant to Code section 6051. Third, the effective date of the regulations has been revised to clarify that the notification requirement applies with respect to remuneration paid after December 31, 1988, for services performed after December 31, 1988. Finally, the final regulations provide that the notice required by these regulations shall be furnished on or before October 24, 1988, in the case of: (1) an employee who was not furnished a Form W-2 for 1987 before October 24, 1988, (2) an employee who was furnished a Form W-2 for 1987 before June 11, 1987, and (3) an employee who was required to be furnished a Form W-2 for 1988 before October 24, 1988, but was not so furnished.

Regulatory Flexibility Act; Executive Order 12291

The Internal Revenue Service has certified that these rules will not have a significant impact on a substantial number of small entities, because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291, and that a regulatory impact analysis, therefore, is not required.

Drafting Information

The principal author of these final regulations is Joel S. Rustein of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these final regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.01-1.58-8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

Adoption of amendments to the regulations

Accordingly, 26 CFR Parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for Part 1 is amended by removing the sentence, "Section 1.32-1T is also issued under the authority of 26 U.S.C. 32."

§ 1.32-1T [Removed]

Par. 2. Section 1.32-1T is removed.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 3. The authority for Part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 31.6051-1(h) is also issued under the authority

of 26 U.S.C. 6051(c) and section 111(e) of Public Law 99–514, 100 Stat. 2108.

Par. 4. Paragraph (h) of § 31.6051–1 is redesignated as paragraph (i), and new paragraph (h) is inserted immediately before redesignated paragraph (i), to read as follows:

§ 31.6051–1 Statements for employees.

* * * * *

(h) *Statements with respect to the refundable earned income credit*—(1) *In general.* In respect of remuneration paid in any calendar year beginning after December 31, 1986, for services performed after December 31, 1986, every employer shall furnish Notice 797 (You May be Eligible for a Refund on Your Federal Income Tax Return Because of the Earned Income Credit (EIC)), or a written statement that contains an exact reproduction of the wording contained in Notice 797, to each employee with respect to whom the employer paid wages (within the meaning of section 3401(a)) during the calendar year and who did not have any income tax withheld by the employer during the calendar year. Notwithstanding the preceding sentence, no such statement need be furnished to an employee who claimed exemption from withholding pursuant to section 3402(n) for the calendar year.

(2) *Time for furnishing statement*—(i) *General rule.* Except as otherwise provided in paragraph (h)(2)(ii) of this section, the statement required by this paragraph (h) for a calendar year shall be furnished—

(A) In the case of an employee who is required to be furnished a Form W–2, Wage and Tax Statement, for the calendar year, within one week of (before or after) the date that the employee is furnished a timely Form W–2 for the calendar year (or, if a Form W–2 is not so furnished, on or before the date by which it is required to be furnished), and

(B) In the case of an employee who is not required to be furnished a Form W–2 for the calendar year, on or before February 7 of the year succeeding the calendar year.

(ii) *Special rule with respect to certain Forms W–2 for 1987 and 1988.* With respect to an employee who is not furnished a Form W–2 for calendar year 1987 before October 24, 1988, or who was furnished such form on or before June 11, 1987, the statement required by this paragraph (h) shall be furnished on or before October 24, 1988. With respect to an employee who is furnished a Form W–2 after June 11, 1987, and before October 24, 1988, the statement required by this paragraph (h) shall be furnished within one week of (before or after) the date the employee is furnished the Form W–2. With respect to an employee who is required to be furnished a Form W–2 for calendar year 1988 before October 24, 1988, but is not so furnished, the statement required by this paragraph (h) shall be furnished on or before that date.

(3) *Manner of furnishing statement.* If an employee is furnished a Form W–2 in a timely manner, the statement required by this paragraph (h) may be furnished with the employee's Form W–2. Any statement not so furnished shall be furnished by direct, personal delivery to the employee or by first class mail addressed to the employee at his or her current or last known address. For purposes of the preceding sentence, direct, personal delivery means hand delivery to the employee. Thus, for example, an employer does not meet the requirements of this paragraph (h) if the statement is sent through inter-office mail or is posted on a bulletin board.

(i) *Cross references.* * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

D. Donaldson Chapoton,

Assistant Secretary of the Treasury.

August 15, 1988.

[FR Doc. 88–19189 Filed 8–23–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Extension of Deadline for the Arkansas Permanent State Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing its decision to extend the deadline for Arkansas to submit the amendments to the Arkansas Permanent Regulatory Program (hereinafter referred to as the Arkansas program) required as a result of the final rule issued by OSMRE in the March 23, 1988 **Federal Register** [53 FR 9881]. Arkansas requested an extension in order to compile documentation to support the State's proposed regulation. OSMRE has decided to grant the extension to December 30, 1988.

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Arkansas program on November 21, 1980. Information pertinent to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the November 21, 1980, **Federal Register** [45 FR 77003]. Subsequent actions concerning program amendments are identified at 30 CFR 903.10, 904.12, 904.15 and 904.16.

II. Submission of Extension Request

On April 17, 1985, in accordance with the provisions of 30 CFR 732.17 (d), (e), and (f), OSMRE notified Arkansas of the changes necessary to ensure that the approved regulatory program was in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and no less effective than its implementing regulations, as revised since November 21, 1980, when the Arkansas program was originally approved. To comply with this letter, the State of Arkansas submitted an amendment package. OSMRE published a final rule on the amendments in the March 28, 1988 **Federal Register** [53 FR 9881]. There are two required program amendments, § 904.16 (a) and (b) included in that final rule. By May 27, 1988, Arkansas was to amend its regulations at 816.116(b)(3)(ii) of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) to be consistent with OSMRE's actions, or resubmit the proposed regulation with sufficient documentation in the record to show the replanting of trees and shrubs is a normal husbandry practice in the State of Arkansas. In addition Arkansas was to revise its regulations at ASCMRC 1000(50) to remove the suspension of ASCMRC 823.11(c) by May 27, 1988.

By letter dated May 27, 1988 (Administrative Record No. AR–341), Arkansas requested an extension to submit the required amendments. The State is compiling documentation to justify the originally proposed regulation at ASCMRC 816.116(b)(3)(ii).

III. Public Comment

The Director solicited public comment on the proposed extension of the deadline to submit the required amendments in the June 28, 1988 **Federal**

Register [53 FR 24320]. No comments were received.

IV. Director's Decision

In accordance with the State's request, the Director has decided to extend the deadline for Arkansas to submit the required amendments to December 30, 1988. The Director is amending Part 904 of 30 CFR Chapter VIII to implement this decision.

V. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review of OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 18, 1988.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

PART 904—ARKANSAS

30 CFR Part 904 is amended as follows:

1. The authority citation for Part 904 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 904.16 is amended by revising paragraphs (a) and (b) to read as follows:

§ 904.16 Required program amendments.

* * * * *

(a) By December 30, 1988, Arkansas shall submit an amendment to its regulations at ASCMRC section 816.116(b)(3)(ii) to be consistent with OSMRE's actions, or resubmit the proposed regulation at ASCMRC 816.116(b)(3)(ii) with sufficient documentation in the record to show the replanting of trees and shrubs is a normal husbandry practice in the State of Arkansas.

(b) By December 30, 1988, Arkansas shall submit an amendment to revise its regulations at ASCMRC 1000(50) to remove the suspension of ASCMRC 823.11(c).

[FR Doc. 88-19192 Filed 8-23-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 103

Banks To Begin Reporting Currency Transactions With Casinos

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of withdrawal of exemptions.

SUMMARY: The Treasury Department is announcing today that it is rescinding all existing exemptions for casinos because banks must report to the Internal Revenue Service all cash transactions involving more than $10,000 with nonbank financial institutions.

EFFECTIVE DATE: September 30, 1988.

FOR FURTHER INFORMATION CONTACT: John Zoscak of the Office of the Assistant General Counsel (Enforcement) at (202) 566-2914 or Amelia A. Gomez, Deputy Director, Office of Financial Enforcement at (202) 566-8022.

SUPPLEMENTARY INFORMATION: Section 103.22(c) of the regulations states, in part, that

> [this] section does not permit a bank to exempt its transactions with nonbank financial institutions (except for check cashing services licensed by state or local governments or the postal service), nor will additional exemption authority be granted for such transactions (except transactions by other check cashers).

Section 103.11(g)(7) provides that casinos having gross annual gaming revenues in excess of $1,000,000 are nonbank financial institutions; therefore, their transactions with banks may not be unilaterally or specially exempted. Thus, Treasury and the IRS Data Center in Detroit, Michigan, are no longer granting special exemptions for casinos having gross annual gaming revenues of more than $1,000,000.

In addition, while the regulations do not prohibit banks from seeking additional authority from Treasury or the IRS to exempt casinos having gross annual gaming revenues of $1,000,000 or less from the currency transaction reporting requirements, Treasury has decided, as a matter of policy, that no exemptions for those casinos will be granted by either Treasury of the IRS Data Center in Detroit.

Finally, because of the prohibition contained in § 103.22 concerning nonbank financial institutions and Treasury's policy with respect to casinos having gross annual revenues of $1,000,000 or less, Treasury is rescinding all special exemptions granted for all casinos, regardless of their size. Thus, banks must remove all casinos from their exemption lists and begin reporting transactions with them in excess of $10,000 on IRS Form 4789, Currency Transaction Report, no later than September 30, 1988.

The September 30, 1988 effective date is being provided to enable banks to implement this requirement more easily.

Date: August 15, 1988.

Gerald L. Hilsher,

Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 88-19197 Filed 8-23-88; 8:45 am]

BILLING CODE 4810-25-M

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations; Amendment

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: On April 8, 1988, the President issued Executive Order No. 12635. In implementation of that Order, the Treasury Department issued the Panamanian Transactions Regulations on June 3, 1988 (53 FR 20566, as amended at 53 FR 23620 (June 23, 1988) (the "Regulations")), which, *inter alia*, prohibit most transfers and payments to the Noriega/Solis regime from the United States and by U.S. persons and U.S.-controlled entities in Panama. This rule permits payment to that regime in certain limited categories, specifically, import duties, other import-related expenses, and port fees.

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EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION: Contact Marilyn L. Muench, Chief Counsel, Tel.: 202/376-0408, or Steven I. Pinter, Chief of Licensing, Tel.: 202/376-0236, Office of Foreign Assets Control, Treasury Department, Washinton, DC 20220.

SUPPLEMENTARY INFORMATION: Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5, U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order No. 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 565

Panama, Customs duties and inspections, Exports, Foreign trade, Imports, Transfers of assets.

For the reasons set forth in the preamble, 31 CFR Part 565 is amended as follows:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

1. The authority citation for Part 565 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12635, 53 FR 12134 (April 12, 1988).

§ 565.503 [Amended]

2. Paragraph (d) of § 565.503, as redesignated in 53 FR 23620 (June 23, 1988), is revised to read as follows:

* * * * *

(d) All payments of administrative fees and taxes paid in connection with basic business activity are authorized, including but not limited to: Commercial license fees, corporate registration fees and taxes, court pleading fees, creation of rights fees, copyright fees and taxes, custodial fees and services, document processing fees, fiscal stamps, health certificates, immigration fees, import duties and other import-related expenses, inspection services, international banking licenses, landing fees, legal fees, licensing fees, litigation costs, mineral extraction fees, municipal taxes, new product fees, notaries' fees, occupational risk insurance fees, parking meters, passport fees, patent fees and taxes, plant inspection fees, port fees, quarantine fees, radio and television registration fees, recordation fees, stamp taxes, towage fees, transportation tolls, trademark fees and taxes, vehicle registration fees, visa fees, warehouse storage fees, and work permits.

* * * * *

3. Paragraph (e) of § 565.503, as redesignated in 53 FR 23620 (June 23, 1988), is revised to read as follows:

* * * * *

(e) This section does not authorize payment of income taxes, rental fees, or direct taxes and fees (*e.g.*, export taxes and fees), not otherwise authorized.

Date: August 17, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 17, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88-19173 Filed 8-19-88; 4:45 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 400

Refugee Cash and Medical Assistance

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rule.

SUMMARY: This regulation amends current rules to change the period of eligibility for the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from the 18-month period beginning with the first month a refugee entered the United States to the 12-month period beginning with such first month. This regulation limits the availability of special refugee assistance in order to reduce Federal costs and encourage refugees to seek early employment.

A proposed rule was published in the **Federal Register** of October 19, 1987 (52 FR 38795). Public comments were received through December 3, 1987, and have been carefully considered. No changes have been made in the content of this final rule as a result of the comments received.

EFFECTIVE DATE: October 1, 1988.

ADDRESS: Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services, 370 L'Enfant Promenade, 6th Floor, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Philip A. Holman, (202) 252-4563.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.202 through 400.204 provide for Federal refugee funding, subject to the availability of funds, to be provided to States for cash and medical assistance for eligible refugees during their first 36 months in the United States. Such funding is provided to States for the non-Federal share of assistance if the refugee is eligible for the programs of aid to families with dependent children (AFDC), foster care maintenance payments under title IV-E of the Social Security Act, supplemental security income (SSI), adult assistance in the territories, and medical assistance (Medicaid) under title XIX of the Social Security Act.

Current regulations also provide for Federal refugee funding, subject to the availability of funds, for a special program of refugee cash assistance (RCA) and refugee medical assistance (RMA) during a refugee's first 18 months in the U.S. and for the cost of general assistance (GA), including GA medical assistance (GMA), provided to eligible refugees under a State or local GA/GMA program during a refugee's second 18 months.

The RCA and RMA programs assist those refugees whose economic needs are equivalent to the economic needs required in a State's AFDC program but who do not meet the AFDC family-composition requirements or the SSI age or disability requirements.

Prior to 1982, RCA and RMA were available during an eligible refugee's first 36 months in the U.S. An interim final regulation published March 12, 1982 (at 47 FR 10841) reduced the period to the current 18 months. After the first 18 months, such refugees may seek assistance under a regular, ongoing State or local GA or GMA program. The 1982 regulation provided for Federal refugee funds to cover the cost of GA and GMA during a refugee's months 19-36 so that overall State costs of providing cash and medical assistance to refugees during their first 36 months in the U.S. would continue to be fully federally funded.

Effective March 1, 1986, this 36-month period was reduced to 31 months in order to implement the fiscal reductions imposed under Pub. L. 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings). Effective February 1, 1988, the 31-month period was further reduced to 24 months based on the funds available for cash and medical assistance under Pub. L. 100-202, the FY 1988 Continuing

Resolution, which was enacted December 22, 1987.

Thus, under current law and available appropriations, the entire cost of refugee cash and medical assistance is borne by the Federal Government during a refugee's first 24 months in the United States.

(None of the time-limits cited above apply to funding for assistance and services for unaccompanied minors under 45 CFR 400.205, nor is such funding affected by this rule.)

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1522(a)(9)) authorizes the Secretary of HHS to issue regulations needed to carry out the refugee resettlement program.

Description of the Regulation

Through this regulation, the Department is reducing the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from 18 months to 12 months—a 6-month decrease. This change is expected to result in net savings of approximately $14 million in FY 1989.

This reduction in the duration of RCA and RMA has the following purposes:

a. To provide refugees with stronger incentives to gain employment and become self-sufficient as rapidly as possible after their arrival in the United States.

b. To reduce the likelihood of unnecessary welfare dependency resulting from extended periods of special support.

c. To reduce Federal expenditures to help meet the objectives of the Balanced Budget and Emergency Deficit Control Act of 1985.

d. To reduce the degree of special treatment afforded to refugees, which results in unequal treatment among low-income populations.

e. To reduce total refugee welfare costs while continuing to relieve States of the cost of cash and medical assistance provided to refugees during their initial period in the U.S.

Under this rule, RCA and RMA are available only during an eligible refugee's first 12 months in the U.S. Such refugees who continue to be needy after the first 12 months can seek assistance under a GA or GMA program beginning in their 13th month rather than in their 19th month as at present. Since, under this rule, Federal refugee funding for GA/GMA begins with a refugee's 13th month, no added financial burden occurs to States or localities as compared to the present policy of funding RCA/RMA during a refugee's first 18 months and GA/GMA beginning with a refugee's 19th month.

The extent of refugee eligibility for assistance, however, is affected by this reduction in RCA/RMA from 18 to 12 months. Since the RCA/RMA programs are generally more comprehensive than existing State or local GA/GMA programs, the assistance available to refugees who do not qualify for AFDC, SSI, or Medicaid is reduced beginning with the 13th month rather than the 19th month. It is, in part, this difference in coverage between RCA/RMA and GA/GMA which is expected to result in reduced Federal costs without increasing State or local costs.

The majority of refugees now arriving in the United States receive extended periods of U.S. cultural orientation and English language instruction overseas before reaching this country—training which was not available when the 18-month limitation went into effect in 1982. We believe that the utility of this training can now be reflected in a shorter period of eligibility for special assistance that is not available to U.S. citizens or immigrants to the U.S.

Discussion of Comments Received

We received 79 comments on the proposed regulation, from State and local government agencies, national and local voluntary refugee resettlement agencies, service providers, refugee advisory boards, consortiums and forums concerned with refugee resettlement, refugee mutual assistance associations, refugees, and other individuals. Seventy-six comments opposed the proposal; two supported it; and one supported the reduction in RCA while recommending that the eligibility period for RMA be increased to 24 months.

The following paragraphs address specific points the commenters raised.

Comment: The majority of comments opposing the proposal stated that a 12-month period for RCA and RMA is too short to allow sufficient English language and skill training and adjustment to U.S. society for refugees to become employed. A few commenters specifically mentioned the needs of Hmong refugees in this connection. A few other commenters said that the change would result in family breakups, mental health problems, and refugees' being stuck in dead-end jobs as a result of having to go to work before they had sufficient training.

Response: We agree that no given period, whether it is 18 months or 12 months, can be optimum for all refugees. We also recognize that, in areas where GA programs are not available or where such programs are very restrictive, an end-date for RCA/RMA eligibility can have a negative effect on some refugees and refugee families.

On the other hand, overall experience with the refugee program does not support a contention that more than 12 months are required before many refugees can be expected to become employed. In fact, some of the commenters noted that refugees do become employed soon after arrival in the U.S. and urged that the 18-month period be retained to assist these refugees if they should be laid off during the initial 18-month period.

We would also note that employment does not preclude continuing English language or other training during non-work hours. Many refugees whose initial employment was an entry-level job that could have been considered "dead-end" have subsequently advanced through additional training and experience.

Despite the generally greater needs of many Hmong refugees in making a transition from their own culture to that of the United States, experience has shown that when resettlements are carefully planned in communities with favorable opportunities for entering employment, Hmong refugees have been successful in obtaining and retaining jobs. Accordingly, we continue to believe that a 12-month period for RCA and RMA is reasonable and that no change is warranted from the proposed regulation.

Comment: A few commenters indicated that they believe GA rules might foster long-term dependency. Therefore they feel it would be undesirable for some refugees to have to rely on existing State or local general assistance (GA) programs beginning with the 13th month after their arrival rather than the 19th.

Response: Relatively few refugees rely on GA programs after the expiration of their 18-month eligibility period for RCA. As of September 30, 1987, fewer than 8,500 refugees nationally were receiving GA during their months 19–31 in the U.S. Based on the experience to date, we do not believe that making GA available in a refugee's 13th month, rather than 19th month, will have any appreciable effect on longer term GA dependency.

Comment: Some commenters considered the proposal a means of shifting costs from the Federal Government to State and local governments. Three commenters saw it as impacting county medical costs. One commenter understood the proposal as shortening the overall period of funding for GA.

Response: This regulation reduces the RCA/RMA eligiblity period from 18 months to 12 months, but it does not shift costs since Federal refugee funds now begin to cover the cost of GA/GMA with the 13th month rather than the 19th.

The regulation does not shorten the overall period of funding for cash and medical assistance which was 31 months at the time that the proposal was published and is now 24 months. This overall period depends on the amount of funds appropriated rather than on regulation.

Comment: One commenter concurred with the proposal to reduce RCA to 12 months but recommended that RMA be lengthened to 24 months and be available to any refugee not covered by employer-financed private insurance.

Response: Since this recommendation would widen the existing gap between the assistance available to refugees and that available to U.S. citizens, it would run counter to our intention of reducing the differences.

Comment: Several commenters disagreed with our view, as stated in the notice of proposed rulemaking, that this proposal would "reduce the degree of special treatment afforded to refugees, which results in unequal treatment among low-income populations." These commenters believe that, because of the special problems of refugees, the availability of RCA/RMA during the first 18 months does not constitute an inequity.

Response: In localities where the RCA/RMA program provides a broader eligibility than GA/GMA, there is unequal, and more favorable, treatment of refugees as compared with non-refugees. Shortening the period during which RCA and RMA are available lessens this unequal treatment.

Comment: A few commenters suggested that the proposed change was contrary to the purpose and intent of the Refugee Act. One commenter stated that the change should be sought through legislation. Another commenter said that the proposal was contrary to Executive Order 12291, contending that it was not based on adequate information, had a higher potential cost than benefit, would not maximize the net benefits to society, and did not represent the alternative having the least net cost to society.

Response: We do not agree that this change in the duration of RCA/RMA either is contrary to the Refugee Act or requires legislation. The Act authorizes the Director of the Office of Refugee Resettlement to provide cash and medical assistance during a refugee's first 36 months in the United States but does not prescribe the duration of assistance, scope of coverage, benefit payment levels, or other details of a program of special assistance except for the requirement that employable recipients must accept employment services and employment. The Act authorizes the Secretary to issue such regulations as he deems appropriate to carry out the statute. We consider our ability to regulate the duration of the special programs of RCA and RMA to have already been established by the 1982 regulation which established the 18-month limitation.

As noted below in the section on "Regulatory Procedures," this regulation does not meet the definition of a "major rule" under Executive Order 12291, since the regulation decreases costs. In addition, the regulation does not result in increased costs for States or localities. We also disagree with the substance of the comments related to the Executive Order: We consider adequate information to exist on which to base the changes made in this regulation, including State-by-State data on the utilization of RCA and RMA. We also believe that the beneficial effects of more rapid refugee self-sufficiency, reduced welfare dependency, more equal treatment among low-income populations, and reduced Federal expenditures will outweigh the costs of the refugee population as has been the case with the previous reduction in RCA and RMA from 36 months to 18 months.

Comment: Several commenters stated that refugees affected by the proposal would move to areas with greater welfare benefits. Therefore the commenters expressed doubt that the regulation would achieve the projected $14 million in Federal savings.

Response: Currently, the availability of RCA and RMA ends after a refugee's 18th month in the United States. This regulation simply moves that point to the 12th month. Therefore, to the extent that secondary migration results from the termination of RCA/RMA, it will be likely to occur 6 months sooner than in the past. We do not believe, however, that secondary migration will be substantially greater than before because the latest available survey data (Fall 1985) that bear on this question do not show the utilization of cash assistance to be higher at 12 months than at 18 months.

With reference to potential savings, since RCA/RMA costs in FY 1987 totaled $83.2 million, we believe that the $14 million in projected net savings represents a conservative estimate which can be achieved.

Regulatory Procedures

Executive Order 12291

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order. This regulation does not increase costs; rather, it decreases costs by decreasing Federal funding.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 604(b)), the Secretary certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: April 29, 1988.

Wayne A. Stanton,

Administrator, Family Support Administration.

Approved: June 15, 1988.

Otis R. Bowen,

Secretary of the Department of Health and Human Services.

45 CFR Part 400 is amended as follows:

PART 400—[AMENDED]

The authority citation for Part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

1. In § 400.2, the definitions of "Refugee cash assistance" and of "Refugee medical assistance" are amended by striking, in each definition, "an 18-month period" and substituting therefor "a 12-month period".

§ 400.203 [Amended]

2. In § 400.203, paragraph (b) is amended by striking "18-month period" and substituting therefor "12-month period", and paragraph (c) is amended by striking "during the 18-month period beginning with the 19th month" and substituting therefor "during the 24-month period beginning with the 13th month".

§ 400.204 [Amended]

3. In § 400.204, paragraph (b) is amended by striking "18-month period" and substituting therefor "12-month period", and paragraph (c) is amended by striking "during the 18-month period beginning with the 19th month" and substituting therefor "during the 24-month period beginning with the 13th month".

§ 400.209 [Amended]

4. In § 400.209, paragraph (b) is amended by striking "18 months" and substituting therefor "12 months".

[FR Doc. 88-18932 Filed 8-23-88; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31, 61, 71, 91, 167, 169, and 189

[CGD 84-024]
RIN 2115-AB58

Intervals for Drydocking and Tailshaft Examination on Inspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the intervals between drydock and tailshaft examinations by extending them in most cases for certain classes of vessels. These changes will decrease the cost incurred by the marine industry in meeting these examination requirements and align the intervals with those specified by the various classification societies and the intervals currently under consideration internationally.

EFFECTIVE DATE: These rules are effective on September 23, 1988.

FOR FURTHER INFORMATION CONTACT: LCDR Geoffrey D. Powers, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267-1185.

SUPPLEMENTARY INFORMATION: On May 30, 1986, the Coast Guard published in the **Federal Register** (51 FR 19720) a notice of proposed rulemaking (NPRM). Two correction documents were published (51 FR 20847; June 9, 1986 and 51 FR 26439; July 23, 1986). On August 14, 1986, the comment period was reopened and extended until September 30, 1986 (51 FR 29116). A total of 46 responses were received.

On October 23, 1987, an interim final rule was published which, with the following exceptions, became effective on November 23, 1987 (52 FR 39639). Sections 31.10-24, 71.53-1, 91.43-1, 167.15-40, 169.234, and 189.43-1 became effective on April 20, 1988. The interim final rule comment period closed on January 21, 1988. A total of 36 responses were received and are summarized below.

Drafting Information

The principal persons involved in the drafting of this rule are LCDR Geoffrey D. Powers, Project Manager, and Mr. Stephen H. Barber, Project Attorney, Office of Chief Counsel.

RIN Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Discussion of Comments and Changes Made

Of the 36 letters received, the majority (25) were from the barge industry. Two letters were from the deep sea industry, four from the Great Lakes, one from the offshore supply vessel industry, and four from Coast Guard field offices.

1. Seventeen comments suggest that the 2.5 year (two examinations within any five year period, with no more than three years to elapse between any two examinations) internal structural examination interval for double hull tank barges in Tables 31.10-21 (a) and (b) and Tables 91.40-3 (a) and (b) is too restrictive.

As explained on page 39643 of the interim final rule, the intervals for all examinations in that document were devised by reference to a standard of twice every five years (2.5) for salt water service and once every five years for fresh water service. This standard is referred to as the "basic examination intervals". From these basic intervals, Tables 31.10-21 (a) and (b) and Tables 91.40-3 (a) and (b) were developed—adding or subtracting years, as appropriate, to address the differences in vessel type and service.

The drydock intervals established by the interim final rule for double hull barges (five years salt, 10 years fresh) are twice as long as the basic drydock intervals (2.5 for salt, five for fresh). This doubling was considered appropriate because of the additional safety inherent in double hull construction and the additional access for examination provided by the wing voids and double bottom. However, due to the extended length of drydock intervals for double hull barges (five years for salt, 10 years for fresh) and the ease of preparing voids for examination it was considered appropriate to require periodic internal structural examinations (2.5 for salt, 2.5 for fresh). An internal structural examination of the wing voids and double bottoms is considered a minor economic burden because it does not require cleaning and gas freeing of the cargo tanks.

The comments suggest, however, that, even though gas freeing of cargo tanks is not a requirement for an internal structural examination, virtually every internal structural examination will reveal some damage. The comments contend that, even though the damage found is often minor and does not affect the seaworthiness of the vessel, the Coast Guard usually will require any minor damage found to be repaired. Repairs involving welding will require gas freeing of the cargo tanks and gas freeing is the most expensive aspect of an examination. Therefore, the comments suggest that the internal structural examination interval should be five years (salt or fresh), rather than 2.5 years, in order to provide an incentive to build double hull tank vessels. The Coast Guard takes the position that damage severe enough to require immediate repair will normally be visible during an on-deck examination of wing voids and rakes. Additionally, the Coast Guard prefers the construction of double hull barges over single hull barges due to the increased level of pollution prevention. For these reasons, the 2.5 year interval in Tables 31.10-21(b) and 91.40-3(b) for internal structural examination of double hull barges in fresh water service is changed to five years.

This five year interval should maintain the incentive for industry to build double hull barges, minimize the need for gas freeing cargo tanks, reduce the generation of hazardous waste and air pollution, and economically benefit vessel owners and operators.

The 2.5 year internal structural examination interval for double hull barges in salt water service has been retained due to the greater potential for corrosion in wing voids and double bottoms resulting from salt water ballasting and the environment in which they operate.

However, to ensure that the general condition of the internal structure of those barges, as well as others, is monitored during the period between internal structural examinations, a requirement for an annual on-deck examination of wing voids and rakes is

added to §§ 31.10–21 and 91.40–3. Gas freeing, cleaning, and other preparations for personnel entry are not required, unless the on-deck examination reveals the presence of water or cargo in the voids and rakes, indicating damage potentially affecting the vessel's seaworthiness. If water or cargo is present, an internal structural examination may be required. Actually, marine inspectors usually conduct on-deck examinations of voids and rakes during inspections and reinspections for certification of both single and double hull salt and fresh water service barges. This regulation is merely an affirmation of this existing practice.

For the above reasons, the internal structural examination interval for fresh water service single hull barges with independent tanks and deck cargo barges has been extended to five years.

2. Four comments recommend the cargo tank internal examination interval for double hull tank barges with externally framed tanks be reduced from 10 to five years. No reasons were given. In the absence of any justification, the Coast Guard has not changed the interval.

3. Seven comments from within the barge industry suggest that the authority to extend examination intervals need not be restricted to Coast Guard Headquarters, particularly internal structural and cargo tank internal examination intervals. They state that the regulations should be more flexible and that Officers in Charge, Marine Inspection, should be given some extension authority.

The Coast Guard agrees and has authorized Officers in Charge, Marine Inspection, to grant cargo tank internal and internal structural examination extensions. The examination interval scheme established in the interim final rule is designated to maximize the incidence of different examinations being conducted concurrently. To achieve this alignment, the Coast Guard has established policy authorizing Officers in Charge, Marine Inspection, to extend internal structural and cargo tank internal examinations a maximum of 12 months. Once the three hull examinations (drydock, internal structural, and cargo tank internal) are in phase, Officers in Charge, Marine Inspection, are authorized to extend the cargo tank internal and internal structural examinations a maximum of three months, in those cases where circumstances beyond the control of the owner exist. In the event an extension would disrupt the desired alignment, the examination completion or credit date will be back-dated to its original due date, in order to maintain concurrence of future examinations. This policy will provide industry and Officers in Charge, Marine Inspection, with the flexibility to deal with the unexpected and will facilitate and maintain alignment of hull examination anniversary dates. It will also relieve Commandant (G–MVI) from having to respond to numerous requests for minor extensions. Commandant (G–MVI) will retain drydock and tailshaft examination extension authority. The Coast Guard does not anticipate granting drydock extensions, except in the most unusual situations.

4. Two comments request that Officers in Charge, Marine Inspection, be given the hull examination extension authority necessary to permit "running" examinations, that is, examinations beginning at one port that are completed at another port along the vessel's route, with deadline extensions as necessary. Running hull examinations are contrary to general Coast Guard policy which requires that hull examinations be conducted in their entirety whenever possible.

5. Eleven comments request that the fresh water service intervals apply to vessels in fresh water at least six months in every 12 month period since the last drydock examination. The interim final rule specifies nine months in every 12. The comments point out that limiting salt water exposure to three months unnecessarily reduces the drydocking intervals for some single hull vessels without a demonstrated need for the reduction.

The Coast Guard agrees and has amended the eligibility requirements for fresh water intervals in §§ 31.10–21(a)(2), 71.50–3(b)(2), 91.40–3(a)(2), 167.15–30(a)(2), 169.229(a)(2), and 189.40–3(a)(2) to permit as much as six months salt water service in a 12 month period.

6. Seventeen comments request that the cargo tank internal and cargo tank external examination intervals in 46 CFR Part 151 (unmanned barges carrying certain bulk dangerous cargoes) be included in this rulemaking. These comments point out that most double hull tank barges affected by the amendments to Part 31 in this rulemaking are certificated to carry liquid hazardous materials under Part 151. The shorter Part 151 examination intervals have the effect of negating the potential economic benefit of the extended Part 31 intervals.

The Coast Guard recognizes this problem and will address the Part 151 intervals in a separate rulemaking. In the interim, the Coast Guard has established policy permitting cargo tanks carrying some of the non-corrosive Part 151 products to be examined at the intervals specified in Tables 31.10–21(a), 31.10–21(b), 91.40–3(a), and 91.40–3(b). Information on specific cargoes can be obtained from Officers in Charge, Marine Inspection.

7. Two comments request that the cargo tank internal examination interval for single hull tank barges certificated for the carriage of Grade D and E cargoes only be changed from five years to the six year interval which existed before the interim final rule. One comment recommends that the interval be changed from five years to 10 years because Grade D and E tanks are the most expensive to gas free and because internal damage, if any, can be detected during a drydock examination.

All the examination intervals in the interim final rule (drydock, internal structural, cargo tank internal, tailshaft, and integral fuel oil tank) are a multiple of five years, which will maximize the incidence of different examinations coming due at the same time. In response to comments received to the notice of proposed rulemaking, the interim final rule established a five year cargo tank examination interval which coincides with the drydocking interval. In addition to reducing the hull examination intervals applicable to barges will coincide and Coast Guard marine inspectors will be able to conduct a complete assessment of the vessel's hull structure.

As for the recommended 10 year interval, the Coast Guard finds a 10 year interval for tank internal examinations on single hull tank barges excessive for barges carrying environmentally hazardous products. Therefore, the five year interval is retained in the final rule.

8. One comment requests that the longer drydock intervals (five years salt, 10 years fresh) allowed double hull tank barges and unmanned deck cargo barges be applied to other barges that permit convenient access to the internal hull structure for examination.

The Coast Guard agrees and has amended Tables 91.40–3(a) and 91.40–3(b) to permit a five year and ten year drydock interval respectively for those unmanned double hull freight barges the arrangement of which produces access for a complete internal structural examination without the necessity of entering cargo tanks or holds.

9. One comment considers the 2.5 year drydock interval excessive for offshore supply vessels, other self propelled vessels less than 1,600 gross tons, and industrial barges.

The Coast Guard takes the position that size is not a factor in determining examination intervals. A 2.5 year drydock interval is necessary to ensure an adequate level of safety for these

manned, single hulled vessels operating in an exposed salt water environment. Therefore, the 2.5 year interval is retained.

10. One comment objects to the lengthening of the drydock interval for passenger vessels on domestic salt water routes from 18 months to 2.5 years. The comment is particularly concerned with older vessels carrying large numbers of passengers on open ocean overnight routes because the schedules of these vessels are often so tight that time in part is consumed with loading and off loading the vessel rather than with preventive maintenance programs.

There are over 100 passenger vessels certificated for domestic salt water service. The vast majority of these are ferries. Many of them are part of the multi-ship operations, which allow individual vessels to be removed from service for maintenance. The Coast Guard is satisfied that these vessels can operate safely with a 2.5 year drydock interval.

There are, however, some passenger vessels operating on open ocean routes that, in all practical respects, are similar to international routes, except for the fact that their points of departure and destination are limited to domestic ports. These vessels typically provide overnight accommodations for the passengers. If the choice of ports made the operations international voyages, these passenger vessels would be subject to a one year drydock interval under SOLAS. Before the intervals were extended in the interim final rule, all domestic salt water service passenger vessels were subject to an 18 month drydock interval. Although there are only a limited number of older vessels with accommodations for overnight passengers operating on exposed open ocean routes, they do carry a large number of passengers and their operations are significantly different from the vast majority of vessels certificated for domestic salt water service. Therefore, the Coast Guard has amended § 71.50–3 to require vessels 20 years of age or older operating on non-international salt water routes and accommodating overnight passengers to be drydocked at 18 month intervals. All other passenger vessels operating on non-international salt water routes can continue to take advantage of the extended drydock interval of 2.5 years, as established in the interm final rule.

11. Four comments request a six year drydock interval for Great Lakes vessels because the corrosion rates for vessels exclusively in fresh water service do not warrant a five year drydock interval and because damage, if any, can be discovered by internal examination. They also suggest that the unique design of Great Lakes vessels (double sides and bottoms) provides the access necessary for structural examinations afloat. While recognizing that a six year interval will have no real effect without a corresponding change to the Load Line Regulations, the comments seek eventual alignment of the drydock interval in these rules and in the Load Line regulations with the six year (five years plus a year of grace) American Bureau of Shipping drydock interval.

Based upon the outcome of the regulatory project to revise the load line regulations (CGD 86–013), the Coast Guard intends to align these rules with the new load line intervals, whatever they may be. In the interim, the Commander, Ninth Coast Guard District, is authorized to grant certain Great Lakes vessels drydock extensions of up to one year. Extension will be limited to vessels of all-welded construction and of a design which provides complete access for an internal structural examination (all shell plating and structural members) without the necessity of entering the holds or cargo tanks. Extensions will be considered on a ship-by-ship basis and will be based on the results of a complete internal structural examination.

12. Two comments suggest that the Great Lakes drydock interval be extended by the amount of time a vessel spends in lay-up. The comments note that the American Bureau of Shipping rules for classing steel vessels contain a provision for deducting all or part of the time in lay-up from the survey interval.

The Coast Guard takes the position that examination intervals should not be based on a vessel's actual number of underway days. Two recent examinations conducted in 1985 and 1987 on Great Lakes vessels in extended lay-up status revealed excessive deterioration in the rivets and bottom shell welds. The extent of deterioration in one vessel required the replacement of more than 10,000 rivets and the vee and re-weld of all welded butts. The other vessel needed over 8,000 rivets redriven and 1,541 linear feet of bottom weld veed and rewelded. Accordingly, no accommodation is made for lay-up time in the final rule.

13. Two comments suggest that all examination intervals in the interim final rule be placed on a two year multiple. These comments suggest that, for unclassed, non-loadlined vessels, the primary examination is the inspection for certification, which occurs every two years, and that hull examinations on a two year multiple would reduce the necessary out-of-service time.

The five year multiple scheme in these rules was developed to ensure that these rules would be consistent with the examination intervals currently under consideration internationally. An International Maritime Organization (IMO) diplomatic conference will be held in November 1988 to consider the examination intervals in the International Convention for the Prevention of Pollution from Ships 1973, in SOLAS, and in the Load Line Convention. A draft protocol, Modifications And Additions To The Annex Of The International Convention For The Safety Of Life At Sea, 1974, proposes to establish a five year period of validity for certificates. Upon completion of the conference, the Coast Guard will consider the possibility of initiating the legislative proposal necessary to permit a five year period of validity of certificates of inspection.

14. One comment requests an explanation of the the term "bilge injection valve" in §§ 31.10–20, 71.50–1, 91.40–1, 167.15–27, 169.231, and 189.40–1.

A bilge injection valve is the valve for the emergency bilge suction required by 46 CFR 56.50–50(f). However, to avoid confusion and establish consistent terminology, the words "valves for the emergency bilge suction" are substituted for the words "bilge injection valves" each place they appeared in the interim final rule and in 46 CFR 61.20–5(b).

Also, the word "including " in §§ 31.10–20(a) and (d), 71.50–1(a), 91–40–1(a) and (d), 167.15–27(a), 169.231(a), and 189.40–1(a) and (c) is removed. Otherwise, the sentence implies that sea chests, sea valves, and valves for the emergency bilge suction need be examined only when they are through hull fittings. It is intended that they be examined regardless of whether or not they are through hull.

15. One comment suggests that, because fresh water service vessels are exempt from the tailshaft examination requirements, they also should be exempt from the requirement that sea valves be examined during each required drydocking.

Sea valves perform a vital function in maintaining the watertight integrity of a vessel and should be regularly examined. Because they cannot be opened easily for examination while the vessel is afloat, the most convenient and logical time to examine them is when the vessel is on drydock. Therefore, the requirement is unchanged.

16. One comment objects to the provision in the interim final rule prohibiting vessels over 15 years of age from entering the underwater survey program. This comment suggests that

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the condition of the vessel rather than age should be the deciding factor.

The underwater survey program is a new one. Until the Coast Guard has sufficient experience in the program and confidence in the quality of underwater survey results, the Coast Guard intends to proceed cautiously and apply the program only to younger vessels.

The Coast Guard had an experimental program whereby certain vessels were allowed to substitute an underwater survey for a drydocking. Experience under this program, using the available techniques and equipment, indicates that poor water quality (turbidity and current), such as that encountered in many U.S. ports, frequently led to unacceptable results.

Because of the Coast Guard's limited experience with underwater surveys, the varying circumstances under which an underwater survey may be considered instead of drydocking, and the developing technology in this field, the Coast Guard will re-evaluate the age restriction after a sufficient number of underwater surveys and subsequent drydocking have been conducted. The drydock/underwater survey/drydock cycle will take a minimum of five years to complete. Therefore, the Coast Guard anticipates that a re-evaluation of this provision could begin in 1994.

17. One comment asks what constitutes a "complete set" of hull gaugings, as required in §§ 31.10–21(d)(2), 91.40–3(d)(2), and 189.40–3(a)(2) for Coast Guard consideration of a request for continued participation in the underwater survey program. A complete set would be all of the gaugings deemed necessary by the Officer in Charge, Marine Inspection, to determine the condition of that particular vessel's hull. They generally would include gaugings taken around two or more complete transverse sections of the hull. Plate gaugings of one or more strakes in the wind-and-water area, of additional transverse belts, or of questionable areas, such as those with pitting or fractures, may also be required.

18. Four comments asked whether "integral" in "integral fuel oil tank" in §§ 31.10–24, 71.53–1, 91.43–1, 167.15–40, 169.234, and 189.43–1 means integral to the deck, as in the case of deck mounted fuel oil tanks.

"Integral fuel oil tank" means a tank located within the vessel's hull with one or more of its sides being part of the vessel's hull. A tank integral only to the deck would not come under these sections. The meaning of integral is clarified in this final rule.

19. One comment objected to requiring an internal examination of one or more randomly selected double bottom fuel oil tanks on vessels 10 years of age and older. The comment contends that defects are rarely found in fuel oil tanks and that, if internal examinations are required, they should be limited to tanks which, through external examination, indicate probable damage.

The Coast Guard recognizes the non-corrosive nature of fuel oil but takes the position that any tank integral to the hull warrants some degree of examination, particulary tanks in older vessels. The random selection method of choosing tanks to be internally examined strikes a reasonable balance between the needs of safety and cost of preparing tanks for internal examination.

The comment also asked that the integral fuel tank examination requirement be suspended for "extended public dialog". In light of the fact that the interim final rule provided for an unusually lengthy comment period (three months) followed by an additional three month period before the fuel tank provisions became effective, the Coast Guard determines that an adequate opportunity for comment has been provided.

20. One comment suggests that § 61.20–17 be amended to allow tailshafts which are corrosion resistant except for the portion between the strut and stern tube to be examined at the intervals established for tailshafts which are fully corrosion resistant. The reasoning is that the unclad portions of these tailshafts can be examined any time the vessel is in drydock without having to draw the shaft. The Coast Guard agrees and amends § 61.20–17(c) to provide that only the inaccessible portions need to be corrosion resistant.

21. One comment points out that the tailshaft examination requirements in the interim final rule address oil lubricated tailshafts with a taper and keyway but fail to address tailshafts with a taper but no keyway. The Coast Guard has corrected this by amending § 61.20–17(d)(4)(i) to read: "For tailshafts with a taper, the propeller is removed and the taper and the keyway (if fitted) are nondestructively tested at intervals not to exceed five years". Section 61.20–18(b) is similarly amended.

22. One comment suggests that § 61.20–17(d) is misleading in stating that "tailshafts with oil lubricated bearings are not required to be examined". What is intended is that tailshafts are required to be examined but are not required to be drawn for the examination. The paragraph is amended accordingly.

23. One comment made the suggestion that a requirement for the examination of inboard seal assemblies be added to the oil lubricated tailshaft examination requirements in § 61.20–17(d). The Coast Guard agrees and incorporates this requirement.

24. Eight comments objected to requiring that the Coast Guard be notified any time a barge is placed in a drydock. These comments suggest that the Coast Guard be notified only when a barge is drydocked for repairs (the old Subchapter D standard). They are concerned that notifying the Coast Guard each time the vessel is drydocked because of a change in ownership or pre-charter will result in needless examinations.

The requirement to notify the Coast Guard whenever a vessel is drydocked is needed to allow the Officer in Charge, Marine Inspection, time to ascertain the reasons for drydocking. Should the need for Coast Guard inspection become evident, the advance notice is necessary to avoid marine inspector scheduling problems. The Coast Guard does not intend to normally examine a vessel that is in drydock solely for a change in ownership or pre-charter. However, experience indicates that, in many instances, hull damage is not discovered until a vessel is hauled out of the water. If damage requiring repairs is discovered, the repair work must be inspected by the Coast Guard. In these instances, prior notification could mitigate inspection scheduling problems and the resulting potential delay in completion of repairs and return of the vessel to service. A simple telephone call can avoid one or more days delay.

Before the interim final rule, Subchapters H, I, R, and U (§§ 71.50–5, 91.40–5, 167.15–30(b), 169.233, and 189.40–5) required notification any time a vessel was placed on a drydock for these same reasons. The requirement, therefore, is new only for Subchapter D (tank) vessels.

25. Six comments object to the requirement in §§ 31.10–22(c), 71.50–5(c), 91.40–5(c), 167.15–35(c), 169.233(c), and 189.40–5(c) that a plan showing the barge's scantlings be made available at drydock examinations of barges with Load Line Certificates. The comments point out that, because barges frequently change ownership, their plans are often misplaced or otherwise are no longer available. Reproducing these plans, so the comments contend, would be unnecessarily expensive.

The plans are needed to assist the marine inspector during a hull examination in determining the extent of any hull deterioration. If the current owner does not have the plans, a copy should be available from the Load Line assigning authority, the naval architect,

or the builder. In the event that a copy is not available from these or other potential sources, the Commandant may permit, under §§ 30.15–1, 70.15–1, 90.15–1, 169.109, and 189.15–1, an equivalency to the requirement for plans and accept an owner generated sketch, a list of the vessel's original bracket, frame, and plate thicknesses, or other information suitable to the Officer in Charge, Marine Inspection.

26. One comment suggested that it would assist the vessel owner or operator if the Coast Guard would provide, upon request, a print-out of the date of the last required examination, any outstanding examination requirements, and the due dates of the next required examinations.

This information is available to Officers in Charge, Marine Inspection, through the Marine Safety Information System. Currently, notification of upcoming inspections for certification and outstanding requirements are provided to vessel owners and operators. As time and priorities allow, Officers in Charge, Marine Inspection, will try, upon request, to furnish other hull examination scheduling information.

27. One comment suggests that the Coast Guard provide written guidance to assist industry in understanding and complying with the new regulations. The Coast Guard has developed policy for implementing the new regulations and guidance for underwater surveys. It is available to the public upon request at all inspection offices.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A Final Regulatory Evaluation is available for inspection or copying at Office of the Chief Counsel (G–LRA–2), Room 2110, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC, or by contacting LCDR Geoffrey D. Powers at (202) 267–1185. The evaluation, which is summarized in the preamble to the interim final rule, has not been changed except as follows to address amendments in the final rule.

The only changes to the Regulatory Evaluation result from extending the internal structural examination interval from twice every five years to once every five years for double hull tank barges in fresh water service and from reducing the drydock interval from twice every five years to once every 18 months for passenger vessels 20 years of age or older operating on non-international salt water routes and accommodating overnight passengers. The extension of the internal structural interval will save the barge industry an estimated $290,000 per year. This figure is based on the revenue that will be saved by eliminating one of the two day-and-a-half examinations required every five years for the 1,196 double hull barges and 191 single hull barges with independent tanks in fresh water service. The reduction in the passenger vessel drydock interval will reduce the estimated economic benefit of this rule by $93,000 per year. The net result of these two changes is a savings of $197,000 per year in addition to the estimated $26,000,000 total annual saving for the maritime industry expected to result from the interim final rule.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary. An environmental assessment with a finding of no significant impact has been prepared and is on file in the rulemaking docket.

Paperwork Reduction Act

These regulations contain information collection requirements in the following sections of 46 CFR Title 1: § 31.10–21, § 31.10–22, § 71.50–5, § 91.40–3, § 91.40–5, § 167.15–35, § 169.233, § 189.40–3, and § 189.40–5. They have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2115–0554.

Regulatory Flexibility Act

The amendments to the interim final rule impose no new economic burdens. Certain amendments reduce costs for the maritime industry. For example, the internal structural examination interval for double hull tank barges in fresh water service is changed from twice every five years to once every five years, thus eliminating one examination every five years. Other amendments will have no economic impact, such as the provision requiring the annual on-deck examination of void spaces. The on-deck examinations are conducted by the Coast Guard during the annual inspection or reinspection for certification and create no additional delays or cost for the maritime industry. The reduced drydock examination interval for older domestic salt water service passenger vessels will affect only a limited number of large vessels with overnight accommodations.

For the above reasons, the Coast Guard certifies, under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 31

Barges, Flammable materials, Law enforcement, Marine safety, Tank vessels.

46 CFR Part 61

Marine safety, Tests and inspections, Vessels.

46 CFR Part 71

Foreign trade, Law enforcement, Marine safety, Passenger vessels, Reporting requirements.

46 CFR Part 91

Cargo vessels, Law enforcement, Marine safety, Reporting requirements.

46 CFR Parts 167 and 169

Fire protection, Marine safety, Reporting requirements, School vessels.

46 CFR Part 189

Marine safety, Oceanographic vessels.

Accordingly, the interim rule amending 46 CFR Parts 31, 61, 71, 91, 167, 169, and 189 which was published at 52 FR 39639–39657 on October 23, 1987, is adopted as a final rule with the following changes:

PART 31—[AMENDED]

1. The authority citation for Part 31 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

§ 31.10–20 [Amended]

2. In § 31.10–20 (a) and (d), by removing the words "bilge injection valves" and adding, in their place, the words "valves for the emergency bilge suction" and by removing the word "including".

3. In § 31.10–21, by revising the introductory text to paragraph (a), the first sentence of paragraph (a)(1), Table 31.10–21(a), the first sentence of paragraph (a)(2), and Table 31.10–21(b), by redesignating paragraphs (b) through

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(f) as paragraphs (c) through (g), by adding a new paragraph (b), by revising the introductory text to redesignated paragraph (e), and by revising redesignated paragraph (f) to read as follows:

§ 31.10–21 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals—TB/ALL.

(a) Except as provided in paragraphs (b) through (g) of this section, each tank vessel must undergo drydock, internal structural, and cargo tank internal examinations as follows:

(1) Except under paragraph (a)(2) of this section, vessels that operate in salt water must be inspected in accordance with the intervals set forth in Table 31.10–21(a). * * *

TABLE 31.10–21(a).—SALT WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Single hull ship and barge	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3]	Wood hull ship and barge	Single hull ship and barge Grade D and E cargoes only [4]	Double hull barge Grade D and E cargoes only [5]	Single hull asphalt barge [6]	Double hull asphalt barge [7]
Drydock	2.5	5.0	5.0	5.0	2.5	2.5	5.0	2.5	5.0
Internal structural	2.5	2.5	2.5	2.5	5.0	5.0	2.5	10.0	2.5
Cargo tank internal	[8] 2.5	[8] 5.0	[8] 10.0	[8] 10.0	[8] 2.5	5.0	10.0	10.0	15.0

Note:
[1] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface accessible for examination from voids, double bottoms, and other similar spaces.
[3] Applicable to single hull tank barges with independent cargo tanks where the cargo tanks are not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
[4] Applicable to single hull tank ships and tank barges certificated for the carriage of Grade D and E cargos only.
[5] Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of Grade D and E cargos only.
[6] Applicable to single hull tank barges certificated for the carriage of asphalt only.
[7] Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of asphalt only.
[8] Or as specified in Part 38 or 151 as applicable.

(2) Vessels that operate in fresh water at least six months in every 12 month period since the last drydock examination must be examined in accordance with the intervals set forth in Table 31.10–21(b). * * *

TABLE 31.10–21(b).—FRESH WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Single hull ship and barge	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3]	Wood hull ship and barge	Single hull ship and barge grade D and E cargoes only [4]	Double hull barge grade D and E cargoes only [5]	Single hull asphalt barge [6]	Double hull asphalt barge [7]
Drydock	5.0	10.0	10.0	10.0	2.5	5.0	10.0	5.0	10.0
Internal structural	5.0	5.0	5.0	5.0	5.0	5.0	5.0	10.0	5.0
Cargo tank internal	[8] 5.0	[8] 5.0	[8] 10.0	[8] 10.0	[8] 2.5	5.0	10.0	10.0	15.0

Note:
[1] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface accessible for examination from voids, double bottoms, and other similar spaces.
[3] Applicable to single hull tank barges with independent cargo tanks where the cargo tanks are not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
[4] Applicable to single hull tank ships and tank barges certificated for the carriage of grade D and E cargos only.
[5] Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of grade D and E cargos only.
[6] Applicable to single hull tank barges certificated for the carriage of asphalt only.
[7] Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of asphalt only.
[8] Or as specified in Part 38 or 151 as applicable.

(b) During each inspection or reinspection for certification, all wing voids, rakes, cofferdams, and other void spaces on tank barges must be opened and checked from on-deck for the presence of water or cargo indicating hull damage or cargo tank leakage. If water or cargo is not present, these spaces need not be gas freed, ventilated, cleaned, or otherwise prepared for personnel entry. If water or cargo is present, an internal structural examination may be required.

* * * * *

(e) Vessels otherwise qualifying under paragraph (d) of this section, that are 15 years of age or older may be considered for continued participation in the underwater survey program on a case-by-case basis, if—

* * * * *

(f) Each vessel which has not met with the applicable examination schedules in paragraphs (a) through (e) of this section because it is on a voyage, must undergo the required examinations upon completion of the voyage.

* * * * *

4. In § 31.10–24, by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 31.10–24 Integral fuel oil tank examinations—T/ALL.

(a) Each fuel oil tank with at least one side integral to the vessel's hull and located within the hull ("integral fuel oil tank") is subject to inspection as provided in this section. * * *

* * * * *

PART 61—[AMENDED]

5. The authority citation for Part 61 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

§ 61.20–5 [Amended]

6. In § 61.20–5(b), by removing the words "bilge injection valves" and adding, in their place, the words "valves for the emergency bilge suction".

7. In § 61.20–17, by revising paragraph (c) and the introductory text to paragraph (d), by redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), by adding a new paragraph (d)(2), and by revising redesignated paragraph (d)(4)(i) to read as follows:

§ 61.20–17 Examination intervals.

* * * * *

(c) Tailshafts with the inaccessible portions fabricated of materials resistant to corrosion by sea water, or fitted with a continuous liner or a sealing gland which prevents sea water from contacting the shaft, must be examined once every five years if they are constructed or fitted with a taper, keyway, and propeller designed in accordance with the American Bureau of Shipping standards to reduce stress concentrations or are fitted with a flanged propeller. Accessible portions of tailshafts must be examined visually during each drydock examination.

(d) Tailshafts with oil lubricated bearings need not be drawn for examination—

* * * * *

(2) If the inboard seal assemblies are examined whenever the vessel undergoes a drydock examination or underwater survey;

* * * * *

(4) * * *

(i) For tailshafts with a taper, the propeller is removed and the taper and the keyway (if fitted) are nondestructively tested at intervals not to exceed five years; or

* * * * *

§ 61.20–18 [Amended]

8. In § 61.20–18(b), by adding the words "(if fitted)" following the word "keyway".

PART 71—[AMENDED]

9. The authority citation for Part 71 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46.

§ 71.50–1 [Amended]

10. In § 71.50–1(a), by removing the words "bilge injection valves" and adding, in their place, the words "valves for the emergency bilge suction" and by removing the word "including"

11. In § 71.50–3, by revising paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b)(3), and by adding a new paragraph (b)(2) and revising newly redesignated paragraph (b)(3) to read as follows:

§ 71.50–3 Drydock and internal structural examination intervals.

* * * * *

(b) * * *

(1) Except as provided in paragraph (b)(2) of this section, vessels that operate in salt water must undergo two drydock and two internal structural examinations within any five year period. No more than three years may elapse between any two examinations.

(2) Vessels 20 years of age or older that operate in salt water and accommodate overnight passengers must undergo drydock and internal structural examinations at intervals not to exceed 18 months.

(3) Vessels that operate in fresh water at least six months in every 12 month period since the last drydock examination must undergo drydock and internal structural examinations at intervals not to exceed five years.

* * * * *

Subpart 71.53—Integral Fuel Oil Tank Examinations

12. By revising the subpart heading to read "Integral Fuel Oil Tank Examinations".

§ 71.53–1 [Amended]

13. In § 71.53–1(a), by revising the first sentence to read: "Each fuel oil tank with at least one side integral to the vessel's hull and located within the hull ("integral fuel oil tank") is subject to inspection as provided in this section."

PART 91—[AMENDED]

14. The authority citation for Part 91 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

§ 91.40–1 [Amended]

15. In § 91.40–1 (a) and (d), by removing the words "bilge injection valves" and adding, in their place, the words "valves for the emergency bilge suction" and by removing the word "including".

16. In § 91.40–3, by revising the introductory text to paragraph (a), the first sentence of paragraph (a)(1), Table 91.40–3(a), the first sentence of paragraph (a)(20), and Table 91.40–3(b), by redesignating paragraphs (b) through (f) as paragraphs (c) through (g), by adding a new paragraph (b), by revising the introductory text to redesignated paragraph (e), and by revising redesignated paragraph (f) to read as follows:

§ 91.40–3 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals.

(a) Except as provided in paragraphs (b) through (g) of this section, each vessel must undergo drydock, internal structural, and cargo tank internal examinations as follows:

(1) Except under paragraph (a)(2) of this section, vessels that operate in salt water must be examined in accordance with the intervals set forth in Table 91.40–3(a) of this section. * * *

TABLE 91.40–3(a).—SALT WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Single hull ship and barge	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3]	Wood hull ship and barge	Unmanned deck cargo barge [4]	Unmanned double hull freight barge [5]
Drydock	2.5	5.0	5.0	5.0	2.5	5.0	5.0
Internal structural	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Cargo tank internal	[6] 2.5	[6] 5.0	[6] 10.0	[6] 10.0	[6] 2.5	.....	[6] 5.0

Note:

[1] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.

[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms, and other similar spaces.

[3] Applicable to single hull tank barges with independent cargo tanks which have a cargo containment envelope that is not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.

[4] Applicable to unmanned/non-permissively manned deck cargo barge which carries cargo only above the weather deck and which provides complete access for examination of the inside of the hull structure.

[5] Applicable to unmanned/non-permissively manned double hull freight barges (double sides, ends, and bottoms) the arrangement of which provides access for a complete internal structural examination as defined in § 91.40–1(b) without the necessity of entering cargo tanks or holds.

[6] Or as specified in Part 151.

(2) Vessels that operate in fresh water at least six months in every 12 month period since the last drydock examination must be examined in accordance with the intervals set forth in Table 91.40–3(b). * * *

TABLE 91.40–3(b).—FRESH WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Single hull ship and barge	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3]	Wood hull ship and barge	Unmanned deck cargo barge [4]	Unmanned double hull freight barge [5]
Drydock	5.0	10.0	10.0	10.0	2.5	10.0	10.0
Internal structural	5.0	5.0	5.0	5.0	2.5	5.0	5.0
Cargo tank internal	[6] 5.0	[6] 5.0	[6] 10.0	[6] 10.0	[6] 2.5	.....	[6] 5.0

Note:
[1] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms, and other similar spaces.
[3] Applicable to single hull tank barges with independent cargo tanks which have a cargo containment envelope that is not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
[4] Applicable to unmanned/non-permissively manned deck cargo barge which carries cargo only above the weather deck and which provides complete access for examination of the inside of the hull structure.
[5] Applicable to unmanned/non-permissively manned double hull freight barges (double sides, ends, and bottoms) the arrangement of which provides access for a complete internal structural examination as defined in § 91.40–1(b) without the necessity of entering cargo tanks or holds.
[6] Or as specified in Part 151.

(b) During each inspection or reinspection for certification, all wing voids, rakes, cofferdams, and other void spaces on barges must be opened and checked from on-deck for the presence of water or cargo indicating hull damage or cargo tank leakage. If water or cargo is not present, these spaces need not be gas freed, ventilated, cleaned, or otherwise prepared for personnel entry. If water or cargo is present, an internal structural examination may be required.

* * * * *

(e) Vessels otherwise qualifying under paragraph (d) of this section, that are 15 years of age or older may be considered for continued participation in the underwater survey program on a case-by-case basis, if—

* * * * *

(f) Each vessel which has not met with the applicable examination schedules in paragraphs (a) through (e) of this section because it is on a voyage, must undergo the required examinations upon completion of the voyage.

* * * * *

Subpart 91.43–Integral Fuel Oil Tank Examinations

17. By revising Subpart 91.43 heading to read "Integral Fuel Oil Tank Examinations".

§ 91.43–1 [Amended]

18. In § 91.43–1(a), by revising the first sentence to read: "Each fuel oil tank with at least one side integral to the vessel's hull and located within the hull ("integral fuel oil tank") is subject to inspection as provided in this section."

PART 167—[AMENDED]

19. The authority citation for Part 167 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46. Section 167.65–65 also issued under 46 U.S.C. 6101. Section 167–60.15 also issued under 46 U.S.C. 6105.

§ 167.15–27 [Amended]

20. In §167.15–27(a), by removing the words "bilge injection valves" and by adding, in their place, the words "valves for the emergency bilge suction' and by removing the word "including".

§ 167.15–30 [Amended]

21. In § 167.15–30(a)(2), by removing the word "nine" and adding, in its place, the word "six".

22. In § 167.15–40, by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 167.15–40 Integral fuel oil tank examinations—T/ALL.

(a) Each fuel oil tank with at least one side integral to the vessel's hull and located within the hull ("integral fuel oil tank") is subject to inspection as provided in this section. * * *

* * * * *

PART 169—[AMENDED]

23. The authority citation for Part 169 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

§ 169.229 [Amended]

24. In § 169.229(a)(2), by removing the word "nine" and adding, in its place, the word "six".

§ 169.231 [Amended]

25. In § 169.231(a), by removing the words "bilge injection valves" and adding, in their place, the words "valves for the emergency bilge suction" and by removing the word "including".

§ 169.234 [Amended]

26. In § 169.234, by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 169.234 Integral fuel oil tank examinations.

(a) Each fuel oil tank with at least one side integral to the vessel's hull and located within the hull ("integral fuel oil tank") is subject to inspection as provided in this section. * * *

PART 189—[AMENDED]

27. The authority citation for Part 189 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46.

§ 189.40–1 [Amended]

In § 189.40–1(a) and (c), by removing the words "bilge injection valves" and adding, in their place, the words "valves for the emergency bilge suction" and by removing the word "including".

§ 189.40–3 [Amended]

29. In § 189.40–3(a)(2), by removing the word "nine" and adding, in its place, the word "six".

Subpart 189.43–Integral Fuel Oil Tank Examinations

30. By revising Subpart 189.43 heading to read "Integral Fuel Oil Tank Examinations"

§ 189.43–1 [Amended].

31. In § 189.43–1(a), by revising the first sentence to read: "Each fuel oil tank with at least one side integral to the vessel's hull and located within the hull ("integral fuel oil tank") is subject to inspection as provided in this section."

Clyde T. Lusk, Jr.,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

August 12, 1988.

[FR Doc. 88–18981 Filed 8–23–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482–8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Cape Falcon, Oregon, to the U.S.-Mexico border at midnight, August 19, 1988 to commercial salmon fishing for coho salmon. The commercial salmon fisheries in the areas that are currently open, i.e., from Cape Falcon to the Orford Reef Red Buoy, Oregon, and from Horse Mountain, California, to the U.S.-Mexico border, will continue for all species of salmon except coho salmon. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial fishery quota of 729,700 coho salmon for the area south of Cape Falcon will be reached by August 19, 1988. The closure is necessary to conform to the preseason announcement of 1988 management measures and ensure that the coho salmon quota for this area is not exceeded. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the EEZ from Cape Falcon to the U.S.-Mexico border to commercial salmon fishing for coho salmon is effective at 2400 hours local time, August 19, 1988. Comments on this closure will be received through September 3, 1988.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the Office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery, management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 commercial fishery in the area from Cape Falcon, Oregon, to the U.S.-Mexico bordor is being managed not to exceed an impact quota of 684,700 coho salmon (hooking mortality of 59,400 fish and landings of 625,300 fish). This commercial coho quota was raised subsequently by 45,000 fish to 729,700 fish (equivalent to landings of 670,300 fish) because the portion of the recreational coho quota not needed to complete scheduled recreational seasons was reallocated to the commercial fishery (53 FR 31343), August 18, 1988) in accordance with provisions of the preseason regulations.

Based on the best available information, the commercial coho quota for the area from Cape Falcon, Oregon, to the U.S.-Mexico border is projected to be reached by midnight, August 19, 1988 (landings are projected to reach the catch quota of 670,300 coho salmon by that time). Therefore, the commercial fishery in this area must be closed to further fishing for coho salmon. The commercial salmon fisheries in the areas that are currently open, i.e., from Cape Falcon to the Orford Reef Red Buoy, Oregon, and from Horse Mountain, California, to the U.S.-Mexico border, will continue for all salmon species except coho salmon, as provided in the preseason notice of 1988 management measures (53 FR 16007–16009, May 4, 1988).

Consequently, NOAA issues this notice to close the commercial salmon fishery to commercial salmon fishing for coho salmon in the EEZ from Cape Falcon, Oregon, to the U.S.-Mexico border effective midnight, August 19, 1988. The commercial salmon fisheries for all species of salmon except coho salmon in the areas from Cape Falcon to the Orford Reef Buoy, Oregon, and from Horse Mountain, California, to the U.S.-Mexico border, remain open. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding a closure of the commercial fishery to further fishing for coho salmon between Cape Falcon and the U.S.-Mexico border. The States of Oregon and California will close the commercial fishery for coho salmon in State waters adjacent to this area of the EEZ effective midnight, August 19, 1988.

The preseason notice contains an unintended error in the table on page 16009 concerning the commercial salmon from Horse Mountain to Point Arena which is herein corrected: the season in the subarea from Horse Mountain to Point Arena that reads "Coho quota thru September 30" should read "All except coho" instead of "All" under the column "Salmon species." This correction reflects a description in the text of the commercial fishery from Cape Falcon to the U.S.-Mexico border within item 5 on page 16008 (53 FR 16002, May 4, 1988).

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through September 3, 1988.

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Other Matters

This action is authorized by 50 CFR 661.21(a)(1) and is on compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation of Management, National Marine Fisheries Service.

[FR Doc. 88-19206 Filed 8-19-88; 3:53 am]

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Proposed Rules

Federal Register
Vol. 53, No. 164
Wednesday, August 24, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 18; Doc. No. 5415S]

General Crop Insurance Regulations; Guaranteed Tobacco Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 crop year. FCIC has determined that insufficient time remains in which to issue a final rule adding a new section § 401.127, the Guaranteed Tobacco Endorsement under the General Crop Insurance Regulations.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Friday, May 27, 1988, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 53 FR 19304 which proposed to issue a new section § 401.127, the Guaranteed Tobacco Endorsement under the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 crop year.

FCIC has determined that, upon further review of the program for insuring guaranteed tobacco, that additional work must be completed before proceeding further with any proposal for change. It is believed that there would not be sufficient time in which to complete the review and re-propose amendments to the rule before the December 31, 1988, date for filing contract changes.

For the reasons stated above, FCIC has determined that the proposed rule published at 53 FR 19304 should be, and is hereby, withdrawn.

Done in Washington, DC on August 11, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–19195 Filed 8–23–88; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 401

[Amdt. No. 25; Doc. No. 5888S]

General Crop Insurance Regulations; Quota Tobacco Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 crop year. FCIC has determined that insufficient time remains in which to issue a final rule adding a new section, § 401.133, the Quota Tobacco Endorsement under the General Crop Insurance Regulations.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Friday, May 27, 1988, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 53 FR 19306 which proposed to issue a new section, § 401.133, the Quota Tobacco Endorsement under the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 crop year.

FCIC has determined that, upon further review of the program for insuring quota tobacco, that additional work must be completed before proceeding further with any proposal for change. It is believed that there would not be sufficient time in which to complete the review and re-propose amendments to the rule before the December 31, 1988, date for filing contract changes.

For the reasons stated above, FCIC has determined that the proposed rule published at 53 FR 19306 should be, and is hereby, withdrawn.

Done in Washington, DC, on August 11, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–19196 Filed 8–23–88; 8:45 am]

BILLING CODE 3410–08–M

Rural Electrification Administration

7 CFR Parts 1745 and 1749

General Policies, Types of Loans, Loan Requirements, Preloan Procedures and Requirements, Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rules.

SUMMARY: The Rural Electrification Administration proposes to add Part 1745, General Policies, Types of Loans, Loan Requirements, and Part 1749, Preloan Procedures and Requirements, to 7 CFR chapter XVII. These new parts consolidate, revise, and clarify the policies, requirements, and procedures contained in the following existing REA Bulletins:

320–1 Preloan Procedures for Rural Telephone Cooperatives
320–4 Preloan Procedures for Telephone Loan Applicants
320–14 Loans for Telephone System Improvements and Extensions
320–22 Guarantee of Loans for Telephone Facilities
321–2 Loan Security Requirements for Telephone Loans
322–1 Area Coverage Survey
322–2 Rural Area Coverage—Telephone Loans
323–1 Determination by Administrator with Respect to Nonduplication of Lines, Facilities, or Systems
324–1 Loans for Refinancing Outstanding Indebtedness of Telephone Borrowers
325–1 Financing Lines, Facilities, or Systems Outside of Rural Areas
326–1 Acquisitions of Telephone Facilities and Systems
360–1 Checklist for Review of a Supplemental Loan Proposal or an Area Coverage Design

385–5 Loans to Finance Radio Equipment for Subscriber Service.

Bulletins 320–1, 320–14, 322–1, 324–1, and 360–1 will be rescinded upon publication of the final rules. The other Bulletins listed above contain certain policies, requirements, and procedures that will be incorporated into other CFR Parts. When that is accomplished, those Bulletins will also be rescinded.

These new parts contain the provisions and requirements of the Rural Electrification Act, as amended, (RE Act) and the administrative policies, requirements, and procedures of the REA telephone program for first time applicants and existing borrowers seeking financial assistance from REA to furnish and improve telephone service in rural areas. The primary objectives of the proposed rules are to update, consolidate, clarify, and simplify REA policies and procedures; to facilitate the loan application process; and to decrease processing time by REA.

DATE: Public comments concerning these proposed rules must be received by REA no later than September 23, 1988.

ADDRESS: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2821, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 2821 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2821, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–8530. The Draft Regulatory Impact Analysis describing the options considered in developing these rules and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major.".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of these rules would not represent a major Federal action signficantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 4507), the reporting and recordkeeping provisions that are included in these proposed rules will be submitted for approval to the Office of Management and Budget (OMB). They will not be effective until approved by OMB.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Currently, the policies and requirements concerning telephone loans and the administrative policies, requirements and procedures covering preloan activities are contained in numerous REA Bulletins, several sections of the REA Telecommunications Engineering and Construction Manual (T&CM) and the REA Telecommunications Operations Manual (TOM), and REA Staff Instructions (internal instructions for REA personnel). Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the **Federal Register.**

There is currently considerable confusion over what constitutes an Area Coverage Design (ACD) or a Supplemental Loan Proposal (SLP). These are replaced with a streamlined Loan Design (LD) which will be the basis for determining the amount and purposes of all loans. Most of the items included in the LD are similar for all loans. There are, however, certain data requirements that apply only to initial loans and loans to serve areas not previously financed by REA, and other data requirements that apply to subsequent loans.

Some supplementary information is also required to support a loan application. Currently, this information is often submitted over a period of time. In the future, it will all be submitted at one time, with the LD. This will end confusion over the status of an application and when all of the required information is to be completed and submitted. REA office engineers and loan specialists will be able to prepare a cost study and loan recommendation without having to wait for a large amount of additional information to be submitted. With all the information required to process a loan received at one time, financial and statistical data will all be as of the same date, simplifying processing. As necessary, REA staff will continue to assist borrowers during the preloan period.

These proposed rules eliminate some reporting requirements and streamline others, reducing the borrowers' burden. Generally, borrowers will be required to submit only the year-end Financial and Statistical Report (REA Form 479). They will no longer have to submit June 30 reports as are now required when the loan is made 9 or months after the date of the last year-end report. Borrowers will be required to submit only rate schedules, and not their entire tariff. Borrowers are currently required to submit their tariff to the Area Office. This can be quite a large document, and to send a copy to REA costs a borrower a significant amount for copying and postage. The rate schedules normally are only a few pages and generally provide all the information necessary to prepare a feasibility study. Borrowers will still be required to have their tariff available for review by the REA field representative, as necessary.

Joint use agreements will no longer have to be submitted to REA for review and approval. REA form 809, "Fundamental Plan Information," is eliminated. Certain of the information on this form will be shown on the trunking diagram required as an exhibit to the LD. The rest of the information is no longer needed. Many borrowers now produce equivalents of REA Forms 569, "Area Coverage Survey Report;" 495, "Construction Cost Estimates;" and 494, "Loan Design Summary." These equivalents will now be accepted by REA, which will save the borrower the time and expense of transferring the data to the REA froms.

Recognizing the growing experience of borrowers and their familiarity with REA design criteria and construction standards, greater reliance will be

placed on certifications provided by borrowers and their engineers. Currently, a principal of the enginering firm, the borrower and the REA field representative all sign the same certification as to the correctness and reasonableness of the LD. In the future, only the engineer and borrower will sign the certificate, which has been expanded to include the certification that "this Loan Design adheres to REA engineering and construction standards and practices." This places a greater responsibility on the borrower and engineer, and provides REA greater loan security. The REA field representative will now review and recommend acceptance of the LD as the basis for REA financing. Final approval of the LD will rest with the relevant Area Director.

As proposed, if a recommended LD and the required supplementary information are not submitted within 1 year of the date of the loan application, the application generally will be cancelled by REA. There currently is no formal procedure for determining when a loan application should be cancelled. The borrower will not be given a time limit to complete its loan application. One year is an ample amount of time in which to prepare an LD.

The present maximum loan period is 35 years, with a 32-year amortization period. With rapidly changing technology, obsolescence is occuring more quickly; therefore, borrowers are depreciating their facilities at a faster rate. New plant facilities, expecially digital central offices, are generally depreciated at a higher rate than the plant replaced. Only about 5 percent of REA telephone borrowers have composite depreciation rates for all plant of less than 4 percent; about 16 percent have a rate of less than 4.5 percent. The median for all REA telephone borrowers is now 5.6 percent.

The loan period will now approximate the anticipated useful life of the facilities financed. If the plant financed by the loan is retired and replaced by new plant before the loan is repaid, earnings from this new plant will have to be used to pay the old loan and any new loan used to finance these replacement facilities; loan security could be endangered. The maximum loan period for all loans will be shortened to 22 years, with a 20-year amortization period, except where the estimated economic life of the facilities or the repayment capacity of the borrower would justify a different period. A 22-year repayment period corresponds to a depreciation rate of approximately 4.5 percent.

The principal deferment period will be reduced to 2 years. Currently, on advances of loan funds within 3 years of the date of the note representing a loan borrowers do not begin repaying principal until the first basis date. This is 3 years after the date of the note. For funds advanced from that date until the second basis date, 6 years after the date of the note, borrowers do not begin repaying principal until that second basis date. All funds advanced during a particular basis date period are amortized at the same rate. Unless a new basis date agreement is executed, the borrower cannot draw down any unadvanced loan funds after the second basis date.

The new system would set the first basis date 2 years after the date of the note and defer the start of principal repayments until then. There would be no second basis date. Principal repayments on all funds advanced after the first basis date would begin with the first billing after the advance. Thus, each of these advances would have a different amortization rate. At the Administrator's discretion, the 2-year deferment could be altered.

This change is being made because a significant portion of loan funds should be advanced within 2 years of the date of the note. The retention of a deferment period allows the borrower to have a substantial portion of the new plant in place and earning revenues with which to repay the loan.

Currently, there is no automatic rescision of unadvanced funds in the Telephone Program. Rescissions are automatic in the Electric Program. All telephone loan funds not encumbered 5 years after the date of the note will now be automatically rescinded. The automatic rescission of a particular loan may be waived at the Administrator's discretion, if the purposes of the loan have not been completed or if rescision would adversely affect loan security. A borrower should have all loan funds encumbered, if not spent, by the end of the 5-year loan period. This change will encourage faster completion of the construction proposed in the loan, and will reduce the administrative burden of rescinding unadvanced loan funds.

7 CFR Part 1745 supersedes any sections of REA Bulletin 320-12, "Loan Payments and Statements", with which it is in conflict. These areas of conflict include automatic rescissions and payments on loans.

Currently, there is no minimum for REA loans. The Rural Telephone Bank has had a $50,000 minimum for a number of years. Recognizing the increase in plant costs, the expenses involved with system design for the borrower, and REA's administrative costs, REA will no longer consider applications for loans of less than $50,000.

Subsidized loans are provided to telephone borrowers for the purpose of providing and improving telephone service in rural areas. These subsidies are not provided for purposes beyond those authorized by the RE Act.

In accordance with REA Bulletins 320–1, 320–14, REA generally does not finance (1) headquarters facilities other than warehouse and garage facilities, (2) office equipment, (3) vehicles and other work equipment, (4) furniture, and (5) station apparatus and associated inside wiring. REA will continue to finance the first three items only in cases of financial hardship, as determied by the Administrator. REA will no longer finance the last two items. These changes are based on considerations of loan security and the borrowers' net worth and financial strength.

Furniture is a minor plant item and much of it is expensed rather than capitalized. Furthermore, it is highly mobile and does not provide adequate security for the Government's loan. Station apparatus and inside writing have been deregulated and generally are not capitalized. To improve the security of REA's loans and the borrower's financial position, borrowers are encouraged to invest internally generated funds in the five items listed above.

As proposed, REA will continue to not finance duplicative toll transmission facilities. Additionally, REA will not finance facilities to serve subscribers outside the local exchange service areas of the borrower unless those facilities are necessary and incidental to furnishing or improving telephone service in rural areas. This restriction is aimed primarily at preventing the financing of services that are outside of a borrower's territory and which primarily serve nonrural subscribers. REA will still finance those portions serving subscribers within the borrower's territory.

For many years REA has had a policy of not making a loan for the same purposes twice. This policy is now being codified so that if an unadvanced loan, or portion thereof, is rescinded, a new loan shall not be made for the same purposes as in the rescinded loan.

Based on loan security considerations, REA will now require that before a loan is approved by REA a borrower must meet certain Times Interest Earned Ratio (TIER) requirements, except when the Administrator determines that the borrower would experience financial hardship. For a loan made solely by REA, a borrower must have a TIER of at

least 125 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan, unless the borrower is subject to the provisions discussed in the next paragraph. The mortgage will contain a provision requiring the borrower to maintain a TIER of at least 125 percent. The borrower will also be expected to demonstrate progress toward achieving a TIER of 150 percent.

For a loan guaranteed by REA, made concurrently by REA and RTB, or made entirely by RTB, a borrower must have a TIER of at least 150 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan. The mortgage will contain a provision requiring the borrower to maintain a TIER of 150 percent.

Also based on loan security considerations, REA will now require that before a loan is approved by REA a borrower must have a net worth as a percent of total assets of at least 20 percent during the immediately preceding 12-month period or be able to satisfactorily demonstrate to the Administrator that it has the ability to reach such a level for new worth within 3 years of the date of loan approval, unless the Administrator determines that the borrower would experience financial hardship. The mortgage will contain a provision requiring the borrower to maintain a net worth as a percent of total assets of at least 20 percent. In addition, all borrowers will be expected to demonstrate progress toward achieving a net worth to assets ratio of 40 percent.

Furthermore, a new policy will allow REA to require a borrower to increase its net worth as a percentage of assets to the highest level recorded at the end of any calendar quarter in the 2 years prior to the receipt by REA of the borrower's loan application form (REA Form 490). This restoration to the higher level of net worth shall take place before REA will determine the feasibility and security of the proposed loan.

REA believes these revised policies, requirements, and procedures will lessen the burden on borrowers and permit REA to maintain the security of the Government's loans.

List of Subjects in 7 CFR Parts 1745 and 1749

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR Chapter XVII by adding the following new Parts 1745 and 1749:

PART 1745—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELEPHONE PROGRAM

Subpart A—General

Sec.

1745.1 General statement.
1745.2 Definitions.
1745.3 Availability of forms.

Subpart B—Loan Purposes and Basic Policies

1745.10 General.
1745.11 Area coverage.
1745.12 Nonduplication.
1745.13 Location of facilities and service for nonrural subscribers.
1745.14 Borrower eligibility.
1745.15 Civil rights.
1745.16 Minimum loan amount.
1745.17 Facilities financed.
1745.18 Additional equity.
1745.19 Mergers and consolidations.
1745.20 Acquisitions.
1745.21 Refinancing loans.
1745.22 Loan security.

Subpart C—Types of Loans

1745.30 Insured Loans.
1745.31 Rural Telephone Bank Loans.
1745.32 Guaranteed Loans.

Subpart D—Terms of Loans

1745.40 General.
1745.41 Notes.
1745.42 Automatic rescissions.
1745.43 Payments on loans.
1745.44 Prepayment premiums.
1745.45 Extension of payments.
1745.46 Loan security documents.

Subpart E—Requirements for Loan Approval

1745.50 Administrative findings.
1745.51 Required findings.
1745.52 Findings required for particular loan purposes.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subpart A—General

§ 1745.1 General statement.

This CFR Part supersedes all REA Bulletins which are in conflict with it.

§ 1745.2 Definitions.

As used in this part:

(a) "Administrator' means the Administrator of REA.

(b) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, or which is seeking such financing.

(c) "Feasibility study" means the pro form a financial analysis performed by REA to determine the economic feasibility of a loan. See 7 CFR Part 1751.[1]

(d) "Loan" means any loan made or guaranteed by REA.

(e) "Rural area" means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available from the Bureau of the Census and Rand McNally and Company. The determination of whether an area is rural is based on the population within the corporate limits or boundaries of unincorporated areas in existence at the time the facilities to serve the community were first financed by REA. If a community is considered rural at that time, it will always be considered rural.

(f) "Telephone service" means any communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity between the transmitting and receiving apparatus, and includes all telephone lines, facilities, or systems used to render such service. It does not mean: (1) Message telegram service, (2) Community antenna television system services or facilities other than those intended exclusively for educational purposes, or (3) Radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

(g) "Times Interest Earned Ratio" (TIER) means the ratio of a borrower's net income plus interest expense plus taxes based upon income, all divided by interest expense.

§ 1745.3 Availability of forms.

Single copies of REA forms and publications cited in this Part are available for Administrative Services Division, Rural Electrification Administration United States Department of Agriculture, Washington, DC 20250. These REA forms and publications may be reproduced.

Subpart B—Loan Purposes and Basic Policies

§ 1745.10 General.

The Rural Electrification Administration (REA) makes loans for the purpose of financing the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems to furnish and improve telephone service in rural

[1] Editorial note: REA will publish a proposal on this part in the near Future.

areas. Loans made or guaranteed by the Administrator of REA will be made in conformance with the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 et seq.), and 7 CFR Chapter XVII. REA provides borrowers specialized and technical accounting, engineering, and other managerial assistance in the construction and operation of their facilities where necessary to aid the development of rural telephone service and to protect loan security.

§ 1745.11 Area coverage.

Borrowers must make adequate telephone service available on a cost-effective basis to the widest practical number of rural subscribers during the life of the loan. Both the nature of the service area and the cost per subscriber must be fully considered. The borrower must seek to provide service to all interested potential subscribers in the service area. The loan contract shall contain appropriate provisions to effect this requirement. See 7 CFR Part 1749.11(a) Preapplication Determinations: Area to be Served.

§1745.12 Nonduplication.

(a) In states having a state regulatory body with authority to regulate telephone service and to require certificates of convenience and necessity, the borrower must obtain such a certificate before REA will make a loan.

(b) In states where there is no such regulatory body, a loan will not be made unless the Administrator determines that no duplication of lines, facilities, or systems already providing reasonably adequate services shall result from such a loan.

(c) REA shall consider the following criteria in determining whether service is reasonably adequate:

(1) Availability of telephone service to commercial establishments, professional offices, essential community services, and residences in the community.

(2) Reasonable audibility and clarity of sound transmission and reception.

(3) Absence of frequent interruptions.

(4) Adequacy of line circuits and central office facilities to permit reasonable frequent subscriber use without unreasonable delay.

(5) Availability of connections with other exchanges and with the interexchange facilities of the Nation.

(6) Any other criteria the Administrator determines to be applicable to the particular case.

§ 1745.13 Location of facilities and service for nonrural subscribers.

(a) When it is determined by the Administrator to be necessary in order to furnish or improve telephone service in rural areas, loans may be made for the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems without regard to their geographical location.

(b) To the greatest extent practical, loans are limited to providing telephone facilities that serve subscribers in rural areas. In order to furnish and improve service to rural subscribers it may at times be necessary to provide loan funds to finance telephone facilities which will also serve nonrural subscribers or are located in nonrual areas, Loans may be approved to finance such facilities if the Administrator determines on a case by case basis that:

(1) The primary purpose of the loan is to provide service to rural areas and

(2) The financing of facilities for nonrural subscribers is necessary and incidental to furnishing or improving telephone service in rural areas.

(c) Loan funds may be approved for facilities to serve nonrural subscribers only if the principal purpose of the loan is to furnish and improve rural service and only if the use of loan funds to serve nonrural subscribers is necessary and incidental to the principal purpose of the loan. The following are examples of purpose for which such loans may be made:

(1) In the case of construction of a new system, if the loan would not be economically feasible and self-liquidating unless the nonrural as well as the rural portions of the telephone service area are included in the proposed system, the loan may include funds for both portions.

(2) Where the acquisition of an existing system located in and serving a nonrural area is necessary to serve as the nucleus of an expanded system to furnish area coverage service in rural areas, the loan may include funds to finance the acquisition.

(3) When a system is being converted to modern service for rural subscribers, the loan may include funds for the conversion of the nonrural facilities, if the rural service will be improved as a result of such nonrural improvements and it is impractical to finance and serve the nonrural and rural areas separately.

(4) A loan may include funds to serve nonrural subscribers located in community centers frequently called by the rural subscribers if the construction to serve such nonrural subscribers will be incidental to, and contribute substantially to, the provision of adequate service for the rural subscribers.

§ 1745.14 Borrower eligibility.

REA makes loans to entities providing, or who may hereafter provide, telephone service in rural areas, to public bodies providing telephone service in rural areas as of October 28, 1949, and to cooperative, nonprofit, limited dividend, or mutual associations. REA does not make loans to individual subscribers. REA gives preference to those borrowers (including initial loan applicants) now providing telephone service in rural areas, and to cooperative, nonprofit, limited dividend, or mutual associations. To be eligible for a loan, a borrower must provide the basic local exchange telephone service needs of rural areas, and it must be incorporated.

§ 1745.15 Civil rights.

Borrowers are required to comply with certain regulations on nondiscrimination and equal employment opportunity. See 7 CFR Part 1790 [1] (or REA Bulletin 320–19) and 7 CFR Part 1791 [1] (or REA Bulletin 320–15), respectively.

§ 1745.16 Minimum loan amount.

Recognizing plant costs, the expenses involved with system design for the borrower, and REA's administrative costs, REA will not consider applications for loans of less than $50,000.

§ 1745.17 Facilities financed.

(a) REA makes loans to finance the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities or systems to furnish and improve telephone service in rural areas.

(b) Except in cases of financial hardship, as determined by the Administrator, REA does not make loans to finance the following items:

(1) Headquarters facilities, other than warehouse and garage facilities.

(2) Office equipment, including computers.

(3) Vehicles and other work equipment.

(c) REA will not make loans to finance the following items:

(1) Furniture.

(2) Station apparatus and associated inside wiring.

(3) Duplicative toll transmission facilities. See 7 CFR 1745.12

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[1] Editorial note: REA will publish a proposal on this part in the near future.

(4) Facilities to serve subscribers outside the local exchange service areas of the borrower unless those facilities are necessary and incidental to furnishing or improving telephone service in rural areas.

(d) If an unadvanced loan, or portion thereof, is rescinded, a new loan shall not be made for the same purposes as in the rescinded loan.

§ 1745.18 Additional equity.

If determined by the Administrator to be necessary for loan security or the allocation of limited loan funds, a borrower shall increase its net worth as a percentage of assets to the highest level recorded at the end of any calendar quarter in the 2 years prior to the receipt by REA of the borrower's loan application form (REA Form 490). This restoration to the higher level of net worth shall take place before REA will determine the feasibility and security of the proposed loan.

§ 1745.19 Mergers and consolidations.

REA does not make loans for the sole purpose of merging or consolidating telephone organizations. After a merger or consolidation, REA will consider making loans to the telephone system to finance the improvement or extension of telephone service in rural areas. See 7 CFR Part 1750 [1] (or applicable parts of REA Bulletins 320–4, 321–2, 325–1, and 326–1).

§ 1745.20 Acquisitions.

(a) REA finances the acquisition by a borrower of another system, lines, or facilities only when the acquisition is necessary and incidental to furnishing or improving rural telephone service. See 7 CFR 1745.13.

(b) REA determines the amount it will lend for each acquisition. If the acquisition price exceeds this amount, the borrower provides the remainder.

(c) For additional policies on acquisitions, see 7 CFR Part 150 [1] (or applicable parts of REA Bulletins 320–4, 321–2, 325–1, and 326–1).

§ 1745.21 Refinancing loans.

(a) REA makes loans to refinance outstanding indebtedness of corporations furnishing telephone service when such refinancing is necessary and incidental to furnishing or improving telephone service in rural areas. Refinancing may not constitute more than 40 percent of the loan.

(b) Loans for refinancing are not made solely to enable borrowers to obtain a lower interest rate or a longer amortization period. REA requires borrowers, to the greatest extent possible, to liquidate outstanding indebtedness through the use of nonloan funds.

(c) If deemed necessary by REA to provide itself with adequate security, REA will consider loans for refinancing outstanding indebtedness secured by a lien on property offered as security for the loan, if the amount of the outstanding indebtedness is significant and the property covered by the lien is integral to the operation of the system.

(d) REA will consider loans for refinancing where the borrower would otherwise be unable to meet payments on both the outstanding indebtedness and the loan as they become due.

(e) REA may consider loans for refinancing in other situations.

§ 1745.22 Loan security.

(a) REA makes loans only if, in the judgment of the Administrator, the security therefor is reasonably adequate and the loan will be repaid within the time agreed. See 7 CFR Part 1745.18 and 7 CFR 1745.51.

(b) REA generally requires that borrowers provide it with a first lien on all of the borrower's property. See 7 CFR Part 1745.46.

(c) In the case of loans that include the financing of telephone facilities that do not constitute self-contained operating systems or units (such as lines switched by other systems), the borrower shall, in addition to the mortgage lien of all of the borrower's telephone facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that conditions and efficient telephone service will be rendered.

(d) The borrower shall provide REA with a satisfactory Area Coverage Survey. See 7 CFR 1749.30 and 1749.31.

(e) REA makes loans only if the borrower's entire system, including the facilities to be constructed with the proceeds of the loan, is economically feasible, as determined by REA.

(f) To obtain a loan after the effective date of this CFR Part, a borrower shall meet the following Times Interest Earned Ratio (TIER) requirements, except when the Administrator determines that the borrower would experience financial hardship.

(1) For a 100 percent REA loan, that is, a loan made solely under Section 305 of the RE Act, a borrower must have a TIER of at least 125 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan, unless the borrower has received a loan subject to the provisions of 7 CFR Part 1745.22(f)(2). In the latter case, the borrower must continue to meet the TIER requirements of 7 CFR% 1745.22(f)(2). The mortgage will contain a provision requiring the borrower to maintain a TIER of at least 125 percent. The borrower will also be expected to demonstrate progress toward achieving a TIER of 150 percent.

(2) For a loan guaranteed by REA or made concurrently by REA and the Rural Telephone Bank (RTB) (and for a 100 percent RTB loan), a borrower must have a TIER of at least 150 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan. The mortgage will contain a provision requiring the borrower to maintain a TIER of 150 percent.

(g) After the effective date of this CFR Part, in order for a loan to be approved by REA a borrower must have had a net worth as a percent of total assets of at least 20 percent during the immediately preceding 12-month period or be able to satisfactorily demonstrate to the Administrator that it has the ability to reach such a level for net worth within 3 years of the date of loan approval, unless the Administrator determines that the borrower would experience financial hardship. The mortgage will contain a provision requiring the borrower to maintain a net worth as a percent of total assets of at least 20 percent. In addition, all borrowers will be expected to demonstrate progress toward achieving a net worth to assets ratio of 40 percent.

(h) Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by REA. See 7 CFR Part 1758.[1]

Subpart C—Types of Loans

§ 1745.30 Insured loans.

(a) REA makes insured loans under Section 305 of the RE Act. These loans bear interest at an annual rate of five percent, unless the Administrator finds that the borrower:

(1) Has experienced extreme financial hardship; or

(2) Cannot, in accordance with generally accepted management and accounting principles and without charging rates to its subscribers so high as to create a substantial disparity between its rates and the rates charged for similar service by others in the same

[1] Editorial note: REA will publish a proposal on this part in the near future.

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or nearby areas, provide service consistent with objectives of the RE Act.

(b) If the Administrator finds (a) (1) or (2) of this section, REA may make an insured loan at an interest rate lower than 5 percent, but not less than 2 percent.

§ 1745.31 Rural Telephone Bank Loans.

(a) RTB makes loans under section 408 of the RE Act. Rules and regulations of the RTB are contained in Chapter XVI of this title.

(b) Loans shall be made by RTB in preference to being made by REA, if the borrower is eligible for such a loan and funds are available therefor.

(c) Notwithstanding (b) of this section, if a borrower has an average subscriber density of three or fewer per route mile of line, an RTB loan can only be made at the election of the borrower.

(d) RTB loans may be made concurrently with either insured or guaranteed loans.

§ 1745.32 Guaranteed Loans.

(a) *General.* REA provides loan guarantees pursuant to section 306 of the RE Act to enable borrowers to secure major telephone loans from non-REA sources. A major telephone loan is a loan requiring over 7 million dollars or such other sum as may be determined from time to time by the Administrator. Guaranteed loans may be made concurrently with insured loans. REA will consider guaranteeing a loan if the borrower meets all requirements set forth in regulations applicable to a loan made by REA. No fees or charges are assessed for any guarantee of a loan provided by REA. In view of the Government's guarantee, REA generally obtains a first lien on all assets of the borrower; see 7 CFR 1745.46.

(b) *Net Worth Requirements.* REA generally requires that borrowers seeing guaranteed loans have a net worth in excess of 20 percent of assets. For the purpose of this section, the term "net worth" means "Total Retained Earnings or Margins and Capital Credits" plus either "Total Capital Stock Outstanding and Subscribed" or "Total Membership and Capital Certificates" as reported to REA pursuant to REA Telecommunications Operations Manual Section 1800. REA will consider loan guarantees for borrowers with a net worth less than 20 percent.

(c) *Full Amount Guaranteed.* Loans are guaranteed in the full amount of principal and interest. Because the Government's full faith and credit 100 percent guarantee of these loans, only REA obtains a mortgage on the borrower's assets.

(d) *Federal Register Notice.* After REA has reviewed an application and determined that it will consider guaranteeing a loan for the proposed project, it will publish a Notice in the **Federal Register**. The Notice will include a description of the proposed project, the estimated total cost, the estimated amount of the guaranteed loan, a statement that the Federal Financing Bank (FFB) has a standing loan commitment agreement with REA, and the name and address of the borrower to which financing proposals may be submitted.

(e) *Qualified Lenders.* REA considers loan guarantees on a case by case basis for loans made by the FFB and any other legally organized lending agency or by a combination of lenders that the Administrator determines to be qualified to make, hold and service the loan. "Legally organized lending agency" and "lender" include commercial banks, trust companies, mortgage banking firms, insurance companies, and any other institutional investor authorized by law to loan money. The borrower is responsible for evaluating all proposals received from lenders other than FFB. The borrower furnishes REA with a report on the evaluations and its choice of proposals. However, at the request of the borrower, the guaranteed loan shall be made by the FFB and at a rate of interest that is not more than the rate of interest applicable to other similar loans then being made or purchased by FFB.

(f) *Interest Rate.* Guaranteed loans shall bear interest at the rate agreed upon by the borrower and lender. Guaranteed FFB loans shall be at a rate of interest that is not more than the rate of interest applicable to other similar loans then being made or purchased by FFB.

(g) *Condition of Guarantee.* REA will not guarantee a loan if the income from the loan or the income from obligations issued by the holder of the loan, when the obligations are created by the loan, is excluded from gross income for the purposes of Chapter I of the Internal Revenue code of 1954.

(h) *Contract of Guarantee.* If REA is satisfied with the engineering and economic feasibility of the project and approves the borrower's choice of proposal, subject to the submission of satisfactory financing documents and to the satisfaction of other pertinent terms and conditions, REA will prepare a contract of guarantee to be executed by the borrower, the lender, and REA within a specified time. The lender, or its representative, shall have the right to examine the borrower's application and supporting data submitted to REA in support of its request for financial assistance.

(i) *Loan Servicing.* The contract of guarantee will require that arrangements satisfactory to REA be made to service the loan. Required servicing by the lender will include:

(1) Determining that all prerequisites to each advance of loan funds by the lender under the terms of the contract of guarantee, all financing documents, and all related security instruments have been fulfilled. Such determinations may be met by obtaining REA approval of each advance.

(2) Billing and collecting loan payments from the borrower.

(3) Notifying the Administrator promptly of any default in the payment of principal and interest on the loan and submitting a report, as soon as possible thereafter, setting forth its views as to the reasons for the default, how long it expects the borrower will be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position.

(4) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, contract of guarantee, or related security instruments, or conditions of which the lender is aware which might lead to nonpayment, violation, or other default.

(j) *Payments Under the Contract of Guarantee.* Upon receipt of the notification required in § 1745.32(i)(3) above, REA will pay the lender the amount in default with interest to the date of payment. When REA has made a payment under a contract of guarantee, it will establish in its accounts the amount of the payment as due and payable from the borrower, with interest at the rate of interest specified in the lending agreement. REA will work with the borrower and the lender in an effort to eliminate the borrower's default as soon as possible. REA may also proceed with other remedies available under its security instruments.

(k) *Pledging of Contract of Guarantee.* Subject to applicable law, REA will consider, on a case by case basis, permitting pledging of the contract of guarantee in order to facilitate the obtaining of funds by the lending agency to make the guaranteed loan.

Subpart D—Terms of Loans

§ 1745.40 General.

Terms and conditions of loans are set forth in a mortgage, note, and loan contract. Provisions of the mortgage and loan contract are implemented by provisions in REA Bulletins and Regulations. Forms of the mortgage,

note, and loan contract are attached as appendixes to 7 CFR Part 1758.[1]

§ 1745.41 Notes.

Loans are represented by one or more notes. Interest accrues only on funds advanced. There are no loan commitment fees or charges. See REA Bulletin 320–12 (or 7 CFR Part 1785) for additional information. This CFR Part supersedes those portions of REA Bulletin 320–12 with which it is in conflict.

§ 1745.42 Automatic rescission.

(a) Loans approved after [Insert the effective date of this CFR Part] will include a contract provision that all loan funds not encumbered 5 years after the date of a note representing those loan funds will be automatically rescinded and the Government's obligation to advance those funds will be terminated. Funds are encumbered when they have been approved for advance by REA for a particular loan purpose.

(b) The Administrator may agree to an extension of the obligation of the Government to advance unencumbered funds if the borrower demonstrates to the satisfaction of the Administrator that the loan funds not encumbered will be needed for approval loan purposes. To apply for an extension, borrowers must send to the relevant Area Office in REA, at least 120 days before the Government's obligation to advance unencumbered loan funds terminates, the following:

(1) A certified copy of a board resolution requesting an extension of the obligation of the Government to advance unencumbered loan funds,

(2) Evidence that those loan funds continue to be needed for approved loan purposes, and

(3) Notice of the estimated date for completion of construction.

If the Administrator approves a request for an extension, the Administrator shall notify the borrower in writing of the extension and the terms and conditions thereof.

§ 1745.43 Payment of loans.

(a) Generally, loans approved after the effective date of this CFR Part must be repaid with interest within a period, up to a maximum of 22 years, that approximates the expected useful life of the facilities to be financed. The expected useful life shall be based on the depreciation rates that the borrower proposes to apply to the facilities financed by the loan, provided that these rates are deemed appropriate by REA. In states where the borrower must obtain state regulatory commission approval of depreciation rates for rate making purposes, the depreciation rates used shall be the rates currently approved by the state commission or rates for which the borrower shall seek state commission approval. In cases where a state regulatory commission does not approve depreciation rates, if the rates proposed by the borrower are not deemed appropriate by REA, REA shall base expected useful life on accepted industry standards. Borrowers may request a repayment period that is shorter than the expected useful life of the facilities financed. The Administrator may approve a longer period, up to 35 years, if the borrower would otherwise experience financial hardship.

(b) Principal and interest will be repaid in accordance with the terms of the notes. Generally, interest is payable each month as it accrues. Principal payments on each note generally are scheduled to begin 2 years after the date of the note. After this deferral period, interest and principal payments on all funds advanced during this 2 year period are scheduled in equal monthly installments. Principal payments on funds advanced 2 years or more after the date of the note will begin with the first billing after the advance. The interest and principal payments on each of these advances will be scheduled in equal monthly installments. Notes for refinancing and acquisitions generally provide for a 6-month deferral of principal payments. This CFR Part supersedes those portions of REA Bulletin 320–12 with which it is in conflict.

§ 1745.44 Prepayment premiums.

The loan documents normally provide that REA insured loans may be repaid in full at any time without prepayment premiums. Depending upon the lender, there may be prepayment premiums on loans guaranteed by REA. See 7 CFR Part 1610 for prepayment premiums on RTB loans. See REA Bulletin 320–12 (or 7 CFR Part 1785) for additional information. This CFR Part supersedes those portions of REA Bulletin 320–12 with which it is in conflict.

§ 1745.45 Extension of payments.

REA may extend the time of payment of principal or interest on a loan. Under Section 12 of the Rural Electrification Act, as amended, this extension may be up to 5 years after such payment is due. Under Section 236 of the Disaster Relief Act of 1970 (Pub. L. 91–606) payment may be deferred by the Secretary of Agriculture as long as necessary in disaster situations so long as the final maturity date is not later than 40 years after the date of the loan. See REA Bulletin 320–2 for additional information.

§ 1745.46 Loan security documents.

Loans are to be repaid according to their terms. REA generally obtains a first lien on all assets of the borrower. This lien shall be in the form of a mortgage by the borrower to the Government or a deed of trust made by and between the borrower and a trustee, satisfactory to the Administrator, together with such security agreements, financing statements, or other security documents as REA may deem necessary in a particular case. Where a borrower is unable by reason of pre-existing encumbrances, or otherwise, to furnish a first mortgage lien on its entire system the Administrator may, if he determines such security to be reasonably adequate and the form and nature thereof otherwise appropriate, accept other forms of security. See 7 CFR Part 1758 [1] (or applicable parts of REA Bulletins 320–4, 320–22, 321–2, 322–2, 323–1, and 326–1) for details.

Subpart E—Basic Requirements For Loan Approval

§ 1745.50 Administrative findings.

The RE Act requires that the Administrator make certain findings to approve a telephone loan or loan guarantee. The borrower shall provide the evidence determined by the Administrator to be necessary to make these findings. Details on the information required to support these findings is included in 7 CFR Part 1749.

§ 1745.51 Required findings.

(a) *Feasibility of and Security for the Loan.* The borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that the security for the loan is reasonably adequate and the loan will be repaid on time. This finding is based on the following factors:

(1) Self-liquidation of the loan within a period specified by REA; this requires that there be sufficient revenues from the borrower's system, in excess of operating expenditures (including maintenance and replacement), to repay the loan with interest.

(2) Reasonable assurance of achieving the telephone market projections upon which the loan is based.

(3) Economic feasibility (based on projected revenues, expenses, net

[1] Editorial note: REA will publish a proposal on this part in the near Future.

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income, maximum debt service, and rate of return on investment) for the proposed system with the application of local service rate schedules appropriate for the areas served.

(4) Impact of the proposed loan and construction on the ratio of the borrower's secured debt to assets.

(5) Projected growth in the borrower's equity.

(6) Satisfactory experience and reputation of the system's principal owners and manager.

(7) A first lien on the borrower's total system or other adequate security.

(8) Fair market value of the borrower's assets as represented in its financial reports to REA.

(9) Appropriate financial and managerial controls included in the loan documents.

(10) Other factors determined to be relevant by REA.

(b) *Area Coverage.* The borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that adequate telephone service will be made available to the widest practical number of rural users during the life of the loan.

(c) *Nonduplication or Certificate Requirement.* The borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that no duplication of service shall result from a particular loan for those borrowers not required by the state regulatory commission to have a certificate of convenience and necessity (or its equivalent). For borrowers required to have a certificate of convenience and necessity, all portions of the existing and proposed system must be covered by the certificate.

§ 1745.52 Findings required for particular loan purposes.

(a) *Refinancing.* For loans which include funds to refinance outstanding indebtedness of the borrower, the borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that the inclusion in the loan of such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas. See 7 CFR 1745.21.

(b) *Facilities in nonrural areas.* Whenever a borrower propose to use loan funds for the improvement, expansion, construction, or acquisition of telephone facilities within or for nonrural areas, the borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas.

PART 1749—PRELOAN PROCEDURES AND REQUIREMENTS—TELEPHONE PROGRAM

Subpart A—General

Sec.

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Subpart E—Interim Financing of Construction of Telephone Facilities

1749.40 General.
1749.41 Procedure for obtaining approval.
1749.42 Procedure for construction.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subpart A—General

§ 1749.1 General statement.

This Part prescribes policies, procedures and responsibilities relating to applications for REA loans to finance the improvement and extension of telephone service in rural areas. Requirements for both initial and subsequent loans are discussed, with differences pointed out.

§ 1749.2 Definitions.

As used in this Part:

(a) "Administrator" means the Administrator of REA.

(b) "Area Coverage" means the provision of adequate telephone service to the widest practical number of rural users during the life of the loan.

(c) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, or which is seeking such financing.

(d) "Initial loan" means the first loan made to a borrower.

(e) "Interim construction" means the purchase of equipment or the conduct of construction under an REA-approved plan of interim financing.

(f) "Interim financing" means funding for a project the borrower desires to be financed by an REA loan but for which no REA loan funds have been made available.

(g) "Loan" means any loan made or guaranteed by REA.

(h) "Rural area" means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available from the Bureau of the Census and Rand McNally and Company. The determination of whether an area is rural is based on the population within the corporate limits or boundaries of unincorporated areas in existence at the time the facilities to serve the community were first financed by REA. If a community is considered rural at that time, it will always be considered rural.

(i) "Subsequent Loan" means any loan to a borrower which has already received a loan.

§ 1749.3 Availability of REA Forms.

Single copies of REA forms and publications cited in this Part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, D.C. 20250. These REA forms and publications may be reproduced.

Subpart B—Preapplication Stage

§ 1749.10 Initial contact.

Initial loan applicants seeking assistance should write the Rural Electrification Administration, United States Department of Agriculture, Washington, D.C. 20250. A field representative will be assigned by REA to visit the applicant and discuss its financial needs and eligibility. Existing borrowers initiate the contact directly with their assigned field representative. Borrowers consult with REA field representatives and headquarters staff, as necessary.

§ 1749.11 Preapplication determinations.

Before submitting an application to REA, the borrower should consider the following:

(a) *Area to be Served.* The proposed service area should neither include subscribers already receiving adequate service from another telephone system nor leave out unserved pockets of potential subscribers who have indicated an interest in service and are located between the proposed system and neighboring systems. See 7 CFR 1745.11 on Area Coverage and 7 CFR 1745.12 on Nonduplication. In establishing service area boundaries, borrowers should consider the location of adjoining systems, natural boundaries such as rivers and mountains, and economic and cultural features such as trading and community centers.

(b) *Number of Subscribers.* The borrower must estimate the number of

subscribers that will request service from the proposed system.

(c) *Acquisitions.* A borrower considering an acquisition should refer to 7 CFR 1745.20 and 7 CFR Part 1750 (or applicable parts of REA Bulletins 320–4, 321–2, 235–1, or 236–1).

(d) *Mergers and Consolidations.* A borrower considering a merger or consolidation should refer to 7 CFR 1745.19 and 7 CFR Part 1750.[1]

(e) *Refinancing.* Restrictions on the use of loan funds for refinancing are contained in 7 CFR 1745.21.

(f) *Service for Nonrural Subscribers.* In some situations, REA loan funds may be used to finance facilities to serve nonrural subscribers. See 7 CFR 1745.13.

(g) *Loan Amount.* The initial loan request is based on the borrower's best estimate of financing needs. REA requires detailed studies by the borrower to complete the application and the initial estimate is subject to revision.

(h) *Loans for Partial Systems.* If it is impractical in a single loan to provide adequate service throughout the borrower's entire telephone service area, REA will consider a loan application to finance improvements to a portion of a borrower's system.

Subpart C—The Loan Application

§ 1749.20 The loan application form.

REA Form 490, "Application for Telephone Loan or Loan Guarantee," shall be used to apply to REA for a loan. The application must be submitted in duplicate. A sketch or map showing the existing and proposed service areas must be attached to the form. (Where there have been no changes in the service area since the last loan application was submitted, and none are proposed, the map may be omitted.) Form 490 serves as formal notice to REA of the borrower's application for REA financing and provides information REA uses to make a preliminary determination of the borrower's eligibility for a loan. If the borrower fails to submit a Loan Design recommended by the REA field representative and all required supplementary information within 1 year of submission of the Form 490, the application generally will be cancelled and returned to the borrower.

§ 1749.21 The completed loan application.

(a) The completed loan application consists of four parts:

(1) A completed REA Form 490.

(2) A market survey called the Area Coverage Survey (ACS).

(3) The plan and associated costs for the proposed construction, called the Loan Design (LD).

(4) Various supplementary information, specified in 7 CFR Part 1749.22.

(b) The REA field representative assists the borrower in assembling this information. Certain information is required from initial loan applicants but usually not from borrowers seeking subsequent loans.

§ 1749.22 Supplementary information.

REA requires additional information in support of the loan application form. The information listed in (a), (b), and (c) of this section must be submitted with the Loan Design.

(a) The following must be submitted by all initial loan applicants. Borrowers seeking subsequent loans must submit any changes in these items since they were last submitted.

(1) Name of attorney and manager, and certified copies of board resolutions selecting them.

(2) Certified copy of articles of incorporation showing evidence of filing with the secretary of state and in county records.

(3) Certified copies of bylaws and board minutes showing their adoption.

(4) Certified sample stock certificates.

(5) Amounts of common and preferred stock issued and outstanding.

(6) Names, addresses, business affiliations, and stockholdings of the manager, officers, directors, and other principal stockholders (those owning at last 20 percent of borrower's voting stock).

(7) Certified copies of real estate deeds showing all recording information.

(8) Service agreements, such as for management or system maintenance.

(9) Certified copies of existing leases, except those for vehicles, furniture and office equipment, and computer equipment.

(10) Certified copies of existing franchises.

(11) Information on any franchises required as a result of the proposed loan project.

(12) Federal Communications Commission (FCC) authorizations.

(13) Certified copy of a certificate of convenience and necessity (or its equivalent), or information demonstrating the nonduplication of reasonably adequate facilities, for all areas in the loan project.

(14) For toll, operator office, traffic, and EAS agreements, the names of all parties to the agreement, the type of agreement, and the effective and termination dates of the agreement and annexes, and the exchanges involved. (Copies of toll, operator office, traffic, and EAS agreements that are deemed "nonstandard" by REA must be submitted.)

(15) Copies of rate schedules. (A copy of the tariff must be available for review by the REA field representative.)

(16) Executed copy of REA Form 291, "Certification of Nonsegregated Facilities".

(b) The following must be submitted by all initial loan applicants and borrowers seeking subsequent loans:

(1) Certified financial statements for the last 3 years.

(2) Toll settlement statements and related data.

(3) Present exchange rates and any pending changes.

(4) Borrower's Environmental Report (BER)—See 7 CFR Part 1794.

(5) Any other supporting data required by the Administrator.

(c) The following must be submitted for all borrowers requesting funds for refinancing:

(1) Copies of all bonds, notes, mortgages, and contracts covering outstanding indebtedness proposed to be refinanced.

(2) For each note or bond, the name of the creditor, original amount of debt and amount as of last year-end, purpose of debt, dates incurred and due, interest rates, and repayment terms.

(3) Justification for refinancing and evidence that the use of loan funds is necessary and incidental to furnishing or improving rural telephone service. See 7 CFR 1745.21.

(d) Borrowers requesting loan funds for acquisitions should refer to 7 CFR Part 1750 [1] (or applicable parts of REA Bulletins 320–4, 321–2, 325–1, and 326–1) for requirements.

Subpart D—Preloan Studies—Area Coverage Survey and Loan Design

§ 1749.30 General.

In support of a loan application, the borrower shall prepare and submit to REA a market forecast to determine service requirements (the Area Coverage Survey and engineering studies to determine the system design that provides service most efficiently (the Loan Design). The REA field representative confers with the borrower and its engineer to schedule the completion and submission of these studies.

[1] Editorial note: REA will publish a proposal on this part in the near future.

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§ 1749.31 Area Coverage Survey (ACS).

(a) The Area Coverage Survey (ACS) is a market forecast of service requirements of subscribers in a proposed service area.

(b) The objective of the ACS is to determine the location, number and telephone service requirements of subscribers in a service area. REA will use the ACS to appraise the proposed plan for area coverage and to determine the largest practical number of rural subscribers which can be served on an economically feasible basis. Preparation of the ACS requires:

(1) A field survey of the service area to locate and indentify on maps all business and residential establishements, whether currently served or not. The location and identification of future establishments are also recorded on the maps.

(2) A forecast of the number of telephone subscribers, in the entire service area, by exchange, grade and class of service, projected for the end of the 5-year study period.

(c) The results of the survey and forecast shall be:

(1) Shown on maps (maps for those service areas previously financed by REA do not have to be included in the ACS provided that the borrower's records contain sufficient information as to subscriber development to enable cost estimates for the proposed facilities to be prepared);

(2) Tabulated on REA Form 569 "Area Coverage Survey Report," or its equivalent; and

(3) Supported by a narrative containing information on the bases for the service requirement forecasts in each exchange.

(d) Guidelines on preparing an ACS are provided in REA Telecommunications Engineering and Construction Manual Section 205.

(e) The REA field representative reviews and approves the borrower's ACS. The borrower should make sure this is done before proceeding with the Loan Design in order to prevent unnecessary expense should the ACS not be approved. The borrower's engineer must use the REA-approved ACS in preparing the Loan Design.

§ 1749.32 loan design (ld).

(a) A loan application requires supporting data collectively called a "Loan Design." The LD contains a forecast of service requirements and a narrative with supporting exhibits. Most of the items included in the LD are similar for all loan applications. However, as noted below, there are certain additional requirements for initial loans and for any exchange areas not previously financed by REA, and other additional requirements for subsequent loans for areas previously financed by REA.

(b) Because of the importance and complexity of the engineering studies necessary for the LD, it should be prepared by a competent experienced telecommunications engineer. While the LD is subject to REA approval, the borrower's selection of an engineer to perform preloan work is not. Note: The borrower's selection of an engineer to perform postloan work *is* subject to REA approval. This should be considered when selecting a preloan engineer, if the same individual or company is to perform both services. See 7 CFR Part 1763."

(c) An LD for initial loans or for any exchange areas not previously financed by REA requires an Outside Plant Design that provides:

(1) The most economical and practical design for a telephone system that meets immediate service demands; and

(2) The basis for orderly expansion of the system to serve the widest practical number of rural establishements.

(d) The LD for a subsequent loan (which only includes areas previously financed by REA) does not require a detailed Outside Plant Design. The detailed Outside Plant Design for these subsequent loans may be completed for REA review and approval after loan approval, but before staking is started and plans and specifications are prepared. By scheduling preparation of the outside plant design closer to preparation for construction, the need for redesign resulting from changing conditions and its attendant costs are reduced.

(e) Guidelines on preparing an LD are provided in REA Telecommunications Engineering and Construction Manual Section 205.

(f) The LD shall include a narrative, several exhibits, and a certification, as explained below:

(1) *Narrative.* This section discusses the following topics, as appropriate.

(i) *General.* The purposes and amount of the proposed construction and both immediate and long range plans must be covered. The source and amount of any nonloan funds to be used for this construction must be discussed.

(ii) *Subscriber Data.* The basis for the subscriber forecast, including any unusual factors expected to influence growth, must be discussed. Reasons for growth projections which vary from historic trends must be explained.

(iii) *Proposed Construction.* All proposed construction must be described fully. Reference to the BER must be made here.

(iv) *Service Area.* For subsequent loans only, proposed construction which is not within the boundaries of prior loan projects must be discussed. New areas to be served (even if from existing exchanges) must be shown on maps submitted with the proposal.

(3) *Toll and EAS.* Proposed new toll to extended area service (EAS) facilities, including any changes from the existing trunking arrangements, must be described fully. Minutes of meetings and correspondence with connecting companies, and connecting company concurrences must be included.

(vi) *Radio Telephone Service.* Proposed radio telephone service must be discussed. Results of studies demonstrating demand and/or need must be included as an exhibit.

(vii) *Special Projects.* Facilities involving investment in excess of $100,000 for any single subscriber must be discussed fully. Contractual arrangements with the subscriber, including a termination agreement providing for:

(A) The full recovery by the borrower of its capital costs of the facilities no later than the maturity date of the note representing the loan,

(B) The immediate repayment of all remaining capital costs, if terminated, and

(C) Repayment to REA of the outstanding amount of the special note shall be submitted.

Usually a separate short-term note is prepared for loans to finance Special Projects.

(viii) *Investment in Nonrural Areas.* (A) For initial loans or loans for areas not previously financed by REA, proposed improvements or expansions in an exchange serving a community of over 1,500 population (a nonrural area), must be discussed fully. The name of the community, the number of existing and projected new subscribers by grades of service within the community, detailed cost estimates of the facilities involved, and information sufficient to establish the necessity for the use of loan funds must be provided.

(B) For subsequent loans, proposed improvements or expansions in an exchange serving a community of over 1,500 population (a nonrural area) which had more than 1,500 at the time facilities to serve the community were first financed by REA, must be discussed as in (A) above. The population determination is based on the corporate limits or boundaries of unincorporated

[1] Editorial note: REA will publish a proposal on this part in the new future.

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areas in existence at the time the facilities to serve the community were first financed by REA.

(C) For subsequent loans, the borrower shall state whether the population of a community which currently is more than 1,500 was 1,500 or less at the time REA first financed facilities to serve the community. Detailed cost estimates are not required if the population was 1,500 or less at the time REA first financed facilities to serve the community.

(ix) *Prior Loan Project.* For subsequent loans only, the reason for and amount of additional loan funds needed to complete construction in progress which was part of a prior loan project in central office areas not included in the current LD must be discussed fully.

(x) *Route Miles.* Route miles of outside plant in central office areas not shown on REA Form 495 must be provided.

(xi) *Future Plans.* Where the loan application is to finance part of a system-wide upgrading plan, plans for those remaining exchanges not included in the current loan proposal must be discussed.

(2) *Exhibits.* (i) An REA Form 569, "Area Coverage Survey Report," or its equivalent shall be included for the total system and for each exchange in which system improvements or additions are proposed. (ii) An REA Form 495, "Construction Cost Estimates," or its equivalent shall be prepared for each exchange in which system improvements or additions are proposed. An explanation of the method used in developing these cost estimates must be included. (iii) REA Form 494, "Loan Design Summary," or its equivalent shall be prepared for each loan. This must show all expected 5-year construction costs, loan and nonloan.

(iv) A schematic trucking diagram shall be included showing the number and type, length, ownership and makeup of existing and proposed toll and EAS trunks, plus transmission and traffic data for each trunk group.

(v) Detailed outside plant design maps must be submitted for all central office areas of initial loan applicants and for areas not previously served by existing borrowers or financed by REA. These design maps must be in sufficient detail to substantiate the construction cost estimates.

(vi) For subsequent loans only, if a change in system boundaries in proposed, a map must be furnished showing present and proposed boundaries, and existing establishments and subscribers in the new areas.

(vii) Any other special exhibits needed to support particular items in the loan proposal must be included.

(3) *Certification.* The following certification shall be signed by a principal of the engineering firm and the borrower:

We, the undersigned, certify that the data in this Loan Design are correct to the best of our knowledge and belief and reasonably reflect the cost to serve the subscribers as proposed on the Forms 569, "Area Coverage Survey Report," which are integral parts hereof, and that this Loan Design adheres to REA engineering and construction standards and practices.

(g) The REA field representative shall reveiw and make a recommendation on each LD.

(l) After completion of the LD, the borrower arranges a meeting with its engineer and REA's field representative to review:

(i) Design and cost estimates.

(ii) Reserves available from prior loans, if any, or internally generated funds which may be applied against the requirements of the current application.

(2) One copy of REA Form 567, "Checklist for Review of Loan Design," completed and signed by the borrower's engineer must be attached to the LD submitted to the REA field representative.

(3) The REA field representative recommends acceptance of the LD as the basis for REA financing.

(4) Three copies of the final LD with the REA field representative's recommendation are then sent to the relevant Area Office in REA. A fourth copy is retained by the REA field representative.

(5) A transmittal letter from the borrower must accompany the LDs, requesting that the application previously submitted by amended so as to be consistent with the approved LD.

(6) Final approval of the LD is given by the relevant Area Office in REA. To be approved, the LD must be cost effective, include appropriate technology, and provide area coverage.

(7) Upon receipt of the LD and any other required information, REA makes a preliminary analysis of the loan proposal. Before final consideration of the loan, REA reviews the results of its preliminary analysis with the borrower.

Subpart E—Interim Financing of Construction of Telephone Facilities

§ 1749.40 General.

(a) Under special circumstances a borrower may request that REA approve interim financing for interim construction. This subpart describes the circumstances in which REA will consider approving interim financing of construction, the information to be submitted to REA to support the borrower's request, REA's requirements relating to interim construction, and related matters. Interim financing of acquisitions is covered in 7 CFR Part 1750.[1]

(b) For a borrower to preserve the option of obtaining loan funds for reimbursement of iterim financing, it must obtain prior REA approval of its interim financing plan and follow the procedures in 7 CFR 1749.41 and 7 CFR 1749.42.

(c) REA will approve interim financing only for projects which must be performed immediately.

(d) REA approval of interim financing is not a commitment that REA will make loan funds available.

(e) Equal employment opportunity requirements apply to interim construction. See 7 CFR 1791[1] (or REA Bulletin 320–15).

§ 1749.41 Procedure for obtaining approval.

(A) The borrower shall submit to the REA Area Office a written request for approval of interim financing. This request shall include:

(1) A description of the construction proposed under interim financing.

(2) An explanation of the urgency of proceeding with the proposed construction.

(3) An estimate of the cost.

(4) The source of funds to be used for interim financing.

(b) REA will not approve interim financing until it has reviewed and found acceptable the following documents:

(1) The loan application (REA Form 490).

(2) The Loan Design (LD), or the portion thereof that covers the proposed construction if the completed LD is not available. See 7 CFR 1749.32.

(3) Evidence that the borrower has satisfied the requirements of 7 CFR Part 1794 applying to the proposed interim construction.

(c) REA will not approve a borrower's request for approval of interim financing if, in REA's judgment:

(1) The proposed interim financing does not comply with the requirements of this Subpart.

(2) The proposed interim construction will not qualify for REA financing.

(3) The proposed interim financing presents unacceptable loan security

[1] Editorial note: REQ will publish a proposal on this part in the near future.

risks to REA, or otherwise is not in the best interests of REA.

§ 1749.42 Procedure for construction.

(a) If REA approves the interim financing, interim construction shall be conducted in accordance with 7 CFR Part 1763 (or REA Bulletins 340–1, 340–2, 341–3, 342–1, 344–1, 344–2, and 344–3), 7 CFR Part 1788, 7 CFR Part 1791 [1] (or REA Bulletin 320–15), and 7 CFR Part 1765 [1] (or REA Bulletins 381–1, 381–2, 381–4, 381–6, 381–7, 381–8, 381–9, 381–10, 381–11, 381–13, 382–1, 382–2, 382–3, 383–1, 383–4, 384–1, 384–2, 384–3, 385–1, 385–2, 385–3, 385–4, 385–5, 385–6, 387–1, 387–2, 387–3, 387–4, and 387–5) except for the following:

(1) All sellers and contractors invited to bid must be informed that funds from sources other than REA will be used to pay for construction.

(2) Contracts involving the interim construction must contain a provision, in form and substance satisfactory to REA, stating that REA is not committed to lend or advance funds to finance the project.

(3) Contracts will not be approved by REA until the borrower demonstrates to REA's satisfaction that funds from sources other than REA will be available when needed to pay invoices submitted in accordance with contract payment terms.

(4) The borrower shall not begin interim construction until all necessary licenses, permits, and other governmental approvals have been obtained.

(b) After REA loan funds are released, the borrower can obtain reimbursement for interim financing by submitting a Financial Requirement Statement. See 7 CFR Part 1754 [1] (or REA Bulletin 327–1).

(1) The first advance of loan funds to a borrower that has received interim financing approval generally will be limited to funds to repay any interim financing indebtedness and such additional amounts as REA deems necessary. REA will make no further advances of loan funds until the borrower has submitted evidence, in form and substance satisfactory to the Administrator, that:

(i) Any indebtedness created by the interim financing and any liens associated therewith have been fully discharged of record and

(ii) The borrower has satisfied all other conditions on the advance of additional loan funds.

(2) If the source of funds for interim financing is the borrower's internally generated funds, the borrower may request reimbursement of those funds along with advances for other purposes on the first Financial Requirement Statement.

Date: August 16, 1988.

Jack Van Mark,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 88–18946 Filed 8–23–88; 8:45am]

BILLING CODE 3410–15–M

[1] Editorial note: REA will publish a proposal on this part in the future.

Food Safety and Inspection Service

9 CFR Parts 317, 319, and 381

[Docket No. 88–019N]

Labeling of Frankfurters and Similar Products Containing Binders

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that Protein Technologies International has filed a petition requesting that the Federal meat and poultry products inspection regulations be amended regarding the standards of identity for sausage (9 CFR 319.140), breakfast sausage (9 CFR 319.143), bockwurst (9 CFR 319.281), frankfurter and similar products (9 CFR 319.180), cheesefurters and similar products (9 CFR 319.181), and poultry rolls (9 CFR 381.159) to eliminate use limitations for certain binders. The petition also requests that the labeling requirements regarding the use of certain binders (9 CFR 317, 319 and 381) be deleted from the regulations. This notice describes these considerations as well as several labeling options and requests comments and information from interested persons.

DATE: Comments on this notice must be received on or before: September 23, 1988.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, Hearing Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 3171, South Agriculture Building, Washington, DC 20250. (For further information on comments, see "**SUPPLEMENTARY INFORMATION.**").

FOR FURTHER INFORMATION CONTACT: Mr. Ashland L. Clemons, Acting Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this notice. Written comments should be sent in duplicate to the Policy Office, and should refer to the docket number that appears in the heading of this document. Any person desiring an opportunity for an oral presentation of views, as provided for in the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), should make such request to Mr. Clemons so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to this notice will be made availbale for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

On November 24, 1986, FSIS published in the **Federal Register** (51 FR 42239) a proposed rule to amend the standards of identity in the Federal meat inspection regulations for frankfurters and similar cooked sausages (9 CFR 319.180 and 319.181) to provide for a maximum combination of 40 percent of fat and added water in those products and to restrict the maximum fat content to no more than 30 percent of the finished product. The proposed rule was finalized on March 15, 1988 (53 FR 8425). The comment period on the proposed rule ended on January 23, 1987, however, in response to several requests, it was extended an additional 60 days (52 FR 2416) until March 24, 1987, and later an additional 90 days (52 FR 9303) until June 27, 1987. FSIS received 115 comments in response to the proposal. Several issues were raised by those in support of the proposal as well as those in opposition. Among the issues, several commenters objected to the requirement that if binders and extenders are used in frankfurters and similar cooked sausages, the name of each binder must prominently appear on the label contiguous to the product name. However, there is no such requirement when non-binder ingredients, such as poultry products, mechanically separated (species), and flavoring materials are used in such products. One commenter stated that FSIS should eliminate the current use limitations on vegetable protein products and credit the protein from soy products as "meat"

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protein in the calculation for added water because, among other reasons, the commenter believed soy products to be equivalent to meat from a protein quality standpoint. In response to the comments, FSIS stated that it recognizes the inconsistency of restrictions imposed on the use of vegetable protein due to labeling requirements and product standards. However, FSIS believed that such changes would have had broad policy implications well beyond the scope of that rulemaking. The Agency further stated that it believed the comments to have merit and that it intended to pursue a rulemaking regarding the current use limitations on vegetable protein products, and the requirements for product name qualifiers when these products are used.

Currently, §§ 319.140, 319.143, 319.180(e), 319.181, 319.281, and 381.159(a) of the Federal meat and poultry products inspection regulations provide special labeling requirements for standardized frankfurter and similar products, cheesefurters and similar products, bockwurst and poultry rolls, respectively, utilizing certain added ingredients, such as binders, which are specified in these sections or in § 317.8(b)(16) or § 317.8(b)(33). Based on these regulations, the use limit on binders, singularly or in combination, is 3½ percent of the product formulation except for soy protein isolate, which is 2 percent of the formulation. The presence of binders must be declared on the label, in a prominent manner, continguous to the name of the product. This requirement is in addition to the requirement in § 317.2(f)(1) that all ingredients be listed in the ingredients statement on labels, in the descending order of predominance by weight.

The Petition

Following publication of the final rule to amend the standards for frankfurters and similar cooked sausages, the Agency received the following petition on May 17, 1988, and amendment to the petition on July 1, 1988, from Protein Technologies International requesting that regulations in 9 CFR Parts 317, 319 and 381 be amended to eliminate certain labeling requirements and use limitation required when certain binders, such as soy protein isolate, are formulated into sausage (9 CFR 319.140), breakfast sausage (9 CFR 319.143), bockwurst (9 CFR 319.281), frankfurter and similar products (9 CFR 319.180), cheesefurters and similar products (9 CFR 319.181), and poultry rolls (9 CFR 381.159):

Citizen's Petition Requesting Amendment of the Standard of Identity for Frankfurters and Similar Products, 9 CFR 319.180, the Standard of Identity for Cheesefurters and Similar Products, 9 CFR 319.181, and § 317.8(b)(16) of the General Labeling Requirements, 9 CFR Part 317

Pursuant to section 7(c) of the Federal Meat Inspection Act, Protein Technologies International, a manufacturer of a high quality vegetable protein, isolated soy protein, requests that the Food Safety and Inspection Service ("FSIS") amend the Standards of Identity for Frankfurters, Cheesefurters and similar Products (9 CFR 319.180 and 181) along with certain provisions of the General Labeling Requirements (9 CFR Part 317). Specifically, petitioner requests these regulations be amended to eliminate certain labeling requirements and use limitations required when certain "binders" are formulated into standardized frankfurters and cooked sausages.

On March 10, 1988, after an extensive rulemaking procedure, FSIS amended the frankfurter standards to provide for a lower fat content product. This was accomplished by allowing the substitution of water for fat, up to forty percent (40%) of the total product. During this rulemaking several other issues relating to the subject standards were raised by interested commentators and acknowledged by the Agency. In its final rule, FSIS noted that several commentators objected to the requirement mandating that, if certain ingredients, such as vegetable protein products, for example, are used in standardized products, "* * * the name of each must prominently appear on the label contiguous to the product name, but there is no such requirement when ingredients such as poultry products and mechanically separated (species) are used." One commentator also suggested "* * * that FSIS should [also] eliminate the current use limitations on vegetable protein products." In response to these comments, FSIS noted that, "* * * due to the merit of these comments, FSIS intends to pursue a rulemaking proceeding regarding the current use limitations on vegetable protein products and the requirements for product name qualifiers when these products are used." This petition serves to initiate such rulemaking.

I. Special Labeling Requirements Mandated in §§ 319.180(e) and 319.181 Are Unwarranted and Unnecessary

In a statement presented to the House of Representatives' Committee on Agriculture's Subcommittee on Livestock, Dairy and Poultry, FSIS officials presenting the Department's position on a resolution to amend the Federal Meat Inspection Act with regard to labels on certain pizzas expressed, with regard to labeling in general, the following views:

> First, the ingredients statement, which is required on all meat and poultry labels, provides complete information about the contents of a product. It includes the names of the ingredients and lists them in order of their presence by weight. Consumers have learned to read the ingredients statement when they want this information, and for the sake of consistency, it would be wise to continue providing ingredient information in the same place and in the same format on all products. For example, the presence of ingredients that could have a significant health impact on consumers, such as sulfites and MSG, is noted in the ingredients statement. Likewise, the presence of calcium from mechanically separated meat is noted either in the ingredients statement, in conjunction with the ingredients statement, or in the nutritional panel. For example, red meat frankfurters can contain up to fifteen percent (15%) poultry without a change in the product name, but this would be listed in the ingredients statement.
>
> In recent years, we have followed the principle that it is inappropriate to indicate an ingredient in the main display panel unless that ingredient alters the basic characteristics of the product.
>
> * * * * *
>
> The regulatory process also provides the flexibility to respond expeditiously when technological advances bring new products into the marketplace. Today's technology is changing rapidly, and we are constantly presented with new formulations and products that respond to consumer demands. Our regulatory system should encourage these developments.

Petitioner wholeheartedly supports these views and urges that they be applied to all regulated products in a uniform and equitable manner.

Current regulations mandating certain product qualifiers are inconsistent with stated FSIS policy. Sections 319.180(e) and 319.181 of the regulations adopt special labeling requirements for standardized frankfurters and similar products utilizing certain added ingredients which are specified in § 317.8(b)(16). In short, these requirements mandate that when these ingredients are used in a standard cooked sausage, their presence must be declared "on the label, in a prominent manner, contiguous to the name of the product." For example, a frankfurter containing only two percent (2%) isolated soy protein must be labeled "Frankfurter, Isolated Soy Protein Added." This requirement is in addition to the ingredient statement declarations.

The ingredients, collectively grouped in paragraph (e) as "binders" are, with a single exception, vegetable or dairy products. No attempt has ever been made to distinguish these ingredients on the basis of protein content, nutritional value or even functionality. As a result of this extremely narrow regulatory approach the use of meat-equivalent quality ingredients has been severely limited and potential benefits available to the producer and consumer have been arbitrarily negated. Protein Technologies International suggests that the ingredients collectively grouped as "binder" in these sections be regulated, as other products, according to their nutritional value, functionality, and dietary benefits.

Petitioner agrees that consumers must have the ability to determine what ingredients constitute the food they eat. We submit, however, that the required ingredient statements can, and do adequately provide this information. While the Agency has argued that it is its policy to use descriptive labeling such as that mandated in § 317.8(b)(16) to assure that consumers are aware of certain "unexpected" or "non-traditional" ingredients in standard type products, its application of such policy has been inconsistent and, as is, often discriminatroy.

One would still have great difficulty arguing that the "typical consumer" would expect their standardized sausage to contain up to fifteen percent (15%) (excluding water) raw or cooked poultry and/or up to twenty percent (20%) mechanically deboned product. However, both these ingredients are provided for in the cooked sausage standard and only require ingredient statement identification. Likewise, numerous hydrolyzed substances merely are permitted in the standardized cooked sausages with minimal use limitations and no specific labeling.

II. Restrictive Use Limitations Negate Beneficial Technical Innovations

In addition to the above-mentioned labeling constraints, the standards also place severe use limitations on various nutritious ingredients. These limitations range from two percent (2%) for isolated soy protein to three and one-half percent (3.5%) for other ingredients used alone or in combination with each other. These limitations were imposed at a time when the standards were severely restrictive, and little consideration was afforded to the ingredients utility or beneficial factors. These limitations severely restrict the use of these ingredients and deprive both manufacturers and consumers the opportunity to fully explore and utilize the advantages they may contribute to products produced within this standard. Petitioner requests that the restrictive use limitations presently imposed upon valuable alternate proteins and other so-called "binders" sources be removed to allow the industry the ability to utilize their technological benefits, and consumers the opportunity to obtain a wholesome product with, in some cases, potential fat reductions significantly greater than those suggested by FSIS in its March 10 rule.

Removal or relaxation of the present use limitations for a quality protein, such as isolated soy protein, from the present allowable two percent (2%) to just three and one-half percent (3.5%), permits manufacturers to economically produce nutritional products, with truly "significant" fat reductions, fifty percent (50%) (fifteen percent (15%) fat) when compared to the present standard sausage. In addition, a "lite" sausage prepared under the revised standard using three and one-half percent (3.5%) higher protein, and more than twenty percent (20%) less cholesterol than the "lite" produced and prepared by replacing fat with water.

Without removal of prohibitive use limitations, manufacturers will be unable to totally utilize the multi-benefits of many ingredient sources presently available without incurring marketing penalties they and the previously discussed labeling restrictions often generate. Additionally, consumers, the ultimate beneficiaries, will continue to be deprived of the chance to obtain valuable, alternative standard products.

On August 18, 1987, FSIS proposed a rule governing "Ingredients That may Be Identified as Flavors or Natural Flavors When Used in Meat or Poultry Products" (52 FR 30922). The proposal, which is presently under FSIS review for final implementation," * * * addresses the use of substances which are often added to products [including those regulated under 9 CFR 319.180–181] for the purpose of serving as flavor enhancers, emulsifiers, stabilizers, binders, extenders and as nutrients * * *". The proposal requires that these substances, when used in meat or poultry products, be identified on the products ingredient statement only, by their common or usual names, and imposes *no* use limitations. Petitioner requests nothing more than equal treatment for its products and others similarly regulated under Sections 319.180(e) and 181 of the regulations.

III. Proposed Amendments

Section 319.180(e) of the regulations is amended to read as follows:

(e) One or more of the following ingredients may, individually or collectively, be used in cooked sausage otherwise complying with paragraph (a) or (b) of this section: Dried milk, calcium reduced dried skim milk, enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate, nonfat dry milk, dry or dried whey, reduced lactose whey, reduced minerals whey, whey protein concentrate, cereal, vegetable starch, starchy vegetable flour, soy flour, soy protein concentrate and isolated soy protein.

Section 319.181 of the regulations is amended to read as follows:

"Cheesefurters" and similar products are products in casing which resemble frankfurters except that they contain sufficient cheese to give definite characteristics to the finished article. They may contain cereal, vegetable starch, starchy vegetable flour, soy flour, soy protein concentrate, isolated soy protein, nonfat dry milk, dry or dried whey, reduced lactose whey, reduced minerals whey, whey protein concentrate, calcium reduced dried skim milk, enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate, or dried milk. These products shall contain no more than forty percent (40%) of a combination of fat and water added, and no more than thirty percent (30%) fat.

Section 317.8(b)(16) of the regulations is deleted.

IV. Conclusion

The requested should be granted. The requests involve no issues of public health or safety and are consistent with the Department's policies regarding truthful and non-deceptive labeling. Furthermore, the relief requested herein is consistent with present and proposed FSIS policies.

Respectfully submitted,

Protein Technologies International (Petitioner).

By _____

Marshall Marcus,

Director, Regulatory and Trade Affairs.

Amendment to Citizen's Petition Submitted by Protein Technologies International on May 17, 1988

Pursuant to Section 7(c) of the Federal Meat Inspection Act, Petitioner requested that the Standards of Identity for Frankfurters, Cheesefurters, and Similar Products (9 CFR 319.180 and 319.181) along with certain provisions of the General Labeling Requirements be amended. Specifically, Petitioner requested that these regulations be amended to eliminate perjorative labeling requirements and restrictive use limitations required when certain

"binders" are formulated into standardized frankfurters and cooked sausages. In Sections I and II of its Petition, Protein Technologies International provided support for each element of its requested amendments and Section III of the Petition provided Proposed Amendments for the Department's consideration.

Subsequent to the May 17, 1988 filing of its original Petition, Petitioner has realized that several other standards found in the meat and poultry regulations contain labeling and use restrictions identical to those originally noted. These provisions require almost identical label qualifiers and use limitations for products containing certain "binders." The justification for the removal of these discriminatory restrictions is found in Sections I and II of Petitioner's May 17, 1988 request.

Therefore, Petitioner herein requests that Section III of its May 17, 1988 Petition be amended to include the following:

III. Proposed Amendments

Section 319.140 (Sausage) of the regulations is amended to read as follows:

Except as otherwise provided in this section, or under the Poultry Products Inspection Act with respect to products consisting partly of poultry, sausage is the coarse or finely comminuted meat food product prepared from one or more kinds of meat or meat and meat byproducts, containing various amounts of water as provided for elsewhere in this part, and usually seasoned with condimented proportions of condimental substances, and frequently cured. Certain sausage as provided for elsewhere in this part may contain binders and extenders; *e.g.*, cereal, vegetable starch, starchy vegetable flour, soy flour, soy protein concentrate, isolated soy protein, nonfat dry milk, dry or dried whey, reduced lactose whey, reduced minerals whey, whey protein concentrate, calcium reduced dried skim milk, enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate or dried milk. Sausage may not contain phosphates except that phosphates listed in Section 318.7(c)(4) of this subchapter may be used in cooked sausage. To facilitate chopping or mixing or to dissolve the usual curing ingredients, water or ice may be used in the preparation of sausage which is not cooked in an amount not to exceed three (3%) percent of the total ingredients in the formula. Cooked sausages such as Polish sausage, cotto salami, braunschweiger, liver sausage, and similar cooked sausage products may contain no more than ten (10%) percent of added water in the finished product. Sausage may contain Mechanical (sic) Separated (Species) used in accordance with Section 319.6.

Section 319.143 (Breakfast sausage) of the regulations is amended to read as follows:

"Breakfast Sausage" is sausage prepared with fresh and/or frozen meat; or fresh and/or frozen meat and meat byproducts, and may contain Mechanically Separated (Species) in accordance with Section 319.6, and may be seasoned with condimental substances as permitted in Part 318 of this subchapter. The finished product shall not contain more than fifty (50%) percent fat. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed three (3%) percent of the total ingredients used.

Section 319.281 (Bockwurst) of the regulations is amended to read as follows:

Section 319.281(a)(9):

(9) Cereal, bread, vegetable starch, starchy vegetable flour, soy flour, soy protein concentrate, dry or dried whey, reduced lactose whey, reduced minerals whey, whey protein concentrate, and isolated soy protein, provided such ingredients, individually or collectively.

Section 317.8(b)(33) of the regulations is deleted.

Section 381.159(a) (Poultry rolls) of the regulations is amended to read as follows:

Binding agents, including but not limited to gelatin and wheat gluten, may be added.

These requested revisions involve no issues of public health or safety and are consistent with FSIS labeling policies.

Respectfully submitted,

Protein Technologies International (Petitioner).

Marshall Marcus

Director, Regulatory and Trade Affairs.

FSIS is soliciting information and comments concerning the action requested by the petitioner, and in particular, answers to the following questions.

1. Would the labeling of meat and poultry food products containing any type of binders be false or misleading if the product's name did not include a qualifier disclosing the type of binder or the fact that binders had been added, but shows the presence of any binders in the ingredients statement?

2. Would the elimination of use limitations of certain binders, such as proposed by the petitioner, conflict with §§ 318.7(a)(2)(iii)(B) and 381.147(f)(2)(iii)(B) of the Federal meat and poultry products inspection regulations, respectively, which require that *new* substances be approved for use only at the lowest level necessary to achieve their intended technical effects?

3. Would use levels of binders in excess of those currently permitted by the regulations change the function of those ingredients such that they could no longer be considered as binders, but rather as meat or poultry product replacers?

4. Should an evaluation of the nutritional value of an ingredient be based solely on protein content and protein quality, or should FSIS consider a nutritional profile that also includes vitamins and minerals normally found in meat or poultry products in such comparisons?

The Department will carefully consider the comments and information on issues raised by the petition in deciding if further regulatory action should be proposed.

Done at Washington, DC, on: August 19, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-19213 Filed 8-23-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-19]

Proposed Control Zone Alteration; Flint, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the control zone area airspace near Flint, MI. The deletion of the VOR Runway 05/23 Standard Instrument Approach Procedure (SIAP) to Bishop Airport, Flint, MI, requires an alteration to the control zone. The intended effect of this action is to eliminate two extensions of the control zone and return that portion of controlled airspace back to a noncontrolled status.

DATES: Comments must be received on or before September 29, 1988.

ADDRESS: Send comments on the proposed in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation

Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AGL–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 1.171. of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone area airspace near Flint, MI.

The present control zone area is being modified due to the deletion of the VOR Runway 05/23 SIAP to Bishop Airport, Flint, MI. This modification will delete two extensions of the control zone. One to the northeast and one to the southwest and return that portion of airspace to a noncontrolled status.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule'" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Flint, MI [Revised]

Within a 5-mile radius of Flint, MI, Bishop Airport (lat. 42°57'58"N., long. 83°44'37"W.), and within 2 miles each side of the Flint VORTAC 075°, 187°, 280° and 351° radials extending from the 5-mile radius zone to 8 miles E, S, W, and N of the VORTAC.

Issued in Des Plaines, Illinois on August 10, 1988.

Teddy, W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88–19142 Filed 8–23–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–18]

Proposed Establishment of Transition Area, Monticello, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Monticello, IL, transition area to accommodate a new VOR–A Standard Instrument Approach Procedure (SIAP) to Monticello Aviation, Inc. Airport, Monticello, IL. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before September 29, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 88–AGL–18, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

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by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AGL–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Monticello, IL.

The development of a new VOR–A SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follow:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Monticello, IL [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Monticello Aviation, Inc. Airport, Monticello, IL (lat. 40°00′ 20″ N., long. 88°33′30″ W.).

Issued in Des Plaines, Illinois, on August 10, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88–19141 Filed 8–23–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Health Care Financing Administration

20 CFR Part 416

42 CFR Parts 435 and 436

What Is Not Income

AGENCIES: Social Security Administration, HHS, Health Care Financing Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The proposed rules revise the regulation as to what is considered not to be income under the Supplemental Security Income (SSI) program in the following instance. The proposed rule changes SSI policy to consider Veterans Administration (VA) payments resulting from unusual medical expenses not to be income for SSI purposes. Currently, VA payments resulting from unusual medical expenses are considered pension payments and, therefore, income for SSI purposes except in the Ninth Circuit where Acquiescence Ruling 86–1(9) applies. The proposed rules also revise the Medical Assistance Program (Medicaid) regulations to clarify that VA payments resulting from unusual medical expenses are income for Medicaid post-eligibility purposes although they may not be considered income for eligibility purposes.

DATE: To be sure that your comments are considered we must receive them no later than October 24, 1988.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, 3–B–3 Operations Building, 6401 Security Blvd., Baltimore, MD 21235, (301) 597–3409.

SUPPLEMENTARY INFORMATION: The proposed regulations affect the SSI program under title XVI of the Social Security Act (the Act), as amended. The purpose of the SSI program is to provide

a minimum income level for aged, blind, and disabled persons who do not have income or resources above levels specified in the Act. We are proposing to revise the regulations regarding what is considered not to be income.

The proposed regulations also affect the Medical Assistance Program (Medicaid) under title XIX of the Act. The purpose of the Medicaid program is to provide assistance to States for payments of Medical Assistance on behalf of cash assistance recipients and, in certain States, on behalf of other medically needy, who, except for income and resources, would be eligible for cash assistance. We are also proposing to revise the Medicaid regulations on post-eligibility to clarify how VA payments resulting from unusual medical payments are treated for post-eligibility purposes.

The VA considers veterans' unusual medical expenses by deducting them from any countable income when computing some needs-based pension and compensation payments. (Unusual medical expenses are unreimbursed medical expenditures that exceed 5 percent of the applicable maximum annual VA payment rate.) Unusual medical expenses may result in a higher monthly VA payment, an extra payment, or an increase in a payment. These VA payments are currently treated as pension payments and, under § 416.1121(a), as income for SSI purposes.

In the case of *Summy v. Schweiker*, 688. F.2d 1233 (1982), the Ninth Circuit Court of Appeals held that these additional VA payments represented reimbursement for medical expenses, and, therefore, were not income under § 416.1109(a). This section, which exempted third party reimbursement for medical expenses from income, was subsequently revised and now appears at § 416.1103(a). We are adding VA payments resulting from unusual medical expenses at § 416.1103(a)(7) to the list of medical care or services that are excluded from the definition of income. By doing this, we are recognizing that the nature of such payments is analogous to that of other forms of medical care or services that are currently not income under § 416.1103(a).

While the proposed regulatory change will generally benefit SSI recipients, it may result in reduced benefits or ineligibility for a small number of SSI recipients. Under section 1614(f) of the Act, the income and resources of spouses and parents who are not eligible for SSI are considered to the extent determined by the Secretary as the income and resources of their spouses and children who live with them and are eligible for SSI benefits. We do not count any of the income of an ineligible spouse or parent who receives payments from a needs-based public income maintenance program because to do so would defeat the purpose of such a program. Under current policy, VA payments resulting from unusual medical expenses are considered needs-based public income maintenance payments, and we do not count under SSI deeming rules any income of an ineligible spouse or parent which was counted or excluded in figuring these payments (see 20 CFR 416.1161(a)(2)). Under the proposed regulatory change, VA payments resulting from unusual medical expenses will be considered reimbursement for medical expenses and *not* pension payments. For an individual who receives only such payments, receipt of such payments will no longer preclude our counting as income to the SSI recipient part of the income of an ineligible spouse or parent used in computing such payment.

Example:

Jenny, a disabled child who is eligible for SSI benefits, lives with her father, Mr. Morton, who received both a VA pension based on need and a title II Social Security benefit. In determining how much income to deem, none of Mr. Morton's title II benefit was considered income deemable to Jenny because the VA had already counted Mr. Morton's title II benefit in figuring the amount of his VA pension payment. In January 1987, Mr. Morton reported an increase in his title II benefit to the VA and the amount of the increase precluded him from receiving further VA pension payments. Because no VA pension payment was being made, Mr. Morton's title II benefit was deemable as income to Jenny, resulting in a reduction of her SSI payment. In December 1987, Mr. Morton filed an annual report with the VA reflecting both his title II income and evidence of his payment of unusual medical expenses. The VA recomputed his income for the period January 1987 through December 1987 based on the evidence of unusual medical expenses and issued him a one-time payment. Under current policy, we would recalculate Jenny's SSI payment for the period January 1987 through December 1987 in order not to deem to Jenny any of Mr. Morton's title II benefit used by the VA in determining a needs-based pension payment. However, under the proposed regulatory change, for deeming purposes, we would not recalculate Jenny's SSI benefit and would continue to consider Mr. Morton's title II benefit for the period January 1987 through December 1987 as income available to Jenny. The VA payment resulting from unusual medical expenses would no longer be considered a public income-maintenance payment so we would not exclude any income used in calculating it, but instead we would consider the payment reimbursement for medical expenses and not income.

The above description describes how we propose to apply the *Summy* decision nationwide under the SSI program. This change in the treatment of VA payments for unusual medical expenses will also affect how eligibility is determined under the Medicaid program under title XIX of the Act.

One of the principles inherent in the Medicaid statute is to apply the methodologies and treatment of income of the cash assistance programs such as SSI in determining eligibility under the Medicaid program. Thus, in defining income for Medicaid eligibility purposes the SSI treatment of VA payments for unusual medical expenses would be applied.

However, under the Medicaid program there is another determination subsequent to and separate from the eligibility process in which certain individuals (such as those in medical institutions) must apply certain amounts of their income toward the costs of medical care. This determination, referred to as the post-eligibility process, is peculiar to the Medicaid program and does not have a parallel under SSI. Under the post-eligibility process an individual's total available income, including amounts which are not counted in the eligibility process, is considered in reducing the Medicaid payments for the costs of medical care. Under the Medicaid post-eligibility process, the VA payments resulting from unusual medical expenses are counted as income and considered available to be applied to the costs of medical care. This is consistent with the purpose of the Medicaid program and its basic principle of being medical payor of last resort, and in that context considering all available resources before providing medical assistance. This is also consistent with existing Federal Medicaid policy for treatment of another VA payment related to aid and attendance. That is, VA aid and attendance payments though not counted in determining SSI and, thus, Medicaid eligibility, are counted in the Medicaid post-eligibility process under the Health Care Financing Administration's (HCFA's) interpretation of existing regulations.

We are therefore proposing revisions to the Medicaid regulations on post-eligibility in order to make certain that the Medicaid regulations clearly reflect its longstanding policy on treatment of these VA payments, i.e., that these VA

payments will continue to be considered income for post-eligibility purposes although they may not be considered income for Medicaid eligibility purposes.

The Medicaid program, as payor of last resort, may not reimburse for those medical expenses which are subject to reimbursement by a third party such as the VA. Additionally, under the Medicaid "medically needy" program an individual's incurred medical expenses are considered in determining the individual's Medicaid eligibility (referred to as the spenddown process). See Federal regulations at 42 CFR 435.831. However, where the incurred medical expenses are subject to payment by a third party, they may not be considered in determining Medicaid medically needy eligibility under the spenddown process. To the extent that the VA payments resulting from unusual medical expenses represent a third party payment, the medical expenses associated with the VA payment would not be reimbursable under Medicaid nor would they be applicable in the medically needy spenddown process.

Finally, under section 1902(f) of the Act, States have the option in determining Medicaid eligibility of aged, blind, and disabled individuals, of applying more restrictive provisions than used under the SSI program so long as those provisions are no more restrictive than the provisions contained in the State's January 1, 1972, Medicaid State plan. Thus, States choosing to cover individuals under section 1902(f) of the Act may still be permitted to count VA payments resulting from unusual medical expenses in determining Medicaid eligibility, so long as those States would have counted such income under their January 1, 1972, State plan.

Regulatory Procedures

Executive Order no. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

These regulations impose no additional reporting and recordkeeping requirement necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program; 13.714, Medical Assistance Program)

List of Subjects

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

42 Parts 435 and 436

Aid to families with Dependent children, Grant programs-health, Medicaid, Supplemental Security Income (SSI).

Dated: April 11, 1988.

Dorcas R. Hardy,

Commissioner of Social Security

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 23, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, HHS

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—Income

Part 416 of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; Sec. 211 of Pub. L. 93-66, 87 Stat. 154; Sec. 2639 of Pub. L. 98-369, 98 Stat. 1144.

2. In § 416.1103, a new paragraph (a)(7) is added to read as follows:

§ 416.1103 What is not income.

* * * * *

(a) * * *

(7) Payments from the Veterans Administration resulting from unusual medical expenses.

* * * * *

TITLE 42—PUBLIC HEALTH

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, HHS

Subchapter C—Medical Assistance Programs

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

Part 435 of title 42 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.725, paragraph (c) is revised to read as follows:

§ 435.725 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) *Required deductions.* In reducing its payment to the institution, the agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. For purposes of the post-eligibility process, income includes all amounts that are considered to be income for purposes of eligibility, whether counted or disregarded. It also includes payments made directly to the individual under a Federal, State, or local government program for medical or remedial care or social services, which are not considered to be income for purposes of eligibility, e.g., Veterans Administration payments for aid and attendance or resulting from unusual medical expenses.

* * * * *

3. In § 435.726, paragraph (c) is revised to read as follows:

§ 435.726 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver. Application of patient income to the cost of care.

* * * * *

(c) In reducing its payment for home and community-based services, the agency must deduct the following amounts, in the following order, from the individual's total income (including amounts disregarded in determining eligibility). For purposes of the post-eligibility process, income includes all amounts that are considered to be income for purposes of eligibility, whether counted or disregarded. It also

includes payments made directly to the individual under a Federal, State, or local government program for medical or remedial care or social services, which are not considered to be income for purposes of eligibility, e.g., Veterans Administration payments for aid and attendance or resulting from unusual medical expenses.

* * * * *

4. In § 435.733, paragraph (c) is revised to read as follows:

§ 435.733 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. For purposes of the post-eligibility process, income includes all amounts that are considered to be income for purposes of eligibility, whether counted or disregarded. It also includes payments made directly to the individual under a Federal, State, or local government program for medical or remedial care or social services, which are not considered to be income for purposes of eligibility, e.g., Veterans Administration payments for aid and attendance or resulting from unusual medical expenses.

* * * * *

5. In § 435.735, paragraph (c) is revised to read as follows:

§ 435.735 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver. Application of patient income to the cost of care.

* * * * *

(c) In reducing its payment for home and community-based services, the agency must deduct the following amounts, in the following order, from the individual's total income (including amounts disregarded in determining eligibility). For purposes of the post-eligibility process, income includes all amounts that are considered to be income for purposes of eligibility, whether counted or disregarded. It also includes payments made directly to the individual under a Federal, State, or local government program for medical or remedial care or social services, which are not considered to be income for purposes of eligibility, e.g., Veterans Administration payments for aid and attendance or resulting from unusual medical expenses.

* * * * *

6. In § 435.832, paragraph (c) is revised to read as follows:

§ 435.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) *Required deductions.* The agency must deduct the folllowing amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. For purposes of the post-eligibility process, income includes all amounts that are considered to be income for purposes of eligibility, whether counted or disregarded. It also includes payments made directly to the individual under a Federal, State, or local government program for medical or remedial care or social services, which are not considered to be income for purposes of eligibility, e.g., Veterans Administration payments for aid and attendance or resulting from unusual medical expenses.

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

Part 436 of title 42 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act [42 U.S.C. 1302].

2. In § 436.832, paragraph (c) is revised to read as follows:

§ 436.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income as determined under paragraph (e) of this section. For purposes of the post-eligibility process, income includes all amounts that are considered to be income for purposes of eligibility, whether counted or disregarded. It also includes payments made directly to the individual under a Federal, State, or local government program for medical or remedial care or social services, which are not considered to be income for purposes of eligibility, e.g., Veterans Administration payments for aid and attendance or resulting from unusual medical expenses.

* * * * *

[FR Doc. 88-19156 Filed 8-23-88; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

(Notice No. 669)

Labels for Export Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed ruelmaking.

SUMMARY: ATF is proposing to amend the regulations in 27 CFR 19.395 to give the Director, ATF, the authority to waive all or any part of the information (net contents, alcohol content, name or trade name of the bottler, and kind) required to appear on labels for spirits bottled for export. Currently, the Director has the authority to waive such information (except for the "kind" of spirits). This proposal would enable distilled spirits products intended for exportation to be bottled in this country at less than the minimum bottling proofs established by regulation (27 CFR 5.22) without the necessity that the labels for such products bear the word "diluted." This proposal has no effect on the labeling of distilled spirits products intended for distribution in the United States.

DATE: Written comments must be received on or before October 24, 1988.

ADDRESS: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 Attn: Notice No. 669.

FOR FURTHER INFORMATION CONTACT: Robert Petrangelo or Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

Background

ATF has received a petition, dated April 12, 1988, filed by Delta Consultants, Inc., Washington, DC. The petition requests that ATF revise the provisions of § 19.395 so that the Director, ATF, would have the authority to waive *all* information normally required to appear on labels for export spirits.

Currently, § 19.395 provides as follows:

"All bottles containing spirits bottled for export shall have securely affixed thereto a label showing the following:

(a) Kind of spirits;

(b) Proof or percent-alcohol-by-volume of the spirits;

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(c) Net contents, unless the markings on the bottle indicate such contents; and

(d) The name (or, if desired, the trade name) of the bottler.

The bottler may place on the label any additional information that he may desire if it is not inconsistent with the required information. The label information may be stated in the language of the country to which the spirits are to be exported provided the proprietor maintains on file an English translation of the information. The net contents and proof may be stated in the units of measurement of the foreign country provided the proprietor maintains a record of the equivalent units as they would be required to be expressed if bottled for domestic consumption. The Director may waive the requirement of showing any of the information required by this section, other than the kind of spirits, upon a showing that the country to which the spirits are to be exported prohibits the showing of such information." § 19.11 provides the "kind of spirits" means the class and type of spirits as prescribed in 27 CFR Part 5. § 5.22 establishes standard of identity requirements for various kinds of distilled spirits products and includes in such standards the requirement that certain types of products (brandy, rum, gin, vodka, whisky, etc.) be bottled at not less than 80 proof. ATF Ruling 75–32, 1975 ATF C.B. 32, provides that if such products are bottled at less than the minimum bottling proof, the products must bear a label showing the word "diluted". The word "diluted" is considered to be part of the required class and type designation (the "kind" of spirits).

This proposal, if adopted, would authorize exportation of distilled spirits products such as vodka, rum, gin, whisky and brandy at less than the 80 proof required under the applicable standard of identity without placing the word "diluted" on the labels for the export products. The petitioner maintains that the word "diluted" is believed to be repugnant to consumers and results in rejection of the product in foreign markets.

The petitioner claims that in many countries there is a substantial consumer preference for lower proof spirits products, and this preference is recognized through lower minimum bottling proofs for particular kinds of spirits products. They further claim that in order to be competitive in these markets, American producers must now export their spirits in bulk so that the products may be bottled below United States minimum proofs without the necessity to include the word "diluted" on the label. This type of export operations results in loss of American jobs, decreased use of domestic products and raw materials, and deterioration in the balance of trade.

Discussion

ATF invites comments on any aspect of this proposal; however, we specifically invite your comments on the following issues:

1. Will lower proof products bearing a standard of identity which requires higher proof if bottled for domestic consumption adequately represent American products overseas?

2. Will American statements of age and origin be as meaningful as they are now?

3. Will the maintenance of two bottling proof standards (one domestic, one foreign) damage or adversely influence the distinctive product status of bourbon abroad?

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Participation

ATF request comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice, the petition, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The authors of this document are Robert Petrangelo and Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine Authority and Issuance.

PART 19—DISTILLED SPIRITS PLANTS IS AMENDED AS FOLLOWS:

Paragraph 1. The authority citation for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066,

5101, 5111–5113, 5171–5173, 5175, 5178, 5178–5181, 5201–5204, 5208–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5238, 5241–5248, 5271–5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5881, 5912, 5682, 6001, 6085, 6180, 6202, 6311, 6678, 7510, 7805; 31 U.S.C. 9701, 9708, 9704, 9708.

§ 19.395 [Amended]

Par. 2. Section 19.395 is amended by adding the following new last sentence to the undesignated paragraph following paragraph (d) to read as follows:

* * * * *

(d) * * * With respect to kind of spirits, the Director may waive the designation required by 27 CFR 5.22, if the proposed designation is in accordance with the rules of the countries to which such product is to be exported.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended 1394, as amended (26 U.S.C. 5201, 5301))

Signed: July 17, 1988.

Stephen E. Higgins,

Director.

Approved: August 2, 1988.

Salvatore R. Martoche,

Acting Assistant Secretary, (Enforcement).

[FR Doc. 88–19153 Filed 8–23–88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 25, and 75

Multiple-Shot Blasting Units, Ventilation Safety Standards for Underground Coal Mines; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rules; extension of comment periods..

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rules for ventilation for underground coal mines in 30 CFR Part 75, and multiple-shot blasting units in 30 CFR Parts 15 and 25 in response to requests from the mining community.

DATES: Written comments on the proposed rule for ventilation in underground coal mines must be received on or before September 2, 1988, and written comments on the proposed rule for multiple-short blasting units must be received on or before September 9, 1988.

ADDRESS: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published in the **Federal Register** (53 FR 2382) a proposed rule to revise existing ventilation standards for underground coal mines. On May 12, 1988, MSHA published in the **Federal Register** (53 FR 16872) a Notice of Public Hearings which stated that the record would remain open until July 22, 1988, for the submission of post-hearing comments. However, in response to requests from the mining community at the public hearings, MSHA extended the comment period to August 18, 1988. Due to further requests from the mining community, MSHA is extending the comment period to September 2, 1988. All interested parties are encouraged to submit their comments prior to that date.

On June 22, 1988, MSHA published in the **Federal Register** (53 FR 23506) a proposed rule which would implement new procedures for testing and approval of multiple-short blasting units used in underground coal mines and in certain metal and nonmetal mines. Due to requests from the mining community, MSHA is extending the comment period for the proposed rule to September 9, 1988. All interested parties are encouraged to submit comments prior to that date.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Date: August 19, 1988.

[FR Doc. 88–19199 Filed 8–23–88; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300191; FRL-3432-9]

Biologically Processed Animal Waste Material

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that biologically processed animal waste material be exempted from the requirement of a tolerance when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Leede Products, Inc.

DATE: Written comments, identified by the document control number [OPP-300191], must be received on or before September 23, 1988.

ADDRESS: By mail, submit comments to:

Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to:

Registration Support and Emergency Response Branch, Registration Division (TS–767C), Environmental Proteciton Agency, Rm. 716, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7700.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Kerry B. Leifer, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7700.

SUPPLEMENTARY INFORAMTION: At the request of Leede Products, Inc., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for biologically processed animal waste material when used as a carrier in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as

carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Biologically processed animal waste material.

Name and address of requestor. Leede Products, Inc., P.O. Box 368, London, OH 43140.

Bases for approval of biologically processed animal waste material. 1. Biologically processed animal waste material is considered by EPA to be a "minimal risk" inert ingredient; it is essentially an organic humus builder-like material.

2. Analysis of the biologically processed waste material (produced by the thermophilic digestion of poultry or cattle manure) indicate acceptable levels of heavy metal and pathogenic microorganism (*E. Coli* and *Salmonella*) contamination.

3. Bilogically processed animal materials are cleared for feed uses by various state regulatory agencies.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation. Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendments to 40 CFR Part 180 will protect the public health. It is therefore proposed that the regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that contains this inert ingredient may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP–300191]. All written comments filed in response to this proposal will be available for inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator had determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 12, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
• • • • •	• •	
Biologically processed animal waste material (produced by the thermophilic digestion of cattle and poultry manure).	*E. Coli* and *Salmonella* free; heavy metal content not to exceed the following	Carrier.

Metal	Concentration (ppm)
As	2.5
Cd	2.0
Cu	14
Cd	17
Hg	0.1
Se	0.2

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assessments and related ATSDR health effects studies. When finalized, this regulation will expand upon and replace an earlier ATSDR policy statement "Interim Procedures for Requesting Health Assessments" which was published in 52 FR 45,018 (November 24, 1987).

The proposed regulation specifically defines "health assessment" and "health effects study." A "health assessment" is the evaluation of data and information on the release of hazardous substances into the environment in order to: assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. A health assessment often relies, in whole or in part, upon data provided to ATSDR by EPA, although other parties will be permitted to submit relevant data to ATSDR for consideration. Under some circumstances when complete environmental or other data are lacking or are incomplete, ATSDR may determine that it will be necessary to conduct further health assessment for a site or facility as the data become available.

A major purpose of a health assessment is to determine the need for health effects studies at a site to assess further any current or future risks to public health. A health assessment, therefore, can be viewed as the first formal level of ATSDR public health review at any site where there is a release of hazardous substances. The results of a health assessment are critical to any determination of a need to conduct further, more extensive health effects studies at a particular site. ATSDR health assessments will be based upon factors such as the nature, concentration, toxicity, and extent of contamination at a site, the existence of potential pathways for human exposure, the size and nature of the community likely to be exposed, and any other information available to ATSDR which is relevant to a determination of potential risks to public health.

Based upon the findings of a health assessment, ATSDR may determine it necessary to conduct more comprehensive health effects studies at a site. "Health effects studies" are research, investigations, or studies performed by ATSDR to evaluate health effects of hazardous substances at specific sites. Examples of health effects studies include epidemiological studies, disease and exposure registries, and health surveillance programs. Normally health effects studies will be largely based upon data gathered directly by ATSDR or its agents specifically for study purposes. ATSDR will, however, consider data submitted by other parties, such as EPA, State and local health departments, and private entities when conducting health assessments and any health effects studies.

ATSDR may issue a public health advisory based on the findings of a health assessment, health effects study or other ATSDR involvement. The public health advisory is a statement containing a finding that a release poses a significant risk to human health and recommending measures to be taken to reduce exposure and eliminate or substantially mitigate the significant risk to human health.

The proposed regulation establishes a procedure for interested persons to request that ATSDR conduct a health assessment at specific facilities and releases. ATSDR does not intend to adopt a restrictive interpretation of this statutory provision by limiting the type of entity which can make such a request. It is ATSDR's intention to consider all requests for health assessments on their merits. The proposal specifies the minimum information required to be contained in a request for a health assessment as well as indicating what other type of information would be useful to ATSDR in deciding whether to conduct a health assessment.

When otherwise not required to conduct a health assessment, ATSDR will conduct a health assessment when there is a reasonable basis for such an action. In making such a discretionary determination, ATSDR will consider factors such as whether individuals have been exposed to hazardous substances, the location, concentration, and toxicity of the hazardous substances, the potential for further human exposure, the recommendations of other governmental agencies, and other ATSDR priorities. While ATSDR is not required to conduct a health assessment in response to such requests, the proposed regulation reaffirms the agency's responsibility under CERCLA to provide a written explanation to the requestor if a health assessment is not conducted.

ATSDR intends to work closely with EPA and States in coordinating and conducting health assessments and related health effects studies. The proposed regulation, for instance, specifies that EPA and applicable State agencies will be notified of all requests for health assessments received from interested persons as well as the results of all ATSDR health effects studies. In most cases, much of the data relied upon by ATSDR in conducting health assessments will have been gathered by EPA through its preliminary assessments, site investigations, or remedial investigations. However, ATSDR recognizes that other parties, such as State and local government agencies, as well as private groups and individuals, may have pertinent information related to specific sites.

The proposed regulation states that ATSDR will notify specific parties, such as government agencies and certain private parties, of its intention to conduct a health assessment. For instance, ATSDR will routinely notify the owner or operator of a facility if that information is readily available. ATSDR does not intend to conduct extensive searches for owners or operators of facilities unless that information is available from such sources as EPA, State or local agencies, or site inspections. Accordingly, it is likely that in the case of an abandoned site, few if any private potentially responsible parties would be notified of ATSDR's intention to conduct a health assessment.

One purpose of the notification of various parties is to gather as much relevant information as possible concerning a site of concern. In situations where little or no data are available for a specific site which is to be the subject of a health assessment, ATSDR retains the right under the proposed regulation to arrange for sampling or other data gathering at a facility or release for the limited purpose of determining the existence of current or potential health problems.

The proposal specifies that the administrative record for an ATSDR health assessment and health effects study shall include, at a minimum, the final report of the assessment or study, nonconfidential data upon which the report is based, the protocol for the study, the list of external peer reviewers of the study, their comments, and ATSDR's response to the comments. The proposed regulation also permits ATSDR to include in its administrative record any other documents which are determined to be appropriate. These provisions are not intended to be a substitute for or conflict with administrative record requirements established by EPA for specific Superfund sites. EPA retains the authority to establish its own

administrative records, although it is likely that EPA will include ATSDR's administrative record for its health assessments and health effects studies in the EPA administrative record for specific sites. In addition, interested parties may comment directly to EPA concerning ATSDR health assessments and health effects studies. EPA may, at its discretion, include these comments in its administrative record for each specific site.

In amending CERCLA, SARA makes it clear that the costs of ATSDR health assessments and health effects studies are response costs which are recoverable from responsible parties. The proposed regulation specifies that ATSDR will compile documentation to support cost recovery actions for its studies. Where appropriate, this documentation will be forwarded to the appropriate EPA regional office for cost recovery purposes.

Paperwork Reduction Act:

The information collection requirements contained in this notice of proposed rulemaking have been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980 and assigned a control number as follows: section 90.4—OMB control number 0920–0204.

Cost Regulatory Analysis:

The Secretary has determined, in accordance with Executive Order 12291, that this rule will not constitute a "major" rule and therefore is not subject to the regulatory impact analysis requirements of the Order. Major rules are those which impose a cost on the economy of $100 million or more a year and have certain other economic impacts.

This rule will not have a significant impact on small businesses; therefore, preparation of a regulatory flexibility analysis is not required.

List of Subjects in 42 CFR Part 90

Hazardous substances, Public health.

For the reasons stated in the preamble, Subchapter H, consisting of Part 90, is proposed to be added, as set forth below, to Title 42 of the Code of Federal Regulations.

Dated: May 10, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 4, 1988.

Otis R. Bowen,

Secretary.

SUBCHAPTER H—HEALTH ASSESSMENTS AND HEALTH EFFECTS STUDIES OF HAZARDOUS SUBSTANCES RELEASES AND FACILITIES

PART 90—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Secs.

90.1 Purpose and applicability.
90.2 Definitions.
90.3 Procedures for requesting health assessments.
90.4 Contents of requests for health assessments.
90.5 Acting on requests.
90.6 Notification of determination to conduct a health assessment in response to a request from the public.
90.7 Conduct of health assessments and health effects studies.
90.8 Public health advisory.
90.9 Notice and commment period.
90.10 Reporting of results of health assessments and health effects studies.
90.11 Confidentiality of information.
90.12 Administrative record.
90.13 Documentation and cost recovery.

Authority: 42 U.S.C. 9615; 42 U.S.C. 6939a(c).

§ 90.1 Purpose and applicability.

The provisions of this part set forth the policies and procedures of the Agency for Toxic Substances and Disease Registry (ATSDR) with repect to its conduct of health assessments and health effects studies under section 104(i) of the Comprehensive Environmental Response, Compenstation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, and section 3019 of the Resource Conservation and Recovery Act. These provisions apply to ATSDR, as well as its contractors and agents, such as other Federal agencies and States carrying out health assessments or health effects studies pursuant to agreements with ATSDR.

§ 90.2 Definitions.

"Administrator" means the Administrator of the Agency for toxic Substances and Disease Registry or designee.

"ATSDR" means the Agency for Toxic Substances and Disease Registry, Public Health Service, U.S. Department of Health and Human Services.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*, Pub. L. No. 96–520), as amended by the superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99–499).

"EPA" means the U.S. Environmental Protection Agency.

"Facility" is defined in 42 U.S.C. 9601(9).

"Hazardous substance" is defined in 42 U.S.C. 9601(14). In addition, the Administrator, pursuant to 42 U.S.C. 9604(i)(16), in carrying out his or her responsibilities under CERCLA, may treat a pollutant or contaminant as a hazardous substance.

"Health assessment" means the evaluation of data and information on the release of hazardous substances into the environment in order to: Assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects.

"Health effects study" means reseach, investigaiton, or study performed by ATSDR to evaluate health effects of hazardous substances at specific sites. This term includes, but is not limited to, epidemiological studies, exposure and disease registries, and health surveillance programs. This term does not include health assessments.

"Owner or operator" is defined in 42 U.S.C. 9601(20).

"Peer review" means review for scientific quality by a panel consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected by the administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commerical entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

"Pollutant or contaminant" is defined in 42 U.S.C. 9601(33).

"Public health advisory" is a statement by ATSDR containing a finding that a release poses a significant risk to human health and recommending measures to be taken to reduce exposure and eliminate or substantially mitigate the significant risk to human health.

"Release" is defined in 42 U.S.C. 9601(22).

§ 90.3 Procedures for requesting health assessments.

(a) ATSDR will accept requests to perform health assessments for a

particular facility or release from any person or group of persons.

(b) All requests to ATSDR to perform health assessments should be addressed to: Associate Administrator, Agency for Toxic Substances and Disease Registry, Chamblee, Building 27, 1600 Clifton Road, N.E., Atlanta, GA 30333.

§ 90.4 Contents of requests for health assessments.

(a) Each request for a health assessment shall contain:

(1) The name, address (including zip code), and telephone number of the requestor;

(2) The organization or group the requestor represents, if any;

(3) The name, location, and description of the facility or release of concern;

(4) A statement providing information that individuals have been exposed to a hazardous substance and that the probable source is a release;

(5) A statement requesting ATSDR to perform a health assessment.

(b) In his or her discretion, the Administrator may decide not to require the preceding information be submitted with a request for a health assessment.

(c) Each request for a health assessment should include, where possible:

(1) Any other information pertaining to the facility or release, such as the nature and amount of the hazardous substances of concern;

(2) Potential pathways for human exposure, including a description of the media contaminated (e.g. soil, groundwater, air, etc.);

(3) The demographic nature and proximity of the potentially affected human population;

(4) Other Federal, State, or local governmental agencies which were notified or investigated the facility or release.

§ 90.5 Acting on requests.

(a) Upon receipt of a request for a health assessment submitted under this part, ATSDR will determine whether or not there is a reasonable basis to justify conducting a health assessment. ATSDR will base this determination on, among other factors:

(1) Whether individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release;

(2) The location, concentration, and toxicity of the hazardous substances;

(3) The potential for further human exposure;

(4) The recommendations of other governmental agencies;

(5) The ATSDR resources available and other ATSDR priorities, such as its responsibilities to conduct other health assessments and health effects sudies.

(b) Where appropriate, ATSDR will request information from other Federal, State, and local governmental agencies pertaining to a facility or release which is the subject of a request from an interested person to ATSDR to conduct a health assessment.

(c) The requestor will be notified in writing of ATSDR's determination that either a health assessment will be performed, a health assessment will not be performed, or that further information concerning the facility or release is required before a decision can be made whether a health assessment will be performed.

(d) If a health assessment is not initiated in response to a request from an interested person, ATSDR shall provide a written explanation to the requestor of why a health assessment is not appropriate.

§ 90.6 Notification of determination to conduct a health assessment in response to a request from the public.

(a) Following a determination by ATSDR to conduct a health assessment in response to a request from an interested person, ATSDR shall notify, at a minimum, the following parties of its intent to perform a health assessment.

(1) The U.S. Environmental Protection Agency;

(2) The appropriate State government environmental agency;

(3) The appropriate State and local health departments;

(4) The requestor;

(5) The owner or operator of the facility of concern, if that information is readily available to ATSDR;

(b) In its discretion, ATSDR may notify any other persons which it feels may be affected by the release or have information pertaining to the release.

§ 90.7 Conduct of health assessments and health effects studies.

(a) Any interested person or persons may submit data or information to ATSDR for it to consider in its conduct of a health assessment or a health effects study. In performing a health assessment or a health effects study, ATSDR will consider data and information it has independently generated or received from other parties, such as EPA, other Federal agencies, State and local governmental agencies, businesses, citizen organizations, and community groups.

(b) ATSDR may determine it is necessary to conduct a site visit in connection with a health assessment or health effects study. The ATSDR representative may allow the participation of any person in the site visit which he or she, in his or her discretion, determines will aid in the conduct of the health assessment or health effects study.

(c) In the event that the information necessary to perform a health assessment or health effects study is not readily available from other sources, ATSDR may arrange for sampling or additional data gathering at a facility or release for the limited purpose of determining the existence of current or potential health problems.

§ 90.8 Public health advisory.

ATSDR may issue a public health advisory based on the findings of a health assessment, health effects study, or other ATSDR involvement.

§ 90.9 Notice and comment period.

Following internal review by ATSDR and external peer review of a draft report of a health effects study, ATSDR will publish a notice that the draft report is available for public review and comment. At a minimum, the notice shall be published in at least one newspaper of general distribution in the locale where the study was conducted. The notice shall describe how copies of the draft report of the health effects study can be obtained and set a reasonable time period for interested persons to submit comments concerning the study. ATSDR may, in its discretion, respond in writing to comments it receives.

§ 90.10 Reporting of results of health assessments and health effects studies.

(a) ATSDR shall provide a report of the results of a health assessment or health effects study to EPA, the appropriate State and local governmental agencies, any person requesting ATSDR to conduct the study, and parties potentially responsible for the release, where known. In addition, such reports shall be available to the general public upon request.

(b) In the event that ATSDR or its representatives conduct medical examinations of individuals in the course of a health effects study and the examination reveals a positive significant medical finding, the individual, and a physician if designated by the individual, will be promptly notified of that significant medical finding of ATSDR.

(c) A summary of the findings of all medical examinations for each

individual will be sent by ATSDR to that individual.

(d) All studies and results of research conducted under this part (other than health assessments) shall be reported or adopted only after appropriate peer review.

§ 90.11 Confidentiality of information.

(a) ATSDR shall consider any medical information in individually identifiable form to be confidential information and shall release such information only in accordance with the Privacy Act (5 U.S.C. 552a) or other applicable Federal law.

(b) As provided under section 104(e)(7) of CERCLA, any records, reports, or information obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to ATSDR by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which any officer, employee, or representative of ATSDR has access under this part if made public would divulge information entitled to protection under the Trade Secrets Act (18 U.S.C. 1905), such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out statutorily mandated duties.

(c) In submitting data to ATSDR, a person may designate the data which such person believes is entitled to protection under this section and submit such designated data separately from other data submitted under this part. A designation under this paragraph shall be made in writing to the Administrator. However, should ATSDR at any time question such designation, not less than 15 days notice to the person submitting the information shall be given of the intention to remove such trade secret designation from such information. The person may submit a request to the Administrator to reconsider this intention and may provide additional information in support of the trade secret designation. The Administrator shall notify the person in writing of the decision which will become effective no sooner than 15 days after the date of such notice.

§ 90.12 Administrative record.

(a) ATSDR shall maintain an administrative record of all health assessments and health effects studies. The Administrator shall, in his or her discretion, determine the contents of the administrative record. At a minimum, the administrative record shall include:

(1) The final ATSDR report of the health assessment or health effects study;

(2) Nonconfidential data and other information upon which that report is based or which was considered by ATSDR;

(3) Nonconfidential data or other information submitted by interested persons pertaining to the health assessment or health effects study;

(4) The protocol for the health effects study;

(5) A list of the individuals responsible for external peer review of the report of a health effects study, their comments, and ATSDR's response to the comments.

(6) For health effects study, the notice announcing the availability of a draft report for public review and comment, all comments received in response to the notice, and any responses to the comments by ATSDR.

(b) The administrative record may contain a confidential portion which shall include all information determined to be confidential by the Administrator under this part.

(c) The Administrator may determine other documents are appropriate for inclusion in the administrative record for health assessments or health effects studies.

(d) Predecisional documents, including draft documents, are not documents upon which ATSDR bases its conclusions in health assessments or health effects studies, and are not usually included in the administrative record.

(e) The administrative record for ATSDR health assessments and health effects studies will be available for review, upon prior request, at ATSDR headquarters in Atlanta, Georgia.

§ 90.13 Documentation and cost recovery.

(a) During all phases of ATSDR health assessments and health effects studies, documentation shall be completed and maintained to form the basis for cost recovery, as specified in section 107 of CERCLA.

(b) Where appropriate, the information and reports compiled by ATSDR pertaining to costs shall be forwarded to the appropriate EPA regional office for cost recovery purposes.

[FR Doc. 88-19154 Filed 8-23-88; 8:45 am]
BILLING CODE 4160-70-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket PS-102, Notice 3]

Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquid Pipeline Operations

AGENCY: Office of Pipeline Safety (OPS), RSPA.

ACTION: Notice of public hearing.

SUMMARY: This notice announces a second public hearing on proposed rules concerning the use of prohibited drugs by persons engaged in sensitive safety and security-related functions involving pipeline facilities. The purpose of this hearing is to receive oral statements from interested persons who did not participate in the August 17, 1988, hearing.

DATES: This public hearing will be held from 1:00 p.m. to 5:00 p.m., September 6, 1988. Persons should give notice of their intent to make oral statements by September 1, 1988.

ADDRESS: This public hearing will be held at the Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC in Room 3442-3446.

FOR FURTHER INFORMATION CONTACT: Requests to make a statement should be directed to Linda Craver, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1640. Questions concerning the subject matter of the notice should be directed to Cesar De Leon using the same address and telephone number.

SUPPLEMENTARY INFORMATION: RSPA recently published a notice of proposed rulemaking regarding the use of prohibited drugs by persons who perform sensitive safety and security-related functions involving gas, liquefied natural gas, or hazardous liquid pipeline facilities that are subject to the safety standards in 49 CFR Part 192, Part 193, or Part 195 (53 FR 25892, July 8, 1988). The proposed rules would apply to operators of these pipeline facilities (other than operators of master meter systems).

Under the proposed rules, each operator would have to establish and conduct a written drug testing plan covering its own employees and those of contractors. Testing would be conducted

prior to employment, after an accident, randomly, and based on reasonable cause. Operators also would be required to have an Employee Assistance Program to provide education and training about drugs.

RSPA held a public hearing at the Dallas/Fort Worth Airport Marriott Hotel in Irving, Texas on August 17, 1988. The Notice of that public hearing was published in the **Federal Register** on July 14, 1988 (53 FR 26615).

RSPA received many valuable oral statements at that hearing, and believes that a second public hearing is warranted so that others might speak who did not participate in the August 17 hearing. A copy of the transcript of that hearing will be placed in the docket on or about September 1, 1988. The transcript will be available for review in Room 8428, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The procedures announced for the August 17 hearing will generally apply to this second hearing. The hearing will be chaired by the Administrator of RSPA, and Co-chaired by the Director of OPS. The hearing will be open to the public subject to the space available. The hearing will be informal, not a judicial or evidentiary type of hearing. Participants will not be permitted to cross examine persons presenting oral statements, although the hearing officer or RSPA staff may ask clarifying questions.

Interested persons will have an opportunity to present oral statements. Because of the time limitation, preference in speaking will be provided to those who did not participate in the August 17 hearing. The time allowed for statements will be at the discretion of the hearing officer, and a speakers roster will be available at the hearing room. After initial oral statements have been presented, those who wish to make rebuttal statements may, if time permits, be given an opportunity to do so in the same order in which the initial statements were made. The hearing will be recorded by a court reporter. A transcript of the hearing will be included in the docket as part of the record of this rulemaking proceeding. Persons who wish to purchase a copy of the transcript should contact the court reporter directly. Further procedures for conducting the hearing will be announced by the hearing officer at the beginning of the hearing.

Persons who wish to make oral statements at the hearing should notify the person whose name appears above under "FOR FURTHER INFORMATION CONTACT" not later than September 1, 1988. Late requests will be accepted only if the statements can be made during the allotted hearing time. Please give your name and the organization you represent, if any. Indicate the amount of time that is requested for your initial oral statement. Requests for more than 15 minutes of initial speaking time must be justified. Requests for special display equipment will not be granted.

Persons who wish to submit written statements in addition to their oral presentation may do so at the hearing. At least twenty-five copies should be available for distribution. Persons who wish to submit written statements without participating in the hearing may do so by sending them in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Such submissions must be received before the close of the period for public comment on the proposed rules, September 6, 1988.

Authority: 49 App. U.S.C. 1672, 1804, and 2202; 49 CFR 1.53.

Issued in Washington, DC, on August 19, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88-19182 Filed 8-23-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Gulf of Mexico Fishery Management Council (Council) has resubmitted Amendment 4 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce (Secretary). Comments are invited from the public on the amendment and other related documents.

DATE: Comments will be accepted until September 19, 1988.

ADDRESSES: Send comments to Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of Amendment 4, the environmental assessment, and the supplemental regulatory impact review are available from the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen (Plan Coordinator), 813-893-3722.

SUPPLEMENTARY INFORMATION: Amendment 4 to the FMP was prepared under the Magnuson Fishery Conservation and Management Act, which requires the Secretary, upon receiving an FMP or amendment, to publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining the approvability of this amendment.

Amendment 4 identifies additional problems that have developed in the fishery and revises the objectives of the FMP accordingly. The annual review process for the Tortugas sanctuary is simplified, and the Council and the Director, Southeast Region, NMFS, review deadline for the Texas closure is exended to February 1. White shrimp taken in the EEZ are to be landed in accordance with a State's size possession regulations to provide consistency and facility of enforcement with the State of Louisiana. This latter action is to be implemented at such time that Louisiana provides for an incidental catch of undersized white shrimp in the fishery for seabobs. The habitat section of the FMP is also updated. Proposed regulations for this amendment will be published within 10 days.

NOAA published a notice of availability on December 15, 1987 (52 FR 47615) outlining the purpose of Amendment 4 and inviting the public to comment. The Secretary returned Amendment 4 to the Council, however, because the socioeconomic analysis of the proposed measures was inadequate. NOAA published a notice (53 FR 266, January 5, 1988) withdrawing Amendment 4 and inviting the public to send comments to the Council while the amendment was being revised.

(16 U.S.C. 1801 *et seq.*)

Dated: August 19, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-19157 Filed 8-19-88; 1:26 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 164
Wednesday, August 24, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 19, 1988.

The Department of Agriculture has submitted to OMB or review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• Farmers Home Administration
Form FmHA 1962–1, Agreement for the Use of Proceeds/Release of Chattel Security
FmHA 1962–1
On occasion
Individuals or households; Farms; 130,000 responses; 42,900 hours
Jack Holston 202–382–9736

• Farmers Home Administration
7 CFR 1951–A, Account Servicing Policies
On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 130 responses; 33 hours
Jack Holston 202–382–9736

• Agricultural Marketing Service
Valencia Organges Grown in Arizona and Designated Part of California, Marketing Order No. 908
Recordkeeping; On occasion; Weekly; Annually
Farms; Businesses or other for-profit; 134,766 responses; 17,998 hours
Virginia M. Olson, (202) 447–5057

New Collection

• Farmers Home Administration
7 CFR 1951–S, Farmer Program Account Servicing Policies
FmHA 1951–39, 1951–39A
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 338,533 responses; 150,082 hours
Jack Holston 202–382–9736

Extension

• Agricultural Cooperative Service
Annual Survey of Farmer Cooperatives and Questionnaire to Identify Farmer Cooperatives
ACS–13, ACS–14A, B, C
Annually; Other: once per cooperative
Businesses or other for-profit; Small businesses or organizations; 5,150 responses; 1,455 hours
Ralph M. Richardson, 202–653–7096.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 88–19212 Filed 8–23–88; 8:45 am]
BILLING CODE 3410–01–M

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Council meeting:

Date and Time: September 14–16, 1988, 9:00 a.m.

Place: Lord Baltimore Radisson Hotel, Baltimore and Hanover Streets, Baltimore, Maryland 21201.

Purpose of Meeting: The Council will continue its study of the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

Agenda: The agenda items will include the following: formulation of recommendations for the Council's 1988 report to the President and Congress; and general program operations. Recommendations for the report will address administrative and legislative changes for the WIC and CSF Programs.

Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the Council before or after the meeting.

Persons wishing additional information about this meeting should contact Sondra Ralph, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. Telephone: (703) 756–3730.

Date: August 18, 1988.

Anna Kondratas,
Administrator.
[FR Doc. 88–79150 Filed 8–23–88; 8:45 am]
BILLING CODE 3410–30–M

Forest Service

Inyo National Forest; Meeting of the Mono Basin National Forest Scenic Area Advisory Board

The Mono Basin National Forest Scenic Area Advisory Board will meet at 9:00 am on September 21, 1988 at the Presbyterian Church in Lee Vining, California.

The agenda of the meeting will include:

1. Update on draft MBNFSA management plan and DEIS;
2. Update on visitor center design and status;
3. Update on minor boundary changes;
4. General business.

The meeting will be open to the public. Persons who wish to attend and make oral presentation should notify Dennis W. Martin, Forest Supervisor, Inyo National Forest, 873 N. Main Street, Bishop, California, 93514, Telephone: (619) 873–5841. Written statements may be filed with the Committee before or after the meeting.

The Committee has established the following rules for public participation: After the Board has completed discussion of each topic, the public will be allowed time for questions or comment.

Date: August 15, 1988.

Dennis W. Martin,

Forest Supervisor and Chairman.

[FR Doc. 88–19140 Filed 8–23–88; 8:45 am]

BILLING CODE 3410–11–M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms control and Disarmament.

Date: September 21, 1988.

Time: 8:30 am.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact: William C Golbitz, Executive Director, General Advisory Committee on Arms Control and Disarmament, Room 5927, Washington, DC 20451, (202) 647–5178.

Purpose of Advisory U.S. Committee: To advise the Director of the Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific arms control and related treaty issues; and Executive session will be held.

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated August 16, 1988, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 88–19161 Filed 8–23–88; 8:45 am]

BILLING CODE 8820–33–M

DEPARTMENT OF COMMERCE

Agency Information Collections Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following four proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.).

Agency. National Oceanic and Atmospheric Administration

Title: Logbook Family of Forms—Separate requests for the Southwest Region, Southeast Region, Northeast Region and Northwest/Alaskan Regions

Form Numbers: OMB—New numbers being requested—Formerly 0648–0016; NOAA—N/A

Type of Request: Request for approval of existing requirements

Burden: Southwest Region—17 respondents; 94 reporting hours; average hours per response—.04 hours. Southeast Region—1,430 respondents; 4,432 reporting hours; average hours per response—.06 hours. Northeast Region—1,524 respondents; 1,893 reporting hours; average hours per response—.084 hours. Northwest and Alaskan Regions—158 respondents; 1,260 reporting hours; average hours per response—.33 hours

Needs and Uses: Commercial fishermen in specified fisheries are required to submit logbooks documenting their catch, fishing effort, and asociated economic information. The data are used for stock assessments, regulatory analyses, and to monitor quotas.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion, weekly, monthly, or by trip

Respondent's Obligation: Mandatory

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3208, new Executive Office Building, Washington, DC 20503.

Dated: August 19, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organizations.

[FR Doc. 88–19151 Filed 8–23–88; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—Control Card.

Form Number: CPS–1, CPS–260, CPS–262.

Type of Request: Revision.

Burden: 16,500 hours.

Avg Hours Per Response: .026.

Needs and Uses: This survey contains questions for basic demographic descriptions of the survey population. These data are used for national and subnational estimates, and evaluation of other survey results.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 19, 1988.,

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–19201 Filed 8–23–88; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A-588-707]

Antidumping Duty Order; Granular Polytetrafluoroethylene Resin From Japan

ACTION: Notice.

SUMMARY: In separate investigations concerning granular polytetrafluoroethylene (PTFE) resin from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that granular PTFE resin from Japan is being sold at less than fair value and that sales of granular PTFE resin from Japan are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption, of granular PTFE resin from Japan made on or after April 20, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or Louis Apple, Office of Investigations, International Trade Administration, United States Deparment of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3464 or 377–1769.

SUPPLEMENTARY INFORMATION: The product covered by this order is granular polytetrafluoroethylene resin, filled and unfilled, which is provided for in *Tariff Schedules of the United States* (TSUS) item 445.54. The corresponding Harmonized System (HS) number is 3904.61.00. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this order.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act), on June 27, 1988, the Department made its final determination that granular PTFE resin from Japan is being sold at less than fair value (53 FR 25191, July 5, 1988). On August 16, 1988, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of granular PTFE resin from Japan. These antidumping duties will be assessed on all unliquidated entries of granular PTFE resin entered, or withdrawn from warehouse, for consumption on or after April 20, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (53 FR 12968).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Manufacturers/producers/exporters	Weighted-average margin (percent)
Daikin Industries, Inc.	103.00
Asahi Fluoropolymers, Inc.	51.45
All others	91.74

This notice constitutes an antidumping duty order with respect to granular PTFE resin from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

August 17, 1988.

[FR Doc. 88–19203 Filed 8–23–88; 8:45 am]

BILLING CODE 3510–DS–M

[A-351-801]

Initiation of Antidumping Duty Investigation: Steel Wheels From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of steel wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may detemine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 12, 1988. If that determination is affirmative, we will make preliminary determination on or before January 5, 1989.

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Laurie Lucksinger, Office of Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

The Petition

On July 29, 1988, we received a petition in proper form filed by Kelsey-Hayes Company on behalf of U.S. producers of steel wheels. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of finished steel wheels are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

The petitioner has alleged that it has standing to file the petition. Specifically, the petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation.

If any interested party as described under paragraph (C), (D), (E), or (F) of

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section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioner based U.S. price on price quotes for steel wheels delivered to original equipment manufacturers in the United States. Petitioner deducted foreign inland freight, foreign warehousing, ocean freight and insurance, U.S. duty, U.S. inland freight, U.S. warehousing, brokerage and handling charges, and inventory carrying cost.

Petitioner based foreign market value on price quotes for steel wheels delivered to original equipment manufacturers in the Brazilian domestic market. Petitioner deducted the value added tax (VAT) on steel wheels.

Based upon a comparison of United States price and foreign market value, petitioner alleges dumping margins of 73.67 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on steel wheels from Brazil and found that it meets the requirments of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of steel wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 5, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Pending adoption of this Harmonized System (HS), we will be providing both the appropriate *Tariff Schedules of the United States Anotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are steel wheels consisting of a disc and a rim either welded or riveted together, having a diameter not less than 13 inches nor greater than 16.5 inches, designed to be mounted with both tube type and tubeless pneumatic tires generally for use on passenger automobiles, light trucks and other vehicles, as currently provided for under *TSUSA* item number 692.3230 and currently classifiable under HS item number 8708.70.60.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Assistant Secretary of Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 12, 1988 whether there is a reasonable indication that imports of steel wheels from Brazil materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: August 17, 1988.

[FR Doc. 88-19204 Filed 8-23-88; 8:45 am]
BILLING CODE 3510-DS-M

[C-351-602]

Initiation of Countervailing Duty Investigation: Steel Wheels from Brazil

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of countervailing duty investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Brazil of steel wheels, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Brazil materially injure, or threaten material injury to, U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 12, 1988, and we will make our preliminary determination on or before October 24, 1988.

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Bernard Carreau, Office of Countervailing Compliance, Import Administration, Room B-099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2786 .

SUPPLEMENTARY INFORMATION:

The Petition

On July 29, 1988, we received a petition filed in proper form from the Kelsey-Hayes Company on behalf of the U.S. indusry producing steel wheels. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Brazil of steel wheels receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that such imports materially injure, or threaten material injury to, the U.S. industry producing a like product.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry.

The petitioner has alleged that it has standing to file the petition. Specifically, the petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains informatiion reasonably available to the petitioner supporting the allegations. We have examined the petiton on steel wheels from Brazil and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a counervailing duty investigation to determine whether manufacturers, producers, or exporters in Brazil of steel wheels, as described in the "Scope of Investigation" section of this notice subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before October 24, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Pending adoption of this Harmonized System (HS), we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are finished steel wheels currently provided for in item 692.3230 of the TSUSA and currently classifiable under HS item number 8708.70.60.

The merchandise covered by this investigation includes finished steel wheels consisting of a disc and a rim either welded or riveted together, having a diameter not less than 13 inches nor greater than 16.5 inches, designed to be mounted with pneumatic tires generally for use on passenger automobiles, light trucks and other vehicles.

Allegations of Subsidies

The petition lists a number of practices by the Government of Brazil which allegedly confer subsidies on manufacturers, producers or exporters in Brazil of steel wheels. We are initiating an investigation on the following alleged programs:

- *Benefits under the BEFIEX Program*
- *Import Duty and IPI Tax Exemptions under Decree-Law 1189*
- *Preferential Working-Capital Financing for Exports*
- *Income Tax Exemption for Export Earnings*
- *Export Financing under the CIC-CREGE 14-11 Circular*
- *Exemption of IPI Tax and Customs Duties on Imported Capital Equipment (CDI)*
- *Resolution 68 (FINEX) Financing*
- *Accelerated Depreciation for Brazilian-made Capital Goods*
- *Resolution 330 of the Bando do Brasil*

Although alleged by the petitioner, we are not investigating the following programs:

- *Benefits under IPI Export Credit Premium*—The Department has previously investigated the IPI export credit premium and found that this program was terminated effective May 1, 1985. See *Brass Sheet*. Because the petitioner has presented no evidence that this program has been reinstated, we are not initiating an investigation on this program.
- *Government Provision of Equity Capital*—The petitioner has provided no evidence of provision of equity capital by the Brazilian government to the producers or exporters of the product under investigation.
- *Upstream Subsidy*—The petitioner has not provided "reasonable grounds to believe or suspect" that a competitive benefit is being bestowed. Under the terms of section 771A(b)(1), a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of the countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

In order to determine whether a competitive benefit is bestowed, we must have the Brazilian market price of the alleged subsidized input to make an adequate price comparison to an unsubsidized price of the input. The petitioner has not provided the Department with a Brazilian market price for hot-rolled carbon sheet steel necessary to make this comparison. Therefore, we do not have sufficient information to determine whether a competitive benefit is bestowed on Brazilian producers of steel wheels. Moreover, the petitioner's allegation of below-cost sales of subsidized steel inputs does not, in and of itself, constitute a reasonable basis to believe or suspect that subsidies are being passed through. We will promptly reconsider this question on the basis of any additional information provided during the investigation.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 12, 1988, whether there is a reasonable indication that imports from Brazil materially injure, or threaten material injury to, a U.S. industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

August 18, 1988.

[FR Doc. 88-19205 Filed 8-23-88; 8:45 am]

BILLING CODE 3510-DS-M

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Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory committee will be held on Wednesday, September 14, 1988, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, and man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Burton (202) 377–3737.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–19202 Filed 8–23–88; 8.45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 70609–8139]

Approval of Federal Information Processing Standards Publication 146, Government Open Systems Interconnection Profile (GOSIP)

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 146. This standard supersedes FIPS PUB 98, Message Format for Computer-Based Message Systems, which is withdrawn.

SUMMARY: On October 28, 1987, notice was published in the **Federal Register** (52 FR 41488) that a Federal Information Processing Standard for GOSIP was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street Between Pennsylvania and Constitution Avenues NW, Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective February 15, 1989.

ADDRESS: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Gerard F. Mulvenna, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301) 975–3631.

Ernest Ambler,

Director.

Date: August 18, 1988.

Federal Information Processing Standards Publication 146

(Date): _____

Announcing the Standard for

Government Open Systems Interconnection Profile (GOSIP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

Name of Standard. Government Open Systems Interconnection Profile (GOSIP).

Category of Standard. Hardware and Software Standards, Computer Network Protocols.

Explanation. This Federal Information Processing Standard adopts the Government Open Systems Interconnection Profile (GOSIP). GOSIP defines a common set of data communication protocols which enable systems developed by different vendors to interoperate and enable the users of different applications on these systems to exchange information. These Open Systems Interconnection (OSI) protocols were developed by international standards organizations, primarily the International Organization for Standardization (ISO) and the Consultative Committee on International Telephone and Telegraph (CCITT). GOSIP is based on agreements reached by vendors and users of computer networks participating in the National Bureau of Standards (NBS) Workshop for Implementers of Open Systems Interconnection.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index.—a. NBS Special Publication 500–150, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 1, Edition 1, NBS Workshop for Implementers of Open Systems Interconnection, December 1987.

Related Documents. Related documents are listed in the Reference Section of the GOSIP document.

Objectives. The primary objectives of this standard are:

—to achieve interconnection and interoperatiblity of computers and systems that are acquired from different manufacturers in an open systems environment
—to reduce the costs of computer network systems by increasing alternative sources of supply
—to facilitate the use of advanced technology by the Federal government
—to stimulate the development of commercial products compatible with Open Systems Interconnection (OSI) standards

Specifications. GOSIP (affixed).

Applicability. GOSIP shall be used by Federal government agencies when acquiring computer network products and services and communications systems or services that provide equivalent functionality to the protocols defined in the GOSIP documents. Currently, GOSIP supports the Message Handling Systems and File Transfer, Access and Management applications. GOSIP also supports interconnection of the following network technologies: CCITT Recommendation X.25; Carrier Sense Multiple Access with Collision Detection (IEEE 802.3); Token Bus (IEEE 802.4); and Token Ring (IEEE 802.5). Additional applications and network technologies will be added to later versions of the GOSIP document.

Implementation. This standard is effective February 15, 1989. For a period of eighteen (18) months after the effective date, agencies are permitted to acquire alternative protocols which provide equivalent functionality to the GOSIP protocols. Agencies are encouraged to use this standard for solicitations and contracts for new network products and services to be acquired after the effective date. This standard is compulsory and binding for use in all solicitations and contracts for new network products and services to be acquired eighteen (18) months after the effective date. OSI protocols providing additional functionality will be added to GOSIP as implementation specifications for these protocols are developed by the NBS Workshop for Implementers of OSI. For a period of eighteen months after these new protocols are included in GOSIP, agencies are permitted to acquire alternative protocols which provide equivalent functionality. After the eighteen month period, the new protocols should be cited in solicitations and contracts when systems to be acquired provide equivalent functionality to the protocols defined in the GOSIP document.

For the indefinite future, agencies will be permitted to buy network products in addition to those specified in GOSIP and its successor documents. Such products may include other non-proprietary protocols, proprietary protocols, and features and options of OSI protocols which are not included in GOSIP.

The National Bureau of Standards is developing a program to accredit testing organizations for specific tests or types of tests for computer products and services. Information on these tests and test procedures will be made available in the future. Until the tests and test procedures are available, government agencies acquiring networks and services in accordance with this standard may wish to require testing for conformance, interoperation, and performance. The tests to be administered and the testing organization are at the discretion of the agency Acquisition Authority. Guidance on testing for GOSIP specifications is contained in section 2 of the GOSIP document.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Requests for waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, Institute for Computer Sciences and Technology, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Bureau of Standards, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

Special Information. The appendices to the GOSIP specification described advanced requirements for which adequate profiles have not yet been developed. Federal government priorities for meeting these requirements and the expected dates that work on these priorities will be completed are also provided. As these work items are addressed and completed by the NBS Workshop for Implementors of OSI, addenda will be inserted into the GOSIP document.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Services (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 146 (FIPSPUB146), and title. Specify microfiche if desired. Payment may be made by check, money order, or NTIS deposit accounts.

[FR Doc. 88–19149 Filed 8–23–88; 8:45 am]
BILLING CODE 3510–CN–M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Gilead Sciences having a place of business in Foster City, CA, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Inhibitors for Replication of Retroviruses and for the Expression of Oncogene Products" U.S. Patent Application No. 7–159,017. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/

487/4650 or by writing to Order Department NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-19137 Filed 8-23-88; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Pharmaceutical Corporation, having a place of business in Eatontown, New Jersey 07724, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application S.N. 7-140,269, "Pyrimidine and Purine 1,2-Butadiene-4-OLS as Anti-Retroviral Agents." Prior to any license grant by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487-4650 or by writing to NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-19178 Filed 8-23-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

SDI Technology Applications Information System Data Base

AGENCY: Strategic Defense Initiative Organization Office of Technology Applications, DOD.

ACTION: Notice.

SUMMARY: The Strategic Defense Initiative Organization, Office of Technology Applications (SDIO/T/TA) has developed the Technology Applications Information System (TAIS) to identify emerging Strategic Defense Initaitive technologies with spinoff potential. The technological innovations available for review by researchers and developers in the Department of Defense (DoD), Federal Agencies, and the private sector, provides its users with a mechanism with which to contact inventors of emerging SDI-funded technologies to initiate technical discussions, business arrangements, licensing agreements, and/or royalty arrangements required to expedite the transfer of these technologies. Any U.S. citizen or corporation can access the TAIS by computer modem once a militarily critical technology data agreement has been completed and eligibility certified by the Defense Logistics Agency under provisions of DoD Directive 5230.25,[1] "Control of Unclassified Technical Data with Military or Space Application". Information regarding qualification and certification for access to militarily critical technology may be obtained by calling (800) DLA-DLSC.

FOR FURTHER INFORMATION CONTACT: SDIO/T/TA, Room 1E1023, the Pentagon, Washington, DC 20301-7100, telephone (202) 693-1563.

August 18, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-19163 Filed 8-23-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

Coordinating Subcommittee on Petroleum Storage & Transportation Committee on Petroleum Storage & Transportation National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time:

Tuesday, September 27, 1988, 1:00 PM
Wednesday, September 28, 1988, 9:00 AM

Place: Hyatt Regency, Room 226, International Parkway, Dallas/Fort Worth Airport, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585. Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review task group status and discuss study draft assignments.

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.
—Review task group status.
—Discuss study draft assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fasion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-19220 Filed 8-23-88; 8:45 am]

BILLING CODE 6450-01-M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attention Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 23, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–511.
3. 1902–0069.
4. Application for Transfer of Electric License.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for profit, Individuals or households, State or local governments, Non-profit institutions, and small businesses or organizations.
9. 10 respondents.
10. 10 responses.
11. 400 hours (total).
12. 40 hours per response.
13. The purpose of the FERC–511 is to carry out the requirements of Part 1, Sections 4(e) and 8 of the Federal Power Act. This section directs that a hydroelectric license may be transferred upon application executed jointly by the parties of the proposed transfer and in agreement with the FERC.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–510.
3. 1902–0068.
4. Application for Surrender of Electric License.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for profit, Individuals or households, State or local governments, Non-profit institutions, and small businesses or organizations.
9. 10 respondents.
10. 10 responses.
11. 100 hours (total).
12. 10 hours per response.
13. To carry out the requirements of Part 1, Sections 4(e), 6 and 13 of the Fedeal Power Act. This section directs that a preliminary permit license may be surrendered or terminated upon application and where agreement exists between the FERC and the licensee.

Statutory authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC., August 19, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–19218 Filed 8–23–88; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of recordkeepers per report period; (10) An estimate of the number of hours per recordkeeper; (11) Estimated total recordkeeping hours; (12) Total recordkeeping retention period, and (13) A brief abstract describing the recordkeeping.

DATES: Comments must be filed on or before September 23, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical

Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–570.
3. 1902–0124.
4. Recordkeeping Requirements for Certain Sales of Natural Gas.
5. Extension.
6. Recordkeeping.
7. Mandatory.
8. Businesses or other for profit.
9. 5,000 recordkeepers.
10. 0.10 hours annually.
11. 500 recordkeeping hours (total).
12. 3 year recordkeeping retention period.
13. Books, records, and contracts must be retained by the seller for a period of three years to enable the Commisaion staff to audit: (1) If sales of gas under Sections 105 and 106(b) of the Natural Gas Policy Act of 1978 (NGPA) are regulated or deregulated and (2) to audit for compliance with the maximum ceiling price permitted for regulated sales under Sections 105, 106(b), and 109.

Statutory authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), and 790a).

Issued in Washington, DC, August 19, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–19219 Filed 8–23–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CI88–76–000 and CI88–77–000]

Mesa Operating Limited Partnership; Applications for Abandonment of Service and Amendment of Certificates [1]

August 18, 1988.

Take notice that on October 30, 1987, Mesa Operating Limited Partnership (Mesa), Post Office Box 2009, Amarillo, Texas 79189–2009, filed applications in Docket Nos. CI88–76–000 and CI88–77–000 pursuant to section 7 of the Natural Gas Act for authorization to abandon service due to assignment of all the interests under the rate schedules listed in Appendices A and C and to reflect assignment of certain interests under the rate schedules listed in Appendix B, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

In Docket No. CI88–76–000 Mesa is filing to reflect assignment of certain interests to Kaiser-Francis Oil Company (Kaiser-Francis) and Cabot Petroleum Corporation (Cabot). By assignment executed December 23, 1985, effective September 1, 1985, Mesa assigned all of its interests covered under the rate schedules listed in Appendix A to Kaiser-Francis and a portion of its interests covered under the rate schedules listed in Appendix B except Rate Schedule No. 168 to Kaiser-Francis. By assignment executed August 28, 1985, effective June 1, 1985, Mesa assigned a portion of its interests covered under its FERC Gas Rate Schedule No. 168 (listed in Appendix B) to Cabot.

In Docket No. CI88–77–000 Mesa is filing to reflect assignment of certain interest to Hutton/Indian Wells 1984 Energy Income Fund, Ltd. (Hutton). By Assignment executed October 31, 1986, effective October 1, 1986, Mesa assigned all of its interests covered under the rate schedules listed in Appendix C to Hutton.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 6, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mesa to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

APPENDIX A

Mesa operating limited partnership G.R.S. No.	Docket No.	Purchaser
113	G–12309	Northern Natural Gas Company.
121	G–4314	Panhandle Eastern Pipe Line Company.
127	CI62–549	Do
198	CI84–303–000	Arkla Energy Resources, a division of Arkla, Inc.
204	CI84–309–000	Northern Natural Gas Company.
205	CI84–310–000	Panhandle Eastern Pipe Line Company.
206	CI84–311–000	Williams Natural Gas Company.

APPENDIX B

Mesa operating limited partnership G.R.S. No.	Docket No.	Acreage	Purchaser
95	CI78–748	Bindel Fed Com #1, Sec. 9–T23S–R27E, Eddy County, New Mexico	El Paso Natural Gas Company.
		Marquess Com #1, Sec. 9–T23S–R27E, Eddy County, New Mexico	
117	G–4316	Stevens, CE #1, Sec. 32–T32S–R30W, Meade County, Kansas	El Paso Natural Gas Company.
168	CI84–274	Sexton No. 1 & No. 2, Sec. 4–T3N–R28E, Beaver County, Oklahoma	ANR Pipeline Company.

APPENDIX B—Continued

Mesa operating limited partnership G.R.S. No.	Docket No.	Acreage	Purchaser
171	CI84-277-000	Briedenstein #1, Sec. 17-T24N-R13W, Woods County, Oklahoma Buskes #1, Sec. 32-T25N-R13W, Woods County, Oklahoma Dimmick #1, Sec. 29-T25N-R13W, Woods County, Oklahoma Freeburg #1, Sec. 18-T24N-R13W, Woods County, Oklahoma Jeffries #1, Jeffries #A-1, Sec. 7-T24N-R16W, Woods County, Oklahoma Martin #1-12, Sec. 12-T24N-R14W, Woods County, Oklahoma	Panhandle Eastern Pipe Line Company.
171	CI84-277-000	Mitchell (Cherokee & Oswego), Sec. 6-T24N-R13W, Woods County, Oklahoma Scrimsher #1, Sec. 31-T25N-R13W, Woods County, Oklahoma Buckles #1-31, Sec. 31-T25N-R13W, Woods County, Oklahoma Swallow #1, Sec. 6-T24N-R13W, Woods County, Oklahoma	Panhandle Eastern Pipe Line Company.
173	CI84-279-000	Leslie #1, Sec. 29-T25N-R12W, Alfalfa County, Oklahoma Koehn #1, Sec. 30-T21N-R12W, Major County, Oklahoma	Panhandle Eastern Pipe Line Company.
200	CI84-305-000	Walker, J.H. #1-2, Sec. 2-T22N-R12W, Major County, Oklahoma	Pioneer Gas, Products Company, Oklahoma Natural Gas Gathering Corporation.
221	CI84-326-000	Antis #1-20, Sec. 20-T20N-R20W, Woodward County, Oklahoma	Northern Natural Gas Company.

APPENDIX C

Mesa operating limited partnership G.R.S. No.	Docket No.	Well name	Purchaser
5	CI66-26	Santa Fe #1, Wilcher A #1	Colorado Interstate Gas Company.
12	CI67-237	Pedigo #1-16	Northern Natural Gas Company.
15	CI67-772	Crooks #1-28	ANR Pipeline Company.
25	CI62-657	Brown #1-4	Northern Natural Gas Company.
29	CI84-1436	McMahan #1	Panhandle Eastern Pipe Line Company.
31	CI63-412	Neal #22	El Paso Natural Gas Company.
44	G-18921	Boese #1-45, Leatherman #1-6, Leatherman #2-6, Lance #1-11, Lance #2-11, Lance #3-11, Lance #4-11, Lance #5-11.	Transwestern Pipeline Company.

[FR Doc. 88-19187 Filed 8-23-88; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59848; FRL-3434-3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements of section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984 (49 FR 46066), (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of thirteen such PMSs and provides a summary of each.

DATES: Close of Review Periods:

Y 88-229—August 8, 1988.
Y 88-230, 88-231, 88-232—August 15, 1988.
Y 88-233, 88-234—August 17, 1988.
Y 88-235—August 21, 1988.
Y 88-236, 88-237, 88-238—August 22, 1988.
Y 88-239—August 28, 1988.
Y 88-240, 88-241—August 30, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 88-229

Manufacturer. Artisted Chemical Corporation.

Chemical. (G) Unsaturated polyester resin thermosetting polyester resin.
Use/Production. (G) Thermosetting resin. Prod. range: Confidential.

Y 88-230

Manufacturer. Confidential.
Chemical. (G) Epoxy modified oleoresinous varnish.
Use/Production. (G) Coating. Prod. range: Confidential.

Y 88-231

Manufacturer. Confidential.
Chemical. (G) Aliphatic Polyurethane.
Use/Production. (G) Coating or film. Prod. range: Confidential.

Y 88-232

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Plasticizing resin. Prod. range: 121,120-181,600 kg/yr.

Y 88-233

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial baking finishes. Prod. range: 25,000-50,000 kg/yr.

Y 88-234

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyurethane.
Use/Production. (G) Adhesive. Prod. range: Confidential.

Y 88-235

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (G) Fabrication of articles for the automative industry. Prod. range: Confidential.

Y 88-236

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane.
Use/Import. (S) Adhesive for manufacturing. Import Range: Confidential.

Y 88-237

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane.
Use/Import. (S) Laminating adhesive. Import Range: Confidential.

Y 88-238

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane.
Use/Import. (S) Laminating adhesive. Import Range: Confidential.

Y 88-239

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Architectural coating. Prod. range: 136,000 kg/yr.

Y 88-240

Manufacturer. Confidential.
Chemical. (G) Modified polyvinyl alcohol.
Use/Production. (S) Adhesives additive, printing parts. Prod. range: Confidential.

Y 88-241

Manufacturer. Performance Polymer International.
Chemical. (G) Polyether thermosplastic polymer.
Use/Production. (S) Adhesive base, modifier base. Prod. range: 50,000-250,000 kg/yr.

Date: August 16, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-19166 Filed 8-23-88; 8:45 am]
BILLING CODE 6560-50-M

[PF-502; FRL-3431-7]

ICI Americas, Inc.; Amended Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of an amended pesticide petition (PP) by ICI Americas, Inc., for PP 8F3573 for the herbicide [R]-2-[4[[(5-trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluaziflop), both free and conjugated, and [R]-butyl-2-[4-[[(5-trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate (fluaziflop-butyl), all expressed as fluazifop in or on various raw agricultural commodities.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM # 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 16, 1987 (52 FR 47754), EPA issued notice of PP 8F3573 by ICI Americas, Inc., Agricultural Products, Concord Pike & New Murphy Rd., Wilmington, DE 19897, proposing to amend 40 CFR 180.411 by establishing a regulation to permit the residues of the herbicide [R]-2-[4-[[(5-trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and [R]-butyl-2-[4-[[(5-trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate (fluazifop-butyl), all expressed as fluazifop, in or on apples, grapes, pecans, and stone fruits at 0.03 ppm. The proposed analytical method for determining residues is the nuclear magnetic resonance spectroscope.

This notice announces that the petition is being amended to propose a tolerance of 0.05 ppm for the herbicide in or on the raw agricultural commodities, i.e., apples, grapes, pecans, and stone fruits.

Authority: 21 U.S.C. 346a.

Dated: August 9, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-18734 Filed 8-23-88; 8:45 am]
BILLING CODE 6560-50-M

[OPP-36163; FLR-3432-8]

Standard Evaluation Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the following draft Standard Evaluation Procedures (SEPs) for public comment prior to their publication: Guidance for Evaluation of Dermal Sensitization Testing; and Guidance for Evaluation of Dermal Irritation Testing. The SEPs are a standard set of guidance documents on

how the Hazard Evaluation Division (HED) in the Office of Pesticide Programs evaluates studies and scientific data to ensure consistency of scientific reviews of studies submitted by registrants in support of pesticide registrations. This will increase the efficiency of pesticide registration and other regulatory activities.

DATE: Comments, identified by the document control number [OPP–36163] should be received on or before October 24, 1988.

ADDRESSES: Submit three copies of written comments, identified with the document control number [OPP–36163] by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street. SW., Washington, DC 20460.

In person, deliver comments to: Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

To obtain a copy of the draft SEPs, please call: (703) 557–2805.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in room 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Copies of the draft SEPs are also available at the following address.

FOR FURTHER INFORMATION CONTACT: By mail: Orville E. Paynter, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street. SW., Washington, DC 20460.

Office location and telephone number: Room 1121, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–7695.

SUPPLEMENTARY INFORMATION: The SEPs are a standard set of guidance documents on how HEW evaluates studies and scientific data to ensure consistency of scientific reviews. Not only will the SEPs serve as valuable internal reference documents and training aids for new staff, these documents will also inform the public and regulated community of important considerations in the evaluation of test data for determining chemical hazards.

The SEPs ensure a comprehensive, consistent treatment of major scientific topics in the Agency's reviews and provide interpretive policy guidance where appropriate, but are not so detailed that they inhibit creativity and independent thought. The SEPs also inform the public of the internal review process. Throughout the remainder of this and next fiscal year, HED will be writing additional SEPs on the scientific disciplines of chemistry, ecological effects, exposure assessment and toxicology. Thirty-six SEPs have been published thus far and are available from the National Technical Information Service, which is responsible for distribution of all SEPs after they have been finalized. Prior to publication, each of the SEPs must undergo extensive peer review including Division, Office, Intra-Agency, FIFRA Scientific Advisory Panel, and public comment; this announcement serves to solicit public comment on the draft documents.

Dated: August 10, 1988.

Anne Barton,

Acting Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 88–18952 Filed 8–23–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50681; FRL–3432–7]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits.

275–EUP–59. Issuance. Abbott Laboratories, 1400 Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 8,397 grams of the plant growth regulator gibberellin A_4 on 609 acres of apples to evaluate the reduction of russetting. The program is authorized only in the States of California, Georgia, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from June 21, 1988 to June 21, 1990. A permanent tolerance for residues of the active ingredient in or on apples has been established (40 CFR 180.224(b)). (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

464–EUP–96. Issuance. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 51 pounds of the insecticide chlorpyrifos on 1,000 acres of pastureland to evaluate the control of grasshoppers. The program is authorized only in the State of South Dakota. The experimental use permit is effective from June 17, 1988 to June 17, 1989. (Dennis Edwards, PM 12, Rm. 202, CM#2, (703–557–2386)

45639–EUP–39. Issuance. Nor-Am Chemical Company, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 3,825 pounds of the insecticide amitraz on 3,825 acres of cotton to evaluate the control of various mites, bollworms, and tobacco bollworms. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The experimental use permit is effective from June 21, 1988 to June 21, 1989. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (Dennis Edwards, PM 12, Rm. 202, CM#2, (703–557–2386))

264–EUP–73. Extension. Rhone Poulenc Ag Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 8,659 pounds of the insecticide thiodicarb on 2,375 acres of lettuce and cole crops to evaluate the control of various insects. The program is authorized in the States of Arizona, California, Colorado, Florida, Michigan, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Washington, and Wisconsin. The experimental use permit is effective from June 6, 1988 to June 8, 1989. Temporary tolerances for residues of the active ingredient in or on lettuce and cole crops have been established.

(Dennis Edwards, PM 12, Rm. 202, CM#2, (703–557–2386))

284–EUP–76. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 35 pounds of the insecticide/ovicide thiodicarb on 23 acres of cotton to evaluate the control of various cotton insects. The program is authorized only in the States of Arizona and California. The experimental use permit is effective from July 1, 1988 to July 1, 1989. A permanent tolerance for residues of the active ingredient in or on cottonseed has been established (40 CFR 180.408). (Dennis Edwards, PM 12, Rm. 202, CM#2, (703–557–2386))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: August 9, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–18953 Filed 8–23–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000050–053.

Title: Pacific Coast/Australia-New Zealand Tariff Bureau.

Parties:

Columbus Line
Associated Container Transportation (Australia), Ltd.
Pacific Australia Direct Line
Blue Star Line, Ltd.
Australia-New Zealand Direct Line

Synopsis: The proposed modification would set forth new rules applicable to service contracts.

AGREEMENT NO.: 202–010656–029.

AGREEMENT NAME: North Europe-U.S. Gulf Freight Association.

PARTIES:

Compagnie General Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Sea-Land Service, Inc.
Hapag-Lloyd AG
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

SYNOPSIS: The proposed modification would clarify the description of neutral body authority of the members and provide for cooperation between them and carriers to discuss procedures and administrative matters concerning self-policing.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 19, 1988.

[FR Doc. 88–19216 Filed 8–23–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003975–005.

Title: Port of Longview Lease Agreement.

Parties:

Port of Longview
Continental Grain Company

Synopsis: The agreement amends Paragraph 4 of the lease to bring the renewal terms into compliance with the Commission's regulations in 46 CFR 572.406(b), which governs the filing of complete and definite agreements.

Agreement No.: 224–003975–006.

Title: Port of Longview Lease Agreement.

Parties:

Port of Longview
Continental Grain Company

Synopsis: The agreement extends the lease for an additional year from October 21, 1988 to October 21, 1989.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

Dated: August 19, 1988.

[FR Doc. 88–19217 Filed 8–23–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 15, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Mary K. Sanditen,* Tulsa, Oklahoma; to acquire an additional 0.91 percent of the voting shares of Woodland Bancorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Woodland Bank, Tulsa, Oklahoma.

Board of Governors fo the Federal Reserve System, August 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–19145 Filed 23–88; 8:45 am]

BILLING CODE 6210–01–M

Center Banks Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 16, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045)

1. Center Banks Incorporated, Skaneateles, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Skaneateles Savings Bank, Skaneateles, New York.

2. The Summit Bancorporation, Summit, New Jersey; to merge with Somerset Bancorp, Inc., Somerville, New Jersey, and thereby indirectly acquire Somerset Trust Company, Somerville, New Jersey.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byred Street, Richmond, Virginia 23261:

1. F&M National Corporation, Winchester, Virginia; to acquire 100 percent of the voting shares of Blakely Bank and Trust Company, Ranson, West Virginia.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FNB, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Colorado National Bank-Greeley, Greeley, Colorado.

2. Lisco State Company, Lisco, Nebraska; to acquire 5.15 percent of the voting shares of First National Financial Corporation, Estes Park, Colorado, parent of First National Bank of Estes Park, Estes Park, Colorado.

Board of Governors of the Federal Reserve System, August 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19143 Filed 8-23-88; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 12, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its subsidiaries Norwest Financial Services, Inc., and Norwest Financial, Inc., both of Des Moines, Iowa, in operating a credit bureau, pursuant to § 225.25(b)(24) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19144 Filed 8-23-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administriaton (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. September 8 and 9, 1988, 9:00 a.m., Bldg. 13, Conference Rm., National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open committee discussion, September 8, 1988, 9:00 a.m. to 4:30 p.m.; open committee discussion, September 9, 8:30 a.m. to 12:00 m.; open public hearing, 1:00 p.m. to 2:00 p.m.; closed board deliberations, 2:00 p.m. to 3:00 p.m.; Ronald F. Coene, National Center for Toxicological Research, Food and Drug Administration, 5600 Fishers Lane, Rm. 14-101, Rockville, MD 20857, 301-443-3155.

General function of the board. The board advises the Director, National Center for Toxicological Research, in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The board provides the extra-agency

review in ensuring that research programs and methodology development at the National Center for Toxicological Research are scientifically sound and pertinent to its stated goals and objectives.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 1, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open board discussion. The board will review the progress and proposed future plans of the National Center for Toxicological Research's divisions of Genetic Toxicology and Biochemical Toxicology as well as continue discussions of the project on caloric restriction. On September 2, 1988, a final agenda will be available from the contact person (address above).

Closed board deliberations. The board will review the projects and progress of the pre-doctoral training programs of the National Center for Toxicological Research. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with these programs, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Circulatory System Devices Panel

Date, time, and place. September 15 and 16, 1988, 8:30 a.m., Rm. 503–527A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, September 15, 1988, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; open public hearing, September 16, 1988, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 31, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for prosthetic heart valves, a coronary perfusion dilatation catheter, a percutaneous transluminal coronary angioplasty catheter, and a laser angioplasty device.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial or financial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ear, Nose, and Throat Devices Panel

Date, time, and place. September 22 and 23, 1988, 8:30 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, September 22, 1988, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 5 p.m.; closed committee deliberations September 23, 1988, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 3 p.m.; David A. Segerson, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8185 (voice/TDD).

A sign language interpreter is available for the hearing-impaired upon request. Those desiring this assistance should notify Carlton M. Coleman, 301–443–3310 (voice) or 301–443–1818 (TDD), no later than September 6, 1988.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 8, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the 3M/House premarket approval application for a children's cochlear implant.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial or financial information regarding the children's cochlear implant system. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral

presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: August 18, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–19193 Filed 8–23–88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Proposed Funding Preferences and Priorities for Grants for Area Health Education Centers Special Initiatives

The Health Resources and Services Administration announces the acceptance of applications for Fiscal Year 1989 for Grants for Area Health Education Centers Special Initiatives under the authority of Section 781(a)(2) of the Public Health Service Act, as amended by Pub. L. 99–129 and invites comments on the proposed funding preferences and funding priorities stated below.

Section 781(a)(2) authorizes Federal Assistance to medical and osteopathic schools which have previously received Federal financial assistance for the Area Health Education Centers (AHEC) program under either section 802 of Pub. L. 94–484 in 1979 or under section 781. In addition, section 781(a)(2) authorizes medical and osteopathic schools currently receiving Federal support for an AHEC program to apply for project aid on behalf of an Area Health Education Center that is no longer federally-funded as part of that program.

Legislative authorization for this program expires September 30, 1988. For FY 1989 the Administration is proposing to consolidate the various health professions categorical programs into a single, flexible grant authority. This announcement is being made in the event that the Area Health Education Centers Special Initiatives Program is reauthorized and funds are made available in FY 1989. Publication of this notice is a contingency measure that will assure that grants can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Section 781(a)(2) applications will be for the purpose of improving the distribution, supply, quality, utilization and efficiency of health personnel in the health services delivery system; to encourage regionalization of responsibility of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps Scholarship program to provide effective health services in health manpower shortage areas.

To receive support, programs must meet the requirements of regulations set forth in 42 CFR Part 57, Subpart MM.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The relative merit of the proposed project; and

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(2) The relative cost-efficiency of the proposed project.

Proposed Funding Preferences

In making awards for Fiscal Year 1989, the following funding preferences are proposed.

(1) Competing continuation applications;

(2) New applications for planning and development projects under section 781(a)(1);

(3) New applications for Special Initiatives projects under Section 781(a)(2); and

(4) Supplements to existing awards.

These preferences are established to maximize both Federal and non-federal investments. The AHEC program requires a long-term strategy and commitments. Short-term funding of a year or two would allow most projects to complete only the planning and development years of their programs.

Proposed Funding Priorities

In determining the order of funding of approved applications it is proposed to give a funding priority to the following:

(1) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

Health professionals are increasingly required to provide a wide range of services to HIV-infected persons. However, widespread organized curricual offerings for these trainees are not in place. The proposed priority is designed to encourage new offerings.

(2) Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly.

The population 65 years of age and over will increase about 2 percent a year between now and 2020 (compared to an increase of less than 1 percent for younger persons). The oldest old (85-plus) segment of the population will experience the most rapid growth before 2000. The youngest old (65–74) segment will increase fastest between 2000 and 2020. The older population will require expansion of a wide range of health services, including preventive, primary, long-term, hospice, and rehabilitation care. However, health providers lack adequate training needed to care for this aging population. The proposed funding priority is designed to provide increased emphasis on geriatrics training for all health professions trainees in the continuum of their training.

(3) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards. Assuring quality in the health care system is increasingly becoming the responsibility of health care providers. The proposed funding priority is designed to encourage increased emphasis on the principles and methods of health care quality assurance and risk management in the continuum of the health professions educational process.

Interested persons are invited to comment on the proposed funding preferences and funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before September 23, 1988 will be considered before the final funding preferences and funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preferences and funding priorities will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copy at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials and questions regarding grants policy should be addressed to: Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6857.

If additional programmatic information is needed, please contact: Division of Medicine, Multidisciplinary Centers and Programs Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–04 Rockville, Maryland 20857, Telephone (301) 443–6950.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is October 10, 1988. Applications shall be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Reveiw of Federal Programs (as implemented through 45 CFR Part 100).

Dated: July 29, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–19179 Filed 8–23–88; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

National Vaccine Advisory Committee; Public Meeting

AGENCY: Office of the Assistant Secretary for Health; Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATE: Date, Time and Place: September 19, 1988, at 10:00 a.m.; September 20, at 8:00 a.m.; Hubert Humphrey Building Auditorium, 200 Independence Avenue SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Park Building, Room 1–24, Rockville, Maryland 20857, (301) 443–0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described

below. Those desiring to make such presentations should notify the contact person before September 2, 1988 and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion: Discusion of this meeting will center on a comparison of vaccine research and resources in both United States and international programs; adverse reaction reporting systems and incidence of adverse events; and the development of the next NVP Plan Report to Congress.

Supplementary Information: The National Vaccine Advisory Committee is established under section 2105 of the Public Health Service Act. The Advisory Committee shall:

(1) Study and recommend ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States;

(2) Recommend research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines;

(3) Advise the Director of the National Vaccine Program with regard to the following vaccine activities carried out by or through the National Institutes of Health, the Centers for Disease Control, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development:

(a) Vaccine research on means to induce human immunity against naturally occurring infectious diseases and to prevent adverse reactions to vaccines;

(b) Vaccine development, including the techniques needed to produce safe and effective vaccines;

(c) Safety and efficacy testing of vaccines;

(d) Licensing of vaccine manufacturers and vaccines by providing for the allocation of resources to support the licensing program;

(e) Production and procurement of vaccines to ensure that the governmental and nongovernmental production and procurement of safe and effective vaccines meet the needs of the United States population and fulfill commitments of the United States to prevent human infectious diseases in other countries;

(f) Distribution and use of vaccines, by providing direction to the Centers for Disease Control and assistance to States, localities, and health practitioners in the distribution and use of vaccines, including efforts to encourage public acceptance of immunizations and to make health practitioners and the public aware of potential adverse reactions and contraindications to vaccines;

(g) Evaluating the need for and the effectiveness and adverse effects of vaccines and immunization activities;

(h) Coordination of governmental and nongovernmental activities; and,

(i) Allocation of supplemental resources to Federal agencies involved in the implementation of the plan for activities not otherwise funded.

(4) Identify annually for the Director the most important areas of government and nongovernment cooperation that should be considered in implementing the Program.

Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: August 18, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-19200 Filed 8-23-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-08-4212-13; A22635]

Realty Action; Exchange of Public and Private Lands in Pima, Graham and Mohave Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under the provision of the Federal land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 18 S., R. 12 E.,
Sec. 7, lot 5;
Sec. 8, lot 1;
Sec. 9, lots 1 and 2, NE¼NW¼, W½NW¼;
Sec. 16, lots 1 and 2;
Sec. 17, lots 1, 2, 3, SW¼SW¼.

Comprising 385.42 acres, more or less, of *public* land in *Pima County.*

In exchange for these lands, the United States will acquire the following described lands from Cyprus Minerals Company:

Gila and Salt River Meridian, Arizona

T. 9 S., R. 27 E.,
Sec. 9, E½NE¼;
Sec. 10, W½NW¼;
Sec. 13, NW¼SE¼.
T. 10 S., R. 28 E.,
Sec. 7, SE¼SE¼,SE¼SE¼;
Sec. 21, SE¼NE¼,NE¼SE¼;
Sec. 22, SW¼NW¼,NW¼SW¼.

Comprising 440.00 acres, more or less, of *private* land in *Graham County,* and:

Gila and Salt River Meridian, Arizona

T. 17 N., R. 14 W.,
Sec. 7, W½NE¼NE¼;
Sec. 17, N½,N½SE¼,SE¼SE¼.

Comprising 460.00 acres, more or less, of *private* land in *Mohave County.*

The purpose of this exchange is to acquire the non-federal lands which have high public values for wildlife habitat and to consolidate public land ownership. The public interest will be served by completing this exchange.

The values of the lands to be exchanged are equal. Lands to be transferred to the United States will be subect to valid existing rights existing at the time of transfer.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or two years from the date of the publication, whichever occurs first.

The patent, when issued, will contain certain reservations to the United States and be subject to all valid existing rights and reservations of record.

DATE: For a period of 45 days from the date of this publication, interested parties may submit comments to the District Manager at the address given in the Supplementary Information.

SUPPLEMENTARY INFORMATION: Detailed information concerning this exchange proposal may be obtained from the District Manager, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Vernon L. Saline,

Acting District Manager.

Date: August 16, 1988.

[FR Doc. 88-19175 Filed 8-23-88; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A proposed modification of a form used in the collection of information listed below as been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the modified form, supporting statement, and related material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the amendment should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Application For and Disposition of Royalty Oil Taken In Kind

OMB Approval number: 1010-0042

Abstract

The minerals Management Service (MMS) proposes to modify Form MMS-4071, Semiannual Report of Royalty-In-Kind Oil Entitlements and Deliveries, used to document monthly royalty oil entitlements delivered by lease operators to refiners under Royalty-In-Kind (RIK) Contracts issued by MMS. To simplify and improve reporting, and reduce burden of respondents, MMS proposes to pre-print the first eight lines on the form before sending it out to leassees or lease operators. In addition, the "Deliveries" column on the form will be eliminated. Respondents will report only that part of lease production designated as royalty oil entitlements due to the Federal Government. The form name will be changed to: Semiannual Report of Royalty-In-Kind Oil Entitlements. The requirement that entitlements must be reported 7 months after the first month of sale and semiannually thereaftger will be changed to further simplify reporting. Uniform report due dates of March 1, (for the 6 month period ending December 31) and September 1, (for the 6 month period ending June 30) will be established for Form MMS-4071 and regulations amended accordingly.

Form MMS.4070, Application For the Purchase of Royalty Oil, will not be modified.

Bureau Form Numbers: MMS-4070, MMS-4071

Frequency: On occasion, semiannually

Description of Respondents: Operators of Federal offshore and onshore leases, oil refiners

Estimated Completion Time: ¼ hour to 1 hour

Annual Responses: 1,972

Annual Burden Hours: 542

Bureau Clearance officer: Dorothy Christopher 703-435-6213.

Date: July 27, 1988.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 88-19176 Filed 8-23-88; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Advisory Board—Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet during the period 8:30 a.m. to 5:00 p.m., September 28-29, 1988, at the Princess Hotel in San Diego, California (619-274-4630).

The agenda for the meeting will cover the following principal subjects:

September 28

- Commercial Fisheries Conflict Resolution
- 5-Year Program Subcommittee Report
- Marine Mining Program—Status Report

September 29

- Plans and Prospects for Frontier Areas
- Socioeconomic Effects Monitoring Program Santa Barbara and Ventura Counties
- California Air Quality Rules
- Report on Cumulative Effects of OCS Activities (Section 20 (e) of OCS Lands Act)

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the Committee. Such requests should be made no later than September 15, 1988, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Room 4230, Washington, DC 20240.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, contact the Executive Secretary, Carolita Kallaur, at 202-343-3504.

Minutes of the meetings will be available for public inspection and copying at the Minerals Management Service, Department of the Interior, 18th and C Streets NW., Room 2070, Washington, DC 20240

Dated: August 18, 1988.

Carolita Kallaur,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88-19174 Filed 8-23-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

General Management Plan; Saguaro National Monument; Availability of Draft Finding of No Significant Impact

SUMMARY: The National Park Service proposes to implement the General Management Plan for Saguaro National Monument, Pima County, Arizona, in accord with the plan selections stated in the Draft Final General Management Plan. The Draft Final Plan, circulated for public review between June 15 and July 22, 1988, combines elements of the four management alternatives contained in a previously circulated draft plan and environmental assessment.

In accordance with the Council on Environmental Quality Regulations at 40 CFR 1501.4(e)(2)(i), a draft Finding of No Significant Impact (FONSI) is being made available for public review for a period of 30 days from the date of this Notice. Copies of the Draft FONSI and Draft Final Plan are both available for inspection at the following addresses:

Saguaro National Monument, 3693 South Old Spanish Trail, Tucson, AZ 85730, Telephone No. (602) 629-6680

Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, P.O. Box 36063, San Francisco, CA 94102, Telephone No. (415) 556-8313

Copies of the Final General Management Plan will be circulated upon approval of the FONSI

Dated: August 16, 1988.

Lewis Albert,

Regional Director, Western Region.

[FR Doc. 88-19221 Filed 8-23-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use in Publication of a Book Entitled "Railroad Traffic in the United States—1987"

The Commission has received a request from ALK Associates, Inc. for permission to use certain data from the Commission's 1987 Waybill Sample. ALK requests permission to extract certain data from the 1987 ICC Master Waybill Sample to distribute as part of a book entitled "Railroad Traffic in the United States—1987." The remainder of the book will consist of extracts from the 1987 ICC Public Use Waybill File (PUWF). The book will be available to the general public. It will be similar in content to the 1984, 1985, and 1986 volumes of the same title. The 1984 and 1985 were derived solely from the Public Use Waybill Files of those years. The change in format of the PUWF requires ICC permission to produce equivalent information for 1987.

The information requested is:

1. Originating and terminating net tonnage by State, for each of the 20 AAR "CS–54" commodity groups.
2. Net tonnage by State-to-State pairs, for each of the 20 "CS–54" commodity groups, including interchange States.
3. Carloads by State-to-State pairs, for the following 12 broad cartype groupings: (1) Plain Box Cars, (2) Equipped Box Cars, (3) Insulated Box Cars, (4) Refrigerated Cars, (5) Open-Top Hoppers, (6) Covered Hoppers, (7) Gondolas, (8) Plain Flat Cars, (9) Auto Racks, (10) Intermodel Flats, (11) Tanks Cars, (12) Other Car Types.
4. Number of trailers or containers by State-to-State pairs, for all intermodal TOFC/COFC traffic as a whole.

The information is requested in four separate files, and in summary form only to prevent cross-referencing between the files, or between this data and the Public Use Waybill File.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 C.F.R. Part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact:
James A. Nash
(202) 275–6864
Noreta R. McGee,
Secretary.

[FR Doc. 88–19162 Filed 8–23–88; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application for Ciba-Geigy Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 19, 1988, Pharmaceuticals Division, Ciba-Geigy Corporation, Regulatory Compliance SEF 1030, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance methylphenidate (1724).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 23, 1988.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: August 16, 1988.

[FR Doc. 88–19184 Filed 8–23–88; 8:45 am]
BILLING CODE 4410–09–M

[Docket No. 88–39]

Leonard Merkow, M.D.; Pittsburgh, PA; Hearing

Notice is hereby given that on March 22, 1988, the Drug Enforcement Administration, Department of Justice, issued to Leonard Merkow, MD., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AM5075305 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, September 7, 1988, commencing at 10:00 a.m., in the Moot Courtroom, First Floor, 213 Law Building, 3900 Forbes Avenue, Pittsburgh, Pennsylvania.

Dated: August 18, 1988.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 88–19183 Filed 8–23–88; 8:45 am]
BILLING CODE 4410–09–M

Super Discount Stores, Inc., d/b/a Super Discount Drugs and Boraks Drugs and Surgical Co., Inc., d/b/a Plantation Community Pharmacy; Revocation of Registrations

On June 6, 1988, the Administrator of the Drug Enforcement Administration (DEA) issued Orders to Show Cause and Immediate Suspensions of Registration to Super Discount Stores, Inc., d/b/a Super Discount Drugs, of 2782 North University Drive, Plantation, Florida, and Boraks Drugs and Surgical Co., Inc., d/b/a Plantation Community Pharmacy, of 240 South University Drive, Plantation, Florida. The Orders to Show Cause proposed to revoke DEA Certificates of Registration AS9172711 and AB6025159, previously issued to the

aforementioned pharmacies, and to deny any pending applications for renewal of such registrations on the grounds that the continued registration of these pharmacies was inconsistent with the public interest. Simultaneously, citing his preliminary finding that the continued registration of these pharmacies during the pendency of these proceedings posed an imminent threat to the public health and safety, the Administrator ordered the immediate suspension of the two registrations.

DEA Special Agents and Diversion Investigators personally served the Orders to Show Cause and Immediate Suspensions of Registration on Jeffrey Boraks, R.Ph., the owner of Super Discount Drugs and Plantation Community Pharmacy, on June 9, 1988. At that time, DEA Special Agents seized the pharmacies' DEA Certificates of Registration, all unused order forms and controlled substances located on the premises. More than 30 days have elapsed since the service of the Orders to Show Cause and Immediate Suspensions of Registration. Neither Mr. Boraks, nor any other representative of either pharmacy, has responded to the Orders to Show Cause. Thus, the Administrator concludes that Mr. Boraks has waived his opportunity for a hearing in this matter and, in accordance with 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the information contained in the investigative file and the record of this proceeding as it now appears.

The Administrator finds that Jeffrey Boraks, R.Ph. is the sole owner of Super Discount Drugs and Plantation Community Pharmacy. In addition, Mr. Boraks previously owned D & L Drugs, Inc., d/b/a Springs Pharmacy, of Coral Springs, Florida.

In 1986, the DEA Miami Field Division received information from a local controlled substance distributor that Super Discount Drugs was ordering excessively large quantities of Schedule II controlled substances. In 1986, Super Discount Drugs was ranked as the third largest pharmacy purchaser of Dilaudid in the State of Florida. Based upon this information, Diversion Investigators from the Miami Field Division conducted an accountability audit of the pharmacy's controlled substance stock on July 1, 1986. The audit, which covered the period from May 1, 1985, to July 1, 1986, revealed excessively large and unexplained shortages of several Schedule II controlled substances, including the following: 8,651 dosage units of Dilaudid 2 mg. tablets, a 96% shortage; 17,400 dosage units of Dilaudid 4 mg. tablets, an 82% shortage; 14,543 dosage units of Percodan tablets, a 76% shortage; 10,026 dosage units of Percocet tablets, a 50% shortage; and 475 dosage units of Demerol 100 mg. tablets; an unexplained average of 650 Tylox capsules was also revealed during the audit. In addition, various recordkeeping violations were discovered during the audit, including the following: failure to maintain executed DEA order forms, the pharmacy could not account for 47 executed order forms; failure to indicate date and quantities of controlled substances received on order forms, invoices and receipts; failure to maintain Schedule III–V prescriptions in a readily retrievable manner; failure to conduct biennial inventories; failure to maintain copies of controlled substance invoices and receiving records; and failure to report a theft or loss of controlled substances.

On August 8, 1986, DEA Diversion Investigators conducted a controlled substance accountability audit at Plantation Community Pharmacy covering the period from July 1, 1985, to August 8, 1986. An audit of the pharmacy's controlled substance stock revealed excessively large shortages of several Schedule II drugs, including the following: 1,525 dosage units of oxycodone with APAP tablets, an 8% shortage; 648 dosage units of oxycodone with ASA tablets, a 4.8% shortage; and 462 dosage units of Dilaudid 4 mg. tablets, a 15% shortage. The audit also revealed unexplained overages of the following controlled substances: 44 dosage units of Dilaudid 2 mg., a 22% overage; 177 dosage units of Tylox capsules, an 88% overage; and 114 dosage units of Demerol 100 mg. tablets, a 14% overage. Several recordkeeping violations were also discovered during the audit, including: failure to conduct biennial inventories; failure to maintain Schedule III–V controlled substance prescriptions in a readily retrievable manner; failure to include required information on telephone prescriptions; and failure to maintain copies of executed order forms, invoices and receipts for controlled substances ordered and received by the pharmacy.

On September 23, 1986, DEA Diversion Investigators conducted a controlled substance accountability audit at Springs Pharmacy covering the period from January 16, 1986, to September 23, 1986. There were excessively large shortages of each of the Schedule II controlled substances audited, including the following: 388 dosage units of Dilaudid 2 mg. tablets, a 78% shortage; 1,670 dosage units of Dilaudid 4 mg. tablets, a 70% shortage; 156 dosage units of Percodan tablets, a 13% shortage; 1,672 dosage units of Percocet tablets, a 53% shortage; and 462 dosage units of Tuinal 200 mg. capsules, a 77% shortage. In addition, the audit revealed the following recordkeeping violations: failure to maintain copies of executed Schedule II order forms; failure to include data and quantity of controlled substances received on executed order forms; and failure to maintain accurate records of controlled substances dispenses from the pharmacy.

Springs Pharmacy was closed for business on March 15, 1987, and all of the pharmacy's controlled substance stock was transferred to Super Discount Drugs. Mr. Boraks also informed the DEA Miami Field Division that all unexecuted order forms issued to Springs Pharmacy were destroyed. The DEA Miami Field Division conducted a second controlled substance accountability audit for the period from September 23, 1986, to the close of business on March 15, 1987. The audit disclosed excessively large and unexplained shortages of each of the drugs audited, including the following: 102 dosage units of Dilaudid 2 mg. tablets, a 92% shortage; 750 dosage units of Dilaudid 4 mg. tablets, an 83% shortage; 1,077 dosage units of Percodan tablets, a 78% shortage; 660 dosage units of Percocet tablets, a 76% shortage; and 108 dosage units of Tuinal 200 mg. tablets, a 46% shortage. The audit also revealed that Mr. Boraks had unlawfully executed DEA Schedule II order forms assigned to Springs Pharmacy to order additional controlled substances after the pharmacy was no longer in operation.

On June 12, 1987, DEA Diversion Investigators conducted a second controlled substance accountability audit at Super Discount Drugs. The audit, which covered the period from July 1, 1986, to June 11, 1987, revealed additional, unexplained shortages of several Schedule II controlled substances, including the following: 892 dosage units of Dilaudid 2 mg. tablets, a 39.8% shortage; 2,340 dosage units of Dilaudid 4 mg. tablets, a 25.2% shortage; 4,960 dosage units of Percodan tablets, a 56.7% shortage; and 3,174 dosage units of Percocet tablets, a 21.3% shortage. In addition, numerous recordkeeping violations were found during the audit, including: failure to indicate issuing and dispensing dates on prescriptions; failure to include physician DEA registration numbers and patient addresses on prescriptions; failure to include pharmacist's initials on filled

prescriptions; and failure to maintain executed DEA order forms.

On June 12, 1987, DEA Diversion Investigators also conducted a second controlled substance accountability audit at Plantation Community Pharmacy for the period from August 8, 1986, to June 11, 1987. This audit disclosed unexplained shortages of most of the Schedule II controlled substances reviewed in the audit, as well as unexplained overages of Demerol 100 mg. tablets and Tylox tablets. In addition, several recordkeeping violations were noted, including: failure to accurately maintain executed DEA Schedule II order forms; failure to obtain written prescriptions for emergency dispensing of Schedule II controlled substances; and failure to provide complete information on controlled substance prescriptions filled at the pharmacy.

During the investigation, DEA Diversion Investigators were able to ascertain that at least 118 of the Schedule II controlled substance prescriptions filled at the three pharmacies were fraudulent. A significant majority of the fraudulent prescriptions were filled by Mr. Boraks. The fraudulent prescriptions accounted for 11,660 dosage units of Schedule II drugs dispensed from the pharmacies. A total of nearly 73,000 dosage units of Schedule II controlled substances from the three pharmacies could not be accounted for or were dispensed pursuant to fraudulent prescriptions.

The Administrator also finds that on March 29, 1988, an individual known as Brian Notkin was observed by officers from the Plantation Police Department as he entered Super Discount Drugs. They also observed him leaving the pharmacy with a white pharmacy bag. The police had obtained reliable information that Mr. Notkin was selling Dilaudid and other Schedule II controlled substances he obtained from Mr. Boraks. Later that day, the officers searched Mr. Notkin's residence and located Schedule II drugs obtained from Super Discount Drugs. He and another individual were charged with illegal possesion of controlled substances. Mr. Notkin admitted that he had illegally purchased Schedule II controlled substances, including Dilaudid, from Mr. Boraks for at least eighteen months.

On May 10, 1988, the DEA Miami Field Division received reliable information that, subsequent to his arrest, Mr. Notkin continued to illegally purchase Dilaudid tablets from Mr. Boraks. In addition, the Miami Field Division also received information that Mr. Boraks had continued to order excessive quantities of Schedule II controlled substances, including Dilaudid, for Super Discount Drugs before and after Mr. Notkin's arrest.

On June 9, 1988, Jeffrey Boraks was arrested and charged with two counts of illegal distribution of a controlled substance, in violation of 21 U.S.C 841(a)(1). At the time of his arrest, Mr. Boraks was also found to be in possession of small quantities of cocaine and marijuana. There has been no final disposition in the pending criminal case at this time.

The Administrator finds that the unexplained shortages and overages of controlled substances and recordkeeping violations discovered at each of Mr. Boraks' pharmacies are sufficient to warrant the revocation of the remaining pharmacies' DEA registrations. The repeated violations demonstrate Mr. Boraks' refusal to comply with state and Federal laws and regulations relating to controlled substances. The pharmacies were some of the largest purchasers of Schedule II controlled substances in the State of Florida, but could not account for significant quantities of the drugs they ordered. In addition, the pharmacies filled numerous prescriptions for Schedule II controlled substances the pharmacists knew or should have known were fraudulent. Also, Mr. Boraks unlawfully sold large quantities of Schedule II controlled substances to an individual he knew was selling the drugs in the illicit drug market. The individual repeatedly received the drugs from Mr. Boraks without providing any prescriptions for these drugs. As a result, the Administrator finds that Mr. Boraks' experience in dispensing controlled substances is abysmally poor. He has abused his controlled substance handling privileges by diverting large quantities of controlled substances for other than legitimate medical purposes from the three pharmacies he operated. He has made no attempt to explain or justify any of the illegal or improper activities which occurred at the pharmacies. Based upon the egregious violations at all three pharmacies, the DEA registrations at the remaining pharmacies must be revoked to protect the public interest and to prevent the further diversion of controlled substances into the illicit drug market.

Having determined that the remaining pharmacies' DEA Certificates of Registration must be revoked, pursuant to the authority vested in him by 21 U.S.C 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AS9172711, previously issued to Super Discount Stores, Inc., d/b/a/ Super Disccount Drugs, be, and it hereby is, revoked. The Administrator further orders that DEA Certificate of Registration AB6025159, previously issued to Boraks Drugs and Surgical Co., Inc., d/b/a Plantation Community Pharmacy, be, and it hereby is, revoked. It is also ordered that any pending applications for renewal of either registration be, and they hereby are, denied.

At the time the Orders to Show Cause and Immediate Suspensions of Registration were served on Super Discount Drugs and Plantation Community Pharmacy, all controlled substances possessed by the pharmacies under the authority of their then-suspended registrations were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking appeal has elapsed. Accordingly, these controlled substances shall remain under seal until September 23, 1988, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

This order is effective August 24, 1988.

Dated: August 16, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-19185 Filed 8-23-88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Festivals Section) to the National Council on the Arts will be held on September 7, 1988, from 9:00 a.m.-8:00 p.m. and on September 8, 1988, from 9:00 a.m-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of the meeting will be open to the public on September 8, 1988, from 4:30-5:30 p.m. to discuss policy issues and guidelines.

The remaining sessions of this meeting on September 7, 1988 from 9:00 a.m-8:00 p.m., and September 8, 1988, from 9:00 a.m.-4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation of

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applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c), (4), (6), and (9) (b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-19177 Filed 8-23-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 1, 1988, through August 12, 1988. The last biweekly notice was published on August 10, 1988 (53 FR 30124).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 23, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: December 1, 1986, October 5, 1987, and February 17, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted amendments to the Physical Security Plant for the Calvert Cliffs Nuclear Power Plant to reflect recent changes to that regulation. The proposed amendments would modify paragraph 2.C.(4) of Facility Operating License No. DPR-53 and paragraph 2.D of Facility Operating License No. DPR-69 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 21817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 1, 1986, October 5, 1987, and February 17, 1988 to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra, Director

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 6, 1988.

Description of amendment request: The proposed amendment would change the Technical Specifications to reflect changes in Station Organization. The proposed amendment also corrects editorial errors in the Table of Contents and Section 6 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analysis contained in their August 6, 1988 letter (BECo 88-121) states the following in response to the three NRC criteria referenced above:

1. Operation of PNPS in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is an administrative change to the organizational structure of PNPS management and technical support. The overall safety responsibilities and functions of the management staff are unchanged. The additional flexibility given the Station Director in appointing Operations Review Committee members does not affect the overall qualifications and range of expertise of the ORC's membership. Additional proposed changes serve to conform management titles to the current nuclear organization, ensure the proper level of management attention and increase the accountability of individual managers in their functional areas. Because no aspects of the nuclear organization that are important to safety are removed or diminished, the proposed amendment will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Operation of PNPS in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment is administrative in nature and does not involve any change to plant design or configuration. For this reason, it will not create the possibility of a new or different kind of accident.

3. Operation of PNPS in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not remove or diminish any elements of the nuclear organization that are essential to the safe operation of PNPS. It does not involve any changes to plant operating systems or associated safety analyses. For these reasons, the proposed amendment will not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92(c). Based on that conclusion, the staff proposes to make a "no significant hazards" determination.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Project Director: R. H. Wessman, PDI-3

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 6, 1988

Description of amendment request: The proposed amendment would revise Technical Specifications to allow some fire barriers to have ratings of less than 3 hours. The proposed amendment is required because a recently completed review of plant fire barriers determined that existing documentation would not support verification of a three hour fire rating for some barriers referenced in License Section 3.F. As a result, Fire Protection Engineering Evaluations (FPEEs) were performed to determine the adequacy of the subject fire barriers.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analysis contained in their August 6, 1988 letter (BECo 88-120) states the following in response to the three NRC criteria referenced above:

1. Operation of Pilgrim Station in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The level of defense a fire barrier must provide is directly tied to the equipment it protects, the function of the protected equipment, the fire hazards it protects against, and the ability to detect and suppress the fire.

FPEEs document actual fire barrier configuration, fire hazards associated with the areas separated by the barrier, pertinent fire protection features, and the consequences of a design basis fire. The FPEE is, by instruction, reviewed and approved by a fire protection engineer.

An FPEE establishes that a fire barrier provides protection consistent with its ultimate design objective of preventing fire propagation, or documents why a lesser rating is acceptable. By establishing that the barrier is capable of meeting its design function, independent of its 3 hour fire rating, it is therefore established that there is not a significant increase in the probability or consequences of an accident previously identified.

Hence, the proposed change to License Condition 3.F, by sanctioning the conclusions reached in the FPEEs, will not involve a significant increase in the probability or consequences of an accident previously identified.

2. Operation of Pilgrim Station in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed in item 1 above, the FPEE process is a formal process used to establish that a fire barrier can perform its design function. Since accident evaluations assume that selected equipment will perform in a predetermined way (design functions), the establishment of a fire barrier's ability to perform its design function of protecting areas and equipment associated with accident evaluations includes it within the category of "accidents previously evaluated." Therefore, operating Pilgrim Station according to the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Pilgrim Station in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Failure of fire barriers poses a challenge to a margin of safety if the barriers cannot perform their design function; that is, they fail to protect equipment from the debilitating effects of fire. If barriers can be demonstrated capable of performing their design function using an acceptable and consistent methodology, the margin of safety is not reduced.

FPEEs demonstrate that the barriers impacted by the proposed change are capable of performing their design function. Therefore, operating Pilgrim Station in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's analysis and agrees with it. We therefore conclude that this amendment satisfies the three criteria of 10 CFR 50.92(c) and based on that conclusion propose to make a "no significant hazards" determination.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Project Director: R. H. Wessman, PDI-3

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 5, 1988

Description of amendments request: The amendments would revise Technical Specifications to delete the two tables which list reactor trip system instrumentation response times and engineered safety features response times.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previous evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed amendment removes Tables 3.3-2 and 3.3-5 from the Technical Specifications. These tables list the reactor trip system instrumentation response times and engineered safety features response times. The tables will be placed in a new section of the Byron/Braidwood FSAR, Chapter 16.3. The response times listed in the tables are not being changed by this proposed amendment. The requirements to periodically measure the response time will remain in the Technical Specifications.

Relocating the reactor trip and engineered safety features response time tables from the Technical Specifications to the FSAR is an administrative change. The response times assumed in previously evaluated accidents are not being changed by this proposed amendment. As a result, the probability or consequences of previously evaluated accidents are not affected by this amendment. Similarly, this administrative change does not create the possibility of a new or different kind of accident, nor does it affect a margin of safety.

For the reasons stated above, the staff believes that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esquire; Sidley and Austin, National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: July 11, 1988

Description of amendments request: These amendments would remove the fixed F_{xy} limits from the Technical Specifications and add the requirement that these limits be submitted in a Radial Peaking Factor Limit Report.

Basis of proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed Technical Specification amendment requests several changes. The first change removes the existing, fixed F_{xy} limits in Specification 4.2.2.2.e and substitutes a requirement to submit the F_{xy} limits to the NRC in a Peaking Factor Limit Report in accordance with Specification 6.9.1.9. The second change revises the position title to whom the Radial Peaking Factor Limit Report is submitted per Specification 6.9.1.9. The title is changed from "Chief, Core Performance Branch" to "Chief, Reactor Systems Branch, DPL-A" to reflect the current organizational responsibilities within the NRC. This change applies only to Byron since it has already been incorporated in the Braidwood Technical Specifications. Finally in Specification 6.9.1.7, the references to Specifications "3.3.3.10 and 3.3.3.11" are being changed to Specifications "3.3.3.9 and 3.3.3.10" respectively because an incorrect specification is referenced.

All the changes requested are administrative in nature and do not affect the probability of an accident occurring. The proposed revision to Specification 4.2.2.2.e does not change the current F_{xy} limits used at the plant. It simply revises the method by which changes to the F_{xy} limits can be requested and implemented. The other changes correct a typographical error and change a position title. None of these changes affect the assumptions or results of any accidents previously analyzed. Therefore the consequences of any accidents are not impacted.

The proposed changes do not involve any equipment additions or modifications at the plant or cause the plant to be operated in a different manner. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

The Radial Peaking Factor, F_{xy} (Z), is measured periodically to provide assurance that the Heat Flux Hot Channel Factor, F_q (Z), remains within its limit. The limits on Heat Flux Hot Channel Factor help to ensure the design limits on peak local power density and minimum DNRB are not exceeded and in the event of a LOCA, the peak fuel clad temperature will not exceed the 2200° F acceptance criteria. The proposed change to remove the fixed limits from the Technical Specification and replace the requirement with a submittal of a Radial Peaking Factor Limit Report does not change the F_{xy} limits. The remaining changes are administrative in nature. The changes proposed for this amendment do not affect any margins of safety.

Therefore, based upon the pervious analysis, the staff concludes that the proposed amendment to the Technical Specifications does not involve significant hazards considerations.

Local Public Document Room location: For the Byron Station Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket No. 50-373, LaSalle County Station, Unit 1, LaSalle County, Illinois

Date of application for amendments: May 23, 1988

Brief description of amendment: The proposed amendments to Operating License No. NPF-11 would revise the LaSalle Unit 1 Technical Specifications by modifying the table of primary containment isolation valves to identify new excess flow check valves that were installed during the second refuel outage. These valves were added as part of a modification to improve the reactor water level instrumentation system as

required by NUREG-0737, Item II.F.2 and Generic Letter 84-23. Completion of this modification satisfies License Condition 2.C.(30)(i) which will be deleted from the Facility Operating License. Also included in this request are corrections of typographical errors in Table 3.6.3-1. This proposed amendment is administrative in nature and is similar to one approved for LaSalle Unit 1, Amendment 34. That amendment dated February 10, 1988 added an excess flow check valve (1CM 102) for containment flood-up instrumentation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because this change is administrative, adding two new valves to Technical Specification Table 3.6.3-1. The modification that installed these new instrument lines and excess flow check valves does not require a Technical Specification change. The design of these new valves, meets the requirements listed in UFSAR Section 6.2.4. The additional containment penetration was designed in accordance with General Design Criteria 55 and Regulatory Guide 1.11. This additional instrument line does not significantly increase the consequences of any postulated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because instrument line failure has already been evaluated and found to be acceptable.

3. Involve a significant reduction in the margin of safety because the instrument line meets regulatory requirements to ensure that the margin of safety previously analyzed is maintained.

Local Public Document Room location: Public Library of Illinois, Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket No. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: July 12, 1988

Brief description of amendment: The proposed amendments to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the LaSalle Units 1 and 2 Technical Specifications by reducing the Onsite Nuclear Safety Group minimum staffing requirement from four engineers to three engineers. Commonwealth Edison plans to transfer one LaSalle engineer to Dresden Station to establish an Onsite Nuclear Safety Group at that station. This amendment request is the same as that granted for Byron Station on July 1, 1988. That approval resulted in the issuance of Amendment 19 to NPF-37 and NPF-66 on Docket Nos. 50-454 and 50-455.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because it will not involve any physical change in the plant or operating procedures. The proposed amendment may have some effect on the probability of an accident previously evaluated since there will be fewer people performing the independent safety assessment function within the Onsite Nuclear Safety Group (ONSG). However, any increase in this probability will not be significant and will be compensated for by the activities of several new corporate level groups (created by recent corporate organization changes) that are independent of the immediate management chain for power production. These groups now perform independent assessments of operating characteristics and safety issues that are often redundant to the Technical Specification responsibilities of the ONSG. This proposed amendment does not change ONSG areas of review as described in the Technical Specifications. The ONSG retains responsibility for review of those items listed in Technical Specification 6.2.3.1, but will make additional use of the independent review work done by the above noted corporate level groups.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because there will be no change in the in the physical plant or in the way the plant is operated. No new accidents are postulated. As a result, operation of the plant in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety because there will be no physical change in the plant or change in operation of the plant. There may be some effect on the margin of safety in terms of the amount of review of operating characteristics and safety issues, but this change will not be significant due to the independent assessment activities of recently created corporate level groups. These groups now have responsibilities that often overlap the Technical Specification responsibilities of the ONSG. When performing their onsite reviews, the ONSG will increase their use of corporate level independent review work performed by new departments.

Local Public Document Room location: Public Library of Illinois, Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al; Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of amendment request: April 29, 1988 as supplemented by letter dated July 21, 1988.

Description of amendment request: By application dated April 29, 1988 as

supplemented by letter dated July 21, 1988, Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company (the licensees) requested changes to the Technical Specification (TS) for Haddam Neck and Millstone Units 1, 2 and 3. The proposed changes effect the TSs which specify the qualifications and conduct of the Nuclear Review Board (NRB) for all Units and the Site Nuclear Review Board for Millstone Units 1, 2 and 3.

Basis for proposed no significant hazards consideration determination: The licensees have proposed the following changes to the Haddam Neck TS:

(1) A new TS 6.5.2.1a would specify the qualifications of the NRB Chairman and NRB members which had previously been incorporated in TS 6.5.2.2, "Composition", (2) the NRB functional review areas which are in TS 6.5.2.1, "Function," would be designated as new TS 6.5.2.1b, (3) the minimum composition of the NRB, specified in TS 6.2.2, "Composition," would be changed from seven to eight members, (4) a "charter" for the NRB review function would be added to TS 6.5.2.6, "Review," to require that "The NRB shall function as an independent review body ...", and (5) the minimum quorum for the NRB, given in TS 6.5.2.5, "Quorum" would no longer be fixed at four members plus the chairman but would be established as "...a majority of the members including the chairman."

In addition, the licensees have proposed the following changes to the TS for Millstone Units 1, 2 and 3:

(1) A new TS 6.5.3.1a would specify the qualifications of the NRB Chairman and NRB members which had previously been incorporated in TS 6.5.3.2, "Composition", (2) the NRB functional review areas which are presently in 6.5.3.1, "Function", would be designated as new TS 6.5.2.1b, (3) the minimum composition of the NRB, specified in TS 6.5.3.2., "Composition", would be changed from seven to eight members, (4) a "charter" for the NRB review function would be added to TS 6.5.3.6, "Review", to require that "The NRB shall function as an independent review body...", (5) the minimum quorum for the NRB, given in TS 6.5.3.5 would no longer be fixed at four members plus the chairman but would be established as "... a majority of the members including the chairman", (6) a new TS 6.5.4.1a would specify the qualifications of the Site Nuclear Review Board (SNRB) Chairman and SNRB members which had previously been incorporated in TS 6.5.4.2, 'Composition," (7) the SNRB functional review areas which are presently in TS 6.5.4.1, "Function", would be designated as new TS 6.5.4.1b, and (8) a "charter" for the SNRB would be added to TS 6.5.3.6, "Review" to require that, "The SNRB shall function as an independent review body...."

The proposed changes to the TS would provide an improved level of commonality among the requirements for NRB for Haddam Neck and Millstone Units 1, 2 and 3. In addition, the TS would not decrease the effectiveness, in terms of qualifications or operating efficiency of the NRB or SNRB. Accordingly, the safety review and audit functions of NRB/SNRB would not be changed by the proposed TS.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC agrees that the proposed amendment will not: (1) Cause a significant increase in the probability or consequences of an accident previously analyzed as a result of oversight by the NRB or SNRB since the proposed TS does not reduce the effectiveness of NRB or SNRB functions; (2) create the possibility of a new or different kind of accident from any accident previously evaluated since no changes in plant equipment or operation are involved; and (3) reduce safety margins since no accident analyses have been changed.

Accordingly, the NRC staff proposes to determine that the proposed changes to the TSs for Haddam Neck and Millstone Units 1, 2 and 3 involve no significant hazards considerations.

Local Public Document Room location: Russel Library, 123 Broad Street, Middletown, Connecticut 06103 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 14, 1986, as supplemented October 6, 1986 and revised August 2, 1988.

Description of amendment request: The proposed amendment would change the surveillance interval for the reactor vessel intervals vent valves (RVVVs) from "at least once per 18 months during shutdown" to "at least once per 24 months during shutdown."

This amendment was previously noticed in the Federal Register on September 9, 1986 (51 FR 33322). However, the August 14, 1986 application originally requested a permanent change for the surveillance interval for the RVVVs from once every 18 months to once per fuel cycle, and also requested a change to the surveillance interval for the high pressure and low pressure injection pumps and valves. By Amendment No. 93 dated October 21, 1986, the staff approved the licensee's request regarding the surveillance interval for the high pressure and low pressure injection pumps and valves. In addition, on November 7, 1986, the staff issued Amendment No. 94 which extended the surveillance interval for the RVVVs from once per 18 months to once per fuel cycle for Cycle 6 only, and stated that the requested permanent extension of the surveillance interval would be addressed as a separate action.

Subsequently, by letter dated August 2, 1988, the licensee revised their original application and requested that the surveillance requirements be changed from "at least once per 18 months during shutdown" to "at least once per 24 months during shutdown." Due to this revised submittal, the staff has decided to renotice the proposed amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change in accordance with the requirements of 10 CFR 50.92 and has determined that the proposed change does not involve significant hazard considerations. The past operating experience of the RVVVs in the industry and at Crystal River 3 has shown that they will remain operable for periods far greater than 18 months; therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated since there is no new mode of plant operation

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being introduced nor does the proposed change involve a physical modification to the plant. Finally, the proposed change will not involve a significant reduction in a margin of safety since existing reactor coolant system chemistry controls and valve material will help to ensure that corrosion is insignificant and therefore help maintain the existing reliability of the RVVVs.

The staff has performed a preliminary review of the licensee's evaluation and agrees with the conclusion that the proposed change does not involve significant hazards considerations. Therefore, the staff proposes to determine that the requested amendment does not involve significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida 32629

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 19, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications to provide the addition of a Table of Contents for Tables and Figures and to correct an error to a location reference found in Section 2.19.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. This amendment request is similar to the example of a purely administrative change to the Technical Specifications. Based on the above, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 12, 1988

Description of amendment request: The amendment would make several changes to Section 6.0 of the Technical Specifications (TS). The first change involves the deletion of Figures 6.2.1-1 and 6.2.2-1 showing the offsite and onsite organizations and replacing them with more general requirements which capture the essential aspects of the organizational structure. TS Sections 6.1.1 and 6.1.2 would be supplemented to include these more general organizational requirements in accordance with Generic Letter 88-06 dated March 22, 1988.

The second change would replace the reference to the Vice President-Nuclear, contained in TS 6.1.2, with a more generic title, senior corporate nuclear officer. For consistency, TS 6.5.1.6f, 6.5.1.6m, 6.5.1.8b, 6.5.1.9, 6.5.2.4.3g, 6.5.2.4.4b, 6.5.2.6, 6.6.1b, 6.7.1a, and 6.7.1c would also replace the title, Vice President-Nuclear, with the title, senior corporate nuclear officer. This change is necessary because the title, Vice President-Nuclear, has been changed to Vice President and Chief Nuclear Officer and the TS as currently structured, should reflect this change. However, this amendment request proposes to replace the specific title, Vice President-Nuclear, with a more generic title, senior corporate nuclear officer. This change will alleviate the need to process future amendment requests to reflect title changes for the Vice President and Chief Nuclear Officer.

The third and final change affects TS 6.9.2 and 6.9.3 concerning special reports. It would require that special reports be submitted to the USNRC Document Control Desk with a copy to the Regional Administrator. This proposal is consistent with a revision to 10 CFR 50.4, published in **Federal Register**, Volume 51, Number 215, on November 6, 1986.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: 1) involve a significant increase in the probability or consequences of an accident previously evaluated; 2) create the possibility or a new or different kind of accident from any accident previously evaluated; or 3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes against these three criteria and made the following statements with respect to each of them.

(1) "The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. For these reasons, the proposed changes do not affect the probability or consequences of accidents previously analyzed."

(2) "The changes being proposed are purely administrative and will not lead to material procedure changes or to physical modifications. In addition, there are no management changes being proposed as a result of this amendment request, rather the request is necessary to comply with Generic Letter 88-06 and to reflect the current management organization. For these reasons, the proposed changes do not create the possibility of a new or different kind of accident."

(3) "The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in and maintained by the Technical Specifications.

The changes discussed herein do not reduce the TS safety margin since all organizational responsibilities are being adequately implemented, all personnel in place are properly qualified, and controlling the organizational details in the UFSAR will be commensurate with controlling them in the TS.

Through PSE&G's strong Quality Assurance Program and our commitment to maintain only qualified personnel in positions of responsibility, it is assured that safety functions performed by the onsite and offsite organizations will continue to be performed with a high level of competence."

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: January 19, 1988

Description of amendment request: The proposed amendment would add an Action Statement to the Hydrogen Analyzers Technical Specification (TS) 3.6.4.1 for Salem Unit Nos. 1 and 2 addressing the situation where both analyzers are inoperable. This Action Statement would allow operation of the plant for 72 hours with both hydrogen analyzers inoperable. It is consistent with the direction given in Generic Letter 83-37, entitled "NUREG-0737 Technical Specifications." This Generic Letter contained Staff guidance regarding an acceptable containment hydrogen monitor (analyzers) Technical Specification. This guidance reads as follows:

"Two independent containment hydrogen monitors should be operable at all times when the reactor is operating in Power Operation or Startup modes. LCO for these monitors should include the requirement that with one hydrogen monitor inoperable, the monitor should be restored to operable status within 30 days or the plant should be brought to at least a hot standby condition within the next 6 hours. If both monitors are inoperable, at least one monitor should be restored to operable status within 72 hours or the plant should be brought to at least hot standby condition within the next 6 hours."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Public Service Electric and Gas Company reviewed the proposed change and determined and the NRC staff agrees that the proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The hydrogen analyzers provide containment hydrogen concentration indication to control room operators under accident conditions. The operation or failure of this systems does not lessen any safety systems' ability to perform its design function. These changes are consistent with the guidance provided in Generic Letter 83-37.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The hydrogen analyzers provide indication only. Their failure to operate cannot create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The hydrogen analyzers, while being required by Technical Specifications, do not have an active part in the determination of a margin of safety. They only provide control room indication of containment hydrogen concentrations during accident conditions. The added Action Statement and increased Surveillance Requirements are consistent with the guidance given in Generic Letter 83-37.

Furthermore, the increase in the surveillance requirements confirms the operability of the hydrogen analyzers at more frequent intervals. This provides earlier and more frequent indication to plant operators of the status of the system, thus increasing the probability that it will function as required.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Dates of amendment request: June 10, 1985, as supplemented December 6, 1985, May 16, 1988, July 14, 1988, and July 28, 1988

Description of amendment request: The proposed amendment to the Virgil C. Summer Nuclear Station Technical Specifications (TS) would reduce the number and severity of starts of the emergency diesel generators, thereby decreasing engine wear and increasing reliability. This proposed change was originally noticed as a proposed no significant hazards consideration on July 17, 1985 at 50 FR 29016 and renoticed on June 4, 1986 at 51 FR 20373.

By letter dated November 9, 1987, the NRC requested additional information on the proposed changes. The licensee responded with a submittal dated May 16, 1988. The May 16, 1988 submittal:

(1) adds the following statement to Action Statement b.1 of TS 3.8.1.1, "If the EDG became inoperable due to any cause other than preplanned maintenance...."

(2) adds a footnote to Action Statements b.2 and c.2 of TS 3.8.1.1, which requires the test to be completed regardless of when the inoperable EDG is restored.

(3) retains the original frequency of every 18 months in Surveillance Requirements 4.8.1.1.1.b and 4.8.1.1.2.e.

(4) changes the loading band to 4150-4250 kW.

(5) retains the wording of "concurrent with" in TS 4.8.1.1.2.e.6.c.

(6) requires the two hour loading at the short time rating at the beginning of the test in accordance with position C.14 of Regulatory Guide 1.9.

(7)retains the original reporting requirements in TS 4.8.1.1.3.

The July 14, 1988 supplement transmitted the No Significant Hazards Determination which was missing from the May 16, 1988 supplement. The July 28, 1988 supplement modified the May 16, 1988 submittal such that surveillance requirement 4.8.1.1.2.a.3 of the May 16 submittal was divided into two separate surveillance requirements, 4.8.1.1.2.a.3 and 4.8.1.1.2.a.4. Surveillance requirement 4.8.1.1.2.a.3 would now verify that the diesel generator could start and accelerate to its synchronous speed with generator voltage and frequency at 7200 ±720 volts and 60 ±1.2 Hz. Surveillance requirement 4.8.1.1.2.a.4 would verify that the generator was synchronized, gradually loaded to an indicated 4150-4250 kW and operated for at least 60 minutes. This division into two separate surveillance requirements would preclude the unnecessary loading of the diesel generators when the Summer Station entered certain Action Statements in the Technical Specifications. The July 28 submittal also corrected a typographical error to Bases Sections 3/4.8.1, 3/4.8.2 and 3/4.8.3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined the proposed change does not involve a significant hazards consideration as follows:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the only change is a reduction in frequency and severity of diesel generator test starts which will result in less wear and stress on engine parts. This will decrease the probability of an accident due to failure of engine parts, and the consequences of an accident will not change.

2. The proposed amendment does not create the possibility of a new kind of accident from any accident previously evaluated because the design and function of the diesel generator will not change.

3. The proposed amendment does not involve a significant reduction in the margin of safety because there will be no change in response times or emergency loads assumed in the accident analysis.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Dates of amendment request: July 6, 1987, as supplemented May 16, 1988 and July 18, 1988

Description of amendment request: The July 6, 1987 submittal proposed to revise Technical Specification (TS) Sections 6.2, "Organization," and 6.4, "Training." This revision proposed to delete the organization charts from the Technical Specifications and to revise the restraining and replacement program. The July 6, 1987 submittal was noticed in the **Federal Register** on September 9, 1987 (52 FR 34019). On March 22, 1988, Generic Letter 88-06, "Removal of Organization Charts from Technical Specifications Administrative Control Requirements," was issued by the Commission. As a result of the issuance of this Generic Letter, the licensee modified its proposed amendment request in their May 16, 1988 submittal. Specifically, a new section, 6.2.1 "Offsite and Onsite Organizations," was added. This submittal was noticed in the August 10, 1988 **Federal Register** (53 FR 30142).

The July 18, 1988 submittal proposed modifying Technical Specifications 6.1.1, 6.2.2, 6.5.1 and 6.5.3 to change the title Director, Nuclear Plant Operations to General Manager, Nuclear Plant Operations and the title Deputy Director, Operations and Maintenance to General Manager, Operations and Maintenance. The July 18 submittal also included a revision to Sections 6.2.3, 6.2.4 and 6.4 involving errors and omissions which were not corrected in the May 16, 1988 submittal.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the change in the title and the correction in the numbering of the Technical Specifications does not affect the Significant Hazards Determination presented in the July 6, 1987 submittal.

The licensee has determined with respect to the July 18, 1988 submittal that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the organizational title changes do not affect plant operation in any manner.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes are administrative in nature and do not affect organizational responsibilities. Also, no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed amendment does not involve a significant reduction in a margin of safety. Through SCE&G's Quality Assurance programs and efforts to maintain only the most qualified personnel in positions of responsibility, it is assured that safety functions performed by personnel within the Nuclear Operations Division will continue to be performed at a high level of competence.

The staff has reviewed these determinations and is in agreement with them.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: June 24, 1988 (TS 241)

Description of amendment requests: The proposed amendments would revise the Browns Ferry Nuclear Plant, Units 1, 2 and 3 Technical Specifications by replacing water level measurements referenced to the top of active fuel with measurements referenced to the height above vessel zero.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an

accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. There will be no change in the operation of the facility as a result of the amendment. No safety-related equipment or function will be altered. The amendment merely changes the reactor vessel water level reference.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, no safety-related equipment, safety functions, or plant operations will be altered as a result of this amendment. The requested change does not create any new accident mode. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident.

3. The proposed amendment does not involve a significant reduction in a margin of safety. This amendment merely changes the reference point of the level instrument to make all the instrument references identical. The safety limit is not changed and therefore there is no reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: June 24, 1988 (TS 242)

Description of amendment requests: The proposed amendment would modify the Browns Ferry Nuclear Plant Units 1, 2 and 3 Technical Specifications, Section 3.5.C, including Table 3.5-1 and the Bases, to clarify the limiting conditions for operation for the Residual Heat Removal Service Water (RHRSW) and Emergency Equipment Cooling Water (EECW) Systems. Specifically:

1. Section 3.5.C is rewritten to refer the user to Table 3.5-1 for RHRSW pump operability requirements prior to startup from a cold shutdown condition.

2. Table 3.5-1 is amended to address minimum service requirements prior to startup from a cold shutdown condition, to allow a reduction by one of the number of RHRSW pumps required to be operable when the decay heat load can be handled by one RHR heat exchanger during shut down, and to reformat.

3. The Bases for Section 3.5.C is amended to state that the entire shutdown cooling load is capable of being handled by one RHR heat exchanger after decay heat levels have decreased following shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

(1) The proposed change does not significantly increase the probability or consequences of an accident previously evaluated. Reducing the number of RHRSW pumps as proposed will not involve a significant increase in the probability or consequences of an accident previously evaluated. A General Electric study performed for Browns Ferry has shown that 96 hours following reactor shutdown, the decay heat load is approximately 12.5 MWt. One RHR heat exchanger can supply adequate cooling capacity during this shutdown mode. Based on this analysis, the minimum RHRSW pump requirements have been reduced. The proposed TS will require only two RHRSW pumps to be operable for each unit that has been in cold shutdown for more than 96 hours. The proposed change will not affect the reliability of the RHRSW system. The RHRSW system will still be able to perform its intended safety function and therefore does not create a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident than any accident previously evaluated. The General Electric analysis has shown that one RHR heat exchanger, and thus, one RHRSW pump, can supply adequate cooling capability after the unit has been shut down for 96 hours. The proposed change does not alter the operation or function of the RHRSW system and therefore will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in margin of safety. It does not change or alter the required safety functions of the RHRSW system, nor does it physically modify any equipment, setpoints, or initiating time/sequence of the equipment.

The NRC staff has reviewed the licensee's determination and concurs with its finding. Accordingly, the Commission proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: July 29, 1988 (TS 248)

Description of amendment request: The proposed amendment would modify the Browns Ferry Nuclear Plant, Unit 2 Technical Specifications by changing the trip setpoint for the Automatic Depressurization System (ADS) timers from 120 ±5 seconds to 105 ±7 seconds, correcting minor TS discrepancies, and adding the surveillance and setpoint requirements for the new 12½ minute timers being added in accordance with NUREG-0737, Item II.K.3.18, to bypass the high drywell pressure requirement for ADS initiation.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or

consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) None of the Final Safety Analysis Report (PSAR) accidents are initiated by spurious actuation or failure of the ADS initiation logic circuitry.

(b) The ADS will still function and operate as currently designed, the 120 ±5 second setpoint for the existing timer is long enough to allow the operator sufficient time to abort an ADS blowdown if conditions warrant, (e.g., if high pressure makeup systems are adequately restoring Reactor Pressure Vessel (RPV) water level). Thus, lowering the setpoint of the existing ADS timer to 105 ±7 seconds does not significantly increase the probability of creating the large stresses associated with a rapid blowdown event on the RPV. These large stresses caused by a rapid blowdown, however, were included in the design of the reactor vessel, and these stresses will not be increased by the proposed changes.

(c) With this modification, two means (manually by operator and automatically by new ADS circuitry) would be available to mitigate a Loss of Coolant Accident event. Therefore, the consequences of this accident scenario are reduced.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The modification to decrease the setpoint ensures that the ADS reacts to an accident condition within the time analyzed in the FSAR. The addition of a timer to bypass the high-drywell pressure interlock causes the ADS to initiate for accidents which previously required manual initiation and decreases the probability for operator error.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The time required for high pressure reactor vessel makeup systems to react to a loss-of-coolant accident is reduced (i.e., 120-second timer setpoint changed to 105-second setpoint), but it is still long enough to ensure that short term transient conditons will not unnecessarily initiate the ADS. Also, by adding circuitry to automatically initiate ADS for accidents previously requiring manual initiation, it decreases the chance for operator error.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: July 27, 1988 (TS 88-13)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN) Units 1 and 2 Technical Specifications (TS). This change is to revise the containment systems surveillance requirement 4.6.5.1.b.3. This change will replace the visual inspection requirement utilizing the current 0.38-inch criteria with a surveillance program to ensure that the flow blockage does not exceed 15 percent.

Basis for proposed no significant hazards consideration determination: In its application, TVA provided the following discussion on its proposed change:

During preparation for unit 2 restart, the surveillance requirement (SR) of the SQN ice condenser, TS 3/4.6.5, was reviewed. The review revealed that SR 4.6.5.1.b.3 attempted to quantify the amount of allowable ice buildup in the ice condenser flow passages, but did not adequately reflect the intent of the TS. The TS is to ensure that adequate flow area exists in the ice condenser bays to allow passage of steam and air. The findings also showed that the surveillance of the ice condenser flow paths should be focused on the original intent of the TS and that a reasonable method of inspection be provided. The proposed method of inspection is more feasible and provides a more direct relationship to the functional requirements of the ice condenser.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed TS change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The ice condenser system is a passive system designed to absorb thermal energy released immediately following a LOCA [Loss-of-Coolant Accident] or a high energy line break (HELB) for the purpose of limiting peak pressure inside containment. The ice condenser serves no function during normal operation but is required in mitigating the consequences of a LOCA or HELB.

Existing TS SR 4.6.5.1.b.3 requires verification that the accumulation of frost or ice on flow passages is restricted to a thickness of less than or equal to 0.38 inch. The intent of this SR was to ensure that the flow areas in the ice condenser are consistent with those used by Westinghouse in analyses to determine containment design pressure. Frost of ice accumulation in the flow passages could momentarily add resistance to the flow of air and steam through the ice condenser. The Westinghouse analyses assumes a hypothetical LOCA and utilized the TMD computer code. The TMD computer code was used for a short-term subcompartment pressure analysis that determined short duration pressure transients across interior concrete walls, the operating deck slab, and the containment shell during the blowdown period. The mass and energy releases used in these analyses were increased by 10 percent over those calculated by the SATAN computer code, and no structural heat sinks were modeled to provide additional conservatism in the calculation of the pressure rise. Westinghouse performed sensitivity studies of flow blockages in the ice condenser, which established that the containment pressure was less than 12 psig with an effective blockage of 15 percent of the total available flow area in the ice bed. Additional conservatism in the sensitivity studies was that the blockages were assumed to be constant throughout the entire height of the ice bed and neglects the benefits that cross-flow will provide in venting the steam and air around actual blockage in the ice bed.

Additionally, TVA performed calculations to confirm that the operating deck floor slab, refueling canal wall, crane wall above the ice condenser columns, and ice condenser end walls were structurally adequate to withstand a design basis accident pressure increase because of ice condenser blockage up to 15 percent. These calculations confirmed that each area is structurally adequate for operation at the increased pressures. The use of 0.38-inch maximum ice buildup in the SQN TS for determination of blockage was intended to quantify the amount of allowable ice buildup in the flow passages because accumulation could momentarily add resistance to the flow of air and steam through the ice bed. Implementation of the existing SR is extremely difficult. In some instances, inspectors must visually determine whether ice buildup is less than or equal to 0.38 inch from a distance of up to 24 feet. The revision of SRs will replace the specific 0.38-inch value for ice condenser flow passage inspection with a conservative, quantifiable, and reasonable method for verifying operability with respect to available flow area. The new surveillance method will inspect 54 (33 percent) of the flow passages in each of the 24 ice condenser bays against acceptance criteria where any bay with less than or equal to 15-percent calculated blockage shall be considered to have

acceptable flow channels for passages of air and steam through the ice condenser. Westinghouse has determined through sensitivity studies that up to 15-percent blockage will allow adequate flow through the ice condenser. The surveillance method to be used for flow passage inspection uses an acceptance criteria based on 15-percent blockage; the revision of the TS to replace the specific 0.38-inch value will not adversely affect the function of the ice condenser and will not increase the probability or consequences of any accident or malfunction previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The ice condenser is a passive system that functions to limit initial pressure inside containment following a LOCA or HELB as previously analyzed. Westinghouse verified that 85-percent available flow area is adequate for the ice condenser to perform its intended safety function; the change in SR from requiring visual inspection to verify that frost/ice accumulation does not exceed 0.38 inch to visual inspection to verify that blockage does not exceed 15 percent of the total flow area will not affect the function of the ice condenser or create abnormal operating conditions. The new SR will provide a reliable and quantifiable means for conservative verification of blockage. Therefore, the change in SR does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. R 4.6.5.1.b.3 utilized a specific value of 0.38 inch for determination of frost/ice blockage in the ice condenser. This specific value was used in an attempt to quantify the amount of blockage so that available flow area could be calculated and verified as acceptable. This specific value, however, does not establish the safety limit for blockage of ice condenser flow area. Westinghouse has shown that with 85 percent of total flow area. Westinghouse has shown that with 85 percent of total flow are available, the ice condenser will perform its intended function. Therefore, the safety limit for ice condenser operability is less than or equal to 15-percent blockage. The new surveillance method to be used requires more extensive visual inspection than the surveillance program currently described in 4.6.1.b.3, thus providing greater reliability and a direct relationship to analytical safety limits.

Because the safety limit for the ice condenser flow is less than or equal to 15-percent blockage of total flow are, a change in TSs to implement a surveillance program that is more reliable utilizing a 15-percent blockage acceptance criteria will not reduce the margin of safety. Design limits for the continued safe function of the containment shell and concrete containment walls and slabs are not exceeded as a result of this change.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Attorney for Licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Ell B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 28, 1988

Description of amendment request: The proposed amendment would change all references regarding the "Vice President, Nuclear" to the "Senior Vice President, Nuclear". The proposed amendment would also delete the General Manager, Engineering (Nuclear) and appoint the Manager, Licensing and Fuels as the Chairman of the Nuclear Safety Review Board (NSRB).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR Section 50.92 by providing certain examples (51 FR 7751) of actions not likely to involve a significant hazard. Example (i) of this guidance states: "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The proposed license amendment is directly related to the above example. The minimum qualifications and basic organizational reporting requirements are unchanged as a result of the upgrade in management assignments. Engineering expertise is currently represented on the NSRB through the membership of the Manager, Nuclear Engineering; and the Manager, Licensing and Fuels, is currently an appointed member of the NSRB.

Based on the above discussions, the staff proposes to determine that the proposed technical specification changes do not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: July 12, 1988

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.5.1 and its associated bases to: change Action Statement a. and b. to allow the unit to remain in Hot Standby (Mode 3) with Reactor Coolant System (RCS) pressure less than 1000 psig and with one accumulator inoperable in lieu of going to Hot Shutdown (Mode 4); and to add a note to Action Statement b. to allow closing one accumulator isolation valve for up to 2 hours to perform leakage testing of system check valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations using the Commission's standards.

1. The proposed change to allow the plant to remain in Mode 3 with a reduction in RCS pressure in lieu of going to Mode 4 if accumulator operability cannot be restored would not:

a. Involve a significant increase in the probability or consequences of an accident previously evaluated. The change to the Action Statement is merely to allow the plant to remain in Hot Standby (Mode 3) for a longer period of time after an accumulator has been declared inoperable, in lieu of going to Hot Shutdown (Mode 4). This additional time allowance in Mode 3 at a reduction of the RCS pressure to less than 1000 psig would reduce thermal cycling on the RCS and reactor internals; conform with the current version of the Westinghouse Standard Technical Specifications, NUREG-0452, Rev. 5; and would not affect the scope of the technical specifications.

b. Create the possibility of a new or different kind of accident from any accident previously evaluated. There is no change to

the system or components to create any new failure or accident sequences. The change allows the plant to remain in Mode 3 for a longer time period upon entry into an Action Statement and is consistent with NUREG-0452, Rev. 5. This change also does not affect the scope or intent of the original technical specification Action Statement.

c. Involve a significant reduction in a margin of safety. The change to allow the plant to remain in Mode 3 at a reduced RCS pressure does not impact the margin of safety. Since this change is only effective upon entry into an Action Statement due to an inoperable accumulator, the margin of safety has been already reduced to three out of four accumulators available if needed and, therefore, this changes does not impact the margin of safety that currently exists.

2. The second proposed change would allow an accumulator isolation valve to be closed for a specified period of up to 2 hours, with the reactor in Mode 3 and with RCS pressure greater than 1000 psig, for testing of system check valves.

a. The change would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change would allow a time period of up to 2 hours in which an accumulator isolation valve can be closed while the plant is in Mode 3 and RCS pressure is greater than 1000 psig to perform surveillance leakage testing of system check valves. This 2-hour time period would only be applicable in Mode 3 and would not affect accident evaluations since the current Action Statement allows up to 6 hours to achieve Mode 3 status with an accumulator isolation valve closed. Also the valve could be immediately opened if needed since the accumulator otherwise meets operability requirements.

b. The change would not create the possibility of a new or different kind of accident from any accident previously evaluated. There is no change to the system or components to create any new failure or accident sequences. The change is merely a closely monitored period of time in which an accumulator isolation valve is closed on an otherwise operable accumulator to allow for system check valve testing required by technical specifications.

c. The change would not involve a significant reduction in a margin of safety. While the shutdown margin following a LOCA may be reduced if a LOCA were to occur with one accumulator isolated, the increase in allowed time before the accumulator isolation valve could be opened does not significantly affect the margin of safety since the accumulator could be returned to service if needed.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; does not involve a reduction in the required margin of safety. The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: April 26, 1988, as supplemented July 18, 1988.

Description of amendment requests: The proposed amendments would revise the Surry Units 1 and 2 Technical Specifications (TS) to allow entry into the containment personnel airlock during power operations to make repairs on the inner door of the personnel airlock. In addition, the definition of containment integrity would be revised to clarify the actions to be taken for an inoperable automatic containment isolation valve.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change with regard to the personnel airlock door in accordance with the requirements of 10 CFR 50.92 and has determined that the proposed change does not involve significant hazards considerations. The change would not increase the probability of occurrence of a design basis accident. And, although there may be an effect on the consequences of an accident if there is a pressurization (Design Base Accident) of the containment during the time the outer door is opened and leakage through the inner door exists, the licensee has determined that the potential increase in the consequences of an event is considered to be insignificant for the following reasons:

a. Entry through the personnel airlock during subatmospheric conditions is acceptable based on the current limiting conditions for operation provided that at least one airlock door is closed and properly sealed. As such, the required containment integrity condition necessary for limiting the consequences of an accident can be satisfied by a single door.

b. The amount of leakage through the inner door seal may not meet the acceptance criteria of the surveillance test. If the seal cannot be repaired and retested at this time, the outer door would be closed and sealed. If the inner door seal leakage is excessive, the pressure equalization necessary to open the outer door could not be accomplished and repairs could not be made until the unit is in a cold shutdown condition with the containment pressure returned to atmospheric.

c. In the event of a containment pressurization due to a design basis accident during the entry through the outer door, the increased pressure in the containment would more fully seat the inner door and would tend to reduce the seal leakage.

d. The probability of a design basis accident occurring during the brief period of time that the outer door is opened for access to repair the inner door seal is considered to be insignificant.

Although the consequences of the accident may increase slightly, the probability of the event is sufficiently small so that the overall increase in consequences is considered insignificant.

In addition, the proposed change will not create the possibility of a new or different kind of accident from any evaluated previously. Although a quantitative analysis of releases has not been made, the potential for an accident concurrent with repair activities and hence the potential consequences are considered to be insignificant.

Finally, the proposed change would not involve a significant reduction in a margin of safety. Although the redundancy in the design of the personnel airlock door and the capability to limit the leakage through the airlock door may be reduced during this brief evolution, the reduction of margin is considered insignificant based on the small probability of concurrently opening the outer door and having a

design basis event. In addition, the effort expended to repair the inner door seal and ensure the operability of both personnel airlock seals improves the capability of the airlock to withstand a containment pressurization and restore the redundancy in the design of the personnel airlock. Repair of the airlock door seals is considered prudent and is normally performed even though the Technical Specifications (1.H.4) for the Surry units requires only one door seal to be operable.

With regard to the proposed change concerning the inoperable automatic containment isolation valve, the licensee has reviewed the proposed change in accordance with 10 CFR 50.92 and determined that the proposed amendments will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. [The] amendment[s] [do] not alter the requirement to ensure that inoperable containment isolation valves are closed (post accident required position).

It clarifies the actions necessary to ensure that valves with air operated (solenoid valves) actuators or direct acting solenoid valves are properly secured. Specific actions for deactivating and securing inoperable valves are provided in the Surry Administrative Procedure (SUADM-0-26).

2. Create the possibility of a new or different kind of accident from any evaluated previously in the safety analysis report. The requirement to close inoperable containment isolation valves is preserved but clarified for particular types of valves.

3. Involve a significant reduction in the margin of safety. The margin of safety will not be affected since the inoperable valves will be closed.

After a preliminary review of the licensee's analyses concerning the proposed changes, the staff agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: July 29, 1988

Description of amendment requests: The proposed amendments would revise Section 4.1.B.5.a of the Surry Units 1 and 2 Technical Specifications (TS) to include all manual isolation valves in the demonstration of operability of the reactor vessel head vent path. In addition, to avoid confusion the words "isolation valves" have been changed to "remote operating isolation valves" in TS 4.1.4 and 4.1.5.b.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in accordance with the requirements of 10 CFR 50.92 and has determined that the proposed changes do not involve a significant hazard consideration. The licensee's evaluation is provided below:

The proposed change[s] [do] not involve a significant hazards consideration because operation of Surry Nos. 1 and 2 in accordance with [these] change[s] would not:

(1) Involve a significant increase in the probability or consequences of an accident or malfunction of equipment previously evaluated. The proposed change[s] [do] not alter plant design function or system operation. The probability of failure of a downstream manual isolation valve is an insignificant contributer to the overall core melt frequency. The downstream manual valves will allow for testing and maintenance of the solenoid operated valves when the reactor is shut down.

(2) Create the possibility of a new or different kind of accident from any accident previously identified in the [Updated Final Safety Analysis Report] UFSAR. It has been determined that a new or different kind of accident will not be possible due to [these] change[s]. The addition of the manual isolation valves will not create the possibility of a new or different accident. Failure of a manual downstream isolation valve would at most, only render one train of the vent path inoperable, which is similar to one SOV failing closed.

(3) Involve a significant reduction in a margin of safety. With the manual downstream isolation valves open both vent paths remain operable. The head vent paths are not assumed to operate for accident mitigation in any design base accident discussed in the UFSAR.

Therefore, pursuant to 10 CFR 50.92 based on the above [considerations], it has been determined that [these] change[s] [do] not involve a significant safety hazards consideration.

After a preliminary review of the licensee's analyses concerning the proposed changes, the staff agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room location: Swen Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 28, 1988

Description of amendment request: This proposed amendment will clarify the required actions to take if Technical Specification 3.6.1.2 is entered when the Reactor Coolant Temperature is above 200 degrees F. This proposed amendment also adds a note to Technical Specification 3.6.3, which addresses leakage concerns on containment isolation valves.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

This proposed amendment will clarify the required actions to take if Technical Specification 3.6.1.2 is entered when the Reactor Coolant Temperature is above 200 degrees F. This proposed amendment also adds a note to Technical Specification 3.6.3, which addresses leakage concerns on containment isolation valves.

(1) This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed amendment clarifies an existing Technical Specification. The current Technical Specifications do not provide actions to take if there is a leakage problem with a

containment isolation component. The actions that this proposed amendment provide, are consistent with Technical Specification 3.6.3, for stroke times.

(2) This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No new type of accident or malfunction is being created. This amendment merely provides clear guidance to accomplish actions commiserate with the existing situation.

(3) This proposed amendment does not involve a significant reduction in a margin of safety. Technical Specification 3.6.3 allows 4 hours to take the required actions or shut the plant down within the next 6 hours. This proposed amendment will require the same response for a containment isolation component with excessive leakage as is required for a containment isolation valve that is either slow closing or will not close. Therefore, the margin of safety is unaffected.

Based on the above discussions, it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards consideration.

The licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Wolf Creek Nuclear Generating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 24, 1988

Description of amendment request: The license amendment request proposes to:

(1) Revise the nuclear enthalpy rise hot channel factor, part power multiplier from 0.2 to 0.3,

(2) Revise technical specification parameters involving instrument allowances for the reactor coolant system (RCS) resistance temperature detectors associated with the reactor trip setpoints for overtemperature delta-T, over power delta-T, and reactor coolant flow setpoints and RCS flow measurement uncertainty. These changes result from improvements in the calculational methodology through the use of a plant specific calibration technique,

(3) Change Special Test Exception Specification 3.10.4 to correct an inconsistency in the Technical Specifications,

(4) Change the minimum boron concentration in the Refueling Water Storage Tank (RWST) from 2000 ppm to 2400 ppm (Technical Specification 3.1.2.5 and Bases),

(5) Change the boron concentration range in the RWST from 2000-2100 ppm to 2400-2500 ppm (Technical Specification 3.1.2.6 and Bases),

(6) Change the accumulator boron concentration range from 1900-2100 ppm to 2300-2500 ppm (Technical Specification 3.5.1),

(7) Change the RWST boron concentration range from 2000-2100 ppm to 2400-2500 ppm (Technical Specification 3.5.5 and Bases).

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination.

The proposed modification regarding a revision of the nuclear enthalpy rise hot channel factor part power multiplier from 0.2 to 0.3 (Change 1) and the modifications to the over temperature delta-T, over power delta-T, and reactor coolant flow setpoints (Change 2) do not involve a significant hazards consideration.

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes affect reactor core design parameters associated with accident mitigation or operational transients. These parameters are determined by design to protect the reactor core from exceeding safety limits. These changes do not affect initiators of an event that would change the probability of occurrence of an accident previously evaluated. The consequences of previously evaluated accidents have not been increased. The impact of these changes on the safety analyses has been evaluated. The evaluation results indicate that the safety analyses continue to meet required safety limits.

(2) The proposed changes affect reactor core design parameters associated with mitigation of postulated accidents and transients. No design changes to plant structures, systems or equipment or modifications to plant operation are being proposed. There are no new failure modes or mechanisms associated with the proposed revisions. The changes reflect revised parameters based on evaluations of existing analyses and or reanalysis, as necessary. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety. The changes do not affect any Technical Specification margin of safety. The changes proposed impact the analyses assumptions and inputs used in the safety analyses, the core power limits used in the reactor design, and reactor trip setpoints. The affected safety analyses and core power limits have been evaluated and/or reanalyzed as necessary and it has been determined that all applicable safety cirteria are met. Therefore, the margin of safety as defined in the bases has not been reduced. Affected Technical Specifications have been revised to reflect the proposed changes.

The proposed change to Special Text Exception 3.10.4 (Change 3) does not involve a significant hazards consideration.

The NRC has given guidance concerning the applicability of 10 CFR 50.92 by providing examples (50 FR 7751) for comparison. The proposed Technical Specification modifications to eliminate an inconsistent reference to Special Test Exception 3.10.4 are purely administrative and are encompassed by example (i) of actions not likely to involve a significant hazards consideration.

The proposed modification regarding the boron concentration limits for the RWST and the Safety Injection System accumulators (Changes 4, 5, 6, and 7) do not involve a significant hazards consideration.

(1) The proposed Technical Specification modifications involve changes in boron concentrations in systems used to mitigate plant accidents and transients. The consequences of accidents and transients previously

evaluated in the USAR, including LOCA and non-LOCA events, have been evaluated and/or reanalyzed and are not significantly affected by the proposed changes. Therefore, the proposed changes would not involve an increase in the probability of occurrence of an accident previously evaluated.

(2) The proposed Technical Specification changes would revise boron concentrations in systems used to mitigate plant accidents and transients. No modifications to plant design or operational requirement to switch to hot leg recirculation 12 hours following a LOCA. However, the 12 hours would allow sufficient time for the required operator action and, therefore, the possibility of boron precipitation on fuel rods following a LOCA is not significantly affected. Therefore, the possibility of a new or different kind of accident would not be created by the proposed changes.

(3) The proposed revisions in boron concentrations affect safety analysis inputs and assumptions. The affected safety analyses have been evaluated, and it has been determined that all applicable safety criteria are met with no significant adverse affects on analyses results. Therefore, the margin of safety as defined by the USAR, safety analyses, and the Technical Specification Bases would not be significantly reduced.

Based on the above discussions, it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested changes do not involve a significant hazards consideration.

The licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 6, 1988

Description of amendment request: This proposed amendment to Technical Specification 3.4.8 and its associated bases revises the requirements for reporting iodine spiking from a short-term report to an item which is to be included in the Annual Report, and eliminates the requirement to shut down the plant after 800 hours of operation with a dose equivalent I-131 value of 1 microcurie per gram or greater. This amendment request complies with the guidance provided by Generic Letter 85-19, dated September 27, 1985.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

(1) This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Generic Letter 85-19, states, the improved quality of fuel and the existence of adequate reporting requirements precludes the operation of the facility with primary system activity that is excessive.

(2) This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No changes in plant equipment, operating modes or safety analyses are involved.

(3) This proposed amendment does not involve a significant reduction in a margin of safety. No changes in plant equipment, operating modes or safety analyses are involved.

Based on the above discussions it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards consideration.

The licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration. 1*Local Public Document Room Location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 27, 1988

Description of amendment request: The proposed amendment permits installation of two spare penetrations into containment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee's analyses contained in the June 27, 1988 letter states the following:

This proposed addition of new containment isolation boundary valves which conform to 10 CFR 50, Appendix A, Criterion 56, does not

expose the plant to an increase chance of failure of containment integrity.

The inside containment check valve, WC-V-622, and the outside containment, locked closed, manual gate valve, WC-V-621, will serve as containment isolation valves for one penetration into the Vapor Container. The inside containment, locked closed, manual gate valve, VD-V-1170, and the outside containment, locked closed, manual gate valve, VD-V-1171, will serve as containment isolation valves for the other penetration into the Vapor Container. The addition of these valves to Section 3/4 6-12, Sections B and C, involves a change that constitutes a limitation and control which presently exists in the Technical Specifications. The containment leakage limiting conditions for operation set forth in Section 3.6.1.2 are applicable to all containment barriers listed in Table 3.6-1. The addition of four valves to be Type C tested in Table 3.6-1 are pieces of equipment which shall be subject to existing requirements and limitations set forth in the current Technical Specifications.

As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The new containment penetration designs conform to 10 CFR 50, Appendix A, Criterion 56. These penetrations will be Type C tested in accordance with 10 CFR 50, Appendix J requirements. The containment leakage limiting condition for operation in Technical Specification 3.6.1.2 remains unchanged. Any leakage attributed to these penetrations must still fit within Technical Specification 3.6.1.2 limits.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The new containment penetrations are identical to existing installed equipment. Their failure would be identical to those previously analyzed, and would not create any new or different kind of accident.

3. Involve a significant reduction in a margin of safety. The new containment penetrations do not reduce the margin of safety of any Technical Specification. The limiting condition for operation of Technical Specification 3.6.1.2 remains unchanged, ensuring the present margin of safety is maintained.

Based on the consideration contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant consistent with the proposed Technical Specifications will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 27, 1988

Description of amendment request: The proposed amendment permits an increase in the nitrogen pressure in the safety injection accumulator.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the June 27, 1988 letter states the following:

The proposed new N_2 supply pressure to the SI accumulator does not expose the plant to an increased chance of failure of either the SI System or the N_2 Supply System. The impact of raising accumulator N_2 pressure on a Loss of Coolant Accident (LOCA) has been analyzed by Yankee. The results of this analysis indicate that the increased accumulator pressure results in a decrease of approximately 20° F in Peak Clad Temperature (PCT). The increased pressure is well within the design of the system components. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This change increases the operating pressure of the SI accumulator in order to adequately monitor the operational readiness of the Safety Injection Accumulator Nitrogen Supply System. The increased operating pressure has a favorable impact on the Yankee LOCA analysis resulting in a decrease in the calculated peak clad temperature. It is also within the design capability of system components.

2. Create the possibility of a new or different kind of accident from any previously analyzed. This change provides for consistent pressure indication of the SI accumulator without changing system functional operability requirements or exceeding component design limitations. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety. This change in accumulator setpoint will increase the margin of safety by reducing the PCT in a LOCA event. Normal operation of the system with an increased accumulator set pressure will also not involve a significant reduction in a margin of safety.

Based on the consideration contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specifications, will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 27, 1988

Description of amendment request: Piping modifications needed to allow for installation of an enhanced liquid radwaste system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the June 27, 1988 letter states the following:

This proposed addition of new containment isolation boundary valves which conform to 10CFR50, Appendix A, Criterion 56, and ECCS header boundary valves does not expose the plant to an increased chance of

failure of either containment integrity or ECCS operability.

The inside containment check valve, WC-V-622, the subject of a separate license amendment request, and the outside containment motor-operated valves, WC-MOV-618 and 619 which replace WC-V-621, will serve as containment isolation valves. These valves provide isolation boundaries for the two-inch WCS return line to the VC. The addition of these valves to Table 3.6-1, Sections C and D, involves a change to the Technical Specifications. The containment leakage limiting conditions for operation set forth in Section 3.6.1.2 are applicable to all containment barriers listed in Table 3.6-1. The additional three valves are pieces of equipment which shall be subject to existing requirements and limitations as set forth in the current Technical Specifications.

WC-MOV-603, 605, and 615 will serve as closed, boundary isolation valves connected to the ECCS. WC-MOV-603, 605, and 615 have been added to Section 4.5.2.b.1 and are, therefore, additional pieces of equipment which will be subject to existing surveillance requirements set forth in the Technical Specifications.

The Water Clean-up System (WCS) would not be used in the recirculation mode until several days after the postulated incident. At that time it is expected that the Main Coolant System (MCS) would be depressurized and all MCS conditions would be stabilized.

The WCS, once connected to the LPSI System, will comprise a closed loop to containment, designed to full LPSI System pressure. When the WCS is placed into service, one LPSI pump and one HPSI pump would be in operation. This pumping combination will provide approximately 300 gpm to the MCS. A flow of approximately 20 gpm is all that is required to the core for decay heat removal long term. The WCS will require approximately 50 gpm from the discharge off of the operating LPSI pump. In this operating configuration, this WCS flow would not reduce the flow to the MCS significantly.

As such:

1. This proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated. The new containment penetration design conforms to 10CFR50, Appendix A. Criterion 56. This penetration will be Type C tested in accordance with 10CFR50, Appendix J requirements. The containment leakage limiting condition for operation in Technical Specification 3.6.1.2 remains unchanged. Any leakage attributed to this penetration must still fit within Technical Specification 3.6.1.2 limits. The new penetration to the LPSI header is isolated with closed motor-operated valves with power removed by two breakers in series, making the probability of its failure insignificant. The ECCS subsystem leakage limiting condition for operation in Technical Specification 3.5.5 remains unchanged, and any leakage by this new penetration must remain within this limit. Operation of the WCS will not significantly reduce the flow to the MCS during long-term recirculation.

2. This proposed change would not create the possibility of a new or different kind of accident from any previously analyzed. The new containment penetration and LPSI header connections are identical to existing installed equipment. Any failures would be identical to those previously analyzed, and would not create any new or different kind of accident.

3. This proposed change would not involve a significant reduction in a margin of safety. The new containment penetration and LPSI header connection do not reduce the margin of safety of any Technical Specification. The limiting conditions for operation of Technical Specifications 3.6.1.2 and 3.5.5 remain unchanged, ensuring the present margins of safety are maintained. Operation of the WCS will not significantly reduce the long-term recirculation flow delivered to the MCS, maintaining the existing margin of safety.

Based on the considerations contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant consistent with the proposed Technical Specifications will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10CFR50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 27, 1988

Description of amendment request: The proposed amendment permits modifications to nonsafety class portions of the neutron shield tank cavity leakage collection piping.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the June 27, 1988 letter states the following:

This change is requested to reflect the elimination of a containment isolation valve and to reflect installation of alternate and equivalent Main Coolant Leakage Detection System necessitated by piping modification in the nonsafety class portion of the neutron shield tank telltale drain piping. This change also includes revisions in the operability and action statements in Specification 3.4.5.1 for the Containment Atmosphere Particulate Monitoring System to provide consistency in system name with the applicable surveillance section. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This change does not alter the function or design basis of any safety-related system, structure, or component. The changes made to the containment boundary will eliminate a potential leakage path by removal of a containment barrier valve. The design of the proposed neutron shield tank telltale drain line level switch is equivalent to the existing detection systems and has the advantage of distinguishing leakage that originates from within the reactor cavity region from other containment drains.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes do not alter the performance or operating design bases of any plant systems, components, or structures.

3. Involve a significant reduction in the margin of safety. This proposed change eliminates a potential leakage path by consolidation of two containment piping penetrations to a single isolation barrier, and does not alter the allowable containment leakage during testing. The proposed change will enhance the Leakage Detection System capabilities by distinguishing leakage originating within the reactor cavity region from other containment drains.

Based on the considerations contained herein, there is reasonable assurance that operation of the Yankee plant consistent with the proposed Technical Specifications will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket No. STN 50-530, Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona

Date of application for amendment: March 1, 1988

Brief description of amendment: The amendment revises Surveillance Requirement 4.7.9.b to postpone the first inservice visual inspection for all inaccessible snubbers until the first refueling outage.

Date of issuance: July 29, 1988

Effective date: July 29, 1988

Amendment No.: 10

Facility Operating License No. NPF-74: Amendment changed the Technical Specifications.

Date of initial notice in Federal Register: April 6, 1988 (53 FR 11364). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: May 9, 1988

Brief description of amendments: The amendments revise Technical Specification Table 3.6-1 to reduce the maximum actuation time of the containment isolation valves which isolate the containment air radioactivity monitor from 12 seconds to 1 second.

Date of issuance: July 29, 1988

Effective date: July 29, 1988

Amendment Nos: 35, 22, 11

Facility Operating License No. NPF-41, NPF-51 and NPF-74: Amendments change the Technical Specifications.

Date of initial notice in Federal Register: June 15, 1988 (53 FR 22399). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 12, 1988

Brief description of amendments: These amendments revise the Technical Specifications to allow more accurate measurement of lower effluent discharge flow rates by installing a three-inch diameter bypass around the existing six-inch diameter line.

Date of issuance: August 5, 1988

Effective Date: August 5, 1988

Amendment Nos.: 22 for Byron, 11 for Braidwood

Facility Operating Licenses Nos. NPF-37, NPF-66, NPF-72, and NPF-77. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 9, 1988 (53 FR 7587). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: March 9, 1987

Brief description of amendment: This amendment revises Technical Specification 4.12, High Energy Piping System, by expanding the augmented inservice inspection program to include weld locations on steam lines to the auxiliary feedwater pumps.

Date of Issuance: August 9, 1988

Effective date: August 9, 1988

Amendment No.: 106

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 25, 1987 (52 FR 9565). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendment: June 15, 1988

Brief description of amendment: The amendments revise the Indian Point 1 and 2 Technical Specifications to delete Figures 3.1 and 3.2 from Unit 1 Technical Specifications and Figures 6.2.1 and 6.2.2 from Unit 2 Technical Specifications. The removal was submitted in accordance with Generic Letter 88-06, "Removal of Organization Charts from Technical Specification Administrative Control Requirements."

Date of issuance: August 1, 1988

Effective date: August 1, 1988

Amendment Nos.: 40 and 134

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24533). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 28, 1988

Brief description of amendment: This amendment revises the Fermi-2 Technical Specifications to change Footnote in Table 1.2 to include the provisions to place the mode switch in the Refuel position to facilitate Source Range Monitor and Intermediate Range Monitor operability testing.

Date of issuance: August 3, 1988

Effective date: August 3, 1988

Amendment No.: 25

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24508). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: December 2, 1986, and October 8, 1987.

Brief description of amendment: The amendment modified paragraph 2.E of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: August 5, 1988

Effective date: August 5, 1988

Amendment No.: 26

Facility Operating License No. NPF-43. The amendment revised the License.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11368). The Commission's related evaluation of the amendment is contained in a letter to Detroit Edison Company dated August 5, 1988 and a Safeguards Evaluation Report dated August 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 27, 1988

Brief description of amendment: This amendment changes the Technical Specifications to require that two channels for the Containment High Range Radiation Monitor be operable instead of one channel.

Date of issuance: August 5, 1988

Effective date: August 5, 1988

Amendment No.: 27

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24508). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: January 25, 1988

Brief description of amendments: The amendments incorporate changes to Sections 3.0 and 4.0 of the units' Technical Specifications, as recommended in NRC's Generic Letter 87-09. The amendments clarify the intent of Specification 3.0.4, 4.0.3 and 4.0.4, thus resolving problems related to unnecessary restrictions on mode change, unnecessary shutdowns caused by exceeded surveillance intervals, and conflicts between the specifications.

Date of issuance: August 9, 1988

Effective date: August 9, 1988

Amendment Nos.: 129 and 4

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9501). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 2, 1986, as supplemented December 1, 1987, January 20, 1988 and April 14, 1988.

Brief description of amendments: The amendment modified paragraph 2.D of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: August 1, 1988

Effective date: August 1, 1988

Amendment No.: 107

Facility Operating License No. DPR-72. Amendment revised the License.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24509). The Commission's related evaluation of the amendments is contained in a letter to Florida Power Corporation dated August 1, 1988 and a Safeguards Evaluation Report dated August 1, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida 32629

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Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: February 4, 1988

Brief description of amendment: The amendment modified the Technical Specifications by deleting the control building sump effluent line radiation monitor, RE-17646.

Date of issuance: August 3, 1988

Effective date: August 3, 1988

Amendment No.: 8

Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 20, 1988 (53 FR 13016). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: May 26, 1988

Brief description of amendment: The amendment changes the Technical Specification by revising various areas in Section 6 (Administrative Controls) for clarity and consistency with GE Standard Technical Specification (NUREG-0123, Revision 3) insofar as the safety review process for new and revised procedures, modifications to unit structures, systems and components and for proposed tests and experiments is concerned. The amendment also adds a definition to Section 1 of the Technical Specifications for substantive changes to these activities.

Date of Issuance: August 10, 1988

Effective date: August 10, 1988

Amendment No.: 125

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24512). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 10, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County Illinois

Date of application for amendment: October 30, 1987

Description of amendment request: The action statements associated with the Containment and Reactor Vessel Isolation Control System (CRVICS) will be changed as previously approved by the NRC in Appendix Q of Supplement 8 of the Clinton Safety Evaluation Report.

Date of issuance: August 3, 1988

Effective date: August 3, 1988

Amendment No.: 4

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2318). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1988.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company, Docket NO. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 30, 1987.

Description of amendment request: The safety/relief valves low low set function setpoint tolerance will be lowered to match the value in the design specifications and the main steam isolation valve-leakage control system (MSIV-LCS) instrument channel will be allowed to be placed in an inoperable status for up to two hours for the performance of surveillances provided the other channel(s) monitoring that parameter are operable.

Date of Issuance: August 3, 1988

Effective date: August 3, 1988

Amendment No.: 5

Facility Operating License No. NPF-62: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2318 and 53 FR 2320). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1988.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 3, 1988

Brief description of amendment: The amendment changed the Technical Specifications to revise the setpoints for undervoltage relays.

Date of issuance: August 3, 1988

Effective date: August 3, 1988

Amendment No.: 124

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 1, 1988 (53 FR 20044). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1988.

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 20, 1988.

Brief description of amendments: The amendments revise Section 6, Administrative Controls, of the Technical Specifications by removing the organization charts and changing the titles of certain management personnel.

Date of Issuance: July 25, 1988

Effective date: July 25, 1988

Amendment Nos: 29 & 28

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications

Date of initial notice in **Federal Register:** June 2, 1988 (53 FR 20199). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 25, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: December 1, 1986 and December 7, 1987

Brief description of amendment: This amendment modified paragraph 2.E of the license to require compliance with the amended Physical Security Plan.

Date of issuance: August 3, 1988

Effective date: August 3, 1988

Amendment No. 9

Facility Operating License No. NPF-39. This amendment revised the License.

Date of initial notice in **Federal Register:** June 15, 1988 (53 FR 22403). The

Commission's related evaluation of the amendment is contained in a letter to Philadelphia Electric Company dated August 3, 1988 and a Safeguards Evaluation Report dated August 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 19, 1987

Brief description of amendments: These amendments increased the recorder ranges of the reactor vessel water level instrumentation. Changes were made to TS Table 3.2.F to change both the fuel zone recorder and the wide range recorder upper endpoint to plus 60 inches. Other changes of an editorial nature were also made to Table 3.2.F. These changes were related to the reactor water level instrumentation system in response to Generic Letter 84-23 and Item II.F.2 of NUREG-0737.

Date of issuance: August 3, 1988

Effective date: August 3, 1988

Amendments Nos. 134 and 137

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47790). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 20, 1987, as supplemented July 2, and October 2, 1987, and February 19, 1988.

Brief description of amendment: The amendment revises the surveillance requirements for the safety injection accumulator isolation valves as related to Trojan Technical Specifications Section 3/4.5 "Emergency Core Cooling Systems (ECCS)."

Date of issuance: July 14, 1988

Effective date: July 14, 1988

Amendment No.: 148

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 7, 1987 (52 FR 37549). The supplemental information provided by the October 2, 1987 and February 19, 1988 letters do not alter the action noticed in the **Federal Register** or affect the staff's initial determination of the proposed action. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 SW., Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: March 31, 1988 as revised June 27, 1988.

Brief description of amendment: The amendment deletes the Offsite and Facility organization charts from the Technical Specifications. The charts are replaced with general organization requirements which capture the essence of those organizational features depicted on the charts necessary for ensuring safe plant operation.

Date of issuance: August 3, 1988

Effective date: August 3, 1988

Amendment No.: 149

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 18, 1988 (53 FR 17791). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 SW., Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: March 29, 1988

Description of amendment request: The amendment deleted the requirement to monitor the temperature of the Dew Point Moisture Monitors in Section 4.4 of the Technical Specifications.

Date of issuance: August 5, 1988

Effective date: August 5, 1988

Amendment No.: 61

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24514). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: April 20, 1988

Description of amendment request: This change deleted a reference in the Technical Specifications to a deleted portion of Title 10 of the Code of Federal Regulations.

Date of issuance: August 5, 1988

Effective date: August 5, 1988

Amendment No.: 62

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24515). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 24, 1987

Brief description of amendments: The amendments modified the reactor coolant pump breaker position trip logic by changing the Technical Specifications. This is a result of the elimination of the coincident logic (one-out-of-four) for the reactor coolant pump breaker position reactor trip above P-8.

Date of issuance: August 8, 1988

Effective date: For Unit 1, as of the next refueling outage, cycle 8, currently scheduled for April 1989. For Unit 2, as of the next refueling outage, cycle 4, currently scheduled for September 1988.

Amendment Nos. 87 and 60

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 7, 1987 (52 FR 37553). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: November 8, 1985, as supplemented December 9, 1986.

Brief description of amendment: The amendment adds limiting conditions for operation and surveillance requirements associated with an automatic shunt trip attachment, which was installed in response to Generic Letter 83-28.

Date of issuance: July 14, 1988

Effective Date: Within 30 days of issuance.

Amendment No.: 99

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37520). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 1988. The letter of December 9, 1986 provided supplemental information which did not change the initial proposed determination of no significant hazards consideration.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: April 28, 1988

Brief description of amendment: The amendment requires all three reactor coolant pumps to be in operation when the reactor trip breakers are closed in Mode 3 (hot standby).

Date of issuance: June 10, 1988

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 103*

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11376). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1988.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 13, 1988 (TS 244)

Brief description of amendments: The amendments modify Technical Specification Table 3.7.A by changing the maximum operating time for the inboard low pressure coolant injection valves from 30 seconds to 40 seconds.

Date of issuance: August 8, 1988

Effective date: August 8, 1988, and shall be implemented within 60 days

Amendments Nos.: 152, 148, 123

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24517). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 13, 1988 (TS 88-10)

Brief description of amendments: The amendment modifies the Sequoyah (SQN) Units 1 and 2 Technical Specifications (TS) to revise the testing requirements for the turbine driven auxiliary feedwater pump (TDAFWP). In addition, an outdated footnote is being deleted. The changes are described in detail below.

1. A footnote is being added to Table 3.3-5. It will apply to items 2.f, 3.f, 4.f, 5.f, 6.f, 9.b, 10.a and 11.a. It indicates that the provisions of Specification 4.0.4 are not applicable for entry into Mode 3 for the TDAFWP.

2. A footnote is being added to Surveillance Requirement (SR) 4.7.1.2.b to indicate that the provisions of Specification 4.0.4 are not applicable for entry into Mode 3 for the TDAFWP.

3. An outdated footnote is being deleted from Table 3.3-5, Item 12, and Note 10. This footnote identified scheduling requirements for a modification that is now complete.

4. The wording of Unit 2 SR 4.7.1.2.b.2 is revised. The change makes the Unit 2 SR wording consistent with the Unit 1 SR and the Westinghouse Standard Technical Specifications (STS).

Date of issuance: August 5, 1988

Effective date: August 5, 1988

Amendment Nos.: 77, 68

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24519). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 7, 1987, supplemented March 21 and May 2, 1988.

Brief description of amendment: The amendment revised the Technical Specifications (Sections 3/4.3.2, Table 3.3-5; and 3/4.6.3, Table 3.6-2) to delete Safety Features Actuation System (SFA) signals to certain valves on the secondary side of the steam generators, and delete closure time requirements for certain of these valves.

Date of issuance: August 2, 1988

Effective date: August 2, 1988

Amendment No. 114

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1988 (53 FR 294). The licensees' letters dated March 21 and May 2, 1988 provided clarifying

*Corrects previously published notice (53 FR 24528).

information and did not change the original application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: April 22, 1988

Brief description of amendment: The amendment deleted organization charts, Figures 6.2.1 and 6.2.2, from the Technical Specifications and changed Sections 6.2.1 and 6.2.2 to compensate for deletion of the organization charts.

Date of issuance: August 2, 1988

Effective date: August 2, 1988

Amendment No. 115

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 18, 1988 (53 FR 17793). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: May 14, 1987

Brief description of amendments: These amendments revised Section 4.9, "Effluent Sampling and Radiation Monitoring System" of the Surry Units 1 and 2 Technical Specifications to make the reporting level and detection capability for I-131 in water samples consistent with NUREG-0472, "Radiological Effluent Technical Specifications for PWRs, Revision 2."

Date of issuance: August 1, 1988

Effective date: August 1, 1988

Amendment Nos. 122 and 122

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 4, 1987 (53 FR 42373). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: April 4, 1988

Brief description of amendment: The amendment makes the battery charger surveillance requirements the same for all three battery chargers.

Date of issuance: July 29, 1988

Effective date: As soon as both battery No. 3 and battery charger No. 3 are installed and declared operable.

Amendment No.: 114

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 18, 1988 (53 FR 17797). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: November 25, 1986, December 7, 1987 and May 6, 1988.

Brief description of amendment: The amendment revised paragraph 2.C(3) of the license to require compliance with the amended Physical Security Plan.

Date of issuance: August 5, 1988

Effective date: August 5, 1988

Amendment No.: 115

Facility Operating License No. DPR-3: Amendment revised the license.

Date of initial notice in **Federal Register:** June 1, 1988 (53 FR 20048). The Commission's related evaluation of the amendment is contained in a letter to Yankee Atomic Electric Company, dated August 5, 1988 and a Safeguards Evaluation Report, dated August 5, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may

provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By September 23, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 5, 1988

Brief description of amendment: The amendment changed the Technical Specifications to delete the requirement to partially stroke the Main Steamline Isolation Valves (MSIVs) weekly.

Date of issuance: August 8, 1988

Effective date: August 8, 1988

Amendment No.: 125

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (53 FR 26696 dated July 14, 1988). That notice provided an opportunity to submit comments on the Commission's proposed no significant

hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 29, 1988, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1988.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: June 22, 1988, as supplemented July 15, 19, 21, and 22, 1988.

Brief description of amendment: The amendment approves a diesel generator rating of 5250 kW plus or minus 5 percent for both generators until the next refueling outage, provided that the main journal bearings Nos. 8 and 9 on diesel generator No. 1 and main journal bearings Nos. 9 and 10 on diesel generator No. 2 are inspected prior to plant operation and found to be free of cracks. The amendment also requires (1) journals Nos. 8 through 12 to be inspected on both units at the next refueling outage and thereafter until the long-term issue of crankshaft cracking has been resolved, (2) The current type AF piston skirts to be replaced with type AE at the next refueling outage, (3) all diesel test starts to be slow starts except for the one performed at 18-month intervals, (4) confirmatory load measurements for the largest loads, and (5) resolution of the charging pump overload issue. The largest rejected load is modified from 2611 kW to 3220 kW.

Date of issuance: July 22, 1988

Effective date: This license amendment is effective as of the date of issuance and must be fully implemented no later than 30 days from the date of issuance.

Amendment No.: 104

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of California, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 22, 1988.

Attorneys for licensee: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

Washington Public Power Supply System, et al., Docket No. 50-397, Washington Nuclear Project, No. 2, Benton County, Washington

Date of application for amendment: July 25, 1988

Brief description of amendment: This amendment revises the WNP-2 Technical Specifications, Tables 3.3.7.5-1 Accident Monitoring Instrumentation, and 4.3.7.5-1, Accident Monitoring Instrumentation Surveillance Requirements, to allow the plant to operate with the acoustic monitor inoperable for safety relief valve MS-RV-1B until the next refueling outage or until the first forced outage of sufficient duration to effect repair prior to that next refueling outage.

Date of issuance: July 27, 1988

Effective date: This license amendment is effective as of the date of issuance.

Amendment No.: 61

Operating License No. NPF-21. Amendment revised the Technical Specifications.

Public Comment requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of Washington, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 27, 1988.

Attorneys for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 18th day of August 1988.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 88-19088 Filed 8-23-88; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-277, 50-278; 50-352, and 50-353; License Nos. DPR-44, DPR-56, and NPF-39, Construction Permit CPPR-107 EA 88-04]

Philadelphia Electric Co.; Order Modifying Licenses

I

Philadelphia Electric Company (PECo) is the holder of Operating License Nos. DPR-44 and DPR-56 issued by the Nuclear Regulatory Commission (NRC/Commission) on December 14, 1973 and July 2, 1974. The licenses authorize the licensee to operate Peach Bottom Atomic Power Station, Units 2 and 3, in accordance with conditions specified therein. Additionally, the licensee is the holder of Operating License No. NPF-39 and Construction Permit CPPR-107 for Limerick Generating Station Units 1 & 2 respectively, issued by the NRC on August 8, 1985 and June 19, 1974.

II

On March 31, 1987, the NRC issued an Order to PECo suspending operation of the Peach Bottom reactors after validating information received by the Commission that control room operators had, at times, left the control room unattended, and at other times, had been observed sleeping while on duty in the control room, reading materials not directly job related, and/or being otherwise inattentive to the obligations of their licenses. Further investigation revealed that operations management at Peach Bottom at the time of the shutdown, specifically, Stephen R. Roberts, the then Operations Engineer, and Drew C. Smith, the then Superintentdent of Operations, clearly knew of these problems, and the then Plant Manager, Richard Fleischmann, clearly should have known about these problems, yet action was not taken to correct this situation.

In particular, when the Operations Engineer was directly notified of the problems in December 1986, he took no action to correct them. Furthermore, he did not notify his supervisor, the Superintendent of Operations, until a meeting in February 1987, after having again been informed of the problems in late January 1987. Although the Superintendent of Operators, during the February 1987 meeting, instructed the Operations Engineere to look into the problems and report back to him, the Operations Engineer did not pursue correction of the problems nor did the Superintendent of Operations follow up with the Operations Engineer

concerning this matter. Further, the Plant Manager apparently was not informed of these problems, and was not aggressively involved in monitoring site activities so as to otherwise detect such conditions.

III

The lack of aggressive actions on the part of the then Operations Engineer and the then Superintendent of Operations to correct the licensed operator inattativenvess problem that existed at Peach Bottom raises serious questions concerning their abilities to supervise licensed activities, and to affect appropriate corrective measures when such activities are not being conducted in accordance with the facility license. Furthermore, given the widespread nature of this problem at Peach Bottom, and the extended period of time during which this condition existed, the failure by the then Plant Manager to be aware of this condition raises serious questions about his ability to ensure his subordinates kept him informed of serious problems impacting plant safety to assure licensed activities are effectively managed. Therefore, although the licensee has removed these three individuals from the Peach Bottom site, I have determined that public health and safety requires that the former Operations Engineer, the former Superintendent of Operations, and the former Plant Manager be prohibited from being employed in any responsible site supervisory position or in any corporate position providing oversight of operations, without prior Commission approval. Because these individuals remain in the employment of PECo it is reasonable to assume that they could at some time be employed at the Limerick Generating Station. Given the nature of their failures, I have also determined that the restrictions outlined should apply to Limerick as well as Peach Bottom and certain corporate positions.

IV

According, in view of the foregoing, and pursuant to section 103, 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered that:

License Nos. DPR–44, DPR–56, NPF–39, and Construction Permit No. CPPR–107 be modified to provide that Stephen R. Roberts (former Operations Engineer at Peach Bottom), Drew C. Smith (former Superintendent of Operations at Peach Bottom), and Richard Fleischmann (former Plant Manager at Peach Bottom) shall not be employed in a site supervisory position responsible for controlling 10 CFR Part 50 activies nor shall they be employed in any corporate operational position, without prior NRC approval by the Regional Administrator.

"Operational Position" as used here, indicates any position directly involved with operation of the plant, the direction or supervision of NRC licensed operators, or independent oversight of operators.

The Regional Administrator, Region I, may relax or terminate in writing any of the proceeding provisions for good cause shown.

V

The licensee or any person adversely affected by this Order may request a hearing within 30 days of the date of this Order. A request for hearing should be clearly marked as a "Request for Hearing" and shall be addressed to the Diretor, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with copies to the Assistant General Counsel for Enforcement at the same address, the Regional Administrator, Region I, and the NRC Resident Inspector, at Peach Bottom Atomic Power Station and Limerick Generating Station. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If a hearing is held, the issue to be considered shall be whether this Order should be sustained. Upon the failure to answer or request a hearing within the specified time, this Order shall be final without further proceedings.

For The Nuclear Regulatory Commission.
Dated this 10th day of August 1988.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88–19172 Filed 8–23–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request For Approval of SF 2809 Submitted To OMB For Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the continuation of information collection from the public. SF 2809, the Health Benefits Registration Form, is completed by qualified former spouses of Federal employees, and by annuitants (retirees and survivors) of retirement systems, other than the civil Service Retirement System or Federal Employees' Retirement System, to enroll or change enrollment in the Federal Employees Health Benefits Program. Annual use by former spouses is estimated at 600 forms, annual use by annuitants of other retirement systems is approximately 7,500. The total annual burden is 1,350 hours. For copies of this proposal, call C. Ronald Trueworthy, Agency Clearance Office, on (202) 632–7714.

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 3235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88–19045 Filed 8–23–88; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A88–6, Order No. 796]

Laird, Colorado 80739, Lola M. Overlease, Petitioner; Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III.

Issued August 18, 1988.

Docket Number: A88–6.

Name of Affected Post Office: Laird, Colorado 80739.

Name(s) of Petitioner(s): Lola M. Overlease.

Type of Determination: Closing.

Date of Filing of Appeal Papers: August 12, 1988.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders

(A) The record in this appeal shall be filed on or before August 29, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

Laird, Colorado 80739

Docket No. A88-6

Aug. 12, 1988—Filing of Petition

Aug. 18, 1988—Notice and Order of Filing of Appeal

Sept. 6, 1988—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].

Sept. 16, 1988—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

Oct. 6, 1988—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

Oct. 21, 1988—Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)].

Oct. 28, 1988—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

Dec. 10, 1988—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 88-19215 Filed 8-23-88; 8:45 am]
BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 26004; File No. SR-PSE-88-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Change in PSE Options Charges

Pursuant to section 19(b)91) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on August 4, 1988, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 20, 1988, the PSE filed a proposed rule change (File No. SR-PSE-88-11) to change its existing schedule of rates and charges in Equities, Options, and Post Cashiering/Clearing operations. The proposed rule change became effective upon filing pursuant to section 19(b)(3)(A) of the Act.[1]

The PSE is proposing to amend two charges in Options operations that were filed as part of SR-PSE-88-11. First, the proposal would amend the Stock Execution Fee. SR-PSE-88-11 provided for a Stock Execution Fee of $.001 per share, to a maximum of $50 per trade. This amendment proposes to replace that fee with a monthly flat fee of $1,000 for each member firm engaged in agency execution services.

Second, the proposed rule change amends the Independent Broker Fee. SR-PSE-88-11 provided for a Floor Broker Fee of $.02 per contract side. This amendment proposes to replace the Floor Broker Fee with an Independent Broker Fee. The same charge of $.02 per contract side will be imposed on Independent brokers only.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Stock Execution Fee

This fee was described in SR-PSE-88-11 as follows:

"Stock Execution Fee—A charge on Stock executions of $.001 (1/10 cent) per share is proposed. The charge for block trades of 50,000 or more shares would be capped at $50.00. Trades executed on the PSE would be exempt from this charge."

The proposed amendment to the stock execution fee is a flat $1,000 monthly charge to firms that offer an agency stock execution service. Total revenue per month to the Exchange is expected to be $12,000, approximately the same as generated by the current fee.

The PSE currently receives no revenue from stock trades originating on its options floors, but executed away from its equities floors. Based on a survey conducted earlier this year, these types of equities trades account for approximately 80% of all equities trades originated on the options floor, or between 4 and 6 million shares per week. Firms that provide stock execution services utilize the facilities of the PSE, but are not charged fees that cover the associated costs to the PSE.

The Options Committee, which was established for the purpose of reviewing the fee structure of Options operations, (and which is described in SR-PSE-88-11), continued to review the stock execution fee subsequent to the filing of SR-PSE-88-11 with the SEC. In addition, the PSE held meetings between Board members and PSE staff to review the substance of the fee. The Options Committee, which had extensive input from floor members in its review of the fees, preferred a different and simpler method of assessing the fee to obtain the same objective, and recommended this amendment.

Independent Broker Fee

The PSE wishes to amend the fee previously proposed to SR-PSE-88-11 so that the Floor Broker Fee of $.02 per contract side would be imposed on Independnet brokers only.

The Floor Broker Fee was described in SR-PSE-88-11 as follows: "Floor Broker Fee: It is proposed to implement a $.02 per contract side charge on all

[1] *See* Securities Exchange Act Release No. 25927, July 20, 1988, 53 FR 28305.

floor broker executions, where the executing broker is not an employee or a member of the firm originating the order."

At the time of filing SR–PSE–88–11, this charge was intended to be imposed on two types of floor brokers: Institutional brokers, and Independent floor brokers. There were, however, distinct and separate reasons for imposing the charge on the two types of floor brokers.

Independent floor brokers are individual members who are not affiliated with any member firm, and who conduct a majority of their business as a floor broker. The Independent brokers pay only their membership dues to the PSE. No other charges are imposed on them, yet they are provided with services by the PSE. PSE reasoned that, since these brokers pay only the minimum charges, a $.02 per contract side charge would reflect a more equitable consideration for the services utilized by them.

Institutional floor brokers are floor brokers that do retail, correspondence retail, and institutional business. Although these brokers currently pay more charges than the Independent floor brokers, they receive significantly more service for the PSE. The PSE believed that the $.02 contract side charge would more accurately reflect the additional services provided to the Institutional floor brokers.

As a result of continued discussions between the Options Committee, Board members, and PSE staff, and the fact that there are distinct differences between the two types of floor brokers, and distinct reasons for charging the fee, the PSE decided that it was better to separate the charges. The PSE has not yet decided whether it will seek SEC approval of the Institutional broker fee. Review of this fee is continuing, with the Options Committee meeting frequently to assess the changes that are being made. In the event the Exchange decides to impose an Institutional broker fee, it must seek prior approval from the SEC.

In summary, the Floor Broker Fee would be amended so that it would be imposed on Independent floor brokers only. It would be called the Independent Broker Fee.

The PSE believes these amendments will result in a fairer and more equitable allocation of fees. The Exchange believes the proposed amendments are consistent with Section 6(b)(4) of the Act in that they provide an equitable allocation of reasonable dues, fees, and other charges among the members using the facilities of the PSE. In addition, the PSE believes the proposed amendments are consistent with section 6(b)(5) of the Act because they should enable the PSE to enhance its ability to facilitate transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed amendments impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed amendments are the result of recommendations of Board and Options members following their review of the substance of the fees.

III. Commission Findings and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–88–16 and should be submitted by September 14, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 17, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–19159 Filed 8–23–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24699]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 18, 1988

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 12, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevent applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in care of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s) as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas System, Inc., et al. (70–7106)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and its subsidiary company, Columbia Gas Transmission Corporation ("Transmission"), 1700 MaCorkle Avenue SE., Charleston, West Virginia 25314, have filed a post-effective amendment to their application-declaration, as amended, pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By prior orders in this proceeding, dated June 7, 1985 (HCAR No. 23724), August 30, 1985 (HCAR No. 23813),

December 24, 1986 (HCAR No. 24279), and September 25, 1987 (HCAR No. 24466). Transmission was authorized (1) to finance its gas inventory through April 30, 1989 through the issuance to Columbia of up to $400 million pursuant to a secured note ("Inventory Facility"); (2) to issue and sell to Columbia, through December 31, 1988, up to $350 million of two series of first mortgage bonds (Series A and long-term Series D ("Bond Program"); (3) to engage through December 31, 1988 in a prepayment program of its installment notes held by Columbia ("Prepayment Program"), and; (4) to sell interests in the proceeds of production of up to $350 million from certain proved reserves to a syndicate of commercial banks ("Loan Facility").

Transmission now proposes to terminate the Loan Facility and to continue the Inventory Facility through April 30, 1990. Under the Inventory Facility, Columbia will lend and Transmission will borrow, from time to time, up to $400 million pursuant to an Inventory Financing Agreement and a Security Agreement, each dated June 19, 1985, as amended.

Pursuant to its Bond Program, Transmission also proposes to issue and sell, and Columbia proposes to acquire, two series of first mortgage bonds ("Mortgage Bonds") aggregating up to $450 million through December 31, 1989. The initial sale of up to $450 million of bonds will be the Series A Bonds, and subsequently a portion will be converted to long-term Series E Bonds. The mix of Series A and Series E Bonds will be based on the nature of Transmission's needs, but in no event will the aggregate exceed $450 million outstanding at any one time.

The Mortgage Bonds will bear interest which is equivalent to the last long-term debt issuance by Columbia preceding the issuance of the Mortgate Bonds. Interest will be paid quarterly for the Serie A Bonds and semi-annually for the Series E Bonds. The Series A Bonds will be repaid no later than December 31, 1989. The Series E Bonds will be dated the date of their issuance, and be repaid in equal annual installments not to exceed 25 years. The Mortgage Bonds will be secured by a perfected first security interest in all of Transmission's property with certain limited exceptions, and subject to certain permitted encumbrances.

Transmission also proposes to continue its Perpayment Program through December 31, 1989. Certain installment promissory notes authorized to be issed by Transmission to Columbia (HCAR No. 23468, November 6, 1984) may be prepaid to Columbia by Transmission, and will be those bearing the highest interest rate outstanding at the time of each prepayment. Interest on such indebtedness will cease upon prepayment and recommence upon reinstatement. As such funds are thereafter required for capital expenditures and other corporate purposes it is proposed that advances be made on open account to Transmission by Columbia in such aggregate amounts not to exceed the amount of long-term indebtendness previously prepaid. The open account advances will bear interest at the same rate or rates as borne by the equivalent principal amounts of long-term indebtedness previously prepaid by Transmission, but from the lowest rate payable on the indebtedness prepaid to the highest rate.

Eastern Utilities Associates, et al. (70–7287)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and EUA Cogenex Corporation ("EUA Cogenex"), P.O. Box 2333, Boston, Massachusetts 02107, its wholly owned subsidiary, have filed a post-effective amendment to EUA's application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12 and 13 of the Act and rules 45(a), 87, 90 and 91 thereunder.

By order dated April 26, 1988 (HCAR No. 24628) ("April 1988 Order"), EUA was authorized to make capital contributions and/or short-term loans to EUA Cogenex in an aggregate amount not to exceed $15 million and to effect short-term borrowings not to exceed $13.5 million under its existing credit lines to fund such loans and/or capital contributions and EUA Cogenex was authorized to effect short-term borrowings from lending institutions under EUA's existing credit lines in an aggregate amount not to exceed $15 million.

EUA proposes and requests authorization to guaranty the obligations of EUA Cogenex with respect to short-term borrowings effected by EUA Cogenex under EUA's existing credit lines in accordance with the April 1988 Order. EUA also proposes and requests authorization to guaranty obligations of EUA Cogenex incurred in connection with financing and refinancing the machinery and equipment which EUA Cogenex uses to provide energy services to customers.

Eastern Utilities Associates, et al. (70–7486)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02017, a registered holding company, and its wholly owned electric utility subsidiary, EUA Power Corporation ("EUA Power"), One Eagle Square, P.O. Box 709, Concord, New Hampshire 03002–0709 have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 6(b), 7, 9(a), 10 and 12(c) of the Act and rules 42, 43 and 50(a)(5) promulgated thereunder.

By Memorandum Opinion and Order dated May 12, 1988 (HCAR No. 24641) EUA Power was authorized, in relevant part, through May 14, 1989, to (a) exchange up to $180 million of 17–½% Series A Secured Notes for up to $180 million of 17–½% Series B Secured Notes ("Series B Notes") and up to 180,000 Contingent Interest Certificates, and (b) issue 17–½% Series C Notes ("Series C Notes") to Series B and Series C Noteholders in lieu of cash interest payments on the Series B and Series C Notes for May 15, 1988 and November 15, 1988.

As of July 13, 1988, $174,650,000 principal amount of Series A Notes has been exchanged for Series B Notes and CICs representing 97% of the $180 million principal amount of Series A Notes outstanding at May 12, 1988. In order to obtain the participation of several Series A Noteholders in the exchange transaction, EUA and EUA Power entered into an agreement ("Agreement"), subject to Commission authorization, to be put into effect no later than November 15, 1988, with each exchanging Series A Noteholder and each subsequent holder of a Series B Note, a Series C Note or a CIC.

EUA and EUA Power now seek authorization to effectuate the terms and conditions of the Agreement, which are as follows: with respect to (1) any voluntary sale by EUA Power of all or any portion of its ownership interest in the Seabrook Nuclear Power Project ("Seabrook") [1] Unit No. 1, as specified, or (2) any sale by EUA of all or any portion of its equity investment in EUA Power, no such proposed sale or disposition shall be consummated without (a) 30 days notice to the registered holders of Series B Notes, of Series C Notes, and of CICs, and (b) the written consent of (i) the holders of at least 90% in aggregate principal amount of Series B Notes and Series C Notes outstanding and (ii) the holders of CICs representing at least 90% of the aggregate number of Coupons represented by all CICs at the time outstanding. Additionally, EUA Power's

[1] Seabrook is a nuclear-fueled electric generating plant located in Seabrook, New Hampshire, consisting of two nuclear reactors ("Unit No. 1" and "Unit No. 2").

failure to pay within 30 days after it is due, its share of Seabrook costs shall have the effect of a default under EUA Power's Indenture of Mortgage dated as of November 15, 1966 as supplemented and modified ("Indenture").

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-19160 Filed 8-23-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26006; File No. SR-PHLX-88-26]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Size of the Unit of Trading of British Pound Foreign Currency Options Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 12, 1988 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") proposes to increase the unit of trading respecting British pound foreign currency options contracts listed and eligible for trading on the PHLX from 12,500 pounds to 31,250 pounds pursuant to PHLX Rules 1013 (Unit of Trading) and 1012(c) (Series of Options Open for Trading).[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to increase the size of the unit of trading of British pound foreign currency options contracts from 12,500 to 31,250 pounds. Since the initiation of trading of British pound options in December 1982, a number of market participants and the PHLX Upstairs Advisory Committee have maintained that the unit of trading of the British pound options contracts was too small. Recently, these concerns have been renewed, prompted by the change in size of the Chicago Mercantile Exchange's ("CME") British pound futures contract from 25,000 pounds to 62,500 pounds.

Since the initiation of trading in PHLX foreign currency options, the Exchange has endeavored to maintain units of trading in its foreign currency options contracts at one half the size of the corresponding futures contracts traded on the CME and the Philadelphia Board of Trade ("PBOT"). The PHLX proposes to maintain the half-size ratio relationship between its British pound options contract and the British pound futures contracts traded on the CME and the PBOT. In doing so, the PHLX hopes to maintain and enhance liquidity in its foreign currency options market by facilitating arbitrage, spread and other hedging opportunities between the foreign currency options, futures and inter-bank markets. Currently, the British pound options contract is the smallest PHLX options contract, as measured by the dollar amount of the underlying foreign currency. The increase in the size of the unit of trading in the British pound contract will bring it into a dollar range comparable to other foreign currency options contracts traded on the PHLX. In this regard, a British pound foreign currency options contract of 31,250 pounds, at current exchange rates, represents a dollar value of $53,171.87 U.S., whereas the comparable ECU contract dollar value, for example, is $68,800.00 U.S., the Japanese yen contract dollar value is $46,706.25 U.S., the Canadian dollar contract value is $41,485.00 U.S., and the Australian dollar contract value is $40,160.00 U.S.

Pursuant to PHLX Rule 1012(a)(ii) the Exchange proposes to initiate trading and open British pound foreign currency options series with units of trading of 31,250 British pounds in puts and calls with both American and European style expirations commencing on September 18, 1988. In order to prevent investor confusion, the PHLX proposes not to continue to add British pound foreign currency options series with units of trading of 12,500 pounds after the September 1988 expiration. The PHLX proposes to continue to trade open and outstanding British pound foreign currency options series with units of trading of 12,500 pounds until their expiration in June 1989.

The PHLX believes the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to facilitate transactions in British pound foreign currency options contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

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[1] PHLX Rules 1013 states that the unit of trading in each series of options dealt in on the Exchange shall be the unit of trading established for that series by the rules of the Options Clearing Corporation ("OCC"). Art. XV, Sec. 1(g) of the OCC By-Laws states that the unit of trading of foreign currency options is to be specified by the exchange on which such options are traded.

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: August 18, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-19214 Filed 8-23-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council, Phoenix, AZ; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, will hold a public meeting at 10:00 a.m. on Tuesday, September 20, 1988, at the SBA Phoenix District Office, First Floor Conference Room, 2005 N. Central Avenue, Phoenix, Arizona, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James P. Guyer, District Director, U.S. Small Business Administration, 2005 N. Central Avenue, Fifth Floor, Phoenix, Arizona, 85004, (602) 261-3732.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 18, 1988.

[FR Doc. 88-19169 Filed 8-23-88; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council, Spokane, WA; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Spokane, will hold a public meeting at 9:30 a.m. on Thursday, September 22, 1988, at the U.S. Courthouse Building, Room 485, West 920 Riverside Avenue, Spokane, Washington to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. Wiebe, District Director, U.S. Small Business Administration, Room 651, U.S. Courthouse Building, Post Office Box 2167, Spokane, Washington, 99210, (509) 456-3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 18, 1988.

[FR Doc. 88-19170 Filed 8-23-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1209]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m. on October 13, 1988 in Room 1205, U.S. Department of State, 2201 C Street NW., Washington, DC 20520.

The purpose of the meeting is to discuss preparations for the Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences, which is scheduled for October 31-November 18, 1988 in Geneva. Article 52 of the Code calls for a Review Conference to be convened for five years from the date the Convention comes into force to examine implementation of the Code and to consider amendments.

In particular, the SHC will review development of U.S. positions concerning, *inter alia*, the following issues:

—Voting Rights for Nonsignatories
—The Effects of Containerization on Code Provisions
—Scope of the Convention
—Reservations to the Convention
—Implementation
—Regulation of Non-Conference Shipping

Members of the public may attend up to the seating capacity of the room. Interested persons may seek information by contacting Mr. Peter R. Keller or Stephen M. Miller, Office of Maritime and Land Transport, Department of State, Washington, DC 20420. tel: (202) 647-6961.

Date: August 10, 1988.

Peter R. Keller,

Secretary, Shipping Coordinating Committee.

[FR Doc. 88-19138 Filed 8-23-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-811208

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on September 9, 1988 at 9:00 a.m. in Room 1103 at Coast Guard Headquarter, 2100 Second Street SW., Washington, DC. Members of the public may attend this meeting up to the seating capacity of the room.

The purpose of this Working Group meeting is to discuss the results and activities of the 33rd Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), held July 4 to 8, 1988, and to prepare for the 34th Session of IMO SLF, which is scheduled for July 3 to 7, 1989. Items of discussion will include the following: Subdivision and damage stability of dry cargo ships, including Ro-Ro ships; intact stability; subdivision and stability requirements for MODUs; flooding protection and residual stability standards for passenger ships; survival capabilities of ships carrying chemicals and liquefied gases in bulk; loan lines and stability for timber deck cargo ships; basic principles for future revisions to the 1966 Load Line Convention; safety of fishing vessels, including discussions on external forces caused by fishing gear and development of protocol to the 1977 Torremolinos Convention; the Work Program of SLF 34; and review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

For further information contact Mr. Spencer or Mr. Cojeen at (202) 267-2988, U.S. Coast Guard Headquarters (G-MTH-3/13), 2100 Second Street SW., Washington, DC 20593-0001.

Date: August 9, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-19139 Filed 8-23-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 18, 1988.

[2] 17 CFR 200.30-3(a)(12) (1986).

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0142.
Form Number: 2220
Type of Review: Revision.
Title: Underpayment of Estimated Tax by Corporations.
Description: Form 2220 is used by corporations to determne whether they are subject to the penalty for underpayment of estimated tax and, if so, the amount of the penalty. The IRS uses Form 2220 to determine if the penalty was correctly computed.
Respondents: Businesses or other for-profit, Small Businesses or organizations.
Estimated Number of Respondents: 700,000.
Estimated Burden Hours Per Response: 52 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 612,045 hours.
OMB Number: 1027.
Form Number: 1120–PC.
Type of Review: Revision.
Title: U.S. Property and Casualty Insurance Company Income Tax Return.
Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.
Respondents: Businesses and other for-profit.
Estimated Number of Respondents: 7,500
Estimated Burden Hours Per Response: 20 hours and 24 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 153,012 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–19198 Filed 8–23–88; 8:45 am]
BILLING CODE 4810-25-M

Internal Revenue Service

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

As Chief Counsel of the Internal Revenue Service, under the authority delegated to me by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Peter K. Scott, Deputy Chief Counsel;
2. Jeanne S. Archibald, Deputy Chief Counsel;
3. Richard J. Mihelcic, Associate Chief Counsel (Finance & Management);
4. James J. Keightley, Associate Chief Counsel (Litigation);
5. Agatha L. Vorsanger, Regional Counsel, North Atlantic Region;
6. Denis J. Conlon, Regional Counsel, Midwest Region.

This publication is required by 5 U.S.C. 4314(c)(4).

Date: August 5, 1988.

William F. Nelson,
Chief Counsel.
[FR Doc. 88–19196 Filed 8–23–88; 8:45 am]
BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 164
August 24, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 2, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb

Secretary of the Commission.

[FR Doc. 88–19264 Filed 8–22–88; 11:30 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 9, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–19265 Filed 8–22–88; 11:30 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 16, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb

Secretary of the Commission.

[FR Doc. 88–19266 Filed 8–22–88; 11:30 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 23, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb

Secretary of the Commission.

[FR Doc. 88–19267 Filed 8–22–88; 11:30 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 30, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb

Secretary of the Commission.

[FR Doc. 88–19268 Filed 8–22–88; 11:30 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 29305.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., August 25, 1988.

CHANGE IN THE AGENDA:

The Commodity Futures Trading Commission has added to the open meeting the following two items:

—Proposed amendments to the Commodity Exchange Act in connection with international information-sharing.

—Status of the implementation of the foreign options rules and other pending regulatory international matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–19285 Filed 8–22–88; 11:30 am]

BILLING CODE 6351-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, August 30, 1988.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last two items are closed under Exemptions 2 and 6 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Hazardous Materials Accident Report: Butadiene Release at CSX Terminal Junction Interchange Yard, New Orleans, Louisiana, September 8, 1987.
2. Marine Accident Report: Capsizing and Sinking of the U.S. Fishing Vessel UYAK II in the Gulf of Alaska, Kodiak Island, Alaska, November 5, 1987.
3. NTSB's Combined Reply to FAA's Response to Safety Recommendations A–87–40, –41 and –42 (Mail Controls 88–359, 87–861, and 87–1380).
4. Discussion of:
   a. Establishment of an additional "satellite field office" in Florida; and
   b. Monetary Award for Senior Executive Service personnel.

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382–6525.

August 19, 1988.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 88–19223 Filed 8–22–88; 9:52 am]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 53, No. 164
Wednesday, August 24, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 170

[Docket No. OPP-300164; FRL 3314-4]

Worker Protection Standards for Agricultural Pesticides

Correction

In proposed rule document 88-15416 beginning on page 25970 in the issue of Friday, July 8, 1988, make the following corrections:

1. On page 25976, in the first column, in the second line, "proposal" should read "proposed"; and in the eighth line, "is the" should read "in this".

2. On page 25978, in the third column, in the second complete paragraph, in the 13th line, "§ 170.79b)(1)" should read "§ 170.7(b)(1)".

3. On page 25979, in the second column, in the first complete paragraph, in the 15th line, insert a comma after the word "necessary".

4. On page 25986, in the third column, in the third complete paragraph, in the 11th line, after the word "exposure" insert "could".

5. On page 26007, in the second column, in the second line, "*Association of Journal*" should read "*Association Journal*".

§ 170.1 [Corrected]

6. On page 26012, in the second column, in § 170.1(b)(3), in the second line, "prorection" should read "protection".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44514; FRL-3422-8]

TSCA Chemical Testing; Receipt of Test Data

Correction

In notice document 88-17247 beginning on page 28909 in the issue of Monday, August 1, 1988, make the following correction:

On page 28909, in the third column, under **SUPPLEMENTARY INFORMATION**, in the second line, after "4(d)", remove the letter "n".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83C-0129]

Color Additives; Denial of Petition for Listing of D&C Red No. 19 for Use in Externally Applied Drugs and Cosmetics

Correction

In notice document 88-16042 beginning on page 26881 in the issue of Friday, July 15, 1988, make the following correction:

On page 26882, in the first column, in the first complete paragraph, in the fourth line, after "Inc." insert "(now the Cosmetic Toiletry and Fragrance Association, Inc.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Technical Amendments to the Sea Otter Translocation Regulations

Correction

In proposed rule document 88-18668 beginning on page 31722 in the issue of Friday, August 19, 1988, make the following correction:

On page 31722, in the first column, under "**DATE**", in the second line, "September 29, 1988" should read "August 29, 1988".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

Correction

In rule document 88-18351 beginning on page 30678 in the issue of Monday, August 15, 1988, make the following corrections:

1. On page 30679, in the second column, in the second complete paragraph, in the 17th line, "from" should read "form".

2. On the same page, in the same column, in the next to last line, "commenter" should read "comments".

3. On the same page, in the third column, in the second paragraph, in the first line, "Pub. L. 100-201" should read "Pub. L. 100-202".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-400]

Carolina Power & Light Co., et al., Shearon Harris Nuclear Power Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

Correction

In notice document 88-18175 beginning on page 30355 in the issue of Thursday, August 11, 1988, make the following corrections:

1. On page 30356, in the first column, in the ninth line, "to" should read "of".

2. On the same page, in the same column, in the first complete paragraph, in the first line "to the" should read "to this".

3. On the same page, in the second column, in the first complete paragraph, in the 14th line, "transportation" was misspelled.

4. On the same page, in the third column, in paragraph (3), in the sixth line, remove "a".

5. On the same page, in the first column under Table I, in the third line, "reasonable" should read "reasonably".

6. On the same page, in the third column under Table I, in the first complete paragraph, in the fifth line, "30" should read "33".

7. On page 30357, in the first column, in the second complete paragraph, under Table II, in the sixth line, "in" should read "is".

8. On the same page, in the third column under Table II, in the fifth line, "in" should read "is".

9. On page 30358, in the first column, in the last line, "ractors" should read "reactors".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Articles Being Considered for Possible Duty Removal

Correction

In notice document 88-18424 beginning on page 30920 in the issue of Tuesday, August 16, 1988, make the following corrections:

On page 30921, in the first column, in the table under *Plants, Vegetable Materials, Lacs, etc.*, "1401.10.00" should read "1401.10.00*". On the same page, in the third column, in the table under **VII. Jute and Hard Fibers**, "5305.19.00" should read "5305.19.00*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos

Correction

In proposed rule document 88-18630 beginning on page 31370 in the issue of Thursday, August 18, 1988, make the following corrections:

1. On page 31371, in the first column, under **SUPPLEMENTARY INFORMATION**, in the 17th line, "of" should read "on".

2. On the same page, in the third column, in the fourth line, "cash totalling" should read "cash in totalling".

3. On page 31373, in the first column, in the fourth line, "device" should read "advice"; and in the eighth line, the first "of" should read "or".

4. On the same page, in the same column, in the last paragraph, in the 15th line, remove "the".

5. On the same page, in the second column, in the second complete paragraph, in the 18th line, "that" should read "what".

6.On page 31374, in the second column, in the second complete paragraph, in the fourth line, "anticipated" was misspelled; and in the eighth line, "individuals" should read "individual".

§ 103.22 [Corrected]

7. On page 31375, in the first column, in § 103.22(a)(2)(i)(A), "Purchase" should read "Purchases".

8. On the same page, in the second column, in § 103.22(a)(2)(iii) introductory text, in the fifth line, "totalling" was misspelled.

§ 103.36 [Corrected]

9. On page 31376, in the first column, in § 103.36(b)(9)(iv)(B), the third line should read "(b)(9); and".

10. On the same page, in the same column, in § 103.36(b)(9)(iv)(C), in the third line, the language beginning with "the casino" through the end of the paragraph should appear as a flush paragraph.

11. On the same page, in the second column, in § 103.36(b)(11)(viii), in the eighth line, "ete." should read "etc.".

12. On the same page, in the same column, in § 103.36(b)(12), in the 12th line "name of casino" should read "name or casino".

§ 103.54 [Corrected]

13. On the same page, in the third column, in § 103.54(b)(1)(i), in the third line, add a comma after "currency".

14. On page 31377, in the first column, in § 103.54(b)(2)(i)(A), in the second line, "currency of chips" should read "currency or chips".

15. On the same page, in the same column, in § 103.54(b)(2)(ii), in the ninth line, "number of taxpayer" should read "number or taxpayer".

16. On the same page, in the second column, in § 103.54(b)(3), in the 3rd line, add a comma after "section"; and in the 15th line, "name of casino" should read "name or casino".

17. On the same page, in the same column, in § 103.54(b)(4)(i), in the second line, remove the comma before "of this section".

18. On the same page, in the same column, in § 103.54(b)(4)(iii), in the 13th line, "alien, the date" should read "alien; the date"; and in the 16th line "name of casino" should read "name or casino".

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Part II

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-66008F; TSH FRL-3434-1]

Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses twelve individual and class petitions for exemption from the prohibition against the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCBs). This proposed rule identifies four petitions which EPA proposes to deny and eight petitions which EPA proposes to grant. EPA hereby solicits comments on these proposed actions.

DATES: An informal hearing, if requested, will be held in Washington, DC, on October 24, 1988. For the exact time and location of the hearing, telephone EPA's TSCA Assistance Office listed under "FOR FURTHER INFORMATION CONTACT." Comments on this proposed rule and requests to participate in the informal hearing must be submitted by October 11, 1988. All requests to participate must include an outline of the topic(s) to be addressed, the amount of time requested for the opening statement, and the names of participants. The informal hearing is meant to provide an opportunity for interested persons to present additional information or to discuss new issues, not to repeat information already presented in written comments. Reply comments made in response to issues raised at the hearing must be submitted no later than one week after the date of that hearing.

ADDRESS: All comments should reference the docket number OPTS-66008F, and be sent in triplicate to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. NE-G004 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

Copies of this proposed rule can be obtained from the TSCA Assistance Office. Copies of the support documents for this rule can be obtained through the OTS Document Control Officer listed above.

SUPPLEMENTARY INFORMATION: The Toxic Substances Control Act (TSCA) requires that anyone who manufactures, processes, or distributes PCBs in commerce must petition EPA for an exemption. The regulations governing exemptions provide that EPA may set terms and conditions including recordkeeping and reporting requirements for granting an exemption.

Public reporting burden for this collection of information is estimated to average 7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

EPA's Interim Procedural Rules for Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the **Federal Register** of May 31, 1979 (44 FR 31514) and are codified at 40 CFR 750.30 through 750.41.

B. History of This Rulemaking

EPA has received for consideration 12 new exemption petitions under TSCA section 6(e)(3)(B) which are the subject of this proposed rule. Four exemption petitions request approval to process and distribute in commerce PCBs for purposes of buying, selling, and servicing customers' electrical transformers. Since the buying and selling of transformers is considered a separate action from servicing, both kinds of actions have been treated independently as discussed below for the purposes of evaluating the exemption petitions. In addition, one petition requests approval to process and distribute in commerce PCBs for use as a mounting medium in microscopy; one petition requests an exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy in addition to processing and distributing in commerce PCBs for use as immersion oil in low fluorescence microscopy and as an optical liquid; one petitioner requested an exemption to manufacture and export PCBs in small quantities for research and development; one petitioner requested an exemption to import small quantities of PCBs for research and development; one petitioner requested an exemption to distribute in commerce inadvertently generated PCBs. Of the 12 petitions for exemptions, 4 of the petitions were previously granted exemptions, 4 of the petitions were previously granted exemptions for 1 year, effective August 23, 1984, as published in the **Federal Register** of July 10, 1984 (49 FR 28154); 1 was granted an exemption for 1 year, effective September 8, 1986, as published in the **Federal Register** of August 8, 1986 (51 FR 28556); and 1 was denied an exemption in a notice of final

action published in the **Federal Register** of August 29, 1985 (50 FR 35192).

In the final PCB Exemptions Rule, published in the **Federal Register** of July 10, 1984 (49 FR 28154), EPA acted on 109 pending exemption petitions and deferred action on the petition from Ward Transformer, Inc. (Ward Transformer). Also in the July 10, 1984 **Federal Register** (49 FR 28203), EPA issued a proposed rule-related notice. In that notice EPA requested that Ward Transformer submit additional information, and indicated that the Agency would take final action on the Ward Transformer petition after evaluating the additional information. In the August 29, 1985 **Federal Register** (50 FR 35192), EPA issued a notice of final action denying the Ward Transformer petition.

In the July 10, 1984 final PCB Exemptions Rule, EPA also revoked its earlier policy of allowing activities which were the subject of exemption petitions to continue until EPA acted to grant or deny the exemption petitions, as published in the **Federal Register** of January 2, 1979 (44 FR 108) and March 5, 1980 (45 FR 14247). As of the effective date (August 23, 1984) of the final rule published in the **Federal Register** of July 10, 1984, the Agency allows a petitioner, whose exemption request is granted, to manufacture, process, or distribute in commerce PCBs only for the period of time granted in the final rule (usually 1 year). When the exemption expires, a petitioner will not be permitted to engage in such activities, even if it renews its exemption request, until EPA has acted on that request.

EPA issued another final PCB Exemption Rule, acting on 22 exemption petitions, in the **Federal Register** of August 8, 1986 (51 FR 28556), after the publication of a proposed rule in the **Federal Register** of August 29, 1985 (50 FR 35182). That rule restated EPA's policy of not allowing the activities to continue beyond 1 year until EPA granted a new PCB exemption. The August 8, 1986 final PCB Exemptions Rule also encouraged those petitioners who were granted exemptions in the final rule who wish to renew their exemptions, to file a renewal request a minimum of 6 months before the expiration of their current exemptions, since EPA must act on petitions for exemption from the prohibitions on PCBs by rulemaking. EPA reiterates this recommendation for any petitioner granted exemptions in the final action following this proposed rule.

II. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to demonstrate that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or the environment against the benefits to society from granting or denying each petition. Specifically, EPA considers the following factors:

1. The effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.

2. The benefits to society of granting an exemption and the reasonably ascertainable costs to the petitioner of denying an exemption petition.

These are the same factors that EPA must consider in deciding whether a chemical substance or mixture presents an unreasonable risk of injury to health or the environment under sections 6(a) and 6(e) of TSCA.

A. Effects of PCBs on Human Health and the Environment

In deciding whether to grant an exemption, EPA considers the effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment. The effects of PCBs are described in various documents that supported previous rulemaking and are a part of the rulemaking record for this proposed rule. Copies of these documents are available from EPA's TSCA Assistance Office at the address listed under "**FOR FURTHER INFORMATION CONTACT.**"

1. Health Effects

EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, can circulate throughout the body, and can be stored in the fatty tissue.

Available animal studies indicate an oncogenic potential, the degree of which would depend on exposure. Available epidemiological data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.

In addition, EPA finds that PCBs may cause reproductive effects and developmental toxicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmental toxic effects. Postnatal effects have been demonstrated on immature animals, following exposure to PCBs prenatally and via breast milk.

In some cases, chloracne may occur in humans exposed to PCBs. Severe cases of chloracne are painful and disfiguring, and may require a long time before the symptoms disappear. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

2. Environmental Effects

Certain PCB congeners are among the most stable chemicals known and decompose very slowly once they are released into the environment. Once released they remain in the environment and are taken up and stored in the fatty tissue of organisms. EPA has concluded that PCBs can be concentrated in freshwater and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources.

Available data show that PCBs affect the productivity of phytoplankton and the composition of phytoplankton communities; cause deleterious effects on environmentally important freshwater invertebrates; and impair reproductive success in birds and mammals.

PCBs are also toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs also have been demonstrated.

3. Risks

Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. EPA has taken exposure into consideration when evaluating each exemption petition, and this is discussed in later units of this preamble.

B. Benefits and Costs

The benefits to society of granting an exemption vary, depending on the activity for which exemption is

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requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petitioner. EPA has taken the benefits and costs into consideration when evaluating each exemption petition.

III. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to demonstrate a good faith effort to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs. EPA considers several factors in determining whether a petitioner has demonstrated good faith efforts. For each petition, EPA considered the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs.

IV. Disposition of Pending Exemption Petitions

A. Processing and Distribution in Commerce of PCBs for Purposes of Servicing Customers' Transformers.

EPA received one exemption petition to process and distribute in commerce, PCBs for purposes of servicing customers' PCB Transformers and PCB-contaminated transformers and introducing its PCB-contaminated fluid into customers' PCB Transformers or PCB-contaminated transformers. The petitioner needs an exemption to engage in this activity. In contrast, a person does not need an exemption to drain PCB fluid or PCB-contaminated fluid from a customer's transformer and return it later to the same transformer. Nor does a person need an exemption to introduce PCB fluid he already owns into his own PCB Transformer or to introduce PCB-contaminated fluid he already owns into his own PCB Transformer or PCB-contaminated transformer for purposes of servicing. These activities are authorized by EPA's Electrical Equipment Rule under 40 CFR 761.30(a), published in the Federal Register of August 25, 1982 (47 FR 37342), and need no exemption, as there is no processing or distribution in commerce of PCBs. Nor does a person need an exemption to introduce non-PCB fluid (i.e., fluid containing less than 50 parts per million (ppm) PCBs) into any transformer.

1. Electrical Apparatus Service Association

On August 22, 1985 the Electrical Apparatus Service Association (EASA) requested a renewal of its 1-year exemption for its 265-member service companies to process and distribute in commerce PCB-contaminated fluid for the purpose of servicing customers' transformers (PDE 77). EPA granted EASA a 1-year exemption in July 1984 to engage in substantially similar activities. EPA proposes to deny petitioner's request for another 1-year exemption because the petitioner failed to meet the statutory requirement of good faith efforts as required by section (6)(e)(3)(B)(ii) of TSCA. EASA also applied under this same petition to process and distribute in commerce PCBs in buying and selling transformers. This is considered a separate action from processing and distributing in commerce PCBs for purposes of servicing customer's transformers, and is discussed separately under Unit IV. B.1.

a. *Background.* In its July 10, 1984, action on the original EASA petition, the Agency concluded that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that EASA had made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid. EPA also concluded that granting an exemption would avoid costs of approximately $10 million (approximately $37,500 per company). EPA also believed that granting EASA a 1-year exemption would give EASA the time it needed to inform its members of what they must do to comply with the PCB regulations, and allow EASA members time to phase out those PCB-related activities which require exemption.

i. *Unreasonable risk finding.* As discussed earlier in Unit II., EPA specifically considers the effects of PCBs on human health and the environment, the benefits to society of granting an exemption, and the reasonably ascertainable costs to the petitioner of denying an exemption petition. In the prior evaluation of unreasonable risk, EPA found that granting EASA an exemption would not present an unreasonable risk because EPA agreed that: (1) The amount of PCBs to be processed and distributed in commerce in servicing customer's transformers was a relatively small percentage of the PCBs then in circulation in PCB-contaminated transformers; (2) the transformers would be serviced by EASA members in accordance with the regulatory requirements of 40 CFR 761.30(a)(2); (3) granting the exemption would avoid costs of approximately $10 million ($37,500 per company); and (4) granting an exemption would benefit society by helping small utilities continue to provide efficient and reliable electrical service throughout the Untied States. Thus, EPA concluded the EASA had shown that granting a 1-year exemption would not present an unreasonable risk of injury to health or the environment.

ii. *Good faith efforts finding.* In the prior evaluation of good faith efforts, EPA concluded that EASA had made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid. EASA stated in its earlier petition that it had attempted through mailings and seminars to inform its members of the changes they must make in their operations to comply with the PCB regulations. However, EASA contended that additional time was needed to fully inform EASA members about what activities are allowed in the absence of an exemption. EPA concluded that a 1-year exemption would allow EASA members enough time to implement the necessary phase out of those PCB-related activities which require exemption. Thus, EPA concluded that EASA had met the statutory requirement of good faith efforts and a 1-year exemption would give EASA the additional time they needed. Therefore, EPA granted EASA an exemption for 1 year. However, the Agency stated that, "Any petitioner who requests a further exemption after its 1-year exemption expired would have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs."

b. *Rationale for proposed decision to deny.* EPA proposes to deny EASA's new petition for exemption because, although EASA has met the statutory requirement of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA, EASA has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

i. *Unreasonable risk finding.* EPA reaffirms its conclusion made in the July 10, 1984 PCB Exemptions Rule, that EASA has met the statutory requirement of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA. EPA sees no significant changes since EASA's earlier petition for exemption to necessitate a change in EPA's conclusion of no unreasonable risk. The estimated cost of denial would be approximately $10 million (approximately $37,000 per company). This is the same estimate used in the July 10, 1984, PCB Exemptions Rule (PCB

Exemption Petitions Economic Impact Analysis, April 1984). In addition, EPA agrees that the amount of PCBs to be processed and distributed in commerce in servicing customers' transformers is still a relatively small percentage of the PCB now in circulation in PCB-contaminated transformers, and since EASA members must continue to service customers' transformers in accordance with the restrictions of 40 CFR 761.30(a)(2), there will be no unreasonable risk of injury to health or the environment.

ii. *Good faith efforts finding.* EPA concludes that EASA has failed to meet the statutory requirements of good faith efforts. EPA considers several factors in determining whether a petitioner has demonstrated a good faith effort (discussed in Unit III.). One such factor is whether the petitioner expended time and effort to develop or search for a substitute. However, the burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs or to show why it was not feasible to do so. Although EASA contends good faith efforts have been made in reducing PCBs, EASA fails to indicate any effort to reduce the amount of PCBs in inventory. EPA stated in the July 10, 1984, PCB Exemptions Rule that, although EPA was granting EASA an exemption, the Agency strongly urged EASA to eliminate its remaining PCB inventories.

EASA's present petition shows virtually no change in the estimated amount of PCBs to be processed, distributed in commerce, or used during the exemption period. In its earliest petition (1979), EASA reported 442.2 lbs. of PCBs a year as the estimated amount of PCBs to be processed, distributed in commerce, or used during the exemption period. EASA updated this figure to 1,127 lbs. of PCBs per year in its 1984 updated petition. In its current petition, EASA continues to report 1,127 lbs. of PCBs a year as the estimated amount of PCBs to be processed, distributed in commerce, or used during the exemption period.

Further, EASA shows that the number of PCB-contaminated transformers to be serviced under the requested exemption has remained the same since the 1984 updated petition for exemption. In both the 1984 updated petition and the current 1985 petition for exemption, EASA estimated 413,400 pole-mounted transformers and 402 substation transformers to be served under the requested exemption, thus showing no reduction during the period that the last exemption was in effect.

In addition, in granting the earlier petition in the July 10, 1984 PCB Exemptions Rule, EPA concluded that a 1-year exemption would allow sufficient time for EASA to inform its members of what they must do to comply with the PCB regulations, and also give EASA members time to phase out those PCB-realated activities which require an exemption. However, EASA has requested that EPA allow its members another year to implement the regulation. EASA contends that although diligent efforts were made, through newsletters, handbooks, and seminars, to notify its members of the activities allowed by the PCB regulations in the absence of an exemption, the members still need more time to implement the procedures necessary to come into full compliance with the regulatory requirements.

EPA believes that although EASA can be commended for its diligent notification efforts, EASA has had sufficient time to complete both the notification of members and the implemention of the necessary procedures. EASA was given a full year exemption, from August 23, 1984 through August 23, 1985. To date, EASA has had over 3 years to notify their members and to implement the regulation.

EPA concludes that, EASA has the burden to demonstrate good faith efforts and has not adequately met that statutory requirement. Therefore, EPA proposed to deny the Electrical Apparatus Service Association's petition for exemption to process and distribute in commerce PCBs for purposes of servicing customers' transformers based on the conclusion that no reduction in the members' PCB inventory has been demonstrated since the last exemption was granted.

B. Processing and Distribution in Commerce of PCBs in Buying and Selling Transformers

EPA received two exemption requests from petitioners who want to process and distribute in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers. Each of these petitioners is engaged in one or more of the following activities for which an exemption is generally required: (1) Buying and selling PCB transformers or PCB-contaminated transformers without introducing PCBs into these transformers; (2) buying PCB transformers or PCB-contaminated transformers, introducing non-PCB fluid into these transformers, and then selling them before they have been reclassified as non-PCB transformers in accordance with the provisions of 40 CFR 761.30(a)(2)(v); and (3) buying PCB Transformers or PCB-contaminated transformers, introducing PCB fluid or PCB-contaminated fluid into these transformers (including fluid originally taken from and returned to the same transformer), and then selling them. The petitioners who introduce PCBs into these transformers need an exemption because they are processing PCBs, as defined in section 3(10) of TSCA and 40 CFR 761.3. The petitioners who sell these transformers need an exemption, because they are distributing in commerce PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3.

Not all of these activities for which EPA received exemption petitions require exemption. EPA regulations at 40 CFR 761.20(c)(1) allow a person to distribute in commerce used PCB transformers and PCB-contaminated transformers without the need for an exemption, provided that the following conditions are met: (a) The transformer was originally distributed in commerce before July 1, 1979, for purposes other than resale; (b) the transformer is totally enclosed (i.e., intact and nonleaking) when it is distributed in commerce; (c) no PCBs are introduced into the transformer (including PCB fluid or PCB-contaminated fluid originally removed from and returned to the same transformer); and (d) the transformer is distributed in commerce only within the United States. Activities described in Units IV.B.1. and 2. Of this preamble do not require an exemption if each of the conditions listed above ((a), (b), (c), and (d)) is met. Unless each of these conditions is met, processing or distributing in commerce of PCBs in buying and selling used PCB transformers and PCB-contaminated transformers is prohibited without an exemption. The EPA findings on the petitions from EASA, Ward Transformer, and Jerry's Electric which are discussed in Units IV.B.1., 2., and 3., pertain to those portions of the petitioners' activities which require exemption from the prohibitions on the processing and distribution in commerce of PCBs.

EPA proposes to deny one exemption petition, for processing and distributing in commerce PCBs in buying and selling PCB-contaminated transformers, because EPA has concluded that the petitioner has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

EPA proposes to grant two petitions, for processing and distributing in commerce PCBs in buying and selling used transformers. One petitioner has provided documentation which: (i) Substantiates its claims of good faith

efforts as required by section (6)(e)(3)(B)(ii) of TSCA: and (ii) verifies that the PCBs will be handled and stored in such a manner as to pose no unreasonable risk, as required by section (6)(e)(3)(B)(i) of TSCA. The other petitioner has also demonstrated good faith efforts and no unreasonable risk as required by section 6(e)(3)(B), (i) and (ii) of TSCA.

1. Electrical Apparatus Service Association

On August 22, 1985, the Electrical Apparatus Service Association requested a renewal of its 1-year exemption for its 265-member service companies to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers (PDE 78). EPA granted EASA a 1-year exemption in July 1984 to engage in substantially similar activities. EPA proposes to deny this petitioner's request for another 1-year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers, because EASA failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA. EASA also applied under this same petition to process and distribute in commerce PCBs for purposes of servicing customers' transformers. This action is discussed separately under Unit IV.A.1.

a. *Background.* In the July 10, 1984, PCB Exemptions Rule, EPA granted to the members of EASA, except for Ward Transformer Co., Inc., an exemption for 1 year to process and distribute in commerce PCB-contaminated fluids in buying and selling PCB-contaminated transformers.

EPA concluded that granting an exemption would not result in an unreasonable risk of injury to health or the environment and further found that EASA made good faith efforts to substitute non-PCBs for PCBs. In addition, EPA believed that granting a 1-year exemption would give EASA the time it needed to inform its members of what they must do to comply with the PCB regulations, thereby allowing EASA members time to phase out their PCB-related activities that require exemption. EPA also concluded that the cost incurred by EASA due to a denial of its petition would be approximately $160 for an average size mineral oil transformer and $4,000 for an average size PCB transformer. Since the costs of replacing the similar sized mineral oil and PCB transformers are approximately $1,600 and $13,000, respectively, these incremental costs would amount to about 10 to 30 percent of the cost of replacements. Therefore, EPA estimated that depending on the purchase price and resale value of used transformers, the additional costs resulting from denial of the petition might have rendered a portion of this buying and selling activity unprofitable.

i. *Unreasonable risks finding.* In EPA's evaluation of unreasonable risk in July 1984, EPA concluded that: (1) The amount of PCBs to be processed and distributed in commerce in buying and selling PCB-contaminated transformers was a relatively small percentage of the PCBs in circulation in PCB-contaminated transformers; (2) the transformers would be serviced in accordance with the requirements of 40 CFR 761.30(a)(2); (3) granting an exemption would avoid some costs to the petitioner, although the costs were not quantified; and (4) granting an exemption would benefit society by allowing small utilities and industrial companies to replace burned-out transformers quickly, which would provide efficient and reliable electrical service throughout the United States. Thus, EPA concluded that granting the EASA petition would not present an unreasonable risk of injury to health or the environment.

ii. *Good faith efforts finding.* In EPA's evaluation of good faith efforts in July 1985, EPA concluded that EASA made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid. EPA also concluded that although EASA had attempted, through mailings and seminars, to inform its members of the changes they must make in their operations to comply with the PCB regulations, a 1-year exemption would allow EASA members time to phase out their PCB-related activities that require exemption. Thus, EPA concluded that EASA had met the statutory requirement of good faith efforts and granted an exemption for 1 year.

b. *Rationale for proposed decision to deny.* EPA proposes to deny EASA's new petition for exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers because, although EASA has met the statutory requirement of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA, EASA has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

i. *Unreasonable risk finding.* EPA reaffirms its conclusion, made in the July 10, 1984, PCB Exemption Rule, that EASA has met the staututory requirement of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA. EPA sees no significant changes since EASA's earlier petition for exemption to necessitate a change in EPA's conclusion of no unreasonable risk made in the July 10, 1984, PCB Exemptions Rule. EPA agrees that the amount of PCBs to be processed and distributed in commerce in buying and selling PCB-contaminated transformers is a relatively small percentage of the PCBs now in circulation in PCB-contaminated transformers. Furthermore, since EASA members must service customer's transformers in accordance with the requirements of 40 CFR 761.30(a)(2), there would be no unreasonable risk of injury of health or the environment. EPA estimated that the incremental costs of denial would be a maximum of $160 for an average size PCB-contaminated transformer, assuming all of the transformers fluid had to be disposed of and replaced. Given that the costs of replacing the similarly sized PCB-contaminated transformer is approximately $1,600, the incremental costs amount to about 10 to 30 percent of replacement costs.

ii. *Good faith efforts finding.* EPA concludes that EASA has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

EPA considers several factors in determining whether a petitioner has demonstrated a good faith effort (discussed in Unit III.). One such factor is whether the petitioner expended time and effort to develop or search for a substitute. However, the burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs or to show why it was not feasible to do so. A reduction in inventory is an indication of efforts to substitute non-PCB material for PCBs. EASA has failed to demonstrate any effort to reduce its inventory nor has EASA indicated why it was not feasible to reduce its inventory, thus failing to meet the burden of showing specifically what it did to substitute non-PCB material for PCBs or why it was not feasible to substitute non-PCBs for PCBs.

Although EASA was previously granted an exemption (49 FR 28154), EPA stated at the time that, "Any petitioner who requests a further exemption after its 1-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs." EASA has filed for another 1-year exemption and has failed to comply with the good faith efforts test. In its current petition for exemption, EASA indicates that its estimated amount of processed transformer oil containing PCBs has remained the same since the association's last exemption request.

Therefore, EPA concludes EASA has not shown good faith efforts to reduce its inventory of PCBs or overcome the substantial burden of showing why it did not eliminate its inventory of PCBs as discussed in EASA's petition request to service customer's transformers (see Unit IV.A.1.a.ii.). Therefore, because the estimated amount of PCBs to be processed, distributed in commerce, or used during the exemption period remains the same as in the last exemption petition request, and EASA has shown no effort to reduce this amount, thus failing to show good faith efforts to find a substitute for PCBs (e.g., eliminating its inventory of PCBs), EPA proposes to deny EASA's petition for exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

2. Ward Transformer

On July 25, 1985, The Ward Transformer Company (Ward Transformer), a member of EASA, requested a 1-year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers (PDE 294). EPA proposes to grant Ward's petition for exemption provided petitioner meets certain criteria including continued compliance with a Consent Judgment and maintaining certain records and submitting certain reports, as outlined in detail in Unit IV.B.2.b.ii.

a. *Background.* In the July 10, 1984, PCB Exemption Rule, EPA deferred final action on Ward transformer's exemption petition in order to gather more information on the issue of unreasonable risk of injury to health or the environment. In the proposed rule-related notice published in the Federal Register of July 10, 1984 (49 FR 28203), EPA specifically solicited information from Ward Transformer on the issue of unreasonable risk, stating that Ward Transformer could allay EPA's concern that granting the petition could result in an unreasonable risk of injury to health or the environment by submitting clear and convincing evidence to the contrary.

In the August 29, 1985, Notice of Petition Denial (50 FR 35192), EPA denied the Ward Transformer petition for an exemption to buy and sell used PCB/contaminated transformers based on EPA's evaluation of the information submitted by the petitioner in response to the proposed rule-related notice, and determined that Ward Transformer had failed to provide clear and convincing evidence that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

i. *Unreasonable risk finding.* Since Ward Transformer would be handling, storing, and disposing of PCB-contaminated fluid were EPA to grant an exemption, EPA concluded that Ward transformer's compliance with the storage for disposal regulations (40 CFR 761.65) was a significant factor in determining whether granting the exemption would result in an unreasonable risk of injury to health or the environment. The information submitted by Ward Transformer in response to the proposed rule-related notice of July 1984 led EPA to question Ward Transformer's compliance with the storage for disposal requirements under 40 CFR 761.65(a). Therefore, EPA concluded in the August 29, 1985, Notice of Petition Denial that Ward Transformer had not provided clear and convincing evidence that granting an exemption would not result in an unreasonable risk of injury to health or the environment. In particular, EPA was concerned that petitioner had accumulated, prior to July 1, 1982, 18,000 to 20,000 gallons of PCB-contaminated fluid which it maintained was being stored in bulk storage containers for reuse, although Ward Transformer maintained that it did and would not use PCB-contaminated fluid in servicing transformers. Ward Transformer stated that the PCB-contaminated fluid was being stored for treatment to below 2 ppm. Since such treatment constitutes disposal of PCBs, the storage of the PCB-contaminated fluid in bulk storage tanks beginning before July 1, 1982, was not in compliance with 40 CFR 761.65 which required that all PCBs stored prior to January 1, 1983, be disposed of by January 1, 1984 (after January 1, 1983, all PCBs were to be disposed of within 1 year of the date PCBs were placed into storage for disposal). EPA placed time limits on the storage of PCBs for disposal due to the concern that facilities would store PCBs for indefinite periods of time, increasing the likelihood of leaks or accidental releases of PCBs. Thus, EPA determined that granting an exemption to Ward Transformer could result in increased risks of human and environmental exposure to PCBs. In addition, EPA concluded that the cost of denying Ward Transformer's petition was not sufficient to outweigh the potential risks of injury to health and the environment. Therefore, EPA was unable to make the statutory finding of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA.

ii. *Good faith efforts finding.* The information provided by the petitioner in response to the July 10, 1984, proposed rule-related notice indicated a continuing failure to act in good faith compliance with applicable regulations on the storage of PCBs for disposal. Thus, in the 1985 Notice of Petition Denial, EPA concluded that Ward Transformer had not met the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii).

b. *Rationale for proposed decision to grant.* EPA proposes to grant Ward Transformer's present exemption petition to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. This decision is based upon information submitted by the petitioner which allays the Agency's concern about the petitioner's good faith efforts, as well as the concern that granting an exemption to Ward Transformer could result in unreasonable risks. However, the exemption will only remain in effect provided Ward Transformer continues to meet certain criteria as outlined by EPA in Unit IV.B.2.b.ii.

According to Ward's petition for exemption, it has made the decision to dispose of its stored PCB-contaminated fluid rather than treat it for reuse. The petitioner provided EPA with copies of manifests and certifications of disposal from an EPA permitted disposal company, accounting for all of the fluid which the petitioner had been storing at the time the Agency denied its earlier petition. In addition, a statement signed by Ward's counsel indicated that, as of November 1985, Ward had no PCB or PCB-contaminated fluid in storage for disposal. Petitioner took this action in response to EPA's concerns about unreasonable risks presented by lengthy storage of the fluid and potential violations of the PCB disposal regulations.

i. *Unreasonable risk finding.* Ward Transformer is engaged in the same types of activities as other EASA members. EPA has found that those activities do not pose an unreasonable risk of injury to health or the environment (see Units II and IV.A.1.a.i.). Therefore, EPA concludes that granting Ward Transformer an exemption would not result in an unreasonable risk of injury to health or the environment since all PCB-contaminated fluid in storage for disposal has been disposed of in accordance with the disposal regulations.

ii. *Good faith efforts finding.* Documents submitted in its previous exemption petition showed that Ward Transformer entered into a contractual agreement of the disposal of 1,815 gallons of PCB fluid and 1,265 gallons of PCB-contaminated solids which were collected prior to July 1, 1982. EPA estimated in the August 29, 1985, Notice of Petition Denial that approximately

16,000 to 18,000 gallons of fluid which had been collected prior to July 1, 1982, remained in storage for disposal at the Ward facility. The documents submitted by Ward Transformer in its current petition show evidence of disposal of some 18,200 gallons of PCBs. Based upon these documents, the Agency concludes that Ward Transformer had demonstrated that it has eliminated its inventory of PCB-contaminated fluid in storage for disposal, thus satisfying an essential test in determining whether one has demonstrated good faith efforts.

Therefore, EPA proposes to grant Ward Transformer's petition for exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. In proposing to grant this exemption, EPA presumes Ward Transformer's continued commitment to comply with all of the PCB regulations at 40 CFR Part 761, and to operate within the limits of its exemption should it be granted in the final rule. In addition, EPA believes that although the Agency is proposing to grant the petitioner's exemption, Ward Transformer must meet certain additional conditions to maintain their exemption. The conditions are that: (1) Ward Transformer must continue to comply with all terms and conditions of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Consent Decree identified as *U.S. v. Ward,* et al. No. 83–63–CIV 5 (E.D.N.C. June 13, 1986); (2) Ward Transformer must maintain complete records relating to labeling, storage, and disposal of PCBs and PCB Items pursuant to TSCA. In addition to complying with the recordkeeping and reporting requirements under 40 CFR Part 671, Subpart J, Ward Transformer must comply with all applicable conditions of § 761.80(e)(1).

EPA concludes that Ward Transformer has adequately met the statutory requirements of no unreasonable risk and good faith efforts as required by section 6(e)(3)(b) (i) and (ii) of TSCA. Therefore, EPA proposes to grant Ward Transformer's petition for exemption for 1 year to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. Should a 1-year exemption be granted to Ward Transformer in the final rule, Ward Transformer must meet the conditions set forth in § 761.80(e)(1).

3. Jerry's Electric, Inc.

On January 21, 1987, Jerry's Electric, Inc. (Jerry's Electric) requested a 1-year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers (PDE–133). Specifically, Jerry's Electric requests an exemption to rebuild drained PCB-contaminated transformers. In July 1984, EPA denied Jerry's Electric's earlier petition for exemption to do essentially the same activities. EPA proposes to grant petitioner's current request for a 1-year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

a. *Background.* In the July 10, 1984 PCB Exemptions Rule, EPA denied Jerry's Electric an exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. In the proposed rule mailed to the petitioners, EPA specifically solicited information about the issue of unreasonable risk of injury to health and the environment and good faith efforts to substitute non-PCBs for PCBs. Since Jerry's Electric, among other petitioners, failed to respond, EPA was unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioners made good faith efforts to substitute non-PCBs for PCBs. Thus, EPA denied, along with several other petitions, Jerry's Electric's petition to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers.

b. *Rationale for proposed decision to grant.* EPA proposes to grant Jerry's Electric's new petition for exemption to process and distribute in commerce PCB's in buying and selling PCB-contaminated transformers since this petitioner has met the statutory requirements of no unreasonable risk and good faith efforts as required by section 6(e)(3)(B) (i) and (ii) of TSCA.

i. *Unreasonable risk finding.* EPA concluded that Jerry's Electric has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA estimates that the amount of PCBs to be processed and distributed in commerce in buying and selling PCB-contaminated transformers is a relatively small percentage of the PCBs now in circulation. Since Jerry's Electric estimates that only 10 percent of the rebuildable transformers are PCB-contaminated transformers, it estimates that only approximately 450 PCB-contaminated transformers will need to be rebuilt. Furthermore, since Jerry's Electric is purchasing already drained units for rebuilding, the risk of exposure due to normal leaks and spills in handling PCBs is mitigated. In addition, since they are required to service these transformers in accordance with the requirements of 40 CFR 761.30(a)(2), there will be no unreasonable risk of injury to health or the environment. EPA also concluded that granting the exemption will benefit society by allowing small utilities nation-wide to replace burned-out transformers quickly, which will provide efficient and reliable electrical service throughout the United States.

ii. *Good faith efforts findings.* EPA concludes that Jerry's Electric has met the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA. Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs.

The petition submitted by Jerry's Electric reveals that all rebuilt units will be filled with new insulating oil that has been tested and found to contain less than 1.0 ppm of PCBs. Thus, the substance that the petitioner proposes to use is a chemical substance which will not present an unreasonable risk of injury to health or the environment. Petitioner has made good faith efforts to substitute non-PCBs for PCBs.

EPA concludes that Jerry's Electric has adequately met the statutory requirements of no unreasonable risk and good faith efforts as required by section 6(e)(3)(B) (i) and (ii) of TSCA. Therefore, EPA proposes to grant Jerry's Electric's petition for exemption for 1 year to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

C. Distribution in Commerce of Equipment Containing Less Than 50 PPM PCBs for Use in the U.S. and Abroad

EPA received one petition for exemption to distribute in commerce within the United States die casting machines and trim presses, as well as hydraulic, heat transfer, and other miscellaneous equipment in use and in storage for reuse, which contain less than 50 ppm PCBs. This same petitioner requested an exemption to distribute in commerce the same equipment for export. TSCA generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs. EPA issued a final rule published in the **Federal Register** of July 10, 1984 (49 FR 28172) (the "Uncontrolled PCB Rule"), prescribing conditions under which certain manufacturing processes were excluded from the TSCA prohibitions, and prescribing conditions on the use of PCBs in hydraulic and heat transfer systems.

The Agency recently clarified the status of these activities by affirming that the existing regulations indeed prohibit these activities, unless specifically excluded or otherwise allowed by regulation. However, EPA published in the Federal Register of June 27, 1988 (52 FR 24206), a final amendment which would exclude the majority of these activities from regulation.

This rule amended the existing regulations by generally excluding from the TSCA section 6(e) prohibitions the processing, distribution in commerce, and use of products containing less than 50 ppm PCB concentration, provided these products were legally manufactured, processed, distributed in commerce, or used, prior to October 1, 1984. The term "legally," as used in this exclusion, includes activities allowed by EPA by regulation, by exemption petition, by settlement agreement, or pursuant to other Agency-approved programs.

As explained in the June 27, 1988, amendment, EPA cannot individually identify and assess every conceivable type of product contaminated at these very low PCB levels. EPA therefore adopted in the June 27, 1988, amendment to the Uncontrolled PCB Rule, a generic exclusion, based upon the Agency's determination that the use, processing, and distribution in commerce of products with less than 50 ppm PCB contamination will not generally present an unreasonable risk of injury to health or the environment. EPA specifically excluded from the ban on the processing and distribution of PCB products, those products containing certain "old" or "legal" PCB's at concentrations of less than 50 ppm. Therefore, EPA determined that an exemption would not be required to process and distribute products that contain the "old" excluded PCBs which appear in concentrations less than 50 ppm.

1. General Motors Corporation

On December 22, 1988, General Motors Corporation (General Motors) submitted two petitions for exemptions to distribute in commerce PCBs for use within the United States, and to distribute in commerce PCBs for export from the United States. General Motors is requesting an exemption to distribute in commerce PCBs found in die casting machinery and trim presses, and in hydraulic, heat transfer, and other miscellaneous equipment in use or in storage for reuse. The equipment has been tested and found to contain less than 50 ppm PCBs. EPA proposes to grant both of General Motors' petitions for exemption because EPA determined, in the July 10, 1984, final Uncontrolled PCB Rule and the June 27, 1988 final amendment to the Uncontrolled PCB Rule (49 FR 28172 and 53 FR 24206, respectively), that the use of PCBs in hydraulic and heat transfer fluid at concentrations of less than 50 ppm would not pose an unreasonable risk. Since the amendment to the Uncontrolled PCB rule was published in the Federal Register on June 27, 1988 (53 FR 24206), General Motors will no longer require an exemption to process and distribute in commerce its equipment containing less than 50 ppm PCBs. EPA proposes to grant both of General Motors' exemption to: (i) Distribute in commerce PCBs for use within the United States; and (ii) distribute in commerce PCBs for export from the United States.

a. *Unreasonable risk: Distribution in commerce within the United States.* In the July 10, 1984, Rule, EPA concluded that the risks associated with the use of PCBs at the concentrations of less than 50 ppm are outweighed by the benefits of the continued use of the contaminated hydraulic and heat transfer systems, and the costs that are avoided by not requiring the further removal of the PCBs remaining in these systems at less than 50 ppm after July 1, 1984. Therefore, EPA concluded that authorizing the use of PCBs in these systems at concentrations of less than 50 ppm would not present an unreasonable risk of injury to health or the environment. EPA has considered the risks associated with the continued use of this equipment in authorizing the use of systems containing less than 50 ppm and found that no unreasonable risks would result. Although EPA has expressed some concern in the past that possible leaks and spills from this equipment during distribution in commerce may pose unreasonable risks, EPA determined, in the August 8, 1988, rule, that if equipment is drained of all free flowing liquid prior to distribution, no unreasonable risks will result.

General Motors states that should EPA grant their request to distribute in commerce this equipment, which has been tested and shown to contain less than 50 ppm PCBs, all free flowing liquid will be drained and outside surfaces will be cleaned prior to distribution in commerce. Thus, EPA concludes that there is no unreasonable risk of injury to health or the environment by granting General Motors' petition for exemption to distribute in commerce, within the United States, this drained equipment previously contaminated with less than 50 ppm PCBs.

b. *Unreasonable risk: Export.* The Agency generally treats petitions for exemption to export PCBs more stringently than petitions to distribute PCBs within the United States because EPA has little or no control over the distribution, use, and disposal of PCBs once they have been exported. However, EPA concludes that these concerns are mitigated in the export of equipment contaminated with less than 50 ppm PCBs, and drained of all free flowing liquid before their distribution in commerce. EPA has considered the risks associated with the continued use of this equipment in authorizing the use of systems containing less than 50 ppm PCBs and found that no unreasonable risks would result. EPA's concerns about possible leaks and spills resulting from distribution in commerce are mitigated in this instance since all equipment is drained of all free flowing liquid. Further, in the July 10, 1983, rule, EPA included provisions that authorized the use of PCBs in hydraulic and heat transfer systems at concentrations less than 50 ppm for the remainder of their useful lives. General Motors is proposing to export only equipment that has been tested and shown to contain less than 50 ppm PCBs that has been drained of all free flowing liquids. Under 40 CFR 761.20(b)(2), EPA allows the export of PCBs at concentrations less than 50 ppm, for purposes of disposal. Thus, EPA's concern about disposal capabilities in other countries, for equipment contaminated with less than 50 ppm, is mitigated. EPA finds that no unreasonable risks of injury to health or the environment would result in granting this exemption. Therefore, EPA proposes to grant General Motors' petition for exemption to export equipment contàining less than 50 ppm PCBs.

c. *Good faith efforts finding.* As discussed in Unit III. of this preamble, section 6(e)(3)(B)(ii) of TSCA requires petitioners to demonstrate good faith efforts to substitute non-PCBs for PCBs. Petitioner has already tested and found that the PCB contaiminated level is less than 50 ppm in the equipment that petitioner wishes to distribute in commerce. As determined in the July 10, 1984, rule, the elimination of PCBs from contaminated hydraulic and heat transfer systems may not be technically feasible through existing retrofill technologies. For reasons related to the internal geometry and operating and design characteristics of these systems, PCB residues tend to persist despite draining and retrofilling.

General Motors has met the statutory requirements of good faith effors as required by TSCA section 6(e)(3)(B)(ii).

General Motors states it has tested and found that all equipment that would be distributed in commerce in the United States and abroad, contains a concentration of less than 50 ppm PCBs. Further, General Motors states that all equipment would be drained of free flowing liquid and the outside surfaces cleaned prior to distribution in commerce.

Therefore, EPA proposes to grant General Motor's two exemptions to: (1) Distribute in commerce within the United States equipment contaminated with less than 50 ppm PCBs; and (2) export equipment contaminated with less than 50 ppm PCBs. However, General Motors does not require an exemption for these activites since the June 27, 1988 Uncontrolled PCB rule become final allowing the processing and distribution in commerce of excluded PCB products as defined in § 761.3.

D. Microscopy

EPA received two petitions to process and distribute in commerce PCBs for use as a mounting medium in microscopy. PCBs are used in art and historic conservation to preserve specimens for later study, and in identifying and preserving small particles, including environmental contaminants, industrial contaminants, and crime scene trace evidence. The identification of these particles is based on their form, structure, and optical properties, as they appear relative to the optical properties of PCBs. EPA has authorized the use of PCBs as a mounting medium in microscopy.

The Use Authorization Rule published in the **Federal Register** of July 10, 1984 (49 FR 28193), authorized the indefinite use of PCBs as a mounting medium in microscopy for all purposes, the indefinite use of PCBs as an immersion oil in low fluorescence microscopy, and the indefinite use of PCBs as an optical liquid. Despite these use authorizations, persons wishing to process and distribute in commerce PCBs for this purpose must petition for an exemption, as stated in 40 CFR 761.30(k).

1. *McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc.* On June 25, 1985, McCrone Accessories & Components, a Division of Walter C. McCrone Associates, Inc. (McCrone), petitioned for an exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy (PDE 149). McCrone's petition is in the form of a request for renewal of an exemption granted in July 1984 to engage in substantially similar activities for a period of 1 year. EPA proposes to deny this petitioner's request for another 1-year exemption because the petitioner has failed to meet the statutory requirements of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

a. *Background.* In the July 10, 1984, PCB Exemptions Rule (49 FR 28354), EPA granted McCrone's earlier petition for 1 year to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes. EPA concluded that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that McCrone met the statutory requirement of good faith efforts.

i. *Unreasonable risks finding.* In McCrone's previous exemption petition, EPA concluded that granting McCrone an exemption would not result in an unreasonable risk of injury to health or the environment. EPA concluded this after taking into consideration the effects on human health and the environment, the potential for exposure to PCBs, the benefits of using PCBs, the availability of substitutes, and the economic impact of various regulatory options, as discussed in the July 10, 1984, Use Authorization Rule.

EPA also concluded that granting McCrone an exemption would not present an unreasonable risk because McCrone would process PCBs in small quantities and the risk of exposure to humans and the environment would be minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of laboratory work. In addition, EPA concluded that granting an exemption would benefit society by allowing specialized microscopy work to continue.

ii. *Good faith efforts finding.* In EPA's evaluation of good faith efforts, EPA concluded that McCrone met the statutory requirement of good faith efforts. EPA was persuaded at that time that there were no adequate substitutes for PCBs for use as a permanent mounting medium in microscopy in some relatively rare instances, such a preserving crime scene evidence. Thus, EPA concluded that McCrone had met the statutory requirement of good faith efforts and granted the exemption.

b. *Rationale for proposed decision to deny.* EPA proposes to deny McCrone's petition for exemption. Although McCrone has met the statutory requirement of no unreasonable risk (section 6(e)(3)(B)(i) of TSCA), McCrone has failed to meet the statutory requirement of good faith efforts (section 6(e)(3)(B)(ii) of TSCA).

i. *Unreasonable risk finding.* EPA reaffirms its conclusion made in the July 10, 1984, PCB Exemption Rule, that McCrone has met the statutory requirement of no unreasonable risk (section 6(e)(3)(B)(i) of TSCA). EPA agrees that there are no unreasonable risks to health or the environment since McCrone continues to process and utilize PCBs in small quantities.

ii. *Good faith efforts finding.* The petitioner has not submitted any information that shows good faith efforts to substitute non-PCBs for PCBs as required by section 6(e)(3)(B)(ii) of TSCA. A good faith efforts finding requires a petitioner to show specifically what it did to substitute non-PCBs for PCBs or to show why it did not seek to substitute non-PCBs for PCBs. McCrone has shown no efforts to phase out the sale and use of PCBs where possible, nor has McCrone indicated an attempt, or why it made no attempt, to develop a chemical substance which may be substituted for PCBs as required by section 6(e)(3)(B)(ii) of TSCA.

Therefore, EPA proposes to deny McCrone's petition for exemption to process and distribute PCBs for microscopy because the petitioner did not provide the information necessary for EPA to conclude that good faith efforts were made to substitute non-PCBs for PCBs as required by section section 6(e)(3)(B)(ii) of TSCA.

2. *R.P. Cargille Laboratories, Inc.* On June 28, 1985, the R.P. Cargille Laboratories, Inc. (Cargille) requested a renewal of its 1-year exemption to process and distribute in commerce PCBs for the following: (1) Use as a mounting medium in microscopy; (2) use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) use as an optical liquid (PDE 181). EPA granted Cargille a 1-year exemption in July 1984 to engage in substantially similar activities. EPA proposes to deny this petitioner's request for another 1-year exemption because the petitioner has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

a. *Background.* In the July 10, 1984, PCB Exemptions Rule (49 FR 28154), EPA granted Cargille's 1979 petition for 1 year to: (1) Process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes; (2) process and distribute in commerce small quantities of PCBs for use as an optical liquid; and (3) process and distribute in commerce PCBs for use as an immersion oil in low fluorescence microscopy (other than capillary microscopy). EPA concluded that

granting an exemption would not result in an unreasonable risk of injury to health or the environment and that Cargille had made good faith efforts to develop substitutes for PCBs and to phase out the sale and use of PCBs whenever possible. The exemption was granted on the condition that Cargille store the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

i. *Unreasonable risk finding.* In Cargille's previous exemption petition, EPA concluded, after considering the effects on human health and the environment, the potential for exposure to PCBs, the benefits of using PCBs and the availability of substitutes, and the economic impact of various regulatory options, as discussed in the July 10, 1984, Use Authorization Rule, that granting Cargille an exemption would not result in an unreasonable risk of injury to health or the environment. EPA also concluded that since Cargille would process and utilize PCBs in small quantities it would present no unreasonable risk to human health or the environment. Thus, EPA concluded that granting Cargille's petition for exemption to process and distribute in commerce PCBs for the uses described above would not present an unreasonable risk of injury to health or the environment.

ii. *Good faith efforts finding.* In EPA's evaluation of good faith efforts, EPA concludes that Cargille made good faith efforts to develop substitutes for PCBs and to phase out the sale and use of PCBs whenever possible. EPA was persuaded, at that time, that in some circumstances there are no adequate substitutes for PCBs for use as a mounting medium in microscopy in some relatively rare instances, such as preserving crime scene evidence; in low fluorescence medical research (other than capillary microscopy); and in space communications and defense-related projects that require specialized optical liquids. In addition, Cargille voluntarily entered into a consent agreement with EPA to store the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b). Thus, EPA granted Cargille's petition for 1 year to process and distribute in commerce PCBs for use (except as a precision calibration standard), with the condition that Cargille store the PCBs it processes and distributes in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

b. *Rationale for proposed decision to deny.* EPA proposes to deny Cargille's new petition for exemption. Although Cargille has met the statutory requirement of no unreasonable risk (section 6(e)(3)(B)(i) of TSCA), Cargille has failed to meet the statutory requirement of good faith efforts (section 6(e)(3)(B)(ii) of TSCA).

i. *Unreasonable risk findings.* EPA concludes that granting Cargille an exemption would not result in an unreasonable risk of injury to health or the environment. EPA reaffirms its conclusion, made in the July 10, 1984, PCB Exemptions Rule, that Cargille has met the statutory requirement of no unreasonable risk (section 6(e)(3)(B)(i) of TSCA). EPA sees no significant changes since Cargille's earlier petition to necessitate a change in EPA's previous conclusion of no unreasonable risk made in the PCB Exemptions Rule.

Cargille continues to process PCBs in small quantities, using laboratory practices designed to minimize human and environmental exposure to PCBs, including the use of exhaust fume hoods and personal protection equipment. Once Cargille has distributed the PCBs, the risks of exposure to humans and the environment are minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of laboratory work.

ii. *Good faith efforts finding.* EPA considers several factors in determining whether a petitioner has made good faith efforts (see Unit III.). One such factor is whether a petitioner has expended time and effort to develop or search for a substitute. Although Cargille alleges that good faith efforts are underway to develop PCB-free replacements for low fluorescence immersion oil and PCB-containing mounting media, no evidence has been submitted to substantiate this allegation. Cargille's last exemption petition was granted based on Cargille's assertions that good faith efforts were underway to develop PCB-free replacements. In fact, Cargille stated in their last petition for exemption (in 1984) that they anticipated that such replacements would be available in 1 year to 18 months. The burden rests on the petitioner to show specifically what it did to substitute non-PCBs for PCBs or show why it did not seek to substitute non-PCBs for PCBs. Therefore, without further evidence of Cargille's continuing efforts to develop substitutes for PCB-containing immersion oil and mounting media, EPA cannot make a finding of good faith efforts.

Therefore, EPA proposes to deny Cargille's petition for exemption to: (1) Process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes; (2) process and distribute in commerce PCBs for use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) process and distribute in commerce small quantities of PCBs for use as an optical liquid.

E. Research and Development

EPA received two petitions for exemption from the same petitioner; one petition requesting an exemption to manufacture PCBs for use in small quantities for research and development and the other petition requesting an exemption to export PCBs for use in small quantities for research and development. EPA also received from another petitioner a petition for exemption to import small quantities of PCBs for research and development.

EPA authorized, indefinitely, the use of PCBs in small quantities for research and development in the Use Authorization Rule published in the **Federal Register** of July 10, 1984. "Small quantities for research and development" is defined at 40 CFR 761.3 as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product."

The processing and distribution of PCBs in small quantities for use in research and development is also allowed via a class exemption which eliminated the need for each processor and distributor to file an individual exemption. In the PCB Exemptions Rule, published in the **Federal Register** of August 8, 1986 (51 FR 28556) EPA granted a class exemption to all persons processing and distributing in commerce PCBs for use in research and development. The class exemption includes all persons or business entities which process and distribute in commerce PCBs in accordance with the definition of "small quantities for research and development" as specified in 40 CFR 761.3. EPA placed the following terms and conditions on the class exemption: (a) That all processors and distributors maintain records of their PCB activities for a period of 5 years; and (b) that any person or company that expects to process or distribute in commerce 100 g (0.22 lbs.) or more PCBs for research and development in 1 year report to EPA and identify the sites of PCB activities and

the quantities of PCBs to be processed or distributed in commerce.

In granting this class exemption, EPA retained the authority to terminate the class exemption, or to exclude any processor or distributor from the class exemption, upon determining that maintaining the class exemption as to all, or some, processors and distributors will pose an unreasonable risk of injury to health or the environment. Any changes in the disposition of the class exemption, or the status of individuals within the class exemption, will be published in a notice of proposed rulemaking and the petitioners will be allowed to continue activities until a final rule is promulgated.

The manufacturing and/or exporting of PCBs in small quantities for research and development is not allowed without specific individual exemptions (manufacture includes importation under 40 CFR 761.3.). Therefore, while the petitioner's processing and distribution in commerce activities are covered by the class exemption discussed above, EPA must make a company-specific determination of no unreasonable risk and good faith efforts before granting petitions for exemption to manufacture and/or export PCBs for use in research and development.

1. Accu-Standard

On April 11, 1986, Accu-Standard submitted two petitions for exemptions to (i) manufacture PCBs in small quantities for research and development, and (ii) export PCBs in small quantities for research and development. EPA proposes to grant both Accu-Standard petitions for exemption because Accu-Standard's manufacturing and export activities are consistent with research and development activities which were found not to pose an unreasonable risk in the July 10, 1984, and August 6, 1986, final PCB Exemption Rules (49 FR 28154 and 51 FR 28556, respectively).

Both final PCB Exemption Rules also concluded that while the general goal of TSCA section 6(e) is to phase out the manufacture, processing, distribution in commerce, and use of PCBs, this goal does not apply to critical health, environmental, and scientific research on PCBs. EPA believes that some PCBs will always be needed, if only for analytical standards, to ensure that the goal of section 6(e) is being met. Therefore, EPA has maintained the policy of automatically renewing exemptions for manufacture, processing, distribution in commerce, and export of PCBs for research and development at the end of each year unless the petitioner changes the quantity of PCBs or the manner of handling of PCBs (in the case of exemptions to manufacture or export PCBs for research and development), or the Agency receives information affecting the unreasonable risk determination as to any or all members of the class exemption to process and distribute in commerce PCBs in small quantities for research and development.

Thus, should either or both of the Accu-Standard exemption requests be granted in the final action on this proposed rule, EPA will automatically renew the exemption(s) every year. However, Accu-Standard will be required to notify EPA of any substantial changes in the quantity handled, or the manner of handling PCBs under the Accu-Standard exemption(s). EPA will review such information, and change the status of the exemption(s), if necessary, by rulemaking. The petitioner will be allowed to continue its activity under the exemption(s) until the Agency takes final action changing the status of the exemption(s).

a. *Unreasonable risk: manufacture.* In the July 10, 1984, final PCB Exemptions Rule, EPA concluded that the manufacture of PCBs for research and development does not pose unreasonable risks of injury to human health or the environment. EPA based this finding on the following considerations: (1) these PCBs are manufactured using good laboratory practices which are designed to minimize human and environmental exposure; (2) the PCB synthesis is performed by trained laboratory personnel; and (3) the risk of exposure, if any, to PCBs during the subsequent storage and shipment of analytical standards is small because the PCBs are packaged in hermetically sealed containers and are marked with warning labels.

Accu-Standard will be manufacturing as little as 200 mg, and no more than 100 g, of PCBs per year. Accu-Standard employs trained laboratory personnel who operate in accordance with good laboratory practices. PCBs manufactured by Accu-Standard will be packaged in hermetically sealed containers of 5 ml or less (by volume). Therefore, EPA finds that no unreasonable risk will result from granting an exemption to Accu-Standard to manufacture PCBs in small quantities for research and development.

b. *Unreasonable risk: Export.* The Agency generally treats petitions for exemption to export PCBs more stringently than petitions for exemption to distribute PCBs within the United States because EPA has little or no control over the distribution, use, and disposal of PCBs once they have been exported. However, EPA believes that those concerns are mitigated in the export of PCBs in small quantities for research and development by the viscosity, quantity, marking, and packaging of the PCBs, as well as by the careful handling of the PCBs by trained personnel.

Accu-Standard will be distributing in commerce (within the United States and for export approximately 800 g of PCBs. Accu-Standard is uncertain how much of this total will be exported under the exemption, if granted. Assuming that Accu-Standard could potentially export as much as 800 g of PCBs under an export exemption, EPA finds that no unreasonable risk will result from granting the exemption.

c. *Good faith efforts finding.* EPA has determined that the good faith efforts finding is not relevant to petitions to manufacture or export PCBs in small quantities for research and development because there are no substitutes for PCBs in health and environmental research. Pure PCBs are needed for this research because commercial PCBs contain mixture of isomers and contaminants which may adversely affect experimental research, and in general PCBs are being phased out of use and are less available for research and development.

Therefore, EPA proposes to grant Accu-Standard two exemptions: (1) To manufacture PCBs in small quantities for research and development; and (2) to export PCBs in small quantities for research and development.

2. Unison Transformer Services, Inc.

On April 24, 1987, Unison Transformer Services, Inc. (Unison) submitted a petition for exemption to import into the United States small quantities of PCB-containing fluid taken from PCB Transformers which have been retrofilled, for purposes of testing and analysis. Unison wants to analyze this fluid to determine PCB concentration, as well as other parameters such as moisture content, as part of its customer service program. Unison wishes to ship no more than 250 samples. Unison states that each sample will contain 5 mL or less fluid and will be shipped in EPA and DOT-approved shipping containers with sufficient absorbent to prevent any releases from containers. Unison also states that the PCB concentration in such samples can range from 0–100 percent. EPA proposes to grant Unison's petition, because Unison's import activity is consistent with research and development activities which were

found not to pose an unreasonable risk in the July 10, 1984, and August 8, 1986, final PCB Exemption Rules. EPA proposes to grant this petitioner's request for a 1-year exemption to import small quantities of PCBs for research and development provided the petitioner meets the conditions of the exemption as stated in § 761.80(m)(8).

The July 10, 1984, and the August 8, 1986, rules concluded that while the general goal of TSCA section 6(e) is to phase out the manufacture (which includes importation under § 761.3), processing, distribution in commerce, and use of PCBs, this goal would not be served if critical health, environmental and scientific research on PCBs is prevented. EPA believes that some PCBs will always be needed, if only for analytical standards to ensure that the goal of section 6(e) is being met. EPA automatically renews exemptions for manufacture, processing and distribution in commerce, and export of PCBs for research and development. However, EPA will require that should an increase in the amount of PCBs to be manufactured, imported, or exported or any change in the manner of manufacture, import, or export of PCBs, petitioners are to notify EPA, as specified at 51 FR 28556 (August 8, 1986).

Thus, should Unison's exemption request be granted in the final action on this proposed rule, EPA will automatically renew the exemption every year. However, Unison will be required to notify EPA of any substantial changes in the quantity handled, or the manner of handling PCBs under Unison's exemption. EPA will review such information, and change the status of the exemption, if necessary, by rulemaking. The petitioner will be allowed to continue its activity under the exemption until the Agency takes final action changing the status of the exemption.

a. *Unreasonable risk finding.* EPA concluded that granting an exemption will not present an unreasonable risk of injury to health or the environment. Should Unison follow the conditions of the exemption, that is: (i) The use of 5.0 ml hermetically sealed vials, (ii) the total to be imported not to exceed 250 samples during the exemption period, and (iii) quarterly inspections of its laboratories to ensure that proper safety procedures are being followed, there will be no unreasonable risk of injury to health or the environment. Futhermore, Unison stated that the shipping container will be shipped with sufficient absorbent to prevent PCB release into the environment should an accident occur.

To ensure proper handling of samples, Unison stated that this laboratory employees who will be involved in the collection, shipping, and analysis of samples have been specially trained in handling, analysis, and disposal of fluids containing PCBs. Unison stated that it requires its workers to wear protective clothing, handle PCBs in a hood used exclusively for PCB-related work, all of which will minimize exposure to PCBs. Unison did not estimate what the cost of denial would be, but did state that denial of the application would significantly hinder efforts in many countries to offer their services, which would adversely impact efforts to remove PCBs from U.S. corporate-owned transformers abroad. Unison stated that granting the petition would expedite removal and destruction of PCBs in many nations. Unison also stated that it has explored the alternative of having these analyses conducted in the countries in which the samples are taken, but found they do not have the precision and reliability required to track and assure successful application of the technology as demonstrated in the United States. In particular, foreign laboratories do not have the necessary experience to quantitate PCBs in Unison's proprietary fluid.

The considerations involved with this petition of Unison are similar to those of the petitions for the manufacturing, processing, and distribution in commerce of PCBs for research and development, as described in Unit IV.D. of this preamble. The goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce and use of PCBs. EPA believes that this goal does not apply to petitioners, such as Unison, who import small quantities of PCBs for the continuation of important research activities. The importation of small quantities of PCB fluid for research and development under the safeguards provided in the Unison petition in addition to the conditions EPA has placed on the exemption, will aid in the Agency's implementation of section 6(e) of TSCA.

Should a 1-year exemption be granted to Unison, EPA will automatically renew the exemption unless Unison notifies EPA of any increase in the amount of PCBs to be imported or any change in the manner of import of PCBs. Any changes in these factors may affect EPA's conclusion that the exemption does not present an unreasonable risk of injury to health or the environment. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, published a proposed rule for public comment, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue the activities for which it requests exemption.

b. *Good faith efforts finding.* EPA concluded that Unison made good faith efforts to substitute non-PCBs for PCBs. Indeed, Unison's petition for exemption to test the samples is an important part of its program to get customers to substitute Unison's non-PCB transformer fluid for PCB transformer fluid. Granting an exemption will benefit society by promoting the use of a non-PCB transformer fluid as a substitute for PCBs, thereby reducing contamination both within the United States and abroad. In addition, Unison's success in marketing the non-PCB transformer fluid abroad may indirectly help it market such substitutes in the United States, as these substitutes become more widely accepted and used. Thus, granting Unison an exemption furthers EPA's goal of phasing out PCB's

Therefore, EPA grants Unison an exemption for 1 year to import no more than 250 samples of PCB-contaminated fluid taken from PCB Transformers for purposes of testing and analysis.

F. Inadvertently Generated PCBs

EPA received one renewal petition for exemption to process and distribute inadvertently generated PCBs above allowable concentration levels for "excluded manufacturing processes".

The Uncontrolled PCB Rule published in the Federal Register of July 10, 1984 (49 FR 28172), excluded from the prohibition on the manufacture, processing, distribution in commerce, and use of PCBs those PCBs, inadvertently generated in an "excluded manufacturing process". An "excluded manufacturing process" as defined at 40 CFR 761.3 is a manufacturing process or importation in which the concentration of inadvertently generated PCBs in the product is limited to an annual average of less than 25 ppm, with a 50 ppm maximum, except that the concentration of inadvertently generated PCBs in the components of detergent bars must be less than 5 ppm. Limits are also placed on the concentration of PCBs discharged to air and water from an excluded manufacturing site.

The Uncontrolled PCB Rule placed limits on the concentration of PCBs leaving the site of processes which generate PCBs as inadvertent

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byproducts. EPA also placed limits on the concentration of inadvertently generated PCBs in products imported into the United States. The processing, distribution in commerce, and use of products of "excluded manufacturing processes" are excluded from the prohibitions on the processing, distribution in commerce, and use of PCBs. Thus, the intent of the Uncontrolled PCB Rule is to limit the addition of PCBs into the environment by regulating the concentration of inadvertently generated PCBs in products at the point where the PCBs are introduced into commerce.

Processors and distributors of products containing inadvertently generated PCBs are responsible for determining that their suppliers' processes qualify as "excluded manufacturing processes", or that their suppliers have exemptions to manufacture or import, and distribute, PCBs over regulatory limits. However, since EPA regulates concentrations of inadvertently generated PCBs in products at the point of the original manufacture or import of the PCBs, a manufacturer or importer cannot assign its duty to comply with the limits on "excluded manufacturing processes" to downstream processors, distributors, or users. Therefore, processors and distributors of inadvertently generated PCBs should not need exemptions except where an exemption is needed to process or distribute inadvertently generated PCBs in inventories accumulated prior to the effective date of the Uncontrolled PCB Rule (October 1, 1984). Although EPA's final amendment to the Uncontrolled PCB Rule (June 27, 1988; 53 FR 24206) specifically excludes from regulation activities involving materials generated prior to October 1, 1984 with PCB concentrations up to 50 ppm, petitioners who generated PCBs at concentrations above 50 ppm continue to need an exemption to distribute in commerce these inadvertently generated PCBs.

In considering petitions for exemption to manufacture, import, or distribute in commerce inventories of inadvertently generated PCBs above the limits established in the Uncontrolled PCB Rule, EPA will evaluate the exposures and risks associated with the further processing, distribution, and use of the PCBs. EPA considered such exposure issues when it established average and maximum concentration levels for inadvertently generated PCBs at the point of their introduction into commerce, and included the further processing, distribution, and use of those PCBs in the Uncontrolled PCB Rule.

1. Aluminum Company of America

On July 24, 1987, the Aluminum Company of America (ALCOA) requested a renewal of its 1-year exemption to distribute in commerce aluminum chloride ($AlCl_3$) containing inadvertently generated PCBs above the limits established in the Uncontrolled PCB Rule. In the **Federal Register** published on August 8, 1986 (51 FR 28556), EPA granted ALCOA and its customers a 1-year exemption to process and distribute in commerce inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes at § 761.3, provided that the conditions for the exemption were met. The conditions included: (a) Limiting the exemption to the sale of 1,116,225 lbs. of $AlCl_3$ for use in the production of pigments; or (b) requiring ALCOA to notify the Agency 30 days prior to delivery if the $AlCl_3$ is to be sold for use only in the production of pigments to a company other than Kemira, Incorporated of Savannah, GA.

EPA proposes to grant this petitioner's request for another 1-year exemption provided the conditions for exemption are met and maintained.

a. *Background.* In the August 8, 1986, PCB Exemptions Rule, EPA granted, with certain conditions, ALCOA's petition to process and distribute in commerce inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes" at § 761.3. EPA determined that granting ALCOA an exemption would not pose an unreasonable risk of injury to human health or the environment and that ALCOA had demonstrated good faith efforts and thus, granted ALCOA a 1-year exemption. However, since ALCOA had approximately twice the amount of $AlCl_3$ in inventory as it expected to distribute in commerce during that 1-year exemption period, EPA anticipated that ALCOA would request another renewal of the exemption to allow further distribution in commerce at the end of that 1-year approval period. ALCOA's Anderson County Works, which is no longer in operation, used a process in which $AlCl_3$ was converted to aluminum metal. ALCOA provided information indicating that there would be no PCBs in the aluminum metal and that all PCBs are concentrated in process wastes which would be disposed of in accordance with EPA regulations. Thus, the 90 percent of the $AlCl_3$ which would be converted to metallic aluminum is part of an "excluded manufacturing process" since the metallic aluminum contains no PCBs and EPA considers a manufacturing process to be all of a series of unit operations at one site (a contiguous property) resulting in the production of a product. Thus, ALCOA does not need an exemption to manufacture $AlCl_3$ for use in the production of aluminum metal at Anderson County Works.

Of the $AlCl_3$ produced by the Anderson County Works process, 10 percent is not converted to aluminum metal. ALCOA petitioned for exemptions to manufacture and distribute in commerce that 10 percent of $AlCl_3$ as a product, as well as to distribute in commerce a substantial amount of $AlCl_3$ in ALCOA's inventory. Although the Anderson County Works was not in operation, ALCOA's petition requested that it be allowed to manufacture and distribute in commerce 10 percent of its $AlCl_3$ production capacity as a product should the plant be reopened within the exemption period. ALCOA specified that if an exemption were granted, the existing inventory of $AlCl_3$ would be distributed in the commerce, whether or not the plant is reopened.

During the comment period on the proposed rule and the public meeting on November 6, 1985, ALCOA withdrew its petition for exemption to manufacture $AlCl_3$, stating that ALCOA had no plans to resume production of $AlCl_3$ for its anhydrous aluminum process. ALCOA also amended its petition for exemption to distribute in commerce $AlCl_3$ containing PCBs at concentrations above the limits established in the Uncontrolled PCB Rule. The amended petition requested exemption only to distribute in commerce its existing inventory.

i. *Unreasonable risk finding.* In the August 8, 1986, final PCB Exemptions Rule, EPA concluded that granting the ALCOA exemption petition would not pose an unreasonable risk of injury to human health or the environment. ALCOA submitted detailed information on the Kemira process which showed that the concentration of PCBs in the Kemira pigment will be about 5 ppm. The Agency determined that pigments compose as little as 2 percent and no more than 20 percent of final consumer products and that no unreasonable risks would result from the processing, distribution in commerce, and use of inadvertently generated PCBs in pigments, assuming that pigment is contaminated with PCBs at the maximum level of 50 ppm. The exposure and associated risks involved in the distribution in commerce of the $AlCl_3$ for use in the manufacture of pigments, as well as the further processing, distribution in commerce, and use of the $AlCl_3$ are estimated to be on the same

order of magnitude as the concentration levels allowed for "excluded manufacturing processes" in the Uncontrolled PCB Rule.

Based on specific information submitted by ALCOA during the comment period, EPA estimated that the economic consequences of denying the petition involved the costs of disposing of 500,000 lbs. of $AlCl_3$ (the amount to be sold during the 1-year exemption period) in accordance with the regulations on the disposal of PCBs at 40 CFR 761.60 and the lost sale value of the pigment. EPA concludes that the total economic consequences to ALCOA if its exemption petition were denied would have been about $995,000.

After careful consideration of the risks posed by the use of the $AlCl_3$ in the production of pigment, and by the use of the pigment in downstream processes and products, EPA has determined that the economic consequences of a denial to ALCOA are not warranted when compared with the relatively low risks associated with granting the exemption.

ii. *Good faith efforts finding.* Since ALCOA had limited its exemption petition to existing inventory and since they would not be producing any additional $AlCl_3$, EPA determined that the good faith efforts concern was no longer pertinent. The current inventory was produced by ALCOA under the EPA policy that allowed activities to continue while EPA acted on their petition (See Unit I.B.). Thus, the Agency found that the petitioner had demonstrated good faith efforts.

b. *Rationale for proposed decision to grant.* EPA proposes to grant ALCOA's present exemption petition to process and distribute in commerce inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes" at § 761.3 provided that the conditions set forth for such exemption are met. The conditions are that: (i) The exemption is limited to the 440,855 lbs. of $AlCl_3$ for use in the production of pigments and (ii) the Agency must be notified 30 days prior to delivery if the $AlCl_3$ is to be sold to a company other than Kemira, Inc. of Savannah, GA.

According to ALCOA's present petition for exemption, ALCOA has permanently closed the Anderson County facility which is presently undergoing decommissioning. Further, ALCOA continues to sell only from the inventory at the Anderson County facility to only one customer (Kemira, Inc.), at one plant location (Savannah, GA). Petitioner has continued to comply with all the conditions EPA set forth when the last exemption was granted. EPA presumes ALCOA's continued good faith efforts to comply with all of the PCB regulations at 40 CFR Part 761, and to operate within the limits of its exemptions should it be granted in the final rule.

i. *Unreasonable risk finding.* ALCOA is engaged in the same activity for which it received its last 1-year exemption. Therefore, EPA concludes that granting ALCOA an exemption would not result in an unreasonable risk of injury to health or the environment since ALCOA is not manufacturing PCBs, but is distributing in commerce inadvertently generated PCBs that are estimated to be on the same order of magnitude as the concentration levels allowed for "excluded manufacturing processes" in the Uncontrolled PCB Rule.

ii. *Good faith efforts finding.* The Agency concluded, for the last exemption, that the good faith efforts concern was not pertinent since ALCOA limited its exemption petition to its existing inventory and was not producing additional $AlCl_3$. ALCOA continues to limit the request for exemption to its existing inventory and continues to engage in the same activity. Thus, EPA proposes to grant ALCOA an exemption to distribute in commerce its existing inventory of $AlCl_3$, provided that the conditions set forth in 40 CFR 761.80(q)(1) (i) and (ii) are met. In granting the ALCOA petition to distribute in commerce its existing inventory of aluminum chloride, EPA is also exempting from the prohibitions on the processing, distribution in commerce, and use of PCBs the further processing and distribution in commerce of these PCBs. Accordingly, processors and distributors of ALCOA's inventory of $AlCl_3$ do not have to apply for separate exemptions.

EPA concludes that ALCOA has submitted sufficient information to determine that ALCOA has acted in good faith compliance with the terms of their last exemption. Therefore, EPA proposes to grant ALCOA's petition for a 1-year exemption to process and distribute in commerce inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes."

V. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted and filed in docket number OPTS–66002 (processing and distribution in commerce exemptions) is being consolidated into one docket, number OPTS–66008. This proposed rule is a continuation of that docket under OPTS–66008F.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents, which constitutes the record of this proposed rulemaking. A supplementary list or lists may be published any time on or before the date the final rule is issued. However, public comments, the transcript of the rulemaking hearing (if one is held), and submissions made at the rulemaking hearing, or in connection with it, will not be listed, because these documents are exempt from Federal Register listing under TSCA section 19(a)(3). A full list of these materials will be available on request from EPA's TSCA Assistance Office listed under "FOR FURTHER INFORMATION CONTACT."

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS–66005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibition Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions," Docket No. OPTS–66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS–62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS–62017, 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS–62020, 48 FR 124, January 3, 1983.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Individual and Class

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Petitions for Exemption," Docket No. OPTS–66008A, 49 FR 28154, July 10, 1984.

(8) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions and Use Authorizations," Docket No. OPTS–62032A, 49 FR 28172, July 10, 1984.

(9) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Development," Docket No. OPTS–62031A, 49 FR 28193, July 10, 1984.

(10) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Exemption Petitions; Proposed Rule," Docket No. OPTS–66008C, 50 FR 35182, August 29, 1985.

B. Federal Register Notices

(11) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking Under Section 6 of Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs) Ban Exemption."

(12) 44 FR 106, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs): Policy for Implementation and Enforcement."

(13) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act: Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyl (PCB) Processing and Distribution in Commerce Prohibitions."

(14) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs): Proposed Rulemaking for PCB Manufacturing Exemptions."

(15) 44 FR 42727, July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (PCBs): Manufacturing Exemptions; Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(16) 45 FR 15247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemptions Petitions."

(17) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal."

(18) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rule," Docket No. OPTS 60008.

(19) 48 FR 52402, November 17, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Development; Proposed Rule," Docket No. OPTS–62031.

(20) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS–62032.

(21) 49 FR 28203, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Request for Additional Comments on Certain Individual and Class Petitions for Exemptions," Docket No. OPTS–66008B.

(22) 48 FR 39966, October 11, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers; Proposed Rule," Docket No. 62035A.

(23) 51 FR 28556, August 8, 1986, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing and Distribution in Commerce and Use Prohibitions; Response to Exemption Petitions; Final Rule," Docket No. 66008E.

(24) 50 FR 35201, August 29, 1986, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Response to Ward Transformer Company Petition; Notice of Final Action," Docket No. 66008D.

(25) 50 FR 35182, August 29, 1986, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing and Distribution in Commerce and Use Prohibition; Response to Exemption Petitions; Proposed Rule," Docket No. 66008C.

(26) 53 FR 24206, June 27, 1988, USEPA, "Polychlorinated Biphenyls (PCBs); Exemptions and Use Authorizations; Final Rule," Docket No. OPTS–62053A.

C. Support Documents

(27) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (July 1983).

(28) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (April 1984).

(29) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (May 1985).

(30) USEPA, OPTS, ETD, "Addendum to PCB Exemptions Petitions Economic Analysis" (January 1986).

(31) USEPA, OPTS, ETD, "Addendum to PCB Exemptions Petitions Economic Impact Analysis" (June 1986).

EPA will identify the complete rulemaking record on or before the date of promulgation of the final rule, as prescribed in section 19(a)(3) of TSCA. EPA will consider for inclusion in the record additional materials submitted at any time between the publication of this proposed rule and the date the Agency identifies the final record.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291 EPA must judge whether a rule is a "major rule' and, therefore, subject to the requirement that a Regulatory impact Analysis be prepared. EPA has determined that this proposed rule is not a "major rule", as that term is defined in section 1(b) of the Executive Order.

EPA has concluded that this proposed rule is not "major" because the annual effect of the rule on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. The proposed rule allows the manufacture, processing, distribution in commerce, and export of PCBs that would otherwise be prohibited by section 6(e)(3)(A) of TSCA for the petitioners who met the requirements of section 6(e)(3)(B) of TSCA and the Interim Procedural Rules for PCB Exemption. This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603 *et seq.*, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small businesss entities. Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA has tried to estimate the cost of this proposed rule on the small businesses whose petitions EPA proposes to deny. For purposes of this regulatory flexibility analysis, EPA considers a small business to be one whose annual sales revenues were less than $40 million. This cutoff is in accordance with EPA's definition of a

small business for purposes of reporting under section 8(a) of TSCA, which was published in the **Federal Register** of November 16, 1984 (49 FR 45430).

EPA is proposing to deny the exemption petition that was submitted on behalf of approximately 265 small businesses who want to process and distribute PCBs in servicing customers' electrical transformers. EPA estimates that the costs of denial of the petition would be approximately $10 million (approximately $37,500 per company) which is approximately the same as the estimate made in 1984 (PCB Exemption Petitions Economic Impact Analysis, April 1984).

EPA proposes to deny one petition that was submitted on behalf of approximately 265 small businesses who want to process and distribute in commerce PCBs in buying and selling transformers. EPA estimates that the incremental costs of denial to be at most $160 for an average size PCB-contaminated transformer, assuming all of the transformer fluid has to be disposed of and replaced.

EPA proposes to deny the two exemption petitions to process and distribute in commerce PCBs for use as a mounting medium in microscopy. The costs of denial would be less than $2,000.

EPA proposes to deny Cargille's petition for exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy, use as an immersion oil in low fluorescence microscopy (other than capillary microscopy) and use as an optical liquid. The cost of denial would be less than $4,500. Cargille's petition stated that the "economic consequences of denying the petition are quite small."

As handled in the past, EPA intends to grant any of the above petitions if comments show that the petitioner has made good faith efforts in accordance with section 6(e)(3)(B)(ii) of TSCA.

Therefore, in accordance with section 605(b) of the Act, EPA certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities. EPA solicits comments from petitioners and other interested persons concerning the economic impact of this proposed rule on small business entities. In addition, EPA is sending a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration.

EPA further notes that section 606 of the Act states that the requirements of section 603 do not alter in any manner standards otherwise applicable by law to Agency action. Section 6(e)(3)(A) of TSCA and EPA's PCB Ban Rule, 40 CFR Part 761, prohibit the manufacture, processing, and distribution in commerce of PCBs. Section 6(e)(3)(A) of TSCA permits EPA to grant exemptions from these prohibitions if it finds that petitioners have demonstrated that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that they have made good faith efforts to develop substitutes for PCBs. Both small and large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically desirable policy to grant an exemption petition for a small business, it could do so only if the small business met the requirements set forth in TSCA.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0021.

Public reporting burden for this collection of information is estimated to average 7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: August 16, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore it is proposed that 40 CFR Part 761 be amended as follows:

PART 761—[AMENDED]

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G also issued under 15 U.S.C. 2614 and 2616.

2. In § 761.80 by adding paragraphs (e), (f)(8), (m)(7) and (8), (q), (r), (s), and the OMB control number to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(e) The Administrator grants the following petitioners an exemption for 1 year to process and distribute in commerce PCB–contaminated fluid in buying and selling used PCB-contaminated transformers.

(1) Ward Transformer Co., St. Louis, MO 63132 (PDE–77), provided the following conditions are met:

(i) Full compliance with all terms and conditions of the CERCLA Consent Decree identified as *U.S. v. Ward, et al.* No. 83–63–CIV–5 (E.D.N.C. June 13, 1986).

(ii) Must not transfer nor allow contractors or subcontractors to utilize the exemption.

(iii) Develop and maintain records during the exemption period on the disposition of all PCBs and PCB Items. These records shall form the basis of a quarterly report to be submitted to EPA, Office of Compliance Monitoring, for the duration of the exemption. The following information shall be included in the quarterly report:

(A) The name (owner or customer), address, location, and serial number of any electrical equipment to be serviced subject to this exemption.

(B) All test data, by method and laboratory, or name plate data, demonstrating the amount and concentrations of PCB fluid being removed from service.

(C) The method, equipment, and personnel used to remove PCB liquids from transformers (to verify actual practices, spillage, etc.).

(D) Identification of all temporary or permanent containers, by serial number, Mark M_L, or other mechanism, to identify the source of the PCB fluids removed for disposal.

(E) The method and location of disposal or destruction.

(F) For PCBs and PCB items removed from service, the location of the initial disposal or storage facility and the name of the owner or operator of the facility.

(G) The dates when PCBs and PCB items are removed from service, are placed into storage for reuse or disposal, and are placed into transport for disposal.

(H) Total quantities of PCBs and PCB items remaining in service at the end of

each quarter shall be indicated using the following breakdown:

(*1*) Total weight in kilograms of any PCBs and PCB Items in PCB Containers including the identification of container contents.

(*2*) Total number of PCB Transformers and total weight in kilograms of any PCBs contained in the transformers.

(I) All documents, correspondence, and data that have been provided to the owner or operator of the facility by any State or local government agency that pertain to the storage or disposal of PCBs and PCB Items at the facility.

(J) All documents, correspondence, and data (including all Uniform Hazardous Waste Manifests) that have been provided by the owner or operator of the facility to any State or local government agency that pertain to the storage or disposal of PCBs and PCB Items at the facility.

(K) Any applications and related correspondence sent by the owner or operator of the facility to any local, State, and Federal authorities in regard to waste water discharge permits, solid waste permits, building permits, or other permits or authorizations such as those required by §§ 761.70(d) and 761.75(c).

(iv) All documents shall be available at the facility for inspection by authorized representatives of EPA.

(2) Jerry's Electric, Inc., Colman, SD 57017 (PDE–133)

(f) * * *

(8) Accu-Standard, New Haven, CT 06503.

* * * * *

(m) * * *

(7) Accu-Standard, New Haven, CT 06503.

(8) Unison Transformer Services, Inc., Tarrytown, NY 10591, provided the following conditions are met:

(i) The samples must be shipped in 5.0 mL or less hermetically sealed vials.

(ii) The exemption is limited to no more than 250 samples.

(iii) Petitioner must make quarterly inspections of its laboratories to ensure that proper safety procedures are being followed.

* * * * *

(q) The Administrator grants the following petitioners, and their customers, an exemption for 1 year to process and distribute in commerce inadvertently generated PCBs at concentration above those specified for "excluded manufacturing processes" at § 761.3 provided that the conditions for each exemption are met.

(1) Aluminum Company of America, Pittsburgh, PA 15219 (PDE–13).

(i) The exemption is limited to the sale of 440,855 lbs. of aluminum chloride for use in the production of pigments.

(ii) [Reserved]

(2) [Reserved]

(r) The Administrator grants the following petitioners a 1-year exemption to distribute in commerce heat transfer and hydraulic systems containing less than 50 ppm PCBs, provided that the systems are drained prior to distribution in commerce.

(1) General Motors Corporation, Warren, MI.

(2) [Reserved]

(s) The Administrator grants the following petitioners a 1-year exemption to export heat transfer and hydraulic systems containing less than 50 ppm PCBs, provided the systems are drained prior to export.

(1) General Motors Corporation, Warren, MI.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070–0021.)

[FR Doc. 88–19070 Filed 8–23–88; 8:45 am]

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Part III

Department of Labor

Employment and Training Administration

20 CFR Part 617

Trade Adjustment Assistance for Workers; Amendment of Regulations; Final Rule; Request for Comments

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 617

Trade Adjustment Assistance for Workers; Amendment of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; request for comments.

SUMMARY: This document contains a final rule amending the regulations on trade adjustment assistance for workers (TAA program) provided under Chapter 2 of Title II of the Trade Act of 1974, to implement the amendments to the Trade Act of 1974 enacted in 1986. The 1986 amendments extend and reauthorize the TAA program, add a new job search program (JSP) requirement, and make other changes affecting primarily eligibility for trade readjustment allowances (TRA) and training.

This document also adds a definition of "justifiable cause" for excusing a worker from participation in a JSP. Such participation, absent "justifiable cause", is a requirement for receiving TRA where a JSP is reasonably available. This definition was not included in the proposed rule, published in the Federal Register on October 22, 1987, 52 FR 39588. As explained below, the Department of Labor (Department) is requesting comments on the new definition.

DATES: Effective September 23, 1988.

Comment Date: Comments on the new definition of "justifiable cause", added to § 617.49(a)(3), must be received in the Department on or before September 23, 1988. The Department will consider all comments before deciding whether to change or readopt the final rule. See discussion of this issue at the beginning of Supplementary Information.

ADDRESS: Written comments on the rule adding the definition for "justifiable cause" may be mailed or delivered to the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street NW., Room 6434, Washington, DC 20213.

All comments received will be available for public inspection during normal business hours in Room 6434 at the above address.

FOR FURTHER INFORMATION CONTACT: Glenn M. Zech, Deputy Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, NW., Washington, DC 20213; telephone: (202) 376-2646 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Publication in Final of Definition of "Justifiable Cause"

As noted above, this rule was published for comment on October 22, 1987. In response to a comment, a new definition for "justifiable cause" is added to § 617.49(a)(3). This definition is adopted without public comment. The Department has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment because the definition is necessary for the proper administration of § 617.49(a). Delaying the implementation of the definition would vitiate the JSP requirement of § 617.49(a)(3) until the definition was effective and would be contrary to the public interest. However, the Department is interested in the public's suggestions on the definition and requests comments.

The Trade Act of 1974 made major changes to the TAA program for workers displaced by increased imports of articles like or directly competitive with articles produced by the workers' firm. On receiving a petition for trade adjustment assistance (TAA) from a group of workers or its representative, the Department conducts a factfinding investigation in response to the petition. If the findings substantiate that the workers of a firm or subdivision of a firm have been adversely affected by import competition, a certification is issued declaring that the workers are eligible to apply for TAA.

The 1981 amendments to the Trade Act of 1974 (Title XXV of Pub. L. 97-35) made extensive changes in the TAA program, and further changes were made in the 1984 amendments (Sections 2671, 2672 of Pub. L. 98-369). Final regulations implementing the 1981 and 1984 amendments were published in the Federal Register on December 22, 1986, at 51 FR 45840 and 45867 (correction published at 51 FR 46746-46760).

The 1986 Amendments to the TAA program are contained in the "Trade Adjustment Assistance Reform and Extension Act of 1986" which is Part 1 of Subtitle A of Title XIII of Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (sections 13001 to 13009) (COBRA or the "1986 Amendments"). The 1986 Amendments changed the TAA provisions of the Trade Act of 1974 by extending the program to September 30, 1991; requiring participation in a JSP, where reasonably available, as a condition for receiving payments of TRA; changing the number of weeks of employer authorized leave credited to satisfy the condition that a worker have 26 weeks of employment in the last 52 weeks to qualify for TRA; extending the period to receive basic TRA from 52 weeks to 104 weeks (although there is no increase in the number of weeks payable); and making other changes. These final regulations implement those changes.

Discussion of Comments and Changes

The Department received timely written comments from eight State employment security agencies, one special interest group, two Private Industry Councils (PICs), and one United States Senator. The California Employment Development Department and Alabama Department of Industrial Relations endorsed the proposed regulations. Comments and suggestions submitted by Georgia, Michigan, Minnesota, New York, Pennsylvania, and Wisconsin employment security agencies, the Unemployment Council of Southwestern Pennsylvania, the Indianapolis, Indiana, and Richmond, California Private Industry Councils, and Senator John Heinz of Pennsylvania were given full consideration in preparing these final regulations.

Written comments were received from three State employment security agencies after the November 23, 1987, closing date for receipt of comments. Two of these three State agencies commented on language in the proposed regulations that is taken directly from the statute and not subject to change in regulations. The third State identified the typographical error in § 617.66(b)(2), showing 1987 rather than 1986, which is addressed below in another connection. Therefore, the untimely comments, while considered, are not otherwise specifically addressed in this document.

1. The Richmond PIC recommended that the list of subjects in 20 CFR Part 617 be expanded to include psychological counseling because early crisis intervention helps facilitate a smoother and faster transition to other suitable employment.

The Department does not concur. The list of subjects is a research aid and has no substantive effect. Further, existing regulations at § 617.21 encourage the provision of a wide range of support services to trade impacted workers as described in Subpart C of the regulations. While psychological services are not mentioned specifically in § 617.21, employment counseling is included. Employment counseling is intended to assist individuals to gain a better understanding of themselves in relation to the labor market so that they can more realistically choose or change an occupation or make a suitable job

adjustment. When the need for psychological counseling is identified, the State agency should refer the worker to a public or private organization that provides these services. Therefore, no change is made in the final regulations.

2. In a comment unrelated to the 1986 Amendments, the Wisconsin Department of Industry, Labor and Human Relations (Wisconsin DILHR) recommended that a definition be added at § 617.3 for the word "entitled" as it applies to section 233(a)(1) of the Trade Act of 1974 and § 617.14(a)(2) of the regulations.

The Department does not concur with the suggestion to add a definition for "entitled" but does agree to change the language in § 617.14(a)(2) to help eliminate any misunderstanding that might exist on this matter. Therefore, § 617.14(a)(2) is revised to read as follows: "(2) Subtracting from the product derived under paragraph (a)(1) of this section, the total sum of UI to which the individual was entitled (or would have been entitled if the individual had applied therefor) in the individual's first benefit period described in § 617.11(a)(4). *The individual's full entitlement shall be subtracted under this paragraph, without regard to the amount, if any, that was actually paid to the individual with respect to such benefit period."* (Modification emphasized for clarity.) This is solely a clarifying change and makes no substantive change in either the regulation or the Department's interpretation of Section 233(a)(1). Unemployment Insurance Program Letter No. 4–88, dated November 9, 1987, which was sent to all State agencies, fully explains this matter.

3. The Minnesota Department of Jobs and Training commented that § 617.3(m)(2), defining the "Eligibility period" for additional weeks of TRA, requires that a worker's application for training be approved after exhaustion of basic TRA. Minnesota suggested that if the intent of Congress was to make the additional 26 weeks of TRA available to persons whose training started after the exhaustion of basic TRA, then this requirement would not effectively implement this intent.

While the Department agrees the comment has merit and needs to be addressed, the comment has no bearing on the 1986 Amendments. Regulations at §§ 617.3(m)(2) and 617.15(b)(1) track Section 233(a)(3) of the Act, as amended by the Deficit Reduction Act of 1984 (Pub. L. 98–369) and no change was made in the 1986 Amendments. Therefore, no change is made in this respect in the final regulation; however, the matter is being addressed separately.

4. The proposed regulation at § 617.3(y) defines a job finding club as "* * * a job search workshop which includes a period of 1 to 2 weeks of structured, supervised activity in which participants attempt to obtain jobs." The Richmond PIC commented that the definition should be changed to permit the duration of a job finding club beyond 2 weeks.

The Department does not agree that a job finding club should be longer than is required in the Act, because the job finding club is one of the alternative components of the JSP that is required as a condition for eligibility for TRA. The Department strongly encourages the provision of comprehensive employability services to basic TRA applicants, and such services should include, where appropriate, elements of the JSP. Moreover, the services provided to each worker should be sufficient to assist the worker in obtaining suitable and available employment. No change is made in the final regulation, however, as it would not be consistent with the statute to extend the requirements for a JSP.

5. The proposed regulation at § 617.11(a)(6)(ii) requires that the extended benefits (EB) work test be met for weeks that begin after the week an individual is notified of eligibility for TRA payments. The Wisconsin DILHR points out that if the intent of this section is to require the work search for TRA claimants, the EB work test should be tied to the first week of TRA claimed after the week the claimants apply for TRA. The Wisconsin agency explains that otherwise individuals may be able to claim and receive TRA payments for up to several weeks without meeting the EB work test because of delays in determining TRA benefit eligibility.

The Department agrees that the intent of § 617.11(a)(6)(ii) is to require the EB work test to be applied for weeks beginning after the individual has filed a claim for TRA and has been informed of the requirement. Therefore, § 617.11(a)(6)(ii) is revised by deleting from the first sentence "prior to receipt by the claimant of notice of determination of eligibility for TRA" and substituting "prior to the filing of an initial claim for TRA by the claimant."

Also, the phrase "eligibility for TRA payments" will be deleted from the last sentence and "the requirements and have filed their initial claims for TRA payments" will be substituted. Another clarifying change is made in the last sentence, and corresponding changes are made in § 617.66(b).

6. The amended § 617.15(a) provides that while the maximum number of basic TRA payments remains unchanged, the time period a worker is eligible to receive basic TRA is extended from 52 weeks to 104 weeks following the first exhaustion of regular unemployment insurance (UI) benefits in the worker's first UI benefit period under the TAA certification.

Senator Heinz reported that the Senate Finance Committee passed legislation which ties separation from employment to the most recent separation from employment. He maintained that the proposed rule applying the eligibility period for TRA payments to the worker's first UI benefit period under the certification contravenes Congressional intent, and urged the deletion of this provision from the final rule. The Unemployment Council of Southwestern Pennsylvania also requested the elimination of the phrase "in such individuals' first benefit period."

The Department does not concur since the regulation is based on the existing statute, rather than on pending legislation in Congress, and the comments have no bearing on the 1986 Amendments. Section 617.15(a) closely tracks section 233(a)(2) of the Act, as amended by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), and no change was made in the 1986 Amendments. Therefore, no change is made in the final regulations.

7. The proposed regulation at § 617.22(a) implements the change made to the conditions for approval of training in amended section 236(a) of the Act. The Georgia Department of Labor commented that the proposed regulation does not address the authority given to a State agency to decide on the types and mix of training that can be offered to TAA eligible workers. Georgia asked specifically whether the rule authorizes a State agency to establish a policy that permits the provision of academic training to TAA eligibles as part of an on-the-job training agreement only where the academic training is essential to that job, or whether other general academic upgrading may also be included.

Section 617.22(a) sets forth the conditions for approval of a worker's application for training. The Department has consistently interpreted section 236(a) of the Act as authorizing training directly related to the worker's approved skills training program. Thus, when a training institution requires specific subjects or skills or a worker needs remedial education services, such as those described in § 617.21 (e) and

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(g), as a prerequisite or requirement to his or her approved training program, then such subjects may be included as part of this training program as approved under the criteria in § 617.22(a). However, remedial education alone does not satisfy the five criteria of § 617.22(a) and therefore is not approvable. In any event, the comments received do not address the changes proposed in § 617.22(a), and no change is made to the final regulations.

8. The proposed regulation at § 617.25(a)(4) reflects the language in amended section 236(a)(4)(D) of the Trade Act of 1974. The amendment authorizes the Secretary to approve other training programs for workers for whom the State agency determines that placement in preferred training under § 617.24 cannot be accomplished. Senator Heinz suggests that the rule should state specifically that the State agency also may approve such training, thereby providing workers with the most effective services. The Unemployment Council of Southwestern Pennsylvania also suggested that § 617.25(a)(4) be amended by adding "or by the State agency."

The Trade Act provides that a State or State agency shall serve as the agent of the United States under an agreement with the Secretary for administering the benefit provisions of the TAA program. Within this context, approval of training for trade impacted workers is performed by such State or State agency on behalf of the Secretary. However, to eliminate any uncertainty in this regard, this section is revised to cite the State agency specifically.

9. The Richmond PIC suggested that § 617.25 should authorize training for self-employment, since the PIC serves many dislocated workers who have management skills that are transferable to running a small business.

The Department does not concur that a change in the existing regulation is needed since the prohibition in the proposed regulations for training workers for self-employment was removed in the final regulations published on December 22, 1986. However, § 617.23(d)(3) provides that the State agency shall exclude training in certain occupations where a lack of employment opportunities exist as substantiated by job orders and other pertinent labor market data, and in occupations providing no reasonable expectation of permanent employment. This provides the State agency with the discretion to deny training for self-employment in an occupation where it can document that there is a lack of permanent employment opportunities in that occupation. Therefore, no change is made in the final regulations.

10. The proposed regulation at § 617.25(b) (1) and (2) reflects the restrictions, set forth in section 236(a)(3)(A) and (B) of the Act, on the funding of training approved under section 236(a)(1) of the Act.

The Georgia Department of Labor commented that the proposed language limits the coordination and utilization of funds under Title III of the Job Training Partnership Act (JTPA) with those of TAA to finance the direct costs of training. Georgia explained that policies of the various Service Delivery Areas (SDAs) differ substantially relative to the allowable length of training under JTPA; therefore, it appears that an adversely affected worker under TAA would be barred from finishing training with TAA funds that could not be completed under JTPA. Georgia suggested that the rule should incorporate broader language to permit and encourage the joint utilization of limited Federal resources for the retraining and reemployment of TAA eligibles.

The Indianapolis PIC also commented that the language prohibiting simultaneous financial support of individuals in training programs with JTPA and TAA funds is not in the best interest of the individuals and that sharing costs of training between the two programs allows more flexibility and more individuals to be served.

The Michigan Employment Security Commission argued that the intent of this section appears to guard against duplicate payment, and that such training costs should apply to the portion already paid and not the entire training program.

The Department does not concur since § 617.25(b) (1) and (2) reflects the language in the 1986 Amendments to section 236(a)(3) (A) and (B) of the Act. Section 236(a)(3)(A) provides that where TAA funds are used to pay for approved training, no payment may be made for such costs under any other Federal law. Section 236(a)(3)(B)(i) states the inverse: Where funds under any other Federal law are used to pay the costs of training, no TAA funds may be used to pay such costs of training the adversely affected worker. Taken together, sections 236(a)(3)(A) and 236(a)(3)(B)(i) prohibit double payment for the same training costs.

For section 236(a)(3)(b)(ii) not to be redundant when read with sections 236(a)(3)(A) and 236(a)(3)(B)(i), it must mean more than simply prohibiting the double payment of training costs. Rather, it prohibits using TAA funds to pay the remainder of the costs of approved training, where the costs are reimbursable under any other Federal law and a portion of such costs have already been paid under such other Federal law.

While section 236(a)(3)(B)(ii) of the Trade Act does reduce somewhat the flexibility in the use of TAA funds and funds under other Federal laws for enrolling trade impacted workers in training programs, this problem can be overcome administratively by using either TAA, or other Federally appropriated funds, such as JTPA Title III funds, to pay the full cost of training for an individual rather than attempting to share costs of training for an individual between TAA and other Federal program fund sources. Because the regulatory language exactly follows the statutory language, no change is made to the final regulations. However, the example used in this section has been deleted since it did not adequately explain the application of the rule.

11. The proposed regulation at § 617.49 reflects the requirement in the 1986 Amendments that workers participate in a JSP as a condition for receiving TRA payments, except when it is determined that no acceptable JSP is reasonably available. This section also provides for reimbursing a worker for necessary expenses to participate in an approved JSP when the State agency refers a worker to a JSP which is conducted outside the worker's normal commuting area.

Senator Heinz suggested that this section should be modified to state that TRA benefits cannot be withheld from an eligible worker if a JSP is not available or not provided. Without such a modification, Senator Heinz stated many workers could be needlessly, and unfairly, penalized.

The Department believes that the proposed regulation satisfies the Senator's concerns. Section 617.49(a) does provide for the waiver of the JSP requirement when a JSP is not reasonably available. Section 617.49(c) sets out the criteria for "reasonably available". Therefore, no change is made in the final regulation.

12. The proposed regulation at § 617.49(a)(2) provides that TRA claimants are subject to participation in the JSP with respect to TRA claims for weeks of unemployment which begin after the date they are notified of eligibility for TRA. The Wisconsin DILHR commented that the State should have flexibility to require the JSP prior to this notification since individuals are ordinarily notified of the JSP requirement when applying for TRA and

scheduled for JSP prior to receiving a TRA monetary determination. Wisconsin suggests that State agencies should be given the flexibility to require JSP participation prior to issuing the monetary determination.

The intent of the proposed regulation is to give State agencies the authority to schedule workers in a JSP when workers are notified of the JSP requirement and they file an initial claim for TRA. As explained by Wisconsin, filing the initial claim for TRA occurs prior to the issuance of a monetary determination. In order to eliminate any uncertainty on this matter and to provide State agencies with the needed flexibility and authority, § 617.49(a)(2) is revised to reflect that TRA claimants are subject to participation in a JSP as condition for receiving TRA for weeks of unemployment which begin after the date they are notified of the requirement and have filed their initial claim for TRA. A corresponding change also is made in § 617.49(c)(4).

13. The proposed regulation at § 617.49(a)(3) provides that when the State agency determines that the worker has failed to begin participation in an approved JSP, or ceased to participate in a JSP before completion, and there is no justifiable cause for failure or cessation, no TRA may be paid to the worker on or after the date of such determination until the worker begins or resumes participation in an approved JSP.

Senator Heinz suggested that the rule be modified to authorize the restoration of TRA payments when a worker agrees to resume participation in a JSP. The Unemployment Council of Southwestern Pennsylvania also recommended that § 617.49(a)(3) be revised by adding the phrase "or when individual agrees to resume participation in JSP."

The Department does not concur in this suggestion since the intent of the law and this implementing regulation is to have workers participate in a JSP early in their unemployment experience. A simple agreement by a worker, who fails without justifiable cause to participate in an approved JSP, to participate in a subsequent JSP would eliminate any enforcement authority of the State agency to require workers to participate in a scheduled JSP and would eliminate any penalty to the worker.

Moreover, the existing § 617.51 provides appeal rights to workers when TRA payments are withheld because of non-participation. The section provides that appeals shall be decided with a degree of promptness meeting the Secretary's "Standard on Appeals Promptness—Unemployment Compensation." Therefore, no change is made to the final regulations.

However, to facilitate the administration of the JSP provisions of the Trade Act, the Department agrees to add a definition for "justifiable cause" in § 617.49(a)(3) as follows: "For purposes of this paragraph (3), justifiable cause means such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to enroll in an approved JSP or complete the JSP."

Because the definition is new and not provided in the proposed rule published in the **Federal Register** on October 22, 1987, for public comment, the Department is providing 30 days from the date of publication of this final rule for public comment on the amendment to § 617.49(a)(3), adding the definition for "justifiable cause" furnished above.

The Wisconsin DILHR suggested that § 617.49(a)(3) should be changed to deny TRA beginning with the week that the failure or cessation occurred when it is determined that such failure or cessation was without justifiable cause. Such a change would serve to treat the failure of a worker to begin or to attend a JSP similarly to the penalty under the EB work test.

The Department agrees with this suggestion. It is the intent to discontinue TRA payments to a worker upon failure to begin or cessation of participation in a JSP scheduled by the State agency. Therefore, to remove any uncertainty on this matter the paragraph is revised by deleting everything after the phrase "paid to the worker" and substituting the words "for weeks beginning with the week that failure or cessation occurred when it is determined that such failure or cessation was without justifiable cause. TRA may be paid thereafter to an otherwise eligible worker only for weeks beginning with the week the worker begins or resumes participation in an approved JSP."

14. The proposed regulation at § 617.49(c)(2) provides the State agency with the authority to waive the JSP requirement when a JSP is not reasonably available. It requires the State agency to document its records for individual workers when such a waiver is granted, prior to making TRA payments to the worker. Senator Heinz commented that the proposed rule should be modified to require that the determination on availability of JSP be made promptly so that TRA payments to eligible workers are not delayed. The Unemployment Council of Southwestern Pennsylvania also suggested that this section be amended by adding the sentence "This determination must be made promptly so that TRA payments are not delayed."

The Department concurs, and believes that the regulations adequately address these concerns. Documentation of the individual worker's record is necessary because participation in a JSP is a qualifying requirement for receiving TRA. Documenting the record is a simple process that should not cause delays of TRA payments to workers. State agencies pay TRA benefits under the same procedures used for paying unemployment benefits. These procedures provide for timely payment of benefits. Moreover, § 617.50(a) provides for prompt determinations on an individual's entitlement for TRA or other TAA benefits. Therefore, no change is made in the final regulations.

15. The proposed regulation at § 617.49(d) provides for the payment of subsistence and transportation costs to a worker when the State refers the worker to a JSP outside the normal commuting area, as required by section 237(c) of the Act.

Senator Heinz and the Unemployment Committee of Southwestern Pennsylvania recommended that this section be eliminated since JSP allowances are dealt with under current regulations.

The Department does not concur since this is a new requirement in the Trade Act added by the 1986 Amendments and therefore is not presently addressed in the regulations. Therefore, no change is made in the final regulations.

16. The proposed regulation at § 617.59(f) provides that in the event of a breach of the agreement between the Secretary of Labor and a State agency or agencies for administering the benefit provisions of the TAA program, sanctions will be applied as provided in the agreement. Senator Heinz and the Unemployment Council of Southwestern Pennsylvania recommended that the Department eliminate the provision in the proposed rule and retain the current regulation. Senator Heinz stated that the proposed rule would establish a new procedure for breach of the agreement when Congress has not authorized any change in the existing procedure and there is not a demonstrated need for a new procedure.

The Pennsylvania Department of Labor and Industry commented that the proposed rule is too vague and fails to give notice of the penalties for breach of the TAA agreement. Without such notice, there is no advance means for identification and review of penalties as

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to whether they go beyond the Department's statutory authority. The Pennsylvania agency also argued that the proposed rule fails to give notice as to what the penalties are for violating the agreement.

The Department had no intention in changing the rule to signal any change in statutory or regulatory procedures, but to allay the concerns expressed the Department is withdrawing the proposed change to the regulation at § 617.59(f) and is retaining the language in the existing regulation. However, § 617.59(f) as currently written references the Internal Revenue Code of 1954. Section 2(a) of the Tax Reform Act of 1986, Pub. L. 99–514, redesignated the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, and the regulation is amended accordingly.

With regard to Pennsylvania's comments on notice of penalties, the Department's remedies are clearly delineated in §§ 617.52(c) and 617.59(f).

17. The proposed regulation at § 617.66(a) on transition procedures provides the effective date for implementing § 617.15(a), which expands the eligibility period for payment of basic TRA benefits from 52 weeks to 104 weeks. Senator Heinz commented that the proposed rule would limit application of the 104-week period only to those claimants whose eligibility periods began on or after April 7, 1986, and would not apply to all workers eligible on April 7, 1986.

The Department does not concur. Section 617.66(a) provides that a worker who has a previously established 52-week eligibility period that ends on or after April 7, 1986, will have the eligibility period extended to 104 weeks. The rule as proposed is consistent with Senator Heinz' understanding of the proper implementation of the effective date provisions in section 13009 of the COBRA. Therefore, no change is made in the final regulations.

18. Several commenters identified the typographical error at § 617.66(b)(2) in which the implementation date is incorrectly printed as 1987 rather than 1986. The date is corrected to April 7, 1986, the date of enactment of COBRA.

19. The Richmond PIC suggested that the proposed rule should address the issue of providing early notification of certifications of worker groups for TAA benefits and services to local governments operating a PIC. It also recommended that a nationwide toll free number be established for employers to obtain the telephone number of the service provider in their area.

The Department does not concur. Existing § 617.4(c) provides that the State agency shall inform the State Board of Vocational Education or equivalent agency and other public or private agencies, institutions and employers, as appropriate, of each certification issued under section 223 of the Act and of projections, if available, of the needs for training under section 236 of the Act as a result of such certification. The Department believes that the existing regulations adequately address notification procedures. Assuring that the existing regulations on notifying pertinent agencies on new TAA certifications of worker groups are enforced will be handled in a separate communication to State agencies. Further, as required by regulations at 29 CFR Part 90, notices are published in the **Federal Register** of all petitions for Trade Adjustment Assistance filed with the Department by worker groups and all determinations issued in response to those petitions. Worker groups and employers also are notified promptly of decisions on petitions for TAA. The Department believes information on providers of services to trade impacted workers can best be acquired locally rather than through a nationwide toll-free telephone call. Therefore, no change is made in the final regulations.

20. In addition to the comments and changes discussed above, other minor technical and clarifying changes have been made.

Drafting Information

This document was prepared under the direction and control of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 610 D Street NW., Washington, DC 20213; telephone: (202) 376–2646 (this is not a toll-free number).

Classification—Executive Order 12291

The final rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This rule is not subject to section 3504(b) of the Paperwork Reduction Act since it does not contain a collection of information requirement.

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not * * * have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States. Since these regulations involve only the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 20 CFR Part 617

Job search assistance, Labor, Reemployment services, Relocation assistance, Trade readjustment allowances, Unemployment compensation, Vocational education.

Words of Issuance

For the reasons set out in the preamble, Part 617 of Title 20, Code of Federal Regulations, is amended as set forth below.

Signed at Washington, DC, on August 18, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

1. The authority for Part 617 continues to read as follows:

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

2. Section 617.3 is amended by redesignating paragraphs (w) and (x) as (z) and (aa), redesignating paragraphs (y) through (bb) as (cc) through (ff), redesignating paragraphs (cc) through (nn) as (gg) through (rr), revising paragraphs (b), (m), and newly designated (ii), and adding paragraphs (w), (x), (y) and (bb) to read as follows:

§ 617.3 Definitions.

* * * * *

(b) "Adversely affected employment" means employment in a firm or appropriate subdivision of a firm, including workers in any agricultural firm or subdivision of an agricultural firm, if workers of such firm or appropriate subdivision are certified

under the Act as eligible to apply for TAA.

* * * * *

(m) "Eligibility period" means, for purposes of paying TRA:

(1) *Basic weeks.* The 104-week period beginning with the first week following the first week with respect to which the individual first exhausts all rights to regular compensation (as defined in paragraph (oo)(1) of this section) in such individual's first benefit period (as defined in paragraph (r) of this section); and

(2) *Additional weeks.* The 26-week period that—

(i) Follows the last week of entitlement to basic TRA otherwise payable under this Part 617 to the individual; or

(ii) Begins with the first week of approved training, if a bona fide, timely application for training is approved after the last week described in paragraph (m)(2)(i) of this section.

* * * * *

(w) "Job search program" means a job search workshop or job finding club.

(x) "Job search workshop" means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects should include, but not be limited to, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

(y) "Job finding club" means a job search workshop which includes a period of 1 to 2 weeks of structured, supervised activity in which participants attempt to obtain jobs.

* * * * *

(bb) "On-the-job training" means training provided by an employer to an individual who is employed by the employer.

* * * * *

(ii) "State agency" means the State Employment Security Agency; the employment service of the State; any State agency carrying out Title III of the Job Training Partnership Act; or any other State or local agency administering job training or related programs with which the Secretary has an agreement to carry out any of the provisions of the Act.

* * * * *

3. The introductory text of paragraph (a) and paragraphs (a)(3) (i) and (ii) and (a)(6)(ii) of § 617.11 are revised to read as follows:

§ 617.11 Qualifying requirements for TRA.

(a) *Basic qualifying requirements for entitlement.* To qualify for TRA for any week of unemployment, an individual must meet each of the following requirements of paragraphs (a)(1) through (a)(7) of this section:

* * * * *

(3) *Wages and employment.* (i) In the 52-week period (i.e., 52 consecutive weeks) ending with the week of the individual's first qualifying separation, the individual must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in § 617.12. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(ii)(A) For purposes of this paragraph (a)(3), any week in which such individual:

(*1*) Is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(*2*) Does not work in such adversely affected employment because of a disability compensable under a workers' compensation law or plan of a State or the United States, or

(*3*) Had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision,

shall be treated as a week of employment at wages of $30 or more;

(B) *Provided,* that—

(*1*) Not more than 7 weeks in the case of weeks described in paragraph (a)(3)(ii)(A)(*1*) or paragraph (a)(3)(ii)(A)(*3*) of this section, or both, and

(*2*) Not more than 26 weeks described in paragraph (a)(3)(ii)(A)(*2*) of this section,

may be treated as weeks of employment for purposes of paragraph (a)(3) of this section.

* * * * *

(6) *EB work test.*

* * * * *

(ii) The EB work test shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA. The claimant shall not be subject to the EB work test requirement set out in § 617.17, nor to any State agency timely filing requirement, but shall be required to be unemployed and able to work and available for work with respect to any such week except as provided for workers in approved training in § 617.17. TRA claimants shall be subject to these work test and timely filing requirements for weeks of unemployment beginning after the date they are notified of the requirements and have filed their initial claims for TRA payments.

* * * * *

4. Paragraph (a) of § 617.11, as amended in item 3 above, is further amended by adding at the end thereof a new paragraph (a)(7) to read as follows:

§ 617.11 Qualifying requirements for TRA.

(a) *Basic qualifying requirements for entitlement.* * * *

* * * * *

(7) *Job search program participation.* The worker is enrolled in, participating in, or has successfully completed a job search program which meets the requirement of § 617.49(a); or the State agency has determined that no acceptable job search program is reasonably available under the criteria set forth in § 617.49(c)

* * * * *

§ 617.13 [Amended]

5. Paragraph (c)(2) of § 617.13 is amended to correct a printing error. In § 617.13(c)(2), "Veterans Education Assistance" is revised to read "Veterans Educational Assistance".

6. Paragraph (a)(2) of § 617.14 is revised to read as follows:

§ 617.14 Maximum amount of TRA.

(a) *General Rule.* * * *

* * * * *

(2) Subtracting from the product derived under paragraph (a)(1) of this section, the total sum of UI to which the individual was entitled (or would have been entitled if the individual had applied therefor) in the individual's first benefit period described in § 617.11(a)(4). The individual's full entitlement shall be substracted under this paragraph, without regard to the amount, if any, that was actually paid to the individual with respect to such benefit period.

* * * * *

7. Paragraphs (a) and (c) of § 617.15 are revised to read as follows:

§ 617.15 Duration of TRA.

(a) *Basic weeks.* An individual shall not be paid basic TRA for any week after the 104-week eligibility period beginning with the first week following the first week with respect to which the individual has first exhausted (as determined under § 617.11(a)(5)), in such individual's first benefit period, all rights to that part of UI which is regular compensation.

* * * * *

(c) *Limit.* The maximum TRA payable to any individual on the basis of a single certification is limited to the maximum amount of basic TRA as determined under § 617.14 plus additional TRA for up to 26 weeks as provided in paragraph (b) of this section.

8. Section 617.17 is revised to read as follows:

§ 617.17 Availability and active search for work.

An individual shall not be paid TRA for any week of unemployment during which the individual is not able to work or is unavailable for work under the applicable State law, or for any week for which TRA is claimed if the individual fails or refuses to make an active search for work and furnish tangible evidence of such work search or to apply for or accept work or to accept a referral to work under those provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970. This paragraph shall not apply to weeks during which the individual is actually undergoing training approved under the provisions of the applicable State law or under Subpart C of this Part 617, unless the individual is determined to be ineligible for such week under the applicable State law or § 617.18(b)(2). The EB work test is applicable under the circumstances set forth in § 617.11(a)(6)(ii).

9. Paragraph (c) is added to § 617.18 as follows:

§ 617.18 Disqualifications.

* * * * *

(c) *Disqualification while in OJT.* In no case may an individual receive TRA for any week with respect to which the worker is engaged in on-the-job training.

10. Paragraph (a) of § 617.20 is revised as follows:

§ 617.20 Responsibilities for the delivery of reemployment services.

(a) *State agency referral.* The State agency shall be responsible for:

(1) Advising each adversely affected worker to apply for training, with the State agency responsible for reemployment services, at the time the worker makes an application for TRA; and

(2) Referring each adversely affected worker to the State agency responsible for reemployment services.

* * * * *

11. Paragraph (b) of § 617.20 is amended by redesignating paragraphs (b)(1) through (b)(12) as (b)(2) through (b)(13), and adding a new paragraph (b)(1) as follows:

§ 617.20 Responsibilities for the delivery or reemployment services.

* * * * *

(b) * * *

(1) Interviewing the adversely affected worker regarding suitable training opportunities available to the worker under section 236 of the Act and reviewing such opportunities with the worker within 60 days after the worker applies for training;

* * * * *

12. The introductory text of paragraph (a) and paragraph (a)(3) of § 617.22 are revised, and a new paragraph (i) of § 617.22 is added, as follows:

§ 617.22 Approval of training.

(a) *Conditions for approval.* To the extent that appropriated funds are available and are allocated by the Department to the State to pay the full costs of any training, such training shall be approved for an adversely affected worker if the State agency determines that:

* * * * *

(3) There is a reasonable expectation of employment following the completion of the training (but a reasonable expectation does not require that employment opportunities be available, or offered, immediately upon the completion of training).

* * * * *

(i) *Training outside the United States.* In no case shall an individual be approved for training under this Subpart C which is conducted totally or partially at a location outside the United States.

13. Section 617.25 is revised as follows:

§ 617.25 Purchased training.

(a) *State agency determination.* If the State agency determines that placement of an adversely affected worker in preferred training under § 617.24 cannot be accomplished, the State agency shall attempt to make arrangements or enter into agreements to purchase training or provide for reimbursement of the cost of training through:

(1) On-the-job training offered by an employer;

(2) Any training program provided by a State pursuant to section 303 of the JTPA;

(3) Any training program approved by a private industry council established under section 102 of the JTPA; and

(4) Any other training program approved by the State agency on behalf of the Secretary.

(b) *Costs of training.* (1) When the direct payment of costs of training are made from TAA program funds, no other payment for such direct costs of training may be made under any other Federal law. When the direct payment of the costs of training have been made under any other Federal law, or are reimbursable under any other Federal law and a portion of the direct costs have already been paid under other Federal law, payment of such training costs may not be paid from TAA program funds.

(2) When the payment of the direct costs for training an adversely affected worker are paid or payable under more than one Federal law, the State agency shall establish procedures to ensure that individuals and institutions do not receive duplicate reimbursement.

(3) The provisions of paragraphs (b)(1) and (2) of this section shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of identical costs incurred in training the adversely affected worker under the TAA program, even if such other use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(c) *Costs of on-the-job training.* The cost of OJT for an eligible worker may be paid to an employer only if:

(1) No currently employed individual is displaced by such eligible worker, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits.

(2) Such training does not impair existing contracts for services or collective bargaining agreements.

(3) In the case of training which would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization.

(4) No other individual is on layoff from the same or any substantially equivalent job for which such eligible worker is being trained.

(5) The employer has not terminated the employment of any regular employee or otherwise reduced the workforce with the intention of filling the vacancy so created by hiring the eligible worker.

(6) The job for which the eligible worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.

(7) Such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222 of the Act.

(8) The employer certifies to the State agency that the employer will continue to employ the eligible worker for at least 26 weeks after completing the training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment.

(9) The employer has not received payment under section 236 and this part for any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (c) (1) through (8) of this section.

(10) The employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (c)(8) of this section made by the employer with respect to any other on-the-job training provided by the employer for which the employer has received a payment under section 236 and this part.

14. Paragraph (a)(1) introductory text of § 617.34 is revised to read as follows:

§ 617.34 Amount.

(a) *Computation.* * * *

(1) *Travel.* The more cost effective mode of travel reasonably available shall be approved by using:

* * * * *

15. Paragraph (a)(1) introductory text of § 617.46 is revised to read as follows:

§ 617.46 Travel allowance.

(a) *Computation.* * * *

(1) *Transportation.* The more cost effective mode of transportation reasonably available shall be approved by using:

* * * * *

§§ 617.50–617.65 (Subpart F) [Redesignated as §§ 617.50—617.65 (Subpart G)]

16. Subpart F, consisting of §§ 617.50 through 617.65, is redesignated as Subpart G.

17. A new Subpart F consisting of § 617.49 on the Job Search Program is added as follows:

Subpart F—Job Search Program

§ 617.49 Job Search Program.

(a) *Program requirements.* (1) A worker, after being separated from adversely affected employment, must participate in an approved job search program (JSP), or have completed a JSP, as a condition for receiving TRA, except where the State agency determines that an acceptable JSP is not reasonably available.

(2) A TRA claimant is subject to participation in a JSP as a condition for receiving TRA for weeks of unemployment which begin after the date the claimant is notified of the requirement and has filed an initial claim for TRA. The claimant is not subject to the JSP as a condition for receiving TRA for weeks which begin prior to that date.

(3) When the State agency determines that the worker has failed to begin participation in an approved JSP, or ceased to participate in such a JSP before completion, and there is no justifiable cause for such failure or cessation, no TRA may be paid to the worker for weeks beginning with the week that failure or cessation occurred when it is determined that such failure or cessation was without justifiable cause. TRA may be paid thereafter to an otherwise eligible worker only for weeks beginning with the week the worker begins or resumes participation in an approved JSP. For purposes of this paragraph (a)(3), justifiable cause means such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to enroll in an approved JSP or complete the JSP.

(4) A worker in training approved under §§ 617.22 through 617.26, or approved by the State agency under State law, is excepted from the JSP qualifying requirement while the worker is attending and making satisfactory progress in the training. This exception applies whether training begins before or after entitlement to basic TRA commences, and also applies after training begins for a worker who is attending a JSP program. Exceptions to the JSP qualifying requirement must be documented in the worker's claim file by the State agency.

(b) *Approved JSPs.* A job search program may be approved if:

(1) The JSP is provided through the JTPA, the public employment service, or any other Federal or State funded program, and complies with paragraphs (w), (x), and (y) of § 617.3.

(2) The JSP is sponsored by a company or firm from which the worker has been separated, and complies with paragraphs (w), (x), and (y) of § 617.3.

(c) *Determination of reasonably available.* (1) Reasonably available means an existing approved JSP that is located in the worker's normal commuting area, as defined in § 617.3, and has sufficient capacity to accommodate the worker.

(2) When the State determines that a JSP is not reasonably available for a worker, the requirement is not a condition of qualifying for TRA for the weeks involved. When a determination is made with respect to a worker, the State agency must document its determination, and the weeks involved, in the worker's claim file, prior to making TRA payments to the worker.

(3) The State agency may issue a blanket waiver of the JSP qualifying requirement for TRA for groups of workers, where deemed appropriate, when it is determined that there is no functioning JSP.

(4) All determinations that a JSP is not reasonably available should extend only for that period of time that a JSP is not reasonably available, and the exception for workers in approved training should extend until the completion of training. If the State determines that a JSP is reasonably available at a later date, then the JSP qualifying requirement must be met for entitlement to basic TRA for weeks of unemployment beginning with the week in which JSP becomes reasonably available.

(d) *JSP allowances.* Subsistence and transportation costs shall be approved for workers participating in JSPs when deemed appropriate and within available State funding levels. Costs incurred may not exceed those allowable for training under §§ 617.27 and 617.28, if, and when, the State refers a worker to a JSP outside the normal commuting area.

18. Paragraphs (a) and (b) of § 617.59 are revised as follows:

§ 617.59 Agreements with State agencies.

(a) *Authority.* Before performing any function or exercising any jurisdiction under the Act and this Part 617, a State or State agency (as defined in § 617.3(ii)) shall execute an Agreement with the Secretary meeting the requirements of the Act.

(b) *Execution.* An Agreement under paragraph (a) of this section shall be signed on behalf of a State or State agency by an authorized official of the State or such State agency, and the signature shall be dated. The authority of the State or State agency official shall be certified by the Attorney General of the State or counsel for the State agency, unless the Agreement is signed by the Governor of the State. An agreement will be executed on behalf of the United States by the Secretary.

* * * * *

§ 617.59 [Amended]

19. In 20 CFR 617.59(f) remove the words "Internal Revenue Code of 1954" and add, in their place, the words "Internal Revenue Code of 1986".

20. Section 617.62(c) is revised as follows:

§ 617.62 Transitional procedures.

* * * * *

(c) *Fraud and recovery of overpayments.* The fraud and overpayment recovery provisions of this Subpart G shall take effect on August 13, 1981, and shall apply to all overpayments outstanding on that date or determined on or after that date.

* * * * *

21. Section 617.66 is added to Subpart G as follows:

§ 617.66 Transition procedures for amendments in sections 13002 through 13009 of Pub. L. 99–272 (the Consolidated Omnibus Budget Reconciliation Act of 1985).

The procedures for administering the Trade Act of 1974 before and after the amendments made by the Pub. L. 99–272 are as follows:

(a) *Duration of TRA.* The provisions contained in § 617.15 expanding the eligibility period for payment of basic TRA benefits from 52 weeks to 104 weeks shall apply only to those claimants whose eligibility periods begin on or after April 7, 1986, or who have a previously established 52-week TRA eligibility period that ends on or after April 7, 1986. Workers with 52-week eligibility periods that end before April 7, 1986, will not have their eligibility periods extended to 104 weeks.

(b) *TRA payments*—(1) Retroactive TRA payments. Retroactive claims of eligible workers may be approved for weeks of unemployment beginning with the first week after the week which includes December 18, 1985. Claims for weeks beginning before April 7, 1986 (or, if later, before claimants are notified of their potential entitlement and have filed claims for retroactive benefits) are not subject to the application of the Extended Benefits (EB) work test, nor to the State timely filing requirement. Claimants shall be subject to those requirements for weeks of unemployment beginning after the date eligible workers are notified of such requirements and have filed claims for such benefits.

(2) *Employer-authorized leave, disability leave and union service.* The change to § 617.11(a)(3) for crediting weeks of specified leave to qualify for TRA will apply only to initial claims for basic TRA filed with the State agency by eligible workers on or after April 7, 1986.

(c) *Job search program.* The job search program requirement applies to workers certified under petitions for trade adjustment assistance filed with the Department on or after April 7, 1986.

(d) *Training and other amendments.* Other amendments in Pub. L. 99–272 are effective on April 7, 1986, and apply to applications for TAA benefits approved on or after April 7, 1986.

(e) *Application of Gramm-Rudman.* TRA payments to workers made under Part 1 of Chapter 2 of Title II of the Trade Act of 1974 and this Part shall be reduced by a percentage equal to the non-defense sequester percentage applied in the Sequestration Report (submitted under the Balanced Budget and Emergency Deficit Control Act of 1985 and dated January 21, 1988) of the Comptroller General of the United States for Fiscal Year 1988, for the period from March 1, 1988 to October 1, 1988.

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Part IV

Federal Reserve System

12 CFR Part 229

Regulation CC; Availability of Funds and Collection of Checks; Preemption Determinations; Final and Proposed Interpretations

VOL 53 ISS 164 AUG 24 1988 UMI

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0640]

Regulation CC; Availability of Funds and Collection of Checks; Preemption Determinations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretations.

SUMMARY: The Board is publishing final official Board interpretations concerning preemption determinations under its Regulation CC, Availability of Funds and Collection of Checks (12 CFR Part 229), with respect to the laws of Illinois and New York and with respect to section 4–213(5) of the Uniform Commercial Code.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel, Legal Division (202/452–3625) or Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452–3874); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (12 U.S.C. 4001–4010). The regulation requires banks to make funds available to their customers within specified time frames, and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any state law in effect on or before September 1, 1989, that provides for a shorter hold for a category of checks that is provided under federal law will supersede the federal provision.

Provisions of state law governing funds availability that provide for longer availability than the federal law are considered inconsistent with Regulation CC and are preempted by Regulation CC. In addition, state disclosure or notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law. These determinations would be provided upon the request of a state, bank, or other interested party.

Discussion

On June 28, 1988 (53 FR 24315), the Board published, for a 30-day comment period, proposed interpretations of Regulation CC concerning preemption determinations with respect to the funds availability laws of Illinois, Maine, and New York (53 FR 24315). In conjunction with the proposed determination of Illinois law, the Board requested comment on the relationship between Regulation CC and section 4–213(5) of the Uniform Commercial Code ("U.C.C."). The Board received twelve comments on the proposed interpretations, which are summarized below. The Board is now publishing its final interpretations concerning U.C.C. section 4–213(5) and the Illinois and New York preemption determinations. The Board has deferred its determination regarding the law of Maine at the request of the Maine Attorney General.

Preemption of State Schedules and Exceptions. State law availability schedules often differ from the Regulation CC schedules with respect both to the categories of checks to which the schedules apply and the time periods within which funds must be available for withdrawal. State availability schedules that provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the Act and Regulation CC. Under the Board's interpretation, the state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit that is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit can be further extended by the federal exception in accordance with Regulation CC. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used. The Board had initially proposed a broader preemption scheme; however, the Board's final approach responds to the concerns of state banking regulators that the more protective provisions of state law be retained. This approach also provides a preemption standard that can be more readily applied by banks in states that have not received preemption determinations from the Board.

Treatment of State Schedules that Provides for the Same Availability as the Federal Schedules. The Board proposed to preempt any state schedule that does not provide for shorter availability than required under Regulation CC. Under this approach, if state law provides for the same availability as federal law, the state law would be preempted. The Maine Attorney General's office argued that only inconsistent state law is preempted by the Act and Regulation CC, and that a state law requiring availability in the same time periods as required by federal law cannot be considered inconsistent. Some states have incorporated the federal schedules into their state law to facilitate state enforcement of these requirements. Under the Board's final interpretations, the only state schedules that are preempted are those that provide for a longer hold than required under Regulation CC; state schedules that provide for availability within the same time periods would not be preempted.

Treatment of Deposits not Subject to Regulation CC. Certain state laws govern the availability of deposits that are not covered by the Regulation CC schedules. For example, the availability schedules of several states apply to "items" deposited to an account. The term "item" may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. The Board proposed that neither the Regulation CC nor the state schedules would apply to deposits of items not subject to Regulation CC's funds availability provisions. The Board also requested comment on two alternative treatments of these deposits: (1) That the state schedules continue to apply to deposits that are not subject to the Regulation CC availability rules; or (2) that the Regulation CC schedules apply to the deposit of all "items" to "accounts" covered by that Regulation.

The Maine Bureau of Banking and the Maine Attorney General's office objected to the federal preemption of deposits not regulated by federal law. They argued that such a broad preemptive approach needlessly restricts the ability of a state to protect the public from excessive holds in circumstances where the federal government has not acted. The Board believes that while funds availability laws would be simpler if state laws applicable to items that are not checks were preempted, states have a

legitimate interest in regulating deposits of these items, and state laws should not be preempted with respect to these items. The Board's final interpretation provides that deposits that are not covered by Regulation CC continue to be subject to the state law and are not subject to the federal law.

Maine. The Board published for comment a proposed preemption determination with respect to the Maine funds availability law that was in effect on June 28, 1988. Maine has recently issued for comment a revision to its law, which would require that funds deposited to any deposit account be made available in accordance with the Expedited Funds Availability Act and Regulation CC. The Maine Attorney General's office, in its comments to the Board, asked that the Board not issue a final preemption determination based on the state's current regulation, because the amended regulation will be adopted in August 1988, and will become effective September 1, 1988. The Board has deferred issuance of a preemption determination with respect to Maine law.

New York. The New York regulation contains availability schedules for local (same city) checks, in-state checks, and out-of-state checks, as well as certain low-risk checks. Different schedules are provided for banks and savings institutions. Certain portions of the New York schedule supersede the availability requirements of Regulation CC. The New York schedules continue to apply to accounts not subject to the Regulation CC availability requirements. The state disclosure requirements are preempted by the Regulation CC disclosure rules to the extent that the state rules pertain to accounts subject to Regulation CC.

Illinois. Following the issuance for public comment of the proposed preemption determination with respect to Illinois law, Illinois enacted a revised funds availability rule, which requires that funds be made available in accordance with the Act and Regulation CC. The Board has determined that the revised Illinois law is not inconsistent with Regulation CC, and that Illinois banks must comply with the Regulation CC funds availability and disclosure requirements.

U.C.C. Availability of Cash Deposits Requirement. In conjunction with the proposed preemption determination of Illinois law, the Board requested comment on the relation of U.C.C. section 4–213(5), which provides for next-day availability of "money" deposited in a bank, to the Regulation CC requirement that deposits of cash be made available on either a next-day or two-day basis, depending on whether the cash was deposited at a staffed teller station. This U.C.C. provision has been adopted in each of the 50 states. The next-day availability requirement in the Code is subject to a general variation by agreement provision. The Board proposed that, because the ability to vary this provision of the Code by agreement may allow depositary banks to provide availability to their customers in a longer time than permitted by Regulation CC, this Code provision be preempted by the Act and Regulation CC. The Board also requested comment on an alternative approach, whereby this U.C.C. provision would supersede the Regulation CC requirement, but a depositary bank could not agree to extend availability beyond the time periods provided in Regulation CC.

The Board has adopted this alternative approach, and has determined that U.C.C. section 4–213(5) governing availability of cash deposits supersedes the federal requirement, but that the ability of a bank to vary this provision by agreement under the Code is limited by the time periods provided in the federal availability schedule.

Summary of Comments

The Board received twelve comments on the three proposed preemption determinations. Five commenters (Illinois League of Savings Institutions, First Chicago Corporation, Illinois Credit Union League, Citicorp, and the Illinois Commissioner of Banks and Trust Companies) responded to the proposed preemption determination for the State of Illinois. Four commenters pointed out that the Illinois General Assembly passed an amendment to the Illinois Commercial Code section 4–213(5), signed by the Governor on July 28, 1988, which provides that the Expedited Funds Availability Act and Regulation CC shall determine the time periods after which funds must be available for withdrawal.

In addition, three commenters requested that the Board explicitly preempt the Illinois Commercial Code section 4–213(6) (which corresponds to U.C.C. section 4–213(5)), which provides next-day availability for cash deposits. The commenters reasoned that the U.C.C. next-day rule was meant to apply only to cash deposits received at a staffed facility and should not be extended to cash deposits received at unstaffed facilities such as ATMs, which are accorded second-day availability under Regulation CC. One commenter suggested that the Board address the preemption of U.C.C. section 4–213(5) in Regulation CC or its official Commentary because it is an issue common to all states. Another commenter suggested that the Board clarify the conflict in the U.C.C. definition of "money," which includes foreign currency, and Regulation CC's definition of "cash," which is limited to U.S. currency.

One bank supported the position that Regulation CC preempt the Illinois state availability schedules with respect to the deposit of "items" not covered by Regulation CC. The commenter favored consistent schedules for all items accepted for deposit, because its processing systems could not distinguish between negotiable and nonnegotiable items.

Three commenters (State of Maine Bureau of Banking, State of Maine Attorney General, and Citicorp) responded to the Board's proposed preemption determination for the State of Maine. The Maine Attorney General pointed out that Maine's funds availability regulation (Regulation 18) is currently being revised to adopt the federal availability and disclosure requirements and requested that the Board not issue a preemption determination concerning a rule that will likely be superseded. The Attorney General also objected to the proposed federal preemption of Maine funds availability requirements that are equivalent to the federal requirements on the grounds that such state requirements would not be inconsistent with Regulation CC.

Both the Attorney General and the Maine Bureau of Banking requested that Regulation CC not preempt the state funds availability requirements with respect to deposits to accounts made by items other than "checks" as defined by Regulation CC, and that the state availability schedules and exceptions continue to apply to the deposit of items not subject to the availability rules of Regulation CC. The commenters reasoned that because the State of Maine had established a public policy governing the availability of items which may not be covered by federal regulation, such a policy should be allowed to prevail in the absence of federal regulation.

One commenter, however, favored Regulation CC preemption with respect to Maine's availability schedules and exceptions for all items deposited to accounts, including those not defined as "checks" under Regulation CC. This commenter also supported federal preemption of state disclosure requirements for accounts but agreed that state disclosure requirements should continue to apply for accounts not governed by Regulation CC.

Four commenters (State of New York Banking Department, New York Clearing House, New York Credit Union League, and Citicorp) responded to the proposed preemption determination for the State of New York. All four commented on the status of checks that are payable by an in-state bank but are nonlocal under Regulation CC. The New York State Banking Department confirmed that the intent of its proposed amendments to the New York funds availability law is to retain state availability schedules for in-state nonlocal checks as the sole feature of state law to escape federal preemption. Two other commenters supported the Banking Department's view. The New York Clearing House supported federal preemption of all state schedules, and stated that if the proposed amendment to the state funds availability schedules were interpreted to supersede the federal schedules, it should supersede only with respect to nonlocal in-state checks.

The State Banking Department also favored allowing the state law provision providing for variation of availability schedules by agreement to stand so long as it does not conflict with Regulation CC. The New York Clearing House favored federal preemption of the New York schedule.

In addition, the New York Clearing House and a large bank took the position that Regulation CC's definition of "local" and "nonlocal" should preempt the state law's definitions and that Regulation CC's special cash withdrawal rule should be available to New York depositary banks. The New York Credit Union League objected to the inclusion of payable through banks in Regulation CC's definition of "paying bank" and therefore did not favor federal preemption of New York's "local" and "nonlocal" definitions.

The State Banking Department stated that the Regulation CC definition of "account," should preempt the scope of transaction accounts as defined in New York law. The New York Clearing House suggested that New York banks be allowed to follow either state or federal availability schedules with respect to accounts covered by state law but not by Regulation CC.

A large bank supported federal preemption of all New York exceptions to the availability schedules and requested that all deposited items covered by state law but not by federal law be subject to the federal availability schedules.

The New York Clearing House requested confirmation that New York banks will be able to use calculated availability for nonconsumer accounts as provided by § 229.19(d) of Regulation CC.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. A new Appendix F is added to read as follows:

Appendix F—Official Board Interpretations; Preemption Determinations

Uniform Commercial Code, Section 4–213(5)

Section 4–213(5) of the Uniform Commercial Code ("U.C.C.") provides that money deposited in a bank is available for withdrawal as of right at the opening of business of the banking day after deposit. Although the language "deposited in a bank" is unclear, arguably it is broader than the language "made in person to an employee of the depositary bank", which conditions the next-day availability of cash under Regulation CC (§ 229.10(a)(1)). Under Regulation CC, deposits of cash that are not made in person to an employee of the depositary bank must be made available by the second business day after the banking day of deposit (§ 229.10(a)(2)). Therefore, this provision of the U.C.C. may call for the availability of certain cash deposits in a shorter time than provided in Regulation CC.

This provision of the U.C.C., however, is subject to Section 4–103(1), which provides, in part, that "the effect of the provisions of this Article may be varied by agreement * * *." (The Regulation CC funds availability requirements may not be varied by agreement.) U.C.C. Section 4–213(5) supersedes the Regulation CC provision in § 229.10(a)(2), but a depositary bank may not agree with its customer under section 4–103(1) of the Code to extend availability beyond the time periods provided in § 229.10(a) of Regulation CC.

Illinois

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A, of Regulation CC, preempt provisions of Illinois law relating to the availability of funds. Section 4–213(5) of the Uniform Commercial Code as adopted in Illinois (Illinois Revised Statutes Chapter 26, paragraph 4–213(5), enacted July 26, 1988) provides that:

> Time periods after which deposits must be available for withdrawal shall be determined by the provisions of the federal Expedited Funds Availability Act (Title VI of the Competitive Equality Banking Act of 1987) and the regulations promulgated by the Federal Reserve Board for the implementation of that Act.

Section 4–213(5) of the Illinois law does not supersede Regulation CC; and, because this provision of Illinois law does not permit funds to be made available for withdrawal in a longer period of time than required under the Act and Regulation, it is not preempted by Regulation CC.

New York

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A, of Regulation CC, preempt the provisions of New York law concerning the availability of funds. This preemption determination specifies those provisions in the New York funds availability law that supersede the Act and Regulation CC. (See also the Board's premption determination regarding U.C.C. Section 4–213(5), pertaining to availability of cash deposits, in paragraph (a), above.)

The New York State Banking Department, pursuant to section 14–d of the New York Banking Law, has issued regulations requiring that funds deposited in an account be made available for withdrawal within specified time periods, and providing certain exceptions to those availability schedules.

Part 34 of the New York State Banking Department's General Regulations establishes time frames within which commercial banks, trust companies, and branches of foreign banks ("banks") and savings banks, savings and loan associations, and credit unions ("savings institutions") must make funds deposited in customer accounts available for withdrawal.

Different schedules apply to deposits in banks and savings institutions. Deposits must be made available for withdrawal not later than the following number of business days following the business day of deposit:

	Banks	Savings institutions
Local checks (same city)	3	4
In-state checks	4	5
Out-of-state checks	7	9
$100 or less checks; on us checks (in-state); Treasury checks; NY state/local gov/t checks	2	2
Nonproprietary ATMs	+1	+1

Note: Part 34 requires that funds be available at the start of the business day subsequent to the number of days specified in the regulation. To simplify comparisons of the New York and federal regulations, the Board has converted the time periods used in Part 34 to the method used in Regulation CC; i.e. the number of business days following the day of deposit.

Coverage

The New York law and regulation govern the availability of funds deposited into savings and time deposits, as well as to "accounts" as defined in § 229.(a) of Regulation CC. The federal preemption of state funds availability laws only applies to "accounts subject to Regulation CC, which generally include transaction accounts. Thus, to the extent that the New York law applies to deposits in time, savings, and other accounts (such as accounts in which the account holder is another bank or foreign bank) that are not "accounts" under Regulation CC, the state funds availability law will continue to apply. (Note, however, that under § 229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.) The New York State Superintendent of Banks stated, in her comments to the Board, that "[t]he Banking Department believes that the Regulation CC definition of account to the extent it applies to transaction accounts preempts the scope of the accounts as defined in Part 34."

The New York law and regulation apply to "items" deposited to accounts. Part 34.2(e) defines "item" as "a check, negotiable order of withdrawal or money order deposited into an account". The Board interprets the definition of "item" in New York law to be consistent with the definition of "check" in Regulation CC (§ 229.2(k)).

Availability Schedules

The following provisions of New York law provide for the same or a shorter hold for certain categories of checks than is provided under Regulation CC, and supersede the federal availability requirements. All other provisions of the New York law relating to the availability of funds deposited in "accounts" are preempted by Regulation CC, because they provide for longer availability than is provided for in Regulation CC.

Temporary Schedule. The New York regulation requires that items payable by a local bank or savings institution (i.e., one that is located in the same city, town, or village, and which uses the same clearing facility, as the depositary bank) be made available for withdrawal not later than the start of business on the third business day following deposit, if deposited in a bank (Part 34.2(a)(1)). The New York Superintendent of Banking has interpreted "clearing facility" to include both check clearinghouse associations and Federal Reserve check processing facilities. (*See* December 21, 1983, letter from Vincent Tese, New York State Superintendent of Banks, regarding adoption of Part 34.) Regulation CC (§ 229.11(b)) also requires that the proceeds of these check deposits be made available for withdrawal not later than the start of business on the third business day following deposit. Regulation CC, however, includes a time period adjustment which permits a depositary bank to delay the time it must make funds available by cash or similar means, for deposits of local checks cleared outside a check clearinghouse arrangement (§ 229.11(b)(2)). New York law supersedes this time period adjustment for withdrawal by cash and similar means for local checks (as defined by New York law) deposited in banks and cleared through the Federal Reserve.

The New York regulation requires items payable by an in-state bank or savings institution to be available for withdrawal not later than the start of business on the fourth business day following deposit, if deposited in a bank (Part 34.3(a)(2)), or the fifth business day following deposit, if deposited in a savings institution (Part 34.3(b)(2)). These time periods are shorter than the seventh business day availability required for nonlocal checks under § 229.11(c) of Regulation CC, although they are not necessarily shorter than the schedules for nonlocal checks set forth in § 229.11(c)(2) and Appendix B–1 of Regulation CC. Thus, these state schedules supersede the federal schedule to the extent that they apply to an item payable by a New York bank or savings institution that is defined as a nonlocal check under Regulation CC and the applicable state schedule is less than the applicable schedule specified in § 229.11(c) and Appendix B–1.

Part 34.3 (a)(8) and (b)(8) provide that for any item deposited at a shared or nonproprietary electronic facility, the depositary bank may, at its option, add one business day to the relevant state schedule for the item being deposited. In the following cases, the state schedules applicable to deposits at nonproprietary ATMs to accounts in banks supersede the federal schedule, which provides for seventh day availability:

Treasury checks, state and local government checks, on us in-state checks—Third business day
Local checks—Fourth business day
In-state checks—Fifth business day

The state schedules applicable to deposits at nonproprietary ATMs to accounts in savings institutions supersede the federal schedule for the following items:

Treasury checks, state and local government checks, on us in-state checks—Third business day
Local checks—Fifth business day
In-state checks—Sixth business day

Permanent Schedule. Under Part 34.3(a)(2), in-state checks must be made available for withdrawal by the start of business on the fourth business day following deposit, if deposited in a bank, and the fifth business day following deposit, if deposited in a savings institution. The New York schedule for banks supersedes the Regulation CC requirement in the permanent schedule that nonlocal checks be made available for withdrawal by the start of the fifth business day following deposit, with a time period adjustment for withdrawals by cash or similar means, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under § 229.12(c)(2) and Appendix B–2 of Regulation CC. In addition, the New York schedule for savings institutions supersedes the Regulation CC time period adjustment in the permanent schedule for withdrawal by cash or similar means, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under § 229.12(c)(2) and Appendix B–2.

The following charts show the relationship between the New York law that supersedes Regulation CC and the temporary and permanent availability schedules in Regulation CC. Section 229.10 (b) and (c) of Regulation CC preempt the New York law and thus are not affected by it.

TEMPORARY AVAILABILITY SCHEDULE—NEW YORK

	Banks	Savings institutions
Local checks	[1] [2]3	[2]3
In-state nonlocal checks	4	[4]5
Out-of-state nonlock checks	[2] [4]7	[4]7
Deposits at Nonproprietary ATMs Treasury checks, state/local gov't checks, on us in-state checks	3	3
Local checks (same city)	4	5
In-state checks	5	6
All other deposits	7	7

[1] Withdrawals by cash or similar means for local checks cleared outside the same *check clearing facility* (i.e., outside a check clearinghouse or the Federal Reserve) may be delayed in accordance with § 229.11(c).

[2] Withdrawals by cash or similar means for local checks cleared outside a *check clearinghouse* may be delayed in accordance with § 229.11(c).

[3] In order to extend the hold beyond the availability schedule, a state exception as well as a federal exception must be applicable. In no case can the hold be extended beyond that permitted under Regulation CC.

[4] Schedule is subject to reductions for certain nonlocal checks. See Appendix B–1 of Regulation CC.

PERMANENT AVAILABILITY SCHEDULE—NEW YORK

	Banks	Savings institutions
Local checks	[1]2	[1]2
In-state nonlocal checks	[2] [3]4	[2] [3]5
Out-of-state nonlock checks	[1]5	[1]5

[1] Withdrawals by cash or similar means may be delayed in accordance with § 229.12(d).

[2] Schedule is subject to reductions for certain nonlocal checks. See Appendix B–2 of Regulation CC.

[3] In order to extend the hold beyond the availability schedule, a state exception must be applicable. To extend the hold beyond the applicable federal availability schedule, a federal exception must also be applicable. In no case can the hold be extended beyond that permitted under Regulation CC.

Exceptions to the Availability Schedules. New York law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions (Part 34.4). In all instances where the federal availability schedule preempts the state availability schedule, the state exceptions do not apply. In such cases, the depositary bank may only invoke the federal exceptions. For those deposits to which the state availability schedule applies, however, the depositary bank may invoke a state exception and place a hold on the deposit up to the federal availability schedule limit for that type of deposit. Once the federal availability schedule limit is reached, the depositary bank may further extend the hold under any of the federal exceptions that apply to that deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by the law, it must give notice of the extended hold to its customer in accordance with § 229.13(g) of Regulation CC.

Variation by Agreement. Part 34.4(f) provides that the New York regulation does not prohibit a depositary bank from agreeing with its customer to make funds available for withdrawal in a longer period of time than prescribed in New York law because of special circumstances, "provided that such agreement is not contained in a preprinted form and is not a usual, regular business practice of the depositary bank." The variation by agreement provision would remain in effect for those provisions of New York law that supersede Regulation CC; however, a depositary bank could not agree with its customer to extend availability beyond the times permitted under Regulation CC.

Business Day/Banking Day. New York law requires availability within a specified number of "business days" following the "business day" of deposit. "Business day" is defined as any day excluding Saturdays, Sundays, and legal holidays (Part 34.2(c)). Legal holiday is not further defined in the regulation. The New York definition of business day is preempted by the Regulation CC definitions of "business day" and "banking day".

Part 34.2(c) also provides that "for electronic branches, opening and closing times shall be the hours of the closest manned office of the depositary bank." The Commentary to the Regulation CC definition of "banking day" provides that "deposits at an ATM are considered made at the branch holding the account into which the deposit is made for purposes of determining the day of deposit." The Regulation CC rule to determine what constitutes a banking day for ATM deposits preempts the New York provision.

Disclosures

Part 34.5 of New York law requires depositary banks to disclose their funds availability policy to their customers, and to post their availability schedule in each branch location. The purposes of the disclosures concerning funds availability appear to be met by the disclosure requirements in Regulation CC. Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts". Thus, Part 34.5 of New York law is preempted by Regulation CC, to the extend that it applies to "accounts", as defined by Regulation CC. The New York disclosure rules would continue to apply to savings, time, and other accounts not governed by Regulation CC disclosure requirements.

By order of the Board of Governors of the Federal Reserve System, August 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–19146 Filed 8–23–88; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0644]

Regulation CC; Availability of Funds and Collection of Checks; Preemption Determinations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretations.

SUMMARY: The Board is publishing for comment proposed official Board interpretations concerning preemption determinations under its Regulation CC, Availability of Funds and Collection of Checks (12 CFR Part 229), with respect to the laws of California, Connecticut, Massachusetts, New Mexico, and Rhode Island.

DATES: Comments must be submitted on or before September 20, 1988.

ADDRESSES: Comments, which should refer to Docket No. R-0644, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. All comments received at the above address will be made available to the public, and may be inspected at the Freedom of Information Office, Room B-1122 between 8:45 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel, Legal Division (202/452-3625) or Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3874); for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (12 U.S.C. 4001-4010). The regulation requires banks to make funds available to their customers within specified time frames and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1989, that provides for a shorter hold for a category of checks than is provided under federal law will supersede the federal provision. Provisions of state law governing funds availability that do not supersede federal law are considered inconsistent, and are thus preempted by Regulation CC. Thus, a state law that permits a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC is preempted by that regulation. In addition, state disclosure or notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations as to whether state law related to the availability of funds is preempted by federal law. These determinations would be provided upon the request of a state, bank, or other interested party.

Discussion

The Board is publishing, for a 30-day comment period, its interpretations of Regulation CC concerning preemption determinations with respect to the laws of California, Connecticut, Massachusetts, New Mexico, and Rhode Island.

Preemption of State Schedules and Exceptions. State law availability schedules often differ from the Regulation CC schedules with respect both to the categories of checks to which the schedules apply and the time periods within which funds must be available for withdrawal. State availability schedules which provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the Act and Regulation CC. Under the Board's proposed interpretations, the state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit that is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit can be further extended under the federal exception in accordance with Regulation CC. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used. This approach provides a preemption standard that can be more readily applied by banks in states that have not received preemption determinations from the Board.

Treatment of State Schedules that Provide for the Same Availability as the Federal Schedules. According to the provisions of the Act, only inconsistent state law is preempted by the Act and Regulation CC. The Board has determined that a state law requiring availability in the same time periods as required by federal law is not inconsistent with Regulation CC. Some states have incorporated the federal schedules into their state law to facilitate bank compliance with a single standard while retaining state enforcement of these requirements. Under the Board's interpretations, the only state schedules that are preempted are those that provide for a longer hold than required under Regulation CC; state schedules that provide for availability within the same time periods would not be preempted.

Treatment of Deposits not Subject to Regulation CC. Certain state laws govern the availability of deposits that are not covered by the Regulation CC schedules. For example, the availability schedules of several states apply to "items" deposited to an account. The term "item" may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. The Board believes that while funds availability laws would be simpler if state laws applicable to items that are not checks were preempted, states have a legitimate interest in regulating deposits of these items, and state laws should not be preempted with respect to these items. The Board's proposed interpretations provide that deposits not covered by Regulation CC continue to be subject to the state law.

Connecticut. Connecticut law provides availability schedules for deposits of on us checks, in-state checks, and out-of-state checks. The state law also provides certain exceptions to those schedules. Generally, the state schedules and exceptions allow longer hold periods than the federal schedules and Regulation CC will preempt; however, out-of-state nonlocal checks will continue to be governed by the shorter state schedule. The state schedules will also continue to apply to items such as nonnegotiable instruments that are not covered by Regulation CC. In addition, the Connecticut law, including disclosure requirements, will continue to apply to accounts, such as savings and time accounts, not subject to Regulation CC.

Massachusetts. Massachusetts enacted a law in July 1988 repealing its previous funds availability statute and replacing it with a requirement that institutions make funds available for withdrawal and disclose their funds availability policy in accordance with the Expedited Funds Availability Act and Regulation CC. Massachusetts law provides, however, that all in-state checks are considered to be local, even though the state is included in two check processing regions. Thus, the state law generally incorporates the federal law, except that state law supersedes Regulation CC to the extent that in-state nonlocal checks must be made available for withdrawal in accordance with the local schedule in Regulation CC.

Rhode Island. Rhode Island law requires depository institutions to make funds deposited by check in a personal transaction account available for withdrawal within certain specific periods. Different schedules apply to deposits in commercial banks and thrift institutions. The Rhode Island statute also provides exceptions to the schedules and requires institutions to make certain disclosures to their customers. No portion of the Rhode Island availability schedule supersedes the federal law.

New Mexico. New Mexico's statute applies only to retail accounts and does not apply to certain instruments that are covered by Regulation CC; Regulation CC would therefore apply to accounts or instruments not covered. New Mexico law, however, applies to time and savings accounts and is not preempted with respect to these accounts. New Mexico provides different availability schedules for checks payable by banks in the same municipality, for in-state checks, and for out-of-state checks. For certain categories of checks, the state schedule supersedes the federal. New Mexico law provides for certain exceptions to its availability schedules; these will continue to apply where the state schedule is not preempted by Regulation CC to the extent that the hold does not exceed the federal schedule for that category of check. An applicable federal exception can be invoked to extend a hold beyond the federal schedule.

California. California has different funds availability regulations governing (1) commercial banks, (2) savings and loan associations and savings banks, and (3) credit unions. The state schedules are generally longer than the Regulation CC schedules, and are thus preempted. For certain categories of checks, however, where the depository bank has a San Francisco or Los Angeles city routing number, the state schedule is shorter and thus supersedes the federal schedule. With respect to items that must be given next-day availability, the state rules provide fewer conditions to the next-day availability requirement (e.g., no special deposit slips are required). Therefore, the state rules supersede the federal for these categories of checks. The state exceptions can be invoked only for those deposits subject to state schedules that are shorter than or equal to the federal schedule and then only up to the federal schedule. An applicable federal exception may be used to extend the hold beyond the federal schedule. The state disclosure rules are preempted by the Regulation CC rules for all accounts subject to Regulation CC.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. Appendix F is amended by adding preemption determinations for the states of California, Connecticut, Massachusetts, New Mexico, and Rhode Island alphabetically to read as follows:

Appendix F—Official Board Interpretations

* * * * *

California

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B (and in connection therewith, Subpart A) of Regulation CC, preempt the provisions of California law concerning availability of funds. This preemption determination specifies those provisions of the California funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

California has three separate sets of regulations establishing maximum availability schedules. The regulations applicable to commercial banks (Cal. Admin. Code tit. 10, sections 10.190400–10.190407) were promulgated by the Superintendent of Banks. The regulations applicable to savings banks and savings and loan associations (Cal. Admin. Code tit. 10, sections 106.200–106.205) were adopted by the Savings and Loan Commissioner. The regulations applicable to credit unions (Cal. Admin. Code tit. 10, section 901) were adopted by the Commissioner of Corporations.

All the regulations were adopted pursuant to California Financial Code section 866.5 and California Commercial Code section 4213(4)(a), under which the appropriate state regulatory agency for each depository institution must issue administrative regulations to define a reasonable time for permitting customers to draw on items received for deposit in the customer's account. California Financial Code section 867 also establishes availability periods for funds deposited by cashier's check, certified check, teller's check, or depository check under certain circumstances. Finally, California Financial Code section 866.2 establishes disclosure requirements.

Different availability schedules apply to (1) California state chartered commercial banks, national banks located in California, and branch offices of foreign banks located in California (collectively referred to as "commercial banks"), (2) savings banks and savings and loan institutions (collectively referred to as "S&Ls"), and (3) state and federally chartered credit unions that maintain offices in California for the acceptance of deposits ("credit unions").

The following table summarizes the availability schedules under California law for all checks other than those that must be given next-day availability. The time periods are stated in terms of availability for withdrawal not later than Xth business day following the banking day of deposit to facilitate comparison with Regulation CC, even though state regulations refer to availability at the start of the business day subsequent to the number of days specified in the regulation.

Commercial Banks:

If the depository bank has a routing number of 1210 (San Francisco city:)

Paying Bank	Availability
1210 routing number	3rd
Other California commercial bank	4th
Out-of-state commercial bank	9th
California thrift (S&L or CU)	5th
Out-of-state thrift (S&L or CU)	10th

If the depository bank has a routing number of 1220 (Los Angeles city), and the paying bank also has a routing number of 1220, third day availability; for other paying banks, the above figures (fourth day to tenth day) are the same.

If the depositary bank has a routing number other than 1210 or 1220:

Paying bank	Availability
California commercial bank	5th
Out-of-state commercial bank	10th
California thrift (S&L or CU)	6th
Out-of-state thrift (S&L or CU)	11th

S&Ls and Credit Unions:

Paying bank	Availability	
	S&Ls	CUs
California institution	5th	6th
Out-of-state institution	11th	10th

For all institutions, "on us" checks (i.e., checks payable by an office of the depositary bank) must be made available on the second business day after the day of deposit. Unlike federal law, the California regulations make no distinction between "on us" checks payable by an office of the paying bank located in the same state as the depositary bank and "on us" checks payable by paying bank offices located in other states.

For deposits at nonproprietary automated teller machines (ATMs), one day is added to all of the above schedules for banks and S&Ls, but there is no comparable provision for credit unions.

Next-day items. Banks, S&Ls, and credit unions must give next-day availability to items drawn with a face amount of $100 or less. The regulations for banks, S&Ls, and credit unions differ as to other next-day items. For banks, next-day availability is required for items payable by the U.S. Treasury, items drawn by the State of California or any department, agency, or political subdivision thereof, and items (other than money orders) drawn by an insured thrift institution or an insured bank on itself. In each case the item must be indorsed by the payee and deposited into the payee's deposit account.

S&L regulations require next-day availability for first-indorsed items payable by the U.S. Treasury and first-indorsed items payable by the State of California or any department, agency, or political subdivision thereof. Credit union regulations require next-day availability for first-indorsed items payable by the U.S. Treasury, first-indorsed items drawn by the State of California or any political subdivision thereof, and first-indorsed items issued by a depository institution whose accounts are insured by the FDIC, the FSLIC, or the NCUA.

California law, unlike federal law, does not provide that institutions may require special deposit slips for certain next-day items.

Coverage

The California law and regulations govern the availability of funds to "demand deposits, negotiable order of withdrawal draft accounts, savings deposits subject to automatic transfers, share draft accounts, and all savings deposits and share accounts, other than time deposits." California Financial Code section 866(b). The federal preemption of state funds availability laws only applies to "accounts" subject to Regulation CC, which generally includes transaction accounts. Thus, California funds availability law continues to apply to deposits in savings and other accounts (such as accounts in which the account-holder is another bank) that are not "accounts" under Regulation CC. (Note, however, that under § 229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

The California law applies to any "item" (California Financial Code section 866.5 and California Commercial Code section 4213(4)(a)). The California Commercial Code defines "item" to mean "any instrument for the payment of money even though it is not negotiable * * *." (Cal. Com. Code section 4104(g).) This term is broader in scope than the definition of "check" in the Expedited Funds Availability Act and Regulation CC. The state regulations limit the statutory definition of "item", however, albeit somewhat inconsistently, as noted in the table below.

INSTRUMENTS INCLUDED IN DEFINITION OF ITEM

Commercial banks	S&Ls	Credit Unions
Checks	Checks	Checks
NOW drafts	NOW drafts	NOW drafts
Share drafts	Share drafts	Share drafts
Traveler's checks (Bank issued).	Traveler's checks (No limit).	
Money orders (Bank issued).	Money orders (No limit).	Money orders (No limit)
	Warrants	Warrants
	Cashier's checks.	

As limited by the state regulations, the term "item" contains only instruments that are "checks" as defined in § 229.2(k) of Regulation CC. To the extent that Regulation CC applies to instruments defined as "checks" under § 229.2(k) that are not "items" under state law (e.g., Postal Service money orders are not considered "items" under the commercial bank regulation), Regulation CC continues to apply to these instruments.

Availability Schedules

The following provisions of California law provide for a shorter hold for certain categories of checks than is provided under Regulation CC, and supersede the Regulation CC availability requirements.

1. Where both the depositary bank and the paying bank have routing numbers beginning 1210 (San Francisco city) or 1220 (Los Angeles city) and are not participants in the same check clearinghouse association, funds must be available no later than the start of business on the third business day after the banking day of deposit. Thus, these checks are not subject to the federal time period adjustment for withdrawal by cash or similar means.

2. Where the depositary bank has a routing number beginning with 1210, and the paying bank is located in that portion of California served by the Los Angeles branch of the San Francisco Federal Reserve Bank, the depositary bank must make funds available no later than the fourth business day after the banking day of deposit unless the paying bank is an S&L or credit union, in which case funds must be available by the fifth business day.

3. Where the depositary bank has a routing number beginning with 1220 and the paying bank is located in that portion of California served by the Head Office of the San Francisco Federal Reserve Bank, the depositary bank must make funds available no later than the fourth business day after the banking day of deposit unless the paying bank is an S&L or a credit union, in which case funds must be made available by the fifth business day.

4. Where the depositary bank is a commercial bank (other than one with a 1210 or 1220 routing number) and the paying bank is a commercial bank located in California but in a different check processing region than the depositary bank, the funds must be available no later than the fourth business day following the day of deposit.

5. Where the depositary bank is a commercial bank (other than one with 1210 or a 1220 routing number) and the paying bank is an S&L or a credit union located in California but in a different check processing region than the depositary bank, the funds must be made available by the fifth business day following the day of deposit.

6. Where the depositary bank is an S&L and the paying bank is located in California but in a different check processing region than the depositary bank, the funds must be available by the fifth business day after the day of deposit.

7. If the depositary bank is a credit union and the paying bank is located in California but in a different check processing region than the depositary bank, the funds must be made available no later than the sixth business day after the day of deposit, except where the check is subject to fifth day availability under Appendix B–1 of Regulation CC.

Permanent Schedule. Under Regulation CC, as of September 1, 1990, nonlocal checks must be made available by the opening of business on the fifth business day following the banking day of deposit, with the time period adjustment for withdrawal by cash or similar means. State law requires availability for some checks on the fourth day, and for other checks on the fifth day, without any time period adjustments, and the state law will therefore supersede the federal law for such checks. The state availability schedules supersede the federal schedule where the depositary bank is a commercial bank and the paying bank is a California commercial bank located in a different check processing region than the depositary bank, in which case funds must be available no later than the fourth business day following the day of deposit.

Next-Day Availability

(1) Commercial banks are required to give next-day availability for items (other than money orders) drawn by an insured institution on itself, indorsed by the payee, and deposited into the payee's account. Credit unions are required to give next-day availability for first-indorsed items issued by a federally insured institution. There is no comparable requirement for S&Ls. Accordingly:

(a) California law supersedes Regulation CC to the extent that it requires commercial banks to provide next-day availability for cashier's checks that are not issued for remittance purposes, and to the extent that it does not condition next-day availability on

receipt at a staffed teller station or use of a special deposit slip.

(b) Under the California rule, credit unions must provide next-day availability to first-indorsed items issued by any federally-insured institution. This is broader than the rule of Regulation CC, which requires next-day availability only for cashier's checks and teller's checks issued for remittance purposes. State law supersedes the federal rule with respect to availability provided these checks issued for other than remittance purposes. In addition, California law supersedes the federal law with respect to cashier's and teller's checks issued by federally insured institutions, since state law does not condition next-day availability on receipt at a staffed teller station, or use of a special deposit slip.

(2) Commercial banks, S&Ls, and credit unions in California are all required to give next-day availability to items drawn by the State of California or any of its departments, agencies, or political subdivisions. California law supersedes the federal law, since the state law does not condition next-day availability on receipt at a staffed teller station, or use of a special deposit slip.

(3) For U.S. Treasury, State of California, and "depositary" checks, commercial banks are required to give next-day availability only for those items that are indorsed by "*the* payee and deposited into *the* payee's deposit account." (Emphasis added.) Regulation CC requires only that these checks be deposited into "an account held by a payee of the check." The California rule for commercial banks requires identity of parties; if a check is payable to A and B, it must be deposited into an account held by A *and* B before the bank is required to give next-day availability. The federal rule does not require identity of interest; thus, a check payable to A and B will be entitled to next-day availability if deposited to A's account. In this case, Regulation CC preempts the state rule.

The S&L and credit union rules, however, require only that the check be "first-indorsed;" there is no requirement that the depositor be a payee, only that a second indorsement not be necessary to transfer title to a subsequent transferee. For S&Ls and credit unions, the state rule may provide for a faster availability for these instruments than are provided under the federal rule. The state S&L and credit union rules supersede Regulation CC to the extent that they require availability in a shorter time than required under Regulation CC.

For deposits at nonproprietary ATMs, state law applicable to commercial banks and S&Ls allows the depositary bank to add one business day to the otherwise applicable schedules. No adjustment of the schedules for deposits at nonproprietary ATMs is provided for credit unions. Regulation CC, by contrast, allows all checks deposited at nonproprietary ATMs under the temporary schedule to be held until the seventh business day following the banking day of deposit. Thus, state schedules for deposits at nonproprietary ATMs supersede the federal schedule to the extent that state law requires availability in less than seven business days following deposit.

Exceptions to the Availability Schedules. California law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions. The exceptions for commercial banks, S&Ls, and credit unions are essentially identical.

In all instances where the federal availability schedule preempts the state availability schedule, the state exceptions do not apply. In such cases, the depositary bank may only invoke a federal exception. For those deposits to which the state availability schedule applies, however, the depositary bank may invoke a state exception and place a hold on the deposit up to the federal availability schedule limit for that type of deposit. Once the federal availability schedule limit is reached, the depositary bank may further extend the hold under any of the federal exceptions that apply to that deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with § 229.13(g) of Regulation CC.

Business Day/Banking Day

The definitions of "banking day" and "business day" in the California regulations are preempted by the Regulation CC definitions of those terms. Thus, for determining the permissible hold under the California schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

Disclosures

California law (Cal. Fin. Code section 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires a depository institution to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account, if the funds may not be immediately available for withdrawal.

Section 229.20(c)(2) provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. The purposes of the disclosures concerning funds availability appear to be met by the disclosure requirements in Regulation CC. California Financial Code § 866.2 is preempted, but only to the extent that it applies to "accounts," as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

Connecticut

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A of Regulation CC, preempt provisions of Connecticut law relating to the availability of funds. This preemption determination specifies those provisions of the Connecticut funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1987, Connecticut amended its statute governing funds availability (Conn. Gen. Stat. section 36–9v), which requires Connecticut depository institutions to make funds deposited in a checking, time, interest, or savings account available for withdrawal within specified periods.

Generally, the Connecticut statute provides that items deposited in a checking, time, interest, or savings account at a depository institution must be available for withdrawal on the second business day after deposit if payable by the depositary bank; the fourth business day after deposit if payable by a Connecticut depository institution; and the sixth business day after deposit if payable by a depository institution not located in Connecticut. Exceptions to the schedules are provided for items received for deposit for the purpose of opening an account and for items that the depositary bank has reason to believe will not clear. The longer hold period for items subject to an exception is undefined. The Connecticut statute also requires availability policy disclosures to depositors in the form of written notices and notices posted conspicuously at each branch.

Coverage

The Connecticut statute governs the availability of funds deposited in savings and time accounts, as well as "accounts" as defined in § 229.2(a) of Regulation CC. The federal preemption of state funds availability requirements only applies to "accounts" subject to Regulation CC, which generally consist of transaction accounts. Thus, the Connecticut availability schedules, exceptions, and disclosure requirements continue to apply to deposits in time and savings accounts that are not "accounts" under Regulation CC. (Note, however, that under § 229.19(e) or Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.) The Connecticut statute would also continue to apply to transaction accounts subject to the state law, but not covered by Regulation CC, such as those where the account holder is another bank.

The Connecticut statute applies to "items" deposited to accounts. This term encompasses instruments that are not defined as "checks" in Regulation CC (§ 229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Connecticut law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions. Certain other items, which are "checks" under Regulation CC but are not covered by the Connecticut law, such as payable through drafts payable by a

nondepository institution, would be subject to the provisions of Regulation CC.

Availability Schedules

Temporary Schedule. Connecticut law provides that certain checks that are nonlocal under Regulation CC must be available in a shorter time (sixth business day after deposit for checks payable by depository institutions not located in Connecticut) than under the federal regulation (seventh business day after deposit under the temporary schedule for nonlocal checks). Accordingly, the Connecticut law preempts Regulation CC with respect to nonlocal checks (other than checks covered by Appendix B–1) deposited in "accounts" until the federal permanent availability schedules take effect on September 1, 1990.

The Connecticut statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the extent that the Connecticut schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Exceptions to the Availability Schedule. The Connecticut law provides exceptions for items received for deposit for the purpose of opening new accounts and for items that the depositary bank has reason to believe will not clear. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (i.e., nonlocal out-of-state checks under the temporary schedule), the state exemptions may be used to extend the state availability schedule (of six business days) to meet the Federal availability schedule (of seven business days under the temporary schedule). Once the deposit is held up to the federal availability schedule limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with § 229.13(g) of Regulation CC.

Disclosures

The Connecticut statute (Conn. Gen. Stat. section 36–9d(b)) requires written notice to depositors of an institution's check hold limitation policies and requires a notice to be posted in each branch. The purposes of the disclosures concerning funds availability appear to be met by the disclosure requirements in Regulation CC.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" (§ 229.20(c)(2)). Thus, the Connecticut statute is preempted by Regulation CC to the extent that these disclosure provisions apply to "accounts" as defined by Regulation CC. The Connecticut disclosure rules would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

* * * * *

Massachusetts

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A of Regulation CC, preempt provisions of Massachusetts law relating to the availability of funds. This preemption determination specifies those provisions of the Massachusetts funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1968, Massachusetts amended its statute governing funds availability (Mass. Gen. L. ch. 167D, section 35), to require Massachusetts banking institutions to make funds available for withdrawal and disclose their availability policies in accordance with the Expedited Funds Availability Act and Regulation CC. The Massachusetts law, however, provides that "local originating depository institution" is to be defined as any originating depository institution located in the Commonwealth.

Coverage

The Massachusetts statute governs the availability of funds deposited in "any demand deposit, negotiable order of withdrawal account, savings deposit, share account or other asset account." This coverage is broader than that of Regulation CC, which applies to "accounts" as defined in § 229.2(a). Regulation CC does not affect state law as it applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under § 229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

Availability Schedules

The Massachusetts definition of "local originating depository institution" (local paying bank in Regulation CC terminology) requires that in-state checks that are nonlocal checks under Regulation CC be made available in accordance with the Regulation CC local schedule. The Massachusetts law supersedes Regulation CC under the temporary and permanent schedule with respect to nonlocal checks payable by banks located in Massachusetts and deposited into "accounts." Regulation CC preempts the Massachusetts law, however to the extent the state law does not define as "local originating depository institution" banks located outside of Massachusetts but in the same check processing region as the paying bank.

Disclosures

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts (§ 229.20(c)(2)). Thus, the Massachusetts statute is preempted by Regulation CC with respect to disclosure of a bank's availability policy with respect to "accounts" as defined in Regulation CC. The Massachusetts disclosure rules (which incorporate the federal rules) would apply to accounts not governed by the Regulation CC disclosure requirements.

New Mexico

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B and, in connection therewith, Subpart A of Regulation CC, preempt provisions of New Mexico law relating to the availability of funds. This preemption determination specifies those provisions in the New Mexico funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1987, New Mexico adopted a statute governing funds availability (N.M. Stat. Ann. Section 58–3–4 (1978, Supp. 1987), which requires New Mexico financial institutions to make funds deposited into retail accounts available for withdrawal after a reasonable period of time. Section 4A of the New Mexico statute establishes the time frames within which financial institutions must make funds deposited by checks or share drafts available for withdrawal if the checks or share drafts are drawn and payable on demand at other financial institutions located in the continental United States. Section 4B of the statute defines terms and specifies availability for checks deposited in branch offices of certain financial institutions, section 4C specifies exceptions to the availability schedules, and section 4D specifies damages recoverable for a violation of this statute.

Generally, the New Mexico law provides that checks and share drafts, other than "on us" checks, drawn and payable on demand at a financial institution and deposited into an individual or household account must be made available for withdrawal at the beginning of the third business day after deposit for checks or share drafts and payable on demand at financial institutions located within the same municipality as the depository bank, and for checks or share drafts deposited in a branch office of a financial institution if the main office of that financial institution is located in the same municipality as the depository bank. Other in-state checks or share drafts must be made available at the opening of the fourth day after deposit. Checks or share drafts drawn and payable on demand at any other financial institution located within continental United States must be made available at the beginning of the sixth business day after deposit.

Exceptions to the schedules are provided for documentary drafts, accounts which have been open less than 60 days, checks or share drafts with two-party indorsements, checks

or share drafts in an amount greater than the average balance in the account over the last 12 months or the average balance since the account was opened, whichever is less, and checks or share drafts deposited in an account on which six or more nonsufficient fund checks or share drafts were presented in the prior six month period.

Coverage

The New Mexico statute is limited to retail accounts and does not apply to business accounts. No portion of the New Mexico statute supersedes Regulation CC for any "account" as that term is defined in Regulation CC that is not held by an individual or household. The New Mexico statute applies to time, savings and other deposits that are not "accounts" under Regulation CC. Regulation CC does not affect the New Mexico statute to the extent that it applies to time and savings deposits. (Note, however, that under § 229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

The New Mexico statute is limited to checks and share drafts payable by financial institutions. The term "financial institution" corresponds generally to the term "bank" in Regulation CC. The terms "checks" and "share drafts" are narrower than the term "check" in Regulation CC, because they do not appear to apply to Treasury checks, checks payable by state or local governments (i.e., warrants), checks payable by Federal Reserve Banks or Federal Home Loan Banks, or U.S. Postal Service money orders. No portion of the New Mexico statute supersedes Regulation CC with respect to these instruments.

Availability Schedules

Temporary Schedules. The New Mexico statute requires checks and share drafts drawn and payable on demand at an office of a financial institution located in the same municipality as the depositary bank and checks and share drafts drawn and payable on demand at offices of financial institutions located in New Mexico whose main office is located in the same municipality as the depositary bank to be made available at the opening of the third business day after deposit. (N.M. Stat. Ann. section 58–3–4A(1)).[1] New Mexico is served by two Federal Reserve check processing regions and, therefore, while most checks and share drafts subject to this schedule will be local under Regulation CC, some checks and share drafts covered by this schedule may be nonlocal under Regulation CC. Under the temporary schedule in Regulation CC, the proceeds of local checks must be available for withdrawal at the start of the third business day after deposit but Regulation CC permits a time period adjustment for withdrawals by cash and similar means which permits a depository bank to delay the time it must make funds available for deposits of local checks cleared outside a check clearinghouse arrangement. Under the temporary schedule in Regulation CC, the proceeds on nonlocal checks must be made available for withdrawal at the opening of the seventh business day following deposit. No time period adjustment is provided. New Mexico law supersedes this time period adjustment for local checks under the temporary schedule and for nonlocal checks coming within the portion of the New Mexico schedule calling for availability on the third banking day after deposit.

The New Mexico statute calls for the proceeds of checks and share drafts to be made available at the opening of the fifth day after deposit for checks and share drafts drawn and payable on demand at other offices of financial institutions located in New Mexico. (N.M. Stat. Ann. section 58–3–4A(2)). To the extent that this schedule applies to nonlocal checks as defined by Regulation CC, it supersedes the temporary schedules in Regulation CC. The New Mexico statute also provides for availability of checks and share drafts drawn and payable on demand at financial institutions located in the continental United States, excluding Alaska, Hawaii, Puerto Rico, and the United States Virgin Islands, at the opening of the seventh banking day after deposit. (N.M. Stat. Ann section 58–3–4A(3)). This schedule is the same as Regulation CC with respect to nonlocal checks.

The New Mexico statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the extent that the New Mexico schedules described above provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Permanent Schedules. Under the permanent schedule in Regulation CC, the proceeds of checks must be made available at the opening of the second business day after deposit for local checks and the fifth business day after deposit for nonlocal checks. Both of these schedules are subject to time period adjustments for withdrawal by cash or similar means. The New Mexico statute supersedes the permanent schedules in Regulation CC for nonlocal checks subject to the third day withdrawal requirement (N.M. Stat. Ann section 58–3–4A(1)) and the time period adjustment for nonlocal checks subject to the fifth day withdrawal requirement (N.M. Stat. Ann section 58–3–4A(2)) of the New Mexico statute.

Exceptions to Availability Schedules. The New Mexico statute provides for exceptions to the state schedules for: (1) Documentary drafts; (2) accounts opened less than 60 days; (3) checks or share drafts with two-party indorsements; (4) a check or share draft in a face amount greater than the average balance of the depositor's account for the prior 12 months or the average balance since the account was opened, whichever is less; and (5) a check or share draft deposited in an account on which six or more nonsufficient fund checks or share drafts were presented for payment in the prior six month period.

The state exceptions will continue to apply where the state schedules are not preempted by Regulation CC but holds may be placed under the state schedules only up to the limits permitted by the Regulation CC schedules. Where the Regulation CC schedules are subject to exceptions, holds placed on checks under the state schedules that would also be permissible under Regulation CC may be continued up to the limit on holds under Regulation CC. Notice of holds as required by Regulation CC (§ 229.13(g)) must be given whenever a hold is placed so that availability is extended beyond the applicable state or federal schedule.

Business Day/Banking Day

Under New Mexico law a bank is authorized to establish its own banking days except that it must observe certain holidays (N.M. Stat. Ann. section 58–5–6 and 58–5–7). This definition is preempted by the Regulation CC definitions of "business day" and "banking day."

* * * * *

Rhode Island

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A of Regulation CC, supersede provisions of Rhode Island law relating to the availability of funds. This preemption determination specifies those provisions in the Rhode Island funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1986, Rhode Island adopted a statute governing funds availability (R.I. Gen. Laws tit. 6A, section 4–601 through 4–608), which requires Rhode Island depository institutions to make checks deposited in a personal transaction account available for withdrawal within certain specific periods. Different schedules apply to deposits in commercial banks and thrift institutions (mutual savings banks, savings banks, savings and loan institutions, and credit unions). Rhode Island law requires that funds be made available at the start of the business day subsequent to a specified number of days. To simplify the comparison of the Rhode Island and federal laws, in the following table the Board has converted the time periods used in the Rhode Island law to the method used in Regulation CC; that is, the number of the business day following the day of deposit when funds are available for withdrawal.

[1] It is not clear from the New Mexico statute whether days stated in the schedules include the day of deposit. For the purposes of this interpretation it is assumed that the stated days do include the day of deposit. References to days included in the New Mexico schedules have also been revised to reflect Regulation CC terminology.

	Commercial banks	Thrift institutions
Treasury checks, Rhode Island Government checks, first indorsed	2nd	2nd
In-state, cashier's checks less than $2,500	2nd	2nd
On-us checks	2nd	3rd
In-state clearing house checks	3rd	4th
In-state nonclearing house checks	5th	6th
1st or 2nd Federal Reserve district checks (out-of-state)	7th	7th
Other checks	9th	10th

The Rhode Island statute also provides restrictions and exceptions to the schedules and requires institutions to make certain disclosures to their customers.

Coverage

The Rhode Island statute governs the availability of funds deposited in "personal transaction accounts", a term not defined in the statute. The federal law would continue to apply to "accounts", as defined in § 229.2(a), that are not "personal transaction accounts."

The Rhode Island statute applies to "items," and defines these as checks, negotiable orders of withdrawal, or money orders. The Board interprets the definition of item to be consistent with the definition of "check" in Regulation CC (§ 229.2(k)).

Availability Schedules

Temporary Schedule. Rhode Island law requires availability for certain checks in the same time as does Regulation CC. Thus, in these instances, the federal law does not preempt the state law. Rhode Island law requires commercial banks (but not thrift institutions) to make checks payable by a depository institution that uses the same in-state clearing facility as the depositary bank available for withdrawal on the third business day following the day of the deposit. This is the same time period contained in Regulation CC for local checks payable by a bank that is a member of the same local clearing house as the depositary bank. (The Board proposes to view the definition of "the same in-state clearing facility" as have the same meaning as the term "the same check clearinghouse association" in the federal law's provision that allows banks to limit the customer's ability to withdraw cash on the third business day if the local check being deposited is payable by a bank that is not a member of the same local clearinghouse as the depositary bank.) Since the Rhode Island law and the federal law both require the funds to be made available no later than the third business day, the state law is not preempted by the federal law.

The Rhode Island law also requires commercial banks and savings institutions to make checks payable by a depository institution located in the First or Second Federal Reserve District (outside of Rhode Island) available on the seventh business day after deposit. To the extent that this provision applies to checks payable by institutions located outside the Boston check processing region, it provides for availability in the same time as required for nonlocal checks under the temporary federal schedule, and thus is not preempted by the federal law.

The Rhode Island statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the extent that the Rhode Island schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

All other provisions of the Rhode Island law dealing with the times funds must be available for withdrawal are preempted by the federal law because the federal law requires availability in a shorter time.

Permanent Schedule. All provisions of the Rhode Island law regarding availability of deposits are preempted by the federal law under the permanent federal schedule. The availability times established by Rhode Island law will in all situations be longer than the times allowed under federal law.

Exceptions to the Availability Schedules. The Rhode Island law contains exceptions for reason to doubt collectibility or ability of the depositor to reimburse, for new accounts, for large checks, and for foreign checks. Generally, the state exceptions will apply to portions of the state law that are not preempted by Regulation CC. In these cases, holds may be placed under state law up to the federal schedule. Holds may be placed on these checks beyond the federal schedule where federal exceptions apply. Under the Rhode Island law, a deposit subject to the portion of the state schedule that is the same as the federal schedule must be subject to both a state and a federal exception, if the hold is extended beyond the schedule.

Business Day/Banking Day

The Rhode Island statute defines "business day" as excluding Saturday, Sunday, and legal holidays. This definition is preempted by the Regulation CC definitions of "business day" and "banking day".

Disclosures

The Rhode Island statute requires written notice to depositors of an institution's check hold limitation policies and requires a notice on deposit slips. The purpose of the disclosures concerning funds availability appear to be met by the disclosure requirements in Regulation CC. Regulation CC preempts the Rhode Island disclosure requirements concerning funds availability.

By order of the Board of Governors of the Federal Reserve System, August 18, 1988.

William W. Wiles,

Secretary of the Board.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873, and 890

Federal Employees Group Life Insurance and Health Benefits Programs; Coverage After Retirement Under FERS

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a regulation to implement amendments to the Federal Employees Health Benefits (FEHB) law enacted by Pub. L. 99–335, as amended, which established the Federal Employees Retirement System (FERS). This regulation describes the conditions under which individuals entitled to immediate or survivor annuities and lump sum death benefits under FERS and former spouses entitled to annuity payments, or a portion of a retiree's annuity, under FERS may receive FEHB coverage. The regulation also allows FERS annuitants to make direct payment of premiums for their FEHB and Federal Employees' Group Life Insurance (FEGLI) coverages when their annuity is too low to cover the insurance premiums.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: Section 207(1) of the Federal Employees Retirement System Act, Pub. L. 99–335, provides that individuals entitled to immediate or survivor annuities under FERS may continue their health benefits coverage, and former spouses entitled to annuity payments, or a portion of the retiree's annuity, under FERS may obtain health benefits coverage in the FEHB Program under the same conditions that apply to individuals under the Civil Service Retirement System (CSRS). Further, the Federal Employees' Retirement System Technical Corrections Act of 1986, Pub. L. 99–556, authorizes widows or widowers entitled to receive basic employee death benefits under FERS to continue health benefits coverage under the FEHB Program. FERS annuitants may also continue their life insurance coverage in retirement under the same conditions that apply to annuitants under CSRS. On October 22, 1987, OPM published an interim regulation in the **Federal Register** (52 FR 39493) that implements these provisions of law by describing the conditions and procedures for continuing health benefits coverage after retirement and after dissolution of marriage, and for paying FEHB and FEGLI premiums directly to the retirement system.

OPM received six written responses to the interim regulation, two from Government agencies, two from associations of Government employees, one from an association representing a number of FEHB Program plans, and one from an association of nurses. Telephone comments were also received from several Federal agencies. While the comments were favorable, four written comments and all of the telephone comments concerned one specific issue. Under the regulation, FERS annuitants, widows or widowers, and surviving children may pay health benefits and life insurance premiums directly to the retirement system when their premiums exceed the amount of their annuity. Direct premium payment is not available to annuitants, widows or widowers, or children under CSRS.

We are aware of the different treatment of FERS and CSRS annuitants in this regard. The FEHB law (5 U.S.C. 8906(d)) specifically addresses the mode of payment for CSRS annuities and mandates the withholding from a CSRS annuity. We continue to believe that this practice operates in the best interests of CSRS annuitants and especially of survivor annuitants.

In addition to fostering low-cost, efficient administration of the health insurance program, annuity withholding protects annuitants from the loss of coverage that would ensue from a failure on their part to forward the necessary premium amounts. For an elderly person, a loss of coverage could have serious financial consequences. The current requirement for annuity withholding guarantees continuous coverage, and in our opinion, avoids some potentially tragic situations.

The requirement for annuity withholding also encourages some retirees to select a higher survivor benefit amount to ensure coverage of the premium. While there is no minimum survivor annuity beneift under CSRS, FERS survivor annuities must be at least 25% of the retiree's annuity benefit. If direct premium payments were allowed, we could see an increased number of minimal CSRS survivor annuitants.

OPM would have preferred to apply the same requirement for annuity withholding consistently to FERS annuitants, but the design of the FERS law made such application infeasible.

The FERS law included certain survivors under the definition of "annuitant" for health insurance purposes even though they are not entitled to an annuity. These survivors receive only lump sum death benefits. Thus, since these survivors have no annuity from which premiums can be withheld but are eligible for health insurance, a different payment mechanism is required than under the CSRS.

Further, since some FERS benefits are offset by Social Security (disability and surviving children), there may be no FERS payment from which premiums can be withheld even though the individual has title to an annuity. For this group as well, a payment system independent of annuity is required.

Finally, FERS is a three-tiered system consisting of a basic annuity plan, a Thrift savings plan, and Social Security. Even though, in contrast to CSRS, FERS has a minimum survivor benefit of 25 percent of annuity, FERS basic annuity benefits (exclusive of Social Security and the Thrift plan) are significantly smaller than CSRS benefits. Hence, there is a greater likelihood, particularly with regard to survivor benefits, that the basic benefit would not be large enough to cover health insurance premiums.

Thus, the difference in annuity withholding between CSRS and FERS proceeds from the difference in the system themselves. The different systems simply drive different solutions to the same problem.

We have added language in §§ 870.601(c)(4), 871.501(d), 872.501(d) and 873.501(d) to bring them into

conformance with the changes made in the interim regulation.

Waiver of the 30-day Delay in Effective Date of Final Regulation

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The regulation is effective immediately because the entitlements conferred by Pub. L. 99–335 and Pub. L. 99–556 addressed in this regulation were effective beginning January 1, 1987.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it simply extends FEHB and FEGLI coverage to qualified annuitants.

List of Subjects

5 CFR Parts 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is adopting its interim rules published October 22, 1987 (52 FR 39493), as final rules with the following changes:

1. The authority citations for Parts 870, 871, 872, and 873 continue to read as follows:

Authority: 5 U.S.C. 8716.

PART 870—BASIC LIFE INSURANCE

2. Section 870.601 is amended by revising the last sentence in paragraph (c) (concluding text) to read as follows:

§ 870.601 Eligibility for life insurance.

* * * * *

(c) * * *

(4) * * *

* * * Except as provided in § 870.401(j) of this part, an election under paragraph (c)(3) or (c)(4) of this section is automatically canceled effective at the end of the month in which it is determined that annuity payments are insufficient to cover the deductions required by the election.

* * * * *

PART 871—STANDARD OPTIONAL LIFE INSURANCE

3. Section 871.501 is amended by revising paragraph (d) to read as follows:

§ 871.501 Termination and conversion of insurance.

* * * * *

(d) Except as provided in § 871.401(i), the standard optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation, or annuity after all other deductions, is insufficient to cover the full cost of the standard optional insurance.

* * * * *

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

4. Section 872.501 is amended by revising paragraph (d) to read as follows:

§ 872.501 Termination and conversion of insurance.

* * * * *

(d) Except as provided in § 872.401(i), the additional optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation, or annuity after all other deductions, is insufficient to cover the full cost of the additional optional insurance.

* * * * *

PART 873—FAMILY OPTIONAL LIFE INSURANCE

5. Section 873.501 is amended by revising paragraph (d) to read as follows:

§ 873.501 Termination and conversion of insurance.

* * * * *

(d) Except as provided in § 873.401(g), the family optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation, or annuity after all other deductions, is insufficient to cover the full cost of the family optional insurance.

* * * * *

[FR Doc. 88–19292 Filed 8–24–88; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 890

Federal Employees Health Benefits Program; Continuation of Coverage During Military Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its Federal Employees Health Benefits (FEHB) Program regulations to permit an employee or annuitant who enters the military on active duty or active duty for training to continue his or her FEHB enrollment for up to 12 months. OPM is taking this action to make the FEHB Program consistent with the Federal Employees' Group Life Insurance (FEGLI) Program.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Bob MacKinnon, (202) 632–1990.

SUPPLEMENTARY INFORMATION: Current FEHB regulations require an employing office to terminate the FEHB enrollment of an employee placed in leave without pay to enter the military on active duty or active duty for training in excess of 30 days. The regulations also apply to annuitants. On March 10, 1988, OPM published proposed regulations in the **Federal Register** (53 FR 7763) that would permit an employee to continue his or her FEHB coverage while in leave without pay for active duty military service for up to 12 months, unless he/she elects to have the enrollment terminated as of the day before entering active duty. A similar choice would be permitted for an annuitant in the same situation, except that a continued enrollment would not terminate after 12 months if the annuity continues while he or she is on active duty.

We received written comments from four Federal agencies and five individuals. All were greatly in favor of the proposed regulations. One commenter requested a clarification and another made a suggestion.

A Federal agency was concerned that an employee's written request to terminate the enrollment would have the same effect a voluntary cancellation would have on the employee's right to a temporary extension of coverage and on his or her eligibility to continue coverage after retirement. Because the written request would be for the enrollment to be *terminated*, rather than cancelled, the same rights would apply as for any other reason for a termination of coverage. The employee would have a 31-day temporary extension of coverage, and the break in coverage would not

count against the employee in meeting the five-year coverage requirement prior to retirement.

An individual suggested that the employee who continues the enrollment be allowed to retain the coverage indefinitely beyond the twelve-month cut-off date, while continuing to pay the employee share of the premiums. We cannot adopt this suggestion because we feel it would be treating a small group of employees more favorably than other employees in leave-without-pay status.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM amends 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.304, paragraphs (a)(5) and (b)(2)(iii) are amended by adding the text set forth below to the end of the respective paragraphs:

§ 890.304 Termination of enrollment.

(a) * * *

(5) * * *, provided the employee elects, in writing, to have the enrollment so terminated.

* * * * *

(b) * * *

(2) * * *

(iii) * * *, provided the annuitant elects, in writing, to terminate the enrollment.

* * * * *

[FR Doc. 88-19291 Filed 8-24-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Economic Research Service

7 CFR Parts 3700 and 3701

Organization, Functions, and Availability of Information to the Public

AGENCY: Economic Research Service, USDA.

ACTION: Final rule.

SUMMARY: This rule explains the organization and functions of the Economic Research Service (ERS) and the procedures for requesting records from ERS under the Freedom of Information Act (FOIA). It supplements the Department's regulations at 7 CFR Part 1, Subpart A.

EFFECTIVE DATE: August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Laura B. Snow, Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue, SW., Washington, DC 20250-3500. Telephone (202) 447-7590.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective in less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects

7 CFR Part 3700

Organization and functions (Government agencies).

7 CFR Part 3701

Freedom of information.

Accordingly, 7 CFR is amended by adding a new Chapter XXXVII and Parts 3700 and 3701, reading as follows:

CHAPTER XXXVII—ECONOMIC RESEARCH SERVICE

PART 3700—ORGANIZATION AND FUNCTIONS

Sec.

3700.1 General.
3700.2 Organization.
3700.3 Functions.
3700.4 Authority to act for the Administrator.

Authority: 5 U.S.C. 301 and 552, and 7 CFR 2.84, except as otherwise stated.

§ 3700.1 General.

The Economic Research Service (ERS) was reestablished as an agency of the U.S. Department of Agriculture on September 30, 1981 (46 FR 47747), in response to Secretary's Memorandum 1000-1 of June 17, 1981, entitled "Reorganization of Department." The primary responsibility of ERS is to produce economic and other social science information as a service to the general public and to aid Congress and the Executive Branch in developing, administering, and evaluating agricultural and rural policies and programs.

§ 3700.2 Organization.

ERS maintains its offices at 1301 New York Avenue, NW., Washington, DC 20005-4788. The organization consists of:

(a) The Administrator;

(b) Associate Administrator;

(c) Four Divisions; Commodity Economics Division, Agriculture and Trade Analysis Division, Resources and Technology Division, and Agriculture and Rural Economy Division; and

(d) Data Services Center.

§ 3700.3 Functions.

(a) *Administrator and Associate Administrator.* The Administrator and Associate Administrator are responsible for formulating current, intermediate, and long-range policies and plans for conducting economic and other social science research, analysis, and information programs related to U.S. and world agricultural production, demand, and marketing systems; natural resources; and rural communities.

(b) *Director, Commodity Economics Division.* The Director, Commodity Economics Division, is responsible for conducting a program of economic outlook and intelligence, research, analysis, and associated work relating to domestic and international aspects of agricultural commodities and food and fiber markets. General functions are:

(1) Providing current intelligence on domestic and international commodity and food developments and forecasts of domestic and worldwide supply of and demand for agricultural commodities, food, and other agricultural products.

(2) Preparing special commodity and market analyses for policy officials as input into agricultural policy formulation and into the development and operation of programs to implement those policies.

(3) Performing research on the structure, conduct, and performance of domestic and international agricultural

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commodity production, marketing, and trade sectors.

(4) Coordinating the broader ERS outlook program and integrating ERS activities into the Department's outlook program.

(c) *Director, Agriculture and Trade Analysis Division.* The Director, Agriculture and Trade Analysis Division, is responsible for conducting a program of economic research and analysis on the economic conditions and the agricultural and trade policies that shape the agricultural sectors of major countries and on agricultural trade and development relationships between foreign countries and the United States. General functions are:

(1) Providing ongoing assessment of the technical, economic, political, and institutional forces affecting the structure and performance of world agricultural markets.

(2) Preparing special analyses for policy officials as input to agricultural policy formulation and the development and operation of programs to implement those policies.

(3) Conducting economic research to identify and empirically estimate the interrelationships between the domestic and world agricultural food systems.

(d) *Director, Resources and Technology Division.* The Director, Resources and Technology Division, is responsible for conducting a national program of research and analysis, statistical programs, and associated service work on agricultural resource and input issues, including soil, water, land, manufactured inputs, and technology and their contribution to local, regional, and national economic growth and the implications of environmental policies on agricultural production and resource use.

(e) *Director, Agriculture and Rural Economy Division.* The Director, Agriculture and Rural Economy Division, is responsible for conducting a national program of research and analysis, statistical programs, and associated service work designed to improve the public's understanding of national and regional rural and agricultural trends and conditions.

(f) *Director, Data Services Center.* The Director, Data Services Center, is responsible for managing the various aspects of automation as they pertain to the information-processing capabilities of ERS programs. This includes providing computer support services needed to carry out the required data processing and operations research capabilities.

§ 3700.4 Authority to act for the Administrator.

In the absence of the Administrator, the following officials are designated to serve as Acting Administrator in the order indicated:

Associate Administrator
Director, Agriculture and Rural Economy Division
Director, Agriculture and Trade Analysis Division
Director, Resources and Technology Division
Director, Commodity Economics Division

PART 3701—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
3701.1 General.
3701.2 Public inspection, copying, and indexing.
3701.3 Requests for records.
3701.4 Denials.
3701.5 Appeals.
3701.6 Requests for published data and information.

Authority: 5 U.S.C. 301 and 552; 7 CFR 1.1 through 1.23 and Appendix A.

§ 3701.1 General.

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1 through 1.23 of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), and governs the availability of records of the Economic Research Service (ERS) to the public.

§ 3701.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. ERS does not maintain any materials within the scope of these requirements.

§ 3701.3 Requests for records.

Requests for records of ERS shall be made in accordance with § 1.6 (a) and (b) of this title and addressed to: Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue SW., Washington, DC 20250–3500. This official is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 3701.4 Denials.

If the Economics Agencies FOIA Officer determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the Economics Agencies FOIA Officer shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 3701.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.6(e) of this title and addressed to the Administrator, Economic Research Service, U.S. Department of Agriculture, 1301 New York Avenue NW., Washington, DC 20005–4788.

§ 3701.6 Requests for published data and information.

Information on published data from ERS programs is contained in the ERS "Reports" newsletter, available without cost from the Director, Information Division, Economics Management Staff, U.S. Department of Agriculture, 1301 New York Avenue NW., Washington, DC 20005–4789.

Done at Washington, DC, this 3rd day of August, 1988.

John E. Lee, Jr.,
Administrator, Economic Research Service.

[FR Doc. 88–19349 Filed 8–24–88; 8:45 am]
BILLING CODE 3410–18–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Definition of Small Business for Dredging

AGENCY: Small Business Administration (SBA).

ACTION: Final Rule and Withdrawal of Previously Published Final Rule.

SUMMARY: The SBA is amending its size standard for the Dredging Industry from the present $9.5 million in annual gross receipts to $13.5 million. This is the size standard which was utilized over the December 9, 1985, to November 3, 1986 period. The $9.5 million size standard which has been utilized since November 3, 1986, resulted from an order from the District Court for the District of Columbia dated November 3, 1986, setting aside the then current dredging size standard of $13.5 million, but restoring the previous size standard of $9.5 million spending SBA's completion of a review of the remanded rulemaking effort. SBA has now completed its review as directed by the Court order and is restoring the size standard of $13.5 million which SBA has determined to be the appropriate size standard for the dredging industry.

EFFECTIVE DATE: September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Economist, Size Standards Staff, (202) 653–6373.

SUPPLEMENTARY INFORMATION: SBA is withdrawing its previously published final rule for the dredging industry size standard (53 FR 30668), which was published on August 15, 1988. In its place SBA is promulgating this final rule which better describes factors involved in the decision process.

On November 3, 1986, the United States District Court for the District of Columbia declared invalid the SBA's size standard for the dredging industry and remanded the administrative record of the rulemaking to the Agency for further consideration. The Court recognized that the previous size standard for the dredging industry of $9.5 million was not challenged and remained in effect pending SBA's completion of its review of the issues raised in the remanded rulemaking record. The Court cited SBA's failure to consider regional size standards, after first recognizing the presence of regional differences in structure and in procurement patterns, as sufficient cause in itself to invalidate the size standard.

In addition, on October 15, 1986 Congress passed the National Defense Authorization Act of 1987 (Pub. L. 99–661). Section 921 of this Act contained a mandate that SBA review the size standard of certain industries including dredging. The purpose of the review was to ensure that small business set-asides accounted for no more than approximately 30 percent of the total Federal contract dollar value for those industries. If SBA were to find as a result of its review that the 30 percent threshold was exceeded for any industry under review, the Agency was required to reduce the size standard for that industry accordingly.

The Act also authorized SBA to further divide industry categories when it received evidence that such division is warranted due to special capital needs, or special labor, or geographic requirements, or to recognize a new industry. New size standard would then be established for these new industry categories.

The Act, moreover, provided three prerequisites which Congress considered must all be present in order for segmentation on a regional basis to occur in an industry. These three prerequisites are: (1) The Government must typically designate the area where work for such contracts is to be performed; (2) Government purchases comprise the major portion of the entire domestic market for such goods and services; and (3) Due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located.

Using these three prerequisites, SBA examined the question as to whether the dredging industry merited segmentation of its size standard in an Advanced Notice of Proposed Rulemaking which was published on March 17, 1987 (52 FR 8261). This notice explored the possibility of segmenting the industry for light and heavy projects for the Northeast, Southeast, Gulf Coast, West Coast, and Great Lakes regions.

A majority of those commenting on this notice did not support segmented size standard for dredging. The comments included one dredging firm and one association that favored the concept of a regional standard, while four firms, two associations, and the U.S. Corps of Engineers were opposed. The respondents raised several concerns regarding the proposed segmentation. The most important issue from the standpoint of complying with the legislation, however, opposed the idea of segmented size standards based on the nature of competition within the industry. In particular, several respondents argued that dredges are mobile, and therefore, the statutory prerequisite that competition could not be expected from outside the region was not met.

As a result of these comments, SBA examined the question further. Specifically, it requested the views of the Army Corps of Engineers, the agency responsible for the great majority of Federal procurement activities in this industry. The Corps responded by stating its view that this third requirement for segmentation was not present and, that therefore, the concept of segmentation should not be applied to the dredging industry. SBA also reviewed available data sources to determine whether there is a pattern of dredging firms operating in more than one region of the Nation. It found, for example, a pattern in which both large and small firms in the industry often operate in more than one region of the Nation. Of the 40 most active firms in the industry during the 1980–83 period, for example, 17 firms operated to a significant degree in more than one region of the Nation. These 17 firms include both large and small firms. As a whole they were responsible for almost 55 percent of all Federal dredging contracts.

Moreover, during the April–June 1988 period in which drought conditions prevailed throughout the upper Midwest, the U.S. Army Corps of Engineers considered mobilizing dredgers from the Eastern seaboard to meet the threat to transportation on the Mississippi.

It concluded that dredgers from as far away as New York State could provide assistance. This study thus provides evidence that dredging competition across regions is not simply limited to adjacent regions, but also applies to noncontiguous, geographically separated regions as well. Thus there is strong evidence for the view that competition does occur across regions and that firms in the activity of dredging are not inherently limited in operations to one region of the country.

After careful review of this issue, SBA concluded that the third statutory requirement for geographic or regional segmentation was not present in the dredging industry. Accordingly, it did not propose segmented size standards for this industry in its Proposed Rule of December 17, 1987 (52 FR 47937) and does not recommend segmented size standards in this Final Rule.

This process in which SBA in an advance notice of proposed rulemaking first solicited public response to the concept of regional size standards, and then rejected the idea after appropriate review in a proposed rule fulfills the Court's requirement that the SBA seriously consider the viability of regional size standards in the dredging industry prior to making a decision on the proper size standard(s). SBA in this Final Rule is, therefore, focusing its attention on a nationally structured size standard. Specifically, it is reinstituting the $13.5 million size standard in preference to the present size standard of $9.5 million which was restored by Court Order.

The decision to move to a size standard of $13.5 million which was made during 1985 was based on a number of factors relating to the industry structure of the dredging industry. Some of these factors cannot be updated because the data at that time were obtained through a special survey of dredging firms which was costly and time consuming. However, some information is presently available from the Corps of Engineers, and therefore, SBA has evaluated whether the industry has changed significantly since the 1985 decision.

In the final dredging size standard rule of November 8, 1985, (50 FR 46418), SBA based it's recommendation to raise the size standard in dredging on six factors. These are: concentration ratio (percent of Federal procurement dollars received by the four largest firms in the

industry), average firm size, cost increases over time, the proportion of firms defined as small, the average size of Federal contracts, and the proportion of Federal contract dollars received by small firms. Of the six variables in question, four supported a higher size standard than the present $9.5 million. These four were average firm size, cost increases over time, the proportion of firms defined as small, and the average size of contracts. The remaining two factors—the concentration ratio and the proportion of contract dollars received by large firms—provided ambiguous results.

In reviewing more recent data, SBA was only able to gather information on the concentration ratio (proportion of sales in the industry generated by the four largest firms in the industry), the average size of Federal contract, and the proportion of contract dollars received by small firms. In general, SBA views high indexes for both the concentration ratio and average size of contract as indicators that an industry's size standard should be relatively high. Conversely, it views a relative low proportion of contract dollars awarded to small firms as an indicator that an industry's size standard might be too low. In this case, SBA wanted to compare the situation in the dredging industry during 1987 with the situation in the earlier period to assure itself that a need continued for a higher size standard. Data for FY 1987 are compared with the 1980–83 data in the following table:

Factor	FY 1980–83	FY 1987
Concentration Ratio (percent of Federal contracts awarded the 4 largest firms in industry)	[1] 26%	63%
Average Size of Total Federal Contracts	[2] 1.60M	1.69M
Proportion of Federal Dollars Awarded Small Firms	[2] 35.3%	15.6%

[1] Average over 1980–83 period. ($9.5 million size standard in effect)
[2] 1983 data. ($9.5 million size standard in effect)

These statistics indicate that the situation in the dredging industry involves a greater concentration of economic activity among a few large firms in the dredging industry than occurred in 1983. There is a need to restore the previous size standard of $13.5 million based on the fact that four very large firms received almost two-thirds of Federal dredging contract dollars, while firms defined as small (less than $9.5 million in gross annual receipts) received only 16 percent of all Federal dredging contract dollars. These low percentages for small firms in the industry also indicate that there is little likelihood that the 30 percent set-aside threshold incorporated in section 921 of Pub. L. 99–661 would be exceeded by a restoration of the $13.5 million size standard.

Based on these considerations and the fact that SBA has extensively considered regional size standards in the dredging industry as directed by Court Order, SBA is restoring the national size standard of $13.5 milion for dredging as appropriate for the reasons described in the published rule change in 1985 (50 FR 49418) and due to the results of the analysis of more current data.

This regulation is promulgated as a final rule without prior notice and opportunity to comment in accordance with 5 U.S.C. 553(b). Because SBA has already received and considered public comment on both the issue of geographical distribution (see 52 FR 8261 and 52 FR 47937), and the size standard increase (see 50 FR 49418 and 49 FR 47412), it is not in the public interest to delay the rule further in order to receive further public comment.

Compliance With Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

SBA certifies that this regulation is a major rule as defined by Executive Order 12291. Over the fiscal year 1987 period, annual Federal outlays for dredging activities exceeded $340 million. Thus the annual economic effect criteria of $100 million used to measure a major rule change could be exceeded as a result of this rule. Potentially, any firm in the industry could be affected in the future by a higher size standard, since the eligibility of a firm could impact on its competitive situation for any set-aside contract and on the decision whether or not to set-aside a contract. This regulation, however, is not likely to result in a major increase in costs, or prices, or in significant adverse effects on the United States economy.

This regulation is unlikely, however, to have a significant economic impact on a substantial number of small entities. (There are no known firms currently active in the dredging industry in the $9.5 to $13.5 million range and only five firms are estimated to be in the $7.0 to $9.5 million range.) Therefore, in compliance with Executive Order 12291, SBA offers this final regulatory impact analysis. SBA has considered regulatory action in this instance in response to intense public comment on the size standard in this particular industry. The purpose of this final rule is to update the size standard for the dredging industry, which has remained at the same level as 1974, to reflect both inflation and changes in industry structure over a 14-year time period. This final rule change is authorized by section 3(a) of the Small Business Act (15 U.S.C. 632(a)), which mandates that SBA define small business concerns on an industry-by-industry basis.

The dredging industry is comprised of approximately 250 companies of which 70 participated in the Federal procurement process during fiscal year 1987. Of these firms, however, only five would likely be significantly affected by a higher size standard. These are firms whose annual receipts usually fall in the $7.0 to $9.5 million range. Clearly, a higher size standard would remove a major constraining factor on expansion for these five firms.

Assuming these five firms are capable of and choose to expand into the $9.5 to $13.5 million range, other firms could be affected by the new higher size standard. There could be some additional competition for contracts, since these five firms could bid for more contracts without exceeding the new size standard limitation of $13.5 million. Similarly, the competition for unrestricted contracts could be expected to be enhanced, since small firms would be less concerned that winning a contract would push them over the size standard. In addition, Federal contracting officials would be able to set aside some additional contracts, and thus a slightly higher proportion of contract dollars would probably be set aside. Although more contracts will probably be set aside, SBA considers it highly unlikely that the set-aside percentage would exceed 30 percent given the low incidence of set-asides in this industry during 1987 (10 percent), and the fact that only five firms are estimated to be in the $7.0 to $9.5 million range.

Overall, anyone of the 250 firms active in the dredging industry might be affected by the increased size standard if it were to bid on a dredging procurement that was set aside for small business, or if the higher size standard freed small firms to bid on unrestricted contracts. The net benefits of this rule change, therefore, are a closer relationship between the size standard and the industry structure and an easing of constraints on expansion for firms within the industry.

In deciding that a size standard of $13.5 million most accurately reflects the current dredging industry, SBA also considered the alternatives of raising the size standard above $13.5 million, lowering it below $9.5 million, or

maintaining it at $9.5 million. SBA rejected raising the standard above the $13.5 million level because of the concern that a higher size standard than $13.5 million would more likely result in a set-aside plus 8(a) percentage of Federal contracting in the industry which exceeds the 30 percent level prohibited by Public Law 99–661. Lowering the size standard was rejected because of the industry's dominance by large firms, the relatively large size of contracts in the industry, and the inflationary trends since 1974 when the $9.5 million size standard was established. Thus there are no significant alternatives which would accomplish the stated objectives of minimizing the economic impact on small firms.

SBA certifies that there are no relevant Federal rules which would duplicate, overlap, or conflict with this Final Rule. SBA also certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

Accordingly, SBA is amending Part 121 of 13 CFR as follows:

PART 121—[AMENDED]

1. The authority citation of Part 121 of 13 CFR is revised to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), and Public Laws 99–591 and 99–661.

§ 121.1 [Amended]

2. In table 2 in § 121.2(d)(2), for Major Group 16—Construction, Other Than Building Construction—General Contractors, the last item in the table, Item 1629—Dredging and Surface Cleanup Activities is revised to read as follows: (Item 1629 Heavy Construction, Except Dredging, N.E.C., is set forth for the convenience of the reader and is not changed).

SIC	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
		Final rule
1629	Heavy Construction, Except Dredging, N.E.C.	$17.0
1629	Dredging and Surface Cleanup Activities [2].	13.5

[2] To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

James Abdnor,
Administrator, U.S. Small Business Administration.

[FR Doc. 88–19290 Filed 8–24–88; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80–53]

Natural Gas Policy Act; Maximum Lawful Prices

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of August, September, and October, 1988. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Order of the Director, Office of Pipeline and Producer Regulation

Issued July 28, 1988.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of August, September, and October, 1988, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 106 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August, 1988 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Raymond A. Beirne,
Deputy Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

2. Section 271.101(a) is amended by adding the maximum lawful prices for August, September, and October, 1988, in Table I and II as follows:

§ 271.101 [Amended]

* * * * *

TABLE I—NATURAL GAS CEILING PRICES

[Other Than NGPA Sections 104 and 106(a)]

[Maximum lawful price per MMBtu for deliveries in]

Subpart of part 271	NGPA section	Category of gas	Aug. 1988	Sept. 1988	Oct. 1988
B	102	New Natural Gas, Certain OCS Gas [1]	$4.957	$4.990	$5.023
C	103(b)(1)	New Onshore Production Wells [2]	3.309	3.321	3.333
E	105(b)(3)	Intrastate Existing Contracts	4.793	4.821	4.849
F	106(b)(1)(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas [3]	1.892	1.899	1.906
G	107(c)(5)	Gas Produced from Tight Formations	6.618	6.642	6.666
H	108	Stripper Gas	5.368	5.343	5.379
I	109	Not Otherwise Covered [4]	2.741	2.751	2.761

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See Part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See Part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.402(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

TABLE II—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106 (a)

[Subpart D, Part 271]

[Maximum lawful price per MMBtu for deliveries made in:]

Category of natural gas and type of sale or contract	Aug. 1988	Sept. 1988	Oct. 1988
Post-1974 gas:			
All producers	$2.741	$2.751	$2.761
1973–1974 Biennium gas:			
Small producer	2.314	2.322	2.330
Large producer	1.771	1.777	1.783
Interstate Rollover gas:			
All producers	1.016	1.020	1.024
Replacement contract gas or recompletion gas:			
Small producer	1.300	1.305	1.310
Large producer	0.996	0.999	1.003
Flowing gas:			
Small producer	0.658	0.660	0.662
Large producer	0.555	0.557	0.559
Certain Permian Basin gas:			
Small producer	0.775	0.778	0.781
Large producer	0.684	0.686	0.688
Certain Rocky Mountain gas:			
Small producer	0.775	0.778	0.781
Large producer	0.658	0.660	0.662
Certain Appalachian Basin gas:			
North eastern contracts dated after 10–7–69	0.624	0.626	0.628
Other contracts	0.579	0.581	0.583
Minimum rate gas [1]:			
All producers	0.344	0.345	0.346

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of August, September, and October, 1988, in Table III as follows:

§ 271.102 [Amended]

TABLE III—INFLATION ADJUSTMENT

Month of delivery 1988	Factor by which price in preceding month is multiplied
Aug	1.00351
Sept	1.00351
Oct	1.00351

* * * * *

[FR Doc. 88-19184 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F-0484]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to extend existing uses and to provide for additional uses of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane (CAS Reg. No. 6683-19-8) as an antioxidant and stabilizer for polymers intended for use in contact with food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective August 25, 1988; objections and requests for a hearing by September 26, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of December 30, 1986 (51 FR 47061), FDA announced that a petition (FAP 6B3966) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to extend existing uses and to provide for additional uses of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane (CAS Reg. No. 6683-19-8) as an antioxidant and stabilizer for polymers.

FDA has evaluated the data in the petition and other relevant material in response to the petitioner's request. The agency concludes that these data and material establish the safety of using the additive in additional food-contact polymers, increasing the levels of use of the additive in certain polymers, and removing certain limitations on the conditions of use of the additive in polymers in contact with food. Additionally, because of numerous changes adopted for the new uses of this additive, FDA is reorganizing in this final rule the 20 existing uses of the

additive that are now listed in 21 CFR 178.2010(b).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before September 26, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in the table of paragraph (b) by revising entries under the heading "Limitations" for the entry "Tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane (CAS Res. No. 6683–19–8)" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
*	* * * *
Tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane (CAS Reg. No. 6683–19–8).	For use only: 1. At levels not to exceed 0.5 percent by weight of all polymers used as indirect additives in food packaging, except as specified below. 2. At levels not to exceed 0.1 percent by weight of petroleum wax or synthetic petroleum wax complying with § 178.170(a)(5) of this chapter. 3. At levels not to exceed 1.0 percent by weight of: (a) Pressure sensitive adhesives complying with § 175.125 of this chapter. (b) Can end cement formulations complying with § 175.300(b)(3)(xxxi) of this chapter. (c) Petroleum alicyclic hydrocarbon resins complying with § 175.320(b)(3) of this chapter, § 178.170(b)(2) of this chapter, or their hydrogenated products complying with § 178.170(b)(2) of this chapter. (d) Rosin and rosin derivatives used in accordance with Parts 175 through 178 of this chapter. (e) Terpene resins complying with § 175.300(b)(2)(xi) of this chapter when such terpene resins are used in accordance with § 178.170(b) of this chapter. (f) Resins and polymers complying with § 178.180 of this chapter. (g) Closures with sealing gaskets complying with § 177.1210 of this chapter. (h) Polyoxymethylene copolymer as provided in § 177.2470(b)(1) of this chapter. (i) Petroleum hydrocarbon resin complying with § 178.3800. (j) Reinforced wax complying with § 178.3850.

* * * * *

Dated: August 18, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–19332 Filed 8–24–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1309

[Docket No. 82–18; Notice 13]

RIN 2127–AC70

Incentive Grant Criteria for Alcohol Traffic Safety Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Final rule.

SUMMARY: This final rule revises the agency's regulation implementing

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section 408 of the Highway Safety Act of 1966, relating to the criteria States must meet to be eligible for alcohol incentive grants. The agency believes some portions of the regulation are unnecessarily restrictive in defining the manner in which a State may demonstrate compliance with the statutory criteria. This action is intended to increase flexibility for the States, by establishing alternative methods of demonstrating compliance with the section 408 criteria to qualify for alcohol incentive grant funds.

EFFECTIVE DATE: The amendments made by this final rule are effective on August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, NTS-01, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-1755; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, (202) 366-1834.

SUPPLEMENTARY INFORMATION: The 408 program was enacted in 1982, under 23 U.S.C. 408 (Pub. L. 97-364), as a two-tier grant program, providing Federal funds (basic and supplemental grants) to States that qualify by implementing certain programs designed to reduce the drunk driving problem. The amount received as a basic grant equals 30 percent of the State's FY 1983 highway safety grant (section 402) apportionment. The amount received as a supplemental grant may not exceed 20 percent of the State's FY 1983 section 402 apportionment. Section 402 apportionments are made to the State under a grant program established by the Highway Safety Act of 1966, 23 U.S.C. 402, to aid the States in conducting highway safety programs.

In 1984, section 408 was amended, Pub. L. 98-363, to expand the scope of the 408 program to include programs to combat drugged driving as well as drunk driving and to establish a third grant for which States may qualify (special grants) to encourage the States to enact tough minimum sentencing standards. The amount received as a special grant may not exceed 5 percent of the State's FY 1984 section 402 and 408 apportionments.

Under the 1982 Act, States could receive section 408 incentive grants in no more than three fiscal years. (The 1984 amendment did not affect this period.) Section 203 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, amended section 408 by extending from three to five, the number of fiscal years in which a State may receive section 408 incentive grants.

Section 408 Criteria

To be eligible for funding under section 408 of the Act, each State must meet certain requirements. The statutory criteria include, for basic grants, that the State provide "for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer."

The State must also provide that: Persons convicted more than once in five years receive a mandatory sentence of 48 consecutive hours imprisonment or 10 days of community service; a blood alcohol content (BAC) of 0.10% is established as illegal per se (meaning that it is a violation of law to operate a motor vehicle with a BAC at that or a higher level); and increased efforts or resources are dedicated to the enforcement of alcohol-related laws and increased efforts are used to inform the public of this enforcement.

Under the statute, a State is not eligible for a supplement grant unless it is first eligible for a basic grant, and in addition provides for some or all of the criteria established by the Secretary of Transportation. By regulation, a total of twenty-two supplemental criteria have been promulgated.

To be eligible for a special grant, section 408 of the Act requires that a State must enact a statute which provides for specific minimum sentencing requirements with regard to both license suspensions and terms of imprisonment or community service.

The agency has promulgated regulations, which are codified in 23 CFR Part 1309, to define the statutory criteria and to specify how States are to demonstrate compliance with the criteria.

The section 408 program has had a significant impact on the legislative and operational progress in State programs. Through their efforts to qualify for section 408 funding and the activities funded with alcohol incentive grants, States have made progress in terms of both program improvements and reductions in the proportion of fatalities that involve intoxicated drivers. No State has been able to qualify for funding under the section 408 program, however, since November 1985. While many States have faced difficulties in qualifying for section 408 grants due to the stringency of the statutory criteria, others have had difficulties with the details of the regulatory requirements for demonstrating compliance.

Although the agency is not authorized to modify the statutory criteria, we can consider amending certain requirements that have been established by regulation.

For this reason, on April 8, 1988, the agency published a Notice of Proposed Rulemaking (NPRM) in the Federal Register, proposing to increase flexibility for the States, by establishing alternative methods of demonstrating compliance with the section 408 criteria to qualify for alcohol incentive grant funds. The notice requested comments from the public and, in particular, from States that are currently participating in, or that believe they may be able to become qualified for funding under, the section 408 program.

The agency received approximately 50 comments. Commenters included either the Governor, the Governor's Highway Safety Representative, the State Highway Safety Coordinator, or a designee of these officials representing 20 States. In the remainder of this notice, comments from any of these officials will be referred to as the State's comments. In addition to these, we also received comments from a number of State agencies, including departments of motor vehicles and law enforcement agencies. We also received comments from General Motors, the Department of Interior's United States Park Police, Congressmen Kyl, Rhodes and Udall of Arizona, and several national organizations, including the Insurance Institute for Highway Safety, the National Head Injury Foundation, and the American Trauma Society. NHTSA appreciates the time taken by these commenters to provide their thoughtful suggestions and recommendations. The comments have been valuable and instructive to the agency in developing this final rule.

General Comments

In the NPRM, NHTSA indicated that the proposed changes were designed to provide as much flexibility to the States as the statute permits, while maintaining the statutory criteria to ensure that States that qualify under the section 408 program have effective programs to reduce traffic safety problems resulting from persons driving while under the

influence of alcohol or a controlled substance. We stated that it would be particularly helpful for the agency to receive comments from States interested in qualifying for section 408 funds, regarding whether the changes being proposed would in fact help them to qualify. We indicated also that we are interested in receiving comments from interested parties regarding whether it is believed the proposed changes would alter the effectiveness of States' programs to reduce drunk and other drug impaired driving.

With regard to these issues, the comments of the National Head Injury Foundation are representative, stating that, "[t]he proposed changes will increase a state's flexibility and eligibility for 408 funds *without* reducing the effectiveness of the programs or altering the goal of the original statutes." [Emphasis in text.] All comments addressing these issues echoed this sentiment. Most importantly, several States, including Connecticut, Illinois, New Jersey, Oklahoma and Texas, indicated that the proposed changes will help them to qualify for funding under the section 408 program. Others remarked that, although they will not yet qualify, the changes will move them closer to meeting the statutory criteria. Kansas said that it would submit an application for section 408 funding in the near future. The application has since been submitted, and is undergoing review.

In the remainder of this notice, we will discuss the changes proposed in the NPRM, the comments received by the agency regarding the proposed changes and the revisions that NHTSA has decided to make to its regulation after having fully considered the comments.

Regulatory Changes

(1) Definition of Imprisonment

In the NPRM, the agency proposed to amend the definition of the term "imprisonment" to acknowledge that, in order to overcome problems involving overcrowded prisons, some States resort to using somewhat unconventional quarters, such as community corrections facilities, converted hotels or other buildings, as minimum security facilities. We stated that as long as individuals are in fact detained in them for the requisite period of time, the agency considers confinement in these quarters to meet the definition of "imprisonment." We went further, to state that the agency does not consider time spent at work under a work release program, to constitute detention or confinement. In other words, an individual must serve 48 consecutive hours within the confines of the work release center to meet the requirement that the State provide that persons convicted of driving while intoxicated more than once in any five year period, and sentenced to imprisonment (rather than community service), must be *confined* for a 48 *consecutive* hour period. NHTSA received no objections to this proposed change, and has decided to revise the regulation accordingly.

NHTSA invited comments on whether "house arrest", or at home detention, by electronic or other means should constitute imprisonment under the agency's regulation. The State of New Jersey indicates that it uses house arrest programs only as "parole or probation programs involving convicted criminals." It goes on to recommend that, since "[i]t is not likely that individuals who need intervention with drinking problems will find it at home where alcohol is likely to be available," pilot house arrest programs should be reviewed before they are accepted under the section 408 criteria. All other commenters who addressed this issue, including seven States and the Insurance Institute for Highway Safety (IIHS), support the inclusion of house arrest within the definition of imprisonment.

NHTSA agrees with New Jersey that rehabilitation, or treatment programs for drunk driving offenders can be effective, particularly when these programs are conducted in an in-patient facility and accompany traditional sanctions. The agency's current regulation already accepts these programs in lieu of a jail term by defining the term "imprisonment" to mean confinement in either a jail, minimum security facility, or "in-patient rehabilitation or treatment center." 23 CFR 1309.3(c). This portion of the regulation is not being changed in this final rule. The agency strongly encourages States to establish in-patient rehabilitation programs as either an alternative to a prison term or an additional element of the State's alcohol countermeasures program. Some States have found that these programs can reduce recidivism rates, and we note that their use may relieve overcrowded conditions in jail facilities. However, a term of imprisonment need not incorporate a rehabilitation program to be accepted by the agency under the regulation.

While NHTSA has an interest in the use of house arrest programs as an alternative method of imprisonment, we agree with New Jersey that we do not at this time have sufficient information regarding the alternative to accept it under our definition. The agency believes it must first consider, for example, the effectiveness of these programs, the manner in which programs are conducted and the period of time States are detaining offenders under house arrest. In the NPRM, NHTSA requested particular information regarding the manner in which house arrest programs are currently being conducted. These questions, however, were not addressed in the comments.

We note also that under the current regulation, a person is required to serve a mandatory sentence of only 48 consecutive hours to meet the section 408 criteria. The agency does not believe a house arrest for a period of 48 consecutive hours would serve as a sufficient deterrent to a repeat offender. We encourage those States with overcrowded prisons to use alternative sentences currently accepted under the regulation, such as confinement in a community corrections facility, converted hotel or other building used as a minimum security facility, confinement in an in-patient rehabilitation or treatment center, or 10 days of community service.

(2) Use of a Restricted, Provisional or Conditional License

Under the definition of the terms "suspension" or "revocation" in the agency's regulation, 23 CFR 1309.3(f), a first offender's 90 day suspension may include "a minimum of 60 days of a restricted, provisional or conditional license" as long as the offender is temporarily debarred of all driving privileges for a minimum of the first 30 days. No period of the 90 day license suspension for a first refuser, or of the one year license suspension for repeat offenders or repeat refusers may be subject to a restricted, provisional or conditional license.

The regulation limits the purposes for which a restricted, provisional or conditional license may be issued to first offenders. For example, a conditional license may be issued for individuals to drive between their residence and place of employment, but may not be issued for individuals to drive between their residence and place of study. In the NPRM, the agency proposed to eliminate the limitation.

In response to this proposed change, the Illinois Secretary of State suggests that the conditions under which such a license may be issued should be modified to include "driving to and from medical care and educational purposes" rather than eliminated. He states that their elimination "could possibly

undermine the effectiveness of the suspension imposed." The State of Kansas also requests that driving during a medical emergency be permitted, and states that, in addition, driving under emergency situations and employment-related driving should be recognized.

The agency recognizes that individual States have different needs and concerns. A review of current State laws reveals that there are a number of conditions which are recognized by the States but not by our regulation. If we were to attempt to name each condition individually, the agency would surely again run the risk of omitting a condition viewed as necessary and valid by a particular State. In our effort to afford the States with increased flexibility, the agency believes it is appropriate for each State to define the conditions under which an offender is permitted to drive with a restricted license. To ensure that the availability of restricted, provisional or conditional licenses does not undermine license suspension requirements in a State, we will retain, as proposed, the condition that these licenses can be issued in accordance with Statewide published guidelines developed by the State, and in exceptional circumstances specific to the offender.

In its comments, Louisiana objects to this requirement if it calls for publication of regulations. The State suggests that such an action could result in publicity and a surge of applications from attorneys and suspended drivers for conditional licenses. As we stated in the NPRM, the regulation does not require that guidelines need be published where the State has a law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued. Likewise, if the State has a binding policy directive in effect, it need not pass a law or issue regulations.

New York requests that the agency permit States to issue conditional licenses to first offenders and refusers immediately where recipients must undergo mandatory screening for an alcohol and drug problem and are required to participate in an alcohol, drug and traffic safety education program of at least 15 hours. California requests that States be allowed to issue conditional licenses in some circumstances for first offenders and for repeat offenders if their license is restricted for a period of 18 months.

NHTSA has decided not to adopt these recommendations. While States may be able to show some success associated with license suspension programs which allow conditional licenses immediately under certain circumstances, the agency views the certainty of a suspension or revocation of a driver's license, which is not subject to the issuance of a conditional license, to be among the most effective means of reducing the incidence of alcohol and drug involvement in motor vehicle accidents. For this reason, the agency's regulation will continue to require a hard suspension for the first 30 days of a first offender's 90 day suspension, for the full 90 day suspension for a first refuser, and for the full one year suspension for repeat offenders and repeat refusers. (As explained below, we will permit States to show compliance with this requirement through the use of averages.) We would encourage States, however, to develop screening and education programs for both offenders and refusers. Such programs have been implemented successfully in States which also impose hard suspensions.

Although comments were not requested on the issue in the NPRM, three commenters state their views on the use of In-Vehicle Alcohol Testing Devices (IVATs), also known as ignition interlock devices. Briefly, these devices, when installed in vehicles, require the driver to pass either a breath alcohol measurement test or a performance test before he or she may operate the vehicle. General Motors and the State of Idaho both suggest that IVATs be recognized by the agency's regulation as a sanction that a State may use *in lieu of* a mandatory license suspension. Kansas recommends instead that the agency permit States to use IVATs as an *additional* court-ordered restriction. Recently, NHTSA submitted a report to Congress entitled, "Potential for Application of Ignition Interlock Devices to Prohibit Operation of Motor Vehicles by Intoxicated Individuals." The agency reported:

> Ignition interlock technology based on breath alcohol test devices for detecting and preventing alcohol impaired driving does appear feasible at this time. Devices that measure a driver's BAC level are currently being marketed and used. * * * Current interest has focused on applying this technology to convicted DWI offenders as a condition of probation or to obtain a restricted driving privilege. * * * There is not yet enough evidence available to judge how effective these devices will be in deterring alcohol impaired driving and related crashes. In the absence of evidence that these devices are effective it is *not* appropriate for these devices to be used *in lieu of* other sanctions that have evidence of beneficial effects (e.g., license suspension). Use of this technology as an *additional* condition of probation or for reinstatement of a restricted driving privilege does appear appropriate [Emphasis added.]

Based on these findings, the agency encourages States to explore the use of IVATs as an additional restriction, which may accompany, for example, a conditional license after the first 30 days of a first offender's 90 day license suspension. However, NHTSA will not accept the use of an ignition interlock device as a substitute for the suspension requirements under the regulation.

(3) Certification Requirements

The agency proposed in the NPRM to eliminate two procedural barriers which were established by regulation. Specifically, we proposed to strike from § 1309.4(a)(2)(i), the requirement that States must provide information showing active implementation of criteria during the four years prior to applying for a grant when the certification is based upon prior adoption of a criterion. The agency also proposed to delete the word "existing" from § 1309.4(a)(2)(iii), thereby permitting States to maintain aggregate expenditures, in accordance with the statute, based not only on existing alcohol traffic safety programs, but also on innovative activities.

The agency also proposed to amend § 1309.4(a)(2) to reflect that State certifications are to be addressed simply to NHTSA, rather than to the Director, Office of Alcohol and State Programs.

We received only supporting comments in response to these proposed changes. Therefore, this final rule revised the regulation accordingly.

(4) Demonstrating Compliance With the Prompt Suspension Requirement

Section 408 of the Act requires that, to be eligible for a basic grant, each State must provide, among other things, for the prompt suspension of the driver's license of any person who commits an alcohol-related offense, including the refusal to submit to a chemical test. The license suspension must be for a period of not less than 90 days for first offenders. First offenders include both individuals who are determined to be intoxicated while operating a motor vehicle as a result of a chemical test and those who refuse to submit to a chemical test. The suspension must be not less than one year for repeat offenses (including both repeat failures and repeat refusals). The agency's regulation implementing this requirement provides in § 1309.3(f) that, for first offenses (other than refusals), the first 30 of the 90 days must be a "hard" suspension, under which no conditional license may be made available; for first refusals, all of the 90 days must be a "hard" suspension.

Subsection 1309.5(a)(2) of the regulation provides that, to demonstrate compliance, a State must submit both a copy of the law or regulation implementing this requirement and a statistically valid sample providing certain necessary data.

The agency proposed, in the NPRM, to adopt a new format for demonstrating compliance with this criterion, which would allow each State to choose whether to base its application on either the text of a complying law, regulation or binding policy directive, or data demonstrating that the State in fact complies with the prompt suspension criterion. The amount of information would also depend upon whether the State is applying for first or subsequent year funding.

The format was described in detail in the NPRM. Those interested in reviewing this more detailed description should consult that notice (53 FR 11679, 11681). The agency has decided to adopt the new format, as proposed. The agency will consider a State to be a "Law" State, for purposes of complying with the prompt suspension requirement, if the terms of the State's statutes, regulations, or binding policy directives, on their face, meet each element of the prompt suspension criterion. Other States will be considered to be "Data" States.

Louisiana states, in its comments, that if a State has a complying law, it should not be required to also issue a binding policy directive. The agency agrees. It did not mean to give this impression in the NPRM. Our regulation requires that the State have *either* a law, regulation *or* a binding policy directive that complies on its face. If a State has a binding policy directive that complies with the criteria, it need not also have a law or regulation. Similarly, if a State has a complying law or regulation, it need not also issue a binding policy directive to comply.

One commenter argues that the agency should accept as a law a measure that has been accepted in one house of a State legislature. However, such a measure would not be binding in the State, and clearly does not conform to the plain meaning of the term "law." In addition, it would not meet the statutory requirement that the States "provide for" each of the section 408 criteria.

In response to a request from Illinois, we wish to clarify that a State can be a Law State for purposes of the prompt suspension requirement and a Data State for purposes of the mandatory sentencing requirement, or vice versa. (See, *infra*, for a further discussion on demonstrating compliance with that criterion.)

A Law State will not be required to submit data to comply with the prompt suspension requirement in the first year it receives a basic grant, only its law, regulation or binding policy directive. It will be required to submit both data and its law, regulation or binding policy directive to show continued compliance in subsequent years. A Data State will be required to submit both data and its law, regulation or binding policy directive to show compliance with the prompt suspension requirement in the first and in subsequent years.

A number of respondents commend the agency for proposing, in this and in other sections of the regulation, to reduce the amount of data required. Others suggest that we have not gone far enough. Mississippi, for example, expresses its opinion that data should not be required of Law States with administrative suspension requirements for more than two years. Illinois asserts that no State should be required to submit data to provide that it complies with an element of the prompt suspension requirement that can be supported by the State's law, regulation or binding policy directive.

NHTSA has decided not to adopt either of these recommendations. Under the prompt suspension criterion, States must demonstrate that licenses are suspended "promptly" and they must submit data regarding the length of license suspension terms. The agency believes the information required under this criterion should not be difficult for States to collect, since it should be available from the licensing agency in each State. More importantly, we believe collection of this information is essential for States, so they can ensure that the elements of the prompt suspension criterion continue to be met. We have observed that both the length of suspension and promptness requirements often prove difficult for States to maintain, even when they are established by State law. The availability of this data should alert both the States and the agency to any compliance problems before they become irreversible. This data is particularly important, as New Jersey suggests, now that the agency is permitting States to demonstrate compliance through the use of averages. (See discussion below.)

Illinois recommends that § 1309.5(a)(3)(i) be further amended to clearly provide that States must demonstrate compliance with each license suspension term separately. It was indeed the intent of the agency to require that States provide data on each of the following terms: 30-day hard suspension and 60-day suspension with a conditional license (or 90-day hard suspension) for first offenders; 90-day hard suspension for first refusers; one-year hard suspension for repeat offenders and one-year hard suspension for repeat refusers. Paragraphs 1309.5 (a)(2)(ii) and (a)(3)(i) of the regulation are amended to clarify this requirement.

Paragraph 1309.5(a)(3)(i) is also amended to clarify that a Data State must submit a copy of its law, regulation or binding policy directive as well as data to demonstrate compliance with this criterion. This requirement was inadvertantly omitted from the amendatory language in the NPRM. The agency has a need to review a State's law to understand its alcohol countermeasures program and to interpret the data that is provided. The submission of this information (which States provide under the current regulation) should not impose any burden on the States. This amendment should not be viewed as a requirement that the law of a Data State must provide for each element of the prompt suspension requirement. This is required only for States that qualify as Law States under the regulation.

The agency did not propose in the NPRM to change the definition of the term "prompt" for basic grants. To demonstrate compliance with the promptness requirement, the regulation provides that a State must show that the average time from arrest to suspension cannot exceed 45 days, or the average time from arrest to suspension cannot exceed 90 days and the State must submit a plan showing how it intends to achieve a 45 day average.

New York proposes that the 45 and 90 day periods should be changed to 90 and 180 days, respectively. The Insurance Institute for Highway Safety (IIHS) proposes that the periods of time should be made progressively shorter to encourage States to pass administrative suspension statutes. The agency has decided not to adopt either of these proposals. We believe that the 90 and 180 day periods proposed by the State of New York are unreasonably long for deterrence purposes. With regard to the change proposed by IIHS, the agency believes it would serve as an unnecessary burden, which is exactly what the agency is attempting to remove in this rulemaking action.

The promptness requirement has proved to be a difficult element for many States to meet, and we do not wish to impose unreasonable regulatory requirements under the section 408 program. The agency agrees that States

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should be encouraged to improve their alcohol countermeasures programs; however, improvement is already required under the regulation. Moreover, different States are capable of improving their programs in different ways. IIHS urges that its proposal is designed to encourage States to enact administrative suspension statutes. The agency encourages States to pass administrative suspension statutes, recognizing that these laws have been effective in States that have enacted them. However, we also realize that enactment of a new statutory scheme can require a substantal effort on the part of the State. Some States may be able to achieve considerable results using other methods that would not require legislative change, and we do not wish to discourage innovation. We believe it could be detrimental to the overall alcohol countermeasures programs in the States if we were to dictate that this one aspect of their programs must be improved at the expense of all others. As NHTSA asserted in its June 29, 1988 statement before the Subcommittee on Water Resources, Transportation and Infrastructure of the Senate Committee on Environment and Public Works regarding S. 2367, a bill which was also designed to encourage States to enact administrative suspension statutes, it is our view that a revocation or suspension within 45 days of arrest, along with other section 408 requirements, creates the desired deterrent effect.

In the NPRM, the agency proposed to increase flexibility by permitting States to show compliance with the prompt suspension requirement through the use of averages. (The element of this prompt suspension requirement that we are referring to here is the length of time for which a license is suspended.) The regulation already permits States to use averages to show compliance with the promptness requirement, i.e., the requirement that States must show that the suspension period begins promptly. In particular, we proposed to accept from Law States "data showing that the State meets an average of [the license suspension] terms, or a plan to achieve these averages." For Data States, NHTSA proposed to accept "data showing that the State meets an average of the terms. A Data State would not have the option of submitting a plan showing how it intends to achieve these averages." (For a more detailed explanation of this proposal, readers should consult the NPRM, 53 FR 11679, 11682.)

With the exception of the Insurance Institute for Highway Safety, all commenters addressing the issue support this aspect of the proposal. Some, in fact, find it to be the most important. IIHS, on the other hand, asserts in its comments that NHTSA does not have discretion to accept averages. Section 408 of the Highway Safety Act requires that each State must provide "for the prompt suspension, for a period *not less than* ninety days in the case of a first offender and *not less than* one year in the case of any repeat offender * * *." [Emphasis added.] IIHS argues that, based on this language, NHTSA does not have discretion to "permit a state to impose * * * suspensions that are less than the required minimum of 90 days or one year."

The agency does not agree with the position of the Insurance Institute on this issue. If NHTSA were to interpret the statutory language to require that States must show that each and every offender completes the time periods for suspensions established in the law, then it is very likely that few, if any States would comply with the statutory criteria. This was clearly not intended by Congress. While we expect that the vast majority of offenders will lose their license for the requisite period of time, this rule is intended to provide flexibility by not penalizing otherwise complying States merely because some offenders receive shorter license suspension terms in special cases, while others receive longer terms than mandated by the Federal law. Moreover, the agency believes that Congress did afford NHTSA with flexibility in this section of the statute.

While we recognize that the Act does establish minimum suspension periods, we note that it does not specify how States must demonstrate compliance with these periods. In addition, Congress did not include in the prompt suspension requirement of 408, the types of restrictions it imposed for the sentencing criterion. The statute requires that each State must provide "for a *mandatory* sentence which *shall not be subject to* suspension or probation." [Emphasis added.] Due to the use of this more restrictive language relating to sentencing, the agency did not consider permitting States to use averages to demonstrate compliance with this criterion.

Finally, by permitting the States to demonstrate that their suspension terms comply with the statute through the use of averages, we are making this section of the regulation more uniform. As indicated above, the current regulation already permits States to use averages to demonstrate compliance with the promptness requirement. Although the statute does not define the term prompt, the legislative history discusses both elements of the prompt suspension requirement as if they are to be treated alike. It provides:

> The key is that, within a matter of days after a drunk driver has been apprehended, his license has been suspended for at least 90 days for the first incident and 1 year for the second * * *. Too often, months and months are allowed to pass * * *

For these reasons, the agency will adopt its proposal and permit States to demonstrate compliance with the prompt suspension requirement of 408 through the use of averages. However, as we stated in the NPRM, since the agency is providing increased flexibility by permitting States to show compliance through averages, we will accept absolutely no deviations from States that qualify based on data. For example, to demonstrate compliance with the 90 day hard license suspension term for first refusers, a State submitting data which shows a 89 day average would not be eligible for funding.

As the agency explained in the NPRM, the average license suspension terms must include only the period of time actually ordered by the State. Plus, the data must include license suspension terms only to the extent they are actually completed. Illinois' Secretary of State asserts that suspension terms should not be limited in this way. He urges the agency to allow States to include the time the individual was actually off the road rather than the minimum period of the suspension. There may be circumstances, such as when a court or licensing agency extends a suspension term, which would justify including a period of time longer that the term *originally* ordered by the State. However, terms must still be limited to the periods of time actually ordered. Otherwise, cases may be considered that would skew the data. For example, an individual whose license is suspended or revoked and moves from the State and obtains a drivers license elsewhere may be included in the sample for an indefinite period of time. The Secretary of State is correct when he asserts that revocations should be used in the calculation of license suspension terms. The agency does not distinguish between suspensions and revocations under the section 408 program. See, § 1309.3(f). Of course, the limitations cited above would continue to apply.

Amendments are made to §§ 1309.3(d), 1309.3(f) and 1309.5(a) to incorporate the changes described above.

(5) Demonstrating Compliance with the Mandatory Sentence Requirement

Section 408 of the Act requires that, to be eligible for a basic grant, each State must provide, among other things, for a mandatory sentence, which shall not be subject to suspension or probation, of any person convicted of driving while intoxicated more than once in any five-year period. The mandatory sentence must consist of either imprisonment for not less than 48 consecutive hours or not less than ten days of community service. The agency's regulation implementing this requirement provides in § 1309.5(b)(2) that, to demonstrate compliance, a State must submit both a copy of the law implementing this requirement and a statistically valid sample providing certain necessary data.

The agency proposed to adopt an approach for demonstrating compliance with this criterion, similar to the one described above with regard to the prompt suspension criterion. We received no objections to this proposed approach, and have therefore decided to adopt the proposal, as it was described in the NPRM. (For a more detailed discussion of the proposal, readers should consult the notice, 53 FR 11679, 11682.)

To summarize these changes, each State may choose whether to base its application on either the text of a complying law, regulation or binding policy directive alone or a combination of the State's law and data demonstrating that the State in fact complies with certain aspects of the mandatory sentence criterion. However, the agency will not permit States to demonstrate compliance with this criterion by means of overall averages.

NHTSA will consider a State to be a "Law" State under this criterion if the terms of the State's statutes, regulations, or binding policy directives, on their face, meet each element of the mandatory sentence criterion. Other States will be considered to be "Data" States under this criterion if the State has a law, regulation or binding policy directive which meets each element of the mandatory sentence criterion, with one exception: It need not provide specifically that the 48 hour term of imprisonment must be served consecutively. (As stated in the previous section of this final rule, a State can be a Law State for purposes of the prompt suspension requirement and a Data State for purposes of the mandatory sentencing requirements, or vice versa.)

To comply with this criterion both in the first and in subsequent years it receives a basic grant, a "Law" States will not be required to submit data, only its law, regulation or binding policy directive. In both the first and subsequent years, a "Data" State will be required to submit its law, regulation or binding policy directive, plus data demonstrating substantial compliance with the consecutiveness requirement.

A number of respondents, all representing the State of Arizona, noted that Arizona has had difficulty re-qualifying for section 408 funds under the mandatory sentencing requirement. The State's law provides for a 60-day mandatory sentence, but does not require that 48 hours of that sentence be served consecutively. Each of these respondents supports modification to the statutory requirements to address this problem, and some ask the agency to use this rulemaking action to recommend consideration of statutory changes. The agency cannot modify the statute in this rulemaking action; nor is this rule the appropriate document in which to recommend statutory changes. However, we will retain these comments and carefully consider them when amendments to section 408 of the Highway Safety Act are being contemplated. (We will do the same with the comments of the Governor's Representative for the Commonwealth of Virginia, who also requests that NHTSA support certain statutory changes to the section 408 criteria.)

(6) Promptness Requirement for Supplemental Grants

NHTSA proposed, in the NPRM, to amend its regulation to make the promptness requirement for supplemental grants consistent with the promptness requirement for basic grants. Oklahoma and New Jersey concur with this change. No one objected. This final rule amends the regulation accordingly.

The State of Washington urges NHTSA to allow States that qualify for basic grants to automatically be eligible for a supplemental grant. NHTSA does not have authority to make this change. Rather than establishing criteria for a 50% alcohol incentive grant, the statute defines certain criteria for a 30% basic grant plus additional criteria for a supplemental grant of up to 20%. This suggestion therefore will not be adopted.

In a final rule published in the **Federal Register** on May 18, 1988 (53 FR 17692), NHTSA revised portions of the agency's regulation implementing section 408, relating to supplemental alcohol incentive grants, to reflect the statutory extension from three to five, the number of fiscal years in which a State may receive alcohol incentive grants. We identified, in the preamble to the final rule, the qualifications for States to receive alcohol incentive grants in a fourth and fifth fiscal year. We indicated that States would not have to adopt any additional supplemental criteria (but must maintain at least the same number as the year before), and must demonstrate improved performance in its overall alcohol countermeasures program. In order to ensure that there is no confusion in the regulatory language, the agency is amending § 1309.6(e) to clarify these requirements.

Miscellaneous Comments and Amendments

The agency also proposed two miscellaneous amendments to correct typographical errors which currently appear in the regulation. These proposed changes were not challenged and will, therefore, be adopted.

Additional recommendations were submitted in the comments, regarding issues that were not addressed in the NPRM. Each of these recommendations will be addressed in this section of the final rule.

Louisiana found our proposal difficult to understand, and requested that the final rule be more concise. The State does not specify, however, which sections it believes should be abbreviated, or whether the State is referring to the regulation itself or the preamble to the NPRM. The agency has avoided repeating, in the preamble to this final rule, many of the details of the revisions that were described in the NPRM. It is our hope that Louisiana will find this preamble clearer. We believe the regulation was clear as originally drafted.

The State of Kansas urges that model legislation would be helpful to States that wish to qualify for section 408 funds. While NHTSA has often prepared model legislation in other areas, it does not believe that the amendments to State laws contemplated by section 408 lend themselves to a single model law. State laws differ greatly in their treatment of drunk driving, and vary widely in the way they are organized. Thus, a model law that recommends appropriate amendments for one State's laws would likely not be appropriate in another State. Also, NHTSA does not wish to limit State flexibility, even by implication, by appearing to prefer one type of legislation over another. If States wish to use a model for drunk driving legislation, we suggest that they consult the Uniform Vehicle Code or the laws of a State that has already qualified for section 408 funding. In addition, States should not hesitate to contact NHTSA

for specific assistance in reviewing proposed State legislation

Michigan requests a statistically sound analysis of the benefits of the individual section 408 criteria, in order that such information can be presented to its legislature. NHTSA is conducting an analysis of the effectiveness of the section 408 program. The study is nearing completion. The agency intends to forward copies of the study to the States once it has been completed. In addition, a number of studies already exist which address the effectiveness of particular countermeasures. Any State that has an immediate need for information, or needs help locating studies, is invited to contact NHTSA's Office of Alcohol and State Programs for assistance.

The United States Park Police suggest several technical amendments, specifically that: (1) The definition of "prompt" in §§ 1309.3(d) and 1309.5(a)(2)(ii) should be determined based on the period of time from arrest to the first judicial appearance, rather than to suspension; (2) in § 1309(f) (1) and (3), the term "conviction" should be used instead of "offense" to ensure that individuals later found not guilty of alcohol-related offenses are not still required to lose their driving privileges; (3) in § 1309.3(f) (2) and (3), the term "chemical test" should be expanded to include "other quantitative tests"; and (4) NHTSA should clarify whether the term "fiscal year" in § 1309.5(a)(2)(i) refers to the Federal or the State fiscal year.

NHTSA is unable to adopt the Park Police's first two recommendations due to statutory requirements. Section 408 of the Highway Safety Act requires an eligible State to provide for a "prompt suspension." A prompt judical appearance, or notice of intent to suspend, as suggested by the Park Police, will not suffice under the statute. While other statutory criteria for basic and special grants specifically pertain to persons who have been "convicted" of alcohol-related offenses, the prompt suspension criterion pertains to a "first offender" and any "repeat offender." The agency agrees with the commenter, and has found on previous occasions, that the statute permits a State to reinstate driving privileges to a person charged with an alcohol-related offense, who is later found not guilty. However, we are unable to replace the word "offenses"with "convictions". Such a change would be interpreted to require a license suspension only after a person was convicted, and the authors of the Act specifically contemplated that a driver's license would be suspended before that time. See, Cong. Rec. S S13198, October 1, 1982.

Prior to the issuance of the NPRM, Mr. Peter B. Higgins, Assistant Attorney General of the State of Oregon, wrote to the agency in connection with Oregon's application for section 408 funding. In this letter, which has been placed in the public docket for this rulemaking, he points out that the agency's regulation currently defines the term "repeat offender" as "any person *convicted* of an alcohol-related traffic offense more than once in five years." [Emphasis added.] For the reason cited above, the agency believes that defining this term as a function of convictions is not consistent with the statutory scheme or the legislative history of the section 408 program and, in fact, the agency has been interpreting the term without regard to convictions. The Advanced Notice of Proposed Rulemaking (ANPRM), which first proposed the definition for "repeat offender," noted that the definition "appears most consistent with Congress' directive * * * that such persons [those who have been convicted more than once in five years] be treated as repeat offenders for sentencing purposes." 47 FR 51152, 51153 [emphasis added]. Neither the ANPRM nor subsequent notices indicate an intent to define a "repeat offender" with reference to convictions for suspension purposes. Since the term "repeat offender" is used only in the prompt suspension criterion of the regulation, and not in the regulation's sentencing criterion, NHTSA has amended the definition of this term to delete references to conviction in order to more accurately reflect Congressional intent and to conform with our interpretations.

The term "chemical test" also comes from section 408 of the Highway Safety Act. The U.S. Park Police suggests expanding this term to include other quantitative tests, to allow for future technological advances in testing for alcohol/drug-related offenses. We believe the respondent is referring to the recent increased used of breath testing instruments which use a technique known as infrared light absorption, and challenges to their use in State courts. In a recent decision in the State of Florida, a court found that use of the term "chemical test" in its statute does not preclude the State from using evidence of "nonreaction physical tests regarded as equally reliable by experts in the scientific field. We think the phrase 'chemical analysis' is commonly used to include tests which identify chemical compounds by their physical properties." *Curry v. State*, 522 So.2d 887, 889 (Fla.App.2 Dist.1988). See also, *Com. v. Smythe*, 5502 N.E.2d 162 (Mass.App.Ct. 1987); *State v. Nichols*, 718 P.2d 1261 (Idaho App. 1986). NHTSA agrees with the court. The key is not whether the test employs chemical reactions, but rather whether a test used to identify chemical compounds is regarded as reliable. We consider any instrument that conforms to the agency's Model Specifications for Evidential Breath Testing Devices (EBT's), and is included on the agency's Conforming Products List (CPL), to be a "chemical test."

In response to the final comment of the U.S. Park Police, we wish to clarify that, wherever the term "fiscal year" appears, the Federal fiscal year applies.

Effective Date

The amendments made by this final rule are designed to increase flexibility for the States, and to help them qualify for section 408 funding. In order to assist States to qualify for alcohol incentive grants before the end of the fiscal year, these amendments are effective immediately upon publication in the **Federal Register.**

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. State participation in the 408 program is voluntary. In addition, the agency has determined that this rule will not have an annual impact of $100 million on the economy, and will not involve either a substantial effect on State and local governments or a substantial change in policy. The agency is simply providing for alternative methods of demonstrating compliance with the statutory criteria for obtaining section 408 funds. Accordingly, neither a Regulatory Impact Analysis nor a Regulatory Evaluation is required.

When the agency first promulgated the initial regulations to implement the section 408 program on February 7, 1983 (48 FR 5545), it determined that the rulemaking should be classified as significant under the Department's regulatory policies and procedures since we were initiating, at that time, a new

regulatory program. A regulatory evaluation was prepared and placed in the public docket (Docket No. 82–18; Notice 5). Persons interested in reviewing this document, should request it from the docket section.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. States, which are not small entities, will be recipients of any funds awarded under the regulation and, accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this action that States retain and report to the Federal government information which demonstrates compliance with alcohol incentive grant criteria, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through April 30, 1990; OMB No. 2127–0501.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action will not have any effect on the human environment.

List of Subjects in 23 CFR Part 1309

Alcohol, Drugs, Grant programs, Transportation, Highway safety.

In accordance with the foregoing, NHTSA amends Part 1309 of Title 23 of the Code of Federal Regulations as follows:

PART 1309—[AMENDED]

1. The authority citation for Part 1309 continues to read as follows:

Authority: 23 U.S.C. 409; delegation of authority at 49 CFR 1.50.

§ 1309.3 [Amended]

2. Section 1309.3(c) is revised to read as follows:

* * * * *

(c) "Imprisonment" means confinement in a jail, minimum security facility, community corrections facility, in-patient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained. It does not include house arrest.

* * * * *

3. Section 1309.3(d) is revised to read as follows:

* * * * *

(d) "Prompt" means that the period of time from arrest to suspension of a driver's license does not exceed 45 days.

* * * * *

4. Section 1309.3(e) is revised to read as follows:

* * * * *

(e) "Repeat offender" means any person who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and

(1) To whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or

(2) Who refuses to submit to such a test as proposed by the officer, more than once in five years.

* * * * *

5. Section 1309.3(f)(1) is revised to read as follows:

* * * * *

(f) * * *

(1) For first offenses (other than refusals), the temporary debarring of all driving privileges for a term of not less than 90 days, or not less than 30 days followed immediately by a term of not less than 60 days of a restricted, provisional or conditional license. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued or with Statewide published guidelines and in exceptional circumstances specific to the offender.

* * * * *

6. Section 1309.3(f)(2) is revised to read as follows:

* * * * *

(f) * * *

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for a term of not less than 90 days.

* * * * *

7. Section 1309.3(f)(3) is revised to read as follows:

(f) * * *

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for a term of not less than one year or longer, subject to the requirements of § 1309.5, or § 1309.7 as appropriate.

§ 1309.4 [Amended]

8. Section 1309.4(a)(2) introductory text is amended by removing the phrase "Office of Alcohol and State Programs, NTS–20" which appears before the word "NHTSA". Paragraph (a)(2)(i) of that section is amended by removing the period at the end of the first sentence, and in its place inserting a comma, and by removing in its entirety the second sentence which begins "If the certification" and ends with the words "application for a grant,". Paragraph (a)(2)(iii) of that section is amended by removing the word "existing" which appears prior to the phrase "alcohol traffic safety programs".

§ 1309.5 [Amended]

9. Section 1309.5(a)(2) is revised to read as follows:

* * * * *

(a) * * *

(2)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the prompt license suspension requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (a)(2)(i) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1309.3(f) and that the average number of days it took to suspend the licenses from date of arrest meets the definition for promptness in § 1309.3(d). The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1309.3(f), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages. If the State's data do not meet the average promptness requirement defined in § 1309.3(d), the State can demonstrate compliance with this element by submitting data showing that the average time from arrest to suspension of a driver's license does not exceed 90 days and a plan showing how it intends to achieve a 45 day average.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the prompt license suspension criterion.

* * * * *

10. A new § 1309.5(a)(3) is added to read as follows:

* * * * *

(b) * * *

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for the prompt license suspension requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refuser, repeat offenders and repeat refusers meets the terms defined in § 1309.3(f) and that the average number of days it took to suspend the licenses from date of arrest meets the definition for promptness in § 1309.3(d). The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not reflect license suspension periods which exceed the terms actually prescribed by the State, and must only reflect terms to the extent that they are actually completed. If the State's data do not meet the average promptness requirement defined in § 1309.3(d), the State can demonstrate compliance with this element by submitting data showing that the average time from arrest to suspension of a driver's license does not exceed 90 days and a plan showing how it intends to achieve a 45 day average.

(ii) For the purpose of this paragraph, "Data State" means a State that does not meet the definition of "Law State" in paragraph (a)(2)(iii) of this section.

* * * * *

11. Section 1309.5(b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory sentence criterion.

(ii) For the purpose of this paragraph, "Law State" means that the State has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, including the requirement that the 48 hour term of imprisonment must be served consecutively.

* * * * *

12. A new § 1309.5(b)(3) is added to read as follows:

* * * * *

(b) * * *

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Data State shall submit, in addition to the information identified in paragraph (b)(2)(i) of this section, data showing that it substantially complies with the consecutiveness requirement. The State can provide the necessary data based on a representative sample.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, except that it need not specifically provide that the 48 hour term of imprisonment must be served consecutively.

* * * * *

13. Section 1309.5(b)(1) is amended by removing the word "or" the second place it appears, and by inserting in its place the word "of".

§ 1309.6 [Amended]

14. Sections 1309.6(a) and 1309.6(c)(1) are amended by removing the words which appear in each paragraph following the phrase "license suspension system", and by inserting in their place the words "which meets the requirements of § 1309.5, and".

15. Section 1309.6(b) introductory text is amended by removing the word "a" which appears after the phrase "Have in place", and by inserting in its place the word "and".

16. Section 1309.6(e) is revised to read as follows:

* * * * *

(e) To qualify for a supplemental grant for a fourth and fifth year, a State must:

(1) Show that it has increased performance in its overall alcohol countermeasures program, and

(2) Implement the same number of requirements from paragraph (b) of this section as were in place the previous year, except that a State does not have to implement more than a total of fifteen criteria.

Issued on August 18, 1988.

Diane K. Steed,

National Highway Traffic Safety Administrator.

[FR Doc. 88-19305 Filed 8-22-88; 3:20 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8220]

Transition Rules for Certain Qualified Business Units Using a Profit and Loss Method of Accounting for Tax Years Beginning Before January 1, 1987

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations setting forth transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), which used a profit and loss method of accounting prior to the enactment of the Tax Reform Act of 1986 and do not elect (or are not required) to use the United States dollar approximate separate transactions method for taxable years beginning after December 31, 1986. This regulation is intended to provide immediate guidance for such taxpayers who must use the statutory profit and loss method of accounting for taxable years beginning after December 31, 1986. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986. In addition, the temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (INTL-892-88) (202-634-5406, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to procedures to be

followed by branches of United States persons, *i.e.* qualified business units (QBUs), using a profit and loss method of accounting prior to the enactment of Subpart J of the Internal Revenue Code of 1986.

Need for Temporary Regulations

New §§ 1.987–0T and 1.987–1T are added by this document to Part 1 of Title 26 of the Code of Federal Regulations in order to provide immediate guidance as to the transition rules for branches that used a profit and loss method of accounting under old law and do not elect (or are not required) to use the United States dollar approximate separate transactions method described in § 1.985–3T for taxable years beginning after December 31, 1986. These regulations will remain in effect until superseded by final regulations on this subject. Immediate guidance is needed by taxpayers who will report under the profit and loss method under section 987 for a taxable year beginning in 1987. For this reason it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Explanation of Provisions

Section 987 of the Internal Revenue Code of 1986 provides that (QBUs) that have a functional currency other than the U.S. dollar must account for their operations under the profit and loss method set forth in section 987 and regulations thereunder. In general, prior to the Tax Reform Act of 1986, foreign branches of U.S. persons accounted for their operations under a net worth method of accounting or a nonstatutory profit and loss method of accounting. Net worth to profit and loss transition rules are provided in § 1.989(c)–1T.

The profit and loss method in effect prior to the Tax Reform Act of 1986 is described in Rev. Rul. 75–107, 1975–1 C.B. 32. In general, under Rev. Rul. 75–107 a taxpayer computed the profit of a foreign branch by first calculating the branch's profit in its local currency and then transacting the net result into dollars.

One consequence of the profit and loss method under section 987 is that remittances from a branch result in the recognition of exchange gain or loss. Generally, a remittance is attributable first to earnings of taxable years beginning after Dcember 31, 1986, and second to unremitted earnings of taxable years beginning before January 1, 1987, and all capital contributions. The temporary regulations provide rules for determining the exchange gain or loss on a remittance in excess of post-86 earnings (*i.e.* on a remittance of pre-87 earnings or any capital contributions regardless of when made (the pool of EQ)), establishing a dollar basis for the EQ, and allocating the dollar basis to a remittance of EQ. Generally, exchange gain or loss equals the dollar amount of the remittance less its allocable dollar basis of EQ.

The dollar basis of the EQ generally equals the total dollar profit of the QBU for taxable years beginning before January 1, 1987, plus the dollar basis of capital contributions, less the dollar amount of remittances made during taxable years beginning before January 1, 1987. The pre-87 dollar profit of the QBU is that profit as properly adjusted for foreign taxes of the branch. That is, since foreign taxes diminish that amount of profits available for remittance, the dollar value of these taxes should not be included in the dollar basis of EQ. The Service is interested in receiving comments on any alternative methods for calculating the dollar basis of the EQ.

The temporary regulations also clarify how a profit and loss branch calculates the functional currency adjusted basis of its assets and the functional currency amount of its liabilities. Generally, these are historic functional currency calculations.

Section 1.987–0T sets forth a table of contents. Section 1.987–1T sets forth the transition rules. Paragraph (a) sets forth the applicability of § 1.987–1T. Paragraph (b) provides rules for (1) determining the functional currency pool of EQ; (2) determining the correct dollar basis of EQ; (3) determining the pool from which a remittance is drawn; (4) calculating the dollar basis of a remittance of EQ; and (5) calculating the exchange gain or loss on a remittance of EQ. Paragraph (c) provides rules for determining the functional currency adjusted basis of branch assets. Paragraph (d) provides rules for determining the functional currency amount of branch liabilities. Paragraph (e) provides an example of the foregoing rules.

Non-Applicability of Executive Order 12291

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is David Rosenberg of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.861–1—1.987–1

Income taxes, Aliens, Exports, DISC, Foreign Investments in U.S., Foreign tax credit, FSC, Sources of Income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.987–0T and 1.987–1T are also issued under 26 U.S.C. 987.

Par. 2. New §§ 1.987–0T and 1.987–1T are added immediately after § 1.861–3 to read as follows:

§ 1.987–0T Branch transactions (Temporary).

This section lists the paragraphs contained in § 1.987–1T.

§ 1.987–1T Transition rules for certain qualified business units using a profit and loss method of accounting for taxable years beginning before January 1, 1987 (Temporary).

(a) Applicability.
(b) Transition rule.
(c) Functional currency adjusted basis of branch assets acquired in tax years beginning before January 1, 1987.
(d) Functional currency amount of branch liabilities acquired in taxable years beginning before January 1, 1987.
(e) Example.

§ 1.987–1T Transition rules for certain qualified business units using a profit and loss method of accounting for taxable years beginning before January 1, 1987 (Temporary).

(a) *Applicability*—(1) *In general.* This regulation provides transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), whose functional currency (as defined in section 985 of the Code and the regulations thereunder) is other than the dollar and that used a profit and loss method of accounting (as described in paragraph (b) of this section) for their last taxable year beginning before January 1, 1987. A profit and loss method of accounting is any method of accounting under which the taxpayer calculates the profits of a QBU by computing the QBU's profits in its functional currency and translating the net result into dollars. For all taxable years beginning after December 31, 1986, such QBUs must account for use the profit and loss method of accounting as described in section 987, except to the extent otherwise provided in regulations under section 985 or any other provision of the Code. See § 1.989(c)–1T regarding transition rules for QBUs of United States persons whose functional currency is other than the dollar and that used a net worth method of accounting for their last taxable year beginning before January 1, 1987.

(2) *Insolvent QBUs.* This section shall not apply to a QBU that used a profit and loss method of accounting for its last taxable year beginning before January 1, 1987, whose beginning pool of $E (as defined in paragraph (b)(2)(1) of this section) is negative.

(b) *Transition rule.* This transition rule sets forth rules for calculating exchange gain or loss on a remittance (as defined in section 987) that occurs in a taxable year beginning after December 31, 1986, from a QBU that was on a profit and loss method of accounting for the taxpayer's last taxable year beginning before January 1, 1987. Under section 987, exchange gain or loss is determined on a remittance of post-86 QBU earnings (which are the previously unremitted earnings of the QBU, as adjusted according to United States generally accepted accounting and tax accounting principles, for taxable years beginning on or after January 1, 1987). Exchange gain or loss is also determined on a remittance in excess of post-86 QBU earnings. In order to calculate the exchange gain or loss occurring on such remittances, the taxpayer must assign its unremitted QBU earnings and capital (as measured in functional currency) to two pools, one pool consisting of post-86 QBU earnings and the other pool consisting of the sum of pre-87 equity (earnings and capital) and post-86 capital (hereinafter referred to as the EQ pool or EQ). A remittance first represents an amount of post–86 QBU earnings and secondly an amount out of EQ. This transition rule provides guidance for determining the extent to which a remittance is out of the EQ pool and provides a 5-step method for calculating exchange gain or loss upon a remittance from the EQ pool. The exchange gain or loss or a remittance from the EQ pool is determined by comparing the current dollar value of the remittance to the historical dollar basis of the remittance as determined under this transition rule and section 987. Such exchange gain or loss shall be considered realized in the taxable year of the remittance and shall be recognized except to the extent otherwise provided in regulations.

(1) *Step 1—Calculating the functional currency pool of EQ.*—(i) *Beginning pool.* The beginning pool of EQ is equal to the functional currency adjusted bases of a branch's assets less the functional currency amount of the branch's liabilities at the end of the taxpayer's last taxable year beginning before January 1, 1987, as these amounts are determined under the rules of paragraphs (c) and (d) of this section.

(ii) *Adjusting the EQ pool.* The EQ pool is increased by the functional currency amount of any capital contributions (as determined under section 987) made during the current taxable year or any prior taxable year beginning after December 31, 1986. If the capital contribution is made in a nonfunctional currency, this amount is translated into functional currency at the spot rate at the date of the contribution. The EQ pool is decreased by the functional currency amount of any remittance made during a prior taxable year beginning after December 31, 1986, that is considered remitted from the EQ pool under the ordering rules in paragraph (b)(3) of this section.

(2) *Step 2—Calculating the dollar pool of equity*—(i) *Beginning pool.* The beginning amount of a branch's dollar equity pool (hereinafter referred to as the $E pool) equals:

(A) The dollar amount of all the branch's profits reported on the taxpayer's income tax returns for taxable years beginning before January 1, 1987, plus the total dollar amount of all capital contributions to the branch during that period (properly reflected on the taxpayer's books), less—

(B) The dollar amount of all the branch's losses reported on the taxpayer's income tax returns for such years, and the total dollar basis of all remittances made by the branch during that period (properly reflected on the taxpayer's books).

A branch's profits and losses shall be properly adjusted for foreign taxes of the branch.

(ii) *Adjusting the $E pool.* The $E pool is increased by the dollar amount of any capital contributions (as determined under section 987) made during the current taxable year or any prior taxable year beginning after December 31, 1986. If the capital contribution is made in a currency other than the dollar, this amount is translated into dollars at the spot rate at the date of the contribution. The $E pool is decreased by the dollar basis of any remittance made during a prior taxable year beginning after December 31, 1986, that is considered remitted from the $E pool (as determined under paragraph (b)(4) of this section).

(3) *Step 3—Determination of the pools from which remittances are drawn.* The functional currency amount of any remittance is considered to come first out of unremitted post-86 functional currency earnings (including functional currency earnigs for the current taxable year determined without regard to remittances made during the current year). To the extent the functional currency amount of the remittance (as determined under section 987) exceeds unremitted post-86 functional currency earnings, it is considered to come out of the EQ pool (as determined under paragraph (b)(1) of this section).

(4) *Step 4—Calculation of the dollar basis of a remittance of EQ.* The dollar basis of the amount of EQ remitted equals:

$$\frac{\text{functional currency amount remitted from EQ}}{\text{EQ}} \times \$E$$

Where:
EQ = the QBU's functional currency pool of branch equity determined under paragraph (b)(1)
$E = the QBU's dollar pool of branch equity determined under paragraph (b)(2)

(5) *Step 5—Calculation of the exchange gain or loss on the remittance of EQ.* The exchange gain or loss determined on a remittance out of EQ equals—

(i) The dollar value of the EQ remitted (as determined under section 987), less

(ii) The dollar basis of the EQ remitted as calculated under paragraph (b)(4) of this section.

(c) *Functional currency adjusted basis of branch assets acquired in taxable*

years beginning before January 1, 1987.

(1) For taxable years beginning after December 31, 1986, the functional currency adjusted basis of a QBU asset acquired in a taxable year beginning before January 1, 1987, is the functional currency basis of the asset at the date of acquisition, as adjusted according to United States generally accepted accounting and tax accounting principles. The functional currency adjusted basis of an asset for which a functional currency basis was not determined at the date of acquisition is the nonfunctional currency basis of the asset at the date of acquisition multiplied by the spot exchange rate at the date of acquisition, as adjusted according to United States generally accepted accounting and tax accounting principles.

(2) Any future adjustments to the functional currency adjusted basis of such an asset are determined with respect to the appropriate functional currency adjusted basis of the asset as determined under this paragraph (c).

(d) *Functional currency amount of branch liabilities acquired in taxable years beginning before January 1, 1987.* For the first taxable year beginning after December 31, 1986, the amount of a QBU liability incurred in a taxable year beginning before January 1, 1987, is the functional currency amount of the liability at the date incurred, as adjusted according to United States generally accepted accounting and tax accounting principles. The functional currency amount of a liability for which a functional currency amount was not determined at the date incurred is the nonfunctional currency amount of the liability at the date incurred multiplied by the spot exchange rate at the date incurred, as adjusted according to United States generally accepted accounting and tax accounting principles.

(e) *Example.* The provisions of this section are illustrated by the following example.

Example. (i) *Facts.* U.S. is a domestic corporation. B, a branch of U.S., operates in country X and was established in 1985. B is a QBU and its functional currency is the FC. U.S. is on a calendar taxable year and, prior to January 1, 1987, accounted for the operations of B by the profit and loss method of accounting as set forth in Rev. Rul. 75–107, 1975–1 C.B. 32. B's books and records were kept according to United States tax accounting principles. B received a capital contribution of $2,000 in 1985, and had profits of $3,000 in 1985 and $5,000 in 1986. B made a remittance in 1988 the dollar basis of which was $1,000. As of December 31, 1986, the adjusted basis of B's functional currency assets exceeded the functional currency amount of its liabilities by 15,000 FC (the beginning pool of EQ). Under section 987, B has earnings of 8,000 FC in 1987, which are worth $1,000 when translated at the weighted average exchange rate for 1987 as required by sections 987(2) and 989(b)(4). B has no earnings and incurs no loss in 1988. There are no contributions to branch capital in 1987 and 1988. B remits 18,000 FC in 1988. Under section 987, the appropriate exchange rate for the 1988 remittance is 10 FC/$1.

(ii) *Calculation of exchange gain or loss on remittance.*

A. *Post-86 earnings.*

Under paragraph (b)(3) of this section, the 18,000 FC remittance comes first out of post-86 earnings (8,000 FC) and second out of EQ (10,000 FC). The loss on the 1988 remittance of post-86 earnings equals:

Dollar value of post-86 earnings remitted—Dollar basis of post-86 earnings remitted

= (8,000 FC × 10 FC/$1) − $1,000
= $800 − $1,000
= <$200> loss

B. *EQ.*

Under paragraph (b) of this section, U.S. will calculate exchange gain or loss on the 10,000 FC remittance of EQ from B as follows:

Step 1. The total EQ pool equals 15,000 FC (the functional currency adjusted bases of its assets less the functional currency amount of its liabilities as of December 31, 1986). There are no adjustments necessary under paragraph (b)(1)(ii) of this section.

Step 2. The $E pool is $9,000 (the $2,000 capital contribution in 1985 plus profits of $3,000 in 1985 and $5,000 in 1986 and less the $1,00 dollar basis of the 1986 remittance). There are no adjustments necessary under paragraph (b)(2)(ii) of this section.

Step 3. The entire 10,000 FC remittance is deemed to come out of EQ.

Step 4. The dollar basis of the EQ remitted equals:

N × $E determined under paragraph (b)(2)

$$= \frac{10{,}000\ \text{FC}}{15{,}000\ \text{FC}} \times \$9{,}000 = \$6{,}000$$

Where:

$$N = \frac{\text{Portion of remittance out of EQ}}{\text{Total EQ determined under paragraph (b)(1)}}$$

Step 5. Exchange loss of U.S. on remittance equals:

Dollar value of the EQ remitted—Dollar basis of the EQ remitted

= (10,000 FC × 10 FC/$1) − $6,000
= $1,000 − $6,000
= <$5,000> loss

C. *Total loss on remittance.* The total combined loss on the remittance is <$5,200>.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

Signed: August 15, 1988.

[FR Doc. 88–19190 Filed 8–24–88; 8:45 am]

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CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Procedures for Disclosure of Records Under the Freedom of Information Act

AGENCY: Central Intelligence Agency.

ACTION: Interim rule.

SUMMARY: The Central Intelligence Agency is amending the Code of Federal Regulations by adding "Predisclosure Notification Procedures for Confidential Commercial Information" to comply with Executive Order 12600 of June 23, 1987. These regulations are intended to provide submitters of confidential commercial information with consultation prior to public release of the information pursuant to the FOIA.

DATES: Effective Date: August 25, 1988. Submit any comments by September 26, 1988.

ADDRESS: Address all comments to John H. Wright, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

FOR FURTHER INFORMATION CONTACT: John H. Wright, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, Telephone: (703) 351–2083.

SUPPLEMENTARY INFORMATION: The policies and procedures of the Central Intelligence Agency (CIA or Agency) for handling requests for CIA records under the Freedom of Information Act (FOIA) or Executive Order 12356 are published in 32 CFR Part 1900. Part 1900 of Title 32 CFR was last published in full text in the **Federal Register** on 8 December 1987 (Vol. 52, No. 235, p. 46456). Section 1900.43(e) directs the records reviewer to § 1900.44 if records are determined to contain confidential commercial information. Section 1900.44 provides details of "Predisclosure Notification Procedures for Confidential Commercial Information" in compliance with Executive Order 12600 of June 23, 1987.

The Agency will issue a final rule as soon as possible after the expiration of the comment period. In the interim, the Agency will follow these regulations when processing records involving information potentially within the scope of exemption (b)(4).

This interim rule is not a major rule for the purposes of Executive Order 12291. This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 1900

Freedom of Information.

For reasons set forth in the preamble, 32 CFR Part 1900 is amended as follows:

PART 1900—[AMENDED]

1. The authority citation for Part 1900 continues to read as follows:

Authority: National Security Act of 1947, as amended; the Central Intelligence Agency Act of 1949, as amended; the Freedom of Information Act, as amended; the CIA Information Act of 1984; and Executive Order 12356.

2. Sections 1900.43(e) and 1900.44 are added to read as follows:

§ 1900.43 Reviewing records

* * * * *

(e) In the event located records are determined to contain confidential commercial information, the Coordinator shall follow the predisclosure notification procedures set forth in § 1900.44.

§ 1900.44 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the Central Intelligence Agency by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to business submitters.* The Coordinator shall provide a submitter with prompt notice of receipt of a Freedom of Information Act request encompassing its confidential commercial information whenever required in accordance with paragraph (c) of this section and except as provided in paragraph (g) of this section. The written notice shall either describe the exact nature of the confidential commercial information requested or provide copies of the records or portions of records containing the confidential commercial information.

(c) *When notice is required.* (1) For confidential commercial information submitted to the Agency prior to January 1, 1988, the Coordinator shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information, or

(ii) The Coordinator has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm, or

(iii) The information is subject to prior express commitment of confidentiality given by the Coordinator to the submitter.

(2) For confidential commercial information submitted to the Agency on or after January 1, 1988, the Coordinator shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) The submitter's claim of confidentiality must be supported by a certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, the Coordinator shall afford a submitter seven working days within which to provide the Coordinator with a detailed statement of any objection to disclosure. Such statement shall specify why the information is contended to be a trade secret or commercial information that is considered confidential and capable of competitive damage if improperly disclosed. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The Coordinator shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose confidential commercial information. Whenever the Coordinator decides to disclose confidential commercial information over the objection of a submitter, the Coordinator shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date, which is seven working days after the notice of the final decision to release the requested information has been mailed to the submitter. When notice is given to a submitter under this subsection, the Coordinator shall notify the requester that such notice has been given to the submitter and the proposed date for disclosure.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information covered by paragraph (c) of this section, the Coordinator shall promptly notify the submitter.

(g) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Coordinator determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

Approved:

R. M. Huffstutler,

Deputy Director for Administration.

Date: July 28, 1988.

[FR Doc. 88-18393 Filed 8-24-88; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-88-02]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: At the request of the Port of Miami, the Coast Guard is changing the regulations governing the Dodge Island drawbridges at Miami, Florida, by extending the existing regulation and allowing the draw to remain closed during certain periods. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, telephone (305) 536-4103.

SUPPLEMENTARY INFORMATION: On March 24, 1988, the Coast Guard published proposed rules (53 FR 9671) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated April 5, 1988. In each notice, interested persons were given until May 9, 1988, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Brodie Rich, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

One hundred and twenty-eight comments were received. One hundred and twenty-two supported the proposal or expressed no objection. Five commentors opposed any change to existing regulations expressing that further restrictions on navigation imposed by a more restrictive regulation would necessitate vessel traffic divert around the bridge, and considered this regulation change unreasonable to meet the present needs of navigation. One of the objectors indicated that the proposed regulation change would cause adverse economic impacts on the marina located on the southwest corner of the Dodge Island bridge known as Miamarina. This regulation change would relieve present vehicular traffic conditions resulting from the steadily increasing volume of passengers destined to and from the passenger port facilities located on Dodge Island. The scheduled closure periods, will still afford opportunities for vessels to transit the bridge periodically through the day on Saturday including three midday openings between 11:15 a.m. and 12:15 p.m., and normally scheduled openings after 2:00 p.m. In addition, since there exists an alternate route around this drawbridge, the minimum disruption of waterway access resulting from this regulation is not considered to be an unreasonable burden to navigation. This regulation will only be in effect until the high-level fixed bridge presently under construction is completed, which will provide uninterrupted direct highway access from the mainland to Dodge Island (the Port of Miami). The final rule remains unchanged from the proposed rule published on March 24, 1988.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.261 is revised to read as follows:

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§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(pp) *Dodge Island bridges, mile 1089.4 at Miami.* The draws shall open on signal; except that from 7:15 a.m. to 5:45 p.m., Monday through Saturday except federal holidays and from 9:15 a.m. to 2:15 p.m. on Sundays, the draw need open only on the quarter-hour and three-quarter hour. From 9:20 a.m. to 11:10 a.m. and from 12:20 p.m. to 2:10 p.m. on Saturdays, the draws need not open.

* * * * *

Dated: August 16, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88-19346 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Port Arthur, Texas Reg. 88-03]

Security Zone Regulations; Port of Beaumont, Texas and Sabine Neches Waterway

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a Security Zone within the Port of Beaumont and around the vessels USNS ALGOL, USNS ALTAIR, and M/V CYGNUS. The zone is needed to safeguard the port and the vessels from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on 9 August 1988. It terminates on 27 August 1988 or unless sooner terminated by the Coast Guard Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Commander J.L. Robinson at (409) 724-4343.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to safeguard the port and attending vessels.

Drafting Information

The drafters of this regulation are LCDR B.J. Lambert, Project Officer for the Coast Guard Captain of the Port, and CDR J.A. Unzicker, Jr., Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The evolution requiring this regulation will begin on or about 9 August 1988. Establishing this Security Zone is essential to facilitating REFORGER 88, a joint service military operation which includes a military equipment load out through the Port of Beaumont, Texas. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.0401, 6.04-6, and 160.5.

2. A new § 165.T835 is added to read as follows:

§ 165.T835 Security Zone: Port of Beaumont, Texas and Sabine Neches Waterway in the vicinity of the USNS vessels ALGOL, ALTAIR and M/V CYGNUS.

(a) *Location.* The following area is a Security Zone: Port of Beaumont within its fenced limited access perimeter, the Neches River immediately adjacent to this area and 2 miles ahead and 1 mile behind these vessels as they transit the Sabine Neches Waterway.

(b) *Effective Date.* This regulation becomes effective on 9 August 1988. It terminates on 27 August 1988 or unless sooner terminated by the Coast Guard Captain of the Port.

(c) *Regulations:* (1) In accordance with the general regulations in Part 165.23, entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

Dated: July 5, 1988.

A.A. Whiting III,

Captain, USCG, Captain of the Port, Port Arthur, Texas.

[FR Doc. 88-19347 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

39 CFR Parts 17 and 21

Eligibility for Medical Benefits; Evidence of Inability To Defray Necessary Medical Expenses; Veterans Education; Clarification of Mitigating Circumstances; Correction

AGENCY: Veterans Administration.

ACTION: Final rules; corrections.

SUMMARY: On pages 25061-25066 of Federal Register of July 10, 1988 (51 FR 25061), the Veterans Administration (VA) published a final rule amending its medical series to conform with changes to several sections of Title 38, United States Code, enacted with passage of Title XIX of Pub. L. 99-272, "The Veterans' Health Care Amendments of 1986," significantly affecting veterans eligibility for health care benefits. In the process of making the amendments, gender specific language was inadvertently retained and some references were not updated.

On pages 28883-28884 of the Federal Register of August 1, 1988 (53 FR 28883) the VA published a final rule clarifying the Agency's policy on mitigating circumstances when a veteran withdraws from a course. In § 21.4136, subparagraph (4) on mitigating circumstances was inadvertently placed in the wrong paragraph.

This notice corrects previously published information.

EFFECTIVE DATES: July 1, 1988 for the Part 17 amendment; July 11, 1988 for the Part 21 amendment.

FOR FURTHER INFORMATION CONTACT:

Part 17: Paul Tryhus, Chief, Policies and Procedures Division (136F), Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2143.

Part 21: June C. Schaeffer, Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION:

List of Subjects in 38 CFR Part 17 and 21

Health care, Veterans.

Dated: August 19, 1988.

C.G. Verenes,

Acting Chief, Directives Management Division.

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

2. § 17.47 [Amended]

In § 17.47(e)(1) (ii) and (iv), remove the word "himself" wherever it appears, and insert, in its place, the word "self".

In § 17.47(e)(2) in the last sentence, remove the words "(c)(3)", and insert, in their place, the words "(e)(1)".

3. § 17.50b [Amended]

In § 17.50b(a) in the second sentence, remove the words "§ 17.50 (c) through (f)", and insert, in their place, the words "§ 17.50 c through f".

4. § 17.60 [Amended]

In § 17.60(c) in the first sentence, remove the words "§ 17.48(g)", and insert, in their place, the words "§ 17.48(j)".

PART 21—[AMENDED]

1. In § 21.4136, paragraph (l)(4) is correctly added as (k)(4) to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

* * * * *

(k) *Mitigating circumstances.* * * *

(4) If the student withdraws from a course during a drop-add period, the VA will consider the circumstances which caused the withdrawal to be mitigating. Veterans who withdraw from a course during a drop-add period are not subject to the reporting requirement found in paragraph (k)(1)(ii) of this section.

(Authority: 38 U.S.C. 1780(a)

* * * * *

[FR Doc. 88-19226 Filed 8-24-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3391-8]

Approval and Promulgation of Air Quality Implementation Plans; Nashua, NH, Carbon Monoxide Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan revisions submitted by the State of New Hampshire. The intended effect of these revisions is to control emissions of carbon monoxide in Nashua, New Hampshire, in order to attain the primary National Ambient Air Quality Standard by December 31, 1990 and to provide for reasonable further progress in the interim, as required under Part D of the Clean Air Act Amendments of 1977.

EFFECTIVE DATE: This action will be effective on September 26, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2312, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the New Hampshire Department of Environmental Services, Air Resources Division, 64 N. Main St., Concord, NH 03302.

FOR FURTHER INFORMATION CONTACT: Thomas F. Wholley, (617) 565-3233; FTS 835-3233.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1985, September 12, 1985, December 3, 1985, July 25, 1986, October 7, 1986, May 12, 1987 and October 15, 1987, the Director of the New Hampshire Air Resources Division (ARD) submitted revisions to the New Hampshire State Implementation Plan (SIP). These revisions request an extension of the attainment date for carbon monoxide (CO) for the City of Nashua to 1990 and contain the necessary attainment plan. The plan includes local street improvements, a vehicle Anti-tampering/Anti-fuel Switching program and a vehicle Inspection/Maintenance (I/M) program.

On August 4, 1986 (51 FR 27878), EPA published a Notice of Proposed Rulemaking proposing approval of the overall plan. On June 12, 1987 (52 FR 22503), EPA published a Supplementary Notice of Proposed Rulemaking proposing approval of the rules for the I/M program in Nashua and eleven surrounding towns (Amherst, Derry, Hollis, Hudson, Litchfield, Londonderry, Merrimack, Pelham, Salem, and Windham).

Details of the plan, the history of its development, and EPA's rationale for proposing approval of the plan are provided in detail in EPA's August 4, 1986 **Federal Register** notice. Similarly, details of the I/M program and EPA's rationale for approving the I/M rules are provided in detail in EPA's June 12, 1987 notice. As no public comments were received on either notice, details provided in those notices will not be repeated here. The remainder of this notice discusses information received since the proposals were published.

I/M Program Requirements

The criteria EPA uses in evaluating the adequacy of I/M programs are discussed in detail in a policy document published in the **Federal Register** on January 22, 1981 (46 FR 7182). The Nashua area program was reviewed against these criteria and found to satisfy seven of the ten applicable requirements. EPA proposed approval of the I/M rules with the understanding that New Hampshire would submit the information on the following criteria before final rulemaking: (1) The recordkeeping and record submittal requirements; (2) the surveillance procedures; and (3) the public awareness plan.

On October 15, 1987, New Hampshire submitted information on the missing elements. The New Hampshire Department of Safety (DOS), the agency responsible for implementing the I/M program, has agreed with EPA on what will be included on emission inspection reports and quarterly reporting of data. We have also agreed that criteria for targeting of surveillance inspections will include low failure rates, abnormal frequencies of reported test results, and complaints. For public awareness, New Hampshire will conduct an extensive press and letter campaign, including distribution of EPA pamphlets on I/M and emission controls to all motorists in the program area.

EPA finds that this information satisfies the criteria set forth in the policy document referenced above. For more details on EPA's review, see the Technical Support Document available at locations listed in the **ADDRESSES** section of this notice.

Local Street Improvements

The attainment plan commits to four transportation control measures which reduce traffic congestion around intersections with high CO levels. These measures include rerouting of traffic, road construction, parking controls and optimization of signal timing. The December 3, 1985 submission contained details of these measures and a schedule showing full implementation by December, 1988. In the August 4, 1986 Notice of Proposed Rulemaking, EPA noted that final approval would not be published until these measures had been

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implemented or until legal authority to implement them had been obtained.

Since that time, the City of Nashua, the ARD and EPA have worked together to modify the details of the December 3, 1985 submission. These modifications, submitted by New Hampshire on May 12, 1987, accommodate some of the city's other needs but still result in improvements in air quality of the same magnitude as the original plan.

EPA has reviewed the modified local street improvements and is satisfied that they provide the equivalent improvements in air quality as the measures we originally proposed for approval. EPA is also satisfied that all of these measures have been implemented. Further details on EPA's review are also found in the Technical Support Document referenced above.

Final Action

EPA is approving the New Hampshire Carbon Monoxide State Implementation Plan for the City of Nashua and New Hampshire's request to extend the attainment date to December 31, 1990. EPA is also approving the Nashua area I/M program rules and the commitment from the Governor to convert the program to computer analyzers, if necessary.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1988. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Date: May 27, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(39) as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(39) Attainment plans for carbon monoxide for the City of Nashua including an extension of the attainment date to December 31, 1990 as submitted on September 12, 1985, December 3, 1985, October 7, 1986, March 6, 1987, May 12, 1987 and October 15, 1987.

(i) *Incorporation by Reference.* (A) The New Hampshire Code of Administrative Rules, Department of Safety, Chapter 900, Emission Inspections, Part Saf–M, 901, Part Saf–M 902, Part Saf–M 903, Part Saf–M 904, Part Saf–M 905, Part Saf–M 906, Part Saf–M 907, Part Saf–M 908, Part Saf–M 909, and Part Saf–M 910, effective October 6, 1986.

(B) Section 715.02 Introductory Text and paragraph (1) of Part Saf-M-715, and § 716.01 Introductory Text and paragraph (g) of Part Saf-M-716, submitted to New Hampshire Department of Safety by the State of New Hampshire on August 14, 1985.

(ii) *Additional Material.* (A) A letter from Governor John H. Sununu to Michael R. Deland, dated March 6, 1987, committing to take legislative measures to convert the Inspection/Maintenance program in the Nashua area to the use of computerized emission analyzers in the event that the program is found to not be achieving the necessary emission reductions.

(B) Narrative submittals, including an attainment demonstration.

[FR Doc. 88–12631 Filed 8–24–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3430–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving Ohio's Good Engineering Stack Height Regulations, Ohio Administrative Code Chapter 3745–16–01 and 02, as a revision to the Ohio State Implementation Plan (SIP). The rules USEPA is approving restrict the use of stack height and dispersion techniques in setting emission limits which are based on the impact of source emissions on ambient air quality. The rules are intended to satisfy the requirements of Section 123 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on September 26, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886–6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 42366–0149.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, (312) 886–6088.

SUPPLEMENTARY INFORMATION: Section 123 of the Clean Air Act, as amended, requires USEPA to promulgate regulations to ensure that the degree of emission limitation required for the control of any air pollutant under an applicable State Implementation Plan (SIP) is not affected by that portion of any stack height which exceeds good engineering practice (GEP) or by any other dispersion technique. A regulation implementing section 123 was promulgated on February 8, 1982 (47 FR 5864). Revisions to the regulation were published on July 8, 1985 (50 FR 27892).

State Implementation Plan Requirements

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, USEPA is requiring that all States (1) review and revise, as necessary, their SIP to include provisions that limit stack height credits and dispersion techniques in accordance with USEPA's July 8, 1985, revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or by any other dispersion techniques. For any limitations that have been so affected, States are required to prepare revised limitations consistent with their revised SIP. All SIP revisions and revised emission limitations were required to be submitted to USEPA within 9 months of promulgation of the July 8, 1985, revised stack height regulations.

Today's notice addresses the State's Stack Height Regulations developed to include provisions in the Ohio SIP that limit stack height credits and dispersion

techniques in accordance with USEPA's July 8, 1985, regulations. This action is potentially subject to review and modification after USEPA finalizes its response to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). Any revised limitations for sources in Ohio will be addressed at a later time in a separate Federal Register notice.

On March 3, 1986, Ohio EPA submitted GEP Stack Height Regulations for inclusion in the State Implementation Plan. These regulations were adopted by the State on February 12, 1986, and became effective on March 5, 1986. On May 6, 1987 (52 FR 16877), USEPA proposed to approve Ohio's regulations. USEPA's proposed approval was based on the State regulations being the same or similar to the Federal regulations with a few exceptions. Only one exception (i.e., definition of emission limitation and emission standard) was considered significant enough to require further clarification from the State. This clarification was submitted to USEPA on September 2, 1987. No other public comments were submitted on USEPA's proposed action.

In the September 2, 1987 letter, the Ohio Environmental Protection Agency (OEPA) informed USEPA that it intended the State definition of "emission standard or emission limitation" to be consistent with the Federal definition.

The only difference between the State and Federal language is that the Federal definition states that the limits or standards apply on a continuous basis and will assure continuous emission reduction. In its comment letter, OEPA noted that emission limits developed by their Agency" * * * apply on a continuous basis * * *". As such, Ohio felt that the additional language in the Federal definition was unnecessary. USEPA accepts this clarification to the State's definition of emission limitation and emission standard and is incorporating this letter by reference into the SIP.

As discussed in the notice of proposed rulemaking, the State definitions are generally identical to the Federal requirements. In the tables below, the State definitions are compared to the Federal definitions. Based on this comparison, the State regulations are approvable.

I. Definitions

Definition	Applicable Federal regulation	State regulation	Comments
(Not Applicable)	(Not Applicable)	3745-16-01(A)	Includes those definitions in 3745-15-01. [On October 10, 1982 (47 FR 43375), USEPA approved 3745-15-01].
Stack in Existence	§ 51.1(gg)	3745-16-01(B)	Identical to Federal.
Dispersion Technique	§ 51.1(hh)	3745-16-01(C)	Nearly identical (State uses the word "source" in place of "facility" except in (C)(2)(e).)
Emission Limitation and Emission Standard.	40 CFR 51.1(Z)	3745-16-01(D)	Both the State and the Federal limits are intended to apply on a continuous basis. Ohio submitted a clarification letter during the public comment period.
Excessive Concentration	§ 51.1(kk)	3745-16-01(E)	State regulation is identical, except that it defines a "nuisance" through reference to 3745-15-07 (approved by USEPA on August 13, 1984, 49 FR 32181).
Good Engineering	§ 51.1(ii)	3745-16-01(F)	State regulation is similar. The July 8, 1985 notice has a provision allowing the use of field study or fluid model demonstrations to verify the GEP stack height formula. The State has accepted this provision by allowing the Director to request such a demonstration. The State regulation references 3745-31 and 3745-35, instead of 40 CFR Parts 51 and 52. USEPA approved 3745-35 on June 10, 1982 (47 FR 25144), and July 8, 1983 (48 FR 31400). USEPA conditionally approved in final 3745-31 on October 31, 1980 (45 FR 72119), and proposed to remove the conditions on July 5, 1984 (49 FR 27584).
Nearby	§ 51.1(jj)	3745-16-01(G)	Identical to Federal.
Stack	§ 51.1(ff)	3745-16-01(H)	Concept identical to Federal.
Stack Height		3745-16-01(I)	State definition is acceptable.

The State requirements as noted in the table are either the same or similar to the Federal requirements and, thus, are acceptable.

II. Stack Height Requirements

Requirement	Federal regulation	State regulation	Comments
Applicability Exemptions	40 CFR 51.12(k)	3745-16-02(A)	Identical.
Stack Height Credit	§ 51.12(j)	3745-16-02(B)	Concept identical to Federal.
Public Hearing (on Greater than Formula Credit).	§ 51.12(j)	3745-16-02(C)	Concept identical to Federal.
Actual Stack Height	§ 51.12(j)	3745-16-02(D)	Concept identical to Federal.

USEPA is taking final action to approve Ohio's Good Engineering Stack Height Regulations, Ohio Administrative Code Chapter 3745-16-01 and 02, as a revision to the Ohio SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Intergovernment all pollutants, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 8, 1988.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7462.

2. Section 52.1870 is amended by adding new paragraph (c)(81) to read as follows:

§ 52.1870 Identification of plan.

* * * * * * *

(c) * * *

(81) On March 3, 1986, the Ohio Environmental Protection Agency (OEPA) submitted Good Engineering Stack Height Regulations as a revision to the Ohio State Implementation Plan (SIP).

(i) Incorporation by reference.

(A) Ohio Administrative Code Chapter 3745–16–01 and 02, entitled "Definitions" and "Good Engineering Practice Stack Height Regulations". These rules were adopted by the State on February 12, 1986 and were effective on March 5, 1986.

(B) September 2, 1987 letter from Richard L. Shank, Ph.D., Director Ohio Environmental Protection Agency; to Valdas Adamkus, Regional Administrator, USEPA.

(ii) Additional material.

(A) March 3, 1986, letter from Warren W. Tyler, Director, Ohio Environmental Protection Agency; to Valdas Adamkus, Regional Administrator, U.S. EPA.

3. Section 52.1881 is amended by revising paragraph (a) introductory text, and adding paragraph (a)(11) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) USEPA is approving, disapproving or taking no action on various portions of the Ohio sulfur dioxide control plan as noticed below. The disapproved portions of the Ohio plan do not meet the requirements of § 51.13 of this chapter in that they do not provide for attainment and maintenance of the national standards for sulfur oxides (sulfur dioxide). (Where USEPA has approved the State's sulfur dioxide plan, those regulations supersede the federal sulfur dioxide plan contained in paragraph (b) of this section and § 52.1882.)

* * * * * * *

(11) *Approval.* USEPA approves Ohio's Good Engineering Stack Height Regulations as contained in Ohio Administrative Code Chapter 3745–16–01 and 02. These rules were adopted by the State on February 12, 1986 and were effective on March 5, 1986.

* * * * * * *

[FR Doc. 88–18581 Filed 8–24–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

Amendment of the Commission's Environmental Rules; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects the release date and title of action taken in the Final Rule document concerning the Commission's Environmental Rules.

FOR FURTHER INFORMATION CONTACT: Ronald Jackson (202) 632–4178.

SUPPLEMENTARY INFORMATION: On July 28, 1988, at 53 FR 28393, the Commission published a summary of a Final rule, FCC 88–191, in this proceeding concerning the Environmental rules. Inadvertently, the release date of the full text of this action, mentioned in the Supplementary Information section of the Preamble, was stated as being July 19, 1988. The correct release date is August 16, 1988. In addition, the type of document was misstated as a Summary of Memorandum Opinion and Order. The correct title should read: Summary of Order.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88–19269 Filed 8–24–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 662

[Docket No. 80737–8165]

Northern Anchovy Fishery; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final harvest quotas.

SUMMARY: NOAA issues this notice announcing the final determination of estimated spawning biomass and harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) for the 1988–89 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. This action is intended to notify fishermen and the public of the final harvest quotas and to promote orderly management of the fishery.

EFFECTIVE DATE: Effective August 22, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, NMFS, Southwest Region, 213–514–6667.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Center, the Director of the NMFS Southwest Region (Regional Director) made a preliminary determination that the spawning biomass of the central subpopulation of northern anchovy (*Engraulis mordax*) was 950,000 metric tons (mt). The biomass estimate is derived from, and is equivalent to, the Egg Production Method of measurement, but is based on the Stock Synthesis Model. Documentation of the spawning biomass estimate is contained in Administrative Report LJ–88–17 published by the Southwest Fisheries Center, NMFS. From this estimate, the Regional Director calculated preliminary determinations of harvest quotas and special allocations for the 1988–89 anchovy fishing season by applying formulas in the FMP. These preliminary determinations were announced in the **Federal Register** on July 14, 1988 (53 FR 26617). Regulations at 50 CFR 611.20(c) require that the estimated total allowable level of foreign fishing (TALFF) for this fishery also be published at the beginning of the fishing year.

The preliminary determinations were discussed, and agreed to, at a public meeting of the Pacific Fishery Management Council (Council) on July 14, 1988, in Portland, Oregon. Public comments were invited in the announcement and at the Council meeting; no public comments were received.

At the time of publication of the preliminary notice, age data were not available for 1987. Since the preliminary biomass estimate was announced, age data have been received, and the final spawning biomass has been calculated to be 1,008,000 mt. Even though the final estimate for spawning biomass is larger than the initial estimate, the harvest quotas previously announced cannot be increased because the U.S. harvest quota cannot exceed 144,900 mt. Regulations at 50 CFR 662.20(b) provide

that when the estimated spawning biomass is equal to or greater than 300,000 mt, the reduction harvest quota in the Pacific anchovy fishery area will be 70 percent of the estimated spawning biomass in excess of 300,000 mt, or 140,000 mt, whichever is less. Thus, the preliminary reduction harvest quota was the maximum allowable under the regulations and cannot be increased. The non-reduction harvest quota is 4,900 mt. The reduction harvest quota plus the non-reduction harvest quota equals the optimum yield (OY).

By applying the formulas in the FMP and in § 662.20, the Regional Director has made the following final determinations of harvest quotas, special allocations, and expected processing levels based on an estimated spawning biomass of 1,008,000 mt;

1. The total U.S. harvest quota or OY of northern anchovy is 144,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 140,000 mt.

a. Of the total reduction harvest quota, 9,072 mt is reserved for the reduction fishery in subarea A (north of Pt. Buchon).

b. The reduction quota for subarea B (south of Pt. Buchon) is 130,928 mt.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and direct human consumption) is 4,900 mt. However, non-reduction fishing is not limited until the total catch in both the reduction and non-reduction fisheries reaches the total harvest quota of 144,900 mt.

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing (DAP) capacity for the reduction and non-reduction industry is 1,621 mt.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. The domestic annual harvest (DAH) capacity, the sum of DAP and JVP, is 1,621 mt.

8. The TALFF is 80,903 mt. The FMP states that the TALFF in the EEZ will be based on the U.S. portion of the OY minus the DAH and minus that amount of expected harvest in the Mexican fishery zone which is in excess of that allocated by the FMP. The excess Mexican harvest in 1988–1989 is expected to be 62,376 mt. Applying the formula in the FMP results in the following for TALFF: [TALFF = (144,900 mt − 1,621 mt) − (62,376 mt) = 80,903 mt].

Other Matters

This action is taken under the authority of 50 CFR Part 662 and § 611.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR Parts 611 and 662

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88–19318 Filed 8–22–88; 2:50 pm]

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VOL 53 ISS 165 AUG 25 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 165
Thursday, August 25, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

Custody and Long-Term Care of Uranium Mill Tailings Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering general licenses that would permit NRC to license the custody and long-term care of decommissioned uranium or thorium mill tailings sites after remedial actions under the Uranium Mill Tailings Radiation Control Act have been completed. Commission action is needed to provide a procedure that ensures the maintenance of closed sites in a manner sufficient to protect the public health and safety and the environment. This action is necessary to meet the requirements of Titles I and II of the Uranium Mill Tailings Radiation Control Act. Although this notice is being published as an advance notice of proposed rulemaking (ANPRM), the full text of a proposed rule is included and a proposed rule may not be necessary.

DATE: Comment period expires October 24, 1988. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Attention: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m.

Comments received, the environmental assessment and finding of no significant impact, and the regulatory analysis can be examined at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NL/S-260. Telephone (301) 492-3877.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
III. The Stabilization and Long-Term Care Program (Title I and Title II).
IV. The Surveillance and Maintenance Plan.
V. Future Uses of the Disposal Site.
VI. Petition for Rulemaking.
VII. Issues for Comment.
VIII. ANPRM/Proposal Rule.
IX. Finding of No Significant Environmental Impact: Availability.
X. Paperwork Reduction Act Statement.
XI. Regulatory Analysis.
XII. Regulatory Flexibility Certification Statement.
XIII. List of Subjects.

I. Background

In the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) the Congress recognized that uranium mill tailings may pose a potentially significant radiation health hazard to the public. One of the measures enacted by Congress to control this hazard is to place the long-term custodial care of the uranium or thorium mill tailings disposal site, after completion of all remedial actions, in the hands of government.

Title I of UMTRCA defines the statutory authority and roles of the Department of Energy (DOE) and the NRC with regard to the remedial action program for inactive uranium mill tailings sites. Title I requires that, upon completion of the remedial action program by DOE, these sites be maintained by the DOE, or other Federal agency designated by the President, under a license issued by the Commission. Title II of UMTRCA contains similar requirements for NRC licensing of presently active uranium or thorium mill tailings sites following their closure and operating license termination. These sites would be licensed by the Commission upon their transfer to the Federal Government or the State in which they are located, at the option of the State. These proposed regulations will complement other UMTRCA required regulations which have been completed and cover activities through closure.

II. Proposed Action

The regulatory additions being considered to Part 40 would provide for two new general licenses. The general licenses in § 40.27 and § 40.28 would correspond to Title I and Title II of UMTRCA, respectively. The provisions in § 40.27 would apply to inactive sites and the provisions in § 40.28 would apply to active sites. Although the requirements in § 40.27 and § 40.28 would differ somewhat due to the differences in Title I and Title II of the Act, the criteria for determining what constitutes adequate monitoring, maintenance, and emergency measures for long-term custodial care are the same.

The regulations being considered deal only with uranium or thorium mill tailings sites after remedial actions have been completed. Upon satisfactory reclamation (by DOE for Title I, or an NRC or Agreement State licensee for Title II) to applicable closure standards, the NRC would receive a detailed surveillance and maintenance plan (SMP) from DOE or an appropriate State. The SMP will discuss ownership (whether Federal or State) and custody (agency responsible) of the site, site conditions, the surveillance program, required follow-up inspections, and how and when custodial maintenance and emergency repairs will be accomplished. (See the section entitled "The Surveillance and Maintenance Plan".) The general license would become effective for each individual Title I or Title II site upon NRC receipt of an SMP that meets the requirements of the general license.

For sites governed by the provisions of § 40.27 (Title I sites), the general license would apply only to the DOE or another Federal agency designated by the President. For sites governed under the provisions of § 40.28 (Title II sites), DOE, or another Federal agency, would submit the SMP, unless the State, at its option, decides to take custody of the site and be included in the general license. The authority to grant a long-term care license is reserved to the NRC. States may be the custodial agency, but are not authorized to grant this type of license. See section 83 b(1)(A) of the Atomic Energy Act of 1954 as amended and 10 CFR 150.15a.

There are some differences in requirements for sites located on Indian

lands. For title I sites, the Indian site will remain in the ownership of that tribe. The NRC and DOE have generally agreed that sites on Indian lands should be handled in the same manner as other Title I sites, including conduct of surveillance and maintenance under proposed § 40.27. We also understand that DOE and the appropriate Indian tribes have agreed that DOE would provide for long-term care. Four of the 24 Title I sites are on Indian lands. (Additional discussion of this issue is provided in VII, Issues for Comment.)

For Title II sites on Indian lands it is not clear who will be responsible for monitoring, maintenance, and emergency measures at the site. Currently, only one site falls into this category. UMTRCA provides that long-term monitoring and maintenance will be done by the United States and that the licensee will be required to enter into arrangements with the Commission to ensure this monitoring and maintenance. However, UMTRCA was not explicit as to which Federal agency is responsible for the site, and should these sites ever require emergency measures, additional authorizations may be required. The basic obligations for these sites have already been codified in Part 40, Appendix A, Criterion 11F, and are not part of this rulemaking.

Both § 40.27 and § 40.28 would allow for potential future uses of the sites. As provided in UMTRCA, any future use would require a separate Commission license to assure that the site remains or is restored to a safe and environmentally sound condition. See the, "Future Uses of the Disposal Site" section.

The rulemaking being considered would issue a general license to governmental bodies for possession and maintenance of uranium or thorium mill tailings sites after closure, pursuant to statute. Therefore, this rulemaking has no impact upon the private sector. NRC could choose to license these sites with a general license or by issuing separate specific licenses for each site. The licensing basis would be the same. The use of general licenses (one for Title I and one for Title II) is the most efficient use of resources and administratively more convenient. Each site to which the general license would eventually apply, will have undergone full environmental and technical review in conjunction with remedial action for Title I or license termination for Title II. The general license being considered by the Commission can accommodate site-specific matters through the site-specific surveillance and maintenance plans and future orders. It is also equally as enforceable as a specific license.

III. The Stabilization and Long-Term Care Program (Title I and Title II)

Although the end result for custodial care licensing for Title I or Title II sites would be similar, the processes leading up to closure of Title I or Title II sites are different. The following provides background on these processes, as well as some of the differences between Title I and Title II licensing.

Title I (24 sites)

UMTRCA charged the EPA with the responsibility for promulgating remedial action standards for inactive uranium mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and non-radiological hazards associated with radioactive materials at the sites. The final standards were promulgated with an effective date of March 7, 1983 (48 FR 602; January 5, 1983). See 40 CFR Part 192-Health and Environmental Protection for Uranium Mill Tailings, Subparts A, B, and C.

The Department of Energy (DOE) will select and execute a plan of remedial action that will satisfy the EPA standards and other applicable laws and regulations. All remedial actions must be selected and performed with the concurrence of the NRC. The required NRC concurrence with the selection and performance of proposed remedial actions and the licensing of long-term surveillance and maintenance of disposal sites would be for the purpose of ensuring compliance with UMTRCA.

The stabilization and long-term care program for each site has four distinct phases. In the first phase DOE selects a disposal site and design. This phase includes preparation of an Environmental Assessment or an Environmental Impact Statement, and a Remedial Action Plan. The Remedial Action Plan is structured to provide a comprehensive understanding of the remedial actions proposed at that site and contains specific design and construction requirements. NRC and State/Indian tribe concur in the Remedial Action Plan to complete the first phase.

The second phase is the performance phase. In this phase the actual decontamination, decommissioning, and reclamation at the site is done in accordance with the Remedial Action Plan. The NRC and the State/Indian tribe, as applicable, must occur in any changes to this plan. At the completion of reclamation activities at the site, NRC concurs in DOE's determination that the activities at the site have been completed in accordance with the approved plan. Prior to licensing, the next phase, title to the disposed tailings and contaminated materials and the land upon which they are disposed must be in Federal custody (except for sites on Indian lands) to provide for long-term Federal control, at Federal expense.

NRC concurrence in the DOE determination that reclamation of the site has been accomplished in accordance with the approval plan may have a conditional clause regarding ground water. For example, ground water restoration, through either active techniques or passive restoration through natural flushing, may take many years. If a conditional clause is required, the post-licensing phase may require monitoring the site to ensure that restoration is proceeding as planned or require other actions as necessary. Because EPA ground water standards are currently being revised, this practice of conditional concurrence and planned activities during post-licensing may have to be re-examined.

The third phase is the licensing phase. The general license would not apply until (1) NRC concurrence in the DOE determination that the site has been properly reclaimed and (2) the surveillance and maintenance plan (SMP) has been received by NRC. The SMP should be submitted within 4 months of the NRC concurrence in completion. Certification indicates that the site has been stabilized in accordance with EPA standards. Current plans also include a Federal Register notice of NRC's receipt of the SMP and public meetings to inform the local public of the future plans for the site and to provide an opportunity for public comments. There is no termination date for the general license being considered.

The final phase of the program is surveillance, monitoring, and maintenance and begins after NRC receives the SMP. In this phase DOE and NRC periodically inspect the site to ensure its integrity. The surveillance and maintenance plan would require the DOE to make repairs, if needed.

One of the requirements in the EPA standards is that control of the tailings should be effective for up to 1,000 years without active maintenance. Thus, although the NRC license will require repairs as necessary, the design of the stabilized pile is such that this should be minimized. In the event that significant repairs are ever necessary, a determination will be made as to the need for additional National

Environmental Policy Act (NEPA) actions.

According to recent schedules presented to the Commission, Title I sites should be eligible for NRC licensing this calendar year. DOE has already submitted certification reports for NRC review and concurrence for two sites. Once NRC concurs in DOE's certification that remedial actions are completed, the sites are ready for site transfer and licensing. Four additional sites are scheduled for completion by the end of fiscal year (FY) 1989, two in FY 1990, four in FY 1991, seven in FY 1992, and the remaining five in early FY 1993. NRC cannot license these sites under 10 CFR Part 40 as now written since 10 CFR 40.1(a) states that "The regulations in this part do not establish procedures and criteria for the issuance of licenses for materials covered under Title I * * *." Consequently, prompt action by the Commission is needed for orderly licensing.

Title II

UMTRCA also charged EPA with the responsibility for promulgating standards for active uranium or thorium sites. EPA completed this in Subpart D and E of 40 CFR Part 192 issued October 7, 1983 (48 FR 45946).

Title II sites have active NRC or Agreement State licenses. Each licensee is responsible for having a remedial action plan that is approved by the NRC or an Agreement State. This plan describes how the licensee will close the site to meet all applicable standards after completion of operations.

Before the NRC, or an Agreement State, terminates a license the site must be closed in a manner sufficient to meet applicable standards. These include the requirements contained within 10 CFR Part 40—Domestic Licensing of Source Material, or similar Agreement State requirements, and the EPA standards in 40 CFR Part 192. In addition, 10 CFR 150.15a requires that prior to the termination of any Agreement State license for byproduct material, the Commission shall have made a determination that all applicable standards and requirements have been met.

Following the operating license termination, invoking the general license for Title II sites would be similar to the process used for Title I sites. The most significant differences are:

1. A State, at its option, my take over custodial care of a Title II site instead of the DOE.

2. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived for a Title II site.

3. Potential future uses of a Title I site are limited to subsurface rights, whereas, a Title II site could also potentially allow the usage of surface rights. (See the section entitled "Future Uses of the Disposal Site".)

4. All surface and subsurface rights for a Title I site must be in Federal custody (except when on Indian land). For a Title II site the Commission may take into account the status of ownership and right to the land, and the ability of a licensee to transfer title and custody to the United States or a State.

5. There is an additional Title II requirement when an operating license in an Agreement State is terminated and the site transferred to the United States for long-term custodial care. All funds collected by the State for long-term monitoring and maintenance will be transferred to the United States. This requirement has already been codified in Part 150 and is not part of this rulemaking.

6. Title I covers designated inactive uranium mill tailings sites. Title II covers sites licensed as of January 1, 1978 and new uranium and thorium mill tailings sites.

Licensees at the Title II sites also need the framework in place for the long-term care of sites. The long-term care programs to be conducted by the DOE or States need to be factored into remedial action plans and decommissioning plans so that engineering, monitoring, data, and financial considerations can be included. As a measure of the urgency, 10 of the 20 conventional mills licensed by NRC have made corporate decisions to no longer use the sites or keep them in standby condition. They plan to decommission them and are seeking license termination. Activities at these 10 sites are in various stages of design, planning and decommissioning.

IV. The Surveillance and Maintenance Plan

DOE, or the appropriate State, would submit a site-specific surveillance and maintenance plan to the NRC after site closure has been satisfactorily completed. The NRC would review the SMP and supporting documentation to ensure that the ownership of land and materials is adequately documented, and that the proposed surveillance and maintenance provides the necessary conditions for that site.

The DOE has developed a "Guidance for UMTRA Project Surveillance and Maintenance" document issued in January 1988. Copies of this document are available from the U.S. Department of Energy, UMTRA Project Office, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico, 87115. This document, which was developed with NRC staff coordination, provides detailed generic guidance for what information should be considered in designing a site-specific SMP for Title I sites. (This guidance has not been evaluated by NRC for application to Title II sites. While many provisions may be appropriate, site closure and remediation by actively regulated licensees may result in somewhat different procedures. NRC is considering what additional guidance and what modifications to existing guidance may be appropriate for Title II sites.) The document addresses five primary activities. These activities, which are discussed in the following paragraphs, are:

1. Definition and characterization of final site conditions.
2. Site inspections.
3. Ground-water monitoring.
4. Aerial photography.
5. Custodial maintenance and contingency (or emergency) repair.

DOE indicated that final site conditions should be defined and characterized prior to the compietion of remedial actions at a site. As-built drawings should be compiled, a final topographic survey should be performed, a vicinity map should be prepared, and ground and aerial photographs should be taken. Survey monuments, site markers, and signs should be established. If the site-specific SMP specifies that ground-water monitoring is required, then a network of monitoring wells should be identified and new wells established if needed.

DOE describes three types of inspections: Phase I, Phase II, and contingency inspections. Scheduled phase I inspections would be conducted by a small team to identify conditions that may affect design integrity. Phase II inspections would be unscheduled and dependent upon potential problems identified during a Phase I inspection. Team members of a Phase II inspection should be specialists in the potential problem areas (e.g., geotechnical engineer for settlement). Contingency inspections would also be unscheduled and occur when information has been received that indicates that site integrity has been, or may be, threatened by natural events (e.g., severe earthquake) or other means.

The need to monitor ground-water conditions should be determined on a site-specific basis. If it is determined that ground-water monitoring is required, then it should be conducted in

two phases, screening monitoring and evaluative monitoring. Screening monitoring would be designed to detect changes in ground-water quality attributable to the tailings. If a significant change is apparent, evaluative monitoring should be initiated. Evaluative monitoring would be more extensive and would quantify the rate and magnitude of the change of conditions.

Initial surveillances should include the acquisition and interpretation of aerial photography. The principal purposes of aerial photography are to aid inspectors in the field and to provide a permanent, visual record of site conditions. Color infrared stereo photos, high oblique prints, and low oblique, natural color photographs should be taken at the completion of remedial action. Follow-up aerial photography would only be done if the Phase I or Phase II inspections identified a need for this.

Custodial maintenance such as grass mowing or fence repair may be required at some sites. Extreme natural events or purposeful intrusion may occur at a site which would require immediate emergency measures. When compared with contingency (or emergency) repair, custodial maintenance will be less costly, smaller in scale, and more frequent in occurrence. In contrast, contingency (or emergency) repairs are very unlikely to be needed; however, repair costs may be substantial.

V. Future Uses of the Disposal Site

UMTRCA provides for potential future uses of the disposal site. For a Title I site, it provides that the Secretary of the Interior, with the concurrence of both the Secretary of Energy and the NRC, may dispose of any subsurface mineral rights. If this occurs, the NRC will issue a specific license to the Secretary of the Interior to assure that the tailings are not disturbed, or if disturbed are restored to a safe and environmentally sound condition.

For a Title II site the same provisions as above apply with the following additions. First, surface as well as subsurface estates may be available for use. Second, although the request to use these rights may be received from any person, if permission is granted, the person who transferred the land shall receive the right of first refusal with respect to this use of the land.

Environmental impacts would be evaluated prior to any action granting the use of surface or subsurface estates.

VI. Petition for Rulemaking

On December 5, 1980, the NRC received a petition for rulemaking submitted by the Sierra Club (PRM-40-23). An amendment to this petition was received by the NRC on March 21, 1983. The original petition requested that the NRC amend its regulations to license the possession of uranium mill tailings at inactive storage sites. The petitioner proposed that the NRC take the following regulatory action to ensure that public health and safety and the environment is adequately protected from the hazards associated with uranium mill tailings.

1. Repeal the licensing exemption for inactive mill tailings sites subject to the Department of Energy's remedial program.

2. Require a license for the possession of byproduct material on any other property in the vicinity of an inactive mill tailings site if the byproduct materials are derived from the inactive mill tailings site.

3. Or alternatively, conduct a rulemaking to determine whether a licensing exemption of these sites or the byproduct material derived from the sites constitutes an unreasonable risk to public health and safety.

In the 1983 amendment, the petitioner requests that, in the event that NRC denies the petitioner's earlier request that NRC repeal the licensing exemption for inactive sites or conduct the requested rulemaking, the NRC take further action. Specifically, the petitioner requests that the NRC ensure that the management of byproduct material located on or derived from inactive uranium processing sites is conducted in a manner that protects the public health and safety and the environment from the radiological and nonradiological hazards associated with uranium mill tailings.

Whether the original petition is granted or not, the petitioner also requests that the NRC establish requirements to govern the management of byproduct material, not subject to licensing under section 81 of the Atomic Energy Act (42 U.S.C. 2111), comparable to the requirements applicable to similar materials under the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.). In the alternative, the petitioner suggests that NRC extend the coverage of the requirements in 10 CFR Part 40, Appendix A, which are now applicable only to licensed byproduct material, to byproduct material not subject to licensing. In addition, the petitioner requests that NRC issue regulations that would require a person exempt from licensing to conduct monitoring activities, perform remedial work, or take any other action necessary to protect health and safety and the environment.

One of the purposes of the rulemaking being considered is to provide a licensing procedure for custodial care of inactive sites. Although this is not what the petitioner requested, the end result would directly address their concerns. Inactive sites would be licensed and would be managed to ensure their long-term integrity.

Another concern of the petitioner is that until DOE completes remedial actions, the tailings will be unregulated. While it is true that the sites are unregulated in a legal sense, they have not been ignored by DOE. DOE has proceeded with its remedial action program. DOE's program is oriented toward completing high priority sites first. High priority sites are those generally closest to population centers. There are eight high priority sites. Reclamation activities at four are completed or underway and activities for the other four are in active planning or design phases. The activities for medium and low priority sites are in various phases—initial planning has been completed for all, and activities for several have progressed into the construction phase. In addition, DOE monitors the sites before and during remedial actions.

After the completion of this rulemaking, NRC will make a final determination on the issues raised by the petitioner and publish its findings in the Federal Register.

VII. Issues for Comment

There are several areas where the statutes, EPA's regulations, and DOE's programs introduce some uncertainties, particularly for the aspects of this rulemaking related to Title I for UMTRCA. Pending bills, the implications of the proposed EPA Title I ground-water protection standards, and institutional issues concerning Tribal lands are specific areas of current concern.

Two recent bills (S. 1991 and H.R. 4591) address extending DOE's authority to perform remedial actions for Title I sites. Action on these bills could impact when and how remedial actions are completed. A two-step process may result at sites where long-term ground-water restoration is needed. Under the bills, DOE would be required to complete final surface restoration by 1994, but could continue activities associated with ground-water restoration indefinitely. The language in the two bills is not identical, particularly regarding extending DOE's authority to address ground-water matters, and will have to be reconciled.

BEST COPY AVAILABLE

The potential statutory implications of EPA's proposed amendments to 40 CFR Part 192 (52 FR 36000; September 24, 1987) were addressed in staff comments on the rule. The letter transmitting the comments dated January 29, 1988 stated.

Under present law, NRC concurrence that DOE has performed the remedial actions in accordance with EPA standards is necessary, before NRC can issue the license called for in UMTRCA. Under the proposed Title I standards, completion of the remedial actions may be delayed by groundwater restoration activities for periods of up to 100 years to achieve the established concentration limits. In addition, the provision for post-disposal monitoring, to confirm performance of disposal designs and corrective actions, also extends the time before remedial action is completed. EPA indicated that periods of at least 30 years may be involved in this post-disposal period. Such prolonged time periods will require Congressional action to extend DOE's authority and funding to conduct such activities. Accordingly, EPA should take into account that legislative changes may be needed to implement the long-term aspects of the proposed standards.

There is an uncertainty in the licensing of the Department of Energy as custodian of a reclaimed tailings millsite on Indian land (that is, reservation land where the title is held in trust by the United States for the benefit of the Indian tribe). Under Section 104(f) of UMTRCA, the NRC will license DOE as to any processing site or disposal site used for the disposal of Title I tailings. These sites are to be acquired by the State and transferred to the United States for permanent custody. On Indian lands the situation is somewhat different. Under Section 105(b) the NRC will license DOE if the disposal site is a site to which the tailings have been removed from the processing site. If the tailings are stabilized in place, the statute is silent on the licensing of DOE, if DOE is the long-term custodian.

The Cooperative Agreement between the Navaho Nation and the DOE recognizes this quirk in the law. It distinguishes between two types of disposal sites, a depository site and a millsite. A depository site is a site to which material is removed for disposal, and the Tribe agrees to assist DOE in securing all property interests. Such a site is recognized as subject to licensing. A millsite equates to stabilization in place. The tribe agrees to assist DOE, to the extent necessary, to acquire or extinguish individual Indian interests. Issues of long-term custody are deferred to resolution on a site specific basis for millsites.

Only if DOE becomes the long-term custodian of a millsite on Indian land is licensing an issue. If any other Government agency, such as the Department of the Interior, or the Tribe, becomes the custodian it may be subject to licensing under the Atomic Energy Act as in possession of byproduct material. Even if DOE becomes the custodian, but not a licensee, it is still subject to NRC oversite under Section 84b of the Atomic Energy Act, as amended, and Section 105(a)(3) of UMTRCA. Thus, NRC may impose the requirements of the general license on DOE, by order, if necessary to assure long-term monitoring and maintenance of tailings on an Indian land millsite.

The Commission concludes that its statutory responsibility to license long-term care of sites where remedial action is complete and all applicable standards have been met dictates that it proceed in spite of these uncertainties. The Commission would appreciate public comments on these uncertainties. In particular, comments on the following points would be appreciated:

1. The Commission's understanding of DOE's current schedules and resources indicates that DOE cannot complete the program by the current 1990 limit. Thus, the Commission considers it unlikely that DOE's authority to continue remedial actions will not be extended in some fashion. However, extension is not assured and the exact terms of any extension are unknown.

2. EPA's proposed amendments of 40 CFR Part 192 concerning ground-water protection for Title I sites also include provisions that may lead to long-term ground-water restoration programs at some sites. The exact timing and content of EPA's final regulations are unknown. Further, based on the proposed regulations, additional legislation may be needed to implement the final standards.

3. The statutes are not completely clear with respect to institutional matters associated with reclaimed sites on Indian land. However, the matter is being addressed through agreements, and there are other options for NRC oversight of the sites. The Commission would particularly welcome comments from DOE and affected Indian Tribes on this matter.

VIII. ANPRM/Proposed Rule

Although this notice is being published at this time as an Advance Notice of Proposed Rulemaking because of the remaining uncertainties in the Department of Energy Title I program, the full text of a proposed rule is being made available for comment. If the noted uncertainties and other aspects of the proposal are commented upon fully by interested persons in response to the advanced notice in a manner that allows the Commission to reach a final decision on the licensing issues, the Commission may exercise its option to proceed directly to a final rule. The Administrative Procedures Act, in 5 U.S.C. 553(b)(3)(B), permits an agency to omit general notice of proposed rulemaking when for good cause it can find that such notice and public procedure are impracticable, unnecessary, or contrary to public interest. Full public comment by interested persons on the general licenses published in this advance notice may make a second round of comment unnecessary, unless the public comment leads to substantial revision of the proposal.

IX. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rulemaking being considered would establish general licenses for custodial care of uranium or thorium mill tailings sites by another Federal agency or State. The licensing action would be done after remedial actions are completed, and would ensure that sites remain in good condition. If unexpected repairs are ever required, the licensee would be responsible to make the necessary repairs. Therefore, the actions required under these regulations being considered would be preventative of adverse environmental impacts.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NL/S-260. Telephone (301) 492-3877.

X. Paperwork Reduction Act Statement

This rule being considered does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0020.

XI. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on the regulation being considered. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the draft analysis may be obtained from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop ML/S–260.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XII. Regulatory Flexibility Certification Statement

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. This rule will apply only to a Federal agency or an appropriate State. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared.

List of Subjects in 10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is proposing the following amendments to 10 CFR Part 40.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The table of contents for Part 40 is amended by adding entries for §§ 40.27 and 40.28 to read as follows:

General Licenses

* * * * *

40.27 General license for long-term care of DOE remedial action sites.

40.28 General license for long-term care of uranium or thorium byproduct tailings sites.

2. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 94, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)); and §§ 40.5, 40.25 (c) and (d) (3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

3. Section 40.1 is revised to read as follows:

§ 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, provide for long-term custodial care, or deliver source, by-product materials, and residual radioactive material, as defined in this part, and establish and provide for the terms and conditions upon which the Commission will issue these licenses. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipments of natural uranium. (Additional requirements applicable to the import and export of natural uranium are set forth in Part 110 of this chapter.)

(b) The regulations contained in this part are issued under the Atomic Energy Act of 1954, as amended (68 Stat. 919), Title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242), and Titles I and II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901).

4. In § 40.2a, paragraph (a) is revised to read as follows:

§ 40.2a Coverage of inactive tailings sites.

(a) Prior to the completion of the remedial action, the Commission will not require a license pursuant to 10 CFR Chapter I for possession of residual radioactive materials as defined in this Part that are located at a site where milling operations are no longer active, if the site is designated a processing site covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978. The Commission will exert its regulatory role in remedial actions primarily through concurrence and consultation in the execution of the remedial action pursuant to Title I of the Uranium Mill Tailings Radiation Control Act of 1978. After remedial actions are completed, the Commission will license the long-term custodial care under the requirements set out in § 40.27.

* * * * *

5. Section 40.3 is revised to read as follows:

§ 40.3 License requirements.

A person subject to the regulations in this part may not receive title to, own, receive, possess, use, transfer, provide for long-term custodial care, deliver byproduct material or residual radioactive material as defined in this part or any source material after removal from its place of deposit in nature, unless authorized in a specific or general license issued by the Commission under the regulations in this part.

6. In § 40.4, paragraph (t) is added to read as follows:

§ 40.4 Definitions.

* * * * *

(t) "Residual radioactive material" means: (1) Waste (which the Secretary of Energy determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (2) other waste (which the Secretary of Energy determines to be radioactive) at a processing site which relates to such processing, including any residual stock of unprocessed ores or low-grade materials. This term is used only with respect to materials at sites subject to remediation under Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

7. In § 40.7, paragraph (f) is revised to read as follows:

§ 40.7 Employee protection.

* * * * *

(f) The general licenses provided in §§ 40.21, 40.22, 40.25, 40.27, and 40.28 are exempt from paragraph (e) of this section.

8. Section 40.20 is revised to read as follows:

§ 40.20 Types of licenses.

(a) Licenses for source material are of two types: general and specific. The general licenses provided in this part are effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon

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applications filed pursuant to the regulations in this part.

(b) Section 40.27 contains a general license applicable for custody and long-term care of residual radioactive material at uranium mill tailings disposal sites remediated under Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

(c) Section 40.28 contains a general license applicable for custody and long-term care of byproduct material at uranium or thorium mill tailings disposal sites remediated under Title II of the Uranium Mill Tailings Radiation Control Act of 1978.

9. New §§ 40.27 and 40.28 are added to read as follows:

§ 40.27 General license for long-term care of DOE remedial action sites.

(a) A general license is issued for the custodial care, to include monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions necessary to comply with the standards of section 275(a) of the Atomic Energy Act of 1954, for remediated uranium mill tailings sites under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The license is available only to the Department of Energy, or another Federal agency designated by the President to provide custodial care. The purpose of this general license is to ensure that uranium mill tailings sites will be maintained in such a manner as to protect the public health, safety, and the environment after closure.

(b) The general license in paragraph (a) of this section becomes effective when the Commission receives a site-specific long-term surveillance and maintenance plan (SMP) that meets the requirements of this section. The Department of Energy, or other Federal agency designated by the President, shall submit the SMP within 120 days following Commission concurrence in the Secretary of Energy's determination of completion of remedial action at each site. The plan may incorporate by reference information contained in documents previously submitted to the Commission if the references to the individual incorporated documents are clear and specific. Each SMP must include—

(1) A legal description of the site to be licensed, including documentation on whether land and interests are owned by the United States or an Indian tribe. If the site is on Indian land, then, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, the Indian tribe and any person holding any interest in the land shall execute a waiver releasing the United States of any liability or claim by the Tribe or person concerning or arising from the remedial action and holding the United States harmless against any claim arising out of the performance of the remedial action;

(2) A detailed description of the final site conditions, including existing ground-water characterization. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs. If the site will have continuing aquifer restoration requirements, then the SMP must provide details on how restoration is to be completed and how contingencies will be resolved;

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission, frequency and extent of ground-water monitoring if required, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) A description of the criteria for follow-up inspections based on routine inspections or extreme natural events; and

(5) A description of the criteria for performing custodial maintenance and emergency measures. This description must specify what constitutes custodial maintenance and what requires emergency measures.

(c) The custodial agency under the general license established by paragraph (a) of this section shall—

(1) Maintain the site in accordance with the provisions of the approved SMP;

(2) Obtain concurrence from the Commission for all changes to the SMP;

(3) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(4) Notify the Commission prior to undertaking any major construction related to the site.

(d) As specified in the Uranium Mill Tailings Radiation Control Act of 1978, the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, may sell or lease any subsurface mineral rights associated with land on which residual radioactive materials are disposed. In such cases, the person acquiring the rights and the Secretary of Interior shall comply with section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978. This section requires, among other things, that the Commission issue a license to the Secretary of the Interior to assure that the site remains in a safe and environmentally sound condition. The Commission shall respond to each licensing request on a site-by-site basis.

§ 40.28 General license for long-term care of uranium or thorium byproduct tailings sites.

(a) A general license is issued for the custodial care, to include monitoring, maintenance, and emergency measures necessary to protect the public health and safety and other actions necessary to comply with the standards promulgated pursuant to section 84 of the Atomic Energy Act of 1954, for remediated uranium or thorium mill tailings sites under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The license is available to the Department of Energy, to another Federal agency designated by the President, or to the State where the remediated site is located if the State exercises its option to acquire the site. The purpose of this general license is to ensure that uranium or thorium mill tailings sites will be maintained in such a manner as to protect the public health, safety, and the environment after closure.

(b) The general license in paragraph (a) of this section becomes effective when the Commission receives a site-specific long-term surveillance and maintenance plan (SMP) that meets the requirements of this section. The intended general licensee shall submit the SMP after the operating licensee has completed remedial action meeting the requirements of Appendix A of this Part of applicable Agreement State requirements. The plan may incorporate by reference information contained in documents previously submitted to the Commission if the reference to the individual incorporated documents are clear and specific. Each SMP must include—

(1) A legal description of the site to be licensed. The description must show that the operating licensee has made all reasonable efforts to transfer title and any other interests in the land to the United States or a State. See Appendix A, Criterion 11 of this Part for more detailed criteria regarding land transfer;

(2) A detailed description of the final site conditions, including existing ground-water characterization. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs;

(3) A description of the long-term surveillance program, including

proposed inspection frequency and reporting to the Commission (see Appendix A, Criterion 12 of this part for more details on inspections and reporting), frequency and extent of ground-water monitoring if required, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) A description of the criteria for follow-up inspections based on routine inspections or extreme natural events; and

(5) A description of the criteria for performing custodial maintenance and emergency measures. This description must specify what constitutes custodial maintenance and what requires emergency measures.

(c) The custodial agency who has a general license established by paragraph (a) of this section shall—

(1) Maintain the site in accordance with the provisions of the approved SMP;

(2) Obtain concurrence from the Commission for all changes to the SMP;

(3) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(4) Notify the Commission prior to undertaking any major construction related to the site.

(d)(1) Upon application, the Commission may issue a specific license, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, permitting the use of surface and/or subsurface estates transferred to the United States or a State. Although an application may be received from any person, if permission is granted, the person who transferred the land to DOE or the State shall receive the right of first refusal with respect to this use of the land. The application must demonstrate that—

(i) The proposed action does not endanger the public health, safety, welfare, or the environment;

(ii) Whether the proposed action is of a temporary or permanent nature, the site would be maintained and/or restored to meet requirements in Appendix A of this Part for reclaimed sites.

(2) A person receiving a specific license to use the surface or subsurface area of a site shall ensure that the site will be maintained or restored to conditions complying with Appendix A of this Part. On a case-by-case determination, the Commission may require financial arrangements to ensure that the licensed person is able to maintain the site undisturbed, or if disturbed is able to restore the site to a safe and environmentally sound condition.

Dated at Rockville, Maryland, this 19th day of August, 1988

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-19322 Filed 8-24-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-129-AD]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes, which would have required a modification of the emergency lighting system. This proposal would amend the proposed AD by clarifying the accomplishment procedures to ensure proper modification of the emergency lighting system on these airplanes.

DATES: Comments must be received no later than September 27, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-129-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Transport Airplane Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-129-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations which would have required modification of the emergency lighting system on Fokker Model F-28 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on February 3, 1988 (53 FR 3047).

That NPRM was prompted by reports that the emergency lighting system on these airplanes may not come on automatically upon impact when both engines stop and the normal aircraft power is lost, if the battery remains attached to the power bus. This condition, if not corrected, could result in failure of the emergency lighting system to operate when required in an emergency situation.

Significant comments were received from one commenter. The commenter stated its understanding of the proposal to be a requirement to modify all Fokker F-28 airplanes to comply with Fokker Service Bulletin F28/33-26, and that the rationale for the proposal was to remove the control of the "emergency exit lights" (commenter's terminology) from the battery power bus, and put the

control on a bus powered solely by a generator system to allow the "exit lights" (commenter's terminology) to come on if generator power is lost. The commenter further stated that Service Bulletin F28/33-28 does not appear to provide for this requirement. The commenter recommended that the proposal be withdrawn, pending clarification of the intent of the service bulletin. The commenter further stated that the modification provided for by Service Bulletin F28/33-28 would not change the mode of operation for the "affected lighting (exit signs)" except by adding an "ARMED" position to the emergency lights switch. The commenter also stated its belief that with the emergency lights illuminated during flight (or during normal aircraft power availability) and the emergency switch in the ARMED position, the airplane would comply with Federal Aviation Regulations (FAR) 25.812. The rationale for this belief is that it would allow the emergency "exit lights" to operate (1) off the AC generator, if available; (2) if generator power is not available, off the ship battery power; and (3) if ship battery power is below minimum voltage or the battery switch is off, off the emergency battery packs. The commenter concluded that if its rationale was correct, there would be no need for the proposed AD action.

The FAA has carefully considered these comments and, while there does appear to be some confusion over terminology and operation of the Model F-28 emergency lighting system, and confusion as to the requirements of the proposal, the need for the proposed action continues to exist.

To clarify the terminology used in this proposal, the FAA notes that the Model F-28 emergency lighting system consists of two elements: The *emergency lights* and the *evacuation lights*. Throughout this document, reference to the "emergency lighting system" is intended to include both elements. Each element consists of numerous individual lights located throughout the airplane; the emergency lights are primarily located in the passenger compartment, and externally to the fuselage. In addition, each emergency exit sign houses light bulbs that are divided between the system's two elements.

FAR 25.812 requires that the emergency lighting system cockpit switch have an ON, OFF, and ARMED position, so that when armed in the cockpit the emergency lighting system will illuminate or remain illuminated upon interruption of the airplane's normal electric power (i.e., AC power). It is known that early configurations of the Model F-28 may not have a cockpit switch of the type required. Also, some configurations may not automatically illuminate. One purpose of Service Bulletin F28/33-28 is to provide instructions for installation of the required three position switch, and modification of the circuitry so that, upon the loss of normal power and when armed, the emergency lighting system (i.e., emergency and evacuation lights) automatically illuminate or remain illuminated.

Subsequent to the closing of the comment period, the FAA also received information from the manufacturer that it was preparing a new service bulletin that would provide additional instructions for modifying the emergency lighting system so that the system would illuminate if normal airplane power (i.e., AC power) were lost. This new service bulletin, however, has not yet been issued.

When normal airplane power is lost (i.e., AC generator power), the emergency lighting system will operate off of the airplane batteries until the emergency lighting control circuit (a voltage dropout relay) senses the airplane battery voltage drop below 10 volts. Below 10 volts, the control circuit switches the power source to the emergency lighting system's dedicated batteries. However, between a voltage greater than 10 volts but less than full charge, there will not be enough battery power available to provide the required illumination levels. In the absence of a determination of the minimum battery voltage necessary to provide the required illumination, the emergency lighting system must, upon loss of normal aircraft power (i.e., AC generator power), be solely powered by the emergency lighting system battery packs. The intent of this proposal, then, is to also assure that the required emergency lighting illumination levels are provided.

In consideration of the comments received and the above discussion, and since the unsafe condition which prompted this rulemaking action is likely to exist or develop on airplanes of this model registered in the United States, the FAA is revising the proposal that would require modification of the emergency lighting system in a manner approved by the FAA, to clarify the requirements as follows:

a. Installation of a three position emergency lighting switch (i.e., OFF, ON, and ARMED) in the cockpit; and

b. Modification of the electrical system so that the emergency lighting system illuminates upon loss of normal electrical power (i.e., AC generator power); and either

c. Modification of the electrical system so that upon loss of normal electrical power, the emergency lighting system is powered by its own dedicated battery packs; or

d. Determination, by illumination measurement, of the minimum airplane battery voltage necessary to provide the required emergency lighting illumination levels and modification of the emergency lighting control circuit to switch from the airplane batteries to the emergency lighting systems dedicated battery packs prior to dropping below this minimum airplane battery voltage.

In addition, the economic impact analysis, below, has been revised to account for additional manhours which may be necessary for some operators to accomplish the required actions.

To provide interested persons an opportunity to comment on the changes to this proposal, the FAA is reopening the comment period for an additional thirty (30) days.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, it would take approximately 90 manhours per airplane to accomplish the required actions, although not all airplanes would need to be modified to the same extent; e.g., some may already have the three position switch installed in the cockpit. The average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $183,600.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($2,400). A copy of a draft regulatory evaluation

prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket 87-NM-129-AD, published in the **Federal Register** on February 3, 1988 (53 FR 3047), FR Doc. 2191, as follows:

Fokker B.V.: Applies to Model F-28 series airplanes, certificated in any category. Compliance is required within the next 12 months after the effective date of this AD, unless previously accomplished:

To ensure the proper operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Verify that a three position emergency lighting switch (i.e., OFF, ON, and ARMED) is installed in the cockpit. If such a switch is not installed in the cockpit, install one in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: Operators may wish to refer to Fokker Service Bulletin F28/33-28, dated October 12, 1983, in determining the means to be used to install a three position switch.

B. Verify that the emergency lighting system illuminates upon loss of normal electrical power when the three position cockpit mounted switch is placed in the armed position.

Note: (1) Normal electrical power is considered to be the F-28 AC generator power.

(2) For the purpose of this requirement, the emergency lighting system is considered to consist of both the emergency lights and the evacuation lights; however, all affected operators should be aware that for operations under FAR Part 121, an airplane's emergency lighting system also includes the floor proximity lighting. Any modification to the F-28 emergency lighting system should ensure the proper operation of the floor proximity lighting.

C. Accomplish either of the following:

1. Modify the electrical system, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, so that upon loss of normal electrical power, the emergency lighting system is powered by its own dedicated battery packs; or

2. Determine, by illumination measurement, the minimum airplane battery voltage necessary to provide the required emergency lighting illumination levels. Modify the emergency lighting control circuit, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, to switch from the airplane batteries to the emergency lighting system battery packs prior to dropping below the above determined minimum airplane battery voltage.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Transport Airplane Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 17, 1988./

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19284 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-393-88]

Transition Rules for Certain Qualified Business Units Using a Profit and Loss Method of Accounting for Tax Years Beginning Before January 1, 1987

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations setting forth transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), who used a profit and loss method of accounting prior to the enactment of the Tax Reform Act of 1986 and do not elect (or are not required) to use the United States dollar approximate separate transactions method for taxable years beginning after December 31, 1986. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to these transition rules. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations are proposed to be effective for taxable years beginning after [Date which is 30 days after final regulations are published in the **Federal Register**]. Written comments and requests for a public hearing must be delivered or mailed by October 24, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-393-88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Attention: CC:LR:T (INTL-393-88) (202-634-5406, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.987-0T and 1.987-1T to Part 1 of Title 26 of the Code of Federal Regulations. Final regulations are by this document proposed on the basis of the temporary regulations. Section 987 was added to the Internal Revenue Code of 1986 by section 1261 of the Tax Reform Act of 1986 (P.L. 99-514, 100 Stat. 2090). For the text of the temporary regulations, see FR Doc. 88-19190 [T.D. 822)]. The preamble to the temporary regulations explains this addition to the Income Tax Regulations.

Non-Applicability of Executive Order 12291

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

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Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicts public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is David Rosenberg of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposal of Regulations

The temporary regulations, FR Doc. 88–19190 [T.D. 8220] published in the Rules and Regulations portion of this issue of the Federal Register are hereby also proposed as final regulations under section 987 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–19191 Filed 8–24–88; 8:45 am]

BILLING CODE 4830–01–M

POSTAL SERVICE

39 CFR Part 111

Exclusion of "Plus" Issues From Second-Class Mail; Extension of Time for Comment

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In anticipation of the possible adoption of a temporary mail classification change concerning the eligibility of "Plus" issues for second-class mail privileges, the Postal Service published in the Federal Register (53 FR 29483) on August 5, 1988 a proposed implementing regulation, which, if adopted, would exclude from second-class mail those "Plus" issues distributed on a different day from any other issue of the parent publication. The Postal Service requested comments by September 6, 1988. In response to requests for additional time, the Postal Service is extending the comment period to September 8, 1988.

DATE: Comments on the proposed rule change must be received on or before September 8, 1988.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Room 8430, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Leo Raymond, (202) 268–5199.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88–19273 Filed 8–24–88; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 434

[BERC–417–P]

Medicaid Program; Modification of Certain Requirements for Health Insuring Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal describes the conditions under which a Health Insuring Organization (HIO) is subject to Medicaid Health Maintenance Organization (HMO) regulations. It would require that an HIO which becomes operational on or after January 1, 1986 and arranges for the delivery of services to Medicaid recipients be subject to HMO requirements. The regulations would specify that exemptions from certain HMO rules are permitted for HIOs which began operation on or after January 1, 1986 if the HIOs obtained a section 1915(b) waiver prior to that date, or if an HIO is otherwise identified in the law. The exemptions continue as long as the waiver under section 1915(b) of the Act remains in effect.

These regulations would implement section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), as amended by section 9435(e) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), and section 1895 (c)(4) of the Tax Reform Act of 1986 (Pub. L. 99–514).

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 24, 1988.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–417–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BERC–417–P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Thomas Saltz, (301) 966–4641.

SUPPLEMENTARY INFORMATION:

I. Background

A. Health Insuring Organizations—General

For a number of years prior to 1981, the Medicaid regulations permitted States to contract with health insuring organizations (HIOs). An HIO is an entity which assumes an underwriting risk to pay for medical services provided to Medicaid recipients in exchange for a premium paid by the State agency. HIOs are paid a negotiated, fixed amount per beneficiary per month and, in return, underwrite the cost of providing Medicaid services. Health insuring organizations are provided for under the broad authority of section 1902(a)(4)(A) of the Social Security Act (the Act), which provides for "such methods of administration * * * as are found by the Secretary to be necessary for the proper and efficient operation of the plan," and under section 1903(a)(1)(C) of the Act (dealing with Federal sharing of Medicaid costs) that makes available funds for sharing the costs of "insurance premiums for medical or any other type of remedial care or the cost thereof".

An HIO differs from a health maintenance organization (HMO) in that an HIO pays for services whereas an HMO provides services. In recent years some HIOs have made arrangements through contracts with community providers, including HMOs, doctors, hospitals, and others, for the provision of Medicaid services in a given area for groups of recipients.

Regulations containing the Medicaid requirements for HIOs are presently in 42 CFR Part 434, Subpart B.

B. Relationship of HIOs to Other Program Activities

Under section 1915(b) of the Act, the Secretary has the authority to waive provisions of section 1902 of the Act, to the extent such waivers are determined to be cost effective, do not substantially impair recipient access to services and quality of care, do not restrict a recipient's access to emergency services, and are consistent with the purposes of title XIX. Waivers requested by States under section 1915(b) of the Act may involve the use of primary care case management systems, specialty physicians' services arrangements, localities as central brokers of health services, a sharing of cost savings with recipients, or a restriction on the providers from whom recipients can obtain covered services. Any section 1902 provisions may be waived. The requirements for statewideness in section 1902(a)(1), comparability of services in section 1902(a)(10), and freedom of choice in section 1902(a)(23) of the Act are the most frequently waived provisions under these proposals.

Several States have requested waivers under section 1915(b)(1) in order to implement primary care case management systems in which HIOs arrange for recipients' health care services through contracts with providers, and assume an underwriting risk for these services. As of January 1, 1986, all new HIOs which operate under the authority of a section 1915(b) waiver must meet all applicable statutory and regulatory requirements of 42 CFR Part 434 and section 1903(m) of the Act. These provisions may not be waived under the authority of section 1915(b).

C. Current Regulations

The basic existing regulations governing HIOs at 42 CFR 434.14 require an HIO to meet certain requirements if it wishes to contract with a State agency to serve as a payer for medical services provided to Medicaid recipients. These include requirements that capitation fees paid by the State cannot exceed the cost of the same services for a group of recipients receiving those services on a fee-for-service basis; that capitation fees paid in HIO can only be renegotiated annually (in most cases), and place the HIO at risk; that capitation fees will not include amounts to enable the HIO to recover specific losses for risks it assumes during a contract period; that the underwriting risks assumed by the HIO must be specified in the contract between the State and the HIO; that the contract must state how any savings which remain after allowable costs are deducted from capitation fees are to be handled; that the contract must specify the extent to which an HIO may obtain reinsurance of its underwriting risk; and that the actuarial basis for computation of capitation fees must be specified.

In addition, HIOs must meet requirements in regulations at 42 CFR 434.6 that all HMOs and PHPs must meet when contracting with a State agency. These regulations specify contract requirements relating to recipients served; enrollment rules; covered services; inspections and evaluation of services provided; contract termination procedures; record systems; confidentiality; third party liability; and subcontracting. Subcontractors, though not directly contracting with the State, must meet all Medicaid requirements appropriate to their delegated service activity.

II. New Legislation

A. Consolidated Omnibus Budget Reconciliation Act of 1985

Section 9517(c) of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), amended section 1903(m)(2)(A) of the Act by identifying HIOs as organizations subject to HMO requirements under section 1903(m) of the Act, if they are involved in the delivery of services through arrangements with providers of services. This amendment is effective for HIOs which became operational on or after January 1, 1986, with one exception. HIOs that operate under the authority of a section 1915(b) waiver granted a State prior to that date, but which did not become operational until after it, are subject to the new statutory requirements if they provide services through arrangements with providers of service. However, they are exempt from the HMO requirements at section 1903(m)(2)(A) (ii) and (vi) of the Act, which pertain to composition of enrollment and the right to terminate enrollment freely at any time.

(Note: Section 9517(c)(2)(B) of COBRA erroneously identified the exception clauses as (ii) and (iv). These should have been (ii) and (vi). Section 1895(c)(4)(B) of Pub. L. 99–514, the Tax Reform Act of 1986 (TRA) corrected this error.)

The conference report accompanying section 9517(c) of COBRA specifically noted the absence in our regulations of: minimum qualifications for an HIO that arranges for the provisions of services; quality assurance methods that HIOs must employ; standards to assure access to services; amounts of savings that may be retained; and frequency or content of utilization or financial reports (H. Conf. Rep. No. 453, 99th Cong., 1st Sess. (1985), pp. 550–551). The report also noted that these HIOs are not subject to specific regulatory requirements regarding financial reporting or ownership information.

The effect of the revision made by COBRA is to subject HIOs that do more than merely act as a payer of services to regulatory requirements virtually identical to HMOs. The conference report accompanying COBRA clarified that:

> where an HIO does more than simply act as a fiscal agent to review and process claims for payment, but actually arranges with other providers (through subcontract or otherwise) for the delivery of services to Medicaid eligible (even though the HIO does not itself deliver services), it is subject to all of the regulatory requirements to which any health maintenance organization or similar prepaid

entity is subject under current law. (H. Conf. Rep. No. 453, 99th Cong., 1st Sess. (1985), pp. 550–551.)

The COBRA amendment permits HIOs which operate under the authority of a section 1915(b) waiver granted a State prior to January 1, 1986 to be exempt during the period of the waiver from the HMO provisions that membership be less than 75 percent Medicare/Medicaid and that enrollees may terminate enrollment without cause at any time.

B. Omnibus Budget Reconciliation Act of 1986

Section 9435(e) of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86) amended section 9517(c) of COBRA, by adding a new subparagraph (D). This change stated that "nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring an HIO to be organized under the HMO laws of a State". The conference report pertaining to section 9435(e) of OBRA 86 stated that in order to meet the requirement in section 1903(m)(2)(A)(1) of the Act, the HIO is only required to be organized under the laws of the State in which it does business, including the State's corporation law. The report states that an HIO organized under the corporation law in the State in which it operates, which makes services accessible as required by section 1903(m)(1)(A)(i) of the Act, and which has made adequate provision against the risk of insolvency as required by section 1903(m)(1)(A)(ii) of the Act, has met the requirement of section 1903(m)(2)(A)(i) of the Act (H. Rep. No. 1012, 99th Cong. 2d Sess. (1986) pp. 411–412.

C. Tax Reform Act of 1986

Section 1895(c)(4)(A) of Pub. L. 99–514, the Tax Reform Act of 1986 (TRA), amended section 9517(c)(2) of COBRA by adding that a health insuring organization is not considered operational until the date on which it first enrolls patients. Under an earlier HCFA interpretation (given to the State agency), operational meant the date an HIO began administrative processes to carry out the provision of Medicaid services. In addition, section 1895(c)(4)(C) of TRA provided that the Hartford Health Network, Inc., is exempt from clauses (ii) and (vi) of section 1903(m)(2)(A) of the Act (concerning composition of enrollment and disenrollment without cause) during the period it has a section 1915(b) waiver in effect (if the request for a waiver under section 1915(b) of the Act submitted before January 1, 1986 is subsequently approved by the Secretary).

III. Provisions of the Proposed Regulations

We propose to revise 42 CFR Part 434 by redesignating Subparts D and E as Subparts E and F respectively, and adding a new Subpart D. The proposed new Subpart D would incorporate changes made by legislation and follow the direction of Congress in the conference reports by establishing the scope of responsibilities for an HIO under Medicaid. The regulations under Subpart D would provide that an HIO that does more than simply act as a payer of services, is subject generally to the regulatory requirements to which any HMO or similar prepaid entity is subject under current law.

Current regulations at § 434.14 describe the requirements for contracts with HIOs. We would remove and reserve § 434.14 and move the requirements in this section to new §§ 434.40 and 434.42 in the new Subpart D of Part 434.

In addition, we would add a new § 434.44 that would specify special rules for certain HIOs. These special rules at § 434.44(a) would require that an HIO which becomes operational on or after January 1, 1986, and which arranges with other providers (through subcontract or through other arrangements) for the delivery of services to Medicaid enrollees on a prepaid capitation risk basis be subject to requirements for HMOs and PHPs set forth in § 434.20 (d) and (e), and §§ 434.21 through 434.38 and §§ 434.50 through 434.65. The rules would also require that an HIO be organized under the appropriate laws, including corporation laws, of the State in which it operates. However, the HIO need not be organized under the State HMO laws, but must meet requirements under § 434.20(c) (1), (2) and (3) of this chapter.

We also would provide in § 434.44(b) that any HIO subject to the special rules in § 434.44(a) that obtained a section 1915(b) waiver of certain requirements under section 1902 of the Act prior to January 1, 1986 is exempt from the requirements at §§ 434.26 and 434.27(b) (composition of enrollment and disenrollment without cause) during the effective period of the waiver. The effective period includes extensions and renewals to the original waiver period.

In § 434.20(e)(2), the cross reference to Subpart D would be revised to Subpart E of the part.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis on any proposed major rule. A major rule is defined as any regulation that is likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers and fiscal intermediaries as small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if the proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis also must conform to the provisions of section 603 of the RFA.

This proposed rule reflects current implementation of previous statutory changes and would serve only to codify in regulations those practices that already have been implemented. This rule, in itself, would have no effect on Medicaid program expenditures.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and would not have a significant impact on the operations of substantial number of rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis.

B. Paperwork Reduction Act

Section 434.44 of this proposed rule contains information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 as amended, 44 U.S.C. 3507–3511. Organizations and individuals desiring to submit comments

on the information collection requirements should direct them to the agency official whose name appears in the "ADDRESS" section of the preamble.

IV. Response to Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments contained in correspondence that we receive by the date specified in the "DATE" section of this preamble, and will respond to the comments in the preamble to that rule.

List of Subjects in 42 CFR Part 434

Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements, Grant programs—health, health insuring organizations (HIOs).

42 CFR Part 434 would be amended as set forth below:

PART 434—CONTRACTS

1. The authority citation for Part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The heading for Subpart B is revised to read as follows:

Subpart B—Contracts With Fiscal Agents and Private Nonmedical Institutions

§ 434.14 [Removed and Reserved]

3. Section 434.14 would be removed and reserved.

§ 434.20 [Amended]

4. In § 434.20, paragraph (e)(2), the cross-reference "Subpart D" is changed to "Subpart E".

5. Subparts D and E are redesignated as Subparts E and F, and a new Subpart D is added to read as follows:

Subpart D—Contracts With Health Insuring Organizations

434.40 Contract requirements.
434.42 Capitation fees.
434.44 Special rules for certain health insuring organizations.

Subpart D—Contracts With Health Insuring Organizations

§ 434.40 Contract requirements.

(a) Contracts with health insuring organizations must—

(1) Meet the general requirements for all contracts and subcontracts specified in § 434.6;

(2) Specify that the contractor assumes at least part of the underwriting risk and;

(i) If the contractor assumes the full underwriting risk, specify that payment of the capitation fees to the contractor during the contract period will constitute full payment by the agency for the cost of medical services provided under the contract;

(ii) If the contractor assumes less than the full underwriting risk, specify how the risk is apportioned between the agency and the contractor;

(3) Specify whether the contractor returns to the agency part of any savings remaining after the allowable costs are deducted from the capitation fees, and if savings are returned, the apportionment between agency and the contractor; and

(4) Specify the extent, if any, to which the contractor may obtain reinsurance of a portion of the underwriting risk.

§ 434.42 Capitation fees.

(a) The contract must—

(1) Specify that the capitation fee will not exceed the limits set forth under part 447 of this chapter;

(2) Specify that, except as permitted under paragraph (b) of this section, the capitation fee paid on behalf of each recipient may not be renegotiated—

(i) During the contract period if the contract period is 1 year or less; or

(ii) More often than annually if the contract period is for more than 1 year.

(3) Specify that the capitation fee will not include any amount for recoupment of any specific losses suffered by the contractor for risks assumed under the same contract or a prior contract with the agency; and

(4) Specify the actuarial basis for computation of the capitation fee.

(b) The capitation fee may be renegotiated more frequently than annually for recipients who are not enrolled at the time of renegotiation or if the renegotiation is required by changes in Federal or State law.

§ 434.44 Special rules for certain health insuring organizations.

(a) A health insuring organization that first enrolls patients on or after January 1, 1986, and arranges with other providers (through subcontract, or through other arrangements) for the delivery of services (as described in § 434.21(b)) to Medicaid enrollees on a prepaid capitation risk basis is—

(1) Subject to the general requirements set forth in §434.20(d) concerning services that may be covered and § 434.20(e) which set forth the requirements for all contracts, the additional requirements set forth in §§ 434.21 through 434.38 and the Medicaid agency responsibilities specified in §§ 434.50 through 434.65; and

(2) To be organized under the appropriate laws, including corporation laws, of the State in which it operates. There is no Federal requirement that an HIO be organized under a State's HMO law, if it has one. However, the health insuring organization must meet the State plan definition requirements in § 434.20(c) (1), (2) and (3) of this chapter.

(b) *Special exemption.* Any health insuring organization subject to the requirements in paragraph (a) of this section, that is operating under the authority of a waiver under section 1915(b) of the Act granted prior to January 1, 1986, is exempt from those requirements relating to composition of enrollment and disenrollment without cause in §§ 434.26 and 434.27(b), during the effective period of the waiver, including extensions and renewals.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: March 17, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 26, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-19155 Filed 8-24-88; 8:45 am]
BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-16; Notice 1]
RIN: 2127-AB-75

Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Standard No. 102 requires "identification of shift lever positions of automatic transmissions" to be "permanently displayed in view of the driver." This notice proposes to replace the requirement for "permanent display" with a requirement that identification of automatic transmission shift lever positions be displayed whenever the ignition is in a position where the

transmission can be shifted, and whenever the transmission is not in park. NHTSA believes that the proposed requirements would facilitate the use of electronic displays, while ensuring that the information in question is displayed at all times when it may be needed for safety. This action results from petitions for rulemaking submitted by Chrysler and General Motors, which requested that the existing requirement be amended to "permit" or "more clearly allow" the use of electronic displays for this purpose. NHTSA previously granted the two petitions by letter.

DATES: Comments must be received on or before October 24, 1988. The amendments in this notice would become effective 30 days after the publication of a final rule.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC (202-366-5287).

SUPPLEMENTARY INFORMATION: NHTSA has received petitions for rulemaking from Chrysler and General Motors (GM) to amend Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect.* That standard specifies requirements for the purposes of reducing the likelihood of shifting errors, preventing starter engagement with the vehicle in drive position, and providing supplemental braking at speeds below 25 miles per hour.

Chrysler and GM requested that section S3.2 of the standard be amended to "permit" or "more clearly allow" the use of electronic displays of automatic transmission shift level positions. (These displays are often called PRNDL displays, the acronym PRNDL referring to the following gear positions: *p*ark, *r*everse, *n*eutral, *d*rive, and *l*ow.) That section currently requires "identification of shift lever positions of automatic transmissions" to be "permanently displayed in view of the driver." NHTSA has interpreted the term "positions" to include both the position of the gears in relation to each other and the gear position actually selected. NHTSA has interpreted the requirement that identification be "permanently displayed in view of the driver" to require a display whenever there is a driver in the driver's seating position, even if the ignition is not turned on.

Chrysler argued that the requirement for permanent display of the PRNDL is design restrictive and prevents the use of electronics. That company stated that since an electronic display requires electrical current for activation, a permanent and constantly activated display would drain the vehicle's battery in a short period of time. Chrysler stated that fifteen minutes is the maximum amount of time that it can allow an electronic display to draw energy from the battery of a parked vehicle.

Both Chrysler and GM argued that the use of electronic PRNDL displays can offer several benefits, as compared to conventional mechanical displays. These include more precise indication of the selected gear, visibility which does not depend on ambient light and/or headlamp activation, designs with improved human factors characteristics, and improved customer satisfaction through product distinction and innovation.

While both petitioners argued that permanent display of PRNDL information is unnecessary for safety and that the safety related aspects of section S3.2 can be maintained by a less stringent requirement, they recommended different approaches for facilitating the use of electronic displays.

Chrysler stated that the driver needs to know the gear position of the automatic transmission before starting the vehicle. That company stated that the principal steps in the driver's normal approach to operating the vehicle are: (1) Opening the door, (2) inserting the ignition key into the ignition lock, and (3) turning the ignition key to start the engine. Chrysler recommended the addition of PRNDL viewing requirements for each of these steps to ensure that the driver would have opportunity to know the gear position at each step before operating the vehicle. More specifically, that company recommended a requirement that the PRNDL be displayed in view of the driver for at least three minutes whenever the driver's door is opened, for at least 15 minutes whenever the ignition key is inserted in the ignition lock, and whenever the ignition key is turned to the "on" position.

GM, on the other hand, recommended a requirement that the PRNDL be displayed in view of the driver whenever the vehicle is capable of mobility and the potential for shifting the transmission exists. That company cited a design in which an electronic PRNDL display is coupled with a transmission shift interlock system. Under this design, the PRNDL display is illuminated whenever the ignition switch is in the "on" or "off" position, but not when the ignition is in the "lock," "accessory," or "start" position. The interlock feature of the design precludes shifting the transmission whenever the ignition switch is in the "lock" or "accessory" position. Moreover, the feature precludes placing the ignition in the "lock" or "accessory" position unless the transmission is in park. Therefore, it is not possible to shift the transmission out of park (or drive the vehicle) without first moving the ignition switch out of the "lock" and "accessory" positions, thereby causing the electronic PRNDL to be activated. GM argued that this design ensures a PRNDL display whenever the vehicle is capable of mobility and the opportunity exists for shifting the transmission, and should be sufficient to satisfy section S3.2.

NHTSA notes that Standard No. 102's requirements for PRNDL displays have not been changed since 1967, when the standard was established as one of the agency's initial Federal motor vehicle safety standards. See 32 FR 2410, February 3, 1967. Electronic technology was largely undeveloped at that time. As a result, the requirement for permanent display of PRNDL information in part reflected the mechanical displays then being used.

In light of Chrysler's and GM's petitions for rulemaking and changed technology, NHTSA has reconsidered whether permanent display of PRNDL information is necessary for safety. As discussed below, the agency has tentatively determined that a less stringent requirement can maintain the safety aspects of section S3.2 while facilitating the use of electronic technology.

As indicated above, the stated purpose of the requirement for permanent display of PRNDL information is to reduce the likelihood of shifting errors. With respect to a driver making a mistake in shifting gears, NHTSA believes that this purpose can be accomplished by requiring PRNDL information to be displayed whenever the ignition is in a position where it is possible for the driver to shift transmission. Another safety concern about shifting errors is the possibility that a driver will leave a vehicle believing that it is in park when it is not. With respect to the contribution that a PRNDL display can make to reducing the likelihood of such an occurrence, NHTSA believes that purpose can be accomplished by requiring PRNDL

information to be displayed whenever the transmission is not in park.

NHTSA is therefore proposing to require that identification of shift lever positions of automatic transmissions, including both the position of the gears in relation to each other and the position selected, be displayed in view of the driver when either of the following conditions exists: (A) the ignition is in a position where the transmission can be shifted, or (B) the transmission is not in park. However, such display would not be required when the ignition is in a position that is used only to start the vehicle. The agency notes that the only time the ignition is in that position is momentarily during the starting of the vehicle, and full battery power may be needed at that time to start the vehicle.

The proposed requirements focus on the vehicle conditions where NHTSA believes there is a safety need for PRNDL information to be displayed to the driver. The agency notes that the proposal is very similar to that suggested by GM.

NHTSA believes that, as a practical matter, manufacturers choosing to avail themselves of the increased flexibility offered by the proposed requirements would likely use an electronic PRNDL display coupled with a transmission shift interlock system. The interlock system could be designed to prevent the transmission from being shifted under the vehicle conditions where the vehicle is parked, i.e., the transmission in park and the ignition in the lock position. The PRNDL information would not be required to be displayed in this situation, since the transmission would be in park and the ignition would be in a position where the transmission could not be shifted. There would thus not be a problem of the vehicle's battery being drained as a result of a driver leaving the vehicle with the PRNDL display illuminated.

NHTSA notes that the use of transmission shift interlock systems can result in safety benefits unrelated to the display of PRNDL information. In a separate rulemaking, the agency has proposed requirements that would have the effect of requiring transmission shift interlock systems for vehicles equipped with automatic transmissions. See 53 FR 11105, April 5, 1988. That proposal was issued in light of a safety concern about the rolling away of automatic transmission vehicles whose shift lever is inadvertently moved while the vehicles are parked on slanted surfaces with the engine off.

NHTSA also considered the regulatory approach suggested by Chrysler concerning when PRNDL information must be displayed. However, the agency believes that an approach which focuses on the times when drivers are *likely* to take certain actions, instead of on the times when drivers *actually* take those actions, could result in a lack of PRNDL information when it may be needed. Assume, for example, that a driver stops a vehicle and turns off the engine without placing the transmission in park, and then waits a few minutes before deciding to leave it. At that time, the driver may have forgotten that the transmission is not in park, but might be reminded if the PRNDL information were displayed. Under Chrysler's recommended approach, however, the PRNDL display could have been turned off. As indicated above, the requirements proposed by this notice focus on the vehicle conditions where the agency believes there is a safety need for PRNDL information to be displayed to the driver. NHTSA believes that the proposed requirements would ensure that PRNDL information is displayed at all times when it is needed.

The agency wishes to reiterate that its primary safety concern in this rulemaking is to provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors. However, the agency recognizes that, for example, in the situation described above (i.e., where they key remains in the ignition and the vehicle is not in park), after a certain length of time, the vehicle's battery will be drained sufficiently so that it will not start the car. While Chrysler's solution would have precluded this situation from occurring, the proposed rule, because of the agency's safety concerns mentioned previously, would not allow the display to be terminated. The agency seeks public comments on this issue (providing gear selector information versus allowing the battery to be drained) and whether the agency needs to take other action in this regard. The agency notes that this situation is not unlike others, such as leaving headlamps or a radio on for extended periods, which could also drain the battery. The agency also wishes to point out that manufacturers would be free to provide warnings to the driver before the battery is drained to the point that it could no longer start the vehicle.

While the above discussion has been limited to vehicles equipped with automatic transmissions, section S3.2 also covers manual transmission vehicles. The section requires that identification of the shift lever pattern of manual transmissions, except three foward speed manual transmissions having the standard "H" pattern, shall be permanently displayed in view of the driver. While the language of this requirement may appear similar to that for automatic transmissions, the substance is quite different. While it is necessary to use a position indicator to show the shift lever *positions* of an automatic transmission, a simple label may be used to show the shift lever *pattern* of a manual transmission. Also, while the requirements for automatic transmissions apply to all vehicles equipped with such transmissions, the requirements for manual transmission vehicles exclude three forward speed transmission having the standard "H" pattern.

Chrysler stated in its petition that the manual transmission requirements do not need to be changed. The discussion in GM's petition did not specifically address the manual transmission requirements. However, its recommended amendment specified the same requirements for displays of the shift lever pattern of a manual transmission as for display of the shift lever positions of an automatic transmission, i.e., whenever the vehicle is capable of mobility and the potential for shifting the transmission exists.

NHTSA is not aware at this time of any reason to propose a change in section S3.2's requirements for display of the shift lever pattern of a manual transmission. The use of electronic technology does not appear to be relevant to these provisions, since they require a simple label rather than a position indicator. Manufacturers desiring to supplement the required label with an electronic display, that may include manual transmisssion positions, are free to do so.

Since the proposed amendment for automatic transmissions would impose no new requirements but would instead increase manufacturer flexibility by relieving a restriction, the agency is proposing that the amendment become effective 30 days after publication of a final rule.

NHTSA previously granted the Chrysler and GM petitions by letter. As indicated above, the requirements proposed by this notice are very similar to those suggested by GM. For the reasons discussed above, NHTSA decided not to propose requirements along the lines requested by Chrysler. However, the requirements proposed by this notice do address the problem cited by Chrysler's petition.

The agency has considered the costs and other impact of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the

meaning of the Department of Transportation's regulatory policies and procedures. The proposed requirements would impose no new requirements but instead increase manufacturer flexibility by relieving a restriction. Any cost impacts would be in the nature of slight, nonquantifiable cost savings. Since the effects of the proposal, if adopted as a final rule, would be minimal, a full regulatory evaluation has not been prepared.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units would be affected by the proposed amendments only to the extent that they purchase motor vehicles. As noted above, the proposed amendments would not significantly affect vehicle price. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this proposed rule for the purpose of the National Environmental Policy Act, and determined that the proposed rule would not have any significant impact on the quality of the human environment.

Finally, this proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purported confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.102 [Amended]

2. S3.1.4 would be added to § 571.102 to read as follows: S3.1.4 *Identification of shift lever positions.*

S3.1.4.1 Except as provided in S3.1.4.2, identification of shift lever positions, including the position of the gears in relation to each other and the gear position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

(a) The ignition is in a position where the transmission can be shifted.

(b) The transmission is not in park.

S3.1.4.2 Such display need not be provided when the ignition is in a position that is used only to start the vehicle.

3. S3.2 would be revised to read as follows:

S3.2 *Manual transmissions.* Identification of the shift lever pattern of manual transmissions, except three forward speed manual transmissions having the standard "H" pattern, shall be permanently displayed in view of the driver.

Issued on August 18, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-19345 Filed 8-22-88; 4:04 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 80624-8124]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to designate two artificial reefs (ARs) off Ft. Pierce, Florida, as special management zones (SMZs) in which specific fishing gear and harvest limitations would apply. The intended effect is to promote orderly use of the fishery resources on the ARs, to reduce potential user-group conflicts, and to maintain the intended socioeconomic benefits of the ARs to the maximum extent practicable.

DATE: Comments on the proposed rule must be received on or before September 26, 1988.

ADDRESS: Comments on the proposed rule and requests for copies of the draft regulatory impact review should be sent to Rodney C. Dalton, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the Fishery Management for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides for designation of ARs and fish attraction devices (FADs) as SMZs, in which specific gear and harvest limitations would apply.

An AR or FAD creates fishing opportunities that would not otherwise exist and an AR may increase biological production. The cost of their construction and maintenance can be substantial and their intended socioeconomic benefits (e.g., recreational fishing or tournaments) can be reduced or eliminated if highly efficient fishing gear and fishing practices are not restrained. Therefore, designation of an AR as an SMZ acts as an incentive for the construction of an AR or FAD.

The Ft. Pierce Sportfishing Club (Club) holder of a permit from the Corps of Engineers to construct the ARs, requested the Council to establish SMZs around two ARs located in the exclusive economic zone off the southeast coast of Florida. FADs are utilized with each AR. The Club requested that the following limitations be applied in these SMZs: (1) Prohibit use of fish traps, (2) prohibit use of bottom longlines, (3) prohibit use of hydraulic and electric reels to fish for snapper-grouper species unless the reels are mounted on hand-held (including rod holder) fishing rod, (4) prohibit spearfishing on the inshore reef, and (5) prohibit harvest or possession of jewfish. The Club expressed concern about the fish traps and bottom longlines that are in the immediate area of the ARs.

In accordance with the FMP, the Council evaluated the Club's request, considering the FMP's criteria of (1) fairness and equity, (2) promotion of conservation, and (3) prevention of excessive shares. The Council also considered possible conflicts among fishermen and impacts on historical uses.

One commercial fish trapper has been identified who fishes between 80 and 120 traps off St. Lucie, Martin, and Indian River Counties. This individual also fishes bottom longline gear. There have been unverifiable reports of an additional one or two individuals who fish with traps, and reports that some commercial divers may use bottom longlines on a part-time basis, though probably not in the specific areas of the ARs. Although fishing occurs off Martin, St. Lucie, and Indian River Counties, the amount that occurs in the immediate vicinity of the ARs is unknown.

Recreational catch information is available only for the east coast of Florida as a whole and is not particularly helpful in ascertaining catches in the Ft. Pierce area. Commercial data (Source: Florida Trip Ticket Program) for all Florida east coast counties north of Palm Beach indicate 892,345 pounds of snappers and groupers were caught in 1985 and 1,072,884 pounds were caught in 1986. Given these catch figures, the total commercial catch from the specific areas that would be regulated through the establishment of SMZs would appear to be relatively small.

The Ft. Pierce sites are located on a relatively wide continental shelf with large sandy areas. Although the site surveys indicate that there are no hard bottom areas within the ARs, the Recreational Use Reefs document (FL Sea Grant MAP-9, 1979; Monitoring Team Report) reports hard bottom in this general area. Most of the information presented at the public hearing supports the position that both of these areas are located in a relatively barren habitat. A commercial diver stated that there is some hard bottom scattered within these sites. Although there is no empirical data on historical use, it is reasonable to assume that there was no significant fishing by the prohibited gear types prior to placement of the ARs and FADs, since the bottom is mostly barren sand.

SMZ designation is consistent with the FMP objective to "promote orderly use of the resource." Although there is limited information that indicates any of the gear types that are proposed to be prohibited has created a problem in the areas under consideration, these efficient gear types have the potential to overfish small, localized areas such as the ARs.

Given the paucity of information available, it is difficult to address conservation in the biological sense. The national standard guidelines indicate that these criteria can also be met by "encouraging a rational, more easily managed use of the resource" or by "optimizing the yield in terms of * * * economics or social benefits of the product." The proposal could be viewed as satisfying these conditions and thus promoting conservation.

The excessive share standard does not appear to be violated because it seems likely that no significant reef fisheries existed near the site prior to the AR and the cumulative impact of SMZs in this area would not appear to be significant at this time.

The natural bottom in and surrounding this area consists of a relatively wide continental shelf with relatively barren sandy habitat. There do not appear to be large areas of natural hard bottom present within the requested areas. There are, however, areas of natural hard bottom outside the SMZs. The distribution of natural bottom serves to minimize the impacts on the historical uses of this area.

An additional problem addressed by this proposed rule is the removal of jewfish from the ARs. Jewfish are exceptionally large members of the grouper family capable of exceeding a length of 7 feet and a weight of 700 pounds. Although jewfish are not common on these ARs, they represent a unique aesthetic experience for the diving community. The inquisitive nature of jewfish makes them easy prey for spearfishermen, and occasionally a jewfish is taken by hook and line. Once a jewfish is removed from a reef, replacement may not occur for several years. The Club and the Council have concluded that the only equitable way to preserve jewfish for the continuing aesthetic enjoyment of many users is to prohibit any take or possession of jewfish in the SMZ.

After due consideration of the evaluation criteria, supporting data, comments during public hearings, and other relevant information, the Council recommended and the Director, Southeast Region, NMFS, concurs with proposing the establishment of the requested SMZs. Restrictions on fishing gear and fishing practices in these SMZs are intended to (1) promote orderly use of the resource, (2) reduce potential user group conflicts, (3) maintain the intended socioeconomic benefits of the ARs and thereby maintain incentives for the creation of ARs and FADs, (4) optimize use of biological production, and (5) create fishing opportunities that would not otherwise exist.

Requests for Comments

Because establishment of these SMZs would prohibit certain gear and activities within the proposed boundaries, thus altering usage of approximately 5.8 square miles of ocean bottom, the public is asked to pay particular attention to possible impacts of the action on historical users of the area and to the potential changes in fishing opportunities for recreational and commercial fishermen and divers within these SMZs.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

These measures are part of the Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1988 (48 FR 37702).

The Assistant Administrator initially determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Council prepared a draft regulatory impact review (RIR) which concludes that this rule will have the following economic effects.

Specific estimates of benefits of the AR program off Ft. Pierce are not available; however, several factors indicate that positive benefits have occurred in this area. Significant increases in the number of offshore-oriented vessels and expansion of the charterboat industry and local diving community are, in part, a response to the enhanced fishing opportunities created by construction of ARs. Continuing increases in participation in offshore fishing tournaments, many of which center around ARs, is another example of the benefits of reefs.

The actual benefit of restricting use of gear that is incompatible with the intended use of these ARs is to ensure that the benefits associated with ARs will continue to be realized. Establishment of these SMZs is intended to provide AR permittees the necessary incentive to properly maintain existing reefs and construct additional ARs to enhance fishing opportunities where necessary.

Costs in terms of the burden on excluded user groups are minimal. Only one commercial fish trapper fishes this general area (he also fishes bottom longline gear) and his catch from these specific SMZs is unknown but is expected to be small, given that the entire reported commercial snapper-grouper catch off the east coast of Florida was less than 1.1 million pounds in 1986. In considering the impacts on the affected fishermen, it should be noted that these ARs were constructed on a relatively wide continental shelf that provides a large fishing area for the various gear types. Therefore, users of the prohibited gear types do have alternative areas in which to fish. Prohibiting the take, possession, or retention of jewfish within these SMZs does not impose a significant burden. It is expected that additonal Federal enforcement costs resulting from this proposed action will be minimal. Copies fo the draft RIR are available (see **ADDRESS**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because its impacts would be limited currently to a very few individuals who may have used gear proposed to be prohibited in the new SMZs. The best available information indicates that fewer than five individuals fish with traps in the general area and there are unverifiable reports of a few individuals using bottom longlines on a part-time basis. These individuals comprise an insignificant percentage of the small business entities involved in the snapper-grouper fishery. Further, the SMZs constitute an extremely small portion of the available fishing grounds and do not appear to have been historical fishing areas prior to construction of the ARs. Prohibiting the harvest of jewfish will have a minimal impact on small entities because jewfish are sporadic inhabitants of ARs and are not sufficiently abundant to support sustained fishing activity. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. A letter was sent to Florida, the only State involved, advising of this determination.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing.

Dated: August 22, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.6, paragraphs (l) and (m) are revised and paragraph (n) is removed, to read as follows:

§ 646.6 Prohibitions.

* * * * *

(l) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.24(b)(2) and (c);

(m) Harvest or fail to release a jewfish within a special management zone, or possess a jewfish taken from a special management zone, as specified in § 646.24(b)(1).

3. In § 646.24, new paragraphs (a)(20) and (21) are added, paragraph (b) is revised, and a new paragraph (c) is added, to read as follows:

§ 646.24 Area limitations.

(a) * * *

(20) *Ft. Pierce Inshore Reef:* The area is bounded on the north by 27°26.6′ N. latitude; on the south by 27°25.6′ N. latitude; on the east by 80°09.24′ W. longitude; and on the west by 80°10.36′ W. longitude.

(21) *Ft. Pierce Offshore Reef:* The area is bounded by straight lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	27°23.66′ N.	80°03.95′ W.
B	27°22.06′ N.	80°03.06′ W.
C	27°23.94′ N.	80°00.02′ W.
D	27°24.85′ N.	80°00.33′ W.
A	27°23.66′ N.	80°03.95′ W.

(b) The following restrictions apply within all of the SMZs specified in paragraph (a) of this section.

(1) Jewfish may not be harvested by any type of gear. Jewfish taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(2) The use of fish traps and bottom longlines is prohibited.

(c) The following additional restrictions apply in the indicated SMZs.

(1) In SMZs specified in paragraphs (a)(1) through (19) of this section,

(i) The use of gill nets and trawls is prohibited; and

(ii) Fishing may be conducted only with hand-held hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing gear (including powerheads).

(2) In SMZs specified in paragraphs (a)(20) and (21) of this section, hydraulic and electric reels that are permanently affixed to the vessel are prohibited when fishing for fish in the snapper-grouper species.

(3) In the SMZ specified in paragraph (a)(20) of this section, the use of spearfishing gear is prohibited.

[FR Doc. 88-19304 Filed 8-22-88; 2:13pm]
BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 80859-8159]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed closure modification; request for comments.

SUMMARY: NOAA proposes modification of a closure notice that will allow U.S. vessels processing their catch on board or delivering it to U.S. processors (DAP) to conduct a directed fishery for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00′ N. latitude and east of 165°00′ W. longitude (Zone 1) under specified conditions intended to limit the incidental or bycatch of Pacific halibut, Tanner crabs (*Chionoecetes bairdi*), and red king crabs. Directed fishing for yellowfin sole and "other flatfish" by DAP fishing vessels and U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) previously was prohibited on March 8, 1988, due to attainment of the prohibited species catch (PSC) limit for *C. bairdi* Tanner crabs. Subsequent reassessment of data on bycatches of crabs in the directed fisheries for yellowfin sole and "other flatfishes" indicates that the risk of biological harm to Tanner crabs and other prohibited species from reopening Zone 1 to only DAP fishing is not significant. Therefore, the previous closure notice would be modified to allow DAP directed fishing for yellowfish sole and "other flatfishes" in Zone 1 under specified conditions. This action is necessary to increase the flexibility of the developing DAP fishery for yellowfin sole in the Bering Sea. The intended effect is to relax a restriction on certain domestic fishermen while maintaining protective measures for prohibited species.

DATE: Comments on this proposed action and especially on the determinations of the Regional Director are invited until September 21, 1988.

ADDRESS: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, P.O. Box 21668, Juneau, AK 99802-1668. Copies of the Regional Director's determinations may be obtained on request from the same address or by calling 907-586-7221.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) area are managed under the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) in 1981. Federal regulations implementing the FMP and governing domestic fisheries in the BSAI area appear under 50 CFR Part 675.

A principal purpose of these regulations is to prevent overfishing of the target groundfish species. In addition, the regulations provide for control of incidental catches of nongroundfish prohibited species. Controls on foreign fishing bycatches of prohibited species have been effective since the early 1980s. In recent years, domestic (JVP and DAP) groundfish fisheries have replaced foreign fishing effort and similar controls on domestic fisheries have become necessary. In 1986, the Council recommended and the Secretary implemented PSC limits on the bycatches of crabs (red king and *C. bairdi* Tanner) and Pacific halibut by the JVP and DAP fisheries for yellowfin sole and "other flatfish." Other flatfish as defined in the FMP include rock sole, flathead sole, arrowtooth flounder, rex sole, butter sole, longhead dab, Dover sole, starry flounder, Alaska plaice, and longnose plaice.

The Council's purpose in recommending PSC limits for domestic fisheries was to limit the fishing mortality of crabs and halibut while not overly restricting access to Bering Sea flatfish resources by the domestic groundfish fisheries. Of concern was the biological impact of such fishing, especially on crabs which were at historically low levels of abundance, and the economic impact on the directed fisheries for crabs and halibut.

The crab and halibut bycatch controls on domestic fisheries were first implemented by emergency rule in 1986 (June 6, 1986, 51 FR 20652) and subsequently by FMP amendment (March 19, 1987, 52 FR 8592) effective only for the 1987 and 1988 fishing years. These controls (1) established two bycatch limitation zones, (2) specified PSC limits for red king crab, *C. bairdi* Tanner crab, and Pacific halibut applicable to the JVP and DAP fisheries for yellowfin sole and "other flatfish" which trigger the closure of one or both zones if reached, and (3) closed an area within Zone 1 to all domestic commercial fishing with trawl gear. Any of the following specified PSC limits trigger a closure of Zone 1 to a directed fishery for yellowfin sole and "other flatfish":

—80,000 *C. bairdi* Tanner crabs caught by DAP and JVP vessels in Zone 1 while directed fishing for yellowfin sole and "other flatfish,"

—135,000 red king crabs caught by DAP and JVP vessels in Zone 1 while directed fishing for yellowfin sole and "other flatfish," and

—828,000 Pacific halibut caught by JVP vessels only while directed fishing for yellowfin sole and "other flatfish" anywhere in the BSAI management area.

The PSC limit which triggers the closure of Zone 2 is:

—326,000 *C. bairdi* Tanner crabs caught by DAP and JVP vessels in Zone 2 while directed fishing for yellowfin sole and "other flatfish."

Zone 1 was closed to JVP and DAP directed fishing for yellowfin sole and "other flatfish" on March 8, 1988, after the Regional Director determined that the PSC limit for Tanner crabs in Zone 1 had been taken (March 11, 1988, 53 FR 7941). This determination was based on bycatch data collected from onboard observers in the JVP fishery. Additional bycatches of prohibited species by the DAP fishery for "other flatfish" in Zone 1 up to that time are unknown due to the absence of onboard observers. Estimates of DAP bycatches of Tanner crabs range from 19,000 to 37,000 animals depending on the assumed rate of bycatch per mt of groundfish.

Closure of either zone due to the achievement of any PSC limit is ordinarily effective for the remainder of the fishing year (§ 675.21 (a), (b), and (c)). However, § 675.21(d) provides for the Secretary to "* * * allow some or all vessels to continue or resume directed fishing for yellowfin sole and 'other flatfish' under conditions which will limit fishing by permissible gear, areas, times, and other appropriate factors." In authorizing and conditioning such fishing in an otherwise closed zone, the Secretary is required to take into account five determinations by the Regional Director regarding the probable effects of allowing continued or resumed fishing.

Representatives of DAP fishing interests requested the Regional Director to reopen Zone 1 to DAP fishing only to allow a harvest of up to 25,000 mt of yellowfin sole. The Council

reviewed this issue on request of the Regional Director at its April 13–15, 1988 meeting and supported, in principle, the reopening of Zone 1 to directed fishing for yellowfin sole by DAP vessels only.

The Secretary has considered the five determinations of the Regional Director and hereby proposes to modify the closure of Zone 1 to allow directed fishing for yellowfin sole and "other flatfish" within Zone 1 by only those DAP fishing vessels that subscribe to the following conditions and until otherwise notified.

Conditions

1. Any DAP fishing vessel on which trawl-caught groundfish are brought onboard must carry an observer approved by the Regional Director.

2. Directed fishing for yellowfin sole and "other flatfish" will cease by notice in the **Federal Register** when any of the following occurs:

(a) the total number of red king crabs taken by JVP and DAP vessels while directed fishing for yellowfin sole and "other flatfish" in Zone 1 since the beginning of the 1988 fishing year equals the PSC limit of 135,000 animals.

(b) the total number of *C. bairdi* Tanner crabs taken by DAP vessels while directed fishing for yellowfin sole and "other flatfish" in Zone 1 after reopening equals a supplemental PSC limit of 50,000 animals.

(c) the total number of Pacific halibut taken by DAP vessels while directed fishing for yellowfin sole and "other flatfish" in Zone 1 after reopening equals a supplemental PSC limit of 60,200 animals.

The five determinations of the Regional Director and the information on which they are based are contained in a separate document which may be requested from the above address. In summary, the Regional Director determined that the expected additional fishing mortality resulting from reopening Zone 1 would be no more than 60,200 halibut, 50,000 *C. bairdi* Tanner crabs, and 21,500 red king crabs. The Regional Director determined further that these additional amounts of fishing mortality are not likely to have a measurable effect on the respective populations of these species and that the added risk of overfishing these species due to reopening Zone 1 according to the above conditions is insignificant.

Classification

This action is proposed under authority of § 675.21(d). For the reasons stated above, the Under Secretary for Oceans and Atmosphere (Under Secretary) has initially determined that this proposed action is necessary and consistent with the Magnuson Fishery Conservation and Management Act. In addition, based on the above discussion and the Regional Director's determinations, the Assistant Administrator for Fisheries, NOAA has determined that this proposed action (1) qualifies for a categorical exclusion from the requirement to prepare an environmental assessment under the National Environmental Policy Act, (2) is not a major rule requiring regulatory impact analysis under Executive Order 12291, and (3) contains no collection of information requirement subject to the Paperwork Reduction Act. A determination as to whether or not the rule has a significant economic impact on a substantial number of small entities will be made in conjunction with the publication of the final rule. However, the Under Secretary finds that the Regional Director's determinations substantially satisfy the environmental and economic documentation requirements of these laws.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 1988.

William Matuszeski,

Executive Director, National Marine Fisheries Service.

[FR Doc. 88–19342 Filed 8–22–88; 4:03 pm]

BILLING CODE 3510–22–M

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Notices

Federal Register
Vol. 53, No. 165
Thursday, August 25, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Control of Unwanted Vegetation, Diseases, Insects, and Animals in the Pacific Southwest Region Nurseries and Tree Improvement Center

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the Pest Management Activities at the Humboldt Nursery, McKinleyville, California; Placerville Nursery, Camino, California; and Chico Tree Improvement Center, Chico, California. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by October 1, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Patricia Malone, Assistant Nursery Manager, Placerville Nursery, 2375 Fruitridge Road, Camino, California 95709.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Patricia Malone, Assistant Nursery Manager, Placerville Nursery, 2375 Fruitridge Road, Camino, California 95709, phone 916–622–9600.

SUPPLEMENTARY INFORMATION: In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this project. One of those is no action. Other alternatives will consider a range of methods for the prevention and control of unwanted vegetation, diseases, insects, and animals in the Region's nurseries and tree improvement center. The methods under consideration includes biological, chemical, manual, and mechanical techniques. The activities that require prevention and controls include cover cropping, seed pre-treatment, nursery seedbed and greenhouse preparation, sowing, seedling growth from germination to lifting, seedling storage, and seed orchard management.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the EIS.
3. Defining the proper interdisciplinary team make-up.
4. Determining the effective use of time and money in conducting the analysis.
5. Identifying potential environmental, technical, and social impacts of the EIS and alternatives.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

Paul F. Barker, Regional Forester, Pacific Southwest Region, is the responsible official.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February, 1989. At that time, EPA will publish a notice of availability of the draft EIS in the Federal Register.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the Federal Register. It is very important that those interested in the pest management project participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alert an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by June, 1989. In the final EIS the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the draft EIS, and applicable laws, regulations and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Date: August 17, 1988.

J. Thomas Whear,

Acting Forest Supervisor, Eldorado National Forest.

[FR Doc. 88–19293 Filed 8–24–88; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Pickens-Anderson Watershed, South Carolina; Finding of No Significant Impact

AGENCY: Soil Conservation, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 65), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pickens-Anderson Watershed, Pickens and Anderson Counties, South Carolina.

FOR FURTHER INFORMATION CONTACT: Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, Telephone (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 3,233 acres of cropland.

A copy of the Finding of No significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protrection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: June 7, 1988.

Billy Abercrombie,

State Conservationist.

[FR Doc. 88–19236 Filed 8–24–88; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda and Notice of Public Forum

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on September 3, 1988, at the Howard Johnson Plaza Hotel, 1500 North 51st Avenue, Phoenix, Arizona 85043. The Advisory Committee will conduct a forum to obtain information on the Immigration Reform and Control Act of 1986 in Arizona.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John White, or Philip Montez, Director of the Regional Division, (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 16, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–19237 Filed 8–24–88; 8:45 am]

BILLING CODE 6335–01–M

Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 11:00 a.m., on September 22, 1988, at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana. The purpose of the meeting is to review current committee projects and discuss civil rights issues of current concern in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 17, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–19238 Filed 8–24–88; 8:45 am]

BILLING CODE 6335–01–M

Maine Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 7:00 p.m. on September 22, 1988, at the Best Western Senator Inn, State Room, 284 Western Ave., Augusta, ME 04330. The purpose of the meeting is (1) provide orientation for new members and update the Committee on Commission and regional program activities, and (2) plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Grayce E. Studley, 207–874–8100, X–3135 or John I. Binkley, Director of the Eastern Regional Division at (202) 523–5264, (TTD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 18, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–19239 Filed 8–24–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held Sept. 13, 1988 at 9:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution

Avenue NW., Washington, DC. The Committee advises the offices of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals adn realted test equipment or technology.

Agenda

General Session

1. Introduction of Members and Visitors.
2. Introduction of Invited Guests.
3. Presentation of Papers of Comments by the Public.
4. Discussion of OEM Sales of Peripherals to Bloc Countries.
5. Discussion of Reclassification of Laser Optical Disk Drives from 1522A to 1565A.
6. Discussion of Protocol Converters—TTG1.
7. Discussion of G–COM/GFW Treatement of Disk Packs.
8. Discussion of Public Rule Making Progress.
9. Discussion of Regulatorion Flow Charting Progress.
10. Status on Release of "Production Systems".

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be sumitted at any time before or after the meeting and can be directed to: Ruth D. Fitts, Technical Support Staff, Office of Technology & Policy Analysis, Room 4086, 14th & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meeting found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: August 18, 1988.

Betty A. Ferrel,

Acting Director, Technical Support Staff, Office of Techology and Policy Analysis.

[FR Doc. 88–19272 Filed 8–24–88; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Wednesday, September 14, 1988, Herbert C. Hoover Building, room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of problems and conditions in the textile and apparel industry.)

General Session: 1:30 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility, room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Burton, (202) 377–3737.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–19271 Filed 8–24–88; 8:45 am]

BILLING CODE 3510–DR–M

Applications for Duty-Free Entry of Scientific Instruments; National Institute of Environmental Health Sciences et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–561; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purpose for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–238. *Applicant:* National Institute of Environmental Health Sciences, NIH, PHS, DHHS, P.O. Box 12233, Research Triangle Park, NC 27709. *Instrument:* Mass Spectrometer, Model CONCEPT I S. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* The instrument will be used for the analysis of substances relevant to problems in environmental health sciences and to development of new analytical techniques which can be applied to environmental health science problems. Typical compounds of interest include polycyclic aromatic hydrocarbons, tetrachlorodienzodioxin, tetrachlorodibenzofurans, prostaglandins, leukotrienes, arachidonic acid metabolites, pesticide and herbicide metabolites, modified bases from the interaction of DNA and carcinogens, carbohydrate analysis and members of the xenobiotic glutathione conjugate family. *Applications Received by Commissioner of Customs:* July 27, 1988.

Docket Number: 88–239. *Applicant:* Occidental College, Department of Biology, 1600 Campus Road, Los Angeles, CA 90041. *Instrument:* Electron Microscope, Model EM 109. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* Studies to expand hemocyte classification scheme and further explore crustacean immunological processes. Experiments will be conducted to provide a sound understanding of the structure of the circulating hemocytes and the hemocytes developing in the hematopoietic tissue throughout the molt cycle in a representative shrimp, crab and lobster. This information will be used to establish a unified classifiation scheme for crustacean hemocytes that will allow results on the physiological function of hemocytes in one crustacean to be properly interpreted with regard to other species. In addition, the instrument will be used to introduce

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introductory biology students, both major and non-majors, to electron microscopy as part of their introduction to cells and tissues and how they are studied. *Application Received by Commissioner of Customs:* Juy 27, 1988.

Docket Number: 88–241. *Applicant:* University of Rochester Department of Pharmacology, 601 Elmwood Ave., Rochester, NY 14642. *Instrument:* Magnetic Sector Mass Spectrometer, Model VG TS–250. *Manufacturer:* VG Tritech, United Kingdom. *Intended Use:* The instrument will be used in experiments for the characterization and quantification of large, polar molecules which are of biological and biomedical significance. Experiments will deal with the enzymatic synthesis of peptides and peptide *S*-conjugates and oligosaccharides, structure-function relationships of glucosyltransferases, organic synthesis of cyclophosphamide analouges and highly oxygenated natural products, and characterization of glycoproteins in respiratory secretions. *Application Received by Commissioner of Customs:* July 28, 1988.

Docket Number: 88–242. *Applicant:* New York University, Department of Psychology, 6 Washington Place, 8th Floor, New York, NY 10003. *Instrument:* Display Oscilloscopes (2), Model DM2. *Manufacturer:* Joyce Electronics, United Kingdom. *Intended Use:* The instrument will be used to generate visual patterns for perceptual and physiological experiments on the organization of the visual system. *Application Received by Commissioner of Customs:* July 28, 1988.

Docket Number: 88–243. *Applicant:* Walter Reed Army Institute of Research, Division of Pathology, Washington, DC 20307–5100. *Instrument:* Electron Microscope, Model CM–12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used to study the interaction of body cells and tissues with a variety of harmful agents. Much of the work is involved with virus, bacterial or parasitic interactions with the cells or tissues they infect. *Application Received by Commissioner of Customs:* August 1, 1988.

Docket Number: 88–244. *Applicant:* Vanderbilt University, Mechanical Engineering Department, Box 1592, Station B, Nashville, TN 37235. *Instrument:* Excimer Laser, Model EMG 160T MSC. *Manufacturer:* Lambda Physik, West Germany. *Intended Use:* Studies of combustion properties in hypersonic propulsion flows using vibrational Raman scattering and fluorescence induced by the narrowband excimer laser. Experiments will be conducted to:

a. Investigate the optimal wavelengths for narrowband excimer-induced Raman scattering and fluorescence,

b. Calibrate the excimer-induced Raman/fluorescence system for measurement of gas properties in hydrogen-air flames, and

c. Apply excimer-induced Raman/fluorescence system to hypersonic propulsion flows to measure the flow properties.

Application Received by Commissioner of Customs: August 1, 1988.

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 88–19343 Filed 8–24–88; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; University of California, Berkeley et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–246. *Applicant:* University of California, Berkely, Department of Geology and Geophysics, 2405 Bowditch Street, c/o Purchasing Department, Berkeley, CA 94720. *Instrument:* Mass Spectrometer, Model 3545. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* Studies of geological materials; rocks, minerals, fluids and gases. Experiments will involve chemical separation of trace element concentrations and isotopic compositions of mineral and the measurements of their isotopic compositions for the purpose of determining the age and origin of geological and geochemical phenomena and structures. The instrument will also be used in some instances for the purpose of determining the compositions of materials produced under laboratory conditions that are chosen to reproduce natural conditions in the earth. *Application Received by Commissioner of Customs:* August 4, 1988.

Docket Number: 88–247. *Applicant:* University of Pittsburgh, Department of Chemical and Petroleum Engineering, 1249 Benedum Hall, Pittsburgh, PA 15261. *Instrument:* Constant Temperature Air Bath and Rocking Mechanism for PVT Cell, Model JEFRI. *Manufacturer:* D.B. Robinson and Associates, Canada. *Intended Use:* The instrument will be used for the study of CO_2/oil/brine and CO_2/particulate suspensions in a PVT cell. *Application Received by Commissioner of Customs:* August 4, 1988.

Docket Number: 88–248. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Strut Buckling Apparatus, Model HST 15. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used in the course 180:345—Properties of Materials Laboratory to give students an understanding of the mechanical properties of materials and structural elements and techniques for testing them. *Application Received by Commissioner of Customs:* August 4, 1988.

Docket Number: 88–249. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscatway, NJ 08854. *Instrument:* Torsion Tester. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used in the course 180:345—Properties of Materials Laboratory to give students an understanding of the mechanical properties of materials and structural elements and techniques for testing them. *Application Received by Commissioner of Customs:* August 4, 1988.

Docket Number: 88–250. *Applicant:* University of Massachusetts, Amherst, MA 01003. *Instrument:* Electron Microscope, Model CM10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for basic research of nuclei from vertebrate animals, plant chromosomes, bacterial cells, viruses. Examples of the experiments to be conducted are:

(1) Tomographic reconstructions from micrographs taken at various tilt angles of the specimens.

(2) Examination of frozen specimens for the determination of the ultrastructure.

(3) General biomedical problems requiring high resolution election microscopy.

The instrument will also be used in the course Zoology 708 Electron Microscopy to train graduate students to be proficient in the theory and practice of electron microscopy as applied to biology. *Application Received by Commissioner of Customs:* August 5, 1988.

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 88-19344 Filed 8-24-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Export Visa and Certification Requirements for Certain Textiles and Textile Articles Produced or Assembled in the United Mexican States

August 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Amending a notice setting forth requirements for participation in the Special Regime and issuing a directive to the Commissioner of Customs establishing visa and certification requirements.

EFFECTIVE DATES: September 1, 1988 and January 1, 1989.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: The Governments of the United States and the United Mexican States established, effective on September 1, 1988, new visa and certification requirements for certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported from Mexico on or after September 1, 1988.

On May 3, 1988, a notice was published in the **Federal Register** (53 FR 15724) announcing the requirements for participation in the Special Regime. Several requirements stated in this **Federal Register** notice have been clarified further or changed.

The requirement that limited the U.S. Customs ports which could be used by shipments under the Special Regime has been revised to include all U.S. Customs ports. However, because the four districts of San Diego, Nogales, El Paso and Laredo will be using district headquarters for administrating the Shippers Export Declaration (Form ITA-370P or successor document) for shipments under the Special Regime for their districts, such shipments must be exported and imported at ports within the same district. Outside these four districts, shipments under the Special Regime may be exported and imported at any port, for which headquarters in Washington, DC, will be used for administering the Shippers Export Declaration under this program.

The description on the Shippers Export Declaration of the cut parts to be exported to Mexico for assembly must state the correct category or part category. A merged category description is unacceptable. The quantity must be stated in correct category units and in whole numbers. Decimals or fractions will not be accepted. All U.S. components to be used in the assembly of the product must be described on the Shippers Export Declaration and exported in the same shipment.

At the time the cut parts are exported from the United States, U.S. Customs will assign a unique 10 digit certification number to the Shippers Export Declaration. The first four digits will identify the district and port of export. The top copy of the form will be sent to the appropriate administration headquarters, the second copy will accompany the shipment and the third copy will remain on file at the port of export.

On September 1, 1988, U.S. Customs will start signing the first section of the form ITA-370P for shipments destined for Mexico which the Government of the United Mexican States intends to export to the United States under the provisions of the Special Regime and TSUSA 807.0010 (or USTS item number 9800.00.0020 under the Harmonized Commodity Code) on or after January 1, 1989. Categories subject to the Special Regime are listed below:

335
338/339/638/639
340/640
342/642
347/348
349/649
351/651
352/652
359-C (coveralls and overalls)
369-B (handbags and luggage)
369-U (shoe uppers)
633
634
647/648
659-C (coveralls and overalls)
659-S (swimwear)
666

These products, which are assembled in Mexico from parts cut in the United States from fabric formed in the United States, are for export from Mexico during the period January 1, 1989 through December 31, 1989.

A copy of the current bilateral textile agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 46 FR 27516, published on May 20, 1981; 53 FR 7961, published on March 11, 1988 and 53 FR 15724, published on May 3, 1988.

Interested persons are advised to take all necessary steps to ensure that textiles and textile articles, produced in Mexico and exported on or after September 1, 1988 or assembled in Mexico and exported on or after January 1, 1989, which are to be entered or withdrawn from warehouse for consumption into the United States will meet the requirements set forth in the letter published below to the Commissioner of Customs.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on May 15, 1981, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile and apparel products, produced or manufactured in Mexico for which the Government of the United Mexcan States had not issued an appropriate export visa or exempt certification.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988 between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended,

you are directed to prohibit, effective on September 1, 1988, entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico), for consumption, and withdrawal from warehouse for consumption of textiles and textile articles of cotton, wool and man-made fiber textile products in Categories 200–222, 223 (excluding cotton webs, wadding and batting in TSUSA number 355.0200), 224–239, 300–369, 400–464, 465 (excluding floor covering in TSUSA items 361.42 and 361.45), 469, 600–620, 621 (excluding inked ribbon film strips in TSUSA numbers 389.6260 and 389.6265) and 622–670, including any part or merged categories as established in the bilateral agreement, produced or manufactured in Mexico and exported on or after September 1, 1988, or on or after January 1, 1989 under the Special Regime and TSUSA 807.0010 (or USTS item number 9800.00.0020 under the Harmonized Commodity Code), from Mexico for which the Government of the United Mexican States has not issued an appropriate visa or exempt certification in accordance with the procedures outlined below. You are directed to prohibit entry of shipments under the Special Regime which are exported from Mexico prior to January 1, 1989.

A valid export visa or exempt certification must accompany each commercial shipment of the aforementioned textiles and textile articles. However, should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall be automatically included in coverage of the visa arrangement.

Effective on January 1, 1989, commercial shipments of apparel and made-up products in the aforementioned categories which have been assembled in the United Mexican States from components cut in the United States from U.S.-formed fabric in which findings and trimmings of non-U.S. manufacture represent no more than 25 percent of the value of the component parts, and are subject to the categories, part categories and merged categories within the Special Regime, as designated in the Agreement, and qualify for entry under TSUSA 807.0010 (or USTS 9800.00.0020), also shall be visaed by the Government of the United Mexican States.

Textiles and textile articles of cotton, wool and man-made fibers exported from Mexico on or after September 1, 1988 shall be visaed by the stamping of the original circular visa in blue ink on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. For shipments subject to the Special Regime, the visa number shall be in the standard nine digit/letter format beginning with one numeric digit for the last digit of the year of export, following by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Mexico is "MX"), followed by the digit 2, 4, 6 or 8 (to designate the shipment as subject to the Special Regime), and a five digit numerical serial number identifying the shipment; e.g., 9MX465432.

For all other shipments, the visa number shall be in the standard nine digit/letter format beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code, MX, followed by the digit 1, 3, 5, 7, or 9, and a five digit numeric serial number identifying the shipment; e.g., 9MX196765.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official. The signature shall be that of the issuing official of the Government of the United Mexican States.

4. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tariff Schedules of the United States Annotated (TSUSA) or successor document shall be reported in the spaces provided within the visa stamp, e.g., "Cat. 340–510dz." Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Category 347/348 may be visaed as "Cat. 347/348" or, if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

A visa with the nine-digit visa number reserved for the Special Regime will not be issued unless it is accompanied by a Shippers Export Declaration (Form ITA–370P or successor document), being evidence of the required origin and will not be issued for shipments exported from Mexico prior to January 1, 1989. Invoices for Special Regime shipments shall include only those apparel or made-up textile products subject to the Special Regime. Shipments exported from the United States at ports within U.S. Customs districts in San Diego, Nogales, El Paso and Laredo must be subsequently imported within the same district as the port of export. Shipments may be exported and imported at any port outside these four districts.

U.S. Customs shall not accept a visa and entry will not be permitted if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the shipment is subject to the Special Regime for entry under TSUSA 807.0010 (or USTS 9800.00.0020), U.S. Customs shall not accept a visa and entry will not be permitted if the shipment is not accompanied by a properly completed Shippers Export Declaration (Form ITA–370P or successor document). The correct category or part-category and quantity in category units must be stated in the Shippers Export Declaration. Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Invoices visaed for Special Regime shall include only products that are subject to the Special Regime. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged.

If the visa is not acceptable to the U.S. Customs, or if there is a minor error on the accompanying ITA–370P form, then a new visa must be obtained from the Government of the United Mexican States, or a visa waiver issued by the U.S. Department of Commerce at the request of the Government of the United Mexican States and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. If does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver, as appropriate.

U.S. Customs may permanently deny entry of any shipment claimed to be qualified for the Special Regime but found not to be qualified according to the provisions of the Special Regime relating to trade in cotton, wool and man-made fiber apparel and made-up textile products assembled of U.S.-formed and cut fabrics. In appropriate cases, the U.S. Customs Service may determine that entry is permitted provided a new visa issued by the Government of the United Mexican States is obtained and presented to the U.S. Customs Service.

If the quotas are in force, U.S. Customs shall charge only the actual quantity in the shipment and the correct category will be charged to the restraint level. If the shipment from Mexico has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Certain textiles and textile articles of cotton, wool and man-made fibers will be exempt from levels of restraint and visa requirements if they are certified, prior to the shipment leaving Mexico, by the placing of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original invoice with the original exempt certification shall not be stamped on duplicate copies of the invoice. The original of the invoice with the original certification stamp will be required to enter that shipment into the United States. Duplicates of the invoice and/or certificate may not be used for this purpose.

In order to qualify as exempt, products must be handloomed fabric, handmade cottage industry products made from handloomed fabric, or a particular folklore handicraft textile product as agreed upon by the Governments of the United States and the United Mexican States or subsequently

added by mutual agreement. Each exempt certification stamp will include the following information: (1) Date of issuance, (2) signature of issuing official, and (3) description of basis for exemption.

Invoices for certified exempt items shall include only textile or apparel products that are agreed to be exempt (list enclosed). An export visa shall not be issued to shipments of certified exempt items. If a shipment is claimed as qualifying for exemption but found not to qualify, then a visa must be obtained from the Government of the United Mexican States and presented to the U.S. Customs Service before any portion of the shipment will be released. Merchandise imported for the personal use of the importer and not for resale, regardless of value; properly marked commercial sample shipments valued at US $250 or less; and floor coverings classified in TSUSA items 361.42 and 361.45, regardless of value; do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

The visa and exempt certification stamps remain unchanged.

The actions taken with respect to the Government of the United Mexican States concerning imports of textiles and textile articles of cotton, wool and man-made fibers from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Annex

Mexican Traditional Folklore Handicraft Textile Products

"Mexican Items" are traditional Mexican products, cut, sewn, or otherwise fabricated by hand in cottage units of the cottage industry.

Name	Description
Abrigo Ramo	A lightweight, long sleeve coat made of crude looking natural cloth. It has buttons in front along the entire length of the coat. The sleeves and front of the coat are heavily embroidered with flowers.
Regional	handloomed costume dresses made from rough "cambaya" cloth, hand dyed and richly decorated with hand embroidered designs representing traditional regional motifs such as stars, key designs, pyramids, poppies, sunflowers and marigolds. All of the designs are richly and brilliantly colored.
Blusa Huahuaxtla Puebla.	An ample blouse worn extensively in the northern hills of the State of Puebla which is made of hand woven, crude greige cloth. It is pleated in the upper front and back and is heavily decorated around the collar, sleeves and bust with hand-embroidered, multi-colored crosses.
Blusa Huamantla Tlaxcala.	A blouse made of natural, plain, hand woven white cloth, traditionally worn in Tlaxcalteca and North Puebla regions of the country. It is heavily pleated around the bust, shoulders and cuffs and hand-embroidered in geometric motifs representing various farm animals and flowers.
Blusa Manta de Bolillo.	A hand made blouse, worn by peasant women in the Mexican highlands, which comes with a very wide round or square neckline. The neckline is overlapped by a hand made piece of lace. The front and back of the blouse are heavily pleated.
Blusa Oaxaca.	An amply cut, loose fitting blouse of hand woven fabric. Worn extensively in the Mixterzapotec region of the State of Oaxaca, it is heavily pleated in the front and upper back and is completely edged in multi-colored lace with strips of lace along the sleeves.
Blusa Punto de Cruz.	A blouse hand made from crude fabric and adorned with traditional "cross stitch" embroidery commonly used by peasants in the central states of Mexico. The neck of the blouse is cut in a square or rectangular shape and is embroidered in a geometric pattern with flowers and leaves. The fabric itself is uniquely woven to form an overall pattern of small squares.
Calzon Blanco.	The most common peasant costume worn in Mexico. The two-piece outfit, consisting of pants and shirt, is made completely by hand in the cottage industry from unbleached griege cloth. The pants are baggy with two slits in the leg at the ankle. Narrow strips of cloth, attached at either end of the slits along the pants leg and at the waist, are used to hold the trousers in place. The shirt is decorated with long vertical pleats in front. A red, hand woven cotton band is worn loosely around the waist as an accessory.
Capa	A cape richly and extensively hand embroidered with vivid colors. When used by bull fighters, it is intricately hand embroidered with silver and gold thread.
Capote	A red cape lined in yellow worn by the "matador" in the bull ring.
Charro	A male costume consisting of a broad-brimmed hat made in cotton velvet, banded and decorated with silver or contrasting cotton ribbons. A shirt in white cotton percale embroidered with an eagle in the back and birds in the front. It is worn with a large multi-colored bow tie called a "corbaton" made of a strip of cotton material more than a yard long and six inches wide. The jacket is fastened beneath the lapels with double frog linked silver buttons. The jacket is worn with close-fitting tapered trousers which have an inch wide flap along the outer sides that sometimes is studded with silver buttons, metal studs or sequins.
Chiapaneca	(From Chiapas). A richly embroidered handmade dress consisting of a "huipil", a very wide skirt and a petticoat. The skirt is made of a very wide strip of cotton lace embroidered with large, brightly colored flowers, which are sewn together with the blouse or "huipil". The petticoat is heavily edged with a hand drawn lace band.
Chinanteca	A female costume from Oaxaca completely handloomed by highland Indians. It consists of a "huipil" made of three long strips of cotton heavily decorated with ruffles and a wrap-around skirt hand embroidered in ancient geometric designs. An embroidered strip of ribbons in alternated colors is sewn or "appliqued" to the huipil.
China Poblana.	A wide skirt called a "castor", made of red cotton flannel printed with black geometrical designs and profusely embroidered with sequins. The top and lower edges of the skirt are made of green cotton satin. The blouse is trimmed at the neckline and shoulders with a wide strip of embroidery in a traditional flower design made with thread or with beads and spangles. A traditional multi-colored hand made "rebozo" and a headdress made of two strands of hand braided red, white and green ribbons complete the costume.
Deshildo	A heavy tablecloth or doilie containing intricate designs exclusively hand drawn from the fabric itself.
Fustan	A type of long skirt, sometimes used as a petticoat. Always has a decorative band called a "xmanikte" encircling the lower edge. The "fustan" is generally heavily hand embroidered in a cross stitch with colorful geometric designs or flowers.
Hamacas	A handmade hammock from the Mexican Tropics uniquely constructed by a system of knots permitting simultaneous utilization by several people.
Huautleca	A "huipil" composed of three rectangular pieces of hand made cloth, heavily hand embroidered with geometric designs representing flowers and birds. From the region of Huautla, Oaxaca.

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Name	Description
Huichol	A man's costume from Jalisco which is completely handwoven and embroidered in cross-stitch. It consists of a straw hat decorated with a "borlas" around the top of a flat crown, a long shirt with slit sleeves and . wide-legged trousers also heavily hand embroidered. The trousers are held in place by a waist-band called a "cosihuire" or "queitzaruame", which is decorated with a number of sashes. The entire costume is covered with a cape called a "tuhuarra", which is richly hand embroidered and decorated with ribbon applique. It is completed with an embroidered hand made carrybag or knapsack called a "morral".
Huipil	A very traditional, unshaped and sleeveless woman's dress heavily embroidered and formed by a rectangular piece of fabric with a hole or slot in the center for the head. In many cases the embroidered decoration is hand drawn from the fabric itself. The designs appearing in the huipil depict birds, flowers and geometric patterns of pre-Colombian Mexico.
Jorongo	A cloak made of a rectangular piece of cotton fabric with a hole in the center for the head to pass through. Heavily embroidered by hand with designs which appear mainly on that part of the fabric which covers the shoulders.
Jubon	An amply cut blouse from Campeche and Yucatan made of unbleached gray cloth richly embroidered around the neckline and lower edge with colored flowers and trailing vine designs. The decoration can also be made of lace or ribbons. A special festive type of Jubon is also used as part of the "Mestiza" costume.
Malacatera	A cotton dress consisting of two pieces. The skirt is hand made out of a large rectangular piece of cloth, pleated at the waist and horizontally stripped in a bold pattern. The "huipil" is hand made of shear transparent cotton richly hand embroidered in the front and at the bottom.
Mestiza	A female costume from Yucatan consisting of a traditional hand made multi-colored "huipil", a "jubon" and a "fustan". The jubon is richly hand embroidered around the neckline and lower edge with colored flowers and trailing vines designs. A decorative band of drawn work which is called "xmanikte" encircles the lower edge of the "fustan". The costume is topped off by an elaborate hand woven cotton headdress called a "tuch".
Mixteca	A handloomed huipil, from the Mixteca region of Oaxaca consisting of three rectangular pieces of cotton cloth brightly embroidered with birds and sewn together by embroidered narrow bands one or two inches in width. The three pieces of cloth are held together by plain, hand made cotton bands.
Nahuatl	(from Puebla) It consists of a handwoven quetchquemetl decorated and embroidered with animals and/or flowers. The dress also includes a wide skirt named the "enredo" which wraps around the waist and is held in place with "faja" which is a narrow piece of fabric, hand-woven, with geometric motifs or greek keys. The entire dress also includes a light short sleeved blouse of cotton fabric embroidered at the neckline and shoulders.
Padas Amano.	A rather primitive hand printed or hand painted fabric depicting rural or religious scenes. Often used as wall tapestry. Generally comes in two sizes 20" x 20" or 79" x 138".
Quetchquemetl.	A type of closed cape made from two rectangular pieces of cloth formed into a square with a hole in the middle for the head. It covers the bust, the back and the shoulders and is handwoven in decorative designs.
Ranchera Jalisco.	A very wide full dress, the bottom portion of which is made out of large pleated horizontal bands of brightly colored fabric. The bands of fabric are decorated with lace at the point they are sewn together. Handmade lace is also used extensively to decorate the top portion of the dress.
Rebozo	A long, narrow shawl, woven by hand in single- or multi-colored designs with fringe edges or ends of edges hand-knotted.
Resplandor	The Tehuana headdress is of Zoque origin folded specially to allow the edge, made of beautiful, intricately designed lace, to remain rigid on top of the head in the shape of a halo. It is made of stiff cotton lace and ribbon, well starched, with pleats at the edges. It is also called "bida-moro".
Rodete de Tlacoyal.	A very heavily knotted rope-like piece of material worn in a twisted configuration on the head.
Sarape	A type of blanket made of rough, hand woven fabric in bright, multi-colored stripes.
Tehuana	A female costume from Oaxaca consisting of an ample white petticoat bound with hand made lace, a bright skirt with a wide starched and pleated lower edge made of wide cotton lace, embroidered all over with geometric or flower design, a short "huipil" which falls slightly below the waist, and a headdress hand made of cotton lace, heavily starched which is called a "resplandor".
Terno	A male costume consisting of pants and jacket, used by a bull fighter at the start of his career. It is hand embroidered on the sides of the pants and jacket with fancy, hand woven ribbon in contrasting colors. It is often heavily decorated in silver and gold.
Traje Regional Tarasco.	A Micuoacan peasant dress hand made from "cambaya" cloth. It has a unique yoke around the collar which is elaborately hand embroidered with flowers and animals utilizing a stitch pattern that gives the motif a very primitive appearance.
Vestido de la Costa del Golfo.	A dress made entirely by hand of delicate cotton lace, either white or in colors. Worn extensively in the State of Veracruz, Tabasco and Campeche at festivals and weddings.
Vestido Encaze.	A very lightweight, transparent, heavily embroidered, hand made dress, made out of strips of lace which is often used for holidays and weddings.
Vestido Miraflores.	An ankle length, long-sleeved woman's dress made from "cambaya" hand loomed and hand dyed fabric. The sleeves and bottom portion of the dress are delicately hand embroidered in brilliantly colored floral or bird motifs. Frequently the dress is also decorated with various colored ribbons sewn along the edges of the entire dress.
Yalalteca	A female costume from Oaxaca consisting of a very large "huipil" which falls almost to the knee, richly decorated with geometric designs and a loosely fitting skirt or wrap-around of stripped red and white cotton.

[FR Doc. 88-19321 Filed 8-24-88; 8:45 am]
BILLING CODE 3510-OR-M

COMMODITY FUTURES TRADING COMMISSION

Advisory Committee on CFTC-State Corporation; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC, headquarters located at Room 532, 2033 K Street, NW., Washington, DC 20581, September 14, 1988, beginning at 10:00 a.m. and lasting until 4:00 p.m. The agenda will consist of:

Agenda

1. Opening Remarks—Wendy L. Gramm, Chairman, CFTC; Fowler C. West, Commissioner, CFTC and Chairman, Advisory Committee on CFTC-State Cooperation;

2. Report by representatives of the Commission's Off-Exchange Task Force on recommendations concerning bank-financed precious metals programs;

3. Report by the Division of Enforcement and representatives of the U.S. Department of Justice on the activities of the Securities and Commodities Fraud Working Group;

4. Educational Efforts—a. Report by the Commission's Division of Enforcement and by representatives of the North American Securities Administrators Association on the Commission's educational enforcement seminars for state officials;

b. Discussion about the feasibility of promoting consumer education programs concerning investment fraud in the public school system;

5. Status report by representatives of the American Newspaper Publishers Association Credit Bureau, Inc. on its advertising fraud forum;

6. Status report and discussion regarding the adoption of the NASAA Model State Commodity Code by the states, and discussion regarding problems posed by potential offshore boiler rooms; and

7. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC-State Cooperation are more fully set forth in the March 31, 1988 Sixth Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Fowler C. West, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC-State Cooperation c/o Commissioner Fowler C. West, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner West in writing at the foregoing address at least three business days before the meeting. Reasonable provisions will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on August 22, 1988.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-19331 Filed 8-24-88; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Survey of Consumers to Determine Exposure to Hazards Associated With Riding Mowers and Lawn and Garden Tractors

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a survey of 800 randomly-chosen consumers who use riding mowers or lawn and garden tractors, hereinafter referred to generically as riding mowers.

The purpose of the survey for which the Commission seeks approval is to collect data from the general population of riding mower users concerning the users, the designs of riding mowers in use, the amount of time the riding mowers are in use, and the types of terrain mowed.

The initial information will be collected by telephone by a contractor; there is also a follow-up questionnaire, and consumers will be asked to measure the slope of the terrain mowed with a simple device that will be supplied with the questionnaire. This information will enable the Commission to assess the importance of various factors on consumer safety and identify strategies for dealing with risks. Using these data, the Commission hopes to reduce the estimated 50,000 medically-attended injuries that occur each year associated with the use of riding mowers, including a number of serious injuries and deaths caused by tipping or slipping of the mowers on slopes.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Survey to Determine Consumer Exposure to Hazards Associated with the Use of Riding Mowers and Lawn and Garden Tractors.

Type of request: New collection.

Frequency of collection: One-time.

General description of respondents: Owners/operators of riding mowers and lawn and garden tractors.

Estimated number of respondents: 800.

Estimated average number of hours per respondent: 0.28

Estimated number of hours for all respondents: 223.

Comments: Comments on this request for approval for collection of information should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. A copy of any comments should be sent to Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6416. Copies of the request for approval may be obtained from Ms. Shacter.

This is not a proposal to which 44 U.S.C. 3504(h) applies.

Dated: August 17, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-19320 Filed 8-24-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Determination of Active Military Service: Civilian U.S. Navy IFF Technicians Who Served in the Combat Areas of the Pacific During World War II

On August 2, 1988, the Secretary of the Air Force determined that the World War II service of a group known as "Civilian U.S. Navy IFF Technicians Who Served in the Combat Areas of the Pacific during World War II (December 7, 1941 to August 15, 1945)" would be considered "active duty" under the provisions of Pub. L. 95–202 and be eligible for benefits according to all laws administered by the Veterans Administrator.

To receive recognition, each applicant must meet the following eligibility criteria:

1. Was employed by the Hazeltine Electronics Corporation under a valid contract with the U.S. Navy.

2. Served satisfactorily aboard a U.S. Navy vessel deployed at sea in the Pacific Ocean beyond the continental limits of the United States.

3. Served during the period December 7, 1941 to August 15, 1945.

Before an individual can receive any Veterans Administration benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to:

Navy Military Personnel Command (NMPC–3), Navy Department, Washington, DC 20370–5300.

Note: Individuals should include as much supporting documentation as possible when making application.

Forms are available from any Veterans Administration Office, Veterans Organization, or the office listed above.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–19353 Filed 8–24–88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

August 19, 1988

The USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Roadmaps Review will meet on September 13, 1988 from 1:00 p.m. to 5:00 p.m. and on September 14, 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to review the roadmaps for the programs in the Air Force S&T base. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–19313 Filed 8–24–88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Government-owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Copies also may be ordered by telephone request to (730) 487–4650. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000, telephone (202) 696–4001.

Patent 4,197,787: Pump piston with flexible member; filed 29 August 1977; patented 15 April 1980.

Patent 4,201,605: Gas Generator Propellant for Airbreathing Missiles; filed 31 July 1978; patented 6 May 1980.

Patent 4,201,853: Polymeric Binders of Nitrated Phenols and Polyisocyanates Which Reversibly Dissociate at Elevated Temperatures; filed 18 May 1978; patented 6 May 1980.

Patent 4,203,667: Covert recovery or signalling system; filed 4 December 1978; patented 20 May 1980

Patent 4,204,143: Pulse width modulated power amplifier for direct current motor control; filed 26 September 1978; patented 20 May 1980.

Patent 4,207,688: Pilot training simulator; filed 11 October 1977; patented 17 June 1980.

Patent 4,211,999: Coverter for converting a high frequency video signal to a digital signal; filed 23 November 1977; patented 8 July 1980.

Patent 4,215,534: Cooling system for an expander engine; filed 3 September 1976; patented 5 August 1980.

Patent 4,215,633: Acoustic emission contact fuze with signal processing capability; filed 5 June 1978; patented 5 August 1980.

Patent 4,217,910: Internal jugular and left ventricular thermodilution catheter; filed 10 October 1978; patented 19 August 1980.

Patent 4,387,974: Circuit for Calculating the Position of the Eye; filed 11 May 1981; patented 14 June 1983.

Patent 4,394,556: Cam Operated Switch Assembly; filed 26 February 1982; patented 19 July 1983.

Patent 4,414,181: Gas generator outlet having controlled temperature transition; filed 2 November 1981; patented 8 November 1983.

Patent 4,414,413: 1,2-DI(N,N-BIS) (2-Fluoro-2,2-Dinitroethyl) Carbanyl Hydrozine; filed 21 December 1981; patented 8 November 1983.

Patent 4,453,754: Electronic plug-in module extractor; filed 25 March 1982; patented 12 June 1984.

Patent 4,468,639: Monolithic combined charge transfer and surface acoustic wave device; filed 29 September 1982; patented 28 August 1984.

Patent 4,472,786: Analog gaussian convolver; filed 23 April 1982; patented 18 September 1984.

Patent 4,480,324: Constant beamwidth frequency independent acoustic antenna; filed 11 April 1983; patented 30 October 1984.

Patent 4,480,916: Phase-modulated polarizing interferometer; filed 6 July 1984; patented 30 October 1984.

Patent 4,487,584: Raster shifting delay compensation system; filed 17 November 1982; patented 11 December 1984.

Patent 4,488,876: Aimpoint Processor for Quantizing Target Data; filed 26 March 1982; patented 18 December 1984.

Patent 4,491,842: Frozen Wave Generator Jammer; filed 9 April 1981; patented 1 January 1985.

Patent 4,493,136: Pivotal mono wing cruise missile with wing deployment and fastener mechanism; filed 29 April 1982; patented 15 January 1985.

Patent 4,494,084: Pin diode linear attenuator controlled by a companding DAC; filed 1 March 1982; patented 15 January 1985.

Patent 4,494,625: Axial acoustic wave attenuator for Ramjets; filed 29 July 1983; patented 22 January 1985.

Patent 4,500,885: Data link data and address recognition; filed 11 May 1965; patented 19 February 1985.

Patent 4,500,886: Data link shift register operation; filed 11 May 1965; patented 19 February 1985.

Patent 4,503,406: Inside collet for coaxial placement of diode; filed 30 June 1983; patented 5 March 1985.

Patent 4,506,368: Dye lasters using 2-(4-pyridyl)-5-aryloxazoles and quaternary salts of these compounds; filed 2 June 1980; patented 19 March 1985.

Patent 4,507,661: Interfering noise pulse eliminator and its use in a dicke type radiometer circuit; filed 26 April 1982; patented 26 March 1985.

Patent 4,509,014: Nuclear Magnetic Resonance Gyroscope; filed 23 November 1982; patented 2 April 1985.

Patent 4,509,325: Turbine Engine Cold Temperature Starting System; filed 28 December 1978; patented 9 April 1985.

Patent 4,509,808: High Voltage, Gas Tight Connector; filed 18 March 1983; patented 9 April 1985.

Patent 4,512,197: Apparatus for Generating a Focusable and Scannable Ultrasonic Beam for Non-Destructive Examination; filed 1 September 1983; patented 23 April 1985.

Patent 4,517,593: Video Multiplexer; filed 29 April 1983; patented 14 May 1985.

Patent 4,520,428: Dense Packaging System for Printer Wiring Boards; filed 2 February 1983; patented 28 May 1985.

Patent 4,521,260: Detonation-Transfer Energetic Composition; filed 26 October 1984; patented 4 June 1985.

Patent 4,522,882: Method and Apparatus for Coating Submerged Portions of Floating Structures; filed 19 September 1983; patented 11 June 1985.

Patent 4,524,090: Deposition of Compounds From Multi-Component Organo-Metals; filed 30 April 1984; patented 18 June 1985.

Patent 4,526,980: Method for the Preparation of Tetranitrodibenzotetrazapentalene; filed 6 July 1983; patented 2 July 1985.

Patent 4,534,436: Bridge Crane; filed 5 July 1983; patented 13 August 1985.

Patent 4,538,149: Frequency Agile Magnetron Imaging Radar; filed 18 January 1982; patented 27 August 1985.

Patent 4,539,300: Method for the Fabrication of Hexagonal BN Toughened Matrix Composites; filed 21 September 1983; patented 3 September 1985.

Patent 4,539,405: Synthesis of 1,4-Dinitrofurazano (3,4-B) Piperzane; filed 16 April 1984; patented 3 September 1985.

Patent 4,539,986: Simulated Oxygen Breathing Apparatus; filed 13 September 1982; patented 10 September 1985.

Patent 4,540,315: Method for Exploratory Trench Wall Stabilization; filed 28 February 1982; patented 10 September 1985.

Patent 4,540,988: Broadband Multi-Element Antenna; filed 13 June 1983; patented 10 September 1985.

Patent 4,541,341: Self-Checking Arming and Firing Controller; filed 28 October 1983; patented 17 September 1985.

Patent 4,541,778: Pin Rooted Blade Biaxial Air Seal; filed 18 May 1984; patented 17 September 1985.

Patent 4,546,249: High Speed Optically Controlled Sampling System; filed 1 July 1983; patented 8 October 1985.

Patent 4,547,775: Frequency Agile Imaging Radar With Error Frequency Correction; filed 18 January 1982; patented 15 October 1985.

Patent 4,547,845: Split-Bus Multiprocessor System; filed 21 April 1982; patented 15 October 1985.

Patent 4,555,455: Ambient Temperature Thermal Battery; filed 14 February 1985; patented 26 November 1985.

Patent 4,600,536: Explosive Compound; filed 19 October 1984; patented 15 July 1984.

Patent 4,634,458: Double-Stage Air Filter; filed 10 February 1986; patented 6 January 1987.

Patent 4,635,246L: Frequency Multiplex System Using Injection Locking of Multiple Laser Diodes; filed 20 October 1983; patented 6 January 1987.

Patent 4,637,570: Drag Stabilizer; filed 9 January 1980; patented 20 January 1987.

Patent 4,639,902: Near Ultrasonic Pattern Comparison Intrusion Detector; filed 24 June 1985; patented 27 January 1987.

Patent 4,640,180: Gun-Firing System; filed 20 June 1985; patented 3 February 1987.

Patent 4,644,505: Broadband Matching Network; filed 11 June 1984; patented 17 February 1987.

Patent 4,644,548: Free Electron Laser With Tapered Axial Magnetic Field; filed 25 January 1984; patented 17 February 1987.

Patent 4,644,843: Gas Actuated Gun System for Launching a Projectile; filed 10 September 1985; patented 24 February 1987.

Patent 4,648,057: Robust Interactive Technique for High-Resolution Spatial Processing and Spectral Estimation; filed 18 May 1984; patented 3 March 1987.

Patent 4,648,461: Fluid Pressure Discharge Safety System; filed 1 July 1985; patented 10 March 1987.

Patent 4,649,281: Oil Content Monitor/Control System; filed 2 July 1985; patented 10 March 1987.

Patent 4,649,824: Apparatus for Aerospace Vehicle Separation Events Using a Linear Shaped Charge; filed 27 June 1985; patented 17 March 1987.

Patent 4,656,918: Electromagnetic Induction Method and Apparatus Therefor for Collapsing and Propelling a Deformable Workpiece; filed 20 February 1985; patented 14 April 1987.

Patent 4,657,822: Fabrication of Hollow, Cored, and Composite Shaped Parts from Selected Alloy Powders; filed 2 July 1986; patented 14 April 1987.

Patent 4,659,035: Rate Estimation By Mixing Independent Rate Signals; filed 25 January 1985; patented 21 April.

Patent 4,661,160: Alkaline Earth Metaborates as Property Enhancing Agents for Refractory Concrete; filed 11 April 1986; patented 28 April 1987.

Patent 4,661,783: Free Electron and Cyclotron Resonance Distributed Feedback Lasers and Masers; filed 18 March 1981; patented 28 April 1987.

Patent 4,662,580: Simple Diver Reentry Method; filed 20 June 1985; patented 5 May 1987.

Patent 4,662,581: Modified Null Flow Modulator; filed 15 July 1985; patented 5 May 1987.

Patent 4,665,526: Minimum Inductance Laser Head for Pulsed Transverse Discharges Without Wall Tracking; filed 15 May 1986; patented 12 May 1987.

Patent 4,675,091: Co-Sputtered Thermionic Cathodes and Fabrication Thereof; filed 16 April 1986; patented 23 June 1987.

Patent 4,689,628: Adaptive Sidelobe Canceller System; filed 16 August 1974; patented 25 August 1987.

Patent Application 058,415: Incoherent Laser System for Producing Smooth and Controllable Spatial Illumination Profiles; filed 5 June 1987.

Patent Application 079,962: Method for Fabricating Thin Film Metallic Meshes for use as Fabry-Perot Interferometer Elements, Filters, and Other Devices; filed 31 July 1987.

Patent Application 091,133: Atomic Layer Etching; filed 31 August 1987.

Patent Application 102,937: Method and Apparatus for Producing Substoichiometric Silicon Nitride of Preselected Proportions; filed 30 September 1987.

Patent Application 106,998: Reflectometers; filed 9 October 1987.

Patent Application 112,579: A Serial Data Word Processing Arrangement; filed 26 October 1987.

Patent Application 123,629: Method for Growing Patterned Thin Films of Superconductors; filed 23 November 1987.

Patent Application 131,684: Pneumatic Induction Fiber Spreader with Lateral Venturi Restrictors; filed 11 December 1987.

Patent Application 154,565: Optical Paramagnetic/Dia-Magnetic Gas Sensor; filed 10 February 1988.

Patent Application 848,880: Doppler-Improved Polyphase Pulse Expander Compressor; filed 7 April 1986.

Patent Application 878,150: 2,2,2-Trifluoroethoxy Bis(2-Fluoro-2,2-Dinitroethoxy) Methane and a Method of Preparation; filed 23 June 1986.

Patent Application 925,039: Optical Position Gauge; filed 30 October 1986.

Date: August 22, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve Alternate Federal Register Liaison Officer.

[FR Doc. 88-19335 Filed 8-24-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Meeting on the International Marketplace—Niches for U.S. Coal Technology

AGENCY: Department of Energy.

ACTION: Notice of meeting.

VOL 53 ISS 165 AG 25 1988 UMI

SUMMARY: The Department of Energy's Office of Fossil Energy (DOE/FE) is announcing a public meeting to present preliminary findings of ongoing programs in (1) characterization of small combustors in international industrial, commercial, and residential market applications, (2) Pacific rim coal trade and coal logistics, and (3) markets for and competitiveness of selected U.S. clean coal technologies.

DOE/FE has initiated these three programs to explore, evaluate and analyze potential market opportunities to improve the U.S. balance of trade and world energy security through increased exports of U.S. coal combustion equipment, technology, and coal. International markets for and competitiveness of selected U.S. Clean Coal Technologies will be discussed. The program on small combustors has concentrated on potential markets in Organization for Economic Cooperation and Development (OECD) member countries. Information systems on international coal trade logistics and the U.S. coal resources available to international markets will also be demonstrated.

The objective of this meeting is to provide interested parties with a report on the current state of findings developed to date.

The meeting is planned to consist of (1) a morning plenary session at which DOE will provide industry with a background of the initiative and present its preliminary findings, (2) an afternoon breakdown into small working groups for interactive discussion regarding opportunities for expanding coal utilization, followed by (3) a closing summary session at which working group leaders will summarize the results of their individual sessions.

A no-host luncheon including a speaker will be offered to participants at a cost of $30.00 per person. An expression of interest in attending this luncheon would be appreciated by September 23, 1988, at the address below, however, walk-in registrants will be welcome. Make checks payable to Sheladia Associates, Inc.

Addressee: Sheladia Associates, Inc., 15825 Shady Grove Road, Suite 100, Rockville, MD 20850, ATTN: Judith Kimel, TELEFAX: (301) 948-7174.

In addition, any questions or comments may be submitted to the above address.

The public meeting will be held October 3, 1988, at: Sir Francis Drake Hotel, 450 Powell Street (Union Square), San Francisco, CA 94102, (415) 392-7755.

Registration will begin at 7:30 a.m. and the opening session will begin at 9:00 a.m.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-19355 Filed 8-24-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-32-NG]

Tarpon Gas Marketing Ltd.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting Blanket Authorization to Import Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Tarpon Gas Marketing Ltd. (TGM) blanket authorization to import Canadian natural gas. The order issued in ERA Docket No. 88-32-NG authorizes TGM to import up to 500 Bcf per day of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 12, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs.

[FR Doc. 88-19356 Filed 8-24-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-539-000 et al.]

Public Service Company of Colorado et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. ER88-539-000]

Take notice that on July 29, 1988, a Consent Settlement Agreement executed by the Commission Trial Staff (Staff) and Public Service Company of Colorado (PSCC) was filed with the Commission. The Consent Settlement Agreement would lower the wholesale requirements rates to the City of Burlington, Colorado (FERC Rate Schedule No. 15), Towns of Julesburg and Center, Colorado (FERC Rate Schedules No. 20 and No. 17, respectively) and the transmission rate to Colorado-Ute Electric Association (FERC Rate Schedule No. 37). The lowered rates are the result of an informal investigation pursuant to Order No. 475.

The signatories request an effective date of August 1, 1988. Copies of this filing were served upon PSCC, the Town of Julesburg, Colorado-Ute Electric Association, Centel, the City of Burlington and the Town of Center, and the Colorado Public Utilities Commission.

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Company

[Docket No. ER88-562-000]

Take notice that on August 15, 1988, Union Electric Company (UE) tendered for filing an Interchange Agreement dated July 15, 1988, between UE and Kansas City Power & Light Company.

The Interchange Agreement, supersedes in its entirety an existing agreement and among other things, establishes the rights and obligations of the parties, the points of interconnections, the types of power and energy to be exchanged and the rates therefore.

UE requests that the filing be permitted to become effective July 15, 1988.

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER88-561-000]

Take notice that on August 15, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Vermont Public Power Supply Authority dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk of peaking capacity and related energy to Vermont Public Power Supply Authority. The terms of this agreement and the period during which the purchase of Peaking Capacity can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Vermont Public Power Supply Authority

and the New York State Public Service Commission.

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Oklahoma and Electric Company

[Docket No. ER87-627-000]

Take notice that on February 2, 1988, Oklahoma Gas and Electric Company (OG&E) tendered for filing revised rates which are applicable to the towns of Mannford and Perry, Oklahoma.

The decreased rates that have been proposed by the Company are being made to reflect the decrease in the corporate income tax rate pursuant to the Tax Reform Act of 1986 and are proposed to be effective with usage on and after July 1, 1987.

OG&E states that copies of the tariff, rate schedules and the entire filing have been sent to Mannford and Perry, Oklahoma. A complete set of the filing has also been sent to the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Colockum Transmission Company, Inc.

[Docket No. ER88-563-000]

Take notice that on August 15, 1988, Colockum Transmission Company, Inc. tendered for filing as a change of rate a contract between Colockum and Pacific Power & Light Company.

This contract contemplates the exchange of capacity for energy, and involves no form of income for either party. Pursuant to the contract, Pacific agrees to delivery firm energy to Colockum at a rate of exchange of 1947 kilowatthours of energy per kilowatt of capacity.

Comment date: September 6, 1988, in accordance with standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19274 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-665-000 et al.]

Midwestern Gas Transmission Company et al.; Natural Gas Certificate Filings

August 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Midwestern Gas Transmission Company

[Docket No. CP88-665-000]

Take notice that on August 8, 1988, Midwestern Gas Transmission Company (Midwestern), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP88-665-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas for six shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern proposes to transport, on an interruptible basis, up to 747,450 Dth per day for the account of six shippers as follows:

Shipper	Volume (Dth/day)
Poco Petroleum Ltd.	207,450
Natural Gas Clearinghouse	100,000
Koch Hydrocarbon Company	100,000
Victoria Gas Corporation	110,000
Renaissance Energy Ltd.	80,000
Tarpon Gas Marketing Ltd.	150,000

It is stated that the proposed service involves Midwestern's northern system. Midwestern states that the gas would be received and delivered at various points as set forth in the Precedent Agreements with each shipper contained in Exhibit I of the application.

Midwestern proposes to charge each shipper the rate set forth in Midwestern's Rate Schedule IT-2. Midwestern states the term of the transportation agreement is for a period of five years.

Midwestern states that the proposed transportation services are necessary to meet the shipper's existing as well as future requirements and that the services would also provide access to alternate sources of supply and markets.

Comment date: September 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. American Distribution Company, Alabama Division

[Docket Nos. CP84-474-011; and Docket No. CP86-263-003]

Take notice that on August 5, 1988, American Distribution Company (Alabama Division), (Applicant), 333 Clay Street, Suite 2000, Houston, Texas 77002, filed in docket Nos. CP84-474-011 and CP86-263-003 an application pursuant to section 7(c) of the Natural Gas Act for amendments to its certificates to extend the authorized terms to be coterminous with the life of production from the Copeland plant, Washington County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant notes that the term of the authorizations issued in Docket Nos. CP84-474-001 and CP86-263-001 expire on December 23, 1988. Applicant now proposes to extend the aurhorizations to be coterminous with the life of the Copeland plant, a term which Applicant indicates would coincide with the term related to the authorization issued to Applicant in Docket No. CP84-474-000. No other changes are proposed.

Comment date: September 8, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Great Lakes Gas Transmission Company

[Docket No. CP87-467-003]

Take notice that on August 8, 1988, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP87-467-003, a petition to amend the orders issued in Docket Nos. CP87-467-000, *et al.*, CP79-462, *et al.* and CP66-110, *et al.*, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Great Lakes states that it requests authorization to continue to provide firm transportation service to both Texas Eastern Transmission Corporation (Texas Eastern) and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), of volumes of natural gas to be purchased by Texas Eastern and Tennessee from ProGas Limited, in the quantity of 75,000 Mcf of natural gas per day (Mcfd), through the contract year ending November 1, 2000.

Great Lakes states that pursuant to an order dated June 10, 1981 (15 FERC ¶ 61,254), which granted it a certificate of public convenience and necessity, in Docket No. CP79-462, *et al.*, as amended by orders dated July 18, 1985, (32 FERC ¶ 62,191), February 10, 1986, (34 FERC ¶ 61,185), November 28, 1986, (37 FERC ¶ 61,195) and October 29, 1987, (41 FERC ¶ 61,094, reh'g granted, 41 FERC ¶ 61,302), Great Lakes is currently authorized to transport up to 75,000 Mcf/d for each of Texas Eastern and Tennessee. It is further stated that in the order issued October 29, 1987, the Commission stated that the subject transportation service would terminate on the earlier of one year from the date of the October 29, 1987 order, or the date that Great Lakes accepts a blanket certificate issued by the Commission pursuant to Part 284 of the Regulations.

It is stated that both Texas Eastern and Tennessee have received authorization from the Economic Regulatory Administration (ERA), in Docket No. 86-06-NG and Docket No. 87-37-NG, respectively, for the import of the subject volumes, for terms ending October 31, 2000. It is further stated that Texas Eastern and Tennessee have executed amendatory agreements, each dated July 27, 1988, with Great Lakes, which embody the parties' agreement to seek regulatory authority for transportation arrangements to November 1, 2000.

Great Lakes states that no additional facilities would be required to provide the subject service, since this service would continue to be provided as a result of agreement with TransCanada Pipe Lines Limited (TransCanada) to back-off equivalent volumes from Great Lakes's system under a gas transportation contract dated September 12, 1967, as amended (T-4 Transportation Contract). Great Lakes indicates that this is reflected in a letter agreement between Great Lakes and TransCanada, dated July 27, 1988. It is further indicated that such letter agreement provides for a continuation of the current back-off arrangements, subject to receipt of regulatory approvals satisfactory to the parties, to November 1, 2000. Great Lakes states that the transportation by Great Lakes for Texas Eastern and Tennessee has, since its inception, occurred in conjunction with the back-off under the T-4 Transportation Contract, and would be required to enable Great Lakes to continue the subject transportation service. Great Lakes further states that pursuant to the back-off arrangements, the firm contract quantity under the T-4 Transportation Contract would be reduced by the sum of the firm contract quantities in effect between Great Lakes and Texas Eastern and Tennessee.

Great Lakes indicates that since this is a back-off arrangement, and to make Great Lakes whole as a result of reduction in charges payable by TransCanada, the Commission has authorized rates for Texas Eastern and Tennessee on the Great Lakes' system equivalent to the rates applicable for service under the T-4 Transportation Contract.

Comment date: September 8, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP88-651-000]

Take notice that on August 1, 1988, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88-651-000, an application pursuant to section 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity, with pre-granted abandonment, authorizing implementation of services at the Jackson Prairie Storage Field under the terms and conditions of a proposed new Rate Schedule SGS-2; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is a one-third owner of the Jackson Prairie Storage Field in Washington. It is stated that the Commission's Order on Rehearing, dated May 31, 1988, (43 FERC ¶ 61342) in Docket No. CP86-578-000, required that Northwest's storage facilities be subject to open access requirements to the extent that they function as system supply storage. Specifically, with respect to the Jackson Prairie storage facility, it is stated that the order required the Applicant to make its one-third of the facility available to the extent that it is used for system supply storage. It is asserted that currently at Jackson Prairie, Applicant is utilizing 25,000 Mcf of daily storage demand and 2,000,000 Mcf of storage capacity for system supply protection and load balancing. It is further asserted that upon approval of the pending pleadings in Docket Nos. CP87-516-000 and CP88-200-000, the subject 25,000 Mcf/d of storage demand will be wholly owned by Applicant, while the 2,000,000 Mcf of storage capacity will continue to be owned one-third each by Applicant, Washington Natural Gas Company (Washington Natural) and the Washington Water Power Company (WWP). Therefore, Applicant, in compliance with the May 31, 1988 Commission order, proposes to make available for open access storage services the 25,000 Mcf/d of storage demand, which is anticipated to soon be wholly owned by Applicant, and Applicant's ownership share, 666,666 Mcf of the 2,000,000 Mcf storage capacity which is being utilized by Applicant for system supply storage.

Applicant requests the Commission to issue a blanket certificate authorizing it to implement new contract storage services in accordance with a proposed new Rate Schedule SGS-2 and any future executed service agreements thereunder. Applicant also requests pre-granted abandonment approval to terminate service under SGS-2 service agreements upon expiration of such service agreements. Rate Schedule SGS-2 is proposed to be applicable to Applicant's ownership share of the Jackson Prairie storage field which is not presently committed to services under Rate Schedule SGS-1.

It is said that upon issuance and acceptance of the requested certificate authorizations, service under Rate Schedule SGS-2 would be available to any party which executed a service agreement under the SGS-2 Rate Schedule and which has transportation agreements in place under Rate Schedules TI-1 or TF-1 covering the delivery of the customer's gas to and from the Jackson Prairie storae field.

Further, Applicant avers that the proposed terms and conditions of service under Rate Schedule SGS-2 will parallel the terms and conditions of service under Applicant's existing Rate Schedule SGS-1, including the modifications thereto which are pending Commission approval in Docket No. CP88-200-000.

The proposed initial rates for service under Rate Schedule SGS-2 are as follows:

Demand charge	102.80 cents per MMBtu of daily storage demand per month.
Capacity demand charge	2.66 cents per MMBtu of storage capcity per month.
Withdrawal charge	3.08 cents per MMBtu of gas withdrawn.

Applicant further requests that the Commission approve specific procedures it should follow in offering the new SGS-2 service on a non-discriminatory, first-come first-served basis. Applicant proposes to establish a queue for SGS-2 service requests commencing the date this certificate is filed with the Commission. All requests

received within 10 days of the Commission order date approving this application would be treated as if received on the application filing date. Since available capacity likely will be inadequate to satisfy all requests having the same request date, an allocation procedure will be needed. It is stated that section 5.2(b) of the Storage Agreement (See Sheet No. 1232 of Applicant's Tariff Volume No. 2) obligates Applicant to make the subject capacity available only to its existing distribution customers, while the Commission's May 31, 1988 order in Docket No. CP86–578–000 requires that the subject capacity be made available on an open-access basis. When multiple requests have the same date, Applicant asks the Commission to clarify whether it should allocate available capacity among its requesting distribution customers prior to considering other requests or whether it should allocate the available capacity amongst all requesters without distinction. It is explained that in either case, allocations of available capacity would be *pro rata*, based upon the requested storage demands of the appropriate group of requesters and storage capacity would be allocated proportionate to storage demand. Any subsequent relinquishment of capcity by the SGS–2 customers would be offered similarly to those requesters in the queue with remaining unsatisfied requests, it is stated.

Comment date: September 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19275 Filed 8–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10255–001]

Alternative Energy Management, Inc., Surrender of Preliminary Permit

August 22, 1988.

Take notice that Alternative Energy Management, Inc., Permittee for the proposed Perry Hydro Project No. 10255, has requested that its preliminary permit be terminated. The permit was issued on June 5, 1987, and would have expired May 31, 1990. The project would have been located on the Delaware River near Topeka, Jefferson County, Kansas. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on August 2, 1988, and the preliminary permit for Project No. 10255 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19276 Filed 8–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–201–001]

East Tennessee Natural Gas Company; Tariff Filing

August 19, 1988.

Take notice that on August 12, 1988, East Tennessee Natural Gas Company (East Tennessee) hereby files ten copies of the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1988.

Twelfth Revised Sheet No. 5
First Revised Sheet No. 143
First Revised Sheet No. 144

East Tennessee states that the purpose of these revisions is to comply with the July 28, 1988, Commission Order in this docket. East Tennessee is filing Revised Sheet No. 143 to include language allowing Buyer to elect payment of the flow-through surcharge of a single payment or a six-month or thirty-six month amortization period. Revised Sheet No. 144 provides for direct billing of former customers only if they were receiving, or had certificate authorization to receive, service on July 1, 1988.

East Tennessee states these tariff sheets have been revised to establish Surcharge Subaccounts for the purpose of computing carrying charges and accommodating separate amortization schedules for each Tennessee surcharge. Also, the collection of accrued interest has been changed to the January and July invoices of each calendar year rather than transferring the accrued interest to a subsequent surcharge.

East Tennessee states that in response to the Commission's inquiry in the July 28 Order regarding the sales to Orange & Rockland, East Tennessee notes that the Commission Order in Docket No. CP81–219 authorizing these sales expressly conditioned (in ordering paragraph (B)(1)) East Tennessee's certificate to "fully interruptible" sales that were "subordinate to the requirements of East Tennessee's existing customers" 16 FERC ¶ 61,127, at 61,307 (1981).

East Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such

motions or protests should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19277 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-22-008 et al.]

High Island Offshore System et al.; Filing of Pipeline Refund Reports and Refund Plans

August 22, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before September 6, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

APPENDIX

Filing date	Company	Docket No.
7/5/88	Highland Island Offshore System.	RP87-22-008
7/22/88	Northwest Pipeline Corporation.	RP79-57-009
7/29/88	El Paso Natural Gas Company.	RP85-58-020
7/29/88	Trunkline Gas Company.	RP85-77-009
8/1/88	Great Lakes Gas Transmission Co.	RP86-35-012
8/15/88	Columbia Gas Transmission Corp.	TA81-1-21-030

[FR Doc. 88-19278 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-578-017, RP85-13-022, 023, RP8-47-011, 012, and TQ88-2-37-002]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

August 19, 1988.

Take notice that on August 12, 1988, Northwest Pipeline Corporation ("Northwest"), in compliance with the orders issued by the Federal Energy Regulatory Commission ("Commission") on July 28, 1988 in the above docket numbers, submitted the following tariff sheets to be a part of its FERC Gas Tariff. On August 16, 1988, Northwest filed Corrected Substitute Forty-First Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1, which has a mathematical error contained in its August 12, 1988 filing.

First Revised Volume No. 1

Substitute Sixth Amended Thirty-ninth Revised Sheet No. 10
Substitute Forty-First Revised Sheet No. 10
Third Revised Sheet No. 16
Substitute Second Revised Sheet No. 16-A
Third Revised Sheet No. 21
First Revised Sheeet No. 21-A
Fourth Revised Sheet No. 27
Substitute Third Revised Sheet No. 28
Third Revised Sheet No. 33
Second Revised Sheet No. 36
Second Revised Sheet No. 38
Second Revised Sheet No. 39
Third Revised Sheet No. 40
Substitute Third Revised Sheet No. 301

Original Volume No. 1-A

Second Amended Thirteenth Revised Sheet No. 201
First Amended Substitute Fourteenth Revised Sheet No. 201
First Amended Substitute Fourth Revised Sheet No. 202
Second Revised Sheet No. 303
Second Revised Sheet No. 311
Second Revised Sheet No. 414-A
Second Revised Sheet No. 502
Second Revised Sheet No. 511
Second Revised Sheet No. 515
Substitute First Revised Sheet No. 601

Original Volume No. 2

Fourteenth Revised Sheet No. 2
Sixth Revised Sheet No. 2.1

(For convenience, Northwest is resubmitting tariff sheets with this filing which have not changed since being previously submitted in its July 18, 1988 compliance filing in Docket No. RP88-47-000.)

Northwest states the purpose of this filing is to comply with the Commission's orders of July 28, 1988 in Dockets Nos. CP86-578-015 and RP85-13-020, and in Docket Nos. RP88-47-003 and 005. Northwest has also consolidated issues addressed in various inter-realted pending proceedings and has provided the Commission and other parties an opportunity to deal with any inter-related issues at the same time in response to a single pleading.

A copy of this filing is being served on all parties of record, Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washigton, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19279 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-40-000 and RP88-168-003]

Raton Gas Transmission Co.; Filing of Annual Purchased Gas Adjustment

August 19, 1988.

Take notice that Raton Gas Transmission Company (Raton) on August 12, 1988, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to implement its first annual purchased gas adjustment under the provisions of Order Nos. 483 and 483-A. The proposed tariff sheets are to be effective October 1, 1988.

Raton states that the revised tariff sheets reflect a demand rate decrease of $1.48, and a commodity rate decrease of 0.27¢ for the P-1 Rate Schedules. The commodity rate change reflects a decrease of 2.07¢ in Raton's projected cost of gas and an increase of 1.79¢ in Raton's surcharge rate effective October 1, 1988. These decreases are based upon a comparison with the rates filed by Raton on February 5, 1988 in Docket No. RP88-55, which rates were accepted by Commission Order of March 24, 1988.

Copies of the filing have been served upon Raton's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with section 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protests in Docket No. TA89–1–40–000 should be filed on or before September 12, 1988, and all such motions or protests in Docket No. RP88–168–003 should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19280 Filed 8–24–88; 8:45 am]

BILLING CODE 6717–01–M

Sea Robin Pipeline Co.; Tariff Filing of Revised Tariff Sheets

[Docket Nos. TQ88–1–6–001, 002 and RP88–138–001, 002]

August 19, 1988.

Take notice that on August 8, 1988, Sea Robin Pipeline Company (Sea Robin) tendered for filing certain tariff sheets and on August 15, 1988, tendered for filing an amendment to its August 8, 1988 filing to include additional tariff sheets inadvertently not included in the August 8, 1988 filing. The tariff sheets thus filed on August 15, 1988 are as follows:

Original Volume No. 1

Substitute Fiftieth Revised Sheet No. 4
Substitute Fifth Revised Sheet No. 6
Substitute Sixth Revised Sheet No. 7
Substitute Third Revised Sheet No. 7–A
Substitute Fourth Revised Sheet No. 7–C
Substitute Original Sheet No. 7–C1
Substitute Second Revised Sheet No. 15
Substitute Second Revised Sheet No. 16
Substitute Third Revised Sheet No. 17
Substitute Fourth Revised Sheet No. 19
Substitute Original Sheet No. 19–A

Original Volume No. 2

Substitute Thirty-third Revised Sheet No. 127–D
Substitute Thirty-third Revised Sheet No. 135–C

Sea Robin states the proposed effective date for the preceding tariff sheets is June 1, 1988. These tariff sheets are being filed to incorporate the appropriate language in section 1 of Rate Schedules X–1 and X–2 and section 4 of Rate Schedules X–7 and X–8 to satisfy the requirements specified in the Commission's Letter Order of July 8, 1988. These revisions bring Sea Robin's PGA clause into compliance with the Commission's regulations as promulgated under Order Nos. 483 and 483–A. Sea Robin proposes no changes to its Current Effective Rates at this time.

Sea Robin also tendered for filing to be effective July 1, 1988 the following tariff sheets:

Original Volume No. 1

Substitute Fifty-first Revised Sheet No. 4

Original Volume No. 2

Substitute Thirty-fourth Revised Sheet No. 127–D
Substitute Thirty-fourth Revised Sheet No. 135–C

Sea Robin states that these revised tariff sheets will be mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions of protest should be filed on or before Aug. 29, 1988. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19281 Filed 8–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 459–022]

Union Electric Co.; Public Meetings

August 22, 1988.

On December 18, 1986, Union Electric Company, licensee of the Osage Project No. 459, located on the Osage River in Benton, Camden, Miller and Morgan Counties, Missouri, filed an application to amend its license to revise the prescribed flood control regulation of the project reservoir, Lake of the Ozarks, to reflect changes in the hydrological conditions in the Osage Basin due to the construction and operation of the U.S. Army Corps of Engineers' Harry S. Truman Project, located upstream of the Osage Project.

The Commission staff has determined that it should meet with interested federal, state, and local agencies and the general public so that the staff may receive and evaluate their veiws, technical and otherwise, regarding the proposed amendment.

Accordingly, a meeting will be held with interested agencies to consider their opinions concerning technical issues related to the proposed amendment on Wednesday, September 14, 1988, at 2:00 p.m. at the Howard Johnson Motel, 1200 South Kirkwood Road, Kirkwood, Missouri 63122.

Futhermore, a public meeting will be held on Thursday, September 15, 1988, from 8:00 p.m. to 10:30 p.m., at Conference Room No. 492, Truman State Office Building, 301 West High Street, Jefferson City, Missouri 65101, at which interested agencies, officials, and the general public may express their views regarding the proposed amendment.

At each of these meetings statements may be given orally or in writing. The meetings will be recorded by a stenographer, and all statements (oral and written) will become part of the public record in this proceeding. In addition, written comments may be submitted until October 15, 1988. Any such comments should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should clearly show the project name and number (*i.e.*, Osage Project No. 459–022) on the first page.

Inquiries with regard to these meetings should be addressed to Ronald Kowalewski, Office of Hydropower Licensing, at (202) 376–1942.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19282 Filed 8–24–88; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of July 4 Through July 8, 1988

During the week of July 4 through July 8, 1988 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

American Air Filter, 7/5/88, KFA–0192

American Air Filter filed an Appeal from a Freedom of Information Act (FOIA) determination issued to it by the

Albuquerque Operations Office (Authorizing Official) of the DOE. The Authorizing Official withheld certain bidding price information of unsuccessful bidders for DOE contracts based upon his finding that the release of the information could cause competitive injury to the firms. American Air Filter contended that the information was not proprietary or confidential and that its release would not place anyone at a competitive disadvantage. In considering the Appeal, the DOE found that the information was properly withheld pursuant to Exemption 4 since release of the data could give American information which would allow the firm to consistently undercut the future bids of its competitors. Therefore, the Appeal was denied.

Motion for Discovery

Texas American Oil Corp., 7/7/88, KRD-0360, KRH-0360

Texas American Oil Corporation (Texas American) filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order (PRO) that was issued to the firm by the Economic Regulatory Administration (ERA) on September 30, 1986. In the PRO, the ERA alleges that in its Refiners' Monthly Reports during the period October 1976 through February 1977, Texas American's wholly-owned subsidiary, Texas American Petrochemicals, Inc. (TAPI), misreported certain crude oil subject to "processing agreements" and thereby received excessive small refiner bias (SRB) benefits under DOE's Entitlements Program, in violation of 10 CFR 211.67(e)(2). In the alternative, the ERA alleges that TAPI's transactions involving that crude oil resulted in the circumvention or contravention of the Entitlements Program, in violation of 10 CFR 205.202. In its Motions, Texas American requested responses to 92 interrogatories and production of documents and also that an evidentiary hearing be convened, principally with respect to its contention that the ERA misapplied the standards of § 211.67(e)(2) since TAPI did not directly purchase the crude oil concerned from the processing refiner and did not directly or indirectly sell the refined products to the processing refiner. In considering the Motion for Discovery, the DOE determined that much of the discovery was unnecessary since the PRO and the ERA's pleadings contained the information requested, and that the discovery was otherwise irrelevant or involved matters of legal interpretation. In considering the Motion for Evidentiary Hearing, the DOE determined that Texas American had failed to specify a disputed factual issue material to the violation alleged in the PRO. Accordingly, Texas American's Motion for Discovery and Motion for Evidentiary Hearing were denied.

Implementation of Special Refund Procedures

Evett Oil Co., 7/6/88, KEF-0020

The DOE issued a Decision and Order implementing a plan for the distribution of $60,000 (plus accrued interest) received pursuant to a consent order entered into by Evett Oil Company and the DOE on July 1, 1985. The DOE determined that the consent order funds should be distributed to customers that purchased covered products from Evett during the period March 1, 1979 through March 31, 1980. The specific information to be included in Applications for Refund is set forth in the Decision.

World Oil Company, 7/7/88, KEF-0005

The DOE issued a Decision and Order implementing a plan for the distribution of $1,057,703 (plus accrued interest) received pursuant to a consent order entered into by World Oil Company and the DOE on January 19, 1984. The DOE determined that the consent order funds would be divided into two pools, one relating to World's crude oil sales and the other relating to the sales of refined products. Purchasers of World refined products during the period August 20, 1973 through January 27, 1981 may file claims for refunds from the refined products pool. Under the procedures adopted, the crude oil pool will be made available for distribution pursuant to the DOE's Statement of Restitutionary Policy for crude oil claims. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Bak Ltd/Portland Heating Oil Co., Inc., 7/8/88, RF303-4

The DOE issued a Decision and Order concerning an Application for Refund filed by Portland Heating Oil Company, Inc., a No. 2 heating oil retailer. Portland sought a portion of the settlement fund obtained by the DOE through a consent order entered into with BAK LTD. The DOE determined that Portland met the criteria for a refund of $1,377. Since this amount is below the $5,000 small claims threshold, Portland was not required to support its refund claim with injury documentation. Portland was awarded a refund of $1,377 plus $1,365 in accrued interest.

Beacon Oil Company/Golden State Oil Co., 7/7/88, RF238-29

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Golden State Oil Company (Golden State) in the Beacon Oil Company (Beacon) special refund proceeding. During 1980, Golden State received $44,722 of the $59,810 in motor gasoline credit refunds that it was scheduled to receive from Beacon. Although Golden State was eligible to apply for the $15,088 that remained unpaid when motor gasoline was deregulated on January 28, 1981, the firm did not attempt to demonstrate that it was injured by Beacon's alleged overcharges. Instead, Golden State attempted to receive a refund under the small claims presumption of injury. Because DOE determined that Golden State did not pass through to its customers the $44,722 of previously received credit, the firm was not eligible for a small claims refund. Accordingly, its Application for Refund was denied.

Dallas County Board of Education Amherst School District, 7/8/88, RF272-3479, RF272-3555.

The DOE issued a Decision and Order granting two Applications for Refund from crude oil overcharge funds based on the Applicants' purchases of refined petroleum products from August 19, 1973, through January 27, 1981. Dallas County Board of Education estimated its 1973-1974 purchases from its actual 1974-1975 volume. Amherst School District estimated its claim based on its recent fuel consumption levels. The DOE determined that each applicant should be presumed injured because it was an end-user of the gallons claimed. The sum of the refunds granted in this Decision is $528.

Getty Oil Co./Farmers and Merchants, Cooperative Oil Co., 7/8/88, RF265-2650, RF265-2651, RF265-2652, RF265-2653

Farmers and Merchants Cooperative Oil Co. (Farmers) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Getty Oil Company. The DOE found that Farmers purchased Getty motor gasoline, middle distillate, propane and other petroleum products during the consent order period, and that the applicant, an agricultural cooperative, was injured. Under the procedure outlined in *Getty Oil Corp.*, 15 DOE ¶ 85,064 (1986) Farmers was found entitled to receive a refund of $42,346.

Good Hope Refineries/Chevron U.S. A. Inc., Gulf Oil Corp., 7/6/88, RF189–18, RF189–23

The DOE issued a Decision and Order concerning two Applications for Refund filed by Chevron U.S.A. Inc. and Gulf Oil Corporation in the Good Hope Refineries refund proceeding. Both applicants were spot purchasers of Good Hope petroleum products. After examining the evidence and supporting documentation, the DOE concluded that the applicants had failed to rebut the presumption that spot purchasers were not injured by Good Hope's alleged violations. Accordingly, both applications were denied.

King & King Enterprises, Inc./Petroleum Trading & Transport Co., 7/7/88, RF256–4

The DOE issued a Decision and Order concerning an Application for Refund filed by Petroleum Trading & Transport Co. (PT&T) in the King & King Enterprises, Inc. (K&K) special refund proceeding. Purchase records submitted by PT&T indicated that the firm was a spot purchaser of K&K motor gasoline, and hence, PT&T was presumed not to have been injured. PT&T, however, attempted to rebut the spot purchaser presumption of non-injury. For the two months in which it purchased from KK, PT&T demonstrated that its base period supply obligations had limited its discretion, but the firm demonstrated that it had suffered a loss on its K&K purchases in only one of the months. Consequently, the DOE limited PT&T's refund to the K&K products that it resold at a loss. The total refund granted to PT&T was $7,804, representing $4,664 in principal and $3,140 in accured interest.

Mat Dur Inc., 7/6/88, RF272–12651

The DOE issued a Decision and Order denying an application for crude oil overcharge refunds filed by Mat Dur Inc., a retailer of refined petroleum products during the period August 19, 1973 through January 27, 1981. Because Mat Dur did not demonstrate that it was injured due to the crude oil overcharges, it was ineligible for a crude oil refund.

Milton Jackson, Et Al., 7/7/88, RF 272–1513, Et Al.

The DOE issued a Decision and Order granting 17 Applications for Refund from crude oil overcharge funds based on the Appliants' purchases of refined petroleum products from August 19, 1973, through January 27, 1981. Those applicants that estimated their annual petroleum purchases multiplied the number of acres they farmed by 23.8, the average annual petroleum product consumption rate among the nation's farmers, as estimated by the U.S. Department of Agriculture. In two cases, the DOE used a factor of 0.13996 gal./lb. to convert pounds of grease to gallons. The DOE determined that all of the Appliants should be presumed injured because each was an end-user of the gallons it claimed. The refunds granted in this Decision total $820.

Mobil Oil Corporation/Benson's Mobil Svc., Holland Fuel Inc., Hollis Bros. Mobil Service, Lou and Ben's Mobil Service, 7/7/88, RF 225–6589, RF225–6590, RF225–6594, RF 225–6606

Benson's Mobil Service, Holland Fuel Inc., Hollis Brothers Mobil Service and Lou and Ben's Mobil Service, all retailers of Mobil refined petroleum products, filed Applications for Refund from the Mobil Oil Corporation escrow account. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $493 ($395 principal plus $98 in interest).

Mobil Oil Corp./Dee Lester's Mobil Svc., Palatine Auto Clinic, Lester's Mobil Service, Bill's Mobil Service, 7/6/88, RF225–6591, RF225–6595, RF225–6596, RF225–6600

Dee Lester's Mobile Service, Palatine Auto Clinic, Lester's Mobil Service, and Bill's Mobil Service filed applications for refund for the Mobil Oil Corporation escrow account. OHA wrote each of the firms requesting confirmation that Mr. Nic Schnettler was its authorized representative in this proceeding. Palatine Auto Clinic informed OHA that Mr. Schnettler was not authorized to submit a claim on behalf of the firm. The letters to the other three firms were returned as undeliverable and Mr. Schnettler was unable to prove that he was authorized to represent them in the Mobil refund proceeding. Therefore, the four Applications for Refund were dismissed.

Mobil Oil Corp./Nicot Oil Co., Inc., 7/8/88, RF225–6577

Nicot Oil Co., Inc., a reseller of Mobil refined petroleum products, filed an Application for Refund from the Mobil Oil Corporation escrow account. The applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted a refund of $4,214 (representing $3,375 in principal plus $839 in interest).

Mohenis Services, Inc., 7/8/88, RF272–3538

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products from August 19, 1973, through January 27, 1981. To calculate its gasoline purchase volume, the Applicant divided its estimated vehicle mileage figures by appropriate miles per gallon figures. The DOE determined that the Applicant should be presumed injured because it was an end-user of the gallons claimed. The refund granted in this Decision is $879.

National Helium Corp., Belridge Oil Co., Palo Pinto Oil Co./Massachusetts, 7/8/88, RQ2–444, RQ8–445, RQ5–446

The DOE issued a Decision and Order approving the consolidated second-state refund application submitted by the Commonwealth of Massachusetts in the National Helium Corp., Belridge Oil Co., and Palo Pinto Oil Co. refund proceedings. Massachusetts will use a total of $254,865 ($121,638 in principal plus $133,227 in interest) to develop a computerized traffic flow project that would incorporate highway mapping, an incident data base, and incident response plans. In evaluating the proposed project, the DOE determined that it would reduce motorists' fuel use and would improve the quality of transportation in the Commonwealth.

Pyrofax Gas Corp./Wilson A. Rice & Son, Wise Oil & Fuel, 7/8/77 RR277–1, RR277–2

The DOE issued a Decision and Order concerning Motions for Reconsideration filed by Wilson A. Rice & Son and Wise Oil & Fuel in the Pyrofax Gas Corporation special refund proceeding. In reviewing the motions, the DOE found that the firms' initial Applications for Refund merit reconsideration. Based on the information provided in the motions, the DOE determined that Rice should receive a refund of $4,578 in principal under the small claims presumption of injury and that Wise should receive a refund of $46,543, its full volumetric share of the Pyrofax consent order fund. Therefore, the DOE granted the firms refunds totalling $87,487 in principal and interest.

Sandoz Pharmaceutical Corp., 7/8/88, RF272–3439

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products from August 19, 1973, through January 27, 1981. The Applicant used actual contemporaneous records to calculate its claim volume. The DOE determined that the Applicant should be presumed injured because it was an end-user of the gallons claimed.

The refund granted in this Decision is $1,193.

Sauvage Gas Company/Flame Gas Company, 7/6/88, RF308–1

The DOE issued a Decision and Order concerning an Application for Refund fled by Flame Gas Company in the Sauvage Gas Company special refund proceeding. The DOE determined that Flame Gas did not purchase any covered petroleum products from Sauvage during the consent order period. Accordingly, its refund applications was denied.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Bill Hanser Ranch, et al.	RF272–19400	7/8/88	112	$3,861
Clement Sipiorski et al.	RF272–19801	7/8/88	130	3,205
Gerald F. Hochstein et al.	RF272–18600	7/7/88	144	3,402
Gilbert Blankenship et al.	RF272–19600	7/8/88	164	3,552
Kurt Huelskamp et al.	RF272–20400	7/6/88	159	3,786
Milton, McLaen, et al.	RF272–19200	7/7/88	163	3,715
Parks Farms, Inc. et al.	RF272–20800	7/8/88	142	3,859
Ralph Bohrtz et al.	RF272–7611	7/7/88	142	7,502

Dismissals

The following submissions were dismissed:

Name	Case No.
A. Duda and Sons, Inc.	RF272–41555
Admiral Cruises Inc.	RF272–23225
Alvia Kiefer	RF272–55535
Anchor Glass Container Corp.	RF277–91
Beaver Creek Board of Education	RF272–22944
Bernard M. Strope	RF272–39437
Biloxi Public Schools	RF272–48396
Blanche W. Pallister	RF272–41890
Borough of Emerson	RF272–37381
Bronson Methodist Hospital	RF272–43775
Brown Stove Works, Inc.	RF272–11278
C&B Equipment	RF272–37560
Carolina Stalite Co.	RF272–41581
City of Emporia	RF272–49900
City of Herington	RF272–42142
City of Pratt	RF272–42151
City of Quincy	RF272–48002
City of Severy	RF272–42117
City of Wyoming	RF272–49159
Comanche County	RF272–42134
Coutouthros Ltd.	RF272–23223
Country Club Inn Motel	RF272–23531
Crumly Farms	RF272–43684
Dennis J. McConville	RF272–42040
Dewitt Public Schools	RF272–43953
Dole Packaged Foods Company	RF272–37066
Donald Reinesch	RF272–41815
Dunn County	RF272–17962
Edwin F. Welch	RF272–49897
Eureka Equity Exchange	RF272–45558
	RF272–47865
F.I.T. Aviation, Inc.	RF272–48394
Florida Airmotive Inc.	RF272–48396
Griffin Wood Co., Inc.	RF272–45556
Harry Kimura	RF272–43717
Herbert's Exxon	RF272–52547
Holly Ridge Planting Co.	RF272–14845
J&C Drilling Co.	RF272–43172
Johnson Concrete Co., Inc.	RF272–41582
Kadoka School District 35–1	RF272–47885
Lawton Transit Mix Inc.	RF272–49402
Linn County	RF272–42129
Logan County Highway Dept.	RF272–16457
Long Island College Hsptl.	RF272–41903
Maple View Farms	RF272–44763
Masonite Corporation	RF272–25593
Michael Kenner	RF272–44708
Neels Farms Inc.	RF272–36259
Perry Public School	RF272–43635
Piedmont Block Company	RF272–41583
Pratt County Road Dept.	RF272–42146
Randolph N. Rhodes	RF272–44623
Riley County Public Works	RF272–42108
Robert J. Pierson	RF272–40654
Roger Thompson	RF272–52202
Rudolph Feldkamp	RF272–54143
Shanahan Farms	RF272–43707
Simon Brothers Inc.	RF272–42981
South Dakota Concrete Products	RF272–43626
Squirt Pak	RF272–41552
Town of Tarboro	RF272–42972
U.S.D. 341	RF272–16434
United Veterans Mutual Housing	RF272–5000788
University Veterans Mutual Housing	RF272–50788
University of Hawaii Auxiliary Services	RF272–56216
Varsity Service	RF272–48397
Vintage Enterprises, Inc.	RF272–41037
Wells Community Hospital	RF272–24834
230 Owners Corporation	RF272–55653

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 19, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–19357 Filed 8–24–88; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of July 11 Through July 15, 1988

During the week of July 11 through July 15, 1988 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

William R. Bowling II, 7/15/88, KFA–0191

William R. Bowling II (Appellant) filed an Appeal from a denial by the Director of the DOE's Office of Executive Secretariat of a request for information which the Appellant has submitted under the Freedom of Information Act. The Appellant sought access to, *inter alia*, the minutes of a meeting of the Atomic Energy Commission purportedly held on October 26, 1953. In considering the Appeal, the OHA found that an adequate search had been conducted in response to the Appellant's request, and that no documents responsive to the Appellant's request exist. Accordingly, the Appeal was denied.

Request for Exception

Petroleum Traders Corp., 7/15/88, KEE–0163

Petroleum Traders Corporation (PTC) filed an Application for Exception from the requirement to complete and file Form EIA–782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that PTC's reporting burden was not significantly different from that of the other firms participating in the EIA–782B survey. Accordingly, exception relief was denied.

Request For Modification and/or Rescission

States, 7/12/88, KER–0015, KER–0016, KER–0017

The DOE considered a Motion for Reconsideration filed by 33 States and territories (States). The States objected to several aspects of three Decisions and Orders Implementing refund procedures for disbursing alleged crude oil overcharges to injured persons. The DOE pointed out that all of the States' arguments had been fully considered in a prior Decision and Order and that there was no basis for adopting any of their suggestions. Accordingly, the Motion was denied.

Implementation of Special Refund Procedures

Exxon Corp., 7/14/88, KEF-0087

The DOE issued a Decision and Order implementing procedures for the distribution of $28,348,738.50 (plus accrued interest) obtained as a result of a DOE consent order with Exxon Corporation on October 8, 1986. The DOE determined that the consent order funds should be distributed to customers that purchased refined petroleum products from Exxon during the period March 6, 1973 through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

Refund Applications

Alpine Butane Co., Inc., 7/13/88, RF272-7643

The DOE issued a Decision and Order denying an application for a crude oil refund filed by Alpine Butane Company, Inc., a reseller of propane and butane. Alpine was ineligible to receive a refund because it failed to demonstrate that it was injured by the crude oil overcharges.

Aminoil U.S.A., Inc., Knudsen Oil & Feed Et Al., 7/11/88, RF139-60 Et Al.

The DOE issued a Decision and Order concerning Applications for Refund filed by five reseller/retailers in the Aminoil U.S.A., Inc. special refund proceeding. The firms submitted cost banks in excess of their refund claims and market price comparisons in support of their claims for refunds exceeding $5,000. After examining the firm's applications and supporting documentation, the DOE concluded that they should receive refunds totaling $220,623, representing $142,830 in principal and $77,793 in interest.

City of Glendale, Public Service Department, Gainesville Regional Utilities, 7/13/86, RF272-5188, RF272-6306

The DOE issued a Decision granting refunds from crude oil overcharge funds to the Public Service Department of the City of Glendale, California, and Gainesville Regional Utilities of Gainesville, Florida. Both applicants operated municipal utilities during the crude oil settlement period, August 19, 1973 through January 27, 1981. The DOE determined that, as regulated public utilities, both Glendale and Gainesville were eligible to receive refunds provided that they passed them through to their customers. The DOE rejected objections raised in the proceeding that: (i) As governmental authorities, Glendale and Gainesville were ineligible for a refund, and (ii) the end-user presumption did not apply since Glendale and Gainesville passed through all overcharges to their customers. Accordingly, DOE approved refunds of $39,230 to Glendale and $42,696 to Gainesville, based upon the amount of their respective purchases and the volumetric refund amount currently available, $0.0002 per gallon.

Getty Oil Co. M&W Propane Co., Inc. Et Al., 7/11/88, RF265-2639, Et Al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty propane purchased from Getty during the consent order period. In three claims of this proceeding, the applicants were eligible for a refund below the small claims threshold of $5,000. In the other three claims, the applicants elected to limit their claims to $5,000. The total amount of the refunds approved in the Decision and Order is $49,842, representing $24,418 in principal and $25,424 in accrued interest.

Gulf Oil Co./H&M Gulf Et Al., 7/14/88, RF300-5803 Et Al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each of the Applicants demonstrated that it purchased less than 7,812,500 gallons of Gulf product during the consent order period. Therefore, under the small claims presumption, each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $26,174.

Gulf Oil Corp./J.L. Sowell, Dist. Wilkerson Fuel Co., Inc., 7/14/88, RF40-3647, RF40-3702

The DOE issued a Decision and Order concerning two Applications for Refund from the Gulf Oil Corporation consent order fund for which refund procedures were set forth in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The Decision resolved a disputed refund claim between the former and current owners of J.L. Sowell, Dist. (Sowell), a sole proprietorship which purchased Gulf product and received Gulf product on consignment during the Gulf consent order period. The DOE determined that it was impossible to conclude that the contract of sale transferred Gulf refund rights from the former owner to the current owner. Therefore, the DOE rescinded the refund previously granted to the current owner and approved a partial refund for the former owner. The DOE denied the portion of the former owner's claim based on consigned gallons because the applicant unreasonably manipulated a previously approved methodology in its attempt to show a sales decline. The refund rescinded in this Decision totals $2,812, and the refund granted totals $1,439.

Holiday of Park Falls, Inc., 7/13/88, RF272-7927

The DOE issued a Decision and Order denying an application for a crude oil fund filed by Holiday of Park Falls, Inc., a retail service station which sold motor gasoline. Holiday was ineligible to receive a refund because it failed to demonstrate that it was injured by the crude oil overcharges.

Hugo Oil Et Al., 7/15/88, RF272-6117 Et Al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by six claimants in the Subpart V crude oil refund proceeding. The DOE determined that the applicants all purchased refined petroleum products for resale and thus passed on the costs of any crude oil overcharges to their customers. Therefore, the DOE concluded that these claimants were not injured by any of the overcharges associated with the gallons that they each purchased. Accordingly, these Applications for Refund were denied.

Kuhlman Corp., 7/14/88, RF272-1039

The DOE issued a Decision and Order concerning an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of transformer oil during the period August 19, 1973 through January 27, 1981 (the Settlement Period). The DOE determined that transformer oil is an eligible product for the purposes of the crude oil refund proceedings. The total refund granted in this Decision is $2,793.

Mobil Oil Corp./Auto Ade, Inc., Et Al., 7/13/88, RF225-6597, Et Al.

The DOE issued a Decision granting 11 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $4,818 (representing $3,858 in principal and $960 in interest).

Mobil Oil Corp. Featherstone Service Station, Inc. Mack Oil Company. Mack Oil Co. Knight Oil Co., 7/12/88, RR225-19 RF225-10037, RF225-

10038, RF225–10048, RF225–10049, RF225–11030

The DOE issued a Decision and Order denying a Motion for Modification submitted by Featherstone Service Station, Inc. (FSS) and granting in part two Applications for Refund submitted by Mack Oil Co. (Mack) and Knight Oil Co. (Knight) in the Mobil special refund proceeding. In its initial refund application, FSS submitted approximated all-product banks of unrecouped increased product cost in an attempt to rebut the level-of distribution presumption and receive 100% of the Mobil volumetric refund amount. The DOE determined that these banks were inadequate for a showing of injury *Mobil Oil Corp./Featherstone Service Station, Inc.*, 17 DOE ¶ 85,171 1988). In the present determination, the DOE again found that FSS's all-product banks do not satisfy the requirements for an injury demonstration because they do not provide accurate measures of specific product cost passthrough and because after July 1, 1976, such banks reflect sales of products that were no longer covered by the Mandatory Petroleum Price Regulations. Similarly, the DOE was unable to accept the all-product banks submitted as a basis for an injury demonstration by Mack and Knight. In *Mobil*, however, applicants who are unable to rebut the *Mobil* presumptions are nontheless eligible for a refund under these presumptions. The DOE reviewed the applications made by Mack and Knight to insure that all necessary information had been provided and, accordingly, the two refunds were granted in part. The total amount approved in this Decision and Order was $8,677, representing $6,949 in principal and $1,728 in interest.

Mobil Oil Corp./Harrell Petroleum Co., 7/15/88, RR225–32

The DOE issued a Decision and Order approving a Motion for Reconsideration in the Mobil Oil Corp. special refund proceeding filed by Harrell Petroleum Company. OHA determined that Harrell should receive an additional refund of $3,500 in principal because Harrell elected to limit its claim to the $5,000 presumption of injury level and due to an inadvertent error, was originally granted only $1,500 in principal. In accordance with the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Harrell was granted a refund totalling $4,744 ($3,500 in principal plus $1,244 in accrued interest).

Palo Pinto/Louisiana Standard Oil Co. (Indiana)/Louisiana Perry Gas Processors, Inc./Louisiana Belridge Oil Co./Louisiana Pennzoil Co./ Louisiana Coline Gas Corp./ Louisiana Standard Oil Co. (Indiana)/Louisiana, 7/15/88, RQ5–435, RQ21–436, RQ183–437, RQ8–438, RQ10–439, RQ2–441, RQ251–442

The DOE issued a Decision and Order denying the second-stage refund application filed by the State of Louisiana in the Palo Pinto, Standard Oil Co. (Indiana), Perry Gas Processors, Inc., Belridge Oil Co., Pennzoil Co., Coline Gas Corp. and Standard Oil Co. (Indiana) second stage refund proceedings. The state requested $2,705,000 for funding the Center for Advanced Microstructures and Devices (CAMD) and the study of "combustion kinetics" at Louisiana State University. The DOE found that the programs were not likely to provide any tangible benefits to injured consumers in the near term. Therefore, the program did not provide restitution to injured consumers of petroleum products. Accordingly, Louisiana's submission was denied.

S.M. Flickinger Co., Inc., Et Al., 7/13/88, RF272–1695, Et Al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the petroleum products for various commercial activities and each determined its claim by consulting actual purchase records. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The total refund granted in this Decision is $4,814.

The New York Hospital RF272–7567, Blue Circle West FR272–12525, Samaritan Hospital, 7/13/88, RF272–12654

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to The New York Hospital, Blue Circle West, and Samaritan Hospital. Each applicant presented evidence that it purchased petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant determined its claim either by consulting actual records or by using a reasonable estimate of its purchases. Additionally, each applicant demonstrated that it was an end-user of the petroleum products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $10,973. Each of the three claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Wisconsin Electric Power Co., RF272–207, San Diego Gas & Electric Co., 7/11/88, RF272–285

Wisconsin Electric Power Company and San Diego Gas & Electric Company filed applications for refund in the Subpart V crude oil refund proceedings. A group of states filed objections to the applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The states also claimed that the applicants should not be permitted to act as conduits for the distribution of refund benefits to their injured customers. The DOE rejected both of the states' arguments, finding that the applicants were not claiming a refund for themselves, but rather agreed to pass through to their customers the benefits of any refunds which they would receive. The DOE also found that the Settlement Agreement permitted utilities to receive refunds in Subpart V crude oil proceedings in order to distribute direct restitution to their injured customers. In addition, the DOE stated that strong considerations of restitutionary policy favored approval of the applicant's claims. Accordingly, the applications were approved and the applicants were granted refunds totalling $717,625.

Wolf Creek School District, Et. Al., 7/13/88, RF272–5184, Et. Al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to five applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for heating its buildings and operating its vehicles, and each determined its claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $2,936. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applicants	Total refund
Alfred G. Starz *et al*	RF272-21000	7/12/88	113	$2,981
Alfred Riebe, Jr. *et al*	RF272-14800	7/11/88	149	3,439
Allan Ramsey *et al*	RF272-25200	7/15/88	106	3,379
Arthur R. Miller *et al*	RF272-7945	7/11/88	46	1,788
Charles M. Golden *et al*	RF272-20601	7/12/88	176	3,530
City of Crofton *et al*	RF272-08801	7/12/88	131	17,361
City of Lamar *et al*	RF272-17800	7/12/88	112	4,324
Clarence E. Zwahr *et al*	RF272-23401	7/15/88	115	3,310
Dale Merryman *et al*	RF272-20000	7/12/88	145	3,666
Donald R. Epperly *et al*	RF272-15002	7/11/88	149	3,535
Duane E. Bonnenberger *et al*	RF272-16800	7/11/88	165	2,972
Ed Stewart *et al*	RF272-21800	7/11/88	158	3,970
Elmer Cohrs & Sons *et al*	RF272-18005	7/11/88	123	2,945
Elvin L. Pospisil *et al*	RF272-15801	7/12/88	133	3,558
Emery F. Tuttle *et al*	RF272-7773	7/15/88	150	5,117
Freed Agricultural Service *et al*	RF272-5200	7/15/88	50	1,335
Garrett Farms *et al*	RF272-15200	7/11/88	147	3,358
Gene Marsh *et al*	RF272-12000	7/12/88	144	5,728
H.W. McKee *et al*	RF272-14410	7/12/88	152	3,754
Irvin Boerthein *et al*	RF272-23200	7/15/88	109	3,164
James Dentlinger *et al*	RF272-17000	7/15/88	173	3,900
James S. Tedder *et al*	RF272-18801	7/11/88	107	3,250
John Merrill Transport *et al*	RF272-16600	7/12/88	144	3,832
Kermit Skadberg *et al*	RF272-08400	7/11/88	150	4,052
Kickert Bus Lines *et al*	RF272-24204	7/15/88	169	3,740
Kohler Dist. *et al*	RF272-25001	7/12/88	143	3,828
Leo Bulfer *et al*	RF272-17400	7/12/88	139	3,084
Lerda Farms *et al*	RF272-15600	7/11/88	159	4,069
Lester A. Johnson *et al*	RF272-16001	7/15/88	142	3,625
Marvin Siebert *et al*	RF272-19000	7/11/88	126	3,674
R. Allen Battin *et al*	RF272-14602	7/11/88	166	3,515
Rodney Koyen *et al*	RF272-17200	7/12/88	164	3,853
Runyan Family Farm *et al*	RF272-22000	7/11/88	168	3,972
Sierra Express *et al*	RF272-21601	7/11/88	169	3,979
Skic's, Inc. *et al*	RF272-16201	7/15/88	111	3,073
Stanford E. Kline *et al*	RF272-17601	7/11/88	136	3,854
Vantage Vocational School *et al*	RF272-21200	7/12/88	167	3,988
Vern C. Jacobson *et al*	RF272-21400	7/12/88	164	4,433

Dismissals

The following submissions were dismissed:

Name	Case No.
Government Accountability Project	KFA-0199
Southern Oil Service, Inc.	RF225-9075

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

August 19, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-19358 Filed 8-24-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3434-5]

Region VI; Approvals of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region VI, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-712—Houston Pipe Line Company: This permit, issued on February 26, 1988, authorizes the construction of a natural gas pipeline compressor station to be located off Highway 281, approximately 2.5 miles northwest of George West, Live Oak County, Texas.

2. PSD-TX-718—Marathon Oil Company: This permit, issued on March 7, 1988, authorizes the installation of two 6,000 horsepower natural gas-fired turbines at the existing gas processing plant located east of Farm Road 1257, approximately 2 miles southwest of Iraan, Pecos County, Texas.

3. PSD-TX-731—Exxon Chemical Company: This permit issued on March 25, 1988, authorizes the construction of three natural gas and off-gas fired turbine cogeneration trains at the existing olefins plant located at 3525 Decker Drive, Baytown, Harris County, Texas.

4. PSD-TX-705—EP Operating Company: This permit, issued on April 12, 1988, authorizes the installation of four compressor engines at the Opelika compressor station located off Highway 31, approximately 4 miles northeast of Murchison, Henderson County, Texas.

5. PSD-TX-741—Sun Exploration and Production Company: This permit, issued on May 11, 1988, authorizes the modification of the existing natural gasoline plant located off FM Road 2294, approximately 4.5 miles southwest of San Isidro, Starr County, Texas.

6. PSD-TX-328M-2—Amerada Hess Corporation: PSD-TX-328M-2 modifies PSD-TX-328M-1 to authorize and increase of 90 tons per year of nitrogen oxides and 1,053 tons per year of carbon monoxide at the injection gas processing plant located on State Highway 214, approximately 4 miles northwest of Seminole, Gaines County, Texas. The modified permit was issued on May 19, 1988.

7. PSD-TX-739—Tenaska, Incorporated: This permit, issued on

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June 1, 1988, authorizes the construction of a gas turbine cogeneration facility to be located adjacent to the Campbell Soup plant at 500 Loop 286 N.W., Paris, Lamar County, Texas.

8. PSD–TX–733—Phillips 66 Company: This permit, issued on June 1, 1988, authorizes the construction of a sulfur recovery unit at the existing natural gas processing plant located on FM Road 722, approximately 3 miles southwest of Dumas, Moore Country, Texas.

9. PSD–TX–725—Celanese Engineering Resins, Inc.: This permit, issued on June 3, 1988, authorizes the construction of a cogeneration facility at the existing Celanese Plant located on State Highway 77, approximately 1.5 miles southwest of Bishop, Nueces County, Texas.

10. PSD–TX–684—Inland-Orange, Inc.: This permit, issued on June 3, 1988, authorizes the modification of a boiler at the existing paper mill located on Highway 87, approximately 7 miles north of Orange, Orange County, Texas.

11. PSD–TX–719—Gulf States Utilities: This permit issued on June 22, 1988, authorizes the modification of Utility Boiler No. 5 at the existing Sabine Power Station located on FM Road 1442, approximately 1 mile east of Bridge City, Orange County, Texas.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action.

Notice is hereby given that the Environmental Protection Agency (EPA), Region VI, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. PSD–TX–662—Texas Utilities: This permit, issued on February 26, 1986, authorized the construction of four natural gas and oil fired turbine units at the existing De Cordova Stream Electric Station located on Walters Bend, approximately 4 miles southeast of Granbury, Hood County, Texas. The company has postponed the start of construction after a reevaluation of its resources planning. The permit was extended on March 2, 1988, to a new expiration date of February 26, 1989.

2. PSD–TX–664—Union Texas Petroleum Corporation: This permit, issued on December 11, 1985, authorized the construction of a cryogenic unit and the installation of two 2,000 horsepower engines at the existing Bendum Gas Processing Plant located on Ranch Road 1555, approximately 12 miles northeast of Rankin, Upton County, Texas. The company has postponed its program of modification due to continued unfavorable economic conditions. The permit was extended on May 19, 1988, to a new expiration date of November 26, 1988.

3. PSD–TX–686—Liquid Energy Corporation: This permit, issued on June 4, 1986, authorized the modification of the existing gas processing plant located on State Highway 114, approximately four miles west of Bridgeport, Wise County, Texas. The company has postponed its program of modification due to current economic conditions. The permit was extended on June 23, 1988, to a new expiration date of November 21, 1989.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extention is justified.

A notice of EPA's proposed action to extend these PSD permits was published in a newspaper in the affected area of each facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of of these actions is available, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals, within 60 days of (date of publication of notice). Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Date: August 8, 1988.

Robert E. Layton, Jr.,

Regional Administrator, Region VI.

[FR Doc. 88–19303 Filed 8–24–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50675A; FRL–3434–7]

Issuance of an Experimental Use Permit; Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use Permit to Crop Genetics International (CGI) for the testing of a genetically engineered microbial pesticide. This permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which define EPA procedures for the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip Hutton, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, Dc 20460. Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2690).

Requests regarding information contained in the public docket should be referenced with docket control number OPP–50675 and sumbitted by mail to: Information Services Section, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person: Rm. 246 CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit (EUP):

58788–EUP–1. Issuance. Crop Genetics International, 7170 Standard Drive, Hanover, MD 21076. This EUP allows the inoculation of a *Clavibacter xyli* subspecies *cynodontis* bacterium that has been genetically engineered to contain a *Bacillus thuringiensis* delta endotoxin gene (Cxc/Bt) into corn seedlings to evaluate the efficacy of this organism as a plant associated insecticidal agent against the European corn borer, and to obtain further knowledge on the behavior of this organism in the environment. The total acreage authorized in this EUP is 4 acres with approximately 2 acres in Ingleside, Maryland and approximately 2 acres in Beltsville, Maryland. 5×1016 organisms have been authorized for shipment to each site. The EUP is effective from May 24, 1988 to May 24, 1989. This EUP was issued subject to several limitations, among which is the requirement that the crop be destroyed or used for research purposes only.

CGI tested at the two Maryland locations in the spring of 1988. Cxc/Bt was injected into corn plants which will be studied through the summer and fall. The parental strain of *Clavibacter xyli* subspecies cynodontis (Cxc) was isolated from Bermuda grass in Westover, Maryland (CGI isolate number MD69a).

The Agency evaluated potential adverse effects on nontarget species that conceivably might occur as a result of this small-scale test. This evaluation also included an assessment of the potential exposure this microorganism might exhibit to the nontarget species.

The Agency has concluded that the potential to affect nontarget organisms is not of concern for this small-scale field test. The reasons follow.

The inherent properties of Cxc and the results of the infectivity and pathogenicity tests in mice submitted by CG indicate that there are not likely to be human health risks. Cxc grows slowly at 34°C and does not grow at 36°C; normal human body temperature is 37°C. The delta endotoxin from *B. thuringiensis* var. *kurstaki* has been extensively studied and there has been no indication of any health problems. In addition, all crops will be used for research purposes or destroyed so there will be no dietary exposure to humans.

The genetic alterations are not likely to enhance any potential plant pathogenic properties of the *C. xyli cynodontis* parental strain which occurs naturally in Maryland. This experiment will not appreciably increase the quantity of the parental strain or the quantity of the delta endotoxin already occurring naturally in the environment, nor will it appreciably alter the distribution of the delta endotoxin as produced by *Bacillus thuringiensis*. In addition, CGI has shown that Cxc/Bt has a relatively low order of toxicity to susceptible insects.

CGI has demonstrated that the toxin gene will eventually be irreversibly lost from the parental Cxc strain, and that the revertant and/or parental Cxc strains that have lost the toxin gene will outgrow the engineered strain so that, for the limited quantity used in this small-scale field test, the Cxc/Bt will not persist in the environment.

The Agency has assessed the probability that the *B. thuringiensis* toxin gene could be transferred to other microorganisms. CGI submitted tests which indicated that Cxc had no mechanism for naturally-occurring genetic transfer. Accordingly, the Agency has concluded that the probability of transfer of this gene is extremely remote.

Furthermore, the Agency has concluded that the exposure of Cxc/Bt to nontarget species will be minimal since stringent containment, monitoring, and contingency procedures will be followed. Thus the environmental spread of Cxc/Bt will be limited from this small-scale field test.

CGI submitted data indicating that, although Cxc can infect many plants after direct inoculation (an infective dose for corn was demonstrated at 100 CFU/plant), it does not appear to persist naturally in certain susceptible plants surveyed by CGI in the field. It has been shown to occur naturally in Bermuda grass. In addition, the incidence of transmission of Cxc from artificially colonized corn plants seems to be very low. CGI has shown that there is no gross colonization of sugarcane from infected Bermuda grass and no gross colonization of Bermuda grass or bindweeds in fields of Cxc-colonized corn. It is not likely to persist at levels that could infect plants in water or soil. This conclusion is supported by studies showing that corn was not infected by high levels of Cxc in soil, both in the laboratory and in the field. Overall, the data indicate that there may be an avenue for limited movement of the Cxc to other plants, particularly by mechanical transfer, i.e. by cutting tools, or by transmission through seed, but the rate of movement is of a low order and the containment, monitoring, and contingency plans will be adequate to control potential movement from the test site.

The Agency has specified procedures to minimize spread of Cxc/Bt beyond the test site. The field test design includes buffer zones, barriers to contain runoff, and fencing. The protocols include tool disinfection, destruction of all seed, monitoring, and contingency plans to minimize any transfer to other plants, and prevent the transfer to subsequent crops.

The Agency issued an announcement of receipt of EUP application in the Federal Register of January 26, 1988 (53 FR 2641). The nonconfidential business information portions of the application were made available for public comment at that time. In addition, the Agency's March 25, 1988, Preliminary Scientific Position was made available for public comment at the time it was sent to an *ad hoc* subcommittee of the EPA Biotechnology Science Advisory Committee (BSAC) for their review and comment.

All commenters, except for one, agreed with the Agency's conclusion that no significant risk to humans or to nontarget organisms could be foreseen from this small-scale field test.

Several commenters, while not objecting to permit issuance, expressed reservations about the adequacy of the existing data base to support future testing conducted on a large-scale. The BSAC also expressed some concern regarding this issue. The Agency shared some of these concerns and informed the applicant of this situation. The Agency focused on assessment of risk for this well-contained small-scale field test.

Several substantive comments were directly related to the proposed small-scale test. One commenter stated that CGI did not follow Good Laboratory Practice (GLP) regulations when they tested the identity, purity, strength, and composition of the test substance. In fact, CGI stated in the submission that it did not possess a formal independent Quality Assurance Unit as provided in the GLP regulations. For this reason, the Agency conducted an audit of these studies on May 17, 1988. The purpose of the audit was to determine the validity of the subject studies, and establish a chain of custody concerning the product tested between CGI and Microbiological Associates, which had performed the toxicology studies. This audit confirmed that while CGI did not possess a formal quality assurance unit, the studies were conducted under more than adequate control and are considered valid.

One commenter questioned the validity of the data waivers requested by the applicant. The regulations concerning the data requirements (40 CFR Part 158) allow for such waivers if the applicant can demonstrate that the requirements are not applicable. The waivers requested by CGI were reviewed by the Agency and found to be reasonable. Prior to submitting the application, CGI met with the Agency on several occasions to discuss specific studies which would be required to support the experimental program. As a part of this process, several studies not listed in Part 158 were requested by OPP and supplied by CGI.

One concern expressed at the BSAC subcommittee meeting was the ability to protect plants in surrounding areas from the runoff of water after rainfall. Specifically, the subcommittee recommended that EPA set a standard for the construction of a dike around the plot area, and gave us an example, one which would be effective to withstand a severe rain event with an occurrence frequency of 1 in 10 years. The Agency has considered the BSAC suggestion and has made the construction of a dike (berm) a requirement associated with permit issuance.

It is the Agency's view that the data requirements needed to support an EUP have been adequately satisfied and that a point has been reached in the research and development of this product where small-scale field studies are warranted. Remaining questions on efficacy and questions regarding possible environmental effects of Cxc/Bt products can best be answered by conducting a carefully controlled and monitored small-scale study. The Agency believes that, although issues of potential hazards from the release of genetically engineered microbial pesticides have been raised, those issues have been satisfactorily addressed by information provided by CGI and other relevant sources. This conclusion is based on reviews from the Agency scientific staff and recommendations from the *ad hoc* subcommittee of the BSAC. It is the Agency's considered option that approval and issuance of this EUP under the conditions imposed will not result in adverse effects on humans or the environment. There, the Agency has issued this EUP.

Dated: August 11, 1988.

Edwin F. Tinsworth,

Director, Registration Division.

[FR Doc. 88-19301 Filed 8-24-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140099; FRL-34348]

Access to Confidential Business Information by Miller Reporting Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Miller Reporting Company (MRC), Washington, DC, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Certain existing chemical substances intended to be exported to foreign countries are required to be reported to EPA under section 12 of TSCA. New and existing chemical substances intended to be imported into the United States are evaluated by EPA under section 13 of TSCA. Petitions received by EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under sections 4, 6, or 8 or an order under section 5(e) or 6(b)(2) are evaluated by EPA under section 21 of TSCA.

Under a procurement, MRC, 507 C St., NE., Washington, DC will assist the Office of Toxic Substances by attending meetings where information that may be claimed or determined to be CBI may be discussed. MRC will be responsible for transcribing information from these meetings into official transcripts for the review of the Biotechnology Science Advisory Committee.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide MRC access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this procurement will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this procurement is scheduled to expire on July 14, 1990.

MRC personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: August 18, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances

[FR Doc. 88-19300 Filed 8-24-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3434-3]

Issuance of National Pollutant Discharge Elimination System Permit to the State of Florida

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Issuance of a National Pollutant Discharge Elimination System Permit to the State of Florida.

SUMMARY: The U.S. Environmental Protection Agency (EPA) intends to issue a National Pollutant Discharge Elimination System (NPDES) General Permit No. FLG040001 to facilities within the political boundary of the State of Florida. This NPDES general permit proposes effluent limitations, prohibitions, reporting requirements and other conditions on facilities which discharge treated groundwater and/or stormwater which have been contaminated by automotive gasoline, aviation and/or diesel fuels. This proposed permit authorizes discharges from facilities currently located in and discharging to surface waters within the political boundary of the State of Florida, and any new treatment facilities placed in operation during the term of the permit. Written notice of intent (NOI) to be covered by the NPDES general permit shall be provided to the Permit Issuing Authority prior to initiation of any discharge. Coverage by this general permit shall commence upon receipt of written notification from the Permit Issuance Authority.

The proposed NPDES permit contains limitations on the amounts of pollutants allowed to be discharged and was drafted in accordance with the provisions of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and other lawful standards and regulations. The pollutant limitations and other permit conditions are tentative and open to comment from the public.

ADDRESSES: Persons wishing to comment upon or object to any aspects of a specific permit issuance or wishing to request a public hearing, are invited to submit same in writing within thirty (30) days of this notice to the Office of Congressional and External Affairs, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, ATTENTION: Ms. Suzanne D. Potter.

The public notice number and NPDES number should be included in the first page of comments. All comments received within the 30-day period will be considered in the formulation of a final determination regarding the permit. Any interested person may within the 30-day period request a public hearing. Where there is a significant degree of public interest in a proposed permit issuance, the EPA Regional Administrator will hold a public hearing.

After consideration of all written comments and the requirements and policies in the Act and appropriate regulations, the EPA Regional Administrator will make a determination regarding the permit issuance. If the determination is substantially unchanged from those announced by this notice, the EPA Regional Administrator will so notify all persons submitting written comments. If

the determination is substantially changed, the EPA Regional Administrator will issue a public notice indicating the revised determination. Requests for evidentiary hearing may be filed after the Regional Administrator makes the above-described determinations. Additional information regarding an evidentiary hearing is available in 40 CFR Subpart E, 48, FR 14278 (April 1, 1983), or by contacting the Office of Regional Counsel at the address aforementioned or by calling (404) 347–2335.

SUPPLEMENTARY INFORMATION: The administrative record for each, including application, fact sheet or statement of basis, draft permit, a sketch showing the exact location of the discharge(s), comments received, and additional information on hearing procedures is available at cost by writing the EPA address aforementioned, or for review and copying at 345 Courtland Street, NE., 3rd floor, Atlanta, Georgia, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a minimal cost per page.

Greer C. Tidwell,

Regional Administrator.

[Permit No. FLG040001]

General Permit To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq*; the "Act").

Discharges of treated groundwater and stormwater incidental to groundwater cleanup operations which are contaminated with gasoline or aviation fuel are authorized to discharge to waters of the United States within the State of Florida.

In accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The permit consists of this cover sheet, Part I *6* pages, Part II *24* pages, Part III *1* page, Part IV *1* page, Part V *2* pages.

This permit shall become effective upon notification of coverage. (See Part II, F for application and coverage requirements.)

This permit and the authorization to discharge shall expire at midnight,

Bruce R. Barrett,

Director, Water Management Division.

Part I

A. Effluent Limitations/and Monitoring Requirements: Existing Sources and New Dischargers

1. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and stormwater that has been contaminated by *Automotive Gasoline.* It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption if necessary, or equivalent treatment to meet the following effluent limitations.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily avg	Daily max	Measurement frequency	Sample type
Flow, MGD	Report	Report	Continuous	Flowmeter.
Benzene, µg/l		1.0	1/month	Grab.
Total lead, µg/l		30.0	1/month	Grab.

[1] Monitoring for this parameter is required only when contamination results from leaded fuel.

The effluent (100%) shall not be lethal to more than 50% of appropriate fish and invertebrate test organisms in 48 hour static toxicity tests (48-hr. LC_{50}). Failure to demonstrate compliance with the acute toxicity requirement will constitute a violation of this permit, (see Part V–2.).

The pH shall not be less than 6.0 standard units nor greater than 8.5 standard units and shall be monitored once every month by grab sample, or continuously with a recorder, at the discretion of the permittee (See item I.B.4).

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS: Existing Sources and New Dischargers

2. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and stormwater that has been contaminated by *Aviation Gasoline, Jet Fuel* or *Diesel.* It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption if necessary or equivalent treatment to meet the foregoing effluent limitations.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily avg	Daily max	Measurement frequency	Sample type
Flow, MGD	Report	Report	Continuous	Flowmeter.
Benzene, µg/l		1.0	1/month	Grab.
Naphthalene, µg/l		100.0	1/month	Grab.
Total lead, µg/l		30.0	1/month	Grab.

[1] Monitoring for this parameter is required only when contamination results from leaded fuel.

The effluent (100%) shall not be lethal to more than 50% of appropriate fish and invertebrate test organisms in 48 hour static toxicity tests (48-hr. C_{50}). Failure to demonstrate compliance with the acute toxicity requirement will constitute a violation of this permit, (see Part V–2.).

The pH shall not be less than 6.0 standard units nor greater than 8.5 standard units and shall be monitored once every month by grab sample, or continuously with a recorder, at the discretion of the permittee (See item I.B.4).

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

B. Other Requirements

1. Any more frequent effluent discharge monitoring required by the Florida Department of Environmental Regulation (FDER) for the parameters limited in this permit, or different parameters, shall be reported to the Permit Issuing Authority in accordance with the requirements of Part III–A of this permit.

2. Effluent limitations for combining Contaminated Groundwater pumped to *above-ground storage tanks*, with Contaminated Groundwater from the sites *recovery wells*.

a. If the permittee desires coverage where waste streams from a facility covered by this General Permit are combined for treatment of contaminated groundwater and performance data indicate the discharge is capable of meeting the applicable limits as described in Part I A.1 or A.2, then approval to combine these discharges may be requested.

3. Within 60 days of the effective date of this permit or startup of discharge the permittee shall also submit the results of the following analyses. These analyses shall be performed on a representative sample of the groundwater effluent discharge, taken after final treatment. Required analyses (one time only):

a. EPA Method 625—Acid and base/neutral extractable organics

b. EPA Method 624—Purgeable Organics

If the analyses required in the above Part B–3 reveal other toxic pollutants or subsequent biomonitoring test shows lethality, (less than 50% survival of test organisms in 100% effluent) this General Permit may be terminated and an individual permit issued.

4. If the pH is monitored continuously, the pH values shall not deviate outside the required range more than 7 hours and 26 minutes in any calendar month and no individual excursion shall exceed 60 minutes. An "excursion" is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in the permit.

C. Test Procedures

In performing the analysis for the dissolved constituents in the surface water and groundwater the permittee shall use the guidelines recommended and described in sections 17–70.008(9)[a-e] of the petroleum contamination site cleanup criteria rule for the State of Florida.

a. If the petroleum contamination is from a petroleum fuel in which the source of contamination has not been identified, the *groundwater* shall be analyzed (using the recommended methods) for the following parameters as described in Section 17.70.008(9)[d] of the State Underground Petroleum Environmental Response Program:

(1) Lead	(EPA Method 239.2 or Standard Method 304)
(2) Priority Pollutant Volatile Organics.	(EPA Method 624)
(3) Priority Pollutant Extractable Organics.	(EPA Method 625)
(4) Non-priority Pollutant Organics (with GC/MS Peaks greater than 10 ppb).	(EPA Methods 624 & 625)

D. Schedule of Compliance

1. The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule: Operational level attained * * * Upon Notification of Coverage.

2. No later than 14 calendar days after any date identified in the above schedule of compliance the permittee shall submit either a report of progress or, in any case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

Part II

Standard Conditions for NPDES Permits

Section A. General Conditions

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

Any person who violates a permit condition is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions is subject to a fine of up to $50,000 per day of violation, or by imprisonment for not more than 1 year, or both.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, terminated or revoked for cause (as described in 40 CFR 122.62 et seq.) including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any conditions that requires either temporary interruption or elimination of the permitted discharge; or

d. Information newly acquired by the Agency indicating the discharge poses a threat to human health or welfare.

If the permittee believes that any past or planned activity would be cause for modification or revocation and reissuance under 40 CFR 122.62, the permittee must report such information to the Permit Issuing Authority. The submittal of a new application may be required of the permittee. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Toxic Pollutants

Notwithstanding Paragraph A–4, above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" Section B, Paragraph B–3, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

9. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

10. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

11. Duty To Provide Information

The permittee shall furnish to the Permit Issuing Authority, within a reasonable time, any information which the Permit Issuing Authority may request to detemine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Permit Issuing Authority upon request, copies of records required to be kept by this permit.

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this permit.

3. Bypass of Treatment Facilities

a. Definitions

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility, which is not a designed or established operating mode for the facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs c. and d. of this section.

c. Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D, Paragraph D–4 (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited and the Permit Issuing Authority may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life; personal injury, or severe and extensive property damage;

(b) There were no feasible alternatives to the bypass, such as maintenance of sufficient reserve holding capacity, the use of auxiliary treatment facilities, retention of untreated waste, waste hauling, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under Paragraph b. of this section.

(2) The Permit Issuing Authority may, within its authority, approve an anticipated bypass, after considering its adverse effects, if the Permit Issuing Authority determines that it will meet the three conditions listed above in Paragraph d.(1) of this section.

4. Upsets

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. An upset constitutes an affirmative defense to an action brought for non-compliance with such technology based permit limitation

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if the requirements of 40 CFR 122.41(n)(3) are met. (Note that this provision does not apply to water quality requirements.)

5. Removed Substances

This permit does not authorize discharge of solids, sludge, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters to waters of the United States unless specifically limited in Part 1.

Section C. Monitoring and Records

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Permit Issuing Authority.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than +10% from the true discharge rates throughout the range of expected discharge volumes. Guidance in selection, installation, calibration and operation of acceptable flow measurement devices can be obtained from the following references.

a. "A Guide of Methods and Standards for the Measurement of Waterflow", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, DC 20402. Order by SD catalog No. C13.10:421)

b. "Water Measurement Manual", U.S. Department of the Interior, Bureau of Reclamation, Second Edition, Revised Reprint, 1974, 327 pp. (Available from the U.S. Government Printing Office, Washington, DC 20402. Order by catalog No. 127.19/2:W29/2, Stock No. S/N 24003–0027.)

c. "Flow Measurement in Open Channels and Closed Conduits", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS No. PB–273 535/5ST.)

d. "NPDES Compliance Flow Measurement Manual", U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD–77, September 1981, 135 pp. (Available from the General Services Administration (8BRC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225.)

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

4. Penalties for Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

5. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by the Permit Issuing Authority at any time.

6. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling of measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

7. Inspection and Entry

The permittee shall allow the Permit Issuing Authority, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable time any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Change in Discharge

The permittee shall give notice to the Permit Issuing Authority as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D, Paragraph D–10(a).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Permit Issuing Authority of any planned change in the permitted facility or activity which may result in noncompliance with permit requirements. Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Permit Issuing Authority.

3. Transfer of Ownership or Control

A permit may be automatically transferred to another party if:

a. The permittee notifies the Permit Issuing Authority of the proposed

transfer at least 30 days in advance of the proposed transfer date;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The Permit Issuing Authority does not notify the existing permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph b.

4. Monitoring Reports

See Part III of this permit.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased frequency shall also be indicated.

6. Averaging of Measurements

Calculations for limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Permit Issuing Authority in the permit.

7. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

8. Twenty-Four Hour Reporting

The permittee shall orally report any noncompliance which may endanger health or the environment, within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Permit Issuing Authority may verbally waive the written report, on a case-by-case basis, when the oral report is made.

The following violations shall be included in the 24 hour report when they might endanger health or the environment:

a. An unanticipated bypass which exceeds any effluent limitation in the permit.

b. Any upset which exceeds any effluent limitation in the permit.

9. Other Noncompliance

The permittee shall report in narrative form, all instances of noncompliance not previously reported under Section D, Paragraphs D–2, D–4, D–7, and D–8 at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D–8.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Permit Issuing Authority as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic substance(s) (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/l); or

(2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/l); or

(2) One milligram per liter (1 mg/l) for antimony.

11. Signatory Requirements

All applications, reports, or information submitted to the Permit Issuing Authority shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation: By a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:

(1) A president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy—or decision-making functions for the corporation, or (2) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

b. All reports required by the permit and other information requested by the Permit Issuing Authority shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity; such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(3) The written authorization is submitted to the Permit Issuing Authority.

c. Certification. Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

12. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Permit Issuing Authority. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

13. Penalties for Falsification of Reports

The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

Section E. Definitions

1. Permit Issuing Authority

The Regional Administrator of EPA Region IV or his designee, unless at some time in the future the State receives the authority to administer the NPDES program and assumes jurisdiction over the permit; at which time, the Director of the State program receiving authorization becomes the issuing authority.

2. Act

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576 and Pub. L. 100–4, 33 U.S.C. 1251 *et seq.*

3. Concentration Measurements

a. The "average monthly concentration", is the sum of the concentrations of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month (arithmetic mean of the daily concentration values). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during the calendar day.

b. The "maximum daily concentration" is the concentration of a pollutant discharge during a calendar day. It is identified as "Daily Maximum" under "Other Limits" in Part I of the permit and the highest such value recorded during the reporting period is reported under the "Maximum" column under "Quality" on the DMR.

4. Other Measurements

a. The effluent flow expressed as MGD is the 24 hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in Part I of the permit the flow rate values are reported in the "Average" column under "Quantity" on the DMR.

b. An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.

c. Where monitoring requirements for pH or dissolved oxygen are specified in Part I of the permit, the values are generally reported in the "Quality or Concentration" column on the DMR.

5. Types of Samples

a. Grab Sample: A "grab sample" is a single influent or effluent portion which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

6. Calendar Day

A calendar day is defined as the period from midnight of one day until midnight of the next day. However, for purposes of this permit, any consecutive 24-hour period that reasonably represents the calendar day may be used for sampling.

7. Hazardous Substance

A hazardous substance means any substance designated under 40 CFR Part 116 pursuant to section 311 of the Clean Water Act.

8. Toxic Pollutant

A toxic pollutant is any pollutant listed as toxic under section 307(a)(1) of the Clean Water Act.

Section F. Application Requirements

a. For expired individual NPDES permits, dischargers desiring coverage under NPDES General Permit Number FLG040001 are required to submit a notice of intent (NOI) to be covered by the general permit to the Permit Issuing Authority. The NOI shall include: (1) The name and address of the operation, (2) the applicable individual NPDES number(s), (3) the identification of any new discharge location not contained in the expired permit, (4) evidence that the operation has obtained a Site Rehabilitation Initiation Order from the State of Florida, (5) a map showing the facility and discharge location (in latitude and longitude), and (6) the name of the receiving water. Operators having several individual permits are encouraged to consolidate requests for coverage into one NOI for all individual permits. The previous submission of the proper forms in the renewal application does not relieve the permittee desiring coverage under the general permit of the requirement to file a NOI.

b. Dischargers having valid individual NPDES permits that desire coverage under the general permit are required to file a NOI to the Permit Issuing Authority within at least 30 days prior to expiration of their current permit(s). The notice shall contain the same information specified in paragraph (a) above. Permittees desiring to retain their individual permit are required to submit the appropriate application forms at least 180 days before expiration of their individual permit.

c. Dischargers who have not previously obtained a valid individual NPDES permit will be required to submit a Site Remedial Action Plan as required by Florida Department of Environmental Regulation to EPA. Such submittals shall be accompanied by a NOI to be covered by the general permit and shall contain the same information specified in paragraph (a) above. The application for coverage under the general permit must be made at least forty-five (45) days before the discharge is to commence.

d. Notification of coverage will be given by the Permit Issuing Authority by letter to the permittee. Upon receipt of coverage the permittee shall achieve the effluent limitations required by this permit, once the facility becomes operational.

Section G. Additional General Permit Conditions

1. The Permit Issuing Authority may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The discharge(s) is a significant contributor of pollution;

b. The discharger is not in compliance with the conditions of this permit;

c. A change has occurred in the availability of the demonstrated technology of practices for the control of abatement of pollutants applicable to the point sources;

d. Effluent limitation guidelines are promulgated for point sources covered by this permit;

e. A Water Quality Management Plan containing requirements applicable to such point source is approved; or

f. The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a pemit application is required.

2. Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator.

3. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

4. A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

5. A petroleum contamination recovery operation may be excluded from this general permit if it proposes discharges to receiving waters that are classified as "Special Protection, Outstanding Florida Waters" as set forth by FAC 17–3.043.

6. The permittee shall notify the Permit Issuing Authority within 30 days after the permanent termination of discharge from their facility. This letter shall include the necessary *Site Rehabilitation Completion Order* (SRCO) from Florida Bureau of Waste Cleanup which constitutes final action on the State level for completion of cleanup activities at the affected site. After review of the SRCO, permission will be given by EPA to deactivate coverage by the general NPDES permit for the facility.

Part III

Other Requirements

A. Reporting of Monitoring Results

Monitoring results obtained during the previous calendar quarter shall be summarized for each month (each quarter if monitoring frequency is quarterly) and must be reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed calendar quarter. (For example data for January-March shall be submitted by April 28.) Duplicate signed copies of these, and all other reports required by Section D of Part II, Reporting Requirements, shall be submitted to the Permit Issuing Authority and the State at the following addresses:

Environmental Protection Agency,
Florida Dept. of Environmental Regulation Region IV, Local District Office Address. Facilities Performance Branch, Water Management Division, 345 Courtland Street, NE., Atlanta, GA 30365.

B. Reopener Clause

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under sections 301(b)(2) (C), and (D), 304(b)(2) and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

1. Contains different conditions or is otherwise more stringent than any condition in the permit; or

2. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

Part IV

Best Management Practices and Conditions

Section A. General Conditions

1. BMP Plan

Preparation of a Best Management Practices (BMP) Plan shall be done in conjunction with development of the Remedial Action Plan required by Florida Department of Environmental Regulation (See Part II.F.c.). The "NPDES guidance Document" can be used as a reference which contains technical information on BMPs and the elements of the BMP program. The permittee shall develop and implement a BMP plan which prevents, or minimizes the potential for. the release of pollutants from ancillary activities, including material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas, to the waters of the United States through plant site runoff; spillage or leaks; sludge or waste disposal; or drainage from raw material storage. The term pollutants refers to any substance listed as toxic under section 307(a)(1) of the Clean Water Act, oil, as defined in section 311(a)(1) of the Act, and substance listed as hazardous under section 311 of the Act. Copies of the "NPDES Guidance Document" may be obtained by submitting written requests to: Director, Permits Division (EN–336), Office of Water Enforcement and Permits, 401 M St. SW., Environmental Protection Agency, Washington, DC 20460.

Part V

Biomonitoring Program

In accordance with Part 1 of this permit, the permittee shall initiate the series of tests described below within 30 days of commencement of discharge from outfall(s) 001.

1. The permittee shall conduct 48-hour static toxicity tests on three appropriate test species (EPA/600/4–85/013, Table 1). The test organisms used shall include at least one fish and one invertebrate test species (Recommend: A Daphnidae species, the fathead minnow (*Pimephales promelas*), and one species selected from EPA/600/4–85/013, Table 1). Tests shall be conducted once every month for a period of three months following the initiation of the tests and once every year thereafter for the duration of the permit using samples of 100% final effluent. Such tests will be conducted on a grab sample of 100% final effluent. Results of all tests conducted with any species shall be reported according to EPA/600/4–85/013, Section 13, Report Preparation and Data Utilization, and shall be submitted to EPA with the quarterly discharge monitoring report.

2. If lethality (less than 50% survival of test organisms in 100% effluent) is found in any of the above samples of effluent, this will constitute a violation of this permit. The permittee will then be subject to the enforcement provisions of the Clean Water Act. In the event a violation of toxicity limits results in an enforcement action, any different or more stringent monitoring requirements imposed in that enforcement action shall apply in lieu of the requirements of this permit condition for whatever period of

time is specified by EPA in the enforcement action.

3. All test organisms, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms*, EPA–600/4–85–013. A standard reference toxicant quality assurance test shall be conducted concurrently with each set of toxicity tests and its results submitted with the quarterly discharge monitoring report.

Fact Sheet For National Pollutant Discharge Elimination System General Permit To Discharge Treated Wastewater To U. S. Waters

[NPDES Permit No. FLG040001]

1. Synopsis of Application

a. Name and Address of Applicant
Applicants within the political boundary of the State of Florida

b. Type of Facility
System for treatment of petroleum fuel contaminated ground water and stormwater

c. Design Capacity of Facility
To be based on a case by case analyses of the contaminated site

d. Applicant's Receiving Waters.
Waters of the U.S. in the State of Florida

e. Description of Wastewater Treatment Facilities
Air stripping, aeration, carbon adsorption when necessary, or other water treatment technologies which can effectively treat contaminated waters to the levels required by the general permit.

f. Description of discharges (as reported by applicant)
Reviewing the effluent data submitted by eight (8) individual applicants, the following information was obtained:

Effluent characteristic	No. of facilities reporting	Reported concentration highest
Benzene	8	< 1.0 µg/1.
Naphthalene	2	< 10.0 µg/1.
Do	1	< 20.0 µg/1.
Do	1	< 1.0 µg1/
Do	4	No data reported.
Lead	1	20 µg/1.
Do	1	7 µg/1.
Do	1	< 100 µg/1.
Do	5	No data reported.

2. Proposed Effluent Limits for This General Permit

Discharges contaminated with *automotive gasoline:*

Effluent characteristic	Daily maximum
Benzene	1.0 µg/1.
Total Lead [1]	30.0 µg/1.
pH	6.0–8.5 std. units.

Discharges contaminated with *aviation fuels and diesel:*

Effluent characteristic	Daily maximum
Benzene	1.0 µg/1.
Naphthalene	100 µg/1.
Total Lead [1]	30 µg/1.
pH	6.0–8.5 std. units.

[1] Required only when contamination results from leaded fuel.

3. Background

The State of Florida's Department of Environmental Regulation (FDER) Bureau of Waste Cleanup has initiated a remedial action process at sites where petroleum contamination of groundwater has occurred through the adoption of the State Underground Petroleum Environmental Response (SUPER) Act of 1986. This act gives the FDER authority over cleanup operations for areas which have been contaminated by fuels from petroleum storage systems. As of December of 1987, FDER estimates that there are over 2000 facilities that have reported suspected petroleum leaks. This potential underground leak and cleanup activity is expected to increase in the near future. The SUPER Act programs are authorized through the year 1997. Currently, EPA is issuing indivdiual permits on a case by case basis. In order to expedite this permitting process, and treat possible contamination to drinking water aquifers, like the Biscayne aquifer which is an important source of drinking water in southern Florida, a National Pollutant Discharge Elimination System (NPDES) general permit is being proposed for the State of Florida.

4. General Information for This Florida General Permit

This general permit covers a variety of contaminants found in petroleum fuels. This will allow the operator, once a leak has been detected and groundwater supply contaminated, to immediately initiate a hydrocarbon recovery system.

This recovery system for the treatment of contaminated groundwater in most cases consists of monitoring wells, and recovery wells. Placement of the wells is generally determined after geologic consideration and groundwater movement in the area affected. The rate of movement by the contaminants is affected by the varying permeability and adsorptive characteristics of the water filled pore spaces and depth to the water table. Vapor recovery systems are often used to remove volatiles from the soil. After reaching the water table, the free-floating contaminant is usually pumped from the recovery wells to an above ground storage tank. The dissolved organics in the contaminated water are pumped to an air stripper and treated using packed-tower aeration and when necessary, carbon adsorption. Both of these treatment processes have been proven effective in removing 94–99% of the volatile compounds by applying good engineering practices, before discharging into surface waters or nearby tributaries and canals.

The State of Florida is expecting 100 permits a year which could occur from petroleum contamination and proposed discharges. Therefore, in order to allow hydrocarbon recovery operations to be permited without delays in permit issuance, this general permit is being proposed for sources identified within the political boundaries of the state of Florida.

This general permit may be used to authorize discharges of treated ground water and any stormwater incidental to the groundwater cleanup operation. All such operations in Florida must obtain a Site Rehabilitation Initiation Order (SRIO) prior to the cleanup. This SRIO becomes a part of the applicant's notice of intent (NOI). This permit is not limited to cleanup operations funded by the State of Florida, but may cover *all* such cleanup operations.

5. Basis For This General Permit Final Effluent Limits And Permit Conditions

The effluent limits for the general permit are based on treatment technology data obtained from previous individual permits. The general permit has been written to require an effluent limit on three (3) chemicals, i.e., benzene, naphthalene and lead. Based on the fact that benzene is a potential carcinogen; (EPA 440/5–80–0180) the effluent limit was written to meet the FDER community drinking water standard of 1.0 ug/1 (FAC 17–22.104(1)(g)) and water quality criteria for a pH range of 6.0–8.5 standard units. Based on the "Ambient Water Qaulity Document for Benzene" this maximum contaminant level for benzene is well below the 10^{-6} risk factor of 40 ug/1 for consumption of contaminated aquatic organisms.

This limit of 1.0 ug/1 is also between the 10^{-5} risk factor of 6.6 ug/1 and 10^{-6} risk factor of .66 ug/1 for consumption of contaminated water and aquatic organisms. The effluent limit for lead, which his added to gasoline in the form of tetraethyllead, was written to meet the FDER water quality standard of 30

ug/1 (FAC 17–3.121(16)(g)) for Class III Waters. Based on the "Ambient Water Quality Document for Lead" this limit is well below the current human health standard of 50 ug/1 which is protective of human health against the ingestion of contaminated water and contaminated aquatic organisms (EPA 440/5–80–057).

The naphthalene limit of 100 ug/1 was written according to FEDER petroleum contamination site cleanup criteria (17–70.011(5)A 2E). Based on the "Ambient Water Quality Document for Naphthalene" acute and chronic toxicity to freshwater aquatic life occur at concentrations as low as 2300 ug/1 for the Rainbow Trout and 620 ug/1 for the Fathead Minnow, respectively, and would occur at lower concentrations among species that are more sensitive than those tested. Since toxicity screening will use acute tests only, a water quality based limit of .3(2300 ug/1) or 690 ug/1 could be derived. Also, according to the "Handbook of Environmental Data and Organic Chemicals" tainting of fish flesh occurs for naphthalene near 1000 ug/1. The petroleum site criteria limit of 100 ug/1 is more stringent than EPA's water quality document for naphthalene and should provide adequate protection for more sensitive aquatic organisms.

The permittee may request an individual permit to contain less stringent end-of-pipe effluent limits for benzene, total lead and naphthalene dependent upon resulting instream concentrations durign critical low flows of the receiving stream.

As with any petroleum fuel, other aromatic compounds will be present once testing has occurred. Since other volatiles will be present in untreated groundwater in greater concentrations than benzene, past experience in treatment design has shown that these organics can be effectively treated before discharging to surface waters.

According to the "Toxicant Profile for the ALKYL BENZENES", (Ethylbenzene, Isopropylbenzene, Toluene, Xylene) prepared for Florida's DER by the Center of Biomedical and Toxicological Research at Florida State University, levels of 100–200 ug/1 were recommended for the protection of aquatic organisms and human health. These recommendations are below EPA's "Ambient Water Quality Critera" documents recommendations for human health which suggest levels of 1400 ug/1–14300 ug/1 for Ethylbenzene and Toluene. The recommended treatment technology of air stripping and when necessary, carbon adsorption, will reduce the benzene concentration to below 1.0 ug/1. Therefore, EPA will not impose specific limits on the other pollutants which may occur since meeting the limits set in this permit should reduce the other pollutants well below those levels allowable based on Florida's water quality standards. Also, the effluent shall not be lethal to more than 50% of appropriate fish and invertebrate test organisms in a 48 hour static renewal toxicity test. Because the effluent from Outfall 001 may be toxic, toxicity testing requirements as contained on Pages I–1, I–2 and in Part V have been included to ensure that the effluent from Outfall conforms with FAC Section 17–4.244(4) and Regional policy as contained in the document, "Whole Effluent Toxicity Testing Policy for Florida", dated May 5, 1986.

Since the recovery wells in most instances are placed in areas of highest contamination, it is reasonable to conclude that the greatest potential for toxicity should occur during the initial stages of facility operation. Therefore, an initial frequency of once-a-month for three (3) months is included in these requirements to indicate instances of toxicity and reveal the facilities treatment performance immediately after commencement of discharge. If no toxicity is confirmed, the frequency is then reduced to yearly since the permittee will be required to meet effluent limitations and the potential for toxicity is at a minimum. Failure to demonstrate compliance with the acute toxicity requirement will constitute a violation of the terms of the permit. The sample type for all monitoring is "Grab" since the untreated groundwater quality is expected to be consistent in level of contamination.

The permittee is required to develop and implement a plan for Best Management Practices (BMPs) in conjunction with development of the Remedial Action Plan required by FDER. BMPs are actions or procedures to prevent or minimize the potential for the release of toxic pollutants or hazardous substances in significant amounts to surface waters.

6. Treatment Technology

According to EPA's publication entitled "Treatment of Volatile Organic Compounds in Drinking Water", a drinking water research experiment was conducted on spiked water using one organic volatile and then by combining two volatiles with aeration as the treatment process. It was discovered that no difference was observed in treatment efficiency when applying aeration to one organic chemical or a combination of volatiles. In this particular experiment an overall efficiency of 92% was obtained. Most petroleum fuels consist of a combination of volatiles and aromatics, each different based on additives included during refining of the fuel. In case studies revealed in Environmental's Science and Engineering document ESE No. 84–912–0300, packed tower aeration utilizing different packing materials, varying flow paths and air-to-water ratios have been proven effective in removing 94–99% of the volatiles. Some particular compounds are not as easily air-stripped as others which would necessitate the need for a combination treatment design used in conjunction with aeration.

Carbon adsorption has been proven effective in removing organics from water until the influent concentration is in equilibrium with the effluent and the organics no longer adhere to the carbon surface. Adsorption has been used successfully in removing less volatile compounds of higher molecular weight.

According to (EPA 570/9–84–005) entitled "Adsorption Techniques in Drinking Water Treatment" the efficiency of carbon adsorption was proven effective during a case study in Hialeah, Florida at the Preston water treatment plant. In this study, groundwater from a drinking water aquifer was spiked with higher molecular weight extractables before treating the water with granular activated carbon. It was found that more than 90% removal of the spiked compounds was obtained. The combination of air-stripping with adsorption usually extends the adsorptive life of the activated carbon and leads to more efficient treatment, but is not always required in every situation.

7. Other Legal Requirements

A. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8[b] of that order.

B. Regulatory Flexibility Act

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

C. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44

U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

8. Requested Variances or Alternatives To Required Standards

None.

9. Effective Date Of Proposed Effluent Limits

The proposed effluent limits will be effective immediately upon receipt of written notification of coverage from the Permit Issuing Authority.

10. State Certification Requirements

Section 301(b)(1)(c) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable State water quality standards or limitations. Section 401 requires that States certify that Federally issued permits are in compliance with State law. This permit is for operations within waters within the State of Florida. EPA is requesting State officials to review and provide appropriate certification of this draft general permit pursuant to 40 CFR 124.53.

11. EPA Contact

Additional information concerning the permit may be obtained at the address and during the hours noted in Item 12 from: Ms. Suzanne D. Potter, Public Notice Coordinator, 404/347–3004.

12. *The Administrative Record*, including application, draft permit, fact sheet, public notice (after release), State Certification (after receipt), comments received, and additional information is available by writing the EPA, Region IV, or for review and copying at 345 Courtland Street, NE., 3rd Floor, Atlanta, Georgia 30365, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a minimal charge per page.

13. Proposed Schedule for Permit Issuance

Draft Permit FDER Bureau of Waste Cleanup—March 29, 1988
Draft Permit to EPA Headquarters—June 8, 1988
Draft to State for Certification—August 11, 1988
Draft Permit to Public Notice—August 25, 1988
Proposed Issuance Date—October 12, 1988

[FR Doc. 88–19302 Filed 8–24–88; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Technical and Allocations Subgroups of Radio Advisory Committee; Joint Meeting

The Technical and Allocations Subgroup of the Advisory Committee on Radio Broadcasting will hold a joint meeting at 1:30 p.m. on Thursday, September 8, 1988 in the McCollough Room at the Headquarters of the National Association of Broadcasters, 1771 N Street W., Washington, DC.

The agenda will be:

—Use of the expanded AM band (1605–1705 kHz) in the United States;
—Methods for improving the AM radio broadcast service;
—FM allocations, with reference to the use of FM directional antennas, Class A upgrades, creation of FM Class C3 stations, and FM translators;
—Other business.

Consideration will be given to the question of whether the subgroups will wish to make written submissions to the FCC, particularly with reference to improvement of the AM technical standards.

The Subgroups' meetings are continuing ones, and may be resumed after each session at times and places decided by the participants. Meetings of the Radio Advisory Committee and its Subgroups are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824–5660, or Louis Stephens, Chairman of the Allocations Subgroup, at (202) 254–3394.

H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88–19270 Filed 8–24–88; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Adrian Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 12, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Adrian Bancshares, Inc.*, Adrian, Missouri; to become a bank holding company by acquiring 80 percent of the voting shares of Adrian Bank, Adrian, Missouri.

2. *Bancorp II, Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens Bank of Pilot Grove, Pilot Grove, Missouri.

3. *First National of Nebraska, Inc.*, Omaha, Nebraska; to acquire 80 percent of the voting shares of First National Columbus Bancorp, Columbia, Nebraska, parent of First National Bank and Trust Company of Columbus, Columbus, Nebraska.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California; to acquire 100 percent of the voting shares of Jefferson State Bank, Medford, Oregon. Applicant proposes to engage in State authorized general insurance activities through the bank as a primary activity.

2. *Philippine National Bank*, Manila, Philippines; to become a bank holding company by acquiring 100 percent of the voting shares of Century Holding Corporation, San Francisco, California, and thereby indirectly acquire Century Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, August 19, 1988.

James McAfee,
Associate Secretary of the Board.

[FRDoc. 88–19233 Filed 8–24–88; 8:45 am]
BILLING CODE 6210–01–M

Comerica Inc.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to engage *de novo* through its subsidiary Comerica Investment Advisers, Inc., Detroit, Michigan, in acting as an investment adviser in providing to persons other than registered investment companies portfolio investment advice, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y

Board of Governors of the Federal Reserve System, August 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19234 Filed 8-24-88; 8:45 am]

BILLING CODE 6210-01-M

John Elson Kirkpatrick; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 16, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John Elson Kirkpatrick*, Oklahoma City, Oklahoma; to acquire an additional 14.8–19.0 percent of the voting shares of Banks of Mid-America, Inc., Oklahoma City, Oklahoma, parent of Liberty National Bank and Trust Company, Oklahoma City, Oklahoma, and First National Bank and Trust Company of Tulsa, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, August 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19235 Filed 8-24-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Eligibility To Use GSA Sources of Supply And Services

AGENCY: Federal Supply Service, GSA.

ACTION: Notice.

SUMMARY: This notice provides information on the eligibility to use GSA sources of supply and services. This action is necessary to provide guidance concerning eligibility requirements to eligible Government activities and cost-reimbursement contractors working for the Government.

FOR FURTHER INFORMATION CONTACT: Robert A. Renner, Regulations Management Branch (703-557-5480).

SUPPLEMENTARY INFORMATION: This notice contains text that was extracted from GSA Order ADM 4800.2B, dated May 13, 1988, Subject: Eligibility to use GSA sources of supply and services. The text reads as follows:

Subject: Eligibility to use GSA sources of supply and services

1. *Purpose.* This order provides definitions and listings of those agencies and other activities authorized to use GSA sources of supply and services.

2. *Background.* The Federal Property and Administrative Services Act of 1949, as amended, authorize the Administrator to procure and supply personal property and nonpersonal services for the use of executive agencies, mixed-ownership Government corporations, as identified in the Government Corporation Control Act, and the District of Columbia. Other organizations may be eligible by reason of enabling statutory authority.

3. *Definition.* GSA sources of supply and services are defined as those support programs administered by GSA and prescribed in the Federal Property Management Regulations (FPMR) Parts 101-26—Procurement Sources and Programs, 101-39—Interagency Fleet Management Systems, 101-40—Transportation and Traffic Management, 101-42—Property Rehabilitation Services and Facilities, 101-43 thru 101-46, 101-48 and 101-49, Utilization and Disposal Programs, and in the Federal Information Resources Management Regulations (FIRMR), 41 CFR ch. 201-32 for ADP and 41 CFR ch. 201-40 for Telecommunications.

4. *Authority to use GSA sources of supply and services.* The authority to use GSA sources of supply and services is established by statute (see par. 5).

5. *Eligible activities.* Organizations eligible to use GSA sources of supply and services are covered by the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereafter referred to as the Property Act. Definitions of the organizations follow. It is noted, however, that although an organization may be eligible to use these sources, it does not necessarily mean that it would always be practical for GSA to make such sources available.

a. *Executive agencies.* Sections 201(a) and 211(b) of the Property Act provide

for executive agencies' use of GSA sources of supply and services. Executive agencies, as defined in section 3(a) of the Property Act, include:

(1) *Executive departments.* These are the cabinet departments defined in 5 U.S.C. 101 and are listed in app. A.

(2) *Wholly owned Government corporations.* These are defined in 31 U.S.C. 9101 and are listed in App. A.

(3) *Independent establishments in the executive branch of the Government.* These are generally defined by 5 U.S.C. 104. However, it is often necessary to consult specific statutes, legislative histories, and other references to determine whether a particular establishment is within the executive branch. To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. A.

b. *Other Federal agencies, mixed-ownership Government corporations, and the District of Columbia.* Sections 201(b) and 211(b) of the Property Act authorize the Administrator of General Services to provide GSA sources of supply and services to these organizations upon request.

(1) *Other Federal agencies.* These Federal agencies are those defined in section 3(b) of the Property Act which are not in the executive branch; i.e., any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction). To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. B.

(2) *Mixed-ownership Government corporations.* These are included in sections 201(b) and 211(b) of the Property Act and defined in 31 U.S.C. 9101. They are listed in app. B.

(3) *District of Columbia.* The Government of the District of Columbia is eligible to use GSA sources of supply and services. The Government of the District of Columbia, and those parts thereof which have been determined by GSA to be eligible to use its sources of supply and services, are listed in app. B.

c. *The Senate, House of Representatives, and activities under the direction of the Architect of the Capitol.* These organizations are eligible to use GSA sources of supply and services, under section 602(e) of the Property Act, upon request. To the extent that GSA has determined that various activities qualify under this authority, they are listed in app. B.

d. *Other organizations authorized under the authority of the Property Act.* GSA has further determined, under the Property Act, that three other types of organizations are eligible to use its sources of supply and services.

(1) *Cost-reimbursement contractors (and subcontractors) as properly authorized.* Part 51 of the Federal Acquisition Regulation (FAR) provides that agencies may authorize certain contractors (generally cost-reimbursement contractors) to use GSA schedules, GSA stock, and GSA contract travel and transportation services. In each case, the written autorization must conform to the requirements of FAR Part 51, Use of Government Sources by Contractors. Subpart 51.2 prescribes policies and procedures governing Federal agencies in authorizing cost-reimbursement contractors to obtain interagency fleet management system vehicles and related services.

(2) *Fixed-price contractor (and subcontractors) purchasing security equipment.* Under section 201 of the Property Act, the Administrator has determined that fixed-price contractors and lower tier subcontractors who are required to maintain custody of security classified records and information may purchase security equipment for GSA. Procedures regarding these organizations are set forth in FPMR 101–26.507 and 101–26.407.

(3) *Non-Federal firefighting organizations cooperating with the Forest Service.* Under section 201 of the Property Act, it has been determined that certain non-Federal firefighting organizations may purchase wildfire suppression equipment and supplies from the Federal Supply Service (FSS) (Article V, Agreement No. FSS 83–1, January 24, 1984).

(4) *Department of the Interior, Bureau of Indian Affairs.* Under a Memorandum of Understanding between the Department of the Interior and the General Services Administration (FSS–83–1) and Pub. L. 93–638, tribal Government grantees of the Bureau of Indian Affairs may use GSA sources of supply and services.

e. *Other statutes.* Other statutes authorize specific organizations to use GSA sources of supply and services. These organizations are listed in app. B, with appropriate annotations. The major categories of such organizations include:

(1) *Certian charitable institutions.* Pursuant to Pub. L. 95–355, the following activities are eligible to use GSA supply sources and are also listed in app. B:

(a) Howard University;

(b) Gallaudet University;

(c) National Technical Institute for the Deaf; and

(d) American Printing House for the Blind.

(2) *Certain territories.* Certain territories of the United States, as indicated in app. B, are eligible to use GSA sources of supply and services.

(Note: This authority has historically depended on the authorizing provisions being reenacted in the annual Appropriations Act for the Department of the Interior.)

(3) *Foreign entities.* Section 607 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2357, provides that the President may authorize certain countries and organizations to use GSA sources of supply and services as part of the foreign policy of the United States. To the extent that the Department of State has made determinations on behalf of the President, they are included in app. C. Purchases made by international organizations through GSA sources of supply and services must be for civilian use only.

(4) *Nonappropriated fund activities.* FPMR 101–26.000 provides that military commissaries and nonappropriated fund activities may use GSA sources of supply and services for their own use, not for resale, unless otherwise authorized by the individual Federal agency and concurred in by GSA.

6. *Ineligible activities.* Except for the acquisition of excess personal property through sponsoring agencies, Federal grantees are ineligible to use GSA sources of supply and services. In addition, a cost-reimbursement contractor cannot transfer procurement authorization to a third party leasing company to use GSA sources of supply and services, unless the leasing company has an independent authorization to use GSA contracts.

7. *Excess, surplus, and forfeited property.* The eligibility of activities and organizations to obtain supplies and services from GSA's personal property utilization and disposal programs is governed by FPMR Parts 103–43 thru 101–46, 101–48, and 101–49.

8. *Determination of eligibility.* Activities or organizations other than those covered in the appendixes may be eligible to use GSA sourses of supply and services. Requests to use these services received from activities or organizations whose eligibility is in question must be forwarded to the office of Customer Service and Marketing, Attention: Marketing and Publications Division (FFP), for determination.

Appendix A—Executive Agencies

The following have been determined to be "executive agencies," or parts thereof, for the purpose of using GSA sources of supply and services. This list is not all-inclusive; other activities also may be eligible to use GSA on a case-by-case basis (see par. 8). Listed here

are major Federal activities and their subordinate entities about which inquiries have been received.

ACTION
Agency for International Development
Agriculture, Department of
Air Force, Department of
Alaska Natural Gas Transportation System
American Battle Monuments Commission
Army Corps of Engineers
Army, Department of
Board for International Broadcasting
Bonneville Power Administration (administrative and housekeeping items)
Bureau of Land Management
Central Intelligence Agency
Commerce, Department of
Commission on Civil Rights
Commission on Fine Arts
Commodity Credit Corporation
Commodity Futures Trading Commission
Consumer Products Safety Commission
Defense, Department of
Defense, Agencies and Joint Service Schools
Education, Department of
Energy, Department of
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of U.S.
Farm Credit Administration
Federal Communications Commission
Federal Savings and Loan Insurance Corporation
Federal Trade Commission
Forest Service, U.S.
General Services Administration
Government National Mortgage Association
Health and Human Services, Department of
Housing and Urban Development, Department of
Inter-American Foundation
Interior, Department of the
Interstate Commerce Commission
Justice, Department of
Kennedy Center
Labor, Department of
Legal Services Corporation (not its grantees)
Merit Systems Protection Board
National Aeronautics and Space Administration
National Credit Union Administration (not individual credit unions)
National Council on the Handicapped
National Endowment of the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation
National Transportation Safety Board
Navy, Department of the
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Peace Corps
Pennsylvania Avenue Development Corporation
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
St. Elizabeths Hospital
St. Lawrence Seaway Development Corporation
Securities and Exchange Commission
Selective Service System
Small Business Administration
Smithsonian Institution
State, Department of
Tennessee Valley Authority
Transportation, Department of
Treasury, Department of the
U.S. Arms Control and Disarmament Agency
U.S. Information Agency
U.S. International Development Agency
U.S. International Trade Commission
U.S. Postal Service
Veterans Administration

Appendix B—Other Eligible Users

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and C. An asterisk indicates that special limitations may apply (see subpar. 5e(2)). This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of those will be ruled upon by GSA on a case-by-case basis (see par. 8).

Administrative Conference of the U.S.
Administrative Office of the U.S. Courts
Advisory Commission on Intergovernmental Relations
Advisory Committee on Federal Pay
American Printing House for the Blind
American Samoa, Territorial and Local Governments of**
Architect of the Capitol
Architectural and Transportation Barriers Compliance Board
Central Bank for Cooperatives
Certain nonappropriated fund activities (generally, not for resale)
Coast Guard Auxiliary (through the U.S. Coast Guard)
Committee for Purchase from the Blind and Other Severely Handicapped
Contractors and Subcontractors—cost-reimbursement (as authorized by the applicable agency's contracting official)
Contractors and Subcontractors—fixed-price (security equipment only when so authorized by the applicable agency's contracting official)
Courts, Federal (not court reporters)
Delaware River Basin Commission
District of Columbia, Government of the
Federal Deposit Insurance Corporation
Federal Home Loan Banks
Federal Intermediate Credit Bank
Federal Land Banks
Federal Reserve Board of Governors
Firefighters, Non-Federal (as authorized by the Forest Service, U.S. Department of Agriculture
Gallaudet University
General Accounting Office
Government Printing Office
Guam, Territorial and Local Governments of**
Harry S. Truman Scholarship Foundation
House of Representatives, U.S.
Howard University (including hospital)
Institute of Museum Services***
Japan-United States Friendship Commission
Library of Congress
Marine Mammal Commission
National Buildings Museum
National Capital Planning Commission***
National Gallery of Art
National Guard Activities (only through U.S. Property and Fiscal Officers)
National Railroad Passenger Corporation (i.e., AMTRAK)
National Technical Institute for the Deaf
Navajo & Hopi Indian Relocation Commission
Northern Mariana Islands, Commonwealth of the Territorial and Local Governments*
Office of the Federal Inspector for the Alaska Natural Gas Transportation System
Prospective Payment Assessments Commission
Regional Banks for Cooperatives
Senate, U.S.
Susquehanna River Basin Commission
Trust Territory of the Pacific Islands, Government of****
U.S. Commission on Civil Rights
U.S. Railway Association
U.S. Representative, Office of Joint Economic Commission
CENPRO Project Saudi Arabia (when Saudi Government cannot supply)
U.S. Soldiers' and Airmen's Home
U.S. Synthetic Fuels Corporation
Virgin Islands, Territorial and Local Governments of (including Virgin Islands Port Authority)**
Washington Metropolitan Area Transit Authority
Water Resources Council

Appendix C—International Organizations

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and B. This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of those will be ruled upon by GSA on a case-by-case basis (see par. 8).

African Development Fund
Asian Development Bank
Caribbean Organization
Customs Cooperation Council
European Space Research Organization
Food and Agriculture Organization of the United Nations
Great Lakes Fishery Commission
Inter-American Defense Board
Inter-American Development Bank
Inter-American Institute of Agriculture Sciences
Inter-American Investment Cooperation
Inter-American Statistical Institute
Inter-American Tropical Tuna Commission
Intergovernmental Maritime Consultive Organization
Intergovernmental Committee for European Migration
International Atomic Energy Agency
International Bank of Reconstruction and Development (World Bank)

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*Pursuant to the Department of the Interior appropriation act of 1987 (Pub. L. 99-591).

**Financial Service—accounting and payroll only.

***Financial Service—payroll only.

****Palau only.

International Boundary Commission-United States and Canada
International Boundary and Water Commission-United States and Mexico
International Center for Settlement of Investment Disputes
International Civil Aviation Organization
International Coffee Organization
International Cotton Advisory Committee
International Development Association
International Fertilizer Development Center
International Finance Corporation
International Hydrographic Bureau
International Institute for Cotton (formerly International Cotton Institute)
International Joint Commission-United States and Canada
International Labor Organization
International Maritime Satellite Organization
International Monetary Fund
International Pacific Halibut Commission
International Pacific Salmon Fisheries Commission-Canada
International Secretariat for Volunteer Services
International Telecommunications Satellite Organization
International Telecommunication Union
International Wheat Council
Lake Ontario Claims Tribunal
Multinational Force and Observers
Organization of African Unity
Organization of American States
Organization for Economic Cooperation and Development
Pan American Health Organization
Radio Technical Commission for Aeronautics
South Pacific Commission
United International Bureau for the Protection of Intellectual Property
United Nations
United Nations Educational, Scientific, and Cultural Organization
Universal Postal Union
World Health Organization
World Intellectual Property Organization
World Meteorological Organization
World Tourism Organization

Dated: August 12, 1988.

William B. Foote,

Assistant Commissioner for Customer Service and Marketing.

[FR Doc. 88-19242 Filed 8-24-88; 8:45 am]
BILLING CODE 8320-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Association of Occupational and Environmental Clinics Managing and Preventing Diseases Related to Hazardous Substances

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds in Fiscal Year 1988 for a cooperative agreement with the Association of Occupational and Environmental Clinics (AOEC) to improve the development and preparation of primary care physicians, medical school residents, and other public health students and practitioners concerning medical surveillance, screening and methods of diagnosing, treating and preventing injury or disease related to the exposure to hazardous substances. No other applications are solicited or will be accepted.

Authority: This cooperative agreement is authorized by sections 104(i)(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). Also, it is authorized by section 301(a) of the Public Health Service Act.

The Catalog of Federal Domestic Assistance is 13.283.

Background

As part of its overall mission, the Agency for Toxic Substances and Disease Registry (ATSDR) is responsible for providing national leadership to increase the knowledge and skill level of health care providers and students by developing their capacity to achieve improved public health related to exposures to hazardous substances. In carrying out that responsibility, ATSDR works, according to its legislative mandate, collaboratively with medical colleges and States—especially academic medical center clinics with expertise in environmental health to develop, implement and utilize educational materials and improved programs for diagnosing, treating and preventing injury or disease related to exposure to hazardous substances.

Reasons for Proposing Association of Occupational and Environmental Clinics as the Recipient of This Cooperative Agreement

The Association of Occupational and Environmental Clinics is a unique network of primary care health clinics, associated with academic medical centers, that have shown a unique ability to address health care issues associated with hazardous substances. Internally, these clinics emphasize teaching and research based on medical surveillance, screening, biostatistics, and occupational and environmental health. Externally these clinics feature an active public health focus within their communities. They educate medical students, public health personnel, primary care practitioners and State officials to perform educational and administrative services and academically based clinical care, and they promote and maintain the health of the communities in which they are located. In addition, the AOEC provides learning experiences open to all medical and allied health students so as to increase their basic skill and knowledge levels concerning principles of environmental health as related to hazardous substances. Member clinics encourage strong relationships with primary care disciplines throughout their program.

Purpose and Cooperative Activities

Purpose

The overall goal of this cooperative agreement is to enhance the education and practice of health care providers and medical and public health students in the areas of surveillance, diagnosing, treating and preventing injury or illness associated with exposure to hazardous substances.

Specific objectives of the agreement areas follow:

1. Enhance training of health care providers within an established clinical setting in matters of health effects caused by hazardous substances.

2. Enhance knowledge and skills in health care providers concerning exposure and disease registries so that they may better serve their local communities in providing this service and encouraging its utilization.

3. Assist the AOEC in providing leadership and direction to its membership in encouraging environmentally related primary care activities, and community outreach by health care providers concerning issues associated with exposure to hazardous substances.

4. Expand the clinical curriculum and variety of field experiences for health care providers at the community and State level.

5. Enhance the linkage of local health clinics with traditional problem solving institutions within local communities concerned about the health effects of exposures to hazard substances.

6. Enlarge medical and scientific knowledge concerning the effects of hazardous substances on human health.

Cooperative Activities

To achieve the above objectives, the following activities will be performed during a 3-year period:

21. AOEC Activities

a. Build consensus among network members regarding knowledge and skill concerning hazardous substances, as needed by health care providers and students serving their local communities.

b. Enhance the validity of educational materials developed for local health care providers and students by evaluating and testing select materials.

c. Make available to academic medical centers associated with the clinics, knowledge and skills acquired for diagnosing, treating and preventing disease or injury associated with exposure to hazardous substances.

d. Identify promising new educational activities and instructional methods to educate health care providers serving within these communities.

e. Identify promising new methods to communicate risks to communities and States concerned about exposures to hazardous substances.

f. Improve the training of medical students to take an "environmental history" as an integral part of their patient work-up.

g. Develop and make available to all clinical staff, faculty and students techniques for immediate access of information needed to manage emergency exposure to hazardous substances.

h. Serve as a focal point for assisting local community environmental health informational requirements and technical assistance needs related to the development and maintenance of Exposure and Disease Registries.

2. ATSDR Activities

a. Collaborate with AOEC in building consensus among the medical community regarding essential skills and knowledge in medical surveillance, screening, treating and preventing injury or disease related to exposure to hazardous substances.

b. Collaborate with the AOEC in assessing the best and most appropriate mechanisms to enhance skills and knowledge of health practitioners located in communities concerned about exposures to hazardous substances.

c. Collaborate with the AOEC in identifying new educational and instructional activities and methods to provide necessary skills and knowledge to students of medicine and public health.

d. Provide technical assistance and current information to the AOEC on specific hazardous substances (chemicals).

e. Participate with the AOEC in identifying new approaches to risk communication for local communities concerned about exposures to hazardous substances.

f. Provide technical assistance and information concerning knowledge and skills associated with health assessments and disease registries so AOEC members can better serve the informational needs of their communities.

g. Participate with the AOEC in validating and improving their individual exposure and disease registries so that these data may serve as guidance to the development of educational materials for health practitioners and students of medicine and public health directly applicable to local community needs.

h. Participate in workshops, conferences and seminars to exchange current information, opinions and findings concerning diagnosing, treating and preventing inquiry and disease associated with exposure to hazardous substances.

Review and Evaluation Criteria

The application will be reviewed in accordance with PHS Grants Administration Manual Part 134, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the merit of the application. The application should include the following:

A. Briefly state the applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement.

B. Document the ability to provide the staff, knowledge, financial and other resources required to perform the applicant's responsibilities in this project, and describe the approach to be used in carrying out those responsibilities.

C. Describe clearly the objectives of the project, the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant, ATSDR and any other entities for carrying out those steps.

D. Provide a proposed schedule for accomplishing each of the activities to be carried out in this project, and a method for evaluating the accomplishments.

E. Describe the names, qualifications, and time allocations of the professional staff to be assigned to this project; the support staff available for performance of this project; and the facilities, space, and equipment available for performance of this project.

F. Specify a proposed plan for administering this project, and the name, qualifications, and time allocations of the individual whom the applicant proposes to make responsible for its administration.

G. Provide a detailed budget which indicates (1) anticipated costs for personnel, travel, communications and postage, equipment, and supplies and (2) the sources of funds to meet those needs.

Reporting Requirements

Annual progress and financial status reports are required no later than 90 days after the end of each budget period. Final reports shall be prepared and submitted in accordance with the requirements of 45 CFR Part 74, Subparts I and J, respectively.

Availability of Funds

Approximately $75,000 will be available in Fiscal Year 1988 to fund this cooperative agreement. It is expected that the cooperative agreement will begin on or about September 15, 1988 and depending upon fund availability, will be funded for a 12-month budget period within a 3-year project period. The estimated future years funding is $150,000 for year 2 and $150,000 for year 3.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information

Information regarding the business aspects of this project may be obtained from Terry Maricle, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E14, Atlanta, Georgia 30305 or by calling (404) 842-6575 or FTS 236-6575.

Information regarding the technical aspects of this project may be obtained from Peter Sherman or Max Lum, Ed.D., ATSDR, OEA, (404) 488-4630 or FTS 236-4630.

Dated: August 18, 1988.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 88-19224 Filed 8-24-88; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Surveillance and Intervention Program for Cervical Cancer; Program Announcement and Availability of Funds for Fiscal Year 1988

Introduction

The Centers or Disease Control (CDC), announces that competitive cooperative agreement applications are being accepted to participate in a project known as Surveillance and Intervention Program for Cervical Cancer.

Authority: This program is authorized under section 317 of the Public Health Service Act.

The Catalog of Federal Domestic Assistance number is 13.283.

Purpose and Objectives

Purpose

To reduce cervical cancer mortality by improving followup care for women with abnormal Pap smear results.

Objectives

A. To expand existing systems or develop and maintain new systems for cervical cancer surveillance that include diagnoses of cancer in situ and invasive cervical cancer. Ideally these systems should be population-based.

B. To develop a surveillance system for Pap smear results which estimates the proportion of Pap smears from women in the proposed surveillance area that are read in out-of-state laboratories, and the number of pap smears from residents of the same surveillance area that are read in in-state laboratories.

C. To develop a mechanism to obtain information on followup care received by women with Class III or higher Pap smear results. This information should become a part of the surveillance system for Pap smears.

D. To develop a mechanism to link the screening and followup surveillance system with the cancer surveillance system.

E. To identify barriers to adequate followup care for women with abnormal Pap smears, at the level of the individual patient and the health care delivery system, and to design intentions to reduce or eliminate these barriers.

Eligible Applicants

Eligible applicants are the official health departments of any city, county or State, including the District of Columbia, the Commonwealth of Puerto Rico, and any Territory or possession of the United States with a population of at least 1 million people.

Cooperative Activities

A. Recipient Activities

1. Design and develop a project plan to be made a part of this agreement for the conduct of a cervical cancer surveillance system based on data from laboratories, health care providers, hospital discharges, death certificates, Medicaid records, Health Care Maintenance Organizations (HMO's), cancer registries, and/or other appropriate sources. The project plan will cover all aspects of this project including the implementation schedule, the selection of geographic areas to be included, training of staff, instrument development, and data collection and analysis.

2. a. Develop, establish, and maintain a surveillance system for Pap smear results with a unique identifier for every woman, utilizing data from laboratories, health care providers, Medicaid records, HMO's, and/or other appropriate sources.

This system should be able to monitor the overall number of Pap smears done and to collect specific information on women with abnormal tests.

b. Develop a system to obtain information on followup care obtained by women with Class III or higher Pap smear readings. This followup system should be a component of the surveillance system for abnormal Pap smears.

3. Develop a mechanism to link the screening and followup surveillance system with the cancer surveillance system. The cancer surveillance system should cover at least the population that is served by the screening and followup surveillance system.

4. Identify the women who receive inadequate followup care, develop appropriate survey instruments, and conduct investigations to determine the causes of inappropriate followup care.

5. Design interventions to reduce or eliminate identified barriers.

To the extent recipient engages in information collection through questionnaires, survey forms, or any related means, there will be no review of such forms or the information collection design by CDC or any other federal agency. However, recipient may request technical consultation from CDC.

B. Centers for Disease Control (CDC) Activities

1. Provide technical assistance in the development and linkage of the cervial cancer and Pap smear surveillance systems which is intended to enhance the recipients capacity in both areas.

2. Provide technical assistance in the development of interventions to address barriers to followup care.

Availability of Funds

It is expected that approximately $100,000 will be available in Fiscal Year 1988 to fund one award. The award will be funded with a 12-month budget period, and it is planned that at least $100,000 w.ll be available each year. The project period is expected to be three years, with Year 1 devoted to developing the surveillance system that will help identify potential problems in followup care. Years 2 and 3 will be devoted to designing and conducting the interventions and evaluating their effectiveness. The funding estimate outlined above is subject to change.

Reporting Requirements

The recipient of this assistance award will submit at least annual progress reports providing details of accomplishments toward the development of the registries and the programmatic component.

Financial status reports must be filed no later than 90 days after the end of each budget period. Final financial status and progress reports are required no later than 90 days after the end of each project period.

Review Criteria

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

A. The adequacy and completeness of the project plan, methodology and proposed specific time schedule for accomplishing the objectives and activities.

B. Qualifications and time allocation of the applicant's technical and administrative staff and the type and quality of facilities and equipment for the project.

C. The extent to which the objectives of the applications fit the objective for which applications were invited. More specifically, the selection of the award site will be based on the expected number of women at high-risk for cervical cancer in the geographic area or system proposed for this project. Preferably, women served through public and private sector should be included, but given a large enough at-risk population, proposals that deal with women served through either the public or private sector alone also will be considered.

D. The extent to which potential barriers are identified and interventions exist to address these barriers.

E. The extent to which the systems developed within this project could be reproduced and applied by other State and local health departments.

Application Submission

The original and two copies of the application (PHS 5161–1 revised 3/86) should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 225 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before September 8, 1988.

A. Deadlines

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Application

Applications which do not meet the criteria in either paragraph 1 or 2 immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

Other Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from: Terry Maricle, Grants Management specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from the Division of Chronic Disease Control: Lambertina W. J. Freni, M.D., M.S.P.H., Medical Epidemiologist, ESB, Division of Chronic Disease Control, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia 30333, (404) 448–4380 or FTS 236–4380.

Dated: August 19, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–19225 Filed 8–24–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88M–0278]

Boehringer Mannheim Diagnostics Division; Premarket Approval of Enzymun-Test AFP Immunoenzymetric Assay To Aid in the Management of Testicular Cancer

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Boehringer Mannheim Diagnostics Division, Indianapolis, IN, for premarket approval, under the Medical Device Amendments of 1976, of the Enzymun-Test AFP Immunoenzymetric Assay to aid in the management of testicular cancer. After reviewing the recommendation of the Immunology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 13, 1988, of the approval of the application.

DATE: Petitions for administrative review by September 26, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: S. K. Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: On September 11, 1986, Boehringer Mannheim Diagnostics Division, Indianapolis, IN 46250–0100, submitted to CDRH an application for premarket approval of the Enzymun-Test AFP Immunoenzymetric Assay to aid in the management of testicular cancer. The device is an enzyme immunoassay (immunoenzymetric assay) indicated for the quantitative serial measurement of alpha-fetoprotein (AFP) in human serum to aid in the management of cancer patients with nonseminomatous testicular cancer. Enzymun-Test AFP is for use on Boehringer Mannheim Diagnostics' automated immunoassay systems: Enzymun-Test System ES–22 and ES–600 Immunoassay System.

On January 29, 1987, the Immunology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 13, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact S. K. Vadlamudi (HFZ–440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petiton for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 26, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitioners may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

BEST COPY AVAILABLE

Dated: August 17, 1988.

Linda A. Suydam,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 88-19334 Filed 8-24-88; 8:45 am]

BILLING CODE 4160-01-M

Indian Health Service; Public Health Service

Geographic Composition of the Health Service Delivery Areas (HSDA) Established by Regulations of the Indian Health Service

AGENCY: Indian Health Service.

ACTION: Notice.

SUMMARY: On September 16, 1987, a final rule establishing new eligibility criteria for Indian Health Service (IHS) programs was published in the **Federal Register**. In the fiscal year 1988 Appropriations Act (section 315, Pub. L. 100-202), the Congress delayed implementation of the regulations from March 16, 1988, to September 16, 1988. Congressional delay to further study the impact of the regulation is possible. This list will help define the parameters of such a study. This designation of HSDA is not effective until September 16, 1988, or such later date as may be established by the Congress.

The new regulation at 42 CFR 36.15(a) provides that:

> (a) The Indian Health Service will designate and publish as a notice in the **Federal Register** specific geographic areas within the United States including Federal Indian reservations and areas surrounding those reservations as Health Service Delivery Areas.[1]

The former contract health service regulation at 42 CFR 36.22(a)(6) provided that:

> With respect to all other reservations [i.e., other than those not specifically listed in 42 CFR 36.22] within the funded scope of the Indian health program, the contract health service delivery area shall consist of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation.

The last update of CHSDA was published in the **Federal Register** on January 10, 1984, and presented the reservations within the funded scope of the IHS program and the State and/or counties which comprised the individual reservation's CHSDA, as well as some CHSDA established by Congress irrespective of the contract health service regulations.

[1] This text is provided for the convenience of the reader.

The preamble to the new rule explains that:

> This rule initially includes as HSDA's all current Contract Health Service Delivery Areas (CHSDA) and non-CHSDA service areas.

Thus, the new regulations grandfathers in as HSDA's all CHSDA and historical non-CHSDA geographical service population areas.

The HSDA's are the geographic areas within which direct and contract health services may be made available by the IHS to *eligible individuals* who reside within the area, subject to the provisions of the regulation. These are to be distinguished from Service Unit boundaries which are established for purposes of planning, administering, and evaluating the Indian Health program. This list presents reservations within the funded scope of the IHS program, and includes exceptions to the rule specifically provided for by the previous contract health service regulation at 42 CFR 36.229(a), several exceptions covering areas which have been traditionally served by IHS and are within the funded scope, exceptions provided by legislation, and includes newly recognized tribes. Listed for each reservation are the counties comprising the HSDA. For convenience, the HSDA counties are also listed by State.

It should be clearly understood that residence within a HSDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 36.12, creates no legal entitlement to particular direct or contract health services. Services needed but not available at an IHS facility are provided under the Contract Health Services program dependent upon the availability of funds, the person's relative medical priority, and the actual availability and accessibility of alternate resources in accordance with the regulations.

Any mistakes in the list of HSDA's should be brought to the attention of: Mr. Richard J. McCloskey, Indian Health Service, Room 6A-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Any corrections of mistaken inclusions or exclusions of a county or counties in a HSDA may be made administratively and included in a later **Federal Register** notice. Also, as explained in the September 16, 1987, notice, redesignations of areas included or excluded from a HSDA for reasons other than a mistake in applying the regulations is governed by the procedures in 42 CFR 316.159(b) and may only be made by the Director, Indian Health Service. This procedure will become available only after the regulation itself become effective.

The HSDA counties for all reservations and service areas within the funded scope of the IHS program are as follows:

HEALTH SERVICE DELIVERY AREAS

Reservation	HSDA (County/State)
Acoma Pueblo	Cibola, NM
Agua Caliente Indian Reservation.	Riverside, CA
Ak Chin	Pinal, AZ
Alabama and Coushatta Tribe of Texas.	Polk, TX [1]
Alaska	[2]
Alturas Indian Rancheria	Modoc, CA
Augustine Reservation	Riverside, CA
Bad River	Ashland, WI
	Iron, WI
Barona Reservation	San Diego, CA
Bay Mills	Chippewa, MI
Benton Paiute Reservation	Mono, CA
Berry Creek Rancheria	Butte, CA
Big Bend Rancheria	Shasta, CA
Big Lagon Rancheria	Humboldt, CA
Big Pine Reservation	Inyo, CA
Big Sandy Rancheria	Fresno, CA
Big Valley Rancheria	Lake, CA [3]
Bishop Colony	Inyo, CA
Blackfeet	Glacier, MT
	Pondera, MT
Blue Lake Rancheria	Humboldt, CA [3]
Bridgeport Indian Colony	Mono, CA
Brigham City Intermountain School Health Center.	[4]
Buena Vista Rancheria	Amador, CA [3]
Burns Paiute	Harney, OR
Cabazon Reservation	Riverside, CA
Cahuilla Reservation	Riverside, CA
Campe Verde	Yavapai, AZ
Campo Indian Reservation	San Diego, CA
Capitan Grande Reservation	San Diego, CA
Cedarville Rancheria	Modoc, CA
Chehalis	Grays Harbor, WA
	Thurston, WA
Chemehuevi Reservation	San Bernardino, CA
	Mohave, AZ
Cheyenne River	Corson, SD
	Dewey, SD
	Haakon, SD
	Meade, SD
	Perkins, SD
	Potter, SD
	Stanley, SD
	Sully, SD
	Walworth, SD
	Ziebach, SD
Chicken Ranch Rancheria	Tuolumne, CA [3]
Chitimacha	St. Mary Parish, LA
Choctaw	Attala, MS
	Jasper, MS [5]
	Jones, MS
	Kemper, MS
	Leake, MS
	Neshoba, MS
	Newton, MS
	Noxubee, MS [5]
	Scott, MS [5]
	Winston, MS [5]
Cloverdale Rancheria	Sonoma, CA [3]
Cochiti Pueblo	Sandoval, NM
Cocopah	Yuma, AZ
Coeur d'Alene	Benewah, ID
	Kootenai, ID
	Latah, ID
	Spokane, WA
	Whitman, WA
Cold Springs Rancheria	Fresno, CA

HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	HSDA (County/State)
Colville	Chelan, WA [7]
	Douglas, WA
	Ferry, WA
	Grant, WA
	Lincoln, WA
	Okanogan, WA
	Stevens, WA
Colorado River	La Paz, AZ
	Riverside, CA
	San Bernardino, CA
	Yuma, AZ
Colusa Rancheria	Colusa, CA
Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon.	Coos, OR [8]
	Curry, OR [8]
	Douglas, OR [8]
	Lane, OR [8]
	Lincoln, OR [8]
Cortina Indian Rancheria	Colusa, CA
Coushatta	Allen Parish, LA
Cow Creek Band of Umpqua	Douglas, OR [9]
	Jackson, OR [9]
	Josephine, OR [9]
Coyote Valley Rancheria	Mendocino, CA
CRIHB Projects in California (additional counties not included in other HSDA).	Kings, CA [10]
	Madera, CA [10]
	Mariposa, CA [10]
	Nevada, CA [10]
	Placer, CA [10]
	Plumas, CA [10]
	Sierra, CA [10]
	Siskiyou, CA [10]
	Sutter, CA [10]
	Tehama, CA [10]
	Trinity, CA [10]
	Yuba, CA [10]
Crow	Big Horn, MT
	Carbon, MT
	Treasure, MT [10a]
	Yellowstone, MT
	Big Horn, WY
	Sheridan, WY
Crow Creek	Brule, SD
	Buffalo, SD
	Hand, SD
	Hughes, SD
	Hyde, SD
	Lyman, SD
	Stanley, SD
Cuyapiape Reservation	San Diego, CA
Death Valley Timbi-Sha Shoshone Band of California.	Inyo, CA
Dry Creek Rancheria	Sonoma, CA
Duck Valley	Nevada (see Nevada below)
	Owyhee, ID
Eastern Band of Cherokees	Cherokee, NC
	Graham, NC
	Haywood, NC
	Jackson, NC
	Swain, NC
Elk Valley Rancheria	Del Norte, CA [8]
Enterprise Rancheria	Butte, CA
Flandreau	Moody, SD
Flathead	Flathead, MT
	Lake, MT
	Missoula, MT
	Sanders, MT
Fond Du Lac	Carlton, MN
	St. Louis, MN
Fort Apache	Apache, AZ
	Coconino, AZ
	Gila, AZ
	Graham, AZ
	Greenlee, AZ
	Navajo, AZ
Fort Belknap	Blaine, MT

HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	HSDA (County/State)
	Phillips, MT
Fort Berthold	Dunn, ND
	Mercer, ND
	McKenzie, ND
	McLean, ND
	Mountrail, ND
	Ward, ND
Fort Bidwell Reservation	Modoc, CA
Fort Hall	Bannock, ID
	Bingham, ID
	Caribou, ID
	Lemhi, ID [11]
	Power, ID
Fort Independence Reservation	Inyo, CA
Fort McDermitt	Nevada (see Nevada below)
	Malheur, OR
Fort McDowell	Maricopa, AZ
Fort Mohave	Nevada (see Nevada below)
	Mohave, AZ
	San Bernardino, CA
Fort Peck	Daniels, MT
	McCone, MT
	Richland, MT
	Roosevelt, MT
	Sheridan, MT
	Valley, MT
Fort Totten (Devil's Lake Sioux Reservation).	Benson, ND
	Eddy, ND
	Nelson, ND
	Ramsey, ND
Fort Yuma (Quechan)	Imperial, CA
	Yuma, AZ
Gila River	Maricopa, AZ
	Pinal, AZ
Goshute	Nevada (see Nevada below)
	Juab, UT
	Tooele, UT
Grand Portage	Cook, MN
Grand Ronde	Polk, OR [12]
	Washington, OR [12]
	Marion, OR [12]
	Yamhill, OR [12]
	Tillamook, OR [12]
	Multnomah, OR [12]
Grand Traverse Band of Ottawa and Chippewa.	Antrim, MI [13]
	Benzie, MI [13]
	Grand Traverse, MI [13]
	Leelanau, MI
	Manisee, MI [13]
Greenville Rancheria	Plumas, CA [8]
Grindstone Indian Rancheria	Glenn, CA
Hannahville	Delta, MI
	Menominee, MI
Haskell Indian Health Center	[4]
Havasupai	Coconino, AZ
Hoh	Jefferson, WA
Hoopa Valley Reservation	Humboldt, CA
Hopi	Apache, AZ
	Coconino, AZ
	Navajo, AZ
Hopland Rancheria	Mendocino, CA
Houlton Band of Maliseet	Aroostook, ME [14]
Hualapai	Coconino, AZ
	Mohave, AZ
	Yavapai, AZ
Inaja and Cosmit Reservation	San Diego, CA
Iowa	Brown, KS
	Doniphan, KS
	Richardson, NE
Isabella	Arenac, MI [15]

HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	HSDA (County/State)
	Clare, MI
	Isabella, MI
	Midland, MI
	Missaukee, MI [15]
Isleta Pueblo	Bernalillo, NM
	Cibola, NM
	Torrance, NM
	Valencia, NM
Jackson Rancheria	Amador, CA
Jamestown Band of Clallam	Clallam, WA
Jamul Indian Village	San Diego, CA
Jemez Pueblo	Sandoval, NM
Jicarilla Apache	Archuleta, CO
	Rio Arriba, NM
	Sandoval, NM
Kaibab	Coconino, AZ
	Mohave, AZ
	Kane, UT
Kalispel	Pend Oreille, WA
Kansas Service Unit	Douglas, KS [16]
Karok Tribe of California	Humboldt, CA
	Siskiyou, CA
Katakitegoning (Watersmeet) or Lac Vieux Desert Band.	Gogebic, MI
Keweenaw Bay	Baraga, MI
	Houghton, MI
	Ontonagon, MI
Kickapoo	Brown, KS
	Doniphan, KS
Klamath Indian Tribe of Oregon	Klamath, OR [17]
Kootenai	Boundary, ID
Lac Courte Oreilles	Sawyer, WI
Lac du Flambeau	Iron, WI
	Oneida, WI
	Vilas, WI
La Jolla Reservation	San Diego, CA
Laguna Pueblo	Bernalillo, NM
	Cibola, NM
	Sandoval, NM
	Valencia, NM
La Posta Indian Reservation	San Diego, CA
Laytonville Rancheria	Mendocino, CA
Leech Lake	Beltrami, MN
	Cass, MN
	Hubbard, MN
	Itasca, MN
Lone Pine Reservation	Inyo, CA
Lookout Rancheria	Modoc, CA
Los Coyotes Reservation	San Diego, CA
Lower Brule	Brule, SD
	Buffalo, SD
	Hughes, SD
	Lyman, SD
	Stanley, SD
Lower Elwha	Clallam, WA
Lower Sioux	Redwood, MN
	Renville, MN
Lummi	Whatcom, WA
Makah	Clallam, WA
Manchester—Pt. Arena Rancheria.	Mendocino, CA
Manzanita Reservation	San Diego, CA
Mashantucket Pequot	New London, CT [18]
Menominee	Langlade, WI
	Menominee, WI
	Oconto, WI
	Shawano, WI
Mesa Grande Reservation	San Diego, CA
Mescalero	Chaves, NM
	Lincoln, NM
	Otero, NM
Middletown Rancheria	Lake, CA
Mille Lacs	Aitkin, MN
	Kanebec, MN
	Mille Lacs, MI
	Pine, MN

HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	HSDA (County/State)
Mole Lake	Forest, WI
Montgomery Creek Rancheria	Shasta, CA
Mooretown Rancheria	Butte, CA [3]
Morongo Reservation	Riverside, CA
Muckleshoot	King, WA
	Pierce, WA
Nambe Pueblo	Santa Fe, NM
Narragansett	Washington, RI [20]
Navajo (including Alamo Navajo, Cononcito Navajo and Ramah Navajo).	Apache, AZ
	Bernalillo, NM
	Cibola, NM
	Coconino, AZ
	Kane, UT
	McKinley, NM
	Montezuma, CO
	Navajo, AZ
	Sandoval, NM
	San Juan, NM
	San Juan, UT
	Socorro, NM
	Valencia, NM
Nett Lake	Itasca, MN
	Koochiching, MN
	St. Louis, MN
Nevada	[21]
Nez Perce	Clearwater, ID
	Idaho, ID
	Latah, ID
	Lewis, ID
	Nez Perce, ID
Nisqually	Pierce, WA
	Thurston, WA
Nooksack	Whatcom, WA
North Fork Rancheria	Madera, CA [3]
Northwestern Band of Shoshone Indians of Utah (Washakie).	Box Elder, UT [22]
Northern Cheyenne	Big Horn, MT
	Carter, MT [24]
	Rosebud, MT
Oklahoma	[25]
Omaha	Burt, NE
	Cuming, NE
	Monona, IA
	Thurston, NE
	Wayne, NE
Onandaga Nation of New York	Onandaga, NY
Oneida Nation of New York	Oneida, NY
Oneida Tribe of Indians of Wisconsin.	Brown, WI
	Outagamie, WI
Paiute Indian Tribe of Utah	Iron, UT [26]
	Millard, UT [26]
	Sevier, UT [26]
	Washington, UT [26]
Pala Reservation	San Diego, CA
Papago	Maricopa, AZ
	Pima, AZ
	Pinal, AZ
Pasqua-Yaqui	Pima, AZ [27]
Passamaquoddy	Aroostook, ME [28]
	Washington, ME
Pauma and Yuima Reservation	San Diego, CA
Payson Community (Tonto Apache).	Gila, AZ
Pechanga Reservation	Riverside, CA
	San Diego, CA
Penobscot	Aroostook, ME [28]
	Penobscot, ME
Picayune Rancheria	Madera, CA [3]
Picuris Pueblo	Taos, NM
Pine Ridge	Bennett, SD
	Cherry, NE
	Custer, SD
	Dawes, NE
	Fall River, SD
	Jackson, SD
	Mellette, SD
	Pennington, SD
	Shannon, SD
	Sheridan, NE
	Todd, SD
	Washabaugh, SD
Pinoleville Rancheria	Mendocino, CA [3]
Pit River Indian Tribe of the X-L Ranch Reservation.	Modoc, CA
Poarch Creek Band of Creek Indians of Alabama.	Baldwin, AL [29]
	Escambia, AL [29]
	Elmore, AL [29]
	Mobile, AL [29]
	Monroe, AL [29]
	Escambia, FL [29]
Pojoaque Pueblo	Rio Arriba, NM
	Santa Fe, NM
Port Gamble	Kitsap, WA
Port Madison	Kitsap, WA
Potowatomi	Forest, WI
	Marinette, WI
	Oconto, WI
Potawatomi	Jackson, KS
Potter Valley Rancheria	Mendocino, CA [3]
Prairie Island	Goodhue, MN
	Pierce, WI [19]
Prior Lake	Scott, MN
Puyallup	King, WA
	Pierce, WA
Quartz Valley Rancheria	Siskiyou, CA [3]
Quileute	Clallam, WA
	Jefferson, WA
Quinault	Grays Harbor, WA
	Jefferson, WA
Ramona Reservation	Riverside, CA
Rapid City	[4]
Red Cliff	Bayfield, WI
Red Lake	Beltrami, MN
	Clearwater, MN
	Koochiching, MN
	Lake of the Woods, MN
	Marshall, MN
	Pennington, MN
	Polk, MN
	Roseau, MN
Redding Rancheria	Shasta, CA [3]
Redwood Valley Rancheria	Mendocino, CA [3]
Resighini Rancheria	Del Norte, CA
Rincon Reservation	San Diego, CA
Roaring Creek Rancheria	Shasta, CA
Robinson Rancheria	Lake, CA
Rocky Boy's	Chouteau, MT
	Hill, MT
	Liberty, MT [30]
Rohnerville Rancheria	Humboldt, CA [3]
Rosebud	Bennett, SD
	Cherry, NE
	Mellette, SD
	Todd, SD
	Tripp, SD
Round Valley Reservation	Mendocino, CA
Rumsey Indian Rancheria	Yolo, CA
Sac and Fox (Iowa)	Tama, IA
Sac and Fox (Missouri)	Brown, KS
Salt River	Maricopa, AZ
Sandia Pueblo	Bernalillo, NM
	Sandoval, NM
San Carlos	Apache, AZ
	Cochise, AZ
	Gila, AZ
	Graham, AZ
	Greenlee, AZ
	Pinal, AZ
San Felipe Pueblo	Sandoval, NM
San Ildefonso	Los Alamos, NM
	Rio Arriba, NM
	Sandoval, NM
	Santa Fe, NM
San Juan Pueblo	Rio Arriba, NM
San Juan Southern Paiute Tribe	[Located on Navajo Reservation]
San Manual Reservation	San Bernardino, CA
San Pasqual Reservation	San Diego, CA
San Ana Pueblo	Sandoval, NM
Santa Clara Pueblo	Los Alamos, NM
	Rio Arriba, NM
	Sandoval, NM
	Santa Fe, NM
Santa Rosa Rancheria	Kings, CA
Santa Rosa Reservation	Riverside, CA
Santa Ynez Reservation	Santa Barbara, CA
Santa Ysabel Reservation	San Diego, CA
Santee	Bon Homme, SD
	Knox, NE
Santo Domingo Pueblo	Sandoval, NM
	Santa Fe, NM
Sauk-Suiattle	Snohomish, WA
Sault Ste. Marie Tribe of Chippewa.	Alger, MI [31]
	Chippewa, MI [31]
	Delta, MI [31]
	Luce, MI [31]
	Mackinac, MI [31]
	Marquette, MI [31]
	Schoolcraft, MI [31]
Sells Service Unit	Santa Cruz, AZ [32]
Seneca	Allegany, NY
	Cattaraugus, NY
	Chautaugua, NY
	Erie, NY
	Warren, PA
Sheep Ranch Rancheria	Calaveras, CA
Sherwood Valley Rancheria	Mendocino, CA
Shingle Springs Rancheria (Veronica Tract).	El Dorado, CA
Shoal Water	Pacific, WA
Siletz	Benton, OR [33]
	Lane, OR [33]
	Lincoln, OR [33]
	Linn, OR [33]
	Marion, OR [33]
	Polk, OR [33]
	Tillamook, OR [33]
	Yam Hill, OR [33]
Sisseton	Codington, SD
	Day, SD
	Grant, SD
	Marshall, SD
	Richland, ND
	Roberts, SD
	Sargent, ND
	Traverse, ND
Skokomish	Mason, WA
Skull Valley	Tooele, UT
Smith River Rancheria	Del Norte, CA [3]
Soboba Reservation	Riverside, CA
South Florida (including Brighton, Florida State, Hollywood, and Miccosukee).	Broward, FL
	Collier, FL
	Dade, FL
	Glades, FL
	Hendry, FL
Southern Ute	Archuleta, CO
	La Plata, CO
	Montezuma, CO
	Rio Arriba, NM
	San Juan, NM

HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	HSDA (County/State)
Spokane	Ferry, WA Lincoln, WA Stevens, WA
Squaxin Island	Mason, WA
St. Croix	Barron, WI [23] Burnett, WI Pine, NM Polk, WI Washburn, WI
St. Regis Mohawk	Franklin, NY St. Lawrence, NY
Standing Rock	Adams, ND Campbell, SD Corson, SD Dewey, SD Emmons, ND Grant, ND Morton, ND Perkins, SD Sioux, ND Walworth, SD Ziebach, SD
Stewarts Point Rancheria	Sonoma, CA
Stillaguamish	Snohomish, WA
Stockbridge-Munsee	Menominee, WI Shawano, WI
Sulpfer Bank Rancheria	Lake, CA
Susanville Indian Rancheria	Lassen, CA
Swinomish	Skagit, WA
Sycuan Reservation	San Diego, CA
Table Bluff Rancheria	Humboldt, CA
Table Mountain Rancheria	Fresno, CA
Taos Pueblo	Colfax, NM Taos, NM
Tesuque Pueblo	Santa Fe, NM
Texas Band of Kickapoo	Maverick, TX [34]
Tonawanda Band of Seneca	Genesee, NY Erie, NY Niagara, NY
Torres-Martinez Reservation	Riverside, CA Imperial, CA
Trinidad Rancheria	Humboldt, CA
Tulalip	Snohomish, WA
Tule River Indian Reservation	Tulare, CA
Tunica-Biloxi	Avoyelles, LA Rapides, LA [35]
Tuolumne Rancheria	Tuolumne, CA
Turtle Mountain	Divide, ND [36] Rolette, ND Williams, ND [36]
Tuscarora Nation of New York	Niagara, NY
Twenty-Nine Palms Reservation	San Bernardino, CA
Uintah and Ouray	Carbon, UT Daggett, UT Duchesne, UT Emery, UT Grand, UT Rio Blanco, CO Summit, UT Uintah, UT Utah, UT Wasatch, UT
Umatilla	Umatilla, OR Union, OR
Upper Lake Rancheria	Lake, CA
Upper Sioux	Chippewa, MN Yellow Medicine, MN
Upper Skagit	Skagit, WA
Ute Mountain Ute	Apache, AZ La Plata, CO Montezuma, CO San Juan, NM San Juan, UT
Viejas Reservation	San Diego, CA
Wampanoag Tribal Council of Gay Head, Inc.	Dukes, MA [37]
Warm Springs	Clackamas, OR Jefferson, OR Linn, OR Marion, OR Wasco, OR
Washoe River (Dresslerville Colony).	Alpine, CA Nevada (see Nevada)
Western Oregon Service Unit	Deschutes, OR [38]
White Earth	Becker, MN Clearwater, MN Mahnomen, MN Norman, MN Polk, MN
Wind River	Hot Springs, WY Freemont, WY Sublette, WY
Winnebago (Nebraska)	Dakota, NE Dixon, NE Monona, IA Thurston, NE Wayne, NE Woodbury, IA
Winnebago (Wisconsin)	Adams, WI [40] Clark, WI [40] Columbia, WI [40] Crawford, WI [40] Dane, WI [39] Eau Claire, WI [40] Houston, MN [40] Jackson, WI [40] Juneau, WI [40] La Crosse, WI [40] Marathon, WI [40] Monroe, WI [40] Sauk, WI [40] Shawano, WI [40] Vernon, WI [40] Wood, WI [40]
Yakima	Klickitat, WA Lewis, WA Skamania, WA [41] Yakima, WA
Yankton	Bon Homme, SD Boyd, NE Charles Mix, SD Douglas, SD Gregory, SD Hutchinson, SD Knox, NE
Yavapai-Prescott	Yavapai, AZ
Ysleta Del Sur Pueblo Tribe of Texas Hudspeth, TX [1].	El Paso, TX [1]
Zia Pueblo	Sandoval, NM
Zuni Pueblo	Apache, AZ Cibola, NM McKinley, NM Valencia, NM

[1] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] For purposes of this notice Alaska Native Regions are defined as reservations (42 CFR 36.21(i)) and the entire State of Alaska is included as a CHSDA by regulation (42 CFR 36.22(a)(1)).

[3] Restored by Court Order issued December 22, 1983, in Tillie Hardwick v. U.S., Civil No. C–79–1910–SW, U.S. District Court for the Northern District of California.

[4] Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically, services have been provided at Haskell and Brigham City (House Rept. No. 95–392 and Pub. L. 88–356 respectively). Rapid City South Dakota Hospital was initially funded to provide health care to "indigent Indians in that city" (S. Rept. No. 1154, FY 1967 Interior Approp. 89th Cong. 2d Sess.).

[5] Choctaw Indians residing in Jasper and Noxubee Counties, MS, will continue to be eligible for contract health services pending correction of the inadvertent omission of these two counties from § 36.22 of the regulations.

[6] Historically part of Choctaw Service Unit population since 1970.

[7] Historically part of Colville Service Unit population since 1970.

[8] Members of the tribe residing in these Counties were specified as eligible for Federal services and benefits notwithstanding the existence of a Federal Indian reservation (Pub. L. 98–481, and H. Rept. No. 98–904).

[9] Cow Creek Band of Umpqua recognized by Pub. L. 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area notwithstanding existence of a reservation.

[10] IHS memo, May 7, 1986, designates additional CHSDA counties in California based on 1973 Congressional action providing funds for CRIHB.

[10a] Historically part of Crow Service Unit population since 1970.

[11] Historically part of Fort Hall Service Unit population since 1979.

[12] Grand Ronde Tribe of Oregon recognized by Pub. L. 98–165, signed into law on November 22, 1983, provides for eligibility in these six counties without regard to the existence of a reservation.

[13] Historically part of Grand Traverse Service Unit population since 1980.

[14] Public Law 97–428 provides for eligibility in or near the Town of Houlton without regard to existence of a reservation.

[15] Historically part of Isabella Reservation Area and Eastern Michigan Service Unit population since 1979.

[16] Historically part of Kansas Service Unit population since 1979.

[17] Legislative history states that for purposes of Federal services and benefits "members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation." (Pub. L. 99–398, Sec. 2(c)).

[18] Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98–134, signed into law on October 18, 1983, provides for a reservation in New London.

[19] Historically part of Minnesota Service Unit population since 1979.

[20] Narragansett Indians recognized by Pub. L. 95–395, signed into law September 30, 1978. Lands in Washington County are now federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[21] The entire State of Nevada is designated a CHSDA by regulation (42 CFR 36.22(a)(2)).

[22] Land in Box Elder County, Utah, taken into trust for the tribe in 1986.

[23] Historically part of Northwestern Wisconsin Service Unit population since 1970.

[24] Historically part of Northern Cheyenne Service Unit population since 1979.

[25] Former reservations in the State of Oklahoma are reservations by regulation (42 CFR 36.21(1)). The entire State of Oklahoma is a CHSDA by regulation (42 CFR 36.22(a)(3)).

[26] Paiute Indian Tribe of Utah Reservation Act, Pub. L. 96–227, provides for extension of services to these four counties without regard to the existence of a reservation.

[27] Legislative history (H.R. Report No. 95–1021) to Pub. L. 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the tribes pursuant to Act of October 8, 1964, (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

[28] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians in Aroostook County (Pub. L. 96–420; House Rept. No. 96–1353).

[29] Counties in service area designated by Congress for the Poarch Band of Creek Indians (See H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[30] Historically part of Rocky Boy's Service Unit population since 1970.

[31] The counties included in this CHSDA were designed by regulation (42 CFR 36.22(a)(4)).

[32] Historically part of Sells Service Unit population since 1970.

[33] In order to carry out the congressional intent under the Siletz Restoration Act, Pub. L. 95-195, as expressed in H.R. Report No. 95-623, at page 4, Siletz tribal members residing in these counties are eligible for contract health services.

[34] Texas Band of Kickapoo was recognized by Pub. L. 97-429, signed into law on January 8, 1983. The Act provides for eligibility for Kickapoo tribal members residing in Maverick County without regard to the existence of a reservation.

[35] Historically part of Tunica Biloxi Service Unit population since 1982.

[36] Historically part of Turtle Mountain Service Unit population since 1979.

[37] "* * * members of the tribe residing on Martha's Vineyard * * * [are] deemed to be living on or near an Indian reservation." for purposes of eligibility for Federal services (Sec. 12, Pub. L. 100-95).

[38] Historically part of Western Oregon Service Unit population since 1983.

[39] Land in Dane County, WI, was added by the BIA to Wisconsin Winnebago Tribe's reservation by the BIA in 1986 (See FR Vol. 51, No. 222, pg. 41669, Nov. 18, 1986).

[40] The counties included in this CHSDA were designed by regulation (42 CFR 36.22(a)(5)).

[41] Historically part of Yakima Service Unit population since 1979.

HSDA Counties by State

State	County
Alabama	Baldwin.
	Escambia.
	Mobile.
	Monroe.
Alaska	All
Arizona	Apache.
	Cochise.
	Coconino.
	Gila.
	Graham.
	Greenlee.
	La Paz.
	Maricopa.
	Mohave.
	Navajo.
	Pima.
	Pinal.
	Santa Cruz.
	Yavapai.
	Yuma.
California	Alpine.
	Amador.
	Butte.
	Calaveras.
	Colusa.
	Del Norte.
	El Dorado.
	Fresno.
	Glenn.
	Humboldt.
	Imperial.
	Inyo.
	Kings.
	Lake.
	Lassen.
	Madera.
	Mariposa.
	Mendocino.
	Modoc.
	Mono.
	Nevada.
	Placer.
	Plumas.
	Riverside.
	San Bernardino.
	San Diego.
	Santa Barbara.
	Shasta.
	Sierra.
	Siskiyou.
	Sonoma.
	Sutter.
	Tehama.
	Trinity.
	Tulare.
	Tuolumne.
	Yolo.
	Yuba.
Colorado	Archuleta.
	La Plata.
	Montezuma.
	Rio Blanco.
Connecticut	New London.
Florida	Broward.
	Collier.
	Dade.
	Escambia.
	Glades.
	Hendry.
Idaho	Bannock.
	Benewah.
	Bingham.
	Boundary.
	Caribou.
	Clearwater.
	Idaho.
	Kootenai.
	Latah.
	Lemhi.
	Lewis.
	Nez Perce.
	Owyhee.
	Power.
Iowa	Monona.
	Tama.
	Woodbury.
Kansas	Brown.
	Doniphan.
	Douglas.
	Jackson.
Louisiana	Allen.
	Avoyelles.
	Rapides.
	St. Mary.
Maine	Aroostook.
	Penobscot.
	Washington.
Massachusetts	Dukes.
Michigan	Alger.
	Antrim.
	Arenac.
	Baraga.
	Benzie.
	Chippewa.
	Clare.
	Delta.
	Gogebic.
	Grand Traverse.
	Houghton.
	Isabella.
	Leelanau.
	Luce.
	Machinac.
	Manistee.
	Marquette.
	Menominee.
	Midland.
	Missaukee.
	Ontonagon.
	Schoolcraft.
Minnesota	Aitkin.
	Becker.
	Beltrami.
	Carlton.
	Cass.
	Chippewa.
	Clearwater.
	Cook.
	Goodhue.
	Houston.
	Hubbard.
	Itasca.
	Kanebec.
	Koochiching
	Lake of the Woods.
	Mahnomem.
	Marshall.
	Mille Lacs.
	Norman.
	Pennington.
	Pine.
	Polk.
	Redwood.
	Renville.
	Roseau.
	Scott.
	St. Louis.
	Traverse.
	Yellow Medicine.
Mississippi	Attala.
	Jasper.
	Jones.
	Kemper.
	Leake.
	Neshoba.
	Newton.
	Noxubee.
	Scott.
	Winston.

HSDA COUNTIES BY STATE—Continued

State	County
Montana	Big Horn.
	Blaine.
	Carbon.
	Carter.
	Chouteau.
	Daniels.
	Flathead.
	Glacier.
	Hill.
	Lake.
	Liberty.
	McCone.
	Missoula.
	Phillips.
	Pondera.
	Richland.
	Roosevelt.
	Rosebud.
	Sanders.
	Sheridan.
	Treasure.
	Valley.
	Yellowstone.
Nebraska	Boyd.
	Burt.
	Cherry.
	Cuming.
	Dakota.
	Dawes.
	Dixon.
	Knox.
	Richardson.
	Sheridan.
	Thurston.
	Wayne.
Nevada	All.
New Mexico	Bernalillo.
	Chaves.
	Cibola.
	Colfax.
	Lincoln.
	Los Alamos.
	McKinley.
	Otero.
	Rio Arriba.
	San Juan.
	Sandoval.
	Santa Fe.
	Socorro.
	Taos.
	Valencia.
New York	Allegany.
	Cattaraugus.
	Chautauque.
	Erie.
	Franklin.
	Genesee.
	Niagara.
	St. Lawrence.

HSDA COUNTIES BY STATE—Continued

State	County
North Carolina	Cherokee.
	Graham.
	Haywood.
	Jackson.
	Swain.
North Dakota	Adams.
	Benson.
	Divide.
	Dunn.
	Eddy.
	Emmons.
	Grant.
	McKenzie.
	McLean.
	Mercer.
	Morton.
	Mountrail.
	Nelson.
	Ramsey.
	Richland.
	Rolette.
	Sargent.
	Sioux.
	Ward.
	Williams.
Oklahoma	All.
Oregon	Benton.
	Clackmas.
	Coos.
	Curry.
	Deschutes.
	Douglas.
	Harney.
	Jackson.
	Jefferson.
	Josephine.
	Klamath.
	Lane.
	Lincoln.
	Linn.
	Malheur.
	Marion.
	Multnomah.
	Polk.
	Tillamook.
	Umatilla.
	Union.
	Wasco.
	Washington.
	Yamhill.
Pennsylvania	Warren.
Rhode Island	Washington.

HSDA COUNTIES BY STATE—Continued

State	County
South Dakota	Bennett.
	Bon Homme.
	Brule.
	Buffalo.
	Campbell.
	Charles Mix.
	Codington.
	Corson.
	Custer.
	Day .
	Dewey.
	Douglas.
	Fall River.
	Grant.
	Gregory.
	Haakon.
	Hand.
	Hughes.
	Hutchinson.
	Hyde.
	Jackson.
	Lyman.
	Marshall.
	Meade.
	Mellette.
	Moody.
	Pennington.
	Perkins.
	Potter.
	Roberts.
	Shannon.
	Stanley.
	Sully.
	Todd.
	Tripp.
	Walworth.
	Ziebach.
Texas	El Paso.
	Hudspeth.
	Maverick.
	Polk.
Utah	Box Elder.
	Carbon.
	Daggett.
	Duchesne.
	Emergy.
	Grand.
	Iron.
	Juab.
	Kane.
	Millard.
	San Juan.
	Sevier.
	Summit.
	Tooele.
	Uintah.
	Utah.
	Wasatch.
	Washington.

HSDA COUNTIES BY STATE—Continued

State	County
Washington	Chelan.
	Clallam.
	Douglas.
	Ferry.
	Grant.
	Grays Harbor.
	Jefferson.
	King.
	Kitsap.
	Klickitat.
	Lewis.
	Lincoln.
	Mason.
	Okanogan.
	Pacific.
	Pend Oreille.
	Pierce.
	Skagit.
	Skamania.
	Snohomish.
	Spokane.
	Stevens.
	Thurston.
	Whatcom.
	Witman.
	Wisconsin.
	Yakima.
Wisconsin	Adams.
	Ashland.
	Barron.
	Bayfield.
	Brown.
	Burnett.
	Clark.
	Columbia.
	Crawford.
	Eau Claire.
	Forest.
	Iron.
	Jackson.
	Juneau.
	La Crosse.
	Langlade.
	Marathon.
	Marinette.
	Menominee.
	Monroe.
	Oconto.
	Oneida.
	Outagamie.
	Pierce.
	Polk.
	Sauk.
	Sawyer.
	Shawano.
	Vernopn.
	Vilas.
	Washburn.
	Wood.
Wyoming	Big Horn.
	Fremont.
	Hot Springs.
	Sheridan.
	Sublette

Date: August 16, 1988.

Everett R. Rhoades,

Director, Indian Health Service.

[FR Doc. 88-19180 Filed 8-24-88; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, November 3-4, 1988, at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on November 3 at 7 p.m. to approximately 7:30 p.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 3 from approximately 7:30 p.m. to recess and on November 4 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, National Institutes of Health, Building 31, Room 10A06, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of Committee members, upon request.

Ms. Cynthia Sewell, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, Westwood Building, Room 838, 5333 Westbard Avenue, Bethesda, Maryland 20892 (301/496-7721) will provide substantive program information upon request.

Dated: August 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-19336 Filed 8-24-88; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute, National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, September 15 and 16, 1988, Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. until approximately 11:30 a.m. on Thursday, September 15. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 11:30 a.m. until closing on September 15; and from 8:30 a.m. until approximately noon on September 16 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

There will also be an open meeting of the Vision Research Program Planning Subcommittee on Wednesday, September 14, from 7 p.m. until completion to discuss further the plans for *Vision Research: A National Plan 1989-90.* The meeting will be held at the National Eye Institute Conference Room, Building 31, Room 6A35 on the National Institutes of Health campus. Attendance by the public will be limited to space available.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110, will provide summaries of meetings, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Anterior Segment Diseases Research; and 13.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health)

Dated: August 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-19337 Filed 8-24-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute, Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on September 25–27, 1988, at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

This meeting will be open to the public on September 25, from 8 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 26 from approximately 8 a.m. until adjournment on September 27, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Mr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19338 Filed 8–24–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases, National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee, Allergy and Immunology Subcommittee, Microbiology and Infectious Diseases Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 22–23, 1988 at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20892.

The meeting will be open to the public on September 22 from approximately 8:30 a.m. to 8:45 a.m. for opening remarks of the Institute Director and from 1 p.m. to recess for meetings of the Council subcommittees. On September 23 the meeting will be open to the public from approximately 8:30 a.m. until 2:00 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a discussion of minority issues related to AIDS; a report of the Intramural Research Program and a report from each of the Council subcommittees.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:45 a.m. until approximately 11:30 a.m. on September 22, in conference rooms 10, 7 and 9 respectively. The meeting of the full Council will be closed from approximately 2 p.m. until adjournment on September 23 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301–496–7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19339 Filed 8–24–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research, National Advisory Dental Research Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held September 26–27, 1988, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on September 26 for general discussion and program presentations. Attendance by the public will be limited to space available. The 1988 Seymour J. Kreshover lecture will follow at 3:30 p.m. in the Mortimer B. Lipsett Auditorium in Building 10, NIH.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10 (d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 27 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone 301–496–9469) will

furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121–Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes; National Institutes of Health)

Dated: August 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19340 Filed 8–24–88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences, National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 19–20, 1988, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina

This meeting will be open to the public on September 19 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public September 19, from approximately 1 p.m. to adjournment on September 20, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog Federal Domestic Assistance Program Nos 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: August 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19341 Filed 8–24–88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1848]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

August 19, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing Development Grant Program: Project Settlement Procedures.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information is needed to close out the Federal financing for project activities. It is also needed to verify that Federal funds were used in accordance with the Grant Agreement and that all participating parties have fulfilled their obligations.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Settlement Procedures	65		1		16		1,040

Total Estimated Burden Hours: 1,040.

Status: New.

Contact: Freda R. Nicolosi, HUD, (202) 755–6142 John Allison, OMB, (202) 395–6880.

Date: August 19, 1988.

Proposal: Public Housing Tenancy and Administative Grievance Procedure (FR–1164).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Section 6 of the National Housing Act of 1937 requires Public Housing Agencies (PHAs) to have an administrative grievance procedure that provide tenants with sufficient notification of proposed adverse actions, an opportunity for an impartial hearing, and also permits PHAs to exclude grievances over evictions and lease terminations.

Form Number None.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Written Notification (1)	3,330		1		.67		2,220
Written Notification (2)	3,330		450		.004		6,229
Notice of Proposed Action (1)	3,330		59.09		.008		1,625
Notice of Proposed Action (2)	3,330		3.90		.017		217
Hearing Officer's Decision	3,330		115.98		.083		32,185
PHA's Reversal of Decision	3,330		2.32		.083		644
Due Process Determination	2,000		1		24		48,000
Notice of Due Process	2,000		1		.333		667
Notice of Ineligible Applicant	3,330		234.23		.008		6,500
Decision of PHA	3,330		23.42		.083		6,500
Recordkeeping	3,330		6		4.375		47,586

Total Estimated Burden Hours: 152,373.

Status: Revision.

Contact: Edward C. Whipple, HUD, (202) 426–0744 John Allison, OMB, (202) 395–6880.

Date: August 19, 1988.

[FR Doc. 88–19288 Filed 8–24–88; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–08–4132–12]

Environmental Assessment; Mt. Pennell Wilderness Study Area, Utah

AGENCY: Bureau of Land Management.

ACTION: Notice of comment period.

SUMMARY: An environmental assessment (EA) has been proposed on an action concerning the re-entering of an old mine on Mt. Pennell, which is within the Mt. Pennell WSA (UT–050–248).

comment period will end 15 days from publication in the **Federal Register**. For further information contact Roy Edmonds at (801) 896–8221. Copies of the EA are available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

Dated: August 19, 1988.

Larry R. Oldroyd,

Acting District Manager, Richfield District Office.

[FR Doc. 88–19315 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–DQ–M

[AA–340–08–4333–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Officer of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Permit Fee Envelope, 36 CFR Part 71

OMB Approval Number: 1004–0133

Abstract: Respondents supply identifying information and data on the campsite number, dates camping, number in party, zip code, fee paid, vehicle license number, and primary purpose of visit. This information allows the Bureau of Land Management (BLM) to determine if all users have paid the required fee, the number of users, and their State of origin.

Bureau Form Number: 1370–36

Frequency: Whenever someone wishes to camp in a campground where fees are collected.

Description of Respondents: Individuals desiring to use the campground.

Estimated Completion Time: Three minutes

Annual Responses: 60,000

Annual Burden Hours: 3,000

Bureau Clearance Officer: Rick Iovaine 202–653–8853

Date: August 5, 1988.

Dean Stepanek,

Assistant Director—Land and Renewable Resources.

[FR Doc. 88–19244 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–84–M

[WY–030–4121–13]

Availability of Coal Geophysical Logs, Rawlins District, WY

ACTION: Public notice of availability of eleven coal geophysical logs from Sweetwater County, Wyoming.

SUMMARY: Notice is hereby given that eleven geophysical logs from eleven coal test holes in Sweetwater County, Wyoming, are now available to the public. The test holes are located in Township 23 North, Range 95 West, and were drilled to investigate coal in the Eocene Wasatch Formation in the central part of the Great Divide Basin.

ADDRESS: Reproductions of the geophysical logs are available at cost. Bureau of Land Management, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: William Newby, Assistant District Manager, Division of Minerals, Rawlins District, Bureau of Land Management,

P.O. Box 670, Rawlins, Wyoming 82301. Telephone (307) 324–7171.

Richard Bastin,

District Manager.

[FR Doc. 88–19294 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–22–M

[WY–030–4121–13]

Availability of Coal Geophysical Logs, Rawlins District, WY

ACTION: Public notice of availability of five coal geophysical logs from Fremont County, Wyoming.

SUMMARY: Notice is hereby given that five geophysical logs from five coal test holes in Fremont County, Wyoming, are now available to the public. The test holes are located in Township 38 North, Range 93 West, and were drilled to investigate coal in the Eocene Wind River Formation in the north-central portion of the Wind River Basin.

ADDRESS: Reproductions of the geophysical logs are available at cost. Bureau of Land Management, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: William Newby, Assistant District Manager, Division of Minerals, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301. Telephone (307) 324–7171.

Richard Bastin,

District Manager.

[FR Doc. 88–19295 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–22–M

District Advisory Council Meeting; Ukiah, CA

AGENCY: Bureau of Land Management.

ACTION: Notice of Meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94–579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Arcata, California, September 30, 1988, to discuss issues identified in public input on the Draft Arcata Resource Management Plan.

DATES: The meeting will begin at 9:30 a.m. and adjourn at 3:30 p.m. Friday, September 30, 1988.

ADDRESS: The meeting will be held at the Bureau of Land Management Office, 1125 16th Street, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462–3873.

SUPPLEMENTARY INFORMATION: Most of the public lands covered by the Draft Arcata Resource Management Plan are in Humboldt and Mendocino counties; small tracts are in Trinity and Sonoma counties. Management alternatives for approximately 125,000 acres of public land and 125,000 acres of mineral reserve land (patented land with mineral rights reserved to the United States) are included in the plan. During the public comment period on the plan, BLM received public comments at two public workshops and two public hearings. In addition, written comments in the form of postcards, letters, and petitions were received from over 4,000 individuals.

The meeting is open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10:30 a.m. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Date: August 15, 1988.

Alfred W. Wright,

District Manager.

[FR Doc. 88–19246 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–32–M

[UT 080–07–4322–02; 7–00152]

Vernal District Grazing Advisory Board Meeting.

August 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Vernal District Grazing Advisory board will be held Friday, September 30, 1988, commencing at 8:00 a.m. The meeting will be held in the District Office conference room at 170 South 500 East, Vernal, Utah.

The agenda items will include: (1) Review of Minutes, (2) Diamond Mountain Resource Area Resource Management Plan, (3) Book Cliffs Range Program Summary update, (4) FY 88 and 89 Range Improvement work and proposals, (5) Predator and Pest Control, (6) Riparian Area Management Program, (7) Review of new Grazing Regulations and Policy, and (8) Items From the Public, if any.

The meeting is open to the public. Interested persons wishing to participate or present a statement should notify the District Manager at the above mentioned address or phone him at (801) 789–1362 no later than September 29, 1988.

David E. Little,

District Manager.

[FR Doc. 88–19316 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–020–4332–01]

Closure of Public Lands to Camping and Off-Road Vehicle Use; Painted Rocks State Park, Arizona

ACTION: Notice of closure.

SUMMARY: This notice is to inform the public that the Bureau of Land Management (BLM) intends to close certain public lands in the Painted Rocks State Park area in Maricopa County to camping and off-road vehicle use except designated/signed open roads. The closure will be year-round and will remain in effect until rescinded or modified by the Lower Gila Area Manager. The public lands affected by this closure are specifically identified as follows:

All BLM administered lands in,

T. 4 S., R. 7 W.,
Secs. 30, 31, 32.
T. 4 S., R. 8 W.
Secs. 13, 14, 24, 25.
T. 5 S., R. 7 W.,
Secs. 5, 6, 7, 8, 17, 20.
T. 5 S., R. 8 W.,
Secs. 1, 2, 3, 10, 11, 12.

The designated area will be posted with signs. This closure will go into effect upon completion of signing, approximately October 1, 1988.

The following persons, operating within scope of their official duties are exempt from the provisions of this closure: Employees of the BLM, Arizona Game and Fish, Arizona State Parks, local and federal law enforcement and fire protection personnel. Access by additional parties may be allowed, but must be approved in advance in writing by the Lower Gila Area Manager.

This closure is in accordance with the provisions of the Federal Land Policy and Management Act of 1976/43 (USC 1701), and 43 CFR, Subpart 8364.1. Any person who fails to comply with the provisions of this closure may be subject to penalties outlined in 43 CFR 8360.0–7.

The reason for this closure is to protect vegetation and soil resources, and to eliminate health hazards associated with indiscrimiante dumping of litter and waste. There is an existing organized long-term camping site within the area with sanitation facilities adequate to suport visitor use demands.

FOR FURTHER INFORMATION CONTACT: William T. Chisdress, Lower Gila Area Manager, Phoenix District Office, at (602) 863-4464.

Herman Kast

Acting District Manager.

Date: August 18, 1988.

[FR Doc. 88-19245 Filed 8-24-88; 8:45 am]

BILLING CODE 4310-32-M

[ID-010-08-4212-24; IDI-25539]

Realty Action; Lease of Public Land for Airport Purposes In Owyhee County, ID

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice.

SUMMARY: The following-described public lands have been examined and found suitable for lease to the Idaho Bureau of Aeronautics for airport purposes under the Act of May 24, 1928, as amended:

T. 12 S., R. 5 E., B.M., Idaho.
Sec. 21, N½NW¼SW¼NW¼, S½SW¼NW¼NW¼, NW¼NE¼SW¼NW¼, S½SE¼NW¼NW¼, NE¼SE¼NW¼NW¼, SW¼NE¼NW¼, N½SE¼NW¼, S½NE¼NE¼NW¼.

Containing 40 acres.

DATES: The previously-described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of one year from the date of publication of this notice in the **Federal Register** or until issuance of the lease, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may sumit comments to the District Manager, Bureau of Land Management, at the address shown below.

ADDRESS: Copies of the Environmental Assessment and lease terms are available for public inspection upon request at the Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Peter T. Cizmich, at the above address or by telephone at (208) 334-1582.

SUPPLEMENTARY INFORMATION: This airport lease will authorize an exiting airstrip near the community of Grasmere, Idaho, to the Idaho Bureau of Aeronautics. The airstrip was originally authorized in 1951 under a Special Land Use Permit (SLUP). The authority for SLUPs was repealed by the Federal Land Policy and Management Act (FLPMA) of 1976. Therefore, the new lease will be issued under the Act of May 24, 1928. The proposed action is administrative and involves no changes in managment nor any new environmental impacts.

Objections to this Notice of Realty Action will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: August 16, 1988.

Gene L. Schlosmer,

Associate District Manager.

[FR Doc. 88-19317 Filed 8-24-88; 8:45 am]

BILLING CODE 4310-GG-M

[UT-942-08-4212-13; U-47389, U-54564, U-58178, U-60052]

Conveyance of Public Land; Order Providing for Opening of Lands in Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 2,491.19 acres of public land out of Federal ownership. This action will also open a portion of the reconveyed land to surface entry.

EFFECTIVE DATE: September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah, 84111-2303, 801-524-3074.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 1,170.17 acres of land in Washington County, Utah from Federal to private ownership.

2. In the exchange, the following described land was reconveyed to the United States:

Salt Lake Meridian

T. 39 S., R. 10 W.
Sec. 10, SE¼NE¼, E½SE¼;
Sec. 11, W½W½;
Sec. 14, NW¼SW¼;
Sec. 15, E½NE¼;
Sec. 20, SW¼NE¼, SW¼NW¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 21, S½NW¼, SW¼;
Sec. 22, E½NE¼SE¼;
Sec. 27, NW¼, N½S½;
Sec. 28, S½S½, N½SE¼, NE¼SW¼, SE¼NW¼;
Sec. 29, SE¼, E½NE¼;
Sec. 33, NE¼, N½NW¼, SE¼NW¼;
Sec. 34, W½NW¼.

The area described aggregates 2,220.00 acres in Washington County.

3. Notice is also hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 20.00 acres of land in Iron County, Utah from Federal to private ownership.

4. In the exchange, the following described land was reconveyed to the United States:

Salt Lake Meridian

T. 38 S., R. 12 W.,
Sec. 18, N½NW¼NE¼.

The area described contains 20.00 acres in Iron County.

5. Notice is also hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 280.00 acres of land in Washington County, Utah from Federal to private ownership.

6. In exchange, the following described land was reconveyed to the United States:

Salt Lake Meridian

Beginning at the North quarter corner of Section 1, Township 39 South, Range 10 West, Salt Lake Base and Meridian; thence West 5 rods; thence Southwesterly 257 rods, more or less, to a point 18 rods West of the Northeast corner of the Southwest quarter of the Southwest quarter of Section 1; thence East 18 rods to the Northeast corner of the Southwest quarter of the Southwest quarter of Section 1; thence South 80 rods; thence East 80 rods to the South quarter corner of Section 1; thence North 320 rods to the point of beginning.

The East half of the Southeast quarter of Section 11, Township 39 South, Range 10 West, Salt Lake Base and Meridian.

The Northeast quarter of the Northwest quarter of Section 12, Township 39 South, Range 10 West, Salt Lake Base and Meridian. Also, beginning at the Northeast corner of the Northwest quarter of the Northwest quarter of Section 12, Township 39 South, Range 10 West, Salt Lake Base and Meridian and running thence South 80 rods; thence West 80 rods; thence Northeasterly 92 rods, more or less, to a point 40 rods East of the Northwest corner of Section 12; thence East 40 rods to the point of beginning.

Beginning at the Northeast corner of the Northwest quarter of the Northeast quarter of Section 14, Township 39 South, Range 10 West, Salt Lake Base and Meridian, and running thence South 80 rods; thence West 80 rods; thence Northeasterly to a point 40 rods west of the point of beginning; thence east 40 rods to the point of beginning.

The lands described aggregate 297 acres in Washington County.

7. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 481.03 acres of land in Washington

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County, Utah from Federal to private ownership.

8. In exchange, the following described land was reconveyed to the United States:

Salt Lake Meridian

T. 42 S., R. 9 W.,
Sec. 19, lots 3, 4, E½SW¼, SE¼;
Sec. 29, N½, N½N½S½, S½NW¼SW¼, W½SW¼SW¼, W½NE¼SW¼SW¼, SE¼NE¼SE¼;
Sec. 30, lot 1, N½NE¼, NE¼NW¼.

The area described contains 923.00 acres in Kane County.

9. At 9:00 a.m. on September 12, 1988, the land described in paragraphs 2, 4, 6 and the lands described in paragraph 8 lying south of the road designated in a map in case filed U–60052 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m., on September 12, 1988, will be considered as simultaneously filed at that time. Those received thereafter will be considered in order of filing.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

Date: August 19, 1988.

[FR Doc. 88–19314 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-DQ-M

[NV–930–08–4333–11]

Camping Stay Limits for Public Lands; Las Vegas, NV District

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Establishment of camping stay limit for public lands administered by the BLM in the Las Vegas District, Nevada.

SUMMARY: Person(s) may occupy a site or multiple sites within a ten (10) mile radius on public lands not closed or otherwise restricted to camping within the Las Vegas District for a total period of not more than fourteen (14) days during any twenty-eight (28) day period. Following the fourteen (14) day period, persons may not relocate within a distance of ten (10) miles of the site that was just previously occupied until completion of the twenty-eight (28) day period. The fourteen (14) day limit may be reached either through a number of separate visits or through a period of continuous occupations of a site. Under special circumstances and upon request, the authorized officer may give written permission for extension of the fourteen (14) day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments or elsewhere on public lands within the Las Vegas District for a period of more than forty-eight (48) hours without written permission from the authorized officer.

This camping stay limit does not apply to Long Term Visitor Use Areas so designated by the Las Vegas District.

DATE: This camping stay limit will be effective August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Ben F. Collins, District Manager, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89125. The mailing address is: P.O. Box 26569, Las Vegas, Nevada 89126.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping on public lands within the Las Vegas District. Of equal importance is the problem of long-term camping, which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

Authority for this stay limit is contained in CFR Title 43, Chapter II, Part 8360, Subpart 8364.1, Subpart 8365, Subpart 8365.1–2, 8365.1–6, and 8365.2–3.

8360.0–7 PENALTIES: Violations of any regulations in this part by a member of the public, except for the provisions of 8365.1–7, are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by 8365.1–6 are punishable in the same manner.

Ben F. Collins,

District Manager.

[FR Doc. 88–19247 Filed 8–24–88; 8:45 am]

BILLING CODE 4210-01-M

[WY–060–4121–08]

Resource Management Plans; Buffalo Resource Area, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Plan amendment; Buffalo Resource Area, Wyoming.

SUMMARY: Notice is hereby given that the Bureau of Land Management has amended the Buffalo Resource Area Resource Management Plan. The amendment modified a decision which precluded the Bureau from considering coal lease applications within a 3-mile buffer zone which surrounds the planning district of the city of Gillette, Wyoming. The new decision allows the Bureau to consider applications for emergency coal leases, exchanges, or lease modifications inside the buffer zone. All applications within the Gillette Buffer Zone would have to be adjacent to an existing mining operation and extend no more than 1 mile beyond the existing coal lease boundaries. The Gillette City Council is in agreement with this amendment and will be consulted with before any new application is approved.

This amendment will become final following a 30-day protest period. Protests should be sent to: Director (202), Bureau of Land Management, 1800 C Street NW., Washington, DC 20240 before the end of the 30-day protest period. Protests should include: (a) The name, mailing address, telephone number, and interest of the person filing the protest; (b) a statement of the issue being protested; (c) a copy of all documents addressing the issue that the protesting party submitted during the planning process, or an indication of the date the issue was discussed for the record; and (d) a concise statement explaining why the proposed amendment is believed to be wrong.

DATES: The 30-day protest period will begin on the publication date of this notice.

FOR FURTHER INFORMATION CONTACT: For further information on this amendment write or call Glenn Bessinger, Buffalo Resource Area Manager, 189 North Cedar, Buffalo, Wyoming 82834; phone (307) 684–5586.

Hillary A. Oden,

State Director.

[FR Doc. 88–19248 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-22-M

[MT–940–08–4520–11]

Filing of Plat of Survey, Land Resource Management; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: Plat of survey of the lands described below accepted August 5, 1988, was officially filed in the Montana State Office effective 10 a.m. on August 17, 1988

Principal Meridian, Montana

T. 32 N., R. 33 W.

The plat representing the dependent resurvey of portions of the Lake Creek Guide Meridian (on the west boundary), the subdivisional lines, Homestead Entry Survey No. 415 and No. 1057, and

Homestead Entry Survey No. 1051; and the survey of Tract 37 in unsurveyed section 30, Township 32 North, Range 33 West, Principal Meridian Montana. The area described is in Lincoln County.

This survey was executed at the request of the U.S. Forest Service, Region 1.

EFFECTIVE DATE: August 17, 1988.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Robert A. Toegarden,

Acting State Director.

Dated: August 18, 1988.

[FR Doc. 88-19249 Filed 8-24-88; 8:45 am]

BILLING CODE 4310-DN-M

[MT-940-08-4520-11]

Filing of Plat of Survey, Land Resource Management; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted August 2, 1988, were officially filed in the Montana State Office effective 10 a.m. on August 16, 1988.

Fifth Principal Meridian, North Dakota

T. 147 N., R. 81 W.

The plat representing the dependent resurvey of portions of the west and north boundaries and subdivisional lines, Township 147 North, Range 81 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

Fifth Principal Meridian, North Dakota

T. 148 N., R. 81 W.

The plat representing the dependent resurvey of portions of the Eleventh Guide Meridian (east boundary) and subdivisional lines, Township 148 North, Range 81 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

Fifth Principal Meridian, North Dakota

T. 148 N., R. 80 W.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, Township 148 North, Range 80 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

Fifth Principal Meridian, North Dakota

T. 147 N., R. 80 W.

The plat representing the dependent resurvey of the Eleventh Guide Meridian (west boundary), a portion of the south boundary, the north boundary, and a portion of the subdivisional lines, Township 147 North, Range 80 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

Fifth Principal Meridian, North Dakota

T. 146 N., R. 80 W.

The plat representing the dependent resurvey of the Eleventh Guide Meridian (west boundary) and subdivisional lines, Township 146 North, Range 80 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

These surveys were executed at the request of the Bureau of Reclamation.

EFFECTIVE DATE: August 16, 1988.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: August 18, 1988.

Robert A. Toegarden,

Acting State Director.

[FR Doc. 88-19250 Filed 8-24-88; 8:45 am]

BILLING CODE 4310-DN-M

[OR-942-08-4520-12; GP8-226]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 7 S., R. 6 W., accepted 7/15/88
T. 23 S., R. 8 W., accepted 7/15/88
T. 19 S., R. 7 W., accepted 7/25/88
T. 28 S., R. 8 W., accepted 7/25/88

Washington

T. 6 N., R. 15 E., accepted 7/25/88
T. 36 N., R. 21 E., accepted 7/25/88

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: August 15, 1988.

[FR Doc. 88-19251 Filed 8-24-88; 8:45 am]

BILLING CODE 4310-33-M

[NM-940-08-4220-11; NM NM 7571]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a 2,829.13-acre withdrawal of National Forest System land continue for an additional 20 years. The land will remain closed to mining but has been and will remain open to surface entry and mineral leasing.

DATE: Comments should be received by November 23, 1988.

ADDRESS: Comments should be sent to: BLM, New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 5128 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

Cabresto Canyon Campground (formerly Cabresto Campground)

T. 29 N., R. 14 E.,
Sec. 19, S½N½SW¼, N½S½SW¼, excluding HES 340 (unsurveyed).

Santa Barbara Campground

T. 21 N., R. 12 E.,
Sec. 1, E½E½NE¼, (partially unsurveyed) including that portion within the Santa Barbara Grant survey.
T. 22 N., R. 12 E.,
Sec. 36, SW¼SE¼NE¼, W½NE¼SE¼, (unsurveyed) including that portion within the Santa Barbara Grant survey.
T. 21 N., R. 13 E. (unsurveyed),
Sec. 6, W½W½NW¼, including that portion within the Santa Barbara Grant survey.

Sangre de Cristo Winter Sports Area

T. 27 N., R. 14 E.,
Secs. 1 and 12 excluding that portion lying within the Wheeler Peak Widerness Area (Pub. L. 96–550).
T. 28 N., R. 14 E. (unsurveyed),
Sec. 36, S½SW¼, SE¼, except that portion lying within HES 102.
T. 27 N., R. 15 E. (unsurveyed),
Sec. 6, W½W½E½, W½, except that portion lying within HES 102 and that portion lying within the Wheeler Peak Wilderness Area (Pub. L. 96–550).
Sec. 7, W½W½E½, W½, except that portion lying within the Wheeler Peak Wilderness Area (Pub. L. 96–550).
Sec. 18, W½W½NE¼, NW¼, except that portion lying within the Wheeler Peak Wilderness Area (Pub. L. 96–550).
T. 28 N., R. 15 E. (unsurveyed),
Sec. 31, SW¼, except that portion lying within HES 102 and that portion lying within the Wheeler Peak Wilderness Area (Pub. L. 96–550).

OK Canyon Campground (formerly La Jara Campground)

T. 25 N., R. 15 E.,
Sec. 9, SW¼NE¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, NW¼SE¼SE¼.

Silver Bell Overflow Camp Area (formerly Silver Bell Campground)

T. 28 N., R. 13 E.,
Sec. 1, SE¼NE¼SE¼SW¼, SE¼SE¼SW¼, SE¼SW¼NW¼SE¼, SE¼NW¼SE¼, N½SW¼SW¼SE¼ (unsurveyed).

The areas described aggregate approximately 2,829.13 acres in Taos County.

The purpose of the withdrawal is to protect five sites in the Camino Real and Questa Ranger Districts. The withdrawal segregates the land from location and entry under the mining laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Monte G. Jordan,

Associate State Director.

Dated: August 18, 1988.

[FR Doc. 88–19252 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–FB–M

[OR–943–08–4220–11; GP–08–227; ORE–011235, ORE–015247, OR–657]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers proposes that three separate land withdrawals continue for an additional 100 years and requests that the lands involved remain closed to mining, and to surface entry where presently closed.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The U.S. Army Corps of Engineers proposes that the following identified land withdrawals be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are within the Green Peter and the Blue River Reservoir Projects and are described as follows:

1. ORE–011235), Public Land Order No. 2952 of February 28, 1963. Green Peter Reservoir Project, containing 870.00 acres. Located in Linn County, approximately 35 miles southeast of Albany, Oregon.
   T. 12 S., R. 3 E., W.M., Oregon.
2. ORE–015247, Public Land Order No. 3643 of April 15, 1965. Blue River Reservoir Project, containing 901.00 acres. Located in Lane County, approximately 30 miles northeast of Eugene, Oregon.
   Tps. 15 and 16 S., Rs. 4 and 5 E., W.M., Oregon.
3. OR–657, Public Land Order No. 4279 of September 18, 1967. Blue River Reservoir Project, containing 430.06 acres. Located in Lane County, approximately 30 miles northeast of Eugene, Oregon.
   T. 16 S., R. 4 E., W.M., Oregon.

The withdrawal made by Public Land Order No. 2952 currently segregates the land from operation of the public land laws generally, including the mining laws. The other two withdrawals segregate the lands from mining only. The U.S. Army Corps of Engineers requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: August 16, 1988.

[FR Doc. 88–19253 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirements should be made directly to

the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS), 30 CFR Part 250.

OMB Approval Number: 1010–0046.

Abstract: Respondents submit the following form to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment and/or procedures which the lessee plans to use during the conduct of production and well-completion and well-workover operations including recompletion. It is also used to evaluate remedial action in the event of well-equipment failure or well-control loss.

Bureau Form Number: Form MMS–330.

Frequency: On occasion.

Description of Respondents: OCS oil and gas lessees.

Estimated Completion Time: 1 hour.

Annual Responses: 2,500.

Annual Burden Hours: 2,500.

Bureau clearance officer: Dorothy Christopher (703) 435–6213.

Date: August 4, 1988.

Carolita Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–19254 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5670, Block 33, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATES: The subject DOCD was deemed submitted on August 17, 1988. Comments must be received on or before September 9, 1988, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 17, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–19255 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Ninetieth Meeting of the Board for International Food and Agricultural Development (BIFAD) on September 15, 1988.

The purposes of this Meeting are: (a) Review the status of the Collaborative Research Support Programs (CRSP's), planning for the Triennial Reviews and considering future funding for the Nutrition CRSP, and (b) Review the results of the "Getting Ready for the 90's" Symposium, making projections for a final report on the activity.

The September 15, 1988 Meeting will be held in the Department of State Building, Rm. 3524, 21st and C Streets, Washington, DC 20523. The Meeting will be held from 3:00 p.m. to 5:00 p.m. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA–18, Washington, DC 20523, or telephone him on (703) 235–8929.

Date: August 18, 1988.

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 88–19243 Filed 8–24–88; 8:45 am]

BILLING CODE 6116–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has

made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 481, 1615 M Street, NW., Washington, DC 20527; Telephone (202) 457–7151.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7340.

Summary of Form Under Review

Type of Request: Revision
Title: Project Information Report
Form Number: OPIC–71 (OMB No. 3420–0004)
Frequency of Use: On occasion—a function of the sampling criteria
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All
Description of Affected Public: Business and other institutions
Number of Responses: 50 per year
Reporting Hours: 1½ hours per application
Authority for Information Collection: Section 231(k)(2) [Title 22 USC 2191 (k)(2)] and 239(h) [Title 22 USC 2199(h)] of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The Project Information Report is necessary to elicit and record the information on the developmental, evnironmental, and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects and reporting the results, as required by Congress, in aggregate form.

Date: August 19, 1988.
James R. Offutt,
Office of the General Counsel.
[FR Doc. 88–19319 Filed 8–24–88; 8:45 am]
BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.
ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended, the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with investigation No. 332–356, The Western U.S. Steel Market, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

Summary of Proposal:

(1) *Number of forms submitted:* Three.

(2) *Title of forms:* The Western U.S. Steel Market—Questionnaires for Western U.S. Producers, Eastern U.S. Producers and Distributors, and Western U.S. Purchasers.

(3) *Type of request;* New.

(4) *Description of respondents:* Firms which produce, purchase, or distribute steel products.

(5) *Estimated reporting burden:*

	Western U.S. producers	Eastern U.S. producers and distributors	Western U.S. purchasers
Estimated average burden per response (hours)	60	20	20
Proposed frequency of response	1	1	1
Estimated number of respondents	150	150	150
Estimated total annual burden (hours)	9,000	3,000	3,000

Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed form and supporting documents may be obtained from James Brandon (USITC, tel. No. 202–252–1433). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting the promptly you should advise OMB of your intent within two weeks of the date this notice appears in the **Federal Register.** Ms. Picoult's telephone number is 202–395–7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.
Kenneth R. Mason,
Secretary.
Issued: August 19, 1988.
[FR Doc. 88–19227 Filed 8–24–88; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 337–TA–285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Investigation

AGENCY: U.S. International Trade Commission.
ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 21, 1988, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of American Cyanamid Company, One Cyanamid Plaza, Wayne, New Jersey 07470. The complaint was supplemented on August 9, 1988. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into and sale within the United States of certain chemiluminescent compositions and components thereof, by reason of alleged direct infringement of claims 1–5 and 7–10 of U.S. Letters Patent No. 3,749,679, claims 1, 2, 4–6 and 8 of U.S. Letters Patent No. 3,775,336, claims 1–6 and 10 of U.S. Letters Patent No. 3,888,786, clams 1, 4 and 5 of U.S. Letters Patent No. 4,313,843; contributory and

induced infringement of claims 1, 2, 4, 6 and 7 of U.S. Letters Patent No. 3,729,426 and claims 1, 3 and 4 of U.S. Letters Patent No. 4,076,645; and contributory and induced infringement of U.S. Registered Trademark Nos. 925,341, 1,133,583 and 1,141,455. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: William M. Nugent, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1581.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, as supplemented, the U.S. International Trade Commission, on August 18, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a) of Section 337 in the unlawful importation into the United States of certain chemiluminescent compositions and components thereof, or in their sale, by reason of alleged direct infringement of claims 1–5 or 7–10 of U.S. Letters Patent 3,749,679, claims 1, 2, 4–6 or 8 of U.S. Letters Patent 3,775,336, claims 1–6 or 10 of U.S. Letters Patent 3,888,786, claims 1, or 5 of U.S. Letters Patent 4,313,843; contributory or induced infringement of claims 1, 2, 4, 6, or 7 of U.S. Letters Patent 3,729,426 or claims 1, 3 or 4 or U.S. Letters Patent 4,076,645; and contributory or induced infringement of Registered Trademark Nos. 925,341, 1,133,583, and 1,141,455, the effect or tendency of which is to destroy or substantially injure an industry efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—American Cyanamid Company, One Cyanamid Plaza, Wayne, New Jersey 07470

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Societe Prolufab, 26 Rue Emile Duclaux, 92150 Suresnes, France

Luc Noel, 279 South Windsor, Los Angeles, California 90004.

(c) William M. Nugent, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401F, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtaind by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: August 19, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–19228 Filed 8–24–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Commission Decision Not To Review Initial Determination Terminating One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Termination of respondent Hyundai Electronics America, Inc. (HEA) on the basis of a consent order; issuance of consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 128) issued by the presiding administrative law judge (ALJ) terminating respondent HEA in the above-captioned investigation on the basis of a consent order.

Termination of respondent HEA on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

FOR FURTHER INFORMATION CONTACT: Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1097.

SUPPLEMENTARY INFORMATION: On July 14, 1988, the presiding ALJ issued an ID terminating the investigation with respect to HEA. The ID granted the joint motion of complainant Intel Corporation and respondents HEA, Hyundai Electronics Industry Co., Ltd.; Cypress Electronics, a division of Braydas Corporation; All American Semiconductor, Inc.; and Pacesetter Electronics, Inc. to terminate the investigation with respect to HEA on the basis of a consent order. No petitions for review of the ID or government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the consent order, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW.,

Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: August 16, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–19230 Filed 8–24–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731–TA–385 and 386 (Final)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 735(b) of the tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Italy and Japan of granular polytetrafluoroethylene resin, provided for in item 445.54 of the Tariff Schedules of the United States (TSUS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective April 19, 1988, following preliminary determinations by the Department of Commerce that imports of granular polytetrafluoroethylene resin from Italy and Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 4, 1988 (53 FR 15902). The hearing was held in Washington, DC, on July 13, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 16, 1988. The views of the Commission are contained in USITC Publication 2112 (August 1988), entitled "Granular Polytetrafluoroethylene Resin from Italy and Japan: Determinations of the Commission in Investigations Nos. 731–TA–385 and 386 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission:

Issued: August 16, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–19286 Filed 8–24–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–293–295 (Preliminary) and 731–TA–412–419 (Preliminary)]

Industrial Belts From Israel, Italy, Japan, Singapore, South Korea, Taiwan, The United Kingdom, and West Germany

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Israel, Singapore, and South Korea of industrial belts,[2] provided for in items 358.02, 358.06, 358.08, 358.09, 358.11, 358.14, 358.16, 657.25, and 773.35 of the Tariff Schedules of the United States, that are alleged to be subsidized by the Governments of Israel, Singapore, and South Korea. The Commission also determines, pursuant to section 733(a) of the Tafiff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Israel, Italy, Japan Singapore, South Korea, Taiwan, the United Kingdom, and West Germany of industrial belts that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 10, 1988, a petition was filed with the Commission and the Department of Commerce by The Gates Rubber Co., Denver, CO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of industrial belts from Israel, Singapore, and South Korea and by reason of LTFV imports from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany. Accordingly, effective June 30, 1988, the Commission instituted preliminary countervailing duty investigations Nos. 701–TA–293–295 (Preliminary) and preliminary antidumping investigations Nos. 731–TA–412–419 (Preliminary).

Notice of the institution of the Commission's investigations and of a purblic conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 7, 1988 (53 FR 25550). The conference was held in Washington, DC, on July 22, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 15, 1988. The views of the Commission are contained in USITC Publication 2113 (August 1988), entitled "Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany: Determinations of the Commission in Investigations Nos. 701–TA–293–295 (Preliminary * * * [and] Investigations Nos. 731–TA–412–419 (Preliminary) Under the Tariff Act of 1930, Together With the Information obtained in the Investigations."

By order of the Commission:

Issued: August 15, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–19231 Filed 8–24–88; 8:45am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–286

Certain Track Lighting System Components, Including Plugboxes; Investigation

AGENCY: U.S. International Trade Commission.

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

[2] For purposes of these investigations, the subject industrial belts include belting and belts for machinery, in part or wholly of rubber or plastics. These belts are used for transmitting power and may be finished or unfinished whether cured or uncured, and are included regardless of cross-sectional configuration. Imports excluded from the scope of these investigations are conveyor belts and automotive belts.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 22, 1988, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Cooper Industries, Inc., First City Tower, Suite 4000, P.O. Box 4446, Houston, Texas 77210. The complaint was amended and supplemented on August 5, 1988. The complaint, as amended and supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain track lighting system components, including plugboxes, and in their sale, by reason of alleged (1) infringement of common law trademark, (2) misrepresentation of source, and (3) passing off. The complaint, as amended and supplemented, further alleges that the effect of tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation; Having considered the complaint, the U.S. International Trade Commission, on August 18, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain track lighting system components, including plugboxes, or in their sale, by reason of alleged (1) common law trademark infringement or (2) false representation of source, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Cooper Industries, Inc., First City Tower, Suite 4000, P.O. Box 4446, Houston, Texas 77210.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Marvin Electric Manufacturing Company, d/b/a/ MARCO or Marvin Electric, 6100 Wilmington, Los Angeles, California 90001

Jin You Industrial Co., Ltd., No. 278 Shyder Road, Peiliu Chun, Wu Feng, Shang, Taichung, Taiwan

Crest Industries, Inc., 2011 Northwest 89th Place, Miami, Florida 33172

Liform Lite Industrial, Third Floor, Lane 425, 48 Chungyang North Road, Section 4, Pei-Tou, Taipei, Taiwan

Metropolis Electric Illumination Co. Ltd., No. 33, Section 2, Chi Nam Road, Taipei, Taiwan

Three's Clever Enterprises Co., Ltd., 73–17, Section 2, Chung Hsing Road, Ta Li Taichung, Taiwan

Encon-Trac-Tec, 6901 Snowden, Fort Worth, Texas 76140

Bravo Track Lighting, G Street & Erie Avenue, P.O. Box 26902, Philadelphia, Pennsylvania 19134–1388

(c) David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436, shall be the Commission Investigative Attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. An extension of time for submitting a response will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1892. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: August 19, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–19229 Filed 8–24–88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 41X)]

Norfolk and Western Railway Co. Discontinuance of Service Exemption—Grant County, IN

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinue service over its 8.02-mile line of railroad between milepost TS–144.20, at Van Buren, IN, and milepost TS-152.22, at Marion, IN, in Grant County.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial

BEST COPY AVAILABLE

assistance has been received, this exemption will be effective September 24, 1988, (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, One Commercial Pl., Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance of service.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 25, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–19101 Filed 8–24–88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance,* 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Browning Ferris Industries-Chemical Services, Inc., and CECOS International

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 12, 1988, a proposed Consent Decree in United States v. Browning Ferris Industries-Chemical Services, Inc., and CECOS International, Civil Action No. 87–317 (M.D. LA.) was lodged with the United States District Court for the Middle District of Louisiana.

The Complaint in this enforcement action was filed on April 28, 1987, against the defendants under Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928, seeking civil penalties and injunctive relief for violations of the operating regulations for an interim status hazardous waste facilities. The Complaint seeks injunctive relief against the defendants to require them to comply with all applicable laws and conduct a groundwater contamination assessment. The proposed Consent Decree ("Decree") requires the defendants to, *inter alia,* conduct an environmental audit of the facility, institute computer waste tracking at the facility, install upgradient and downgradient groundwater monitoring wells and comply with the facility's Louisiana Water discharge permit limits for the discharge of pollutants from its wastewater treatment facilities and its underdrain waters. It further provides for stipulated penalties for failure to comply with the Decree and for payment of a $2,000,000 civil penalty for past violations of the Act and a $500,000 payment to Louisiana State University for the establishment of an endowment for the study of hazardous waste problems.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States v. BFI/CECOS,* D.J. No. 90–7–1–404.

The proposed Consent Decree may be examined at the office of the United States Attorney, 352 Florida Street, Baton Rouge, Louisiana 70804 and at the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $1.50 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–19256 Filed 8–24–88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984 Notification; Dialkyl Project

Notice is hereby given that, on August 3, 1988, pursuant to Section 6(a) of the National Cooperative Research Act of 184, 15 U.S.C. 4301 *et seq.* ("the Act"), Lonza Inc., filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Dialkyl Project and (2) the nature and objectives of the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Dialkyl Project and its general areas of planned activities are given below.

The parties to the Project are Lonza Inc., Huntington Laboratories, Inc., Mason Chemical Company, and Stepan Company. The objective of the project is to sponsor and conduct toxicological research pursuant to a Data Call-In Notice issued by the U.S. Environmental Protection Agency ("EPA") on March 4, 1987 with respect to members of the Dialkyl quaternary ammonium compound family. These compounds are the active ingredients in certain commercially available pesticide products. The results of such research will be submitted to EPA in connection with the registration and data call-in of pesticides containing these compounds as active ingredients.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–19257 Filed 8–24–88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts In Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Challenge II/ Advancement Section) to the National Council on the Arts, will be held on September 13, 1988, from 9:00 a.m.—5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 19, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–19354 Filed 8–24–88; 8:45 am]

BILLING CODE 7537–01–M

National Council on The Arts, Design Arts Advisory Panel (Overview Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 8, 1988, from 3:30 p.m.–5:30 p.m., at the Vietnam Veterans War Memorial, Constitution Avenue at 21st Street, NW., Washington, DC, and on September 9, 1988, from 9:00 a.m.–5:00 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on September 8, from 3:30-5:30 p.m.; on September 9, from 9:00 a.m.-3:00 p.m.; and on September 9, from 3:15-5:00 p.m. The topics for discussion will include: Issues and Opportunities in Design Arts, Grant Programs, Leadership Initiative, Five-Year Plan and Guidelines.

The remaining session of this meeting on September 9, from 3:00-3:15 p.m. is for discussion and development of confidential FY 89 and FY 90 budgetary projections and related plans to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: August 16, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88–19258 Filed 8–25–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs. ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503

Title: Assessment of the NSF College Science Instrumentation Program.

Affected Public: Non-profit institutions.

Responses/Burden Hours: 809 responses; 43 minutes per response.

Abstract: This study of the impacts of the College Science Instrumentation Program during its first three years will identify factors which tend to impede or facilitate project development and will determine effects CSIP has had on students, faculty, and institutions. Program strengths and weaknesses will be identified and used for (CSIP) improvement.

Dated: August 19, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88–19306 Filed 8–24–88; 8:45 am]

BILLING CODE 7555–01–M

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 23, 1988. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the Federal Register on June 21, 1988.

The applications received are as follows:

1. Applicant

John L. Bengtson, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115.

Activity for Which Permit Requested

Taking; Import into the U.S.A. The applicant proposes to take seals as part of a study of the feeding ecology, reproduction, and population dynamics of Antarctic Seals and to examine their role in the marine ecosystem. When logistically possible, time-depth recorders, radio transmitters, and satellite-lined electronics will be deployed on seals of various species to monitor their feeding and diving behavior. Recorders will be retrieved from seals up to 90 days after initial deployment.

Location

Antarctic Peninsula area and offshore islands; circumpolar pack ice areas.

Dates

January 1989–December 1990.

2. Applicant

John L. Bengtson, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115.

Activity for Which Permit Requested

Taking. The applicant is conducting research and monitoring studies on selected seabirds as part of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) ecosystem monitoring program.

A principal aim of this work is to quantify variability in food web dynamics and selected aspects of seabird life history parameters. The species to be examined are Chinstrap penguin, Macaroni penguin, Cape Petrel, Wilson's Storm Petrel, and American Sheathbill.

Location

Antarctic Peninsula and South Shetland Islands.

Dates

December 1988–December 1990.

3. Applicant

John L. Bengtson, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115.

Activity for Which Permit Requested

Enter Cape Shirreff Specially Protected Area (SPA) Enter Byers Peninsula Site of Special Scientific Interest (SSSI). The applicant requests permission to enter protected geographic areas to census Antarctic fur seals and penguins as part of the Antarctic Marine Living Resources program. No speciments will be taken.

Location

Cape Shirreff, SPA, and Byers Peninsula, SSSI.

Dates

January 1989–December 1990

4. Applicant

David F. and Jean M. Parmelee, 349 Bell Museum, University of Minnesota, Minneapolis, Minnesota 55455.

Activity for Which Permit Requested

Taking; Import into U.S.A.; Enter Sites of Special Scientific Interest; and Enter Specially Protected Areas. The applicants are writing a monograph on the Birds of the Palmer Archipelago. They request permission to examine previously banded birds and salvage dead specimens of banded birds. Salvaged specimens will be returned to the Bell Museum.

Location

Palmer Archipelago, Antarctica.

Dates

January–March 1989.

5. Applicant

David G. Ainley, Point Reyes Bird Observatory, Stinson Beach, California 94970.

Activity for Which Permit Requested

Taking. The applicants are investigating certain life history parameters of seabirds as indicators of changes in food web dynamics of the marine ecosystem. It is proposed to capture, band, weigh, measure and examine Adelie penguins, South Polar Skuas and Brown Skuas. Some birds will undergo stomach pumping and/or affixing/removing radio transmitters.

Location

Palmer Station and vicinity, Antarctica.

Dates

December 1988–March 1989.

6. Applicant

David G. Ainley, Point Reyes Bird Observatory, Stinson Beach, California 94970.

Activity for Which Permit Requested

Enter Specially Protected Area. The applicant proposes to visit Litchfield Island on 3 different days during the period of December 1988 to March 1989 to count penguins and other seabirds. This is a part of the Antarctic Marine Living Resources Program.

Location

Litchfield Island, Arthur Harbor, Antarctica.

Dates

December 1988–March 1989.

Charles E. Myers,

Permit Officer.

[FR Doc. 88–19259 Filed 8–24–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee on Chemical, Biochemical, and Thermal Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee on Chemical, Biochemical, and Thermal Engineering

Date and Time:
September 12, 1988–8:30 a.m. to 5:00 p.m.
September 13, 1988–8:30 a.m. to 4:00 p.m.

Place: Room 1243, 1800 G Street, NW., Washington, DC

Type of Meeting: Open

Contact Person: Dr. E. M. Sparrow, Division Director for Chemical, Biochemical, and Thermal Engineering, Room 1126, National Science Foundation, Washington, DC 20550 Telephone: 202–357–9606

Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide directions to Chemical, Biochemical, and Thermal Engineering research

Agenda: Monday, September 12, 1988—Open
8:30 a.m.—Brief overview of the Chemical, Biochemical, and Thermal Engineering Division
9:00 a.m.—Presentations of models and methodologies for utilization and transfer of research results and technology within and between organizations
12:30 p.m.—Recess
1:30 p.m.—Additional presentation of models and methodologies
2:10 p.m.—Discussion and formulation of approaches for enhancing utilization and transfer of CBTE-supported research results
5:30 p.m.—Adjournment for the day

Tuesday, September 13, 1988—Open
8:30 a.m.—(a) Drafting of report on enhancing utilization and transfer
—(b) Overview of specific CBTE Programs
12:00 Noon—recess
1:00 p.m.—(a) Continuation of report

on enhancing utilization and transfer
—(b) Drafting of reports on Program overviews
4:00 p.m.—Adjourn

M. Rebecca Winkler,
Committee Management Officer.
August 22, 1988.
[FR Doc. 88-19307 Filed 8-24-88; 8:45 am]
BILLING CODE 7555-01-M

Division of Earth Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel
Date: September 21, 22, and 23, 1988
Time: 8:00 a.m. to 6:00 p.m. each day
Place: The National Science Foundation, Room 543, 1800 G. Street, NW, Washington, DC 20550
Type of Meeting: Closed
Contact Person: Dr. Ian D. MacGregor, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550; Telephone: (202) 357-7958
Summary Minutes: May be obtained from the Contact Person at the above address
Purpose of Meeting: To provide advice and recommendations concerning support for research in Earth Sciences
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards
Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
August 22, 1988.
[FR Doc. 88-19308 Filed 8-24-88; 8:45 am]
BILLING CODE 7555-01-M

Advisory Committee for Emerging Engineering Technologies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Emerging Engineering Technologies
Date and Time:
September 19, 1988, 8:30 am to 6:00 pm;
September 20, 1988, 8:30 am to 12:30 pm.
Place: 1800 G Street, NW., Washington, DC: Rm 523
Type of Meeting: Closed
Contact Person: Frank L. Huband, Division Director, Emerging Engineering Technologies, 1800 G Street, NW., Washington, DC 20550, (202) 357-7962
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: Perform oversight of program management, overall program balance, and other aspects of program performance.
Agenda: Committee Review of the Biotechnology Program, including examination of proposal jackets, reviewer comments, and other privileged materials; and Committee drafting of a report.
Reason for Closing: The meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 88-19309 Filed 8-24-88; 8:45 am]
BILLING CODE 7555-01-M

Advisory Committee for Emerging Engineering Technologies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Emerging Engineering Technologies
Date and Time:
September 26, 1988, 8:30 am to 6:00 pm;
September 27, 1988, 8:30 am to 12:30 pm.
Place: 1800 G Street, NW., Washington, DC: Rm 540
Type of Meeting: Closed
Contact Person: Frank L. Huband, Division Director, Emerging Engineering Technologies, 1800 G Street, NW., Washington, DC 20550, (202) 357-7962
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: Perform oversight of program management, overall program balance, and other aspects of program performance.
Agenda: Committee Review of the Biotechnology Program, including examination of proposal jackets, reviewer comments, and other privileged materials; and Committee drafting of a report.
Reason for Closing: The meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
August 22, 1988.
[FR Doc. 88-19310 Filed 8-24-88; 8:45 am]
BILLING CODE 7555-01-M

Advisory Panel for Science and Technology; Meeting

Name: Advisory Panel for Science and Technology Centers
Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550
Date and Time:
September 14, 1998, 2:00 p.m. to 5:00 p.m.
September 15, 16 & 17 1988, 9:00 a.m. to 5:00 p.m.
Type of Meeting: Closed
Contact Person: Dr. William C. Harris, Acting Director, Office of Science and Technology Centers Development, Room 533, National Science Foundation, Washington, DC 20550. Telephone: 202/357-9808.
Purpose of Meeting: To provide advice and recommendations concerning support for Science and Technology Centers.
Summary Minutes: May be obtained from the Contact Person at the above address
Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.
Reason for Closing: The proposals being reviewed include information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C.

552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

August 22, 1988.

[FR Doc. 88-19311 Filed 8-24-88; 8:45 am]

BILLING CODE 7555-01-M

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Task Force on September 29, 1988.

Meeting

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology
Date: September 29, 1988
Time: 9:00 a.m. to 1:00 p.m.
Place: U.S. Department of Agriculture, 14th and Independence Avenue NW., Room 104A, Washington, DC 20250
Type of Meeting: Open
Purpose: Discussion 1) dissemination of the task force interim report; 2) progress on data colleciton by agencies; and 3) status of each agencies plans for implementation of the task force interim report.

Sue Kemnitzer,

Executive Director. (202) 245-7477.

July 21, 1988.

[FR Doc. 88-19312 Filed 8-24-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Regional State Liaison Officers' Meeting

On September 28 and 29, 1988, the Nuclear Regulatory Commission (NRC) will sponsor a regional meeting with the Governor-appointed Stated Liaison Officers from Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. The subjects which will be discussed include waste management, licensee performance, decommissioning, radioactive contamination, as well as other items of mutual regulatory interest.

The meeting will be conducted at the NRC Region III office, 799 Roosevelt Road, Building 4, Glen Ellyn, Illinois. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. until 5:00 p.m. on Wednesday, September 28, and from 8:30 a.m. until 1:00 p.m. on Thursday, September 29, 1988.

Questions regarding this meeting should be directed to Mr. Roland Lickus, at 312/790-5666.

Dated at Glen Ellyn, Illinois, this 16th day of August, 1988.

For the Nuclear Regulatory Commission.

A. Bert Davis,

Regional Administrator.

[FR Doc. 88-19323 Filed 8-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI-2) will be meeting on September 7, 1988 from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, GPU Nuclear Corporation.

The Panel will also conduct a working session to review the recently issued draft supplement to the Programmatic Environmental Impact Statement (NUREG-0683, Supplement 3) dealing with the licensee's plans for post-defueling monitored storage and subsequent cleanup of TMI-2. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1373.

Dated: August 19, 1988.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 88-19324 Filed 8-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Operator License No. 6010-2 EA 88-164; Docket No. 55-08347; ASLBP No. 88-577-02-EA]

Maurice P. Acosta, Jr.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and § 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Maurice P. Acosta, Jr., Operator License No. 6010-2, EA 88-164.

This Board is being established pursuant to the Licensee's request for a hearing regarding an Order issued by the Executive Director for Operations, dated June 15, 1988, entitled "Order Suspending License (Effective Immediately) and Notice of Denial of Application for Renewal of License."

The Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108.

Judge Kenneth A. McCollom, 1107 West Knapp Street, Stillwater, Oklahoma 74075.

Issued at Bethesda, Maryland, this 18th day of August 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-19325 Filed 8-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company (the licensee), for operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The amendment would revise the Technical Specifications to reduce the minimum water coverage for irradiated fuel and control rods during their handling in accordance with the licensee's application for amendment dated August 12, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request

for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 12, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas and the Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland this 17th day of August 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–19326 Filed 8–24–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

System Energy Resources, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. This notice relates to the licensees' revised application for an amendment dated August 3, 1988 and supersedes a previous notice published in the **Federal Register** on January 27, 1988 (53 FR 2302), which related to the licensees' initial application for an amendment dated December 16, 1987.

The proposed amendment would delete a condition in the Facility Operating License (OL) and revise provisions in the Technical Specifications (TS) related to the qualifications and training of operating personnel for the facility. These changes would implement an amendment to 10 CFR Part 55, "Operator's Licenses," which became effective May 26, 1987. The specific proposed changes are described as follows:

1. OL Condition 2.C.(30) states, "Permanent training center instructors and consultants assigned to training who, after initial criticality will teach systems, integrated responses, transients, and simulator courses to license candidates or NRC-licensed personnel, shall either demonstrate or have previously demonstrated their competence to the NRC staff by successful completion of a senior operator examination prior to teaching licensed operators."

SERI proposes to delete this condition, since the Grand Gulf Nuclear Station (GGNS) operator training program is now INPO accredited and based on a systems approach to training.

2. TS 6.3 states, "Each member of the unit staff shall meet or exceed the

minimum qualifications of ANSI N18.1–1971 for comparable positions and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter # to all licensees, except for the Chemistry/Radiation Control Superintendent who shall meet or exceed the qualifications of Regulatory Guide 1.8, September 1975##; the Shift Technical Advisor who shall meet or exceed the qualifications referred to in Section 2.2.1.b of Enclosure I of the October 30, 1979 NRC letter to all operating nuclear power plants * * *"

SERI proposes to delete the phrase "and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter to all licensees except for the Chemistry/Radiation Control Superintendent who shall meet or exceed the qualifications of Regulatory Guide 1.8, September 1975##; the Shift Technical Advisor who shall meet or exceed the qualifications referred to in Section 2.2.1.b of Enclosure I of the October 30, 1979 NRC letter to all operating nuclear power plants" from the above TS and replace it with, "except for the Chemistry/Radiation Control Superintendent and Shift Technical Advisor, who shall meet or exceed the education and experience requirements of ANSI/ANS 3.1–1981 as endorsed by Regulatory Guide 1.8, Revision 2, 1987, and licensed personnel who shall meet or exceed the criteria of the accredited license training program." This change will make GGNS TS consistent with the revision to 10 CFR Part 55 and Regulatory Guide 1.8, Revision 2, 1987.

3. Footnote # to TS 6.3 and 6.4 states, "Except that the experience and other training information provided in the licensee's letter to the NRC dated July 29, 1985 are acceptable for the individuals listed in that letter." Footnote ## to T.S. 6.3 states, "Except that the individual identified in MP&L's [Mississippi Power & Light Company's] letter to the NRC dated December 11, 1985 is considered qualified to hold the position of Chemistry/Radiation Control Superintendent based on the experience, education, and other information provided or referenced in that letter."

SERI proposes to delete these footnotes. Footnote # modified Section A of Enclosure 1 of the March 28, 1980 NRC letter which SERI proposes deleting under changes 2 and 4. The individual identified in the referenced MP&L letter in Footnote ## complies with the requirements of Regulatory Guide 1.8, Revision 2, 1987.

4. TS 6.4 states, "A retraining and replacement training program for the unit staff * * * shall meet or exceed the requirements and recommendations of Section 5.5 of ANSI N18.1–1971 and Appendix "A" of 10 CFR Part 55 and the supplemental requirements specified in Sections A and C of Enclosure 1 of the March 28, 1980 NRC letter # to all licensees * * *"

SERI proposes to: (a) Delete the phrase "the requirements and recommendations of Section 5.5 of ANSI N18.1–1971" and replace it with "INPO accreditation criteria"; (b) delete the reference to "Appendix A" since the revision to 10 CFR Part 55 deleted this appendix; and, (c) delete the phrase "and supplemental requirements specified in Sections A and C of Enclosure 1 of the March 28, 1980 NRC letter # to all licensees" to make GGNS TS consistent with the revision to 10 CFR Part 55, which superseded the referenced letter.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 26, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington,

DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 16, 1987, as revised August 3, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Dated at Rockville, Maryland, this 18th day of August 1988.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

Acting Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–19327 Filed 8–24–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

System Energy Resources, Inc., et al., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Facility Operating License No. NPF–29 issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change Technical Specification 3/4.8.1 "A.C. Sources," by separating the 24-hour surveillance test of diesel generators from the surveillance test simulating loss of offsite power in conjunction with an ECCS actuation signal. This separation of tests would provide more flexibility in scheduling tests during refueling outages.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 26, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioners; property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

No later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set for the with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the

amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 28, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 18th day of August, 1988.

For The Nuclear Regulatory Commission.

Lester L. Kintner,

Acting Director, Project Directorate II–1 Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 88–19328 Filed 8–24–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

System Energy Resources, Inc., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change Technical Specification 3/4.7.4, "Snubbers," and associated Bases 3/4.7.4 by deleting Sample Plan 3 for snubber functional tests and by deleting the reject region from Figure 4.7.4–1, "Sample Plan 2 for Snubber Functional Tests." Sample Plan 3 is not used. The change to Sample Plan 2 will eliminate the possibility of unnecessarily requiring 100% testing of snubbers and associated unnecessary radiological exposure of personnel.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 26, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's "Rule for Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the result of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 in (Missouri 1–800–324–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam; petitioner's name and telephone number; date petition was mailed, plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 25, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 18th day of August 1988.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

Acting Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–19329 Filed 8–24–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 116 to Facility Operating License No. NPF–3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which changed the license and revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment changed a license condition and the Technical Specifications to revise the existing pressure temperature limits and extend the operation period of the limits up to 10 effective full power years; the amendment also approved revision of the existing surveillance capsule removal schedule.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 4, 1988 (53 FR 15932). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated March 30, 1988 as supplemented May 4, 1988, (2) Amendment No. 116 to License No. NPF–3, (3) the Commission's related Safety Evaluation dated August 19, 1988 and (4) the Environmental Assessment dated July 7, 1988 (53 FR 27095). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 19th day of August 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–19330 Filed 8–24–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

August 22, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Angell Real Estate Co., Inc.
Common Stock, No Par Value (File No. 7–3723)
Adams Express Co.
Common Stock, $.10 Par Value (File No. 7–3724)
Burlington Coat Factory Warehouse Corp.
Common Stock, $1 Par Value (File No. 7–3725)
Bemis, Inc.
Common Stock, $5 Par Value (File No. 7–3726)
CoastAmerica Corp.
Common Stock, $.01 Par Value (File No. 7–3727)
CalFed Income Partners L.P.
Depository Units, No Par Value (File No. 7–3728)
Daniel Industries, Inc.
Common Stock, $1.25 Par Value (File No. 7–3729)
Data Design Laboratories, Inc.
Capital Stock, $.33⅓ Par Value (File No. 7–3730)
Emerald Homes, LP
Units of Limited Partnership Interest, No Par Value (File No. 7–3731)
Equimark Corp.
Common Stock, $.33⅓ Par Value (File No. 7–3732)
First Financial Funds, Inc.
Common Stock, $.001 Par Value (File No. 7–3733)
Foothill Group, Inc.
Class A Common Stock, No Par Value (File No. 7–3734)
Gleason Corp.
Common Stock, $1 Par Value (File No. 7–3735)
Harmon International Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–3736)
Hills Department Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–3737)
ICM Property Investors, Inc.
Common Stock, $1 Par Value (File No. 7–3738)
Foodmaker, Inc. $.01 Par Value (File No. 7–3739)
JWP, Inc.
Common Stock, $.10 Par Value (File No. 7–3740)
Koger Properties, Inc.
Common Stock, $.10 Par Value (File No. 7–3741)
Leggett & Platt, Inc.
Common Stock, $1 Par Value (File No. 7–3742)
Laclede Gas Co
Common Stock, $2 Par Value (File No. 7–3743)
Metropolitan Financial Corp.
Common Stock, $.01 Par Value (File No. 7–3744)
NAFCO Financial Group, Inc.
Common Stock, $.01 Par Value (File No. 7–3745)
NERCO, Inc.
Common Stock, No Par Value (File No. 7–3746)
Pacific Scientific Co.
Common Stock, $1 Par Value (File No. 7–3747)
Rodman & Renshaw Capital Group, Inc.
Common Stock, $.09 Par Value (File No. 7–3748)
Schafer Value Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–3749)
Santa Fe Energy Partners, LP
Depository Units, No Par Value (File No. 7–3750)
Thor Industries, Inc.
Common Stock, $.06⅔ Par Value (File No. 7–3751)
Transcanada Pipeline, Ltd.
Common Stock, $.33⅓ Par Value (File No. 7–3752)
United Kingdom Funds, Inc.
Common Stock, $.01 Par Value (File No. 7–3753)
Winners Corp.
Common Stock, $.05 Par Value (File No. 7–3754)
Zenith National Insurance Corp.
Common Stock, $.01 Par Value (File No. 7–3755)

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These securitiese are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 12, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19350 Filed 8-24-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 22, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

India Growth Fund, Inc. (The)
Common Stock, $.01 Par Value (File No. 7-3756)
First Union Corp.
Common Stock, $3.33 ⅓ Par Value (File No. 7-3757)
Rexene Corp.
Common Stock, $.01 Par Value (File No. 7-3758)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 12, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19351 Filed 8-24-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

National Advisory Council Executive Committee Meeting

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, DC., will hold a National Advisory Council Executive Committee meeting, from 8:30 a.m. on Thursday, August 25, 1988 to noon Friday, August 26, 1988, at the Little America Hotel, 500 S. Main Street, Salt Lake City, Utah 84101, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, Office of Advisory Councils, 1441 L Street NW., Room 503-E, Washington, DC. 20416 (202) 653-6748.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 17, 1988.

[FR Doc. 88-19289 Filed 8-24-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 88-14]

Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea (72 COLREGS)

AGENCY: Coast Guard, DOT.

ACTION: Notice of Granting of Certificates of Alternative Compliance to Vessels.

SUMMARY: This notice lists commercial vessels granted Certificates of Alternative Compliance by the Commander, Eighth Coast Guard District, since 24 February 1988. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Navigation Rules for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessel's special functions. The intent of this notice is to advise the mariner of those vessels that have been granted Certificates of Alternative Compliance.

EFFECTIVE DATE: August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Robert L. Knapp, USCG, c/o Commander, Eighth Coast Guard District (mvs), Hale Boggs Federal Building, Room 1341, 500 Camp Street, New Orleans, LA 70130-3396. Telephone (504) 589-6271.

SUPPLEMENTARY INFORMATION: Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules for light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. The Eighth Coast Guard District has on record a total of six vessels to which it granted Certificates of Alternative Compliance since 24 February 1988. These vessels are incapable of complying with the 72 COLREGS light provisions. Following is a list of commercial vessels that are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance.

The following vessels carry the after (second) masthead light at the noted horizontal distance from the forward masthead light:

Vessel	Official No.	After masthead light carried at the designated horizontal distance (in meters) from the forward masthead light
Caribbean Sentry	693268	15.24 M
Gulf Sentry	667650	15.24 M
Pacific Sentry	659398	15.24 M
Golden Saint	569686	14.63 M
Golden Shore	561981	14.63 M

The following vessel carries the side lights forward of the masthead (single) light:

Vessel	Official No.	Sidelights carried at designated horizontal distance (in meters) forward of the masthead (single) light
Elissa	697285	3.65 M

Dated: August 11, 1988.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 88-19348 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: City of Ponce, PR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the construction of Highway PR-9, East-West Expressway, in the city of Ponce, Puerto Rico.

FOR FURTHER INFORMATION CONTACT:

Mr. Juan O. Cruz, Division Administrator, Federal Highway Administration, Puerto Rico Division, U.S. Courthouse and Federal Building, Room 329, Carlos Chardon Street, Hato Rey, Puerto Rico 00918

Mr. Jorge Rivera Jimenez, Environmental Studies Office, Department of Transportation and Public Works, Box 41269, Minillas Station, Santurce, Puerto Rico 00940, Phone (809) 728-6290.

SUPPLEMENTARY INFORMATION: The proposed project consists of the construction of Route PR-9 East-West Expressway, through the northern limits of the urbanized area of the city of Ponce, located in the southern part of Puerto Rico. It will be a four (4) lane divided freeway, with (three (3.00) meters wide) paved shoulders at both sides) and a median 14.60 meters wide. The proposed project will begin at the northeast of the city of Ponce, with an interchange with Route PR-14 and will end at an interchange with Route PR-10, for a total length of 6.1 kilometers. At present, highway users that want to by-pass the city core have to use the existing PR-2 By-pass, which is highly congested and has a lot of traffic lights, or may use as an alternate route existing local streets, which are narrow and congested, not having the capacity for the traffic demand.

Alternatives to the proposed action include a different location alignment with a reduced facility, that will require a lot of relocation of businesses and residences, and the no-build alternative.

The proposed scoping process for the proposed action will include coordination with all concerned Federal and State agencies through a consultation process by letter and the holding of a scoping meeting to be held before the environmental studies and the preparation of the Draft EIS is started and meetings or visits to the project area with public officials who could have significant comments related to the proposed action.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 1, 1988.

Juan O. Cruz,

Division Administrator, San Juan, Puerto Rico.

[FR Doc. 88-19260 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act, Pub. L. 100-202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcment include the grant number, the grant amount, and the transit property receiving each grant.

This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Date obligated
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL	IL-03-0138	$8,188,500	8/2/88
Kansas City Area Transportation Authority, Kansas City, MO	MO-03-0026	22,834,755	8/5/88
Utica Transit Authority, Utica, NY	NY-03-0232	486,000	7/25/88
County of Westchester Department of Transportation, New York, NY	NY-03-0231	1,086,750	6/30/88
Seattle Metro, Seattle, WA	WA-03-0059-02	67,162,500	8/8/88

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Issued on August 18, 1988.
Alfred A. DelliBovi,
Administrator.
[FR Doc. 88-19352 Filed 8-24-88; 8:45 am]
BILLING CODE 4910-57-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 26, 1988.

Dated: August 17, 1988.
By direction of the Administrator.
David N. Stone,
Executive Assistant, Office of Information Management and Statistics.

Extension

1 Department of Veterans Benefits.

2. Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit Only); Manufactured Home Loan Claim Under Loan Guaranty Combination Loan—Manufactured Home Unit And Lot Or Lot Only; and Records Maintained by Holders of Loans for Manufactured Homes and Lots.

3. VA Forms 26-8629 and 26-8630.

4. The forms are completed and submitted by holders of foreclosed VA guaranteed manufactured home unit combination loans as prerequisite to payment of claim.

5. On occasion.

6. Individuals or households, and business or other for-profit.

7. 3,835 responses.

8. 1,582 recordkeepers.

9. 1,279 hours.

10. Not applicable.

Extension

1. Department of Veterans Benefits.

2. Loan Guaranty Funding Fee Transmittal.

3. VA Form 26-8986.

4. This form is used by lending institutions to transmit funding fees required for VA-guaranteed home loans to a lockbox depository.

5. On occasion.

6. Individuals or households, and business or other for-profit.

7. 450,000 responses.

8. 75,000 hours.

9. Not applicable.

[FR Doc. 88-19262 Filed 8-24-88; 8:45 am]
BILLING CODE 8320-01-M

Agency Form Under OMB Review; Epidemiologic Study of the Health of Vietnam Veterans—Selected Cancers

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department sponsoring the study; (2) study title; (3) the agency form number; (4) a description of the need and its use; (5) frequency of study; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the study; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the study and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2282. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503 (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 26, 1988.

Dated: August 17, 1988.
By direction of the Administrator.
David N. Stone,
Executive Assistant, Office of Information Management and Statistics.

Extension

1. Department of Medicine and Surgery.

2. Epidemiologic Study of the Health of Vietnam Veterans—Selected Cancers Study.

3. VA Form 10-20851 a and b.

4. To be used in the solicitation of information on the health status of Vietnam veterans/controls in support of research related to the Selected Cancers Study (SCS) component of the Centers for Disease Control's Epidemiologic Study of Health of Vietnam Veterans.

5. Non-recurring.

6. Individuals or households.

7. 1700 responses.

8. 1411 hours.

9. Not applicable.

[FR Doc. 88-19263 Filed 8-24-88; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 165
Thursday, August 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 30, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 1, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-33: Jan W. Baran on behalf of the Republican Party of Florida and its Federal political committee.
Expedited Compliance Procedures for the 1988 General Election
Final FY 1990 Budget Document
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88-19373 Filed 8-23-88; 12:31 pm]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, August 31, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 23, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-19470 Filed 8-23-88; 3:49 pm]
BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-88-22A]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 30162—dated August 10, 1988.

PREVIOUSLY ANNOUNCED STATUS OF THE MEETING: Open.

CHANGE IN STATUS OF THE MEETING: Closed, in part.

In conformity with 19 CFR 201.37(b), Commissioners Brunsdale, Lodwick, Liebeler, Rohr, and Cass determined that Commission business required the change in status of the meeting on August 18, 1988, and affirmed that no earlier announcement of the change to the status was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Eckes voted against closing the meeting.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

Kenneth R. Mason,
Secretary.

August 18, 1988

[FR Doc. 88-19409 Filed 8-23-88; 1:49 pm]
BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 53, No. 165
Thursday, August 25, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3605/P456; FRL-3417-5]

Pesticide Tolerance for Metalaxyl

Correction

In proposed rule document 88-16323 beginning on page 27370 in the issue of Wednesday, July 20, 1988, make the following correction:

On page 27370, in the first column, under "**SUMMARY**", in the 10th line, "Interregulational" should read "Interregional".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-42064; FRL-3410-5]

Intent to Approve Department of Energy Plan for Certification of Applicators of Restricted Use Pesticides

Correction

In notice document 88-15230 appearing on page 26498 in the issue of Wednesday, July 13, 1988, make the following correction:

On page 26498, in the first column, under "**SUPPLEMENTARY INFORMATION**", in the 13th line, after the word "plan" insert "or".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/39A; FRL-3407-2]

Preliminary Determination to Cancel Registrations of Aldicarb Products and Notice of Availability of Technical Support Document

Correction

In notice document 88-14614 beginning on page 24630 in the issue of Wednesday, June 29, 1988, make the following corrections:

1. On page 24632, in the third column, in the sixth line, "oldicarb's" should read "aldicarb's".

2. On page 24633, in the first column, in the fourth complete paragraph, in the ninth line, "an done" should read "and one".

3. On page 24638, in the second column, in the third complete paragraph, in the 11th line and in the 16th line, "Health" should read "Heath".

4. On the same page, in the third column, in the first paragraph, in the 10th line, "Health" should read "Heath".

5. On the same page, in the same column, in the second paragraph, in the eighth line, after the word "many" insert "wells".

6. On page 24639, in the first column, in the first complete paragraph, in the 11th line, "Health" should read "Heath"; and in the 13th line and the 15th line "to" should read "for".

7. On the same page, in the second column, in the second complete paragraph, in the 13th line, "section" should read "certain".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Correction

In notice document 88-18084 appearing on page 30103 in the issue of Wednesday, August 10, 1988, make the following correction:

In the third column, in the first complete paragraph, in the first and second lines, the heading should read, "*Division of Special Populations Program Development (HBCB).*"

BILLING CODE 1505-01-D

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Thursday
August 25, 1988

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines; Final Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule updates and clarifies the Mine Safety and Health Administration's (MSHA) safety standards for loading, hauling, and dumping and machinery and equipment at metal and nonmetal mines. These revisions reorganize standards, upgrade provisions consistent with advances in mining technology, eliminate duplicative and unnecessary standards, reduce recordkeeping requirements, and provide alternative methods of compliance.

DATES: This final rule is effective on October 24, 1988. The incorporations by reference of certain publications listed in this final rule have been approved by the Director of the Federal Register as of October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background.

MSHA announced the availability of preproposal drafts for the machinery and equipment (Subpart M) and loading, hauling and dumping (Subpart H) standards on February 11, 1983 (48 FR 6489) and April 22, 1983 (48 FR 17513), respectively.

After reviewing suggestions and recommendations from mine operators, labor groups, equipment manufacturers, and other interested parties, MSHA published a proposed rule in the Federal Register for machinery and equipment on March 6, 1984 (49 FR 8375) and a proposed rule for loading, hauling and dumping on December 18, 1984 (49 FR 49202). Public hearings were held in June 1984 for the machinery and equipment standards and August 1985 for the loading, hauling, and dumping standards. MSHA received and reviewed written and oral statements on both proposed rules from all segments of the mining community. The final rule for Subpart M contains more standards than were included in the proposed rule due to the inclusion of standards originally proposed in Subpart H, but which more precisely and appropriately address machinery and equipment requirements. Additionally, a new standard addressing restricted clearance for foot travel on travelways is added to Parts 56 and 57, Subpart J (Travelways and Escapeways). The standards in Part 56 apply to all surface metal and nonmetal mines; those in Part 57 apply to underground and surface areas of underground metal and nonmetal mines.

II. Discussion and Summary of the Final Rule.

A. General Discussion.

Hazards associated with loading, hauling, and dumping activities and the use of machinery, equipment, and tools in mining have resulted in many serious injuries and fatalities. Precautions against these hazards and the proper use of the equipment involved are essential parts of any effective mine safety program.

Although fatalities and injuries in general have shown a downward trend in metal and nonmetal mines, machinery and equipment-related injuries and fatalities, as a percentage of the total, have been increasing over the past few years. This trend is, in part, due to increasing mechanization of the mining industry. During the past two decades, activity in metal and nonmetal mining nationally has shifted from underground to largely surface mining. This development has resulted in a substantial increase in the number and size of haulage vehicles being used at mine sites. While improving productivity, these changes have also exposed miners to additional potential hazards.

Accidents related to powered haulage continue to represent a significant portion of the fatalities in metal and nonmetal mines. Transportation accidents involving large equipment tend to result in the most serious types of accidents. Between 1978 and 1987, an average of 76 fatalities and 12,600 nonfatal injuries occurred annually in metal and nonmetal mines. During this period, fatalities involving powered haulage averaged about 24 annually and nonfatal injuries involving powered haulage averaged 972 annually.

Machinery and equipment accidents were also a significant cause of injuries and fatalities in mines during this period. An average of 1,675 nonfatal injuries, and 11 fatalities occurred annually, caused by either accidental contact with or misuse of machinery and equipment ranging from small, portable hand tools to large, stationary machinery, crushers and conveyors.

MSHA examined fatality reports for the years 1982–1987 to determine projected benefits from this final rule for Subparts H and M. Over the last 6 years, the Agency estimates that 127 fatalities could have been prevented by full compliance with all the provisions of the final rule. Based on this estimate, MSHA projects that full compliance will result in between 10 and 15 lives saved per year.

While increased mechanization has created potential hazards, technological improvements have also created opportunities to ensure a safer working environment for miners. Technological advances aid in reducing hazards because many safeguards are integral design features on new products. Also, improved engineering and work practices in loading, hauling, and dumping operations can contribute to enhanced protection of persons working on mining property.

These revised standards are intended to improve safety by recognizing and incorporating many of these technological improvements and bringing MSHA's standards up-to-date. In addition, standards are included to ensure safety in areas not previously addressed; but where the data show that accidents are occurring and duplicative and unnecessary standards are eliminated.

MSHA's review of the existing standards and comments received has resulted in revisions to reflect both the Agency's experience and the concerns of commenters, including small mine operators. In developing this final rule, MSHA has been responsive, to the extent possible, to the many comments received from the mining public. These changes are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12291, the Paperwork Reduction Act, and the Regulatory Flexibility Act, in that the final rule provides new compliance alternatives to accommodate advances in mining technology while offering the most effective protection for persons working at mines.

Throughout the rulemaking process a number of commenters expressed concern about the applicability of individual standards and the relationship of the loading, hauling, and dumping standards contained in Subpart H, to the machinery and equipment standards contained in Subpart M, particularly since many of the standards in Subpart H address equipment.

In drafting the final rule, it became evident that the most logical organizational approach would be to realign the standards into "hazard or

task-related" groups within separate subparts. Accordingly, many of the standards which appeared in the proposed rule for Subpart H have been transferred to Subpart M. The final rule continues to provide the necessary safety for workers at metal and nonmetal mines. Changes made to all of the existing standards are discussed fully below.

The standards that address safe conduct of loading, hauling, and dumping activities are contained in Subpart H under the following headings: Traffic Safety; Transportation of Persons and Materials; and Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites. The standards contained in Subpart M address: Safety Devices and Maintenance Requirements; and Safety Practices and Operational Procedures for various types of machinery and equipment, including those used in loading, hauling and dumping activities. Standards for Subpart H and Subpart M are published together in the **Federal Register** for the convenience of readers to assist then in understanding the realignment of the standards and to clarify the relationship between Subpart H and Subpart M.

The Agency believes this realignment of standards and restructuring of subcategories will aid in clarifying the intent of each standard and will help users locate the various standards within the Code of Federal Regulations (CFR).

B. Transfers and Deletions.

The following table lists the transferred standards.

Final rule number	Existing number
56/57.14100	56/57.9001, 56/57.9002, 56/57.9073
56/57.13101	56/57.9003
56/57.14102	56/57.9048
56/57 14103	56/57.9010, 56/57.9011, 56/57.9012
56/57.14104	56/57.9069
56/57.14109	56/57.9007
56/57.14111	56/57.9015
56/57.14113	56/57.9013
56/57.14114	56/57.9026
56/57.14130	56/57.9088
56/57.14132	56/57.9087
56/57.14160	57.9115
56/57.14161	57.9098
56/57.14162	57 9112
56/57 14200	56/57.9005
56/57 14201	56/57.9006
56/57.14206	56/57 9031, 56/57 9032
56/57.14207	56/57 9036, 56/57 9037
56/57 14208	56/57.9049, 56/57 9068
56/57 14209	56/57.9070
56/57 14210	56/57.9025
56/57 14214	56/57.9009
56/57.14215	56/57.9065, 57.9097
56/57 14216	56/57.9046
56/57 14217	56/57.9047
56/57.14218	56/57.9066
56/57.14219	56/57.9052

At the suggestion of several commenters and on the basis of the Agency's enforcement experience, the final rule deletes five existing standards. Standard 56/57.9019 which requires blocking of track guardrails, lead rails, and frogs is deleted because MSHA analysis showed no evidence of injuries associated with the performance of this task. Standard 56/57.9042 which requires that rocker-bottom and bottom-dump railcars be equipped with locking devices is deleted because these type railcars do not operate without locking devices. Standard 57.9114, which requires the designation of discharge and boarding points where mantrips are used, is deleted because final standard 56/57.9318 addresses the hazard of getting on or off moving equipment. Standard 56/57.14009 which addresses grinding wheels is also deleted because the hazard of operating such devices is covered by final standard 56/57.14205, which requires that equipment be used within the manufacturer's specifications and instructions unless no hazard to persons is created. Standard 56/57.14027, which requires that competent persons be assigned to the operation of machinery or equipment is deleted because the training requirements in 30 CFR Part 48 cover the competency of persons operating machinery or equipment.

C. Other Changes.

The final rule includes a new § 56/57.11008 for Subpart J (Travelways and Escapeways). The standard addresses restricted clearances encountered by persons traveling on foot. The standard is added in response to several commenters who urged that existing § 56/57.9060, addressing restricted overhead clearance hazards in general, be limited to situations where persons are traveling in mobile equipment. The proposal suggested the restricted clearance areas be conspicuously marked where a hazard is created. However, commenters believed the standard should only apply where the restricted clearance creates a hazard to persons on travelways. MSHA agrees with commenters who stated that, without this limitation to travelways, a multitude of other restricted clearance locations might unnecessarily have to be marked. Commenters also opposed having the standard specify how the area should be marked. In this instance, the primary compliance action relates to alerting persons to hazards presented by restricted clearnces. Under this final rule, where marking is required, and method of conspicuous marking alerting persons would be permitted. Restricted clearances that create hazards to persons on mobile equipment are addressed in final § 56/57.9306.

The provisions of existing § 56/57.14014 addressing eye protection while using grinding wheels is a "personal protection" standard which the Agency has determined would be more appropriately grouped with other personal protection standards for metal and nonmetal miners. The final rule redesignates § 56/57.14014 as § 56/57.15014 in Subpart N. No changes have been made in the requirements of the standard.

D. Petitions for Modification.

Operators with petitions for modification that involve the standards revised in this rulemaking need to determine the status of those petitions before the effective date of this final rule. If there are sections of this rule which are renumbered but remain substantively unchanged from the existing standards, operators with modifications granted for these standards need not reapply. However, operators with modifications granted for standards that have been revised will need to comply with the new rule on its effective date. New petitions for modification of the final rule may be submitted in accordance with 30 CFR Part 44. If Agency assistance is needed, questions should be directed to the appropriate MSHA District Office.

E. Definitions.

Subpart H contains two defined terms: *Berm* and *mobile equipment*. Subpart M also contains two defined terms: *Mobile equipment*, and *travelway*. In the proposed rule for Subpart H, *berm* was defined as "A pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway." Commenters supported this definition which is retained in the final rule.

Several commenters suggested clarification of the proposed rule's definitions for mobile and self-propelled equipment. In the proposed rule for Subpart H, mobile equipment was defined as "equipment capable of moving or being moved readily," and self-propelled equipment as "equipment capable of moving itself." Both subparts now define *mobile equipment* as "wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of

moving or being moved." Wherever the final rule refers to equipment capable of moving itself, it uses the term *self-propelled mobile equipment*, for which a separate definition is not necessary.

The definition of *travelway* has been revised in Subpart M to include "a passage, walk, or way regularly used or designated for persons to go from one place to another." This revision recognizes that walkways that are regularly used, in addition to those which are designated, are also included within the scope of the safety standards.

Mantrip, as proposed in Subpart H, has been deleted from the final rule because commenters indicated that mantrip is a readily understood mining term. Likewise, *trip light* has been deleted since it is also fully recognized and understood within the affected mining community.

F. Incorporations by Reference.

Subpart H does not contain any incorporations by reference. Subpart M contains two standards which incorporate by reference national consensus standards: § 56/57.14130, which addresses roll-over protective structures (ROPS) and seat belts, and § 56/57.14131, which requires the use of seat belts on certain equipment which is not fitted with ROPS. These incorporations by reference were approved by the Director of the Federal Register, and are discussed in detail in the section-by-section analysis, below.

G. Section-by-Section Discussion of Subpart H.

The following section-by-section analysis discusses the issues raised during this rulemaking.

Traffic Safety

Section 56/57.9100 Traffic control. This standard revises existing § 56/57.9071. It requires the establishment and posting of traffic safety rules, signs and signals. The standard provides for the safe operation of self-propelled mobile equipment. The final rule clarifies several provisions of the proposal and expands the scope of the required traffic safety rules.

The failure to establish traffic rules and post warning signs has been cited as a contributing factor in mining accidents. Fatalities have occurred where rules governing direction of equipment movement were not established and where signs warning of hazardous curves and steep declines were not provided.

The final standard contains two requirements. Under paragraph (a) each mine is required to establish and follow traffic rules governing equipment speed, right-of-way, direction of movement and the use of headlights. The latter requirement is added to emphasize the importance of using lights where necessary to prevent collisions and other hazards associated with operating self-propelled mobile equipment in conditions of limited visibility. The requirement is compatible with and a logical extension of the requirement in § 56/57.9101 that operating speeds be consistent with visibility. Paragraph (b) requires that warning signs or signals be placed at appropriate locations in order to alert equipment operators of the need to take appropriate precautions. For example, a sign warning the equipment operator to check a vehicle's brakes and use a low gear may be needed in advance of a steep decline.

Commenters stated that the proposal's provision for traffic rules to be posted was impractical for some mining operations since rules can change as often as each shift. MSHA agrees that this situation can exist at some mines, and the final rule deletes the posting requirement for rules but, not warning signs. However, rules would have to be established at the mine for miners' training and awareness.

Commenters also asked whether the standard would require an increase in the number of signs already required. The final rule does not require additional signs to be installed. However, it does require that the signs "warn of hazardous conditions". A second concern was the proposal's provision that each sign be uniform in size and shape for each purpose. Several commenters believed this provision was inappropriate since low clearances may sometimes make uniformity impossible, particularly underground. Commenters also stated that larger signs may be needed in some situations. MSHA agrees that while standardization may enhance warning recognition, compliance may be difficult in some situations; therefore, the final rule deletes the uniformity requirement.

Some commenters questioned the phrase "appropriate locations on roadways" and were not sure where signs or signals would be required. The final rule clarifies that signs or signals are required to be positioned so that hazardous conditions are known in advance. For example, signs must be appropriately placed to warn drivers of hazards which they are approaching, such as intersections, steep grades, and sharp turns.

Commenters also questioned the scope of the standard as it relates to underground operations. As with the existing standard, the final rule applies to surface as well as underground locations since traffic control hazards exist in both situations. While MSHA realizes that rules of the road and signs may have to be different to accommodate confined environments, they must appropriately address underground hazards.

Section 56/57.9101 Operating speeds and control of equipment. This standard revises and consolidates existing §§ 56/57.9017, 56/57.9023, 56/57.9024, and 57.9113 which address equipment speed and control. The final rule requires that operators of self-propelled mobile equipment maintain control of equipment while it is in motion. It also requires that operating speeds be consistent with conditions of the roadway or tracks, other traffic, visibility and the type of equipment used. Commenters supported this consolidation and the final rule retains the proposed language.

Section 56/57.9102 Movement of independently operating rail equipment. This standard revises existing § 56/57.9035. To prevent collision of independently operated trains, the final rule requires that movement of two or more pieces of rail equipment operating independently on the same track be controlled for safe operation.

A commenter recommended that the standard permit "control for safe operation" to be achieved by either an equipment operator or a safety device. For clarification, operators can use either approach as long as safety is achieved. Some examples of control methods are: Train dispatchers using electronic switchboards; block light systems; flagmen and switchmen.

The final rule retains the proposed language.

Section 56/57.9103 Clearance on adjacent tracks. This standard revised existing § 56/57.9050. It prohibits the parking of railcars on side tracks unless clearance is provided for traffic on adjacent tracks to pass by. No comments were received on this standard as proposed, and the final rule clarifies the proposed language to explain that clearance is needed in order for traffic to pass.

Section 56/57.9104 Railroad crossings. This standard revises existing § 56/57.9059. The final rule requires that designated railroad crossings be posted with warning signs or signals or, as an alternative, guarded when trains are passing. For example, brakemen and switchmen can guard crossings in lieu of installing signs, as long as the goal of warning workers is achieved. The final rule retains the requirement that crossing points be planked or filled between the rails.

Some commenters believed this standard should only apply to surface rail equipment. These commenters were concerned that MSHA could require the entire length of underground rails to be planked or filled since persons often use the rails as travelways. The final standard continues to apply to both surface and underground locations since the hazards exist in either situation. However, the final rule clarifies that the standard applies only to those "designated" locations where persons or equipment cross the tracks. It also deletes the proposal's reference to "permanent" crossings since the appropriate consideration is whether the location is a designated crossing point.

Section 57.9160 Train movement during shift changes. This standard revises existing § 57.9116 which applies to underground areas of underground mines. Pedestrian traffic increases considerably in most track haulage areas during shift changes. Therefore, at those times, the final rule requires that production train travel be limited to areas where pedestrian traffic is not affected.

A commenter believed that the standard should be expanded to include persons who are exposed to rail or truck haulage traffic at open pit operations. However, the final rule retains the scope of the existing standard because underground operations generally have limited areas for persons to escape from moving equipment.

Transportation of Persons and Materials

Section 56/57.9200 Transporting persons. This standard revises and consolidates existing §§ 56/57.9040, 56/57.9041, 56/57.9067, and 56/57.9085. Each of these standards involve safety practices related to transporting persons on mobile equipment. Commenters supported the consolidation of these standards; however, the final rule modifies the proposal in several respects as discussed below.

In the proposal, paragraph (a) would have prohibited transporting persons in or on dippers, forks, clamshells, or buckets. Commenters requested that MSHA include the provision contained in existing § 56/57.9049 which permits persons to be transported in shaft buckets under limited circumstances. MSHA agrees and the final rule allows persons to be transported in shaft buckets during shaft-sinking operations, or during inspection, maintenance, and repair of shafts. Several commenters questioned whether paragraph (a) would prevent persons from working from raised platforms. The final rule addresses dippers, forks, clamshells and buckets, not raised platforms. However, raised platforms are discussed in Subpart M, §§ 56/57.14211, which addresses equipment in a raised position and the use of mobile work platforms.

Paragraph (b) of the proposal prohibited transporting persons in beds of mobile equipment or railcars unless they were seated and provisions were made for secure travel. Paragraph (f) of the proposal addressed the related aspect of transporting persons in moblile equipment provided with unloading devices unless provisions were made to prevent accidental starting of the unloading devices. Commenters suggested that these related paragraphs be combined and the final rule for paragraph (b) reflects this consolidation.

Commenters questioned whether paragraph (b) would always require persons to be seated, even if provisions were made for their secure travel. For example, they cited instances of persons being safely transported while standing on platforms attached to the rear of mobile equipment. MSHA does not believe that it is always necessary for persons to be seated, so long as provisions are made for secure travel. Therefore, the final rule for paragraph (b) deletes the requirement for persons to be seated; depending upon the situation, "secure travel" may require that persons be seated or that other precautions be taken.

Paragraph (c) prohibits the transportation of persons on top of loads in mobil equipment. Except for an editorial change substituting the words "loads in" for "loaded," the final rule for paragraph (c) is the same as the proposal.

Paragraph (d) prohibits transporting persons on the outside of cabs, equipment operators' stations, or beds of mobil equipment except when necessary for maintenance, testing, or training purposes. Some commenters were concerned that the proposal's use of the term "equipment operators' stations" could prohibit the transportation of persons in cabs that are designed to accommodate more than just the operator of the equipment. MSHA did not intend to restrict the use of such cabs, and the final rule includes the term "cabs" to remove any ambiguity. As with the proposal, paragraph (d) of the final rule retains the exclusion of rail equipment.

Paragraph (e), with certain exceptions, prohibits persons from riding in locations on trains and locomotives which expose them to hazards from train movement. The proposal prohibited all persons from riding in hazardous locations on trains. Many commenters objected to the scope of this prohibition, stating that there was no basis to conclude that riding between railcars was hazardous. During the past two years, MSHA has reviewed 6 fatality reports involving persons who rode between railcars of trains, and on the leading end of trains or railcars. These victims were performing train-related work duties, such as car dropping, at the time of the fatal occurrences. In nearly every instance, the use of a safety belt and line may have avoided the fatality. Commenters agreed that use of safety belt and line during car dropping eliminates the hazard of persons falling off the platform and being run over by a train. Therefore, paragraph (e) allows car droppers to ride on the leading end of trains as long as they are secured with a safety belt and line which will prevent them from falling off the work platform. Further, commenters were concerned that paragraph (e) would prohibit gravity dropping of railcars. The final rule does not prohibit gravity dropping, which is the practice of using gravity forces and braking power to reposition cars, rather than locomotive power. Commenters also pointed out that car droppers will at times be on the leading end of a railcar since the brake wheel and platform will come on to the line on the car's leading end about half of the time. During car dropping, a person must be at the end of the railcar that has the brake wheel and platform in order to control the railcar being dropped.

The final rule for paragraph (e) specifically addresses brakemen who typically have duties such as coupling and uncoupling cars, throwing switches, setting mechanical brakes on uncoupled cars, and giving signals to the engineer. Such duties may require these workers to be in locations between railcars. It also addresses trainmen who typically run the locomotive with a remote control device; go from one end of the train to the other; and, in some instances, must leave the train in order to arrange for the loading of cars. The final rule allows these workers to take actions necessary to perform their work functions, but specifically prohibits them from riding between cars of moving trains. Commenters agreed with MSHA that when persons are being transported on trains, there should be strict adherence to the standard's prohibited riding locations.

Paragraph (f) prohibits transportation of persons in overcrowded mobile equipment. Equipment is determined to be "overcrowded" when the stability of the equipment is affected or the presence of persons would interfere with the driver's ability to safely operate

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the controls. The final rule retains the proposed language.

Paragraph (g) of the final rule prohibits transporting persons in mobile equipment with materials or equipment, unless those items are secured. Several commenters believed the standard should exempt small items that can be hand-carried, such as lunch boxes and mechanic's tools. Other commenters were concerned that if MSHA permitted such an exception, items that could pose a hazard due to their size or weight, such as mining bars and drill steel, could be construed as "hand-carried" items. The final rule addresses these concerns and permits small hand tools or other items to be hand-carried in mobile equipment if a hazard to persons is not created. Items such as mining bars or drill steel could pose hazards to persons and, therefore, would not be permitted in mobile equipment when persons are being transported unless they are secured.

Editorially, paragraph (h) of the proposal has become paragraph (g) of the final rule because of the consolidation of paragraph (b) and (f) in the final rule.

Paragraph (h) of the final rule is derived from existing §§ 56/57.9014. It appeared in the proposal for Subpart M (Machinery and Equipment) and addressed the hazard of persons riding on conveyors that are used to transport material or supplies. With the reorganization of standards, it has been retained in this subpart. Paragraph (h) prohibits persons from riding on conveyors unless the conveyors are designed to safely transport persons.

Section 56/57.9201 Loading, hauling, and unloading of equipment and supplies. This standard revises existing § 56/57.9045 which addresses the hazard of equipment and supplies falling or shifting during the process of loading, transporting, and unloading. The final rule requires that each of these procedures be performed in a manner which does not create a falling or shifting hazard that could injure persons.

Commenters questioned whether the standard could be interpreted as requiring all loads to be physically secured without regard to the presence of a hazard. For example, unsecured items are often transported in the beds of pickup trucks without posing a hazard to persons in the truck's cab or to other persons. Under the final rule, loads do not have to be secured if a hazard to persons does not exist.

Commenters also asked if the standard would prohibit dropping loads when that is the customary method of unloading a particular item. The final rule would permit this activity, so long as it did not create a hazard to persons.

Section 56/57.9202 Loading and hauling large rocks. This standard consolidates existing §§ 56/57.9034 and 56/57.9062. The final rule prohibits loading rocks in haulage vehicles when the rocks are too large to be handled safely. It also requires that when mobile equipment is used to haul mined material, the equipment must be loaded to minimize spillage where a hazard to persons could be created. In addition to creating a hazard to foot traffic, the spillage could also create a hazard to other vehicle operators.

Some commenters stated that the standard should apply only where persons "will" be endangered if rocks are not broken before loading. However, in order to prevent hazards from developing, MSHA believes that it is important to require that large rocks be broken prior to loading if their size could endanger persons or affect the stability of equipment. Several fatalities have resulted from equipment being overturned by rocks too large for the equipment.

As pointed out by commenters, the size of the equipment picking up or transporting the rock, and the size, weight, and shape of the rock are factors involved in determining whether a hazard will be created. Due to these highly variable factors, the standard is written to ensure that vehicles of appropriate size and design will be used, or that the rock is reduced to an appropriate size for the vehicle involved.

Some commenters, referring to the provision for minimizing spillage, believed that the standard should also require that loaded materials be centered. However, MSHA agrees with those commenters who noted that while operators normally attempt to center loads, a requirement to do so in all instances would be impractical given the methods typically used to load mined material. While it is impossible to prevent total spillage, the standard requires operators to take all reasonable actions to minimize spillage of material.

Section 57.9260 Supplies, materials, and tools on mantrips. This standard revises existing § 57.9099 and applies to underground operations. It prohibits the transportation of supplies, materials, and tools (except small hand tools that can be carried without creating a hazard) with persons in mantrips. It also specifies that mantrips must be operated independently of ore and supply trips. No comments were received on this standard as proposed, and the final rule clarifies the proposed language on small hand tools.

Section 57.9261 Transporting tools and materials on locomotives. This standard revises existing § 57.9096 and applies to underground mining operations. The standard prohibits the transportation of materials on top of locomotives because of the potential hazards to the train operator and miners. Derailing devices are exempted from the prohibition provided they are properly located and secured. No comments were received on this standard as proposed, and the final rule retains the proposed language.

Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites

Section 56/57.9300 Berms or guardrails. This standard revises existing §§ 56/57.9022 which addresses berms. The final rule requires berms or guardrails to be provided and maintained on the banks of roadways where a drop-off exists which is of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment. The final rule also includes a height requirement for berms and guardrails. While evaluating hazards presented by different types of roadways, MSHA identified over 90 fatalities occurring between 1969 and 1984 on haulage, service, and access roadways where a berm could have minimized the seriousness of the accident resulting from an out-of-control vehicle. In all documented instances, the roadway had a drop-off sufficient to cause equipment to overturn or otherwise endanger persons riding in the vehicle.

The existing berm standard applied to all elevated roadways, regardless of their function or frequency of use. Commenters questioned both the scope and nature of the berm provision. Many commenters believed that, under certain circumstances, the Agency should permit alternatives to the installation of berms or guardrails. Other commenters took the position that berms or guardrails should only be required on roadways that are used to haul the mine's ore and waste products. Others believed that infrequently traveled secondary roadways which are only used by small service or maintenance equipment, should be exempt from the standard. However, all of these commenters agreed that if certain roadways were exempted, alternative methods would be necessary to protect equipment operators on such roadways. MSHA has provided an option for those infrequently traveled roadways which are traveled only by service and maintenance vehicles.

MSHA discussed this issue in its public hearing notice published on July 3, 1985 (50 FR 27568), and outlined criteria to be followed should an alternative compliance method be permitted for infrequently traveled roadways which are only used by service or maintenance equipment. The Agency received public comment and testimony and agrees that an alternative to berms or guardrails on infrequently traveled roadways is appropriate and will provide necessary protection for workers. Under the final rule, berms or guardrails are not required for infrequently traveled roadways used only by service or maintenance vehicles. For those roadways, the final rule includes an alternative compliance method. Specifically, locked gates, warning signs, reflectors along the roadway's perimeter, and controlled speeds would have to be used where a berm or guardrail is not installed. These roadways cannot be traveled when traction is impaired by the presence of sleet or snow unless corrective measures are taken to improve the traction. All of these criteria must be met to diminish the likelihood of equipment going over the bank of an elevated roadway. MSHA believes that many service and secondary roadways, such as tailings dam roads can effectively use this alternative compliance method.

Some commenters also urged MSHA to exempt roadways that are under construction. However, during construction there is frequent use of the roadways, posing continual exposure to hazardous dropoffs. In these instances, the installation of the berm or guardrail should concurrently proceed with road construction. Since these roadways are in constant use and drop-off hazards exist, the alternative compliance method would not be effective. After construction, depending on the type and frequency of vehicles that use the roadway, berms or guardrails may be required or the alternative method may be used for roads used by service and maintenance vehicles.

Some commenters asked that MSHA explain the basis for requiring berms and guardrails to be mid-axle height of the largest self-propelled equipment which usually travels the roadway. Mid-axle height is the minimum height needed to (1) ensure under-carriage contact with the restraint, (2) alert the equipment operator of the hazardous situation, (3) moderate the force of the equipment, (4) provide time for corrective action, and (5) assist the operator in regaining control of the equipment. Studies have shown that berms or guardrails less than mid-axle height are not capable of limiting the force of the equipment or impeding passage over the bank of the elevated roadway. There were no adverse comments regarding the mid-axle requirement. (See Bureau of Mines Information Circular No. 8758, 1977). Where berms or guardrails are required, the final rule requires that they be at least mid-axle height of the largest self-propelled equipment which ususally travels the roadway. Therefore, the height of the berm would not need to be increased where equipment with greater mid-axle height infrequently travels the roadway.

Some commenters were concerned that berms could cause pools of water to be created along roadways which could affect the structual integrity of roads, particularly on tailings dams. MSHA realizes that water accumulation can be a problem, and the final rule permits openings along bermed areas to the extent necessary for roadway drainage.

Section 56/57.9301 Dump site restraints. This standard revises existing §§ 56/57.9054 which requires that berms, bumper blocks, safety hooks, or similar means be provided at dumping locations to prevent overtravel and overturning of mobile equipment.

Several commenters believed that the proposal's use of the words "restrain" and "prevent" was vague, and pointed out that the devices may not prevent equipment from overtravel or overturning in all cases. MSHA agrees that these devices may not provide an absolute barrier. They do, however, provide a restraint or impedance in the form of a physical obstruction to overtravel at the dump site. The final rule clarifies that these devices are intended to impede overtravel or overturning.

Some commenters also suggested that truck spotters be allowed as an alternative to using impeding devices. While the final rule does not prohibit using truck spotters in conjunction with these devices, truck spotters alone are not permitted. Truck spotters would not be able to provide an equivalent means of protection since they may not always be visible to the truck driver, nor can they provide the physical resistance that an impeding device can offer. Procedures for truck spotters are addressed in §§ 56/57.9305.

Section 56/57.9302 Protection against moving or runaway railroad equipment. This standard revises and consolidates existing §§ 56/57.9020 and 56/57.9056. The final rule requires the installation of stopblocks, derail devices, or other equivalent devices where they are necessary to protect persons from moving or runaway railroad equipment.

A commenter believed that the proposal's requirements were vague, open to interpretation, and that these deivices should be installed in accordance with the American Railway Enginering Association (A.R.E.A.) standards. MSHA has reviewed the A.R.E.A. recommended practices, and the final rule is consistant with them. Both the A.R.E.A. standards and MSHA's final rule recognize the diversity of conditions at mining operations and allow mine operators to independently assess their particular conditions when determining which type of device is appropriate. At surface mines, these protective devices are necessary where rail equipment enters work areas such as repair shops and at railcar storage areas in the proximity of work or travel sites. In underground mines, these devices provide protection against overtravel at shaft collars, level landings, and rail car storage areas where equipment or material is loaded or unloaded near work or travel sites. The final rule does not change the wording of the proposal.

Section 56/57.9303 Construction of ramps and dumping facilities. This standard revises existing §§ 56/57.9063. The final rule requires that ramps and dumping facilities be constructed of materials that are capable of supporting the loads to which they will be subjected. These ramps and dumping facilities must also provide adequate width, clearance, and headroom to safely accommodate the equipment using the facilities. No comments were received on this standard as proposed and the final rule editorially clarifies the proposed language.

Section 56/57.9304 Unstable ground. This standard clarifies the provisions of existing §§ 56/57.9055 which addresses the hazard of unstable ground at dumping locations. The final rule requires that dumping locations be inspected prior to work commencing, and as ground conditions warrant. It also provides for actions to be taken when there is evidence that the ground at a dumping location may fail.

MSHA stated in the preamble to the proposed rule that the standard would require periodic examination of dumping locations for signs of instability. Some commenters believed the standard should expressly include this examination requirement whereas others were opposed to such a requirement. The final rule includes a requirement to visually inspect dumping locations prior to work commencing and

thereafter as ground conditions warrant. Numerous accidents have occurred when dumping locations deteriorate and become unable to support the weight of the equipment using them. Therefore, the final rule also requires that where there is evidence that the ground at a dumping location may fail to support the equipment, loads are to be dumped a safe distance away from the edge of the unstable area of the bank.

Section 56/57.9305 Truck spotters. This standard revises existing §§ 56/57.9058 which establishes safety procedures to be followed when truck spotters are used for guiding trucks during dumping. No comments were received on this standard as proposed and the final rule makes grammatical changes to the proposed language.

Section 56/57.9306 Warning devices for restricted clearances. This standard revises existing §§ 56/57.9060 and 56/57.9104. The final rule addresses instances where restricted clearance creates a hazard to persons on mobile equipment, and requires that a warning device be installed in advance of the restricted area and the area be conspicuously marked.

Commenters suggested that the standard be limited to restricted clearances along roadways and that rail equipment be excluded from its scope on the basis that proposed §§ 56/57.9330 covered those hazards. MSHA agrees that the standard should be limited to roadways since it would be impractical to anticipate and mark every off-road location that has a restricted clearance. However, rail equipment is retained in this standard because §§ 56/57.9330 applies only to side clearance and is limited to surface equipment. In addition, §§ 56/57.9330 does not require an advance warning device, and marking is only required where the minimum side clearance cannot be met at surface operations. Similarly, although commenters suggested that new §§ 56/57.11008 could adequately address restricted clearances, that standard pertains only to pedestrian exposure to these hazards.

Section 56/57.9307 Design, installation, and maintenance of railroads. This standard revises existing §§ 56/57.9016. The final rule requires that road beds and all elements of the railroad track be designed, installed, and maintained to prevent accidents and injuries which could result when rail equipment is operated at speeds too fast for the condition of the tracks. Trackage elements include such items as rails, joints, switches, and frogs. The proposed rule included the reference which limited the standard's application to trackage elements "subject to the control of the mine operator". The Agency recognizes that these type of jurisdictional issues are sometimes addressed when citations are litigated. Matters of jurisdiction are not, however, at issue in the development of safety and health standards for miners. Therefore, the phrase has been deleted from the final rule. MSHA will examine the circumstances to determine who is responsible for correction of the violation.

Section 56/57.9308 Switch throws. This standard revises existing §§ 56/57.9028 which requires that switch throws be installed to protect switchmen from contact with moving trains. No comments were received on the standard as proposed and the final rule retains the proposed language.

Section 56/57.9309 Chute design. This standard revised existing §§ 56/57.9064 which requires that chute-loading installations be designed so that a person is placed in a safe location while "pulling" a chute. A safe location is needed to prevent the chute puller from either being struck by material that is being loaded, or by the vehicle involved. No comments were received on this standard as proposed and the final rule editorially clarifies the proposed language.

Section 56/57.9310 Chute hazards. This standard consolidates and revises existing §§ 56/57.9072, 57.9105, and 57.9106. Each of these standards address hazards such as uncontrolled rock movement and improper use of tools to free lodged material in chutes.

Paragraph (a) requires that prior to chute-pulling, persons who may be affected by the draw, or otherwise exposed to danger, must be warned and given time to clear the hazardous area. A commenter was concerned that paragraph (a) would prohibit persons from working on grizzlies above the chute during chute-pulling even if they were secured with a safety line. Persons working above the chute who are using safety lines would not be affected by the draw; therefore, the requirements of paragraph (a) would not apply in those situations.

Paragraph (b) addresses safety practices for persons attempting to free chute hangups. Commenters stated that the proposal's reference to "barring down" material did not fully describe all the methods used to dislodge chute hangups. MSHA agrees, and the final rule requires that proper tools be used to free material. Another commenter believed that paragraph (b) should retain the existing standard's requirement that persons attempting to free hangups be experienced and understand the hazards involved. MSHA agrees that this work is extremely hazardous and has revised paragraph (b) of the standard to include experience and knowledge requirements.

Some commenters believed that the term "chute" was not descriptive of equipment found in some surface operations. For example, some surface operations place material in bins and stockpiles and then draw from the under portion through feeders. MSHA's use of "chute" in the final rule is intended as a general term to include draw points, feeders or gates, each of which serve the common purpose of providing an extraction point mechanism for the transfer of muck or material. The final rule would cover surface bins and stockpiles from which material is drawn.

Paragraph (c) requires that empty chutes be either equipped with guards to contain flying rock or material prior to dumping broken rock or material, or that persons be isolated from the hazards of flying rock or material. A commenter recommended that paragraph (c) be deleted from the standard, stating it had no application to surface operations. The final rule retains this requirement because many surface stone operations use these type of chutes.

Section 56/57.9311 Anchoring stationary sizing devices. This standard editorially revises existing §§ 56/57.9057 which requires that grizzlies and other stationary sizing devices be securely anchored.

A commenter asked whether this standard would prohibit use of grizzlies or grates that can be pivoted or raised to allow for cleaning. As long as the structure itself remains securely anchored, the final rule would allow use of a hinge feature to permit cleaning.

Section 56/57.9312 Working around drawholes. This standard revises exising § 57.9107 which prohibits persons from standing over drawholes if there is danger that material may be withdrawn or may collapse unless platforms or safety lines are used. No comments were received on this standard as proposed and the final rule retains the proposed language.

Section 56/57.9313 Roadway maintenance. This standard was considered for deletion in the proposed rule. The Agency originally believed that two other existing standards adequately addressed these roadway maintenance hazards §§ 56/57.4050, which prohibits the accumulation of waste materials in quantities that could create a fire hazard; and §§ 56/57.20003, which requires that workplaces, passageways and rooms be kept clean and orderly. However, some commenters requested

that MSHA retain and revise existing §§ 56/57.9053 because the hazard presented by the accumulation of water, debris, and spilled material on roadways in a loading, hauling, and dumping environment is not adequately addressed by either of these existing standards.

In response to this concern, MSHA reviewed 207 accidents associated with these hazards and found 43 haulage accidents which resulted from rough roadways, extended pools of roadway water, and spilled haulage material. In a study "MSHA Analysis of Underground Load, Haul, Dump Accidents" which addressed the cause of accidents that occurred from 1978 through 1980, rough roadways or roadway debris was a contributing factor in twenty percent of the accidents occurring during that period. Based on this information, the standard has been retained. Editorially, the standard has been revised to clarify that it applies to instances where water, debris, or spilled material on roadways creates a hazard to the operation of mobile equipment.

Section 56/57.9314 Trimming of stockpile and muckpile faces. This standard makes editorial changes to existing § 57.9061 which requires that stockpile and muckpile faces be trimmed to prevent hazards to persons. Some commenters suggested as an alternative method "that MSHA allow stockpile and muckpile faces to be either guarded or barricaded and posted until the hazard is removed". The final rule does not permit guarding, barricading, or posting as an alternative because the suggested language would allow the hazardous condition to exist indefinitely since stockpiles and muckpiles are used on a regular basis in the mining cycle. In addition, workers who are required to be in the immediate area above and below these stockpiles and muckpiles on a regular basis would not be provided with protection.

Section 56/57.9315 Dust control. This standard clarifies and revises existing §§ 56/57.9074 which requires dust control at muck piles, material transfer points, crushers, and on haulage roads where hazards to persons may be created as a result of impaired visibility.

Some commenters believed that the requirement to control dust where hazards "may" be created was too speculative, and suggested that the standard take effect when hazards "are" or "will be" created. MSHA agrees that "may" could be construed as being too speculative. In MSHA's view, to be effective, dust control measures must be instituted before the hazard to persons is created. Therefore, the final rule uses the term "would".

Section 56/57.9316 Notifying the equipment operator. This standard revises existing §§ 56/57.9027. It requires persons to notify the operator of self-propelled mobile equipment before getting on or off that equipment when the operator is present. The intent of the standard is to prevent serious injuries from occurring because equipment operators are unaware of the presence of persons near the equipment who intend to or attempt to get on or off it. The final rule retains the proposed language.

Section 56/57.9317 Suspended loads. This standard revises existing §§ 56/57.9030 which prohibits persons from working or passing under the buckets or booms of loaders in operation. No comments were received on this standard and the final rule retains the proposed language.

Section 56/57.9318 Getting on or off moving equipment. This standard revises existing §§ 56/57.9039 which prohibits persons from getting on or off moving mobile equipment. The proposal included an exception for trainmen who, because of their work duties, are required to get on and off slowly moving trains. Commenters requested that brakemen and car droppers also be exempt because their work duties entail getting off slowly moving trains. MSHA agrees, and the final rule clarifies that trainmen, brakemen, and car droppers are permitted to get on or off slowly moving trains in the performance of their work duties.

Section 56/57.9319 Going over, under, or between railcars. This standard revises existing §§ 56/57.9051 which establishes safety practices to be followed to prevent persons from being accidentally run over by the sudden movement of railcars. No comments were received on this standard as proposed and the final rule retains the proposed language.

Section 56/57.9330 Clearance for surface equipment. This standard makes editorial changes to existing §§ 56/57.9083. It is applicable to surface mines and surface areas of underground mines. It requires that where possible, at least 30 inches of continuous clearance from the farthest projection of moving railroad equipment be maintained on at least one side of the railroad tracks at surface installations. This 30-inch clearance is necessary to protect persons who work or travel along haulageways from the hazards of moving railroad equipment. Places that are less than 30 inches must be conspicuously marked. No comments were received on this standard as proposed and the final rule retains the proposed language.

Section 57.9360 Shelter holes. This standard consolidates and clarifies the requirements of existing §§ 57.9110 and 57.9111. The final rule requires that when continuous clearance of at least 30 inches cannot be maintained on at least one side of underground haulageways, shelter holes be provided at intervals which are adequate to assure the safety of persons along the haulageway. In response to comments, the standard provides that only areas having less than 30 inches of continuous clearance need to be evaluated, since the critical concern is access to a safe clearance area. For example, a commenter described a situation where 90 percent of an underground haulageway had at least 30 inches of clearance. To comply with the final rule, the mine operator would need to evaluate only the area where the minimum clearance could not be maintained and determine the distance to the nearest area that has the minimum 30-inch clearance. Where it would be questionable if persons can safely reach adequate clearance areas, shelter holes would need to be constructed. However, in most instances MSHA does not believe that additional shelter holes will need to be constructed to comply with the final rule.

Several commenters raised issues concerning the prohibition on using shelter holes for storage. They believed that as long as the minimum clearance was maintained, storage should be permitted. Other commenters supported the ban on storage and other uses. MSHA agrees with those commenters who noted that the critical factor is maintaining the minimum clearance. Therefore, the final rule allows shelter holes to be used for storage as long as the minimum clearance of 40 inches from the farthest projection of moving equipment is strictly maintained. This approach is consistent with the existing requirement, and avoids the need for the construction of additional storage facilities which may have been required under the proposal.

Section 57.9361 Drawholes. This standard clarifies existing § 57.9103 which requires that collars of open drawholes underground be kept free of muck or material.

Some commenters believed that it is impractical to keep drawholes free of material when normal practice calls for continuous or intermittent flow of materials. The accumulation of material around the collars of drawholes presents tripping and falling hazards to persons who work around the collar, and falling material hazards to those who work at the bottom of the drawhole. The final rule clarifies that

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the standard does not apply when muck or material is being transferred through the drawhole.

Section 57.9362 Protection of signalmen. This standard revises existing § 57.9102 which provides that signalmen used during slushing operations must be positioned in a safe place. The proposal clarified that signalmen must be located away from possible contact with cables, sheaves, or slusher buckets during slushing operations in underground mines because broken cables can cause serious injuries. No comments were received on this standard. The final rule clarifies the proposed language, consistent with the intent of the standard to protect signalmen from contact with slushing hazards.

H. Section-by-Section Discussion of Subpart M

Safety Devices and Maintenance Requirements

Section 56/57.14100 Safety defects; examination, correction and records. This final standard is derived from existing and proposed standards which appeared in Subparts H and M. It consolidates the equipment examination, defect correction and recording requirements of existing §§ 56/57.9001, 56/57.9002, 56/57.9073, and 56/57.14026. The rule addresses machinery and powered haulage accidents by establishing procedures for detection and correction of defects.

Powered haulage accidents and machinery and equipment accidents in metal and nonmetal mines are among the leading causes of fatalities and serious injuries. These accidents are often attributable to defects in the machinery and equipment which can develop at any time. During a five year period ending in December 1987, 104 fatalities occurred on equipment which is required to be examined for defects by this section. An additional 60 fatalities were recorded during this same period on machinery and equipment addressed by the defect correction requirements of this section.

Self-propelled mobile equipment is specifically required to be examined prior to use on each shift where it is to be placed in operation. This specific requirement is included in the standard in view of the fact that defects affecting safety become more critical when they occur on a piece of equipment which is mobile throughout the mine.

If safety defects are detected on any equipment, machinery or tools, the required compliance measures vary with the degree of the hazard. The final rule requires that all safety defects be corrected in a timely manner and that, in instances where continued use would pose a risk of injury, the correction must be made immediately unless the defective equipment is removed from service and identified as defective. The defective condition must be corrected before the equipment is returned to service.

The time allowed to correct a safety defect will vary, depending upon the specific circumstances involved. For example, broken windshield wipers would constitute a defect affecting safety which would require timely repair. However, if this defect existed at a time when the wipers were needed because of rain, snow, or other conditions which affected visibility, then the removal from service or repair would have to be immediate. The primary reason for this differentiation among safety defects is to ensure that safety defects that impose an immediate hazard to persons are corrected before the equipment is used. It also provides that other safety defects will be corrected before they present a hazard to persons. It is expected that defects not creating an immediate hazard will be attended to without delay, normally at the end of the shift in which the defect is discovered.

When safety defects on self-propelled mobile equipment are not corrected immediately, the defect must be reported to the mine operator. Reports of these defects must be recorded by the mine operator and retained until the defect has been corrected. If no defects affecting safety are found, no documentation is required. This reporting and recording procedure which was contained in the proposed rule for Subpart H, will ensure that persons in authority are made aware of defects and can arrange for appropriate correction while also keeping the recordkeeping burden to a minimum.

Some commenters believed that there should be no recordkeeping requirement when corrective action is taken immediately upon detection of the defect. Others believed that, as in the existing standard, there should be a record made in each instance and that these records should be retained for some period of time in order to build accountability for repairs. MSHA notes that it is a common practice to make on the spot repairs on equipment in the field. In these circumstances the Agency believes that it would be unnecessary to require a record to be made of the defect. From a safety standpoint, the critical consideration is the correction of the defect. Therefore, the final rule provides that no record need be made where the corrective action is immediate.

Some commenters suggested that the recordkeeping requirements of this section be expanded to cover all mobile equipment, regardless of whether it is self-propelled. Others believed that the scope of the standard should continue to apply only to self-propelled mobile equipment. In MSHA's view, the inclusion of all mobile equipment within the scope of this standard would unnecessarily increase recordkeeping requirements; therefore, the final rule continues to limit this requirement to self-propelled mobile equipment.

Commenters also focused on the requirement to tag or otherwise effectively mark equipment that is taken out of service. Some commenters believed that tagging was a minimal burden that should be required in all instances. Others took the position that, in addition to tagging or marking defective equipment, the standard should also permit an alternative of allowing equipment to be placed in a designated repair area. These commenters stated that such placement was a common practice and that persons do not mistakenly use defective equipment under this arrangement.

Under the final rule this alternative is permitted as long as the equipment is placed in a designated area that is posted for defective equipment. Equipment located within a repair shop or repair yard would be considered in compliance with this requirement. Tagging or some other effective method of marking must be used whenever the equipment is not immediately removed to a designated repair area.

Section 56/57.14101 Brakes. This final standard sets forth minimum performance requirements for braking systems on self-propelled mobile equipment and requires that all braking systems be maintained in functional condition. It replaces existing §§ 56/57.9003 which required that the equipment be provided with adequate brakes. The rule provides for service brake tests on surface-operated equipment to determine the capability of a vehicle's braking system, clarifies the existing standard regarding adequate brakes, and also prevents the hazard by setting out specific braking requirements. In addition, it provides the mine operator with a specific means of testing his vehicles' brakes prior to inspection by MSHA. Rail equipment is excluded from this standard and is addressed by §§ 56/57.14103.

In the past three years, there were 88 accidents related to brake failure involving loading, hauling, and dumping

equipment, of which 3 resulted in fatal injuries. During FY 86, under existing §§ 56/57.9002, 680 violations were cited for faulty braking systems and during FY 87, 763 violations were issued.

Nearly all types of self-propelled mobile equipment found at mining properties are equipped with one or more braking systems. The service braking system is the primary system for stopping and holding equipment during normal use. Some large equipment also utilizes retarding mechanisms to supplement service braking systems. Most equipment also is provided with a parking (secondary) brake system. Service braking systems must be capable of stopping and holding the equipment, with its typical load, on the maximum grade it travels.

Some commenters pointed out that several types of equipment, such as some self-propelled lawn mowers, are not manufactured with brakes. The final rule takes this into consideration by providing that the standard does not apply to equipment which is not originally manufactured with brakes unless the equipment is used in a manner which requires the use of brakes for safe operation. Some commenters suggested that battery and air-powered equipment be exempted from the rule. However, this equipment is often used in a manner which necessitates the use of brakes.

The rule also requires that self-propelled mobile equipment equipped with parking brakes shall be capable of holding the equipment with its typical load on the maximum grade it travels. Several commenters to this provision urged MSHA to limit this performance requirement to a maximum grade of 15 percent. They noted that the Society of Automotive Engineers (SAE) document J 1152 has this performance limitation.

The final rule retains the performance requirement that the parking brake be capable of holding the equipment on the maximum grade traveled. MSHA notes that the SAE document establishes only the minimum acceptable performance. Although grades in excess of 15 percent are not common at mining operations, equipment must be able to perform safely under the conditions to which it is subjected. The steeper the grade, the more demand is placed on the brakes. If the brake does not perform, the vehicle will roll. Of the few operations having grades that are greater than 15 percent, MSHA estimates that most if not all mine operators would choose to regrade rather than incur costs to retrofit existing braking systems. These increased regrading costs would be offset by reduced equipment operating costs. MSHA expects that the cost savings will offset the cost of regrading.

The second part of this rule addresses service brake system testing. It provides for tests on surface-operated self-propelled mobile equipment which is capable of traveling at least 10 miles per hour when there is reason to believe that the service brake system does not function as required. MSHA will not be conducting routine or random testing of equipment. The purpose of the test is to determine the performance of the service brake system. To pass the service brake test, equipment must not exceed the maximum stopping distance for its weight class at the speed tested. The maximum stopping distances are listed in Table M–1 of the standard.

The brake test is based on recommended minimum performance standards for service brakes which are set forth in the SAE document J 1152. MSHA's test combines different machine categories and weights from the SAE document, extracts the appropriate stopping distances from each group, and adds a one second response time. MSHA brake testing requirements, while differing somewhat from those in SAE J 1152 because of conditions likely to be encountered in the mining environment, are nevertheless based on widely accepted criteria. The requirements of this standard will provide the necessary measure of safety at the mine site.

Field testing of equipment is not expected to be frequent, and would not impose a significant burden on the mining operation. In its field tests, MSHA found that four brake test runs were typically completed in less than ten minutes. Under the final rule, equipment which passes the first test will not be tested further.

Some commenters favored the deletion of the testing provision. These commenters were concerned that testing could be dangerous since it would involve equipment with brakes which are already suspect. The final rule contains several provisions to ensure that brake testing will be performed safely. Testing will not occur when the mine operator agrees that the equipment's service brakes do not function as required and orders that the equipment be removed from service for repair. Although some commenters wanted mine operators to have the option of removing equipment for inspection instead of repair, others agreed that if the mine operator chooses to test, repair action should be initiated. The operator has the option to conduct testing and repair prior to inspection by MSHA. Testing would only be utilized in those instances when there is disagreement about the performance capabilities of the service brakes. To further ensure safety, an MSHA inspector may independently determine that the equipment would be too hazardous to test in the field. For example, the inspector would not permit testing in any instance where a brakeline was plugged. The inspector will also inquire as to whether the equipment operator or mine operator is aware of any defect on the equipment about to be tested.

Testing is not to occur unless there is an appropriate test site at the mining operation. Working with the mine operator to ensure that no hazard will be presented by testing, the MSHA inspector will instruct the equipment operator before any testing to activate the equipment's emergency brakes should the service brakes fail completely. The mine operator can designate the person who will operate the equipment during the test. Most testing sites will also provide a course of sufficient length to allow the equipment to come to a rolling stop in the event of complete failure of all braking systems.

MSHA inspectors will also be trained to safely conduct these tests. Persons and equipment will be clear of the approach and measured course during testing. While testing places demands upon the equipment's service brakes, these demands are comparable to those that would be encountered in the continued performance of the equipment's routine functions at the mine site.

Several commenters who favored the deletion of the proposed rule's brake testing provision urged MSHA to substitute the "stall test" in its place. This test measures, under certain conditions, the equipment's mechanical braking capability against engine power.

MSHA did not adopt the stall test in the final rule for several reasons. The stall test only measures the static holding capability of the equipment's service brakes. As noted by commenters, for larger equipment it is the dynamic braking which does most of the work in slowing equipment for a stop.

For large equipment which utilizes some form of dynamic braking, mechanical braking becomes important at speeds below 10 mph. Unlike the stall test, the final rule's brake testing procedure does evaluate dynamic braking. The stall test cannot generally be applied to all equipment. The limited information provided by a stall test is only valid when the manufacturer has

specifically designed the test for the exact equipment in question.

Several comments were directed toward the issue of which brakes may be applied in a service brake test. Some commenters were concerned that the use of the term "service brakes" in the proposed rule would prohibit the use of dynamic brakes during tests. The final rule allows the use of "auxiliary retarders" when they are simultaneously activated by the application of the service brake control. The term "dynamic brakes" and "auxiliary retarders" are often used interchangably. The final rule clarifies MSHA's intent that all braking systems which are designed to bring the equipment to a stop under normal operating circumstances may be used during the test. Parking and emergency brakes or, as they are sometimes described, secondary brakes, are not to be used during a test since they are not designed or intended to stop equipment under normal braking circumstances.

Another aspect of testing involves the load carried by the vehicle being tested. In the proposed rule, MSHA provided that service brakes were to be tested with the equipment "fully loaded." Several commenters objected to this provision. They favored testing vehicles which were loaded to their gross vehicle weight, while others took the position that either of those measures would be inappropriate where a mining operation routinely fills its haul trucks below their capacity.

The final rule responds to these concerns by providing that equipment is to be tested with a load which is typical for the particular model of equipment at the mining operations. Gross vehicle weight was not utilized as the measure for loading because it would be necessary to weigh equipment before a test. Scales are not always present at operations and even where present, the load for some equipment may exceed the scale's measuring capacity.

MSHA notes that the testing provisions of the brake standard is not limited to haulage trucks. It applies to all types of self-propelled mobile equipment which is capable of traveling at least 10 miles per hour. For non-haulage vehicles, the typical load consists of the load, if any, that is normally carried by the equipment to be tested.

Several commenters were concerned that front-end loaders with full buckets might have less stability during testing and could spill some of their load. To ensure safety, the final rule provides that front-end loaders are to be tested with the loader bucket empty. For safety reasons the final rule also provides that equipment carrying hazardous loads, such as explosives, may not be tested with those loads. In such instances, the hazardous load must be removed and an equivalent substitute weight placed on the equipment before testing.

Some commenters also believed that the table which sets forth the maximum allowable distances should have a separate weight category and longer stopping distances added for equipment weighing over 600,000 pounds. The final rule does not provide an additional category because the heaviest weight class already specifically includes all equipment which exceeds 400,000 pounds. The major reason for allowing greater stopping distances for heavier equipment is to take into account the increased time it takes for the service brake system to respond to the application of the brake. This "system response time" does not significantly increase for equipment which exceeds 400,000 pounds.

Commenters also questioned whether the standard should include testing of equipment underground. The proposed rule provided that testing would apply to all equipment capable of traveling at least 10 miles per hour. Many commenters objected to testing of equipment underground due to restricted roadway widths, the presence of drift walls, and limited lighting. Other commenters believed that while some underground roadways would be inappropriate, each situation should be independently assessed. MSHA has considered both of these viewpoints but, in recognition of the limitations for brake testing underground, the final rule limits testing to equipment which is used at surface locations. Therefore, testing applies to surface locations at underground mines and all surface mines.

Several comments were directed toward the details of testing. As pointed out by commenters, some equipment with defective brakes could, technically, pass a brake test by sliding sideways as long as the maximum distance was not exceeded.

In such a situation, more than the braking system in at work in stopping the equipment since lateral motion is involved. Equipment is not designed or intended to stop in this manner. For this reason, the final rule provides that a valid test requires that the equipment not slide sideways or exhibit other lateral motion while braking.

The proposed rule also provided that the roadway approach have sufficient length and uniformity of grade to enable the equipment to maintain a stable rate of speed. The proposal stated that the braking portion of the test course was to be generally level, dry, and packed. Some commenters believed these ground conditions would be difficult to find and could be a source of controversy. MSHA's field testing disclosed that appropriate test sites will exist at most mines. As mentioned in the proposed rule, a distance of less than one-sixth of a mile is needed. However, where no appropriate site is present, no tests would be required. Test sites are not required to be constructed under this standard, although some mining operations may decide to designate their own test sites as a useful method of field testing their own equipment after repairs.

The final rule clarifies that the approach is to be of sufficient length to allow the equipment operator to reach and maintain a constant speed between 10 and 20 miles per hour prior to entering the 100 foot measured area. In response to comments, the final rule states that the roadway is to be wide enough to adequately accommodate the size of the equipment being tested. It also explains that ground moisture may be present to the extent that it does not adversely affect the braking surface. Some degree of ground moisture has the effect of improving stopping performance. Although some commenters expressed concern that spillage during testing could affect whether the ground remains generally level, MSHA has determined that this will be unlikely since testing will typically involve a single piece of equipment. The testing of front-end loaders with their buckets empty should also diminish this likelihood. Should this problem arise, the course could also be regraded, but MSHA's field testing revealed that limited amounts of spillage did not affect the outcome or safety of the tests.

Although some commenters suggested that the equipment's power train be permitted to be disengaged during braking, the final rule does not allow this action unless the equipment is designed to function that way. Disengaging the power train may improve braking performance, since it disengages the rotational inertia of the electric motors on some equipment. However, except where so designed as part of the service brake system for stopping, this procedure would be inconsistent with the equipment's normal method of stopping. MSHA's field testing revealed that all well-maintained properly functioning equipment, regardless of its age, was able to readily pass the brake tests without this assistance.

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As confirmed by MSHA's field studies, the brake testing provision provides an objective, safe and reliable means for mine management and MSHA to resolve questions about the performance of service brake systems on surface equipment. It provides means to quantitatively measure the performance of the brake systems in question.

Where there is not an appropriate test site at the mining operation or the equipment is not capable of traveling at least 10 miles per hour, service brake tests will not be conducted. In such cases, the inspector will rely upon other available evidence to determine whether the service brake system meets the performance requirement of this standard.

Section 56/57.14102 Brakes for rail equipment. This final standard revises existing §§ 56/57.9048 by clarifying that braking systems on railroad cars and locomotives are required to be maintained in functional condition.

Several commenters wanted this section to apply only in those instances when rail equipment is under the control of the mine operator. These commenters noted that there is great diversity in the business relationships between mine operators and railroads as to ownership, maintenance, and control over rail equipment. MSHA's objective is to provide for safe rail equipment on mine property, regardless of who owns or controls the equipment. However, when a violation of a standard pertaining to rail equipment is involved, MSHA will examine the circumstances to determine who is responsible for correction of the violation.

Some commenters considered it unnecessary for all railroad car braking systems to be functioning if there were a sufficient number of cars with functioning systems to be able to stop the train. MSHA has considered this approach but the final rule requires each railroad car equipped with a braking system to be functional. That system must be maintained in functional condition for several reasons. First, cars are often handled individually and their braking systems must function individually. Second, if the braking systems on all cars were not maintained, numerous cars could be linked together with no functional brakes.

The final rule does not require the installation of braking systems, but rather requires that provided systems be maintained in functional condition.

Section 56/57.14103 Operators' stations. This final standard sets forth several safety requirements relating to the operator's station on self-propelled mobile equipment. It consolidates existing §§ 56/57.9010, 56/57.9011, and 56/57.9012.

Paragraph (a) requires that when windows are provided on equipment they are to be of safety glass or a material with an equivalent safety characteristic maintained to provide safe operating visibility. Commenters asked MSHA to explain what would be equivalent to safety glass. Safety glass is a general term which refers to a type of glass which breaks into relatively harmless granules upon impact, instead of sharp pieces. Therefore, any glass or plastic product with equivalent performance qualities meets the requirements of this paragraph.

Some commenters also suggested that this paragraph retain the existing requirement that windows be kept "clean", instead of the proposed rule's wording that windows be maintained to provide safe operating visibility. MSHA retained the wording of the proposed rule because it more accurately describes the desired performance objective of the standard.

Paragraph (b) addresses damaged windows. It requires the removal and in some instances, replacement of windows when they have been damaged in a manner which either obscures operating visibility or poses a risk of injury to the equipment operator. Replacement is required where the absence of a window would leave the equipment operator exposed to hazardous environmental conditions which would affect the ability to safely operate the equipment.

While some commenters believed that the rule should specifically name the hazardous environmental conditions which would require replacement of windows, others stated that the performance language of the proposed rule permitted flexibility to address each circumstance. The final rule requires window replacement only when hazardous environmental conditions such as extreme cold weather, rain, snow, or dust affect the ability of the equipment operator to safely operate the equipment.

Paragraph (c) requires that operators' stations be free of materials which could impair safe operation of the equipment and prohibits modification of the station in a manner which would impair visibility. Commenters were concerned that the standard, as proposed, could be interpreted as prohibiting some factory installed equipment options. The standard would only prohibit options that obscure visibility or otherwise affect safety. It is unlikely that factory installed equipment would hinder safe operation or impair visibility since manufacturers take these concerns into account in designing equipment.

Section 56/57.14104 Tire repairs. This final standard appeared in the proposed rule for loading, hauling, and dumping and replaces existing §§ 56/57.9069. It addresses the safety procedures and devices to be employed when tires are being repaired. Serious injuries and fatalities have occurred to miners who have been engaged in tire repair. In several instances, multi-piece rims have separated during repair. Tremendous force can accompany such a separation. For example, a size ten hundred twenty tire inflated to 100 psi, creates a pressure of 41,600 pounds against the rim flange. In the proposed rule, these hazards were addressed by requiring tire deflation before repairs were started and by using devices during tire inflation to constrain wheel components in the event of an explosive separation. As an alternative, the proposal would have permitted devices that allow persons to stand clear of the trajectory of such a separation. In response to commenters, the final rule clarifies several aspects of these requirements.

The proposed rule required that tires be deflated before repairs are started. The final rule retains this requirement and specifies that before repairing a tire, the valve core must be partially removed to allow for gradual deflation. The proposed rule also provided that when repair was necessary on either tire of a dual wheel, both tires were to be deflated before either was removed from the equipment. Many commenters objected to this provision. They believed that this requirement could increase the probability of a hazard since two tires would need to be reinflated after repair of the defective tire had been completed. The commenters believed that the hazards associated with tire repairs were greatest during re-inflation of the tire. MSHA had proposed that both tires be deflated where dual wheels were involved because in some repair instances the inner wheel rim has separated violently, forcing the outer tire and rim to fly off. However, this hazard must be weighed against the hazards associated with tire inflation. MSHA agrees that requiring both tires to be deflated would increase the probability of an injury since wheel rim separation is always a risk during tire inflation. For this reason, the final rule does not contain the requirement to deflate both tires. MSHA notes that the final rule's provision for the use of devices that allow persons to stand outside of the potential trajectory of the lock ring should diminish the potential

for injury in the event of separation of the inner wheel's rim.

Several comments were directed to the scope of the standard. One commenter asked whether the standard would apply where brake or axle repair was involved. Another questioned whether re-inflation of a tire, apart from any repair, is covered by the standard. The standard is intended to address hazards to persons which are associated with the performance of repair work on tires. Since brake and axle repair do not directly involve tire work the standard does not apply to those situations. However, tire re-inflation, even apart from any repair, involves direct work on tires and can pose the same hazard of sudden wheel rim failure. Therefore, the provisions of paragraph (b), involving the use of a restraining device or a stand-off inflation device, apply to tire inflation in all situations. Should a malfunction occur while using a stand-off inflation device which requires the need to approach the tire, the following precautions should be taken: The tire should either be deflated, or a safety cage, chain or restraint should be used, and the tire should be approached from the side.

Commenters also stated that the standard should apply to single as well as multi-piece wheel rims. Other commenters believed that the standard should adopt the Occupational Safety and Health Administration's (OSHA) provisions for the servicing of wheels (29 CFR 1910.177) which applies to single and multi-piece wheels. MSHA agrees that both wheel types can present hazards during deflation and inflation, and the requirements of the rule apply to both. Similarly, in answer to one commenter's request for clarification, this standard applies to all wheeled vehicles, both on and off road types. A review of mining accidents from 1978 to 1980 associated with tire repairs, indicates that 54 injuries occurred which included 6 fatalities from tire explosions. After reviewing these accidents and the OSHA provisions, MSHA believes that the final rule will provide the appropriate level of protection against the hazards associated with tire repairs.

Commenters stated that the standard did not specify the strength required for tire cages or other restraining devices. The final rule includes performance language which requires that the device must be capable of constraining all wheel rim components during an explosive separation. Although some commenters did not believe that a stand-off inflation device should be permitted as an alternative to a restraining device, MSHA has allowed this alternative since both devices furnish protection from explosive separation. One commenter noted that the standard did not clarify whether tire repairs could be performed on loaded, or unloaded, jacked-equipment. These related repair aspects are addressed by §§ 56/57.14105. Editorially, the standard uses the more commonly recognized "multi-piece rim" in place of the proposed rule's reference to "wheel locking rims".

Section 56/57.14105 Procedures during repairs or maintenance. This final standard clarifies the requirements of existing §§ 56/57.14029. Prior to the performance of repairs or maintenance on machinery or equipment, the power must be off and the machinery or equipment blocked against hazardous motion. The final rule allows an exception to this requirement which permits machinery and equipment motion or activation to the extent necessary for adjustment or testing, as long as persons are not exposed to hazardous motion. The existing standard had permitted this exception only when it was necessary for making adjustments.

The proposed rule included a requirement that the power also be "locked-out". Commenters pointed out that for some types of mechanical equipment this requirement was not practical. For example, some types of self-propelled mobile equipment start without an ignition key system. These commenters also noted that where electrically powered equipment is involved, §§ 56/57.12016 and 56/57.12017 require that power switches be locked-out. MSHA agrees that many types of mechanically-powered equipment cannot be locked-out practically and that other standards address lock-out requirements for electrically powered equipment. The final rule, therefore, does not contain the proposed "lock-out" requirement.

56/57.14106 Falling object protection. This final standard revises and clarifies existing §§ 56/57.14013 and was proposed in Subpart H. It addresses the injuries and fatalities which have occurred to operators of certain types of mining equipment as a result of falling objects. The rule requires that protective structures be provided on fork-lift trucks, front-end loaders, and bulldozers if the equipment is used in an area where falling objects could present a hazard to the equipment operator.

The existing standard required that this equipment be provided with "substantial canopies when necessary to protect the operator." The final rule retains the performance-oriented language while requiring that the strength of the structure be consistent with the anticipated loads. It further clarifies that the protection is required when the equipment is used in an environment which could create a hazard of falling objects. If hazards such as falling ground near a bank, highwall or face, or toppling materials at a storage facility or materials handling site could be anticipated, a structure must be provided. An evaluation would be necessary to determine the anticipated weights and forces of the falling object so that sufficient strength can be built into the structure.

In many instances, fork-lift trucks, front-end loaders, and bulldozers are equipped at time of manufacture with structures which meet the applicable falling object protective structures (FOPS) specifications of SAE or the American National Standards Institute (ANSI). These specifications are based on extensive engineering studies which have taken into account anticipated weights and forces of falling objects. Structures meeting these specifications, therefore, would comply with this standard.

The standard also allows for on-site fabrication and installation of structures other than those which meet the specifications of SAE and ANSI standards provided that the necessary strength requirements are considered.

The proposed rule provided for compliance through incorporation by reference of the SAE and ANSI standards. Some commenters preferred the approach of the existing standard's requirement to provide "substantial" canopies on the listed equipment. They considered the incorporation by reference in the proposal to be an "unnecessary complexity". In contrast, other commenters preferred the incorporation by reference approach because it required a measured degree of safety. A third group of commenters requested that the standard permit both approaches. Agency experience has indicated that the necessary degree of safety can be achieved through either alternative and the final rule, therefore, recognizes structures which meet the SAE or ANSI standards as well as those which meet the standards' performance requirements as acceptable for compliance with the rule.

Commenters also contended that the incorporated documents contained in the proposed rule may not address all types and sizes of the listed equipment which is found at metal and nonmetal mines and may not be appropriate in all situations.

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In view of these comments and the Agency's desire to replace incorporations by reference with specific performance-oriented requirements where possible, this standard contains no incorporation by reference. To assist mine operators in meeting the performance criteria for falling object protective structures, an appendix of applicable national consensus standards is included as an informational aid.

Section 56/57.14107 Moving machine parts. This final standard revises and consolidates existing §§ 56/57.14001 and 56/57.14003. As with the existing standard, the final standard requires the installation of guards to protect persons from coming into contact with hazardous moving machine parts. The standard clarifies that the objective is to prevent contact with these machine parts. The guard must enclose the moving parts to the extent necessary to achieve this objective. It also provides that guarding by location is recognized as an alternative to a physical guard in instances where the exposed moving parts are elevated at least seven feet above walking or working surfaces.

The proposed rule would not have permitted guarding by location for fan blades. This was based upon a concern that the blades could become projectiles upon disengagement from the fan shaft. Commenters questioned whether a guard would be able to contain a fan projectile and whether guarding was needed at all for elevated ventilation fans which operate at low speeds. MSHA agrees that in several situations a guard would not be able to provide effective containment, and in other situations would not be practical or necessary. For these reasons, the final standard permits guarding by elevated location for fan blades, as well as for the other classes of moving machine parts. This change is consistent with the standard's intent to protect persons from contacting moving machine parts, as opposed to protecting persons from machine parts which have become projectiles after becoming disengaged from a machine.

Some commenters suggested that the standard also permit an exception for situations where the exposed moving parts are "located out of reach." However, this phrase would create uncertainty as to the standard's application. Under the final rule, the standard applies where the moving machine parts can be contacted and cause injury. Some commenters believed that guards should provide protection against inadvertent, careless, or accidental contact but not against deliberate or purposeful actions. They considered guards which totally enclose moving parts as counter-productive to other safety considerations such as proper work procedures, training, and general attention to hazardous conditions.

In reviewing the statistics in which persons working in mines have lost hands, arms, legs, and their lives to moving machine parts, MSHA notes that in most of those instances the persons were performing deliberate or purposeful work-related actions with the machinery. The installation of a guard to enclose the moving machine parts would have prevented most of those injuries. Guards provide a physical barrier, which offers the most effective protection from hazards associated with moving machine parts. MSHA recognizes that guards provide only one of several safety measures for preventing injuries which can result from contact with moving machine parts. Proper work procedures, safety training, and attentiveness to hazards all play a role in reducing those injuries.

Some commenters questioned whether the standard would require guarding beyond that provided by the manufacturer for the engine cooling fan on small vehicles such as vans or pickup trucks. In those situations the vehicle size and the engine hood would act to prevent access and contact with the exposed moving parts, and no additional guard would be required. However, larger, off-road vehicles present special hazards because of the greater accessibility to their moving machine parts. In some instances persons can walk directly under the vehicle to inspect the engine and be exposed to its moving parts. In most instances, these parts are already guarded by the manufacturer but guards are sometimes removed during repair work and not replaced. MSHA's objective is to ensure that these guards remain in place.

Commenters also questioned whether the guarding requirement would reduce equipment inspection and maintenance capability by obscuring the ability to make observations of belt slippage or breakage. The commenters also believed that guards which met the performance objective of the proposed standard would be heavy and, therefore, pose risks of strained backs, hernias, and injured hands during installation or removal for maintenance.

The final rule does not require guards which are different from those currently required. Instead, the standard is intended to clarify the performance objective of guards. The standard does not specify the type of material to be used for guarding, but expanded metal or transparent safety plastics are examples of alternatives which provide lightweight means to enclose the moving parts so that they cannot be contacted while also allowing observation during machinery operation.

Section 56/57.14108 Overhead drive belts. This final standard revises existing §§ 56/57.14002. It requires guarding of overhead drive belts in instances where the whipping action of a broken belt could be hazardous to persons. The existing standard applied only where the whipping action could affect persons beneath the overhead belt. The final rule clarifies that the standard applies to drive belts and that containment of the hazardous whipping action is required for all directions where the danger exists.

Section 56/57.14109 Unguarded conveyors with adjacent travelways. This final standard revises existing §§ 56/57.9007. It requires that unguarded conveyors next to travelways be equipped with emergency stop devices or protective railings. Emergency stop devices must be located so that a person falling on or against the conveyor can readily de-activate the conveyor. If railings are used as an alternative to stop devices, the railings must be placed in a position which will provide protection for the person and must be capable of preventing persons from falling on or against the conveyor. Under the existing standard, railings have been permitted by MSHA policy.

Commenters questioned whether the emergency stop devices must run the length of the conveyor or the length of the travelway. The standard has been revised to clarify that it applies only to the extent that the travelway is along an adjacent and unguarded conveyor. Where portions of the travelway and conveyor are not adjacent, emergency stop devices are not required.

Some commenters were concerned that the alternative permitting railings as a means of compliance would limit the standard to pipe railings and prohibit the use of other materials. The standard does not restrict the type of material used. The important consideration is that the railing meet the standard's performance requirements by being positioned properly and structurally capable of preventing persons from falling on or against the conveyor.

The railings must be able to withstand the anticipated forces such as vibration, shock and wear, to which they would be subjected during normal operations. Consideration must also be given to construction material and maintenance

so that the railing does not pose a hazard. For example, if wire ropes or wood are used, they must not be frayed or have jagged ends which could create a puncture or laceration hazard to a person traveling in the area.

Section 56/57.14110 Flying or falling materials. This final standard revises existing §§ 56/57.14011 and addresses those instances where a hazard is created by flying or falling materials generated from the operation of screens, crushers, or conveyors. The existing standard did not specify the sources of the flying or falling material. The final standard requires guards, shields, or equivalent protection to be provided in areas where persons are exposed to hazards from those sources. Some commenters believed the standard should address all instances where a hazard is created by flying or falling materials. MSHA has limited the scope of the standard in the final rule to those hazards associated with the operation of screens, crushers, or conveyors because several other safety standards already provide protection from other specific sources of flying or falling materials.

Section 56/57.14111 Slusher, backlash guards and securing. This final standard revises existing §§ 56/57.9015. It requires that safety devices be provided when slushers are used. A slusher is a versatile piece of machinery which is used to move material or other machinery by means of a hoisting engine, cables, and two drums on which the cable is wound. It is distinguished from a similar machine known as an "air tugger" which has a single drum and cable.

Commenters suggested that the proposed rule's requirement to securely anchor slushers and equip them with rollers and drum covers be limited to situations where persons are exposed to slushing operations. MSHA agrees and the final rule adds this qualification to address situations where slushing operations are performed by remote control or from protective enclosures. Commenters also suggested that cable guides be permitted in place of rollers. MSHA did not adopt this suggestion because guides can cause burrs to develop on the cable and increase the chance of a hangup or break in the cable.

In response to commenters, the final rule expressly states that the standard does not apply to air tuggers of 10 horsepower or less that have only one cable and one drum. As noted in the preamble to the proposed rule, this standard is not intended to apply to such devices since their low horsepower minimizes the hazards associated with slushers.

Section 56/57.14112 Construction and maintenance of guards. This final standard replaces and consolidates existing §§ 56/57.14006 and 56/57.14007. As with the existing standards, it addresses construction characteristics, maintenance, and safe practice requirements for guards. To be useful and effective, guards must not themselves create a hazard and must be able to withstand the vibration, shock, and wear to which they would be subjected during normal operations. In response to commenters, the rule does not include the proposed rule's reference to "all reasonable" vibration, shock, and wear and clarifies that guards must be able to stand up to the stresses they will be subjected to during normal operation. Both the existing standard, and the new standard require that guards remain securely in place while machinery is being operated. However, the final standard permits removal of the guard when the testing or adjustment of the machinery could not otherwise be performed. The existing standard had permitted guard removal only for testing.

Section 56/57.14113 Inclined conveyors: backstop or brakes. This final standard clarifies existing §§ 56/57.9013. It requires the installation of backstops or brakes on drive units of inclined conveyors to prevent the conveyors from running in reverse and exposing persons to the risk of material rushing downward which can occur when the incline causes the conveyor and the material being conveyed to reverse direction. The final standard clarifies that these devices are installed on the drive units of inclined conveyors.

Commenters were concerned that the standard's requirement for devices which "prevent" conveyors from running in reverse might prohibit the slight backward motion which occurs when the brake is setting up. Because the standards performance objective is to prevent conveyors from "running" in reverse, the momentary backward motion as the brake engages would not constitute a violation.

Section 56/57.14114 Air valves for pneumatic equipment. This final standard clarifies the requirements of existing §§ 56/57.9026. It requires a manual master quick-close type air valve on all pneumatic-powered equipment if there is risk of uncontrolled movement of the equipment when the air supply is activated. The valve is required to be closed unless the equipment is being operated.

Some commenters wanted the standard to be revised to apply only to operator controlled self-propelled pneumatic powered equipment which is used for loading, hauling, and dumping. In MSHA's view, all types of pneumatic powered equipment which present a potential for uncontrolled movement upon activation of the air supply, need to be equipped with this safety valve. MSHA notes that these valves are a standard feature on most types of pneumatic equipment which have this hazard potential. MSHA is aware that some equipment is provided with a control trigger switch and cannot be activated unless the trigger is depressed. Pneumatic powered equipment provided with a trigger switch control is not required to have a master valve since no uncontrolled motion could occur until the trigger is depressed.

Some commenters opposed the proposed rule's requirement that the valve be closed unless the equipment is being operated. They believed it was unnecessary to have the valve closed when the equipment was not connected to the air supply. Other commenters favored having the valve remain closed except during operation of the equipment. MSHA retained this requirement in the final rule to avoid the potential for injury which may occur when equipment with an open valve is inadvertently connected to an open air supply, thereby creating sudden movement of the pneumatic equipment.

Section 56/57.14115 Stationary grinding machines. This final standard revises and clarifies existing §§ 56/57.14008. As with the existing standard, the final standard requires peripheral hoods, safety washers, and adjustable tool rests as safety devices for stationary grinding machines. It specifies the maximum allowable opening between adjustable tool rests and grinding wheels. The tool rest opening is an important safety consideration because a gap which is larger than the width of the material being ground can allow the material to be drawn into the grinding wheel and cause serious injury. To eliminate this hazard, the standard requires that the opening be set so that all points between the grinding surface of the wheel and the tool rest are not greater than ⅛ inch.

The existing standard required the tool rest opening to be set as close as practical to the wheel. In the preproposal draft, the agency included a performance oriented requirement that would have permitted a variable tool rest opening, as long as the opening was smaller than the material being worked. The proposed rule provided that the opening not exceed ⅛ inch. Although some commenters preferred the variable

opening requirement, other commenters supported the ⅛ inch requirement.

The ⅛ inch opening has been recognized as a setting which provides reliable protection from the serious hazard of material being drawn into the grinding wheel. The opening is also identical to the ANSI recommended practice for grinding wheel tool rest settings which that organization has advocated for four decades.

A risk associated with the variable setting approach is that each individual may have to adjust the tool rest opening prior to using the grinding machine. Failure to make the adjustment or misjudgment as to the maximum safe opening, could cause a serious injury if the material gets drawn into the grinder. Maintaining a maximum ⅛ inch opening provides protection regardless of the size of the material being worked or whether the opening is checked prior to use. For these reasons, MSHA believes that a fixed ⅛ inch maximum opening more effectively addresses the hazard than would a requirement permitting variable openings.

Commenters also suggested that the standard include two additional safety practices for stationary grinding machines. One suggestion was the inclusion of the "ring test" to verify that new grinding wheels are nondefective prior to their installation on a grinding machine. Another commenter suggested that the standard prohibit the practice of grinding items on the side of the wheel, instead of the surface edge. These situations are addressed by §§ 56/57.14205, which require that tools and equipment be used according to the manufacturer's specification and instructions.

Section 56/57.14116 Hand-held power tools. This final standard revises existing §§ 56/57.14010. It addresses operating controls for certain classes of hand-held power tools. The existing standard required constant pressure operating switches, or their equivalent, for these tools. The final standard clarifies these requirements and lists the tools to which it applies. It requires power drills, disc sanders, grinders, circular saws, and chain saws to be equipped with operating controls requiring constant hand or finger pressure. Many power drills, disc sanders, and grinders are also equipped with devices which can lock-on the operating controls. Under the final rule, these tools are to be operated only by using the constant pressure switch when they are being operated by hand. Circular saws and chain saws are prohibited from having devices which "lock-on" the operating controls.

Under the proposed rule, the standard would have prohibited the presence, as well as the use, of lock-on devices for each of these classes of power tools. Although commenters agreed that circular and chain saws should not be equipped with lock-on devices, several commenters objected to the proposal's requirement to forbid lock-on devices on power drills, disc sanders, and grinders because many of them are sold with these devices and the proposal would have required their removal. Commenters suggested that improper removal of the devices could result in increased hazards for persons using the tools in the hand-held mode. Commenters also were concerned that the devices were permitted for certain work areas regulated by OSHA, but under the proposal would have been prohibited at mines.

The final standard recognizes that many power drills, sanders, and grinders are manufactured with lock-on devices as a standard feature. One reason these tools come equipped with lock-on devices is to permit their use in machine stands. For example, a hand-held drill secured in a machine stand can serve as a drill press. Although the lock-on devices need not be removed, the standard continues to prohibit their use when the tool is operated in the hand-held mode. Commenters acknowledge the potential for serious injury when loss of control occurs. Some manufacturers of these power tools have also recognized the potential hazards and advise that the lock-on feature be utilized only when the portable tool is placed in a stationary machine. By not requiring the lock-on feature to be removed, these power tools can be used in stationary machines at mines and can continue to be used at work sites inspected by OSHA, to the extent permitted by applicable standards.

Some commenters believed that use of a lock-on device could lessen fatigue for the tool operator. MSHA, however, believes that the devices should not be substituted for rest when the users of power tools become fatigued.

Section 56/57.14130 Roll-over protective structures (ROPS) and seat belts. This final standard is derived from and replaces existing §§ 56/57.9088. It applies only to surface mining equipment, and specifies the types of equipment which must have roll-over protective structures and seat belts to protect equipment operators in event of an accident.

Many commenters were directed to the scope of equipment covered by this standard. Some commenters wanted the standard to include underground equipment while others were opposed to such an extension. A third group wanted to exempt equipment which operates in flat areas.

The final standard retains the existing standard's scope and would apply to surface mines and surface areas of underground mines. MSHA's accident data does not support requiring ROPS in underground mines. However, accident data strongly supports the need for ROPS for surface equipment. From 1983 through 1986, 21 miners were killed while operating the type of equipment addressed by the roll-over and seat belt protection requirements of this standard. In 16 of these fatal accidents the equipment rolled over. In 11 instances no roll-over protective structures (ROPS) were provided. In 16 of these accidents seat belts were not worn; either because they were not provided (12) or, were provided but not worn (6). As to the suggested exemption for flat areas, mining equipment is exposed to varying terrains, and equipment may be susceptible to a roll-over in level or near level areas under certain conditions, often depending upon the distribution of the load on the equipment. The final standard updates the existing standard's references to SAE documents to reflect the most current publications.

The terminology used to describe the equipment is taken from the referenced SAE documents, but the rule does not expand the classes of equipment from those addressed by the existing rule. In the proposed rule, MSHA published a table which compared the existing standard's terminology with the new terminology for these classes of self-propelled mobile equipment. To aid in the transition to this new terminology, the comparison table has been republished in this preamble:

COMPARISON TABLE

Current SAE and final rule terminology	Existing standard terminology
Crawler tractors and crawler loaders.	Front-end loaders, tractors, and dozers.
Graders	Motor graders
Wheel loaders and wheel tractors.	Front-end loaders and tractors.
The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear dump wagons and towed fifth wheel attachments.	Self-propelled scrapers. Off-road wheeled prime movers.

COMPARISON TABLE—Continued

Current SAE and final rule terminology	Existing standard terminology
Skid-steer loaders	Front-end loaders
Agricultural tractors	Agricultural tractors.

Commenters questioned whether particular types of equipment would require ROPS. The Comparison Table is intended to assist in answering these questions and will resolve most matters. For example, one commenter asked whether fork-lift trucks are required to have ROPS. Since this equipment is not listed in the standard or the comparison table, it is not required to have ROPS. The specific SAE documents can also be consulted in resolving particular questions and MSHA district offices will assist mine operators in these matters.

The standard requires roll-over protective structures (ROPS) and seat belts for certain classes of self-propelled mobile equipment. The performance requirements for these safety devices are based upon technical documents developed by SAE. These documents are incorporated by reference in this rule in recognition of the extensive engineering criteria which must be considered when constructing and installing roll-over protective structures. ROPS must be able to provide protection from varying forces exerted from numerous directions in a roll-over situation. A predictable level of performance is best provided by construction which meets the specifications of these SAE documents.

Some commenters suggested that the ROPS label information be made available at the mine as an alternative to affixing it to the structure. This concept has not been included in the final rule because it could result in a mix-up as to which equipment was matched to a particular model of ROPS. In most instances, these labels are secured to the structure by welding, riveting or some other relatively permanent method. The chance of dislodgment during equipment use is remote.

The proposed rule would have required ROPS to be installed in accordance with the recommendations of the manufacturer and also specified the grades of bolts to be used for attachment purposes. Some commenters were concerned that this provision could result in the use of inappropriate bolts in some instances. In response to these comments, the final rule does not refer to specific bolts since the manufacturer's recommendations will provide the correct grade of bolt to be used.

This final standard also requires that ROPS be maintained to assure that the performance requirements continue to be met. When a ROPS is subjected to a roll-over, or abnormal structural loading, either the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design must recertify that the ROPS continues to meet the performance requirements of this standard. A similar recertification would also be in order if the ROPS undergoes modifications or repairs for any other reason.

Several manufacturers of ROPS stated that proper repairs or alterations require knowledge as to how the specific type of ROPS performs during plastic deformation. Some of these commenters believed that only manufacturers should be permitted to make repairs, while other commenters believed that engineers with the experience described above were fully qualified. Plastic deformation relates to the designed partial collapse of some ROPS during a roll-over or abnormal structural loading, in order to absorb some of the impact from those events. Sometimes a ROPS may outwardly appear to be sound after such an event while having undergone subtle damaging effects to its integrity. In the final rule, MSHA has retained the provision allowing registered engineers with knowledge and experience in ROPS design to certify that the ROPS complies with the standard. This knowledge and experience should include, where applicable, information relating to performance of the specific type of ROPS during plastic deformation.

The final rule continues the existing exemption for equipment manufactured prior to July 1, 1969, since much of that equipment could not structurally support ROPS.

Some commenters were concerned that ROPS which were acceptable under the existing standard would no longer be in compliance. The final standard's updated references apply only as of the effective date of this rule. The standard's new requirement applies to ROPS installed after the effective date of this rule. Equipment currently in compliance under existing §§ 56/57.9088 will continue to be in full compliance with the new standard as long as the affected piece of equipment remains in service.

Commenters also addressed the requirement for equipment operators to wear seat belts. Many commenters supported this provision. Others noted that its successful implementation will require educational efforts and, in some intances, disciplinary sanctions for failure to abide by the provision. To address commenters' concerns and after reviewing the above statistics, the final rule requires that seat belts be worn by the equipment operator. Some commenters also urged that an exception be permitted for situations when the equipment operator needs to stand in order to operate the equipment. Graders and loaders were cited as examples of equipment which require the operator to stand occasionally. MSHA has reviewed these concerns but concludes that a harness and safety line must be used in the limited instances where equipment operators might be required to stand while operating the equipment. Standing exposes the equipment operator to a higher risk of losing control of the equipment and falling from it. Commenters noted that in many instances equipment operators have been run over by their own equipment after jumping or falling off. Assisting equipment operators in maintaining control of the equipment by keeping the operator seated and in command of the equipment's controls diminishes the potential for a roll-over. Therefore, where operators must stand, the standard requires that a harness and safety line be used. Standing should rarely be required since the controls on graders and loaders are designed to be properly operated from a seated position.

Many comments were directed to the requirement for seat belts. The proposed rule referenced a single document for seat belts, SAE J386, April 1980, which requires equipment operators to wear seat belts. The final standard incorporates by reference, SAE's latest publication, SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985.

Some commenters believed that the standard should also add SAE document J 1194 for agricultural tractor seat belts. MSHA agrees and the final rule includes this reference.

The final standard also provides that belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

Commenters also stated "that it would be extremely difficult to keep seat belts 'free' from grease, oil, or other deteriorating agents as proposed". The final rule deletes this requirement for clean belts but retains the criteria for maintenance and replacement of seat belts.

Section 56/57.14131 Seat belts for surface haulage trucks. This new standard requires that seat belts be

provided and worn in haulage trucks at surface mines and surface areas of underground mines. Under the existing §§ 56/57.9088, seat belts are required only for equipment which was provided with ROPS. Commenters stated that the seat belt requirement should be expanded to include haulage trucks. At the public hearings, commenters continued to advocate this position and they cited the occurrence of many fatalities involving haulage trucks which may have been avoided had seat belts been present and in use. No commenters were opposed to requiring seat belts for haulage trucks.

MSHA agrees that seat belts in haulage trucks would save lives provided that they were appropriate for the equipment in which they were installed. A review of 308 accidents from 1982 to 1984, involving off-highway trucks with seat belts, indicates that 130 were related to the nonuse of seat belts, including 6 fatalities. Therefore, the final rule adds haulage trucks as a category of equipment for which seat belts are required and specifies that the belts meet SAE requirements. MSHA expects that this requirement will have only a minimal cost effect since, as stated by one equipment manufacturer at the public hearings, seat belts are a standard feature on such equipment whether ROPS are present or not.

Section 56/57.14132 Horns and backup alarms for surface equipment. This revises existing §§ 56/57.9087. It requires that manually-operated horns or other audible warning devices provided on self-propelled mobile equipment be maintained in a functional manner. It is applicable to surface mines and surface areas of underground mines only, because the construction of load, haul, dump vehicles generally used underground, is such that the view to the rear is less likely to be obstructed. The standard protects persons from the hazard of backing equipment when the equipment operator's view to the rear is obstructed. Where there is an obstructed view, reverse movement alarms or the presence of an observer is required. This revised standard clarifies the application of the horn and backup alarm requirements, provides alternative compliance methods and exempts rail equipment.

Horns are provided on self-propelled mobile equipment for several purposes. An equipment operator may sound a horn to signal that equipment motion is imminent. The operator may also need to warn nearby persons of the presence of the moving equipment in their work area. Horns are also sounded to attract the attention of other equipment operators in the area when a collision may be likely to occur. Equipment manufacturers evalute the need for horns on self-propelled mobile equipment as part of the design process and take into account factors which include: The size and operating speed of the equipment; the operating noise of the equipment and other equipment in the area; the likelihood that persons traveling on foot might be in the area; and the presence or absence of a cab or enclosure on the affected equipment or nearby equipment.

Standards 56/57.9087 required that these audible warning devices be provided on all "heavy duty" mobile equipment. "Heavy duty" was not defined, and application of the horn requirement was a source of confusion and controversy. During the rulemaking process, commenters suggested that "certain types of equipment be exempted from the rule if it is small, slow-moving, provide good visibility for the operator, is track equipment operated at extremely slow speeds coupled with high engine noise, or is not equipped with horns and would have to be retrofitted."

Several commenters felt that a horn was not necessary so long as the operator's view to the front was not obstructed. MSHA believes that the equipment operator's good visibility to the front does not negate the need for a functioning horn since persons on foot or aboard other equipment may need to be warned of a developing hazard.

The Agency recognizes that many of the commenters' concerns are taken into account by equipment designers when determining whether or not a horn should be provided on a specific type of self-propelled mobile equipment. The final rule, therefore does not require that a horn be installed on specific types of equipment. However, where a horn is provided as a design feature on a piece of equipment it must be maintained in functional condition.

The standard also addresses situations where the equipment is operated in a reverse direction with the operator's view to the rear obstructed. Under these circumstances, reverse movement alrams or the presence of an observer is required. Existing §§ 56/57.9087, requires an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it was safe to back up. The final rule retains these two alternatives and provides additional compliance methods which have been developed in recent years.

Wheel-mounted bell alarms are permitted provided they sound at least once for each three feet of reverse movement. Bell alarms are appropriate and effective in some instances because they do not rely upon an electrical source for initiation. In muddy conditions, however, they can become clogged and rendered useless. Mine operators must evaluate roadway conditions at their mine site to determine whether bell alarms would be appropriate.

Recent advances in backup alarm technology have resulted in the development of discriminating backup alarms, commonly referred to as proximity devices, which are an acceptable compliance alternative under the revised standard provided that they offer coverage of the entire "blind area". These discriminating backup alarm systems employ infrared light, ultrasonics or radar and the alarm is activated only when a person or object is detected in the obstructed area of view. Ultrasonic and radar systems have been found to provide more effective coverage of the "blind area". One of the advantages of these new systems is the fact that the alarm is sounded only when a hazard exists, rather than every time equipment is put in reverse. The constant sounding of a conventional backup alarm system may become an accustomed sound of the mining environment and therefore be less noticeable and effective as a warning. Additional information on discriminating backup alarms is available from the Bureau of Mines, 2401 E Street NW., Washington, DC, 20241 (see Technology News Bulletin No. 255, August, 1986, and Information Circular No. 9079, 1986).

All audible reverse alarm systems acceptable as complying with this standard must be sufficiently loud to be heard above the surrounding noise level.

MSHA has received numerous petitions for modification of the audible backup alarm requirement from mining operations which are located near residential areas and operate on multiple shifts. In these instances, mine operators requested that they be allowed to use reverse-activated strobe lights in order to comply with local noise ordinances. Strobe lights are effective as warning devices under darkened conditions. The final rule provides that these strobe lights may be used in place of audible alarms during night operations only.

Section 57.14160 Mantrip trolley wire hazards underground. This final standard appears as proposed. No comments were received. It is derived from existing § 57.9115, and is applicable underground only. It provides

protection for miners being transported on trolley-powered mantrips by requiring that the mantrip be covered if there is a danger of persons contacting the energized trolley wire.

Section 57.14161 Makeshift couplings. This final standard appears as proposed since no comments were received. It is derived from existing § 57.9098, and is applicable underground only. It addresses the hazards which exist when improper devices are used for connecting individual cars or components of a train. Couplings other than those designed for the specific equipment are permitted only during the movement of disabled rail equipment provided that no hazard to persons is created.

Section 57.14162 Trip lights. This final standard appears as proposed since no comments were received. It is derived from existing § 57.9112, and is applicable underground only. It provides for a visible signal in the darkened underground environment as an indication to miners that passing trains have cleared their area and that backing trains are approaching.

Safety Practices And Operational Procedures

Section 56/57.14200 Warnings prior to starting or moving equipment. This final standard revises existing §§ 56/57.9005. It requires that equipment operators give an effective warning prior to starting crushers and before moving self-propelled equipment.

Commenters were concerned about the scope of the proposed standard since it did not specify the types of equipment to which it applied. They also noted that some types of equipment would need to be started in order to actuate the warning devices.

The final standard specifies that it applies to self-propelled mobile equipment and crushers. It also clarifies that a warning must be given before starting a crusher and before moving the equipment.

Section 56/57.14201 Conveyor start-up warning. This final standard revises existing §§ 56/57.9006. It addresses the concern that persons be clear of conveyors before they are started. As with the existing standard, the final standard provides that in situations where the conveyor operator can observe the entire lenth of the conveyor from the starting switch, a visual check is required to make certain that persons are in the clear. Where the conveyor operator cannot view the entire conveyor length from the starting switch, a system which provides visible or audible warning of the impending conveyor movement is required. The final standard also requires that the warning must be repeated if conveyor motion does not occur within 30 seconds after the warning is given.

Commenters questioned how the standard would be applied for multi-conveyor systems. Whether a single belt or several belts are involved in the conveyor system, the deciding factor in determining whether a visual check or a warning device is required is the ability of the conveyor operator to see the entire length of the conveyor from the starting switch. Where the entire length cannot be seen, the warning device is required.

Some commenters believed the 30-second interval between the warning and the start of the conveyor is too short and recommended a 60-second interval be permitted to allow multiple belt systems sufficient time to start. MSHA has retained the 30 second interval to assure that the warning will be effective. Longer intervals may result in a lapse of attention or disregard of the warning. In most instances, belt systems will be able to start within 30 seconds after the warning is given. MSHA believes that in the few instances where systems take longer to start, improved safety will be provided by repeating the warning when motion does not begin within 30 seconds.

The standard does not specify the minimum amount of time between the warning and the conveyor start-up. Sufficient time must be allowed, however, for affected persons to leave the hazardous area.

Section 56/57.14202 Manual cleaning of conveyor pulleys. This final standard renumbers, but otherwise does not change, existing §§ 56/57.14033. Commenters supported the retention of this standard which prohibits manual cleaning of conveyor pulleys when the conveyor is in motion to prevent entanglement of persons in the pulleys.

Section 56/57.14203 Application of belt dressing. This final standard replaces and clarifies existing §§ 56/57.14034. As with the existing standard, the final standard prohibits the manual application of belt dressing while belts are in motion except where a pressurized-type applicator is used that does not require reaching inside the guards.

Some commenters believed that any applicator which does not require reaching inside the guard should be permitted. MSHA did not adopt this suggestion because only pressurized belt dressing applicators afford protection from the risk of persons or the applicator becoming ensnared by belt movement. Because this standard applies only to the manual application of belt dressing, it does nor restrict the use of mechanical means of application, such as drip-type devices.

Section 56/57.14204 Machinery lubrication. This final standard replaces and revises existing §§ 56/57.14035. Manual lubrication of machinery while it is in motion often exposes persons to a risk of harm. Serious injuries have occurred when persons have attempted to apply lubricant from outside a guard by using a hand-held extension, such as a stick coated with lubricant. For these reasons, the final standard continues to prohibit the manual lubrication of machinery while it is in motion, where application of the lubricant may expose persons to injury.

The existing standard and the proposed standard specifically allowed for lubrication of operating machinery through the use of extended fittings and cups. This provision has been removed from the final standard at the suggestion of commenters because it is unnecessary. The performance-oriented language of the final standard allows for the use of these types of devices since they do not expose persons to the hazards addressed.

Section 56/57.14205 Machinery, equipment, and tools. This final standard makes editorial changes to existing § 56/57.14036.

Some commenters considered the requirement to use machinery, equipment, and tools according to the manufacturer's specifications and instructions as proposed in § 56.14208, to be unrealistic in some mining situations. They proposed that this standard be deleted. MSHA agrees that the manufacturers' specifications and instructions could go beyond the intent of this regulation. However, MSHA notes that serious mining accidents can occur from the misuse of equipment. For example, haulage trucks can be loaded beyond their design capacity, and braking and suspension systems can fail. MSHA has therefore, retained the requirement that machinery, equipment, and tools shall not be used beyond the design capacity intended by the manufacturer where such use may create a hazard to persons.

This final standard permits mine operators to modify the machinery, equipment, or tools they purchase from manufacturers to suit their particular mining needs provided that hazards to persons aren't created. Overloading of equipment, such as haulage vehicles and cranes, that can create a hazard to equipment operators and other persons in the area would not be permitted by this standard.

Some commenters also considered this standard to be duplicative of § 56/57.14200 (defects affecting the safe operation of machinery, equipment, or tools). The focus of this standard is the safe use and modification of mining equipment while § 56/57.14200 address defective equipment. Defects may exist or develop in equipment even when used within the design capacity intended by the manufacturers or when it has been modified safely.

Section 56/57.14206 Securing movable parts. This final standard consolidates existing §§ 56/57.9031 and 56/57.9032. Together these standards address safety procedures to be followed to secure movable parts when moving equipment between work areas, and when this type of equipment is unattended or not in use.

Paragraph (a) addresses the procedures to be used when moving this equipment between workplaces. Commenters believed the standard should recognize that the extent to which a movable part needs to be secured depends on the type of equipment involved. These commenters were concerned that the proposed rules's requirement for movable parts to be secured in a safe travel position could imply type of physical or mechanical restraint system in each instance. The final rule clarifies that the movable part is to be positioned in the travel mode. Mechanical securing would only be necessary when required for safe travel. For example, when a drill mast or boom is mounted on a piece of mobile equipment it would be insufficient to only place the boom in its travel mode. The drill mast would also need to be mechanically secured to prevent it from moving about during travel between workplaces. In contrast, securing a bulldozer blade would require lowering of the blade to the normal travel position.

Paragraph (b), which addresses the procedures for securing these movable parts when equipment is unattended or not in use, has also been clarified in the final rule to reflect that the method of securing depends upon the movable part involved. In each instance the objective is to prevent movement of the movable part when it could create a hazard to persons.

Section 56/57.14207 Parking procedures for unattended equipment. This final standard consolidates existing §§ 56/57.9036 and 56/57.9037 and sets forth the procedures to be followed to prevent mobile equipment from moving when left unattended. Whenever equipment is unattended, the standard requires that the controls be placed in the park position and the parking brake, if provided on the equipment, be set. In addition, when mobile equipment is parked on a grade, the wheels or tracks must also be either chocked or turned into bank or rib. Except for an editorial change deleting the reference to the underground term "rib" in Part 56, the final standard adopts the wording of the proposed standard.

Several comments were directed to the proposed standard's requirement for setting the parking brake. Some commenters stated that they experienced continual maintenance problems with parking brakes because employees chronically forget to disengage them before moving equipment. Others stated that maintenance problems with parking brakes develop from the failure to use them. These commenters believed that it would be better to save the parking brake for emergency situations. As an alternative, they suggested having the vehicle cut a ditch in the road or be turned into a berm or rib. They also believed that it was unnecessary to apply the parking brake when the vehicle was on level ground. MSHA has considered each of these viewpoints, but believes that parking brakes should be fully utilized for their intended purpose. Although a parking brake might be engaged as a last resort to provide an additional means of slowing a vehicle in an emergency situation, it is not designed or intended for that purpose. Parking brakes are intended for the purpose of keeping stopped equipment stationary. In contrast, many types of self-propelled mobile equipment used in mining are designed with an emergency braking system that is distinct from the parking brake. Manufacturers advise, in their equipment operating instructions, that parking brakes are to be applied any time the equipment is stopped and is to remain stationary. In some instances vehicle manufacturing design prevents starting of the equipment unless the brake is engaged.

The requirement for application of the parking brake applies regardless of whether a level surface or a grade is involved. In some situations it would be difficult to accurately detect whether the surface is level or on a grade which may cause a vehicle to overcome its own rolling resistance. Grades as little as one to three percent can cause a vehicle to overcome its own inertia. In those limited situations where training is ineffective to remind employees to disengage the parking brake before moving vehicles, warning lights or an inter-lock system that prevents equipment from moving until the brake is released can be installed.

Commenters also asked MSHA to explain the standard's requirement to place the operating controls in the park position. These commenters noted that placing the controls in neutral is the park position for some vehicles, while low gear is used for others. Due to these variations, MSHA used the term "park position" to convey that the controls are to be placed in the position recommended by the manufacturer when equipment is unattended.

Section 56/57.14208 Warning devices. This final standard consolidates existing §§ 56/57.9049 and 56/57.9068, The proposed standard addressed the need for warning devices in three distinct situations involving mobile equipment. It required warning devices when parked mobile equipment creates a hazard to persons in vehicles; when mobile equipment is carrying extended loads; and when restricted clearances create a hazard to persons in mobile equipment. During the realignment of standards within Subparts H and M, it became apparent that the third situation, restricted clearances, addressed warnings which would be located on roadways, railroads, and loading and dumping sites rather than warnings affixed to the machinery and equipment. This requirement was, therefore, transferred to Subpart H as §§ 56/57.9306. Warnings on parked mobile equipment and extended loads being transported on equipment are retained within this final standard.

Paragraph (a) is derived from existing §§ 56/57.9068 and requires that visible warning devices be used when parked mobile equipment creates a hazard to persons in vehicles. Warning devices are required when the location of a parked vehicle poses a risk that a moving piece of equipment may strike it. The warning device alerts the operator of the moving equipment of the presence and hazardous location of the parked equipment.

Paragraph (b) is derived from existing §§ 56/57.9049. The final standard provides that when mobile equipment has loads that extend beyond its sides, or more than four feet beyond its rear, warning flags, or where visibility is limited, warning lights, must be at the end of the projection. Commenters believed the standard should permit the alternative of allowing persons to walk alongside the extended load, carrying the warning flag or light. MSHA agrees and the final standard permits this procedure.

Although some commenters believed the standard should only require warning flags or lights when visibility is

limited, MSHA has retained these requirements for all instances involving extended loads. Even where visibility is not limited, the fact that a load is extended may not always be readily recognizable. The warning device serves to alert other persons of this condition and acts as a depth perception aid.

Commenters also suggested that the standard permit a vehicle to travel behind an extended load as an alternative to the flag or light. The requirement to provide a warning flag or light is a standard safety practice regardless of whether a vehicle with an extended load would be traveling on a mine site or highway. Since the warning flag or light also serves as a perception aid, even to a trailing vehicle, MSHA believes that the warning device is still needed on the projecting loads in those instances.

Commenters also suggested that rail equipment be excluded on the basis that §§ 56/57.9330 address those hazards. Under this final standard, rail equipment continues to be covered because the same hazards to persons exist with regard to the equipment, regardless of the type of wheels or tracks used.

Section 56/57.14209 Safety procedures for towing. This final standard replaces existing §§ 56/57.9070. It sets forth the safety procedures to be followed when a piece of equipment is being towed. The final standard clarifies the requirements of the existing standard by stating the practices required to ensure that the towed piece of equipment remains under control.

The standard requires that a tow bar or other effective means of control be used for towing. In addition to this primary rigging, a safety chain or wire rope must be used as a secondary control mechanism, unless there is a person on the towed piece of equipment who has control over its braking and steering. One commenter asked MSHA to clarify whether the tongue of a utility trailer would constitute the primary rigging. Primary rigging refers to the principal means of connection between the towing and towed equipment. For a trailer, this would typically be the tongue. In each instance, the principal consideration is the use of an effective primary means of control in conjunction with a secondary mechanism to control the towed equipment should the primary connection fail.

Commenters also questioned whether this standard would apply when small trailers are being towed at slow speeds. These procedures apply whenever mobile equipment is being towed, since the potential for loss of control always exists.

Procedures for moving rail equipment are contained in §§ 56/57.14218.

Section 56/57.14210 Movement of dippers, buckets, loading booms, or suspended loads. This final standard is derived from existing §§ 56/57.9025. It prohibits dippers, buckets, loading booms, or suspended loads from being located over the operators' stations of self-propelled mobile equipment until the equipment operator is out of the station and in a safe location. However, an exception was provided for equipment that is specifically designed to protect the equipment operator from falling objects. Commenters supported the wording of the proposed standard and it is unchanged in this final standard.

Section 56/57.14211 Blocking equipment in a raised position. This final standard is derived from existing §§ 56/57.14030. Because of the realignment of standards, the standard is now retained in Subpart M.

When persons work on top of, under, or from mobile equipment in a raised position, or a raised portion of that equipment, there is a hazard that the raised portion may descend without warning. Miners have been seriously injured or killed when raised equipment or raised components of equipment have fallen unexpectedly. This standard sets forth safety requirements that are intended to prevent these occurrences.

Several aspects of the proposal have been clarified in the final rule. Although commenters recognized that this standard addresses both raised mobile equipment and raised components of such equipment, they requested clarification and stated that the standard should separate these different aspects. The final standard does this by providing separate paragraphs.

Paragraph (a) addresses the situation when the mobile equipment itself has been raised and persons are working on top of, under, or working from it to reach objects that are otherwise not accessible. In those situations, the equipment must be blocked or mechanically secured to prevent it from accidentally rolling or falling.

Paragraph (b) provides the same requirement to block or mechanically secure a raised component on a piece of mobile equipment when persons are working on top of, under, or working from it. In addition, when work on a raised component is being performed, the mobile equipment itself must be blocked or secured to prevent it from rolling.

Commenters asked whether it was necessary to block the raised component if work is being performed on an entirely separate component. The final standard clarifies, in paragraph (c), that securing must be done if persons are exposed to the hazard of accidental lowering of the component.

Paragraph (d) provides a compliance alternative for blocking of raised components. Elevated mobile work platforms and other types of equipment provided with functional load-locking devices or devices that prevent free and uncontrolled descent need not be blocked against falling. As discussed during the public hearings, load-locking devices work by fixing the raised component in position to prevent it from an unplanned descent. The devices can operate mechanically or hydraulically. The final standard also permits use of any other device that prevents free and uncontrolled descent should there be a sudden failure of the system that is holding up the raised component. An example of this type of device would be a check valve or flow restrictor which provides a controlled drift-down rate.

Some commenters stated that "the standard should permit persons to work from the buckets of front-end loaders when performing quick repairs, thereby avoiding the need to use specifically designed mobile work platforms". MSHA does not believe this use of loader buckets is safe unless the buckets are provided with a device that controls descent. As noted by other commenters, loaders are designed to handle ore and materials and are not intended to be used as work platforms. Unstable footing inside the loader bucket and the potential for accidental unloading by the relatively quick-action dumping mechanism of the bucket make front-end loaders unsafe as makeshift mobile work platforms, unless a load-locking device, or other device that prevents free and uncontrolled descent is installed on the equipment. In those instances, the equipment would be effectively modified to be considered a specifically designed mobile work platform.

Similarly, a forklift truck with an attached work basket and load-locking device would be permitted.

Although some commenters favored having the standard only address the hazards associated with raised components, MSHA's experience has been that many accidents and fatalities have occurred when the mobile equipment itself is raised and it has not been sufficiently secured to prevent accidental rolling or falling.

A few commenters also questioned the requirement for blocking the mobile equipment when a component is raised if the equipment is on level ground. Even when it is possible to assure that the

equipment is on level ground, blocking is a sound precaution. At times, work from the raised component may cause the mobile equipment to move due to drive line slack or the shifting of the elevated weight. There is also a possibility that another vehicle may bump the equipment. Blocking the mobile equipment provides an element of additional security for these situations. Editorially, the final standard substitutes the words "on top of" for "on" in referring to work performed on the mobile equipment or its raised component. Commenters suggested this change to permit persons to perform non-hazardous activities such as changing bits on a lowered boom of a jumbo drill when standing to the side of the boom. Paragraph (c) also recognizes these non-hazardous situations, by requiring the securing of raised components only when persons are exposed to the hazard of accidental lowering.

Another issue raised by commenters was whether cranes would be specifically excluded from the scope of this standard. Some commenters favored such an exclusion, preferring to have a separate rulemaking for cranes. Others believed that while cable systems on cranes should be excluded, hydraulic systems on cranes should be included. They stated that equipment such as a crane, which uses a hydraulic telescoping boom with a cable on the end, or a cherry picker should have load-locking devices on the hydraulic system portion when they are used as elevated mobile work platforms.

If a crane is modified to be used as a mobile work platform, then it also must comply with paragraph (d) of this standard and have either a load-locking or an anti-free-descent device installed. These devices were also accepted as compliance with the existing standards.

Section 56/57.14212 Chains, ropes and drive belts. This final standard consolidates and replaces existing §§ 56/57.14031 and 56/57.14032. It addresses the hand and arm injuries which can occur when chain, rope, or drive belts are moved onto sprockets, pulleys or drums while in motion. The standard requires that these chains, ropes, and drive belts be guided mechanically unless the equipment has been specifically designed for hand feeding. Commenters supported the consolidation of these standards.

Section 56/57.14213 Ventilation and shielding for welding. This final standard revises existing §§ 56/57.14045. As with the existing standard, this final standard requires that welding operations be well-ventilated. It also clarifies that shielding must be provided where arc flash could be hazardous to persons. Without the protection provided by shielding, the intensity of light from arc flash can damage the eyesight of persons exposed. Shielding also provides protection from metals being projected during welding.

Welding fumes and gases are created as a direct by-product of the work activity and as a result, unlimited amounts of these harmful fumes and gases are continuously released into the work environment during welding in a manner which could impair visibility. For these reasons the standard requires that the welding area be well-ventilated to remove the fumes and gases from the work environment. This is especially important where the welding is carried out in confined spaces.

One commenter suggested that the ventilation requirement be deleted on the basis that the air quality standards address this hazard. MSHA has retained the welding ventilation requirement of this standard in the final rule because of the always present fumes and gases from welding, in areas which are not well-ventilated. The accumulation of welding fumes and gases can present a safety hazard by impairing visibility of the welder and other workers in the area if no ventilation is provided. If inhaled, welding fumes and gases can rapidly lead to disorientation and irreversible physical harm to the welder.

Section 56/57.14214 Train warnings. This final standard, revises existing §§ 56/57.9009 and sets forth situations when train operators are required to sound an audible warning.

A commenter questioned whether a switch engine would be considered a train if no railcar were attached. The hazard to persons exists when locomotives are moved individually as well as when they are coupled to railcars. The standard is applicable in both situations.

Section 56/57.14215 Coupling or uncoupling cars. This final standard, consolidates existing §§ 56/57.9065 and 57.9097. It sets forth the safety procedures to be followed when coupling or uncoupling railcars so that persons will not be injured by the movement of the train or be placed in a hazardous position while performing the coupling or uncoupling.

Some commenters suggested that this standard be deleted from Part 56 on the basis that it was not applicable to surface mining operations. However, the final standard continues to apply to both Part 56 and Part 57 since some surface operations use rail haulage.

Section 56/57.14216 Backpoling. This final standard, prohibits backpoling of trolleys except where it is unavoidable due to inadequate clearance to reverse the trolley pole. It retains the substantive requirements of existing §§ 56/57.9046. Backpoling is the practice of moving a trolley wire-powered train with the trolley pole pointed in the direction of movement rather than trailing the movement. When backpoling, the pole is more likely to become disengaged from the trolley wire or to catch an object and break. Miners have been electrocuted from such backpoling hazards. The final rule prohibits this practice except where it is absolutely unavoidable. Where backpoling is necessary, the standard provides that it be done only at the minimum tram speed of the trolley.

Some commenters believed this standard was not applicable to surface mining operations. MSHA recognizes that trolleys are more commonly encountered at underground mines; however, they are used at some surface operations. In either setting, the hazards of backpoling exist. Therefore, the final standard continues to apply to surface as well as underground mining operations.

Section 56/57.14217 Securing parked railcars. This final standard revises existing §§ 56/57.9047. It is applicable to surface and underground mines and provides protection for miners against unintended movement of railcars. No comments were received on this standard and it appears in the final rule as proposed.

Section 56/57.14218 Movement of equipment on adjacent tracks. This final standard replaces existing §§ 56/57.9066. It is applicable to surface and underground mines and requires that any connective devices between a locomotive on one track and rail equipment on another track be of sufficient strength for the task. When inappropriate connecting devices are used to move rail equipment, the device can fail during movement and the uncontrolled rail equipment can pose a hazard to miners in the area. No comments were received on this standard and it appears in the final rule as proposed.

Section 56/57.14219 Brakeman signals. This final standard replaces existing §§ 56/57.9052. It is applicable to surface and underground mines and requires that when communicative signals cannot be clearly understood they shall be interpreted as a stop signal so that the instructions can be verified and train movement can proceed safely. No comments were received on this standard and it appears in the final rule as proposed.

I. Derivation Table.

The following derivation table lists the number of each standard in both subparts of the final rule, the number of the standard in the applicable proposed rule, and the number of the existing standard.

New No.	Proposed No.	Old No.
56/57.900	56/57.9000	56/57.2
56/57.9100	56/57.9101	56/57.9071
56/57.9101	56/57.9205	56/57.9017, .9023, .9024, 57.9113
56/57.9102	56/57.9305	56/57.9035
56/57.9103	56/57.9307	56/57.9050
56/57.9104	56/57.9313	56/57.9059
57.9160	57.9362	57.9116
56/57.9200	56/57.9102	56/57.9040, .9041, .9067, .9085
56/57.9200(h)	56/57.14202	56/57.9014
56/57.9201	56/57.9104	56/57.9045
56/57.9202	56/57.9105, .9106	56/57.9062, .9034
57.9260	57.9160	57.9099
57.9261	57.9360	57.9096
56/57.9300	56/57.9203	56/57.9022
56/57.9301	56/57.9402	56/57.9054
56/57.9302	56/57.9303	56/57.9020, .9056
56/57.9303	56/57.9400	56/57.9063
56/57.9304	56/57.9404	56/57.9055
56/57.9305	56/57.9403	56/57.9058
56/57.9306	56/57.9112(c)	56/57.9060, 57.9104
56/57.9307	56/57.9311	56/57.9016
56/57.9308	56/57.9310	56/57.9028
56/57.9309	56/57.9500	56/57.9064
56/57.9310	56/57.9501	56/57.9072, 57.9105, .9108
56/57.9311	56/57.9401	56/57.9057
56/57.9312	56/57.9502	57.9107
56/57.9313	Delete	56/57.9053
56/57.9314	56/57.9405	56/57.9061
56/57.9315	56/57.9204	56/57.9074
56/57.9316	56/57.9206	56/57.9027
56/57.9317	56/57.9208	56/57.9030
56/57.9318	56/57.9103	56/57.9039
56/57.9319	56/57.9306	56/57.9051
56/57.9330	56/57.9330	56/57.9083
57.9360	57.9363	57.9110, .9111
57.9361	57.9560	57.9103
57.9362	57.9660	57.9102
Deleted	Deleted	56/57.9019
Deleted	Deleted	56/57.9042
Deleted	Deleted	57.9114
56/57.14100	56/57.9100, 56/57.9200, 58.14200.	56/57.9001, 56/57.9002, .9073, 58.14026
56/57.14101	56/57.9202	56/57.9003
56/57.14102	56/57.9300	56/57.9048
56/57.14103	56/57.9201	56/57.9010, .9011, .9012
56/57.14104	56/57.9111	56/57.9069
56/57.14105	58.14203	56/57.14029
56/57.14106	56/57.9209	56/57.14013
56/57.14107	58.14100	56/57.14001, .14003
56/57.14108	58.14101	56/57.14002
56/57.14109	58.14103	56/57.9007
56/57.14110	58.14107	56/57.14011
56/57.14111	56/57.9600	56/57.9015
56/57.14112	58.14102	56/57.14006, .14007
56/57.14113	58.14104	56/57.9013
56/57.14114	56/57.9700	56/57.9026
56/57.14115	58.14105	56/57.14008
56/57.14116	58.14106	56/57.14010
56/57.14130	56/57.9230	56/57.9089
56/57.14131	N/A	N/A
56/57.14132	56/57.9231	56/57.9087
57.14160	57.9361	57.9115
57.14161	57.9364	57.9098
57.14162	57.9365	57.9112
56/57.14200	56/57.9701	56/57.9005
56/57.14201	56/57.14201(G)	56/57.9006
56/57.14202	58.14205(G)	56/57.14033
56/57.14203	58.14206(G)	56/57.14034
56/57.14204	58.14207(G)	56/57.14035
56/57.14205	58.14208(G)	56/57.14036
56/57.14206	56/57.9108	56/57.9031, .9032
56/57.14207	56/57.9109	56/57.9036, .9037
56/57.14208	56/57.9112	56/57.9068, .9049
56/57.14209	56/57.9107	56/57.9070
56/57.14210	56/57.9207	56/57.9025
56/57.14211	56/57.9110	56/57.14030
56/57.14212	58.14204(G)	56/57.14031, .14032
56/57.14213	58.14209(G)	56/57.14045
56/57.14214	56/57.9312	56/57.9009
56/57.14215	56/57.9308	56/57.9085, 57.9087
56/57.14216	56/57.9301	56/57.9046
56/57.14217	56/57.9302	56/57.9047
56/57.14218	56/57.9304	56/57.9066
56/57.14219	56/57.9306	56/57.9052
56/57.9200(h)	58.14202	56/57.9014
56/57.15014	N/A	56/57.14014

J. Distribution Table.

For the convenience of the reader, the following distribution table has been included as a guide in cross-referencing existing standard numbers with the section numbers used in both final rules.

Old No.	New No.
56/57.2	56/57.9000
56/57.9001	56/57.14100
56/57.9002	56/57.14100
56/57.9003	56/57.14101
56/57.9005	56/57.14200
56/57.9006	56/57.14201
56/57.9007	56/57.14108
56/57.9009	56/57.14214
56/57.9010	56/57.14103
56/57.9011	56/57.14103
56/57.9012	56/57.14103
56/57.9013	56/57.14113
56/57.9014	56/57.9200(h)
56/57.9015	56/57.14111
56/57.9016	56/57.9307
56/57.9017	56/57.9101
56/57.9019	Removed
56/57.9020	56/57.9302
56/57.9022	56/57.9300
56/57.9023	56/57.9101
56/57.9024	56/57.9101
56/57.9025	56/57.14210
56/57.9026	56/57.14114
56/57.9027	56/57.9316
56/57.9028	56/57.9308
56/57.9030	56/57.9317
56/57.9031	56/57.14206
56/57.9032	56/57.14206
56/57.9034	56/57.9202
56/57.9035	56/57.9102
56/57.9036	56/57.14207
56/57.9037	56/57.14207
56/57.9039	56/57.9318
56/57.9040	56/57.9200
56/57.9041	56/57.9200
56/57.9042	Removed
56/57.9045	56/57.9201
56/57.9046	56/57.14216
56/57.9047	56/57.9302
56/57.9048	56/57.14102
56/57.9049	56/57.14208
56/57.9050	56/57.9103
56/57.9051	56/57.9319
56/57.9052	56/57.14219
56/57.9053	56/57.9313
56/57.9054	56/57.9301
56/57.9055	56/57.9304
56/57.9056	56/57.9302
56/57.9057	56/57.9311
56/57.9058	56/57.9305
56/57.9059	56/57.9104
56/57.9060	56/57.9306
56/57.9061	56/57.9314
56/57.9062	56/57.9202
56/57.9063	56/57.9303
56/57.9064	56/57.9309
56/57.9065	56/57.14215
56/57.9066	56/57.14218
56/57.9067	56/57.9200
56/57.9068	56/57.14208
56/57.9069	56/57.14105
56/57.9070	56/57.14209
56/57.9071	56/57.9100
56/57.9072	56/57.9310
56/57.9073	56/57.14100
56/57.9074	56/57.9315
56/57.9083	56/57.9330
56/57.9085	56/57.9200
56/57.9087	56/57.14132
56/57.9088	56/57.14130
57.9096	57.9261
57.9097	56/57.14215
57.9098	57.14161
57.9099	57.9260
57.9102	57.9362
57.9103	57.9361
57.9104	57.9306
57.9105	57.9310
57.9106	57.9310
57.9107	57.9312
57.9110	57.9360
57.9111	57.9360
57.9112	57.14162
57.9113	57.9101
57.9114	Removed
57.9115	57.14160
57.9116	57.9160
56/57.9001, .9002	56/57.14100
56/57.9003	56/57.14101
56/57.9005	56/57.14200
56/57.9006	56/57.14201
56/57.9007	56/57.14109
56/57.9009	56/57.14214
56/57.9010, .9011, .9012	56/57.14103
56/57.9013	56/57.14113
56/57.9015	56/57.14110
56/57.9025	56/57.14210
56/57.9026	56/57.14114
56/57.9031, .9032	56/57.14206
56/57.9036, .9037	56/57.14207
56/57.9046	56/57.14216
56/57.9047	56/57.14217
56/57.9048	56/57.14102
56/57.9049, .9068	56/57.14206
56/57.9052	56/57.14102
56/57.9065	56/57.14215

Old No.	New No.
56/57.9066	56/57.14218
56/57.9069	56/57.14104
56/57.9070	56/57.14209
56/57.9073	56/57.14100
56/57.9087	56/57.14132
56/57.9088	56/57.14130
57.9097	56/57.14215
57.9098	57.14161
57.9112	57.14162
57.9115	57.14160
56/57.14001	56/57.14107
56/57.14002	56/57.14108
56/57.14003	56/57.14107
56/57.14006, .14007	56/57.14112
56/57.14008	56/57.14115
56/57.14010	56/57.14116
56/57.14011	56/57.14110
56/57.14013	56/57.14106
56/57.14014	56/57.15014
56/57.14026	56/57.14100
56/57.14029	56/57.14105
56/57.14030	56/57.14211
56/57.14031, .14032	56/57.14212
56/57.14033	56/57.14202
56/57.14034	56/57.14203
56/57.14035	56/57.14204
56/57.14036	56/57.14205
56/57.14045	56/57.14213

III. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with the revisions to the Agency's standards for machinery and equipment and for loading, hauling, and dumping at metal and nonmetal mines. The Agency has incorporated this analysis into the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. The Agency prepared a separate analysis for each of Subpart H and Subpart M. Because of the interrelationship between these two subparts, however, MSHA has combined these separate analyses in the summary below. MSHA has determined that the final rule will neither result in major cost increases nor have a combined effect of $100 million or more annually on the economy. Because the final rule does not meet the criteria for a major rule, a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate and include, wherever possible, compliance alternatives which minimize any adverse impact on small businesses. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mining operations with fewer than 20 employees. The final rule contains several alternatives to the existing regulations, some of which will especially benefit small operations. In addition, the final rule clarifies compliance responsibilities, updates standards to reflect advances in technology, adopts more performance-oriented criteria, and transfers standards to more appropriate subparts. Performance-oriented standards maximize flexibility by establishing safety objectives without limiting the means to achieve them.

The primary benefit of the final rule, however, is the improved protection that the standards will provide to persons who could be endangered by hazards associated with loading, hauling, and dumping activities and the use of machinery and equipment. During the five year period from January 1983 through December 1987, the metal and nonmetal mining industry experienced 316 work-related fatalities. Fifty two percent (164) of these fatalities were directly related to haulage accidents and mishaps in the use of machinery and equipment. The Health and Safety Analysis Center of the Agency has categorized these 164 deaths as follows: Powered haulage—104; nonpowered haulage—2; machinery—55; and, handtools—3. Twenty five of these incidents occurred in underground mines; 139 at surface operations. The Agency anticipates that full compliance with these improved standards will prevent between 10 and 15 fatalities on an annual basis.

In the following summary of the Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the final rule with the costs of the existing requirements. A copy of the full analysis for Subpart H and for Subpart M is available upon request.

In developing cost estimates, the Agency has taken into consideration industry-wide safety practices. Current compliance costs are related to the requirements for labor and equipment purchase and maintenance. In calculating the costs of the existing requirements and the final rule, the Agency annualized capital expenditures and included annual operating costs.

MSHA estimates that the annualized capital costs and operating costs for compliance with the existing requirements amount to approximately $36.1 million, compared to approximately $37.4 million for the final rule. The final rule represents a $1.3 million (3.5%) increase in annual compliance costs over the existing standards. One final standard contributes new compliance costs of about $18,590 for the installation of seat belts on surface haulage trucks. Revision of two existing requirements, for testing brakes and replacing cab windows, increases compliance costs by $1,376,731 under the final rule. Revision of three existing requirements, for makeshift couplings, for records of examinations, and for warnings prior to starting equipment, decreases compliance costs by $114,890 under the final rule. In addition, under the final rule, 38 standards do not pose compliance costs and 37 standards impose the same compliance costs as under the existing rule.

The final rule affects about 11,290 metal and nonmetal mining operations employing about 189,101 miners. About 84% of the mines or 9,465 are considered as small business entities and they employ about 31% or 57,704 of the miners. Annual compliance costs under the final rule average about $1,936 per small mine which represents a 4.9% increase over that required for compliance with the existing requirements. Small mines incur about 48% of the total compliance cost under the existing standard and about 49% of the total compliance cost under the final rule. The final rule does not represent a significant economic impact on a substantial number of small businesses under the criteria of the Regulatory Flexibility Act.

IV. Paperwork Reduction Act

Subpart H does not contain any recordkeeping or retention requirements subject to the Paperwork Reduction Act of 1980. The retention provision of the recordkeeping requirement in existing standard 56/57.9001, which is replaced by standard 56/57.14100, would be modified in the final rule to require that records of equipment defects affecting the safety of self-propelled mobile equipment be retained from the date they are recorded until the defects are corrected. The recordkeeping burden itself has been modified in that only those defects not corrected immediately are required to be recorded.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 1219–0089.

V. List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Incorporation by reference, Loading, hauling, and dumping, Machinery and equipment, Metal and nonmetal mining, Personal protection, Travelways.

BEST COPY AVAILABLE

Date: August 15, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Title 30, Chapter I, Subchapter N of the Code of Federal Regulations, Parts 56 and 57, is amended as set forth below:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

1. The authority citation for Part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

Subpart A—General

§ 56.2 [Amended]

2. In § 56.2 the definitions of "berm" and "trip light" are removed.

3. Subpart H is revised to read as follows:

Subpart H—Loading, Hauling, and Dumping

Sec.

56.9000 Definitions.

Traffic Safety

56.9100 Traffic control.
56.9101 Operating speeds and control of equipment.
56.9102 Movement of independently operating rail equipment.
56.9103 Clearance on adjacent tracks.
56.9104 Railroad crossings.

Transportation of Persons and Materials

56.9200 Transporting persons.
56.9201 Loading, hauling, and unloading of equipment or supplies.
56.9202 Loading and hauling large rocks.

Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites

56.9300 Berms or guardrails.
56.9301 Dump site restraints.
56.9302 Protection against moving or runaway railroad equipment.
56.9303 Construction of ramps and dumping facilities.
56.9304 Unstable ground.
56.9305 Truck spotters.
56.9306 Warning devices for restricted clearances.
56.9307 Design, installation, and maintenance of railroads.
56.9308 Switch throws.
56.9309 Chute design.
56.9310 Chute hazards.
56.9311 Anchoring stationary sizing devices.
56.9312 Working around drawholes.
56.9313 Roadway maintenance.
56.9314 Trimming stockpile and muckpile faces.
56.9315 Dust control.
56.9316 Notifying the equipment operator.
56.9317 Suspended loads.
56.9318 Getting on or off moving equipment.
56.9319 Going over, under, or between railcars.
56.9330 Clearance for surface equipment.

Subpart H—Loading, Hauling, and Dumping

§ 56.9000 Definitions.

The following definitions apply in this subpart:

Berm. A pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway.

Mobile equipment. Wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved.

Traffic Safety

§ 56.9100 Traffic control.

To provide for the safe movement of self-propelled mobile equipment—

(a) Rules governing speed, right-of-way, direction of movement, and the use of headlights to assure appropriate visibility, shall be established and followed at each mine; and

(b) Signs or signals that warn of hazardous conditions shall be placed at appropriate locations at each mine.

§ 56.9101 Operating speeds and control of equipment.

Operators of self-propelled mobile equipment shall maintain control of the equipment while it is in motion. Operating speeds shall be consistent with conditions of roadways, tracks, grades, clearance, visibility, and traffic, and the type of equipment used.

§ 56.9102 Movement of independently operating rail equipment.

Movement of two or more pieces of rail equipment operating independently on the same track shall be controlled for safe operation.

§ 56.9103 Clearance on adjacent tracks.

Railcars shall not be left on side tracks unless clearance is provided for traffic on adjacent tracks.

§ 56.9104 Railroad crossings.

Designated railroad crossings shall be posted with warning signs or signals, or shall be guarded when trains are passing. These crossings shall also be planked or filled between the rails.

Transportation of Persons and Materials

§ 56.9200 Transporting persons.

Persons shall not be transported—

(a) In or on dippers, forks, clamshells, or buckets except shaft buckets during shaft-sinking operations or during inspection, maintenance and repair of shafts.

(b) In beds of mobile equipment or railcars, unless—

(1) Provisions are made for secure travel, and

(2) Means are taken to prevent accidental unloading if the equipment is provided with unloading devices;

(c) On top of loads in mobile equipment;

(d) Outside cabs, equipment operators' stations, and beds of mobile equipment, except when necessary for maintenance, testing, or training purposes, and provisions are made for secure travel. This provision does not apply to rail equipment.

(e) Between cars of trains, on the leading end of trains, on the leading end of a single railcar, or in other locations on trains that expose persons to hazards from train movement.

(1) This paragraph does not apply to car droppers if they are secured with safety belts and lines which prevent them from falling off the work platform.

(2) Brakemen and trainmen are prohibited from riding between cars of moving trains, but may ride on the leading end of trains or other locations when necessary to perform their duties;

(f) To and from work areas in overcrowded mobile equipment;

(g) In mobile equipment with materials or equipment unless the items are secured or are small and can be carried safely by hand without creating a hazard to persons; or

(h) On conveyors unless the conveyors are designed to provide for their safe transportation.

§ 56.9201 Loading, hauling, and unloading of equipment or supplies.

Equipment and supplies shall be loaded, transported, and unloaded in a manner which does not create a hazard to persons from falling or shifting equipment or supplies.

§ 56.9202 Loading and hauling large rocks.

Large rocks shall be broken before loading if they could endanger persons or affect the stability of mobile equipment. Mobile equipment used for haulage of mined material shall be loaded to minimize spillage where a hazard to persons could be created.

Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites

§ 56.9300 Berms or guardrails.

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

(b) Berms or guardrails shall be at least mid-axle height of the largest self-

propelled mobile equipment which usually travels the roadway.

(c) Berms may have openings to the extent necessary for roadway drainage.

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms or guardrails are not required when the following criteria are met:

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Reflectors are installed at 25-foot intervals along the perimeter of the elevated roadway.

(4) A maximum speed limit of 15 miles per hour is posted.

(5) Road surface traction is not to be impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

(e) This standard is not applicable to rail beds.

§ 56.9301 Dump site restraints.

Berms, bumper blocks, safety hooks, or similar impeding devices shall be provided at dumping locations where there is a hazard of overtravel or overturning.

§ 56.9302 Protection against moving or runaway railroad equipment.

Stopblocks, derail devices, or other devices that protect against moving or runaway rail equipment shall be installed wherever necessary to protect persons.

§ 56.9303 Construction of ramps and dumping facilities.

Ramps and dumping facilities shall be designed and constructed of materials capable of supporting the loads to which they will be subjected. The ramps and dumping facilities shall provide width, clearance, and headroom to safely accommodate the mobile equipment using the facilities.

§ 56.9304 Unstable ground.

(a) Dumping locations shall be visually inspected prior to work commencing and as ground conditions warrant.

(b) Where there is evidence that the ground at a dumping location may fail to support the mobile equipment, loads shall be dumped a safe distance back from the edge of the unstable area of the bank.

§ 56.9305 Truck spotters.

(a) If truck spotters are used, they shall be in the clear while trucks are backing into dumping position or dumping.

(b) Spotters shall use signal lights to direct trucks where visibility is limited.

(c) When a truck operator cannot clearly recognize the spotter's signals, the truck shall be stopped.

§ 56.9306 Warning devices for restricted clearances.

Where restricted clearance creates a hazard to persons on mobile equipment, warning devices shall be installed in advance of the restricted area and the restricted area shall be conspicuously marked.

§ 56.9307 Design, installation, and maintenance of railroads.

Roadbeds and all elements of the railroad tracks shall be designed, installed, and maintained to provide safe operation consistent with the speed and type of haulage used.

§ 56.9308 Switch throws.

Switch throws shall be installed to provide clearance to protect switchmen from contact with moving trains.

§ 56.9309 Chute design.

Chute-loading installations shall be designed to provide a safe location for persons pulling chutes.

§ 56.9310 Chute hazards.

(a) Prior to chute-pulling, persons who could be affected by the draw or otherwise exposed to danger shall be warned and given time to clear the hazardous area.

(b) Persons attempting to free chute hangups shall be experienced and familiar with the task, know the hazards involved, and use the proper tools to free material.

(c) When broken rock or material is dumped into an empty chute, the chute shall be equipped with a guard or all persons shall be isolated from the hazard of flying rock or material.

§ 56.9311 Anchoring stationary sizing devices.

Grizzlies and other stationary sizing devices shall be securely anchored.

§ 56.9312 Working around drawholes.

Unless platforms or safety lines are used, persons shall not position themselves over drawholes if there is danger that broken rock or material may be withdrawn or bridged.

§ 56.9313 Roadway maintenance.

Water, debris, or spilled material on roadways which creates hazards to the operation of mobile equipment shall be removed.

§ 56.9314 Trimming stockpile and muckpile faces.

Stockpile and muckpile faces shall be trimmed to prevent hazards to persons.

§ 56.9315 Dust control.

Dust shall be controlled at muck piles, material transfer points, crushers, and on haulage roads where hazards to persons would be created as a result of impaired visibility.

§ 56.9316 Notifying the equipment operator.

When an operator of self-propelled mobile equipment is present, persons shall notify the equipment operator before getting on or off that equipment.

§ 56.9317 Suspended loads.

Persons shall not work or pass under the buckets or booms of loaders in operation.

§ 56.9318 Getting on or off moving equipment.

Persons shall not get on or off moving mobile equipment. This provision does not apply to trainmen, brakemen, and car droppers who are required to get on or off slowly moving trains in the performance of their work duties.

§ 56.9319 Going over, under, or between railcars.

Persons shall not go over, under, or between railcars unless:

(a) The train is stopped; and

(b) The train operator, when present, is notified and the notice acknowledged.

§ 56.9330 Clearance for surface equipment.

Continuous clearance of at least 30 inches from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks at all locations where possible or the area shall be marked conspicuously.

4. Subpart J is amended by adding a new § 56.11008, to read as follows:

Subpart J—Travelways and Escapeways

§ 56.11008 Restricted clearance.

Where restricted clearance creates a hazard to persons, the restricted clearance shall be conspicuously marked.

5. Subpart M is revised to read as follows:

Subpart M—Machinery and Equipment

Sec.

56.14000 Definitions.

Safety Devices and Maintenance Requirements

56.14100 Safety defects; examination, correction and records.
56.14101 Brakes.
56.14102 Brakes for rail equipment.
56.14103 Operators' stations.

Sec.
56.14104 Tire repairs.
56.14105 Procedures during repairs or maintenance.
56.14106 Falling object protection.
56.14107 Moving machine parts.
56.14108 Overhead drive belts.
56.14109 Unguarded conveyors with adjacent travelways.
56.14110 Flying or falling materials.
56.14111 Slusher, backlash guards and securing.
56.14112 Construction and maintenance of guards.
56.14113 Inclined conveyors: backstops or brakes.
56.14114 Air valves for pneumatic equipment.
56.14115 Stationary grinding machines.
56.14116 Hand-held power tools.
56.14130 Roll-over protective structures (ROPS) and seat belts.
56.14131 Seat belts for haulage trucks.
56.14132 Horns and back-up alarms.

Safety Practices and Operational Procedures

56.14200 Warnings prior to starting or moving equipment.
56.14201 Conveyor start-up warning.
56.14202 Manual cleaning of conveyor pulleys.
56.14203 Application of belt dressing.
56.14204 Machinery lubrication.
56.14205 Machinery, equipment, and tools.
56.14206 Securing movable parts.
56.14207 Parking procedures for unattended equipment.
56.14208 Warning devices.
56.14209 Safety procedures for towing.
56.14210 Movement of dippers, buckets, loading booms, or suspended loads.
56.14211 Blocking equipment in a raised position.
56.14212 Chains, ropes, and drive belts.
56.14213 Ventilation and shielding for welding.
56.14214 Train warnings.
56.14215 Coupling or uncoupling cars.
56.14216 Backpoling.
56.14217 Securing parked railcars.
56.14218 Movement of equipment on adjacent tracks.
56.14219 Brakeman signals.
Appendix I for Subpart M—National Consensus Standards

Subpart M—Machinery and Equipment

§ 56.14000 Definitions.

The following definitions apply in this subpart.

Mobile equipment. Wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved.

Travelway. A passage, walk, or way regularly used or designated for persons to go from one place to another.

Safety Devices and Maintenance Requirements

§ 56.14100 Safety defects; examination, correction and records.

(a) Self-propelled mobile equipment to be used during a shift shall be inspected by the equipment operator before being placed in operation on that shift.

(b) Defects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.

(c) When defects make continued operation hazardous to persons, the defective items including self-propelled mobile equipment shall be taken out of service and placed in a designated area posted for that purpose, or a tag or other effective method of marking the defective items shall be used to prohibit further use until the defects are corrected.

(d) Defects on self-propelled mobile equipment affecting safety, which are not corrected immediately, shall be reported to and recorded by the mine operator. The records shall be kept at the mine or nearest mine office from the date the defects are recorded, until the defects are corrected. Such records shall be made available for inspection by an authorized representative of the Secretary.

§ 56.14101 Brakes.

(a) *Minimum requirements.* (1) Self-propelled mobile equipment shall be equipped with a service brake system capable of stopping and holding the equipment with its typical load on the maximum grade it travels. This standard does not apply to equipment which is not originally equipped with brakes unless the manner in which the equipment is being operated requires the use of brakes for safe operation. This standard does not apply to rail equipment.

(2) If equipped on self-propelled mobile equipment, parking brakes shall be capable of holding the equipment with its typical load on the maximum grade it travels.

(3) All braking systems installed on the equipment shall be maintained in functional condition.

(b) *Testing.* (1) Service brake tests shall be conducted when an MSHA inspector has reasonable cause to believe that the service brake system does not function as required, unless the mine operator removes the equipment from service for the appropriate repair;

(2) The performance of the service brakes shall be evaluated according to Table M–1.

TABLE M–1

Gross vehicle weight lbs.	Equipment speed, MPH										
	10	11	12	13	14	15	16	17	18	19	20
	Service Brake Maximum Stopping Distance—Feet										
0–36000	34	38	43	48	53	58	64	70	76	83	89
36000–70000	41	46	52	58	62	70	76	83	90	97	104
70000–140000	48	54	61	67	74	81	88	95	103	111	119
140000–250000	56	62	69	77	84	92	100	108	116	125	133
250000–400000	59	66	74	81	89	97	105	114	123	132	141
Over 400000	63	71	78	86	94	103	111	120	129	139	148

Stopping distances are computed using a constant deceleration of 9.66 FPS² and system response response times of .5.1, 1.5, 2, 2.25 and 2.5 seconds for each increasing weight category respectively. Stopping distance values include a one-second operator response time.

TABLE 2.—THE SPEED OF A VEHICLE CAN BE DETERMINED BY CLOCKING IT THROUGH A 100-FOOT MEASURED COURSE AT CONSTANT VELOCITY USING TABLE 2. WHEN THE SERVICE BRAKES ARE APPLIED AT THE END OF THE COURSE, STOPPING DISTANCE CAN BE MEASURED AND COMPARED TO TABLE 1.

Miles per hour	10	11	12	13	14	15	16	17	18	19	20
Seconds Required to Travel 100 Feet	6.8	6.2	5.7	5.2	4.9	4.5	4.3	4.0	3.8	3.6	3.4

(3) Service brake tests shall be conducted under the direction of the mine operator in cooperation with an according to the instructions provided by the MSHA inspector as follows:

(i) Equipment capable of traveling at least 10 miles per hour shall be tested with a typical load for that particular piece of equipment. Front-end loaders shall be tested with the loader bucket empty. Equipment shall not be tested when carrying hazardous loads, such as explosives.

(ii) The approach shall be sufficient length to allow the equipment operator to reach and maintain a constant speed between 10 and 20 miles per hour prior to entering the 100 foot measured area. The constant speed shall be maintained up to the point when the equipment operator receives the signal to apply the brakes. The roadway shall be wide enought to accommodate the size of the equipment being tested. The ground shall be generally level, packed, and dry in the braking portion of the test course. Ground moisture may be present to the extent that it does not adversely affect the braking surface.

(iii) Braking is to be performed using only those braking systems, including auxiliary retarders, which are designed to bring the equipment to a stop under normal operating conditions. Parking or emergency (secondary) brakes are not to be actuated during the test.

(iv) The tests shall be conducted with the transmission in the gear appropriate for the speed the equipment is traveling except for equipment which is designed for the power train to be disengaged during braking.

(v) Testing speeds shall be a minimum of 10 miles per hour and a maximum of 20 miles per hour.

(vi) Stopping distances shall be measured from the point at which the equipment operator receives the signal to apply the service brakes to the final stopped position.

(4) Test results shall be evaluated as follows:

(i) If the initial test run is valid and the stopping distance does not exceed the corresponding stopping distance listed in Table 1, the performance of the service brakes shall be considered acceptable. For tests to be considered valid, the equipment shall not slide sideways or exhibit other lateral motion during the braking portion of the test.

(ii) If the equipment exceeds the maximum stopping distance in the initial test run, the mine operator may request from the inspector up to four additional test runs with two runs to be conducted in each direction. The performance of the service brakes shall be considered acceptable if the equipment does not exceed the maximum stopping distance on at least three of the additional tests.

(5) Where there is not an appropriate test site at the mine or the equipment is not capable or traveling at least 10 miles per hour, service brake tests will not be conducted. In such cases, the inspector will rely upon other available evidence to determine whether the service brake system meets the performance requirement of this standard.

§ 56.14102 Brakes for rail equipment.

Braking systems on railroad cars and locomotives shall be maintained in functional condition.

§56.14103 Operators stations.

(a) If windows are provided on operators' stations of self-propelled mobile equipment, the windows shall be made of safety glass or material with equivalent safety characteristics. The windows shall be maintained to provide visibility for safe operation.

(b) If damaged windows obscure visibility necessary for safe operation, or create a hazard to the equipment operator, the windows shall be replaced or removed. Damaged windows shall be replaced if absence of a window would expose the equipment operator to hazardous evironmental conditions which would affect the ability of the equipment operator to safely operate the equipment.

(c) The operator's stations of self-propelled mobile equipment shall—

(1) Be free of materials that could create a hazard to persons by impairing the safe operation of the equipment; and

(2) Not be modified, in a manner that obscures visibility necessary for safe operation.

§ 56.14104 Tire repairs.

(a) Before a tire is removed from a vehicle for tire repair, the valve core shall be partially removed to allow for gradual deflation and then removed. During deflation, to the extent possible, persons shall stand outside of the potential trajectory of the lock ring of a multi-piece wheel rim.

(b) To prevent injury from wheel rims during tire inflation, one of the following shall be used:

(1) A wheel cage or other restraining device that will constrain all wheel rim components during an explosive separation of a multi-piece wheel rim, or during the sudden release of contained air in a single piece rim wheel; or

(2) A stand-off inflation device which permits persons to stand outside of the potential trajectory of wheel components.

§ 56.14105 Procedures during repairs or maintenance.

Repairs of maintenance of machinery or equipment shall be performed only after the power is off, and the machinery or equipment blocked against hazardous motion. Machinery or equipment motion or activation is permitted to the extent that adjustments or testing cannot be performed without motion or activation, provided that persons are effectively protected from hazardous motion.

§ 56.14106 Falling object protection.

(a) Fork-lift trucks, front-end loaders, and bulldozers shall be provided with falling object protective structures if used in an area where falling objects could create a hazard to the equipment operator.

(b) The protective structure shall be capable of withstanding the falling object loads to which it would be subjected.

§ 56.14107 Moving machine parts.

(a) Moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail, and takeup pulleys, flywheels, couplings, shafts, fan blades, and similar moving parts that can cause injury.

(b) Guards shall not be required where the exposed moving parts are at least seven feet away from walking or working surfaces.

§ 56.14108 Overhead drive belts.

Overhead drive belts shall be guarded to contain the whipping action of a broken belt if that action could be hazardous to persons.

§ 56.14109 Unguarded conveyors with adjacent travelways.

Unguarded conveyors next to the travelways shall be equipped with—

(a) Emergency stop devices which are located so that a person falling on or against the conveyor can readily deactivate the conveyor drive motor; or

(b) Railings which—

(1) Are positioned to prevent persons from falling on or against the conveyor;

(2) Will be able to withstand the vibration, shock, and wear to which they will be subjected during normal operation; and

(3) Are constructed and maintained so that they will not create a hazard.

§ 56.14110 Flying or falling materials.

In areas where flying or falling materials generated from the operation of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons.

§ 56.14111 Slusher, backlash guards and securing.

(a) When persons are exposed to slushing operations, the slushers shall be equipped with rollers and drum covers and anchored securely before slushing operations are started.

(b) Slushers rated over 10 horsepower shall be equipped with backlash guards, unless the equipment operator is otherwise protected.

(c) This standard does not apply to air tuggers of 10 horsepower or less that have only one cable and one drum.

§ 56.14112 Construction and maintenance of guards.

(a) Guards shall be constructed and maintained to—

(1) Withstand the vibration, shock, and wear to which they will be subjected during normal operation; and

(2) Not create a hazard by their use.

(b) Guards shall be securely in place while machinery is being operated, except when testing or making adjustments which cannot be performed without removal of the guard.

§ 56.14113 Inclined conveyors: backstops or brakes.

Backstops or brakes shall be installed on drive units of inclined conveyors to prevent the conveyors from running in reverse, creating a hazard to persons.

§ 56.14114 Air valves for pneumatic equipment.

A manual master quick-close type air valve shall be installed on all pneumatic-powered equipment if there is a hazard of uncontrolled movement when the air supply is activated. The valve shall be closed except when the equipment is being operated.

§ 56.14115 Stationary grinding machines.

Stationary grinding machines, other than special bit grinders, shall be equipped with—

(a) Peripheral hoods capable of withstanding the force of a bursting wheel and enclosing not less than 270 of the periphery of the wheel;

(b) Adjustable tool rests set so that the distance between the grinding surface of the wheel and the tool rest in not greater than ⅛ inch; and

(c) A safety washer on each side of the wheel.

§ 56.14116 Hand-held power tools.

(a) Power drills, disc sanders, grinders and circular and chain saws, when used in the hand-held mode shall be operated with controls which require constant hand or finger pressure.

(b) Circular saws and chain saws shall not be equipped with devices which lock-on the operating controls.

§ 56.14130 Roll-over protective structures (ROPS) and seat belts.

(a) *Equipment included.* Roll-over protective structures (ROPS) and seat belts shall be installed on—

(1) Crawler tractors and crawler loaders;

(2) Graders;

(3) Wheel loaders and wheel tractors;

(4) The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear-dump wagons, and towed fifth wheel attachments;

(5) Skid-steer loaders; and

(6) Agricultural tractors.

(b) *ROPS construction.* ROPS shall meet the requirements of the following Society of Automotive Engineers (SAE) publications, as applicable, which are incorporated by reference:

(1) SAE J1040, "Performance Criteria for Roll-Over Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines,", 1988; or

(2) SAE J1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors", 1983.

(c) *ROPS labelling.* ROPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The ROPS model number; and

(3) The make and model number of the equipment for which the ROPS is designed.

(d) *ROPS installation.* ROPS shall be installed on the equipment in accordance with the recommendations of the ROPS manufacturer.

(e) *ROPS maintenance.* (1) ROPS shall be maintained in a condition that meets the performance requirements applicable to the equipment. It the ROPS is subjected to roll-over a abnormal structural loading, the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design shall recertify that the ROPS meets the applicable performance requirements before it is returned to service.

(2) Alterations or repairs on ROPS shall be performed only with approval from the ROPS manufacturer or under the instructions of a registered professional engineer with knowledge and experience in ROPS design. The manufacturer or engineer shall certify that the ROPS meets the applicable performance requirements.

(f) *Exemptions.* (1) This standard does not apply to—

(i) Self-propelled mobile equipment manufactured prior to July 1, 1969;

(ii) Over-the-road type tractors that pull trailers or vans on highways;

(iii) Equipment that is only operated by remote control; and

(2) Self-propelled mobile equipment manufactured prior to October 24, 1988, that is equipped with ROPS and seat belts that meet the installation and performance requirements of 30 CFR 56.9088 (1986 edition) shall be considered in compliance with paragraphs (b) and (c) of this section.

(g) *Wearing seat belts.* Seat belts shall be worn by the equipment operator except that when operating graders from a standing position, the grader operator shall wear safety lines and a harness in place of a seat belt.

(h) *Seat belts construction.* Seat belts shall meet the requirements of SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985; or SAE J1194, "Roll-Over Protective Structures (ROPS) For Wheeled Agricultural Tractors", 1983, as applicable, which are incorporated by reference.

(i) *Seat belt maintenance.* Seat belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

(j) *Publications.* Publications incorporated by reference in this section have been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies are available from the Administrator for Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Blvd., Arlington, Virginia 22203, and may be examined at any Metal and Nonmetal District Office. Copies may also be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096./

(Approved by the Office of Management and Budget under Control Number 1219–0089)

§ 56.14131 Seat belts for haulage trucks.

(a) Seat belts shall be provided and worn in haulage trucks.

(b) Seat belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985, which is incorporated by reference in accordance with 5 U.S.C. 552(a).

(d) Publications incorporated by reference in this section have been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies are available from the Administrator for Metal and Nonmetal Mine Safety and Health, (MSHA), 4015 Wilson Blvd., Arlington, VA 22203, and may be examined at any Metal and Nonmetal District Office. Copies may also be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096.

§ 56.14132 Horns and backup alarms.

(a) Manually-operated horns or other audible warning devices provided on self-propelled mobile equipment as a safety feature shall be maintained in functional condition.

(b)(1) When the operator has an obstructed view to the rear, self-propelled mobile equipment shall have—

(i) An automatic reverse-activated signal alarm;

(ii) A wheel-mounted bell alarm which sounds at least once for each three feet of reverse movement;

(iii) A discriminating backup alarm that covers the area of obstructed view; or

(iv) An observer to signal when it is safe to back up.

(2) Alarms shall be audible above the surrounding noise level.

(3) An automatic reverse-activated strobe light may be used at night in lieu of an audible reverse alarm.

(c) This standard does not apply to rail equipment.

Safety Practices and Operational Procedures

§ 56.14200 Warnings prior to starting or moving equipment.

Before starting crushers or moving self-propelled mobile equipment, equipment operators shall sound a warning that is audible above the surrounding noise level or use other effective means to warn all persons who could be exposed to a hazard from the equipment.

§ 56.14201 Conveyor start-up warnings.

(a) When the entire length of a conveyor is visible from the starting switch, the conveyor operator shall visually check to make certain that all persons are in the clear before starting the conveyor.

(b) When the entire length of the conveyor is not visible from the starting switch, a system which provides visible or audible warning shall be installed and operated to warn persons that the conveyor will be started. Within 30 seconds after the warning is given, the conveyor shall be started or a second warning shall be given.

§ 56.14202 Manual cleaning of conveyor pulleys.

Pulleys of conveyors shall not be cleaned manually while the conveyor is in motion.

§ 56.14203 Application of belt dressing.

Belt dressings shall not be applied manually while belts are in motion unless a pressurized-type applicator is used that allows the dressing to be applied from outside the guards.

§ 56.14204 Machinery lubrication.

Machinery or equipment shall not be lubricated manually while it is in motion where application of the lubricant may expose persons to injury.

§ 56.14205 Machinery, equipment, and tools.

Machinery, equipment, and tools shall not be used beyond the design capacity intended by the manufacturer where such use may create a hazard to persons.

§ 56.14206 Securing movable parts.

(a) When moving mobile equipment between workplaces, booms, forks, buckets, beds, and similar movable parts of the equipment shall be positioned in the travel mode and, if required for safe travel, mechanically secured.

(b) When mobile equipment is unattended or not in use, dippers, buckets and scraper blades be lowered to the ground. Other movable parts, such as booms, shall be mechanically secured or positioned to prevent movement which would create a hazard to persons.

§ 56.14207 Parking procedures for unattended equipment.

Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, the wheels or tracks of mobile equipment shall be either chocked or turned into a bank.

§ 56.14208 Warning devices.

(a) Visible warning devices shall be used when parked mobile equipment creates a hazard to persons in other mobile equipment.

(b) Mobile equipment, other than forklifts, carrying loads that project beyond the sides or more than four feet beyond the rear of the equipment shall have a warning flag at the end of the projection. Under conditions of limited visibility these loads shall have a warning light at the end of the projection. Such flag or lights shall be attached to the end of the projection or be carried by persons walking beside or behind the projection.

§ 56.14209 Safety procedures for towing.

(a) A properly sized tow bar or other effective means of control shall be used to tow mobile equipment.

(b) Unless steering and braking are under the control of the equipment operator on the towed equipment, a safety chain or wire rope capable of withstanding the loads to which it could be subjected shall be used in conjunction with any primary rigging.

(c) This provision does not apply to rail equipment.

§ 56.14210 Movement of dippers, buckets, loading booms, or suspended loads.

(a) Dippers, buckets, loading booms, or suspended loads shall not be swung over the operators' stations of self-propelled mobile equipment until the equipment operator is out of the operator's station and in a safe location.

(b) This section does not apply when the equipment is specifically designed to protect the equipment operator from falling objects.

§ 56.14211 Blocking equipment in a raised position.

(a) Persons shall not work on top of, under, or work from mobile equipment in a raised position until the equipment has been blocked or mechanically secured to prevent it from rolling or falling accidentally.

(b) Persons shall not work on top of, under, or work from a raised component of mobile equipment until the component has been blocked or mechanically secured to prevent accidental lowering. The equipment must also be blocked or secured to prevent rolling.

(c) A raised component must be secured to prevent accidental lowering when persons are working on or around mobile equipment and are exposed to the hazard of accidental lowering of the component.

(d) Under this section, a raised component of mobile equipment is considered to be blocked or mechanically secured if provided with a functional load-locking device or a device which prevents free and uncontrolled descent.

(e) Blocking or mechanical securing of the raised component is required during repair or maintenance of elevated mobile work platforms.

§ 56.14212 Chains, ropes, and drive belts.

Chains, ropes, and drive belts shall be guided mechanically onto moving pulleys, sprockets, or drums except where equipment is designed specifically for hand feeding.

§ 56.14213 Ventilation and shielding for welding.

(a) Welding operations shall be shielded when performed at locations where arc flash could be hazardous to persons.

(b) All welding operations shall be well-ventilated.

§ 56.14214 Train warnings.

A warning that is audible above the surrounding noise level shall be sounded—

(a) Immediately prior to moving trains;

(b) When trains approach persons, crossings, other trains on adjacent tracks; and

(c) Any place where the train operator's vision is obscured.

§ 56.14215 Coupling or uncoupling cars.

Prior to coupling or uncoupling cars manually, trains shall be brought to a complete stop, and then moved at minimum tram speed until the coupling or uncoupling activity is completed. Coupling or uncoupling shall not be attempted from the inside of curves unless the railroad and cars are designed to eliminate hazards to persons.

§ 56.14216 Backpoling.

Backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. Where backpoling is required, it shall be done only at the minimum tram speed of the trolley.

§ 56.14217 Securing parked railcars.

Parked railcars shall be blocked securely unless held effectively by brakes.

§ 56.14218 Movement of equipment on adjacent tracks.

When a locomotive on one track is used to move rail equipment on adjacent tracks, a chain, cable, or drawbar shall be used which is capable of meeting the loads to which it could be subjected.

§ 56.14219 Brakeman signals.

When a train is under the direction of a brakeman and the train operator cannot clearly recognize the brakeman's signals, the train operator shall bring the train to a stop.

Appendix I for Subpart M—National Consensus Standards

Mine operators seeking further information regarding the construction and installation of falling object protective structures (FOPS) may consult the following national consensus standards, as applicable.

MSHA STANDARD 56.14106, FALLING OBJECT PROTECTION.

Equipment	National consensus standard
Front-end loaders and bulldozers.	Society of Automotive Engineers (SAE) minimum performance criteria for falling object protective structures (FOPS) SAE J231—January, 1981.
Fork-lift trucks	American National Standards Institute (ANSI) safety standard for low lift and high lift trucks, B 56.1, section 7.27—1983; or, American National Standards Institute (ANSI) standard, rough terrain fork lift trucks, B56.6—1987.

6. Subpart N is amended by adding a new § 56.15014 to read as follows:

Subpart N—Personal Protection

§ 56.15014 Eye protection when operating grinding wheels.

Face shields or goggles in good condition shall be worn when operating a grinding wheel.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

7. The authority citation for Part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

Subpart A—General

§ 57.2 [Amended]

8. In § 57.2 the definitions of "berm" and "trip light" are removed.

9. Subpart H is revised to read as follows:

Subpart H—Loading, Hauling, and Dumping

Sec.

57.9000 Definitions.

Traffic Safety

57.9100 Traffic control.
57.9101 Operating speeds and control of equipment.
57.9102 Movement of independently operating rail equipment.
57.9103 Clearance on adjacent tracks.
57.9104 Railroad crossings.

Transportation of Persons and Materials

57.9200 Transporting persons.
57.9201 Loading, hauling, and unloading of equipment or supplies.
57.9202 Loading and hauling large rocks.
57.9260 Supplies, materials, and tools on mantrips.
57.9261 Transporting tools and materials on locomotives.

Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites

57.9300 Berms or guardrails.
57.9301 Dump site restraints.
57.9302 Protection against moving or runaway railroad equipment.
57.9303 Construction of ramps and dumping facilities.
57.9304 Unstable ground.
57.9305 Truck spotters.
57.9306 Warning devices for restricted clearances.
57.9307 Design, installation, and maintenance of railroads.
57.9308 Switch throws.
57.9309 Chute design.
57.9310 Chute hazards.
57.9311 Anchoring stationary sizing devices.
57.9312 Working around drawholes.
57.9313 Roadway maintenance.
57.9314 Trimming stockpile and muckpile faces.
57.9315 Dust control.
57.9316 Notifying the equipment operator.
57.9317 Suspended loads.
57.9318 Getting on or off moving equipment.
57.9319 Going over, under, or between railcars.
57.9330 Clearance for surface equipment.
57.9360 Shelter holes.
57.9361 Drawholes.
57.9362 Protection of signalmen.

Subpart H—Loading, Hauling, and Dumping

§ 57.9000 Definitions.

The following definitions apply in this subpart:

Berm. A pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway.

Mobile equipment. Wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved.

Traffic Safety

§ 57.9100 Traffic control.

To provide for the safe movement of self-propelled mobile equipment—

(a) Rules governing speed, right-of-way, direction of movement, and the use of headlights to assure appropriate visibility, shall be established and followed at each mine; and

(b) Signs or signals that warn of hazardous conditions shall be placed at appropriate locations at each mine.

§ 57.9101 Operating speeds and control of equipment.

Operators of self-propelled mobile equipment shall maintain control of the equipment while it is in motion. Operating speeds shall be consistent with conditions of roadways, tracks, grades, clearance, visibility, and traffic, and the type of equipment used.

§ 57.9102 Movement of independently operating rail equipment.

Movement of two or more pieces of rail equipment operating independently on the same track shall be controlled for safe operation.

§ 57.9103 Clearance on adjacent tracks.

Railcars shall not be left on side tracks unless clearance is provided for traffic on adjacent tracks.

§ 57.9104 Railroad crossings.

Designated railroad crossings shall be posted with warning signs or signals, or shall be guarded when trains are passing. These crossings shall also be planked or filled between the rails.

§ 57.9160 Train movement during shift changes.

During shift changes, the movement of underground trains carrying rock or material shall be limited to areas where the trains do not present a hazard to persons changing shifts.

Transportation of Persons and Materials

§ 57.9200 Transporting persons.

Persons shall not be transported—

(a) In or on dippers, forks, clamshells, or buckets except shaft buckets during shaft-sinking operations or during inspection, maintenance and repair of shafts.

(b) In beds of mobile equipment or railcars, unless—

(1) Provisions are made for secure travel, and

(2) Means are taken to prevent accidental unloading if the equipment is provided with unloading devices;

(c) On top of loads in mobile equipment;

(d) Outside cabs, equipment operators' stations, and beds of mobile equipment, except when necessary for maintenance, testing, or training purposes, and provisions are made for secure travel. This provision does not apply to rail equipment.

(e) Between cars of trains, on the leading end of trains, on the leading end of a single railcar, or in other locations on trains that expose persons to hazards from train movement.

(1) This paragraph does not apply to car droppers if they are secured with safety belts and lines which prevent them from falling off the work platform.

(2) Brakemen and trainmen are prohibited from riding between cars of moving trains but may ride on the leading end of trains or other locations when necessary to perform their duties;

(f) To and from work areas in overcrowded mobile equipment;

(g) In mobile equipment with materials or equipment unless the items are secured or are small and can be carried safely by hand without creating a hazard to persons; or

(h) On conveyors unless the conveyors are designed to provide for their safe transportation.

§ 57.9201 Loading, hauling, and unloading of equipment or supplies.

Equipment and supplies shall be loaded, transported, and unloaded in a manner which does not create a hazard to persons from falling or shifting equipment or supplies.

§ 57.9202 Loading and hauling large rocks.

Large rocks shall be broken before loading if they could endanger persons or affect the stability of mobile equipment. Mobile equipment used for haulage of mined material shall be loaded to minimize spillage where a hazard to persons could be created.

§ 57.9260 Supplies, materials, and tools on mantrips.

Supplies, materials, and tools, other than small items that can be carried by hand, shall not be transported underground with persons in mantrips. Mantrips shall be operated independently of ore or supply trips.

§ 57.9261 Transporting tools and materials on locomotives.

Tools or materials shall not be carried on top of locomotives underground except for secured rerailing devices located in a manner which does not create a hazard to persons.

Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites

§ 57.9300 Berms or guardrails.

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

(b) Berms or guardrails shall be at least mid-axle height of the largest self-propelled mobile equipment which usually travels the roadway.

(c) Berms may have openings to the extent necessary for roadway drainage.

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms or guardrails are not required when the following criteria are met.

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Reflectors are installed at 25-foot intervals along the perimeter of the elevated roadway.

(4) A maximum speed limit of 15 miles per hour is posted.

(5) Road surface traction is not to be impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

(e) This standard is not applicable to rail beds.

§ 57.9301 Dump site restraints.

Berms, bumper blocks, safety hooks or similar impeding devices shall be provided at dumping locations where there is a hazard of overtravel or overturning.

§ 57.9302 Protection against moving or runaway railroad equipment.

Stopblocks, derail devices, or other devices that protect against moving or runaway rail equipment shall be installed wherever necessary to protect persons.

§ 57.9303 Construction of ramps and dumping facilities.

Ramps and dumping facilities shall be designed and constructed of materials capable of supporting the loads to which they will be subjected. The ramps and

dumping facilities shall provide width, clearance, and headroom to safely accommodate the mobile equipment using the facilities.

§ 57.9304 Unstable ground.

(a) Dumping locations shall be visually inspected prior to work commencing and as ground conditions warrant.

(b) Where there is evidence that the ground at a dumping location may fail to support the mobile equipment, loads shall be dumped a safe distance back from the edge of the unstable area of the bank.

§ 57.9305 Truck spotters.

(a) If truck spotters are used, they shall be in the clear while trucks are backing into dumping position or dumping.

(b) Spotters shall use signal lights to direct trucks where visibility is limited.

(c) When a truck operator cannot clearly recognize the spotter's signals, the truck shall be stopped.

§ 57.9306 Warning devices for restricted clearances.

Where restricted clearance creates a hazard to persons on mobile equipment, warning devices shall be installed in advance of the restricted area and the restricted area shall be conspicuously marked.

§ 57.9307 Design, installation, and maintenance of railroads.

Roadbeds and all elements of the railroad tracks shall be designed, installed, and maintained to provide safe operation consistent with the speed and type of haulage used.

§ 57.9308 Switch throws.

Switch throws shall be installed to provide clearance to protect switchmen from contact with moving trains.

§ 57.9309 Chute design.

Chute-loading installations shall be designed to provide a safe location for persons pulling chutes.

§ 57.9310 Chute hazards.

(a) Prior to chute-pulling, persons who could be affected by the draw or otherwise exposed to danger shall be warned and given time to clear the hazardous area.

(b) Persons attempting to free chute hangups shall be experienced and familiar with the task, know the hazards involved, and use the proper tools to free material.

(c) When broken rock or material is dumped into an empty chute, the chute shall be equipped with a guard or all persons shall be isolated from the hazard of flying rock or material.

§ 57.9311 Anchoring stationary sizing devices.

Grizzlies and other stationary sizing devices shall be securely anchored.

§ 57.9312 Working around drawholes.

Unless platforms or safety lines are used, persons shall not position themselves over drawholes if there is danger that broken rock or material may be withdrawn or bridged.

§ 57.9313 Roadway maintenance.

Water, debris, or spilled material on roadways which creates hazards to the operation of mobile equipment shall be removed.

§ 57.9314 Trimming stockpile and muckpile faces.

Stockpile and muckpile faces shall be trimmed to prevent hazards to persons.

§ 57.9315 Dust control.

Dust shall be controlled at muck piles, material transfer points, crushers, and on haulage roads where hazards to persons would be created as a result of impaired visibility.

§ 57.9316 Notifying the equipment operator.

When an operator of self-propelled mobile equipment is present, persons shall notify the equipment operator before getting on or off that equipment.

§ 57.9317 Suspended loads.

Persons shall not work or pass under the buckets or booms of loaders in operation.

§ 57.9318 Getting on or off moving equipment.

Persons shall not get on or off moving mobile equipment. This provision does not apply to trainmen, brakemen, and car droppers who are required to get on or off slowly moving trains in the performance of their work duties.

§ 57.9319 Going over, under, or between railcars.

Persons shall not go over, under, or between railcars unless—

(a) The train is stopped; and

(b) The train operator, when present, is notified and the notice acknowledged.

§ 57.9330 Clearance for surface equipment.

Continuous clearance of at least 30 inches from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks at all locations where possible or the area shall be marked conspicuously.

§ 57.9360 Shelter holes.

(a) Shelter holes shall be—

(1) Provided at intervals adequate to assure the safety of persons along underground haulageways where continuous clearance of at least 30 inches cannot be maintained from the farthest projection of moving equipment on at least one side of the haulageway; and

(2) At least four feet wide, marked conspicuously, and provide a minimum 40-inch clearance from the farthest projection of moving equipment.

(b) Shelter holes shall not be used for storage unless a 40-inch clearance is maintained.

§ 57.9361 Drawholes.

To prevent hazards to persons underground, collars of open drawholes shall be free of muck or materials except during transfer of the muck or material through the drawhole.

§ 57.9362 Protection of signalmen.

Signalmen used during slushing operations underground shall be located away from possible contact with cables, sheaves, and slusher buckets.

10. Subpart J is amended by adding a new § 57.11008, to read as follows:

Subpart J—Travelways and Escapeways

§ 57.11008 Restricted clearance.

Where restricted clearance creates a hazard to persons, the restricted clearance shall be conspicuously marked.

11. Subpart M is revised to read as follows:

Subpart M—Machinery and Equipment

Sec.

57.14000 Definitions.

Safety Devices and Maintenance Requirements

57.14100 Safety defects; examination, correction and records.
57.14101 Brakes.
57.14102 Brakes for rail equipment.
57.14103 Operators' stations.
57.14104 Tire repairs.
57.14105 Procedures during repairs or maintenance.
57.14106 Falling object protection.
57.14107 Moving machine parts.
57.14108 Overhead drive belts.
57.14109 Unguarded conveyors with adjacent travelways.
57.14110 Flying or falling materials.
57.14111 Slusher, backlash guards and securing.
57.14112 Construction and maintenance of guards.
57.14113 Inclined conveyors: backstops or brakes.

57.14114 Air valves for pneumatic equipment.
57.14115 Stationary grinding machines.
57.14116 Hand-held power tools.
57.14130 Roll-over protective structures (ROPS) and seat belts for surface equipment.
57.14131 Seat belts for surface haulage trucks.
57.14132 Horns and back-up alarms for surface equipment.
57.14160 Mantrip trolley wire hazards underground.
57.14161 Makeshift couplings.
57.14162 Trip lights.

Safety Practices and Operational Procedures

57.14200 Warnings prior to starting or moving equipment.
57.14201 Conveyor start-up warning.
57.14202 Manual cleaning of conveyor pulleys.
57.14203 Application of belt dressing.
57.14204 Machinery lubrication.
57.14205 Machinery, equipment, and tools.
57.14206 Securing movable parts.
57.14207 Parking procedures for unattended equipment.
57.14208 Warning devices.
57.14209 Safety procedures for towing.
57.14210 Movement of dippers, buckets, loading booms, or suspended loads.
57.14211 Blocking equipment in a raised position.
57.14212 Chains, ropes, and drive belts.
57.14213 Ventilation and shielding for welding.
57.14214 Train warnings.
57.14215 Coupling or uncoupling cars.
57.14216 Backpoling.
57.14217 Securing parked railcars.
57.14218 Movement of equipment on adjacent tracks.
57.14219 Brakeman signals.

Appendix I for Subpart M—National Consensus Standards

Subpart M—Machinery and Equipment

§ 57.14000 Definitions.

The following definitions apply in this subpart.

Mobile equipment. Wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved.

Travelway. A passage, walk, or way regularly used or designated for persons to go from one place to another.

Safety Devices and Maintenance Requirements

§ 57.14100 Safety defects; examination, correction and records.

(a) Self-propelled mobile equipment to be used during a shift shall be inspected by the equipment operator before being placed in operation on that shift.

(b) Defects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.

(c) When defects make continued operation hazardous to persons, the defective items including self-propelled mobile equipment shall be taken out of service and placed in a designated area posted for that purpose, or a tag or other effective method of marking the defective items shall be used to prohibit further use until the defects are corrected.

(d) Defects on self-propelled mobile equipment affecting safety, which are not corrected immediately, shall be reported to, and recorded by, the mine operator. The records shall be kept at the mine or nearest mine office from the date the defects are recorded, until the defects are corrected. Such records shall be made available for inspection by an authorized representative of the Secretary.

§ 57.14101 Brakes.

(a) *Minimum requirements.* (1) Self-propelled mobile equipment shall be equipped with a service brake system capable of stopping and holding the equipment with its typical load on the maximum grade it travels. This standard does not apply to equipment which is not originally equipped with brakes unless the manner in which the equipment is being operated requires the use of brakes for safe operation. This standard does not apply to rail equipment.

(2) If equipped on self-propelled mobile equipment, parking brakes shall be capable of holding the equipment with its typical load on the maximum grade it travels.

(3) All braking systems installed on the equipment shall be maintained in functional condition.

(b) *Testing.* (1) Service brake tests shall be conducted on surface-operated equipment at underground mines when an MSHA inspector has reasonable cause to believe that the service brake system does not function as required, unless the mine operator removes the equipment from service for the appropriate repair;

(2) The performance of the service brakes shall be evaluated according to Table M–1.

TABLE M–1

Gross vehicle weight lbs.	Equipment Speed, MPH										
	10	11	12	13	14	15	16	17	18	19	20
	Service Brake Maximum Stopping Distance—Feet										
0–36,000	34	38	43	48	53	59	64	70	76	83	89
36,000–70,000	41	46	52	58	62	70	76	83	90	97	104
70,000–14,0000	48	54	61	67	74	81	88	95	103	111	119
140,000–250,000	56	62	69	77	84	92	100	108	116	125	133
250,000–400,000	59	66	74	81	89	97	105	114	123	132	141
Over–400,000	63	71	78	86	94	103	111	120	129	139	148

Stopping distances are computed using a constant deceleration of 9.66 FPS ^{2} and system response times of .5.1, 1.5, 2, 2.25 and 2.5 seconds for each of increasing weight category respectively. Stopping distance values include a one-second operator response time.

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TABLE 2.—THE SPEED OF A VEHICLE CAN BE DETERMINED BY CLOCKING IT THROUGH A 100-FOOT MEASURED COURSE AT CONSTANT VELOCITY USING TABLE 2. WHEN THE SERVICE BRAKES ARE APPLIED AT THE END OF THE COURSE, STOPPING DISTANCE CAN BE MEASURED AND COMPARED TO TABLE 1.

Miles per hour	10	11	12	13	14	15	16	17	18	19	20
Seconds required to travel 100 feet..	6.8	6.2	5.7	5.2	4.9	4.5	4.3	4.0	3.8	3.6	3.4

(3) Service brake tests shall be conducted under the direction of the mine operator in cooperation with and according to the instructions provided by the MSHA inspector as follows:

(i) Equipment capable of traveling at least 10 miles per hour shall be tested with a typical load for that particular piece of equipment. Front-end loaders shall be tested with the loader bucket empty. Equipment shall not be tested when carrying hazardous loads, such as explosives.

(ii) The approach shall be of sufficient length to allow the equipment operator to reach and maintain a constant speed between 10 and 20 miles per hour prior to entering the 100 foot measured area. The constant speed shall be maintained up to the point when the equipment operator receives the signal to apply the brakes. The roadway shall be wide enough to accommodate the size of the equipment being tested. The ground shall be generally level, packed, and dry in the braking portion of the test course. Ground moisture may be present to the extent that it does not adversely affect the braking surface.

(iii) Braking is to be performed using only those braking systems, including auxiliary retarders, which are designed to bring the equipment to a stop under normal operating conditions. Parking or emergency (secondary) brakes are not to be actuated during the test.

(iv) The tests shall be conducted with the transmission in the gear appropriate for the speed the equipment is traveling except for equipment which is designed for the power train to be disengaged during braking.

(v) Testing speeds shall be a minimum of 10 miles per hour and a maximum of 20 miles per hour.

(vi) Stopping distances shall be measured from the point at which the equipment operator receives the signal to apply the service brakes to the final stopped position.

(4) Test results shall be evaluated as follows:

(i) If the initial test run is valid and the stopping distance does not exceed the corresponding stopping distance listed in Table 1, the performance of the service brakes shall be considered acceptable. For tests to be considered valid, the equipment shall not slide sideways or exhibit other lateral motion during the braking portion of the test.

(ii) If the equipment exceeds the maximum stopping distance in the initial test run, the mine operator may request from the inspector up to four additional test runs with two runs to be conducted in each direction. The performance of the service brakes shall be considered acceptable if the equipment does not exceed the maximum stopping distance on at least three of the additional tests.

(5) Where there is not an appropriate test site at the mine or the equipment is not capable of traveling at least 10 miles per hour, service brake tests will not be conducted. In such cases, the inspector will rely upon other available evidence to determine whether the service brake system meets the performance requirements of this standard.

§ 57.14102 Brakes for rail equipment.

Braking systems on railroad cars and locomotives shall be maintained in functional condition.

§ 57.14103 Operators' stations.

(a) If windows are provided on operators' stations of self-propelled mobile equipment, the windows shall be made of safety glass or material with equivalent safety characteristics. The windows shall be maintained to provide visibility for safe operation.

(b) If damaged windows obscure visibility necessary for safe operation, or create a hazard to the equipment operator, the windows shall be replaced or removed. Damaged windows shall be replaced if absence of a window would expose the equipment operator to hazardous environmental conditions which would affect the ability of the equipment operator to safely operate the equipment.

(c) The operators' stations of self-propelled mobile equipment shall—

(1) Be free of materials that may create a hazard to persons by impairing the safe operation of the equipment; and

(2) Not be modified, in a manner that obscures visibility necessary for safe operation.

§ 57.14104 Tire repairs.

(a) Before a tire is removed from a vehicle for tire repair, the valve core shall be partially removed to allow for gradual deflation and then removed. During deflation, to the extent possible, persons shall stand outside of the potential trajectory of the lock ring of a multi-piece wheel rim.

(b) To prevent injury from wheel rims during tire inflation, one of the following shall be used:

(1) A wheel cage or other restraining device that will constrain all wheel rim components during an explosive separation of a multi-piece wheel rim, or during the sudden release of contained air in a single piece rim wheel; or

(2) A stand-off inflation device which permits persons to stand outside of the potential trajectory of wheel components.

§ 57.14105 Procedures during repairs or maintenance.

Repairs or maintenance on machinery or equipment shall be performed only after the power is off, and the machinery or equipment blocked against hazardous motion. Machinery or equipment motion or activation is permitted to the extent that adjustments or testing cannot be performed without motion or activation, provided that persons are effectively protected from hazardous motion.

§ 57.14106 Falling object protection.

(a) Fork-lift trucks, front-end loaders, and bulldozers shall be provided with falling object protective structures if used in an area where falling objects could create a hazard to the operator.

(b) The protective structure shall be capable of withstanding the falling object loads to which it could be subjected.

§ 57.14107 Moving machine parts.

(a) Moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail, and takeup pulleys, flywheels, coupling, shafts, fan blades; and similar moving parts that can cause injury.

(b) Guards shall not be required where the exposed moving parts are at

least seven feet away from walking or working surfaces.

§ 57.14108 Overhead drive belts.

Overhead drive belts shall be guarded to contain the whipping action of a broken belt if that action could be hazardous to persons.

§ 57.14109 Unguarded conveyors with adjacent travelways.

Unguarded conveyors next to travelways shall be equipped with—

(a) Emergency stop devices which are located so that a person falling on or against the conveyor can readily deactivate the conveyor drive motor; or

(b) Railings which—

(1) Are positioned to prevent persons from falling on or against the conveyor;

(2) Will be able to withstand the vibration, shock, and wear to which they will be subjected during normal operation; and

(3) Are constructed and maintained so that they will not create a hazard.

§ 57.14110 Flying or falling materials.

In areas where flying or falling materials generated from the operation of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons.

§ 57.14111 Slusher, backlash guards and securing.

(a) When persons are exposed to slushing operations, the slushers shall be equipped with rollers and drum covers and anchored securely before slushing operations are started to protect against hazardous movement before slushing operations are started.

(b) Slushers rated over 10 horsepower shall be equipped with backlash guards, unless the equipment operator is otherwise protected.

(c) This standard does not apply to air tuggers of 10 horsepower or less that have only one cable and one drum.

§ 57.14112 Construction and maintenance of guards.

(a) Guards shall be constructed and maintained to—

(1) Withstand the vibration, shock, and wear to which they will be subjected during normal operation; and

(2) Not create a hazard by their use.

(b) Guards shall be securely in place while machinery is being operated, except when testing or making adjustments which cannot be performed without removal of the guard.

§ 57.14113 Inclined conveyors: backstops or brakes.

Backstops or brakes shall be installed on drive units of inclined conveyors to prevent the conveyors from running in reverse, creating a hazard to persons.

§ 57.14114 Air valves for pneumatic equipment.

A manual master quick-close type air value shall be installed on all pneumatic-powered equipment if there is a hazard of uncontrolled movement when the air supply is activated. The valve shall be closed except when the equipment is being operated.

§ 57.14115 Stationary grinding machines.

Stationary grinding machines, other than special bit grinders, shall be equipped with—

(a) Peripheral hoods capable of withstanding the force of a bursting wheel and enclosing not less than 270— of the periphery of the wheel;

(b) Adjustable tool rests set so that the distance between the grinding surface of the wheel and the tool rest is not greater than ⅛ inch; and

(c) A safety washer on each side of the wheel.

§ 57.14116 Hand-held power tools.

(a) Power drills, disc sanders, grinders and circular and chain saws, when used in the hand-held mode shall be operated with controls which require constant hand or finger pressure.

(b) Circular saws and chain saws shall not be equipped with devices which lock-on the operating controls.

§ 57.14130 Roll-over protective structures (ROPS) and seat belts for surface equipment.

(a) *Equipment included.* Roll-over protective structures (ROPS) and seat belts shall be installed on—

(1) Crawler tractors and crawler loaders;

(2) Graders;

(3) Wheel loaders and wheel tractors;

(4) The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear-dump wagons, and towed fifth wheel attachments;

(5) Skid-steer loaders; and

(6) Agricultural tractors.

(b) *ROPS construction.* ROPS shall meet the requirements of the following Society of Automotive Engineers (SAE) publications, as applicable, which are incorporated by reference:

(1) SAE J1040, "Performance Criteria for Roll-Over Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines,", 1986; or

(2) SAE J1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors", 1983.

(c) *ROPS labeling.* ROPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The ROPS model number; and

(3) The make and model number of the equipment for which the ROPS is designed.

(d) *ROPS installation.* ROPS shall be installed on the equipment in accordance with the recommendations of the ROPS manufacturer.

(e) *ROPS maintenance.* (1) ROPS shall be maintained in a condition that meets the performance requirements applicable to the equipment. If the ROPS is subjected to a roll-over or abnormal structural loading, the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design shall recertify that the ROPS meets the applicable performance requirements before it is returned to service.

(2) Alterations or repairs on ROPS shall be performed only with approval from the ROPS manufacturer or under the instructions of a registered professional engineer with knowledge and experience in ROPS design. The manufacturer or engineer shall certify that the ROPS meets the applicable performance requirements.

(f) *Exemptions.* (1) This standard does not apply to—

(i) Self-propelled mobile equipment manufactured prior to July 1, 1969;

(ii) Over-the-road type tractors that pull trailers or vans on highways;

(iii) Equipment that is only operated by remote control; and

(2) Self-propelled mobile equipment manufactured prior to [insert date 60 days after date of publication], that is equipped with ROPS and seat belts that meet the installation and performance requirements of 30 CFR 57.9088 (1986 edition) shall be considered in compliance with paragraphs (b) and (c) of this section.

(g) *Wearing seat belts.* Seat belts shall be worn by the equipment operator except that when operating graders from a standing position, the grader operator shall wear safety lines and a harness in place of a seat belt.

(h) *Seat belts construction.* Seat belts shall meet the requirements of SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985; or SAE J1194, "Roll-Over Protective Structures (ROPS) For Wheeled Agricultural Tractors", 1983, as applicable, which are incorporated by reference.

(i) *Seat belt maintenance.* Seat belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

(j) *Publications.* Publications incorporated by reference in this section have been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies are available from the Administrator for Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Blvd., Arlington, Virginia 22203, and may be examined at any Metal and Nonmetal District Office. Copies may also be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096.

(Approved by the Office of Management and Budget under Control Number 1219-0069)

§ 57.14131 Seat belts for surface haulage trucks.

(a) Seat belts shall be provided and worn in haulage trucks.

(b) Seat belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985, which is incorporated by reference in accordance with 5 U.S.C. 552(a).

(d) Publications incorporated by reference in this section have been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies are available from the Administrator for Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Blvd., Arlington, VA 22203, and may be examined at any Metal and Nonmetal District Office. Copies may also be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096.

§ 57.14132 Horns and backup alarms for surface equipment.

(a) Manually-operated horns or other audible warning devices provided on self-propelled mobile equipment as a safety device shall be maintained in a functional condition.

(b)(1) When the operator has an obstructed view to the rear, self-propelled mobile equipment shall have—

(i) An automatic reverse-activated signal alarm;

(ii) A wheel-mounted bell alarm which sounds at least once for each three feet of reverse movement;

(iii) A discriminating backup alarm that covers the area of obstructed view; or

(iv) An observer to signal when it is safe to back up.

(2) Alarms shall be audible above the surrounding noise level.

(3) An automatic reverse-activated strobe light may be used at night in lieu of an audible reverse alarm.

(c) This standard does not apply to rail equipment.

§ 57.14160 Mantrip trolley wire hazards underground.

Mantrips shall be covered if there is danger of persons contacting the trolley wire.

§ 57.14161 Makeshift couplings.

Couplings used on underground rail equipment shall be designed for that equipment, except that makeshift couplings may be used to move disabled rail equipment for repairs if no hazard to persons is created.

§ 57.14162 Trip lights.

On underground rail haulage, trip lights shall be used on the rear of pulled trips and on the front of pushed trips.

Safety Practices and Operational Procedures

§ 57.14200 Warnings prior to starting or moving equipment.

Before starting crushers or moving self-propelled mobile equipment, equipment operators shall sound a warning that is audible above the surrounding noise level or use other effective means to warn all persons who could be exposed to a hazard from the equipment.

§ 57.14201 Conveyor start-up warnings.

(a) When the entire length of a conveyor is visible from the starting switch, the conveyor operator shall visually check to make certain that all persons are in the clear before starting the conveyor.

(b) When the entire length of the conveyor is not visible from the starting switch, a system which provides visible or audible warning shall be installed and operated to warn persons that the conveyor will be started. Within 30 seconds after the warning is given, the conveyor shall be started or a second warning shall be given.

§ 57.14202 Manual cleaning of conveyor pulleys.

Pulleys of conveyors shall not be cleaned manually while the conveyor is in motion.

§ 57.14203 Application of belt dressing.

Belt dressings shall not be applied manually while belts are in motion unless a pressurized-type applicator is used that allows the dressing to be applied from outside the guards.

§ 57.14204 Machinery lubrication.

Machinery or equipment shall not be lubricated manually while it is in motion where application of the lubricant may expose persons to injury.

§ 57.14205 Machinery, equipment, and tools.

Machinery, equipment, and tools shall not be used beyond the design capacity intended by the manufacturer, where such use may create a hazard to persons.

§ 57.14206 Securing movable parts.

(a) When moving mobile equipment between workplaces, booms, forks, buckets, beds, and similar movable parts of the equipment shall be positioned in the travel mode and, if required for safe travel, mechanically secured.

(b) When mobile equipment is unattended or not in use, dippers, buckets and scraper blades shall be lowered to the ground. Other movable parts, such as booms, shall be mechanically secured or positioned to prevent movement which would create a hazard to persons.

§ 57.14207 Parking procedures for unattended equipment.

Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, the wheels or tracks of mobile equipment shall be either chocked or turned into a bank or rib.

§ 57.14208 Warning devices.

(a) Visible warning devices shall be used when parked mobile equipment creates a hazard to persons in other mobile equipment.

(b) Mobile equipment, other than forklifts, carrying loads that project beyond the sides or more than four feet beyond the rear of the equipment shall have a warning flag at the end of the projection. Under conditions of limited visibility these loads shall have a warning light at the end of the projection. Such flags or lights shall be attached to the end of the projection or be carried by persons walking beside or behind the projection.

§ 57.14209 Safety procedures for towing.

(a) A properly sized tow bar or other effective means of control shall be used to tow mobile equipment.

(b) Unless steering and braking are under the control of the equipment operator on the towed equipment, a

safety chain or wire rope capable of withstanding the loads to which it could be subjected shall be used in conjunction with any primary rigging.

(c) This provision does not apply to rail equipment.

§ 57.14210 Movement of dippers, buckets, loading booms, or suspended loads.

(a) Dippers, buckets, loading booms, or suspended loads shall not be swung over the operators' stations of self-propelled mobile equipment until the equipment operator is out of the operator's station and in a safe location.

(b) This section does not apply when the equipment is specifically designed to protect the equipment operator from falling objects.

§ 57.14211 Blocking equipment in a raised position.

(a) Persons shall not work on top of, under, or work from mobile equipment in a raised position until the equipment has been blocked or mechanically secured to prevent it from rolling or falling accidentally.

(b) Persons shall not work on top of, under, or work from a raised component of mobile equipment until the component has been blocked or mechanically secured to prevent accidental lowering. The equipment must also be blocked or secured to prevent rolling.

(c) A raised component must be secured to prevent accidental lowering when persons are working on or around mobile equipment and are exposed to the hazard of accidental lowering of the component.

(d) Under this section, a raised component of mobile equipment is considered to be blocked or mechanically secured if provided with a functional load-locking device or devices which prevent free and uncontrolled descent.

(e) Blocking or mechanical securing of the raised component is required during repair or maintenance of elevated mobile work platforms.

§ 57.14212 Chains, ropes, and drive belts.

Chains, ropes, and drive belts shall be guided mechanically onto moving pulleys, sprockets, or drums except where equipment is designed specifically for hand feeding.

§ 57.14213 Ventilation and shielding for welding.

(a) Welding operations shall be shielded when performed at locations where arc flash could be hazardous to persons.

(b) All welding operations shall be well-ventilated.

§ 57.14214 Train warnings.

A warning that is audible above the surrounding noise level shall be sounded—

(a) Immediately prior to moving trains;

(b) When trains approach persons, crossing, other trains on adjacent tracks; and

(c) Any place where the train operator's vision is obscured.

§ 57.14215 Coupling or uncoupling cars.

Prior to coupling or uncoupling cars manually, trains shall be brought to a complete stop, and then moved at minimum tram speed until the coupling or uncoupling activity is completed. Coupling or uncoupling shall not be attempted from the inside of curves unless the railroad and cars are designed to eliminate hazards to persons.

§ 57.14216 Backpoling.

Backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. Where backpoling is required, it shall be done only at the minimum tram speed of the trolley.

§ 57.14217 Securing parked railcars.

Parked railcars shall be blocked securely unless held effectively by brakes.

§ 57.14218 Movement of equipment on adjacent tracks.

When a locomotive on one track is used to move rail equipment on adjacent tracks, a chain, cable, or drawbar shall be used which is capable of withstanding the loads to which it could be subjected.

§ 57.14219 Brakeman signals.

When a train is under the direction of a brakeman and the train operator cannot clearly recognize the brakeman's signals, the train operator shall bring the train to a stop.

Appendix I for Subpart M—National Consensus Standards

Mine operators seeking further information regarding the construction and installation of falling object protective structures (FOPS) may consult the following national consensus standards, as applicable.

MSHA STANDARD 57.14106, FALLING OBJECT PROTECTION

Equipment	National consensus standard
Front-end loaders and bulldozers.	Society of Automotive Engineers (SAE) minimum performance criteria for falling object protective structures (FOPS) SAE J231—January, 1981.
Fork-lift trucks	American National Standards Institute (ANSI) safety standard for low lift and high lift trucks, B 56.1, section 7.27—1983; or American National Standards Institute (ANSI) standard, rough terrain fork lift trucks, B 56.6—1967.

12. Subpart N is amended by adding a new § 57.15014 to read as follows:

Subpart N—Personal Protection

§ 57.15014 Eye protection when operating grinding wheels.

Face shields or goggles in good condition shall be worn when operating a grinding wheel.

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Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 435

Energy Conservation Mandatory Performance Standards for New Federal Residential Buildings; Final Interim Rule and Proposed Modification of Final Interim Rule

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS-RM-79-112-B]

Energy Conservation Mandatory Performance Standards for New Federal Residential Buildings

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final interim rule.

SUMMARY: In accordance with Title III of the Energy Conservation and Production Act, the U.S. Department of Energy (DOE) is developing energy conservation performance standards for new buildings. The law provides that the standards will be voluntary for new non-Federal buildings, but will be mandatory for new Federal buildings.

Today, after due consideration of public comment, DOE is promulgating interim energy conservation mandatory performance standards for new Federal residential buildings. The interim standards require a Federal agency to establish an energy consumption goal for the design of a new Federal residential building using the computerized calculation procedure provided in a designated Federal micro-computer program and to adopt such procedures as may be necessary to assure that the design of a new Federal residential building is not less energy conserving than the energy consumption goal established for the design.

The interim standards were designed specifically to accommodate the types of Federal construction most commonly built, Federal economic parameters, and Federal procurement procedures. The Department is in the process of developing energy conservation voluntary standards, that would be more applicable to the non-Federal residential and commercial sectors to be issued at a future date. The Department recognizes that the standards established today could be modified for other than Federal use. It cautions any person or entity that wishes to do so. The Department does not recommend use of the interim standards for non-Federal sector application without a substantial review of the interim standards for applicability to the particular use.

EFFECTIVE DATE: February 21, 1989.

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SUPPLEMENTARY INFORMATION: Today, the U.S. Department of Energy (DOE) is promulgating interim energy conservation performance standards that will be mandatory for new Federal residential buildings as required by the Energy Conservation Standards for New Buildings Act of 1976, as amended, (Act) 42 U.S.C. 6831 *et seq.* The interim standards require Federal agencies to design new Federal residential buildings in accordance with the energy conservation requirements of § 435.303 of the interim standards. The interim standards do not regulate non-Federal construction. The interim standards have been developed specifically for Federal agencies that construct residential buildings. The calculation procedures used to apply the interim standards to Federal residential construction are not intended for use by the non-Federal sector. DOE intends to develop and promulgate a more appropriate format for voluntary interim energy conservation performance standards for use in the private sector at some future date.

Prior to the promulgation of the interim standards, DOE published, on August 20, 1986, a Notice of Proposed Rulemaking (NOPR) (51 FR 29754) in the **Federal Register**. The NOPR announced DOE's intention to promulgate interim mandatory standards for new Federal residential buildings and provided for a ninety day public comment period and three public hearings. In a subsequent Notice in the **Federal Register**, on November 19, 1986, (51 FR 41637), DOE extended the comment period by fifty-nine days. The comment period closed on January 16, 1987.

In response to public comment and with the availability of additional technical information, DOE made revisions to the proposed interim standards and the micro-computer program, and its supporting documentation. Several comments were received concerning the lack of energy conservation credits for thermal mass options within the proposed interim standards. DOE concurs with those who provided the comments and is in the process of preparing modifications to the computer program that will accurately reflect the energy conservation benefits of thermal mass. An alternate compliance procedure and new window glazing energy data are also being developed as modifications to the computer program. It is intended that the proposed modifications will be published in a Notice of Proposed Modification to the Final Interim Rule in the **Federal Register** to allow the public an opportunity to comment.

The interim standards, promulgated today, will remain in effect until DOE promulgates final standards. By law, DOE is required to conduct a demonstration of the interim standards, based on criteria established by the Act, and report its findings to the Congress, prior to the development and promulgation of final standards.

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I. Background

Originally enacted on August 14, 1976 as Title III of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1144 *et seq.*, 42 U.S.C. 6831, the Act required the Department of Housing and Urban Development (HUD) to develop, promulgate, implement and enforce compliance with performance standards to improve the energy efficiency of all

new buildings in the nation. On August 4, 1977, the Act was amended by Section 304(a), 42 U.S.C. 7154, of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.*, which transferred from HUD to DOE the responsibility to develop and promulgate the standards. The amendments to the Act did not change HUD's implementation responsibilities.

In November 1979, DOE published proposed performance standards in the **Federal Register**, 44 FR 68120 (November 28, 1979). The notice was controversial and generated over 1,800 comments totalling 40,000 pages. The comments included technical and other substantive criticisms of the performance standards.

Less than a year after the publication of the proposed standards, the Act was again amended. Section 326, 94 Stat. 1649, of the Housing and Community Development Act of 1980, Pub. L. 96-399 (October 8, 1980) required that DOE promulgate interim standards by August 1, 1981 and extended the promulgation date of the final standards to April 1, 1983. The interim standards were only to apply to new Federal buildings. In addition, the Act required demonstration projects to be conducted in at least two geographical areas.

In August 1981, Congress again amended the Act. Subtitle D of Title 10 of the Omnibus Reconciliation Act of 1981, Pub. L. 97-35, 95 Stat. 621, amended the Act to create the term "voluntary performance standards", eliminated the provision for a possible statutory sanction for noncompliance, added a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings", and extended the deadline for DOE to furnish reports on the demonstration projects to Congress.

The legislative changes that have taken place since the original 1976 enactment required DOE to make fundamental changes to the compliance aspects of the Standard regulatory approach which Congress had earlier directed the Department to take. DOE retains the responsibility for developing performance standards to achieve the maximum practicable improvements in energy efficiency and use of non-depletable resources for all new buildings. However, these standards now serve a dual purpose. The performance standards serve one purpose for the Federal sector where the standards prescribe mandatory design requirements. For non-Federal buildings, voluntary performance standards serve only as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings. Accordingly, the performance standards serve a second purpose of providing sound technical information and examples of efficient design practices for voluntary use in the private sector.

On August 20, 1986, the Department published in the **Federal Register** (51 FR 29754) proposed interim mandatory energy conservation performance standards for new Federal residential buildings. These proposed standards were the first of three proposed interim standards. The others are voluntary energy conservation performance standards for new commercial and multi- family high rise residential buildings and voluntary energy conservation performance standards for new non-Federal residential buildings. On September 23, 1986, DOE published an addendum to the proposed standards to correct data in the Technical Support Document issued concurrently with the NOPR. On November 19, 1986, a **Federal Register** notice was published announcing an extension of the public comment period by fifty- nine days. Public comments were analyzed and revisions were made culminating in today's rulemaking. On May 8, 1987, the Department published proposed voluntary interim energy conservation performance standards for commercial and multi- family high rise buildings in the **Federal Register** (52 FR 17052).

The Department also intends to publish voluntary interim standards for new non-Federal sector residential housing sometime in the future. DOE is currently working with the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) on a research project that would culminate in recommendations being made to both organizations on new residential building standards.

II. Summary of the Interim Standards

A. Description of the Interim Standards

As the Act requires, the interim standards for new residential buildings were developed to enable Federal agencies to design residential buildings which are cost-effective to build and operate. Pursuant to the Act they were intended to serve two purposes: (1) To be used as a mandatory standard for all Federal agencies that design and construct residential buildings, and (2) to be able to serve as a voluntary guideline to the nation's builders. In order to meet these criteria, the useability of the interim standards was considered a very high project priority.

The interim standards are expressed in terms of this objective: each Federal residential building should be designed to include the combination of energy conservation measures that represents the practicable optimum life cycle energy cost to the Federal government in a particular location. This is achieved by requiring that Federal officials use local construction, maintenance and replacement costs, local climate data, and local fuel costs as inputs to a micro-computer program that will automatically construct an energy-efficient and cost-effective energy consumption goal for any of nine building unit types.

The most novel aspect of the interim standards, which distinguishes it from other standards, is that location-specific requirements can be generated by the use of software and micro-computer technology. The use of micro-computer technology was chosen partly on the basis of the emergence of the technology over the period of the last few years and partly because of the ease in which energy and cost calculations are made. The use of micro-computers has become common among Federal agencies, and advantages in time savings clearly justify the technology for use with building standards. Use of micro-computers eliminates the need for anyone to perform lengthy calculations or make uninformed choices regarding the optimization of energy conservation measures. Research has shown that in the majority of cases, the optimization of energy conservation measures cannot be derived from professional judgement alone, and the amount of time it takes to perform adequate analysis has been a deterrent to the advancement of energy-conserving residential building design in the U.S. The need to perform analyses that continually trade off energy conservation measures is required to produce cost-effective building designs.

The interim standards mandate the use of a DOE-sponsored micro-computer program called COSTSAFR (*C*onservation *O*ptimization *S*tandard for *S*avings in *F*ederal *R*esidences) that was developed to make the selection of optimal energy conservation measures and, consequently, the design of cost-effective energy-efficient buildings a relatively simple process. One output from the COSTSAFR program is the data to be used in determining compliance with the interim standards. COSTSAFR is designed to provide specific information on the interaction of up to 30 energy conservation measures in nearly any U.S. location. It will enable the Federal government to develop cost-effective residential building standards for a single project, thus reducing the more general nature of

previous standards. Finally, it is designed to be effective for any of several building types including single-family, small multifamily, and manufactured housing.

Before developing a compliance tool, DOE reviewed the design and construction procedures currently used by the military as well as other Federal agencies responsible for residential construction. The military is responsible for in excess of 95% of the Federal government's housing construction. DOE concluded that what was necessary was a simplified tool that could display energy conservation options in terms of dollars saved to the government. In addition, this tool had to be available early in the design and construction process to preserve designer flexibility.

COSTSAFR has been designed so that implementing officials, designers, and builders can easily tell if a proposed combination of measures will result in energy conservation levels that meet or exceed an optimized level for cost-effective energy conservation in a building.

The COSTSAFR program performs life cycle cost optimization for a broad set of energy conservation measures and determines the energy costs for the resulting optimum set of measures. The result is a total point value for the energy conservation measures to be installed in the optimal house. COSTSAFR then prints out a point system for all energy conservation options indicating how various levels of each option perform relative to the optimum option. This point system is the compliance tool provided to bidders who can then select measures as they choose and know whether their combination of energy conservation measures has met or exceeded the optimum levels required by the interim standards.

Procedurally, to comply, a Federal procurement official will have to obtain a copy of the COSTSAFR software, its accompanying User's Manual and have access to a micro-computer system which runs on the MS-DOS disk operating system. COSTSAFR will be made available through the Department of Commerce's National Technical Information Service. The software and the User's Manual will lead the user through the steps of selecting a building prototype, location and fuel type; selecting the set of energy conservation measures that are to be considered; calculating the life cycle cost minimum for the prototypical building; and finally, calculating the points corresponding to alternative energy conservation options and printing them out in a set of compliance forms. The builder using the compliance forms must show that the intended design is equivalent to or more efficient than its corresponding prototypical design with its optimized set of energy conservation measures. The COSTSAFR program will be made available to all Federal agencies procuring residential buildings.

B. Section-by-Section Analysis of the Interim Standards

The following paragraphs discuss, section by section, the interim standards: (Please note that the numbering system for the interim standards has been changed from the system used in the proposed interim standards.)

Section 435.300 Purpose. (formerly Section 435.300)

This section restates the purpose of the interim standards to be used by Federal agencies in the design and construction of new residential buildings.

Section 435.301 Scope. (formerly Section 435.31)

Under the scope of the interim standards, new residential buildings include all new buildings for Federal residential occupancy in the Continental U.S., Alaska and Hawaii, except a multi-family building more than three stories above grade, after the effective date of this rule.

Section 435.302 Definitions. (formerly Section 435.32)

This section defines terms that are used throughout this subpart. Definitions of the technical terms used in this subpart or in any of the supporting documentation are standard def initions used by the national standards setting organizations.

Section 435.303 Requirements for the Design of a Federal Residential Building. (formerly Section 435.33)

This section identifies the interim standards and the requirements for compliance. The interim standards are expressed in the terms of an energy goal or objective which is unique to each building. The goal for Federal officials and their building designers is to produce a building that contains the maximum practicable improvements in energy efficiency for their intended buildings.

Section 435.304 The COSTSAFR Program. (formerly Section 435.34)

The COSTSAFR micro-computer program is the source for developing the total point score that serves as the energy consumption goal for the design of new Federal residential buildings. The basis for the point score is the practicable optimum life cycle cost of the most effective energy conservationmeasures for a given building type and climate location. Once a housing type has been selected and the appropriate fuel price forecasts identified, the responsible Federal official is free to use local fuel costs, local construction, maintenance and operation costs, and to select climate data appropriate for the construction location.

III. Summary of Public Comment on the August 20, 1986 NOPR and DOE Responses

The following is a summary of the public comments received by DOE on the *Proposed Interim Energy Conservation Standards for New Federal Residential Buildings* published in the August 20, 1986, **Federal Register**. Comments were received from August 20, 1986, through January 16, 1987. The DOE held three public hearings, one each in San Francisco, California, Chicago, Illinois, and Washington, DC, and a total of 202 written comments and oral testimony were received.

Approximately 42% of the comments came from firms and organizations related to the production and sale of concrete and masonry products; 33% from builders, material supply organizations, government agencies, research organizations, and trade associations; and about 25% from electric power utilities. Their comments were reviewed by DOE officials and are discussed below.

A. General Comments

Overall, the public comment received was generally favorable to the use of a computer program as a compliance tool for Federal residential standards. In fact, no comments were received relative to §§ 435.300 - 435.304, which detail the requirements of the interim standards. All of the comments received pertained to the COSTSAFR micro-computer program, its User's Manual, and the COSTSAFR Technical Support Documents. Some who commented indicated that COSTSAFR, in its proposed form, appeared to be complicated to use, unclear, inadequately documented, incapable of being verified through some alternate means, and biased against the masonry and concrete industries because no energy conservation credit is given for massive wall construction. In addition, some expressed concern that COSTSAFR was based upon a methodology which they believe

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promotes the selection of certain fuels, appliances, or construction techniques while penalizing others.

DOE was asked to consider delaying or re-proposing the interim standards until the issues with COSTSAFR and thermal mass could be resolved.

A small number of commenters argued that the COSTSAFR program also discriminates against small business and contractors which do not have access to micro-computers or the knowledge to run the program. They expressed concern that they would be required to hire a computer professional to obtain data from the program. This they indicated would raise their overheads and jeopardize their ability to compete.

DOE Response:

As noted above, the DOE issued an Addendum to the COSTSAFR Technical Support Documents on September 23, 1986, to correct some errors that were the cause of confusion and concern to the public. Also, the User's Manual and point system have been improved to increase clarity and reduce confusion. In addition, DOE has decided to issue a modification to COSTSAFR which will provide for an alternate compliance method as well as integrate thermal mass algorithms and new window data into the COSTSAFR program. DOE believes that the modifications will alleviate and dispel the concerns and confusion voiced by those who commented on these issues.

The use of COSTSAFR should place minimal burdens on small business and contractors since only the Federal agencies need the capability to run the micro-computer software. DOE will conduct a demonstration program designed to identify if and what effects the interim standards have on small business, contractors, and others.

B. Specific Comments

1. Time Extension Comments

Approximately 40% of all who commented indicated the need for additional time to prepare for public hearings and/or submit written comments. Many argued that the COSTSAFR computer program and User's Manual lacked sufficient information to permit a complete analysis. Additional information frequently requested included: a description of the optimum building prototype on which the COSTSAFR computer program is based: an explanation of the points assigned to the energy conservation options: examples of compliance printouts: sufficient computer program documentation. and. the sources of information for appliance energy efficiency labels, area cost multipliers and HVAC equipment constants used in COSTSAFR.

Others requesting time extensions indicated their limited resources and expertise in analyzing computer programs and computer programming languages. Many found it difficult and time consuming to obtain and install the 8087 math co-processor in time to prepare comments by the end of the official public comment period. A 90-day extension was the time frame most often requested by those who commented.

DOE Response:

DOE issued a time extension to the comment period on November 19, 1986, extending the comment period by fifty-nine days. This extended the comment period from its previous closing date of November 18, 1986, to January 16, 1987. In addition, DOE provided reviewers with additional mathematical documentation of the COSTSAFR computer program and an example of a completed compliance form. The time extension was provided because DOE recognized early in the original comment period that additional time would increase the number of beneficial comments.

2. Objections to Private Sector Use Comments

There were a few comments received which objected to the use of DOE standards for private sector use. Those who commented felt that although public input was solicited, DOE standards are not consensus standards in the manner of standards sanctioned by the American Society of Testing and Measurements (ASTM). ASHRAE is actively pursuing the development of consensus standards for energy conservation in new construction and those who commented preferred that DOE reference the ASHRAE standards.

DOE Response:

The Department's rulemaking is pursuant to a Federal law and the Department is obligated to promulgate under the provisions cited earlier in this Notice. Further, it is noted in this document, and others pertaining to the interim standards, that the interim standards were designed for Federal agency use and not for non-Federal use.

3. Thermal Mass Comments

Thermal mass received the largest number of comments. All of those who commented on this issue were opposed to the proposed interim standards because it gave no recognition to the energy conserving properties of massive masonry construction. Those who commented indicated that failure to consider masonry's durability. low maintenance, structural characteristics and fire protection (as opposed to fire resistance) will result in increased expenditure of tax dollars on construction, operation and maintenance of Federal residential buildings.

It was also contended that implementation of the proposed interim standards would produce severe economic impacts upon the masonry industry by placing builders who wish to utilize materials other than light frame construction at a serious disadvantage in competing for military and other Federally-funded housing construction programs.

Many who commented on this issue cited an October 31, 1985, **Federal Register** notice (50 FR 45469) in which DOE announced results of its thermal mass research. They also indicated that this research was being incorporated by ASHRAE and Lawrence Berkeley Laboratory documents. Therefore, they did not accept DOE statements that data were not available to include a treatment of masonry at the time of publication of the NOPR.

Most suggested that promulgation of the interim standards be delayed until DOE had included provisions for thermal mass, or that DOE should defer to private sector standard development activities, such as those being undertaken by ASHRAE.

DOE Response:

The interim standards were developed primarily for use by Federal agencies. Thermal mass is not typically selected by Federal agencies to be included in their residential construction projects. For this reason and the lack of acceptable data during initial standards development, thermal mass was not included in the original version of COSTSAFR (Version 1.0). However, since DOE has not yet made available building design standards specifically for use by the non-Federal sector and since the interim standards have the concurrent purpose of serving as a design guideline to private sector builders, DOE has decided to include thermal mass in the COSTSAFR computer program.

After developing the thermal mass algorithms and formulae necessary to properly update the COSTSAFR computer program. DOE will formally issue thermal mass revisions to COSTSAFR through a " Notice of Proposed Modification to Final Interim Rule with Request for Comments" have an opportunity to see exactly how DOE plans to integrate the thermal mass provisions into the COSTSAFR

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computer program and provide their comments.

4. COSTSAFR Program Comments

The comments received on the COSTSAFR program were numerous and ranged from comments about its inadequacies as a working piece of computer software to dissatisfaction with its capabilities in setting energy consumption goals. The comments below are grouped into two categories, comments on the use of the computer software and comments on the analyses and assumptions used in the computer program.

(a) Software Use Comments

Some of those who commented were concerned that the COSTSAFR computer program would require a high level of user sophistication and familiarity with personal computer (PC) operations. They felt that software convenience functions typically found in "business software" should be added to COSTSAFR, such as page scrolling, batch installation procedures, a look-up routine for cities, ability to save the points system files on a non-system disk, different version numbers, etc. These comments indicated that the addition of these functions would enhance the overall efficiency and ease of using COSTSAFR. In addition, some believed that the need to run COSTSAFR on a computer equipped with an 8087 math co-processor chip was expensive and not generally necessary for standard computer software.

DOE Response:

DOE is well aware that prescribing the use of a computer program in residential building standards is a major change from current practice. DOE's intention in developing the computer compliance tool was to make the interim standards more rigorous, in terms of relating energy conservation options to the required life cycle cost analyses, but at the same time simplify the calculation procedures. In addition, DOE emphasizes that, as a mandatory Federal standard, only Federal agency personnel will be required to use the computer program. It will contain each Agency's own Federal cost guidelines for fuel and materials, specified building types and the location which determine the energy conservation features for a particular project. The product of the computer program, the interim standards compliance form, is all the prospective bidder will need to complete the energy conservation portion of a bid package.

After Federal agency personnel identify the energy consumption goal required in a new project, they will write up contract specifications and issue Requests for Proposals to have these buildings constructed. Bidders will then have an opportunity to compete for the construction work. *Bidders will not have to use COSTSAFR to respond to an RFP.* Individuals who wish to use COSTSAFR for the purpose of developing energy conserving packages for their own purposes should be careful to use actual fuel, labor and material cost data for their area.

In response to the comments on shortcomings of COSTSAFR as a piece of software, DOE authorized many improvements to the computer program. Each has been included in the most recent version (Version 2.0). The revised software now provides a batch installation program, more user friendly directions and keyboard manipulations, the ability to name and save files, and other items which make COSTSAFR easier to use. In addition, DOE will provide a source code for COSTSAFR in a non-compiled format on a separate disk.

(b) Program Analyses and Assumptions Comments

Many who commented expressed approval of the COSTSAFR computer program for its innovation as a compliance tool and for what it was attempting to accomplish, namely, to give designers reliable but time-saving method to determine whether their energy conservation designs are optimal for a given location. However, even the strongest of its proponents requested the DOE to improve the computer program and develop a new User's Manual together with additional guides to the program's structure and algorithms. Those who commented did not totally agree with several assumptions and inputs made by DOE, or with the output of the computer program. They expressed concern over the accuracy of the tradeoffs between energy conservation options. Several stated that could not achieve compliance with designs prepared for their geographic area because some of the energy conservation options specified were not common to construction practice.

Several were concerned that the program did not appear to allow the flexibility to introduce more innovative design strategies such as zoned heating, ground-coupled heat pumps, thermal storage and heat pump water heaters.

DOE Response:

DOE believes that many of the comments were based on a misunderstanding of COSTSAFR's intended purpose. Many of the comments may have been due to the fact that COSTSAFR is designed so exclusively for Federal use and operations. The building types, economic criteria, and energy conservation options chosen for COSTSAFR come directly from Federal agencies and may not pertain to non-Federal sector use. The intent of the interim standards and the COSTSAFR program is simply to minimize the life cycle energy costs to the Federal government for the heating, cooling and hot water features in a new residential building while still offering a wide variety of conservation options to a Federal agency's builders.

Based on public comment and DOE's own testing of the COSTSAFR computer program, several minor programming and input errors were corrected. DOE believes that the COSTSAFR program is now valid for its intended purpose. As noted earlier DOE will continue to update COSTSAFR and intends to add an alternate compliance procedure as well as additonal information on thermal mass and windows in the near future.

5. COSTSAFR Output Comments

Comments on the COSTSAFR output refer to the compliance form printout generated by the COSTSAFR computer program. The compliance form contains the required point values for each energy conservation option and allows those preparing proposals to calculate the point values of the designs they propose.

Some who commented reported difficulty in understanding how to use the compliance forms and attributed their problems to inadequacies in the computer program design and the instructions contained in the User's Manual. Some found specific computer program "bugs" and provided useful information to allow DOE to locate the errors.

Several who commented asserted that without examples of the compliance calculation procedures, it was difficult to understand how the compliance procedures worked and therefore they could not provide useful comments. Others found it impossible to achieve compliance with example designs chosen from their own experience. In addition, comments were received questioning whether design flexibility could really be achieved with the proposed compliance method.

Several who commented asked for more information on the optimum selections used to generate the point total and the "constants" listed on the compliance forms. These constants are used in establishing point values for

various options. In addition, some who commented requested information on the equations that are imbedded in the COSTSAFR computer program.

DOE Response:

Some of the confusion experienced by those who commented may have been caused through incorrect application of location multipliers by the computer program that were issued with the August 20, 1986, NOPR. The September 23, 1986, addendum to the Technical Cupport Documents clarified and corrected the location multipliers. A completed compliance form sample was included in the addendum and is now included in the revised User's Manual. In addition, computer program "bugs", that were identified and located, were corrected. Unfortunately, some who commented did not provide sufficient information to find the "bugs" they identified. However, DOE made a concerted effort to locate and rectify all programming errors. Other revisions related to COSTSAFR Output comments include modifying the COSTSAFR program to display the optimal set of energy conservation strategies used to set the interim standards, thus improving the compliance forms to make them more usable.

In response to questions of design flexibility, the point system does allow tradeoffs between envelope insulation levels, window options, fuel types and equipment efficiency levels and does include a wide variety of conservation options from which to choose. Also in the proposed amendments to COSTSAFR an alternate compliance procedure, that will allow for more innovative designs, will be proposed. However, the fact remains that options which are less energy-conserving will receive fewer points and choosing them will make it difficult to meet the interim standards. It should be remembered that the legislative requirement for the interim standards is that they reduce non-renewable energy use to the maximum practicable extent. DOE studies indicate that the interim standards can be met with sensible designs that are cost-effective.

Information regarding the mathematics, constants and processes used to establish the point system, can be found in the 4th and 5th Chapters of the Technical Support Document. DOE has reviewed this document and made any necessary changes. It believes that the Technical Support Document adequately reflects COSTSAFR's operation.

6. Fenestration Comments

Several comments were received concerning fenestration. One comment suggested that DOE eliminate the passive solar and sunspace options unless state-of-the-art DOE research was used to establish the options. A few comments were received noting that in the determination of minimum life-cycle costs, DOE requires window attributes to be among the base options while passive solar designs are modifying options. In practice, a distinction between windows and passive solar windows may not be useful as an alternative and DOE should consider expressing this distinction in terms of the extent of external window shading. Other comments questioned the fact that in the standards passive solar points are linear with window area in COSTSAFR, that the relationship between passive solar options and other details of the building design are not accounted for, including whether moveable insulation is used properly.

DOE Response:

In the interim standards, a window is considered to contribute to passive solar design if the window area is arranged in an orientation more favorable than having 25% in each cardinal direction. Shading is treated with heat absorbing and heat reflective glazing. Data available during initial development of the interim standards did not permit explicit treatment of shading coefficients. The revision to COSTSAFR to be issued in the near future will include this information along with the addition of Low-E glazings as an option.

Passive solar points are awarded by COSTSAFR in addition to the window type and window area points. While improvements could be made to the passive solar and sunspace data used in the standards, the most compatible information was used during development of the interim standards. Updated information on passive solar design will be included in updates to COSTSAFR. Due to the complexity of the interactions between passive solar and areas of thermal mass, these interactions are not presently accounted for in COSTSAFR. A more extensive treatment of thermal mass will also appear in the revisions to COSTSAFR.

Studies conducted by the Navy that showed moveable insulation was effectively used both day and night support the assumptions in the standards. However, other studies conflict. DOE intends to leave moveable insulation in COSTSAFR as an option, but it will not be optimized along with the other options.

7. Equipment (General) Comments

Approximately 20% of the comments received pertained to equipment requirements. These comments have been divided between this and following sections into categories covering general equipment issues, equipment labels, heating, ventilating and air-conditioning (HVAC), and domestic hot water (DHW) equipment issues.

Some of those who commented requested that DOE explain the mathematical "constants" used in HVAC, DHW and appliance equipment sections of the compliance form. Others indicated that several potential energy-conserving equipment options were missing from COSTSAFR. For example, DOE received several comments on heat pump water heaters which, the comments suggested, are employed extensively by the military.

Others felt COSTSAFR lacks flexibility to consider modern innovative heating systems, cannot handle off peak electric water heating rates, and that it is unfairly biased against electric water heating.

DOE Response:

The mathematical "constants" that appear in the equipment section of the compliance form are described in the Technical Support Document. DOE notes that these numbers vary by housing type, fuel price, etc., so they do not have a constant value for all compliance forms.

The criterion for deciding which equipment to include in the COSTSAFR program was whether or not DOE/FTC ratings were available (efficiency and energy guide labels). For the many types of equipment mentioned in the comments, no ratings are available. DOE agrees that the interim standards should not impose barriers to the use of innovative and advanced equipment. Federal agencies using the interim standards can decide to accept efficiency ratings provided by nationally recognized testing organizations. In addition, an alternate compliance procedure that utilizes a systems performance approach is being developed. The alternate compliance approach will allow builders to demonstrate compliance of innovative building designs.

DOE would like to note that it is not intended that the interim standards have an inherent bias for or against particular fuels. However, the Federal Official using the COSTSAFR program can specify or eliminate certain fuels in the compliance forms based on site availability. The intent of the interim standards is to minimize energy cost regardless of fuel type.

Other comments identified above are addressed in the equipment comment categories below.

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8. Equipment (Labels) Comments

Several who commented requested either a list or a source of the equipment label information required for domestic hot water heaters and refrigerator/freezers. In addition, some who commented pointed out inaccuracies or useful additions to the COSTSAFR computer program, the User's Manual, and the Technical Support Document. Others pointed out that the DOE Domestic Hot Water information does not include any efficient electric water heaters. They stated that the most efficient hot water heaters listed in the DOE data base turned out to be approximately 48% less efficient than the most efficient electric water heater for sale in utility showrooms.

DOE Response:

The sources for information on the various label values were included in the addendum of September 23, 1986. In addition, these sources for equipment efficiencies have been added to the User's Manual. The inaccuracies that were identified have been rectified and several of the suggested language changes have been made. The data base in the computer program includes the most efficient water heaters included in the most recent version of the available source, the Gas Appliance Manufacturers Association (GAMA) Consumer's Directory of Certified Water Heater Efficiency Ratings (July 1987). For electric water heaters, builders can use the label values of more efficient equipment if available.

9. Equipment (HVAC) Comments

Several who commented found it problematic that the COSTSAFR program only permits comparative analysis of heating and cooling systems with ducted distribution such as furnaces, heat pumps and central air conditioners, and does not give credit for zoned heating or cooling. Their suggestion was that DOE add zoned heating/cooling system options to COSTSAFR and enhance the data base to provide accurate cost estimates for such a system.

The inclusion and application of DOE's degradation factors for heat pumps was seen by some as arbitrary and unnecessary. Some observed that all HVAC systems operate at varying efficiencies from the manufacturer's labeled rating because of a number of factors.

Other comments suggested that all equipment (not just heat pumps) should be adjusted to account for variations in operation outside the range of tested ratings. They felt that by not doing this for all equipment, an unfair advantage may result in favor of one equipment type and consequently produce unrealistic data for the compliance forms.

Other comments claimed the relationship between the heating system performance factor (HSPF) and seasonal energy efficiency ratio (SEER) in COSTSAFR was erroneous and that the Air-Conditioning and Refrigeration Institute (ARI) Unitary Heat Pump Directory (ARI 210-81, ARI 210/240-84) should be referenced for heat pump data.

Also, some commenters observed that while more efficient equipment is frequently required by COSTSAFR to achieve compliance, requirements for equipment with a SEER of 15.0 and HSPF of 9.0 are overly optimistic. They indicate that such equipment is not yet available in the marketplace. They suggested a more realistic range of equipment ratings to help eliminate erroneous operating cost estimates.

DOE Response:

All energy savings calculations in COSTSAFR have been estimated assuming setback thermostats are employed. COSTSAFR implicitly assumes that zoned systems have benefits equivalent to centrally-controlled systems with setback. Therefore, no extra credit is given to zoned systems. Homes with neither ducted air conditioning nor heating systems can be considered by Federal agencies by adding ducting costs to the first cost for ducted systems. The revised User's Manual provides information on typical ducting costs and how to add them to COSTSAFR.

The degradation factor accounts for climate effects on heat pump performance. The degradation factors used by the proposed COSTSAFR program (Version 1.0) were in error and have been corrected in the current program (Version 2.0). The point system requires the input of the HSPF for heat pumps. This number accounts for all climatic degradations for a single baseline city in the U.S. (Pittsburgh, PA.). The degradation factors in Version 1.0 of the program have been adjusted upward to set the baseline location (Pittsburgh, PA.) factor equal to one. This will result in locations warmer than the baseline location having a factor greater than one, and colder locations will have a factor less than one. There is no degradation factor included for cooling and other heating systems because the climate effects are relatively small.

COSTSAFR must optimize on a single heat pump; it cannot determine the optimal life cycle cost for both heating and cooling and have two different heat pumps. Therefore, HSPFs and SEERs must be related in the optimization analysis. The relationship used in the program is based on a study of about 200 heat pumps and provides a typical correlation between HSPF and SEER values. In the point system, however, the proposer enters actual values for both the HSPF and SEER and can get the appropriate credit for higher ratings. The numbers used are required to be those on the actual equipment proposed in the design.

The ARI unitary heat pump directory is referred to in the updated User's Manual as the source for the heat pump efficiencies.

Version 1.0 of the software contained errors in heat pump degradation factors (discussed above) and first cost. These errors in turn caused some of the results of the analysis of heat pumps to be in error. Though the errors had limited effect on previous analyses, they tended to result in selection of more efficient heat pumps than was actually justified. These errors are eliminated in Version 2.0.

After investigating several equipment availability comments, DOE concluded that heat pumps and air conditioners are available with approximately the same efficiencies as are in the data base. DOE recognizes that equipment with very high efficiencies may be difficult to obtain in some parts of the country but believes that they should be included in COSTSAFR for use where they are available and a proposer wishes to include them in an optimal design solution.

10. Equipment (DHW) Comments

The most prevalent comments regarding DHW were that a penalty was placed on electric domestic water heating service by: not making it possible to take advantage of special electric water heater rates which can substantially improve the life cycle cost of a residential structure; assigning negative points to electric DHW heaters in some cases; eliminating from the purview of the COSTSAFR program heat pump water heaters, zonal electric heating, and heat reclaiming devices for hot water heaters; understating the life of electric DHW service; and addressing hot water heating separately from other heating and cooling considerations thereby failing to give credit for cost savings of electric systems when the costs for plumbing and venting requirements for gas equipment are eliminated. Many who submitted comments on this topic included considerable justification for their position, including reports, papers and

recently published accounts of heat pump water heaters. Moreover, they charged that by eliminating use of a common form of water heating, the COSTSAFR program is in contradiction with the intent of the rulemaking which is to enhance Federal design flexibility.

DOE Response:

The COSTSAFR program has always been able to accommodate separate electrical rates for heating and cooling seasons, but Version 2.0 now includes provisions to permit a specific rate for domestic hot water use.

The points assigned in the DHW section of the compliance forms are based on energy savings over the lowest efficiency equipment for the optimal fuel. This fuel is normally gas for water heating. The life cycle costs for even high efficiency electric hot water equipment are often higher than costs for the lowest efficiency gas equipment. Because of this, the electric water heater will often correctly earn negative points.

Many of the uncommon water heater types mentioned by those who commented were not included because of lack of efficiency test data. Federal agencies could include these systems when appropriate data become available. Service life of both electric and gas DHW equipment has been set in the revised program to 15 years.

COSTSAFR does not consider connection costs for any fuel or system type. These costs should affect the overall housing project cost and, therefore, be accounted for in the proposer's bid.

11. R-Values Comments

The few who commented objected to the use of R-values to measure compliance of the building envelope. They stated that the use of R-values may not be sufficiently accurate to predict the thermal performance of wall systems due to the effects of other thermal transmission through framing members and other wall components. They suggested the use of U-values. In addition, those who commented asserted that the minimum allowable R-value (R-11) permitted is inappropriate for masonry walls.

DOE Response:

The COSTSAFR computer program does use U-values, which take into account insulation R-values and typical construction practices. The point system provides and uses R-values, however, since they are the values most familiar to designers and the building community. The revisions to COSTSAFR previously discussed will permit lower R-values for masonry walls.

12. Multi-Family Housing Comments

Several commented that the COSTSAFR program should be revised to include multi-family housing and reissued for review. The version circulated wasn't able to calculate for multi-family structures.

DOE Response:

COSTSAFR includes two-story townhouses and small apartments. The interim standards are not intended for buildings more than three stories high. For standards covering buildings of more than three stories, designers are referred to the proposed DOE Energy Conservation Standards for New Commercial and Multi- Family High Rise Buildings which were published in the Federal Register for public review.

13. Area Cost Multiplier Comments

Several who commented requested DOE to: (a) Provide lists of where data pertinent to the area cost multipliers could be found; (b) provide a discussion of how the multipliers are used; and, (c) provide a discussion of how they can be amended by the user. The concern was the validity of using a single cost multiplier for each region of the country to adjust the various costs (materials, labor, fuel, etc.) that go into producing the compliance forms.

From others there was the suggestion that a multiplier may not be the best way to update price data for Federal buildings. They indicated the belief that Federal agencies will need a central source of data for updating prices and DOE was asked to consider issuing a new data base every 5 years.

DOE Response:

The Area Cost Multiplier is a uniform method of correcting the cost data base values to account for regional variations and is currently used by Federal agencies in making those corrections. This may not be accurate for all costs; however, the program user can change the costs to suit his own individual needs. Each Federal construction agency officials will have to assume the responsibility for keeping price data current. Therefore, area cost multipliers will be the responsibility of the Federal agency. DOE is using the most recent set in establishing COSTSAFR as a compliance tool. When such multipliers are not available, it is suggested that proposers reference those developed by the U.S. Department of Defense. (See User's Manual, Appendix B, for discussion.)

DOE believes that area cost multipliers are an effective way to keep prices current between updates of COSTSAFR. Because they change with time they are not included in the User's Manual. However, the Manual now gives sources for the multipliers as well as label values.

14. Economic Variables Comments

Quite a few of those who commented requested additional information and explanations of the equipment and material costs built into the COSTSAFR program. They asserted that they were unable, on first try, to meet compliance levels using electric space and water heating equipment based on current energy costs in their service territories. Consequently, the validity of the COSTSAFR computer program was questioned. Many who commented on this issue pointed out that the proposed economic variables dictate that natural gas option would most likely be used and the impact of the interim standards would be to increase consumption of this critical resource.

Mentioned specifically were observations that: (a) Omissions of variations in utility rate schedules, such as seasonal pricing, time of day pricing, and block charges, is a mistake and may bias the interim standards toward natural gas as an energy source rather than electricity; (b) fuel price projections based on residential rates for actual fuel prices that are outside the normal residential rate structure are inappropriate; and, (c) cost data for HVAC equipment and appliances was taken from a 1982 DOE Report for which it is uncertain whether revalidation occurred.

Comments from several electric utilities stated that the COSTSAFR program does not address the non-system costs unique to different HVAC equipment types. Such items include flues, provisions for combustion air, sealing and insulating indoor equipment rooms, extra utility connections, line extensions, associated plumbing, and additional wiring capacity. They stated that COSTSAFR needs to address these conditions before it can provide a true economic analysis.

DOE Response:

The interim standards are based on life cycle cost analysis; therefore, energy costs are considered along with first cost. Relative fuel prices may make it harder to meet the cost- effective optimum requirements for one fuel if that fuel is more expensive than the optimum fuel. COSTSAFR does not in any way provide preference to one fuel over another, but the cost-based criterion for setting the requirements may make it difficult for a relatively expensive fuel to meet the necessary requirements.

DOE believes that the cost-effectiveness test built into the interim standards will lead to reductions in energy consumption in new Federal housing. Using the market price of fuel to set requirements reflects the value of that fuel at the local and national level and the interim standards make no assumptions about one fuel relative to another.

It will be the responsibility of the Federal agency using COSTSAFR to calculate an accurate estimate of the average seasonal electrical rate if special rates apply, and update, if necessary, with more relevant fuel prices. Federal agencies are required to use DOE's Federal Energy Management Program (FEMP) fuel price projections and these are built into COSTSAFR. Where cost data figures appear questionable for an area, the cost data base, which has been adjusted to 1987 levels, can be modified by the area cost multiplier or the costs can be changed as necessary on an individual basis.

As noted before, in cases where non-ducted systems are proposed, the Federal agency can modify the cost data base in COSTSAFR to include ducting costs for central systems. The updated User's Manual provides helpful information on this procedure. Any other system costs that the Federal agency deemed appropriate to include could be added in the cost data base, but proper changes would have to be made for all system types.

15. User's Manual Comments

Not many comments were received on the User's Manual per se. However, those who commented reported that through trial and error they discovered that the system does not operate on MS-DOS or PC-DOS systems earlier than DOS 3.1.

Others commented that the instructions for using COSTSAFR were not very well detailed, the criteria poorly conceived, important steps were skipped, and the instructions did not specify the types of printers that must be used to operate the program. The suggestions offered by those who commented were for DOE to have people who prepare user-friendly manuals for a living prepare the User's Manual and to definitely include examples showing how COSTSAFR generates compliance forms.

With respect to the contents of the User's Manual, several comments were received suggesting that this was the appropriate place for DOE to include all the various types of input data Federal agencies will need in order to operate the COSTSAFR Program. Two types of input data recommended for inclusion were the area cost multipliers and equipment label efficiencies. This would assure that each Federal agency analysis is based on the same input assumptions. In addition, they felt that DOE should plan to update these data regularly with input from the public.

DOE Response:

Many commenters expressed concern that they were unable to run COSTSAFR on their versions of DOS. However, DOE checked into this thoroughly and concluded that COSTSAFR operates on DOS 2.0 or later versions of DOS. The User's Manual was edited and revised because it was clear that many instructions were misunderstood. In response to most of the comments, the Manual was edited to improve clarity. A batch installation program has also been added. Since outputs are ASCII files they should print out on any printer.

IV. Procedural Requirements

A. National Enviromental Policy Act

DOE prepared and issued on August 20, 1986, concurrently with the proposed interim standards, an Environmental Assessment (EA) of the proposed interim standards under the Implementing Regulations of the Council of Environmental Quality (CEQ) (40 CFR Parts 1500-1800) and the National Environmental Policy Act of 1969 (NEPA), as amended (Pub. L. 91-190, U.S.C. 4221 et. seq.), which requires agencies to conduct environmental assessments when their regulations constitute a significant Federal action. A Finding of No Significant Impact was issued in the **Federal Register** at 50 FR 29773 on August 20, 1986. The Environmental Assessment concluded that no significant impacts will result to the indoor or outdoor environments from implementing the Interim Energy Conservation Mandatory Performance Standards for New Federal Residential Buildings. Based upon the findings in the Environmental Assessment, DOE determined the proposed interim standards do not constitute a major federal action significantly affecting the quality of the human environment within the meaning of NEPA

B. Executive Order No. 12291

Section 3 of Executive Order No. 12291, 46 FR 13193, February 12, 1281, requires that DOE determine whether a proposed rule is a "major rule" as defined by section 1(b) of that Order, and prepare a preliminary regulatory impact analysis for rules which fall within that definition.

DOE prepared an "Economic Analysis," 51 FR 29770, August 20, 1986 wherein DOE reviewed the proposed Final Interim Rule. DOE has determined that the rule will not have an annual effect on the national economy of $100 million or more, nor certain other effects listed in the Order, and that the Final Interim Rule is not a "major rule" within the meaning of the Order.

The rule was submitted to the Director of the Office of Management and Budget for a 10 day review period as required by section 3(c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 603,604) requires DOE to calculate the effect its rulemaking will have on small businesses in the nation. DOE analyzed the small business impacts the rule would have, including its impacts upon manufacturers of building and construction materials and equipment, architects, builders, construction companies, and utilities.

In accordance with the findings of Chapter 3 of the Economic Analysis, 51 FR 29770, August 20, 1986, DOE certifies that the Interim Energy Conservation Standards for New Federal Residential Buildings will not have significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

No information collection or record keeping requirements are imposed on the public by the Final Interim Rule. Accordingly, authorizations are not required under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., as amended, or its implementing regulations, 5 CFR Part 132.

V. List of Subjects in 10 CFR Part 435

Architects, Building Code Officials, Buildings, Energy conservation, Energy Conservation Building Performance Standards, Engineers, Federal buildings and facilities, Housing, Insulation, Voluntary performance standards.

In consideration of the foregoing, the Department of Energy hereby adopts Chapter II, Title 10, Part 435 of the Code of Federal Regulations as set forth below.

Issued in Washington, DC, August 2, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Chapter II of Title 10, Code of Federal Regulations is amended by adding a new Part 435 to read as set forth below:

PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings [Reserved]

Subpart B—Voluntary Performance Standards for New Non-Federal Residential Buildings [Reserved]

Subpart C—Mandatory Performance Standards for New Federal Residential Buildings

Sec.
435.300 Purpose.
435.301 Scope.
435.302 Definitions.
435.303 Requirements for the design of a Federal residential building.
435.304 The COSTSAFR Program.

Authority: Energy Conservation Standards for New Buildings Act of 1976, as amended, [42 U.S.C. 6831-6870], enacted as Title III of the Energy Conservation and Production Act; Section 545 [42 U.S.C. 8255] of the National Energy Conservation Policy Act, [42 U.S.C. 8201 *et seq.*]; the Department of Energy Organization Act [42 U.S.C. 7101 *et seq.*].

Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings [Reserved]

Subpart B—Voluntary Performance Standards for New Non-Federal Residential Buildings [Reserved]

Subpart C—Mandatory Performance Standards for New Federal Residential Buildings

§ 435.300 Purpose.

(a) This subpart establishes voluntary energy conservation performance standards for new residential buildings. The voluntary energy conservation performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy.

(b) Voluntary energy conservation performance standards prescribed under this subpart shall be developed solely as guidelines for the purpose of providing technical assistance for the design of energy conserving buildings, and shall be mandatory only for the design of Federal buildings.

(c) The energy conservation performance standards will direct Federal policies and practices to ensure that cost-effective energy conservation features will be incorporated into the designs of all new residential buildings designed and constructed by and for Federal agencies.

§ 435.301 Scope.

(a) The energy conservation performance standards for new Federal residential buildings will apply to the design of all new residential buildings except multifamily buildings more than three stories above grade.

(b) The primary types of buildings built by or for the Federal agencies, to which the energy conservation performance standards will apply, are:

(1) Single-story single-family residences;
(2) Split-level single-family residences;
(3) Two-story single-family residences;
(4) End-unit townhouses;
(5) Middle-unit townhouses;
(6) End-units in multifamily buildings (of three stories above grade or less);
(7) Middle-units in multifamily buildings (of three stories above grade or less);
(8) Single-section mobile homes; and
(9) Multi-section mobile homes.

§ 435.302 Definitions.

(a) "Building" means any new residential structure (1) that includes or will include a heating or cooling system, or both, or a domestic hot water system, and (2) for which a building design is created after the effective date of this rule.

(b) "Building design" means the development of plans and specifications for human living space.

(c) "Conservation Optimization Standard for Savings in Federal Residences" means the computerized calculation procedure that is used to establish an energy consumption goal for the design of Federal residential buildings.

(d) "COSTSAFR" means the Conservation Optimization Standard for Savings in Federal Residences.

(e) "Energy conservation voluntary performance standard" means an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary.

(f) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(g) "Federal residential building" means any residential building to be constructed by or for the use of any Federal agency in the Continental U.S., Alaska, or Hawaii that is not legally subject to state or local building codes or similar requirements.

(h) "Life cycle cost" means the minimum life cycle cost calculated by using the methodology specified in Subpart A of 10 CFR Part 436.

(i) "Point system" means the tables that display the effect of the set of energy conservation options on the design energy consumption and energy costs of a residential building for a particular location, building type and fuel type.

(j) "Practicable optimum life cycle energy cost" means the energy costs of the set of conservation options that has the minimum life cycle cost to the Federal government incurred during a 25 year period and including the costs of construction, maintenance, operation, and replacement.

(k) "Project" means the group of one or more Federal residential buildings to be built at a specific geographic location that are included by a Federal agency in specifications issued or used by a Federal agency for design or construction of the buildings.

(l) "Residential building" means a new building that is designed to be constructed and developed for residential occupancy.

(m) "Set of conservation options" means the combination of envelope design and equipment options that influences the long term energy use in a building designed to maintain a minimum ventilation level of 0.7 air changes per hour, including the heating and cooling equipment, domestic hot water equipment, glazing, insulation, refrigerators and air infiltration control measures.

§ 435.303 Requirements for the Design of a Federal Residential Building.

(a) The head of each Federal agency responsible for the construction of Federal residential buildings shall establish an energy consumption goal for each building to be designed or constructed by or for the agency.

(b) The energy consumption goal for a Federal residential building shall be a total point score derived by using the micro-computer program and user manual entitled "Conservation Optimization Standard for Savings in Federal Residences (COSTSAFR)," unless the head of the Federal agency shall establish more stringent requirements for that agency.

(c) The head of each Federal agency shall adopt such procedures as may be necessary to ensure that the design of a Federal residential building is not less energy conserving than the energy consumption goal established for the building.

§ 435.304 The COSTSAFR Program.

(a) The COSTSAFR Program (Version 2.0) provides a computerized calculation procedure to determine the most effective set of energy conservation measures, selected from among the measures included within the Program that will produce the practicable optimum life cycle cost for a type of residential building in a specific geographic location. The most effective set of energy conservation measures is expressed as a total point score that serves as the energy consumption goal.

(b) The COSTSAFR Program (Version 2.0) also prints out a point system that identifies a wide array of different energy conservation measures indicating how many points various levels of each measure would contribute to reaching the total point score of the energy consumption goal. This enables a Federal agency to use the energy consumption goal and the point system in the design and procurement procedures so that designers and builders can pick and choose among different combinations of energy conservation measures to meet or exceed the total point score required to meet the energy consumption goal.

(c) The COSTSAFR Program (Version 2.0) operates on a micro-computer system that uses the MS DOS operating system and is equipped with an 8087 co-processor.

(d) The COSTSAFR Program (Version 2.0) may be obtained from:
National Technical Information Service;
Department of Commerce; Springfield,
Virginia 22161; (202) 487-4600

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS-RM-79-112-B]

Energy Conservation Mandatory Performance Standards for New Federal Residential Buildings; Proposed Modification of Final Interim Rule

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice of proposed modification to final interim rule with request for comments and notice of public briefing.

SUMMARY: In accordance with Title III of the Energy Conservation and Production Act, the U.S. Department of Energy (DOE) is developing energy conservation performance standards for new buildings. The law provides that the standards will be voluntary for new non-Federal buildings, but will be mandatory for new Federal buildings.

In today's **Federal Register**, DOE promulgated final interim energy conservation mandatory performance standards for new Federal residential buildings. The interim standards require a Federal agency to establish an energy consumption goal for the design of a new Federal residential building using the computerized calculation procedure.

Today, the Department is proposing several modifications to the COSTSAFR computer program (Version 2.0), and requesting public comment on these proposals. These modifications include: (1) The addition of a credit for three different massive wall configurations - mass on the inside of the insulation, mass integral with the insulation, and mass on the outside of the insulation; (2) the addition of new energy data to the window glazing options, including low-emissivity (Low-E) glazings; and, (3) the addition of an alternative compliance procedure that allows bidders on Federal residential projects to utilize innovative designs and energy conservation options not presently found in the computer program.

DATES: Written comments on the Proposed Modifications to the Final Interim Rule for Mandatory Energy Conservation Performance Standards for New Federal Residential Buildings should be received by the Department by November 23, 1988.

A public briefing will be held in Washington, DC on September 29, 1988, 9:30 a.m., at the U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E-245. The purpose of the public briefing is to provide a briefing on the proposed modifications to the COSTSAFR computer program to interested parties.

ADDRESSES: All written comments (7 copies) and requests for the supporting documentation on the proposed modifications to COSTSAFR are to be submitted to:

U.S. Department of Energy
Office of Conservation and Renewable Energy
Hearings and Dockets
Docket Number CAS-RM-79-112-B
1000 Independence Avenue, SW., Room 6B-025
Washington, DC 20585,
(202) 586-9320

Copies of the written public comments received may be viewed and/or obtained from the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6020, 9:00 a.m.-4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Today, the U.S. Department of Energy (DOE) is requesting public comment on proposed modifications to the computer program that is required to be used by the interim energy conservation operformance standards for new Federal residential buildings in the establishment of an energy consumption goal for the design of buildings for a particular Federal residential building project.

The proposed modifications come as a result of further research that was performed by DOE in response to public comment on the proposed interim standards. The interim standards for new Federal residential buildings are required by the Energy Conservation Standards for New Buildings Act of 1976, as amended, (Act) 42 U.S.C. 6831 *et seq.*

In response to its request for public comment on the proposed interim standards, DOE received over two hundred individual comments. Approximately 75% of those commenting suggested that DOE recognize the energy conservation benefit of wall thermal mass in the COSTSAFR computer program. Virtually every person who commented on this issue was opposed to the COSTSAFR program because it gave no recognition to the energy conserving benefits of more massive masonry construction or to the technical difficulty and increased costs of installing R-11 insulation in a masonry wall, especially in moderate to warm climates, where they asserted, it was not needed.

Those who commented stated that failure to consider masonry's durability, low maintenance, structural characteristics and fire protection (as opposed to fire resistance) would result in increased expenditure of tax dollars on construction, operation and maintenance of Federal residential buildings. They indicated that failure to recognize the benefits of thermal mass in COSTSAFR would produce severe negative economic impacts for the masonry industry by placing builders, who wish to utilize other than light frame construction, at a serious disadvantage in competing for military and other Federally-funded housing construction programs.

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Those who commented, citing the October 31, 1985, DOE publication of a Notice of Inquiry in the **Federal Register** (50 FR 45469), in which the Department stated that it had completed its research on energy conservation benefits of thermal mass use in residences, and the subsequent use of the research results in proposed American Society of Heating, Refrigerating and AirConditioning Engineers, Inc. (ASHRAE) standards and in a computer program (PEAR) developed by Lawrence Berkeley Laboratory (LBL), did not accept DOE statements that data were not available to include thermal mass options in the proposed interim standards.

Most suggested that the interim standards be delayed until they

appropriately and accurately included provisions for thermal mass options, or that DOE should defer to private sector standard development activities currently being conducted by ASHRAE.

DOE found that thermal mass is not typically selected by Federal agencies to be included in their residential construction projects. For this reason, and the lack of building industry consensus about how to reflect the energy conservation benefits of thermal mass in the design of residential buildings, during the initial development of COSTSAFR, thermal mass was not included in the original version. However, DOE now believes that their is adequate industry consensus on how to fairly reflect the energy conservation benefits of thermal mass in residential construction and has decided to include thermal mass options in the COSTSAFR computer program.

After developing the thermal mass algorithms and formulae necessary to properly update the COSTSAFR computer program, DOE is formally requesting comments on the thermal mass revisions to COSTSAFR.

Updated information on passive solar design and other window glazing options are also included in the proposed changes to COSTSAFR. New energy data would be incorporated into the computer program for all site-built prototype window glass options. This includes clear, heat absorbing, and reflective glazings. Low-E glass would also be added to the program. A new sun-tempered section (formerly passive solar) would be completely modified with new data. The moveable insulation energy data would remain unchanged.

Finally, DOE received several comments that the point system generated by the COSTSAFR computer program was too prescriptive and did not allow for innovative or unusual energy conservation design solutions. Therefore, DOE is proposing an alternate means of compliance. The alternate method would accommodate different energy conservation designs, materials, and construction techniques, and yet remain consistent with the basic framework and economic assumptions of the computer program.

Details of the proposed modifications to the COSTSAFR computer program may be found in Section III of this Notice. DOE requests public comment on each of the modifications. Based on the public comment, DOE will make modifications to the computer program and distribute the new version of the COSTSAFR computer program to Federal agencies and other interested individuals and groups, and also make it available through the Department of Commerce's National Technical Information Service.

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B. New Window Data
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C. Regulatory Flexibility Act
D. Paperwork Reduction Act

I. Background

Originally enacted on August 14, 1976 as Title III of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1144 *et seq.*, 42 U.S.C. 6831, (August 14, 1976), the Act required the Department of Housing and Urban Development (HUD) to develop, promulgate, implement and enforce compliance with performance standards to improve the energy efficiency of all new buildings in the nation. On August 4, 1977, the Act was amended by section 304(a), 42 U.S.C. 7154, of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.*, which transferred from HUD to DOE the responsibility to develop and promulgate the standards. The amendments to the Act did not change HUD's implementation responsibilities.

In November 1979, DOE published proposed performance standards in the **Federal Register**, 44 FR 66120 (November 28, 1979). The notice was cotroversial and generated over 1,800 comments totalling 40,000 pages. The comments included technical and other substantive criticisms of the performance standards.

Less than a year after the publication of the proposed standards, the Act was again amended. Section 326, 94 Stat. 1649, of the Housing and Community Development Act of 1980, Pub. L. 96-399 (October 8, 1980) required that DOE promulgate interim standards by August 1, 1981 and extended the promulgation date of the final standards to April 1, 1983. The interim standards were only to apply to new Federal buildings. In addition, the Act required demonstration projects to be conducted in at least two geographical areas.

In August 1981, Congress again amended the Act. Subtitle D of Title 10 of the Omnibus Reconciliation Act of 1981, Pub. L. 97-35, 95 Stat. 621, amended the Act to create the term "voluntary performance standards", eliminated the provision for a possible statutory sanction for noncompliance, added a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings", and extended the deadline for DOE to furnish reports on the demonstration projects to Congress.

The legislative changes that have taken place since the original 1976 enactment required DOE to make fundamental changes to the compliance aspects of the standards. DOE retains the responsibility for developing performance standards to achieve the maximum practicable improvements in energy efficiency and use of non-depletable resources for all new buildings. However, development of these standards must now serve two purposes. The performance standards serve one purpose for the Federal sector where the standards prescribe mandatory design requirements. For non-Federal buildings, these performance standards serve only as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings. Accordingly, these performance standards serve a second purpose of providing sound technical information and examples of efficient design practices for voluntary use in the private sector.

On August 20, 1986, the Department published in the **Federal Register** (51 FR 29754) proposed interim mandatory energy conservation performance standards for new Federal residential buildings. On September 23, 1986, DOE published an addendum to the proposed standards to correct data in the Technical Support Document issued concurrently with the NOPR. On November 19, 1986, a **Federal Register** notice was published announcing an extension of the public comment period by fifty-nine days. In response to public comment and with the availability of additional technical information, DOE made revisions to the proposed interim standards and the micro-computer program, and its supporting documentation. The revised micro-computer program was designated, COSTSAFR Version 2.0.

The interim standards are being published in today's **Federal Register**. The interim standards require Federal agencies to design new Federal residential buildings in accordance with the energy conservation requirements required by § 435.303 of the interim standards. The Federal agencies have until February 21, 1989 to place the interim standards into effect. The interim standards do not regulate non-Federal construction. The interim standards have been developed specifically for Federal agencies that

construct residential buildings. The calculation procedures used to apply the interim standards to Federal residential construction are not intended for use by the non-Federal sector.

The interim standards will remain in effect until DOE promulgates final standards. By law, DOE is required to conduct a demonstration of the interim standards, based on criteria established by the Act, and report its findings to the Congress, prior to the development and promulgation of final standards.

II. Summary of the Interim Standards

The interim standards were developed to enable Federal agencies to design residential buildings that are cost-effective to build and operate. They are intended to serve two purposes: (1) To be used as a mandatory standard for all Federal agencies that design and construct residential buildings, and (2) to be able to serve as a voluntary guideline to the nation's builders. In order to meet these criteria, the useability of the interim standards was considered a very high project priority.

The interim standards are expressed in terms of this objective: Each Federal residential building should be designed to include the combination of energy conservation measures that represents the practicable optimum life cycle energy cost to the Federal government in a particular location. This is achieved by requiring that Federal officials use local construction, maintenance and replacement costs, local climate data, and local fuel costs as inputs to a micro-computer program that will automatically construct an energy-efficient and cost-effective energy consumption goal for any of nine building unit types.

The most novel aspect of the interim standards, which distinguishes it from other standards, is that location-specific requirements can be generated by the use of software and micro-computer technology. The use of micro-computer technology was chosen partly on the basis of the emergence of the technology over the period of the last few years and partly because of the ease in which energy and cost calculations are made. The use of micro-computers has become common among Federal agencies, and advantages in time savings clearly justify the technology for use with building standards. Use of micro-computers eliminates the need for anyone to perform lengthy calculations or make uninformed choices regarding the optimization of energy conservation measures.

The interim standards mandate the use of a DOE-sponsored micro-computer program called COSTSAFR that was developed to make the selection of a set of optimal energy conservation measures and, consequently, the design of cost-effective energy-efficient buildings a relatively simple process. One output from the COSTSAFR program is the data to be used in determining compliance with the interim standards. COSTSAFR is designed to provide specific information on the interaction of over 30 energy conservation measures in nearly any U.S. location. It enables a Federal agency to develop cost-effective residential building standards for a single project, thus reducing the more general nature of previous standards. Finally, it is designed to be effective for any of several building types including single-family, small multi-family, and manufactured housing.

COSTSAFR has been designed so that implementing officials, designers, and builders can easily tell if a proposed combination of measures will result in energy conservation levels that meet or exceed an optimized level for cost-effective energy conservation in a building.

The COSTSAFR program performs life cycle cost optimization for a broad set of energy conservation measures and determines the energy costs for the resulting optimum set of measures. The result is a total point value for the energy conservation measures to be installed in the optimal house. COSTSAFR then prints out a point system for all energy conservation options indicating how various levels of each option perform relative to the optimum option. This point system is the compliance tool provided to bidders who can then select measures as they choose and know whether their combination of energy conservation measures has met or exceeded the optimum levels required by the interim standards. Those proposing respond by submitting a completed compliance form for each proposed model residence with the rest of the bid package.

Procedurally, to comply, a Federal procurement official will have to obtain a copy of the COSTSAFR software, its accompanying User's Manual and have access to a micro-computer system which runs on the MS-DOS disk operating system. The software and the User's Manual will lead the Federal official through the steps of selecting a building prototype, location and fuel type; selecting the set of energy conservation measures that are to be considered; calculating the life cycle cost minimum for the prototypical building; and finally, calculating the points corresponding to alternative energy conservation options and printing them out in a set of compliance forms. The compliance forms are then made a part of the RFP package. The bidder (proposer), using the compliance forms, must show that the intended design is equivalent to or more efficient than its corresponding prototypical design with its optimized set of energy conservation measures. The COSTSAFR program will be made available to all Federal agencies procuring residential buildings.

III. Description of the Proposed Modifications to COSTSAFR

A. Thermal Mass Walls

It is proposed that thermal mass be added as an option in COSTSAFR in response to the many public comments on the issue. The approach that would be used relies on the data and techniques developed by Lawrence Berkeley Laboratory (LBL) for the *Affordable Housing through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes,* and previously provided for public review and comment. LBL has studied the effect of thermal mass in walls and has included the results in the residential housing data base that was described in a Federal Register Notice of Inquiry on October 31, 1985 (50 FR 45469) and may be found in the supporting documentation.

Three different massive walls configurations have been modeled for the COSTSAFR computer program modification: mass on the inside of the insulation, mass integral with the insulation, and mass on the outside of the insulation. A ranch-style prototype was used for the DOE 2.1 computer simulations of thermal mass, with all components except the walls of the house held constant. These components are a 4-inch, carpet-covered slab foundation, R-30 ceiling, and double glazing with an area equivalent to 15% of the floor area.

Heat capacity and steady-state thermal resistance typically can be independent in wall materials. A wall can be constructed to have high levels of heat storage, or thermal resistance, or both. For thermal mass, LBL has considered different heat capacities per square foot of wall area, including those for wood, concrete, and brick. In addition, the thickness of the mass was varied to give a large range of total heat capacities. Only two different R-values were modeled in each of the three massive walls configurations. Table 1 shows the range of mass walls studied.

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TABLE 1 MASS WALL CHARACTERISTICS

Insulation Location	Mass Conductivity (Btu/hr*ft-*F)	Mass Thickness (inches)	Heat Capacity (Btu/ft²-*F)	Wall R-value (hr*ft²*F/Btu)
Outside	0.5	4-8	3.3-13.3	5,20
Inside	0.5	4-8	3.3-13.3	5,20
Integral	0.03-0.13	4-8	3.3-13.3	5,10

In order to place a limit on the number of simulations needed, LBL separated the 45 base cities included in the data base into 12 zones. In all 45 cities, simulations were run for only three walls: A base wall, the base wall with added mass, and the base wall with added mass and added insulation.

Based on the initial runs, each of the cities were grouped into one of the 12 zones where the energy savings with the extra mass divided by the savings with both extra mass and resistance are comparable. Therefore, the cities grouped into a zone are not necessarily in the same geographic region. Also, it was possible for each of the 45 base cities to be assigned to a different zone for heating and cooling seasons.

Each of the 12 zones were represented by a base city for which 51 DOE 2.1 simulations were run, covering the range of wall properties listed in the table above. From these results, regression coefficients were determined, for each of the three mass locations: outside, integral, and inside, and each of the 12 zones, for both heating and cooling. These regression coefficients are then used in the following equation:

Equation 1.

$$\text{MASS WALL LOAD} = C_1 + C_2 * EXP(C_3 * HC) + C_4 * U_t + C_5 * EXP(C_6 * HC) * U_t$$

Where:

C_0....C_6 are regression coefficients.

HC is the heat capacity (Btu/ft²*°F).

U_t is the total wall U-value (Btu/hr*ft²*°F).

EXP indicates the exponential function.

A quadratic regression equation based on the existing COSTSAFR wood frame wall construction was used to interpolate the annual heating and cooling load on a wood frame wall for U-values between the ones in the data base. This load is calculated for the wall with the same total U-value as the mass wall. The equation is:

Equation 2.

$$\text{FRAME WALL LOAD} = C_8 * U_t^2 + C_9 * U_t + C_7$$

Where:

C_8....C_7 are regression coefficients.

The load for the wood frame wall and the load for the mass wall are added together to obtain the total energy load for the mass wall:

Equation 3.

TOTAL MASS WALL LOAD = FRAME WALL LOAD + MASS WALL LOAD

Data would be added to the COSTSAFR computer program energy data files for all seven site-built prototypes. No mass construction data has been developed or added for manufactured homes (mobile homes). The added data consist of the seventeen regression coefficients for each location and season. These coefficients are read into the program for the appropriate location and equations 1, 2, and 3 are used to determine the energy loads for a range of heat capacities and wall R-values. The energy loads are then converted into points as discussed in Chapter 5 of the Interim Federal Residential Standard Technical Support Document.

A new section would be added to the COSTSAFR point system for the mass wall with a table similar in format to the window section. The bidder (proposer) would choose between the wood frame wall and the thermal mass wall. For the mass wall, the bidder (proposer) would choose values for the following parameters: the heat capacity of the mass, the total wall R-value, and the location of the insulation (outside, integral, or inside). The heat capacity ranges from 4 to 20 (Btu/hr*ft²*°F). The heat capacity is only for the massive material and does not include other materials in the wall.

To assist the bidder (proposer), a section would be added to the User's Manual with tabular data for the heat capacities and R-values of materials commonly used in heavy-weight walls. This information was obtained from the ASHRAE Handbook, 1985 Fundamentals Volume. The bidder (proposer) would use the appropriate numbers from the ASHRAE Handbook tables and a worksheet in the User's Manual to calculate the wall R-value and the heat capacity.

B. New Window Data

New energy data would be incorporated into the COSTSAFR program for all site-built prototype window glazing options. This includes clear, heat absorbing, and reflective glazings. Low-E glass would also be added to the program. The sun-tempered (formerly passive solar) section would be completely redone with new data. The moveable insulation energy data would remain unchanged.

The energy data were generated by LBL in the form of regression equations for each of the 45 base locations and for both heating and cooling seasons. The energy load was split into two components: A conductive load and a solar load. For the conductive load, DOE-2.1 simulations were done for all site-built prototypes and locations, with equally distributed windows having a shading coefficient of 1.00 and an area 12% of the total floor area. Window U-values of 1.10, 0.49, and 0.10 were simulated. The thermal integrity of other components of the building were held at levels consistent with the window levels. Parameters such as the thermostat set points and internal gains were identical to the conditions in the simulations for the original residential housing data base (Interim Federal Residential Standard Technical Support Document).

The conductive loads are a function of the window U-value with the window area as a multiplier. The regression equation for the conductive load is:

Equation 1.

$$\text{CONDUCTIVE LOAD} = \text{AREA} * (U_1 * C_1 * 24\text{hrs} + U^2 * C_2 * 576[24\text{hrs}^2])$$

Where:

C_1 and C_2 are the regression coefficients, U is the U- value, and AREA is the window area.

The solar load was determined by a set of 52 parametric simulations for the ranch prototype in each of the 45 base locations. The shading coefficient was varied from 1.00 to 0.00 and the total window area ranged from 8% to 20% of the total floor area. Window areas in the four cardinal orientations were varied from 1% to 14% of the floor area. A quadratic multi-variant regression equation was developed as a result of the simulations:

Equation 2.

$$\text{SOLAR LOAD} = \text{ZETA} * (1 + C_7 * \text{ZETA})$$

Equation 3.

$$\text{with ZETA} = [C_8 * n + C_9 * e + C_8 * s * C_9 * w] * \text{AREA} * SC$$

Where: C_8.....C_7 are regression coefficients

SC = Shading coefficient (depends on layers)

n,e,s,w = fraction of glazing with north, east, south, and west orientation, respectively.

The total window energy load is simply a combination of the conductive load and the solar load:

Equation 4.

WINDOW LOAD = CONDUCTIVE LOAD + SOLAR LOAD

Data were produced by Pacific Northwest Laboratory (PNL) for all the window options from the window regression equations. WINDOW-2, a one dimensional heat transfer computer program developed by LBL, that determines the shading coeeficient and U- value of the glass based on the weather conditions, the number of layers, the thickness of the air space, and the glass properties, was used to generate the U-values and shading coefficients for the various types of glass. Glazing thermal and optical properties were obtained from manufacturer product informa ation and the ASHRAE Handbook of Fundamentals. Weather conditions for the heating season data consisted of 30°F outside temperature, 70°F inside temperature, 10 mph outside air speed, and no solar load (night time conditions). Cooling season weather conditions were taken from the ASHRAE Handbook of Fundamentals.

The COSTSAFR compliance form format would be changed for the sun-tempered (formerly passive solar) section and a new low-E section. The main window section (E) in the compliance forms would be unchanged. This section would contain the points for clear glass with equal areas in the four cardinal directions with both conductive load and solar load incorporated. The heat absorbing and reflective sections would also remain unchanged. The section for low-E glazing would have the same format as the heat absorbing and reflective sections (i.e., modifying the points for clear glass).

The new sun-tempered section would modify the window points for different glazing area percentages in the cardinal directions. The points from this section would be in addition to the points from the clear glass section. Due to the nature of the solar load equations, the point system user would have to use three sets of equations in the sun-tempered section. First, they would enter the desired window areas (as a fraction of the total window area) in the four cardinal directions (see equations below). In the second equation, the preliminary numbers are modified by the shading coefficient and the window area (as a fraction of the floor area). A table with shading coefficients for the different glass types would be provided in the User's Manual. The third set of calculations gives the points for the sun-tempered design. These calculations would be found as part of the COSTSAFR compliance form.

Heating Points

A. Equation 5.

$$\left(C_1 * \frac{}{n} + C_2 * \frac{}{e} + C_3 * \frac{}{s} + C_4 * \frac{}{w}\right) - (C_1+C_2+C_3+C_4) * 0.25 = \frac{}{X}$$

B. Equation 6.

$$\frac{}{X} * \frac{}{SC} * \frac{}{\%AREA} * \text{FLOOR AREA} = \frac{}{Z}$$

C. Equation 7.

$$\frac{}{Z} * \left(C_5 + \frac{}{Z} * C_6\right) = \frac{}{H}$$

Cooling Points

A. Equation 8.

$$\left(C_1 * \frac{}{n} + C_2 * \frac{}{e} + C_3 * \frac{}{s} + C_4 * \frac{}{w}\right) - (C_1+C_2+C_3+C_4) * 0.25 = \frac{}{X}$$

B. Equation 9.

$$\frac{}{X} * \frac{}{SC} * \frac{}{\%AREA} * \text{FLOOR AREA} = \frac{}{Z}$$

C. Equation 10.

$$\frac{}{Z} * \left(C_5 + \frac{}{Z} * C_6\right) = \frac{}{C}$$

C. Alternate Compliance Procedure.

The standard method of compliance for the interim standards is with the use of the COSTSAFR computer program and the compliance forms it produces. While this program covers a wide range of energy conservation options (ECOs), it does not have the ability to consider some unusual or innovative designs. Therefore, an alternate means of compliance is offered for such designs. The alternate method must be able to accommodate different designs, materials, and construction techniques, and yet remain consistent with the basic framework and economic assumptions of COSTSAFR.

The COSTSAFR program is based upon energy data calculated by DOE-2.1 simulations for seven general house designs built with specific materials and by specific construction practices. DOE-2.1 is a computerized and verified analysis and research tool developed by DOE and widely used by building design groups. COSTSAFR includes ECOs such as insulation levels, window options, five types of heating equipment, and two types of water heating. If bidders (proposers) on a new Federal housing project choose to propose housing with unique energy conservation design features, not included in COSTSAFR, then the alternate compliance method shall be necessary.

To be consistent with the energy data base used by COSTSAFR, the alternate method uses DOE-2.1 simulations to calculate the yearly space conditioning energy loads for the proposed house. The yearly load is adjusted by equipment efficiency and fuel escalation rates to obtain the life cycle cost (LCC) for energy. To comply with the interim standards, the DOE-2.1 calculated LCC of the proposed design would have to be equal to or less than the "optimal" energy LCC calculated by COSTSAFR for the house type with the closest design. The optimal LCC has the combination of ECOs that produce the lowest total 25 year life cycle cost.

The Federal agency will run the COSTSAFR program and produce the compliance forms that are used to calculate the total life cycle energy cost. Necessary input for the COSTSAFR program includes:

* price escalations and area cost multipliers;
* housing location;
* allowable foundations types;
* the house type closest to the proposed design;
* allowable HVAC equipment; and
* applicable energy prices.

The optimal life cycle energy cost would be determined by an Estimated Unit Energy Cost equation in the compliance form. The optimal space conditioning, domestic hot water heating (DHW), and appliance (refrigerators and freezers) points along with the conditioned floor area would then be entered into the appropriate equation, depending on the number of bedrooms in the design. The Estimated Unit Energy Cost would then be multiplied by 100 to obtain the total discounted LCC for energy in dollars. This number would be provided to the bidder (proposer) as the goal for compliance to the interim standards. The bidder (proposer) would also be provided with the DHW and refrigerator/freezer section of the compliance forms.

The bidder (proposer) would then run the DOE-2.1 simulation program with assumptions equivalent to the assumptions used in COSTSAFR wherever possible. (DOE-2.1, and not other similar computer programs such as BLAST, must be used to insure consistency in calculation procedures.) This includes using the same thermostat set points: 78°F for cooling, 70°F for heating, and a night setback of 60°F for 12 PM to 6 AM. Window shading, venting, and internal gain schedules would have to be consistent with those used by COSTSAFR. DOE would provide an input file that specifies the input parameters that would be used by the bidder (proposer). The most accurate climate data available would have to be used. Either TRY (Test Reference Year) or WYEC (Weather Year for Energy Conservation) climate data would be recommended.

The bidder (proposer) would then divide the DOE-2.1 calculated loads by the efficiencies of the proposed HVAC equipment to determine the absolute energy loads. The bidder (proposer) would use the same efficiency measures found in COSTSAFR unless a Federal agency permits the use of other comparable measures for equipment not rated by existing Federally-approved methods. The load would then be multiplied by the appropriate fuel cost to obtain the first year energy cost.

Next, the first year energy cost would be adjusted to the 25 year life cycle energy cost by multiplying by the Uniform Present Worth (UPW). The product of the first year cost and the UPW gives the life cycle cost (see equation 1). The proper UPW depends on the geographical region and the fuel type, and is provided by COSTSAFR in the input values that are printed at the end of each printout of the point system. The LCC would then be determined for both heating and cooling.

Equation 1.

$$\text{Heating, Cooling Energy LCC} = \frac{\text{Energy Load} * \text{Fuel Cost} * \text{UPW}}{\text{Equipment Efficiency}}$$

The bidder (proposer) would also calculate water heating and refrigerator/freezer energy LCCs by filling out the appropriate section of the COSTSAFR compliance forms. These numbers would then be multi plied by 100 to get dollars, and are added to the heating and cooling LCCs to obtain the total energy LCC (equation 2).

Equation 2.

Energy LCC = Heating LCC + Cooling LCC + (DHW points + Ref/Frz points) * 100

If the DOE-2.1 life cycle energy cost of the proposed design is equal to or less than the optimal energy LCC obtained from the COSTSAFR compliance forms then the design would comply with the interim standards. If not, the proposed design must be modified until the energy cost criterion is met.

The bidder (proposer) would have to provide the Federal agency with the following:

* the DOE-2 Building Design Language (BDL) input file;
* the DOE-2 output;
* the DHW and Refrigerator/Freezer sections of the compliance forms; and
* the proposed design's energy Life Cycle Cost with all calculations.

IV. Public Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments and for making statements at the public briefing are set forth below.

Comments should be labeled both on the envelope and on the documents, "Revisions for COSTSAFR Computer Program (Docket No. CAS-RM-79-112-B)" and must be received by the date indicated in the beginning of this notice, in order to insure full consideration. Seven (7) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed modifications.

All written comments received on the Notice of Proposed Modification to the Final Interim Rule will be available for public inspection at the Freedom of Information Reading Room as provided at the beginning of this notice.

Comments may also be presented at the public briefing after DOE presents its briefing material. Following the DOE briefing, the moderator will ask for comments from the audience. Comments may be spontaneous or prepared prior to the briefing. Should the comments be prepared prior to the briefing, those individuals are asked to provide seven copies of their comments for the briefing. These comments will also be placed on display in the DOE Freedom of Information Office. A court reporter will be in attendance at the public briefing and will record a transcript of the session.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the submitting person believes to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and six copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has

previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and, (7) whether disclosure of the information would be in the public interest.

V. Procedural Requirements

A. National Environmental Policy Act

DOE prepared and issued an Environment Assesment (EA), DOE/EA-0300, for the proposed interim standards under the Implementing Regulations of the Council of Environmental Quality for the National Environmental Policy Act of 1969, as amended. The EA addresses the possible incremental environmental affects attributable to the application of the proposed interim standards to the design of Federal residential buildings. A Finding of No Significant Impact (FONSI) was issued on April 17, 1976. DOE has determined that the proposed modification to the interim standards does not affect the assumptions or results of the EA, and that the original FONSI is still valid.

B. Executive Order No. 12291

Section 3 of Executive Order No. 12291, 46 FR 13193, February 19, 1981, requires that DOE determine whether a proposed rule is a "major rule," as defined by section 1(b) of that Order, and prepare a preliminary regulatory impact analysis for rules which fall within that definition.

DOE reviewed the Final Interim Rule, completed an "Economic Analysis," 51 FR 29770, August 20, 1986, and concluded that the Final Interim Rule was not a "major rule" under this Executive Order. DOE has determined that today's proposed amendments to the Final Interim Rule do not constitute a "major rule" either, because the amendments will not result in an annual affect on the economy of $100 million or more, or certain other effects listed in the Order. The amendments to the final interim rule will allow alternative credit for three massive wall configurations, new window glass options, and alternative compliance procedures that will allow utilization of innovative designs and energy conservation options not presently found in the computer program.

Given the relatively small number of residential buildings affected by the Final Interim Rule, as well as the optional nature of the proposed modifications, DOE has determined that the modifications will not have sufficient effects such as to constitute a "major rule" within the meaning of Executive Order No. 12291.

The proposed modifications to the Final Interim Rule was submitted to the Director of the Office of Management and Budget for a 10 day review period as required by section 3 (c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 603, 604) requires DOE to consider the effect its rulemaking will have on small business in the nation. DOE has considered today's proposed modifications in light of DOE's analysis of the small business impacts of the Final Interim Rule, (51 FR 29700, August 20, 1986), including its impacts upon manufacturers of building and construction materials and equipment, architects, builders, construction companies. These modifications are minimal, and by creating new options allowing for credit for certain configurations for massive walls, new window glazing materials, and alternative compliance procedures for utilization of innovative designs and energy conservation, will not increase the effects of the Final Interim Rule to such a degree as to activate the provisions of the Regulatory Flexibility Act. Consequently, pursuant to section 605(b) of that Act, DOE certifies that this proposed rulemaking will not have a significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

No information collection or record keeping requirements are imposed on the public by these modifications to the Final Interim Rule. Accordingly, authorizations are not required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as amended, or its implementing regulations, 5 CFR Part 132.

For the reasons set out in this preamble, 10 CFR Part 435 is proposed to be amended as set forth below.

Issued in Washington, DC, August 2, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Chapter II of Title 10, Code of Federal Regulations is proposed to be amended by revising Part 435 to read as set forth below:

PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings [Reserved]

Subpart B—Voluntary Performance Standards for New Non-Federal Residential Buildings [Reserved]

Subpart C—Mandatory Performance Standards for New Federal Residential Buildings

Sec.

435.300 Purpose.
435.301 Scope.
435.302 Definitions.
435.303 Requirements for the design of a Federal residential building.
435.304 The COSTSAFR Program.

Authority: Energy Conservation Standards for New Buildings Act of 1976, as amended, [42 U.S.C. 6831-6870], enacted as Title III of the Energy Conservation and Production Act; Section 545 [42 U.S.C. 6255] of the National Energy Conservation Policy Act, [42 U.S.C. 8201 *et seq.*]; The Department of Energy Organization Act [42 U.S.C. 7101 *et seq.*].

Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings [Reserved]

Subpart B—Voluntary Performance Standards for New Non-Federal Residential Buildings [Reserved]

Subpart C—Mandatory Performance Standards for New Federal Residential Buildings

§ 435.300 Purpose.

(a) This subpart establishes voluntary energy conservation performance standards for new residential buildings. The voluntary energy conservation performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy.

(b) Voluntary energy conservation performance standards prescribed under this subpart shall be developed solely as guidelines for the purpose of providing technical assistance for the design of energy conserving buildings, and only shall be mandatory for the design of Federal buildings.

(c) The energy conservation performance standards will direct Federal policies and practices to ensure that cost-effective energy conservation

features will be incorporated into the designs of all new residential buildings designed and constructed by and for Federal agencies.

§ 435.301 Scope.

(a) The energy conservation performance standards for new Federal residential buildings will apply to the design of all new residential buildings except multifamily buildings more than three stories above grade.

(b) The primary types of buildings built by or for the Federal agencies, to which the energy conservation performance standards will apply, are:

(1) Single-story single-family residences

(2) Split-level single-family residences;

(3) Two-story single-family residences

(4) End-unit townhouses

(5) Middle-unit townhouses;

(6) End-units in multifamily buildings (of three stories above grade or less);

(7) Middle-units in multifamily buildings (of three stories above grade or less);

(8) Single-section mobile homes; and

(9) Multi-section mobile homes.

§ 435.302 Definitions

(a) "Building" means any new residential structure (1) that includes or will include a heating or cooling system, or both, or a domestic hot water system, and (2) for which a building design is created after the effective date of this rule.

(b) "Building design" means the development of plans and specifications for human living space.

(c) "Conservation Optimization Standard for Savings in Federal Residences" means the computerized calculation procedure that is used to establish an energy consumption goal for the design of Federal residential buildings.

(d) "COSTSAFR" means the Conservation Optimization Standard for Savings in Federal Residences.

(e) "Energy conseration voluntary performance standard" means an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary.

(f) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive brance of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(g) "Federal residential building" means any residential building to be constructed by or for the use of any Federal agency in the Continental U.S., Alaska, or Hawaii that is not legally subject to state or local building codes or similar requirements.

(h) "Life cycle cost" means the minimum life cycle cost calculated by using the methodology specified in Subpart A of 10 CFR Part 436.

(i) "Point system" means the tables that display the effect of the set of energy conservation options on the design energy consumption and energy costs of a residential building for a particular location, building type and fuel type.

(j) "Practicable optimum life cycle energy cost" means the energy costs of the set of conservation options that has the minimum life cycle cost of the Federal government incurred during a 25 year period and including the costs of construction, maintenance, operation, and replacement.

(k) "Project" means the group of one or more Federal residential buildings to be built at a specific geographic location that are included by a Federal agency in specifications issued or used by a Federal agency for design or construction of the buildings.

(l) "Residential building" means a new building that is designed to be constructed and developed for residential occupancy.

(m) "Set of conservation options" means the combination of envelope design and equipment options that influences the long term energy use in a building designed to maintain a minimum ventilation level of 0.7 air changes per hour, including the heating and cooling equipment, domestic hot water equipment, glazing, insulation, refrigerators and air infiltration control measures.

§ 435.303 Requirements for the Design of a Federal Residential Building.

(a) The head of each Federal agency responsible for the construction of Federal residential buildings shall establish an energy consumption goal for each building to be designed or constructed by or for the agency.

(b) The energy consumption goal for a Federal residential building shall be a total point score derived by using the micro-computer program and user manual entitled "Conservation Optimization Standard for Savings in Federal Residences (COSTSAFR),"unless the head of the Federal agency shall establish more stringent requirements for that agency.

(c) The head of each Federal agency shall adopt such procedures as may be necessary to ensure that the design of a Federal residential building is not less energy conserving than the energy consumption goal established for the building.

§ 435.304 The COSTSAFR Program.

(a) The COSTSAFR Program (Version 3.0) provides a computerized calculation procedure to determine the most effective set of energy conservation measures, selected from among the measures included within the Program that will produce the practicable optimum life cycle cost for a type of residential building in a specific geographic location. The most effective set of energy conservation measures is expressed as a total point score that serves as the energy consumption goal.

(b) The COSTSAFR Program (Version 3.0) also prints out a point system that identifies a wide array of different energy conservation measures indicating how many points various levels of each measure would contribute to reaching the total point score of the energy consumption goal. This enables a Federal agency to use the energy consumption goal and the point system in the design and procurement procedures so that designers and builders can pick and choose among different combinations of energy conservation measures to meet or exceed the total point score required to meet the energy consumption goal.

(c) The COSTSAFR Program (Version 3.0) operates on a micro-computer system that uses the MS DOS operating system and is equipped with an 8087 co-processor.

(d) The COSTSAFR Program (Version 3.0) may be obtained from:

National Technical Information Service; Department of Commerce; Springfield, Virginia 22161; (202) 487-4600

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 25 and 52
Federal Acquisition Regulation; English Translation of Contracts; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

Federal Acquisition Regulation (FAR); English Translation of Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to FAR Subpart 25.9 to add language prescribing the use of the clause at 52.225–14, Inconsistency Between English Version and Translation of Contracts, when the Government translates a contract into a foreign language.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 24, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–44 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the translation inconsistency clause is routinely used in overseas contracts when prospective vendors require a translation into a local language. Therefore, an Initial Regulatory Flexibility Analysis has not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: August 16, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 25 and 52 be amended as set forth below:

1. The authority citation for Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Subpart 25.9 is revised to read as follows:

Subpart 25.9—Additional Foreign Acquisition Clauses

25.901 Omission of the Examination of Records clause.
25.902 Inconsistency between English version and translation of contract.

Subpart 25.9—Additional Foreign Acquisition Clauses

25.901 Omission of examination of records clause.

(a) *Definition.* "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

(b) *Policy.* As required by 10 U.S.C. 2313, 41 U.S.C. 254, and 15.106–1(b)(3), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the clause at 52.215–1, Examination of Records by Comptroller General. Omission of the clause should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the clause.

(c) *Conditions for omission.* (1)(a) The contracting officer may omit the clause at 52.215–1, Examination of Records by Comptroller General, from contracts with foreign contractors—

(i) If the agency head determines, with the concurrence of the Comptroller General or a designee, the omission of the clause will serve the public interest;

(ii) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(2) When a determination under paragraph (c)(1)(ii) of this section is the basis for omission of the clause at 52.215–1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination.

(d) *Determination and findings.* The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the clause;

(3) State the reasons for the contractor's refusal to include the clause;

(4) Describe the price and availability of the property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to omit the clause.

25.902 Inconsistency between English version and translation of contract.

The contracting officer shall insert the clause at 52.255–14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts whenever translation into another language is anticipated.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.255–14 is added to read as follows:

52.225–14 Inconsistency Between English Version and Translation of Contract.

As prescribed at 25.902, insert the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (AUG 1988)

In the event of inconsistency between any terms of this contract and any translation thereof into another langauge, the English language meaning shall control.

(End of clause)

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Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 12 and 52
Federal Acquisition Regulation; Delivery of Excess Quantities; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

Federal Acquisition Regulation (FAR); Delivery of Excess Quantities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 12.401, 12.403, and the clause at 52.212–10 concerning Delivery of Excess Quantities to increase the delivery of excess quantities threshold from $100 to $250 and to modify the clause title accordingly.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 24, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 88–37 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed change to FAR 12.401, 12.403, and the clause at 52.212–10 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it would apply to all small businesses that want to contract with the Government under fixed price contracts when delivery of quantities are specified. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. A copy of the Initial Regulatory Flexibility Analysis will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose any recordkeeping or information collection requirements from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subject in 48 CFR Parts 12 and 52

Government procurement.

Dated: August 16, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 12 and 52 be amended as set forth below:

1. The authority citation for Parts 12 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 12—CONTRACT DELIVERY OR PERFORMANCE

§ 12.401 [Amended]

2. Section 12.401 is amended by removing in the third sentence of paragraph (c) the words "of $100 or Less", and by removing in paragraphs (c)(1) and (c)(2) the figure "$100" and inserting in both places the figure "$250".

§ 12.403 [Amended]

3. Section 12.403 is amended in paragraph (b) by removing the words "of $100 or Less".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.212–10 is revised to read as follows:

§ 52.212–10 Delivery of Excess Quantities.

As prescribed in 12.403(b), insert the following clause:

DELIVERY OF EXCESS QUANTITIES (AUG. 1988)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $250 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

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Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 24594; Amendment Nos. 25-66 and 121-198]

RIN: 2120-AB23

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Findings concerning additional comments.

SUMMARY: These amendments upgrade the fire safety standards for cabin interior materials in transport category airplanes by establishing refined fire test procedures and apparatus and a new requirement for smoke emission testing. The refined test procedures and apparatus are the result of additional research and fire testing and are intended to improve the reproducibility of test results. The refinement for smoke emission testing is intended to minimize the possibility that emergency egress will be hampered by smoke obscuration. In addition, the operating rules for air carrier (Part 121) and air taxi (Part 135) operators, which were adopted in the original final rule, are amended to enable additional compliance time to be granted for the few interior components for which timely compliance cannot be achieved.

The FAA findings concerning the requested additional comments on the final flammability criteria are also presented.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Killion, Manager, Regulations Branch (ANM-114), Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 17900 Pacific Highway South C-68966, Seattle, Washington 98168; telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking (NPRM) No. 85-10, which was published in the **Federal Register** on April 16, 1985 (50 FR 15038), proposed to upgrade the flammability safety standards for materials used in the interiors of transport category airplane cabins.

As discussed in the notice, the FAA established a committee in June of 1978 to examine the factors affecting the ability of the aircraft cabin occupant to survive in the post-crash environment and the range of solutions available. The Committee was composed of fire safety experts from the FAA, National Aeronautics and Space Administration, the aerospace industry, and the general public. Included in the recommendations of this committee, which was known as the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee, were further research and development in regard to cabin materials and prompt evaluation and implementation of a method using radiant heat for testing cabin materials. The FAA concurred and initiated the necessary research and development. The resulting research and development program, which was managed and conducted primarily at the FAA Technical Center in Atlantic City, New Jersey, was designed to study aircraft fire characteristics, develop practical test methods, and investigate the feasibility of the various new standards being considered at that time.

Among the tests conducted at the Technical Center were full-scale fire tests using the fuselage of a military C-133 configured to represent a wide-body jet transport. The test conditions simulated representative post-crash external fuel-fed fires. Numerous laboratory tests were also conducted to correlate possible material qualification test methods with the full-scale tests. As a result of these tests, the Ohio State University (OSU) rate-of-heat-release apparatus, as standardized by the American Society of Testing and Materials (ASTM), ASTM-E-906, was determined to be the most suitable for material qualifications. The OSU rate-of-heat-release apparatus utilizes radiant heat, which the SAFER Advisory Committee recommended because it is most representative of the post-crash fire environment. The ability of the test method to adequately discriminate acceptable from unacceptable materials was verified using several generic materials. The generic materials covered a range of flammability characteristics and each was tested and ranked in the full-scale fire test facility. Sample materials were then tested and ranked using the OSU apparatus. The ranking of materials from the OSU tests was identical to that obtained in the full scale fire facility. Thus, the OSU apparatus demonstrated that it would properly rank the relative performance of interior materials in typical post-crash fires. The acceptance criteria proposed in Notice 85-10 were chosen in order to produce a significant retardation of the flashover event which controls occupant survivability, as experienced in the full-scale testing.

As proposed in Notice 85-10, all large interior surface materials installed above the floor in compartments occupied by the crew or passengers would have to comply with the new flammability standards. This would include sidewalls, ceilings, bins and partitions, galley structures, and any coverings on these surfaces. Smaller items, such as windows, window shades, or curtains, would not be included. Floor coverings, floor structure, seats, and service items would not be included for the reasons discussed in Notice 85-10.

As proposed, Part 25 would have required the use of cabin interior materials meeting the new flammability standards for all transport category airplanes for which application for type certification is made after the effective date of the amendment. As originally proposed, Part 121 would have required the use of such materials in all large airplanes newly manufactured 2 years or more after the effective date of the amendment and operated under the provisions of Part 121 or 135, regardless of the basis for type certification. (Section 135.169(a) incorporates the provisions of § 121.312 by reference insofar as operations with large airplanes are concerned.) In addition, all other large airplanes type certificated after January 1, 1958, and operated under the provisions of Part 121 or 135 would have had to be modified to use such materials the first time the cabin interior is replaced after a date 2 years from the effective date of the amendment.

The public comment period for Notice 85-10 originally closed on July 15, 1985; however, as announced in Notice 85-10A (50 FR 30447; July 26, 1985), it was reopened until September 9, 1985. Subsequent to the development of Notice 85-10, an industry trade association and the FAA Technical Center completed two series of round-robin tests to assess the reproductibility of test results using the OSU rate-of-heat-release apparatus among various laboratories. In the round-robin testing, the same group of materials was tested by each laboratory. This assessment was necessary because preliminary testing by the industry to evaluate the impact of the proposed rule yielded results significantly different from those obtained using the FAA OSU apparatus. During the retesting, samples of actual in-service panels and several materials representative of in-service interior panels were tested by the FAA, OSU, and two large airplane manufacturers. The first series of tests completed subsequent to issuance of Notice 85-10

indicated that the FAA apparatus had an incorrect heat flux calibration, and there were several significant areas where the other test apparatus differed from that of the FAA. The non-FAA test apparatus were modified to more closely match those of the FAA. After the second series of round-robin tests, much closer results were achieved among the laboratories.

Based on the round-robin tests, the Technical Center recommended certain adjustments in test procedures and acceptance criteria. In particular, the recommendations included: (1) Adjustment of the specimen exposure heat flux from 5 watts per square centimeter (W/cm^2) to 3.5 W/cm^2; (2) elimination of the oxygen depletion method of measuring heat release, leaving only the thermopile method; (3) adjustment of the acceptance criteria for total heat release over the first 2 minutes of sample exposure from 40 to 65 kilowatt-minutes per square meter; and (4) inclusion of a requirement for a peak heat release rate of 65 kilowatts per square meter. The FAA outlined these recommended adjustments in Notice 85–10A and requested public comments thereon.

Following the close of the reopened comment period, all comments were carefully considered; and Amendments 25–61 and 121–189 (51 FR 26206; July 21, 1986) were adopted accordingly. For reasons discussed in the preamble to these amendments, the adopted standards differ from those originally proposed in a number of respects:

1. The adjustments in test procedures and acceptance criteria recommended by the FAA Technical Center and proposed in Notice 85–10A were adopted in lieu of those originally proposed in Notice 85–10.

2. Airplanes with maximum seating capacities of 19 passengers or less are not required to meet the new standards.

3. As proposed, airplanes newly manufactured 2 years or more after the effective date and certain other airplanes in which the cabin interior is replaced 2 years or more after the effective date would have had to meet the new standards. As adopted, airplanes newly manufactured on or after August 20, 1988, must meet interim standards, and those newly manufactured on or after August 20, 1990, must meet the definitive standards. Similarly, certain airplanes in which the cabin interior is replaced on or after August 20, 1988, or August 20, 1990, must meet the interim or definitive standards, respectively.

4. Other nonsubstantive editorial changes were made for clarity.

Commenters responding to Notice 85–10 contended that the progress of this rulemaking initiative was, in general, outpacing developments in materials technology. Nevertheless, the FAA did not consider the comments received by that time sufficient to warrant abandoning the rulemaking or delaying it further, considering the increases in fire-safety that would be achieved. Amendments 25–61 and 121–189 were adopted accordingly; however, the FAA did request further comments on both the test procedure and the appropriateness of the performance criteria. The closing date for the further comments was January 21, 1987. The FAA stated that a document discussing all comments received, presenting FAA responses, and proposing any necessary further revisions to the new standards of Amendments 25–61 and 121–189, would be published in the **Federal Register**.

Following completion of the final rule but prior to its publication in the **Federal Register**, the Aerospace Industries Association of America (AIA) and Air Transport Association of America (ATA) jointly petitioned for further rulemaking that would substitute different test procedures and acceptance criteria. This petition was published in the **Federal Register** on July 21, 1988 (51 FR 26166) along with a request for public comments thereon.

As also discussed in the preamble to Amendments 25–61 and 121–189, some commenters expressed concerns regarding repeatability of test results using the FAA OSU test apparatus and procedures. The commenters noted that, in addition to the initial type certification testing, succeeding material lots would have to be tested from a production standpoint to ensure that their heat release characteristics are not degraded from those of material lot originally tested for type certification. Variations in test results would, therefore, necessitate the use of materials that nominally exceed the new standards of Amendments 25–61 and 121–189 to ensure that the results of individual tests are satisfactory. Such variations in test results could also create a situation in which a given material is found acceptable in the testing conducted by one manufacturer while the material is found unacceptable by another manufacturer. As a result of these concerns, the FAA conducted a third series of round-robin tests to determine whether certain additional refinements in the apparatus and procedures would improve the repeatability of test results. These tests were conducted at the FAA Technical Center, the facilities of two airplane manufacturers, and OSU, using common test specimens. Based on the results of these tests, the FAA Technical Center recommended certain further adjustments in the test apparatus and procedures.

Subsequent to the original closing date for comments but prior to their consideration, the Aviation Staff of the U.S. House of Representatives Committee on Public Works and Transportation requested the FAA to participate in a meeting held on February 6, 1987, concerning the interior materials rulemaking. The purpose of this meeting, which was also attended by representatives of the AIA, ATA, General Aviation Manufacturers Association (GAMA), Association of Flight Attendants (AFA), National Bureau of Standards (NBS) and Office of Management and Budget (OMB), was to enable the committee staff to hear an exchange of views concerning this rulemaking between the FAA and industry representatives. Minutes of this meeting, as prepared separately by the FAA, the AIA, and the ATA, have been added to the docket.

In response to requests from the AIA, ATA, and Suppliers of Advanced Composite Materials Association (SACMA), the comment period was reopened to April 21, 1987 (52 FR 5422; February 20, 1987). In conjunction with reopening the comment period, the FAA also outlined the further adjustments in the test apparatus and procedures recommended by the FAA Technical Center and requested public comments thereon.

Discussion of Comments

Comments were received from a diversity of interested parties ranging from organizations representing various domestic and foreign aircraft manufacturers and operators, to aviation trade unions. Commenters also included government organizations, foreign airworthiness authorities, and producers of candidate interior materials. Due to their interrelationship, comments received in response to the AIA/ATA joint petition for rulemaking have been considered along with those received in response to the request for comments contained in the preamble to Amendments 25–61 and 121–189. Virtually all commenters supported the intent of these amendments to increase airplane fire safety. Many of the commenters are in full support of the standards established by these amendments, while others express concerns regarding the viability of the test method, availability of suitable materials, and cost of compliance.

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Three commenters are critical of the full-scale testing that was the basis for the new standards. In that regard, one noted that the testing did not include consideration of external wind effects. While the full-scale testing was conducted in zero wind conditions, the effects of wind were considered. The full-scale testing was preceded by a series of tests in which the effects of wind were evaluated. From those tests, it was concluded that a zero wind condition is the most critical insofar as the contribution of interior materials to the fire is concerned.

Two commenters note that the panels used in the full-scale testing were "generic" and differed somewhat from actual panels used in specific airplane models. Due to these differences, the commenters allege that the results of the full-scale testing are invalid. One of the two commenters recommends that the full-scale fire test should be repeated with industry support using interior panels "acceptable for aircraft interiors." Prior to conducting the full-scale testing, the FAA attempted to purchase representative panels used in actual airplanes. Because the aircraft manufacturers were unable or unwilling to supply such panels, it was necessary to obtain "generic" panels constructed specifically for the testing. While these panels did differ in detail from panels used in actual airplanes, they were constructed of five basic types of facing materials used in the construction of panels of actual airplanes, and the decorative film and the honeycomb core used in the construction of such panels. Following completion of the full-scale testing, specimens of these "generic" panels were used in laboratory tests to obtain a correlation of laboratory test data with the data from the full-scale testing. Because the "generic" panels were used primarily to correlate full-scale and laboratory test data, their use did not, in any way, invalidate the results of the full-scale test. Rerunning the full-scale test would, therefore, provide no benefit insofar as this rulemaking is concerned; and it would unduly delay the safety benefits that will result from the new standards.

One commenter points to a full-scale test conducted in the Federal Republic of Germany as evidence that the FAA correlation of full-scale and laboratory testing has not been proven. The commenter asserts that the latest state-of-the-art materials were used in this test which was conducted in June of 1986 by the Ministry of Transport. The final report of this test is not available to the FAA as of this writing; however, the FAA has been advised informally that the test was conducted using a portion of the fuselage of a wide body transport category airplane currently produced in Europe with interior furnishings that are typically used in that airplane model. Contrary to the commenter's assertion, the FAA has been advised that the interior materials involved had very high heat release values. The fact that an early flashover occurred when materials with high heat release values were used supports the FAA correlation of full-scale and laboratory testing rather than discredits it.

A number of commenters express their belief that the OSU rate-of-heat-release apparatus and procedures are not viable means to establish the acceptability of materials used in the interiors of airplanes. In this regard, they note variations in test results that were obtained when specimens of the same materials were tested in different facilities. As noted above, a round-robin test series was conducted shortly after the issuance of Notice 85-10. During that test series, it was found that the heat release readings obtained at the FAA Technical Center were consistently lower than those obtained with the same materials at each of the other three facilities. Since that time, refinements in the test apparatus and procedures have been developed and verified in two subsequent round-robin test series. These refinements, which are adopted herein, have reduced the variations in test results considerably, and the FAA Technical Center facility no longer consistently produces the lowest test results. The reproducibility has been reduced to ±7.68 percent standard deviation for total heat release and to ±7.82 percent for peak heat release. The repeatability of test results at a given facility has also been improved. The average of the repeatability at the five facilities is ±5.23 percent. It must be noted that the test procedures specify that the total heat release readings for each of three or more samples must be averaged and the peak heat release for each of the samples must also be averaged. Averaging the readings of three or more samples mitigates the remaining differences due to test repeatability considerably. One commenter asserts that it is absolutely essential that all test chambers give the same results at all times. This, of course, is a desirable goal, but its achievement is impossible, as it is with any testing. Considering the inherent variability in fire testing, these reproducibility and repeatability values are considered to be remarkable. They are, in fact, much better than those that would be obtained with Bunsen burners which have been FAA standards for fire testing for years.

One commenter states that the FAA did not determine whether other laboratory test devices could be developed to reliably predict the full-scale fire performance of cabin interior materials, and another recommends that the FAA should do so at this time. Contrary to the commenter's statement, the FAA has considered other devices. The FAA sponsored a study by the NBS in which the relative performance of the OSU apparatus, the NBS cone calorimeter, and other possible devices were compared. While the NBS reported ("The Role of Aircraft Panel Materials in Cabin Fires and Their Properties"; DOT/FAA/CT-84/30 dated June 1985) only fair agreement for energy release data, the materials tested were ranked in the same order by the two devices. An independent comparison of the OSU apparatus, the NBS cone calorimeter, and a Swedish device was conducted in Sweden and reported in the *Journal of Fire and Materials* Vol. 9, No. 4, 1985. According to the report, there was a good correlation of test results among the three devices. There is, therefore, no basis on which to believe that the NBS cone calorimeter or any other device is superior to the OSU rate-of-heat-release apparatus. Unlike that with the OSU apparatus, there has been very little experience in testing airplane interior materials with the other devices; and considerable development would be required to reach the current performance level of the OSU apparatus. The substitution of another device, such as the NBS cone calorimeter, as the required test method would result in an unwarranted delay in the introduction of improved materials in service. In addition, the NBS cone calorimeter is understood to be considerably more expensive than the OSU apparatus, and none are currently in service or available to U.S. airplane manufacturers. Nevertheless, an applicant would have the option of developing and utilizing an alternate test method, such as the cone calorimeter, under the equivalent level of safety provisions of § 21.21(b)(1).

Some commenters assert that the OSU rate-of-heat-release apparatus and the definitive acceptance criteria of 65 kilowatt-minutes per square meter and 65 kilowatts per square meter do not separate materials they characterize as "desirable" from those that are "undesirable." In this regard, they cite test results in which certain specimens of "undesirable" materials are shown to have heat release characteristics that

are better than those of certain specimens of "desirable" materials. Contrary to this assertion, the OSU apparatus and the acceptance criteria do discriminate all but borderline materials. Actually, there is no definition of "desirable" and "undesirable" in this context. These criteria are standards; and, as such, are the minimum values considered acceptable in light of the full-scale testing. It must be recognized that there are frequently variations in examples of a basic generic material and corresponding ranges in performance. These may be due to production tolerances or may be the result of intentional tailoring of the material composition and processing for specific applications. There may also be variations in the finished products due to the type and thickness of decorative finishes applied. Due to these variations, materials cannot be considered "desirable" or "undesirable" on a generic basis. Individual component specimens could exceed the 65 kilowatt-minutes per square meter and 65 kilowatts per square meter standards as long as the average of the heat release values for the tested specimens of that component is equal to or below the 65/65 standard. The FAA has worked with the manufacturing industry to develop improved quality control measures to minimize variations between specimens of components tested in the OSU test chamber. In the case of borderline materials, it must be recognized that some samples will pass and some will fail due to these variations.

Several commenters question the statement in the preamble to Amendments 25–61 and 121–189 that, "compliance with this rule is possible within the current state-of-the-art in cabin materials." In this regard, they assert that the new definitive standards of 65 kilowatt-minutes per square meter and 65 kilowatts per square meter are beyond the capability of the best state-of-the-art materials used in current production and that new materials and processing technology must be developed before industry can comply with the rule. One commenter further states that virtually every interior part in current production must be changed. The reference to "current state-of-the-art" was not intended to mean that the components currently produced for the interiors of transport category airplanes would all meet the new standards. If that were the case, the new standards would provide no improvement in safety. Instead, the statement referred to materials which are currently in production by material suppliers and from which such components can be fabricated by the airplane manufacturers. Clarification of this point has been made to the industry on numerous occasions. The commenter further states that new technology, at present unidentified and undefined, is required for some areas of the interior in order to comply with the new standards. Another commenter states that none of the new candidate materials are viable because they have characteristics that are unacceptable for production airplanes. The commenter then lists six such materials or processes and provides reasons why, in the commenter's opinion, none of the six can be used to meet the new standards. Typically, the reasons cited include high forming temperatures and the need for new, sophisticated tooling.

In contrast to these negative comments, other commenters cite various new materials and processes which meet the definitive standards and are available. Although new or modified manufacturing processes are required in some instances, the materials are currently being produced and are available for use in the manufacture of the interior components. That components made from these materials will meet the definitive standards is evidenced by testing conducted at the FAA Technical Center and other test facilities. It must be noted that, in most instances, these new materials are the products of established, credible companies. It appears that some of the negative comments were based on earlier variants of these materials, as the disadvantages cited for some of the materials are not currently true.

Some of the major interior components currently in service also meet the new standards. One major manufacturer, for example, has been producing transport category airplanes for a number of years with interior sidewall panels constructed of aluminum with a laminated decorative finish. This construction easily meets the new flammability standards. It is alleged by one commenter that such panels are less resistant to penetration of an external fire into the cabin and therefore present a greater hazard than certain other materials that do not meet the new standards. It appears, from testing previously conducted by the FAA, that flame penetration through windows or possibly through the cabin air return grills would occur much earlier than penetration through the fuselage external surface, any insulating material, and the aluminum interior panels. In any event, flashover from such a fire would occur much later than it would occur from a fire that enters the cabin through a fuselage rupture, giving occupants more time to egress safely.

The phenolic resin fiberglass construction extensively used by another major airplane manufacturer marginally meets the new standards. This construction appears to be too marginal as currently used to be a viable means of compliance, considering production tolerances, test variations, etc. Nevertheless, it easily meets the new standards with the application of a recently developed, currently produced laminate.

In light of this and other information available to the FAA, the contention that no materials will be available in time to meet the definitive standards is not credible. Nevertheless, it is recognized that no single material or construction is feasible for use in every component that must meet the new standards, due to various functional and aesthetic considerations. While the FAA does not agree that the concerns stated by the commenters are, or are likely to become, widespread, additional time may be needed in order to develop new materials and production methods for a few unique components. For example, carpeting is generally used on the lower cabin sidewall panels, for protection from abrasion. To date, no carpeting, or other material suitable for such protection, has been shown to meet the new standards. (Carpeting used as a floor covering does not have to meet the new standard for the reason discussed in Notice 85–10.) Additional time will be needed to develop carpeting that meets the new standards or a suitable substitute material. Many materials that meet the new standards and can be used in the fabrication of typical interior components cannot be used in the fabrication of certain other components due to unique shape or functional considerations. There are promising new materials that can be used for these unique components; however, additional time will be needed to develop new fabrication processes for those materials. Rather than addressing these concerns by issuing an extension of the compliance time for materials in general, the FAA is providing for an evaluation, on an individual basis, of those relatively few components which may not meet the new standards. If, as a result of that evaluation, a determination is made that special circumstances exist that make compliance impractical, and that there would be no significant adverse effect on the overall flammability of the cabin, relief may be granted with respect to those few components. Section

121.312(a) is amended to enable the Manager of the Aircraft Certification Division, FAA Northwest Mountain Region, to grant such relief in the form of a deviation from the requirements of that paragraph. A request for a deviation from the requirements of § 121.312(a) must be based on a thorough and accurate analysis of each component used in the airplane cabin, the steps that are being taken to achieve substantial compliance, and, for the few components for which timely compliance cannot be achieved, credible reasons for such noncompliance. Such deviation may be granted to operate airplanes manufactured within 1 year after the applicable date specified in § 121.312(a) or those in which the interior is replaced within 1 year after that date.

Following completion of Amendments 25–61 and 121–189, but prior to their publication in the **Federal Register**, the ATA and AIA jointly petitioned for further rulemaking in which the standards contained in Amendments 25–61 and 121–189 would be replaced by alternate test criteria and standards which they proposed. The ATA and AIA, which represents the major U.S. airlines and the major U.S. manufacturers of transport category airplanes, respectively, were supported in their petition by certain European airplane manufacturers and the International Air Transport Association (IATA). As noted above, comments received in response to this petition were considered along with those received in response to the request contained in the preamble to Amendments 25–61 and 121–189. In essence, the petitioners' proposal involves the following:

1. The adopted definitive standards of 65 kilowatts per square meter for peak heat release and 65 kilowatt-minutes per square meter for 2 minutes would be relaxed to 100 Kilowatts per square meter and 100 kilowatt-minutes per square meter, respectively. These proposed final standards would be the same as the interim standards currently required by Amendment 121–189. The OSU test apparatus and procedures would be retained.

2. The time by which affected components would have to meet the proposed standards would be delayed from August 20, 1988, until a date 3 years after the new rulemaking became effective.

3. A smoke release test using the NBS Smoke Chamber (ASTM F814–83) would be required. Although not currently required by regulation, the petitioner states that the NBS smoke chamber is already in use by domestic and European airplane manufacturers as part of their materials acceptance procedures.

4. A two-tier certification procedure would be used. In lieu of testing representative completed parts, only the basic material systems from which parts would be fabricated later would be subjected to the OSU radiant heat release test and the smoke test. Completed parts would be subjected only to the flammability test requirement that was in effect prior to the adoption of Amendments 25–61 and 121–189.

In support of their proposal, the petitioners assert that adoption of these changes would enhance public safety by the use of proven fire test methods to eliminate the use of undesirable cabin materials and would permit the orderly incorporation of improved materials in production airplanes with a minimum of disruption to public service. The petitioners' proposal is based on the premise that the standards of Amendments 25–61 and 121–189 preclude the use of certain "desirable" materials because their peak and 2-minute heat release values exceed 65 kilowatts per square meter and 65 kilowatt-minutes per square meter, respectively. Raising these standards to 100 kilowatts per square meter and 100 kilowatt-minutes per square meter would allow these materials to pass insofar as testing with the OSU apparatus is concerned. In order to preclude the use of "undesirable" materials that have heat release values less than 100 kilowatts per square meter and 100 kilowatt-minutes per square meter, a smoke test would also be required. According to the petitioners, "undesirable" materials in this heat release range have excessive Smoke release characteristics.

A number of commenters support the petitioners' proposal by citing their beliefs that the OSU apparatus and test procedures do not discriminate "desirable" materials from those that are "undesirable" and that there will be no materials or processes available in sufficient time to comply with the new standards.

Other commenters disagree. Some cite various available materials and processes which are already or will be available to meet the new standards. Some question the validity of the smoke test in assessing the flammability characteristics of interior materials.

The petitioners propose a delay in implementing the new standards until a date 3 years after the date on which their proposed rulemaking would become effective. Considering the time required for the normal rulemaking process, this would mean that the petitioners' proposed standards would not be implemented for at least 4 years. None of the commenters, including the petitioners, have presented convincing arguments to date as to why even the much more stringent adopted definitive standards cannot be met by August 20, 1990. As most of the affected components in currently manufactured transport category airplanes already meet the petitioner's standards, there is virtually no evident need for the proposed delay if the petitioners' proposed standards were adopted.

As noted by the National Transportation Safety Board (NTSB) in their comments to the docket, there has been no scientific correlation made between the rate of heat release and smoke production. The NTSB comment is consistent with testimony of NBS and FAA Technical Center fire safety experts in the meeting with the Staff of the House of Representatives Committee on Public Works and Transportation on February 6, 1987.

As shown in the full-scale test and other testing, the critical factor in survivability is the time afforded for egress before flashover occurs. The release of large quantities of heated gases, which eventually result in flashover, is not relative to the amount of smoke released. The correlation of the amount of heat released by materials to the time of flashover and, in turn, to the time in which survival is possible is based on scientific testing and analyses conducted by the FAA and others. In contrast, the fact that certain materials, which are classed as "desirable" by the petitioners and the supportive commenters, exhibit low smoke release characteristics is a fortuitous coincidence, and any conclusions derived from that coincidence are not based on scientific evidence. In this regard, the FAA understands that the interior materials involved in the early flashover experienced in the German full-scale test met the manufacturer's smoke emission criteria.

The NTSB also concurs with the FAA belief that insufficient flammability data are available to determine whether there is a correlation between the flammability of individual components of an assembled system and the flammability of the system. The FAA is, in fact, unaware of any data developed to show such a correlation. The petitioner's proposal to use a two-tier certification procedure is, therefore, considered inadequate.

One commenter recommends that the Fire Research Center of the NBS should

review the technical basis of the new flammability standards as adopted (i.e., the correlation of large-scale and laboratory testing, the test procedure and the acceptance criteria) and the petitioners' proposal. The NBS has already reviewed the new standards. There was, in fact, extensive cooperation between the FAA Technical Center and the NBS throughout the development of these standards. In regard to the petitioners' proposal, a fire safety expert of the NBS testified, in the meeting with the Staff of the House of Representatives Committee on Public Works and Transportation, that there was no scientific correlation of smoke release and flammability of materials.

Because there is no known correlation between smoke release and flammability, the petitioners' proposal would merely relax the standards adopted with Amendments 25–61 and 121–189. There are few interior materials used in current production of transport category airplanes that do not have heat release characteristics that are better than the standards proposed by the petitioner. There would, therefore, be virtually no improvement in cabin fire safety if the petitioners' proposal were adopted in lieu of the recently adopted standards of Amendments 25–61 and 121–189.

Some commenters do, however, believe that standards for smoke emission should be established in addition to the recently adopted flammability standards. Although smoke testing has not been shown to be of any value as a substitute for appropriate flammability standards, they believe that it should be conducted to minimize any direct hazards due to smoke, such as obscuration of escape routes, etc. Smoke testing was proposed by the ATA and AIA in their joint petition for rulemaking and offered for public comment. In light of the comments received and because it would place no additional burden on the manufacturers, § 25.853(a) and Appendix F are amended to require smoke testing in order to preclude the indiscriminate use of materials which produce excessive smoke, since suitable alternative materials are available. A corresponding amendment is also made to § 121.312(a) to require smoke testing coincident with the definitive rate of heat release standards.

The final disposition of the petitioners' request is the subject of a separate document and, except as noted above, no further action concerning their proposals is taken insofar as this rulemaking is concerned.

Two commenters believe that the flammability standards should be extended to window shades, and one of the two believes that they should also be applicable to curtains. Small parts, such as window shades, are not required to meet the new standards because their overall contribution to the flammability of the cabin interior is small. It is also noted that window shades are normally retracted behind the sidewall panels and not exposed to flames during the time period in which survival is still possible. The OSU rate-of-heat-release apparatus and procedures are not adaptable for testing fabrics. Requiring curtains to meet heat release standards would require the development of new test method which would be beyond the scope of this rulemaking.

One commenter believes that tapestries installed on bulkheads for aesthetics should be excluded from meeting the new standards. The commenter asserts that they constitute less than 1 percent of the interior linings's exposed surface; they are local and isolated so that they cannot contribute to the progression of a flame in a longitudinal direction; and their contrast in design, color and texture adds an important element to the otherwise stark interior lining. The FAA does not concur that such tapestries should be excluded. The addition of the tapestry as an integral part of the bulkhead may compromise the ability of the bulkhead to meet the new standards and add to the overall flammability of the interior. The comment that such tapestries cannot contribute to the progression of a flame in a longitudinal direction does not appear to be relevant, as a bulkhead containing a tapestry may be near a rupture in the fuselage sidewall. If there were such a rupture, the bulkhead could be in the direct path of an external fire as it enters the cabin. Although such tapestries do improve the appearance of the interior, the safety improvements that will result from the new rule far outweigh any aesthetic considerations.

One commenter notes that § 25.853(a-1) states: ". . . The outer surfaces of galleys. . ." and inquires whether this means the outer decorative finish will be tested and structural panels will not be tested. Structural items, to the extent they form the outer surfaces of galleys, large cabinets, stowage bins, etc., must be tested with the decorative laminate installed. Internal structure that is protected from exposure to flames during the time period when survival is possible (i.e., until flashover occurs) is not required to meet the new standards.

One commenter believes that passage stowage bins may be opened and left open by passengers in panic situations after a controlled crash. The commenter, therefore, believes that the construction materials used on the inside of stowage bins should also meet the new standards. While it is possible that some bins may be left open, they will generally remain closed on instruction of the crewmembers to leave personal belongings behind and evacuate the airplane immediately. For the few that might be left open, much of the interior surface would be isolated from the fire by the bin contents. It is, therefore, not considered necessary to require the inner surfaces of passenger stowage bins to meet the new standards. Generally, the inner surfaces of such bins are constructed of the same material as the outer surfaces, less the decorative laminate. In that case, the materials would be shown to meet the new standards when tested as an outer surface.

One commenter inquired as to whether the test is to be conducted with a simulated specimen made with the same materials and processes used for the production article or with the individual surface components. Another commenter recommends that the final specification of test panel thickness be delayed until more experience has been gained in interior panel construction with the new materials. Section 25.853(a-1) specifies the components which must meet the requirements of Part IV of Appendix F. It is not necessary to test the production articles, per se; however, the test specimen must have a thickness representative of the production article, rather than an arbitrarily specified thickness, in order to ensure that the production article does, indeed, meet these standards.

One commenter believes the figures are deficient and must be revised in order to better reflect the test apparatus. The commenter does not note any specific areas; however, the FAA will monitor compliance with the new standards and propose changes to the figures in the future if shown desirable as further experience is gained. In the same vein, another commenter believes an advisory circular (AC) should be prepared to provide guidance in showing compliance with the new standards. The FAA concurs that the preparation of an AC could be beneficial; however, the FAA does not consider it to be essential or necessary for compliance with the rule. It will, therefore, be delayed in order to benefit from the initial experience in showing compliance with the new standards.

Two commenters request further clarification of the phrase "substantially complete replacement" that appears in

§ 121.312(a) (5) and (6). For reasons discussed in the preambles to Notice 85–10 and to Amendments 25–61 and 121–189, these subparagraphs generally apply only when all of the components subject to § 25.853(a–1), i.e., interior ceiling and wall panels (other than lighting lenses), partitions, and the outer surfaces of galleys, large cabinets, and certain stowage compartments, are replaced. The qualifying term "substantially complete" is used, however, to ensure that persons cannot circumvent the intent of the rule by replacing all but a small, insignificant portion of the components. Generally, there would be a complete replacement of the interior if all but a few units of the affected components are replaced. For example, compliance with the new standards would be required if all of the components subject to § 25.853(a–1), except a few sidewall panels, were replaced, or if all but a few storage bins were replaced. It is not possible to precisely define "few units," because the number will vary with the total number of units in the airplane and the relative size of the units. It is recognized that a person could avoid using materials that meet the new standards by replacing a portion, e.g., 50 percent, at one time, and the remainder at a later date. It does not, however, appear that this will become a widespread practice. Nevertheless, if materials that do not meet the new standards do remain in service in a significant number of air carrier airplanes because they are not replaced as anticipated, and a substantial increase in overall safety can be realized, the FAA will, as noted in the preamble to Notice 85–10, consider a mandatory retrofit program in a subsequent rulemaking action.

Two commenters suggest editorial changes for clarity. One believes that a new § 25.853(a–2) should be added to state that, "smaller items, such as windows, window shades, or curtains, as well as floor coverings, floor structure, seats, and service items, are not included and do not have to meet the requirements in (a–1). All of such materials have to meet the flammability requirements prescribed in paragraph (a) of this part." As discussed in the preamble to Notice 85–10, these would be correct statements. It does not appear, however, that clarity would be enhanced by their addition. These items are clearly not required to comply with the new standards due to their absence in § 25.853(a–1). The other commenter suggests that the word "component" should be deleted from § 121.312 (5) and (6). As the reason for this deletion, the commenter repeats a statement in the preamble to Notice 85–10 that replacement of individual components on a piece-meal basis will not significantly increase the level of safety and might result in incompatibility of parts. This, of course, does reflect the intent of the rule; however, the current wording does not imply that individual components would have to meet the new standards, and the phrase "components subject to § 25.853(a–1)" is necessary to exclude the components not subject to § 25.853(a–1). For example, whether the seats or flooring is replaced is not relevant to a determination that there is a "substantially complete replacement" of the components that must meet these flammability standards.

One commenter requests clarification of whether galley inserts such as oven racks, standard units, meal trolleys, waste trolleys, etc., must meet the new standards. Generally, such items do not have to meet the new standards because they are not exposed when they are stowed. There are, however, interior arrangements in which major surfaces of such items are exposed even when they are stowed. If the exposed surfaces of such units, individually or collectively, comprise a surface area that is significant from a flammability standpoint, the exposed surfaces must comply with the new flammability standards.

The statement in the preamble to Amendments 25–61 and 121–189 that "components removed from one airplane, refurbished and installed in another airplane on a rotational basis would have to meet the new flammability requirements" is characterized by one commenter as a new requirement that was added in the final rule without being proposed in Notice 85–10. The commenter appears to be confusing the word "replacement" with the qualified term "essentially complete replacement." As discussed in the preamble, interior components that are removed, refurbished, and reinstalled in the same airplane would not be "replaced." Because they would not be replaced, § 121.312(a)(6) does not require these components to meet the new standards, regardless of whether they constitute all, or essentially all, of the cabin interior components subject to § 25.853(a–1). If, on the other hand, the refurbished components installed in the airplane are not those removed earlier from that airplane, the components removed from the airplane have, by definition, been "replaced." The fact that certain components have been "replaced" does not, in itself, mean that the newly installed components have to meet the new standards. As discussed above, whether the components that "replace" the removed components have to meet the new standards depends on whether there is an "essentially complete replacement" of the cabin interior components.

The same commenter states that the FAA failed to comply with the requirements of § 604(a) (2) and (3) of the Administrative Procedures Act (APA) by not discussing significant comments and alternatives provided by parties affected by the Notice. The commenter lists a number of comments which, according to the commenter, were not discussed. Actually, the listed comments were discussed in varying depths. That the FAA did not accept the commenter's position does not mean that the comments were not considered. The commenter must recognize that when comments are in conflict with other comments or with other information available to the FAA, the FAA must accept the position deemed to have the most credence. The commenter is particularly disturbed that the alternative standards proposed in the joint ATA/AIA petition for further rulemaking were not evaluated and addressed in the preamble to Amendments 25–61 and 121–189. Although the petitioners had informally indicated their intent to petition for further rulemaking earlier, neither the petition nor any supporting data were received prior to December 24, 1985, when the rulemaking was completed and forwarded from the FAA for executive review. Delaying the rulemaking until the petition was received would have resulted in an unwarranted delay in the implementation of the new safety standards. Nevertheless, the FAA did provide for further consideration of the matter by requesting the additional comments addressed in this document.

One commenter believes that requiring compliance with interim standards within 2 years and with the definitive standards within 4 years will result in greater costs than requiring compliance with the definitive standards within 2 years, as originally proposed. As the basis for this belief, the commenter states that interior materials meeting the interim standards will not be acceptable to airlines taking delivery both before and after the interim period because of costly complex spares and maintenance problems.

Compliance with the interim standards is not expected to present a significant burden in itself, because, as noted above, there are few interior

materials used in current production of transport category airplanes that do not have heat release characteristics that are better than the interim standards. As discussed in the preamble to Amendments 25–61 and 121–189, the interim standards were established primarily to prevent any degradation in the present level of safety due to increased use of materials found to be especially flammable. While some airlines may choose to voluntarily use components that meet the definitive standards in airplanes produced during the interim period, it does not appear that their choice would be due to spares and maintenance considerations. Typically, the interior components that must meet these standards do not fail unexpectedly in service. Rather, they deteriorate on a slow, predictable basis due to wear and tear. Even when deteriorated, such components are frequently refurbished and reused. Consequently, there is no need to maintain an extensive supply of spares for such components; and having two interior configurations would not significantly increase the number of spares needed. It appears that a more likely reason for voluntarily using components that meet the definitive standards during the interim period would be the safety benefits that will result from their use. In any event, costs due to voluntary compliance are not attributable to this rulemaking.

The only comments received concerning the further adjustments in the test apparatus and procedures recommended by the FAA Technical Center are outlined in the notice of reporting of the comment period are favorable. These adjustments are, therefore, adopted as proposed.

Since the time Amendment 25–61 was adopted, questions have been raised concerning the applicability of the type certification standards contained in that amendment to cabin windows and clear vision panels in cabin partitions, galleys (including galley carts and other rotatable galley equipment), and isolated compartments. The FAA will address these issues in separate rulemaking or advisory action.

Other nonsubstantive editorial changes have also been made for clarity. In particular, § 121.312(a) (1), (2), (5), and (6) have been changed to clarify that only compliance with § 25.853(a–1) is required, not § 25.853 in its entirety. Minor nonsubstantive changes have also been made in the test procedures to more closely reflect the manner in which the tests are actually conducted.

Regulatory Evaluation

I. Evaluation of Cost and Benefits

Two commenters reiterate their earlier contentions that the actual cost impact will be greater than the value estimated in the original regulatory evaluation for these amendments. The FAA considers these comments worthy of further discussion. A revised regulatory evaluation reflecting the issues raised by these comments has been placed in the docket, and the revisions are summarized below.

The contentions of the commenters are based, to a large extent, on the premise that no suitable candidate materials will be available in time to comply with the new standards. The FAA is aware of some materials that meet the new standards and are currently in use in the cabins of transport category airplanes. Other materials are available for such use. As discussed above, § 121.312(a) is amended to provide relief for the few unique components for which timely compliance cannot be achieved. The rule has, therefore, been revised to accommodate their concerns to the limited extent to which the FAA concurs with those comments.

It is difficult for either the FAA or the manufacturing industry to estimate the compliance costs of the new flammability standards with great precision. The development of the new or modified manufacturing processes found necessary or desirable for the fabrication of compliant interior components involves experimentation with unfamiliar applications of relatively new materials. Estimates by manufacturers can, therefore, be expected to be extremely conservative because of this uncertainty. While the FAA does not consider the cost of compliance to be nearly as great as the manufacturers' estimates, the FAA does acknowledge that the adoption of these new flammability standards will be more costly than originally estimated. Due to this same uncertainty, it is difficult to predict the exact extent of the difference between the amount originally estimated and the actual cost. Nevertheless, the FAA still considers that the new standards are in the best overall interest of the public. It is difficult to separate the incremental costs of the rule from the cost of the ongoing research and development efforts of materials suppliers, interior manufacturers, and airplane manufacturers. Indeed, in its regulatory evaluation, the FAA anticipated that approximately 48 percent of the U.S. airplane fleet would have met the new standards voluntarily by the year 2000; therefore, no benefits were attributed to the rule for those airplanes. This voluntary action would have a similar mitigating effect on the costs of the rule. This mitigating effect was not fully recognized by the commenters. The rulemaking action of the FAA will expedite the movement toward improved flammability characteristics for airplane interiors that industry has been pursuing in recent years.

Furthermore, the FAA only estimated potential benefits that could be realized by U.S. air carriers. United States manufacturers, however, included production costs for future airplane deliveries to foreign airlines in their cost estimates. Consequently, these estimates were excessive, even after allowance is made for airplanes that will be delivered by foreign manufacturers to U.S. air carriers.

Additionally, the FAA estimate of benefits attributable to the rule was extremely conservative. The benefits were estimated using a value of only $650 thousand per statistical fatality avoided. The Department of Transportation currently advocates a *minimum* value of one million dollars per statistical fatality avoided. The FAA originally estimated that an average of only about nine lives could potentially be saved per year if all large transport category airplanes operated by U.S. air carriers were equipped with interiors that have improved flammability characteristics as a result of both voluntary and FAA mandated actions. This estimate, however, was excessively low because of a misinterpretation of the data used in its derivation. The estimate should have been that, on average, from nine to sixteen lives could potentially be saved per year from both voluntary and FAA mandated actions, growing as traffic activity, and consequently passenger exposure, increases over time. The FAA estimated that the rulemaking itself would contribute to the realization of these potential safety improvements at a very slow pace, with the cumulative share attributable to the rulemaking increasing in annual increments of three percent from zero through 1988 to only 36 percent by the year 2000, resulting in a total of about 30 potential fatalities avoided. Thus, any appreciable benefit from the FAA action would not be realized until very late in the analysis period. Furthermore, the most substantial benefits would not be realized until well in the future, far beyond the 15 year analysis period used in the FAA regulatory evaluation. Nevertheless, this is a long term problem requiring a long term solution; and, to

achieve the safety objective, immediate action is necessary.

One final point must be made with respect to the evaluation of benefits. Although estimated benefits have been based upon average annual values in the evaluation to reflect the fact that an accident could occur at any time during the analysis period, the benefits of the rule will, in all likelihood, be realized in a more random, erratic manner, and in much larger increments. Thus, this rule could prevent numerous casualties in an accident occurring relatively soon after its implementation, or in an accident that does not occur until twenty to thirty years later. This rulemaking is intended to prevent the worst case scenario.

Some trade association commenters estimated that the cost of the rule to its members would be approximately $400 million through 1999, or about $300 million when discounted to the present. The FAA has reviewed those estimates and has concluded that they are somewhat high. The FAA considers that the cost to U.S. firms attributable to regulatory action would not exceed about $250 million through 1999, or about $175 million when discounted to the present. The cost per fatality avoided (discounted present value), based upon saving 30 lives during the analysis period, would be approximately $5.8 million. Although this cost per fatality avoided may seem somewhat high, it must be remembered that this rulemaking action represents only the beginning of a long term solution, and that many of the benefits of the improved flammability standards will not be realized until long after the analysis period. Further, to put the costs of this rule into a more practical perspective, the cost per U.S. enplanement would only be on the order of ten cents when annualized into the future using a capital recovery factor, and divided by the number of enplanements forecast for U.S. air carriers in future years. (The cost per enplanement would be even lower if future worldwide enplanements were considered.) Ten cents per enplanement is far below any meaningful threshold of perception by the typical airline passenger—the ultimate bearer of the cost of this rulemaking.

The present amendments involved minor refinements in the test procedures and apparatus required to demonstrate compliance with the standards adopted in the 1986 final rule for materials used in the cabins of certain transport category airplanes, an additional requirement for smoke testing, and a provision that would allow deviations to be granted under special circumstances for those few components for which timely compliance cannot be achieved.

The refinements in the test apparatus and procedures are intended only to improve the repeatability of test results from one test run to another and from one laboratory to another. These refinements do not involve any changes in the heat release standards adopted in Amendment Nos. 25–61 and 121–189, and therefore will not affect those materials found to be acceptable under the new standards. The cost of these refinements is only a few hundred dollars per test apparatus.

The new requirement for smoke testing is not expected to be very costly because most airplane manufacturers and the larger firms that manufacture aircraft interiors already conduct such testing routinely as part of their procurement procedures. Some additional expense will be incurred, however, as a result of conducting these tests to meet a formal FAA certification requirement rather than for less formal purposes. Further, there are approximately a half dozen smaller firms that fabricate cabin interior retrofit kits and most of these firms will find it necessary to obtain a smoke test chamber. This equipment can be acquired for about $30,000 per unit. However, because those materials meeting the recently adopted heat release standards also meet the new smoke standards, the smoke test will not affect those materials found to be acceptable under the new heat release standards. Therefore, no costs will be incurred as a result of the need to change materials to meet the smoke test requirements.

Finally, the deviation authority is intended to provide relief to operators only *after* the FAA has determined that special circumstances exist. Because this provision is transitional and will involve relatively few components, any impacts that may result are expected to be minimal.

II. Regulatory Flexibility Act Determination

A Final Regulatory Flexibility Determination was made in compliance with the Regulatory Flexibility Act. The original conclusion that the amendment would not result in a significant economic impact on a substantial number of small entities is not altered by the revised cost estimates or by the present amendment. The airframe manufacturers affected by the amendments in Part 25 are not small entities. Small entities that conduct operations under Part 121 are defined by FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance*, as operators that own nine or fewer aircraft. Most small entity operators typically use airplanes at the smaller end of the airplane size range found in Part 121 operations, and therefore would use the least expensive new interiors and interior replacement kits. Consequently, any incremental costs resulting from the amendments to Part 121 are not expected to be burdensome, especially for existing airplanes because the interiors of these airplanes are replaced very infrequently, and the amended rule only requires that the new standards be met at the first substantially complete replacement of the cabin interior. Finally, the only small entities that could potentially be affected by the present amendments are the small manufacturers of interior retrofit kits that might find it necessary to obtain smoke test chambers. Order 2100.14A establishes the criteria for a "a substantial number of small entities" as "a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule." Because there are only about a half dozen smaller firms that fabricate retrofit kits (and some of these may even be too large to be considered small entities under Order 2100,14A), there are less than the eleven firms necessary to meet the "substantial number" criteria. Therefore, the FAA has determined that both the previous and the present amendments will not result in a significant economic impact on a substantial number of small entities.

III. International Trade Assessment

This amendment will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S., as there are no significant benefits or costs. Also, airplanes newly manufactured for the U.S. market will have to comply with the rules, regardless of whether they are made by a U.S. or a foreign manufacturer.

Federalism Implications

The regulations adopted herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

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Conclusion

For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291. The FAA has determined that this action is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this rule does not have a significant economic effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since none would be affected. A regulatory evaluation of this action, including a Regulatory Flexibility Determination and a Trade Impact Assessment, has been prepared for this regulation and has been placed in the docket. A copy of this evaluation may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Flammable materials, Transportation, Common carriers.

Adoption of the Amendment

Accordingly, Parts 25 and 121 of the Federal Aviation Regulations (FAR), 14 CFR Parts 25 and 121 are amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 25.853 by revising paragraph (a–1) to read as follows:

§ 25.853 Compartment interiors.

* * * * *

(a–1) For airplanes with passenger capacity of 20 or more, interior ceiling and wall panels other than lighting lenses), partitions, and the outer surfaces of galleys, large cabinets, and stowage compartments (other than underseat stowage compartments and compartments for stowing small items, such as magazine and maps) must also meet the test requirements of Parts IV and V of Appendix F of this Part, or other approved equivalent method, in addition to the flammable requirements prescribed in paragraph (a) of this Section.

* * * * *

3. By amending Appendix F by removing paragraph (e)(6) of Part IV and marking it "reserved;" removing Figures 2 through 5 of Part IV; redesignating Figures 6A, 6B, 7, and 8 of Part IV as Figures 2A, 2B, 3, and 4, respectively; revising Figures 1, 2A, 2B, 3 and 4 of Part IV; and revising paragraphs (b)(2), (3), (6), (7), (8) and (8)(i), (c)(1), (d)(1), (e)(7), and (f)(2) of Part IV and adding a new Part V to read as follows:

Appendix F

* * * * *

Part IV.—Test Method to Determine the Heat Release Rate From Cabin Materials Exposed to Radiant Heat.

* * * * *

(b) * * *

(2) *Thermopile.* The temperature difference between the air entering the environmental chamber and that leaving is monitored by a thermopile having five hot and five cold, 24-gauge Chromel-Alumel junctions. The hot junctions are spaced across the top of the exhaust stack, 10 mm below the top of the chimney. One thermocouple is located in the geometric center, with the other four located 30 mm from the center along the diagonal toward each of the corners. The cold junctions are located in the pan below the lower air distribution plate (see paragraph (b)(4)). Thermopile hot junctions must be cleared of soot deposits as needed to maintain the calibrated sensitivity.

(3) *Radiation Source.* A radiant heat source for generating a flux up to 100 kW/m², using four silicon carbide elements, Type LL, 20 inches (50.8 cm) long by ⅝ inch (1.54 cm) O.D., nominal resistance 1.4 ohms, is shown in Figures 2A and 2B. The silicon carbide elements are mounted in the stainless steel panel box by inserting them through 15.9-mm holes in 0.8 mm thick ceramic fiber board. Location of the holes in the pads and stainless steel cover plates are shown in Figure 2B. The diamond shaped mask of 24-gauge stainless steel is added to provide uniform heat flux over the area occupied by the 150- by 150-mm vertical sample.

* * * * *

(6) *Specimen Holders.* The 150-mm x 150-mm specimen is tested in a vertical orientation. The holder (Figure 3) is provided with a specimen holder frame, which touches the specimen (which is wrapped with aluminum foil as required by paragraph (d)(3) of this Part) along only the 6-mm perimeter, and a "V" shaped spring to hold the assembly together. A detachable 12-mm × 12-mm × 150-mm drip pan and two .020-inch stainless steel wires (as shown in Figure 3) should be used for testing of materials prone to melting and dripping. The positioning of the spring and frame may be changed to accommodate different specimen thicknesses by inserting the retaining rod in different holes on the specimen holder.

Since the radiation shield described in ASTM E–906 is not used, a guide pin is added to the injection mechanism. This fits into a slotted metal plate on the injection mechanism outside of the holding chamber and can be used to provide accurate positioning of the specimen face after injection. The front surface of the specimen shall be 100 mm from the closed radiation doors after injection.

The specimen holder clips onto the mounted bracket (Figure 3). The mounting bracket is attached to the injection rod by three screws which pass through a wide area washer welded onto a ½-inch nut. The end of the injection rod is threated to screw into the nut and a .020 inch thick wide area washer is held between two ½-inch nuts which are adjusted to tightly cover the hole in the radiation doors through which the injection rod or calibration calorimeter pass.

(7) *Calorimeter.* A total-flux type calorimeter must be mounted in the center of a ½-inch Kaowool "M" board inserted in the sample holder to measure the total heat flux. The calorimeter must have a view angle of 180 degrees and be calibrated for incident flux. The calorimeter calibration must be acceptable to the Administrator.

(8) *Pilot-Flame Positions.* Pilot ignition of the specimen must be accomplished by simultaneously exposing the specimen to a lower pilot burner and an upper pilot burner, as described in paragraph (b)(8)(i) and (b)(8)(ii), respectively. The pilot burners must remain lighted for the entire 5-minute duration of the test.

(i) *Lower Pilot Burner.* The pilot-flame tubing must be 6.3 mm O.D., 0.8 mm wall, stainless steel tubing. A mixture of 120 cm³/min. of methane and 850 cm³/min. of air must be fed to the lower pilot flame burner. The normal position of the end of the pilot burner tubing is 10 mm from and perpendicular to the exposed vertical surface of the specimen. The centerline at the outlet of the burner tubing must interest the vertical centerline of the sample at a point 5 mm above the lower exposed edge of the specimen.

* * * * *

(c) * * *

(1) *Heat Release Rate.* A burner as shown in Figure 4 must be placed over the end of the lower pilot flame tubing using a gas tight connection. The flow of gas to the pilot flame must be at least 99 percent methane and must be accurately metered. Prior to usage, the wet test meter is properly leveled and filled with distilled water to the tip of the internal pointer while no gas is flowing. Ambient temperature and pressure of the water are based on the internal wet test meter temperature. A baseline flow rate of approximately 1 liter/min is set and increased to higher preset flows of 4, 6, 8, 6, and 4 liters/min. The rate is determined by using a stopwatch to time a complete revolution of the wet test meter for both the baseline and higher flow, with the flow returned to baseline before changing to the next higher flow. The thermopile baseline voltage is measured. The gas flow to the burner must be increased to the higher preset flow and allowed to burn for 2.0 minutes, and the thermopile voltage must be measured.

The sequence is repeated until all five values have been determined. The average of the five values must be used as the calibration factor. The procedure must be repeated if the percent relative standard deviation is greater than 5 percent. Calculations are shown in paragraph (f).

* * * * *

(d) *Sample Preparation.*

(1) The standard size for vertically mounted specimens is 160 × 150 mm with thicknesses up to 45 mm.

* * * * *

(e) *Procedure.*

* * * * *

(6) [Reserved]

(7) Injection of the specimen and closure of the inner door marks time zero. A record of the thermopile output with at least one data point per second must be made during the time the specimen is in the environmental chamber.

* * * * *

(f) * * *

(1) * * *

(2) Heat release rates may be calculated from the reading of the thermopile output voltage at any instant of time as

$$HRR = \frac{V_m \times K_h}{.02323m^2}$$

HRR = Heat release Rate kw/m²
V_m = measured thermopile voltage (mv)
K_h = Calibration Factor (Kw/mv)

* * * * *

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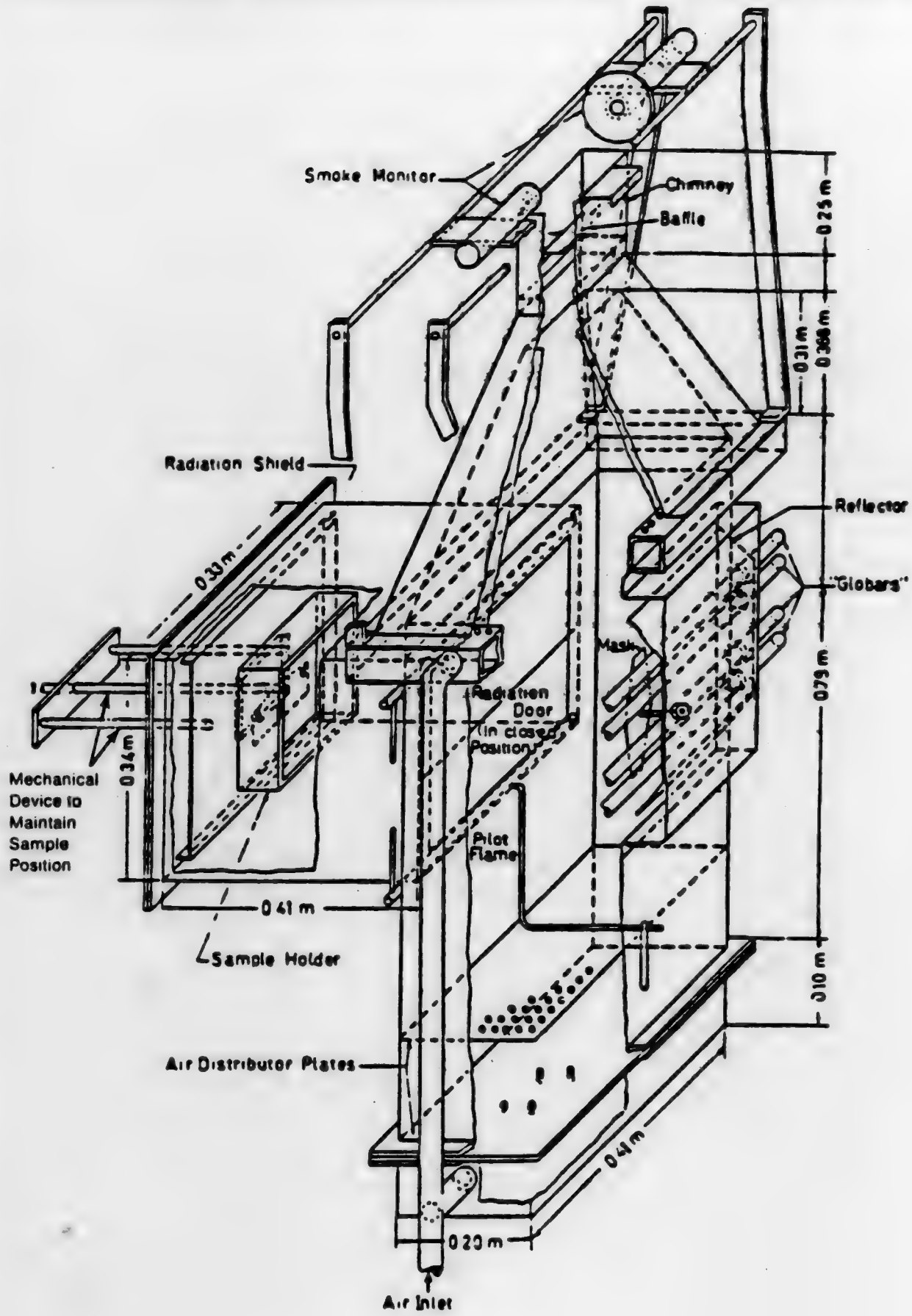
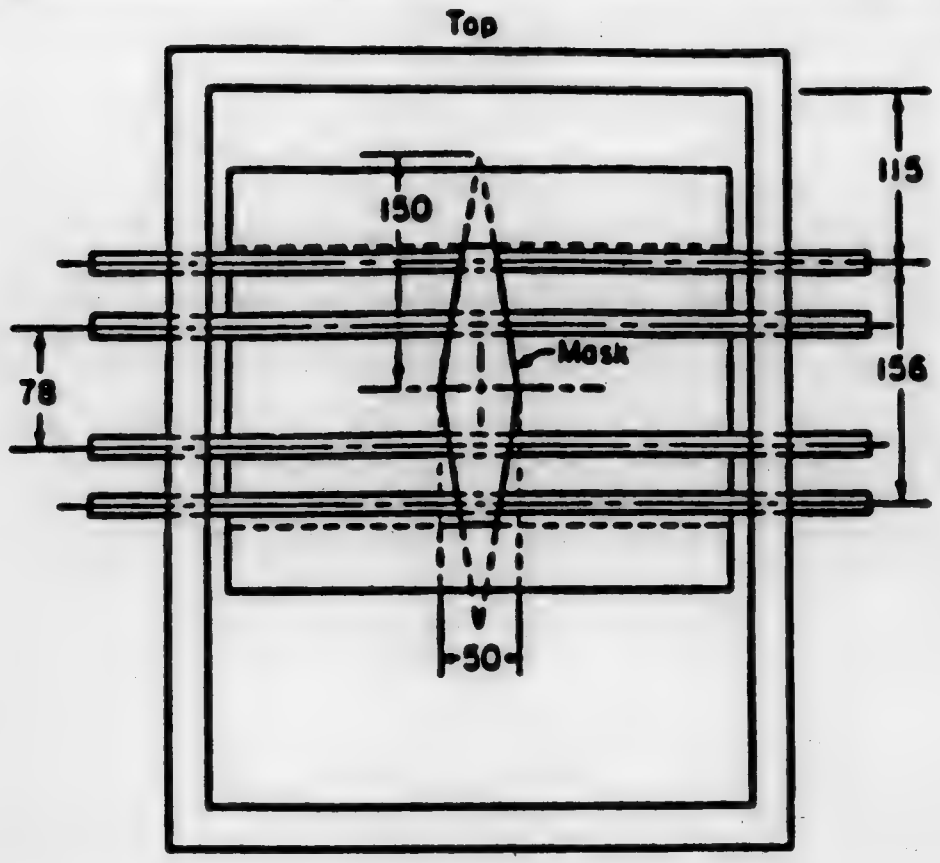


Figure 1. Release Rate Apparatus



(Unless denoted otherwise all dimensions are in millimeters.)
Figure 2A. "Globar" Radiant Panel

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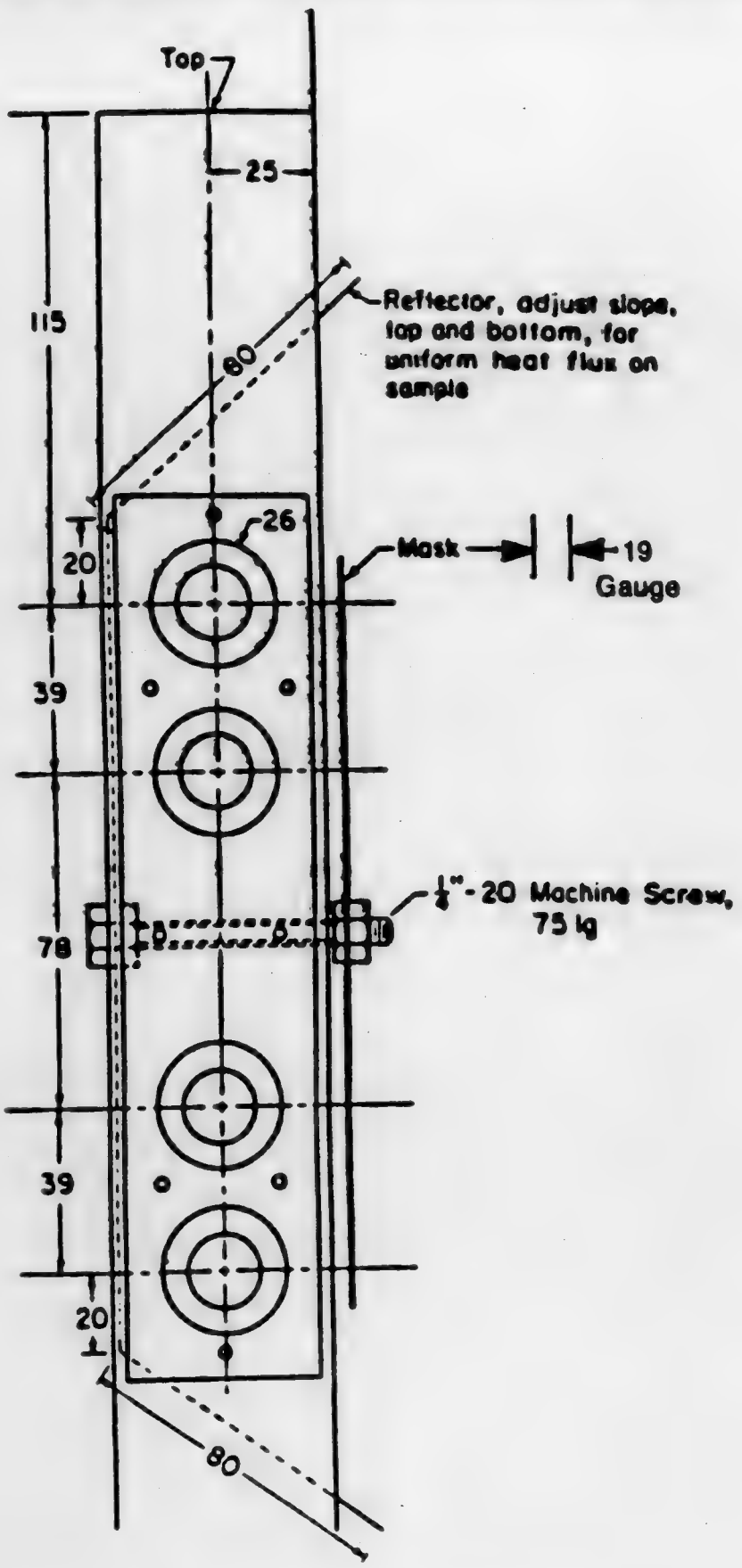
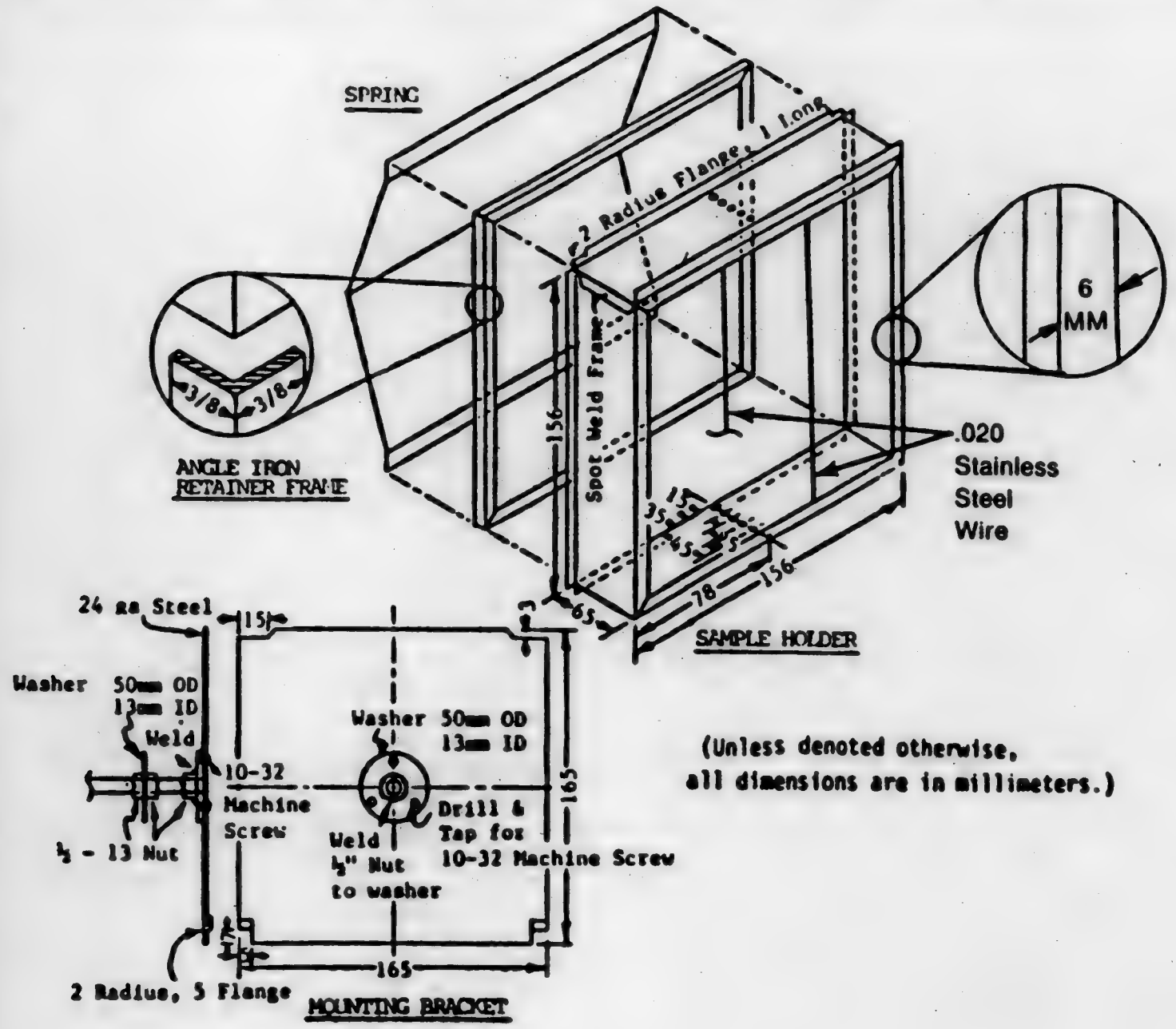
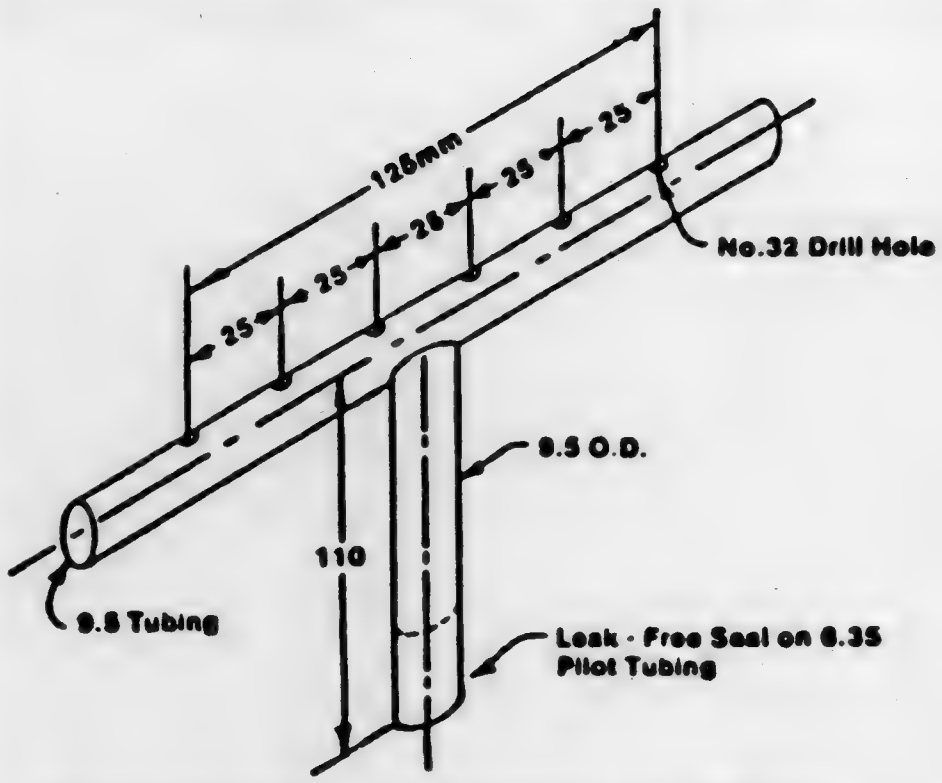


(Unless denoted otherwise all dimensions are in millimeters.)
Figure 2B. "Globar" Radiant Panel



(Unless denoted otherwise, all dimensions are in millimeters.)

Figure 3.



(Unless denoted otherwise, all dimensions are in millimeters.)

Figure 4.

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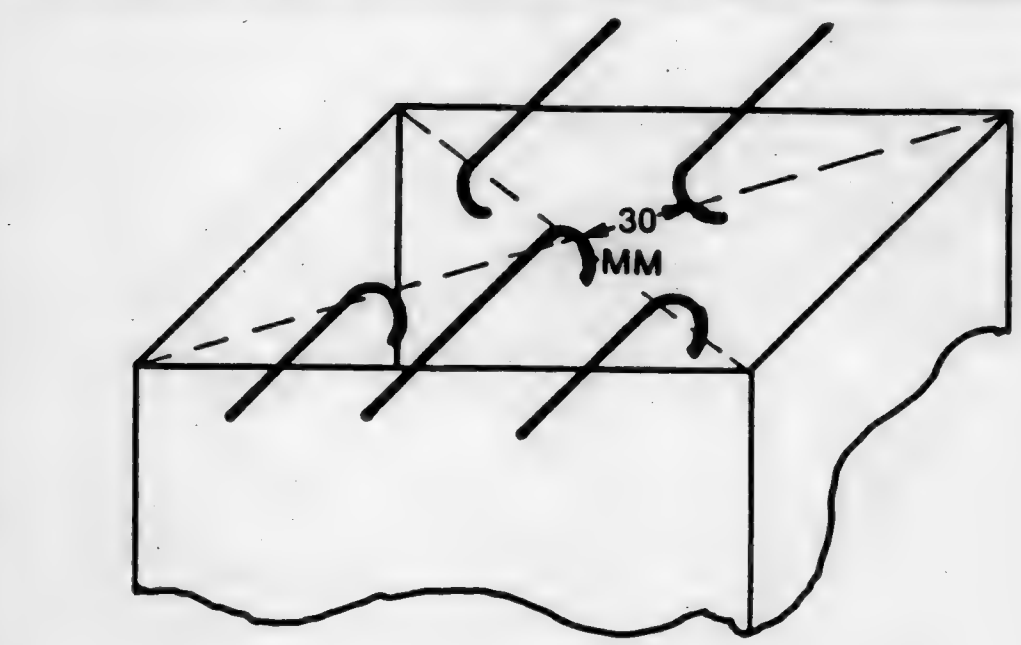

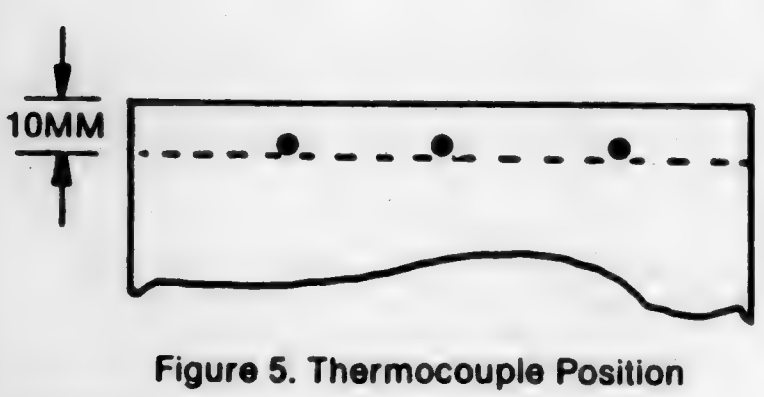

Figure 5. Thermocouple Position

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Part V. Test Method to Determine the Smoke Emission Characteristics of Cabin Materials

(a) *Summary of Method.* The specimens must be constructed, conditioned, and tested in the flaming mode in accordance with American Society of Testing and Materials (ASTM) Standard Test Method ASTM F814–83.

(b) *Acceptance Criteria.* The specific optical smoke density (D_s), which is obtained by averaging the reading obtained after 4 minutes with each of the three specimens, shall not exceed 200.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

4. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983) 49 CFR 1.47(a).

5. By amending § 121.312 by revising paragraphs (a)(1), (a)(2), (a)(5), and (a)(6) to read as follows and by adding a new paragraph (a)(7):

§ 121.312 Materials for compartment interiors.

(a) * * *

(1) All airplanes manufactured on or after August 20, 1988, but prior to August 20, 1990, must comply with the heat release rate testing provisions of § 25.853(a–1) in effect on August 20, 1986 or the date of a later amendment thereto, except that the total heat release over the first 2 minutes of sample exposure must not exceed 100 kilowatt minutes per square meter and the peak heat release rate must not exceed 100 kilowatts per square meter.

(2) All airplanes manufactured on or after August 20, 1990, must comply with the heat release rate and smoke testing provisions of § 25.853(a–1) in effect on September 26, 1988.

* * * * *

(5) Upon the first substantially complete replacement of the cabin interior components subject to § 25.853(a–1) on or after August 20, 1988, but prior to August 20, 1990, airplanes type certificated after January 1, 1958, must comply with the heat release rate testing provisions of that paragraph in effect on August 20, 1986, or the date of a later amendment thereto, except that the total heat release over the first 2 minutes of sample exposure shall not exceed 100 kilowatt-minutes per square meter, and the peak heat release rate shall not exceed 100 kilowatts per square meter.

(6) Upon the first substantially complete replacement of the cabin interior components identified in § 25.853(a–1) on or after August 20, 1990, airplanes type certificated after January 1, 1958, must comply with the heat release rate and smoke testing provisions of that paragraph in effect on September 26, 1988.

(7) Contrary provisions of this section notwithstanding, the Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, may authorize deviation from the requirements of paragraph (a)(1), (a)(2), (a)(5), or (a)(6) of this section for specific components of the cabin interior which do not meet applicable flammability and smoke emission requirements, if the determination is made that special circumstances exist that make compliance impractical. Such grants of deviation will be limited to those airplanes manufactured within 1 year after the applicable date specified in this section and those airplanes in which the interior is replaced within 1 year of that date. A request for such grant of deviation must include a thorough and accurate analysis of each component subject to § 25.853(a–1), the steps being taken to achieve compliance, and, for the few components for which timely compliance will not be achieved, credible reasons for such noncompliance.

* * * * *

Issued in Washington, DC, on August 19, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–19283 Filed 8–23–88; 9:58 am]

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federal register

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August 25, 1988

Part VII

Environmental Protection Agency

Proposed Effluent Guidelines; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3386-8]

Proposed Effluent Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed plans to implement Section 304(m) of the Water Quality Act.

SUMMARY: This notice announces the Agency's proposed plans for reviewing existing effluent guidelines and promulgating new effluent guidelines to implement section 304(m) of the Clean Water Act, as amended by the 1987 Water Quality Act (Pub. L. 100-4). EPA is requesting comment on all aspects of its proposed plans and the criteria used to select existing guidelines for review and revision and to select new industrial categories for the promulgation of effluent guidelines.

DATE: Comments must be received on or before October 24, 1988.

ADDRESS: Comments should be addressed to Ms. Marion Thompson, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M St. SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Farrell, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, telephone 202-382-7137.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

This notice is published under the authority of section 304(m) of the Clean Water Act, 33 U.S.C. 1251 *et. seq.*, (as amended most recently by the Water Quality Act of 1987, Pub. L. 100-4). The 1987 Water Quality Act ("WQA") added new requirements to section 304 of the Clean Water Act.

II. Background

A. Statutory Requirements and the Effluent Guidelines Program

The Clean Water Act (CWA) controls the discharge of pollutants into the nation's surface waters. Specifically, section 301(a) prohibits the discharge of any pollutant by any person except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act.

Wastewaters from industrial sources are discharged into the nation's surface waters in two principal ways: Directly into surface waters of the United States by direct dischargers, or indirectly through publicly owned treatment works (POTWs) by indirect dischargers. Industrial wastewaters from indirect dischargers mixed with domestic and commercial wastewaters in municipal collection systems are treated at municipal treatment systems (POTWs) and discharged to surface waters.

Industrial and municipal wastewaters have been found to contain pollutants which harm receiving waters, aquatic life, and human health. The Federal Water Pollution Control Act (FWPCA) of 1972 established a program to restore and maintain the integrity of the nation's waters. To implement the Act, Congress directed EPA to issue effluent guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These regulations were to be based principally on the degree of effluent reduction attainable through the application of treatment technologies. In 1977, the amendments to the FWPCA, known as the Clean Water Act Amendments, stressed additional control of 65 toxic compounds or classes of compounds (from which EPA later developed a list of 126 priority pollutants). To further strengthen the toxic control program, section 304(e), added by the 1977 amendments, authorizes the Administrator to establish management practices to control toxic and hazardous pollutants in plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

The CWA calls for achieving technologically based effluent limitations for industrial direct dischargers in two stages. First, section 301(b)(1)(A) directed the achievement of effluent limitations requiring application of the best practicable control technology currently available (BPT). Effluent limitations based on BPT are generally to represent the average of the best treatment technology performance in an industrial category. Second, for the toxic pollutants listed in section 307(a) and for nonconventional pollutants, section 301(b)(2) (A), (C), (D) and (F) directed the achievement of effluent limitations requiring application of the "best available technology economically achievable" (BAT). Effluent limitations based on BAT are to represent at a minimum the best treatment technology performance in the industrial category that is technologically and economically achievable. For conventional pollutants listed under section 304(a)(4), section 301(b)(2)(E) directed effluent limitations based on the performance of best conventional pollutant control technology (BCT).

To ensure that such limitations remain current with the state of the industry and with available treatment technologies, section 304(b) require EPA to revise effluent limitations and guidelines at least annually if appropriate. In addition, section 301(d) also required the Agency to review and revise, if appropriate, any effluent limitation required by section 301(b)(2), pursuant to procedures established under that section. Section 306 provided for technology-based standards for new sources (known as new source performance standards, or NSPS). These standards must be based on the best demonstrated control technology, processes, operating methods, or other alternatives.

Section 402 of the CWA provided for the issuance of permits to direct dischargers under the National Pollutant Discharge Elimination System (NPDES). These permits, which are required by section 301, are issued either by EPA or by a State agency approved to administer the NPDES program. Individual NPDES permits must incorporate applicable technology-based limitations contained in guidelines and standards for the industrial category in question. Where EPA has not promulgated applicable technology-based effluent limitations and guidelines for an industry, section 402(a)(1)(B) provided that the permit must incorporate such conditions as the Administrator determines are necessary to carry out the provisions of the Act. In other words, the permit writer uses best professional judgment (BPJ) to establish limitations for the dischargers.

Indirect dischargers are regulated by the general pretreatment regulations (40 CFR Part 403) and pretreatment standards for new and existing sources (PSNS and PSES) covering specific industrial categories. These standards under sections 307 (b) and (c) apply to the discharge of pollutants from industrial sources which interfere with or pass through POTWs. Pretreatment standards are enforced by POTWs or by State or Federal authorities. The standards covering specific industries are generally analogous to the limitations imposed on direct dischargers.

B. New Requirements: Section 304(m)

On February 4, 1987, the Water Quality Act of 1987 became effective. The WQA strengthens the CWA through changes designed to improve water quality. One of these changes, the addition of section 304(m), requires EPA to publish the Agency's plans to review and revise existing effluent guidelines and promulgate new guidelines for dischargers of toxic and nonconventional pollutants.

Specifically, section 304(m)(1) requires the Agency to publish in the **Federal Register** a plan to review and revise existing effluent guidelines and to identify and promulgate guidelines for categories discharging toxic and nonconventional pollutants for which guidelines have not been previously published. The plan must establish a schedule for the annual review and revision of promulgated effluent guidelines; must identify industrial categories discharging toxic or nonconventional pollutants that are not covered by promulgated guidelines under sections 304(b)(2) and 306; and must establish a schedule for promulgating guidelines for the industrial categories so identified. In the case of industrial categories for which guidelines have not been promulgated that are listed in the first published plan, EPA must establish a schedule which calls for promulgation of effluent guidelines within four years after enactment of the WQA. For categories listed in later plans, the schedule must call for promulgation of guidelines within three years after publication of the plan in question.

Section 304(m)(2) also requires EPA to provide for public review and comment on the plan before final publication.

III. Purpose

The purpose of today's Notice is to describe EPA's plans to implement Section 304(m). The notice will: (1) Identify industries for which new or revised guidelines and standards are currently being developed; (2) describe the procedures followed by the Agency in selecting and evaluating additional candidates for new or revised guidelines and standards; (3) explain the criteria the Agency will consider when deciding whether to initiate rulemakings for these industries; and (4) solicit public comment on all aspects of today's notice.

Appendix A of this Notice lists existing industrial categories or subcategories that EPA is reviewing as potential candidates for revised guidelines. This review is required by section 304(m)(1)(A). EPA will, as needed, revise this list. Section 304(m) requires EPA to publish schedules for the annual review and revision of existing guidelines. If and when EPA decides to initiate rulemakings for any of these industries, it will identify the industries in a subsequent **Federal Register** notice pursuant to section 304(m).

Appendix B is a list of industrial categories and subcategories discharging toxic and nonconventional pollutants for which BAT guidelines and NSPS have not been promulgated. These categories are under review as potential candidates for BAT guidelines and NSPS. Most were selected for section 304(m)(1)(B) review because of Domestic Sewage Study findings (see Section V). If the Agency decides that rulemaking is appropriate for these industrial categories, it will, pursuant to section 304(m), publish schedules for these guidelines that call for promulgation not later than three years after final identification of the industries in the **Federal Register.**

Although section 304(m) mandates the publication of schedules both for reviewing and revising existing guidelines and for promulgating new guidelines and standards, only in the case of new guidelines and standards does the schedule include a date for promulgation (three years after publication of the **Federal Register** notice identifying the industrial category in question). EPA interprets section 304(m) to mean that these "new" industries are categories or subcategories for which BAT guidelines and NSPS have *not* previously been promulgated (even though BPT guidelines may have been promulgated). New industries are subject to the above-mentioned three-year promulgation schedule. An "existing" industry under section 304(m) is a category or subcategory for which BAT guidelines *have* been promulgated. Existing industries are not subject to a schedule for promulgation.

Part IV of this Notice describes industries and subcategories currently being revised. Parts V and VI of this Notice describe EPA procedures for selecting and evaluating both existing industries (for review and revision) and new industries (for consideration for rulemaking) and the criteria for deciding whether to initiate rulemaking. To the extent necessary, these procedures and criteria will be modified to reflect specific Congressional or judicial directives.

EPA is including in this notice plans for new or revised pretreatment standards for indirect dischargers, as well as new or revised new source performance standards. The Agency recognizes that section 304(m) does not require EPA to review and revise such standards or to promulgate such standards except for new source performance standards for industries not heretofore covered by them. Nevertheless, EPA has in the past generally proposed these standards for an industrial category when guidelines for direct dischargers in that category were proposed. The Agency will continue to do this in the future, whenever appropriate. Therefore, plans presented in this notice cover new source performance and pretreatment standards as well as effluent limitations and guidelines for direct dischargers.

IV. Development of New or Revised Guidelines; Industries Already Identified

For six industrial categories, EPA has activities underway that are anticipated to result in the promulgation of new or revised effluent guidelines and standards. One involves a promulgated rulemaking for which EPA has initiated a new rulemaking for the entire industrial category in response to a court ordered remand. One of these is an industry subcategory for which the Agency does not currently have BAT guidelines and new source performance standards. In three other cases, legal challenges to promulgated regulations led to negotiated agreements to settle litigation by initiating rulemaking. Negotiated agreements usually follow discussions with litigants who may demostrate by various means (including the submission of technical data) the need for adjustments to some parts of a promulgated guideline. For the sixth activity the Agency has decided to proceed with revisions to an existing guideline.

A. Pesticide Manufacturers, Packagers, and Formulators (40 CFR Part 455)

EPA is preparing a proposed regulation establishing guidelines and standards for the pesticide chemical point source category. Following legal challenge, the Agency determined that there were errors in the data base used to derive the numerical limitations in the pesticide regulation published on October 4, 1985 (50 FR 40672). EPA therefore filed a motion with the U.S. Court of Appeals for the Eleventh Circuit requesting a remand of the regulation to the Agency for reconsideration of the rule. On July 25, 1986, the Court granted EPA's motion. The currently valid effluent guidelines for the pesticide industry set BPT limitations only. Section 301(f) of the WQA required BAT guidelines to be promulgated for this industry by December 31, 1986.

In addition to promulgating defensible regulations to replace those remanded by the Court of Appeals, it is anticipated that the guidelines and standards published for this industry will include limitations for other pollutants not identified by the remanded regulation. The Agency's preliminary analysis shows significant changes in the industry requiring a major data collection effort. EPA expects to

promulgate a final rule in this industrial category in 1991.

B. Offshore Oil and Gas Extraction (40 CFR Part 435)

EPA promulgated effluent limitations and guidelines (40 FR 42543, September 15, 1975) and proposed additional guidelines and standards (40 FR 42572, September 15, 1975) for the offshore segment of the oil and gas extraction point source category. In a Settlement Agreement entered in an action brought in 1979 by the Natural Resources Defense Council (NRDC) and joined by the American Petroleum Institute (API) *NRDC v. Costle,* C.A. No. 79–3442, D.D.C.), the Agency agreed to develop final NSPS to control discharges from offshore oil and gas facilities. These activities generate wastes that include produced water, deck drainage, drilling muds, fluids and cuttings, produced sand, and sanitary and domestic wastes.

Subsequent to the Settlement Agreement, EPA withdrew the NSPS and BAT regulations, which had been promulgated in 1975; and collected and examined data that became available since the earlier proposal. The Agency has since evaluated current and projected offshore drilling and production activities, drilling fluid characteristics, old and new alternative treatment technologies, environmental impacts, and economic costs of pollution control. EPA has also used analytical protocols to confirm the presence of and further quantify concentrations of toxic pollutants in produced water discharges at 30 production facilities in the Gulf of Mexico. Priority pollutant sampling efforts were also conducted at sites in Alaska and California.

On August 25, 1985, EPA reproposed NSPS and BAT effluent limitations. In the same notice, the Agency also proposed best conventional technology (BCT) effluent limitations and certain amendments to BPT effluent limitations (50 FR 34592). EPA has met periodically with representatives of NRDC and API to inform them of the Agency's progress in fulfilling the terms of the Settlement Agreement. The Agency plans to publish, in the next few weeks, a **Federal Register** notice of availability for review of the additional data collected. EPA also plans to repropose BCT effluent limitations in late 1988. The final BAT and BCT effluent limitations and NSPS for drilling wastestreams are expected to be promulgated in 1990, at which time the proposed amendments to the BPT effluent limitations will also be addressed.

C. Nonferrous Metals Forming (40 CFR Part 471)

On August 23, 1985, EPA promulgated effluent guidelines and standards for the nonferrous metals forming category (50 FR 34242). In response to several challenges to the rule, on November 5, 1986, the Agency entered into a settlement agreement in which it agreed to propose amendments to BPT and BAT effluent limitations guidelines, NSPS, PSES, and PSNS in the nickel-cobalt forming and zirconium-hafnium forming subcategories (*Inco Alloys International, Inc. v. EPA, General Electric Co. v. EPA,* U.S. Court of Appeals for the Sixth Circuit, Consolidated Nos. 86–3091 and 86–3092). The Agency plans to propose the amendments in 1988.

D. Nonferrous Metals Manufacturing (Phase II-40 CFR Part 421)

On September 20, 1985, EPA promulgated final effluent limitations guidelines and standards for portions of this industrial category (50 FR 38726). The regulation was challenged by several regulated parties. On May 19, 1987, EPA entered into another settlement agreement in which it agreed to propose to amend BPT and BAT limits, NSPS, PSES, and PSNS in the primary beryllium subcategory (*Brush Wellman, Inc. v. EPA,* U.S. Court of Appeal for the Third Circuit, No. 86–3072). On May 20, 1987, the Agency entered into a settlement agreement in which it agreed to propose to amend BPT and BAT limits, NSPS, PSES, and PSNS for the secondary precious metals subcategory (*Englehard Co. v. EPA, Johnson Matthey, Inc. v. EPA,* United States Court of Appeals for the Third Circuit, Consolidated Nos. 85–3694 and 85–3726). In addition, on June 8, 1987, EPA entered into a settlement agreement in which the Agency agreed to propose new effluent limitations and guidelines and standards for the secondary molybdenum and vanadium subcategory (*Gulf Chemical and Metallurgical Company v. EPA,* U.S. Court of Appeals for the Third Circuit, No. 86–3039).

Finally, on June 9, 1987, the Agency entered into a settlement agreement in which the Agency agreed to propose to suspend certain BAT effluent limitations, NSPS, and PSNS in the metallurgical acid plant subcategory and to propose to suspend certain BPT and BAT effluent limitations, NSPS, and PSNS in the primary molybdenum and rhenium subcategory. The Agency also agreed to propose amendments to BPT and BAT effluent limitations, NSPS, PSES, and PSNS in the secondary tungsten and cobalt subcategories (*Amax, Inc. v. EPA, GTE Products Corp. v. EPA,* U.S. Court of Appeals for the Third Circuit, Consolidated Nos. 85–3560 and 85–3625). EPA plans to propose all of the above amendments in 1988.

E. Aluminum Forming (40 CFR Part 467)

On October 24, 1983 (48 FR 49126) and March 27, 1984 (49 FR 11629), EPA promulgated final effluent limitations guidelines and standards for the aluminum forming category. Under a Settlement Agreement (*Aluminum Association, Inc. et. al. v. EPA, Aluminum Extruders Council, et. al. v. EPA,* U.S. Court of Appeals for the Sixth Circuit, Consolidated Nos. 84–3090 and 84–3091), EPA has agreed to propose to amend portions of the aluminum forming regulation or to add preamble language relating to: (1) Nonscope waters; (2) discharge allowance for hot water seal; (3) the BAT and PSES pollutant discharge allowances for the cleaning or etching rinse in the extrusion and forging subcategories (Subparts C and D, respectively); (4) the discharge allowance for the alternative monitoring parameter of oil and grease for PSES; (5) the BPT and NSPS requirement for pH in the direct chill casting contact cooling water ancillary operation; and (6) the addition of a definition for hot water seal to the general definitions of 40 CFR Part 467. These amendments were proposed on March 19, 1986 (51 FR 9618) and the Agency expects to promulgate final amendments in 1988.

F. Pulp, Paper, and Paperboard Manufacturing (40 CFR Parts 430 and 431)

EPA promulgated effluent limitations guidelines and standards for the pulp, paper, and paperboard point source category on November 18, 1982 (47 FR 52006). Since that time, results received from the *National Dioxin Study* indicate that dioxin was present in fish samples collected downstream from pulp and paper mills. EPA then conducted a dioxin study at five pulp and paper mills (U.S. EPA/Paper Industry Cooperative Dioxin Screening Study or "Five Mill Study"), and dioxin was detected in most of the wastewater sludges, treated effluents, and bleached pulps from all five pulp and paper mills.

A second EPA/Paper Industry Cooperative Study, signed on April 25, 1988, will obtain additional information on dioxin discharges from approximately 105 mills that use chlorine or chlorine derivatives to bleach chemical wood pulp. In addition, the Agency has initiated sampling for additional pollutants of concern. Data

gathered in these efforts will be used to revise the BAT effluent limitations, new source performance standards, and pretreatment standards for the pulp, paper, and paperboard industry.

V. Selecting and Evaluating Potential Candidates for New or Revised Guidelines and Standards

As discussed above, section 304(m) requires the Agency to publish plans and schedules for reviewing and revising existing guidelines and for promulgating new guidelines and standards for industrial categories that discharge toxic and nonconventional pollutants and that are not covered by existing BAT effluent guidelines or NSPS. However, neither the WQA nor the CWA specifies how priorities for review and revision of the guidelines should be established or how new industries should be selected for regulation. The Agency has developed, therefore, a general strategy for selecting and evaluating industries that are potential candidates for new or revised effluent limitations guidelines and standards. Following is a discussion of that strategy.

A. Selection of Candidates for Evaluation

1. Reviewing Technical Studies and Reports

Technical studies and reports on various industries or on significant pollution problems are a valuable source of information in determining which effluent limitations guidelines or standards may need to be revised. Data collected from States, EPA researchers, permittees, etc., identify industries that have discharges that cause adverse impacts on the water quality. The types of information include data from: 1) Compliance monitoring activities by State and Federal regulatory agencies to assess compliance with permits; 2) toxicity reduction evaluations, which combine toxicity testing (biomonitoring data obtained from biosurveys or bioassays), chemical tests, and treatment analysis to determine either the actual causative toxicants or the treatment methods that will reduce effluent toxicity; 3) data on stream loadings and dilution, stream models, discharge data, bioaccumulation studies, fish kill reports, and citizen complaints, 4) data from other streams of similar size and watershed characteristics with the same aquatic ecological conditions, and 5) information submitted under the Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III, Community Right to Know.

Moreover, water quality data collected from studies performed under the CWA section 304(1) and from biomonitoring studies may identify specific types of point sources that need new or revised technology-based effluent regulations under section 304(m). Section 304(1) specifically requires EPA to: (1) Identify and list waters impaired by sources of toxic pollution as specified by the CWA; (2) identify facilities and amounts of pollutants causing impairment; and (3) develop Individual Control Strategies for these facilities. Part of the Agency's strategy for implementing this Section is to focus immediate attention on controls where there are impacts due entirely or substantially to point source discharges of section 307(a) pollutants as well as to identify other high priority water quality impairment problems caused by other pollutants of concern.

Examples of technical studies or reports include: the *National Dioxin Study (National Dioxin Study, Tier 3, 5, 6, and 7,* U.S. EPA, Office of Water Regulations and Standards EPA 400/4–87/003, February 1987); the Report to Congress on Hazardous Constituents in Oil and Gas Facilities (*Report to Congress on the Management of Wastes from Oil and Gas Exploration, Development, and Production,* U.S. EPA, Office of Solid Waste, RCRA Docket No. F88–OGRA–FFFFF, December 1987); and the Domestic Sewage Study (*Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works,* U.S. EPA, Office of Water Regulations and Standards, EPA 530–SW–86–004, February 1986). Of these, the Domestic Sewage Study addresses the largest number of dischargers and industrial categories.

The Domestic Sewage Study (DSS) was prepared by EPA pursuant to the mandate of section 3018(a) of RCRA. This provision requires the Agency to evaluate the impact of RCRA hazardous wastes discharged to POTWs. As a follow-up to the DSS, section 3018(b) of RCRA directs the Administrator to revise existing regulations and to promulgate such additional regulations as are necessary to ensure that hazardous wastes discharged to POTWs are adequately controlled to protect human health and the environment.

In the DSS (submitted to Congress in February, 1986) EPA examined the nature and sources of hazardous wastes discharged to POTWs; measured the effectiveness of EPA's programs in dealing with such discharges; and recommended ways to improve the programs to achieve better control of hazardous wastes entering POTWs. One of the specific recommendations of the Study was that EPA evaluate several industrial categories to determine whether new or revised categorical pretreatment standards should be promulgated to achieve such improved control.

Although the Domestic Sewage Study was intended to deal primarily with indirect dischargers, the findings of the DSS are useful in evaluating direct dischargers because direct and indirect dischargers do not differ significantly in the amounts or kinds of pollutants in the wastewater. Similarly, although the DSS focused on hazardous constituents under RCRA, these constituents include all toxic and many nonconventional pollutants under the CWA.

2. Consultation with EPA Regions, States, and POTWs

A second important source of information is the experience of people who implement the Agency's water pollution control programs. Under the CWA, EPA Regions and State permitting authorities are responsible for translating effluent limitations guidelines into limits in NPDES permits issued to individual dischargers. States and Regions are also responsible for enforcing these limits; POTWs are generally responsible for implementing the categorical pretreatment standards. They are therefore likely to have the most intimate working knowledge of the existing guidelines and standards, and of discharges that warrant new or better control because of environmental incidents or new process and control technologies.

EPA Headquarters routinely meets with EPA Regional Offices, States, and POTWs in several contexts. These include informal discussions, technical workshops, development of program guidance, and development of technical assistance and field support for permit writers. These meetings provide information to assist in the selection of particular industries as potential candidates for new or revised guidelines and standards because of identified problems.

3. Reviewing Legal Challenges to Promulgated Effluent Limitations Guidelines and Standards

As mentioned above, some effluent limitations guidelines and standards are reviewed or revised in response to legal challenges and litigation. Discussions with litigants may reveal additional data or other reasons not yet considered to propose changes in existing guidelines and standards.

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4. Reviewing Variance Requests and Petitions

Requests by industrial dischargers for variances under the CWA may disclose technical information indicating that the effluent limitations guideline needs to be reviewed. Similarly, citizen petitions concerning particular industries and pollutants may uncover data leading to a similar conclusion.

5. Reviewing Public Comments

Comments from the public in response to this notice may provide the Agency with additional information on any of the issues presented in the notice. The Agency will consider these comments in further activities pursuant to section 304(m) review.

B. Evaluation of Selected Candidates

1. Review of Available Information

After an industry has been selected for evaluation by methods described above, EPA will review all available technical information relating to the need and opportunity for reduction of water pollution from that industry. In the case of "existing" industries (i.e., those for which BAT effluent limitations guidelines and NSPS have been promulgated), this review will determine whether any significant changes have occurred in an industry since the collection of data supporting the existing regulation. The Agency will look again at previous sampling and analysis data and all other relevant information used to support rulemakings for the industry. EPA will then compare that information to any new data. New data may come from permit applications, technical surveys, published literature on technical or engineering aspects of pollution control within an industry, and from contacts with permitting authorities and industry representatives. EPA will consider the extent of the human health and environmental problems remaining after application of current regulations. The most important aspects of an industry that could lead to selection for possible revision of guidelines would be changes in manufacturing processes, changes in or reevaluation of achievable pollutant reduction by treatment technologies, gaps in regulated parameters, and the evaluation of the toxicity of the industrial effluents.

In the case of "new" industries (i.e., industries for which BAT effluent limitations and NSPS have not been promulgated), the Agency will conduct a review of similar factors, including changes in the industry that may have occurred since promulgation of BPT or BCT effluent guidelines for the industry. If no guidelines have been promulgated for an industry, the Agency will rely more heavily on the contents of permit applications, published literature, and information gained from permitting authorities and industry. In particular, the Domestic Sewage Study is a good source of information on discharges of RCRA hazardous waste constituents (which are toxic or nonconventional pollutants). EPA will review all information on the industry, or similar industries, including available process change and control technology that could reduce pollutants in effluents, and the extent of the environmental problems caused by the industry's discharges to receiving waters. EPA will also attempt to determine if there are any State or local controls on these industries and evaluate these controls for effectiveness.

2. Collection of New Data

When an industry has been evaluated for new or revised guidelines as provided above, EPA will assemble a preliminary data base on the industry through questionnaires, telephone calls, and plant visits, plus other publicly available information. This data base will help the Agency to characterize influent and effluent flows and characteristics, manufacturing processes, and treatment processes. In most cases, the Agency will conduct sampling on the influent, effluent, and sludge from a small number of plants in the industry. In the case of existing industries, the results of such sampling will help determine whether previous sampling data were incomplete or are outdated. In the case of both existing and new industries, the sampling helps characterize the wastewater and sludges. In addition, new analytical methods can be used to measure pollutants which could not be measured by previous protocols.

3. Decision Document

The Agency will next prepare a decision document that contains a summary of the information collected for an industry. The document will be available to the public and will include a profile of each industry, its wastewater and sludge characteristics, treatability data for treatment technologies, treatment technologies that can be used to control discharges of toxic and nonconventional pollutants, estimated control costs, and a summary of possible environmental impact reductions that might be obtained through rulemaking. To the extent possible with available information, the decision document will make estimates useful for applying the decision criteria in Part VI.

VI. Initiation of Rulemakings for New or Revised Guidelines and Standards: Decision Criteria

After completing the decision document, EPA will decide whether to initiate rulemaking procedures to revise or propose a guideline or standard. In making this decision, EPA will consider the following criteria:

- Legislative deadlines or court orders.
- Number and location of dischargers.
- Volume of wastewater per facility.
- Types of pollutants discharged and their significance to human health and the aquatic environment.
- Amounts of pollutants discharged to air and water and captured in sludge.
- Treatability of pollutants discharged (especially the quantity of toxics likely to be removed).
- Effects of discharges on water quality (especially demonstrated water quality impacts such as those identified under 304(1)).
- Costs and economic impacts of controls, including but not limited to cost-effectiveness analysis.
- Impact on the NPDES program.
- Impact on air emissions.
- Impact on the pretreatment program (including local limits, POTW operations, and sludge management).
- Impact on industrial sludge.
- Other factors that may arise during analysis of the industry.

When EPA decides to initiate a rulemaking to propose new or revised effluent guidelines and standards, it will propose a plan in the next biennial **Federal Register** notice required to be published under section 304(m) or in an earlier notice. This plan will identify the industry in question, announce EPA's decision to initiate rulemaking for the industry, and establish a promulgation schedule. The plan will also indicate the availability of the decision document. After comments are received on the proposed plan, EPA will publish a final notice. In the case of industrial categories (or subcategories) that discharge toxic or nonconventional pollutants for which BAT effluent guidelines and NSPS have not been promulgated, schedules will call for promulgation of new effluent guidelines and NSPS no later than three years after publication of that final notice.

VII. Solicitation of Comments

EPA welcomes comment on all aspects of today's notice, including EPA's proposed plans, its selection and evaluation procedures and the criteria

used to decide whether to begin rulemaking. Comments should identify the regulatory docket number and should be submitted to the address specified above. All comments submitted on or before the closing date will be considered by the Agency before publishing a final plan. Comments will be available for inspection in the EPA Public Information and Reference Unit, Room 2904, 401 M St. SW., Washington, DC 20460.

Dated: August 17, 1988.

Lee M. Thomas,

Administrator.

Appendix A

Following is a list of industrial categories or subcategories for which BAT effluent limitations and guidelines and NSPS have already been promulgated that are currently under review, pursuant to section 304(m)(1)(A), and which are potential candidates for revised effluent limitations and guidelines, or in the case of the recently promulgated organic chemicals plastics and synthetic fibers (OCPSF) regulation, where the Agency is in the process of making a determination on the further regulation of the reserved priority pollutants, as well as nonconventional pollutants (52 FR 42544). Section 304(m) requires EPA to publish schedules for the annual review and revision of existing effluent guidelines, but does not mandate completion of review and revisions within a specified time. If and when EPA decides to initiate rulemakings for any of these industries, it will identify the industries in a subsequent **Federal Register** notice pursuant to section 304(m).

1. Copper Forming (40 CFR Part 468).
2. Timber Products Processing (40 CFR Part 429).
3. Textile Manufacturing (40 CFR Part 410).
4. Pharmaceutical Manufacturing (40 CFR Part 439).
5. Organic Chemicals Plastics and Synthetic Fibers (40 CFR 414, 416), (reserved priority pollutants and nonconventional pollutants).

Appendix B

Following is a list of industrial categories or subcategories discharging toxic and nonconventional pollutants for which BAT effluent guidelines and NSPS have not been promulgated. These categories are under review, pursuant to section 304(m)(1)(B), as potential candidates for BAT effluent guidelines and NSPS. Most were selected for review because of Domestic Sewage Study findings. If the Agency decides that rulemaking is appropriate for these industrial categories, it will, pursuant to section 304(m), publish schedules for these guidelines that call for promulgation not later than three years after final identification of the industries in the **Federal Register** (see parts III and VI of today's notice).

1. Hazardous Waste Treaters.
2. Solvent Recyclers.
3. Machinery Manufacturing and Rebuilding.
4. Transportation.
5. Paint Manufacture and Formulation (40 CFR Part 446).
6. Industrial Laundries.
7. Hospitals (40 CFR Part 460).
8. Waste Oil Refiners.
9. Drum Reconditioners.
10. Oil and Gas (Onshore and Coastal subcategories—40 CFR Part 435).

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August 25, 1988

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 348

External Analgesic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 348

[Docket No. 78N-0301]

External Analgesic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of an amended tentative final monograph that modifies the indications for which over-the-counter (OTC) hydrocortisone-containing external analgesic drug products are generally recognized as safe and effective and not misbranded, by including additional warnings and directions for products labeled for "external anal itching." FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products and public comments on the advance notice of proposed rulemaking for OTC anorectal drug products that was based on those recommendations. The agency's proposal concerning OTC anorectal drug products was published in the **Federal Register** of August 15, 1988; (53 FR 30756). These proposals are part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by October 24, 1988. New data by August 25, 1989. Comments on the new data by October 25, 1989. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by December 21, 1988.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 4, 1979 (44 FR 69768), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC external analgesic drug products, together with the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. Interested persons were invited to submit comments by March 6, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by April 3, 1980.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC external analgesic drug products was published in the **Federal Register** of February 8, 1983 (48 FR 5852).

In the **Federal Register** of May 27, 1980 (45 FR 35576), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC anorectal drug products, together with the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (Hemorrhoidal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in that drug class. Interested persons were invited to submit comments by August 25, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by September 24, 1980.

In accordance with § 330.10(a)(10), the data and information considered by the Panels were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking on OTC anorectal drug products, one comment pointed out that the Panel did not consider the status of hydrocortisone for use in OTC anorectal drug products and requested that this use be clarified because another Panel's recommended labeling for OTC external analgesic drug products containing hydrocortisone included a claim "for itchy genital and anal areas." (See comment 25 in the Notice of Proposed Rulemaking for OTC Anorectal Drug Products published in the **Federal Register** of August 15, 1988; (53 FR 30756 at 30766) and the Notice of Proposed Rulemaking for OTC External Analgesic Drug Products (48 FR 5852).)

In this tentative final monograph (proposed rule) that amends Part 348 (as proposed in the **Federal Register** of February 8, 1983; 48 FR 5852), FDA states for the first time its position that the labeling of OTC hydrocortisone-containing external analgesic drug products for "external anal itching" should be consistent with the general warnings and directions for all OTC anorectal drug products. Accordingly, the agency is amending the tentative final monograph for OTC external analgesic drug products to include for hydrocortisone-containing products the warnings and directions proposed in § 348.50(c)(2), (3), and (4), and (d)(1) of the tentative final monograph for OTC anorectal drug products, published in the **Federal Register** of August 15, 1988; (53 FR 30756 at 30783 and 30784).

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC external analgesic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC external analgesic drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substanital or significant economic impact that this rulemaking would have on OTC external analgesic drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling repackaging, or reformulating.

Comments regarding the impact of this rulemaking on OTC external analgesic drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on OTC external analgesic drug products, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before October 24, 1988, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 21, 1988. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brakcets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before August 25, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before October 25, 1989. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on October 25, 1989. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 348

External analgesic drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 348 as follows:

PART 348—EXTERNAL ANALGESIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 348 is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. In Subpart C, § 348.50 (c)(9) and (d)(3) are added to read as follows:

§ 348.50 Labeling of external analgesic drug products.

* * * * *

(c) * * *

(9) *For products containing hydrocortisone preparations identified in § 348.10(d) (1) and (2) that are labeled with the indication "* * * for external anal itching."* In addition to the warnings in paragraph (c)(1) of this section, the labeling of the product also contains the warnings proposed in § 246.50(c) (2), (3), and (4) of this chapter. (See the **Federal Register** of August 15, 1988; 53 FR 30756.)

(d) * * *

(3) *For products containing hydrocortisone preparations identified in § 348.10(d) (1) and (2).* In addition to the applicable directions in paragraph (d)(1) of this section, the labeling of the product also contains the directions proposed in § 346.50(d)(1) of this chapter. (See the **Federal Register** of August 15, 1988; 53 FR 30756.)

Dated: April 28, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–19333 Filed 8–24–88; 8:45 am]

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 628]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 628 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 335,141 cartons during the period August 28 through September 3, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 628 (§ 910.928) is effective for the period August 28 through September 3, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The committee met publicly on August 23, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.928 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.928 Lemon Regulation 628.

The quantity of lemons grown in California and Arizona which may be handled during the period August 28, 1988, through September 3, 1988, is established at 335,141 cartons.

Dated: August 24, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-19550 Filed 8-25-88; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 958

[AMS-FV-88-052 FR]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Final Rule Clarifying Grade Terminology and Adding Container Marking Requirements to the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires persons who handle onions under Marketing Order No. 958 to mark containers of U.S. Commercial grade onions with the grade. The rule also specifically lists "U.S. Commercial" as a grade which may be shipped by such handler. These changes are necessary in order to identify shipments of U.S. Commercial grade onions, to improve the marketing of onions, and to clarify the application of current grade requirements.

EFFECTIVE DATE: August 26, 1988.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and

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Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Order No. 958 (7 CFR Part 958), regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Idaho-Eastern Oregon onions subject to regulation under this marketing order, and approximately 360 onions producers. Approximately 30 importers of onions are subject to the onion import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Idaho-Eastern Oregon onions and the majority of importers may be classified as small entities.

The handling requirements for Idaho-Eastern Oregon onions are specified in § 958.328 [47 FR 32919 (July 30, 1982) as amended at 49 FR 31257 (August 6, 1984) and 50 FR 50157 (December 8, 1985)]. That regulation establishes grade and size requirements for each of the three types of onions grown in the production area—white, red, and all other varieties, principally yellow varieties. Yellow varieties comprise the vast majority of fresh market shipments, accounting for approximately 90 percent of this season's total to date. The remaining 10 percent of fresh movement is divided about evenly between white and red varieties.

For each of the varieties, the regulation establishes that no person may handle any onions which do not meet the minimum grade requirement of U.S. No. 2 as defined in the U.S. Standards for Grades of Onions (7 CFR 51.2830–51.2854, 51.3195–51.3209). The three grades of onions permissible to ship are, in descending order of quality, U.S. No. 1, U.S. Commercial, and U.S. No. 2.

At its February 17 and May 10 meetings the committee unanimously recommended that containers of U.S. Commercial grade onions shipped under the order be so marked. The objective is to ensure that buyers are aware that shipments consist of onions of U.S. Commercial grade quality and not U.S. No. 1 or U.S. No. 2 grade quality. Peeling has been a problem with sweet Spanish (yellow) onions during the 1987–88 shipping season. The outer skins would fall off, exposing the fleshy inner scales. However, except for the lack of outer skins, the onions would normally meet U.S. No. 1 grade requirements. Many of these lots were shipped as U.S. Commercial grade, which is better than U.S. No. 2, the minimum quality required under the order. The consensus among shippers was that by shipping the onions without outer skins under U.S. Commercial grade, a better price would be obtained in the marketplace than for U.S. No. 2 grade.

After several carlots of U.S. Commercial grade onions had been shipped, some shippers complained that such shipments were adversely affecting sales and prices of U.S. No. 1 grade onions.

According to committee records, fewer than 50 loads, about three-tenths of one percent of total shipments, have been marketed as U.S. Commercial grade this season, and only three shippers handled onions of this grade. However, this rule will apply uniformly to all handlers of U.S. Commercial grade onions regulated by Marketing Order No. 958.

Onion disposition reports compiled by the committee for the August 1987 to April 1988 period indicate that of the 15,305 carlots of yellow onions marketed fresh, 14,660 carlots of 96 percent were U.S. No. 1 grade. Similar grade breakdowns for white and red varieties are not compiled.

Under this rule, containers of U.S. Commercial grade onions are the only ones required to be marked. Most shipments of U.S. No. 1 grade onions are already marked, although this is not required by the regulation. U.S. No. 2 grade onions are readily distinguished from No. 1 grade onions, and comprise only four percent of the shipments. For these reasons, the committee believes that container marking requirements for all grades are unnecessary. Further, the purpose of the rule is to identify shipments of U.S. Commercial grade onions, not to discourage such shipments. Each grade has its place in the marketplace. U.S. No. 1 onions are customarily shipped for fresh market consumer sales. U.S. Commercial and U.S. No. 2 grade onions generally go to other outlets for processing into products such as onion rings, or chopping for fast food outlets, or manufacturing into sauces.

The committee considered several alternatives to the container marking requirement. One was changing the minimum grade to U.S. No. 1, thus eliminating both U.S. Commercial and U.S. No. 2 grades. Another was to require U.S. Commercial as the minimum grade. However, the consensus was that these alternatives would limit the choices buyers have and also cause hardship on those growers with a high proportion of their crop in the lower grades. Other alternatives included recommending tightening tolerances for U.S. Commercial grade, and making no change in the regulations. All of these were discussed and dismissed as unsuitable solutions.

Onions are typically shipped in cardboard boxes or mesh bags containing 50 pounds. These containers could be permanently labeled to indicate U.S. Commercial grade with a stencil, rubber stamp, or a separate press run during printing. Consequently, the cost to handlers of complying with this rule will be minimal.

In addition to the marking requirement, the committee recommended a change in the wording of the grade requirements for yellow onions. Some confusion exists as to whether U.S. Commercial grade onions can be shipped since this grade is not specifically listed in the current grade requirements. The committee therefore recommended adding "U.S. Commercial" after "U.S. No. 2" in paragraph (a)(3)(i) of the regulation which pertains to yellow onions and recommended a similar change in paragraph (a)(1) of the regulation pertaining to white varieties for conformity.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including onions, are regulated under a Federal

marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in direct competition with the imported commodity. Imports then must meet the quality standards set for the particular area.

In the case of onions, the current import regulation (7 CFR 980.117) specifies that import requirements for onions be based on those requirements in effect for onions grown in certain designated counties in Idaho, and Malheur County, Oregon (M.O. 958) from June 1 through March 9 of each marketing year and on those requirements in effect for onions grown in designated counties of south Texas (M.O. 959) for the remainder of the year.

The changes to § 958.328 require no changes in the language of § 980.117 or the present paragraph (g) of § 958.328 *Applicability to imports.*

Further, miscellaneous changes are made to the unmarked introductory paragraph in § 958.328. These changes clarify present requirements and conform paragraph references to other changes.

Notice of this action was published in the **Federal Register** on June 22, 1988 (53 FR 23404) allowing interested persons until July 22, 1988, to file written comments. One comment was received from the manager of the committee. The comment stated that it was the intent of the committee that the proposed grade markings be of a permanent nature, as opposed to pressure sensitive labels. It was therefore suggested that the word "permanent" be included in the marking requirement. This point is found to have merit, and the proposal is so changed.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters, including information and recommendations submitted by the committee, the comment on the proposal, and other available information, it is found that the following amendment will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of onions grown in the production area have begun, (2) to maximize benefits to the industry this regulation should apply to as many shipments as possible during the marketing season, (3) the action was proposed at open meetings of onion producers and handlers in the production area, and (4) compliance with this regulation requires no special preparation on the part of handlers.

List of Subjects in 7 CFR Part 958

Marketing agreements and orders, onions, Idaho, Oregon

For the reasons set forth in the preamble, 7 CFR Part 958 is hereby amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 958.328 *Handling regulation* is amended by: revising the introductory paragraph; inserting the words "or U.S. Commercial" after the words "U.S. No. 2" in paragraphs (a)(1) (i) and (ii) and (a)(3)(i); redesignating paragraphs (b), (c), (d), (e), (f), and (g) as (c), (d), (e), (f), (g), and (h), respectively; adding a new paragraph (b); and revising the first sentence of newly redesignated (g) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 958.328 Handling regulation.

No person shall handle any lot of onions, except braided red onions, unless such onions are at least "moderately cured," as defined in paragraph (g) of this section, and meet the requirements of paragraphs (a), (b), and (c) of this section, or unless such onions are handled in accordance with paragraphs (d) and (e) or (f) of this section.

(b) *Pack.* Onions packed as U.S. Commercial grade shall have the grade marked permanently and conspicuously on the container.

* * * * *

(g) *Definitions.* The terms "U.S. No. 1," "U.S. Commercial," and "U.S. No. 2" have the same meaning as defined in the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types), as amended (7 CFR 51.2830-2854), or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195-51.3209), whichever is applicable to the particular variety, or variations thereof specified in this section.

* * * * *

Dated: August 23, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-19484 Filed 8-25-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1946

Agricultural Loan Mediation Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts its proposed rule which was published on May 16, 1988 (53 FR 17198). This action is being taken to add a new regulation to implement subtitles A and B of Title V of the Agricultural Credit Act of 1987 (Pub. L. 100-233), enacted on January 6, 1988. This action is needed to provide the certification requirements a State's agricultural loan mediation program must meet in order for FmHA and other agencies of the Department of Agriculture to participate in mediations conducted pursuant to a State's agricultural loan mediation program, and to enable a State to receive a Federal matching grant(s) to be used for the operation and administration of the program. The intended effect of this action is to establish procedures for certification and for administering the matching grant program, and sets out FmHA's duty to participate in such programs.

EFFECTIVE DATE: August 26, 1988.

FOR FURTHER INFORMATION CONTACT: Chester Bailey, Assistant to the Assistant Administrator, Farmer Programs, Farmers Home Administration, USDA, South Agriculture Building, Room 5025, Washington, DC 20250, telephone (202) 382-1471.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor," since the annual effect on the economy is less $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment,

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investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlays, more than one agency, or to be controversial. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provide better service to agricult producers and their creditors.

Public reporting burden for this collection information is estimated to vary from 2 to 16 hours per response, with an average of 5.7 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20250.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the Administrator of the Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pub. L. 100–233 establishes a procedure under which a State, upon its application, can be certified by the Secretary of Agriculture as a "qualifying" State if the State's agricultural loan mediation program meets certain requirements set out in the statute. The Secretary of Agriculture has delegated the responsibility for State certification and administration of the matching grant program to the Administrator of the Farmers Home Administration (FmHA).

Discussion of the Comments

On May 16, 1988, FmHA published in the **Federal Register** (53 FR 17198) a proposed rule giving interested parties until June 15, 1988, to submit comments. In response to the proposed rule 15 comments were received from individuals, a farm mediation service, farm organizations and other special-interest groups. Most of the comments covered a broad range of subjects relating to the proposed rule. The agency is adopting many of the suggestions made in these comments, and the changes resulting in the text of the rule will be discussed subsequently in the section of this preamble concerning Significant Changes. Other suggestions, which are described below, the agency will not adopt. These are as follows:

1. It was suggested that the agency permit the use of matching grant funds to provide legal and financial counseling to farmers before the mediation process begins. This the agency cannot do, since the statute establishing the program quite specifically limits compensation to expenses incurred in "mediation," and does not include financial counseling which is not provided during the mediation.

2. It was suggested that FmHA should not have been selected by the Secretary of Agriculture as the agency to decide whether State programs qualify for certification and to administer the grant program for such programs, since FmHA, being involved in mediations as a creditor, would have a "conflict of interest" in its capacity of administrator of the program. This suggestion, of course, is technically outside the scope of this rulemaking proceeding, since FmHA has no power to amend a delegation made by the Secretary to itself. It must also be noted, however, that the selection of FmHA as the agency to administer this program has a logical basis because of FmHA's routine involvement in farm lending credit issues. Moreover, the proposition that FmHA would use the certification and grant administration process to coerce mediators into making recommendations favoring the recovery of FmHA debts ignores the fact that the statute quite specifically states that "The Secretary shall not be bound by any determination made in a program described in paragraph (1) (which refers to State mediation programs) if the Secretary has not agreed to such determination." (7 U.S.C. 5103(a)(2)). FmHA would have little incentive to use a mechanism as crude as reducing or withholding funds for an entire State program to attempt to influence individual mediation decisions that it is free to accept or reject in any event.

3. Some commenters argued that FmHA should amend its rules to provide that FmHA's participation in mediations should be mandatory even in States in which participation is voluntary for debtors and creditors generally. This FmHA declines to do. While it is true that it probably will be unusual for FmHA to decline to participate in a mediation, especially since the agency would never be obliged to accept the outcome in any event, the agency sees no reason to bind itself by regulation to participate in all cases. The statute clearly does not require that FmHA's participation in each mediation be mandatory, since the statute's mandatory language refers only to participation in "State agricultural loan mediation programs," not to participation in each and every mediation conducted pursuant to such programs.

4. The agency also will not adopt the suggestion that it impose a requirement in this regulation that private lenders whose loans are guaranteed by FmHA must participate in mediations. Those lenders will be subject to the mediation laws and rules governing private lenders in each State, and the imposition of a requirement in this rule is unnecessary and potentially confusing. Moreover, FmHA would not, as a matter of policy, want to impose a special requirement concerning mediation on those lenders because their loans are guaranteed by FmHA. The guaranteed loan program is intended to provide a vehicle for increasing private sector participation in the provision of agricultural credit, and that goal is best achieved by keeping governmentally-imposed special conditions and restrictions to an absolute minimum.

5. Several comments suggested the imposition of a specific minimum number of annual hours of training for mediators in each State, and specific rules requiring the provision of brochures, broadcast announcements, and notification of mediators' names, addresses and phone numbers on foreclosure notices, also were suggested. The agency declines to adopt these suggestions, which would attempt to micro-manage each State's program and operations in ways that the statute does not seem to contemplate. Congress did not intend FmHA or any other Federal agency to operate a uniform, nationwide, mediation program, but rather confined the Federal role to providing limited financial support to State-run programs that satisfy the statutory criteria. The number of hours of training that may be necessary in one program may not be necessary in another, since prior experience of the mediators and the complexity of the

programs may well vary from one State to another. Similarly, the best method of ensuring that adequate notice is given to borrowers should be left to the States, and the circumstances of the States clearly vary here as well. FmHA will not hesitate to impose detailed requirements, by rule or otherwise, if problems develop in actual practice. But attempts to anticipate such problems in advance are too likely to lead to burdensome and needlessly-detailed regulation.

6. The agency, for similar reasons, will not establish detailed requirements for the annual reports that the statute requires each State to submit. Our experience, although it is limited, with the materials submitted by the various States in support of their applications for certification suggests that the States are quite competent to obtain necessary information without detailed guidance. If it appears that specific information is needed that is not being provided in those annual reports, FmHA will not hesitate to require its submission. But we do not know at this time what specific problems, if any, may develop, and fear that attempting to anticipate such problems could be counterproductive.

7. The agency similarly concludes that the rules should not be amended to attempt to provide more detailed conditions and restrictions concerning the sanctions to be imposed for possible non-compliance with requirements for the use of matching grant funds, nor should the rule go into such details as to whether capital expenditures for used equipment, should be permitted. The departmental regulations governing grant administration are quite extensive and specific, and FmHA does not now have any reason to believe that even more specific guidance is possible at this time. Here again, the agency concludes that regulatory conditions and restrictions adopted in advance of known problems could be counterproductive.

The significant changes are as follows:

Part 1946—Mediation

Subpart A—Agricultural Loan Mediation Program

Section 1946.1 has been partially revised in paragraph (b) to make an editorial change and to show that FmHA will comply with requests for information and analysis.

Section 1946.4(d) has been partially revised to clarify the method of distributing matching grant funds to qualifying States.

Section 1946.4(e)(2) has been partially revised to show that detailed cost estimates are to be provided by a State on the operation and administration of its agricultural loan mediation program.

Section 1946.4(g)(1) has been partially revised to require FmHA to notify a Governor or Head of a State Agency within 15 days after receipt of an application for a grant if additional information/clarification is needed.

Section 1946.5(a) has been partially revised to show that this program will be monitored by the FmHA Assistant to the Assistant Administrator for Farmer Programs in lieu of the Emergency Designation Staff.

Section 1946.7 has been partially revised to make an editorial change in the title.

Section 1946.8 has been partially revised to change the delegation of authority from the Staff Director, Emergency Designation Staff, to the Assistant to the Assistant Administrator for Farmer Programs.

This program/activity will be listed in the Catalog of Federal Domestic Assistance under No. 10.435, Agricultural Loan Mediation Program. This program is being proposed for exclusion from the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers-Home Administration Programs and Activities.")

List of Subjects in 7 CFR Part 1946

Federal-State Relations, Grant Programs-Agriculture, Mediation.

Accordingly, FmHA adds a new Part 1946 consisting of Subpart A, to Chapter XVIII, Title 7, of the Code of Federal Regulations as follows:

PART 1946—MEDIATION

Subpart A—Agricultural Loan Mediation Program

Sec.

1946.1 General.
1946.2 Definitions.
1946.3 Process for certification.
1946.4 Matching grants.
1946.5 Monitoring compliance and penalty for non-compliance.
1946.6 Nondiscrimination.
1946.7 Environmental requirements.
1946.8 Delegation of authority.
1946.9 1946.49 [Reserved]
1946.50 OMB control number.

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Agricultural Loan Mediation Program

§ 1946.1 General.

(a) This subpart provides procedures for administration of the agricultural loan mediation program whereby a State may be certified by the Farmers Home Administration (FmHA) as a qualifying State for purposes of FmHA and other USDA agencies' participation in the program. Such certification is also necessary for a State to receive Federal matching grant funds to be used for the operation and administration of the State's agricultural loan mediation program.

(b) FmHA will participate in mediations conducted pursuant to a State's agricultural loan mediation program under the same terms and conditions applicable to agricultural creditors generally, and will cooperate in good faith in such mediations by complying with requests for information and analysis, and in presenting and exploring debt restructuring proposals, wherever feasible, when that State is and remains a qualifying State as defined in § 1946.2(b) of this subpart.

§ 1946.2 Definitions.

(a) *Agricultural Loan Mediation Program.* A State authorized or administered program which meets the requirements for certification outlined in § 1946.3(a)(2) (i) through (v) of this subpart.

(b) *Qualifying State.* A State which has been certified by FmHA as having an agricultural loan mediation program which meets the requirements outlined in § 1946.3(a)(2) (i) through (v) of this subpart, provided the State's certification has not expired or been withdrawn under the provisions of § 1946.5(c) of this subpart.

§ 1946.3 Process for certification.

(a) No later than August 1, of each year, the Governor of a State or Head of a State agency designated by the Governor of a State must submit a written request to the FmHA if the State wishes to be certified as a qualifying State for the purposes of FmHA participation in the State's program and for the State to receive a matching grant to be used for the operation and administration of the program within the State during the fiscal year commencing October 1 of that same year. The request must include:

(1) A description of the State's agricultural loan mediation program.

(2) Documentary information to support the request and a certification by the Governor or Head of a State

agency designated by the Governor that the State's agricultural loan mediation program:

(i) Provides for mediation services to be provided to producers, and their creditors, that, if decisions are reached, result in mediated, mutually agreeable decisions between the parties under the program;

(ii) Is authorized or administered by an agency of the State government or by the Governor of the State;

(iii) Provides for the training of mediators;

(iv) Provides that the mediation session shall be confidential; and

(v) Ensures that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program.

(b) If the State is a qualifying State at the time the written request is made, the written request need only describe the changes to the program since the previous year's request together with such documentary support as may be necessary concerning such changes, as well as a certification that the remaining elements of the program remain as described in the previous application.

(c) The request for certification should be mailed to:

Administrator, Farmers Home Administration, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Room 5014, Washington, DC 20250.

(d) If a matching grant is requested in accordance with § 1946.4 of this subpart, the request for certification also must include the information required by § 1946.4 (e)(2) of this subpart.

(e) Within 15 days from receipt of the request for certification, the Administrator will notify the State Governor or Head of a State agency designated by the governor whether or not the State is certified as a qualifying State as defined in § 1946.2(b) of this subpart, or, if additional information or clarification is needed to make the determination, the Administrator will advise the State Governor or Head of a State agency of the additional information or clarification needed. Upon receipt of the additional information or clarification requested, the Administrator will respond within 15 days from the date of receipt.

§ 1946.4 Matching grants

(a) *Administration of grants.* FmHA will administer the program in accordance with the requirements of 7 CFR Parts 3015 and 3016. Any State requesting a grant must comply with the provisions of those regulations.

(b) *Source of funds.* All grants awarded to qualifying States will be made from appropriated funds specifically for this program. A statement of the amounts appropriated, obligated, and remaining available for the program at any particular time will be given to any person upon request to FmHA.

(c) *Amount of grant.* A grant will not exceed 50 percent of the total fiscal year funds that a qualifying State requires to operate and administer its Agricultural Loan Mediation Program which has been certified by the Administrator as meeting the requirements of § 1946.3 (a)(2) (i) through (v) of this subpart. In no case will the total amount of a grant exceed $500,000 annually.

(d) *Distribution criteria.* If funds for grants are appropriated on a fiscal year basis, funds will be obligated on a pro-rata basis to all States whose programs are certified at the beginning of the fiscal year. States certified after the beginning of the fiscal year will receive a share of funds not previously obligated. If, however, when funds for a fiscal year become available, there are not sufficient funds to give all qualified States 50 percent of their justified estimated expenses for the fiscal year, the percentage allocation to each State will be reduced so as to give all States the same percentage of their expenses. If after the percentage calculation any State's allocation still exceeds $500,000, that State's share will be further reduced to $500,000 and the remaining States' shares will be increased by the same percentage.

(e) *Eligibility criteria for amount of grant requested.* To be eligible to receive the amount of grant requested, a State must:

(1) Have an Agricultural Loan Mediation Program that has been certified by the Administrator in accordance with § 1946.3 of this subpart, which certification has not been withdrawn in accordance with § 1946.5 (c) of this subpart.

(2) Provide detailed estimates of the costs of operating and administering the State's Agricultural Loan Mediation Program.

(f) *Grant purposes.* (1) Grants made under this subpart will be used solely for the operation and administration of the State's Agricultural Loan Mediation Program. There is no other authorized use of grant funds. Eligible costs are limited to those allowable under 7 CFR 3016.22 that are reasonable and necessary to carry out the mission of the State's Agricultural Loan Mediation Program in providing mediation services for agricultural producers and their creditors within the State, such as:

(i) Salaries of professional, technical, and clerical staffs;

(ii) Payment of necessary, reasonable office expenses such as office rental, office utilities, and office equipment rental;

(iii) Purchase of office supplies;

(iv) Payment of administrative costs, such as workers' compensation, liability insurance, employer's share of social security, and travel that is necessary to provide mediation services;

(v) Training for mediators; and

(vi) Secretary systems necessary to assure confidentiality of mediation sessions.

(2) Grant funds may not be used for:

(i) The purchase of capital assets, real estate, or vehicles or repair and maintenance of privately-owned property;

(ii) Political activities; and

(iii) Routine administrative activities not allowable under OMB Cost Principles.

(g) *Application processing.* (1) FmHA will have 60 days from the date of certifying a State as a qualifying State to review the State's application and supporting information for a grant, mail the obligation document to the responsible State Government official for signature, to obligate funds, and notify the State of approval. In any case where additional information/clarification is needed for processing a grant application, the 60-day time limit will begin on the date the additional information of clarification is received. FmHA will notify the Governor or Head of a State agency within 15 days of receipt of the application for a grant if information/clarification is needed.

(2) A State requesting a matching grant will submit to the Administrator:

(i) Standard Form 424, "Federal Assistance." The application form can be obtained from any FmHA office.

(ii) The information prescribed in paragraph (e)(2) of this section.

(h) *Grant approval.* (1) The Administrator will notify the Governor or Head of the State agency designated by the Governor of grant approval by mailing, on the obligation date, a copy of the completed Form FmHA 1940–1, "Request for Obligation of Funds." The Form FmHA 1940–1 will indicate that the grant is subject to the requirements of 7 CFR Parts 3015 and 3016, this subpart, and will cite any special grantee conditions.

(i) *Fund disbursement or grant termination or major changes.* (1) Qualifying States approved to receive matching grants under this subpart will receive payment in accordance with 7 CFR Parts 3015 and 3016.

(2) In the case of a grant reduction, termination or withdrawal of

certification, in accordance with § 1946.5 (c) of this subpart, or major changes in the scope of the State's Agricultural Loan Mediation Program, the Administrator, or designee, will execute Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," to stop further disbursement of funds under the Grant Agreement.

(j) *Financial management systems and reporting requirements.* (1) States receiving grants must comply with standards for the financial management and reporting and program performance reporting found in 7 CFR Parts 3015 and 3016.

(2) Qualifying States receiving matching grants must provide to the FmHA State Office by September 30 an annual report on:

(i) The effectiveness of the State's Agricultural Loan Mediation Program;

(ii) Recommendations for improving the delivery of mediation services to producers; and

(iii) The savings to the State as a result of having an Agricultural Loan Mediation Program.

(3) FmHA State Offices will include any comments or recommendations regarding the State's Agricultural Loan Mediation Program and mail the information to the Administrator no later than November 1.

§ 1946.5 Monitoring compliance and penalty for non-compliance.

(a) *FmHA monitoring.* The FmHA Assistant to the Assistant Administrator, Farmer Programs, will monitor compliance of the State's Agricultural Loan Mediation Program through the reports received in accordance with § 1946.4(j) of this subpart, through information received from FmHA field offices and the public, and through on-site visits to observe the operation and administration of the program.

(b) *Audit.* The qualifying State is subject to the audit requirements of 7 CFR Parts 3015 and 3016 of this chapter. An audit report will be submitted to the FmHA Administrator annually or biennially as applicable in accordance with OMB Circular A–128 by each qualifying State receiving a grant.

(c) *Penalty for non-compliance.* If the Administrator determines that a State's Agricultural Loan Mediation Program does not meet or no longer meets the requirements set out in § 1946.3(a)(2) (i) through (v) of this subpart for certification or, that grant funds are not being used only for the operation and administration of the State's Agricultural Loan Mediation Program, the FmHA Administrator is authorized to withdraw the certification of the program and terminate additional grant assistance and/or to impose any penalties or sanctions established in 7 CFR Parts 3015 and 3016. In the event that the penalty for non-compliance is enforced, the FmHA and other USDA agencies will cease to participate in mediations conducted by the State Agricultural Loan Mediation Program. If the penalty for noncompliance is enforced, the reason(s) will be included in a letter to the Governor or Head of the State agency along with appeal rights under Subpart B of Part 1900 of this chapter.

§ 1946.6 Nondiscrimination

The provisions of 7 CFR 1901 Subpart E, "Civil Rights Compliance Requirements," 7 CFR Part 15, "Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture-Effectuation of Title VI of the Civil Rights Act of 1964," 7 CFR Part 15b, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," and 45 CFR Part 90, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," apply to activities financed by grants made under this subpart.

§ 1946.7 Environmental requirements.

Environmental requirements are not applicable to this subpart.

§ 1946.8 Delegation of authority.

The Administrator hereby delegates the authority for processing applications and administering grants under this subpart to the Assistant to the Assistant Administrator, Farmer Programs.

§§ 1946.9–1946.49 [Reserved]

§ 1946.50 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0125. In accordance with 5 CFR Part 1320, summarized below is the annualized public reporting burden for this regulation:

Section of regulations	Title	Form No. (if any)	Established number of respondents	Reports filed annually	Total annual responses (d) x (e)	Established number of manhours per response	Established total manhours (f) x (g)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Reporting Requirements/No Forms							
1946.3(a)	Request for certification	NONE	15	On occasion	15	4	60
1946.3(b)	Reverification of Approval	NONE	10	On occasion	10	2	20
1946.4(e)(2)	Eligibility criteria for amount of grant requested.	NONE	10	On occasion	10	2	20
1946.4(c)	Financial management systems and reporting requirements.	NONE	10	1	10	8	80
1946.5(b)	Audit report	NONE	10	1	10	16	160
Reporting Requirements Approved Under Other Dockets							
1946.4(g)(2)	Application for Federal Assistance	SF 424 (0348–0006)	15	On occasion	15	2	30
Docket Total.					70		370

Vance L. Clark,

Administrator, Farmers Home Administration.

Dated: August 9, 1988.

[FR Doc. 88–19481 Filed 8–25–88; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-116]

CITE [R] Test, Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming, without change, an interim rule that amended the brucellosis regulations by allowing designated epidemiologists to consider the results of the concentration of immunoassay technology (CITE [R]) test as a diagnostic supplement to the standard card testing of official vaccinates. This action is warranted in order to permit faster diagnostic testing than has been available to determine brucellosis disease status, and to avoid the unnecessary destruction of valuable cattle and bison.

DATES: September 26, 1988. The incorporation by reference of certain procedures in the regulations was approved by the Director of the Federal Register April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Hugh E. Metcalf, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8713.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious and contagious disease, caused by bacteria of the genus *Brucella,* that affects animals and man. The Secretary of Agriculture is authorized to cooperate with the states in conducting a brucellosis eradication program. The regulations in 9 CFR Part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the interstate spread of brucellosis.

Official bucellosis tests are used for determining the brucellosis status of cattle, bison, and swine. The regulations stipulate that testing negative to an official brucellosis test is a condition for certain interstate movements of cattle, bison, and swine. Additionally, official tests are used to determine eligibility for indemnity payments for animals destroyed because of brucellosis.

In an interim rule published in the **Federal Register** on May 5, 1988 (53 FR 16245-16246, Docket Number 88-026), and effective April 27, 1988, we amended the regulations to allow designated epidemiologists to use the CITE [R] test as a diagnostic supplement to standard card testing when determining the brucellosis disease status of officially vaccinated cattle or bison. Comments on the interim rule were required to be postmarked or received on or before July 5, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action allows designated epidemiologists a faster method of gathering data to supplement standard card test results. The current procedure of verifying standard card test results through laboratory testing would remain a viable option.

This amendment does not change the testing requirements for brucellosis. It merely authorizes an optional methodology to laboratory verification of standard card test results. CITE [R] testing is faster than laboratory testing and allows for faster marketing, but the economic effect on owners of officially vaccinated cattle or bison should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Incorporation by reference, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 53 FR 16245-16246 on May 6, 1988.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 22nd day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-19389 Filed 8-25-88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of increasing discount rates.

The decision reflects the intent of the Federal Reserve to reduce inflationary pressures. The action was also taken in light of the growing spread of market interest rates over the discount rate.

The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The discount rate is the interest rate that is charged depository institutions when

they borrow from their district Federal Reserve Banks.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452-3257); for the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) (202/452-3544), Earnestine Hill or Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A to incorporate changes in discount rates on Reserve Bank extensions of credit. Further, under the authority of 5 U.S.C. 553 (b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations require that these amendments be adopted immediately.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons outlined above, the Board of Governors amends 12 CFR Part 201 as set forth below:

PART 201—[AMENDED]

1. The authority citation for 12 CFR Part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6.5	Aug. 9, 1988.
New York	6.5	Do.
Philadelphia	6.5	Do.
Cleveland	6.5	Do.
Richmond	6.5	Do.
Atlanta	6.5	Do.
Chicago	6.5	Aug. 10, 1988.
St. Louis	6.5	Aug. 9, 1988.
Minneapolis	6.5	Do.
Kansas City	6.5	Do.
Dallas	6.5	Aug. 11, 1988.
San Francisco	6.5	Aug. 9, 1988.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6.5	Aug. 9, 1988.
New York	6.5	Do.
Philadelphia	6.5	Do.
Cleveland	6.5	Do.
Richmond	6.5	Do.
Atlanta	6.5	Do.
Chicago	6.5	Aug. 10, 1988.
St. Louis	6.5	Aug. 9, 1988.
Minneapolis	6.5	Do.
Kansas City	6.5	Do.
Dallas	6.5	Aug. 11, 1988.
San Francisco	6.5	Aug. 9, 1988.

(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6.5	Aug. 9, 1988.
New York	6.5	Do.
Philadelphia	6.5	Do.
Cleveland	6.5	Do.
Richmond	6.5	Do.
Atlanta	6.5	Do.
Chicago	6.5	Aug. 10, 1988.
St. Louis	6.5	Aug. 9, 1988.
Minneapolis	6.5	Do.
Kansas City	6.5	Do.
Dallas	6.5	Aug. 11, 1988.
San Francisco	6.5	Aug. 9, 1988.

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be lengthened or shortened.

By order of the Board of Governors of the Federal Reserve System, August 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19471 Filed 8-25-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

Special Flight Rules in the Vicinity of the Grand Canyon National Park; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: On June 2, 1988, the FAA published a final rule for the restriction of aircraft flights in the vicinity of the Grand Canyon National Park. This action corrects errors in the preamble and final rule, including the technical descriptions of the Special Flight Rules Area and flight-free zones within that area.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION: On May 27, 1988, the FAA issued a final rule for the regulation of aircraft operations in the vicinity of the Grand Canyon National Park (53 FR 20264, June 2, 1988). In that document, the language of the preamble and final rule contained certain technical errors which are corrected below.

Correction to Special Federal Aviation Regulation No. 50-2

The following corrections are made in SFAR 50-2, Special Flight Rules in the Vicinity of the Grand Canyon National Park (53 FR 20264, June 2, 1988).

1. On page 20267, first column, line 1, change "Tuweep" to "Toroweap".

2. On page 20268, first column, line 26, change "exist" to "exit".

3. On page 20268, first column, line 51, change "205°" to "203° magnetic".

4. On page 20268, second column, line 4; on page 20272, second column, line 51; and on page 20274, second column, line 32: remove the word "Canyon".

5. On page 20268, second column, line 26, change "Toroweap" to "Tuweep".

6. On page 20271, second column, line 11, change "March 19, 1989" to "April 6, 1989".

7. On page 20272, second column, lines 5 and 16; page 20273, third column, line 32; and page 20274, third column, line 1: change "Yumitheska" to "Yumtheska".

8. On page 20272, second column, revise the first sentence of numbered paragraph 4 to read:

"4. Prohibit operation in four "flight-free zones" unless necessary for the purposes enumerated in paragraph 3 above for flight below minimum flight altitudes."

9. On page 20273, remove the word "proposed" in the first column, lines 15, 29, and 38, and from the second column, line 5.

10. On page 20273, second column, insert a semicolon after the abbreviation "W." in lines 47 through 50.

11. On page 20273, second column, last line, change the period after the word "regulation" to a colon.

12. On page 20274, first column, lines 5 and 7, change the word "and" to "an".

13. On page 20274, first column, lines 32, 33, and 37, insert a period after the abbreviation "W".

14. On page 20274, first column, line 41, change the number "112°" to "111°".

15. On page 20274, first column, line 49, and second column, line 13, change "216°" to "218°".

16. On page 20274, second column, insert a period after the abbreviation "W" on line 3 and the abbreviation "N" on line 6.

17. On page 20274, second column, remove paragraphs (d) (i) and (ii) (lines 32 through 40, beginning with "(i) at or above * * *") and add in their place the following:

at or above 10,500 feet MSL within 2 nautical miles either side of a line extending between Lat. 36°22'55" N., Long. 112°48'50" W. and Lat. 36°17'10" N., Long. 112°48'50" W.; to the point of origin.

18. On page 20274, third column, line 27, change the word "structural" to "structure".

Issued in Washington, DC on August 18, 1988.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 88-19232 Filed 8-25-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6793; 34-26010; 35-24701; 39-2177; IC-16530; IA-1136; File No. S7-5-88]

Expedited Publication of Interpretative, No-Action and Certain Exemption Letters

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of an amendment to its regulation concerning Information and Requests to provide uniform procedures for prompt publication of interpretative, no-action, and certain exemption letters, unless temporary confidential treatment is granted.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Burke or Michael T. Dorsey at (202) 272-2848, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to Rule 81 of its regulation concerning Information and Requests.[1] The revision will establish uniform procedures for prompt publication of interpretative, no-action, and certain exemption correspondence, except in cases where confidential treatment is extended under the standards of Rule 81(b).

I. Background and Summary

On September 8, 1987, the Commission proposed for public comment amendments to Rule 81 [2] to provide for expedited publication of interpretative, no-action, and certain exemption letters,[3] except in cases where confidential treatment had been granted or when the request related to certain trading practices rules [4] under the Exchange Act. Because of concerns that correspondence under the trading practices rules might more typically involve matters sensitive to premature disclosure, the Commission proposed that such correspondence continue to receive delayed publication. Certain commentators on Release 33-6740 recommended that correspondence issued under the trading practices rules also be released immediately, unless confidential treatment had been granted.[5]

On April 7, 1988, the Commission adopted the amendments to Rule 81 as proposed,[6] and at the same time issued a release proposing for public comment an additional amendment providing for expedited publication of interpretative, no-action, and exemption letters issued under the trading practices rules.[7] The Commission has determined to adopt the amendment as proposed, thereby establishing uniform procedures for publication of all correspondence subject to Rule 81.

II. Discussion of Amendment

The amendments to Rule 81 adopted in Release 33-6740 reflect the Commission's view that interpretative, no-action, and exemption correspondence should be publicly available as promptly as possible, unless confidential treatment has been granted. In this way, the public will have earlier access to the staff's positions on issues under the federal securities laws. Rule 81, however, retained the automatic 30-day period of confidentiality for correspondence issued under the trading practices rules. Two commentators on Release 33-6740 opined that the justification for distinguishing the trading practices rules was insufficient when compared to the public benefits resulting from more timely publication of interpretative, no-action, and exemption letters.[8] These commentators pointed out that transactions forming the basis for requests under the trading practices rules, such as impending public offerings or tender offers, cannot be said to be intrinsically more sensitive to public disclosure than transactions involving other issues. They noted that any adverse consequences of premature disclosure could be avoided in any type of transaction through the confidential treatment procedure of Rule 81(b).

In light of these considerations, the Commission requested public comment on whether to eliminate the distinction in Rule 81 concerning the timing of public availability of interpretative, no-action, and exemption letters involving the trading practices rules. One of the prior commentators [9] reiterated support

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[1] 17 CFR 200.81.

[2] Securities Act Release No. 6740 (September 8, 1987), 52 FR 35115 ("Release 33-6740").

[3] Exemption letters subject to Rule 81 include only those letters granting exemptions from the provisions of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78a *et seq.*, or rules or regulations thereunder, where the issuance of an order granting such exemption does not require public notice and an opportunity for hearing.

[4] 17 CFR 240.10b-6, 240.10b-7, 240.10b-8, 240.10b-13, and 240.13e-4.

[5] The letters of comment concerning Release 33-6740 are available for public inspection and copying at the Commission's Public Reference Room in File No. S7-32-87.

[6] Securities Act Release No. 6764 (Apr. 7, 1988), 53 FR 12412.

[7] Securities Act Release No. 6765 (Apr. 7, 1988), 53 FR 12429 ("Release 33-6765").

[8] Comment letters from the American Bar Association, Section of Corporation, Banking and Business Law (Jan. 4, 1988), and New York State Bar Association, Banking, Corporation and Business Law Section ("NYSBA") (Nov. 4, 1987).

[9] The Commission received only one comment letter concerning Release 33-6765. The letter, sent by NYSBA, is available for public inspection and copying at the Commission's Public Reference Room in File No. S7-5-88.

for expedited release of all interpretative, no-action, and exemption correspondence unless confidential treatment had been granted.

The Commission has determined to adopt the amendment as proposed. The same standard of prompt publication will therefore apply to all interpretative, no-action, and exemption correspondence subject to Rule 81. Temporary confidential treatment continues to be available under Rule 81(b), and premature disclosure of business plans may be prevented in an appropriate case, if the party so requests and the Commission's staff concurs. The amended rule does not change the procedures, standards or maximum duration of such confidential treatment. At the same time, the public interest served by the availability of the staff's positions will be met in ordinary cases in which no substantial prejudice to legitimate business purposes arises through public disclosure. The general standard for prompt disclosure of this correspondence will ease administration of Rule 81 by the Commission's staff, and, because public availability dates will normally be identical to the date of the staff's response, research and citation of this correspondence should be simplified.

III. Cost/Benefit Analysis

The amendment neither imposes additional reporting or recordkeeping requirements nor significantly increases regulatory compliance costs. The principal benefit associated with the amendment is that it will allow more timely public availability of staff responses to requests for interpretative, no-action, and certain exemption letters under trading practices rules. Expedited publication will assist the public in its understanding of significant questions arising under the federal securities laws.

IV. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission certified that the amendment as proposed would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification was noticed in the Release 33–6765 and no comments were received in this regard.

V. Statutory Basis

The amended rule is being adopted under section 19 of the Securities Act of 1933; section 23 of the Securities Exchange Act of 1934; section 20 of the Public Utility Holding Company Act of 1935; section 319 of the Trust Indenture Act of 1939; section 38 of the Investment Company Act of 1940; section 211 of the Investment Advisers Act of 1940; and section 1 of the Freedom of Information Act.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

VI. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

1. The authority citation for Part 200, Subpart D, continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, 15 U.S.C. 77s, 78w, 79l, 80a–37, 80b–11, unless otherwise noted.

2. 17 CFR 200.81 is amended by revising paragraph (a) to read as follows:

§ 200.81 Publication of interpretative, no-action and certain exemption letters and other written communications.

(a) Except as provided in paragraphs (b) and (c) of this section, every letter or other written communication requesting the staff of the Commission to provide interpretative legal advice with respect to any statute administered by the Commission or any rule or regulation adopted thereunder; or requesting a statement that, on the basis of the facts stated in such letter or other communication, the staff would not recommend that the Commission take any enforcement action; or requesting an exemption, on the basis of the facts stated in such letter, from the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or any rule or regulation thereunder, where the issuance of an order granting such exemption does not require public notice and an opportunity for hearing; together with any written response thereto, shall be made available for inspection and copying by any person as soon as practicable after the response has been sent or given to the person requesting it.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

Date: August 19, 1988.

[FR Doc. 88–19403 Filed 8–25–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 87F–0290]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of pentasodium diethylenetriaminepentaacetate and trisodium *N*-hydroxyethylethylenediaminetriacetate as components of adhesives used in food packaging. This action responds to a petition filed by The Dow Chemical Co.

DATES: Effective August 26, 1988; written objections and requests for a hearing by September 26, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 24, 1987 (52 FR 35965), FDA announced that a petition (FAP 7B4023) had been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of pentasodium diethylenetriaminepentaacetate and trisodium *N*-hydroxyethylethylenediaminetriacetate as components of adhesives used in food packaging.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additives are safe, and that the regulations should be amended by revising the table in § 175.105(c)(5).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 26, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding two new entries in the table to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
Pentasodium diethylenetriaminepentaacetate (CAS Reg. No. 140–01–2)...	
* * * * *	
Trisodium *N*-hydroxyethylethylenediaminetriacetate (CAS Reg. No. 139–89–9)	
* * * * *	

Dated: August 17, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–19439 Filed 8–25–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 436 and 446

[Docket No. 88N–0122]

Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs; High-Performance Liquid Chromatographic, EPI-Minocycline Content, Residue on Ignition, and Absorption Testing Methods for Minocycline Hydrochloride

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to: (1) Provide for an improved method for determining the potency of minocycline hydrochloride bulk and minocycline hydrochloride dosage forms; (2) revise the potency standard for minocycline hydrochloride bulk to prescribe a minimum and a maximum specification; (3) identify and limit the epi-minocycline content of minocycline hydrochloride bulk; and (4) add a residue on ignition test and an absorptivity test for minocycline hydrochloride bulk. These actions are being taken at the request of the sole manufacturer of these products and to provide better quality control of these products.

DATES: Effective September 26, 1988; comments, notice of participation, and request for hearing by September 26, 1988; data, information, and analyses to justify a hearing by October 25, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: At the request of the sole manufacturer of minocycline bulk and its dosage forms, FDA is replacing the microbiological turbidimetric assay currently specified in the regulations for determining the potency of minocycline hydrochloride bulk and minocycline hydrochloride dosage forms with a high-performance liquid chromatographic (HPLC) assay. In addition, FDA is amending the antibiotic drug regulations for minocycline hydrochloride bulk to: (1) Revise the potency standard from not less than 785 micrograms per milligram on an "as is" basis to not less than 890 and nor more than 950 micrograms per milligram on an "anhydrous" basis; (2) use the HPLC assay to test for epi-minocycline content with an upper limit of not more than 1.2 percent; (3) add a residue on ignition test with an upper limit of not more than 0.15 percent; and (4) add an absorptivity test with an upper limit of not more than 0.006.

Current assay methods for determining the content and potency of minocycline hydrochloride are done by gravity flow chromatographic and microbiological turbidimetric assay methods, respectively. The gravity flow chromatographic method is specific; however, it is time-consuming and unable to detect and quantitate related compounds. The microbiological turbidimetric assay lacks specificity. The manufacturer has demonstrated that the HPLC assay provides a fast, easily performed and specific test that can be used to determine both content and potency of minocycline hydrochloride and identify and quantitate its related compounds.

Additionally, the manufacturer recommends that three additional tests (residue on ignition, absorptivity, and epi-minocycline content) be added to the accepted standards for minocycline hydrochloride bulk to assure its quality.

FDA has reviewed the manufacturer's request and has concluded that the requested changes are acceptable. Therefore, FDA is amending the monographs for minocycline hydrochloride bulk and minocycline hydrochloride dosage forms to revise the potency assay from a microbiological turbidimetric assay to an HPLC assay and to revise the potency standard and add tests and limits for epi-minocycline content, residue on ignition and absorptivity for minocycline hydrochloride bulk.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) the this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

These amendments were requested by the sole manufacturer of minocycline hydrochloride. They made changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because, when effective, they provide notice of accepted standards, FDA finds that notice and public procedure are unnecessary and not in the public interest. The amendments, therefore, become effective September 26, 1988, except that the manufacturer may elect to comply with the amendments prior to this effective date. Interested persons may, on or before September 26, 1988, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Any person who will be adversely effected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before September 26, 1988, a written notice of participation and request for hearing, and (2) on or before October 25, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 446

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 436 and 446 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

§ 426.106 [Amended]

2. Section 436.106 *Microbiological turbidimetric assay* is amended in paragraphs (a) and (b) in the tables by removing the entry "Minocycline".

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 446 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

4. Section 446.60 is amended by revising paragraphs (a)(1)(i) and (a)(1)(v), by adding new paragraphs (a)(1)(viii) and (a)(1)(ix), by revising paragraphs (a)(3)(i), (b)(1), and (b)(5), and by adding new paragraphs (b)(8) and (b)(9) to read as follows:

§ 446.60 Minocycline hydrochloride.

(a) * * *

(1) * * *

(i) Its potency is not less than 890 micrograms per milligram and not more than 950 micrograms per milligram on the anhydrous basis.

* * * * *

(v) Its epi-minocycline content is not more than 1.2 percent.

* * * * *

(viii) Its residue on ignition is not more than 0.15 percent.

(ix) The absorptivity at 560 nanometers of an aqueous solution containing 10 milligrams of minocycline hydrochloride per milliliter is not more than 0.006.

* * * * *

(3) * * *

(i) Results of tests and assays on the batch for potency, moisture, pH, epi-minocycline content, identity, crystallinity, residue on ignition, and absorptivity.

* * * * *

(b) *Tests and methods of assay*—(1) *Minocycline potency.* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 280 nanometers, a 4.6-millimeter X 3-centimeter guard column containing 10-micrometer diameter RP–8 Lichrosorb, a 4.6-millimeter X 15-centimeter analytical column packed with octyl silane chemically bonded to porous microsilica particles, 5 micrometers in diameter, a flow rate of 2.9 milliliters per minute, and a known injection volume of 10 microliters. Reagents, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(*a*) *0.1 M Disodium ethylenediamine-tetraacetate (EDTA).* Accurately weigh 37.22 grams of disodium ethylenediaminetetraacetate into a 1,000-milliliter volumetric flask. Dissolve in and dilute to mark with deionized water.

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(b) *0.3 M Ammonium oxalate.* Accurately weigh 28.42 grams of ammonium oxalate into a 1,000-milliliter volumetric flask. Dissolve in and dilute to mark with deionized water.

(c) *Mobile phase.* Mix 250 milliliters of dimethylformamide, 200 milliliters of 0.1*M* disodium ethylenediaminetetraacetate and 550 milliliters of 0.2*M* ammonium oxalate. (5:4:11). Allow the solution to cool to room temperature and then adjust the pH to 6.2 to 6.3 with 0.4*M* tetrabutylammonium hydroxide. Filter and degas the mobile phase just prior to its introduction into the chomatographic pumping system.

(ii) *Preparations of working standard, sample and resolution testing solutions*—(a) *Working standard solution.* Dissolve an accurately weighed portion of the minocycline hydrocholoride working standard with sufficient mobile phase (prepared as described in paragraph (b)(1)(i)(c) of this section) to obtain a solution containing 500 micrograms of minocycline activity per milliliter. Use this standard solution within 3 hours of preparation.

(b) Sample solution. Dissolve an accurately weighed sample in sufficient mobile phase to obtain a solution containing 500 micrograms of minocycline activity per milliliter (estimated). Use this solution within 3 hours of preparations.

(iii) *System suitability requirements*—(a) *Asymmetry factor.* Calculate the asymmetry factor (A_s), measured at a point 5 percent of the peak height from the baseline, as follows:

$$A_s = \frac{a+b}{2a}$$

where:

a = Horizontal distance from point of ascent to point of maximum peak height; and
b = Horizontal distance from the point of maximum peak height to point of descent.

The asymmetry factor (A_s) is satisfactory if it is not less than 0.9 and not more than 1.35.

(b) *Efficiency of the column.* From the number of theoretical plates (n) calculated as described in section 436.216(c)(2) calculate the reduced plate height (h_r) as follows:

$$h_r = \frac{(L)(10{,}000)}{(n)(d_p)}$$

where:

L = Length of the column in centimeters;
n = number of theoretical plates; and
d_p = Average diameter of the particles in analytical column packing in micrometers.

The absolute efficiency (h_r) is satisfactory if it is not more than 50 for the minocycline peak.

(c) *Resolution.* Dissolve 50 milligrams of minocycline hydrochloride in 25 milliliters of deionized water. Pipet 5 milliliters of this solution into a 25-milliliter volumetric flask and heat on a steam bath for 60 minutes. Transfer the contents of the flask to a small beaker and evaporate to dryness. Dissolve the residue in mobile phase, transfer to a 25-milliliter volumetric flask, dilute to mark with mobile phase, mix, and filter through Whatman No. 1 filter paper. Use this solution to determine the resolution factor. The resolution (R) between the peaks for minocycline and epi-minocycline is satisfactory if it is not less than 2.0.

(d) *Coefficient of variation (relative standard deviation).* The coefficient of variation (S_R in percent) of 5 replicate injections is satisfactory if it is not more than 2.0 percent.

(e) *Capacity factor (k').* Calculate the capacity factor (k') for minocycline as follows:

$$k' = \frac{t_r - 1}{t_o}$$

where:

t_r = Retention time of minocycline in minutes; and
t_o = Column dead time in minutes, which is estimated from the following equation:

$$t_o = \frac{(3.1416)(D^2)(L)(0.75)}{4F}$$

where:

D = Column diameter in centimeters;
L = Column length in centimeters;
0.75 = Average total column porosity; and
F = Flow rate in milliliters per minute.

The capacity factor (k') for minocycline is satisfactory if it is not less than 6.2 and not more than 11.5.

If the system suitability requirements have been met, then proceed as described in § 436.216(b) of this chapter. Alternate chromatographic conditions are acceptable provided reproducibility and resolution are comparable to the system. However, the sample preparation described in paragraph (b)(1)(ii)(*b*) of this section should not be changed.

(iv) *Calculations*—Calculate the micrograms of minocycline per milligram of sample as follows:

$$\text{Micrograms of minocycline per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100 - m)}$$

where:

A_u = Area of the minocycline peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_s = Area of the minocycline peak in the chromatogram of the minocycline working standard;
P_s = Minocycline activity in the minocycline working standard solution in micrograms per milliliter;
C_u = Milligrams of minocycline per milliliter of sample solution; and
m = Percent moisture content of the sample.

* * * * *

(5) *Epi-minocycline content.* Proceed as directed in paragraph (b)(1) of this section. Calculate the epi-minocycline content as follows:

$$\text{Percent Epi-Minocycline} = \frac{(A_{epi}) \times 100}{(A_{total})}$$

where:

A_{epi} = Area of the epi-minocycline peak in the chromatogram of the sample; and
A_{total} = The sum of the areas of all the peaks eluting after the solvent front.

* * * * *

(8) *Residue on ignition.* Proceed as directed in § 436.207(b) of this chapter.

(9) *Absorptivity.* Accurately weigh about 1 gram of sample into a 100-milliliter volumetric flask, dissolve, and dilute to mark with deionized water. Determine the absorbance of this solution on a suitable spectrophotometer at 560 nanometers (nm) using 5-centimeter cells with water in the reference cell. Calculate the absorptivity as follows:

$$\text{Absorptivity at 560 nm} = \frac{(A_{560})\ (100)}{\frac{\text{(grams of sample)}}{(1{,}000)(5)}}$$

5. Section 446.160a is amended by revising paragraphs (l)(3)(i)(*a*) and (b)(1) to read as follows:

§ 446.160a Minocycline hydrochloride tablets.

(a) * * *
(3) * * *
(i) * * *

(*a*) The minocycline hydrochloride used in making the batch for potency, moisture, pH, epi-minocycline content, identity, crystallinity, residue on ignition, and absorptivity.

* * * * *

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 446.60(b)(1) of this part, except prepare the sample solution and calculate the minocycline potency as follows:

(i) *Sample solution.* Grind a representative number of tablets in a mortar and pestle. Wash the ground tablets into a volumetric flask containing mobile phase (described in § 446.60(b)(1)(i)(*c*) of this part) and shake to dissolve. Dilute with mobile phase to give a stock solution of convenient concentration. Filter the stock solution. Further dilute using mobile phase to obtain a solution containing 500 micrograms of minocycline activity per milliliter (estimated). Use this solution within 3 hours of preparation.

(ii) *Calculations.* Calculate the minocycline content as follows:

$$\text{Milligrams of minocycline per tablet} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000 \times n}$$

where:

A_u = Area of the minocycline peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_s = Area of the minocycline peak in the chromatogram of the minocycline working standard;
P_s = Minocycline activity in the minocycline working standard solution in micrograms per milliliter;
d = Dilution factor of the sample; and
n = Number of tablets in the sample assayed.

* * * * *

6. Section 446.160b is amended by revising paragraphs (a)(3)(i)(*a*) and (b)(1) to read as follows:

§ 446.160b Minocycline hydrochloride capsules.

(a) * * *
(3) * * *
(i) * * *

(*a*) The minocycline hydrochloride used in making the batch for potency, moisture, pH, epi-minocycline content, identity, crystallinity, residue on ignition, and absorptivity.

* * * * *

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 446.60(b)(1) of this part, except prepare the sample solution and calculate the minocycline potency as follows:

(i) *Sample solution.* Open a representative number of capsules and empty the contents into a volumetric flask containing mobile phase (described in § 446.60(b)(1)(i)(*c*) of this part) and shake to dissolve. Dilute with mobile phase to give a stock solution of convenient concentration. Filter the stock solution. Remove an aliquot of the stock solution and further dilute with mobile phase to obtain a solution containing 500 micrograms of minocycline activity per milliliter (estimated). Use this solution within 3 hours of preparation.

(ii) *Calculations.* Calculate the minocycline content as follows:

$$\text{Milligrams of minocycline per capsule} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000 \times n}$$

where:

A_u = Area of the minocycline peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_s = Area of the minocycline peak in the chromatogram of the minocycline working standard:
P_s = Minocycline activity in the minocycline working standard solution in micrograms per milliliter;
d = Dilution factor of the sample; and
n = Number of capsules in the sample assayed.

* * * * *

7. Section 446.160c is amended by revising paragraphs (a)(3)(i)(*a*) and (b)(1) to read as follows:

§ 446.160c Minocycline hydrochloride oral suspension.

(a) * * *
(3) * * *
(i) * * *

(*a*) The minocycline hydrochloride used in making the batch for potency, moisture, pH, epi-minocycline content, identity, crystallinity, residue on ignition, and absorptivity.

* * * * *

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 446.60(b)(1) of this part, except prepare the sample solution and calculate the minocycline potency as follows:

(i) *Sample solution.* Transfer an accurately measured 5-milliliter portion of the well-shaken suspension to a 100-milliliter volumetric flask. Dilute to mark with mobile phase (described in § 446.60(b)(1)(i)(*c*) of this part) and mix well. Filter this solution and use within 3 hours of its preparation.

(ii) *Calculations.* Calculate the minocycline content as follows:

$$\text{Milligrams of minocycline per milliliter} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000 \times 5}$$

where:

A_u = Area of the minocycline peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_s = Area of the minocycline peak in the chromatogram of the minocycline working standard:
P_s = Minocycline activity in the minocycline working standard solution in micrograms per milliliter; and
d = Dilution factor of the sample.

* * * * *

8. Section 446.260 is amended by revising paragraphs (a)(3)(i)(*a*) and (b)(1) to read as follows:

§ 446.260 Sterile minocycline hydrochloride.

(a) * * *
(3) * * *
(i) * * *

(*a*) The minocycline hydrochloride used in making the batch for potency, moisture, pH, epi-minocycline content, identity, crystallinity, residue on ignition, and absorptivity.

* * * * *

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 446.60(b)(1) of this part, except prepare the sample solution and calculate the minocycline potency as follows:

(i) *Sample solution.* Reconstitute as directed in the labeling. Using a suitable hypodermic needle and syringe, remove the withdrawable contents from each container represented as a single-dose container; or if the labeling specifies the amount of potency in a given volume of the resultant preparation, withdraw an accurately measured representation portion from each container. Dilute the sample thus obtained with sufficient mobile phase (described in § 446.60(b)(1)(i)(*c*) of this part) to give a stock solution of convenient concentration. Filter the stock solution. Further dilute an aliquot of this stock solution with mobile phase to obtain a solution containing 500 micrograms of minocycline activity per milliliter (estimated). Use this solution within 3 hours of preparation.

(ii) *Calculations—(a)* Calculate the minocycline of the single dose vial as follows:

$$\text{Milligrams of minocycline per single-dose vial} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:
A_u = Area of the minocycline peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_s = Area of the minocycline peak in the chromatogram of the minocycline working standard:
P_s = Minocycline activity in the minocycline working standard solution in micrograms per milliliter; and
d = Dilution factor of the sample.

(b) Calculate the minocycline content of the multiple-dose vial as follows:

$$\text{Milligrams of minocycline per multiple-dose vial} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000 \times n}$$

where:
A_u = Area of the minocycline peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_s = Area of the minocycline peak in the chromatogram of the minocycline working standard:
P_s = Minocycline activity in the minocycline working standard solution in micrograms per milliliter;
d = Dilution factor of the sample.
n = Volume of sample solution assayed.

* * * * *

Dated: August 10, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-19440 Filed 8-25-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510, 522, and 524

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for several NADA's from Vet Labs Ltd., Inc., to Veterinary Laboratories, Inc.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Veterinary Laboratories, Inc., 12340 Santa Fe Drive, Lenexa, KS 66215, currently is the sponsor of several NADA's formerly held by Vet Labs Ltd., Inc. Vet Labs Ltd., Inc., informed FDA of the change of corporate ownership and a subsequent change of sponsor. The NADA's affected are:

NADA 8-142—Enteritis Formula (nitrofurazone),
NADA 8-354—Sodium Arsanilate Tablets,
NADA 42-889—Oxytocin Injection,
NADA 121-559—Nitrofurazone Solution,
NADA 138-857—Nitrofurazone Ointment.

The agency is amending 21 CFR 510.600(c)(1) and (c)(2) to add the new sponsor, and is revising 21 CFR 522.1680(b), the first sentence in § 524.1580b(b), and 524.1580d(b) to reflect the new sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

21 CFR Part 524

Animal drugs.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510, 522, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by alphabetically adding an entry for "Veterinary Laboratories, Inc.," and in Paragraph (c)(2) by numerically adding an entry for "000857" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * *	*
Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215	000857
* * * *	*

(2) * * *

Drug labeler code	Firm name and address
* * * *	*
000857	Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215.
* * * *	*

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

4. Section 522.1680 is amended by revising paragraph (b) to read as follows:

§ 522.1680 Oxytocin injection.

* * * * *

(b) *Sponsors.* See Nos. 000010, 000402, 000693, 000856, 000857, 000864, 010271, 015562, 032420, and 053617 in § 510.600(c) of this chapter.

* * * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

6. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1580b [Amended]

7. Section 524.1580b is amended by revising the first sentence in paragraph (b) to read as follows:

§ 524.1580b Nitrofurazone ointment.

* * * * *

(b) *Sponsors.* For use in dogs, cats, and horses see Nos. 000857, 000864, 011519, 015579, 023851, and 053617 in § 510.600(c) of this chapter. * * *

* * * * *

8. Section 524.1580d is amended by revising paragraph (b) to read as follows:

§ 524.1580d Nitrofurazone solution.

* * * * *

(b) *Sponsors.* See 000857, 015562, 051259, and 053617 in § 510.600(c) of this chapter for use as in paragraphs (d) (1)

and (2) of this section. See 017153 in § 510.600(c) of this chapter for use in paragraph (d)(1) of this section.

* * * * *

Dated: August 22, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 88-19438 Filed 8-25-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 87-10]

National Bridge Inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its regulation on the National Bridge Inspection Standards (NBIS). The revised regulation maintains the existing 2-year frequency as the basic requirement. For certain types or groups of bridges the States may, under the revised regulation, request FHWA approval for appropriate inspection intervals that are longer than the basic 2-year interval. States are also expected to continue to inspect some bridges more often than once every 2 years when the condition, age, load capacity or other site specific features of a bridge are such that more frequent monitoring is needed. The revised regulation also requires that States identify, establish special inspection procedures, specify inspection intervals and designate in their National Bridge Inventory (NBI) files those bridges with fracture critical members (tension members which are likely to cause collapse of a significant portion of the bridge if the member fails). Similar requirements are established for bridges which require special underwater inspection because the integrity of the substructure or stream bed underneath them cannot be determined by normal above water surface evaluation and for bridges with special features which by their nature or experience need specialized monitoring and evaluation. The revisions allow an alternate procedure for bridge inspection team leaders to be certified as meeting required levels of competence and require that changes in the status of a bridge due to replacement, rehabilitation or load restriction be entered in the State bridge inventory file within 90 days or 180 days of the change in status, depending upon whether the bridge is under direct State or local jurisdiction.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Ahlskog, Bridge Management Branch, Bridge Division, Office of Engineering, 202/366-4617, or Mr. Michael J. Laska, Office of Chief Counsel, 202/366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Bridge Inspection Standards (NBIS) for bridges on all public roads are set forth in 23 CFR Part 650, Subpart C. Within § 650.3, bridges are defined, inspection procedures and frequencies specified, minimum qualifications of personnel indicated; reporting and inventory procedures are listed and load posting and inspection recordkeeping requirements are stated. Section 650.305 currently requires that the type and depth of inspections be determined by the individual in overall charge of the program and cites the "Manual for Maintenance Inspection of bridges," published by the American Association of State Highway and Transportation Officials (AASHTO) in 1978 as a reference guide.

Four provisions of the NBIS are affected by this rulemaking action. The revisions to § 650.303 require that States identify and maintain a list of fracture critical members and bridges which need periodic underwater inspection and other special inspections. In addition, the States must determine inspection procedures and frequencies of inspection for these bridges and maintain records of findings and follow-up actions for inspection. Section 650.305 is modified to permit certain groups of bridges to be inspected at frequency longer than the current 2 year maximum. The FHWA intends by this provision to permit the States to modify inspection frequencies, for groups of relatively new structures in good condition, which have safe load capacities at least equal to the State legal load, in low traffic volume areas, with proven performance histories to be inspected at frequencies longer than the previous 2 year maximum provided that the inspection plan is approved by the FHWA.

Revised § 650.307 will permit another alternate to the previous requirements for bridge inspection team leaders. Level III or IV Bridge Safety Inspection certification under the National Society of Professional Engineer's National Certification of Engineering Technologies (NICET) program is specified as an additional alternate qualification certification for bridge inspection team leaders. The other long standing alternates are (1) registration as a professional engineer, (2) eligibility for registration as a professional engineer or (3) completion of a comprehensive course in bridge inspection and a minimum of 5 years of bridge inspection experience.

Revised § 650.311 adds the requirement that any changes in load restrictions on bridges must be entered into each State's NBI file within 90 days for State jurisdiction bridges and within 180 days for bridges not under State jurisdiction. Existing provisions requiring that changes brought about as the result of bridge replacement or rehabilitation be entered into a State's NBI file within 90 days are also modified by retaining the 90 day limit for bridges under State jurisdiction but extending the time period to 180 days for bridges not directly under State jurisdiction.

Background

On April 7, 1987 the FHWA issued a notice of proposed rulemaking (NPRM) published at 52 FR 11093, FHWA Docket No. 87-10 and an extension of comment period at 52 FR 20726 on June 3, 1987. Its purpose was to solicit public comments on proposed changes to the NBIS.

The current NBIS as shown in 23 CFR Part 650, Subpart C, have been in effect for bridges on Federal-aid system highways since 1971 and were expanded in 1979 to apply to all bridges on public roads as the result of a provision of the 1978 Surface Transportation Assistance Act, Pub. L. 95-599. This last revision was published on May 1, 1979 (44 FR 25434).

In 1982 the FHWA reviewed data in the NBI for the purpose of considering an increase in the inspection frequency interval for some categories of bridges for which a State would submit a detailed proposal and supply data to the FHWA for approval before implementation of any inspection interval changes. The purpose of the evaluation was to determine whether such a change would allow States to redirect their bridge inspection resources towards bridges which pose the most potential for loss of human life or serious injury should a bridge failure occur. An NPRM was published in the **Federal Register** on January 20, 1983, to propose variations in the maximum inspection frequency interval for some categories of bridges in good condition (48 FR 2550). The NPRM was withdrawn on April 23, 1984 (49 FR 17039).

Because of further analysis of NBI data, advances in training and bridge

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inspection techniques, the need to intensify bridge inspection efforts on certain bridges and bridge elements which pose a higher than normal potential for collapse should they fail, and the need for improved recordkeeping and positive management procedures to identify, inspect and evaluate the critical elements of some bridges, the FHWA issued the most recent NPRM for public comment on April 7, 1987.

The enactment of the 1987 Surface Transportation and Uniform Relocation Assistance Act (STURAA) on April 2, 1987 (Public Law 100–17), strengthened the congressional mandate for the NBIS by making the requirements for NBIS a separate section of Title 23 of the U.S. Code. It had previously been a part of 23 U.S.C. 116, Maintenance. It is now designated 23 U.S.C. 151, National Bridge Inspection Program.

Discussion of Comments and Revisions

A total of 61 commenters responded to the NPRM. One of these provided two separate comments on the proposal. Comments were received from 31 State transportation agencies, 5 local governmental agencies, 3 consumer groups, 3 Federal agencies, 5 professional societies, 8 engineering consulting firms, 1 member of Congress, and 4 private citizens.

General Comments

A total of 14 commenters expressed opinions on issues which were not specifically addressed in the NPRM.

1. Eleven of these urged the FHWA to adopt minimum qualification requirements for underwater inspectors that are at least as restrictive as for bridge inspection team leaders. These commenters are concerned that most commercial divers have no expertise or experience in inspection and evaluation of bridge condition. Discussion: The determination of which bridges require inspector-divers should be made by the individual in overall charge of the State program on a case-by-case basis. Such determinations should be made by considering the substructure type, past experience, scour studies and predictions, an assessment of the potential for impurities within the water to attack substructure elements and other appropirate evaluations. For some bridges it may be necessary for divers to have bridge inspection expertise and experience. For many other bridges where underwater inspection is required, a fully qualified inspector on the surface can give sufficient guidance to a diver to determine adequately the condition of the bridge members and streambed not readily visible from above water.

2. One commenter was concerned that the FHWA has proposed the elimination of requirements for inspection of Interstate highway bridges. Discussion: the NPRM did not propose elimination of any requirements for inspection of bridges on any public highway.

3. One commenter requested a 60 day extension of the original 60 day comment period and also suggested that the NPRM would have sufficient impact to constitute a major regulatory proposal. Discussion: The comment period was extended 30 days even though it was believed that an additional period for comment was not necessary. In order for a proposed regulation to be considered as a major regulatory proposal, it must have a substantial impact as measured on a macroeconomic basis on the entire nation. The NPRM proposed changes in the existing regulation which would not meet this criterion.

4. Two commenters suggested that the Brooks Act (Public Law 92–582) procurement procedures be followed when securing engineering services for bridge inspection work. This law requires that qualifications of prospective consultants be considered as the initial determinant for obtaining engineering services; then the price is negotiated with the selected firm. Discussion: While the procurement of engineering services is not covered under the existing or proposed NBIS, Section 111 of the 1987 STURAA contains new requirements pertaining to contracting for engineering and design services. This section requires that States use qualification based selection procedures for engineering services unless the State uses a formal procurement procedure that is required by State statute or is subsequently established by State statute. To the extent that engineering services are obtained using Federal highway fund participation, the provisions of Section 111 of the 1987 STURAA apply. However, many State and local governments carry out bridge inspection programs without Federal fund participation. Others make use of a portion of their apportioned Highway Replacement and Rehabilitation Program or Highway Planning and Research funds for bridge inspection activities. When such Federal funds are used, the Section 111 provisions apply.

5. Ten commenters responded to the FHWA request for input as to what length a comprehensive training course for bridge inspectors should be. While this definition is not regulatory, States, local governments and other agencies have expressed some concern about FHWA's guidance to the effect that a comprehensive bridge inspection course should be 3 weeks long for technicians and 2 weeks long for engineers or equivalent. Nine of the comments were made by State highway agencies and one was submitted by a professional organization. There was no clear consensus of comments. However, the majority of commenters expressed the opinion that a combination of classroom and on the job training is needed to ensure adequate bridge inspection expertise of team leaders and team members. Most commenters suggested that about 2 weeks of classroom training plus on the job training would be more appropriate than a straight 3 week classroom course. Some suggested that a one week long course which is updated and attended annually by all bridge inspectors would be sufficient. Two commenters suggested that the adequacy of bridge inspection team leaders and team members be evaluated by the FHWA field offices during annual reviews of the State bridge inspection program. Discussion: Because bridge inspectors must have a basic knowledge of how loads are distributed throughout the bridges, the importance of the various components of bridges to safety and a general understanding of the effects of deterioration upon safe load capacity, the FHWA believes that each State should have a comprehensive training program to meet these requirements. The FHWA will continue to recommend a minimum course duration of 2 weeks for engineers not experienced in bridge inspection and 3 weeks for technicians. Both should be supplemented periodically, preferably annually, by a short refresher or updated formal training session. This guidance will not be made regulatory at this time.

When a State believes that prospective bridge inspection team leaders have gained requisite knowledge through experience and study outside of the recommended comprehensive training, the new, alternate qualification for bridge inspection team leaders, NICET Level III Certification, as discussed later in this presentation is available. A State could train its inspectors as deemed appropriate and qualify them through NICET testing. It should be noted that the 1987 STURAA made some changes in Title 23 of the U.S. Code which affect the NBIS. Before enactment of the 1987 Act, the requirement that the Secretary of Transportation establish and implement the NBIS was contained in 23 U.S.C. 116

(d) and (e). Section 125 of the new Act established a new section 151 of Title 23, National Bridge Inspection Program, as a separate section of Title 23. The requirements for a national bridge inspection program were not changed substantively from previous law. However, the new section clearly states the intent of the U.S. Congress that training of bridge inspectors is of high priority and that various categories of Federal funds, including Highway Bridge Replacement and Rehabilitation Program and Highway Planning and Research funds, may be used by the States to participate in inspection and bridge inspection training programs.

The specific changes in the NBIS which were proposed in the NPRM dealt with (1) frequency of inspection, (2) inspection of fracture critical members, underwater inspections and other special inspections, (3) certification of bridge inspectors and (4) prompt updating of bridge inventory files when load posting signs are placed at specific bridges.

1. Frequency of Inspection

Forty-six commenters addressed this issue. Thirty-three of them were in favor of providing for additional flexibility in inspection frequency for bridges and thirteen were not in favor of any change. The majority of commenters in favor of the change had specific concerns or suggestions for implementing the change. Most agreed that State experience, age, condition, type and frequency of traffic volume as suggested in the NPRM should be considered along with other considerations.

Several commenters suggested that no bridge should be inspected less frequently than once every 2 years until it had at least one in-depth inspection. Three others suggested that only bridges with high sufficiency and key element condition and appraisal ratings be considered for less frequent inspections. Suggested minimum condition ratings ranged from 6 to 8 and suggested minimum sufficiency ratings ranged from 40 to 50. Two comments were made that a 2-year frequency should be kept for all bridges greater than 15 or 20 years old. A number of commenters emphatically stated that all scour vulnerable bridges should be inspected immediately after or during floods. Others stated that load posted bridges and bridges with fatigue-prone, pin connections, complex welded, non-redundant or damaged members should be inspected at least once every 2 years. Several agreed that longer periods between inspections are appropriate for concrete culverts and short span concrete Tee beam and slab bridges in good condition but metal culvert bridges that depend upon shape for stability should be inspected more frequently.

Thirteen commenters against the proposal were generally concerned that lengthening the time between inspections would have an adverse effect on bridge safety. A number of State Department of Transportation commenters believe that their maintenance and bridge management data needs will require them to continue to inspect all bridges at least every 2 years. Others have State laws which require inspection every one or 2 years. At least 5 of the commenters strongly emphasized that some bridges need to be inspected more often than once every 2 years. One commenter erroneously thought that the proposal would eliminate inspections of bridges carrying the Interstate highway system. Another commenter suggested that 4 or more years between in-depth inspections may be appropriate for all structures but at least a walk around, visual inspection should be made of each bridge once every 2 years. One commenter emphasized that the current 2 year maximum period between inspections should be the absolute maximum time between inspections. Two commenters strongly suggested that bridge owners should be required to place much more emphasis and resources into bridge inspection programs.

One Federal agency suggested that it should have the authority to decide the appropriate inspection interval for its bridges rather than State officials in the various States where Federal agency bridges are located.

Several State commenters expressed concern that approval procudures for non-standard inspection frequencies should not be too complex and that local FHWA offices should be delegated approval authority for State procedures.

Discussion: The current NBIS requires that the individual in charge of State bridge inspection programs make the determination as to inspection procedures, inspection frequency (up to a maximum of 2 years), inspection depth and when special inspections should be carried out. The changes in the NBIS in this final rule action will continue that basic provision. However, based upon an evaluation of the comments received and an evaluation of bridge inspection experience and bridge performance, a determination has been made that some newer bridges in relatively good condition which are not load restricted and which have no fracture critical members may be candidates for inspection frequencies longer than 2 years. The individual in charge of State programs will have the choice of continuing to inspect bridges at least once every 2 years (more often if circumstances dictate) or inspecting most bridges at least once every 2 years and some bridges in good condition at greater intervals. A maximum time of 4 years between inspections is suggested. Only under very unique and special circumstances would longer periods be considered for approval by the FHWA.

In order to gain the FHWA approval of longer periods between inspections for groups of bridges, it is the intent of the FHWA that the State will cause all bridges to be inspected within 2 years of initial opening to traffic in sufficient depth to determine that initial service conditions have not caused adverse behavior or deterioration of the elements of the superstructure, substructure, foundation or waterway.

Certain bridge types such as concrete culverts of bridge length, short span Tee beam and slab bridges in good condition over well behaved waterways and other topographic barriers would be likely candidates for increased inspection intervals.

It is expected that any State submitting a plan to the FHWA for an increased inspection interval would consider structure age, condition, volume, type and frequency of traffic, degree of redundancy, past history of performance, whether the waterway has a history of scour or erosion problems, whether underwater inspections have been performed and other relevant factors.

Some bridge owners erroneously believe that local bridges on relatively low volume roads can be inspected at intervals of 4 or more years with little regard for the age, condition or load capacity of these structures. It is clearly not the intent of the FHWA that these revisions of the NBIS would reduce inspection effort on any but relatively new bridges which performance history and other relevant considerations have shown to be good candidates for increased inspection intervals.

In order to gain FHWA approval, States would be expected to submit inspection plans to the FHWA which include a comprehensive discussion of their proposed criteria for lengthening the period between inspections for identified groups of bridges, the numbers and types of bridges affected, the proposed inspection interval and an assessment of the frequency and degree of overload on the identified bridges.

Other Federal agencies would be expected to submit their inspection frequency exception plans through each affected State highway agency to the

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FHWA for comment and approval. The intent is to make each State aware of the inspection plan procedures being proposed for all bridges on public roads within the State.

It is expected that the FHWA will soon be issuing a technical advisory through its field offices to State highway agencies regarding inspection frequency plan submittals. The guidance will address methods for identifying and grouping bridges as candidates for increased inspection intervals and suggested criteria for inspection of some bridges more often than once every 2 years.

It must be noted that all bridge owners should also have criteria for identifying bridges which must be inspected more often than every two years as shown in the AASHTO Manual for Maintenance Inspection of Bridges. The final rule is changed slightly from the NPRM proposal to emphasize this requirement. In addition, special inspections are considered necessary after significant traumatic events such as earthquakes, fires and collisions with bridges.

2. Inspection of Fracture Critical Members, Underwater Inspections and Other Special Inspections

Thirty-two commenters addressed this portion of the NPRM. Twenty-seven were in favor of the proposed requirements while 5 were not in favor of portions of this aspect of the NPRM. All commenters agreed that States should identify those bridges with fracture critical members. Most agreed that the inspection of such bridge elements should be specified. One commenter objected to the requirement that a master list be maintained and another objected to the requirement that an inspection frequency be identified for such bridge elements.

One State suggested some bridges with underwater elements in freestanding fresh water or with masonry or concrete piers or prestressed concrete or drilled shaft piles in salt or brackish water where scour is not a problem should not be subject to rigid underwater inspection requirements. Two commenters suggested that a 6-year maximum time between underwater inspections may be appropriate so that they can be dovetailed into multiples of the normal biennial inspections. One commenter pointed out the extreme difficulty of carrying out underwater inspection of bridges in fast moving turbulent rivers. In extreme cases divers cannot work near the pier faces.

Two commenters recommended that the FHWA's Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges be changed to include data entry items for inspection of fracture critical members, underwater inspection and other special inspections. *Discussion:* The need to identify and keep careful, complete records of required inspection procedures, inspection findings, follow-up actions and inspection frequencies of fracture critical bridge members has been demonstrated vividly in the several catastrophic failures during the last two decades. Bridge inspectors need to know precisely where and how to look and evaluate findings from inspections of critical features. They should have written instructions within the inspection file for each such bridge in order to plan and carry out needed inspections and evaluations. The frequency of such inspections can range from as often as weekly to no more than during the regularly scheduled biennial inspections. (Except for underwater inspections which can be up to 5 years apart as discussed below.) It is incumbent on the individual in charge of the State program, or equivalent, to make these decisions and to positively convey them to the inspection team. A systematic procedure with positive requirements for rational decisions by the individual in overall charge of the program is strongly believed to be necessary for adequate monitoring of fracture critical members.

The FHWA is in the process of updating the Recording and Coding Guide for the Structure Inventory and Appraisal of the nation's bridges. One revision is to include an item for keeping track of fracture critical members, underwater inspections and other special inspections.

Underwater inspections have been considered necessary for evaluating the overall safety and load carrying capacity of bridges since the inception of the NBIS and the AASHTO Manual for Maintenance Inspection of Bridges. Specific requirements are included in the AASHTO Manual for Maintenance Inspection of Bridges which are currently included in the NBIS by reference. However, in the past, not all bridge owners have allocated sufficient resources to carry out comprehensive underwater inspection programs.

The FHWA intends that the term underwater inspection be defined as one or more of several techniques including, but not limited to, tactile evaluation at low water, use of scuba or hard hat divers, underwater cameras or other devices to see subsurface structural and stream bed or bottom conditions, underwater radar or sonar devices and use of weighted lines and probes for scour hole or bottom mapping.

It is the intent of the FHWA that the techniques, frequency and records kept be adequate to establish the integrity of all individual bridges over water and may ultimately provide a basis for extending the frequency of inspection beyond 5 years for some categories of foundation types. However, the collective best judgment of professional bridge, hydraulic and geotechnical engineers as expressed by the current AASHTO Guide for Bridge Maintenance Inspection and comments received regarding this rulemaking procedure is that strong underwater inspection programs which encompass all bridges over waterways are currently needed. The 5 year maximum between underwater inspections is appropriate until a sufficient national data base to alter the period is established and evaluated. Many structures subject to adverse underwater conditions should be inspected more often. The AASHTO Guide for Maintenance Inspection of Bridges requires that structure steel substructure elements in corrosive environments be inspected at least once every 2 years. Streams, rivers and other waterways with known or suspected scour potential should be inspected after every major runoff event to the extent necessary to ensure bridge foundation integrity. The FHWA will soon be issuing a Technical Advisory on evaluation of scour potential and scour vulnerability which will offer guidance to bridge owners on evaluating existing bridges.

The FHWA will continue to work with the States, other bridge owners, researchers and other knowledgeable individuals to refine and improve underwater inspection criteria and procedures. It is expected that each State will have a written rationale and criteria for determining which bridges require underwater inspection, the inspection procedure and the frequency

While it is expected that bridge owners will designate inspection procedures, frequency, follow-up actions, etc., for fracture critical members, underwater and other special inspections in the individual inspection files for such bridges, the addition of a special data item to the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges should make it relatively simple for States to establish a master list for affected structures.

3. Certification of Bridge Inspectors

Thirty-two commenters addressed the NPRM proposal to add NICET Level III

Bridge Safety Inspection Certification as an alternative minimum qualification option for bridge inspection team leaders. Twenty four were in favor of the proposal and eight expressed reservations about it.

Two professional societies and one State recommended that only professional engineers or graduate engineers with bridge inspection training be used as bridge inspection team leaders. One State commented that the NICET III experience and testing requirements are to severe for bridge inspection team leaders. Four States recommended that a minimum training and experience requirement be added to the NICET Level III proposed qualification. Discussion: This provision is being added to the NBIS to comply with new section 151(b)(5) of Title 23 of the U.S. Code which was added by section 125 of the 1987 Surface Transportation Act of 1987 (Pub. L. 100–17). This new section requires the U.S. Secretary of Transportation to "establish a procedure for national certification of highway bridge inspectors." The NICET Level III and IV Bridge Safety Inspection certification is based upon a combination of experience and satisfactory scores on standardized tests concerning a broad spectrum of bridge knowledge and inspection and evaluation skills. Individuals successfully achieving certification at Level III plane are required to have a minimum of 5 years of bridge inspection related experience. In permitting NICET Level III or IV Bridge Safety Inspection certification as an alternate to the current minimum requirements for inspection team leaders [(1) registration as a professional engineer, (2) eligibility for registration as a professional engineer in the State or (3) a minimum of 5 years of bridge inspection experience and have completed a comprehensive training course in bridge inspection], the only change would be that team leaders would be substituting successful passage of a standardized test, covering virtually the entire range of knowledge and skills necessary for bridge inspection, for the comprehensive training course which nonregistered professional engineer team leaders must take to combine with their five years of bridge inspection experience.

Many States and bridge owners may properly choose to provide additional training for NICET Level III certified inspectors. This is highly encouraged.

A State may choose any level of minimum requirements that it considers appropriate for bridge inspection team leaders, provided that they are at least the same as one of the NBIS alternatives. Some States may require registered professional engineer team leaders. Others are able to accomplish most needed work with highly trained, experienced technicians. However, all bridge owners agree that some bridges require a great deal of specialized experience and knowledge which can only be provided by an experienced professional bridge engineer. This is especially true for the evaluation of the safe load capacity of bridges which have any uncommon features of design or have deteriorated to the point that specialized analysis is appropriate.

Because bridge inspection team leaders must in their day-to-day inspections make judgments as to the specific integrity, safety and load carrying capacity of both individual elements and the collective elements of individual bridges acting as a unit, it is essential that team leaders be well trained and experienced in bridge performance and inspection techniques.

4. Prompt Updating of Bridge Inventory Files When Load Posting Signs Are Placed at Specific Bridges

Twenty-two commenters provided input on this proposal. Fifteen were in accordance with the proposed change and 7 expressed reservations against it. The majority commenting in favor of the proposal stated that they were already updating their bridge inventory files within 90 days of completion of any rehabilitation, replacement or load posting action.

One commenter suggested that the prompt reporting requirement should be expanded to require that load posting signs be placed as soon as possible, but no later than 90 days after load capacity evaluation indicates that load restrictions are needed.

Most commenters not in favor of the proposal stated that updating the inventory within 90 days would be extremely difficult to carry out for bridges not directly maintained by State forces. Local bridge owners, Federal agency bridge owners and toll authorities are generally not under the authority of State highway agencies for these matters. Three commenters suggested that updating the load posting status during the next scheduled inspection would be appropriate. Two commenters suggested that a 180-day requirement for updating State bridge inventory files would be more reasonable when replacement, rehabilitation or load posting changes the status of a bridge. *Discussion:* The current NBIS requires that State inventory date on newly completed bridges or modified bridges be entered within 90 days of completion. The majority of States have had no problem with this requirement for bridges under the direct jurisdiction of the State. But many States have had considerable difficulty getting prompt inventory data from bridges under the jurisdiction of local governments or Federal agencies. Therefore, the requirement for prompt updating of inventory data for bridges under the jurisdiction of local governments or Federal agencies is changed from the NPRM 90 day limit to 180 days. These same States have generally had difficulty in convincing local bridge owners that load posting signs should be promptly placed whenever load evaluation indicates that a bridge cannot continue to safely carry legal loads. Because load restrictions have a direct effect upon the economic well being of State and local geographic areas, it is appropriate for States to have a reasonably current knowledge of the maximum safe load capacity of the various routes within its boundaries. This information is vital during periods of national, State or local emergencies and is needed for routing permit loads through the State on a day-to-day basis. Such information is also critical to day-to-day Statewide bridge management decisions.

States are strongly encouraged to have positive, written follow-up procedures in effect to ensure that local governments and other bridge owners inform the State promptly when changes occur to a bridge which affect its load capacity. This is particularly desirable to ensure that load posting recommendations, which are often made by the States as the result of their inspections, are carried out by local bridge owners.

In summary, there are many excellent reasons for ensuring the prompt updating of State bridge inventory files whenever any bridge on a public road within the State has a change in its safe load capacity. The reasons range from national defense to effects on the local economy.

However, because it is recognized that it can sometimes be difficult to obtain current information for bridges not under State jurisdiction, an extension beyond the 90-day maximum proposed may be appropriate. Therefore, the final rule is changed slightly from the NPRM proposal to reflect this. Prompt load posting, where needed, is strongly encouraged and required, but State inventory records for bridges not under the jurisdiction of the State may take as long as 180 days. The new requirement will be for prompt updating of State bridge inventory files within 90 days for newly completed,

rehabilitated or load posted bridges under the jurisdiction of the State and for similar updating within 180 days for all bridges on public roads in the States that are not directly under State jurisdiction.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant rulemaking action under the regulatory policies and procedures of the Department of Transportation.

It is anticipated that this final rule will have a neutral or positive economic impact on State highway agencies. Additional inspection effort will be required on some bridges where fracture critical details, more comprehensive underwater inspections and other special inspections may be required. On the other hand, some States may identify some bridges in good condition which are candidates for inspection at intervals longer than every 2 years. If FHWA approves the State plans for these longer periods between inspections, the additional resources so made available could be directed towards offsetting any additional costs of fracture critical member, underwater and other special inspections. Also, since States would be under no obligation to propose greater time intervals between inspections for any bridges, it is not anticipated that this final rule will have a significant economic effect. Accordingly, a full regulatory evaluation has not been prepared.

For the foregoing reasons, the FHWA certifies that this rulemaking action, under the criteria of the Regulatory Flexibility Act, will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511) the reporting or recordkeeping provisions that are included in this rule are being submitted to the Office of Management and Budget (OMB) for approval.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

In consideration of the foregoing, the FHWA hereby amends Part 650, Subpart C of Title 23, Code of Federal Regulations, as set forth below.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads.

Issued on: August 22, 1988.

Robert E. Farris,

Federal Highway Administrator.

The FHWA amends 23 CFR Part 650, Subpart C as follows:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. The authority citation for Part 650 is revised to read as follows and all other authority citations which appear throughout Part 650 are removed:

Authority: 23 U.S.C. 109 (a) and (h), 144, 151, 351, and 319; 23 CFR 1.32; 49 CFR 1.48(b). E.O. 11988—Floodplain Management, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); section 161 of Pub. L. 97-424, 96 Stat. 2097, 3135; Pub. L. 97-134, 95 Stat. 1699; and 33 U.S.C. 401 491 *et seq.*, 511 *et seq.*

Subpart C—National Bridge Inspection Standards [Amended]

2. Footnote number one in § 650.303(a) is amended by revising the first sentence to read as follows:

§ 650.303 Inspection procedures.

* * * * *

[1] The "AASHTO Manual" referred to in this part is the "Manual for Maintenance Inspection of Bridges 1983" together with subsequent interim changes or the most recent version of the AASHTO Manual published by the American Association of State Highway and Transportation Officials. * * *

3. Section 650.303 is amended by adding paragraph (e) to read as follows:

* * * * *

(e) The individual in charge of the organizational unit that has been delegated the responsibilities for bridge inspection, reporting and inventory shall determine and designate on the individual inspection and inventory records and maintain a master list of the following:

(1) Those bridges which contain fracture critical members, the location and description of such members on the bridge and the inspection frequency and procedures for inspection of such members. (Fracture critical members are tension members of a bridge whose failure will probably cause a portion of or the entire bridge to collapse.)

(2) Those bridges with underwater members which cannot be visually evaluated during periods of low flow or examined by feel for condition, integrity and safe load capacity due to excessive water depth or turbidity. These members shall be described, the inspection frequency stated, not to exceed five years, and the inspection procedure specified.

(3) Those bridges which contain unique or special features requiring additional attention during inspection to ensure the safety of such bridges and the inspection frequency and procedure for inspection of each such feature.

(4) The date of last inspection of the features designated in paragraphs (e)(1) through (e)(3) of this section and a description of the findings and follow-up actions, if necessary, resulting from the most recent inspection of fracture critical details, underwater members or special features of each so designated bridge.

4. Section 650.305 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 650.305 Frequency of inspections.

* * * * *

(b) Certain types or groups of bridges will require inspection at less than 2-year intervals. The depth and frequency to which bridges are to be inspected will depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The evaluation of these factors will be the responsibility of the individual in charge of the inspection program.

(c) The maximum inspection interval may be increased for certain types or groups of bridges where past inspection reports and favorable experience and analysis justifies the increased interval of inspection. If a State proposes to inspect some bridges at greater than the specified 2-year interval, the State shall submit a detailed proposal and supporting data to the Federal Highway Administrator for approval.

5. Section 650.307 is amended by revising paragraph (a)(3), adding paragraph (b)(3), and adding footnotes three and four to read as follows:

§ 650.307 Qualifications of personnel.

(a) * * *

(3) Have a minimum of 10 years experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the, "Bridge Inspector's Training Manual," [2] which has been developed by a joint Federal-State task force, and subsequent additions to the manual.[3]

(b) * * *

(3) Current certification as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (NICET) [4] is an alternate acceptable means for establishing that a bridge inspection team leader is qualified.

[3] The following publications are supplements to the "Bridge Inspector's Training Manual": "Bridge Inspector's Manual for Movable Bridges," 1977, GPO Stock No. 050-002-00103-5; "Culvert Inspector's Training Manual," July 1986, GPO Stock No. 050-001-0030-7; and "Inspection of Fracture Critical Bridge Members," 1986, GPO Stock No. 050-001-00302-3.

[4] For information on NICET program certification contact: National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, Virginia 22314, Attention: John D. Antrim, P.E., Phone (703) 684-2835.

6. Section 650.311 is amended by revising paragraph (b) to read as follows:

§ 650.311 Inventory.

(a) * * *

(b) Newly completed structures, modification of existing structures which would alter previously recorded data on the inventory forms or placement of load restriction signs on the approaches to or at the structure itself shall be entered in the State's inspection reports and the computer inventory file as promptly as practical, but no later than 90 days after the change in the status of the structure for bridges directly under the State's jurisdiction and no later than 180 days after the change in status of the structure for all other bridges on public roads within the State.

[FR Doc. 88-19392 Filed 8-25-88; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Abandoned Mine Land Reclamation Plan, Approval of Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of proposed amendments to the West Virginia Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the West Virginia plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern modifications to reflect changes that have occurred in the State government and agency structure, public participation procedures, and a proposal to assume responsibility for administering an emergency reclamation program. After opportunity for public comment and review of the amendment, the Deputy Director has determined that the West Virginia amendment meets the requirements of the Surface Mining Control and Reclamation Act and the Secretary's regulations at 30 CFR Part 884.

EFFECTIVE DATE: August 26, 1988.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

West Virginia Department of Energy, 1615 Washington Street East, Charleston, West Virginia 25311

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, WV 25301, Telephone (304) 347-7164.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the West Virginia plan on February 23, 1981. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the January 23, 1981 **Federal Register** (46 FR 7324-7327).

The Secretary has adopted regulations that specify the content requirements of a State Reclamation Plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision. Subsequent actions taken with regard to the West Virginia plan can be found in 30 CFR 948.20 and 948.25.

II. Discussion of Amendments

By letter dated December 30, 1987, West Virginia submitted amendments to the West Virginia plan. The amendments consisted of revised narratives to replace several sections of the approved West Virginia plan as provided for by 30 CFR 884.13. Specifically, the following areas of the plan are being revised:

(1) Organization (30 CFR 884.13(d)(1)&(2)): West Virginia proposed to update certain portions of its AMLR plan to reflect changes that have occurred in the State government and agency structure. The State also submitted material outlining the administration of a proposed State emergency response reclamation program and procedures for coordinating with OSMRE.

(2) Public participation (30 CFR 884.13(c)(7)): West Virginia proposed amending its public participation procedures by requiring a public hearing on proposed State AML grants at the State's Division of Abandoned Mine Lands office in Charleston, West Virginia rather than at every Regional Planning and Development Council. Specifically, the amendment provides that prior to submission of a construction grant application to OSMRE, the West Virginia Department of Energy would conduct at least one public meeting in Charleston, West Virginia to describe the grant submittal's contents. Additional public meetings could also be conducted in other appropriate locations for specific sites in the grant application if certain specified criteria was met. All public meetings would be conducted as part of the grant submittal process and be announced via news releases and legal advertisements. The legal advertisements would, in turn, be placed in newspapers with circulations in the locations of the proposed projects and would comply with Chapter 59, Article 3 of the Code of West Virginia. Copies of the news releases and legal advertisements would also be on file in the Office of the West Virginia Secretary of State.

(3) State emergency response reclamation activities: West Virginia has requested authority to assume the emergency response reclamation activities authorized by section 410 of SMCRA. On September 29, 1982, OSMRE informed the States and Tribes of the opportunity to amend their reclamation plans to include the responsibility for administering emergency response reclamation activities (47 FR 42729-42730). For a State to undertake such activities as part of its reclamation program, it must demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work, and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors. The

State of West Virginia has submitted material complying with these requirements.

OSMRE announced receipt of the proposed amendments in the April 11, 1988 Federal Register (53 FR 11888–11889), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their substantive adequacy.

No public comments were received before or after May 11, 1988, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

Under SMCRA, OSMRE codifies the approved requirements of individual States including decisions on State reclamation plans and amendments under Parts 900 to 950 of 30 CFR Subchapter T. Provisions relating to West Virginia are found in 30 CFR Part 948.

III. Deputy Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR Part 884 and the criteria for assumption of emergency response activities specified in 47 FR 42729–42730, are the Deputy Director's findings concerning the proposed amendments to the West Virginia AMLR Plan.

(1) Organization (30 CFR 884.13(d) (1) and (2))

West Virginia proposes to update its AMLR Plan to reflect changes that have occurred in the State government and agency structure. Since publication of the plan in the Federal Register, further changes to the organizational structure have been made by the State legislature and signed into law by the Governor of West Virginia. These additional changes created the Division of Abandoned Mine Lands in the West Virginia Department of Energy and provided for a Director of the Division to serve at the will and pleasure of the Commissioner of Energy.

The Deputy Director finds that these changes do not materially impact the operation of the AMLR program.

(2) Public Participation (30 CFR 884.13(c)(7))

West Virginia proposes to centralize its public participation procedure by requiring a public hearing at the State's Division of Abandoned Mine Lands office in Charleston, West Virginia rather than at every Regional Planning and Development Council. Additional opportunity for public involvement will be provided for projects costing over $1 million, potentially controversial projects or upon request by local interests.

The Deputy Director finds that West Virginia's approach is reasonable, cost effective and consistent with 30 CFR 884.13(c)(7).

(3) State emergency reclamation activities (47 FR 42729–42730)

West Virginia submitted a comprehensive package to demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work, and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors.

Based upon the Agency's substantive review and after considering other agency comments, the Deputy Director finds that the West Virginia Department of Energy has complied with the emergency program guidelines and qualifies for assumption of emergency response capability within the constraints imposed by law and Departmental regulations.

(4) Additional findings

The State has the legal authority, policies and administrative structure necessary to implement the amendment.

The proposed plan amendment meets all requirements of the OSMRE AMLR Program provisions.

The State has an approved Surface Mining Regulatory Program.

The proposed plan amendment is in compliance with all applicable State and Federal laws and regulations.

IV. Other Agency Comments

As discussed in the section of this notice entitled "Discussion of Amendment," the Deputy Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments were received from the public during or after the comment period, which closed on May 11, 1988. Since no one requested an opportunity to testify, the public hearing scheduled for May 6, 1988, was cancelled.

Pursuant to 30 CFR 884.14(2), comments were also solicited from various Federal agencies with an actual or potential interest in the West Virginia plan. A summary of the comments received and their disposition appears below:

1. The U.S. Army Corps of Engineers recommended that the engineers assigned to the State's emergency reclamation program be registered professional engineers with experience in embankment design and construction and in mining operations. In response, the Deputy Director notes that under the West Virginia Plan only qualified applicants can be certified and hired for each position classification within the State Civil Service System. The comment, though outside the scope of this rulemaking, has been passed on to the State for its future consideration.

2. The National Park Service encouraged the State and OSMRE to reclaim more sites affecting units of the National Park System. Though this comment is outside the scope of this rulemaking, the Deputy Director notes and reaffirms previous commitments in this area, including a National OSMRE/NPS cooperative initiative that has already resulted in a significant positive reclamation effort in the New River Gorge National River.

3. Both the Environmental Protection Agency and U.S. Fish and Wildlife Service expressed reservations about an implication in the amendments that appeared to waive regulatory requirements for mineral extraction in association with AML reclamation efforts. The Deputy Director concurred and required the State to revise this section to conform with pertinent provisions of the Clean Water Act, 30 CFR Part 707, and the Office's recently published Federal Assistance Manual (FAM) policy (Chapter 4–06).

4. The Environmental Protection Agency also encouraged continuation of high level coordination between the State Departments of Energy and Natural Resources in consideration of abandoned mine drainage problems for cleanup funding. The Deputy Director concurs and has consulted with the State.

5. The U.S. Fish and Wildlife Service recommended more stringent coordination guidelines to assure adequate identification and evaluation of impacts of fish and wildlife resources. Though not within the scope of this rulemaking, the Deputy Director concurs and notes that components of this issue have surfaced in previous annual oversight reviews. OSMRE has submitted this comment to the State for further consideration and has suggested that coordination guidelines be developed.

6. The U.S. Fish and Wildlife Service commented that the State provided no specific guidelines to preclude harm to environmental resources resulting from emergency corrective measures and states that there appears to be enough time for coordination with other agencies. Although the Department Manual and CEQ regulations exempt emergencies from the review procedures, both OSMRE and the State share the U.S. Fish and Wildlife's

concern to minimize environmental harm. Under the State's approved AML program, the State has established coordination efforts with the U.S. Fish and Wildlife Service and will continue to follow such practices during the administration of the emergency program where time permits. In addition, OSMRE's oversight of the State's emergency program and its site by site review and approval of emergency projects will seek to minimize and offset potential adverse impacts from reclamation activities.

V. Deputy Director's Decision

Based upon the Findings enumerated above the Deputy Director is approving the amendment package. A copy of the approved amendment can be obtained by contracting the Offices listed under "ADDRESSES".

VI. Procedural Matters

1. National Environmental Policy Act

The Office of Surface Mining Reclamation and Enforcement has determined that the approval of State AMIR plans and amendments are categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 2.p.B–1.

2. Executive Order 12291 and the Regulatory Flexibility Act

On November 23, 1987, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State AMLR plans. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Author

The principal author of this rule is Carl A. Walker, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Charleston West Virginia 25301; Telephone (304) 347–7160 (commercial).

Effective Date

The final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because: (1) West Virginia's Division of Abandoned Mined Lands and Reclamation is fully staffed and prepared to administer the emergency reclamation program, and (2) OSMRE wishes to expedite grant assistance to the State to initiate emergency reclamation work.

List of Subjects in 30 CFR 948

Coal mining, Intergovernmental relations, Surface Mining, Underground mining, Abandoned Mine Land Plans.

(Pub. L. 95–87 U.S.C. 1201 *et seq.*)

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

Date: August 19, 1988.

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 948.25 a new paragraph (b) is added to read as follows:

§ 948.25 Approval of state abandoned mine reclamation plan amendments.

* * * * *

(b) The West Virginia amendment, consisting of modifications to reflect changes that have occurred in the State government and agency structure, public participation procedures, and assumption of responsibility for administering an emergency reclamation program, as submitted on December 30, 1987, and modified on June 27, 1988, is approved effective August 26, 1988.

[FR Doc. 88–19462 Filed 8–25–88; 8:45 am]

BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

38 CFR Part 21

Vocational Rehabilitation Panel

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) is changing the procedure under which a special review is provided in cases in which discontinuance of the rehabilitation program of a veteran with a service-connected disability of 50 percent or more is being considered. These reviews are currently conducted by the Vocational Rehabilitation Panel (VRP). This responsibility is being reassigned to the Vocational Rehabilitation and Counseling Officer (VR&C). The change provides greater flexibility in utilizing the VRP, improves program administration, and maintains the quality of service to seriously disabled veterans.

EFFECTIVE DATE: This regulation is effective September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2886.

SUPPLEMENTARY INFORMATION: At pages 1042 and 1043 of the Federal Register of January 15, 1988, the VA published proposed regulations to change the rules under which a special review is provided in cases in which discontinuance of the rehabilitation program of a veteran with a service-connected disability of 50 percent or more is being considered. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. Since no comments, suggestions or objections to the proposed regulatory amendments were received, the proposed rule is adopted.

The VRP is a multidisciplinary group of professional staff of the Veterans Administration. The VRP furnishes technical assistance in cases involving seriously disabled veterans and dependents. Under current provisions the VRP reviews each case in which discontinuance of the rehabilitation program of a veteran with a service-connected disability evaluated at 50 percent or more disabling is being considered.

The VA is reassigning the responsibility for conducting this special review to the VR&C Officer. Under this change, the VR&C Officer can continue to utilize the assistance of the VRP as necessary in the individual case. The change provides greater flexibility in utilizing the VRP, improves program administration, and maintains the quality of service to seriously disabled veterans.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation

facilities, and the public at large with the way these provisions will be implemented.

These final amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulations. The change will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulatory amendments concern only the internal Agency procedures for reviewing the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 3, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

§ 21.62 [Amended]

1. Section 21.62 is amended by removing paragraph (b)(4).

§ 21.198 [Amended]

2. Section 21.198 is amended by adding paragraph (b)(7) as set forth below:

§ 21.198 "Discontinued" status.

* * * * *

(b) * * *

(7) *Special review of proposed discontinuance action.* The Vocational Rehabilitation and Counseling (VR&C) Officer shall review each case in which discontinuance is being considered for a veteran with a service-connected disability rated 50 percent or more disabling. The VR&C Officer may utilize existing resources to assist in the review, including referral to the Vocational Rehabilitation Panel (VRP).

(Authority: 38 U.S.C. 1504(a)(1))

* * * * *

[FR Doc. 88–19360 Filed 8–25–88; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 223, and 252

Defense Federal Acquisition Regulation Supplement; Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities

AGENCY: Department of Defense (DoD).

ACTION: Notice of extension of interim rule.

SUMMARY: The Defense Acquisition Regulatory Council has extended the expiration date of the interim rule published in the **Federal Register** on November 21, 1986 (51 FR 42095) and October 1, 1987 (52 FR 36774), presently in effect, which pertains to security of arms, ammunition, and explosives at contractor facilities.

DATES: This interim rule continues in effect and expires on January 1, 1989, unless sooner rescinded. There have been no changes to the October 1, 1987 revision.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 88–19385 Filed 8–25–88; 8:45 am]

BILLING CODE 3810–01–M

48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement; Best and Final Offers (BAFOs)

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved new coverage at DFARS 215.611 with respect to Best and Final Offers (BAFOs). This rule imposes new restrictions and approvals for the use of second and subsequent BAFOs. The rule, developed under DAR Case 88–94, ensures that multiple BAFOs are only used when necessary in the acquisition process and then under specific management controls.

EFFECTIVE DATE: August 10, 1988.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DAR Council has approved new coverage at DFARS 215.611 with respect to Best and Final Offers (BAFOs). This final rule imposes new restrictions and approvals for the use of second and subsequent BAFOs. The coverage is effective August 10, 1988, unless second or subsequent BAFOs have already been requested. The reporting system required by paragraphs (c)(S–71) and (c)(S–72) is to be in place by October 1, 1988.

B. Regulatory Flexibility Act

The final rule does not constitute a significant DFARS revision within the meaning of Pub. L. 98–577 and publication for public comment is not required. Therefore the Regulatory Flexibility Act does not apply. Comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88–610D.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 215

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 215.611 is added to read as follows:

215.611 Best and final offers.

(c)(S–70) Second or subsequent requests for best and final offers require close monitoring and control at appropriate management levels in order to avoid auction techniques, enhance protection of source selection sensitive data, and ensure that contracts are awarded fairly and promptly. Unavoidable changes in requirements or funding or other compelling reasons may require a second or subsequent request for best and final offers; however, these circumstances should seldom occur when proper planning and review is accomplished before the initial request for best and final offers. Each request for second or subsequent best and final offers shall be approved before the request is issued, as follows:

(i) For competitive negotiated acquisitions under formal source selection (see FAR 15.612(a)), by the Source Selection Authority (SSA) and the Service Acquisition Executive (SAE). The SAE may delegate this authority to a level no lower than the Head of the Contracting Activity (HCA).

(ii) For all other competitive negotiated acquisitions, by the HCA. The HCA may delegate this authority to a level no lower than the chief of the contracting office.

(S–71) Each HCA shall establish a system for reporting and documenting second or subsequent requests for best and final offers, which shall as a minimum include—

(i) The total number of competitive negotiated acquisitions awarded;

(ii) The number of those acquisitions for which a second or subsequent request for best and final offers was approved and issued; and

(iii) The reasons for approving each second and subsequent request for best and final offers.

(S–72) Each HCA shall periodically examine the data collected and documented under 215.611(c)(S–71), analyze trends, and take any necessary action to provide training, revise approval levels or otherwise ensure that second or subsequent requests for best and final offers are used only when clearly necessary and unavoidable. The HCA shall provide summary reports to the SAE as specified in departmental procedures.

[FR Doc. 88–19386 Filed 8–25–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355–7127]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of catch limit increase in the General Category.

SUMMARY: NOAA issues this notice to adjust the catch limit for giant Atlantic bluefin tuna in the General Category from one to two fish per vessel per day. The regulations governing this fishery allow this adjustment during the fishing season based on a review of specified criteria. The intent of this action is to provide handgear fishermen an additional opportunity to harvest the quota.

EFFECTIVE DATE: August 27, 1988.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–3600, ext. 324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 through 971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 CFR 43396).

Section 285.24(a) provides that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), on or about September 1, may adjust the daily catch limit to a maximum of three giant Atlantic bluefin tuna per vessel per day based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, in order to provide for maximum utilization of the quota. The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna of only 112.7 short tons (st) through August 14, 1988, and on the relatively low average daily catch rate of 4 st per day for the period August 1 through August 14, 1988, that the quota for the General Category will not be harvested under the prevailing catch constraints. Therefore, the catch limit of one giant Atlantic bluefin tuna per vessel per day will be increased on the effective date of this notice to two per vessel per day in order to provide for the maximum opportunity to utilize the General Category quota of 650 st set forth in § 285.22(a).

This daily catch limit will remain in effect for the remainder of 1988 or until the quota for the General Category is reached or until further adjustment is warranted.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.24 and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: August 23, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–19448 Filed 8–25–88; 8:45 am]
BILLING CODE 3510–22–M

50 CFR Part 663

[Docket No. 71158–7288]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces closure of the fishery for sablefish caught with nontrawl gear, predominantly pots and longlines, off the coasts of Washington, Oregon, and California, and requests public comment on this action. This closure is authorized under the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and the 1988 fishing restrictions which prohibit further retention or landings of sablefish by nontrawl gear when the quota for that gear type is projected to be reached. The Director, Northwest Region, NMFS (Regional Director) has determined that the 1988 nontrawl quota of 4,800 metric tons (mt) for sablefish will be reached by August 26, 1988. This closure is intended to avoid overfishing sablefish, which has been documented as biologically stressed and which is fully utilized.

DATES: Effective from 0001 hours, Pacific Daylight Time (PDT), August 26, 1988, until 2400 hours Pacific Standard Time (PST), December 31, 1988, unless modified, superseded, or rescinded.

Comments will be accepted until September 12, 1988.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE. Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140; or Rodney R. McInnis at (213) 514–6202.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations implementing the FMP at § 663.22(a)(3) and the fishing restrictions imposed at the beginning of 1988 (53 FR 248, 253; January 6, 1988), the 10,000 mt optimum yield (OY) for sablefish was allocated 52 percent (5,200 mt) for trawl gear and 48 percent (4,800 mt) for nontrawl gear, predominantly pot and longline fixed gears.

The regulations at § 663.21(b) and the notice at 53 FR 248 (January 6, 1988) require that, when the quota for either gear type is projected to be reached, retention or landings of sablefish by that gear type will be prohibited. If the overall OY for sablefish is reached, further retention or landings of sablefish by all gear types will be prohibited until January 1, 1989.

Based on the best available information as of August 10, 1988, and after consultation with the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, the California Department of Fish and Game, and the Pacific Fishery Management Council (Council), the Regional Director has determined that the 4,800 mt quota for sablefish caught with nontrawl gear will be reached by August 26, 1988. Accordingly, closure of the nontrawl fishery for sablefish will occur on August 26, 1988, effective at 0001 hours (one minute after midnight). The states of Washington, Oregon, and California also will close state ocean waters at that time.

This action is automatic and nondiscretionary, and modifies previous restrictions for sablefish caught with fixed gear.

Secretarial Action

For the reasons stated above, the Secretary of Commerce announces that:

(1) From 0001 hours, Pacific Daylight Time, August 26, 1988 through 2400 hours, Pacific Standard Time, December 31, 1988, it is unlawful to retain or land sablefish caught with nontrawl gear.

(2) Nontrawl gear includes set nets, traps or pots, longlines, commercial vertical hook-and-line gear, troll gear, and trammel nets.

(3) This restriction applies to all sablefish taken with nontrawl gear between 0 and 200 nautical miles offshore of Washington, Oregon, and California. All sablefish taken with nontrawl gear that are possessed 0–200 nautical miles offshore of, or landed in Washington, Oregon, or California are presumed to have been taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Classification

The determination to prohibit further retention or landings of sablefish caught with nontrawl gear is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see Addresses) during business hours until the end of the comment period.

Because of the immediate need to prevent the nontrawl quota from being exceeded, the Secretary finds that advance notice and public comment on this closure are impracticable and not in the public interest and that good cause exists for issuing this notice without affording a prior opportunity for public comment. The public did have an opportunity to comment at the Council's July 1988 meeting, during which the Groundfish Management Team (Team) announced that the nontrawl quota for sablefish was expected to be reached before the end of the year. The public also participated in the August 10–11 meeting of the Team at which the closure date was determined. Public comments also will be accepted for 15 days after publication of this notice in the **Federal Register**. Because of the need to prevent the nontrawl quota from being exceeded, the Secretary also finds good cause to waive the 30-day delayed effectiveness provision of § 663.23(c).

This action is taken under the authority of §§ 663.21(b), 663.22(a)(3), and 663.23 and the notice at 53 FR 248 (January 6, 1988), and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 23, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–19447 Filed 8–25–88; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 166
Friday, August 26, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1253 and 1260

Filing of Complaints and Allegations, Filing of Freedom of Information Act Requests; Address Changes

AGENCY: Office of the Special Counsel, Merit Systems Protection Board.

ACTION: Proposed rules.

SUMMARY: These regulations propose to amend 5 CFR 1253.1 and 1260.3 to reflect one address for filing complaints and allegations, for disclosing information described in 5 CFR Part 1252, and for filing Freedom of Information Act requests.

DATE: Written comments on these proposed rules may be submitted by any person. Comments received by September 26, 1988 will be considered.

ADDRESS: Comments should be directed to Henry Darnell Lewis, Office of Special Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Suite 1100, Washington, DC 20005. Comments received will be available for public inspection at the above address between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Darnell Lewis, (202) or FTS 653–8982.

SUPPLEMENTARY INFORMATION: In its present form, 5 CFR 1253.1(a) provides that allegations of prohibited personnel practices and other violations of civil service law, rule or regulation within the investigative authority of the Special Counsel may be filed at either the Washington, DC, Atlanta, GA, Dallas, TX, Philadelphia, PA, or San Francisco, CA, offices. The Atlanta and Philadelphia offices have been abolished, and complaints for all offices are now processed initially at the Complaints Examining Unit in Washington. The revision of § 1253.1(a) reflects this change. Similarly, § 1260.3, concerning the filing of Freedom of Information Act requests, was keyed to § 1253.1. Since all FOIA requests are now processed at the Washington office, section 1260.3 is being revised to reflect this change. Finally, section 1253.1(b) is being amended to reflect room number and zip code changes.

Executive Order 12291, Federal Regulation

The Special Counsel has determined that these are not major rules as defined in section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the Office of the special Counsel is not required to prepare an initial or final regulatory analysis of these regulations pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603–04, because these regulations will not have significant economic impact on a substantial number of small entities including small businesses, small organizational units, and small governmental jurisdictions.

List of Subjects

5 CFR Part 1253

Filing of complaints and allegations.

5 CFR Part 1260

Public information.

Erin McDonnell,

Acting Special Counsel.

Date: August 19, 1988.

It is proposed to amend 5 CFR Parts 1253 and 1260 as follows:

PART 1253—[AMENDED]

1. The authority citation for Part 1253 continues to read as follows:

Authority: 5 U.S.C. § 1206(k), sec. 204(g) of Reorganization Plan No. 2 of 1978.

2. Section 1253.1 is revised to read as follows:

§ 1253.1 Place of filing.

(a) Allegations of prohibited personnel practices or other violations of civil service law, rule, or regulation within the investigative authority of the Special Counsel described in Part 1251 of this chapter should be submitted to the Office of the Special Counsel, Complaints Examining Unit, 1120 Vermont Avenue, NW., Suite 1100, Washington, DC 20005.

(b) Information evidencing violations of law, rule, or regulation or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, described in Part 1252 of this chapter, should be submitted to the Office of the Special Counsel, 1120 Vermont Avenue, NW., Suite 1100, Washington, DC 20005.

PART 1260—[AMENDED]

3. The authority citation for Part 1260 continues to read as follows:

Authority: 5 U.S.C. 552.

4. Section 1260.3 is revised to read as follows:

§ 1260.3 Procedures for obtaining records.

Requests for records shall be made in writing. Except in unusual circumstances, a determination shall be made on a request within 10 working days. Requests should be addressed to the Office of the Special Counsel, 1120 Vermont Avenue, NW., Suite 1100, Washington, DC 20005. Requests must be clearly and prominently marked "Freedom of Information Act Request" on both the envelope and the letter.

[FR Doc. 88–19480 Filed 8–25–88; 8:45 am]

BILLING CODE 7400–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1098

[DA–88–118]

Milk in the Nashville, Tennessee, Marketing Area; Proposed Termination of Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This notice invites written commens on a proposal to terminate provisions of the Nashville order. The proposed action would allow a cooperative association to be the responsible handler on milk of producers who are not members of the cooperative when such milk is delivered to pool plants of other handlers for the account of the cooperative association.

DATE: Comments are due on or before September 2, 1988.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/ Diary Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the termination of the following provisions of the order regulating the handling of milk in the Nashville marketing area is being considered:

1. In § 1098.9(c), the provision "of its producer members".
2. In § 1098.73(c), the provision "of its members".

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the Diary Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agricultural, Washington, DC 20250, not later than 7 days after the publication of this notice in the **Federal Register**. It is necessary that the time for responding be limited in order that the termination procedure can be completed at the earliest possible date to adapt the order to a recent change in milk handling practices in the market.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed termination would permit a cooperative association to be the handler on milk of producers who are not members of the cooperative association when such milk is delivered to pool plants of other handlers for the account of the cooperative association.

Dairymen, Inc., requested that the proposed termination of provisions of the Nashville order be made effective in August 1988. The cooperative indicated that termination of the provisions would:

(1) Facilitate the pooling of producer milk which will be needed to fulfill the fluid needs of pool distributing plants;

(2) Eliminate unnecessary reporting costs otherwise borne by the receiving pool distributing plant on such milk delivered for the account of Dairymen, Inc.;

(3) Allow the commingling of member and nonmember milk on the same farm-to-market routes and thereby lead to greater farm-tomarket delivery efficiency; and

(4) Result in similar application under the Nashville order as applies under most other Federal milk marketing orders.

Therefore, comments are sought to determine whether the aforementioned provisions should be terminated.

List of Subjects in 7 CFR Part 1098

Milk marketing order, Milk, Dairy products.

The authority citation for CFR Part 1098 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washingon, DC, on: August 23, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–19483 Filed 8–25–88; 8:45 am]

BILLING CODE 3410-02-M

Packers and Stockyards Administration

9 CFR Parts 201 and 203

Poultry Regulations and Policy Statements

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On July 11, 1988, a notice of proposed rulemaking was published in the **Federal Register** (53 FR 26062) advising that the Packers and Stockyards Administration was proposing to amend certain existing regulations relative to poultry to conform to the Poultry Producers Financial Protection Act of 1987 (Pub. L. 100–173) amending the Packers and Stockyards Act.

That notice provided that comments regarding the proposal should be filed with the Administration on or before September 9, 1988.

Pursuant to requests from interested parties for additional time to prepare their comments. the time for filing comments concerning the proposed rulemaking is hereby extended 60 days.

DATE: The time for filing comments is hereby extended to and including November 8, 1988.

ADDRESS: Written comments may be mailed to: Packers and Stockyards Administration, Room 3039-South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected during normal business hours in the office of the Administrator.

FOR FURTHER INFORMATION CONTACT: Kenneth Stricklin, Director, Packer and Poultry Division, Packers and Stockyards Administration, Room 3422-South Building, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–7363.

Done at Washington, DC this 23rd day of August, 1988.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 88–19482 Filed 8–25–88; 8:45 am]

BILLING CODE 3410-KD-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–50]

Charles Young; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated April 18, 1988, which was filed with the Commission by Charles Young. The petition was docketed by the Commission on July 3, 1988, and has been assigned Docket No. PRM–50–50. The petitioner requests the Commission to amend its regulations to rescind the provision that authorizes nuclear power plant operators to deviate from technical specifications during an emergency.

DATE: Submit comments by October 25, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Juanita Beeson, Chief, Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, Washington, DC 20555, Telephone (301) 492–8926.

SUPPLEMENTARY INFORMATION:

Background

I. Petitioner's Interest

Mr. Charles Young, the petitioner, is requesting the NRC to rescind paragraphs (x) and (y) of § 50.54 of 10 CFR. The regulation, issued on June 1, 1983 (48 FR 13966), authorizes a senior operator in a nuclear power plant to deviate from technical specifications in an emergency. The petitioner opposes the regulation because he believes that nuclear power plants should be operated in accordance with the operating license and appropriate technical specifications and that requiring a senior operator to follow the technical specifications during an emergency enhances plant safety.

The petitioner notes that technical specifications (a) prescribe settings for safety systems at nuclear power plants, such as the emergency core cooling system, so that action of a safety system will correct an abnormal condition before fuel design limits are exceeded; and (b) require an automatic safety system to operate as long as the abnormal condition which threatens the nuclear fuel exists in the plant.

II. Grounds for the Petition

The petitioner cites several cases of hazardous practices where, the petitioner asserts, the licensee has violated Federal regulations at the Dresden and Quad Cities Nuclear Power Plants, owned by Commonwealth Edison Company, Chicago, Illinois. The petitioner believes that these practices could lead to an accident similar to the one at Three Mile Island, Unit 2. The petitioner claims that three official investigations have confirmed that damage to the nuclear reactor at Three Mile Island, Unit 2, could have been prevented if plant operators had followed the requirements of the plant's operating license and technical specifications. According to the petitioner, the three investigations and their applicable findings are as follows:

(1) The President's Commission found that reactor core damage would have been prevented if the high pressure injection system had not been throttled. (Kemeny Commission Finding #4, pg 28)

(2) Calculations by the Special Inquiry Group show that use of the high pressure injection system would have prevented overheating of the fuel and release of radioactive material. (Rogovin, Vol II, Part 2, pgh D.2.b, pgs 558, 561)

(3) The Special Investigation by the Senate Subcommittee on Nuclear Regulation found the cause of severe damage to the reactor core was the inappropriate overriding of automatic safety equipment by plant operators and managers. (Hart Report Chapter 2, Findings and Conclusions, #2, pg 9)

The petitioner believes the NRC should rescind the existing provisions in paragraphs (x) and (y) of § 50.54 to adequately protect the public health and safety from the hazards of nuclear radiation when nuclear energy is producing power.

III. Petitioner's Proposal

PART 50—[AMENDED]

The petitioner proposes that 10 CFR 50.54 (x) and (y) be amended to read as follows:

§ 50.54 Conditions of Licenses.

* * * * *

(x) The Atomic Energy Act of 1954 stipulates that a licensee shall operate a commercial nuclear power plant in accordance with technical specifications. Technical specifications define the specific characteristics of a nuclear power plant which ensure that fuel design limits are not exceeded during normal operations and emergencies. By review of a nuclear power plant's safety analysis and technical specifications, the Nuclear Regulatory Commission determines that utilization of special nuclear material will be in accord with the common defense and security and will provide protection to the health and safety of the public. To prevent fuel damage and protect public health and safety from the hazards of nuclear radiation, a licensee shall follow technical specifications when operating a commercial nuclear power plant.

(y) The Chief Executive Officer of a public utility or other organization licensed to operate a commercial nuclear power plant shall establish policy for operating the plant. The Chief Executive Officer shall direct that the nuclear power plant be operated in accordance with the Operating License and Technical Specifications.

Dated at Rockville, MD, this 22nd day of August of 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–19428 Filed 8–25–88; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM88–22–000]

Accounting for Phase-in Plans; Extension of Time

Issued: August 19, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry; extension of time.

SUMMARY: On June 21, 1988, the Commission issued a notice of inquiry into the effects of recent and proposed actions of the Financial Accounting Standards Board (FASB) that would change the way regulated public utilities account for certain transactions in financial statements that they issue to the public. (53 FR 24096, June 27, 1988). On August 19, 1988, an extension of time was granted at the request of various interested parties for the filing of comments on the notice of inquiry.

DATE: The time for filing comments is extended from August 22, 1988 to August 31, 1988.

ADDRESS: Office of the Secretary, 825 N. Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Acting Secretary, (202) 357–8400.

Extension of Time

On August 19, 1988, The American Institute of Certified Public Accountants (AICPA) filed a motion for an extension of time to file comments in response to the Commission's Notice of Inquiry issued June 21, 1988, in the above-docketed proceeding. In its motion, the AICPA states that while the AICPA's Public Utility Committee is in the process of preparing comments in

response to the Commission's notice, the Committee requires additional time to provide input on this matter and to meet the Commission's deadline for submitting comments.

Upon consideration, notice is hereby given that an extension of time for filing comments is granted to and including August 31, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19378 Filed 8-25-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF STATE

Bureau of Administration and Information Management

22 CFR Part 171

[SD-217]

Predisclosure Notification Procedures for Confidential Commercial Information

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The proposed rule implements Executive Order 12600 which requires Federal agencies to establish predisclosure notification procedures applicable to Freedom of Information Act requests for the release of records containing commercial or financial information that is privileged or confidential if the disclosure of these records can reasonably be expected to result in substantial competitive harm to the person who submitted the information. The procedure provides for notice to the submitter and an opportunity for the submitter to object to the disclosure of the records.

DATE: Comments must be received on or before September 26, 1988.

ADDRESS: Written comments should be submitted to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Malin, Office of the Legal Adviser, (202) 647-3022.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to issue proposed implementing regulations in conformance with the requirements of Executive Order 12600 of June 23, 1987, which was published in the **Federal Register** on June 25, 1987, 52 FR 23781. Section 7 of Executive Order 12600 requires that the designation and notification procedures required by this Executive Order shall be established by regulation, after notice and public comment.

The Department of State has determined that this document is not a major rule under Executive Order 12291 of February 17, 1981 since it will not have a significant economic effect on a substantial number of small entities. Any economic impact on small entities resulting from this proposed rule would be attributable to Executive Order 12600, not to these regulations.

This proposed rule does not contain information collection requirements which require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The publication of this notice is made in accordance with the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

List of Subjects in 22 CFR Part 171

Availability of information and records to the public.

For the reasons set forth in the preamble, the Department of State proposes to amend Title 22, Chapter I, Subchapter R, Part 171, as follows:

PART 171—[AMENDED]

1. The authority citation for 22 CFR Part 171 is revised to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the Administrative Procedure Act, 5 U.S.C. 551; the Ethics in Government Act, Pub. L. 95-521; Executive Order 12356, 47 FR 14874; and E.O. 12600, 52 FR 23781.

2. Section 171.16 is added to Subpart B to read as follows:

§ 171.16 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the Department shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) "Confidential Commercial Information" means records provided to the Department by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the Department. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* Whenever the Department receives a Freedom of Information Act request for confidential commercial information and, pursuant to paragraph (c) of this section, the submitter is entitled to receive notice of that request, the Department shall promptly notify the submitter that it has received the request, unless such notice is excused under paragraph (g) of this section. The notice shall be in writing and either describe the exact nature of the confidential commercial information requested or provide a copy of the records or portion of the records containing the confidential commercial information. The notice shall be addressed to the submitter and mailed, postage prepaid, first class mail, to the submitter's last known address. Where notice is required to be given to a voluminous number of submitters, in lieu of mailing the notice may be posted or published in a manner and place reasonably calculated to provide notice to the submitters.

(c) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, the Department shall provide a submitter with notice of a receipt of a Freedom of Information Act request whenever:

(i) The records are less than ten (10) years old and the information has been designated by the submitter as confidential commercial information; or

(ii) The Department has reason to believe that the disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted to the Department on or after January 1, 1988, the Department shall provide a submitter with notice of receipt of a Freedom of Information Act request whenever:

(1) The submitter has designated the information as confidential commercial information pursuant to the requirements of this section; or

(ii) The Department has reason to believe that the disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than ten years after the date of submission unless the submitter provides reasonable justification for a designation period of greater duration.

(4) A submitter shall use good-faith efforts to designate by appropriate markings, either at the time a record is

submitted to the Department or within a reasonable period of time thereafter, those portions of the record which it deems to contain confidential commercial information. The designation shall be accompanied by a certification made by the submitter, its agent or designee, that to the best of the submitter's knowledge, information and belief, the record does, in fact, contain confidential commercial information that theretofore has not been disclosed to the public.

(5) Whenever the Department provides notice to the submitter in accordance with paragraph (c) of this section, the Department shall at the same time provide written notice to the requester that it is affording the submitter a reasonable period of time within which to object to the disclosure, and that, therefore, the Department may be required to enlarge the time within which it otherwise would respond to the request.

(d) *Opportunity to object to disclosure.* To the extent permitted by law, the notice required by paragraph (c) of this section shall afford a submitter a reasonable period of time within which the submitter or its authorized representative may provide the Department with a written objection to the disclosure of the confidential commercial information. The objection shall set forth in detail all grounds for withholding information and demonstrate why the submitter believes that the records contain confidential commercial information. Except where a certification already had been made in conformance with the requirements of paragraph (c)(4) of this section, the objection shall be accompained by certification made by the submitter, its agent or designee, that to the best of the submitter's knowledge, information and belief, the record does, in fact, contain confidential commercial information that theretofore has not been disclosed to the public. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(e) *Notice of intent to disclose.* (1) The Department shall give careful consideration to objections made by a submitter pursuant to paragraph (d) of this section prior to making any administrative determination of the issue. Whenever the Department decides to disclose information over the objection of a submitter, the Department shall forward to the submitter a written notice which shall include:

(i) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(ii) A description of the information to be disclosed; and

(iii) A specified disclosure date.

(2) To the extent permitted by law, the notice required to be given by paragraph (e)(1) of this section shall be provided to the submitter a reasonable number of days prior to the specified disclosure date.

(3) Whenever the Department provides notice to the submitter in accordance with paragraphs (e)(1) and (2) of this section, the Department shall at the same time notify the requester that such notice has been given and the proposed date for disclosure.

(f) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel the disclosure of information for which notice is required pursuant to paragraph (c) of this section, the Department shall promptly notify the submitter that such suit has been filed.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The Department determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) Disclosure of the information is required by a Department rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information requested was not designated by the submitter as exempt from disclosure in accordance with paragraph (c) of this section, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the Department has substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, the Department must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

Richard C. Faulk,

Acting Assistant Secretary, Bureau of Administration and Information Management.

August 15, 1988.

[FR Doc. 88-19369 Filed 8-25-88; 8:45 am]
BILLING CODE 4710-24-M

VETERANS ADMINISTRATION

38 CFR Part 3

Determination of Service Connection for Impaired Hearing

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration (VA) proposed to amend its adjudication regulations to define "hearing within normal limits" for rating purposes. This change is necessary to provide regulatory limits governing the establishment of service connection for impaired hearing. The intended effect will be to establish an agency-wide rule for making determinations of service connection for impaired hearing.

DATES: Comments must be received on or before September 26, 1988. Comments will be available for public inspection until October 7, 1988. This rule is proposed to be effective 30 days after the date of final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed regulation to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 7, 1988.

FOR FURTHER INFORMATION CONTACT: Robert W. White, Chief, Regulations Staff (211B), Compensation and Pension Service, Department of Veterans Benefits, (202) 233-3005.

SUPPLEMENTARY INFORMATION: The Chief Medical Director suggested that a definition of hearing within normal limits be established consistent with the revision of 38 CFR Part 4 on the evaluation of hearing loss which was effective December 18, 1987. The Chief Benefits Director concurred. We propose to add a section to 38 CFR Part 3 to define hearing within normal limits for

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rating purposes and to preclude service connection when hearing is within normal limits. Hearing thresholds for frequencies other than those included in the proposed rule shall not be for consideration when making a determination as to service connection.

The Administrator hereby certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this regulation would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed regulation is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this proposed regulation is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: July 26, 1988.

Thomas K. Turnage,

Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, *Adjudication*, § 3.385 is proposed to be added to read as follows:

§ 3.385 Determination of service connection for impaired hearing.

Service connection for impaired hearing shall not be established when hearing is within normal limits. Hearing shall be considered within normal limits when all thresholds for the frequencies of 500, 1000, 2000, 3000 and 4000 Hertz are less than 40 decibels; the thresholds of at least three of these frequencies are 25 decibels or less; and speech recognition scores using the Maryland CNC Test are 94 percent or better.

Authority: 38 U.S.C. 210(c)(1).

[FR Doc. 88–19361 Filed 8–25–88 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3434–6]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate the LA–5 dredged material disposal site located offshore of San Diego, California for the disposal of dredged material removed from the port of San Diego and other nearby harbors or dredging sites. At the same time EPA will cancel the interim designation of the LA–4 dredged material disposal site off San Diego. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material, and to cancel the LA–4 site which is no longer needed. The proposed LA–5 site designation is for an indefinite period of time, and the site will be monitored to ensure that unacceptable adverse environmental impacts do not occur.

DATE: Comments on the proposed action must be received on or before September 26, 1988.

ADDRESSES: Send comments to: Dr. Wendy Wiltse, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street (W–7–1), San Francisco, CA 94105. The file supporting this proposed designation is available for public inspection at the following locations:

1. EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC.
2. EPA Region IX, Library, 215 Fremont Street, San Francisco, CA.
3. Army Corps of Engineers, Los Angeles District, Library, 300 North Los Angeles Street, Los Angeles, CA.

FOR FURTHER INFORMATION CONTACT: Dr. Wendy Wiltse at the above address, or call (415) 974–9812.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated the authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the Region in which the site is located. The LA–5 site designation and the LA–4 site cancellation actions are being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter 1, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2462 *et seq.*) and was last extended on August 24, 1984 (49 FR 33647 *et seq.*). That list established the LA–4 and LA–5 sites as interim sites. Interested persons may participate in this proposed rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to designation of ocean disposal sites, EPA has voluntarily committed to prepare EISs for these actions (39 FR 37419, October 21, 1974).

The EPA prepared a Draft EIS entitled "San Diego (LA–5) Ocean Dredged Material Disposal Site Designation." A notice of availability for public review and comment on the DEIS was published in the **Federal Register** (52 FR 37832, October 9, 1987). Anyone desiring a copy of the DEIS may obtain one from the EPA Region IX office address given above. During the public comment period on this DEIS, which closed on November 23, 1987, EPA received 6 comment letters.

The following substantive comments were discussed in the 6 comment letters:

1. Three commentors requested that the site management program be included in the FEIS. The section on site monitoring was expanded to cover the guidance provided in the Ocean Dumping Regulations (49 CFR 228.13). Site management programs will be defined at the EPA and Corps national level as agreed to in the EPA/Corps

National Memorandum of Understanding on ocean dumping, signed on July 27, 1987. EPA Region 9 and the Corps' Los Angeles District will prepare a detailed site management program and circulate the proposal for public review, before implementation.

2. Two commentors questioned the level of testing required and the possible use of suitable dredged material for beach replenishment. During the Corps' Ocean Dumping Permit process under section 103 of the Act, EPA and the Corps review sediment test data and results of bioassays to determine whether the proposed dredged material is suitable for ocean disposal. Only dredged material which passes these tests is considered suitable for ocean disposal. Sediments that show significant toxicity, bioaccumulation of contaminants or abnormally high concentrations of contaminants are pohibited from ocean disposal. Alternative disposal methods must be used if the project is to proceed.

Each permit application is reviewed by EPA and other agencies to determine whether this material is suitable for ocean disposal. If the material is compatible with a specific beach, then the material may be used for beach replenishment projects in cooperation with the California Coastal Commission. These considerations are made on a case-by-case basis and are not part of this site designation action.

3. EPA was requested to evaluate the cumulative impacts of designating the LA–5 site. The impact tables contained in Chapter 4 Environmental Consequences were revised to reflect further analysis of cumulative impacts in that chapter. Special attention was paid to the possible extension of the Point Loma municipal waste outfall. EPA participates in the planning group involved with the Point Loma project. It is EPA's goal to ensure that the impacts from the outfall and the LA–5 site are spatially separate so that any impacts detected can be traced to the likely source. Endangered Species Act and National Historic Preservation Act coordination have been carried out as documented in Chapter 5 of the FEIS.

C. Alternative Analysis

The action discussed in the FEIS is the designation of an ODMDS for continuing use. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The approval of specific ocean dredged material disposal permits is determined on a case-by-case basis as part of the permitting process for ocean dredged material disposal under section 103 of the Act.

The FEIS discusses the need for the site selection action and examines a range of ocean disposal sites and other alternatives to the proposed action. Land-based disposal alternatives were examined in the DEIS and found to be unacceptable for disposal of large amounts of dredged material. These alternatives will be evaluated by the Corps' Los Angeles District on a case-by-case basis during the permitting process.

The following alternatives were evaluated in this FEIS:

1. No Action

Selection of this alternative would prevent final designation of the LA–5 site and may prohibit further use of the ODMDS as of December 31, 1988 as required by the 1980 EPA and National Wildlife Consent Agreement (National Wildlife Federation v. Costle, 14 ERC 1680 *et seq.*, 1980). No action on the site designation could force the Corps to designate their own site under section 103 of the Act, or modify or cancel dredging projects that rely on ocean disposal of suitable material.

2. Delayed Action Alternative

Delaying the designation of the LA–5 site would be a violation of the 1980 Consent Agreement between EPA and the National Wildlife Federation. The need for an ODMDS is a continuing concern and requires conclusion of the site designation process in the most expeditious manner possible.

3. Upland Disposal (including Landfilling in Port Areas and Disposal at Sanitary Landfills

These alternatives are considered on a case-by-case basis when the Corps' ocean dumping permit applications are reviewed. Beach replenishment is preferred if the dredged material is suitable. Disposal of large amounts of dredged material at upland sites is not a feasible long-term solution for management of dredged material disposal because the capacity of these sites is limited in the San Diego area.

4. LA–5 ODMDS (Preferred Alternative)

This site was selected as the preferred alternative because it has been used historically since the 1970's. It is located 5.4 nautical miles southwest of Point Loma on the outer continental shelf in 71 to 104 fathoms (130–190 meters) of water. The environmental impacts at the site have proven to be acceptable. The anticipated future use of the site will not cause significant environmental impacts and conflicts with other uses of the ocean are minimal.

5. LA–4 ODMDS

This site is located in 45 fathoms (82 meters) of water, 4.9 nautical miles south of Point Loma. Synergistic effects from the Point Loma outfall; proximity to fishing and boating areas; and effects on kelp beds, benthic resources, cultural resources, navigation and shoreline process were evaluated in the FEIS. EPA and the Corps determined that the environmental impacts of designating the LA–4 site were not acceptable because the site was too close to the major resources listed above.

6. Deep Water ODMDS

The deep water site is located 12–16 nautical miles off Point Loma in 600 fathoms (1092 meter) of water. This site has not been used previously as a disposal site. The major reason for not selecting this deep site is that disposal of dredged material would cause new impacts to an undisturbed habitat. The LA–5 site, in contrast, has been used for disposal of dredged material since the 1970's and impacts at that site have been acceptable. Other reasons for not selecting the deep site include: the size of the area affected by disposal, distance from shore, and the feasibility of monitoring and surveillance at the site. Disposal at this deep site (600 fm) would cause greater sediment dispersal in the water column with more sediment remaining in suspension at neutral buoyancy than would occur at LA–5 (100 fm). A larger area of the bottom would be impacted by deposition of dredged material at the deep site. It would be difficult to monitor the deep site because of the great depth and the overall logistics of taking samples in the deep sea.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

D. Proposed Site Designation

LA–5, the proposed site, is located approximately 5.4 nautical miles southwest of Point Loma and occupies an area of about 2.39 square nautical miles. Water depths within the area are between 80 and 110 fathoms (145 and 200 meters). The center coordinates of the site are as follows: 32°36'50" North × 117°20'40" West with a radius of 0.76 nautical miles. If at any time disposal operations at the site cause unacceptable adverse environmental

impacts, further use of the site will be restricted or terminated.

E. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected to minimize interference with other marine activities, to keep any temporary perturbations from causing impacts outside the disposal site, and to permit effective monitoring which is designed to detect any adverse impacts at an early stage. Where feasible, locations off the continental shelf and historical sites are chosen. If at any time disposal operations at a designated site cause unacceptable adverse impacts, the use of that site will be terminated as soon as a suitable alternative disposal site can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6(a) lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site, as discussed below under the eleven specific factors, is acceptable under the five general criteria. Historical use at the existing site has not resulted in substantially adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed site are reviewed below in terms of the 11 specific site selection factors.

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1))

The LA–5 site is located on the outer continental shelf approximately 5.4 nautical miles (8.6 kilometers) southwest of Point Loma at depths ranging from 80 to 110 fathoms (145–200 meters). The bottom, consisting of fine sediment, slopes to the northwest.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The LA–5 site provides feeding and breeding areas for common resident benthic species. Designation of the site will not affect any geographically limited habitats, breeding sites or critical areas that are essential to commercially important species or rare or endangered species.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The LA–5 site is 5.4 nautical miles from the nearest shoreline. EPA and the Corps have determined that aesthetic impacts of plumes, transport of dredged material to any shoreline and alteration ofany habitat of special biological significance or marine sanctuary will not occur if this site is designated.

The LA–5 site is approximately 5 nautical miles south of the Point Loma Outfall and 14 nautical miles northwest of the United States/Mexico border. Any resuspended sediments from the LA–5 site are expected to move northwest along the 100 fathom depth contour. There should be minimal effect from LA–5 on the Proposed Point Loma Outfall and the proposed South Bay sewage treatment plant and associated ocean discharge for San Diego and Tijuana sewage.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste if any (40 CFR 228.6(a)(4))

An annual average of approximately 370,000 cubic yards of predominantly silts and clays dredged from San Diego Harbor and other nearby harbor areas are expected to be disposed at the ODMDS once it is designated. The dredged material proposed for disposal at the site must pass stringent sediment chemistry and bioassay tests before a permit can be issued by the Corps. Disposal will be from split hull barges towed by tugboat to the site. No dumping of toxic materials or other kinds of industrial or municipal wastes will be permitted at the site.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

The U.S. Coast Guard (USCG) will conduct surveillance of disposal activities at the site. EPA and the Corps will assist the USCG within the limits of their jurisdiction.

Physical and biological sampling will be key factors in the site monitoring program. The monitoring program will be established to answer several question including: the area of impact and effects on grain size, sediment chemistry and benthic infauna; disposal model verification and sediment transport; potential for bioaccumulation of contaminants in local species; and potential impacts on commercial and recreational fisheries. If significantly adverse impacts are detected at the site, the site management plan will be flexible enough to allow for appropriate management actions to minimize any adverse environmental impacts.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6))

Bottom water currents in the vicinity of LA–5 are variable but move predominantly to the northwest along bathymetric contour lines. Vertical mixing and surface currents will disperse fine material disposed at the LA–5 site to the south. The main direction of sediment transport is toward the northwest and dredged material disposed at the LA–5 site may be transported in that direction by the net current movement.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

LA–5 has been used as an interim site for disposal of dredged material since the late 1970's. Impacts of disposal activities at LA–5 include: a greater range of grain size at the site; elevated concentrations of trace metals and chlorinated hydrocarbons; lower species diversity and abundance of demersal fish; and lower diversity of benthic infauna and epifauna compared to the reference site. These effects are considered to be acceptable localized impacts within the disposal site. Impacts on the water column associated with disposal events are minimal and temporary.

The potential for cumulative effects with a possible South Bay Outfall and the proposed Point Loma Outfall extension is uncertain at this time because plans for these outfalls are not finalized. Cumulative effects will be assessed in future monitoring of impacts in the vicinity of LA–5. EPA and the state have initiated enforcement action against the City of San Diego. In its involvement with the progression towards secondary treatment EPA is working with the City of San Diego in their facilities planning for secondary treatment in the metropolitan area. A South Bay sewage treatment plant and ocean discharge may be a component of future facilities for both San Diego and Tijuana. The feasibility and location of these facilities, including an ocean outfall, has yet to be determined. If a South Bay plant and the ocean outfall are proposed, EPA will work with the city to ensure that the outfall is constructed so that impacts of the outfall and the LA–5 ODMDS can be spatially separated.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

Interference with shipping is minimal because of the low volume of material to be discharged at LA–5 (370,000 cubic yards per year) and because the disposal site is located outside of the U.S. Coast Guard Precautionary Area and major shipping lanes. Impacts on commercial fishing are expected to be minor and temporary since most of the catch in the vicinity of LA–5 consists of pelagic species, and the impacts of dredged material disposal on the upper water column are intermittent and short-term.

The most important impacts of dredged material disposal are localized changes in the bottom community. The benthic fish community at the LA–5 site is somewhat depauperate compared to the reference site. This effect is localized and not expected to affect the major sport and commercial bottom fishing activities in much shallower water. Sportfishing, pleasure boating, and dredged material disposal are presently coexisting at LA–5 and no changes are expected. Oil and gas devlopment has not occurred off the San Diego coast and will not be affected by designation of the disposal site.

9. The Existing Water Quality and Ecology of the Site as Determined By Available Data or By Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Water quality at LA–5 is indistinguishable from the water quality of nearby areas. Sediment quality differs from a reference site in grain size distribution, and levels of trace metals and chlorinated hydrocarbons. Species diversity of benthic epifauna, infauna, and demersal fish was lower at the LA–5 site than at the reference site. Many of the same species exist at both sites. Further analysis of the benthic community will be a major part of the site management program.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

Opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ODMDS in response to physical deposition of sediments. Opportunistic polychaetes, such as *Capitella,* may colonize the disposal site, but these worms will become food items for bottom-feeding fish and are not directly harmful to other species. No recruitment of species capable of harming human health or the marine ecosystem are expected.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11))

The California State Historic Preservation Officer has determined that there are no known shipwrecks nor any known aboriginal artifacts in the vicinity of the LA–5 site.

F. Proposed Action

EPA and the Corps have concluded that the proposed LA–5 site should be designated for continued use and that the LA–4 site should be canceled. The proposed LA–5 site is compatible with the general criteria and specific factors used for site evaluation. Designation of the LA–5 site as an EPA-approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region IX.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual ocean disposal of materials. Before ocean dumping of dredged material at the site may commence, the Corps must evaluate a permit application according to EPA's ocean dumping criteria. The Corps or EPA has the right to disapprove the actual dumping, if it is determined that environmental concerns under the Act have not been met.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 18, 1988.

Daniel W. McGovern,

Regional Administrator for Region IX.

In consideration of the foregoing, Subchapter H of Chapter 1 of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing and reserving paragraph (a)(1)(i)(F) San Diego, CA (2 sites) and removing from the Dredged Material Site Listing "San Diego-Point Loma" and "San Diego 100 fathom" interim sites from paragraph (a)(3); and by adding paragraph (b)(69) to read as follows:

§ 228.12 Delegation of Management Authority for Ocean Dumping Sites.

* * * * *

(b) * * *

(69) San Diego (LA–5) Ocean Dredged Material Disposal Site-Region IX.

Location: 32°36'50" North × 117°20'40" West (0.76 nautical mile radius)

Size: 2.39 square nautical miles.

Depth: 80 to 110 fathoms (145 to 200 meters).

Primary Use: Ocean dredged material disposal.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material.

[FR Doc. 88–19411 Filed 8–25–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3480

[AA–660–08–4121–02]

Coal Exploration and Mining Operations Rules; Diligence Requirements

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This Notice sets forth a proposed rulemaking for the Department of the Interior's administration of section 7(a) and section 39 of the Mineral Leasing Act (MLA) (30 U.S.C.

207(a) and 30 U.S.C. 209 (1982)). The proposed rulemaking would amend the existing regulations at 43 CFR 3483.3 to provide that, if a Federal coal lease has an approved or directed suspension of operations and production under section 39 of MLA, the 10-year production period set in section 7(a) of MLA would be extended by an amount of time equal to the duration of the suspension of operations and production.

DATE: Comments should be submitted by September 26, 1988. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer, (202) 343–7722 or Allen B. Agnew, (202) 343–7753.

SUPPLEMENTARY INFORMATION: Section 7(a) of MLA, as amended by the Federal Coal Leasing Amendments Act of 1976 (FCLAA), provides that any Federal coal lease that is not producing in commercial quantities at the end of 10 years, after being made subject to section 7 of MLA as amended by FCLAA, shall be terminated. Since enactment of FCLAA, the Department of the Interior has defined the diligent development requirement of section 7(b) of MLA as meeting the 10-year production requirement. Section 39 of MLA provides that the Secretary of the Interior, in the interest of conservation, may direct or assent to the suspension of operations and production under any lease granted pursuant to MLA and the term of each such lease shall be extended by adding to it any such suspension period.

On July 19, 1979, the Department of the Interior published the final coal management rulemaking (44 FR 42584), which included regulations governing suspensions of operations and production under section 39 of the MLA. The preamble discussed the section 39 regulations as follows (44 FR 42584, 42607 (July 19, 1979)):

> The relationship between the Secretary's authority to suspend lease operations and lease obligations in § 3473.4, and the diligence regulations (§§ 3475.4, 3475.5), merits some discussion. In 1976, when the Secretary defined diligent development (subsection 3400.0–5(m)) to mean production in 10 years from lease issuance or by June 1, 1986, depending on when the lease was issued, he did not wholly abrogate the Secretary's authority to suspend a lease and lease obligations wholly under section 39 of the Mineral Leasing Act (30 U.S.C. 209), in the interest of conservation of the natural resources. For a lease on which the lessee applies for and receives such a suspension, the period of the lease does not run, lease rental and royalty obligations do not accrue, and likewise the time for achieving diligent development does not advance for the period of the suspension. In light of the Secretary's lease suspension authority, the regulatory definition means to the Department the "tenth lease year" from the date of lease issuance * * *.

On July 30, 1982, the Department of the Interior published the final Coal Exploration and Mining Operations Rules (30 CFR Part 211, 47 FR 33179, redesignated at 43 CFR Part 3480, 48 FR 41589–41594, September 16, 1983). At 43 CFR 3483.3, those rules address Section 39 of MLA suspensions of operations and production, among others. Specifically 43 CFR 3483.3(b)(1) states, in relevant part: "Any such suspension [of operations and production] of a Federal coal lease * * * approved by the authorized officer also suspends all other terms and conditions of the Federal coal lease * * *, except the diligent development period, for the entire period of such a suspension." The preamble to this rulemaking did not discuss the change in regulations from the 1979 rulemaking.

On August 5, 1987, the Secretary of the Interior received a petition filed by Consolidation Coal Company under 43 CFR Part 14 and 5 U.S.C. 553(e) to remove the exception for the diligent development period from 43 CFR 3453.3(b)(1) and to return to the 1979 regulations. The Assistant Secretary, Land and Minerals Management, then asked the Solicitor for an opinion as to what the law allowed. On July 14, 1988, the Solicitor signed Solicitor's Opinion M–36956, 95 I.D. ____ (1988). The Solicitor concluded that amending the regulation at 43 CFR 3483.3(b)(1) to provide that a suspension of operations and production in the interest of conservation under section 39 of MLA suspends the 10-year production requirement and extends this 10-year period for the duration of the suspension is fully supported by the law.

In summary, the Solicitor's analysis stated that all operations and production are suspended during a suspension of operations and production under section 39 of MLA, and a lessee has neither the right nor the obligation to produce. The Solicitor then finds that the requirement in section 7(a) of MLA that a Federal coal lease terminates unless coal is being produced in commercial quantities at the end of 10 years meets the definition of lease term normally applied to MLA leases. The Solicitor concludes that when a coal lease is suspended under section 39, the section 7(a) production requirement is suspended and, since section 39 of MLA extends the term of a suspended lease, the 10-year diligent development period must be extended for the duration of a section 39 of MLA suspension of operations and production. After an extensive analysis of the legislative history of FCLAA, the Solicitor found nothing to indicate that Congress intended otherwise. Accordingly, the proposed rulemaking would provide for extension of the regulatory 10-year diligent development period for a period of time equal to an approved suspension of operations and production under section 39 of MLA.

The principal author of this proposed rulemaking is Allen B. Agnew, Division of Solid Mineral Operations, Bureau of Land Management, assisted by staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The economic impact of this rulemaking is not significant and its impact will fall equally on all affected entities, whether large or small.

This proposed rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3480

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181, *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), and the Federal land Policy and Management Act of 1976 (43 U.S.C.

1701, *et seq.*), it is proposed to amend Part 3480, Group 3400, of Subchapter C. Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3480—[AMENDED]

1. The authority citation for Part 3480 continues to read:

Authority: The Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181, *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 296a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*); and the Freedom of Information Act (5 U.S.C. 552).

§ 3483.3 [Amended]

2. Section 3483.3(b)(1) is amended by removing from where it appears in the second sentence the phrase ", except the diligent development period,".

3. Section 3483.3(b)(3) is amended by inserting the phrase ", including the diligent development period," between the words "term" and "of" in the first line of the paragraph.

August 4, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-19368 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-388, RM-6374]

Radio Broadcasting Services; Glencoe, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on by Bill Dunnavant, seeking the allotment of FM Channel 228A to Glencoe, Alabama, as that community's first local broadcast service. Reference coordinates for this proposal are 33–56–44 and 85–52–19.

DATES: Comments must be filed on or before October 7, 1988, and reply comments on or before October 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Bill Dunnavant, P.O. Box 389, Athens, Alabama 35611.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–388, adopted July 14, 1988, and released August 16, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexability Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *all ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-19452 Filed 8-25-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-385, RM-6272]

Radio Broadcasting Services; Fayetteville, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Noalmark Broadcasting Corporation, license of Station KKIX(FM), Channel 280A, Fayetteville, Arkansas, proposing the substitution of FM Channel 280C1 for Channel 280A and modification of its license accordingly, to provide that community with an additional expanded coverage area FM service. The site coordinates for this proposal are 36–05–38 and 94–10–16.

DATES: Comments must be filed on or before October 7, 1988, and reply comments on or before October 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners counsel, as follows Dennis J. Corbett, and Laura B. Humphries, Esqs., Leventhal, Senter and Lerman, 2000 K Street, NW., Suite 600, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–385, adopted July 6, 1988, and released August 16, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-19453 Filed 8-25-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-390, RM-6302]

Radio Broadcasting Services; Coosa, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Steven L. Gradick proposing the allotment of Channel 237A to Coosa, Georgia, as the community's first local FM service. Channel 237A can be allotted to Coosa in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.4 kilometers south to avoid a short-spacing to unused but applied for Channel 239A at Trion, Georgia. The coordinates for this allotment are North Latitude 34-13-54 on West Longitude 85-21-25.

DATES: Comments must be filed on or before October 7, 1988, and reply comments on or before October 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Steven L. Gradick, 47 Ridgeview Drive, Silver Creek, Georgia 30173 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-390, adopted July 14, 1988, and released August 16, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-19454 Filed 8-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-389, RM-6366]

Radio Broadcasting Services; Bozeman, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel *271C2 to Bozeman, Montana and reservation of the channel for noncommerical educational use, in response to a petition filed by Eastern Montana College. The coordinates for Channel 271C2 are 45-40-54 and 111-02-18.

DATES: Comments must be filed on or before October 7, 1988, and reply comments on or before October 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Byrnes, Haley, Bader & Potts, 2000 M. Street, NW., Suite 600, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleeen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-389 adopted July 14, 1988, and released August 16, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-19455 Filed 8-25-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

Migratory Bird Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to modify two existing depredation orders (50 CFR 21.43 and 21.44) that presently allow killing of certain bird species for depredation control purposes. The proposed rule would prohibit the killing of the tricolored blackbird (listed as "tri-colored red-winged blackbird" in 50 CFR 21.43) throughout its range, and seven species (western meadowlark [listed as "meadowlark" in 50 CFR 21.44]; American, lesser, and Lawrence's goldfinch [listed collectively as "goldfinches" in 50 CFR 21.44]; acorn woodpecker; Lewis' woodpecker; and northern flicker [listed as "flickers" in 50 CFR 21.44] in California, for depredation control purposes without first obtaining a Federal permit. This action is necessary because these species are no longer serious agricultural pests, and some are declining in numbers such that their continued existence may be in jeopardy without additional protection. This modification is intended to provide the additional protection necessary for these birds and still permit control when and where necessary for protection of California's agriculture. It does not address the need for keeping the remaining bird species in the two depredation orders.

DATE: Comments from all interested parties must be received on or before October 25, 1988.

ADDRESS: Comments concerning this proposal should be mailed to the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Vernon D. Cunningham at the address above (503/231–6167 or FTS 429–6167).

SUPPLEMENTARY INFORMATION: Pursuant to 50 CFR 21.43, a Federal permit is not required to control the tricolored blackbird—

> * * * when found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance * * *.

Tricolored blackbird (50 CFR 21.43 currently refers to the species erroneously as tricolored red-winged blackbirds) populations throughout much of California's Central Valley have declined by over 90% during the past 50 years and probably have suffered similar losses throughout much of the remainder of their restricted range. Because of this dramatic range-wide decline, the U.S. Fish and Wildlife Serivce has included the species as a Category 2 "candidate" in its Review of Vertebrate Wildlife considered for possible addition to the List of Endangered and Threatened Species (47 FR 58459, December 30, 1982; 50 FR 37958, September 18, 1985).

While depredations on rice and other agricultural grain crops still occur, frightening devices are most often used to obtain relief. Tricolored blackbird damage at cattle feedlots is minimal compared to that of less insectivorous species such as starlings, brown-headed cowbirds, and red-winged blackbirds. While lethal control of blackbirds, starlings, and cowbirds is done at feedlots, tricolored blackbirds usually flock separately and can usually be avoided. Therefore, the proposed action, revision of 50 CFR 21.43 to delete any reference to the tricolored blackbird, should not significantly impact agricultural interests.

In its current form, 50 CFR 21.43 refers erroneously to yellow-headed red-winged blackbirds and bi-colored red-winged blackbirds. The proposed rule would also be revised to refer to these species correctly as yellow-headed blackbirds and red-winged blackbirds, respectively.

Pursuant to 50 CFR 21.44, a California—

> * * * Commissioner of Agriculture may, without a permit, kill or cause to be killed under his general supervision * * * migratory birds as may be necessary to safeguard any agricultural or horticultural crop in the county * * *.

This depredation order relates to a June 5, 1937, order by the Secretary of Agriculture and was based upon importance to crop depredation during the period 1929–36. However, California agriculture and bird populations have changed considerably since that time. Western meadowlarks, American, lesser, and Lawrence's goldfinches, acorn woodpeckers, Lewis' woodpeckers, and northern flickers are no longer considered to be significant agricultural pests according to the California Department of Food and Agriculture. Damage is infrequent and can usually be controlled by non-lethal methods. The western meadowlark has occasionally damaged sprouting grain fields, large-seeded truck crops, and grapes. Goldfinches have occasionally damaged commercial flower and vegetable seed fields. Scaring devices, barriers, and other non-lethal control methods generally provide satisfactory control. The acorn woodpecker, Lewis' woodpecker, and northern flicker occasionally damage almonds and apples and do structural damage to wooden buildings and poles. Repellents, netting, and metal barriers are effective non-lethal means which usually provide adequate protection if applied properly. In addition, Lewis' woodpecker populations are decreasing and the species could become federally listed as endangered or threatened in the foreseeable future if present trends continue.

For these reasons, the Service proposes to delete from 50 CFR 21.44 the references to the migratory bird species discussed above.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

A Determination of Effects approved by the Assistant Secretary, Fish and Wildlife and Parks, on May 20, 1988, concluded that the proposed modification of the depredation orders was not a "major" rule. The proposed rule does not contain information collection requirements which would require approval by the Office of Management and Budget, and will not have a significant economic effect on a substantial number of small entities.

National Environment Policy Act Consideration

In accordance with NEPA requirements, an Environmental Assessment of the proposed rule to "Modify Existing Depredation Orders to Protect Certain Bird Species in California" was prepared in December 1987, and a Finding of No Significant Impact was signed on May 19, 1988.

Endangered Species Act Consideration

The proposed rule is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species.

Authorship

The primary author of this proposed rule is Vernon D. Cunningham, working under the direction of Richard D. Bauer, Migratory Bird Coordinator, 500 NE. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231–6167 or FTS 429–6167).

Public Comments Solicited

The policy of the Department of the interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or objections regarding this proposed rule to the **ADDRESS** above on or before the **DATE** above. An environmental assessment of the proposed action has been prepared and is also available from the **ADDRESS** above.

List of Subjects in 50 CFR Part 21

Exports, Imports, Reporting requirements, Wildlife.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Subpart D of Part 21, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 21—[AMENDED]

1. The authority citation for Part 21 will continue to read as follows:

> **Authority:** Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); Sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. It is proposed to amend § 21.43 by revising the introductory paragraph to read as follows:

§ 21.43 Depredation order for blackbirds, cowbirds, grackles, crows, and magpies.

A Federal permit shall not be required to control yellow-headed, red-winged, rusty and Brewer's blackbirds, cowbirds, all grackles, crows, and magpies, when found committing or about to commit depredations upon

ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance: Provided:

* * * * *

3. It is proposed to amend § 21.44 by revising the introductory paragraph to read as follows:

§ 21.44 Depredation order for designated species of depredating birds in California.

In any county in California in which horned larks, golden-crowned, white-crowned, and other crowned sparrows, and house finches are, under extraordinary conditions, seriously injurious to agricultural or other interests, the Commissioner of Agriculture may, without a permit, kill or cause to be killed under his general supervision such of the above migratory birds as may be necessary to safeguard any agricultural or horticultural crop in the county: Provided:

* * * * *

Date: August 22, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19489 Filed 8-25-88; 8:45 am]

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Notices

Federal Register
Vol. 53, No. 166
Friday, August 26, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Case No. OEE-2-88]

Marli S.A. et al.; Order Renewing Temporary Denial of Export Privileges

In the Matter of:
MARLI S.A., 3 Chemin Tavernay, CH–1218 Geneva, Switzerland
GRAPHIC DATA PRODUCTS S.A., 3 Chemin Tavernay, CH–1218 Geneva, Switzerland
FINCOSID S.A., Galleria Benedettini, CH–6500 Bellinzona, Switzerland
TUORIMEX S.A., Via Gordemo, CH–6596 Gordola, Switzerland
and
LILLY MERCHANDISING CO., Taborstrasse 39, 1020 Vienna, Austria, Respondents.

The Office of Export Enforcement Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368–399 (1988) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985) (the Act), has asked the Assistant Secretary for Export Enforcement to renew an order initially issued on April 22, 1988, and renewed effective June 22, 1988, temporarily denying all United States export privileges to Marli S.A., Graphic Data Products S.A., Fincosid S.A., Tuorimex S.A. and Lilly Merchandising Co. (hereinafter collectively referred to as respondents). 53 FR 15587, May 2, 1988; 53 FR 24334, June 28, 1988.

In its renewal request data August 2, 1988, the Department states that, as a result of an ongoing investigation, it continues to have reason to believe that respondents have taken possession of controlled U.S.-origin commodities in Switzerland and then reexported them, oftentimes to proscribed destinations. The Department also has reason to believe that respondents have provided false and misleading statements of material fact concerning the intended end-users of U.S.-origin equipment respondents ordered from a company in Switzerland which was the foreign consignee under a U.S. distribution license. Based on the orders placed by the respondents, the foreign consignee in turn ordered the U.S.-origin goods from the distribution license holder, representing that the goods were intended for use by the Western European companies respondents had named in their orders as the end-users. In fact, it appears that the Western European companies identified by respondents as being the intended end-users had no involvement in the transactions. The Department has reason to believe that, once the U.S.-origin goods were received by the respondents in Switzerland, the respondents reexported the goods, which are controlled for reasons of national security, to end-users in the Soviet bloc.

The Department believes that respondents' past activities establish that the violations of the Act and the Regulations which they are suspected of having committed and which the Department is presently investigating were deliberate and covert and are likely to occur again unless appropriate action is taken to reduce the likelihood that respondents can continue to acquire U.S.-origin goods either inside or outside of the United States. The Department believes that respondents' activities show a clear pattern of disregard for the Act and the Regulations.

Furthermore, the Department believes that in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations, a renewal of the temporary denial order naming Marli S.A., Graphic Data Products S.A., Fincosid S.A., Tuorimex S.A. and Lilly Merchandising Co. is necessary to give notice to companies in the United States and abroad that they should cease dealing with these parties in transactions involving U.S.-origin goods.

None of the respondents opposed the request for renewal submitted by the Department on August 2, 1988. Therefore, based on the showing made by the Department, I find that renewal of the order temporarily denying export privileges to the respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with the respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby
ORDERED

I. All outstanding individual validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Marli S.A. and Graphic Data Products S.A., both with an address at 3 Chemin Tavernay, CH–1218 Geneva, Switzerland; Fincosid S.A., Galleria Benedettini, CH–6500 Bellinzona, Switzerland; Tuorimex S.A., Via Gordemo, CH–6596 Gordola, Switzerland; and Lilly Merchandising Co., Taborstrasse 39, 1020 Vienna, Austria, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United

States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

V. In accordance with the provisions of § 388.19(e) of the Regulations, any respondent may, at any time, appeal this order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order. The Regulations further provide that any respondent may request that a hearing be held on the renewal request.

A copy of this Order shall be served on each respondent and this Order shall be published in the **Federal Register**.

Effective date: August 22, 1988.

Lee W. Mercer,

Assistant Secretary for Export Enforcement.

[FR Doc. 88-19427 Filed 8-25-88; 8:45 am]

BILLING CODE 3301-00-M

[Case No. OEE-1-88]

Purchasing Pool Co.; Order Renewing Temporary Denial of Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368-399 (1988) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985)) (the Act), has asked the Assistant Secretary for Export Enforcement [1] to renew an order temporarily denying all United States export privileges to Wilfried Lange, individually and doing business as Purchasing Pool Company (hereinafter collectively referred to as respondents). The initial order was issued on April 20, 1988 (53 FR 15253, April 28, 1988) and renewed, effective June 20, 1988 (53 FR 23294, June 21, 1988).

In its renewal request of July 29, 1988, the Department states that, as a result of an ongoing investigation, it continues to have reason to believe that, on numerous occasions since the end of 1985, respondents have reexported, without the required reexport authorizations from the Department, U.S.-origin computers, which are controlled for reasons of national security from West Germany to Austria, Yugoslavia and Hungary. The Department is presently trying to obtain documents that will further substantiate its belief.

The Department also believes that, in connection with the Department's investigation into respondents' trade-related activities, respondents have provided the Department with false and misleading information. Specifically, based on additional documentation the Department has obtained since it made its initial request, the Department has reason to believe that respondents have provided it with false invoices in an effort to hide the fact that they have reexported certain controlled U.S.-origin commodities from West Germany without the required reexport authorizations.

The Department further states that its investigation continues to give it reason to believe that a contract for two U.S.-origin computers, which are controlled for reasons of national security, presently exists between respondents and a Czechoslovakian foreign trading firm, that respondents intend to fulfill the contract in question and that they are likely to do so without complying with the Regulations.

The Department states that, viewed as a whole, the above-described events concerning respondents' past activities demonstrate that respondents are involved in a scheme to obtain controlled U.S.-origin commodities, lawfully or otherwise, take possession of them in West Germany and then reexport them, oftentimes to proscribed destinations, without obtaining the required reexport authorizations. Accordingly, the Department believes that respondents' activities show a pattern of disregard for the Act and the Regulations.

The Department continues to believe that respondents' past activities establish that the violations of the Act and the Regulations which they are suspected of having committed and which the Department is presently investigating were deliberate and covert and are likely to occur again unless appropriate action is taken to reduce the likelihood that respondents can continue to acquire U.S.-origin goods either inside or outside of the United States.

Furthermore, the Department continues to believe that, in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations, a temporary denial order naming Wilfried Lange and Purchasing Pool Company is necessary to give notice to companies in the United States and abroad that they should cease dealing with these parties in transactions involving U.S.-origin goods.

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[1] In accordance with Department Organization Order 50-1, dated March 23, 1988, the Assistant Secretary for Export Enforcement is now the Department official who issues temporary denial orders.

Therefore, based on the showing made by the Department and given that respondents have not opposed the Department's request for renewal, I find that an order temporarily denying export privileges to the respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with the respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby

Ordered

I. All outstanding validated export licenses in which either respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Wilfried Lange and Purchasing Pool Company, both with an address at Grasslfinger Str. 61, 8038 Grobenzell, West Germany, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner of capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which either respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, form, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with either respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for either respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or deversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of Section 388.19(e) of the Regulations, either respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days befor the expiration date of this order. The Regulations further provide that either repondent may request a hearing concerning the July 29, 1988 request.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Effective Date: August 19, 1988.

G. Philip Hughes,

Assistant Secretary for Export Enforcement.

[FR Doc. 88–19374 Filed 8–25–88; 8:45 am]

BILLING CODE 3301-01-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Committee will convene a public meeting on August 29, 1988, at 9 a.m., at the Council's office (address below), and on August 30, 1988, also at 9 a.m., at the Hotel Pierre, Santurce, Puerto Rico, to discuss issues related to the Committee's regular administrative operations.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918–2577; (809) 753–4926.

Date: August 23, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–19449 Filed 8–25–88; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene public meetings at the Embassy Suites Hotel, 440 West Cypress Street, Tampa, FL, as follows:

Council—On September 13, 1988, at 8:30 a.m., will discuss the Habitat Protection Committee and Budget Committee actions, review the Red Drum Amendment 3 Options Paper and select an Economic Stock Assessment Group, approve Draft Amendment 3 to the Mackerel Fishery Management Plan (FMP), establish a public hearing schedule, and continue discussion of the

Mackerel Amendment 4 Options Paper. A public comment period will be allowed from 1:30 p.m. to 2 p.m. The public meeting will recess at 5 p.m., and reconvene on September 14 at 8:30 a.m., to continue review of the Reef Fish Amendment 1 Options Paper. Public testimony will be allowed from 8:30 a.m. to 9:30 a.m., and there also will be selection of a Reef Fish Stock Assessment Group. The public meeting will recess at 5 p.m., reconvene on September 15 at 8:30 a.m., to continue review of the Reef Fish Amendment 1 Options Paper, review the Spiny Lobster Amendment 2 Options Paper, hear a summary of the Chairmen's meeting and the South Atlantic Fishery Management Council's Liaison Report, elect a Chairman and Vice Chairman, and will adjourn at 5 p.m.

Committees—On September 12 at 1 p.m., will convene with a public meeting of the Habitat Protection Committee and recess at 5 p.m. A public meeting of the Budget Committee will convene at 4 p.m. in the Collins Suite, and will recess at 5 p.m. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: August 22, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–19450 Filed 8–25–88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled separate public meetings at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Rooms 2143 and 2079, Building 4, 7600 Sand Point Way, NE., Seattle, WA, of its Gulf of Alaska Groundfish Plan Team and its Bering Sea/Aleutian Islands Groundfish Plan Team, to discuss development of Resource Assessment Documents (RAD), deriving estimates of acceptable biological catch (ABC) for commercial goundfish species, and reviewing bycatch rates.

The Gulf of Alaska Groundfish Plan Team public meeting will convene on September 6, 1988, at 9 a.m., and will continue as necessary through September 9. The Bering Sea/Aleutian Islands Groundfish Plan Team meeting also will convene on September 6 at 9 a.m., continuing as necessary through September 9. For further information contact Steve Davis or Denby Lloyd, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: August 22, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–19451 Filed 8–25–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

August 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 1, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Group II and the limits for certain categories in Groups I and III are being increased for carryover. In addition, the current limits for Categories 336 and 342 are being reduced for carryforward used in 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 51, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 23, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on September 1, 1988, the directive of December 30, 1987 is being amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted Twelve-Month Limit [1]
Levels in Group I:	
226	21,651,564 square yds.
313	59,137,059 square yds.
315	56,170,758 square yds.
334	46,881 doz.
335	54,980 doz.
336	141,851 doz.
342	82,219 doz.
Group II:	
200, 201, 218–225, 227, 229, 239, 300, 301, 314, 317, 326, 330, 332, 333, 337, 345, 349, 350, 353, 354, 359, 360–362, 369–S,[2] and 369–O,[3] as a group.	67,274,801 square yds.
Levels in Group III:	
636	94,128 doz.
647/648	500,992 doz.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 369–S, only TSUSA number 366.2840.

[3] In Category 369–O, all TSUSA numbers except 366.6815, 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440, 366.2840 and 366.2860.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-19469 Filed 8-25-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Arrangement for Certain Cotton Textile Products From India

August 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the visa arrangement.

EFFECTIVE DATE: September 1, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Sepcialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: The existing export visa arrangement between the Governments of the United States and India is being amended to provide for the use of visas for Categories 369-S (shop towels) and 369-0 (other than shop towels). Shipments produced or manufactured in India and exported from India on and after September 1, 1988 which are accompanied by a visa for Category 369 will be denied entry without the correct part-category designation.

A copy of the current agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 44 FR 66504, published in the **Federal Register** on November 29, 1979.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 23, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 28, 1979, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns export visa requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India.

Effective on September 1, 1988, you are directed to amend further the November 28, 1979 directive to require export visas for Categories 369-S [1] and 369-O [2] for merchandise produced or manufactured in India and exported from India on or after September 1, 1988. Shipments accompanied by visas issued as Category 369 which are exported from India on or after September 1, 1988 shall be denied entry without the correct part-category designation.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-19428 Filed 8-25-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Proposed Additions; Correction

In FR Doc. 88-17142 appearing at page 28680 in the issue for Friday, July 29, 1988, make the following correction:

On page 28681, 2nd column, under CLASS 8410, Shirt, Woman's, on the sixth line from the bottom, NSN 8410-01-224-6078 should read 8410-01-105-2505.

Because of this change, the time for receipt of comments on the proposed additions of these commodities is extended until September 12, 1988.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 88-19418 Filed 8-25-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 military resale commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 26, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION:

On June 3 and June 24, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 F.R. 20359 and 23783) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the military resale commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the military resale commodities and service listed.

c. The actions will result in authorizing small entities to produce the military resale commodities and provide the service procured by the Government.

Accordingly, the following military resale commodities and service are hereby added to Procurement List 1988:

Military Resale Item Nos. and Name

No. 040 Pen, Twist Action, Black Ink

No. 041 Pen, Twist Action, Blue Ink

Service

Janitorial/Custodial, Federal Building and Interagency Motor Pool, Louisville, Kentucky

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 88-19416 Filed 8-25-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

[1] In Category 369-S, only TSUSA number 366.2840.

[2] In Category 369-O, all TSUSA numbers except 366.2840.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: September 26, 1988

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Blanket, Bed 7210–00–177–4966

Services

Commissary Shelf Stocking and Custodial Service, Langley Air Force Base, Virginia

Commissary Warehouse Service, Langley Air Force Base, Virginia

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 88–19417 Filed 8–25–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Dependent's Education Advisory Council

ACTION: Renewal of the Advisory Council on Dependent's Education.

SUMMARY: Under the provisions of Pub. L. 92–463, "Federal Advisory Committee Act," notice is hereby given that the Advisory Council on Dependent's Education has been determined to be in the public interest and has been renewed.

The Advisory Council on Dependent's Education advises the Assistant Secretary of Defense for Force Management and Personnel and other Defense Department officials on recommended policies for operation of the DoD dependents' education system with respect to curriculum selection, administration, and functioning of the system. The Council also provides information regarding primary and secondary education with respect to programs and practices which have been found to be effective in other Federal agencies and the academic sector, and which may have application in the DoD education system.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 23, 1988.

[FR Doc. 88–19472 Filed 8–25–88; 8:45 am]

BILLING CODE 3810–01–M

Education of Handicapped Dependents, Overseas Dependents Schools National Advisory Panel

ACTION: Renewal of the Overseas Dependents Schools National Advisory Panel on the Education of Handicapped Dependents.

SUMMARY: Under the provisions of Pub. L. 92–463, "Federal Advisory Committee Act," notice hereby given that the Overseas Dependents Schools National Advisory Panel on the Education of handicapped Dependents has been determined to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law, and has been renewed.

The Overseas Dependents Schools National Advisory Panel on the Education of Handicapped Dependents advises the Assistant Secretary of Defense for Force Management and Personnel and other Defense Department officials on policies for meeting the needs of handicapped children within the Department of Defense Dependents Schools (DoDDS) educational system. The panel makes recommendations on programs and budget levels and comments publicly on any proposed rules regulations, or standards regarding the education of handicapped children in DoDDS.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 23, 1988.

[FR Doc. 88–19473 Filed 8–25–88; 8:45am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Defense Mapping Agency; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Mapping Agency will meet in closed session on October 19–20, 1988 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will study the Defense Mapping Agency and ascertain whether or not the mechanism exist within DMA to meet the needs of weapons systems developers and operators with respect to resources, capabilities, and procedures.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

August 23, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–19474 Filed 8–25–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Scientific Advisory Board; Meeting

August 23, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet on September 12–14, 1988, from 8:00 a.m. to 5:00 p.m., at the Pentagon, Washington DC.

The purpose of this meeting is to prepare a briefing to the Assistant Secretary of the Air Force for Acquisition. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–19444 Filed 8–25–88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board, Open Meeting; Ad Hoc Subgroup on Human Dimensions in Army Safety

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: September 13 and 14, 1988.

Time: 0800–1700 hours, September 13; 0800–1430 hours, September 14.

Place: Fort Rucker, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its initial meeting at the United States Army Safety Center (USASC), Fort Rucker, Alabama. Briefings will be conducted by various members of the USASC staff as well as a representative from the Army General Counsel. Past, current and planned actions will be discussed in accordance with the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–19376 Filed 8–25–88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board, Closed Meeting; Steering Group

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: September 15, 1988.

Time of Meeting: 0900–1630 hours.

Place: Alexandria, VA.

Agenda: The Army Science Board Steering Group will meet to discuss future Army Science Board study topics and potential Summer Studies as well as received a briefing from Commanding General, AMC, on how the Army Science Board can provide assistance. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–19375 Filed 8–25–88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Education Appeal Board

AGENCY: Department of Education.

ACTION: Notice of Applications for Review Accepted for Hearing by the Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (the Board) between April 20, 1988, and July 27, 1988. The Chairman has prepared a summary of each appeal to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: The Honorable Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue,SW. (Room 3053, FOB–6), Washington, DC 20202. Telephone: (202) 732–1754–3724.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education (the Secretary), and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholdiong or termination of funds, and cease and desist actions for most grant programs administered by the Department of Education (the Department). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most Department-administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees.

Regulations governing Board jurisdiction and procedures are set forth in 34 CFR Part 78.

Applications Accepted

Appeal of Aspira, Inc. de Puerto Rico (Aspira), Docket No. 6(270)88, ACN: 02–60505

Aspira appealed a final letter of determination issued by Grants and Contracts Service (GCS). The underlying audit reviewed expenditures and the administration of the "Talent Search Program" grant conducted between July, 1985, and June 20, 1988.

GCS determined that Aspira failed to maintain appropriate documentation to substantiate employee salary, fringe benefits, and indirect costs charged to the grant.

The Department seeks a refund of $40,075. Aspira contests GCS' method of cost calculation and argues that only $8,680 should be subject to refund.

Appeal of Glenpool School District, Docket No. 7(271)88; ACN: 06–60500

Glenpool School District (Glenpool) appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed programs conducted under Part A of the Indian Education Act between July 1, 1982, and May 8, 1986. The Under Secretary has designated the Board as the forum for this appeal.

The Assistant Secretary concluded that Glenpool submitted to the Department overstated counts of Indian children which resulted in the overpayment of Part A grant funds during fiscal years 1983 through 1986.

The Department seeks a refund of $191,246. Glenpool disputes all liability.

Appeal of the State of Michigan, Docket No. 8(272)88; ACN: 05–70304

The State appealed a final letter of determination issued by the Grants and Contracts Service (GCS). As pertinent, the underlying audit reviewed costs attributed to the National Origin Desegregation Program conducted between October 1, 1983, and September 30, 1985.

GCS determined that employee salary and other related expenses charged to the subject program were not supported by the required time distribution records.

The Department seeks a refund of $289,784. The State disputes all liability.

Appeal of the University of California, Docket No. 9(273)88

The University appealed a 1988 funding decision of Grants and Contracts Services (GCS) to void a grant for the National Cancer for Research in Vocational Education. The grant, which was awarded on January 4, 1988, for a 5-year project period, was voided effective April 12, 1988, consistent with the U.S. District Court's order "that the Secretary vacate the designation of the University of California at Berkeley as the National Center for Research in Vocational Education * * *"

The University disputes GCS' use of a voiding procedure, rather than termination proceedings, and seeks reimbursement for $501,000, the sum of the costs incurred from the date of award to the date of voiding. The Department disputes all liability.

Appeal of the State of Louisiana, Docket No. 10(274)88, ACN: 06-60304

The State appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed expenditures charged to the Migrant Education Program conducted during fiscal year 1984.

The Assistant Secretary concluded that equipment purchases made during the period failed to follow established procurement procedures and were improperly charged to the Migrant Education Program.

The Department seeks a refund of $145,553. The State disputes all liability.

Appeal of the State of Louisiana, Docket No. 11(275)88, ACN: 06-72008

The State appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed progarms conducted under Chapter 2 of the Education Consolidation and Improvement Act during fiscal year 1985.

The Assistant Secretary sustained the auditor's finding, concluding that the State had supplanted funds during the period in issue.

The Department seeks a refund of $75,012. The State disputes all liability.

Appeal of the State of Massachusetts, Docket No. 12(276)88, ACN: 01-30017

The State appealed a final letter of determination issued by the Assistant Secretary for Special Education and Rehabilitative Services. The underlying audit reviewed expenditures made under Part B of the Education of the Handicapped Act (EHA-B) by the Watertown School District (Watertown) during fiscal years 1983 and 1984.

The Assistant Secretary modified the auditor's finding regarding the actual pupil count, concluding that the State and Watertown failed to maintain adequate documentation which would support the purported pupil population.

The Department seeks a refund of $48,535. The State disputes all liability.

Appeal of Everett Community College, Docket No. 13(277)88, ACN: 10-82010

The College appealed a final letter of determination issued by Grants and Contracts Services (GCS). The underlying audit reviewed various grants administered by the College between July 1, 1984, and June 30, 1985.

GCS sustained the auditor's findings and concluded that the College had failed to maintain adequate salary distribution records for employees whose time was charged to more than one grant program.

The Department seeks a refund of $7,226. The College disputes all liability.

Intervention

Regulations in 34 CFR 78.43 provide that an interested person, group, or agency may file an application to the Board Chairman to intervene in an appeal before the Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to the Board Chairman at the address provided above.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: August 19, 1988.

Michelle Easton,

Acting Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 88-19486 Filed 8-25-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to the Virginia Coal Council

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2), it is making a noncompetitive financial assistance award under Grant Number DE-FG01-88FE61637 to the Virginia Coal Council for its tenth annual conference and exposition.

Scope: This grant will partially fund the Virginia Coal Council's tenth annual conference and exposition, "Virginia Ports: Expanding Applachian Coal's Horizons." The conference will address issues faced by the Appalachian coal industry and highlight the expanded international market opportunities that should result from the deepening of Virginia's ports. The program will feature presentations on electrical and industrial markets; legislative issues; inland, port facilities and ocean transportation; and international coal users.

This conference will benefit the public by bringing together Coal producers, worldwide coal consumers, government agencies and officials, leaders in research and development, and representatives from all phases of the transportation industry to search for better markets for Appalachian coal domestically and overseas.

In accordance with 10 CFR 600.7(b)(2)(i)(B), negotiations will be conducted only with the Virginia coal Council. The conference will be conducted by the Virginia Coal Council; however, DOE support would enhance the public benefits by increasing the cooperative information exchange among key DOE and industrial participants. There is no known other entity which is conducting or is planning to conduct such a conference on Appalachian coal in the near future.

The term of this grant shall be from September 13 through September 15, 1988. The project cost is estimated at $35,350, of which the share contributed by DOE will be $15,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Lisa Jones, MA-452.1, 1000 Independence Ave., SW., Washington, DC 20585.

Edward T. Lovett,

Director, Contract Operations Division "A" Office of Procurement Operations.

[FR Doc. 88-19477 Filed 8-25-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-45-NG]

Consolidated Fuel Corp.; Application to Import and Export Natural Gas From and to Canada and Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import and export natural gas from and to Canada and Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notices of receipt on July 27, 1988, of an application filed by Consolidated Fuel Corporation (Consolidated) for blanket authorization to import and export up to 100 Bcf of natural gas from and to Canada and Mexico, over a two-year period beginning on the date of first delivery.

The company intends to utilize existing pipeline facilities for the transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 26, 1988.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Consolidated, a Delaware corporation with its principal place of business in Dallas, Texas, is marketer of natural gas. It intends to import and export gas, either for its own account or as agent on behalf of both suppliers and puchasers, including local distribution companies, pipelines, and commercial and industrial end-users. According to the application, the authority requested by Consolidated comtemplates the following types of import and export transactions: (1) Importation of supplies of Canadian and Mexican natural gas for consumption in U.S. markets; (2) importation of Canadian natural gas for eventual return (via export) to Canadian markets; (3) exportation of domestically produced natural gas for consumption in Canadian and Mexican markets; and (4) exportation of domestically produced gas for eventual return (via import) to U.S. markets.

These transactions, Consolidated asserts, would reflect market conditions existing at the time of their negotiation, and sales would typically be on a best efforts-basis.

In support of its application, Consolidated asserts that the import of Canadian and Mexican gas under market-responsive terms would make available to U.S. consumers competitively-priced spot market gas. The import of Canadian gas for eventual return to Canada would benefit U.S. interests because it would improve pipeline utilization, thereby reducing per-unit transportation and sales rates on any U.S. pipelines providing transportation. Further, an authorization to export gas would permit Consolidated to make available to spot market purchasers in Canada and Mexico supplies of U.S. gas for which there is no present regional or national need. Finally, Consolidated maintains that the export and return to the U.S. of domestically produced gas would enable U.S. consumers who might not otherwise be able to secure transportation on U.S. pipelines, the ability to purchase domestically produced gas or to take advantage of least cost transportation.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the ERA considers the domestic need natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issue determined by the Administrator to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for gas the applicant proposes to export. As noted above, the applicant asserts that import and export arrangements transacted under the requested authority will be competitive, and that there is no current need for domestic gas that would be exported under the proposed short-term arrangements. Parties opposing the arrangement bear the burden of overcoming these assertions.

Consolidated requests that an authorization be granted on an expedited basis. An ERA decision on Consolidated's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

All parties should be aware that if the ERA approves this requested blanket import/export it may permit the import or export of the gas at any existing point of entry and through any existing transmission system.

Public Comment Procedures:

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t. September 26, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedure be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should

explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Consolidated's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 19, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 88-19479 Filed 8-25-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 8-18; Certification Notice—23]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Tenaska II, Inc., Omaha, NE.	8-17-88	Cogen combined cycle.	213	Paris, TX

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on August 19, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-19478 Filed 8-25-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF88-588-002, et al.]

GWF Power Systems Co., Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. GWF Power Systems Company, Inc.

[Docket No. QF88-588-002]

August 19, 1988.

On August 1, 1988 GWF Power Systems Company, Inc. (Applicant) of 17780 Fitch St., Irvine, CA 92714 submitted for filing 3 applications for certification of facilities as qualifying cogeneration facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that any of the submittals constitutes a complete filing.

The docket numbers, locations (all in California), process steam users and electric power production capacities of the 3 topping-cycle cogeneration facilities are listed below. Each facility will consist of a coal burning fluidized bed boiler and a Rankine cycle steam turbine-generator. Steam is extracted to provide process steam. In each case the user of the steam is not affiliated with the applicant.

Docket No.	Location and process steam user	Net electric power prod. capacity
QF88-138-002	Hanford, Kings Cty., Armstrong Rubber Co.	22.824 MW.
QF88-139-002	Kingsbury, Fresno Cty., Vie-Del Co.	21.789 MW.
QF88-140-002	Fresno Cty., Vie-Del Co.	21.798 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Soledad Energy Limited Partnership, a California Limited Partnership

[Docket No. QF88-282-001]

August 18, 1988.

On August 10, 1988, Soledad Energy Limited Partnership c/o Oxford Energy, Inc. 675 Third Avenue, 25th Floor, New York, New York 10017 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility, which will be located in an industrial park off Los Coches Drive in the southwest section of the City of Soledad in the County of Monterey, California, will burn biomass in the form of wood waste to produce steam which will drive a turbine generator to produce electricity. By order issued May 6, 1988, the Commission granted certification of the facility as a small power production facility (43 FERC ¶62,145).

The recertification is requested due to an ownership change from A. Johnson Energy Development, Inc. to Soledad Energy Limited Partnership, A California Limited Partnership.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER88-567-000]

August 19, 1988

Take notice that on August 17, 1988, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during May and June 1988, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Co., Supplement No. 77
Montana Power Co., Supplement No. 58
Washington Water Power Co., Supplement No. 58
Sierra Pacific Power Co., Supplement No. 76

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket No. ER88-564-000]

August 19, 1988.

Take notice that on August 15, 1988, Kansas City Power & Light Company (KCPL) tendered for filing with the Commission proposed changes in Service Schedules for Firm Power Service to supersede and replace Service Schedules for Firm Power Service in contracts and agreements with the following wholesale customers:

1. City of Gardner, Kansas, FPC No. 79
2. City of Pamona, Kansas, FPC No. 82
3. City of Prescott, Kansas, FERC No. 76
4. City of Baldwin, Kansas, FERC No. 85
5. City of Garnett, Kansas, FERC No. 78
6. City of Osawatomic, Kansas, FPC No. 77
7. City of Ottawa, Kansas, FERC No. 90
8. Kansas Electric Power Cooperative, Inc.—Coffey County, FPC No. 69
9. Kansas Electric Power Cooperative, Inc.—United Electric, FPC No. 84
10. City of Higginsville, Missouri, FERC No. 91
11. City of Salisbury, Missouri, FERC No. 100

The proposed changes would decrease revenues from jurisdictional sales and revenues by $120,730.57 based on the 12-month period ending July 31, 1988.

These new Schedules are filed in compliance with Joint Offers of Settlement in Dockets No. ER86-273-001 and ER86-273-002 approved by the Commission by orders dated July 31, 1986. The result of the change will be to reduce the test year revenue for the Company's Kansas Sales for Resale customers by 4.85% and increase the test year revenue for a portion of the Company's Missouri Sales for Resale customers by 2.21%.

A copy of the filing was sent to each customer affected and to the Kansas Corporation Commission.

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. U.S. Department of Energy Bonneville Power Administration

[Docket No. EF87-2011-007]

August 19, 1988.

Take notice that on August 12, 1988, Bonneville Power Administration (BPA) pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839e(a)(2), and § 300.21(f) of the Commission's regulations, 18 CFR 300.21(f), tendered for filing proposed rate schedule Modified SL-87, Long-Term Surplus Firm Power Rate. Modified SL-87 is available to Pacific Northwest purchasers for the long-term purchase of surplus firm power.

BPA has tendered the Modified SL-87 rate schedule under the Commission regulations permitting BPA to file a rate in substitution of a rate which has been disapproved by the Commission. 18 CFR 300.21(f). The Commission disapproved BPA's SL-87 rate in an order issued on April 6, 1988. *United States Dep't of Energy—Bonneville Power Administration,* 43 F.E.R.C. ¶ 61,032 (1988).

Modified SL-87 is proposed to become effective on December 1, 1988, for up to a period no longer than September 30, 2010. BPA requests waiver of the Commission's 180-day advance filing requirement contained in 18 CFR 300.10(a)(3)(iii) so that the Modified SL-87 rate receives final approval effective December 1, 1988. In the alternative, BPA requests interim approval by December 1, 1988, pursuant to § 300.20 of the Commission's regulations.

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Companies

[Docket No. ER88-566-000]

August 22, 1988.

Take notice that on August 17, 1988, Northeast Utilities Service Companies (NUSCO) as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company (NU Companies) tendered for filing a proposed rate schedule with respect to Transmission Service Agreement (Agreement), described below as "Agreement A" between the NU Companies and Boston Edison Company (BECO) and "Agreement B" between the NU Companies and Public Service Company of New Hampshire (PSNH) dated May 1, 1988.

NUSCO states that Agreement A provides service to BECO for the transmission of BECO's purchase of nonfirm electric system capacity and associated energy, and Agreement B provides service to PSNH for the transmission of PSNH's purchase of nonfirm electric system capacity and associate energy.

NUSCO requests that the Commission waive its standard notice periods and filing requirements to the extent necessary to permit the rate schedule to become effective as of May 1, 1988.

NUSCO states that copies of this rate schedule have been mailed to BECO and PSNH. Copies have also been sent to Vermont Electric Power Company (VELCO) and New England Power Company in accordance with the NU Companies' present intervention in *VELCO,* Docket No. ER88-411-000.

NUSCO further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER88-519-000]

August 22, 1988.

Take notice that on August 12, 1988, Southern California Edison Company (Edison) tendered for filing pursuant to § 35.13 of the Federal Energy Regulatory Commission's Regulations and the Federal Power Act the following Letter Agreements (Agreements) which have been executed by Edison and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (BPA).

Letter Agreement Dated August 19, 1987 (Umbrella Agreement, Contract No. DE-MS79-87BP92410)
Letter Agreement Dated April 26, 1988 (Subsequent Agreement)

Notice of the submission by Edison of these Agreements was issued July 18, 1988.

These Agreements supersede the Power Sales Contract executed by BPA and Edison as of July 31, 1967 (Power Sales Contract, Contract No. 14-03-54125). The Power Sales Contract, by its terms, terminated July 31, 1987. The Parties executed these Letter Agreements to facilitate additional sales and exchange arrangements.

The Umbrella Agreement provides a 20-year contractual mechanism for the purchase and sale or exchange of surplus energy and/or capacity and/or

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other services for short-term periods, not to exceed 24 months. By its terms, the Umbrella Agreement includes four exhibits: Exhibit A (Wholesale Power Rate Schedules and General Rate Schedule Provision), Exhibit B (General Contract Provisions (Form PSC SW–1)), Exhibit C (Pub. L. 88–552 as amended) and Exhibit D (Subsequent Agreements). In its July 13, 1988 filing Edison inadvertently omitted Exhibits A, B and C and included only an unmarked Exhibit D. By way of this amendment Edison has submitted the omitted exhibits and has rectified this inadvertent omission.

Edison respectfully requests waiver of the notice provisions of § 35.3 of the Commission's Regulations to permit the Agreements to become effective on July 31, 1987 to coincide with the termination of the Power Sales Contract and to permit an effective termination date of July 31, 1987 for the Power Sales Contract to coincide with the termination date in the Power Sales Contract.

Copies of this filing were served upon the Public Utilities Commission of the State of California and BPA.

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19419 Filed 8–25–88; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

August 23, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Filing:* Amendment of Conduit Exemption.

b. *Project No.:* 8256–006.

c. *Date Filed:* March 29, 1988.

d. *Applicant:* Electro Technologies, Ltd.

e. *Name of Project:* Highland Canal Hydroelectric Plant.

f. *Location:* On Highland Canal Ditch near the town of Meeker, in Rio Blanco County, Colorado.

g. *Filed Pursuant to:* Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. *Applicant Contact:* Alan K. Forbes, Electro Technologies, Ltd., P.O. Box 27602, Denver, Colorado 80227, (303) 721–9550.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 21, 1988.

k. *Purpose of Amendment:* The exemptee proposes to abandon the location of the authorized, yet to be constructed project, located between Highland Canal Ditch and the Lower Irrigation Canal, and relocate the project facilities approximately 2 miles east of the original exempted project. The exemptee also proposes to replace the single 800-kW generating unit with two generating units with a combined installed capacity of 1,250 kW.

Description of Project: The proposed revised project would consist of: (1) An intake structure at elevation of 6,470 feet msl located on the Highland Canal Ditch; (2) a 4,800-foot-long penstock; (3) a powerhouse containing two generating units with a combined installed capacity of 1,250 kW, operating under a hydraulic head of 110 feet; and (4) a tailrace discharging water into the White River.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D3b.

A4. Development Application Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with the public notice of this initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters this title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: The Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D3b. Agency Comments—The Commission requests that, for the purposes in section 408 of the Energy Security Act of 1980, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the state fish and game agency(ies) file, within 45 days from the date of issuance of this notice, appropriate terms and conditions to protect any fish and wildlife resources, or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, the Commission will presume that the agency has none. Other federal, state, and local agencies are requested to provide any comments related to their duties and responsibilities. No other formal requests for comments will be made. Agencies should confine comments to

substantive issues relevant to the granting of an exemption. If any agency does not file comments within 45 days from the date of issuance of this notice, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19420 Filed 8-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-686-000 et al.]

Texas Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Company

[Docket No. CP88-686-000]

August 18, 1988.

Take notice that on August 16, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-686-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations (18 CFR 284.221) for a blanket certificate of public convenience and necessity authorizing it to perform transportation service on behalf of other interstate pipelines and on behalf of shippers other than interstate pipelines, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that there are factors, both jointly and individually that necessitate this application. It is alleged that one of the factors is that by order issued July 6, 1988 (44 FERC ¶ 61,011), the Commission authorized Texas Gas to abandon an expired contract with one of its suppliers, United Gas Pipe Line Company. It is further alleged that the July 6, 1988, order conditioned Texas Gas to file for and accept a blanket certificate under § 284.221 of the Commission Regulations. It is asserted that the second factor is that the take-or-pay crediting mechanism provided by Order No. 500 has produced no meaningful credits during its operation on the Texas Gas system. It is alleged that despite the fact that transportation accounted for almost 75 percent of total throughput on the Texas Gas system during the 1987-1988 winter, Texas Gas' take-or-pay liability increased by approximately $40 million during this period, while the credit generated by transportation during the 1987-1988 winter, if any, were minimal, at best.

Texas Gas asserts that the only Commission approved vehicle which permits take-or-pay liability to be recovered through other than sales commodity rate is the statement of policy contained in Order No. 500. It is further asserted that the key elements of that policy require that (i) a blanket certificate pursuant to Part 284.221 be adopted and (ii) a filing to recover take-or-pay amounts be made no later than December 31, 1988. Texas Gas states that this filing is without prejudice to the applications for rehearing and petitions for review filed, or to be filed, in other dockets. Texas Gas further states that it would comply with § 284.221(c) of the Commission's Regulations.

Comment date: September 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88-688-000]

August 19, 1988.

Take notice that on August 16, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-670-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Tenngasco Corporation (Tenngasco), a marketer, acting as agent for The Tennessee Gas Marketing Company, Tenngasco Exchange Corporation, and Deblin Oil & Gas, Inc., under the certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated June 15, 1988, it proposes to transport up to 1,000,000 dekatherms per day equivalent of natural gas on an interruptible basis for Tenngasco from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A," which transportation service involved interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points in multiple states and that it would transport and redeliver the gas to Venice, Louisiana.

Tennessee advises that service under § 284.223(a) commenced June 17, 1988, as reported in Docket No. ST88-4713 (filed July 15, 1988).

Comment date: October 3, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. ANR Pipeline Company)

[Docket No. CP88-673-000]

August 19, 1988

Take notice that on August 11, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-673-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain certificated levels of firm sales entitlements of five firm sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that pursuant to section 284 of the Commission's Regulations, five of ANR's eligible firm sales customers, City of Aledo, Illinois; Community Natural Gas Company; Great River Gas Company; City of Lamoni, Iowa; and Wisconsin Public Service Corporation, have elected to convert a portion of their firm sales entitlements to firm transportation. ANR proposes to abandon a total of 10,943 dt of contract demand for five of ANR's firm sales customers under Rate Schedules CD-1 and SGS-1 of Original Volume No. 1 of its FERC Gas Tariff.

Comment date: September 9, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act

and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19379 Filed 8-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES88-51-000]

Pennsylvania Power & Light Co.; Application

August 22, 1988.

Take notice that on August 16, 1988, Pennsylvania Power & Light Company filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking authority to issue up to $400 million in short-term unsecured promissory notes including commercial paper notes. The unsecured promissory notes are to be issued from time to time, prior to September 30, 1990, with maturity date which are less than one year from the date of issuance.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19424 Filed 8-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-80-007]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 22, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 17, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fourth Revised Sheet No. 64
Fourth Revised Sheet No. 65
Fourth Revised Sheet No. 66
Fourth Revised Sheet No. 67
Fourth Revised Sheet Nos. 68-69
Third Revised Sheet No. 482
Third Revised Sheet No. 483

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover, in addition to United Gas Pipe Line Company's (United) take-or-pay charges billed to Texas Eastern and Texas Gas Transmission Corporation's (Texas Gas) flow-through to Texas Eastern of a portion of its share of United's take-or-pay charges, the flow-through by Southern Natural Gas Company (Southern) to Texas Eastern of a portion of Southern's share of United's take-or-pay charges as proposed by Southern in a filing made on August 1, 1988 in Docket No. RP88-229.

Texas Eastern's portion of United's total take-or-pay costs to be billed by Southern is $1,950,053, exclusive of amortization interest. Texas Eastern proposes to recover this amount through fixed monthly charges of $45,210 which includes amortization interest computed by Southern in Southern's August 1, 1988 filing in Docket No. RP88-229.

Workpapers setting forth Texas Eastern's determination of the allocation factor for the monthly principal amount and the monthly principal amounts each Texas Eastern customer will be required to pay are set forth under Attachment A.

Texas Eastern states if at any time Southern is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedure and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Southern in Docket No. RP88-229.

Texas Eastern states the tariff sheets are proposed to become effective as of September 1, 1988, the proposed effective date of Southern's filing in Docket No. RP88-229.

Copies of this filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19425 Filed 8-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-16-000]

Paul DeCleva; Petition for Adjustment

Issued: August 22, 1988.

On July 22, 1988, Mr. Paul DeCleva filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 502(c) of the Natural Gas Policy Act of 1978 and Subpart K of the Commission's Rules of Practice and Procedure, a petition for waiver of a portion of the interest due on a Btu refund obligation owing to Natural Gas Pipeline Company of America under Commission Order Nos. 399, 399-A and

399–B. Petitioner seeks waiver on the ground of financial distress.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19421 Filed 8–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–231–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

August 22, 1988.

Take notice that on August 17, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates and tariff provisions for effectiveness on the dates shown below:

Effective January 1, 1988

Substitute Fourteenth Revised Sheet No. 8
First Revised Sheet No. 27
First Revised Sheet No. 28
First Revised Sheet No. 29
First Revised Sheet No. 30
First Revised Sheet No. 31
Second Revised Sheet No. 32
First Revised Sheet No. 33

Effective June 1, 1988

Fifteenth Revised Sheet No. 8

According to Granite State, the revised tariff sheets pertain to a storage service which it renders under its Rate Schedule S–1 to its two affiliated distribution company customers, Bay State Gas Company and Northern Utilities, Inc. It is further stated that the storage service is rendered for Granite State's account by Penn-York Energy Corporation (Penn-York) under the latter's Rate Schedule SS–1. Granite State further states that the Commission recently approved a settlement in Penn-York's rate proceeding in Docket No. RP87–78–000 (43 FERC ¶ 61,144) in which the rates and a revised rate structure for service under Rate Schedule SS–1 were authorized. Further, it is said that Penn-York made a compliance filing with the Commission on May 31, 1988.

According to Granite State, it is authorized to track changes in its Rate Schedule S–1 as they are made in Penn-York's Rate Schedule SS–1. (Docket No. CP82–348–000; *Granite State Gas Transmission, Inc.*, 21 FERC ¶ 61,199 (1982). The instant filing is made to conform Granite State's rates, rate structure and other tariff provisions for storage service under Rate Schedule S–1 for consistency with identical provisions in Penn-York's Rate Schedule SS–1 as approved in the settlement in Docket No. RP87–78–000 and the Penn-York compliance filing.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19422 Filed 8–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–190–001]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

August 22, 1988.

Take notice that North Penn Gas Company (North Penn) on August 16, 1988 tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Original Sheet No. 15H
Original Sheet No. 15H(1)
Original Sheet No. 15H(2)
Original Sheet No. 15H(3)

North Penn states the revised tariff sheets are filed in compliance with the Federal Energy Commission's (Commission) Order in the above docket number dated August 1, 1988 and are proposed to be effective July 1, 1988.

North Penn states these tariff sheets establish procedures pursuant to Order No. 500 by which North Penn will recover from its customers Commission-approved Take-or-Pay charges which North Penn's pipeline suppliers, pursuant to Section 2.104(e) of the Commission's Regulations, bill North Penn.

North Penn states the Take-or-Pay charges proposed to be recouped by these tariff sheets arise from Tennessee Gas Pipeline FERC Docket P88–191 and Transcontinental Gas Pipe Line Corporation FERC Docket RP88–68. The allocation procedures used by North Penn for the allocation of the Take-or-Pay costs to its customers are, to the extent possible, the same procedures utilized by its pipeline supplier.

North Penn states all refunds or additional charges arising out of FERC proceedings or court proceedings in these dockets will be allocated and charged to North Penn's customers in the same manner as utilized in this filing.

As stated above, North Penn states that it is filing these tariff sheets in response to the Commission's August 11, 1988 Order. North Penn intends to file for rehearing of the August 1, 1988 Order on the matter of customer allocation (concerning specifically treatment of Corning Natural Gas Corporation). In the event North Penn is successful on rehearing, North Penn reserves the right to revise the tariff sheets submitted herewith accordingly.

North Penn states since its pipeline suppliers' Take-or-Pay billing procedures have been placed into effect by the Commission as of or before July 1, 1988, North Penn requests that whatever waivers are necessary be granted and that the tariff sheets filed in the instant docket be accepted to be effective July 1, 1988.

Copies of this filing are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19423 Filed 8-25-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of May 2 Through May 6, 1988

During the week of May 2 through May 6, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request For Exception

Doyle Brothers, Inc., 5/3/88, KEE-0139

Doyle Brothers, Inc. (Doyle) filed an Application for Exception seeking to be relieved of the requirement to file Form EIA-821, entitled "Fuel Oil and Kerosene Sales Report." In reviewing the request, the DOE found that Doyle would not experience any inordinate burden by fulfilling its reporting obligation. Accordingly, exception relief was denied.

Interlocutory Order

Economic Regulatory Administration, 5/5/88, KRZ-0082

The DOE issued a Decision and Order in which several clarifications were made to a Decision and Order issued on April 1, 1988, to Thomas P. Reidy, Inc. First, the interest rates enumerated in the April 1 Order were set forth in more specific detail. Second, after agreement between the parties, an undeleted copy of the April 1 Order was put on file for public reference.

Refund Applications

Aminoil U.S.A., Inc./Behm Family Corporation, Corp., 5/2/88, RR139-10 and RF139-174

The Beham Family Corporation (Behm) filed a Motion for Modification in which it alleged that the refund it had received in the Aminoil U.S.A., Inc., special refund proceeding was insufficient. *Aminoil U.S.A., Inc./Behm Family Corp.*, 15 DOE ¶ 85,419 (1987). The DOE rejected Behm's claims that pertinent regulatory provisions had been misapplied and that other more favorable market price data should have been employed in the initial refund determination. Consequently, the Motion for Modification was denied. During its review, however, the DOE found that Behm had failed to apprehend a number of matters in OHA's original determination and, *sua sponte*, issued a Supplemental Decision and Order granting Behm an additional refund of $251,878 in principal and $187,671 in interest.

Aminoil U.S.A., Inc./McCoy's LP Gas Service, Inc., 5/6/88, RF139-18

The DOE issued a Decision and Order concerning an Application for Refund filed by McCoy's LP Gas Service, Inc. (McCoy) in the Aminoil U.S.A., Inc. special refund proceeding. McCoy submitted a market price comparison and information which allowed the DOE to approximate its cost banks. The reconstructed cost banks showed that the firm had absorbed increased product costs greater than the refund it claimed. The market price data submitted indicated that the firm was forced to absorb the alleged overcharges, and, thus had been injured. The DOE granted the firm a refund of $127,193, representing $68,425 in principal and $58,768 in interest.

B-B Paint Corporation, 5/3/88, RF272-895

The DOE issued a Decision and Order concerning an Application for Refund from crude oil overcharge funds based on the applicant's purchases of six different products. The DOE determined that all of the products purchased by the applicant, including xylene and toluene, are eligible products for the purposes of the crude oil refund proceedings. The total refund granted in this Decision is $218.

City of Lancaster Pennsylvania B.R. Dewitt, Inc. 5/3/88, RF272-2109 and RF272-2243

The DOE issued a Decision and Order granting two Applications for Refund from crude oil overcharge funds. Each applicant consulted contemporaneous documentation in arriving at its total petroleum product purchases during the crude oil price control period. Because both claimants were end-users, neither was required to demonstrate injury. A total of $2,473 in refunds was approved in this Decision and Order.

Dale E. Swenson, et al., 5/3/88, RF272-3028, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 25 applicants based on their respective purchases of refined petroleum products. Each applicant used the products for various agricultural activities. Each applicant determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and therefore was presumed injured. The sum of the refunds granted in this Decision is $1,261.

Dorchester Gas Corporation/Mobil Oil Corporation, 5-5-88, RF253-8

The DOE issued a Decision and Order granting an Application for Refund filed by Mobil Oil Corporation in the Dorchester Gas Corporation refund proceeding. Mobil demonstrated that it purchased 989,784 gallons of butane directly from Dorchester during the consent order period. Because the applicant limited its claim to $5,000, it was not required to demonstrate injury. Accordingly, a small claims refund of $5,000 in principal and $1,847 in interest was aproved for Mobil.

Edwin Powers, et al., 5/3/88, RF272-2913, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 29 applicants based on their respective purchases of refined petroleum products. Each applicant used the products for various agricultural activities. Each applicant determined its claim either by consulting actual purchase records or by estimating its consumption based on the number of acres ..armed. Each applicant was an end-user of the products it claimed and therefore was presumed injured. The sum of the refunds granted in this Decision is $686.

Franklin D. Hadley, et al., 5/3/88, RF272-13402, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 34 applicants based on their respective purchases of refined petroleum products. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the number of acres it farmed. Each applicant was an end-user of the products it claimed and therefore was presumed injured by the DOE. The sum of the refunds granted by this Order is $604. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Getty Oil Company/Bratz Oil Corporation, et al., 5/6/88, RF265-0357, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In five of these claims, the applicants were eligible for a refund below the $5,000 small claims threshold. In the remaining claim, the applicant elected to limit its claim to $5,000. The sum of the refunds approved in this Decision is $47,407, representing $23,314 in principal and $24,093 in accrued interest.

Getty Oil Company/Ervin C. Cahlin, et al., 5/6/88, RF265–0514, et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In four of these claims, the applicants were eligible for a refund below the $5,000 small claims threshold. In the remaining 13 claims, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $70,795, representing $34,816 in principal and $35,979 in accrued interest.

Getty Oil Company/Kellam Propane Gas Company, 5/4/88, RF265–2022

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of propane that was covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volume of Getty propane that was indirectly purchased from Getty distributors during the consent order period. It elected to limit its claim on the basis of the level-of-distribution presumption of injury methodology and was eligible for a refund below the maximum of the $50,000 threshold. The sum of the refund approved in this Decision is $49,953, representing $24,566 in principal and $35,387 in accrued interest.

Getty Oil Company/Russ and Son's Getty, et al., 5/6/88, RF265–0082, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In 13 of these claims, the applicants were eligible for a refund below the $5,000 small claims threshold. In the remaining two claims, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $70,336, representing $34,590 in principal and $35,746 in accrued interest.

Griswold Gardens, et al., 5/5/88, RF272–6751, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 31 applicants based on their respective purchases of refined petroleum products. Each applicant used various actual records and/or conservatiave estimates in order to substantiate its gallonage claim. Each applicant was an end-user of the products it claimed and therefore was found injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is $686. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Howell Oil Corp. and Quintant Refinery Co./Kent Oil and Trade Co., 5/6/88, RR245–1

The DOE issued a Decision and Order concerning a Motion for Reconsideration of a June 4, 1987 Decision and Order denying and Application for Refund filed by Kent Oil & Trading Company (Kent), a reseller of Howell Oil Corporation and Quintana Refinery Company (Howell/Quintana) motor gasoline, No. 2 diesel fuel, and naphtha. The June 4 Decision denied Kent's refund claim on the grounds that Kent was a spot purchaser of Howell/Quintana product. In its motion, Kent requested reconsideration of the denial with respect to the Howell diesel fuel which it resold to Metropolitan Petroleum Company. The firm claims that Metropolitan was a historical customer of Charter Oil Company, which in turn was an historical customer of Kent's

In considering Kent's motion the DOE found that Kent had not shown that Metropolitan was one of its base period customers not that the purchase from Howell/Quintana was necessarily in order to maintain its base period supply obligations. Additionally, the firm did not submit any documents which supported alleged contractual commitments between Kent and Charter or between Charter and Metropolitan. Accordingly, the DOE was unable to conclude that, as a spot purchaser, Kent suffered injury as a result of its resale of the Howell diesel fuel to Metropolitan, and the firm's Motion for Reconsideration was denied.

Mobil Oil Corporation/Blakesburg Oil Company, et al., 5/5/88, RF225–9016, et al.

The DOE issued a Decision granting five Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant election to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $2,243 ($1,803) principal plus $440 interest).

Mobil Oil Corp./Clinton G. Dunk, et al., 5/6/88, RF225–9446, et al.

The DOE issued a Decision and Order granting applications filed by 10 purchasers of Mobil refined petroleumproducts in the Mobil Oil Corporation special refund proceeding. According to the procedures set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 1985), each applicant was found to be eligible for a refund based on the volume of products it purchased from Mobil. The total amount of refunds approved in this Decision was $20,856, representiang $16,769 in principal plus $4,087 in accrued interest.

Plaquemines Oil Sales Corp., Delta Marina, Inc., 5/6/88, RF305–8

The DOE issued a Decision and Order granting, in part, a refund application filed in the Plaquemines Oil Sales Corp. special refund proceeding by Delta Marina, Inc., a reseller. *See Plaquemines Oil Sales Corp.*, 17 DOE ¶ 85,059 (1988). In considering Delta's request for a full volumetric refund, the DOE found that the firm's banks of unrecouped increased product costs were only sufficient to support a refund of $4,843. Because the firm's maximum refund was less than the $5,000 small claims threshold, Delta was not required to provide a detailed showing of injury. The total refund granted, including $1,990 in interest, was $6,833.

Plaquemines Oil Sales Corp./Strachan Shipping Co., McDermott Marine Construction, 5/4/88, RF305–3 and RF305–6

The DOE issued a Decision and Order granting refund applications filed by two end-users from the Plaquemines Oil Sales Corporation consent order fund. In accordance with the standards in *Plaquemines Oil Sales Corporation*, 17 DOE ¶ 85,059 (1988), each applicant documented its purchase volumes of Plaquemines product and was found to be eligible to recieve a refund. The total amount of refunds approved in the Decision was $35,925, representing

$25,470 in principal and $10,455 in interest.

Potter Chevron, 5/3/88, RF272–5433

The DOE issued a Decision and Order denying an application for crude oil overcharge funds filed by Potter Chevron, a retail service station which sold motor gasoline and motor oil during the crude oil settlement period (August 19, 1973 through January 27, 1981). Because Potter did not show that it was injured by the crude oil overcharges, its Application was denied.

Rex W. Johnston, et al., 5/5/88, RF272–6688, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products. Each applicant used various actual records and/or conservative estimates to report their gallonage claims. Each applicant was an end-user of the products it claimed and therefore was found injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,234. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Simon Corporation, et al., 5/5/88, RF272–2069, et al.

The DOE issued a Decision and Order granting four Applications for Refund from crude oil overcharge funds. Each applicant estimated all or a portion of its gallonage during the crude oil price control period based on its gallonage during a period for which actual records were available. Because each claimant was an end-user, none was required to demonstrate injury. A total refund of $944 was approved in this Decision and Order.

St. Catherine Gravel Co., 5/5/88, RF272–2128

The DOE issued a Decision concerning an Application for Refund filed by the St. Catherine Gravel Company, Inc. in the Subpart V crude oil refund proceedings. The application was based upon the firm's purchases of gasoline, propane, motor oil and antifreeze. Because antifreeze is not an eligible product, the DOE denied the portion of the claim. The total refund approved in this Decision is $472.

Suburban Propane Gas Corporation/ Frank A. Days and Son et al., 5/2/88, RF299–81, et al.

The DOE issued a Decision granting three Applications for Refund filed by retailers and end-users in the Suburban Propane Gas Corporation special refund proceeding. Each applicant elected to apply for a refund based upon the presumptions set forth in *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987). The total refunds granted were $2,286 ($2,024 principal plus $262 interest).

Via Metropolitan Transit Metro-Dade Transit Agency Queen City Metro, 5/3/88, RF272–13 et al.

The DOE issued a Decision and Order granting refunds to three public transit authorities that filed Applications for refund in the Subpart V crude oil overcharge refund proceedings. Each of the applicants satisfactorily documented the volume of its respective purchases. As end-users, the applicants were presumed to have been injured. The refund granted was $19,126.

Vickers Energy Corp./Texas, 5/2/88, RQ1–450

The DOE issued a Decision and Order approving the second-stage refund application filed by the State of Texas in the Vickers Energy Corporation special refund proceeding. Texas requested disbursement of its Vickers funds for a traffic light synchronization program, a local match for a rural transit providers program and for mobile car units. The DOE has previously authorized the use of Vickers monies for these programs. Because the litigation involving the Vickers funds has been resolved, the DOE can now disburse the Vickers funds for those programs it previously approved. Accordingly, Texas will receive a total of $419,835 from the Vickers escrow fund.

Virginia Pratt, et al., 5/3/88, RF272–7079, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 30 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,153.

Dismissals

The following submissions were dismissed:

Name	Case No.
Burlington Industries	RD272–2977
Martin & Son, Inc.	RF153–39
United States Postal Service—New York Division	RF272–8562

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forestall Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

August 19, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–19476 Filed 8–25–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[(ER–FRL–3435–7)]

Environmental Impact Statements And Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 8, 1988 through August 12, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–AFS–L65126–ID, Rating EC2, Boise National Forest, Land and Resource Management Plan, Implementation, Ada, Boise, Gem, Elmore, Valley and Washington, ID.

Summary

EPA would like to see greater detail on monitoring provided in the plan. The feedback mechanism described in various parts of this document needs to be made clearer so that standard operating procedures, intensity of monitoring, timber sale administration, and grazing allotment management and

modelling are adjusted when monitoring indicates a need.

ERP No. D–BLM–J65148–UT, Rating EC1, Pony Express Resource Management Plan, Implementation, Salt Lake District, Utah, Tooele and Salt Lake Counties, UT.

Summary

EPA has requested BLM to reconsider further restrictions on the acreage designated limited ORV use.

Final EISs

ERP No. F–BLM–J20009–UT, Aptus Industrial and Hazardous Waste Treatment Facility Construction and Operation, Land Exchange, Right-of-Way Grants, Temporary Use Permits and Possible 404 Permit, Tooele County UT.

Summary

EPA is in substantial agreement with this document. However, a future supplement to the EIS may be necessary to analyze an alternative hazardous waste incinerator proposed by U.S. Pollution Control at a nearby location.

ERP No. F–BLM–J70013–MT, West Hiline Planning Area, Resource Management Plan, Implementation, several Counties, MT.

Summary

EPA feels this document has significantly improved with regard to emphasis on implementation of mitigation and monitoring. However, it still does not contain assurance that monitoring and mitigation will be implemented in order for an activity to proceed. Further, without the provision that future "activity plans" will conform to the requirements of NEPA, concern remains for the environmental impacts from site specific development.

ERP No. F–BLM–L03004–AK, Trans-Alaska Gas System (TAGS) and Associated Facilities Construction and Operation, Prudue Bay to Anderson Bay, Right-of-Way Grants, Section 10 and 404 Permits and Special Use Permits, AK.

Summary

EPA's concerns with the Trans-Alaska Gas System (TAGS) project would be satisfied as long as the mitigation measures identified in this document are implemented.

ERP No. F–CGD–K40164–HI, I–H3 Freeway Construction, Windward to Leeward Oahu, US Coast Guard Approval for I–H3 Right-of-Entry, Collocation and Land Tranfer, Koolaupoko, Island of Oahu, Honolulu County, HI.

Summary

EPA requested that the Coast Guard's Record of Decision specify the mitigation measures that will ensure the protection of motorists and highway construction workers from very low frequency (VLF) transmissions for the USCG OMEGA Station, including a commitment to comply with any EPA guidance on exposure levels to electromagnetic radiation.

ERP No. F–COE–L90019–WA, Puget Sound Unconfined Open-Water Disposal Sites for Dredged Material, Phase 1 (Central Puget Sound), Site Identification and Sections 10 and 404 Permits, San Juan, Mason, Thurston, Island, Jefferson, Whatcom, Skagit, king, Clallam, Pierce, and Snohomish Counties, WA.

Summary

EPA feels that this document adequately addressed EPA's comments and those of others.

ERP No. F–FHW–D40226–MD, MD–5/ Branch Avenue Improvement, North of I–95 to South of US 301, Funding and 404 Permit, Prince Georges County, MD.

Summary

EPA has no objections to the project.

ERP No. F–FHW–G40118–TX, TX–71/ US 290 Improvements, R.M. 1826 to F.M. 973, Funding, Travis County, TX.

Summary

EPA has no objections to the proposed action with proper implementation of the mitigation measures.

Dated: August 23, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–19487 Filed 8–25–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3435–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency:

Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075.

Availability of Environmental Impact Statements Filed August 15, 1988 Through August 19, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880260, Final, AFS, NV, CA, Inyo National Forest, Land and Resource Management Plan, Implementation, Inyo, Mono, Fresno, Madera and Tulare Counties, CA and Esmeralda and Mineral Counties, NV, Due: September 26, 1988, Contact: Dennis W. Martin (619) 873–5841.

EIS No. 880261, Draft, FHW, NB, US 275 Improvement, Mercer to Waterloo, Funding, Douglas County, NB, Due: October 11, 1988, Contact: Philip E. Barnes (402) 437–5521.

EIS No. 880262, Final, NPS, AK, Kenai Fjords National Park, Wilderness Recommendations, Designation or Nondesignation, AK, Due: September 26, 1988, Contact: Linda Nebel (907) 257–2654.

EIS No. 880263, Final, NPS, AK, Bering Land Bridge National Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: September 26, 1988, Contact: Linda Nebel (907) 257–2654.

EIS No. 880264, Final, NPS, AK, Yukon-Charley Rivers National Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: September 26, 1988, Contact: Linda Nebel (907) 257–2654.

EIS No. 880265, Final, NPS, AK, Lake Clark National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK, Due: September 26, 1988, Contact: Linda Nebel (907) 257–2654.

EIS No. 880266, Final, NPS, AK, Gates of the Arctic National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK, Due: September 26, 1988, Contact: Linda Nebel (907) 257–2654.

EIS No. 880267, Final, FHW, MD. Beaver Dam Road Widening and Extension, Beaver Court to Padonia Road, Funding and 404 Permit, Baltimore County, MD, Due: September 26, 1988, Contact: Herman Rodrigo (301) 962–4010.

EIS No. 880268, Draft, EPA, REG, Coke By-Product Recovery Plants, Revised Proposed Standards for Benzene Emissions, Implementation, Due: October 11, 1988, Contact: Gilbert H. Wood (919) 541–5625.

EIS No. 880269, Draft, UMT, CA, Muni Metro System Sturnaround Project, Facilities Construction, Embarcadero, Clay Street to Brannon, Funding, City and County of San Francisco, CA, Due: October 11, 1988, Contact: Carmen C. Clark (415) 974–7317.

EIS No. 880270, Final, NPS, AK, Wrangell-St. Elias National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK, Due: September 26, 1988, Contact: Linda Nebel (907) 257–2654.

EIS No. 880271, Final, AFS, CA, South Fork Fire Recovery and Salvage Project, August thru October 1987, South Fork Roadless Area Land and Resource Management Plan, Implementation, Shasta-Trinity

National Forest, Trinity County, CA. Due: September 26, 1988, Contact: Dan R. Angello (916) 628–5227.

EIS No. 880272, Draft, COE, FL, Miami Harbor Channel Navigation Improvements, Implementation Dade County, FL, Due: October 11, 1988, Contact: Rea N. Boothby (904) 791–3453.

EIS No. 880273, Final, EPA, CA, San Diego (LA–5) Ocean Dredged Material Disposal Site, Permanent Designation for Material Dredged from San Diego Bay, Los Angeles County, CA, Due: September 26, 1988, Contact: Wendy Wiltse (415) 974–9812.

Dated: August 23, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–19480 Filed 8–25–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3435–3]

Intent To Review Guidelines For Carcinogen Risk Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to review guidelines for carcinogen risk assessment and request for information.

SUMMARY: On September 24, 1986, the U.S. Environmental Protection Agency (EPA) issued risk assessment guidelines relating to environmental carcinogens, mutagens, developmental toxicants, chemical mixtures, and estimating exposure (51 FR 33992–34054). Today's notice announces EPA's intent to review the 1986 Guidelines for Carcinogen Risk Assessment, identifies areas under study for possible revision, and outlines intended procedures. Any amendments are expected to be formally proposed for public review during the Fall of 1989.

DATES: Information received by October 11, 1988 will be considered in reviewing the guidelines and developing any proposed amendments.

ADDRESS: Information may be mailed or delivered to: Ms. Linda C. Tuxen, Risk Assessment Forum, Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Linda C. Tuxen, (202 or FTS) 475–6743.

SUPPLEMENTARY INFORMATION: In 1984, EPA proposed (and Agency scientists began to apply) risk assessment guidelines for carcinogenicity, mutagenicity, suspect development toxicants, chemical mixtures, and exposure assessment. Following extensive scientific and public review, final guidelines on these topics were issued on September 24, 1986 (51 FR 33992–34054). The Guidelines set forth principles and procedures to guide EPA scientists in the conduct of Agency risk assessments, to help promote high scientific quality and Agency-wide consistency, and to inform Agency decisionmakers and the public about these scientific procedures.

In publishing this guidance, EPA emphasized that one purpose of the guidelines was to "encourage research and analysis that will lead to new risk assessment methods and data," which in turn would be used to revise and improve the guidelines. Thus, the Guidelines were developed and published with the understanding that risk assessment is an evolving scientific undertaking and that continued study would lead to changes.

As expected, there is new information and thinking in several areas of carcinogen risk assessment. In addition, after using the Guidelines for four years, Agency scientists (and others) have identified areas needing further study. For these reasons, the Agency has decided that review and, if appropriate, revision of the Guidelines for Carcinogen Risk Assessment (51 FR 33992) may be appropriate at this time. A public workshop, tentatively scheduled for early 1989, would assess possible changes in the classification system and the scientific basis for quantification. Other activities are described later in this notice.

Primary Issues

Because the guidelines have served the Agency well for four years, the current review will focus on a few selected areas. The classification system and the decision logic for when and how to apply quantitative risk estimation have been designated for priority consideration because examination of these issues is expected to consume considerable time, generate substantial discussion, and draw extensive comment.

Classification System. The classification system in the EPA Guidelines provides a framework and scientific criteria for qualitative description of the hazard potential of chemicals as human carcinogens. Aspects of the classification system that are of special interest are outlined below.

(1) *Options for weight-of-evidence scheme.* The current classification scheme for describing the weight of evidence for potential carcinogens has five groups, ranging from A for "known" human carcinogens to E for "no evidence of human carcinogenicity." These groups, defined in the guidelines, were modeled after the classification scheme used by the International Agency for Research on Cancer (IARC) when the Guidelines were proposed in 1984. EPA created category C, "possible" human carcinogens, for chemicals having "limited" evidence from animal studies. The weight of evidence scheme, which depends on extensive review of animal and human data on potential carcinogenic effects, forms the basis for the current classification system.

With use of the Guidelines, EPA finds that the continuum of responses used to identify potential carcinogenic hazard often complicates assignment of a chemical to a particular category. In addition, the wide range of results that may recommend a substance to a particular category, encourages comparisons within a category and raises questions as to whether the designation adequately represents what is known about the potential of the substance to be a potential human carcinogen. These experiences have caused some to argue for increased numbers of categories to better differentiate among substances. Others suggest fewer categories to remove the emphasis from the letter designation and focus more on the actual evidence under consideration.

(2) *Definitions of "sufficient" and "limited" evidence.* In evaluating the strength of human and animal evidence that a particular agent is carcinogenic, EPA adopted, with modification, the definitions of "sufficient" and "limited" used by IARC (Supplement 4, 1982). In 1987 IARC revised its Preamble (Supplement 7, 1987) to give more emphasis to principles for evaluating evidence than in 1982. The new Preamble also modifies IARC definitions of "sufficient" and "limited" evidence.

The Agency is considering clarifying its definitions of sufficient and limited evidence because of uncertainty inside and outside the Agency about the intended use of "sufficient" and "limited" in the Guidelines. One issue relates to ambiguity about "sufficient" and "limited" evidence in animals when the only animal evidence consists of comparable positive findings of carcinogenicity in multiple experiments in a single strain of one species, rather than such findings in different species. Another is that guideline users have difficulty distinguishing between EPA's criteria for "limited" and for "inadequate" evidence of carcinogenicity in human studies.

(3) *Other classification issues.* Other possible changes in the classification system include additional guidance and criteria for evaluating evidence of non-carcinogenicity in humans, and for considering the relevance to human hazard assessment of carcinogenic responses in animals that appear to the species specific. Also, the use of adjectives such as "possible" and "probable" to classify carcinogens merits discussion.

Decision Logic for Quantitative Risk Estimation. Several aspects of the Guidelines deal with quantitative risk estimation. Agency scientists are considering changes that would clarify the logic for deciding when and how to estimate human cancer risks quantitatively when using only animal data.

(1) *Rationales for quantifying category C chemicals.* The current Guidelines clearly contemplate quantitative risk estimation for category A and B chemicals, but call for quantitative estimates for "possible" carcinogens assigned to class C on a "case-by-case" basis, suggesting that quantification is not expected for all chemicals in this category. EPA's experience with this aspect of the Guideline, as well as comments from numerous reviewers, suggests that additional guidance is needed on "when" quantification is appropriate. Some scientists interpret this language as contemplating quantification for nearly all chemicals in Category C. Such an interpretation assumes that data leading to the qualitative finding of "probable" hazard based on "sufficient" animal evidence is always suitable for subsequent quantitative analysis, and that data classified as "limited" is generally suitable for quantification. Other scientists interpret the Guidelines to mean that quantification is expected for a smaller subset of Category C chemicals.

(2) *"Best estimates" as compared to plausible upper bound.*

Guidance on "how" to quantify cancer risk also warrants consideration. For example, the 1986 guidelines emphasize the scientific community's somewhat limited experience with "best estimates," noting that "an established procedure does not yet exist for making 'most likely' or 'best' estimates of risk within the range of uncertainty defined by the upper and lower limit estimates."

The limited use of "most likely" or "best" estimates of risk in the current Guidelines was based on several considerations. For example, maximum-likelihood estimates based on the multistage model are usually close to upper-bound estimates or are mathematically unstable and, even if considered useful, such estimates do not reflect the probability that the underlying model is correct.

The Agency will reconsider whether this rationale is still valid, and will focus its discussion on extrapolation model selection. In particular, scientists are currently studying models that take more biologically-based approaches to estimating risk than does the lineanized multistage procedure. In addition, pharmacokinetic models may help reduce uncertainties in relating environmental levels to target organ doses. Although both EPA and the risk assessment community in general have only limited experience in using these new approaches, they merit further consideration.

Any new approach would also emphasize (a) the need for evaluation, review, and use of newer or updated methods for calculating, or coming closer to, "most likely" or "best" estimates of risk; and (b) the importance of fully stating qualifying considerations that affect Agency risk estimates, particularly the accuracy of EPA's current "plausible upper bound" estimates.

(3) *Pharmacokinetics and interspecies scaling factors.*

The current Guidelines provide for use of pharmacokinetic information to assess dose-response relationships, if supported by relevant evidence for any particular agent. The Agency expects to expand guidance in this area by discussing current scientific practices, along with new data pertinent to choosing a "default" method for use in the absence of adequate agent-specific data.

When chemical-specific information is not available, the current Guidelines call for use of interspecies dose-scaling factors based on surface area, a common but not universal approach. An alternative to surface-area scaling is based on body weight, which reduces estimated human risks by a factor of 6 or 13, depending on whether the extrapolation is from rats or from mice, respectively. Both methods are in common use and some reviewers, including the Office of Science and Technology Policy (1986), conclude that there is no clear scientific basis for choosing among them. The Agency expects to reexamine this issue in the light of recent scientific developments, including work on the use of pharmacodynamic sensitivity as a factor in making such choices.

Other Issues

The other issues under discussion, described in the following paragraphs, would involve amending certain specific sections of the Guidelines without altering basic concepts.

Mechanisms of Carcinogenesis. The Agency now uses more information bearing on mechanisms of chemical carcinogens than in the past. As a result, EPA risk assessments often describe not only what is known about the general potential of a substance to cause cancer in animals or in humans, but also what is known about underlying mechanisms. Also, mechanistic information that may influence decisions about, for example, the human carcinogenic potential of an established animal carcinogen or the most appropriate method of quantification for a particular chemical is now frequently included in assessments.

For these reasons, the Agency is considering additional guidance on the use of mechanistic information relating to factors such as the site of contact and hormonal carcinogenesis, the role of cellular peroxide formation and cytotoxicity, and the use of promotion studies.

Data on genotoxicity is particularly relevant. Information gathered over a decade of research and testing in genetic toxicology has established positive correlations between carcinogenicity and mutagenicity. More recently the mechanisms by which carcinogens affect expression of specific genes involved in growth and differentiation (oncogenes) are being elucidated.

This information contributes to evaluating the weight of evidence regarding human carcinogenic potential, as well as the applicability of various extrapolation models. New information and concepts on the use of data on genotoxicity, along with considerations of structure-activity relationships, metabolism, and pharmacokinetics, will be evaluated to develop guidance on the hazard assessment for potential carcinogenicity.

Benign and Malignant Tumors. Currently, the Guidelines call for combining benign and malignant tumors in animal studies when "scientifically defensible," a point of national and international agreement. The IARC and National Toxicology Program (NTP) have interpreted this to mean that there is a common cell type and evidence for progression from benign to malignant tumors. EPA states it will combine tumors unless there is evidence against the progression of benign lesions to corresponding malignancies. As such, we are requiring negative evidence before we decide not to combine tumors. EPA plans to revisit its position.

Subsequent to the development of the guidelines, additional criteria, guidance, and methods for evaluating the scientific merits of the current approach have been suggested. In particular, the NTP's 1984 Report of the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation and the IARC's Monograph Supplement 7, 1987, may provide guidance.

Risk Characterization. Risk characterization links the risk assessment and risk management elements of decision-making by presenting all important information used in the assessment, along with estimated numerical risks.

Because discussion relating to important risk characterization issues is not fully developed in the 1986 Guidelines, the Agency is considering changes that would give guidance on types of analyses to be conducted, articulating risk findings (for example, use of sensitivity analyses on data sets employed in risk extrapolation), expressing variability in risks from a given extrapolation model, levels used to project risk (e.g., median, 95 percentile, range), and ways to evaluate risks quantitatively when the qualitative weight of evidence is low.

Incorporation of Risk Assessment Forum Reports. The Risk Assessment Forum has published reports on several issues relating to cancer risk assessment. The recommendations included in the following reports will be considered for incorporation into the guidelines.

(1) "Proliferative Hepatocellular Lesions of the Rat: Review and Future Use in Risk Assessment" (EPA/625/3–86/011) February 1986,

(2) "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-*p*-Dioxins and -Dibenzofurans (CDDs and CDFs)" (EPA/625/3–87/012) March 1987, and

(3) "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations" (EPA/625/3–88/014A) (Draft).

Proposed Schedule

During the last year, members of the Risk Assessment Forum, in consultation with EPA's Risk Assessment Council, have informally discussed the possible revision issues outlined above. During the coming year, this review of the Guidelines for Carcinogen Risk Assessment will include discussion and review by EPA scientists, other scientific experts, including EPA's Science Advisory Board, and the public.

The public is invited to participate by submitting information on topics identified in this notice, and commenting on any revisions which, when proposed, would be published in the Federal Register during 1989.

Date: August 16, 1988.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 88–19412 Filed 8–25–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3435–4]

Proposed Guidelines for Assessing Female and Male Reproductive Risk; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of Public Comment Period on Proposed Guidelines for Assessing Female and Male Reproductive Risk.

SUMMARY: On June 30, 1988, EPA proposed Guidelines for Assessing Female and Male Reproductive Risk (53 FR 24834; 53 FR 24850), with 60-day public comment periods ending on August 29, 1988. In response to several requests, EPA is extending the deadline for comments beyond the summer vacation months to September 30, 1988.

REVISED DATE: Comments must be postmarked by September 30, 1988.

ADDRESS: Comments must be mailed or delivered to: Dr. Carol Sakai (Female Guidelines) or Dr. Harold Zenick (Male Guidelines), Reproductive Effects Assessment Group, Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Carol Sakai (202) 382–7303; Dr. Harold Zenick (202) 475–8913.

SUPPLEMENTARY INFORMATION: Several groups have requested an extension of the August 29 deadline because the comment periods for both guidelines fall entirely in the vacation months of July and August, when many scientific experts are unavailable for consultation. The comment period is extended to September 30, 1988 to encourage broader participation by public interest groups, industry, and academia.

Dated: August 16, 1988.

John A. Moore,

Chairman, Risk Assessment Council.

[FR Doc. 88–19413 Filed 8–25–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Joy FM Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/state	File No.	MM Docket No.
A. Joy FM Limited Partnership; Leesburg, GA.	BPH–870619MS	88–363
B. Augusta Radio Fellowship Institute, Inc. d/b/a Georgia Radio Fellowship; Leesburg, GA.	BPH–870820MA	
C. Goldwing Broadcasting Company; Leesburg, GA.	BPH–870820MF	
D. Marshall William Rowland, Jr.; Leesburg, GA.	BPH–870820MG	
E. Rivers Broadcasting, Inc.; Leesburg, GA.	BPH–870820MW	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative—A–E
2. Ultimate—A–E

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800.)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–19456 Filed 8–25–88; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Oceans Waves Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/State	File No.	MM Docket No.
A. Oceans Waves Broadcasting; Narragansett Pier, RI.	BPH-870311ME	88-344
B. David C. Grady & James Durkin d/b/a South County Broadcasting; Narragansett Pier, RI.	BPH-870312MG	
C. John Correa; Narragansett Pier, RI.	BPH-870312MH	
D. Molly A. Waltman; Narragansett Pier, RI.	BPH-870313MA	
E. Cyndie Ann Rakovan; Narragansett Pier, RI.	BPH-870313MS	
F. Susan L. Kenary d/b/a Narragansett Resort Radio; Narragansett Pier, RI.	BPH-870313NA	
G. South Shore Broadcasting, Inc.; Narragansett Pier, RI.	BPH-870313NF	
H. John J. Fuller; Narragansett Pier, RI.	BPH-870313NH	
I. Wiltshire Broadcast Co; Narragansett Pier, RI.	BPH-870313NI	
J. Brenda R. Tanger; Narragansett Pier, RI.	BPH-870313NJ	
K. Zachs Narragansett Broadcasting Partnership; Narragansett Pier, RI.	BPH-870313NL	
L. C.G. Associates of Narragansett; Narragansett Pier, RI.	BPH-870313NU	
M. Ocean Venture Broadcasting Company; Narragansett Pier, RI.	BPH-870313MZ	(Previously dismissed)

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1(a). Site Availability—B
1(b). Section 1.65—B
1(c). Misrepresentation—B
1(d). Qualifications—B
2. Air Hazard—I
3. Comparative—A-L
4. Ultimate—A-L

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800.)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-19451 Filed 8-25-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Paiva Limited et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/State	File No.	MM Docket No.
A. Paiva Limited, Lewes, DE.	BPH-870910ML	88-365
B. Bay Communications, Inc., Lewes, DE.	BPH-870910MO	
C. John E. Arsenault, Jr., Lewes, DE.	BPH-870910MS	
D. Richard B. Gamberg, Lewes, DE.	BPH-870910NA	
E. Vincent T. Ridikas, Lewes, DE.	BPH-870910NL	
F. Lewes Communications, Inc., Lewes, DE.	BPH-870910NY	
G. Susan Marie Beth Romaine, Lewes, DE.	BPH-870910OE	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues have been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Air Hazard—C,D,F,G,
2. Comparative—All applicants
3. Ultimate—All applicants

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-19456 Filed 8-25-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; R&B Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/State	File No.	MM Docket No.
A. R&B Communications Inc., Trinity, AL.	BPH-861212MB	88-378
B. Victoria Newman d/b/a Radio Trinity; Trinity, AL.	BPH-861215MA	
C. Beatrice M. Covington; Trinity, AL.	BPH-861215MF	

Applicant, and city/ State	File No.	MM Docket No.
D. Trinity FM Limited Partnership; Trinity, AL.	BPH-861215MG	
E. Morgan Broadcasting, Inc.; Trinity, AL.	BPH-861215MH	
F. John Timms; Trinity, AL.	BPH-861215MK	
G. Moulton Broadcasting Company, Inc.; Trinity, AL.	BPH-861215ML	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative—A-F
2. Ultimate—A-F

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800.)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-19459 Filed 8-25-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Adlai E. Stevenson IV et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ State	File No.	MM Docket No.
A. Adlai E. Stevenson IV; Mahomet, IL.	BPH-870909MK	88-364
B. Louise B. Toft and Stuart A. Toft d/b/ a Alliance Broadcasting of Champaign County; Mahomet, IL.	BPH-870910MT	
C. Middletown Developers, Inc.; Mahomet, IL.	BPH-870910NO	
D. Dybedock & Associates, Inc.; Mahomet, IL.	BPH-870910NW	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard—B
2. Comparative—A,B,C,D
3. Ultimate—A,B,C,D

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800.)

W. Jan Gay,

Assistant Chief, Audio Services Divsion, Mass Media Bureau.

[FR Doc. 88-19460) Filed 8-25-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Stephen D. Tarkenton et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ State	File No.	MM Docket No.
A. Stephen D. Tarkenton; Lafayette, FL.	BPH-870720MU	88-377
B. Family Group Radio, Ltd. III; Lafayette, FL.	BPH-870729MA	
C. Gator Radio Limited Partnership; Lafayette, FL.	BPH-870729MH	
D. Lafayette Communications of Tallahassee, Inc.; Lafayette, FL.	BPH-870729MI	
E. Brian Mitchell Rowland; Lafayette, FL.	BPH-870729MJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard—B, C
2. Comparative—A, B, C, D, E
3. Ultimate—A, B C, D, E

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800.)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-19461 Filed 8-25-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, *et.*

seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 550

FMC requests an extension of clearance for 46 CFR Part 550 which provides tariff filing rules for common carriers in the domestic offshore commerce, pursuant to the Shipping Act, 1916, and the Intercoastal Act, 1933. The rule requires that agencies file and keep open for public inspection a schedule of their rates and charges for the transport of cargo. The Commission estimates an annual respondent universe of 229, with a total estimated 16,894 manhour burden. Total cost to the Federal Government is estimated at $172,000; total cost to respondents is estimated at $220,000.

Joseph C. Polking,

Secretary.

[FR Doc. 88–19463 Filed 8–25–88; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. 6–88]

Guam Rate Agreement; Filing of Petition

The Guam Chamber of Commerce ("GCC") has filed a petition pursuant to Rule 69, 46 CFR 502.69, requesting that the Federal Maritime Commission investigate the Guam Rate Agreement, FMC No. 102–8454 ("Agreement"). GCC alleges that the Agreement is "grossly discriminatory" and "serves to preclude any concept of rate competition and is thereby detrimental to commerce." According to GCC, since the Agreement's membership constitutes a monopoly in the U.S.-Guam trade, the Agreement does not meet the definition of a "rate agreement" as set forth in 46 CFR 560.2(a)(2). The Commission is also requested to investigate and determine whether the Agreement complies with the requirements of 46 CFR 550.3(h), 552.2(a)(b)(h)(n)(f), 562.3(a)(b)(c), 562.4, 564.2(a)(1)(b), 566.1, 566.3, 568.0, 568.1, 568.2, 568.3 and 568.4.

In order for the Commission to make a thorough evaluation of this matter, interested persons are requested to submit views, arguments and/or data on the petition no later than October 11, 1988. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 in an original and 15 copies. Responses shall also be served on the Guam Chamber of Commerce: Wayne F. Brown, Chairman of the Board, Guam Chamber of Commerce, Agana, Guam U.S.A., P.O. Box 238, 96910.

Copies of the petition are available for examination at the Washington, DC. office of the Commission, 1100 L Street NW., Room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 88–19367 Filed 8–25–88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 87–14]

Banfi Products Corp. et al.; Amended Order of Investigation

The Commission instituted this proceeding by Order of Investigation served June 24, 1987, to determine whether Banfi Products Corporation ("Banfi"), an importer of wine from Italy, has been knowingly and willfully obtaining transportation by water for property at less than the rates and charges which would otherwise be applicable, in violation of section 16, Initial Paragraph, Shipping Act, 1916, 46 U.S.C. 815, Initial Paragraph, *amended by* 46 U.S.C. app. sec. 801 (1984), and section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. sec. 1709(a)(1) ("the Shipping Acts").

Hearing Counsel, by Motion to Amend ("Motion"), has now requested that the Order of Investigation in this proceeding be amended to add ten additional respondents. Banfi filed a Memorandum in Opposition ("Memorandum"). Subsequently, Hearing Counsel filed a request for oral argument on its Motion or, in the alternative, leave to file a reply to Banfi's Memorandum. Banfi did not respond to this latter request and advised the Commission's Office of the Secretary that it would not do so.[1] On May 18, 1988, Hearing Counsel was granted leave to file a reply to Banfi's Memorandum ("Reply"), limited to indicating with specificity why orders issued against the present respondent and the measures for production and interrogation presently available would be insufficient to achieve the purposes of the investigation.

Hearing Counsel's Motion to add ten new companies as respondents to this proceeding is based on the results of its prehearing inspection and discovery.[2] Hearing Counsel alleges that the various companies it has named are all engaged in a common enterprise, and that adding these companies as respondents to this proceeding will assist it in obtaining evidence and permit any ultimate remedial action to be directed against all participants in the arrangement.

Banfi in its Memorandum contends that addition of respondents at this time would prejudice it. Moreover, Banfi asserts that the addition of companies located abroad as respondents would be futile because of lack of jurisdiction or enforcement authority over such companies.[3] Lastly, Banfi argues that it is not necessary to add any alleged agents of Banfi to the proceeding as respondents because any Commission order directed against Banfi will be sufficient to terminate and punish the illegal conduct described in the Order of Investigation, if such is shown.

In its Reply, Hearing Counsel contends that House of Banfi, Inc. should be added as a respondent because it would not be bound by an order directed against Banfi. Hearing Counsel explains that House of Banfi does not share a direct corporate link to Banfi and is neither owned nor apparently controlled by Banfi. Moreover, House of Banfi, a California corporation is said to perform substantially the same functions as Banfi, shipping and importing wines in its own right, and using the same freight forwarder, SOGECA, to arrange the transportation of cargo from Italy to the United States. Hearing Counsel asserts that the existence of House of Banfi and

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[1] For some unexplained reason, Hearing Counsel's request for oral argument had not been received by Banfi, and, as a result, an additional copy was mailed to it.

[2] The respondents Hearing Counsel seeks to add are identified as: (a) Villa Banfi, SpA; Principessa Gavia, SRL; Villa Banfi Cellars, SpA; Loretto Winery; Il Chianti, Ltd.; and Riunite Vini, SpA (jointly owned by Banfi and Cantine Cooperativa Riunite), subsidiaries of Banfi engaged in wine production in Italy; (b) Banfi Holding Corp. and Villadco, Inc., holding companies which hold stock in one or more Banfi subsidiaries; (c) House of Banfi, Inc., which, like Banfi, is responsible for import/distribution of wines within the United States; and (d) Societa Gestioni Commerciali ed Agricole, SpA ("SOGECA"), an Italian forwarder which handles Banfi products and 95% of the stock of which is owned by a Dr. Ezio Rivella, who is also a director and stock owner in several Banfi subsidiaries.

[3] The companies located abroad are identified by Banfi as: SOGECA; Principessa Gavia, SRL; Villa Banfi Cellars, SpA; Riunite Vini, SpA; and Villa Banfi, SpA.

other related companies was not known at the commencement of this proceeding. Failure to add House of Banfi as a respondent allegedly would leave unaddressed several hundred shipments on which House of Banfi is named as shipper.

Hearing Counsel further urges that the other nine companies also be added as respondents to this proceeding. It contends that the Italian subsidiaries and affiliates of Banfi and House of Banfi may be engaged as nominal shippers on bills of lading for wine destined to the United States and produced under their own label.[4] It also alleges that Banfi subsidiaries and affiliates may have participated, directly or indirectly, in the receipt of rebates through SOGECA, the freight forwarder obtaining transportation for Banfi and House of Banfi and, perhaps, Banfi subsidiaries and affiliates as well.

Among the devices Hearing Counsel alleges SOGECA may have used to funnel rebates to "the Banfi corporate family" are reduced or non-compensatory charges for helicopter spraying services, reduced or non-compensatory charges for computer services, and absorption of fowarding charges or inland transport costs. Hearing Counsel fears that if the Banfi subsidiaries and/or affiliates, rather than Banfi, are found to have received illegal rebates, Banfi may try to divorce itself from liability for such acts.

Hearing Counsel is also concerned that failure to amend the Order of Investigation to include the Banfi subsidiaries, affiliates, and SOGECA will enable Banfi easily to restructure its operations to divest itself of its shipper status for purposes of Commission-administered statutes, while still enjoying the benefits of rebates received through subsidiaries and affiliates by means of controlling cargo through SOGECA.

Lastly, Hearing Counsel asserts that amendment of the Order of Investigation is required to obtain discovery sufficient to complete the investigation. Hearing Counsel claims that the absence of additional parties has already presented problems in obtaining information. Moreover, making these additional parties respondents would enable the Commission to proceed directly against them through discovery and to obtain sanctions against them for their refusal to obey and failure to comply, measures which are not available against non-parties (*see* 46 CFR 502.205, 502.206, 502.207, 502.210(a)).

We find that the above described contentions of Hearing Counsel have raised sufficient grounds not available until the present time to warrant granting amendment of the Order of Investigation. That Order as presently drafted is not sufficiently broad so as to cover unlawful conduct in which the proposed respondents in addition to Banfi may have engaged and effectively to terminate such conduct. Nor do the presently available means of obtaining the necessary information appear adequate or appropriate to the enlarged scope and nature of the activities to be investigated. In the event that Banfi, House of Banfi, and Banfi and/or House of Banfi subsidiaries and/or related companies have received funds through SOGECA from ocean carriers for ostensibly forwarding or brokering wine and other products imported into the United States, such transfer and/or receipt of funds, either with or without the knowledge of the ocean carriers, would in effect constitute obtaining transportation for wine and other products at less than the rates or charges that would otherwise be applicable. We will therefore grant Hearing Counsel's Motion and amend the Order of Investigation as requested.

Accordingly, pursuant to sections 16, 22, and 27 of the Shipping Act, 1916, 46 U.S.C. 815, 821, and 826, amended by 46 U.S.C. app. section 801 (1984), and sections 11, 13 and 17 of the Shipping Act of 1984, 46 U.S.C. app. section 1710, 1712, and 1716, the proceeding will be expanded to determine whether Banfi, House of Banfi, SOGECA, and/or any of the Banfi or House of Banfi subsidiaries or affiliated companies have been, knowingly and willfully, directly or indirectly, by false device or means, obtaining ocean transportation for property at less than the rates or charges that would otherwise be applicable in violation of section 10(a)(1) of the Shipping Act of 1984, and for activity prior to June 18, 1984, section 16, Initial Paragraph, of the Shipping Act, 1916, amended by 46 U.S.C. app. section 801 (1984).

The Commission clearly has the authority to name the additional companies as respondents, and the facts that they are not carriers, forwarders, or other persons subject to the Shipping Acts and may be foreign nationals acting abroad do not prevent assertion of jurisdiction for the purpose of investigating the conduct alleged here. *See e.g., U.S. Lines & Gondrand Bros.—Sect. 16 Violation,* 7 F.M.C. 464, 465, 471–72 (1962); *Armement Deppe, S.A. v. United States,* 399 F.2d 794, 797–800 (5th Cir. 1968), *cert. denied,* 393 U.S. 1094 (1969); *Compagnie Generale Transatlantique v. American Tobacco Co.,* 31 F.2d 663, 665 (2d Cir.), *cert. denied,* 280 U.S. 555 (1929). *See also* discussion of "prescriptive jurisdiction" in *FTC v. Compagnie De Saint-Gobain-Port-a-Mousson,* 636 F.2d 1300, 1315–16 (D.C. Cir. 1980). Substantial penalties have, moreover, been imposed by courts against foreign companies. *See e.g., United States v. Atlantica, S.p.A.,* 478 F.Supp. 833, 836–37 (S.D.N.Y. 1979).

Moreover, Banfi has not been prejudiced by the time which has elapsed so far. The mere passage of time has not injured Banfi, and no "stigma" attaches to the fact that it and the additional parties are made respondents here. The expense and annoyance of litigation are not sufficient justification for failing to investigate possible violations of the Shipping Acts. *See e.g., FTC v. Standard Oil Co. of California,* 449 U.S. 232, 244 (1980); *Petroleum Exploration, Inc. v. Public Service Comm'n,* 304 U.S. 209, 222 (1938).

Therefore, it is ordered, That Hearing Counsel's Motion to Amend the Order of Investigation is granted; and

It is further ordered, That the ordering paragraphs of the Order of Investigation in this proceeding served on June 24, 1987 are amended to read as follows:

Now therefore, it is ordered, That pursuant to section 22 of the Shipping Act, 1916, and section 11 of the Shipping Act of 1984, an investigation into the practices of the respondents named herein is hereby instituted to determine:

1. Whether, during the period from June 30, 1982 through June 17, 1984, respondent Banfi Products Corporation violated section 16, Initial Paragraph, of the Shipping Act, 1916, by knowingly and willfully, directly or indirectly, by means of an unjust or unfair device or means, obtaining transportation by water for property at less than the rates or charges which would otherwise be applicable;

2. Whether, during the period from August 30, 1983 through June 17, 1984, respondents other than Banfi Products Corporation violated section 16, Initial Paragraph, of the Shipping Act, 1916, by knowingly and willfully, directly or indirectly, by means of an unjust or unfair device or means, obtaining transportation by water for property at less than the rates or charges which would otherwise be applicable;

3. Whether since June 17, 1984, all or any of the respondents violated section 10(a)(1) of the Shipping Act of 1984, by knowingly and willfully, directly or

[4] Banfi has argued that its Italian subsidiaries and affiliates do not ship their wines to the United States (*See* Banfi's Memorandum, 4), but there is of course presently no resolution of the matter as the hearing has not yet commenced and no evidence has been received in the case.

indirectly, by means of an unjust or unfair device or means, obtaining ocean transportation for property at less than the rates or charges that would otherwise be applicable; and

4. Whether in the event the respondents have violated the above-cited provisions, civil penalties should be assessed and, if so, the amount of such penalties, and whether any other appropriate order, including a cease and desist order, should be entered.

It is further ordered, That a public hearing be held in this proceeding before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge, in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61;

It is further ordered, That Banfi Products Corporation; Villa Banfi, SpA; Principessa Gavia, SRL; Villa Banfi Cellars, SpA; Loretto Winery; Il Chianti, Ltd.; Riunite Vini, SpA; Banfi Holding Corp.; Villadco, Inc.; House of Banfi, Inc.; and Societa Gestioni Commerciali ed Agricole, SpA ("SOGECA") be designated respondents in this proceeding;

It is further ordered, That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall be issued by August 30, 1989 and the final decision of the Commission shall be issued by December 30, 1989;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commision's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-19464 Filed 8-25-88; 8:45 am]

BILLING CODE 6730-01-M

Inquiry Into Laws, Regulations and Policies of the Republic of Korea Affecting Shipping in the United States/Korea Trade; Amended Notice

Pursuant to section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714 ("Section 15 Order"), the Commission initiated this inquiry into the existence and impact of laws, regulations and rules of the Government of the Republic of Korea ("ROK") affecting the ancillary maritime activities carried on in the ROK by common carriers serving the U.S. foreign trade with Korea ("Trade"). The purpose of the inquiry was to determine whether there exist conditions in the Trade unfavorable to shipping, within the meaning of section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("Section 19"). The questions posed in the section 15 Order and the responses it generated were described in the Commission's Notice of March 28, 1988 ("March Notice").

That document detailed the various ROK enactments which could serve to hamper and restrict non-ROK-flag carriers who are otherwise prepared to carry on their own ancillary maritime activities in Korea. The March Notice stated:

> While the responses [to the Section 15 Order] reflect the discriminations practiced, they are far less detailed or informative as to any detrimental impacts these practices visit on U.S. interests protected by Section 19.

The March Notice referred to commitments made by the ROK on some issues in the course of discussions with U.S. Government officials in May 1987, and to actual progress made on other issues. Based on these factors, the Commission determined not to initiate action pursuant to section 19 at that time, but to reassess the need for such action "after the ROK Government has had the opportunity to fully act on its May 1987 commitments." interested parties were invited to submit additional information on the status and effects of relevant ROK practices by July 15, 1988.

Comments in Response to The March Notice

Three responses to the March Notice have been filed. Maritime Administrator John Gaughan, on behalf of the Departments of Transportation and State ("DOT and DOS"), submitted a letter detailing discussions held between U.S. and ROK officials in late April 1988. Mr. Gaughan notes that the ROK's commitment to permit U.S. carriers to own and operate their own branch offices no later than June 30, 1988, is dependent upon legislative action and was therefore hindered by the ROK's majority party's loss of a majority in the April 26, 1988 National Assembly elections. Thus, delays in issuance of branch office licenses will be occasioned, perhaps, Mr. Gaughan advises, until early 1989.

On the issue of container terminals, Mr. Gaughan reports that both Sea-Land Service, Inc. ("Sea-Land") and American President Lines, Ltd. ("APL") have signed contracts for the use of the on-dock container freight station ("CFS") at the Port of Pusan, but notes that "the facility is still unused, due to the high rate charged for its use." Mr. Gaughan advises that U.S. carrier participation in developing *future* container facilities in Korea is being urged by DOT and DOS and this remains an open issue. Mr. Gaughan reports that Jin Nyum, Administrator of the Korea Maritime and Ports Administration ("KMPA") indicated his willingness to meet with foreign shipowners, a "departure from previous KMPA Administrators." No progress is said to have been made on trucking rights other than that ROK officials have "opened a dialogue" on the issue.

Mr. Gaughan concludes that there is now "a greater readiness on the part of Korea's maritime policymakers to resolve our concerns and move to a more amicable maritime relationship." He opines that no formal section 19 action is warranted at this time.

APL states that "litte progress has been made" in any of the areas of concern, but that this may be caused by "the intervention of the 1988 Olympics in Korea, the ongoing labor and civil strife, and the recent elections resulting in substantial realignment of political power. * * *" Noting that the fall session of the ROK National Assembly is scheduled for September through December, 1988, APL requests that interested parties be granted leave until January 30, 1989 to fill further comments in response to the March Notice.

Sea-Land also requests an extension of time to respond to the March Notice

in recognition of the fall assembly of the legislature; it suggests a new comment period ending November 15, 1988. Sea-Land reports greater progress than does APL, however, noting that discriminatory treatment as to the use of container yards and CFS facilities at Pusan "has ceased," and that "progress is being made" in other areas, particularly on the branch office issue. Sea-Land notes that continued progress and resolution are dependent upon legislative action.

Discussion

There have been conflicting reports on the degree of progress achieved to date on specific issues raised by this inquiry into the practices of the ROK affecting the ability of carriers to carry on ancillary maritime activities. *Some* progress has been made, according to Sea-Land and Mr. Gaughan, although not as much as was anticipated. APL reports much less movement.[1] Yet the commenting parties agree that a prompt resolution of these issues appears to have been impeded at least in part by political developments in Korea occurring since the March Notice.

The Commission is particularly mindful of the unanimity of the U.S. carriers—who are the only commercial interests commenting and who are among the few carriers operating in the Trade who are desirous of undertaking their own ancillary maritime activities—in requesting more time to comment and in *not* proposing any section 19 action by the Commission. Thus, the parties whose interests are being affected by the ROK laws and practices appear to be satisfied, not with the level of progress achieved to date, but with the legitimacy of the apparent reasons why previous commitments have not as yet been realized.

In light of these circumstances, the Commission has determined to grant the U.S.-flag carriers' requests, and to provide an additional opportunity to augment and update the responses received in the March Notice *and* to comment on the impact and effect of the ROK laws, rules and policies at issue. This action should not be taken as a determination by the Commission that section 19 action is unwarranted or insupportable at this time. The Commission is adopting the suggestion of the commenting parties that, as stated by Sea-Land, they would be "in a better position to provide the Commission with more definitive and conclusive responses to its Notice" following assembly of the legislature. To this end, the Commission shall extend the time for responses to the March Notice until January 30, 1989.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-19465 Filed 8-25-88; 8:45 am]

BILLING CODE 6730-01-M

[1] The U.S.-flag carriers do not addres the shortcomings in the record noted in the March Notice; *e.g.*, the lack of descriptions of the impact or costs of the ROK practices on affected carriers in the Trade.

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 29-30, 1988

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 29-30, 1988.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has continued to expand at a fairly vigorous pace. Growth in total nonfarm payroll employment moderated somewhat in April and May. The civilian unemployment rate rose to 5.6 percent in May, a level just below its average in the first quarter. Industrial production advanced considerably in April and May. Retail sales were little changed on balance over the two months after rising appreciably in the first quarter. Available data indicate that business capital spending has remained at the high level reached in the first quarter. Housing starts fell sharply in May, but other indicators suggested little change in the pace of recent housing activity. The nominal U.S. merchandise trade deficit declined substantially in April, as imports dropped sharply and exports were essentially unchanged. Most measures indicate that prices and wages have risen somewhat more rapidly in recent months. Prices of a broad range of commodities, particularly agricultural goods, have increased sharply in the past few weeks.

Short-term interest rates have risen since the Committee's meeting on May 17, while bond yields have moved lower. The trade-weighted foreign exchange value of the dollar in terms of the other G-10 currencies appreciated considerably over the intermeeting period.

Expansion of M2 and M3 slowed considerably in May and M1 was about unchanged, but data available for June suggested some pickup in monetary growth. From a fourth-quarter base, M2 and M3 have grown at rates in the upper portion of the ranges established by the Committee for 1988. Expansion in total domestic non-financial debt for the year thus far appears to be at a pace somewhat below that in 1987.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee reaffirmed at this meeting the ranges it had established in February for growth of 4 to 8 percent for both M2 and M3, measured from the fourth quarter of 1987 to the fourth quarter of 1988. The monitoring range for growth in total domestic nonfinancial debt was also maintained at 7 to 11 percent for the year.

For 1989, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1988 to the fourth quarter of 1989, of 3 to 7 percent for M2 and 3½ to 7½ percent for M3. The Committee set the associated monitoring range for growth in total domestic nonfinancial debt at 6½ to 10½ percent. It was understood that all these ranges were provisional and that they would be reviewed in early 1989 in the light of intervening developments.

With respect to M1, the Committee reaffirmed its decision in February not to establish a specific target for 1988 and also decided not to set a tentative range for 1989. The behavior of this aggregate will continue to be evaluated in the light of movements in its velocity, developments in the economy and financial markets, and the nature of emerging price pressures.

In the implementation of policy for the immediate future, the Committee seeks to increase slightly the existing degree of pressure on reserve positions. Taking account of indications of inflationary pressures, the strength of the business expansion, developments in foreign exchange and domestic financial markets, and the behavior of the monetary aggregates, somewhat greater reserve restraint would, or slightly lesser reserve restraint might, be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth in M2 and M3 over the period from June through September at annual rates of about 5½ and 7 percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 5 to 9 percent.

By order of the Federal Open Market Committee, August 22, 1988.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 88-19371 Filed 8-25-88; 8:45 am]

BILLING CODE 6210-01-M

[1] Copies of the Record of policy actions of the Committee for the meeting of June 29-30, 1988, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notification listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 9, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55408:

1. *George Klein Share of Family Trust* dated December 31, 1975, FBO Daniel Klein, to acquire 13.06 percent of the Common Stock; George Klein Share of Family Trust dated December 31, 1975, FBO Daniel Klein, to acquire 17.66 percent of the Class A Preferred Stock; George Klein Share of Family Trust dated December 31, 1975, FBO James Klein, to acquire 17.66 percent of the Class Preferred Stock; and George Klein Share of Family Trust dated December 31, 1975, FBO Alan Klein, to acquire 17.66 percent of the Class Preferred Stock of Klein Bancorporation, Inc., Chaska, Minnesota, and thereby indirectly acquire First National Bank in Montevideo, Montevideo, Minnesota; First National Bank of Waconia, Waconia, Minnesota; First National Bank of Chaska, Chaska, Minnesota; State Bank of Young America, Young America, Minnesota; The Klein National Bank of Madison, Madison, Minnesota; Victoria State Bank, Victoria, Minnesota; Oakley Holding Company, Buffalo, Minnesota; and Oakley National Bank, Buffalo, Minnesota.

Board of Governors of the Federal Reserve System, August 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19372 Filed 8-25-88; 8:45 am]

BILLING CODE 6210-01-M

First Bancorporation of Ohio; Proposed Acquisition of Federal Savings Bank

First Bancorporation of Ohio, Akron, Ohio, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire all of the voting shares of Peoples Federal Savings Bank ("Peoples"), Wooster, Ohio.

The board previously has determined by order that the operation of a thrift institution (including a federal savings bank) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See e.g., Citicorp,* 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation,* 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

In view of the request by the Federal Home Loan Bank Board that the Board act promptly on this application in light of the financial condition of Peoples, the comment period has been shortened to seven days.

Accordingly, comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2223, Eccles Building, 20th Street and Constitution Avenue, NW., Washington, DC 20551, not later than 5:00 p.m. on Thursday, September 1, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, August 24, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-19525 Filed 8-24-88; 3:02 pm]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following is submitted to OMB since the last list was published on August 12, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-966-2088 for copies of package.)

ACTION: The Health Care Financing Administration has submitted the following public information requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

NOTE: This is a correction to the notice published in the August 12, 1988 **Federal Register** on pg. 30471.

SUMMARY: On June 3, 1988, the final rule "Conditions for Intermediate Care for the Mentally Retarded, (42 CFR, Section 483 Subpart D) was published in the **Federal Register**". This rule revises and simplifies the content of regulations for intermediate care facilities for the mentally retarded and persons with related conditions and requires extensive change to the ICF/MR Survey Report From (HCFA-3070B). The revisions to the Survey Report Form will simplify and clarify Federal requirements while strengthening client health and safety. The effective date of these regulations is October 3, 1988. In view of the critical importance of the Survey Report Form to the implementation of the ICF/MR survey process and the considerable opportunity already extended to the public for comment, the OMB has approved expedited processing (30 days) for this information collection proposal. The following summarizes the information collection proposal submitted to OMB.

Type of Request: Revision

Originating Office: Health Care Financing Administration
Title of information collection: ICF/MF Survey Report
Form number: HCFA #3070B—Revised
Frequency: Annual
Respondents: State or local governments
Estimated number of responses: 4,315
Average hours per response: 3
Total estimated burden hours: 12,945
Additional Information or Comments: A copy of the proposed form and instructions are published herewith. Also attached are the survey procedures as contained in Appendix J, entitled, "Interpretive Guidelines and Survey Procedures". To obtain a copy of the interpretive guidelines contact Robert Harrison at (301) 966–6832. Comments and questions should be directed immediately to (OMB) Allison Herron (202) 395–7316 or for program information call (301) 966–2088.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Allison Herson.

Date: August 23, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

BILLING CODE 4150-04-M

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Part I

ICF/MR Survey Report

7. State Region Code | 8. State/County Code

1. Name of ICF/MR

2. Street Address

3. City and/or County, State, Zip

4. Medicaid Provider #

5. Name of CEO 6. Telephone #

9. Dates of Survey (Begin/End)

10. Type of Ownership or Control: (Check one)

- [ ] A. Private (Non Profit)
- [ ] B. Private (Proprietary)
- [ ] C. State
- [ ] D. City/Town
- [ ] E. County
- [ ] F. City-County
- [ ] G. Other # H. (Specify:)

11. Is this ICF/MR a distinct part of a Hospital, SNF or ICF? (Check one) [ ] Y [ ] N

12. If "YES", indicate the Hospital Provider #, SNF Provider #, or ICF Provider #:

13. FACILITY DATA

A.	Is this ICF/MR a residential unit within a larger organization or agency in the State that provides residential services to persons with mental retardation? (Check one) If no, proceed to Item G.	[ ] Y [ ] N
B.	If "YES", indicate: Name of organization:	
	Address of Organization:	
D.	Name of CEO of organization:	
E.	Total # of beds (bed capacity) of the larger organization:	
F.	Total # of clients (including ICF/MR clients) served by the organization:	
G.	Is this ICF/MR the only residence/residential unit at the address stated in W #2 (above)? (Check one)	[ ] Y [ ] N
H.	Is this ICF/MR the only resident/residential unit in the building at the address stated in W #2 (above)? (Check one)	[ ] Y [ ] N
I.	Total # of ICF/MR beds under this Provider #:	
J.	Total # of discreet living units under this Provider #:	

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K.	Median age of clients served under this Provider #:
L.	Age range of clients served:
M.	Total # of off-campus day program sites used by ICF/MR clients.

14. SURVEY TEAM COMPOSITION

(Col. #1): Indicate the number of disciplines represented on the survey team.
(Col. #2): Indicate the number of surveyors represented on the survey team who also qualify as a QMRP? Indicate Name(s) and Title(s) of Surveyors on last page of this form.

		(1)	(2)			(1)	(2)
A.	Administrator			H.	LSC Specialist		
B.	Nurse			I.	Laboratorian		
C.	Dietitian			J.	Sanitarian		
D.	Pharmacist			K.	Therapist		
E.	Records Administrator			L.	Physician		
F.	Social Worker			M.	Psychologist		
G.	(Not Applicable)	///	///	N.	Other O. (Specify)		

P.	Total # of surveyors onsite:		Q.	Total # of QMRP surveyors onsite:

15. STAFFING

List the full time equivalents who function in this capacity:

A.	Direct Care Personnel (483.430(d)(3)	.		
B.	Registered Nurse (483.460(d)(3)	.	C.	Licensed Voc/Practical Nurse (483.460(d)(2)) /
D.	Total Personnel (List the Full Time Equivalents):			

16. OFF-CAMPUS DAY PROGRAMS

A.	How many clients of the sample attend off-campus day programs?
B.	In how many off-campus day program sites was an observation done by the surveyor?

17.
18.
19.
20.

NOTE
disa

CLIENT CHARACTERISTICS

	AGE Under 22	22-45	46-65	66+	TOTAL #	TOTAL %
17. SEX						
A. Male						
B. Female						
18. Total:						100%
19. DISABILITIES:						
A. Mental Retardation (Total)						
1. Mild						
2. Moderate						
3. Severe						
4. Profound						
B. Autism						
C. Cerebral Palsy						
D. Epilepsy (Total)						
1. Controlled						
2. Uncontrolled						
20. OTHER DISABILITIES:						
A. Nonambulatory (Total)						
1. Mobile						
2. Non-Mobile						
B. Speech/Language Impairment (Total)						
C. Hearing Impairment (Total)						
1. Hard of Hearing						
2. Deaf						

NOTE: The total numbers may exceed the facility's population because some clients have multiple disabilities.

PAGE 2 OF CLIENT CHARACTERISTICS

	AGE Under 22	22-45	46-65	66 +	TOTAL #	%
D. Visual Impairment (Total)						
1. Impaired						
2. Blind						
21. Medical Care Plan						
22. Drugs to Control Behavior						
23. Restraints						
24. Time Out Rooms						
25. Application of Painful or Noxious Stimuli						
26. # Attending Off-Campus Day Programs						
27. # of Court Ordered Admissions						
28. Number of Clients Over Age 18 with a Legal Guardian Assigned by the Court.						
29. Other (Specify):						
A. _____						
B. _____						
C. _____						

NOTE: The total numbers may exceed the facility's population because some clients have multiple disabilities.

The ICF/MR Survey Report Form (SRF)
HCFA #3070B - Revised

PART 1: DEMOGRAPHIC DATA (required form)

Purpose: Cover sheet for the ICF/MR SRF which will summarize data relative to: facility characteristics; description of the client population served; special needs represented by that population; and essential characteristics of the survey conducted. Portions of this information will be entered into the Medicare-Medicaid Automated Certification System (MMACS) and will be used to review trends about the ICF/MR program nationwide.

General Instructions:

1. Complete all portions of this form.
2. If a number is requested (e.g., # of beds, # of clients), and the answer is NONE or ZERO, please enter a "0" in the space provided.
3. If a box is provided to "check one" of the answers provided, enter a " " (check mark).
4. The symbol "Y" means "Yes" and "N" means "No".
5. The symbol "#" means "Number".
6. Abbreviations used: "CEO" means Chief Executive Officer; "QMRP" means Qualified Mental Retardation Professional"; "MR" means mental retardation.
7. Regulatory references included on the form refer to regulations found in the Code of Federal Regulations, and refer to regulations applicable to ICFs/MR.
8. Review all portions of the form for accuracy.

Specific Instructions:

Blocks 1-8, 11-12:	Enter identifying data, as requested.
Block 9	Enter the dates of the first and last days of the survey (regardless if there is a break in survey days).
Block 10 (A-G):	Check which category best applies.
" (H):	If none of the above describes the facility, specify the type that does.
Block 13 (A):	A "Yes" indicates that the CEO directs the activities of the ICF/MR, but also directs the activities of another residential services program (e.g. another ICF/MR; another Medicare/Medicaid Provider that serves persons with MR regardless of funding source). A "No" indicates that the CEO of the ICF/MR does not direct the activity of any other residential services program for persons with MR
Blocks 13 (B-D):	If "Yes" was indicated for 13A, identify the name, address and CEO of the larger organization or agency (could be the same information for the ICF/MR.)
Block 13 (E):	Enter the total bed capacity of all residential services directed by the CEO (including the ICF/MR bed capacity.)
Block 13 (F):	Enter the total # of clients residing in the beds described in Block 13E (including ICF/MR clients).

Block 13 (G):	A "Yes" indicates that there is no other bed capacity (beyond that of the ICF/MR covered under this provider #) at the address stated at W#2. A "No" indicates that there is other bed capacity to provide residential services to persons with MR at the address stated at W#2 (e.g., the organization or agency operates: another ICF/MR on the grounds or campus; operates another Medicare/Medicaid provider on the campus; operates beds for residential services that are not certified).
Block 13 (H):	A "Yes" indicates that: there is only one building (e.g., a house or apartment bldg.) at the address in W#2; the ICF/MR is the sole occupant that provides residential services to people with MR; and the bldg. is "community-based" into the surrounding neighborhood. A "No" indicates that: the ICF/MR encompasses several buildings; there are other special residential programs for persons (e.g. mentally ill, juvenile offenders, etc.) operated in the same bldg. as the ICF/MR.
Block 13 (I):	Enter the #, as requested.
Block 13 (J):	Enter the total # of discrete units. If the ICF/MR encompasses several bldgs, count the # of discrete living units within each bldg.
Block 13 (K):	To calculate this #: list each client served, in order of youngest client to oldest client; identify the client who is exactly one half (1/2) the way, down the list (i.e, the 50% ile); enter the age represented by that client into the space provided.
Block 13 (L):	List the ages of the youngest and oldest clients.
Block 13 (M):	Each day program site included in this number should be located off the grounds or campus of the ICF/MR. Any client going to this program should be scheduled to attend the program regularly (at least 3 hrs./day (2-5 days/wk.). If the day program provides 2 or more programs at the same address, for purposes of this item, that day program should be considered one site.
Block 14 (A-F): (H-N)	(Col. 1): Enter the # of disciplines that best describe the survey team's composition. If a surveyor has multiple areas of expertise (e.g. a nurse surveyor who may also be a dietitian), then each discipline of expertise should be included. (Col. 2) Enter the # of disciplines represented on the team which also qualified as a QMRP (as per §483.430(a)(1)(2)(i)-(iii) and §483.430(b)(5) of the ICF/MR COPs).
Block 14 (O):	Specify the discipline, if not described in 14(A-N) above.
Block 14 (P):	Enter the # (regardless of multiple expertise).
Block 14 (Q):	Enter the # (regardless of multiple expertise).

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Block 15 (A-D):	Enter the full time equivalents (FTEs) for each category listed. For 15A, include only those staff who provide direct care services to clients on their living units. Include direct care superivsors only if they are also responsible to provide direct care as part of their duties (see §483.430(d). For 15D, include all personnel, including the # of direct care & licensed nursing personnel. To determine FTEs: add the total # of hrs. worked the week prior to the survey by all employees identified in each category of 15 (A-D); divide this # by the # of hrs. in the standard work week. Express FTEs to the nearest quarter decimal (e.g., ".00", ".25", ".50", and ".75").
Block 16 (A):	Enter the # of these clients represented in the total sample (the Representative Sample of Clients and any other persons added to the sample for other reasons).
Block 16 (B):	Enter the # of sites visited, in which a Client Observation was completed.
Block 17-26:	CLIENT CHARACTERISTICS: Use the last date of the survey as the date by which age is determined. The term "Total #" refers to the # of ICF/MR clients fitting the characteristic listed. The term "%", refers to the percentage that that client characteristic represents within the total ICF/MR population.
Blocks 17 (A-B):	Enter the # of clients by sex, within each age group; the total.
Block 18:	Enter the # of clients within each age group, and the total. The total should equal the #s entered in 17 (A-B).
Blocks 19 (A-C): 20 (A-D):	Enter the # of clients by each characteristic requested; and the total.

Individuals with more than one disability are to be counted in every column that applies to them.

Use the following definitions:
Autism is a diagnosis whereby the individual exhibits: extreme forms of self-injurious, repetitive, aggressive, or withdrawal behaviors; extremely inadequate social relationships; or extreme language disturbances.
Cerebral Palsy is a diagnosed condition whereby: gross and fine movements and speech clarity of the individual may be impaired but performance of activities of daily living is functional; or, the individual is unable to perform adequately activities of daily living such as walking, using hands, or using speech for communication.
Mental retardation levels (mild, moderate, severe, and profound) are as described in the American Association on Mental Retardation's Manual on Terminology and Classification in Mental Retardation.
Nonambulatory means unable to walk independently.
Mobile nonambulatory means unable to walk independently, but able to move from place to place with the use of such devices as walkers, crutches, wheelchairs, and wheeled platforms.
Nonmobile means unable to move from place to place.
Epilepsy means a nervous disorder characterized by seizures of motor and sensory movements.

	Hard of hearing means able to understand speech even with amplification. Impaired vision means acuity of 20/70 or less in the better eye with correction. Blind means corrected acuity of 20/200 or less in the better eye or visual field of 20 degrees or less.
Blocks 21-27:	Enter the total # of ICF/MR clients who have the following care needs or characteristics and their %: Medical Care Plan (§483.450(a)(2)); Drugs to Control Behavior (§483.450(b)(1)(iv)(C)); Restraints (§483.450 (b)(1)(iv)(B); Time out rooms (§483.450(b)(1)(iv)(A); Application of Painful or Noxious Stimuli (§483.450(b)(1)(iv)(D)); Attend Off-Campus Day Programs; Court ordered admissions; and the # over age 18 with a legally appointed guardian.
Blocks 29 (A-C):	If the facility or the surveyors believe that a particular client or program characteristic that describes the population, has not been requested on this form, identify this "other" type of client characteristic, programs provided, etc., in the space provided. Enter the total #s of clients having this characteristic by age groups, total and %.

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Part 2

Name of Facility:_____ Page 1 of _____

REPORT OF ICF/MR DEFICIENCIES

Instructions: Evaluate each of the discrete requirements identified in the ICF/MR Interpretive Guidelines, (Appendix "J" to the SOM). For each identified deficiency:

a. In the first column, identify the data tag number;
b. In the second column, write the standard number. If it is a Condition of Participation, enter "CoP" below the standard number.
c. Describe the findings and evidence in the "Comments" column.
d. Draw horizontal lines to separate identified tag numbers.
e. Use as many continuation sheets as needed.
f. Each surveyor must sign the certifying statement on the last page.

DEFICIENCIES		
TAG #	CoP/STND	COMMENTS

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Continuation Sheet

Name of Facility:_____ Page ___ of ___

DEFICIENCIES		COMMENTS
TAG #	CoP/STND	

Name

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Name of Facility:_____ Page ___ of ___

DEFICIENCIES		COMMENTS
TAG #	CoP/STND	

For Certification Survey: I certify that I have reviewed each ICF/MR Condition of Participation and related standard(s) and unless indicated on this form, the facility was found to be in compliance with the standard and/or the Condition of Participation.

Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____

For Resurvey: For the purpose of a resurvey, I certify that I have reviewed each Condition of Participation and related standard(s) found not to be in compliance during the survey on _____ and unless indicated on this form, the facility was found to be in compliance with the standard and/or the Condition of Participation.

Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
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Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____
Signature:_____ Title:_____ Date:_____

8312C

Part 3

CLIENT OBSERVATION WORKSHEET

Name of Facility: Date:

Location/Start: Finish:

Time/Start: Finish:

Surveyor:

Client Codes:

Column 1	Column 2
Time	OBSERVATION

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Part 3

CLIENT OBSERVATION WORKSHEET

Purpose: A worksheet to record observations.

General Instructions: Complete form for each observation.

Heading: Enter requested names, locations, codes, times and dates. Enter "client codes" only if clients in the sample are present.

Column 1 - Time: Space for entering time of descrete observation or consecutive time intervals.

Column 2 - Observation: The following types of observations should be included for each observation: number of clients; number of staff; and activity in progress.

APPENDIX J

INTERPRETIVE GUIDELINES AND SURVEY PROCEDURES

INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

Rev

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Survey Procedures for Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)

I. Introduction
II. Principal Focus of Surveys
III. Task 1 - Representative Sample of Clients-Selection Methodology
IV. Task 2 - Record Review of Clients in the Sample
V. Task 3 - Direct Client Observations
VI. Task 4 - Interviews
VII. Task 5 - Drug Pass Observation
VIII. Task 6 - Visit to Each Area of the Facility Serving Certified Clients
IX. Task 7 - Team Assessment of Compliance and Formation of the Report of ICF/MR Deficiencies
X. Additional Survey Report Documentation (For the File)

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INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

SURVEYOR PROCEDURES FOR CONDUCTING SURVEYS OF ICFs/MR

I. INTRODUCTION

Since a facility may claim reimbursement only for the cost of care of clients classified for the ICF/MR level of care who are receiving active treatment, determine facility compliance with Conditions of Participation and with standards in the context of individual client experiences within the facility. Thus, when performing certification surveys to assess facility compliance, assess whether individuals are receiving needed active treatment services.

Approximately one-third of the ICF/MR facility regulations in 42 CFR 483, Subpart D, contain requirements about the development and implementation of active treatment services and the sufficiency and adequacy of staff to deliver them. These requirements are, in effect, detailed statements of what active treatment incorporates although their applicability varies depending on the needs of each individual client.

The definition of "active treatment in intermediate care facilities for the mentally retarded" in 42 CFR 435.1009 refers to treatment that meets the requirements specified in the standard for active treatment 42 CFR 483.440(a). The five components of the active treatment process most relevant to this survey methodology are:

A. Comprehensive Functional Assessment (42 CFR 483.440(c)(3)).--The client's interdisciplinary team must produce accurate, comprehensive functional assessment data that identify all of the clients: presenting problems and disabilities, and when possible their causes; specific developmental strengths; specific developmental and behavioral management needs; and need for services without regard to availability of those services.

B. Individual Program Plan (IPP) (42 CFR 483.440(c)(4)).--The client's interdisciplinary team must prepare an IPP for each client which identifies: the discrete, measurable, criteria-based objectives the client is to achieve; the timetables for expected mastery; and the specific individualized program of specialized and generic strategies and techniques to be employed. The IPP must be directed toward--the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and the prevention or deceleration of regression or loss of current optimal functional status.

C. Program Implementation (42 CFR 483.440(d)).--Each client must receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of IPP objectives.

D. Program Documentation (42 CFR 483.440(e)).--Accurate, systematic, behaviorally stated data about the client's performance toward meeting the criteria stated in IPP objectives serves as the basis for changes and revisions to the program, whenever necessary.

E. Program Monitoring and Change (42 CFR 483.440(f)).--At least annually, the comprehensive functional assessment of each client is reviewed by the client's interdisciplinary team for relevancy and updated, as needed and the IPP is revised, as appropriate.

The pages which follow describe how you should select a representative sample of client cases, conduct interviews and client observations in order to enable you to assess active treatment. No forms are required, however an optional client observation form is available to report on this specific activity. Instead, employ your findings, impressions and assessments of specific cases to develop summary assessments of the facility's compliance with each of the active treatment requirements in this Appendix. The individual case findings enable you to state by reference to actual instances what you find the facility does or does not do concerning each active treatment standard. In completing the Survey Report (HCFA 3070B) and the Statement of Deficiencies (HCFA 2567), you may cite what you have found the facility actually doing or not doing to furnish active treatment. Instructions for summarizing additional survey report data for the official file about observations and interviews conducted throughout the survey are included in Section X of this Appendix.

II. PRINCIPAL FOCUS OF SURVEYS

The principal focus of ICF/MR surveys should be on the "outcome" of the facility's implementation of ICF/MR requirements. In other words, surveyors should direct their principal attention to what actually happens for clients: how competently and effectively staff interact with clients, how physically well clients are, and how clean and pleasant the physical surroundings are.

In each ICF/MR survey, the surveyor should observe the following priorities:

A. Assess the delivery of active treatment services (including the comprehensive functional client assessment, interdisciplinary team program planning, individual program plan (IPP) implementation, documentation of each client's data-based responses to programs, and staff training necessary to implement client objectives) as outlined in this instruction. This ranks as the principal focus of the survey;

B. Assess client health care, nutrition, and protections (e.g., client rights, use of restraints, medications, fire safety);

C. Assess physical environment issues generally, with detailed surveys in areas where apparent problems exist.

III. TASK 1 - REPRESENTATIVE SAMPLE OF CLIENTS -- SELECTION METHODOLOGY

A. Purpose of the Sample.--The purpose of drawing a sample of clients from the facility is to reflect a proportionate representation of clients by the four functional levels (mild, moderate, severe, and profound mental retardation) as defined by the American Association on Mental Deficiency, Classification in Mental Retardation.

Since the sampling process results in survey team judgements, rather than quantitative, criteria-based projections, this process is not designed to be a statistically valid sample. The method to be followed should be applied with flexibility based on the prevailing developmental strengths and needs presented by the clients served by the facility. A statistically valid sample would not accommodate this need.

While the clients in the sample will be targeted for observation and interview, surveyors are to conduct each program audit of the client within the context of each of the environments in which the client lives, works, and spends major leisure time. Although, the surveyor focuses on the client, the behavior and interactions of all other clients and staff within those environments also contribute to the total context and conditions for active treatment. Therefore, other clients are included in the overall sample, as well.

As the sample is built, additional information about the facility's services and special client needs may emerge. If it is found that a disproportionate number of disabilities or needs are present within the facility's clients, it may be necessary to adjust or add to the program audit sample to ensure that the appropriate care and services are surveyed.

For example, if it is discovered that a significant percentage of individuals are non-ambulatory, and this characteristic has not been represented in the sample, additional clients should be added. Likewise, if during the course of observing Client A (a member of the sample), it is noted that Client B (who was not targeted for the sample) engages in a particular problematic behavior for which staff have not provided appropriate intervention, Client B should be added to the sample in order to probe further if needs are being addressed. The surveyor is left free by this methodology to add to the sample on a problem-oriented basis, or as dictated by client needs.

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B. Sample Size.--Calculate the size of the sample according to the following guidance :

Number of Clients in Facility	Number of Clients in Sample
Up to 16 ICF/MR clients	4
17 - 50 clients	8
51 - 100 clients	10
101 - 500 clients	10 percent
Over 500 clients	50

C. Sample Selection.--Do not allow the facility staff to select the sample.

o Facilities Serving 100 or fewer clients.--Draw a sample that evenly distributes the clients among buildings and functioning levels. This can usually be done by asking the staff to provide a full list of the clients with building location and functional level and simply choosing names.

o Facilities with over 100 clients.--:

1. Request a listing of all clients by overall functional (cognitive and adaptive) level (e.g., mild, moderate, severe, profound) and building location.

2. Determine the number of clients to be drawn based on the total clients from Section III A.

3. Determine the percentage occurrence of each functional level in the overall population (e.g., 12 percent mild; 24 percent moderate; 63 percent severe).

4. Determine the number of clients to be drawn in each functional category (for example, if the sample size is to be 50, and 12 percent of the clients have mild mental retardation, then 50 X .12 = 6 clients to be drawn in the sample who have mild mental retardation).

5. Draw the sample for each functional category. (Assume there are 60 with mild mental retardation, and 6 are to be sampled. Then divide 60 by 6 = 10, and every tenth client is drawn.) The interval of selection will vary with each functional category because there will be a different percentage occurrence at each functional level. Thus, assuming there are 16 clients with severe mental retardation and 4 are to be sampled, draw every fourth client name from the list of clients with severe mental retardation.

6. Locate each of the selected clients' living units on a map of the campus to see if too many clients are concentrated in too few buildings. To provide a comprehensive look at the facility, drop some clients and add others in other buildings for a better distribution, but each client replacing an originally selected client must be of the same functional level.

D. Alternate Sampling Procedure.--Additional clients can be added to the sample for whatever reasons you feel important. In the rare situation in which the facility might be unable to produce the necessary data on which to draw the sample, the facility should draw a random sample, to the maximum extent possible, and supplement as described above.

E. Program Audit Approach.--To maximize the advantage of an interdisciplinary survey team, each member of the team is to be assigned an equitable number of clients from various living units (not from the same buildings) on which to focus during the survey. For each client, all applicable ICF/MR Conditions of Participation are to be assessed based on the client's need for that particular service to be provided, including but not limited to: active treatment. special behavior shaping strategies, health care, pharmacy services, dietary, etc. Each member of the team should share with each other salient data about findings relative to their assigned clients. Survey members should consult with one another on a regular basis during the survey, as necessary to maximize sharing of knowledge and competencies.

IV. TASK 2 - RECORD REVIEW OF CLIENTS IN THE SAMPLE

A. Introduction.--Do not spend an excessive amount of time looking at fine details of material in the record review of the selected sample. The purpose is to determine what the facility has committed itself to do for the client during the current IPP period and whether the IPP is being carried out. On the average, 30 - 45 minutes is ample time to review each record using the criteria above.

While the sample size and composition should be maintained, it is acceptable to review fewer numbers of client records (particularly with larger samples) if it is found that client records are highly similar and that the records reveal -- at least on paper -- that the comprehensive functional assessment, objectives, and services are being conducted and provided. However, if record reviews reveal serious problems and deficiencies, review the full sample.

B. The Individual Program Plan (IPP).--Identify the developmental, behavioral, and health objectives the facility has committed itself to accomplish during the current IPP period. Identify what, if any, behavioral strategies (e.g., behavior modification programs, use of psychotropics) are being used with clients.

C. The Comprehensive Functional Assessment.--Identify the evaluative material (e.g., functional, standardized, and anecdotal assessments) from which the objectives are derived and determine whether the objectives adequately reflect the client's developmental strengths, needs, and need for services, regardless of availability. Determine what, if any, health or other problems might interfere with participation in program services.

D. Data Collection.--Compare the individual's data-based progress to the criteria specified in IPP objectives. Be especially sensitive to the types and amounts of data gathered and determine if they accurately reflect client performance. If the record does not reflect client progress, ask if staff know how clients are performing against the stated objectives. This type of finding is a critical part of the overall data used to make a decision about whether active treatment is being delivered.

E. Performing the Drug Regimen Review.--The purpose of the drug regimen review is to determine if the pharmacist has reviewed the drug regimen on a quarterly basis. Follow Part One of Appendix N, Surveyor Procedures for Pharmaceutical Requirements in Long Term Care Facilities. Fill in the appropriate boxes on the top left hand corner of the reverse side of the OIRR worksheet (HCFA-522). Appendix N lists many apparent drug irregularities that can occur. Learn these apparent irregularities so that you can identify pertinent drug therapy problems when you are reviewing the client's record. Review at least six different indicators on each survey. However, the same six indicators need not be reviewed on each survey.

NOTE If you detect irregularities and the documentation demonstrates that the pharmacist has notified the attending physician, do not cite a deficiency. Bring the irregularity to the attention of the physician or other facility official. Note the official's name and date of notification in the surveyor's notes.

F. Other Salient Information.--Early in the survey, review accident and incident logs and reports for any evidence that suggests clients are being abused, abusing each other, or are vulnerable to abuse and injury. If you discern patterns in these logs and reports that suggest abuse, follow up on the status and condition of these clients. Data that can be derived from an examination of these reports is important to cite in the event you find an immediate and serious threat to client health and safety. Use the Interpretive Guidelines and Additional Data Probes in this Appendix at §483.420(a)(5) for further guidance.

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V. TASK 3 - DIRECT CLIENT OBSERVATIONS

A. Purpose.--The objective of client observations is to determine if the necessary relationship between what the IPP says and what staff know and do with clients in both formal and informal settings throughout the day and evening is actually made. Thus, surveyors must be present when clients are present. Observe the individual sampled clients (at least one time in their home environment and once in their day programs). Be as neutral and unobtrusive as possible during all observations. To the extent possible, observe clients receiving programming in locations that are difficult to get to (e.g. off-campus, county school programs, etc.). Surveyors are to visit as many of these programs as possible. Early morning observations (wake up, toileting, etc.) and late afternoon and evening observations (e.g., dinner, evening activities, bathing -- 8:30 - 9:00 p.m.) are absolutely essential. Survey teams can conduct observations over this full timespan by altering the work day for various members (e.g., some work from 6:30 a.m. to 3:00 p.m., while others work from 1:00 p.m. to 9:30 p.m.), or by accumulating compensatory time. It is not appropriate to ask the facility to prevent clients from attending day programming or work or to call clients back simply to prevent surveyors from having to work at other than regular work times in order to see clients during the survey.

Surveyors should schedule their time so that they can observe special training programs addressed in the IPP that are critical to the clients' development. It is important to use observations to determine if client training is carried out consistently at all appropriate times through out the day (continuous active treatment). Observations of clients at meal times, communication with staff, toilet training, behavior interventions, etc. should reflect a consistent pattern of interaction with the client and demonstrate to the surveyor the staff's knowledge of the client and the clients' IPP. Observations should also be made of client training programs not represented by clients in the sample. See Section IX, for further guidance.

When observing clients in any of their day programs (including off-campus day programs), ascertain whether clients come to programs appropriately dressed (do they dress differently from clients living in their own home?), are their lunches adequate, are day program staff knowledgable about medications that clients are taking and what are the possible side effects. This is also a good time to determine if the client is learning skills in the day programs, such as cooking, communication skills, etc., which the client should be encouraged to practice in the home environment.

B. Documentation.--A record should be made of all observations conducted by the surveyor. There are several methods for observing clients, (e.g., consecutive time intervals, focused observations of training, etc.) The optional client observations form (HCFA) may be used for this purpose. If the surveyor's behavior or presence has disrupted the activity being observed, wait five minutes before recording the observation. The following information should be recorded for each observation:

A. Date and location of observation (beginning and ending)
B. Time of each observation
C. Number of clients in area
D. Number of staff present
E. What activity was in progress
F. What materials were used
G. What clients are doing (regardless of whether or not a scheduled activity was in progress)
H. If possible, determination if IPP is being followed
I. Client's level of engagement in the activity
J. Presence of maladaptive behavior, and staff intervention, if any
K. Any other salient information observed

C. Summary Judgement.--At the end of each observation, the surveyor should review the data probes identified in this Appendix at §483.440(a) regarding the competency of the interactions just observed. Record this information on the Optional Client Observations Worksheet (HCFA) or in the surveyor's notes.

VI. TASK 4 - INTERVIEWS

Interviews are conducted to secure information about compliance and only to the extent that further information, necessary to make compliance decisions, is not available through client observations. Interviews are conducted as part of the program audit approach and start with the client and the people most closely associated with the client's daily program implementation. Use the following hierarchy of "sources," to the maximum extent possible:

A. Client
B. Families or Legal Guardians
C. Direct care staff
D. QMRP and/or Professional staff
E. Managers, Administrators, or Department Heads

In the absence of finding appropriate IPP implementation during observations, it may be necessary to judge whether or not staff are knowledgeable about client objectives and techniques for program implementation. Interview all levels of staff, optimally during the period of time immediately following the interval in which the client was observed with the particular staff member. (For example, if you have just observed Client A engaging in stereotypical behaviors referenced in Client A's IPP, ask: "Can you tell me what the behavior program is for Client A?") Ask questions that elicit information about how staff learn what to do with clients across the spectrum of caregiving and programming tasks they are expected to perform. Ask professional staff the same kinds of questions to see if they know how to implement programs for a client other than their own (e.g., how to carry through with a behavior program in the midst of communications training).

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Ascertain whether the staff persons are competent to carry out the client's IPP, whether there is evidence that programs are in fact being carried out over the clients' waking hours, and whether data are being taken to account for client performance against objectives. If staff cannot demonstrate the skills necessary to implement client programs, if plans are not being carried out, or if poor data or no data are being taken, then you have additional evidence that active treatment is not being delivered.

Record each interview conducted by the surveyor with clients, staff, consultants, off-grounds day program staff, client's guardian, etc. Include the following information in your notes for each interview:

A. Job title and assignment at the ICF/MR
B. Relationship to the client or reason for the interview
C. Summary of the information obtained from the interview.

VII. TASK 5 - DRUG PASS OBSERVATION

The purpose of the drug pass observation is to observe the preparation and administration of medications to clients. With this approach, there is no doubt that the errors detected, if any, are errors in drug administration, not documentation. Follow the procedure in Part Two of Appendix N, Surveyor Procedures for Pharmaceutical Service Requirements in Long-Term Care Facilities, and complete the Drug Pass Worksheet (HCFA 522). Be as neutral and unobtrusive as possible during the drug pass observation. Whenever possible, select one surveyor to observe the drug pass of approximately 20 clients. In facilities where fewer than 20 clients are receiving medications, review as many clients receiving medications as possible. Clients selected for the in-depth review need not be included in the group chosen for the drug pass; however, their whole or partial inclusion is acceptable. In order to get a balanced view of a facility's practice, observe more than one person administering a drug pass, if feasible. This might involve observing the morning pass one day in one living unit, for example, and the morning pass the next day in another living unit.

If the facility's medication error rate (including both significant and nonsignificant errors) is 5 percent or more, or if you observe the occurrence of one significant error, this is evidence for deficiency under the Drug Administration Standard Section §483.460(k)(2). Transfer findings of deficiency noted on the "Drug Pass" worksheet and report the error rate under W368 on the SRF.

VIII. TASK 6 - VISIT TO EACH AREA OF THE FACILITY SERVING CERTIFIED CLIENTS

A. Purpose.--By the end of the survey, the team must have visited each area of the facility serving certified clients in order to:

- o Insure that all areas of the facility (including those which are not represented by clients in the sample) are providing services in the manner required by the regulations
- o Assess physical environment requirements.
- o Assess that client rights are proactively asserted and protected.

B. Protocol.--After clients in the sample have been assigned to team members, review a map or building layout of the facility. Assign team members to visit each remaining residential and day program site prior to completion of the survey. Insure that each area of the facility has been visited by at least one team member. This visit may be done with or without facility staff accompanying you, as you prefer, and subject to their availability. Record your observations in your surveyor notes

Converse with clients, family members/significant others (if present), and staff, asking open-ended questions in order to confirm observations, obtain additional information, or corroborate information, e.g., accidents, odors, apparent inappropriate dress, adequacy and appropriateness of training activities. Observe staff interactions with other staff members as well as with clients for insight into matters such as client rights and staff responsibilities.

Always get permission before entering a room. If it is necessary to observe a treatment procedure, or to observe a client who is exposed, courteously ask permission from the client if she/he comprehends, or ask permission from the staff if the client cannot communicate. If you have an opportunity to observe a training activity, regardless of whether or not there is a client present from the sample, follow instructions listed in Section V. for recording observation findings.

IX. TASK 7 - TEAM ASSESSMENT OF COMPLIANCE AND FORMING THE DEFICIENCY STATEMENT

A. General.--The Survey Report Form will contain information about all negative findings of the survey. Transfer to the Survey Report Form all examples of evidence obtained from your observations, interviews, record reviews, drug pass observation, as well as salient data obtained from visiting remaining areas of the facility. Transfer only those findings which could possibly contribute to a determination that the facility is deficient in a certain area.

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Meet as an entire team in a pre-exit conference to discuss the findings and make conclusions about the deficiencies, subject to additional information provided by facility officials. Review the summaries/conclusions from each task and decide whether further information and/or documentation is necessary to substantiate a deficiency. Ask the facility for additional information or clarification about particular findings, if necessary. Always consider information provided by the facility. If the facility considers as acceptable practices which you believe are not, have it backup its contention with suitable reference material or sources and submit them for your consideration.

B. Analysis.--Analyze the team's findings relative to each requirement for the degree of severity, frequency of occurrence and impact on delivery of active treatment or quality of life. The threshold at which the frequency of occurrences amounts to a deficiency varies from situation to situation. One occurrence directly related to a life-threatening or fatal outcome can be cited as a deficiency. On the other hand, a few sporadic occurrences may have so slight an impact on delivery of active treatment or quality of life that they do not warrant a deficiency citation.

C. Additional Indicators for Determining Compliance with Active Treatment.--

- o Appropriateness of Client Objectives.--If it can be identified in the record and in observation that the facility is focusing effectively and consistently on prioritized objectives for the clients in the sample, this indicates that the facility is at least trying to reach the needs of individual clients with individual programs. If you do not find a clear and consistent relationship between designated objectives and patterns of active treatment provided, look more intensely at professional services, staff shortages, in-service training, information management and dissemination systems, and administrative coordination activities. This does not mean that a client should have a specific number of objectives. What is important is that the objectives in the IPP, regardless of number, are well developed, rationalized, etc. and that the objectives evolve from comprehensive functional assessment data. For example, if a client is so severely behaviorally disordered as to be precluded from other programming, a principle objective to begin reduction of the maladaptive behavior may be appropriate, with other, positive program objectives added as the client responds to the single behavioral objective.

- o Adequacy of Behavior Management Approach.--If large numbers of clients are observed to be engaged in self-stimulatory, aggressive, and/or withdrawn behaviors and the direct care staff either do not know what to do or

the program they follow is not working, you may find that the client behaviors are interfering and limiting the availability of that client for learning, and the facility needs a systematic, aggressive approach to behavior management. Staff training issues, which are usually a major part of the breakdown in this area, constitute a major deficiency area that can be cited under numerous data tags (e.g, staff training, the IPP, management of inappropriate client behavior, program monitoring and change, active treatment).

- o Relatedness of Client Programs to Objectives.--Large numbers of clients whose programming consists of working puzzles, assembling nuts and bolts (and other similar assembly tasks), and "structured leisure," or other such terms, should prompt you to question what the developmental outcome of these activities is intended to be. Typically, these types of activities are simply "make-work" and are not developmentally targeted to meet an individual need. Often these same clients will have major self-care, communications, perceptual-motor, and behavioral needs that are not being attended to. Because a facility provides daytime activity does not mean that active treatment as required by the ICF/MR program is being provided.

- o Environmental Impediments to Active Treatment.--Building design, noise levels, light intensity, temperature and humidity may all have a direct and major impact on the behavior of the clients (and staff) and the ability of the facility to provide active treatment and the client to respond to it. Many times client behavior is induced by the overall ecology of the environment. If you feel the building is too noisy, too bright, etc., these points can be used as supportive documentation that the "active treatment" requirements for the facility are not met.

- o Appropriateness and Sensitivity of Staff Behavior.--Staff behavior toward clients affects in a major way how clients behave in return. In many instances, apparently inappropriate client behaviors are in fact adaptive considering how the staff behaves. You should see staff treating clients with respect, dignity, consistency, and individuality. Staff training inadequacies are often most evident in this area.

- o Adequacy of Staff.--Insufficient direct care and professional staffs can affect how well the facility addresses client needs across the developmental, behavioral and health spectrum. Do not attempt to determine how many additional professional staff persons would be satisfactory, or direct care staff persons if at least the minimum direct care staff ratios are met. If minimum direct care staff ratios are not met, specify how many are necessary to meet minimum required ratios. The facility is responsible for providing clients with needed services; how they meet that responsibility is up to the facility, not the surveyors.

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D. Deficiencies Alleged by Staff or Clients.--If staff or clients allege deficiencies, but records, interviews, and observation fail to confirm them, it may be unlikely that a deficiency exists. Needed services that are confirmed by the survey to be in compliance with the regulatory requirements, but considered deficient by clients or staff, cannot be cited as deficient for certification purposes. On the other hand, if an allegation is of a very serious nature, e.g., client abuse, and record review and observation are not effective tools because the problem is concealed, obtain as much information as possible or necessary to ascertain compliance status, and cite accordingly. Clients, family, or former employees may be helpful for information gathering.

E. Team Assessment of Compliance.--During the pre-exit conference, the team shall review each survey tag number in Appendix J, and come to a consensus decision on whether or not the facility complies with each stated requirement. The team reviews all of the data collected by the surveyors during the course of the meeting. For each standard determined to be not met, the team is responsible to record all salient findings on the Survey Report Form. With the exception of the Life Safety Code Survey, compliance decisions are not to be made by individual surveyors.

F. Composing the Report of ICF/MR Deficiencies (HCFA ___).--Write the deficiency statement in terms specific enough to allow a reasonably knowledgeable person to understand the aspect(s) of the requirement(s) that is (are) not met. Do not delve into the facility's policies and procedures to determine or speculate on the root cause of a deficiency, or sift through various alternatives in an effort to prescribe an acceptable remedy. Indicate the data prefix tag and regulatory citation, followed by a summary of the deficiency and supporting findings using client identifier codes, not client names.

XI - ADDITIONAL SURVEY REPORT DOCUMENTATION (FOR THE FILE)

Upon the completion of each ICF/MR survey the following additional documentation is completed by the team leader or surveyor-in-charge and then this information remains at the Survey agency with the HCFA 3070B in the official file:

A. Summary listing of all ICF/MR clients comprising the survey sample (including any additional clients added to the sample).--At a minimum, identify:

- o The name or Medicaid number of each client chosen to be part of the sample;
- o Any client-identifier codes used as a reference to protect the clients' confidentiality; and

- The reason for including the client in the sample. (e.g., "Program Audit", "Discharge", "New Admission", "Death", "Abuse Investigation", "Drugs to Control Behavior, etc.). This listing serves as a future reference to any client identifiers recorded in the surveyors' notes, the HCFA 3070B, and the HCFA 2567.

B. Description of the Representative Sample Selection.--At a minimum this description should identify, at the time of the survey:

- How the sample was selected;
- What was the percentage occurrence of each functional level of mental retardation in the facility's overall population;
- The distribution of the clients in the sample across the facility's living units;
- The number of people in the sample;
- The number of clients substituted in the sample, if any, and the reason; and
- Any other client characteristic that was specifically introduced into the sampling process and the reason.

C. Summary of Client Observations.--At a minimum, this summary should identify:

- How many direct observations were conducted for members of the representative sample;
- How much of the total time spent observing members of the representative sample (e.g., hours, minutes) is recorded either on optional client observation worksheets (HCFA) or in the surveyors' notes;
- How many direct observations were conducted for other clients of the facility; and
- How much of the total time spent observing other clients of the facility (e.g., hours, minutes) is recorded either on optional client observation worksheets (HCFA) or in the surveyors' notes;

D. Summary of Interviews.--At a minimum this summary should identify how many interviews were conducted with clients, families, guardians, direct care staff, QMRPs, professional staff or consultants, administrators and managers, and others.

E. Drug Pass Worksheets (HCFA 522)

G. Other Facility Data Relevant to the Survey Findings.--At the discretion of the Survey Agency, other salient data used in support of the survey findings may be included with the HCFA 3070B (e.g., photographs, affidavits, etc.)

[FR Doc. 88-19408 Filed 8-25-88; 8:45 am]
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Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 12, 1988.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package.)

1. *Uniform Relocation and Real Property Acquisition Under Federal and Federally Assisted Programs—0990–0150*—HHS has adopted standard government-wide regulations on acquisition of real property and relocation of persons thereby displaced, (45 CFR Part 15 and 49 CFR Part 24). Federal agencies and state and local governments must maintain records and file reports as necessary to demonstrate compliance with these regulations. Respondents: State and local governments, Federal agencies and employees Number of Respondents: 5; Frequency of Response: 10; Estimated Annual Burden: 55 hours.

OMB Desk Officer: Shannah Koss-McCallum;

Health Care Financing Administration

(Call Reports Clearance Officer on 301–966–2088 for copies of package.)

1. *Laboratory Personnel Qualification Appraisal—0938–0049*—This form must be completed by personnel employed by independent laboratories certified by Medicare. It is submitted to the State agency surveyor who verifies that the laboratories personnel meet Federal regulatory standards. Respondents: Individuals or households, Small businesses or organizations; Number of Respondents: 3,000; Frequency of Response: 1; Estimated Annual Burden: 1,000 hours.

OMB Desk Officer: Allison Herron.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package.)

National Institute for Health

1. *Avoidable Mortality From Cancers in Black Populations: Nurse-Delivered Intervention—New*—An educational intervention designed to affect black women's knowledge, attitudes and practices regarding breast and cervical cancer testing and screening will be examined under three different conditions. The results will enable the NCI to make recommendations to its National Cancer Control Program to reduce the mortality from cancer by the year 2000. Respondents: Individuals or households; Number of Respondents: 5,318; Frequency of Response: Single-time collection; Estimated Annual Burden: 921 hours.

Health Resources and Services Administration

1. *Health Education Assistance Loan (HEAL) Program—Forms HRSA 502–162, HRSA 500–162, HRSA 512—0915–0043*—The information is essential for administering the HEAL program. The Repayment Schedule establishes the amounts, number, and due dates of payments. The Promissory Note provides the legal documentation of the loan. The Call Report enables the Department to monitor outstanding HEAL loans. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions; Number of Respondents: 466; Frequency of Response: On occasion; Estimated Annual Burden: 28,196 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:
PHS: 202–245–2100
HCFA: 301–966–2088
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn.: Shannah Koss-McCallum.

Date: August 22, 1988.

James V. Oberthaler,

Deputy Assistant Secretary, Information Resources Management.

[FR Doc. 88–19407 Filed 8–25–88; 8:45 am]

BILLING CODE 4150–04–M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 12, 1988.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package.)

Center for Disease Control

1. *Aids Prevention and Surveillance Reports—0920–0208*—Information and date gathered by recipients of AIDS cooperative agreements will be reported to CDC in narrative or summary statistical reports. Project activities include AIDS Surveillance, assessment of AIDS-related knowledge, attitudes and behavior, AIDS public information and education, counseling and HIV testing and special activities to reach minorities at risk. Respondents: State or local governments; Number of respondents: 64; Frequency of Response: Quarterly; Estimated Annual Burden: 896 hours.

Food and Drug Administration

1. *Medical Device Reporting—0910–0201*—This regulation requires a manufacturer or importer of medical devices to report to FDA whenever they possess information suggesting a device has caused or contributed to a death or serious injury, or has malfunctioned and is likely to cause or contribute to a death or serious injury. Importers are required to establish and maintain files or reports and records of this information.

Respondents: Business or other for-profit, Small businesses or organizations; Number of Respondents: 691; Frequency of Response: On occasion; Estimated Annual Burden: 71,112 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Social Security Administration

(Call Report Clearance Officer on 301–245–0652 for copies of package.)

1. *Federal Assistance—0960–0184*—The information collected by form SSA–96 is needed by the Social Security Administration to evaluate proposed Federal grants to eligible applicants. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 150; Frequency of Response: On

occasion; Estimated Annual Burden: 2,100 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238 for copies of package.)

1. *Pro Reconsiderations and Appeals in 42 CFR 473.18, 473.34, 473.36 and 473.42—0938–0443*—These regulations contain procedures for PRO's to use in reconsideration of initial determinations. These sections contain reporting requirements on PRO's to provide data to parties requesting a reconsideration review. Respondents: Business or other for-profit, Small businesses or organizations; Number of Respondents: 54; Frequency of Response: On occasion; Estimated Annual Burden: 23,332 hours.

2. *Procedures for Determining Liability for Non-Covered Services—42 CFR 405.334 and 405.336—0938–0465*—HCFA requires that written notification of non-covered services be provided to beneficiaries, providers, practitioners and suppliers. The notification provides that knowledge that Medicare will not pay for these items or services mentioned in the notification. Respondents: Small businesses or organizations; Number of Respondents: 5,405; Frequency of Response: On occasion; Estimated Annual burden: 193,679 hours.

OMB Desk Officer: Allison Herron.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–966–2088
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Shannah Koss-McCallum.

Date: August 22, 1988.

James V. Oberthaler,

Deputy Assistant Secretary, Information Resources Management.

[FR Doc. 88–19406 Filed 8–25–88; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

[Announcement No. 818]

Program Announcement and Availability of Fiscal Year 1988 Funds for a Cooperative Agreement To Develop a Comprehensive Model Plan for Use by the State Dental Public Health Programs Concerning Infection Control Procedures and Care of HIV Infected Patients

Introduction

The Centers for Disease Control (CDC) anounces the availability of funds for Fiscal Year 1988 to assist in the development of a comprehensive model plan for use by the State dental public health programs in educating the dental community about Acquired Immunodeficiency Syndrome (AIDS) prevention, as it relates to infection control, and care of Human Immunodeficiency Virus (HIV) infected patients.

Authority

This project is authorized by section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Eligibility

This is not a formal request for applications. Assistance will be provided only to the Public Health Foundation (PHF) for this project. No other applications will be solicited or will be accepted. The Public Health Foundation is a non-profit corporation which conducts research and data collection for the Association of State and Territorial Health Officers (ASTHO).

The Public Health Foundation provides design evaluation criteria and actually gathers data from State health departments for ASTHO and its constituents, like the Association of State and Territorial Dental Directors (ASTDD).

The constituents of ASTHO, State health departments, and ASTDD rely on the expertise of the Public Health Foundation in evaluation and statistical analysis. In addition, ASTHO has developed policies concerning AIDS for use by State health departments, which have been managed and facilitated by the Public Health Foundation. Because of already having developed and published 5 consensus policy documents, such as "Guide to Public Health Practice: State Health Agency Programmatic Responses to HTLV–III Infection," PHF have the working knowledge and understanding of the impact of these plans and policies, as well as the essential established working relationships necessary to develop a comprehensive model plan for use by the State dental public health programs concerning AIDS prevention and HIV infection. The Public Health Foundation, as an organization established by ASTHO, is thereby uniquely qualified to develop this field response for dentistry as an adjunct to the existing developed AIDS prevention documents.

No other organization has the established relationship with State health departments and the existing staff capability and expertise which is necessary to carry out the project.

Background

State and local health agencies have a primary role in providing the response to AIDS prevention and HIV infection. Coordination of national, regional, State, and local AIDS prevention and infection control efforts must be maximized and facilitated.

Few cooperative efforts between the private and public sector of the dental community have occurred related to HIV infection and infection control. Moreover, when cooperative efforts have occurred, communication concerning the implementation or evaluation of these efforts has not been optimal. There have been numerous concerns in both the private and public sectors about HIV and the necessary infection control procedures to treat patients with HIV infection.

In the private sector, perceived risk of transmission of HIV has concerned many health care workers, including dental professionals, who have been reluctant to provide care for patients infected with HIV. As a result, State and local health agencies have been faced with the new challenge of educating the dental community concerning HIV/AIDS, and in the proper infection control procedures which can be used for treating all patients. The resources needed to meet these new challenges have, in many instances, been redirected into other AIDS crisis oriented infection control projects. Resources are essential if the State and local health agencies are expected to adequately respond to the AIDS issues in the private dental community.

Purpose and Objectives

The Public Health Foundation will organize a meeting of joint working groups of ASTHO and ASTDD to develop a comprehensive model plan for use by the State dental public health programs concerning AIDS prevention

and infection control and outline the responsibilities of the private and public sectors. Existing knowledge, attitudes, and practices (KAPs) survey data will be compiled about practices of dental health care workers in sterilization and disinfection of dental equipment and devices, and of dental health care workers and ongoing State health departments HIV/AIDS training activities. The plan will stress cooperation between the private and public sector in planning, implementing, and evaluating the dental public health programs and the programs for AIDS prevention and control. The plan, developed through a multidisciplinary review process, will be flexible to accommodate differences among States. The final plan will be distributed to State and local health departments, national and State dental societies and appropriate educational and training institutions.

CDC Activities

A. Collaborative in identifying appropriate organizations and agencies which should be considered in the coordination of a model comprehensive plan.

B. Provide available reference and background information concerning sterilization and disinfection.

C. Assist in evaluating the scientific data relative to the management of the care environment.

D. Collaborate in the development of the model plan.

E. Collaborate in identifying appropriate organizations and individuals, other than State health departments, to whom the document will be disseminated.

F. Assist in the development of model outcome objectives for training of practicing dentists.

Availability of Funds

During fiscal years 1988, approximately $57,000 will be available to support this project. The cooperative agreement will be funded for one 9-month budget/project period. The funding estimate outlined above may vary and is subject to change.

Review and Evaluation Criteria

The application will be reviewed and evaluated on the following:

1. Extent to which the applicant provides complete, specific, and focused description of background and need and the rationale for developing a model plan for use by State dental public health programs for AIDS prevention and infection control;

2. Degree to which the applicant provides evidence of an ability to carry out the proposed project and the extent to which the applicant institution documents demonstrated capability to achieve objectives similar to those of this project;

3. Extent to which professional personnel involved in this project are qualified, including evidence of past achievements appropriate to this project;

4. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the purpose of this project; and

5. Adequacy of plans for administering the project.

Consideration will also be given to the extent to which the budget request is clearly explained, reasonable, and consistent with the purpose of the project.

Application Submission and Deadline

The original and two copies of the application form SF 424 must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before September 9, 1988.

Other Submission and Review Requirements

Application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information

Information regarding the business aspects of this project may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, (404) 842-6575 or FTS 236-6575.

Announcement No. 818 entitled, "A Comprehensive Model Plan for Use by the State Dental Public Health Programs Concerning Infection Control Procedures and Care of HIV Infected Patients" must be referenced in all requests for information pertaining to this project. Information regarding technical aspects of this project may be obtained from Dr. Margaret Scarlett, Dental Disease Prevention Activity, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-1833 or FTS 236-1833.

Dated: August 22, 1988.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 88-19381 Filed 8-25-88; 8:45 am]

BILLING CODE 4160-18-M

Second National Injury Control Conference

Action: Notice of conference—Second National Injury Control Conference.

Time and Date: 7:30 a.m.-5:00 p.m., September 15, 1988; 8:30 a.m.-5:10 p.m., September 16, 1988; 8:30 a.m.-12:00 noon, September 17, 1988.

Place: St. Anthony Inter-Continental Hotel, 300 East Travis, San Antonio, Texas.

Status: Open to public, limited only by the space available.

Matters to be Discussed: The Centers for Disease Control (CDC) is convening a conference entitled, "Second National Injury Control Conference," for citizens, injury researchers, State and local health officials, and other interested parties to provide a forum for the exchange of information on injury control activities and scientific research. The purposes of the conference are to recognize contributions to the injury control field, strengthen interdisciplinary coordination and collaboration, foster the development of injury control programs, and to identify strategies to address research and control program needs.

For Further Information Contact: Harvey F. Davis, Jr., Disivion of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephones: FTS: 236-4690, Commercial: (404) 454-4690.

Dated: August 22, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-19380 Filed 8-25-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88F-0274]

Hoechst-Celanese, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst-Celanese, Inc., has filed a petition proposing that the food additive regulations be amended to

provide for the safe use of sodium alkyl (C_{10}-C_{18}) mono- and disulfonates in polystyrene and rubber-modified polystyrene in contact with food.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)), 72 Stat. 1786 (21 U.S.C. 348 (b)(5))), notice is given that a petition (FAP 8B4097) has been filed by Hoechst-Celanese, Inc., Frankfurt, Germany, proposing that § 178.3130 *Antistatic and/or antifogging agents in food-packaging materials* (21 CFR 178.3130) and § 178.3400 *Emulsifiers and/or surface-active agents* (21 CFR 178.3400) be amended to provide for the safe use of sodium alkyl (C_{10}-C_{18}) mono- and disulfonates in polystyrene and rubber-modified polystyrene in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 17, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–19441 Filed 8–25–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88D–0219]

Guidance Document for the Preparation of Investigational Device Exemptions and Premarket Approval Applications for Intra-Articular Prosthetic Knee Ligament Devices; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance Document for the Preparation of Investigational Device Exemptions and Premarket Approval Applications for Intra-articular Prosthetic Knee Ligament Devices" prepared by FDA's Center for Devices and Radiological Health (CDRH). The purpose of this document is to suggest to the device applicant or investigation sponsor important preclinical and clinical tests that should be performed to generate data which will provide reasonable assurance of the safety and effectiveness of these devices for their intended purposes. Suggestions and recommendations written in the document reflect methodologies acceptable to CDRH. While use of this document to prepare preclinical and clinical protocols and to organize and analyze data will not ensure investigational device exemption (IDE) or premarket approval, it will ensure that appropriate tests are conducted and data are collected to enable FDA to determine whether or not an application is approvable. IDE or premarket approval can be expected to follow if tests are conducted properly, data are adequately analyzed and presented, and the test results support application approval.

ADDRESS: Written requests for copies of the guidance document to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–2041, calls from within MD 301–443–6597.

FOR FURTHER INFORMATION CONTACT: Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

SUPPLEMENTARY INFORMATION: The development of guidance document for intra-articular prosthetic knee ligament devices is based on the Division of Surgical and Rehabilitation Devices' (DSRD's) evaluation of numerous devices and the recognition of certain criteria on which to base the evaluation of these devices. FDA has recognized the need to develop evaluation criteria for prosthetic ligament devices since the early 1980's, when several manufacturers developed prosthetic ligament devices and requested approval to begin clinical studies. FDA staff members met with representatives of the Society of Sports Medicine in 1983 to discuss the status of prosthetic ligament research. Later that year, a meeting of the Orthopedic and Rehabilitation Devices Panel (the Panel) was held solely for the discussion of research, evaluation, and regulations of prosthetic ligament devices. DSRD staff initiated preparation of a guidance document in December 1985.

In May 1986, DSRD completed a first draft of the document containing preclinical and clinical test recommendations and suggestions for the preparation of IDE and premarket approval applications. Panel review and discussion of the document was postponed so that the Panel's industry representative could obtain comments from his constituents. The Health Industry Manufacturers Association (HIMA) and the Orthopedic Surgical Manufacturers Association (OSMA) undertook the task of soliciting comments from industry. HIMA provided industry comments to DSRD shortly before the October 31, 1986, Panel meeting. At this meeting, industry representatives and Dr. Savio L-Y Woo, a professional noted for ligament research, provided comments in an open public session preceding the discussion of the document by the Panel.

As a result of the October 31, 1986, Panel meeting, two working groups were established by FDA, based on nominations from the Panel and industry: The Working Group for Evaluating Mechanical Test Recommendations and the Working Group for Evaluating Biological Test Recommendations. FDA selected Dr. Woo to be the chairman of the Mechanical Test Working Group consisting of a HIMA representative, an OSMA representative, two Panel members, and FDA representatives. The Biological Test Working Group consisted of a HIMA representative, an OSMA representative, and FDA representatives. The working groups reviewed draft document recommendations which were revised according to comments from Panel members, HIMA, and OSMA.

After meeting with both working groups, DSRD again revised the document and accepted further comments from the working groups. Panel members and consultants reviewed the final draft of the document at the Panel meeting held on May 7, 1987. The Orthopedic and Rehabilitation Devices Panel voted unanimously to adopt the document with several changes recommended by that Panel. The document now being made available to the public incorporates those changes.

The Panel and industry requested that the document be reviewed again in 1 year at a meeting of the Orthopedic and Rehabilitation Devices Panel. The document will be reviewed and, if necessary, revised every 2 years thereafter. The guidance document does not state regulatory requirements. It is intended as a scientific position paper, and suggests some evaluative criteria, test procedures, and end points that FDA believes to be important. Alternate approaches are acceptable for satisfying IDE and PMA requirements; however, it

must be demonstrated that alternate procedures are appropriate and adequate.

The guidance document is available for public examination in the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may, at any time, submit written comments regarding the guidance document to the Dockets Management Branch (address above). Such comments will be considered in determining whether further amendments to, or revisions in, the guidance document are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comment may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 18, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–19442 Filed 8–25–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88E–0269]

Determination of Regulatory Review Period for Purposes of Patent Extension; Sensor® Model Kelvin® 500 Unipolar Pulse Generator, Model K Endocardial Lead, Model 5000 Transceiver, and Model 50 Lead Tester (Sensor® Model Kelvin® 500)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Sensor® Model Kelvin® 500 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrea E. Chamblee, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

FDA recently approved for marketing a medical device known as the Sensor® Model Kelvin® 500 (exercise-responsive cardiac pacemaker) which is indicated for ventricular use in patients with third-degree A–V block, atrial flutter or fibrillation with slow ventricular response, sinus node dysfunction or sick sinus syndrome (including sinus bradycardia, sinus arrest and/or exit block), bradycardia-tachycardia syndrome, and second-degree block Mobritz Type II or trifascicular block. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the Sensor® Model Kelvin® 500 (U.S. Patent No. 4,543,954) from the Purdue Research Foundation and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated July 25, 1988, advised the Patent and Trademark Office that the medical device had undergone a regulatory review period. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for the Sensor® Model Kelvin® 5—0 is 696 days. Of this time, 572 days occurred during the testing phase of the regulatory review period, while 124 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* June 5, 1986. FDA has verified the applicant's claim that the investigational device exemption (IDE G860081) for the device became effective on June 5, 1986.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* December 28, 1987. The applicant claims September 4, 1987, as the date of the product marketing application (PMA 870054) for the device became effective. However, FDA records indicate that PMA 870054 was not sufficiently complete to permit substantive review until December 28, 1987.

3. *The date of application was approved:* April 29, 1988. FDA has verified the applicant's claim that PMA 870054 was approved on April 29, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 412 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 25, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 21, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88-19443 Filed 8-25-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N-88-1818; FR-2524]

Lead-Based Paint Abatement Demonstration Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of a Lead-Based Paint Abatement Demonstration Program.

SUMMARY: HUD is announcing a demonstration project to test, evaluate, and determine the cost-effectiveness of a number of methods for abating lead-based paint in residential properties. This demonstration project is one element in a broad program of research, development of regulations, and implementation of lead-based paint testing and abatement procedures mandated by section 566 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988 (42 U.S.C. 4822)) (The Act.)

ADDRESS: Organizations interested in being considered as the support contractor or for other related procurements should contact the Office of Procurement and Contracts, ATTN: ACR, Room 5256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, to be placed on the bidders' mailing lists for such procurements.

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Office of Policy Development and Research, (202) 755-5528, Room 8230, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

HUD last conducted research on issues involving lead-based paint in housing in the 1970's; in the intervening period, continuing research by others on the causes and extent of lead poisoning in children has shown that some abatement methods can actually increase the possibility of lead poisoning. Several new abatement strategies have been suggested and some tested in limited programs; in addition, new materials have been developed for encapsulating paint and for removing existing paint.

As noted, this demonstration project is one element of a larger Departmental research and demonstration program which also includes examination and improvement of lead-based paint testing and detection technology; an estimate of the amount, characteristics, and regional distribution of housing in the United States containing lead-based paint; preparation of a comprehensive and workable plan for the inspection and abatement of privately owned housing; and the development of various technical guidelines to provide direction to future abatement efforts.

Regulatory Status

In 1986 and 1987, HUD revised its regulations on lead-based paint testing and abatement to comply with the decision in *Ashton v. Pierce,* 716 F.2d 56 (DC Cir. 1983), and to reflect advances in knowledge regarding the causes of elevated blood lead levels of children and in hazard detection and abatement techniques. HUD published revised regulations implementing section 566 of the Act on June 6, 1988 (53 FR 20790). Additional regulatory changes will be initiated after HUD conducts this demonstration.

Demonstration Concept

Section 566 requires, no later than 22 months after enactment of the Act, a report to the Congress on the findings and recommendations of a demonstration program of abatement techniques in HUD-owned single and multifamily housing. The demonstration program is to "utilize a sufficient variety of abatement methods in a sufficient number of areas and circumstances to demonstrate their relative cost-effectiveness and their applicability to various types of housing." Section 566 further specifies:

In preparing such report, the Secretary shall examine—

(i) The most reliable technology available for detecting lead-based paint;

(ii) The most efficient and cost-effective methods of abatement;

(iii) Safety considerations in testing;

(iv) The overall accuracy and reliability of laboratory testing of physical samples, X-ray fluorescence machines, and other available testing procedures;

(v) Availability of qualified samplers and testers; and

(vi) An estimate of the amount, characteristics, and regional distribution of housing in the United States that contains lead-based paint hazards at differing levels of contamination.

The demonstration program, in accordance with the requirements of the Act, will be carried out in residential properties held by the Department in the name of the Secretary. The inventory of Secretary-held properties will be reviewed to select properties representative of housing types in various geographic regions suspected of having housing with lead-based paint. The final location of the demonstration projects will be determined on the basis of property availability and program technical requirements which will permit testing of known and promising abatement techniques on a broad range of materials and substrates. It is estimated that the demonstration program will involve approximately 200 housing units. The demonstration program is expected to begin in October 1988 and be completed in December 1989.

HUD will select a demonstration management support contractor through competitive procurement procedures. The support contractor will be expected to assist HUD in planning, managing, and carrying out the lead-based paint detection and abatement activities, and in collecting data on the demonstration program.

The proposed demonstration program will utilize approximately 20 promising methods and materials on approximately 30 substrates. The methods will include paint removal; encapsulation (or covering) of the painted surface; or replacement of the painted material, where costs and effectiveness can be documented and measured. The demonstration program also may involve some abatement methods currently not permitted in HUD's regulations, such as sanding and other abrasive removal methods, provided that appropriate safety measures can be implemented.

Selection of the abatement techniques to be tested and evaluated will be performed by HUD staff and HUD's demonstration management support contractor, with the assistance of information provided by the National Bureau of Standards (NBS) and the National Institute of Building Sciences (NIBS).

Other Information

The Catalog of Federal Domestic Assistance program number is 14.506, General Research and Technology Activity.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD

regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Authority: Sec. 566, Housing and Community Development Act of 1987 (Pub. L. 100-242); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 22, 1988.

Kenneth J. Beirne,

Assistant Secretary for Policy Development and Research.

[FR Doc. 88-19390 Filed 8-25-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-08-4212-17; CA 22649]

Emergency Area Closure; Riverside County, CA

Emergency Area Closure

The following order, affecting the S1/2SW1/4, Section 14, T. 8S., R. 8E., SBM., was issued on August 15, 1988.

I have determined that current use of this area is causing environmental degradation and is a serious threat to public health. This problem is the result of a number of people living in unauthorized sub-standard housing without sanitary facilities or a potable water supply.

In order to rectify this situation, I hereby order the above captioned public land closed to entry pursuant to 43 CFR 8364.1. Persons exempt from this order shall include law enforcement personnel and those persons engaged in retrieving personal property from the site, or those with other specific authorization. Any person who knowingly and willfully violates this closure may be subject to $1000 fine and/or one year imprisonment.

This order shall remain in effect until further notice.

Date: August 19, 1988.

James W. Abbott,

Acting Area Manager.

[FR Doc. 88-19370 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). An expedited review has been requested in accordance with the Act, because of the need to implement this information collection before the beginning of the 1989 water year. Since allowing for the normal review period would adversely affect the public interest, approval has been requested by October 17, 1988.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Mr. Terry P. Lynott, Assistant Commissioner for Resources Management, U.S. Bureau of Reclamation, Building 67, Denver Federal Center, Denver, CO 80225, and to the Office of Information and Regulatory Affairs, Attention: Interior Department Desk Officer, Office of Management and Budget, Washington, DC 20503.

Title: Certification and Reporting Summary Forms Required by the Reclamation Reform Act of 1982.

OMB Approval Number: 1006-0006.

Description: The proposed information collection requires irrigation district offices to summarize landholder certification and reporting forms using the summary forms described below. Irrigation districts must indicate on the summary form known errors, omissions and discrepancies in the landholders' forms.

Bureau Form Numbers: 7-1781A and 7-1781B.

Proposed Frequency of Response: Annually.

Description of Respondents: Contracting Organizations for Bureau of Reclamation Project Irrigation Water.

Estimated Number of Likely Respondents: 386.

Estimated Annual Responses: 386.

Annual Burden Hours: 15,440.

Estimated Average Burden Hours Per Response: 40.

Date: August 22, 1988.

C. Dale Duvall,

Commissioner, Bureau of Reclamation.

BILLING CODE 4310-09-M

7-1781A (6-88)
Bureau of Reclamation

INSTRUCTIONS FOR COMPLETION OF "DISTRICT SUMMARY OF CERTIFICATION FORMS," FORM 7-1781A

Form 7-1781A is to be used to summarize only certification (blue) forms. Reporting (brown) forms are to be summarized on Form 7-1781B.

For the purposes of this summary, the certification forms submitted by your landholders are divided into three general categories:

1. "Individual's Certificate Of Landholdings," Form 7-2180, and "Multiple Ownership Certificate of Landholdings," Form 7-2181

2. "Governmental Agency's Certificate of Landholdings," Form 7-2183

3. "Religious or Charitable Organization's Certificate of Landholdings," Form 7-2184

We have provided three kinds of tabulation sheets to help you in tallying the data on the landholders' certification forms, one kind for each of the three general categories. The first tabulation sheet is Form 7-1781A, sheet 2. It is to be used to tabulate individual and multiple ownership certification forms. Form 7-1781A, sheet 3, is to be used to tabulate "Governmental Agency's Certificate of Landholdings," and Form 7-1781A, sheet 4, is to be used to tabulate "Religious or Charitable Organization's Certificate of Landholdings."

We have attempted to design the summary form so that it will be easy for you to transcribe the pertinent data from the landholders' forms to the tabulation sheets, and from there to the summary form. Following is a step-by-step procedure to follow to complete the tabulation sheets and the summary form:

1. Start with six copies of Form 7-1781A, sheet 2, and one copy each of Form 7-1781A, sheet 3, and Form 7-1781A, sheet 4.

2. Regarding the six copies of Form 7-1781A, sheet 2, you should fill in the blanks in the title of each of the six copies according to the six acreage categories on the summary form (sheet 1). For example, one of the six forms should read ". . . Landholdings of Over 40 through 160 Acres . . .," the next ". . . Landholdings of Over 160 through 320 Acres . . ." and so on for each of the six forms.

3. Now you are ready to begin transcribing the data from the landholders' forms to the tabulation sheets. Obtain one landholder's certification form (or forms) and determine which of the eight tabulation sheets it applies to. If it is an "Individual's Certificate of Landholding," look to the "Total" column of line III.D.7 to determine which landholding size category the landholding belongs to. For "Multiple Ownership Certificate of Landholdings" look to the "Total" column of line IV.C.3 to determine which category it belongs to. (Information from the individual and multiple ownership forms should be tabulated on the same tabulation sheets (sheet 2) and reported without further distinction in the summary (sheet 1). If the landholder is a religious or charitable organization, or a Governmental agency, the data will be transcribed to the corresponding tabulation sheet, i.e., sheet 3 or 4.

4. If the form you have obtained is an "Individual's Certificate of Landholdings," start by entering the landholder's name in the left-hand column of the appropriate tabulation sheet. If either the landholder or the landholder's spouse has indicated nonresident alien status in section II.C, place a check ( ) in the "N" column of the tabulation sheet. Then turn to section III.D of the landholder's form. If the landholder holds land in more than one district (i.e., if acreage appears in any of the "OTHER DISTRICTS" columns), place a check ( ) in the "M" (multidistrict) column of the tabulation sheet. Enter the acreage from the "THIS DISTRICT" column of line D.1. in the column entitled "Irrigable and Irrigation Acreage Owned in this District." Then enter the acreage from the "THIS DISTRICT" column of line D.4 in the column entitled "Irrigable and Irrigation Acreage Leased From Others in This District." (Note: If the landholder has submitted Form 7-2185, "Leasing Change Form," since his/her last "Individual's Certificate of Landholdings" was submitted, the leased acreage totals must be modified accordingly.)

If the landholder has completed "Application for Designation of Nonexcess Land," Form 7-2188, enter the total excess acreage in this district from page 2 of that form to the tabulation sheet column entitled "Excess Acreage." Note that if the landholder has indicated ownership in more than one district, he or she may also have indicated excess landholdings in more than one district. Do not include excess landholdings outside of your district in the tabulation and summary sheets.

If the landholder has completed Form 7-2189, "Application for Selection of Non-Full-Cost Land," enter the total full-cost acreage in this district from the second section of page 2 of that form in the tabulation sheet column entitled "Full-Cost Acreage." Again, do not include full-cost acreage outside of your district in the tabulation and summary sheets.

5. If the form you have obtained is a "Multiple Ownership Certificate of Landholdings," again, start by entering the landowner's name in the left-hand column of the appropriate tabulation sheet. Then turn to section IV of the multiple ownership form. If the landholder has indicated holdings in any of the "OTHER DISTRICTS" columns, place a check ( ) in the "M" (multidistrict) column of the tabulation sheet. Enter the acreage from the "THIS DISTRICT" column of line C.1 on the landholder's form in the "Irrigable and Irrigation Acreage Owned in This District" column of the tabulation sheet. Then enter the acreage from the "THIS DISTRICT" column of line C.2 of the landholder's form in the "Irrigable and Irrigation Acreage Leased From Others in This District" column of the tabulation sheet. (Note: If the landholder has submitted Form 7-2185, "Leasing Change Form," since its last certification form was submitted, the leased acreage totals must be modified accordingly.)

If the multiple ownership has completed an "Application for Designation of Nonexcess Land" form, or an "Application for Selection of Non-Full-Cost Land" form, proceed exactly as described under item 4 above for an individual landholding. Then proceed to the next form.

6. If the form you are working on is a "Governmental Agency's Certificate of Landholdings," enter the agency's name in the left-hand column of tabulation sheet 3. The total acreage shown in section II.A of the agency's form should be entered in the "Irrigable and Irrigation Acreage Owned, Not Leased to Other Parties" column of the tabulation sheet. The total acreage shown in section II.B of the agency's form should be entered in the "Irrigable and Irrigation Acreage Owned and Leased to Other Parties" column of the tabulation sheet.

7. If the form you are working on is a "Religious or Charitable Organization's Certificate of Landholdings," proceed exactly as you would on an "Individual's Certificate of Landholdings" form (except that you will enter the data on tabulation sheet 4).

8. When you fill a tabulation sheet, total the various columns. The total number of landholders on each page should be entered at the bottom of the left-hand column. For each other column, count the number of entries in that column and enter that number in the space labeled "Total Number." For example, there may be 25 landholders entered on a tabulation sheet, in which case the number "25" would be entered at the bottom of the left-hand column; but perhaps only 8 of those landholders own excess land. In that case, "8" would be written in the "Total Number" box at the bottom of the "Excess Acreage" column.

Use as many tabulation sheets for each category as necessary.

9. When you have entered all the data from the landholders' forms onto the tabulation sheets, transfer the column totals to the "Landholding Summary" on sheet 1. This process should be self-explanatory. Note that columns 8 and 9, both headed "Irrigable and Irrigation Acreage in this District Leased to Other Parties," apply only to Governmental agencies.

10. For the line on sheet 1 headed "Noncertifying Landholdings 40 Acres or Less," please estimate the number of landholders who have not eported because their total landholding is 40 acres or less, and note the approximate acreage in the "Owned Acreage" column. For the line headed "Other Noncertifying Landholdings," enter the number of noncertifying landholdings over 40 acres, and estimate the owned and leased acreage in the appropriate columns. Presumably, this will allow you to account for all the land in the district that is subject to the discretionary provisions of the RRA.

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It is not necessary to complete the other columns in these two categories, unless you somehow have the appropriate data available.

11. Please remember that the information is to be reported on the summary form exactly as the landholders have reported it. However, the district has the responsibility to report known errors, omissions, and discrepancies in the landholders' forms to the Bureau, using the space provided on the back of sheet 1. The back of sheet 1 should be self-explanatory; any questions should be referred to the appropriate Bureau of Reclamation office. Use as many copies of sheet 1 as necessary.

12. The summary form must be signed and dated by an authorized district official.

13. The following items must be submitted to the Bureau of Reclamation:

a. "District Summary of Certification Forms 19____," Form 7-1781A, Sheet 1

b. Any additional Sheet 1's indicating any landholders that have failed to submit adequate certification forms or that have made errors, omissions, or discrepancies on their forms

c. Copies of all certification forms completed by landholders which indicate landholdings in more than one district

d.. Copies of all certification forms completed by landholders which have submitted Form 7-2188, "Application for Designation of Nonexcess Land," or which otherwise indicate excess landownership

e. Copies of all certification forms completed by landholders that have submitted Form 7-2189, "Application for Selection of Non-Full-Cost Land," or which otherwise indicate full-cost landholdings.

7-1781A (6-88)
Sheet 1
Bureau of Reclamation

DISTRICT SUMMARY OF CERTIFICATION FORMS 19___

OMB Clearance No.: 1006-0006
Expiration Date:

District Name	District Acreage Subject to The Discretionary Provisions	IDCON Number
Project, Unit, and/or Division Name		

LANDHOLDING SUMMARY

	Landholding Size (Acres, in all districts)	Number of Landholders in Each Category			Irrigable and Irrigation Acreage Owned in This District		Irrigable and Irrigation Acreage in This District Leased From Other Parties		Irrigable and Irrigation Acreage in This District Leased To Other Parties		Excess Acreage		Full-Cost Acreage	
		Nonres. Al.	Multidist.	All	Number	Acres	Number	Acres	Number	Acres	Number	Acres	Number	Acres
		1	2	3	4	5	6	7	8	9	10	11	12	13
Individual and Multiple Ownership	Over 40 Through 160													
	Over 160 Through 320													
	Over 320 Through 640													
	Over 640 Through 960													
	Over 960 Through 1920													
	Over 1920													
	Subtotal													
Government Agencies														
Religious and Charitable Organizations														
Noncertifying Landholdings 40 Acres or Less														
Other Noncertifying Landholdings														
TOTAL														

I CERTIFY THAT THESE DATA ARE BASED ON LANDHOLDER'S CERTFICATION FORMS AND ACCURATELY REPRESENT THE DATA SUBMITTED BY THE LANDHOLDERS. I FURTHER CERTFY THAT ALL KNOWN ERRORS, OMISSIONS, AND DISCREPANCIES IN THE LANDHOLDERS' FORMS ARE LISTED ON THE REVERSE OF THIS SHEET.

Signature

Title

Date

CERTIFICATION FORM ERRORS, OMISSIONS, AND DISCREPANCIES

Landholder Name	Nature of Error, Omission, or Discrepancy			
	Check Here If no Form Submitted	Did Landholder Receive Irrigation Water?		Explanation of Known Errors, Omissions, and Discrepancies Other than Failure to Submit Required Forms
		Yes	No	

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7-1781A (8-88)
Sheet 2
Bureau of Reclamation

Tabulation Sheet for Landholdings of Over_____ through_____Acres for "Individual's Certificate of Landholdings," Form 7-2180, and "Multiple Ownership Certificate of Landholdings," Form 7-2181					OMB CLEARANCE NO.: 1006-0006 EXPIRATION DATE: Page_____of_____	
Landholder Name	N	M	Irrigable and Irrigation Acreage Owned in This District	Irrigable and Irrigation Acreage Leased from Others in this District	Excess Acreage	Full-Cost Acreage

7-1781A (8-88)
Sheet 3
Bureau of Reclamation

Tabulation Sheet for "Governmental Agency's Certificate of Landholdings," Form 7-2183	OMB CLEARANCE NO.: 1006-0006 EXPIRATION DATE: Page_____of_____	
Agency Name	Irrigable and Irrigation Acreage Owned, Not Leased To Other Parties	Irrigable and Irrigation Acreage Owned and Leased To Other Parties

7-1781A (6-88)
Sheet 4
Bureau of Reclamation

Tabulation Sheet for "Religious or Charitable Organization's Certificate of Landholdings," Form 7-2184					OMB CLEARANCE NO.: 1006-0006 EXPIRATION DATE: Page_____of_____
Landholder Name	M	Irrigable and Irrigation Acreage Owned in This District	Irrigable and Irrigation Acreage Leased from Others in this District	Excess Acreage	Full-Cost Acreage

7-1781B (6-88)
Bureau of Reclamation

INSTRUCTIONS FOR COMPLETION OF "DISTRICT SUMMARY OF REPORTING FORMS," FORM 7-1781B

For 7-1781B is to be used to summarize only reporting (brown) forms. Certification (blue) forms are to be summarized on Form 7-1781A.

For the purpose of this summary, the reporting forms submitted by your landholders are divided into three general categories:

1. "Individual's Report Of Landholdings," Form 7-2190 and "Multiple Ownership Report of Landholdings," Form 7-2191

2. "Governmental Agency's Report of Landholdings," Form 7-2193

3. "Religious or Charitable Organization's Report of Landholdings," Form 7-2194

We have provided three kinds of tabulation sheets to help you in tallying the data on the landholders' reporting forms, one kind for each of the three general categories. The first tabulation sheet is Form 7-1781B, sheet 2. It is to be used to tabulate individual and multiple ownership reporting forms. Form 7-1781B, sheet 3, is to be used to tabulate "Governmental Agency's Report of Landholdings," and Form 7-1781B, sheet 4, is to be used to tabulate "Religious or Charitable Organization's Report of Landholdings."

We have attempted to design the summary form so that it will be easy for you to transcribe the pertinent data from the landholders' forms to the tabulation sheets, and from there to the summary form. Following is a step-by-step procedure to follow to complete the tabulation sheets and the summary form:

1. Start with six copies of Form 7-1781B, sheet 2, and one copy each of Form 7-1781B, sheet 3, and Form 7-1781B, sheet 4.

2. Regarding the six copies of Form 7-1781B, sheet 2, you should fill in the blanks in the title of each of the six copies according to the six acreage categories on the summary form (sheet 1). For example, one of the six forms should read " . . . Landholdings of Over 40 through 160 Acres . . . ," the next " . . . Landholdings of Over 160 through 320 Acres . . . ," and so on for each of the six forms.

3. Now you are ready to begin transcribing the data from the landholders' forms to the tabulation sheets. Obtain one landholder's reporting form (or forms) and determine which of the eight tabulation sheets it applies to. If it is an "Individual's Report of Landholding," look to the "Total" column of line III.D.7 to determine which landholding size category the landholding belongs to. For "Multiple Ownership Report of Landholdings" look to the "Total" column of line IV.C.3 to determine which category it belongs to. (Information from the individual and multiple ownership forms should be tabulated on the same tabulation sheets (sheet 2) and reported without further distinction in the summary (sheet 1). If the landholder is a religious or charitable organization, or a Governmental agency, the data will be transcribed to the corresponding tabulation sheet; i.e., sheet 3 or 4.

4. If the form you have obtained is an "Individual's Report of Landholdings," start by entering the landholder's name in the left hand column of the appropriate tabulation sheet. Then turn to section III.D of the landholder's form. If the landholder holds land in more than one district (i.e., if acreage appears in any of the "OTHER DISTRICTS" columns), place a check ( ) in the "M" (multidistrict) column of the tabulation sheet. Enter the acreage from the "THIS DISTRICT" column of line D.1. in the column entitled "Irrigable and Irrigation Acreage Owned in this District." Then enter the acreage from the "THIS DISTRICT" column of line D.4 in the column entitled "Irrigable and Irrigation Acreage Leased From Others in This District." (Note: If the landholder has submitted Form 7-2195, "Leasing Change Form," since his/her last "Individual's Report of Landholdings" was submitted, the leased acreage totals must be modified accordingly.)

If the landholder has completed "Application for Designation of Nonexcess Land," Form 7-2198, enter the total excess acreage in this district from page 2 of that form to the tabulation sheet column

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entitled "Excess Acreage." Note that if the landholder has indicated ownership in more than one district, he or she may also have indicated excess landholdings in more than one district. Do not include excess landholdings outside of your district in the tabulation and summary sheets.

If the landholder has completed Form 7-2199, "Application for Selection of Non-Full-Cost Land," enter the total full-cost acreage in this district from the second section of page 2 of that form in the tabulation sheet column entitled "Full-Cost Acreage." Again, do not include full-cost acreage outside of your district in the tabulation and summary sheets.

5. If the form you have obtained is a "Multiple Ownership Report of Landholdings," again, start by entering the landowner's name in the left-hand column of the appropriate tabulation sheet. Then turn to section IV of the multiple ownership form. If the landholder has indicated holdings in any of the "OTHER DISTRICTS" columns, place a check ( ) in the "M" (multidistrict) column of the tabulation sheet. Enter the acreage from the "THIS DISTRICT" column of line C.1 on the landholder's form in the "Irrigable and Irrigation Acreage Owned in This District" column of the tabulation sheet. Then enter the acreage from the "THIS DISTRICT" column of line C.2 of the landholder's form in the "Irrigation Acreage Leased From Others in This District" column of the tabulation sheet. (Note: If the landholder has submitted Form 7-2195, "Leasing Change Form," since its last reporting form was submitted, the leased acreage totals must be modified accordingly.)

If the multiple ownership has completed an "Application for Designation of Nonexcess Land" form, or an "Application for Selection of Non-Full-Cost Land" form, proceed exactly as described under item 4 above for an individual landholding. Then proceed to the next form.

6. If the form you are working on is a "Governmental Agency's Report of Landholdings," enter the agency's name in the left-hand column of tabulation sheet 3. The total acreage shown in section II.A of the agency's form should be entered in the "Irrigable and Irrigation Acreage Owned, Not Leased to Other Parties" column of the tabulation sheet. The total acreage shown in section II.B of the agency's form should be entered in the "Irrigable and Irrigation Acreage Owned and Leased to Other Parties" column of the tabulation sheet.

7. If the form you are working on is a "Religious or Charitable Organization's Report of Landholdings," proceed exactly as you would on an "Individual's Report of Landholdings" form (except that you will enter the data on tabulation sheet 4).

8. When you fill a tabulation sheet, total the various columns. The total number of landholders on each page should be entered at the bottom of the left-hand column. For each other column, count the number of entries in that column and enter that number in the space labeled "Total Number." For example, there may be 25 landholders entered on a tabulation sheet, in which case the number "25" would be entered at the bottom of the left-hand column; but perhaps only 8 of those landholders own excess land. In that case, "8" would be written in the "Total Number" box at the bottom of the "Excess Acreage" column.

Use as many tabulation sheets for each category as necessary.

9. When you have entered all the data from the landholders' forms onto the tabulation sheets, transfer the column totals to the "Landholding Summary" on sheet 1. This process should be self-explanatory. Note that columns 7 and 8, both headed "Irrigable and Irrigation Acreage in this District Leased to Other Parties," apply only to Governmental agencies.

10. For the line on sheet 1 headed "Nonreporting Landholdings 40 Acres or Less," please estimate the number of landholders who have not reported because their total landholding is 40 acres or less, and note the approximate acreage in the "Owned Acreage" column. For the line headed "Other Nonreporting Landholdings," enter the number of nonreporting landholdings over 40 acres, and estimate the owned and leased acreage in the appropriate columns. Presumably, this will allow you to account for all the land in the district that is subject to prior law. It is not necessary to complete the other columns in these two categories, unless you somehow have the appropriate data available.

11. Please remember that the information is to be reported on the summary form exactly as the landholders have reported it. However, the district has the responsiblity to report known errors, omissions, and discrepancies in the landholders' forms to the Bureau, using the space provided on the back of sheet 1. The back of sheet 1 should be self-explanatory; any questions should be referred to the appropriate Bureau of Reclamation office. Use as many copies of sheet 1 as necessary.

12. The summary form must be signed and dated by an authorized district official.

13. The following items must be submitted to the Bureau of Reclamation:

a. "District Summary of Reporting Forms 19 ____," Form 7-1781B, sheet 1

b. Any additional sheet 1's indicating any landholders that have failed to submit adequate certification forms or that have made errors, omissions, or discrepancies on their forms

c. Copies of all reporting forms completed by landholders which indicate landholdings in more than one district.

d. Copies of all reporting forms completed by landholders which have submitted Form 7-2198, "Application for Designation of Nonexcess Land," or which otherwise indicate excess landownership

e. Copies of all reporting forms completed by landholders that have submitted Form 7-2199, "Application for Selection of Non-Full-Cost Land," or which otherwise indicate full-cost landholdings.

7-1781B (6-88)
Sheet 1
Bureau of Reclamation

DISTRICT SUMMARY OF REPORTING FORMS 19__

OMB Clearance No.: 1006-0006
Expiration Date:

District Name	District Acreage Subject to Acreage Limitation Law	IDCON Number
Project, Unit, and/or Division Name		

LANDHOLDING SUMMARY

Individual and Multiple Ownership: Landholding Size (Acres, in all districts)	Number of Landholders in Each Category		Irrigable and Irrigation Acreage Owned in This District		Irrigable and Irrigation Acreage in This District Leased From Other Parties		Irrigable and Irrigation Acreage in This District Leased To Other Parties		Excess Acreage		Full-Cost Acreage	
	Multidist.	All	Number	Acres	Number	Acres	Number	Acres	Number	Acres	Number	Acres
	1	2	3	4	5	6	7	8	9	10	11	12
Over 40 Through 160												
Over 160 Through 320												
Over 320 Through 640												
Over 640 Through 960												
Over 960 Through 1920												
Over 1920												
Subtotal												
Government Agencies												
Religious and Charitable Organizations												
Nonreporting Landholdings 40 Acres or Less												
Other Nonreporting Landholdings												
TOTAL												

I ATTEST THAT THESE DATA ARE BASED ON LANDHOLDER'S REPORTING FORMS AND ACCURATELY REPRESENT THE DATA SUBMITTED BY THE LANDHOLDERS. I FURTHER ATTEST THAT ALL KNOWN ERRORS, OMISSIONS, AND DISCREPANCIES IN THE LANDHOLDERS' FORMS ARE LISTED ON THE REVERSE OF THIS SHEET.

Signature

Title

Date

REPORTING FORM ERRORS, OMISSIONS, AND DISCREPANCIES

Landholder Name	Nature of Error, Omission, or Discrepancy				
	Check Here If no Form Submitted	Did Landholder Receive Irrigation Water?			Explanation of Known Errors, Omissions, and Discrepancies Other than Failure to Submit Required Forms
		Yes	No		

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7-1781B (8-88)
Sheet 2
Bureau of Reclamation

Tabulation Sheet for Landholdings of Over_____ through_____Acres For "Individual's Report of Landholdings," Form 7-2190, and "Multiple Ownership Report of Landholdings," Form 7-2191	OMB CLEARANCE NO.: 1006-0006 EXPIRATION DATE:
	Page_____of_____

Landholder Name	M	Irrigable and Irrigation Acreage Owned in This District	Irrigable and Irrigation Acreage Leased from Others in this District	Excess Acreage	Full-Cost Acreage

7-1781B (6-88)
Sheet 3
Bureau of Reclamation

Tabulation Sheet for "Governmental Agency's Report of Landholdings," Form 7-2193	OMB CLEARANCE NO.: 1006-0006 EXPIRATION DATE: Page_____of_____

Agency Name	Irrigable and Irrigation Acreage Owned, Not Leased To Other Parties	Irrigable and Irrigation Acreage Owned and Leased To Other Parties

7-1781B (8-88)
Sheet 4
Bureau of Reclamation

Tabulation Sheet for "Religious or Charitable Organization's Report of Landholdings," Form 7-2194				OMB CLEARANCE NO.: 1006-0006 EXPIRATION DATE: Page_____of_____	
Landholder Name	M	Irrigable and Irrigation Acreage Owned in This District	Irrigable and Irrigation Acreage Leased from Others in this District	Excess Acreage	Full-Cost Acreage

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). An expedited review has been requested in accordance with the Act, because of the need to implement this information collection before the beginning of the 1989 water year. Since allowing for the normal review period would adversely affect the public interest, approval has been requested by October 17, 1988.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Mr. Terry P. Lynott, Assistant Commissioner for Resources Management, U.S. Bureau of Reclamation, Building 67, Denver Federal Center, Denver, CO 80225, and to the Office of Information and Regulatory Affairs, Attention: Interior Department Desk Officer, Office of Management and Budget, Washington, DC 20503.

Title: Individual Landholders' Certification and Reporting Forms Required by the Reclamation Reform Act of 1982.

OMB Approval Number: 1006–0005.

Description: The proposed information collection requires landholders to complete forms demonstrating their compliance with the acreage limitation provisions of Reclamation law. All landholders that own or lease more than 40 acres of land subject to these requirements must complete one or more of the forms listed below. The forms establish each landholder's status with respect to landownership limitations, full cost pricing thresholds, lease requirements, and other provisions of Reclamation law.

Bureau Form Numbers: 7–2178 through 7–2181, 7–2183 through 7–2185, 7–2187 through 7–2191, 7–2193 through 7–2195, and 7–2197 through 7–2199.

Proposed Frequency of Response: Annually, and when landholding changes occur.

Description of Respondents: Owners and lessees of land on Federal Reclamation projects.

Estimated Number of Likely Respondents: 48,850.

Estimated Annual Responses: 56,610 (some respondents must complete more than one form).

Annual Burden Hours: 26,888.

Estimated Average Burden Hours Per Response: 0.47.

Date: August 22, 1988

C. Dale Duvall,

Commissioner, Bureau of Reclamation.

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7-2178A (8-88)
Bureau of Reclamation

GENERAL INSTRUCTIONS
(For Certification Forms)

Use of this booklet. (repeated from cover)

Use this booklet only if you are subject to the discretionary provisions of the Reclamation Reform Act of 1982 (RRA). You are subject to the discretionary provisions if you have personally made an irrevocable election, or if you have directly owned or leased land in a district after that district conformed to the discretionary provisions of the RRA.

Please note that a part owner's or beneficiary's status is not automatically determined by the status of the entity in which he or she holds an interest. For example, if you own or lease land only indirectly through a legal entity that holds land in a district with a new or amended contract, you may choose whether you wish to be subject to the discretionary provisions or to prior Reclamation law. In that situation, you may indicate your choice by submitting a certification (blue) form if you wish to become subject to the discretionary provisions, or by submitting a reporting (brown) form if you wish to remain subject to prior law. If you choose to remain subject to prior law, do not use this booklet; instead, obtain a "Reporting Forms Booklet" from your irrigation district office. It is very important to note that if you submit a certification (blue) form to a district with a new or amended contract, you will be bound to the discretionary provisions permanently, and in all districts.

If you own or lease land only indirectly through a legal entity that is subject to the discretionary provisions by virtue of an irrevocable election, you are not subject to the discretionary provisions unless you personally make an irrevocable election.

Similarly, a legal entity's status under Reclamation law is not determined by the status of the entity's part owners or beneficiaries. For example, a corporation in a prior law district remains subject to prior law ownership limitations even if all of its stockholders become subject to the discretionary provisions. In that situation, the corporation itself must make an irrevocable election if it is to become subject to the discretionary provisions.

Who must complete these certification forms.

All persons, organizations, and Governmental agencies which own or lease irrigable or irrigation land and which are subject to the discretionary provisions must certify their landholdings. The only exceptions to this certification requirement are as follows:

1. Landholders whose total irrigable and irrigation land owned and leased, both directly and through entities, totals 40 acres or less westwide are exempt from certification requirements.

2. Landholdings in districts which are exempted from acreage limitation law by statute or by action of the Secretary of the Interior are exempt from certification requirements.

3. Landholdings in districts which are obligated to the United States only by a Small Reclamation Projects Act or Water Conservation and Utilization Act contract are exempt from these particular certification requirements.

When to certify.

If you are making an irrevocable election to become subject to the discretionary provisions, you must submit the necessary certification form(s) to the Bureau of Reclamation with your irrevocable election form. Copies of your irrevocable election and certification forms must also be filed with the appropriate irrigation district(s) at the same time. If you are subject to the discretionary provisions because a district in which you hold land has amended its contract with the United States, or has entered into a new contract with the United States, you must submit the necessary certification form(s) to the office of each irrigation district in which you hold irrigable or irrigation land by the date specified by each district. This date must always precede the initial delivery of irrigation water. Failure to certify will jeopardize the continued delivery of irrigation water.

After you complete your first certification, you will not need to complete basic certification forms again unless your landholding changes. If your ownership or leasing arrangements change in some way, you must notify your district office, either verbally or in writing, within 15 days of the change and submit new certification form(s) within 30 days of that change. If your ownership and leasing arrangements do not change, you will be required only to verify annually in writing that your most recently submitted certification form(s) remain valid. Your district office will send you a verification form to fill out each year.

Which forms to fill out.

If you have determined that you or your organization is subject to the discretionary provisions of the RRA, the next step is to decide which form or forms to fill out.

There are five forms in this booklet (two copies of each form). MOST FARMERS AND LANDOWNERS, HOWEVER, NEED TO COMPLETE ONLY THE FIRST FORM, "INDIVIDUAL'S CERTIFICATE OF LANDHOLDINGS." The following summaries will help you to determine which form or forms you need to complete.

1. Individuals and single families (see definition of "family" following these instructions) whose total holding of irrigable and irrigation land, both directly and through part ownership in entities, is greater than 40 acres westwide, must complete Form 7-2180, "Individual's Certificate of Landholdings." With the exception of trusts, all legal entities which are composed solely of an individual or a single family must complete Form 7-2180. Holdings of dependents must be included on their parents' or legal guardians' Form 7-2180; dependents may not complete separate forms. If you hold land in more than one name – for example, some land in your own name, and some land in the name of a family corporation – you must report all such land on one Form 7-2180. Part owners and beneficiaries of entities should not use Form 7-2180 unless they wish to become subject to the discretionary provisions. If such part owners and beneficiaries do not wish to become subject to the discretionary provisions, they must report their holding on Form 7-2190, "Individual's Report of Landholdings," which can be obtained from the appropriate irrigation district office.

2. All trusts, even if composed solely of members of a single family, (see definition of "family" following these instructions) and other legal entities such as corporations, partnerships, joint tenancies, and tenancies-in-common, that are not composed solely of members of a single family, must complete Form 7-2181, "Multiple Ownership Certificate of Landholdings." Entities that are composed of more than one family must complete Form 7-2181, even if the families are related.

3. If your are a lessee that has previously completed Form 7-2180, 7-2181, or 7-2184, and need to report a change in leaseholdings only, you may report those changes using Form 7-2185, "Leasing Change Form." Any changes in leases, including termination of existing agreements, must be reported by both the landowner and the lessee. By signing a lessee's Form 7-2185, an owner can satisfy the requirement to report changes in his/her farming arrangements.

4. If you own and/or lease land above certain thresholds, Forms 7-2180, 7-2181, and 7-2184 will direct you to complete Form 7-2188, "Application for Designation of Nonexcess Land," and/or Form 7-2189, "Application for Selection of Non-Full-Cost Land." These forms need not be completed unless the instructions for Forms 7-2180, 7-2181, or 7-2184 so indicate.

If the landholder is a governmental agency, or a religious or charitable organization, none of the forms listed above are to be used for certification. Such entities must contact their district offices to obtain the proper forms. Agencies of Federal, State, county, city, or other levels of government which hold more than 40 acres of irrigable and/or irrigation land westwide must submit Form 7-2183, "Governmental Agency's Certificate of Landholdings." Religious or charitable organizations which are exempt from taxation under section 501 of the Internal Revenue Code of 1954, and which hold more than 40 acres of irrigable and/or irrigation land westwide, must submit Form 7-2184, "Religious or Charitable Organization's Certificate of Landholdings."

Filling out the forms.

Once you have determined which form(s) you must complete, follow the instructions for completing that form carefully and complete the form(s). If you have questions, contact your district or Bureau of Reclamation office.

Be sure to break down land parcels as far as necessary to ensure accurate reporting. For example, a quarter section of land, half of which is operated by the owner, and half of which is operated by a lessee, should be listed as two separate 80-acre parcels.

On all forms, individuals and families must give the street address or rural route number of their residence. Similarly, legal entities must give their street address or rural route number. Post office box numbers, attorneys' addresses, relatives' addresses, "c/o" addresses, etc., are not acceptable in place of street addresses. Post office box numbers may be used only if no other address for the landholder exists. If the mailing address differs from the residential address, it is also required; please enter the mailing address on the back of the form, or where indicated.

Any unauthorized alteration made to any certification form will render that form invalid.

If you are making an irrevocable election, return the signed certification form(s) with your irrevocable election form to the Bureau of Reclamation, and be sure to provide copies of these forms to the appropriate district(s). If you are not making an irrevocable election, return the signed certification form(s) to the office of each irrigation district in which you own or lease irrigable or irrigation land.

Please be aware that the completion of certification forms does not guarantee your land's eligibility for water. For example, excess land (see definitions) which has not been placed under recordable contract, and land acquired from excess status without price approval, is generally ineligible for irrigation water deliveries.

If you lease land to or from another individual or entity, please inform the lessees or lessors of their obligation to certify or report. If either the lessee or lessor fails to report, the eligibility of the land to receive irrigation water will be jeopardized.

It is recommended that you keep a copy of your certification form(s) for your own records.

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DEFINITIONS

Following are the definitions of some of the terms used in these forms and instruction. Please refer to these definitions whenever the meaning of a term is not clear to you.

Contract operator: An individual or legal entity other than the owner, lessee, or sublessee that performs part or all of the farming operations. Excepted are spouses, minor children, and hired employees for whom the social security is paid. (See definition of "operator.")

Dependent: The term "dependent" means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) as it may be amended from time to time. Landholdings of a person who is someone's dependent for income tax purposes must be reported as landholdings of the dependent's parent(s) or legal guardian(s).

Description: This refers to a legal description of the land in question, or a county assessor's parcel number if your district so requires. In a legal description, detail beyond the quarter section is not necessary, except on Forms 7-2188 and 7-2189. Thus, an example of a legal description might read either "SE 1/4, Section 22, T3N, R2W, 3rd P.M." or "APN 026-051-28."

Discretionary provisions of the Reclamation Reform Act of 1982: This refers to section 203-208 of the Reclamation Reform Act of 1982, which provide for increased ownership entitlements and full-cost pricing of water. Districts and individuals may, at their discretion, choose to become subject to the discretionary provisions, or to remain subject to prior acreage limitation law.

District or Irrigation district: Any entity which has a contract with the United States for the delivery of Reclamation project water. The term "district," as used in these forms, could refer to a canal company, irrigation company, water user association, ditch company, water company, drainage district, etc.

Effective date of agreement: The effective date of a farm operation agreement or lease is either the date the agreement was entered into or the effective date as specified in the agreement.

Excess land: Irrigable land, other than exempt land, owned by any landowner in excess of the maximum ownership limitation under the applicable provisions of Reclamation law.

Family: A married couple and their dependents. Non-dependent children are not considered part of the same family as their parents. Rather, each non-dependent child is considered a separate individual or, if married, a separate family.

Federal Employer's Identification Number (FEIN): A unique number assigned to businesses by the Internal Revenue Service.

Individual: A person, including his or her spouse, and their dependents. Under the discretionary provisions of the Reclamation Reform Act of 1982, and individual has exactly the same entitlement as a family (see definition of "family").

Irrevocable election: A legally binding decision by a landholder to conform to the discretionary provisions of the Reclamation Reform Act of 1982. An irrevocable election becomes official when a landholder submits an irrevocable election form to the Bureau of Reclamation. If an entire district elects to amend its contract to conform with the ownership entitlement and pricing provisions of the Reclamation Reform Act of 1982, all direct landholders in the district are automatically subject to these provisions without making an irrevocable election. A landholder is subject to prior law until either an irrevocable election is made or the district amends its contract to conform to the discretionary provisions of the Reclamation Reform Act of 1982.

Irrigable land: Land which is part of a specific Reclamation project and for which a Reclamation project water supply is, can be, or is planned to be provided. Areas occupied by homesites, farm buildings, permanent feedlots, permanent equipment storage yards, public roads, and other permanent facilities, are not included in irrigable acreage.

Irrigation land: All irrigable land (see preceding definition) receiving irrigation water, and other land receiving irrigation water.

Irrigation water: Water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary of the Interior.

Landholding: Land served with irrigation water which is owned and/or operated under a lease by an individual or legal entity.

Lease: Contract by which one party gives to another the use of land for a specified time and for agreed upon payments, and by which the lessee assumes the economic risk in the operation and management of the leased land. The Reclamation Reform Act of 1982 requires that all leases of land receiving irrigation water *must be written*, and available for the Department of the Interior's inspection. See also definition of "term of lease."

Legal entity: Any business or property ownership arrangement established under State or Federal law including, but not limited to, corporations, partnerships, associations, joint tenancies, and tenancies-in-common.

Limited recipient: A legal entity established under State or Federal law benefiting more than 25 persons.

Nondiscretionary or Self-enacting provisions of the Reclamation Reform Act of 1982: This refers to sections 209-230 of the Reclamation Reform Act of 1982. These provisions cover a wide range of topics and apply to all Reclamation districts.

Operator: An individual or legal entity that conducts farming operations by either doing or supervising all or a portion of the work. The operator(s) of a given parcel may be the owner, a lessee, a sublessee, contract operator(s), or a combination of the above.

Prior law: The Reclamation Act of 1902 and other laws which were in effect before the Reclamation Reform Act of 1982 was enacted, and which address acreage limitation law.

Reclamation Reform Act of 1982: An act signed into law by President Reagan on October 12, 1982, which gave districts and individuals the option of remaining subject to prior Reclamation law or electing to become subject to the increased acreage entitlement and full-cost pricing provisions of the new law. The new law also permits the Secretary of the Interior to collect the information on landholdings necessary to administer acreage limitation law.

Term of lease: For leases which were in effect on October 12, 1982, the term of the lease refers to the time remaining on the lease on that date. For leases which went into effect after October 12, 1982, this refers to the actual term of the lease on the day it went into effect.

Westwide: The 17 Western States in which Reclamation projects are located. Upon your request, the Bureau of Reclamation or your district can provide a list of all districts westwide which are subject to Reclamation law.

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7-2180 (6-88)
Bureau of Reclamation

INSTRUCTIONS FOR "INDIVIDUAL'S CERTIFICATE OF LANDHOLDINGS," FORM 7-2180

PLEASE REVIEW THE GENERAL INSTRUCTIONS BEFORE COMPLETING THIS FORM. THE GENERAL INSTRUCTIONS EXPLAIN THE USE OF THIS FORM, GIVE DEFINITIONS OF TERMS USED IN THIS FORM, AND PROVIDE OTHER ESSENTIAL INFORMATION.

If you own or lease land in more than one Reclamation project district, give all information pertaining to those holdings on this form. You must also complete and submit a certification form in each district in which you own or lease land, declaring all your landholdings each time you submit this form. If you wish, you may make copies of Sections II, III.A, III.B, and III.C of this form to turn in with the 7-2180 forms you submit to other irrigation districts, rather than rewriting these sections each time. If you need extra forms, please contact your district office.

If you determine, based on the General Instructions, that you must report the interest you hold in an entity or entities, you should obtain a copy of each entity's Form 7-2181, "Multiple Ownership Certificate of Landholdings," or Form 7-2191, "Multiple Ownership Report of Landholdings." By referring to the information contained on the entity's form, you can ensure that the information on entity landholdings which you report is both accurate and reliable. If such an entity (or entities) holds irrigable or irrigation land in more than one district, you must also certify in each of those districts.

Item-by-Item Instructions *(Please type or print all answers.)*

Section I: Print the name of the district in which you are submitting this form. Print your name and social security number and, if you are married, your spouse's name and social security number. If you hold land in the name of an individual or husband/wife corporation (or other entity owned entirely by you, your spouse, and/or your dependents), print that name in the space marked "OTHER NAMES IN WHICH YOU, YOUR SPOUSE, AND/OR YOUR DEPENDENTS HOLD IRRIGABLE OR IRRIGATION LAND." Any other names in which irrigable or irrigation land is held, such as your dependents' names, maiden names, etc., must also be listed here.

Section II: The purpose of Section II is to determine whether you are subject to the discretionary provisions and if you should continue to complete this form. IF YOU ANSWER "NO" TO BOTH II.A AND II.B, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

To answer question II.C, place a check in the box which indicates the correct citizenship status of yourself and your spouse. You must answer this question only if you hold land directly; if you hold land only indirectly as a part owner, stockholder, or beneficiary of a legal entity, you need not answer this question.

To answer question II.D, place a check in the box which indicates the landholder's dependency status under the Internal Revenue Code. If the answer is "yes," the landholder should be included on his/her parents' or legal guardians' Form 7-2180.

Section III: Use Section III.A to report all irrigable and irrigation land in which you, your spouse, and/or your dependents own a 100% interest. Use Section III.B to report all irrigable and irrigation land leased from other parties by you, your spouse, and/or your dependents, or by entities in which you, your spouse, and/or your dependents own a 100% interest. Use Section III.C to describe your interest as a part owner or beneficiary of an entity or entities which own or lease irrigable or irrigation land. Any such irrigable or irrigation land, whether within or outside of the district in which you are submitting this form, must be listed in Section III. If you are unsure about whether a parcel must be considered "irrigable land" or "irrigation land," please refer to the definitions of these terms located in the front of this booklet. If you are still unsure, contact the office of the district in which the land is located or your nearest Bureau of Reclamation office for assistance.

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Section III.A: In Column 1, give the name of the district in which the parcel you are describing is located. If you hold land in more than one district, grouping the parcels by district will make it easier for you to summarize your landholdings in Section III.D.

In Column 2, please provide a legal description accurate to the quarter section, or an assessor's parcel number if your district office so requires.

In Column 3, place a check in the box which indicates how each parcel is being operated.

In Column 4, give the name and address of the operator or lessee if the land is operated or leased by another party.

In Column 5, the effective date of an agreement is either the date the lease (or any other operation agreement) was entered into, or the effective date as specified in the agreement.

In Column 6, "Number of acres" of each parcel should be rounded to the nearest acre.

Section III.B: Enter the district name, legal description, effective date of agreement, and number of acres for each leased parcel as discussed in the instructions for Section III.A above.

In Column 3, enter the name of the owner of each parcel.

In Column 4, indicate whether you operate each parcel yourself, or whether another party operates the parcel.

Section III.C: In Column 1, print the name of the district in which the entity holds irrigable or irrigation land. It is recommended that all holdings of entities in one district be listed before starting with holdings in other districts. Grouping your listings "by district" rather than "by entity" will make it easier for you to complete the summary in Section III.D.

In Column 2, print the correct name of the entity(s) in which you, your spouse, and/or your dependents hold an interest. Do not include entities owned by or benefiting more than 25 persons if your interest is 4 percent or less, or amounts to 40 acres or less. If the entity has holdings in more than one district, you may need to enter the entity's name more than once.

In Columns 3 and 4, enter each entity's Federal Employer's Identification Number, if applicable, and check the box that most accurately describes the entity. The heading "DISCRETIONARY TRUST" refers to a trust that is subject to the discretionary provisions of the RRA; a corporation, partnership, joint tenancy, or any other entity subject to the discretionary provisions would fall under the heading "OTHER DISCRETIONARY." Similarly, the heading "PRIOR LAW CORPORATION" refers to a corporation that remains subject to prior law; all other prior law legal entities such as trusts, partnerships, etc., fall under the heading "OTHER PRIOR LAW."

In Columns 5 and 6, enter the number of irrigable and irrigation acres owned and leased by each entity in each district to the nearest acre. Note: In Columns 5 and 6, part owners leasing land to or from an entity in which they hold an interest may subtract any such acreage they have included as part of their own landholding in sections III.A and III.B. Such part owners must use footnotes to briefly explain these subtractions on the back of the form.

In Column 7, enter the percentage interest you, your spouse, and/or your dependents hold in each entity.

In Column 8, multiply the acreage from Column 5 by the percentage (in decimal form) from Column 7. For example, if Column 5 reads "160" (acres) and Column 7 reads "50" percent, the correct entry in Column 8 would be "80." Column 9 uses a similar procedure; in Column 9, multiply the acreage from Column 6 by the percentage in Column 7.

Section III.D: Acreages reported in Sections III.A, III.B, and III.C are totaled and summarized here. Columns are provided for up to five other districts in which you may hold irrigable or irrigation land.

Please note that if the "total" column of line D.3 exceeds 960 acres, or if you own any excess land, you must submit Form 7-2188, "Application for Designation of Nonexcess Land" with this form.

If the "total" column of line D.6 is greater than zero, and if the "total" column of line D.7 exceeds 960 acres, you must submit Form 7-2189, "Application for Selection of Non-Full-Cost Land" with this form. If both of these conditions are not present, Form 7-2189 need not be completed.

Section IV: The street address or rural route number of your residence is required. Attorneys' addresses, relatives' addresses, "c/o" addresses, etc., are not acceptable as residential addresses. Post office box numbers may be used only if no other address exists. If your mailing address differs from your residential address, it is also required; please enter the mailing address on the back of the form. The remainder of this section is self-explanatory. Please read it carefully and sign it. The statements concerning the reporting of changes in information, the rent paid on irrigation land, written leases, the terms of such leases, and holdings of spouses and dependents are requirements of Reclamation law.

ANY QUESTIONS YOU MAY HAVE SHOULD BE ADDRESSED TO YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

BEST COPY AVAILABLE

7-2180 (6-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM.
(Attach additional pages if necessary)

FOR DISTRICT USE ONLY: IDCON NO.

INDIVIDUAL'S CERTIFICATE OF LANDHOLDINGS Required by the Reclamation Reform Act of 1982	FORM 7-2180	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTIFICATION

District Name	Landholder	Spouse	Other names, or names of entities, in which you, your spouse, and/or your dependents hold irrigable or irrigation land. (Include only those entities in which you, your spouse, and/or your dependents own 100 percent of the stock or interest.)	
	Name	Name		
	Social Security Number	Social Security Number		

SECTION II: LANDHOLDER STATUS

A. Have you ever owned or leased, either directly or indirectly, irrigation land in any district which has amended its contract with the United States for conformance to the discretionary provisions of the Reclamation Reform Act of 1982, or has entered into a new contract with the United States after October 12, 1982? (If you do not know, please ask a district official.) ☐ Yes ☐ No

B. Have you personally made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982? ☐ Yes ☐ No

IF YOU ANSWERED "NO" TO BOTH QUESTIONS "A" AND "B" ABOVE, DO NOT COMPLETE THIS FORM.
CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

C. Check the box which indicates your citizenship status: (individuals that hold land only as part owners, stockholders, or beneficiaries of legal entities need not respond to this question.)

	Self	Spouse
U.S. Citizen		
Resident Alien		
Nonresident Alien		

D. Are you claimed as a dependent within the meaning of the Internal Revenue Code? (Dependents must be included on their parents' or legal guardians' Form 7-2180.) ☐ Yes ☐ No

SECTION III: LANDHOLDINGS

A. List all irrigable and irrigation land parcels westwide in which a 100 percent interest is owned by you, your spouse, and/or your dependents. If the land is located in more than one district, group your listing of parcels by district to facilitate your summarization of acreages in section III.D. In column 3, check the box that indicates how each parcel is being farmed; check "self" if you farm the parcel yourself, "lessee" if you lease the parcel to another party, and "other" if the parcel is being farmed by another party under an agreement other than a lease. (Attach additional pages if necessary.)

(1)	(2)	(3)			(4)	(5)	(6)
District Name	Legal Description of Irrigable And Irrigation Land	Operated By:			Name and Address of Lessee or Other Party Operating Each Parcel	Effective Date Of Agreement	Number Of Acres
		Self	Lessee	Other			
						Total Acres	

B. List all irrigable and irrigation land parcels westwide which you, your spouse, and/or your dependents lease from another party. If the land is located in more than one district, group your listing of parcels by district to facilitate your summarization of acreages in section IILD. (Attach additional pages if necessary.)

(1)	(2)	(3)	(4)		(5)	(6)
District Name	Legal Description of Irrigable and Irrigation Land	Landowner's Name	Operated By: Self	Operated By: Other	Effective Date of Agreement	Number of Acres
					Total Acres	

C. List all entities in which you, your spouse, and/or your dependents hold a part (less than 100 percent) interest, and which own or lease irrigable or irrigation land, as defined in the front of this booklet. You need not include entities which are owned by or benefit more than 25 individuals, provided the interest you, your spouse, and/or your dependents hold is 4 percent or less, or amounts to 40 acres or less. Group your listings by district in order to make it easier to summarize your holdings in section IILD. If a listed entity holds irrigable or irrigation land in more than one district, it will be necessary to enter the entity's name on more than one line.

(1)	(2)	(3)	(4) Entity Type And Status				(5)	(6)	(7)	(8)	(9)
District Name	Name of Entity Which Owns or Leases Irrigable or Irrigation Land and in Which You Own an Interest (Exactly as it appears on the entity's multiple ownership form)	Entity's Federal Employer's Identification Number (If applicable)	Discretionary Trust	Other Discretionary	Prior Law Corporation	Other Prior Law	Number of Irrigable and Irrigation Acres Owned by the Entity in Each District	Number of Irrigable and Irrigation Acres Leased by the Entity in Each District	Percentage of Interest You Hold in Each Entity	Owned Acreage Attributable to Your Interest in the Entity (Col. 5 X Col. 7)	Leased Acreage Attributable to Your Interest in the Entity (Col. 6 X Col. 7)
									Total Acres		

SECTION III: LANDHOLDINGS (Continued)

D. Landholding Summary	Number of Acres						
	This District	Other Districts					Total
1. Enter the total number of irrigable and irrigation acres owned (from Section III.A).							
2. Enter the total number of irrigable and irrigation acres owned through entities (if any) as reported in Section III.C, Column 8.							
3. Total irrigable and irrigation acreage owned (add lines D.1 and D.2).							
4. Enter the total number of irrigable and irrigation acres leased (from Section III.B).							
5. Enter the total number of irrigable and irrigation acres leased through entities (if any) as reported in section III.C, Column 9.							
6. Total irrigable and irrigation acreage leased (add lines D.4 and D.5).							
7. Total irrigable and irrigation acreage owned and leased (add lines D.3 and D.6).							

If the "Total" column of line D.3 exceeds 960 acres, or if you own any excess land, you must complete form 7-2188, "APPLICATION FOR DESIGNATION OF NONEXCESS LAND."

If the "Total" column of line D.6 is greater than zero, and if the "Total" column of line D.7 exceeds 960 acres, you must complete Form 7-2189, "APPLICATION FOR SELECTION OF NON-FULL-COST LAND." Form 7-2189 must also be completed if you own land subject to an extended recordable contract.

SECTION IV: SIGNATURE

Attention: This certificate must be signed. Read the following paragraphs before signing.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

I (we) certify that the information provided herein is true, accurate, and complete to the best of my (our) knowledge and agree that any change in the information contained in this report will be provided verbally to the district first named within 15 days of such change, and that new forms will be submitted within 30 days of such change. I (we) further certify that, in my (our) best judgment, the rent paid on any land leased by or from me (us) which is receiving irrigation water, reflects the reasonable value of the irrigation water to the productivity of the land. I (we) also certify that any leases of land receiving irrigation water to which I (we) am (are) a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years. I (we) further certify that all irrigable and irrigation landholdings of both spouses and any dependents (if applicable), whether held directly or through entities, have been reported on this form.

Landholder's Signature _____ Spouse's Signature _____

Landholder's Residential Street Address or Rural Route Number _____

City and State _____ Zip Code _____

Telephone Number (include area code) _____ Date _____

This certificate is required by Public Law 97-293. Failure to report can result in prosecution and/or loss of water deliveries from Federal Reclamation projects. Information obtained in this certificate is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or the irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

Disclosure of the Social Security Number is voluntary. It is requested on this form to facilitate processing and recordkeeping by the irrigation district and the Bureau of Reclamation.

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE.

7-2181 (6-88)
Bureau of Reclamation

INSTRUCTIONS FOR "MULTIPLE OWNERSHIP CERTIFICATE OF LANDHOLDINGS," FORM 7-2181

PLEASE REVIEW THE GENERAL INSTRUCTIONS BEFORE COMPLETING THIS FORM. THE GENERAL INSTRUCTIONS EXPLAIN THE USE OF THIS FORM, GIVE DEFINITIONS OF TERMS USED IN THIS FORM, AND PROVIDE OTHER ESSENTIAL INFORMATION.

All irrigable and irrigation landholdings of the entity completing this form, including landholdings in other Reclamation project districts, must be included on this form.

Each entity must submit a completed Form 7-2181, "Multiple Ownership Certificate of Landholdings" in each district in which it holds irrigable or irrigation land, either directly or through subsidiaries. If desired, Sections II, III, IV.A, and IV.B may be copied and submitted with the 7-2181 forms submitted in other districts, rather than rewriting these sections each time. If extra forms are needed, please contact your district office.

Holdings of subsidiaries are counted against the entitlement of the parent entity. Therefore, this form must be completed by the ultimate parent entity and must fully disclose the identity and landholdings of each subsidiary. In the case where a corporation which holds irrigable or irrigation land is owned by more than one other corporation, describe the ownership of the corporation(s) in detail on a separate sheet. Submit that sheet with this certificate, and fill out this certificate as completely as possible.

If the certifying entity is a trust, please note the special instructions for trusts on the reverse side of this page.

Item-by-Item Instructions *(Please type or print all answers.)*

Section I: Enter the name of the district in which you are submitting the form, and check the box that best identifies the landholder's entity type. The landholder name(s) should be the name(s) in which the land is owned or leased, unless the landholder is a subsidiary of another entity. In that case, the parent entity's name should be given as the landholder, and the subsidiary's name should appear on the lines provided. Indicate the State or States in which the landholder entity is established or registered, and the entity's Federal Employer's Identification Number (FEIN). The FEIN is required if one exists for the entity. Enter the names and addresses of any subsidiaries that own or lease irrigable or irrigation land. Finally, trusts must enter the names of all the trust's grantors.

Section II: The purpose of questions II.A and II.B is to determine whether the entity is subject to the discretionary provisions and if you should continue to complete this form. Please note that irrevocable elections by an entity's part owners or beneficiaries do not bind the entity and are therefore not the equivalent to an irrevocable election by the entity. IF YOU ANSWER "NO" TO BOTH II.A AND II.B, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

Questions II.C and II.D – These questions must be answered by all trusts. Check the appropriate boxes.

Question II.E – A limited recipient is an entity owned by or benefiting more than 25 persons. A limited recipient's non-full-cost entitlement is determined by whether or not it received Federal Reclamation project water on or before October 1, 1981. An entity owned by or benefiting 25 or fewer persons does not need to answer this question.

Section III: Qualified recipients (entities owned by or benefiting 25 or fewer persons) must identify all part owners or beneficiaries. Limited recipients (entities owned by or benefiting more than 25 persons) must identify only those part owners or beneficiaries who hold an interest greater than 4 percent in the entity, and whose interest amounts to more than 40 acres. If the entity is a limited recipient, and none of the part owners or beneficiaries holds an interest in the entity greater than 4 percent or amounting to more than 40 acres, skip the remainder of Section III and proceed to Section IV.

All persons identified in Section III must complete either Form 7-2180, "Individual's Certificate of Landholdings," or Form 7-2190, "Individual's Report of Landholdings," unless the part owner or

beneficiary's total holding of irrigable and irrigation land westwide, both directly and through entities, is 40 acres or less. The part owner or beneficiary must determine which of Forms 7-2180 or 7-2190 to complete based on his or her status under Reclamation law. If subject to the discretionary provisions of the RRA, the part owner or beneficiary should use Form 7-2180; if subject to prior law, he or she should use Form 7-2190. THE ENTITY COMPLETING THIS FORM SHOULD INFORM ALL PERSONS IDENTIFIED IN SECTION III OF THEIR OBLIGATION TO CERTIFY OR REPORT IN ORDER TO PROTECT THE LAND'S ELIGIBILITY TO RECEIVE IRRIGATION WATER.

Section IV: Use Section IV.A to report the entity's landownership; use Section IV.B to report land leased by the entity from other parties. Any irrigable and irrigation land owned or leased by the entity, whether within or outside of the district in which this form is being submitted, must be described here. If you are unsure about whether a parcel must be considered "irrigable land" or "irrigation land," please refer to the definitions of these terms located in the front of this booklet. If you are still unsure, contact the office of the district in which the land is located or your nearest Bureau of Reclamation office for assistance.

Section IV.A: In Column 1, give the name of the district in which the parcel being described is located. If the entity holds land in more than one district, grouping the parcels by district will make it easier to summarize the entity's landholdings in Section IV.C.

In Column 2, provide a legal description accurate to the quarter section, or an assessor's parcel number if your district office so requires.

In Column 3, place a check in the box which indicates how each parcel is being operated.

In Column 4, give the name and address of the operator or lessee if the land is operated by another party.

In Column 5, the effective date of an agreement is either the date the lease (or any other operation agreement) was entered into, or the effective date as specified in the agreement.

In Column 6, "Number of acres" of each parcel should be rounded to the nearest acre.

Section IV.B: Enter the district name, legal description, effective date of agreement, and number of acres for each leased parcel as discussed in the instructions for Section IV.A above.

In Column 3, enter the name of the owner of each parcel.

In Column 4, indicate whether you operate the parcel yourself, or whether another party operates the parcel.

Section IV.C: Acreages reported in Sections IV.A and IV.B are summarized here. If the "Total" column of line C.1 exceeds 960 acres (640 acres for a limited recipient), or if the entity owns any excess land, you must complete Form 7-2188, "Application for Designation of Nonexcess Land."

Qualified recipient entities must complete Form 7-2189, "Application for Selection of Non-Full-Cost Land" if the "total" column of line C.2 exceeds zero and if the "Total" column of line C.3 exceeds 960 acres. Form 7-2189 must also be completed if the entity owns land subject to an extended recordable contract.

Limited recipient entities whose first delivery of Reclamation project irrigation water took place on or before October 1, 1981 (refer to Section II.E) must complete Form 7-2189 if the "total" column of line C.3 exceeds 320 acres. If such entities' first delivery of Reclamation project irrigation water took place after October 1, 1981, Form 7-2189 must be completed in all cases, because all landholdings of such entities are subject to full-cost pricing.

Any limited recipient entity that owns land subject to an extended recordable contract must complete Form 7-2189.

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Section V: Note that if the entity is a joint tenancy or tenancy-in-common, all tenants or cotenants must sign the form unless they have provided a written authorization allowing one person to sign for the entity. Also, please note that the entity must give its street address or rural route number. Post office box numbers, attorneys' addresses, "c/o" addresses, etc., are not acceptable in place of a street address. A post office box number may be entered only if no other address for the entity exists. If the mailing address differs from the street address, it is also required; please enter the mailing address on the back of the form. The remainder of this section is self-explanatory. Please read it carefully and sign it. The statements concerning the reporting of changes in information, the rent paid on irrigation land, written leases, and the terms of such leases, are requirements of Reclamation law.

SPECIAL INSTRUCTION FOR TRUSTS: Because the acreage entitlements for trusts are entirely dependent upon the number of beneficiaries and their individual entitlements, trusts should use the following procedure to determine whether it is necessary to complete Forms 7-2188 and 7-2189:

On a separate sheet of paper, list each beneficiary identified in Section III of this form and give each beneficiary's status (i.e., qualified recipient or prior law). Also give the number of owned and leased irrigable and irrigation acres which are attributable to the interest held by each beneficiary. Unless you are completely familiar with acreage limitation law, you should work with your district to determine whether each beneficiary is within his or her ownership and non-full-cost entitlements, and whether it is necessary for the trust to complete Forms 7-2188 and 7-2189. Copies of these papers and computations must be filed in the district office with the trust's certification forms. Remember that in most cases, each part owner or beneficiary identified in Section III of Form 7-2181 must submit either Form 7-2180, "Individual's Certificate of Landholdings," or Form 7-2190, "Individual's Report of Landholdings," depending on his or her status and total westwide holding.

ANY QUESTIONS YOU MAY HAVE SHOULD BE ADDRESSED TO YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

7-2181 (6-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM.
(Attach additional pages if necessary)

For District Use Only: IDCON NO.

MULTIPLE OWNERSHIP CERTIFICATE OF LANDHOLDINGS
Required by the Reclamation Reform Act of 1982

FORM 7-2181

OMB CLEARANCE NO.: 1006-0005
EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTIFICATION

A. District Name

B. Type of Entity (Check one)
- ☐ Corporation
- ☐ Partnership
- ☐ Joint Tenancy or Tenancy-in-Common
- ☐ Trust
- ☐ Other (Describe) _____

C. Landholder Name(s)

D. State(s) in which landholder is established or registered (if applicable)

E. Federal employer's identification number (FEIN) (if applicable)

F. Identification of subsidiaries which hold all or a portion of the irrigation land listed herein.

Subsidiary Name(s)	Subsidiary Address(es)

G. Trusts only - enter grantor name(s)

SECTION II: LANDHOLDER STATUS

A. Has the district named above, or any other district in which this entity has ever owned or leased irrigation land, amended its contract with the United States to conform to the discretionary provisions of the Reclamation Reform Act of 1982, or entered into a new contract with the United States after October 12, 1982? (If you do not know, please ask a district official) ☐ Yes ☐ No

B. Has this entity made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982? ☐ Yes ☐ No

IF YOU ANSWERED "NO" TO BOTH II.A AND II.B, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

C. (Trusts only) Is the trust revocable at the discretion of the grantor in such a manner that revocation results in the title to the trusted land reverting either directly or indirectly to the grantor? ☐ Yes ☐ No

D. (Trusts only) Is the trust revoked or terminated by its terms upon the expiration of a specified period of time in such a manner that revocation or termination results in the title to the trusted land reverting either directly or indirectly to the grantor? ☐ Yes ☐ No

IF YOU ANSWERED "YES" TO EITHER QUESTION II.C OR II.D, THE TRUSTED LAND MUST BE ATTRIBUTED TO THE GRANTOR(S) NAMED ABOVE. PLEASE REFER TO THE INSTRUCTIONS FOR THIS SECTION.

E. (Limited recipients only) Did this entity receive Federal Reclamation project water on or before October 1, 1981? ☐ Yes ☐ No

SECTION III: PART OWNER/BENEFICIARY/GRANTOR ATTRIBUTION

A. Is this entity owned by, or does it benefit, 25 or fewer persons? ☐ Yes ☐ No

B. Do any of the owners or beneficiaries, or grantors to whom trusted land is attributable, hold an interest greater than 4 percent in this entity which amounts to more than 40 acres through attribution? ☐ Yes ☐ No

C. If the answers to both III.A and III.B above are "no," skip the remainder of this section and proceed to section IV.

If the entity has more than 25 owners or beneficiaries, or grantors to whom trusted land is attributable, any such person whose interest in the entity results in an attribution of more than 40 acres, and whose interest in the entity exceeds 4 percent, must be identified here. If there are 25 or fewer owners or beneficiaries, or grantors to whom trusted land is attributable, all such persons must be identified here, regardless of their interest.

All persons identified here must complete and submit either form 7-2180, "INDIVIDUAL'S CERTIFICATE OF LANDHOLDINGS," or Form 7-2190, "INDIVIDUAL'S REPORT OF LANDHOLDINGS," unless they directly and/or indirectly own and/or lease 40 acres or less westwide. (Attach additional pages if necessary.)

Part Owner, Beneficiary, or Grantor Name	Social Security Number	Percentage of Interest Held

SECTION IV: LANDHOLDINGS

A. List all irrigable and irrigation land parcels westwide which this entity owns. If the land is located in more than one district, group the listing of parcels by district to facilitate summarization of acreages in section IV.C. In column 3, check the box that indicates how each parcel is being farmed; check "Self" if this entity farms the parcel, "Lessee" if the entity leases the parcel to another party, and "Other" if the parcel is being farmed by another party under an agreement other than a lease. (Attach additional pages if necessary.)

(1)	(2)	(3)			(4)	(5)	(6)
District Name	Legal Description of Irrigable and Irrigation Land	Operated By:			Name and Address of Lessee or Other Party Operating Each Parcel	Effective Date of Agreement	Number Of Acres
		Self	Lessee	Other			
						Total Acres	

B. List all irrigable and irrigation land parcels westwide which this entity leases from another party. If the land is located in more than one district, group the listing of parcels by district to facilitate summarization of acreages in section IV.C. (Attach additional pages if necessary.)

(1)	(2)	(3)	(4)		(5)	(6)
District Name	Legal Description of Irrigable and Irrigation Land	Landowner's Name	Operated by:		Effective Date of Agreement	Number Of Acres
			Self	Other		
					Total Acres	

SECTION IV: LANDHOLDINGS (Continued)

C. Landholding Summary	Number of Acres						
	This District	Other Districts					Total
1. Enter the total number of irrigable and irrigation acres owned (From section IV.A).							
2. Enter the total number of irrigable and irrigation acres leased (from section IV.B).							
3. Total irrigable and irrigation acreage owned and leased (add lines C.1 and C.2).							

PLEASE REFER TO THE INSTRUCTIONS FOR SECTION IV.C TO DETERMINE IF IT IS NECESSARY TO COMPLETE FORM 7-2188 OR FORM 7-2189.

SECTION V: SIGNATURE

Attention: This declaration must be signed by an officer or authorized agent of the entity to which this form applies. If the entity is a partnership, joint tenancy, or tenancy-in-common, all partners, tenants, or co-tenants must sign this form unless they have authorized, in writing, another person or persons to sign for them. All part owners and beneficiaries identified in section III must submit either Form 7-2180, "INDIVIDUAL'S CERTFICATE OF LANDHOLDINGS", or Form 7-2190, "INDIVIDUAL'S REPORT OF LANDHOLDINGS" if they own and/or lease more than 40 acres of irrigable and/or irrigation land westwide. The entity completing this form should inform all such persons, along with any lessors or lessees, of their certification or reporting requirements in order to protect the land's eligibility to receive irrigation water.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

This certificate is required by Public Law 97-293. Failure to report can result in prosecution and/or loss of water deliveries from Federal Reclamation projects. Information obtained in this certificate is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or the irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

Disclosure of the Social Security Number is voluntary. It is requested on this form to facilitate processing and recordkeeping by the irrigation district and the Bureau of Reclamation.

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE.

I certify that the information provided herein is true, accurate, and complete to the best of my knowledge and agree that any change in the information in this certificate will be provided verbally to the district first named within 15 days of such change, and that new forms will be submitted within 30 days of such change. I further certify that any leases of land receiving irrigation water to which this entity is a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years. I also certify that, in my best judgment, the rent paid on any land leased by or from this entity that is receiving irrigation water reflects the reasonable value of the irrigation water to the productivity of the land.

Signature of Officer or Authorized Agent

Office Held

Other Required Signatures

Landholder's Street Address or Rural Route Number

City and State

Zip Code

Telephone Number (Include Area Code)

Date

7-2183 (8-88)
Bureau of Reclamation

INSTRUCTIONS FOR "GOVERNMENTAL AGENCY'S CERTIFICATE OF LANDHOLDINGS," FORM 7-2183

USE OF THIS FORM: This form is to be completed by Federal, State, County, and City government agencies and any other government agencies which own more than 40 acres of "irrigable land" and/or "irrigation land" (as defined on the reverse side of these instructions) westwide, part or all of which land is located in a district which has conformed to the discretionary provisions of the Reclamation Reform Act of 1982 (RRA). Use this form to declare landholdings in a district that has conformed to the discretionary provisions; land located in districts subject to prior law must be reported using Form 7-2193, "Governmental Agency's Report of Landholdings." Government agencies must report irrigable and/or irrigation landholdings which are operated for either revenue-producing or non-revenue-producing functions.

Please refer to the definitions on the reverse side of these instructions whenever the meaning of a term is not clear to you.

Agencies must complete this form for all the irrigable and irrigation land that is owned within a district. If an agency owns irrigable or irrigation land in more than one district, a separate form must be completed for each district and be submitted to the appropriate irrigation district office. If extra forms are needed, please contact your district office.

If the agency leases irrigable or irrigation land to or from another individual or entity, we request that the agency inform the lessees or lessors of their obligation to certify or report. Failure to report by either the lessee or lessor will jeopardize the land's eligibility to receive irrigation water.

A certifying agency will not need to complete this form again unless the information reported on this form changes in some way. If such information does change, the agency must verbally notify the district of that change within 15 days of that change, and a new certification form must be submitted to the district within 30 days of such a change. If this information does not change, a verification to that effect must be signed and submitted annually. Your district will provide a verification form for this purpose each year.

After completing the form, please detach it from these instructions and return it to the office of the district in which the land is located.

Item-by-Item Instructions *(Please type or print all answers.)*

Section I.A: Give the name of the district to which the form is being submitted. The remainder of Section I is self-explanatory.

Section II: When completing Sections II.A and II.B, the same land parcel should not be listed more than once. Please refer to the definitions "Description," "Irrigable land," "Irrigation land," and "Effective date of agreement" which can be found on the reverse side of this form. Agencies need not report leases of less than five acres, provided the total acreage leased by the agency to the lessee in question is less than five acres.

"Number of acres" of each parcel should be rounded to the nearest acre.

Enter the name and address of any lessee or operator where indicated, and place a check in the appropriate column to indicate whether the party named is a lessee or an operator. Please refer to the definitions of "lease" and "operator" on the reverse side of these instructions, as necessary.

Section III: This section is self-explanatory. Please read it carefully and sign it. The statements concerning the rent paid on irrigation land, written leases, and the terms of such leases are requirements of the RRA.

ANY QUESTIONS YOU MAY HAVE SHOULD BE DIRECTED TO YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

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DEFINITIONS

Following are the definitions of some of the terms used in these forms and instructions. Please refer to these definitions whenever the meaning of a term in not clear to you.

Description: This refers to a legal description of the land in question, or a county assessor's parcel number if your district so requires. In a legal description, detail beyond the quarter section is not necessary, except on Forms 7-2188 and 7-2189. Thus, an example of a legal description might read either "SE 1/4, Section 22, T3N, R2W, 3rd P.M.," or "APN 026-051-28."

Discretionary provisions of the Reclamation Reform Act of 1982: This refers to sections 203-208 of the Reclamation Reform Act, which provide for increased ownership entitlements and full-cost pricing of water. Districts and individuals may, at their discretion, choose to become subject to the discretionary provisions, or to remain subject to prior acreage limitation law.

Effective date of agreement: The effective date of a farm operation agreement or lease is either the date the agreement was entered into or the effective date as specified in the agreement.

Irrigable land: Land which is part of a specific Reclamation project and for which a Reclamation project water supply is, can, or is planned to be provided. Areas occupied by homesites, farm buildings, permanent feedlots, permanent equipment storage yards, public roads, and other permanent facilities, are not included in irrigable acreage.

Irrigation land: All irrigable land (see preceding definition) receiving irrigation water, and other land receiving irrigation water.

Irrigation water: Water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary of the Interior.

Landholding: Land served with irrigation water which is owned and/or operated under a lease by an individual or legal entity.

Lease: Contract by which one party gives to another the use and possession of land for a specified time and for agreed upon payments, and by which the lessee assumes the economic risk in the operation and management of the leased land. The Reclamation Reform Act of 1982 requires that all leases of land receiving irrigation water *must be written*. See also definition of "term of lease."

Nondiscretionary or Self-enacting provisions of the Reclamation Reform Act of 1982: This refers to Sections 209-230 of the Reclamation Reform Act of 1982. These provisions cover a wide range of topics and apply to all Reclamation Districts.

Operator: An individual or legal entity that conducts farming operations by either doing or supervising all or a portion of the work. The operator of a given parcel may be the owner, a lessee, a sublessee, a contract operator, or a combination of the above.

Prior law: The Reclamation Act of 1902 and other laws which were in effect before the Reclamation Reform Act of 1982 was enacted, and which address acreage limitation law.

Reclamation Reform Act of 1982 (RRA): An act signed into law by President Reagan on October 12, 1982, which gave districts and individuals the option of remaining subject to prior Reclamation law or electing to become subject to the increased ownership entitlement and full-cost pricing provisions of the new law. The new law also directs the Secretary of the Interior to collect the information on landholdings necessary to administer acreage limitation law.

Term of lease: For leases which were in effect on October 12, 1982, the term of the lease refers to the time remaining on the lease on that date. For leases which went into effect after October 12, 1982, this refers to the actual term of the lease on the day it went into effect.

7-2183 (6-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM.
(Attach additional pages if necessary)

For District Use Only: IDCON NO.

GOVERNMENTAL AGENCY'S CERTIFICATE OF LANDHOLDINGS Required by the Reclamation Reform Act of 1982	FORM 7-2183	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTFICATION

A. District Name

B. Name of Agency Which Holds (Owns or leases) Land

C. Level of Government of Landholder (Check one)

- ☐ Federal
- ☐ State (Identify) _____
- ☐ County (Identify With State Name) _____
- ☐ City (Identify with County and State Name) _____
- ☐ Other (Describe) _____

SECTION II: LANDHOLDINGS

A. List the irrigable and irrigation land parcels this agency owns in this district which are not operated by or leased to another party or parties.

Description of Irrigable and Irrigation Land	Number of Acres
Total Acres	

B. List the irrigable and irrigation land parcels this agency owns in this district which are operated by or leased to another party or parties.

Lessee's or Operator's Name and Address	Lessee	Operator	Description of Irrigable and Irrigation Land	Effective Date Of Agreement	Number of Acres
			Total Acres		

Continued on Page 2

SECTION II: LANDHOLDINGS (Continued)

B. (Continued) List the irrigable and irrigation land parcels this agency owns in this district which are operated by or leased to another party or parties.

Lessee's or Operator's Name and Address	Lessee	Operator	Description of Irrigable and Irrigation Land	Effective Date Of Agreement	Number of Acres
				Total Acres	

SECTION III: SIGNATURE

Attention: This certificate must be signed by an official or authorized agent of the certifying agency. Read the following paragraphs before signing this certification.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

I certify that the information provided herein is true, accurate, and complete to the best of my knowledge and agree that any change in the information in this certificate will be provided verbally to the district first named within 15 days of such occurrence, and in writing within 30 days of such occurrence. I further certify that, in my best judgment, the rent paid on any land leased by or from this agency which is receiving irrigation water reflects the reasonable value of the irrigation water to the productivity of the land. I also certify that any leases of land receiving irrigation water to which this agency is a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years.

Signature of Official or Authorized Agent | Office Held | Date

Address | City and State | Zip Code | Telephone Number (include Area Code)

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE

This certificate is required by Public Law 97-293. Failure to report can result in loss of water deliveries from Federal Reclamation projects. Information obtained in this certificate is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or your irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

7-2184 (6-88)
Bureau of Reclamation

INSTRUCTIONS FOR "RELIGIOUS OR CHARITABLE ORGANIZATION'S CERTIFICATE OF LANDHOLDINGS," FORM 7-2184

USE OF THIS FORM: This form is to be completed by religious or charitable organizations which own and/or lease more than 40 acres of "irrigable land" and/or "irrigation land" (these terms are defined on the pages following these instructions) westwide and which are exempt from taxation under Section 501 of the Internal Revenue Code of 1954. This includes parishes, congregations, schools, wards, or similar nonprofit organizations.

Please refer to the definitions which follow these instructions whenever the meaning of a term is not clear to you.

If the organization owns and/or leases irrigable and/or irrigation land in more than one Reclamation project district, give information on all landholdings in all districts on this form. The organization must also complete and submit this form in each district in which it owns or leases land, giving all the information about all its landholdings each time the form is submitted. If you need extra forms, please contact your district office. If desired, the organization may make copies of Sections II, III.A, III.B, and III.C of this form to turn in with the 7-2184 forms submitted to other districts, rather than rewriting these sections each time.

The certifying organization will not need to complete this form again unless its landholdings change in some way. If its landholdings do change, the organization must notify the district office verbally within 15 days of that change, and a new certification form must be submitted within 30 days of such a change. If the landholdings do not change, a verification to that effect must be provided annually. Your district will provide a verification form for this purpose each year.

Please be aware that the completion of this form does not guarantee the organization's eligibility for irrigation water. For example, any land acquired from excess status without Federal price approval is ineligible for Reclamation project water deliveries.

Item-by-Item Instructions *(Please type or print all answers.)*

Begin by detaching the form from these instructions.

Section I: Give the name of the district in which you are submitting this form. The landholder's name should be the name in which the land is owned or leased. The remainder of Section I is self-explanatory.

Section II: The purpose of questions II.A and II.B is to determine whether the organization is subject to the discretionary provisions of the Reclamation Reform Act of 1982 and if you should continue to complete this form. IF YOU ANSWER "NO" TO BOTH II.A AND II.B, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

The purpose of questions II.C, II.D, and II.E is to determine the organization's status under Reclamation law. IF YOU ANSWER "YES" TO ANY OF QUESTIONS II.C, II.D, OR II.E, CONTACT YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE FOR FURTHER GUIDANCE.

Section III: Use Section III.A to report all irrigable and irrigation land in which the organization owns a 100% interest. Use Section III.B to report all irrigable and irrigation land leased from other parties by the organization or by entities in which the organization owns a 100% interest. Use Section III.C to describe your organization's interest as a part owner or beneficiary of an entity or entities which own or lease irrigable or irrigation land. Any such irrigable and/or irrigation land, whether within or outside of the district in which you are submitting this form, must be listed in Section III. If you are unsure about whether a parcel must be considered "irrigable land" or "irrigation land," please refer to the definitions on the pages following these instructions. If you are still unsure, contact the office of the district in which the land is located or your nearest Bureau of Reclamation office for assistance.

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Section III.A: In Column 1, give the name of the district in which the parcel being described is located. If the organization holds land in more than one district, grouping the parcels by district will make it easier to summarize the organization's landholdings in Section III.D.

In Column 2, please provide a legal description accurate to the quarter section, or an assessor's parcel number if your district office so requires.

In Column 3, place a check in the box which indicates how each parcel it being operated.

In Column 4, if any irrigable or irrigation land owned by this organization is operated or leased by a party other than this organization or another division of this organization, enter that operator's or lessee's name and address.

In Column 5, please refer to the definition of "Effective date of agreement" which follows these instructions.

In Column 6, "Number of acres" of each parcel should be rounded to the nearest acre.

Section III.B: This section is similar to Section III.A, except that this section applies to irrigable or irrigation land leased by the organization from another party. Enter the district name, legal description, effective date of agreement, and number of acres for each leased parcel as discussed in the instructions for Section III.A above.

In Column 3, enter the name of the owner of each parcel.

In Column 4, indicate whether the organization (or some division of the organization) operates each parcel itself, or whether another party operates the parcel.

If the organization does not hold a part interest in any entities that hold irrigable or irrigation land, skip Section III.C and proceed to Section III.D.

Section III.C: In Column 1, print the name of the district in which the entity holds irrigable or irrigation land. It is recommended that all holdings of entities in one district be listed before starting with holdings in other districts. Grouping your listings "by district" rather than "by entity" will make it easier for you to complete the summary in Section III.D.

In Column 2, print the correct name of the entity(s) in which the organization holds an interest. Do not include entities that have more than 25 part owners or beneficiaries if your organization's interest is 4 percent or less, or amounts to 40 acres or less. If the entity has holdings in more than one district, you may need to enter the entity's name more than once.

In Columns 3 and 4, enter each entity's Federal Employer's Identification Number, if applicable, and check the box that most accurately describes the entity. The heading "DISCRETIONARY TRUST" refers to a trust that is subject to the discretionary provisions of the RRA; a corporation, partnership, joint tenancy, or any other entity subject to the discretionary provisions would fall under the heading "OTHER DISCRETIONARY." Similarly, the heading "PRIOR LAW CORPORATION" refers to a corporation that remains subject to prior law; all other prior law legal entities such as trusts, partnerships, etc., fall under the heading "OTHER PRIOR LAW."

In Columns 5 and 6, enter the number of irrigable and/or irrigation acres owned and leased by each entity in each district to the nearest acre.

In Column 7, enter the percentage interest the organization holds in each entity.

In Column 8, multiply the acreage from Column 5 by the percentage (in decimal form) from Column 7. For example, if Column 5 reads "160" (acres) and Column 7 reads "50" percent, the correct entry in Column 8 would be "80." Column 9 uses a similar procedure; in Column 9, multiply the acreage from Column 6 by the percentage in Column 7.

Section III.D: Acreages reported in Sections III.A, III.B, and III.C are totaled and summarized here. Columns are provided for up to five other districts in which you may hold irrigable or irrigation land.

Please note that if the "total" column of line D.3 exceeds 960 acres, or if any excess land is owned, the organization must submit Form 7-2188, "Application for Designation of Nonexcess Land" with this form.

If the "total" column of line D.6 is greater than zero, and the "total" column of line D.7 exceeds 960 acres, the organization must submit Form 7-2189, "Application for Selection of Non-Full-Cost Land" with this form. If both of these conditions are not present, Form 7-2189 need not be completed.

Section IV: Please read this section carefully and sign where indicated. The statements concerning the reporting of changes in information, the rent paid on irrigation land, written leases, and the terms of such leases are requirements of Reclamation law.

The local street address or rural route number of the organization is required. Attorneys' addresses, "c/o" addresses, etc., are not acceptable in place of a street address. Post office box numbers may be used only if no other address exists. If the organization's mailing address differs from its street address, it is also required; please enter the mailing address on the back of the form.

ANY QUESTIONS YOU MAY HAVE SHOULD BE ADDRESSED TO YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

DEFINITIONS

Following are the definitions of some of the terms used in this form and instructions. Please refer to these definitions whenever the meaning of a term is not clear to you.

Contract operator: An individual or legal entity other than the owner, lessee, or sublessee that performs part or all of the farming operations. Excepted are spouses, minor children, and hired employees for whom Social Security is paid.

Description: This refers to a legal description of the land in question, or a county assessor's parcel number, if your district so requires. In a legal description, detail beyond the quarter section is not necessary, except on Forms 7-2188 and 7-2189. Thus, an example of a legal description might read either "SE 1/4, Section 22, T3N, R2W, 3rd P.M.," or "APN 026-051-28."

Discretionary provisions of the Reclamation Reform Act of 1982: This refers to sections 203-208 of the Reclamation Reform Act, which provide for increased ownership entitlements and full-cost pricing of water. Districts and individuals may, at their discretion, choose to become subject to the discretionary provisions, or to remain subject to prior acreage limitation law.

District or Irrigation district: Any entity which has a contract with the United States for the delivery of Reclamation project water. The term "District," as used in these forms, could refer to a canal company, irrigation company, water user association, ditch company, water company, drainage district, etc.

Effective date of agreement: The effective date of a farm operation agreement or lease is either the date the agreement was entered into or the effective date as specified in the agreement.

Excess land: Irrigable land, other than exempt land, owned by any landowner in excess of the maximum ownership limitation under the applicable provisions of Reclamation law.

Federal Employer's Identification Number (FEIN): A unique number assigned to businesses by the Internal Revenue Service.

Irrevocable election: A legally binding decision by a landholder to conform to the discretionary provisions of the Reclamation Reform Act of 1982. An irrevocable election becomes official when a landholder submits an irrevocable election form to the Bureau of Reclamation. If an entire district elects to amend its contract to conform with the acreage entitlement and pricing provisions of the Reclamation Reform

Act of 1982, all direct landholders in the district are automatically subject to these provisions without making an irrevocable election. A landholder is subject to prior law until either an irrevocable election is made or the district amends its contract to conform to the discretionary provisions of the Reclamation Reform Act of 1982.

Irrigable land: Land which is part of a specific Reclamation project and for which a Reclamation project water supply is, can be, or is planned to be provided. Areas occupied by homesites, farm buildings, permanent feedlots, permanent equipment storage yards, public roads, and other permanent facilities are not included in irrigable acreage.

Irrigation land: All irrigable land (see preceding definition) receiving irrigation water, and other land receiving irrigation water.

Irrigation water: Water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary of the Interior.

Landholding: Land served with irrigation water which is owned and/or operated under a lease by an individual or legal entity.

Lease: Contract by which one party gives to another the use and possession of land for a specified time and for agreed upon payments, and by which the lessee assumes the economic risk in the operation and management of the leased land. The Reclamation Reform Act of 1982 requires that all leases of land receiving irrigation water *must be written*, and available for the Department of the Interior's inspection. See also definition of "Term of lease."

Legal entity: Any business or property ownership arrangement established under State or Federal law including, but not limited to, corporations, partnerships, associations, joint tenancies, and tenancies-in-common.

Nondiscretionary or Self-enacting provisions of the Reclamation Reform Act of 1982: This refers to sections 209-230 of the Reclamation Reform Act. These provisions cover a wide range of topics and apply to all Reclamation districts.

Operator: An individual or legal entity that conducts farming operations by either doing or supervising all or a portion of the work. The operator of a given parcel may be the owner, a lessee, a sublessee, a contract operator, or a combination of the above.

Prior law: The Reclamation Act of 1902 and other laws which were in effect before the Reclamation Reform Act of 1982 was enacted, and which address acreage limitation law.

Reclamation Reform Act of 1982: An act signed into law by President Reagan on October 12, 1982, which gave districts and individuals the option of remaining subject to prior Reclamation law or electing to become subject to the increased acreage entitlement and full-cost pricing provisions of the new law. The new law also permits the Secretary of the Interior to collect the information on landholdings necessary to administer acreage limitation law.

Term of lease: For leases which were in effect on October 12, 1982, the term of the lease refers to the time remaining on the lease on that date. For leases which went into effect after October 12, 1982, this refers to the actual term of the lease on the day it went into effect.

Westwide: The 17 Western States in which Reclamation projects are located. Upon your request, the Bureau of Reclamation or your district can provide a list of all districts westwide which are subject to Reclamation law.

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7-2184 (6-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM.
(Attach additional pages if necessary)

FOR DISTRICT USE ONLY: IDCON NO.

RELIGIOUS OR CHARITABLE ORGANIZATION'S CERTIFICATE OF LANDHOLDINGS Required by the Reclamation Reform Act of 1982	FORM 7-2184	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTFICATION

District Name	State in Which Landholder is Established or Registered	Other names, or names of entities, in which this organization holds irrigable or irrigation land. (Include only those entities in which this organization owns 100 percent of the stock or interest.)	
Landholder Name	Central Organization to Which Landholder is Affiliated (If Any)		

SECTION II: LANDHOLDER STATUS

A. Has this organization ever owned or leased, either directly or indirectly, irrigation land in any district which has amended its contract with the United States for conformance to the discretionary provisions of the Reclamation Reform Act of 1982, or has entered into a new contract with the United States after October 12, 1982? (If you do not know, please ask a district official.) ☐ Yes ☐ No

B. Has this organization made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982? ☐ Yes ☐ No

IF YOU ANSWERED "NO" TO BOTH QUESTIONS "A" AND "B" ABOVE, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

C. Is any part of this organization's agricultural produce or the proceeds of the sales of such produce used for other than charitable purposes? ☐ Yes ☐ No

D. Is any irrigable or irrigation land owned or leased by this organization farmed by a party other than this organization or a more central organization of the same faith? ☐ Yes ☐ No

E. Does any part of this organization's net earnings accrue to the benefit of any private shareholder or individual? ☐ Yes ☐ No

IF YOU ANSWERED "YES" TO ANY OF THE THREE PRECEDING QUESTIONS, CONTACT YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE FOR FURTHER GUIDANCE

SECTION III: LANDHOLDINGS

A. List all irrigable and irrigation land parcels westwide in which a 100 percent interest is owned by this organization. If the land is located in more than one district, group your listing of parcels by district to facilitate your summarization of acreages in section III.D. In column 3, check the box that indicates how each parcel is being farmed; check "self" if this organization farms the parcel, "lessee" if this organization leases the parcel to another party, and "other" if the parcel is being farmed by another party under an agreement other than a lease. (Attach additional pages if necessary.)

(1)	(2)	(3)			(4)	(5)	(6)
District Name	Legal Description of Irrigable And Irrigation Land	Operated By:			Name and Address of Lessee or Other Party Operating Each Parcel	Effective Date Of Agreement	Number Of Acres
		Self	Lessee	Other			
						Total Acres	

B. List all irrigable and irrigation land parcels westwide which you, your spouse, and/or your dependents lease from another party. If the land is located in more than one district, group your listing of parcels by district to facilitate your summarization of acreages in section III.D. (Attach additional pages if necessary.)

(1)	(2)	(3)	(4)		(5)	(6)
District Name	Legal Description of Irrigable and Irrigation Land	Landowner's Name	Operated By: Self	Operated By: Other	Effective Date of Agreement	Number of Acres
					Total Acres	

C. List all entities in which you, your spouse, and/or your dependents hold a part (less than 100 percent) interest, and which own or lease irrigable or irrigation land, as defined in the front of this booklet. You need not include entities which are owned by or benefit more than 25 individuals, provided the interest you, your spouse, and/or your dependents hold is 4 percent or less, or amounts to 40 acres or less. Group your listings by district in order to make it easier to summarize your holdings in section III.D. If a listed entity holds irrigable or irrigation land in more than one district, it will be necessary to enter the entity's name on more than one line.

(1)	(2)	(3)	(4) Entity Type And Status				(5)	(6)	(7)	(8)	(9)
District Name	Name of Entity Which Owns or Leases Irrigable or Irrigation Land and in Which You Own an Interest (Exactly as it appears on the entity's multiple ownership form)	Entity's Federal Employer's Identification Number (If applicable)	Discretionary Trust	Other Discretionary	Prior Law Corporation	Other Prior Law	Number of Irrigable and Irrigation Acres Owned by the Entity in Each District	Number of Irrigable and Irrigation Acres Leased by the Entity in Each District	Percentage of Interest You Hold in Each Entity	Owned Acreage Attributable to Your Interest in the Entity (Col. 5 X Col. 7)	Leased Acreage Attributable to Your Interest in the Entity (Col. 6 X Col. 7)
									Total Acres		

SECTION III: LANDHOLDINGS (Continued)

D. Landholding Summary	Number of Acres						
	This District	Other Districts					Total
1. Enter the total number of irrigable and irrigation acres owned (from Section III.A).							
2. Enter the total number of irrigable and irrigation acres owned through entities (if any) as reported in Section III.C, Column 8.							
3. Total irrigable and irrigation acreage owned (add lines D.1 and D.2).							
4. Enter the total number of irrigable and irrigation acres leased (from Section III.B).							
5. Enter the total number of irrigable and irrigation acres leased through entities (if any) as reported in section III.C, Column 9.							
6. Total irrigable and irrigation acreage leased (add lines D.4 and D.5).							
7. Total irrigable and irrigation acreage owned and leased (add lines D.3 and D.6).							

If the "Total" column of line D.3 exceeds 960 acres, or if the organization owns any excess land, you must complete form 7-2188, "APPLICATION FOR DESIGNATION OF NONEXCESS LAND."

If the "Total" column of line D.6 is greater than zero, and if the "Total" column of line D.7 exceeds 960 acres, you must complete Form 7-2189, "APPLICATION FOR SELECTION OF NON-FULL-COST LAND." Form 7-2189 must also be completed if the organization owns land subject to an extended recordable contract.

SECTION IV: SIGNATURE

Attention: This certificate must be signed. Read the following paragraphs before signing.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

I certify that the information provided herein is true, accurate, and complete to the best of my knowledge and agree that any change in the information contained in this report will be provided verbally to the district first named within 15 days of such change, and that new forms will be submitted within 30 days of such change. I further certify that, in my best judgment, the rent paid on any land leased by or from this organization which is receiving irrigation water, reflects the reasonable value of the irrigation water to the productivity of the land. I also certify that any leases of land receiving irrigation water to which this organization is a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years. I further certify that all irrigable and irrigation landholdings of this organization, whether held directly or through entities, have been reported on this form.

Signature of officer or authorized agent of the certifying organization

Organization's Street Address or Rural Route Number

City and State

Zip Code

Telephone Number (include area code)

Date

This certificate is required by Public Law 97-293. Failure to report can result in prosecution and/or loss of water deliveries from Federal Reclamation projects. Information obtained in this certificate is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or the irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE.

BEST COPY AVAILABLE

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7-2185 (6-88)
Bureau of Reclamation

INSTRUCTIONS FOR "LEASING CHANGE FORM," 7-2185

USE OF THIS FORM: This form is to be used by lessees who have previously submitted Form 7-2180, 7-2181, or 7-2184, to indicate that they have terminated or altered leases previously reported, or to indicate that they have entered into new leases. The lessee may submit this form rather than resubmitting Form 7-2180, 7-2181, or 7-2184 to report a change in leaseholdings. If this form is used, the lessee must obtain the signatures of all landowners involved, thereby indicating the landowners' concurrence with the information supplied. This will satisfy the requirement that landowners must also report changes in their operating arrangements.

Any change in information previously reported other than a leasing change requires the submission of a new Form 7-2180, 7-2181, or 7-2184.

The lessee has 15 days in which to report a leasing change at least verbally to the district in which the land is located. However, within 30 days of any leasing change, the lessee must submit this form (or a completely new certification form) to all districts in which he or she holds irrigable or irrigation land.

IMPORTANT NOTE FOR ENTITIES THAT ORIGINALLY SUBMITTED FORM 7-2181: If the leasing change being reported on this form results in a net increase in leased acreage, part owners and beneficiaries identified on the entity's Form 7-2181 must submit new individual certification or reporting forms within 30 days of the landholding change. If the leasing change results in no net change or a net decrease in leased acreage, part owners and beneficiaries need not complete new forms unless their full cost acreage is affected.

Item-by-Item Instructions *(Please type or print all answers.)*

Section I: Names and other information presented here must correspond precisely to that presented in the most recently submitted certification form. Begin by printing the name of the district in which this form is being submitted. Individuals should enter their name and social security number, and, if married, their spouse's name and social security number. If the landholder is an entity, the entity name and Federal Employer's Identification Number (FEIN), if applicable, must be entered in the indicated spaces.

Also check the form number of your most recent certification form (other than Form 7-2185) and the date you signed that form.

Section II: This section is separated into two subsections. Subsection II.A is to be used to report leases which are being terminated or in which the leased acreage is being reduced. Subsection II.B is to be used to report new leases, or increases in acreage under existing leases.

In describing the irrigable or irrigation land, please refer to the definitions of "Description," "Irrigable land," and "Irrigation land" which can be found in the front of this booklet.

The "termination date" is the date a lease ends or is broken. The "effective date" is either the date a lease was entered into or another effective date which may be specified in the lease.

"Number of acres" of each parcel should be rounded to the nearest acre.

In section II.B, indicate whether you are operating each parcel yourself or whether another party is operating the parcel, by placing a check in the appropriate box.

Section III: The acreage entered in item III.A should agree with the information submitted on your most recent certification form. The acreage entered in item III.B should also be based on the data from your most recent certification form, as modified by the changes you have submitted on this form.

For individuals, single families, and entities owned by or benefiting 25 or fewer individuals (other than trusts), Form 7-2189, "Application for Selection of Non-Full-Cost Land" must be completed if item III.B is greater than zero, and if item III.C is greater than 960. If either of these conditions is not present, Form 7-2189 need not be completed. If Form 7-2189 is completed, it should be attached to Form 7-2185 for submittal to the office of each district in which you hold irrigable or irrigation land.

Entities owned by or benefiting more than 25 individuals (other than trusts) must submit Form 7-2189 if item III.C is greater than 320 acres. However, if such entities did not first receive irrigation water until after October 1, 1981, Form 7-2189 must be completed regardless of the acreage involved, since the entity's entire landholding is subject to full cost. Again, Form 7-2189 must be attached to Form 7-2185 and submitted to the office of each district in which the entity holds irrigable or irrigation land.

Because the acreage entitlements for trusts are entirely dependent upon the number of beneficiaries and their individual entitlements, trusts should use the following procedure to determine whether it is necessary to complete Form 7-2189:

On a separate sheet of paper, list each beneficiary identified in Section III of the trust's Form 7-2181, and give each beneficiary's status (i.e., qualified recipient or prior law). Also give the number of owned and leased irrigable and irrigation acres which are attributable to the interest held by each beneficiary. Unless you are completely familiar with acreage limitation law, you should work with your district or nearest Bureau of Reclamation office to determine whether each beneficiary is within his or her non-full-cost entitlement, and whether it is necessary for the trust to complete Form 7-2189. Copies of these papers and computations must be filed in the district office with the trust's certification forms. (If this procedure was completed when the trust previously certified, it need only be updated to reflect the changes now being declared.)

Section IV: The lessee must sign the certification in Section IV.A and provide all other information requested there.

Individuals and families (as defined on the first page in this booklet) must give the street address or rural route number of their residence. Similarly, legal entities must give their street address or rural route number. Post office box numbers, attorneys' addresses, relatives' addresses, "c/o" addresses, etc., are not acceptable in place of a street address. Post office box numbers may be used only if no street address or rural route number exists. If the mailing address differs from the residential address, it is also required; please enter the mailing address where indicated.

The lessee must also obtain the signatures of any landowners named in this form. This includes both the landowners with whom you are terminating leases as well as those with whom you are entering into new leases. By signing this form, the landowners will satisfy their requirement to report changes in their operating arrangements.

The statements concerning the reporting of changes in information, the rent paid, written leases, and the terms of such leases are requirements of the Reclamation Reform Act of 1982.

ANY QUESTIONS YOU MAY HAVE CAN BE ANSWERED BY YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

7-2185 (6-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM.
(Attach additional pages if necessary)

FOR DISTRICT USE ONLY: IDCON NO.

LEASING CHANGE FORM (CERTIFICATION) Required by the Reclamation Reform Act of 1982	FORM 7-2185	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTIFICATION

District Name	Landholder	Spouse	Number and Date of Most Recently Submitted Certification Form (Other than form 7-2185)	Form Number (Check One)	Date
	Name of Individual or Entity	Name		☐ 7-2180	
	Social Security Number or FEIN	Social Security Number		☐ 7-2181 ☐ 7-2184	_____

SECTION II: LEASING CHANGES

A. List the irrigable and irrigation land parcels for which leases are being terminated.

District Name	Landowner's Name	Legal Description of Irrigable or Irrigation Land	Termination Date of Lease	Number of Acres

B. List the irrigable and irrigation land parcels for which you are entering new leases.

District Name	Landowner's Name	Legal Description of Irrigable or Irrigation Land	Operated By: Self	Operated By: Other	Effective Date of Lease	Number of Acres

SECTION III: CALCULATION OF NON-FULL-COST LANDHOLDINGS

A. Enter the total number of irrigable and irrigation acres you own, directly and indirectly, in all districts.	
B. Enter the total number of irrigable and irrigation acres you lease from someone else, directly and indirectly, in all districts.	
C. Total irrigable and irrigation acreage owned and leased (Add lines III.A and III.B).	

Please refer to the instructions for section III to determine if it is necessary to complete form 7-2189, "APPLICATION FOR SELECTION OF NON-FULL-COST LAND."

Continued on Page 2

SECTION IV: SIGNATURES

Attention: The lessee, and all landowners identified in sections II.A and II.B of this form, must sign this certification. Please read the following paragraph before signing.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

A. LESSEE

I (we) certify that the information provided herein is true, accurate, and complete to the best of my (our) knowledge and agree that any change in the information in this certificate will be provided verbally to the district first named within 15 days of such change, and that new forms will be submitted within 30 days of such change. I (we) further certify that in my (our) best judgment, the rent paid on any land leased by me (us) which is receiving irrigation water reflects the reasonable value of the irrigation water to the productivity of the land. I also certify that any leases of land receiving irrigation water to which I (we) am (are) a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years.

Signature of Lessee or Authorized Agent _____ Date _____

Spouse's Signature or Other Required Signature(s) _____ Date _____

Agent's Title or Office Held, and Name of Entity, If Applicable _____

Residential Street Address _____ City and State _____

Telephone Number (Include Area Code) _____

Mailing Address, If Different From Residential Street Address _____

This certification is required by Public Law 97-293. Failure to report can result in loss of water deliveries from Federal Reclamation projects. Information obtained in this certification is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or the irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

Disclosure of the Social Security Number is voluntary. It is requested on this form to facilitate processing and recordkeeping by the irrigation district and the Bureau of Reclamation.

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE.

B. LANDOWNER(S)

I (we), the undersigned landowner(s), certify that the information contained herein concerning land I (we) own is true and accurate. I (we) also certify that in my (our) best judgment, the rent paid on any land leased from me (us) which is receiving irrigation water reflects the reasonable value of the irrigation water to the productivity of the land. I (we) further certify that any leases of land receiving irrigation water to which I (we) am (are) a party are (1) written and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years.

LANDOWNER 1

Signature of Landowner(s) or Authorized Agent _____ Signature of Spouse (If Land is Held Jointly) _____

Signator's Title or Office Held and Name of the Entity Which Owns the Referenced Land (If Applicable) _____

LANDOWNER 2

Signature of Landowner(s) or Authorized Agent _____ Signature of Spouse (If Land is Held Jointly) _____

Signator's Title or Office Held and Name of the Entity Which Owns the Referenced Land (If Applicable) _____

LANDOWNER 3

Signature of Landowner(s) or Authorized Agent _____ Signature of Spouse (If Land is Held Jointly) _____

Signator's Title or Office Held and Name of the Entity Which Owns the Referenced Land (If Applicable) _____

LANDOWNER 4

Signature of Landowner(s) or Authorized Agent _____ Signature of Spouse (If Land is Held Jointly) _____

Signator's Title or Office Held and Name of the Entity Which Owns the Referenced Land (If Applicable) _____

7-2187 (6-88)
Bureau of Reclamation

VERIFICATION OF LANDHOLDINGS (CERTIFICATION)

INSTRUCTIONS

If the landholdings previously described on certification forms have not changed since those forms were submitted, the landholder(s) must verify that the information contained on those forms remains valid. This must be done on an annual basis as a precondition for the receipt of Reclamation project water in any given water year. Part owners and beneficiaries of an entity which holds irrigable or irrigation land may be required to sign the entity's verification form. However, such part owners and beneficiaries need not complete separate verification forms, unless they hold other irrigable or irrigation land in their own names. The landholder name(s) entered on this form must match exactly the landholder name(s) which appear on any previously submitted certification form. Questions should be referred to your irrigation district or nearest Bureau of Reclamation office.

Individuals and families must give the street address or rural route number of their residence. Similarly, legal entities must give their street address or rural route number. Post office box numbers, attorneys' addresses, relatives' addresses, "c/o" addresses, etc., are not acceptable in place of a street address. However, post office box numbers may be used if no other address for the landholder exists. If the mailing address differs from the residential address, it is also required; please enter the mailing address where indicated.

All landholders must answer the following questions:

District Name: _____

Previously submitted certification form: (Check one)

- ☐ 7-2180, "Individual's Certificate of Landholdings"
- ☐ 7-2181, "Multiple Ownership Certificate of Landholdings"
- ☐ 7-2183, "Governmental Agency's Certificate of Landholdings"
- ☐ 7-2184, "Religious or Charitable Organization's Certificate of Landholdings"

During the preceding water year, the land parcels described on your previously submitted certification form(s) were operated by: (check all that apply)

- ☐ 1. The landholder completing this form.
- ☐ 2. A lessee or sublessee of the landholder completing this form.
- ☐ 3. A contract operator or operators (Individuals or legal entities other than the owner, lessee, or sublessee that perform part or all of the farming operations. Excepted are spouses, minor children, and hired employees for whom Social Security is paid).

If you checked item 3 above, list all contract operators employed during the past water year, their telephone numbers, the services the contract operators provided (i.e., farm management services, pesticide application, harvesting, etc.), and the approximate acreage associated with each operator:

Operator Name	Telephone Number	Service(s) Provided	Approximate Acreage Operated

(Continued on reverse)

If the landholder completing this form is not a trust, skip the following section and complete the remainder of this form. All trusts must complete the following section.

TRUSTS ONLY:

1. The trust instrument is: ☐ revocable ☐ irrevocable (check one)

If the trust is irrevocable, skip questions 2 and 3 below and complete the remainder of this form. Revocable trusts must answer the following questions.

2. Is the trust revocable at the discretion of the grantor in such a manner that revocation results in the title to the trusted land reverting either directly or indirectly to the grantor? ☐ yes ☐ no

3. Is the trust revoked or terminated by its terms upon the expiration of a specified period of time in such a manner that revocation or termination results in the title to the trusted land reverting either directly or indirectly to the grantor? ☐ yes ☐ no

If the answer to either questions 2 or 3 above is "yes," then new certification or reporting forms must be submitted which attribute the trusted land to the grantor.

I ATTEST THAT THE INFORMATION I SUBMITTED CONCERNING THE LANDHOLDINGS OF

_____ (NAME OF LANDHOLDER)

ON THE CERTIFICATION FORM DATED _____ REMAINS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE. ALSO, I ATTEST THAT I HAVE CORRECTLY IDENTIFIED ALL OPERATOR(S) (OTHER THAN THE LANDHOLDER NAMED ABOVE) OF ALL LAND OWNED AND LEASED BY THE LANDHOLDER NAMED ABOVE.

_____ Signature of Landholder(s) or Authorized Agent

_____ Signature of Spouse

_____

_____

_____ Other required signatures

_____

_____ Signator's Title or Office Held (If applicable)

_____ Name of Entity (If applicable)

_____ Landholder's Residential Address City and State Zip Code

( ) _____ Telephone Number

_____ Date

_____ Mailing Address (If different from residential address)

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

7-2188 (6-88)
Bureau of Reclamation

APPLICATION FOR DESIGNATION OF NONEXCESS LAND
(For individuals and entities subject to the discretionary provisions of the Reclamation Reform Act of 1982)

FORM 7-2188

OMB CLEARANCE NO.: 1006-0005
EXPIRATION DATE:

Instructions: The instructions on the certification form or forms you have completed will indicate whether or not you must complete this form. For your convenience, we have summarized below the conditions which require the completion of this form.

1. Individuals, single families, and entities (other than trusts) benefiting 25 or fewer persons must complete this form if more than 960 acres of irrigation land are owned, or if land that must be considered excess for other reasons is owned.

2. Entities (other than trusts) owned by or benefiting more than 25 persons must complete this form if more than 640 acres of irrigable and/or irrigation land are owned, or if land that must be considered excess for other reasons is owned.

3. Trusts must refer to the special instructions for Form 7-2181 to determine whether it is necessary to complete this form.

The amount of land you may declare nonexcess depends on many factors, such as your status under the law, the type of organization which owns the land, the application of equivalency, etc. You should work with your irrigation district (or districts) or nearest Bureau of Reclamation Office to complete this form properly.

All descriptions of land on this form should be full legal descriptions. Include the assessor's parcel number, if available. Acreages should be rounded to the nearest acre.

Landholder's Name(s)

Landholder's Address

District to which this form is being submitted: _____

Landholder's Status (Check one)

- ☐ Individual
- ☐ Married Couple
- ☐ Partnership
- ☐ Joint Tenancy or Tenancy-in-Common
- ☐ Corporation
- ☐ Trust
- ☐ Other (Describe) _____

Description of irrigable and/or irrigation land you wish to declare nonexcess. Include an explanation of any special reasons a particular parcel should be considered nonexcess. If you are listing parcels located in more than one district, group the parcels by district. If appropriate, use the columns provided to compute Class I Equivalent Acreage. The "Actual Acres" column must be completed. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigation Land	Actual Acres	Class I Equivalency Factor	Class I Equivalent Acres
	Total Nonexcess Acreage			

Continued on Page 2

Description of all excess land you own westwide. In the column indicated, give an explanation of the status of the land, i.e., under recordable contract, not being irrigated, receiving nonproject water, etc. Round acreages to the nearest acre. If you are listing parcels located in more than one district, group the parcels by district. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigation Land	Land Status	Number of Acres
		Total Excess Acreage	

Signature of Landholder or Authorized Agent

Spouse's Signature

Landholder's Street Address or Rural Route Number

Agent's Title (If Applicable)

Other Required Signature

City and State

Other Required Signature

Other Required Signature

Date

7-2188 (6-88)
Bureau of Reclamation

APPLICATION FOR SELECTION OF NON-FULL-COST LAND
(For individuals and entities subject to the discretionary provisions of the Reclamation Reform Act.)

FORM 7-2188

OMB CLEARANCE NO.: 1006-0005
EXPIRATION DATE:

Instructions: The instructions on the certification form or forms you have completed will indicate whether or not you must complete this form.

You should work with your irrigation district (or districts) or nearest Bureau of Reclamation office to complete this form properly. The amount of land you may declare non-full-cost depends on many factors, such as your status under the law, the type of organization which owns the land, the application of equivalency, etc. You may select either owned or leased irrigable or irrigation land as non-full-cost, up to your non-full-cost entitlement. Irrigation land you select as non-full-cost on this form cannot be changed until the next water year. Once you have completed your non-full-cost entitlement in any water year, any additional land you purchase or lease from another party during that water year can receive irrigation water only at full cost. (Note: Irrigable land not receiving irrigation water does not count against your non-full-cost entitlement, but must still be listed here to establish your non-full-cost selection for this water year.)

It is strongly recommended that the party selecting land to pay full cost notify any lessor or lessee of that land's status.

All descriptions of land on this form should be full legal descriptions. Include the assessor's parcel number, if available. Acreages should be rounded to the nearest acre.

When you have completed this form, submit a copy with your certification form(s) to each district in which you hold irrigation or irrigable land.

Landholder's Name(s)

Landholder's Address

District to which this form is being submitted: _____

Landholder's Status (Check one)

- ☐ Individual
- ☐ Married Couple
- ☐ Partnership
- ☐ Joint Tenancy or Tenancy-in-Common
- ☐ Corporation
- ☐ Trust
- ☐ Other (Describe) _____

Description of irrigation land you have selected to receive irrigation water at non-full-cost rates. If your total acreage receiving irrigation water at non-full-cost rates exceeds 960 acres, (320 acres for a limited recipient that received irrigation water on or before October 1, 1981), explain why any such acreage should not be charged full cost. Limited recipients that did not first receive irrigation water on or before October 1, 1981, must list their entire landholding on page 2. If you are listing parcels located in more than one district, group the parcels by district. If appropriate, use the columns provided to compute Class I Equivalent Acreage. The "Actual Acres" column must be completed if any land is to receive irrigation water at non-full-cost rates. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigation Land	Actual Acres	Class I Equivalency Factor	Class I Equivalent Acres
	Total Acreage Receiving Irrigation Water at Non-Full-Cost Rates			

Continued on Page 2

Description of irrigable land held in excess of your entitlement that is not receiving Federal project irrigation water. Check the appropriate column to indicate whether the parcel is not being irrigated or is being irrigated with a nonproject water supply. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigable Land	Land Status		Number of Acres
		Not Irrigated	Receiving Nonproject Water	
			Total irrigable acreage not receiving Federal project irrigation water	

Description of irrigation land for which you will pay full cost. If you are listing parcels located in more than one district, group the parcels by district. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigation Land	Number of Acres
	Total full-cost acres	

Signature of Landholder or Authorized Agent

Spouse's Signature

Landholder's Street Address or Rural Route Number

Agent's Title (If Applicable)

Other Required Signature

City and State

Other Required Signature

Other Required Signature

Date

VOL 53 ISS 166 AUG 26 1988 UMI

7-2178A (6-88)
Bureau of Reclamation

GENERAL INSTRUCTIONS
(For Reporting Forms)

Use of this booklet. (repeated from cover)

Use this booklet only if you are subject to acreage limitation law prior to the Reclamation Reform Act of 1982 (RRA). You are subject to prior law unless you have personally made an irrevocable election to conform to the discretionary provisions of the RRA, or unless you have directly owned or leased land in a district after that district conformed to the discretionary provisions of the RRA.

Please note that a part owner's or beneficiary's status is not automatically determined by the status of the entity in which he or she holds an interest. For example, if you own or lease land only indirectly through a legal entity that holds land in a district with a new or amended contract, you may choose whether you wish to be subject to the discretionary provisions or to prior Reclamation law. In that situation, you may indicate your choice by submitting a certification (blue) form if you wish to become subject to the discretionary provisions, or by submitting a reporting (brown) form if you wish to remain subject to prior law. If you choose to remain subject to prior law, use this booklet; if, instead, you wish to become subject to the discretionary provisions of the RRA, obtain a "Certification Forms Booklet" from your irrigation district office. It is very important to note that if you submit a certification (blue) form to a district with a new or amended contract, you will be bound to the discretionary provisions permanently, and in all districts.

If you own or lease land only indirectly through a legal entity that is subject to the discretionary provisions by virtue of an irrevocable election, you are not subject to the discretionary provisions unless you personally make an irrevocable election.

Similarly, a legal entity's status under Reclamation law is not determined by the status of the entity's part owners or beneficiaries. For example, a corporation in a prior law district remains subject to prior law ownership limitations even if all of its stockholders become subject to the discretionary provisions. In that situation, the corporation itself must make an irrevocable election if it is to become subject to the discretionary provisions.

Who must complete these reporting forms.

All persons, organizations, and governmental agencies which own or lease irrigable or irrigation land and which are subject to prior law must report their landholdings. The only exceptions to this reporting requirement are as follows:

1. Landholders whose total irrigable and irrigation land owned and leased, both directly and through entities, totals 40 acres or less westwide are exempt from reporting requirements.

2. Landholdings in districts which are exempted from acreage limitation law by statute or by action of the Secretary of the Interior are exempt from reporting requirements.

3. Landholdings in districts which are obligated to the United States only by a Small Reclamation Projects Act or Water Conservation and Utilization Act contract are exempt from these particular certification requirements.

When to report.

You must submit your report to the office of each irrigation district office by the date specified by each district. This date must always precede the initial delivery of irrigation water. Failure to report will jeopardize the continued delivery of irrigation water.

It will not be necessary for you to complete basic reporting forms again unless one of the three following events takes place:

1. Your ownership or leasing arrangements change, in which case you must inform the district of the change either verbally or in writing within 15 days of the change and submit a new reporting form within 30 days of the change.

2. You make an irrevocable election, in which case you must complete a certification form.

3. Your district amends its contract with the United States and becomes subject to the discretionary provisions. In this case, you must complete a certification form, unless you hold land only indirectly through a legal entity. If you hold land only indirectly, you may choose to fill out certification forms. (Refer to explanation in paragraph 2 on the first page of these instructions.)

However, even if none of these events takes place, each year you must verify that your most recently submitted reporting form remains valild. Your district office will send you a verification form to fill out each year.

Which forms to fill out.

If you have determined that you or your organization is subject to prior law, the next step is to decide which form or forms to fill out.

There are five forms in this booklet (two copies of each form). MOST FARMERS AND LANDOWNERS, HOWEVER, NEED TO COMPLETE ONLY THE FIRST FORM, "INDIVIDUAL'S REPORT OF LANDHOLDINGS." The following summaries will help you to determine which form or forms you need to complete.

1. Individuals and single families (see definition of "family" following these instructions) whose total holding of irrigable and irrigation land, both directly and through part ownership in entities, is greater than 40 acres westwide, must complete Form 7-2190, "Individual's Report of Landholdings." With the exception of trusts, all legal entities which are composed solely of an individual or a single family must complete Form 7-2190. Holdings of dependents must be included on their parents' or legal guardians' Form 7-2190; dependents may not complete separate forms. If you hold land in more than one name – for example, some land in your own name, and some land in the name of a family corporation – you must report all such land on one Form 7-2190. Part owners and beneficiaries who own or lease land only indirectly through a legal entity that holds land in a district subject to the discretionary provisions of the RRA may use this form only if they wish to remain subject to prior law. If such part owners or beneficiaries do not wish to remain subject to prior law, but instead, desire to conform to the discretionary provisions, of the RRA, they must certify their holdings using Form 7-2180, "Individual's Certificate of Landholdings."

2. All trusts, even if composed solely of members of a single family (see definition of "family" following these instructions), and other legal entities such as corporations, partnerships, joint tenancies, and tenancies-in-common, that are not composed solely of members of a single family, must complete Form 7-2191, "Multiple Ownership Report of Landholdings." Entities that are composed of more than one family must complete Form 7-2191, even if the families are related.

3. If you are a lessee that has previously completed Form 7-2190, 7-2191, or 7-2194, and need to report a change in leaseholdings only, you may report those changes using Form 7-2195, "Leasing Change Form." Any changes in leases, including termination of existing agreements, must be reported by both the landowner and the lessee. By signing a lessee's Form 7-2195, an owner can satisfy the requirements to report changes in his/her farming arrangements.

4. If you own and/or lease land above certain thresholds, Forms 7-2190, 7-2191, and 7-2194 will direct you to complete Form 7-2198, "Application for Designation of Nonexcess Land," and/or Form 7-2199, "Application for Selection of Non-Full-Cost Land." You need not complete these forms unless the instructions for Forms 7-2190, 7-2191, or 7-2194 so indicate.

If the landholder is an agency of Federal, State, or local government or a religious or charitable organization, none of the forms listed above are to be used for making an ownership declaration. Such entities must contact their district office or offices for the proper form. Agencies of Federal, State, County, City, or other levels of local government which hold more than 40 acres of irrigable and/

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or irrigation land westwide must submit Form 7-2193, "Governmental Agency's Report of Landholdings." Religious or charitable organizations which are exempt from taxation under Section 501 of the Internal Revenue Code of 1954, and which hold more than 40 acres of irrigable and/or irrigation land westwide must submit Form 7-2194, "Religious or Charitable Organization's Report of Landholdings."

Filling out the forms.

Once you have determined which form(s) you must complete, follow the instructions for completing that form carefully and complete the form(s). If you have questions, contact your district or Bureau of Reclamation office.

Be sure to break down land parcels as far as necessary to ensure accurate reporting. For example, a quarter section of land, half of which is operated by the owner, and half of which is operated by a lessee, should be listed as two separate 80-acre parcels.

On all forms, individuals and families must give the street address or rural route number of their residence. Similarly, legal entities must give their street address or rural route number. Post office box numbers, attorneys' addresses, relatives' addresses, "c/o" addresses, etc., are not acceptable in place of street addresses. Post office box numbers may be used only if no other address for the landholder exists. If the mailing address differs from the residential address, it is also required; please enter the mailing address on the back of the form or where indicated.

Any unauthorized alteration made to any reporting form will render that form invalid.

When you finish the form or forms, sign them and return them to your district office. Please remember that if you hold land in more than one district, you must submit a reporting form to each district office.

Please be aware that the completion of reporting forms does not guarantee your land's eligibility for water, even if you own less than 160 acres. For example, excess land (see definitions) which has not been placed under recordable contract, and land acquired from excess status without Federal price approval is generally ineligible for Reclamation project irrigation water deliveries.

If you lease land to or from another individual or entity, please inform the lessees or lessors of their obligation to certify or report. If either the lessee or lessor fails to report, the eligibility of the land to receive irrigation water will be jeopardized.

It is recommended that you keep a copy of your reporting form(s) for your own records.

DEFINITIONS

Following are the definitions of some of the terms used in these forms and instructions. Please refer to these definitions whenever the meaning of a term is not clear to you.

Contract operator: An individual or legal entity other than the owner, lessee, or sublessee that performs part or all of the farming operations. Excepted are spouses, minor children, and hired employees for whom Social Security is paid. (See definition of "Operator.")

Dependent: The term "dependent" means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) as it may be amended from time to time. Landholdings of a person who is someone's dependent for income tax purposes must be reported on the same form as landholdings of the dependent's parent(s) or legal guardian(s).

Description: This refers to a legal description of the land in question, or a county assessor's parcel number where required by the district. In a legal description, detail beyond the quarter section is not necessary, except on Forms 7-2199 and 7-2199. Thus, an example of a legal description might read either "SE 1/4, Section 22, T3N, R2W, 3rd P.M." or "APN 026-051-28."

Discretionary provisions of the Reclamation Reform Act of 1982: This refers to sections 203-208 of the Reclamation Reform Act, which provide for increased ownership entitlements and full-cost pricing of water. Districts and individuals may, at their discretion, choose to become subject to the discretionary provisions, or to remain subject to prior acreage limitation law.

District or irrigation district: Any entity which has a contract with the United States for the delivery of Reclamation project water. The term "District," as used in these forms, could refer to a canal company, irrigation company, water user association, ditch company, water company, drainage district, etc.

Effective date of agreement: The effective date of a farm operation agreement or lease is either the date the agreement was entered into or the effective date as specified in the agreement.

Excess land: Irrigable land, other than exempt land, owned by any landowner in excess of the maximum ownership limitation under the applicable provision of Reclamation law.

Family: A married couple and their dependents.

Federal Employer's Identification Number (FEIN): A unique number assigned to businesses by the Internal Revenue Service.

Irrevocable election: A legally binding decision by a landholder to conform to the discretionary provisions of the Reclamation Reform Act of 1982. An irrevocable election becomes official when a landholder submits an irrevocable election form to the Bureau of Reclamation. If an entire district elects to amend its contract to conform with the acreage entitlement and pricing provisions of the Reclamation Reform Act of 1982, all direct landholders in the district automatically are subject to these provisions without making an irrevocable election. A landholder is subject to prior law until either an irrevocable election is made or the district amends its contract to conform to the discretionary provisions of the Reclamation Reform Act of 1982.

Irrigable land: Land which is part of a specific Reclamation project and for which a Reclamation project water supply is, can be, or is planned to be provided. Areas occupied by homesites, farm buildings, permanent feedlots, permanent equipment storage yards, public roads, and other permanent facilities, are not included in irrigable acreage.

Irrigation land: All irrigable land (see preceding definition) receiving irrigation water, and other land receiving irrigation water.

Irrigation water: Water made available for agricultural purposes from the operations of Reclamation project facilities pursuant to a contract with the Secretary of the Interior.

Landholding: Land served with irrigation water which is owned and/or operated under the lease by an individual or legal entity.

Lease: Contract by which one party gives to another the use and possession of land for a specified time and for agreed upon payments, and by which the lessee assumes the economic risk in the operation and management of the leased land. The Reclamation Reform Act of 1982 requires that all leases of land receiving irrigation water *must be written*, and available for the Department of the Interior's inspection. See also definition of "Term of lease."

Legal entity: Any business or property ownership arrangement established under State or Federal law including, but not limited to, corporations, partnerships, associations, joint tenancies, and tenancies-in-common.

Nondiscretionary or Self-enacting provisions of the Reclamation Reform Act of 1982: This refers to sections 209-230 of the Reclamation Reform Act. These provisions cover a wide range of topics and apply to all Reclamation districts.

Operator: An individual or legal entity that conducts farming operations by either doing or supervising all or a portion of the work. The operator(s) of a given parcel may be the owner, a lessee, a sublessee, contract operator(s), or a combination of the above.

Prior law: The Reclamation Act of 1902 and other laws which were in effect before the Reclamation Reform Act of 1982 was enacted, and which address acreage limited by law.

Reclamation Reform Act of 1982: An act signed into law by President Reagan on October 12, 1982, which gave districts and individuals the option of remaining subject to prior Reclamation law or electing to become subject to the increased acreage entitlement and full-cost pricing provisions of the new law. The new law also permits the Secretary of the Interior to collect the information on landholdings necessary to administer acreage limitation law.

Term of lease: For leases which were in effect on October 12, 1982, the term of the lease refers to the time remaining on the lease on that date. For leases which went into effect after October 12, 1982, this refers to the actual term of the lease on the day it went into effect.

Westwide: The 17 Western States in which Reclamation projects are located. Upon your request, the Bureau of Reclamation or your district can provide a list of all districts westwide which are subject to Reclamation law.

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7-2190 (8-88)
Bureau of Reclamation

INSTRUCTIONS FOR "INDIVIDUAL'S REPORT OF LANDHOLDINGS," FORM 7-2190

PLEASE REVIEW THE GENERAL INSTRUCTIONS BEFORE COMPLETING THIS FORM. THE GENERAL INSTRUCTIONS EXPLAIN THE USE OF THIS FORM, GIVE DEFINITIONS OF TERMS USED IN THIS FORM, AND PROVIDE OTHER ESSENTIAL INFORMATION.

If you own or lease land in more than one Reclamation project district, give all information pertaining to those holdings on this form. You must also complete and submit a reporting form in each district in which you own or lease land, declaring all your landholdings each time you submit this form. If you wish, you may make copies of Sections III.A, III.B, and III.C of this form to turn in with the 7-2190 forms you submit to other irrigation districts, rather than rewriting these sections each time. If you need extra forms, please contact your district office.

If you determine, based on the General Instructions, that you must report the interest you hold in an entity or entities, you should obtain a copy of each entity's Form 7-2191, "Multiple Ownership Report of Landholdings," or Form 7-2181, "Multiple Ownership Certificate of Landholdings." By referring to the information contained on the entity's form, you can ensure that the information on entity landholdings which you report is both accurate and reliable. If such an entity (or entities) holds irrigable or irrigation land in more than one district, you must also submit a report in each of those districts.

Item-by-Item Instructions *(Please type or print all answers.)*

Section I: Print the name of the district in which you are submitting this form. Print your name and social security number and, if you are married, your spouse's name and social security number. If you hold land in the name of an individual or husband/wife corporation (or other entity owned entirely by you, your spouse, and/or your dependents), print that name in the space marked "OTHER NAMES IN WHICH YOU, YOUR SPOUSE, AND/OR YOUR DEPENDENTS HOLD IRRIGABLE OR IRRIGATION LAND." Any other names in which irrigable or irrigation land is held, such as your dependents' names, maiden names, etc., must also be listed here.

Section II: The purpose of Section II is to determine whether you are subject to the discretionary provisions and if you should continue to complete this form. IF YOU ANSWER "YES" TO EITHER II.A OR II.B, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

To answer question II.C, place a check in the box which indicates the landholder's dependency status under the Internal Revenue Code. If the answer is "yes," the landholder should be included on his/her parents' or legal guardians' Form 7-2190.

Section III: Use Section III.A to report all irrigable and irrigation land in which you, your spouse, and/or your dependents own a 100% interest. Use Section III.B to report all irrigable and irrigation land leased from other parties by you, your spouse, and/or your dependents, or by entities in which you, your spouse, and/or your dependents own a 100% interest. Use Section III.C to describe your interest as a part owner or beneficiary of an entity or entities which own or lease irrigable or irrigation land. Any such irrigable or irrigation land, whether within or outside of the district in which you are submitting this form, must be listed in Section III. If you are unsure about whether a parcel must be considered "irrigable land" or "irrigation land," please refer to the definitions of these terms located in the front of this booklet. If you are still unsure, contact the office of the district in which the land is located or your nearest Bureau of Reclamation office for assistance.

Section III.A: In Column 1, give the name of the district in which the parcel you are describing is located. If you hold land in more than one district, grouping the parcels by district will make it easier for you to summarize your landholdings in Section III.D.

In Column 2, please provide a legal description accurate to the quarter section, or an assessor's parcel number if your district office so requires.

In Column 3, answer according to the date title to the parcel was transferred into your name(s).

In Column 4, place a check in the box which indicates how each parcel is being operated.

In Column 5, give the name and address of the operator or lessee if the land is operated or leased by another party.

In Column 6, the effective date of an agreement is either the date of the lease (or any other operation agreement) was entered into, or the effective date as specified in the agreement.

In Column 7, "Number of acres" of each parcel should be rounded to the nearest acre.

Section III.B: Section III.B is similar to Section III.A except that it applies to land you, your spouse, and/or your dependents lease from another party. Enter the district name, legal description, effective date of agreement, and number of acres for each leased parcel as discussed in the instructions for Section III.A above.

In Column 3, enter the name of the owner of each parcel.

In Column 4, indicate whether you operate each parcel yourself, or whether another party operates the parcel.

If you, your spouse, and/or your dependents do not hold a part interest in any entities that hold irrigation land, skip Section III.C and proceed to Section III.D.

Section III.C: In Column 1, print the name of the district in which the entity holds irrigable or irrigation land. It is recommended that all holdings of entities in one district be listed before starting with holdings in other districts. Grouping your listings "by district" rather than "by entity" will make it easier for you to complete the summary in Section III.D.

In Column 2, print the correct name of the entity(s) in which you, your spouse, and/or your dependents hold an interest. Do not include entities owned by or benefiting more than 25 persons if your interest is 4 percent or less, or amounts to 40 acres or less. If the entity has holdings in more than one district, you may need to enter the entity's name more than once.

In Columns 3 and 4, enter each entity's Federal Employer's Identification Number, if applicable, and check the box that most accurately describes the entity. The heading "DISCRETIONARY TRUST" refers to a trust that is subject to the discretionary provisions of the RRA; a corporation, partnership, joint tenancy, or any other entity subject to the discretionary provisions would fall under the heading "OTHER DISCRETIONARY." Similarly, the heading "PRIOR LAW CORPORATION" refers to a corporation that remains subject to prior law; all other prior law legal entities such as trusts, partnerships, etc., fall under the heading "OTHER PRIOR LAW."

In Columns 5 and 7, enter the number of irrigable and irrigation acres owned and leased by each entity in each district to the nearest acre. Note: In Columns 5 and 7, part owners leasing land to or from an entity in which they hold an interest may subtract any acreage they have included as part of their own landholding in sections III.A and III.B. Such part owners must use footnotes to briefly explain these subtractions on the back of the form.

In Column 6, answer according to the date the legal entity acquired title to the land, or according to the date you acquired an interest in the entity, whichever is later.

In Column 8, enter the percentage interest you, your spouse, and/or your dependents hold in each entity.

In Column 9, multiply the acreage from Column 5 by the percentage (in decimal form) from Column 8. For example, if Column 5 reads "160" (acres) and Column 8 reads "50" percent, the correct entry in Column 9 would be "80." Column 10 uses a similar procedure; in Column 10, multiply the acreage from Column 7 by the percentage in Column 8.

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Section III.D: Acreages reported in Sections III.A, III.B, and III.C are totaled and summarized here. Columns are provided for up to five other districts in which you may hold irrigable or irrigation land.

Please note that if the "total" column of line D.3 exceeds 160 acres (320 acres for a married couple, if each spouse holds an equal interest) or if you own any excess land, you must submit Form 7-2198, "Application for Designation of Nonexcess Land" with this form. If the spouses' interests in the land are not equal, and if more than 160 acres are owned, contact your district or Bureau office for guidance.

If the "total" column of line D.6 is greater than zero, and if the "total" column of line D.7 exceeds 160 acres (320 acres for a married couple, if each spouse holds an equal interest), you must submit Form 7-2199, "Application for Selection of Non-Full-Cost Land" with this form. Form 7-2199 must also be completed if you own land subject to an extended recordable contract.

Section IV: The street address or rural route number of your residence is required. Attorneys' addresses, relatives' addresses, "c/o" addresses, etc., are not acceptable as residential addresses. Post office box numbers may be used only if no other address exists. If your mailing address differs from your residential address, it is also required; please enter the mailing address on the back of the form. The remainder of this section is self-explanatory. Please read it carefully and sign it. The statements concerning the reporting of changes in information, written leases, the terms of such leases, and holdings of spouses and dependents are requirements of Reclamation law.

ANY QUESTIONS YOU MAY HAVE SHOULD BE ADDRESSED TO YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

7-2190 (6-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM. (Attach additional pages if necessary)

FOR DISTRICT USE ONLY: IDCON NO.

INDIVIDUAL'S REPORT OF LANDHOLDINGS Required by the Reclamation Reform Act of 1982	FORM 7-2190	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTIFICATION

District Name	Landholder	Spouse	Other names, or names of entities, in which you, your spouse, and/or your dependents hold irrigable or irrigation land. (Include only those entities in which you, your spouse, and/or your dependents own 100 percent of the stock or interest.)	
	Name	Name		
	Social Security Number	Social Security Number		

SECTION II: LANDHOLDER STATUS

A. Have you ever directly owned or leased irrigation land in any district which has amended its contract with the United States for conformance to the discretionary provisions of the Reclamation Reform Act of 1982, or has entered into a new contract with the United States after October 12, 1982? (If you do not know, please ask a district official) ☐ Yes ☐ No

B. Have you personally made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982? ☐ Yes ☐ No

IF YOU ANSWERED "YES" TO EITHER OF THE PRECEDING QUESTIONS, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

C. Are you claimed as a dependent within the meaning of the Internal Revenue Code? (Dependents must be included on their parents' or legal guardians' Form 7-2190.) ☐ Yes ☐ No

SECTION III: LANDHOLDINGS

A. List all irrigable and irrigation land parcels westwide in which a 100 percent interest is owned by you, your spouse, and/or your dependents. If the land is located in more than one district, group your listing of parcels by district to facilitate your summarization of acreages in section IILD. In column 3, check the box that indicates how each parcel is being farmed; check "self" if you farm the parcel yourself, "lessee" if you lease the parcel to another party, and "other" if the parcel is being farmed by another party under an agreement other than a lease. (Attach additional pages if necessary.)

(1)	(2)	(3)		(4)			(5)	(6)	(7)
District Name	Legal Description of Irrigable And Irrigation Land	Was Land Acquired After 12/06/79?		Operated By:			Name and Address of Lessee or Other Party Operating Each Parcel	Effective Date Of Agreement	Number Of Acres
		Yes	No	Self	Lessee	Other			
								Total Acres	

B. List all irrigable and irrigation land parcels westwide which you, your spouse, and/or your dependents lease from another party. If the land is located in more than one district, group your listing of parcels by district to facilitate your summarization of acreages in section IIID. (Attach additional pages if necessary.)

(1)	(2)	(3)	(4)		(5)	(6)
District Name	Legal Description of Irrigable and Irrigation Land	Landowner's Name	Operated By: Self	Operated By: Other	Effective Date of Agreement	Number of Acres
					Total Acres	

C. List all entities in which you, your spouse, and/or your dependents hold a part (less than 100 percent) interest, and which own or lease irrigable or irrigation land, as defined in the front of this booklet. You need not include entities which are owned by or benefit more than 25 individuals, provided the interest you, your spouse, and/or your dependents hold is 4 percent or less, or amounts to 40 acres or less. Group your listings by district in order to make it easier to summarize your holdings in section IIID. If a listed entity holds irrigable or irrigation land in more than one district, it will be necessary to enter the entity's name on more than one line.

(1)	(2)	(3)	(4)				(5)	(6)	(7)	(8)	(9)
District Name	Name of Entity Which Owns or Leases Irrigable or Irrigation Land and in Which You Own an Interest (Exactly as it appears on the entity's multiple ownership form)	Entity's Federal Employer's Identification Number (If applicable)	Entity Type And Status: Discretionary Trust	Other Discretionary	Prior Law Corporation	Other Prior Law	Number of Irrigable and Irrigation Acres Owned by the Entity in Each District	Number of Irrigable and Irrigation Acres Leased by the Entity in Each District	Percentage of Interest You Hold in Each Entity	Owned Acreage Attributable to Your Interest in the Entity (Col. 5 X Col. 7)	Leased Acreage Attributable to Your Interest in the Entity (Col. 6 X Col. 7)
									Total Acres		

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SECTION III: LANDHOLDINGS (Continued)

D. Landholding Summary	Number of Acres						
	This District	Other Districts					Total
1. Enter the total number of irrigable and irrigation acres owned (from Section III.A).							
2. Enter the total number of irrigable and irrigation acres owned through entities (if any) as reported in Section III.C, Column 9.							
3. Total irrigable and irrigation acreage owned (add lines D.1 and D.2).							
4. Enter the total number of irrigable and irrigation acres leased (from Section III.B).							
5. Enter the total number of irrigable and irrigation acres leased through entities (if any) as reported in section III.C, Column 10.							
6. Total irrigable and irrigation acreage leased (add lines D.4 and D.5).							
7. Total irrigable and irrigation acreage owned and leased (add lines D.3 and D.6).							

If the "Total" column of line D.3 exceeds 160 acres, (320 acres for a married couple, if each spouse holds an equal interest), or if you own any excess land, you must complete Form 2198, "APPLICATION FOR DESIGNATION OF NONEXCESS LAND."

If the "Total" column of line D.6 is greater than zero, and if the "Total" column of line D.7 exceeds 160 acres (320 acres for a married couple, if each spouse holds an equal interest), you must complete Form 7-2199, "APPLICATION FOR SELECTION OF NON-FULL-COST LAND." Form 7-2199 must also be completed if you own land subject to an extended recordable contract.

SECTION IV: SIGNATURE

Attention: This declaration must be signed. Read the following paragraphs before signing.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

I (we) attest that the information provided herein is true, accurate, and complete to the best of my (our) knowledge and agree that any change in the information contained in this report will be provided verbally to the district first named within 15 days of such change, and that new forms will be submitted within 30 days of such change. I (we) also attest that any leases of land receiving irrigation water to which I (we) am (are) a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years. I (we) further attest that all irrigable and irrigation landholdings of both spouses and any dependents (if applicable), whether held directly or through entities, have been reported on this form.

Landholder's Signature _____ Spouse's Signature _____

Landholder's Residential Street Address or Rural Route Number _____

City and State _____ Zip Code _____

Telephone Number (include area code) _____ Date _____

This report is required by Public Law 97-293. Failure to report can result in prosecution and/or loss of water deliveries form Federal Reclamation projects. Information obtained in this report is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or the irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

Disclosure of the Social Security Number is voluntary. It is requested on this form to facilitate processing and recordkeeping by the irrigation district and the Bureau of Reclamation.

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE.

7-2191 (6-88)
Bureau of Reclamation

INSTRUCTIONS FOR "MULTIPLE OWNERSHIP REPORT OF LANDHOLDINGS," FORM 7-2191

PLEASE REVIEW THE GENERAL INSTRUCTIONS BEFORE COMPLETING THIS FORM. THE GENERAL INSTRUCTIONS EXPLAIN THE USE OF THIS FORM, GIVE DEFINITIONS OF TERMS USED IN THIS FORM, AND PROVIDE OTHER ESSENTIAL INFORMATION.

All irrigable and irrigation landholdings of the entity completing this form, including landholdings in other Reclamation project districts, must be included on this form.

Each entity must submit a completed Form 7-2191, "Multiple Ownership Report of Landholdings" in each district in which it holds irrigable or irrigation land, either directly or through subsidiaries. If desired, Sections II, III, IV.A, and IV.B may be copied and submitted with the 7-2191 forms submitted in other districts, rather than rewriting these sections each time. If extra forms are needed, please contact your district office.

Holdings of subsidiaries are counted against the entitlement of the parent entity. Therefore, this form must be completed by the ultimate parent entity and must fully disclose the identity and landholdings of each subsidiary. In the case where a corporation which holds irrigable or irrigation land is owned by more than one other corporation, describe the ownership of the corporation(s) in detail on a separate sheet. Submit that sheet with this report, and fill out this report as completely as possible.

Item-by-Item Instructions *(Please type or print all answers.)*

Section I: Enter the name of the district in which you are submitting the form, and check the box that best identifies the landholder's entity type. The landholder name(s) should be the name(s) in which the land is owned or leased, unless the landholder is a subsidiary of another entity. In that case, the parent entity's name should be given as the landholder, and the subsidiary's name should appear on the lines provided. Indicate the State or States in which the landholder entity is established or registered and the entity's Federal Employer's Identification Number (FEIN). The FEIN is required if one exists for the entity. Enter the names and addresses of any subsidiaries that own or lease irrigable or irrigation land. Finally, trusts must enter the names of all the trust's grantors.

Section II: The purpose of questions II.A and II.B is to determine whether the entity is subject to prior law and if you should continue to complete this form. Please note that irrevocable elections by an entity's part owners or beneficiaries do not bind the entity and are therefore not the equivalent of an irrevocable election by the entity. IF YOU ANSWER "YES" TO EITHER II.A OR II.B, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

Questions II.C and II.D – These questions must be answered by all trusts. Check the appropriate boxes.

Section III: Entities owned by or benefiting 25 or fewer persons must identify all part owners or beneficiaries. Entities owned by or benefiting more than 25 persons must identify only those part owners or beneficiaries who hold an interest greater than 4 percent in the entity, and whose interest amounts to more than 40 acres. If the entity is owned by or benefits more than 25 persons, and none of those persons holds an interest in the entity greater than 4 percent or amounting to more than 40 acres, skip the remainder of Section III and proceed to Section IV.

All persons identified in Section III must complete either Form 7-2180, "Individual's Certificate of Landholdings," or Form 7-2190, "Individual's Report of Landholdings," unless the part owner or beneficiary's total holding of irrigable and irrigation land westwide, both directly and through entities, is 40 acres or less. The part owner or beneficiary must determine which of Forms 7-2180 or 7-2190 to complete based on his or her status under Reclamation law. If subject to the discretionary provisions of the RRA, the part owner or beneficiary should use Form 7-2180; if subject to prior law, he or she should use Form 7-2190. THE ENTITY COMPLETING THIS FORM SHOULD INFORM ALL PERSONS IDENTIFIED IN SECTION III OF THEIR OBLIGATION TO CERTIFY OR REPORT IN ORDER TO PROTECT THE LAND'S ELIGIBILITY TO RECEIVE IRRIGATION WATER.

Section IV: Use Section IV.A to report the entity's landownership; use Section IV.B to report land leased by the entity from other parties. Any irrigable and irrigation land owned or leased by the entity, whether within or outside of the district in which this form is being submitted, must be described here. If you are unsure about whether a parcel must be considered "irrigable land" or "irrigation land," please refer to the definition of these terms located in the front of this booklet. If you are still unsure, contact the office of the district in which the land is located or your nearest Bureau of Reclamation office for assistance.

Section IV.A: In Column 1, give the name of the district in which the parcel being described is located. If the entity holds land in more than one district, grouping the parcels by district will make it easier to summarize the entity's landholdings in Section IV.C.

In Column 2, please provide a legal description accurate to the quarter section, or an assessor's parcel number if your district office so requires.

In Column 3, answer according to the date the entity acquired title to the parcel in question.

In Column 4, place a check in the box which indicates how each parcel is being operated.

In Column 5, give the name and address of the operator or lessee if the land is operated by another party.

In Column 6, the effective date of an agreement is either the date the lease (or any other operation agreement) was entered into, or the effective date as specified in the agreement.

In Column 7, "Number of acres" of each parcel should be rounded to the nearest acre.

Section IV.B: Enter the district name, legal description, effective date of agreement, and number of acres for each leased parcel as discussed in the instructions for Section IV.A above.

In Column 3, enter the name of the owner of each parcel.

In Column 4, indicate whether you operate the parcel yourself, or whether another party operates the parcel.

Section IV.C: Acreages reported in Sections IV.A and IV.B are summarized here. Please note that if the "total" column of line C.1 exceeds 160 acres, entities other than partnerships, trusts, joint tenancies, and tenancies-in-common must complete Form 7-2198, "Application for Designation of Nonexcess Land," and submit that form to the district with the entity's Form 7-2191. Partnerships, trusts, joint tenancies, and tenancies-in-common which have a total in line C.1 greater than 160 acres must follow the special instructions below to determine whether it is necessary to complete Form 7-2198.

All entities must also complete Form 7-2198 if they own any excess land.

Similarly, if the "total" column of line C.2 exceeds zero and the "total" column of line C.3 exceeds 160 acres, entities other than partnerships, trusts, joint tenancies, and tenancies-in-common must submit Form 7-2199, "Application for Selection of Non-Full-Cost Land." The aforementioned types of entities must follow the special instructions below to determine whether it is necessary to complete Form 7-2199.

All entities that own land subject to an extended recorded contract must also complete a Form 7-2199.

Section V: Please read this section carefully before signing. Note that if the entity is a joint tenancy or tenancy-in-common, all tenants or cotenants must sign the form unless they have provided a written authorization allowing one person to sign for the entity. The statement concerning reporting of changes in information, written leases, and terms of such leases, are requirements of Reclamation law. Also, please note that the entity must give its street address or rural route number. Post office box numbers, attorney's addresses, "c/o" addresses, etc., are not acceptable in place of a street address. A post office box number may be entered only if no other address for the entity exists. If the mailing address

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differs from the street address, it is also required; please enter the mailing address on the back of the form.

SPECIAL INSTRUCTIONS FOR PARTNERSHIPS, TRUSTS, JOINT TENANCIES, AND TENANCIES-IN-COMMON: Because the acreage entitlements for partnerships, trusts, joint tenancies, and tenancies-in-common are entirely dependent upon the number of beneficiaries and their individual entitlements, such entities which own and/or lease more than 160 acres of irrigation land should use the following procedure to determine whether it is necessary to complete Form 7-2198 or Form 7-2199:

On a separate sheet of paper, list each part owner or beneficiary identified in Section III of this form, and give each part owner's or beneficiary's status (i.e., qualified recipient or prior law). Also give the number of owned and leased irrigable and irrigation acres which are attributable to the interest held by each part owner or beneficiary. Partnerships must also establish whether the partners' interests are separable. Unless you are completely familiar with acreage limitation law, you should work with your district or nearest Bureau of Reclamation office to determine whether each part owner or beneficiary is within his or her entitlements, and whether it is necessary for the entity to complete Forms 7-2198 and 7-2199. Copies of these papers and computations must be filed in the district office with the entity's reporting forms. Remember that in most cases, each part owner or beneficiary identified in Section III of Form 7-2191 must submit either Form 7-2190, "Individual's Report of Landholdings," or Form 2180, "Individual's Certificate of Landholdings," depending on his or her status and total westwide landholding.

ANY QUESTIONS YOU MAY HAVE SHOULD BE DIRECTED TO YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

7-2191 (8-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM.
(Attach additional pages if necessary)

For District Use Only: IDCON NO.

MULTIPLE OWNERSHIP REPORT OF LANDHOLDINGS
Required by the Reclamation Reform Act of 1982

FORM 7-2191

OMB CLEARANCE NO.: 1006-0005
EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTIFICATION

A. District Name

B. Type of Entity (Check one)
- ☐ Corporation
- ☐ Partnership
- ☐ Joint Tenancy or Tenancy-in-Common
- ☐ Trust
- ☐ Other (Describe) _____

C. Landholder Name(s)

D. State(s) in which landholder is established or registered (If applicable)

E. Federal employer's identification number (FEIN) (If applicable)

F. Identification of subsidiaries which hold all or a portion of the irrigation land listed herein.

Subsidiary Name(s)	Subsidiary Address(es)

G. Trusts only - enter grantor name(s)

SECTION II: LANDHOLDER STATUS

A. Has the district named above, or any other district in which this entity has ever owned or leased irrigation land, amended its contract with the United States to conform to the discretionary provisions of the Reclamation Reform Act of 1982, or entered into a new contract with the United States after October 12, 1982? (If you do not know, please ask a district official) ☐ Yes ☐ No

B. Has this entity made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982? ☐ Yes ☐ No

IF YOU ANSWERED "YES" TO EITHER II.A OR II.B, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

C. (Trusts only) Is the trust revocable at the discretion of the grantor in such a manner that revocation results in the title to the trusted land reverting either directly or indirectly to the grantor? ☐ Yes ☐ No

D. (Trusts only) Is the trust revoked or terminated by its terms upon the expiration of a specified period of time in such a manner that revocation or termination results in the title to the trusted land reverting either directly or indirectly to the grantor? ☐ Yes ☐ No

IF YOU ANSWERED "YES" TO EITHER QUESTION II.C OR II.D, THE TRUSTED LAND MUST BE ATTRIBUTED TO THE GRANTOR(S) NAMED ABOVE. PLEASE REFER TO THE INSTRUCTIONS FOR THIS SECTION.

SECTION III: PART OWNER/BENEFICIARY/GRANTOR ATTRIBUTION

A. Is this entity owned by, or does it benefit, 25 or fewer persons? ☐ Yes ☐ No

B. Do any of the owners or beneficiaries, or grantors to whom trusted land is attributable, hold an interest greater than 4 percent in this entity which amounts to more than 40 acres through attribution? ☐ Yes ☐ No

C. If the answers to both III.A and III.B above are "no," skip the remainder of this section and proceed to section IV.

If the entity has more than 25 owners or beneficiaries, or grantors to whom trusted land is attributable, any such person whose interest in the entity results in an attribution of more than 40 acres, and whose interest in the entity exceeds 4 percent, must be identified here. If there are 25 or fewer owners or beneficiaries, or grantors to whom trusted land is attributable, all such persons must be identified here, regardless of their interest.

All persons identified here must complete and submit either form 7-2180, "INDIVIDUAL'S CERTFICATE OF LANDHOLDINGS," or Form 7-2190, "INDIVIDUAL'S REPORT OF LANDHOLDINGS," unless they directly and/or indirectly own and/or lease 40 acres or less westwide. (Attach additional pages if necessary.)

Part Owner, Beneficiary, or Grantor Name	Social Security Number	Percentage of Interest Held

SECTION IV: LANDHOLDINGS

A. List all irrigable and irrigation land parcels westwide which this entity owns. If the land is located in more than one district, group the listing of parcels by district to facilitate summarization of acreages in section IV.C. In column 3, check the box that indicates how each parcel is being farmed; check "Self" if this entity farms the parcel, "Lessee" if the entity leases the parcel to another party, and "Other" if the parcel is being farmed by another party under an agreement other than a lease. (Attach additional pages if necessary.)

(1)	(2)	(3)		(4)			(5)	(6)	(7)
District Name	Legal Description of Irrigable and Irrigation Land	Was Land Acquired After 12/08/78?		Operated By:			Name and Address of Lessee or Other Party Operating Each Parcel	Effective Date of Agreement	Number Of Acres
		Yes	No	Self	Lessee	Other			
								Total Acres	

B. List all irrigable and irrigation land parcels westwide which this entity leases from another party. If the land is located in more than one district, group the listing of parcels by district to facilitate summarization of acreages in section IV.C. (Attach additional pages if necessary.)

(1)	(2)	(3)		(4)		(5)	(6)
District Name	Legal Description of Irrigable and Irrigation Land		Landowner's Name	Operated by:		Effective Date of Agreement	Number Of Acres
				Self	Other		
						Total Acres	

SECTION IV: LANDHOLDINGS (Continued)

C. Landholding Summary	Number of Acres						
	This District	Other Districts					Total
1. Enter the total number of irrigable and irrigation acres owned (From section IV.A).							
2. Enter the total number of irrigable and irrigation acres leased (from section IV.B).							
3. Total irrigable and irrigation acreage owned and leased (add lines C.1 and C.2).							

PLEASE REFER TO THE INSTRUCTIONS FOR SECTION IV.C TO DETERMINE IF IT IS NECESSARY TO COMPLETE FORM 7-2198 OR FORM 7-2199.

SECTION V: SIGNATURE

Attention: This declaration must be signed by an officer or authorized agent of the entity to which this form applies. If the entity is a partnership, joint tenancy, or tenancy-in-common, all partners, tenants, or co-tenants must sign this form unless they have authorized, in writing, another person or persons to sign for them. All part owners and beneficiaries identified in section III must submit either Form 7-2180, "INDIVIDUAL'S CERTFICATE OF LANDHOLDINGS", or Form 7-2190, "INDIVIDUAL'S REPORT OF LANDHOLDINGS" if they own and/or lease more than 40 acres of irrigable and/or irrigation land westwide. The entity completing this form should inform all such persons, along with any lessors or lessees, of their certification or reporting requirements in order to protect the land's eligibility to receive irrigation water.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

This report is required by Public Law 97-293. Failure to report can result in prosecution and/or loss of water deliveries from Federal Reclamation projects. Information obtained on this form is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or the irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

Disclosure of the Social Security Number is voluntary. It is requested on this form to facilitate processing and recordkeeping by the irrigation district and the Bureau of Reclamation.

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE.

I attest that the information provided herein is true, accurate, and complete to the best of my knowledge and agree that any change in the information in this report will be provided verbally to the district first named within 15 days of such change, and that new forms will be submitted within 30 days of such change. I further attest that any leases of land receiving irrigation water to which this entity is a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years.

Signature of Officer or Authorized Agent _____ Office Held _____

_____ _____

_____ _____

Other Required Signatures

Landholder's Street Address or Rural Route Number

City and State _____ Zip Code _____

Telephone Number (Include Area Code) _____ Date _____

7-2193 (6-88)
Bureau of Reclamation

INSTRUCTIONS FOR "GOVERNMENTAL AGENCY'S REPORT OF LANDHOLDINGS," FORM 7-2193

USE OF THIS FORM: This form is to be completed by Federal, State, County, and City government agencies and any other government agencies which own more than 40 acres of "irrigable land" and/or "irrigation land" (as defined on the reverse side of these instructions) westwide, part or all of which land is located in a district which has not conformed to the discretionary provisions of the Reclamation Reform Act of 1982 (RRA). Use this form to declare landholdings in a district that remains subject to prior law; land located in districts that have conformed to the discretionary provisions must be reported using Form 7-2183, "Governmental Agency's Certificate of Landholdings." Government agencies must report irrigable and/or irrigation landholdings which are operated for either revenue-producing or non-revenue-producing functions.

Please refer to the definitions on the reverse side of these instructions whenever the meaning of a term is not clear to you.

Agencies must complete this form for all the irrigable and irrigation land that is owned within a district. If an agency owns irrigable or irrigation land in more than one district, a separate form must be completed for each district and be submitted to the appropriate irrigation district office. If you need extra forms, please contact your district office.

If the agency leases irrigable or irrigation land to or from another individual or entity, we request that the agency inform the lessees or lessors of their obligation to certify or report. Failure to report by either the lessee or lessor will jeopardize the land's eligibility to receive irrigation water.

A reporting agency will not need to complete this form again unless the information reported on this form changes in some way. If such information does change, the agency must verbally notify the district of that change within 15 days of that change, and a new reporting form must be submitted to the district within 30 days of such a change. If this information does not change, a verification to that effect must be signed and submitted annually. Your district will provide a verification form for this purpose each year.

After completing the form, please detach it from these instructions and return it to the office of the district in which the land is located.

Item-by-Item Instructions *(Please type or print all answers.)*

Section I.A: Give the name of the district in which you are submitting the form. The remainder of Section I is self-explanatory.

Section II: When completing Sections II.A and II.B, do not list the same land parcel more than once. Please refer to the definitions "Description," "Irrigable land," "Irrigation land," and "Effective date of agreement" which can be found on the reverse side of this form. Agencies need not report leases of less than five acres, provided the total acreage leased by the agency to the lessee in question is less than five acres.

"Number of acres" of each parcel should be rounded to the nearest acre.

Enter the name and address of any lessee or operator where indicated, and place a check in the appropriate column to indicate whether the party named is a lessee or an operator. Please refer to the definitions of "lease" and "operator" on the reverse side of these instructions, as necessary.

Section III: This section is self-explanatory. Please read it carefully and sign it. The statements concerning written leases and the terms of such leases are requirements of the RRA.

ANY QUESTIONS YOU MAY HAVE SHOULD BE DIRECTED TO YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

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DEFINITIONS

Following are the definitions of some of the terms used in these forms and instructions. Please refer to these definitions whenever the meaning of a term in not clear to you.

Description: This refers to a legal description of the land in question, or a county assessor's parcel number if your district so requires. In a legal description, detail beyond the quarter section is not necessary, except on Forms 7-2188 and 7-2189. Thus, an example of a legal description might read either "SE 1/4, Section 22, T3N, R2W, 3rd P.M.," or "APN 026-051-28."

Discretionary provisions of the Reclamation Reform Act of 1982: This refers to sections 203-208 of the Reclamation Reform Act, which provide for increased ownership entitlements and full-cost pricing of water. Districts and individuals may, at their discretion, choose to become subject to the discretionary provisions, or to remain subject to prior acreage limitation law.

Effective date of agreement: The effective date of a farm operation agreement or lease is either the date the agreement was entered into or the effective date as specified in the agreement.

Irrigable land: Land which is part of a specific Reclamation project and for which a Reclamation project water supply is, can, or is planned to be provided. Areas occupied by homesites, farm buildings, permanent feedlots, permanent equipment storage yards, public roads, and other permanent facilities, are not included in irrigable acreage.

Irrigation land: All irrigable land (see preceding definition) receiving irrigation water, and other land receiving irrigation water.

Irrigation water: Water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary of the Interior.

Landholding: Land served with irrigation water which is owned and/or operated under a lease by an individual or legal entity.

Lease: Contract by which one party gives to another the use and possession of land for a specified time and for agreed upon payments, and by which the lessee assumes the economic risk in the operation and management of the leased land. The Reclamation Reform Act of 1982 requires that all leases of land receiving irrigation water *must be written*. See also definition of "term of lease."

Nondiscretionary or Self-enacting provisions of the Reclamation Reform Act of 1982: This refers to Sections 209-230 of the Reclamation Reform Act of 1982. These provisions cover a wide range of topics and apply to all Reclamation Districts.

Operator: An individual or legal entity that conducts farming operations by either doing or supervising all or a portion of the work. The operator of a given parcel may be the owner, a lessee, a sublessee, a contract operator, or a combination of the above.

Prior law: The Reclamation Act of 1902 and other laws which were in effect before the Reclamation Reform Act of 1982 was enacted, and which address acreage limitation law.

Reclamation Reform Act of 1982 (RRA): An act signed into law by President Reagan on October 12, 1982, which gave districts and individuals the option of remaining subject to prior Reclamation law or electing to become subject to the increased ownership entitlement and full-cost pricing provisions of the new law. The new law also directs the Secretary of the Interior to collect the information on landholdings necessary to administer acreage limitation law.

Term of lease: For leases which were in effect on October 12, 1982, the term of the lease refers to the time remaining on the lease on that date. For leases which went into effect after October 12, 1982, this refers to the actual term of the lease on the day it went into effect.

7-2193 (6-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM. (Attach additional pages if necessary)

For District Use Only: IDCON NO.

GOVERNMENTAL AGENCY'S REPORT OF LANDHOLDINGS Required by the Reclamation Reform Act of 1982	FORM 7-2193	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTIFICATION

A. District Name

B. Name of Agency Which Holds (Owns or Leases) Land

C. Level of Government of Landholder (Check one)

- ☐ Federal
- ☐ State (Identify) _____
- ☐ County (Identify With State Name) _____
- ☐ City (Identify with County and State Name) _____
- ☐ Other (Describe) _____

SECTION II: LANDHOLDINGS

A. List the irrigable and irrigation land parcels this agency owns in this district which are not operated by or leased to another party or parties.

Description of Irrigable and Irrigation Land	Number of Acres
Total Acres	

B. List the irrigable and irrigation land parcels this agency owns in this district which are operated by or leased to another party or parties.

Lessee's or Operator's Name and Address	Lessee	Operator	Description of Irrigable and Irrigation Land	Effective Date Of Agreement	Number of Acres
Total Acres					

Continued on Page 2

SECTION II: LANDHOLDINGS (Continued)

B. (Continued) List the irrigable and irrigation land parcels this agency owns in this district which are operated by or leased to another party or parties.

Lessee's or Operator's Name and Address	Lessee	Operator	Description of Irrigable and Irrigation Land	Effective Date Of Agreement	Number of Acres
				Total Acres	

SECTION III: SIGNATURE

Attention: This form must be signed by an official or authorized agent of the reporting agency. Read the following paragraphs before signing this form.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

I attest that the information provided herein is true, accurate, and complete to the best of my knowledge and agree that any change in the information in this report will be provided verbally to the district first named within 15 days of such occurrence, and in writing within 30 days of such occurrence. I also attest that any leases of land receiving irrigation water to which this agency is a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years.

Signature of Official or Authorized Agent

Office Held

Date

Address

City and State

Zip Code

Telephone Number (Include Area Code)

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE

This report is required by Public Law 97-293. Failure to report can result in loss of water deliveries form Federal Reclamation projects. Information obtained in this report is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or your irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

7-2194 (8-88)
Bureau of Reclamation

INSTRUCTIONS FOR "RELIGIOUS OR CHARITABLE ORGANIZATION'S REPORT OF LANDHOLDINGS," FORM 7-2194

USE OF THIS FORM: This form is to be completed by religious or charitable organizations which own and/or lease more than 40 acres of "irrigable land" and/or "irrigation land" (these terms are defined on the pages following these instructions) westwide and which are exempt from taxation under Section 501 of the Internal Revenue Code of 1954. This includes parishes, congregations, schools, wards, or similar nonprofit organizations.

Please refer to the definitions which follow these instructions whenever the meaning of a term is not clear to you.

If the organization owns and/or leases irrigable and/or irrigation land in more than one Reclamation project district, give information on all landholdings in all the districts on this form. The organization must also complete and submit this form in each district in which it owns or leases land, giving all the information about its landholdings each time the form is submitted. If you need extra forms, please contact your district office. If desired, the organization may make copies of Sections III.A, III.B, and III.C of this form to turn in with the 7-2194 forms submitted to other districts, rather than rewriting these sections each time.

The reporting organization will not need to complete this form again unless its landholdings change in some way. If its landholdings do change, the organization must notify the district office verbally within 15 days of that change, and a new reporting form must be submitted within 30 days of such a change. If the landholdings do not change, a verification to that effect must be provided annually. Your district will provide a verification form for this purpose each year.

Please be aware that the completion of this form does not guarantee the organization's eligibility for irrigation water. For example, any land acquired from excess status without Federal price approval is ineligible for Reclamation project water deliveries.

Item-by-Item Instructions *(Please type or print all answers.)*

Begin by detaching the form from these instructions.

Section I: Give the name of the district in which you are submitting this form. The landholder's name should be the name in which the land is owned or leased. The remainder of Section I is self-explanatory.

Section II: The purpose of questions II.A and II.B is to determine whether the organization is subject to the discretionary provisions of the Reclamation Reform Act of 1982 and if you should continue to complete this form. IF YOU ANSWER "YES" TO EITHER QUESTION II.A OR II.B, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

The purpose of questions II.C, II.D, and II.E is to determine the organization's status under Reclamation law. IF YOU ANSWER "YES" TO ANY OF QUESTIONS II.C, II.D, OR II.E, CONTACT YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE FOR FURTHER GUIDANCE.

Section III: Use Section III.A to report all irrigable and irrigation land in which the organization owns a 100% interest. Use Section III.B to report all irrigable and irrigation land leased from other parties by the organization or by entities in which the organization owns a 100% interest. Use Section III.C to describe your organization's interest as a part owner or beneficiary of an entity or entities which own or lease irrigable or irrigation land. Any such irrigable and/or irrigation land, whether within or outside of the district in which you are submitting this form, must be listed in Section III. If you are unsure about whether a parcel must be considered "irrigable land" or "irrigation land," please refer to the definitions on the pages following these instructions. If you are still unsure, contact the office of the district in which the land is located or your nearest Bureau of Reclamation office for assistance.

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Section III.A: In Column 1, give the name of the district in which the parcel being described is located. If the organization holds land in more than one district, grouping the parcels by district will make it easier to summarize the organization's landholdings in Section III.D.

In Column 2, please provide a legal description accurate to the quarter section, or an assessor's parcel number if your district so requires.

In Column 3, "Was land acquired after December 6, 1979?," must be answered for each parcel of owned land.

In Column 4, place a check in the box which indicates how each parcel is being operated.

In Column 5, if any irrigable or irrigation land owned by this organization is operated or leased by a party other than this organization or another division of this organization, enter that operator's or lessee's name and address.

In Column 6, please refer to the definition of "Effective date of agreement" which follows these instructions.

In Column 7, "Number of acres" of each parcel should be rounded to the nearest acre.

Section III.B: Section III.B is similar to Section III.A except that it applies to land the organization leases from another party. Enter the district name, legal description, effective date of agreement, and number of acres for each leased parcel as discussed in the instructions for Section III.A above.

In Column 3, enter the name of the owner of each parcel.

In Column 4, indicate whether the organization (or some division of the organization) operates each parcel itself, or whether another party operates the parcel.

If the organization does not hold a part interest in any entities that hold irrigable or irrigation land, skip Section III.C and proceed to Section III.D.

Section III.C: In Column 1, print the name of the district in which the entity holds irrigable or irrigation land. It is recommended that all holdings of entities in one district be listed before starting with holdings in other districts. Grouping your listings "by district" rather than "by entity" will make it easier for you to complete the summary in Section III.D.

In Column 2, print the correct name of the entity(s) in which the organization holds an interest. Do not include entities that have more than 25 part owners or beneficiaries if the organization's interest is 4 percent or less, or amounts to 40 acres or less. If the entity has holdings in more than one district, you may need to enter the entity's name more than once.

In Columns 3 and 4, enter each entity's Federal Employer's Identification Number, if applicable, and check the box that most accurately describes the entity. The heading "DISCRETIONARY TRUST" refers to a trust that is subject to the discretionary provisions of the RRA; a corporation, partnership, joint tenancy, or any other entity subject to the discretionary provisions would fall under the heading "OTHER DISCRETIONARY." Similarly, the heading "PRIOR LAW CORPORATION" refers to a corporation that remains subject to prior law; all other prior law legal entities such as trusts, partnerships, etc., fall under the heading "OTHER PRIOR LAW."

In Column 5, enter the number of irrigable and/or irrigation acres owned by each entity in each district to the nearest acre.

In Column 6, answer according to the date the legal entity acquired the land, or according to the date the organization acquired an interest in the entity, whichever is later.

In Column 7, enter the number of irrigable and irrigation acres leased by each entity in each district to the nearest acre.

In Column 8, enter the percentage interest the organization holds in each entity.

In Column 9, multiply the acreage from Column 5 by the percentage (in decimal form) from Column 8. For example, if Column 5 reads "160" (acres) and Column 8 reads "50" percent, the correct entry in Column 9 would be "80." Column 10 uses a similar procedure; in Column 10, multiply the acreage from Column 7 by the percentage in Column 8.

Section III.D: Acreages reported in Sections III.A, III.B, and III.C are summarized here. Columns are provided for up to five other districts in which you may hold irrigable or irrigation land.

Please note that if the "total" column of line D.3 exceeds 160 acres, or if any excess land is owned, the organization must submit Form 7-2198, "Application for Designation of Nonexcess Land" with this form.

If the total leased acreage in line D.6 is greater than zero, and the total owned and leased acreage in line D.7 exceeds 160 acres, the organization must submit Form 7-2199, "Application for Selection of Non-Full-Cost Land" with this form.

Section IV: This section is self-explanatory. Please read it carefully before signing it. The statements concerning reporting of changes in information, written leases, and the terms of such leases are requirements of Reclamation law.

The local street address or rural route number of the organization is required. Attorneys' addresses, "c/o" addresses, etc., are not acceptable in place of a street address. Post office box numbers may be used only if no other address exists. If the organization's mailing address differs from its street address, it is also required; please enter the mailing address on the back of the form.

ANY QUESTIONS YOU MAY HAVE SHOULD BE ADDRESSED TO YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

DEFINITIONS

Following are the definitions of some of the terms used in this form and instructions. Please refer to these definitions whenever the meaning of a term is not clear to you.

Contract operator: An individual or legal entity other than the owner, lessee, or sublessee that performs part or all of the farming operations. Excepted are spouses, minor children, and hired employees for whom Social Security is paid. (See definition of "Operator.")

Description: This refers to a legal description of the land in question, or a county assessor's parcel number, if your district so requires. In a legal description, detail beyond the quarter section is not necessary, except on Forms 7-2198 and 7-2199. Thus, an example of a legal description might read either "SE 1/4, Section 22, T3N, R2W, 3rd P.M.," or "APN 026-051-28."

Discretionary provisions of the Reclamation Reform Act of 1982: This refers to sections 203-208 of the Reclamation Reform Act, which provide for increased ownership entitlements and full-cost pricing of water. Districts and individuals may, at their discretion, choose to become subject to the discretionary provisions, or to remain subject to prior acreage limitation law.

District or Irrigation district: Any entity which has a contract with the United States for the delivery of Reclamation project water. The term "District," as used in these forms, could refer to a canal company, irrigation company, water user association, ditch company, water company, drainage district, etc.

Effective date of agreement: The effective date of a farm operation agreement or lease is either the date the agreement was entered into or the effective date as specified in the agreement.

Excess land: Irrigable land, other than exempt land, owned by any landowner in excess of the maximum ownership limitation under the applicable provisions of Reclamation law.

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Federal Employer's Identification Number (FEIN): A unique number assigned to businesses by the Internal Revenue Service.

Irrevocable election: A legally binding decision by a landholder to conform to the discretionary provisions of the Reclamation Reform Act of 1982. An irrevocable election becomes official when a landholder submits an irrevocable election form to the Bureau of Reclamation. If an entire district elects to amend its contract to conform with the acreage entitlement and pricing provisions of the Reclamation Reform Act of 1982, all direct landholders in the district are automatically subject to these provisions without making an irrevocable election. A landholder is subject to prior law until either an irrevocable election is made or the district amends its contract to conform to the discretionary provisions of the Reclamation Reform Act of 1982.

Irrigable land: Land which is part of a specific Reclamation project and for which a Reclamation project water supply is, can be, or is planned to be provided. Areas occupied by homesites, farm buildings, permanent feedlots, permanent equipment storage yards, public roads, and other permanent facilities are not included in irrigable acreage.

Irrigation land: All irrigable land (see preceding definition) receiving irrigation water, and other land receiving irrigation water.

Irrigation water: Water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary of the Interior.

Landholding: Land served with irrigation water which is owned and/or operated under a lease by an individual or legal entity.

Lease: Contract by which one party gives to another the use and possession of land for a specified time and for agreed upon payments, and by which the lessee assumes the economic risk in the operation and management of the leased land. The Reclamation Reform Act of 1982 requires that all leases of land receiving irrigation water *must be written*, and available for the Department of the Interior's inspection. See also definition of "Term of lease."

Legal entity: Any business or property ownership arrangement established under State or Federal law including, but not limited to, corporations, partnerships, associations, joint tenancies, and tenancies-in-common.

Nondiscretionary or Self-enacting provisions of the Reclamation Reform Act of 1982: This refers to sections 209-230 of the Reclamation Reform Act. These provisions cover a wide range of topics and apply to all Reclamation districts.

Operator: An individual or legal entity that conducts farming operations by either doing or supervising all or a portion of the work. The operator of a given parcel may be the owner, a lessee, a sublessee, a contract operator, or a combination of the above.

Prior law: The Reclamation Act of 1902 and other laws which were in effect before the Reclamation Reform Act of 1982 was enacted, and which address acreage limitation law.

Reclamation Reform Act of 1982: An act signed into law by President Reagan on October 12, 1982, which gave districts and individuals the option of remaining subject to prior Reclamation law or electing to become subject to the increased acreage entitlement and full-cost pricing provisions of the new law. The new law also permits the Secretary of the Interior to collect the information on landholdings necessary to administer acreage limitation law.

Term of lease: For leases which were in effect on October 12, 1982, the term of the lease refers to the time remaining on the lease on that date. For leases which went into effect after October 12, 1982, this refers to the actual term of the lease on the day it went into effect.

Westwide: The 17 Western States in which Reclamation projects are located. Upon your request, the Bureau of Reclamation or your district can provide a list of all districts westwide which are subject to Reclamation law.

7-2194 (6-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM.
(Attach additional pages if necessary)

FOR DISTRICT USE ONLY: IDCON NO.

RELIGIOUS OR CHARITABLE ORGANIZATION'S REPORT OF LANDHOLDINGS Required by the Reclamation Reform Act of 1982	FORM 7-2194	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTIFICATION

District Name	State in Which Landholder is Established or Registered	Other names, or names of entities, in which this organization holds irrigable or irrigation land. (Include only those entities in which this organization owns 100 percent of the stock or interest.)	
Landholder Name	Central Organization to Which Landholder is Affiliated (If Any)		

SECTION II: LANDHOLDER STATUS

A. Has this organization ever directly owned or leased irrigation land in any district which has amended its contract with the United States for conformance to the discretionary provisions of the Reclamation Reform Act of 1982, or has entered into a new contract with the United States after October 12, 1982? (If you do not know, please ask a district official.) ☐ Yes ☐ No

B. Has this organization made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982? ☐ Yes ☐ No

IF YOU ANSWERED "YES" TO EITHER QUESTION "A" OR "B" ABOVE, DO NOT COMPLETE THIS FORM. CONTACT YOUR DISTRICT OFFICE TO OBTAIN THE PROPER FORM.

C. Is any part of this organization's agricultural produce or the proceeds of the sales of such produce used for <u>other</u> than charitable purposes? ☐ Yes ☐ No

D. Is any irrigable or irrigation land owned or leased by this organization farmed by a party <u>other</u> than this organization or a more central organization of the same faith? ☐ Yes ☐ No

E. Does any part of this organization's net earnings accrue to the benefit of any private shareholder or individual? ☐ Yes ☐ No

IF YOU ANSWERED "YES" TO ANY OF THE THREE PRECEDING QUESTIONS, CONTACT YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE FOR FURTHER GUIDANCE

SECTION III: LANDHOLDINGS

A. List all irrigable and irrigation land parcels westwide in which a 100 percent interest is owned by this organization. If the land is located in more than one district, group your listing of parcels by district to facilitate your summarization of acreages in section III.D. In column 3, check the box that indicates how each parcel is being farmed; check "self" if this organization farms the parcel, "lessee" if this organization leases the parcel to another party, and "other" if the parcel is being farmed by another party under an agreement other than a lease. (Attach additional pages if necessary.)

(1)	(2)	(3)		(4)			(5)	(6)	(7)
District Name	Legal Description of Irrigable And Irrigation Land	Was Land Acquired After 12/06/79?		Operated By:			Name and Address of Lessee or Other Party Operating Each Parcel	Effective Date Of Agreement	Number Of Acres
		Yes	No	Self	Lessee	Other			
							Total Acres		

B. List all irrigable and irrigation land parcels westwide which this organization leases from another party. If the land is located in more than one district, group your listing of parcels by district to facilitate your summarization of acreages in section III.D. (Attach additional pages if necessary.)

(1)	(2)	(3)	(4)		(5)	(6)
District Name	Legal Description of Irrigable and Irrigation Land	Landowner's Name	Operated By: Self	Operated By: Other	Effective Date of Agreement	Number of Acres
					Total Acres	

C. List all entities in which this organization holds a part (less than 100 percent) interest, and which own or lease irrigable or irrigation land, as defined in the front of this booklet. You need not include entities which are owned by or benefit more than 25 individuals, provided the interest this organization holds is 4 percent or less, or amounts to 40 acres or less. Group your listings by district in order to make it easier to summarize your holdings in section III.D. If a listed entity holds irrigable or irrigation land in more than one district, it will be necessary to enter the entity's name on more than one line.

(1)	(2)	(3)	(4)					(5)	(6)		(7)	(8)	(9)	(10)
			Entity Type And Status											
District Name	Name of Entity Which Owns or Leases Irrigable or Irrigation Land and in Which This Organization Owns an Interest (Exactly as it appears on the entity's multiple ownership form)	Entity's Federal Employer's Identification Number (If applicable)	Discretionary Trust	Other Discretionary	Prior Law Corporation	Other Prior Law		Number of Irrigable and Irrigation Acres Owned by the Entity in Each District	Was Owned Land Acquired After December 6, 1979? Yes	No	Number of Irrigable and Irrigation Acres Leased by the Entity in Each District	Percentage of Interest Held In Each Entity	Owned Acreage Attributable To This Organization's Interest in the Entity (Col. 5 X Col. 8)	Leased Acreage Attributable To This Organization's Interest in the Entity (Col. 7 X Col. 8)
												Total Acres		

SECTION III: LANDHOLDINGS (Continued)

D. Landholding Summary	Number of Acres: This District	Other Districts					Total
1. Enter the total number of irrigable and irrigation acres owned (from Section III.A).							
2. Enter the total number of irrigable and irrigation acres owned through entities (if any) as reported in Section III.C, Column 9.							
3. Total irrigable and irrigation acreage owned (add lines D.1 and D.2).							
4. Enter the total number of irrigable and irrigation acres leased (from Section III.B).							
5. Enter the total number of irrigable and irrigation acres leased through entities (if any) as reported in section III.C, Column 10.							
6. Total irrigable and irrigation acreage leased (add lines D.4 and D.5).							
7. Total irrigable and irrigation acreage owned and leased (add lines D.3 and D.6).							

If the "Total" column of line D.3 exceeds 160 acres, or if the organization owns any excess land, you must complete form 7-2198, "APPLICATION FOR DESIGNATION OF NONEXCESS LAND."

If the "Total" column of line D.6 is greater than zero, and if the "Total" column of line D.7 exceeds 160 acres, you must complete Form 7-2199, "APPLICATION FOR SELECTION OF NON-FULL-COST LAND." Form 7-2199 must also be completed if the organization owns land subject to an extended recordable contract.

SECTION IV: SIGNATURE

Attention: This certificate must be signed. Read the following paragraphs before signing.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

I attest that the information provided herein is true, accurate, and complete to the best of my knowledge and agree that any change in the information contained in this report will be provided verbally to the district first named within 15 days of such change, and that new forms will be submitted within 30 days of such change. I also attest that any leases of land receiving irrigation water to which this organization is a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years. I further attest that all irrigable and irrigation landholdings of this organization, whether held directly or through entities, have been reported on this form.

Signature of officer or authorized agent of the reporting organization

Organization's Street Address or Rural Route Number

City and State

Zip Code

Telephone Number (include area code)

Date

This report is required by Public Law 97-293. Failure to report can result in prosecution and/or loss of water deliveries from Federal Reclamation projects. Information obtained in this report is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or the irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE.

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7-2195 (6-88)
Bureau of Reclamation

INSTRUCTIONS FOR "LEASING CHANGE FORM," 7-2195

USE OF THIS FORM: This form is to be used by lessees who have previously submitted Form 7-2190, 7-2191, or 7-2194, to indicate that they have terminated or altered leases previously reported, or to indicate that they have entered into new leases. The lessee may submit this form rather than resubmitting Form 7-2190, 7-2191, or 7-2194 to report a change in leaseholdings. If this form is used, the lessee must obtain the signatures of all landowners involved, thereby indicating the landowners' concurrence with the information supplied. This will satisfy the requirement that landowners must also report changes in their operating arrangements.

Any change in information previously reported other than a leasing change requires the submission of a new Form 7-2190, 7-2191, or 7-2194.

The lessee has 15 days in which to report a leasing change at least verbally to the district in which the land is located. However, within 30 days of any leasing change, the lessee must submit this form (or a completely new reporting form) to all districts in which he or she holds irrigable or irrigation land.

IMPORTANT NOTE FOR ENTITIES THAT ORIGINALLY SUBMITTED FORM 7-2191: If the leasing change being reported on this form results in a net increase in leased acreage, part owners and beneficiaries identified on the entity's Form 7-2191 must submit new individual certification or reporting forms within 30 days of the landholding change. If the leasing change results in no net change or a net decrease in leased acreage, part owners and beneficiaries need not complete new forms unless their full-cost acreage is affected.

Item-by-Item Instructions *(Please type or print all answers.)*

Section I: Names and other information presented here must correspond precisely to that presented in the most recently submitted reporting form. Begin by printing the name of the district in which this form is being submitted. Individuals should enter their name and social security number, and, if married, their spouse's name and social security number. If the landholder is an entity, enter the entity name and Federal Employer's Identification Number (FEIN), if applicable, in the indicated spaces.

Also check the form number of your most recent reporting form (other than Form 7-2195) and the date you signed that form.

Section II: This section is separated into two subsections. Subsection II.A is to be used to report leases which are being terminated or in which the leased acreage is being reduced. Subsection II.B is to be used to report new leases, or increases in acreage under existing leases.

In describing the irrigable or irrigation land, please refer to the definitions of "Description," "Irrigable land," and "Irrigation land" which can be found in the front of this booklet.

The "termination date" is the date a lease ends or is broken. The "effective date" is either the date a lease was entered into or another effective date which may be specified in the lease.

"Number of acres" of each parcel should be rounded to the nearest acre.

In Section II.B, indicate whether you are operating each parcel yourself or whether another party is operating the parcel, by placing a check in the appropriate box.

Section III: The acreage entered in item III.A should agree with the information submitted on your most recent reporting form. The acreage entered in item III.B should also be based on the data from your most recent reporting form, as modified by the changes you have submitted on this form.

For individuals, families, and entities other than partnerships, trusts, joint tenancies, and tenancies-in-common, Form 7-2199, "Application for Selection of Non-Full-Cost Land" must be completed if item III.B is greater than zero, and if item III.C is greater than 160 acres (320 acres for a married couple, if each spouse holds an equal interest). Partnerships, trusts, joint tenancies, and tenancies-in-common must refer to the following special instructions to determine whether it is necessary to complete Form 7-2199. If Form 7-2199 is completed, attach it to Form 7-2195 for submittal to the office of each district in which you hold irrigable or irrigation land.

SPECIAL INSTRUCTIONS FOR PARTNERSHIPS, TRUSTS, JOINT TENANCIES, AND TENANCIES-IN-COMMON: Because the acreage entitlements for partnerships, trusts, joint tenancies, and tenancies-in-common are entirely dependent upon the number of beneficiaries and their individual entitlements, such entities which own and/or lease more than 160 acres of irrigable and/or irrigation land should use the following procedure to determine whether it is necessary to complete Form 7-2199:

On a separate sheet of paper, list each part owner or beneficiary identified in Section III of the entity's Form 7-2191, and give each part owner or beneficiary's status (i.e., qualified recipient or prior law). Also give the number of owned and leased irrigable and irrigation acres which are attributable to the interest held by each part owner or beneficiary. Partnerships must also establish whether the partners' interests are separable. Unless you are completely familiar with acreage limitation law, you should work with your district or nearest Bureau of Reclamation office to determine whether each part owner or beneficiary is within his or her entitlements, and whether it is necessary for the entity to complete Form 7-2199. Copies of these papers and computations must be filed in the district office with the entity's reporting forms. (If this procedure was completed when the entity previously reported, you need only to update it to reflect the changes now being reported.)

Section IV: The lessee must sign the declaration in Section IV.A and provide all other information requested there.

Individuals and families (as defined on the first page in this booklet) must give the street address or rural route number of their residence. Similarly, legal entities must give their street address or rural route number. Post office box numbers, attorneys' addresses, relatives' addresses, "c/o" addresses, etc., are not acceptable in place of a street address. Post office box numbers may be used only if no street address or rural route number exists. If the mailing address differs from the residential address, it is also required; please enter the mailing address where indicated.

The lessee must also obtain the signatures of any landowners named in this form. This includes both the landowners with whom you are terminating leases as well as those with whom you are entering into new leases. By signing this form, the landowners will satisfy their requirement to report changes in their operating arrangements.

The statements concerning the reporting of changes in information, written leases, and the terms of such leases are requirements of the Reclamation Reform Act of 1982.

ANY QUESTIONS YOU MAY HAVE SHOULD BE DIRECTED TO YOUR DISTRICT OR NEAREST BUREAU OF RECLAMATION OFFICE.

BEST COPY AVAILABLE

7-2195 (6-88)
Bureau of Reclamation

PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY WHEN COMPLETING THIS FORM.
(Attach additional pages if necessary)

FOR DISTRICT USE ONLY: IDCON NO.

LEASING CHANGE FORM (REPORTING) Required by the Reclamation Reform Act of 1982	FORM 7-2195	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

SECTION I: DISTRICT AND LANDHOLDER IDENTIFICATION

District Name	Landholder	Spouse	Number and Date of Most Recently Submitted Reporting Form (Other than form 7-2195)	Form Number (Check One)	Date
	Name of Individual or Entity	Name		☐ 7-2190	
	Social Security Number or FEIN	Social Security Number		☐ 7-2191 ☐ 7-2194	

SECTION II: LEASING CHANGES

A. List the irrigable and irrigation land parcels for which leases are being terminated.

District Name	Landowner's Name	Legal Description of Irrigable or Irrigation Land	Termination Date of Lease	Number of Acres

B. List the irrigable and irrigation land parcels for which you are entering new leases.

District Name	Landowner's Name	Legal Description of Irrigable or Irrigation Land	Operated By: Self	Operated By: Other	Effective Date of Lease	Number of Acres

SECTION III: CALCULATION OF NON-FULL-COST LANDHOLDINGS

A. Enter the total number of irrigable and irrigation acres you own, directly and indirectly, in all districts.	
B. Enter the total number of irrigable and irrigation acres you lease from someone else, directly and indirectly, in all districts.	
C. Total irrigable and irrigation acreage owned and leased (Add lines III.A and III.B).	

Please refer to the instructions for section III to determine if it is necessary to complete form 7-2199, "APPLICATION FOR SELECTION OF NON-FULL-COST LAND."

Continued on Page 2

SECTION IV: SIGNATURES

Attention: The lessee, and all landowners identified in sections II.A and II.B of this form, must sign this form. Please read the following paragraph before signing.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

A. LESSEE

I (we) attest that the information provided herein is true, accurate, and complete to the best of my (our) knowledge and agree that any change in the information in this report will be provided verbally to the district first named within 15 days of such change, and in writing within 30 days of such change. I also attest that any leases of land receiving irrigation water to which I (we) am (are) a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years.

Signature of Lessee or Authorized Agent — Date

Spouse's Signature or Other Required Signature(s) — Date

Agent's Title or Office Held, and Name of Entity, If Applicable

Residential Street Address — City and State

Telephone Number (Include Area Code)

Mailing Address, if Different From Residential Street Address

This report is required by Public Law 97-293. Failure to report can result in loss of water deliveries from Federal Reclamation projects. Information obtained in this report is protected by the Privacy Act of 1974 and will be used to administer the acreage limitation provisions of Reclamation law. The Secretary of the Interior or the irrigation district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

Disclosure of the Social Security Number is voluntary. It is requested on this form to facilitate processing and recordkeeping by the irrigation district and the Bureau of Reclamation.

PLEASE RETURN THIS FORM TO THE APPROPRIATE IRRIGATION DISTRICT OFFICE.

B. LANDOWNER(S)

I (we), the undersigned landowner(s), attest that the information contained herein concerning land I (we) own is true and accurate. I (we) further attest that any leases of land receiving irrigation water to which I (we) am (are) a party are (1) written, and (2) have terms which do not exceed 10 years except with the approval of the Bureau of Reclamation in regard to perennial crops, but which in no case exceed 25 years.

LANDOWNER 1

Signature of Landowner(s) or Authorized Agent — Signature of Spouse (If Land is Held Jointly)

Signator's Title or Office Held and Name of the Entity Which Owns the Referenced Land (If Applicable)

LANDOWNER 2

Signature of Landowner(s) or Authorized Agent — Signature of Spouse (If Land is Held Jointly)

Signator's Title or Office Held and Name of the Entity Which Owns the Referenced Land (If Applicable)

LANDOWNER 3

Signature of Landowner(s) or Authorized Agent — Signature of Spouse (If Land is Held Jointly)

Signator's Title or Office Held and Name of the Entity Which Owns the Referenced Land (If Applicable)

LANDOWNER 4

Signature of Landowner(s) or Authorized Agent — Signature of Spouse (If Land is Held Jointly)

Signator's Title or Office Held and Name of the Entity Which Owns the Referenced Land (If Applicable)

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7-2197 (6-88)
Bureau of Reclamation

VERIFICATION OF LANDHOLDINGS (REPORTING)

INSTRUCTIONS

If the landholdings previously described on reporting forms have not changed since those forms were submitted, the landholder(s) must verify that the information contained on those forms remains valid. This must be done on an annual basis as a precondition for the receipt of Reclamation project water in any given water year. Part owners and beneficiaries of an entity which holds irrigable or irrigation land may be required to sign the entity's verification form. However, such part owners and beneficiaries need not complete separate verification forms, unless they hold other irrigable or irrigation land in their own names. The landholder name(s) entered on this form must match exactly the landholder name(s) which appear on any previously submitted reporting form. Questions should be referred to your irrigation district or nearest Bureau of Reclamation office.

Individuals and families must give the street address or rural route number of their residence. Similarly, legal entities must give their street address or rural route number. Post office box numbers, attorneys' addresses, relatives' addresses, "c/o" addresses, etc., are not acceptable in place of a street address. However, post office box numbers may be used if no other address for the landholder exists. If the mailing address differs from the residential address, it is also required; please enter the mailing address where indicated.

All landholders must answer the following questions:

District Name: _____

Previously submitted reporting form: (Check one)

- ☐ 7-2190, "Individual's Report of Landholdings"
- ☐ 7-2191, "Multiple Ownership Report of Landholdings"
- ☐ 7-2193, "Governmental Agency's Report of Landholdings"
- ☐ 7-2194, "Religious or Charitable Organization's Report of Landholdings"

During the preceding water year, the land parcels described on your previously submitted reporting form(s) were operated by: (check all that apply)

- ☐ 1. The landholder completing this form.
- ☐ 2. A lessee or sublessee of the landholder completing this form.
- ☐ 3. A contract operator or operators (Individuals or legal entities other than the owner, lessee, or sublessee that perform part or all of the farming operations. Excepted are spouses, minor children, and hired employees for whom Social Security is paid).

If you checked item 3 above, list all contract operators employed during the past water year, their telephone numbers, the services the contract operators provided (i.e., farm management services, pesticide application, harvesting, etc.), and the approximate acreage associated with each operator:

Operator Name	Telephone Number	Service(s) Provided	Approximate Acreage Operated

(Continued on reverse)

If the landholder completing this form is not a trust, skip the following section and complete the remainder of this form. All trusts must complete the following section.

TRUSTS ONLY:

1. The trust instrument is: ☐ revocable ☐ irrevocable (check one)

If the trust is irrevocable, skip questions 2 and 3 below and complete the remainder of this form. Revocable trusts must answer the following questions.

2. Is the trust revocable at the discretion of the grantor in such a manner that revocation results in the title to the trusted land reverting either directly or indirectly to the grantor? ☐ yes ☐ no

3. Is the trust revoked or terminated by its terms upon the expiration of a specified period of time in such a manner that revocation or termination results in the title to the trusted land reverting either directly or indirectly to the grantor? ☐ yes ☐ no

If the answer to either question 2 or 3 above is "yes," then new certification or reporting forms must be submitted which attribute the trusted land to the grantor.

I ATTEST THAT THE INFORMATION I SUBMITTED CONCERNING THE LANDHOLDINGS OF

_____ (NAME OF LANDHOLDER)

ON THE REPORTING FORM DATED _____ REMAINS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE. ALSO, I ATTEST THAT I HAVE CORRECTLY IDENTIFIED ALL OPERATOR(S) (OTHER THAN THE LANDHOLDER NAMED ABOVE) OF ALL LAND OWNED AND LEASED BY THE LANDHOLDER NAMED ABOVE.

_____ Signature of Landholder(s) or Authorized Agent

_____ Signature of Spouse

_____

_____

_____ Other required signatures

_____

_____ Signator's Title or Office Held (If applicable)

_____ Name of Entity (If applicable)

_____ Landholder's Residential Address

_____ City and State

_____ Zip Code

( ) _____ Telephone Number

_____ Date

_____ Mailing Address (If different from residential address)

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

7-2198 (6-88)
Bureau of Reclamation

APPLICATION FOR DESIGNATION OF NONEXCESS LAND (For individuals and entities subject to prior law)	FORM 7-2198	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

Instructions: The instructions on the reporting form or forms you have completed will indicate whether or not you must complete this form. For your convenience, we have summarized below the conditions which require the completion of this form.

1. Individuals, corporations, and any entities which benefit more than one individual must complete this form if more than 160 acres of irrigable and/or irrigation land are owned. However, partnerships, joint tenancies, tenancies-in-common, and trusts may be excepted from this requirement if the Bureau of Reclamation makes a specific determination that the particular entity in question owns no excess land, based on the information provided on Form 7-2191, "Multiple Ownership Report of Landholdings."

2. Married couples who own all their irrigable and/or irrigation land in a joint tenancy or other form of ownership in which each spouse has an equal interest must complete this form if more than 320 acres of irrigable and/or irrigation land are owned. If the spouses' interests are not equal, and if more than 160 acres of irrigable and/or irrigation land are owned, contact your district or Bureau of Reclamation office.

3. Any party that owns land that must be considered excess either because it was acquired from excess status or for other reasons, must report such land on the back of this form.

The amount of land you may declare nonexcess depends on many factors, such as you status under the law, the type of organization which owns the land, the date the land was acquired, etc. You should work with your irrigation district (or districts) or nearest Bureau of Reclamation Office to complete this form properly.

All descriptions of land on this form should be full legal descriptions. Include the assessor's parcel number, if available. Acreages should be rounded to the nearest acre.

Landholder's Name(s)	
Landholder's Address	

District to which this form is being submitted: _____

Landholder's Status (Check one)

- ☐ Individual
- ☐ Married Couple
- ☐ Partnership
- ☐ Joint Tenancy or Tenancy-in-Common
- ☐ Corporation
- ☐ Trust
- ☐ Other (Describe) _____

Description of irrigable and/or irrigation land you wish to declare nonexcess. Include an explanation of any special reasons a particular parcel should be considered nonexcess. If you are listing parcels located in more than one district, group the parcels by district. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigation Land	Number of Acres
	Total Nonexcess Acreage	

Continued on Page 2

Description of all excess land you own westwide. In the column indicated, give an explanation of the status of the land, i.e., under recordable contract, not being irrigated, receiving nonproject water, etc. Round acreages to the nearest acre. If you are listing parcels located in more than one district, group the parcels by district. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigation Land	Land Status	Number of Acres
		Total Excess Acreage	

Signature of Landholder or Authorized Agent

Spouse's Signature

Landholder's Street Address or Rural Route Number

Agent's Title (If Applicable)

Other Required Signature

City and State

Other Required Signature

Other Required Signature

Date

7-2199 (6-88)
Bureau of Reclamation

APPLICATION FOR SELECTION OF NON-FULL-COST LAND (For individuals and entities subject to prior law)	FORM 7-2199	OMB CLEARANCE NO.: 1006-0005 EXPIRATION DATE:

Instructions: The instructions on the reporting form or forms you have completed will indicate whether or not you must complete this form.

You should work with your irrigation district (or districts) or nearest Bureau of Reclamation office to complete this form properly. The amount of land you may declare non-full-cost depends on many factors, such as your status under the law, the type of organization which owns the land, etc. You may select either owned or leased irrigable or irrigation land as non-full-cost, up to your non-full-cost entitlement. Irrigation land you select as non-full-cost on this form cannot be changed until the next water year. Once you have completed your non-full-cost entitlement in any water year, any additional land you purchase or lease from another party during that water year can receive irrigation water only at full cost. (Note: Irrigable land not receiving irrigation water does not count against your non-full-cost entitlement, but must still be listed here to establish your non-full-cost selection for this water year.)

It is strongly recommended that the party selecting land to pay full cost notify any lessor or lessee of that land's status.

All descriptions of land on this form should be full legal descriptions. Include the assessor's parcel number, if available. Acreages should be rounded to the nearest acre.

When you have completed this form, submit a copy with your reporting form(s) to each district in which you hold irrigation or irrigable land.

Landholder's Name(s)	
Landholder's Address	

District to which this form is being submitted: _____

Landholder's Status (Check one)

- ☐ Individual
- ☐ Married Couple
- ☐ Partnership
- ☐ Joint Tenancy or Tenancy-in-Common
- ☐ Corporation
- ☐ Trust
- ☐ Other (Describe) _____

Description of irrigation land you have selected to receive irrigation water at non-full-cost rates. If your total acreage receiving irrigation water at non-full-cost rates exceeds 160 acres (320 acres for a married couple holding equal interests), explain why any such acreage should not be charged full cost. If you are listing parcels located in more than one district, group the parcels by district. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigation Land	Number of Acres
	Total Acreage Receiving Irrigation Water at Non-Full-Cost Rates	

Continued on Page 2

Description of irrigable land held in excess of your entitlement that is not receiving Federal project irrigation water. Check the appropriate column to indicate whether the parcel is not being irrigated or is being irrigated with a nonproject water supply. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigable Land	Land Status		Number of Acres
		Not Irrigated	Receiving Nonproject Water	
	Total irrigable acreage not receiving Federal project irrigation water			

Description of irrigation land for which you will pay full cost. If you are listing parcels located in more than one district, group the parcels by district. (Attach additional pages if necessary.)

District Name	Full Legal Description of Irrigation Land	Number of Acres
	Total full-cost acres	

Signature of Landholder or Authorized Agent

Spouse's Signature

Landholder's Street Address or Rural Route Number

Agent's Title (If Applicable)

Other Required Signature

City and State

Other Required Signature

Other Required Signature

Date

2

[FR Doc. 88-19360 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-09-C

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National Park Service

[FES 88-23]

Availability of the Final Environmental Impact Statement, Arctic National Park and Preserve, Alaska

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Gates of the Arctic National Park and Preserve, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Gates of the Arctic National Park and Preserve, Alaska.

SUPPLEMENTARY INFORMATION: Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Gates of the Arctic National Park and Preserve Headquarters in Fairbanks, Alaska; telephone: (907) 456-0281; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets, NW.

James W. Stewart,

Associate Director, Planning and Development.

Date: August 15, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88-19394 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-70-M

[FES 88-20]

Availability of the Final Environmental Impact Statement; Wilderness Recommendation Bering Land Bridge National Preserve, Alaska

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Bering Land Bridge National Preserve, Alaska

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Bering Land Bridge National Preserve, Alaska

SUPPLEMENTARY INFORMATION: Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Reginal Office, address above; at the Office of the Superintendent, Bering Land Bridge National Preserve Headquarters in Nome, Alaska; telephone: (907) 443-2522; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets, NW.

Jacob J. Hogland,

Acting Associate Director, Planning and Development.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Date: August 15, 1988.

[FR Doc. 88-19395 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Assessment; Chevron U.S.A., Inc.; Jean Lafitte National Historical Park, Louisiana

Notice is hereby given in accordance with § 9.52(b) of Title 36, Part 9, Subpart B, of the Code of Federal Regulations of the availability of an oil and gas Plan of Operations and Environmental Assessment submitted by Chevron U.S.A., Incorporated, for the purpose of removing of LL&E LS.1 Well 4, Barataria Unit, Jean Lafitte National Historical Park.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Jean Lafitte National Historical Park, 423 Canal Street—Room 210, New Orleans, Louisiana 70130-2341, and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 346, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Date: August 16, 1988.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 88-19401 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-70-M

[FES 88-21]

Availability of the Final Environmental Impact Statement; Wilderness Recommendation; Kenai Fjords National Park, Alaska

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Kenai Fjords National Park, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Kenai Fjords National Park, Alaska.

SUPPLEMENTARY INFORMATION: Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Kenai Fjords National Park Headquarters in Seward, Alaska; telephone: (907) 224-3874; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets, NW.

Jacob J. Hoogland,

Acting Associate Director, Planning and Development.

Approved:

Date: August 15, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88-19396 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-70-M

[FES 88-24]

Availability of the Final Environmental Impact Statement; Wilderness Recommendation; Lake Clark National Park and Preserve, Alaska

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Lake Clark National Park and Preserve, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Lake Clark National Park and Preserve, Alaska.

SUPPLEMENTARY INFORMATION: Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Lake Clark National Park and Preserve Headquarters at 701 C Street, Box 61, Anchorage, Alaska; telephone: (907) 271-3751; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets, NW.

James W. Stewart,

Associate Director, Planning and Development.

Approved:
Date: August 16, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88-19397 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-70-M

[FES 88-25]

Availability of Final Environmental Impact Statement; Wilderness Recommendation; Wrangell-St. Elias National Park and Preserve, Alaska

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Wrangell-St. Elias National Park and Preserve, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Wrangell-St. Elias National Park and Preserve, Alaska.

SUPPLEMENTARY INFORMATION: Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Wrangell-St. Elias National Park and Preserve Headquarters at Glennallen, Alaska; telephone: (907) 822-5235; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets, NW.

James W. Stewart,

Associate Director, Planning and Development.

Approved:
Date: August 18, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review United States Department of the Interior.

[FR Doc. 88-19398 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-70-M

[FES 88-22]

Availability of Final Environmental Impact Statement; Wilderness Recommendation; Yukon-Charley Rivers National Preserve, Alaska

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Yukon-Charley Rivers National Park and Preserve, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Yukon-Charley Rivers National Park and Preserve, Alaska.

SUPPLEMENTARY INFORMATION: Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Yukon-Charley Rivers National Park and Preserve Headquarters at Eagle, Alaska; telephone: (907) 547-2233; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets, NW.

Jacob J. Hoogland,

Acting Associate Director, Planning and Development.

Approved:
Date: August 15, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review United States Department of the Interior.

[FR Doc. 88-19399 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-70-M

Blackstone River Valley National Heritage Corridor Massachusetts and Rhode Island, Blackstone River Valley National Heritage Corridor Commission; Meeting

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 8, 1988.

The Commission was established pursuant to Pub. L. 99-647. The purpose of the Commission is to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Blackstone Valley Historical Society, Northgate, Old Louisquissett Pike, Lime Rock, Rhode Island, for the following reasons:

1. Ratification of By-laws;
2. Ratification of Subcommittees;
3. Election of Subcommittee Chairpersons;
4. Confirmation of Cultural Heritage and land Management Plan Cooperator;
5. Confirmation of Public Education Program Cooperator;

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565-8887.

Steven H. Lewis

Acting Regional Director.

Date: August 16, 1988.

[FR Doc. 88-19400 Filed 8-25-88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-53]

Jopat Drugs, Inc., Baldwin, NY; Hearing

Notice is hereby given that on April 21, 1988, the Drug Enforcement Adminstration, Department of Justice, issued to Jopat Drugs, Inc., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AJ3425938, and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, September 1, 1988, commencing at 10:00 a.m., at the United States Claims Court, Courtroom 10, Room 309, 717 Madison Place, NW., Washington, DC.

Dated: August 22, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-19445 Filed 8-25-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-42]

Henry J. Schwarz, Jr., North Bergen, NJ; Hearing

Notice is hereby given that on March 24, 1988, the Drug Enforcement Administration, Department of Justice, issued to Henry J. Schwarz, Jr., M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, September 22, 1988, commencing at 10:00 a.m., at the United States Claims Court, Courtroom 10, Room 309, 717 Madison Place, NW., Washington, DC.

Dated: August 22, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-19446 Filed 8-25-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
FL88-5 (Jan. 8, 1988) ..... p. 116.
Kentucky:
KY88-4 (Jan. 8, 1988) ..... pp. 296-302.
KY88-28 (Jan. 8, 1988) ..... pp. 372-374.
New York:
NY88-3 (Jan. 8, 1988) ..... pp. 702-703.
NY88-6 (Jan. 8, 1988) ..... p. 728.
NY88-7 (Jan. 8, 1988) ..... pp. 738, 742.
NY88-10 (Jan. 8, 1988) ..... p. 770.
NY88-12 (Jan. 8, 1988) ..... p. 792.
NY88-13 (Jan. 8, 1988) ..... p. 802.
NY88-17 (Jan. 8, 1988) ..... p. 820.
NY88-18 (Jan. 8, 1988) ..... p. 830.
Pennsylvania:
PA88-4 (Jan. 8, 1988) ..... pp. 870-871.
PA88-9 (Jan. 8, 1988) ..... pp. 922-923.
PA88-10 (Jan. 8, 1988) ..... pp. 930-931.
PA88-14 (Jan. 8, 1988) ..... p. 946.

Volume II

Illinois:
IL88-2 (Jan. 8, 1988) ..... pp. 96-111.
IL88-3 (Jan. 8, 1988) ..... pp. 114-115.
IL88-4 (Jan. 8, 1988) ..... pp. 120-121.
IL88-5 (Jan. 8, 1988) ..... pp. 126-127.
IL88-6 (Jan. 8, 1988) ..... p. 132.
IL88-8 (Jan. 8, 1988) ..... pp. 142-144.
IL88-9 (Jan. 8, 1988) ..... pp. 148-149.
IL88-11 (Jan. 8, 1988) ..... pp. 158-162.
Ohio:
OH88-2 (Jan. 8, 1988) ..... pp. 741-745.
OH88-29 (Jan. 8, 1988) ..... pp. 823-825.
Oklahoma:
OK88-18 (Jan. 8, 1988) ..... p. 920.
Wisconsin:
WI88-1 (Jan. 8, 1988) ..... pp. 1084-1085.
WI88-3 (Jan. 8, 1988) ..... pp. 1092-1093.
WI88-6 (Jan. 8, 1988) ..... pp. 1104-1105.
WI88-7 (Jan. 8, 1988) ..... pp. 1108-1109.
WI88-9 (Jan. 8, 1988) ..... pp. 1130-1131.
WI88-10 (Jan. 8, 1988) ..... pp. 1134-1144.
WI88-11 (Jan. 8, 1988) ..... p. 1146.
WI88-12 (Jan. 8, 1988) ..... p. 1150.
WI88-13 (Jan. 8, 1988) ..... pp. 1154-1155.
WI88-14 (Jan. 8, 1988) ..... pp. 1158-1159.
WI88-15 (Jan. 8, 1988) ..... p. 1162.
WI88-16 (Jan. 8, 1988) ..... pp. 1166-1167.

Volume III

Washington:
WA88-1 (Jan. 8, 1988) ..... p. 360.
WA88-2 (Jan. 8, 1988) ..... p. 386.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 19th day of August 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-19222 Filed 8-25-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-139-C]

Rushton Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Rushton Mining Company, P.O. Box 367, Ebensburg, Pennsylvania 15931 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Rushton Mine (I.D. No. 36-00856) located in Centre County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to inclination of the coal seam and water accumulation, certain areas of the mine cannot be safely traveled. These areas cannot be dewatered and rehabilitated without hazardous work.

3. As an alternate method, petitioner proposes to establish safe evaluation procedures for the safety of the examiners in the West Mains, South Mains, and East Mains.

4. In support of this request, petitioner states that—

(a) The areas described are not a part of the ventilation system of active working sections;

(b) The amount of methane generated from the subject and adjacent areas as shown on the current ventilation plan is negligible;

(c) The levels of methane generated range from 0.0% to 0.1%; and

(d) The areas in question were supported according to plan and additional supports such as cribs and posts have been added as needed.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 26, 1988. Copies of the petition are available for inspection at that address.

Date: August 17, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulation and Variances.

[FR Doc. 88-19485 Filed 8-25-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-73]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Flight Research and Technology.

DATE AND TIME: September 21, 1988, 8 a.m. to 5 p.m., and September 22, 1988, 8 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625,

Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2835.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Flight Research and Technology, chaired by Mr. Joseph T. Gallagher, is comprised of eleven members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

September 21, 1988

8 a.m.—Overview of Draft Report.
9 a.m.—Review of Findings.
1 p.m.—Review of Concerns and Issues.
2 p.m.—Discussion of Recommendations.
5 p.m.—Adjourn.

September 22, 1988

8 a.m.—Working Group Activities.
1 p.m.—Convene Working Groups-Review of Final Report Elements.
3 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

August 19, 1988.

[FR Doc. 88-19364 Filed 8-25-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-3018; License No. SNM-1963]

Houston Lighting and Power Co. et al., Matagorda County, TX; Finding of No Significant Impact Issuance of Special Nuclear Material

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1983 to Houston Lighting and Power Company, City Public Service Board of San Antonio, Texas, Central Power and Light Company, and the City of Austin, (the applicants) for the South Texas Project Electric Generating Station Unit 2, located in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action: The proposed action would authorize the applicants to receive, possess, inspect, and store special nuclear material in the form of unirradiated fuel assemblies. The discussion below will be limited to assessing the potential for environmental impacts resulting from the handling and the storage of new fuel at South Texas, Unit 2.

The Need for the Proposed Action: The proposed license will allow the applicants to receive and store fresh fuel prior to issuance of the Part 50 operating license in order to inspect the fuel and finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license.

Environmental Impacts of the Proposed Action: Once at South Texas, Unit 2, the new fuel assemblies may be temporarily stored in their shipping containers in the new fuel inspection lay-down area and the new fuel handling area prior to placement in their designated storage location; the new fuel storage pit located in the Fuel Handling Building. This temporary storage of assemblies in their shipping containers will present no significant environmental impact or significant radiation exposure to plant workers.

Upon removal of the fuel assemblies from the shipping containers, they are inspected and surveyed for any external contamination. Assuming no contamination is found, the assemblies are transferred to their designated storage location. Criticality safety in the storage location is maintained by limiting interaction between adjacent fuel assemblies. The staff has evaluated the new fuel storage pit and found it to be critically safe for all conditions of water moderation and/or reflection. The design of this storage location, combined with plant procedures, will ensure acceptable protection of the general public and plant personnel under either normal or abnormal conditions.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For low-enriched uranium fuel (<4 percent U-235 enrichment), the exposure rate at 1 foot from the surface is normally less than 1 mR/hr; therefore, it is estimated that the exposure level to workers handling the fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. Because of the low radiation levels associated with the requested materials and activities and the applicant's radiation protection procedures, the staff concludes that fuel handling and storage activities can be carried out without any significant occupational dose to workers or radiological impact to the environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated packaged material) is expected to be generated as a result of fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

In the event that applicants must return the fuel to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR Part 71. No significant external radiation hazards are associated with the unirradiated fuel, because the radiation level from the clad fuel pellets is low and the shipping packages must meet the external radiation standards in 10 CFR Part 71. Therefore, shipment of unirradiated fuel by the applicants is expected to have an insignificant impact upon the environment.

In the unlikely event that an assembly (either within or outside its shipping container) is dropped during transfer, fuel cladding is not expected to rupture. Even if the fuel rod cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release of UO_2 aerosol is unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

Conclusion: The environmental impacts associated with the handling and storage of new fuel at South Texas, Unit 2, are expected to be insigificant. Essentially no effluents, liquid or airborne, will be released, and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternative to the Proposed Action: The principal alternative would be to deny the requested license. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at South Texas, Unit 2. Although denial of the Special Nuclear Material License for South Texas, Unit 2, is an alternative available to the Commission, it would be considered only if significant issues

of public health and safety could not be resolved.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG–1171) dated August 1986 related to this facility.

Agencies and Persons Contacted: The Commission's staff reviewed the applicants' request of April 5, 1988, and did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM–1983. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the April 5, 1988 application related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland this 22nd day of August, 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88–19429 Filed 8–25–88; 8:45 am]

BILLING CODE 7590–01–M

International Nuclear Power Plant Aging Symposium; Meeting

AGENCY: Nuclear Regulatory Commission.

SUMMARY: The study of nuclear power plant aging is part of the NRC's current research program to improve the safety of nuclear power plants. The advancing age of nuclear power plants plays an ever increasing role in the decision-making related to the continued safe operation of these plants. Progress has already been made in understanding and managing aging phenomena, but more remains to be done. The theme of this international symposium is: "Understanding Aging—A Key to Ensuring Safety; Managing Aging—A Necessity to Ensuring Safety."

The symposium is being organized by NRC in cooperation with the American Nuclear Society, the American Society of Civil Engineers, the American Society of Mechanical Engineers, and the Institute of Electrical and Electronics Engineers.

The keynote address on the first day of the symposium will be delivered by NRC Commissioner Kenneth C. Rogers. The keynote speaker at a dinner reception during the symposium will be Dr. Thomas P. Rona, Deputy Director, White House Office of Science and Technology. During the symposium, principal addresses to the more than 500 nuclear experts will be made by Dr. Hideo Uchida, Chairman, Nuclear Safety Commission, Japan on August 31, and Michel Laverie, Chef du Service Central de Surete des Installations Nucleaires, France on September 1. The symposium will conclude with a panel discussion led by Dr. L.V. Konstantinov, Deputy Director General, International Atomic Energy Agency, Vienna.

Among others who have confirmed participation are John Taylor, Vice President, EPRI; Byron Lee, Chief Executive Officer, NUMARC; Jack Ferguson, Chief Executive Officer, Virginia Power; Wallace Behnke, Vice Chairman, Commonwealth Edison; James Moore, Vice President, Westinghouse; Delbert Bunch, Principal Deputy Assistant Secretary for Nuclear Energy, U.S. Department of Energy; Russell Drew, President, IEEE; Albert Grant, President, ASCE; Ronald Stinson, President, ANS; L. Chockie, Vice President, ASME; Klaus Gast, Director, Office for Safety of Nuclear Installations, BMU, Federal Republic of Germany; E.G. Gomez, Vice President, Consejo de Seguridad Nuclear, Spain.

The symposium will entail presentations of technical papers, and a panel discussion on a wide spectrum of plant aging issues, arriving at an improvement of understanding nuclear plant aging phenomena and its management on an international level.

Date & Time: August 30, 31 and September 1, 1988; 8:00 a.m. to 5:00 p.m. daily

Address: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814

Admission: Registration is required.

FOR FURTHER INFORMATION CONTACT: Mr. Satish Aggarwal, General Chairman, International Nuclear Power Plant Aging Symposium, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Phone: 301–492–3823.

Dated at Rockville, Maryland, this 23rd, day of August 1988.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Deputy Director for Research, Office of Nuclear Regulatory Research.

[FR Doc. 88–19430 Filed 8–25–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 8–10, 1988, in Room P–118, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on July 26, 1988.

Thursday, September 8, 1988

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45a.m.–10:45a.m.: Decay Heat Removal (Open)—Review and report on proposed NRC Staff resolution of Generic Issue 99, Loss of RHR Capability During Plant Shutdown Conditions.

11:00 a.m.–12:30 p.m.: Maintenance of Nuclear Power Plants (Open)—Review and comment on proposed NRC rule regarding maintenance of nuclear power plants.

1:30 p.m.–3:30 p.m.: Pilgrim Nuclear Power Station (Open)—Review and report on proposed restart of the Pilgrim Nuclear Power Station, Unit 1.

3:45 p.m.–5:45 p.m.: Quantitative Safety Goals (Open)—Discuss and comment regarding proposed NRC Staff implementation Plan for the NRC Quantitative Safety Goals.

5:45 p.m.–6:30 p.m.: ACRS Procedures and Practices (Open/Closed)—Discuss qualifications of new members proposed for appointment and current members proposed for reappointment to the ACRS. Appoint Nominating Panel for ACRS Officers for CY–1989 and select meeting dates for CY–1989.

Portions of this session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Friday, September 9, 1988

8:30 a.m.–10:00 a.m.: TVA Management/Lessons Learned Review (Open)—Discuss and comment on

lessons learned from TVA management problems and recent changes in staffing and organization.

10:15 a.m.–11:15 a.m.: Restart of Browns Ferry Nuclear Power Plant (Open)—Briefing regarding proposed restart of the Browns Ferry Nuclear Power Plant.

11:15 a.m.–12:15 p.m.: Hydrogen Control Requirements (Open)—Review and report on NRC Staff proposed resolution of USI A–48, Hydrogen Control Measures and Effects of Hydrogen Burns on Safety Equipment.

1:15 p.m.–1:45 p.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:45 p.m.–3:15 p.m.: International Operating Experience (Open)—Discuss and comment on implications of Chernobyl accident and review of the Staff's program at BNL to address severe reactivity transients.

3:30 p.m.–4:30 p.m.: Severe Accident Management (Open)—Briefing by representatives of the NRC Staff regarding the status of work on management of severe accidents.

4:30 p.m.–5:30 p.m.: Equipment Reliability/Valve Testing (Open)—Review and report on proposed changes in requirements for in-situ testing of motor operated valuves (GI–II.E.6.1).

5:30 p.m.–6:30 p.m.: ACRS-ACNW Responsibilities (Open)—Discuss proposed bases and mechanism for assignment of specific activities between the ACRS and the ACNW in areas which may overlap/interface.

Saturday, September 10, 1988

8:30 a.m.–12:00 Noon and 1:00 p.m.–2:00 p.m.—Preparation of ACRS reports on matters considered during this meeting and proposed resolution of A–45, Decay Heat Removal, and the High Temperature Gas Cooled Reactor considered during the 340th meeting of the Committee.

2:00 p.m.–3:30 p.m.: ACRS Subcommittee and Member Activities (Open/Closed)—Report and discussion of recent meetings on Thermal-Hydraulic Phenomena and Feedback of Operational Safety Experience from Nuclear Plants.

Portions of this session will be closed as required to protect information provided in confidence by a foreign source.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and televison cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), and to protect information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: August 23, 1988.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 88–19431 Filed 8–25–88; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has reissued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.155, "Station Blackout," is being reissued to correct Tables 1, 5, and 6. This guide was originally issued in June 1988 as part of the resolution of Unresolved Safety Issue A–44, "Station Blackout." The guide describes methods acceptable to the NRC staff for complying with the Commission regulation that requires nuclear power plants to be capable of coping with a station blackout for a specified duration.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contracting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 18th day of August 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88–19432 Filed 8–25–88; 8:45am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and

data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 8.22, "Bioassay at Uranium Mills," describes a bioassay program acceptable to the NRC staff for uranium mills and some portions of uranium conversion facilities. The guide also describes working conditions for which bioassays should be performed.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 18th day of August 1988.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director for Generic Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 88-19433 Filed 8-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454 and 50-455]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37 and NPF-66, issued to Commonwealth Edison Company (the licensee), for operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois.

The amendments would change the Technical Specification action statement involving Rock River water flow. The existing Technical Specification requires that both Byron Units 1 and 2 be shutdown if the Rock River flow rate is less than 700 cubic feet per second (cfs). The proposed amendment would allow both units to continue operation when river flow decreases below 700 cfs. The amendment would be effective for only 90 days to allow continued plant operation during the drought.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practices for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or peition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petiton to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limted to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commision, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Sidley and Austin, One First National Place, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a

balancing of the factors specified in 10 CFF 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Dated at Rockville, Maryland, this 19th day of August 1988.

William L. Forney,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–19435 Filed 8–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Kansas Gas & Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considerating issuance of an amendment to Facility Operating License No. NPF–42, issued to Kansas Gas and Electric Company, Kansas City Power & Light Company, and Kansas Electric Power Cooperative, Inc. (the licensees), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The amendment would revise three Technical Specifications; 3/4.7.6 (Control Room Emergency Ventilation System), 3/4.7.7 (Emergency Exhaust System), and 3/4.9.13 (Emergency Exhaust System). The changes in Technical Specification 3/4.7.6 consist of: 1) increasing the Control Room Pressurization System Flow from 500 cfm +10% to 750 cfrm +10% in all applicable portions of 4.7.6; 2) changing the Pressurization System dirty filter dp from 3.8" W.G. to 3.6" W.G. in all applicable portions of 4.7.6; 3) deleting the dirty filter dp requirements in 4.8.7.c.1; 4) adding a maximum allowable dp for the Pressurization System filter unit in 4.7.6.e.1; 5) deleting the 0.5% in place penetration and bypass leakage test for charcoal filters in 4.7.6.f which tests HEPA filter integrity; and 6) deleting the 1% in place penetration and bypass leakage test for HEPA filters in 4.7.6.g which tests charcoal filter integrity.

The changes in Technical Specification 3/4.7.7 consist of: 1) adding Auxiliary Building in the identification title; 2) deleting all sections of 4.7.7 dealing with testing of the adsorber unit and fan flow rates and replacing with requirements to perform the same adsorber unit testing at the appropriate flow rates per 4.9.13; 3) in renumbered paragraph 4.7.7.b.1 changing "fuel" to "auxiliary" to correctly identify the appropriate building; and 4) renumbering as necessary due to deleted/transferred testing requirements.

The changes in Technical Specification 3/4.9.13 consist of: (1) Adding fuel Building in the identification title; (2) reducing the required fan flow from 9000 cfm +10% to 6500 cfm +10% for all applicable sections of 4.9.13; (3) changing the dirty filter dp from 7.2" W.G. to 4.7" W.G. in all applicable sections of 4.9.13; (4) deleting the dirty filter requirement in 4.9.13.b.1; (5) transferring 4.9.13.d.2 and 4.9.13.d.3 to new section 4.9.13.g as 4.9.13.g.1 and 4.9.13.g.2 and renumbering 4.9.13.d as applicable; (6) deleting .05% in place penetration and bypass leakage testing for charcoal adsorbers in 4.9.13.e; and (7) deleting the 1% in place penetration and bypass leakage testing for HEPA filters in 4.9.13.f.

The change in the BASES consist of: (1) Changes in the identification titles for 3/4.7.7 and 3/4.9.13 (2) changing "pump room" to "auxiliary building" in 3/4.7.7; and (3) adding that the surveillance requirements associated with the filtration unit for 3/4.7.7 are stated in Technical Specification 4.9.13.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularlity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may

be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–600 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed findings of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 26, 1988, which is available for public inspection at the Commisson's Public Document Room, 1717 H Street, NW., Washington, DC and at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland, this 19th day of August, 1988.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–19438 Filed 8–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

Public Service Company of New Hampshire; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–56, issued to Public Service Company of New Hampshire, for operation of Seabrook Station, Unit 1 located in Rockingham County, New Hampshire.

The amendment would revise the technical specification setpoints for the pressurizer pressure, pressurizer water level, and steam generator water level channels as a result of replacing the Veritrak/Tobar transmitters with Rosemount transmitters in accordance with the licensee's application dated July 8, 1988 and supplemented by the licensee's August 8, 1988 submittal.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

During hot functional testing, ambient temperature compensation calibration shifts were observed with Veritrak/Tobar pressurizer pressure transmitters located inside containment. The cause of the drift could not be isolated by testing. The licensee proposes to replace the Veritrak/Tobar pressurizer pressure, pressurizer water level and steam generator water level transmitters with Rosemount transmitters which have demonstrated better calibration stability at other installations.

The proposed change provides new setpoints for the pressurizer pressure, pressurizer water level, and steam generator water level channels. This change provides new values for Total Allowance (TA), Statistical Summation of Errors (Z), Trip Setpoint, and Allowable Value for these transmitters in Technical Specification Tables 2.2–1 (REACTOR TRIP SYSTEM INSTRUMENTATION SETPOINTS). The stream generator water level low-low value is also revised in Specifications 4.4.1.2.2, 4.4.1.3.2, and 3.4.1.4.1, to be consisent with the setpoints.

The replacement Rosemount transmitters are environmentally and seismically qualified for their locations inside the containment. The replacement Rosemount transmitters have been used in operating plants and have an excellent history of performing within stated accuracy limits.

Therefore, the probability of previously evaluated accidents will not be increased.

The replacement Rosemount transmitters are identical in type to the Veritrak/Tobar transmitters except for the pressurizer pressure transmitter. In this application, the Rosemount transmitter is a guage type pressure transmitter while the Veritrak/Tobar transmitter is an absolute pressure type. The effect of normal variations in atmospheric pressure have been considered in the instrument setpoint calculation. The proposed amendment does not allow any new mode of operation beyond what is already permitted. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or difficult kind of accident from any accident previously evaluated.

The protection system setpoints for use with the Rosemount transmitters were developed by calculating the instrument channel statistical allowance using the Westinghouse methodology which has been reviewed and approved by the NRC staff, and applying this to the FSAR Chapter 15 accident analysis limit.

When compared to the calcalated values, the steam generator low-low level setpoint is conservative. The effect of the Rosemount transmitters on the overtemperature delta–T trip was evaluated and determined to be acceptable since it resulted in an increase of 0.6 percent of span in the margin between the total allowance and the channel statistical allowance. When compared to the calculated values, the low pressurizer pressure reactor trip setpoint, low pressurizer pressure safety injection setpoint, and the high pressurizer pressure reactor trip setpoint are conservative. The margin between the total allowance and the channel statistical allowance is approximately the same (within 0.04 percent of span) for the Rosemount and Veritrak/Tobar

transmitters. Therefore, this amendment does not involve a significant reduction in a margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to The Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland 20814 from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at teh NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing request for hearing and petitions for leave to intervene is discussed below.

By September 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceedings must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been submitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in prevention of facility startup or preventing a mode change for purposes of preoperational testing the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the commission by a toll-free telephone call to Western Union at 1-800-325-600 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington DC 20555, and to Thomas Dignan, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 22nd date of August, 1988.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate, I-3, Division of Reactor Projects, I/II.

[FR Doc. 88-19434 Filed 8-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Denial of Amendment to Provisional Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for amendment to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), for operation of San Onofre Nuclear Generating Station, Unit No. 1 (the facility), located in San Diego County, California.

The application for amendment was dated December 19, 1985. Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on April 23, 1986 (51 FR 15410).

The amendment, as proposed by the licensees, would consist of the following changes to the Technical Specifications (Appendix A to Provisional Operating License No. DPR-13):

1. The proposed amendment would reduce the number and frequency of diesel generator test starts consistent with NRC Generic Letter 84-15.

2. The proposed amendment would allow one diesel generator to be out of service for up to seven days and place a cumulative limit of 800 hours per year out-of-service time for both diesel generators.

The portion of the application which would allow out-of-service times of seven days for a single diesel generator and up to 800 hours per year for both diesel-generators has been denied. Both of these items were contained in Enclosure 3 to Generic Letter 84-15 only for the purpose of soliciting industry comments and further staff consideration in finalizing revised surveillance requirements for diesel generators. This activity is designated as generic issue B-56, "Diesel-Generator Reliability," and is scheduled for resolution in fiscal year 1989. Since the relevant generic resolution is not complete, the NRC staff is not issuing changes such as licensees have proposed at this time.

The licensees were notified of the Commission's denial of this request by letter dated August 17, 1988. The other changes required by the application have been approved by the issuance of Amendment No. 106. Notice of issuance of this amendment will be published in the Commission regular bi-weekly **Federal Register** notice.

By September 26, 1988, the licensees may demand a hearing with respect to the denial described above and any persons whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensees.

For further details with respect to this action, see (1) the application for amendment dated December 19, 1985, and (2) the Commission's letter and Safety Evaluation issued with Amendment No. 106 to DRR-13 dated August 17, 1988. These documents are available for public inspection at the Commission's Public Document Room 1717 H Street, NW, Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. Single copies of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects-III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 17th day of August, 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-19437 Filed 8-25-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities ad Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Form 1, File No. 270-16
Form 1-A, File No. 270-13
Form MSD, File No. 270-88

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval of:

Form 1 which is prescribed for applications for or exemption from registration as a national securities exchange. Ten respondents incur an estimated average burden of fifteen hours to complete this form.

Form 1-A which is prescribed for amendments to applications for an exemption from registration as a national securities exchange. Ten respondents incur an estimated average of forty-five hours to complete this form; and

Form MSD is prescribed for application for registration with the Commission by a bank municipal securities dealer. Forty respondents incur an estimated average of one and one-half burden hours to complete this form.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Robert Neal at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549-6004, and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228 New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

August 19, 1988.

[FR Doc. 88-19405 Filed 8-25-88; 8:45 am]

BILLING CODE 8010-01-M

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VOL 53 ISS 166 AUG 26 1988 UMI

(Release No. 34-26015; File No. SR-PSE-88-02)

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On February 26, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change that would amend PSE Rule VII, section 3(d) ("Member Compensation Only") and section 3(g) ("Gratuities, Employees") in order to clarify and conform their meanings in relation to previously amended section 2(d) ("Dual Employment").[3]

Notice of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25577, April 12, 1988), and by publication in the Federal Register (53 FR 12844, April 19, 1988). No comments were received with respect to the proposed rule change.

Currently, both the Exchange and the relevant Exchange member must approve compensation or gratuity arrangements in each of three covered situations. The proposed rule change would eliminate this dual approval requirement.

First, the proposed rule change would eliminate the need for Exchange approval of compensation or gratuity arrangements, in connection with any security transaction, between registered employees of an Exchange member and third parties other than the members or member firm with whom the employee is registered. Second, the proposed rule change would eliminate the need for Exchange approval of compensation or gratuity arrangements directed by an Exchange member to employees of other members of the Exchange or employees of nonmember brokers, dealers, banks or institutions. Finally, the proposed rule change would eliminate the need for an Exchange member's approval of any compensation or gratuity arrangements directed by an Exchange member to any Exchange employee. In each of these covered arrangements, the rule change proposes that only the primary employer of the potential recipient need consent in writing to the compensation or gratuity arrangement, thereby eliminating the prior dual approval requirement.

The PSE contends that the dual approval requirement imposes an unnecessary burden on the Exchange and the relevant Exchange member. The Exchange believes that the principal employer of the potential recipient is in the best position to determine whether or not a gratuity or compensation arrangement may constitute a conflict of interest.

The Commission believes that the proposed amendment of the Exchange's compensation and gratuity rules is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b).[4] Under the proposed rule change, the principal employer (*i.e.*, the Exchange or the relevant Exchange member) will still be required to approve in writing any of the above covered gratuity or compensation arrangements, and thus would have to make a review of the proposed arrangements. The Commission agrees with the PSE that dual approval by the Exchange prior to implementation of the arrangements is not essential. The Commission notes, however, that the Exchange will continue to be responsible for compliance by its members with this rule.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19404 Filed 8-25-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-16261]

Application and Opportunity for Hearing; Virginia Electric and Power Company

August 22, 1988.

Notice is hereby given that Virginia Electric and Power Company (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Chemical Bank (the "Bank") under an indenture dated as of June 1, 1966 ("June Indenture") between the Company and the Bank which was heretofore qualified under the Act and under six indentures dated as of August 1, 1988 (two indentures), June 1, 1987 (two indentures), September 1, 1987 and December 1, 1987 (collectively, "Bond Indentures") between the Bank and certain political subdivisions of the Commonwealth of Virginia and the State of West Virginia relating to the issuance of that certain series of Pollution Control Revenue Bonds, the payment of which is supported by Promissory Notes issued by the Company and assigned to the Bank as Trustee which have not been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the June Indenture, there are issued and outstanding $282,785,000 in principal amount of Series B Notes ("Notes") with maturities ranging from 1989 to 1998. The Notes were registered under the Securities Act of 1933 (the "1933 Act") and the June Indenture was qualified under the Act.

(2) On October 6, 1988, November 20, 1988, June 4, 1987 (two notes), September 10, 1987 and December 9, 1987, the Applicant issued Promissory Notes (the "Promissory Notes") dated as of the same dates. Each Promissory Note was assigned to the Bank, as Trustee under a separate trust indenture between a political subdivision of the Commonwealth of Virginia or of the State of West Virginia and the Bank, as Trustee, (the "Bond Indentures"), to support the payment of a separate series of Pollution Control Revenue Bonds (the "Bonds") that were issued by the following political subdivisions:

$11,200,000 Industrial Development Authority of the County of Prince William (Virginia) Money Market Municipals (TM) Pollution Control Revenue Bonds Series 1988 due August

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 22187 (June 24, 1985), 50 FR 28671 (June 28, 1985).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78s(b)(2).

[6] *See* 17 CFR 200.30-3(a)(44).

1, 2016 pursuant to a Bond Indenture dated as of August 1, 1986;

$7,400,000 The County Commission of Grant County, West Virginia Money Market Municipals (TM) Pollution Control Revenue Bonds Series 1986 due August 1, 2016 pursuant to a Bond Indenture dated as of August 1, 1986;

$40,000,000 Industrial Development Authority of the County of Chesterfield (Virginia) Money Market Municipals (TM) Pollution Control Revenue Bonds Series 1987A due June 1, 2017 pursuant to a Bond Indenture dated as of June 1, 1987;

$35,000,000 Industrial Development Authority of the County of Chesterfield (Virginia) Money Market Municipals (TM) Pollution Control Revenue Bonds Series 1987B due June 1, 2017 pursuant to a Bond Indenture dated as of June 1, 1987;

$15,000,000 Industrial Development Authority of the County of Chesterfield (Virginia) Money Market Municipals (TM) Pollution Control Revenue Bonds Series 1987C due December 1, 2007 pursuant to the Bond Indenture dated as of Septemer 1, 1987; and

$18,000,000 Industrial Development Authority of the Town of Louisa, Virginia Money Market Municipals (TM) Pollution Control Revenue Bonds Series 1987 due December 1, 2015 pursuant to the Bond Indenture dated as of December 1, 1987.

(3) The Bonds were not required to be, and were not, registered under the 1933 Act and the Bond Indentures were not qualified under the Act.

(4) The Company is not in default in any respect under the June Indenture or under any other existing indenture.

(5) The Notes and the Promissory Notes are both wholly unsecured and rank *pari passu*.

(6) Trusteeship under the June Indenture and under the Bond Indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the June Indenture.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application, which is on file in the Offices of the Commission's Public Reference Section, File No. 22–18281, 450 Fifth Street, NW., Washington, DC 20549.

Notice Is Further Given that any interested person may, not later than September 16, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by the application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed:

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–19475 Filed 8–25–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Meeting on Agency's Rulemaking, Research and Enforcement Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement programs will be held on October 12, 1988, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by September 28, 1988. If sufficient time is available, questions received after the September 28 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by September 28, and issues to be discussed, will be mailed to interested persons on October 7, 1988, and will be available at the meeting.

ADDRESS: Questions for the October 12 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on October 12, 1988. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section, in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Issued on August 23, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–19391 Filed 8–25–88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of Treasury, Room 2224, 15th and

Pennsylvania Avenue NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0012
Form Number: TFS 6324
Type of Review: Extension
Title: Annual and Quarterly Financial Statements of Surety Companies—Schedule F
Description: Information is used to compute amount of unauthorized reinsurance in determining Treasury Certified companies' underwriting limitations to be published in Treasury Circular 570 for use by Federal bond approving officers.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 306
Estimated Burden Hours Pre Response: 48 hours and 45 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 14,912 hours
Clearance Officer: Rita Franklin, (301) 436–5300, Programs Section, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 88–19382 Filed 8–25–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1009
Form Number: IRS Form 8598
Type of Review: Revision
Title: Home Mortgage Interest
Description: The form is needed to figure qualified residence interest when mortgages are taken out after October 13, 1987, and the mortgages exceed certain dollar limits. The form affects individuals.
Respondents: Individuals or households
Estimated Number of Respondents: 200,000
Estimated Burden Hours Per Response: 1 hour and 53 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 361,125 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 88–19383 Filed 8–25–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: New
Form Number: TD F 90–19.5
Type of Review: New collection
Title: Securities Investors Protection Corporation Questionnaire Regarding Repurchase Agreements and Reverse Repurchase Agreements Outstanding as of 1988
Description: The purpose of this survey is to determine the potential insurance liability and proper reaction thereto by SIPC. The study will affect government securities dealers.
Respondents: Businesses and other for-profit
Estimated Number of Respondents: 177
Estimated Burden Hours Per Response: 8 hours
Frequency of Response: One time
Estimated Total Reporting Burden: 1,416 hours
Clearance Officer: Dale A. Morgan, (202) 343–0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue, NW., Washington, DC 20220
OMB Reviewer: Robert N. Neal, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 88–19384 Filed 8–25–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 22, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 8644–A
Type of Review: Resubmission
Title: Annual Return of Shareholder Information Under Section 1295
Description: Form 8644–A is used by certain foreign investment companies to report information to its shareholders who are U.S. persons. These shareholders use the information to report amounts in gross income when filing their income tax returns. The IRS uses the information on Form 8644–A to determine if the correct amount has been included in income.
Respondents: Business or other for-profit
Estimated Number of Respondents: 100
Estimated Burden Hours Per Response: 18 minutes
Frequency of Response: Annually
Estimated Average Reporting Burden: 1,972 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Mangement and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 88-19388 Filed 8-25-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 22-88]

Treasury Notes of August 31, 1990, Series AE-1990

August 18, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000 of United States securities, designated Treasury Notes of August 31, 1990, Series AE-1990 (CUSIP No. 912827 WP 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 31, 1988, and will accrue interest from that date, payable on a semiannual basis on February 28, 1989, and each subsequent 6 months on August 31 and February 28 through the date that the principal becomes payable. They will mature August 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et. seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, August 23, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, August 22, 1988, and received no later than Wednesday, August 31, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the dealine for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in amount sufficient to provide fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted

average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the avarage yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes or applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made to the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, August 31, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bill, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, August 29, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, August 31, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders , to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-19506 Filed 8-24-88; 10:20 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 23-88]

Treasury Notes of November 15, 1993, Series M-1993

August 18, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of title 31, United States Code, invites tenders for approximately $7,250,000,000 of United States securities, designated Treasury Notes of November 15, 1993, Series M-1993 (CUSIP No. 912827 WQ 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 1, 1988, and will accure interest from that date, payable on a semiannual basis on May 15, 1989, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imosed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving Time, Wednesday, August 24, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 23, 1988, and received no later than Thursday, September 1, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thursday, September 1, 1988. Payment in full must accompany tenders submitted by all other investors. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, August 30, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, September 1, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is

pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-19507 Filed 8-24-88; 10:20 am]

BILLING CODE 4810-40-M

Customs Service

Law Enforcement Program Development; Drug Smuggling

AGENCY: Customs Service, Treasury.

ACTION: Notice of development of a law enforcement program encouraging citizens to report suspicious activities that may involve drug smuggling.

SUMMARY: A new joint law enforcement program entitled the "Outlaw Aircraft, Vessel, and Land Conveyance Program" has been developed by the U.S. Customs Service, the U.S. Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, to reemphasize federal authority to seize and hold for forfeiture any aircraft, vessel, vehicle, or other means of conveyance that has or is being used to carry, conceal, or transport illegal drugs. This document informs the public of how they can assist with this program by reporting activities that they suspect may be related to drug smuggling. Rewards and incentives leading to the arrest and/or conviction of suspected drug smuggling individuals are authorized under the program.

DATE: August 26, 1988.

FOR FURTHER INFORMATION CONTACT: William S. Heffelfinger III, Executive Director, The Interdiction Committee, U.S. Customs Headquarters, 1301 Constitution Avenue NW., Room 3417, Washington, DC 20229; telephone (202) 786-7511.

SUPPLEMENTARY INFORMATION:

Background

Authority exists under title 19, United States Code sections 1590, 1433, 1436, 1595a, and 1703, title 21, United States Code section 881, title 49, United States Code App., sections 1472(b) and (q), and 1474 to seize and forfeit aircraft, vessels and other conveyances used to smuggle illegal drugs into the United States. In addition, statutes permit federal law enforcement officers to seize any conveyance carrying illicit drugs in any measurable amount.

All owners of conveyances that could be used to carry or conceal illicit drugs, in measurable amounts, should be aware that their conveyances are subject to seizure and possible administrative forfeiture if violations of the above statutes are committed on their conveyances. Owners should exercise extreme care, and take all reasonable steps, to ensure that illicit drugs are not brought into the United States using their conveyance as the means of transportation.

Procedures/Due Process

Under Customs law, if the value of the seized conveyance does not exceed $100,000 or, regardless of value, if the seized conveyance was used to transport drugs, the seized conveyance is subject to Customs summary forfeiture preceedings. Owners and any other interested parties will receive written notice of Customs seizure, intent to forfeit and expected date of publication of a notice of seizure and intent to summarily forfeit the conveyance. (19 U.S.C. 1607). Owners and interested parties may file a claim and cost bond within 20 days from the date a notice is first published. The filing of a claim and cost bond suspends the summary forfeiture proceeding and causes the matter to be referred to the U.S. Attorney for commencement of judicial forfeiture proceedings (19 U.S.C. 1608).

Owners and other interested parties may petition for remission and/or mitigation of the forfeiture pursuant to 19 U.S.C. 1618 and 19 CFR 171, or may petition for the proceeds of sale pursuant to 19 U.S.C. 1613 and 19 CFR 171.41, *et seq.*, depending on the circumstances surrounding the violation.

Owners and other interested parties are further advised that immediate release of the seized conveyance may be obtained pending final determination of the proceedings by paying the appraised domestic value of the conveyance.

Public Awareness

A new law enforcement program entitled the "Outlaw Aircraft, Vessel, and Land Conveyance Program" has been developed by the U.S. Customs Service, the U.S. Coast Guard, and Drug Enforcement Administration, and the Immigration and Naturalization Service to reemphasize federal authority to seize and hold for forfeiture any aircraft, vessel, vehicle, or other means of conveyance that has been or is being used to carry, conceal, or transport illegal drugs. Because public support for the program will greatly enhance its success, this notice is intended to create a public awareness of the total national effort to reduce the supply of illicit drugs being smuggled into the United States via various conveyances, as well as the consequences of such illegal activities. This notice is also intended to encourage all Americans to contribute to the national effort by reporting any suspicious activities.

Outlaw Aircraft, Vessel, and Vehicle Program

Active public participation in this vital program can be a big first step in helping to secure our nation's borders against illicit drug smuggling. Below are ways in which each individual may directly contribute in the "War Against Drugs." Specifically, anyone may assist by properly reporting activities they observe that may be considered as "outlaw" in nature. The following are examples:

Indications of Aviation Smuggling

Telltale signs for general aviation smuggling activity include:

—Aircraft windows covered by curtains or temporarily taped over.

—Passenger seats missing from the aircraft.

—Numerous boxes, duffel bags, or other containers inside the aircraft.

—Aircraft registration numbers that appear altered; i.e. signs of adhesive tape in the area of registration numbers.

—Trucks, campers, boats or vans waiting at or near an area suitable for an aircraft landing or air drop site; awaiting vehicles and boats often appear to be equipped with radios for use in communications with an aircraft; i.e., whip antennae.

—Aircraft that appear to be modified with exended range fuel tanks or altered doors that would facilitate air dropping of drugs including modified hinge lines on doors, special hatches or accesses.

—Inspection panels not normally found on the specific model of aircraft.

—Aircraft flying or landing without proper wing and tail position lights illuminated.

—Associated suspicious activity away from airports.

Indications of Vessel Smuggling

Telltale signs for boats, yachts, and fishing vessels involved in smuggling activity include:

—Vessels loitering in an area where an aircraft is circling, indicating a possible drop site.

—Extensive radio and sophisticated navigation equipment on board enabling surface to air communication.

—Vessels operating at high speed without proper navigation lights illuminated.

—Vessels that are transferring bundles, packages or cargo at sea, in the vicinity of land, or at dockside at unusual hours.

—Boats purchased with large cash payments.

—Boats changed in internal configuration, i.e., raised deck, no access to bilges, fuel tanks added or modified, construction of concealed compartments, or modified bulkheads.

—Immediate repairs or modifications demanded without regard to cost.

—A false water line.

—Improper or false registration.

—Tow vehicle equipped to haul excessive loads or modified with heavy duty bracing and tires.

—Tow vehicles and trailer coming from somewhere other than the normal designated parking areas.

—Communications between a boat and a shore vehicle by unusual means, i.e., lights, flags, etc.

—Boat riding excessively low in the water.

Indications of Smuggling by Land Conveyances

Telltale signs for land conveyances of people and goods involved in smuggling activity include:

—Vehicles that are transferring bundles, packages or cargo from boats or aircraft.

—Vehicles that appear modified with concealed compartments which inlcude unaccounted for space or unusual configurations.

—Screws that appear to have been removed and replaced frequently.

—Vehicles observed in the vicinity of our land borders with Mexico and Canada that appear to be involved in suspicious activity.

Rewards

Cash rewards, ranging from $250 to $2,500, may be applied for anonymous information leading to the arrest and conviction of drug smugglers. Informant awards up to $250,000 may be authorized for original information provided by a documented confidnetial source to U.S. Customs leading to a recovery, e.g., seizure and forfeiture of a conveyance. The amount of any reward or award will depend on the circumstances of each case and the results.

Reporting Procedures

Suspicious activity may be reported to the Customs Service by calling 1–800–BE–ALERT, 24 hours a day. The person reporting these activities will not only remain anonymous, but will also perform a great service to preserve and protect their community.

(1) *Be Alert:* In observations, note the time and location of activity and write this information down. Take extra care to note any aircraft registration, vehicle or boat names and numbers or distinctive features of the suspects such as clothing and build.

(2) *Be Accurate:* Call U.S. Customs toll free at 1–800–BE–ALERT. Tell the officer that you have information about narcotics smuggling activities. You will be given a code number to protect your identity. After you receive your caller number, give an accurate account of your information to the Customs officers.

(3) *Stay in Contact:* Call Customs again at 1–800–BE–ALERT ten days after your initial contact. Identify yourself by your assigned code. At this time you can learn if any action resulted from your information, and if so, you can arrange for payment of your cash reward.

Date: August 18, 1988.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 88–19377 Filed 8–25–88; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency's Division for the Study of the U.S. seeks to secure the services of an institution to coordinate and implement five thirty-day study programs in the field of American studies for foreign secondary school educators. The programs will take place in the spring and fall of 1989.

The Division for the Study of the U.S. provides opportunities for foreign education ministry officials, teacher trainers, textbook writers, and curriculum developers to receive information, training, and resource materials which will enable them to more accurately and effectively teach about the U.S. in the secondary schools of their home countries.

Interested programming institutions in metropolitan Washington, DC, with experience in international education, in particular the social sciences, should submit a request for complete application materials to Mr. Richard Taylor at the following address no later than 10 days from the date of this notice. The Division for the Study of the U.S. will then forward a set of materials which contain the proposal guidelines and project prospectus. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on proposal submission deadlines will be forwarded with the application materials: United States Information Agency, Office of Academic Programs, American Studies Branch, E/AAS—Attn: Richard Taylor, Room 256, 301 4th Street SW., Washington, DC 20547, Phone: (202) 485–2578.

Date: August 22, 1988.

Barry Ballow,

Chief, Division for the Study of the U.S.

[FR Doc. 88–19359 Filed 8–25–88; 8:45 am]

BILLING CODE 8320–01–M

UNITED STATES SENTENCING COMMISSION

Public Hearings on Organizational Sanctions

AGENCY: United States Sentencing Commission.

ACTION: Notice of public hearings. Request for public comment on discussion materials.

SUMMARY: This notice announces public hearings scheduled by the U.S. Sentencing Commission for October 11, 1988, and November 17, 1988, to consider the development of guidelines and policy statements for sentencing organizations found guilty of federal criminal offenses. In addition, this notice invites public analysis and comment regarding discussion materials on organizational sanctions published by the Commission.

DATES: Public hearings on the development of sentencing guidelines and policy statements for organizations are scheduled for:

1. New York, NY—October 11, 1988, 10 a.m. to 4 p.m. (location to be announced)
2. Los Angeles, CA—November 17, 1988, 10 a.m. to 4 p.m. (location to be announced)

The Commission encourages interested persons to submit written comments regarding its Discussion Materials on Organizational Sanctions (available from the Commission upon request) or other written statements on the subject of organizational sanctions by October 1, 1988.

ADDRESS: Written statements, comments on the Commission's Discussion Materials, requests to testify, and other written communications may be mailed to: United States Sentencing Commission, 1331 Pennsylvania Avenue NW., Suite 1400, Washington, DC 20004, Attention: Organizational Sanctions Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications

Director for the Commission, telephone (202) 662–8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government that is charged with the responsibility of establishing sentencing policies and practices for the Federal criminal justice system. The Commission has promulgated sentencing guidelines and policy statements applicable to most federal offenses committed by individuals.

The preliminary draft guidelines previously published by the Commission in the October 1, 1986, **Federal Register** (51 FR 35079) also included discussions of general approaches to organizational sentencing. However, the Commission's initial set of sentencing guidelines and policy statements, published in the May 13, 1987, **Federal Register** (52 FR 18046), deferred promulgation of guidelines for organizational defendants except with respect to fines for antitrust offense.

After further review and research, the Commission now is considering the development of more comprehensive guidelines and policy statements for sentencing organizations. The Commission invities public comment on all aspects of organization sanctions and public participation in the scheduled hearings. As a vehicle for stimulating the broadest possible range of public input, the Commission is distributing a volume entitled "Discussion Materials on Organizational Sanctions" that contains (i) a discussion draft of sentencing guidelines and policy statements covering all types of organizational sentences (restitution, forfeitures, fines, notice to victims, and probation), (ii) a partial alternative to the discussion draft, consisting of a draft proposal on standards for organizational probation, (iii) an empirical report on sentencing of organizations in the federal courts during the period of 1984 through 1987, and (iv) a staff working paper on criminal sentencing policy for organizations. In addition, the Discussion Materials include a general statement of the subjects and issues regarding organizational sanctions on which the Commission particularly invites public analysis and comment and a reprint of Statndard 18–2.8 (Organizational Sanctions) of the American Bar Association's Standards for Criminal Justice (1980 & Supp. 1986).

Copies of the Discussion Materials may be obtained from the Commission upon request. The Commission encourages interested persons to obtain and comment upon the Discussion Materials; however, the Commission emphasizes that it has not adopted any of the approaches suggested in the Discussion Materials and welcomes comments suggesting alternative approaches.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994, 995).

William W. Wilkins, Jr.,

Chairman.

[FR Doc. 88–19402 Filed 8–25–88; 8:45 am]

BILLING CODE 2210-40-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the information collection, (2) the title of the information collection, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the information collection must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of recordkeepers, (8) an estimate of the total number of hours needed to fill out the information collection, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 26, 1988.

Dated: August 19, 1988.

By direction of the Administrator.

David N. Stone,

Acting Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.

2. Inspection of Records in Programs Operating Under the Veterans' Job Training Act.

3. Not applicable.

4. This information collection pertains to the recordkeeping requirement in a regulation that requires employers with job training programs to maintain records to document compliance with the law and requires the VA to monitor and inspect these records.

5. On occasion.

6. Businesses or other for-profit; small businesses or organizations.

7. 7,040 recordkeepers.

8. Not applicable.

9. Not applicable.

[FR Doc. 88–19362 Filed 8–25–88; 8:45 am]

BILLING CODE 8320-01-M

Emergency Request; Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the form(s) must be filled out, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to fill out the form; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 26, 1988.

Dated: August 22, 1988.

By direction of the Administrator.

David N. Stone,

Acting Director, Office of Information Management and Statistics.

New

1. Department of Veterans Benefits.
2. Claim for Veterans Mortgage Life Insurance.
3. VA Form 29–0549.
4. This form is used by the mortgage holder to apply for the proceeds of Veterans Mortgage Life Insurance.
5. On occasion.
6. Businesses or other for-profit.
7. 250 responses.
8. 250 hours.
9. Not applicable.

Request for Emergency Processing Under 5 CFR 1320.18

1. We are requesting emergency processing of this information collection submission since the timeframe required for normal clearance procedures would cause the statutory deadline imposed by the passage of Pub. L. 100–322 to be missed.

2. This legislation changes Veterans Mortgage Life Insurance (VMLI) from a group policy purchased by the Veterans Administration to a program under which the United States is the insurer. The group policy contract expires September 1, 1988 and the VA will assume responsibility for the administration of the program at that time. A part of that responsibility will be the processing of claims under the VMLI program. Without this collection, the VA will have no method of obtaining information needed to settle the insurance. Therefore, we are requesting that review of this submission be completed and the VA notified by August 26, 1988.

3. The information collected in this submission is the same as that currently required by the commercial carrier providing the group policy. This information is the minimum needed to verify the insurance amount payable and the mortgage holder's entitlement to the insurance proceeds.

BILLING CODE 8320-01-M

OMB Approved No. 2900-0000
Respondent Burden: 1 hour

Veterans Administration — CLAIM FOR VETERANS MORTGAGE LIFE INSURANCE

IMPORTANT: This form is to be completed by the mortgage holder.

PRIVACY ACT INFORMATION: No proceeds may be paid unless a completed claim form has been received (38 U.S.C. 806). The information provided, on a voluntary basis, will be used by VA employees and your authorized representative in the maintenance of Government insurance records. Responses amy be disclosed outside the VA only if disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 53VA00, Veterans Mortgage Life Insurance - VA, published in the Federal Register.

RESPONDENT BURDEN: Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to VA Clearance Officer (732), 810 Vermont Ave., NW, Washington, DC 20420; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

INSTRUCTIONS: Complete all items on this claim form and return it with a copy of the original mortgage and note to the Veterans Administration Regional Office and Insurance Center, Veterans Mortgage Life Insurance (335/295M), Bishop Henry Whipple Federal Building, Ft. Snelling, St. Paul, MN 55111.

If the loan has been assumed by the deceased but his/her name does not appear on the mortgage, also send evidence of the assumption. The maximum payment we are allowed to make under the law is $40,000.

If the loan interest is charged at a variable rate, attach a separate sheet showing the date of each rate change and the new interest rate.

1. FIRST - MIDDLE - LAST NAME OF VETERAN	2. MAILING ADDRESS *(Include number and street or rural route, City or P.O., State and ZIP Code)*	3. VA FILE NUMBER C-

4. MORTGAGED PROPERTY	5. ORIGINAL MORTGAGE	
A. STREET ADDRESS *(Include number and street or rural route, City or P.O., State and ZIP Code)*	A. EFFECTIVE DATE	B. AMOUNT $
	C. DATE OF FIRST PAYMENT	D. INTEREST RATE %
B. LEGAL DESCRIPTION	E. MORTGAGE ACCOUNT NUMBER	
	F. AMOUNT OF MONTHLY PAYMENT *(P & I only)* $	
	G. TOTAL MONTHLY PAYMENT	H. DAY OF MONTH PAYMENT IS DUE

6. AMENDMENT(S) TO MORTGAGE AGREEMENT *(Give purpose and date of any amendment(s) affecting the amount or term of the loan and/or amount or frequency of payment)*	7. PREPAYMENT(S) *(List date(s) and amount(s) of any prepayment(s) since original mortgage date. Attach separate sheet if necessary)*			
☐ NO AMENDMENT(S) ☐ AMENDMENT(S) AS FOLLOWS: *(Specify)*	DATE	AMOUNT	DATE	AMOUNT
		$		$
		$		$
		$		$

8. ACCOUNT STATUS	9. REPAYMENT OF MORTGAGE	
A. DATE OF MOST RECENT PAYMENT	NOTE: The principal balance should be current assuming payments were made when due whether they actually were or not. Also, the principal balance figure should be reduced by any prepayments made on or before the date shown in Item 9A and should not be reduced by any escrow balance (taxes and insurance).	
B. FOR MONTHS OF: *(Such as; January, February, etc.)*	A. PRINCIPAL BALANCE ON _____ *(Date)*	$
C. PRINCIPAL BALANCE AFTER LAST PAYMENT $	B. PREPAYMENT PENALTY *(If any)*	$
D. DUE DATE OF NEXT SCHEDULED PAYMENT	C. OTHER *(Specify)*	$
E. WERE PAYMENTS PAST DUE ON DATE OF DEATH? ☐ YES ☐ NO *(If "Yes," give details on separate sheet)*	D. TOTAL AMOUNT DUE TO DISCHARGE INDEBTEDNESS AS OF DATE OF DEATH	$
10A. NAME OF MORTGAGE HOLDER	10B. ADDRESS OF MORTGAGE HOLDER	

11. NAME AND TITLE OF OFFICER OR DESIGNEE COMPLETING THIS FORM	12. TELEPHONE NUMBER
13. SIGNATURE OF OFFICER OR DESIGNEE	14. DATE

VA FORM SEP 1988 **29-0549**

[FR Doc. 88-19363 Filed 8-25-88; 8:45 am]

BILLING CODE 8320-01-C

Sunshine Act Meetings

Federal Register
Vol. 53, No. 166
Friday, August 26, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:11 a.m. on Tuesday, August 23, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to concider the following matters:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,244—San Francisco Regional Office, San Francisco, California

Matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideraiton of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 23, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-19515 Filed 8-24-88; 10:56 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—August 31, 1988.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Fact Finding Investigation No. 15—Practices of Various Entities Operating as Intermediaries for the Transportation of Goods in the United States Waterborne Foreign Commerce.
2. Trans-Pacific Trades Malpractices.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88-19562 Filed 8-24-88; 3:16 pm]

BILLING CODE 6730-01-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 10:30 a.m. Monday, September 26, 1988.

PLACE: The Army and Navy Club, 901 17th Street, NW., Washington, DC 20006-2503.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Call meeting to order.
2. Adoption of proposed agenda.
3. Approval of minutes of April 5, 1988 meeting.
4. Report of the Chairman—
a. Discussion of any proposed changes in 1989 or 1990 scholarship program.
b. Discussion of Public Service Conference in Lexington, VA.
c. Report on Awards Ceremony Speaker.
5. Reports of the Executive Secretary—
a. Status of the Trust Fund.
b. Regional Review Panel update.
c. Comments on faculty representatives.
d. Outlook for 1989 nominations.
6. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, etc.
7. New Business.
8. Discuss and set date, time and place of Spring Board meeting, April, 1989.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, Telephone (202) 395-4831.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 88-19503 Filed 8-24-88; 10:17 am]

BILLING CODE 9500-01-M

Corrections

Federal Register
Vol. 53, No. 166
Friday, August 26, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Umpqua National Forest Boundary Extension, Tiller Administrative Site

Correction

In notice document 88-17660 appearing on page 29506 in the issue of Friday, August 5, 1988, make the following corrections:

1. On page 29506, in the third column, under *Douglas County*,in the second paragraph, in the 13th line, "4571 feet" should read "45.71 feet".

2. In the same paragraph, in the 14th line, "Northern" was misspelled.

3. In the same paragraph, in the 17th line, "292,60 feet" should read "292.60 feet".

4. In the same paragraph, in the 25th line, "N41˚32'" should read "N41˚32'E".

5. In the same paragraph, in the 26th line, "N39˚41'243.40 feet" should read "N39˚41'E243.40 feet".

6. The signature at the bottom of the page should read "Richard E. Lyng".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PF-499; FRL-3416-9]

Pesticide Tolerance Petitions; ATL Enterprises, Inc., et al.

Correction

In notice document 88-16329 beginning on page 27391 in the issue of Wednesday, July 20, 1988, make the following corrections:

1. On page 27391, in the second column, under **FOR FURTHER INFORMATION CONTACT** the table should appear as follows:

Product manager	Office location/ telephone number	Address
Phil Hutton (PM 17).	Rm. 207, CM #2, (703)–557–2690.	Do.
Robert Taylor (PM 25).	Rm. 245, CM #2, (703)–557–1800.	Do.

2. On the same page, in the third column, in the fourth complete paragraph, in the 13th line, "tolerance" should read "tolerances".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51706, FRL-3410-8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-15335 beginning on page 25662 in the issue of Friday, July 8, 1988, make the following corrections:

1. On page 25662, in the third column, under **DATES**, in the entry for "P 88-1436", "August 20" should read "August 17"

2. On the same page, in the same column, in the entry for "P 88-1459", "August 23" should read "August 22".

3. On the same page, in the same column, in the entry for "P 88-1463", "August 22" should read "August 23".

4. On page 25663, in the third column, under **P 88-1427** in the third line, after *Use/Production.*, insert "(S)".

5. On page 25664, in the third column, under **P 88-1451**, in the sixth line, "2000,000-3,000,000" should read "200,000-3,000,000".

6. On page 25665, in the first column, under **P 88-1461**, in the first line, "R. R. Vanderbilt" should read "R. F. Vanerbilt"; and in the fourth line, "thiadiaole" should read "thiadiazole".

7. On the same page, in the third column, under **P 88-1474**, in the third line, "monoethyl" should read "monethyl"

8. On page 25666, in the second column, under **P 88-1492**, in the eighth line, "mf/kg" should read "mg/kg

9. On the same page, in the third column, under **P 88-1499**, in the fifth line, "stontium 90" should read "strontium90".

10. On page 25668, in the first column, under **P 88-1529**, in the 12th and 13th lines, "moderate species (Rabbit)" should read "moderate species (Red killifish). Skin irritation: negligible species (Rabbit)".

11. On the same page, in the same column, under **P 88-1530**, the fifth line should read "nitrophenyl)azo)-3-methyl-5-oxo-1H-".

12. On the same page, in the same column, under **P 88-1533**, in the 12th line, "LD50 5" should read "LD50 > 5".

13. On the same page, in the second column, under **P 88-1534**, in the fifth line; under **P 88-1539**, in the eighth line; and under **P 88-1540**, in the fifth line, "LD50 5" should read "LD50 > 5".

14. On the same page, in the third column, under **P 88-1546**, in the third line, "raction" should read "reaction".

15. On page 25669, in the first column, under **P 88-1556**, in the 11th line, after "hr" insert "062".

16. On the same page, in the third column, under **P 88-1568**, the sixth line should read "phenyl)azo)-1,4-dimethyl-, (T-4)-tetrachlorozincate(2) (2:1)."

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

48 CFR Part 553

General Services Administration Aquisition Regulation; Miscellaneous Changes

Correction

In rule document 88-18340 beginning on page 30841 in the issue of Tuesday, August 16, 1988, make the following corrections:

PART 553—[CORRECTED]

1. On page 30845, in the first column, the heading which reads **PART 533—PROTESTS, DISPUTES AND APPEALS**, should read **PART 553—FORMS.**

2. On the same page, in the same column, in amendatory instruction 31, in the first line, "533.370-3420" should read "553.370-3420".

553.370-3420 [Corrected]

3. On the same page, in the second column, in the first line, "533.370-3420"should read "553.370-3420".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-08-4220-10; COC-48697]

Proposed Withdrawal and Proposed Public Meeting; Colorado

Correction

In notice document 88-18482 beginning on page 30873 in the issue of Tuesday, August 16, 1988, make the following correction:

On page 30873, in the third column, under "T. 10 S., R. 86 W", in the entry for "Sec. 23", the sixth line should read "NW¼SE¼SE¼, SW¼NW¼SE¼SE¼, ".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kenneth Curtis Davis, R.Ph. and Larry Nicholson, d/b/a Paramount II Pharmacy and Paramount Pharmacy; Revocation of Registrations

Correction

In notice document 88-18423 beginning on page 30876 in the issue of Tuesday, August 16, 1988, make the following correction:

On page 30877, in the third column, in the seventh line, after the word "Paramount" and before the word "Pharmacy", insert "II Pharmacy, be, and it hereby is, revoked. The Administrator further orders that DEA Certificate of Registration BP1156644, previously issued to Kenneth Curtis Davis and Larry Nicholson, d/b/a Paramount".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Size Standard for Refuse and Garbage Collection Services

Correction

In proposed rule document 88-18310 beginning on page 30691 in the issue of Monday, August 15, 1988, make the following correction:

On page 30694, in the third column, in the middle column of the last table, in the last line, "Without" should read "With".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8218]

Income Tax; Inclusion Amounts for Listed Property Leased After December 31, 1986

Correction

In rule document 88-17819 beginning on page 29880 in the issue of Tuesday, August 9, 1988, make the following corrections:

1. On page 29880, in the first column, after the **SUMMARY**, the **DATES** paragraph was ommited and should read as following:

DATES: These regulations are effective June 18, 1984, and apply to listed property leased after June 18, 1984, in taxable years ending after that date.

2. On page 29881, in the first column, the 35th and 36th lines should read "**Adoption of Amendments to the Regulations**".

§ 1.280F-7T [Corrected]

3. On page 29884, in the first column, in § 1.280F-7T(b)(3), in the *Example*, in the second line, "calendar" was misspelled.

BILLING CODE 1505-01-D

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federal register

Friday
August 26, 1988

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Quercus hinckleyi (Hinckley Oak) and Solanum drymophilum; Final Rules

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Quercus hinckleyi (Hinckley Oak)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined that a plant, *Quercus hinckleyi* (Hinckley oak), is a threatened species. Hinckley oak is known from four documented localities in Presidio County of western Texas. The plants are threatened by possible changes in grazing practices, road improvements, wildlife predation, disease, hybridization with other oak species, and taking. The determination of threatened status for *Quercus hinckleyi* implements the full protection provided by the Endangered Species Act of 1973 (Act), as amended.

EFFECTIVE DATE: September 26, 1988.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Charles McDonald, Botanist, Endangered Species Office, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Quercus hinckleyi (Hinckley oak) was first collected by Dr. L.C. Hinckley in The Solitario, Presidio County, Texas, near Solitario Peak in June 1950. Hinckley and Dr. C.H. Muller collected additional specimens a month later and Muller (1951) subsequently named the species in honor of his colleague.

Hinckley oak is a shrubby evergreen sometimes occurring as single stems but more often growing as clonal groups that form dense thickets. Plants reach a maximum height of 1.2 meters (4 feet). The species can be recognized at a distance by its gray-green leaves that lend a smokey appearance to the compact intricately branched plants. The leaves are only about 15 millimeters (.6 inch) long, glabrous, and have spine-tipped margins. Acorns are produced annually, occur singly or paired on the branches, and mature in the fall.

Hinckley oak is a localized component of the middle elevation Chihuahuan Desert vegetation occurring on dry limestone slopes at about 1370 meters (4,500 feet) in elevation. The surrounding desertscrub community is dominated by *Agave lecheguilla* (lechuguilla), *Acacia constricta* (whitethorn acacia), and *Parthenium incanum* (mariola). The area averages 25 centimeters (10 inches) of rain per year and has a frost-free season of 260 days.

There are presently four documented populations of Hinckley oak. Three of the populations occur within 1.9 kilometers (1.2 miles) of each other in The Solitario, which is a circular laccolith approximately 13 kilometers (8 miles) in diameter in southeastern Presidio and southwestern Brewster Counties, Texas. The Solitario populations, all in Presidio County, include the population at the type locality estimated at 30–40 plants, a population discovered in 1984 by Mr. Jeff Clark, a former graduate student at Sul Ross University estimated at 12–15 plants, and a population discovered in 1988 by U.S. Fish and Wildlife Service and Texas Parks and Wildlife Department botanists estimated at 300–500 plants. The fourth population occurs in the vicinity of Shafter in south-central Presidio County. This population was discovered by Barton H. Warnock in 1963 and is estimated at 30–40 plants. Because of the clonal nature of Hinckley oak, these population estimates are very subjective, and mostly should be used to compare the relative sizes of the four known populations.

Two other Hinckley oak sites in the Shafter area have not been relocated, although the area has been searched by Dr. A.M. Powell of Sul Ross University (Miller and Powell 1982). Searches have been conducted but no populations of Hinckley oak have been found in likely habitat in the Mexican State of Coahuila (Miller 1951). Mr. Mike Fleming, of Big Bend National Park has speculated that Hinckley oak may occur within the Park in the Dead Horse Mountains (pers. comm., 1988). Although no occurrences of Hinckley oak in the Dead Horse Mountains have been documented, Fleming's belief is supported by the presence of suitable habitat and evidence from fossil packrat middens that Hinckley oak was more widely distributed in southwestern Texas prior to the area's desertification about 8,000 years ago (Van Devender et al. 1978). The warming and drying trend probably precipitated the decline of Hinckley oak, and may in part explain the species' present limited distribution.

Three of the known Hinckley oak populations occur on private land and one population occurs on State of Texas land administered by the Texas General Land Office. Formerly, all the populations were thought to be on private land, but a survey by U.S. Fish and Wildlife Service and Texas Parks and Wildlife botanists in the spring of 1988, determined that the type locality in The Solitario has been mapped incorrectly. The correct locality, about 300 meters (330 yards) south of the old one, is within a state-owned section of land leased to the surrounding private ranch for grazing. The State land is not fenced.

Federal action involving this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document 94–51 and the July 1, 1975, **Federal Register** publication. *Quercus hinckleyi* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withhdrawn. A one-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with 4 other proposals that had expired.

On December 15, 1980 (45 FR 82480), and September 27, 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endnagered. *Quercus hinckleyi* was included in these notices as a category 1 species. Category 1

comprises taxa for which the Service has sufficient biological information to support proposing them as endangered or threatened.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having been newly submitted on that date. Because the 1980 notice of review was accepted as a petition, all of the taxa contained in the notice, including *Quercus hinckleyi*, were treated as being newly petitioned on October 12, 1982. On October 13, 1983, and on or about that date every year thereafter through 1986, the Service made one-year findings that the petition to list *Quercus hinckleyi* was warranted but precluded by other listing actions of higher priority. Biological data, supplied by Miller and Powell (1982), fully support a listing of *Quercus hinckleyi* as threatened. The September 16, 1987, proposal (52 FR 34966) to list *Quercus hinckleyi* is threatened was based primarily on Miller and Powell's biological data and constituted the final finding requirement of Section 4(b)(3)(B) of the Act for the petition on this species.

Summary of Comments and Recommendations

In the September 16, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Alpine Avalanche on October 8, 1987.

Three comments were received. Comments by the two botanists who represent the Texas Parks and Wildlife Department on the U.S. Fish and Wildlife Service's Texas Plant Recovery Team, supported the listing but indicated their feeling that Hinckley oak should be listed as endangered rather than threatened. They questioned the Service's assertion in the proposal that Hinckley oak has good recovery potential mentioning such problems as the need for a better understanding of the species' habitat preferences, potential problems with hybridization and genetic contamination in any projects dealing with re-introduction or population augmentation, and the difficulty of maintaining recovery cooperation and coordination with agencies and individuals over time. *Response:* The Service agrees these problems may make recovery difficult, but feels the problems can all be overcome. In addition, none of the Hinckley oak populations appear to be in immediate danger of destruction and this is the principal reason for listing the species as threatened rather than endangered. If declines in the species occur after listing, then Hinckley oak will be reclassified as endangered.

The recovery team members had several other comments. *Comment:* The benefit of collecting acorns for population establishment projects should be weighed against possible damage from the loss of potential recruits to the population. *Response:* If acorns are collected for propagation or population establishment, care will be taken to collect only a small fraction of any year's seed crop. *Comment:* Past and present population counts should be taken lightly because of the highly subjective nature of counting plants that grow in clonal groups. *Response:* The reference to population counts as evidence for a decline in one of the populations has been deleted from the final rule. Also, a statement has been included warning that the population counts included in the rule are highly subjective estimates. *Comment:* The type locality population may be suffering from disease or insect predation. *Response:* The information has been included in the "Summary of Factors" section of this final rule. *Comment:* Information concerning the discovery of the population near Shafter is incorrect. *Response:* The final rule has been corrected. *Comment:* More effort should be expended searching for Hinckley oak within the range represented by late Pleistocene fossil evidence. *Response:* Additional searches for undiscovered populations will be part of the recovery program for this species.

The other comment letter was received from a professional botanist with many years experience studying the botany of the Texas Trans-Pecos region. The botanist neither supported nor opposed the listing, but made several corrections to the collecting history of the species and provided other additional information. *Response:* The corrections and appropriate additional information have been included in the final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Quercus hinckleyi* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Quercus hinckleyi* Muller (Hinckley oak) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In 1986, Texas highway 67 was expanded and the road is now close to the Hinckley oak population near Shafter (Poole, Texas Natural Heritage Program Biologist, pers. comm., 1986). Further expansion or a realignment of the highway may eliminate all or part of the population.

Any change in grazing practices is a potential threat to the three populations in The Solitario. The land presently is used for cattle grazing and at current stocking levels it is unlikely the plants will be damaged. However, nothing prevents the landowner from increasing cattle numbers or introducing other domestic livestock, such as goats, that could easily reach and browse Hinckley oaks. Development of this area as an exotic game ranch is another possible grazing change and some species of exotic game could severely damage Hinckley oak. Exotic game ranching has become a profitable alternative to raising cattle or sheep in other parts of Texas, and west Texas ranchers are also considering this potential income source.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The attractive Hinckley oak has potential as a cultivar. Propagation research was conducted several years ago (B.J. Simpson, Texas A&M Research and Extension Center, Dallas, Texas, pers. comm., 1987), but the work was discontinued when the seedlings being grown were determined to be hybrids. Although plants are grown easily from acorns, some people wanting plants to sell or to continue propagation research may want to take whole plants. Only one population is easily accessible and this population likely would receive the most collecting pressure. This population is already small and any loss of plants would be detrimental. There have been several reported instances of acorns being illegally taken from this population, but the actual impact of acorn collecting is unknown.

C. *Disease or predation.* Native deer, small mammals, and birds all eat the

acorns of Hinckley oak. In a desert environment where food sources are often scarce, most of the annual acorn crop likely is consumed by predators. The potential value of predators as agents of seed dispersal has not been assessed. As mentioned in Factor A, the introduction of non-native animal predators remains a potential threat. There is evidence of disease or insect predation at the type locality population. The leaf epidermis of green leaves disintegrates and webs are found on the leaves and branches. The frequency and severity of this infestation is unknown.

D. *The inadequacy of existing regulatory mechanisms.* Hinckley oak is not currently protected by Federal or State law.

E. *Other natural or manmade factors affecting its continued existence.* Genetic swamping of small Hinckley oak populations is possible whenever Hinckley oaks grow near more abundant oak species with which they can hybridize. Simpson (pers. comm., 1987) reports that *Quercus pungens* var. *vaseyana* (Vasey oak) is a contaminating pollinator that regularly causes hybrid seed production at one Hinckley oak population.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to list *Quercus hinckleyi* as threatened. This action seems appropriate because although this species has a small population size and limited distribution, none of the populations are in imminent danger of destruction. However, *Quercus hinckleyi* is not currently protected by law and if protective measures are not taken, the species could become endangered in the foreseeable future. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," *Quercus hinckleyi* is threatened by taking, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. All involved parties and landowners have been notified of the location of *Quercus hinckleyi* and the importance of protecting its habitat. Protection of this species' habitat will be addressed through the recovery process and through section 7 of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service at the earliest opportunity. Actions that may benefit Hinckley oak include fencing and continued propagation studies for possible introduction of plants back into native habitat. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The usual result of a section 7 consultation, if jeopardy is found, is modification and not cancellation of a proposed action. The only possible Federal activity involving *Quercus hinckleyi* is Federal Highway Administration funding of any maintenance or widening activities for Texas highway 67.

The Act and its implementing regulations found at 50 CFR 17.71 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. With respect to *Quercus hinckleyi*, it is anticipated that few trade permits would ever be sought or issued because although Hinckley oak is presently cultivated to a limited extent, it is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Permit Branch, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Miller, D.J., and A.M. Powell. 1982. Status report on *Quercus hinckleyi*. U.S. Fish and Wildlife Service, Endangered Species Office, Albuquerque, NM. 6 pp.

Muller, C.H. 1951. The oaks of Texas. Contributions from the Texas Research Foundation 1:40-41.

Van Devender, T.R., C.E. Freeman, and R.D. Worthington. 1978. Full-glacial and recent vegetation of Livingston Hills, Presido County, Texas. Southwestern Naturalist 23:289-302.

Author

The primary author of this final rule is Charles McDonald, Endangered Species Office, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). Status information was provided by Dennis J. Miller, Chihuahuan Desert Research Institute, Alpine, Texas, and A. Michael Powell, Sul Ross University, Alpine, Texas.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fagaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Fagaceae—Oak family:						
Quercus hinckleyi	Hinckley oak	U.S.A. (TX)	T	318	NA	NA
*	*	*	*	*	*	

Dated: August 11, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–19486 Filed 8–25–88; 8:45 am]

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Solanum drymophilum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Solanum drymophilum* (Erubia) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Solanum drymophilum* is now limited to the lower montane region of southeastern Puerto Rico. The species is affected by housing construction and deliberate eradication. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Solanum drymophilum*.

EFFECTIVE DATE: September 26, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Tom Turnipseed at the Atlanta Regional Office address (404/331–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

Solanum drymophilum was first collected in 1885 by Paul Sintenis in the Sierra de Cayey, a range of foothills extending to the southeast from the Central Cordillera of Puerto Rico. The species was later found at several scattered locations in these mountains and to the northeast in the Sierra de Naguabo. In the 1950's, R.O. Woodbury found the species near Lares, a town in the lower mountains of western Puerto Rico (Vivaldi and Woodbury 1981). The species has never been observed between these widely disjunct locations. Since its discovery, *Solanum drymophilum* has been extirpated from all known sites except one in the Sierra de Cayey, where approximately 200 plants survive.

Solanum drymophilum is a tall evergreen shrub occasionally reaching 18 feet (5.5 meters) in height, sometimes having a single stem, but often branching from the base. Young twigs, leaves, and flowers are covered with whitish, star-shaped hairs, and the leaves and inflorescence are also armed with numerous yellowish, stiff spines nearly one-half inch (1.25 centimeters) in length. The leaves are alternate, lanceolate to oblanceolate, with entire margins. The bisexual flowers are white, fan-shaped, and borne in subterminal racemes. The fruits are round, shiny-black berries one-quarter inch (6 to 8 millimeters) in diameter. The species is endemic to evergreen forests on volcanic soils from 1000 to 3000 feet (300 to 900 meters) in elevation. The site where the single population remains is an area of volcanic outcrops known as Las Tetas de Cayey. This site is at an elevation of 2760 feet (840 meters), where there is a mosaic of pasture, remnants of native evergreen forest in draws and on hilltops, and several cleared homesites.

Although the extensive deforestation of the region has caused the loss of known *Solanum drymophilum* populations and probably countless others, it is not certain that the actual or potential range and abundance of the species was in the past. It is possible that it was once at least locally common in many parts of eastern Puerto Rico, and may have also been numerous in the western mountains. The loss of plants to land clearing and deliberate eradication has been documented in the Cayey area (Vivaldi and Woodbury 1981). *Solanum drymophilum* was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980. The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) and

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was retained in category 1 in the November 28, 1983, update (48 FR 53640) of the 1980 notice, and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service made subsequent petition findings in October of 1983, 1984, 1985, 1986, and 1987 that listing *Solanum drymophilum* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. The Service proposed listing *Solanum drymophilum* as endangered on November 19, 1987 (52 FR 44580–44583).

Summary of Comments and Recommendations

In the November 19, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the *San Juan Star* on December 9, 1987. Four letters of comment were received and are discussed below. A public hearing was neither requested nor held.

Comments were received from the Secretary of the Puerto Rico Department of Natural Resources, the Environmental Protection Agency, U.S. Forest Service, and a private citizen, Victor Balbin.

The Secretary of the Puerto Rico Department of Natural Resources supported the proposed listing of *Solanum drymophilum* stating that the Department is aware of the species' limited distribution and is keeping a close watch on activities that might jeopardize survival and recovery. Administrators of the Environmental Protection Agency and the U.S. Forest Service stated that they knew of no ongoing or proposed actions that would impact the species and that they had no information on its status. A private citizen, Victor Balbin, wrote in support of the listing of *Solanum drymophilum*.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Solanum drymophilum* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Solanum drymophilum* Schulz (erubia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of habitat and direct destruction of plants appear to have been, and continue to be, significant factors reducing the numbers of *Solanum drymophilum.* Of four populations documented by the collection of specimens, only one is know to survive. All of the approximately 200 known individuals at the remaining site occur on private land; most are within a pasture surrounded by lots that are being developed for private homes and an adjacent communications facility operated by the Puerto Rico Telephone Company. It is likely that deforestation prior to creation of pasturelands destroyed many plants at this and other sites in the Region. However, it is also possible that, given this species' ability to recolonize disturbed sites, new plants became established within these pastures, and were subsequently eradicated because of their perceived threat to livestock.

B. *Overutilization for commercial, recreational, scientific, or education purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Solanum drymophilum* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* The most important factor affecting this species' continued survival is its restricted distribution, with approximately 200 plants known to inhabit a five-acre area that is subject to commercial development. Continued cutting of the plants to alleviate perceived threats to livestock may not drive the species to extinction, but intensive land alteration at the only known population site could lead to that result. The species is well-adapted to low levels of disturbance, and readily reseeds open areas. However, total land clearance, as is being practiced on surrounding lands, would eliminate potential sources of seed.

It has been reported (Vivaldi and Woodbury 1981) that this species is viewed as a pest and is cut whenever encountered in the fields. *Solanum drymophilum* is extremely spiny, and in some cases the concern for injury to livestock may be justified. Nevertheless, mature plants become progressively less spiny, and the foliage is generally out of the reach of most browsers. Only the young plants are readily accessible to animals, and these were observed to be quite numerous in the remaining pasture supporting most of the known population. Thus, either the species reproduces more rapidly that it can be cut, or there is now less concern regarding its threat to animals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in making this determination. Based on this evaluation, the preferred action is to list *Solanum drymophilum* as endangered. Although the species seems to produce viable seed in good quantity, and may only require protection from land clearing and deliberate cutting to survive and increase its numbers in the Cayey area, only this single population and limited area of occurrence are know. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Solanum drymophilum* is sufficiently small that vandalism could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood

of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have or will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Solanum drymophilum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversly modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Solanum drymophilum*, as discussed above. Federal involvement is not expected where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.72 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Solanum drymophilum* will ever be sought or issued since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, P.O. Box 27329, U.S. Fish and Wildlife Service, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1974, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. Defilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Solanum drymophilum* Schulz. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 24 pp.

Author

The primary author of this final rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Solanaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	
Solanaceae—Nightshade family:						
Solanum drymophilum	Erubia	U.S.A. (PR)	E	319	NA	NA
•	•	•	•	•	•	

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19467 Filed 8-25-88; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

Initial Sequestration Report for Fiscal Year 1989

August 25, 1988.

AGENCY: Office of Management and Budget.

ACTION: Report Transmittal.

SUMMARY: This notice transmits the initial Sequestration Report for Fiscal Year 1989. In accordance with the provisions of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. Public Law 100–119.

INITIAL OMB SEQUESTER REPORT TO THE PRESIDENT AND CONGRESS FOR FISCAL YEAR 1989

August 25, 1988

BILLING CODE 3110-01-M

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 25 1988

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

In accordance with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177, as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119, I hereby submit to you my Initial OMB Sequester Report to the President and Congress for Fiscal Year 1989.

The budget estimates contained in this report are based on laws and regulations in effect on August 15, 1988. Because most appropriations bills for fiscal year 1989 have not been enacted, estimates for discretionary programs (other than those funded by the Energy and Water Development Appropriations Act, 1989) are based on appropriations for fiscal year 1988, adjusted for inflation and pay costs as specified in the Act. Also, because the deficit estimate is currently below the $146 billion sequester trigger level specified in the Act, no sequester is required by this report. However, the Final OMB Sequester Report to the President and Congress for Fiscal Year 1989 to be submitted on October 15th will take into account legislation enacted and final regulations promulgated subsequent to August 15th. To avoid a sequester, we estimate that these actions can add no more than $2.0 billion to the baseline deficit projected in this report (or $0.7 billion, after including our estimates of legislation that passed Congress but had not been signed by the President as of the August 15th snapshot date). If legislation is passed that increases outlays by more than that amount, a sequester sufficient to reduce outlays by at least $10 billion will be indicated in the October report. It is a risk Congress should avoid.

The report is in two parts: a summary and a detailed appendix that lists the sequesterable baseline by agency and budget account. The summary section includes the economic assumptions, the projected budget baseline levels, and comparisons with the estimates provided by the Director of the Congressional Budget Office in his report of August 20th.

With best wishes, I remain,

Sincerely yours,

James C. Miller III
Director

Enclosure

IDENTICAL LETTERS SENT TO THE HONORABLE GEORGE BUSH, HONORABLE JAMES C. WRIGHT, JR.

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GENERAL NOTES

1. All years referred to are fiscal years unless otherwise noted.

2. Details in the tables and text may not add to totals because of rounding.

3. The source of all data in this report is the Office of Management and Budget unless otherwise noted.

4. Unless otherwise noted, "The Act" refers to The Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) as amended by The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

August 25, 1988

INTRODUCTION

The Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, commonly known as Gramm-Rudman-Hollings (G-R-H), sets deficit targets for 1989 through 1993 and, if necessary, requires a sequester of budgetary resources (i.e., across-the-board reductions) to achieve these targets. The table below shows the deficit targets specified in the Act. Except in 1993, the Act allows for a $10.0 billion margin-of-error. Thus, there will be no sequester for 1989 unless the deficit exceeds the sequester trigger level of $146.0 billion. However, if the 1989 deficit exceeds $146.0 billion, the Act requires a sequester sufficient to reduce the deficit to the target level of $136.0 billion. a/

Deficit Targets
(in billions of dollars)

Fiscal Year	Target Deficit	Sequester Trigger
1989 a/	136.0	146.0
1990	100.0	110.0
1991	64.0	74.0
1992	28.0	38.0
1993	zero	zero

a/ For 1989 only, the outlay reductions resulting from sequestration are limited to $36.0 billion. In addition, there would be no sequester if the laws enacted and regulations promulgated between January 1, 1988, and October 1988 reduced the deficit by $36.0 billion.

It is important to note that the baseline estimates in this report are not intended to be projections of actual receipts, outlays, and the resulting deficit under standard OMB methodologies. The baseline estimates are constructed under very precise legislative language that requires specific assumptions to be used in estimating budgetary resources, outlays, and receipts. This baseline deficit estimate is important, however, because the Act requires a sequester if the October 15th baseline deficit estimate for 1989 exceed $146.0 billion.

Under the Act, the Director of the Office of Management and Budget (OMB) is to determine each year whether or not sequestration is necessary and, if so, the magnitude of sequestration. The Congressional Budget Office (CBO) plays an advisory role in this process. Each year, the two agencies are required to prepare independently two sets of sequestration reports. The CBO reports are transmitted to the Director of OMB and to Congress, and they provide a benchmark against which Congress and others may assess the OMB reports. The OMB reports are made to the President and to Congress, and they provide the

basis for sequestration orders to be issued by the President. The timetable for the OMB and CBO reports and sequestration orders is as follows:

Report or Order	Date
Snapshot date for initial OMB and CBO reports.....	August 15th
Initial CBO report.....	August 20th
Initial OMB report.....	August 25th
Initial Presidential order.....	August 25th
Revised CBO report.....	October 11th 1/
Revised OMB report.....	October 15th
Final Presidential order.....	October 15th

1/ The statutory date for the revised CBO report is October 10th, which is a legal holiday in 1988. The report will therefore be submitted on the following day, as prescribed by the Act.

The initial OMB and CBO sequestration reports are to be based on laws enacted and regulations promulgated as of a common "snapshot date" of August 15th. In contrast, the revised reports must be based on laws enacted and regulations promulgated as final by the latest possible date before the reports are issued. Because the CBO report is to be issued five days before the OMB report, the second "snapshot date" may be different in the final reports of the two agencies. Thus, some legislation and regulations reflected in the final OMB report may not be reflected in the CBO report.

As required by the Act, OMB issued preliminary estimates of the G-R-H baseline deficit in the Mid-Session Review of the 1989 Budget, which was published on July 28, 1988. The next step in the sequestration process for 1989 was the transmittal of the CBO Director's initial sequestration report on August 20, 1988, to the Director of OMB and Congress, providing CBO's estimates of the baseline and sequester calculations. The third step is the issuance of this report, which the Director of OMB provides to the President and Congress.

As required by the Act, this report:

-- Estimates the 1989 baseline deficit, using the economic and technical assumptions used in the Mid-Session Review;

-- Calculates whether a sequester is required; and

-- Presents and explains significant differences between the estimates in this report and the estimates CBO presented in its report.

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Because this report indicates that no reductions are yet required for 1989, the President is required to issue an initial order stating that no sequester is required at this point in the G-R-H process. The initial order for fiscal year 1989 is being issued today -- August 25, 1988.

The final sequester report and final Presidential order for 1989 are to be issued on October 15, 1988. The final report will take into account additional measures enacted or promulgated by that date that affect the deficit estimates.

As discussed below, legislation that has passed Congress but had not been signed by the President as of the snapshot date is not reflected in this report. OMB's preliminary estimates indicate that this legislation would add $1.3 billion to the current $144.0 billion baseline deficit estimate, bringing the baseline estimate to within $0.7 billion of the sequester trigger level.

If a sequester for 1989 is to be avoided, Congress and the Administration must continue to work together to ensure that the Bipartisan Budget Agreement reached last November is fully implemented before the final sequester report is issued. New legislation that could undermine the agreement or force a sequester must be avoided. To achieve this goal, any increases in spending over the levels specified in the Bipartisan Budget Agreement will need to be offset by reductions in other spending. The Administration urges the Congress to pass separate appropriations bills that in total stay within the agreement levels.

G-R-H BASELINE TOTALS FOR 1989

As shown in Table 1, OMB's baseline deficit estimate for 1989 based on laws and regulations in effect as of August 15, 1988, is $144.0 billion -- $2.0 billion below the level that would trigger a sequester. Baseline revenues are estimated at $973.8 billion, and baseline outlays are estimated to total $1,117.8 billion. These estimates are made in accordance with the specifications set forth in the Act. The budget baseline estimates shown in this report reflect legislation enacted and regulations promulgated as of August 15, 1988. They assume that current law for revenues and spending authority (including most entitlements) will continue unchanged, except that expiring provisions of law providing revenues and spending authority are assumed to terminate as scheduled. 1/

1/ The Act requires exceptions to the expiring-provision assumption for excise taxes dedicated to a trust fund (but not for spending authority in that trust fund), for Commodity Credit Corporation price support programs, for contract authority for transportation trust funds, and for authority to provide insurance through the Federal Housing Administration fund.

The August baseline estimates for discretionary spending accounts that do not yet have appropriations for 1989 are based on the appropriations enacted for 1988, adjusted only for inflation and pay-related costs, as specified by the Act. The August estimates include the effects of the Energy and Water Development Appropriations Act, 1989, and the effects of the Dire Emergency Supplemental Appropriation Act, 1988; the July estimates did not include either. As required by law, the baseline estimates include the receipts and outlays of the off-budget social security trust funds, but social security benefits themselves are exempt from sequestration.

As discussed in the Mid-Session Review, OMB's estimate of the baseline deficit is further affected by two specific requirements of the law. First, the Act specifically requires that in developing the G-R-H baseline the Director of OMB shall assume that the aggregate spendout rate (the ratio of outlays to new budgetary resources) from sequesterable discretionary resources for defense programs not differ by more than one-half percentage point from the comparable rates contained in the sequester report submitted for the previous fiscal year. The Act applies the same requirement to nondefense programs. The estimates for defense programs meet this requirement. To meet this Congressionally-imposed constraint, for nondefense programs an adjustment from our normal spendout rate methodology had to be made. Thus, an increase in outlays from new budgetary resource in the amount of $0.6 billion was added to our normal calculations in order to bring the aggregate spendout rate to within one-half percentage point of the benchmark rate. Pursuant to the Act, a similar adjustment -- in the amount of $1.2 billion -- was contained in the Mid-Session Review published on July 28th. (The reason for the difference is the impact of the Disaster Assistance Act of 1988 on spendout rates.)

Table 1.--G-R-H Baseline Totals for 1989
(in billions of dollars)

	Laws and regulations in effect as of		
	January 1, 1988	July 8, 1988	August 15, 1988
Receipts	973.4	973.8	973.8
Outlays	1,113.7	1,114.0	1,117.8
Deficit	140.3	140.1	144.0

NOTE: All estimates shown reflect the economic and technical assumptions used in the Mid-Session Review of the 1989 Budget. Based on the economic and technical assumptions in the President's February budget, the estimates under laws and regulations in effect as of January 1, 1988 were as follows: Receipts of $964.6 billion; outlays of $1,107.4 billion; and a deficit of $142.7 billion.

Second, the Act requires that aggregate outlays for medicare in the current baseline not differ for technical or economic reasons by more than one percent

from the comparable level published in the current services baseline in February. The most up-to-date information available for these programs results in estimates that slightly exceed this one percent rule. To meet the requirements of the law, a separate adjustment for the G-R-H medicare requirement was added to the baseline. This adjustment reduced outlays in the medicare function and the baseline outlay and deficit totals by $0.3 billion.

NET DEFICIT REDUCTION ACHIEVED SINCE JANUARY

Estimates of the G-R-H baseline based on laws and regulations in effect on January 1, 1988, produce a deficit of $140.3 billion. Table 2 shows the impact on this deficit estimate of legislation enacted since January. In total, this legislation has increased the deficit by $3.7 billion. The Medicare Catastrophic Coverage Act of 1988, which reduced the deficit by $0.1 billion, was primarily responsible for the decline in the deficit between January 1, 1988, and July 8, 1988, the snapshot date used for the budget baseline estimates in the Mid-Session Review. Between July 8, 1988, and August 15, 1988 (the snapshot date required for this report), however, further changes increased the deficit by $3.9 billion. The largest increase, $3.9 billion, results from the Disaster Assistance Act of 1988, which provides aid for farmers stricken by the drought. The assistance provided in the bill includes feed assistance to dairy, livestock, and poultry producers who lost, as a result of the drought, all or part of the feed they normally produce on the farm and disaster payments to all producers based on the severity of their drought losses. In addition, the Energy and Water Development Appropriations Act, 1989, increases the deficit by $0.2 billion. The Dire Emergency Supplemental Appropriations Act, 1988, increases the deficit by an additional $ 0.2 billion. This includes the 1989 spending from the 1988 appropriation as well as the increased budgetary resources and spending in 1989 as a result of a larger 1988 base for the estimates. (Much of the latter increase should disappear when 1989 appropriations are enacted.)

Legislation enacted since July 8th has resulted in a higher aggregate spendout rate from sequesterable nondefense discretionary resources than the comparable spendout rate incorporated in the Mid-Session Review baseline estimates. This is primarily due to increased spending from the direct loan limitation in the Agricultural Credit Insurance Fund resulting from liberalized eligibility criteria enacted in the Disaster Assistance Act of 1988. Because the aggregate spendout rate is constrained by the G-R-H Act, as discussed in the previous section the net effect of these spendout rate changes is a reduction of $0.6 billion in the adjustment needed to meet the aggregate spendout rate requirement. As additional legislation is enacted the adjustment for the aggregate spendout rate requirement may further change.

The estimates presented in this report do not include the effects of legislation passed by both the House and Senate but not acted upon by the President as of the August 15th snapshot date. The Omnibus Trade and Competitiveness Act of 1988, which provides an expanded trade adjustment assistance entitlement and reduces tariff revenues, would increase the deficit by $0.4 billion. The Hunger Prevention Act of 1988, which provides increases for food stamps, child nutrition, and emergency feeding, would add another $0.3 billion to the deficit. The Department of Housing and Urban Development and Independent Agencies Appropriations Act, 1989 would further increase the

Table 2.--Differences Between January Law and August Law
G-R-H Baseline Deficits for 1989
(in billions of dollars)

January 1 Law Baseline Deficit	140.3
Legislation enacted between January 1st and July 8, 1988:	
Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360)	-0.1
Other	*
Subtotal, legislation enacted January 1 - July 8	-0.1
Debt service (interest)	-*
Subtotal, change from January 1 law to July 8 law	-0.1
July 8 Law Baseline Deficit	140.1
Legislation Enacted between July 8th and August 15, 1988:	
Energy and Water Development Appropriations Act, 1989 (P.L. 100-371)	0.2
Disaster Assistance Act of 1988 (P.L. 100-387)	3.9
Dire Emergency Supplemental Appropriations Act, 1988 (P.L. 100-393)	0.2
Subtotal, legislation enacted July 8 - August 15	4.3
Impact of congressional constraint on aggregate spendout rate 1/	-0.6
Debt service (interest)	0.2
Subtotal, change from July 8 law to August 15 law	3.9
August 15 Law Baseline Deficit	144.0
Addendum:	
Preliminary estimate of legislation passed by Congress but not acted upon by the President as of August 15th:	
Omnibus Trade and Competitiveness Act of 1988	0.4
Hunger Prevention Act of 1988	0.3
Department of Housing and Urban Development and Independent Agencies Appropriations Act, 1989	0.6
Subtotal, legislation passed but not enacted by August 15th	1.3
Debt Service (interest)	*
Baseline deficit including legislation passed but not enacted by August 15th	145.3

* $50 million or less.
1/ The reduction in the adjustment since the Mid-Session Review of July 28th.

deficit by $0.6 billion. After taking into account the preliminary estimates of these Acts, the baseline deficit would be increased to $145.3 billion -- only $0.7 billion below the sequester trigger.

ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the G-R-H baseline estimates for 1989 are shown in Table 3. These are the same assumptions used by OMB for its Mid-Session Review of the 1989 Budget.

The Act requires the OMB Director to estimate the rate of real GNP growth for each quarter of fiscal year 1989, and for the last two quarters of fiscal year 1988. These estimates are shown in Table 4. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than one percent for two consecutive quarters, Congress may suspend many of the provisions of the Act. Neither OMB nor CBO projects real economic growth to be less than zero in any quarter during 1988 or 1989.

Table 3.--Economic Assumptions
(Fiscal Year 1989)

Economic Variable	
Gross National Product:	
Current dollars (in billions of dollars)	5,039
Percent change, year over year	7.0
Constant (1982) dollars (in billions of dollars)	4,046
Percent change, year over year	3.1
GNP Implicit Price Deflator (percent change, year over year)	3.8
CPI-W (percent change, year over year)	4.2
Civilian Unemployment Rate (percent, fiscal year average)	5.4
Interest Rates (fiscal year average):	
91-day Treasury bills	5.6
10-year Treasury notes	8.2

Table 4.--Real Economic Growth Rates by Quarter
(in percents, annual rates)

FY 1988			FY 1989 Estimates			
Actual		Estimate				
Jan-Mar 1988 a/	Apr-Jun 1988 b/	Jul-Sep 1988	Oct-Dec 1988	Jan-Mar 1989	Apr-Jun 1989	Jul-Sep 1989
3.6	2.6	2.9	2.9	3.3	3.3	3.3

a/ As reported by the Department of Commerce (June 23, 1988) and published in the Mid-Session Review of the 1989 Budget. Subsequently, the Department of Commerce revised the "actual" for January - March 1988 to 3.4 percent. Pursuant to the Act, OMB may not update the Mid-Session figure for purposes of estimating the G-R-H baseline.

b/ On July 27, 1988, the Department of Commerce reported a preliminary "actual" for April - June 1988 of 3.1 percent.

COMPOSITION OF BASELINE OUTLAYS

Table 5 provides further detail on the OMB baseline outlay estimates for 1989. An estimated $107.5 billion of 1989 outlays for defense programs, or 37 percent of total defense outlays, are associated with budgetary resources subject to any across-the-board percentage reduction. This figure excludes outlays from military personnel accounts. Under the Act, the President is granted authority, which he has already notified Congress he intends to use if there is a sequester this year, to exempt all military personnel accounts from such sequester.

An estimated $216.6 billion of outlays for nondefense programs, or 26 percent of total nondefense outlays, are associated with sequesterable budgetary resources. About $110.2 billion of these outlays, or 13 percent of total nondefense outlays, are associated with programs with automatic spending increases and certain special rule programs, the largest of which is medicare. The Act limits the extent of spending reductions for these programs.

Of the total estimated 1989 nondefense outlays of $824.1 billion, an estimated $106.4 billion -- about 13 percent of nondefense outlays -- are associated with budgetary resources subject to an across-the-board percentage reduction. 2/

2/ The estimated $106.4 billion nondefense total subject to across-the-board reduction shown in Table 5 excludes $6.0 billion of 1990 outlays for CCC that are also subject to a 1989 sequester.

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Table 5.--Composition of Baseline Outlay Estimates for 1989
(dollar amounts in billions)

	Estimate	Percent of Total
Defense Programs a/:		
Subject to across-the-board reduction b/....	107.5	9.6
Exempt from sequestration c/.....	186.3	16.7
Subtotal, defense programs.....	293.8	26.3
Nondefense Programs:		
Subject to sequestration:		
Certain programs with automatic spending increases d/.....	1.3	0.1
Certain special rule programs e/.....	108.9	9.7
Subject to across-the-board reductions f/.	106.4	9.5
Subtotal, subject to sequestration.	216.6	19.4
Exempt from sequestration:		
Social security.....	230.6	20.6
Federal retirement, disability, and workers compensation.....	62.0	5.5
Earned income tax credit.....	3.8	0.3
Low-income programs g/.....	75.2	6.7
Veterans compensation and pensions.....	14.9	1.3
State unemployment benefits.....	13.3	1.2
Offsetting receipts and collections.....	-62.3	-5.6
Net interest.....	157.5	14.1
Other h/.....	112.6	10.1
Subtotal, exempt from sequestration	607.5	54.3
Subtotal, nondefense programs.....	824.1	73.7
Total.....	1,117.8	100.0

a/ Budget function 050, excluding FEMA programs.
b/ Excludes military personnel accounts exempted by Presidential authority.
c/ Largely outlays from military personnel accounts, which were exempted by Presidential authority, and outlays from obligated balances.
d/ National Wool Act, special milk, and vocational rehabilitation programs.
e/ Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.
f/ Excludes $6.0 billion in estimated 1990 outlays for the Commodity Credit Corporation (CCC) that are also subject to a 1989 sequester.
g/ Family support payments, child nutrition, medicaid, food stamps, SSI, and WIC.
h/ Outlays from prior-year appropriations, certain prior legal obligations, and other exempt programs.

An estimated $607.5 billion of nondefense outlays, or 74 percent of total nondefense outlays, are exempt from sequestration.

For defense and nondefense programs combined, an estimated $793.8 billion in outlays, or 71 percent of total outlays, are associated with budgetary resources exempt from sequestration.

SEQUESTERABLE RESOURCES

In the event that a sequester is indicated in the final sequester report for 1989, the required reductions in outlays would not be made directly; rather, they would be achieved by the permanent cancellation -- referred to under the Act as "sequestration" -- of budget authority and other authority to obligate and expend funds (except that amounts sequestered in special and trust funds remain in such funds). For defense programs, sequesterable budgetary resources are defined to be new budget authority provided for 1989 and unobligated balances of budget authority provided in previous years. For nondefense programs, the sequesterable budgetary resources are new budget authority; new direct loan obligations, commitments, or limitations; new guaranteed loan commitments or limitations; obligation limitations, and spending authority as defined in Section 401(c)(2) of the Congressional Budget Act of 1974. This definition of spending authority includes various mandatory and permanent appropriations, as well as Federal payments financed by offsetting collections that are credited to budget accounts.

Not all budgetary resources are subject to sequestration. The Act exempts a number of Federal programs and activities from sequestration. As shown in Table 5, the largest are social security benefits, net interest, certain low-income programs, most Federal retirement and disability benefits, veterans compensation and pensions, and regular State unemployment insurance benefits. Also exempt from sequestration are prior legal obligations of the Government in specified budget accounts. Federal administrative expenses, including those for most programs and activities that are otherwise exempt and those for programs that are self-supporting, are subject to sequester. Outlays from obligated balances for defense programs and outlays from obligated and unobligated balances of prior-year appropriations for nondefense programs are generally not subject to sequestration. In addition, the President has used the authority granted under the Act to exempt all military personnel accounts from sequester. As a result, the remaining sequesterable accounts for defense would be subject to a higher uniform percentage reduction than they would have been otherwise.

Certain programs and activities, while not exempt, are subject to special rules that have the effect of limiting the amount of the spending reduction. For example, the sequestration reduction for medicare, veterans medical care, and certain health programs (but not for the administrative expenses of these programs) is limited to two percent annually. In addition, the total amount of the automatic spending increases in three programs specified in the Act is sequesterable; however, the program base for the automatic spending increase is exempt.

For credit programs, the measures governing sequesterable budgetary resources are direct loan obligations and guaranteed loan commitments. In the event of a sequester, the Act requires that credit limitations enacted in annual

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appropriation acts be reduced, and that de facto limitations be imposed on both types of new credit activity where there is no enacted limitation. For the Commodity Credit Corporation (CCC) any contract entered into after a sequestration order has been issued for a fiscal year is subject to sequester. CCC outlay reductions in the post-sequester year (1990) that are the result of a 1989 sequester are to be credited to the overall outlay reduction required in the sequester year (1989).

SEQUESTRATION CALCULATIONS

Although the current estimate of the deficit excess ($8.0 billion) is not sufficient to trigger a sequester, if the final sequester report for 1989 (to be transmitted October 15, 1988) indicates a sequester is required due to legislation enacted subsequent to August 15th, the sequester calculations would be made as follows.

First, the total amount of the deficit excess is calculated by subtracting the $136.0 billion deficit target for 1989 from the baseline deficit. If the deficit excess is less than or equal to $10 billion, no sequester is required. Otherwise, a sequester equal to the deficit excess amount is required. 3/

One-half of the sequester amount is assigned to defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half to nondefense programs.

Second, all savings from eliminating automatic spending increases in three specific programs -- the National Wool Act, the special milk program, and vocational rehabilitation -- are applied to the required reduction in outlays for nondefense programs. (For 1989, only vocational rehabilitation State grants are estimated to have an automatic spending increase -- a 4.5 percent increase totalling $48 million in outlays.)

3/ Because no net reduction in the 1989 deficit has been achieved since January 1988, the alternative sequestration calculation allowed under the Act -- a maximum reduction of $36 billion -- is improbable and therefore not discussed.

Table 6.--Composition of Outlays Subject to Reduction
Under a 1989 Sequester
(in millions of dollars)

Category:	
Potential savings from automatic spending increases	48
Potential saving from the application of special rules:	
Guaranteed student loans	37
Foster care and adoption assistance	4
Medicare	1,320
Other health programs	188
Subtotal, Special rules	1,548
Total, Potential savings from automatic spending increases and special rules	1,596
Outlays associated with sequesterable budgetary resources subject to potential across-the-board reduction:	
Defense programs	107,498
Nondefense programs 1/	112,400

1/ Includes $6,018 million in estimated 1990 outlays for the Commodity Credit Corporation that can be affected by a 1989 sequester and $2,211 million in 1989 outlays from offsetting collections.

Third, the amount of outlay savings to be obtained by applying two of the four special rules is calculated. These special rules are for guaranteed student loans and for foster care and adoption assistance. The estimated savings from these special rules are applied toward the required spending reductions in nondefense programs. An initial uniform sequester percentage for nondefense programs is calculated at this point. If the initial nondefense sequester percentage is greater than two percent, the savings from applying two additional special rules for medicare and certain other health programs are also calculated at this stage and applied toward the required spending reductions for nondefense. The nondefense sequester percentage is then recalculated. Under current baseline estimates, the four special rules would provide $1,548 million of the nondefense sequester amount (if the sequester is 2 percent or more for nondefense programs).

The reductions in defense programs and remaining reductions in nondefense programs must be taken on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The remaining outlay savings to be achieved separately in defense and nondefense spending are divided by the estimated outlays associated with

sequesterable budgetary resources in each category. The two resulting uniform reduction percentages for defense and nondefense are then applied separately to all of the remaining sequesterable budgetary resources (budget authority, credit authority, and other spending authority) in each category.

Table 7.--Examples of Possible 1989 Sequester
(in billions of dollars)

	Defense	Nondefense
Example 1: $10 billion sequester		
Budgetary resources	267.7	492.4
Associated outlays	107.7	112.6
Percentage across-the-board reduction required	4.6	3.0
Example 2: $15 billion sequester		
Budgetary resources	269.0	494.8
Associated outlays	108.2	113.2
Percentage across-the-board reduction required	6.9	5.2
Example 3: $20 billion sequester		
Budgetary resources	270.4	497.3
Associated outlays	108.8	113.7
Percentage across-the-board reduction required	9.2	7.4

NOTE: To reach the hypothetical deficit levels of $146 billion, $151 billion, and $156 billion, the baseline budgetary resources and outlays for all sequesterable and exempt programs -- other than special rule programs -- were increased proportionately across-the-board. In all cases, the savings associated with nondefense programs subject to special rules was assumed to be $1.6 billion.

The calculations generally assume that all nonexempt budgetary resources can be sequestered to produce outlay savings, including entitlement programs and other mandatory spending programs for which the spending authority is not controlled through the annual appropriations process. In a few instances the uniform percentage reduction of budgetary resources would not produce any outlay savings. Two examples are credit programs with new direct loan limits higher than expected program levels and intragovernmental payments to

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revolving funds -- such as Government payments for annuitants, Federal employee health benefits. For such cases, no outlays are included in the sequester base used for calculating the uniform reduction percentages.

An understanding of the scope of a potential sequester may be gleaned from a few examples. Assume first a minimum sequester -- $10 billion; this would occur if the October 15th estimate of the G-R-H baseline deficit just exceeded the $146.0 billion trigger. Second, assume that the October 15th calculation of the G-R-H baseline deficit turned out to be $151.0 billion; in this case, the sequester amount would be $15.0 billion. Finally, assume that the October 15th report calculated a G-R-H baseline deficit of $156.0 billion -- requiring a sequester of $20.0 billion. The results are shown in Table 7.

COMPARISONS WITH CONGRESSIONAL BUDGET OFFICE ESTIMATES

The Congressional Budget Office (CBO) issued its initial sequester report on August 20th, showing an estimate of $153.0 billion for the G-R-H baseline deficit for 1989. As shown in Table 8, CBO and OMB differ by $9.0 billion in their estimates of this baseline deficit. While OMB estimates show that the deficit is below the $146 billion trigger for sequestration the CBO estimate is $7.0 billion above the trigger, which would require outlay reductions of $17.0 billion. This $7.0 billion difference is small, as such things go, amounting to less than three quarters of 1 percent of either the G-R-H total receipt or outlay estimate.

The difference between OMB and CBO economic assumptions accounts for $5.0 billion of the difference between the baseline deficit estimates. The CBO forecast includes higher interest, unemployment, and inflation rates than the OMB forecast. Technical estimating differences result in an additional $4.3 billion difference in the deficit estimates. These differences are the net effect of a $2.2 billion increase in receipts under CBO technical assumptions relative to OMB estimates, more than offset by a $6.6 billion increase in outlay estimates, principally for national defense and aid to thrift and banking institutions. For national defense, CBO estimates $5.7 billion more in outlays than OMB primarily due to faster spendout rates from new budgetary resources. Differences for the Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation are in large part due to different assumptions about timing of problem case resolution, with CBO assuming less aid will be given in 1988 and more in 1989. Accounting differences in the classification of Nuclear Regulatory Commission user fees and certain customs fees have no effect on the deficit but reduce CBO estimates of both receipts and outlays below the OMB estimates by $0.3 billion. Finally, two adjustments required by law of OMB baseline estimates, which are discussed in the section on budget baseline totals, do not affect the CBO estimates. On net, the adjustments increase the OMB outlay and deficit estimates by $0.3 billion.

Table 8.--Differences Between OMB and CBO Baselines
(in billions of dollars)

	Outlays	Receipts	Deficit
OMB Baseline	1,117.8	973.8	144.0
Differences:			
Economic:			
Interest Rates	6.2	0.7	5.5
Other (including debt service)	2.8	3.3	-0.5
Subtotal, economic	9.0	4.0	5.0
Technical:			
National defense	5.7	---	5.7
Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation	3.1	---	3.1
Other	-2.3	2.2	-4.5
Subtotal, technical	6.6	2.2	4.3
Accounting:			
Nuclear Regulatory Commission fees and customs receipts	-0.3	-0.3	---
Required adjustments in the OMB baseline:			
Aggregate spendout rate requirement	-0.7	---	-0.7
Medicare one percent rule	0.3	---	0.3
Subtotal, required adjustments in the OMB baseline	-0.3	---	-0.3
Total differences	14.9	5.9	9.0
CBO Baseline	1,132.8	979.8	153.0

Because OMB and CBO differ in their estimates of the baseline deficit, they also differ in their estimate of the need for a sequester and required outlay reductions. OMB estimates no sequester of budgetary resources or required outlay reductions. CBO, however, estimates required outlay reductions totalling $17 billion ($8.5 billion each for defense programs and for nondefense programs). CBO's estimate of required reductions in budgetary resources is $52.8 billion ($19.9 billion for defense programs and $32.9 billion for nondefense programs). Similarly, since OMB estimates that no outlay reductions are required, no budgetary resource reductions would be

estimated using CBO's technical assumptions with OMB's aggregate outlay reduction amount (a calculation required by Section 251(a)(2)(B)(11) of the Act whether or not a sequester is required).

Summary tables showing the baseline budget authority and outlay estimates by agency and by function follow this section. An appendix showing the sequesterable baseline estimates by agency and budget account concludes the report.

TABLE 9.--G-R-H Baseline Spending Estimates for 1989 by Function
(in billions of dollars)

Function	Budget Authority	Outlays
National defense	306.8	294.1
International affairs	16.7	15.9
General science, space, and technology	11.3	11.7
Energy	6.1	5.0
Natural resources and environment	16.0	16.0
Agriculture	23.3	21.2
Commerce and housing credit	16.1	11.6
Transportation	28.4	27.9
Community and regional development	7.5	6.7
Education, training, employment, and social services	36.4	36.2
Health	50.0	49.3
Medicare	106.2	86.1
Income security	176.5	135.4
Social security	283.6	232.6
Veterans benefits and services	29.5	29.2
Administration of justice	9.0	8.8
General government	10.1	9.6
Net Interest	157.5	157.5
Allowances	---	0.7
Undistributed offsetting receipts	-37.4	-37.4
Total	1,253.5	1,117.8

Table 10.--G-R-H Baseline Spending Estimates for 1989 by Agency
(in billions of dollars)

Department or Other Unit	Budget Authority	Outlays
Legislative Branch.....	2.0	2.0
The Judiciary.....	1.4	1.4
Executive Office of the President.....	0.1	0.1
Funds Appropriated to the President.....	10.6	11.1
Agriculture.....	56.5	52.3
Commerce.....	2.5	2.5
Defense-Military.....	298.2	285.6
Defense-Civil.....	38.4	23.6
Education.....	21.6	20.8
Energy.....	12.2	11.4
Health and Human Services, except Social Security.....	193.5	173.1
Health and Human Services, Social Security.....	278.1	227.0
Housing and Urban Development.....	15.9	20.5
Interior.....	5.5	5.4
Justice.....	5.7	5.5
Labor.....	31.7	22.4
State.....	4.0	3.5
Transportation.....	27.5	27.0
Treasury.....	218.8	218.5
Environmental Protection Agency.....	5.1	5.1
General Services Administration.....	0.1	-*
National Aeronautics and Space Administration.....	9.3	9.8
Office of Personnel Management.....	50.9	30.9
Small Business Administration.....	0.4	0.4
Veterans Administration.....	29.4	29.1
Other independent agencies..	21.7	16.2
Allowances.....	---	0.7
Undistributed offsetting receipts.....	-87.9	-87.9
Total.....	1,253.5	1,117.8

* $50 million or less.

APPENDIX: SEQUESTERABLE BASELINE BY

AGENCY AND BUDGET ACCOUNT

(fiscal year 1989; in thousands of dollars)

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Account Title		Sequesterable Base
Legislative Branch		
Senate		
Salaries, officers and employees		
(01-05-0110-801)	Budget Authority	355,326
	Outlays	332,230
House of Representatives		
Mileage of Members		
(01-10-0208-801)	Budget Authority	218
	Outlays	109
Salaries and expenses		
(01-10-0400-801)	Budget Authority	541,101
	Outlays	509,717
Congressional use of foreign currency, House of Representati		
(01-10-0488-801)	401(C) Authority	2,700
	Outlays	2,700
Joint Items		
Capitol Guide Service		
(01-12-0170-801)	Budget Authority	1,203
	Outlays	1,083
Joint Committee on Printing		
(01-12-0180-801)	Budget Authority	1,097
	Outlays	988
Joint Economic Committee		
(01-12-0181-801)	Budget Authority	3,363
	Outlays	3,195
Office of the Attending Physician		
(01-12-0425-801)	Budget Authority	1,570
	Outlays	630
Joint Committee on Taxation		
(01-12-0460-801)	Budget Authority	4,450
	Outlays	4,228
General expenses, Capitol police		
(01-12-0476-801)	Budget Authority	1,800
	Outlays	1,528
Statements of appropriations		
(01-12-0499-801)	Budget Authority	20
Official mail costs		
(01-12-0825-801)	Budget Authority	85,285
	Outlays	85,285
Congressional Budget Office		
Salaries and expenses		
(01-14-0100-801)	Budget Authority	18,813
	Outlays	16,932
Architect of the Capitol		
Office of the Architect of the Capitol: Salaries		
(01-15-0100-801)	Budget Authority	6,281
	Outlays	5,722
Contingent expenses		
(01-15-0102-801)	Budget Authority	50
	Outlays	50
Capitol buildings		
(01-15-0105-801)	Budget Authority	13,470
	Outlays	10,843
Capitol grounds		
(01-15-0108-801)	Budget Authority	3,593
	Outlays	2,989
Senate office buildings		
(01-15-0123-801)	Budget Authority	24,527
	Outlays	18,052

Account Title		Sequesterable Base
House office buildings		
(01-15-0127-801)	Budget Authority	32,165
	Outlays	22,869
Capitol Power Plant		
(01-15-0133-801)	Budget Authority	25,599
	401(C) Authority--Off. Coll.	123
	Outlays	22,138
Structural and mechanical care, Library buildings and ground		
(01-15-0155-801)	Budget Authority	7,115
	Outlays	5,720
Library of Congress		
Salaries and expenses		
(01-25-0101-503)	Budget Authority	147,115
	401(C) Authority--Off. Coll.	4,828
	Outlays	125,462
Copyright Office: Salaries and expenses		
(01-25-0102-376)	Budget Authority	12,242
	401(C) Authority--Off. Coll.	6,992
	Outlays	18,193
Congressional Research Service: Salaries and expenses		
(01-25-0127-801)	Budget Authority	45,421
	Outlays	41,061
Books for the blind and physically handicapped: Salaries & e		
(01-25-0141-503)	Budget Authority	37,677
	Outlays	18,838
Furniture and furnishings		
(01-25-0146-503)	Budget Authority	6,043
	Outlays	3,420
Gift and trust fund accounts		
(01-25-9971-503)	Obligation limitation	288
Government Printing Office		
Office of Superintendent of Documents: Salaries and expenses		
(01-30-0201-808)	Budget Authority	19,970
	Outlays	12,401
Congressional printing and binding		
(01-30-0203-801)	Budget Authority	73,033
	Outlays	58,426
General Accounting Office		
Salaries and expenses		
(01-35-0107-801)	Budget Authority	347,520
	Outlays	319,790
United States Tax Court		
Salaries and expenses		
(01-40-0100-752)	Budget Authority	28,845
	Outlays	23,076
Other Legislative Branch Agencies		
Commission on Security & Cooperation in Europe: Salaries & e		
(01-45-0110-801)	Budget Authority	739
	Outlays	664
Botanic Garden: Salaries and expenses		
(01-45-0200-801)	Budget Authority	2,350
	Outlays	2,115
Copyright Royalty Tribunal: Salaries and expenses		
(01-45-0310-376)	Budget Authority	140
	Outlays	125
Biomedical Ethics: Salaries and expenses		
(01-45-0400-801)	Budget Authority	106
	Outlays	106
International conferences and contingencies: House, Senate e		

Account Title		Sequesterable Base
(01-45-0500-801)	401(C) Authority	290
	Outlays	290
Office of Technology Assessment: Salaries and expenses		
(01-45-0700-801)	Budget Authority	17,750
	Outlays	13,312
Payment to the Congressional Award Board		
(01-45-0900-801)	Budget Authority	189
	Outlays	189
Legislative Branch		
Total	Budget Authority	1,866,186
	401(C) Authority	2,990
	401(C) Authority--Off. Coll.	11,943
	Obligation limitation	288
	Outlays	1,684,476
The Judiciary		
Supreme Court of the United States		
Salaries and expenses		
(02-05-0100-752)	Budget Authority	14,967
	Outlays	10,192
Care of the building and grounds		
(02-05-0103-752)	Budget Authority	2,208
	Outlays	2,000
United States Court of Appeals for Federal Circuit		
Salaries and expenses		
(02-07-0510-752)	Budget Authority	6,581
	Outlays	5,872
United States Court of International Trade		
Salaries and expenses		
(02-15-0400-752)	Budget Authority	7,280
	Outlays	6,996
Courts of Appeals, District Courts and other Svcs		
Salaries and expenses		
(02-25-0920-752)	Budget Authority	1,053,799
	Outlays	958,588
Defender services		
(02-25-0923-752)	Budget Authority	88,718
	Outlays	45,779
Fees of jurors and commissioners		
(02-25-0925-752)	Budget Authority	45,313
	Outlays	44,271
Court security		
(02-25-0930-752)	Budget Authority	42,418
	Outlays	25,875
Administrative Office of the United States Courts		
Salaries and expenses		
(02-26-0927-752)	Budget Authority	32,741
	Outlays	28,943
Federal Judicial Center		
Salaries and expenses		
(02-30-0928-752)	Budget Authority	11,039
	Outlays	8,467
The Judiciary		
Total	Budget Authority	1,305,064
	Outlays	1,136,983
Executive Office of the President		
The White House Office		
Salaries and expenses		
(03-10-0110-802)	Budget Authority	27,771
	Outlays	24,995

Account Title		Sequesterable Base
Executive Residence at the White House		
Operating expenses		
(03-20-0210-802)	Budget Authority	7,357
	401(C) Authority--Off. Coll.	1,362
	Outlays	7,431
Official Residence of the Vice President		
Operating expenses		
(03-21-0211-802)	Budget Authority	269
	Outlays	235
Special Assistance to the President		
Salaries and expenses		
(03-22-1454-802)	Budget Authority	2,272
	Outlays	1,999
Council of Economic Advisers		
Salaries and expenses		
(03-28-1900-802)	Budget Authority	2,632
	Outlays	2,290
Council/Office on Environmental Quality		
Council on Environmental Quality & Off. of Environmental Qua		
(03-31-1453-802)	Budget Authority	870
	Outlays	827
Office of Policy Development		
Salaries and expenses		
(03-35-2200-802)	Budget Authority	3,157
	Outlays	2,747
National Security Council		
Salaries and expenses		
(03-40-2000-802)	Budget Authority	5,254
	Outlays	4,203
National Critical Materials Council		
Salaries and expenses		
(03-41-0111-802)	Budget Authority	364
	Outlays	331
Office of Administration		
Salaries and expenses		
(03-42-0038-802)	Budget Authority	16,724
	Outlays	12,041
Office of Management and Budget		
Office of Federal Procurement Policy: Salaries and expenses		
(03-48-0201-802)	Budget Authority	2,423
	Outlays	2,183
Salaries and expenses		
(03-48-0300-802)	Budget Authority	41,028
	Outlays	36,474
Office of Science and Technology Policy		
Salaries and expenses		
(03-49-2600-802)	Budget Authority	1,982
	Outlays	1,189
Office of the United States Trade Representative		
Salaries and expenses		
(03-50-0400-802)	Budget Authority	15,983
	Outlays	13,586
White House Conference for a Drug Free America		
Salaries and expenses		
(03-55-0212-551)	Budget Authority	2,615
	Outlays	2,265
Executive Office of the President		
Total	Budget Authority	130,701
	401(C) Authority--Off. Coll.	1,362

Account Title		Sequesterable Base
	Outlays	112,796
Funds Appropriated to the President		
Unanticipated Needs		
Unanticipated needs		
(04-08-0037-802)	Budget Authority	1,038
	Outlays	999
International Security Assistance		
Peacekeeping operations		
(04-09-1032-152)	Budget Authority	32,893
	Outlays	22,696
Economic support fund		
(04-09-1037-152)	Budget Authority	3,322,451
	Outlays	1,857,250
Military assistance		
(04-09-1080-152)	Budget Authority	727,378
	Outlays	189,118
International military education and training		
(04-09-1081-152)	Budget Authority	49,201
	Outlays	22,140
Foreign military sales credit		
(04-09-1082-152)	Budget Authority	4,202,862
	Direct Loan Limitation	4,202,862
	Outlays	1,827,200
Multilateral Assistance		
Contribution to the Inter-American Development Bank		
(04-12-0072-151)	Budget Authority	60,863
	Outlays	1,887
Contribution to the International Development Association		
(04-12-0073-151)	Budget Authority	949,770
Contribution to the Asian Development Bank		
(04-12-0076-151)	Budget Authority	44,693
	Outlays	6,252
Contribution to the International Bank for Reconstruction &		
(04-12-0077-151)	Budget Authority	41,703
	Outlays	4,170
Contribution to the International Finance Corporation		
(04-12-0078-151)	Budget Authority	21,071
	Outlays	21,071
Contribution to the African Development Fund		
(04-12-0079-151)	Budget Authority	77,850
Contribution to the African Development Bank		
(04-12-0082-151)	Budget Authority	9,341
	Outlays	9,341
Contribution to Multilateral Investment Guarantee Agency		
(04-12-0084-151)	Budget Authority	46,090
	Outlays	23,045
International organizations and programs		
(04-12-1005-151)	Budget Authority	253,945
	Outlays	167,096
Agency for International Development		
Operating expenses, Agency for International Development		
(04-14-1000-151)	Budget Authority	425,461
	Outlays	319,096
Operating expenses of the AID Office of Inspector General		
(04-14-1007-151)	Budget Authority	25,094
	Outlays	18,820
American schools and hospitals abroad		
(04-14-1013-151)	Budget Authority	41,520
	Outlays	10,588

Account Title		Sequesterable Base
Development fund for Africa		
(04-14-1014-151)	Budget Authority	570,900
	Outlays	70,221
Functional development assistance program		
(04-14-1021-151)	Budget Authority	1,196,885
	Outlays	147,217
International disaster assistance		
(04-14-1035-151)	Budget Authority	25,950
	Outlays	6,436
Housing and other credit guaranty programs		
(04-14-4340-151)	401(C) Authority--Off. Coll.	6,630
	Guaranteed Loan Limitation	129,750
	Outlays	6,630
Private sector revolving fund		
(04-14-4341-151)	Budget Authority	7,206
	Direct Loan Limitation	12,456
Trade and Development Program		
Trade and development program		
(04-16-1001-151)	Budget Authority	25,975
	Outlays	5,377
Peace Corps		
Peace Corps		
(04-18-0100-151)	Budget Authority	153,587
	Outlays	126,095
Overseas Private Investment Corporation		
Overseas Private Investment Corporation		
(04-20-4030-151)	401(C) Authority--Off. Coll.	12,030
	Direct Loan Limitation	23,874
	Guaranteed Loan Limitation	207,600
	Outlays	14,585
Inter-American Foundation		
Inter-American Foundation		
(04-22-4031-151)	Budget Authority	13,559
	401(C) Authority--Off. Coll.	9,083
	Outlays	9,057
African Development Foundation		
African Development Foundation		
(04-24-0700-151)	Budget Authority	7,291
	Outlays	4,375
Military Sales Programs		
Special defense acquisition fund		
(04-37-4116-155)	Obligation limitation	245,866
Foreign military sales trust fund		
(04-37-8242-155)	401(C) Authority--Off. Coll.	340,000
	Outlays	340,000
Special Assistance for Central America		
Central American reconciliation assistance		
(04-55-1038-152)	Budget Authority	28,753
	Outlays	13,183
Assistance to the Nicarauguan democratic assistance		
(04-55-1090-054)	Budget Authority	7,399
	Outlays	7,399
Funds Appropriated to the President		
Total	Budget Authority	12,370,729
	401(C) Authority--Off. Coll.	367,743
	Obligation limitation	245,866
	Direct Loan Limitation	4,239,192
	Guaranteed Loan Limitation	337,350
	Outlays	5,251,344

Account Title		Sequesterable Base
Department of Agriculture		
Office of the Secretary		
Office of the Secretary		
(05-03-0115-352)	Budget Authority	6,023
	Outlays	5,722
Departmental Administration		
Rental payments and building operations		
(05-05-0117-352)	Budget Authority	72,455
	Outlays	67,818
National Commission on Agriculture and Rural Development		
(05-05-0118-352)	Budget Authority	1,367
	Outlays	894
Departmental administration		
(05-05-0120-352)	Budget Authority	28,466
	Outlays	25,278
Hazardous Waste Management		
(05-05-0500-304)	Budget Authority	2,076
	Outlays	1,038
Working capital fund		
(05-05-4609-352)	Budget Authority	5,931
	Outlays	5,854
Office of Governmental and Public Affairs		
Office of Governmental and Public Affairs		
(05-06-0130-352)	Budget Authority	9,143
	Outlays	7,223
Office of the Inspector General		
Office of the Inspector General		
(05-08-0900-352)	Budget Authority	51,398
	Outlays	43,997
Office of the General Counsel		
Office of the General Counsel		
(05-10-2300-352)	Budget Authority	19,796
	Outlays	19,618
Agricultural Research Service		
Agricultural Research Service		
(05-18-1400-352)	Budget Authority	567,854
	401(C) Authority--Off. Coll.	3,350
	Outlays	457,062
Buildings and facilities		
(05-18-1401-352)	Budget Authority	60,017
	Outlays	11,584
Cooperative State Research Service		
Cooperative State Research Service		
(05-24-1500-352)	Budget Authority	315,624
	401(C) Authority	2,850
	Outlays	206,207
Extension Service		
Extension Service		
(05-27-0502-352)	Budget Authority	372,097
	401(C) Authority--Off. Coll.	495
	Outlays	293,710
National Agricultural Library		
National Agricultural Library		
(05-30-0300-352)	Budget Authority	12,797
	Outlays	9,278
National Agricultural Statistics Service		
Salaries and expenses		
(05-33-1801-352)	Budget Authority	64,271
	401(C) Authority--Off. Coll.	1,007
	Outlays	53,324
Economic Research Service		
Salaries and expenses		
(05-36-1701-352)	Budget Authority	50,753
	Outlays	42,683
World Agricultural Outlook Board		
World agricultural outlook board		
(05-50-2100-352)	Budget Authority	1,825
	Outlays	1,391
Foreign Agricultural Service		
Foreign Agricultural Service		
(05-51-2900-352)	Budget Authority	96,278
	Outlays	53,049
Office of International Cooperation & Development		
Scientific activities overseas		
(05-53-1404-352)	Budget Authority	1,559
	Outlays	780
Salaries and expenses		
(05-53-3200-352)	Budget Authority	5,550
	Outlays	4,557
Foreign Assistance Programs		
Expenses, PL 480, foreign assistance programs, Agriculture		
(05-57-2274-151)	Budget Authority	1,154,516
	Obligation limitation	1,538,316
	Direct Loan Limitation	777,773
	Outlays	1,399,868
Agricultural Stabilization & Conservation Service		
Salaries and expenses		
(05-60-3300-351)	401(C) Authority--Off. Coll.	24,547
	Outlays	24,547
Dairy indemnity program		
(05-60-3314-351)	Budget Authority	99
	Outlays	493
Agricultural conservation program		
(05-60-3315-302)	Budget Authority	183,835
	Outlays	84,380
Emergency conservation program		
(05-60-3316-453)	Budget Authority	1,039
	Outlays	468
Colorado river basin salinity control program		
(05-60-3318-304)	Budget Authority	5,095
	Outlays	1,681
Conservation reserve program		
(05-60-3319-302)	Budget Authority	1,127,019
	Outlays	901,615
Water Bank program		
(05-60-3320-302)	Budget Authority	8,697
	Outlays	1,131
Forestry incentives program		
(05-60-3336-302)	Budget Authority	12,355
	Outlays	3,583
Federal Crop Insurance Corporation		
Administrative and operating expenses		
(05-63-2707-351)	Budget Authority	211,348
	Outlays	121,710
Commodity Credit Corporation		
Temp. stor. & distr. of CCC emgcy. food		
(05-66-3635-351)	Budget Authority	51,900
	Outlays	35,500

Account Title		Sequesterable Base
Commodity Credit Corporation Fund		
(05-66-4336-351)	401(C) Authority	10,421,674
	Direct Loan Limitation	13,500,000
	Guaranteed Loan Limitation	5,500,000
	Outlays	10,421,674
Rural Electrification Administration		
Salaries and expenses		
(05-72-3100-271)	Budget Authority	32,400
	Outlays	29,211
Reimbursement to the Rural elec. & tel. revolv. fund for int		
(05-72-3101-271)	Budget Authority	340,127
	Outlays	340,127
Purchase of Rural Telephone Bank capital stock		
(05-72-3102-452)	Budget Authority	29,801
	Outlays	29,801
Rural electrification and telephone revolving fund		
(05-72-4230-271)	Direct Loan Limitation	1,291,376
	Direct Loan Floor	894,029
	Guaranteed Loan Limitation	2,180,438
	Guaranteed Loan Floor	968,532
	Outlays	-163,347
Rural telephone bank		
(05-72-4231-452)	Direct Loan Limitation	218,541
	Direct Loan Floor	183,773
	Outlays	11,026
Farmers Home Administration		
Salaries and expenses		
(05-75-2001-452)	Budget Authority	431,912
	Outlays	397,359
Rural housing for domestic farm labor		
(05-75-2004-604)	Budget Authority	9,874
	Outlays	395
Mutual and self-help housing		
(05-75-2006-604)	Budget Authority	8,304
	Outlays	664
Very low income housing repair grants		
(05-75-2064-604)	Budget Authority	12,975
	Outlays	12,326
Rural development grant program		
(05-75-2065-452)	Budget Authority	6,747
	Outlays	4,494
Rural water and waste disposal grants		
(05-75-2066-452)	Budget Authority	113,552
	Outlays	2,271
Rural community fire protection grants		
(05-75-2067-452)	Budget Authority	3,208
	Outlays	1,444
Rural housing preservation grants		
(05-75-2070-604)	Budget Authority	19,867
	Outlays	1,192
Compensation for construction defects		
(05-75-2071-371)	Budget Authority	740
	Outlays	740
Agricultural Credit Insurance Fund		
(05-75-4140-351)	401(C) Authority--Off. Coll.	89,930
	Direct Loan Limitation	1,686,912
	Guaranteed Loan Limitation	3,449,134
	Outlays	1,688,732
Rural Housing Insurance Fund (Appr.)		

Account Title		Sequesterable Base
(05-75-4141-371)	Budget Authority	19,877
	401(C) Authority--Off. Coll.	53,500
	Obligation limitation	285,771
	Direct Loan Limitation	1,915,100
	Outlays	1,035,795
Rural Development Insurance Fund (Appr.)		
(05-75-4155-452)	Direct Loan Limitation	442,271
	Guaranteed Loan Limitation	299,337
	Outlays	15,687
Self-help housing land development fund		
(05-75-4222-371)	Direct Loan Limitation	519
Rural development loan fund		
(05-75-4233-452)	Direct Loan Limitation	14,532
	Outlays	1,453
Soil Conservation Service		
Conservation operations		
(05-78-1000-302)	Budget Authority	467,890
	401(C) Authority--Off. Coll.	8,681
	Outlays	440,470
Resource conservation and development		
(05-78-1010-302)	Budget Authority	26,383
	401(C) Authority--Off. Coll.	1,920
	Outlays	17,697
Watershed and flood prevention operations		
(05-78-1068-301)	Budget Authority	205,626
	401(C) Authority--Off. Coll.	19,194
	Outlays	162,501
Great plains conservation program		
(05-78-2268-302)	Budget Authority	21,408
	Outlays	9,698
Miscellaneous contributed funds (Water resources)		
(05-78-8210-301)	Outlays	419
Miscellaneous contributed funds (Conservation and land mgmt.		
(05-78-8210-302)	Outlays	91
Animal and Plant Health Inspection Service		
Salaries and expenses		
(05-79-1600-352)	Budget Authority	348,431
	401(C) Authority--Off. Coll.	14,472
	Outlays	312,729
Buildings and facilities		
(05-79-1601-352)	Budget Authority	2,331
Federal Grain Inspection Service		
Salaries and expenses		
(05-80-2400-352)	Budget Authority	7,380
	Outlays	6,162
Inspection and weighing services		
(05-80-4050-352)	401(C) Authority--Off. Coll.	36,856
	Outlays	36,856
Agricultural Marketing Service		
Marketing services		
(05-81-2500-352)	Budget Authority	34,134
	401(C) Authority--Off. Coll.	32,179
	Outlays	49,485
Payments to States and possessions		
(05-81-2501-352)	Budget Authority	978
	Outlays	26
Perishable Agricultural Commodities Act fund		
(05-81-5070-352)	401(C) Authority	5,329
	Outlays	4,842

Account Title		Sequesterable Base
Funds for strengthening markets, income, and supply (section		
(05-81-5209-605)	401(C) Authority	405,873
	Outlays	196,835
Milk market orders assessment fund		
(05-81-8412-351)	401(C) Authority--Off. Coll.	36,865
	Outlays	36,865
Miscellaneous trust funds		
(05-81-9972-352)	401(C) Authority	85,979
	Outlays	72,205
Office of Transportation		
Office of Transportation		
(05-82-2800-352)	Budget Authority	2,530
	Outlays	2,070
Food Safety and Inspection Service		
Salaries and expenses		
(05-83-3700-554)	Budget Authority	413,324
	401(C) Authority--Off. Coll.	46,384
	Outlays	430,775
Exp. & refunds, insp. & grading		
(05-83-8137-352)	401(C) Authority	825
	Outlays	575
Food and Nutrition Service		
Food donations program		
(05-84-3503-605)	Budget Authority	201,484
	Outlays	163,202
Food stamp program		
(05-84-3505-605)	Budget Authority	58,891
	Outlays	23,556
Food program administration		
(05-84-3508-605)	Budget Authority	90,478
	Outlays	83,240
Special supplemental food prog. for women, infants and child		
(05-84-3510-605)	Budget Authority	3,000
	Outlays	3,000
Child nutrition programs		
(05-84-3539-605)	Budget Authority	3,033
	Outlays	3,033
Human Nutrition Information Service		
Salaries and Expenses		
(05-86-3501-352)	Budget Authority	9,029
	Outlays	3,891
Packers and Stockyards Administration		
Packers and Stockyards Administration		
(05-90-2600-352)	Budget Authority	9,615
	Outlays	8,814
Agricultural Cooperative Service		
Salaries and expenses		
(05-92-3000-352)	Budget Authority	4,854
	Outlays	3,514
Forest Service		
Construction		
(05-96-1103-302)	Budget Authority	224,225
	401(C) Authority--Off. Coll.	1,505
	Outlays	132,229
Forest research		
(05-96-1104-302)	Budget Authority	142,584
	401(C) Authority--Off. Coll.	738
	Outlays	108,104
State and private forestry		

Account Title		Sequesterable Base
(05-96-1105-302)	Budget Authority	79,911
	Outlays	58,894
National forest system		
(05-96-1106-302)	Budget Authority	1,307,301
	Outlays	1,150,909
Land acquisition		
(05-96-5004-303)	Budget Authority	51,048
	Outlays	20,419
Range betterment fund		
(05-96-5207-302)	Budget Authority	4,430
	Outlays	3,544
Acquisition of lands for nat'l forests		
(05-96-5208-302)	Budget Authority	1,007
	Outlays	849
Acq. of lands to complete land exchanges		
(05-96-5216-302)	Budget Authority	1,029
	Outlays	914
Operations and maintenance of quarters		
(05-96-5219-302)	Obligation limitation	5,869
	Outlays	4,713
Cooperative work trust fund		
(05-96-8028-302)	Obligation limitation	267,748
	Outlays	225,975
Gifts, donations, bequests for forest and rangeland research		
(05-96-8034-302)	Budget Authority	94
	Outlays	94
Reforestation trust fund		
(05-96-8046-302)	Obligation limitation	30,000
	Outlays	24,000
Other appropriations		
(05-96-9911-302)	Budget Authority	85,857
	Outlays	66,151
Forest Service permanent appropriations		
(05-96-9921-806)	Obligation limitation	341,529
	Outlays	304,309
Forest Service permanent appropriations		
(05-96-9922-302)	Obligation limitation	91,733
	Outlays	79,243
Department of Agriculture		
Total	Budget Authority	9,339,052
	401(C) Authority	10,922,530
	401(C) Authority--Off. Coll.	371,623
	Obligation limitation	2,560,966
	Direct Loan Limitation	19,847,024
	Direct Loan Floor	1,077,802
	Guaranteed Loan Limitation	11,428,909
	Guaranteed Loan Floor	968,532
	Outlays	21,969,985
Department of Commerce		
General Administration		
Salaries and expenses		
(06-05-0120-376)	Budget Authority	41,198
	Outlays	39,468
Grants and loans administration		
(06-05-0125-452)	Budget Authority	26,011
	Outlays	22,838
Economic development assistance programs		
(06-05-2050-452)	Budget Authority	188,945
	Guaranteed Loan Limitation	194,625

Account Title		Sequesterable Base
	Outlays	18,895
Bureau of the Census		
Salaries and expenses		
(06-07-0401-376)	Budget Authority	99,921
	401(C) Authority--Off. Coll.	8,000
	Outlays	96,930
Periodic censuses and programs		
(06-07-0450-376)	Budget Authority	363,722
	Outlays	278,975
Economic and Statistical Analysis		
Salaries and expenses		
(06-08-1500-376)	Budget Authority	33,765
	401(C) Authority--Off. Coll.	395
	Outlays	30,446
Information products and services		
(06-08-8546-376)	Obligation limitation	42,140
	Outlays	28,718
International Trade Administration		
Operations and administration		
(06-25-1250-376)	Budget Authority	169,429
	401(C) Authority--Off. Coll.	10,519
	Outlays	129,766
Export Administration		
Operations and administration		
(06-30-0300-376)	Budget Authority	38,869
	Outlays	27,417
Minority Business Development Agency		
Minority business development		
(06-40-0201-376)	Budget Authority	41,411
	Outlays	13,003
United States Travel and Tourism Administration		
Salaries and expenses		
(06-44-0700-376)	Budget Authority	12,259
	401(C) Authority--Off. Coll.	2,500
	Outlays	11,866
National Oceanic and Atmospheric Administration		
Operations, research, and facilities		
(06-48-1450-306)	Budget Authority	1,202,187
	401(C) Authority--Off. Coll.	14,778
	Outlays	832,265
Coastal energy impact fund		
(06-48-4315-452)	401(C) Authority--Off. Coll.	7,280
	Outlays	7,280
Federal ship financing fund, fishing vessels		
(06-48-4417-376)	401(C) Authority--Off. Coll.	3,000
	Guaranteed Loan Limitation	85,000
	Outlays	3,000
Fishermen's contingency fund		
(06-48-5120-376)	Budget Authority	747
	Outlays	710
Foreign fishing observer fund		
(06-48-5122-376)	Budget Authority	2,010
	Outlays	1,932
Fisheries Promotional Fund		
(06-48-5124-376)	Budget Authority	2,725
	Outlays	1,501
Aviation weather services program		
(06-48-8105-306)	Budget Authority	29,366
	Outlays	29,366

Account Title		Sequesterable Base
Patent and Trademark Office		
Salaries and expenses		
(06-51-1006-376)	Budget Authority	125,846
	401(C) Authority--Off. Coll.	160,476
	Outlays	229,691
National Bureau of Standards		
Scientific and technical research and services		
(06-52-0500-376)	Budget Authority	147,727
	Outlays	114,045
Working capital fund		
(06-52-4650-376)	Budget Authority	4,147
	Outlays	2,074
National Telecommunications and Information Admin.		
Salaries and expenses		
(06-60-0550-376)	Budget Authority	14,536
	Outlays	11,629
Public telecommunications facilities, planning and construct		
(06-60-0551-503)	Budget Authority	22,115
	Outlays	2,565
Department of Commerce		
Total	Budget Authority	2,566,956
	401(C) Authority--Off. Coll.	206,748
	Obligation limitation	42,140
	Guaranteed Loan Limitation	279,625
	Outlays	1,934,380
Department of Defense--Military		
Operation and Maintenance		
Operation and maintenance, Defense agencies		
(07-10-0100-051)	Budget Authority	7,459,287
	Outlays	6,209,857
Court of Military Appeals, Defense		
(07-10-0104-051)	Budget Authority	3,410
	Outlays	2,831
Foreign currency fluctuations, Defense		
(07-10-0801-051)	Unobligated Balances--Defense	281,905
Environmental restoration, Defense		
(07-10-0810-051)	Budget Authority	10,380
	Outlays	6,228
Humanitarian Assistance		
(07-10-0819-051)	Budget Authority	10,380
	Outlays	7,526
Operation and maintenance, Marine Corps		
(07-10-1106-051)	Budget Authority	1,900,925
	Outlays	1,311,638
Operation and maintenance, Marine Corps Reserve		
(07-10-1107-051)	Budget Authority	72,311
	Outlays	50,183
National Board for the Promotion of Rifle Practice, Army		
(07-10-1705-051)	Budget Authority	4,276
	Outlays	3,078
Operation and maintenance, Navy		
(07-10-1804-051)	Budget Authority	24,774,743
	Outlays	16,413,268
Operation and maintenance, Navy Reserve		
(07-10-1806-051)	Budget Authority	966,885
	Outlays	582,549
Operation and maintenance, Army		
(07-10-2020-051)	Budget Authority	22,014,233
	Outlays	16,290,533

Account Title		Sequesterable Base
Operation and maintenance, Army National Guard		
(07-10-2065-051)	Budget Authority	1,943,520
	Outlays	1,452,781
Operation and maintenance, Army Reserve		
(07-10-2080-051)	Budget Authority	897,145
	Outlays	645,944
Operation and maintenance, Air Force		
(07-10-3400-051)	Budget Authority	20,670,990
	Outlays	15,596,261
Operation and maintenance, Air Force Reserve		
(07-10-3740-051)	Budget Authority	1,048,153
	Outlays	807,078
Operation and maintenance, Air National Guard		
(07-10-3840-051)	Budget Authority	2,050,144
	Outlays	1,650,366
Procurement		
Procurement, Defense agencies		
(07-15-0300-051)	Budget Authority	1,314,381
	Unobligated Balances--Defense	410,951
	Outlays	431,333
National Guard and Reserve Equipment		
(07-15-0350-051)	Budget Authority	1,245,600
	Unobligated Balances--Defense	463,723
	Outlays	51,280
Defense Production Act purchases		
(07-15-0360-051)	Budget Authority	13,494
	Unobligated Balances--Defense	18,200
Coastal defense augmentation		
(07-15-0380-051)	Budget Authority	20,760
	Unobligated Balances--Defense	4,000
Chemical agents and munitions destruction, Defense		
(07-15-0390-051)	Budget Authority	206,043
	Unobligated Balances--Defense	31,751
	Outlays	104,605
Procurement, Marine Corps		
(07-15-1109-051)	Budget Authority	1,344,832
	Unobligated Balances--Defense	304,981
	Outlays	321,713
Aircraft procurement, Navy		
(07-15-1506-051)	Budget Authority	9,884,146
	Unobligated Balances--Defense	2,174,692
	Outlays	1,477,208
Weapons procurement, Navy		
(07-15-1507-051)	Budget Authority	6,190,652
	Unobligated Balances--Defense	1,765,556
	Outlays	716,059
Shipbuilding and conversion, Navy		
(07-15-1611-051)	Budget Authority	16,769,258
	Unobligated Balances--Defense	9,736,176
	Outlays	1,160,939
Other procurement, Navy		
(07-15-1810-051)	Budget Authority	5,058,653
	Unobligated Balances--Defense	1,909,045
	Outlays	714,189
Aircraft procurement, Army		
(07-15-2031-051)	Budget Authority	2,821,705
	Unobligated Balances--Defense	547,687
	Outlays	606,491
Missile procurement, Army		

Account Title		Sequesterable Base
(07-15-2032-051)	Budget Authority	2,420,862
	Unobligated Balances--Defense	624,671
	Outlays	231,461
Procurement of weapons and tracked combat vehicles, Army		
(07-15-2033-051)	Budget Authority	3,329,060
	Unobligated Balances--Defense	1,058,842
	Outlays	193,068
Procurement of ammunition, Army		
(07-15-2034-051)	Budget Authority	2,359,988
	Unobligated Balances--Defense	179,121
	Outlays	863,297
Other procurement, Army		
(07-15-2035-051)	Budget Authority	5,291,949
	Unobligated Balances--Defense	1,704,258
	Outlays	559,697
Aircraft procurement, Air Force		
(07-15-3010-051)	Budget Authority	13,450,652
	Unobligated Balances--Defense	6,102,810
	Outlays	1,808,695
Missile procurement, Air Force		
(07-15-3020-051)	Budget Authority	7,570,415
	Unobligated Balances--Defense	3,035,208
	Outlays	2,688,525
Other procurement, Air Force		
(07-15-3080-051)	Budget Authority	8,315,238
	Unobligated Balances--Defense	2,452,839
	Outlays	5,129,912
Research, Development, Test, and Evaluation		
Research, development, test, and evaluation, Defense agencie		
(07-20-0400-051)	Budget Authority	7,852,192
	Unobligated Balances--Defense	589,149
	Outlays	4,431,703
Developmental test and evaluation, Defense		
(07-20-0450-051)	Budget Authority	189,036
	Unobligated Balances--Defense	32,192
	Outlays	57,519
Operational test and evaluation, Defense		
(07-20-0460-051)	Budget Authority	72,889
	Unobligated Balances--Defense	14,044
	Outlays	33,826
Research, development, test, and evaluation, Navy		
(07-20-1319-051)	Budget Authority	9,856,364
	Unobligated Balances--Defense	485,396
	Outlays	5,315,665
Research, development, test, and evaluation, Army		
(07-20-2040-051)	Budget Authority	4,883,209
	Unobligated Balances--Defense	333,913
	Outlays	2,608,561
Research, development, test, and evaluation, Air Force		
(07-20-3600-051)	Budget Authority	15,584,044
	Unobligated Balances--Defense	1,739,669
	Outlays	8,176,793
Military Construction		
Military construction, Defense agencies		
(07-25-0500-051)	Budget Authority	574,415
	Unobligated Balances--Defense	264,985
	Outlays	151,092
North Atlantic Treaty Organization infrastructure		
(07-25-0804-051)	Budget Authority	400,668

Account Title		Sequesterable Base
	Unobligated Balances--Defense	183,839
Military construction, Navy		
(07-25-1205-051)	Budget Authority	1,477,521
	Unobligated Balances--Defense	706,591
	Outlays	436,822
Military construction, Naval Reserve		
(07-25-1235-051)	Budget Authority	76,539
	Unobligated Balances--Defense	23,383
	Outlays	14,988
Military construction, Army		
(07-25-2050-051)	Budget Authority	1,307,884
	Unobligated Balances--Defense	431,691
	Outlays	460,686
Military construction, Army National Guard		
(07-25-2085-051)	Budget Authority	191,412
	Unobligated Balances--Defense	13,137
	Outlays	28,837
Military construction, Army Reserve		
(07-25-2086-051)	Budget Authority	98,714
	Unobligated Balances--Defense	19,102
	Outlays	17,672
Military construction, Air Force		
(07-25-3300-051)	Budget Authority	1,259,420
	Unobligated Balances--Defense	734,068
	Outlays	318,958
Military construction, Air Force Reserve		
(07-25-3730-051)	Budget Authority	82,313
	Unobligated Balances--Defense	30,439
	Outlays	11,839
Military construction, Air National Guard		
(07-25-3830-051)	Budget Authority	157,121
	Unobligated Balances--Defense	40,758
	Outlays	19,788
Family Housing		
Family housing, Army		
(07-30-0702-051)	Budget Authority	1,671,824
	Unobligated Balances--Defense	105,241
	Outlays	1,024,486
Family housing, Navy and Marine Corps		
(07-30-0703-051)	Budget Authority	798,853
	Unobligated Balances--Defense	96,266
	Outlays	358,152
Family housing, Air Force		
(07-30-0704-051)	Budget Authority	874,889
	Unobligated Balances--Defense	79,137
	Outlays	499,280
Family housing, Defense agencies		
(07-30-0706-051)	Budget Authority	21,487
	Unobligated Balances--Defense	1,481
	Outlays	13,610
Revolving and Management Funds		
ADP equipment management fund		
(07-40-3910-051)	Unobligated Balances--Defense	56,479
National Defense Stockpile transaction fund		
(07-40-4550-051)	Budget Authority	10,380
	Unobligated Balances--Defense	423,501
	Outlays	21,599
Navy stock fund		
(07-40-4911-051)	Budget Authority	341,917

Account Title		Sequesterable Base
	Outlays	112,833
Air Force stock fund		
(07-40-4921-051)	Budget Authority	234,595
	Outlays	77,416
Defense stock fund		
(07-40-4961-051)	Budget Authority	137,639
	Outlays	45,421
Army stock fund		
(07-40-4991-051)	Budget Authority	200,549
	Outlays	66,181
Department of Defense--Military		
Total	Budget Authority	219,790,344
	Unobligated Balances--Defense	39,210,977
	Outlays	102,401,120
Department of Defense--Civil		
Cemetorial Expenses, Army		
Salaries and expenses		
(08-05-1805-705)	Budget Authority	8,563
	Outlays	6,381
Corps of Engineers--Civil		
Flood control, Mississippi River and tributaries		
(08-10-3112-301)	Budget Authority	337,980
	401(C) Authority--Off. Coll.	250
	Outlays	277,394
General investigations		
(08-10-3121-301)	Budget Authority	142,405
	Outlays	98,829
Construction, general		
(08-10-3122-301)	Budget Authority	1,107,268
	401(C) Authority--Off. Coll.	160
	Outlays	742,029
Operation and maintenance, general		
(08-10-3123-301)	Budget Authority	1,184,714
	401(C) Authority--Off. Coll.	4,565
	Outlays	987,878
Operation and maintenance, general		
(08-10-3123-303)	Budget Authority	15,000
	Outlays	11,700
General expenses		
(08-10-3124-301)	Budget Authority	120,000
	Outlays	96,000
Flood control and coastal emergencies		
(08-10-3125-301)	Budget Authority	20,000
General regulatory functions		
(08-10-3126-301)	Budget Authority	60,427
	Outlays	50,154
Inland waterways trust fund		
(08-10-8861-301)	Budget Authority	77,467
	Outlays	51,887
Rivers and harbors contributed funds		
(08-10-8862-301)	Outlays	157,419
Harbor maintenance trust fund		
(08-10-8863-301)	Budget Authority	171,000
	Outlays	141,930
Permanent appropriations (Water resources)		
(08-10-9921-301)	Obligation limitation	3,000
	Outlays	48
Permanent appropriations		
(08-10-9921-806)	Obligation limitation	6,000

Account Title		Sequesterable Base
Soldiers' and Airmen's Home		
Operation and maintenance		
(08-20-8931-705)	Budget Authority	37,769
	401(C) Authority--Off. Coll.	144
	Outlays	33,192
Capital outlay		
(08-20-8932-705)	Budget Authority	16,032
	Outlays	321
Forest & Wildlife Conservation, Mil. Reservations		
Wildlife conservation		
(08-30-5095-303)	401(C) Authority	2,050
	Outlays	1,800
Forest products program		
(08-30-5285-302)	401(C) Authority	2,000
	Outlays	2,000
Department of Defense--Civil		
Total	Budget Authority	3,298,615
	401(C) Authority	4,050
	401(C) Authority--Off. Coll.	5,119
	Obligation limitation	9,000
	Outlays	2,658,962
Department of Education		
Office of Elementary and Secondary Education		
Indian education		
(18-10-0101-501)	Budget Authority	68,888
	Outlays	10,101
Impact aid		
(18-10-0102-501)	Budget Authority	735,398
	Outlays	585,854
Compensatory education for the disadvantaged		
(18-10-0900-501)	Budget Authority	4,501,332
	Outlays	540,160
School improvement programs		
(18-10-1000-501)	Budget Authority	1,079,844
	Outlays	129,581
Off. of Bilingual Ed. & Minority Languages Affairs		
Immigrant and refugee education		
(18-15-1300-501)	Budget Authority	199,038
	Outlays	23,885
Office of Special Education & Rehabilitative Svcs.		
Education for the handicapped		
(18-20-0300-501)	Budget Authority	1,940,042
	Outlays	239,830
Vocational rehabilitation		
(18-20-0301-506)	Budget Authority	218,914
	Budget Authority--ASI	62,078
	Outlays	216,364
Special institutions for the handicapped (APHB)		
(18-20-0604-501)	Budget Authority	5,466
	Outlays	5,466
Special institutions for the handicapped (Gallaudet)		
(18-20-0604-502)	Budget Authority	97,353
	Outlays	93,260
Promotion of education for the blind		
(18-20-8893-501)	401(C) Authority	10
	Outlays	5
Office of Vocational and Adult Education		
Vocational and adult education		
(18-30-0400-501)	Budget Authority	1,043,767

Account Title		Sequesterable Base
	401(C) Authority	7,148
	Outlays	126,110
Office of Postsecondary Education		
Student financial assistance		
(18-40-0200-502)	Budget Authority	5,755,494
	Outlays	1,071,247
Higher education		
(18-40-0201-502)	Budget Authority	554,781
	Outlays	82,463
College construction loan insurance		
(18-40-0210-502)	Budget Authority	19,876
	Outlays	19,876
Guaranteed student loans		
(18-40-0230-502)	Budget Authority--Spec. Rules	46,677
	Outlays	37,342
College housing and academic facilities loans		
(18-40-0242-502)	Budget Authority	64,596
	Outlays	1,675
Howard University		
(18-40-0603-502)	Budget Authority	178,747
	Outlays	171,255
College housing loans		
(18-40-4250-502)	401(C) Authority--Off. Coll.	753
	Outlays	678
Office of Educational Research and Improvement		
Libraries		
(18-50-0104-503)	Budget Authority	140,222
	Outlays	49,287
Education research and statistics		
(18-50-1100-503)	Budget Authority	70,092
	Outlays	30,140
Departmental Management		
Office for Civil Rights		
(18-80-0700-751)	Budget Authority	61,269
	Outlays	50,853
Salaries and expenses (Research and general education aids)		
(18-80-0800-503)	Budget Authority	253,215
	Outlays	210,168
Department of Education		
Total	Budget Authority	16,988,334
	Budget Authority--ASI	62,078
	Budget Authority--Spec. Rules	46,677
	401(C) Authority	7,158
	401(C) Authority--Off. Coll.	753
	Outlays	3,695,600
Department of Energy		
Atomic Energy Defense Activities		
Atomic energy defense activities		
(19-10-0220-053)	Budget Authority	8,100,000
	Unobligated Balances--Defense	47,617
	Outlays	5,051,523
Energy Programs		
Geothermal resources development fund		
(19-20-0206-271)	Budget Authority	75
	Outlays	75
Federal Energy Regulatory Commission		
(19-20-0212-276)	Budget Authority	108,760
	Outlays	92,446
Fossil energy research and development		

Account Title		Sequesterable Base
(19-20-0213-271)	Budget Authority	339,400
	Outlays	135,760
Energy conservation (Energy conservation)		
(19-20-0215-272)	Budget Authority	379,960
	Outlays	75,992
Energy information administration		
(19-20-0216-276)	Budget Authority	63,337
	Outlays	41,170
Economic regulation		
(19-20-0217-276)	Budget Authority	22,648
	Outlays	14,268
Strategic petroleum reserve		
(19-20-0218-274)	Budget Authority	170,849
	Outlays	93,967
Naval petroleum and shale reserves		
(19-20-0219-271)	Budget Authority	165,643
	Outlays	91,103
General science and research activities		
(19-20-0222-251)	Budget Authority	922,116
	Outlays	700,808
Energy supply, R&D activities		
(19-20-0224-271)	Budget Authority	2,142,326
	Outlays	1,071,163
Uranium supply and enrichment activities		
(19-20-0226-271)	Budget Authority	1,133,080
	Outlays	985,780
SPR petroleum		
(19-20-0233-274)	Budget Authority	456,294
	Outlays	319,406
Emergency preparedness		
(19-20-0234-274)	Budget Authority	6,503
	Outlays	5,202
Clean Coal Technology		
(19-20-0235-271)	401(C) Authority	525,000
	Outlays	52,500
Nuclear waste disposal fund		
(19-20-5227-271)	Budget Authority	369,832
	Outlays	184,916
Power Marketing Administration		
Operation and maintenance, Southeastern Power Administration		
(19-50-0302-271)	Budget Authority	1,165
	Outlays	1,025
Operation and maintenance, Southwestern Power Administration		
(19-50-0303-271)	Budget Authority	5,210
	Outlays	4,585
Operation and maintenance, Alaska Power Administration		
(19-50-0304-271)	Budget Authority	765
	Outlays	673
Bonneville Power Administration fund		
(19-50-4045-271)	401(C) Authority--Off. Coll.	50,000
	Outlays	97,500
Colorado river basins power marketing fund, WAPA		
(19-50-4452-271)	401(C) Authority--Off. Coll.	7,668
	Outlays	7,668
Construction, rehabilitation, operation and maintenance, WAP		
(19-50-5068-271)	Budget Authority	37,151
	Outlays	32,693
Departmental Administration		
Departmental administration (Energy information, policy, & r		

Account Title		Sequesterable Base
(19-60-0228-276)	Budget Authority	403,665
	Outlays	242,199
Department of Energy		
Total	Budget Authority	14,828,779
	401(C) Authority	525,000
	401(C) Authority--Off. Coll.	57,668
	Unobligated Balances--Defense	47,617
	Outlays	9,302,422
Department of Health and Human Services		
Food and Drug Administration		
Program expenses		
(09-10-0600-554)	Budget Authority	505,883
	Outlays	440,118
Buildings and facilities		
(09-10-0603-554)	Budget Authority	1,505
	Outlays	978
Revolving fund for certification and other services		
(09-10-4309-554)	401(C) Authority--Off. Coll.	3,187
	Outlays	3,187
Health Resources and Services		
Health resources and services (health care services)		
(09-15-0350-551)	Budget Authority	937,037
	Budget Authority--Spec. Rules	9,270
	401(C) Authority--Off. Coll.	375
	Direct Loan Limitation	993
	Outlays	566,135
Health resources and services (education and training)		
(09-15-0350-553)	Budget Authority	216,831
	Outlays	65,049
Indian Health		
Tribal and Federal Health Services		
(09-17-0390-551)	Budget Authority	72,032
	Budget Authority--Spec. Rules	18,277
	401(C) Authority--Spec. Rules	774
	Outlays	76,243
Indian health facilities 2% split (G-R-H)		
(09-17-0391-551)	Budget Authority--Spec. Rules	1,298
	Outlays	325
Centers for Disease Control		
Disease control (Health care services)		
(09-20-0943-551)	Budget Authority	731,522
	401(C) Authority--Off. Coll.	1,005
	Outlays	447,233
Disease control (Health research)		
(09-20-0943-552)	Budget Authority	72,587
	Outlays	52,988
National Institutes of Health		
National Library of Medicine (Health research)		
(09-25-0807-552)	Budget Authority	22,893
	Outlays	14,651
National Library of Medicine (Education and training)		
(09-25-0807-553)	Budget Authority	48,024
	Outlays	30,735
John E. Fogarty International Center		
(09-25-0819-552)	Budget Authority	16,301
	Outlays	9,292
Buildings and facilities		
(09-25-0838-552)	Budget Authority	49,689
	Outlays	13,913

Account Title		Sequesterable Base
National Institute on Aging (Health research)		
(09-25-0843-552)	Budget Authority	193,706
	Outlays	63,923
National Institute on Aging (Education and training)		
(09-25-0843-553)	Budget Authority	8,762
	Outlays	4,118
Nat. Inst. Child Health and Human Development (Health resear		
(09-25-0844-552)	Budget Authority	396,141
	Outlays	134,688
Nat. Inst. Child Health and Human Development (Ed. & trainin		
(09-25-0844-553)	Budget Authority	16,209
	Outlays	1,621
Office of the Director (Health research)		
(09-25-0846-552)	Budget Authority	59,086
	Outlays	28,952
Office of the Director (Education and training)		
(09-25-0846-553)	Budget Authority	5,518
	Outlays	5,242
Research resources (Health research)		
(09-25-0848-552)	Budget Authority	380,769
	Outlays	178,981
Research resources (Education and training)		
(09-25-0848-553)	Budget Authority	2,331
	Outlays	117
National Cancer Institute (Health research)		
(09-25-0849-552)	Budget Authority	1,492,854
	401(C) Authority--Off. Coll.	10
	Outlays	627,009
National Cancer Institute (Education and training)		
(09-25-0849-553)	Budget Authority	34,344
	Outlays	687
National Institute of General Medical Sciences (Health resea		
(09-25-0851-552)	Budget Authority	586,718
	Outlays	222,953
National Institute of General Medical Sciences (Ed. & traini		
(09-25-0851-553)	Budget Authority	70,130
	Outlays	7,714
National Institute of Environmental Health Sciences (Researc		
(09-25-0862-552)	Budget Authority	214,766
	Outlays	122,417
National Institute of Environmental Health Sciences (Ed.&tra		
(09-25-0862-553)	Budget Authority	9,642
	Outlays	2,314
National Heart, Lung and Blood Institute (Health research)		
(09-25-0872-552)	Budget Authority	959,938
	Outlays	364,777
National Heart, Lung and Blood Institute (Education & traini		
(09-25-0872-553)	Budget Authority	43,031
	Outlays	1,721
National Institute of Dental Research (Health research)		
(09-25-0873-552)	Budget Authority	125,653
	Outlays	60,314
National Institute of Dental Research (Education and trainin		
(09-25-0873-553)	Budget Authority	5,742
	Outlays	3,158
National Insti. of Diabetes, and Digestive and Kidney Diseas		
(09-25-0884-552)	Budget Authority	533,034
	Outlays	170,571
National Insti. of Diabetes, and Digestive and Kidney Diseas		

Account Title		Sequesterable Base
(09-25-0884-553)	Budget Authority	22,611
	Outlays	4,522
National Institute of Allergy & Infectious Diseases (Researc		
(09-25-0885-552)	Budget Authority	650,245
	Outlays	221,083
National Institute of Allergy & Infectious Diseases (Ed.&tra		
(09-25-0885-553)	Budget Authority	13,548
	Outlays	1,897
National Institute of Neurological & Communicative Disorders		
(09-25-0886-552)	Budget Authority	540,517
	401(C) Authority--Off. Coll.	12
	Outlays	183,788
National Institute of Neurological & Communicative Disorders		
(09-25-0886-553)	Budget Authority	15,165
	Outlays	4,398
National Eye Institute (Health research)		
(09-25-0887-552)	Budget Authority	227,580
	Outlays	75,102
National Eye Institute (Education and training)		
(09-25-0887-553)	Budget Authority	6,113
	Outlays	1,528
National Ins. of Arthritis and Musculoskeletal and Skin Dise		
(09-25-0888-552)	Budget Authority	147,233
	Outlays	47,114
National Ins. of Arthritis and Musculoskeletal and Skin Dise		
(09-25-0888-553)	Budget Authority	6,153
	Outlays	1,231
National Center for Nursing Research		
(09-25-0889-552)	Budget Authority	21,290
	Outlays	1,703
National Center for Nursing Research		
(09-25-0889-553)	Budget Authority	3,009
	Outlays	1,352
Alcohol,Drug Abuse, & Mental Health Administration		
Federal subsidy for St. Elizabeths Hospital		
(09-30-1300-551)	Budget Authority	69,153
	Outlays	69,153
Alcohol, drug abuse, and mental health (Health care services		
(09-30-1361-551)	Budget Authority	772,327
	Outlays	509,736
Alcohol, drug abuse, and mental health (Health research)		
(09-30-1361-552)	Budget Authority	612,791
	Outlays	545,384
Alcohol, drug abuse, and mental health (Education and traini		
(09-30-1361-553)	Budget Authority	42,236
	Outlays	33,366
Office of Assistant Secretary for Health		
Public health service management (Health care services)		
(09-37-1101-551)	Budget Authority	40,728
	401(C) Authority--Off. Coll.	25
	Outlays	24,055
Public health service management (Health research)		
(09-37-1101-552)	Budget Authority	70,982
	Outlays	48,268
Health Care Financing Administration		
Program management (Health care services)		
(09-38-0511-551)	Budget Authority	93,118
	Outlays	84,407
Program management (Health research)		

Account Title		Sequesterable Base
(09-38-0511-552)	Budget Authority	9,938
	Outlays	7,950
Federal supplementary medical insurance trust fund		
(09-38-8004-571)	Obligation limitation	1,248,650
	Obligat. limit.--Spec. Rules	340,000
	Outlays	1,419,896
Federal hospital insurance trust fund		
(09-38-8005-571)	Obligation limitation	1,161,379
	Obligat. limit.--Spec. Rules	970,000
	Outlays	1,951,607
Catastrophic health and drug insurance fund		
(09-38-8804-571)	Obligation limitation	112,400
	Obligat. limit.--Spec. Rules	9,630
	Outlays	122,030
Social Security Administration		
Supplemental security income program		
(09-60-0406-609)	Budget Authority	837,050
	Outlays	837,050
Special benefits for disabled coal miners		
(09-60-0409-601)	Budget Authority	6,822
	Outlays	6,822
Family Support Administration		
Program administration		
(09-70-1500-609)	Budget Authority	82,879
	Outlays	68,790
Family support payment to States (CSE)		
(09-70-1501-609)	Budget Authority	1,153,000
	Outlays	1,153,000
Low income home energy assistance		
(09-70-1502-609)	Budget Authority	1,590,050
	Outlays	1,446,945
Refugee and Entrant Assistance		
(09-70-1503-609)	Budget Authority	360,116
	Outlays	230,475
Community services block grant		
(09-70-1504-506)	Budget Authority	396,817
	Outlays	273,010
Work incentives		
(09-70-1505-504)	Budget Authority	96,068
	Outlays	90,304
Interim assistance to States for legalization		
(09-70-1508-506)	Obligation limitation	645,000
	Outlays	206,400
Human Development Services		
Social services block grant		
(09-80-1634-506)	Budget Authority	2,700,000
	Outlays	2,619,000
Human development services		
(09-80-1636-506)	Budget Authority	2,549,800
	Outlays	1,453,386
Payments to State for foster care and adoption assistance		
(09-80-1645-506)	Budget Authority--Spec. Rules	5,132
	Outlays	3,683
Departmental Management		
General Departmental management		
(09-90-0120-609)	Budget Authority	71,234
	Outlays	53,426
Policy research		
(09-90-0122-609)	Budget Authority	5,064

Account Title		Sequesterable Base
	Outlays	3,038
Office of the Inspector General		
(09-90-0128-609)	Budget Authority	37,631
	Outlays	28,223
Office for Civil Rights		
(09-90-0135-751)	Budget Authority	17,217
	Outlays	15,840
Office of Consumer Affairs		
(09-90-0137-506)	Budget Authority	1,750
	Outlays	1,628
Department of Health and Human Services		
Total	Budget Authority	21,082,913
	Budget Authority--Spec. Rules	33,977
	401(C) Authority--Off. Coll.	4,614
	401(C) Authority--Spec. Rules	774
	Obligation limitation	3,167,429
	Obligat. limit.--Spec. Rules	1,319,630
	Direct Loan Limitation	993
	Outlays	17,572,694
Health and Human Services - Social Security		
Social Security		
Federal old-age and survivors insurance trust fund		
(16-05-8006-651)	Obligation limitation	1,283,058
	Outlays	1,067,888
Federal disability insurance trust fund		
(16-05-8007-651)	Obligation limitation	432,972
	Outlays	372,896
Health and Human Services - Social Security		
Total	Obligation limitation	1,716,030
	Outlays	1,440,784
Department of Housing and Urban Development		
Housing Programs		
Housing counseling assistance		
(25-02-0156-506)	Budget Authority	3,488
Subsidized housing programs (Community development)		
(25-02-0164-451)	Budget Authority	209,676
	Outlays	20,760
Subsidized housing programs (Housing assistance)		
(25-02-0164-604)	Budget Authority	7,979,526
	Outlays	29,753
Congregate services program		
(25-02-0178-604)	Budget Authority	4,384
Supportive housing demonstration program		
(25-02-0188-604)	Budget Authority	66,692
Rental housing assistance fund		
(25-02-4041-604)	401(C) Authority--Off. Coll.	50,000
	Outlays	50,000
Nonprofit sponsor assistance		
(25-02-4042-604)	Direct Loan Limitation	996
Federal Housing Administration fund		
(25-02-4070-371)	401(C) Authority--Off. Coll.	541,682
	Obligation limitation	371,741
	Direct Loan Limitation	82,284
	Guaranteed Loan Limitation	99,648,000
	Outlays	938,423
Housing for the elderly or handicapped fund		
(25-02-4115-371)	Budget Authority	3,967
	Direct Loan Limitation	587,275
	Outlays	3,907

Account Title		Sequesterable Base
Interstate land sales		
(25-02-5270-376)	401(C) Authority	600
	Outlays	600
Manufactured home inspection and monitoring		
(25-02-5271-376)	401(C) Authority	6,475
	Outlays	4,460
Public and Indian Housing Programs		
Payments for operation of low income housing projects		
(25-03-0163-604)	Budget Authority	1,505,100
	Outlays	692,346
Government National Mortgage Association		
Guarantees of mortgage-backed securities		
(25-04-4238-371)	401(C) Authority--Off. Coll.	48,877
	Guaranteed Loan Limitation	146,800,000
	Outlays	48,877
Community Planning and Development		
Community development grants		
(25-06-0162-451)	Budget Authority	2,989,440
	Guaranteed Loan Limitation	149,500
	Outlays	119,578
Urban development action grants		
(25-06-0170-451)	Budget Authority	224,208
Urban homesteading		
(25-06-0171-451)	Budget Authority	14,947
	Outlays	14,947
Assistance for solar and conservation improvements		
(25-06-0179-272)	Budget Authority	1,765
	Outlays	35
Emergency shelter grants program		
(25-06-0181-604)	Budget Authority	8,304
	Outlays	4,152
Rehabilitation loan fund		
(25-06-4036-451)	401(C) Authority--Off. Coll.	30,000
	Direct Loan Limitation	88,230
	Outlays	30,000
Policy Development and Research		
Research and technology		
(25-28-0108-451)	Budget Authority	17,139
	Outlays	5,142
Fair Housing and Equal Opportunity		
Fair housing assistance		
(25-29-0144-751)	Budget Authority	4,982
	Outlays	1,993
Management and Administration		
Salaries & expenses, incl. transfer of funds (Community dev.		
(25-35-0143-451)	Budget Authority	184,081
	Outlays	150,946
Salaries & expenses, incl. transfer of funds (Public assist.		
(25-35-0143-604)	Budget Authority	108,886
	Outlays	88,877
Salaries & expenses, incl. transfer of funds (Federal law ac		
(25-35-0143-751)	Budget Authority	31,847
	Outlays	26,115
Department of Housing and Urban Development		
Total	Budget Authority	13,357,932
	401(C) Authority	7,075
	401(C) Authority--Off. Coll.	670,559
	Obligation limitation	371,741
	Direct Loan Limitation	758,785

Account Title		Sequesterable Base
	Guaranteed Loan Limitation	246,597,500
	Outlays	2,230,911
Department of the Interior		
Bureau of Land Management		
Management of lands and resources		
(10-04-1109-302)	Budget Authority	523,922
	Outlays	457,384
Construction and access		
(10-04-1110-302)	Budget Authority	3,580
	Outlays	895
Payments in lieu of taxes		
(10-04-1114-806)	Budget Authority	108,990
	Outlays	108,990
Oregon and California grant lands		
(10-04-1116-302)	Budget Authority	61,359
	Outlays	45,406
Special acquisition of lands and minerals		
(10-04-1117-302)	401(C) Authority	1,308
Service charges, deposits, and forfeitures		
(10-04-5017-302)	Budget Authority	7,543
	Outlays	5,340
Land acquisition		
(10-04-5033-302)	Budget Authority	9,233
	Outlays	4,580
Operation and maintenance of quarters		
(10-04-5048-302)	401(C) Authority	250
	Outlays	208
Range improvements		
(10-04-5132-302)	Budget Authority	8,506
	Outlays	5,376
Miscellaneous permanent appropriations		
(10-04-9921-302)	Obligation limitation	6,500
	Outlays	4,758
Miscellaneous permanent appropriations		
(10-04-9921-806)	Obligation limitation	81,510
Minerals Management Service		
Leasing and royalt management		
(10-06-1917-302)	Budget Authority	176,967
	Outlays	115,029
Payments to states from receipts under Mineral Leasing Act		
(10-06-5003-806)	Obligation limitation	427,629
	Outlays	427,629
Office of Surface Mining Reclamation & Enforcement		
Regulation and technology		
(10-08-1801-302)	Budget Authority	108,216
	Outlays	63,090
Abandoned mine reclamation fund		
(10-08-5015-302)	Budget Authority	214,610
	Outlays	59,447
Bureau of Reclamation		
Loan program		
(10-10-0667-301)	Budget Authority	26,022
	Direct Loan Limitation	27,766
	Outlays	16,004
Construction program		
(10-10-0684-301)	Budget Authority	712,305
	401(C) Authority--Off. Coll.	3,000
	Outlays	601,336
Lower Colorado River basin development fund		

Account Title		Sequesterable Base
(10-10-4079-301)	401(C) Authority--Off. Coll.	98,296
	Outlays	98,296
Upper Colorado River basin fund		
(10-10-4081-301)	401(C) Authority--Off. Coll.	30,150
	Outlays	30,150
Working capital fund		
(10-10-4524-301)	Budget Authority	4,000
	Outlays	3,200
Emergency fund		
(10-10-5043-301)	Budget Authority	1,000
	Outlays	605
General investigations		
(10-10-5060-301)	Budget Authority	14,250
	401(C) Authority--Off. Coll.	75
	Outlays	9,252
Operation and maintenance		
(10-10-5064-301)	Budget Authority	187,731
	401(C) Authority--Off. Coll.	8,313
	Outlays	154,179
General administrative expenses		
(10-10-5065-301)	Budget Authority	48,313
	Outlays	43,482
Colorado River Dam Fund, Boulder Canyon Project		
(10-10-5656-301)	Obligation limitation	38,347
	Outlays	21,972
Reclamation trust funds		
(10-10-8070-301)	Obligation limitation	61,101
	Outlays	50,480
Miscellaneous permanent appropriations		
(10-10-9922-806)	Outlays	226
Geological Survey		
Surveys, investigations and research		
(10-12-0804-306)	Budget Authority	470,409
	401(C) Authority	250
	401(C) Authority--Off. Coll.	76,507
	Outlays	521,101
Operation and maintenance of quarters		
(10-12-5055-306)	Obligation limitation	75
	Outlays	30
Bureau of Mines		
Mines and minerals		
(10-14-0959-306)	Budget Authority	153,666
	Outlays	104,493
Helium fund		
(10-14-4053-306)	401(C) Authority--Off. Coll.	3,730
	Outlays	3,730
United States Fish and Wildlife Service		
Resource management		
(10-18-1611-303)	Budget Authority	359,676
	401(C) Authority--Off. Coll.	1,000
	Outlays	288,741
Construction		
(10-18-1612-303)	Budget Authority	26,046
	Outlays	5,209
Land acquisition		
(10-18-5020-303)	Budget Authority	53,772
	Outlays	24,198
Operations and maintenance of quarters		
(10-18-5050-303)	Obligation limitation	1,727

Account Title		Sequesterable Base
	Outlays	251
National wildlife refuge fund		
(10-18-5091-806)	Budget Authority	5,860
	Obligation limitation	6,040
	Outlays	7,545
Migratory bird conservation account		
(10-18-5137-303)	Budget Authority	1,042
	Obligation limitation	29,378
	Outlays	21,732
Sport fish restoration		
(10-18-8151-303)	Obligation limitation	194,760
	Outlays	59,988
Contributed funds		
(10-18-8216-303)	Obligation limitation	140
	Outlays	140
Miscellaneous permanent appropriations		
(10-18-9923-303)	Obligation limitation	119,200
	Outlays	31,690
National Park Service		
Operation of the national park system		
(10-24-1036-303)	Budget Authority	766,944
	401(C) Authority--Off. Coll.	2,294
	Outlays	577,502
John F. Kennedy Center for the Performing Arts		
(10-24-1038-303)	Budget Authority	5,125
	Outlays	3,844
Construction		
(10-24-1039-303)	Budget Authority	125,215
	401(C) Authority--Off. Coll.	10,000
	Outlays	28,782
National recreation and preservation		
(10-24-1042-303)	Budget Authority	13,600
	Outlays	12,240
Illinois & Michigan Canal National Heritage-Corridor Commiss		
(10-24-1043-303)	Budget Authority	260
	Outlays	130
Land acquisition		
(10-24-5035-303)	Budget Authority	33,123
	Outlays	22,093
Operations and maintenance of quarters		
(10-24-5049-303)	Obligation limitation	8,829
	Outlays	6,758
Historic preservation fund		
(10-24-5140-303)	Budget Authority	29,324
	Outlays	15,102
Miscellaneous permanent appropriations		
(10-24-9924-303)	Obligation limitation	1,069
	Outlays	288
Bureau of Indian Affairs		
Operation of Indian programs (Conservation and land manageme		
(10-76-2100-302)	Budget Authority	152,755
	Outlays	131,369
Operation of Indian programs (Area and regional development)		
(10-76-2100-452)	Budget Authority	611,356
	401(C) Authority--Off. Coll.	3,000
	Outlays	500,032
Operation of Indian programs (Elementary, secondary, & vo. e		
(10-76-2100-501)	Budget Authority	249,942
	Outlays	203,703

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Account Title		Sequesterable Base
Construction		
(10-76-2301-452)	Budget Authority	86,476
	Outlays	19,889
Road construction		
(10-76-2364-452)	Budget Authority	1,038
	401(C) Authority--Off. Coll.	1,000
	Outlays	1,934
Revolving fund for loans		
(10-76-4409-452)	401(C) Authority--Off. Coll.	12,210
	Direct Loan Limitation	13,494
	Outlays	12,210
Indian loan guaranty and insurance fund		
(10-76-4410-452)	Budget Authority	3,202
	Guaranteed Loan Limitation	34,773
	Outlays	1,806
Operations and maintenance of quarters		
(10-76-5051-452)	Obligation limitation	7,000
	Outlays	5,022
Miscellaneous permanent appropriations (Area and regional de		
(10-76-9925-452)	Outlays	11,640
Miscellaneous permanent appropriations		
(10-76-9925-808)	401(C) Authority	2,000
	Outlays	1,975
Office of Territorial Affairs		
Administration of territories		
(10-82-0412-808)	Budget Authority	41,112
	Outlays	28,080
Trust Territory of the Pacific Islands		
(10-82-0414-808)	Budget Authority	43,534
	Outlays	38,745
Compact of free association		
(10-82-0415-808)	Budget Authority	17,978
	Outlays	17,978
Office of the Secretary		
Salaries and Expenses		
(10-84-0102-306)	Budget Authority	49,903
	Outlays	42,418
Construction management		
(10-84-0103-306)	Budget Authority	1,883
	Outlays	1,697
Office of the Solicitor		
Office of the Solicitor		
(10-86-0107-306)	Budget Authority	24,283
	Outlays	21,855
Office of Inspector General		
Office of Inspector General		
(10-88-0104-306)	Budget Authority	18,694
	Outlays	16,825
Department of the Interior		
Total	Budget Authority	5,562,765
	401(C) Authority	3,800
	401(C) Authority--Off. Coll.	249,575
	Obligation limitation	983,305
	Direct Loan Limitation	41,260
	Guaranteed Loan Limitation	34,773
	Outlays	5,120,079
Department of Justice		
General Administration		
Salaries and expenses		

Account Title		Sequesterable Base
(11-03-0129-751)	Budget Authority	92,728
	Outlays	83,084
United States Parole Commission		
Salaries and expenses		
(11-04-1061-751)	Budget Authority	12,266
	Outlays	10,549
Legal Activities		
Salaries and expenses, Foreign Claims Settlement Commission		
(11-05-0100-153)	Budget Authority	524
	Outlays	379
Salaries and expenses, General legal activities		
(11-05-0128-752)	Budget Authority	249,676
	Outlays	219,216
Fees and expenses of witnesses		
(11-05-0311-752)	Budget Authority	55,030
	Outlays	38,576
Salaries and expenses, Antitrust Division		
(11-05-0319-752)	Budget Authority	47,192
	Outlays	38,697
Salaries and expenses, United States Attorneys		
(11-05-0322-752)	Budget Authority	399,366
	Outlays	351,442
Salaries and expenses, United States Marshals Service		
(11-05-0324-752)	Budget Authority	196,374
	401(C) Authority--Off. Coll.	4,000
	Outlays	180,737
Independent counsel		
(11-05-0327-752)	401(C) Authority	7,000
	Outlays	7,000
Salaries and expenses, Community Relations Service		
(11-05-0500-752)	Budget Authority	35,270
	Outlays	29,979
Support of United States prisoners		
(11-05-1020-752)	Budget Authority	100,733
	Outlays	60,440
Assets forfeiture fund		
(11-05-5042-752)	Budget Authority	166,713
	Outlays	66,685
United States trustees system fund		
(11-05-5073-752)	Budget Authority	49,595
	Outlays	27,731
Federal Bureau of Investigation		
Salaries and expenses		
(11-10-0200-751)	Budget Authority	1,471,195
	401(C) Authority--Off. Coll.	40,211
	Outlays	1,217,167
Drug Enforcement Administration		
Salaries and expenses		
(11-12-1100-751)	Budget Authority	518,989
	401(C) Authority--Off. Coll.	1,500
	Outlays	390,742
Immigration and Naturalization Service		
Salaries and expenses		
(11-15-1217-751)	Budget Authority	765,131
	401(C) Authority--Off. Coll.	695
	Outlays	612,800
Immigration legalization		
(11-15-5086-751)	401(C) Authority	89,786
	Outlays	78,620

Account Title		Sequesterable Base
Immigration user fee		
(11-15-5087-751)	401(C) Authority	92,000
	Outlays	85,428
Federal Prison System		
Buildings and facilities		
(11-20-1003-753)	Budget Authority	209,469
	Outlays	20,947
National Institute of Corrections		
(11-20-1004-754)	Budget Authority	10,005
	Outlays	4,002
Salaries and expenses		
(11-20-1060-753)	Budget Authority	798,878
	401(C) Authority--Off. Coll.	11,825
	Outlays	753,184
Federal Prison Industries, Incorporated		
(11-20-4500-753)	Obligation limitation	2,347
	Outlays	2,347
Office of Justice Programs		
Justice assistance		
(11-21-0401-754)	Budget Authority	238,052
	Outlays	88,079
Crime Victims Fund		
(11-21-5041-754)	Outlays	42,500
Department of Justice		
Total	Budget Authority	5,417,186
	401(C) Authority	188,786
	401(C) Authority--Off. Coll.	58,231
	Obligation limitation	2,347
	Outlays	4,410,331
Department of Labor		
Employment and Training Administration		
Program administration		
(12-05-0172-504)	Budget Authority	74,572
	Outlays	59,658
Training and employment services		
(12-05-0174-504)	Budget Authority	3,956,817
	Outlays	122,630
Community service employment for older Americans		
(12-05-0175-504)	Budget Authority	343,848
	Outlays	68,770
State unemployment insurance and employment services		
(12-05-0179-504)	Budget Authority	23,254
	Outlays	5,209
Federal unemployment benefits and allowances		
(12-05-0326-603)	Budget Authority	134,000
	Outlays	134,000
Adv. to the unemployment trust fund & other funds (Unemploym		
(12-05-0327-603)	Budget Authority	22,000
	Outlays	22,000
Unemployment trust fund (Training and employment)		
(12-05-8042-504)	Obligation limitation	997,202
	Outlays	398,881
Unemployment trust fund (Unemployment compensation)		
(12-05-8042-603)	Obligation limitation	1,914,247
	Outlays	1,914,247
Labor-Management Services		
Salaries and expenses		
(12-10-0104-505)	Budget Authority	81,229
	Outlays	70,750

Account Title		Sequesterable Base
Pension Benefit Guaranty Corporation		
Pension Benefit Guaranty Corporation fund		
(12-12-4204-601)	Obligation limitation	40,552
	Outlays	40,552
Employment Standards Administration		
Salaries and expenses		
(12-15-0105-505)	Budget Authority	218,453
	401(C) Authority--Off. Coll.	1,500
	Outlays	188,933
Black lung disability trust fund		
(12-15-8144-601)	Budget Authority	55,810
	Outlays	55,810
Special workers' compensation expenses		
(12-15-9971-601)	Obligation limitation	494
	Outlays	494
Occupational Safety and Health Administration		
Salaries and expenses		
(12-18-0400-554)	Budget Authority	246,494
	Outlays	214,450
Mine Safety and Health Administration		
Salaries and expenses		
(12-19-1200-554)	Budget Authority	168,683
	Outlays	153,502
Bureau of Labor Statistics		
Salaries and expenses		
(12-20-0200-505)	Budget Authority	186,717
	401(C) Authority--Off. Coll.	626
	Outlays	167,282
Departmental Management		
Inspector General salaries and expenses		
(12-25-0106-505)	Budget Authority	39,200
	Outlays	29,641
Salaries and expenses		
(12-25-0165-505)	Budget Authority	120,878
	Outlays	105,406
Department of Labor		
Total	Budget Authority	5,670,955
	401(C) Authority--Off. Coll.	2,126
	Obligation limitation	2,952,495
	Outlays	3,752,215
Department of State		
Administration of Foreign Affairs		
Salaries and expenses		
(14-05-0113-153)	Budget Authority	1,770,534
	Outlays	1,398,722
Protection of foreign missions and officials		
(14-05-0520-153)	Budget Authority	9,342
	Outlays	3,737
Emergencies in the diplomatic and consular service		
(14-05-0522-153)	Budget Authority	4,152
	Direct Loan Limitation	700
	Outlays	2,848
Payment to the American Institute in Taiwan		
(14-05-0523-153)	Budget Authority	11,418
	Outlays	9,614
Acquisition and maintenance of buildings abroad		
(14-05-0535-153)	Budget Authority	325,217
	401(C) Authority--Off. Coll.	6,633
	Outlays	66,473

Account Title		Sequesterable Base
Representation allowances		
(14-05-0545-153)	Budget Authority	4,671
	Outlays	4,012
International Organizations and Conferences		
Contributions for international peacekeeping activities		
(14-10-1124-153)	Budget Authority	30,517
	Outlays	30,517
International conferences and contingencies		
(14-10-1125-153)	Budget Authority	6,231
	Outlays	4,237
Contributions to international organizations		
(14-10-1126-153)	Budget Authority	498,240
	401(C) Authority--Off. Coll.	862
	Outlays	474,190
International Commissions		
Salaries and expenses, IBWC		
(14-15-1069-301)	Budget Authority	10,791
	Outlays	9,280
Construction, IBWC		
(14-15-1078-301)	Budget Authority	3,290
	Outlays	658
American sections, international commissions		
(14-15-1082-301)	Budget Authority	4,523
	Outlays	3,058
International fisheries commissions		
(14-15-1087-302)	Budget Authority	10,948
	Outlays	10,937
Other		
United States emergency refugee and migration assistance fun		
(14-25-0040-151)	Budget Authority	24,912
	Outlays	2,093
Anti-terrorism assistance		
(14-25-0114-152)	Budget Authority	10,214
	Outlays	4,596
Soviet-East European research and training		
(14-25-0118-153)	Budget Authority	4,775
	Outlays	2,865
Payment to the Asia Foundation		
(14-25-0525-153)	Budget Authority	14,221
	Outlays	12,088
International narcotics control		
(14-25-1022-151)	Budget Authority	102,565
	Outlays	35,898
Migration and refugee assistance		
(14-25-1143-151)	Budget Authority	359,725
	Outlays	241,016
U.S. bilateral science and technology agreements		
(14-25-1151-153)	Budget Authority	1,972
	Outlays	1,972
Fisherman's protective fund		
(14-25-5116-376)	Budget Authority	995
Fisherman's guaranty fund		
(14-25-5121-376)	Budget Authority	1,791
	Outlays	1,343
International Center, Washington, D.C.		
(14-25-5151-153)	401(C) Authority	410
	Outlays	410
Department of State		
Total	Budget Authority	3,211,044

Account Title		Sequesterable Base
	401(C) Authority	410
	401(C) Authority--Off. Coll.	7,495
	Direct Loan Limitation	700
	Outlays	2,320,564
Department of Transportation		
Federal Highway Administration		
Access highways to public recreation areas on certain lakes		
(21-05-0503-401)	Budget Authority	1,854
	Outlays	371
Motor carrier safety		
(21-05-0552-401)	Budget Authority	23,935
	Outlays	20,345
Railroad-highway crossings demonstration projects		
(21-05-0557-401)	Budget Authority	2,695
	Outlays	539
Waste isolation pilot projects roads		
(21-05-0562-401)	Budget Authority	16,093
	Outlays	3,219
Expressway gap closing demonstration project		
(21-05-0563-401)	Budget Authority	8,185
	Outlays	1,637
Trust fund share of other highway programs		
(21-05-8009-401)	Budget Authority	5,391
	Outlays	1,078
Baltimore-Washington Parkway		
(21-05-8014-401)	Budget Authority	14,792
	Outlays	2,958
Highway safety research and development		
(21-05-8017-401)	Budget Authority	6,903
	Outlays	1,380
Highway-related safety grants		
(21-05-8019-401)	401(C) Authority	10,000
	Obligation limitation	9,762
	Outlays	1,952
Motor carrier safety grants		
(21-05-8048-401)	401(C) Authority	60,000
	Obligation limitation	48,778
	Outlays	17,072
Federal-aid highways		
(21-05-8083-401)	401(C) Authority	13,701,929
	401(C) Authority--Off. Coll.	1,500
	Obligation limitation	12,227,640
	Outlays	2,104,654
Right-of-way revolving fund (trust revolving fund)		
(21-05-8402-401)	Direct Loan Limitation	47,184
	Outlays	47,184
Miscellaneous appropriations		
(21-05-9911-401)	Budget Authority	12,425
	Outlays	2,485
Miscellaneous trust funds--Highway		
(21-05-9972-401)	Budget Authority	43,586
	Outlays	8,717
National Highway Traffic Safety Administration		
Operations and research		
(21-10-0650-401)	Budget Authority	65,320
	Outlays	42,458
Trust fund share of operations and research		
(21-10-8016-401)	Budget Authority	31,665
	Outlays	20,582

Account Title		Sequesterable Base
State and community highway safety grants		
(21-10-8020-401)	401(C) Authority	126,000
	Obligation limitation	133,365
	Outlays	53,346
Federal Railroad Administration		
Northeast corridor improvement program		
(21-16-0123-401)	Budget Authority	27,611
	Outlays	2,761
Office of the Administrator		
(21-16-0700-401)	Budget Authority	23,954
	Outlays	18,605
Railroad safety		
(21-16-0702-401)	Budget Authority	29,408
	Outlays	23,526
Grants to National Railroad Passenger Corporation		
(21-16-0704-401)	Budget Authority	602,870
	Outlays	542,583
Railroad safety research and development		
(21-16-0745-401)	Budget Authority	9,657
	Outlays	5,794
Urban Mass Transportation Administration		
Urban mass transportation fund, administrative expenses		
(21-20-1120-401)	Budget Authority	33,541
	Outlays	30,187
Research, training and human resources		
(21-20-1121-401)	Budget Authority	12,681
	Outlays	3,804
Interstate transfer grants		
(21-20-1127-401)	Budget Authority	128,193
	Outlays	19,229
Washington metro		
(21-20-1128-401)	Budget Authority	187,359
	Outlays	9,368
Formula grants		
(21-20-1129-401)	Budget Authority	1,802,438
	Outlays	688,754
Discretionary grants		
(21-20-8191-401)	401(C) Authority	1,250,000
	Obligation limitation	1,173,459
	Outlays	105,422
Federal Aviation Administration		
Operations		
(21-25-1301-402)	Budget Authority	2,445,010
	401(C) Authority--Off. Coll.	9,100
	Outlays	2,188,949
Headquarters administration		
(21-25-1302-402)	Budget Authority	37,339
	Outlays	31,789
Trust fund share of FAA Operations		
(21-25-8104-402)	Budget Authority	869,500
	401(C) Authority	750
	Outlays	870,200
Grants-in-aid for airports (Airport and airway trust fund)		
(21-25-8106-402)	401(C) Authority	1,687,544
	Obligation limitation	1,316,937
	Outlays	197,540
Facilities and equipment (Airport and airway trust fund)		
(21-25-8107-402)	Budget Authority	1,151,315
	401(C) Authority--Off. Coll.	2,821

Account Title		Sequesterable Base
	Outlays	94,926
Research, engineering & development (Airport & airway trust		
(21-25-8108-402)	Budget Authority	159,860
	401(C) Authority--Off. Coll.	400
	Outlays	104,309
Coast Guard		
Operating expenses		
(21-30-0201-403)	Budget Authority	1,865,985
	401(C) Authority--Off. Coll.	4,000
	Outlays	1,590,087
Acquisition, construction, and improvements		
(21-30-0240-403)	Budget Authority	256,717
	Outlays	28,239
Retired pay (Coast Guard)		
(21-30-0241-403)	Budget Authority	41,900
	Outlays	41,900
Reserve training		
(21-30-0242-403)	Budget Authority	66,157
	Outlays	57,557
Research, development, test, and evaluation		
(21-30-0243-403)	Budget Authority	19,835
	Outlays	6,744
Alteration of bridges		
(21-30-0244-403)	Budget Authority	976
	Outlays	224
Offshore oil pollution compensation fund		
(21-30-5167-304)	Obligation limitation	59,166
Pollution fund		
(21-30-5168-304)	401(C) Authority	5,700
	Outlays	2,257
Deepwater port liability fund		
(21-30-5170-304)	Obligation limitation	49,305
Boat safety		
(21-30-8149-403)	Budget Authority	45,776
	Obligation limitation	22,187
	Outlays	30,128
Maritime Administration		
Operations and training		
(21-35-1750-403)	Budget Authority	79,056
	Outlays	67,198
Federal ship financing fund		
(21-35-4301-403)	Obligation limitation	3,600
	Outlays	3,420
Saint Lawrence Seaway Development Corporation		
Operations and maintenance		
(21-40-8003-403)	Budget Authority	11,348
	Outlays	11,348
Office of the Inspector General		
Salaries and expenses		
(21-45-0130-407)	Budget Authority	29,390
	Outlays	25,393
Research and Special Programs Administration		
Research and special programs		
(21-50-0104-407)	Budget Authority	13,450
	Outlays	8,877
Pipeline safety		
(21-50-5172-407)	Budget Authority	8,921
	Outlays	8,858
Office of the Secretary		

Account Title		Sequesterable Base
Salaries and expenses		
(21-55-0102-407)	Budget Authority	37,940
	Outlays	34,147
Transportation planning, research, and development		
(21-55-0142-407)	Budget Authority	5,229
	Outlays	2,076
Payments to air carriers, DOT		
(21-55-0150-402)	Budget Authority	24,652
	Outlays	19,722
Working capital fund		
(21-55-4520-407)	Budget Authority	1,874
	Outlays	1,874
Department of Transportation		
Total	Budget Authority	10,262,786
	401(C) Authority	16,841,923
	401(C) Authority--Off. Coll.	17,821
	Obligation limitation	15,044,199
	Direct Loan Limitation	47,184
	Outlays	9,207,772
Department of the Treasury		
Departmental Offices		
Salaries and expenses		
(15-05-0101-803)	Budget Authority	83,189
	401(C) Authority--Off. Coll.	4,884
	Outlays	76,410
Federal Law Enforcement Training Center		
Salaries and expenses		
(15-08-0104-751)	Budget Authority	30,023
	Outlays	27,021
Financial Management Service		
Salaries and expenses		
(15-10-1801-803)	Budget Authority	276,582
	Outlays	240,626
Payments to the Farm Credit System Financial Asst. Corp.		
(15-10-1850-351)	Budget Authority	86,000
	Outlays	86,000
Saint Lawrence Seaway toll rebate program		
(15-10-8865-808)	Budget Authority	10,084
	Outlays	9,882
Federal Financing Bank Activities		
Federal Financing Bank		
(15-11-4521-803)	401(C) Authority--Off. Coll.	2,740
	Outlays	2,740
Bureau of Alcohol, Tobacco and Firearms		
Salaries and expenses		
(15-13-1000-751)	Budget Authority	228,700
	Outlays	205,830
United States Customs Service		
Salaries and expenses		
(15-15-0602-751)	Budget Authority	1,014,535
	401(C) Authority	96,100
	Outlays	944,039
Operation and maintenance, air interdiction program		
(15-15-0604-751)	Budget Authority	145,320
	Outlays	79,926
Payments to the Government of Puerto Rico		
(15-15-0606-751)	Budget Authority	8,096
	Outlays	8,096
Customs forfeiture fund		

Account Title		Sequesterable Base
(15-15-5693-803)	Budget Authority	10,411
	Outlays	10,411
Customs services at small airports		
(15-15-5694-808)	Budget Authority	515
	Outlays	515
Refunds, transfers and expenses, unclaimed and seized goods		
(15-15-8789-803)	401(C) Authority	17,230
	Outlays	17,230
Bureau of Engraving and Printing		
Bureau of Engraving and Printing fund		
(15-20-4502-803)	401(C) Authority--Off. Coll.	7,000
	Outlays	7,000
United States Mint		
Salaries and expenses		
(15-25-1616-803)	Budget Authority	44,170
	401(C) Authority--Off. Coll.	109,957
	Outlays	147,502
Bureau of the Public Debt		
Administering the public debt		
(15-35-0560-803)	Budget Authority	224,493
	Outlays	180,044
Internal Revenue Service		
Salaries and expenses		
(15-45-0911-803)	Budget Authority	91,506
	Outlays	71,375
Processing tax returns and executive direction		
(15-45-0912-803)	Budget Authority	1,807,403
	Outlays	1,445,922
Examinations and appeals		
(15-45-0913-803)	Budget Authority	1,870,770
	Outlays	1,721,109
Investigation, collection, and taxpayer service		
(15-45-0914-803)	Budget Authority	1,548,809
	Outlays	1,393,928
Federal tax lien revolving fund		
(15-45-4413-803)	401(C) Authority--Off. Coll.	5,000
	Outlays	5,000
United States Secret Service		
Contribution for annuity benefits		
(15-55-1407-751)	401(C) Authority	15,000
	Outlays	15,000
Salaries and expenses		
(15-55-1408-751)	Budget Authority	385,094
	Outlays	308,076
Department of the Treasury		
Total	Budget Authority	7,865,680
	401(C) Authority	128,330
	401(C) Authority--Off. Coll.	129,581
	Outlays	7,003,682
Environmental Protection Agency		
Environmental Protection Agency		
Construction grants		
(20-00-0103-304)	Budget Authority	2,391,452
	Outlays	83,704
Research and development (Energy supply)		
(20-00-0107-271)	Budget Authority	52,155
	Outlays	15,125
Research and development (Pollution control and abatement)		
(20-00-0107-304)	Budget Authority	141,276

Account Title		Sequesterable Base
	Outlays	40,970
Abatement, control, and compliance		
(20-00-0108-304)	Budget Authority	629,227
	Outlays	283,152
Buildings and facilities		
(20-00-0110-304)	Budget Authority	24,393
	Outlays	4,147
Salaries and expenses		
(20-00-0200-304)	Budget Authority	804,489
	401(C) Authority--Off. Coll.	1,800
	Outlays	685,616
Payment to the hazardous substance superfund		
(20-00-0250-304)	Budget Authority	248,186
Revolving fund for certification and other services		
(20-00-4311-304)	401(C) Authority--Off. Coll.	1,500
	Outlays	1,500
Hazardous substance superfund		
(20-00-8145-304)	Budget Authority	1,172,985
	401(C) Authority--Off. Coll.	13,200
	Obligation limitation	192,173
	Outlays	247,797
Leaking underground storage tank trust fund		
(20-00-8153-304)	Budget Authority	15,014
	Obligation limitation	5,049
	Outlays	2,252
Environmental Protection Agency		
Total	Budget Authority	5,479,277
	401(C) Authority--Off. Coll.	16,500
	Obligation limitation	197,222
	Outlays	1,364,263
General Services Administration		
Real Property Activities		
Federal buildings fund		
(23-05-4542-804)	401(C) Authority--Off. Coll.	6,120
	Outlays	6,120
Personal Property Activities		
Federal supply service		
(23-10-0116-804)	Budget Authority	49,224
	Outlays	47,747
Expenses of transportation audit contracts		
(23-10-5246-804)	Outlays	15,000
Information Resources Management Service		
Operating expenses, information resources management service		
(23-15-0900-804)	Budget Authority	32,760
	Outlays	27,846
Federal Property Resources Activities		
Operating expenses, federal property resources service (Gene		
(23-25-0533-804)	Budget Authority	12,449
	Outlays	7,905
Real property relocation		
(23-25-0535-804)	Budget Authority	5,190
	Outlays	2,500
Expenses, disposal of surplus real and related personal prop		
(23-25-5254-804)	Outlays	2,284
General Activities		
Allowances and office staff for former Presidents		
(23-30-0105-802)	Budget Authority	918
	Outlays	826
Office of Inspector General		

Account Title		Sequesterable Base
(23-30-0108-804)	Budget Authority	25,650
	Outlays	23,342
General management and administration, salaries and expenses		
(23-30-0110-804)	Budget Authority	128,731
	Outlays	102,985
Consumer information center fund		
(23-30-4549-376)	Budget Authority	1,343
	401(C) Authority--Off. Coll.	382
	Outlays	578
General Services Administration		
Total	Budget Authority	256,265
	401(C) Authority--Off. Coll.	6,502
	Outlays	237,133
National Aeronautics and Space Administration		
National Aeronautics and Space Administration		
Research and program management (Space flight)		
(26-00-0103-253)	Budget Authority	873,789
	401(C) Authority--Off. Coll.	5,000
	Outlays	720,633
Research & program management (Space science, applications,		
(26-00-0103-254)	Budget Authority	568,787
	Outlays	514,184
Research & program management (Supporting space activities)		
(26-00-0103-255)	Budget Authority	71,989
	Outlays	51,832
Research and program management (Air transportation)		
(26-00-0103-402)	Budget Authority	334,732
	Outlays	301,259
Space Flight, Control, and Data Comm.		
(26-00-0105-250)	401(C) Authority--Off. Coll.	8,368
	Outlays	8,368
Space Flight, Control, and Data Comm. (space flight)		
(26-00-0105-253)	Budget Authority	3,037,499
	Outlays	2,035,124
Space Flight, Control, and Data Comm. (supporting act.)		
(26-00-0105-255)	Budget Authority	915,866
	Outlays	476,250
Construction of facilities (Space flight)		
(26-00-0107-253)	Budget Authority	17,854
	Outlays	1,714
Construction of facilities (Space science, applications, etc		
(26-00-0107-254)	Budget Authority	8,927
	Outlays	545
Construction of facilities (Supporting space activities)		
(26-00-0107-255)	Budget Authority	113,840
	Outlays	9,563
Construction of facilities (Air transportation)		
(26-00-0107-402)	Budget Authority	44,426
	Outlays	222
Research and development (Space flight)		
(26-00-0108-253)	Budget Authority	959,170
	401(C) Authority--Off. Coll.	5,781
	Outlays	470,978
Research and development (Space science, applications, etc)		
(26-00-0108-254)	Budget Authority	1,953,841
	Outlays	920,259
Research and development (Supporting space activities)		
(26-00-0108-255)	Budget Authority	18,580
	Outlays	11,092

Account Title		Sequesterable Base
Research and development (Air transportation)		
(26-00-0108-402)	Budget Authority	371,181
	Outlays	213,058
National Aeronautics and Space Administration		
Total	Budget Authority	9,290,481
	401(C) Authority--Off. Coll.	19,149
	Outlays	5,735,081
Office of Personnel Management		
Office of Personnel Management		
Salaries and expenses		
(27-00-0100-805)	Budget Authority	107,169
	Outlays	101,811
Government payment for annuitants, employees health benefits		
(27-00-0206-551)	Budget Authority	2,374,414
Revolving fund		
(27-00-4571-805)	401(C) Authority--Off. Coll.	851
	Outlays	851
Civil service retirement and disability fund		
(27-00-8135-602)	Obligation limitation	65,187
	Outlays	65,187
Employees life insurance fund		
(27-00-8424-602)	Obligation limitation	1,050
	Outlays	1,050
Employees health benefits fund		
(27-00-8440-551)	Obligation limitation	10,650
	Outlays	10,650
Retired employees health benefits fund		
(27-00-8445-551)	Obligation limitation	126
	Outlays	126
Office of Personnel Management		
Total	Budget Authority	2,481,583
	401(C) Authority--Off. Coll.	851
	Obligation limitation	77,013
	Outlays	179,675
Small Business Administration		
Small Business Administration		
Salaries and expenses		
(28-00-0100-376)	Budget Authority	237,286
	Outlays	173,693
Pollution control equipment contract guarantee revolving fun		
(28-00-4147-376)	Guaranteed Loan Limitation	51,900
Disaster loan fund		
(28-00-4153-453)	Direct Loan Limitation	363,300
	Outlays	163,485
Business loan and investment fund		
(28-00-4154-376)	Budget Authority	99,656
	Direct Loan Limitation	88,230
	Guaranteed Loan Limitation	3,882,950
	Outlays	69,421
Surety bond guarantees revolving fund		
(28-00-4156-376)	Guaranteed Loan Limitation	1,621,875
Small Business Administration		
Total	Budget Authority	336,842
	Direct Loan Limitation	451,530
	Guaranteed Loan Limitation	5,556,725
	Outlays	406,599
Veterans Administration		
Veterans Administration		
Construction, major projects		

Account Title		Sequesterable Base
(29-00-0110-703)	Budget Authority	418,225
	Outlays	8,783
Construction, minor projects		
(29-00-0111-703)	Budget Authority	121,014
	Outlays	47,106
Readjustment benefits		
(29-00-0137-702)	Budget Authority	589,806
	Outlays	565,330
Grants to the Republic of the Philippines		
(29-00-0144-703)	Budget Authority	498
General operating expenses		
(29-00-0151-705)	Budget Authority	814,755
	Outlays	749,575
Medical administration and miscellaneous operating expenses		
(29-00-0152-703)	Budget Authority	49,009
	Outlays	36,757
Burial benefits and miscellaneous assistance		
(29-00-0155-701)	Budget Authority	132,956
	Outlays	132,801
Medical care		
(29-00-0160-703)	Budget Authority	810,213
	Budget Authority--Spec. Rules	189,970
	401(C) Authority--Spec. Rules	477
	Outlays	875,636
Medical and prosthetic research		
(29-00-0161-703)	Budget Authority	203,816
	Outlays	166,314
Grants for construction of state extended care facilities		
(29-00-0181-703)	Budget Authority	41,852
Direct loan revolving fund		
(29-00-4024-704)	Direct Loan Limitation	1,039
Vocational rehabilitation revolving fund		
(29-00-4114-702)	Direct Loan Limitation	750
Education loan fund		
(29-00-4118-702)	Direct Loan Limitation	18
	Outlays	18
Parking garage revolving fund		
(29-00-4538-703)	Budget Authority	4,090
	401(C) Authority--Off. Coll.	875
	Outlays	1,079
Veterans Administration		
Total	Budget Authority	3,186,234
	Budget Authority--Spec. Rules	189,970
	401(C) Authority--Off. Coll.	875
	401(C) Authority--Spec. Rules	477
	Direct Loan Limitation	1,807
	Outlays	2,583,399
Other Independent Agencies		
ACTION		
Operating expenses		
(30-01-0103-506)	Budget Authority	169,676
	Outlays	102,993
Administrative Conference of the United States		
Salaries and expenses		
(30-02-1700-751)	Budget Authority	1,959
	Outlays	1,567
Advisory Committee on Federal Pay		
Salaries and expenses		
(30-05-1800-805)	Budget Authority	210

Account Title		Sequesterable Base
	Outlays	168
Advisory Council on Historic Preservation		
Salaries and expenses		
(30-10-2300-303)	Budget Authority	1,809
	Outlays	1,737
American Battle Monuments Commission		
Salaries and expenses		
(30-12-0100-705)	Budget Authority	13,081
	Outlays	9,418
Architectural & Transportation Barriers Compliance		
Salaries and expenses		
(30-14-3200-751)	Budget Authority	1,987
	Outlays	1,470
Arms Control and Disarmament Agency		
Arms control and disarmament activities		
(30-17-0100-153)	Budget Authority	31,041
	Outlays	20,580
Barry Goldwater Scholarship Foundation		
Barry Goldwater Scholarship and Excellence in Educ. Foundati		
(30-18-8281-502)	Obligation limitation	1,150
	Outlays	720
Board for International Broadcasting		
Grants and expenses		
(30-19-1145-154)	Budget Authority	192,043
	Outlays	184,361
Israel Relay Station		
(30-19-1146-154)	Budget Authority	35,294
	Outlays	25,482
Commission of Fine Arts		
Salaries and expenses		
(30-32-2600-451)	Budget Authority	467
	Outlays	428
National capital arts and cultural affairs		
(30-32-2602-503)	Budget Authority	4,671
	Outlays	4,671
Commission on Civil Rights		
Salaries and expenses		
(30-35-1900-751)	Budget Authority	5,991
	Outlays	5,092
Committee for Purchase from the Blind & others		
Salaries and expenses		
(30-37-2000-505)	Budget Authority	893
	Outlays	854
Commodity Futures Trading Commission		
Commodity Futures Trading Commission		
(30-38-1400-376)	Budget Authority	34,678
	Outlays	30,170
Consumer Product Safety Commission		
Product safety		
(30-41-0100-554)	Budget Authority	34,400
	401(C) Authority--Off. Coll.	10
	Outlays	29,250
Corporation for Public Broadcasting		
Public broadcasting fund		
(30-42-0151-503)	401(C) Authority	228,000
	Outlays	228,000
District of Columbia		
Federal payment to D.C. (St. Elizabeth's Hospital)		
(30-43-1700-806)	Budget Authority	562,700

Account Title		Sequesterable Base
	401(C) Authority	20,000
	Outlays	567,157
Equal Employment Opportunity Commission		
Salaries and expenses		
(30-46-0100-751)	Budget Authority	190,241
	Outlays	167,987
Export-Import Bank of the United States		
Export-Import Bank of the United States		
(30-48-4027-155)	Budget Authority	114,180
	Obligation limitation	20,531
	Direct Loan Limitation	716,220
	Guaranteed Loan Limitation	10,380,000
	Outlays	145,870
Farm Credit Administration		
Revolving fund for administrative expenses		
(30-52-4131-351)	Obligation limitation	36,848
	Outlays	36,848
Federal Communications Commission		
Salaries and expenses		
(30-60-0100-376)	Budget Authority	104,963
	Outlays	98,141
Federal Election Commission		
Salaries and expenses		
(30-65-1600-808)	Budget Authority	14,874
	Outlays	13,387
Federal Emergency Management Agency		
Salaries and expenses (Defense-related activities)		
(30-67-0100-054)	Budget Authority	74,807
	Outlays	67,326
Salaries and expenses (Disaster relief and insurance)		
(30-67-0100-453)	Budget Authority	57,744
	Outlays	51,970
Emergency planning and assistance (Defense-related activitie		
(30-67-0101-054)	Budget Authority	255,672
	Outlays	140,620
Emergency planning and assistance (Community development)		
(30-67-0101-453)	Budget Authority	27,179
	Outlays	14,948
Emergency food and shelter		
(30-67-0103-605)	Budget Authority	118,332
	Outlays	118,332
Disaster relief		
(30-67-0104-453)	Budget Authority	119,370
	Outlays	47,748
National insurance development fund		
(30-67-4235-451)	401(C) Authority	15,961
	Outlays	299
Federal Labor Relations Authority		
Salaries and expenses		
(30-70-0100-805)	Budget Authority	18,503
	Outlays	16,394
Federal Maritime Commission		
Salaries and expenses		
(30-72-0100-403)	Budget Authority	14,294
	Outlays	12,865
Federal Mediation and Conciliation Service		
Salaries and expenses		
(30-76-0100-505)	Budget Authority	25,809
	Outlays	23,667

Account Title	Sequesterable Base
Federal Mine Safety and Health Review Commission	
Salaries and expenses	
(30-79-2800-554) Budget Authority	4,111
Outlays	3,864
Federal Retirement Thrift Investment Board	
Program expenses	
(30-81-5290-803) Obligation limitation	15,396
Outlays	15,396
Federal Trade Commission	
Salaries and expenses	
(30-84-0100-376) Budget Authority	69,797
Outlays	63,975
Harry S Truman Scholarship Foundation	
Harry S Truman memorial scholarship trust fund	
(31-01-8296-502) Obligation limitation	2,125
Outlays	3,010
Christopher Columbus Quincentennary Jubilee Commis	
Salaries and expenses	
(31-03-0800-376) Budget Authority	220
Outlays	197
Commission on the Bicentennial of the U.S. Constit	
Salaries and expenses	
(31-04-0054-808) Budget Authority	21,873
Outlays	4,375
Franklin Delano Roosevelt Memorial Commission	
Salaries and expenses	
(31-05-0700-808) Budget Authority	28
Outlays	23
Intelligence Community Staff	
Intelligence community staff	
(31-07-0400-054) Budget Authority	23,988
Outlays	15,592
Advisory Commission on Intergovernmental Relations	
Salaries and expenses	
(31-08-0100-808) Budget Authority	1,445
Outlays	1,228
Appalachian Regional Commission	
Appalachian regional development programs	
(31-09-0200-452) Budget Authority	110,700
Outlays	7,860
Delaware River Basin Commission	
Salaries and expenses	
(31-10-0100-301) Budget Authority	205
Outlays	191
Contribution to Delaware River Basin Commission	
(31-10-0102-301) Budget Authority	263
Outlays	263
Interstate Commission on the Potomac River Basin	
Contribution to Interstate Commission on the Potomac River B	
(31-11-0446-304) Budget Authority	379
Outlays	379
Susquehanna River Basin Commission	
Salaries and expenses	
(31-12-0500-301) Budget Authority	192
Outlays	181
Contribution to Susquehanna River Basin Commission	
(31-12-0501-301) Budget Authority	262
Outlays	262
International Trade Commission	

Account Title	Sequesterable Base
Salaries and expenses	
(31-17-0100-153) Budget Authority	36,491
Outlays	31,419
Interstate Commerce Commission	
Salaries and expenses	
(31-19-0100-401) Budget Authority	46,695
Outlays	42,026
James Madison Memorial Fellowship Foundation	
James Madison Memorial Fellowship Foundation	
(31-20-0200-502) 401(C) Authority	10,000
Outlays	10,000
James Madison Memorial Fellowship Trust Fund	
(31-20-8282-502) Obligation limitation	250
Outlays	250
Japan-United States Friendship Commission	
Japan-United States friendship trust fund	
(31-21-8025-154) Budget Authority	1,248
Outlays	1,248
Legal Services Corporation	
Payment to the Legal Services Corporation	
(31-22-0501-752) Budget Authority	317,109
Outlays	276,202
Marine Mammal Commission	
Salaries and expenses	
(31-23-2200-302) Budget Authority	1,003
Outlays	891
Merit Systems Protection Board	
Salaries and expenses	
(31-24-0100-805) Budget Authority	22,039
Outlays	18,909
Office of the Special Counsel	
(31-24-0101-805) Budget Authority	4,926
Outlays	4,379
National Archives and Records Administration	
Operating expenses	
(31-26-0300-804) Budget Authority	121,608
Outlays	97,286
National archives trust fund	
(31-26-8436-804) 401(C) Authority--Off. Coll.	7,884
Outlays	7,884
National Capital Planning Commission	
Salaries and expenses	
(31-28-2500-451) Budget Authority	3,106
Outlays	2,858
National Commission on Libraries & Info. Science	
Salaries and expenses	
(31-30-2700-503) Budget Authority	755
Outlays	680
National Council on the Handicapped	
Salaries and expenses	
(31-32-3500-506) Budget Authority	935
Outlays	733
National Endowment for the Arts	
National Endowment for the Arts: Grants and administration	
(31-35-0100-503) Budget Authority	174,309
Outlays	59,259
National Endowment for the Humanities	
National Endowment for the Humanities: Grants and administra	
(31-36-0200-503) Budget Authority	145,971

Account Title		Sequesterable Base
	Outlays	67,384
Institute of Museum Services		
Institute of Museum Services		
(31-37-0300-503)	Budget Authority	22,790
	Outlays	6,015
National Labor Relations Board		
Salaries and expenses		
(31-39-0100-505)	Budget Authority	140,254
	Outlays	131,979
National Mediation Board		
Salaries and expenses		
(31-40-2400-505)	Budget Authority	7,379
	Outlays	5,874
National Science Foundation		
Research and related activities		
(31-45-0100-251)	Budget Authority	1,512,310
	Outlays	753,130
Science and engineering education activities		
(31-45-0106-251)	Budget Authority	144,768
	Outlays	21,570
U.S. Antarctic program		
(31-45-0200-251)	Budget Authority	129,792
	Outlays	64,247
National Transportation Safety Board		
Salaries and expenses		
(31-47-0310-407)	Budget Authority	25,242
	Outlays	22,788
Neighborhood Reinvestment Corporation		
Payment to the Neighborhood Reinvestment Corporation		
(31-49-1300-451)	Budget Authority	19,431
	Outlays	19,431
Nuclear Regulatory Commission		
Salaries and expenses		
(31-50-0200-276)	Budget Authority	420,000
	Outlays	315,000
Occupational Safety and Health Review Commission		
Salaries and expenses		
(32-02-2100-554)	Budget Authority	6,190
	Outlays	5,757
Panama Canal Commission		
Panama Canal revolving fund		
(32-07-4061-403)	Obligation limitation	50,287
	Outlays	47,773
Pennsylvania Avenue Development Corporation		
Salaries and expenses		
(32-08-0100-451)	Budget Authority	2,645
	Outlays	2,142
Public development		
(32-08-0102-451)	Budget Authority	3,114
	Outlays	2,336
Land acquisition and development fund		
(32-08-4084-451)	401(C) Authority--Off. Coll.	3,000
	Outlays	3,000
Postal Service		
Payment to the Postal Service fund		
(32-10-1001-372)	Budget Authority	536,646
	Outlays	536,646
Postal Service		
(32-10-4020-372)	401(C) Authority	1,059,000

Account Title		Sequesterable Base
	Outlays	1,094,000
Railroad Retirement Board		
Railroad social security equivalent benefit account		
(32-20-8010-601)	Obligation limitation	31,671
	Outlays	31,671
Rail Industry Pension Fund		
(32-20-8011-601)	Obligation limitation	28,563
	Outlays	28,563
Supplemental Annuity Pension Fund		
(32-20-8012-601)	401(C) Authority	117,618
	Obligation limitation	2,293
	Outlays	58,515
Securities and Exchange Commission		
Salaries and expenses		
(32-35-0100-376)	Budget Authority	142,339
	Outlays	129,528
Selective Service System		
Salaries and expenses		
(32-40-0400-054)	Budget Authority	26,714
	Outlays	21,933
Smithsonian Institution		
Salaries and expenses		
(32-50-0100-503)	Budget Authority	211,971
	Outlays	187,170
Construction and improvements, National Zoological Park		
(32-50-0129-503)	Budget Authority	8,468
	Outlays	3,811
Repair and restoration of buildings		
(32-50-0132-503)	Budget Authority	20,005
	Outlays	8,002
Construction		
(32-50-0133-503)	Budget Authority	1,366
	Outlays	546
Salaries and expenses, National Gallery of Art		
(32-50-0200-503)	Budget Authority	39,292
	Outlays	33,673
Salaries and expenses, Woodrow Wilson International Center		
(32-50-0400-503)	Budget Authority	4,216
	Outlays	2,589
Endowment challenge fund		
(32-50-8188-503)	401(C) Authority	60
	Outlays	60
Canal Zone biological area fund		
(32-50-8190-503)	401(C) Authority	150
	Outlays	130
Other Temporary Commissions		
State Justice Institute		
(33-02-0052-752)	Budget Authority	11,409
	Outlays	3,089
Navajo and Hopi Indian Relocation Commission		
(33-02-1100-808)	Budget Authority	26,270
	Outlays	16,550
Interagency Council on the Homeless		
(33-02-1300-604)	Budget Authority	779
Comm. for the Study of Int. Mig. and Coop. Econ. Dev: S and		
(33-02-1400-153)	Budget Authority	911
	Outlays	820
Tennessee Valley Authority		
TVA fund (Energy supply)		

Account Title		Sequesterable Base
(33-16-4110-271)	Obligation limitation	98,900
TVA fund (Area and regional development)		
(33-16-4110-452)	Budget Authority	103,000
	Obligation limitation	1,100
	Outlays	25,338
United States Holocaust Memorial Council		
Holocaust Memorial Council		
(33-19-3300-808)	Budget Authority	2,270
	Outlays	1,795
United States Information Agency		
Salaries and expenses		
(33-22-0201-154)	Budget Authority	648,920
	Outlays	511,998
East West Center		
(33-22-0202-154)	Budget Authority	20,760
	Outlays	19,618
Radio broadcasting to Cuba		
(33-22-0208-154)	Budget Authority	13,397
	Outlays	10,718
Educational and cultural exchange program		
(33-22-0209-154)	Budget Authority	155,742
	Outlays	70,863
National Endowment for Democracy		
(33-22-0210-154)	Budget Authority	17,516
	Outlays	7,006
United States Institute of Peace		
United States Institute of Peace		
(33-24-1300-153)	Budget Authority	4,491
	Outlays	4,491
United States Sentencing Commission		
Salaries and expenses		
(33-31-0938-752)	Budget Authority	6,537
	Outlays	6,014
Other Independent Agencies		
Total	Budget Authority	7,773,460
	401(C) Authority	1,450,789
	401(C) Authority--Off. Coll.	10,894
	Obligation limitation	289,114
	Direct Loan Limitation	716,220
	Guaranteed Loan Limitation	10,380,000
	Outlays	7,124,903
Allowances		
Allowances		
G-R-H aggregate spendout rate requirement		
(51-05-6070-929)	Outlays	655,000
Allowances		
Total	Outlays	655,000

Account Title		Sequesterable Base
REPORT TOTAL		
	Budget Authority	383,720,163
	Budget Authority--ASI	62,078
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Friday
August 26, 1988

Part IV

The President

Emergency Deficit Control Measures for Fiscal Year 1989

Initial Order of August 25, 1988

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Title 3—

The President

INITIAL ORDER

Emergency Deficit Control Measures for Fiscal Year 1989

By the authority vested in me as President under the Constitution and by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law No. 99-177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law No. 100-119) (hereafter referred to as "the Act"), and in accordance with the report of the Director of the Office of Management and Budget issued August 25, 1988, pursuant to section 251(a)(2)(B) of the Act, I hereby state, pursuant to section 252(a)(3), that no aggregate outlay reductions are required pending issuance of the revised report and final order.

This Order shall be reported to the Congress and shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,

August 25, 1988.

[FR Doc. 88-19707
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Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and subject/agency indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

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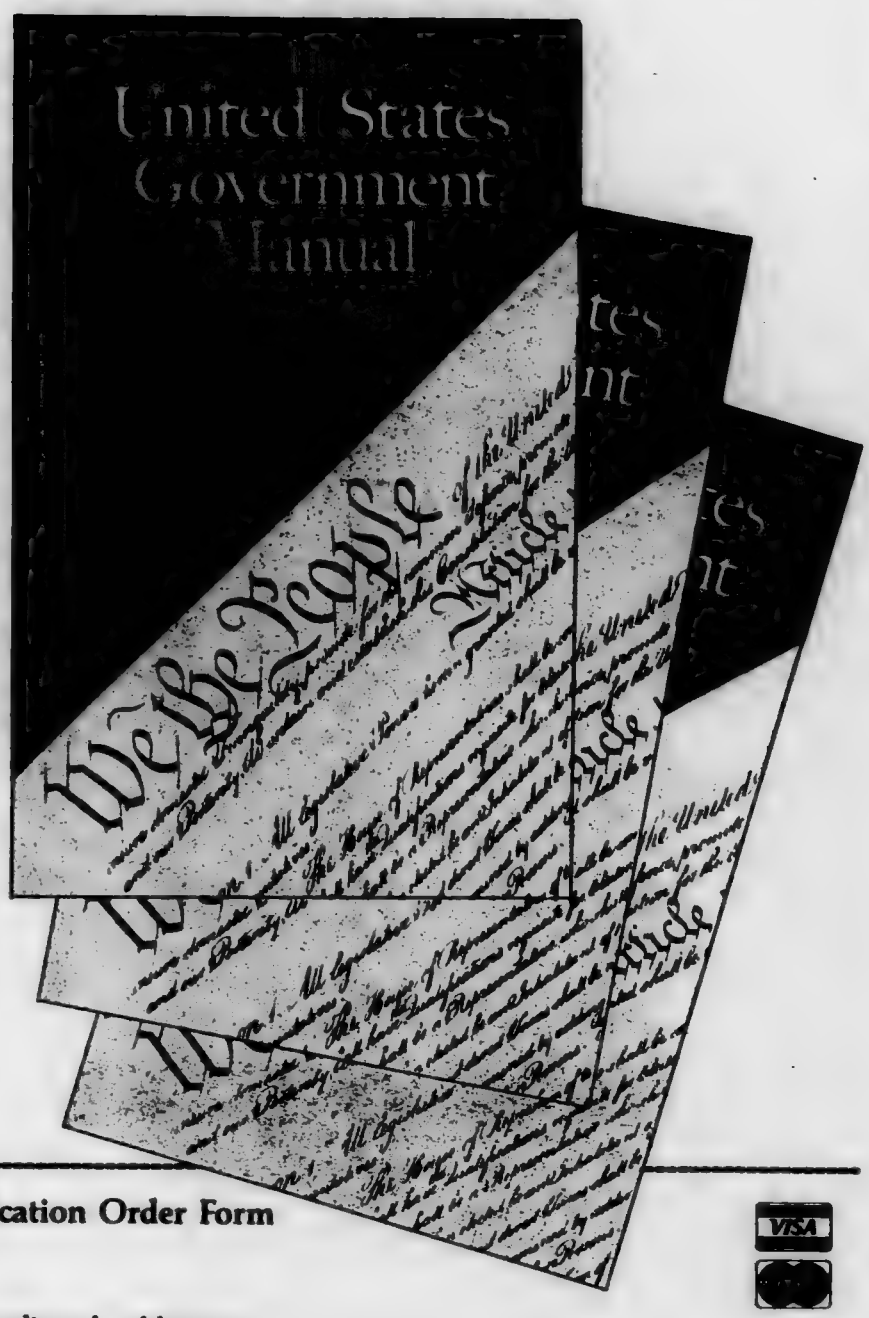

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Monday
August 29, 1988

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 13; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Doris Tucker, 202–523–3419

CHICAGO, IL

WHEN: September 19; at 9:15 a.m.
WHERE: Room 3320, Federal Building, 230 S. Dearborn St., Chicago, IL
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Presidential Documents

Title 3—

The President

Proclamation 5848 of August 22, 1988

Neurofibromatosis Awareness Month, 1989

By the President of the United States of America

A Proclamation

Neurofibromatosis is a potentially debilitating genetic disorder that causes tumors to develop in nervous system tissues. It affects one in 3,700 Americans. There are two known types of neurofibromatosis. The great majority of patients have NF–1, characterized by six or more dark patches on the skin and by tumors on peripheral nerves. The tumors can be severely disfiguring and painful and can also result in bone deformations and visual impairment. In the less common NF–2, tumors occur within the central nervous system, usually damaging nerves crucial to hearing and balance.

Individuals with neurofibromatosis, their families, and the health professionals who help them can all benefit from new guidelines for the diagnosis and management of this condition developed last year in a consensus conference at the National Institutes of Health. At the conference, scientists studying the genetics of neurofibromatosis presented particularly encouraging findings: They have determined that the gene defect that causes NF–1 lies on chromosome 17, and the defect for NF–2 on chromosome 22. These discoveries, medical experts agree, should soon lead to the development of diagnostic tests capable of definitively detecting neurofibromatosis gene carriers. As more is learned about the genetic defects in neurofibromatosis, scientists will be better able to design treatment strategies to assist those afflicted.

Private voluntary health agencies, chiefly the National Neurofibromatosis Foundation, are partners with the National Institute of Neurological and Communicative Disorders and Stroke in the fight against this tragic disorder. Countless families have been sustained and encouraged by support groups established by these agencies in most large American cities. These agencies also play an essential role in informing the health care professions and the general public about neurofibromatosis, about the needs of patients and families, and about the positive actions we can all undertake to ease their burdens.

To enhance public awareness of neurofibromatosis, the Congress, by House Joint Resolution 417, has designated May 1989 as "Neurofibromatosis Awareness Month" and authorized and requested the President to issue a proclamation in observance of that occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1989 as Neurofibromatosis Awareness Month. I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of August, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-19715
Filed 8-25-88; 5:12 pm]
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Presidential Documents

Proclamation 5849 of August 25, 1988

National Drive for Life Weekend, 1988

By the President of the United States of America

A Proclamation

Deaths from drunk driving on America's highways occur every hour of every day throughout the year. On average, someone is killed every 22 minutes, 65 people a day. Almost 24,000 people lost their lives last year in crashes involving alcohol.

These are not remote statistics. Two out of every five individuals in the United States will be involved in an alcohol-related crash at some time during their lives. Each of us is therefore a potential victim.

Our risk is greater on weekends, when alcohol consumption is heavier, and greatest on holiday weekends. We must remember, as we celebrate, that alcohol can turn a holiday into a tragedy. The responsibility belongs to each of us to see that this does not happen.

If we can begin with a single step, a single weekend, on which each of us can make a commitment not to drink and drive, it may be that we can demonstrate how individual commitments can produce life-saving results nationwide. Last year, a coalition headed by Mothers Against Drunk Driving sponsored the first National Drive for Life Day, campaigning for all Americans to pledge not to drink and drive on that day. The success of that first day has prompted calls for an expanded campaign.

The Congress, by Senate Joint Resolution 350, has designated the Labor Day weekend beginning on September 3, 1988, as "National Drive for Life Weekend" and authorized and requested the President to issue a proclamation in observance of that weekend.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the Labor Day weekend beginning September 3, 1988, as National Drive for Life Weekend. I ask each American to help improve the safety of our highways by pledging not to drink and drive on that weekend. I call upon the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, the Mayor of the District of Columbia, and the people of the United States to observe this weekend with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-19716
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Presidential Documents

Proclamation 5850 of August 25, 1988

Women's Equality Day, 1988

By the President of the United States of America

A Proclamation

Sixty-eight years ago, on August 26, 1920, the Nineteenth Amendment to the Constitution of the United States, granting women the right to vote, was ratified. The anniversary of this milestone is a fitting time to celebrate this achievement and to pay tribute to those who resolutely sought to secure this most basic right. It is also an appropriate time to reflect on the advances women have continued to make over the past seven decades in political participation and other areas, playing indispensable roles and offering leadership in family life, the economy, intellectual and artistic activity, business, the professions, and government.

On this day of historic significance, Americans everywhere should pause to salute women for their contributions to our land. Many have won a place in history and in the way we define ourselves as a people—for instance, Pocahontas and Sacagawea; Dolley Madison and Molly Pitcher; Sojourner Truth and Rosa Parks; Nellie Bly and Sally Ride; Helen Hayes and Kate Smith; Clara Barton and Clare Boothe Luce. They and countless other women, some widely known and many more known simply in family, village, office, or neighborhood, have helped make us and keep us a country both great and good.

Women continue to achieve. For instance, women's economic strides in recent years have been notable. More than 55 million women are now in the labor force, and women hold 60 percent of the more than 17 million new jobs created since 1982. Since November 1982, employment of women is up 19 percent. Many women hold high-paying managerial and professional jobs; women's entry into top management has grown greatly since 1980. Women's real median income grew more than 15 percent between 1981 and 1986. Women are starting small businesses at twice the rate of men, and the gap in wages is steadily closing.

Women's roles continue to grow in other areas, too, such as public service. In this Administration, 1,308 women have achieved senior policy-level positions, and, at all levels of government, 3,039 women have accepted at least one Presidential appointment. In just the first term of this Administration, 37 women served as Presidential assistants. During this Administration, 32 women have received lifetime appointments to the Federal judiciary, and one of them serves as a Supreme Court Justice. Four of the ten female Cabinet members in our entire history have served in this Administration.

On this day, let us recount women's accomplishments and celebrate. But let us also reaffirm, individually and as communities and a Nation, our determination to seek a future of increasing economic freedom, prosperity, and equal opportunity in which all our citizens can fully and freely develop their talents and reach for their dreams for the good of others.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1988, as Women's Equality Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-19717
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-25; Amdt. 39-5997]

Airworthiness Directives; Alexander Schleicher Models ASW-15 and ASW-15B Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Schleicher Models ASW-15 and ASW-15B gliders by individual priority letters. The AD requires visual inspection of the wing spar on Schleicher Models ASW-15 and ASW-15B gliders; and a more detailed inspection prior to further flight if damage is suspected, and if damage is not suspected no later than December 31, 1988. If no damage is evident during the more detailed inspection, the aircraft may continue in service until the results of the core analysis are obtained, but no later than March 1, 1989. If no damage is confirmed, the aircraft may continue in service for a period up to 1 year at which time the more detailed inspection must be repeated.

Confirmed damage to the spar requires repair or replacement before further flight. The AD is needed to prevent failure of the wing spar which could result in the loss of the wing and consequent loss of the glider.

DATES: *Effective*—September 12, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD 88-11-05, issued May 19, 1988, which contained this amendment.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the **Federal Register** as of September 12, 1988.

ADDRESSES: The technical information referenced in this amendment may be obtained from Eastern Sailplane, Heath Stage Route, Shelburne Falls, Massachusetts 01370, or Calistoga Soaring Center, 1546 Lincoln Avenue, Calistoga, California 94515; or may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, Rules Docket No. 88-ANE-25, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Munroe Dearing, Brussels Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 15 Rue de la Loi B-1040, Brussels, Belgium, telephone 513.38.30, extension 2710; or Mr. John J. Maher, New York Aircraft Certification Office, ANE-172, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6221.

SUPPLEMENTARY INFORMATION: On May 19, 1988, priority letter AD 88-11-05 was issued and made effective immediately to all known U.S. owners and operators of Schleicher Models ASW-15 and ASW-15B gliders. The AD provided for inspections and repair or replacement of the wing spar in accordance with instructions contained in Alexander Schleicher ASW-15 Technical Note (TN) No. 23, dated April 21, 1988. Compliance with TN No. 23 is required by Luftfahrt Bundesamt (LBA) AD 88-95 Schleicher, dated April 25, 1988. AD action was necessary to prevent failure of the wing spar and loss of a wing.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued May 19, 1988, to all known U.S. owners and operators of Schleicher Models ASW-15 and ASW-15B gliders. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket, otherwise an evaluation or analysis is not required. A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by Reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulation (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Alexander Schleicher: Applies to Schleicher Models ASW–15 and ASW–15B gliders certificated in all categories, including all conversions to motor gliders.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the wing spar, which could result in loss of the gliders, accomplish the following:

(a) Before further flight, unless already accomplished, visually inspect the wing spar, using an endoscope or a suitable mirror and light, in accordance with Action paragraphs 1.1 through 1.3 of Alexander Schleicher ASW–15 Technical Note (TN) No. 23, dated April 21, 1988.

(b) A more comprehensive inspection as delineated in Action paragraphs 2.1, 2.2, 3, and 4 may be substituted for the inspection specified in Action paragraphs 1.1 thru 1.3.

(c) If damage is found during the inspection of paragraph (a), accomplish the more comprehensive inspection referred to in paragraph (b), before further flight.

(d) If no damage is found during the inspection of paragraph (a), the glider may be continued in service, but is required to have the more comprehensive inspection referred to in paragraph (b) accomplished prior to December 31, 1988, unless already accomplished. If no damage is evident during the comprehensive inspection, the aircraft, after Action paragraph 2.2 is accomplished, may continue in service until the core analysis results are obtained, but no later than March 1, 1989. If the core analysis shows no evidence of damage, the aircraft may continue in service.

(e) Repeat the inspection referred to in paragraph (b) at intervals not to exceed 1 year since the last such inspection; additional core samples need not be taken.

(f) Damage found during the more comprehensive inspections of paragraphs (b), (c), (d), or (e) requires repair or replacement of the wing spar before further flight. Any repair must be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium; or the Manager, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

Note: The manufacturer has advised in TN No. 23 that upon submission of the results of the inspection he will provide instructions for either accomplishment of a repair or replacement of the wing spar.

(g) Upon request of an operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office.

(h) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Alexander Schleicher TN No. 23, dated April 21, 1988, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Eastern Sailplane, Heath Stage Route, Shelburne Falls, Massachusetts 01370, or Calistoga Soaring Center, 1546 Lincoln Avenue, Calistoga, California 94515.

This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, Rules Docket No. 88–ANE–25, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

This amendment becomes effective September 12, 1988, as to all persons except those persons to whom it was made immediately effective by individual priority letter AD 88–11–05, issued May 19, 1988, which contained this amendment.

Issued in Washington, DC, on August 8, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–19492 Filed 8–26–88; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33–6795; 34–26018; 35–24703; 39–2180; IC–16534; IA–1138]

Temporary Lockbox Rule

AGENCY: Securities and Exchange Commission.

ACTION: Extension of temporary rule.

SUMMARY: The Commission is extending for two years the effectiveness of a temporary rule, adopted in June, 1984, which permits filing and other fees to be remitted to a U.S. Treasury designated lockbox depository located in Pittsburgh, Pennsylvania. This action will permit registrants to continue to use the procedures specified by the temporary rule pending the Commission's consideration of whether to adopt additional amendments to the Rule. In a related release, the staff shortly will be proposing an amendment to temporary Rule 202.3a that will permit filers to submit fees to a depository at the Bank of America and will instruct filers on how to use standard banking language when providing the required data elements for wire transfer of funds to both depositories.

EFFECTIVE DATE: September 1, 1988 through September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jeanne G. Hartford, EDGAR Counsel, (202–272–3808) Office of EDGAR Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6540, dated June 30, 1984 [49 FR 27306], the Commission adopted a temporary amendment to Rule 202.3a, to permit filing and other fees to be remitted to a lockbox depository. Under this amendment, filers may continue to submit filing and other fees to the Commission or may transmit required fees to a lockbox depository in Pittsburgh, Pennsylvania, by mail, wire transfer, or hand delivery. When the temporary amendments were adopted, the Commission stated that in approximately twelve months it would consider whether to eliminate payment of fees directly to the Commission and instead mandate payment of fees to a lockbox. The effectiveness of the temporary rule has been extended on three previous occasions, February 3, 1986 (51 FR 4106), November 10, 1986 (51 FR 40791), and September 4, 1987 (52 FR 33796). In addition, in January 1986, amendments to Rule 202.3a were proposed which would change its provisions from permissive to mandatory (51 FR 6267). Commentators have raised concerns about the availability of a west coast depository and have questioned the appropriateness of a mandatory lockbox requirement. In addition, the Commission is concerned that recent changes to its financial accounting system may necessitate certain changes to the lockbox proposal. Accordingly, pending its decision concerning whether to adopt certain proposed changes, the Commission has determined that the effectiveness of temporary Rule 202.3a should be extended for a period of two years (until September 1, 1990) to permit the continuation of existing procedures.

Administrative Procedure Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553 (b)(A), that temporary Rule 202.3a relates solely to agency organization, procedure or practice and, therefore, advance notice and opportunity for comment is unnecessary in connection with this action.

§ 202.3a [Amended]

PART 202—AMENDED

Accordingly, the effectiveness of 17 CFR 202.3a is extended from September 1, 1988 through September 1, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

Date: August 23, 1988.

[FR Doc. 88-19519 Filed 8-26-88; 8:45 am]

BILLING CODE 6010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385, and 388

[Docket No. RM87-17-001]

Natural Gas Data Collection System; Notice of Implementation Conference

August 23, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of implementation conference.

SUMMARY: In Order No. 493, issued April 5, 1988 (53 FR 15023 (April 27, 1988)) the Federal Energy Regulatory Commission (Commission) amended its regulations to require natural gas companies to file on electronic medium certain forms, rate filings, certificate applications and tariffs. On August 1, 1988, the Commission issued Order No. 493-A, 53 FR 30027 (August 10, 1988), extending the implementation dates for electronic data submission of FERC Form No. 8 to November 30, 1988, FERC Form No. 11 to November 30, 1988, and FERC Form No. 16 to April 30, 1989. Order No. 493-A also stayed implementation of electronic data submission of rate, tariff and certificate applications until March 31, 1989. This notice provides the implementation conference schedule and agenda for Order No. 493. Finally, Commission staff responses to technical questions on electronic data submission of rates, tariffs and certificates are attached to this notice as Appendix A.

DATES: The conference will be held on Monday and Tuesday, September 12 and 13, 1988, at 10:00 a.m. Requests to participate should be directed to the Commission no later than September 5, 1988.

ADDRESSES: The implementation conference will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Requests to participate and questions regarding participation should be directed to: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8995.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8995.

SUPPLEMENTARY INFORMATION: The Commission staff will first discuss general issues related to filings on electronic medium followed by specific discussions on the record formats for each form or filing. The following agenda lists the order of discussion. Anyone interested in participating at the implementation conference should contact the Commission by September 5, 1988. At that time, in addition to the items on the agenda, participants may submit questions or suggest additional topics for discussion.

Lois D. Cashell,

Acting Secretary.

Order No. 493 Implementation Conference Agenda

September 12-13, 1988, Washington, DC

A. General Topics
  1. Waiver Policy
  2. Submittal of Filings
  3. FERC Receipt and Processing
  4. Edit Checks
  5. Criteria for Acceptance or Rejection of Electronic Filings
  6. Updates/Revisions
  7. Notices/Service Lists/Public Access
  8. Confidentiality
  9. Other Issues

B. Monthly and Semiannual Forms
  1. FERC Form 8
  2. FERC Form 11
  3. FERC Form 16

C. Annual Forms
  1. FERC Form 2
  2. FERC Form 2A
  3. FERC Form 14
  4. FERC Form 15

D. Nonperiodic Filings
  1. Rate Filings
  2. Tariffs
  3. Certificate Applications

Appendix A—Responses to Technical Questions on Electronic Data Submission of Rate, Tariff and Certificate Applications in Docket No. RM87-17-001

A. General Questions

Some applicants request the Commission to allow natural gas companies to file the text for rate cases and certificate applications on word processing disks.[1] INGAA and Transco propose that natural gas companies should be permitted to submit certificate filings on floppy disks created by the natural gas company's existing word processing system. According to INGAA and Transco, Commission staff would then use its own computer software to put the natural gas company's data into the electronic format desired by the Commission.

Commission staff will accept text only files recorded in the ASCII Character set. To the extent natural gas companies file text data on PC diskettes, they may use an ASCII file. Additionally, since the Commission is staying implementation of the electronic filing of rates, tariffs and certificates, staff will consider acceptable methods for handling text data at the implementation conference.

Some applicants also argue that the Commission should not require natural gas companies to submit material incorporated by reference on an electronic medium.[2]

Order No. 493 specifically excludes certain exhibits, such as executed service agreements, maps and diagrams, from the electronic data submission requirement. Staff believes that filing all other materials incorporated by reference in rate and certificate filings is necessary for the efficient processing of these filings on an electronic medium.

ANR & CIG request the Commission to clarify whether compliance filings pursuant to a Commission suspension order will be subject to the electronic data submission requirement of Order No. 493.

Compliance filings must be made on an electronic medium. Otherwise the Commission's data base would contain incorrect, incomplete, or out of date information.

B. Rate Filings

The Commission staff notes that some applicants for rehearing argue that a number of the record formats for rate filings contain new reporting requirements. Staff has carefully reviewed these comments. To the extent that the record formats contain new data elements, the Commission staff will delete those requirements. Staff points out, however, that the Commission's regulations for rate filings in § 154.63 contain numerous specific data that natural gas companies must include in a rate filing. The record formats are designed to include all of the data

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[1] *See, e.g.*, Algonquin, Enron, INGAA and Transco.

[2] *See e.g.*, ANR & CIG, Enron and Northwest.

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requirements currently specified in § 154.63 of the regulations.

In the past, natural gas companies have submitted rate filings with varying amounts of data. Some companies have supplied data in greater detail than is required by § 154.63. In fact, several commenters have stated that the record formats do not provide sufficient space to file all of the data they routinely submit. Additionally, certain companies' accounting systems provide a more detailed breakdown of costs than others. In designing these formats, the Commission staff has attempted to accommodate these companies by providing for details. Some pipelines have expressed concern in their comments that they will be required to file this additional information because it has been included in the formats. This is not staff's intent. Certain data elements in the formats are optional and are not required by Order No. 493 to be submitted by each company. In the discussion of the technical questions the Commission staff has indicated those details that are not mandatory.

1. Statement A

ANR & CIG argue that in Record 03, Character Positions 11 and 24, it is not clear whether it is intended that each cost item referred to in the Cost Classifications (Char. Pos. 11) will be functionally classified, or whether it is acceptable to report each cost item only in total for all functions. ANR & CIG argue it is not logical to report total costs broken down by functional classification when a number of the supporting record formats do not require the functional breakdown of costs.

The Commission staff agrees with ANR & CIG that functional classifications on this statement are optional. However, function codes have been included since some pipelines have traditionally provided the functional classification in Statement A.

2. Statement B

Northwest argues that Record 04 is not compatible with Northwest's current presentation methodology for Statement B. According to Northwest, the cost of some items reported on this statement is amortized over time, and detailed by project. The record format does not allow for detailing account balances. In fact, there does not appear to be enough space available in the format to contain the information presented in Northwest's rate filings. Furthermore, Northwest does not report certain items called for by other portions of this record format, and much of the information to be reported is not collected in the manner required.

The Commission staff has provided a footnote record so that more detailed information can be reported along with explanations of why certain items are not reported. Northwest may raise any concerns about the specific data items in Schedule B at the implementation conference.

3. Statement C

Northwest states that there is a wording difference between Record 05 and what it currently files in Statement C. Northwest believes that the meaning of "Reductions" (Character Positions 43–54) is unclear and that "Retirement" should be substituted.

The Commission staff notes that "Reductions" is the term used in § 154.63(f) and that same term was used in the record formats.

a. Schedule C–1. Northwest comments that it uses subfunctions under functional classifications that are not identified in Record 06. Northwest asks if they should provide separate subfunction totals and, if so, where, or should they provide an aggregate subfunction total.

The Commission staff suggests that the footnote record is one alternative for the subfunctions. However, certain pipelines may need additional free form or formatted records to report plant allocation. Staff will consider this issue at the implementation conference.

ANR & CIG point out that in Record 06, Character Positions 20–25, it is not clear what is meant by the statement "A Reference Is Needed".

The Commission staff notes that the reference refers to the detailed Gas Plant Account itemized in Character Positions 26–70.

United notes that on Record 06 the data item "Detailed Plant Account Number" is defined as a 6-character numeric field. United asks how a company can enter an account number with a decimal, *i.e.*, 108.1. United questions whether there is an implied decimal and whether the field is to be right or left justified and filled with zeros.

The Commission staff intends all account number fields to be 7-character numeric fields. Record 06 will be revised accordingly, and will then be consistent with General Instruction 9. Account numbers should be right justified.

b. *Schedule C–2.* ANR & CIG note that in Record 07, Character Positions 53–55 are used twice, which does not allow for the inclusion of the requested data. In addition, in Record 08, Character Positions 53–55 are assigned to the "Project Code" and Character Positions 13–144 are assigned to the "Description of Plant Addition or Retirement Projects." The commenters state that either one or both should be reassigned correct character positions. United also points out that there is no Data Sensitivity Indicator on Record 08.

The Commission staff will correct the record formats in response to these concerns.

c. *Schedule C–4.* Northwest and Texas Eastern argue that the format for Schedule C–4 (Record 10) looks much like the format for Schedule E–2 (Record 17), and questions whether this is a duplication.

The Commission staff is revising the record format for Schedule C–4 to coincide with the requirements of § 154.63(f) for that schedule.

3. Statement D

United points out that in Record 12 for Statement D, the technical specification layout requires a lower level of detail on such items as retirements, cost of removal, salvage, and reimbursement than is currently available at United. According to United, General Plant Depreciation associated with computer equipment is not currently tracked at the level requested. United also argues that supporting statements for Test Period and Normalized Depreciation are not included.

The Commission staff notes that the record format allows for the data to be broken down by the indicated categories if available. However, it is not mandatory that the data be reported in such detail for each of these items. The supporting statements for test period and normalized depreciation may be discussed at the implementation conference.

Northwest argues that its computer accounting system does not separate "Adjustments and Reimbursements" (item 47) and "Other Debits and Credits" (item 48).

The Commission staff will permit Item 48 to be used for adjustments and reimbursements.

4. Statement E

a. Schedule E–1:

Northwest indicates there is no place in the Statement E–1 record formats (Records 15 and 16) for extracted products balances. This information is currently reported, and Northwest asks if there is a reason for its exclusion.

In response, the Commission staff will add a code for products extraction to Records 14, 15 and 16.

According to ANR & CIG, in Record 16, Character Positions 11–12 require base period functionalization of all Schedule E working capital components. CIG notes that it currently does not

account for these working capital components on a functional basis. In addition, they note that some working capital components are allocated to functions.

The Commission staff agrees that pipelines are not required by the regulations to provide base period functionalization on Schedule E–1. However, because this information is sometimes provided by pipelines on a functional basis, Record 16 provides pipelines the opportunity to continue to report on this basis.

b. Schedule E–3:

United notes that on Record 18, "Beginning Storage Balance" is repeated and "Beginning Storage Balance Amount" and "Ending Storage Volume" are missing. United also points out that it does not utilize the LIFO method of storage accounting shown in Record 18.

The Commission staff will revise Record 18 to reflect the following data items: Beginning Storage Volume, Beginning Storage Amount, Beginning Storage Date, Ending Storage Volume, Ending Storage Amount, and Ending Storage Date. Staff will also revise this record to permit other methods of storage accounting.

5. Statement F(2)

Northwest states that in the past it has reported capitalization in three different ways: (1) incremental pre-build capitalization; (2) net of pre-build capitalization; and (3) total capitalization. They ask which one should be reported on Record 22.

The Commission staff will expand the record to allow for multiple presentations.

6. Statement F(3)

Northwest argues that there is no code or definition for the term "Subissue Identification Code".

The Commission staff intends that natural gas companies use this code to identify several issues (on different dates) of a single debt instrument. Staff will revise the codes and definitions on this record to clarify this item.

7. Statement F(3)(g)

ANR & CIG argue that in Record 25, Character Positions 70–73, natural gas companies have not been required to furnish the information on a "mmyy" basis. They point out that pipelines have typically furnished this information in total by debt instrument for the entire year of reacquisition. In addition, they argue that it would be extremely burdensome to report this information when it is not used or useful in the overall calculation of the amortized gains and/or losses on reacquired debt.

Staff notes that the Commission's regulations in § 154.63(f) for Statement F(3)(g) require that the data be provided on an annual basis, not on a monthly basis. Consequently, natural gas companies may, but are not required, to file the data on a monthly basis.

ANR & CIG claim that in Record 25, Character Positions 140–147, both the item description, "Total Gain/Loss * * *" and the comments, "amount, $ * * *" are ambiguous in their requirements. They request clarification.

The Commission staff intends that any gain/loss associated with early debt retirements should be included in the summary data, in addition to the gain/loss associated with currently outstanding debt instruments that are paid off at their scheduled maturity.

8. Statement F(4)

ANR & CIG argue that the format for Record 26 does not provide for the inclusion of the reacquisitions and amortization of gains or losses associated with reacquired preferred stock.

The Commission staff points out that this data is not specifically required in § 154.63 of the Commission's regulations for Statement F(4). However, ANR & CIG may raise this issue at the implementation conference.

9. Statement F(5)(4/5)

ANR & CIG argue that in Record 32, Character Positions 76–83 do not provide for the inclusion of additional items such as "Lease Rentals" and "Amortization of Debt Premium Discount and Expense."

The Commission staff responds that amortization of debt premium discounts and expenses should be reflected in the interest shown in Item 222, "Interest on Debt." Normally, lease interest expenses are not used by pipelines to calculate the interest coverage. However, a pipeline may include a separate calculation including lease interest expenses in a footnote for this statement. These issues can be discussed in more detail at the implementation conference.

10. Statement F(6)

Northwest points out that there has been a proposed rulemaking issued in Docket No. RM88–18–000, and that a final rule will have an impact on Records 33 through 36 and upon Form 2 as well. Northwest suggests postponing implementation of Statement F(6) and Form 2 until after a final rule is issued in order to avoid duplication of effort.

The Commission staff is aware that a final rule in Docket No. RM88–18–000 will have an impact on Statement F(6) and FERC Form No. 2. However, staff does not believe that the Commission should postpone implementation of this statement or FERC Form No. 2. Revised record formats will be issued whenever any final rule affects the reporting requirements.

11. Statement G

Northwest argues that Statement G (Records 37 through 49) does not provide the typical statement breakout. Because there are no subheadings and the record formats are collectively referred to as "Statement G", it is more difficult to decipher than the other statements.

The Commission staff notes that the regulations do not specify a breakout for Statement G as they do for certain other schedules. The Commission staff invites further discussion of the format of Statement G at the implementation conference.

ANR & CIG and Texas Eastern claim that in Record 37, "Points of Delivery" (Character Positions 96–125), is a new requirement since pipelines have never been required to identify the name of the delivery point for each jurisdictional customer. ANR & CIG believe the Commission must provide the justification for requiring this information. ANR & CIG also argue that some of this data may not be readily available. Texas Eastern also argues that a considerable increase in the amount of data previously provided is now required. Texas Eastern notes that the proposed format requests Maximum Single Day Delivery in each month by delivery point. According to Texas Eastern, this was required in the previous Statement G but was in no way tied to a specific delivery point. United states that date and volume data items are not available and daily volumes are not currently available for all measuring points.

The Commission staff notes that Statement G requires that the data for each customer will be shown by delivery point in the absence of conjunctive billing. In cases where there is conjunctive billing for deliveries at more than one point, the data can be grouped for the customer and the multiple delivery points listed.

ANR & CIG state that in Record 37, Character Positions 184–191 and 204–211, it is not clear whether these fields are to be used to report both demand and commodity rates. Also, ANR & CIG argue that "Sales Rate" needs to be defined and clarified as to the intent and usefulness of this data.

This record will be used for both demand and commodity rates. The

Commission staff expects the pipeline to state in Item 309, "Volume Billing Determinant Name", whether it is reporting demand or commodity rates. Staff also notes that the information required in Record 37 is described in § 154.63(f), Statement G, paragraphs (a) and (b). "Sales Rate" refers to the presently effective and proposed rates, both demand and commodity, used to compute revenues. The pipeline will also state whether the data are for the base period or test period in Item 302.

United points out that Records 38 and 41 are "footnote" records which refer back to Records 37 and 39, respectively, and give explanations of adjustments to base period volumes for each customer. According to United, this is not currently filed or prepared.

The Commission staff notes that in § 154.63(f), Statement G requires: "Adjustments to actual period sales volumes, jurisdictional and nonjurisdictional, shall be fully and clearly explained including reference to any certificate docket authorizing changes in sales." The pipeline may use the same footnote for more than one customer if the adjustments are for the same reason.

United also indicates that the information in Record 39 is not currently filed because Nonjurisdictional Sales Volumes and Revenue should not be reported to the Commission.

The Commission staff notes that the only data required for nonjurisdictional sales is the total volume and revenue. These data are necessary to allocate costs between jurisdictional and nonjurisdictional customers. Staff also notes that under § 154.63(f), Statement G requires that "Sales and services and the related volumes shall be classified as between jurisdictional and nonjurisdictional." Furthermore, paragraphs (a) and (b) under Statement G require the pipeline to provide annual revenues (actual and projected) from nonjurisdictional sales.

United points out that on Record 43, "Fuel Used at Plant" is not currently filed and is not available.

The Commission staff agrees that this information is not currently required and will delete "Fuel Used at Plant" from Record 43.

Also in Record 43, United requests that the Commission clarify "Field Code of Product." United questions whether this is really product code or field code.

The Commission staff will revise Record 43 to replace "Field Code of Product" with "Location of Processing Plant." Respondents will provide the FIPS code of the state and the name of the county or parish for each processing plant.

ANR & CIG note that in Record 43, Character Positions 104–125 require monthly Btu content of the inlet and outlet gas at all processing plants by month. They point out that current regulations require only annual reporting of inlet and outlet volumes.

The Commission staff agrees that Statement G requires that the Btu content be provided on an annual basis, not on a monthly basis. Pipelines may submit data on a monthly basis, but they are not required to do so.

ANR & CIG argue that in Record 45, Character Positions 61–152 require reporting of purchasers' names. According to ANR & CIG, current regulations do not require such reporting.

The Commission staff agrees that purchaser names are not required. Those items will be deleted from the format for Record 45.

United points out that in Record 45, data currently is not required at the same level of detail as in § 154.63. According to United, the technical specifications require monthly volumes and dollars, whereas United provides dollars only for the base period total.

The Commission staff has constructed the record format to allow monthly reporting. However, data on Record 45 does not have to be reported on a monthly basis. It is sufficient to provide total data for the base period and for the test period.

United notes that in Record 47, it currently does not provide monthly volumes and dollars for this filing; only base period totals for dollars are provided.

The Commission staff notes that volumes are not required in the format for Record 47. Although the record format allows data to be reported on a monthly basis, applicants may provide total data only.

United points out that in Record 48, the technical specifications provide a total indicator for reporting base period totals. United notes, however, that Record 49 is also a total record for this account and is redundant. United also notes that the well number is not provided on the existing schedule. ANR & CIG also note that in Record 49, Character Positions 60–94 are not identified. In a related comment, Texas Eastern states that the new page 111 (Record 49) is not a logical continuation of the old page 110.

The Commission staff agrees that Record 49 is duplicative and it will be deleted. In addition, the regulations do not require the reporting of well number. Therefore, that item will be deleted from Record 48.

12. Statement H(1)

United points out that on Record 50, the Account Number comments say "SEE EXHIBIT." United asks for clarification.

The Commission staff notes that an exhibit was omitted from the record formats for rate filings. This exhibit should have contained the accounts and account numbers for Operation and Maintenance expenses. This exhibit will be added to the corrected record formats. Account numbers should be right justified.

a. Schedule H(1)–3: Northwest argues that the format for Record 55 does not provide fields for accumulated data and is expressed in text rather than numbers. Northwest questions whether text is an useful as numerical information.

The Commission staff responds that since this record is for working papers, a text format was specified so the respondent could use a free-format. It is anticipated that most of the data provided by the respondent will be numerical and will include accumulated data. The format for this schedule can be discussed at the implementation conference if natural gas companies want more standardization.

Northwest argues that Schedule H(1)–3h is a very long spread sheet containing twelve months of data and will not fit in the 133 character positions allowed for Schedule H(1)–3. Northwest asks if it's possible to wrap the data to a new line or, alternatively, to use filler positions for the overflow data.

The Commission staff designed the record layout in text format so the data can be wrapped. Northwest and other participants may propose a more appropriate format at the implementation conference.

13. Statement H(2)

ANR & CIG argue that in Record 59, Character Positions 82–87 require the Percent Functionalized. According to ANR & CIG, current regulations do not require this information and it is neither useful nor meaningful.

The Commission staff notes that Percent Functionalized is a mathematical calculation derived from other data provided in Record 59. Specifically, it is the Amount Functionalized (Char. Pos. 88–99) divided by the As Adjusted Amount (Char. Pos. 68–79).

United points out that the Account Number is not currently reported and is not available at this level. In addition, General Plant Depreciation associated with computer equipment is not tracked

at this level. United also states that the current schedule does not include the annual depreciation rate, and that Functionalization, Percent Functionalized, and Amount Functionalized are not currently available.

The Commission staff notes that the account number requested is the depreciation account, not the plant account, and is currently reported. Also, if the pipeline does not have the data associated with computer equipment at this level of detail, it doesn't have to provide it. Statement H–2 requires an explanation of the methods used and the computations for the derivation of the unit rates for depreciation. Thus, the current depreciation rate should be provided. Finally, Statement H(2) requires the data to be shown by function and certain data to be further classified as between onshore and offshore facilities.

a. *Schedule H(2)–1:* Northwest argues that Record 58 lacks functions and functionalization code descriptions.

The Commission staff notes that the regulations call for the reconciliation of depreciable plant in Statement H(2) and the aggregate investment in gas plant shown in Statement C. Thus, staff does not believe that functions are required to be shown on this schedule.

Schedule H(3): ANR & CIG argue that in Record 60, Character Positions 120–131 require the reporting of an item called "Allowance for Federal Tax", in addition to "Federal Income Tax", "Deferred Federal Tax" and "Current Federal Tax." They point out that the Commission has not defined what is meant by "Allowance for Federal Tax." In addition, ANR & CIG note that Record 60 does not include a data item for the inclusion of city taxes.

The Commission staff responds that the "Allowance for Federal Tax" is the sum of the current and deferred federal income taxes. As such, it duplicates "Federal Income Tax" (Char. Pos. 84–95). The item "Federal Income Tax" will be relabeled "Allowance for Federal Tax" and Character Positions 120–131 will be deleted. The Commission staff will also expand the data element for state taxes to include state and local taxes and will make a similar revision to the information to be reported in Record 61 under Text ID 4.

a. *Schedule H(3)–6.* Northwest, ANR & CIG note that Schedule H(3)–6 is missing from the record formats. Northwest wonders whether its absence is intentional or whether the data has been incorporated elsewhere.

The Commission staff notes that this data should have a separate record format which will be provided in the revised formats.

15. Statement H(4)

ANR & CIG state that in Record 62, Character Positions 24–25, it is not clear whether it is intended that each tax type requested in Character Positions 12–23 be identified by state. ANR & CIG claim that this is a new requirement which will require some additional recordkeeping by the pipelines. According to ANR & CIG, the Commission should explain why this additional information is required.

The Commission staff disagrees. The regulations at 18 CFR § 154.63(f) for Statement H–4 provide that "The taxes shall be shown by states and by kind of taxes."

16. Statement I

ANR & CIG point out that in Record ID 65, Character Position 11 is used twice.

The Commission staff will correct the record format.

a. *Schedules I–1, I–2, and I–3:* United, ANR & CIG state that Schedules I–1, I–2 and I–3 are missing from the automated format. United also notes that Statement I (Record 64) is a *text* Record but asks for details of *Statement I, Schedule I–1,* and *Schedule I–2.* United further notes that the numbers (costs) associated with these schedules are not requested on a record layout.

The Commission staff confirms that specific record formats for Schedules I–1, I–2 and I–3 were not included in the automated formats. Staff intended that natural gas companies use Records 64 and 65 for filing the information on those schedules. The Commission staff believes it would be difficult to devise a standardized format due to reporting variations among pipelines. However, in view of United's comment, staff will consider alternative formats for these schedules at the implementation conference.

b. *Schedule I–4:* ANR & CIG state that in Record 66, Character Positions 229–242, it is not clear whether this reporting requirement is applicable to base period volumes or test period volumes or both.

The Commission staff clarifies that the temperature and pressure base specified for those character positions in Schedule I–4 apply only to the test period.

c. *Schedule I–6:* ANR & CIG claim that in Record 68, Character Position 38, the term "Nature of Service" is a new requirement and the Commission should explain why it is required.

The Commission staff does not agree that this is a new requirement. The regulations for Schedule I–6 in 18 CFR 154.63(f) require " * * * deliveries during the winter heating season within the twelve months of actual experience, classified as between firm, interruptible, exchange, transportation, gasoline plants, emergency, etc."

ANR & CIG note that, in Record 68, Character Positions 11–16 and 101 are missing.

The Commission staff will correct the error by reassigning character positions.

ANR & CIG note that in Record 68, Character Positions 102–136 require various peak day information. In addition, to the three continuous peak days, they note that the record requests the "Average Daily Delivery Volume" during the peak period. ANR & CIG request that the Commission clarify this term and explain why this new requirement should be added.

The Commission staff responds that this schedule should require an average of the volumes for the three days, not an average for each of the three days. Additionally, the adjustments are to the average of the three days, not to the total for the three days. Staff will issue revised formats to reflect these changes and clarifications.

d. *Schedule I–7:* Northwest notes that there is no code or definition for the term "Types of Service" in Statement I–7.

The Commission staff will correct this omission by adding appropriate codes and definitions.

ANR & CIG note that Records 69 and 70 appear to require the same data with the only exception being the layout of the record format.

The Commission staff agrees that the formats are duplicative. Record 70 will be deleted and codes to provide "totals" will be added to Record 69.

17. Statement K

Texas Eastern states that certain schedules such as Statement K, Schedule K–1, are too large to fit in the proposed formats.

The Commission staff notes that all records have a record length of 255 characters. However, 132 characters are provided for entering text data in Schedule K–1. Staff will consider alternatives to these record format parameters at the implementation conference.

18. Statement L

Northwest claims that it does not understand what "consolidation" and "non-consolidation" mean and requests further explanation. It also requests clarification as to whether Statement L requires submission of financial data from nonjurisdictional parents or

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affiliates. If so, Northwest objects to the requirement not only on the basis that the information is nonjurisdictional and beyond the reach of the Commission but also because Northwest and its parent do not have coordinated accounting systems. Northwest alleges that it will cost $50,000 to $75,000 to coordinate the systems and probably could not be completed within the allotted time. Northwest also argues that this record format requires much more information than is currently required.

The Commission staff notes that pipelines are required by § 154.63 of the regulations for Statement L to provide a balance sheet on a consolidated basis if the pipeline is a member of a system group of companies. Specific concerns regarding the level of detail for the consolidated balance sheet may be raised at the implementation conference.

ANR & CIG state that Records 77 through 96 for Statements L and M do not provide for filing the notes to the financial statements which are generally an integral part of the financial statements. ANR & CIG argue that if the notes are not necessary, then perhaps neither are the statements themselves.

The Commission staff agrees that notes to financial statements are an integral part of the statements and are also required by the regulations. Staff will consider an additional format(s) for this purpose after discussion at the implementation conference.

18. Statement M

Northwest states that its comments with respect to Statement L apply as well to Statement M.

The Commission staff notes that, as with Statement L, the regulations require an income statement on a consolidated basis if the pipeline is a member of a system group of companies. The level of detail for this income statement may be discussed at the implementation conference.

19. Statement N

ANR & CIG note that the Commission has omitted "code numbers" from Records 4 through 16, Schedule N–3, Working Capital.

The Commission staff will correct the Record ID errors.

a. *Schedule N–7:* ANR & CIG point out that, in Schedules N–7, N–8, N–10 and N–11, the character positions for "Item Data Sensitivity" and "Item Filler," are out of sequence. ANR & CIG also note that, in Statement N–7, Character Positions 11–56 are missing.

The Commission staff will revise the character positions to correct these errors.

ANR & CIG state that in Schedule N–7, Character Positions 81–82, "Interest and Debt" does not provide for any other adjustments to the taxable portion of return. They also request clarification of the definition of "Tax Adjustment Amount" in positions 105–116.

The Commission staff clarifies that "Tax Adjustment Amount" will include those other adjustments to the taxable portion of return which are not included in "Interest and Debt."

ANR & CIG also request clarification of the term "Taxable Portion."

The Commission staff defines "Taxable Portion" as the "Return" shown in Character Positions 69–80, less the "Interest and Debt"shown in Character Positions 81–92.

ANR & CIG point out that, in Character Positions 153–164, it is not clear whether "State Income Taxes" refers to deferred state income taxes or current state income taxes.

The Commission staff notes that "State Income Taxes" refers to current state income taxes. Staff also notes that a new item should be added for deferred state income taxes.

b. *Schedule N–8:* ANR & CIG point out that Character Positions 11–142 refer to a note which was not included.

The Commission staff will include a note in the record format for Schedule N–9 similar to the note in Record 75 for Schedule K–1.

c. *Schedule N–10:* ANR & CIG claim that in Statement N–10, Part 1, the "Point of Delivery" and "Max. Single Day Delivery in Month" are new requirements. According to ANR & CIG, the Commission should explain why this new requirement is necessary.

The Commission staff agrees that the regulations do not require the pipeline to provide the maximum single day delivery in the month and the point of delivery on this schedule. The information may be provided, but is not required.

In Schedule N–10, Part, 2 ANR & CIG request clarification of "Adjustments to Base Period Jurisdictional Sales Billing Determinants." They also request clarification of the term "Adjustment to Base Period Annual Field Sales Volume" in Part 3.

The Commission staff will revise the records so that these items reflect adjustments in volumes and revenues between the base and test periods.

ANR & CIG state that in Parts 2 and 3, the reason for requiring a "Line No." is not clear. ANR & CIG also note that in Parts 1, 2 and 3, certain character positions need to be renumbered.

The Commission staff will correct all character position errors and will delete the requirement to include a line number in Parts 2 and 3.

d. *Schedule N–11:* ANR & CIG request that the Commission clarify what is being requested by "monthly balance."

The Commission staff will issue a revised format for this schedule.

20. Footnotes

ANR & CIG state that in Schedule RB, Record 19, Character Positions 11–20, "Reference Number" should refer to General Instruction 8.

The Commission staff notes that General Instruction 7 is the correct reference for "Reference Number." The Footnote Record will be revised accordingly.

United notes that on the Footnote Record, the Reference Number is 10 characters; however, the definition in General Instruction 5 requires 13 characters.

The Commission noted in Order 493–A that the footnote record for all formats was inconsistent with the General Instructions. The footnote record will be revised in accordance with Order 493–A.

21. Other General Comments

Texas Eastern indicates that all control data should precede text data and that as much space as possible, up to a maximum of 255 characters per line, needs to be utilized for text.

The Commission staff notes that, with the exception of data sensitivity, all control data precedes text data. Staff has limited the text record lengths in order to accommodate all filers.

United objects to all Working Papers being included in automated filing. According to United, these are often manual records and not an official part of the filing.

The Commission staff notes that if working papers are included in a rate filing, then those working papers must be submitted on an electronic medium.

United points out that its Project Number is not numeric but the record format allows only numeric data. Also, United notes that the current field length is not long enough to accommodate its project numbers (requires six characters).

The Commission staff will modify the field length and definition to accommodate project numbers used by respondents. The requirements for the project number field will be discussed at the implementation conference.

United recommends inclusion of a generalized record format for supplemental schedules of new or different data from that outlined in specific formats.

At this time, the Commission has issued automated formats only for the data identified in § 154.64(f) of the regulations. The Commission staff recognizes that applicants also file supplemental data which is not covered by the existing automated formats. Staff will entertain specific recommendations on any additional formats for new or different data at the implementation conference.

United asks whether a Record ID need be generated if a statement or schedule is N/A.

The Commission staff does not intend that pipelines include any records in a filing for statements or schedules that are not applicable.

United points out that no means has been outlined to file alternative statements.

The Commission staff will permit pipelines to file alternative statements. A pipeline should designate the primary and alternate statements.

C. Tariffs

Texas Eastern notes that the tariff specification in the Tariff Sheet Identification record is labeled TF–01 and should be TF–02.

The Commission staff agrees and will revise the record indentification. In the following comments Record 02 will refer to the Tariff Sheet Identification record format.

Northwest and United filed separate comments requesting modifications of the item "Sheet Number" in Record 02. Both Northwest and United seek expansion of the field length from three characters. Northwest notes that Volume 2 of Northwest's current tariff contains 1634 pages; the current United tariff contains 2500 pages. In addition, United and Northwest note that the tariff sheet numbers sometimes contain alphabetic characters. Northwest points out that § 154.33(d)(2)(ii) of the Commission's regulations specifically provides that a sheet inserted between two consecutively numbered sheets will be marked with the appropriate number and letter indicating the insertion.

The Commission staff is aware that in addition to Northwest and United, several other pipelines have sheet numbers which exceed three character positions. In light of this fact, Commission staff will expand "Sheet Number" to six character positions. Further, staff will change this field from numeric to character in order to conform with § 154.33(d)(2)(ii) of the regulations.

Northwest requests clarification of several issues. First, Northwest questions whether a pipeline is required to file a complete schedule TF before it files any changes to individual sheets. Northwest cites Order 493, pages 6–7, which provides that:

> On or after September 30, 1988, natural gas companies filing rate changes, including the affected tariff sheets, * * * must make these applications using an electronic media.
>
> Additionally, on or after September 30, 1988, natural gas companies filing a general rate proceeding pursuant to section 4 of the NGA, or submitting a restatement of the * * * base tariff * * * must make a one-time only filing which resubmits the company's entire tariff, except for executed service agreements, on electronic media."

The Commission staff clarifies that pipelines are required to file individual sheets electronically prior to submitting the entire tariff.

Second, Northwest asks if a pipeline must file an entire Schedule TF each time it files a tariff change, or only those sheets that changed.

The Commission staff clarifies that only the affected tariff sheets need be filed on electronic medium when a pipeline's tariff volume is revised in part.

Third, if a pipeline is allowed to change a tariff by submitting a file containing only those sheets that changed, Northwest asks if the Record Cross-Reference (see specific instruction 10) should match the original filing of Records 02 and 03.

The Commission staff responds that a pipeline is allowed to change a tariff by submitting a file containing only those sheets that changed. However, the "Record Cross-Reference" is not intended to correspond to previously filed tariff sheets. it is intended to link information submitted on Records 02 and 03 relating to a single unique tariff sheet.

Finally, Northwest asks if it will have to rename its Volume No. 1–A tariff to comply with FERC's instruction that only numeric characters are used in the tariff volume number field provided in Record 02. Several other pipelines also use a Volume No. 1–A designation for their tariffs.

The Commission's regulations at § 154.33 govern the submittal of tariff volumes. Although the regulations provide for the submittal of multiple volumes, those volumes are to be numbered consecutively without the use of alphabetic characters. However, in the past, the Commission staff has permitted certain pipelines to number tariff volumes using alphabetic characters. In the interest of maintaining continuity in the Commission's tariff files, the item "Tariff Volume Number" on the Tariff Sheet Identification record will be changed from numeric to character. When the pipeline submits the replacement of the tariff in its entirety, the numbering of the tariff volumes should comply with § 154.33 of the regulations.

United questions how to distinguish "proposed revised tariff sheets" from "true effective tariff sheets." For example, according to United, proposed revisions submitted with a rate case will not be in effect until the rate case is "approved." According to United, there is no indicator on the records.

The Commission staff notes that all sheets filed by the company are considered proposed sheets until the Commission acts upon them. It will therefore be impossible for the company to file effective tariff sheets. The Commission staff intends to maintain the tariff sheets according to their status, *e.g.*, suspended subject to refund, pending Commission review, etc.

United notes that there is no provision for "alternative" tariff sheets.

The Commission staff will adjust the tariff schedule to accommodate the filing of alternative tariff sheets.

United objects to the technical specification reference to margin and border requirements under § 154.33. United argues that these will be meaningless on magnetic tape and are redundant due to format specifications.

The Commission staff responds that this rulemaking is not intended to make wholesale changes to the Commission's regulations regarding the format of the tariff sheets. The Commission staff intends to be able to print a copy of the tariff sheets in the format required by the regulations. Any significant change to the tariff sheet format would require another rulemaking.

United notes that certain tariff sheets have both horizontal and vertical text. United questions whether the FERC system can handle this.

The Commission staff recognizes that some companies currently have tariff sheets which are displayed both horizontally and vertically. However, the Commission staff hoped to avoid requiring the companies to totally rewrite the tariff by providing the latitude to file the tariff sheets as the sheets now appear.

United requests clarification on the initial one-time filing of the entire tariff. Specifically, in addition to general rate case filings, United questions how the one-time filing of the entire tariff will be triggered.

The Commission staff clarifies that the one-time filing of tariff sheets is designed to capture the entire tariff volume on the computer. The three year restatement of rates filing will also trigger the entire tariff refiling. Any other filing of the tariff volume in its

entirety will occur for the same reasons these filings were triggered in the past, *e.g.*, a company name change.

United notes that the issued date is missing from Record 02 but is present as identifying information on existing tariff sheets. Similarly, in a separate comment, Texas Eastern argues that additional items are needed to designate "Issued By" and "Issued On."

The Commission staff notes that the information which these commenters wish to add to Record 02 already appears as part of the border information on Record 03 at character positions 18–149.

ANR & CIG point out that Schedule TF, page 3, states "* * * the Company should use only 72 character positions * * *" ANR & CIG argue that the important issue here is whether the tariff can be accepted with more than 72 character positions. According to ANR & CIG. if 72 characters are the limit, all CIG tariffs may have to be resubmitted. ANR & CIG argue that the Commission should be flexible and permit up to 255 characters. Texas Eastern argues that the number of characters should be increased to 240 and that the use of additional characters above 240 should be optional.

The Commission has not revised the regulations governing the presentation of the tariff sheets in this rulemaking. The tariff sheets must be placed on the tape or diskette in such a way that they may be printed in the format specified by the Commission's regulations.

ANR & CIG argue that the handling of numeric fields and dates within the "text" item is unclear in Schedule TF, General Instruction 2(b) and (c).

The Commission staff responds that any numerical items submitted within a text field are not subject to the restrictions of a numeric field.

D. Certificate Applications

Northwest claims that Order No. 493 dictates that the various certificate reports called for by 18 CFR 157.20, 157.21 and 157.207 must be provided on an electronic medium. However, the regulation section code, required by the record formats for Schedule CA (certificate filings), has not been provided in these reports. Northwest recommends that the section code requirement be dropped completely. Often submissions are made pursuant to a number of different sections, and Northwest questions whether inclusion of all these codes would be feasible. Conversely, sometimes the text is explanatory and not submitted pursuant to any particular code section. Moreover, the text itself will contain section code references, and Northwest believes that the repetition would be unnecessary as well as costly.

The Commission staff agrees that codes for the reports cited by Northwest were omitted from Exhibit C. The format for these reports may be discussed at the implementation conference. The section codes enable quick access to specific parts of a certificate application. Where records pertain to more than one section, respondents can indicate this fact in a footnote.

ANR & CIG argue that the Commission has not provided a method by which docket numbers can be electronically incorporated on a filing.

The Commission staff will revise the general information record to include a docket number field. For initial filings, this field will be completed by the Commission staff. Applicants will then enter the assigned docket number on subsequent filings in that docket.

ANR & CIG point out that on Schedule CA, Record 02, "Text" data type should be "character," and not "numeric" as indicated.

The Commission staff will revise Record 02 so that "Text" data is "character" data.

ANR & CIG ask that the Commission clarify whether signatures are still required within the body of the application text. If signatures are still required, ANR & CIG point out that the signature sheet will have to be submitted separately from the electronic copy.

The Commission staff agrees that signatures should be submitted on a separate transmittal letter.

ANR & CIG note that no code has been provided for exhibits which are not required to be filed electronically (e.g., Exhibit F). ANR & CIG ask that the Commission clarify how these exhibits will be referenced in the text of the application without a specific code number to identify that they are submitted on paper only. ANR & CIG suggest that the Commission consider code number 160, "Additional Information," to describe exhibits submitted on paper only.

The Commission staff agrees that Code 160 may be used to indicate those exhibits submitted only on paper.

United notes that no mention is made regarding Subpart B of Part 284. According to United, this part of the regulations requires that Initial Full Reports and Subsequent Reports be filed for Section 311 transports.

The Commission staff responds that Subpart B was not included in the electronic filing requirements of Order No. 493. Therefore, the initial and subsequent reports required under that section will continue to be filed on paper.

United indiates that the Initial Full Reports and Subsequent Reports relating to Subpart G of Part 284 are not addressed.

The Commission staff notes that it did not include Form 549–ST in the electronic filing requirements of Order No. 493. Form 549–ST must still be filed on paper.

United notes that it is required to file with Subpart G Prior Notice copies of executed agreements. United asks how it can do this. United also indicates that these prior notices must refer to the ST docket number in which it reported the initialization of the agreement. United asks whether it will be violating the cross reference rules because the Initial Full Reports filed to establish the ST docket are not reported electronically.

The Commission staff reponds that executed agreements were excluded from the electronic filing requirement. These agreements must still be filed on paper.

United asks whether it needs to refile the Blanket Certificate which authorized United to use Subpart G (open-access), and whether it needs to refile its § 157.204 Blanket certificate application. For section 7c applications previously filed, United also asks whether it will need to refile the entire application since it will be filing supplemental information and answers to data requests subsequent to September 30, 1988.

The Commission staff clarifies that the electronic filing requirement of Order No. 493 will not only apply to any type of certificate application initiated prior to the March 31, 1989 implementation date specified in Order No. 493–A.

Finally, United indicates that the monthly transportation rate discount report was not addressed (§ 284.7).

The Commission staff notes that these reports were not included in the electronic filing requirements of Order No. 493.

[FR Doc. 88–19560 Filed 8–26–88; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY
Internal Revenue Service

26 CFR Parts 1 and 602

[LR-119-86]

Section 1060; Allocation Rules for Certain Asset Acquisitions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of time for comments and requests for a public hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing concerning the notice of proposed rulemaking relating to the allocation rules for certain asset acquisitions. The extended deadline for submission of comments and requests for a public hearing is November 15, 1988.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 15, 1988.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attn: CC:LR:T (LR-119-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Judith C. Winkler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC (Attention: CC:LR:T) or telephone 202-566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On July 18, 1988 (53 FR 27035), the **Federal Register** published temporary regulations (T.D. 8215) with a notice of cross-reference (LR-119-86) relating to the application of the allocation rules for certain asset acquisitions under section 1060 to taxpayers generally and to partnerships. A number of members of the public have requested additional time in order to prepare their comments. This document extends the period for the submission of comments and requests for a public hearing to November 15, 1988.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive on improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Technical Section, Legislation and Regulations Division.

[FR Doc. 88-19564 Filed 8-26-88; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3436-3]

North Carolina; Order To Commence Proceedings To Determine Whether To Withdraw Hazardous Waste Program Approval; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of postponement of hearing date until further notice.

SUMMARY: This notice postpones the date previously published in the **Federal Register** on June 7, 1988 (53 FR 20845), which established dates and locations for the North Carolina withdrawal proceedings hearing. The hearing scheduled to be held on September 19-21, 1988 at the Jane S. McKimmon Center in Raleigh, North Carolina is hereby postponed until further notice. EPA is suspending the proceeding pending a national policy review of consisting and capacity issues under the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act. The review of these issues is complex and a final decision will take longer than originally anticipated.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, WPS, RCRA Branch, Region IV, 345 Courtland Street, Atlanta, Georgia 30365, Telephone: (404) 347-3016.

Date: August 19, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88-19531 Filed 8-26-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-406; FCC 88-235]

Broadcast Services; Reconsideration/ Clarification of the Report and Order Concerning the Main Studio and Program Origination Rules for Radio and Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration and clarification.

SUMMARY: This decision responds to several Petitions for Reconsideration and/or Clarification of the *Report and Order* (52 FR 21684, June 9, 1987) in the above-cited proceeding, which modified the main studio rule and several related requirements for broadcasters. Although this action denies the petitions for reconsideration, it clarifies several aspects of the earlier decision, including the function of the main studio. The item also removes a limited stay of the revised public inspection file rules, and amends these rules to grandfather the location of public files that were authorized to be maintained outside a station's community of license prior to the effective date of the *Report and Order (R&O)*.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis or Michele Farquhar, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in MM Docket 86-406, adopted July 11, 1988, and released August 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order (MO&O)

1. This decision reponds to seven petitions requesting reconsideration and/or clarification of the *R&O* in this proceeding. The *R&O* amended the Commission's Rules to permit broadcast stations to locate their main studios outside their communities of license at any point within their principal community contours, and eliminated the program origination requirement. The program origination provision required that every broadcast station originate more than 50 percent of its non-network programs from its main studio or from other points within its community of license. The *R&O* also revised the local public inspection file rules to provide that the public file must be maintained within the station's community of license, and adopted a requirement that each broadcast station maintain a local or toll-free telephone number if community residents would incur toll charges in telephoning a station.

2. The petitions in this proceeding generally raise five issues: (1) Whether the Commission should modify its

requirement that every station locate its public inspection file in the community of license and maintain a local or toll-free number; (2) whether the main studio has a function in light of the Commission's elimination of the program origination rule and, if so, what is the function and how is the term "main studio" defined; (3) whether the Commission should apply the main studio location rule to noncommercial educational FM stations; (4) whether the Commission should modify the main studio location standard; and (5) whether clarification of the principal community contour standard in the main studio location rule is necessary.

3. The *MO&O* reaffirms the actions adopted in the *R&O* and clarifies several aspects of the *R&O*, including the function of the main studio, the definition of the community contour standard, and the applicability of the *R&O* to noncommercial educational FM stations. First, in clarifying the function of the main studio, the *MO&O* states that a station must maintain a main studio which has the capability adequately to meet its function of serving the needs and interests of the residents of the station's community of license. To fulfill this function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence. Maintenance of production and transmission facilities and program transmission capability will allow broadcasters to continue, at their option, and as the marketplace demands, to produce local programs at the studio. A meaningful management and staff presence will help expose stations to community activities, help them identify community needs and interests and thereby meet their community service requirements. The term "main studio" continues to designate a broadcast station's only studio when no auxiliary studio is maintained. If a licensee has two or more studios that meet the applicable criteria, it may select one (within its community contour) to designate as its main studio.

4. Second, several petitioners questioned the Commission's decision to apply the amended main studio location rule to public broadcasters. In response, the Commission reaffirmed in the *MO&O* that the main studio requirement imposed in the *R&O*, just as previous main studio requirements, would apply to all noncommercial educational stations.

5. Finally, the *MO&O* clarified that the main studio must be located within a station's actual or its predicted principal community contour. The Commission's rules provide that the principal community contour is the contour that encompasses the minimum field strength a station is required to place over its community of license. *See* 47 CFR 73.24(j), 73.315(a), and 73.685(a) (1987). Since a principal community contour for AM stations can be defined by actual or predicted field strength, a licensee of an AM station may locate its main studio within a contour established by either actual or predicted measurements. If an AM licensee used a predicted contour in its initial construction permit application, but wishes to rely on actual measurements in relocating a main studio under the amended rule, the licensee must comply with § 73.186 of our rules. Since there is no method for locating a principal community contour based on actual measurements for FM (commercial and noncommercial educational) and television stations, the applicable contour for locating a main studio of an FM or television station under the amended rule is the predicted contour in all cases.

6. This *MO&O* also permits a station which is currently allowed to locate its public files outside its community of license at either (1) the AM transmitter main studio site pursuant to 47 CFR 73.1125(a), or (2) a main studio location authorized pursuant to the waiver provisions of 47 CFR 73.1125(a), to continue such practice. Without this grandfather provision, such stations would have been required under the *R&O* to move their public files from their main studio, where the public had been accustomed to finding them, to a location within their community of license. To provide temporary relief for those stations, the Commission, on July 16, 1987, had issued a limited stay of the *R&O*, permitting them to retain the public files at the former location pending Commission action on the petitions for reconsideration. The *MO&O* removes that stay, because it is now unnecessary given the adoption of the grandfather provision.

Final Regulatory Flexibility Act Statement

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rule will reduce the administrative burden on certain stations by grandfathering the location of public files that were authorized to be maintained outside the community of license prior to the effective date of the *R&O*.

8. The Secretary shall send a copy of this *Memorandum Opinion and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1982)).

Paperwork Reduction Act Statement

9. The requirements contained in this *Memorandum Opinion and Order* have been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirement; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

10. Accordingly, *it is ordered, that* Part 73 of the Commission's Rules and Regulations is amended as set forth below.

11. *It is further ordered,* that pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(1), the amendments to the Commission's Rules and Regulations shall become immediately effective upon publication in the **Federal Register**.

12. *It is further ordered,* that the limited stay of the revised public inspection rules *is rescinded.*

13. *It is further ordered,* that the petitions for reconsideration and/or clarification *are granted* to the extent indicated herein, and in all other respects, *are denied.*

14. *It is further ordered,* that this proceeding *is terminated.*

15. Authority for the action taken herein is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Rule Amendments

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. secs. 154 and 303.

2. Section 73.3526 is amended by revising paragraph (d) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(d) *Location of records.* The file shall be maintained at the main studio of the station, where such studio is located in the community to which the station is licensed or where such studio is located outside of the community of license pursuant to authorization granted under § 73.1125(a) of the rules prior to July 16, 1987, or at any accessible place (such as a public registry for documents or an attorney's office) in the community to which the station is or is proposed to be licensed. The file shall be available for public inspection at any time during regular business hours.

* * * * *

3. Section 73.3527 is amended by revising paragraph (d) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(d) *Location of records.* The file shall be maintained at the main studio of the station, where such studio is located in the community to which the station is licensed or where such studio is located outside of the community of license pursuant to authorization granted under § 73.1125(a) of the rules prior to July 16, 1987, or at any accessible place (such as a public registry for documents or an attorney's office) in the community to which the station is or is proposed to be licensed. The file shall be available for public inspection at any time during regular business hours.

* * * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-19512 Filed 8-26-88; 8:45 am]

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47 CFR Part 94

[PR Docket No. 87-5; FCC No. 88-255]

Amendment Regarding Multiple Address Frequencies et al.

AGENCY: Federal Communications Commission.

ACTION: Partial stay of final rule.

SUMMARY: The Commission has adopted an Order granting a partial stay of the Report and Order in PR Docket No. 87-5, 3 FCC Rcd 1564 (1988), regarding amended rules for Multiple Address System operations. Specifically, the Order stays the amended separation criteria in § 94.63(d) of the Commission's Rules, 47 CFR 94.63(d)(4)(i), pending reconsideration. Therefore, the Order reinstates the former separation citerion and provides a procedure by which the Commission will process applications for MAS operations during the interim. Those aspects of the Report and Order in PR Docket No. 87-5 not specifically stayed by the Order will remain in effect.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Rudolfo Baca, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in PR Docket No. 87-5, adopted July 22, 1988, and released August 4, 1988.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. The Commission has before it a Request for Stay (Request) filed by Digital Radio Networks, Inc. (Digital), a Motion for Stay Pending Reconsideration (Motion) filed by Radscan, Inc. (Radscan),[1] a Partial Opposition to Motion to Stay filed by EnScan, Inc. (EnScan), and an Opposition to Requests for Stay filed by NITECH, Inc. (NITECH). Digital and Radscan seek to stay the effective date of the co-channel mileage separation standard set forth in § 94.63(d)(4)(i) of the Rules, 47 CFR 94.63(d)(4)(i), as amended by the Report and Order in PR Docket No. 87-5, 3 FCC Rcd 1564 (53 FR 11855, April 11, 1988). EnScan, a manufacturer of mobile meter reading equipment, and NITECH, an equipment marketer, argue that the stay, if granted, should be limited to the separation standard between fixed master stations and that it should not suspend the implementation of those rules governing mobile-to-fixed or mobile-to-mobile separation standards.[2]

2. Upon review of the pleadings, we find that the contention that implementation of the new standard would result in harmful interference to existing licensees warrants further study. Accordingly, we conclude that the public interest will be served by staying the effective date of the co-channel separation criteria stated in § 94.63(d)(4)(i) of the revised Rules pending final decision on the petitions for reconsideration. Furthermore, we are also staying the effective date of the co-channel separation standards for fixed-to-mobile and mobile-to-mobile because these standards are the product of the technical assumptions supporting the fixed master-to-master standard.[3]

3. Our action here reinstates former § 94.63(d)(4)(i) of our Rules, 47 CFR 94.63(d)(4)(i), which provides that an applicant must state that the border area of the applicant's service area is not closer than 70 miles from the service area of existing licensees or pending applications that could be affected by the applicant. To this end, all applicants for multiple address station licenses filed on or after May 12, 1988,[4] will have three options: They may (1) certify that their applications comply with former § 94.63(d)(4)(i) of our Rules and, thus, can be processed according to the agency's established procedures; (2) amend their applications to comply with former § 94.63(d)(4)(i) so that they can be processed; [5] or (3) apply for a refund of the application fee if their applications fail to comply with former § 94.63(d)(4)(i) and cannot be amended to be brought into compliance. Petitions for refund of the application fee should be directed to the Managing Director and filed with the Secretary at 1919 M Street NW., Room 222, Washington, DC 20054.

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[1] Both Digital's Request and Radscan's Motion incorporate, either directly or by reference, a Petition for Reconsideration of the Report and Order in PR Docket No. 87-5. Additionally, the American Petroleum Institute (API) filed a Statement in Support of Digital's Request on May 12, 1988. This Order is not responsive to the merits of either Petition for Reconsideration. All petitions for reconsideration of the Report and Order in PR Docket No. 87-5 will be addressed in a subsequent order.

[2] The Commission also modified § 94.63(d)(4)(i) by adopting a mobile-to-fixed separation standard of 85 miles and a mobile-to-mobile separation standard of 50 miles. Report and Order, PR Docket number 87-5, 3 FCC Rcd at 1569.

[3] The dispute regarding the applicability to mobile systems of the technical assumptions upon which the separation criteria are based convinces us that the public interest would be furthered by staying the revised separation criteria for all MAS systems pending reconsideration. *See* NITECH's Opposition at 4-6.

[4] Applications received before May 11, 1988, have been processed under the former criteria . *See infra* at n. 13 (effective date).

[5] Applications must comply with the service radius guidelines provided in the Public Notice issued December 6, 1985, but need not comply with the power reduction table provided in § 94.65(a)(1)(iv) of the revised Rules because the reinstatement of the former criteria ordered herein obviates the need for such table pending reconsideration. A change in the applicant's service area will be considered a "substantial amendment" pursuant to §§ 1.918 and 1.962 of our Rules, 47 CFR 1.198 and 1.962, and processed accordingly.

Ordering Clauses

4. Pursuant to §§ 1.43, 1.44 and 1.429 of the Commission's Rules, and in view of the discussion above, *it is ordered* that revised § 94.63(d)(4)(i) of our Rules, 47 CFR 94.63(d)(4)(i), adopting co-channel mileage separation criteria for multiple address stations is *Stayed nunc pro tunc* pending reconsideration; therefore, the separation criteria stated in former § 94.63(d)(4)(i) will be reinstated during the interim.

5. *It is further ordered* that those portions of the Rules modified by the Report and Order in this docket [6] and not specifically stayed by this Order will remain in effect.[7]

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary

[FR Doc. 88-19098 Filed 8-26-88; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1817, 1835, and 1870

Changes to NASA FAR Supplement Concerning "NASA Research Announcement"

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This amendment to the NASA FAR Supplement (NSF) constitutes NASA's implementation of the Broad Agency Announcement, as authorized by the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

FAR 6.102 (48 CFR 6.102) and 35.016 (48 CFR 35.016) authorize and provide procedures for the use of a "Broad Agency Announcement" for obtaining research proposals. This rule establishes the NASA Research Announcement (NRA) as one mechanism for exercising the FAR authority. The rule covers policies and procedures for preparing and issuing NRAs, proposal preparation instructions, solicitation provisions, late proposals, evaluation and selection procedures, relationship to unsolicited proposals and related NASA administration procedures. The NRA was previously published for public comment in a **Federal Register** (52 FR 26705, July 16, 1987) notice of proposed rule making. The single public comment received was considered in writing the final rule. However, a number of improvements relating primarily to NASA's internal operations have been made based on comments from various NASA installations.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. These regulations fall in this category. NASA certifies that these regulations will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Information collection approval number 2700-0042, assigned by OMB to the NASA solicitation process, applies to individual NRAs issued pursuant to this rule.

List of Subjects in 48 CFR Parts 1815, 1817, 1835, and 1870

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

PARTS 1815, 1817, 1835 AND 1870—[AMENDED]

1. The authority citation for 48 CFR 1815, 1817, 1835, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—[AMENDED]

2. Subpart 1815.4 is amended as set forth below:

1815.407 [Amended]

a. In 1815.407, paragraph (a), the words "for Announcements of Opportunity or" are removed, and the phrase "or for broad agency announcements listed in 1835.016." is added after the word "program".

1815.412 [Amended]

b. In the introductory material of 1815.412, the phrase "Announcement of Opportunity (see 1870.1)" is removed, and the phrase "broad agency announcements listed in 1835.016" is added in its place.

1815.413-2 [Amended]

c. In 1815.413-2, subparagraph (c)(2), the words "and proposals in response to a NASA Research Announcement" are added after the phrase "unsolicited proposals."

3. Subpart 1815.5 is amended as set forth below:

1815.505-70 [Amended]

a. In 1815.505-70, the following sentence is added at the end of the section:

"* * * Unsolicited renewal proposals within the scope of an open NASA Research Announcement (NRA) shall be evaluated in the same manner as unsolicited proposals described in 1815.506(b)."

1815.506 [Amended]

b. In 1815.506, paragraph (b), the word "Reserved." is removed, and the following material is added to read as follows:

(b) *Relationship to open NRAs.* An unsolicited proposal for a new effort, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA under 1835.016-70(e), provided that the evaluating office can either (i) state that the proposal is not at a competitive disadvantage or (ii) give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

4. Subpart 1815.6 is amended as set forth below:

1815.613-70 [Amended]

In 1815.613-70, the following material is added between the reference "1870.103, App. I." and the next sentence:

"Proposals received in response to an open NASA Research Announcement will be evaluated in accordance with 1835.016-70(e). Unsolicited proposals identified by an evaluating office as being within the scope of an open NASA Research Announcement shall be evaluated under 1835.016-70(d). Small Business Innovation Research (SBIR) proposals will be evaluated in accordance with the SBIR program solicitations issued under the authority of section 9 of the Small Business Act (15 U.S.C. 638)."

PART 1817—[AMENDED]

5. Subpart 1817.5 is amended as set forth below:

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[6] Report and Order, PR Docket No. 87-5, 3 FCC Rcd at 1572

[7] Erratum, PR Docket No. 87-5, 3 FCC Rcd 2467 (1988) (amended rules effective May 11, 1988).

1817.504 [Amended]

In 1817.504, paragraph (a), the word "Solicitations" is removed, and the phrase "Invitations for bids and requests for proposals" is added in its place.

PART 1835—[AMENDED]

6. Part 1835 is amended by adding 1835.016 and 1835.016–70 to read as follows:

1835.016 Broad Agency Announcements.

(a) The following forms of broad agency announcements are authorized for use:

(1) Announcements of Opportunity, described in Subpart 1870.1, NASA Acquisition of Investigations System.

(2) NASA Research Announcements, described in 1835.016–70.

(3) Other forms of announcements approved by the Assistant Administrator for Procurement.

(b) Broad agency announcements may not preclude the participation of any offeror capable of satisfying the Government's needs unless a justification for other than full and open competition is approved under FAR 6.304 (see FAR 6.102(d)(2) and 35.001).

(c) Other program announcements, notices, and letters not authorized by this section shall not be used to solicit proposals which may result in contracts.

1835.016–70 NASA Research Announcements.

(a) *Scope.* This subsection prescribes regulations and procedures for the use of a NASA Research Announcement (NRA), a form of broad agency announcement (see FAR 6.102(d)(2)). An NRA is used to announce NASA's research interests and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest to NASA. The NRA is intended to be used for those research procurements for which it would be impossible to draft an adequate request for proposals in sufficient detail without restraining the technical response, and thus hindering the competition of ideas rather than expanding competition. Consequently, an NRA shall not be used in place of an RFP when the procurement requirement is narrowly defined and it is necessary to use a detailed description or specification.

(b) *Issuance.* (1) Each NRA shall be assigned a unique number in accordance with 1804.7102–1.

(2) NRAs may remain open for proposal submission for a maximum of one year. They may not be amended or modified once issued, but may be reissued by assigning a new number and resynopsizing. (See also 1835.016–70(g).) NRAs should remain open for at least 90 days.

(3) Before issuance, each field-generated NRA shall be concurred in by the Procurement Officer and approved by the Field Installation Director or designee, who shall serve as or designate a selecting official. Before issuance, each Headquarters-generated NRA shall be concurred in by General Counsel (Code GK) and the Director, Headquarters Grants and Contracts Division (Code HW) and approved by the cognizant Program Associate Administrator or designee, who shall serve as or designate a selecting official. If a Headquarters-generated NRA may result in awards by a NASA field installation, the concurrence of that installation's Procurement Officer may be sought in place of or in addition to Code HW's concurrence.

(4) The contracting officer shall assure that the NRA is synopsized in the Commerce Business Daily (CBD). The CBD synopsis required by FAR 35.016(c) satisfies the synopsis requirement at FAR 5.201 and the synopsis contemplated by FAR 5.205 is not required. The synopsis shall be brief and provide the address for obtaining a copy of the detailed NRA. The technical part of the synopsis is intended to describe an identifiable area of interest and should not exceed 50 words.

(5) The NRA shall be prepared, printed, and distributed by or under the direction of the selecting official. Distribution shall not begin until the concurrence of the Procurement Officer has been obtained and the contracting officer has confirmed that the synopsis requirements have been met. The NRA shall be distributed to each coordinating office responsible for receipt of unsolicited proposals and to the Office of Procurement (Code HS).

(6) In addition to the approvals in paragraph (b)(3) above, each Installation shall submit its first two NRAs to the Assistant Administrator for Procurement (Code HS) for concurrence before issuance.

(c) *Content.* The NRA shall consist of the following items in the order shown. This entire package shall be provided in response to requests.

(1) *Cover.* The cover shall display:

(i) "OMB Approval Number 2700–0042" in the upper right corner.

(ii) Title (centered, in uppercase).

(iii) "NASA Research Announcement Soliciting Research Proposals for the Period Ending _____" (centered, on three lines, two inches below the title, insert closing date).

(iv) NRA number (centered, two inches below closing date).

(v) Official address for office issuing NRA (centered, at bottom of cover).

(2) *Summary and Supplemental Information.*

(i) The Summary and Supplemental Information shall not exceed two pages and shall include:

(A) Title (centered, in uppercase).

(B) Introductory paragraphs describing the purpose of the NRA and the period for receipt of proposals. When proposals received during this period may be grouped for evaluation at separate times, the introductory paragraphs shall indicate when evaluations are planned and shall include the following remark:

> A proposal that is scientifically and programmatically meritorious, but that cannot be accepted during its initial review under an NRA due to funding uncertainties may be included in subsequent reviews unless the offeror requests otherwise.

(C) NRA number.

(D) Address for submitting proposals, including "ATTN: NRA _____."

(E) Copies required.

(F) Selecting official's title.

(G) Name, address, and telephone number for additional technical information.

(H) Name and telephone number of Procurement Office point of contact for administrative and contractual information.

(I) Additional instructions which supplement the Instructions for Responding to NASA Research Announcements for Solicited Research Proposals (see 1870.2). Such information shall be kept to the minimum necessary for a particular NRA and shall cite specific "Instructions" paragraphs supplemented.

(J) When awards will be chargeable to funds of the new fiscal year and the NRA is to be issued before funds are available, the NRA shall contain a statement as follows:

> Funds are not presently available for awards under this NRA. The Government's obligation to make awards is contingent upon the availability of appropriated funds from which payment for award purposes can be made and the receipt of proposals which the Government determines are acceptable for award under this NRA.

(ii) The Summary and Supplemental Information may include estimates of the amount of funds that will be available and the number of anticipated awards. A breakdown of the estimates by research area may also be shown.

(iii) The Summary and Supplemental Information may indicate that proposals submitted under an earlier NRA and held for subsequent reviews will be considered and need not be resubmitted. To so indicate, the earlier NRA shall be identified by number in the following statement:

> Proposals for which no selection decision was made under NRA _____ and held for subsequent reviews will be considered under this NRA and need not be resubmitted.

(3) Technical Description. The first page shall contain the NRA number and title at the top. A brief description not exceeding two pages is preferable, but it should be detailed enough to enable ready comprehension of the research areas of interest to NASA. Specifications containing detailed statements of work more suited to RFPs should be avoided. Any program management information included must be limited to matters that are essential for proposal preparation.

(4) Instructions for Responding to NASA Research Announcements for Solicited Research Proposals. The NRA shall contain instructions in accordance with 1870.203.

(d) *Unsolicited proposals.* (1) Unsolicited proposals for new efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.506(b).

(2) Unsolicited proposals for renewal of ongoing efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.505–70.

(3) A broad agency announcement shall not be considered to be an "acquisition requirement" as the term is used in FAR 15.507(a)(2).

(e) *Receipt of proposals, evaluation, and selection.* (1) Proposals shall be protected as provided in 1815.508–70 and 1815.509–70.

(2) Evaluation, selection, and award may occur during or after the period established for receipt of proposals. Late proposals and modifications shall be treated in accordance with 1815.412 (a) and (b).

(3) When more than one time is established in the NRA for evaluating proposals, proposals received prior to the time established will be considered as part of the initial group to be evaluated. Subsequent groups of proposals to be evaluated shall be formed from those proposals received after the time established for the earlier evaluation groups and prior to the time established for a subsequent group, along with those proposals, if any, held over under paragraph (e)(8) below.

(4) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve evaluation, outside NASA, by a discipline specialist in the area of the proposal or evaluation by an in-house specialist or both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in FAR 15.413–2(f) and 1815.413 and 1815.413–2. In particular, the selecting official shall ensure compliance with FAR 15.413–2(f)(5) regarding the designation of outside evaluators and avoidance of conflicts of interest. After receipt of a proposal and prior to selection, scientific or engineering personnel shall communicate with an offeror, regarding the proposal, only for the purpose of clarification, as defined in FAR 15.601, or in order to understand the meaning of some aspect of the proposal which is not clear or obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(5) Competitive range determinations shall not be made, and best and final offers shall not be requested.

(6) All or part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought as long as (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, they may be described to the contracting officer under paragraph (e)(10)(ii) below, or the selecting official may request revisions from the offeror. The changes shall not transfer information from one offeror's proposal to another offeror (see FAR 15.610(d)(2)). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(7) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers.

(8) A proposal that is scientifically and programmatically meritorious, but that is not selected during its initial review under an NRA may be included in subsequent reviews unless the offeror requests otherwise. If the proposal is not to be held over for subsequent reviews, the offeror shall be notified that the proposal was not selected for award.

(9) The selecting official shall notify each offeror whose proposal was not selected for award and explain generally why the proposal was not selected. If requested, the selecting official shall arrange a debriefing under 1815.1003, with the participation of a contracting officer.

(10) The selecting official shall forward to the contracting officer—

(i) The results of the technical evaluation, including the total number of proposals received under the NRA by the time of selection, the selection statement, and the proposal(s) selected for funding;

(ii) A description of any changes desired in any offeror's statement of work, including the reasons for the changes and any effect on level of funding;

(iii) If a contract will be used to fund the proposal, a description of deliverables, including technical reports, and delivery dates, consistent with the requirements of the NRA;

(iv) A procurement request;

(v) Comments on the offeror's cost proposal: either the selecting official's comments, which may be based on the reviewers' comments, or copies of the reviewers' comments with any different conclusions of the selecting official. The comments shall address the need for and reasonableness of travel, computer time, materials, equipment, subcontracted items, publication costs, labor hours, labor mix, and other costs; and

(vi) A copy of the selected proposal as originally submitted, any revisions, and any related correspondence from the successful offeror.

(11) The selecting official may provide to the contracting officer copies of the reviewers' evaluations. Reviewers' names and institutions may be omitted in order to protect their identity.

(12) The selecting official may notify each offeror whose proposal was selected for negotiation leading to award.

(i) The notification shall state that—

(A) The proposal has been selected for negotiation leading to award;

(B) The offeror's business office will be contacted by a contracting officer, who is the only official authorized to obligate the Government; and

(C) Any expenses incurred by the offeror in anticipation of receiving an award will be at the risk of the offeror.

(ii) The notification may identify which award instrument (contract,

grant, cooperative agreement, or other agreement) has been recommended.

(f) *Award.* If a contract is selected as the award instrument (see FAR 35.003(a) and 1835.003(a)), the contracting officer shall—

(1) Advise the offeror that the Government contemplates entering into negotiations; the type of contract contemplated to be awarded; and the estimated award date, level-of-effort, and delivery schedule;

(2) Send the offeror a model contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions; the contract statement of work may summarize the proposed research, state that the research shall be conducted in accordance with certain technical sections of the proposal, which shall be identified by incorporating them into the contract by reference, and identify any changes to the proposed research;

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, "Solicitation, Offer, and Award," or other appropriate forms;

(4) Conduct negotiations in accordance with FAR Subparts 15.8 and 15.9, as applicable;

(5) Award a contract with reasonable promptness to the successful offeror by transmitting written notice of the award to that offeror; and

(6) Comply with FAR Subparts 4.6 and 5.3 on contract reporting and synopses on contract awards, to the extent required by these subparts.

(g) *Cancellation of an NRA.* When program changes, the absence of program funding, or any other reason requires cancellation of an NRA, the contracting officer shall publish a notice in the Commerce Business Daily. The office issuing the NRA may provide additional notification by using the mailing list for the NRA.

PART 1870—[AMENDED]

7. Part 1870 is amended by adding Subpart 1870.2 consisting of sections 1870.201 through 1870.203 and Appendix I to read as follows:

Subpart 1870.2—NASA Research Announcement System

1870.201 Purpose.

It is NASA policy to encourage submission of research proposals relevant to agency requirements. The NASA Research Announcement (NRA) System is one means of implementing the policy by permitting the solicitation and competitive selection of research projects in accordance with statute while at the same time preserving the traditional concepts and understandings associated with NASA sponsorship of research.

1870.202 System content.

(a) The regulations governing the NRA System (see 1835.016–70) set forth the requirements for preparing, issuing, and processing NRAs.

(b) The system contains specific instructions for proposers. These instructions shall be included in the NRA, a form of broad agency announcement authorized at 1835.016.

1870.203 Instructions for responding to NRAs.

(a) The "Instructions for Responding to NASA Research Announcements for Solicited Research Proposals" document (prescribed in 1835.016–70(c)(4)) is set forth as Appendix I to this section 1870.203.

(b) This Appendix may be reproduced locally as part of the NRA provided the following conditions are met:

(1) For each NRA the issuing office shall verify that the most recent version of Appendix I, as contained in the NFS, is used.

(2) The current text shall be reproduced verbatim; however, the issuing office may remove the NFS page headers and add the NRA number in order to identify the NRA to which the Appendix is attached. Any other change shall be treated as a deviation in accordance with 18–1.400.

Appendix I To 1870.203—Instructions for Responding to NASA Research Announcements for Solicited Research Proposals

Instructions for Responding to NASA Research Announcements for Solicited Research Proposals (August 1988)

1. Foreword

a. NASA depends upon industry, educational institutions and other nonprofit organizations for most of its research efforts. While a number of mechanisms have been developed over the years to inform the research community of those areas in which NASA has special research interests, these instructions apply only to "NASA Research Announcements," a form of "broad agency announcement" described in 6.102(d)(2) and 35.016 of the Federal Acquisition Regulation (FAR). The "NASA Research Announcement (NRA)" permits competitive selection of research projects in accordance with statute while at the same time preserving the traditional concepts and understandings associated with NASA sponsorship of research.

b. These instructions are Appendix I to 18–70.203 of the NASA Federal Acquisition Regulation Supplement.

2. Policy

a. NASA fosters and encourages the submission of research proposals relevant to agency mission requirements by solicitations, "NASA Research Announcements," which describe research areas of interest to NASA. Proposals received in response to an NRA will be used only for evaluation purposes.

b. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

c. A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

3. Purpose

These instructions are intended to supplement documents identified as "NASA Research Announcements." The NRAs contain programmatic information and certain "NRA-specific" requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

4. Relationship To Award

a. A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded on the basis of a proposal submitted in response to an NRA. NASA does not have separate "grant proposal" and "contract proposal" and "contract proposal" categories, so all proposals may be prepared in a similar fashion. NASA will determine the appropriate instrument.

b. Grants are generally used to fund basic research in educational and nonprofit institutions, while research in other private sector organizations is accomplished under contract. Additional information peculiar to the contractual process (certifications, cost and pricing data, facilities information, etc.) will be requested, as necessary, as the procurement progresses. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement (NHB 5100.4). Any resulting grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NHB 5800.1).

5. Conformance to Guidance

a. NASA dos not have any mandatory forms or formats for preparation of responses to NRAs; however, it is requested that proposals conform to the procedural and submission guidelines covered in these instructions. In particular, NASA may accept proposals without discussion; hence, proposals should initially be as complete as

possible and be submitted on the proposers' most favorable terms.

b. In order to be considered responsive to the solicitation, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation. NASA reserves the right to reject any or all proposals received in response to an NRA when such action is considered in the best interest of the Government.

6. NRA-Specific Items

a. Several proposal submission items will appear in the NRA itself. These include: The unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information.

b. Items included in these instructions may be supplemented by the NRA, as circumstances warrant. Examples are: Technical points for special emphasis; additional evaluation factors; and proposal length.

7. Proposal Contents

a. The following general information is needed in all proposals in order to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

b. *Transmittal Letter or Prefatory Material*—

(1) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(2) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(3) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women-owned, etc.;

(4) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(5) Identification of any other organizations that are currently evaluating a proposal for the same efforts;

(6) Identification of the specific NRA, by number and title, to which the proposal is responding;

(7) Dollar amount requested of NASA, desired starting date, and duration of project;

(8) Date of submission; and

(9) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

c. Restriction on Use and Disclosure of Proposal Information

It is NASA policy to use information contained in proposals for evaluation purposes only. While this policy does not require that the proposal bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page on the proposal and specify the information subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal Information

The information (data) contained in [*insert page numbers or other identification*] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

d. Abstract

Include a concise (200–300 word if not otherwise specified in the NRA) abstract describing the objective of the proposed effort and the method of approach.

e. Project Description.

(1) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge in the field; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the general plan of work, including the broad design of experiments to be undertaken and an adequate description of experimental methods and procedures. The project description should be prepared in a manner that addresses the evaluation factors in these instructions and any additional specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Note, however, that subcontracting significant portions of a research project is discouraged.

(2) When it is expected that the effort will require more than one year for completion, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should, of course, be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

f. Management Approoch

For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and any necessary arrangements for ensuring a coordinated effort should be described. Aspects of any required intensive working relations with NASA field centers that are not logical inclusions elsewhere in the proposal should be described in this section.

g. Personnel

The principal investigator is responsible for direct supervision of the work and participates in the conduct of the research regardless of whether or not compensation is received under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

h. Facilities and Equipment

(1) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use on the project.

(2) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative to purchase. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for both research and non-research purposes should be explained.

i. Proposed Costs

(1) Proposals should contain cost and technical parts in one volume: do not use separate "confidential" salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all manpower data in terms of man-months or fractions of full-time.

(2) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases. (Standard Form 1411 may be used).

(3) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 18–31 (and OMB Circulars A–21 for educational institutions and A–122 for nonprofit organizations).

j. Security

Proposals should not contain security classified material. However, if the proposed research requires access to or may generate security classified information, the submitter will be required to comply with applicable Government security regulations.

k. Current Support

For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

l. Special Matters

(1) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(2) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

8. Renewal Proposals

a. Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. It is not necessary that a renewal proposal repeat all of the information that was in the original proposal upon which the current support was based. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which extended support is desired.

A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

b. NASA reserves the right to renew an effort either through amendment of an existing contract or by a new award.

9. Length

Unless otherwise specified in the NRA, every effort should be made to keep proposals as brief as possible, concentrating on substantive material essential for a complete understanding of the project. Experience shows that few proposals need exceed 15–20 pages. Any necessary detailed information, such as reprints, should be included as attachments rather than in the main body of the proposal. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of "one-of-a-kind" attachments: their availability may be mentioned in the proposal.

10. Joint Proposals

a. Some projects involve joint efforts among individuals in different organizations or mutual efforts of more than one organization. Where multiple organizations are involved, the proposal may be submitted by only one of them. In this event, it should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

b. Where a project of a cooperative nature with NASA is contemplated, the proposal should describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. However, the proposal must be confined only to that which the proposing organization can commit itself. "Joint" proposals which purport to specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

11. Late Proposals

A proposal or modification thereto received after the date or dates specified in an NRA may still be considered if the selecting official deems it to offer NASA a significant technical advantage or cost reduction.

12. Withdrawal

Proposals may be withdrawn by the proposer at any time. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

13. Evaluation Factors

a. Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

b. Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

c. Evaluation of its intrinsic merit includes the consideration of the following factors, none of which is more important than any other:

(1) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(3) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(4) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art.

d. Evaluation of the cost of a proposed effort includes the consideration of the realism and reasonableness of the proposed cost and the relationship of the proposed cost to available funds.

14. Evaluation Techniques

Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases, however, proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house where NASA has particular competence; others are evaluated by a combination of in-house people and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. Regardless of the technique, the final decisions are always made by a designated NASA selecting official. A proposal which is scientifically and programmatically meritorious, but which is not selected for award during its initial review under the NRA may be included in subsequent reviews unless the proposer requests otherwise.

15. Selection for Award

a. When a proposal is not selected for award, and the proposer has indicated that the proposal is not to be held over for subsequent reviews, the proposer will be notified that the proposal was not selected for award. NASA will notify the proposer and explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

b. When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation with the submitter. Formal RFPs are not used to obtain additional information on a proposal selected under the NRA process.

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However, the contracting officer may request certain business data and may forward a model contract and other information which will be of use during the contract negotiation.

16. Cancellation of NRA

NASA reserves the right to make no awards under this NRA and, in the absence of program funding or for any other reason, to cancel this NRA by having a notice published in the *Commerce Business Daily*. NASA assumes no liability for cancelling the NRA or for anyone's failure to receive actual notice of cancellation. Cancellation may be followed by issuance and synopsis of a revised NRA, since amendment of an NRA is normally not permitted.

[FR Doc. 88-19516 Filed 8-26-88; 8:45 am]
BILLING CODE 7510-01-M

Proposed Rules

Federal Register
Vol. 53, No. 167
Monday, August 29, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[AMS-FV-88-050PR]

Almonds Grown in California; Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change administrative rules and regulations established under the Federal marketing order for California almonds to: (1) Allow handlers credit against their assessments for payments for in-store supermarket advertising using fixed position, i.e., stationary display advertisements, or video media; and (2) remove restrictions on a provision which allows handlers to receive 150 percent credit for handler payments to the Almond Board of California (Board) for the Board's use for generic promotion and paid adverstising. These changes were recommended by the Board, the agency responsible for local administration of the order, and would give handlers additional flexibility in obtaining credit against their advertisting assessments under the order.

DATE: Comments must be received by September 28, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proproal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20250–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20250–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 981 (7 CFR Part 981), as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (REA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposed rule invites comments on changes to the administrative rules and regulations of the almond marketing order. These changes were recommended by the Board and would give additional opportunities to handlers to recive credit against their annual creditable assessments. It is AMS's view that the proposal would relieve restrictions on handlers and provide additional opportunities to handlers to receive credit against their advertising assessments, while not imposing any additional costs on handlers.

This proposal would revise § 981.441 of Subpart—Administrative Rules and Regulations and is based on recommendations of the Board and upon other available information.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against those portions of such handlers' assessment obligations which are designated for marketing promotion, including paid advertising. That paragraph also provides that handlers shall not receive credit for allowable expenditures that would exceed the amount of such creditable assessments. Section 981.41(e) provides that before crediting is undertaken, and once a recommendation is received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer provisions for creditable advertising expenditures.

Section 981.441 currently prescribes rules and regulations to regulate crediting for marketing promotion which includes paid advertising. This proposed rule would amend § 981.441(c) concerning crediting for paid advertising and § 981.441(e) which allows handlers to receive a 150 percent credit against their advertising assessments for payments to the Board for the Board's generic promotion and paid advertising program.

Section 981.441(c) prescribes requirements which specifically apply to crediting for paid advertising. This proposal would amend § 981.441(c) by adding a new provision to § 981.441(c)(3)(i) to allow handlers credit against their creditable assessments for 100 percent of such handlers' payments for in-store supermarket generic or brand advertising using fixed position or video media. Such in-store supermarket advertising would have to be conducted through an advertising firm. The advertising firm would pay the supermarket for displaying the advertisements. Therefore, the money would not come directly from the

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handler who owned the brand or the product. Provision for advertising directly between a handler and a supermarket would not allow the Board to separate the costs for advertising and shelf space as these are usually consolidated under the general heading "advertising." Fixed position advertisements, which are stationary display advertisements, would include at least two of the following: (1) Processed color displays enclosed in frames and mounted on supermarket shopping carts; (2) overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or (3) processed color advertisements enclosed in frames and mounted on a supermarket shelf. Two of the three methods would be required as the Board believes this to be the most effective method of utilizing fixed position advertisements. Video advertisements would be shown on video monitors running television commercials, or "infomercials" (informative commercials), for specific products on a rotating basis. Handlers would submit to the Board a copy of the agency invoice to the supermarket, a copy of the actual advertisement or video tape, a published rate card from an advertising firm, and a copy of the agency invoice to the handler. This proposal could give handlers using a brand name an increased opportunity to receive credit against their creditable assessments, allow more handlers to take advantage of crediting under current rules and regulations, and increase almond sales through additional promotions.

Section 981.441(e) currently allows a handler to receive credit for 150 percent of payments made to the Board against the creditable assessment obligation incurred on the first 4,000,000 redetermined kernelweight pounds received by such a handler during a crop year. In addition, the poundage limit is reduced by any poundage on which a handler incurs an obligation and receives 150 percent credit pursuant to the provisions for credit on distribution of sample packages. This proposed rule would remove the volume limitations and allow handlers to receive 150 percent credit for an unlimited tonnage of almonds, subject to the conditions provided for in § 981.441(c), concerning creditable expenditures. Also, the proposed rule would permit handlers to make payments to the Board in installments between January 31 and June 30 of each crop year. Payments would have to be made on a quarterly basis with payments to be made on or before January 31, March 31, May 31, and June 30. If the entire amount of the claim is not paid by June 30, or if a handler fails to meet any payment deadline, credit for payment would revert to the 100 percent basis. Currently the full amount must be paid by January 31.

Both of these proposed changes would give handlers additional flexibility and opportunities to obtain credit against their advertising assessments. This proposed rule would also allow handlers to utilize the 150 percent provision in conjunction with a deferment provision contained in paragraph (b) of § 981.441. Paragraph (b) provides that handlers may receive 100 percent credit against their creditable assessment obligations for their own advertisements published, broadcast, or displayed and other marketing promotion activities conducted during the crop year for which credit is requested (July 1–June 30) except that handlers may receive 100 percent credit up to a maximum of 40 percent of their creditable assessment obligations for such advertisement and promotion activities deferred until no later than December 31 of the subsequent crop year. This proposed rule would allow handlers to receive 100 percent credit for up to 40 percent of their obligation for their own advertising and promotion activities deferred until no later than December 31, while also receiving 150 percent credit for direct payments made to the Board in installments between January 31 and June 30 of each crop year.

This change would give handlers additional flexibility in meeting their assessment obligations and should be particularly beneficial to small handlers. The action might also benefit handlers who, because they have no brand name or because they do not market their almonds in retail outlets, find the current rules concerning crediting for marketing promotion and paid advertising less advantageous to their marketing strategies than handlers who do have a brand name or market their almonds in retail outlets.

Since the inception of the creditable advertising and promotion program in 1972, new activities for which credit may be received have frequently been added to the rules. The Board has attempted to add new activities which would benefit a wide range of handlers who market their almonds in different types of outlets. It is the AMS's view that this action would reduce the costs to handlers of meeting their creditable assessment obligations by making more credit available to more handlers.

The information collection requirements contained in the provisions of the administrative rules and regulations to be revised by the proposed rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0071.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section 981.441 is amended by revising paragraph (c)(3)(i); redesignating the current (c)(6)(v) as (c)(6)(v) as (c)(6)(vi) and revising it; adding a new paragraph (c)(6)(vi); and revising paragraph (e) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(3) * * *

(i) For 100 percent of a handler's payment to an advertising medium:

(A) For a generic advertisement of California almonds;

(B) For an advertisement of the handler's brand of almonds;

(C) When either of these advertisements includes reference to a complementary commodity or product;

(D) For a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotion activities, including joint promotions, and the entire expenditure is borne by the handler; or

(E) For in-store supermarket advertisements using fixed position or video media, when such payments are made through an advertising firm:

(1) Fixed position advertisements must include at least two of the following:

(i) Processed color displays enclosed in plastic frames and mounted on supermarket shopping carts;

(ii) Overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or

(iii) Processed color advertisements enclosed in frames and mounted on a supermarket shelf;

(2) Video advertisements must be shown on a fixed video monitor running television commercials, or infomercials

for specific products on a rotating basis.

* * * * *

(6) * * *

(v) For in-store supermarket advertising, submit a copy of the company invoice, a copy of the actual advertisement or video tape, a published rate card from a nationally recognized company, and a copy of the agency invoice, if any.

(vi) Each claim shall also include a certification to the Secretary of Agriculture and to the Board that the claim is just and conforms to requirements set forth in § 981.41(c). The Board shall advise the handler promptly of the extent to which such claim has been allowed.

* * * * *

(e) Credit shall be granted for payments made to the Board for use by the Board for generic marketing promotion including paid advertising subject to the following conditions:

(1) A handler may receive credit for 150 percent of a payment made to the Board against the creditable assessment obligation.

(2) When a handler elects to use this method of crediting for all or a portion of such handler's assessment obligation, the handler may use the extension provided for pursuant to paragraph (b) of this section for the handler's deferred advertising and promotion obligation.

(3) Handlers must file claims with the Board on ABC Form 31 in order to receive credit for payments made to the Board. No credit shall be granted unless a claim is filed on or before January 31 of the then current crop year. Payments must be made as follows: One-fourth of total claim on or before January 31; one-fourth on or before March 31; one-fourth on or before May 31; and one-fourth on or before June 30 of the then current crop year. If the entire amount of the claim is not paid by June 30, or if a handler fails to meet any payment deadline of this paragraph, credit for payment shall revert to the 100 percent basis.

Dated: August 24, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-19570 Filed 8-26-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1002

[Docket No. AO-71-A76; DA-88-107]

Milk in the New York-New Jersey Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends increasing from four cents to five cents the maximum allowable rate of payment for expense of administration under the New York-New Jersey Federal milk order. The higher maximum allowable rate of payment reflects the increased costs of administering the order that have occurred since it was last adjusted in September 1969.

The recommended action is based on a public hearing held in Syracuse, New York, on June 6, 1988, to consider an industry proposal to amend the marketing order. The hearing was requested by three dairy farmer cooperatives.

DATE: Comments are due on or before September 13, 1988.

ADDRESS: Comments (six copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The economic impact of the amendment incorporated in this decision will fall on all regulated handlers pro rata to their size of operation. On a unit basis such additional expense is minor (less than 1/1000 of the value of milk handled) and most likely would be translated into the price of the goods that a handler sells. As a result, the action taken here is not expected to have a significant economic impact on a substantial number of small entities.

Prior document in this proceeding:

Notice of Hearing: Issued May 19, 1988; published May 25, 1988 (53 FR 18844).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the New York-New Jersey marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 15th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendment set forth below is based on the record of a public hearing held at Syracuse, New York, on June 6, 1988, pursuant to a notice of hearing issued May 19, 1988 (53 FR 18844).

The material issue on the record of hearing relates to an increase in the maximum allowable rate of payment for expense of administration.

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

Expense of Administration

The maximum allowable rate of assessment for expense of administration under Order 2 should be increased to five cents per hundredweight. Such payment should continue to be applicable to the total quantity of pool milk received by the handler from dairy farmers at plants or from farms in a unit operated by the handler directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2).

The Act requires that handlers shall pay the cost of operating an order through an assessment on milk handled. The present maximum allowable rate of payment adopted September 1, 1969, of four cents per hundredweight has not provided sufficient funds since 1980 to cover the administrative expenses necessarily incurred by the market administrator and to maintain a reasonable operating reserve.

The increase was jointly proposed by three dairy farmer cooperatives, namely, Agri-Mark, Inc., Dairylea Cooperative, Inc., and Eastern Milk Producers Cooperative Association (Agri-Mark, Dairylea and Eastern, respectively). Spokesmen for these groups stated that

the administrative fund has been operating at a deficit for several years due to supplies of milk leveling off while costs were continuously increasing. Therefore, they proposed that the maximum allowable charge for administering the order be raised to offset such deficit. At the hearing, representatives of two Order 2 handlers, namely, Empire Cheese, Inc., and Sunnydale Farms, gave statements in support of such action.

An indication of an adequate financial status of the administrative fund is an operating reserve adequate to close out the office in the event that the order is terminated. This entails maintaining an operating reserve with a balance within 15 percent of the sum of one-half of a year's total expenses plus one-quarter of a year's salaries and services expense. The New York-New Jersey order has not maintained such a reserve since 1982, and in 1987 the operating reserve was barely one-quarter of that recommended. If such trend were not reversed, then it would be reasonable to expect that the operating reserve would be exhausted by the end of 1989. However, by increasing the maximum allowable rate of assessment to five cents per hundredweight, and charging that amount, it is conceivable, barring any unforeseen escalation of expenses or a reduction in milk receipts of order handlers, that the operating reserve could be brought to an adequate level by the end of 1991.

Total expenses exceeded total income of 1981 by $71,000. However, the operating reserve still exceeded the recommended reserve. In 1982 expenses exceeded income by $215,000 and the operating reserve fell short of the recommended level, but only by five percent. In 1983 expenses exceeded income by $315,000 and the operating reserve was only 72 percent of the recommended reserve, below the 15 percent safety net. From 1983 on (excluding 1984 when the accounting changed to accrual method), annual operating deficits have served to drain the operating reserve. The net accumulated decrease in the administrative fund reserve for the 1983–1987 period has totaled $1,742,893. The operating reserve as of December 31, 1987, was $823,772, only 25.3 percent of the recommended reserve.

This trend could be reversed if either receipts of milk pooled would drastically increase, or expenses would drastically decline, or if the maximum allowable assessment rate is increased. Presently, milk production is declining. In fact, between 1986 and 1987, total receipts of pooled milk under the New York-New Jersey order decreased 3.5 percent. On the other hand, expenses have and are expected to keep pace with the rate of inflation, which between 1983 and 1988 rose 19 percent. Therefore, increasing the maximum allowable assessment rate one cent as proposed is the only sure way of obtaining sufficient funds to administer the New York-New Jersey order.

Opponents to the proposed increase suggested one other alternative to solving the financial problems of administering Order 2, that being to move the main headquarters out of New York City. In their testimony and briefs, representatives of the New Jersey Milk Industry Association, the Dairy Industry Institute, the National Farmers Organization, Inc. (NFO) and Crowley Foods all rejected the idea of increasing the assessment one more penny on the basis that such action would increase handler costs by over one million dollars. The midtown Manhattan address of the market administrator's office was cited as the main reason why the cost of administration under Order 2 is much higher than that under other comparable orders. Rather than raise handlers' and ultimately consumers' costs, these groups suggested that the market administrator's headquarters be moved to a less expensive location which would also be closer to a majority of regulated handlers. Such site would be somewhere beyond 150 miles of New York City because 58 percent of the handlers are located beyond the 150 mile zone. It was even put forth that such a move might result in an actual assessment charge of less than four cents a hundredweight.

The four opponents all suggested that the market administrator promptly institute a search for a new location. The Dairy Industry Institute suggested that an independent professional study be undertaken and that from such study a report on the "wisdom of location in New York City" be given to an advisory group composed of dairy farmers, handlers and government representatives. This group would then join in a recommendation as to location. In the meantime, however, they stated that the maximum assessment charge should remain at four cents.

On the other hand, NFO stated that they would support a temporary increase in the maximum assessment charge while the market administrator conducted a search for new headquarters.

It must be noted that proponent, Dairylea, in its brief, stated that it supported a study to determine a feasible location for the market administrator's office. However, Dairylea still supported an increase in the maximum allowable assessment rate.

The record indicated that in 1983 the market administrator's office was relocated from one Manhattan address to another because it lost its lease in its former location. When determining where to move, several things were considered, including choosing a location that would cause the least amount of disruption to the industry that the office serves. After studying alternative sites in New York City and its suburbs, it was decided that the location that would best accommodate the effective operation of the office and industry needs would be another midtown address. It was believed that a suburban location would have resulted in a loss of trained and experienced employees that would adversely impact on the industry. A suburban location would have meant longer commutes for part of the staff, with most having to come into the City first on their way to the suburban office. The salaries paid by the market administrator were viewed as not enough to entice many of the existing staff to endure such commutes.

With respect to the location of regulated handlers, a majority of the handlers, as opponents indicated, are located 150 miles beyond the City. However, the greatest concentration of large handlers have their corporate headquarters in New York City. The complex books and records of these large handlers, being located at the corporate headquarters require auditors to spend a great deal of time in the City. It is also desirable for other office personnel to keep in close contact with these handlers. These are additional considerations supporting the decision to have the market administrator's office remain in New York City.

In the face of declining milk receipts, the ever increasing office rental expense combined with the other expenses incurred in order to effectively administer the order make it imperative that the maximum allowable assessment rate be increased to five cents per hundredweight.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and

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conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the New York-New Jersey order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as its pro rata share of such expense, five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1002.90 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the New York-New Jersey marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1002

Milk marketing orders, Milk, Dairy products.

PART 1002—[AMENDED]

1. The authority citation for 7 CFR Part 1002 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1002.90 is amended by revising the first sentence to read as follows:

§ 1002.90 Payment by handlers.

To share on a pro rata basis the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer-settlement fund pursuant to § 1002.85, pay to the market administrator a sum not exceeding five cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2), the exact amount to be determined by the market administrator subject to review by the Secretary. * * *

Signed at Washington, DC, on August 23, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–19517 Filed 8–26–88; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

[Docket No. PRM–50–52]

Marvin Lewis; Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated June 6, 1988, that was submitted by Marvin I. Lewis. The petition was docketed on June 8, 1988, and assigned Docket No. PRM–50–52. The petition requests that the Commission amend its regulations in 10 CFR Parts 2 and 50 to reinstate financial qualfications as a consideration in the operating licensing hearings for electric utilities.

DATE: Submit comments by October 28, 1988. Comments received after this date will considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC, 20555. Attention: Docketing and Service Branch.

For copies of the petition for rulemaking, write: Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, Nuclear Regulatory Commission, Washington DC, 20555.

FOR FURTHER INFORMATION CONTACT: Juanita Beeson, Chief, Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, Nuclear Regulatory Commission, Washington DC, 20555, Telephone (301) 492–8926.

SUPPLEMENTARY INFORMATION: .

Background

The Commission published a final rule on September 12, 1984 (49 FR 35747) that eliminated financial qualifications from consideration during the operating license review and hearings for electric utilities. The petitioner states that issuance of this final rule prevents the financial condition of a utility from being investigated during licensing hearings, that the "* * * rule requires the assumption of financial adequacy * * *," which has resulted in several problems that could pose a danger to the public health and safety.

Petitioner's Interest

The petitioner, Marvin I. Lewis, is a reisident of Philadelphia, Pennsylvania, and is concerned about the financial stability of the Philadelphia Electric Company (PECO). PECO is the parent utility for Limerick and Peach Bottom nuclear power plants located in Pennsylvania. Mr. Lewis believes that Limerick 2 may go critical and eventually have to shutdown and that he and residents of the surrounding area will be adversely affected by the shutdown. In addition to being exposed to radiation from the radioactive waste

produced by Limerick 2. Mr. Lewis is also concerned about the many costs associated with health risks, rate hikes, and other unknown potential problems.

Grounds for the Petition

Mr. Lewis cites several long-standing operating problems at Limerick 1 and 2 and Peach Bottom plants that he claims have placed a financial burden on PECO. Mr. Lewis asserts that PECO has admitted to being under financial pressure and that the cost of Limerick 1 and 2 has placed the company billions of dollars in debt. Mr. Lewis indicates that the financial problems facing PECO will lead to a situation such as the shutdown of Shoreham nuclear power plant after it became radioactive. Mr. Lewis states that Shoreham was granted a license despite the shaky financial condition of the parent utility, Long Island Lighting Company (LILCO). He claims that LILCO has admitted that it does not have sufficient monies to pay for decommissioning of the nuclear power plant.

General Solution to the Problem

The petitioner requests that NRC reinstate financial qualifications as a requirement for electric utilities and suspend the licensing proceedings for Limerick 2 until the parent utility, PECO, can demonstrate to the NRC that it is financially qualified to safely proceed with Limerick 2 and its other nuclear operations. The petitioner requests that the 30-day comment period for this petition be reduced in order to prevent further financial hardship on PECO.

Conclusion

Mr. Lewis believes that Limerick 2 is going "critical," i.e., will begin to generate power, and may be closed. Even if the plant stays open, Mr. Lewis states that the shipment of radioactive waste will expose him to radiation without corresponding benefit, which he claims is in violation of the Atomic Energy Act. Mr. Lewis states this Act exhorts the Federal Government to protect health and safety of the public and that the Nuclear Regulatory Commission has been charged with enforcing this mandate.

Notice Regarding Petitioner's Request to Reduce 30-day Comment Period

The staff has read the petitioner's letter to waive the 30-day comment period for this notice of petition for rulemaking and determined that it is impractical to do so, therefore we are publishing this notice of receipt of the petition for rulemaking with an opportunity for the public to comment.

Petitioner's Proposal

PART 2—[AMENDED]

The petitioner requests that Part 2 be amended to revise §§ 2.4(s), 2.104(c)(4), and paragraph VII.(b)(4) of Appendix A to reflect the language prior to issuance of the final rule published September 12, 1984 (49 FR 35747).

PART 50—[AMENDED]

The petitioner requests that Part 50 be amended to revise §§ 50.2(x), 50.33(f), 50.40(b), and 50.57(a)(4) to reflect the language prior to issuance of the final rule published September 12, 1984 (49 FR 35747).

Dated at Rockville, MD this 23d day of August 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-19542 Filed 8-26-88; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 20

Disposal of Waste Oil by Incineration

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations to permit the onsite incineration of slightly contaminated waste oils generated at licensed nuclear power plants without the need to specifically amend existing Part 50 operating licenses. This proposed action would help ensure that the limited capacity of licensed regional low-level waste burial grounds is used more efficiently while maintaining releases from operating nuclear power plants at levels which are "as low as is reasonably achievable" as required by 10 CFR Part 50, Appendix I. Incineration of this class of waste would be carried out in full compliance with Commission regulations restricting the release of radioactive materials to the environment that are currently in force at each operating nuclear power plant. This proposed rule, if promulgated, would constitute a partial granting of a petition for rulemaking (PRM-20-15) submitted by Edison Electric Institute and Utility Nuclear Waste Management Group. Other portions of the petition are being denied.

DATE: The comment period expires on October 28, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can only be given to comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch. Comments may be delivered to 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. weekdays.

Copies of the petition, the regulatory analysis, and the environmental assessment and finding of no significant impact may be examined and copied for a fee at the NRC Public Document Room at 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3638.

SUPPLEMENTARY INFORMATION:

Background

The Edison Electric Institute (EEI) and the Utility Nuclear Waste Management Group (UNWMG) petitioned the Commission on July 31, 1984 (RPM-20-15) to initiate rulemaking to define a level of radioactive materials in reactor-generated waste oils which would permit disposal of such oils without regard to their radioactive material content. Currently, the only generically approved method of disposal for low-level radioactively contamined oil from nuclear power plants involves solidification or immobilization, packaging, and transportation to and burial at a licensed disposal site. The petition was submitted in response to Commission views expressed in the Supplementary Information statement accompanying publication of 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste" (December 27, 1982; 47 FR 57446). In that statement, the Commission expressed its views that the establishment of standards for waste for which there is no regulatory concern would be beneficial and would, among other things, reduce disposal and long-term disposal site maintenance costs, help preserve the limited capacity of the regional licensed waste disposal sites for the disposal of wastes with higher levels of activity, and enhance overall site stability of disposal facilities by reducing the volume of Class A waste. That view was further advanced when the Commission announced its intent (August 29, 1986; 51 FR 30839) to expeditiously process petitions to exempt specific waste streams from the Commission's regulations. The

Commission subsequently published an Advance Notice of Proposed Rulemaking, ANPRM, (December 2, 1986; 51 FR 43367) soliciting public comments on the broad concepts of defining classes of waste which were "below regulatory concern" (BRC).

The petition, however, predates the Policy Statement and does not include all of the information required for expedited evaluation and handling under the Policy Statement. The petitioners have chosen not to supplement the petition to follow the guidance provided in the Policy Statement.

In the subject petition, the EEI and the UNWMG suggested that an appropriate basis for establishing a cutoff level for determining whether specific waste streams were BRC would be that the direct release of the specific waste streams to the environment would not result in a dose to an individual member of the general public greater than 1 mrem/yr. The petitioners suggested that using a 1 mrem/yr limit, alternative disposal methods, including (1) on- or offsite incineration, (2) on- or offsite burial, (3) road stabilization (spraying), and (4) recycling, could be considered viable alternatives to land burial. The Staff Implementation Plan accompanying the Commission's policy statement published on August 29, 1986 (51 FR 30839) suggested that 1 mrem/yr was low enough to facilitate expedited processing of a petition for exempting a specific waste stream and that higher doses might be acceptable but could require more extensive justification. However, the policy statement and implementation plan dealt with additional criteria which have not been addressed by the petitioners.

After due consideration of the pertinent issues involved, the Commission has concluded that in responding to this petition at this particular time, it would not be appropriate to attempt to make a generic determination as to what level of radioactive contamination in waste oil would constitute a level which is "below regulatory concern." The petition did not supply either adequate information on which to base the selection of a dose criterion for waste oil or an adequate basis for evaluating all of the proposed disposal alternatives. The Commission believes, however, that action on the EEI/UNWMG petition is warranted in view of the very small radiological doses imposed on any member of the public from disposal of waste oil, the potential reduction in fire and toxic risks, the inordinate costs of disposing of this waste material in licensed low level burial grounds, and the need to use the limited burial ground space most efficiently. The Commission is therefore proposing to amend its regulations.

Based on information provided by the petitioners and a Brookhaven National Laboratory report, "Evaluation of Potential Mixed Wastes Containing Lead, Chromium, Used Oil, or Organic Liquids" (NUREG/CR-4730,[1] January 1987), and experience with the few licensees incinerating waste oil under license amendment, the Commission is convinced that, as a class, waste oil generally contains such low levels of radioactive contamination that releases to the general environment from its incineration would have an inconsequential radiological impact on the health and safety of the public, even in combination with other routine reactor effluents. Incineration is a demonstrated disposal technology and one that can be carried out by licensees within already established radiation protection criteria set forth in 10 CFR Part 50, Appendix I. Thus, by maintaining effluents under established limiting conditions for operation, the licensees will continue to maintain doses from effluents that are "as low as is reasonably achievable."

The other disposal methods proposed by the petitioners also appear to have acceptably low radiological impacts. However, adequate information has not been supplied to evaluate the acceptability of these disposal methods. In addition, a number of other considerations limit the desirability of these alternatives in relation to onsite incineration. Some of the more important of these considerations are the following:

1. Because of practical considerations, EPA has recently exempted waste oil from requirements for hazardous waste disposal; however, waste oil does contain a significant amount of toxic constituents. Many of these constituents are combustible and thus are destroyed during incineration, but not through other proposed disposal methods. The remainder of the toxic constituents are metals which remain in the ash residues from incineration. These residues can be disposed of in a controlled manner in the case of onsite incineration. Incineration in industrial boilers is EPA's preferred method of disposal of used oils; thus, incineration is the most acceptable method based on nonradiological considerations. Neither NUREG/CR-4730 nor the information submitted by the petitioners addressed the nonradiological toxic properties of reactor waste oil; thus, this class of impacts from other disposal methods cannot be adequately considered.

2. Concentrations of radionuclides in the ash from incineration and in the sludge from recycling may be too high to exempt an offsite incinerator or a recycling center from requirements for a radioactive materials license. As noted in Consideration 1, the ash residue may also contain significant quantities of toxic metals. These issues were not evaluated by the petitioners.

3. An offsite incinerator or recycling center might handle waste oil for multiple reactors. This factor has not been adequately incorporated into the petitioners' dose analysis.

4. Landfill disposal, although more economical than low-level waste (LLW) burial, requires much of the same processing and handling and would thus result in less cost and risk savings than incineration.

Analysis of Comments

Fourteen comment letters were received on the subject petition (13 from industry and 1 from a private individual). The fourteenth comment letter consisted of the original petitioners' analysis of the other comments received by the Commission and a revised version of the petition. All but one of the commenters supported the idea of exempting slightly contaminated waste oil from the requirements for disposal at an LLW disposal site and most supported the petition in its entirety. Many specifically commented on the excessive cost of disposal at an LLW disposal site relative to the health and safety and environmental impacts of alternative disposal methods. One commenter provided a detailed estimate of LLW disposal costs for waste oil. Consideration of these comments contributed to the commission's decision to provide some relief through an alternative disposal method. However, a few of the commenters raised questions concerning some of the specific disposal methods and concentration limits proposed by the petitioners, such as (1) the concentration of radionuclides in the sludge produced during recycling might be high enough that the recycling center would need a radioactive materials license; (2) consideration should be given to multiple sources of waste oil being handled at one offsite unlicensed

[1] Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

BEST COPY AVAILABLE

incinerator or recycling center; (3) some secondary pathways might be more limiting than those considered by the petitioners; (4) road spraying is prohibited in some areas because of environmental considerations of petroleum products alone; and (5) burial at a landfill will save low-level waste burial space but remains a costly alternative. These and other considerations resulted in the conclusion that incineration onsite was the only clearly acceptable alternative at this time. Although the petitioners addressed these issues in their comment analysis, that analysis was not sufficient.

Other comments were worthy of note. One commenter discussed means of reducing the generation of and the concentration of contaminants in waste oil. Although these methods are likely to be desirable, it is not necessary for the regulations to deal with these specific concepts. Licensees should have flexibility in handling these wastes as long as risks can be kept acceptably low. Several commenters favored the concept of de minimis being applied to other waste streams and regulations. The Commission is currently considering this issue in the context of a potential policy statement that would identify a level of radiation risk below which government regulation becomes unwarranted.

The remaining comments concern details which relate to specific matters that are irrelevant to the proposed course of action; thus, a detailed discussion of these specific comments is not warranted.

The Commission is therefore proposing to grant the petitioner's request only with respect to onsite incineration and to deny the other options without prejudice at this time.

The Proposed Rule

The proposed rule, which would apply all operators of nuclear power plants licensed under 10 CFR Part 50, would allow the onsite incineration of slightly contaminated waste lubricating oils and hydraulic fluids generated onsite without the need to apply for a specific license amendment as is presently required under the provisions of §§ 20.106 and 20.302. The incineration could be carried out either in the licensee's existing auxiliary boiler or incinerator, if available, or in an onsite facility specifically constructed for this purpose. Each licensee would be required to prepare and retain the following types of records in accordance with applicable NRC record retention requirements: (1) A complete description of equipment, facilities, and procedures that will be used to collect, store, determine the radiological components of, and incinerate waste oils; and (2) the results of the radiological and other analyses of each batch of oil discharged through the disposal system which demonstrate that effluents from the facility, including effluents from this operation, are below existing plant discharge limits established under Part 50, Appendix I, as well as § 50.36a.

The first part of this information, the description of equipment and procedures, would be submitted to the Commission under § 50.71(e) as a change to the FSAR since it represents a change to the information submitted in the original license application under § 50.34(b)(2)(i) and (b)(3) and § 50.34a. The second part, the determination of the quantities released, will be reported under existing semiannual effluent reporting requirements. In addition, the requirements of § 50.59 apply. These include the writing of a safety evaluation to assure that the changes do not involve an unreviewed safety question, the submittal of a summary of the changes and of the safety evaluation, and associated recordkeeping.

As noted, the proposed rule does not exempt these effluents from the operating limits developed under Part 50, Appendix I. The licensees are required to demonstrate that all effluents, including those resulting from the incineration of waste oil, meet the effluent dose limits established under Appendix I and are thus "as low as is reasonably achievable." This would be done in practice through a limited modification of the offsite dose calculation manual (ODCM) and the semiannual effluent reports. The ODCM, although not specified in the regulations, is a document required in the technical specifications established under Appendix I, Section IV, paragraph B and § 50.36a which contains the analysis methods to calculate offsite doses from effluents; the additions to the ODCM would be included in the first semiannual effluent report following initiation of incineration. This approach for assessing doses from the effluents from the incineration of waste oil has been used in the case of licensees who have incinerated waste oil under a license amendment. The applicable dose limit in limiting conditions for operations, consistent with the design objective in Appendix I of Part 50, is generally 15 mrem/yr to any organ of an individual in an unrestricted area from radioactive iodine and radioactive material in particulate form. Licensees with existing license amendments allowing incineration of waste oil have been maintaining the contribution from waste oil at 0.1% of the dose limit or on the order of 15 μrem/yr.

Section 20.305(b)(3) of the proposed rule is included so that a technical specification change, constituting a license amendment, will not be necessary, for example, if a release point other than those identified in the technical specifications is used. This provision will also relieve licensees who have already received a license amendment allowing waste oil incineration from requirements in their license that might be more restrictive than is necessary to conform to the requirements of Appendix I of Part 50.

Since no dose criterion is being chosen and the only releases to the environment being allowed by this action are effluents controlled under existing operating limits, this rule does not strictly constitute a BRC determination. Rather, it only makes an exception to the restriction against incineration without prior approval contained in § 20.305. The decision criteria contained in the BRC policy statement of August 1986 have not been explicitly addressed.

Because the proposed rule would allow a licensee to adopt a potentially more cost- and risk-effective means of disposing of this class of waste while maintaining existing limits on plant effluents, the net impact of this action should be positive. For each licensee, the onetime cost of preparing the appropriate documentation to support an incineration operation should be more than offset by direct first-year savings in waste disposal costs. For those licensees who elect to process waste oils in this fashion, monitoring and maintaining records on waste oil disposal activities would be covered by current regulatory requirements set forth in Part 50, Appendix I, which are implemented primarily through technical specifications established under § 50.36a. Even if a new incinerator is installed exclusively for this purpose, costs could be recovered in a few years. In addition, risk associated with transportation to the LLW burial site are eliminated and toxic and fire hazards associated with storage would likely be reduced. It should be noted that any solid radioactive residues produced in the incineration process would, for purposes of regulation, be treated as any other low-level radioactive solid waste.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the

Commission's regulations in Subpart A of 10 CFR Part 51 not to prepare an environmental impact statement for this proposed amendment to 10 CFR 20.305 because the Commission has concluded on the basis of an environmental assessment that this proposed rule, if adopted, would not be a major Federal action signficantly affecting the quality of the human environment.

The proposed rule would allow incineration of waste oil at nuclear power plant sites resulting in very small releases of radionuclides to the environment. Total effluent releases from the plants, including those resulting from waste oil incineration, will be maintained at or below existing plant discharge limits determined to be "as low as is reasonably achievable." Potentially, risks from toxic components in waste oil, fire hazards from storage of oil, and risks inherent in transportation may be somewhat reduced from those associated with the currently available disposal option of burial at LLW disposal sites. Incineration will not require significant quantities of materials, water, or energy and in some cases may involve the recovery of energy. Thus, no significant impact on the environment would result.

The environmental assessment and finding of no significant impact on which this determination is based are published as Appendix A to this document and are available for inspection and copying at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, (301) 492–3638.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis for this proposed rule. That analysis examines the costs and benefits of the alternative courses of action that the Commission considered in responding to the subject petition. The draft analysis is available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the draft analysis may be obtained from Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3638.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

This amendment to the Commission's regulations would not impose any new requirements on production or utilization facilities; it only allows incineration of waste oils onsite without the need for specific approval by license amendment. The amendment to 10 CFR 20.305 is therefore not a backfit under 10 CFR 50.109 and a backfit analysis is not required.

List of Subjects in 10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 68 Stat. 930, 933, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103 (a), (b) and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b), and 20.409 are issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 20.305 is revised to read as follows:

§ 20.305 Treatment or disposal by incineration.

(a) No licensee shall treat or dispose of licensed material by incineration except:

(1) As authorized by paragraph (b) of this section;

(2) For materials listed under § 20.306; or

(3) As specifically approved by the Commission pursuant to § 20.106(b) or § 20.302.

(b)(1) Waste oils (water immiscible organic hydrocarbons used principally as lubricants or hydraulic fluids) that have been radioactively contaminated in the course of the operation of a nuclear power reactor licensed under Part 50 of this chapter may be incinerated on the site where generated provided that the total radioactive effluents from the facility, including the effluents from such incineration, must conform to the requirements of Appendix I to Part 50 of this chapter. The licensee shall report any changes or additions to the information supplied under §§ 50.34 and 50.34a of this chapter associated with this incineration pursuant to § 50.71 of this chapter, as appropriate. The licensee shall also follow the procedures of § 50.59 of this chapter with respect to such changes to the facility or procedures.

(2) Solid residues produced in the process of incinerating waste oils must be disposed of as provided by § 20.301.

(3) The provisions of this section authorize onsite waste oil incineration under the terms of this section and supersede any provision in an individual plant license or technical specification that may be inconsistent.

(c) Nothing in paragraph (b) of this section relieves the licensee from complying with other applicable Federal, State, and local regulations governing any other toxic or hazardous property of these materials.

Dated at Rockville, Maryland this 19th day of August 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

Appendix A—Environmental Assessment and Finding of No Significant Impact

Proposed Amendment to 10 CFR 20.305 Disposal of Waste Oil by Incineration

The Nuclear Regulatory Commission is proposing to amend its regulations to

allow power reactor licensees to incinerate slightly contaminated waste oil onsite without obtaining the specific approval of the Commission through a license amendment.

Environmental Assessment

Identification of Proposed Action. Present § 20.305 forbids the incineration of any licensed material, except that specifically exempted by § 20.306, without the specific approval of the Commission. The proposed action would amend § 20.305 to allow power reactor licensees to incinerate slightly contaminated waste oil onsite without prior approval. It would not exempt the effluents from this process from the requirements established under Appendix I to Part 50, in particular, effluent limits and effluent monitoring and reporting.

Need for the Proposed Action. The Edison Electric Institute and the Utility Nuclear Waste Management Group petitioned the Commission (PRM–20–15, dated July 31, 1984) to initiate rulemaking to define a level of radioactivity in power-reactor-generated waste oils which would permit disposal of these oils without regard to their radioactive material content. Currently, the only generically approved method of disposal for low-level radioactively contaminated oil from nuclear power plants involves solidification or immobilization, packaging, and transportation to and burial at a licensed disposal site. The cost of this type of disposal is significant, while the concentrations of contaminants are quite low. The waste oil is a potential candidate for being declared a "below regulatory concern" (BRC) waste. Although there is an ongoing action to resolve comments on an Advance Notice of Proposed Rulemaking (December 2, 1986; 51 FR 43367) for a potential generic rule on BRC wastes, a Commission decision on a generic BRC waste rule is not expected in the near future. Also, EPA is considering a similar standard.

Several power reactor licensees have requested and been granted amendments to their licenses to allow onsite incineration of slightly contaminated waste oil. Others are interested in doing so.

Environmental Impacts of the Proposed Action. The primary impact of this rulemaking is to reduce the administrative effort involved in the application for and issuance of amendments to power reactor licenses to allow incineration of waste oil. However, easing these requirements may result in greater amounts of waste oil being incinerated than would otherwise be the case. Thus, the overall impacts of such incineration must be considered.

Some information on the quantities and concentrations of waste oil generated at nuclear power plants was provided in the petition and in a Brookhaven report "Evaluation of Potential Mixed Wastes Containing Lead, Chromium, Used Oil, or Organic Liquids" (NUREG/CR–4730, January 1987). The amounts and concentrations vary considerably from plant to plant and even from year to year at a given plant. Generally, the volumes produced are approximately 1,000 gal/year at a PWR and up to 5,000 gal/year at a BWR. In addition, some utilities have large quantities in storage on site. Cocentrations of radioactive contaminants are typically 10^{-7} to 10^{-5} μCi/ml but can be as high as 10^{-3} μCi/ml in some cases. Total activity per reactor per year is generally no greater than 10^{-4} Ci. The dominant radionuclides are Mn–54, Co–58, Co–60, Cs–134, and Cs–137. Others reported include Sr–90, Cd–109, Zn–65, and Zr–95. It appears that the bulk of waste oil generated, in terms of volume, could be incinerated with resultant individual doses of less than 1 mrem/yr. Licensees with license amendments permitting onsite incineration have been able to dispose of most of their waste oils under a technical specification of 0.1% of the total dose limit, which is generally 15 mrem/yr from radioactive iodine and radioactive material in particulate form (in keeping with the guidance contained in Appendix I of Part 50), or 15 μrem/year. Although waste oil contaminated during reactor operation might eventually be declared "below regulatory concern," this decision is being deferred to the ongoing generic rulemaking on this subject or until a petition following the August 1986 Commission policy is filed. This action modifies the restriction against incineration without prior approval contained in § 20.305 to make an exception for waste oil at power reactor sites; however, it does not exempt the resulting effluents from the requirements of Appendix I of Part 50. These limiting conditions for operation include dose limits for effluents and monitoring and reporting requirements. Although this action may slightly increase actual effluents, the radioactivity in these effluents must be accounted against existing limits for total dose from nuclear power plant effluents which have been determined to satisfy the "as low as is reasonably achievable" criterion.

Impacts from the toxic constituents of used oil would be minimized by onsite incinceration. (See discussion under "Alternatives to the Proposed Action.") Potentially, the proposed action might result in reduced storage of waste oil onsite thus reducing the associated fire hazard. Also, risks inherent in transportation would be reduced from those associated with the currently available disposal option of burial at LLW disposal sites. Incineration will not require significant quantities of materials, water, or energy and in some cases may involve the recovery of energy, e.g., when the oil is burned in an auxiliary boiler.

Based on these considerations, this action will not result in a significant effect on the quality of the human environment.

Alternatives to the Proposed Action. As required by Section 102(2)(E) of NEPA (42 U.S.C. 4322(2)(E)), possible alternatives to the proposed action have been considered. One alternative considered was to defer any action until decisions are made regarding the ongoing generic BRC rulemaking. However, this alternative would be inconsistent with Commission policy adopted in 51 FR 30839 (August 29, 1986). Since it is apparent that the cost to licensees to solidify or immobilize, package, transport, and bury contaminated waste oil at licensed disposal sites is not justified based on the very limited doses from incineration and the fact that other environmental impacts, if anything, will be reduced, and since it is more cost-effective to allow the incineration through rulemaking rather than to continue processing applications for license amendment, this action should be taken rather than delay the relief any further.

Other alternatives were considered which would have granted more of what the petitioners originally requested. However, methods other than onsite incineration would require more complete information and analysis for waste oil. Controlled incineration onsite has been demonstrated to be an acceptable technical alternative for disposal of material. Although there is not sufficient information available to preclude allowing any of the other alternatives in the future, incineration appears to be environmentally preferable to the other proposed alternatives. Although used oil is not listed as a Federal hazardous waste, it does contain a significant amount of toxic substances consisting of various organic compounds and metals. Although there may be some environmental impact from the toxic nature of used oil for any disposal alternative, incineration at a controlled

site minimizes these effects and is EPS's preferred method for used oil disposal. The organic components are essentially destroyed by the incineration process and the metals essentially remain in the ash residue. Incineration at a controlled site assures that the disposal of the ash residue can be controlled appropriately considering both its radiologic and toxic constituents. Nationally, any nonradiological environmental effect of disposal of radioactively contaminated used oil from nuclear power plants would be small compared to that associated with the total quantity of used oil disposed. All power plants in total produce on the order of 150,000 gallons/year of such used oil; nationally, vehicle maintenance produces about 700 million gallons/year of used oil.

Any other alternative action to this proposed rulemaking would take longer to complete, thus delaying any relief to licensees and other benefits such as savings in land usage for waste disposal.

Agencies and Persons Consulted. Further consultation has been made with the petitioners (PRM–20–15) concerning this action as a resolution of the petition.

Consideration has also been given to ongoing EPA activities, the 14 comment letters received on the petition, and the Brookhaven report, NUREG/CR–4730.

Finding of No Significant Impact. The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR Part 51, that this proposed amendment to 10 CFR Part 20 to allow the incineration of slightly contaminated waste oil by power reactor licensees onsite, if adopted, would not have a significant effect on the quality of the human environment and that an environmental impact statement is not required. This determination is based on the foregoing environmental assessment performed in accordance with the procedures and criteria in Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

[FR Doc. 88–19545 Filed 8–26–88; 8:45 am]
BILLING CODE 7590–01–M

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10 CFR Part 50

Nuclear Plant License Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (Commission) is developing regulations for extending nuclear power plant licenses beyond 40 years. In order to inform the public, industry and other government agencies of its activities and to solicit timely comments on various regulatory options and issues developed thus far, the Commission is promulgating this notice and requesting comments on NUREG–1317 "Regulatory Options for Nuclear Plant License Renewal."

A free copy of NUREG–1317 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC.

DATE: The comment period expires 10/28/88. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3556.

SUPPLEMENTARY INFORMATION:

Historical Background

In the early part of the twenty-first century, a significant number of the licenses for the existing operating nuclear power plants are due to expire. Without renewal of these licenses, these plants will be shut down and their generating capacity will be lost. The electric power which would have to be supplied from new generating capacity is substantial. In response to the recognition of this situation and the necessity to address license renewal issues early, the utilities, industry, and the Department of Energy (DOE) are sponsoring programs to study plant life extension for both nuclear and non-nuclear generating plants. The Commission understands that electric utilities may desire to submit applications for renewal of operating licenses beginning in the early 1990s.

The Commission has undertaken a program to develop a regulatory framework which meets the need of utilities to be informed of license renewal requirements sufficiently early so that utilities can either prepare for license renewal or pursue alternative sources of generating capacity. A solicitation for comments on seven major issues (21 separate questions) was published on November 6, 1986, "Request for Comments on Development of Policy for Nuclear Power Plant License Renewal," **Federal Register**, 51 FR 40334 and 40335. A total of 58 written comments were received from a cross-section of the United States which included the electric utility industry, public interest groups, private citizens, independent consultants, and government agencies. These comments were reviewed and a summary provided to the Commission in SECY–87–179, "Status of Staff Activities to Develop a License Renewal Policy, Regulations and Licensing Guidance and to Report on Public Comments," [1] dated July 21, 1987.

Subsequently, the Commission has decided to by-pass a policy statement and go directly to a proposed rule. As the Commission begins to focus on the integration of analyses of a wide variety of topics into a proposed rule for license renewal, it is worthwhile to provide the opportunity for public comment on the issues and options under consideration. Through this notice the Commission is making NUREG–1317, "Regulatory Options for Nuclear Plant License Renewal," available for public comment.

Comments are solicited on the following questions concerning the content of NUREG–1317. This list of questions is not exhaustive, therefore, comments are welcome on any additional questions raised in NUREG–1317.

1. Are there any other major regulatory options that should be considered for license renewal?

2. What are the relative merits of each option with regard to ensuring the continued adequate protection of the public health and safety?

3. What are the benefits of requiring a licensee to verify his original licensing design basis, as subsequently amended, as a part of the license renewal process?

4. With regard to each of the technological, environmental, and procedural issues, are there any

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[1] SECY–87–179, "Status of Staff Activities to Develop a License Renewal Policy, Regulations and Licensing Guidance and to Report on Public Comments" is available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

comments or other information that should be considered in their resolution? Comments submitted in response to the November 6, 1986 **Federal Register** notice are already being considered and need not be repeated.

5. Is there interest in participating in a public meeting to discuss the comments received? If held, which issues should be given priority attention in the meeting?

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

The authority citation for this document is:

Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Dated at Rockville, Maryland, this 23rd day of August 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–19543 Filed 8–26–88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–CE–23–AD]

Airworthiness Directives; Dornier Models Do28D and Do28D–1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Dornier Models Do28D and Do28D–1 airplanes, which would require inspection of the horizontal tail bearing fitting. Loose rivets and cracks have been reported at rear fuselage frame 10420. The inspection would detect the loose rivets and cracks before the possible loss of the horizontal tail surface and preclude the loss of the airplane.

DATES: Comments must be received on or before December 28, 1988.

ADDRESSES: Dornier Service Bulletin (S/B) No. 1110–3204, dated April 15, 1988, applicable to this AD may be obtained from Dornier GmbH, P.O. Box 2160, D–8000 Munchen 66, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88–CE–23–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Project Support Section Foreign Aircraft, Central Region, ACE–109, 601 East 12 Street, Kansas City, Missouri 64106; Telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Region Counsel, Attention: Rules Docket No. 88–CE–23–AD, Room 1558, 601 East 12 Street, Kansas City, Missouri 64106.

Discussion

Dornier has received reports of loose rivet connections between the left hand (LH) and right hand (RH) horizontal tail bearing fittings and the lateral skins, and also reports of cracks in frame 10420 and the corner gusset on Models Do28D and Do28D–1 airplanes. If uncorrected, these conditions may cause loss of the horizontal tail bearing fitting or failure of the frame which can lead to the loss of horizontal tail control functions. As a result, Dornier has issued S/B 1110–3204, dated April 15, 1988, which specifies periodic visual inspections and repair as necessary of (a) the rivet connections between the LH and RH horizontal tail bearing fittings and the lateral skins for play; and (b) aft fuselage frame 10420 and the corner gusset for cracks. The Luftfahrt-Bundesamt (LBA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the Federal Republic of Germany, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under LBA registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the LBA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Dornier S/B 1110–3204, dated April 15, 1988, and the mandatory classification of this service bulletin by the LBA. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 1110–3204 is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require initial and subsequent visual inspections every 100 hours time-in-service and repair as necessary of (a) the rivet connections between the LH and RH horizontal tail bearing fittings and the lateral skins for play; and (b) aft fuselage frame 10420 and the corner gusset for cracks.

The FAA has determined there are currently 2 U.S. Registered airplanes affected by the proposed AD. The cost of the visual inspection required by the proposed AD is estimated to be $40 (one man-hour) per airplane. The total cost is estimated to be $80 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Dornier: Applies to Models Do28D and Do28D–1 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service and every 100 hours time-in-servcie thereafter after the effective date of this AD, unless already accomplished.

To preclude the loss of the horizontal tail, accomplish the following:

(a) Visually inspect in accordance with Dornier Service Bulletin No. 1110–3204, dated April 15, 1988, as follows:

(1) Inspect the rivet connections between the left hand and right hand horizontal tail bearing fittings and the lateral skins for loose rivets. If loose rivets are found, before further flight replace the loose rivets in accordance with Dornier Service Bulletin No. 1110–3204, and

(2) Inspect the rear fuselage frame 10420 and the corner gusset for cracks. If cracks are detected, before further flight repair as follows:

(i) For cracks less than 25mm (.98 inch), stop drill the crack in accordance with Dornier Service Bulletin No. 110–3204.

(ii) For cracks 25mm or longer (.98 inch or more), repair the airplane in accordance with instructions from Dornier approved by the Manager, Aircraft Certification Staff, AEU–100.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain a copy of the document referred to herein upon request to Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; or Dornier GmbH, P.O. Box 2160, D–8000 Munchen 66, Federal Republic of Germany; or may examine this document at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on August 18, 1988.

Stephen M. Soffe,

Acting Director, Office of Airworthiness.

[FR Doc. 88–19490 Filed 8–26–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–ASW–17]

Airworthiness Directives; Sikorsky Model S–61L, S–61N, S–61NM, S–61R, S–61A, and S–61V Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposed to amend an existing airworthiness directive (AD) which requires frequent inspections of certain Sikorsky Model-S–61 series main rotor blades. The proposal would increase the main rotor (MR) blade eligibility for S–61 helicopter operators who are involved with external load operations. The proposed amendment is needed to provide relief for operators who may have MR blades or spares that are presently ineligible.

DATES: Comments must be received on or before September 28, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, Fort Worth, Texas 76193–0007, or delivered in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 85–ASW–17. Comments may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, between the hours of 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7118.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85–ASW–17." The postcard will be date/time stamped and returned to the commenter.

The FAA is proposing to further amend Amendment 39–5129 (50 FR 38506; September 23, 1985), AD 85–18–05, as amended by Amendment 39–5525 (52 FR 8582; March 19, 1987), AD 85–18–05R1, which currently requires frequent inspections of certain Sikorsky Model S–61 series main rotor blades. After

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issuing Amendment 39–5129, as amended by Amendment 39–5525, the FAA has determined, based on additional information from the manufacturer and FAA data files, that additional MR blades should also be eligible for use on Sikorsky Model S–61 series helicopters involved in frequent, heavy-lift operations under Part 133 external load operations. This proposed amendment would allow use of additional eligible MR blades by listing additional part and dash numbers for use on certain models. This proposal is relieving in nature and imposes no additional burden.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations would not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves about 12 helicopters engaged in Part 133 external cargo operations and the approximate cost would be reduced by $250,000 for each helicopter by allowing use of existing main rotor blades. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Southwest Region Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 39.19 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.19 [Amended]

2. By further amending Amendment 39–5129 (50 FR 38506; September 23, 1985), AD 85–18–05, as amended by Amendment 39–5525 (52 FR 8582; March 19, 1987), AD 85–18–05R1, by revising paragraphs (a)(1)(iii), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), and (a)(6); and by adding new paragraphs (a)(1)(iv) and (a)(2)(v) to read as follows:

Sikorsky Aircraft • • •

* * * * *

(a) • • •

(1) • • •

(iii) P/N's S61170–20201–055, –056, –058, –059, –060, –061, –062, –065, and –067.

(iv) P/N's S6117–20101–041, –046, –050, –051, –054, –055, –056, –057, and –058.

(2) • • •

(ii) P/N's S6115–20601–041, –042, –045, –046, –047, and –048.

(iii) P/N's S6188–15001–041, and –045.

(iv) P/N's 61170–20201–054, –055, –056, –058, –059, –060, –061, –062, –065, and –067.

(v) P/N's S6117–20101–041, –046, –050, –051, –054, –055, –056, –057, and –058.

* * * * *

(6) The following blades are approved for Model S–61R transport category helicopters operating up to a combined aircraft and cargo gross weight of 19,500 pounds:

(i) P/N's S6115–20501–041 and –042.

(ii) P/N's S6115–20601–042, and –045 through –048.

(iii) P/N's S6117–20101–041, –050, –051, –054, –056, –057, and –058.

(iv) P/N's S61170–20201–055, –056, –058, through –062, –064, –065, and –067.

Issued in Washington, DC, on August 16, 1988.

Stephen M. Soffe,

Acting Director, Office in Airworthiness.

[FR Doc. 88–19491 Filed 8–26–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of proposed amendments to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments are intended to make the Commonwealth's regulations consistent with revised regulations contained in 30 CFR Chapter VII.

This notice sets forth times and locations that the Kentucky program and the proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on September 28, 1988. If requested, a public hearing on the proposed amendments will be held at 10:00 a.m. on September 23, 1988; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on September 13, 1988.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand deliverd to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the Kentucky program, the proposed amendments, a listing of any scheduled public meetings, and all comments received in response to this notice will be available for review at the OSMRE Lexington Field Office and at the Office of the Department for Surface Mining Reclamation and Enforcement listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting the OSMRE Lexington Field Office:

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315 A, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828

Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16 and 917.17.

II. Discussion of Amendments

By letter dated February 22, 1985, (Administrative Record No. KY–622) the Director, OSMRE notified Kentucky of State regulations that must be amended to be consistent with revised Federal regulations. The Director's letter, pursuant to 30 CFR 732.17, identified 102 changes needed in the Kentucky regulatory program. A second letter from OSMRE updating the status of Kentucky's regulatory reform, (Administrative Record No. KY–733) was sent to Kentucky on April 7, 1987. This letter identified 46 changes, from the original list of 102, that had not been addressed by Kentucky.

In partial response to the second OSMRE letter Kentucky submitted, on July 15, 1988, (Administrative Record No. KY–812) proposed program amendments affecting 33 regulations contained in the Kentucky permanent regulatory program. The proposed regulations would amend the following Kentucky Administrative Regulations (KAR).

KAR Title 405 Chapter 7—General Provisions for KAR Title 405 Chapters 8 through 24

7:015 Documents incorporated by reference
7:020 Definitions and abbreviations
7:030 Applicability
7:090 Hearings

KAR Title 405 Chapter 8 Permits

8:010 General provisions for permits
8:020 Coal exploration
8:050 Permits for special categories of mining

KAR Title 405 Chapter 10 Bond and Insurance Requirements

10:010 General requirements for performance bond ~~and liability~~ insurance
10:020 Amount and duration of performance bond
10:030 Types, terms and conditions of performance bonds and liability insurance
10:040 Procedures, criteria and schedule for release of performance bond
10:050 Bond forfeiture

KAR Title 405 Chapter 16 Performance Standards for Surface Mining Activities

16:010 General provisions
16:070 Water quality standards and effluent limitations
16:080 Diversions
16:100 Permanent and temporary impoundments
16:110 Surface and ground water monitoring
16:120 Use of explosives
16:150 Disposal of noncoal mine waste
16:190 Backfilling and grading

KAR Title 405 Chapter 18 Performance Standards for Underground Mining Activities

18:010 General provisions
18:070 Water quality standards and effluent limitations
18:080 Diversions
18:100 Permanent and temporary impoundments
18:110 Surface and ground water monitoring
18:120 Use of explosives
18:150 Disposal of noncoal mine waste
18:190 Backfilling and grading

KAR Title 405 Chapter 20 Special Performance Standards

20:010 Coal exploration
20:060 Steep slopes

KAR Title 405 Chapter 24 Areas Unsuitable for Mining

24:020 Petition requirements
24:030 Process and criteria for designating lands unsuitable for surface mining operations
24:040 Areas unsuitable for mining

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Kentucky satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington Field Office, Lexington, Kentucky, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on September 13, 1988. If no requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE, Lexington Field Office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or

conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not obtain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 15, 1988.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 88-19561 Filed 8-26-88; 8:45 am]

BILLING CODE 4310-01-M

National Park Service

36 CFR Part 7

Rocky Mountain National Park, CO; Trucking Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to change the trucking regulations in Rocky Mountain National Park since the new fee collection legislation has rendered the existing trucking permit fee schedule obsolete. The proposed rule changes would still allow the Superintendent to issue permits for commercial traucking on park roads by ranchers, farmers and business concerns located in the counties of Larimer, Boulder and Grand, Colorado, when the loads originate and terminate in these counties. This proposed rule will also revise the fee schedule and the permit conditions. With these proposed changes in place, the park staff will be able to more effectively manage the truck traffic on park roads. Effects of the proposed rules are expected to be minimal.

DATE: Written comments will be accepted through September 28, 1988.

ADDRESS: Comments should be addressed to: Mr. James B. Thompson, Superintendent, Rocky Mountain National Park, Estes Park, CO 80517.

FOR FURTHER INFORMATION CONTACT: David J. Essex, Chief Park Ranger, Rocky Mountain National Park, Estes Park, CO 80517. Phone (303) 586-2371.

SUPPLEMENTARY INFORMATION: .

Background

The existing National Park Service (NPS) special regulations that pertain to trucking in Rocky Mountain National Park are codified at 36 CFR 7.7(b) and (e). They allow the Superintendent to issue permits for trucks on park roads, as long as they originate and terminate within the three counties (Grand, Larimer, and Boulder) that surround Rocky Mountain National Park.

The original intent of the trucking regulations was to abide by agreements reached with the State of Colorado years ago when Trail Ridge Road was constructed, to permit trucking on park roads by ranchers, farmers and business concerns located in the three counties surrounding the park. In recent years the number of trucking permits issued under this regulation has decreased considerably. Because of the advent of the new fee legislation which has rendered the present trucking permit fee schedule obsolete, and the low numbers of trucking permit issued, the NPS proposes that a more accurate and simplified schedule of fees for these permits be charged.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

Drafting Information

The primary authors of these regulations are David Essex, Chief Park Ranger, and Ronald S. Maitland, Visitor Protection Specialist, both of Rocky Mountain National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 5501 *et seq.*

Compliance With Other Laws

The Department of Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Felxibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that his rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteriistics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks: Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under DC Code 8-137 (1981) and DC Code 40-721 (1981).

2. In § 7.7, by removing paragraph (e), redesignating paragraph (f) as paragraph (e) and revising paragraph (b) to read as follows:

§ 7.7 Rocky Mountain National Park.

* * * * *

(b) *Trucking permits.* (1) The supreintendent may issue a permit for trucking on park roads when the loads carried originate and terminate in

counties of Larimer, Boulder, and Grand, Colorado.

(2) The fee charged for such trucking over Trail-Ridge Road is the same as the single-visit entrance fee for a private passenger vehicle. A trucking permit is valid for one round-trip, provided such trip is made in one day, otherwise the permit is valid for a one-way trip.

(3) The fee provided in this paragraph also applies to a special emergency trucking permit issued pursuant to § 5.6(b) of this chapter.

* * * * *

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

Date: June 24, 1988.

[FR Doc. 88-19527 Filed 8-26-88; 8:45 am]

BILLING CODE 4310-70-M

Notices

Federal Register
Vol. 53, No. 167
Monday, August 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

National Arboretum Advisory Council

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. (770-776), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council.

Date: October 24-25, 1988.

Time:

8:30 a.m.-4:30 p.m., October 24.

8:30 a.m.-3:30 p.m., October 25.

Place: U.S. National Arboretum, 3501 New York Avenue, NE., Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review progress of National Arboretum relating to Congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact Person: Howard J. Brooks, Executive Secretary, National Arboretum Advisory Council, Room 234 Bg-005, BARC-W, Beltsville, MD 20705. Telephone: AC 301/344-3912.

Done at Beltsville, Maryland, this 15th day of August 1988.

Howard J. Brooks,

Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 88-19518 Filed 8-26-88; 8:45 am]

BILLING CODE 3410-03-M

Farmers Home Administration

Credit Report Fees

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that the nonrefundable commercial credit report fee of $31 is being increased to $40. This increase is necessary due to the cost to the Agency in obtaining this report. The nonrefundable commercial credit report fee can be found in FmHA Instruction 1910-C (available in any FmHA field office).

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond R. McCracken, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone 202-382-1486.

SUPPLEMENTARY INFORMATION: The Catalog of Federal Domestic Assistance programs affected by this notice are:

10.405 Farm Labor Housing Loans and Grants
10.410 Low-Income Housing Loans (Section 502 Rural Housing Loans)
10.415 Rural Rental Housing Loans
10.416 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.423 Community Facilities Loans

Date: June 24, 1988.

Michael C. Wilkinson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-19571 Filed 8-26-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review; Abreu de la Mota and Associates International, Inc. (ADLM)

AGENCY: International Trade Administration, Commerce.

ACTION: Revocation of Export Trade Certificate of Review No. 86-00006.

SUMMARY: The Department of Commerce had issued an export trade certificate of review to Abreu de la Mota and Associates International, Inc. (ADLM). Because the certificate holder has failed to file an annual report as required by law, the Department is revoking the certificate. This notice summarizes the notification letter sent to ADLM.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-4021) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR Part 325. Pursuant to this authority, a certificate of review was issued on November 17, 1986, to ADLM (application no. 86-00006).

A certificate holder is required by law (section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14(b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) and 325.14(c) of the Regulations).

On November 6, 1987, the Department of Commerce sent to ADLM a letter containing annual report questions with a reminder that its annual report was due on January 1, 1988. Additional reminders were sent on January 15 and on January 26, 1988. The Department has received no response from ADLM to any of these letters.

On May 4, 1988, and in accordance with § 325.10(c)(1) of the Regulations, the Department sent a letter by certified mail to notify ADLM that the Department was formally initiating the process to revoke its certificate for its failure to file an annual report. In addition, a summary of these letters allowing ADLM thirty days to respond was published in the **Federal Register** on May 11, 1988 (53 FR 16755). Pursuant to §325.10(c)(2) of the Regulations (15 CFR

325.10(c)(2)), the Department considers the failure of ADLM to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to ADLM for its failure to file an annual report. The Department has sent a letter, dated August 23, to notify ADLM of its determination. The revocation is effective thirty days from the date of publication of this notice. Any person aggrieved by such decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (§ 325.11 of the Regulations, 15 CFR 325.11).

Date: August 23, 1988.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 88-19537 Filed 8-26-88; 8:45 am]

BILLING CODE 3510-DR-M

[Application # 88-00006]

Export Trade Certificate of Review; Global Marketing Associates, Inc.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Global Marketing Associates, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

X-ray and electro-medical equipment, surgical and medical instruments, surgical appliances and medical supplies, dental equipment and supplies ("surgical and medical products").

Export Trade Facilitation Services (as They Relate to the Export of Products)

Marketing, selling, brokering, consulting, international market research, advertising and sales promotion, product research and design, cooperative bidding, consolidation of shipments, export financing and insurance.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, Global is certified to:

(1) Enter into exclusive agreements, each with a single supplier of surgical and medical products and each entered into independently of agreements with other suppliers, wherein:

(a) Global agrees to locate customers for the supplier's surgical and medical products in the Export Markets; and

(b) The supplier agrees, for a specific transaction or for a specified period not to exceed three (3) years, not to sell into the Export Markets or to specific customers in the Export Markets except through Global.

(2) On the basis of agreements with suppliers or customers in the Export Markets, provide or arrange for the provision of Export Trade Facilitation Services. In such agreements, Global may require customers in the Export Markets not to purchase surgical and medical equipment from Global's suppliers except through Global.

(3) Provide to suppliers on an individual basis information on specific solicitations (including price, quantity, specifications, and other terms) by customers in the Export Markets for bids to supply surgical and medical products.

(4) Provide to each supplier on an individual basis:

(a) Information that is already generally available to the trade or public;

(b) Information that is specific to the Export Markets or to a particular Export Market, including, but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications by geographic area and by individual customers in the Export Markets;

(c) Information on expenses specific to exporting to the Export Markets or to a particular Export Market (such as ocean freight, inland freight to the terminal or port, storage, wharfage and handling charges, insurance agents' commissions, export sales documentation and service, and export sales financing);

(d) Information on U.S. and foreign legislation and regulation affecting sales to the Export Markets or to a particular Export Market; and

(e) Information on Global's activities in the Export Markets or in any particular Export Market on the supplier's behalf, including, but not limited to, customers, complaints and quality problems, visits by customers, reports by foreign sales representatives, and other matters concerning the agreement between Global and the supplier.

(5) Assemble, through agreements with suppliers of complementary surgical and medical products, a responsive bid to each solicitation by customers in the Export Markets and, in so doing, set a single price and other terms of sale, including servicing of surgical and medical products.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: August 23, 1988.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR. Doc. 88-19536 Filed 8-26-88; 8:45 am]

BILLING CODE 3510-DR-M

[Application # 88-00007]

Export Trade Certificate of Review; Hammerl-Davis International, Inc. ("HDI")

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Hammerl-Davis

International, Inc. ("HDI"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

All industrial and consumer products.

Export Trade Facilitation Services (as they relate to the export of goods and services)

Export management, including, evaluating product market potential, selecting country markets, consulting, developing and implementing export business plans, and assisting clients in introducing products into new export markets or developing new approaches for existing markets; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

HDI may:

1. Act as an agent or representative for the export of the Products of individual clients;

2. Take possession of Products in the export of Products of individual clients; and

3. Export the Products of several clients in the same industry on a one-on-one basis.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 88–19539 Filed 8–26–88; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Business Development Center Applications; Lubbock/Midland-Odessa, TX

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of January 1, 1989 to December 31, 1989. The MBDC will operate in the Lubbock/Midland-Odessa, Texas, Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coodinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of applications is October 1, 1988. Applications must be postmarked on or before October 1, 1988.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce, Room 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

A pre-bid conference will be held in Dallas on September 16, 1988 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director, Dallas Regional Office.

Date: August 23, 1988.

Project Specifications

Project Indentification

1. Program Number and Title: 11.800 Minority Business Development.

2. Project Name: Lubbock/Midland-Odessa, Texas (Geographic Area or SMSA) MBDC.

3. Project Identification Number: 06–10–89006–01.

Budget Period Duration

1. Budget Period (Check One): First ____ Second ____ Third ____.
2. Start Date: January 1, 1989.
3. End Date: December 31, 1989.

Project Cost

1. Required Federal Funding Level: $165,000.00.
2. Minimum Non-Federal Contribution: $29,118.00.
3. Total Project Cost: $194,118.00.

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level: $10,670,000.00.
2. Billable SM&TA Minimum Goal Level: $100,000.00.
3. Number of Clients Minimum Goal Level: $80.

Other Project Specifications

1. Closing Date for Submission of this Application: October 1, 1988.
2. *Geographic Specifications:* The Minority Business Development Center shall offer assistance in the geographic area of: Lubbock/Midland Odessa, Texas.
3. *Eligiblity Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Period:* The competitive aware period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 88-19536 Filed 8-26-88; 8:45 am]
BILLING CODE 3510-21-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Charter; Strategic Defense Initiative Organization Advisory Committee

AGENCY: Revised Charter of the Strategic Defense Initiative Organization Advisory Committee.

SUMMARY: Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the Strategic Defense Initiative Organization has been determined to be in the public interest and has been rechartered, effective August 18, 1988. The new charter reflects the incorporation of a provision to allow the establishment of subcommittees which will function under the principal committee.

The Strategic Defense Initiative Organization Advisory Committee provides expert, senior-level advice to the Director, SDIO and other key officials in the Department of Defense on all matters relating to the Strategic Defense Initiative research and technology program, to include, technical content, program emphasis, and schedules. The ultimate goal of the SDI is to determine the feasibility of eliminating the threat posed by nuclear ballistic missiles and increasing the contribution of defensive systems to United States and allied nations security.

August 24, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-19568 Filed 8-26-88; 8:45 am]
BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 22, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Munitions Effectiveness will meet on 5-6 October 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330-5430.

The purposes of this meeting are to assess the changes in the threat over the past ten years and to study how to take full advantage of potential improvements in munitions that were not possible ten years ago. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-19505 Filed 8-26-88; 8:45 am]
BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Texaco, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Texaco, Inc. (Texaco) shall be made final as proposed. The Consent Order resolves, with certain exceptions, matters relating to Texaco's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. To resolve these matters, Texaco will pay the sum of $1.25 billion, plus interest from the effective date of this Consent Order. Persons claiming to have been harmed by Texaco's alleged overcharges will be able to present their claims for refunds in an administrative proceeding before the DOE's Office of Hearings and Appeals (OHA).

In addition to settling Texaco's possible liability for violations arising out of Texaco's sales of crude oil and refined products, the Consent Order incorporates a resolution of Texaco's alleged deficiency in the Injection Well Litigation Escrow Account (Escrow Account) maintained by the court in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.) (*Stripper Well*). After the entry of an Agreed Judgment and Order, attached to the Consent Order as Exhibit A, Texaco will deposit $52 million into the Escrow Account which will be disposed of pursuant to the Final Settlement Agreement in the *Stripper Well* litigation. The Final Settlement Agreement was approved by the district court on July 7, 1988.

The decision to make the Texaco Consent Order final was made after a full review of written comments from the public and the oral testimony received in a public hearing conducted on May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Paul M. Geier, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6727.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments
III. Analysis of Comments
IV. Decision

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I. Introduction

On April 27, 1988, ERA issued a notice announcing a proposed Consent Order between DOE and Texaco which, with certain exceptions, would resolve matters relating to Texaco's compliance with federal petroleum price and allocation regulations for the period from January 1, 1973 through January 27, 1981, 53 FR 15106 (April 27, 1988). The proposed Consent Order, which requires Texaco to pay DOE $1.25 billion, plus interest, is for the settlement of Texaco's maximum potential liability of approximately $2.174 billion which includes interest on alleged overcharges. Under the terms of the Consent Order, Texaco will pay this sum in the following manner: Within 30 days of the effective date of the Consent Order, Texaco will pay $348 million to DOE. Texaco will make a second payment to DOE of $190 million, plus interest accrued on unpaid balances from the effective date of the Consent Order, within 18 months after the Consent Order becomes final. Beginning one year thereafter, Texaco will make four equal annual installments of $165 million, plus accrued interest. In addition to the foregoing payments, Texaco will pay $52 million to settle a dispute between DOE and Texaco regarding alleged deficiencies in Texaco's payments into the Escrow Account in the *Stripper Well* litigation. The issue of Texaco's deficiency in that litigation will be resolved by the submission of an Agreed Judgment and Order to the Kansas district court for approval within 25 days of the effective date of the Consent Order.[1]

The April 27 notice provided in detail the bases for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. The notice is also announced a public hearing for the purpose of receiving oral presentations on the settlement. The hearing was held on May 31, 1988 at the headquarters of DOE in Washington, DC.

II. Comments Received

ERA receivd six written comments and four oral presentations were made at the May 31, 1988 public hearing. All of the written and oral comments were considered in making the decision as to whether the proposed Consent Order should be made final.

The written and oral comments addressed a number of subject categories. Comments from the following groups addressed certain provisions of the Consent Order and the ultimate disposition or distribution of the Texaco settlement funds:

A joint comment from the following States and Territories and the Attorneys General of four states:

Alabama, California, Connecticut, Idaho, Indiana, Maryland, Michigan, Mississippi, Montana, Ohio, South Dakota, Vermont, Wisconsin and Wyoming;
Hawaii, Illinois, Kansas, Nebraska, Nevada, North Carolina, Guam and the Virgin Islands;
Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia; and the
Attorney General of Illinois; Attorney General of Oregon; Attorney General of Pennsylvania; and the Attorney General of California (collectively referred to herein as "the States").

A group comprised of the following utilities, transporters and manufacturers:

Consolidated Edison Company of New York, Long Island Lighting Company, Orange and Rockland Utilities, Inc., Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company; Daiichi Chuo Kisen Kaisha, Flota Mercante Grancolombiana S.A., Globe Trade and Transport Company, Ltd., Island Navigation Corporation (Ship Management) Ltd., Japan Line, Ltd., Kawasaki Kisen Kaisha, Mitsui O.S.K. Lines, Ltd., n.v. Bocimar, s.a., Nippon Yusen Kaisha, The Sanko Steamship Co., Ltd., Shinwa Kaiun Kaisha, Ltd., Showa Line Ltd., Star Shipping A/S, Yamashita-Shinnihon Steamship Co., Ltd.; Champion International Corporation, Federal Paperboard Company, Inc., International Paper Company, and Weyerhauser Company (all of which are collectively referred to herein as "Utilities");

Texaco Marketers Group.

Two other comments addressed only the question of the distribution or disposition of the Texaco settlement funds:

Energy Refunds, Inc. ("ERI")
National Association of Texaco Wholesalers ("NATW")

One comment was received from an individual, Mr. John R. Lynch, which addressed both the provisions of the Consent Order and the adequacy of the overall settlement.

One comment, received from the Louisiana Land & Exploration Company (LLE), addressed the adequacy of the proposed Consent Order and the April 27 Notice of the Proposed Consent Order.

III. Analysis of Comments

The April 27 notice solicited written comments and provided for a public hearing to enable the ERA to receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified or rejected. To ensure public understanding of the basis for the proposed settlement, the April 27 notice provided information regarding Texaco's overcharge liability and the consideration that went into the government's preliminary agreement with the proposed terms. This settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

A. Terms of the Consent Order

A number of comments addressed specific provisions of the proposed Consent Order. The Texaco Marketers Group stressed the importance of the Consent Order provision requiring Texaco to preserve customer lists and volumes for use in conjunction with the Subpart V refund proceeding. The Consent Order at Paragraph 601 specifically requires Texaco to retain its records which show customer identity and volumetric purchase information, and to provide such information to DOE upon request. The States' comment inquired whether paragraph 501(c) of the proposed Consent Order, which excludes Texaco's rights concerning claims under 10 CFR Part 205, Subpart V ("Subpart V") from the coverage of the Consent Order, affects Texaco's waiver and release of claims to crude oil funds as set forth in the Final Settlement Agreement in the *Stripper Well* litigation. This issue is covered by paragraph 501(b) of the proposed Consent Order which states that the settlement does not affect Texaco's "rights or obligations" under the Final Settlement Agreement except for a provision not germane to the States' comment.

The comment filed by Mr. Lynch objected to the failure of the government to require interest on the Texaco's installment payments. This is not correct. Paragraph 404 of the Consent Order required Texaco to pay interest at the rate of 8.85% on all unpaid balances

[1] Texaco will deposit $52 million in the Escrow Account within 5 business days after the entry of the Agreed Judgment.

and to include such accrued interest in its payments. (The rate of 8.85% per annum was the average of recent prime rates as reported by the Federal Reserve for the first calendar quarter of 1988, within which the Consent Order was executed.)

The States questioned whether the definition of Texaco in paragraph 203 of the proposed Consent Order could be limited to include only Texaco's subsidiaries and affiliates as of March 10, 1988, the date of the signing of the proposed Consent Order. They make this suggestion so that any company buying or being sold to Texaco, or affiliating at a later date with the firm, would be unable to obtain the benefit of the Consent Order. ERA has concluded that this provision should be modified so as to make clear that the subsidiaries and affiliates included in the definition of Texaco Inc. are limited to those existing as of March 10, 1988, the date on which the proposed Consent Order was executed. ERA believes that this clarification will insure that questions will not arise over the issue of whether a later-acquired subsidiary or affiliate could obtain some benefit from the Consent Order, even though it was not a part of Texaco at the time the proposed Consent Order was signed. The change proposed by the States would accomplish this objective. Texaco and DOE have agreed to a modification of the definition of Texaco found in paragraph 203 of the Consent Order in order to establish March 10, 1988 as the date for determining the subsidiaries and affiliates covered by the Consent Order. Accordingly, the words "as of March 10, 1988" are inserted after the words "including Getty Oil Company" in paragraph 203 of the proposed Consent Order. Paragraph 203, as modified, is set forth at the end of this notice.

B. Distribution Questions

The April 27 notice indicated ERA's view that approximately $120 million of the amounts to be paid by Texaco were attributable to refined product issues and the remainder to crude oil pricing issues. Crude oil monies are governed by the Final Settlement Agreement in the *Stripper Well* litigation. Refined product monies are not so governed and must be dealt with in the context of a separate Subpart V process. The Texaco Marketers, NATW, and ERI, all of whom represent potential claimants with regard to Texaco's product sales, have commented that ERA's figure for refined products is too little, whereas the Utilities, who have lodged substantial refund claims in Subpart V proceedings distributing crude oil monies, have argued that $120 million is an excessive amount for refined product issues. Although the four commenters each disagree with ERA's approximate attribution for refined product issues, the view of each is consistent with a result that increases the share available for the persons they represent rather than because of any error in ERA's determination.[2]

ERA's assessment of the value of refined product and crude oil issues is the result of consideration of the various litigation risks associated with the different cases, the linkage of certain refined product issues which could substantially alter dollar liability amounts, and the relatively early stages of litigation for many of the refined product issues as compared to the crude oil pricing issues.

The OHA may ultimately decide the proportions, but ERA does not believe any persuasive evidence has been offered by these commenters to alter ERA's attribution of settlement proceeds to the refined product and crude oil issues.

Likewise, virtually all the other specific comments on distribution matters are more properly addressed to the OHA rather than ERA. For example, the Texaco Marketers Group and ERI commented favorably upon ERA's recommendation that OHA utilize $120 million of Texaco's first payment for the refined product Subpart V payment. The Texaco Marketers Group further urged ERA to identify the possible overcharges to specific Texaco customers and to allocate a share of the crude oil monies to Sohio's customers who may have been overcharged by Getty. Each of these matters can be resolved by OHA when it devises its Subpart V procedures. Also, the amounts for specific customers can best be determined by OHA in its Subpart V proceeding, not by the ERA.

Other procedural issues for the Subpart V proceedings were raised by the States and the Utilities, which suggested a single filing deadline for the Texaco crude oil claims, and by the NATW which desired a prompt initiation of Subpart V proceedings. ERA intends to promptly file a Petition for the Implementation of Special Refund Procedures after the Consent Order is made final, but it must be left to OHA to address procedural matters such as filing deadlines.

[2] ERI incorrectly claims that the April 27 notice describes $307 million in Natural Gas Liquids and Natural Gas Liquid Product overcharges. That amount constitutes the alleged cost overstatements, none of which has been adjudicated by OHA. Neither has it been determined what amount of overcharges would result from only these alleged cost overstatements.

The Utilities' comments also raised a number of issues relating to the disposition of crude oil monies, primarily focusing upon an assertion that the reservation of up to 20% of these monies for a claims procedure would be insufficient to pay claims. They seek to augment the 20% by arguing that the $52 million payable to the Escrow Account in the *Stripper Well* litigation is too much and should be reduced or factored into an adjustment by OHA in calculating overall refunds. On the other hand, the Utilities want $78 million of the crude oil monies to be *removed* by OHA from the claims process and transferred to an escrow account maintained by the Court in *Getty v. DOE*, C.A. No. 77-434 (D.Del.), where the Utilities are presently arguing over the proper disposition of other crude oil funds paid by Getty in 1986. The States disagree with Utilities on the 20% issue, which is also the subject of litigation initiated by the Utilities in several other judicial actions against the DOE and is thereby the subject of ongoing disputes in pending cases. The terms of a particular Consent Order cannot resolve complex matters which are the subject of litigation on the meaning and/or applicability of another agreement.

In general, the disposition of crude oil monies is governed by the Final Settlement Agreement in the *Stripper Well* litigation. More importantly, however, it is neither appropriate nor necessary to resolve disputes about that agreement in the context of the Texaco Consent Order. Specific issues about the adequacy of particular refund formulae should be presented to the OHA which is responsible for Subpart V procedures and decisions.

Both the States and the Utilities commented that DOE should not have agreed to pay 100% of the alleged overchafges relating to the *Stripper Well* litigation into the Escrow Account maintained by the Court. The Utilities also argue that this money should be available for claims, rather than being paid into the Escrow Account. First, it is incorrect that the $52 million represents 100% of the account in issue. The April 27 notice states that a portion of the $52 million is in settlement of a potential issue concerning crude oil sold by in-kind owners other than Texaco. Second, the decision to pay the entire amount attributed to the injection well issues into the Escrow Account is required by the *Stripper Well* Agreement to which DOE and the States, as well as Texaco, are parties.

C. Adequacy of the Settlement

Mr. Lynch questioned the overall adequacy of the settlement and had two specific objections: one, that no interest on over charges was obtained and the other, that Texaco should have been required to pay the entire $1.25 billion in one payment. The April 27 notice describes the various cases, and their related overcharges and interest which formed the basis for the settlement with Texaco. The DOE believes that the overall settlement of $1.25 billion, plus interest, is in the public interest and represents a fair and reasonable compromise of numerous cases involving complex issues and regulations. Other than his complaints about interest, Mr. Lynch offers no explanation or support for his claims regarding the adequacy of the settlement. The descriptions of the cases against Texaco in the April 27 notice demonstrate that DOE sought and considered interest on alleged overcharges as part of the $1.25 billion compromise. Texaco indicated that it was not able to make a single payment of $1.25 billion, given the bankruptcy proceeding which was pending at the time of settlement and its obligations to other creditors. See 53 FR 15109, fn.5. In addition, the Consent Order calls for all payments to be completed within five and a half years, whereas the litigation which is resolved by the settlement would not, in all likelihood, be complete until even later.

As noted previously, Texaco will pay interest on any unpaid balances over the entire period of repayment, thereby providing additional compensation. As well, almost 50% of the total required payment will be made within eighteen months of the effective date of the Consent Order. Purchasers of refined products will not be required to wait until the end of the repayment period, but will be able to make claims against the $120 million included in Texaco's initial payment.

Notwithstanding the specific comments addressed above, all of the groups or organizations filing comments supported the overall settlement and urged that the Consent Order be made final.

D. The Federal Register Notice

One brief comment filed by the Louisiana Land and Exploration Company ("LL&E"), a royalty and working interest owner in many of Texaco's crude oil properties, stated that there was insufficient information in the proposed Consent Order and the April 27 notice for the company to form a judgment "as to the effect of the matters" therein. No further explanation was provided by the company for its expressed concern about the effect of the Consent Order provisions. While asserting that insufficient information was provided to allow it to assess the effect of the Consent Order provisions, LL&E has provided no indication or explanation of its concerns which would allow DOE to specifically address the comment. The most important elements affected by the Consent Order are, of course, the resolutions of petroleum price and allocation disputes and Texaco's obligation to pay, but, by its own terms, the Consent Order does not affect the rights or obligations of Texaco with regard to private or unrelated parties—including LL&E.

Finally, the States suggested that ERA might have included a chart of Texaco's banks of refined product costs in the final **Federal Register** notice, but not at the cost of delaying implementation of the agreement. ERA believes this is unnecessary for consideration of the adequacy of the proposed Consent Order. Although the existence of *any* usable amount of regulatory cost banks in certain months or products is instructive for understanding that the amounts of cost disputes do not predictably correlate with the overcharge amounts even in the government's "best case," the total amounts left in the monthly banks after applying all disputed cost reductions are irrelevant to the potential overcharges which DOE considered material in assessing reasonable settlement values.[3]

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Texaco and DOE executed on March 10, 1988, and modified on June 13, 1988, is made a final order of the Department of Energy, effective the date of publication of this notice in the **Federal Register.**

Issued in Washington, DC, on August 25, 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

Modification to Consent Order

Paragraph 203 of the Consent Order is hereby modified in part to read as follows:

[3] In some Consent Order notices several years ago, DOE published such illustrative "bank charts" because of confusion that might have then existed about the relationship between cost and overcharge issues as they affected settlement valuations. That purpose is effectively achieved by the narrative explanation of such relationships as set forth in the April 27, 1988, Notice of the Texaco proposed Consent Order.

203. For purposes of this Consent Order, the phrase "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The Federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the Federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Texaco" shall include: (1) Texaco Inc. and all of its subsidiaries and affiliates, including Getty Oil Company, as of March 10, 1988, (2) all of Texaco's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise and, except for purposes of Article IV, *infra,* (3) Texaco's directors, officers, and employees.

Dated: June 13, 1988.

I, the undersigned, a duly authorized representative of Texaco Inc., hereby agree to and accept on behalf of Texaco Inc. the foregoing modification to paragraph 203 of the Consent Order.

R. Bruce McLean,

Texaco Inc.

Dated: June 9, 1988.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of DOE the foregoing modification to paragraph 203 of the Consent Order.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 88-19710 Filed 8-26-88; 8:45 am]

BILLING CODE 6450-01-M

Availability of Draft Environmental Impact Statement Superconducting Super Collider (SSC)

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of draft environmental impact statement (EIS) and notice to conduct public hearings on the draft EIS.

SUMMARY: The Department of Energy (DOE) announces the availability of the Superconducting Super Collider (SSC) Draft Environmental Impact Statement (DOE/EIS–0138D). The proposed action is to select a site for the construction and operation of the SSC. The seven alternative site locations are in Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee, and Texas. Following site selection, DOE will prepare a supplemental EIS to address, in more detail, the impacts of constructing and operating the proposed SSC.

Comments on the content of the draft EIS are invited from interested persons, organizations and agencies. Public hearings will be held at a location near each of the seven alternative sites evaluated in the draft EIS.

DATES: Written comments to the DOE should be postmarked by October 17, 1988, to ensure consideration in preparation of the final EIS. Oral comments will be accepted at the public hearings to be held on September 26 and 29, and October 3 and 6 (schedule given below). Individuals desiring to make oral statements at a hearing should notify the DOE's SSC Site Task Force at the address below not later than one week prior to the hearing so that the DOE may arrange a schedule for presentations.

ADDRESS: Requests for copies of the draft EIS, written comments on the draft EIS, requests to present oral comments at the hearings, and requests for further information concerning this draft EIS should be directed to: Dr. Wilmot Hess, Chairman, SSC Site Task Force, ER–65/GTN, Office of Energy Research, U.S. Department of Energy, Washington, DC 20545, Attention: SSC Draft EIS. Requests to present oral comments at the hearings and requests for copies of the draft EIS will also be accepted by telephone at 301–353–6570. For general information on the procedures followed by the DOE in complying with the requirements of the National Environmental Policy Act (NEPA), contact: Carol Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202–586–4600.

SUPPLEMENTARY INFORMATION:

I. Background

The DOE proposes to select a site to construct and operate the SSC. The SSC project is being proposed for the study of the basic structure of matter. The proposed SSC would be the largest scientific instrument ever constructed. Its major feature would be an oval tunnel approximately 53 miles in circumference. Two beams of protons (subatomic particles) would be accelerated in opposite directions to velocities near the speed of light and then made to collide at energies of up to 40 trillion electron volts.

Research and development for the SSC project has been conducted as a national scientific effort under the guidance of the Central Design Group (CDG), an organizational entity of Universities Research Association, Inc.

The Reference Design Study, completed in March 1984, established the basis for design of the SSC. The CDG completed the Conceptual Design Report (CDR) in 1986 which led to the conclusion that the SSC was technically feasible and that cost and schedule estimates were acceptable. In January 1987, the President proposed construction of the SSC to the Congress. Construction of the SSC is anticipated to cost $4.4 billion in fiscal year 1988 dollars and would be completed during the mid-1990's.

The SSC is expected to remain in operation for 25 to 30 years after construction. After completion of its useful life, the SSC would be decommissioned. Additional review, in accordance with the NEPA, will be completed prior to a decision on decommissioning.

On April 1, 1987, the DOE issued an Invitation for Site Proposals (ISP) for the SSC. In response, 43 proposals were received and reviewed by the DOE; of these, 36 were further evaluated by the National Academy of Sciences and the National Academy of Engineering (NAS/NAE). Based upon criteria listed in the ISP, design details of the proposals, and specific characteristics of the sites, the NAS/NAE recommended to the DOE a Best Qualified List (BQL) of sites to be considered further. These sites were presented to the DOE on December 24, 1987. One of the recommended BQL sites was subsequently withdrawn by the proposing organization. Following a review and validation of the NAS/NAE recommendation, the BQL was accepted by the DOE and announced on January 19, 1988. The proposals for these seven sites, as provided in response to the ISP, form the seven site alternatives considered in this draft EIS.

II. EIS Preparation

The DOE published a Notice of Intent (53 FR 1821) on January 22, 1988, announcing its intent to prepare an EIS on the SSC. The DOE received approximately 2,100 written comments on the proposed scope of the EIS. The scoping process also included public meetings held near each of the proposed alternative sites; comments given at scoping meetings were documented through transcripts. Comments were considered in preparation of the draft EIS.

The draft EIS evaluates and compares four types of alternatives: (1) Site alternatives (the seven locations identified on the Best Qualified List), (2) technical alternatives (different technology, equipment, or facility configuration), (3) programmatic alternatives (using other accelerators, international collaboration, or project delay), and (4) the no action alternative (the option not to construct the SSC). This draft EIS identifies and analyzes the potential environmental consequences expected to occur from siting, construction, and operation of the SSC at seven site alternatives. Residual impacts are examined to identify and analyze possible mitigation measures to be applied through final site design.

This draft EIS provides as much information as possible at this stage of the project development regarding the potential environmental impacts of the proposed construction and operation of an SSC at each of the alternative sites. However, DOE recognizes that further review under NEPA is required prior to construction and operation of the proposed SSC. Accordingly, following selection of a site for the proposed SSC, the DOE will prepare a supplement to this EIS to address, in more detail, the impacts of constructing and operating the proposed SSC at the selected site and alternatives for mitigating those impacts.

III. Floodplains/Wetlands Notification

Pursuant to Executive Order 11988, Floodplain Management, and 11990, Protection of Wetlands, and 10 CFR Part 1022, Compliance with Floodplains/Wetlands Environmental Review Requirements, DOE hereby provides notice that the construction and operation of the proposed SSC may impact surface waters and adjacent floodplain or wetland areas at any of the seven alternative sites. Identified surface waters at each of the alternative sites are as follows:

Arizona Site—Maricopa County

Although there are no perennial streams and no defined floodplains, the following major washes may be affected.

- West Branch Waterman Wash
- Bender Wash

Colorado Site—Adams, Morgan, and Washington Counties

- Beaver Creek
- Shears Draw
- Antelope Creek
- Sand Creek
- Plum Bush Creek
- Wetzel Creek
- Badger Creek

Illinois Site—Kane, Dupage, and Kendall Counties

- Welch Creek
- Blackberry Creek
- Fox River
- Waubansee Creek
- Kress Creek
- Norton Creek

Michigan Site—Ingham and Jackson Counties

- Sycamore Creek
- Mud Creek
- Deer Creek
- Doan Creek
- Grand River
- Batteese Creek
- Orchard Creek
- Portage Creek

North Carolina Site—Person, Granville, and Durham Counties

- Flat River
- South Flat River
- North Flat River
- Knap of Reeds Creek
- Mayo Creek
- Tar River

Tennessee Site—Bedford, Marshall, Rutherford, and Williamson Counties

- West Fork Stones River
- Lytle Creek
- Dry Fork Creek
- Fall Creek
- North Fork Creek
- Spring Creek
- Harpeth River
- Overall Creek
- Armstrong Branch

Texas Site—Ellis County

- Chambers Creek
- South Prong Creek
- Waxahachie Creek
- North Prong Creek
- Red Oak Creek
- Grove Creek
- Mustang Creek
- Big Onion Creek

The potential environmental impacts of site selection on these surface waters and adjacent floodplain and wetland areas are discussed in Chapter 5 and Appendices 7 and 11 of the draft EIS. Any comments regarding the proposed action on floodplains and wetlands may be submitted to DOE in accordance with procedures described below.

IV. Comment Procedures

A. Availability of Draft EIS

As announced in the **Federal Register** on June 17, 1988, copies of the draft EIS, including its approximately 4,000 pages of appendices, have been distributed to Federal, State, and local agencies; copies of the draft EIS without the separately-bound appendices have been distributed to organizations, environmental groups, and individuals known to be interested in or affected by the proposed project. Additional copies of either the main document or any appendix may be obtained by contacting the DOE at the address given above.

Copies of the draft EIS, including appendices, and major documents referenced in the draft EIS are available for inspection at the DOE's reading rooms and at the public libraries in the vicinity of the seven alternative sites. The locations where SSC-related documents are available are as follows:

1. DOE Reading Rooms

—Freedom of Information Reading Room, Room 1E–190, U.S. DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585
—Public Reading Room, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
—Public Reading Room, Oak Ridge Operations Office, Federal Building, P.O. Box E, Oak Ridge, TN 37831

2. Public Libraries

a. Arizona

—Noble Science and Engineering Library, Arizona State University, Tempe, AZ 85287–1506
—Phoenix Public Library, 12 E. McDowell Road, Phoenix, AZ 85004

b. Colorado

—Fort Morgan Public Library, 414 Main Street, Fort Morgan, CO 80701
—East Morgan County Library, 500 Clayton Street, Brush, CO 80723

c. Illinois

—Illinois SSC Project Office, c/o Illinois State Water Survey, 101 North Island Avenue, Batavia, IL 60510
—Aurora Public Library, 1 East Benton Street, Aurora, IL 60506
—St. Charles Public Library, 1 South 6th Avenue, St. Charles, IL 60174
—Kaneville Township Library, c/o Kaneville Civic Center, P.O. Box 5, Main Street and Harter Road, Kaneville, IL 60144
—West Chicago Public Library, 332 East Washington Street, West Chicago, IL 60185

d. Michigan

—Ingham County Library System, Library Service Center, 407 North Cedar Street, Mason, MI 48854
—Jackson District Library System, 244 West Michigan Avenue, Jackson, MI 49201

e. North Carolina

—Richard H. Thornton Library, Spring and Main Street, Oxford, NC 27565
—Durham County Library, 300 South N. Roxboro Street, Durham, NC 27701
—Roxboro Library, 307 South Main Street, Roxboro, NC 27573

f. Tennessee

—Linebaugh Public Library, 110 West College, Murfreesboro, TN 37130
—Tennessee Department of Economic and Community Development Library, 320 6th Avenue, North, 8th Floor, Rachel Jackson Building, Nashville, TN 37219–5308

g. Texas

—Sims Library, 515 West Main Street, Waxahachie, TX 75665
—Ennis Public Library, 501 West Ennis Avenue, Ennis, TX 75119

B. Written Comments

Interested parties are invited to provide comments on the content of the draft EIS to the DOE at the above address. Envelopes should be marked "Attention: SSC Draft EIS Comments." Comments should be postmarked no later than October 17, 1988, to ensure consideration in preparing the final EIS. Comments postmarked after October 17, 1988, will be considered to the extent practicable.

C. Public Hearings

1. Participation Procedure

The public is also invited to provide comments on the draft EIS to the DOE in person at the scheduled public hearings. The purpose of the hearings is to receive substantive comments related to the draft EIS. It is not the purpose of the hearings to receive either general endorsements or criticisms of the project. The hearings will not be judicial or evidentiary-type hearings. Advance registration for presentation of oral comments at the hearings will be accepted up to one week prior to the hearing date by telephone or by mail at the office listed above. "Attention: SSC Draft EIS Hearing Registration." Requests to speak at a specific time will be honored, if possible. Registrants are allowed to only register themselves to speak and must confirm the time they are scheduled to speak at the

registration desk the day of the hearing. Persons who have not registered in advance may register to speak at the hearings to the extent time is available. To ensure that as many persons as possible have the opportunity to present comments, 5 minutes will be allotted to each speaker. Persons presenting comments at the hearing are requested to provide the DOE with written copies of their comments at the hearing, if possible.

2. Hearings Schedules and Locations

Hearings will be held from 2 to 5 p.m. and 7 to 10 p.m. at each of the following locations on dates indicated:

September 28, 1988

Stockbridge High School Gymnasium, 416 North Clinton Street, Stockbridge, Michigan
Southwestern Assemblies of God College, Administration Building, W.B. McCafferty Auditorium, 1200 Sycamore Street, Waxahachie, Texas

September 29, 1988

Fort Morgan High School, Auditorium, 709 E. Riverview Avenue, Fort Morgan, Colorado
Middle Tennessee State University, James Union Building, Tennessee Room, East Main Street, Murfreesboro, Tennessee

October 3, 1988

Butner Sports Arena, 24th Street, Butner, North Carolina
Arizona State University College of Law, Great Hall, Intersection of McAllister and Orange, Tempe, Arizona

October 6, 1988

Waubonsie Valley High School, Auditorium, 2590 Route 34, Intersection of Rt. 34 and Eola Road, Aurora, Illinois

An additional session will be held on the day following the scheduled date, if requests for presentation of comments received by the week before the hearing are so extensive that the time needed to accommodate registered speakers would exceed the time available on the scheduled date. Such additional sessions will be announced both prior to and at the scheduled hearings.

3. Conduct of Hearings

The DOE has established basic rules and procedures for conducting the hearings. Rules needed for the orderly conduct of the hearings will be announced by the presiding officer at the start of the hearings. Clarifying questions regarding statements made at the hearings may be asked only by DOE personnel conducting the hearings. There will be no cross-examination of persons presenting statements. A transcript of the hearings will be prepared, and the entire record of each hearing, including the transcript, will be retained by the DOE for inspection at libraries and reading rooms listed above.

Issued in Washington, DC, August 24, 1988.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88-19615 Filed 8-26-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Docket: RCS Standby State Case; Puerto Rico]

Residential Conservation Service (RCS); Public Hearing on Adequacy of Implementation of Puerto Rico Electric Power Authority Plan

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of public hearing.

SUMMARY: The Department of Energy's (DOE) current information on the Puerto Rico Electric Power Authority (a non-regulated utility) Residential Conservation (RCS) program, under the National Energy Conservation Policy Act (NECPA), as amended (42 U.S.C. *et seq.*) suggests that the program is not being adequately implemented. Pursuant to 10 CFR 456.602(d) DOE announces a public hearing on the status of the Puerto Rico Electric Power Authority RCS program.

DATES: The public hearing will be held on October 20, 1988. Requests to speak at the hearing must be received no later than October 14, 1988. Requests should contain the person's name, address and telephone number and any organizational affiliation. Oral presentations will be limited to the issue of the adequacy of the implementation of the Puerto Rico Electric Power Authority RCS plan. Please bring five (5) copies of the oral statement to the hearing.

ADDRESSES: The hearing will be held at Federico Degetau Federal Building and U.S. Court House, Room CH 155 (Courthouse Building, 1st Floor), Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918, and begin at 9:30 a.m. All requests to speak at the hearing should be addressed to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, Room 6B-025, RCS Standby State Case: Puerto Rico Electric Power Authority, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9320. The transcript of this hearing will be available for inspection at the Freedom of Information Public Reading Room, 1E-190, Mail Stop MA-232.1, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6020, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Edna Jones, CE-222, Residential and Commercial Conservation Program, Office of Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8224.

SUPPLEMENTARY INFORMATION: Under the RCS program established by Title II of NECPA (42 U.S.C. 8211 *et seq.*), "covered" electric and natural gas utilities are required to offer to their residential customers energy audits and certain other related services. A utility is "covered" by the program in any calendar year if during the second preceding calendar year it had sales of natural gas or electric energy, for purposes other than resale, in excess of 10 billion cubic feet or 750 million kilowatt hours, respectively (42 U.S.C. 8282).

Pursuant to DOE regulations, 10 CFR 456.404(a), a non-regulated utility may elect to participate in the RCS program by submitting a plan for DOE approval. The plan must show how the utility intends to implement the RCS program. Generally, if a utility does not have an approved plan or if DOE determines, after notice and opportunity for a public hearing, that an approved plan is not being adequately implemented, DOE is required to invoke Federal Standby. DOE regulations also provide, as an alternative to RCS, the waiver process. This procedure enables a utility to obtain a waiver from any RCS requirement, subject to certain findings described in 10 CFR 456.1203. The waiver request is subject to a hearing and must be supported by the Governor (or his designee).

DOE's current information on the Puerto Rico Electric Power Authority RCS program suggests that the program is not being implemented in accordance with the RCS plan approved by DOE in January 1981. Correspondence with utility officials in February of 1988 indicate that the RCS Plan, as approved, was not being properly implemented. Since questions of adequate

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implementation have not been resolved concerning the Puerto Rico Electric Power Authority's approved RCS plan, DOE is obligated to hold a hearing so that the utility and any interested persons may present relevant information. Subsequent to the hearing, DOE will consider all relevant views and data submitted and will issue a final determination, accompanied by a statement of the basis for its determination. If the final determination is to implement the Federal Standby Plan, DOE will order the Puerto Rico Electric Power Authority to implement the Federal Standby Plan within 90 days of the order.

Issued in Washington, DC, on August 23, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88-19569 Filed 8-26-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI64-1053-001, et al.]

Tenneco Oil Co., et al.; of Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

August 23, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI64-1053-001, D, 7-29-88	Tenneco Oil CO., P.O. Box 2511, Houston, TX 77252.	Arkla Energy Resources, a division of Arkla, Inc., Longstreet Field, De Soto Parish, LA.	(1)
CI88-549-000, E, 8-8-88	Tenneco Oil Co	ANR Pipeline Co., Cedardale NE Field, Woodward County, OK.	(2)
CI88-553-000 (CI61-16), 7-29-88	do	Panhandle Eastern Pipe Line Co., Mocane-Laverne Field, Beaver County, OK.	(3)
CI88-554-000 (G-10670), D, 8-1-88	do	Williams Natural Gas Co., Gordon #1-25 Well, NE/4 Section 25-T28N-R6W, Grant County, OK.	(4)
CI88-555-000 (CI79-367), D, 8-2-88	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	ANR Pipeline Co., Campbell East Field, Major County, OK.	(5)
CI88-556-000 (CI60-650), D, 8-4-88	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Texas Gas Transmission Corp., Sugar Creek Field, Claiborne Parish, LA.	(6)
CI88-560-000 (CI71-439), B, 8-8-88	Texaco Producing Inc	Tennessee Gas Pipeline Co., Grand Isle Block 63, Offshore Louisiana.	(7)
CI88-561-000 (CI76-202), B, 8-8-88	do	Tennessee Gas Pipeline Co., Grand Isle Block 45, Offshore Louisiana.	(8)
CI88-564-000 (CI70-180), D, 8-10-88	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Transwestern Pipeline Co., Adobe Barstow Area, Ward Country, TX.	(9)
CI88-565-000 (CI76-393), D, 8-10-88	do	Transwestern Pipeline Co., EC State Field, Eddy County, NM.	(10)
CI88-566-000 (CI76-331), D, 8-10-88	do	El Paso Natural Gas Co., Parkway West Unit, Eddy County, NM.	(9)
CI88-567-000 (CI87-378), D, 8-10-88	Amoco Production Co., P.O. Box 3092, Houston, TX 77253.	Transwestern Pipeline Co., Kermit Field, Winkler County, TX.	(11)
CI88-570-000 (CI85-638), D, 8-15-88	OXY USA Inc., P.O. Box 300. Tulsa, OK 74102	Williston Basin Interstate Pipeline Co., Pavillion Field, Fremont County, WY.	(12)
CI88-572-000, A, 8-15-88	OXY USA, Inc	Trunkline Gas Co., South Timbalier Block 52, Offshore Louisiana.	(13)

[1] Effective January 1, 1977, Tenneco assigned its interest in certain acreage to Kalda Company. Tenneco also assigned certain acreage to G.R. Goodwill. Five other leases were surrendered by Tenneco's predecessor.

[2] Tenneco acquired certain interests from Robert B. Lambert, effective December 31, 1987.

[3] Effective December 1, 1986, Tenneco assigned its interests in certain acreage to Mesa Operating Limited Partnership and to PNG Operating Company.

[4] By assignment executed April 26, 1984, effective May 1, 1984, Tenneco assigned its interest in the acreage attributable to the Gordon #1-25 Well to Vernon E. Faulconer.

[5] Effective November 1, 1986, Multistate assigned its interests in certain acreage to Prentice, Napier & Green.

[6] TPI assigned to Sugar Creek Producing Company its interest in certain leases by assignment dated May 11, 1988, effective September 1, 1987. No active leases remain under the contract.

[7] OCS Lease No. G-1054 expired June 22, 1987.

[8] OCS Lease No. G-1582 expired April 30, 1988.

[9] ARCO assigned certain interests to Hondo Oil & Gas Company, effective January 1, 1987.

[10] ARCO assigned certain interests to Yates Petroleum Corporation, effective January 1, 1987.

[11] Amoco assigned certain interests to Petrus Management Corporation, General Partner of Petrus Oil Company, L.P., effective February 1, 1987.

[12] Cities Service Oil and Gas Corporation, OXY's predecessor, assigned certain interests to Wind River-Pavillion, Ltd. by various assignments dated March 3, 1988, and effective December 1, 1987.

[13] Applicant is filing for its own certificate to cover its interest in a sale previously covered by the operator, Chevron U.S.A. Inc., under its certificate in Docket No. CI68-1241 and related FERC Gas Rate Schedule No. 44.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 88-19555 Filed 8-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-61-003]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 25, 1988.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on August 19, 1988, certain revised tariff sheets included in Appendix A attached to the filing. Such tariff sheets are proposed to be effective October 23 and November 1, 1987; May 1, June 1 and August 1, 1988, respectively.

ESNG states that the purpose of the filing is to revise ESNG's sales, storage, and transportation rates to reflect the cost allocation and rate design methodology approved for the ESNG system by the Commission in the *Order approving Settlement* issued on April 20, 1988 in Docket No. RP87-61-000. The instant filing is submitted in accordance with Article VII of the Stipulation and Agreement as filed on November 9, 1987.

ESNG states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at ESNG's main office at 861 Silver Lake Boulevard, Cannon Building—2nd Floor, Dover, Delaware 19901.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19551 Filed 8-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-58-021 and TA85-1-33-010]

El Paso Natural Gas Co.; Tariff Filing

August 23, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on August 17, 1988, tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, Article IX of the Stipulation and Agreement at Docket No. RP85-58-000, *et al.*, and in compliance with ordering paragraph (B) of the Commission's order issued May 18, 1988 at Docket Nos. TA85-1-33-004, TA84-1-33-001, and TA84-2-33-013, certain tariff sheets which reflect a reduction in jurisdictional sales rates. Such tariff sheets are identified on the appendix, for inclusion in El Paso's FERC Gas Tariff, Original Volume No. 1, First Revised Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that prior to October 1, 1983, El Paso priced its company-owned production on a cost-of-service basis. As a result of using the Commission-approved normalization method of reflecting income tax expenses, El Paso accumulated $100,266,469 in deferred tax reserves associated with its company-owned production as of October 1, 1983. In accordance with Commission policy, El Paso credited those reserves against its rate base. As a result of the issuance of the Supreme Court's *Mid-Louisiana* decision, and El Paso's Settlement Agreement at Docket No. RP82-33, effective October 1, 1983, El Paso began to price its company-owned production on the basis of the Natural Gas Policy Act of 1978 ("NGPA"). As a result, beginning on that date, all expenses incurred by El Paso in connection with such production were excluded from El Paso's rates and no longer charged to its customers. A disagreement remained, however, concerning the treatment of the balance of accumulated deferred tax reserves associated with the production as of October 1, 1983. El Paso states that by order issued May 18, 1988 at Docket Nos. TA85-1-33-004, *et al.*, the Commission adopted what it termed an "equitable solution," returning the parties to their respective positions prior to removal of the subject properties from the rate base and thus directed El Paso to credit its deferred tax reserve to its rate base.

El Paso further states that the Commission, in its July 15, 1988 order in this proceeding, addressed El Paso's concerns that the May 18, 1988 order would place El Paso in danger of forfeiting its right to use accelerated depreciation. The Commission also recognized that if their decision impacted El Paso, the Commission had the power to take remedial action. On August 12, 1988, El Paso failed a ruling application and request for expenditious handling with the Internal Revenue Service regarding the tax consequences of the Commission's May 18, 1988 order. El Paso requested that the Commission delay action on the tariff sheets pending an indication from the IRS on El Paso's ruling request.

Copies of El Paso's filing were served upon all parties of record in Docket Nos. RP85-58-000, *et al.*, and TA85-1-33-000, *et al.*, and otherwise upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before August 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19552 Filed 8-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-233-000]

Panhandle Eastern Pipe Line Co.; Tariff Filing

August 25, 1988.

Panhandle states that this tariff sheet which reflects a revision to Panhandle's Rate schedule PT-Firm governing firm transportation service is requested to be effective April 1, 1988. This tariff sheet clarifies procedures attendant to the CD conversion rights afforded to Panhandle's existing sales customers in accordance with § 248.10 of the Commission's Regulations.

Copies of this letter and enclosures are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19553 Filed 8-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-181-002]

Sea Robin Pipeline Co.; Filing of Revised Tariff Sheets

August 23, 1988.

Take Notice that on August 16, 1988, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following substitute tariff sheets, related thereto:

Original Volume No. 1

Substitute Fifty-Second Revised Sheet No. 4
Substitute Twenty-Seventh Revised Sheet No. 4-A
Substitute Fifth Revised Sheet No. 4-A1
Substitute Fifth Revised Sheet No. 4-A2
Substitute Second Revised Sheet No. 4-C

Original Volume No. 2

Substitute Thirty-Fifth Revised Sheet No. 127-D
Substitute Thirty-Fifth Revised Sheet No. 135-C

Sea Robin states that this filing is made pursuant to Ordering Paragraph (C) of the Order of the Federal Energy Regulatory Commission (Commission) issued in Docket No. RP88-181-000, et al., on June 30, 1988.

Sea Robin states the filing amends its May 31, 1988 filing to reflect rates based on a Demand-1 Component allocated upon actual three-day peak deliveries and a Demand-2 Component based upon Demand-2 Billing Determinants nominated by customers as of July 15, 1988. Additionally, other gas supply expenses in Sea Robin's cost of service have been allocated to the commodity charge.

Sea Robin's Substitute Fifth Revised Sheet No. 4-A2 has been revised to clarify that the minimum reservation charge is zero and that the authorized overrun rate will never be less than the rate for interruptible transportation service.

Sea Robin has also revised Substitute Second Revised Sheet No. 4-C to include language to implement a 100% load factor charge for takes in excess of a customer's nominated D2 Billing Determinants.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before August 30, 1988.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19554 Filed 8-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-142-001]

Tennessee Gas Pipeline Co.; Tariff Filing

August 25, 1988.

Take notice that on August 18, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, to be effective June 1, 1988:

Third Revised Sheet No. 219
Fourth Revised Sheet No. 220
Fourth Revised Sheet No. 221
Fourth Revised Sheet No. 222
Third Revised Sheet No. 223
Third Revised Sheet No. 224
Second Revised Sheet No. 225
Second Revised Sheet No. 226
First Revised Sheet No. 226A

Tennessee states it is revising the Purchased Gas Adjustment clause of its tariff, Article XXIII of the General Terms and Conditions, to comply with the letter order of the Director of OPPR issued on July 21, 1988, in the referenced docket.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions protests should be filed on or before September 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-19556 Filed 8-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-180-002]

Trunkline Gas Co., Compliance Filing

August 23, 1988.

Take notice that Trunkline Gas Company on August 15, 1988, tendered for filing certain revised tariff sheets in compliance with Ordering Paragraphs (B), (D), and (E) of the Commission's Order dated June 30, 1988 and the Notice of Extension of Time issued July 29, 1988 in this matter.

Trunkline states that copies of its filing have been served on all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 30, 1988. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19557 Filed 8-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-124-001, RP88-124-002, TM88-1-11-002]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

August 25, 1988.

Take notice that on August 8, 1988, United Gas Pipe Line Company (United) tendered for filing certain tariff sheets and on August 19, 1988 tendered for filing an amendment to its August 8, 1988 filing to include additional tariff sheets inadvertently not included in the August 8, 1988 filing.

United states that Tariff Sheet Nos. 74-C through 74-F2a are being filed to incorporate the appropriate language in section 19 of United's General Terms and Conditions to satisfy the requirements specified in the Commission's Letter Order at July 6, 1988. In addition, United is filing Substitute Revised Eightieth Revised Sheet No. 4 and Substitute Second Revised Eightieth Revised Sheet No. 4 to incorporate the column heading changes required by the July 6, 1988 Letter Order.

United states that these substitute tariff sheets will be mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before September 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19558 Filed 8-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-123-001]

Valero Interstate Transmission Co.; Filing

August 25, 1988.

Take notice that on August 15, 1988, Valero Interstate Transmission Company (Vitco) filed the following tariff sheets to its FERC Gas Tariff, to be effective June 1, 1988:

Original Volume No. 1

Substitute 2nd Revised Sheet No. 21.8
Substitute 2nd Revised Sheet No. 21.9

Original Volume No. 2

Substitute 2nd Revised Sheet No. 10
Substitute Original Sheet No. 12.1

Vitco states that this filing is made in accordance with the directions of the Letter Order of June 23, 1988, issued by the Director, Office of Pipeline and Producer Regulation.

Vitco requests waiver of a filing fee under § 381.106 by incorporating by reference the financial statements in the FERC Form 2A as support. Vitco protests the application of any fee to this filing, requests that the Letter Order be treated as an informal request, states that the corrections to these tariff sheets did not change the intent of the original tariff but only served to clarify the intention, and protests that the fee is not relative to the cost of processing the submission of the four corrected tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before September 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19559 Filed 8-26-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3435-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Notification of Oil or Hazardous Substance Release. (EPA ICR # 1049).

Abstract: Persons in charge of a facility or vessel from which there has been a release of a CERCLA hazardous substance that equals or exceeds the reportable quantity, or from where there has been a discharge of oil, must immediately report the incident to the National Response Center (NRC).

Burden of Statement: Reporting burden for this collection of information is estimated to average 2 hours per response, this includes the time to review the regulatory requirements, the time spent by the plant manager in calling the NRC, and time spent by any other staff in communicating with the NRC or any other federal, state or local agency.

Respondents: Facilities or vessels releasing a CERCLA hazardous substance or oil discharge.

Estimated No. of Respondents: 33,816 (including, 24,816 hazardous substance releases and 9,000 petroleum releases).

Frequency of Collection: On occasion

Total Estimated Annual Burden: 67,632 hours.

Send comments regarding the burden estimates, or any other aspects of this collection of information, including suggestions for reducing these burdens, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy

Branch (PM–223), 401 M St., SW., Washington, DC 2046;
and
Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 0814; Information Requirements for Hazardous Waste Storage and Treatment Facilities; was approved 08/08/88; OMB # 2050–0009; expires: 01/31/91.

EPA ICR # 0246; Contractor Cumulative Claim and Reconciliation; was approved 08/08/88; OMB # 2030–0016; expires: 07/31/89.

EPA ICR # 0287; Report of Nonexpendable Government Property Acquired by Contractor; OMB # 2030–0009, has been discontinued as of 07/12/88.

Date: August 18, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–19533 Filed 8–26–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

August 22, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0185

Title: Section 73.3613, Filing of Contracts.

Action: Extension.

Respondents: Bussiness, including small business.

Frequency of Response: Recordkeeping requirement and reporting on occasion.

Estimated Annual Burden: 3,717 Recordkeepers, 30 minutes each, 1,800 Respondents, 30 minutes each.

Needs and Uses: Licensees of TV and low power TV broadcast stations are required to file network affiliation contracts with FCC. All broadcast station licensees are required to file contracts relating to ownership or control and personnel. Certain contracts must be retained at the station. The data are used by Commission staff to assure that licensee maintains full control over the station.

OMB No.: 3060–0346

Title: Section 78.27, License Conditions.

Action: Extension.

Respondents: Business, including small business.

Frequency of Response: On occasion.

Estimated Annual Burden: 500 Responses, 10 minutes each.

Needs and Uses: Licensees of Cable Television Relay Service stations are required to notify the FCC when the station commences operation, and to request additional time to complete construction when necessary. The data are used by Commission staff to provide accurate records of actual CARS channel usage for frequency coordination purposes.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–19514 Filed 8–26–88; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1744]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

August 22, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Subpart C of Part 90 of the Commission's Rules to Permit Commercial Enterprises to be Licensed Directly in the Special Emergency Radio Service. (PR Docket No. 87–312, RM–5662) Number of petitions received: 2.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Saint Robert, Missouri) (MM Docket No. 87–378, RM–5927) Number of petitions received: 1.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–19513 Filed 8–26–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–730; FHLBB No. 3880]

Decatur Federal Savings and Loan Association Decatur, GA, Final Action; Approval of Conversion Application

Date: August 22, 1988.

Notice is hereby given that on August 5, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Decatur Federal Savings and Loan Association, Decatur, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–19574 Filed 8–26–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–733] FHLBB No. 6905]

First Federal Savings and Loan Association of Chilton County, Clanton, AL, Final Action; Approval of Conversion Application

Date: August 22, 1988.

Notice is hereby given that on August 12, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Chilton County, Clanton, Alabama, for permission to convert to

the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Pechtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-19575 Filed 8-26-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-732 FHLBB No. 1523]

First Federal Savings Bank of Richmond, Richmond, KY, Final Action Approval of Conversion Application

Date: August 22, 1988.

Notice is hereby given that on August 12, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings Bank of Richmond, Richmond, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-19576 Filed 8-26-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-731; FHLBB No. 1910]

Sturgis Federal Savings Bank, Sturgis, MI; Final Action; Approval of Conversion Application

Date: August 22, 1988.

Notice is hereby given that on August 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Sturgis Federal Savings Bank, Sturgis, Michigan for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-19577 Filed 8-26-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Center for Health Services Research and Health Care Technology Assessment; Intermittent Positive Pressure Breathing Therapy; Re-announcement of Assessment

IPPB therapy consists of the use of a pressure-limited respirator to deliver a gas with or without humidity and/or an aerosol solution at various intervals to assist a patient in breathing. OHTA previously published a notice of assessment in the **Federal Register** volume 51 #116: 21984 June 17, 1986. Additional information is sought as to the risks and benefits associated with the use of this mode of treatment. Information is also sought pertaining to the advantages and disadvantages of IPPB in the treatment of acute bronchospasm or chronic obstructive pulmonary disease or other forms of lung disease. We also seek information regarding other uses of IPPB either as a therapeutic modality or as a preventive measure against pulmonary complications following abdominal surgery. Specifically, we wish to determine if this treatment method offers any advantages over using a compression nebulizer of a metered-dose inhaler with or without B-agonists. We also seek information about IPPB clinical results as compared to deep breathing exercises or incentive spirometry as well a comparison of complications with the use of a hand-held nebulizer. Finally, are there conditions or circumstances under which IPPB is not only a reasonable and necessary therapy but is the preferred therapy?

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS and other agencies in the Federal government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on the clinical acceptability and the effectiveness of this technology and the extent of use is also being sought. Proprietary information is not being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than November 30, 1988 or 90 days from the date of publication of this notice.

Written material should be submitted to: Kesinee C. Nimit, M.D., Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A-27, Rockville, MD 20857, (301) 443-4990.

Date: August 19, 1988.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88-19563 Filed 8-26-88; 8:45 am]

BILLING CODE 4160-17-M

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review Draft NTP Technical Reports

Pursuant to Pub. L. 92-463, notice is given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*) on October 3 and 4, 1988, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9:00 a.m. on both days and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on October 3 and 4 are draft technical reports of studies on the following chemicals, listed alphabetically, along with Chemical Abstracts Service registry numbers, responsible staff scientists with

telephone numbers, NTP report numbers, uses, routes of administration, exposure levels used in the chronic studies, and tentative levels of evidence of carcinogenic activity (see table below). All studies were done using Fischer 344 rats and B6C3F$_1$ mice unless noted. Levels of evidence of carcinogenic activity proposed by NTP staff are included to provide more information in advance of the meeting. The tentative order of review is given in the far left column of the table.

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members, staff, and attendees. Presentations must be limited to no more than 5 to 10 minutes.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientists as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish final agendas, a roster of subcommittee and panel meetings, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Attachment.

Dated: August 22, 1988.

David P. Rall,

Director, National Toxicology Program.

Tentative order of review	Chemical/CAS No.	Study scientist/ technical report No.	Use	Exposure levels	Laboratory	Proposed levels of evidence of carcinogenicity [1]
6	Bromoethane (ethyl bromide) 74–96–4.	Dr. J. Roycroft, 919–544–3627 TR 363.	Alkylating agent, chemical intermediate, refrigerant, solvent.	Inhalation: R&M: 0,100,200,400 PPM.	Battelle Northwest Laboratory.	MR: Equivocal evidence. Adrenal gland (pheochromo-cytoma). FR: Equivocal evidence. Brain (Glioma). MM: Equivocal evidence. Lung (Alveolar/ bronchiolar adenoma or carcinoma). FM: Clear evidence. Uterus (endometrial adenoma or adenocarcinoma, squamous-Cell carcinoma).
7	Chloroethane (ethyl chloride) 75–00–3.	Dr. J. Roycroft, 919–541–3627 TR 346.	Alkylating agent, chemical intermediate, topical anesthetic, refrigerant, solvent.	Inhalation: R&M: 0, 15000 PPM.	do	MR: Equivocal Evidence. Skin (Trichoepithelioma, sebaceous gland adenoma, or basal cell carcinoma). FR: Equivocal evidence. Brain (Astrocytoma). MM: Inadequate experiment. FM: Clear evidence. Uterus (endometrial Carcinoma).
4	Dimethoxane 828–00–2.	Dr. K. Abdo 919–541–7819 TR 354.	Preservative oils, cosmetics, inks, water-based paints; in adhesives, textile chemicals; gasoline additive.	Oral gavage (corn oil) MR: 0, 62.5, 125, FR: 0,125,250, M: 0, 250,500 MG/KG.	do	MR: No evidence. FR: No evidence. MM: Equivocal evidence. Forestomach (squamous cell papilloma, squamous cell carcinoma). FM: No evidence.
5	Diphenhydramine hydrochloride 147–24–0.	Dr. R. Melnick, 919–541–4142 TR–355.	Antihistamine	Oral in feed: MR: 0, 313,625, FR&M: 0, 156,313 PPM.	SRI International	MR. Equivocal evidence. Brain (astrocytoma or Glioma) lung (alveolar/ bronchiolar adenoma or carcinoma). FR: equivocal evidence. Pituitary gland (adenoma). MM: No evidence. FM: No evidence.
2	Hexachloroethane 67–72–1.	Dr. W. Eastin, 919–541–7941 TR–361.	Plasticizer, moth repellant, anthelmentic, ignition suppressant, pressure lubricant component.	Oral, gavage (corn oil): MR: 0, 10, 20, FR: 0, 80, 160 MG/KG.	EG&G Mason Research Institute.	MR: Clear evidence. Kidney (tubular cell adnoma or carcinoma). FR: No evidence.

Tentative order of review	Chemical/CAS No.	Study scientist/ technical report No.	Use	Exposure levels	Laboratory	Proposed levels of evidence of carcinogenicity [1]
3	Hydroquinone 123-31-9.	Dr. F. Kari, 919-541-2926 TR-366.	Photography processing, rubber antioxidant, intermediate for food antioxidants, depigmentor.	Oral, gavage (water): R: 0, 25, 50, M: 0, 50, 100 MG/KG.	American Biogenics Corp.	MR: Clear evidence. Kidney (tubular cell adenoma). FR: Some evidence. Hematopoietic system (leukemia). MM: No evidence. FM: Some evidence. Liver (adenoma or (carcinoma).
8	Iodinated glycerol 5634-39-9.	Dr. J. French, 919-541-7790 TR-340.	Expectorant, mucolytic.	Oral, gavage (water): FR&FM: 0, 62, 125, MR&MM: 0, 125,250 MG/KG.	EG&G Mason Research Institute.	MR: Some evidence. Hematopoietic System (Leukemia). Thyroid gland (follicular cell carcinoma). May have been related: nasal cavity (adenoma). FR: No evidence. MM: No evidence. FM: Some evidence pituitary gland (adenoma), Harderian gland (adenoma or carcinoma). May have been related: Forestomach (squamous cell papilloma).
1	N-Methylolacrylamide 924-42-5.	Dr. J. Bucher, 919-541-4532 TR-352.	Polymers for varnishes, adhesives, permanent press fabrics.	Oral gavage (water): R: 0,6,12, M: 0,25,50 M/KG.	Battelle Columbus Laboratory.	MR: No evidence. FR: No evidence. Clear evidence. Harderian Gland (adenoma). Liver (adenoma or carcinoma) Lung (alvelar/bronchiolar adenoma or A/B carcinoma). FM: Clear evidence. Harderian gland (Adenoma) liver (adenoma or carcinoma) lung (Alvelar/Bronchiolar Adenoma or A/B carcinoma) Ovary (granulosa cell tumor).
10	Pentaerythritol tetranitrate 78-11-5.	Dr. J. Bucher, 919-541-4532 TR-365.	Mainly in manufacture of detonating fuses; also as vasodilator.	Oral in feed: FR: 0, 6200, 12500, MR&M: 0, 25000, 50000 PPM.	EG&G Mason Research Institute.	MR: Equivocal evidence. Zymbal gland (adenoma or carcinoma). FR: Equivocal evidence. Zymbal gland (Adenoma or carcinoma) MM: No evidence. FM: No evidence.
9	Rhodamine 6G, 989-38-8.	DR. J. French 919-541-7790 TR-364.	Dye	Oral in feed: R: 0, 120, 250, FM: 0, 500, 1000, MM: 0, 1000, 2000 PPM.	Southern Research Institute.	MR: Equivocal evidence. Skin (keratoacanthoma) FR: Equivocal evidence adrenal gland (pheochromocytoma or malignant pheochromocytoma). MM: No evidence. FM: No evidence.

Note: The proposed results indicated are to be considered tentative until reviewed, discussed, and approved at the Board of Scientific Counselor's Peer Review Panel Public Meeting October 3-4, 1988.

Levels of Evidence Summary (38 individual experiments): clear evidence, 6; some evidence, 4; equivocal evidence, 12; no evidence, 15; inadequate experiment, 1.

[1] MR = male rats, FR = female rats, MM = male mice, FM = female mice.

[FR Doc. 88-19508 Filed 8-26-88; 8:45 am]

BILLING CODE 4140-01-M

VOL 53 ISS 167 AUG 29 1988 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1849]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 23, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Title I—Transfer of Note Report.

Office: Administration.

Description of the Need for the Information and its Proposed Use: Section 7(d) of the National Housing Act states that the insured shall not assign or otherwise transfer any loan reported for insurance to a transferee not holding a contract of insurance under Title I of the National Housing Act. This information is needed and used by HUD to transfer a loan from one insured lender to another.

Form Number: HUD-27030.

Respondents: Business or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Report	10,000		.20		.20		400

Total Estimated Burden Hours: 400.

Status: Extension.

Contact: Cynthia H. Palmer, HUD, (202) 755-5263, John Allison, OMB, (202) 395-6880.

Date: August 22, 1988.

Proposal: Application for Designation as Fee Personnel

Office: Housing.

Description of the Need for the Information and its Proposed Use: This form is used as an application for fee appraisers and reviewed by the HUD Field Offices who make determinations of acceptability based on the information provided. Qualified applicants are then placed on a roster from which assignments for fee work are made. This form is needed to select capable and responsible individuals to perform the appraisals.

Form Number: HUD-92563.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
HUD-92563	1,700		1		1/2		850

Total Estimated Burden Hours: 850.

Status: Extension.

Contact: Gerald A. White, HUD, (202) 755-7620, John Allison, OMB, (202) 395-6880.

Date: August 23, 1988.

Proposal: Recertification of Family Income and Composition

Office: Housing.

Description of the Need for the Information and its Proposed Use: Under the Section 235 Program, the forms are submitted by homeowners to mortgages to determine their continued eligibility for assistance and the amount of assistance to be received. The information is used by mortgages to report statistical and program data to HUD for monitoring purposes.

Form Number: HUD-93101 and 93101A.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion, Monthly, and Annually.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
HUD-93101	150,000		1.25		1		187,500
HUD-93101A	962		12		21		242,424

Total Estimated Burden Hours: 429,924

Status: Extension.

Contact: Florence B. Brooks, HUD, (202) 755–7330, John Allison, OMB, (202) 395–6880.

Date: August 22, 1988.

[FR Doc. 88–19580 Filed 8–26–88; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–88–1850]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 23, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Request for Construction Change—Project Mortgages

Office: Housing

Description of the Need for the Information and its Proposed Use: This information is used by contractors, mortgagors, and mortgagees to obtain approval of changes in the contract drawings and specifications. It is needed by HUD to make sure they are complying with Article 1E of the Construction Contract.

Form Number: HUD–92437

Respondents: Businesses or Other For-Profit

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Request of Construction Change	500		20		3		30,000

Total Estimated Burden Hours: 30,000

Status: Extension.

Contact: Linda D. Cheatham, HUD, (202) 426–0035, John Allison, OMB, (202) 395–6880.

Date: August 23, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

[FR Doc. 88–19579 Filed 8–26–88; 8:45 am]

BILLING CODE 4210–01–M

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D–88–885]

Acting Manager, Region IV (Atlanta); Designation for Nashville Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officals who may serve as Acting Manager for the Nashville Office.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Manager for Nashville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the

absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Director, Housing Division.

2. Director, Housing Management Division.

3. Chief Attorney.

4. Chief, Assisted Housing Management Branch.

This designation supersedes the designation effective February 25, 1987, (52 FR 17482, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of July 12, 1988.

Joseph P. Garaffa,

Acting Manager, Nashville Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 88-19578 Filed 8-26-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-010-08-4830-04]

Elko BLM District Grazing Advisory Board; Meeting

The Elko BLM District Grazing Advisory Board will hold a meeting September 29, 1988 at the Elko District BLM office at 10:00 a.m.

The Board will reveiw range improvement projects for Fiscal Year 1989 as proposed by the BLM, and proposed allotment management plans as well as other matters that may come before the Board.

The meeting is open to the public: Interested persons may make oral statements to the Board between 1:30 p.m. and 2:00 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, BLM, 3900 E. Idaho St., Elko, NV 89801 by September 22, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Rodney Harris,

District Manager.

[FR Doc. 88-19565 Filed 8-26-88; 8:45 am]

BILLING CODE 4310-HC-M

[ES-940-08-4520-13; ES-039041, Group 24]

Filing of Plat of the Survey of the Rend Lake Acquisition Boundary; Illinois

August 19, 1988.

1. The plat of the survey of the Rend Lake acquisition boundary, Township 6 South, Range 3 East, Third Principal Meridian, Illinois, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on October 3, 1988.

2. The survey was made at the request of the Corps of Engineers.

3. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Gadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., October 3, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-19501 Filed 8-26-88; 8:45 am]

BILLING CODE 4310-GJ-M

INTERSTATE COMMERCE COMMISSION

[Section 5a; Application No. 46]

Southern Motor Carriers Rate Conference, Inc., and Central and Southern Motor Freight Tariff Association, Inc.; Merger Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of joint application for merger, and for comments.

SUMMARY: Southern Motor Carriers Rate Conference, Inc. (SMC) and Central and Southern Motor Freight Tariff Association, Inc. (CSA) have filed a joint application seeking approval of the merger of CSA into SMC, and approval of the revised by-laws of SMC. SMC and CSA are collective ratemaking organizations which presently have overlapping territories and memberships. With one minor exception (the points of Helena and West Helena, AR), the territorial scope of SMC embraces that of CSA. SMC's activities are confined to traffic moving between, and from and to, points in Alabama, Florida, Georgia, Kentucky, Louisiana (eastern portion), Mississippi, North Carolina, South Carolina, Tennessee, Virginia (southern portion), and a small part of West Virginia. However, to date SMC has not engaged in collective ratemaking to the full extent of its territory and its present activities do not include CSA's territory. CSA's present activities are confined to traffic between points in the South, on the one hand, and on the other, points in Illinois, Indiana, Michigan, Missouri, Ohio, Pennsylvania, West Virginia, and Wisconsin. The merger would broaden SMC's present collective ratemaking activities to include all of its authorized territorial scope and add the two points in Arkansas previously mentioned. SMC has 232 members. Only 45 of CSA's 160 members do not belong to SMC. Applicants believe that significant economies of operation will result from the merger. Employment costs would be reduced and combined operations would lower administrative and facilities costs. The merged operation would be conducted under the terms of SMC's agreement (with minor amendments) that received final approval as consistent with the requirements of 49 U.S.C. 10706(b).

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by September 28, 1988. A service list will then be prepared. Applicants will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of the application and any additional evidence. (If the Commission or a party has been previously supplied the materials, applicants need only so certify.) Other parties will have 35 days from the service date of the service list to submit their comments to the Commission and to applicants' representatives. Applicants will have 50 days from the service date of the list to reply.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 46 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission must also be served on applicants' representatives.

FOR FURTHER INFORMATION CONTACT: J.R. Hodge (202) 275-7890 or Richard B. Felder (202) 275-7691 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The Commission seeks comment from interested parties on any and all aspects of this proposal, including anticipated competitive impacts of it.

Applicants are encouraged to submit detailed evidence supporting their anticipated operating savings and

explaining how the merger would affect collective activity generally.

No Commission decision accompanies this notice. Copies of the merger agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from the applicant's representatives: John Womack, P.O. Box 37110, Louisville, KY 40233–7110, Sherman D. Schwartzberg, 1307 Peachtree Street, NE., Atlanta, GA 30309, and John W. McFadden, Jr., 1600 Wilson Boulevard, Suite 1001, Arlington, VA 22209.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: August 22, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88–19523 Filed 8–26–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–305X]

Nicholas, Fayette & Greenbrier Railroad Co., Abandonment Exemption, Fayette County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 13.4-mile line of railroad between milepost 0.0 at Babcock, WV, and milepost 13.4 at the end of applicant's Landisburg Subdivision near Landisburg, WV, in Fayette County, WV.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the amendment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 28, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of itent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by September 5, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 13, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 29, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 15, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–19524 Filed 8–26–88; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

[2] *See Exemp. of Rail Line Aband. or Discont.—Offers of Fin. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Justice

AGENCY: Department of Justice.

ACTION: Notice of availability of draft Transition Plan and Self-Evaluation and request for comments.

SUMMARY: The Department of Justice is announcing the availability of its draft Transition Plan and Self-Evaluation for implementation of its regulation prohibiting discrimination on the basis of handicap in its federally conducted programs and activities (28 CFR Part 39). The draft describes the Department's review of its policies, practices, and facilities and their effects on individuals with handicaps involved in Department of Justice programs and activities, and the steps the Department has taken or is taking to ensure that no qualified individual with handicaps is excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any such program or activity. The purpose of this notice is to provide an opportunity for interested persons, including individuals with handicaps, and organizations representing individuals with handicaps, to participate in the self-evaluation process and the development of the transition plan by reviewing the Department's draft Transition Plan and Self-Evaluation and submitting oral and written comments.

DATE: To be assured of consideration, comments must be received on or before October 28, 1988.

ADDRESSES: Comments should be sent to the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, DC 20035–6118. The draft Transition Plan and Self-Evaluation is available for public inspection at the Coordination and Review Section, Civil Rights Division, Department of Justice, 320 First Street, NW., Room 854, Washington, DC 20530. Persons who need assistance to review the document will be provided with appropriate aids such as readers, print magnifiers, or audio tape players. A limited number of copies of the document are available. The document is available in regular and large print, on computer disc, and on audio tape. Copies may be obtained from the Coordination and Review Section.

FOR FURTHER INFORMATION CONTACT: Bert Keys, Coordination and Review Section. (202) 724–2218 (Voice) or (202)

724–7678 (TDD). (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in federally assisted programs and activities, was amended in 1978 to extend its coverage to programs and activities conducted by Federal Executive agencies, including the Department of Justice. The Department's regulation implementing section 504 for its federally conducted program is codified at 28 CFR Part 39. Section 39.110 of that rule requires the Department to evaluate its current policies and practices for compliance with section 504. Additionally, section 39.150 prescribes that, in the event that structural changes are necessary to make the Department's programs accessible to individuals with handicaps, the Department shall develop a plan setting forth the steps necessary to complete these changes. The Department has combined the self-evaluation process with the development of a transition plan. This document is the result of an examination of the Department's facilities and the policies and practices by which the Department's programs are operated. Various components of the Department have identified those obstacles that might hinder the effective participation of individuals with handicaps in the Department's programs and have either begun or already completed the process by which these potential obstacles are to be eliminated. The draft Transition Plan and Self-Evaluation thus sets forth the results of this examination and outlines the actions that the Department has taken and intends to take over the next several years.

The Department actively solicits specific, concrete public comment to help resolve issues that have been noted or to identify new issues. In particular, the public is invited to comment on how the Department can best ensure access to its programs by using telecommunication devices for deaf persons (TDD's). Also, because of the very large number of facilities (over 1,500) used by the Department throughout the United States, including its territories and possessions, the Department seeks any specific information the public may have regarding accessibility in facilities used by the Department. This information will help the Department in taking the necessary steps to improve accessibility.

Although the Department's employment program is subject to section 504 under § 39.140 of the final rule, the Department has not included employment practices as part of the self-evaluation process. The Department is subject to the requirements and procedures of section 501 of the Rehabilitation Act of 1973, as amended. Section 501 requires the Department to take affirmative action to hire and advance in employment qualified individuals with handicaps. The Equal Employment Opportunity Commission (EEOC) has established detailed regulations to implement section 501 at 29 CFR Part 1613. The EEOC's section 501 at 29 CFR Part 1613. The EEOC's section 501 program includes affirmative action requirements that go beyond the nondiscrimination requirements of section 504. The Department believes that further review of its employment practices in this document is unnecessary in light of its compliance with its section 501 responsibilities.

The draft Transition Plan and Self-Evaluation reflects the Department's internal organizational structure. Although it is generally true that the Justice Management Division (JMD) provides administrative and management support services to all of the Department's component agencies, the largest of the Department's components, (*i.e.*, Bureau of Prisons, Marshals Service, Immigration and Naturalization Service, Drug Enforcement Administration, and Federal Bureau of Investigation) have their own management staff and function independently of JMD. These components will directly implement their respective portions of the transition plan. The smaller components within the Department do not have their own management staff. Thus, they conducted their self-evaluations with assistance from the Civil Rights Division and will implement their respective portions of the transition plan in conjunction with JMD. The components covered by this document include:

- The Federal Bureau of Prisons has almost 12,000 employees, a budget of 650 million dollars and maintains 47 Federal correctional institutions with over 40,000 inmates;
- The United States Marshals Service, consisting of 94 marshals with a support staff of 2,700, provides security assistance for Federal prisoners and interacts with the public in matters related to the judicial process;
- The Immigration and Naturalization Service has approximately 12,000 employees, a budget of about 600 million dollars, and maintains a broad network of regional and district offices to enforce the immigration laws;
- The Executive Office for Immigration Review, which is entirely separate from the INS, includes the Board of Immigration Appeals, the Office of the Chief Immigration Judge, and 250 support staff;
- The Drug Enforcement Administration, which enforces the controlled substances laws in coordination with Federal, State, and local law enforcement authorities, has almost 5,000 employees and field offices in 15 states and the District of Columbia;
- The Federal Bureau of Investigation has almost 23,000 employees, a budget of 1.5 billion dollars, and maintains 59 field divisions and over 400 auxiliary offices throughout the United States;
- The Justice Management Division oversees selected management operations and provides direct administrative services to the offices, boards, and divisions of the Department;
- The U.S. Parole Commission's 168 employees administer a parole system for Federal prisoners and develop Federal parole policy;
- The Office of the Pardon Attorney (OPA), in consultation with the Associate Attorney General, receives and reviews all petitions for Executive clemency, initiates the necessary investigations and prepares the recommendation of the Associate Attorney General to the President in connection with consideration of all forms of Executive clemency. OPA has ten employees;
- The Executive Office for U.S. Attorneys (EOUSA) provides general executive assistance and supervision to the 94 offices of the U.S. Attorneys which have 5,000 employees in over 150 offices throughout the United States. EOUSA also coordinates the relationship of other Department units with those offices;
- The Executive Office for U.S. Trustees supervises the administration of all cases filed pursuant to the Bankruptcy Reform Act of 1978 with the offices of the United States Trustees. There are 88 offices of United States Trustees Executive Office and the Offices of the U.S. Trustees have a combined staff of almost 400 persons.
- The Office of Justice Programs provides financial and technical assistance to State and local governments and nongovernmental organizations for criminal justice system improvement programs;
- The Community Relations Service consists of ten regional offices throughout the United States that provide conciliation and mediation services to communities where disputes

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regarding discriminatory practices have arisen;

• The six legal divisions (Antitrust, Civil, Civil Rights, Criminal, Land and Natural Resources and Tax) have over 3,600 employees in Washington and in several field offices. These divisions conduct litigation on a wide variety of issues where the interests of the Federal Government are involved;

• The Foreign Claims Settlement Commission's employees determine claims of United States nationals for loss of property in specific foreign countries as a result of the nationalization or other taking of property by those governments;

• INTERPOL—United States National Central Bureau functions as a central conduit providing communication between this country, other INTERPOL member countries, and the INTERPOL Headquarters;

• A variety of Executive level offices (Offices of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, Office of the Solicitor General, Office of Legal Counsel, Office of Legal Policy, Office of Intelligence Policy and Review, Office of Professional Responsibility, Office of Legislative and Intergovernmental Affairs, and the Office of Public Affairs) provide direct support to the top management officials of the Department.

Wm. Bradford Reynolds,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 88-19499 Filed 8-26-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *Unites States v. Hitlsborough County, Florida and the State of Florida,* has been lodged with the United States District Court for the Middle District of Florida. That action was brought pursuant to the Clean Water Act for violations of the discharge limitations included in the federal permit issued to Hillsborough County for its Dale Mabry wastewater treatment plant, and for unpermitted discharges related to the plant.

The settlement agreement requires Hillsborough County to submit plans for improvements to the plant to insure that effluent discharges do not occur at locations or in frequencies in violation of its NPDES permit and to construct those necessary improvements by April 15, 1989. Hillsborough County must be in full compliance with its permit by April 30, 1989. Until that time, Hillsborough County must meet strict interim standards regulating its discharge or pay stipulated penalties for such violations. In addition, Hillsborough County will pay a $195,000 civil penalty to the United States.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Hillsborough County, Florida,* D.J. Ref. 90-5-1-1-3024.

The proposed consent decree may be examined at the office of the United States Attorney, Robert Timberlake Building, 500 Zack Street, Tampa, Florida 33602 and at the Region IV Office of the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the consent decree should be accompanied by a check in the amount of $1.70 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19497 Filed 8-26-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; McGraw-Edison Co. et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 15, 1988 a proposed partial consent decree in *United States v. McGraw-Edison Co., et al.,* Civ. No. 88-542 C, was lodged with the United States District Court for the Western District of New York. That action was brought pursuant to the Comprehensive Environmental Response, Compensation and Recovery Act for the recovery of costs expended by the United States in connection with the Olean Well Field Site located in Olean, New York and for penalties against a non-settling party.

The partial consent decree is entered into between the United States, and five of the six parties potentially responsible for the contamination at the Olean Well Field Site. The decree provides for the payment by those parties of $1,026,696.50 to the United States for costs expended by the government in conducting investigatory, removal and remedial activities at the site. The partial consent decree does not resolve the liability of one of the defendants named in the complaint filed by the United States in this action.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. All comments should refer to *United States v. McGraw-Edison Co., et al.,* D.O.J. Ref. 90-11-3-181.

The proposed consent decree may be examined at the office of the United States Attorney, 502 U.S. Courthouse, Court & Franklin Streets, Buffalo, New York 14202 and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the proposed partial consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the decree should be accompanied by a check in the amount of $1.50 for copying costs payable to the "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19498 Filed 8-26-88; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Clean Air Act Enforcement Action; Simplicity Manufacturing, Inc.

In accordance with the Department Policy 28 CFR § 50.7, notice is hereby given that on August 15, 1988 a Consent Decree in *United States V. Simplicity Manufacturing, Inc.,* Civil Action No. 88-C-0294 was lodged with the United States District Court for the Eastern District of Wisconsin. The Compliant

alleged Simplicity used coatings which violated limits established by the Clean Air Act and the Wisconsin State Implementation Plan (SIP)for volatile organic compounds at Simplicity's Port Washington, Wisconsin facility. Under the decree, Simplicity has agreed not to use coatings which violate the Wisconsin SIP, to satisfy various monitoring, record keeping and reporting requirements, and to pay a civil penalty of $35,000.

The Department of Justice will receive for thirty (30) days from the publication date on this notice written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States v. Simplicity Manufacturing, Inc.*, 90-5-2-11220.

The proposed consent decree can be examined at the office of the United States Attorney, 330 Federal Building, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois. Copies of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States. The Decree can be examined at the above address without cost.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19500 Filed 8-26-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Request for Nomination of Members

The Assistant Secretary of Labor for Occupational Safety and Health requests nominations for memership on the National Advisory Committee on Occupational Safety and Health. The Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

The terms of 6 members of the 12 member committee will expire on November 13, 1988. Nominations will be accepted for vacancies occurring in the following categories Three public representatives, one management representative, one labor representative, and one safety representative. Any interested person or organization may nominate one or more qualified persons for membership. Nominees should be identified by name, occupation or position, address, and telephone number and social security number. The category which the candidate would represent should be specified and a resume of the nominee's background, experience, and qualifications included. In addition, the nomination should state that the nominee is aware of the nomination and is willing to serve as a committee member for a 2 year term ending November 13, 1990.

Nominations should be submitted to Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, no later than September 15, 1988. Nominations received after this date cannot be considered.

Signed at Washington, DC, this 23rd day of August 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88-19529 Filed 8-26-88; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-364]

Alabama Power Co., Joseph M. Farley Nuclear Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from a portion of the requirements of 10 CFR 50-55a(g)(4)(ii) to the Alabama Power Company (the licensee) for the Joseph M. Farley Nuclear Power Plant, Unit 2 (Farley 2 or Unit 2) located in Houston County, Alabama.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.55a(g)(4)(ii) to authorize a program update at this time to the ASME Code, 1983 Edition, through the Summer 1983 addenda, for the Farley 2 Inservice Inspection (ISI) program and the Farley 2 Inservice Testing (IST) program. Thereby, the ASME Code of record for Farley 2 would be updated three years in advance of the July 31, 1991, Code requirements. Also, the updated Farley 2 program would continue through the first and second 40-month periods of the second ten-year interval until December 1, 1997. This action would allow the licensee to maintain and exercise one set of ISI and IST program requirements for both Unit 1 and Unit 2. The licensee intends to update the programs to be performed starting in 1997 in order that Code requirements for the remaining life of the plant remain the same for both units.

The Need for the Proposed Action

The licensee has described the need for the action as follows:

> The requested exemption is needed because the ISI and IST Programs for Farley Nuclear Plant would otherwise be accomplished under two different editions of the ASME Code. Although administratively possible, this situation could contribute to the increased administrative overhead in the performance of inspection and testing requirements to two different editions of the Code. This would create an additional administrative workload for what could be described as only nominal technical differences in the inspection and testing requirements.

The Commission agrees with this assessment.

Environmental Impact of Proposed Action

The licensee has reviewed the environmental impact of the proposed action as follows:

> The proposed exemption would provide a degree of inservice inspection and testing that is equivalent to that required by 10 CFR 50.55a(g)(4), such that there would be no increase in the risk of failure for operation readiness of pumps and valves or other components whose function is required for safety at these facilities. Consequently, the probability of failure for operational readiness of components would not be increased, the radiological risk would not be greater than determined previously, and the requested exemption would not otherwise affect plant radiological effluents. Therefore, we concluded that there are no significant radiological environmental impacts associated with this proposed exemption.
>
> With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It would not affect plant nonradiological effluents and would have no other environmental impact. Therefore, we conclude that there are no significant nonradiological environmental

impacts associated with the proposed exemption.

The Commission agrees with this assessment. There would be no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological and nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2," dated December 1974.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption dated June 22, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Dated at Rockville, Maryland this 18th day of August 1988.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

Acting Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–19548 Filed 8–26–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corp., Wolf Creek Generating Station; Issuance of Director's Decision Under 10 CFR 2.206 (DD–88–14)

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a petition under 10 CFR 2.206 filed Ms. Billie Pirner Garde on behalf of the Nuclear Awareness Network (NAN) (hereinafter referred to as the Petitioners). The Petitioners asked the U.S. Nuclear Regulatory Commission (NRC) to:

1. Require the Staff to take possession of the Quality First (Q1) files and provide to the Commission and the public the analysis of why the alleged significant safety-related deficiencies identified for the past year by members of the work force do not pose a danger to the public health and safety.

2. Conduct an inquiry on the ramifications of the collective safety significance and/or adequacy on the quality assurance (QA) program in the light of the information contained in the Q1 files.

3. Require an explanation from both the Office of Nuclear Reactor Regulation (NRR) and Region IV as to why they allegedly allowed the allegations to be exempt from the regulatory analysis for determination of safety significance.

4. Request that the Office of Investigations (OI) conduct an investigation into the alleged compromising of the Q1 program by William Rudolph, site QA manager. Mr. Rudolph was originally responsible for resolvling allegations made against the QA program that he supervised.

The Petitioner's request has been denied for the reasons fully described in the Director's Decision (DD–88–14) under 10 CFR 2.206, issued on this date, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and the Local Public Document Rooms for the Wolf Creek Generating Station located at Emporia State Unviersity, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas.

A copy of the decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the decision within that period.

Dated at Rockville, Maryland, this 22nd day of August 1988.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88–19549 Filed 8–26–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261; Licensee No. DPR–23, EA 87–124]

Carolina Power and Light Co., H.B. Robinson Steam Electric, Generating Plant Unit 2; Order Imposing Civil Monetary Penalty

I

Carolina Power and Light Company (CP&L/licensee) is the holder of Operating License No. DPR–23 (license) issued by the Nuclear Regulatory Commission (NRC/Commission) on July 31, 1970. The license authorizes the licensee to operate the H.B. Robinson Steam Electric Generating Plant, Unit 2, in accordance with the conditions specified therein.

II

A Safety System Functional Inspection (SSFI) was conducted on March 9—April 15, 1987, with a followup inspection conducted May 26—29, 1987, at the H.B. Robinson Steam Electric Generating Plant, Hartsville, South Carolina. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated November 13, 1987. The Notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for Violation I set out in the Notice. The licensee responded to the Notice by letter dated December 17, 1987.

III

After consideration of the licensee's response and the statements of fact, explanations, and arguments for withdrawal of Violation I, reduction of severity level, and remission or mitigation of the proposed civil penalty contained therein, the Deputy Executive Director for Regional Operations had determined, as set forth in the Appendix to this Order, that Violation I occurred as stated in the Notice and that the penalty proposed for Violation I

designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), U.S.C. 2282, and 10 CFR 2.205, it is hereby credited that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with copies to the Assistant General for Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Regional Administrator, Region II, 101 Marietta Street, NW., Atlanta, Georgia 30323, and a copy to the NRC Resident Inspector, H. B. Robinson Steam Electric Generating Plant.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation I of the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 17th day of August 1988.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluation and Conclusions

On November 13, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a Safety System Functional Inspection (SSFI) conducted March 9—April 15, 1987, with a followup inspection conducted May 26–29, 1987. Carolina Power and Light Company (CP&L/licensee) responded to the Notice on December 17, 1987. In its response, the licensee denied the violations as stated in the Notice, adding that in no instance does the Notice raise any issues that individually or collectively could have jeopardized the capability of its operating staff to safely shut the plant down using established procedures. The licensee asserts its belief that if complied with the requirements of 10 CFR Part 50, Appendix R, although "some problems may have existed at the time of the SSFI," and that, if the NRC concludes that violations occurred, they merit no more than a Severity Level IV classification. This appendix addresses each of the detailed arguments raised by the licensee related to the Notice.

The intent of Appendix R was to prevent a repeat of the TVA Browns Ferry fire and to provide adequate separation of equipment and power supplies necessary to achieve safe shutdown. For plants where extensive modifications would be required to meet the separation criteria, Appendix R allowed the substitution of Dedicated/Alternate Shutdown. These methods permit the use of dedicated equipment and manual operator actions to:

1. Achieve and maintain subcritical conditions in the reactor,
2. Maintain reactor coolant inventory,
3. Achieve and maintain hot standby,
4. Achieve cold shutdown within 72 hours, and
5. Maintain cold shutdown.

A Dedicated/Alternate Shutdown system was implemented at H. B. Robinson Steam Electric Generating Plant rather than the installation of extensive plant modifications. The licensee proposed to meet Appendix R by establishing adequate procedures, training, communications, and emergency lighting to assure safe shutdown capability with a fire in any zone. The licensee also stated that at least ten operators would be called in to direct the activities of maintenance personnel throgh the dedicated shutdown repair procedures.

After the initial development of the dedicated shutdown procedures and initial operator training by a consultant, the primary responsibility for Dedicated/Alternate Shutdown was relegated to the Operations Department. Interviews with Operations management and staff indicated that the licensee believe the chance of a severe fire and implementation of the dedicated shutdown procedures were extremely remote. Operations staff indicated that dedicated shutdown was considered a very low priority in comparison with other operations responsibilities and requirements.

VIOLATION I

I. Response to Violation I

Restatement of Violation I (Civil Penalty)

10 CFR 50.48 requires, in part, that the licensee implement fire protection features to assure fire protection of safe shutdown capability in accordance with Section III.G of 10 CFR Part 50, Appendix R. The licensee elected to install a dedicated shutdown capability pursuant to Section III.G of Appendix R and was required to do so by March 24, 1986. Section III.L.3 of Appendix R requires the licensee to have procedures in effect to implement this shutdown capability.

Technical Specification 6.5.1.1.1.f requires that written procedures shall be established, implemented, and maintained for the Fire Protection Program.

Contrary to the above, the licensee failed to adequately establish, implement and maintain procedures to carry out the dedicated shutdown capability in the event of a fire in the control room. Specific example of these failures include the following:

A. *Failure to Establish Procedures.* 1. On March 24, 1987, plant operating procedures were not adequately established in that the procedure entry conditions were insufficient to ensure that Dedicated Shutdown Procedure (DSP)–001, Hot Shutdown Using the Dedicated/Alternate Shutdown System, was entered only when required. In particular, the lack of decision points may not preclude unwarranted deenergization of all AC power sources.

Summary of Licensee's Response. The licensee denies the alleged violation occurred. The licensee believes that DSP–001 did provide adequate guidance on the entry conditions in that the procedures stated "This procedure is used to safely bring the reactor plant to a hot shutdown condition subsequent to a severe fire. The procedure will only be used if the extent of the fire induced damage precludes the use of the Emergency Operating Procedures (EOPs) Network to safely control the plant."

The licensee states that the NRC had previously approved deenergization of major busses in the August 8, 1984 Safety Evaluation Report (SER). This

action was approved as a basis to prevent spurious operations from impacting safe shutdown and from causing damage to other plant equipment. Additionally, the licensee stated that spurious operation of the emergency diesel generators and equipment running without loss of offsite power was identified in a 10 CFR Part 50, Appendix R, inspection conducted by Region II personnel in 1985. The Inspector Followup Items, detailed in NRC inspection report 85–07, identified two concerns. They were the spurious operation of the emergency diesel generators and equipment running without loss of off-site power. The licensee states that it resolved these concerns by determining that all AC power sources except for the Dedicated Shutdown (DS) diesel would be deenergized initially and that restoration occur as soon as possible following stabilization of the plant in a hot shutdown condition and determination as to the extent of fire damage and completion of any needed repairs. The licensee asserts that the NRC staff previously accepted this methodology, which is now found to be deficient, and as such may constitute a backfit.

The licensee states that the dedicated shutdown procedures were developed using worst case fire conditions that could not be controlled using the emergency operating procedures. An event of this magnitude does not afford one time to diagnose equipment malfunctions during initial stages when outside the emergency operating procedure network or from remote operating stations.

With the above statement in mind, the licensee states they were in compliance with the requirements of 10 CFR Part 50, Appendix R, and denies that any violation of regulations occurred.

NRC Evaluation. The licensee's emergency operating procedures (EOPs) are not designed for use outside of the main control room. At the time of the SSFI inspection, the licensee had in place two separate procedures designed to allow the safe shutdown of the reactor from outside the main control room. Abnormal Operating Procedure (AOP) –004, Control Room Inaccessibility, which was in place prior to the dedicated shutdown procedures, was intended to allow for a controlled boration shutdown when the control room is inaccessible due to smoke or toxic gas. The other procedure, DSP–001, Hot Shutdown Using the Dedicated/ Alternate Shutdown System, was intended to allow a safe shutdown from outside the control room when severe fire conditions have resulted in a loss of power to both trains of the normal systems and instrumentation used to perform a reactor shutdown, or when the fire results in the unintended and uncontrolled spurious operation of systems and equipment. DSP–001 is the more severe of the two procedures in that it requires the intentional deenergization of all normal and emergency onsite and offsite power supplies. Additionally, once DSP–001 was entered, there are no additional decision points or related symptoms provided prior to the deenergization of the AC power to the redundant trains of the normal safety shutdown systems and instruments.

During the inspection, the inspectors interviewed operations personnel during a simulated walkthrough and posed the hypothetical situation that there was a very smoky fire in the main control panel (current transformer fire). The Operations supervisor in setting up the walkthroughs expected under the simulated conditions (no loss of voltage or ESF equipment, or spurious equipment actuations) that the Senior Reactor Operator (SRO) would elect to enter AOP–004 and perform a routine shutdown from outside the main control room. However, in the walkthrough the SRO elected first to have the operators don respirators and attempt the shutdown using the EOPs from within the main control room which was supposedly on fire. Given a simulated increase in heat level and smoke, the SRO then decided to enter DSP–001, not the expected response. This highlights inadequacies in the licensee's procedures and training with regard to the use of the Dedicated Shutdown and Abnormal Operating Procedures.

DSP–001 is considered inadequate as it permits entry into the procedure and resulting deenergization without adequate consideration of the circumstances associated with the fire event. In particular, it fails to interface with AOP–004 with the resulting uncertainty as to which procedure is to be applied.

The NRC staff agrees that approval of the deenergization of AC power sources in the alternative/dedicated shutdown procedures was given in the SER and in inspection reports. The NRC in the SER noted the multiple and complex manual actions required by this approach and noted that compliance with Appendix R Would be subject to future inspections. Deenergization of AC power sources is an appropriate response to a worst case fire at the Robinson facility. In the case of a less severe fire, a situation not before evaluated by the NRC staff at the Robinson facility and for which deenergization of AC power sources had not been specifically approved, the NRC staff expects that appropriate procedures including guidance for these less severe fires would be provided to preclude the Unwarranted deenergization of the AC power sources. In this case, the procedures were insufficient to provide the necessary guidance. In addition, operator training was proven not to be sufficient to ensure a consistent response.

NRC Conclusion. The safety significant concern is that the lack of well-defined entry conditions and interfaces among EOP's, AOP's, and DSP's. This violation when combined with inadequate operator training and the associated stresses under actual fire situations, could result in confusion of the operators and the unwarranted initiation of DSP–001 and subsequent deenergization of the normal emergency power sources. For the above reasons, the NRC staff concludes that this example of the violation occurred as stated.

2. On March 24, 1987, the dedicated shutdown procedures did not provide directions for controlling the auxiliary feedwater AFW) pump speed controller.

Summary of Licensee's Response. The licensee indicated that Operations personnel perform, on a monthly basis, Operations Surveillance Test (OST)–202 Steam Driven Auxiliary Feedwater System Component Test. This procedure requires operators to use the knurled knob on the Steam Driven AFW pump speed controller. The licensee considers the inclusion of specific instruction as to which direction to turn the knurled knob as unnecessary, claiming it is well within the scope of operators' knowledge. Additionally, the licensee states that steam generator level can be controlled solely by the use of the pump discharge valve. As such they have deleted the requirement to adjust the pump speed controller from the emergency operating procedures but the dedicated shutdown procedures had not yet been revised.

NRC Evaluation. DSP–001, Step 5.1.3. requires operators to control the steam driven AFW pump by:

(1) Controlling steam generator level by throttling valve V2–14a, and

(2) Adjusting AFW pump speed using the knurled knob.

While operation of the knurled knob may be within an operator's knowledge, NRC discussions with operators during walkthroughs of DSP–001 indicated confusion over the use of this knob to control pump speed and how adjustments of this knob would

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interface with the efforts to control steam generator level through valve adjustments. In addition, this step is in conflict with the system description provided by the licensee which indicates that adjustment of this knob without first removing control air supply could result in physical damage to the controller.

The licensee's response indicates that this step had been removed from the emergency operating procedures but the dedicated shutdown procedures had not yet been revised. In actuality, this unnecessary and inadequate step had been removed from the emergency operating procedures in November 1984. This revision to the emergency operating procedures therefore took place several months before the dedicated shutdown procedures were even written, and the licensee's implication that the associated revision of the dedicated shutdown procedures was pending is inappropriate. It is clear that the dedicated shutdown procedures did not have the same management attention as the emergency operating procedures.

Further, if, as the licensee asserts, its operators knew how to operate the AFW pump properly, review or walkthroughs of the dedicated shutdown procedures should have alerted plant personnel to the fact that procedural inconsistencies existed. This is another indication of the lack of plant staff and management involvement in these procedures.

NRC Conclusion. The instructions contained in DSP–001 did not provide for adequate guidance for controlling the AFW pump speed controllers as evidenced by the confusion experienced during the NRC inspection.

For the above reasons, the NRC staff concludes this example of the violation occurred as stated.

3. On March 24, 1987, DSP–011 contained an incorrect cable routing diagram for the repair of the PORV control power.

Summary of Licensee's Response. The licensee does not argue the accuracy of the statement, but does deny that any violation of a regulatory requirement occurred. The licensee indicated that it recognized the need for a revised diagram as a result of a change to the doorway into the auxiliary building prior to the SSFI inspection. The licensee states that the walls did have penetrations through which the cables could be run. Additionally, the licensee states that measures were in progress to revise the procedure to include an updated drawing depicting the corrected cable routing.

NRC Evaluation. The licensee's response indicated that it was aware of the need to revise the cable routing diagram due to construction changes to the walls of the auxiliary building. Operators did have a draft revision of the revised diagram at the time of the SSFI inspection. The actual change in the wall, however, was completed on January 2, 1986. This is not a timely incorporation of a design change into procedures. Although a draft revision was available and may be acceptable for a brief period while a procedure was being revised, the NRC finds it unacceptable to rely on a draft (unapproved) diagram for an extended period of time.

The licensee indicated that six to eight hours would lapse before repairs needed to be implemented and that the Emergency Response Organization would be available to compensate for the incorrect diagram. However, the PORV repairs may need to be completed much earlier to support Hot Standby operations as addressed in DSP–001/002. Additionally, the licensee's commitment for Dedicated/Alternate Shutdown did not include the Emergency Response Organization/Technical Support Center (ERO/TSC).

NRC Conclusion. For the above reasons, the NRC staff concludes that this example of the violation occurred as stated.

4. On May 26–29, 1987, DSP–007 did not provide (1) specific acceptance criteria for parameters related to control and verification, (2) charts and tables required for performing necessary calculations and evaluations, and (3) the locations for local valves and breakers which were required to be operated.

Summary of Licensee's Response. The licensee states that the magnitude of fire that would require the use of DSP–007 would also require the activation of the Emergency Response Organization (ERO). Activation of the ERO would provide additional resources and personnel to assist and make recommendations for the continued safety of the plant.

The licensee argues that DSP–007 does provide specific parameters related to a controlled cooldown and depressurization of the reactor coolant system. The licensee states these parameters, when followed, allow acceptable operating conditions and that no other acceptance criteria is required.

The licensee states that the charts and tables referred to in the violation were included as references in the procedures and are available for use as needed.

The licensee states that its practice has been to list component identification within procedures. However, since the location of plant equipment is located on plant drawings, location information is typically not included in procedures due to the availability of drawings.

NRC Evaluation. See NRC Evaluation under B.1.

NRC Conclusion. See NRC conclusion under B.1.

B. *Failure to Implement Procedures.* 1. As evidenced during the walkdown of DSP–002 and DSP–007, on May 26–29, 1987, the licensee's employees failed to properly implement procedures to demonstrate dedicated shutdown capability. The personnel could not readily locate essential valves and breakers; locate necessary repair equipment such as cables and instruments; locate security keys and access required areas; locate or properly utilize required charts and tables associated with the procedures; and were unfamiliar with specific setpoints and requirements such as minimum boron concentrations or the steam generator level high band.

Summary of Licensee's Response. With respect to DSP–002, the licensee denies that any operators had difficulty during the walkthrough of this procedure.

The licensee states that DSP–007 is used to achieve cold shutdown and would not be implemented until six to eight hours after a fire. With that in mind, the licensee states that the operators in the walkthroughs were given the impression by the NRC that this procedure was to be accomplished without delay and without the assistance from any personnel or resources not in the procedure. Once again the licensee indicates that a fire of this magnitude would require the activation of the Emergency Response Operator (ERO) and the Technical Support Center (TSC). This would provide additional personnel and resources to support Operations personnel.

The licensee states that only one operator can recall having difficulty in locating a specific valve or breaker. The operator did admit he was unsure and then, using available resources, did identify the valve location. The licensee states that one operator having difficulty does not constitute a programmatic breakdown. Additionally, the licensee states it believes it unreasonable for the NRC to impose unrealistic time constraints during walkthrough scenarios.

The licensee states that it does not require operators to memorize the locations for post fire repair equipment. The repair equipment would not be required for six to eight hours following

a fire, at which time additional personnel would be available to assist.

The licensee states that none of the operators who participated during the NRC walkthroughs of dedicated shutdown procedures could recall any concerns about gaining access to locked rooms. Additionally, the licensee stated that procedures addressing immediate actions designate the keys required and for those procedures where longer term actions are required, normal key control is used.

The licensee states that only one operator recalled a concern with not being able to utilize charts and tables. The operator thought that the information was included with the dedicated shutdown procedures when, in fact, it was not. When questioned by the NRC as to where the information could be located, he responded properly.

The licensee states that it does not require operators to memorize specific parameters and setpoints which are readily available in procedures and reference material. The licensee believes that memorization of this type of information increases the likelihood of personnel error. Instead the licensee places emphasis on having the procedure available to guide the operators.

NRC Evaluation. During the SSFI followup inspection, May 26–29, 1987, the licensee indicated that the additional Dedicated/Alternate Shutdown training commitments had been satisfied and that the revised procedures were in draft. In an attempt to verify the adequacy of the upgrade training and procedures, the inspectors walked several operators, including one Senior Reactor Operator (SRO) selected by the licensee, through selected procedures.

The procedures used were DSP–002 (formerly DSP–001), Hot Standby using the Dedicated/Alternate Shutdown System, DSP–006, Cold Shutdown using the Dedicated/Alternate Shutdown System, and DSP–007, RHR Pump Power Repair Procedure. DSP–001 is used under fire conditions to place the reactor in Hot Standby within approximately one hour and DSP–006 is used to achieve Cold Shutdown within 72 hours, if normal equipment is lost. Dedicated shutdown repair procedures 006 through 012 are used to provide temporary power supplies to cooldown equipment such as RHR to restore vital instrumentation and controls.

The inspector recognized that Cold Shutdown under DSP–006 and –007 was an extended process not requiring the timely response of DSP–002. Participants were advised that this was not a timed evaluation and were walked through individually versus the team concept used during the SSFI. The walkthroughs indicated that operators were still unfamiliar with the contents of DSP–006 and –007 and with the locations of essential valves and breakers. It should be noted that these deficiencies were identified after the licensee had completed the upgrade training on Dedicated/Alternate Shutdown. The licensee's response indicates that only one operator could recall difficulty in locating one valve. The fact is that during walkthroughs of DSP–007 and –006, an SRO had significant difficulty in locating numerous valves. In several instances the individual led inspectors to the wrong rooms and pointed out valves which were subsequently determined to be the wrong valves. He became disoriented and confused and admitted to the inspectors he was unfamiliar with the procedures and nad never walked them through.

The licensee maintains that six to eight hours would lapse before it would be necessary to implement repair procedures. To maintain Hot Standby and natural circulation, DSP–001 (now DSP–002) requires implementation of the PORV repair procedure as soon as possible if the PORVs are not operable, and also indicates that the RHR pump and instrumentation repair procedures should be implemented if necessary. If the extent of the fire damage was sufficient to require Cold Shutdown, the operators would proceed from DSP–001 to DSP–006 to perform a natural circulation cooldown. The prerequisites for DSP–006 require that the repair procedures to restore RHR system operability have been initiated. In addition, SROs indicated that, if they knew the fire damage was sufficient to require Cold Shutdown, they would initiate the start of these repairs as soon as the reactor was in Hot Standby or within one hour.

The licensee also implies that the NRC conclusions were based on the inability of one operator to recall the location of several valves. During the SSFI walkthroughs, the inspectors used an entire shift, including operators and supervisors, in performing DSP–001. These personnel demonstrated a number of inadequacies in knowledge of the procedures and location and operation of equipment. This was despite the fact that the licensee had conducted rehearsal drills when they learned of plans to perform the walkthroughs. During the followup inspection walkthroughs of DSP–002, several operators were used. For the walkthroughs of DSP–006 and DSP–007, the licensee provided a staff SRO. Since the performance of DSP–006 and DSP–007 does not require the time constraints as in DSP–001 and DSP–002, the inspectors preferred to walkthrough one individual at a time versus a team. Since the licensee indicated the upgrade training on Dedicated/Alternate Shutdown was completed, and with difficulties experienced by the SRO in completing the procedures, the NRC inspectors did not consider the testing of additional personnel was essential to demonstrate the need for more training.

This decision was also influenced by the licensee, who was reluctant to provide additional personnel due to manpower requirements for startup preparations. It should also be noted that since this individual was a staff SRO, the potential exists that he may have been one of the ERO/TSC members the licensee was relying on to assist operators in locating valves and equipment and performing Cold Shutdown.

Considering a worst case fire, certain plant repairs would be necessary to implement natural circulation cooldown and to achieve Cold Shutdown per Dedicated Shutdown Procedures. These repairs can be divided into three areas as follows:

(1) Required for initiation of cooldown:

- Connection of steam generator PORV long-term nitrogen supply

(2) Required for reactor coolant system depressurization:

- Installation of temporary PROV control cables and lineup of backup nitrogen supply (if required)

(3) Required for RHR entry conditions:

- RHR pump motor cable replacement;
- Portable self contained fan units; and
- Installation of RHR flow control, flow indication, and temperature monitoring equipment.

The licensee's submittal dated May 1984 indicated that the earliest time to implement the repairs to support activity (1) would not be for six to eight hours. It appears, however, that repair of the PORVs may be necessary much sooner to support the maintenance of Hot Standby. This submittal also indicated that ten operators would be available to direct the activities of post fire repairs and to achieve Cold Shutdown. Prior to the SSFI inspection, the operators had not been trained in the directing of maintenance personnel in Cold Shutdown repairs including the location of repair materials, the routes and methodology necessary to deliver the equipment to the appropriate plant locations, or the specific locations for repair connections of cables and instruments. As a result, the

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commitment to have operators direct the repair activities could not have been reasonably exercised. In addition, the maintenance personnel, who operators indicated to inspectors were actually responsible, had not received in-plant training on the delivery of materials, routing of cables, or the physical repairs or temporary connections. The inspectors did request operators to gain access to the warehouse, to point out delivery routes and access, and to point out cable routing paths and repair locations, all of which demonstrated deficient operator knowledge levels. Of greater concern, however, is that the licensee had not: (1) Actually designated which group was responsible, (2) trained the personnel in-plant, and (3) preplanned the actions to be taken to achieve repairs and Cold Shutdown. Once again, the licensee's response relies heavily on support from the ERO/TSC to accomplish these evolutions and to compensate for inadequate procedures, training, and preplanning.

During the followup inspection, walkthroughs of DSP–006 and DSP–001 revealed several other concerns involving locks and access. At one point during the walkthrough of DSP–006, the SRO attempted to enter a locked room in the HP decontamination area to look for valves. He did not have a key to the door and was not sure who would. This locked door was to a closet in which were located the penetrations necessary for routing the PORV repair control cable. Also encountered during the walkthroughs of the dedicated shutdown procedures and local valve operations were rooms requiring full dress out and a pathway labeled as a high radiation area. In both cases, the operators did not appear to be sure what actions would be necessary during a severe fire, i.e., to dress out or not, to use the high radiation path or seek an alternate path. Hopefully, HP technicians would be available at this point, but training and preplanning could avoid delays and or unnecessary exposures and contamination.

In implementation of repair procedure DSP–007, the inspectors observed additional deficiencies in training and preplanning. The warehouse was not manned and Operations personnel appeared to differ in opinion as to how access would be gained. There was, in fact, a delay in gaining access to the building which housed the Dedicated/Alternate Shutdown materials. Once access was gained, the operators were requested to point out the routes that would be used to deliver the cable reels and instrument carts to the required locations in the plant. The operators appeared unsure of the correct routes, and in some cases led inspectors through normal corridors that would be difficult to access with a fork lift, particularly during the loss of normal lighting and AC power. The operators also indicated paths that passed through locked perimeter gates for which they did not have keys and were unsure who would. We realize that as time progressed support personnel would be available to provide access although this might not be in time to support PORV repairs to maintain Hot Standby under DSP–001/002. The primary concern here, once again, is that the licensee committed to provide operators to direct the Cold Shutdown repair efforts, but did not provide training or adequate preplanning to ensure effective implementation and prevent confusion.

DSP–006, requires operators to use Curve 3.4, Reactor Coolant System Pressure-Temperature Limitations for Cooldown, and steam tables to ensure adequate subcooling margin in performance of natural circulation cooldown. The operator and inspectors were at the local control station when the requirement to begin using curve 3.4 was reached. The operator could not locate the curve in DSP–006. He then pointed out a different curve in a different dedicated shutdown procedure. This curve could not be used to maintain RCS pressure-temperature limits. The operator then indicated that the curve and steam tables were probably in a procedure envelope attached to the wall of the valve room; however, they were not. The operator indicated that the station curve book would be the only place he could obtain the curve. There is a station curve book in the control room, which under the scenario was inaccessible, and in the Operations Superintendent's office outside of the plant proper. The only available option was the Operations Superintendent's office and the inspectors accompanied the operator to that location. Even when the book was located, the operator did not demonstrate an adequate ability to find and use the curve. Once again, the licensee indicates that six to eight hours would be available permitting the assistance of the ERO/TSC. Procedures, however, should be complete and provide the operator with the necessary charts and tables, particularly when they are intended for use in emergency conditions and outside of the main control room. It should be noted that charts and drawings are attached to other dedicated shutdown procedures, including DSP–001/002. Under severe fire conditions and recovery, an operator should not be expected to have to exit the plant to retrieve necessary charts and tables.

DSP–006 requires operators to verify RCS boron concentration is adequate to achieve Cold Shutdown. Three different licensed operators were asked what this concentration would be. The inspectors were given widely varying answers on what value PPM this would be. Since the procedure did not specify a specific value, as indicated in the licensee's response, and the operators had not been adequately trained, an adequate cold shutdown boron concentration could not have been insured. DSP–006 also indicates that feeding each steam generator to the high band will ensure adequate secondary water inventory prior to steam pressure decreasing below the minimum required to operate the AFW pump. Once again, the operators provided three different interpretations as to what was meant by "high band." Since a specific value was not provided in the procedure, and operator training was inadequate, adequate secondary water level could not have been assured. It should be noted that specific values are provided for other parameters in other dedicated shutdown procedures. The licensee again seeks to compensate for those inadequacies by taking credit for the availability of six to eight hours of time and the ERO/TSC for assistance.

NRC Conclusion

(1) The inspectors did not impose unrealistic constraints on operators in the walkthroughs of DSP–006 and DSP–007.

(2) There were multiple valves which could not be readily located and more than one operator was involved in these failures.

(3) The upgraded operator training between the SSFI and the followup inspection was inadequate and did not include in-plant walkthroughs of DSP–006 and DSP–007. The training, however, was represented by the licensee as being complete.

(4) The violation was not based on the inability of one operator to perform Dedicated/Alternate Shutdown.

(5) Given the procedure conditions that were in existence from July 31, 1985 until the SSFI, the licensee's response on the assistance from the ERO/TSC is not reasonable for some scenarios and was not the commitment under Appendix R and Dedicated/Alternate Shutdown.

(6) Operators (or maintenance) personnel had not been trained to direct or accomplish cold shutdown repair procedures including the location of repair equipment, equipment delivery routes and methodology, and connection

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locations for temporary power and instrumentation.

(7) Despite the licensee's commitment made 2 years ago to provide ten operators to direct cold shutdown repairs, plant personnel were confused as to whether Operators or Maintenance was responsible for this area.

(8) Access areas required for Dedicated/Alternate Shutdown were inaccessible. The operators did not have keys and did not know where to look for them.

(9) Charts and tables essential for use of DSP–006 to perform natural circulation cooldown were not provided in the procedure or in the dedicated shutdown areas of the plant and operators were not familiar with the use of these curves.

(10) Minimum boron concentration and the high band of steam generator level were not defined in DSP–006 and operators indicated widely varying opinions on these values to inspectors.

The NRC staff maintains that the licensee failed to adequately implement procedures to demonstrate the ability to perform Dedicated/Alternate Shutdown. For the above reasons, the NRC staff concludes the examples of the violation set out in this area occurred as stated.

2. On March 24–25, 1987, the implementation of DSP–001 was not adequate in that the necessary communications could not be accomplished. The portable radio system, the only communication system available under this dedicated shutdown procedure, could not provide adequate communications essential to the dedicated shutdown evolutions and coordination.

Summary of Licensee's Response. The licensee states that it was aware that radio communications required during dedicated shutdown at the time of the SSFI were not up to previously demonstrated capability. The licensee states that the acceptability of the portable radio system was determined based on testing. These tests revealed a few areas in the auxiliary building where communications were weak, but by moving around communications were possible. The licensee states that it is true that the portable radio system is the only practical means of communications during the first one-half hour of the event. However, after that operators would be stationed at locations where a sound powered phone system is available and thus a second means of communications would be available.

NRC Evaluation. In a February 1984 submittal, the licensee indicated that Dedicated/Alternate Shutdown communications would be accomplished via a portable radio system and the intercom. They also committed in this submittal to upgrade the communications capability for operators at remote locations. In a supplemental submittal dated June 6, 1984, the licensee indicated that Dedicated/Alternate Shutdown communications would consist of a combination of sound powered phones and portable radios. This submittal also indicted that the routine usage of the portable radio system at H. B. Robinson provided reasonable assurance that they would be adequate for post fire safe shutdown. The NRC subsequently questioned the adequacy of the communications system to support the complex manual operator actions with the expected noise levels during post fire shutdown. The licensee once again stated that the use of these radios provides reasonable assurance that they would be adequate for post fire safe shutdown. Their submittals did not address numerous inadequacies in the licensee's communications network for Dedicated/Alternate Shutdown, including:

(1) The intercom system addressed in the first submittal would not be available under DSP–001/002 because the power source is intentionally deenergized.

(2) The sound powered phone system provides communications between only three Dedicated/Alternate control stations in the plant and cannot support the complex and manual operator actions required initially to achieve hot stanby.

(3) The portable radio repeater system was not powered from a redundant or safety-related supply. Until December 1987, the power supply was from MCC–5, a power source that would not be available with a fire in a specified zone and which also had an incorrect reenergization sequence procedure in DSP–001.

(4) The portable radio system, until after the SSFI, did not have an installed repeater to enable transmission capability between plant areas.

During testing in 1985, the licensee became aware of the deficiencies in the ability of the portable radio system. The licensee indicated to inspectors that it was determined at that time that effective radio communications could be assured only between three specific locations in the plant. This information was not provided to the NRC although it related to the ability to support post fire safe shutdown. Additionally, this information was never incorporated into training on the Dedicted/Alternate Shutdown scheme. During the SSFI walkthroughs of DSP–001, the operators were observed having extreme difficulty communicating between the dedicated shutdown locations and the SRO who was directing the evolutions. The operators ran from area to area, climbed ladders and shouted in an effort to communicate.

It was also identified by the NRC that the direction provided for restoration of Motor Control Center (MCC) 5 following international deenergization of all onsite and offsite power, in accordance with Dedicated Shutdown Procedure (DSP–001), was incorrect and would not have resulted in restoration of power to MCC 5. The response at the time of the inspection was that MCC 5 was not necessary for Dedicated/Alternate Shutdown, but as reflected in the licensee's December 17, 1987 letter, MCC 5 was the only power supply for the portable radio system repeater.

NRC Conclusion. This lack of adequate communications constitutes a major impediment to safe shutdown capability considering the complexity and nonroutine nature of the evolutions, the necessity to complete certain actions before initiating others, and the commitment to have the SRO direct and control the effort from a central location. The licensee's response acknowledges that inadequate radio communications would exist during the first half hour of Dedicated/Alternate Shutdown, but places emphasis on the availability after that of the sound powered phone system. The manual operator actions taken during the first half hour are multiple and complex and must be coordinated. The NRC maintains its position in that the communications provided for Dedicated/Alternate Shutdown were inadequate. Based on the above reasons, the NRC staff concludes this example of the violation occurred as stated.

II. Arguments for Mitigation of Civil Penalty

Summary of Licensee's Response

The licensee states there are extenuating circumstances that justify mitigating the proposed civil penalty. First, the licensee states that 100% reduction of the civil penalty is justified because of the plant's prior good performance in the fire protection area, as evidenced by the SALP Category 2 ratings in the two most recent SALP reports and the lack of any violations involving fire protection. Second, the licensee states that the NRC mischaracterized the licensee's corrective actions, which are asserted to be sufficiently prompt and effective, and satisfied its commitment to retrain the operators prior to power operation.

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The licensee states that the facts described in the reply to the examples of the violation demonstrate that the specific issues do not involve a Severity Level III violation but are more appropriately characterized as a Severity Level IV violation. The licensee asserts that the NRC has not raised any issues which individually or collectively could have jeopardized the capability to safely shut down the plant. The licensee asserts that the ability to safely shut down the plant was recognized by Region II management in the enforcement conference held on June 26, 1987 and at the SALP board meeting held on October 13, 1987.

The licensee states that the situation at Robinson when compared to other recently issued fire protection enforcement actions taken (Susquehanna, Vermont Yankee, and Salem) demonstrates that the alleged violations at Robinson are simply not as safety-significant as the other three cases which involved redundant train separation violations. The licensee states that the Robinson violations are more comparable to the Severity Level IV violations given to St. Lucie in an NOV issued on may 22, 1985 which involved violations regarding emergency operating procedures for alternate shutdown.

The licensee argues for not imposing a civil penalty based on the lack of clarity in and the evolving nature of the NRC's fire protection requirements. The licensee states that the draft procedures were accepted by the NRC audit team in 1985 and the NRC had not provided guidance in Generic Letter 86–10 concerning such procedures.

NRC Evaluation

The licensee claims that additional reduction in the proposed civil penalty is justified based on the plant's good performace in the area of fire protection. The NRC originally proposed only partial mitigation when it issued this Notice. The NRC notes that the SSFI inspection was an in-depth inspection of the implementation of the procedures to safely shut down the facility in the event of a fire and thus focused on a different area than the inspections which formed the basis of the SALP report. The ratings given in SALP and the findings during routine inspections focus generally on the licensee's overall fire protection activities (i.e., maintenance of fire barriers and fire protection systems, establishment and implementation of fire watches where necessary, and the maintenance of good housekeeping practices). Therefore, the NRC concludes that only partial mitigation based on the plant's prior good performance in the general area of fire protection is appropriate.

With respect to the licensee's claim that it completed adequate corrective actions to retrain the operators prior to power operation, the NRC, prior to its follow-up inspection in May 1987, had contacted the plant personnel to assure that the NRC inspection was not performed prior to the completion of the plant's retraining program. Based on assurances that the necessary re-training had taken place, the NRC conducted its follow-up inspection. While this inspection was performed prior to the plant resuming operation, there was no indication from plant personnel before or during the follow-up inspection that any additional training activities were planned by plant personnel. As discussed above, the training levels observed by NRC inspections at this time were inadequate. Therefore, the NRC considers that the follow-up inspection was conducted at an appropriate time and at that time the licensee's corrective actions had not been adequate to assure that operators could complete the actions necessary to accomplish dedicated shutdown in the event of a fire. Therefore, escalation of the base civil penalty is considered appropriate based on the licensee's inadequate corrective actions.

The NRC disagrees with the licensee's statement that in the SALP board meeting and the enforcement conference with the licensee, Region II management recognized the capability to safely shut down the plant. Rather, Region II had emphasized during these meetings the significance of deficient procedures, the lack of adequate operator training, the lack of adequate communications. These deficiencies when viewed collectively lead the NRC to conclude that, without further evaluation, the plant would not likely have been able to adequately conduct safe shutdown evolutions in the event of a fire. NRC walk-throughs of these procedures with plant operators, who would have been called upon to perform duties during an actual fire, demonstrated that these responsible personnel would not likely have been able to promptly accomplish the complex multiple actions required for safe shutdown.

The licensee asserts that the situation at Robinson is not as severe as those for which other enforcement actions have been taken. The licensee has compared the procedural, training, and communications deficiencies at Robinson with the failure to provide adequate separation of redundant trains at the other facilities. The NRC views the deficiencies at Robinson to be equally as significant as the physical hardware problems encountered at the other plants. The inability of plant personnel to perform the necessary teps to assure the safe shutdown of the plant in the event of a fire is considered to be as safety significant as the failure to provide adequate physical separation for one train of systems necessary to achieve and maintain hot shutdown. Both of these situations involve the potential inability of the plant to achieve and maintain hot shutdown conditions in the event of a fire. Therefore, the NRC concludes that the Severity Level III classification for the Robinson violations is appropriate and is consistent with the enforcement actions taken for other fire protection violations.

The licensee argues that the lack of clarity and the evolving nature of the fire protection requirements are facts for which the NRC should consider to not impose the civil penalty. The NRC does not consider the requirements for placing procedures in effect to implement the alternative and dedicated shutdown capability, specified in 10 CFR Part 50, Appendix R, Section III.L, as lacking clarity or having an evolving nature. Implicit in the requirement to establish these procedures was the understanding that the procedures would be adequate and that personnel would be trained in the use of the procedures. The procedures themselves had numerous deficiencies. In addition, although the licensee had done some training of personnel, this training was inadequate to enable the personnel to complete the necessary actions called out by the procedures when the procedures were demonstrated in the presence of NRC inspectors. The difficulties encountered by the plant personnel demonstrated the inadequacies in the training, procedures, and communications to cope with a fire in certain plant areas.

The review of the draft procedures in 1985 had no bearing on the deficiencies identified in the implementation of the procedures found in the March–May, 1987 inspections. The NRC noted in the inspection report in 1985 that the procedures were only in draft form and that the actual training had yet to be done. The NRC recognizes that a lack of specific procedural guidance can sometimes be compensated by the use of personnel training which would instruct personnel in the proper performance of the procedure. However, in the case at Robinson, even if the procedures had been adequate, the failure to provide proper training caused a condition in which it was questionable

whether the procedures could be satisfactorily accomplished.

III. NRC Conclusions

The Staff emphasizes that the examples of the violation taken as a whole including inadequate training, communications, and procedures, raises a safety concern and warrants the severity level of the violation. It is clear that licensee management, particularly at the program implementation level, was not sensitive to the importance of 10 CFR Part 50, Appendix R, requirements and the necessity to assure continued safe shutdown capability. From these violations it is clear that the review of fire protection procedures and the training on these procedures did not receive adequate plant staff or licensee management attention.

The results of the SSFI indicated, and continues to indicate, that the initial training, procedures, and communications were inadequate to reasonably assure safe shutdown capability and have been inadequate since implementation in July 1985. Additionally, from the implementation date until the SSFI was conducted, there had been no upgrades to operator or maintenance training, no requalification training, no revisions to the dedicated shutdown procedures, and no substantial improvements to radio communications.

There were many technical and human factors deficiencies observed in the dedicated shutdown procedures, which at the time of the inspection had been implemented for nearly two years. Incorrect or inadequate in any emergency procedures can contribute to operate stress and personnel error, particularly under the stress and environmental working conditions experienced during a fire. When considered with the other existing deficiencies in operator training and communications, it remains unlikely that the licensee could have effectively carried out safe shutdown of the plant under postulated fire conditions.

Of concern to the NRC is that even after numerous deficiencies were identified during the first week of the SSFI, the operations effort at upgrading training and procedures appeared minimal and was more directed toward correcting items identified by the inspectors than truly upgrading the Dedicated/Alternate Shutdown capability. Only two operations staff members were assigned to complete both training and procedures upgrade. The training staff was not utilized during this effort and operator training was primarily conducted in the classroom environment and not actually in the plant. During the followup inspection, the operations staff indicated to the inspectors that training had been completed. However, during subsequent walkthroughs with operators using the revised dedicated shutdown procedures, there continued to be deficiencies noted which indicated that in-plant walkthroughs were not included in the training. During the followup inspection, plant management committed to provide 16 hours of additional training including eight hours of in-plant walkthroughs of all dedicated shutdown procedures.

The licensee's response to the Notice of Violation and Proposed Imposition of Civil Penalty emphasizes the inspection findings in NRC Inspection Report 85–07 and the role of the Emergency Response Organization (ERO) in supporting dedicated shutdown. However, Inspection Report 85–07 was considered a pre-audit and inconclusive in that the licensee's dedicated shutdown procedures were in draft form and operations and maintenance training had not been conducted. The Inspector Follow-up Items that were referenced, in some cases, may have been violations if the procedures had been approved and the program implemented. The licensee was also informed that final inspection of the procedures could not be completed until the procedures were approved. Heavy reliance on the ERO to achieve dedicated shutdown is also cause for concern. While the engineers and personnel in the Technical Support Center (TSC) are intended to assist operators in the mitigation and recovery from accidents, it was never intended that the ERC would be utilized to compensate for inadequate Dedicated/Alternate Shutdown procedures, training, and communications.

The NRC staff has concluded for the reasons stated above that the violation occurred as stated in the Notice of Violations and Proposed Imposition of Civil Penalty. A sufficient basis for mitigation of the proposed $50.000 civil penalty has not been provided by the licnesee. Accordingly, a civil penalty in the amount of Fifty Thousand Dollars ($50,000) shoult be imposed.

VIOLATION II

Restatement of Violation II (Non-Civil Penalty)

10 CFR Part 50, Appendix R, Section III.J, requires, in part, that emergency lighting units with at least an eight-hour battery supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

Contrary to the above, on March 24–25, 1987, emergency lighting units were not provided in several areas needed for operation of safe shutdown equipment. These areas included the dedicated shutdown diesel enclosure and local operating panel, and the auxiliary feedwater (AFW) local control area. Subsequent reviews by the licensee noted additional dedicated shutdown areas where emergency lighting was nonexistent, inadequate, or improperly directed and also noted a large number of emergency lights and battery packs out for maintenance.

Summary of Licensee's Response

The licensee denies the violation as pertaining to the lack of emergency lighting provided in the dedicated shutdown diesel enclosure and local operating panel, and the AFW local control area. The licensee concurs with the NRC in its evaluation of the violation for nonexistent, inadequate or improperly directed lighting for the additional dedicated shutdown areas.

NRC Evaluation

The licensee in its response states that the dedicated shutdown diesel is remotely started and operated from the 4 kV switchgear room. This method of operation was previously approved in the August 8, 1984, Safety Evaluation Report. While attempting to perform a surveillance test during the SSFI, the operators were unable to start the dedicated shutdown diesel. Upon the failure to start, operators were dispatched to the dedicated shutdown diesel enclosure and local operating panel. Subsequent investigation revealed that the previous surveillance test had left the remote/local switch in the local position.

While the NRC agrees that the dedicated shutdown diesel may be operated remotely, without adequate assurance that maintenance or surveillance activities will not defeat the remote starting capability, the diesel may, in some cases, need to be started using the local operating panel. As was evident during the SSFI, operator action at the local operating panel was necessary to start the diesel. In addition, protracted run times may require adjustments and the monitoring of the diesel parameters. Thus, because operator actions in the diesel enclosure may be needed for the safe operation of the diesel, emergency lighting is necessary.

With regard to the emergency lighting in the auxiliary feedwater local control area, the licensee claims that action in this area is not necessary and therefore emergency lighting is not required. At the time of the NRC inspection, DSP–001, Step 5.1. specified operator actions at the local control panel. The NRC inspection revealed that appropriate emergency lighting had not been provided in this area. It was for this lack of emergency lighting in an area where the licensee's procedures required operator actions for which this example of a violation was cited. While later evaluations showed that operator actions in this area were not necessary, this has no bearing on the fact that, during the NRC inspection, operator actions had been specified in procedures in an area which did not have the appropriate emergency lighting.

As a result of the NRC inspection, the licensee identified other areas with deficient emergency lighting in areas called for in procedures.

The deficiencies in the emergency lighting could have been identified during a blackout evaluation in 1985. This evaluation resulted in a June 16, 1985, submittal to the NRC requesting exemption from Section III.J of Appendix R requirements for two specific areas identified as deficient in the licensee's evaluation. However, these were not the same areas identified in the post-SSFI evaluation as inadequate.

NRC Conclusion

For the above reason, the NRC staff concludes that the violation for failure to provide emergency lighting in required areas, including the dedicated shutdown diesel enclosure, and the local operating panel, as well as the auxiliary feedwater pump local control area, as well as others, occurred as stated.

[FR Doc. 88–19544 Filed 8–26–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc.; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 28 to Facility Operating License No. NPF–43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), which revised the Technical Specifications (TSs) for operation of Fermi-2, located in Monroe County, Michigan. The amendment is effective as of the date of issuance.

The amendment changes the Technical Specifications to require two channels, instead of one, to be operable for the Standby Gas Treatment System Radiation Monitors. In addition, the amendment revises Action Statement 81 in Table 3.3.7.5–1 as recommended in NRC Generic Letter 83–36 and makes appropriate changes in the Technical Specification bases as a result of the change.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 10, 1988 (53 FR 7819). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on August 11, 1988, at 53 FR 30358.

For further details with respect to this action, see (1) the application for amendment dated November 30, 1987, (2) Amendment No. 28 to License No. NPF–43, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Monroe County library System, 3700 South Custer Road, Monroe, Michigan 48161. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 19th day of August 1988.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–19547 Filed 8–26–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–327]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–77 issued to Tennessee Valley Authority (TVA or the Licensee), for the operation of the Sequoyah Nuclear Plants, Unit 1, located in Hamilton County, Tennessee.

The Licensee proposes to modify certain requirements on the upper head injection (UHI) accumulators for the Sequoyah Unit 1 (SQN) Technical Specification (TS). This is TS change 88–20 in the Licensee's application dated August 15, 1988. The proposed change would revise the SQN UHI level switch setpoint and tolerances to TS surveillance requirement (SR) 4.5.1.2.c.1. This change reflects the relationship between instrument-sensed differential pressure for the UHI water accumulator level and the delivered UHI water volume into the reactor vessel during an accident. A high differential pressure is sensed at the switch when the accumulator level is low, which correlates to the maximum injected water volume. Likewise, a low differential pressure is sensed for a high accumulator level and a minimum injected water volume.

In its application, the Licensee stated that a Condition Adverse to Quality Report (CAQR) documented that the UHI level switches and setpoints currently used for Unit I could allow more than the analytical limit of 1130.5 cubic feet of UHI water to be injected during a postulated accident. It explained that two changes in the design and configuration of the UHI system were pursued to correct this potential problem. First, the minimum delivered UHI water volume is reduced from 900 cubic feet to 850 cubic feet. This is supported by Westinghouse Electric Corporation evaluations which are described in the application. Second, a new model of level switch is being installed in the UHI system, which are essentially the same as those switches presently used except for their span. The Licensee stated that because of the span differences the switches also have different accuracy characteristics. The Licensee has determined a new setpoint and tolerances based on the new instrument characteristics. These new values are being incorporated into SR

4.5.1.2.c.1 to ensure that the delivered UHI water volumes are bounded by the volumes assumed in the large-break, loss-of-coolant accident (LOCA) analyses. This, the Licensee explained, will ensure that the offsite doses from a postulated LOCA are bounded by the analyses in Section 15.5 of the SQN Final Safety Analysis Report (FSAR).

The Licensee requested in its application that, because of the potential for this amendment request to impact the heatup and restart of Unit 1, its application be given the highest priority and processed as expeditiously as possible. The Licensee explained that entry into Mode 3, Hot Standby, above 1900 psi is contingent upon the approval of this amendment request. The Licensee further explained that, if it appears that entry into Mode 3 above 1900 psi would be delayed strictly because of proposed TS change had not yet been approved it would request a temporary waiver of compliance for SR 4.5.1.2.c.1 until the amendment had been approved.

Before issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commissions' regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability of consequences of an accident previously evaluated; (2) create the possibility of new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided by the Licensee in its submittal and is given below.

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or conseqences of an accident previously evaluated. The UHI system is designed to supply additional inventory to the reactor core during the blowdown phase of the LOCA. UHI flow to the core is terminated by automatic hydraulic isolation valves. These valves are actuated by level switches on the UHI water accumulator. The proposed change reflects a new actuation setpoint and the associated instrument tolerances for the level switches. As such, the change does not increase the probability of a previously evaluated accident. The new setpoint and tolerances were calculated based on a new level switch accuracy characteristic and a broadened UHI-delivered water volume band. Broadening the delivered water volume band did result in increased PCTs [peak clad temperatures] for the limiting cases. In all cases, however, the PCT remained below the 10 CFR 50.46 limit of 2,200°F. This in turn ensures that offsite doses remain bounded by the analyses of [SQN] FSAR Section 15.5. Because the proposed setpoint ensures that the delivered water volume remains bounded by the new analytical limits, the proposed change does not increase the consequences of by previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The proposed change to the actuation setpoint and tolerances represents no modification to the UHI design or operations, which could create a new accident. The change only affects the performance of UHI for accident scenarios in which it is already assumed to function.

(3) Involve a significant reduction in a margin of safety. The proposed change to SR 4.5.1.2.c.1 represents a new setpoint and accuracies for the combination of new level switches and a broadened delivered water volume band. The setpoint ensures that the delivered water volume remains between 850 and 1,130.5 cubic feet. Westinghouse analyses have indicated that delivered water volumes between these limits ensure that PCT remains below 2,200°F. Therefore, the margin of safety is not reduced by this proposed change.

In its review of the Licensee's application, the NRC staff concluded that, although the PCT remains below the limit of 2200°F in 10 CFR 50.46, the PCT does raise because of the proposed changes and there is a reduction in a margin of safety. However, the rise in PCT is not significant and the PCT remains below the limit of 2200°F. Therefore, the NRC staff concludes that the proposed changes do not involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By September 28, 1988, the Licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by the proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference sheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions should be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment invovles no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the request for amendment invovles a signficant hazards consideration, any hearing held would take place before the issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should cirumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: Petitioner's name and telephone number; date petition was mailed; plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorneys for the Licensee.

Nontimely filings of the petition for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board designated to rule on the petition and/or requests, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to his action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 22 day of August 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-19546, Filed 8-26-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26016; File No. SR-DTC-88-14]

Self Regulatory Organizations; Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Same-Day Funds Settlement Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("the Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 18, 1988, the Depository Trust Company ("DTC") filed a proposed rule change to include auction-rate and tender-rate preferred stocks and notes as eligible securities in DTC's Same-Day Funds Settlement Service ("SDFS"). The Commission is publishing this notice to solicit comment on the rule change.

SDFS began pilot operations on June 26, 1987, with transactions in municipal notes.[1] SDFS was later expanded to include zero coupon bonds backed by U.S. Government securities, municipal bonds with demand ("put") options and medium-term notes. DTC's proposal would expand SDFS eligible securities to include auction-rate and tender-rate preferred stocks and notes as eligible securities in DTC's SDFS.[2] The proposal also provides that DTC's mandatory book-entry receipt procedures apply to transactions in auction-rate and tender-rate preferred stocks and notes. Under DTC's mandatory book-entry receipt procedures, a buyer of auction-rate and tender-rate preferred stocks and notes may not reject a book-entry delivery on the basis that the buyer wanted a physical delivery unless, at the time of the trade, the buyer specified physical delivery as a term of the trade.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of transactions in securities. In addition, DTC believes that the proposed rule change does not adversely affect the safeguarding of securities or funds in DTC's custody or control or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using SDFS. According to DTC, neither DTC, SDFS participants, nor settling banks have experienced any significant operational problems in using SDFS. Based upon initial operational experience and participant requests, DTC now seeks to expand SDFS to include auction-rate and tender-rate preferred stocks and notes.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment with 21 days after notice is published in the Federal Register. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

[1] *See* Securities Exchange Act Release No. 24669 (July 9, 1987), 52 FR 26613.

[2] As with all SDFS eligible securities, DTC imposes a haircut to insure proper collateralization of SDFS positions. The haircut for auction-rate and tender-rate preferred stocks and notes is 2%. This rate was established based upon a bank agreement to lend DTC 98% of the par value of these securities.

Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. § 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-88-14.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19566 Filed 8-26-88 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26019; File No. SR-NASD-88-19]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Extension of Public Comment Period of Proposed Rule Change Relating to the OTC Bulletin Board Display Service

On June 9, 1988, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to establish a quotation service, the OTC Bulletin Board Display Service, respecting OTC securities that are not included in the NASDAQ System nor listed on a national securities exchange.

Notice of the proposed rule change together with terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25949, July 28, 1988) and by publication in the **Federal Register** (53 FR 29096, August 2, 1988).

The NASD has consented to an extension of the period for public comment on the proposed rule change, for forty-five days, until October 7, 1988.[1]

The Commission hereby extends the period for public comment on the proposed rule change for a period of forty-five days, until October 7, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: August 23, 1988.

[FR Doc. 88-19520 Filed 8-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26017; File No. SR-PSE-87-13]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Incorporated; Relating to Transmission of Orders to the Index Options Trading Pit by Inter-Floor Telephones

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 28, 1987, the Pacific Stock Exchange, Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III belowk which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its rules to permit the transmission of orders into its index options trading pit by inter-floor telephones. The PSE proposes to place general access telephones in the pit which may be accessed by members in other locations on the trading floor. The proposal will allow market makers and various floor brokerage operations located on the trading floor to transmit orders to brokers located directly in the index options pit. In this regard, the PSE proposes the following amendment to Rule VI, Section 42 and to Options Floor Procedure Advices B-6 and F-5. (Brackets indicate language to be deleted; italics indicates new language.)

Rule VI. Exchange Options Trading

Sec. 42. Orders Required to be in Written Form

(a) through (c) No change.

Commentary:

.01 No change.

.02 In the case of index options, orders which have been transmitted to the floor and appropriately time-stamped may be verbally transmitted by telephone to the index trading pit. Immediately thereafter, the written time-stamped memoranda must be forwarded to the broker in the trading crowd.

Options Floor Procedure Advice B-6

Subject: Market Maker's Use of Floor Brokers to Effect Transactions for the Market Maker's Account

Section 73 of Rule VI states, in part, that "A Market Maker is an individual who is registered with the Exchange for the purpose of making transactions as dealer-specialist on the Floor," and Section 79 requires, in part, that "Transactions of a Market Maker should contribute to the maintenance of a fair and orderly market * * *." Accordingly, the Exchange believes that the special obligations and role of the Market Maker warrant that the crowd be fully aware of the Market Maker's trading activity. Pursuant to sections 73 and 79, the following special procedures will be applicable when a Market Maker has occasion to utilize the services of a Floor Broker to effect transactions for the Market Maker's account:

(1) Order Tickets

(a) If possible, the order should be prepared by the Market Maker. In all cases, the order shall be recorded on a standard phone order ticket, time-stamped, including the Market Maker's symbol in the box or boxes marked "buying firm/selling firm" and indicate whether the order is GTC or day only. Floor Brokers are reminded that all the requirements of Rule VI, Section 42, apply to Market Maker orders. When any occasion arises where verbal orders, changes or instructions must be given *in stock options,* the Floor Broker shall immediately write up and time-stamp the ticket from outside the trading crowed.

(b) through (d) No change.

(2) through (5) No change.

Options Floor Procedure Advice F-5

Subject: Means of Communication on the Options Floor

Pursuant to sections 39(b), 42, 47 and 62 of Rule VI, the Options Floor Trading Committee deems that hand signals may represent a potential for abuse in the transmission of private information not generally available to other members. Accordingly, the Committee has established the following regulations governing the proper use of hand signals on the Floor.

Hand signals may always be used to request and to relay information regarding current quotations and market size. Also, without limiting the applicability of Rule VI, Section 42, (Orders Required to be in Written Form) the use of hand signal communications

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[1] *See* letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated August 22, 1988.

on the floor of the Exchange may be used to increase or decrease the size of an order, to change the order's limit, to cancel an order or to activate a market order. *In the case of index options, it will be permissible to initiate orders through the use of hand signals and through inter-floor telephones.* Any cancellation[,] or change [of] *to* an order, *and any initiation of an index options order* relayed to a Floor Broker through the use of hand signals, *or through an inter-floor telephone,* must be relayed to the Floor Broker in a time-stamped, written form immediately thereafter. All cancellations and changes of orders held by the Order Book Official must be in written form. The executing broker who receives the communication must have a written order in his possession with all of the following information on the ticket:

No change to the rest of the Advice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organizaiton included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The PSE is proposing certain amendments to its options rules and Floor Procedure Advises to permit the use of telephones in its index options pit for the purpose of communicating orders and changes to orders directly into the pit. These phones would be for inter-floor use only, allowing floor brokerage operations and market makers on the trading floor to communicate directly into and from the trading pit. The PSE also proposes to permit the initiation of orders into the pit through these phones as well as by hand signal so long as a time-stamped order memorandum has been prepared that will immediately be forwarded to the Broker in the pit.

The PSE has been studying the manner in which index options are traded on the PSE's floor as well as on the floors of other exchanges. The PSE believes that because of potential arbitrage between index products and index futures, it is important to speed order delivery into the trading pit to ensure accurate market making and price discovey. For this reason, the PSE proposes to allow members on the floor to phone such orders and/or changes to such orders directly into the pit.[1]

The PSE believes that this proposal is entirely consistent with section 6(b)(5) of the Act because it will further remove impediments to and help perfect the mechanism of a free and open market.

(b) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(c) Self-Regulaory Organization's Statement on Comments on the Propsed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written subsmissions should file six copies thereof with the Secretary, Securites and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be availabe for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-metioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 19, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 23, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19521 Filed 8-26-88; 8:45 am]

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[1] In response to inquiries from the Commission staff, the PSE has indicated that telephone calls transmitting index option orders would be answered by floor brokers in the trading pit on a first-in-time basis. If index option volume were to increase substantially from current low levels, new procedures would be developed "to apportion such orders among the floor brokers located in the index option pit." Letter from Craig R. Carberry, Director, Options Compliance, PSE, to Howard L. Kramer, Assistant Director, Division of Market Regulation, Commission, dated June 14, 1988.

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Over-the-Counter Issues and to Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

August 23, 1988.

The Midwest Stock Exchange, Inc. ("MSE") on August 15, 1988, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-3814	AMGN	Amgen, Inc., common, $0.0001 par value.
7-3815	LAGR	L.A. Gear, Inc., common, no par value.
7-3816	BBEC	Blockbuster Entertainment Corp., common, $0.10 par value.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following OTC issues:

File No.	Symbol	Issuer
7-3817	CTUS	Cetus Corp., common, $0.01 par value.
7-3818	DAZY	Daisy Systems Corp., common, $0.01 par value.
7-3819	WYSE	Wyse Technology, common, no par value.

The MSE applied to withdraw UTP on WYSE due to its recent listing on the New York Stock Exchange, thus rendering it ineligible for continued inclusion in the pilot program. In the case of CTUS and DAZY, replacement issues are being requested as a result of extremely low volume.

Comments

Interested persons are invited to submit on or before September 14, 1988, written comments, data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are requested to address whether they believe the requested grants of UTP would be consistent with section 12(f)(1)(C). In considering an application for extension of UTP in OTC securities under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

Commentators also should address whether the requested withdrawal of UTP would be consistent with section 12(f)(4) of the Act. That section empowers the Commission to grant a request for withdrawal if, to do so is necessary or appropriate in the public interest or for the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19522 Filed 8-26-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 19, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tenatative order, or in appropriate cases a final order without further proceedings.

Docket No. 45755

Date Filed: August 18, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 15, 1988.

Description:

Application of Iberia, Lineas Aereas De Espana, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations, requests an amendment of its foreign air carrier permit so as to authorize it to engage in foreign air transportation of persons, property and mail between a point or points in Spain and Los Angeles, California.

Docket No. 45756

Date Filed: August 18, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 15, 1988.

Description:

Application of Iberia, Lineas Aereas De Espana, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations requests an amendment of its foreign air carrier permit so as to authorize it to engage in foreign air transportation of persons, property and mail between a point or points in Spain and Chicago, Illinois.

Docket No. 45760

Date Filed: August 19, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 16, 1988.

Description:

Application of Airbc Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to carry persons and property under trans border charters, between any point or points in Canada and any point or points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-19526 Filed 8-26-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-88-34]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued; General Motors Corp. et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 19, 1988.

ADDRESS: send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No._____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 22, 1988.

Denise D. Hall,

Manager, Program Management Staff.

Docket No.	Petitioner	Regulations affected	Description of relief sought
25643	North American Airline Training Group.	14 CFR 63.37(a) and Part 63, Appendix C, paragraphs (a)(3)(i) and (iv)(*a*) and (iv)(*b*).	To allow petitioner to utilize Boeing 727 training vehicle No. 3/0233/24 in its FAA-approved Flight Engineer Training Program.
25657	General Motors Corporation	14 CFR 21.181	To allow petitioner to operate its Cessna aircraft, model number 650, serial numbers 094, 095, 096, with three deviations from the master minimum equipment list. These deviations include allowing one analog function for the ITT Indicating System (Engine) to be inoperative if the corresponding digital function is operative, allowing comparable requirements for fan speed indicators, and allowing the mechanical indicating system for the main cabin door to be used when the electrical system is malfunctioning.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
23336	Simulator Training, Inc	14 CFR 61.63(d)(2) and (3); 61.157(d)(1) and (2); and Part 61, Appendix A.	To amend Exemption No. 4797, which allows petitioner to use FAA-approved visual simulators to meet certain training and testing requirements of the Federal Aviation Regulations. *Grant, August 17, 1988, Exemption No. 4797D.*
24770	Flight Safety International	14 CFR 61.57(a)(1) and 61.58(c)	To amend Exemption No. 4609, as amended, which permits pilots contracting with petitioner to substitute an FAA-approved helicopter training program using petitioner's training facilities for the requirements of §§ 61.57(a)(1) and 61.58(c) for the Sikorsky S–76 aircraft and § 61.57(a)(1) for the Bell 222 aircraft. *Grant, August 17, 1988, Exemption No. 4609B.*
25366	Aviall, Inc. and Caledonian Airmotive, Ltd.	14 CFR 145.47(b) and 145.51(d)	To allow petitioner to perform services including inspection, repair, maintenance, overhaul, and return to service of aircraft engines, appliances, parts and components for which petitioner is appropriately rated for installation on any U.S.-registered aircraft without geographical limitation, and in accordance with their ratings. *Partial Grant, August 15, 1988, Exemption No. 4972.*
25581	Bannock Regional Medical Center	14 CFR 135.271(g)	To allow certain crewmembers to be assigned to conduct training, public relations, and routine transportation missions while on a Hospital Emergency Medical Evacuation Service (HEMES) mission *Denial, August 17, 1988, Exemption No. 4971.*

[FR Doc. 88–19495 Filed 8–26–88; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 135—Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the 12th meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment to be held September 21–23, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agency for this meeting is as follows: (1) Chairman's remarks, (2) approval of minutes of the eleventh meeting, (3) review status of the FR susceptibility problem and proposed changes to § 20.1, (4) review status and new proposals for § 22.0, (5) Review § 23.0, (6) review the third draft of the proposed revision to DO–160B, (7) update change coordinator list, (8) other business, (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 23, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88–19493 Filed 8–26–88; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 150—Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the 19th meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation Above Flight Level 290, to be held September 26–27, 1988, in the RTCA Conference Room, One McPherson

Squarew, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of minutes of the eighteenth meeting, (3) working group reports, (4) resolution of MSPS issues, (5) review and discuss EUROCAE WG–30 activities, (6) review the fifth draft MSPS, (7) other business, and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 23, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88–19494 Filed 8–26–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 88–14]

Stock Appraisals; Policy Statement

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of policy statement on stock appraisals.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has issued Banking Bulletin 88–22 to describe methods used by the OCC to estimate the value of a bank's shares when a shareholder dissents to a conversion, consolidation, or merger involving a national bank, and to summarize the results of appraisals performed for transactions that consummated in 1985 and 1986. This notice, which provides the full text of BB 88–22, is for the benefit of persons who do not normally receive Banking Bulletins.

DATE: BB 88–22 was dated August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Sheila G. Ogilvie, National Bank Examiner/Senior Licensing Policy and Systems Analyst, Bank Organization and Structure, (202) 447–1184, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington 20219.

SUPPLEMENTARY INFORMATION: On August 22, 1988, the OCC issued BB 88–22 describing methods used to estimate the value of a bank's shares and the appraisal results for transactions that consummated in 1985 and 1986. The full text of BB 88–22 is set out below.

To: Chief Executive Officers of National Banks, Deputy Comptrollers (District), Department and Division Heads, and Examing Personnel

Purpose

This banking bulletin is to inform all national banks of the valuation methods used by the Office of the Comptroller of the Currency to estimate the value of a bank's shares when a shareholder dissents to a conversion, consolidation or merger involving a national bank. The results of appraisals performed for transactions that consummated in 1985 and 1986 are also summarized.

References: 12 U.S.C. 214a, 215 and 215a; 12 CFR 11.590 (Item 2).

Background

Under 12 U.S.C. sections 214a, 215 and 215a, any shareholder dissenting to a conversion, consolidation, or merger involving a national bank may request from the resulting bank a valuation of the shares held by the dissenting shareholder. A committee of three appraisers (a representative of the dissenting shareholder, a representative of the resulting bank, and a third appraiser selected by the other two) is then to be formed to appraise the value of the shares. If the committee is formed and renders an appraisal that is acceptable to the dissenting shareholder, the process is complete and the appraised value of the shares is paid to the dissenting shareholder by the resulting bank. If, for any reason, the committee is not formed or if it renders an appraisal that is not acceptable to the dissenting shareholder, an interested party may request an appraisal by the Office of the Comptroller of the Currency (OCC).

The above provides only a general review of the appraisal process. The specific requirements of the process are set forth in the statutes themselves.

Methods of Valuation Used

Through its appraisal process, the OCC attempts to arrive at a fair estimate of the value of a bank's shares. After reviewing the particular facts in each case and the available information on a bank's shares, the OCC selects an appropriate valuation method, or combination of methods, to determine a reasonable estimate of the shares' value.

Market Value

The OCC uses various methods to establish the market values of shares being appraised. If sufficient trading in the shares exists and the prices are available from direct quotes from the *Wall Street Journal* or a market-maker, those quotes are considered in determining the market value. If no market value is readily available, or if the market value available is not well established, other methods of estimating market value can be used, such as the investment value and adjusted book value methods.

Investment Value

Investment value requires an assessment of the value to investors of a share in the future earnings of the target bank. Investment value is estimated by applying an average price/earnings ratio of banks with similar earnings potential to the earnings capacity of the target bank.

The peer group selection is based on location, size, and earnings patterns. If the state in which the subject bank is located provides a sufficient number of comparable banks using location, size and earnings patterns as the criteria for selection, the price/earnings ratios assigned to the banks are applied to the earnings per share estimated for the subject bank. In order to select a reasonable peer group when there are too few comparable independent banks in a location that is comparable to that of the subject bank, the pool of banks from which a peer group is selected is broadened by including one-bank holding company banks in a comparable location, and/or by selecting banks in less comparable locations, including adjacent states, that have earnings patterns similar to the subject bank.

Adjusted Book Value

As a rule, the OCC does not place any weight on "unadjusted book value." While book value is a type of value, it is based on historical acquisition costs of the bank's assets, and does not reflect investors' perceptions of the value of the bank as a going concern. The OCC does consider "adjusted book value." Adjusted book value is calculated by multiplying the book value of the target bank's assets per share times the average market price to book value ratio of comparable banking organizations. The average market price to book value ratio measures the premium or discount to book value which investors attribute to shares of similarly situated banking organizations.

Both the investment value method and the adjusted book value method present

appraised values which are based on the target bank's value as a going concern. These techniques provide estimates of the market value of the shares of the subject bank.

Overall Valuation

The OCC may use more than one of the above-described methods in deriving the value of shares of stock. If more than one method is used, varying weights may be applied in reaching an overall valuation. The weight given to the value by a particular valuation method is based on how accurately the given method is believed to represent market value. For example, more weight may be given to a market value representing infrequent trading by shareholders than to the value derived from the investment value method when the subject bank's earnings trend is so irregular that it is considered to be a poor predictor of future earnings.

Purchase Premiums

For mergers and consolidations, the OCC recognizes that purchase premiums do exist and may, in some instances, be paid in the purchase of small blocks of shares. However, the payment of purchase premiums depends entirely on the acquisition or control plans of the purchasers, and such payments are not regular or predictable elements of market value. Consequently, the OCC's valuation methods do not include consideration of purchase premiums in arriving at the value of shares.

Statistical Data

The chart below lists the results of appraisals performed by the OCC for transactions that consummated in 1985 and 1986. The statistical data on book value and price/earnings ratios are provided for comparative purposes and are not necessarily relied on by the OCC in determining the value of the bank's shares. These historical data are provided to inform banks and investors about the results of past appraisals and should not be viewed as determinative for future appraisals.

In connection with disclosures given to shareholders under 12 CFR 11.590 (Item 2), banks may provide shareholders a copy of this banking bulletin or disclose the information contained herein, including the results of OCC appraisals. If the bank discloses the past results of the OCC appraisals, it should advise shareholders that (1) the OCC did not rely on all the information set forth in the chart in performing each appraisal and (2) that the OCC's past appraisals are not necessarily determinative of its future appraisals of a particular bank's shares.

APPRAISAL RESULTS

Appraisal date [1]	OCC appraisal value	Price offered	Book value	Average price/earnings ratio of peer group
1/1/85	107.05	110.00	178.29	5.3
1/2/85	73.16	NA	66.35	6.8
1/15/85	53.41	60.00	83.95	4.8
1/31/85	22.72	20.00	38.49	5.4
2/1/85	30.63	24.00	34.08	5.7
2/25/85	27.74	27.55	41.62	5.9
4/30/85	25.98	35.00	42.21	4.5
7/30/85	3,153.10	2,640.00	6,063.66	NC
9/1/85	17.23	21.00	21.84	4.7
11/22/85	316.74	338.75	519.89	5.0
11/22/85	30.28	NA	34.42	5.9
12/16/85	66.29	77.00	89.64	5.6
12/27/85	60.85	57.00	119.36	5.3
12/31/85	61.77	NA	73.56	5.9
12/31/85	75.79	40.00	58.74	12.1
1/21/86	19.93	NA	26.37	7.0
3/14/86	59.02	200.00	132.20	3.1
4/21/86	40.44	35.00	43.54	8.4
5/2/86	15.50	16.50	23.69	5.0
7/3/86	405.74	NA	612.82	3.9
7/31/86	297.34	600.00	650.63	4.4
8/2/86	103.53	106.67	136.23	NC

[1] The "Appraisal date" is the consummation date for the conversion, consolidation, or merger.
NA—Not Available.
NC—Not Computed.

For more information regarding the OCC's stock appraisal process, contact the Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219, Director for Corporate Activity, Bank Organization and Structure.

J. Michael Shepherd,
Senior Deputy Comptroller.
Date: August 22, 1988.
Robert L. Clarke,
Comptroller of the Currency.
[FR Doc. 88-19528 Filed 8-26-88; 8:45 am]
BILLING CODE 4810-33-M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 as amended by section 5(c) of Pub. L. 94-409 (Federal Advisory Committee Act) that a meeting of the Cooperative Studies Evaluation Committee will be held at the Ramada Hotel, 901 North Fairfax Street, Alexandria, VA 22314 on October 18 and 19, 1988. The session of October 18 is scheduled to begin at 7:30 a.m. and end at 3:30 p.m. and the session on October 19 is scheduled to begin at 7:30 a.m. and end at 3:30 p.m. The meeting will be for the purpose of reviewing four proposed new clinical trials, one in cardiovascular, one in cancer research, one in dental root caries prevention, one in mental health research, and the progress of on-going studies concerning dental materials and gastroesophageal disease. The Committee advises the Director, Medical Research Service, through the chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8 a.m., on October 18, 1988, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202-233-2861), prior to October 14, 1988.

The meeting will be closed from 8 a.m. to 3:30 p.m. on October 18, and from 8 a.m. to 3:30 p.m. on October 19, 1988, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Pub. L. 92-463 as amended by section 5(c) of Pub. L. 94-409 (the Federal Advisory Committee Act) and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Dated: August 22, 1988.
By direction of the Administrator.
Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 88-19510 Filed 8-26-88; 8:45 am]
BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice under the Federal Advisory Committee Act, Pub. L. 92-463 as amended by Pub. L. 94-409, of the meetings of the following Federal Advisory Committees.

Merit Review Board for—	Date	Time	Location
Immunology	Sept. 19, 1988	8 a.m. to 5 p.m	Radisson Park Terrace Hotel.[1]
Do	Sept. 20, 1988	do	Do.
Hematology	Sept. 23, 1988	do	Room 19, VA Central Office.[2]
Alcoholism and Drug Dependence	Sept. 27, 1988	do	Radisson Park Terrace Hotel.[1]
Mental Health and Behavioral Sciences	Sept. 28, 1988	do	Do.
Do	Sept. 29, 1988	do	Do.
Do	Sept. 30, 1988	do	Do.
Basic Sciences	Sept. 29, 1988	do	Do.
Do	Sept. 30, 1988	do	Do.
Do	Oct. 1, 1988	do	Do.
Respiration	Oct. 2, 1988	2 p.m. to 10 p.m	Do.
Do	Oct. 3, 1988	8 a.m. to 5 p.m	Do.
Oncology	Oct. 6, 1988	do	Holiday Inn-Central.[3]
Do	Oct. 7, 1988	do	Do.
Neurobiology	Oct. 5, 1988	3 p.m. to 10 p.m.	Do.
Do	Oct 6, 1988	8 a.m. to 5 p.m	Do.
Do	Oct. 7, 1988	do	Do.
Do	Oct. 8, 1988	do	Do.
Gastroenterology	Oct. 10, 1988	do	Do.
Do	Oct. 11, 1988	do	Do.
Endocrinology	Oct. 17, 1988	do	Do.
Do	Oct. 18, 1988	do	Do.
Do	Oct. 19, 1988	do	Do.
Surgery	Oct. 22, 1988	do	Chicago Hilton & Towers.[4]
Nephrology	Oct. 24, 1988	do	Room 19, VA Central Office.
Do	Oct. 25, 1988	do	Do.
Cardiovascular Studies	Oct. 27, 1988	do	Room 119–VA Central Office.
Do	Oct. 28, 1988	do	Do.
Infectious Diseases	Oct. 28, 1988	6 p.m. to 10 p.m	Mayfair Hotel Los Angeles, CA.[5]
Do	Oct. 29, 1988	8 a.m. to 8 p.m	Do.
Do	Oct. 30, 1988	8 a.m. to 12 Noon	Do.

[1] Radisson Park Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
[2] Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.
[3] Holiday Inn, 1501 Rhode Island Avenue, NW., Washington, DC 20005.
[4] Chicago Hilton & Towers, 720 S. Michigan Avenue, Chicago, IL 60605.
[5] Mayfair Hotel, 1256 W. Seventh Street, Los Angeles, CA 90017.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each speciality by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meeting will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with the qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. Arlene E. Mitchell, Assistant Director for Scientific Review, Medical Research Service, Veterans Administration, Washington, DC, (202) 233–5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: August 18, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–19509 Filed 8–26–88; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 167
Monday, August 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 32321.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., August 25, 1988.

CHANGES IN THE AGENDA: The Commodity Futures Trading Commission has deleted from the open meeting the following two items:

Proposed amendments to the Commodity Exchange Act in connection with international information-sharing;

Status of the implementation of the foreign options rules and other pending regulatory international matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, *Secretary of the Commission.*

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-19648 Filed 8-25-88; 12:21 pm]

BILLING CODE 6351-01-M

COUNCIL ON ENVIRONMENTAL QUALITY

DATE, TIME AND PLACE: Friday, September 9, 1988, 9:30 a.m., council on Environmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC 20503.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. The purpose of the meeting is to examine the consideration of global climate change impacts, including depletion of the ozone layer, sea level rise, and the "greenhouse effect", within the framework of the environmental impact assessment process under the National Environmental Policy Act (NEPA). The Council will hear representatives of several federal agencies discuss this issue, and will also entertain comments from interested parties outside of the federal government. The Council plans to issue guidance on this topic this fall.

Individuals who wish to address the Council at the meeting should contact Sara Nero, Confidential Assistant, at 395-5754, by close of business on *September 7, 1988.*

2. Others matters may be discussed.

FOR FURTHER INFORMATION CONTACT: Sara Nero, Confidential Assistant, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503; Telephone: (202) 395-5754.

Dinah Bear,

General Counsel.

[FR Doc. 88-19651 Filed 8-25-88; 12:31 pm]

BILLING CODE 3125-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Tuesday, August 30, 1988, 9:30 a.m.

PLACE: 1776 G Street, NW., Board Room, Third Floor, Washington, DC 20006

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Keith Earley, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8414.

MATTERS TO BE CONSIDERED:

Closed—President's Report

Closed—Briefing on Seller/Servicer Eligibility

Closed—Mid-year Budget Report and Financial Report

Date sent to Federal Register: August 24, 1988.

Maud Mater,

Secretary.

[FR Doc. 88-19649 Filed 8-25-88; 12:21 pm]

BILLING CODE 6719-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 24, 1988.

TIME AND DATE: 10:00 a.m., Wednesday, August 31, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Paula Price* v. *Monterey Coal Company,* Docket No. LAKE 86-45-D. (Issues include whether the judge erred in dismissing the discrimination complaint).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/ (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-19654 Filed 8-25-88; 8:45 am]

BILLING CODE 6735-01-M

federal register

Monday
August 29, 1988

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments; Final Rule

VOL 53 ISS 167 AUG 29 1988 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) is revising the regulations in Subpart M of 20 CFR Part 404 to expand them and make them clearer and easier for the public to use and to reflect legislative changes under the Social Security Amendments of 1983 (Pub. L. 98–21), the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), and the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). These regulations contain the rules on providing Social Security coverage under Title II of the Social Security Act (the Act) for the services of employees of State and local governments and interstate instrumentalities.

DATE: With the exception of §§ 404.1203, 404.1204(a)(5) and (b), 404.1214(d), 404.1216(a), 404.1220, 404.1225, 404.1237, 404.1239, 404.1242, 404.1243, 404.1247, 404.1249, 404.1251, 404.1265, 404.1271, and 404.1272, containing information collection and recordkeeping requirements subject to Office of Management and Budget (OMB) review pursuant to the Paper Work Reduction Act of 1980, these regulations are effective beginning August 29, 1988. The statutory provisions contained in these regulations are effective as explained in **SUPPLEMENTARY INFORMATION.** Information collection and recordkeeping requirements will be effective upon OMB approval and notification to this effect will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6629.

SUPPLEMENTARY INFORMATION:

Introduction

These final regulations revise our rules on Social Security coverage of employees of State and local governments and interstate instrumentalities. These changes will improve the organization of, and clarify the current regulations. They also update the entire subpart to reflect policies and statutory amendments which are in effect but are not in current regulations.

Background

State and local government employees are exempt from mandatory coverage under Social Security. Section 218 of the Act requires that the Secretary of Health and Human Services (the Secretary), when requested by a State, shall enter into an agreement to provide retirement, survivors, disability, and hospital insurance coverage of the services of employees of a State or its political subdivisions. If an interstate instrumentality (which to the extent practicable is treated as a State) makes the request, the Secretary may enter into such an agreement. By this agreement Social Security protection is provided for the groups of employees the State brings under the agreement. State and local government employees covered under an agreement have the same benefit rights and responsibilities as other employees who have Social Security coverage. The amount of the payments made by the State for Social Security protection of State and local employees is the same as is paid by private sector employers and employees who are mandatorily covered by the Federal Insurance Contributions Act, 26 U.S.C. 3101 *et seq.* For payments due on wages paid before January 1, 1987, the State assumed full financial and reporting responsibility for the coverage provided under its agreement. The agreement may not be terminated in its entirety or with respect to any coverage group under that agreement.

All States, Puerto Rico, and the Virgin Islands have agreements with the Secretary. Currently these agreements provide coverage to approximately 10 million employees.

Delayed Effective Date

Section 7 of Pub. L. 94–202 (42 U.S.C. 405a) requires that any regulation or modification of a regulation which pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 218(e) of the Act as it read prior to the enactment of Pub. L. 99–509 not become effective until 18 months after it is published as a final rule in the **Federal Register**. Section 404.1249 affects those due dates and is discussed under "Major Changes." However, only § 404.1249(b)(2)(ii) is subject to the 18-month delayed effective date. Most of the rules in the section are already in effect and the more frequent deposit of contributions is mandated by section 342 of Pub. L. 98–21 for calendar months beginning after December 1983.

Considerations in Preparing This Comprehensive Revision

Most of the current regulations governing the coverage of employees of State and local governments were written in the 1950's and early 1960's. Some of the current rules have not been changed since they were originally published in May 1955. In preparing this comprehensive revision, we not only looked at the structure of the subpart and the language used in the current sections, but also evaluated the policies and procedures.

Comments Received Following Publication of a Notice of Proposed Rulemaking.

In order to obtain the public's views and comments before proceeding with these amendments, we published an NPRM in the **Federal Register** on May 29, 1986 at 51 FR 19468. The public was invited to submit comments pertaining to the proposed amendments within a period of 120 days from the date of the publication of the notice. The comment period closed on September 26, 1986. We received comments from six States. Each State commented on one or more provisions of the regulations. For ease of comprehension, we have condensed, summarized or paraphrased the comments and have grouped them according to the subject and issues raised. We have tried, to the extent possible, to present the comments and our response in the order in which the regulations are organized.

Comment: Two comments were made that the requirement in § 404.1226 that the State or political subdivision furnish a terminated employee with a Form W–2 or statement on the day on which wages are last paid to the employee is not needed because the requirement is not consistent with Federal income tax requirements and as a result is confusing.

Response: We are adopting this comment. Section 404.1226 is removed to reflect this change in the final regulations. Pub. L. 99–509 transfers responsibility for collecting contributions and receiving wage reports from the States to IRS for wages paid in 1987 and years later. Therefore, these requirements are within the purview of IRS rather than SSA.

Comment: Two comments were made that the subpoena provision is not needed because there has historically been good cooperation and there are already in place adequate means for securing records and information.

Response: We are not adopting this comment. We agree that there has been

good cooperation. However, section 205(d) of the Act authorizes our use of the subpoena, and retaining the subpoena provision in the final regulations appropriately reflects SSA's authority to use a subpoena in the event that it would, at sometime in the future, be necessary to do so.

Comment: Two commenters suggest that § 404.1243(c) should have a cross-reference to the IRS magnetic media requirements.

Response: We are not adopting this comment. IRS frequently revises the magnetic media requirements. During these revisions, the name and publication number may change resulting in an incorrect reference in the regulations. We believe a specific request to IRS for the magnetic media requirements will be more effective than to request the information by the incorrect name or publication number.

Comment: There were several comments that electronic fund transfer would be costly to the States and deprive the States of interest from the time the deposits were made until the deposits were actually credited.

Response: We are adopting this comment. The first sentence and the parenthetical sentence at the beginning of § 404.1262 are removed. The removal of these two sentences restores the manner of payment requirements to what they were before this revision of regulations. At the time the NPRM that proposed requiring electronic transfer of funds was published, SSA was responsible for collection of contributions from the States amounting to over $4 billion per year. The potential for greater savings and efficiency by requiring electronic transfer of funds was extraordinarily high. However, with the passage of section 9002 of Pub. L. 99–509, the responsibility for collection of contributions was transferred to IRS for payments due on wages paid in 1987 and years later. As a result of this change in responsbility, deposits by the States (including Puerto Rico, the Virgin Islands, and interstate instrumentalities) to SSA now average less than $10,000 per month each. Most of this amount is from adjustments and underpayments subject to other provisions of the regulations rather than payments made in connection with filed wage reports. The savings previously estimated by requiring electronic transfer of funds are now significantly overstated. For these reasons, we are not requiring electronic transfer of funds in these final regulations, but continue to make it available to those remaining States who have not elected to use it.

Comment: There were several comments that the regulations provisions for interest payments on adjustment reports at § 404.1265 would discourage States from filing adjustment reports to make corrections and that these provisions should be reconsidered. (Two comments offered alternative proposals to be considered.)

Response: We are adopting the comments that we should reconsider the regulations provisions for interest payments on adjustment reports. While we are reconsidering this policy, we will continue to use the rules that are currently in effect. We moved the modified version of the text regarding interest payments from the former § 404.1261 (a) and (b) to § 404.1265 (b) and (c) replacing § 404.1265 (a)(2) and (b) shown in the NPRM. Section 404.1265(b) is renumbered as § 404.1265(d). Section 404.1265(d) is renumbered as § 404.1265(e). We also made editorial changes to the former paragraphs that are retained to correct the reference in § 404.1265(b)(1) to read § 404.1249, to remove the references in § 404.1265(c) to the numbered forms because these forms are obsolete, to continue the use of the IRS abbreviation for the Internal Revenue Service, and to remove the parenthetical sentence at the end of the paragraph because the reference is no longer appropriate.

Comment: One commenter suggests that the § 404.1291 proposed reconsideration by an appropriate SSA official that is to precede the review by the Secretary or someone delegated by the Secretary is an unnecessary step in the review process and should be eliminated.

Response: We are not adopting this suggestion. Our experience indicates that the reconsideration process is a cost efficient method of resolving many disagreements. Further, States requested that the reconsideration step be included during a Federal/State meeting about the review process.

Comment: Two commenters suggest that since States have only 90 days to request review, SSA should have a similar 90 days to issue the Commissioner's decision.

Response: We are not adopting this comment. The requirement that the State file a request for review does not equate to the requirements for our review of the evidence, the conducting of an audit if necessary, and the preparation of a determination. Although it may appear that the review process is lengthy, this conclusion does not recognize that there may be complex issues under review.

Changes to Take Account of Legislation Impacting on the NPRM

Section 12110 of Pub. L. 99–272 (enacted April 7, 1986) amends sections 218(f)(1) and 218(u)(3) of the Act by providing that the effective date of an agreement or modification is based on the date of mailing or delivery by other means to the Secretary. These amendments to the Act apply to agreements or modifications mailed or delivered to the Secretary on or after April 7, 1986. Sections 404.1214(e) and 404.1215(d) of these regulations are amended to include this new provision of the Act.

Section 9002 of Pub. L. 99–509 (enacted October 21, 1986) amends section 218 of the Act and Subchapter C of Chapter 21 of the Internal Revenue Code of 1954 by removing the States' fiscal liability for their political subdivisions' Social Security contributions and requiring States and political subdivisions to pay Federal Insurance Contribution Act taxes in the same manner that private employers do. Administration and collection of these taxes is transferred from SSA to IRS. The amendments are effective for payments due on wages paid in 1987 and later years. For payments due on wages paid prior to 1987, regulations in Subpart M continue to apply.

To assist in referencing, we indicated all sections in subpart M that are wholly or partially affected by the amendment of section 218 of the Act by Pub. L. 99–509. Each section title is appended with the phrase "—for wages paid prior to 1987" to show the limited applicability of that section in regard to contribution liability. Although the appended phrase may appear inappropriate for certain section titles, the appended phrase is appropriate in the context of the contribution liability. Several sections are reordered to emphasize the limited applicability, but the text remains unchanged. In § 404.1200, we explain the use of the phrase "For wages paid prior to 1987.—" to make clear the financial and reporting responsibility of the States. Also, in § 404.1242(b) last sentence, we added the phrase "For backpay awards paid prior to 1987,—" to show the responsibility extends to backpay awards.

Upon resolution of payment, reporting, and adjustment issues for years prior to 1987, we plan to remove sections or paragraphs designated "—for wages paid prior to 1987."

Section 404.1249(b)(2)(i) is rewritten to show that for agreements or modifications providing coverage of employees for periods prior to 1987,

States shall pay contributions due and shall file wage reports with SSA for these periods. The payments and wage reports are due within 90 days after the date of the notice that the Secretary has signed the agreement or modification. Section 9002 of Pub. L. 99–509 provides that Subchapter C of Chapter 21 of the Internal Revenue Code of 1954 applies to wages paid in 1987 and later years.

In addition to the major changes required by statute, we made editorial changes to make the regulations clear and to provide for ease of cross reference. These changes include:

(1) Adding the phrase ", the period involved," to the definitions of "allowance of a credit or refund" and to the definition of "assessment" in § 404.1202 because we routinely provide this information in these notices;

(2) Adding a cross-reference to the Act in § 404.1206(c)(3);

(3) Updating the reference at §§ 404.1207(a) and 404.1214(c)(1) from section 218(k) of the Act to section 218(g) as provided by section 9002 of Pub. L. 99–509;

(4) Moving the second parenthetical at the end of the sentence, "(the "no" group)" in § 404.1207(b) to a location next to the group referred to and in the next sentence adding the phrase "for groups covered after 1959" for clarity;

(5) Adding the exclusion at § 404.1210(e)(1) that was in effect prior to the enactment of section 353 of Pub. L. 95–216 because this exclusion is contained in and still applies to some State agreements;

(6) Removing the reference in the second sentence of § 404.1220(b) to filing a return with the State by removing the phrase "with the State";

(7) Substituting the word "employer" for "State" in § 404.1220(e);

(8) Removing §§ 404.1221, 404.1223, and 404.1226 because the enactment of section 9002 of Pub. L. 99–509 makes reporting requirements the responsibility of IRS for wages paid in 1987 and years after;

(9) Substituting the word "employer" for "State" each place it appears in the text of § 404.1223;

(10) Removing § 404.1275 (b) and (c) because adjustment made on personal income tax returns is within the purview of IRS; and

(11) Rewriting § 404.1283(b) to conform to section 205(c)(5) of the Act to show our authority to "delete" wage entries from the earnings record rather than to "revise."

Changes To Take Account of Final Rule Published May 9, 1986, But Not Included in the NPRM Published May 29, 1986

On May 9, 1986, we published a final rule at 51 FR 17173. This final rule amended 20 CFR 404.1281(a) and 404.1286(a). At this time, we are incorporating that final rule into this final rule. The text is unchanged. However, since the revised §§ 404.1281 and 404.1286 deal with different subjects, we are incorporating the text of these sections of the final rule into the proper sections of the revision which are §§ 404.1287(a) and 404.1283(a) respectively.

Except for the changes in response to comments, statutory changes, the inclusion of the final rule that amended current §§ 404.1287(a) and 404.1283(a), and minor editorial changes, we are adopting the rules as proposed.

Summary of Changes

Definitions

Section 404.1202.

We have added a new section which contains definitions of terms which have special meanings as used throughout this subpart.

Evidence

Section 404.1203.

Section 404.1203 is a new section which describes in general terms our rules about requesting evidence from a State of wages paid to employees and contributions due on those wages. We discuss in this section what we do when we need evidence, the State's responsibility for supplying accurate wage information and any evidence needed to verify the accuracy of reports related to those wages, and what happens if a State does not submit the requested evidence.

Authorized State Officials

Section 404.1204.

This is a new section which requires that a State designate the official authorized to act on its behalf, and that it inform SSA of any change in officials or his or her authority.

What Groups of Employees May Be Covered

Sections 404.1205–404.1212.

This is a new group of sections which discuss in general terms what groups of employees may be covered, other groupings of employees and the services which may or may not be covered. We have also included a description of the referendum procedures States must follow in providing coverage to certain groups of employees. These referendum procedures reflect the requirements in sections 218(d) (3) and (7) of the Act (42 U.S.C. 418(d) (3) and (7)).

There are a number of special provisions in the Act which relate to specific States. These provisions establish procedures for a State to provide coverage for employees in specified positions. For example, section 218(d)(6)(G) of the Act (42 U.S.C. 418(d)(6)(G)) gives several States the option of providing coverage for employees in positions under a retirement system where these States are paid from Federal grants for administering unemployment compensation. Since these various provisions have limited applicability and are rarely used, we have not included them in these regulations.

How Coverage is Obtained and Continues

Sections 404.1214–404.1219.

These are new sections which generally reflect the procedures for establishing and continuing coverage under an agreement.

In § 404.1214(d) we set out what provisions an agreement must include.

Section 404.1215(b) indicates that when an agreement is modified, the State may specify a controlling date for determining retroactive coverage for employees. That controlling date can be no earlier than the date the modification is mailed or otherwise delivered to the Secretary.

Section 404.1216 describes how an agreement may be modified to correct various errors.

Section 404.1217 explains that coverage under an agreement continues indefinitely.

Sections 404.1218 and 404.1219 reflect the provisions of section 103 of Pub. L. 98–21, enacted April 20, 1983. Section 103 provides that no agreement may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983. Section 103 applies without regard to whether a notice of intent to terminate was filed before Pub. L. 98–21 was enacted. Section 103 also repealed the prohibition in former section 218(g)(3) of the Act against resumption of coverage. Coverage previously terminated may be resumed by a modification to the State's agreement.

How to Identify Employees Who Are Covered

Section 404.1220.

Section 404.1220 describes how we assign identification numbers to the State and its political subdivisions,

coverage groups, etc., covered by a State's agreement.

What Records of Coverage Must Be Kept

Section 404.1225.

Section 404.1225 describes what records of an employee's remuneration a State or its political subdivisions must keep, where they are to be maintained, and for how long.

Review of Compliance by State With Its Agreement

Sections 404.1230 through 404.1234.

These regulations provide for onsite review of all pertinent source records maintained by the State or its political subdivisions. This will enable us to evaluate the records from which wage reports and contribution returns were prepared and how those records were compiled, processed, and maintained. These reviews may include discussions with the employee(s) working with those records. They would be conducted in cooperation with the State Social Security Administrator.

How to Report Wages and Contributions

Sections 404.1237 through 404.1251.

Section 404.1237 contains the basic rule that a State must report each year, by coverage group, the wages paid each covered employee during that year.

Section 404.1239 permits a State to combine the wages of an employee who performs covered services for more than one coverage group up to the annual wage limitation and pay Social Security contributions on that amount. Otherwise, the wages reported for an employee by all of the coverage groups might exceed the annual wage limitation. And the State, by paying Social Security contributions on the wages reported separately by each coverage group, would pay more than the maximum amount of Social Security contributions required each year.

Section 404.1242 is a new section which describes "back pay" to an employee and how it must be reported.

Section 404.1243 describes what means a State may use to make reports, e.g., forms, magnetic tape, etc. Section 404.1247 requires that a State shall report wages for the calendar year in which they were paid.

Section 404.1249 is the current § 404.1255a. Paragraph (a)(2) of this section contains the twice a month "frequency of deposit" rule mandated by section 342 of Pub. L. 98–21, the Social Security Amendments of 1983. Paragraph (b)(2) contains the due dates for filing contribution returns and wage reports and also the "annual reporting" rules. Paragraphs (b)(2)(i) and (b)(2)(iii) are virtually identical to current § 404.1255a(c)(2) (i) and (iii). Paragraph (b)(2)(ii) is subject to the 18 month delay in its effective date to comply with section 7 of Pub. L. 94–202 (42 U.S.C. 405a). Paragraph (c) on payments by a third party on account of sickness or accident disability is virtually identical to current § 404.1255a(a)(2) which we published in the **Federal Register** as a final rule on September 30, 1983, at 48 FR 44771. We propose to delay the effective date of only paragraph (b)(2)(ii) for 18 months after it is published as a final rule in the **Federal Register**. This delay would in no way affect the current rules that are merely incorporated in the new section, since they are already in effect. The delay would also in no way delay the effect of the "frequency of deposit" requirement since the requirement is mandated by statute.

What is a State's Liability for Contributions

Section 404.1255 and 404.1256.

Section 404.1255 describes the amount of Social Security contributions a State is liable for and when that liability begins. Section 404.1256 describes the conditions under which a State's liability for contributions may be limited when an employee performs services in one or more coverage groups.

Figuring the Amount of the State's Contributions

Sections 404.1260 through 404.1263.

These sections describe how a State's contributions are computed and when and how they must be paid.

If a State Fails To Make Timely Payments

Sections 404.1265 through 404.1267.

Section 404.1265 sets out when and how adjustment of underpayments of contributions are made if a State fails to pay timely its contributions when due under § 404.1249.

Section 404.1267, which accords with section 218(j) of the Act as it read prior to the enactment of Pub. L. 99–509, authorizes the Secretary to offset the Social Security contributions a State has not paid against amounts due a State under another provision of the Social Security Act.

How to Adjust Errors in Reports and Contributions

Sections 404.1270 through 404.1276.

Sections 404.1271, 404.1272, and 404.1275 describe how we handle payments made by a State which exceed the amount of contributions for which it is liable.

Section 404.1276 explains how we handle situations where employees' wages have been erroneously reported and Social Security contributions have been erroneously paid to the Internal Revenue Service.

How Overpayments of Contributions Are Credited or Refunded

Sections 404.1280 through 404.1284.

When a State pays more than the required amount of Social Security contributions, the State may timely request that we credit or refund the overpaid amount.

Section 404.1284 allows the Secretary, in limited situations, to offset an underpayment of contributions against an overpayment. In § 404.1284(b) we indicate the State will be given an opportunity to pay the contributions due before those amounts are offset against any credit which is due the State.

How Assessments For Underpayments of Contributions Are Made

Sections 404.1285 through 404.1289.

Section 404.1285 provides that a State is liable for an amount due under an agreement until the Secretary is satisfied the State has paid that amount. If the Secretary is not satisfied that a State has paid the correct amount, the Secretary issues an assessment for the outstanding amount.

Section 404.1286 sets out the time limits within which the Secretary must issue an assessment for an amount due. Section 404.1287 sets out exceptions to the time limits within which the Secretary must issue an assessment.

Section 404.1289 points out when we may accept a wage report which a State submits after the time periods described in § 404.1286 expire.

Secretary's Review of Decisions on Credits, Refunds, or Assessments

Sections 404.1290 through 404.1296.

These sections revise current §§ 404.1270–404.1274 and also include new sections to provide for review of appealed administrative decisions.

How a State May Seek Court Review of Secretary's Decision

Sections 404.1297 through 404.1299.

Sections 404.1297 and 404.1298 describe under what circumstances and where to file a civil action for a review of a decision by the Commissioner for the Secretary, who can file for the civil action, and the time requirements for filing. Section 404.1299 describes how

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payments, based upon final judgments of courts, are made.

Redesignation Table

To assist users of this document we are including a table which shows the section numbers as redesignated in these final regulations:

Redesignation Table

Former section	New section
404.1201	404.1200
404.1210	404.1201
404.1220	404.1260
404.1221	404.1260
404.1222	404.1255
404.1222a	404.1256
404.1223	404.1262
404.1224	404.1263
404.1225	404.1265
404.1226	None
404.1227	404.1267
404.1230	None
404.1240	404.1220
404.1241	None
404.1242	None
404.1243	None
404.1250	404.1237
404.1250a	404.1239
404.1250b	404.1239
404.1251	404.1247
404.1252	404.1251
404.1253	None
404.1254	404.1243
404.1255	404.1249
404.1255a	404.1249
404.1256	404.1225
404.1257	404.1237 and 404.1239
404.1260	404.1270
404.1261	404.1265
404.1262	404.1271
404.1263	404.1272
404.1264	404.1281
404.1265	404.1270
404.1266	404.1275
404.1270	404.1290
404.1271	404.1292
404.1272	404.1293
404.1273	404.1291
	404.1292
	404.1294
	and
	404.1295
404.1274	404.1296
404.1275	404.1297
404.1276	404.1298
404.1277	404.1299
404.1280	404.1286
404.1281	404.1287
404.1282	404.1289
404.1283	None
404.1284	404.1285
404.1285	404.1282
404.1286	404.1283
404.1287	404.1280
404.1290	404.1202

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 as the economic impact on State and local governments is less than $100 million. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These final rules contain information collection and recordkeeping requirements in the following sections: 404.1203, 404.1204(a)(5) and (b), 404.1214(d), 404.1216(a), 404.1220, 404.1225, 404.1237, 404.1239, 404.1242, 404.1243, 404.1247, 404.1249, 404.1251, 404.1265, 404.1271, and 404.1272. As required by section 3507 of the Paperwork Reduction Act of 1980, we will submit a copy of these rules to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3002, Washington, DC 20503, Attention: Desk Officer for HHS.

Regulatory Flexibility Act

The Secretary of the Department of Health and Human Services certifies that these regulations will not have a significant economic impact on a substantial number of small entities, including small governmental jurisdictions. Under the terms of the agreement under section 218 of the Act, a State obtains coverage for governmental entities requesting Social Security coverage. Entities which obtain coverage are now responsible for paying the contributions and filing the reports necessary to provide Social Security coverage for the services of its employees.

Some of the regulations describe the economic consequences when these responsibilities are not met. However, we expect those measures will impact on a limited number of small entities and will not have a significant economic impact on those entities. Any economic impact involved in the regulations reflecting sections 103 and 342 of Pub. L. 98–21, section 12110 of Pub. L. 99–272, and section 9002 of Pub. L. 99–509 result directly from the statutory amendments, not from the regulations.

Therefore, we believe that a regulatory analysis under the Regulatory Flexibility Act is not required.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.814, Social Security Programs.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits, Disabled, Old-Age, Survivors, and Disability Insurance, Social Security Administration.

Dated: April 20, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: June 1, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set out in the preamble, 20 CFR Part 404, Subpart M is revised to read as follows:

PART 404—[AMENDED]

Subpart M—Coverage of Employees of State and Local Governments

General

Sec.

404.1200 General effect of section 218 of the Act.
404.1201 Scope of this subpart regarding coverage and wage reports and adjustments.
404.1202 Definitions.
404.1203 Evidence—for wages paid prior to 1987.
404.1204 Designating officials to act on behalf of the State.

What Groups of Employees May Be Covered

404.1205 Absolute coverage groups.
404.1206 Retirement system coverage groups.
404.1207 Divided retirement system coverage groups.
404.1208 Ineligible employees.
404.1209 Mandatorily excluded services.
404.1210 Optionally excluded services.
404.1211 Interstate instrumentalities.
404.1212 Policemen and firemen.

How Coverage Under Agreements Is Obtained and Continues

404.1214 Agreement for coverage.
404.1215 Modification of agreement.
404.1216 Modification of agreement to correct an error.
404.1217 Continuation of coverage.
404.1218 Resumption of coverage.
404.1219 Dissolution of political subdivision.

How to Identify Covered Employees

404.1220 Identification numbers.

What Records of Coverage Must Be Kept

404.1225 Records—for wages paid prior to 1987.

Review of Compliance By State With Its Agreement

404.1230 Onsite review program.
404.1231 Scope of review.
404.1232 Conduct of review
404.1234 Reports of review's findings.

How to Report Wages and Contributions—for Wages Paid Prior to 1987

404.1237 Wage reports and contribution returns—general—for wages paid prior to 1987.
404.1239 Wage reports for employees performing services in more than one coverage group—for wages paid prior to 1987.
404.1242 Back pay.

404.1243 Use of reporting forms—for wages paid prior to 1987.
404.1247 When to report wages—for wages paid prior to 1987.
404.1249 When and where to make deposits of contributions and to file contribution returns and wage reports—for wages paid prior to 1987.
404.1251 Final reports—for wages paid prior to 1987.

What Is a State's Liability for Contributions—for Wages Paid Prior to 1987

404.1255 State's liability for contributions—for wages paid prior to 1987.
404.1256 Limitation on State's liability for contributions for multiple employment situations—for wages paid prior to 1987.

Figuring the Amount of the State's Contributions—for Wages Paid Prior to 1987

404.1260 Amount of contributions—for wages paid prior to 1987.
404.1262 Manner of payment of contributions by State—for wages paid prior to 1987.
404.1263 When fractional part of a cent may be disregarded—for wages paid prior to 1987.

If a State Fails to Make Timely Payments—for Wages Paid Prior to 1987

404.1265 Addition of interest to contributions—for wages paid prior to 1987.
404.1267 Failure to make timely payments—for wages paid prior to 1987.

How Errors in Reports and Contributions Are Adjusted—for Wages Paid Prior to 1987

404.1270 Adjustments in general—for wages paid prior to 1987.
404.1271 Adjustment of overpayment of contributions—for wages paid prior to 1987.
404.1272 Refund or recomputation of overpayments which are not adjustable—for wages paid prior to 1987.
404.1275 Adjustment of employee contributions—for wages paid prior to 1987.
404.1276 Reports and payments erroneously made to Internal Revenue Service-transfer of funds—for wages paid prior to 1987.

How Overpayments of Contributions Are Credited or Refunded—for Wages Paid Prior to 1987

404.1280 Allowance of credits or refunds—for wages paid prior to 1987.
404.1281 Credits or refunds for periods of time during which no liability exists—for wages paid prior to 1987.
404.1282 Time limitations on credits or refunds—for wages paid prior to 1987.
404.1283 Exceptions to the time limitations on credits or refunds—for wages paid prior to 1987.
404.1284 Offsetting underpayments against overpayments—for wages paid prior to 1987.

How Assessments for Underpayments of Contributions Are Made—for Wages Paid Prior to 1987

404.1285 Assessments of amounts due—for wages paid prior to 1987.
404.1286 Time limitations on assessments—for wages paid prior to 1987.
404.1287 Exceptions to the time limitations on assessments—for wages paid prior to 1987.
404.1289 Payment after expiration of time limitations for assessment—for wages paid prior to 1987.

Secretary's Review of Decisions on Credits, Refunds, or Assessments—for Wages Paid Prior to 1987

404.1290 Review of decisions by the Secretary—for wages paid prior to 1987.
404.1291 Reconsideration—for wages paid prior to 1987.
404.1292 How to request review—for wages paid prior to 1987.
404.1293 Time for filing request for review—for wages paid prior to 1987.
404.1294 Notification to State after reconsideration—for wages paid prior to 1987.
404.1295 Commissioner's review—for wages paid prior to 1987.
404.1296 Commissioner's notification to the State—for wages paid prior to 1987.

How a State May Seek Court Review of Secretary's Decision—for Wages Paid Prior to 1987

404.1297 Review by court—for wages paid prior to 1987.
404.1298 Time for filing civil action—for wages paid prior to 1987.
404.1299 Final judgments—for wages paid prior to 1987.

Authority: Secs. 205, 218, and 1102 of the Social Security Act; 42 U.S.C. 405, 418, and 1302; sec. 12110 of Pub. L. 99-272, 100 Stat. 287, sec. 9002 of Pub. L. 99-509, 100 Stat. 1970.

Subpart M—Coverage of Employees of State and Local Governments

General

§ 404.1200 General effect of section 218 of the Act.

Under section 218 of the Social Security Act (the Act) a State may ask the Secretary of Health and Human Services to enter into an agreement to extend Federal old-age, survivors, disability and hospital insurance coverage to groups of employees of the State and its political subdivisions. The Secretary shall enter into such an agreement. State and local government employees, after being covered under an agreement, have the same benefit rights and responsibilities as other employees who are mandatorily covered under the programs. For payments due on wages paid before 1987, the State assumes full financial and reporting responsibility for all groups covered under its agreement. The agreement may not be terminated in its entirety or with respect to any coverage group under that agreement. For payments due on wages paid in the year 1987 and years later, section 9002 of Pub. L. 99-509 amends section 218 of the Act by transferring responsibility for collecting contributions due and receiving wage reports from the Social Security Administration (SSA) to the Internal Revenue Service (IRS). Sections of the regulations wholly or partly affected by this amendment to the Act are appended with the phrase "—for wages paid prior to 1987."

§ 404.1201 Scope of this subpart regarding coverage and wage reports and adjustments.

This subpart contains the rules of SSA about:

(a) Coverage—

(1) How a State enters into and modifies an agreement; and

(2) What groups of employees a State can cover by agreement.

(b) Contributions, wage reports, and adjustments—for wages paid prior to 1987—

(1) How a State must identify covered employees and what records it must keep on those employees;

(2) Periodic reviews of the source records kept on covered employees;

(3) How and when a State must report wages and pay contributions;

(4) What the State's liability for contributions is and how SSA figures the amount of those contributions;

(5) What happens if a State fails to pay its contributions timely;

(6) How errors in reports and contribution payments are corrected;

(7) How overpayments of contributions are credited or refunded;

(8) How assessments are made if contributions are underpaid; and

(9) How a State can obtain administrative or judicial review of a decision on a credit, refund, or assessment.

§ 404.1202 Definitions.

(a) Terms which have special meaning in this subpart are described in this section. Where necessary, further explanation is included in the section where the term is used.

(b) Coverage terms:

Agreement—The agreement between the Secretary of Health and Human Services and the State containing the conditions under which retirement, survivors, disability and hospital insurance coverage is provided for State and local government employees.

Coverage—The extension of Social Security protection (retirement, survivors, disability, and hospital

insurance) by agreement between the Secretary of Health and Human Services and a State to employees of the State and its political subdivisions or by agreement between the Secretary of Health and Human Services and an interstate instrumentality to employees of the interstate instrumentality.

Coverage group—The grouping by which employees are covered under an agreement.

Employee—An employee as defined in section 210(j) of the Act. Usually, the common-law control test is used in determining whether an employer-employee relationship exists. The term also includes an officer of a State or political subdivision.

Governmental function—The traditional functions of government: legislative, executive, and judicial.

Interstate instrumentality—An independent legal entity organized by two or more States to carry out one or more functions. For Social Security coverage purposes under section 218 of the Act, an interstate instrumentality is treated, to the extent practicable, as a "State."

Modification—A change to the agreement between the Secretary of Health and Human Services and a State which provides coverage of the services of employees not previously covered or which alters the agreement in some other respect.

Political subdivision—A separate legal entity of a State which usually has specific governmental functions. The term ordinarily includes a county, city, town, village, or school district, and in many States, a sanitation, utility, reclamation, drainage, flood control, or similar district. A political subdivision includes an instrumentality of a State, one or more politicial subdivisions of a State, or a State and one or more of its political subdivisions.

Proprietary function—A business engaged in by a State or political subdivision such as a public amusement park or public parking lot.

Retirement system—A pension, annuity, retirement, or similar fund or system established by a State or political subdivision.

Secretary—The Secretary of Health and Human Services or authorized delegate.

SSA—The Social Security Administration.

State—Includes the fifty States, Puerto Rico, and the Virgin Islands. It does not include the District of Columbia, Guam or American Samoa. "State" also refers to an interstate instrumentality where applicable.

We—The Social Security Administration.

(c) Contributions, wage reporting, and adjustment terms—for wages paid prior to 1987:

Allowance of a credit or refund—The written notice to a State of the determination by SSA of the amount owed to the State by SSA, the period involved, and the basis for the determination.

Assessment—The written notice to a State of the determination by SSA of the amount (contributions or accrued interest) owed to SSA by the State, the period involved, and the basis for the determination.

Contributions—Payments made under an agreement which the State deposits in a Federal Reserve bank. The amounts are based on the wages paid to employees whose services are covered under an agreement. These amounts are equal to the taxes imposed under the Internal Revenue Code on emp1oyers and employees in private employment.

Contribution return—Form used to identify and account for all contributions actions.

Disallowance of a State's claim for credit or refund—The written notice to a State of the determination by SSA that the State's claim for credit or refund is denied, the period involved, and the basis for the determination.

Overpayment—A payment of more than the correct amount of contributions or interest.

Underpayment—A payment of less than the correct amount of contributions or interest.

Wage Reports—Forms used to identify employees who were paid wages for covered employment and the amounts of those wages paid. This includes corrective reports.

§ 404.1203 Evidence—for wages paid prior to 1987.

(a) *State's responsibility for submitting evidence.* The State, under the provisions of the agreement, is responsible for accurately reporting the wages paid employees for services covered by the agreement and for paying the correct amount of contributions due on those wages. This responsibility includes submitting evidence to verify the accuracy of the reports and payments.

(b) *Failure to submit requested evidence.* The State is required to submit information timely to SSA. If we request additional evidence to verify the accuracy of reports and payments, we specify when that evidence must be submitted. If we do not receive the evidence timely, and the State provides no satisfactory explanation for its failure to submit the evidence timely, we may proceed, if appropriate, on the basis of the information we have. Proceeding on the basis of the information we have permits us to credit the wage records of employees properly, where possible, while continuing to work with the State to resolve remaining discrepancies.

§ 404.1204 Designating officials to act on behalf of the State.

(a) Each State which enters into an agreement shall designate the official or officials authorized to act on the State's behalf in administering the agreement. Each State shall inform SSA of the name, title, and address of the designated official(s) and the extent of each official's authority. For example, a State may indicate that the State official is authorized:

(1) To enter into an agreement and execute modifications to the agreement; and

(2) To carry out the ministerial duties necessary to administer the agreement.

For wages paid prior to 1987:

(3) To enter into agreements to extend or re-extend the time limit for assessment or credit;

(4) To make arrangements in connection with onsite reviews; and

(5) To request administrative review of an assessment, an allowance of a credit or refund, or a disallowance of a credit or refund.

(b) Each State shall inform SSA timely of changes in designated officials or changes in their authority.

What Groups of Employees May Be Covered

§ 404.1205 Absolute coverage groups.

(a) *General.* An absolute coverage group is a permanent grouping of employees, e.g., all the employees of a city or town. It is a coverage group for coverage and reporting purposes. When used for coverage purposes, the term refers to groups of employees whose positions are not under a retirement system. An absolute coverage group may include positions which were formerly under a retirement system and, at the State's option, employees who are in positions under a retirement system but who are ineligible (see § 404.1208) to become members of that system.

(b) *What an absolute coverage group consists of.* An absolute coverage group consists of one of the following employee groups:

(1) State employees performing services in connection with the State's governmental functions;

(2) State employees performing services in connection with a single proprietary function of the State;

(3) Employees of a State's political subdivision performing services in connection with that subdivision's governmental functions;

(4) Employees of a State's political subdivision performing services in connection with a single proprietary function of the subdivision;

(5) Civilian employees of a State's National Guard units; and

(6) Individuals employed under an agreement between a State and the U.S. Department of Agriculture as agricultural products inspectors.

(c) *Designated coverage groups.* A State may provide coverage for designated (i.e., selected) absolute coverage groups of the State or a political subdivision. When coverage is extended to these designated groups, the State must specifically identify each group as a designated absolute coverage group and furnish the effective date of coverage and any optional exclusion(s) for each group. Where a State has provided coverage to designated absolute coverage groups, the State may, by modifying its agreement, extend that coverage to any absolute coverage group in the State.

§ 404.1206 Retirement system coverage groups.

(a) *General.* Section 218(d) of the Act authorizes coverage of services of employees in positions under a retirement system. For purposes of obtaining coverage, a system may be considered a separate retirement system authorized by section 218(d)(6) (A) or (B) of the Act. Under this section of the Act a State may designate the positions of any one of the following groupings of employees as a separate retirement system:

(1) The entire system;

(2) The employees of the State under the system;

(3) The employees of each political subdivision in the State under the system;

(4) The employees of the State and the employees of any one or more of the State's political subdivisions;

(5) The employees of any combination of the State's political subdivisions;

(6) The employees of each institution of higher learning, including junior colleges and teachers colleges; or

(7) The employees of a hospital which is an integral part of a political subdivision.

If State law requires a State or political subdivision to have a retirement system, it is considered established even though no action has been taken to establish the system.

(b) *Retirement system coverage groups.* A retirement system coverage group is a grouping of employees in positions under a retirement system. Employees in positions under the system have voted for coverage for the system by referendum and a State has provided coverage by agreement or modification of its agreement. It is not a permanent grouping. It exists only for referendum and coverage purposes and is not a separate group for reporting purposes. Once coverage has been obtained, the retirememt system coverage group becomes part of one of the absolute coverage groups described in § 404.1205(b).

(c) *What a retirement system coverage group consists of.* A retirement system coverage group consists of:

(1) Current employees—all employees whose services are not already covered by the agreement, who are in positions covered by the same retirement system on the date an agreement or modification of the agreement is made applicable to the system;

(2) Future employees—all employees in positions brought under the system after an agreement or modification of the agreement is signed; and

(3) Other employees—all employees in positions which had been under the retirement system but which were not under the retirement system when the group was covered (including ineligibles who had been optionally excluded from coverage under section 218(c)(3)(B) of the Act).

(d) *Referendum procedures.* Prior to signing the agreement or modification, the governor or an official of the State named by the governor (for an interstate instrumentality, its chief executive officer) must certify to the Secretary that:

(1) All eligible employees were given at least 90 days' notice of the referendum;

(2) All eligible employees were given an opportunity to vote in the referendum;

(3) Only eligible employees were permitted to vote in the referendum;

(4) Voting was by secret written ballot on the question of whether service in positions covered by the retirement system should be included under an agreement;

(5) The referendum was conducted under the supervision of the governor or agency or individual named by him; and

(6) A majority of the retirement system's eligible employees voted for coverage under an agreement.

The State has two years from the date of a favorable referendum to enter into an agreement or modification extending coverage to the retirement system coverage group. If the referendum is unfavorable, another referendum cannot be held until at least one year after that unfavorable referendum.

(e) *Who is covered.* If a majority of the eligible employees in a retirement system vote for coverage, all employees in positions in that retirement system become covered.

(f) *Coverage of employees in positions under more than one retirement system.*

(1) If an employee occupies two or more positions each of which is under a different retirement system, the employee's coverage in each position depends upon the coverage extended to each position under each system.

(2) If an employee is in a single position which is under more than one retirement system (because the employee's occupancy of that position permits her or him to become a member of more than one retirement system), the employee is covered when the retirement system coverage group including her or his position is covered under an agreement unless (A) he or she is not a member of the retirement system being covered and (B) he or she is a member of a retirement system which has not been covered. This rule also applies to the coverage of services in policemen's and firemen's positions in interstate instrumentalities and in those States named in § 404.1212(c)(1).

§ 404.1207 Divided retirement system coverage groups.

(a) *General.* Under section 218(d)(6)(C) of the Act certain States and under section 218(g)(2) of the Act all interstate instrumentalities may divide a retirement system based on whether the employees in positions under that system want coverage. The States having this authority are Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin.

(b) *Divided retirement system coverage group.* A divided retirement system coverage group is a grouping under a retirement system of positions of members of the system who voted for coverage and positions of individuals who become members of the system (the "yes" group), and positions of members of the system who did not elect coverage (the "no" group) and ineligible employees (see § 404.1206). For purposes of this section for groups covered after 1959, the term "member" also includes individuals who have an option to become members of the retirement system but have not done so. The

position of a member in the "no" group can be covered if, within two years after the agreement or modification extending coverage to the "yes" group is executed, the State provides an opportunity to transfer the position to the covered "yes" group and the individual occupying the position makes a written request for the transfer. The members of the "no" group can also be covered if, by referendum, a majority of them vote for coverage. If the majority votes for coverage, all positions of the members of the "no" group become covered. There is no further subdivision of the "no" group into those who voted for and those who voted against coverage. If the State requests, the ineligibles in the "no" group may become part of the "yes" group and have their services covered.

(c) *Referendum procedures.* To divide a retirement system, the State must conduct a referendum among the system's employees. If the system is to be divided, the governor or an individual named by him must certify to the Secretary that:

(1) The referendum was held by written ballot on the question of whether members of a retirement system wish coverage under an agreement;

(2) All members of the retirement system at the time the vote was held had the opportunity to vote;

(3) All members of the system on the date the notice of the referendum was issued were given at least 90 days' notice regarding the referendum;

(4) The referendum was conducted under the supervision of the governor or agency or person designated by him; and

(5) The retirement system was divided into two parts, one composed of positions of members of the system who voted for coverage and the other composed of the remaining positions under the retirement system.

After the referendum the State may include those members who chose coverage under its agreement as a retirement system coverage group. The State has two years from the date of the referendum to enter into an agreement or modification extending coverage to that group.

§ 404.1208 Ineligible employees.

(a) *Definition.* An ineligible is an employee who, on first occupying a position under a retirement system, is not eligible for membership in that system because of a personal disqualification like age, physical condition, or length of service.

(b) *Coverage of ineligible employees.* A State may, in its agreement or any modification to the agreement, provide coverage for the services of ineligible employees in one of three ways:

(1) As part of or as an addition to an absolute coverage group;

(2) As part of a retirement system coverage group covering all positions under the retirement system; or

(3) As part of or as an addition to a retirement system coverage group composed of those members in positions in a retirement system who chose coverage.

§ 404.1209 Mandatorily excluded services.

Some services are mandatorily excluded from coverage under a State's agreement. They are:

(a) Services of employees who are hired to relieve them from unemployment;

(b) Services performed in an institution by a patient or inmate of the institution;

(c) Transportation service subject to the Federal Insurance Contributions Act;

(d) Certain emergency services in case of fire, storm, snow, volcano, earthquake, flood or other similar emergency; and

(e) Services other than agricultural labor or student services which would be excluded from coverage if performed for a private employer.

§ 404.1210 Optionally excluded services.

Certain services and positions may, if the State requests it, be excluded from coverage. These exclusions may be applied on a statewide basis or selectively by coverage groups. They are:

(a) Services in any class or classes of elective positions;

(b) Services in any class or classes of part-time positions;

(c) Services in any class or classes of positions where the pay is on a fee basis;

(d) Any agricultural labor or student services which would also be excluded if performed for a private employer; and

(e) Services performed by election officials or election workers if the payments for those services:

(1) In a calendar quarter are less than $50; or

(2) For modifications executed after 1977, in a calendar year are less than $100.

§ 404.1211 Interstate instrumentalities.

For Social Security coverage purposes under section 218 of the Act, interstate instrumentalities are treated, to the extent practicable, as States, that is:

(a) They must be legally authorized to enter into an agreement with the Secretary;

(b) They are subject to the same rules that are applied to the States;

(c) They may divide retirement systems and cover only the positions of members who want coverage; and

(d) They may provide coverage for firemen and policemen in positions under a retirement system.

§ 404.1212 Policemen and firemen.

(a) *General.* For Social Security coverage purposes under section 218 of the Act, a policeman's or fireman's position is any position so classified under State statutes or court decisions. Generally, these positions are in the organized police and fire departments of incorporated cities, towns, and villages. In most States, a policeman is a member of the "police" which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms "policeman" and "fireman" do not include services in positions which, although connected with police and firefighting functions, are not policeman or fireman positions.

(b) *Providing coverage.* A State may provide coverage of:

(1) Policemen's and firemen's positions not under a retirement system as part of an absolute coverage group;

(2) Policemen's or firemen's positions, or both, as part of a retirement system coverage group for the States specified in paragraph (c)(1) of this section; or

(3) Firemen's positions only as a separate retirement system as set forth in paragraph (c)(2) of this section.

(c) *Policemen and firemen in positions under a retirement system.* (1) Some States and all interstate instrumentalities may provide coverage for employees in policemen's or firemen's positions, or both, which are under a retirement system by following the majority vote referendum procedures in § 404.1206(d). The States are Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, and Washington. Some States and all interstate instrumentalities may use the desire for coverage procedures in § 404.1207. The States are California, Florida, Georgia, Hawaii, New York, North Dakota, Tennessee, Texas, Vermont, and Washington.

(2) All States not listed in paragraph (c)(1) of this section may provide coverage for employees in firemen's positions which are under a retirement system by:

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(i) Following the referendum procedures in § 404.1206(d); and

(ii) Submitting a certification by the governor, or an individual named by her or him, to the Secretary that extending coverage to this group of employees will improve their overall benefit protection.

How Coverage Under Agreements Is Obtained and Continues

§ 404.1214 Agreement for coverage.

(a) *General.* A State may enter into a written agreement with the Secretary to provide for Social Security coverage for its employees or the employees of one or more of its political subdivisions. An interstate instrumentality may enter into a similar agreement for its employees. These agreements cover employees in groups of positions or by types of services rather than the individual employees.

(b) *Procedures.* A State or interstate instrumentality may request coverage by submitting to SSA a proposed written agreement for the desired coverage.

(c) *Authority to enter into an agreement for coverage*—(1) *Federal law.* Section 218(a) of the Act requires the Secretary to enter into an agreement, at the request of the State, to extend Social Security coverage to the State's employees or those of its political subdivisions. Section 218(g) authorizes the Secretary to enter into an agreement, at the request of an interstate instrumentality, to extend Social Security coverage to the employees of the interstate instrumentality.

(2) *State law.* State law must authorize a State or an interstate instrumentality to enter into an agreement with the Secretary for Social Security coverage.

(d) *Provisions of the agreement.* The agreement must include:

(1) A description of the specific services to be covered and excluded;

(2) The State's promise to pay, to the Secretary of the Treasury, contributions equal to the sum of the taxes which would be required under the Federal Insurance Contributions Act from employers and employees if the employment were in the private sector;

(3) The State's promise to comply with the regulations the Secretary prescribes for carrying out the provisions of section 218 of the Act; and

(4) Identification of the political subdivisions, coverage groups, or services being covered and the services that are excluded.

The agreement must be signed by the authorized State or interstate instrumentality official and the Secretary or his or her designee.

(e) *Effective date.* The agreement must specify an effective date of coverage. However, the effective date cannot be earlier than the last day of the sixth calendar year preceding the year in which the agreement is mailed or delivered by other means to the Secretary. The agreement is effective after the effective date.

(f) *Applicability of agreement.* The agreement establishes the continuing relationship between the Secretary and the State or interstate instrumentality except as it is modified (see §§ 404.1215–404.1217).

§ 404.1215 Modification of agreement.

(a) *General.* A State or interstate instrumentality may modify in writing its agreement, for example, to:

(1) Exclude, in limited situations, employee services or positions previously covered;

(2) Include additional coverage groups; or

(3) Include as covered services:

(i) Services of covered employees for additional retroactive periods of time; and

(ii) Services previously excluded from coverage.

(b) *Controlling date for retroactive coverage.* A State may specify in the modification a date to make all individuals in the coverage group who were in an employment relationship on that date eligible for retroactive coverage. This date is known as the controlling date for retroactive coverage. It can be no earlier than the date the modification is mailed or otherwise delivered to the Secretary nor can it be later than the date the modification is signed by the Secretary. If the State does not designate a controlling date, the date the modification is signed by the Secretary is the controlling date.

(c) *Conditions for modification.* The provisions of section 218 of the Act which apply to the original agreement also apply to a modification to the agreement.

(d) *Effective date.* Generally, a modification must specify an effective date of coverage. However, the effective date cannot be earlier than the last day of the sixth calendar year preceding the year in which the modification is mailed or delivered by other means to the Secretary. The modification is effective after the effective date.

§ 404.1216 Modification of agreement to correct an error.

(a) *General.* If an agreement or modification contains an error, the State may correct the error by a subsequent modification to the agreement. For example, the agreement or modification incorrectly lists a covered service as an optionally excluded service or shows an improper effective date of coverage. In correcting this type of error, which affects the extent of coverage, the State must submit a modification along with evidence to establish that the error occurred. However, a modification is not needed to correct minor typographical or clerical errors. For example, an agreement or modification incorrectly lists School District No. 12 as School District No. 13. This type of error can be corrected based on a written request from the appropriate official of the State or interstate instrumentality.

(b) *Correction of errors involving erroneous reporting to the IRS—for wages paid prior to 1987.* Where a State or political subdivision makes reports and payments to the Internal Revenue Service under the provisions of the Federal Insurance Contributions Act which apply to employees in private employment in the mistaken belief that this action would provide coverage for its employees, the State may provide the desired coverage for those same periods of time by a subsequent modification to its agreement. If State law permits, the State may make that coverage effective with the first day of the first period for which the erroneous reports and payments were made. (In this instance, the limitation on retroactive coverage described in § 404.1215(d) is not applicable.) Where the State does not want to provide such retroactive coverage or is not permitted to do so by State law, the State may provide the coverage for the affected coverage group as of a specified date (§ 404.1215(b)). The coverage would then apply to the services performed by individuals as members of the coverage group

(1) Who were employees on that date, and

(2) Whose wages were erroneously reported to IRS, and

(3) For whom a refund of FICA taxes has not been obtained at the time the Secretary executes the modification.

§ 404.1217 Continuation of coverage.

The coverage of State and local government employees continues as follows:

(a) *Absolute coverage group.* Generally, the services of an employee covered as a part of an absolute coverage group (see § 404.1205) continue to be covered indefinitely. A position covered as a part of an absolute coverage group continues to be covered even if the position later comes under a retirement system. This includes policemen's and firemen's positions

which are covered with an absolute coverage group.

(b) *Retirement system coverage group.* Generally, the services of employees in positions covered as a part of a retirement system coverage group continue to be covered indefinitely. For a retirement system coverage group made up of members who chose coverage, a position continues to be covered until it is removed from the retirement system and is no longer occupied by a member who chose coverage or by a new member of the system. Coverage is not terminated because the positions are later covered under additional retirement systems or removed from coverage under a retirement system, or because the retirement system is abolished with respect to the positions. However, if the retirement system has been abolished, newly created or reclassified positions or positions in a newly created political subdivision cannot be covered as a part of the retirement system coverage group. If the retirement system is not abolished, a newly created or reclassified position is a part of the coverage group if the position would have been a part of the group had it existed earlier. If the retirement system coverage group is made up of members who chose coverage, the newly created or reclassified position is a part of the coverage group if it is occupied by a member who chose coverage or by a new member.

§ 404.1218 Resumption of coverage.

Before April 20, 1983, an agreement could be terminated in its entirety or with respect to one or more coverage groups designated by the State. Coverage of any coverage group which has been previously terminated may be resumed by a modification to the agreement.

§ 404.1219 Dissolution of political subdivision.

If a political subdivision whose employees are covered under the agreement is legally dissolved, the State shall give us satisfactory evidence of its dissolution or nonexistence. The evidence must establish that the entity is not merely inactive or dormant, but that it no longer legally exists. We will notify the State whether the evidence is satisfactory.

How to Identify Covered Employees

§ 404.1220 Identification numbers.

(a) *State and local government.* (1) When a State enters into an agreement with the Secretary under section 218 of the Act, SSA assigns one identification number to the State (if State employees are covered under the agreement) and one identification number to each political subdivision included under the agreement. Similarly, in the case of an agreement with an interstate instrumentality, SSA assigns one identification number to the instrumentality. SSA notifies the appropriate official of the State or instrumentality of the number assigned.

(2) If a State or political subdivision is paying wages for covered transportation service (as determined under section 210(k) of the Act) which are subject to the Federal Insurance Contributions Act, the appropriate IRS Service Center assigns an identification number to the State or political subdivision. The IRS Service Center procedures for issuing identification numbers to States or political subdivisions may be found in 26 CFR 31.6011(b)–1.

(b) *Coverage group number for coverage groups.* If a State's agreement provides coverage for a State or a political subdivision based on designated proprietary or governmental functions, the State shall furnish a list of those groups. The list shall identify each designated function and the title and business address of the official responsible for filing each designated group's wage report. SSA assigns a coverage group number to each designated group based on the information furnished in the list.

(c) *Unit numbers for payroll record units.* SSA assigns, at a State's request, unit numbers to payroll record units within a State or political subdivision. When a State requests separate payroll record unit numbers, it must furnish the following:

(1) The name of each payroll record unit for the coverage group; and

(2) The title and business address of the official responsible for each payroll unit.

(d) *Unit numbers where contribution amounts are limited—for wages paid prior to 1987.* An agreement, or modification of an agreement, may provide for the computation of contributions as prescribed in § 404.1256 for some employees of a political subdivision. In this situation, SSA assigns special unit numbers to the political subdivision to identify those employees. SSA does not assign a special unit number to a political subdivision in which the contributions for all employees are computed as prescribed in § 404.1256.

(e) *Use.* The employer shall show the appropriate SSA issued identifying number, including any coverage group or payroll record unit number, on records, reports, returns, and claims to report wages, adjustments, and contributions.

What Records of Coverage Must Be Kept

§ 404.1225 Records—for wages paid prior to 1987.

(a) *Who keeps the records.* Every State which enters into an agreement shall keep, or require the political subdivisions whose employees are included under its agreement to keep, accurate records of all remuneration (whether in cash or in a medium other than cash) paid to employees performing services covered by that agreement. These records shall show for each employee:

(1) The employee's name, address, and Social Security number;

(2) The total amount of remuneration (including any amount withheld as contributions or for any other reason) and the date the remuneration was paid and the period of services covered by the payment;

(3) The amount of remuneration which constitutes wages (see § 404.1041 for wages and §§ 404.1047–404.1059 for exclusions from wages); and

(4) The amount of the employee's contribution, if any, withheld or collected, and if collected at a time other than the time such payment was made, the date collected. If the total remuneration (paragraph (a)(2) of this section) and the amount which is subject to contribution (paragraph (a)(3) of this section) are not equal, the reason shall be stated.

The State shall keep copies of all returns, reports, schedules, and statements required by this subpart, copies of claims for refund or credit, and copies of documents about each adjustment made under § 404.1265 or § 404.1271 as part of its records. These records may be maintained by the State or, for employees of a political subdivision, by the political subdivision. Each State shall use forms and systems of accounting as will enable the Secretary to determine whether the contributions for which the State is liable are correctly figured and paid.

(b) *Place and period of time for keeping records.* All records required by this section shall:

(1) Be kept at one or more convenient and safe locations accessible to reviewing personnel (see § 404.1232(a));

(2) Be available for inspection by reviewing personnel at any time; and

(3) Be maintained for at least four years from the date of the event recorded. (This four-year requirement applies regardless of whether, in the meantime, the employing entity has been legally dissolved or, before April

20, 1983, the agreement was terminated in its entirety or in part.)

Review of Compliance By State With Its Agreement

§ 404.1230 Onsite review program.

To ensure that the services of employees covered by a State's agreement are reported and that those employees receive Social Security credit for their covered earnings, we periodically review the source records upon which a State's contribution returns and wage reports are based. These reviews are designed:

(a) To measure the effectiveness of the State's systems for ensuring that all wages for those employees covered by its agreement are reported and Social Security contributions on those wages are paid;

(b) To detect any misunderstanding of coverage or reporting errors and to advise the State of the corrective action it must take; and

(c) To find ways to improve a State's recordkeeping and reporting operations for the mutual benefit of the State and SSA.

§ 404.1231 Scope of review.

The onsite review focuses on four areas:

(a) State's controls and recordkeeping—to assess a State's systems for assuring timely receipt, correctness, and completeness of wage reports and contribution returns;

(b) Instruction, education, and guidance a State provides local reporting officials—to assess a State's systems for assuring on a continuing basis that all reporting officials and their staffs have the necessary instructions, guidelines, and training to meet the State's coverage, reporting and recordkeeping requirements;

(c) Compliance by reporting officials—to assess a State's systems for assuring that the reporting officials in the State have adequate recordkeeping procedures, are properly applying the appropriate provisions of the State's agreement, and are complying with reporting requirements; and

(d) Quality control with prompt corrective action—to assess a State's systems for assuring that its reports and those of its political subdivisions are correct, for identifying the causes and extent of any deficiencies, and for promptly correcting these deficiencies.

§ 404.1232 Conduct of review.

(a) Generally, SSA staff personnel conduct the onsite review. Occasionally, members of the Office of the Inspector General, Department of Health and Human Services (HHS), may conduct or participate in the review.

(b) The review is done when considered necessary by SSA or HHS or, if practicable, in response to a State's specific request for a review.

(c) All pertinent source records prepared by the State or its political subdivisions are reviewed, on site, to verify the wage reports and contribution returns. We may review with the appropriate employees in a subdivision those source records and how the information is gathered, processed, and maintained. We notify the State's Social Security Administrator when we plan to make the review and request her or him to make the necessary arrangements.

(d) The review is a cooperative effort between SSA and the States to improve the methods for reporting and maintaining wage data to carry out the provisions of the agreement.

§ 404.1234 Reports of review's findings.

We provide the State Social Security Administrator with reports of the review's findings. These reports may contain coverage questions which need development and resolution and reporting errors or omissions for the State to correct promptly. These reports may also recommend actions the State can take to improve its information gathering, recordkeeping, and wage reporting systems, and those of its political subdivisions.

How to Report Wages and Contributions—for Wages Paid Prior to 1987

§ 404.1237 Wage reports and contribution returns—general—for wages paid prior to 1987.

(a) *Wage reports.* Each State shall report each year the wages paid each covered employee during that year. With the wage report the State shall also identify, as prescribed by SSA, each political subdivision by its assigned identification number and, where appropriate, any coverage group or payroll record unit number assigned.

(b) *Wage reports of remuneration for agricultural labor.* A State may exclude from its agreement any services of employees the remuneration for which is not wages under section 209(h)(2) of the Act. Section 209(h)(2) excludes as wages the cash remuneration an employer pays employees for agricultural labor which is less than $150 in a calendar year, or, if the employee performs the agricultural labor for the employer on less than 20 days during a calendar year, the cash remuneration computed on a time basis. If a State does exclude the services and the individual meets the cash-pay or 20-day test described in § 404.1056, the State shall identify on the wage report and on any adjustment report each individual performing agricultural labor and the amount paid to her or him.

(c) *Contribution returns.* The State shall forward the contribution return as set out in § 404.1249(b). It shall make contribution payments under § 404.1262.

§ 404.1239 Wage reports for employees performing services in more than one coverage group—for wages paid prior to 1987.

(a) *Employee of State in more than one coverage group.* If a State employee is in more than one coverage group, the State shall report the employee's total wages, up to the annual wage limitations in § 404.1047, as though the wages were paid by only one of the coverage groups.

(b) *Employee of political subdivision in more than one coverage group.* If an employee of a political subdivision is in more than one coverage group, the State shall report the employee's total wages, up to the annual wage limitations in § 404.1047, as though the wages were paid by only one of the coverage groups.

(c) *Employee of State and one or more political subdivisions.* If an individual performs covered services as an employee of the State and an employee of one or more political subdivisions and the State agreement does not provide for limiting contributions under section 218(e)(2) of the Act as it read prior to the enactment of Pub. L. 99–509, the State and each political subdivision shall report the amount of covered wages it paid the employee up to the annual wage limitations in § 404.1047.

(d) *Employee of more than one political subdivision.* If an individual performs covered services as an employee of more than one political subdivision and the State agreement does not provide for limiting contributions under section 218(e)(2) of the Act as it read prior to the enactment of Pub. L. 99–509, each political subdivision shall report the covered wages it paid the employee up to the annual wage limitations in § 404.1047.

(e) *Employee performing covered services for more than one political entity where section 218(e)(2) of the Act is applicable.* If an agreement provides for limiting contributions under section 218(e)(2) of the Act as it read prior to the enactment of Pub. L. 99–509, the reporting officials compute the total amount of wages paid the employee by two or more political subdivisions of a State, or a State and one or more of its political subdivisions, which were subject to section 218(e)(2) of the Act. The State reports the amount of wages

paid up to the annual wage limitations in § 404.1047. The employee is treated as having only one employer. If the employee also had wages not subject to section 218(e)(2) of the Act, the State shall report those wages separately.

§ 404.1242 Back pay.

(a) *"Back pay"* defined. Back pay is pay received in one period of time which would have been paid in a prior period of time except for a wrongful or improper action taken by an employer. It includes pay made under Federal or State laws intended to create an employment relationship (including situations where there is unlawful refusal to hire) or to protect an employee's right to wages.

(b) *Back pay under a statute.* Back pay under a statute is a payment by an employer following an award, determination or agreement approved or sanctioned by a court or administrative agency responsible for enforcing a Federal or State statute protecting an employee's right to employment or wages. Examples of these statutes are:

(1) National Labor Relations Act or a State labor relations act;

(2) Federal or State laws providing reemployment rights to veterans;

(3) State minimum wage laws; and

(4) Civil Rights Act of 1964.

Payments based on legislation comparable to and having a similar effect as those listed in this paragraph may also qualify as having been made under a statute. Back pay under a statute, excluding penalties, is wages if paid for covered employment. It is allocated to the periods of time in which it should have been paid if the employer had not violated the statute. For backpay awards affecting periods prior to 1987, a State must fill a wage report and pay the contributions due for all periods involved in the back pay award under the rules applicable to those periods.

(c) *Back pay not under a statute.* Where the employer and the employee agree on the amount payable without any award, determination or agreement approved or sanctioned by a court or administrative agency, the payment is not made under a statute. This back pay cannot be allocated to prior periods of time but must be reported by the employer for the period in which it is paid.

§ 404.1243 Use of reporting forms—for wages paid prior to 1987.

(a) *Submitting wage reports.* In the form and manner required by SSA, a State shall submit an annual report of the covered wages the State and its political subdivisions paid their employees. Any supplemental, adjustment, or correctional wage report filed is considered a part of the State's wage report.

(b) *Correction of errors.* If a State fails to report or incorrectly reports an employee's wages on its wage report, the State shall submit a corrective report as required by SSA.

(c) *Reporting on magnetic tape or other media.* After approval by SSA, a State may substitute magnetic tape or other media for any form required for submitting a report or reporting information.

§ 404.1247 When to report wages—for wages paid prior to 1987.

A State shall report wages for the calendar year in which they were actually paid. If the wages were constructively paid in a prior calendar year, the wages shall be reported for the prior year (see § 404.1042(b) regarding constructive payment of wages).

§ 404.1249 When and where to make deposits of contributions and to file contribution returns and wage reports—for wages paid prior to 1987.

(a) *Deposits of contributions.* The State shall pay contributions in the manner required in § 404.1262. (For failure to make deposits when due see § 404.1265.) The contribution payment is considered made when received by the appropriate Federal Reserve bank or branch (see § 404.1262). Except as provided in paragraphs (b) (2) and (3) and paragraph (c) of this section, contributions are due and payable as follows:

(1) *For wages paid before July 1, 1980.* Contribution payments for wages paid in a calendar quarter are due on the 15th day of the second month following the end of the calendar quarter during which the wages were paid.

(2) *For wages paid beginning July 1, 1980, and before January 1984.* Contribution payments for wages paid in a calendar month are due within the thirty day period following the last day of that month.

(3) *For wages paid after December 1983 and prior to 1987.* Contribution payments for wages paid in the first half of a calendar month are due on the last day of that month. Contribution payments for wages paid in the second half of that calendar month are due on the fifteenth day of the next month. (For purposes of this section, the first half of a calendar month is the first 15 days of that month and the second half is the remainder of that month.)

(b) *Contribution returns and wage reports*—(1) *Where to be filed.* The State shall file the original copies of all contribution returns, wage reports, and adjustment reports with the SSA.

(2) *When to be filed*—(i) *For years prior to execution of agreement or modification.* If an agreement or modification provides for the coverage of employees for periods prior to 1987, the State shall pay contributions due and shall file wage reports with SSA for these periods within 90 days after the date of the notice that the Secretary has signed the agreement or modification.

(ii) *For year of execution of agreement or modification.* If the agreement or modification provides for the coverage of employees for the year of execution of the agreement or modification, the State may, within 90 days after the date of the notice that the Secretary has signed the agreement or modification, submit a single contribution return and pay all contributions due for the following periods:

(A) The month in which the agreement or modification was signed;

(B) Any prior months in that year; and

(C) Any subsequent months before January 1984 (half-months after December 1983) whose contribution return and payment due date is within this 90 day period. The State shall file wage reports for that year by February 28 of the year following the date of execution or within 90 days of the date of the notice, whichever is later.

(iii) *For years after execution of agreement or modification.* Except as described in paragraph (b)(2)(ii) of this section, when the State pays its contributions under paragraph (a) of this section, it shall also file a contribution return. The State shall file the wage report for any calendar year after the year of execution of the agreement or modification by February 28 of the following calendar year.

(iv) For good cause shown, and upon written request by a State, the Secretary may allow additional time for filing the reports and paying the related contributions described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(3) *Due date is on a weekend, legal holiday or Federal nonworkday.* If the last day for filing the wage report falls on a weekend, legal holiday or Federal nonworkday, the State may file the wage report on the next Federal workday. If the due date for paying contributions for the wages paid in a period (as specified in paragraph (a) of this section) falls on a weekend, legal holiday or Federal nonworkday, the State shall pay the contributions and shall file the contribution return no later than—

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(i) The preceding Federal workday for wages paid in July 1980 through December 1983;

(ii) The next Federal workday for wages paid before July 1980 or after December 1983.

(4) *Submitting reports and payments.* When submitting the contribution returns or wage reports the State shall release them in time to reach SSA by the due date. When submitting contribution payments as described in § 404.1262, the State shall release the payments in time to reach the appropriate Federal Reserve bank or branch by the due date. In determining when to release any returns, reports, or payments the State shall provide sufficient time for them to timely reach their destination under the method of submission used, e.g., mail or electronic transfer of funds.

(c) *Payments by third party on account of sickness or accident disability.* Where a third party makes a payment to an employee on account of sickness or accident disability which constitutes wages for services covered under a State agreement, the wages will be considered, for purposes of the deposits required under this section, to have been paid to the employee on the date on which the employer receives notice from the third party of the amount of the payment. No interest will be assessed for failure to make a timely deposit of contributions due on such wages for which a deposit was made after December 1981 and before July 1982, to the extent that the failure to make the deposit timely is due to reasonable cause and not willful neglect.

§ 404.1251 Final reports—for wages paid prior to 1987.

If a political subdivision is legally dissolved, the State shall file a final report on that entity. The report shall include each coverage group whose existence ceases with that of the entity. It shall:

(a) Be marked "final report";

(b) Cover the period during which final payment of wages subject to the agreement is made; and

(c) Indicate the last date wages were paid.

With the final report, the State shall submit a statement showing the title and business address of the State official responsible for keeping the State's records and of each State and local official responsible for keeping the records for each coverage group whose existence is ended. The State shall also identify, as prescribed by SSA, each political subdivision by its assigned number and, where applicable, any coverage group or payroll record unit number assigned.

What Is a State's Liability for Contributions—for Wages Paid Prior to 1987

§ 404.1255 State's liability for contributions—for wages paid prior to 1987.

A State's liability for contributions equals the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954, if the services of the employees covered by the State's agreement were employment as defined in section 3121 of the Code. The State's liability begins when those covered services are performed, for which wages are actually or constructively paid to those individuals, including wages paid in a form other than cash (see § 404.1041(d)). If an agreement is effective retroactively, the State's liability for contributions on wages paid during the retroactive period begins with the date of execution of the agreement or applicable modification. Where coverage of a coverage group has been terminated, the State is liable for contributions on wages paid for covered services even if the wages are paid after the effective date of termination of coverage.

§ 404.1256 Limitation on State's liability for contributions for multiple employment situations—for wages paid prior to 1987.

(a) *Limitation due to multiple employment.* Where an individual in any calendar year performs covered services as an employee of a State and as an employee of one or more political subdivisions of the State, or as an employee of more than one political subdivision; and the State provides all the funds for payment of the amounts which are equivalent to the taxes imposed on the employer under FICA on that individual's remuneration for those services; and no political subdivision reimburses the State for paying those amounts; the State's agreement or modification of an agreement may provide that the State's liability for the contributions on that individual's remuneration shall be computed as though the individual had performed services in employment for only one political subdivision. The State may then total the individual's covered wages from all these governmental employers and compute the contributions based on that total subject to the wage limitations in § 404.1047.

(b) *Identification of employees in multiple employment.* An agreement or modification of an agreement providing for the computation of contributions as described in paragraph (a) of this section shall identify the class or classes of employees to whose wages this method of computing contributions applies. For example, the State may provide that such computation shall apply to the wages paid to all individuals for services performed in positions covered by a particular retirement system, or to the wages paid to all individuals who are members of any two or more coverage groups designated in an agreement or modification. The State shall promptly notify SSA if the conditions in paragraph (a) of this section are no longer met by any class or classes of employees identified in an agreement or modification. In its notification, the State shall identify each class of employees and the date on which the conditions ceased to be met.

(c) *Effective date.* In the agreement or modification, the State shall provide that the computation of contributions shall apply to wages paid after the effective date stated in the agreement or modification. That date may be the last day of any calendar year; however, it may be no earlier than January 1 of the year in which the agreement or modification is submitted to SSA.

Figuring the Amount of the State's Contributions—for Wages Paid Prior to 1987

§ 404.1260 Amount of contributions—for wages paid prior to 1987.

The State's contributions are equal to the product of the applicable contribution rate (which is equivalent to both the tax rates imposed under sections 3101 and 3111 of the Internal Revenue Code) times the amount of wages actually or constructively paid for covered services each year (subject to the wage limitations in § 404.1047) to the employee.

§ 404.1262 Manner of payment of contributions by State—for wages paid prior to 1987.

When paying its contributions, the State shall deposit its payment at the specific Federal Reserve bank or branch designated by SSA.

§ 404.1263 When fractional part of a cent may be disregarded—for wages paid prior to 1987.

In paying contributions to a Federal Reserve bank or branch, a State may disregard a fractional part of a cent unless it amounts to one-half cent or more, in which case it shall be increased to one cent. Fractional parts of a cent shall be used in computing the total of contributions.

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If a State Fails To Make Timely Payments—for Wages Paid Prior to 1987

§ 404.1265 Addition of interest to contributions—for wages paid prior to 1987.

(a) *Contributions not paid timely.* If a State fails to pay its contributions to the appropriate Federal Reserve bank or branch (see § 404.1262), when due under § 404.1249(a), we add interest on the unpaid amount of the contributions beginning with the date the payment was due, except as described in paragraphs (b) and (c) of this section. Interest, if charged, begins with the due date even if it is a weekend, legal holiday or Federal nonwork day. Interest is added at the rate prescribed in section 218(j) of the Act as it read prior to the enactment of Pub. L. 99–509.

(b) *Method of making adjustment.* (1) If a State shall file a contribution return and shall accompany such return with payment of contributions due and payable as reported on such return in accordance with § 404.1249 but the amount of the contributions reported and paid is less than the correct amount of contributions due and payable and the underpayment of contributions is attributable to an error in computing the contributions (other than an error in applying the rate of contributions in effect at the time the wages were paid), the State shall adjust the underpayment by reporting the additional amount due by reason of such underpayment either as an adjustment of total contributions due with the first wage report filed after notification of the underpayment by the Social Security Administration, or as a single adjustment of total contributions due with any contribution return filed prior to the filing of such wage report.

(2) If an underpayment of contributions is due to an underreporting of or a failure to report one or more employees:

(i) Where the underreporting or failure to report has been ascertained by the State, the State may cause an adjustment by filing a report within 30 days after ascertainment of the error by the State;

(ii) Where the underreporting or failure to report has been ascertained by the Social Security Administration, a notification of underpayment shall be forwarded to the State, and the State may cause an adjustment of the underpayment by returning to the Social Security Administration, within 30 days from the date of the notification, a copy of the notification of underpayment and the State's corrected report. The report shall show the amount of wages, if any, erroneously reported for the reporting period and the correct amount of wages that should have been reported and the identification number of the State or the political subdivision for each employee who was omitted or erroneously reported. The filing to correct an underreporting of or a failure to report one or more employees' wages shall not constitute an adjustment under this section unless the wages were erroneously omitted or erroneously reported.

(c) *Payment.* The amount of each underpayment adjusted in accordance with this section shall be paid to the Federal Reserve Bank, or branch thereof, serving the district in which the State is located, without interest, at the time of reporting the adjustment; except that where any amounts due with respect to such an adjustment had been paid in error to IRS and a refund thereof timely requested from, or instituted by, IRS, the amount of underpayment adjusted in accordance with this section, plus any interest paid by IRS on the amount of such underpayment, shall be paid to the Federal Reserve Bank, or branch thereof, serving the district in which the State is located, at the time of reporting the adjustment or within 30 days after the date of issuance by IRS of the refund of the erroneous payments, whichever is later. Except as provided in the preceding sentence of this paragraph, if an adjustment is reported pursuant to paragraph (b) of this section, but the amount thereof is not paid when due, interest thereafter accrues.

(d) *Verifying contributions paid against reported wages.* We check the computation of contributions to verify that a State has paid the correct amount of contributions on the wages it reports for a calendar year (see § 404.1249(b)(2)). If we determine that a State paid less than the amount of contributions due for that year, we add interest to the amount of the underpayment. We would add interest beginning with the date the unpaid contributions were initially due to the date those contributions are paid. However, if the total amount of the underpayment is 5 percent or less than 5 percent of the contributions due for a calendar year based upon the State's wage report and the State deposits the underpaid amount within 30 days after the date of our notification to the State of the amount due, the State may request that the interest on the underpaid amount be waived for good cause. This request must be made within 30 days of our notification to the State of the amount due. Such requests will be evaluated on an individual basis. The evaluation will include, but not be limited to, consideration of such factors as the circumstances causing the late payment, the State's past record of late payments and the amount involved.

Examples

(1) The records of a political subdivision for the month of June are destroyed by fire. The State makes an estimated deposit of contributions for the month of June for that political subdivision and deposits contributions for the month of June for all other political subdivisions based on actual records. At the time SSA verifies contributions paid against reported wages, we discover that the State has paid only 97 percent of its total liability for the year. Within 30 days after we notify it of the amount due, the State asks that we waive the interest on the unpaid amount and the State deposits the unpaid amount. In this situation, we would waive the interest on the unpaid contributions.

(2) We would waive interest if:

(i) Some of the political subdivisions made small arithmetical errors in preparing their reports of wages,

(ii) After verification of the contributions paid against reported wages, SSA discovers that minimal additional contributions are due,

(iii) Within 30 days of our notice to the State regarding this underpayment the State, which usually makes its deposits timely, pays the amount due, and

(iv) Within that same 30 day period the State requests that we waive the interest due.

(3) We would not waive interest where a State frequently has problems depositing its contributions timely. Reasons given for the delays are, e.g., the computer was down, the 5 p.m. mail pickup was missed, one of the school district reports was misplaced. If requested we would not waive interest on this State's late payment of contributions based upon its past record of late payments and because of the circumstances cited.

(e) *Due date is on a weekend, legal holiday or Federal nonworkday.* If the last day of the 30-day periods specified in paragraphs (b) and (d) of this section is on a weekend, legal holiday or Federal nonworkday, the State shall make the required deposit or request for waiver of payment of interest on the next Federal workday.

§ 404.1267 Failure to make timely payments—for wages paid prior to 1987.

If a State does not pay its contributions when due, the Secretary has the authority under section 218(j) of the Act as it read prior to the enactment of Pub. L. 99–509 to deduct the amounts of the unpaid contributions plus interest at the rate prescribed from any amounts certified by her or him to the Secretary of the Treasury for payments to the State under any other provision of the Social Security Act. The Secretary notifies the Secretary of the Treasury of the amounts deducted and requests that the amount be credited to the Trust Funds. Amounts deducted are

considered paid to the State under the other provision of the Social Security Act.

How Errors in Reports and Contributions Are Adjusted—for Wages Paid Prior to 1987

§ 404.1270 Adjustments in general—for wages paid prior to 1987.

States have the opportunity to adjust errors in the payment of contributions. A State but not its political subdivisions is authorized to adjust errors in the underpayment of contributions. Similarly, the State shall file all claims for credits or refunds and SSA makes the credits and refunds only to the State. Generally, we do not refund contributions in cash to a State unless the State is not expected to have future liability for contributions under section 218 of the Act.

§ 404.1271 Adjustment of overpayment of contributions—for wages paid prior to 1987.

(a) *General.* If a State pays more than the correct amount of contributions, the State shall adjust the overpayment with the next contribution return filed on which the amount owed equals or exceeds the amount of the overpayment.

(b) *Overpayment due to overreporting of wages*—(1) *Report to file.* If the overpayment is due to the State's reporting more than the correct amount of wages paid to one or more employees during a reporting period and the overpayment is not adjusted under paragraph (a) of this section, the State shall file a report on the appropriate form showing:

(i) The corrected wage data as prescribed by SSA; and

(ii) The reason why the original reporting was incorrect.

(2) *Refund or credit of overpayment where section 218(e)(2) of the Act not applicable.* If:

(i) The State collected contributions from employees in excess of the amount of taxes that would have been required under section 3101 of the Internal Revenue Code; and

(ii) The State paid to the Secretary of the Treasury those contributions plus a matching amount in excess of the taxes which would have been required from an employer under section 3111 of the Code; and

(iii) The services of the employees in question would have constituted employment under section 3121(b) of the Code; and

(iv) Section 218(e)(2) of the Act as it read prior to the enactment of Pub. L. 99–509 does not apply (see § 404.1256(a)), then the State shall adjust the overpaid contributions under paragraph (b)(1) of this section. With its adjustment the State, where appropriate, shall include on the prescribed form a statement that the employees from whom the excess contributions were collected have not received nor expect to receive a refund of excess contributions under section 6413(c) of the Internal Revenue Code of 1954 (see § 404.1275(b)). Generally, if the State does not include this statement with its adjustment request, we only refund or credit the State for up to one-half of the overpaid amount.

(c) *Refund or credit of overpayment where section 218(e)(2) of the Act applicable.* (1) *General.* If—

(i) The overreporting of the amount of wages paid to one or more employees during a reporting period(s) is due to a computation of contributions under § 404.1256 for a year or years prior to the year in which the agreement or modification providing for the computation is entered into, or

(ii) The overreporting is due to a failure to compute § 404.1256,

the State shall adjust the overpayment under paragraph (b)(1) of this section. An overpayment due to overreported wages which does not result from the computation of contributions or a failure to compute contributions under § 404.1256 shall also be adjusted by the State under paragraph (b)(1) of this section. If the adjustment of the overpayment results in an underreporting of wages for any employee by the State or any political subdivision, the State shall include with the report adjusting the overpayment a report adjusting each underreporting. If the adjustment of the overpayment does not result in an underreporting of wages for any employee by the State or any political subdivision, the State shall include with the report adjusting the overpayment a statement that the adjustment of the overpayment does not result in any underreporting.

(2) *Amount of refund or credit.* If the State collects excess contributions from employees, the State's claim for refund or credit is limited to the overpaid amounts. (See § 404.1275 relating to adjustment of employee contributions.) If—

(i) The State collected the correct amount of contributions from employees based on the amount of wages reported and the Forms W–2 issued to the employees show only the amount of contributions actually collected, but the amount of wages reported is being adjusted downward, or

(ii) The State collects excess contributions from employees but Forms W–2 have not been issued for an amount of wages which is being adjusted downward, the State may claim a refund or credit for the overpaid amounts. Where the State's claim for refund or credit is for the total overpaid amount, the adjustment report shall include a statement that excess contributions have not been collected from employees, or, where excess contributions have been collected, that Forms W–2 have not been issued and that, when issued, they will show the correct amount of employee contributions.

§ 404.1272 Refund or recomputation of overpayments which are not adjustable—for wages paid prior to 1987.

(a) *General.* If a State pays more than the correct amount of contributions or interest to the appropriate Federal Reserve bank or branch (see § 404.1262), and no adjustment in the amount of reported wages is necessary, that State may file a claim for refund or recomputation of the overpayment.

(b) *Form of claim.* No special form is required to make a claim for a refund or recomputation. If a credit is taken under § 404.1271, a claim is not required.

(c) *Proof of representative capacity.* If a report or return is made by an authorized official of the State who ceases to act in an official capacity and a claim for a refund is made by a successor official, the successor official must submit with the claim written evidence showing that he or she has the authority to make a claim for and receive a refund of any contributions paid by the former official. The written evidence is not necessary if the successor official has previously filed one or more reports or returns which contain her or his signature and official title.

§ 404.1275 Adjustment of employee contributions—for wages paid prior to 1987.

The amount of contributions a State deducts from an employee's remuneration for covered services, or any correction of that amount, is a matter between the employee and the State or political subdivision. The State shall show any correction of an employee's contribution on statements it furnishes the employee under § 404.1226. Where the State issues an employee a Form W–2 and then submits an overpayment adjustment but claims less than the total overpaid amount as a refund or credit, the State shall not correct the previously issued Form W–2 to reflect that adjustment.

§ 404.1276 Reports and payments erroneously made to Internal Revenue Service-transfer of funds—for wages paid prior to 1987.

(a) *General.* In some instances, State or local governmental entities not covered under an agreement make reports and pay contributions to IRS under the Federal Insurance Contributions Act (FICA) procedures applicable to private employers in the mistaken belief that this provides Social Security coverage under section 218 of the Act for their employees. In other instances, entities which are covered under an agreement erroneously report to IRS, or a State or local government employee reports other employees to IRS or reports to IRS as a self-employed individual. Where these reports and payments are erroneously made to IRS, the State may correct the error and obtain coverage under its agreement as described in paragraphs (b) through (f) of this section.

(b) *Political subdivision not included in the State agreement.* We notify the State that if it desires coverage, it may be provided by either a regular modification or an error modification, depending on the circumstances (§§ 404.1215 and 404.1216). In most cases, the State may obtain coverage by a regular modification. If a regular modification cannot be used (e.g., State law does not permit the retroactive effective date which would be desired), the State may use an error modification. The effective date of either modification depends on the facts of the situation being corrected.

(c) *Political subdivision included in the agreement.* If a political subdivision included in the agreement erroneously makes reports and payments under FICA procedures, the State must correct the reportings for periods not barred by the statute of limitations. If the covered entity reported both under the agreement and under FICA procedures, we notify IRS and make necessary corrections in the earnings records. We also advise the State that the entity which reported under FICA procedures should request a refund of payments erroneously made to IRS.

(d) *State and local government employees erroneously reported as employees of individual or as self-employed.—(1) Covered entity.* If employees of a covered entity are erroneously reported as employees of an individual or as self-employed, we advise the State that the individual who made the reports should request a refund from IRS for periods not barred by the statute of limitations. We require the State to file correctional reports and returns for any periods open under the State and local statute of limitations.

(2) *Noncovered entity.* We advise the State that the individual who made the reports should request a refund from IRS for the periods not barred by the statute of limitations. If the State wishes to provide coverage, it must submit a modification as discussed in paragraph (b) of this section. If the State does not wish to provide coverage, we void the reports. Amounts reported for periods barred by the statute of limitations remain on the earnings records.

(e) *Filing wage reports and paying contributions.* Generally, the entity or individual that makes the erroneous reports and payments requests the refund from IRS for periods not barred by the statute of limitations. The State files the necessary reports with SSA and pays any contributions due. The reports shall conform to the coverage provided by the agreement to the extent permitted by the statute of limitations. The due date for these reports depends on whether original reports or adjustment reports are involved. Reports and contribution returns for the entire retroactive period of coverage provided by a regular or error modification are due 90 days after the date of execution of the modification. The time limitations for issuing assessments and credits or refunds extend from this due date. Thus, SSA may issue assessments or credits or refunds for periods barred to refund by IRS. The State may request that reports and payments for the IRS barred periods be considered made under the agreement as described in paragraph (f) of this section.

(f) *Use of transfer procedure.* In limited situations, the State may request that reports and payments the State or a political subdivision (but not an individual) erroneously made under FICA procedures and which have been posted to the employee's earnings record be considered made under the State's agreement. We use a transfer procedure to do this. The transfer procedure may be used only where

(1) The periods are open to assessment under the State and local statute of limitations;

(2) The erroneous reports to be transferred are posted to SSA's records;

(3) The periods are barred to refund under the IRS statute of limitations; and

(4) A refund is not obtained from IRS by the reporting entity.

How Overpayments of Contributions Are Credited or Refunded—for Wages Paid Prior to 1987

§ 404.1280 Allowance of credits or refunds—for wages paid prior to 1987.

If a State pays more than the amount of contributions due under an agreement, SSA may allow the State, subject to the time limitations in § 404.1282 and the exceptions to the time limitations in § 404.1283, a credit or refund of the overpayment.

§ 404.1281 Credits or refunds for periods of time during which no liability exists—for wages paid prior to 1987.

If a State pays contributions for any period of time for which contributions are not due, but the State is liable for contributions for another period, we credit the amount paid against the amount of contributions for which the State is liable. We refund any balance to the State.

§ 404.1282 Time limitations on credits or refunds—for wages paid prior to 1987.

(a) *General.* To get a credit or refund, a State must file a claim for a credit or refund of the overpaid amount with the Secretary before the applicable time limitation expires. The State's claim for credit or refund is considered filed with the Secretary when it is delivered or mailed to the Secretary. Where the time limitation ends on a weekend, legal holiday or Federal nonworkday, we consider a claim timely filed if it is filed on the next Federal workday.

(b) *Time limitation.* Subject to the exceptions in § 404.1283, a State must file a claim for credit or refund of an overpayment before the end of the latest of the following time periods:

(1) 3 years, 3 months, and 15 days after the year in which the wages in question were paid or alleged to have been paid; or

(2) 3 years after the due date of the payment which included the overpayment; or

(3) 2 years after the overpayment was made to the Secretary of the Treasury.

§ 404.1283 Exceptions to the time limitations on credits or refunds for wages paid prior to 1987.

(a) (1) *Extension by agreement.* The applicable time period described in § 404.1282 for filing a claim for credit for, or refund of, an overpayment may, before the expiration of such period, be extended for no more than 6 months by written agreement between the State and the Secretary. The agreement must involve and identify a known issue or reporting error. It must also identify the periods involved, the time limitation

which is being extended and the date to which it is being extended, and the coverage group(s) and position(s) or individual(s) to which the agreement applies. The extension of the period of limitation shall not become effective until the agreement is signed by the appropriate State official and the Secretary. (See § 404.3(c) for the applicable rule where periods of limitation expire on nonwork days.) A claim for credit or refund filed by the State before the extended time limit ends shall be considered to have been filed within the time period limitation specified in section 218(r)(1) of the Act as it read prior to the enactment of Pub. L. 99–509. (See § 404.1282.)

(2) *Reextension.* An extension agreement provided for in paragraph (a)(1) of this section may be reextended by written agreement between the State and the Secretary for no more than 6 months at a time beyond the expiration of the prior extension or reextension agreement, and only if one of the following conditions is met:

(i) Litigation (including intrastate litigation) or a review under §§ 404.1290 or 404.1297 involving wage reports or corrections on the same issue is pending; or

(ii) The State is actively pursuing corrections of a known error which require additional time to complete; or

(iii) The Social Security Administration is developing a coverage or wage issue which was being considered before the statute of limitations expired and additional time is needed to make a determination; or

(iv) The Social Security Administration has not issued to the State a final audit statement on the State's wage or correction reports; or

(v) There is pending Federal legislation which may substantially affect the issue in question, or the issue has national implications.

(b) *Deletion of wage entry on employee's earnings record.* If the Secretary, under section 205(c)(5) (A), (B), or (E) of the Act, deletes a wage entry on an individual's earnings record, a claim for credit or refund of the overpayment resulting from the deletion is considered filed within the applicable time limitations in § 404.1282 if

(1) The State files the claim before the Secretary's decision regarding the deletion of the wage entry from the individual's earnings record becomes final or

(2) The State files a claim regarding the deletion of the wage entry from the individual's earnings record which entry is erroneous because of fraud.

§ 404.1284 Offsetting underpayments against overpayments—for wages paid prior to 1987.

(a) *State fails to make adjustment for allowance of credit.* If SSA notifies a State that a credit is due the State, and the State does not make the adjustment for the allowance of the credit, SSA offsets the credit against any contributions or interest due. Before making the offset, SSA will give the State an opportunity to make the adjustment.

(b) *State fails to make adjustment for underpayment of contributions or interest due.* If SSA notifies a State that contributions or interest are due, and the State does not pay the contributions or interest, SSA offsets the contributions or interest due against any credit due the State. Before making the offset, SSA will give the State an opportunity to pay the underpayment or interest due.

How Assessments for Underpayments of Contributions Are Made—for Wages Paid Prior to 1987

§ 404.1285 Assessments of amounts due—for wages paid prior to 1987.

(a) A State is liable for any amount due (which includes contributions or interest) under an agreement until the Secretary is satisfied that the amount has been paid to the Secretary of the Treasury. If the Secretary is not satisfied that a State has paid the amount due, the Secretary issues an assessment for the amount due subject to the time limitations in § 404.1286 and the exceptions to the time limitations in §§ 404.1287 and 404.1289. If detailed wage information is not available, the assessment is issued based on the following:

(1) The largest number of individuals whose services are known to be covered under the agreement is used for computation purposes;

(2) The individuals are assumed to have maximum creditable earnings each year;

(3) The earnings are considered wages for covered services; and

(4) The amount computed is increased by twenty percent to insure that all covered wages are included in the assessment.

(b) If the State pays the amount assessed and the assessed amount is later determined to be more than the amount actually due, we issue a refund or credit to that State for the excess amount. When the assessment is issued within the applicable time limitation, there is no time limit on collecting the amount due. An assessment is issued on the date that it is mailed or otherwise delivered to the State.

§ 404.1286 Time limitations on assessments—for wages paid prior to 1987.

(a) Subject to the exceptions to the time limitations in §§ 404.1287 and 404.1289, a State is not liable for an amount due under an agreement unless the Secretary makes an assessment for that amount before the later of the following periods ends:

(1) Three years, 3 months, and 15 days after the year in which the wages, upon which the amount is due, were paid; or

(2) Three years after the date the amount became due.

(b) Where the time limitation ends on a weekend, legal holiday or Federal nonworkday, an assessment is considered timely if the Secretary makes the assessment on the next Federal workday.

§ 404.1287 Exceptions to the time limitations on assessments—for wages paid prior to 1987.

(a)(1) *Extension by agreement.* The applicable time period described in § 404.1286 for assessment of an amount due may, before the expiration of such period, be extended for no more than 6 months by written agreement between the State and the Secretary. The agreement must involve and identify a known issue or reporting error. It must also identify the periods involved, the time limitation which is being extended and the date to which it is being extended, and the coverage group(s) and position(s) or individual(s) to which the agreement applies. The extension of the period of limitation shall not become effective until the agreement is signed by the appropriate State official and the Secretary. (See § 404.3(c) for the applicable rule where periods of limitation expire on nonwork days.) An assessment made by the Secretary before the extended time limit ends shall be considered to have been made within the time period limitation specified in section 218(q)(2) of the Act as it read prior to the enactment of Pub. L. 99–509. (See § 404.1286.)

(2) *Reextension.* An extension agreement provided for in paragraph (a)(1) of this section may be reextended by written agreement between the State and the Secretary for no more than 6 months at a time beyond the expiration of the prior extension or reextension agreement, and only if one of the following conditions is met:

(i) Litigation (including intrastate litigation) or a review under § 404.1290 or § 404.1297 involving wage reports or corrections on the same issue is pending; or

(ii) The State is actively pursuing corrections of a known error which require additional time to complete; or

(iii) The Social Security Administration is developing a coverage or wage issue which was being considered before the statute of limitations expired and additional time is needed to make a determination; or

(iv) The Social Security Administration has not issued to the State a final audit statement on the State's wage or correction reports; or

(v) There is pending Federal legislation which may substantially affect the issue in question, or the issue has national implications.

(b) *The 365-day period.* If a State files a report before the applicable time limitation in § 404.1286 (or any extension under paragraph (a) of this section) ends and makes no payment or pays less than the correct amount due, the Secretary may assess the State for the amount due after the applicable time limitation has ended. However, the Secretary must make the assessment no later than the 365th day after the day the State makes payment to the Secretary of the Treasury. The Secretary can only make this assessment on the wages paid to the reported individuals for the reported periods. The Secretary, in making this assessment, credits the amount paid by the State on these individuals' wages for those reported periods.

(c) *Revision of employee's earnings record.* If, under section 205(c)(5) (A) or (B) of the Act, the Secretary credits wages to an individual's earnings record, the Secretary may make an assessment for any amount due on those wages before the Secretary's decision on revising the individual's earnings record becomes final. (Section 404.822(c) (1) and (2) describe the time limits for revising an earnings record where an individual has applied for monthly benefits or a lump-sum death payment or requested that we correct his earnings record.)

(d) *Overpayment of contributions on wages of employee having other wages in a period barred to assessment.* If the Secretary allows a State a credit or refund of an overpayment for wages paid or alleged to have been paid an individual in a calendar year but the facts upon which the allowance is based establish that contributions are due on other wages paid that individual in that year which are barred to assessment, we may make an assessment notwithstanding the periods of limitation in § 404.1286. The assessment, however, must be made before or at the time we notify the State of the allowance of the credit or refund. In this situation, the Secretary reduces the amount of the State's credit or refund by the assessed amount and notifies the State accordingly. For purposes of this paragraph, the assessment shall only include contributions and not interest as provided for in section 218(j) of the Act as it read prior to the enactment of Pub. L. 99–509.

Example: The State files an adjustment report timely to correct an error in the amount reported as wages for an employee. The correction reduces the employee's wages for the year to less than the maximum amount creditable. The employee has other earnings in the same year which were not reported because of the previously reported maximum amounts. The applicable time limitation for assessing contributions on wages for the year has expired before the credit was allowed. The Secretary may assess for the underpaid contributions but no later than thd date of the notice to the State that its claim for a credit had been allowed.

(e) *Evasion of payment.* The Secretary may make an assessment of an amount due at any time where the State's failure to pay the amount due results from the fraudulent attempt of an officer or employee of the State or political subdivision to defeat or evade payment of that amount.

§ 404.1289 Payment after expiration of time limitation for assessment—for wages paid prior to 1987.

The Secretary accepts wage reports filed by a State even though the applicable time limitation described in § 404.1286 (or as the time limitation is extended under § 404.1287) has expired, provided:

(a) The State pays to the Secretary of the Treasury the amount due on the wages paid to employees performing services in the coverage group in the calendar years for which the wage reports are being made; and

(b) The State agrees in writing with the Secretary to extend the time limitation for all employees in the coverage group in the calendar years for which the wage reports are being made.

In this situation, the time period for assessment is extended until the Secretary notifies the State that the wage reports are accepted. Where the State pays the amount due within the time period as extended under this section, the amount shall not include interest as provided for in section 218(j) of the Act as it read prior to the enactment of Pub. L. 99–509.

Secretary's Review of Decisions on Credits, Refunds, or Assessments—for Wages Paid Prior to 1987

§ 404.1290 Review of decisions by the Secretary—for wages paid prior to 1987.

(a) *Delegation of authority.* The Secretary, who has the authority under section 218(s) of the Act as it read prior to the enactment of Pub. L. 99–509 to review decisions on credits, refunds or assessments, has delegated this authority to the Commissioner of Social Security.

(b) *What decisions will be reviewed.* A State, under section 218(s) of the Act as it read prior to the enactment of Pub. L. 99–509, may request review of an assessment of an amount due from the State, an allowance to the State of a credit or refund of an overpayment, or a disallowance of the State's claim for credit or refund of an overpayment. The Commissioner may review regardless of whether the amount assessed has been paid or whether the credit or refund has been accepted by the State. Prior to the Commissioner's review, however, an assessment, allowance or disallowance may be reconsidered under §§ 404.1291 through 404.1293.

§ 404.1291 Reconsideration—for wages paid prior to 1987.

After the State requests review of the assessment or allowance or disallowance of a credit or refund, and prior to the Commissioner's review, that decision may be reconsidered, and affirmed, modified, or reversed. We notify the State of the reconsidered determination and the basis for it. The State may request the Commissioner to review this reconsidered determination under § 404.1294(b). In limited situations, SSA and the State may agree that the reconsideration process should be waived, e.g., where major policy is at issue.

§ 404.1292 How to request review—for wages paid prior to 1987.

(a) *Form of request.* No particular form of request is required. However, a written request for review must:

(1) Identify the assessment, allowance or disallowance being questioned;

(2) Describe the specific issue on which the review is requested;

(3) Contain any additional information or argument relevant to that issue; and

(4) Be signed by an official authorized to request the review on behalf of the State.

(b) *Submitting additional material.* A State has 90 days from the date it requests review to submit additional evidence it wishes considered during the review process. The time limit for

submitting additional evidence may be extended upon written request of the State and for good cause shown.

§ 404.1293 Time for filing request for review—for wages paid prior to 1987.

(a) *Time for filing.* The State must file its request for review within 90 days after the date of the notice of assessment, allowance, or disallowance. Usually, the date of the request for review is considered the filing date. Where the 90-day period ends on a weekend, legal holiday or Federal nonworkday, a request filed on the next Federal workday is considered as timely filed.

(b) *Extension of time.* For good cause shown, and upon written application by a State filed prior to the expiration of the time for filing a request for review, additional time for filing the request may be allowed.

§ 404.1294 Notification to State after reconsideration—for wages paid prior to 1987.

(a) The State will be notified in writing of the reconsidered determination on the assessment, allowance, or disallowance, and the basis for the determination.

(b) If the State does not agree with the reconsidered determination, it has 90 days from the date of notice of the reconsidered determination to request the Commissioner to review that determination. The rules on what the request should contain and the time for filing the request are the same as in §§ 404.1292 and 404.1293.

§ 404.1295 Commissioner's review—for wages paid prior to 1987.

Upon request by the State, the Commissioner will review the reconsidered determination (or the assessment, allowance or disallowance as initially issued if reconsideration is waived under § 404.1291). If necessary, the Commissioner may request the State to furnish additional evidence. Based upon the evidence considered in connection with the assessment, allowance or disallowance and any additional evidence submitted by the State or otherwise obtained by the Commissioner, the Commissioner affirms, modifies, or reverses the assessment, allowance or disallowance.

§ 404.1296 Commissioner's notification to the State—for wages paid prior to 1987.

The Commissioner notifies the State in writing of the decision on the assessment, allowance, or disallowance, and the basis for the decision.

How a State May Seek Court Review of Secretary's Decision—for Wages Paid Prior to 1987

§ 404.1297 Review by court—for wages paid prior to 1987.

(a) *Who can file civil action in court.* A State may file a civil action under section 218(t) of the Act as it read prior to the enactment of Pub. L. 99–509 requesting a district court of the United States to review any decision the Commissioner makes for the Secretary under section 218(s) of the Act as it read prior to the enactment of Pub. L. 99–509 concerning the assessment of an amount due, the allowance of a credit or refund, or the disallowance of a claim for credit or refund.

(b) *Where the civil action must be filed.* A State must file the civil action in the district court of the United States for the judicial district in which the State's capital is located. If the civil action is brought by an interstate instrumentality, it must file the civil action in the district court of the United States for the judicial district in which the instrumentality's principal office is located. The district court's judgment is final except that it is subject to review in the same manner as judgments of the court in other civil actions.

(c) *No interest on credit or refund of overpayment.* SSA has no authority to pay interest to a State after final judgment of a court involving a credit or refund of an overpayment made under section 218 of the Act.

§ 404.1298 Time for filing civil action—for wages paid prior to 1987.

(a) *Time for filing.* The State must file the civil action for a redetermination of the correctness of the assessment, allowance or disallowance within 2 years from the date the Commissioner mails to the State the notice of the decision under § 404.1296. Where the 2-year period ends on a Saturday, Sunday, legal holiday or Federal nonwork day, an action filed on the next Federal workday is considered timely filed.

(b) *Extension of time for filing.* The Commissioner, for good cause shown, may upon written application by a State filed prior to the end of the two-year period, extend the time for filing the civil action.

§ 404.1299 Final judgments—for wages paid prior to 1987.

(a) *Overpayments.* Payment of amounts due to a State required as the result of a final judgment of the court shall be adjusted under §§ 404.1271 and 404.1272.

(b) *Underpayments.* Wage reports and contribution returns required as the result of a final judgment of the court shall be filed under §§ 404.1237–404.1251. We will assess interest under § 404.1265 where, based upon a final judgment of the court, contributions are due from a State because the amount of contributions assessed was not paid by the State or the State had used an allowance of a credit or refund of an overpayment.

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Part III

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 661

Buy America Requirements—Amendments; Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 661

[Docket No. 88-G]
RIN 2132-AA15

Buy America Requirements—Amendments

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Urban Mass Transportation Administration (UMTA) to implement section 337 of the Surface Transportation And Uniform Relocation Assistance Act of 1987. Section 337 amends UMTA's "Buy America" domestic preference provision (section 165 of the Surface Transportation Assistance Act of 1982). The purpose of this document is to seek comments on the amendments to the existing "Buy America" regulation that UMTA is proposing to implement these statutory changes, and on other amendments that UMTA is proposing based on experience in implementing the existing regulation.

DATE: Comments should be received by October 28, 1988.

ADDRESS: Comments should be addressed to: Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88-G, 400 Seventh Street SW., Room 9316, Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Deputy Chief Counsel, Office of the Chief Counsel, Room 9316, UMTA, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4063.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background

The Surface Transportation Assistance Act of 1978 included a Buy America provision applicable to the UMTA program. That provision was not an absolute prohibition against the procurement of foreign products, rather it established a preference for products mined, produced or manufactured in the United States, and applied to all contracts or UMTA grantees over $500,000.

Section 165 of the Surface Transportation Assistance Act of 1982 (section 165) made significant changes to the Buy America requirements by eliminating the $500,000 threshold for applicability and setting up essentially two separate programs. One governed the procurement of steel and manufactured products, and the other governed the procurement of rolling stock and certain kinds of enumerated associated equipment such as traction power, train control, and communications equipment.

Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) made further changes to the Buy America requirements by amending section 165. The principal change was to require that more than 50 percent of the cost of a component's subcomponents (for buses and other rolling stock) be of U.S. origin in order for the component itself to be considered to be of U.S. origin. In addition, the domestic content requirement for buses, rolling stock and associated equipment will be increased from 50 to 55 percent effective October 1, 1989, and to 60 percent effective October 1, 1991, except that any company that has met the existing Buy America requirement would be exempted from these increases for all contracts entered into before April 1, 1992. Finally, the rolling stock price differential waiver was increased from 10 percent to 25 percent.

In addition to proposing to amend the "Buy America" regulation to implement these statutory changes, UMTA is also proposing a number of amendments to the existing regulation which reflect UMTA's experience in enforcing and interpreting the existing regulation since its issuance in 1983. Comments are specifically sought on both the proposed amendments implementing the new statutory provisions and on the proposed amendments to the existing regulation.

B. Implementation of Section 337 of the STURAA

1. Increase in Domestic Content

As indicated above, section 337 provides for a gradual increase of the domestic content requirement for rolling stock and associated equipment. UMTA is proposing to revise § 661.11 to reflect the increase in domestic content. Section 337(a)(2)(B) provides that the revised requirements shall not apply to any contract entered into prior to April 1, 1992, with "any supplier or contractor or any successor in interest or assignee which qualified under the provision of section 165(b)(3) of the Surface transportation Assistance Act of 1982 prior to [April 2, 1987]." UMTA specifically seeks comments on how it should define a "successor in interest or assignee" and how it should determine whether a supplier or contractor qualified under the provision of section 165(b)(3). It is UMTA's position that a company which complied with the domestic content requirements of section 165(b)(3) by supplying rolling stock or equipment to an entity that utilized UMTA funding for the procurement would be considered a "grandfathered" company under section 337(a)(2)(B). UMTA specifically seeks comments on whether a company which provided rolling stock which complied with the requirements of section 401 of the Surface Transportation Assistance Act of 1978 and its implementing regulations at 49 CFR part 660, but which did not provide rolling stock which complied with the requirements in section 165(b)(3) or did not provide any rolling stock since the enactment of section 165(b)(3) should be treated as a "grandfathered" company under section 337(a)(2)(B).

2. Price Differential Waiver

Section 317(c) of the STURAA amends section 165(b)(4) by eliminating the 10 percent price differential waiver that applied to the procurement of rolling stock and associated equipment and expanding the existing 25 percent price differential waiver that has applied to the procurement of steel and manufactured products to all procurements. Accordingly, UMTA is proposing to amended § 661.7(d) to reflect this statutory change. In addition, UMTA is proposing other changes to § 661.7(d) which are discussed below.

3. Procurement of Rolling Stock

Basic Requirements. Before discussing the implementation of the statutory change set forth in section 337(b) which expands the domestic content requirements relative to the procurement of rolling stock and associated equipment to include "subcomponents", it is important to set forth UMTA's position relative to the "manufacture" of components, and the "final assembly" of the "end product".

Prior to the STURAA, section 165(b)(3) provided, in essence, that in the procurement of rolling stock, the rolling stock would be considered to be of domestic origin and in compliance with the "Buy America" requirements if "the cost of components (of the rolling stock) which are produced in the United States is more than 50 per centum of the cost of all components of the vehicle * * * and final assembly of the vehicle

* * * has taken place in the United States."

UMTA's existing regulations define a component as "any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location" (49 CFR 661.11(b)). Final assembly is defined as being "the effort expended at the final assembly point to manufacture the end-product" (49 CFR 661.11(f)).

The key question in determining whether a supplier is complying with the "50 percent component" test is one of determining the identification of the "components." In order to determine if the regulatory definition of "component" has been met, UMTA must first make a determination as to what constitutes the "final assembly location" and then look to what is "directly incorporated into the end-product at the final assembly location" (49 CFR 661.11(b)). The existing regulation does not contemplate a single building or facility being the "final assembly location" or "final assembly point." (see discussion below concerning proposed revision to the existing regulation).

Origin of Components and Subcomponents. As noted above, section 337(b) of STURAA expands the domestic content requirements relative to the procurement of rolling stock and associated equipment to include "subcomponents." UMTA's review of the Joint Explanatory Statement of the Committee of Conference which accompanied the enactment of STURAA in House Report 100–27 (the Conference Report) indicates that Congress intended that a "component" is to be considered a "domestic" item if more than 50 percent of the "subcomponents" of the component, by cost, are of domestic origin and if the manufacture of the component takes place in the United States. It is UMTA's position that if a "component" meets this test, and is determined to be "domestic", the entire cost of the component is counted as being of U.S. origin in evaluating the cost of the "components" of the "end product." It is UMTA's position that a "subcomponent" is considered "domestic" if it is manufactured in the United States. There is nothing in section 337 or in the Conference Report to indicate that Congress intended that UMTA look to the origin of the parts of the "subcomponents." To carry the statutory language to its logical extension, the origin of "sub-sub-components" is immaterial in determining whether a "subcomponent" is manufactured in the United States.

The Conference Report indicates that "[b]y including the terms subcomponents, the conferees intend that major components, systems, or assemblies of buses and rail rolling stock be counted towards meeting the Buy America domestic content standard if the components, systems, or assemblies themselves would meet the domestic content requirement." The Conference Report also includes language that provides that "[i]n the case of both rail cars and buses, the conferees intend to cover only subcomponents that are one step removed from the major components, systems or assemblies, such as those listed [elsewhere in the Statement], and which are clearly recognized as primary subcomponents in the industry." UMTA specifically seeks comments of whether the regulation should provide that the origin of "sub-sub-components" should be examined in calculating domestic content.

The Conference report states that "[m]ajor components, systems, or assemblies of buses include, but are not limited to, items such as engines, transmissions, front axle assemblies, rear axle assemblies, drive shaft assemblies, front suspension assemblies, rear suspension assemblies, air compressor and pneumatic systems, generator/alternator and electrical systems, steering system assemblies, front and rear air brake assemblies, air conditioning compressor assemblies, air conditioninig evaporator/condenser assemblies, heating systems, passenger seats, driver's seat assemblies, window assemblies, entrance and exit door assemblies, door control systems, destination sign assemblies, interior lighting assemblies, front and rear end cap assemblies, front and rear bumper assemblies, specialty steel (structural steel tubing, etc.), aluminum extrusions, aluminum, steel or fiberglass exterior panels, and interior trim, flooring, and floor coverings."

The Conference Report also states that "[m]ajor components, systems, or assemblies of rail rolling stock include, but are not limited to, items such as car shells, main transformer, pantographs, traction motors, propulsion gear boxes, interior linings, acceleration and braking resistors, propulsion controls, low voltage auxiliary power supplies, air conditioning equipment, air brake compressors, brake controls, foundation brake equipment, aritculation assemblies, train control systems, window assemblies, communication equipment, lighting, seating, doors, door actuators and controls, couplers and draft gear, trucks, journal bearings, axles, diagnostic equipment, and third rail pick-up equipment."

In drafting the proposed regulation, UMTA has developed very general language concerning identification of subcomponents. This language follows on UMTA's previous general language concerning the definition of components, and reflects the Conference Report language cited above that the conferees only intend to cover subcomponents that are one step removed from the major components. UMTA specifically seeks comments on its proposed requirements concerning subcomponents, and on whether the listings from the Conference Report quoted above should be included, *in toto*, in the regulation. In addition, UMTA specifically seeks comments on whether the domestic content requirements should only be applied to *major* components as contained in the two quoted lists, or should continue to be applied to all components of end products as currently required in the regulation.

Export of Domestic Subcomponents. There are a number of issues that have been raised with UMTA relative to the treatment of exported domestic "subcomponents" and none of these issues are specifically addressed in section 337(b) nor by UMTA's general position discussed in the preceding paragraph.

Section 337(b) does not specifically address the treatment of "subcomponents" which are of U.S. origin, exported and manufactured into a component. However, the Conference Report indicates that "[t]he conferees * * * intend that American subcomponents incorporated into foreign components should be counted towards meeting the domestic content requirement." Therefore, UMTA is faced with determining how to account for the cost or value of a subcomponent manufactured in the United States which is incorporated into a component outside the United States.

UMTA is proposing to permit U.S. origin subcomponents that receive tariff exemptions to retain their domestic identity for purposes of determining origin if they met an existing United States Customs Service procedure. This procedure implements a legislative exemption from customs duties for those items produced in the United States which are: (1) Exported in condition ready for assembly without further fabrication; (2) have not lost their physical identity by change in form, shape, or otherwise; and (3) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

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This proposal is a dramatic change from UMTA's existing procedures in that previously any U.S. content of a foreign component would not have been included in any calculation of domestic content requirements. It is important to note that this proposal would only have an impact on end products that receive final assembly in the United States. End products which do not receive final assembly in the United States are not domestic for purposes of the Buy America requirements, and the origin of their components and subcomponents is actually immaterial.

When UMTA issued regulations to implement section 165 of the STAA (48 FR 41564, September 15, 1983), it proposed the same procedure discussed above. Although UMTA did not implement this proposal as a final rule, it is again proposing to do so in connection with the implementation of section 337.

The duty imposed on such manufactured articles is computed by subtracting the cost or value of the United States products from the duty that is applicable to the full value of the imported articles. The Customs Service regulations implementing this procedure are set out at 19 CFR 10.11 through 10.24. An importer who desires to take advantage of this exception files documentation identifying the United States components in the assembled product. Thus, in incorporating this procedure, UMTA will not be imposing any additional paperwork requirements on suppliers.

Under this proposal, United States subcomponents that receive tariff exemptions would retain their domestic identity for purposes of determining the domestic content of both components and end products. The cost of subcomponents that receive tariff exemption would be included in the computation of domestic content regardless of whether the component itself would be considered domestic. For example, if a subcomponent that receives tariff exemption is 20% of the value of the entire component and the remaining 80% of the value of the entire component is of foreign origin, this 20% can be included in calculating the domestic content of the end product while the 80% foreign content would continue to be considered foreign content for the overall end product.

It is UMTA's position that materials produced in the United States cannot be counted a U.S. content if they have lost their physical identity during a manufacturing process which takes place outside of the United States. It is also UMTA's position that such materials are *not* "subcomponents" for purposes of applying the "Buy America" requirements. This case can be distinguished from the discussion of the "subcomponents" above wherein those "subcomponents" do not undergo further machining after they are exported, but are merely subject to the assembly process necessary to "manufacture" the component. Similarly, it is UMTA's position that raw material, such as aluminum or steel, that is produced in the United States and then exported for incorporation into a component cannot be counted as U.S. content.

Components With Less Than Fifty Percent U.S. Content. UMTA is also proposing to amend the regulations to provide that if a component which is manufactured in the United States contains less than 50 percent domestic subcomponents, by cost, the cost of the domestic subcomponents plus the cost of manufacturing the component in the United States may be included in the calculation of the domestic content of the end product.

C. Proposed Revisions to Existing Regulation

1. General

The authority citation for Part 661 is being revised to include the Surface Transportation and Uniform Relocation Assistance Act of 1987.

Section 661.1 of the existing regulations is proposed to be amended to simplify the explanation of the applicability of the regulations set forth in Part 661. Specifically the reference to programs administered by the Federal Highway Administration is being deleted because the program is now administered by UMTA; and paragraphs (b) and (c) of the existing regulations are being deleted because they were transition provisions for the implementation of section 165 of the STAA which are no longer necessary.

The definition of "overall project contract" is being deleted because UMTA has found the concept to be confusing to grantees. References to the term "overall project contract" in the text of the regulation have all been changed to spell out the actual contractual relationship being referred to.

2. Manufactured Products

Section 165(a) provides, in essence, that no Federal funds may be used in a procurement unless all manufactured products purchased through that procurement are of United States origin. The existing regulations, at § 661.3(d), define a "manufactured product" as a "product produced as a result of [a] manufacturing process." "Manufacturing process" is defined at § 661.3(e) as "a process whereby an original material is changed or transformed into an article which, because of the process, is different from the original product." It is UMTA's position that in order for a "manufactured product" to comply with the "Buy America" requirements, the product must be produced in the United States from original items or material originating in the United States. In other words, an item is "produced in the United States" if all of the manufacturing processes for the item take place in the United States, and the "components" of that item are *all* of U.S. origin. The existing regulations do not set forth any specific requirements concerning "manufactured products." Accordingly, UMTA is proposing to amend § 661.5 to reflect its position concerning what is required in order for a "manufactured product" to be considered of U.S. origin. The existing definitions of "manufactured product" and "manufacturing process" will remain.

3. Waivers to Statutory Requirements

Section 661.7 of the existing regulation provides procedures for obtaining exceptions to the general requirements set forth in section 165(a) of the STAA. The words "exception" and "waiver" have the same meaning for the purposes of this section, and UMTA is revising the regulation to use the term "waiver" throughout in order to avoid confusion.

Non-Availability Waiver. The existing regulations concerning the non-availability waiver under section 165(b)(2) of the STAA is written in terms of a bid or bids actually being received by a grantee. It is also possible that the grounds for a non-availability waiver can exist if there is a sole source procurement. UMTA is proposing to revise § 661.7(c) to reflect that a non-availability waiver can be granted in the case of a sole source procurement if the grantee provides UMTA with sufficient information to show that the grounds for the waiver exist. In this regard, UMTA has determined that the procurement of an item from an original supplier is not, in and of itself, sufficient grounds to grant a non-availability waiver. UMTA has encouraged grantees to enter into free and open competition to obtain such items. UMTA has been requested to grant a number of such waivers in the case of the procurement of replacement parts for rolling stock within the original part was a component of foreign origin supplied by the original vehicle manufacturer.

Price Differential Waiver. UMTA has received a number of questions concerning the mechanics of applying the provisions of section 165(b)(4) to a bid when multiple items are being procured under one contract. Section 165(b)(4), as amended, provides that a waiver can be granted if "inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent." The existing regulation, both in § 661.7 and in the definitions in § 661.3., utilize the term "overall project contract."

It is UMTA's position that the price differential must be applied independently to each individual item even if there is a single contract for all of these items. The bid for each non-domestic item must be adjusted by the differential and then the adjusted bid price for the foreign item compared to the lowest responsive and responsible bid for a domestic item to determine if the grounds for a waiver exist. Accordingly, UMTA is proposing to amend § 661.7(d) to reflect this position, and to clarify that the price differential is not be applied to the overall contract between the grantee and its supplier but to the comparative costs of each individual item being supplied.

UMTA believes that such a position is consistent with the statutory terms because the inclusion of domestic material in the overall project contract is still considered before a waiver is granted. The proposed amendment to the regulations will only directly affect the determination of adjusted bid price in the case of a single contract for multiple items, whereas a single contract for a single item will not be affected by the proposed amendment. UMTA seeks comments on this proposed amendment.

Waivers for Components. Section 661.7(f) of the existing regulations provides that a public interest or a non-availability waiver can be granted for a "component" as that term is defined in § 661.11, and that if such a waiver is granted, the "component" is treated as domestic for the purposes of calculating domestic content. UMTA also has determined on a number of occasions that it is appropriate to grant a non-availability waiver to an item or material included in a manufactured product. Accordingly, UMTA is proposing to add a new paragraph (g) to § 661.7 to reflect that such a waiver can be granted.

General Waivers. Appendix A to § 661.7 sets forth General Exceptions that have been granted by UMTA. UMTA has granted a number of such General Exceptions, and the Appendix is being revised to reflect these exceptions.

UMTA specifically seeks comments on whether it should grant any General Exception waivers in addition to those listed in Appendix A to § 661.7. In addition to those exceptions listed, UMTA has, for example, received a request for a general exception for a waiver to permit the procurement of audio visual equipment that does not meet the requirements of section 165(a). UMTA recognizes that there are a significant number of manufactured products procured by its grantees which do not comply with the strict domestic content requirements of section 165(a). Grantees are able to obtain individual "non-availability" waivers under section 165(b)(2), but the process for obtaining such waivers may be administratively burdensome especially when it is recognized that no product of the type being procured is produced or available in the United States that meets the strict requirements of section 165(a).

Application for Waivers. Although, § 661.9(c) provides that only a grantee may request a waiver from UMTA, in a very limited number of cases, UMTA has granted waivers to potential bidders, especially waivers applicable to a single "component" of rolling stock or to a single item or material of a manufactured product. Accordingly, UMTA is proposing to revise § 661.9(c) to reflect its current policy in this regard.

4. Manufacturing of Components

UMTA has been faced with a number of questions concerning what constitutes the "manufacture" of a component. For example if a bus manufacturer buys engines, transmissions, and drive units from various sources that deliver these items to the bus manufacturer's plant, the question is whether the manufacture of a power unit at such plant can be considered the domestic manufacture of the power unit as a component or whether such activity is actually part of the final assembly of the bus, which is also taking place at the same plant.

In this scenario, the principal question that must be addressed is whether the "manufacturing" of the power unit is an activity separate and apart from the "final assembly" of the bus.

It has been UMTA's position that the manufacturing of a component in an off-line fabrication area located in or at the same facility wherein final assembly takes place is not sufficient, in and of itself, to mean that such activity is component manufacture as opposed to part of final assembly. UMTA's current regulations do not define final assembly in terms of an assembly line but rather in terms of a point where final assembly is taking place. UMTA is proposing to clarify the existing regulations in this regard.

In the scenario set out above, it is possible that UMTA would conclude that a final assembly point could include a fabrication area not included within the final assembly process where the "manufacture" of a component appears to be taking place. The regulations define a "component" as that which is "directly incorporated into the end-product at the final assembly location." Thus, depending on the actual activities taking place, one would have to determine whether the power unit is "directly incorporated" into the bus or whether the engine, transmission and drive units are "directly incorporated" into the bus. If the power unit is "directly incorporated" into the bus, the power unit is considered to be a component. If the engine, transmission and drive units are "directly incorporated" into the bus, each of these items would be considered to be a component.

In the case of components, the key issue is whether the supplier is actually "manufacturing" the component rather than merely assembling the component. Where the manufacturing of the component takes place and the cost of the actual manufacturing are not the critical questions—the critical question is whether or not the activities which take place are sufficient to constitute the actual manufacture of the component in question. If a component is manufactured at the same site as the final assembly of the end product, there is no reason why this component cannot be considered to be a domestic component. The labor cost devoted to the manufacture of a component should be included in the calculation of the domestic content of that component even if it occurs at the plant in which final assembly occurs. Therefore, UMTA is proposing to amend § 661.11 to provide that a component can be manufactured at the final assembly point.

It is extremely difficult to define the level of effort need to qualify activities as the manufacture of a component. At a minimum, it is UMTA's position that there must be more than mere assembly of subcomponents to form a component. There must be sufficient activities to advance the value or improve the condition of subcomponents. UMTA is proposing general requirements to reflect this position, but specifically seeks comments to assist it in providing an adequate definition of manufacturing as it applies to components.

5. Final Assembly Requirements

The existing regulations (49 CFR 661.11(f)) define final assembly as "the effort expended at the final assembly point to manufacture the end-product." The regulations further provide, at 49 CFR 661.11(g), that "[t]he final assembly requirement will be presumed to have been met if the cost of final assembly is at least 10 percent of the overall project contract cost." UMTA does *not* require that final assembly cost be 10 percent of the overall project contract cost, but has presumed that if a supplier's costs for final assembly are 10 percent of the overall project contract cost, it is performing sufficient work to constitute legitimate final assembly. If a supplier's costs for final assembly do not meet the 10 percent presumption, UMTA has taken the position that the final assembly activities must be examined on a case-by-case basis to determine if sufficient activities are being performed to constitute "final assembly." The key issue is whether a supplier is performing adequate work to constitute legitimate "final assembly". UMTA has found that in a majority of cases, the final assembly does not meet the 10 percent presumption, but that adequate final assembly is taking place. Accordingly, UMTA is proposing to delete existing § 661.11(g) that provides that the final assembly requirement will be presumed to have been met if the cost of such assembly is at least 10 percent of the overall project cost.

6. Train Control, Communications, and Traction Power Equipment

The listing for train control equipment, communications equipment and traction power equipment (§ 661.11 (h), (i), and (j)) are *not* all inclusive lists of equipment included in each category. UMTA is proposing to add items to two of the lists in response to inquiries that have arisen since the regulation was issued. In addition, UMTA seeks comments and suggestions on items that should be added to the lists and specifically seeks comments on whether pantographs should be included as traction power equipment.

7. Certifications

UMTA has been faced with a number of questions relative to whether a bidder is bound by its original certification even if it later indicates that it erred in signing the original certification. The proper operation of the regulation set forth in Part 661 requires that it be absolutely clear, at the time of bid opening, whether a bidder will comply with the applicable "Buy America" requirements. A bidder who certifies that it will meet the "Buy America" requirements is on notice that it cannot receive a waiver if it becomes apparent after bid opening that the grounds for a waiver exist. Conversely, a bidder who certifies that it cannot meet the applicable "Buy America" requirements is on notice that it cannot be awarded a contract unless the grounds for a waiver exist, and such bidder cannot, after bid opening, change its certification to one of compliance with the applicable requirements.

Regardless of the certification submitted, each and every bidder is bound by its original certification. No bidder is given the opportunity to later indicate that it will or will not comply with the applicable "Buy America" requirements after bid opening when it is determined that the grounds for a waiver are not present, or that such grounds may be available to the bidder. To allow such a bidder to modify its certification, would give the bidder the best of both worlds—it could bid and then decide, based on the competing bids, whether it will supply a foreign or domestic "end product". The intent of the bidder must be based on the certification alone—if a bidder mistakenly executes the wrong certification, it is bound by that certification.

Therefore, UMTA is proposing to amend § 661.13 to clearly provide that a bidder is bound by its original certification and cannot be permitted to change its certification after bid opening.

8. Investigations

UMTA has conducted a number of investigations under § 661.15 and proposes to make a number of changes to this section to reflect its experience in those investigations. First, it is proposed that § 661.15(b) be revised to provide that UMTA can initiate a Buy America investigation on its own. Although the existing regulation provides that any party may petition UMTA to conduct an investigation, UMTA has the inherent authority, under the statute, to ensure that the requirements are being met, and can thus initiate an investigation on its own without a request from an interested party. Second, it is proposed that § 661.15(d) be revised to reflect that an investigated party can correspond directly to UMTA rather than through the grantee. However, such action can only be taken with the concurrence of the grantee. In a number of instances, grantees have requested that this process be followed in order to expedite the investigation. Third, UMTA is proposing to amend § 661.15(h) to more clearly reflect what is meant by confidential information. A number of parties have requested that information be treated as confidential, and UMTA has been faced with making a determination of whether all such information is actually confidential. The proposed definition will clarify this matter, and place the burden on the party claiming confidentiality to prove that the information falls under the proposed definition. Fourth, a new paragraph is proposed to reflect that UMTA, when appropriate, will conduct site visits during the course investigation. UMTA has been conducting such site visits, and the regulation is proposed to be amended to reflect current practice.

9. Suspension and Debarment

Section 661.19 is being up-dated to reflect that the Department of Transportation's suspension and debarment regulations have been issued as a final rule.

10. Pre-Award and Post-Delivery Audits

Section 319 of the STURAA requires UMTA to issue regulations requiring pre-award and post-delivery audits of rolling stock purchases made with funds available under the Urban Mass Transportation Act of 1964, as amended. One of the items that is to be addressed under such audits is compliance with the applicable Buy America requirements. UMTA will issue a separate notice of proposed rulemaking seeking comments on UMTA's proposed implementation of this statutory requirement.

D. Request for Comments

Above, UMTA has asked for comments on several particular matters. UMTA also requests comments on any of the amendments proposed today. In addition to those matters, UMTA specifically requests comments and data in response to the following questions:

1. What, if any, will be the economic impact resulting from the elimination of the ten percent price differential waiver previously applicable to the acquisition of rolling stock and associated equipment?

2. What will be the economic impact resulting from the increase of the domestic content requirement from fifty percent to fifty-five percent and eventually to sixty percent? Specifically, UMTA is interested in receiving comments and data from manufacturers who currently meet the fifty percent requirement as to the steps that will be necessary for them to meet the increased domestic content requirements, and the economic impacts

of these steps. UMTA is also specifically interested in receiving comments on whether any manufacturers will drop out of the domestic market as a result of the increased domestic content requirements.

3. What will be the economic impact resulting from the requirement that more than fifty percent of the cost of a component's subcomponents be of U.S. origin in order for the component itself to be considered to be of U.S. origin? Specifically, UMTA is interested in receiving comments and data from manufacturers as to the steps that will be necessary for them to meet this requirement, and the economic impacts of these steps. UMTA is also specifically interested in receiving comments on whether any manufacturers will drop out of the domestic market as a result of the expansion of domestic content requirements to subcomponents.

Commentors wishing acknowledgement of their comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with date and time the comments are received and return the card to the commentor.

II. Regulatory Impacts

A. Executive Order 12291

This action has been reviewed under Executive Order 12291. UMTA believes that the rule will not result in an annual effect on the economy of $100 million or more, and is therefore not a major rule under Executive Order 12291. However, in this NPRM, UMTA specifically asks for data on the economic impact of this proposed rule. The final Regulatory Evaluation will reflect any data brought to UMTA's attention through the docket.

B. Departmental Significance

This proposed regulation would be a "significant" rule, as defined by the Department's Regulatory Policies and Procedures on Improving Governmental Regulations, because it involves important departmental policy and will generate substantial public interest. UMTA has prepared a preliminary Regulatory Evaluation in support of this rulemaking which is on file as part of the docket to this rulemaking.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

D. Paperwork Reduction Act

Collection of information under the Buy America regulations in Part 661 has been approved by the Office of Management and Budget (Approval Number 2132–0544). This approval expires on September 30, 1989. UMTA does not anticipate any additional collection of information required by the regulations proposed in this document that is subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. However, if the rule does result in an increased paperwork burden, that increase will be calculated when the collection of information is submitted for renewal to the Office of Management and Budget prior to the expiration date.

E. Federalism

This proposed regulation has been reviewed under Executive Order 12612 on Federalism and UMTA has determined that this action does not have implications for principles of federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making and administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge traditional State governmental functions or otherwise affect any aspect of State sovereignty.

List of Subjects in 49 CFR Part 661

Buy America, Domestic preference requirement, Government contracts, Grant programs—Transportation, Mass transportation.

III. Proposed Amendment to 49 CFR Part 661

Accordingly, for the reasons described in the preamble, it is proposed that Part 661 of Title 49 of the Code of Federal Regulations be amended as follows:

PART 661—[AMENDED]

1. By reviewing the authority citation for Part 661 to read as follows:

Authority: Sec. 165, Pub. L. 97–424, as amended by sec. 337, Pub. L. 100–17; 49 CFR 1.51.

2. By revising § 661.1 to read as follows:

§ 661.1 Applicability.

Except as otherwise provided in this section, this part applies to all federally assisted procurements utilizing funds authorized by the Urban Mass Transportation Act of 1964, as amended; 23 U.S.C. 103(e)(4); and section 14 of the National Capital Transportation Act of 1969, as amended, and which are obligated by the Urban Mass Transportation Administration after January 6, 1983.

§ 661.3 [Amended]

3. By removing § 661.3(f).

4. By adding a new § 661.5(d) to read as follows:

§ 661.5 General requirements.

* * * * *

(d) In order for a manufactured product to be considered to be produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All items or material used in the product must be of United States origin.

5. By revising the text in § 661.7 and adding paragraph (b), (c), and (d) to the Appendix to read as follows:

§ 661.7 Waivers.

(a) Section 165(b) of the Act provides that the general requirements of section 165(a) shall not apply in four specific instances. This section sets out the conditions for three of the four statutory waivers based on public interest, non-availability, and price-differential. Section 661.11 sets out the conditions for the fourth statutory waiver governing the procurement of rolling stock and associated equipment.

(b) Under the provision of section 165(b)(1) of the Act, the Administrator may waive the general requirements of section 165(a) if the Administrator finds that their application would be inconsistent with the public interest. In determining whether the conditions exist to grant this public interest waiver, the Administrator will consider all appropriate factors on a case-by-case basis, unless a general exception is specifically set out in this part.

(c) Under the provision of section 165(b)(2) of the Act, the Administrator may waive the general requirements of section 165(a) if the Administrator finds that the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfacory quality. It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States. In the case of a sole source procurement, the Administrator will grant this non-availability waiver only if the grantee provides sufficient information which indicates that the item to be procured is only available from a single source or that the item to be procured is not produced in sufficient and reasonably

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available quantities of a satisfactory quality in the United States.

(d) Under the provision of section 165(b)(4) of the Act, the Administrator may waive the general requirements of section 165(a) if the Administrator finds that the inclusion of a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than 25 percent. The Administrator will grant this price-differential waiver if the amount of the lowest responsive and responsible bid offering the item or material that is not produced in the United States multiplied by 1.25 is less than the amount of the lowest responsive and responsible bid offering the item or material produced in the United States.

(e) The four statutory waivers of section 165(b) of the Act as set out in this part shall be treated as being separate and distinct from each other.

(f) The waivers described in paragraphs (b) and (c) of this section may be granted for a component or subcomponent in the case of the procurement of the items governed by section 165(b)(3) of the Act. If a waiver is granted for a component or a subcomponent, that component or subcomponent shall be considered to be of domestic origin for the purposes of § 661.11.

(g) The waivers described in paragraphs (b) and (c) of this section may be granted to a specific item or material that is used in the production of a manufactured product that is governed by the requirements of § 661.5(d). If such a waiver is granted to such a specific item or material, that item or material shall be treated as being of domestic origin.

Appendix A—General Exceptions

* * * * *

(b) Under the provisions of § 661.7(b), 15 Passenger Vans produced by Chrysler Corporation are exempt from the requirement that final assembly of the vans take place in the United States (49 FR 13044, April 3, 1984).

(c) Under the provisions of § 661.7(b), 15 Passenger Wagons produced by Chrysler Corporation are exempt from the requirement that final assembly of the wagons take place in the United States (letter to Chrysler Corporation dated May 13, 1987.)

(d) Under the provisions of § 661.7 (b) and (c), microcomputer equipment of foreign origin can be procured by grantees (50 FR 18780, May 2, 1985 and 51 FR 36126, October 8, 1986).

6. By revising the title of § 661.9, revising § 661.9 (c), redesignating (d) as (e), and adding a new paragraph (d) to read as follows:

§ 661.9 Application for waivers.

* * * * *

(c) Except as provided in paragraph (d), only a grantee may request a waiver. The request must be in writing, include facts and justification to support the waiver, and be submitted to the Administrator through the appropriate Regional Office.

(d) UMTA will consider a request for a waiver from a potential bidder or supplier only if the waiver is being sought under § 661.7 (f) or (g) of this part.

7. By revising § 661.11 (a), redesignating (b) as (d), (c) as (e), (d) as (f), (e) as (l), (f) as (o), (h) as (p), (i) as (q), (j) as (r), (k) as (s), (l) as (t), removing (g), adding new (b), (c), (g), (h), (i), (j), (k), (m), (n), (p) (12) and (13), and (r) (24), (25), (26) and (27), and revising new (d), (f), (l), (o), and (t).

§ 661.11 Rolling stock procurement.

(a) The provisions of § 661.5 will not apply in the case of the procurement of buses and other rolling stock (including train control, communication, and traction power equipment) if the cost of components and subcomponents of such items which are produced in the United States is more than 50 percent of the cost of all components and final assembly of the item takes place in the United States.

(b) Except as provided in paragraph (c) of this section, the domestic content requirement will be increased to 55% for contracts entered into after October 1, 1989, and, increased to 60% for contracts entered into after October 1, 1991.

(c) The domestic content requirement will be increased to 60% for contracts entered into after April 1, 1992 with any supplier or contractor or any successor in interest or assignee which complied with the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982 prior to April 2, 1987.

(d) A component is any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location. A component may be manufactured at the final assembly location if the manufacturing process to produce the component is a separate and distinct activity from the final assembly of the end product. A component is considered to be manufactured if there are sufficient activities taking place to advance the value or improve the condition of the subcomponents of that component.

* * * * *

(f) In order for a component to be considered to be of domestic origin, more than 50 percent of the subcomponents of that component, by cost, must be of domestic origin and the manufacture of the component must take place in the United States. If a component is determined to be of domestic origin, its entire cost may be utilized in calculating the cost of domestic components of an end product.

(g) A subcomponent is considered to be of domestic origin if it is manufactured in the United States.

(h) If a subcomponent that is manufactured in the United States and exported for inclusion in a component that is manufactured outside of the United States receives tariff exemptions under the procedures set forth in 19 CFR 10.11 thru 10.24, the subcomponent retains its domestic identity and can be included in the calculation of the domestic content of an end product even if such a subcomponent represents less than 50% of the cost of a particular component.

(i) If a subcomponent that is manufactured in the United States and exported for inclusion in a component manufactured outside of the United States does not receive tariff exemption under the procedures set forth in 19 CFR 10.11 thru 10.24, that subcomponent loses its domestic identity and cannot be included in the calculation of the domestic content of an end product.

(j) Raw materials produced in the United States and then exported for incorporation into a component are not considered to be a subcomponent for the purposes of calculating domestic content. The value of such raw materials is to be included in the cost of the foreign component.

(k) If a component is manufactured in the United States but contains less than 50% domestic subcomponents, by cost, the cost of the domestic subcomponents and the cost of manufacturing the component may be included in the calculation of the domestic content of the end product.

(l) For purposes of this section, the cost of a component or a subcomponent is the price that a bidder or offeror must pay to a subcontractor or supplier for that component or subcomponent. Transportation costs to the final assembly location must be included in calculating the cost of a component. Applicable duties must be included in determining the cost of foreign components and subcomponents. If a component or subcomponent is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into

the component or subcomponent, an allowance for profit, and the administrative and overhead costs attributable to that component or subcomponent under normal accounting principles.

(m) In accordance with section 165(c) of the Act, labor costs involved in final assembly shall not be included in calculating component costs.

(n) The actual cost, not the bid price, of a component is to be considered in calculating domestic content.

(o) Final assembly is the effort expended at the final assembly point to assemble the end product.

(p) * * *

(12) Brake equipment.

(13) Brake systems.

* * * * *

(r) * * *

(24) Traction motors.

(25) Propulsion gear boxes.

(26) Third rail pick-up equipment.

(27) Pantographs.

* * * * *

(t) A bidder who is bidding on a contract for any of the items covered by section 165(b)(3) and who will comply with section 165(b)(3) and the regulations in this section is not required to follow the application for waiver procedures set out in § 661.9. In lieu of these procedures, the bidder must submit the appropriate certificate required by § 661.12 of this part.

8. By adding a new § 661.13(c) to read as follows:

§ 661.13 Grantee responsibility.

* * * * *

(c) Regardless of whether a bidder or offeror certifies that it will comply with the applicable requirement, such bidder or offeror is bound by its original certification and is not permitted to change its certification after bid opening. A bidder or offeror that certifies that it will comply with the applicable Buy America requirements is not eligible for a waiver of those requirements.

9. In § 661.15, by redesignating (c) as (d) , (d) as (e), (e) as (f), (f) as (g), (h) as (i), (g) as (j), (h) as (l), (i) as (n), (j) as (o), and (k) as (p), adding a new paragraph (c), (k) and (m), and by revising paragraph (e) to read as follows:

§ 661.15 Investigation procedures.

* * * * *

(c) In appropriate circumstances, UMTA may determine on its own to initiate an investigation without receiving a petition from a third party.

* * * * *

(e) The grantee shall be required to reply to the request under paragraph (d) of this section within 15 working days of the request. The grantee may inform UMTA that the investigated party will respond directly to UMTA.

* * * * *

(k) During the course of an investigation, with appropriate notification to affected parties, UMTA may conduct site visits of manufacturing facilities and final assembly locations as if considers appropriate.

* * * * *

(m) For purposes of paragraph (h) of this section, confidential or proprietary material is any material or data whose disclosure could reasonably be expected to cause substantial competitive harm to the party claiming that the material is confidential or proprietary.

10. By revising § 661.19 to read as follows:

§ 661.19 Sanctions.

A willful refusal to comply with a certification by a successful bidder may lead to the initiation of debarment or suspension proceedings under Part 29 of this title.

Dated: August 23, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 88-19393 Filed 8-26-88; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Parts 122 and 123
Application Requirements; Duration of Certain NPDES Permits; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 123

[FRL-3394-7]

NPDES Permit Regulations; Application Requirements; Duration of Certain NPDES Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 18, 1987, (52 FR 30931) EPA proposed to withdraw provisions in the Agency's National Pollutant Discharge Elimination System (NPDES) regulations which authorize the Director of a NPDES program to grant case-by-case extensions for the submission of certain types of effluent data by permit renewal applicants (see 40 CFR 122.21(d)(2)(ii) and 123.62(e)). Today the Agency is promulgating a final rule withdrawing the Director's authority to grant such extensions. The effect of the repeal of these provisions would be to obligate all applicants for renewal of NPDES permits to submit effluent data along with the rest of the renewal application.

EFFECTIVE DATES: This regulation shall become effective September 28, 1988. In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for judicial review at 1:00 p.m. Eastern Time September 12, 1988. Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be had only by filing a petition for review in the United States Courts of Appeals within 120 days after the regulation is considered issued for purposes of judicial review.

FOR FURTHER INFORMATION CONTACT: Stephen Bugbee, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; (202) 475-9539. The record for this rulemaking is available for inspection in Room 208 [NE Mall] 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

On August 9, 1984, EPA promulgated regulations authorizing NPDES program Directors to grant extensions for permit renewal applicants to submit certain effluent data beyond the expiration date of the discharger's NPDES permit (49 FR 31840). In *National Wildlife Federation v. EPA*, 84-1547 (D.C. Cir. 1984), the petitioners challenged the data submission rule on the grounds that it was not adopted in accordance with the Administrative Procedure Act, and that the rule was inconsistent with provisions of the Clean Water Act ("CWA" or the "ACT"). EPA sought, and the Court granted, a voluntary remand of the regulation in order to address NWF's concerns in a new rulemaking.

On August 18, 1987, the Agency proposed to delete 40 CFR 122.21(d)(2)(ii) and the last sentence in 40 CFR 123.62(e) (52 FR 30931). The effect of the repeal of these provisions would be to obligate all applicants for renewal of NPDES permits to submit effluent data along with the rest of the renewal application. As noted in the notice of the proposal to repeal those provisions, the Agency believes that withdrawing the 1984 rule is appropriate because the circumstances that it was designed to address have been largely alleviated since it was promulgated.

In 1981, when the Agency originally proposed to allow the delayed submission of data, the Agency's Permit Compliance System indicated that approximately 67% of the major industrial NPDES permits had been continued beyond their expiration date. Currently, that figure is about 10%. The permitting backlog for majors has been drastically reduced; therefore, it is very unlikely that permittees will be required to resample because effluent data submitted with the rest of the NPDES permit application has become outdated by the time Directors reissue their NPDES permits. In the rare event that new data is required and, for the reasons outlined elsewhere in this preamble, the Agency believes that any inconvenience that might be caused by such resampling is justified by the benefits of having permittees submit effluent data along with the rest of their permit application. One commenter expressed concern that backlogs may not have been eliminated in every State; however, no commenter presented any specific reasons to believe that troublesome backlogs are in fact occurring. The national figures indicate that, on average, permitting authorities are on the verge of eliminating their backlogs.

At the time the data submission rule was adopted, it was believed that shortages in priority pollutant laboratory testing capacity might make it difficult for some permit applicants to submit effluent data by the deadlines in § 122.21(d) for submission of the rest of the permit application. However, as discussed more fully below, there is now adequate laboratory capacity to accommodate the testing needs of NPDES permit applicants.

Finally, EPA believed in 1984 that extensions were appropriate in light of uncertainty regarding testing regulations which had not yet been finalized by the Agency (see 49 FR 31840, (August 8, 1984)). Since EPA has promulgated regulations pursuant to settlement of the Consolidated Permit Regulations litigation (see 49 FR 37998, (September 26, 1984)), that justification for the 1984 data submission rule has been eliminated.

The NPDES regulations and the application form (EPA Form 3510-2c, Items V and VI; hereinafter called "Form 2c") require that existing industrial dischargers submit, in their applications for permit renewal, quantitative and qualitative information for certain pollutants discharged, used, produced or expected to be used at their facilities (see 40 CFR 122.21(g)(7)). The Agency believes that there will be considerable advantages to having all applicants submit this effluent data along with the rest of the permit applications. Timely submission of effluent data promotes the efficient use of permitting resources by State and federal agencies which may utilize that data in establishing permitting priorities. Also, uniform submission requirements may tend to promote public participation in the permitting activities of agencies administering the NPDES program. EPA believes that these goals justify a firm rule requiring effluent data to be submitted with the application. One commenter suggests that the agencies could use the data submitted on discharge monitoring reports to set permitting priorities. Another suggests that parameters such as plant size could be used. EPA believes that such information does not supply as complete a picture of a plant's operation and discharges as does the information submitted in Form 2c. Moreover, these suggestions ignore the need to control discharges of toxic pollutants that Congress emphasized in the adoption of the 1987 CWA amendments. As explained in the Agency's guidance for implementing section 304(1) of the Act, submission of the data required by 40 CFR 122.21(g)(7) will be used by permitting agencies to evaluate those point sources which should be controlled through the individual control strategies developed under section 304(1). Since current permits may not contain limitations on the discharges of toxic pollutants that will be controlled in permits reissued pursuant to section 304(1), discharge monitoring reports based on current permits may not fully reflect the toxic pollutants being discharged by permittees. Commenters

express concerns about the possible backlogs that might result from the implementation of new requirements under the 1987 amendments, and the possibility that permittees may have to resample their effluent if data submitted with the application is outdated by the time of reissuance. As previously noted in this preamble, permitting authorities are on the verge of eliminating the major permit backlogs and are reissuing those permits without significant delays. In the event that delays do occur, it is extremely unlikely that the delays would extend beyond the three year sampling requirement contained in the permit application Form 2c, and provided that all data are representative of the present discharge. EPA believes that, in the rare event that new sampling is required the burden that may result from permittees' having to resample their effluent prior to permit reissuance is justified.

In the August 18, 1987 notice, the Agency noted that an informal survey revealed that none of the Agency's ten regional offices were aware of any requests for extensions made to EPA. A few commenters noted that the rule had been used by State agencies and that it might be needed in the future to address situations such as temporary plant shutdowns, variations in plant operations, weather conditions and laboratory delays. As discussed further below, the Agency believes that permitting authorities retain sufficient discretion, even without the authority to grant extensions contained in § 122.21(d)(2)(ii), to deal with situations where it is impossible for the permittee to plan their sampling activites such that they can submit data by the deadlines established in § 122.21(d).

Other commenters noted that the lack of records of the rule's use indicates a need for procedural safeguards if the rule is maintained. EPA considered retaining the rule with the addition of procedural safeguards to assure that it is being properly applied. For example, the rule could have been amended to provide that requests must be made in writing and that copies of all requests and decisions be made available for public inspection. The EPA or the State agency administering the program would have to weigh the need for data against the justifications for the extensions. The Agency believes that imposing these administrative requirements on permittees and the relevant agencies is not justified and that, for the reasons discussed in this preamble, a firm rule requiring timely submission of effluent data is the most appropriate course of action.

The final rule, by deleting 40 CFR 122.21(d)(2)(ii) and the last sentence in 40 CFR 123.62(e), requires all permit renewal applicants to submit the data required in § 122.21(g)(7), (9) and (10) at the time that they submit the rest of their permit renewal application. The rule does not affect the authority of Directors to waive the requirement that the application be submitted 180 days prior to the permit expiration date, 40 CFR 122.21(d)(2)(i), or such other deadline prior to the permit expiration date established by State law.

II. Responses to Comments on the Proposal

In response to our proposal, EPA received comments on several issues associated with submission of effluent data. The Agency's responses to all of those comments are discussed below.

1. Laboratory Capacity

One commenter questioned the basis for the Agency's claim that laboratory capacity for testing the 129 priority pollutants was no longer of concern. Another commenter expressed concern that laboratory capacity shortages may occur because of new initiatives under the 1987 Clean Water Act (CWA) amendments, including increased emphasis on biological testing. However, commenters submitted no evidence that indicated that a shortage in laboratory capacity currently exists or is likely to develop.

As noted in the preamble to the proposed rule, the Agency believes that there has been a sufficient increase in laboratory capacity to accommodate the full range of testing needs of NPDES applicants. The results of an independent study of the commercial market for environmental laboratory services conducted during 1987 show the market and capacity of environmental laboratories have increased at least four-fold since the early 1980's. Currently, over 1,000 laboratories in the U.S. are performing commercial environmental analytical services with a significant portion of them providing the full priority pollutant analyses. The study indicated over 1,400 GC/MS systems are currently in use for priority pollutant analyses. In the Superfund Program, 75 organic and inorganic laboratories were operating at 50 to 60% capacity on January 1, 1988. The remainder of this capacity is available to the regulated community. In addition to chemical analytical services, EPA recently identified over 120 commercial, university and industrial laboratories in 38 States, providing biological testing services.

EPA is aware of only one recent laboratory shortage for NPDES-required testing, which was due to an apparent shortage of *Mysidopsis bahia* (a small crustacean) needed for toxicity testing of the effluent from Gulf of Mexico oil and gas drilling activities (51 FR 33130 (Sept. 18, 1986)). This shortage occurred after the promulgation of the general permit for those activities. EPA temporarily stayed some of the permit's testing requirements so that breeders could develop their supply of *M. bahia* to meet new demand for the highly specialized resource. Possible shortages of test species for biomonitoring is not directly relevant to this rulemaking, however. The extension provided under §§ 122.21(d)(2)(ii) and 123.62(e) only applied to data submitted pursuant to § 122.21(g)(7), (9) and (10), and these provisions relate to sampling for specific pollutants, not whole effluent toxicity testing. As pointed out above, adequate laboratory capacity exists for pollutant specific analyses.

EPA is not aware of any permittees actually having problems with obtaining laboratory testing to obtain the information required by 40 CFR 122.21(g)(7). The shortage anticipated in 1984 due to new testing requirements never developed. EPA has no reason to believe that supply will not continue to grow to meet demand, especially if demand is made more predictable because of firm deadlines for data submission.

2. Storm Water

Several commenters suggested EPA should retain the 1984 regulation because of the uncertainty regarding the effluent data submission requirements that will apply under the storm water provisions in the 1987 CWA amendments. The comments centered on: (1) The uncertainty surrounding testing requirements for existing dischargers; (2) the difficulty in collecting storm water data in certain areas of the country where it may not be possible to collect required data in a timely fashion; and (3) the possibility of a backlog of storm water permit applications after EPA promulgates new permit application requirements.

In response to the first comment, it is clear that the existing regulations require an operator of a storm water discharge that is currently covered by a NPDES permit to submit a completed application (see 40 CFR 122.21). Although EPA is currently considering changing permit application requirements for storm water discharges, these changes would not create uncertainty that would prevent a

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discharger from submitting the appropriate data when reapplying within the time limits established by 40 CFR 122.21(d). Furthermore, as part of the Agency's storm water rulemaking that will implement section 402(p) of the Act, EPA is planning to solicit comments on reducing application requirements for storm water discharges from the current requirements contained in Form 2c. In any case, there will be an opportunity for the public to raise their concerns about the interplay between new and existing data submission requirements for storm water in the context of the Agency's storm water rulemaking.

In response to the second comment, EPA will consider such problems in the development of storm water regulations. As to existing permittees that may have difficulty obtaining storm water effluent data due to a dry spell immediately prior to their permit renewal, the Agency believes, as discussed below, that permitting agencies have sufficient discretion to deal with such situations even without the extension provisions.

In response to the third comment, although a backlog of storm water permits may result, the backlog problem will primarily be caused by first time permit applications for discharges not currently covered by a NPDES permit. Today's rule will not affect that backlog since it applies only to permit renewals. Some commenters noted the possible effect of a backlog of storm water permits on the processing of other permits. However, the potential for backlog of first time permits is reduced by the 1987 CWA amendments' staggering the dates by which applications for storm water permits must be filed; permit applications for storm water discharges associated with industrial activity and discharges from municipal separate storm sewer systems serving a population of 250,000 or more which are not currently covered by a permit need not be filed until February 4, 1990; permit applications for storm water discharges from municipal separate storm sewer systems serving a population of 100,000 or more but less than 250,000, need not be filed until February 4, 1992. The Agency also anticipates that many States will minimize backlogs by issuing general permits for storm water discharges. Furthermore, as discussed elsewhere in this preamble, the Agency believes that the timely submission of effluent data outweighs the inconvenience that might result from the rare requirement that a permittee be required to resample the effluent prior to permit reissuance.

3. Ability to Obtain Representative Effluent Data

Several commenters expressed concern that dischargers would not be able to obtain the effluent data necessary to submit a complete application because of extended shutdowns, plant modifications, variations in plant operations (i.e., peak versus non-peak flows), unscheduled repairs or extreme weather conditions, thereby causing permits to expire and leading to unpermitted discharges or plant shutdowns until new permits are issued. For example, commenters stated that some steam electric facilities often have long intervals between their discharges, and discharges of storm water in arid areas may be similarly intermittent. Where such an extended period of no discharge happens to coincide with the period preceding the permit expiration, it would be difficult for the permittee to supply current effluent data. Other commenters noted that short term shutdowns due to weather conditions (freezing, flooding or dry spells) or repairs coinciding with the period prior to permit expiration may necessitate the granting of extensions for submission of effluent data beyond the permit expiration date.

The Agency believes it is reasonable to expect permittees to plan their sampling sufficiently far in advance of permit expiration so that such problems do not arise. Under 40 CFR 122.21(d), permittees are obligated to submit a completed application 180 days prior to permit expiration. Given that permittees must plan their sampling accordingly, there should be few cases where short-term shutdowns prevent sampling until after the permit expiration date. Furthermore, seasonal weather conditions and regular repair operations can be anticipated, and the permittee should plan sampling activity with these events in mind. In addition, applicants for EPA issued permits can request that they be able to submit the data up to the permit expiration date rather than 180 days prior thereto (see 40 CFR 122.21(d)(2)(i)). Applicants in States that do not have a rule analogous to § 122.21(d) should plan their sampling sufficiently far in advance of the permit application deadline.

The agency believes that under normal conditions such dischargers should be able to plan their effluent sampling over the three year period prior to permit expiration presently provided for in permit application Form 2c. If circumstances do result in unusually long periods of no discharge, Directors have the discretion to consider data from earlier discharges in determining whether the application is complete (see 40 CFR 122.21(e)). If necessary, the Director can request that the less recent information submitted as part of a complete application be supplemented with data from the next discharge. The permit could be modified, in accordance with 40 CFR 122.62(a)(2), if the supplemental information shows that modification is appropriate. EPA recognizes, as several commenters pointed out, that there may be some administrative burden associated with modifying permits based on newly submitted effluent data. However, as noted elsewhere in this preamble, the Agency believes such resampling will be rare and when required, such a burden is justified by the need for timely submission of effluent data.

Several commenters stated that eliminating the extension provision would require some plants to operate at peak capacity merely for the purpose of collecting representative effluent data, imposing unnecessary costs and resulting in unnecessary discharges. Commenters have failed to show how eliminating the provisions would require them to operate at peak capacity. Form 2c only requires the submission of data that is representative of a facility's operations. Dischargers do not have to provide data from peak operations unless, in fact, that is representative of the operations of the facility.

Several commenters, who raised the possibility of delays in receiving laboratory analysis reports, are in favor of retaining the current rule. However, EPA believes that since such delays are certainly foreseeable, it behooves permittees to conduct their sampling sufficiently far in advance to account for such possible delays.

4. Statutory Authority for the Extension Rule

Several commenters argued that the rule being repealed today was inconsistent with language in section 304(i) of the Clean Water Act directing EPA to "promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information" from permittees. Furthermore, the National Wildlife Federation asserted in its comments that the court order granting the Agency's motion for a voluntary remand of the extension provision required EPA to address NWF's concerns that the regulation violated section 304(i). The Agency does not believe that the extension provision is prohibited by section 304(i) of the Act, but rather that the rule should be repealed for the

reasons outlined above in this preamble. In any case, the Agency does not believe that the DC Circuit's remand of the extension provision requires the Agency to address legal arguments made by NWF which are not germane to this rulemaking. Because the Agency proposed to rescind the rule and is adopting the same approach in the final regulation, it is not relevant whether the Agency would have the authority to retain the rule if it decided that such a course was appropriate. That legal question is simply not posed by this rulemaking.

III. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those that impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This regulation is not a major rule because it merely deletes a time extension for submission of Form 2c effluent data. Thus, it meets none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB and any EPA response will be available for public inspection at EPA in Room 208 (NE Mall) 401 M Street SW., Washington, DC 20460.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 2 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of an agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Since this regulation does not impose any new requirements on permit applicants, but merely adjusts the timing for submission of effluent data, the Administrator certifies, pursuant to 5 U.S.C. 605(b), that this final regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 122 and 123

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Lee M. Thomas,

Administrator.

Date: August 19, 1988.

For the reasons set out in the preamble, 40 CFR Parts 122 and 123 are amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 122.21 [Amended]

2. In § 122.21, paragraph (d)(2)(ii) is removed.

PART 123—STATE PROGRAM REQUIREMENTS

3. The authority citation for Part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 123.62 [Amended]

4. In § 123.62, the last sentence in paragraph (e) is removed.

[FR Doc. 88-19296 Filed 8-26-88; 8:45 am]

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Part V

Federal Communications Commission

47 CFR Part 36

Common Carrier Services; MTS and WATS Market Structure; Joint Board Establishment; Final Rule and Supplemental Notice of Proposed Rulemaking

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket Nos. 78-72, 80-286 and 86-297]

Common Carrier Services; MTS and WATS Market Structure; Amendment of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Federal Communications Commission grants, in part, reconsideration of its decision to adopt revisions of the Separations Manual, Part 36 of its Rules. The Commission: (1) Reconsidered its decision to require that carriers count intermediate terminations when assigning costs in Category 4.23, Central Office Equipment (COE), All Other Interexchange Circuit Equipment; (2) reinstated the former Part 67 procedures for Other Billing and Collecting Expenses as an interim measure pending the outcome of a Supplemental NPRM regarding Revenue Accounting Expenses which refers this issue to the Joint Board in Docket No. 80-286 and is summarized elsewhere in this volume; (3) simplified Lifeline Connection Assistance Expense procedures; (4) denied petitions for reconsideration of the new separations procedures for Category 3 COE, Local Switching Equipment, except to the limited extent necessary to clarify the calculation of the transition from the former Part 67 allocation factors to the new Part 36 allocation factor; (5) denied petitions requesting revisions in the separations procedures for Category 1 COE, Operator Systems Equipment; (6) affirmed its decision to adopt one Separations Manual to be used by both large and small carriers; (7) affirmed its decision to adopt different allocation factors to be used by large and small carriers in the allocation of General Support Facilities; (8) revised the Separations Manual to permit the National Exchange Carrier Association (NECA) to adjust the Universal Service Fund (USF); and (9) affirmed the legal basis for its decision to adopt the new Part 36 separations procedures.

EFFECTIVE DATE: January 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cindy Schonhaut, Special Counsel, Federal-State Joint Board Matters, Accounting and Audits Division, Common Carrier Bureau, at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, CC Docket Nos. 78-72, 80-286 and 86-297, FCC 88-216; adopted June 27, 1988, and released August 8, 1988.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Order on Reconsideration

1. Several parties have filed petitions for reconsideration or clarification of the revisions to the Separations Manual recently adopted by the Commission. In revising the Manual, the Commission adopted the recommendations of the Joint Board in CC Docket No. 80-286 and the Joint Board in CC Docket No. 86-297 and recodified the Separations Manual as the new Part 36 of the Commission's rules effective January 1, 1988. In that decision, the Commission conformed the separations rules to the recently revised Uniform System of Accounts, simplified separations procedures and made changes in the separations rules applicable to Central Office Equipment and Revenue Accounting Expenses.

2. Under the current separations procedures of Part 36 of the Commission's Rules, local exchange carriers (LECs) are required to count intermediate terminations in assigning the costs in Category 4.23 COE to subcategories. *See* 47 CFR 36.126(e)(3). Several parties urged the Commission to reconsider this requirement and suggested that carriers be required to count only end terminations. The Commission decided to reconsider its decision to include intermediate terminations in the assignment of costs in Category 4.23 COE and required instead that LECs count only the terminations at the ends of circuits. The Commission believes that a count of only end terminations is consistent with its intentions as well as those of the Joint Board in Docket 80-286. The Commission required that LECs implement this change effective January 1, 1988 and file revised access charges to reflect this change with a minimum of forty-five days notice.

3. The Commission also reinstated the former Part 67 procedures for the Other Billing and Collecting Expense subcategory on an interim basis because the new procedures produced unintended and anomalous results and have proven difficult to apply. In a Supplemental Notice of Proposed Rulemaking summarized elsewhere in this volume, the Commission seeks comments and data on the separations procedures for Revenue Accounting Expenses and refers this issue to the Joint Board in Docket No. 80-286.

4. In addition, the Commission granted the petitions of USTA and others requesting revision in the Commission's Rules to provide an adjustment for Lifeline Connection Assistance Expense that is comparable to the USF adjustment. Because the recently adopted procedure requiring the assignment of Lifeline Connection Assistance Expense to account categories has proven to be unduly burdensome and does not provide for the identification of the expenses associated with Lifeline Connection Assistance, the Commission revised these procedures.

5. The Commission also denied petitions to reconsider its decision to adopt new procedures for the categorization and allocation of Category 3 COE because the new procedures reflect cost-causation principles, simplify the separations process and reduce administrative burdens on carriers. The Commission clarified, however, that the small carriers eligible for the weightings should implement the five-year phase-in of the new debt allocation factor. Because neither the Joint Board in Docket No. 80-286 nor the Commission has sought comment on Category 1 COE procedures, the Commission also denied petitions requesting revision in the separations rules for these procedures.

6. The Commission affirmed its decision to adopt one Separations Manual for the use of both large and small carriers. The Commission affirmed that a modified Class B Manual adopted for all carriers would simplify the separations process without reducing the accuracy of jurisdictional results. Moreover, the Commission stated that the benefits of simplifying separations procedures apply equally to both large and small carriers. The Commission also stated that the use of one manual will promote uniformity and reduce inconsistent separations results and inconsistent access charges. The Commission believes that the modified Class B Manual will best achieve a balance between the goal of simplification and the need to reasonably reflect cost causation principles.

7. The Commission also affirmed its decision to adopt bifurcated procedures for the allocation of General Support

Facilities. Under these procedures, large carriers allocate General Support Facilities on the basis of an expense-related factor and small carriers on the basis of a plant-related factor. The data submitted in this proceeding indicated that the adoption of a bifurcated approach will substantially mitigate the revenue requirement impact of the new manual. The Commission believes that the bifurcated approach reflects the appropriate balance between the need to adopt procedures that reflect cost-causation principles and the concern for the revenue requirement impact of those procedures.

8. The Commission granted NECA's request that it be allowed to resize the USF beginning April 1, 1989 to reflect updated data filed with NECA by the carriers. This approach will make the USF more accurately reflect actual costs and is consistent with the Lifeline Connection Assistance procedures.

9. Finally, the Commission affirmed the legal basis for its decision to adopt the new Part 36 procedures and concluded that sufficient notice was provided to satisfy the requirements of the Administrative Procedure Act. It also concluded that the Joint Boards followed appropriate procedures and afforded all interested persons an adequate opportunity to comment.

Ordering Clauses

10. Accordingly, *It is hereby ordered,* That the Petitions for Reconsideration or Clarification filed in these proceedings *are granted* to the extent provided herein and otherwise *are denied.*

11. *It is further ordered,* That the modifications of Part 36 of the Commission's rules described above and set forth in Appendix A *are adopted,* effective thirty days after publication in the **Federal Register,** except that the interim Section 36.380 will become effective on the effective date of the next annual interstate access tariff revision.

12. *It is further ordered,* That local exchange carriers shall implement the revised separations procedures for Category 4.23 Central Office Equipment adopted in this Order effective January 1, 1989.

13. *It is further ordered,* That the Petition for Waiver of § 36.381 of this Commission's Rules filed by the Bay Springs Telephone Company *is denied.*

List of Subjecs in 47 CFR Part 36

Communications common carrier, Telephone, Uniform system of accounts, Reporting and recordkeeping requirements, Jurisdictional separations procedures.

This action is taken pursuant to 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 218, 221(c), 403, and 410.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Part 36 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (j), 205, 211(c), 403 and 410.

2. Section 36.125 is amended by revising paragraph (f) to read as follows:

§ 36.125 Local switching equipment—Category 3.

* * * * *

(f) For study areas with fewer than 50,000 access lines, Category 3 investment is apportioned by the application of an interstate allocation factor that is the lesser of either .85 or an amount as follows: Beginning January 1, 1993, the amount will equal the DEM factor specified in § 36.125(b) multiplied by a weighting factor. During the 1988–1992 period, the amount will equal the sum of two elements for the appropriate transition year (the A component times the composite allocator plus the B component times the DEM allocator times a weighting factor). The A and B components are specified in § 36.125 (d) and (e). The applicable weighting factor is as follows:

Number of access lines in service in study area	Weighting factor
0 to 10,000	3.0
10,001 to 20,000	2.5
20,001 to 50,000	2.0
50,001 or above	1.0

* * * * *

3. Section 36.380 is revised to read as follows:

§ 36.380 Other billing and collecting expense.

(a) This classification includes the salary expense, including supervision, general accounting administrative, and miscellaneous expense, associated with the preparation of customer bills other than carrier access charge bills and with other revenue accounting functions not covered in § 36.379. Included in this classification are the expenses incurred in the preparation of monthly bills, initial and final bills, the application of service orders to billing records (establishing, changing, or discontinuing customers' accounts), station statistical work, controlling record work and the preparation of revenue reports.

(b) Pending the adoption of permanent procedures, the expenses assigned this classification are segregated on the basis of the relative number of users of the following services: Message toll telephone and telegram (excluding semi-public where tolls are not itemized on the bill); TWX; exchange including semi-public; directory advertising; and private line services, as determined by analysis for a representative period. In determining the number of users, an individual customer is counted once for each class of service which it uses; for example, a majority of customers are counted both as message toll telephone and telegram users and as exchange users.

(1) Expense allocated to message toll telephone and telegram users is apportioned among the operations on the basis of the relative number of non-affiliated company telegram message, state message toll telephone messages and interstate message toll telephone messages. In this apportionment, telegram messages are treated as exchange.

(2) Expense allocated to TWX users is apportioned between state and interstate operations on the basis of the relative number of TWX connections.

(3) Expenses allocated to exchange, including semi-public users, and to directory advertising users are assigned to the exchange operation.

(4) Expense allocated to private line services users is apportioned among the operations on the basis of the relative number of interstate and intrastate private line service accounts, as determined by analysis for a representative period.

(c) If end user common line charges for intrastate toll access are assessed in a particular state, one-half of the end user common line access charge billing expense shall be apportioned to the interstate operations. If no end user common line charge is assessed for intrastate toll access, all of the end user common line access charge billing expense shall be assigned to interstate operations.

4. Section 36.631 is amended by adding paragraph (e) to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(e) Beginning April 1, 1989, the expense adjustment calculated pursuant to § 36.631 (c) and (d) shall be adjusted each year to reflect changes in the size of the Universal Service Fund resulting from adjustments calculated pursuant to

§ 36.612(a) made during the previous year. If the resulting amount exceeds the previous year's fund size, the difference will be added to the amount calculated pursuant to § 36.631 (c) and (d) for the following year. If the adjustments made during the previous year result in a decrease in the size of the funding requirement, the difference will be subtracted from the amount calculated pursuant to § 36.631 (c) and (d) for the following year.

5. Section 36.741 is amended by revising paragraph (c) to read as follows:

§ 36.741 Expense adjustment.

* * * * *

(c) The expense adjustment calculated pursuant to § 36.741 (a) and (b) shall be subtracted from total intrastate expenses and added to total interstate expenses.

§ 36.101 [Amended]

6. In § 36.101(a), Section Arrangement, change "36.128" to "36.126."

7. In § 36.101(a), Section Arrangement, insert "Rural Telephone Bank Stock 36.172" to precede the category "Material and Supplies . . . . ."

§ 36.112 [Amended]

8. In § 36.112(a), change "Expense" to "Expenses" everywhere it appears.

§ 36.125 [Amended]

9. In § 36.125(a) fourth sentence, change "transverters", to "transmitters".

§ 36.126 [Amended]

10. In § 36.126(e)(3)(i) first sentence, change "circuits." to "circuits: Interstate Private Line, State Private Line, Message, and TWX."

§ 36.153 [Amended]

11. In § 36.153(a)(2)(i), second sentence, change "so" to "directly".

§ 36.154 [Amended]

12. In § 36.154(f)(4)(ii), change "Sec. 36.154(d)" to "Sec. 36.154 (d) and (e)".

13. In § 36.154(f)(4)(iii), change "Sec. 36.154(d)" to "Sec. 36.154 (d) and (e)".

§ 36.172 [Amended]

14. In § 36.172(b), change "Part 67" to "Part 36".

§ 36.191 [Amended]

15. In § 36.191(a), change "where" to "or where".

§ 36.201 [Amended]

16. In § 36.201(a), remove "36.201 and".

§ 36.216 [Amended]

17. In § 36.216(a), change "represented" to "representative".

§ 36.301 [Amended]

18. In § 36.301(a), add the following the precede the category "Corporate Operations Expenses":

Telephone Operator Services	36.374
Published Director Listing	36.375
All Other	36.376
Category 1—Local Bus. Office Expense	36.377
Category 2—Customer Services (Revenue Accounting)	36.378
Message Processing Expense	36.379
Other Billing and Collecting Expense	36.380
Carrier Access Charge Billing and Collecting Expense	36.381
Category 3—All other Customer Service Expense	36.382

§ 36.310 [Amended]

19. In § 36.310(c), change "67.2 (c) and (d)" to "36.2 (c) and (d)".

§ 36.331 [Amended]

20. In § 36.331(b), remove "36" in second sentence, following the word "Operations".

In § 36.331(b), change "investment 36.142(a)" to "Investment as per 36.142(a)".

§ 36.631 [Amended]

21. In § 36.631(c)(2), change "§ 36.662(b)" to "§ 36.622(b)".

Appendix-Glossary [Amended]

22. In Appendix-Glossary, the definition for Customer Dialed Charge Traffic is revised to read: "Message toll charge is made, except for that traffic recorded by means of message registers".

23. In Appendix-Glossary, the definition for Study Area, is revised to read: "A telephone holding company's operations within a single state. Study area boundaries shall be frozen as they are on November 15, 1984".

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket Nos. 78-72, 80-286, and 86-297; FCC 88-216]

Common Carrier Services; MTS and WATS Market Structure; Amendment of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Commission has issued a Supplemental Notice of Proposed Rulemaking (Supplemental NPRM) seeking comment and data on the appropriate allocation method for Revenue Accounting Expenses. In an Order on Reconsideration summarized elsewhere in this volume, the Commission granted petitions for requiring that it reconsider its decision to revise the separations procedures for Revenue Accounting Expenses. The Commission also adopted modifications of Part 36 of its Rules, effective thirty days after publication in the Federal Register, except that the new § 36.380, which is applicable to Revenue Accounting Expenses, will become effective on the effective date of the next annual interstate access tariff revision.

DATES: Comments and data must be filed on or before September 9, 1988 and reply comments on or before September 26, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Art Leahy, Accounting and Audits Division, Common Carrier Bureau, at (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Supplemental Notice of Proposed Rulemaking, CC Docket Nos. 78-72, 80-286 and 86-297, FCC 88-216; adopted June 27, 1988, and released August 8, 1988.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Supplemental Notice of Proposed Rulemaking

1. The original Notice of Proposed Rulemaking in this proceeding was released in 1980. *Amendment of Part 67 of the Commission's Rules,* CC Docket No. 80-286, 78 FCC 2d 837 (1980). The Joint Board in Docket No. 80-286 requested comments on specific approaches for the allocation of Revenue Accounting Expenses in *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board,* CC Docket Nos. 78-72 and 80-286, FCC 86J-3, released July 25, 1986, 51 FR 30, 522 (August 27, 1986). In April 1987, the Joint Board in CC Docket No. 80-286 recommended that the Commission adopt new separations procedures for the allocation of Revenue Accounting Expenses, formerly in Account 662 and currently in Accounts 6620 and 6623. Revenue Accounting Expenses represent a major portion of the costs incurred by the local exchange carriers (LECs) in performing billing and collecting services for other carriers. The Commission adopted the Joint Board's recommendation that it revise the separations procedures for these expenses to reflect the decrease in interstate billing and collecting functions performed by the LECs on behalf of AT&T.[1]

2. Under the revised separations procedures of Part 36 of the Commission's Rules, Revenue Accounting Expenses are segregated into three subcategories. Message Processing Expense and Carrier Access Charge Billing and Collecting Expense are allocated essentially the same as under the former Part 67 rules. Other Billing and Collecting Expense has been combined with End User Common Line Access Charges and is allocated on the basis of a formula that reflects the number of users of various local and toll services. This allocation factor is further refined to reflect the ratio of the number of users of those services in 1984 to the number of users in the study year. In addition, the rules establish a maximum 33 percent and a minimum 5 percent interstate allocation for the Other Billing and Collecting Expense subcategory. The Commission found this formula unworkable and stated that it resulted in problematic jurisdictional allocations that did not reflect the actual amount of billing and collecting services performed by the LECs on behalf of the interexchange carriers (ICs).

[1] These procedures are codified in §§ 36.378-36.381 of the Commission's Rules, 47 CFR 36.378-36.381.

3. In the Supplemental NPRM, the Commission sought further comment and data on the new separations procedures for Revenue Accounting Expenses and referred a permanent resolution of this issue to the Joint Board in CC Docket No. 80-286. Pending resolution of this inquiry, the Commission reinstated the former Part 67 procedures for Other Billing and Collecting Expense on an interim basis.

4. The Commission requested that the LECs submit data, as specified in Appendix B of the Supplemental NPRM, to assist the Joint Board and the Commission in the evalution of alternative allocation methods. It also requested that parties propose specific proposals for a permanent formula that will be consistent with the Commission's objectives. It requested that the Joint Board analyze those proposals and submit a recommendation.

Comments

5. Interested parties may file comments and data on the issues discussed above on or before August 15, 1988, and reply comments on or before September 30, 1988.

Regulatory Flexibility Act

6. We certify that the Regulatory Flexibility Act [2] is not applicable to the rule changes we are adopting in this proceeding. In accordance with the provisions of Section 605 of the Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Supplemental NPRM in the **Federal Register.** As part of our analysis of the proposals submitted in response to this Supplemental NPRM, however, the Joint Board in Docket No. 80-286 and this Commission will consider the impact of proposals on small telephone companies, *i.e.,* those serving 50,000 or fewer access lines.[3] The action

[2] 5 U.S.C. 601.

[3] Because of the nature of local exchange and access service, this Commission concluded that small telephone companies are dominant in their fields of operation and, therefore, are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338-89 (1983). Thus, this Commission is not required by the terms of the Regulatory Flexibility Act to apply the formal procedures set forth therein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

proposed herein would have a beneficial economic impact on all such telephone companies because the new procedures will reduce administrative burdens and will better reflect cost-causation principles. The carriers will therefore be able to develop rates that better reflect their actual costs.

Paperwork Reduction Act

7. We have analyzed the proposal contained herein with respect to the Paperwork Reduction Act of 1980 [4] and have tentatively concluded that it will not, if adopted, impose new or modified information collection requirements on the public. The instant proposal is a general solicitation of comments from the public and as such, does not constitute a collection of information.[5] All comments will be considered in this proceeding. Parties need not file data for their comments to be considered in this proceeding. Therefore, implementation of the proposed rules will not be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

Ex Parte Contacts

8. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period.[6] The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission: (1) Releases a final order; (2) issue a public notice stating that the matter has been deleted from the Sunshine Agenda; or, (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first.[7] During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission, Joint Board member or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding.[8] In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which: (1) If written, is not served on the parties to the proceeding; or, (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present.[9] Any person who submits a written *ex parte* presentation must provide, on the same day it is submitted, a copy of the same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide, on the day of the oral presentation, a written memorandum to the Secretary (with a copy to the Commissioner, Joint Board member or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state, by docket number, the proceeding to which it relates. For Joint Board actions, special *ex parte* rules apply.[10] For Joint Board actions, all written materials which are not filed in accordance with a pleading cycle established by the Joint Board shall be accompanied by a Petition for Leave to File showing cause why the material should be considered by the Joint Board. The Joint Board will not consider any filing made outside the authorized pleading cycle and received by the Commission less than fifteen days [11] in advance of a Joint Board meeting at which the Joint Board is to consider the subject matter of that filing. Written *ex parte* presentations, as defined by the Commission's rules, need not be accompanied by a Petition for Leave to File and may be received in the discretion of the Joint Board member or staff personnel involved. No written *ex parte* presentations, however, shall be made during the fifteen day period immediately preceding a Joint Board meeting except in response to an inquiry by a member of the Joint Board or its staff.

Ordering Clauses

9. Accordingly, it is ordered, That the Joint Board in CC Docket No. 80–286 shall review the comments, proposals and data filed regarding the separations procedures applicable to Revenue Accounting Expenses and shall prepare recommendations to this Commission on the issue raised herein.

List of Subjects in 47 CFR Part 36

Communications common carrier, Telephone Uniform system of accounts, Reporting and recordkeeping requirements, Jurisdictional separations procedures.

This action is taken pursuant to 47 U.S.C. 154(i) and (j), 201, 202, 203, 205, 218, 221(c), 403, and 410.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–18761 Filed 8–26–88; 8:45 am]

BILLING CODE 6712-01-M

[4] 44 U.S.C. 501.

[5] *See* 5 CFR 1320.7(k)(4).

[6] *See generally* 47 CFR 1.1206(a).

[7] 47 CFR 1.1202(f).

[8] 47 CFR 1.203.

[9] 47 CFR 1.1202(b).

[10] Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80–286, 89 FCC 2d 36 (1982).

[11] In calculating this fifteen day period, neither the day on which the material is filed nor the day on which the Joint Board meeting is scheduled shall be counted.

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Monday
August 29, 1988

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 8
Federal Acquisition Regulation (FAR); Approval of Requirements for Acquisition of Printing; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

Federal Acquisition Regulation (FAR); Approval of Requirements for Acquisition of Printing

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to withdraw coverage in FAR 8.802 (a) and (c) pertaining to the requirements in 44 U.S.C. 501(2) for approval, by the Congressional Joint Committee on Printing, of requirements for acquisition of printing.

Withdrawal of the referenced FAR coverage is intended to be responsive to the fundamental congressional concern that gave rise to enactment of section 309 of the Legislative Branch Appropriations Act, Pub. L. 100–202, Continuing Resolution for FY 1988, as expressed in its accompanying report language.

DATE: Comments should be submitted to the Far Secretariat at the address shown below on or before October 28, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–42 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule does not appear to have a significant impact on a substantial number of small entities and analysis of the proposed revision indicates that it is not a "significant revision" as defined in FAR 1.501, i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or have significant effect beyond the internal operating procedures of the issuing agencies.

Accordingly, and consistent with section 1212 of Pub. L. 98–525 and section 302 of Pub. L. 98–577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation) solicitation of agency and public views on the proposed revision is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: August 17, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 8 be amended as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for Part 8 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

2. Section 8.802 is amended by removing the existing paragraphs (a) and (c); by redesignating the existing paragraphs (b), (d), and (e) as (a), (b), and (c); and by revising in new paragraph (b) the first sentence to read as follows:

8.802 Policy

* * * * *

(b) The head of each agency shall designate a central printing authority; that central printing authority may serve as the liaison with the Congressional Joint Committee on Printing (JCP) and the Public Printer on matters related to printing. * * *

* * * * *

[FR Doc. 88–19502 Filed 8–26–88; 8:45 am]

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Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 45 and 52
Federal Acquisition Regulation (FAR); Special Tooling; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

Federal Acquisition Regulation (FAR); Special Tooling

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to FAR 45.306, Providing special tooling, and the clause at 52.245–17, Special Tooling, to provide clear policy and uniform procedures for furnishing or acquiring special tooling under fixed-price contracts. Complementary changes are proposed for sections 45.305, 45.307, and 45.308, and clauses at 52.245–2, 52.245–17, 52.245–18, and 52.245–19.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 28, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Street NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–36 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 45.306, Providing special tooling, and the clause at 52.245–17, Special Tooling, are proposed for revision to clarify that the Special Tooling clause is used in fixed-price contracts when the Government will furnish special tooling to the contractor, or the contractor will acquire or fabricate special tooling, and the Government intends to maintain rights to the special tooling until such time that the Government decides it wants full title to the special tooling, or has no further interest in the special tooling.

Under the proposed revision to the Special Tooling clause, the types of information which contractors must keep in their property control systems is delineated. The periodic reporting of this information to the Government is also defined. The costs of increased recordkeeping is offset by reductions in contractors' management costs by eliminating the requirements for physical inventories, assignment of condition codes, and preparation of inventory schedules.

These FAR changes are intended to improve the management of special tooling, the retention and disposal decisions made by the Government, and the opportunities for using the special tooling to increase competition when contracting for postproduction requirements.

Other changes are made to FAR 45.305, 45.307, and 45.308 to locate the prescriptions for the Special Test Equipment clause and the Government Property Furnished "As Is" clause in the FAR sections which address the policy on the use of these clauses. These changes are intended to clarify when the clauses are to be used.

B. Regulatory Flexibility Act

The proposed changes to FAR Subpart 45.3 and the clauses at 52.245–2 and 52.245–17 may have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is on file in the FAR Secretariat. The Initial Analysis will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

A copy of the IRFA may be obtained from the FAR Secretariat, Attn: Margaret A. Willis, Room 4041, GS Building, 18th and F Streets NW., Washington, DC 20405. Comments are invited. Comments from small entities concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

This proposed rule contains an information collection requirement. Accordingly, a revised burden estimate for OMB clearance number 9000–0075 is being submitted to the Office of Management and Budget for approval under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: August 17, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 45 and 52 be amended as set forth below:

1. The authority citation for Parts 45 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

45.305 [Reserved]

2. Section 45.305 is removed and reserved.

3. Section 45.306–2 is revised to read as follows:

45.306–2 Special tooling under cost-reimbursement contracts.

Title to special tooling under cost-reimbursement contracts is acquired in all cases. The clause used for this purpose is 52.245–5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

4. Section 45.306–3 is revised to read as follows:

45.306–3 Special tooling under fixed-price contracts.

(a) *Criteria for acquisition.* In deciding whether or not to acquire title to special tooling, or rights to title, under fixed-price contracts, the contracting officer shall consider the following factors:

(1) The current or probable future need of the Government for the items involved (including in-house use) and the estimated cost of producing them if not acquired.

(2) The estimated residual value of the items.

(3) The administrative burden and other expenses incident to reporting, recordkeeping, preparation, handling, transportation, and storage.

(4) The feasibility and probable cost of making the items available to other offerors in the event of future acquisitions.

(5) The amount offered by the contractor for the right to retain the items.

(6) The effect on future competition and contract pricing.

(b) *Decision not to acquire special tooling.* In contracts in which the Government will not acquire title to special tooling, or rights to title, special requirements may be included in the Schedule of the contract (e.g.,

requirement governing the contractor's capitalization of special tooling costs).

(c) *Contract clause.* The contracting officer shall insert the clause at 52.245–17, Special Tooling, in solicitations and contracts when a fixed-price contract is contemplated, and either the contract will include special tooling provided by the Government or the Government will acquire title or right to title in special tooling to be acquired or fabricated by the contractor for the Government, other than special tooling to be delivered as an end item under the contract. The Special Tooling clause shall apply to all special tooling accountable to the contract.

45.306-4 [Removed]

5. Section 45.306–4 is removed.

6. Section 45.307–1 is amended by removing in paragraph (b) the reference "45.306–2(c)" and inserting in its place the reference "45.306–3(a)", and by adding paragraph (c) to read as follows:

45.307–1 General.

* * * * *

(c) The contracting officer shall insert the clause at 52.245–18, Special Test Equipment, in solicitations and contracts when contracting by negotiation and the contractor will acquire or fabricate special test equipment for the Government but the exact identification of the special test equipment to be acquired or fabricated is unknown.

7. Section 45.308 is amended by adding paragraph (c) to read as follows:

45.308 Providing Government production and research property "as is."

* * * * *

(c) The contracting officer shall insert the clause at 52.245–19, Government Property Furnished "As Is," in solicitations and contracts when a contract other than a consolidated facilites contract, a facilities acquisition contract, or a facilities use contract is contemplated and Government production and research property is to be furnished "as is" (see 45.106 for additional clauses that may be required).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.245–2 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1988);" by adding in paragraph (c)(2) a second sentence; and by revising paragraph (c)(3) to read as follows:

52.245–2 Government Property (Fixed-Price Contracts)

As prescribed in 45.106(b)(1), insert the following clause:

* * * * *

(c) * * *

(2) * * * However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. * * *

(3) Title to each item of facilities, and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

* * * * *

9. Section 52.245–17 is revised to read as follows:

52.245–17 Special Tooling.

As prescribed in 45.306–3(c), insert the following clause:

SPECIAL TOOLING (AUG 1988)

(a) *Definition.* "Special Tooling" means jigs, dies, fixtures, molds, patterns, tapes, gauges, other equipment and manufacturing aids, all components of these items, and replacements of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items. Special tooling, for the purpose of this clause, includes all special tooling acquired or fabricated by the Contractor for the Government (other than special tooling to be delivered as a line item) or furnished by the Government for use in connection with and under the terms of the contract.

(b) *Title.* The Government retains title or option to take title to all special tooling subject to this clause until such time as title or option to take title is relinquished by the Contracting Officer as provided for in subparagraphs (j)(2) and (j)(3) of this clause.

(c) *Risk of loss.* Except to the extent that the Government shall have otherwise assumed the risk of the loss to special tooling applicable to this clause, in the event of the loss, theft or destruction of or damage to any such property, the repair or replacement shall be accomplished by the Contractor at its own expense.

(d) *Special tooling furnished by the Government.*

(1) Except as otherwise provided, all Government furnished special tooling is provided "as is." The Government makes no warranty whatsoever with respect to special tooling furnished "as is," except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when last available for inspection by the Contractor under the solicitation.

(2) The Contractor may repair any special tooling made available on an "as is" basis. Such repair will be at the Contractor's expense except as otherwise provided in this clause. Such property may be modified as necessary for use under this contract at the Contractor's expense, except as otherwise directed by the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of the Government.

(3) If there is any change in the condition of special tooling furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation or the Government directs a change in the quantity of special tooling furnished or to be furnished, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts, and, as directed by the Contracting Officer, either (a) return such items at the Government's expense or otherwise dispose of the property or (b) effect repair to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of special tooling in a condition or in quantities other than that when originally offered.

(e) *Use of special tooling.* The Contractor may use special tooling subject to this clause on other Government effort when specifically approved by the Contracting Officer for this contract and the Contracting Officer for the contract under which the special tooling will be used. Any other use of the special tooling shall be subject to advance written approval of the Contracting Officer. In the event the Government elects to remove any special tooling that is required for continued contract performance, the contract shall be equitably adjusted in accordance with paragraph (m) of this clause.

(f) *Property control.*

(1) *Records.* The Contractor's special tooling records shall provide the following minimum information regarding each item of special tooling subject to this clause and shall be made available for Government inspection at all reasonable times.

(i) Number or code of the contract to which the tooling is accountable and the number or code of the contract for which the tooling was originally acquired or fabricated.

(ii) Retention codes as defined below:

(A) *Primary Code.* Assign one of the following to each item of special tooling.

Code A. Spares Tooling. Required to provide a provisioned spare part or assembly.

Code B. Judgment (Insurance) Tooling. Fabrication tools for parts that are not provisioned spares but which in the judgment of the Contractor will be required at some time for logistic support of the end item.

Code C. Rate Tooling. Necessary to economically produce at increased rates (e.g., for mobilization or surge) but not essential for parts fabrication at low production rates.

Code D. Assembly Tooling. Required for manufacture of the end product but not required for production of spare parts. Those items having no postproduction need except for potential modification or resumed production programs.

(B) Secondary Code. Assign one or more of the following codes, as applicable, to each item of special tooling:

Code 1. Repair Tooling. Items which are capable of being used for repair of provisioned parts or assemblies.

Code 2. Replaceable Tooling. Spares or judgment tooling (primary retention codes A or B) which, in the opinion of the Contractor, can be effectively and economically replaced by "soft" tooling on an "as required" basis in lieu of retention of the "hard" production tooling for supporting postproduction requirements.

Code 3. Maintenance Tooling. Items which are capable of being used for depot level maintenance of the applicable end item or components thereof.

Code 4. Crash Damage Tooling. Items which apply to provisioned or nonprovisioned parts or assemblies which are designated as or have the potential of being required for crash damage repairs.

(iii) Nomenclature, function or comparable code.

(iv) Tool part number or code.

(v) Tool identification number, or quantity of each tool part number or code, if tool identification number is not assigned.

(vi) Part number(s) of item(s) on which used (complete hierarchy of part numbers).

(vii) Unit price.

(viii) Storage method code. Assign one of the following:

Code J. Inside storage.

Code K. Outside storage.

Code L. Other.

(ix) Estimated weight of tool, if over 25 pounds.

(x) Estimated volume of tool, if over 3 cubic feet.

(xi) Location of Contractor, subcontractor, vendor for each item. Use Federal Supply Code for Manufacturers (FSCM), or name and address if code is not available.

(xii) All operation sheets and other data as are necessary to show the manufacturing operation or processes for which such items were used, designed, or modified.

(2) *Identification or tagging.* To the extent practicable, the Contractor shall identify all special tooling subject to this clause in accordance with the Contractor's identification procedures.

(g) *Maintenance.* The Contractor shall maintain special tooling in accordance with sound industrial practice. These requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under paragraph (j), Disposition instructions, of this clause.

(h) *Identification of excess special tooling.* The Contractor shall promptly identify and report all special tooling in excess of the amounts needed to complete full performance under this contract (see subdivision (i)(3)(i) of this clause).

(i) *Lists of special tooling.* The Contractor shall periodically prepare and distribute lists of special tooling as described below:

(1) *Initial list.* If this is a supply contract, the initial list shall be furnished within 60 days after delivery of the first production end item under this contract or completion of the initial provisioning process, whichever is later, and shall include all special tooling subject to this clause as of the reporting date. If this is a contract for storage of special tooling, the initial list shall be provided within 60 days of contract implementation.

(2) *Updated list.* When the last production end item under this contract is delivered, the Contractor shall furnish an updated list of special tooling that shall contain all tools accountable to the contract. However, if this contract represents the final production contract, the Contractor shall provide this updated list of all tools not later than 180 days prior to scheduled delivery of the last production end item.

(3) *Excess special tooling list.*

(i) *Excess special tooling.* Expect for items subject to subdivision (i)(3)(ii) of this clause, lists of special tooling excess to this contract shall be furnished within 60 days of the date that the item is determined to be excess. The Contractor shall include in this list the information prescribed in Format of lists, subparagraph (i)(4) of this clause, as well as the applicable excess code as follows:

Code V. Excess to contract requirements with no follow-on requirements.

Code W. Excess to contract requirements but can be used to support actual or anticipated follow-on requirements.

Code X. Excess due to changes in design or specification of the end items.

Code Y. Excess due to nonserviceable or nonrepairable condition.

Code Z. Other.

(ii) *Termination inventory.* These items shall be submitted on SF 1432 or by computer list attached to an SF 1432 in accordance with FAR 45.606. Format and content of this submission will be as prescribed by Format of lists, subparagraph (i)(4) of this clause, but will contain information as prescribed by FAR Subpart 45.6, in effect on the date of award of this contract.

(4) *Format of lists.* Lists furnished by the Contractor shall state the type of list and shall include all information from Records, subparagraph (f)(1) of this clause, items (i) through (xi). All lists will be grouped by primary retention code as prescribed in subdivision (f)(1)(ii)(A) of this clause and further listed in tool part number sequence.

(5) *Distribution of lists.* The Contractor shall submit two copies of lists to each of the following recipients unless otherwise directed:

(i) The Contracting Officer;

(ii) The Administrative Contracting Officer; and

(iii) The inventory control point designated by the contracting office.

(j) *Disposition instructions.* The Contracting Officer shall provide the Contractor with written disposition instructions within 180 days of receipt of the updated list as prescribed by subparagraph (i)(2) of this clause and within 90 days of the receipt of excess special tooling lists reported in accordance with subparagraph (i)(3) of this clause. The Contracting Officer may direct disposition by any of the methods listed in subparagraphs (j)(1) through (j)(3) of this clause, or a combination of such methods. The Contractor shall comply with such disposition instructions.

(1) The Contracting Officer may identify specific items of special tooling to be retained or give the Contractor a list specifying the products, parts, or services including follow-on requirements for which the Government may require special tooling and request the Contractor to identify all usable items of special tooling on hand that were designed for or used in the production or performance of such products, parts, or services. Once items of usable special tooling required by the Government are identified, the Contracting Officer may:

(i) Direct the Contractor to transfer specified items of special tooling to follow-on contracts requiring their use. Those items shall be furnished for use on the contract(s) as specified by the Contracting Officer and shall be subject to the provisions of the gaining contract(s); or

(ii) Request the Contractor to enter into an appropriate storage contrct for special tooling specified to be retained by the Contractor for the Government. Tooling to be stored shall be stored pursuant to a storage contract between the Government and the Contractor; or

(iii) Direct the Contractor to transfer title to the Government (to the extent not previously transferred) and deliver to the Government those items of special tooling which are specified for removal from the Contractor's plant.

(2) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling not specified by the Government pursuant to subparagraph (j)(1) of this clause. To the extent that the Contractor incurs any costs occasioned by compliance with such direction, for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract. The net proceeds of all sales shall either be credited to the cost of contract performance or shall be otherwise paid to the Government as directed by the Contracting Officer. Sale of special tooling to the prime Contractor or any of its subcontractors is subject to the prior written approval of the Contracting Officer.

(3) The Contracting Officer may furnish the Contractor with a statement disclaiming further Government interest or right in specified special tooling.

(4) Restoration of Contractor's premises. Unless otherwise provided in this contract, the Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if special tooling is withdrawn or if other special

tooling is substituted, then the equitable adjustment under paragraph (m) of this clause may properly include restoration or rehabilitation costs.

(k) *Access to special tooling.* The Contractor shall provide access to special tooling subject to this clause at all reasonable times to all individuals designated by the Contracting Officer.

(l) *Storage or shipment.* The Contractor shall promptly arrange for either the shipment or the storage of special tooling specified in accordance with the final disposition instructions in subdivisions (j)(1)(ii) or (j)(1)(iii) of this clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. All operation sheets and other data necessary to show the manufacturing operations or processes for which the items were used or designed shall accompany special tooling to be shipped or stored or shall otherwise be provided to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs costs for storage, shipment, packing, crating, or handling under this paragraph and not otherwise compensated for, the contractor price shall be equitably adjusted in accordance with the Changes clause of this contract.

(m) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished special tooling;

(2) Delivery of Government-furnished special tooling in a condition not suitable for its intended use;

(3) A decrease in or substitution of special tooling; or

(4) Failure to repair or replace Government-furnished special tooling for which the Government is responsible.

(n) *Subcontract provisions.* In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontract appropriate provisions to obtain Government rights and data comparable to the rights of the Government under this clause (unless the Contractor and Contracting Officer agree in writing that such rights are not of interest to the Government). The Contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

(End of clause)

52.245–18 [Amended]

10. Section 52.245–18 is amended by removing in the introduction text the reference "45.305(b)" and inserting in its place the reference "45.307–1(c)".

11. Section 52.245–19 is amended by revising the introductory text to read as follows:

52.245–19 Government Property Furnished "As Is."

As prescribed in 45.308(c), insert the following clause:

* * * * *

[FR Doc. 88–19504 Filed 8–26–88; 8:45 am]
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Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Urban Development Action Grant (UDAG); Selection Criteria; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No.: R-88-1383; FR 2449]

Urban Development Action Grant (UDAG); Selection Criteria

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule implements the amendments under the Housing and Community Development Act of 1987 and the HUD—Independent Agencies Appropriations Act, 1988 to section 119 of the Housing and Community Development Act of 1974—Urban Development Action Grant (UDAG) statute, 42 U.S.C. 5318, by modifying the UDAG project selection criteria and by modifying the definitions of eligible cities. This selection system is expected to spread UDAG funds to more areas of the country.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Stanley Newman, Director, Office of Urban Development Action Grants, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-6290. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 515 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), (1987 Act), and the HUD-Independent Agencies Appropriation Act, 1988 (Pub. L. 100-202, approved December 22, 1987) amended section 119 of the Urban Development Action Grants (UDAG) statute, 42 U.S.C. 5318. On May 2, 1988, the Department published proposed rules governing these amendments in the **Federal Register** (53 FR 15566). The new provisions included the following areas:

- A two-phased 65%-34% selection system with statutorily assigned weights for impaction, distress, project merit factors and bonus points.
- A $10 million cap on individual grants for FY 1988 and FY 1989.
- Modifications to the "Definitions" section.
- Revisions to the project selection criteria, use of repaid grant funds, certifications and the application submission and review schedule.

Interested parties were given until June 1, 1988 to comment on the proposed rules. Twelve responses were received. All comments have been reviewed and their disposition is discussed below.

Section 570.451 Definition

Two commenters suggested that HUD eliminate the General Revenue Sharing Program eligibility as a factor for defining eligible "Indian Tribe" because of inequities that use of this factor would cause. For example, new tribes may have been formed after the termination of the General Revenue Sharing program, and therefore not be able to meet the eligibility criteria. HUD understands this concern. However, since this is a statutory requirement, HUD has no authority to change it. The definition remains as proposed.

A commenter suggested that the definitions of "transaction" and "economic development component" place onerous requirements upon projects containing public facility activities. The commenter felt that such definitions will hurt projects with integrally related public facilities because their leveraging ratios will be lower and therefore less competitive in project selection. HUD determined that one of the key interests of the UDAG program is to leverage private investment. The UDAG program should not pay for public facilities as a sole funding source. Other budgetary funds (State and local) should be used for such public facilities. The selection system does allocate 2 points for State/Local funds per UDAG dollar. The two definitions, however, remain as proposed.

One commenter supported the addition of three Hawaiian counties as "cities" in terms of defining eligibility for the UDAG program. Such an addition has been made and is a result of legislation amending the UDAG statutes.

Section 570.455 Eligible activities

HUD was urged to restore project selection points for projects in which minorities are participants as contractors, major suppliers, equity investors, lessors, owners or private participating parties. The Housing and Community Development Act of 1987 contains an exclusive, prescriptive list of criteria for selection. HUD has no authority to modify the list. Minority business participation is, however, encouraged in § 570.455(d).

Section 570.458 Full application

Concern was expressed about the potential impact on the selection process caused by the change in relocation requirements under section 509 of the Housing and Community Development Act of 1987 after October 1, 1988. A commenter suggested that the financial burdens of the new relocation requirement will adversely affect UDAG projects. After analysis of the issue, HUD remains convinced that, as a matter of law, if an applicant chooses to submit a UDAG application that contains residential relocation, the applicant must comply with the relocation requirements and bear any such costs.

One commenter asked for clarification of the criteria for, and the documentation needed for obtaining, the selection point for "Pressing Employment Need". The Department does not require documentation from an applicant to award this selection point. Instead, a general statement describing a condition, such as a plant closing, which has had a significant impact on employment in the community and which would be alleviated by the activities proposed in the UDAG application would suffice. The regulation identifies these activities as reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally; retraining recently unemployed residents in new skills; or providing training to increase the local pool of skilled labor.

A commenter asked for clarification of the work "area" in citing the requirement for the applicant to certify that "the area has a severe shortage of housing for low and moderate income persons", in regard to "Pressing Residential Need". The term "area" refers to the applicant's entire geographic jurisdiction, i.e., city or urban county. HUD will accept the applicant's certification as to a severe housing shortage for low and moderate income persons.

Section 570.459 Criteria for Selection

Support was expressed by one commenter for the new statutorily imposed two-tiered selection system (65%-35%) as a method to make areas in the West more competitive under the UDAG program.

Another comment recommended revising the UDAG project selection system to give priority to proposed activities of enterprise zones in coordination with UDAG projects. This idea was analyzed carefully and HUD determined that a selection factor for UDAG projects within a federally designated enterprise zone would be added. This factor falls within the statutory selection criterion at section 119(d)(1)(C)(vii) for commitment of State or local government funding or special economic incentives.

A question was raised concerning how points for the leveraging ratio factor are assigned to multi-component transactions and whether they are averaged. The answer is that the total private investment for all components will be divided by the UDAG amount to arrive at a single leveraging ratio for the project. All transactions must, however, individually meet the 2.5:1 leveraging test of private dollars to UDAG dollars.

Two commenters felt that the leveraging ratio factor was receiving too many points in the selection system (10 out of 33) and should be reduced, with the points spread to other factors. Another comment suggeted that there were not enough points for lower income people or people with the greatest need for jobs, and that taxes and UDAG funds per job were misleading measures and should be reduced on the point scale. HUD has carefully analyzed these suggestions and has made the following changes to the regulation for the selection system:

1. *Leveraging Ratio* (10)—No change. It is HUD's view that this measure is a key factor in the program and deserves this level of points.
2. *New Permanent Jobs* (3)—No change.
3. *UDAG Funds Per New Permanent Job* (7)—No change.
4. *Percent New Low/Moderate Income Jobs* (2)—This factor was incresed from 1 to 2 points in response to comments.
5. *Percent New Minority Jobs* (2)—This factor was increased from 1 to 2 points in response to comments.
6. *Retained Jobs* (2)—No change.
7. *Pressing Employment Need* (1)—No change.
8. *Pressing Residential Need* (1)—No change.
9. *Tax Benefit Per UDAG Dollar* (2)—This factor was reduced from 5 to 2 points in response to comments.
10. *State/Local Funds Per UDAG Dollar* (2)—No change.
11. *Federal Enterprise Zone Designation* (1)—This factor was added in response to a comment, to recognize the importance of locating UDAG projects within federally designated enterprise zones.

Two respondents cited the need for a definition of new permanent jobs and a methodology for determining net new jobs for UDAG projects. As one of these respondents noted, there are instructions for calculating net jobs in the UDAG application form. When the application form is revised, clarification will be provided in instructing applicants as to the methodology for the calculation. HUD will continue to deduct jobs transferred within the jurisdiction of the applicant and only count new jobs for the community. HUD will continue to permit applicants, developers and other parties to submit evidence as to the anticipated job transfers for the specific project. If there are any complaints about job transfers, this information will be analyzed to see if it rebuts the presumptions as to job transfers.

The selection system gives an unintentional bias to commercial projects over industrial projects particularly with UDAG funds per job, tax benefits and percent low/moderate income jobs, one commenter believed. No specific suggestions were made by the commenter. After careful analysis, HUD notes that a substantive majority of small city projects are industrial activities, but that large cities primarily submit commercial type projects or mixed use activities. Retained jobs, as noted in the proposed regulation, have been increased to 2 points to account for the need to address industrial plant closings.

A commenter cited the need for a definition of private leverage. Such a definition is provided in § 570.451(1), and in the UDAG application.

Another commenter questioned the method for the award of points—was it to be "all or nothing" or based on a range? Points will be assigned based on a range, with the most points being awarded for the project in the round with the highest factor (e.g., for leveraging, 10 points will be assigned for the highest leveraged project, scaling down to 0 points for the lowest leveraged project). A commenter also proposed that a project lose points if it adversely impacts a previously funded UDAG project from the same applicant. This interesting idea was considered but determined to be impracticable, since it is presumed that applicant cities and urban counties act in their own self-interest and would not seek assistance for adverse impact on themselves.

Section 570.461 Post preliminary approval requirements

Clarification was requested concerning whether housing rehabilitation is an eligible use of UDAG loan repayments. Since housing rehab is an eligible activity in the UDAG program, it is an eligible activity for use of repayments.

Another commenter requested clarification whether a UDAG loan repayment can be used to pay the costs of UDAG project administration. The new language in the Act specifies that repayments can be made available by the recipient for economic development activities that are eligible for funding under the UDAG program or section 105 of the Housing and Community Development Act of 1974 (Community Development Block Grants). Therefore, repayments may be used for any activity eligible under the UDAG program or any activity eligible under the CDBG program which is related to economic development, including administrative costs for economic development projects. Activities eligible under the CDBG program but not related to economic development (such as construction or recreational facilities or provision of public services) are not eligible uses for UDAG repayments.

One commenter suggested that the assertion in the proposed rule that the rule did not constitute a "major rule" as defined by Executive Order 12291 was incorrect. HUD continues to believe that the rule does not meet the Executive Order's definition of a major rule. The Executive Order addresses general economic effect. A general economic effect would be realized if the funds were being awarded in such a way that there was a cost or benefit to the overall economy of $100 million or more. For example, if $100 million or more were not going to be spent because of constraints in the proposed rule, or if $100 million or more were going to be spent inefficiently, then there would be implications under the Executive Order Instead, what HUD has done in the proposed rule is to establish revised criteria (required by statute) which will mean that the mix of particular projects to be funded may change under the proposed rule, but the aggregate impact on the economy will not.

The same commenter expressed concern that the proposed rule will have a significant economic impact on a substantial number of small cities and cited a particular UDAG project application as a case in point. The facts in the case cited by the commenter indicate that this rule will not make it any more or less likely that the application in question would be funded. HUD regards the rule as completely neutral with reference to the

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facts suggested in the commenter's case example.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities because the number of affected small entities would not be substantial. The funding for the UDAG program has been reduced in recent years and the effect of the changes will be neutral on the competitive position of small entities.

This rule was listed as item 988 in the Department's Semiannual Agenda of Regulations published April 25, 1988 (53 FR 13854, 13883) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance number is 14.221—Urban Development Action Grants.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: Housing and community development, Loan programs: Housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR Part 570 continues to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 570.451 is amended by adding new paragraphs (m), (n), (o) and (p), to read as follows:

§ 570.451 Definitions.

* * * * *

(m) The term "city" includes large cities and small cities, as defined in this section, and the counties of Kauai, Maui and Hawaii in the State of Hawaii and American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands and Indian tribes.

(n) A "transaction" is a major project element which can be undertaken separately and can be evaluated on its own merits.

(o) An "economic development component" is a major project element which cannot be undertaken separately but which generates its own cash flow separate from other components of the project, exclusive of publicly-owned infrastructure and parking.

(p) An "Indian tribe" means one that is located on a reservation or in an Alaskan Native Village and was eligible for the General Revenue Sharing Program before that program's September 30, 1986 repeal (31 U.S.C. 6701 *et seq.*). For the purposes of UDAG, an Indian reservation includes former Indian reservations in Oklahoma, as determined by the Secretary of the Interior.

In § 570.452, paragraphs (c)(2), (d)(1)(ii), (d)(2)(ii) and (e) are revised and (d)(1)(ii)(E) is added, to read as follows:

§ 570.452 Distressed communities.

* * * * *

(c) * * *

(2) If the city or urban county's percentage of poverty is less than one-half of the HUD-established standard, or if the change in per capita income is more than twice the HUD-established standard, then it must meet four of the following seven minimum standards: percentage of housing constructed before 1940; percentage of proverty; per capita income change; population growth lag/decline; job lag/decline; unemployment; unemployment criteria used to establish the Labor Surplus Area designation.

(d) * * *

(1) * * *

(ii) If the percentage of poverty is less than one half of the HUD-established standard, or if the change in per capita income is more than twice the HUD-established standard, then the city must meet four of the following five standards.

* * * * *

(E) Percentage of Poverty.

* * * * *

(2) * * *

(ii) If the percentage of poverty is less than one-half of the HUD-established standard, or if the change in per capita income is more than twice the HUD-established standard, then the city must meet four of the following six minimum standards: Percentage of housing constructed before 1940; percentage of poverty; per capita income change; population growth lag/decline; job lag/decline; unemployment criteria used to establish the Labor Surplus Area designation.

* * * * *

(e) *Indian Tribes.* An Indian tribe that meets the definition in § 570.451(p) shall be presumed to meet the minimum standards of distress. However, the Secretary may deny eligibility to a tribe if available data establishes that the tribe's distress is not comparable to that of potentially eligible jurisdictions.

4. Section 470.455 is amended by adding new paragraphs (c) and (d), to read as follows:

§ 570.455 Eligible activities.

* * * * *

(c) Projects whose increased energy efficiency facilitates broader economic development, preserves scarce fuels or promotes development and use of renewable energy resources are encouraged.

(d) Projects in which minorities are participants as contractors, major suppliers, equity investors, lessors, owners or private participating parties are encouraged.

5. In § 570.456, paragraph (a) is revised to read as follows:

§ 570.456 Ineligible activities and limitations on eligible activities.

(a) Large cities and urban counties may not use assistance under this subpart for planning the project or developing the application. However, they may use entitlement community development block grant funds for this purpose, provided that the UDAG project meets the eligibility test of this part. Any small city which submits a project application which is selected for preliminary approval and for which legally binding grant agreement and for which a release of funds pursuant to 24 CFR Part 58 has been issued may devote up to three (3) percent of the approved amount of its action grant to defray its

actual costs in planning the project and preparing its application.

* * * * *

(6) Section 570.458 is amended to revise paragraph (c)(14)(ix)(I) and to add new paragraphs (c)(14) (xvi) and (xvii) as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(I) The acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.457(a)(1) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.457(a)(2) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the applicant is following such a plan); the relocation requirements of § 570.457 (a)(3) and (b) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.457(a)(4) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

(xvi) For an appropriate project, the project will relieve the most pressing employment need of the applicant by:

(A) Reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally;

(B) Retraining recently unemployed residents in new skills; or

(C) Providing training to increase the local labor pool of skilled labor.

(xvii) For an appropriate project, the area has a severe shortage of housing for low and moderate income persons. (The applicant should be aware that this certification could affect its compliance with the new provisions under section 104(d) of the Housing and Community Development Act of 1974).

7. Section 570.459 is revised to read as follows:

§ 570.459 Criteria for selection.

(a) *General.* Each funding round, HUD will review all new applications received and all applications pending consideration and will determine which meet the basic program requirements. The specific nature and purpose of the proposed project will determine the extent to which each of the selection criteria in paragraphs (e) and (f) of this section will apply. In utilizing the discretion of the Secretary when providing assistance and apply selection criteria under this section, the Secretary will not discriminate against applications on the basis of: (1) The type of activity involved, *i.e.*, whether the applicant is a city of an urban county.

(b) Requirements which must be met to be considered in project selection:

(1) *A firm private commitment.* No project will be funded under this subpart unless there is a firm private commitment to finance and carry out the proposed project. The private commitment must have clear, direct relationship to the activities for which funding is requested.

(2) *Leveraging Ratio.* Each project, each transaction within a project, and each economic development component within a project must have a leveraging ratio of at least $2.50 of private funds to every $1.00 of action grants funds.

(3) *A firm commitment of public resources.* If a project requires a commitment of other public resources, then there must be a firm public commitment.

(4) *Funds required*—The Secretary must determine that the project requires action grant funds by finding that:

(i) The action grant funds will not subsitute for local funds (see § 570.458(c)(14)(iii));

(ii) But for the receipt of the action grant funds, the project would not be undertaken; and

(iii) The grant amount provided is the least amount necessary to make the project feasible. For Fiscal Years 1988 and 1989 the maximum grant amount for any project is $10,000,000.

(5) *Impact on physical and economic conditions.* The proposal must demonstrate to HUD the extent to which the project will have a substantial impact on the physical and economic development of the city or urban county;

(6) *Timeliness.* The proposal must demonstrate to HUD that the proposed activities are likely to be accomplished in a timely fashion with the grant amount available. (HUD expects projects to be completed within four years from the date of the announcement of preliminary funding approval); and

(7) *Demonstrated Performance.* The applicant has demonstrated performance in carrying out housing and community development programs. Performance shall be evaluated using such considerations as past compliance with HUD regulations and statutory requirements and progress in carrying out programs as planned.

(c) *Selection of projects for preliminary approval: Large cities and urban counties.* Projects shall be selected on the basis of the following point system:

(1) *Impaction (maximum value of 35 points).* The comparative degree of economic distress among applicants, as measured by combining the points from three factors:

(i) The percentage of the total housing stock that was built prior to 1940—up to 17 points;

(ii) The extent of poverty—up to 11 points; and

(iii) The population growth rate—up to 7 points;

(2) *Distress (maximum value of 35 points).* The comparative degree of economic deterioration in cities and urban counties, as measured by combining the points from three factors:

(i) Per capita income change—up to 15 points;

(ii) Unemployment rate—up to 15 points; and

(iii) Job lag/decline—up to 5 points;

(3) *Other criteria (maximum value of 33 points) and bonus points (maximum value of 2 points).* The factors contained in paragraphs (e) through (f) of this section.

(d) *Selection of projects for preliminary approval: Small cities.* Projects shall be selected on the following basis:

(1) *Impaction (maximum value of 35 points).* The comparative degree of economic distress among applicants, as measured by combining the points from three factors:

(i) The percentage of the total housing stock that was built prior to 1940—up to 17 points;

(ii) The extent of poverty—up to 11 points; and

(iii) The population growth rate—up to 7 points;

(2) *Distress (maximum value of 35 points).* The comparative degree of economic deterioration, as measured by combining the points from the following factors:

(i) Per capita income change—up to 18 points; and

(ii) Labor Surplus Area (LSA) unemployment rate—up to 17 points;

(3) *Other criteria (maximum value of 33 points) and bonus points (maximum value of 2 points).* The factors contained in paragraphs (e) through (f) of this section.

(e) *Other criteria (maximum value of 33 points).* In evaluating a proposed project, HUD will consider the following factors. The maximum point value for each factor is identified below:

(1) *Leveraging ratio* (10 points). The extent to which the grant will stimulate economic recovery by leveraging private investment:

(2) *New permanent jobs* (3 points). The number of new permanent jobs to be created;

(3) *UDAG funds per new permanent job* (7 points). The amount of action grant funds requested in relationship to the number of new permanent jobs;

(4) *Percent new low/moderate income jobs* (2 points). The percentage of new permanent jobs accessible to low/moderate income persons, including low/moderate income persons who are unemployed;

(5) *Percent of new minority jobs* (2 points). The percentage of new permanent jobs accessible to minorities, including minorities who are unemployed;

(6) *Retained jobs* (2 points). The number of jobs that will be lost without the provision of a UDAG award. Retained jobs will be measured by the number of jobs that were in existence before the start of the project and that are dependent upon the project for their continued existence as substantiated by firm evidence that if the project does not proceed, the jobs will be lost;

(7) *Pressing employment need* (1 point). Based upon the applicant's certification, HUD will assess whether the project will relieve the most pressing employment needs of the applicant by:

(i) Reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally;

(ii) Retraining recently unemployed residents in new skills; or

(iii) Providing training to increase the local labor pool of skilled labor;

(8) *Pressing residential need* (1 point). HUD will assess whether the project will relieve a pressing housing need for low and moderate income persons in the jurisdiction by using the factors described in this paragraph (e)(8):

(i) The applicant certifies that the area has a severe shortage of housing for low and moderate income persons (this certification may affect the applicant's compliance with the new provisions under section 104(d) of the Housing and Community Development Act of 1974); and

(ii) The application proposes that:

(A) Not less than 51% of all funds available for the project will be used for dwelling units and related facilities; and

(B) Not less than 30% of all funds used for dwelling units and related facilities will be used for dwelling units to be occupied by persons of low and moderate income, or not less than 20% of all dwelling units made available to occupancy using such funds will be occupied by persons of low and moderate income, whichever results in the occupancy of more dwelling units by persons of low and moderate income;

(9) *Tax benefits per UDAG dollar* (2 points). The impact of the proposed project on the fiscal base of the community and the relationship to the amount of grant funds;

(10) *State/local funds per UDAG dollar* (2 points). The extent of assistance to be made available by State/local funds in relation to the amount of UDAG funds;

(11) *Federal Enterprise Zone Designation* (1 point). The project demonstrates special State/local economic incentives by being located within an enterprise zone designated in accordance with Title VII of the Housing and Community Development Act of 1987.

(f) *Bonus Points.* An applicant will be provided with bonus points as provided for below:

(1) An applicant that did not receive preliminary grant approval during the 12-month period preceding the date on which applications are required to be submitted for the grant competition involved shall be awarded 1 bonus point.

(2) An applicant that did not receive a preliminary grant approval during the 24-month period preceding the date on which applications are required to be submitted for the grant competition involved shall be awarded two bonus points.

(3) If an applicant has submitted and has pending more than one application, bonus points shall only be provided to the pending application which receives the highest number of points awarded under paragraph (e) of this section.

The following table summarizes the point system to be used by HUD in accordance with § 570.460(c)(1) in selecting projects for preliminary funding approval:

UDAG PROJECT SELECTION SYSTEM

Selection criteria for large cities, urban counties and small cities	Factors	Maximum points
A. Impaction	Pre-1940 Housing (17). Extent of Poverty (11) Population Growth Rate (7)	35
B. Distress		35
Large Cities and Urban Counties	*Small Cities*	
Per Capita Income Change (15). Unemployment rate (15) Job lag (5).	Per Capita Income Change (18) LSA Unemployment Rate (17)	
C. Other Criteria		33
	1. Leveraging ratio (10)	
	2. New Permanent Jobs (3)	
	3. UDAG funds per New Permanent Job (7)	
	4. Percent New Low/Moderate Income Jobs (2)	
	5. Percent New Minority Jobs (2)	
	6. Retained Jobs (2)	
	7. Pressing Employment Need (1)	
	8. Pressing Residential Need (1)	
	9. Tax Benefits per UDAG $ (2)	
	10. State/Local Funds per UDAG $ (2)	
	11. Federal Enterprise Zone Designation (1)	
D. Bonus Points		2

1. Applicant has not received a preliminary UDAG approval for one year (1)

or

2. Applicant has not received a preliminary UDAG approval for two years (2).

Total Possible Points.....105

8. In § 570.460, paragraph (a) is revised, paragraphs (c)(1) through (c)(5) are redesignated as paragraphs (c)(4) through (c)(8), respectively, new paragraphs (c)(1) through (c)(3) are added, and paragraph (d) is removed, to read as follows:

§ 570.460 HUD review and action on applications:

(a) *Submission and review schedule.* The following chart indicates dates for submission of pre-application requests for determination of eligibility, the full application, HUD review and consultation with the applicant, the deadline for receipt of firm financial commitments, and the date by which the decision for preliminary approval is made. This schedule will remain in effect unless, within 30 days of the start of a fiscal year, the Secretary announces by **Federal Register** Notice a revised schedule applicable to the upcoming fiscal year. Public announcements of preliminary funding approvals will be made shortly after the decision date.

Determination of eligibility (preapplication SF–424 to be submitted by	Application submission period	Review period	Deadline for firm financial commitments [1]	Decision date
Large cities/Urban counties:				
Sept. 30	Nov. 1–30	Dec. 1–Jan. 31	Jan. 15	Jan. 31
Jan. 31	Mar. 1–31	Apr. 1–May 31	May 15	May 31.
May 31	July 1–31	Aug. 1–Sept. 30	Sept. 15	Sept. 30.
Small cities:				
Nov. 30	Jan. 1–31	Feb. 1–Mar. 31	Mar. 15	Mar. 31.
Mar. 31	May 1–31	June 1–July 31	July 15	July 31.
July 31	Sept. 1–30	Oct. 1–Nov. 30	Nov. 15	Nov. 30

[1] If, in a particular month a deadline falls on a weekend, the deadline is carried over to the following Monday. If the deadline falls on a Federal holiday, it is carried over to the next business day.

(1) * * *

* * * * * *

(c) *Central office action on applications.* (1) Preliminary approval decisions will be made by HUD Central Office utilizing the point system described in § 570.459. Central Office funding decisions for distressed cities and urban counties will be based upon a funding formula for grants which, to the extent practicable, will make 65% of funds available for projects based upon points received for all the criteria and 35% of funds available for projects based only on other criteria and bonus points, as described in § 570.459 (e) and (f). Applications for Pockets of Poverty are selected separately from distressed cities and urban counties. Applicable criteria for Pockets of Poverty are found in § 570.466.

(2) The funds for the competition are to be an amount approximately equal to the amount of appropriated funds available, divided by the number of scheduled competitions, plus available carry-overs and recaptures.

(3) For Fiscal Years 1988 and 1989, the maximum grant amount for any project is $10,000,000.

* * * * *

9. In § 570.461, paragraph (e) is revised to read as follows:

§ 570.461 Post preliminary approval requirements.

* * * * *

(e) *Program Income.* Notwithstanding any other provisions of this part and unless otherwise provided in the grant agreement, program income received by the Recipient under this Subpart before the completion of construction of all action grant funded activities shall be used to reimburse costs incurred for the Recipient activities. Such income shall be used instead of any draw under the letter of credit to the extent adequate to reimburse costs so incurred except as otherwise provided in the grant agreement. Program income received before project closeout shall be spent for activities eligible under Title I of the Housing and Community Development Act of 1974 and shall be spent in accordance with 24 CFR Part 570. Upon project closeout all program income shall be made available by the Recipient for economic development activities that are eligible for funding under the Urban Development Action Grant program or section 105 of the Housing and Community Development Act of 1974. These funds are to be considered miscellaneous revenues and shall not be governed by 24 CFR Part 570. The Recipient shall provide the Secretary with a statement of the use of repaid grant funds during the most recent full fiscal year and projected receipt and use of repaid grant funds for the following fiscal year of this applicant.

* * * * *

Date: August 20, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

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Part IX

International Trade Commission

19 CFR Parts 206, 207, 210, and 211
Investigations; Domestic Industries; Unfair Practices in Import Trade; Interim Rules With Request for Comments

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INTERNATIONAL TRADE COMMISSION

19 CFR Part 206

Investigations Relating To Import Injury to Industries, Market Disruption, and Review of Relief Actions

AGENCY: International Trade Commission.

ACTION: Interim rules with request for comments.

SUMMARY: The Commission is revising Part 206 on an interim basis to conform its rules to amendments to sections 201 and 406 of the Trade Act of 1974 made by the Omnibus Trade and Competitiveness Act of 1988. The Commission has adopted interim rules because the amendments in the 1988 act were effective on the date of enactment. In addition, the Commission seeks public comment on these interim rules prior to issuing final rules.

In the 1988 act Congress rewrote section 201 in its entirety and amended section 406 in several respects. Among other things, new section 201 provides for the submission of industry adjustment plans and commitments, for Commission determinations concerning critical circumstances, and for interim relief for industries producing perishable agricultural products; includes new or reviewed factors to be considered in determining serious injury or threat of serious injury; and establishes new time limits for making determinations and issuing reports. Amended section 406 includes, among other things, several provisions that clarify statutory criteria. Because of the number of changes, the Part 206 rules have been revised.

DATES: The interim rules are effective on August 23, 1988, except that they shall not apply to any investigations commenced before that date. Comments on the interim rules will be considered if received on or before October 28, 1988.

ADDRESS: A signed original and 14 copies of each set of comments, along with a cover letter addressed Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Assistant General Counsel, U.S. International Trade Commission, telephone 202–252–1091.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

On August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") became effective. The 1988 Act contains provisions which, *inter alia,* amend sections 201 and 406 of the Trade Act of 1974 (19 U.S.C. 2251, 2436). The Commission's rules concerning practice and procedure in regard to these provisions need to be amended to conform to the new legislation. The 1988 Act, *inter alia,* also amended the antidumping and countervailing duty provisions of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*) and section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Interim rules amending Parts 207, 210, and 211 of 19 CFR, Chapter II, to reflect the amendments to those provisions are being published elsewhere in this issue of the **Federal Register.**

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA), which requires the following steps: (1) Publication of a notice of proposed rule making; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules 30 days prior to their effective date. *See* 5 U.S.C. 553. That procedure could not be utilized in this instance because the new legislation became effective upon enactment, and it was not possible to complete the procedure prior to the effective date of the new legislation.

The Commission thus determined to adopt *interim* rules that would go into effect when the new legislation was enacted and would remain in effect until the Commission could adopt final rules promulgated in accordance with the usual notice, comment, and advance publication procedure.

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from two sources: (1) Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and (2) provisions of section 553 of the APA which allow an agency to dispense with various steps in the prescribed rulemaking procedure under certain circumstances.

Section 335 of the Tariff Act of 1930 authorizes the Commission "to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties." 19 U.S.C. 1335. The Commission determined that the need for interim rules is clear in this instance. The Commission noted that the new legislation alters practice and procedure in important respects with respect to sections 201 and 406 and that some existing Commission rules either do not anticipate the new legislation or will be in conflict with it. The Commission found that rulemaking was essential for the orderly administration of the two provisions as amended by the new legislation. Furthermore, since the legislation became effective immediately upon enactment, the Commission concluded that it was imperative that implementing Commission rules be in place on the enactment date of the new statute.

The Commission noted that an agency may dispense with publication of a notice of proposed rule making when the following circumstances exist: (1) The proposed rules are interpretative rules, general statements of policy, or rules of agency organization, procedure or practice; or (2) the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, and that finding (and the reasons therefor) are incorporated into the rules adopted by the agency. 5 U.S.C. 553(b). An agency may also dispense with the publication of a notice of final rules thirty days prior to their effective date if (1) the rules are interpretive rules or statements of policy or (2) the agency finds that "good cause" exists for not meeting the advance publication requirement and that finding is published along with the rule. 5 U.S.C. 553(d)(3).

In this instance, the Commission determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rule making which solicits public comment, the Commission found that (1) the interim rules are "agency rules of procedure or practice"; and (2) since the new legislation would become effective upon enactment, it clearly would be "impracticable" for the Commission to comply with the usual notice, comment, and advance publication procedure. For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules 30 days prior to their effective date, the Commission found that the fact that the new legislation was effective upon enactment made such advance publication impossible and constituted

"good cause" for the Commission not to comply with that requirement.

The Commission recognizes that interim regulations should not respond to anything more than the exigencies created by the new legislation and expects that the more comprehensive final rules to follow will emerge as a result of the Congressionally mandated policy of affording public participation in the rulemaking process.[1] Having been promulgated in reponse to exigencies created by the new legislation, each interim rule accordingly comes under one or more of the following categories: (1) Revision of an pre-existing rule that conflicted with the new legislation; (2) a technical amendment to make a pre-existing rule conform to the language or subsection designations of the new legislation; (3) a cross-reference to an interim rule which was added to an otherwise unamended pre-existing rule to achieve intra-part consistency and to avoid confusion about how the unamended provisions of the rule are to be applied in light of the interim rule provisions concerning the same subject matter; (4) reorganization or rewording of a pre-existing rule to avoid confusion about how the rule is to be applied in light of the new legislation; or (5) a new rule covering a matter provided for in the new legislation but not covered by a pre-existing rule. More comprehensive final rules will be issued at a later date in accordance with the usual notice, public comment, and advance publication procedure.

The Commission has determined that these amendments do not constitute a major rule for the purposes of Executive Order 12291 (46 FR 13193, Feb. 17, 1981) because they do not meet the criteria described in section 1(b) of the EO. Moreover, the amendments, as interim rules, are not subject to the filing requirement of section 3(c)(3) of the EO.

Explanation of Interim Amendments to 19 CFR Part 206

The amendments set forth below are intended to reflect amendments to §§ 201 and 406 of the Trade Act of 1974 effected by the 1988 act. In the 1988 act Congress rewrote the sections 201–203 import relief provisions of the Trade Act of 1974 in their entirety. The new provisions are set forth in sections 201–204 of the Trade Act of 1974, as amended. The 1988 act amended section 406 of the Trade Act but did not rewrite it in its entirety. References below the Trade Act and to sections thereof are to the Trade Act of 1974, as amended by the 1988 act.

Except as noted, the interim rules are similar in substance to the previous rules but have been rewritten in their entirety and renumbered largely to reflect numerous changes in statutory citations, additional information to be furnished in petitions relevant to the question of injury, new Commission findings with regard to critical circumstances and perishable agricultural products, and new Commission responsibilities with regard to the monitoring of relief, advising the President as to the effect of modification or termination of relief, and evaluating the effectiveness of recently terminated relief.

Sections 206.1 through 206.6 are rules of general applicability to this Part 206.

Section 206.1 is amended to refer to the new statutory provisions in the Trade Act as well as to delete references to the Trade Expansion Act of 1962, the predecessor statute to the 1974 Trade Act (which for the most part was repealed in 1975 when the 1974 Trade Act was originally enacted), under which the Commission no longer performs functions in this regard.

Section 206.2 would similarly be amended to reflect changes in statutory authority.

Section 206.3 is amended to effect minor editorial changes.

Section 206.4 is amended to reflect the fact that the Comission is required to transmit copies of petitions to the U.S. Trade Representative (rather than the Special Representative for Trade Negotiations).

Section 206.5 is amended to reflect the fact that separate Commission hearings will be required for the issues of injury and remedy (if necessary) and to invite public comment on the petitioner's adjustment plan, if one is submitted.

Section 206.6 amended to reflect changes in statutory citations and the findings and information that new section 204 of the Trade Act requires that the Commission furnish with its report to the President.

Sections 206.11 through 206.17 pertain to Commission investigations under title II of the Trade Act of 1974 with respect to relief from import competition.

Section 206.11 is similar to old § 206.7, except that it reflects changes in statutory citations.

Section 206.12 defines the terms "adjustment plan", "commitments", "critical circumstances", and "perishable agricultural product". These are terms newly used in the escape clause law, and the Commission definitions closely track definitions set forth in the statutory provisions.

Section 206.13(a) and (b) closely parallel old § 206.8, and new subsection (c) reflects the statutory prerequisites for filing a petition that requests provisional relief with respect to a perishable agricultural product.

Section 206.14 parallels the petition contents requirements of old § 206.9 and, in addition, requires that petitioner notify the Commission in the petition, when appropriate, as to whether petitioner is alleging critical circumstances or is seeking temporary relief with regard to a perishable agricultural product; that petitioner indicate the percent of domestic production that it accounts for and basis for asserting that it is representative of an industry; and that petitioner provide certain additional data relating to additional economic factors that the Commission is required to consider in determining whether a domestic industry is seriously injured or threatened with serious injury.

Section 206.15 reflects statutory provisions relating to the submission to the Commission of industry adjustment plans and commitments by firms, workers, communities, trade associations, and other interested persons.

Section 206.16 parallels the time for reporting provision of old § 206.10 and, in addition, indicates Commission statutory deadlines for making findings, with respect to injury and remedy, parishable agricultural products, and critical circumstances.

Section 206.17 parallels the public report provision of old § 206.11.

Section 206.21 through 206.26 pertain to Commission investigations under title IV of the Trade Act of 1974 with regard to market disruption.

Section 206.21 is unchanged from old § 206.12.

Section 206.22 parallels old § 206.13 without substantive change.

Sections 206.23 is substantially the same as old § 206.14, except that it requires submission of certain data in petitions relating to additional economic factors that the Commission must consider in determining whether market disruption exists and certain information relating to the question of whether petitioner is representative of an industry.

Sections 206.24 and 206.25, which relate to time for reporting and public reports, respectively, are the same as old §§ 206.15 and 206.16.

Sections 206.31 through 206.34 pertain to Commission investigations under

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[1] *See American Federation of Government Employees, AFL–CIO v. Block*, 655 F.2d 1153, 1157–1158 (D.C. Cir. 1981). *See also United States v. Garner*, 767 F.2d 104, 120 (5th Cir. 1985) (quoting *American Federation of Government Employees, AFL–CIO v. Block*).

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section 204 of the Trade Act of 1974 with respect to monitoring of imports subject to relief and advice to the President concerning the probable economic effect of extension, reduction, modification, or termination of relief actions.

Section 206.31 states that the rules in this Subpart C pertain to Commission investigations under section 204 of the Trade Act.

Section 206.32 states that the Commission will monitor developments in the domestic industry for the duration of a relief action and will submit biannual reports to the President and the Congress on the results of that monitoring.

Section 206.33 states that the Commission, upon the request of the President, will conduct investigations for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the industry concerned of any extension, reduction, modification, or termination of a relief action.

Section 206.34 states that the Commission will conduct investigations to evaluate the effectiveness of relief after the termination of a relief action.

List of Subjects in 19 CFR Part 206

Administrative practice and procedure, Investigations, Imports.

19 CFR Chapter II is amended by revising Part 206 to read as follows:

PART 206—INVESTIGATIONS RELATING TO IMPORT INJURY TO INDUSTRIES, MARKET DISRUPTION, AND REVIEW OF RELIEF ACTIONS

Sec.

206.1 Applicability of part.

Subpart A—General

206.2 Identification of type of petition.
206.3 Institution of investigations.
206.4 Notification of other agencies.
206.5 Public hearing.
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Subpart B—Investigations for Relief From Import Competition

206.11 Applicability of subpart.
206.12 Definitions applicable to Subpart B.
206.13 Who may file a petition.
206.14 Contents of petition.
206.15 Industry adjustment plan and commitments.
206.16 Time for determinations, reporting.
206.17 Public report.

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206.21 Applicability of subpart.
206.22 Who may file a petition.
206.23 Contents of petition.
206.24 Time for reporting.
206.25 Public report.

Subpart D—Monitoring; Advice As to Effect of Extension, Reduction, Modification, or Termination of Relief Action

206.31 Applicability of subpart.
206.32 Monitoring.
206.33 Investigations to advise the President as to the probable economic effect of extension, reduction, modification, or termination of action.
206.34 Investigations to evaluate the effectiveness of relief.

Authority: Sec. 335, Tariff Act 1930 (72 Stat. 680; 19 U.S.C. 1335); Sec. 603, Trade Act of 1974 (88 Stat. 2073; 19 U.S.C. 2482).

§ 206.1 Applicability of part.

This Part 206 applies specifically to functions and duties of the Commission under sections 201–202, 204, and 406 of the Trade Act of 1974, as amended (19 U.S.C. 2251 *et seq.*, 2436) (hereinafter Trade Act). For other rules of general applications see Part 201 of this chapter. Subpart A of this part sets forth rules generally aplicable to investigations conducted under these provisions of the Trade Act. Each of Subparts B and C of this part sets forth rules specifically applicable to petitions and investigations under sections 202 and 406, respectively, of the Trade Act. Subpart D of this part sets forth rules specifically applicable to functions and duties under section 204 of the Trade Act.

Subpart A—General

§ 206.2 Identification of type of petition.

Each petition under this Part 206 shall state clearly on the first page thereof "This is a petition under section (202 or 406, as the case may be) of the Trade Act of 1974 and Subpart (B or C, as the case may be) of Part 206 of the rules of practice and procedure of the United States International Trade Commission".

§ 206.3 Institution of investigations.

Promptly after the receipt of a petition under this Part 206, properly filed, the Commission will institute an appropriate investigation and will cause a notice thereof to be published in the **Federal Register.**

§ 206.4 Notification of other agencies.

The Commission will promptly transmit copies of petitions filed and notification of investigations instituted to the Office of the United States Trade Representative (hereinafter USTR), the Secretary of Commerce, the Secretary of Labor, and other Federal agencies directly concerned.

§ 206.5 Public hearings.

Public hearings on the subject of injury and remedy (if necessary) will be held in connection with each investigation instituted under this part after reasonable notice thereof has been caused to be published in the **Federal Register.** All interested parties and consumers will be afforded an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted in the case of an investigation under section 202(b), and to be heard at such hearings. A hearing on remedy will not be held if the Commission has made a negative determination on the question of injury.

§ 206.6 Report to the President.

The Commission will include in its report to the President the following:

(a) The determination with respect to whether the criteria for relief provided in section 202(b) or section 406(a)(1) of the Trade Act, as the case may be, have been satisfied, and an explanation of the basis for the determination;

(b) If the determination under section 202(b) or section 406(a)(1) is affirmative, the recommendations for action and an explanation of the basis for each recommendation;

(c) Any dissenting or separate views by members of the Commission regarding the determination and any recommendations;

(d) In the case of a determination made under section 202(b):

(1) The findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry;

(2) A copy of the adjustment plan, if any, submitted by the petitioner;

(3) Commitments submitted and information obtained by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition;

(4) A description of the short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, other domestic industries, and consumers; and

(5) A description of the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and communities where production facilities of such industry are located, and other domestic industries.

Subpart B—Investigations for Relief from Import Competition

§ 206.11 Applicability of subpart.

This Subpart B applies specifically to investigations under section 202(b) of

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the Trade Act. For other applicable rules, see Subpart A of this part and Part 201 of this chapter.

§ 206.12 Definitions applicable to Subpart B.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) *Adjustment plan* means a plan to facilitate positive adjustment to import competition submitted by a petitioner to the Commission and USTR either with the petition or an any time within 120 days after the date of filing of the petition.

(b) *Commitment* means commitments that a firm in the domestic industry, a certified or recognized union or group of workers in the domestic industry, a local community, a trade association representing the domestic industry, or any other person or group of persons submits to the Commission regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition;

(c) *Critical circumstances* mean such circumstances as are described in section 202(b)(3)(B) of the Trade Act;

(d) *Perishable agricultural product* means any agricultural article, including livestock, for which the USTR considers action to be appropriate after taking into account the factors set forth in section 202(d)(5)(A) of the Trade Act.

§ 206.13 Who may file a petition.

(a) *In general.* A petition under this Subpart B may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article like or directly competitive with a foreign article that is allegedly being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(b) *Reinvestigation within 1 year.* Except for good cause determined by the Commission to exist, no investigation for the purposes of section 202 of the Trade Act shall be made with respect to the same subject matter as a previous investigation under this section unless 1 year has elaped since the Commission made its report to the President of the results of such previous investigation.

(c) *Perishable agricultural product.* An entity of the type described in (a) of this section that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to such product only if it has previously filed a request with USTR for the monitoring of imports of that product, USTR has requested that the Commission monitor and investigate imports of such product, and such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

§ 206.14 Contents of petition

A petition under this Subpart B shall include specific information in support of the claim that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such petition shall state whether *critical circumstances* are alleged and whether provisional relief is sought because the imported article is a *perishable agricultural product.* In addition, such petition shall, to the extent practicable, include the following information:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced; (2) the percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and basis for claiming that such firms and/or workers are representative of an industry; and (3) the names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that the article concerned is being imported in increased quantities, either actual or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development; and

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets;

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

§ 206.15 Industry adjustment plan and commitments.

(a) *Adjustment plan.* A petitioner may submit to the Commission, either with the petition or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(b) *Commitments.* If the Commission makes an affirmative injury determination, any firm in the domestic industry, certified or recognized union or group of workers in the domestic industry, local community, trade association representing the domestic industry, or any other person or group of persons may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§ 206.16 Time for determinations, reporting.

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be, except that if the Commission determines before the 100th day that the investigation is extraordinarily complicated, the Commission will make its determination within 150 days. The Commission will make its report to the President at the earliest practicable time, but not later than 180 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition or on or before the 90th day after the day on which the petition was filed, the Commission will report its determination regarding such allegation and any finding on or before the 120th day after such filing date. In the event petitioner alleges such circumstances after the 90th day and on or before the 150th day after such filing date, the Commission will report its determination regarding such allegation and any finding on or before the date its report is submitted to the President.

§ 206.17 Public report.

Upon making a report to the President of the results of an investigation to which the Subpart B relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the **Federal Register.**

Subpart C—Investigations for Relief from Market Disruption

§ 206.21 Applicability of subpart.

This Subpart C applies specifically to investigations under section 406(a) of the Trade Act. For other applicable rules, see Subpart A of this part and Part 201 of this chapter.

§ 206.22 Who may file a petition.

A petition under this Subpart C may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article with respect to which there are imports of a like or directly competitive article which is the product of a Communist country, which imports, allegedly, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of a material injury, or the threat thereof, to such domestic industry.

§ 206.23 Contents of petition

A petition under this Subpart C shall include specific information in support of the claim that imports of an article the product of a Communist country which are like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry. In addition, such petition shall, to the extent practicable, include the following information:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced; (2) the percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and (3) the names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that imports from a Communist country of an article like or directly competitive with the article produced by the domestic industry concerned are increasing rapidly, either absolutely or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to subsection (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to material injury, data indicating:

(i) An idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Unemployment or underemployment within the industry; and/or

(2) With respect to the threat of material injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development; and

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets;

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the material injury, or threat thereof, described in paragraph (e) of this section; information relating to the effect of imports of the subject merchandise on prices in the United States for like or directly competitive articles; evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns; and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported

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article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought.

§ 206.24 Time for reporting.

The Commission will make its report to the President at the earliest practical time, but not later than 3 months after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

§ 206.25 Public report.

Upon making a report to the President of the results of an investigation to which the Subpart C relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the **Federal Register**.

Subpart D—Monitoring; Advice As to Effect of Extension, Reduction, Modification, or Termination of Relief Action

§ 206.31 Applicability of subpart.

This Subpart D applies specifically to investigations under section 204 of the Trade Act. For other applicable rules, see Subpart A of this part and Part 201 of this chapter.

§ 206.32 Monitoring.

(a) *In general.* As long as any import relief imposed by the President pursuant to section 203 of the Trade Act remains in effect, the Commission will monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the industry to make a positive adjustment to import competition.

(b) *Biannual reports.* The Commission will submit a report on the results of the monitoring to the President and the Congress not later than (1) the 2nd anniversary of the day on which the action under section 203 of the Trade Act first took effect, and (2) the last day of each 2-year period occurring after such first report. In the course of preparing each such report, the Commission will hold a hearing at which interested persons will be given a reasonable opportunity to be present, to produce evidence, and to be heard.

§ 206.33 Investigations to advise the President as to the probable economic effect of extension, reduction, modification, or termination of action.

Upon the request of the President, the Commission will conduct an investigation for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the industry concerned of any extension, reduction, modification, or termination of the action taken under section 203 which is under consideration.

§ 206.34 Investigations to evaluate the effectiveness of relief.

(a) *Investigation.* After any action taken under section 203 has terminated, the Commission will conduct an investigation for the purpose of evaluating the effectiveness of the relief action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b).

(b) *Hearing.* In the course of such investigation, the Commission will hold a hearing at which interested persons will be given an opportunity to be present, to produce evidence, and to be heard.

(c) *Time for reporting.* The Commission will submit its report to the President and to the Congress by no later than the 180th day after the day on which the action terminated.

By order of the Commission.

Issued: August 24, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-19634 Filed 8-26-88; 8:45 am]

BILLING CODE 7020-02-M

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19 CFR Part 207

Investigations of Whether Injury to Domestic Industries Results from Imports Sold at Less Than Fair Value or from Subsidized Exports to the United States

AGENCY: U.S. International Trade Commission.

ACTION: Interim rules and request for comments.

SUMMARY: The Commission is amending Part 207 on an interim basis to conform with the Omnibus Trade and Competitiveness Act of 1988, which became effective on August 23, 1988.

The amendments to Part 207 provide, in particular, for certification by submitters of factual information that such information is accurate; changes in the procedure for release of business proprietary (formerly confidential business) information under administrative protective order; strengthening sanctions for breach of protective order; more detailed filing of critical circumstances allegations; deletion of provisions incompatible with the new law; and procedures in proceedings for the establishment of short life cycle product categories.

DATES: The interim rules are effective on August 23, 1988. Comments on the interim rules will be considered if received on or before October 28, 1988.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter addressed to Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

On August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") became effective. This new trade legislation contains provisions which, *inter alia*, amend Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*). The Commission's rules concerning Title VII practice and procedure need to be amended to conform to the new legislation. The 1988 Act, *inter alia*, also amends other parts of the Tariff Act of 1930 and the import relief and market disruption provisions of the Trade Act of 1974 (19 U.S.C. 2251, 2436). Interim rules amending Parts 206, 210, and 211 of 19 CFR, Chapter II to reflect the amendments to those provisions are being published elsewhere in this issue of the **Federal Register**.

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rule making provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). (APA), which entails the following steps: (1) Publication of a notice of proposed rule making; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. *See* 5 U.S.C. 553. That procedure could not be utilized in this instance because the new legislation became effective upon enactment, and it was not possible to complete the

procedure *prior* to the effective date of the new legislation.

The Commission thus determined to adopt *interim* rules that will go into effect when the new legislation is enacted and will remain in effect until the Commission can adopt final rules promulgated in accordance with the usual notice, comment, and advance publication procedure.

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from two sources: (1) Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and (2) provisions of section 553 of the APA which allow an agency to dispense with various steps in the prescribed rule making procedure under certain circumstances.

Section 335 of the Tariff Act of 1930 authorizes the Commission "to adopt reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties." 19 U.S.C. 1335. The Commission determined that the need for interim rules is clear in this instance. The Commission noted that the new legislation alters Title VII practice and procedure in important respects and that some existing Commission rules would be in conflict with the new legislation. The Commission found that rule making was essential for the orderly administration of Title VII as amended by the new legislation. Furthermore, since the legislation became effective immediately upon enactment, the Commission concluded that it was imperative that implementing rules be in place on the enactment date of the new statute.

The Commission noted that an agency may dispense with publication of a notice of proposed rule making when the following circumstances exist: (1) The proposed rules are interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or (2) the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, and that finding (and the reasons therefor) are incorporated into the rules adopted by the agency. 5 U.S.C. 553(b). An agency may also dispense with the publication of a notice of final rules thirty days prior to their effective date if (1) the rules are interpretive rules or statements of policy or (2) the agency finds that "good cause" exists for not meeting the advance publication requirement and that finding is published along with the rule. 5 U.S.C. 553(d)(3).

In this instance, the Commission determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rule making which solicits public comment, the Commission found that (1) the interim rules are "agency rules of procedure or practice"; and (2) since the new legislation would become effective upon enactment, it clearly would be "impracticable" for the Commission to comply with the usual notice, comment, and advance publication procedure. The Commission found that it could not predict when or if the new legislation would pass and therefore could not predict the effective date. For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules thirty days prior to their effective date, the Commission found that the fact that the new legislation was effective upon enactment made such advance publication impossible and constituted "good cause" for the Commission not to comply with that requirement.

The Commission recognizes that interim regulations should not respond to anything more than the exigencies created by the new legislation and expects that the more comprehensive final rules to follow will emerge as a result of the Congressionally-mandated policy of affording public participation in the rule making process.[1] Having been promulgated in response to exigencies created by the new legislation, each interim rule accordingly comes under one or more of the following categories: (1) Revision of a pre-existing rule that conflicted with the new legislation; (2) a technical amendment to make a pre-existing rule conform to the language or subsection designations of the new legislation; (3) a cross-reference to an interim rule which was added to an otherwise unamended pre-existing rule to achieve intra-Part consistency and to avoid confusion about how the unamended provisions of the rule are to be applied in light of the interim rule provisions concerning the same subject matter; (4) reorganization or rewording of a pre-existing rule to avoid confusion about how the rule is to be applied in light of the new legislation; or (5) a new rule covering a matter provided for in the new legislation but not covered by a pre-existing rule. More comprehensive final rules will be issued at a later date in accordance with the usual notice, public comment, and advance publication procedure.

The Commission has determined that these amendments do not constitute a major rule for the purposes of Executive Order 12291 (46 FR 13193, February 17, 1981) because they do not meet the criteria described in section 1(b) of the EO. Moreover, the amendments, as interim rules, are not subject to the filing requirement of section 3(c)(3) of the EO.

Explanation of the Interim Amendments to 19 CFR Part 207

The amendments set forth below are intended to reflect changes in the law effected by the 1988 Act.

Section 207.2 is amended to remove paragraph (h) which defines the term "interested party." Because the statute as amended defines the term and the definition in § 207.2(h) does not conform to the statute, paragraph (h) is removed as unnecessary and obsolete. Paragraph (i), which defines the term "record", is redesignated paragraph (h) accordingly.

Section 207.3 is amended to require that any interested party submitting factual information and any person submitting a response to a Commission questionnaire must certify that such information is accurate and complete to the best of the submitter's knowledge. This change implements a provision in the 1988 Act and applies only to investigations instituted after the effective date of the 1988 Act.

Section 207.7 is amended to modify the procedure for obtaining confidential business information, now termed business proprietary information, under administrative protective orders. The amended rule applies to all investigations instituted after the effective date of the 1988 Act. In the case of an investigation in which the preliminary phase was instituted before the effective date but the final phase is instituted after the effective date, business proprietary information received by the Commission during the prelimianry phase will not be disclosed under protective order, except if such information is separately gathered by the Commission in the final phase. Sanctions for breach of protective order are strengthened by adding the sanctions of (1) public release of the business proprietary information submitted by the breaching party, and (2) denial of access to business proprietary information in the current and future investigations. The added sanctions are necessitated by the provision in the 1988 Act for access to

[1] *See* American Federation of Government Employees, AFL-CIO v. Block, 655 F.2d 1153, 1157-1158 (D.C. Cir. 1981). *See also* United States v. Garner, 767 F.2d 104, 120 (5th Cir. 1985) (quoting American Federation of Government Employees, AFL-CIO v. Block).

business proprietary information by interested parties not represented by counsel.

Section 207.10 is amended to add a provision requiring that allegations of critical circumstances made after the date of institution of the Commission's final investigation be made in more detail than allegations made earlier. This change is made to permit sufficient time for the Commission to make the complex critical circumstances determination required by the 1988 Act.

Sections 207.26 and 207.27 are removed, as is the reference to § 207.26 in § 207.11. This change is made because the 1988 Act makes significant changes in the factors which the Commission must consider in making determinations, thus rendering §§ 207.26 and 207.27 incompatible with current law.

A new § 207.26 is added to provide for procedure in proceedings to establish a short life cycle product category. Such procedure is needed because of a provision for such proceedings in the 1988 act.

List of Subjects in 19 CFR Part 207

Administrative practice and procedure, Investigations, Imports.

19 CFR Chapter II, Part 207 is amended as set forth below:

PART 207—[AMENDED]

1. The authority citation for Part 207 is revised to read as follows:

Authority: Secs. 303, 332, and 701–779 of the Tariff Act of 1930 (19 U.S.C. 1303, 1332, 1335, 1671–1677h); sec. 603 of the Trade Act of 1974 (19 U.S.C. 2582); secs. 3, 102–107, 1001, and 1002 of the Trade Agreements Act of 1979; and secs. 1311–1337 of the Omnibus Trade and Competitiveness Act of 1988.

§ 207.2 [Amended]

2. Section 207.2 is amended to remove paragraph (h), and redesignate paragraph (i) as paragraph (h).

3. Section 207.3 is revised to read as follows:

§ 207.3 Certification and service of documents.

Any person submitting factual information on behalf of the petitioner or any other interested party for inclusion in the record, and any person submitting a response to a Commission questionnaire, must certify that such information is accurate and complete to the best of the submitter's knowledge. Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. Failure to comply with the requirements of this rule may result in removal from status as a party. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings and responses to requests under § 201.6(b) (confidential business information) of this Chapter and § 207.7 (documents under protective order), placed in the record of the investigation by the Commission.

4. Section 207.7 is amended by revising paragraphs (a), (b), (d), and (e), and adding paragraphs (f), (g), and (h) to read as follows:

§ 207.7 Limited disclosure of certain confidential information under a protective order.

(a) (1) *Disclosure* Upon receipt of a timely application filed by an authorized applicant which (1) describes in general terms the information requested, and (ii) sets forth the reasons for the request (*e.g.*, all business proprietary information properly disclosed pursuant to this section for the purpose of representing an interested party in proceedings pending before the Commission) the Secretary will make available all business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets) to the authorized applicant under a protective order described in paragraph (b) of this section. The term "business proprietary information" as used in this section has the same meaning as the term "confidential business information" as defined in section 201.6 of this Chapter.

(2) *Application* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or by certification that the authorized applicant agrees to be bound by the terms of the protective order entered pursuant to paragraph (b) of this section. An application must be made no later than the time that an entry of appearance is made pursuant to § 201.11 of this chapter.

(3) *Authorized applicant* Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(i) An attorney, excepting in-house corporate counsel, for an interested party which is a party to the investigation.

(ii) An in-house corporate attorney for an interested party which is a party to the investigation, if the attorney is not involved in competitive decisionmaking as defined in *U.S. Steel Corp. v. United States*, 703 F.2d 1465 (Fed. Cir. 1984).

(iii) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i) or (ii) of this section.

(iv) A consultant or expert who appears regularly before the Commission.

(v) An interested party which is a party to the investigation, if such interested party is not represented by counsel.

A person under paragraph (a)(3)(iv) or (v) of this section will be given access to the business proprietary information in the record under such terms and conditions as required to assure its use is limited to the current investigation and that the recipient is not involved in competitive decisionmaking as defined in *U.S. Steel Corp. v. United States, supra*.

(4) *Forms and determinations.* The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to a protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination will be made concerning specific business proprietary information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, or seven (7) days in a preliminary investigation, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination will be made within thirty (30) days from the filing of the information, or ten (10) days in a preliminary investigation. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final for purposes of review by the U.S. Court of International Trade under section 777(c)(2) of the Act. Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by an interested person do not constitute business proprietary information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f).

(b) *Protective order.* The protective order under which information is made available to the authorized applicant shall require him to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, he will:

(1) Not divulge any of the information so obtained and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the proceeding,

(ii) The person or agency from whom the information was obtained,

(iii) An attorney, excepting in-house counsel involved in competitive decision-making, employed on behalf of the party requesting the disclosure, and who has furnished a similar statement, or

(iv) Consultants and other experts under the control of the authorized applicant and those persons independently contracted with, or employed or supervised by, the authorized applicant having a need thereof in connection with the proceeding and who have furnished a similar statement;

(2) Use such information solely for the purposes of the Commission proceeding then in progress or for judicial or Commission review thereof;

(3) Not consult with any person not described in paragraph (b)(1) (iii) or (iv) of this section concerning such business proprietary information without first having received the written consent of the Secretary and the attorney of the party from whom such business proprietary information was obtained;

(4) Not copy or otherwise reproduce any business proprietary material obtained under the protective order except in accordance with procedures to be established by the Secretary; and

(5) Report promptly to the Secretary any breach of the protective order.

* * * * *

(d) *Sanctions for breach of protective order.* The sworn statement referred to in paragraph (b) of this section shall include an acknowledgment by the person providing it that breach thereof may subject to being barred from practice in any capacity before the Commission:

(1) The person submitting the statement, and

(2) Such person's partners, associates, employer, and employees,

for up to seven years following publication of a determination that the order has been breached. Any breach of a protective order may be referred to the United States Attorney. In the case of an attorney, accountant, or other professional, such breach also may be referred to the ethics panel of the appropriate professional association. The offender and the party he represents shall be subject to such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, and denial of further access to business proprietary information in the current or any future proceedings before the Commission.

(e) *Sanction procedure.* The Commission shall determine whether any person has violated a protective order, and may impose sanctions in accordance with paragraph (d) of this section. Any person against whom a sanction is proposed to be applied shall be afforded a reasonable opportunity to be heard before the determination is made.

(f) *Service.* Any party filing written submissions which include business proprietary information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants appearing on the list established by the Secretary pursuant to paragraph (a)(3) of this section. Such submissions must be accompanied by a certificate of service. Business proprietary information in such submissions must be clearly marked as such when submitted, and must be segregated from other material being submitted.

(g) *Opportunity to comment.* Parties which obtain disclosure of business proprietary information pursuant to this section may comment on such information in their prehearing and posthearing briefs, and in their postconference briefs in a preliminary investigation. They may also file additional written comments on such information no later than five (5) calendar days after the deadline for posthearing briefs in a final investigation, or three (3) calendar days after the deadline for postconference briefs in a preliminary investigation. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs, or in or after the postconference briefs in a preliminary investigation. Additional comments which do not comply with the requirements of this paragraph may be stricken from the record. The time periods set out in this paragraph are not subject to § 201.6(a) of this chapter in that intermediate Saturdays, Sundays, and Federal legal holidays shall be not excluded from the computation of such time periods.

(h) *Applicability.* This section applies to investigations instituted after the effective date of the Omnibus Trade and Competitiveness Act of 1988.

5. Section 207.10 is amended to revise paragraph (b) and add a new paragraph (c) as follows:

§ 207.10 Filing of petition with the Commission.

* * * * *

(b) *Service of the petition.* A copy of the petition, or a version thereof omitting business proprietary information, shall be served by petitioner on those persons enumerated in 19 CFR 353.36(a)(6) and (a)(11) or in 19 CFR 355.28(a)(6) and (a)(10), as appropriate. A copy of the petition including all business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 207.7(a)(3). Such service shall be attested by a certificate of service as required in § 201.16(c).

(c) When not made in the petition, any allegations of critical circumstances under section 703 or 733 of the Act shall be made in an amendment to the petition and shall be filed as early as possible. If filed after the date of institution of the Commission's final investigation, the allegation shall contain information reasonably available to petitioner concerning the factors enumerated in sections 705(b)(4)(A) and 735(b)(4)(A) of the Act.

§ 207.26 [Removed]

§ 207.27 [Removed]

§ 207.11 [Amended]

6. Section 207.26, § 207.27, and the second sentence of § 207.11 are removed.

7. A new § 207.26 is added to read as follows:

§ 207.26 Short life cycle products

(a) An eligible domestic entity may file a petition to establish a product category for short life cycle merchandise which has been the subject of two or more affirmative dumping determinations. The Commission shall within thirty (30) days of the filing of the petition determine its sufficiency. If the petition is found to be sufficient, the Commission shall institute a proceeding to establish a product category and publish a notice of institution in the Federal Register. Upon request of an interested person filed within fifteen (15) days after publication of the notice of institution, the Commission will conduct

a hearing which shall be transcribed. The Commission's determination concerning the scope of the product category into which to classify the short life cycle merchandise identified by the petition shall be issued no later than ninety (90) days after the filing of the petition.

(b) The Commission may on its own initiative and at any time modify the scope of a product category established in a proceeding pursuant to paragraph (a) of this section. Ninety (90) days prior to such modification, the Commission shall publish a notice of proposed modification in the **Federal Register**. Upon request of an interested party filed within proposed modification in the **Federal Register**. Upon request of an interested party filed within fifteen (15) days after publication of the notice of proposed modification, the Commission will conduct a hearing which shall be transcribed. Written submissions concerning the proposed modification will be accepted if filed no later than sixty (60) days after publication of the notice of proposed modification.

By order of the Commission

Issued: August 24, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-19637 Filed 8-26-88; 8:45 am]

BILLING CODE 7020-02-M

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19 CFR Parts 210 and 211

Interim Rules Governing Investigations and Enforcement Procedures Pertaining to Unfair Practices in Import Trade

AGENCY: U.S. International Trade Commission.

ACTION: Interim rules and request for comments.

SUMMARY: The Commission has revised 19 CFR Parts 210 and 211 on an interim basis to implement certain provisions of the Omnibus Trade and Competitiveness Act of 1988, which became effective on August 23, 1988.

DATES: The effective date of the interim rules is August 23, 1988. Comments on the interim rules will be considered if received on or before October 28, 1988.

ADDRESSES: A signed original and fourteen (14) copies of each set of comments, along with a cover letter addressed to Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, Office of the Secretary, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION:

The Omnibus Trade and Competitiveness Act of 1988

On August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988 ("the Omnibus Trade Act") became effective. This new legislation contains provisions that, inter alia, amend section 337 of the Tariff Act of 1930 ("the Tariff Act") (19 U.S.C. 1337) and repeal 19 U.S.C. 1337a.[1] As a result, the new legislation has affected the Commission's practice and procedure under section 337 as summarized below:

(1) The elements of a section 337 violation have changed. The definition of a domestic industry has been broadened for cases based on the alleged infringement of a valid and enforceable U.S. patent or a federally registered copyright, trademark, or mask work, and for cases based on the importation or sale of a product allegedly made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent. In addition, complainants are no longer required to prove, in any type of case, that the relevant domestic industry is efficiently and economically operated. Complainants also do not have to prove injury in cases based on the alleged infringement of a valid and enforceable U.S. patent or a federally registered copyright, trademark, or mask work, or in cases based on the importation or sale of a product allegedly made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent.

(2) The law limits access to confidential business information that is exchanged among parties or submitted to the Commission in connection with a section 337 investigation to the following persons: (a) Those who are granted access under a protective order; (b) officers or employees of the Commission who are directly involved in carrying out the investigation; (c) officers or employees of the U.S. Government who are involved in the Presidential review of section 337 remedial orders pursuant to subsection (h) of section 337; and (d) officers or employees of the U.S. Customs Service who are directly involved in administering an exclusion order resulting from the investigation in connection with which the confidential business information was submitted. Disclosure of confidential business information to other persons without the consent of the submitter is prohibited by law.

(3) The Commission now has very short statutory deadlines for determining whether to grant or deny temporary relief—*viz.*, 90 days after institution in an ordinary investigation and up to 150 days in a "more complicated" investigation. Complainants can be required to post a bond as a prerequisite to obtaining such relief, and if the Commission ultimately determines that respondents have not violated section 337, the bond may be forfeited to the U.S. Treasury in in accordance with rules prescribed by the Commission.[2]

(4) The Commission's express jurisdiction under section 337 has been expanded to include actions that the Commission previously took pursuant to inherent authority under section 337 or authority derived from the Administrative Procedure Act ("the APA")—*i.e.*, (a) termination of investigations in whole or in part on the basis of settlement agreements or consent orders with no finding as to whether section 337 has been violated; (b) the issuance of affirmative final determinations and remedial orders (general or limited exclusion orders or cease and desist orders) in default cases; and (c) modification or rescission of remedial orders in response to a

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[1] *See* sections 1341(b) and 1342 of the Omnibus Trade Act. The bill that became the Omnibus Trade Act is H.R. 4848, 100th Cong. 2d Sess. (1988). The provisions of H.R. 4848 that amend section 337 of the Tariff Act and repeal 19 U.S.C. 1337a are identical to provisions of H.R. 3, 100th Cong., 2d Sess (1988), a previous trade bill which the President vetoed. For that reason, the legislative history of H.R. 3 also serves as the legislative history of the relevant provisions of H.R. 4848. *See* section 2 of the Omnibus Trade Act. (*See also* the citations in nn. 2, 9, 11, 12, 14, 15, 21, and 29 of this notice.)

[2] Section 337(e)(2) of the Tariff Act, created by section 1342(a)(3)(B) of the Omnibus Trade Act; H.R. Rep. No. 576, 100th Cong., 2nd Sess. 635-636 (1988). The Commission is not required to apply the new statutory provisions relating to the posting of temporary relief bonds by complainants until the earlier of the 90th day after enactment of the Omnibus Trade Act or the day on which the Commission issues interim regulations setting forth procedures relating to the posting of such bonds. Section 1342(d)(1)(B) of the Omnibus Trade Act; H.R. Rep. No. 576 at 635. Interim Commission rules governing the posting of temporary relief bonds and the possible forfeiture of such bonds will be published at a later date.

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motion by a respondent previously found to be in violation of section 337.

(5) The relief and penalty provisions of section 337 have been strengthened. The Commission now has express authorization to issue cease and desist orders in addition to (as well as in lieu of) exclusion orders. Articles imported in violation of an outstanding exclusion order can be seized and forfeited by order of the Commission. The maximum daily statutory civil penalty for violation of a cease and desist order has been increased to $100,000 or twice the domestic value of the articles on each day they are entered or sold in violation of the order.

(6) The Commission is now authorized to impose sanctions for abuse of discovery and abuse of process in section 337 investigations to the extent provided by Rules 11 and 37 of the Federal Rules of Civil Procedure.

(7) The statutory provision exempting U.S. Government importations from section 337 remedial orders in patent-based investigations has been expanded to cover remedial orders in investigations based on infringement of a federally registered copyright or mask work.

(8) Any investigation due to be completed within 180 days after the enactment of the new legislation can be declared "complicated" and its 12-month or 18-month statutory deadline can be extended by as much as 3 months.

The Commission has determined to apply the amendments to section 337 contained in the new legislation to all pending section 337 investigations. To the extent such amendments affect the scope of a pending investigation, the Commission expects that a motion will be made to amend the scope and notice of that investigation pursuant to interim rule 210.22.

The Adoption of Interim Rules To Implement the Omnibus Trade and Competitiveness Act of 1988

As indicated above, the Omnibus Trade Act affects section 337 practice and procedure in many respects. Commission rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the APA, which entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules 30 days prior to their effective date. *See* 5 U.S.C. 553. That procedure could not be utilized in this instance because the new legislation became effective upon enactment, and it was not possible to complete the procedure prior to the effective date of the new legislation.

The Commission thus determined to adopt interim rules that would go into effect upon enactment of the new legislation and would remain in effect until the Commission is able to adopt final rules promulgated in accordance with the usual notice, comment, and advance publication procedure.[3]

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from two sources: (1) Section 335 of the Tariff Act (19 U.S.C. 1335) and (2) provisions of section 553 of the APA, which allow an agency to dispense with various steps in the prescribed rulemaking procedure under certain circumstances.

Section 335 of the Tariff Act authorizes the Commission "to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties." 19 U.S.C. 1335. The Commission determined that the need for interim rules was clear in this instance. The Commission noted that the new legislation alters section 337 practice and procedure in many respects and that some Commission rules had to be revised so that they would not conflict with the new legislation or the congressional intent expressed in its legislative history. The Commission also found that other rules had to be revised in order (1) to conform to the language or provisions of the new legislation, (2) to bring the rule into technical conformity with the new legislation (*e.g.*, by inserting correct citations to redesignated subsections of the amended statute), or (3) to avoid confusion about how unrevised provisions of a rule would be applied in light of the new legislation. The Commission also found that it had to promulgate new rules to cover matters that are provided for in the new legislation but not covered by an existing rule. In sum, the Commission found that rulemaking was essential for the orderly administration of section 337 as amended by the new legislation.

Furthermore, since the legislation was to become effective immediately upon enactment, the Commission concluded that it was imperative that implementing interim Commission rules be in place as close as possible to the enactment date of the new statute.

The Commission noted that an agency may dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) The proposed rules are interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (2) the agency for good cause finds that notice and the procedure for public comment are impracticable, unnecessary, or contrary to the public interest, and that finding and the reasons therefor are incorporated into the rules adopted by the agency. *See* 5 U.S.C. 553(b). An agency may also dispense with the publication of a notice of final rules 30 days prior to their effective date if (1) the rules are interpretive rules or statements of policy or (2) the agency finds that "good cause" exists for not meeting the advance publication requirement and that finding is published along with the rule. *See* 5 U.S.C. 553(d)(3).

In this instance, the Commission determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication that ordinarily precede the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rulemaking (which would have solicited public comment), the Commission noted that (1) the interim rules it intended to adopt are "agency rules of procedure or practice"; and (2) since the new legislation would become effective upon enactment, it clearly would be "impracticable" for the Commission to comply with the usual notice, comment, and advance publication procedure. For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules 30 days prior to their effective date, the Commission found that the fact that the new legislation was effective upon enactment made such advance publication impossible and constituted "good cause" for the Commission not to comply with that requirement.

The Commission is cognizant that interim regulations should not respond to anything more than the exigencies created by the new legislation and expects that the final rules will emerge as a result of the congressionally mandated policy of affording public

[3] In addition to amending section 337 of the Tariff Act and repealing 19 U.S.C. 1337a, the Omnibus Trade Act contains provisions affecting the Commission's practice and procedure in antidumping the countervailing duty investigations, as well as investigations of import injury to industries, firms, or workers due to trade agreement concessions. For that reason, the Commission adopted interim revisions to 19 CFR Parts 206 and 207 (in addition to the interim revisions to Parts 210 and 211 that are set forth in this notice). The interim revisions to Parts 206 and 207 are published elsewhere in today's **Federal Register**.

participation in the rulemaking process.[4] Having been promulgated in response to exigencies created by the new legislation, most of the interim revisions in Parts 210 and 211 come under one or more of the following categories: (1) Revision of a preexisting rule that conflicted with the new legislation or was inconsistent with congressional intent expressed in its legislative history; (2) a technical revision to make a preexisting rule conform to the language or subsection designations of the new legislation; (3) a cross-reference to an interim rule that was added to an otherwise unrevised preexisting rule to achieve intra-Part consistency and to avoid confusion about how the unrevised provisions of the rule are to be applied in light of the interim rule provisions concerning the same subject matter; (4) reorganization or rewording of a preexisting rule to avoid confusion about how the rule is to be applied in light of the new legislation; or (5) a new rule covering a matter provided for in the new legislation but not covered by a preexisting rule. Final rules will be issued at a later date in accordance with the usual notice, public comment, and advance publication procedure.

The Commission also has determined, for the following reasons, that the interim rules contained in this notice are not subject to the provisions of Executive Order 12291 of February 17, 1981 (46 FR 13193, February 19, 1981) governing Federal regulation. Some of the interim rules pertain to administrative actions governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and thus are not "regulations" or "rules" within the meaning of section 1(a) of Executive Order 12291. The interim rules also do not qualify as "major rules" under section 1(b) of Executive Order 12291 because they do not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

[4] *See American Federation of Government Employees, AFL–CIO* v. *Block*, 655 F.2d 1153, 1157–1158 (D.C. Cir. 1981). *See also United States* v. *Garner*, 767 F.2d 104, 120 (5th Circ. 1985) (quoting *American Federation of Government Employees, AFL–CIO* v. *Block*).

Explanation of the Interim Revisions in 19 CFR Part 210

Section 210.1

Section 210.1 describes the applicability of the rules in Part 210 and lists the statutory provisions that authorize the enactment of such rules. In order to bring § 210.1 into conformity with the new legislation, the following interim revisions have been made: (1) The reference to 19 U.S.C. 1337a has been deleted from § 210.1 because that statutory provision was repealed by the new legislation; [5] and (2) since the new legislation expressly authorizes the Commission to promulgate rules imposing sanctions for abuse of discovery and abuse of process in proceedings under section 337 of the Tariff Act,[6] section 337 is cited as one of the statutory provisions authorizing the Commission to promulgate the rules in Part 210.

Sections 210.2 and 210.4

The new legislation did not necessitate revision of these sections; the interim provisions are the same as the former provisions.

Section 210.5

Section 1342(a)(5)(B) of the Omnibus Trade Act creates a new subsection (h) of section 337 of the Tariff Act, which authorizes the Commission to prescribe rules for imposing sanctions for abuse of process in section 337 investigations to the extent sanctions could be imposed in Federal district courts under Rule 11 of the Federal Rules of Civil Procedure ("FRCP").

FRCP 11 requires the following:

(1) That every pleading, motion, or other paper filed by a party is to be signed by the party's attorney of record—or by the party himself if he is appearing pro se; and

(2) That the signature of the attorney or the party constitutes certification that—

(a) The signer has read the document,

[5] Section 1337a of title 19 of the U.S. Code provided that the importation of products made, produced, processed, or mined under or by means of a process covered by an unexpired, valid U.S. patent was cognizable under section 337 to the same extent as the importation of any product or article covered by the claims of a valid and unexpired U.S. Letters Patent. Section 1342(c) of the Omnibus Trade Act repealed that provision. Under the new section 337(a)(1)(B)(ii) of the Tariff Act (created by section 1342(a)(1) of the Omnibus Trade Act), the importation or sale of an article made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent is a violation of section 337 (provided that the other statutory elements of a violation exist).

[6] *See* section 337(h) of the Tariff Act, created by section 1342(a)(5)(B) of the Omnibus Trade Act.

(b) That to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law (or a good faith argument for extension, modification, or reversal of the existing law), and

(c) That the document is not being interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

FRCP 11 also provides sanctions for violations of its signing and certification provisions. If a document is not signed, FRCP 11 authorizes the court to strike the document from the record of the proceeding unless the document is signed promptly after the omission is called to the attention of the pleader or the movant. If the document is signed in violation of any of the certification provisions, the court upon motion or sua sponte can impose an appropriate sanction on the person who signed the document, the represented party, or both. Appropriate sanctions may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the document, including reasonable attorneys' fees.

The Commission rules that govern the signing and filing of written submissions in section 337 proceedings are § 210.5 of Part 210 ("Written submissions") and § 201.8(e) of Part 201 ("Identification of party filing document"). In order to bring § 210.5 into conformity with the signing, certification, and sanction provisions of FRCP 11, § 210.5 has been revised in the following manner:

(1) There is a new paragraph (b) of § 210.5. It corresponds to the relevant provisions of FRCP 11 (including the title) and incorporates the § 201.8(e) provision that signing a document constitutes certification that the signer was duly authorized to sign it.

(2) The previous paragraph (b) of § 210.5 has been redesignated paragraph (c) and retitled "Filing of documents," and the references to § 201.8(e) of Part 201 has been deleted.

(3) The previous paragraph (c) of § 210.5 has been deleted.

The Commission will determine at a later date whether to publish proposed rules governing the issuance of orders directing the payment of costs and attorneys' fees as a sanction for abuse of process.

Section 210.6

The previous enactment of section 337 of the Tariff Act did not contain provisions governing the handling of

confidential business information. Instead, the procedures for handling such information in section 337 proceedings were set forth in various Commission rules and in protective orders issued by the presiding ALJ in each investigation.[7]

Section 1342(a)(8) of the Omnibus Trade Act added a new subsection (n) to section 337 governing the handling of confidential business information in section 337 proceedings and imposing restrictions on the disclosure of such information without the consent of the submitter.

Section 210.6 of 19 CFR Part 210 has been revised on an interim basis in the following manner: (1) The previous provisions of § 210.6 now constitute paragraph (a) of that section; and (2) there is a new paragraph (b) corresponding to the new statutory restrictions on disclosure of confidential information and providing cross-references to other Commission rules pertaining to the handling and disclosure of such information.

Section 210.7

This section pertains to computation of time, additional hearings, postponements, continuances, and extensions of time in section 337 investigations. It previously provided that such matters are governed by the provisions of § 201.14 of Part 201. Since interim § 210.24(e) of Part 210 contains provisions that conflict with the provisions of § 201.14 (*e.g.*, intervening Saturdays, Sundays, and holidays are not excluded from the computation of time for filing certain documents under interim § 210.24(e)), the words "except as provided in § 210.24(e) (2), (7), and (17)" have been added to § 210.7 for intra-Part consistency and to prevent confusion.

Section 210.8

Section 210.8 identifies the general rule governing service of process and other documents in section 337 investigations. Because interim § 210.24(e) contains exceptions to the general rule concerning service of documents (*e.g.*, certain documents must be served in a manner other than by first class mail), the words "except as provided in § 210.24(e) (4), (7), and (17)" have been added to § 210.8 for intra-Part consistency and to avoid confusion.

Section 210.10

Paragraph (a) of § 210.10 requires, inter alia, that complainants file with the Commission 1 copy of the complaint for each person named in the complaint as a proposed respondent. (Those copies are subsequently served by the Commission pursuant to § 210.13 when the Commission institutes an investigation of the complaint.) The preexisting provisions of § 210.10 have not been changed, but the interim revisions to § 210.24(e) made it necessary to add clarifying language to § 210.10. Interim § 210.24(e)(4) requires complainants seeking temporary relief to serve copies of the complaint on all proposed respondents on the same day the complaint and motion for temporary relief are filed with the Commission. To avoid confusing prospective complainants, paragraph (a) of § 210.10 has been revised to indicate that complainants who are seeking temporary relief are to provide additional copies of the complaint and the motion for temporary relief for each proposed respondent and the appropriate foreign government notwithstanding the provisions of § 210.24(e)(4).

Section 210.11

The new legislation did not necessitate revision of this section; the interim provisions are the same as the former provisions.

Section 210.12

Section 210.12 discusses the manner in which the Commission institutes (or declines to institute) a section 337 investigation on the basis of a complaint. In its previous form, § 210.12 imposed a 30-day deadline for deciding whether to take such action (except in "exceptional circumstances"). Since interim § 210.24(e) (2), (7), and (8) provide exceptions to the 30-day deadline (other than the "exceptional circumstances" noted by the former § 210.12), the words "except as provided in § 210.24(e) (2), (7), and (8)" have been added to § 210.12 for intra-Part consistency and to avoid confusing prospective parties in section 337 proceedings. In addition, since interim § 210.24(e)(4) requires complainants seeking temporary relief to serve copies of the complaint and motion for temporary relief upon each proposed respondent the day the complaint and motion are filed with the Commission, § 210.12 has been revised to indicate that if the Commission determines not to institute an investigation, the proposed respondents (as well as the complainant) shall receive notice of the Commission's action.

Section 210.13

Section 210.13 was previously entitled "Service of complaint and notice of investigation" and discussed such service by the Commission upon institution of an investigation of the complaint. The substance of this section has not been changed, but it has been reworded for clarity. Additionally, because interim § 210.24(e)(4) requires complainants seeking temporary relief to serve copies of the complaint and motion for temporary relief on all proposed respondents on the same day the complaint and motion are filed with the Commission, the words "by the Commission" have been added to the title of § 210.13. The Commission also has added a provision to § 210.13 indicating that the complaint and notice of investigation are to be served by the Commission upon institution of an investigation despite the fact that complainant was required to serve a copy of the complaint on each proposed respondent pursuant to interim § 210.24(e)(4). Service of the complaint and notice of investigation by the Commission is the operative service for the purpose of computing the deadline for filing a response to the complaint.

Section 210.20

Section 210.20 specifies what information and materials must be provided in or with a complaint under section 337 of the Tariff Act in order for it to be considered "properly filed" and to result in the institution of an investigation. The preexisting § 210.20 of Part 210 essentially required all complaints to allege and make a prima facie showing of unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale. All complaints also were required to specifically allege and provide corroborating information that the "effect or tendency" of the alleged unfair methods and acts was one of the following: (1) Destruction of or substantial injury to an efficiently and economically operated domestic industry; (2) prevention of the establishment of such an industry; or (3) restraint or monopolization of trade and commerce in the United States.

Section 1342(a)(1) of the Omnibus Trade Act amended subsection (a) of section 337 of the Tariff Act by altering the elements of a section 337 violation. Under the new law, all complaints must still allege (1) that the proposed respondents have engaged in unfair methods of competition and unfair acts in the importation or sale of the accused

[7] *See* § 201.6 (a) and (c) of 19 CFR Part 201; former §§ 210.6, 210.37, and 210.44 of Part 210; former § 211.52 of Part 211.

imported articles,[8] and (2) that there is a domestic industry for the type of articles in question or that such an industry is in the process of being established.[9] The definition of a domestic industry has been broadened for cases based on the alleged infringement of a valid and enforceable U.S. patent or a federally registered copyright, trademark, or mask work, and for cases based on the importation or sale of a product allegedly made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent.[10] However, complainants are no longer required to prove, in any type of case, that the relevant domestic industry is efficiently and economically operated.[11] An additional aspect of the new law is that the nature of the alleged unfair act or method will determine whether complainant will be required to prove that the respondents' unfair methods of competition and unfair acts have a "threat or effect" (instead of an "effect or tendency") to cause injury of some sort.[12] Complainants do not have to make such a showing in cases based on the alleged infringement of a valid and enforceable U.S. patent or a federally registered copyright, trademark, or mask work, or in cases based on the importation or sale of a product allegedly made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent.

In order bring § 210.20 of this Part into conformity with the new legislation, § 210.20 has been revised to correspond to the changed elements of a section 337 violation and to prevent confusion about what data must be provided with complaints based on various types of unfair methods and unfair acts.

Section 210.20 previously was divided into six paragraphs. Paragraph (a) listed the required contents of a section 337 complaint; paragraph (b) provided for the submission of samples of the subject domestic and imported articles as exhibits to the complaint; and paragraphs (c) through (f) listed the additional materials that had to be provided with complaints based on the alleged infringement of a patent, registered federal trademark, nonfederally registered trademark, or registered copyright, or the importation or sale of a product produced under a process covered by claims of a valid and unexpired U.S. patent.

The interim revisions to § 210.20 consist of changes in paragraph (a) and the addition of a new paragraph (g). Paragraphs (b) through (f) of § 210.20 have not been changed.

The Commission has made interim revisions to paragraphs (a)(3), (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10) of § 210.20 to bring them into conformity with the new legislation or to reduce confusion about how substantively unmodified provisions of those paragraphs are to be satisfied in light of the new legislation.

Paragraph (a)(3) of § 210.20 requires that the complaint describe specific instances of alleged unlawful importations or sales. The former version of paragraph (a)(3) required the complaint to include the Tariff Schedules of the United States item number under which the subject article was imported. Section 1217(b) of the Omnibus Trade Act provides for the implementation of the Harmonized Tariff System of the United States, which will become effective on January 1, 1989. For that reason, paragraph (a)(3) of § 210.20 of the Commission's rules has been revised to state that for importations occurring prior to January 1, 1989, the complaint must include the Tariff Schedules of the United States item number under which the article was imported, and for importations occurring on or after January 1, 1989, the complaint must list the Harmonized Tariff Schedule of the United States heading or subheading under which the subject article was imported.

Paragraph (a)(6) of § 210.20 lists the information that must be provided with respect to the relevant domestic industry or the trade and commerce affected by the alleged unfair methods and acts. Paragraph (a)(6) has been revised (1) to correspond to the new statutory provisions concerning the relevant "domestic industry" and proof that such industry exists or is in the process of being established. It also has been revised by changing the phrase "effect or tendency" to "threat or effect" (to destroy or substantially injure a domestic industry).

Paragraph (a)(7) of § 210.20 provides for the submission of information concerning the complainant and its position vis-a-vis the relevant domestic industry or the trade or commerce affected by the proposed respondents' alleged unfair acts. In its preexisting form, paragraph (a)(7) required the complainant to submit certain data when the complaint was based on alleged infringement of an intellectual property right. The only specific types of intellectual property rights cases that are expressly referred to in the amended statute are infringement of a patent or a federally registered copyright, trademark, or mask work, and the importation or sale of a product made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent. (*See* section 337(a)(1) (B) through (D) and section 337(l) of the Tariff Act.) Section 337(a)(1)(A) of the amended statute does encompass, however, unfair methods of competition and unfair acts other than the aforesaid types. That provision would cover complaints based on alleged infringement of a common-law trademark or misappropriation of a trade secret. The Commission has therefore revised paragraph (a)(7) of § 210.20 to make it clear that the term "intellectual property right" as used in that paragraph is not limited to patents or federally registered copyrights, trademarks, or mask works.

In its preexisting form, paragraph (a)(8) of § 210.20 required that complainants submit information supporting the injury theory set forth in the complaint. As explained previously, under the new law, complainants do not have to prove injury in cases based on alleged infringement of a patent or a federally registered copyright, trademark, or mask work, or in cases based on the importation or sale of an article allegedly made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent. The Commission accordingly has revised paragraph (a)(8) of § 210.20 to make it clear that injury data are to be provided only with respect to alleged violations based on unfair methods and acts other than the aforesaid types.

To be consistent with the new industry provision and the reworded injury provisions of section 337 of the

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[8] *See generally* section 1342(a)(1) of the Omnibus Trade Act; section 337(a) (1) and (4) of the Tariff Act.

[9] *See* section 1342(a)(1) of the Omnibus Trade Act; section 337(a) (1), (2), and (3) of the Tariff Act. *See also* H.R. Rep. No. 40, 100th Cong., 1st Sess. 156–158 (1987); S. Rep. No. 71, 100th Cong., 1st Sess. 129–130 (1987); H.R. Rep. No. 576 at 633–634.

[10] *See* section 1342(a)(1) of the Omnibus Trade Act; section 337(a) (2) and (3) of the Tariff Act.

[11] *See* H.R. Rep. No. 40 at 154–156; S. Rep. No. 71 at 127–129; H.R. Rep. No. 576 *supra*.

[12] The injury requirement has been eliminated entirely for alleged violations based on infringement of a patent or a federally registered patent, copyright, trademark, or mask work, and for alleged violations based on the importation or sale of a product made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent. *See* section 1342(a)(1) of the Omnibus Trade Act; section 337(a)(1) (B), (C), and (D) of the Tariff Act; H.R. Rep. No. 40 at 154–156; S. Rep. No. 71 at 127–129; H.R. Rep. No. 576 at 633. The substitution of the word "threat" for "tendency" is intended to codify previous Commission practice with respect to its interpretation of the word "tendency," under which it construes "tendency" as "threat." The wording change is not intended to introduce a new standard for proving injury. *See* H.R. Rep. No. 576 at 633.

Tariff Act, paragraph (a)(8) of § 210.20 also has been revised by changing the phrase "effect or tendency" to "threat or effect" and by changing the phrase "efficiently and economically operated domestic industry" to "domestic industry."

In its previous form, paragraph (a)(9) of § 210.20 required certain information relating to the patent in controversy when the complaint was based on "the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. letter patent." Paragraph (a)(9) of § 210.20 has been revised to correspond to the language of the new section 337(a)(1)(B) of the Tariff Act. It now refers to the provision of certain information when the complaint is based on "the infringement of a valid and enforceable U.S. patent or the importation or sale of a product allegedly made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent."

Paragraph (a)(10 of § 210.20 formerly required complainants who sought temporary relief to file a separate motion for such relief along with the complaint in accordance with preexisting § 210.24(e). Paragraph (a)(10) of § 210.20 has been revised to be consistent with interim paragraphs (e)(1) through (3) of § 210.24, which allow motions for temporary relief to be filed concurrently with the complaint or prior to the institution of an investigation but not after such institution.

The final revision of § 210.20 consists of the addition of a new paragraph (g) requiring the submission of material to document the existence of a federally registered mask work when the complaint is based on the alleged infringement of that type of intellectual property right.

Section 210.21

Section 210.21 governs the content and filing of responses to complaints and notices of investigation. Paragraph (a), which pertains to the time for filing such a response, has been revised to include the exception to the 20-day response deadline provided for in interim § 210.24(e)(9).

Sections 210.22 and 210.23

The new legislation did not necessitate revision of these sections; the interim provisions are the same as the former provisions.

Section 210.24

The new legislation has altered the previous temporary relief provisions of section 337 of the Tariff Act (*i.e.*, the former subsections (e) and (f) of section 337) in the following manner:

(1) There are now statutory deadlines for determining whether to order temporary relief—*viz.*, 90 days after institution in an ordinary investigation and up to 150 days after institution in a "more complicated" investigation.[13] (Institution occurs when the Commission's notice of investigation is published in the Federal Register. *See* interim § 210.12.)

(2) Complainants may be required to post a bond as a prerequisite to obtaining temporary relief,[14] and if the Commission ultimately determines that respondents have not violated section 337, the bond may be forfeited to the U.S. Treasury.[15]

(3) The Commission now has express authorization to issue temporary cease and desist orders in addition to (as well as in lieu of) temporary exclusion orders.[16]

(4) The Commission is authorized to grant preliminary (*i.e.*, temporary) relief to the same extent that preliminary injunctions and temporary restraining orders may be granted by Federal courts under the FRCP.[17]

The previous paragraph (e) of § 210.24 addressed only the content and filing the motions for temporary relief and responses thereto. The interim revisions to paragraph (e) of § 210.24 include revisions of the former provisions and the addition of new provisions governing all other aspects of the temporary relief decision-making process.[18] The principal objectives of the interim revisions are to expedite the decision-making process and to accommodate the new statutory deadlines for determining whether to order temporary relief.

The new legislation does not require any change in the substantive information that must be provided with the motion for temporary relief. The previous provisions of § 210.24(e) that pertained to the content of motions for temporary relief thus have been retained. However, because of the limited time available for discovery pertaining to the motion after an investigation is instituted, each complainant seeking temporary relief is now required to file along with the motion all evidence and information in its possession that complainant intends to submit in support of the motion, in addition to the usual affidavits. *See* paragraph (e)(1) of interim § 210.24.

The previous provisions pertaining to the filing of motions for temporary relief have been revised so that complainants may file motions for temporary relief concurrently with the complaint, or at any time prior to the Commission's decision on whether to institute an investigation, but not after an investigation has been instituted. *See* paragraphs (e)(1), (2), and (3) of interim § 210.24. A prohibition on the post-institution filing of motions for temporary relief was adopted because: (1) The deadline for completing the temporary relief decision-making process is measured from the date the investigation was instituted, not the filing date of the motion; (2) the stringent statutory deadlines will benefit complainants, but will pose a substantial burden on respondents, the Commission investigative attorney, the presiding ALJ, and the Commission; and (3) a reduction of investigation time resulting from the complainant's delay in seeking temporary relief (even if the delay was justified) would be prejudicial to the rights of the other parties and could jeopardize the Commission's ability to adjudicate the motion in a timely fashion.

The interim revisions provide that when a motion for temporary relief is filed after the compliant but before the Commission has determined whether to institute an investigation based on the complaint, the 35-day period allotted for review of the complaint and the motion for temporary relief and for informal investigative activity will begin to run anew from the date on which the motion was filed. *See* paragraphs (e)(2) and (8) of interim § 210.24.

The interim revisions to § 210.24(e) also contain new provisions concerning service by complainants of motions for temporary relief. Under former provisions of Part 210, motions for temporary relief were not served on the respondents until an investigation had been instituted. If the motion was filed along with the complaint, the motion was served by the Commission along with the complaint and notice of investigation after institution. If the motion was filed after the complaint, complainant served it on the

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[13] Section 1342(a)(3)(B) of the Omnibus Trade Act; section 337(e)(2) of the Tariff Act.

[14] *Id. See also* H.R. Rep. No. 576 at 633–636. *See supra* n.2 regarding interim rules governing the posting of temporary relief bonds by complainants.

[15] *See* H.R. Rep. No. 576 at 635–636. *See supra* n.2 regarding bond forfeiture rules.

[16] Section 1342(a)(4)(A) of the Omnibus Trade Act; section 337(f) of the Tariff Act.

[17] *See* section 1342(a)(3)(B) of the Omnibus Trade Act; section 337(e)(3) of the Tariff Act.

[18] The new interim provisions governing temporary relief have been added to interim § 210.24 for convenience and to avoid having to renumber sections in Part 210 because of the insertion of new interim provisions. The final provisions governing temporary relief may be set out in one or more new sections.

respondents. *(See* former §§ 210.13 and 210.24(e)(1).)

The interim revisions to § 210.24(e) make the following provisions concerning service of motions for temporary relief:

(1) The previous rule provisions requiring service by the Commission upon institution of an investigation will remain in force. However, paragraph (e)(4) of interim § 210.24 now provides that a complainant seeking temporary relief must serve nonconfidential copies of the complaint and a motion for temporary relief (including nonconfidential copies of all materials or documents attached thereto) on all proposed respondents and on the embassy in Washington, DC of the foreign country(s) represented by the proposed respondents. Such service is to be made on the same day that the complaint and motion for temporary relief are filed with the Commission. The Commission believes that such service is necessary and appropriate because the time for responding to motions for temporary relief must be substantially reduced in light of the short statutory deadlines for determining whether to grant or deny the motion. (See the discussion below). The Commission notes further that giving proposed respondents advance notice of the allegations against them will enable them to consult an attorney and to decide prior to the tolling of the period for filing a response to the motion for temporary relief what course of action to pursue if an investigation is instituted. The Commission also hopes that service of the complaint and motion for temporary relief on the day both documents are filed with the Commission will reduce the number of respondents who will request extensions of the deadline within which to respond to the motion for temporary relief.

(2) In order to give proposed respondents the benefit of at least 30 full days in which to make the necessary preliminary arrangements, the revisions to § 210.24(e) require (1) that service of the complaint and motion for temporary relief be effected by the fastest possible means and (2) that the Commission will decide whether to institute an investigation within 35 days (rather than 30 days) after the complaint and motion are filed. *See* paragraphs (e) (4) and (8) of interim § 210.24. The revisions provide further that a signed certificate of service must accompany the complaint and motion for temporary relief. If the certificate does not accompany the complaint and the motion, the Secretary shall not accept the complaint or the motion and shall promptly notify the submitter. Actual proof of service (or proof of a serious effort to make service)—*e.g.*, certified mail return receipts, courier or overnight delivery receipts, or other proof of delivery—need not be filed with the complaint and motion, but should be retained by the complainant in the event that the complainant is requested to provide actual proof of service. *See* paragraph (e)(4) of interim § 210.24.

(3) Any purportedly confidential business information which is deleted from the nonconfidential service copies of the complaint and motion for temporary relief must satisfy the requirements of § 201.6(a) of Part 201 (which defines confidential information for purposes of Commission proceedings). Despite such deletions, the nonconfidential service copies must contain enough factual information about each element of the violation alleged in the complaint and the motion for temporary relief to enable each proposed respondent to comprehend the allegations against it. *See* paragraph (e)(5) of interim § 210.24.

(4) The service copies of the complaint and motion for temporary relief must be accompanied by a notice (in a form prescribed by paragraph (e)(6) of interim § 210.24) explaining that the service of the complaint and motion does not initiate an investigation. The notice must state the date on which the complaint and motion for temporary relief are to be filed with the Commission. The prescribed text of the notice also summarizes the provisions of interim §§ 210.10 through 210.13 concerning (1) the commencement of section 337 proceedings, (2) the action of the Commission upon receipt of the complaint, (3) the institution of an investigation, and (4) service by the Commission of the complaint and the motion for temporary relief. Copies of the notice must be filed along with the proof of service. *See* paragraph (e)(6) of interim § 210.24.

The interim revisions to § 210.24(e) also contain new provisions concerning preinstitution processing of motions for temporary relief. Each motion for temporary relief will be processed concurrently with and in the same manner as the complaint. In other words, the Commission will examine the motion for its sufficiency and compliance with the pertinent rules and will conduct informal investigative activity relating to the motion as needed. The Commission also will determine whether to accept a motion for temporary relief at the same time it determines whether to institute an investigation on the basis of the complaint.[19] Commission rejection of an insufficient or improperly filed complaint will preclude acceptance of a motion for temporary relief. However, Commission rejection of a motion for temporary relief will not preclude institution of an investigation of the complaint. *See* paragraph (e)(8) of interim § 210.24.

The interim revisions to § 210.24(e) also contain new provisions pertaining to amendment of motions for temporary relief. Amendment before an investigation is instituted is a matter of right. However, all material filed to supplement or amend the motion must be served on all proposed respondents and on the embassies of foreign governments that they represent. If the amendment expands the scope of the motion, the 35-day period allotted for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. *See* paragraph (e)(7) of interim § 210.24.

The interim revisions to § 210.24(e) also contain new provisions pertaining to the filing of responses to motions for temporary relief. Under the former § 210.24(e), respondents and the Commission investigative attorney had 20 days to file such responses if the motion for temporary relief was filed with the complaint. If the motion was filed after an investigation had been instituted, responses were due 10 days after service of the motion.

In light of the short statutory deadlines for concluding the temporary relief proceedings and the fact that respondents will have prior notice of the complaint and motion for temporary relief, the Commission determined that the period for responding to the motion for temporary relief (and the complaint) must be reduced to 10 days (plus additional time if service pursuant to § 210.13 was by mail). Because a respondent's response to the complaint and notice of investigation helps to define the issues in a section 337 investigation, each respondent's response to the complaint and notice also must be filed in 10 days, along with its response to the motion for temporary relief. *See* paragraph (e)(9) of interim § 210.24.

With respect to adjudication of motions for temporary relief, interim

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[19] Such acceptance will constitute provisional acceptance for purposes of referring the motion to an ALJ for issuance of an ID, and the ALJ is not precluded from subsequently issuing an ID dismissing the motion if appropriate reasons exist for doing so.

§ 210.24(e) essentially retains the bifurcated process utilized under the former rules—*i.e.*, (1) use of the ID/discretionary Commission review procedure to determine whether there is reason to believe that section 337 has been violated, and (2) Commission determination of the issues of the appropriate form of relief, whether the public interest factors enumerated in the statute preclude such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of the investigation and the temporary relief order.[20] However, the interim rule provisions modify that process somewhat, in the manner described below.

Interim § 210.24(e) contains new provisions stating that after the motion has been referred to an ALJ, the ALJ has discretion to determine the following matters: (1) The extent to which the parties will be permitted to engage in discovery; (2) the form and extent of the evidentiary hearing, if such a hearing is conducted; and (3) the extent to which parties will be permitted to file proposed findings of fact, proposed conclusions of law, and briefs pursuant to interim § 210.52. *See* paragraphs (e) (10), (12), (13), and (14) of interim § 210.24. In light of the stringent statutory deadlines for concluding the temporary relief phase of an investigation, the ALJ's decision on the aforesaid matters is not reviewable on the basis of a petition filed pursuant to interim § 210.54 (discretionary Commission review of an ID) or on the basis of an application for interlocutory appeal filed pursuant to § 210.70. *See* paragraph (e)(15) of interim § 210.24.

Since the legislative history of the new legislation indicates that the Commission should not grant temporary exclusion orders without an inter partes APA hearing [21] and the Commission intends to follow the same procedure when determining whether to grant a temporary cease and desist order, the interim revisions to § 210.24(e) provide that no hearing will be held if summary judgment is granted for the respondents (*i.e.*, if temporary relief is denied on that basis). *See* paragraph (e)(13) of interim § 210.24. The interim revisions further provide that the Commission's acceptance of a motion for temporary relief prior to the institution of an investigation is a provisional acceptance for purposes of referring the motion to the ALJ and that the ALJ is not precluded from issuing an ID dismissing the motion without a hearing if the facts and circumstances so warrant. *See* paragraphs (e) (8) and (13) of interim § 210.24.

With regard to designating an investigation "more complicated," the Commission notes that there may be cases in which additional time is needed for the adjudication of motions for temporary relief, but not for the final disposition of the investigation. The interim revisions to § 210.24(e) therefore provide that an investigation may be designated "more complicated" for the purpose of extending the deadline for deciding whether to order temporary relief and/or for the purpose of extending the statutory deadline for completing the investigation. *See* paragraph (e)(11) of interim § 210.24 (*See also* paragraphs (a) and (b) of interim § 210.59.) The revisions to § 210.24(e) further provide that if warranted, the Commission may designate an investigation "more complicated" for purposes of adjudicating the motion for temporary relief at the same time it determines whether the motion is properly filed and should be forwarded to the ALJ. However, since it is not always possible to gauge the complexity of a temporary relief motion from the face of the motion or the corroborating documentation, the interim revisions also authorize the ALJ to issue an order, sua sponte or on motion, designating an investigation "more complicated" for the purpose of extending the deadline for issuing the temporary relief ID and the Commission's deadline for determining whether to grant or deny such temporary relief. Such an order by the ALJ constitutes a final Commission determination, and notice of the order shall be published in the Federal Register as required by the statute and interim § 210.59. *See* paragraph (e)(11) of interim § 210.24.[22]

Another noteworthy difference between the former rules and the interim revisions is that under the interim rules, the ALJ may compel discovery pertaining to the issues of the appropriate form of temporary relief, whether the public interest factors enumerated in the statute preclude the issuance of such relief, and the amount of the bond under which respondents' merchandise will be permitted to enter the United States during the pendency of the investigation and any temporary relief order issued in response to the motion.[23] The ALJ may, but will not be required to, take evidence on those issues at the hearing or to address them in the ID on whether there is reason to believe a violation exists. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief, the ALJ should take evidence and the ID should address the question of what effect the form of relief requested in the motion would have on the public interest. *See generally* paragraphs (e)(12), (13), (17) and (18) of interim § 210.24.

In order to accommodate the new statutory deadlines for determining whether to order temporary relief, the interim revisions to § 210.24(e) provide that in an ordinary investigation, the ID is to be issued within 70 days after publication of the notice of investigation in the Federal Register in an ordinary case, and within 120 days after such publication in a "more complicated" investigation. *See* paragraph (e)(17) of interim § 210.24. The interim rules also provide that the record relating to all temporary relief issues should be certified to the Commission as soon as possible after the close of reception of evidence, rather than certifying the record of the Commission concurrently with the ID. *See* paragraph (e)(16) of interim § 210.24. The advance certification provision was added in order to facilitate prompt and timely Commission action (if any) with respect to the ID and with respect to the issues of the appropriate form of relief, the public interest factors enumerated in the statute, and bonding by complainant and respondents.

The interim rules also contain new provisions pertaining to the disposition of a temporary relief ID after it has been issued. In order to comply with the statutory deadlines for determining whether to grant temporary relief, the ID will become the Commission's determination 20 calendar days after issuance (not service) thereof in an ordinary case, and 30 calendar days after issuance in a "more complicated" investigation—unless the Commission modifies or vacates the ID within that period. Such modification or vacation may be ordered on the basis of errors of law or policy reasons articulated by the Commission. The existence of alleged

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[20] When the interim bonding rules are promulgated (*see supra* n.2), they may provide that the Commission also will determine whether complainant should be required to post a bond as a prerequisite to obtaining temporary relief and, if so, the amount of the bond.

[21] H. R. Rep. No. 576 at 635.

[22] Motion to designate an investigation "more complicated" for the purpose of extending the deadline for concluding the entire investigation and determining whether there is a violation of section 337 will continue to be decided according to the ID/discretionary review procedure. *See* interim §§ 210.53(c) and 210.59 (a) and (b).

[23] As stated in n. 2 *supra*, interim rules pertaining to the posting of temporary relief bonds by complainants will be set forth in a separate notice to be published at a later date.

errors of fact will not be considered. *See* paragraph (e)(17) of interim § 210.24.

In order to assist the Commission in determining whether modification or revocation is warranted, all parties will be permitted to file written comments concerning the presence (or absence) of errors of law in the ID or policy reasons that justify such action (or which show that it would not be justified). Such comments will be limited to 30 pages and must be filed no later than 7 calendar days after issuance of the ID in an ordinary case and 10 calendar days after issuance of the ID in a "more complicated" investigation. (Because of time constraints imposed by the new statutory deadlines for determining whether to order temporary relief, additional time for IDs served by mail will not be allotted.) *See* paragraph (e)(17) of interim § 210.24.

In keeping with the Commission's statutory obligation to consult with and to seek advice and information from other federal agencies in section 337 proceedings, other agencies will be given an opportunity to file comments on the ID. *See* paragraph (e)(17) of interim § 210.24

Each party may file a response to other parties' comments within 12 calendar days after issuance of the ID in an ordinary case and within 14 days after issuance of the ID in a "more complicated" investigation. (Again, because of the constraints imposed by the statutory deadlines, additional time if service of the initial comments was by mail will not be provided. The parties thus are expected to cooperate in this matter and facilitate the filing of timely and useful responses by serving their initial comments on each other by the fastest means available. The reply comments will be limited to 15 pages. *See* paragraph (e)(17) of interim § 210.24

For purposes of determining (1) the appropriate form of temporary relief (if such relief is to be granted), (2) whether the statutory public interest factors preclude such relief, and (3) the amount of the bond under which respondents' merchandise will be permitted to enter the United States during the pendency of the investigation and any temporary relief order issued in response to the motion, the procedure set forth in paragraph (e)(18) of interim § 210.24 is as follows:

(1) While the motion for temporary relief is before the ALJ, he will supervise and, if necessary, will compel discovery on the remedy, public interest, and bonding issues as specified in paragraphs (e) (12), (13), and (17) of interim § 210.24.

(2) On the 60th day after institution in an ordinary case, or on the 105th day after institution in a "more complicated" investigation, all parties may file written submissions addressing those issues. *See* paragraph (e)(18) of interim § 210.24.

(3) The ALJ will certify the record to the Commission as soon as possible after the closing of the reception of evidence (as discussed above) and on the 70th day after institution in an ordinary investigation or on the 120th day after institution in a "more complicated" investigation, the ALJ will issue a temporary relief ID. *See* paragraphs (e) (16) and (17) of interim § 210.24. The ALJ may address in the ID the remedy, public interest, and bonding issues that will be considered by the Commission, but he is not required to do so. The only public interest issue that the ID must address is that of the effect the form of relief requested in the motion would have on the public interest. *See* paragraph (e)(17) of interim § 210.24. However the ALJ's findings on the public interest may be superceded by Commission findings on that issue, as discussed below. *See* paragraph (e)(18) of interim § 210.24.

(4) On or before the statutory deadline for determining whether to order temporary relief, the Commission will determine: (a) What form of relief is appropriate in light of any violation that appears to exist (notwithstanding the form of relief complainant may be seeking); (b) whether the public interest factors enumerated in the statute preclude such relief; and (c) the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission.[24] In the event that Commission findings on the public interest are inconsistent with findings made by the administrative law judge in the initial determination, the Commission's findings are controlling. *See* paragraph (e)(18) of interim § 210.24.

The previous enactment of section 337 made no express provision for the issuance of affirmative final determinations and remedial orders in situations in which one or more of the respondents defaults. The Commission took such action, however, pursuant to former § 210.25. Section 1342(a)(5)(B) of the Omnibus Trade Act amends section 337 by adding a new subsection (g), which authorizes the Commission to (1) reach an affirmative final determination concerning the violation of section 337 with respect to defaulting respondents, and (2) issue a limited or general exclusion order or a cease and desist order if certain conditions are met.

Section 210.25

The new legislation differs from the Commission's previous default practice in the following respects: Paragraph (c) of former § 210.25 authorized the Commission to draw adverse inferences against defaulting respondents in determining whether complainant had made a prima facie case of a section 337 violation. However, such inferences could be drawn only "with respect to those issues for which the complainant has made a good faith but unsuccessful effort to obtain evidence." The new legislation permits more liberal use of adverse inferences if the complainant is seeking relief limited to the defaulting respondent. Specifically, the new legislation provides that "the Commission shall presume the facts alleged in the complaint to be true" as long as the grounds for default have been satisfied.[25] It thus establishes a pure default rule (similar to federal district court practice) in cases in which the complainant is seeking limited relief against a particular respondent.

In order to bring § 210.25 into conformity with the new legislation, paragraph (c) of § 210.25 ("Relief against a respondent in default") has been revised to conform to the language and provisions of the new legislation (and its legislative history, where appropriate). The Commission has retained the previous provision of § 210.25 that authorizes the Commission to utilize adverse inferences in determining whether section 337 has been violated in a default case where complainant is seeking a general exclusion order.

The previous paragraphs (a) and (b) of § 210.25 (which provide the definition of default and the procedure for determining default) are not inconsistent with the provisions of the new legislation and therefore have not been revised, except that the reference in paragraph (a) to failure to file a response to the complaint and notice of investigation within the time provided in interim § 210.21 has been changed to refer to interim § 210.24(e)(9) as well as interim § 210.21.

Section 210.26

The new legislation did not necessitate revision of this section; the interim provisions are the same as the former provisions.

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[24] *Id.*

[25] Section 1342(a)(5)(B) of the Omnibus Trade Act; section 337(g)(1) of the Tariff Act.

Section 210.30

Section 210.30 sets forth general provisions governing discovery. Paragraph (c) of that section discusses general limitations on discovery. For clarity—and to be consistent with the provisions of interim § 210.24(e)(12) which give the ALJ discretion to control the nature and extent of discovery pertaining to a motion for temporary relief—§ 210.30(c) has been revised to state that the ALJ shall limit the kind or amount of discovery to be had, or the period during which discovery may be carried out, in a manner that is consistent with the time limitations set forth in paragraph (e)(17) of interim § 210.24 for adjudicating motions for temporary relief or the time limitations imposed by interim § 210.53(a) for issuing an ID on permanent relief. The other provisions of § 210.30 have not been changed.

Sections 210.31 through 210.35

The new legislation did not necessitate revision of these sections; the interim provisions are the same as the former provisions.

Section 210.36

As noted above, section 1342(a)(5)(B) of the Omnibus Trade Act created a new subsection (h) of section 337, which authorizes the Commission to prescribe rules for imposing sanctions for abuse of discovery in section 337 investigations to the extent sanctions could be imposed by a Federal district court under Rule 37 of the FRCP.

The Commission rule governing sanctions for abuse of discovery is § 210.36. It has not been revised, for the following reasons. The existing provisions of § 210.36 provide sanctions that are comparable to those available under FRCP 37, except that there is no provision for a sanction order directing payment of a party's costs and attorneys' fees. The Commission will determine at a later date whether to publish proposed rules governing the issuance of orders directing the payment of costs and attorneys' fees as a sanction for abuse of discovery.

Section 210.37

The new legislation did not necessitate revision of this section; the interim provisions are the same as the former provisions.

Section 210.40

The new legislation did not necessitate revision of this section; the interim provisions are the same as the former provisions.

Section 210.41

Section 210.41 sets forth general provisions governing hearings in section 337 investigations. Paragraph (a) has been revised to include a cross-reference to paragraph (e)(13) of interim § 210.24 concerning the ALJ's discretion as to the conduct of a hearing on motions for temporary relief. No other changes have been made in this section.

Section 210.42

The new legislation did not necessitate revision of this section; the interim provisions are the same as the former provisions.

Section 210.43

Section 210.43 defines what constitutes the administrative record in a section 337 proceeding. It also sets forth procedures for reporting and transcribing hearings, correcting hearing transcripts, and certifying the record to the Commission concurrently with an ID or at such time as the Commission may order. The only revision is the insertion of the phrase "except as provided in § 210.24(e)(16) of this part" at the beginning of paragraph (d) of § 210.43. This change was made in order to maintain intra-Part consistency and to reiterate that certification of the record of a temporary relief proceeding may occur prior to issuance of the temporary ID.

Section 210.44

Section 210.44 makes provision for in camera treatment of confidential information. Paragraph (a) of § 210.44(a), which defines in camera treatment for purposes of a section 337 investigation, has been revised (1) to conform to the new statutory restrictions on disclosure of confidential information and (2) to include cross-references to the other Commission rule concerning the same subject matter, namely interim § 210.6. Paragraph (e) of § 210.44—which provides for "declassification" (*i.e.*, removal of the confidential designation from information so designated by the submitter)—also has been revised (1) to conform to the new statutory provision which indicates that the confidentiality of information submitted or exchanged among the parties is determined by the Commission's rules, and (2) to be consistent with section 1342(a)(8) of the Omnibus Trade Act, which created a new subsection (n) of section 337 providing that information that is (properly) designated confidential by the submitter cannot be declassified and publicly disclosed without the consent of the submitter.

Section 210.50

The new legislation did not necessitate revision of this section. The interim provisions of § 210.50 are the same as the former provisions, except that a cross-reference to paragraph (e)(17) of interim § 210.24 has been added to paragraph (f) of § 210.50. Paragraph (f) previously stated that an administrative law judge's order of summary determination constituted an initial determination under § 210.53. Since paragraph (e)(13) of interim § 210.24 contemplates the possible issuance of a summary determination a motion for temporary relief by an administrative law judge and states that such a ruling shall be in the form of an initial determination under paragraph (e)(17) of interim § 210.24, the cross-reference to paragraph (e)(17) of interim § 210.24 was necessary for intra-Part consistency.

Section 210.51

The previous enactment of section 337 made no provision for the Commission to terminate an investigation in whole or in part on the basis of a settlement agreement or a consent order without a concurrent determination as to whether section 337 had been violated. Prior to the enactment of the new legislation, the Commission took such action on the basis of authority derived from the APA.

Section 1342(a)(2) of the Omnibus Trade Act amends subsection (c) of section 337 to give the Commission express authority to take such action. Section 210.51 of the Commission's rules, which governs termination of investigations, has been revised by adding, to paragraphs (b) and (c) of that section, a citation to the new statutory provision that authorizes the Commission to order terminations on the basis of a settlement agreement or a consent order without making a determination as to whether section 337 has been violated. Since the statute indicates that such terminations "may" be ordered without making a determination as to whether a violation has occurred and it is possible that there may be instances in which such a determination would be appropriate, paragraphs (b) and (c) have been further revised to indicate that the Commission can, but is not required to, make a violation determination when it terminates an investigation in whole or in part on the basis of a settlement agreement or consent order.

Section 210.51 also has been revised by including the word "settlement" before "agreement," where appropriate, in order to make it plain that the

licensing and other agreements discussed in that section are "settlement agreements" for purposes of the amended statute.

Section 210.52

Section 210.52 governs the filing of proposed findings of fact, proposed conclusions of law, and briefs by the parties. The former § 210.52 gave parties the right to file such documents with no restrictions on subject matter, page length, or the time of filing (except that the presiding ALJ was given some discretion to determine the time for filing such documents after an evidentiary hearing under former § 210.41). Section 1342(a)(3)(B) of the Omnibus Trade Act amends subsection (e) of section 337 by creating statutory deadlines for determining whether to grant or deny temporary relief. For that reason and in order to be consistent with paragraph (e)(14) of interim § 210.24 of the Commission's rules (which allows the ALJ to determine to what extent the parties will be permitted to file proposed findings of fact, proposed conclusions of law, and briefs), the words "except as provided in § 210.24(e)(14)" have been inserted into the first sentence of § 210.52 of the rules.

Section 210.53

Former § 210.53 governed the issuance and disposition of IDs for all matters that were to be adjudicated by the ID/discretionary review procedure—including motions for temporary relief and motions for designating an investigation "more complicated." In light of the interim revisions to § 210.24(e) concerning those matters, the phrase "except as provided in § 210.24(e)" or similar clarification has been inserted into paragraphs (b), (c), (h), and (i) of § 210.53. These changes were made to indicate that Commission review of and the finality of IDs pertaining to temporary relief and ALJ determinations to designate an investigation "more complicated" for purposes of adjudicating a motion for temporary relief are governed by interim § 210.24(e) and not interim § 210.53.

Because interim § 210.59(c) contains new provisions concerning the issuance of IDs designating an investigation "complicated" (see the discussion below), paragraph (c) of § 210.53 has been revised to cover IDs on that issue as well.

Section 210.54

Former § 210.54 governed the filing and disposition of petitions for review of IDs, including those pertaining to the grant or denial of temporary relief. In light of the interim revisions to §§ 210.24(e) and 210.53, § 210.54 has been revised to indicate that (1) paragraph (e)(17) of interim § 210.24 (and not § 210.54) governs the parties' ability to challenge IDs pertaining to temporary relief, and (2) and ALJ's determination to designate an investigation "more complicated" to obtain more time to adjudicate a motion for temporary relief is not reviewable since it constitutes a final determination of the Commission pursuant to paragraph (e)(11) of the interim § 210.24.

Section 210.55

Section 210.55 governs review of an ID on the Commission's own initiative rather than in response to a petition for review. In order to conform to interim §§ 210.24(e), 210.53 and 210.54, § 210.55 has been revised to indicate that (1) paragraph (e)(17) of interim § 210.24 (and not § 210.54) governs the parties' ability to challenge IDs pertaining to temporary relief, and (2) an ALJ's determination to designate an investigation "more complicated" to obtain more time to adjudicate a motion for temporary relief is not reviewable since it constitutes a final determination of the Commission pursuant to paragraph (e)(11) of interim § 210.24.

Section 210.56

Section 210.56 governs the process of reviewing of IDs. The former provisions of this section discussed (1) the filing of briefs, (2) requests for oral argument, (3) the scope of the review, (4) what action the Commission could take upon completion of the review, and (5) the time limits for concluding a review of an ID concerning temporary relief. The same types of revisions that were made in §§ 210.54 and 210.55 have been made in § 210.56.

Section 210.57

Former paragraph (c) of § 210.57 provided (1) that all Commission actions except exclusion orders generally are enforceable when the affected party received notice of such action, and (2) that exclusion orders are enforceable when the Secretary of the Treasury receives notice of such orders.

Section 1342(a)(5)(B) of the Omnibus Trade Act amended section 337 of the Tariff Act by creating a new subsection (i), which authories the Commission, if certain conditions are met, to order seizure and forfeiture of articles imported in violation of an outstanding permanent (and final) exclusion order. In cases in which such seizure and forfeiture is ordered, the Commission must notify the Secretary of the Treasury and, upon receipt of the order, the Secretary must enforce it in accordance with the procedure set forth in the statute.

Paragraph (c) of § 210.57 of the rules has been revised to indicate that all Commission actions except exclusion orders and seizure and forfeiture orders generally are enforceable when the affected party receives notice of such action, and that exclusion and seizure and forfeiture orders are enforceable when the Secretary of the Treasury receives notice of such orders.

Former paragraph (d) of § 210.57 has been revised to correct a typographical error in the first sentence, which made the sentence unintelligible.

Section 210.58

Section 210.58 governs the Commission's adjudication of the issues of remedy, the public interest, and bonding in section 337 investigations. The following revisions have been made in this rule.

(1) The previous enactment of section 337 of the Tariff Act provided that if the Commission determined that there was a violation of section 337, the Commission could order exclusion of the subject imports or, in lieu of exclusion, the Commission could issue cease and desist orders. (The same rule applied for temporary relief.) Section 1342(a)(4)(A) of the Omnibus Trade Act amended subsection (f) of section 337 by giving the Commission express authority to issue cease and desist orders in addition to (as well as in lieu of) exclusion orders. Revisions have been made in paragraph (a) of § 210.58 of the Commission's rules in order to correspond to the change in the statutory relief provisions.

(2) As discussed above in connection with interim § 210.25, the new legislation also makes provision for the issuance of "general" or "limited" exclusion orders. (*See* section 1342(a)(5) of the Omnibus Trade Act creating a subsection (g) of section 337.) Paragraph (a) of § 210.58 of the Commission's rules has been modified to make explicit the option available to the Commission in determining whether to order articles to be excluded from entry into the United States.

(3) The reference in paragraph (a) of § 210.58 to the bonding provision of former subsection (g)(3) of section 337 has been changed to "subsection (j)(3)," which is the new designation for that subsection. (*See* section 1342(a)(5)(A) of the Omnibus Trade Act.)

(4) Paragraph (b) of § 210.58 of the Commission's rules formerly provided that the ALJ could make findings in the temporary relief ID pertaining to the public interest but he could not compel

discovery solely to obtain information relating to the public interest. In light of the provisions of interim § 210.24(e), which now authorize ALJs to compel discovery and make findings on remedy, the public interest, and bonding issues when adjudicating motions for temporary relief, a reference to paragraphs (e)(12), (13), and (17) of interim § 210.24 have been added to paragraph (b) of § 210.58 for intra-Part consistency and to prevent confusion.[26]

Section 210.59

Former § 210.59, (entitled "Period for concluding investigation") previously discussed the following matters: (1) The 12-month and 18-month statutory deadlines for completing ordinary and "more complicated" investigations; (2) the grounds and procedure for designating an investigation "more complicated"; and (3) the exclusion of any time during which an investigation was suspended, in computing the statutory deadline for completion of the investigation.

Section 210.59 has been revised in the following manner:

(1) The previous text of § 210.59 has been incorporated into a new paragraph (a).

(2) To be consistent with the provisions of interim § 210.24(e), a new paragraph (b) has been added to § 210.59 to provide for the designation of an investigation as "more complicated" solely for the purpose of obtaining more time to adjudicate a motion for temporary relief.

(3) The other revisions to § 210.59 pertain to "complicated" (as opposed to "more complicated") investigations. Section 1342(d)(2) of the Omnibus Trade Act provides that any investigation under section 337 of the Tariff Act that is due to be completed within 180 days after enactment of the Omnibus Trade Act can be declared "complicated," and the 12-month or 18-month statutory deadline can be extended for up to an additional 90 days. New provisions for "complicated" investigations have been added to § 210.59 of the Commission's rules as paragraph (c). The first part of paragraph (c) corresponds to the language of the new legislation, which provides for "complicated" designations. The second half of paragraph (c) provides a general definition of a "complicated" investigation and also provides that the ID/discretionary review procedure is to be used to obtain that designation. The appropriateness of ordering the "complicated" designation and the length of the resulting extension of time will depend on the facts and circumstances in each case.

Sections 210.60 and 210.61

The new legislation did not necessitate revision of these sections; the interim provisions are the same as the former provisions.[27]

Section 210.70

Section 210.70 governs interlocutory appeals to the Commission of actions taken by the ALJ. The preexisting provisions of this rule have been retained, but the Commission has added the phrase "except as provided in § 210.24(e)(15)" to be consistent with the new interim provisions of that section, which expressly disallow such appeals in connection with motions for temporary relief because of the stringent statutory deadlines for determining whether to grant such motions.

Section 210.71

Section 210.71 sets out the statutory right to judicial review of Commission determinations under section 337. The new legislation resulted in a technical amendment in the previous statutory provisions governing such review—*i.e.*, the reference to judicial review of a Commission determination "under subsection (d), (e), or (f) of section 337" was changed to "subsection (d), (e), (f) or (g) of section 337." (*See* section 1342(b)(2)(A) of the Omnibus Trade Act.) A corresponding revision has been made in § 210.71.

Explanation of the Interim Revisions to 19 CFR Part 211

Section 211.01

The new legislation did not necessitate revision of this section. The interim provisions are the same as the former provisions, except that the reference to "section 337" has been changed to "section 337 of the Tariff Act of 1930."

Section 211.10

Paragraphs (a) and (b) of this section were revised to correct an erroneous cross-reference to former § 210.14 which no longer exists. The references to that section have been changed to "§ 210.58(a)(1)". In addition, the reference to "section 337" in paragraph (a) of § 211.10 has been changed to "section 337 of the Tariff Act of 1930."

Section 211.20

The new legislation did not necessitate revision of this section. The interim provisions are the same as the former provisions, except for minor editorial changes.

Section 211.21

Section 211.21 pertains to settlement by consent. Paragraph (b) of this section has been revised in the same fashion as § 210.51 of Part 210—*i.e.*, the Commission has added a citation to the new statutory provision authorizing terminations on the basis of consent orders without a determination of whether section 337 has been violated. In addition, the citation to §§ 210.54 through 210.56 in paragraph (b) of § 211.21 has been corrected to refer to interim §§ 210.53 through 210.56.

Section 211.22

The new legislation did not necessitate revision of this section. The interim provisions are the same as the former provisions, except that the previous references to "section 337" have been changed to "section 337 of the Tariff Act of 1930" where appropriate.

Section 211.50

The new legislation did not necessitate revision of this section. The interim provisions are the same as the former provisions, except that the previous references to "section 337" have been changed to "section 337 of the Tariff Act of 1930" where appropriate.

Section 211.51

The new legislation did not necessitate revision of this section. The interim provisions are the same as the former provisions, except that the first sentence of paragraph (a) has been revised to correct a typographical error.

Section 211.52

Section 211.52 pertains to the handling and treatment of confidential information submitted to the Commission pursuant to a final Commission action. This rule has been revised to be consistent with the new legislative provisions concerning the handling of confidential information in section 337 proceedings and with other Commission rules pertaining to the same subject treatment. The revisions primarily consist of cross-references to the other applicable rules.

Section 211.53

The new legislation did not necessitate revision of these sections. The interim provisions are the same as the former provisions, except that

[26] Because the temporary relief provisions of the new legislation provide for the possible posting of a temporary relief bond by the complainant as a prerequisite to obtaining such relief, the Commission may eventually revise paragraph (a) of section 210.58 further to include that issue as part of the Commission's bonding analysis. (*See supra* n.2.)

[27] But see *infra* n. 29 with respect to § 210.61.

references to the Commission's former "Unfair Import Investigations Division" and the "the Chief" of that division have been changed to "the Office of Unfair Import Investigations" (consistent with a similar reference in interim § 210.24(e)(6) and "the Director."

Section 211.54

The new legislation did not necessitate revision of this section.[28] The interim provisions are the same as the former provisions, except that the previous reference to "section 337" in paragraph (b) has been changed to "section 337 of the Tariff Act of 1930" where appropriate.

Section 211.55

The new legislation did not necessitate revision of this section. The interim provisions are the same as the former provisions, except that the previous reference in paragraph (b) to "subsection (a) above" has been changed to "paragraph (a) of this section."

Sections 211.56, 211.58, and 211.59

In addition to authorizing the Commission to issue cease and desist orders in addition to an exclusion order, section 1342(a)(5)(B) of the Omnibus Trade Act amends section 337 of the Tariff Act by creating a new subsection (i), which authorizes the Commission, if certain conditions are met, to order seizure and forfeiture of articles imported in violation of section 337 and an outstanding permanent (and final) exclusion order. In cases in which such seizure and forfeiture is ordered, the Commission must notify the Secretary of the Treasury and, upon receipt of the order, the Secretary must enforce it in accordance with the procedure set forth in the statute.

The Commission determined that the most logical place to insert interim Commission rules providing for the issuance of seizure and forfeiture orders is in Subpart C of Part 211. Subpart C of Part 211 governs, inter alia, enforcement of Commission exclusion orders, cease and desist orders, and consent orders. Section 211.56(c) in that subpart provides for (1) formal Commission enforcement proceedings, (2) the resulting modification or revocation of the order in question to prevent unfair practices, and (3) the initiation of civil actions for civil penalties or injunctive relief. Since the new seizure and forfeiture provisions of section 337 will be an additional means of enforcing Commission exclusion orders, the seizure and forfeiture provisions have been implemented on an interim basis by adding a new paragraph (c)(5) to § 211.56. The new paragraph (c)(5) of § 211.56 corresponds to the seizure and forefeiture provisions of the new legislation. Section 211.56 also has been revised in the following manner: (1) The reference in paragraph (a) to the Commission's former "Unfair Import Investigations Division" has been changed to "the Office of Unfair Import Investigations" (consistent with a similar reference in interim §§ 210.24(e)(6) and 211.53); and (2) the previous references to "section 337(f)" in paragraphs (b) and (c) have been changed to "subsection (f) of section 337 of the Tariff Act of 1930."

As part of the general plan for interim implementation of the new seizure and forfeiture provisions, the Commission also has revised § 211.58 ("Temporary emergency action") to provide for the issuance of seizure and forfeiture orders on an emergency basis, pending the institution of formal Commission enforcement proceedings pursuant to § 211.56(c).

Finally, since the proposed seizure and forfeiture provisions require the Commission to notify the Secretary of the Treasury whenever a seizure and forefeiture order is issued (so that the order can be enforced), the Commission also has revised § 211.59 ("Notice of enforcement action to government agencies") to expressly provide for such notification.

Section 211.57

Section 1342(a)(6)(B) of the Omnibus Trade Act amended section 337 by adding a new subsection (k) providing for the modification or rescission of an exclusion from entry or an order issued under subsections (d), (e), (f), (g), or (i) of section 337. The new statutory provision authorizes the Commission to modify or rescind temporary and permanent remedial orders in response to a petition filed by a respondent who was previously found to be in violation of section 337, provided that such action is warranted on the basis of new evidence, or evidence that could not have been presented during the proceeding that led to the issuance of the order, or on grounds that would permit relief from a judgment or an order under the FRCP.[29]

Commission § 211.57, formerly entitled "Modification or dissolution of final Commission actions," has been revised in the following manner:

(1) To conform to language of the new statutory provisions, the word "rescission" has been substituted for "dissolution" and the word "petition" has been substituted for "motion."

(2) The former provisions regarding the filing of motions under § 211.57 and new language corresponding to the new statutory provisions pertaining to the filing of petitions for modifications or revocation by a party previously found to be in violation of section 337 have respectively become paragraphs (1) and (2) of a newly created paragraph (a) of § 211.57 entitled "Petitions for modification or rescission of final Commission actions."

(3) The remaining provisions of former § 211.57 have become paragraph (b) of that rule, which is entitled "Commission action upon receipt of a petition."

List of Subjects

19 CFR Part 210

Administrative practice and procedure, Investigations of unfair acts and unfair methods of competition in U.S. import trade.

19 CFR Part 211

Administrative practice and procedure, Enforcement.

Chapter II, Subchapter C of Title 19 of the Code of Federal Regulations is amended as follows:

1. Part 210 is revised to read as follows:

PART 210—ADJUDICATIVE PROCEDURES

Sec.

210.1 Applicability of part.
210.2 General policy.

Subpart A—General Provisions

210.4 Definitions.
210.5 Written submissions.
210.6 Confidential business information.
210.7 Computation of time, additional hearings, postponements, continuances, and extensions of time.

[28] But see *infra* n.29 with respect to § 211.54(b).

[29] The House and Senate reports accompanying the original House and Senate versions of the trade bill stated that this provision is intended to codify the existing Commission practice. H.R. No. 40 at 161; S. Rep. No. 71 at 133. The Commission notes, however, that the new legislation differs significantly from preexisting Commission rules under which respondents and other parties could have obtained implicit or explicit modification or rescission of a remedial order or the determination that resulted in the issuance of the order—*viz.*, former §§ 210.61, 211.57, and 211.54(b). For purposes of implementing the new statutory provisions on an interim basis, the Commission has decided simply to incorporate the statutory provisions into § 211.57. But for purposes of developing final rules to implement the new modification and rescission provisions, the Commission will assess interim §§ 210.61, 211.54(b), and 211.57(a) to determine whether to develop new or revised rules governing modification or rescission of final Commission actions. Interested persons are encouraged to comment on the issue.

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210.8 Service of process and other documents.

Subpart B—Commencement of Proceedings

210.10 Commencement of proceedings.
210.11 Action of Commission upon receipt of complaint.
210.12 Institution of investigation.
210.13 Service of complaint and notice of investigation by the Commission.

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210.52 Proposed findings and conclusions.
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210.54 Petition for review.
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210.56 Review by Commission.
210.57 Implementation of Commission action.
210.58 Commission action, public interest factor, and bonding.
210.59 Period for concluding Commission investigation.

Subpart G—Appeals

210.60 Petition for reconsideration.
210.61 Disposition of petition for reconsideration.
210.70 Interlocutory appeals.
210.71 Appeals of final determination to the United States Court of Appeals for the Federal Circuit.

Authority: 19 U.S.C. 1333, 1335, and 1337.

§ 210.1 Applicability of Part.

The rules in this Part govern procedure relating to proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). These rules are authorized by section 333, 335, and 337 of the Tariff Act of 1930 (19 U.S.C. 1333, 1335, and 1337).

§ 210.2 General policy.

It is the policy of the Commission that, to the extent practicable and consistent with requirements of law, such proceedings shall be conducted expeditiously. In the conduct of such proceedings, the administrative law judge and counsel or other representative for each party shall make every effort at each stage of the proceedings to avoid delay.

Subpart A—General Provisions

§ 210.4 Definitions.

As used in this part—

"Administrative law judge" means the person appointed under section 3105 of Title 5 of the United States Code presiding over the taking of evidence in an investigation under this Part;

"Commission investigative attorney" means, for purposes of a particular proceeding under section 337 of the Tariff Act, the attorney(s) designated to engage in investigatory activities with respect to the proceeding, in his (or their) capacity as investigator(s) in the proceeding;

"Complainant" means a person who has filed a complaint with the Commission under this part;

"Party" means each complainant and respondent in the investigation, the Commission investigative attorney, and each person permitted to intervene pursuant to § 210.26;

"Respondent" means any person named in a notice of investigation issued under this Part as allegedly violating section 337 of the Tariff Act.

§ 210.5 Written submissions

(a) *Caption; names of parties.* Every submission shall contain a caption setting forth the name of the Commission, the title of the investigation, the docket number or investigation number assigned to the proceeding, if any, and, in the case of a complaint and response, the names of all or the primary parties to the proceeding.

(b) *Signing of pleadings, motions, and other papers; sanctions.* Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign or his duly authorized officer or agent shall sign the party's pleading, motion, or other paper, and shall state the party's address. Except when otherwise provided in §§ 210.20(a), 210.21, and 210.24(e) (1) and (9), pleadings, motions, and other papers need not be under oath or accompanied by an affidavit. The signature of an attorney or party, or the party's duly authorized officer or agent constitutes certification by the signer that:

(1) He is duly authorized to sign the pleading, motion, or other paper;

(2) He has read the document;

(3) To the best of the signer's knowledge, information, and belief founded after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(4) The document is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this section, the Commission or (if the case is before the administrative law judge) the administrative law judge, upon motion or sua sponte, shall impose upon the person who signed the document, the represented party, or both, an appropriate sanction.

(c) *Filing of documents.* Submissions shall be filed in accordance with paragraphs (a), (b), and (c) of this section and § 210.8 of this chapter. Except as otherwise provided for in this Part or by the Commission, the original and fourteen (14) true copies of each submission shall be filed with the Commission. While an investigation is before an administrative law judge, the original and six (6) true copies of each submission shall be filed with the Commission Secretary.

(d) *Service of submissions.* Except as otherwise provided for in this part, or by the Commission or the administrative law judge, each submission filed by a party with the Commission shall be served on all other parties and in a manner provided for in § 210.16 of this chapter.

§ 210.6 Confidential business information

(a) *Confidential business information defined and identified.* Confidential business information shall be defined in accordance with § 210.6(a) of this chapter and shall be identified and submitted in accordance with § 210.6(c) of this chapter.

(b) *Restrictions on disclosure.* Information that is submitted to the Commission or exchanged among the parties in connection with proceedings under this part, is designated confidential by the person submitting it (pursuant to paragraph (a) of this section), and is in fact confidential within the meaning of § 210.6(a) of this chapter, may not be disclosed without the consent of the person submitting it to anyone but the following persons:

(1) Persons who are granted access to confidential information under orders issued pursuant to § 210.37(a) or § 210.44;

(2) An officer or employee of the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted;

(3) An officer or employee of the United States Government who is directly involved in a review conducted pursuant to section 337(j) of the Tariff Act of 1930; or

(4) An officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under section 337(d) or 337(g) of the Tariff Act or an entry under bond under section 337(e) of the Tariff Act resulting from the investigation in connection with which the information was submitted.

§ 210.7 Computation of time, additional hearings, postponements, continuances, and extensions of time.

Unless otherwise ordered by the Commission or the administrative law judge and except as provided in § 210.24(e) (2), (7), and (17), the computation of time, the granting of additional hearings, postponements, continuances, and extensions of time shall be in accordance with § 201.14 of this chapter.

§ 210.8 Service of process and other documents.

Unless otherwise ordered by the Commission or the administrative law judge and except as provided in § 210.24(e) (4), (7), and (17), the service or process and other documents shall be in accordance with § 201.16 of this chapter.

Subpart B—Commencement of Proceedings

§ 210.10 Commencement of proceedings.

(a) *Upon receipt of complaint.* A proceeding is commenced by filing with the Secretary of the Commission the original and fourteen (14) true copies of a complaint, plus one copy for each person named in the complaint as violating section 337 of the Tariff Act and one (1) copy for the government of each foreign country of any person or persons so named. If the complainant is seeking temporary relief, one (1) additional copy of the motion for such relief also must be filed for each proposed respondent and for the government of the foreign country of the proposed respondent. The additional copies of the complaint and motion for temporary relief for each proposed respondent and the appropriate foreign government are to be provided notwithstanding the provisions of § 210.24(e)(4) that require service of the complaint and motion for temporary relief by the complainant.

(b) *Upon the initiative of the Commission.* The Commission may upon its initiative commence proceedings based upon any alleged violation of section 337 of the Tariff Act.

§ 210.11 Action of Commission upon receipt of complaint.

Upon receipt of a complaint filed pursuant to § 201.8 of this chapter and §§ 210.5, 210.10, and 210.20, the Commission shall take the following actions:

(a) *Examination of complaint.* The Commission shall examine the complaint for sufficiency and compliance with the applicable rules of this chapter.

(b) *Informal investigatory activity.* The Commission shall identify sources of relevant information, assure itself of the availability thereof, and, if deemed necessary, prepare subpoenas therefore, and give attention to other preliminary matters.

§ 210.12 Institution of investigation.

Except as provided in § 210.24(e) (2), (7), and (8), within thirty (30) days after receipt of a complaint or, in exceptional circumstances, as soon after such period as possible, the Commission shall determine whether the complaint is properly filed and, if so, shall vote on whether to institute an investigation. The complaint may be withdrawn as a matter of right before the Commission votes on whether to institute an investigation. The investigation shall be instituted by notice published in the **Federal Register**. Such notice will define the scope of the investigation. If the Commission determines not to institute an investigation, the complaint shall be dismissed and the Commission shall notify the complainant and all proposed respondents in writing of the Commission's action and the reason(s) therefor.

§ 210.13 Service of complaint and notice of investigation by the Commission.

Notwithstanding the provisions of § 210.24(e)(4) requiring service of the complaint by the complainant, the Commission, upon institution of an investigation, shall serve copies of the complaint and the notice of investigation (and any accompanying motion for temporary relief) upon the following:

(a) Each respondent;

(b) The Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other agencies and Departments as the Commission considers appropriate; and

(c) The embassy in Washington, DC of the government of each foreign country represented by each respondent.

All respondents named after an investigation has been instituted and the governments of the foreign countries they represent shall be served as soon as possible after the respondents are named.

Subpart C—Pleadings and Motions

§ 210.20 The complaint.

(a) Contents of the complaint. In addition to conforming with the requirements of § 201.8 of this chapter and § 210.5 (a), (b), and (c), the complaint shall—

(1) Be under oath and signed by the complainant or his duly authorized officer, attorney, or agent, with the name, address, and telephone number of the complainant and any such officer, attorney, or agent given on the first page of the complaint;

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts;

(3) Describe specific instances of alleged unlawful importations or sales; for importations occurring prior to January 1, 1989, include the Tariff Schedules of the United States item number under which the article was imported; for importations occurring on or after January 1, 1989, include the Harmonized Tariff Schedule of the United States item number under which the article was imported;

(4) State the name, address, and nature of the business (when such nature is known) of each person alleged to be violating section 337 of the Tariff Act;

(5) Include a statement as to whether or not the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency

litigation, and, if so, include a brief summary of such litigation;

(6)(i) When the alleged violation of section 337 is based on an unfair method of competition or an unfair act other than infringement of a U.S. patent or a federally registered copyright, trademark, or mask work, or the importation or sale of a product made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent, and an element of the complaint is the existence of a threat or effect to destroy or substantially injure, or to prevent the establishment of, such a domestic industry, include a description of the domestic industry affected, including the relevant operations of any licensees; or

(ii) When the alleged violation of section 337 is based on an unfair method of competition or an unfair act other than infringement of a U.S. patent or a federally registered copyright, trademark, or mask work, or the importation or sale of a product made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent, and an element of the complaint is the existence of a threat or effect to restrain or monopolize trade and commerce in the United States, include a description of the trade and commerce affected; or

(iii) When the alleged violation of section 337 is based on infringement of a U.S. patent or infringement of a federally registered copyright, trademark, or mask work, or the importation or sale of a product made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent, include a description of the relevant domestic industry as defined in section 337(a)(3), including the relevant operations of any licensees. Relevant information includes but is not limited to:

(A) Significant investment in plant and equipment;

(B) Significant employment of labor or capital; or

(C) Substantial investment in the exploitation of the subject patent, copyright, trademark, or mask work, including engineering, research and development, or licensing;

(7) Include a description of the complainant's business and its interests in the relevant domestic industry or in the trade and commerce allegedly affected. For every intellectual property based complaint (regardless of the type of intellectual property right involved), include a showing that at least one complainant is the owner or exclusive licensee of the subject property;

(8) If the alleged violation involves an unfair method of competition or an unfair act other than infringement of a patent or a registered copyright, trademark, or mask work, or the importation or sale of a product made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent, state a specific theory underlying the general allegation(s) regarding the existence of a threat or effect to destroy or substantially injure a domestic industry, to prevent the establishment of a domestic industry, or to restrain or monopolize trade and commerce in the United States. Include a statement of facts indicating the threat or effect to substantially injure. The information that should ordinarily be provided includes the volume and trend of production, sales, and inventories of the involved domestic article; a description of the facilities and number and type of workers employed in the production of the involved domestic article; profit-and-loss information covering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other data pertinent to the subject matter of the complaint that would support the allegation that—

(i) The threat or effect of the importations or sales in question is to destroy or substantially injure an industry in the United States; or

(ii) The threat or effect of the importations or sales in question is to prevent the establishment of an industry in the United States; or

(iii) The threat or effect of the importations or sales in question is to restrain or monopolize trade and commerce in the United States;

(9) Include, when a complaint is based upon the infringement of a valid and enforceable U.S. patent or the importation or sale of a product allegedly made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable U.S. patent—

(i) The identification of each U.S. letters patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(ii) The identification of the ownership of each involved U.S. letters patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. letters patent;

(iv) When known, a list of each foreign patent, each foreign patent application (not already issued as a patent), and each foreign patent application that has been denied corresponding to each involved U.S. letters patent, with an indication of the prosecution status of each such foreign patent application;

(v) A nontechnical description of the invention of each involved U.S. letters patent;

(vi) A reference to the specific claims in each involved U.S. letters patent that allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act, or the process under which such article was produced;

(vii) A showing of any domestic production of the involved article or of any domestic utilization of the involved process allegedly covered by the above specific claims of each involved U.S. letters patent, and a showing that each person named as violating section 337 of the Tariff Act is importing and/or selling the article covered by, or produced under the involved process covered by, the above specific claims of each involved U.S. letters patent. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies an exemplary claim of each involved U.S. letters patent to a representative involved domestic article or process and to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced; and

(viii) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act, or of the process utilized in producing such article, and, when a chart is furnished under paragraph (a)(9)(vii) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(10) *Contain a request for relief sought.* When the complaint contains a request for temporary relief pursuant to subsections (e) or (f) of section 337 of the Tariff Act, a separate motion for temporary relief shall accompany the complaint in accordance with § 210.24(e).

(b) *Submissions of articles as exhibits.* At the time the complaint is filed, when practical and possible, the

involved articles shall be submitted as exhibits—both the involved domestic article and that of each person named as violating section 337 of the Tariff Act.

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. letters patent the following:

(1) Three (3) copies of each license agreement arising out of each involved U.S. letters patent, except that, to the extent that a standard license agreement is used, three (3) copies of the standard license agreement and a list of the licensees oeprating under such agreement will suffice;

(2) One (1) certified copy of the Patent and Trademark Office file wrapper for each involved U.S. letters patent, plus three (3) additional copies thereof; and

(3) Four (4) copies of each patent and applicable pages of each technical reference mentioned in the file wrapper of each involved U.S. letters patent.

(d) *Additional material to accompany each registered trademark-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a federally registered trademark one (1) certified copy of the trademark registration.

(e) *Additional material to accompany each complaint based on a nonfederally registered trademark.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a nonfederally registered trademark the following:

(1) Information concerning prior attempts to register the alleged trademark; and

(2) Information on the status of current attempts to register the alleged trademark.

(f) *Additional material to accompany each copyright-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one (1) certified copy of the copyright registration.

(g) *Additional material to accompany each registered mask work-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of a semiconductor chip in a manner that constitutes infringement of a federally registered mask work, one (1) certified copy of the mask work registration.

§ 210.21 The response.

(a) *Time for response.* Except as provided in § 210.24(e)(2) and unless otherwise ordered in the notice of investigation or by the administrative law judge, respondents shall have twenty (20) days from the date of service of the complaint and notice of investigation by the Commission under § 210.13 within which to file a written response to the complaint and the notice of investigation. When the investigation involves a motion for temporary relief under § 210.24(e), the response to the complaint and notice of investigation must be filed concurrently with the response to the motion for temporary relief—*i.e.*, ten (10) days after service of the complaint, notice of investigation, and the motion for temporary relief by the Commission pursuant to § 210.13. (*See* § 210.24(e)(9).)

(b) *Contents of the response.* In addition to conforming to the requirements of § 201.6 of this chapter and § 210.5, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response. Each respondent shall respond to each allegation in the complaint and in the notice of investigation, and shall set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission, denial, or explanation of each fact alleged in the complaint and notice, or if the respondent is without knowledge of any such fact, a statement to that effect. Allegations of a complaint and notice not thus answered may be deemed to have been admitted. Each response shall include, when available, statistical data on the quantity and value of imports of the involved article in addition to a statement concerning the respondent's capacity to produce the subject article and the relative significance of the United States market to its operations. Affirmative defenses shall be pleaded with as much specificity as possible in the response. When the alleged unfair methods of competition and unfair acts are based upon the claims of a valid U.S. letters patent, the respondent is encouraged to make the following showing when appropriate:

(1) If it is asserted in defense that the article imported or sold by respondent is not covered by, or produced under a process covered by, the claims of each involved U.S. letters patent, a showing of such noncoverage for each involved claim in each U.S. letters patent in question shall be made, which showing may be made by appropriate allegations and, when practicable, by a chart that applies the involved claims of each U.S. letters patent in question to a representative involved imported article of respondent or to the process under which such article was produced;

(2) Drawings, photographs, or other visual representations of the involved imported article of respondent or the process utilized in producing such article, and, when a chart is furnished under paragraph (b)(1) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(3) If the claims of any involved U.S. letters patent are asserted to be invalid or unenforceable, the basis for such assertion, including, when prior art is relied on, a showing of how the prior art renders each claim invalid or unenforceable and a copy of such prior art.

(c) Submission of article as exhibit. At the time the response is filed, when practical and possible, the involved imported article shall be submitted as an exhibit.

§ 210.22 Amendments to pleadings and notice of investigation.

(a) Amendment of complaint. The complaint may be amended at any time prior to the institution of the investigation. After institution, the complaint may be amended for good cause shown upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation by a change in the scope of the investigation that results from such amendment.

(b) By leave. If and whenever disposition of the issues in an investigation on the merits will be facilitated, the administrative law judge, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to an investigation, may allow appropriate amendments to pleadings. Provided, however, that a motion for amendment of a complaint after the institution of an investigation shall be made to the administrative law judge, who shall grant the motion by filing with the Commission an initial determination, or shall deny the motion by issuing an order directing denial; the motion shall be decided according to the standards of paragraph (a) of this section. A motion for amendment of a notice shall be dealt with as provided with respect to motions for amendment of a complaint.

(c) Conformance to evidence. When issues not raised by the pleadings or notice of investigation, but reasonably within the scope of the pleadings and notice, are considered during the taking of evidence by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings and notice. Such amendments of the pleadings and notice as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time, and shall be effective with respect to all parties who have expressly or impliedly consented.

§ 210.23 Supplemental submissions.

The administrative law judge may, upon reasonable notice and such terms as are just, permit service of a supplemental submission setting forth transactions, occurrences, or events that have taken place since the date of the submission sought to be supplemented and that are relevant to any of the issues involved.

§ 210.24 Motions.

(a) Presentations and disposition. (1) During the period between the institution of an investigation and the assignment of the investigation to a presiding administrative law judge, all motions shall be addressed to the Chief Administrative Law Judge. During the time an investigation is before an administrative law judge, all motions therein shall be addressed to the administrative law judge.

(2) When an investigation is before the Commission, all motions shall be addressed to the Chairman of the Commission. A motion to amend the complaint and notice of investigation to name an additional respondent after institution shall be served on the proposed respondent. All written motions shall be filed with the Commission Secretary and served upon each party.

(b) Content. All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) Responses to motions. Within ten (10) days after service of any written motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission, a nonmoving party, or in the instance of a motion to amend the complaint or notice of investigation to name an additional respondent after institution, the proposed respondent, shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply except as permitted by the administrative law judge or the Commission.

(d) Motions for extensions. As a matter of discretion, the administrative law judge or the Commission may waive the requirements of this section as to motions for extension of time, and may rule upon such motions ex parte.

(e) Motions for temporary relief. Requests for temporary relief pursuant to subsection (e) or (f) of section 337 of the Tariff Act shall be made through a motion to be filed and adjudicated in accordance with the following provisions.

(1) *Motion accompanying complaint.* (i) A complaint requesting temporary relief pursuant to § 210.20(a)(10) shall be accompanied by a motion that sets forth complainant's request for temporary relief. The motion must contain a detailed statement of specific facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that the issuance of the requested temporary relief would have on the public interest.

(ii) The following documents and information shall be filed along with the motion:

(A) A memorandum of points and authorities in support of the motion;

(B) Affidavits executed by persons with knowledge of the facts specified in the motion; and

(C) All documentary information and other evidence in complainant's possession that complainant intends to submit in support of the motion.

If the complaint and/or the motion for temporary relief contains confidential business information as defined in § 201.6(a), the complainant must follow the procedure outlined in § 210.6(a), § 201.6 (a) and (c), and paragraph (e)(5) of this section.

(2) *Motions filed after the complaint.* A motion for temporary relief may be filed after the complaint, but must be filed prior to the Commission determination under § 210.12 on whether to institute an investigation. A motion filed after the complaint shall contain the information, documents, and evidence described in paragraph (e)(1) of this section, and must also make a showing that extraordinary circumstances exist that warrant temporary relief and that the moving party was not aware, and with due diligence could not have been aware, of those circumstances at the time the complaint was filed. When a motion for temporary relief is filed after the complaint but before the Commission has determined whether to institute an investigation based on the complaint, the 35-day period allotted for review of the complaint and informal investigative activity pursuant to paragraph (e)(8) of this section will begin to run anew from the date on which the motion was filed.

(3) Motions after institution of an investigation. A motion for temporary relief may not be filed after an investigation has been instituted.

(4) Service of the motion by complainant. Notwithstanding the provisions of § 210.13 regarding service of the complaint and motion for temporary relief by the Commission upon institution of an investigation, on the day the complainant files a complaint and motion for temporary relief with the Commission (*see* § 201.8(a)), the complainant must serve nonconfidential copies of both documents (as well as nonconfidential copies of all materials or documents attached thereto) on all proposed respondents and on the embassy in Washington, DC of the government of the country(s) that the proposed respondents represent. The complaint and motion shall be served by the fastest means available. A signed certificate of service must accompany the complaint and motion for temporary relief. If the certificate does not accompany the complaint and the motion, the Secretary shall not accept the complaint or the motion and shall promptly notify the submitter. Actual proof of service (or proof of a serious effort to make service)—*e.g.*, certified mail return receipts, courier or overnight delivery receipts, or other proof of delivery—need not be filed with the complaint and motion, but should be retained by the complainant in the event that the complainant is requested to provide actual proof of service.

(5) Content of the service copies. Any purportedly confidential business information that is deleted from the nonconfidential service copies of the complaint and motion for temporary relief must satisfy the requirements of § 201.6(a) (which defines confidential information for purposes of Commission proceedings). For attachments that are confidential in their entirety, complainant must provide a nonconfidential summary of what the document contains. Despite the redaction of confidential material from the motion for temporary relief and the complaint, the nonconfidential service copies must contain enough factual

information about each element of the violation alleged in the complaint and the motion to enable each proposed respondent to comprehend the allegations against it.

(6) Notice accompanying the service copies. Each service copy of the complaint and motion for temporary relief shall be accompanied by a notice containing the following text:

Notice is hereby given that the attached complaint and motion for temporary relief will be filed with the U.S. International Trade Commission in Washington, DC on , 19 . However, the filing of the complaint and motion will not institute an investigation on that date, nor will it begin the period for filing responses to the complaint and motion pursuant to 19 CFR 210.21 and 210.24(e)(9).

Upon receipt of the complaint, the Commission will examine the complaint for sufficiency and compliance with 19 CFR 201.8, 210.5, 210.10, and 210.20. The Commission's Office of Unfair Import Investigations will conduct information investigative activity pursuant to 19 CFR 210.11 to identify sources of relevant information and to assure itself of the availability thereof. The motion for temporary relief will be examined for sufficiency and compliance with 19 CFR 201.8, 210.5, and 210.24(e) (1), (4), (5), (6), and will be subject to the same type of preliminary investigative activity as the complaint.

Within thirty-five (35) days after receiving the complaint and motion for temporary relief in accordance with 19 CFR 210.24(e) (1), or within thirty-five (35) days after filing of the motion for temporary relief (if it is filed after the complaint pursuant to 19 CFR 210.24(e)(2)), the Commission will determine whether to institute an investigation on the basis of the complaint and whether to refer the motion for temporary relief to a Commission administrative law judge for issuance of an initial determination in accordance with 19 CFR 210.24(e) (10) and (17). *See* 19 CFR 210.12 and 210.24(e) (1) and (8).

If the Commission determines to conduct an investigation of the complaint and the motion for temporary relief, the investigation will be formally instituted on the date on which the Commission publishes a notice of investigation in the Federal Register pursuant to 19 CFR 210.12. If an investigation is instituted, copies of the complaint, the notice of investigation, the motion for temporary relief, and the Commission's rules of Practice and Procedure (19 CFR Parts 210 and 211) will be served on each respondent by the Commission pursuant to 19 CFR 210.13. Responses to the complaint, the notice of investigation, and the motion for temporary relief must be filed within ten (10) days after Commission service thereof, in accordance with 19 CFR 201.8, 210.5, 210.21, and 210.24(e)(9). *See also* 19 CFR 201.14 and 210.7 regarding computation of the 10-day response period.

If, after reviewing the complaint and motion for temporary relief, the Commission determines not to institute an investigation, the complaint and motion will be dismissed and the Commission will notify the complainant and all proposed respondents in writing of the Commission's decision and the reason(s) therefor, pursuant to 19 CFR 210.12.

For information concerning the filing of the complaint and its treatment and to ask general questions concerning section 337 practice and procedure, contact the Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, telephone 202–252–1560. Such inquiries will be referred to the Commission investigative attorney assigned to the complaint. (*See also* the Commission's rules of practice and procedure set forth in 19 CFR Parts 210 and 211.)

To learn the date on which the Commission will vote on whether to institute an investigation and the publication date of the notice of investigation (if the Commission decides to institute an investigation), contact the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1000.

This notice is being provided pursuant to 19 CFR 210.24(e)(6).

(7) *Amendment of the motion.* A motion for temporary relief may be amended at any time prior to the institution of an investigation. However, all material filed to amend the motion (or the complaint) must be served on all proposed respondents and on the embassies in Washington, DC, of the foreign governments that they represent, in accordance with paragraph (e)(4) of this section. If the amendment expands the scope of the motion, the 35-day period allotted under paragraph (e)(8) of this section for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. Motions for temporary relief may not be amended after an investigation is instituted.

(8) *Provisional acceptance of the motion.* The Commission shall determine whether to accept a motion for temporary relief at the same time it determines whether to institute an investigation on the basis of the complaint. That determination shall be made within thirty-five (35) days after the complaint and motion for temporary relief are filed. Before the Commission determines whether to provisionally accept a motion for temporary relief, the motion will be examined for sufficiency and compliance with paragraphs (e) (1), (4), (5), and (6) of this section and §§ 201.8, 210.5 of this chapter, and will be subject to the same type of preliminary investigative activity as the complaint (see § 210.11(b)). Acceptance of a motion pursuant to this paragraph constitutes provisional acceptance for referral of the motion to an administrative law judge for an initial determination pursuant to paragraph (e)(17) of this section. Commission rejection of an insufficient or improperly filed complaint will preclude acceptance of a motion for temporary relief. However, Commission rejection of a motion for temporary relief will not preclude institution of an investigation of the complaint.

(9) *Responses to the motion and the complaint.* Any party may file a response to a motion for temporary relief. Responses shall be filed within ten (10) days after service of the motion by the Commission upon institution of an investigation, unless otherwise ordered by the administrative law judge. The response must comply with the requirements of § 201.8 of this chapter and § 210.5, and shall contain the following information:

(i) A statement that sets forth with particularity any objection to the motion for temporary relief;

(ii) A statement that sets forth with specificity facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm, if any, to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that issuance of the requested temporary relief would have on the public interest;

(iii) a memorandum of points and authorities in opposition to the motion;

(iv) affidavits, where possible, executed by persons with knowledge of the facts specified in the response.

Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Responses to the complaint and notice of investigation must comply with § 201.8 of this chapter and §§ 210.5 and 201.21.

(10) *Referral to an administrative law judge.* Following provisional Commission acceptance of a motion for temporary relief and upon institution of an investigation, the motion for temporary relief shall be forwarded to an administrative law judge for an initial determination on whether there is reason to believe there is a violation of section 337 of the Tariff Act and whether temporary relief is appropriate.

(11) *Designating an investigation "more complicated" for the purpose of adjudicating a motion for temporary relief.* At the time the Commission

determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to paragraph (e)(8) of this section, the Commission may designate the investigation "more complicated" pursuant to § 210.59(b) for the purpose of obtaining additional time to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under paragraphs (e)(10) and (17) of this section, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" for purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the **Federal Register.**

(12) *Discovery and compulsory process.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitation set forth in paragraph (e)(17) of this section relating to issuance of an initial determination concerning the motion for temporary relief. The administrative law judge's authority to compel discovery includes discovery relating to the following issues:

(i) The effect, if any, that issuance of the relief requested in the motion would have on the public interest;

(ii) The form of temporary relief the Commission should issue if it determines to grant temporary relief;

(iii) Whether the public interest factors enumerated in the statute preclude that form of relief; and

(iv) The amount of the bond under which the respondent(s)'s merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission.

As part of the standard analysis for determining whether to grant a motion for temporary relief (see paragraphs (e)(1) and (9) of this section), the administrative law judge should make findings on the issue specified in paragraph (e)(12)(i) of this section. The administrative law judge may, but is not required, to make findings on issues specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties' written submissions on remedy, the public interest, and bonding to be filed with the Commission pursuant to paragraph (e)(18) of this section.

(13) *Evidentiary hearing.* A motion for temporary relief may be ruled upon without a hearing by the administrative law judge when a motion for summary determination under § 210.50(a) is granted in favor of respondents or other parties opposing the motion for temporary relief, or if the administrative law judge determines that the motion should be dismissed for some other reason (*e.g.*, failure to comply with some portion of paragraph (e)(1) of this section). (Such rulings by the administrative law judge shall be in the form of an initial determination issued under paragraph (e)(17) of this section.) If a hearing is conducted, the precise form and scope of the hearing are left to the discretion of the administrative law judge. At the hearing or as directed by the administrative law judge, the parties shall address the issues of whether there is reason to believe that there is a violation of section 337 of the Tariff Act and whether temporary relief is appropriate. The administrative law judge may, but is not required, to take evidence at the hearing concerning the remedy, public interest, and bonding issues specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (see paragraphs (e)(1) and (9) of this section), the ALJ should take evidence on the question of what effect the form of relief requested in the motion would have on the public interest.

(14) *Proposed findings and conclusions and briefs.* The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, and/or briefs (pursuant to § 210.52) concerning the grant or denial of temporary relief.

(15) *Interlocutory appeals and review by the Commission.* There will be no interlocutory appeals to the Commission (pursuant to § 210.71) of the administrative law judge's ruling on any matter delegated to him or her for decision under paragraph (e) of this section. After the administrative law judge has certified to the Commission pursuant to paragraphs (e) (16) and (17) of this section an initial determination granting or denying a motion for temporary relief and the administrative record upon which the initial determination is based, the Commission's review of the administrative law judge's actions and rulings relating to the motion for temporary relief is limited to the issues specified in paragraph (e) (17) of this section.

(16) *Certification of the record.* At the close of the reception of evidence in any hearing held pursuant to paragraph (e)(13) of this section or as soon as possible thereafter, the administrative law judge shall certify the record to the Commission prior to issuance of the initial determination concerning temporary relief. However, if such advance certification is not feasible, the record shall be certified to the Commission when the administrative law judge issues the initial determination concerning the grant or denial of temporary relief, in accordance with paragraph (e)(17) of this section.

(17) *Initial determination concerning temporary relief and Commission action thereon.*

(i) On the 70th day after publication of the notice of investigation in an ordinary investigation, or on the 120th day after such publication in a "more complicated" investigation, the administrative law judge will issue an initial determination concerning temporary relief—*i.e.*, whether there is reason to believe that respondents have violated section 337 of the Tariff Act and, if so, whether temporary relief should be issued. The initial determination may, but is not required, to address the remedy, public interest, and bonding issues specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (see paragraphs (e) (1) and (9) of this section), the initial determination shall address the question for what effect the form of relief requested in the motion would have on the public interest (except when the initial determination is granting a summary determination denying the motion for temporary relief pursuant to paragraph (e)(13) of this section).

(ii) The initial determination will become the Commission's determination twenty (20) calendar days after issuance thereof in an ordinary case, and thirty (30) calendar days after issuance in a "more complicated" investigation unless the Commission modifies or vacates the initial determination within that period. Such modification or vacation may be ordered on the basis of errors of law or for policy reasons articulated by the Commission. The existence of alleged errors of fact will not be considered. In computing the aforesaid 20-day and 30-day deadlines, intermediary Saturdays, Sundays, and holidays shall be

included. However, if the last day of the period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily allotted under § 210.16(d) of this chapter cannot be provided.

(iii) In order to assist the Commission to determine whether modification or revocation of the initial determination is warranted, all parties may file written comments concerning the presence (or absence) of errors of law in the initial determination and/or policy reasons that justify such action (or show that it would not be justified). Such comments will be limited to thirty (30) pages and must be filed no later than seven (7) calendar days after service of the initial determination in an ordinary case and ten (10) calendar days after service of the initial determination in a "more complicated" investigation. In computing the aforesaid 7-day and 10-day deadlines, intermediary Saturdays, Sundays, and holidays shall be included. However, if the last day of the period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this Chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily allotted under § 210.16(d) of this chapter cannot be provided.

(iv) Nonconfidential copies of the initial determination also will be served on other agencies, and they will be given ten (10) calendar days in which to file comments on the initial determination.

(v) Each party may file a response to other parties' comments within ten (10) calendar days after issuance of the initial determination in an ordinary case—and within fourteen (14) calendar days after issuance of an initial determination in a "more complicated" investigation. The reply comments will be limited to fifteen (15) pages. If the last day of the 10-day or 14-day period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the constraints imposed by the statutory deadlines, additional time ordinarily allotted under § 201.16(d) of this chapter will not be provided. The parties are expected to facilitate the filing of timely and useful responses to each other's initial comments by serving the initial comments by the fastest means available.

(vi) If the Commission determines to modify or vacate the initial determination within twenty (20) calendar days after issuance thereof in an ordinary case, or thirty (30) calendar days after issuance in a "more complicated" case, a notice and (if appropriate) a Commission opinion will be issued. If the Commission does not modify or vacate the administrative law judge's initial determination within the time provided, the initial determination will automatically become the determination of the Commission and a notice of that fact will not be issued.

(18) *Remedy, the public interest, and bonding.* The procedure for arriving at the Commission's determination of the issues of the appropriate form of temporary relief, whether the public interest factors enumerated in the statute preclude such relief, and the amount of the bond under which respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission, is as follows:

(i) While the motion for temporary relief is before the administrative law judge, he may compel discovery on matters relating to remedy, the public interest, and bonding (as provided in paragraph (e)(12) of this section). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in paragraph (e)(17) of this section. However, such findings may be superceded by Commission findings on that issue as provided in paragraph (e)(18)(iii) of this section.

(ii) On the 60th day after institution in an ordinary case or on the 105th day after institution in a "more complicated" investigation, all parties may file written submissions with the Commission addressing those issues. The submissions shall refer to information and evidence already on the record, but additional information and evidence germane to the issues of appropriate relief, the statutory public interest factors, and bonding may be provided along with the parties' submissions.

(iii) On or before the 90-day or 150-day statutory deadline for determining whether to order temporary relief under subsection (b) of section 337 of the Tariff Act, the Commission will determine what relief is appropriate in light of any violation that appears to exist, whether the public interest factors enumerated in the statute preclude the issuance of such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission. In the event that Commission's findings on the public interest pursuant to paragraph (e)(18) of this section are inconsistent with findings made by the administrative law judge in the initial determination pursuant to paragraph (e)(17) of this section, the Commission's findings are controlling.

§ 210.25 Default.

(a) *Definition of default.* Failure of a respondent to take actions including but not limited to the following may be deemed to constitute a waiver of the respondent's right to appear, to be served with documents, and to contest the allegations at issue in the investigation: file a response to the complaint and notice pursuant to § 210.21 (or § 210.24(e)(9)) within the time provided, respond to a motion for summary determination, respond to a motion that materially alters the scope of the investigation, or appear at a hearing before the administrative law judge on the issue of violation of section 337 of the Tariff Act.

(b) *Procedure for determining default.* If a respondent has failed to respond or appear in the manner described in paragraph (a) of this section, the administrative law judge upon motion of his own initiative shall order such respondent to show cause why it should not be found in default. If the respondent fails to show cause why it should not be found in default, the administrative law judge may make any orders appropriate to paragraph (a) of this section.

(c) *Relief against a respondent in default.* The complainant shall declare at the time the last remaining respondent is found to be in default whether the complainant is seeking a general or limited exclusion order, or a cease and desist order, or both. In cases in which the complainant is seeking relief solely affecting the respondent found to be in default, the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion order or cease and desist order, or both, which affects only that respondent unless, after considering the effect of such order(s) upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, the Commission finds that the order should not be issued. In cases in which the

record developed by the administrative law judge contains substantial, reliable, and probative evidence of a violation of section 337 of the Tariff Act, the Commission may issue a general exclusion order (in addition to or in lieu of cease and desist orders) regardless of the source or importer of the articles concerned, unless the public interest considerations enumerated above preclude such relief. In considering whether a prima facie case of violation of section 337 has been presented, the administrative law judge and the Commission may draw appropriate adverse inferences as provided in § 210.56 against a respondent or respondents in default with respect to those issues for which complainant has made a good faith but unsuccessful effort to obtain evidence.

§ 210.26 Intervention.

Any person desiring to intervene in an investigation under this part shall make written application in the form of a motion setting forth a sufficient basis therefore. Such application shall have attached to it a certificate showing service thereof upon each party to the investigation in accordance with the provisions of § 210.16 of this chapter. A similar certificate shall be attached to the answer filed by any party with respect to the application showing service of such answer upon the applicant and all other parties. The Commission, or the administrative law judge by initial determination, may permit the intervention of such person to such extent and upon such terms as may be deemed proper under the circumstances.

Subpart D—Discovery and Compulsory Process

§ 210.30 General provisions governing discovery.

(a) Discovery methods. The parties to an investigation may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions, interrogatories, production of documents or things for inspection and other purposes, requests for admissions, and entry upon land or other property.

(b) Scope of discovery. Unless otherwise ordered by the administrative law judge, a party may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearings if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Discovery and compulsory process. The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in § 210.24(c)(17) relating to the issuance of initial determinations concerning motions for temporary relief or in § 210.53(a) relating to the issuance of initial determinations concerning whether there is a violation of section 337 of the Tariff Act.

(d) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement his response with respect to any question directly addressed to—

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty to seasonably amend a prior response if he obtains information upon the basis of which—

(i) He knows that the response was incorrect when made; or

(ii) He knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

§ 210.31 Depositions.

(a) When depositions may be taken. After the date of publication in the **Federal Register** of the notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. Leave of the administrative law judge must be obtained only if the complainant seeks to take a deposition prior to the expiration of twenty (20) days after the date of service of the complainant and notice of investigation.

(b) Persons before whom depositions may be taken. Depositions may be taken before a person having power to administer oaths by the laws of the United States or of the place where the examination is held.

(c) Notice of examination. A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation of not less than ten (10) days if the deposition is to be taken within the United States, and not less than fifteen (15) days if the deposition is to be taken elsewhere. The administrative law judge may designate a shorter or longer time. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A notice may provide for the taking of testimony by telephone, but the administrative law judge may, on motion of any party, require that the deposition be taken in the presence of the deponent. The parties may stipulate in writing, or the administrative law judge may upon motion order, that the testimony at a deposition be recorded by other than stenographic means. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(d) Taking of deposition. Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. Evidence objected to shall be taken subject to the objections, except that privileged communications and subject matter need not be disclosed. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, after which the deposition shall be subscribed by the deponent (unless the parties by stipulation waive signing or the deponent is ill or cannot be found or refuses to sign) and certified by the person before whom the deposition was taken. If the deposition is not subscribed by the deponent, the person administering the oath shall state on the record such fact and the reasons therefor. When a deposition is recorded by stenographic means, the stenographer shall certify on the transcript that the witness was sworn in

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the stenographer's presence and that the transcript is a true record of the testimony of the witness. When a deposition is recorded by other than stenographic means and is thereafter transcribed, the person transcribing it shall certify that the person heard the witness sworn on the recording and that the transcript is correct writing of the recording. Thereafter, that person shall forward one (1) copy to each party who was present or represented at the taking of the deposition.

(e) Depositions of nonparty officers or employees of the Commission or of other Government agencies. A party desiring to take the deposition of an officer or employee of the Commission other than the Commission investigative attorney, or of an officer or employee of another Government agency, or to obtain documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall proceed by written motion to the administrative law judge for leave to apply for a subpoena under § 210.35(c). Such a motion shall be granted only upon a showing that the information expected to be obtained thereby is within the scope of discovery permitted by § 210.30(b) and cannot be obtained without undue hardship by alternative means.

(f) Filing of depositions. The party taking the deposition shall file one (1) copy thereof with the Commission investigative attorney, and shall give prompt notice of such filing to all other parties.

(g) Admissibility of depositions. The fact that a deposition is taken and filed with the Commission investigative attorney as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the investigation. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such investigation upon which a determination may be based. Objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

(h) Use of depositions. A deposition may be used as evidence against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisons:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness,

(2) The deposition of a party may be used by an adverse party for any purpose,

(3) The deposition of a witness, whether or not a party, may be used by any party for any purposes if the administrative law judge finds—

(i) That the witness is dead; or

(ii) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the oral testimony of witnesses at a hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part that ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

§ 210.32 Interrogatories.

(a) Scope; use at hearing. Any party may serve upon any other party written interrogatories to be answered by the party served. Interrogatories may relate to any matters that can be inquired into under § 210.30(b), and the answers may be used to the extent permitted by the rules of evidence.

(b) Procedure. (1) Interrogatories may be served upon any party after the date of publication in the **Federal Register** of the notice of investigation.

(2) Parties answering interrogatories shall repeat the interrogatories being answered immediately preceding the answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within ten (10) days after the service of the interrogatories. The administrative law judge may allow a shorter or longer time. The party submitting the interrogatories may move for an order under § 210.36(a) with respect to any objection to or other failure to answer an interrogatory.

(3) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the administrative law judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or a later time.

(c) Option to produce records. When the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specifications provided shall include sufficient detail to permit the interrogating party to identify readily the documents from which the answer may be ascertained.

§ 210.33 Request for production of documents and things and entry upon land.

(a) Scope. Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 210.30(b).

(b) Procedure. (1) The request may be served upon any party after the date of publication in the **Federal Register** of the notice of investigation. The request shall set forth the items to be inspected, either by individual item or by category, and

describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within ten (10) days after the service of the request. The administrative law judge may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of any item or category, the part shall be specified. The party submitting the request may move for an order under § 210.36(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

(c) Persons not parties. This rule does not preclude issuance of an order against a person not a party to permit entry upon land.

§ 210.34 Request for admission.

(a) Form, content, and service of request for admission. Any party may serve on any other party a written request for admission of the truth of any matters relevant to the investigation and set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter as to which an admission is requested shall be separately set forth. The request may be served upon a party whose complaint is the basis for the investigation after the date of publication in the Federal Register of the notice of investigation. The request may be served upon any other party at any time twenty (20) days after the date of service of complaint and notice of investigation, unless leave of the administration law judge is obtained to serve the request at an earlier date.

(b) Answers and objections to requests for admissions. A party answering a request for admission shall repeat the request for admission immediately preceding his answer. The matter may be deemed admitted unless, within ten (10) days after service of the request, or within such shorter or longer time as the administrative law judge may allow, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter as to which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known to or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for a hearing may not object to the request oin that ground alone; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) Sufficiency of answers. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to a hearing under this Part.

(d) Effect of admissions; withdrawal or amendment of admission. Any matter admitted under this rule may be conclusively established unless the administrative law judge on motion permits withdrawal or "amendment" of the admission. The administrative law judge may permit withdrawal or amendment when the presentation of the issues of the investigation will be subserved thereby and the party who obtained the admission fails to satisfy the administrative law judge that withdrawal or amendment will prejudice him in maintaining his position on the issues of the investigation. Any admission made by a party under this section is for the purpose of the pending investigation only and is not an admission by him for any other purpose not may it be used against him in any other proceeding.

§ 210.35 Subpoenas

(a) Application for issuance of a subpoena.—(1) Subpoena ad testificandum. An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge.

(2) Subpoena duces tecum. An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) Use of subpoena for discovery. Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits that constitute or contain evidence relevant to the subject matter involved and that are in the possession, custody, or control of such person.

(c) Application for subpoenas for nonparty Commission records or personnel or for records and personnel of other Government agencies. (1) Procedure. An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Commission, or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent

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could not be obtained without undue hardship or by alternative means.

(2) Ruling. Such applications shall be ruled upon by the administrative law judge. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) Application for subpoena grounded upon the Freedom of Information Act. No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge.

(d) Motion to limit or quash. Any motion to limit or quash a subpoena shall be filed within ten (10) days after service thereof, or within such other time as the administrative law judge may allow.

(e) Ex parte rulings on applications for subpoenas. Applications for the issuance of the subpoenas pursuant to the provisions of this section may be made ex parte, and, if so made, such applications and rulings thereon shall remain ex parte unless otherwise ordered by the administrative law judge.

§ 210.36 Failure to make discovery; sanctions.

(a) Motion for order compelling discovery. A party may apply to the administrative law judge for an order compelling discovery upon reasonable notice to other parties and all persons affected thereby.

(b) Failure to comply with order compelling discovery. If a party or an officer or agent of a party fails to comply with an order including, but not limited to, an order for the taking of a deposition or the production of documents, an order to answer interrogatories, an order issued pursuant to a request for admissions, or an order to comply with a subpoena, the administrative law judge, for the purpose of permitting resolution of relevant issues and disposition of the investigation without unnecessary delay despite the failure to comply, may take such action in regard thereto as is just, including, but not limited to, the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the investigation the matter or matters concerning the order or subpoena issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or agent, or documents, or other material, in support of his position in the investigation;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a motion or other submission by the party concerning the order or subpoena issued be stricken or rule by initial determination that a determination in the investigation be rendered against the party, or both. Any such action may be taken by written or oral order issued in the course of the investigation or by inclusion in the initial determination of the administrative law judge. It shall be the duty of the parties to seek, and that of the administrative law judge to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence. If in the administrative law judge's opinion such relief would not be sufficient, the administrative law judge shall certify to the Commission a request that court enforcement of the subpoena or other discovery order be sought.

§ 210.37 Protective Orders.

(a) Issuance of protective order. Upon motion by a party or by the person from whom discovery is sought or by the administrative law judge on his own initiative, and for good cause shown, the administrative law judge may make any order that may appear necessary and appropriate for the protection of the public interest or that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the administrative law judge;

(6) That a deposition, after being sealed, be opened only by order of the Commission or the administrative law judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or the administrative law judge.

If the motion for a protective order is denied, in whole or in part, the Commission or the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(b) Unauthorized disclosure of information. If confidential business information submitted in accordance with the terms of a protective order is disclosed to any person other than in a manner authorized by the protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the submitter of the information and the administrative law judge or the Commission, and, without prejudice to other rights and remedies of the submitter of the information, make every effort to prevent further disclosure of such information by the party or the recipient of such information.

(c) Violation of protective order. Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined by the Commission or the administrative law judge to have violated the terms of the protective order may be subject to one or more of the following penalties:

(1) An official reprimand by the Commission;

(2) Disqualification from or limitation of further participation in a pending investigation;

(3) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to § 201.15(a) of this chapter;

(4) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice;

(5) Sanctions as enumerated in § 210.36, or such other action as may be appropriate.

Such sanctions may be imposed upon the filing of a motion by a party or upon the administrative law judge's own motion. The administrative law judge shall allow the parties to make written submissions and if warranted to present

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oral argument. The administrative law judge shall grant or deny a motion for sanctions by filing with the Commission an initial determination pursuant to § 210.53(c).

Subpart E—Prehearing Conferences and Hearings

§ 210.40 Prehearing conferences.

(a) When appropriate. The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with him for one or more conferences to consider any or all of the following:

(1) Simplification and clarification of the issues;

(2) Scope of the hearing;

(3) Necessity or desirability of amendments to pleadings subject, however, to the provisions of § 210.22;

(4) Stipulations and admissions of either fact or the content and authenticity of documents;

(5) Expedition in the discovery and presentation of evidence including, but not limited to, restriction of the number of expert, economic, or technical witnesses; and

(6) Such other matters as may aid in the orderly and expeditious disposition of the investigation including disclosure of the names of witnesses and the exchange of documents or other physical exhibits that will be introduced in evidence in the course of the hearing.

(b) *Subpoenas.* Prehearing conferences may be convened for the purpose of accepting returns on subpoenas duces tecum issued pursuant to the provisions of § 210.35(a)(2).

(c) *Reporting.* In the discretion of the administrative law judge, prehearing conferences may or may not be stenographically reported and may or may not be public.

(d) *Order.* The administrative law judge may enter in the record an order that recites the results of the conference. Such order shall include the administrative law judge's rulings upon matters considered at the conference, together with appropriate direction to the parties. The administrative law judge's order shall control the subsequent course of the hearing, unless modified to prevent manifest injustice.

§ 210.41 General provisions for hearings.

(a) *Purpose of hearings.* Unless otherwise ordered by the Commission:

(1) An opportunity for a hearing shall be provided in each investigation under section 337 of the Tariff Act to take evidence and hear argument for the purpose of determining whether there is a violation of section 337 of the Tariff Act.

(2) Except as provided under § 210.24(e)(13), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act.

(b) *Public hearings.* All hearings in investigations under this Part shall be public unless otherwise ordered by the administrative law judge.

(c) *Expedition.* Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed unless otherwise ordered by the administrative law judge.

(d) *Rights of the parties.* Every party shall have the right of due notice, cross examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

(e) *Presiding official.* An administrative law judge shall preside over each hearing unless the Commission shall otherwise order.

§210.42 Evidence.

(a) *Burden of proof.* The proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded as far as practicable.

(c) *Information obtained in investigations.* Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by the Commission investigative attorney when necessary in connection with investigations and may be offered in evidence by the Commission investigative attorney.

(d) *Official notice.* When any decision of the administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

(e) *Objections.* Objections to evidence shall be made in timely fashion and shall briefly state the grounds relied upon. Rulings on all objections shall appear on the record.

(f) *Exceptions.* Formal exception to an adverse ruling is not required.

(g) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of what he expects to prove by the answer of the witness, or the administrative law judge may in his discretion receive and report the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained with the record so as to be available for consideration by any reviewing authority.

§ 210.43 Record.

(a) *Definition of the record.* The record shall consist of all pleadings, the notice of investigation, motions and responses, and other documents and things properly filed with the Secretary in accordance with § 210.5(b), in addition to all orders, notices, and initial determinations of the administrative law judge, orders and notices of the Commission, hearing and conference transcripts, evidence admitted into the record, and any other items certified into the record by the administrative law judge or the Commission.

(b) *Reporting and transcription.* Hearings shall be reported and transcribed by the official reporter of the Commission under the supervision of the administrative law judge, and the transcript shall be a part of the record.

(c) *Corrections.* Corrections of the transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections ordered by the administrative law judge or agreed to in a written stipulation signed by all counsel and parties not represented by counsel and approved by the administrative law judge shall be included in the record, and such stipulations, except to the extent that they are capricious or without substance, shall be approved by the administrative law judge. Corrections shall not be ordered by the administrative law judge except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the official reporter by furnishing substitute typed pages, under the usual certificate of the reporter, for insertion in the transcript. The original uncorrected pages shall be retained in the files of the Commission.

(d) *Certification of record.* Except as provided in § 210.24(e)(16) in connection with the disposition of motions for temporary relief, the record shall be certified to the Commission by the administrative law judge upon his filing of an initial determination or at such earlier time as the Commission may order.

§ 210.44 In camera treatment of confidential information.

(a) *Definition.* Except as hereinafter provided and consistent with §§ 210.6 and 210.37, confidential documents and testimony made subject to protective orders or orders granting in camera treatment are not made part of the public record and are kept confidential in an in camera record. Only the persons identified in a protective order, persons identified in § 210.6(b), and court personnel concerned with judicial review shall have access to confidential information on the in camera record. The right of the adminstrative law judge and the Commission to disclose confidential data under a protective order (pursuant to § 210.37) to the extent necessary for the proper disposition of each proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* The administrative law judge shall have authority to order documents or oral testimony offered in evidence, whether admitted or rejected, to be placed in camera.

(c) *Part of confidential record.* In camera documents and testimony shall constitute a part of the confidential record of the Commission.

(d) *References to in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make an attempt in good faith to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of in camera data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "Business Confidential," which shall be placed in camera and become a part of the confidential record.

(e) *Motions to declassify.* Any party may move to declassify documents (or portions thereof) that have been designated confidential by the submitter but that do not satisfy the confidentiality criteria set forth in § 201.6(a). All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the presiding administrative law judge, or if the investigation is not before a presiding administrative law judge, by the chief administrative law judge or such administrative law judge as he or she may designate.

Subpart F—Determinations and Actions Taken

§ 210.50 Summary determinations.

(a) *Motions for summary determinations.* Any party may move with any necessary supporting affidavits for a summary determination in his favor upon all or any part of the issues to be determined in the investigation. Counsel or other representatives in support of the complaint may so move at any time after twenty (20) days following the date of service of the complaint and notice instituting the investigation, and any other party, or a respondent, may so move at any time after the date of publication in the Federal Register of the notice of investigation. Any such motion by any party, however, must be filed at least thirty (30) days before the date fixed for any hearing provided for in § 201.41.

(b) *Opposing affidavits; oral argument; time and basis for determination.* Any nonmoving party may, within ten (10) days after service of the motion, file opposing affidavits. The administration law judge may in his discretion or may at the request of any party set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving party shall be rendered if the pleadings and any depositions, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

(c) *Affidavits.* Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The administrative law judge may permit affidavits to be supplemented or opposed by depositions or further affidavits. When a motion for summary determination is made and supported as provided in this rule, a party opposing the motion may not rest upon mere allegations or denials in his pleading; his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of fact for hearing. If no such response is filed, a summary determination, if appropriate, shall be rendered.

(d) *Refusal of application for summary determination; continuances and other orders.* Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present facts essential to justify his opposition, the administrative law judge may refuse the application for summary determination or may order a continuance to permit affidavits to be obtained or depositions or other discovery to be had, or make such other order as is appropriate, and a ruling to that effect shall be made a matter of record.

(e) *Order establishing facts.* If on motion under this rule a summary determination is not rendered upon all the allegations for all the relief asked and a hearing is necessary, the administrative law judge shall make an order specifying the facts that appear without substantial controversy and directing further proceedings in the investigation. The facts so specified shall be deemed established.

(f) *Order of summary determination.* An order of summary determination shall constitute an initial determination of the administrative law judge under § 210.53 or § 210.24(e)(17).

§ 210.51 Termination of investigation.

(a) *Motions for termination.* Any party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents.

(b) *Settlement by licensing or other agreement.* (1) An investigation before the Commission may be terminated as provided in paragraph (a) of this section and pursuant to subsection (c) of section 337 of the Tariff Act on the basis of a licensing or other settlement agreement entered into between the complainant (all of the complainants if there is more than one) and one or more of the respondents. A motion for termination by such parties shall contain copies of the licensing or other settlement agreement, and any agreements supplemental thereto, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion.

(2) The motion, licensing or other agreement, and any agreements supplemental thereto, shall be certified by the administrative law judge to the Commission with an initial determination regarding the motion for termination. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents.

The Commission shall promptly publish a notice in the **Federal Register** stating that an initial determination has been received terminating the respondent or respondents in question on the basis of a licensing or other settlement agreement, that nonconfidential versions of the initial determination and the agreement are available for inspection in the Office of the Secretary, and that interested persons may submit written comments concerning termination of the respondents in question within ten (10) days of the date of publication of the notice in the **Federal Register**. In accordance with subsection (c) of section 337 of the Tariff Act, an order of termination based upon such licensing or other settlement agreement need not constitute a determination as to violation of section 337.

(c) *Settlement by consent order.* An investigation before the Commission may be terminated as provided in paragraph (a) of this section and pursuant to subsection (c) of section 337 of the Tariff Act on the basis of a consent order settlement under § 211.20(b) of this chapter. In accordance with subsection (c) of section 337 of the Tariff Act, an order of termination based upon such a settlement need not constitute a determination as to violation of section 337.

(d) *Effect of termination.* Except as provided in paragraphs (b) and (c) of this section, an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.56(c), and an order of termination issued by the administrative law judge shall constitute an initial determination under § 210.53.

§ 210.52 Proposed findings and conclusions.

At the time a motion for summary determination under § 210.50(a) or a motion for termination under § 210.51(a) is made, or when it is found that a party is in default under § 210.25, or at the close of the reception of evidence in any hearing held pursuant to this part (except as provided in § 210.24(e)(14)), or within a reasonable time thereafter fixed by the administrative law judge, any party may file proposed findings of fact and conclusions of law, together with reasons therefor. When appropriate, briefs in support of the proposed findings of fact and conclusions of law may be filed with the administrative law judge for his consideration. Such proposals and briefs shall be in writing, shall be served upon all parties in accordance with § 210.08, and shall contain adequate references to the record and the authorities on which the submitter is relying.

§ 210.53 Initial determination.

(a) *On issues concerning permanent relief.* Except as may otherwise be ordered by the Commission, within nine (9) months, or within fourteen (14) months in a more complicated case, of the date of publication in the **Federal Register** of the notice of investigation, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether there is a violation of section 337 of the Tariff Act.

(b) *On issues concerning temporary relief.* The disposition of an initial determination concerning temporary relief is governed by the provisions of § 210.24(e)(17).

(c) *On motions for summary determination, termination, finding of default, intervention, amendment to the complaint, or notice of investigation, a "more complicated" designation (except as provided in § 210.24(e)(11)), a "complicated" designation, suspension of an investigation, or sanctions for violation of a protective order.* (1) The administrative law judge shall grant by filing with the Commission an initial determination or shall deny by issuing an order directing denial the following types of motions after they have been filed: a motion for summary determination pursuant to § 210.50; a motion for termination pursuant to § 210.51; a motion for a finding of default pursuant to § 210.25; a motion for intervention pursuant to § 210.26; a motion to amend the complaint or notice of investigation pursuant to § 210.22; a motion to designate an investigation "more complicated" pursuant to § 210.59(a) (except as provided in § 210.24(e)(11)); a motion to designate an investigation "complicated" pursuant to § 210.59(b); or a motion to suspend an investigation pursuant to § 210.59 (a) or (b).

(2) Following a motion for a sanction for violation of a protective order § 210.37, the administrative law judge shall grant or deny such motions by filing with the Commission an initial determination.

(d) *Contents.* The initial determination shall include: an opinion stating findings (with specific page references to principal supporting items of evidence in the record) and conclusions and the reasons or bases therefor necessary for the disposition of all material issues of fact, law, or discretion presented in the record; and a statement that pursuant to § 210.53(h) of these rules, the initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to § 210.54 or the Commission pursuant to § 210.55 orders on its own motion a review of the initial determination or certain issues therein.

(e) *Notice to and advice from departments and agencies.* The Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate shall be served with a copy of the initial determination. The Commission shall consider comments, limited to issues raised by the record, the initial determination, and the petitions for review, received from such agencies when deciding whether to initiate review or the scope of review. The Commission shall allow such agencies twenty (20) days after the service of an initial determination filed pursuant to § 210.53(a) or ten (10) days after the service of an initial determination filed pursuant to § 210.53 (b) or (c) to submit their comments.

(f) *Initial determination made by the administrative law judge.* The initial determination shall be made and filed by the administrative law judge who presided over the investigation, except when that person is unavailable to the Commission.

(g) *Reopening of proceedings by the administrative law judge.* At any time prior to the filing of the initial determination, the administrative law judge may reopen the proceedings for the reception of additional evidence.

(h) *Effect.* An initial determination filed pursuant to § 210.53(a) shall become the determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission, within forty-five (45) days after the date of such service shall have ordered review of the initial determination or certain isues therein pursuant to § 210.54(b) or § 210.55, or by order shall have changed the effective date of the initial determination. An initial determination filed pursuant to § 210.53 (b) or (c) shall become the determination of the Commission thirty (30) days after the date of service of the initial determination, except that the disposition of an initial determination granting or denying a motion for temporary relief is governed by the provisions of § 210.24(e).

(i) *Notice of determination.* Except as provided in § 210.24(e)(17), in the event an initial determination becomes the determination of the Commission, the

parties shall be notified thereof by the Secretary.

§ 210.54 Petition for review.

(a) *The petition and responses.* (1) Except as provided in § 210.24(e)(17), any party to an investigation may request a review by the Commission of an initial determination by filing with the Secretary a petition for review, except that a party who has defaulted may not petition for review of any issue regarding which the party is in default. A petition for review of an initial determination filed pursuant to § 210.53(a) shall be filed within ten (10) days after the service of the initial determination. A petition for review of an initial determination filed pursuant to § 210.53(c) shall be filed within five (5) days after the service of the initial determination, except that a party or proposed respondent who has not responded to the motion before the administrative law judge pursuant to § 210.24(c) may be deemed to have consented to the relief requested and may not petition for review of the issues raised in the subject motion. A petition for review filed under this section shall:

(i) Identify the party seeking review;

(ii) Specify the issues upon which review of the initial determination is sought:

(A) A finding or conclusion of material fact is clearly erroneous;

(B) A legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion; or

(C) The determination is one affecting Commission policy.

(iii) Set forth a concise statement of the facts material to the consideration of the stated issues; and

(iv) Present a concise argument setting forth the reasons why review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy.

(2) Any issue not raised in the petition for review filed under this section will be deemed to have been abandoned and may be disregarded by the Commission in reviewing an initial determination.

(3) Any party may file a response to the petition for review within five (5) days after service of the petition, except that a party who has defaulted may not file a response to any issue regarding which party is in default.

(b) *Grant or denial of review.* (1) The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53(a) within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commissioner may order. The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53(c) within thirty (30) days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall decide whether to grant a petition for review, based upon the petition and response thereto, without oral argument or further written submissions unless the Commission shall order otherwise. The standards for granting review of an initial determination are set forth in paragraph (a)(1)(ii) of this section.

(3) The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition for review shall be served by the Secretary on all parties, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate.

§ 210.55 Commission review on its own motion.

Within the time provided in § 210.53(h), the Commission on its own initiative may order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. The standards for granting review of an initial determination are set forth in § 210.54(a)(1)(ii). This section does not apply to initial determinations issued pursuant to § 210.24(e)(17) or determinations issued by the presiding administrative law judge pursuant to § 210.24(e)(11).

§ 210.56 Review by Commission.

(a) *Briefs and oral argument.* In the event the Commission orders review of an initial determination, the parties may be requested to file review briefs concerning the issues on review at a time and of a size and nature set forth in the notice of review. The parties, within the time provided for filing the review briefs, may submit a written request for a hearing to present oral argument before the Commission, which the Commission in its discretion may grant or deny. The Commission shall grant the request when at least one of the participating Commissioners votes in favor of the request.

(b) *Scope of review.* Only the issues set forth in the notice of review, and all subsidiary issues therein, will be considered by the Commission.

(c) *Determination on review.* On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge and make any findings or conclusions that in its judgment are proper based on the record in the proceeding.

(d) *Initial determinations concerning temporary relief.* Commission action on an initial determination concerning temporary relief is governed by the provisions of § 210.24(e) (17) and (18).

§ 210.57 Implementation of Commission action.

(a) *Service of Commission determination upon the parties.* A Commission determination pursuant to § 210.56(c) or a termination on the basis of a licensing or other agreement or consent settlement pursuant to § 210.51 (b) and (c), respectively, shall be served upon each party to the investigation.

(b) *Publication and transmittal to the President.* A Commission determination that there is a violation of section 337, or that there is reason to believe that there is such a violation, together with the action taken relative to such determination, or Commission action pursuant to Subparts B and C of Part 211 of this chapter shall be immediately published in the **Federal Register** and transmitted to the President, together with the record upon which it is based.

(c) *Enforceability of Commission action.* Unless otherwise specified, any Commission action, other than an exclusion order or order directing seizure and forfeiture of articles imported in violation of an outstanding exclusion order shall be enforceable upon receipt by the affected party of notice of such action. Exclusion orders and seizure and forfeiture orders shall be enforceable upon receipt of notice thereof by the Secretary of the Treasury.

(d) *Finality of affirmative Commission action.* If the President does not disapprove for policy reasons such Commission action within a period of sixty (60) days beginning on the day after delivery of a copy of such Commission action to the President, or if the President notifies the Commission before the close of such period that he approves such Commission action, then such Commission action shall become final on the day after the close of such period, or the day on which the

President notifies the Commission of his approval, as the case may be.

(e) *Duration.* Final Commission action shall remain in effect as provided in Subpart C of Part 211 of this Chapter.

§ 210.58 Commission action, public interest factor, and bonding.

(a) During the course of each proceeding under this Part when an investigation has been instituted, the Commission shall—

(1) Consider what action (general or limited exclusion of articles from entry and/or a cease and desist order, or exclusion of articles from entry under bond and/or a temporary cease and desist order), if any, it should take, and, when appropriate, take such action;

(2) Consult with and seek advice and information from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate, concerning the subject matter of the complaint and the effect its actions (general or limited exclusion of articles from entry and/or a cease and desist order, or exclusion of articles from entry under bond and/or a temporary cease and desist order) under section 337 of the Tariff Act shall have upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers;

(3) Determine the amount of the bond to be posted pursuant to paragraph (3) of subsection (j) of section 337 of the Tariff Act taking into account, among other things, the amount that would offset any competitive advantage resulting from the alleged unfair methods of competition and unfair acts enjoyed by persons benefitting from the importation of the articles in question.

(4) Receive submissions from the parties, other interested persons, Government agencies and departments, and the public with respect to the subject matter of paragraphs (a) (1), (2), and (3), of this section, which submissions shall be served upon the parties and be available to the public in the Office of the Secretary. The Commission will consider motions for oral argument or, when necessary, for a hearing with respect to the subject matter of this section, except with respect to the grant or denial of temporary relief on a motion filed pursuant to § 210.24(e).

(b) Unless otherwise ordered by the Commission or permitted by this paragraph, and except as provided in § 210.24(e) (12) and (13), the administrative law judge shall not take evidence or other information or hear arguments from the parties and other interested persons with respect to the subject matter of paragraphs (a) (1), (2), (3), and (4) of this section. However, with regard to settlements by agreement or consent order under §210.51 (b) and (c), the parties may file statements regarding the impact of the proposed settlement on the public interest, and the administrative law judge may in his discretion hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. With respect to raising the issues of appropriate Commission action, the public interest, and bonding for purposes of an initial determination concerning the grant or denial of a motion for temporary relief, see § 210.24(e) (12), (13), and (17).

§ 210.59 Period for concluding Commission investigation.

(a) Each investigation instituted under this Part shall be concluded and a final order issued no later than twelve (12) months after the date of publication in the **Federal Register** of the notice instituting the investigation, except that the Commission may designate the investigation as a "more complicated" investigation and require that it be concluded no later than eighteen (18) months after the date of publication in the **Federal Register** of the notice of investigation. A "more complicated" investigation refers to an investigation that is of an involved nature owing to the subject matter, difficulty in obtaining information, the large number of parties involved, or other significant factors. The Commission shall publish its reasons for designating the investigation as a "more complicated" ivnestigation in the **Federal Register**. In computing the 12-month and 18-month periods prescribed by this paragraph, there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

(b) An investigation may be designated "more complicated" by the Commission or the presiding administrative law judge pursuant to § 210.24(e)(11) for the purpose of extending the statutory deadline for determining whether to grant or deny a motion for temporary relief. The Commission's or the administrative law judge's reasons for designating the investigation "more complicated" for that purpose shall be published in the **Federal Register**. In computing the statutory deadline for determining whether to grant or deny a motion for temporary relief in an investigation designated "more complicated" pursuant to this paragraph (and § 210.24(e)(11)), there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

(c) Notwithstanding any provision of paragraph (a) of this section, the Commission may extend, by not more than ninety (90) days, the 12-month or 18-month period within which the Commission is required to make a final determination in an investigation if the Commission would be required to make such determination before the 180th day after the date of enactment of the Omnibus Trade and Competitiveness Act of 1988 and the Commission finds that the investigation is "complicated." A "complicated" investigation is one in which the following circumstances exist:

(1) Previously established deadlines or procedures must be changed in order to comply with provisions of the Omnibus Trade and Competitiveness Act of 1988 which amend section 337 of the Tariff Act; and

(2) The altered deadlines or procedures are impracticable, prejudice the rights of the parties, adversely affect the public interest, or create the possibility that the Commission will be unable to conclude the investigation by the prescribed 12-month or 18-month statutory deadline.

Unless otherwise ordered by the Commission, in order to obtain and implement the "complicated" designation and resulting extension of time, the parties, the administrative law judge, and the Commission shall follow the procedures used to obtain and implement a "more complicated" designation. (See §§ 210.53(c)–(i), 210.54, 210.55, 210.56 (a) through (c), and 210.57(a)). The Commission shall publish its reasons for designating an investigation "complicated" in the **Federal Register**. In computing the new termination deadline resulting from such designation, there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar

questions concerning the subject matter of such investigation.

Subpart G—Appeals

§ 210.60 Petition for reconsideration.

Within fourteen (14) days after service of a Commission determination, any party may file with the Commission a petition for reconsideration of such determination or any action ordered to be taken thereunder, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments. Any party desiring to oppose such a petition shall file an answer thereto within five (5) days after service of the petition upon such party. The filing of a petition for reconsideration shall not stay the effective date of the determination or action ordered to be taken thereunder or toll the running of any statutory time period affecting such determination or action ordered to be taken thereunder unless specifically so ordered by the Commission.

§ 210.61 Disposition of Petition for reconsideration.

The Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

§ 210.70 Interlocutory appeals.

Rulings by the administrative law judge on motions may not be appealed to the Commission prior to the administrative law judge's issuance of his initial determination, except in the following circumstances:

(a) *Appeals without leave of the administrative law judge.* The Commission may in its discretion entertain interlocutory appeals, except as provided in § 210.24(e)(15), when a ruling of the administrative law judge:

(1) Requires the disclosure of the Commission records or requires the appearance of Government officials pursuant to § 210.35(c); or

(2) Denies an application for intervention pursuant to the provisions of § 210.26. Appeals from such ruling may be sought by filing an application for review, not to exceed fifteen (15) pages with the Commission within five (5) days after notice of the administrative law judge's ruling. An answer to the application for review may be filed within five (5) days after service of the application. The application for review should specify the person or party taking the appeal, designate the ruling or part thereof from which appeal is being taken, and specify the reasons and present arguments as to why review is being sought. The Commission may, upon its own motion, enter an order staying the return date of an order issued by the administrative law judge pursuant to § 210.35(c) or an order placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues that will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.

(b) *Appeals with leave of the administrative law judge.* Except as otherwise provided in paragraph (a) of this section and § 210.24(e)(15), applications for review of a ruling by an administrative law judge may be allowed only upon request made to the administrative law judge and upon determination by the administrative law judge in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that either an immediate appeal from the ruling may materially advance the ultimate completion of the investigation or subsequent review will be an inadequate remedy. Applications for review in writing, not to exceed fifteen (15) pages, may be filed within five (5) days after notice of the administrative law judge's determination. An answer to the application for review may be filed within five (5) days after service of the application for review. Thereupon, the Commission may, in its discretion, permit an appeal. Commission review, if permitted, shall be confined to the application for review and answer thereto, without oral argument or further briefs, unless otherwise ordered from the Commission.

(c) *Investigation not stayed.* Application for review under this section shall not stay the investigation before the administrative law judge unless the administrative law judge or the Commission shall so order.

§ 210.71 Appeals of final determination to the United States Court of Appeals for the Federal Circuit.

Any person adversely affected by a final determination of the Commission under subsection (d), (e), (f) or (g) of section 337 of the Tariff Act may appeal such determination to the United States Court of Appeals for the Federal Circuit.

2. Part 211 is revised to read as follows:

PART 211—ENFORCEMENT PROCEDURES

Sec.
211.01 Purpose.

Subpart A—Informal Enforcement Procedure

211.10 Informal disposition through voluntary compliance.

Subpart B—Consent Order Procedure

Sec.
211.20 Opportunity to submit proposed consent order.
211.21 Settlement by consent.
211.22 Contents of consent order agreement.

Subpart C—Enforcement, Modification, and Revocation of Final Commission Actions

211.50 Applicability, purpose, and retroactivity.
211.51 Information gathering.
211.52 Confidentiality of information.
211.53 Review of reports.
211.54 Advice concerning Commission orders.
211.55 Modification of information requirements.
211.56 Proceedings to enforce Commission orders.
211.57 Modification or rescission of final Commission actions.
211.58 Temporary emergency action.
211.59 Notice of enforcement action to Government agencies.

Authority: 19 U.S.C. 1333, 1335, and 1337.

§ 211.01 Purpose.

This part sets forth procedures for the settlement by consent of matters that involve alleged violations of section 337 of the Tariff Act of 1930 and for the enforcement, modification, and revocation of final Commission actions. Definitions applicable to Part 210 apply to this part unless specifically provided otherwise.

Subpart A—Informal Enforcement Procedure

§ 211.10 Informal disposition through voluntary compliance.

(a) Opportunity for informal disposition. When the Commission has information obtained during the course of an informal inquiry or preliminary investigation pursuant to section 603 of the Trade Act of 1974 (19 U.S.C. 2482) indicating that a person may be engaging in a practice that may involve a violation of section 337 of the Tariff Act of 1930, it may afford such person the opportunity to have the matter disposed of on an informal administrative basis if it deems that the public-interest factors set forth in

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§ 210.58(a)(2) of this chapter will be fully safeguarded thereby.

(b) Public-interest factors to be considered. In determining whether the public-interest factors set forth in § 210.58(a)(2) of this chapter will be fully safeguarded through such informal administrative action, the Commission will consider:

(1) The nature and gravity of the practice;

(2) Whether the practice is likely to recur;

(3) The prior record and good faith of the person involved;

(4) The adequacy of assurance of voluntary compliance; and

(5) Any other relevant factor that the Commission deems appropriate.

Subpart B—Consent Order Procedure

§ 211.20 Opportunity to submit proposed consent order.

(a) Prior to institution of an investigation. Where time, the nature of the proceeding, and the public interest permit, any person being investigated pursuant to section 603 of the Trade Act of 1974 (19 U.S.C. 2482) or § 210.11(b) shall be afforded the opportunity to submit to the Commission a proposal for disposition of the matter under investigation in the form of a consent order agreement that incorporates a proposed consent order executed by or on behalf of such person and that complies with the requirements of § 211.22.

(b) Subsequent to institution of an investigation. In investigations under section 337 of the Tariff Act of 1930, a proposal to settle a matter by consent shall be submitted as a motion to the presiding officer to terminate an investigation under § 210.51 of this chapter together with a consent order agreement that incorporates a proposed consent order. If the consent order agreement contains confidential business information within the meaning of § 201.6 of this chapter, a copy of the agreement with such information deleted shall accompany the motion. The proposed agreement shall comply with the requirements of § 211.22. At any time prior to commencement of a hearing as provided in § 210.41(a)(1) of this chapter, the motion may be filed jointly by all of the following:

(1) All private complainants;

(2) The Commission investigative attorney; and

(3) One or more respondents.

However, upon request and for good cause shown, the presiding officer may consider such a motion during or after a hearing. The filing of the motion shall not stay proceedings before the presiding officer unless the presiding officer so orders. The presiding officer shall promptly file with the Commission an initial determination regarding the motion for termination. If the initial determination contains confidential business information, a copy of the initial determination with such information deleted shall be filed with the Commission simultaneously with the filing of the confidential version of the initial determination. The Commission shall promptly publish a notice in the **Federal Register** stating that an initial determination has been received terminating the respondent or the respondents in question on the basis of a consent order agreement, that nonconfidential versions of the initial determination and consent order agreement are available for inspection in the Office of the Secretary, and that interested persons may submit written comments concerning termination of the respondents in question within ten (10) days of the date of publication of the notice in the **Federal Register**. Pending disposition by the Commission of a consent order agreement, a party may not, absent good cause shown, withdraw from the agreement once it has been submitted pursuant to this section.

§ 211.21 Settlement by consent.

(a) After the initial determination on the motion for termination based on a consent order agreement has been filed with the Commission, the Commission shall promptly serve copies of the nonconfidential version of the initial determination and the proposed consent order agreement on the Department of Health and Human Services, the Department of Justice, and the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate.

(b) The Commission, after considering the effect of the consent order upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers in the manner provided by § 210.58(a) of this chapter, shall dispose of the initial determination according to the procedures of §§ 210.53 through 210.56 of this chapter. In accordance with subsection (c) of section 337 of the Tariff Act of 1930, an order of termination based upon a consent order agreement need not constitute a determination as to violation of section 337.

§ 211.22 Contents of consent order agreement.

(a) Contents. Every consent order agreement shall contain, in addition to the appropriate proposed consent order, the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order; and

(3) A statement that the enforcement, modification, and revocation will be carried out pursuant to Subpart C of Part 211, incorporating by reference the Commission's Rules of Practice and Procedure.

The consent order agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute admission by any party that section 337 of the Tariff Act of 1930 has been violated.

(b) Effect, interpretation, and reporting. The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and Parts 210 and 211 for other Commission action. Except as otherwise provided in the agreement, the complaint and notice of investigation or the proposed complaint may be used in construing the terms of the consent order, but no agreement, understanding, representation or interpretation not contained in the consent order agreement or Commission decision accompanying the consent order may be used to vary the terms of the consent order. The Commission may require periodic compliance reports pursuant to Subpart C of Part 211 to be submitted by the person entering into the consent order agreement.

Subpart C—Enforcement, Modification, and Revocation of Final Commission Actions

§ 211.50 Applicability, purpose, and retroactivity.

(a) Applicability. The rules in this subpart apply to final Commission actions issued by the Commission under section 337 of the Tariff Act of 1930, including exclusion orders, cease and desist orders, and consent orders.

(b) Purpose. The purpose of this subpart is to set forth procedures for the enforcement, modification, and revocation of final Commission actions.

(c) Retroactivity. The rules in this subpart apply to final Commission actions taken before the effective date

of these rules only to an extent not inconsistent with such final actions.

§ 211.51 Information gathering.

(a) Power to require information. Whenever the Commission takes a final Commission action, it may require any person to report facts available to that person that will aid the Commission in determining whether and to what extent there is compliance with the action or whether and to what extent the conditions that led to the action are changed. The Commission may also include provisions that exercise any other information gathering power available to it by law. The Commission may at any time request the cooperation of any person or agency in supplying it with information that will aid it in these determinations.

(b) Form and detail of reports. Reports under paragraph (a) of this section are to be in writing, under oath, and in such detail and in such form as the Commission prescribes. A final Commission action may also contain terms and conditions that exercise, or make possible the exercise of, on conditions precedent, any power of information gathering available to the Commission by law, subject to the standards of paragraph (a) of this section.

(c) Power to enforce informational requirements. Terms and conditions of final Commission actions for reporting and information gathering, and modifications of such terms and conditions, shall be enforceable by the Commission by a civil action under 19 U.S.C. 1333 or, at the Commission's discretion, in the same manner as any other provision of the final Commission action is enforceable.

(d) Term of reporting requirement. The Commission may prescribe in the final Commission action (or, in the case of a consent order, approve) the frequency of reporting or information gathering and the date on which these activities are to terminate. If no date for termination is provided, reporting and information gathering shall terminate when the final Commission action or any amendment to it expires by its own terms or is terminated. The Commission may modify informational requirements of a final Commission action at any time pursuant to §§ 211.53 and 211.55.

§ 211.52 Confidentiality of information.

Confidential information (as defined in § 201.6(a) of this Chapter) that is provided to the Commission pursuant to final Commission action will be received by the Commission in confidence. The restrictions on disclosure and the procedures for handling such information (which are set out in §§ 210.6 and 210.44 of this chapter) shall apply and, in a proceeding under § 211.56 or § 211.57, the Commission or the presiding administrative law judge may, upon motion or *sua sponte*, issue or continue appropriate protective orders.

§ 211.53 Review of reports.

(a) Review to insure compliance. The Commission, through its Office of Unfair Import Investigations, will review reports submitted pursuant to any final Commission action and conduct such further investigation as it deems necessary to insure compliance with its orders and to ascertain if such orders are being violated.

(b) Extension of time. The Director of the Office of Unfair Import Investigations may, for good cause shown, extend the time for filing reports required by Commission orders. An extension of time within which a report may be filed, or the filing of a report that does not evidence full compliance with the order, does not in any circumstances suspend or relieve a respondent from its obligation under the law with respect to compliance with such order.

§ 211.54 Advice concerning Commission orders.

(a) Advice to respondents submitting information. The Commission may advise respondents reporting or providing information whether their reports or information comply with a final Commission order or whether the actions or information set forth therein evidence compliance with the Commission order. The Commission may, in any event, institute proceedings pursuant to § 211.56 to enforce compliance with an order.

(b) Advisory opinions. Upon request of a respondent, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether a respondent's proposed new course of action or conduct would violate the Commission order or section 337 of the Tariff Act of 1930. The Commission will consider whether the issuance of such an advisory opinion would facilitate the enforcement of section 337, would be in the public interest, and would benefit consumers and competitive conditions in the United States.

(c) Revocation. The Commission may at any time reconsider its approval of any report of compliance or any advice given under this section and, where the public interest requires, rescind or revoke its prior approval or advice. In such event the respondent will be given notice of the Commission's intent to revoke or rescind as well as an opportunity to submit its views to the Commission. The Commission will not proceed against a respondent for violation of an order with respect to any action that was taken in good faith reliance upon the Commission's approval or advice under this section, if all relevant facts were fully, completely, and accurately presented to the Commission and such action was promptly discontinued upon notification of rescission or revocation of the Commission's approval.

§ 211.55 Modification of information requirements.

(a) Cease and desist orders. The Commission may modify reporting requirements of cease and desist orders as necessary to assure compliance with an outstanding action, to take account of changed circumstances, or to minimize the burden of reporting or informational access. An order to modify reporting requirements shall identify the reports involved and state the reason or reasons for modification. No reporting requirement will be suspended during the pendency of such a modification unless the Commission so orders. The Commission may, if the public interest warrants, announce that a modification of reporting is under consideration and ask for comment, but it may also modify any reporting requirement at any time without notice, consistent with the standards of this section.

(b) Consent orders. Consistent with the standards set forth in paragraph (a) of this section, the Commission may modify reporting requirements of consent orders. The Commission shall publish a notice of any proposed change in the Federal Register, together with the reporting requirements to be modified and the reasons therefor, and serve notice on each party subject to the proposed modified consent order. Such parties shall be given the opportunity to sumit briefs to the Commission, and the Commission may hold a hearing on the matter.

§ 211.56 Proceedings to enforce Commission orders.

(a) Informal enforcement proceedings. Informal enforcement proceedings may be conducted by the Commission, through its Office of Unfair Import Investigations, with respect to any act or omission by any person in violation of any provision of a final Commission action. Such matters may be handled by the Commission through correspondence or conference or in any other way that the Commission deems appropriate. The Commission may issue such orders as it deems appropriate to implement and

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insure compliance with the terms of a cease and desist or exclusion order, or any part thereof. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this Subpart.

(b) Court enforcement. To enforce a Commission order, the Commission may, without prior notice of any kind to a respondent or any proceeding otherwise available under the section, initiate a civil action in a U.S. district court pursuant to subsection (f) of section 337 of the Tariff Act of 1930, requesting the imposition of such civil penalty or the issuance of such mandatory injunctions as the Commission deems necessary to enforce its orders and protect the public interest.

(c) Formal Commission enforcement proceedings. The Commission may institute an enforcement proceeding at the Commission level by docketing a complaint setting forth alleged violations of any final Commission order. The complaint, if docketed, shall be served upon the alleged violator, and notice of the complaint and the institution of formal enforcement proceedings shall be published in the **Federal Register.** Within fifteen (15) days after the date of receipt of such complaint, the named respondent shall file a response. Responses shall fully advise the Commission as to the nature of any defense and shall admit or deny each allegation of the complaint specifically and in detail unless the respondent is without knowledge, in which case its answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed uncontroverted.

(1) Failure of a respondent to file and serve a response within the time and in the manner prescribed herein shall authorize the Commission, in its discretion, to find the facts alleged in the complaint to be true and to take such action as may be appropriate without notice or hearing, or, in its discretion, to proceed without notice to take evidence on the allegations or charges set forth in the complaint, provided that the Commission or the presiding officer (if one is appointed) may permit late filing of an answer for good cause shown.

(2) The Commission, in the course of a formal enforcement proceeding under paragraph (c) of this section, may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The hearing provided for under paragraph (c) of this section is not subject to sections 554, 556, 557, and 702 of title 5, United States Code. The Commission may delegate any hearing under paragraph (c) of this section to the Chief Administrative Law Judge for designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

(3) Upon conclusion of an enforcement proceeding under paragraph (c) of this section, the Commission may modify a cease and desist, consent, or exclusion order in any manner necessary to prevent the unfair practices that were originally the basis for issuing such order, bring civil actions in a United States district court pursuant to § 211.56(b) (and subsection (f) of section 337 of the Tariff Act of 1930) requesting the imposition of a civil penalty or the issuance of mandatory injunctions incorporating the relief sought by the Commission, or revoke the cease and desist order or consent order and direct that the articles concerned be excluded from entry into the United States.

(4) Prior to effecting any modification, or revocation, and/or exclusion, under paragraph (c) of this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(5) In lieu of or in addition to taking the action provided for in paragraph (a)(3) of this section, the Commission may issue, pursuant to subsection (i) of section 337 of the Tariff Act of 1930, an order providing that any article imported in violation of the provisions of section 337 of the Tariff Act and an outstanding final exclusion order issued pursuant to subsection (d) of section 337 be seized and forfeited to the United States, if the following conditions are satisfied:

(i) The owner, importer, or consignee of the article (or the agent of such person) previously attempted to import the article into the United States;

(ii) The article previously was denied entry into the United States by reason of a final exclusion order; and

(iii) Upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article (or the agent of such person) with written notice of the aforesaid exclusion order and the fact that seizure and forfeiture would result from any further attempt to import the article into the United States.

§ 211.57 Modification or rescission of final Commission actions.

(a) Petitions for modification or rescission of final Commission actions. (1) Whenever any person believes that conditions of fact or law, or the public interest, require that a final Commission action be modified or set aside, in whole or in part, such person may file with the Commission a petition requesting such relief. The Commission may also on its own initiative consider such action. The petition shall state the changes desired and the changed circumstances warranting such action, and shall include materials and argument in support thereof.

(2) If the petitioner previously has been found by the Commission to be in violation of section 337 of the Tariff Act of 1930 and if his petition requests a Commission determination that the petitioner is no longer in violation of that section or requests modification or rescission of an order issued pursuant to subsections (d), (e), (f), (g), or (i) of section 337, the burden of proof in any proceeding initiated in response to the petition pursuant to paragraph (b) of this section shall be on the petitioner. In accordance with subsection (k) of section 337, relief may be granted by the Commission with respect to such petition on the basis of new evidence or evidence that could not have been presented at the prior proceeding or on grounds that would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(b) Commission action upon receipt of petition. Upon receiving a petition, the Commission shall either provisionally accept the petition or reject it. The Commission shall treat a self-initiated action as a provisionally accepted petition under this section. Upon provisional acceptance, notice thereof shall be published in the **Federal Register**, and the petition and the notice shall be served on each former party to the original investigation under section 337 of the Tariff Act of 1930. Within thirty (30) days after the service of such petition, any party served may file an answer. The Commission may hold a public hearing and afford interested persons the opportunity to appear and be heard. After consideration of the petition, any responses thereto, or any information placed on the record at a public hearing or otherwise, the Commission shall take such action as it deems appropriate. Any final Commission action will, if not modified or revoked, expire by terms stated in the action. The Commission may delegate any hearing under this section to the Chief Administrative Law Judge for

designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

§ 211.58 Temporary emergency action.

(a) Whenever the Commission determines, pending a formal enforcement proceeding under § 211.56(b), that without immediate action a violation of a Commission order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation, the Commission may immediately and without hearing or notice modify or revoke such order and, if it is revoked, replace the order with an appropriate exclusion order.

(b) If the Commission determines, pending a formal enforcement proceeding under § 211.56(b), that without immediate action a violation of a final exclusion order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation, the Commission may immediately and without hearing or notice issue an order requiring temporary seizure and forfeiture of the imported articles in question, provided the following requirements are satisfied:

(1) The owner, importer, or consignee of the article (or the agent of such a person) previously attempted to import the article into the United States;

(2) The article was previously denied entry into the United States by reason of a final exclusion order; and

(3) Upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article (or the agent of such person) with written notice of the aforesaid exclusion order and the fact that seizure and forfeiture would result from any further attempt to import the article into the United States.

(c) Prior to taking any action under this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. The Commission shall, if it has not already done so, institute a formal enforcement proceeding under § 211.56 at the time of taking action under this section or as soon as possible thereafter, in order to give the alleged violator and other interested parties a full opportunity to present information and views regarding the continuation, modification, or revocation of Commission action taken under this section.

§ 211.59 Notice of enforcement action to Government agencies.

(a) Consultation. The Commission may consult with or seek information from any Government agency while taking action under this subpart.

(b) Notification of Treasury. The Commission shall notify the Secretary of the Treasury of any action under this subpart that results in a permanent or temporary exclusion of articles from entry, or the revocation of an order to such effect, or the issuance of an order compelling seizure and forfeiture of imported articles.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 24, 1988.

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National Highway Traffic Safety Administration

49 CFR Part 531

Passenger Automobile Average Fuel Economy Standards for Model Years 1989 and 1990; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. FE-88-01; Notice 2]

[RIN No. 2127-AB75]

Passenger Automobile Average Fuel Economy Standards for Model Years 1989 and 1990

AGENCY: National Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); notice of public meeting; response to petitions.

SUMMARY: The National Highway Traffic Safety Administration is seeking public comment on whether to reduce the passenger car corporate average fuel economy standards for Model Year 1989, 1990, or both. NHTSA is taking this action to determine whether retaining the 27.5 mpg standard (which is set by statute) would have a significant, adverse effect on U.S. employment or on the competitiveness of the U.S. auto industry. Until recently, the Department had no evidence to support the motion that the 1989 or 1990 standard might have such significant effects. Within the past few weeks, however, NHTSA has received information suggesting that the MY 1989 and 1990 standard could threaten the competitiveness of the U.S. auto industry. In addition, the Department seeks comment on whether the Department will be able to find again that a substantial share of the market made reasonable efforts to achieve the statutory standard. Accordingly, NHTSA is proposing to set the standard at a level between 26.5 and 27.5 mpg.

DATES: *Written Comments:* The agency is providing different comment periods for the proposed MY 1989 and MY 1990 standards. Written comments on the proposed MY 1989 standard must be received on or before September 15, 1988. Written comments on the proposed MY 1990 standard must be submitted by October 28, 1988. An explanation of the abbreviated comment period for the proposed MY 1989 standard is provided in the Supplementary Information section of this notice.

Public Meeting: A public meeting to receive oral comments on the proposed standards for both model years will be held on September 14, 1988, at 9 a.m., at the Department of Commerce Auditorium, 14th Street and Constitution Ave. NW. in Washington, DC.

Effective Date: The proposed amendments would be effective for MYs 1989–90.

ADDRESSES: *Written Comments:* Each written comment on these proposals must refer to the docket and notice numbers set out in brackets underneath "49 CFR Part 531" in the heading of this document and must be submitted (preferably 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to the Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section, at the address given above.

Public Meeting: The September 14, 1988 public hearing will be held at the U.S. Dep't of Commerce Auditorium, Herbert C. Hoover Building, 14th Street and Constitution Ave. N.W., Washington, DC. (The entrance to the auditorium is on 14th Street.)

FOR FURTHER INFORMATION CONTACT: *Questions regarding the public meeting:* Mr. James Jones, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (202–366–4793). *All other questions:* Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (202) 366–0846.

SUPPLEMENTARY INFORMATION:

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I. Introduction

For several years, the Secretary of Transportation has been calling public attention to the serious economic dislocations threatened by the law establishing the Corporate Average Fuel Economy (CAFE) program. Among other things, the Department has found, in previous years, that industry actions needed to comply with the statutory standard of 27.5 mpg seriously threatened American jobs. Indeed, the Department found specifically that tens of thousands of U.S. jobs could have been lost, had the fuel economy standard been retrained at 27.5 mpg. Accordingly the Department reduced the standards for Model Years 1986 through 1988, finding that the potential for significant economic harm from the higher standard outweighed the negligible energy savings that could (theoretically) be realized from the higher standard.

One of the most perverse aspects of the CAFE law is its positive incentive to ship U.S. jobs out of this country. The law requires that manufacturers separate their fleets into two categories: a "domestic" fleet and a "not domestically manufactured" (or, import) fleet. In fact, the rules defining "domestically manufactured" are so strict that many cars assembled in the U.S. (including all U.S.-built Japanese models) do not qualify as "domestically manufactured." The law further requires that the CAFE standard be met separately by a manufacturer's "domestic" fleet and its "import" fleet. For U.S. manufacturers, each of which has two fleets under this rule, the two fleets cannot be averaged together for compliance purposes. In contrast, the Japanese companies average their small cars with their largest cars, because they don't have any cars that meet the strict "domestic" content rules. This provision hurts only the U.S. auto makers and U.S. autoworkers—because it encourages the export of U.S. jobs for the sole purpose of affecting the assignment of a model to "import" rather than the "domestic", fleet. Obviously, this result would have *no* impact on the fuel efficiency of the model, but would have significant adverse effects on the employment status of the U.S. autoworkers employed to construct that car model or its parts. In previous fuel economy rulemaking proceedings, the Department found that the 27.5 mpg standard posed a significant threat to U.S. jobs by encouraging manufacturers to ship jobs out of the country solely for CAFE compliance.

In these previous rulemaking decisions, the agency also found that the auto manufacturers had made reasonable plans to achieve the statutory standard, but that these plans had been derailed for reasons outside the control of the manufacturers. Based on new information suggesting that economic dislocations could occur if the statutory standard of 27.5 mpg is retained for MY 1989 and 1990, the agency has opened this proceeding to ascertain the magnitude of the threatened economic dislocations and the reasons for them. The Department is particularly concerned about whether the statutory standard significantly threatens U.S. jobs or the competitiveness of the U.S. auto industry. Finally, the Department is seeking comment on whether the Department will be able to find again that a substantial share of the market made reasonable efforts to achieve the statutory standard.

If the Department decides to amend the standard, the amendment must be set at the "maximum feasible average fuel economy level." Section 502(e) of the Act requires the agency to consider four factors in determining that level: technological feasibility, economic practicability, the effect of other Federal standards on fuel economy, and the need of the nation to conserve energy. Another focus of this proposal is a request for information and comments concerning the maximum feasible CAFE level.

II. Background

A. Corporate Average Fuel Economy Statutory Provisions

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act (EPCA). One provision of EPCA established an automotive fuel economy regulatory program and was added as a new Title V to the existing Motor Vehicle Information and Cost Savings Act (the Act, 15 U.S.C. 2001 *et seq.*). The program includes corporate average fuel economy (CAFE) standards for passenger automobiles.

Title V specified CAFE standards for passenger automobiles of 18, 19, and 20 mpg, for MYs 1978, 1979, and 1980, respectively. The Secretary of Transportation (as delegated to the NHTSA Administrator) was required to establish standards for MYs 1981–1984. For MY 1985 and thereafter, Title V specifies a standard of 27.5 mpg.

Under the Act, the agency has discretion, in certain circumstances, to amend the 27.5 mpg standard. Section 502(a)(4) provides that the standard for MY 1985 or any year thereafter may be amended to a level which the agency determines is the "maximum feasible average fuel economy level" for the model year in question. In determining maximum feasible, the agency is required by section 503(e) of the Act to consider the following four factors: (1) Technological feasibility; (2) economic practicability; (3) the effect of other Federal motor vehicle standards on fuel economy; and (4) the need of the Nation to conserve energy.

While compliance with fuel economy standards is determined by averaging the various models produced by each manufacturer, enabling them to produce vehicles with fuel economy below the level of the standard if they produce sufficient numbers of vehicles with fuel economy above the level of the standard, manufacturers may not average their imported cars together with their domestically manufactured cars. Instead, manufacturers must meet fuel economy standards separately for their imported and domestically manufactured fleets. (See section 503 of the Act.) Cars are considered to be domestically manufactured if they have at least 75 percent domestic content. Conversely, cars are considered to be imports, or as the statute characterizes them, "not domestically manufactured," if they have less than 75 percent domestic content. One result of this provision is that domestic automakers are unable to take advantage of the higher fuel economy of smaller imported vehicles which they sell, for purposes of CAFE compliance of their domestic fleets.

While a separate fuel economy standard is set for each model year, the Cost Savings Act does not require absolute achievement of the standard by manufacturers within each year. Instead, it allows a shortfall in one year (or years) to be offset if a manufacturer exceeds the standard for another year (or years). Under the Act, as amended by the Automobile Fuel Efficiency Act of 1980, manufacturers earn credits for exceeding average fuel economy standards which may be carried back for three model years or carried forward for three model years. If a manufacturer still does not meet the standard, after taking credits into account, it has committed "unlawful conduct" under section 508 of the Act, and is liable to the Federal government for civil penalties.

In recent years, the Department increasingly has become aware of—and concerned by—the discriminatory effects and adverse impacts of the CAFE program, and of its marginal relevance to *real* fuel economy. On August 5, 1987, the Secretary of Transportation submitted to Congress draft legislation that would repeal the corporate average fuel economy standards for new model years. The bill would also retain and update the Environmental Protection Agency's (EPA) fuel economy labeling requirements, and revise EPA's automotive fuel economy testing procedures to require that results simulate conditions of actual use. The legislation was proposed in light of a number of considerations, including the fact that the energy conservation goals that Congress sought to achieve by the CAFE program largely have been realized. Another is the growing view of economic thought that the decontrol of the price of oil and changes in gasoline prices, rather than CAFE standards, were primarily responsible for the increase in fuel efficiency over the past decade. The nation might well have achieved similar results simply through the natural operation of the market.

Moreover, it is clear that CAFE standards can cause serious economic distortions in the marketplace. For example, while the standards exert pressure on manufacturers to sell a mix of vehicles to meet the required CAFE level, they do nothing to ensure that consumers will want to buy the mix the manufacturers offer. Indeed, if standards are set at too high a level, the manufacturers may be able to meet the standards only by restricting the sale of their larger (domestically produced) vehicles and engines, resulting in the loss of American jobs and less choice for consumers. The law also provides perverse incentives for domestic carmakers to move parts and assembly jobs for larger cars out of the United States, just so those vehicles can be shifted from the "domestic" to the "imported" fleet. Also, CAFE standards place the full-line U.S. automakers at a competitive disadvantage, as compared to other producers who specialize in smaller vehicles. As a result, domestic manufacturers may be forced to restrict sales of their larger, less fuel efficient vehicles. Import manufacturers who are not constrained by the CAFE standards simultaneously are entering this market segment, which long has been dominated by domestic manufacturers. The Secretary noted that there is strong evidence that the market will continue to provide the proper balancing of fuel-efficient vehicles versus other vehicle characteristics such as size, safety, and performance, and concluded that the most sensible public policy is to repeal the CAFE standards program.

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Unfortunately, the Congress has not yet taken any action on the Department's legislative proposal. Unless and until the draft legislation becomes law, NHTSA must continue to administer the law as it is currently written, and as it has been construed by the courts. Thus, today's notice is based on the existing law.

B. Setting the 1981–84 Standards

On June 30, 1977, NHTSA published in the Federal Register (42 FR 33534) a final rule establishing the MYs 1981–1984 passenger automobile CAFE standards. The selected standards were 22.0 mpg for 1981, 24.0 mpg for 1982, 26.0 mpg for MY 1983 and 27.0 mpg for MY 1984.

As part of establishing the 1981–1984 standards, the agency developed estimates of the maximum feasible fuel economy for each manufacturer for MYs 1981 through 1985. The agency's conclusion at that time was that "levels of average fuel economy in excess of 27.5 mpg are achievable in the 1985 time frame." 42 FR 33552 The agency believed that it was feasible for GM to achieve an average fuel economy level of 28.9 mpg in MY 1985, Ford 27.9 mpg and Chrysler 26.7 mpg. See 1977 Rulemaking Support Paper (RSP), p. 5–36 (Table 5.11). Those levels were based on a number of assumptions, including the ability of manufacturers to maintian a rapid rate of introduction of technology, consumer acceptance of a 10 percent reduction in vehicle acceleration, and significant use of a widespread range of technological options, including weight reduction, improved transmissions and lubricants, reduced aerodynamic drag, reduced accessory losses and reduced tire rolling resistance.

The agency's estimates did not assume a downward mix shift in automobile sizes or the use of diesel engines. The agency concluded that a standard set at a level that required substantial mix shifts would not be economically practicable due to the risk that a signficant number of consumers might defer purchasing new automobiles, resulting in a substantial sales drop. However, these techniques were viewed in the 1977 rule as "constituting a safety margin" for manufacturers in the event that other technological improvements did not result in sufficient CAFE improvements. 42 FR 33545, June 30, 1977.

As to foreign manufacturers, the 1977 RSP projected that all but three of them could improve their average fuel economy levels, without expanded use of diesel engines, sufficiently to meet the 27.5 mpg standard. With fleet fuel economy improvements from additional diesels included in the foreign fleet projections, only one manufacturer, Mercedes, was projected to fall below the 1985 standard.

It should be emphasized that the agency's 1977 estimates were intended to demonstrate the feasibility of achieving the 27.5 mpg standards and not to predict what specific actions the manufacturers would actually take to achieve the standard. The agency's estimates were based on one scenario of what the agency believed manufacturers could do to achieve an average fuel economy level of 27.5 mpg by 1985. Manufacturers were free to pursue other courses of action to achieve the 27.5 mpg fuel economy level.

C. Events from 1977 to 1984

In January 1979, NHTSA presented new feasibility estimates for each manufacturer for MYs 1980 through 1985 in its Third Annual Report to the Congress on the Automotive Fuel Economy Program (44 FR 5742, January 29, 1979). The agency stated that "(o)n balance, the conclusions reached during the 1981–84 rulemaking * * * are similar to those resulting from the most recent assessments. These assessments indicate that all domestic manufacturers can exceed the scheduled standards for each year through 1985." 44 FR 5757.

Between January and May of 1979, NHTSA received a number of submissions from Ford and General Motors on the 1981–1984 fuel economy standards for passenger automobiles asserting that those standards should be reduced. In response to these submissions, the agency published a document entitled "Report on Requests by General Motors and Ford to Reduce Fuel Economy Standards for MY 1981–85 Passenger Automobiles," DOT HS–804 731, June 1979. The report concluded that the standards were technologically feasible and economically practicable and noted that both companies had submitted product plans for meeting the standards. Report, p. 14.

One year later, the Nation was in the midst of another energy crisis, brought on by events in Iran. Gasoline prices were rising rapidly, creating significantly increased consumer demand for small cars. The U.S. city average retail price for gasline rose from 88 cents per gallon in 1979 to $1.22 in 1980. (In 1986 dollars, this increase was from $1.33 in 1979 to $1.83 in 1980.) In light of these changed conditions, the industry announced plans to significantly exceed the 27.5 mpg standard for 1985. Both Ford and GM, as well as Chrysler and American Motors (now a part of Chrysler), indicated that they expected to achieve average fuel economy in excess of 30 mpg for that model year. Product plans submitted to NHTSA by these companies indicated that the projections assumed significant mix shift toward smaller cars and rapid introduction of new technology.

On January 26, 1981, NHTSA published an advance notice of proposed rulemaking (ANPRM) in the Federal Register (46 FR 8056) which addressed the issue of passenger automobile fuel economy standards for MY 1985 and beyond. That notice and an accompanying paper entitled "Analysis of Post-1985 Fuel Economy," assumed that manufacturers would achieve their announced average fuel economy goals of over 30 mpg for 1985.

On April 16, 1981, NHTSA published in the Federal Register (46 FR 22243) a notice withdrawing the ANPRM. The notice stated that "(t)his action is being taken in recognition of market pressures which are creating strong consumer demand for fuel-efficient vehicles and sending clear signals to the vehicle manufacturers to produce such vehicles. It is expected that the market will continue to act as a powerful catalyst * * *."

Conditions affecting fuel economy changed dramatically after 1981, following completion of decontrol of domestic oil and other external factors increasing available supplies. Gasoline prices did not continue to rise but instead declined over time. This, combined with economic recovery, caused consumer demand to shift back toward larger cars and larger engines. Data submitted to the agency by GM and Ford in mid-1983 indicated that instead of achieving fuel economy well in excess of the 27.5 mpg standard for MY 1985, they would be unable to meet the levels prescribed by the standard.

D. Rulemakings to Amend the MYs 1986–1988 CAFE Standards

In response to petitions from GM and Ford, the agency exercised its discretion and lowered the MY 1986 and MY 1987–88 passenger automobile CAFE standards in two separate rulemakings. (For MY 1986, see 50 FR 40528, October 4, 1985; for MYs 1987–88, see 51 FR 35594, October 6, 1986.) (The agency denied petitions by Mercedes-Benz and GM to amend retroactively the MYs 1984–85 passenger automobile CAFE standards. (See 53 FR 15241, April 28, 1988.))

The rulemaking reducing the MYs 1986–1988 CAFE standards were consistent with the Cost Savings Act and its legislative history which clearly indicate that NHTSA has the authority to reduce fuel economy standards. The determination of maximum feasible

average fuel economy level is made as of the time of the amendment. The agency has emphasized, however, that it could not reduce properly a standard under the Act if a current inability to meet the standard resulted from manufacturers previously declining to take reasonable steps to improve their average fuel economy as required by the Act.

For MY 1986, the agency evaluated the manufacturers' past efforts to achieve higher levels of fuel economy as well as their immediate capabilities. Based on the information received, the agency concluded that Ford and GM, constituting a substantial part of the industry, had taken or planned appropriate steps to meet the 27.5 mpg standard in MY 1986 and made significant progress toward doing so, but were prevented from fully implementing those steps by unforeseen events. The decline in gasoline prices, which began in 1982, had been expected to be temporary and quickly reverse, but instead continued. The agency concluded that, among other things, there had been a substantial shift in expected consumer demand toward larger cars and engines, and away from the more fuel-efficient sales mixes previously anticipated by GM and Ford. The agency's analysis indicated that this shift was largely attributable to the continuing decline in gasoline prices and that the only actions available to those manufacturers to improve their fuel economy in the remaining time for MY 1986 would have involved product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into the tens of thousands, and unreasonable restrictions on consumer choice. That action was recently upheld by the D.C. Circuit Court of Appeals as consistent with the provisions of the Act and within the agency's discretion. (*Public Citizen* v. *National Highway Traffic Safety Administration*, 848 F. 2d 256, 264 (D.C.Cir. 1988)

The agency also lowered to 26.0 mpg the standards for MYs 1987–88. In this case as well, the agency determined that manufacturers had made reasonable efforts at compliance, but that these efforts had been overtaken by unforeseen events, whose effects could not be overcome by available means within the time available. NHTSA stated: "* * * both GM and Ford have continued to make significant technological improvements in their fleets and have had reasonable plans to meet CAFE standards. In a situation where unforeseen events, including changes in consumer demand or changes in the competition's product offerings, overtake a manufacturer's reasonable product plan, the agency does not consider it consistent with the Act to "hold" the manufacturer to carrying out a product plan that has become economically impractical." (51 FR 35611)

In evaluating the reasons for GM's and Ford's declining MYs 1987–88 CAFE projections, the agency noted that the companies appeared to be applying the same technologies as planned in late 1983. In the case of GM, NHTSA stated that the two major reasons for the decline in GM's CAFE projections were net engine and model mix shifts, and engine and transmission improvement programs not yeilding projected gains. The great majority of the factors reducing Ford's CAFE projections were due to net shifts in projected sales for models and engines, engine efficiency improvements not yielding projected gains, and new models not meeting initial weight targets. The agency thus concluded that the major reasons for the decline in both GM's and Ford's MYs 1987–88 CAFE projections were largely beyond those companies' control. (51 FR 35610) NHTSA's analysis further indicated that the only actions then available to those manufacturers to raise the fuel economy in their domestic fleets to 27.5 mpg in MYs 1987–88 would involve a combination of (1) product restrictions likely resulting in significant adverse economic impacts, including substantial job losses and sales losses and unreasonable restrictions on consumer choice, and (2) transfer of the production of large cars outside of the United States, thereby costing American jobs, while having absolutely no energy conservation benefits. (51 FR 35594)

III. Petitions To Amend the Modal Year 1989 and 1990 CAFE Standards

The agency received five petitions to amend the passenger car CAFE standards for MYs 1989 and 1990. All petitions seek rulemaking to lower those CAFE standards, with four of the petitions requesting a lower standard based on the reported prospective inability of automobile manufacturers to meet the statutorily set standard of 27.5 mpg. The fifth petition requests a lower standard based on the contention that the CAFE program has caused an increase in motor vehicle fatalities. A brief summary of each petition follows.

A. Manufacturer Petitions

Automobile Importers of America, Inc.

On February 12, 1988, the Automobile Importers of America, Inc. (AIA) petitioned the agency to reduce the passenger automobile CAFE standards to 26.0 mpg for MYs 1989 and 1990. (Docket No. PRM–FE–011; supplemented May 25, 1988, Docket No. PRM–FE–011A) AIA represents 19 automobile importers, including BMW, Fiat/Alfa Romeo, Honda, Hyundai, Isuzu, Jaguar, Mazda, Mitsubishi, Nissan, Peugeot, Porsche, Renault, Rolls-Royce, Saab-Scania, Subaru, Suzuki, Toyota, Volvo and Yugo. The basic thesis of the AIA petition is that the 27.5 mpg CAFE standard for MYs 1989 and 1990 is technologically infeasible and economically impracticable under Title V, because it will unduly restrict consumer choice. AIA states that there is no evidence that the situation which caused NHTSA to amend the MYs 1986–1988 CAFE standards, i.e., high consumer demand for better performing cars with more features, will not continue for 1989 and 1990 as it has in previous years.

The focus of the AIA petition is the fuel economy abilities of the single- and limited-line manufacturers, who, according to AIA, lack one crucial advantage of the American full-line manufacturers. They do not have a wide variety of sizes of smaller cars to average against their larger, higher performance cars. AIA also argues that these manufacturers have been at the forefront of implementing technological advances, including those that improve safety and fuel economy. However, AIA states that many of the safety advances pioneered by these manufacturers, such as antilock brakes and airbags, have a negative effect on fuel economy.

In addition, AIA makes several other points in support of its request to lower the standards. First, AIA states that the resultant savings from a CAFE standard of 27.5 mpg compared to those from a standard of 26.0 mpg would be equal to approximately one-tenth of one percent of all motor vehicle fuel consumed in the United States during 1986. Second, the group argues that the goals of EPCA have already been met, because the entire fleet of automobiles exceeds 27.5 mpg. Third, AIA says that the single-line or limited-line manufacturer is at a disadvantage with too-stringent CAFE standards. Since such a manufacturer does not sell smaller cars, it does not have the option of refusing to sell larger cars or of providing incentives for smaller cars.

Austin Rover

Austin Rover Group Limited petitioned the agency on March 8, 1988, to reduce the passenger automobile CAFE standards to 26.0 mpg for MYs

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1989 and 1990. Austin Rover, in collaboration with Honda Motors, produces the Sterling automobile for sale in the United States. Austin Rover's basis for petitioning is that it is a single-line manufacturer of "executive class" automobiles, with no smaller models to offset the lower fuel economy of the executive class automobiles. Austin Rover's petition includes a listing of the various engine and vehicle parameters said to have been optimized for fuel economy. (Austin Rover is not a member of AIA.)

Mercedes-Benz of North America, Inc.

On March 16, 1988, Mercedes-Benz of North America (Mercedes) petitioned the agency to reduce the passenger automobile CAFE standard for MY 1989 and later model years to 22.0 mpg. Mercedes believes that this is the maximum achievable level, in the near term by most limited-line manufacturers which operate in a restricted market segment. (Mercedes is not a member of AIA.)

Mercedes' main argument is that limited-line manufacturers such as Mercedes have taken all steps necessary to reduce the fuel consumption of the vehicles they produce, and that the source of their inability to comply is the narrow market which they serve. Mercedes urges NHTSA, in setting the new CAFE standard for model year 1989 and beyond, to recognize that a manufacturer's ability (or failure) to comply depends primarily on the nature of consumer demand for its products.

Mercedes urges the agency to lower the standard, stating that NHTSA should not keep the standard at 27.5 mpg when it knows that the standard cannot be achieved by limited-line manufacturers such as Mercedes. Mercedes says that a CAFE standard set above the capabilities of a particular segment of the market is an anti-competitive regulation and strongly suggests that, accordingly, NHTSA has a statutory obligation to revise the standard for MY 1989 and beyond.

General Motors

On May 17, 1988, General Motors Corporation (GM) submitted a petition requesting the agency to amend the MYs 1989 and 1990 passenger car CAFE standards to the maximum feasible level. The GM petition did not provide specific data to support its request; instead, the petition indicated support of the petitions previously filed, endorsed the opening of rulemaking to establish the maximum feasible level for MYs 1989 and 1990, and referred the agency to GM comments submitted in connection with the AIA petition, and in connection with the agency's amendment of the MY 1986 and MYs 1987–88 passenger car standards.

B. CEI Petition

Competitive Enterprise Institute

The Competitive Enterprise Institute (CEI) petitioned the agency on April 11, 1988, to set the passenger automobile CAFE standard for MYs 1989 and 1990 at 24.0 mpg. CEI is the only petitioner whose request to reduce the CAFE standards is not based on arguments that some manufacturers currently are unable to meet the standards. Instead, CEI contends that the CAFE program is causing an increase in vehicle occupant fatalities and that a CAFE of 27.5 mpg for MY 1989 will result in increased deaths of 2,200 to 3,900 over the life of that year's fleet. Further, CEI asserts that neither Congress nor the agency consciously considered the possible adverse safety side effects of CAFE standards, and that the agency is therefore without power to adopt standards until it makes a specific finding that the savings in fuel is worth the increase in highway fatalities. CEI contends that 24.0 mpg is what the average new car fuel economy would be if there were no CAFE regulatory program, and uses this assumption as the basis for promoting 24.0 mpg as the appropriate level to set.

IV. Summary of Agency Response to Petitions

In reviewing the manufacturers' petitions to lower the CAFE standards for MYs 1989–90, the agency has attempted to apply the analytical approach it spelled out in the decisions to amend the standards for MYs 1986–88. Accordingly, the agency published a request for comments relating to the petitions (53 FR 8668, March 16, 1988) and followed up with specific information requests to several manufacturers. The purpose of this activity was to obtain information to allow the agency to assess the reasonableness of the manufacturers' efforts to achieve the 27.5 mpg statutory standard and to ascertain the maximum feasible fuel economy levels for MYs 1989 and 90. The initial responses to the notice and those requests were not sufficient to permit the agency to attempt to assess the reasonableness of manufacturer efforts to achieve the 27.5 mpg statutory standard. Recently, however, GM supplied information to NHTSA that is sufficient to permit the agency to go forward with this proposal. (All publicly available material supplied by GM is in the docket in this proceeding.) For purposes of a possible final rule, the agency will complete its analysis of GM's submissions, both as to whether they are sufficient for the agency to make a determination concerning the reasonableness of that company's efforts and, if so, whether GM in fact made reasonable efforts to meet the statutory standard for MYs 1989–90. This proposal will permit manufacturers and others to present data, views and arguments about retaining or reducing the standard. Accordingly, it requests information and comment from all interested persons on manufacturers' reasonable efforts and maximum feasible fuel economy levels.

As the agency set forth clearly in the decisions to reduce the MYs 1986–88 standards, NHTSA does not believe it can properly lower the statutorily set standard of 27.5 mpg unless it first can make a determination that manufacturers have made reasonable efforts to attain the standard. If the agency makes such a determination in this instance, it will analyze the industry's maximum feasible CAFE level, and adopt a standard in the range of 26.5 mpg to 27.5 mpg. As discussed more fully below, NHTSA believes the lower end of the range, 26.5 mpg, is appropriate given the agency's longstanding interpretation of the statutory requirement that standards be set at the "maximum feasible" level, taking industrywide considerations into account, and the CAFE projections and recent CAFE performance of manufacturers whose sales (individually or combined) represent a substantial share of the market. The high end of the range, 27.5 mpg, represents the current level of the standard.

With regard to CEI's petition, the agency seeks comment on the issues raised in the petition, as discussed later in this preamble.

V. Agency Analytical Approach in Amending Standards

When it adopted EPCA, Congress established a long-term obligation on the part of manufacturers to bring their fleets into compliance with the 27.5 mpg standard and provided for civil penalties for the failure to do so. While Title V provides no express guidance concerning the appropriate circumstances for the exercise of its discretion to amend, the agency has been guided by the purposes of EPCA and by the statutory scheme of Title V. As the agency has explained in its rulemaking actions lowering the MYs 1986–88 standards, it believes that the exercise of its discretion consistent with those factors is required by the

provision in the Administrative Procedure Act stating that an agency's discretionary decision will be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (5. U.S.C. 706(2)(A)]

For petitions requesting a reduction in an existing CAFE standard, the agency has stated previously that it would not lower the 27.5 mpg standard unless the agency could conclude both that the manufacturers have made reasonable efforts to comply with the prescribed standard *and* that the 27.5 mpg standard is above the "maximum feasible" level for the industry.

In administering the fuel economy program, NHTSA must take into account "industrywide considerations". This phrase also has been discussed in several previous documents. In its petition to lower the MYs 1989–90 standards, Mercedes proffered another interpretation of this term, to include European manufacturers, as a significant segment of the industry. The issue of industrywide considerations has been addressed on many previous occasions, and most recently in the April 26, 1988 agency denial of petitions to amend retroactively the MYs 1984 and 1985 passenger automobile CAFE standards. The agency reiterates its position below:

The CAFE statute requires that, for each model year, there be a single standard for all passenger automobile manufacturers not exempted under section 502(c). Section 502 does not state expressly whether the concept of feasibility is to be determined in setting passenger automobile standards on a manufacturer-by-manufacturer basis or on an industrywide basis. The agency has therefore long interpreted this section in a manner that is consistent with the legislative history of Title V. The conference report accompanying Title V states, with respect to determining the maximum feasible average fuel economy level:

Such determinations should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the [Administrator] must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under section 508(b) in situations where competition will suffer significantly if penalties are imposed. (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–5 (1975))

This language expresses two themes: first, a Congressional goal of improved fuel economy for the nation and second, fuel economy standards which are set at the maximum feasible level. NHTSA has construed this language many times. For example, as the agency stated in the 1977 notice establishing the MYs 1981–84 standards for passenger automobiles, Congress did not intend that standards simply be set at the level of the single least capable manufacturer. Setting standards in that fashion would have vitiated the CAFE program. This point can be illustrated by considering the effects of setting a standard at 19.0 mpg, based on the capability of a single manufacturer with a market share of less than one percent. Such a standard would have no possible impact on the balance of the manufacturers which, together produce more than 99 percent of all cars and have higher average fuel economies.

Since this initial interpretation, the agency has expanded its position, noting that the statute contemplated that standards should not be set above the capability of manufacturers whose sales represent a substantial share of the market. (50 FR 29912, 29923) This would apply either to a single larger such manufacturer or to a combination of smaller manufacturers constituting together a substantial share of the market. In the final rule reducing the MYs 1987–88 standards, the agency concluded that the particular compliance difficulties of several of the European manufacturers, whose combined market share is relatively small, was not legally sufficient to justify a standard set for below the capabilities of the other manufacturers. (51 FR 35617)

The agency does not believe that Congress intended the CAFE standards to be governed by the abilities of a single, narrow segment of the industry, such as the projected 0.8 percent market share of Mercedes in MY 1988, or even the 6.7 percent combined market share of European manufacturers in that model year. (It also should be noted that the 6.7 percent reflects all European manufacturers; 3.2 of those 6.7 percentage points represent European manufacturers that already achieve or exceed 27.5 mpg, i.e., Volkswagen/Audi and Yugo.)

This statement is not intended as criticism of those manufacturers for not achieving 27.5 mpg CAFE, or as lack of appreciation for the difficulty caused to them by the CAFE program. On the contrary NHTSA believes that regulation of fuel economy by a single standard to be met on a corporate average basis—as required by Title V—is unfair to many manufacturers which produce larger cars (including full-line U.S. manufacturers as well as limited-line European producers). The burdens of the program fall entirely on the manufacturers which produce larger or higher performance cars, especially if they also do not have sufficient smaller or lower-performance cars that can be averaged into the same fleet. Other manufacturers, including a number of major importers, are, as a practical matter, not required to take any actions to improve fuel economy or change product offerings. Moreover, these other manufacturers can produce smaller and mid-size cars that compete against those of the full-line manufacturers, without concern as to how much fuel economy technology is incorporated in the cars. This results in a potential cost advantage for these manufacturers—and a competitive disadvantage for the companies that also produce larger cars. This overall issue is one of the reasons NHTSA has recommended repeal of the CAFE program. Unfortunately, the Act does not permit the agency to set the standard based on the discriminatory impact on a small portion of the market, even though the agency is keenly aware of the practical problems it presents to many manufacturers.

Clearly, NHTSA's decade of consistent interpretation of the statutory scheme cannot be abandoned without good cause, and the agency is not persuaded that Mercedes' petition demonstrates that the agency's consistent interpretations are erroneous. While the agency appreciates the frustration of the limited-line manufacturers which believe that they have achieved their own individual maximum feasible levels of fuel economy and still fall short of the CAFE standard, it notes that the manufacturers are pursuing an administrative solution to a legislative problem. These manufacturers really are alleging that they can *never* meet the statutorily set standard of 27.5 mpg, due to the market segment in which they compete. This, however, is inherent in a statutory scheme in which single standards must be set on the basis of the entire industry, but met by individual manufacturers. In

this case, the appropriate solution to the dilemma faced by these manufacturers can be obtained only from Congress, not from NHTSA.

NHTSA believes that the approach regarding "industry-wide" considerations used in its determinations of "maximum feasible" also is appropriate in its determination of reasonable efforts. Accordingly, the agency believes that it is inappropriate to base a determination of reasonable efforts or maximum feasible level solely on any market segment which does not represent a substantial share of the industry. For this reason, in today's analyses, the agency principally considered the efforts of Ford and GM, since either of their sales represents a substantial share of the market.

VI. Reasonable Efforts Analysis

A key issue in deciding whether to exercise its discretion to amend the statutorily set CAFE standard for passenger automobiles of 27.5 mpg is a determination by the agency that manufacturers have made reasonable efforts to meet the standard. The agency has explained its reasonable efforts analysis in several previous documents, including the rulemakings lowering the MY 1986 and MYs 1987–1988 passenger automobile CAFE standards and the document denying the petitions by Mercedes and GM to amend the MY 1984 and 1985 passenger automobile CAFE standards. (For MY 1986, see 50 FR 40528, October 4, 1985; for MYs 1987–1988, see 51 FR 35594, October 6, 1986; for the petition denial for MYs 1984–1985, see 53 FR 15241, April 28, 1988.) Because this determination is critical to the agency's decision whether or not to amend the CAFE standards for MYs 1989 and 1990, the agency repeats its rationale below.

The agency sees the determination of reasonable efforts as a necessary step to amending a given year's CAFE standard. Since Title V imposed a long-term obligation on manufacturers to achieve a 27.5 mpg fuel economy level, the agency could not properly exercise its limited statutory discretion to amend the standard if the current inability to meet the standard resulted simply from manufacturers previously declining to take steps needed to improve their average fuel economy as required by the Act. Therefore, the agency must evaluate the manufacturers' past efforts to achieve higher levels of fuel economy, as well as their current capabilities.

The agency's evaluation of the reasonableness of manufacturer efforts is not only a prudent but also a necessary step. To reduce a standard notwithstanding the absence of reasonable efforts would be an abuse of discretion i.e., beyond the agency's limited administrative authority under the Act. In its recently-issued opinion upholding NHTSA's reduction of the MY 1986 CAFE standard for passenger automobiles and citing approvingly the "reasonable efforts" test, the Court of Appeals for the D.C. Circuit said that "(l)owering the standard whenever the larger manufacturers assert current inability to meet that standard would, without doubt, completely vitiate the statutory scheme." *Public Citizen* v. *National Highway Traffic Safety Administration*, 848 F. 2d 256, 264 (D.C.CIR. 1988).

In reviewing the current requests to lower the standard, the agency needs to analyze the statements and actions of the manufacturers particularly carefully, in view of the amount of time which has passed since the events which led to the reduction of the MYs 1986–88 CAFE standards for passenger automobiles (i.e., the unexpected decline in gasoline prices during the early 1980's, leading to increased consumer demand for larger, more powerful, less fuel-efficient vehicles). The significance of the increasing length of this interval of time was noted in *Center for Auto Safety, et al.* v. *Thomas*, a recent case considered by the full D.C. Circuit Court sitting *en banc* concerning EPA's adjustments to the formula for computing manufacturers' actual CAFE levels. In that case, one-half of the evenly-split court observed: "Whatever the barriers to changing MY 1987 and 1988 vehicles as of August 20, 1985, it is uncontested that, MY 1990 and MY 1991, the auto manufacturers could have redesigned their vehicle offering to enhance fuel economy." 847 F. 2d 843, 858 (D.C.Cir. 1988) (per curiam).

In evaluating the manufacturers' past efforts to achieve compliance with a standard of 27.5 mpg consistent with section 502(e) of the Cost Savings Act, and as noted in the two previous rulemakings lowering the 27.5 mpg standard, the agency does not consider it appropriate to judge each and every manufacturer product action by 20–20 hindsight. Instead, the agency reviews the manufacturers' fuel economy efforts in light of "the information available to manufacturers at the time product decisions were being made."

For MY 1986, and again for MYs 1987–88, the agency determined that GM and Ford had plans adequate to meet the 27.5 mpg standard, but that these plans were overtaken by unforeseen events in the early 1980's. The agency identified a number of factors which led to lower than expected CAFE levels, including the dropping price of gasoline and a related increase in expected consumer demand for larger and more powerful cars. The agency concluded that the manufacturers did not have time to offset the impact of these unexpected events by developing and implementing supplementary or alternate plans for meeting the CAFE standard of 27.5 mpg for MYs 1986–88.

The agency also noted in both the MY 1986 rulemaking and the MYs 1987–88 decision that Title V contemplates that manufacturers would have to adopt intensified and/or supplementary methods of compliance in the event that previous plans were unsuccessful. The fact that adequate plans had been overtaken by unforeseen events in the early 1980's was only a temporary justification for not achieving the long-term 27.5 mpg CAFE goal set by Congress. The agency noted in these previous determinations that in view of the statutory program of mandatory maximum feasible standards:

> Manufacturers had an obligation to take whatever steps were necessary consistent with the factors of section 502(e). (My 1986 final rule, 50 FR 40528)
>
> On the other hand, as it becomes apparent that additional application of technology, such as further penetration of front-wheel drive or additional use of material substitution, is necessary to meet CAFE standards, manufacturers must initiate efforts to redesign and replace their older cars as necessary to meet such standards. (51 FR 35594, 35611)
>
> The agency also emphasized that while changes in product plans which may, as an unintended effect, reduce CAFE, are consistent with the statutory criteria to the extent that they reflect changes in what is economically practicable, manufacturers recognizing the consequences of such changes must then pursue additional means, consistent with the factors of section 502(e), to meet the standards. (MY 1987–88 rulemaking, referring to and affirming the analysis in the MY 1986 rulemaking, 51 FR 35594, 35600)

Given the passage of time since those unforeseen events in the early 1980's, coupled with the agency's understanding of traditional auto industry leadtimes to introduce new technologies or new vehicles, the agency could not reasonably base an exercise of its discretion to amend the MY 1989–90 standards on the same set of facts that supported the reduction of the MY 1986–88 standards. The agency will need to know whether, and to what extent, the industry as a whole made new reasonable plans to comply with the 27.5 mpg standard after the unanticipated events of the early 1980's derailed the previous plans.

To help it assess the reasonableness of manufacturer efforts, the agency

published a fuel economy questionnaire in the **Federal Register** (March 16, 1988, 53 FR 8668) and mailed copies of the questionnaire to nine manufacturers, both domestic and import. NHTSA subsequently sent follow-up questions to six manufacturers. The questions asked for, among other items, specific explanations of what events had occurred or circumstances had changed to create a compliance problem now. The agency asked manufacturers to provide a description of specific actions taken to achieve 27.5 mpg in MY 1989 and beyond, the impact of those actions, and why the original assessment of these actions is no longer valid.

The initial responses did not provide sufficient information for NHTSA to attempt to assess the reasonableness of manufacturer compliance efforts. However, in early August, GM (which constitutes a substantial share of the industry) provided a considerable amount of additional information and arguments on this issue, the public version of which is in the docket of this proceeding. The agency has not completed its analysis of the new GM materials. However, NHTSA has concluded that GM provided sufficient information for the agency to go forward with rulemaking, including seeking public comment on GM's arguments. As indicated above, for purposes of a possible final rule, the agency will complete its analysis of GM's submissions, both as to whether they are sufficient for the agency to make a determination concerning the reasonableness of that company's efforts and, if so, whether GM in fact made reasonable compliance efforts under the statute. Of course, all other submissions and arguments received during the comment period will be analyzed as well.

GM's arguments can be summarized as follows. That company states that at all times it has made plans to comply with the legislated 27.5 mpg standard, but those plans have been overtaken by unforeseen events beyond its control. According to GM, just as events in the early and mid-1980's overwhelmed its expectation that it would meet the 27.5 mpg standard in 1986–88, similar events, including an uprecedented precipitous 28 percent drop in gasoline prices over the 1986 model year (which was in addition to a 27 percent drop in gasoline prices spread between 1981 and 1985), coupled with radical changes in the competitive environment that characterized the mid- and late 1980s, have overtaken its plans for the 1989–90 time frame. More specifically, GM argues the following:

1. GM consistently planned for compliance with the 1989–90 standards. Immediately after the 28 percent drop in gasoline prices over the 1986 model year, GM could not forecast CAFE compliance without plant closings and layoffs. As prices stabilized at the lower levels, subsequent compliance planning called for long-term compliance through a continued aggressive presence in the fuel-economy conscious segments in the market and introduction of more fuel-efficient and better performing powertrains. However, given the magnitude of the gasoline price drop and the need to assure long-term competitiveness by responding to anticipated changes in consumer expectations, GM also forecast the need for some limited market-forcing actions to achieve compliance over the intermediate term, including 1989 and 1990.

2. Compliance actions were successfully implemented. In the 1986 to 1988 period, GM's compliance efforts were rewarded by a continually improved CAFE. These efforts included, for example, continued introduction of new powertrains like the 16-valve QUAD IV and 3800, and new production platforms like the Beretta and Corsica. For 1989, GM is introducing the 3300 engine which is expected to have better driveability and be more fuel efficient than its 3.0L predecessor. Additionally, GM has continued to maintain an aggressive competitive presence in the fuel-economy conscious segments of the markets.

3. Unexpectedly high CAFE levels achieved by GM in recent years result from temporary or one-time aberrations and should not be viewed as representing a new " base" or trend for future year performance. The success, which exceeded expectations, was derived in part from unanticipated fuel economy performance on EPA tests that cannot reasonably be forecast to be repeated in future model years. Other sources of aberrations from long-term expectations included an extented 1988 model year for the Beretta and Corsica which alone accounts for an estimated 0.1 mpg in MY 1988 CAFE performance. Also, beyond these aberrations, there is a downside to GM's unexpectedly high CAFE. One contributing element has been a lower than forecast level of sales of midsize, larger and luxury models owing in part to downsizing and small engine programs that, in GM's view, may have been too agressive given recent gasoline prices. This has had a very real cost in lost employment at plants like Detroit-Hamtramck that have barely sufficient demand for one shift of production of E/K bodies (e.g., Buick Riviera). Looking to the future, GM programs hope to increase sales of these vehicles and restore employment with restyling and driveability improvements, albeit while trying to minimize the CAFE penalty.

4. Changing circumstances render current 1989–90 plans impracticable. As GM entered the 1988 model year, it began to appear that previously forecast 1989 and 1990 compliance actions were no longer likely to be economically practicable risks, with GM domestic U.S. passenger car market share reduced 6.1 points from the 1986 model year. For example, previously anticipated potential market forcing actions began to appear impracticable with unexpected volume declines that led to the idling of the Leeds, Missouri, J-car assembly facility and a several month layoff of the Framingham, Massachusetts, A-car assembly facility—both despite incentive programs and attractive 1988 pricing for those vehicles. Moreover, the intensified competition now expected from foreign manufacturers and other factors leaves no room for product compromises previously thought to be acceptable.

5. GM is pursuing strategies for future compliance. Plans now under management review are expected to yield compliance with the 27.5 mpg standard in the future.

GM provided a variety of supporting materials, including explanations of why its CAFE projection declines from MY 1988 to MY 1989 and from MY 1989 to MY 1990, why it achieved higher than projected CAFE levels for MY 1986–88, and why its MY 1989–90 CAFE projections have decreased over time; discussions of compensating actions to improve 1989 CAFE after its July 1986 projection that it likely would be below 27.5 mpg, gasoline price effects on CAFE, technology improvements and cost effectiveness, and technology update; the results of a survey related to consumer demand for performance; and information about its 1989 and later model year compliance plan, including a discussion of the impacts of product restrictions, characterized by that company as "one means of assuring compliance at the cost of jobs, consumer choice and national economic harm," and its CAFE compliance planning from 1986 to the present.

NHTSA notes that Ford also provided new information in August 1988 concerning reasonable efforts. However, the information provided was insufficient for the agency to analyze whether that company made reasonable efforts to achieve 27.5 mpg in MYs 1989–

90. In particular, the agency does not have sufficient information to analyze the timing of when Ford first realized that its product plans might not result in 27.5 mpg CAFE and what compensating actions that company initiated or considered at and since that time to improve its CAFE. Depending on the comments that Ford may submit in response to this notice, the agency may, of course, be able to make such a determination for purposes of a possible final rule.

In an earlier submission, Ford indicated that its compliance with the statute would be achieved by using credits earned by exceeding the standard in other years. NHTSA notes that *if* that company decided not to make efforts to achieved 27.5 mpg in MYs 1989–90 in light of credits from other years, such a decision would be perfectly acceptable under the statute. However, if a manufacturer chooses, in light of the flexibility offered by the credit provisions, not to make the reasonable efforts necessary to achieve the level of a standard for a particular model year, it would be clearly inconsistent with the statutory scheme for the agency to then exercise its discretion to lower the standard solely on the basis of that manufacturer's inability to meet the standard.

In analyzing whether manufacturers made reasonable efforts, the agency is attempting to answer the questions which follow. NHTSA notes that manufacturers have already provided information relevant to some of the questions, as well as to some of the questions which appear later in this notice. The agency is continuing to analyze these manufacturer submissions. Copies of the manufacturer submissions are in the public docket (Docket FE–88–01, Notice 1, or Docket PRM–FE). (Information subject to a claim of confidentiality is not included in the docket versions.) NHTSA invites interested persons to submit any information which would aid the agency in answering these questions, and encourages manufacturers to expand on prior submissions if doing so would more fully address the issues raised in this notice.

1. In considering a possible reduction in the MYs 1989–90 standards, how should the agency evaluate the sufficiency of manufacturer efforts to meet the standard? If manufacturer plans are found to have been reasonable, what additional actions should be expected of them, once compliance difficulties are evident? Should the agency consider a second round of investments or product decisions to be "economically practicable" or otherwise compelled by the statute within the timeframe in question?

2. NHTSA requests information and comments concerning the plans developed by manufacturers to achieve 27.5 mpg for MY 1989–90 *after* the unexpected gasoline price reductions of the early to mid-1980's, particularly that of 1986.

3. All full-line manufacturers projected exceeding 27.5 mpg for MY 1989–90 as recently as October 1985. The agency seeks information about what changed since those projections were made, leading to lower projections for MYs 1989–90.

4. For manufacturers which once expected to achieve or exceed 27.5 mpg in MYs 1989–90 but no longer project doing so, the agency requests detailed information concerning the timing of when a possible shortfall was first recognized, the reasons for the shortfall as compared with the earlier projections, and what compensating actions were implemented, formulated, and/or considered since that time to improve CAFE. What happened to any such plans in the intervening time? If plans were formulated but not implemented, why not?

5. How is leadtime relevant to evaluating the sufficiency of manufacturer efforts to meet the standard? NHTSA notes that if a manufacturer recognized a possible shortfall in mid-1986 for MYs 1989–90, there would have been more than two years of leadtime for MY 1989 cars and more than three years of leadtime for MY 1990 cars. Was this sufficient leadtime to improve CAFE by additional technological improvements for MY 1989 and/or MY 1990? In addressing this issue, please discuss the leadtimes for making various technological changes, both for existing cars and as part of new car designs. NHTSA notes with respect to this issue that an August 15, 1988 *Automotive News* article reported that GM "says it has found a new way of developing products in as little as three years instead of the usual five years from first design rendering to Job One." Could a manufacturer have designed an all-new car, as of mid-1986, for MY 1990? If there were sufficient leadtime for MY 1989 and/or MY 1990 to make additional fuel-economy-enhancing technological improvements (whether for existing cars or as part of new car designs) and yet those changes were not made, how should the agency assess the reasonableness of not making such changes?

6. In comparing the largest domestic manufacturers, the agency notes that Ford's CAFE is currently below that of GM. For MY 1988, Ford projects CAFE of 26.4 mpg, while GM projets 27.6 mpg. What accounts for this difference? The agency seeks comments on the significance, if any, of this difference, as well as information to help the agency understand the reasons for the difference.

7. Ford's CAFE has remained relatively flat for several model years and is projected to continue to do so. What relevance, if any, does this have in analyzing whether Ford made reasonable efforts to achieve 27.5 mpg for MY 1989–90?

8. GM's MY 1988 Mid-Model Year Report projects a CAFE level of 27.6 mpg. Why is GM's CAFE projected to decline in MYs 1989–90? What relevance, if any, does this have in analyzing whether GM made reasonable efforts to achieve 27.5 mpg CAFE in MYs 1989–90?

VII. Elements of Setting a Standard

The CAFE statute requires that the agency set a standard at the "maximum feasible level", which consists of four factors: Economic practicability, technological feasibility, the need of the Nation to conserve energy, and the effect of other Federal standards. The agency has explained and weighed these factors each time it has adopted or amended a CAFE standard.

A. Need of the Nation To Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has changed significantly. Oil markets were deregulated in 1981, permitting consumers to make choices in response to market signals and allowing the market to adjust quickly to changing conditions. The U.S. Strategic Petroleum Reserve (SPR) was built to ensure a supply of oil during any major supply disruption. In June 1988, the SPR contained 550 million barrels of oil, stored principally in underground caverns, that could be pumped back to the surface if needed.

1. Petroleum Imports and Prices

The United States imported 15 percent of its oil needs in 1955. The import share had reached 36.8 percent by 1975, and peaked at 46.4 percent in 1977, at a cost of $71 billion (stated in 1988 dollars). While the import share of total petroleum supply declined after that year, the cost continued to rise to a 1980 peak level of $99 billion (1988 dollars).

By 1985, the import share had declined to 28.7 percent at a cost of $52 billion (1986 dollars). In addition, imports from OPEC sources declined through 1985, from a high of 6.2 MMB/D and 70.3 percent of all imports in 1977 to 1.8 MMB/D barrels per day and 36.2 percent of imports in 1985.

Since 1985, the import share of petroleum supply has been increasing. Between 1985 and 1986, net imports rose from 28.7 percent of the U.S. petroleum supply to 34.6 percent. In 1987 that figure was 37.1 percent, and for the first six months of 1988, net imports accounted for 38.1 percent of total supply. Due to sharply lower petroleum prices, however, the value of imports declined from 1985 to 1987, from $52 billion to $43 billion (1986 dollars).

Imports from OPEC sources have also increased. Between 1985 and 1986, imports from OPEC rose from 36.2 percent of all imports to 45.6 percent. In 1987 that figure was 45.8 percent, and for the first five months of 1988, imports from OPEC accounted for 48.4 percent of all imports.

2. Continued Need for Progress

Despite the progress which has been made, both within and outside the transportation sectors of the economy, the current energy situation and emerging trends point to the continued importance of oil conservation. Oil continues to account for well over 40 percent of U.S. energy use, and 97 percent of the energy consumed in the transportation sector. While the U.S. is the second-largest oil producer, it contains only four percent of the world's proved oil reserves. Moreover, proved reserves have declined from a peak of 39.0 billion barrels in 1970 to 26.9 billion barrels in 1986.

According to 1987 Energy Information Administration (EIA) projections, domestic production is expected to decline from 10.0 MMB/D in 1987 to between 8.3. and 9.3 MMB/D in 1995 and between 7.9 and 9.1 MMB/D in 2000, depending on the price of oil. (Data available for the first six months of 1988 indicate domestic production at 9.94 MMB/D.) Net imports are projected to increase from 5.9 MMB/D in 1987 to between 7.4 and 10.5 MMB/D in 1995 and between 7.6 and 11.7 MMB/D in 2000. Thus, as a percentage of total U.S. petroleum use, EIA expects imports to rise from a 1987 level of 37 percent to between 44 and 56 percent of total supply in 1995 and between 46 and 60 percent in 2000. NHTSA notes, however, that future projections about petroleum imports are subject to great uncertainty. For example, the EIA's 1977 Annual Report to Congress projected that net oil imports by the U.S. would, in the "reference case", reach 11 MMB/D by 1985. Net imports in 1986 actually were 5.4 MMB/D, less than half the level predicted in 1977.

The level of oil imports remains an issue for the nation as a whole. In 1987, the U.S. imported $411.3 billion worth of goods and exported $257.6 billion, resulting in a deficit of $153.7 billion. To the extent that oil imports remain steady or decrease, instead of increasing, there is a positive effect on the nation's balance of trade problem.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security". NHTSA believes that the following quotation from that report represents a useful summary of the current energy situation and national security:

> Although dependence on insecure oil supplies is * * * projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to changing situations. Furthermore, the large strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.
>
> The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to the world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.
>
> Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978–79 Iranian revolution contributed to the largest economic recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

B. Effect of Other Federal Standards

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations—both in process and recently completed—that may have an impact on fuel economy capability.

1. NHTSA Standards

Several relatively recent changes in Federal safety and damageability requirements could have an effect on CAFE. These include a May 1982 amendment to the Part 581 Bumper Standard reducing the standard's impact protection requirements and thereby permitting weight savings; an amendment to the agency's lighting standard, which permits greater aerodynamic efficiency; and implementation of automatic restraint requirements.

The bumper standard was amended for 1983 and later model years to provide for a 2½ mph impact test speed (compared to an earlier 5 mph impact test speed). The regulatory analysis accompanying this rule noted that manufacturers could realize a weight savings of from 15 to 33 pounds. This could produce a gain in fleet average CAFE capability of 0.2 mph to 0.5 mph. In the past, however, the agency has not factored in any CAFE advantage, because manufacturers have indicated that they continue to comply, on a voluntary basis, with the 5 mph standard. The agency endorses the voluntary use of 5 mph bumper systems.

The agency modified its Federal Motor Vehicle Safety Standard 108, Lamps, Reflective Devices, and Associated Equipment, to permit the use of replaceable light source headlamps, smaller sealed beam headlamps, and lower headlamp mounting height. The PRIA concludes that the ability to redesign headlamps in this way could result in a 2 to 3 percent improvement in aerodynamic drag. This in turn could produce a 0.4 to 0.9 percent improvement in fuel economy. For a 27.5 mpg fleet, this would equate to a 0.11 mpg to 0.25 mpg improvement in CAFE if all vehicles in that fleet employed the new lamp designs. Both Ford and GM are making extensive use of this new flexibility.

However, GM also notes in its August 1988 docket submission that composite headlamps have been partially responsible for its "C" and "H" carlines moving into a higher EPA test weight category, producing a negative CAFE effect. The agency seeks specific data concerning any negative impact manufacturers believe using this design flexibility has on CAFE levels.

A July 1984 amendment to Federal Motor Vehicle Safety Standard 208, Occupant Crash Protection, specified

the phase-in of automatic protection requirements beginning in model year 1987, with 40 percent phased in by MY 1989 and 100 percent implementation by MY 1990. The agency has developed its own estimate of the average incremental weight of automatic restraint systems. As noted in the PRIA, the agency's current best estimates of typical system incremental primary weights over manual belts are as follows: Front seat airbag, approximately 21 pounds; non-motorized automatic belts, approximately 11 pounds; and motorized automatic belts, approximately 15 pounds. Neither GM or Ford claimed during the Standard 208 rulemaking a specific weight penalty associated with these 208 requirements. Both stated, however, that there would be weight increases, and depending on the success or failure of weight-reducing efforts, as well as some weight-increasing pressures (options packages), that it is not unlikely that certain vehicles equipped with automatic restraints could result in the vehicle being placed in the next higher test weight class. This would have a negative effect on fuel economy. The agency seeks specific information from manufacturers to the extent the information demonstrates specific net weight effects of this standard.

On January 27, 1988, the agency published a proposed rule (53 FR 2239) to upgrade its test procedures and performance requirements for side impact protection for passenger cars. The agency is focusing on two ways of improving the side impact performance of passenger cars: Adding padding on the door and increased structure to reduce intrusion. Specific weight penalties are not known yet, and will depend on such factors as final performance requirements, chosen countermeasure, and baseline vehicle performance. The agency has not considered any negative effect of this proposed standard on CAFE performance, since any final rule on this subject would not apply to the model years under consideration in this rulemaking.

On June 18, 1987, the agency published an advance notice of proposed rulemaking (52 FR 22818) requesting comments on the possible requirement to install lap/shoulder belts in rear seating positions of passenger cars, multipurpose vehicles and small buses. The agency anticipates that any additional weight penalty for this requirement would be minimal, with the current estimate of 0.6 pounds for each outboard seat and 2.4 pounds for the center seat. The agency has not considered this weight penalty in its evaluation of fuel economy and notes that essentially all manufacturers indicate that they will achieve voluntary compliance with this requirement for all of their passenger cars by MY 1990.

2. EPA Noise Standards

The agency is not aware of any plans on the part of the Environmental Protection Agency to promulgate noise regulations during the time period under discussion. Accordingly, no fuel economy penalties from noise regulations have been forecast.

3. Emissions Standards

EPA has not announced any plans to modify its current exhaust emission control requirements for hydrocarbons, carbon monoxide and oxides of nitrogen. Therefore, the agency has not considered any further impacts on fuel economy from control of these pollutants. As discussed in the PRIA, the agency has analyzed previously the effects of the current requirements on fuel economy.

Also discussed in the PRIA is EPA's tightening control of particulate matter that became effective in MY 1987. While this requirement applies to all vehicles, the only current production powerplant which will have difficulty meeting this requirement is the diesel engine. EPA has indicated that there is a 1 to 2 percent fuel economy penalty for diesel powered vehicles which require a particulate trap to comply with the standard; however, the agency believes that only a very small fraction of the diesel vehicles (those with larger displacement engines) will need traps for compliance.

In July 1987 EPA issued a proposed rule on the on-board control of refueling emissions. The proposal would limit gasoline vapor emissions to 0.10 grams of vapor per gallon of dispensed fuel. The agency has not taken this future rulemaking into its estimates of CAFE levels for two reasons. First, the final rule, when issued, will not take effect until two model years after that point, which is beyond the model years that are the subject of this rulemaking. And second, the real weight impact is not clear. EPA estimates that this regulation would add about 4–5 pounds to a vehicle, which could reduce the average Ford or GM fleet CAFE by 0.04 mpg. There is additional concern that this requirement could affect compliance with the exhaust emissions requirements and degrade fuel economy. This may happen because canister purging may occur when the engine is least likely to be able to compensate for it. Ford also claims that the increase in test fuel volatility (RVP) will increase HC and CO emissions.

The California Air Resources Board (CARB) has adopted a new requirement which will require 80 percent of all MY 1989 light duty passenger cars and 90 percent of MY 1990 passenger cars to meet a 0.4 gm/mi NO_x standard. GM has indicated that this requirement will result in a 4 to 5 percent negative impact on the fuel economy of approximately 300,000 of its vehicles. Ford has not claimed specific CAFE losses due to the California NO_x requirements. Half of all vehicles certified to the Federal NO_x standard, are already below the California standard of 0.4 gm/mi level. While they may not be far enough below to ensure compliance, CARB believes that its standard can be met with little or no degradation in fuel economy using refined emission control technology calibrations and higher catalyst loadings. NHTSA does not see whatever small penalty there may be while manufacturers gain experience certifying at this new level, as significant or long-lasting.

4. EPA Test Procedure

The Environmental Protection Agency published a final rule on July 1, 1985, providing CAFE adjustments to compensate for the effects of past test procedure changes (See 50 FR 27172). The final rule adopted a formula approach for calculating CAFE adjustments. The manufacturer projections discussed above include the effect of the EPA test adjustment credit. Due to the formula approach, the specific value of the credit may vary for different model years and among manufacturers. A typical credit for the model years in question would be 0.2–0.3 mpg.

C. Industry Capability: Technological Feasibility and Economic Practicability

1. Manufacturer CAFE projections

In response to its questions published in the Federal Register, the agency received comments from 11 manufacturers, the Competitive Enterprise Institute, and one member of Congress. The agency submitted additional questions to six manufacturers, who responded in May of this year. GM and Ford both project falling short of the 27.5 mpg standard for MYs 1989–90, for their domestic fleets, although GM's April 1988 comments indicate that it will achieve 27.8 mpg in MY 1988. Chrysler indicates that it will achieve or exceed the 27.5 mpg CAFE level for MYs 1989–90, with projections of 27.8 mpg for MY 1989 and 27.9 mpg for

MY 1990. In addition, many importers (those which specialize in smaller vehicles) currently have fleets above the CAFE statutory standard of 27.5 mpg, including Mazda, Subaru, Suzuki, Toyota, Volkswagen, Mitsubishi, Nissan, Isuzu, Yugo, Honda, and Hyundai. (This also is true of GM's and Ford's imported passenger fleets, which are required by the statute to meet the CAFE standard separately from their domestic fleets.)

Manufacturers indicating that they may not meet the CAFE standard of 27.5 mpg in MYs 1989 and 1990 include Ford and GM (domestic fleets) and several limited product-line manufacturers, including Volvo, Saab, Mercedes-Benz, Jaguar, Porsche, BMW, Austin Rover, and Peugeot. GM, Mercedes-Benz, and Austin Rover each submitted a petition to lower the standard. The remaining foreign manufacturers are all members of AIA, which also submitted a petition to lower the standard.

Since either Ford or GM alone would constitute a substantial share of the market, and both manufacturers project MYs 1989–90 CAFE levels below 27.5 mpg, the agency focused on their projections in its analysis of industry projections.

Ford provided in its April 12, 1988, submission an analysis of how its earlier projections of 27.6 mpg for MY 1989 and 27.7 mpg for MY 1990 projected on October 23, 1985, had declined to the present estimates of 26.8 mpg for both years. The principal reason for the decline is attributed to technical changes, primarily weight increases (due to occupant protection systems required by Standard 208; see discussion in previous section of this Preamble) and lower than expected fuel economy of several series. Ford has partially offset these losses, however, by implementing some small engine improvements and achieving weight reduction in other models. Sales mix shifts have resulted in a decrease in CAFE, as has decreased marketing efforts and delays in product introduction. Ford identifies several risks for its projections, and offsetting opportunities.

As indicated previously, GM characterizes its projected MY 1988 CAFE of 27.6 mpg as a surprise. While this performance can be seen as prima facie evidence that GM is making reasonable efforts to achieve 27.5 mpg, the achievement also raises the issue of why achieving 27.5 mpg is not feasible for MYs 1989 and 1990 as well. GM indicates that the unexpected MY 1988 CAFE level was the result of unanticipated fuel economy performance in EPA tests, which cannot be considered necessarily repeatable, and the extended model year for the Beretta and Corsica.

In fact, GM indicates that its CAFE level will drop over the next two years, from 27.6 mpg in MY 1988, to 27.1 mpg in MY 1989 and 26.9 mpg in MY 1990. GM identified several reasons for this drop in its projected CAFE, including continued growth in demand for larger cars and higher performance (ascribed to lower gasoline prices) and import competition with small cars.

In response to an additional request from the agency, GM submitted detailed variance analyses to explain GM's efforts in attaining the statutory CAFE compliance level. GM provided the agency with specific analyses for different mpg changes, model mix changes and engine mix changes. Examples of the types of changes which result in GM projecting a drop in its fleet's CAFE for MYs 1989–90 include the following:

GM projects a positive net CAFE change due to all model mix shifts between the 1988 and 1989 model years of 0.01 mpg. GM indicates that the largest effect in this category is due to the discontinuation of its "G" models. For MYs 1989–90, GM indicates a negative net CAFE change of 0.06 mpg due to model mix shifts, the details of which were submitted under a claim of confidentiality.

GM also provided details on changes in its CAFE projections based on engine mix shifts and mpg changes. GM describes changes to components and systems to improve the engine quality and reliability, and performance. Changes include technology updates to the fuel injection systems, the addition of newer, high technology engines, increased V–8 volume, and other changes in response to indications of consumer preference.

NHTSA is in the process of analyzing the manufacturers' MYs 1989–90 CAFE projections. Among other things, the agency is attempting to answer the following questions:

9. Both GM and Ford have exceeded a number of the MYs 1986–88 CAFE projections they provided to the agency during the rulemakings for those model years. For example, GM exceeded its MYs 1986–87 projections by 0.3 mpg and 0.4 mpg, respectively, and now expects to exceed its MY 1988 projection by 0.7 mpg. The agency requests information to help it understand why the manufacturers exceeded prior projections, and whether the same types of factors are likely to result in the current MYs 1989–90 projections being exceeded.

10. To what extent do the manufacturers' current MYs 1989–90 CAFE projections reflect the effects of the 1986 fall in gasoline prices? What evidence is available concerning whether that drop in gasoline prices affected consumer demand during MYs 1986–88? In answering this question, please address the fact, noted above, that actual CAFE levels for MYs 1986–88 in some cases exceeded manufacturer projections. Is the effect of the 1986 fall in gasoline prices on consumer demand likely to be the same in MYs 1989–90 as for previous model years? If not, why?

11. What effect is import competition likely to have on the domestic manufacturers' CAFE levels for MYs 1989–90, as compared to recent model years? To the extent that there may be increased penetration of small import cars, how would this affect GM's and Ford's domestic CAFE values? To the extent that import manufacturers are importing larger vehicles, how would this affect GM's and Ford's domestic CAFE values? In addressing these questions, please discuss which of GM's and Ford's domestic models, as opposed to import models, compete with small and large import cars.

While the agency has not completed its analysis of manufacturer projections, it believes that the maximum feasible CAFE for MYs 1989–90, without unreasonable risk to any manufacturer with a major share of the market, is at least 28.5 mpg.

2. Possible Additional Actions To Improve MYs 1989–90 CAFE

In the past, the agency's rulemaking record has included discussions of technological improvements to the engine and transmission, as well as weight reduction, and aerodynamic and rolling resistance reduction as the prime sources for fuel economy improvements. From the entire fleet perspective, technological changes have been impressive: Over the past 10 years, the average passenger car weight has declined by 800 pounds, the average engine displacement has dropped from 280 CID to 162 CID, front-wheel drive has increased from 7 percent to 75 percent of the new car fleet, automatic transmissions with overdrive and/or lock-up torque converter clutches have increased from less than 1 percent to 85 percent and fuel-injected engines have increased from 5 percent to 72 percent.

For MYs 1988–1990, as indicated in the rulemaking record of this and prior CAFE rulemaking proceedings, there are a number of fuel-efficiency enhancing methods that are not fully utilized throughout the GM and/or Ford fleets. These include further weight reduction; front-wheel drive; four-speed automatic

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transmissions; engine improvements such as advanced electronic control of engines, reduced friction, and lean-burn fast-burn combustion; reduction of parasitic losses; and aerodynamic and rolling resistance reductions. All of these methods have previously been identified by the agency as feasible, and are partially utilized by the GM and Ford fleets, as well as by other manufacturers.

As a practical matter, it is not feasible for manufacturers at this point to implement significant technological changes for MY 1989 or MY 1990, due to lack of leadtime. This would not prevent the agency from maintaining the standard at 27.5 mpg, however, if it cannot make a determination of reasonable efforts, for the reasons discussed previously. The agency is analyzing whether additional, minor technological changes could be made during the 1989 model year or for MY 1990.

In considering whether further technological changes can be made for MYs 1989–90, NHTSA requests information or comments on the following questions:

12. What is the feasibility (bearing in mind both technological feasibility and economic practicability) of the various fuel-efficiency enhancing technologies, including but not limited to those identified in the agency's PRIA, for improving manufacturers' CAFE to or nearer to 27.5 mpg for MY 1989 and MY 1990? In answering the question, please address the potential penetrations of those technologies during this time period. If not feasible, why not? What are the leadtimes involved in making such technological changes?

13. To what extent, if any, would fuel economy improvements adversely affect consumer choice of vehicles or engines? If the record shows that it would adversely affect consumer choice, how should the agency take account of the effect of such restrictions in evaluating possible improvement of CAFE by additional technological means? Please address this issue with respect to the various available fuel-enhancing technologies, e.g., diesel engines, changing from rear-wheel drive to front-wheel drive, performance reductions, etc. and the legislative history indicating Congress' intent that consumer choice not be unduly limited. The agency seeks specific comment from the public on the trend toward increasing acceleration performance and whether manufacturers have any role in stimulating this trend through advertising or marketing strategies.

In previous rulemakings to lower the CAFE standard, the agency has evaluated the use of marketing efforts and/or product restrictions to improve CAFE. In the past, the agency has concluded that GM and Ford both have made efforts to promote the sales of fuel-efficient cars and determined that the manufacturers have undertaken extensive and significant marketing efforts to shift consumers toward their more fuel-efficient vehicles and options.

The agency also has stated previously that it believes that the ability to improve CAFE by additional marketing efforts is relatively small. As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient cars less expensive or less fuel-efficient cars more expensive. Moreover, the ability to increase sales of fuel-efficient cars largely relates to either increasing market share at the expense of competitors or pulling ahead a manufacturer's own sales from the future. A factor which makes it difficult for the domestic manufacturers to sell domestically-produced fuel-efficient cars is the growing competition of lower-priced small cars from newly developing countries such as Yugoslavia and South Korea.

Another consideration in this area is that the manufacturers' success in improving the fuel-efficiency of large cars has itself made it more difficult to sell smaller cars. The reason for this is that there are diminishing returns in terms of greater fuel economy from purchasing small cars as the fuel efficiency or larger cars increases. Similarly, as gasoline prices have declined, there are diminishing returns to the consumer from purchasing more fuel-efficient vehicles.

There is a problem with pulling ahead sales, as mentioned above, which consists of the manufacturer's CAFE for subsequent years being reduced. For example, if a manufacturer increases its MY 1988 CAFE by pulling ahead sales of fuel-efficient cars from MY 1989, the MY 1989 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

The agency is not sure that manufacturers can improve significantly their CAFEs by increased marketing efforts. In a follow-up question to six manufacturers, the agency asked for details of specific marketing efforts undertaken during MYs 1987–88 to encourage the sale of more fuel efficient cars or engine options. NHTSA also asked for the financial and CAFE effects of these activities. Of the manufacturers asked, only one (Volvo) indicated that it did not spend its marketing money on promoting sales of its more fuel-efficient models. Volvo indicated that since its two carlines achieve similar CAFE, it is not an appropriate use of marketing funds. Volvo did indicate, however, that it provides some pricing incentives to encourage the sale of its more fuel-efficient vehicles (those with manual transmissions).

Ford and GM both presented specific information concerning their marketing programs. GM indicates that its total cost for numerous incentive programs for its fuel-efficient cars during MYs 1987–88 was over $2.0 billion. Ford indicates that its expenditures for its marketing program approaches $3.0 billion for the years 1982–1988. Ford also stated that its marketing support costs are disproportionately greater for its fuel-efficient models than its large-luxury models.

In considering whether marketing efforts can be used to improve CAFE beyond the levels projected by the manufacturers, NHTSA requests comments on the following questions:

14. Please quantify any financial or CAFE effects of marketing programs undertaken during MYs 1987–88 to encourage the sale of more fuel-efficient cars or engine options. (Describe the specific marketing programs undertaken.) What relevance, if any, does the MY 1987–88 experience have to what can be done for MYs 1989–90?

In looking at the potential methods for improving CAFE, the agency also has recognized in the past that manufacturers could improve their CAFE by restricting their product offerings, e.g., deleting less fuel-efficient car lines or dropping higher performance engines. However, the agency also acknowledges that, to the extent these product restrictions result in net sales losses, they could have a significant adverse economic impact on the industry and the economy as a whole, and could run counter to the statutory criterion of economic practicability and the Congressional intent that the CAFE program not unduly limit consumer choice.

VIII. Determining Maximum Feasible

As discussed above, section 502(a)(4) provides that the 27.5 mpg standard can be amended if the agency determines that some other standard represents the maximum feasible average fuel economy level. Such an amendment will be made only if the agency first makes a determination that the manufacturers made reasonable efforts to meet the standard. If the manufacturers'

compliance plans were overtaken by unforeseen events, this determination includes consideration of the efforts made by manufacturers to offset the effects of those events. In determining maximum feasible, the agency considers the four factors of section 502(e): Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. Also, as discussed above, the agency takes industrywide considerations into account in determining the maximum feasible average fuel economy level.

A. Interpretation of Feasible

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency traditionally has interpreted "feasible" to refer to whether something is capable of being done, taking into account the four statutory criteria mentioned above. The statute does not elevate any one of these criteria above the others, nor does it provide guidance to the agency in weighing any of these criteria more heavily than any others. For example, the agency's determination of the "maximum feasible" standard cannot be that level which is merely the maximum technologically feasible without regard to the economic practicability of such a level.

B. Economic Impacts of Not Amending the 27.5 mpg Standard

As the agency has stated in previous rulemakings, the determination of a maximum feasible level is not a cut and dry mathematical formula, but rather, a series of decisions based on interrelated trends, projections and factors. The agency's analysis of economic impacts is based on a preliminary assessment of GM's and Ford's capabilities, and is discussed in the PRIA.

In the past, the record of the rulemakings has shown that a CAFE standard set above those companies' capabilities could have an adverse effect on production, and hence employment, for either or both companies. For example, in the MY 1986 rulemaking, GM stated that it "must contemplate the possibility of restricting the production of many of [its] more popular models" (GM statement of August 8, 1985, public hearing). Similarly, in the MYs 1987–88 rulemaking, GM claimed that in order to remain in compliance, it "would have to both curtail drastically production of its fuel efficient cars and attempt to increase greatly its small car sales * * * [N]et GM production cuts could be more than 1 million cars" (GM submission of March 24, 1986).

While GM indicated in previous years that it "*must* contemplate" product restrictions (emphasis added) and "*would* have to curtail * * * production" (emphasis added), its statements in this rulemaking to date are less clear on this issue. For example, in its April 11, 1988, submission, GM only claimed that it "*may* need to restrict production" (emphasis added), and in its August 10, 1988, submittal GM stated that "product restrictions provide one means of assuring compliance." At the same time, that submission discussed other, technological means of complying with a 27.5 mpg standard. In summarizing its CAFE compliance planning, GM stated that with projections beneath 27.5 mpg, meeting the standard in a given year depends on "*either*" (a) product restrictions, with concomitant job losses to GM and its suppliers of 60,000 for MY 1989 and 110,000 in MY 1990 (with higher job loss estimates if minimum uncertainties are considered), "*or*" (b) recovery actions involving significant costs and marketing risks. (Emphasis added.) That company also stated that the latter approach *could* produce job impacts as a consequence of lower sales. (Emphasis added.) NHTSA believes that it is unclear from GM's submission the extent to which it believes jobs are at issue. This notice should not be viewed as an agency conclusion that the employment loss figures cited by GM, or any other employment losses, are likely. The agency will continue to analyze this issue during the comment period.

Ford indicates that it intends to comply with the statutory CAFE level of 27.5 mpg for MYs 1989–90 through the use of credits earned for exceeding the standard in other model years. Ford notes, however, that if sufficient credits are not available in the specified time period, there would be a significant increase in its compliance costs. The lack of lead-time as well as the lack of identifiable technology would force Ford to implement a more aggressive forced sales mix restrictions.

In analyzing possible employment impacts, NHTSA believes that it is obvious that some product decisions to restrict options might have a limiting effect on consumer choice, but would not necessarily have an adverse net employment effect. While the agency would need to consider whether product decisions to limit options would unduly limit consumer choice, the agency also believes it is important to keep separate in its analysis those product restrictions that would have adverse U.S. employment effects and those that might not. The agency also notes a trend in the industry (presumably unrelated to CAFE) to limit the number of consumer options on some models, generally by making previous options standard or only offering options in packages, in order to enchance competitiveness by introducing efficiencies and streamlining production. These decisions are described in business journals as related to efforts to increase market share which, if successful, should have a positive effect on U.S. employment. NHTSA requests commenters that address product restrictions to indicate whether the restrictions being discussed necessarily have an associated employment effect, and why.

As the agency analyzes possible employment impacts, it is attempting, among other things, to answer the following questions:

15. To what extent, if any, are U.S. jobs affected by the level of the MY 1989–90 CAFE standards and thus at issue in this rulemaking? If restricting products (with concomitant job losses) is one of a number of compliance options available to a manufacturer, how should the agency consider that option as compared to other options? To what extent would potential compliance actions other than restricting products (including "recovery" actions) affect jobs? Would such actions affect the competitiveness of the domestic industry? If so, would this have a negative impact on jobs? Would some potential compliance actions, such as marketing efforts to sell a greater number of U.S.-made smaller, more fuel-efficient cars, have a positive impact on U.S. jobs?

16. As discussed in connection with analyzing manufacturer CAFE projections, both GM and Ford have exceeded a number of the MYs 1986–88 CAFE projections they provided to the agency during the rulemakings for those model years. During those rulemakings, the manufacturers also provided estimates of job losses that would result from exceeding their projections. The agency requests information to help it understand how the manufacturers exceeded prior projections without apparent job losses, and whether the same types of factors are relevant to MYs 1989–90.

The agency also looks at the effect on gasoline consumption of a different CAFE standard. The per-vehicle present discounted value of lifetime fuel costs for a MY 1989 passenger automobile with a fuel economy level of 27.5 mpg is $3,237. If this same car achieved a fuel economy level of 27.0 mpg, it would add

$60 to the lifetime operating cost of the vehicle. If this same car achieved a fuel economy level of 26.5 mpg, an additional $62 would be added to the total operating cost of the vehicle. The financial significance to the consumer of these incremental changes in fuel economy has declined since the early 1970's as the fuel efficiency already achieved by the overall vehicle fleet has increased dramatically.

The precise magnitude of possible energy savings associated with retaining the 27.5 mpg standard versus establishing a lower standard is uncertain. The maximum hypothetical difference in gasoline consumption between GM and Ford achieving 26.5 mpg in MY 1989–90, as compared to those companies achieving 27.5 mpg, would be 1.8 billion gallons of gasoline over the life of the MYs 1989–90 fleets. This would represent a maximum yearly impact on U.S. gasoline consumption of 238 million gallons, or roughly 0.3 percent of total annual automobile consumption. In terms of U.S. petroleum consumption, it would amount to a maximum yearly increase of 0.09 percent.

The actual energy savings could be less if certain manufacturers were able to meet the 27.5 mpg standard only by restricting sales of their larger cars. In that event, consumers desiring such vehicles might tend to keep their older, larger cars in service longer, which generally are less fuel-efficient than their new counterparts; or they might purchase similar vehicles from manufacturers which did not face CAFE constraints; or they could purchase larger pick-up trucks and vans (which are less fuel-efficient, but not subject to the passenger automobile CAFE standards) to obtain the room, power and load-carrying capacity they desire. Those actions would have adverse (or at least neutral) effects on actual fuel consumption, which could offset in whole or part the theoretical energy savings associated with a higher passenger vehicle CAFE standard.

C. Consideration of Standards Above GM's and/or Ford's Capability

In the MY 1987–88 rulemaking, NHTSA considered, as part of taking industrywide considerations into account, whether a standard could or should be set at levels above the capabilities of GM and/or Ford. The agency concluded that since GM then produced more than 40 percent, and Ford approximately 18 percent, of all cars sold in the U.S., CAFE standards set at the level of the least capable of these manufacturers represents an appropriate balancing of "the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers." NHTSA also stated that given GM's and Ford's large market shares, it believed that a standard set at a level above either company's capability would be inconsistent with taking industrywide considerations into account.

The MYs 1987–88 decision was made in the context of a determination that both GM and Ford had made reasonable efforts to achieve 27.5 mpg CAFE for those two model years. As discussed above, NHTSA is still in the process of analyzing whether it can make such a determination for GM and Ford for MYs 1989–90. There is thus a possibility that the agency will conclude that one manufacturer made reasonable efforts to achieve 27.5 mpg and that the other did not. Should this occur, it is also possible that an approach of not setting a standard at a level above either company's capability could result in the company which did *not* make reasonable efforts driving the level of the standard downward.

As discussed above, the agency has previously concluded that reducing a standard notwithstanding the absence of reasonable efforts by the industry would be an abuse of discretion. Moreover, the Court of Appeals has stated that lowering the standard whenever the larger manufacturers assert current inability to meet the standard would, without doubt, completely vitiate the statutory scheme. NHTSA's approach of analyzing reasonable efforts for purposes of deciding whether to exercise its discretion to amend a standard and then following its traditional approach of analyzing maximum feasibility as of the time of the amendment for purposes of setting the new standard produces results clearly consistent with the statutory scheme so long as either all, or none, of the larger manufacturers have made reasonable efforts to achieve 27.5 mpg CAFE for a particular model year. NHTSA notes, however, about the possible result where the capability and reasonable efforts of one of the larger manufacturers "opens the door" for setting a new standard, and the lower capability of another larger manufacturer which has not made reasonable efforts drives the level of the standard downward. The agency requests comments on the following question:

17. If the capability and reasonable efforts of one of the larger manufacturers justifies an amendment to lower the 27.5 mpg standard, and another larger manufacturer which may not have made reasonable efforts to achieve 27.5 mpg CAFE for the model year in question (whether because it decided to utilize the statute's flexibility related to credits or for any other reason) has a lower capability which could drive the level of the standard downward, how should the agency consider this issue in setting the new standard at the "maximum feasible average fuel economy level"?

IX CEI Petition

CEI's petition requested, based on safety considerations, that NHTSA set the MY 1989–90 standards at a "nonconstraining" level, i.e., a level at or below the CAFE that manufacturers would achieve in the absence of any regulatory program. The petitioner argued that larger cars are generally more crashworthy than smaller cars, and that downsizing is a major means by which carmakers improve the fuel economy of their product. CEI argued that to the extent that a particular model year's CAFE standard mandates a level of fuel economy above that which would otherwise be achieved, it diminishes the crashworthiness of the new car fleet. The petitioner cited a report by Robert W. Crandall of the Brookings Institution and John D. Graham of the Harvard School of Public Health in support of its contention.

NHTSA believes that setting CAFE standards deliberately low enough to be "nonconstraining," as requested by CEI, would be inconsistent with EPCA's requirements and thus outside the agency's legal authority. As discussed above, in 1975, Congress set the 27.5 mpg standard for MY 1985 and subsequent years by statute. The 27.5 mpg standard represented a long-term goal, requiring manufacturers to essentially double their CAFE. While the Act provides NHTSA with authority to amend the standard for particular model years, any amended standard must be at the "maximum feasible" level. Clearly, Congress intended the CAFE program to have a substantial impact on the cars being produced.

While NHTSA shares CEI's objection to the CAFE program (albeit for different reasons), the agency cannot unilaterally alter or ignore the statute. As noted earlier, NHTSA has asked Congress to repeal the law; but until then, we must administer it as written, despite our policy views. Any methodology of setting standards deliberately to be at or below the level that would be achieved in the absence of the CAFE program, whether for safety considerations or any other reason, would violate the requirement for maximum feasible

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standards and vitiate the statutory scheme.

On the other hand, NHTSA believes that it is appropriate to consider safety in deciding whether to exercise its discretion to amend CAFE standards and also in determining maximum feasible fuel economy. NHTSA notes that in proceeding to the final step in its selection of the level of the MY 1981–84 passenger car CAFE standards, it dropped from further consideration the highest schedule of standards, i.e., the one based on the use of diesels, mix shifts and certain other actions. The agency did so in part because it desired further information on health effects of diesel particulates. 42 FR 33454–45.

NHTSA also notes that it has been argued that some recent product decisions that tend to *lower* CAFE may have adverse safety impacts. These observers have cited such things as recent significant increases in acceleration and performance of certain vehicles. In analyzing possible safety impacts, the agency must, of course, consider possible impacts in both directions.

In analyzing this issue, the agency requests information or comments on the following question:

18. Would lower passenger car CAFE standards for MYs 1989–90 have any impact, positive or negative, on safety? Why? The agency is particularly interested in comments from manufacturers as to whether and how they would change their product plans in response to a lower standard, i.e., whether weight would be added, whether additional safety features would be added and, if so, for which models; the quantitative impact such features would have on safety; and why the 27.5 mpg standard prevents or discourages them from offering such features. Are there product decisions that are adverse to safety that would be encouraged by a lower standard?

X. Comment Period

NHTSA is providing different comment periods for the proposed MY 1989 and MY 1990 standards. An abbreviated comment period is provided for the proposed MY 1989 standard, while a 60 day period is provided for the proposed MY 1990 standard.

The comment period is shortened for MY 1989, due the limited remaining time for amending that standard. NHTSA notes, however, that on March 16, 1988, it published a request for comments relating to one of the petitions requesting a reduction in the MY 1989–90 CAFE standards. That notice specifically sought information concerning manufacturer efforts at meeting the CAFE standards, manufacturer product plans, and projected CAFE levels. Thus, the public has had a previous opportunity to submit comments relating to a possible reduction in the MY 1989 CAFE standard, and has been aware for many months of the possibility of rulemaking in this area.

NHTSA also recognizes, however, that there may be some persons or organizations commenting for the first time. We encourage every interested person to comment, whether or not the submitter responds to all of the questions posed. The agency requests that the commenter identify the numbered question he or she is addressing. Each comment will be reviewed and considered by the agency.

NHTSA has stated previously that amendments reducing a standard for a particular model year may be made until the beginning of the model year, but not after that time. See 49 FR 41250, 41254–6 (October 22, 1984). While the agency has not established a particular date as the beginning of the model year, it has stated that the model year begins in the fall of the preceding calendar year. Moreover, in *In Re Center for Auto Safety*, 793 F.2d 1346 (D.C. Cir. 1986), the Court of Appeals stated that "the model year is traditionally thought to start approximately October 1st." That court also concluded that in amending the MY 1985 light truck CAFE standards on October 16, 1984, the agency failed to amend the standards before the start of that model year. In light of this decision, NHTSA believes that in order to be timely, any decision regarding the MY 1989 standard should be made and issued by the beginning of the model year, ordinarily thought to be the beginning of October.

EPCA does not establish a specific minimum notice period. Accordingly, NHTSA has established a reasonable comment period, based on the circumstances. The agency believes that the comment period for MY 1989 is sufficiently long to provide a full opportunity for meaningful participation by the public, and that a longer period would make it difficult or impossible to make a final decision in a timely manner. Accordingly, the agency finds good cause for the shortened comment period.

XI. Public Meeting

A public meeting will be held on September 14, 1988, in Washington, DC, at 9:00 a.m. at the U.S. Department of Commerce Auditorium, 14th Street and Constitution Ave., NW., Washington, DC 20591. The agency invites interested members of the public to participate in this meeting and to comment on the full range of issues raised by this proposal, and specifically to respond to the question of whether manufacturers have made reasonable efforts to meet the 27.5 mpg CAFE standard and to the question of the maximum feasible level for MY 1989 and MY 1990.

No opportunity will be afforded the public to directly question participants in the meetings. However, the public may submit written questions to the panel of Federal officials for the panel to consider asking of particular participants. The presiding officials reserve the right to ask questions of all persons making oral presentations.

Persons wishing to make oral presentations at the public hearing should contact Mr. James Jones, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4793, by September 9, 1988, so that time limitations (if necessary) and the need for any special equipment, such as projectors, can be discussed and final arrangements can be made. Persons whose presentations will include slides, motion pictures, or other visual aids should submit copies of them for the record at the meeting. Oral presentations will be limited to between 5 and 15 minutes, depending on the number of witnesses. If the number of requests for oral presentation exceeds the available time, the agency may ask prospective witnesses having similar views or belonging to similar types of groups or occupations to combine their presentations.

Persons making oral presentations are requested, but not required, to submit 25 written copies of the full text of their presentation to Mr. James Jones no later than the day before the hearing. If time permits, persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so at the end of the day's schedule. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of the public hearing will be prepared and also placed in the NHTSA docket as soon as possible after the hearing. A schedule of the persons making oral presentations at the hearing will be available at the designated meeting area at the beginning of the public hearing.

XII. Written Comments

Comments are requested in three specific areas: reasonable efforts, jobs, maximum feasible capability, and safety effects of the CAFE program. The agency has discussed in more detail what it needs in each of the preamble sections dealing with these issues.

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Interested persons are invited to submit comments on the proposal, regardless of whether they also present oral statements at the September 14 public meeting. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting further the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated in the **DATES:** section of this preamble will be considered, and will be available for examination in the docket at the above address both before and after that date. Because of the short time available to decide whether to issue a final decision for MY 1989, the agency does not expect to be able to consider any late comments. For MY 1990, comments filed after the closing date will be considered to the extent possible. Rulemaking action may proceed at any time after the comment due date. Any comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

XIII. Impact Analyses

A. Economic Impacts

The agency considered the economic implications of the proposed amendment and determined that the proposal is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Preliminary Regulatory Impact Analysis, copies of which are available from the Docket Section. The contents of that analysis are generally described above.

B. Environment Impacts

The agency has analyzed the environmental impacts of the proposed amendment to the 1989–1990 model year passenger automobile average fuel economy standards in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Copies of the Environmental Assessment (EA) are available from the Docket Section. The agency has tentatively concluded that no significant environmental impact would result from the execution of this rulemaking action. The agency notes, for the first time in this EA, however, that part of its analysis should include the possible effects of the potential increase in carbon dioxide (CO_2) build-up as the result of action lowering the standard (build-up is known as the "greenhouse" effect).

C. Impacts on Small Entities

Consistent with the provisions of the Regulatory Flexibility Act, the agency has considered the impacts this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No passenger car manufacturer, if subject to the proposed, rule would be classified as a "small business" under the Regulatory Flexibility Act. In the case of small businesses, small organizations, and small governmental units which purchase passenger cars, adoption of the proposed rule would not affect the availability of fuel efficient passenger cars or have a significant effect on the overall cost of purchasing and operating passenger cars.

D. Impact on Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Department of Energy Review

In accordance with section 502(i) of the Cost Savings Act, the agency submitted this proposal to the Department of Energy for review. There were no unaccommodated comments.

List of Subjects in 49 CFR Part 531

Energy conservation, Fuel economy, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 531 would be amended as follows:

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

1. The authority citation for Part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

§ 531.5 [Amended]

2. The table in § 531.5(a) would be amended by revising the fuel economy standards specified for MY 1989–90 to the levels determined by the agency to be the maximum feasible average fuel economy level, based on the considerations discussed above.

Issued: August 25, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–19089 Filed 8–26–88; 8:45 am]

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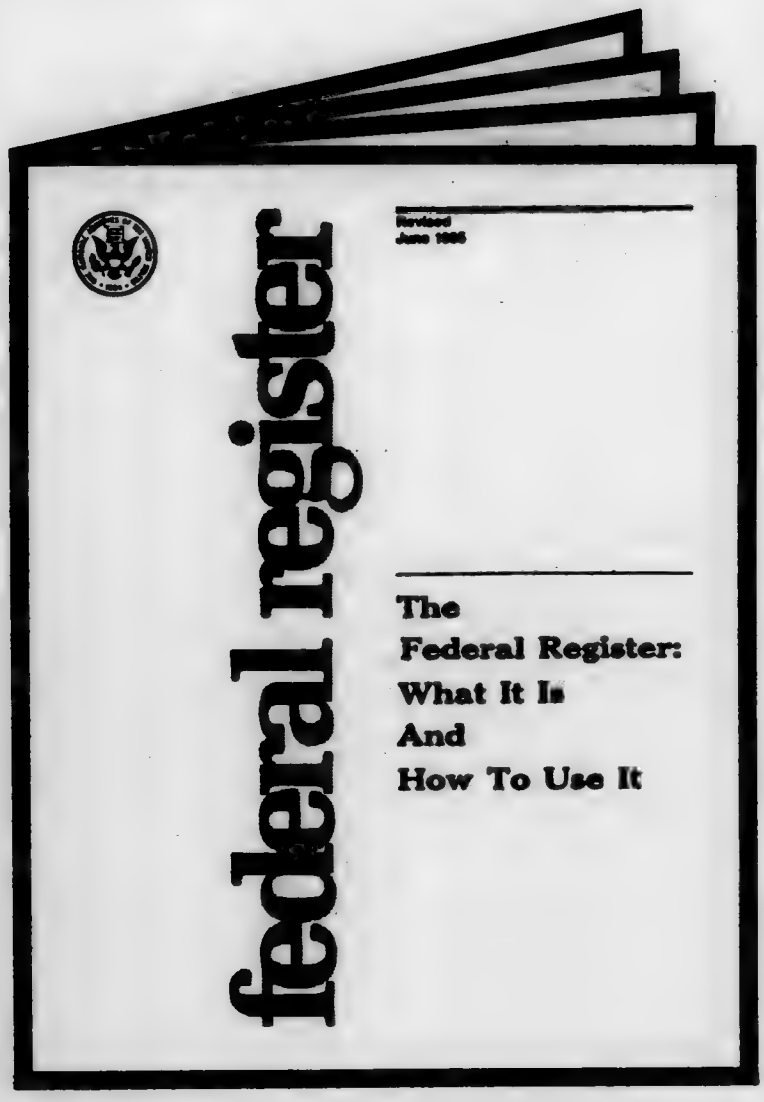

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Rules and Regulations

Federal Register
Vol. 53, No. 168
Tuesday, August 30, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[AMS-TB-88-033RN]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the designation of the consolidated flue-cured tobacco markets of Carthage and Aberdeen, North Carolina. A mail referendum was conducted during the period of March 28–April 1, 1988, among tobacco growers who sell their tobacco at auction in Carthage and Aberdeen, North Carolina, to determine producer approval of the designation of these two markets as one consolidated market. Eligible producers voted in favor of the designation. Therefore, for the 1989 and succeeding flue-cured marketing seasons, the Carthage and Aberdeen, North Carolina, tobacco markets shall be designated as and be called Carthage-Aberdeen. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: September 29, 1988.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Room 502 Annex, Washington, DC 20090–6456, telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: A notice was published in the March 24, 1988, issue of the **Federal Register** (53 FR 9673) advising that a referendum would be conducted among flue-cured producers who market their tobacco on the Carthage and Aberdeen, North Carolina, markets to ascertain if such producers favored the designation of the consolidated market. Carthage and Aberdeen had been officially and separately designated on June 26, 1942 (7 CFR 4811) under the Tobacco Inspection Act of 1935 (7 U.S.C. 511 *et seq.*).

The referendum was conducted among producers who were engaged in the production of flue-cured tobacco which they marketed in Carthage and Aberdeen, North Carolina, during the calendar year 1987. Ballots for the March 28–April 1 referendum were mailed to 410 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 113 responses: 101 eligible producers voted in favor of the consolidation of the Carthage and Aberdeen markets; 2 eligible producers voted against the consolidation; and 10 ballots were determined to be invalid because they were not completed and/or signed.

The notice of referendum announced the determination by the Secretary that the consolidated market of Carthage-Aberdeen, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory, Federal grading of tobacco sold at auction for the 1988 and succeeding seasons, subject to the results of the referendum. That determination was based on the evidence and arguments presented at a public hearing held in Aberdeen, North Carolina, on October 28, 1987, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions for referendum of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule because it does not meet any of the criteria established for major rules under the executive order.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Tobacco warehousemen and producers fall within the confines of "small business" as defined in the Regulatory Flexibility Act. A number of firms which are affected by these adopted regulations do not meet the definition of small business either because of their individual size or because of their dominant position in one or more marketing areas. The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant impact on a substantial number of small entities, and will not substantially affect the normal movement in the marketplace.

List of Subjects in 7 CFR Part 29

Administrative practices and procedure, Tobacco.

For the reason set forth in the preamble, 7 CFR Part 29, Subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732 as amended by sec. 157(a)(i), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.8001 [Amended]

2. In § 29.8001, the table is amended by removing under item (t) in the column Auction Markets the words "Aberdeen, N.C. and "Carthage, N.C." and by adding a new entry (bbb) to read as follows:

Territory	Type of tobaccos	Auction markets	Order of designation	Citation
•	•	•	•	•
(bbb) North Carolina	Flue-Cured	Carthage-Aberdeen	Aug. 30, 1988	53 FR.

Dated: August 22, 1988.

J. Patrick Boyle,
Administrator

[FR Doc. 88-19636 Filed 8-29-88; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-123]

Melon Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that removed the melon fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. We have determined that the melon fly has been eradicated from Los Angeles County, California, and the regulations are no longer necessary.

EFFECTIVE DATE: September 29, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective May 16, 1988, and published in the **Federal Register** on May 19, 1988 (53 FR 17912-17913, Docket Number 88-064), we amended the "Domestic Quarantine Notices" in 7 CFR Part 301 by removing the melon fly regulations (7 CFR 301.97 through 301.97-10). These regulations designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. We have determined that the melon fly has been eradicated from Los Angeles County, California, and the regulations are no longer necessary. Comments on the interim rule were required to be postmarked or received on or before July 18, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the part of Los Angeles County that was quarantined, there were fewer than 250 small entities affected, including 53 nurseries, 150 mobile fruit vendors, 30 fruit stands, 5 fruit wholesalers, and 8 companies catering to airlines. Most of the sales by the fruit vendors and the fruit stand operators are local intrastate, and were not affected by the quarantine. Effects on the nurseries were minimized by the availability of soil treatment under the regulations. Effects on the fruit wholesalers were minimized by the availability of treatments for many of the regulated articles. Effects on the caterers were negligible, because virtually all of their food products intended for interstate movement originate outside the quarantined area and, properly handled, can be moved onto aircraft without a certificate or limited permit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Melon fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 53 FR 17912-17913 on May 19, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 25th day of August, 1988.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-19706 Filed 8-29-88; 8:45 am]
BILLING CODE 3410-34-M

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7 CFR Part 301

[Docket No. 88-124]

Oriental Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that removed the Oriental fruit fly regulations that designated a portion of Orange County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. We have determined that the Oriental fruit fly has been eradicated from Orange County, California, and the regulations are no longer necessary.

EFFECTIVE DATE: September 29, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective May 16, 1988, and published in the **Federal Register** on May 19, 1988 (53 FR 17911-17912, Docket Number 88-077), we amended the "Domestic Quarantine Notices" in 7 CFR Part 301 by removing the Oriental fruit fly regulations (7 CFR

301.93 through 301.93–10). These regulations designated a portion of Orange County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. We have determined that the Oriental fruit fly has been eradicated from Orange County, California, and the regulations are no longer necessary. Comments on the interim rule were required to be postmarked or received on or before July 18, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the part of Orange County that was quarantined, there are approximately 80 small entities that may have been affected. These include approximately 60 nurseries, 10 roadside stands and flea markets, 6 fruit and vegetable growers, 2 packing houses, 1 processor, and 1 farmers market. The vegetable growers have a total of 23 acres in production, including 3 acres of avocados, 10 acres of tomatoes, and 10 acres of peppers and cucumbers. The effect of this rule on these entities should be significant, since most of their sales are local intrastate and are not affected by the regulatory provisions we are removing. Those sales that are affected are mainly of articles that can be moved interstate after compliance with treatment or inspection provisions of the regulations. Compliance with these provisions does not add significant costs to the interstate movement of most of these affected articles.

Based on these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires governmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Oriental fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 53 FR 17911–17912 on May 19, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, DC, this 25th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–19705 Filed 8–29–88; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 88–122]

Peach Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that removed the Peach fruit fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. We have determined that the peach fruit fly has been eradicated from Los Angeles County, California, and the regulations are no longer necessary.

EFFECTIVE DATE: September 29, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective May 16, 1988, and published in the Federal Register on May 19, 1988 (53 FR 17913–17914, Docket Number 88–025), we amended the "Domestic Quarantine Notices" in 7 CFR Part 301 by removing the "Peach Fruit Fly" regulations (7 CFR 301.96 through 301.96–10). These regulations designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. We have determined that the peach fruit fly has been eradicated from Los Angeles County, California, and the regulations are no longer necessary. Comments on the interim rule were required to be postmarked or received on or before July 18, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information complied by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the quarantined area, there are fewer than 115 small entities that may be affected, including 45 nurseries, 50 mobile fruit vendors, eight fruit stands, and eight companies catering to airlines.

The effect of this rule on these entities should be insignificant. Most of the sales by the entities, except for the nurseries and caterers, are local, intrastate and were not affected by the regulatory provisions we removed. Effects on the nurseries were minimized by the availability of soil treatment under the regulations. Effects on the caterers were negligible, because virtually all of their food products intended for interstate movement originated outside the quarantined area and, properly handled, were permitted to be moved onto aircraft without a certificate or limited permit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (see 7 CFR 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Peach fruit fly.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 53 FR 17913–17914 on May 19, 1988.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 25th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–19704 Filed 8–29–88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 932 and Part 944

[Docket No. FV–88–119]

Olives Grown in California and Imported Olives; Interim Final Rule Establishing Grade and Size Requirements for Limited Use Styles of California Processed Olives for the 1988–89 Season, and Conforming Changes in the Olive Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes grade and size requirements for California processed olives used in the production of limited use styles of olives such as wedges, halves, slices, or segments and establishes similar requirements in the olive import regulation to bring that regulation into conformity with the domestic requirements. The grade and size requirements are the same as implemented last season. Olives used in limited use styles are too small to be desirable for use as whole or pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of products where the form of the olive is changed. Their use in such products over the years has helped the California olive industry meet the increasing market needs of the food service industry. The requirements for domestic olives were recommended by the California Olive Committee, which works with the Department in administering the marketing order program for olives grown in California. The establishment of such requirements for imported olives is required pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Interim final rule is effective August 30, 1988. Comments which are received by September 29, 1988, will be considered prior to issuance of the final rule.

ADDRESS: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 932 [7 CFR Part 932], as amended (the order), regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are seven handlers of California olives subject to regulation under the order and approximately 1,400 producers in California. Approximately 25 importers of olives are subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Most but not all of the olive producers and importers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. About 75 percent of the production comes from the San Joaquin Valley and 25 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons in the 1972–73 crop year to a high of 146,500 tons in the

1982–83 crop year. Last year's production totaled about 64,000 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. The industry expects the 1988–89 crop to be about 85,000 tons.

The primary use of California olives is for canned ripe olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

This action will allow handlers to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the California olive supply, facilitate market expansion, and benefit both growers and handlers.

This interim rule modifies § 932.153 of Subpart-Rules and Regulations [7 CFR 932.108 through 932.161]. The modification establishes grade and size regulations for 1988–89 crop limited use size olives. The modification is issued pursuant to paragraph (a)(3) of § 932.52 of the order. This rule also makes necessary conforming changes in the olive import regulation [Olive Regulation 1; 7 CFR 944.401]. The import regulation is issued pursuant to section 8e of the Act. Section 8e provides that whenever grade, size, quality, or maturity provisions are in effect for specified commodities, including olives, under a marketing order, the same or comparable requirements must be imposed on the imports.

Paragraph (a)(3) of § 932.52 of the marketing order provides that processed olives smaller than the sizes prescribed for whole and pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories. The section further provides for the establishment of size tolerances.

To allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives, the committee recommended that grade and size requirements again be established for limited use olives for the 1988–89 crop year (August 1 through July 31). The grade requirements are the same as those applied during the 1987–88 crop year, as are the sizes and the size tolerances. Permitting handlers to use small olives in limited use style canned olives will have a positive impact on industry returns. In the absence of this action, the undersized fruit would have to be used for non-canning uses, like oil, for which returns are lower. Except for the changes necessary in the effective date, the provisions, hereinafter set forth in § 932.153, are the same as those established last season.

Paragraph (b)(12) of § 944.401 of the olive import regulation allows imported bulk olives which do not meet the minimum size requirements for canned whole and pitted ripe olives to be used for limited use styles if they meet specified size requirements. Continuation of the limited use authorization for California olives by this interim rule requires that similar changes be made in paragraph (b)(12) of § 944.401 to keep the import regulation in conformity with the applicable domestic requirements. These conforming changes will benefit importers because they will be able to import small-sized olives for limited use during the 1988–89 season ending July 31, 1989.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is determined that the provisions as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Compliance with this action will require no special preparation by handlers and importers; (2) it is important that these requirements apply to as much of the 1988–89 marketing season as possible; (3) the olive import requirements are mandatory under section 8e of the Act; (4) this action relieves restrictions on handlers and importers; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to the issuance of a final rule.

List of Subjects

7 CFR Part 932

Marketing agreements and orders, Olives, California.

7 CFR Part 944

Marketing agreements and orders, Fruits, Import Regulations.

For the reasons set forth in the preamble, 7 CFR Parts 932 and 944 are amended as follows.

1. The authority citations for 7 CFR Parts 932 and 944 continue to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Section 932.153 is revised to read as follows:

Note.—This section will appear in the Code of Federal Regulations.

§ 932.153 Establishment of grade and size requirements for processed 1988–89 crop year olives for limited use.

(a) *Grade.* On and after August 30, 1988, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1988, and meet the grade requirements specified in paragraph (a)(1) of § 932.52 as modified by § 932.149.

(b) *Sizes.* On and after August 30, 1988, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1988, through July 31, 1989, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1988, or after July 31, 1989.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh 1/90 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/90 pound.

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh 1/140 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh 1/180 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

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PART 944—FRUITS; IMPORT REGULATIONS

5. Section 944.401 is amended by revising the introductory text of paragraph (b)(12) to read as follows:

Note.—This paragraph will appear in the Code of Federal Regulations.

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported during the period August 30, 1988, through July 31, 1989, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

* * * * *

Dated: August 24, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-19635 Filed 8-29-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1126

[DA-88-114]

Milk in the Texas Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action continues, for the months of August 1988 through July 1989, a suspension of portions of the pool plant and producer milk definitions of the Texas order. Specifically, the action continues the suspension of the 60-percent delivery standard for pooling cooperative association plants, the limitation on the types of pool plants at which milk receipts are used to determine the amount of milk that a cooperative may divert to nonpool plants, and the limits on the amount of milk that a pool plant operator may divert to nonpool plants. In addition, the shipping standards for pooling supply plants under the order, and the individual producer performance standards that must be met to be eligible to be diverted to a nonpool plant, also are suspended for August 1988 through July 1989. The continuation of the suspension, and the suspension of the additional provisions, were requested by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial proportion of the producers who supply milk to the market. The action is necessary to give handlers the flexibility to dispose of the market's increasing milk supplies without engaging in uneconomic movements of milk solely for the purpose of insuring that dairy farmers who have historically supplied the fluid milk needs of the market would continue to have their milk pooled and priced under the order.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of proposed suspension: Issued August 3, 1988; published August 8, 1988 (53 FR 29689).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 8, 1988 (53 FR 29689) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1988 through July 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c) and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

5. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;"

Statement of Consideration

This action continues, for the months of August 1988 through July 1989, a suspension of portions of the pool plant and producer milk definitions of the Texas order. Specifically, the action continues the suspension of the 60-percent delivery standard for pool plants operated by cooperative associations, the restriction on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants, and the limits on the amount of milk that a pool plant operator may divert to nonpool plants. In addition, for the same time period, the action suspends the shipping standards that must be met by supply plants to be pooled under the order and the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order provides for pooling a cooperative association plant located in the marketing area if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants

during the month. Also, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received at pool distributing and supply plants during the month. In addition, the order provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. The suspension would inactivate the 60-percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant. Such provisions were suspended during March–July 1988.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested suspension would remove these performance standards during August 1988 through July 1989 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. The suspension would remove the 15 percent delivery requirement. It is noted that such action represents a minor modification of the provisions that were originally proposed to be suspeneded. The modification is based on comments received from one of the cooperative associations that originally requested the suspension. Upon further review, the cooperative indicated that it would not be necessary to remove all of the conditions that are applicable to producer milk eligibility for diversion purposes. Thus, the suspension does not remove the requirement that the milk of a producer must first be received at a pool plant in order to be eligible for diversion to a nonpool plant.

The continuation of the current suspension, as well as the additional suspension of the supply plant and producer performance standards, were requested by two cooperative associations (Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.) that represent a substantial proportion of the dairy farmers who supply the Texas market. Associated Milk Producers operates supply-balancing plants that are pooled under the order and Mid-America operates a supply plant in southwestern Missouri that has historically been pooled under the Texas order.

As indicated by the cooperatives, the suspension is necessary because of production increases by Texas dairy farmers. As a result of substantially greater production, supplies of milk are more than ample to meet fluid milk needs and significant quantities of milk will have to be shipped to nonpool plants for use in manufactured dairy products. In addition, it is unlikely that additional supplies of milk from southwestern Missouri will be necessary in the coming months to supplement fluid milk needs of distributing plants. As a result, the suspension is necessary to give handlers the flexibility to dispose of excess milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the Texas market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action will eliminate unnecessary milk movements and ensure that dairy farmers who have been supplying the market's fluid requirements will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of the Texas order are hereby suspended for the months of August 1988 through July 1989.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1126.7 [Temporarily suspended in part]

2. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

3. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c) and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

§ 1126.13 [Temporarily suspended in part]

4. In 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

5. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

6. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;"

Signed at Washington, DC, on August 23, 1988.

Robert Melland,

Deputy Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88–19839 Filed 8–29–88; 8:45am]

BILLING CODE 3410-02-M

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 500 and 501

[No. 88-884]

Nomenclature Change; and Miscellaneous Conforming Technical Amendments

Date: August 18, 1988

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; nomenclature change; and miscellaneous conforming and technical amendments.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations: (1) To reflect the current organization of the Board's Office of District Banks; and (2) To correct typographical and other technical errors contained in the Board's regulations.

EFFECTIVE DATE: August 30, 1988.

FOR FURTHER INFORMATION CONTACT: Cindy L. Hausch, Financial Analyst, (202) 377-7488; Kathy O'Dea, Assistant Director (202) 377-6789; or Patrick G. Berbakos, Director (202) 377-6720, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of these corrective amendments, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Parts 500 and 501

Accounting, Administrative practice and procedure, Bank deposit insurance, Claims, Investments, Organization and channeling of functions, Reporting and recordkeeping requirements, and Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 500 and 501, Subchapter A, Title 12, *Code of Federal Regulations*, as set forth below.

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER A—GENERAL

PART 500—ORGANIZATION AND CHANNELING OF FUNCTIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1988).

2. Section 500.13 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 500.13 Director of the Office of Management Systems and Administration.

* * * * *

(a) The Financial Management Division is responsible for the administration and management of the internal financial operations of the Board and the headquarters of the Federal Savings and Loan Insurance Corporation, including budgeting, accounting, receipt, and disbursement of funds; control, processing, and payment of expenses; and maintenance of pay and leave records. * * *

* * * * *

3. Revise § 500.19 to read as follows:

§ 500.19 Director of the Office of District Banks.

The Director of the Office of District Banks serves as chief liaison between the 12 Federal Home Loan Banks ("district banks") and the Federal Home Loan Bank Board and oversees the operations and financial programs of each district bank. The Director is responsible for ensuring that the district banks conform with applicable laws as well as Board regulations and policies and for arranging annual audits of each of the district banks. The office is responsible for processing, reviewing, and evaluating certain applications to the Board and the Federal Savings and Loan Insurance Corporation, except for applications which are approved by other agents or offices of the Board pursuant to delegated authority. The Director is responsible for conducting elections of elected directors and for identifying and recommending the appointment of appointed directors of each Federal Home Loan Bank. The Office of District Banks is divided into three units: Application Analysis and Policy Division; Bank Operations Division; and Bank Systems and Reports Division.

§ 500.2 [Removed and reserved]

4. Remove § 500.21 and reserve the section designation for future use.

PART 501—OPERATIONS

5. The authority citation for Part 501 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended, (12 U.S.C. 1437); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1988).

6. Amend § 501.10 by revising paragraph (a) to read as follows:

§ 500.10 Officers as agents.

* * * * *

(a) Such agents shall see that all Federal savings and loan associations and other insured institutions in the agent's bank district submit for consideration such matters as applications for Board action pursuant to the various sections of the Federal Regulations as delegated, the hearing of oral argument and making recommendation to the Board, and such similar matters as are required to be acted upon by the Board or the Federal Savings and Loan Insurance Corporation by statute, rule, or regulation.

* * * * *

7. Amend § 501.11 by revising paragraph (d) to read as follows:

§ 501.11 Designation of Principal Supervising Agent and Supervisory Agents.

* * * * *

(d) He shall see that Federal savings and loan associations and other insured institutions in his bank district submit to him for his consideration such matters as applications for Board action pursuant to the various sections of the Federal Regulations as delegated, the hearing of oral argument and making recommendation to the Board, and such similar matters as are required to be acted upon by the Board or the Federal Savings and Loan Insurance Corporation by statute, rule, or regulation. When these matters come to the attention of said agent he shall, after giving them due consideration, submit them, together with such supplemental information as may be available to him, to the Board with his recommendations thereon.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-19873 Filed 8-29-88; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 574

[No. 88-910]

Acquisition of Control of Insured Institutions; Delegations of Authority and Technical Amendments

Date: August 18, 1988

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; delegations of authority and revision of filing procedures; solicitation of comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "the Corporation"), is amending the provisions of 12 CFR Part 574 to expand the authority of the Board's Principal Supervisory Agents ("PSAs") at the Federal Home Loan Banks ("FHLBanks") to approve and disapprove change of control notices and applications by eliminating paragraphs (i) and (v) of § 574.8(a)(1), which preclude PSAs from approving or disapproving acquisitions of insured institutions that involve certain securities filings made with the Board under the Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.* (the "Exchange Act"), or the Board's securities offering regulations at 12 CFR Part 563g. In addition, the Board is delegating to the PSAs the authority to accept or reject certain rebuttal of control and rebuttal of concerted action submissions filed pursuant to 12 CFR Part 574. Finally, the Board is taking this opportunity to make various technical amendments that will streamline and update Part 574, as more fully described in the preamble to this final rule.

DATES: Effective August 30, 1988. Comments must be received on or before October 31, 1988.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office at 801 17th Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Financial Analyst, (202) 778–2860, Corporate Activities Section, Office of Regulatory Activities, Federal Home Loan Bank System, 801 Seventeenth Street NW., Washington, DC 20552; J. Amanda Machen, Assistant Deputy Director, (202) 377–7396; Jeff Miner, Assistant Deputy Director, (202) 377–7546; Kevin A. Corcoran, Deputy Director for Corporate Transactions, (202) 377–6982; V. Gerard Comizio, Director, (202) 377–6411; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377–6459, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Acquisitions and Notices

Paragraphs (a)(1) and (2) of 12 CFR 574.8 delegate to each PSA authority to approve or disapprove any acquisition application or notice filed under § 574.3(a) or (b), provided certain criteria are met. Prior to the amendments described herein, there were six such criteria. By the action described herein, the Board is eliminating the following two of those criteria:

(1) Neither the acquiror nor the insured institution to be acquired, or any affiliate of either, is required under the Exchange Act, 15 U.S.C. 78a–78jj, and Part 563d of this chapter, to make a filing with the Board under any of the following regulations in connection with the transaction in which the acquisition would occur:

(A) Rule 13e–3, 17 CFR 240.13e–3 (for "going private" transactions);

(B) Rule 13e–4, 17 CFR 240.13e–4 (for tender offers by an issuer for its own stock);

(C) Regulation 14A, 17 CFR 240.14a–1 through 240.14a–101 (for solicitation of proxies);

(D) Regulation 14C, 17 CFR 240.14c–1 through 240.14c–101 (for distribution of information statements in lieu of solicitation of proxies); or

(E) Regulations 14D or 14E, 17 CFR 240.14d–1 through 240.14f–1 (for tender offers); and

(2) Neither the insured institution to be acquired nor the acquiror is required under Section 563g.2 of this chapter to file an offering circular with the Board in connection with the acquisition.

As a result of the above two provisions, all acquisitions that have involved the aforementioned types of securities filings with the Board have, in the past, required review either by the Board or the Board's Washington staff. The Board, at the time it promulgated the above two provisions, stated two reasons for requiring all such acquisition applications and notices to be processed in Washington. First, the Board noted that acquisitions requiring securities filings with the Board often involve institutions that have recently converted to the stock form. *See* 50 FR 48,686, 48,711 (Nov. 26, 1985). The Board was concerned that acquisitions involving such institutions could raise "special issues" requiring scrutiny by the Board or the Board's Washington staff. *Id.* After several years of experience with such applications and notices, however, the Board believes it would now be appropriate to delegate acquisitions involving securities filings to the PSA level. The Board feels confident, on the basis of the transactions it and its Washington staff have processed during the past several years as a result of the currently structured system of delegations, that the issues generally presented by acquisitions of recently converted institutions have been identified and adequately addressed either by regulation or by the establishment of Bank Board System policies, procedures, and internal applications processing guidelines. Of course, to the extent that an acquisition involving a securities filing presents a significant issue of law or policy, or another aspect that renders it ineligible for action by the PSA, it will still come to the Board or the Washington staff for a decision.

The second reason stated by the Board, at the time the above two provisions were promulgated, for requiring acquisitions involving securities filings to be reviewed in Washington was efficiency. The Board reasoned that since the Washington staff would be reviewing securities filings made in connection with such acquisitions, certain efficiencies and economies of scale might result from having the Washington staff also review the acquisition applications themselves. 50 FR at 48,711; 51 FR 40,127, 40,137 (Nov. 5, 1986). The Board has found, however, that the dates on which acquisition applications and notices and the related securities filings are submitted to the Board may differ to an extent that efficiencies do not result. As a result, the applications and notices and the related securities filings are frequently processed serially, rather than concurrently. Depending upon the manner in which an applicant chooses to schedule a transaction, an acquisition application or notice and the related securities filing may be submitted a month or more apart.

Thus, the Board has decided to expand the current delegations of authority to the PSAs to delegate responsibility for acquisition applications and notices involving securities filings to the PSA level in an effort to further streamline the agency's procedures. This action is consistent with the Board's efforts on a number of fronts to improve the efficiency of the agency's application processing procedures.[1]

[1] It is important to note that the Board has found that information is often gleaned from a securities filing that is helpful in reviewing an acquisition application or notice and vice versa. The Board does not believe that delegating responsibility for processing acquisition applications and notices involving securities filings to the PSAs should result in any significant diminution in the agency's ability to take advantage of such information, especially since the Federal Home Loan Banks receive copies of many of the types of securities filings that are processed by the Board's Washington staff. The Board's Washington staff and staff of the FHLBanks are in frequent contact and routinely seek input from one another, and the Board will continue to

Continued

Rebuttal Filings

By Resolution No. 85–1005, dated November 25, 1985, the Board adopted a formalized process by which an acquiror could attempt to rebut certain determinations of control or presumptions of action in concert that may arise in connection with the acquisition of stock, equity, or proxies of an insured institution (or holding company thereof) under specified circumstances. The Board thereby established an expedited process for the resolution of questions as to whether an investor has the power to control or influence an insured institution.

After more than two years of experience with the rebuttal regulations, the Board believes that the review of rebuttal of control determinations and presumptions of action in concert can be further expedited. Therefore, the Board is delegating authority to the PSAs to act under specified circumstances to accept or reject rebuttal of control and action in concert filings. The PSA will have delegated authority if the following conditions are met:

(1) With a rebuttal of control filing, the acquiror has submitted an executed agreement that conforms in material respects to the agreement set forth at § 574.100;

(2) The filing does not raise novel or significant issues of law or policy. Such issues may include, but are not limited to:

(a) The acquiror is in violation of provisions of Part 574, such as the requirement to file and obtain clearance of a rebuttal of control or concerted action filing *before* making an acquisition or taking other action that would give rise to a rebuttable determination of control or concerted action under § 574.4 (b) or (d);

(b) The applicable control factor arises as a result of holding revocable or irrevocable proxies;

(3) The proposed acquisition is not opposed by the institution whose securities are to be acquired, and there is no competing acquiror for the institution's securities.

(4) The acquisition does not arise in the context of a conversion under Part 563b of the Insurance Regulations.

If any of these conditions are not met, the acquiror must file the rebuttal submission with the Federal Home Loan Bank System's Office of Regulatory Activities and the Board's Office of General Counsel. These Offices will continue to have delegated authority to determine whether the control determination or the presumption of concerted action has been rebutted. It is the Board's view that filings that do not meet the above conditions frequently raise complex or precedential legal issues or present supervisory considerations with system-wide implications, which warrant review by the Board's Washington staff. In any case where a rebuttal filing raises a significant issue of law or policy, however, only the Board itself would have authority to act on the filing. Given the nature of rebuttal filings, the Board expects such situations to be rare.

The Board also is partially modifying the time frames within which the FSLIC may determine that a rebuttal submission is sufficient. The Corporation or its delegate will continue to be required to provide notification, within 20 calendar days after proper filing of a rebuttal submission, of its determination to accept or reject the submission, request additional information, or return the submission as materially deficient. However, the Corporation or its delegate must provide such notification within 15 calendar days of the proper filing of any additional information furnished in response to a specific request. The amendment is intended to retain the expedited 20-day time frame for review of rebuttal submissions while at the same time conforming these time frames to the time frames applicable to processing acquisition applications and notices under other portions of Part 574 as well as the FSLIC's general guidelines for processing applications. *See* 12 CFR 571.12. In addition, the Board is amending its recently-adopted filing requirements to specify that non-delegated rebuttal submissions must be filed directly with the Secretariat, the Office of Regulatory Activities, the Office of General Counsel, and the Principal Supervisory Agent for the insured institution. *See* 12 CFR 574.6.

Also, the Board is amending its rebuttal procedures to require that, when the Board or its delegate agrees to accept a rebuttal of control, the acquiror must transmit a copy of the executed agreement to the insured institution or holding company to which the rebuttal pertains. This step should enhance the effectiveness of the rebuttal process since the affected institution is best situated to know whether or not an acquiror is complying with the undertakings contained in the rebuttal agreement.

The Board is also taking this opportunity to make a technical amendment to Part 574. Section 574.6(b)(1), (3), (4), and (5) (filing requirements for acquisition applications and notices and rebuttal submissions) is being merged into one omnibus paragraph regarding filing procedures, thereby eliminating a substantial amount of duplicative text from Part 574.

Finally, the Board has directed the Office of Regulatory Activities and the Office of General Counsel to develop guidelines and methods for alerting the FHLBanks to issues and types of transactions that present significant issues of law or policy. These guidelines will be issued to the FHLBanks concurrently with the delegation. The Board also anticipates that in conjunction with the significantly enhanced delegations implemented by these amendments, that a post audit function of all rebuttal decisions made by the FHLBanks will be performed in order to monitor the decisions rendered at the FHLBank level.

The foregoing changes are effective August 30, 1988 and are applicable to filings made after such date.

Because these changes are nonsubstantive, the Board finds that observance of the notice and comment procedure prusuant to 5 U.S.C. 553(b) and 12 CFR 508.11 and the 30-day delay of effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary and contrary to the public interest. However, the Board is soliciting comments from interested parties as to how the Board's current regulations related to the review and processing of rebuttal submissions, and the changes adopted today, may be further improved. Comments should be submitted within sixty days of the effective date of this final rule.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 574, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

1. The authority citation for Part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a).

2. Amend Section 574.4 by revising paragraphs (e)(1)(i) and (e)(3) to read as follows and by removing the reference to "§ 574.6(b)(6)" in paragraph (f)(2) and

---

encourage frequent exchange of inforamtion so as to promote the highest possible quality of review of acquisition applications and notices and securities filings.

by inserting in lieu thereof the phrase "§ 574.6(b)(3)":

§ 574.4 Control.

* * * * *

(e) *Procedures for rebuttal*—(1) *Rebuttal of control determination.* * * *

(i) An acquiror seeking to rebut the determination of control arising under paragraph (b)(1) of this section shall submit to the Corporation and executed agreement materially conforming to the agreement set forth at § 574.100 of this Part. Unless agreed to by the Corporation or its delegate in writing, no other agreement or filing shall be deemed to rebut the determination of control arising under paragraph (b)(1) of this section. If accepted by the Corporation or its delegate, the acquiror shall furnish a copy of the executed agreement to the institution to which the rebuttal pertains.

* * * * *

(3) *Determination.* A rebuttal filed pursuant to paragraph (e) of this section shall not be deemed sufficient unless it includes all the information, agreements, and affidavits required by the Corporation and this Part, as well as any additional relevant information as the Corporation or its delegate may require by written request to the acquiror. Within 20 calendar days after proper filing of a rebuttal submission, the Corporation or its delegate will provide written notification of its determination to accept or reject the submission; request additional information in connection with the submission; or return the submission to the acquiror as materially deficient. Within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Corporation or its delegate, the Corporation or its delegate shall notify the acquiror in writing as to whether the rebuttal is thereby deemed to be sufficient. If the Corporation or its delegate fails to notify an acquiror within such time, the rebuttal shall be deemed to be accepted. The Corporation or its delegate may reject any rebuttal which is inconsistent with facts and circumstances known to them or where the rebuttal does not clearly and convincingly refute the rebuttable determination of control or presumption of action in concert, and may determine to reject a submission solely on such bases.

* * * * *

§ 574.5 [Amended.]

3. Amend § 574.5 by removing the reference to "§ 574.6(b)(7)" in paragraph (a)(1) and by inserting in lieu thereof the phrase "§ 574.6(b)(4)".

4. Amend § 574.6 by revising paragraph (b)(1) to read as follows; by removing paragraphs (b)(3), (4), and (5) and by redesignating paragraphs (b)(6), (7), (8), and (9) as the paragraphs (b)(3), (4), (5), and (6); and by amending newly redesignated paragraphs (b)(4), (5), and (6) by removing the reference to "paragraph (b)(6)" in these paragraphs and by inserting in lieu thereof the phrase "paragraph (b)(3)".

§ 574.6 Procedural requirements.

* * * * *

(b) *Filing requirements*—(1) *Applications, notices, and rebuttals.* (i) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions that are not eligible to be processed under delegated authority pursuant to § 574.8(a) of this Part shall be filed as follows: one copy with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, labeled "Dockets Copy;" one (manually executed) copy with the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, Washington, DC 20552; one copy with the Corporate Activities Section, Office of Regulatory Activities, 801 Seventeenth Street NW., Washington, DC 20552; and one copy with the Principal Supervisory Agent of the district in which the insured institution or institutions involved in the transaction have their home office or offices. Unsigned copies shall be conformed.

(ii) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions eligible to be processed under delegated authority pursuant to § 574.8(a) of this Part shall be filed as follows: two copies with the Principal Supervisory Agent of the district in which the insured institution or institutions involved in the transaction have their home office or offices (including one manually executed copy); and one copy with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552. Unsigned copies shall be conformed. Each copy shall include a summary of the proposed transaction including an explanation of why the application, notice, or rebuttal submission may be processed under delegated authority, and an affirmative representation that none of the factors specified in § 574.8(a) that would preclude action under delegated authority are present. Such statement shall be clearly labeled "Statement Regarding Eligibility for Processing Under Delegated Authority." If the person or company making the submission subsequently becomes aware of additional information or changed circumstances that would alter the eligibility of the application, notice, or rebuttal submission of processing under delegated authority, the company or person shall promptly so advise the Principal Supervisory Agent in writing.

(iii) All companies submitting applications under Section 574.3 of this Part shall comply with Section 7A of the Clayton Act (15 U.S.C. 18A) and regulations issued thereunder (Parts 801, 802, and 803 of Title 16 of the *Code of Federal Regulations*).

(iv) Any acquiror filing a notice with respect to acquisition of a state-chartered institution shall file an additional copy of the notice with the Principal Supervisory Agent and label such copy "State Supervisor Copy."

(v) Any person or company may amend an application, notice, or rebuttal submission, or file additional information with respect thereto, upon request of the Principal Supervisory Agent or the Corporation or its delegate or, in the case of the party filing an application, notice, or rebuttal, upon such party's own initiative.

* * * * *

5. Amend § 574.8 by removing paragraphs (a)(1)(i) and (v) and by redesignating existing paragraphs (a)(1)(ii), (iii), (iv), and (vi) as the new paragraphs (a)(1)(i), (ii), (iii), and (iv); by redesignating paragraphs (a)(2), (3), and (4) as the new paragraphs (a)(3), (4), and (5); by adding a new paragraph (a)(2); and by revising newly redesignated paragraphs (a)(3), (a)(4) introductory text, (a)(4)(ii), and (a)(5) to read as follows:

§ 574.8 Delegations of authority.

(a) *Actions by the Principal Supervisory Agent*—(1) *Approval.* * * *

(2) *Acceptance.* The Principal Supervisory Agent is authorized to accept a rebuttal filed under Section 574.4(e) of this Part where the following conditions are met:

(i) With a rebuttal of control, the acquiror submits an executed rebuttal agreement that conforms in material respects to the agreement set forth in § 574.100;

(ii) The rebuttal does not raise significant issues of law or policy;

(iii) The proposed acquisition of securities or other action covered by the rebuttal is not opposed by the institution whose securities are to be acquired and there is no competing acquiror for the institution's securities; and

(iv) The acquisition is not part of a conversion under Part 563b of this chapter.

(3) *Denial.* The Principal Supervisory Agent is authorized to disapprove any application or notice that he is authorized to approve or for which he is authorized to issue a statement of intent not to disapprove under paragraph (a)(1) of this section. The Principal Supervisory Agent is authorized to reject any rebuttal that he is authorized to accept under paragraph (a)(2) of this section. Such disapproval or rejection shall be in writing, shall set forth with specificity the basis for disapproval or rejection, and shall be furnished promptly to the acquiror.

(4) *Other actions.* For notices filed pursuant to Section 574.3(b) of this Part, and applications filed pursuant to Section 574.3(a) of this Art, and rebuttals filed pursuant to Section 574.4(e) of this Part, which may be approved under paragraph (a) of this section, the Principal Supervisory Agent may take the following actions:

* * * * *

(ii) A determination that an application or notice is sufficient or requires additional information under Section 574.6(c)(1) of this Part, or that a rebuttal of control is sufficient or requires additional information under Section 574.4(e)(3) of this Part;

* * * * *

(5) *Appeal.* Denial of an application or notice or rejection of a rebuttal by a Principal Supervisory Agent pursuant to paragraph (a) of this section may be appealed to the Corporation under the following procedures: Within 20 days after notification of the Principal Supervisory Agent's decision as provided herein, the acquiror must notify the Office of the Secretariat in writing of the acquiror's desire to appeal the Principal Supervisory Agent's decision. Two copies of such request for review must be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, with one copy indicated "Attention: Corporate Activities Section, Office of Regulatory Activities" and a second copy indicated "Attention: Corporate and Securities Division, Office of General Counsel." A third copy should be sent to the appropriate Principal Supervisory Agent. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial or notice of disapproval or rejection is contended to be erroneous. If an applicant does not file an appeal with in the time permitted under this section, any objection to the Principal Supervisory Agent's action is waived. A timely appeal filed with the Secretariat in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

* * * * *

6. Add a new § 574.100 to read as follows:

§ 574.100 Rebuttal of control agreement.

Agreement

Rebuttal of Rebuttable Determination Of Control Under Part 574

I. WHEREAS

A. [ ] is the owner of [ ] shares (the "Shares") of the [ ] stock (the "Stock") of [name and address of institution], which Shares represent [ ] percent of a class of "voting stock" of [ ] as defined under the Federal Home Loan Bank Board's ("Board") Acquisition of Control Regulations ("Regulations") 12 C.F.R. Part 574 ("Voting Stock");

B. [ ] is an "insured institution" within the meaning of the Regulations;

C. [ ] seeks to acquire additional shares of stock of [ ] ("Additional Shares"), such that [ ]'s ownership thereof will exceed 10 percent of a class of Voting Stock but will not exceed 25 percent of a class of Voting Stock of [ ];

[and/or]

[ ] seeks to [ ], which would constitute the acquisition of a "control factor" as defined in the Regulations ("Control Factor");

D. [ ] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [ ] or in connection with or as a participant in any transaction having such purpose or effect;

E. The regulations require a company or a person who intendes to hold 10 percent or more but not in excess of 25 percent of any class of Voting Stock of an insured institution or holding company thereof and that also would possess any of the control factors specified in the Regulations, to file and obtain approval of an application ("Application") under the Savings and Loan Holding Company Act ("Holding Company Act"), 12 U.S.C. Section 1730a, or file and obtain clearance of a notice ("Notice") under the Change in Savings and Loan Control Act of 1978 ("Control Act"), 12 U.S.C. Section 1730(q), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted.

F. Under the Regulations, [ ] would be determined to be in control, subject to rebuttal, of [ ] upon acquisition of the [Additional Shares or Control Factor];

G. [ ] has no intention to manage or control, directly or indirectly, [ ];

H. [ ] has filed on [ ], a written statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein, (this submission referred to as the "Rebuttal");

I. In order to rebut the rebuttable determination of control, [ ] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

II. The FSLIC has determined, and hereby agrees, to act favorably on the Reubuttal, and in consideration of an FSLIC determination and agreement to act favorably on the Rebuttal, [ ] and any other existing, resulting a successor of [ ] agree with the FSLIC that:

A. Unless [ ] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either shall have obtained approval of the Application or clearance of the Notice in accordance with the Regulations, [ ] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement.

1. Seek or accept representation of more than one member of the board of directors of [insert name of institution and any holding company thereof];

2. Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of [insert name of institution and any holding company thereof]'s board of directors or as president or chief executive officer of [insert name of institution and any holding company thereof];

3. Engage in any intercompany transaction with [ ] or [ ]'s affiliates;

4. Propose a director in opposition to nominees proposed by the management of [insert name of institution and any holding company thereof] for the board of directors of [insert name of institution and any holding company thereof] other than as permitted in paragraph A–1;

5. Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders [ ] other than in support of, or in opposition to, a solicitation conducted on behalf of management of [ ];

6. Do any of the following, except as necessary solely in connection with [ ]'s performance of duties as a member of [ ]'s board of directors:

(a) Influence or attempt to influence in any respect the loan and credit decisions or policies of [ ], the pricing of services, any personnel decisions, the location of any offices, branching, the hours of operation or similar activities of [ ];

(b) Influence or attempt to influence the dividend policies and practices of [ ] or any decisions or policies of [ ] as to the offering or exchange of any securities;

(c) Seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or character of [ ];

(d) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies or business operations of [ ]; or

(e) Seek or accept access to any non-public information concerning [ ].

B. [ ] is not a party to any agreement with [ ].

C. [ ] shall not assist, aid or abet any of [ ]'s affiliates or associates that are not parties to this Agreement to act, or act in concert with any person or company, in a manner which is inconsistent with the terms hereof or which constitutes an attempt to evade the requirements of this Agreement.

D. Any amendment to this Agreement shall only be proposed in connection with an amended rebuttal filed by [ ] with the FSLIC for its determination or a determination pursuant to delegated authority;

E. Prior to to acquisition of any shares of "Voting Stock" of [ ] as defined in the Regulation in excess of the Additional Shares, any required filing will be made by [ ] under the Control Act or the Holding Company Act and either approval of the acquisition under the Holding Company Act shall be obtained from the FSLIC or any Notice filed under the Control Act shall be cleared in accordance with the Regulations;

F. At any time during the 10 percent or more of any class of Voting Stock of [ ] is owned or controlled by [ ], no action which is inconsistent with the provisions of this Agreement shall be taken by [ ] until [ ] files and either obtains from the FSLIC a favorable determination with respect to either an amended rebuttal, approval of an Application under the Holding Company Act, or clearance of a Notice under the Control Act, in accordance with the Regulations;

G. Where any amended rebuttal filed by [ ] is denied or disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after either (1) reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of a class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations; or (2) filing a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either obtaining approval of the Application or clearance of the Notice, in accordance with the Regulations;

H. Where any Application or Notice filed by [ ] is disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

I. Should circumstances beyond [ ]'s control result in [ ] being placed in a position to direct the management or policies of [ ], then [ ] shall either (1) promptly file an Application under the Holding Company Act or a Notice under the Control Act, as appropriate, and take no affirmative steps to enlarge that control pending either a final determination with respect to the Application or Notice, or (2) promptly reduce the amount of shares of [ ] Voting Stock owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock or immediately cease any actions that give rise to a conclusive or rebuttable determination of control under the Regulation;

J. By entering into this Agreement and by offering it for reliance in reaching a decision on the request to rebut the presumption of control under the Regulations, as long as 10 percent or more of any class of Voting Stock of [ ] is owned or controlled, directly or indirectly, by [ ], and [ ] possesses any Control Factor as defined in the Regulations, [ ] will submit to the jurisdiction of the Regulations, including (1) the filing of an amended rebuttal or Application or Notice for any proposed action which is prohibited by this Agreement, and (2) the provisions relating to a penalty for any person who willfully violates the [Holding Company Act or Control Act] and the Regulations thereunder, and any regulation or order issued by the FSLIC.

K. Any violation of this Agreement shall be deemed to be a violation of the [Holding Company Act or Control Act] and the Regulations, and shall be subject to such remedies and procedures as are provided in the [Holding Company Act or Control Act] and the Regulations for a violation thereunder and in addition shall be subject to any such additional remedies and procedures as are provided under any other applicable statutes or regulations for a violation, willful or otherwise, of any agreement entered into with the FSLIC.

III. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the Agreement among the parties thereto. It shall not be necessary that any one counterpart be signed by all of the parties hereto as long as each of the parties has signed at least one counterpart.

IV. This Agreement shall be interpreted in a manner consistent with the provisions of the Rules and Regulations of the Board.

V. This Agreement shall terminate upon (i) the approval by the Board of [ ]'s Application under the Holding Company Act or clearance by the Board of [ ]'s Notice under the Control Act to acquire [ ], and consummation of the transaction as described in such Application or Notice, or in the disposition by [ ] of a sufficient number of shares of [ ], or the taking of such other action that thereafter [ ] is not in control and would not be determined to be in control of [ ] under the Control Act, the Holding Company Act or the Regulations of the Board under either in effect at that time.

VI. IN WITNESS THEREOF, the parties thereto have executed this Agreement by their duly authorized officer.

_____

[Acquiror]

Federal Savings and Loan Insurance Corporation.

Date: _____

By: _____

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-19572 Filed 8-29-88; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1201

Statement of Organization and General Information

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1201, "Statement of Organization and General Information," to reflect the current organizational structure and to make editorial corrections. This regulation sets forth NASA's policy and functions as established by the National Aeronautics and Space Act of 1958, as amended.

EFFECTIVE DATE: August 30, 1988.

ADDRESS: General Management Division, Code NPN-1, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Margaret M. Herring, 20.2 453-2922.

SUPPLEMENTARY INFORMATION: NASA is revising §§ 1201.200 and 1201.400 to reflect the current organizational structure and to make editorial corrections. In § 1201.200(a)(1) the position title "Associate Deputy Administrator (Policy)" is changed to "Associate Deputy Administrator." § 1201.200(a)(3) is rewritten for clarification. § 1201.200(b)(8) is changed from the National Space Technology Laboratories to the John C. Stennis Space Center, Stennis Space Center, MS 39529. A correction is also made to § 1201.400(c) which corrects "48 U.S.C." to "48 CFR."

Since this revision involves internal administrative decisions and editorial changes, no public comment period is required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1201

Organization and functions (Goverment agencies).

For reasons set forth in the Preamble, 14 CFR Part 1201 is amended as follows:

PART 1201—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for 14 CFR Part 1201 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

2. Section 1201.200 is amended by revising paragraphs (a)(1), (a)(3), and (c)(8) to read as follows:

§ 1201.200 General.

(a) * * *

(1) The Office of the Administrator which includes the Administrator, Deputy Administrator, Associate Deputy Administrator, Associate Deputy Administrator (Institution), Assistant Deputy Administrator, and the Executive Officer.

* * * * *

(3) Fourteen Headquarters Offices. Thirteen of these offices provide agencywide leadership in certain administrative and specialized areas and one office provides administrative operations for Headquarters. All of these offices report directly to the Office of the Administrator.

* * * * *

(c) * * *

(8) John C. Stennis Space Center, Stennis Space Center, MS 39529.

* * * * *

3. Section 1201.400 is amended by revising paragraph (c) to read as follows:

§ 1201.400 NASA procurement program.

* * * * *

(c) All procurements are made in accordance with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Federal Acquisition Regulation Supplement (NASA/FAR Supplement) (48 CFR Chapter 18). Copies of these publications are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on an annual subscription basis.

James C. Fletcher,

Administrator.

August 23, 1988.

[FR Doc. 88-19674 Filed 8-29-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 87N-0160]

D&C Red No. 33

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDS) is permanently listing D&C Red No. 33 for general use in drugs and cosmetics, except for use in the area of the eye. This action is in response to petitions filed by several petitioners. This rule will remove D&C Red No. 33 from the provisional list of color additives for general use in drugs and cosmetics.

DATES: Effective September 30, 1988, except for any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by September 29, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5740.

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I. Introduction

In 1960, Congress passed the Color Additive Amendments (the amendments). In *Certified Color Mfg. Ass'n* v. *Mathews*, 543 F.2d 284, 286–287 (D.C. Cir. 1976), the United States Court of Appeals for the District of Columbia Circuit explained the purpose of this legislation:

> The Color Additive Amendments of 1960 reflect a Congressional and administrative response to the need in contemporary society for a scientifically and administratively sound basis for determining the safety of artificial color additives, widely used for coloring food, drugs, and cosmetics. The Amendments reflect a general unwillingness to allow widespread use of such products in the absence of scientific information on the effect of these products on the human body. The previously used system had some glaring deficiencies, and the 1960 Amendments were designed to overcome them. * * *
>
> (Footnotes omitted)

As amended, section 706(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376(a)) provides that a color additive will be deemed unsafe for use in food, drugs, cosmetics, and some medical devices unless FDA has issued a regulation permanently listing that color additive for its intended use. FDA will issue such a regulation only if it has been presented with data that establish with reasonable certainty that no harm will result from the use of the color additive. The burden of presenting such data is on the person who is seeking approval of the use of the additive.

In passing the amendments, Congress provided for the provisional listing of the color additives in use at that time, pending completion of the scientific investigations needed for a determination about the safety of these additives (section 203(b) of the transitional provisions of the amendments, Title II, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note)). Section 81.1 (21 CFR 81.1) of the agency's color additive regulations enumerates those color additives that are still provisionally listed. Among them is D&C Red No. 33 for use in drugs and cosmetics.

II. Regulatory History

A. The Color Additive

D&C Red No. 33, a dull bluish red dye of the monoazo class, is identified in *Chemical Abstracts* as the disodium salt of 5-amino-4-hydroxy-3-(phenylazo)-2,7-naphthalenedisulfonic acid (CAS Reg. No. 3567–66–6). It is indentified in § 82.1333 (21 CFR 82.1333) as the disodium salt of 8-amino-2-phenylazo-1-naphtol-3,6-disulfonic acid. Other names include Colour Index Food Red 12 (C.I. No. 17200), C.I. Acid Red 33, Fast Acid Magenta B, and Acid Fuchsin D.

In manufacturing the additive, the product obtained from the nitrous acid diazotization of aniline is coupled with 4-hydroxy-5-amino-2,7-naphthalenedisulfonic acid in a alkaline aqueous medium. D&C Red No. 33 is soluble in water and glycerol and slightly soluble in methanol and ethanol.

D&C Red No. 33 is used in ingested drug preparations and in cosmetics subject to ingestion, such as lipsticks, dentifrices, mouthwashes, and breath fresheners. It is also used in externally applied cosmetics such as noncoloring hair preparations, skin care, fragrance, and make-up products.

The color additive D&C Red No. 33 has been in use for many years. Because D&C Red No. 33 was in use at the time the Color Additive Amendments of 1960 were enacted, it was provisionally listed for drug and cosmetic use in the **Federal Register** of October 12, 1960 (25 FR 9759).

In the **Federal Register** of October 12, 1960 (25 FR 9759), the agency established temporary tolerances for the provisional listing of certain color additives, including D&C Red No. 33, for use in lipsticks, ingested drugs, and other products subject to ingestion, such as mouthwashes and dentifrices. The original temporary tolerances, based on preliminary usage information and toxicity data available at that time, were intended to limit use of the color additive to safe levels until all required toxicity tests were completed. The agency has revised the temporary tolerances over the years as additional data became available, the lastest revision being on August 21, 1979 (44 FR 48964). D&C Red No. 33 usage is limited under the temporary tolerances in 21 CFR 81.25 to 3.0 percent by weight in lip cosmetics, to 0.75 milligram (mg) per daily dose of drugs, and to amounts consistent with current good manufacturing practice in mouthwashes and dentifrices.

Between 1960 and February 4, 1977, FDA postponed the closing date for the provisional listing of D&C Red No. 33 several times. The agency granted these postponements in response to requests for additional time to complete the scientific investigations necessary for listing the color additive under section 706 of the act.

B. Color Additive Petitions

In the **Federal Register** of November 20, 1968 (33 FR 17205), FDA announced that a petition (CAP 8C0066) for the permanent listing of D&C Red No. 33 as a color additive for use in ingested drugs, lipsticks, and externally applied drugs and cosmetics had been filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association (CTFA)), the Pharmaceutical Manufacturers Association (PMA), and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, Inc. (CCMA)), c/o Hazleton Laboratories, Inc., P.O. Box 30, Falls Church, VA 22046 (now 9200 Leesburg Turnpike, Vienna, VA 22180).

The petition was filed under section 706 of the act (21 U.S.C. 376). A later notice (41 FR 9584; March 5, 1976) amended the notice of filing of the petition to include the use of D&C Red No. 33 in all types of cosmetics subject to ingestion and the additional use of D&C Red No. 33 in cosmetics intended for use in the area of the eye.

FDA notified the petitioners by letters dated May 14, 1976, August 15, 1977, and August 4, 1978, of the need for data to support the use of D&C Red No. 33 in cosmetics intended for use in the area of the eye. In a fourth letter, dated October 24, 1978, FDA advised the petitioners to consider withdrawing the portion of the petition that sought approval of the use of D&C Red No. 33 in cosmetics intended for use in the area of the eye because it appeared that the required data from eye-area studies were not readily available.

The petitioners have not submitted the required data on eye-area use. Therefore, FDA considers that portion of the petition that relates to the listing of D&C Red No. 33 for eye-area use to be withdrawn without prejudice in accordance with the provisions of § 71.4

(21 CFR 71.4). Use of D&C Red No. 33 in the area of the eye has never been covered by the provisional listing of this color additive.

The petitioners for CAP 8C0086 originally requested a regulation permitting up to 5.5 mg of D&C Red No. 33 per daily dose in ingested drugs, up to 3 percent of the color additive in cosmetics subject to ingestion, and use in amounts consistent with current good manufacturing practice in other cosmetics and topically applied drugs.

In February 1988, the petitioners amended their proposed tolerances to request that use of D&C Red No. 33 be limited to 0.75 mg per daily dose in ingested drugs. These uses and limitations are the same as the current uses and limitations under the provisional listing of this color additive.

In the Federal Register of August 6, 1973 (38 FR 21200), FDA announced that a petition (CAP 7C0059) for the permanent listing of D&C Red No. 33 as a color additive for use in drugs and cosmetics for external applications also had been filed by the Procter and Gamble Co., Toilet Goods Division, 6000 Center Hill Rd., Cincinnati, OH 45224. The petition was filed under section 706 of the act (21 U.S.C. 376).

C. Toxicological Testing of D&C Red No. 33

In the Federal Register of February 4, 1977 (42 FR 6992), FDA published revised regulations that required new chronic toxicity studies on 31 color additives, including D&C Red No. 33, as a condition for continued provisional listing for ingested uses. FDA required the new toxicity studies because the earlier toxicity studies that the petitioners had submitted to support the safe use of these color additives were deficient in several respects. FDA described these deficiencies in the Federal Register of September 23, 1976 (41 FR 41860):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.
2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.
3. In a number of the studies, an insufficient number of animals was reviewed histologically.
4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.
5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

In the February 4, 1977 rule, FDA postponed the closing date for the provisional listing of the color additives until January 31, 1981, for the completion of required toxicity studies. Subsequently, FDA published amendments to the provisional regulations in the Federal Register of April 7, 1978 (43 FR 14642), that required a new multigeneration reproduction study for D&C Red No. 33 as another condition of its continued provisional listing. The deficiency in the reproduction study previously submitted by the petitioners to support the safe use of the color additive was described in the Federal Register of December 13, 1977 (42 FR 62497; Docket No. 76N-0366). FDA found the study to be inadequate for assessing the potential for the color additive to affect reproduction adversely following ingestion. The selection of test animals for the succeeding generations was not made randomly, introducing a possible bias in the outcome of the studies. Evaluation of weaning weights of the animals to be used for subsequent generations disclosed that heavier, and, therefore, presumably healthier, test animals were selected in more instances than would have been dictated by random selection. This is an improper manner of selection as test animals selected for subsequent breeding should be representative of the available animals as a whole. The possible bias that was introduced by not selecting animals randomly but rather by weight may have resulted in the nonselection of animals exhibiting adverse effects.

In the Federal Register of March 27, 1981 (46 FR 18954), FDA established the closing date of March 31, 1983, for the completion of the evaluation of D&C Red No. 33. Because its review of the data and of the scientific and legal issues raised on this color additive took longer than the agency anticipated, FDA had to extend the provisional listing of the color additive on a number of occasions. On June 26, 1985 (50 FR 26377), FDA proposed a longer extension of the provisional listing for several color additives, including D&C Red No. 33, to provide for the submission of additional information. On September 4, 1985 (50 FR 35783), the agency published a final rule extending the provisional listing for D&C Red No. 33 until March 3, 1987. On July 30, 1986, CTFA submitted additional information, which is discussed below. To provide time for the completion of its review and preparation of the appropriate documents, the agency further extended the closing date several times. The most recent extension was announced in the Federal Register on July 1, 1988 (53 FR 25127), establishing the current closing data of August 30, 1988.

d. Citizen Petition Filed by Public Citizen Health Research Group

On December 17, 1984, the Public Citizen Health Research Group (Public Citizen) petitioned FDA to ban the use of the color additives that remained provisionally listed. On January 22, 1985, Public Citizen filed a complaint in the District Court for the District of Columbia seeking the same relief. Public Citizen alleged that, by continuing to provisionally list the color additives, including D&C Red No. 33, FDA had violated the Color Additive Amendments to the act, as well as those provisions of the Administrative Procedure Act (5 U.S.C. 706(1)) that pertain to unreasonable delay of agency action. Public Citizen sought to enjoin FDA from using the provisional list or any other means to allow the marketing of the provisionally listed color additives.

On June 21, 1985, the Commissioner of Food and Drugs sent to Public Citizen a detailed response to the petition. In his response, the Commissioner carefully reviewed and discussed the arguments and information submitted in support of the petition. The Commissioner concluded that the public health would not be endangered by the continued marketing of the color additives while scientific, legal, and policy issues were addressed and, therefore, the Commissioner denied the petition.

On February 13, 1986, Judge Stanley S. Harris granted FDA's motion for summary judgment and dismissed Public Citizen's complaint. *Public Citizen, et al.* v. *DHHS, et al.*, No. 85-1573 (D.D.C. February 13, 1986). Public Citizen's appeal of this decision was denied by the U.S. Court of Appeals, No. 86-5150 (October 23, 1987).

III. Evaluation of the Safety of D&C Red No. 33

A. *Statutory Safety Requirements*

Under section 706(b)(4) of the act (21 U.S.C. 376 (b)(4)), the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that it is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history makes clear that this word is to have the same

meaning for color additives as for food additives. (See H. Rept. No. 1761, "Color Additive Amendments of 1960," Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).) The Senate report on the Food Additives Amendment of 1958 states:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

S. Rept. No. 2422, "Food Additives Amendment of 1958," Committee on Labor and Public Welfare, 85th Cong., 2d Sess. 6 (1958).

FDA has incorporated this concept of safety into its color additive regulations. Under 21 CFR 70.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Therefore, the general safety clause prohibits approval of a color additive if doubts about the safety of the additive for a particular use are not resolved to an acceptable level in the minds of competent scientists.

The general safety clause is buttressed by the anticancer or Delaney clause (section 706(b)(5)(B) of the act), which provides that a color additive shall be deemed to be unsafe "for any use which will or may result in ingestion of all or part of such additive, if the additive is found by the Secretary to induce cancer when ingested by man or animal, or if it is found by the Secretary, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal," and it shall be deemed unsafe "for any use which will not result in ingestion of any part of such additive, if, after tests which are appropriate for the evaluation of the safety of additives for such use, or after other relevant exposure of man or animal to such additive, it is found by the Secretary to induce cancer in man or animal" (21 U.S.C. 376(b)(5)(B)).

The application of the Delaney clause to color additives was amplified recently by a decision concerning D&C Orange No. 17 and D&C Red No. 19 in *Public Citizen, et al.* v. *Young, et al.* (D.C. Cir. No. 86-1548, October 23, 1987):

> In sum, we hold that the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogenic dyes with trivial risks to humans. We based this decision on our understanding that Congress adopted an "extraordinarily rigid" position, denying the FDA authority to list a dye once it found it to "induce cancer in * * * animals" in the conventional sense of the term.

B. Earlier Studies

Among the earlier toxicity studies on the color additive, submitted by the petitioners before 1977, were acute oral toxicity studies in rats, dogs, and mice; short-term and chronic feeding studies in dogs and rats; a three-generation reproduction study in rats; teratology studies in rats and rabbits; dermal studies in rabbits; and 2-year skin-painting studies in mice. Some toxic effects, including hemolytic anemia and enlarged spleens, were observed at higher doses in the pre-1977 feeding studies, but the agency concluded that the color additive could be used safely until the completion of further testing.

From the earlier studies with D&C Red No. 33 submitted by the petitioners, the agency has evaluated the dermal safety of the color additive. The data from these studies demonstrate that D&G Red No. 33 is nonirritating when applied repeatedly to either intact or abraded skin. Furthermore, D&C Red No. 33 was not found to be carcinogenic in two studies in which it was applied periodically to the skin of mice over their lifetimes.

FDA has evaluated the genetic toxicity tests related to D&C Red No. 33 found in the literature. The available information is fragmentary and inconsistent, and the agency considers the full complement of animal toxicity studies to provide more pertinent information on safety than these in vitro tests. FDA finds no basis for further concerns in this information.

C. New Studies

In the new reproduction study required by the April 7, 1978, order, Sprague-Dawley (Charles River) COBS CD rats were fed dietary levels of 0, 0.25, 2.5, 7.5, and 25 milligrams per kilogram (mg/kg) per day of D&C Red No. 33. Twenty females and 20 males for each group were used to initiate the study, which was conducted for three generations. The selection of test animals for the succeeding generations was made randomly. Examination of a number of indices of viability, health, reproductive abnormality, and developmental toxicity in offspring and mothers did not reveal any pattern of adverse effects. From evaluation of the new multigeneration reproduction study in rats and of earlier teratology studies, agency scientists have concluded that there have been no reproductive or teratogenic effects related to treatment with the color additive.

Reports were submitted to FDA on the new chronic toxicity studies in rats and mice required by the February 4, 1977, order. These new studies represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge of deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity protocols. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure in one of the two species tested, significantly increase the power of these tests to detect dose-related effects.

The reproduction and chronic studies were conducted for the petitioner by International Research and Development Corp., Mattawan, MI 49071. The color additive fed to the animals in theses studies contained 88 percent total color.

In the new chronic mouse study, D&C Red No. 33 was fed to Charles River CD-1 mice at dietary levels of 0, 0.1, 1, and 5 percent. Sixty females and 60 males were used for each dietary level and in each of 2 control groups. The male mice fed 5 percent D&C Red No. 33 were sacrificed at 57 weeks and the female mice fed 5 percent were sacrificed at 74 weeks due to reduced survival. All other groups were sacrificed at 104 weeks of feeding. The mice fed 1 and 5 percent of D&C Red No. 33, compared to the controls, showed hemolytic anemia and associated adverse effects, but no adverse effects were seen in mice fed 0.1 percent. No increased incidence of tumors was related to feeding of the test substance. Based on the evaluation of the results of this chronic mouse toxicity study, the agency has determined that D&C Red No. 33 did not cause cancer in Charles River CD-1 mice.

In one chronic study, Sprague-Dawley (Charles River CD) rats were fed dietary levels of 0, 0.25, 0.05, and 0.2 percent D&C Red No. 33 for 129 weeks. These rats were exposed in utero and during lactation by the feeding of the same dietary levels of D&C Red No. 33 to their parents. Seventy females and 70 males were used for each dietary level and in each of 2 control groups.

A related second study was performed with the same strain of rats, in which the animals, similarly exposed in utero and during lactation, were fed

either 0 or 2 percent of D&C Red No. 33. FDA requested that this feeding level be added to provide testing at the highest level compatible with completion of the test. The agency's analysis of data from earlier studies suggested that this maximum level of 2 percent could be used without jeopardizing completion of the study. The males were sacrificed at 113 weeks of feeding and the females at 117 weeks. There were 70 animals of each sex in each group.

Tests rats in both studies showed adverse effects associated with hemolytic anemia. Decreases in erythrocyte counts, decreases in hemoglobin levels, and increases in reticulocyte counts were seen at the 0.2 percent and the 2 percent doses. Also at the 0.2 percent dose, the males had increased spleen/body weight ratios at the 12-month sacrifice and the females had increased spleen weights at the end of the study. No adverse effects were seen at the 0.05 percent level or below.

In the second rat study, survival of males fed 2.0 percent was less than the controls and the body weights of treated rats were decreased compared to controls. The treated rats of both sexes showed enlargement of the spleen at 12 months and also at termination of the study. Both sexes of the treated group showed a marked increase in parenchymal fibrosis of the spleen compared to their controls. Both sexes also had splenic capsular fibrosis, and, in addition, the males showed fatty metamorphosis. In the spleens of the 140 treated rats, the agency also found a few uncommon tumors: three fibrosarcomas and one hemangioma in males and one fibroma in females. One male control rat had a hemangiosarcoma. The incidences of the various tumors are not sufficient to show carcinogenicity. Based on the evaluation of the results of both chronic rat studies, the agency has determined that D&C Red No. 33 did not cause cancer in Sprague-Dawley rats.

D. The Issue of Whether More Testing is Necessary

1. *Statement of the issue.* In a notice of proposed rulemaking (50 FR 26377; June 26, 1985), FDA stated that the chronic testing of both D&C Red No. 33 and D&C Red No. 36 did not reveal a carcinogenic effect in the animals in which they were tested. FDA noted increased incidences of unusual, nonneoplastic splenic lesions in Sprague-Dawley rats fed high doses of D&C Red No. 33. There were higher incidences of parenchymal fibrosis, enlargement, capsular fibrosis, and (in males) fatty metamorphosis of the spleen in animals fed the test compound than in the control animals. In the 140 rats fed D&C Red No. 33 there were three fibrosarcomas, one hemangioma, and one fibroma.

In the proposal, FDA stated that if it had only results of the testing of D&C Red No. 33 and D&C Red No. 36 before it, the agency would likely have approved the use of these color additives in spite of the observed effects. However, the proliferative effects seen in the testing of D&C Red No. 33 and D&C Red No. 36 indicated to FDA that there was a similarity between these color additives and certain other compounds, such as D&C Red No. 9, that have been shown to be carcinogenic. When D&C Red No. 9 was fed to Sprague-Dawley rats, a few rare tumors and numerous rare lesions of the spleen were produced. These rats had the same kinds of nonneoplastic lesions as with D&C Red No. 33 and D&C Red No. 36. When D&C Red No. 9 was fed to Fischer 344 rats, however, numerous rare tumors of the spleen were produced, and D&C Red No. 9 was found to be a splenic carcinogen in this strain.

The association of the nonneoplastic splenic lesions with tumor occurrence suggested to FDA that the nonneoplastic lesions may be precursors or indicators of the start of a carcinogenic process. This similarity of effects in the Sprague-Dawley strain of rats between D&C Red No. 33, on the one hand, and D&C Red No. 9, on the other, raised concerns that D&C Red No. 33 may be carcinogenic in the Fischer 344 rat. To clarify the significance of this similarity of effects, FDA proposed that new studies be conducted on D&C Red No. 33 and D&C Red No. 36 (50 FR 26377; June 26, 1985). The agency stated that it believed that such studies would be the best way to resolve the ambiguities about these color additives that had been created by the results of the testing with D&C Red No. 9 and other compounds in Fischer 344 rats. The agency also noted, however, that it would reconsider the issue of additional testing if data and information were received that showed that such testing was not necessary.

As part of its effort to resolve this problem, FDA, in 1984, had asked that a panel of experts from the National Toxicology Program's Board of Scientific Counselors examine the data on D&C Red No. 33 in conjunction with the data on D&C Red No. 9. FDA sought the guidance of the Board on two questions: "(1) Do the results of the long-term feeding studies of D&C Red No. 33 in CD–1 (Charles River) mice and Sprague-Dawley (Charles River) rats indicate a possible carcinogenic effect that could be attributed to exposure to this color additive? (2) In particular, do the splenic changes in rats constitute evidence of neoplastic potential?"

The Board met on July 26, 1984, and provided the following response:

1. Quantitatively, the low incidence rates for primary mesenchymal neoplasms of the spleen in male and female Charles River CD–1 rats given long term dietary administration of 2% D&C Red No. 33 could not be considered sufficient to be categorized as a demonstrated carcinogenic response to chemical treatment.

2. Qualitatively, there appears to be treatment-related nonneoplastic target organ (spleen) toxic responses which are similar to those previously described for certain other aromatic azo compounds, aromatic nitro compounds, and amines.

3. Further research is necessary and should be directed toward developing understanding of the mechanisms of the toxic action of this particular family of compounds in the spleen of rats. (Ref. 1).

FDA agrees with the Board's first point and concludes that the evidence does not establish D&C Red No. 33 to be a carcinogen. The incidences of splenic tumors in Sprague-Dawley rats (produced by Charles River) do not show carcinogenicity.

The agency agrees with the Board's second point, that there were similar nonneoplastic splenic effects produced with D&C Red No. 33 as there were with others in this family of compounds. FDA acted on this basis in publishing the proposal on June 26, 1985 (50 FR 26377).

The Board's third recommendation was intended to apply to the narrow question of what is needed to further scientific understanding, and not what is needed to protect the public health.

The petitioners' comments on the 1985 proposal suggested that conducting a risk assessment based on the comparative toxicities of D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 in Sprague-Dawley rats would show that additional testing would not be necessary to protect the public health. The petitioner later submitted a lengthy comparative assessment on the relative splenic toxicities of the three color additives.

2. *Resolution of the issue.* The agency carefully considered the petitioners' comments and concluded that, if the splenic toxicity associated with the use of these color additives were produced by the major components of the colors, then it should be possible to evaluate the health concern raised by the color additives using the data from the studies involving the Sprague-Dawley rat and the D&C Red No. 9 study in the Fischer 344 rat. FDA concluded that knowledge of the relative toxicities of these additives would enable the agency to make a determination about the safety

of D&C Red No. 33 and D&C Red No. 36 without requiring new long-term studies (50 FR 35783 at 35788; September 4, 1985).

FDA has conducted its own comparative evaluation based on the relative toxicities of D&C Red No. 9 and D&C Red No. 33 (Ref. 2). The assessment shows that, even assuming that D&C Red No. 33 were carcinogenic if subjected to further testing in a strain of rat other than the Sprague-Dawley, the theoretical, upper-bound, lifetime risk associated with exaggerated use exposure to the compound would be extremely small, that is, less than 3×10^{-7} (Ref. 3).

In light of this comparative evaluation, the agency has reconsidered whether additional chronic testing of D&C Red No. 33 is necessary to establish the safety of the compound. When deciding whether to require additional testing for a compound under review, the agency routinely follows the principle articulated in its toxicology guidelines that "the degree of effort expended in reducing uncertainty about the safety of an additive ought to relate in some concrete way to the likelihood that the substance poses a potential for health risk to the public * * *." (Ref. 4, p. 10). By showing that the splenic toxicity presents no reasonable likelihood of harm to the public, the assessment adequately responds to the agency's initial concern that additional testing of the additive would be necessary to protect the public health. In fact, in light of the assessment, to require additional testing would be pointless from a public health perspective and contrary to agency practice.

Accordingly, the agency concludes that the existing carcinogenicity studies concerning D&C Red No. 33 are adequate for the evaluation of the color additive.

E. Summary of the Safety Evidence for D&C Red No. 33

1. *Adequacy of the submitted studies to demonstrate safety.* The series of studies completed by the petitioner satisfies the usual requirements to demonstrate safety for a color additive that will be ingested and applied dermally. The studies were properly conducted and are acceptable under today's standards of toxicity testing. Agency scientists have found no adverse effects related to treatment with the color additive in doses up to the highest dose of 25 mg/kg in the teratology studies or in the 3-generation reproduction studies. The long-term studies in dogs, mice, and rats all showed the hemolytic anemia syndrome prominently at high doses. The highest dose level that did not show this syndrome was 150 mg/kg (0.1 percent) in mice, 12.5 mg/kg in dogs, and 25 mg/kg (0.05 percent) in rats. Thus, the safety studies established a no-observed-effect-level of 12.5 mg/kg body weight or higher in all species tested.

Based on its evaluation of these studies and on its analysis of concerns raised by studies on D&C Red No. 9, the agency concludes that the data show that no harm will result from using D&C Red No. 33 under the conditions prescribed.

2. *Negative results of carcinogenicity studies.* As discussed above, the agency believes that these studies are adequate to determine whether D&C Red No. 33 is carcinogenic. No significant increased incidence of any type of tumor, in any of the many tissues examined, in either sex, in any dose group, in any strain of any species tested, by either ingestion or skin application, was associated with D&C Red No. 33 treatment in any of the studies. Thus, after thorough evaluation of these studies, which meet modern design standards for tests to determine carcinogenicity, the agency finds that D&C Red No. 33 has not induced cancer in any of the laboratory testing. As stated above, the National Toxicology Program's Board of Scientific Counselors has also concluded that the data do not demonstrate a carcinogenic response to treatment. Accordingly, the Delaney clause is not applicable to the decision on this color additive.

3. *Conclusion.* For the foregoing reasons, the agency considers that the direct testing of D&C Red No. 33 show that the color additive is safe for use in drugs and cosmetics.

IV. Potential Carcinogenic Impurities

For the reasons discussed above, the agency considers that the direct testing of D&C Red No. 33 shows that the color additive is safe for use in drugs and cosmetics. The agency must still consider, however, any risk posed by possible carcinogenic impurities in D&C Red No. 33.

A. The Impurities Found

During the safety review, the agency developed a new analytical methodology for examining the color additive for the presence of trace level impurities. Analyses by this new methodology found six carcinogenic impurities in commercial, certified batches of D&C Red No. 33 (Refs. 5 and 6). The carcinogenic impurities that the agency detected are 4-aminoazobenzene, 4-aminobiphenyl, aniline, azobenzene, benzidine, and 1,3-diphenyltriazene. These impurities result from impurities in the starting materials used to manufacture the color additive, remaining traces of starting material, and from reactions involving these impurities during the manufacturing process. The regulation set forth below establishes specifications that would limit the concentrations of all six of these impurities in future batches.

Because of its concerns about the carcinogenic impurities, the agency has analyzed representative samples from 10 certified batches of the color additive (Refs. 5 and 6). The results of the analyses, expressed as concentration in parts per billion (ppb), for the 6 carcinogenic impurities in these 10 batches are summarized in Table I.

TABLE I.—LEVELS OF IMPURITIES FOUND IN D&C RED NO. 33

Impurity	No. of batches (out of 10)[a] containing detectable amounts of impurity	Range of impurity concentration (ppb)[b]	Average impurity level in 10 samples (ppb)[c]
4-Aminoazobenzene.	10	50–3, 100	500
4-Aminobiphenyl.	10	40–530	280
Aniline	10	2,000–19,900	8,300
Azobenzene	2	ND–2,200	410
Benzidine	4	ND–60	15
1,3-Diphenyltriazene.	8	ND–410	100

[a] Thirteen certified batches were analyzed but each batch was not necessarily analyzed for all six impurities. Ten batches were examined for each impurity.

[b] Approximately detectability limits: Azobenzene—200 ppb; Benzidine—1 ppb; 1,3-Diphenyltriazene—10 ppb.

[c] Impurity assumed to be present at detectability limit if not detected.

The detectability limit mentioned in the table is the approximate concentration of the impurity sufficient to cause a visible response on the chromatogram. This limit is lower than the concentration that will produce a response that can be reproducibly quantitated with good precision.

B. Prior Actions by FDA

The current testing of D&C Red No. 33 has not proven it to be a carcinogen, and, thus, the anticancer clause does not apply to it. Nevertheless, the agency must still consider whether the color additive, in light of the fact that it may contain carcinogenic impurities, may be safely used in drugs and cosmetics.

The agency is using the same approach for this situation concerning impurities in D&C Red No. 33 as it used to examine the risk associated with the presence of minor carcinogenic impurities in FD&C Yellow No. 5 (50 FR 35774; September 4, 1985), and FD&C Yellow No. 6 (51 FR 41765; November 19, 1986), both of which may contain the same impurities as those found in D&C Red No. 33. These color additives had not been shown to be carcinogenic by appropriate bioassays. FDA concluded that the use of each of these color additives, within prescribed specifications, is safe.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5 (47 FR 24278; June 4, 1982), which contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list D&C Green No. 5, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulations.

The assessment procedure used to estimate risk from an impurity has two aspects: (1) Assessment of the probable exposure to the impurity from the proposed use of the additive, and (2) extrapolation of carcinogenic potency observed in the animal bioassay with the impurity to the conditions of probable human exposure.

C. Exposure to Carcinogenic Impurities in D&C Red No. 33

The agency has estimated the maximum risk from exposure to the carcinogenic impurities that may result from use of D&C Red No. 33 in drugs and cosmetics. The lifetime exposure to D&C Red No. 33 is not expected to exceed 160 micrograms/person/day (θg/person/day) internally and 800 θg/person/day from dermal exposure, for the high users (Ref. 2). With these estimates, the agency has examined the likely exposures to the carcinogenic impurities in D&C Red No. 33.

In adopting specifications for D&C Red No. 33, FDA considered the concentrations of the carcinogenic impurities that were present in the certified batches of the color additive that the agency recently surveyed and in the batches used for the toxicological testing.

The agency believes that the specifications listed in the first column of Table II are readily obtainable under current good manufacturing practice and will assure safe use of the color additive.

TABLE II—ESTIMATED IMPURITY EXPOSURE AT THE SPECIFICATION LIMITS

Impurity	Specification (ppb)	High User Exposure (ng/day) [1] Systemic	Dermal
4-Aminoazobenzene	100	0.02	0.08
4-Aminobiphenyl	275	.04	.....
Aniline	25,000	4.0	.....
Azobenzene	1,000	.2	.....
Benzidine	20	.003	.....
1,3-Diphenyl-triazene	125	.02	.1

[1] ng = Nanograms (1 billionth of a gram).

Table II also gives the estimated high user exposure to the impurities if each batch of the color additive contained each impurity at the maximum level allowed by the specifications. The systemic exposure is calculated by multiplying the high user exposure for the color additive itself (160 θg/day by ingestion) by each specification. Systemic exposure to these impurities from dermal application will be negligible compared to ingestion because the major fraction of exposure to this color additive results from its ingested uses and because only a small fraction of a dermally applied product is likely to be absorbed.

Two of the impurities, 4-aminoazobenzene and 1,3-diphenyltriazene, have been shown not only to be systemic carcinogens when ingested but also to be skin carcinogens when applied dermally. Accordingly, for these two impurities, the agency has estimated the risks from dermal exposure as well as those from systemic exposure. FDA has based its estimates of dermal exposure on the high user exposure to D&C Red No. 33 (800 θg/day) multiplied by each specification (Ref. 7).

D. Risk Estimations for Impurities

The second part of the evaluation of the risk presented by the presence of the impurities is an extrapolation from the actual compound-related incidence of tumors found in animal bioassays, under conditions of exaggerated exposure, to the conditions of much lower probable exposure for humans.

The agency has used estimates of carcinogenic potency and estimates of exposures to the carcinogenic impurities for high users of D&C Red No. 33 (with all carcinogenic impurities at the maximum concentrations allowed by the specifications) to estimate risks for exposure to each impurity (Ref. 7). The agency then summed these risks to derive the maximum upper bound risk associated with lifetime exposure to D&C Red No. 33.

The agency searched the scientific literature for evidence on the carcinogenicity of the impurities found in D&C Red No. 33. If more than one study found one of these impurities to be carcinogenic, the agency identified the study that was most suitable to estimate risk. Although, in general, these studies were not designed to estimate risk and were often deficient under current standards, they are the only studies available and can not be ignored. Also, the reports did not always provide all the information necessary for a risk estimate. The agency has thus attempted to make assumptions and corrections that would provide estimates that are reasonable while not underestimating the risk. These assumptions and corrections are discussed more fully in the discussions of each constituent.

1. *4-Aminoazobenzene.* The agency has evaluated reports showing that 4-aminoazobenzene is carcinogenic in the diet of rats (Refs. 8 and 9), and that it is carcinogenic when applied dermally to rats (Ref. 10). The agency has developed a risk estimate from each of these studies.

A study implicating 4-aminoazobenzene as a carcinogen by dietary administration to Wistar rats was reported by Kirby et al. (Ref. 9). The study reported that 7 of the 16 animals in the treated group were found to have liver cell neoplasms after a total of 120 weeks. Six rats in this group displayed papillomas of the stomach. No information is available to determine whether any of the individual rats had neoplasms in both the liver and the stomach. The dose was allowed to vary throughout the experiment. The agency calculated the average dose over 120 weeks to be 0.25 percent in the diet (Ref. 11).

4-Aminoazobenzene was also implicated as a carcinogen in a skin painting study in which 1.0 milliliter (mL) of a 0.2 percent acetone solution containing 4-aminoazobenzene (corresponding to a dose of 2 mg of 4-aminoazobenzene per application) was applied to the skin twice weekly on six male albino rats. This was part of a larger study utilizing a number of azo compounds (Ref. 10). All six male rats in the treatment group displayed skin neoplasms after 123 weeks compared to none in the control group.

The agency has estimated that the lifetime risk of cancer from systemic exposure to 4-aminoazobenzene is less than 3 in 1 trillion from products containing D&C Red No. 33 (Refs. 5 and 11). The data indicate, however, that 4-aminoazobenzene may be a more potent carcinogen at the site of application to

the skin than when absorbed systemically. The agency has estimated that the lifetime risk of skin cancer from dermal application is less than 2 in 1 billion (Refs. 5 and 11). Because the risk estimate for dermally applied products is larger than for ingested products, FDA is using this higher estimate to evaluate total risk.

2. *4-Aminobiphenyl.* A number of studies in different species have been performed on 4-aminobiphenyl. The agency has chosen a dog study reported both by Block et al. and by Rippe et al. for quantitative risk assessment because the data on this study yield a higher risk estimate than data from other studies (Refs. 12, 13, and 14).

In this study, 24 pure-bred female beagle dogs were administered 4-aminobiphenyl orally, by capsule, at a dosage level of 5 mg/kg body weight for 5 days a week. Cystoscopic examinations were made routinely starting at 16 months and continuing up to 41 months after commencement of treatment. Diagnoses at 24 months showed that 22 of 24 treated dogs had bladder papillomas. Because this incidence is so high, data at later times show essentially the same incidence. Data at earlier times show a lower incidence, proportional to the lesser exposure time. The agency concludes that data obtained at 24 months are the most reliable for risk assessment because, among other reasons, more complete histopathology was performed at this time (Ref. 14).

Under circumstances in which lifetime risk must be estimated from studies that are performed for less than a lifetime, the data must be corrected to account for the fact that the animals were at risk for less than a lifetime. Typically, tumor incidence has been thought to be proportional to some power of time (Ref. 15). The agency believes that, in the absence of specific data, it is reasonable to make adjustments based on a model that uses the third power of the time exposed (Refs. 14 and 15).

Because 24 months represent approximately one-fifth of the lifetime of a beagle dog, the agency has corrected for the rapid induction of these neoplasms in the calculation of lifetime risk. Extrapolating directly from the data and making a correction for less than lifetime exposure, the agency estimates that the lifetime risk of cancer from systemic exposure to 4-aminobiphenyl in products containing D&C Red No. 33 is less than 2 in 100 million (Refs. 5 and 14).

3. *Aniline.* Data reported by the National Cancer Institute (NCI) demonstrated that aniline was carcinogenic to the spleen of Fischer 344 rats (Ref. 16). This finding has subsequently been verified by a dietary study performed by the Chemical Industry Institute of Toxicology (CIIT) using the same strain of rat (Ref. 17). FDA used data from the CIIT study to estimate that the lifetime risk of cancer from systemic exposure to aniline in products containing D&C Red No. 33 is less than 4 in 100 billion (Refs. 5 and 18).

4. *Azobenzene.* In an NCI-sponsored bioassay reported in 1979, azobenzene induced a dose-related increase in the incidence of sarcomas of the abdominal cavity, particularly the spleen, in both sexes of Fischer 344 rats (Ref. 19). Three groups of animals of both sexes were given 0, 200, and 400 parts per million (ppm) in the diet. From this study, the agency estimates that systemic exposure to azobenzene in products containing D&C Red No. 33 presents a lifetime risk of less than 2 in 100 billion (Refs. 6 and 20).

5. *Benzidene.* FDA used a human epidemiology study by Zavon (Ref. 21) and a study performed by Rinde and Troll in the rhesus monkey (Ref. 22) as the basis for a quantitative risk assessment on benzidine. Zavon attempted to obtain good data on exposure to benzidine by analyzing the urine of workers in a plant that manufactures this substance. The workers were monitored until a number of them were diagnosed as having bladder neoplasms. Urine levels of benzidine in workers were measured before each work shift, after each work shift, and on every Monday morning. Average levels were: before work, 0.01 milligram per liter (mg/L); after work, 0.04 mg/L; and on Monday morning before work, somewhat below 0.005 mg/L.

No controlled study with the administration of benzidine and the concomitant measurement of benzidine in the urine in humans has been performed. Thus, the conversion from urine concentration to total exposure cannot be made from human data alone. However, the Rinde and Troll study related ingestion of benzidine to amounts of benzidine and monoacetylbenzidine in the urine of rhesus monkeys. The agency believes it is reasonable to use this study to relate urine concentration to exposure for humans (Ref. 23). This procedure yields a higher risk estimate than if the risk was estimated solely from an animal feeding study and thus is less likely to underestimate risk.

In the Rinde and Troll study, benzidine was administered orally to rhesus monkeys, and the 72-hour urine collection was analyzed for benzidine and monoacetylbenzidine. In two trials the amount of benzidine and monoacetylbenzidine excreted in the urine was 1.4 percent and 1.5 percent of the initial input. The agency used these data, and applied a safety factor of two to compensate for uncertainties, to estimate that the amount of benzidine and monoacetylbenzidine excreted in the urine of humans is approximately 3 percent of that consumed. The agency then calculated that the average human worker in the Zavon study was exposed to approximately 0.8-mg benzidine per work day. Based on these two studies, the agency estimates that systemic exposure to benzidine from products containing D&C Red No. 33 presents a lifetime risk of less than 2 in 100 million (Refs. 5 and 23).

6. *1,-Diphenyltriazene.* The agency has evaluated reports showing that 1,3-diphenyltriazene is carcinogenic in the diet, and that it is carcinogenic when applied dermally. A study performed by Otsuka (Ref. 24), while deficient in certain aspects, showed that 1,3-diphenyltriazene produced forestomach tumors in mice upon dietary exposure. The compound was administered in the diet at a concentration of 0.04 percent for 483 days. Although this dietary study is quite old and was terminated after 16 months, the agency believes that it is usable if corrected for less than lifetime exposure. Assuming that the average lifetime of a mouse is 24 months, the agency has corrected for less than lifetime exposure by assuming the risk of cancer increases as the third power of the time exposed (Refs. 15 and 25). Therefore, the agency has used a correction factor of 3.4, i.e., $(24 \text{ months}/16 \text{ months})^3$, which increases the estimated risk.

Using this correction, the agency estimates that systemic exposure to 1,3-diphenyltriazene from products containing D&C Red No. 33 presents a lifetime risk of less than 4 in 1 trillion (Refs. 6 and 25).

A lifetime skin-painting study using 1,3-diphenyltriazene on mouse skin was performed by Kirby (Ref. 26). This skin study involved a thrice weekly application of a 5-percent solution of the test compound in acetone. In 16 mice surviving more than 300 days, 3 developed squamous cell papilloma and 3 developed squamous cell carcinoma. One mouse that developed a carcinoma could not be identified as part of this experiment or a parallel experiment. The agency has assumed that this mouse was part of this experiment so as not to underestimate risk. As was often the case in the 1940's, when this study was conducted, the amount of solution applied to the skin of the animals was

not accurately measured and thus not reported for this experiment. The failure to measure and to report this information creates probleme in conducting a quantitative risk assessment. However, in later years, the standard protocol for this kind of study in mice became the application of 0.20 mL of solution to the skin. Because the agency does not know whether as much as 0.20 mL was applied, it has made a more conservative assumption that 0.10 mL was used in order to estimate the risk. Using this procedure, the agency estimates that dermal exposure to 1,3-diphenyltriazene from products containing D&C Red No. 33 presents a lifetime risk of less than 1 in 100 billion (Refs. 6 and 25).

E. Cumulative Risk Estimates

In evaluating FD&C Yellow No. 5, the agency established a procedure of setting specifications for more than one carcinogenic constituent for the same color additive (50 FR 35774; September 4, 1985). The agency used the same procedure when it evaluated the safety of FD&C Yellow No. 6 (51 FR 41765; November 19, 1986) and is using it again in evaluating the safety of D&C Red No. 33 because it is necessary to consider the most appropriate way to evaluate the risk from simultaneously consuming small amounts of several carcinogenic agents.

The Office of Science and Technology Policy discussed the issue of exposure to multiple carcinogenic agents in a document entitled "Chemical Carcinogens; A Review of the Science and Its Associated Principles" (50 FR 10371, 10394; March 14, 1985) as follows:

> Since people are exposed to many different agents at the different times in different sequences, the effect of multiple agents on carcinogenesis is of major concern. However there is little information of general import in the field. Models for interaction are generally limited by lack of information on dose-response curves for carcinogens in the area of interest. The great number of permutations of possible agents and doses makes understanding interaction of multiple agents very difficult.
>
> In general, the action of two or more agents can be additive (if the agents are given in a dose range where the biological response is a linear function of dose) or multiplicative (if the response is a simple exponential response to dose), synergistic (greater than expected) or antagonistic (less than expected).

The agency knows of no method where by potential multiplicative, synergistic, or antagoniatic interactions can be incorporated into a generalized risk assessment process. Furthrmore. at the dose levels under consideration (far below those having measurable pharmacologic or physiologic activity), the agency sees no reason to consider synergistic or antagonistic interactions. When one extrapolates carcinogenicity data downward to very low doeses, one is, in effect, assuming that the carcinogens are acting independently, and that no interactions occur. Thus, if the probability of developing cancer from one substance is independent of the probability of developing cancer from another substance, then the probability of developing cancer from either substance may be obtained from summing the individual probabilities. Therefore, in the absence of specific information on the interactions among the carcinogenic impurities, the agency believes that, operationally, the risks incurred from the presence of multiple carcinogenic impurities in a color or food additive can be considered independent, and that the estimated upper bound risks should be summed.

The individual risk estimates discussed earlier show that the impurities other than 4-aminobiphenyl and benzidine make negligible contributions to the total risk. Table III shows the total upper bound risk, estimated by summing the risk estimate from each carcinogenic impurity when present at the highest level, consistent with specifications, to be 4 in 100 million.

TABLE III—UPPER BOUND RISK ESTIMATES BASED ON SPECIFICATIONS FOR CARCINOGENIC IMPURITIES IN D&C RED NO. 33

Impurity	Lifetime cancer risk	
4-Aminoazobenzene [1]	0.000000002	(2×10^{-9})
4-Aminobiphenyl [2]	0.00000002	(2×10^{-8})
Aniline	0.000000000004	(4×10^{-12})
Azobenzene	0.000000000002	(2×10^{-12})
Benzidine	0.00000002	(2×10^{-8})
1,3-Diphenyltriazene [1]	0.00000000001	(1×10^{-11})
Sum [2]	0.00000004	(4×10^{-8})

[1] The risk for skin cancer is used here because it is higher than the risk estimated for systemic cancer.
[2] In summing risk estimates, numbers have been rounded off to the nearest significant figure.

The agency emphasizes that these upper bound risk estimates are worst case estimates that are used to assure that there is a reasonable certainty that use of an additive will not cause harm. Consequently, several assumptions used for the estimate tend to overestimate rather than underestimate risk. For example, the linear model used to extrapolate risk to low dose exposure is a conservative model. It is used to generate an upper bound estimate of an unknown risk, not to predict an actual risk.

Furthermore, the agency's risk estimates are based on the assumption that all carcinogenic impurities are present at the maximum concentrations allowed by the regulations. In reality, any batch with any impurity concentration above a specification would be rejected while batches with lower concentrations would be allowed. Therefore, unless all batches of certified color additive have impurity concentrations exactly at the specification limits, the average concentration of each impurity will be lower than the maximum allowed.

Finally, the agency points out that the levels of the impurities found in D&C Red No. 33 are so low that under no circumstances could a bioassay detect a carcinogenic effect from these impurities.

The agency has considered the potential presence of these impurities in other color additives as part of this evaluation. D&C Red No. 33, FD&C Yellow No. 5, and FD&C Yellow No. 6 all can contain the same carcinogenic impurities (50 FR 35774 at 35776; September 4, 1985 and 51 FR 41765 at 41774; November 19, 1986). Currently, the agency can estimate risks only for products containing these three color additives with these impurities. Simple addition of the upper bound risks for high users of each color additive (all projected to have the impurities present at the levels of the specifications) would give a value of less than 6 in 10 million. Although this value is clearly exaggerated, FDA sees no need to refine the analysis when the risk is so low.

The agency believes that the maximum risk to consumers from the use of D&C Red No. 33 alone or in combination with the other additives is sufficiently low that it can conclude that the use of batches of D&C Red No. 33 that meet the specifications adopted by this rule is safe. The agency is aware that some of these carcinogenic impurities may occur also in some color additives other than FD&C Yellow No. 5 and FD&C Yellow No. 6. Due to the small amounts of these other color additives that are manufactured, or the limited usage, FDA does not expect any noticeable risk from these sources. The agency will review any risk resulting from exposure to these impurities in other color additives, and will take whatever regulatory action is needed to protect the public health, when sufficient information is available for an appropriate decision.

V. Refrences

The following references have been placed on file at the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. National Toxicology Program, "Peer Review of the Data from the Chronic Carcinogenesis Animal Bioassay of D&C Red No. 33 by the Technical Reports Review Subcommittee and Panel of Experts," July 28, 1984.

2. Memorandum, McLaughlin, P.J., to File for D&C Red No. 33, "Comparative Evaluation for Additional Safety Considerations, D&C Red No. 33," July 5, 1988.

3. Memorandum, Quantitative Risk Assessment Committee, "Carcinogenicity Risk Analysis for D&C Red No. 33 and D&C Red No. 36, Including a Discussion of ENVIRON/CTFA's Risk Analysis and Incorporation of Recommendations of the Color Additive Scientific Review Panel," March 12, 1987.

4. FDA, Bureau of Foods, "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food," 1982.

5. Memorandum, Link, W.B., to E. Coleman, "Amines in D&C Red No. 33," August 12, 1983.

6. Memorandum, Bailey, J.E., to E. Coleman, "1,3-Diphenyltriazene and Azobenzene in D&C Red No. 33," September 19, 1983.

7. Memorandum, Quantitative Risk Assessment Committee, "Upper Bound Risks from Carcinogenic Impurities in D&C Red No. 33 and D&C Red No. 36," March 31, 1987.

8. Kirby, A.H.M., "Studies in Carcinogenesis with Azo Compounds," *Cancer Research*, 7:333–341, 1947.

9. Kirby, A.H.M. and P.R. Peacock, "The Induction of Liver Tumors by 4-Aminoazobenzene and its N,N-Dimethyl Derivative in Rats on a Restricted Diet," *Journal of Pathology and Bacteriology*, 59:1–18, 1947.

10. Fare, G., "Rat Skin Carcinogenesis by Topical Applications of Some Azo Dyes," *Cancer Research*, 26:2406–2408, 1966.

11. Memorandum, Quantitative Risk Assessment Committee, "Report of the Committee on 4-Aminoazobenzene (Dietary and Skin Exposures)," December 20, 1983.

12. Block, N.L., et al., "The Initiation, Progress and Diagnosis of Dog Bladder Cancer Induced by 4-Aminobiphenyl," *Investigative Urology*, 16:50–54, 1978.

13. Rippe, D.F., et al., "Urinary Bladder Carcinogenesis in the Dog: Preliminary Studies on Cellular Immunity," *Transplantation Proceedings*, 7:495–501, 1975.

14. Memorandum, Quantitative Risk Assessment Committee, "Report of the Committee on 4-Aminobiphenyl," December 20, 1983.

15. Druckrey, H., "Quantitative Aspects in Chemical Carcinogenesis," U.I.C.C. Monograph Series, 7:60–78, 1967.

16. National Cancer Institute, "Bioassay of Aniline Hydrochloride for Possible Carcinogenicity," NCI Technical Report No. 130, NCI–CG–TR–130, U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health, 1978.

17. Chemical Industry Institute of Toxicology, Research Triangle Park, NC, "104 Week Chronic Toxicity Study in Rats: Aniline Hydrochloride," Final Report, January 4, 1982.

18. Memorandum, Quantitative Risk Assessment Committee, "Committee Report on Aniline," December 20, 1983.

19. National Cancer Institute, "Bioassay of Azobenzene for Possible Carcinogenicity," NCI Technical Report No. 154, NCI–CG–TR–154, U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health, 1979.

20. Memorandum, Quantitative Risk Assessment Committee, "Committee Report on Azobenzene," December 20, 1983.

21. Zavon, M.R., et al., "Benzidine Exposure as a Cause of Bladder Tumors," *Archives of Environmental Health*, 27:1–7, 1973.

22. Rinde, E., and W. Troll, "Metabolic Reduction of Benzidine Azo Dyes to Benzidine in the Rhesus Monkey," *Journal of the National Cancer Institute*, 55: 181–182, 1975.

23. Memorandum, Quantitative Risk Assessment Committee, "Committee Report on Benzidine," December 20, 1983.

24. Otsuka, I., "Uber die Experimentelle Papillomerzeugung im Vormagen der Mausen durch Diazoaminobenzol," *Gann*, 29:209–214, 1935.

25. Memorandum, Quantitative Risk Assessment Committee, "Committee Report on 1,3-Diphenyltriazene (Dietary and Dermal Exposures)," December 20, 1983.

26. Kirby, A.H.M., "Further Experiments in Mice With p-Diazoaminobenzene," *British Journal of Cancer*, 2:290–294, 1948.

VI. Conclusions

The agency concludes that D&C Red No. 33 is safe under the conditions of use set forth below for general use in drugs and cosmetics, and that certification is necessary for the protection of the public health. In reaching this conclusion, the agency evaluated a full battery of animal feeding and dermal studies adequate to demonstrate the safety of a color additive. The agency also performed a comparative evaluation on the splenic toxicity of D&C Red No. 33 and D&C Red No. 9 to determine whether additional animal safety testing was needed to achieve a reasonable certainty that no harm would result from use of D&C Red No. 33. Based on all the relevant data, including the comparative splenic toxicity evaluation, the agency concludes that there is a reasonable certainty of no harm from use of the additive and that further testing is unnecessary and of no benefit to the public health.

The final toxicity study reports, interim reports, and the agency's evaluations of these studies are on file at the Dockets Management Branch (address above) and may be reviewed there between 9 a.m. and 4 p.m., Monday through Friday.

The agency concludes that it is necessary to have limitations on the levels of D&C Red No. 33 that may be used in drugs and cosmetics to assure safe use.

The petitioners have not submitted the required data for eye-area use. Therefore, FDA now considers that portion of the petition that included the permanent listing of D&C Red No. 33 for eye-area use to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4). Use of D&C Red No. 33 in the area of the eye has never been covered by provisional listing. The agencys listing of a color additive for general use in drugs and cosmetics does not encompass eye-area use.

The agency is describing the color additive in this regulation according to the current Chemical Abstracts nomenclature, which differs somewhat from the nomenclature FDA previously used.

The agency concludes that it is necessary to include in the listing regulations for D&C Red No. 33 a brief description of its manufacturing process to ensure the safety of the color additive. FDA has included that description to define as closely as possible the color additive that has been tested and shown to be safe. The agency is doing so because use of a different manufacturing process is likely to produce different impurities that have not been considered in establishing specifications for this color additive. The agency is not able at this time to set specifications that would control the presence of all such impurities. FDA is willing to consider petitions for alternative manufacturing processes, but those petitions should contain evidence that demonstrates that those processes will not produce impurities that will make use of the color additive unsafe.

The agency has contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to develop appropriate specifications for color additives for use in food as part of the Food Chemical Codex. Similarly, appropriate specifications for color additives for use in drugs and cosmetics will be developed following the general guidelines used by NAS/NRC in its evaluation of color additives used in food. The agency concludes that specifying, through a general decription, the manufacturing process in the regulations for this color additive will provide an adequate assurance of safety until suitable specifications can be developed.

The agency finds that because of the presence, or possible presence, of carcinogenic impurities in the color additive, specifications for impurities are necessary to protect the public health. Therefore, specifications as listed in Table II, column 2, of this preamble are included in the regulation.

In the past, D&C lakes have been permitted to be prepared from uncertified straight color additives. The resulting lakes would subsequently be certified. However, to assure that all lakes meet the specification limits for the carcinogenic impurities and that the use of lakes remains consistent with the evaluation, the agency is establishing the requirement that all lakes of D&C Red No. 33 be prepared from certified batches of the straight color additive. Accordingly, § 82.1333 is amended to reflect this requirement.

This order does not permanently list D&C Red No. 33 lakes. FDA published a notice of intent in the Federal Register of June 22, 1979 (44 FR 36411), which discussed the additional information that the agency believes is needed before final regulations on lakes can be issued. FDA intends to publish proposed regulations governing the use of color additives in lakes in the Federal Register in the near future and concludes that the listing of color additives for use in lakes can best be implemented by general regulations. D&C Red No. 33 lakes will, therefore, continue to be provisionally listed for coloring drugs and cosmetics under Parts 81 and 82 (21 CFR Parts 81 and 82).

The agency has determined under 21 CFR 25.24(b)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 29, 1988, file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. Section 74.1333 is added to Subpart B to read as follows:

§ 74.1333 D&C Red No. 33.

(a) *Identity.* (1) The color additive D&C Red No. 33 is principally the disodium salt of 5-amino-4-hydroxy-3-(phenylazo)-2,7-naphthalenedisulfonic acid (CAS Reg. No. 3567–66–6). To manufacture the additive, the product obtained from the nitrous acid diazotization of aniline is coupled with 4-hydroxy-5-amino-2,7-naphthalenedisulfonic acid in an alkaline aqueous medium. The color additive is isolated as the sodium salt.

(2) Color additive mixtures for drug use made with D&C Red No. 33 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Specifications.* D&C Red No. 33 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practices:

Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 18 percent.
Water-insoluble matter, not more than 0.3 percent.
4-Amino-5-hydroxy-2,7-naphthalenedisulfonic acid, disodium salt, not more than 0.3 percent.
4,5-Dihydroxy-3-(phenylazo)-2,7-naphthalenedisulfonic acid, disodium salt, not more than 3.0 percent.
Aniline, not more than 25 parts per million.
4-Aminoazobenzene, not more than 100 parts per billion.
1,3-diphenyltriazene, not more than 125 parts per billion.
4-Aminobiphenyl, not more than 275 parts per billion.
Azobenzene, not more than 1 part per million.
Benzidine, not more than 20 parts per billion.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 82 percent.

(c) *Uses and restrictions.* The color additive D&C Red. No 33 may be safely used for coloring ingested drugs, other than mouthwashes and dentifrices, in amounts not to exceed 0.75 milligram per daily dose of the drug. D&C Red No. 33 may be safely used for coloring externally applied drugs, mouthwashes, and dentifrices in amounts consistent with current good manufacturing practice.

(d) *Labeling requirements.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Red No. 33 shall be certified in accordance with regulations in Part 80 of this chapter.

3. Section 74.2333 is added to Subpart C to read as follows:

§ 74.2333 D&C Red No. 33.

(a) *Identity and specifications.* The color additive D&C Red No. 33 shall conform in identity and specifications to the requirements of § 74.1333(a) (1) and (b).

(b) *Uses and restrictions.* The color additive D&C Red No. 33 may be safely used for coloring cosmetic lip products in amounts not to exceed 3 percent total color by weight of the finished cosmetic products. D&C Red No. 33 may be safely used for coloring mouthwashes (including breath fresheners), dentifrices, and externally applied

cosmetics in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 33 shall be certified in accordance with regulations in Part 80 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

4. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 85–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

5. Section 81.1 *Provisional lists of color additives* is amended by removing the entry for "D&C Red. No. 33" from the table in paragraph (b).

§ 81.25 [Removed]

6. Section 81.25 *Temporary tolerances* is removed.

§ 81.27 [Amended]

7. Section 81.27 *Conditions of provisional listing* is amended by removing the entry for "D&C Red. No. 33" from the table in the introductory text of paragraph (d).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

8. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

9. Section 82.1333 is revised to read as follows:

§ 82.1333 D&C Red No. 33.

(a) The color additive D&C Red. No. 33 shall conform in identity and specifications to the requirements of § 74.1333(a) (1) and (b) of this chapter.

(b) All lakes of D&C Red. No. 33 shall be manufactured from previously certified batches of the straight color additive.

Dated: August 23, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–19541 Filed 8–29–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 314

[Docket No. 82N–0293]

Technical Revision in Regulations Governing Drug Master File Submissions

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making a minor revision of the rules governing the submission to FDA of Drug Master Files (DMF's). DMF's are reference files submitted to FDA generally in support of investigational and marketing applications for human drugs. The final rule reduces from three to two the number of copies of a DMF required to be submitted. This change will eliminate the submission of unneeded material and will reduce the volume of submissions.

DATES: Effective September 29, 1988; comments by October 31, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: DMF's are reference files submitted to FDA that generally are used in the review of investigational and marketing applications for human drugs. DMF's are often submitted to the agency to allow another party to reference this material without disclosing to that party the contents of the file. In the Federal Register of February 22, 1985 (50 FR 7452 at 7493), FDA adopted new regulations governing the submission and content of DMF's. The agency is now making a minor change in these requirements.

The current regulation requires that DMF's be submitted in triplicate (21 CFR 314.420(c)). FDA has found that two copies of the drug master file are adequate and has revised the regulation accordingly.

This revision is consistent with the guidance provided in the "Draft Guideline for Drug Master Files" made available under a notice published in the Federal Register of October 15, 1987 (52 FR 38276).

Notice and comment procedure is not necessary before issuing this technical revision (5 U.S.C. 553(b)(B); 21 CFR 10.40(e)(1)). This regulation does not impose any new requirements but merely makes a minor technical revision of the DMF regulations already in place. This revision is intended to assist both DMF submitters and FDA by eliminating submission of an unneeded copy. No useful purpose would be served by notice and comment. The Commissioner has therefore determined for good cause that notice and comment are unnecessary and contrary to the public interest.

This technical revision becomes effective on September 29, 1988. However, interested persons may, on or before October 31, 1988, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether amendments, modifications, or revisions to the final rule are warranted. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), the agency has carefully analyzed the economic consequences of this final rule. This final rule is merely a technical revision of an existing rule which will have minor but beneficial economic consequences, and the agency has determined that it is, therefore, not a major rule as defined in Executive Order 12291. Further, the Commissioner certifies that this clarification will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Paperwork Reduction Act

The minor technical changes under this rule relate to collection of

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information requirements already submitted to the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980 and previously approved under OMB control number 0910–0001.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, 21 CFR Chapter I, Part 314 is amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR Part 314 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

§ 314.420 [Amended]

2. Section 314.420 *Drug master files* is amended in paragraph (c) in the first and fourth sentences by revising the word "three" to read "two".

Dated: August 24, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–19682 Filed 8–29–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Red No. 3, D&C Red No. 33, and D&C Red No. 36; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listings of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs; of the lakes of FD&C Red No. 3 for use in coloring food, drugs, and cosmetics; and of D&C Red No. 33 and D&C Red No. 36 for use as color additives in drugs and cosmetics. The new closing date for the provisional listing of these color additives will be October 28, 1988. FDA has decided that this postponement is necessary to provide time for the receipt and evaluation of any objections and comments submitted in response to two final rules and a proposal published in the **Federal Register** concerning these color additives.

EFFECTIVE DATE: August 30, 1988. The new closing date for FD&C Red No. 3 and its lakes, D&C Red No. 33, and D&C Red No. 36 will be October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA has established the current closing date of August 30, 1988, for the provisional listing of FD&C Red No. 3, D&C Red No. 33, and D&C Red No. 36 by a regulation published in the **Federal Register** of July 1, 1988 (53 FR 25127). In the **Federal Register** of August 2, 1988 (53 FR 29024), FDA permanently listed the drug and cosmetic use of D&C Red No. 36. Elsewhere in this issue of the **Federal Register**, FDA is permanently listing the drug and cosmetic uses of D&C Red No. 33 and proposing to postpone the closing date for the provisional listing of the cosmetic and external drug uses of FD&C Red No. 3 and of the use of FD&C Red No. 3 lakes in coloring food, drugs, and cosmetics. The regulation set forth below will postpone the August 30, 1988, closing date for the provisional listing of these color additives until October 28, 1988.

The two final rules referred to above provide 30 days for any person who will be adversely affected by these rules to file written objections. The proposal provides 30 days for the submission of comments by interested persons. The postponement of the closing dates for the provisional listing of these color additives for 60 days will provide time for receipt and evaluation of, and appropriate agency action to, objections or requests for a hearing submitted in response to the final rules and comments on the proposed rule.

FDA believes that it is reasonable to postpone the closing date for these color additives until October 28, 1988, to provide a short period of time for its receipt and evaluation of any comments or objections and subsequent agency action. FDA concludes that this extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 DC Cir. 1982).

Because of the shortness of time until August 30, 1988, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of August 30, 1988. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553(b), (d)(1), and (d)(3), this postponement is issued as a final regulation, effective August 30, 1988.

List of Subject in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the tables of paragraph (a) for the entry "FD&C Red No. 3" and of paragraph (b) for the entries "D&C Red No. 33" and "D&C Red No. 36" by revising the closing date to read "October 28, 1988".

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table, appearing in the introductory text in paragraph (d), by revising the closing dates for the entries "FD&C Red No. 3", "D&C Red No. 33", and "D&C Red No. 36" to read "October 28, 1988."

Dated: August 24, 1988.

John M. Taylor

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–19681 Filed 8–29–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 85

[DoD Directive 1010.10]

Health Promotion

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This Departmental health promotion Part emphasizes education about health risks associated with smoking, use of drugs and alcohol, diet, lack of exercise, and high blood pressure. It aims at creating an atmosphere that supports smoking prevention and cessation, discourages tobacco use and restricts smoking in Department buildings and facilities, and creates a healthy work environment.

EFFECTIVE DATE: July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Colonel Hagey, Office of the Secretary of Defense (Health Affairs) (PA&QA), Room 3D368, the Pentagon, Washington, DC 20301, telephone (202) 695–6800.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 32 CFR Part 85

Federal buildings and facilities, Smoking.

Accordingly, Title 32, Chapter I, is amended by adding Part 85 as follows:

PART 85—HEALTH PROMOTION

Sec.

85.1 Purpose.
85.2 Applicability and scope.
85.3 Definitions.
85.4 Policy.
85.5 Responsibilities.
85.6 Procedures.

Authority: 5 U.S.C. 301.

§ 85.1 Purpose.

(a) This Part establishes a health promotion policy within the Department of Defense to improve and maintain military readiness and the quality of life of DoD personnel and other beneficiaries.

(b) This Part replaces 32 CFR Part 203 and establishes policy on smoking in DoD occupied buildings and facilities.

§ 85.2 Applicability and scope.

(a) This Part applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies.

(b) It is directed to all military personnel and retirees, their families, and, where specified, to civilian employees.

§ 85.3 Definitions.

Health Promotion. Any combination of health education and related organizational, social, economic or health care interventions designed to facilitate behavioral and environmental alterations that will improve or protect health. It includes those activities intended to support and influence individuals in managing their own health through lifestyle decisions and selfcare. Operationally, health promotion includes smoking prevention and cessation, physical fitness, nutrition, stress management, alcohol and drug abuse prevention, and early identification of hypertension.

Lifestyle. The aggregated habits and behaviors of individuals.

Military Personnel. Includes all U.S. military personnel on active duty, U.S. National Guard or Reserve personnel on active duty, and Military Service Academy cadets and midshipmen.

Self-Care. Includes acceptance of responsibility for maintaining personal health, and decisions concerning medical care that are appropriate for the individual to make.

Target Populations. Military personnel, retirees, their families, and civilian employees.

§ 85.4 Policy.

It is DoD policy to:

(a) Encourage military personnel, retirees, their families and civilian employees to live healthy lives through an integrated, coordinated and comprehensive health promotion program.

(b) Foster an environment that enhances the development of healthful lifestyles and high unit performance.

(c) Recognize the right of individuals working or visiting in DoD occupied buildings to an environment reasonably free of contaminants.

(d) Disallow DoD Components' participation with manufacturers or distributors of alcohol or tobacco products in promotional programs, activities, or contests aimed primarily at DoD personnel. This does not prevent accepting support from these manufacturers or distributors for worthwhile programs benefiting military personnel when no advertised cooperation between the Department of Defense and the manufacturer or distributor directly or indirectly identifying an alcohol or tobacco product with the program is required. Neither does it prevent the participation of military personnel in programs, activities, or contests approved by the manufacturers or distributors of such products when that participation is incidental to general public participation.

§ 85.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)) shall coordinate and monitor the DoD health promotion program in accordance with this Part, executing this responsibility in cooperation with the Assistant Secretary of Defense (Force Management and Personnel) and the Assistant Secretary of Defense (Reserve Affairs). The Office of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) shall:

(1) Establish and chair the Health Promotion Coordinating Committee comprised of representatives of the Office of the Assistant Secretary of Defense (Force Management and Personnel) (OASD(FM&P)), Office of the Assistant Secretary of Defense (Acquisition and Logistics) (OASD(A&L)), the Office of the Assistant Secretary of Defense (Reserve Affairs) (OASD(RA)), each Military Service, and such other advisors as the OASD(HA) considers appropriate.

(2) Facilitate exchanges of technical information and problem solving within and among Military Services and Defense Agencies.

(3) Provide technical assistant, guidance and consultation.

(4) Coordinate health data collection efforts to ensure standardization and facilitate joint studies across DoD components.

(5) Review dietary standards for DoD dining facilities as specified in DoD Directive 3235.2 [1]

(b) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall, in collaboration with the ASD(HA), coordinate and monitor relevant aspects of the health promotion program. These include:

(1) Use of tobacco products in DoD occupied facilities.

(2) Operation of health promotion and screening programs at the worksite and in Professional Military Education, DoD Dependents Schools, and Section 6 schools.

(3) Dietary regulation of DoD snack concessions, and vending machines.

(4) Reduction of stress in work setting.

(5) Designate two representatives to the Health Promotion Coordinating Committee.

(c) The *Assistant Secretary of Defense (Reserve Affairs)* (OASD(RA)) shall:

(1) Coordinate and monitor relevant aspects of the health promotion program as it pertains to National Guard and Reserve Personnel.

(2) Designate a representative to the Health Promotion Coordinating Committee.

(d) The *Secretaries of the Military Departments* shall:

(1) Develop a comprehensive health promotion program plan for their respective Service(s).

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[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

(2) Establish and operate an integrated, coordinated and comprehensive health promotion program as prescribed by this Directive.

(3) Designate from their respective Service(s) a health promotion coordinator who shall also serve as representative to the Health Promotion Coordinating Committee.

(4) Evaluate the effectiveness of their respective health promotion program(s).

(e) The *Directors of Defense Agencies* shall develop and implement health promotion plans and programs for their civilian employees in accordance with this part.

(f) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) shall develop and implement a health program promotion for OSD civilian employees.

§ 85.6 Procedures.

(a) Each Military Service shall establish a health promotion program coordinator to serve as the focal point for all health promotion program issues and to integrate the activities of the medical and personnel departments.

(b) A Health Promotion Coordinating Committee shall be established to enhance communication among the Military Services; recommend joint policy and program actions, review program implementation, and recommend methodologies and procedures for program evaluation. The Committee shall be chaired by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) or designee. Additional members shall include two representatives from the Office of the Assistant Secretary of Defense (Force Management and Personnel); one representative from the Office of the Assistant Secretary of Defense (Reserve Affairs); one representative from the office of the Assistant Secretary of Defense (Acquisition & Logistics); and the health promotion coordinator from each Military Service.

(c) Each Component shall prepare a plan for the implementation of a comprehensive health promotion program that includes specific objectives (planned accomplishments) with measurable action steps. The plan shall address all of the program elements identified in the definition of health promotion for each group in the target populations. The plan shall consider workload, systems support, and training needs of individuals charged with responsibility at all organizational levels.

(d) Health promotion plans and programs shall address smoking prevention and cessation, physical fitness, nutrition, stress management, alcohol and drug abuse, and early identification of hypertension.

(1) Smoking prevention and cessation programs shall aim to create a social environment that supports abstinence and discourage use of tobacco products, create a healthy working environment, and provide smokers with encouragement and professional assistance in quitting. In addition to these aims, smoking prevention and cessation programs shall include the following elements.

(i) Smoking shall be permitted in buildings only to the extent that it does not endanger the life or property, or risk impairing nonsmokers' health.

(ii) The smoking of tobacco products within DoD occupied space shall be controlled in accordance with the following guidelines:

(A) Smoking shall be prohibited in auditoriums, conference rooms and classrooms. No Smoking signs shall be prominently displayed, and ashtrays shall not be permitted. Receptacles may be placed at entrances so that visitors may dispose of lighted smoking material when entering a nonsmoking area.

(B) Nonsmoking areas shall be designated and posted in all eating facilities in DoD occupied buildings. Smoking areas shall be permitted only if adequate space is available for nonsmoking patrons and ventilation is adequate to provide them a healthy environment.

(C) Elevators shall be designated as nonsmoking areas.

(D) Smoking shall be prohibited in official buses and vans.

(E) Within the confines of medical treatment facilities, smoking shall be restricted to private offices and specially designated areas. Smoking by patients shall be limited to specially designated areas, and health care providers shall not smoke in the presence of patients while performing their duties. Smoking is permitted in visitor waiting areas only where space and ventilation capacities permit division into smoking and nonsmoking sections.

(F) Smoking shall not be permitted in common work areas shared by smokers and nonsmokers unless adequate space is available for nonsmokers and ventilation is adequate to provide them a healthy environment. Where feasible, smoking preference should be considered when planning individual work stations so that smoking and nonsmoking areas may be established.

(G) When individual living quarters are not available and two or more individuals are assigned to one room, smoking and nonsmoking preferences shall be considered in the assignment of rooms.

(H) Smoking by students attending DoD Dependents Schools or Section 6 schools shall not be permitted on school grounds except as provided by policy regulations promulgated by the Director, DoDDS. Faculty and staff shall smoke only in specifically designated areas and shall not smoke in the presence of students.

(iii) Installations shall assess the current resources, referral mechanisms, and need for additional smoking cessation programs. Occupational health clinics shall consider the feasibility of smoking cessation programs for civilian employees or, at a minimum, be able to refer employees to such programs. While smoking cessation should be encouraged, care shall be taken to avoid coercion or pressure on employees to enter smoking cessation programs against their will. Smoking prevention programs shall be made available in DoD Dependents Schools and Section 6 schools.

(iv) Information on the health consequences of smoking shall be incorporated with the information on alcohol and drug abuse provided to military personnel at initial entry and at permanent change of station as specified in 32 CFR Part 62a. At initial entry, nonsmokers shall be encouraged to refrain from smoking. Smokers shall be encouraged to quit and be offered assistance in quitting.

(v) As part of routine physical and dental examinations and at other appropriate times, health care providers should be encouraged to inquire about the patient's tobacco use, including use of smokeless tobacco products; to advise him or her of the risks associated with use, the health benefits of abstinence, and of where to obtain help to quit.

(vi) Appropriate DoD health care providers should advise all pregnant smokers of the risks to the fetus.

(vii) The Military Services shall conduct public education programs appropriate to various target audiences on the negative health consequences of smoking.

(2) Physical fitness programs shall aim to encourage and assist all target populations to establish and maintain the physical stamina and cardiorespiratory endurance necessary for better health and a more productive lifestyle. In addition to the provisions of DoD Directive 1308.1 [2] and Secretary of

[2] See footnote 1 to § 85.5(a)(5).

Defense Memorandum physical fitness programs shall include the following elements.

(i) Health professionals shall consider exercise programs conducive to improved health, and encourage appropriate use by patients. For military personnel, recommendations shall accord with military readiness requirements.

(ii) Commanders and managers should assess the availability of fitness programs at or near work sites and should consider integrating fitness regimens into normal work routines for military personnel as operational commitments allow.

(iii) The chain of command should encourage and support community activities that develop and promote fitness among all target populations. Activities should be designed to encourage the active participation of many people rather than competition among a highly motivated few.

(3) Nutrition programs shall aim to encourage and assist all target populations to establish and maintain dietary habits contributing to good health, disease prevention, and weight control. Weight control involves both nutrition and exercise, and is addressed in part in DoD Directive 1308.1. Nutrition programs include efforts not only to help individuals develop appropriate dietary habits, but also to modify the environment so that it encourages and supports appropriate habits. Additionally, nutrition programs shall include the following elements.

(i) Nutritional advice and assistance shall be provided by appropriate DoD health care professionals to military personnel, retirees, and family members.

(ii) In military and civilian dining facilities, where feasible, calorie information and meals with reduced amounts of fat, salt, and calories shall be made readily available.

(iii) Snack concessions and vending machines, when feasible, shall offer nutritious alternatives, such as fresh fruit, fruit juices, and whole grain products.

(iv) Public information campaigns shall be conducted by the Military Services to alert all target populations about the relationship between diet and risk of chronic diseases.

(4) Stress management programs shall aim to reduce environmental stressors and help target populations cope with stress. Additionally, stress management programs shall include the following elements.

(i) Commanders should develop leadership practices, work policies and procedures, and physical settings that promote productivity and health for military personnel and civilian employees.

(ii) Health and fitness professionals are encouraged to advise target groups on scientifically supported stress management techniques.

(iii) The topic of stress management should be considered for integration into the curricula at appropriate Professional Military Education programs and in the DoD Dependents Schools and Section 6 schools to familiarize students with scientifically supported concepts of stress management for day-to-day problems, life transitions, and life crises.

(5) Alcohol and drug abuse prevention programs shall aim to prevent the misuse of alcohol and other drugs, eliminate the illegal use of such substances, and provide counseling or rehabilitation to abusers who desire assistance in accordance with the provisions of 32 CFR Parts 62a and 62 and DoD Instruction 1010.6 [3] Additionally, alcohol and drug abuse prevention programs shall include the following elements.

(i) Appropriate DoD health care professionals shall advise all pregnant patients and patients contemplating pregnancy about the risks associated with the use of alcohol and other drugs during pregnancy.

(ii) The Military Services shall conduct public education programs appropriate to various target audiences. Programs should include such topics as alcohol and drug use and pregnancy, driving while intoxicated, and adolescent alcohol and drug abuse.

(6) Hypertension prevention programs shall aim to identify hypertension early, provide information regarding control and lifestyle factors, and provide treatment referral where indicated. Early identification of hypertension programs shall include the following elements.

(i) Hypertension screening shall be provided as part of all medical examinations and the annual dental examination for active duty service members. Screening shall also be provided to other beneficiaries, excluding those in the Children's Preventive Dentistry Program, at the time of their original request for care. Patients with abnormal screening results shall receive appropriate medical referrals.

(ii) Each DoD medical facility should periodically offer mass hypertension screening to encourage beneficiaries to monitor their blood pressure regularly.

(iii) Occupational health clinics shall make hypertension screening readily available to civilian employees, and shall encourage employees to use this service.

(iv) Public information campaigns emphasizing the dangers of hypertension and the importance of periodic hypertension screening and dietary regulation shall be conducted.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 24, 1988.

[FR Doc. 88-19567 Filed 8-29-88; 8:45 am]

BILLING CODE 3810-01-M

[3] See footnote 1 to § 85.5(a)(5).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD8-88-16]

Special Local Regulations; Fireworks Display, Morgan City, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for The Fireworks Display. This event will be held on 4 September 1988 from 9:00 p.m. until 11:00 p.m. on Berwick Bay in the Atchafalaya River at Morgan City. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 4 September 1988 at 8:30 p.m. and terminate on 4 September 1988 at 11:30 p.m.

FOR FURTHER INFORMATION CONTACT: CWO William G. Whitehouse, Eighth U.S. Coast Guard District, Tel: (504) 589-2972.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published. Following normal rulemaking procedures would have been impracticable. The details of the event were not finalized until 17 August 1988 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data or arguments. Comments should include their name and address, identify this notice (CGD8-88-16) and the specific section of the proposal to which the comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-

addressed envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are CWO William G. Whitehouse, Project Officer, Eighth Coast Guard District, New Orleans, LA, and CDR J.A. Unzicker, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulations

The marine event requiring this regulation is a Fireworks Display called "The Fireworks Display." This event is sponsored by the Louisiana Shrimp and Petroleum Festival and Fair Association, Inc. It will consist of 1 tugboat with 1 or 2 barges for the launching of fireworks. Approximately 25–30 spectator boats are expected for the event. While viewing the event at any point outside the regulated area is not prohibited, spectators will be encouraged to congregate within areas designated by the sponsor.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–8–88–16 is added to read as follows:

§ 100.35–8–88–16 Berwick Bay, Atchafalaya River, Louisiana

(a) *Regulated area:* The following area will be closed to all vessel traffic: Berwick Bay from the junction of the Lower Atchafalaya River and Bayou Boeuf at Morgan City, LA to the Highway 90 Bridge.

(b) *Special local regulations:* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectator shall anchor, block, loiter or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled, by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and/or property. He may be reached on VHF–FM Channel 16, when required, by the call sign "PATCOM."

(c) *Effective dates:* These regulations will be effective from 6:30 p.m. to 11:30 p.m. 4 September 1988.

Dated: August 16, 1988.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 88–19600 Filed 8–29–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Removal of National Forest Timber

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes additional standards for a Contracting Officer to use in determining whether a prospective purchaser is responsible and capable of performing a particular contract before the Government enters into a contract with that prospective purchaser. In addition, this rule requires increased downpayments from those purchasers of National Forest System timber with a recent record of failure to perform timber sale contracts but who otherwise may meet the responsibility requirements and who are determined to be responsible. These changes should improve timber sale contracting and reduce the number of unperformed and violated contracts with a corresponding reduction in negative effects on management of the National Forests.

EFFECTIVE DATE: This rule is effective September 29, 1988.

FOR FURTHER INFORMATION CONTACT: Questions about this final rule may be addressed to: Ed Whitmore, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013–6090, (202) 475–3758.

SUPPLEMENTARY INFORMATION:

Background

Since 1982 the Forest Service has witnessed a significant upsurge in the number of National Forest timber purchasers who do not complete their sale contracts. Over 1,900 timber sale contracts have been defaulted by approximately 1,300 purchasers. Under contract provisions governing default, the Government estimates it has sustained damages valued in excess of $230 million as a result of these defaults. In addition, there is potential for another estimated $200 million dollars in damages in the event of default of some high-priced sales bid prior to 1982. These sales are vulnerable to default because they were bid when the lumber market was extremely high compared to current prices. Following default, sales are reappraised and reoffered. Damages are determined by subtracting the resale value of the timber from the original bid price.

A timber sale program is designed so that every year the cumulative effects of the program are compatible with and contribute to the planned management of a National Forest. When a timber sale contract is defaulted, the harvest of that timber is delayed until the timber can be resold and cut under the resale contract. In addition to causing a tremendous administrative burden on the agency associated with the rescheduling, reappraising, and reoffering the timber for sale, the delayed harvesting of Federal timber sale contracts can adversely affect management of the natural resources of the National Forest System. A default-delayed harvest may result in adverse economic, resource, and environmental effects which are both direct and indirect, as well as cumulative. Among the major impacts are:

(1) Some timber sales are sold to remove trees for the benefit of other resources. Timber harvest can improve cover/forage ratios for wildlife, increase available water supplies, open vistas for public viewing along roadsides, improve range conditions for wildlife and livestock, or remove potentially hazardous trees in a recreation area. A default-caused delay in the harvest of such a sale will delay these benefits.

(2) Some timber harvests are timed to minimize logging damage to the remaining timber or to reduce the spread of pathogens from the overstory to the understory (for example, to reduce the spread of mistletoe). When operations are delayed, the logging may be too late to minimize damage to the remaining timber or to reduce the spread of pathogens.

(3) Some logging is planned to remove some or all of the overstory in order to maintain or increase the growth of the understory. Delays in harvesting the overstory can slow the growth of the remaining smaller trees, resulting in increase brush competition or can postpone needed precommercial thinning of the remaining timber.

(4) If a timber sale contract was planned and offered to achieve commercial thinning of the timber in the sale area, a harvest delay could delay the increased growth of the remaining timber.

(5) Other silviculture treatments such as timber stand improvement in nearby areas may be delayed because the slash in the default-delayed area was not treated when originally planned. This can result in growth losses in those stands and/or an increased cost of treating the logging debris.

(6) Sales are designed to leave a healthy residual stand of timber. Default-caused delays may mean that the planned residual stand would not meet management objectives if the sale were logged as originally designed. This can result in additional delay and expense if the sale has to be redesigned to meet the objectives.

(7) Many sales are made to salvage timber that has been damaged by fire, insects, diseases, or other causes. Such timber is often subject to rapid deterioration. Default-caused delay in the harvest of this timber can cause a significant loss in the timber's volume and value and thus a significant loss of benefits to the American public.

(8) Some sales are prepared to assist control of Forest pest epidemics. Failure to remove such timber in a timely manner can increase the damage to adjacent stands.

(9) If a timber sale default delays construction of a road, the resulting delay in access could affect management of the other resources which would be tributary to the road.

In addition to serious resource problems caused by defaults, the economies of many communities, particularly in the West, are heavily dependent upon the employment generated by the harvest and manufacture of timber from the National Forests. Timber sale defaults can interrupt the flow of timber to those communities.

Defaults may also reduce receipts to the Federal Treasury and revenue sharing payments to local counties that are based on those receipts. The public services provided by many western counties are heavily dependent on these payments. State and county Governments, which depend upon an orderly source of income from the National Forests for funding of roads and schools, are subjected to budget fluctuations when purchasers fail to perform their contracts.

Inequities among purchasers also result from timber sale defaults. Purchasers who default with the exception of delaying the payment of damages are in a stronger financial position to bid on new contracts than they would have been had they performed the defaulted contracts. An inequity exists when purchasers, who have conscientiously performed their high-priced contracts and have suffered economic losses as a result, are required to compete for new contracts against purchasers whose financial ability to bid has been enhanced as a result of their failure to perform their own high-priced contracts.

These adverse impacts are magnified when a high incidence of default occurs. This recent history of defaults and deficient performance is an unacceptable situation requiring better business practices in future sales of public timber.

In light of the upsurge in defaults of timber sale contracts and the attendant adverse effects on National Forest System management, the Department of Agriculture proposed a revision of its regulations at 36 CFR Part 223 governing the sale of timber on National Forest System lands. The proposed rule, published May 20, 1987, at 52 FR 18926, proposed additional criteria for determining a purchaser to be qualified for award of a timber sale contract as well as a requirement for increased downpayments from purchasers with a deficient performance record. Public comment was requested by June 19, 1987. That date was later extended to July 6, 1987 [52 FR 23188].

Response to Public Comments

The Forest Service received comments on the proposed rule from 40 individuals and entities. Comments came from individual timber sale purchasers, timber sale purchaser associations, attorneys, Forest Service employees, a private consulting forester, and a forester employed by another Federal agency but expressing private views. About two-thirds of the responses came from the Pacific Northwest. Eighty-five percent of the responses were from West of the 100th Meridian.

Eighty percent of the respondents supported the proposal for increased downpayments either in its entirety or with suggested modifications to strengthen it. Five precent did not support any part of the increased downpayment proposal.

About 20 percent of the respondents expressed support for the proposal to determine bidder responsibility. Most of the comments pertaining to bidder responsibility expressed a concern that either the standards were too subjective or the pre-bid qualifications should be established.

The following summarizes the major comments and suggestions received and the Department's response to these in the final rule. This final rule reflects full consideration of all comments received.

General Comments

Two respondents disagreed with the statement in the supplementary information section of the proposed rule document that default of timber sale contracts might create certain adverse environmental impacts. They maintained that the identified impacts had not occurred as a result of default-delayed harvest, and, therefore, should not be listed. The agency disagrees. The discussion in the proposed rule made clear that not all the listed effects on the environment occur from any one default but that these effects *may* occur as a result of default-delayed timber harvest. The National Forests are, in fact, experiencing these impacts either singly or in combination. Therefore, the general findings stand.

Section-by-Section Comments

Section 223.49 Downpayment.

Under the proposed rule, if a purchaser or affiliate has defaulted a Forest Service or Bureau of Land Management (BLM) timber sale contract, and the contract value of the defaulted timber sale(s) was $100,000 or more, the downpayment on the new contract, if awarded to that purchaser, would be twice the amount as that normally required. Further, the purchaser would not be able to apply funds deposited as the downpayment to other uses utnil the last timber on the sale is being harvested. Under the proposal, this provision would apply to defaults occurring 30-calendar days after the effective date of the final rule.

One respondent stated that defaults of BLM timber sales should not be considered with respect to bidders of National Forest timber while another stated that they should be included. Because the two agencies have similar timber sale programs and frequently have common purchasers, purchaser performance on a BLM sale is a valid indicator of the purchaser's likely performance on a National Forest timber sale. Therefore, consideration of defaults of BLM sales is retained in the

final rule. Although performance on other Federal timber sales was considered, it is not included due to the dissimilarity of programs involved.

A few respondents expressed concern that the requirement for an additional downpayment would create unequal bidder classes, in violation of the precept of Government contracting which requires that all bidders be treated equally. This concern is not well-founded. All bidders are treated equally. Should any company choose to default a contract(s) at values exceeding the established threshold, the requirement for a double downpayment applies on new sales. In seeking competitive bids for timber sales, the Forest Service attempts to maintain a balance between protecting the public and the Government's interests and recognizing the interests of the private sector. When a company fails to perform a contract or defaults a contract, the Forest Service is obligated to protect the interests of the public and the Government. Where there are future dealings with that purchaser, this final rule provides increased security via the increased downpayment to reflect the increased risk of nonperformance by a party that has previously failed to perform in accordance with contract terms. The requirement for an increased downpayment applies equally to all purchasers with a deficient performance record as identified in the rule and does not establish two classes of purchasers.

A few respondents expressed concern that the proposed rule would not accomplish the objectives of securing performance and reducing risk to the Government. Reasons were varied and conflicting: the additional downpayment requirements might create additional defaults; the additional downpayment may create a penalty while issues are being litigated; or the additional downpayment requirement is too meager. The Forest Service does not agree with these concerns. Timber sale contracting experience indicates that stronger downpayment requirements will not create additional defaults, but instead will serve as an incentive to the orderly completion of contracts for any purchaser who intends to compete for future National Forest timber sale contracts. As to the view that the additional downpayment is too meager, the agency believes a doubling of downpayment should help meet the objective of reducing risk of nonperformance of contracts and of completion of contracts in a timely manner. Those companies who have defaulted contracts will pay no more for timber than purchasers who have not defaulted, although the purchaser with a deficient performance record will have to put more money down upfront and meet more stringent performance standards before the downpayment can be applied to other uses. The Department believes this is in accordance with sound business practices and good policy. Therefore, this final rule retains the requirement of doubling the downpayment for purchasers with a record of deficient performance.

Several respondents including two industry associations recommended removal of the 12-month stipulation, thus requiring the increased downpayment for so long as default damage claims remained unpaid. Additionally, it was suggested that the increased downpayments, including the requirement for 40 percent of bid premium, should apply without regard to average bid ratios. Because these suggestions would strengthen the protection to the Government and simplify administration of the regulation, they are adopted with the proviso remaining that the Chief may determine, prior to advertisement, that timber sales in some areas may have another downpayment rate to achieve the objectives of National Forest System management.

Therefore, the final rule will require that any purchaser or affiliate who defaults a Forest Service or BLM timber sale contract within 30 days after the effective date of this rule shall make a minimum downpayment of 20 percent of the total advertised value of the sale, plus 40 percent of the total bid premium when that purchaser is determined to be the successful bidder on a Forest Service timber sale. The final rule eliminates the reference to bid ratios in determining the additional 40 percent downpayment for overbid. All bid premiums regardless of bid ratios will be subject to the 40 percent downpayment rule once the criteria for the additional downpayment requirement have been established. The requirement of an increased downpayment on Forest Service timber sales shall continue until it is determined (1) that the Government improperly classified the contract(s) as expiring uncompleted or as terminated for cause or (2) the contract value damages claimed by the Government have been paid and corrective actions have been taken by the purchaser to avoid future deficient performance.

The respondents specifically agreed with holding the downpayment deposits until the last timber on the contract was reached with one of them further suggesting that the downpayment be held on all contracts until *after* the final timber was removed whether or not the purchaser had previously defaulted. The retention of downpayments in excess of the value of the remaining timber would be unnecessary are might the considered to be punitive in nature. The intent of the rule is to protect the Government proportionate to increased risks, to minimize defaults, and to assure the orderly completion of contracts, rather than to punish those who do default. Therefore, this final rule retains the requirement that the downpayments required under this rule will not be available for other uses until the amount of unremoved timber is equal to or less than the amount of the downpayment. This is consistent with the concept that a downpayment is intended to protect the Government and public.

A few respondents suggested that the requirements for additional downpayments should not include default of sales bid prior to 1982 when bidding was generally higher and which is resulting in more contract defaults. This suggestion has been carefully evaluated but not incorporated into the final rule. The objective of the additional downpayment is to protect the Government's interest where there is additional risk of nonperformance as indicated by past conduct. Given all of the circumstances, there is no basis to differentiate among defaulted contracts based on speculative reasons for an individual default. The additional downpayment requirement needs to apply to all contractors who default contracts of a certain amount of timber and who have outstanding damages remaining to be paid, including sales bid prior to 1982.

A few respondents offered that defaulters should not be allowed to bid on Forest Service or BLM timber sales either in perpetuity or so long as outstanding default damages remain uncollected. Adoption of this proposed change would result in de facto debarment and would deny due process and the opportunity to consider mitigating circumstances provided under the debarment and suspension procedures. Debarment regulations at 36 CFR Part 223, Subpart C will continue to guide the Forest Service Debarring Official in the determination of whether a purchaser who has failed to perform in accordance with contract terms will be excluded from bidding on or award of Forest Service timber sale contracts. Therefore, this suggestion is not adopted as part of this rulemaking.

A few respondents recommended that the requirement for additional

downpayments should not include defaults that were in dispute. To adopt this recommendation would likely increase the number of defaults that are disputed or litigated in order to delay or avoid the additional downpayments. Additionally, adoption of this suggestion would undermine incentives for minimizing defaults of future sales while disputes exist. Therefore, this suggestion is not incorporated in the final rule. The requirement for additional downpayment for new sales applies until the default damage claims are resolved. Should it be determined that no contract or contracts were properly classified as expiring uncompleted or terminated for cause with a value of $100,000 or more, or it is determined that the remaining value of those terminated or expired contracts is less than $100,000, any existing contract(s) would no longer be subjected to the requirement of an additional downpayment and any remaining unobligated portion of a required extra downpayment would be refunded or credited towards existing balances on the contract requiring the extra downpayment. This has been clarified in the final rule.

One respondent suggested that the requirement for additional downpayments should recognize default situations arising from good faith efforts to complete the contract as opposed to those where little or no effort was made. This suggestion is not incorporated into the final rule since the reasons for a particular default would be difficult to determine and the results of defaulted contracts are essentially the same regardless of the reason; that is, management of the National Forest System is adversely affected. To differentiate would not address the purpose of the proposed rule: To improve purchaser responsibility and to reduce risk to the Government.

One respondent recommended that the value of unscaled timber, or value of timber not cut and removed be increased from $100,000 to $500,000 before the increased downpayment be required on new sales. Conversely, several respondents suggested that all defaulters regardless of the value of remaining timber should be subjected to the increased downpayment requirement. Should the limit be increased to $500,000, it appears that too many defaulters would not be covered by the increased downpayment requirement, and the objectives of the rulemaking would not be achieved. Under Forest Service analyses, the $100,000 threshold reflects a balance between impacts on small business concerns and increased administration of impacted contracts, on the one hand, and an appropriate point at which the Government needs additional security in the form of an increased downpayment. Whether a purchaser's default(s) fall above or below the threshold, the Contracting Officer will be required to affirmatively find that the purchaser is responsible following the guidance of 36 CFR 223.101. Therefore, the final rule retains the $100,000 level of the proposed rule.

A few respondents recommended that additional bid deposits should be imposed as an incentive to assure that contracts are signed once they are bid. One respondent suggested that failure to execute a contract once it was bid should cause the sale to be treated as a default for purposes of triggering a double downpayment. The situation of the high bidder refusing to execute the contract has not been a common occurrence up to this point in time. The agency already has established procedures for recovering damages through bid deposits when contracts are not executed after bidding. The additional standards for determining purchaser responsibility as a prerequisite to award of a timber sale, which are being incorporated in the new 36 CFR 223.101, should provide adequate incentives against refusal to execute contracts.

In response to comments, the final rule clarifies that once a higher downpayment is triggered, it applies throughout the National Forest System except in those areas where the Chief determines that another downpayment rate is necessary to achieve the management objectives of the National Forest System.

Section 223.101 Determination of purchaser responsibility.

In addition to revising downpayment requirements, the Forest Service proposed to incorporate many of the bidder responsibility standards found in the Federal Acquisition Regulations [48 CFR 9.104] into the rules governing timber sale contracts. Under the proposal, before any bidder could be awarded a Forest Service timber sale contract, the Contracting Officer would have to determine that the bidder has met all of the conditions of the sale offer and that the bidder is responsible. To be determined responsible for award of a timber sale contract, the Contracting Officer must determine that the purchaser has adequate financial resources to perform the contract or can obtain them, can perform within the contract term, has a satisfactory record of performance, has a satisfactory record of integrity and business ethics, is able to obtain necessary equipment and supplies, and is otherwise qualified and eligible to receive an award of the contract.

Although not as popular as the proposal for increased downpayments, several respondents supported the proposal for determining purchaser responsibility. In addition, a few indicated support if it were modified. Suggested modifications were to establish more specific criteria for determining tenacity, perseverance, and integrity and that the determination of responsibility should rest with an authority higher than the Contracting Officer.

The standards for determining responsibility of Government procurement contractors in the Federal Acquisition Regulations (48 CFR 9.104) have been used successfully by Contracting Officers for other than timber sale contracts for several years without establishing additional criteria. A "cookbook" approach is inappropriate. The intent is to allow sufficient flexibility to ensure that all relevant information is considered. It is believed that Forest Service timber sale Contracting Officers will be equally successful in applying these established standards.

Fiscal personnel of the agency will be available to and consulted by the Contracting Officer. If there is disagreement with the Contracting Officer's determination, the prospective purchaser may submit to the Contracting Officer additional information for reconsideration. If a prospective purchaser believes a determination on respsonbibility is without a reasonable basis, that determination may be reviewed by the General Accounting Office (4 CFR Part 21). Therefore, additional guidelines have not been added to the final rule.

A few reviewers suggested that the standards for determining purchaser responsibility presume that the prospective purchaser is not responsible until proven otherwise. The Department disagrees. The regulation implements the Department's policy that the Government should only do business with those responsibile business interests who are willing and able to operate under the terms of the contracts. Accordingly, the Contracting Officer cannot award a timber sale contract until that purchaser's responsibility has been affirmatively determined. Since the information necessary to establish responsbility can only be provided by the prospective purchaser, the burden of proof is properly placed on the

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prospective purchaser. It is only logical that the Contracting Officer must conclude that a prospective purchaser is not responsbile if there is no information clearly indicating responsibility.

A few respondents expressed concern that the provision for Small Business Administration (SBA) review and issuance of a Certifcate of Competency would create two classes of bidders by allowing another agency to conclusively determine whether a small business is responsbile where the Forest Service initiatlly determined they were not responsible, while providing only Forest Service review for large business. This provision would not establish a new policy. Under existing law, the Small Business Administration has authority to conclusively determine any or all elements of a small business concern's responsibility by issuing or declining to issue a Certificate of Competency (15 U.S.C. 637(b)(7)). This authority applies to the sale of Federal property as well as Government procurement. Therefore, the final rule retains this provision.

One of the respondents further suggested that the Forest Service was improperly defining the 12-month period within which it may be presumed that a purchaser is not responsible as being before the bid date rather than the award date. In light of several comments, the final rule has been clarified and revised to follow the language of the Federal Acquisition Regulations. The presumption that a purchaser is not responsible will exist where the purchaser is or recently has been seriously deficient in performance of timber sale contracts. As a general guideline, deficient performance within the last 12 months will be considered to be recent performance. Because responsibility shall be determined before *award* of each timber sale contract, it is the purchaser's performance up to that point in time that is to be considered. While current and recent performance are the best indicators of present responsibility and are the basis for the rebuttable presumption, a purchaser's entire performance record should be considered in determining whether or not the purchaser is presently responsible.

Several respondents suggested that the Forest Service should establish additional pre-bid qualifications rather than determine whether a prospective purchaser is responsible after the date of any oral auction but prior to award. The agency believes that additional pre-bid standards may help protect the Government's and timber purchasers' interests and is examining the opportunities available, including establishing more restrictive pre-bid qualifications. The Forest Service will continue to study pre-bid qualifications to complement the purchaser responsibility determinations made prior to award. Any such action would be by a separate rulemaking.

One respondent expressed concern that financial information should not be available to others, including Freedom of Information Act (FOIA) inquiries, and that Contracting Officers should be the only persons to have access to financial statements. The Forest Service will provide confidentiality to information submitted for purposes of determining responsibility to the maximum extent allowed by law. Any FOIA requests for information submitted for this purpose will be handled with full consideration of available exemptions from disclosure, particularly where disclosure of the information could reasonably be expected to cause substantial competitive harm. If, after careful agency review, the agency determines that it may be required to disclose any portion of the records, the Forest Service will notify the submitter of any records containing confidential commercial information when those records have been requested under the Freedom of Information Act and allow an opportunity for the purchaser to object to disclosure of the records. (See Executive Order 12600 of June 23, 1987, 52 FR No. 122.) Current Forest Service policy strictly limits access to the information solely to personnel who use these data on a need to know basis.

Summary of the Final Rule

This final rule has substantial support in the agency record, viewed as a whole, and full attention has been given to the comments received in preparing the final regulations.

The final rule adds additional criteria and a procedure for determining a purchaser to be qualified for award of a timber sale contract. It further implements this Department's policy established in the public interest and for the Government's protection that the Forest Service shall award timber sale contracts only to responsible business concerns and individuals. The Department believes these requirements are necessary and follow good business practices while allowing flexibility and without being unduly burdensome on either party to the proposed transaction.

When reviewing bids, a Contracting Officer shall not award a timber sale contract unless he or she is able to determine from information in his or her possession that the prospective purchaser is a responsible individual or entity. Determining responsibility requires analysis of the particular facts involving that prospective purchaser. For example, when an analysis of the purchaser's financial ability to perform all contracts in a portfolio indicates the purchaser is in financial jeopardy, award of a new sale would be withheld. The prospective purchaser's past record of performance and business dealings is also clearly a factor to be considered. Section 223.101(b)(3) will require that the purchaser have a satisfactory performance record on timber sale contracts in order to be found responsible. This is sound business practice consistent with other Government contracting.

However, because of the recent large number of defaulting purchasers, the requirement of a satisfactory performance record alone could result in numerous determinations that prospective purchasers are not responsible and that contracts should not be awarded to those prospective purchasers. Many purchasers with previously good performance records have failed to perform or to satisfactorily perform contracts in recent years. Due to the unique structure of the timber industry, there may be some districts or communities where no existing purchaser would qualify to buy additional timber under a strict application of this standard. Such a large-scale result under current circumstances would not be in the public interest for the ongoing recovery of the timber industry, for dependent communities, or for proper management of the National Forest System.

Therefore, this rule provides a degree of flexibility, at § 223.101(b)(3), which provides that a Contracting Officer may determine a prospective purchaser that has been seriously deficient in previous contract performance to be responsible if the Contracting Officer determines that the circumstances of previous deficiencies were (1) properly beyond the purchaser's control, or (2) that the purchaser has taken appropriate corrective action.

With respect to the first criterion and defaults of high-priced timber, the price a purchaser bids for a particular sale generally is within the control of that purchaser. As to the second criterion, corrective action taken by the purchaser to avoid future deficiencies in performance and the corresponding reduction of risk to the Government in doing business with that prospective purchaser are also clearly relevant to the determination of current responsibility. Among actions taken by the purchaser which reduce the risk of

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deficient performance to the Government and which will be among the facts considered by the Contracting Officer, is an increased downpayment required of a purchaser with the serious performance deficiencies identified in § 223.49(e).

Under the final rule, if a purchaser or its affiliates have outstanding obligations to the Government through defaulting of Forest Service or Bureau of Land Management timber sale contracts after the effective date of this rule, and the contract value of the previously defaulted timber is $100,000 or more, the downpayment on any new contract, if awarded to that purchaser, will be approximately twice the amount as that currently required pursuant to 36 CFR 223.49. The additional downpayment required by this final rule reflects some of the additional risk of doing business with a purchaser who has failed to perform on another contract but who otherwise meets all of the requirements of the sale and is determined to be a responsible entity. For example, the decision by a company to default a contract may be an economic one. The company may otherwise have had a good performance record and generally be on sound economic footing but choose to default a contract to reduce its economic losses.

The standard downpayment represents a monetary commitment to perform the contract at issue and reduces the risk of nonperformance. Where a timber sale purchaser has failed to perform under one contract, the Government may reasonably assume that that purchaser may fail to perform on another contract in the future. The additional downpayment required by this rule reflects the additional risk of doing business with a purchaser who has failed to perform on another contract but who otherwise meets all of the requirements of the sale and is determined to be a responsible entity. Sound business practice requires this additional security where it is determined to do further business with a concern even though that concern has failed to perform on one or more other contracts.

By contrast, a prospective purchaser who has been seriously deficient in contract performance, absent mitigating circumstances, is not a responsible entity with which the Government should do business. Under this final rule, such a prospective purchaser would be denied award (36 CFR 223.101(b)(3)). Furthermore, failure to perform and serious contract violations are listed causes for debarment which, dependent upon the seriousness of the purchaser's acts or omissions and any mitigating factors, may lead to a debarment decision by the Forest Service Debarring Official (36 CFR 223.137, 52 FR 43324–43334, November 12, 1987).

Affiliates are included in the requirement for additional downpayments and, where appropriate, in determining purchaser responsibility to assure that the Government's interests are protected when doing business. When one company or individual directly or indirectly controls or has the power to control the other, an affiliation is determined to exist. Common management, common ownership, and contractual relationships are among the factors considered in determining affiliation. The Forest Service will use the Small Business Administration regulations on affiliation found at 13 CFR 121.3 as guidance in determining whether or not concerns are affiliated. The inclusion of affiliates will help to assure that sales are operated and to reduce the risk of nonperformance.

The intent of this rulemaking is to improve procedures for the sale of public timber in light of recent experiences. The Department believes better timber sale contracting may prevent or at least minimize the adverse effects of delayed performance discussed above.

Regulatory Impact

This action has been submitted to the Office of Management and Budget for review pursuant to Executive Order 12291. It has been determined that this regulation is not a major rule. It does not change the total amount a purchaser would pay for National Forest System timber, although it would affect when a purchaser with a recent history of poor timber sale contract performance would pay for timber.

The procedures implemented in this rule will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State or local Government agencies or geographic regions, and will not have significant adverse effects on the ability of United States-based industries to compete with foreign-based enterprises in domestic or export markets. On the contrary, the proposed requirements will contribute to the economic well-being of timber dependent communities, the orderly flow of timber to market and of receipts to the Treasury, strengthen the orderly accomplishment of resource management objectives, and reduce administrative costs associated with settling claims against defaulting purchasers.

It has also been determined that this rule will not have significant economic impact on a substantial number of small entities. There are very few small entities that have defaulted more than $100,000 worth of Federal timber. While it cannot be predicted with certainty how many small business concerns will choose to default in the future, this final rule would affect less than 50 small entities were it to be applied to existing defaulters. In addition, the Certificate of Competency procedures as applied by the Small Business Administration will continue to cover small firms under the proposed bidder responsibility standards.

Based on both experience and environmental analysis, the rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4) Furthermore, the proposed rule will not result in additional procedures or paperwork not already required by law. Therefore, no additional reviews or clearances pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), or implementing regulations at 5 CFR Part 1320 are required.

Lists of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

Therefore, for the reasons set forth above, Subpart B of Part 223, chapter II of Title 36 of the Code of Federal Regulations is amended as follows:

PART 223—[AMENDED]

1. The authority citation for Part 223 continues to read as follows:

Authority: Sec. 14, Pub. L. 94–588, 90 Stat. 2958, 16 U.S.C. 472a, unless otherwise noted. Secs. 223.49 and 223.50 also issued under Sec. 2, Pub. L. 98–476, 98 Stat. 2213, 16 U.S.C. 618.

Subpart B—[Amended]

2. Amend § 223.49 by adding new paragraphs (a)(5), and (e) through (i) to read as follows:

§ 223.49 Downpayment.

(a) * * *

(5) *Affiliate.* Concerns or individuals are affiliates if directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. In determining whether or not

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affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

* * * * *

(e) A purchaser or any affiliate of that purchaser, awarded a Forest Service timber sale contract must meet the additional downpayment requirements of paragraph (g) of this section under the following circumstances:

(1) The purchaser or its affiliate after September 29, 1988 has failed to perform in accordance with the terms of a Forest Service or Bureau of Land Management timber sale contract which results in notification by a Contracting Officer that a contract has expired uncompleted or is terminated for cause; and

(2) The estimated value of the unscaled timber on scaled sales, or the estimated value of the timber outstanding on tree measurement sales, included in those terminated or expired contracts exceeds $100,000, and

(3) Unpaid damages claimed by the Government remain outstanding prior to award of the new sale at issue and corrective action has not been taken to avoid future deficient performance.

(f) A subsequent final determination by the Contracting Officer or by a court of competent jurisdiction that a contract was improperly classified under the criteria in paragraph (e) of this section will result in the refund or credit of any unobligated portion of the amount of downpayment exceeding that required by paragraphs (c) and (d) and the limitations of paragraph (h) on application of downpayment shall no longer apply.

(g) Notwithstanding the provisions of paragraphs (c) and (d) of this section, a purchaser meeting the criteria of paragraph (e) of this section must make a minimum downpayment equal to 20 percent of the total advertised value of that sale, plus 40 percent of the total bid premium. This higher downpayment requirement applies throughout the National Forest System, except in those areas where the Chief of the Forest Service determines, before advertisement of the sale, that another downpayment rate is necessary to achieve the management objectives of the National Forest System.

(1) In calculating bid premiums for the downpayment requirement, the Forest Service shall not include the portion of the bid premium that offsets ineffective purchaser credit.

(2) To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustments.

(h) A purchaser subject to the additional downpayment requirements of paragraph (g) of this section cannot apply the amount deposited as a downpayment to other uses until:

(1) *On scaled sales,* the estimated value of the unscaled timber is equal to or less than the amount of the downpayment; or

(2) *On tree measurement sales,* the estimated value remaining to be cut and removed as shown on the timber sale statement of account is equal to or less than the amount of the downpayment.

(i) For the purpose of releasing funds deposited as downpayment by a purchaser subject to paragraph (f) of this section, the Forest Service shall compute the estimated value of timber as follows:

(1) *On scaled sales,* the estimated value of the unscaled timber is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been scaled of that species.

(2) *On tree measurement sales,* the estimated value of the timber outstanding (that not shown on the timber sale statement of account as cut and removed) is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been shown on the timber sale statement to have been cut and removed of the species. The current contract rate for each species is that specified in each Forest Service timber sale contract.

3. Revise the introductory text and paragraph (c) of § 223.100 to read as follows:

§ 223.100 Award to highest bidder.

The sale of advertised timber shall be awarded to the responsible bidder submitting the highest bid that conforms to the conditions of the sale as stated in the prospectus unless:

* * * * *

(c) The highest bidder is notoriously or habitually careless with fire.

* * * * *

§§ 223.101 and 223.102 [Redesignated as §§ 223.102 and 223.103]

§ 223.103 [Removed]

4. Remove § 223.103, redesignate §§ 223.101 and 223.102 as §§ 223.102 and 223.103 respectively, and add a new § 223.101 to read as follows:

§ 223.101 Determination of purchaser responsibility.

(a) A Contracting Officer shall not award a timber sale contract unless that officer makes an affirmative determination of purchaser responsibility. In the absence of information clearly indicating that the prospective purchaser is responsible, the Contracting Officer shall conclude that the prospective purchaser does not qualify as a responsible purchaser.

(b) To determine a purchaser to be responsible, a Contracting Officer must find that:

(1) The purchaser has adequate financial resources to perform the contract or the ability to obtain them;

(2) The purchaser is able to perform the contract within the contract term taking into consideration all existing commercial and governmental business commitments;

(3) The purchaser has a satisfactory performance record on timber sale contracts. A prospective purchaser that is or recently has been seriously deficient in contract performance shall be presumed not to be responsible, unless the Contracting Officer determines that the circumstances were beyond the purchaser's control and were not created through improper actions by the purchaser or affiliate, or that the purchaser has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably under a contract is strong evidence that a purchaser is not a responsible contractor. The Contracting Officer shall consider the number of contracts involved and extent of deficiency of each in making this evaluation;

(4) The purchaser has a satisfactory record of integrity and business ethics;

(5) The purchaser has or is able to obtain equipment and supplies suitable for logging the timber and for meeting the resource protection provisions of the contract;

(6) The purchaser is otherwise qualified and eligible to receive an award under applicable laws and regulations.

(c) If the prospective purchaser is a small business concern and the Contracting Officer determines that the purchaser does not qualify as a responsible purchaser on an otherwise acceptable bid, the Contracting Officer shall refer the matter to the Small Business Administration which will decide whether or not to issue a Certificate of Competency.

(d) Affiliated concerns, as defined in § 223.49(a)(5) of this subpart are normally considered separate entities in

determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the Contracting Officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective purchaser's responsibility.

Date: August 23, 1988.

Peter C. Myers,

Deputy Secretary of Agriculture.

[FR Doc. 88-19703 Filed 8-29-88; 8:45 am]

BILLING CODE 3410-11-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6805]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office of the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II—Minimal Conversions				
New York:				
Carlisle, Town of, Schoharie County	361193	Sept. 26, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp.	9-1-88	Sept. 1, 1988.
Seward, Town of, Schoharie County	361199	Oct. 3, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp.	9-1-88	Do.

State and location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
Alabama: Avon, Town of, Houston County	010100	Dec. 30, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Region V				
Indiana:				
White County, Unincorporated areas	180447	Aug. 3, 1979, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Williamsport, Town of, Warren County.	180272	June 3, 1976, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Attica, City of, Fountain County	180065	July 28, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Austin, Town of, Scott County	180233	Dec. 30, 1976, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Covington, City of, Fountain County	180066	July 1, 1975, Emerg.; Sept. 1, 1988, Reg.; Spet. 1, 1988, Susp	9-1-88	Do.
Clinton County, Unincorporated Areas.	180029	Feb. 13, 1976, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Fayette County, Unincorporated Areas.	180417	Apr. 11, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Franklin County, Unincorporated Areas.	180068	May 15, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Laurel, Town of, Franklin County	180306	May 27, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Tipton County, Unincorporated Areas	180475	Nov. 1, 1979, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Michigan:				
Banks, Township of, Antrim County	260643	Oct. 29, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Big Rapids, Township of, Mecosta County.	260135	Aug. 20, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Ely, Township of, Marquette County	260449	Nov. 9, 1981, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Minnesota:				
Carlton County, Unincorporated Areas.	270039	Aug. 16, 1974, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Todd County, Unincorporated Areas	270551	Feb. 1, 1974, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Douglas County, Unincorporated Areas.	270623	Apr. 16, 1974, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Martin County, Unincorporated Areas	270641	May 20, 1974, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Meeker County, Unincorporated Areas.	270280	Apr. 22, 1974, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Wisconsin:				
Adams, City of, Adams County	550002	May 31, 1974, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Bayfield County, Unincorporated Areas.	550539	June 6, 1974, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Neskoro, Village of, Marquette County.	550267	June 9, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Rosholt, Village of, Portage County	550377	June 24, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Superior, Village of, Douglas County	550117	June 26, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Region VII				
Nebraska: Bayard, City of, Morrill County	310347	Aug. 13, 1976, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp	9-1-88	Do.
Region I—Regular Program				
Connecticut: Canaan, Town of, Litchfield County.	090044	July 3, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Maine: Hallowell, Town of, Kennebec County.	230069	Jan. 13, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Region II				
New York: Union Vale, Town of, Dutchess County.	361146	July 28, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Region III				
Pennsylvania:				
Barrett, Township of, Monroe County	421884	Dec. 26, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Bedford, Borough of, Bedford County	421228	July 30, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Carroll Valley, Borough of, Adams County.	422635	Dec. 4, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Paradise, Township of, Monroe County.	421891	Jan. 30, 1980, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Regular Program				
Pennsylvania:				
Price, Township of, Monroe County	421894	Sept. 29, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Rockland, Township of, Berks County	421098	July 29, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Lackawaxen, Township of, Pike County.	421966	July 7, 1975, Emerg.; Aug. 4, 1988, Reg.; Sept. 2, 1988, Susp	8-4-88	Do.
Region IV				
North Carolina: Mitchell County, Unincorporated Areas.	370161	July 18, 1979, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Tennessee: Lexington, City of, Henderson County.	470089	Feb. 26, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Georgia: Woodstock, City of, Cherokee County.	130264	Jan. 20, 1976, Emerg.; July 15, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.

State and location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region V				
Illinois: Elkhart, Village of, Logan County	171010	Feb. 12, 1982, Emerg.; Feb. 12, 1982, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Regular Program				
Illinois:				
Greenview, Village of, Menard County.	170754	Aug. 7, 1985, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Lincoln, City of, Logan County	170428	June 16, 1975, Emerg.; Oct. 16, 1979, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Logan County, Unincorporated Areas	170427	May 11, 1973, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Menard County, Unincorporated Areas.	170505	May 1, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Morton, Village of, Tazewell County	170652	June 23, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Minnesota: Mahnomen, City of, Mahnomen County.	270266	May 8, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Ohio: Port Jefferson, Village of, Shelby County.	390506	May 14, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp	9-2-88	Do.
Region III—Minimal Conversions				
West Virginia: Pennsboro, City of, Ritchie County.	540182	July 2, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Sept. 16, 1988
Region IV				
Mississippi: Yalobusha County, Unincorporated Areas.	280239	June 15, 1983, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Region V				
Indiana:				
Gentryville, Town of, Spencer County	180394	July 3, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Huntingburg, City of, Dubois County	180362	Apr. 1, 1976, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Michigan: Cannon, Township of, Kent County.	260734	Apr. 8, 1983, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Wisconsin:				
Brandon, Village of, Fond du Lac County.	550132	Mar. 31, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Pigeon Falls, Village of, Trempealeau County.	550446	Mar. 26, 1976, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Minimal Conversions				
Wisconsin:				
Shell Lake, City of, Washburn County	550469	Nov. 8, 1974, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Tony, Village of, Rusk County	550377	July 22, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Region III—Regular Program				
Virginia: Buchanan County Unincorporated Areas.	510024	Nov. 4, 1974, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Region IV				
Kentucky:				
Augusta, City of, Bracken County	210022	Feb. 26, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Smithland, City of, Livingston County	210147	Nov. 3, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Region V				
Michigan:				
Colon, Township of, St. Joseph County.	260510	Mar. 9, 1977, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Colon, Village of, St. Joseph County	260511	Mar. 9, 1977, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Minnesota: Stearns County, Unincorporated Areas.	270546	Mar. 23, 1973, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Ohio: Zanesville, City of, Muskingum County.	390427	Apr. 15, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Region VI				
Arkansas: White Hall, City of, Jefferson County.	050375	Aug. 11, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Region VIII				
North Dakota: Valley City, City of, Barnes County.	380002	Apr. 11, 1974, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Region IX				
Arizona: Mohave County, Unincorporated Areas.	040058	May 6, 1974, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
California: Redland, City of, San Bernardino County.	060279	Apr. 12, 1974, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.
Hawaii: Hawaii County, Unincorporated Areas.	155166	June 5, 1970, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp	9-16-88	Do.

Code for reading third colum: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 88-19622 Filed 8-29-88; 8:45 am]
BILLING CODE 6718-03-M

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44 CFR Part 64

[Docket No. FEMA 6804]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Arizona: Colorado City, Town of, Mohave County [1]	040059	July 1, 1988, Emerg	
Missouri: Keytesville, City of, Chariton County, Eff. FIRM: 7-4-88.	290723	July 4, 1988, Emerg.; July 4, 1988, Susp	
Iowa:			
Guthrie Center, City of, Guthrie County	190135	July 8, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; July 5, 1988, Rein	6-1-87
Kiron, City of, Crawford County	190098	Nov. 23, 1976, Emerg.; Aug. 1, 1986, Reg.; June 3, 1988, Susp.; July 5, 1988, Rein.	8-1-86
Marquette, City of, Clayton County	195182	Apr. 16, 1971, Emerg.; Jan. 19, 1982, Reg.; June 3, 1988, Susp.; July 5, 1988, Rein.	1-19-72
What Cheer, City of, Keokuk County	190179	Jan. 29, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; July 5, 1988, Rein	8-1-87
Louisa County, Unincorporated Areas	190193	Oct. 16, 1974, Emerg.; June 1, 1987, Reg.; June 3, 1988, Susp.; July 6, 1988, Rein	6-1-87
Texas:			
Crystal City, City of, Zavala County	480688	Nov. 29, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; July 1, 1988, Rein.	9-1-87
Frankston, City of, Anderson County	480003	Feb. 1, 1977, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.; July 1, 1988, Rein	6-1-88
Iowa:			
Hiawatha, City of, Linn County	190441	Aug. 3, 1976, Emerg.; Feb. 3, 1982, Reg.; June 3, 1988, Susp.; July 1, 1988, Rein	2-3-82
Hinton, City of, Plymouth County	190224	Aug. 27, 1976, Emerg.; Sept. 27, 1982, Reg.; June 3, 1988, Susp.; July 1, 1988, Rein.	9-27-82
Lawton, City of, Woodbury County	190292	Aug. 8, 1975, Emerg.; Sept. 1, 1986, Reg.; June 3, 1988, Susp.; July 1, 1988, Rein	9-1-86
Manning, City of, Carroll County	190046	Nov. 8, 1974, Emerg.; Sept. 1, 1986, Reg.; June 3, 1988, Susp.; July 1, 1988, Rein	9-1-86
New York:			
Esperance, Village of, Schoharie County	36152	July 27, 1976, Emerg.; Sept. 16, 1982, Reg.; May 17, 1988, Susp.; July 7, 1988, Rein.	9-16-82
Plandome, Village of, Nassau County*	360484	June 18, 1975, Emerg.; May 25, 1978, Reg.; June 15, 1988, Susp.; July 7, 1988, Rein.	NSFHAs
Mechanicville, City of, Saratoga County*	360721	July 1, 1975, Emerg.; Jan. 5, 1984, Reg.; June 15, 1988, Susp.; July 7, 1988, Rein	1-5-84
Smithville, Town of, Chenango County*	361040	Apr. 17, 1980, Emerg.; Nov. 4, 1983, Reg.; June 15, 1988, Susp.; July 7, 1988, Rein.	11-4-83
Taghkanic, Town of, Columbia County*	361324	Aug. 5, 1975, Emerg.; Jan. 3, 1986, Reg.; June 15, 1988, Susp.; July 7, 1988, Rein	1-3-86
Van Etten, Village of, Chemung County [2]*	361056	July 11, 1975, Emerg.; June 15, 1988, Susp.; July 7, 1988, Rein	7-1-88

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Syracuse, City of, Onodaga County	360595	Aug. 2, 1974, Emerg.; May 3, 1982, Reg.; June 15, 1988, Susp.; July 7, 1988, Rein	5-3-82
Pennsylvania: Greenwood, Township of, Juniata County.	421741	July 28, 1975, Emerg.; Dec. 3, 1987, Reg.; Dec. 3, 1987, Susp.; July 7, 1988, Rein	12-3-87
New York: Shoreham, Village of, Suffolk County	361508	May 30, 1975, Emerg.; May 25, 1978, Reg.; June 15, 1988, Susp.; July 8, 1988, Rein.	NSFHAs
Colorado: Jefferson County, Unincorporated Areas	080087	July 5, 1973, Emerg.; Aug. 5, 1986, Reg.; Aug. 5, 1986, Susp.; July 6, 1988, Rein	8-5-86
Arizona: Cave Creek, Town of, Maricopa County [3]	040127-New	June 9, 1988, Emerg.; June 9, 1988, Reg	8-5-86
Alabama: Chambers County, Unincorporated Areas	010026	July 29, 1975, Emerg.; July 4, 1988, Reg.; July 4, 1988, Susp.; July 6, 1988, Rein	
Pennsylvania: Snake Spring, Township of, Bedford County.	421349	Feb. 28, 1977, Emerg.; July 4, 1988, Reg.; July 4, 1988, Susp.; July 6, 1988, Rein	7-4-88
Iowa:			
Vail, City of, Crawford County	190101	June 30, 1975, Emerg.; Aug. 19, 1986, Reg.; June 3, 1988, Susp.; July 11, 1988, Rein.	8-19-86
Aredale, City of, Butler County	190035	Nov. 3, 1975, Emerg.; Aug. 1986, Reg.; June 3, 1988, Susp.; July 12, 1988, Rein	8-19-86
Sibley, City of, Osceola County	190218	July 23, 1975, Emerg.; Sept. 27, 1985, Reg.; June 3, 1988, Susp.; July 12, 1988, Rein.	9-27-85
New York: Rushford, Town of, Allegany County	360033	June 9, 1975, Emerg.; Dec. 23, 1983, Reg.; June 15, 1988, Susp.; July 15, 1988, Rein.	12-23-83
Iowa: Brayton, City of, Audubon County	190920	June 9, 1975, Emerg.; Aug. 19, 1985, Reg.; June 3, 1988, Susp.; June 27, 1988, Rein.	8-19-85
Florida: Destin, City of, Okaloosa County	125158	July 6, 1988, Emerg.; July 6, 1988, Reg	1-15-88
North Carolina:			
Old Fort, Town of, McDowell County [4]	370149	July 12, 1988, Emerg	
Dallas County, Unincorporated Areas	050061	July 12, 1988, Emerg	6-17-77
Michigan: Morley, Village of, Mecosta County	260585	Oct. 12, 1976, Emerg.; July 16, 1987, Reg.; July 16, 1987, Susp.; July 15, 1988, Rein.	7-16-87
North Carolina: Whiteville, City of, Columbus County [*].	370071	Sept. 3, 1974, Mar. 4, 1988, Susp.; June 24, 1988, Rein	6-18-76
South Carolina: Lancaster County, Unincorporated Areas.	450120	July 3, 1975, Emerg.; Jan. 6, 1983, Reg.; Jan. 6, 1983, Susp.; July 20, 1988, Rein	1-6-83
Iowa: Hamburg, City of, Fremont County	190133	Aug. 11, 1975, Emerg.; June 3, 1988, Susp.; July 20, 1988, Rein	8-11-75
Nebraska: Orlean, Village of, Harland County	310394	Mar. 20, 1984, Emerg.; May 1, 1988, Reg.; May 1, 1988, Susp.; July 20, 1988, Rein.	5-1-88
Florida: Blountstown, City of, Calhoun County	120060	Mar. 17, 1975, Emerg.; May 1, 1980, Reg.; June 18, 1987, Susp.; July 20, 1988, Rein.	6-18-88
Kentucky: Johnson County, Unincorporated Areas	210339	Oct. 30, 1978, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.; July 18, 1988, Rein	5-4-88
Pennsylvania: Bethel, Township of, Armstrong County.	421300	Aug. 8, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.; July 25, 1988, Rein.	8-8-75
Texas: Quintana, Village of, Brazoria County	481301	May 8, 1971, Emerg.; May 8, 1971, Reg.; May 4, 1988, Susp.; July 26, 1988, Rein	6-5-85
Illinois: Hinckley, Village of, Dekalb County	170184	July 26, 1988, Emerg	3-1-74
Maine: Berwick, Town of, York County	230144	July 26, 1988, Emerg	8-9-74
New Hampshire: Kingston, Town of, Rockingham County.	330217	July 26, 1988, Emerg	
North Carolina: Rockingham County, Unincorporated Areas [5].	370350	Nov. 6, 1987, Emerg	6-16-78
Pennsylvania: Point Marion, Borough of, Fayette County.	421617	July 3, 1974, Emerg.; July 4, 1988, Reg.; July 4, 1988, Susp.; July 26, 1988, Rein	7-4-88
Montana: Flathead County, Unincorporated Areas	300023	Oct. 31, 1975, Emerg.; Sept. 5, 1984, Reg.; July 15, 1988, Susp.; July 27, 1988, Rein.	
New Mexico: Tatum, Town of, Lea County	350032	Oct. 16, 1980, Emerg.; July 1, 1988, Reg.; July 1, 1988, Susp.; July 27, 1988, Rein	7-1-88
New York: Buchanan, Village of, Westchester County.	361534	June 28, 1977, Emerg.; July 27, 1979, Reg.; May 17, 1988, Susp.; July 25, 1988, Rein.	7-27-79

[1] The Town of Colorado City, Arizona will be converted to the Regular Program on August 4, 1988.
[2] Reinstated into the Regular Program.
[3] The Town of Cave Creek, Arizona is a regular program entry. The Town will use the County's FIRM dated April 15, 1988, for floodplain management and flood insurance purposes.
[4] The Town of Old Fort, North Carolina converted to the Regular Program effective on July 15, 1988. The effective FIRM date is July 15, 1988.
[5] This community was erroneously omitted from the November 1987 FEDERAL REGISTER. Rockingham County is an emergency program entry.
[*] Minimal conversions.

Code for reading third column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension, Rein.—Reinstatement.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region II—Minimal Conversions			
New York:			
Marion, Town of, Wayne County	361446	July 1, 1988, Suspension Withdrawn	7-1-88
Van Etten, Village of, Chemung County	361056	do	7-1-88
West Union, Town of, Steuben County	361437	do	7-1-88
Region IV			
Tennessee: McNairy County, Unincorporated Areas	470127	do	7-1-88
Region V			
Minnesota: Rock County, Unincorporated Areas	270642	do	7-1-88
Region VI			
New Mexico: Bayard, Village of, Grant County	350019	do	7-1-88

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region VII			
Kansas: Delphos, City of, Ottawa County	200487	do	7-1-88
Nebraska: Dawson County, Unincorporated Areas	310058	do	7-1-88
Region I—Regular Conversions			
Massachusetts: Bedford, Town of, Middlesex County.	255209	July 4, 1988, Suspension Withdrawn	7-4-88
Vermont: Pittsford, Town of, Rutland County	500098	do	7-4-88
Region II			
New Jersey: Bound Brook, Borough of, Somerset County.	340430	do	7-4-88
Region III			
Pennsylvania:			
Hamiltonban, Township of, Adams County	421252	do	7-4-88
Highland, Township of, Adams County	421253	do	7-4-88
Menallen, Township of, Adams County	421256	do	7-4-88
West Virginia: Harrison County, Unincorporated Areas.	540053	do	7-4-88
Region IV			
Alabama: Lanett, City of, Chambers County	010029	do	7-4-88
Region V			
Ohio: Jewett, Village of, Harrison County	390259	do	7-4-88
Region VII			
Missouri:			
Andrew County, Unincorporated Areas	290004	do	7-4-88
Clinton, City of, Henry County	290155	do	7-4-88
Region VIII			
North Dakota: Bowman, City of, Bowman County	330012	do	7-4-88
South Dakota: Fort Pierre, City of, Stanley County	465419	do	10-15-80
Region IX			
California: San Joaquin County, Unincorporated Areas.	060299	do	7-4-88
Region I—Regular Conversions			
Maine: Anson, Town of, Somerset County	230123	July 15, 1988, Suspension Withdrawn	7-15-88
Massachusetts:			
Holbrook, Town of, Norfolk County	255212	do	7-15-88
Huntington, Town of, Hampshire County	250165	do	7-15-88
Region III			
Pennsylvania:			
Bethel, Township of, Berks County	421052	do	7-15-88
Penn, Township of, Berks County	421091	do	7-15-88
Salem, Township of, Wayne County	422172	do	7-15-88
Tunkhannock, Township of, Wyoming County	422206	do	7-15-88
Virginia: Front Royal, Town of, Warren County	510167	do	7-15-88
Region IV			
Georgia:			
Cherokee County, Unincorporated Areas	130424	do	7-15-88
Canton, City of, Cherokee County	130039	do	7-15-88
Holly Springs, City of, Cherokee County	130425	do	7-15-88
Woodstock, City of, Cherokee County	130264	do	7-15-88
Region V			
Wisconsin:			
Almena, Village of, Barron County	550009	do	7-15-88
Hawkins, Village of, Rusk County	550373	do	7-15-88
Region VI			
New Mexico: Aztec, City of, San Juan County	350065	do	7-15-88
Region VIII			
Colorado: Boulder County, Unincorporated Areas	080023	do	7-15-88
Montana: Bozeman, City of, Gallatin County	300028	do	7-15-88
Region IX			
California:			
Coronado, City of, San Diego County	060287	do	7-15-88
Encinitas, City of, San Diego County	060726	do	7-15-88
San Marcos, City of, San Diego County	060296	do	7-15-88
Santa Maria, City of, Santa Barbara County	060336	do	7-15-88
Nevada: Lander County, Unincorporated Areas	320013	do	7-15-88
Region IV			
Florida: Arcadia, City of, Desoto County	120072	July 16, 1988, Suspension Withdrawn	6-3-88

Code for reading third column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension, Rein.—Reinstatement.

VOL 53 ISS 168 AUG 30 1988 UMI

Harold T. Duryea,
Administrator, Federal Insurance Administration.
[FR Doc. 88-19623 Filed 8-29-88; 8:45 am]
BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 85-19]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers or Their Agents

AGENCY: Federal Maritime Commission.
ACTION: Final rule; stay of effective date.

SUMMARY: Because of numerous inquiries from carriers and conferences concerning various aspects of the Equipment Interchange Agreement (EIA) filing requirements, the Federal Maritime Commission has determined to provide an indefinite stay of the effective date of the Final Rule in Docket No. 85-19.

DATE: August 30, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, Telephone: (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission published the Final Rule in this proceeding in the **Federal Register** on February 26, 1988 (53 FR 5770) with an effective date of March 28, 1988. On March 9, 1988, a petition was filed by several conferences requesting a 90-day stay of the effective date. The purpose of the request was to allow carriers and conferences sufficient time to comply with the new rule. On March 21, 1988, (53 FR 9629, March 24, 1988) the Commission granted that request, extending the effective date of the Final Rule to June 26, 1988.

On June 17, 1988, (53 FR 23632, June 23, 1988) because of the continuing compliance difficulties faced by the industry, the Commission granted a further 90-day extension of the Rule's effective date until September 30, 1988. With a number of issues yet to be resolved regarding compliance with the various aspects of the Equipment Interchange Agreements filing requirements, the Commission had determined to grant an indefinite stay of the effective date of Docket No. 85-19. This stay will provide the Commission with an opportunity to address these issues either formally or informally and develop guidelines to assure compliance with the rule in a manner which both satisfies its intent and is not overly burdensome on the industry or the Commission.

By the Commission,
Joseph C. Polking,
Secretary.
[FR Doc. 88-19604 Filed 8-29-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-602; RM-6091]

Radio Broadcasting Services; Roseburg, OR

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: The Commission, at the request of Michael R. Wyatt, substitutes Channel 276C2 for Channel 276A at Roseburg, Oregon, and modifies his license for Station KRSB-FM to specify the higher powered channel. Channel 276C2 can be allotted to Roseburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.5 kilometers (15.2 miles) west to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 43-14-43 and West Longitude 123-38-15. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-602, adopted July 14, 1988, and released August 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Roseburg, Oregon, is revised by removing Channel 276A and adding Channel 276C2.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-19611 Filed 8-29-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-481; RM-6000]

Radio Broadcasting Services; Elkton, VA

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document substitutes Channel 253B1 for Channel 252A at Elkton, Virginia and modifies the construction permit BPH-8406071A to specify operation on the higher class channel, at the request of Stonewall Broadcasting Company. The upgraded facility could provide Elkton with its first wide coverage area FM service. A site restriction of 10.3 kilometers (6.4 miles) west of the city is required, at coordinates 38-22-42 and 78-44-07. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-481, adopted June 30, 1988, and released August 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Virignia, by removing Channel 252A and adding Channel 253B1 at Elkton.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-19609 Filed 8-29-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Atka mackerel from reserve to domestic fishermen, catching and processing fish or delivering fish to domestic processors (DAP) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action promotes optimum use of these groundfish by allowing domestic fisheries to proceed without interruption.

DATES: August 25, 1988. Comments will be accepted through September 9, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK. 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patricia Peacock, Fishery Management Specialist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Area (BSA) under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675.

In 1988, 15 percent of Total Allowable Catch (TAC) for BSA groundfish was placed in the non-specific reserve, the initial specifications for DAP were determined, and the remaining amounts were provided to domestic fishermen delivering fish to foreign processors (JVP) (53 FR 894, January 14, 1988). No initial specification was provided for total allowable level of foreign fishing (TALFF) because domestic annual harvest (DAH) requirements exceeded TAC.

The following inseason actions have apportioned amounts from the reserve to DAP and/or JVP, or amounts from DAP to JVP: April 14 (53 FR 12772; April 19, 1988), May 5 (53 FR 16552, May 10, 1988), May 20 (53 FR 19303, May 25, 19988), June 17 (53 FR 23402, June 22, 1988), July 11 (53 FR 26599, July 14, 1988), and July 22 (53 FR 28229, July 27, 1988).

The Regional Director has determined from DAP catch-to-date and the DAP survey during May 1988, that DAP could harvest an additional 1,700 mt of Atka mackerel; therefore, 1,700 mt of Atka mackerel is transferred from the reserve to DAP (see Table 1).

This apportionment does not result in overfishing of Atka mackerel stocks because the sum of the adjusted DAP amount and initial JVP amount for Atka mackerel (53 FR 894, January 14, 1988) is less than the allowable biological catch for this species (see Table 1).

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

Because immediate effectiveness of this notice will allow DAP fishermen to continue fishing for Atka mackerel, the Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice, in accordance with § 675.20(b)(2)(i). The Secretary will consider all timely comments in deciding to modify an apportionment that has previously been made and will publish responses to those comments in the **Federal Register** as soon as practicable according to § 675.20(b)(2)(i). The Regional Director will make available to the public during business hours the aggregate data upon which this apportionment is based according to § 675.20(b)(2)(ii). See ADDRESSES.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF INITIAL TAC

[All values are in metric tons]

		Current	This action	Revised
Atka Mackerel	DAH	17,850	+1,700	19,550
	DAP	80	+1,700	1,780
TAC=21,000; ABC=21,000	JVP	17,770	+0	17,770
Total (TAC=2,000,000)	DAP	796,320	+1,700	798,020
	JVP	1,176,284	+0	1,176,284
	Reserve	27,396	−1,700	25,696

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 88-19709 Filed 8-25-88; 4:40 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 168
Tuesday, August 30, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loans, Fees

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would change the existing regulation on what fees a participating lender and others may charge an applicant borrower for services. Major changes: a lender would be permitted to charge the borrower reasonable packaging fees; the Agency would not automatically review and evaluate fees for reasonableness; where the Agency determines that fees are exessive, the lender must make a refund or face a suspension or revocation action.

DATE: Comments must be submitted on or before October 31, 1988.

ADDRESS: Comments may be mailed to: Charles R. Hertzberg, Deputy Associate Administrator for Financial Assistance, 1441 L Street, NW., Room 804–D, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, (202) 653–6574.

SUPPLEMENTARY INFORMATION: The present rules require the Small Business Administration (SBA) to review the fees which lenders charge borrowers and they prohibit fees that would defray the overhead of the lender. The Agency has now decided to ease the restrictions on the fees chargeable by a lender or its associate.

These proposed rules place on the borrower the initial responsibility for evaluating the reasonableness of the fees it is being charged a borrower. The Agency contemplates that as a general rule in the future it will only review fees if a borrower so requests, although SBA will continue to geneally monitor fees being charged across the country, and reserves the right to review any fees at any time. A lender or associate would be permitted to charge a borrower reasonable fees for packaging or other services. Reasonable is defined as customary for financial institutions in the geographic area where the loan is made. This will encourage a borrower to shop around. When the Agency does review fees being charged a borrower, it will use this community standard of reasonableness. If the Agency finds that the fees are excessive, the lender will be requested to refund the excessive fees to the applicant. If the lender refuses, the SBA reserves the right, under § 120.305 of these regulations (13 CFR 120.305) to take steps to revoke or temporarily suspend the eligibility of the lender to participate with SBA.

Under this proposed regulation, a lender or associate would be allowed to charge the applicant reasonable fees for services, including those services rendered by counsel, accountants, financial analysts, etc., who are salaried employees to defray overhead costs. A borrower would be permitted to pay a contingent fee for requested services actually rendered so long as the fee is based on time and hourly charges.

These proposed changes from the current regulations are the Agency's way of recognizing the reality of the commercial lending marketplace. The Agency is proposing to loosen its regulatory authority with respect to fees payable by borrowers, but it is not abidcating its authority to provide general oversight. Moreover, it will certainly undertake a detailed review in response to a borrower's complaint with respect to fees. The Agency is making no change in its present policy which permits a borrower to be charged for necessary out-of-pocket expenses incured for filing or recordation to perfect a security interest in borrower's assets, including obtaining title insurance. There is also no change in policy in which the Agency prohibits a lender from charging a borrower points or add-on interest.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), this proposed rule, if promulgated in final, will have a significant economic impact on a substantial number of small entities. In fiscal year 1987, SBA approved 16,436 guaranteed loans for an aggregate amount of $2.65 billion. In fiscal 1986, the Agency approved 16,093 guaranteed loans for an aggregate total of $2.52 billion. The Agency does not collect or maintain statistics on the fees participating lenders charge borrowers, but it may be presumed that each borrower paid some fees with respect to each loan, some payable to the borrower's own attorney or accountant (which is not covered by this regulation) and some payable to professional persons engaged by the lender at borrower's request. Based upon the largest conceivable estimate for fiscal 1987, the fees would not have exceeded $26 million. This proposed change does not contemplate any reporting or recordkeeping requirements to comply with this proposed rule. There are no Federal rules which duplicate, overlap or conflict with this proposed rule. The only alternatives to this proposed rule are to repeal any regulation on what charges a lender may impose on small business or to broaden the present regulation so that the Agency embraces greater regulatory control and oversight over the various fees imposed on borrowers.

SBA certifies that this proposed rule does not constitute a major rule for the purpose of Executive Order 12291, since, as above stated, the change is not likely to result in an annual effect on the economy of $100 million or more.

As stated above, this rule would not impose any additional reporting or recordkeeping requirements pursuant to the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

List of Subjects in 13 CFR Part 120

Loan programs/business, Small business.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.104–2 is amended by revising paragraph (e) to read as follows:

§ 120.104–2 Service and commitment fees.

* * * * *

(e) *Fees for other services.* A Lender or Associate may charge an applicant reasonable fees for packaging and/or

other services. Reasonable is defined as customary for Financial Institutions in the geographic area where the loan is being made. The Lender shall advise the applicant that he, she, or it is not required to obtain or pay for services that are unwanted. However, the applicant must take responsibility for the decision as to whether fees are reasonable. As a general rule, SBA will not review fees in the absence of a complaint by the applicant, although it reserves the right to do so. Where SBA undertakes a review of fees, and determines that fees charged are excessive, Lender's or Associate's failure to refund excessive fees to the applicant may result in an action by SBA to suspend or revoke Lender participant status in accordance with § 120.305 of this Part. Contingent fees may be charged to an applicant provided they (1) are based upon requested services actually rendered, and (2) are based on time and hourly charges. Expenses for necessary out-of-pocket costs, such as filing or recordation to perfect security interests, may be passed on to the applicant. A Lender shall not require that borrower pay points, and add-on interest shall not be used.

* * * * *

(Catalog of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Date: August 4, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-19647 Filed 8-29-88; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9211]

Pacific Resources Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that through March 1997, Pacific Resources Inc., a Hawaii based corporation, obtain FTC approval before acquiring any terminalling, refining, or gasoline retail marketing assets in the state of Hawaii. It must also obtain Commission approval before acquiring any terminalling agreement, such as a long term lease, for more than 50 percent of a terminal's capacity.

DATE: Comments must be received on or before October 31, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S-3302, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Gas, Oil, Trade practices.

In the Matter of Pacific Resources, Inc., a corporation. Agreement Containing Consent Order to Cease and Desist.

The agreement herein, by and between Pacific Resources, Inc., a corporation, hereinafter referred to as respondent, by their duly authorized officers and their attorneys, and counsel, for the Federal Trade Commission ("Commission"), is entered into in accordance with the Commission's rules governing consent Order procedures. In accordance therewith the parties hereby agree:

1. Respondent Pacific Resources, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its principal place of business at 733 Bishop Street, Honolulu, Hawaii 96842.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging respondent with entering into an acquisition agreement that violates section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18. Respondent has filed an answer to the complaint denying the charges.

3. Respondent admits all jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said complaint issued by the Commission.

7. This agreement contemplates that, if accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25 of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by stature for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or in the agreement may be used to vary or contradict the terms of the Order.

8. Respondent has read the complaint and Order contemplated hereby. Respondent understands that once the Order has been issued, respondent will

be required to file one or more compliance reports showing that it has fully complied with the Order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

(a) "Exchange agreement" means any arrangement or transaction or series of arrangements or transactions, other than a terminalling agreement as defined in subparagraph (j) of this paragraph, in which two or more persons or firms reciprocally transfer to each other or their respective consignees or assignees, quantities of petroleum products, without collecting a monetary price, except possibly some monetary accounting or settlement for the difference for differentials between quantity, transportation, storage, or handling of the exchanged products. An exchange agreement also includes a buy-sell arrangement or a purchase-and-sale transaction or any series of transactions or arrangements in which two or more firms or persons, at or about the same time, reciprocally agree to sell to and purchase from each other at some price but pursuant to mutual understanding, that one party's sale to the other is dependent or contingent upon the latter's reciprocal sale to the former.

(b) "Gasoline station" means a facility at which retail marketing is or has been conducted. "Gasoline station" does not include a facility that is closed and has not been used to sell gasoline to the public for a year or more.

(c) "Petroleum products" means any grade of leaded or unleaded gasoline and diesel fuel #2.

(d) "Refining" means converting crude oil into various refined petroleum products such as gasoline, diesel fuel and jet fuel.

(e) "Refinery" means a facility that converts crude oil into various refined petroleum products such as gasoline, diesel fuel and jet fuel.

(f) "Respondent" means Pacific Resources, Inc. ("PRI"), its predecessors, parent companies, subsidiaries, divisions, groups and affiliates controlled by respondent, and all their respective directors, officers, employees, agents and representatives and all their respective successors and assigns.

(g) "Retail marketing" means selling gasoline to the public.

(h) "Terminal" means any petroleum product facility in the State of Hawaii, not owned or operated by respondent on the date this Order becomes final, that has a total petroleum products storage capacity exceeding 10,000 barrels (42 U.S. gallons per barrel) and that has or had in the past two (2) years equipment to dispense smaller quantities from the storage tanks into tank trucks. "Terminal" does not include (i) an entire facility that has been closed and has not been used to store petroleum products for at least two (2) years prior to its proposed acquisition by respondent or (ii) any part of a facility that is used and has been used for the last two (2) years exclusively for the storage of products other than petroleum products.

(i) "Terminalling" means storing petroleum products at a terminal. A party is "engaged in terminalling" if it stores petroleum product at a facility that it owns or operates in whole or in part.

(j) "Terminalling agreement" means any arrangement whereby respondent (i) purchases or leases any part of a terminal, (ii) becomes the operator of any part of a terminal, or (iii) contracts for the use of any part of a terminal.

(k) "Throughput agreement" means any arrangement, other than a terminalling agreement as defined in subparagraph (j) of this paragraph, for receipt, storage and dispensing of petroleum products at a terminal owned or operated by another person or firm.

II.

It is ordered that for a period commencing on the date this Order becomes final and continuing through March 31, 1997, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without prior approval of the Federal Trade Commission, any part of the stock or share capital of any person or firm engaged in terminalling, refining, or retail marketing in the State of Hawaii, or any assets of, or interest in a refinery, terminal or gasoline station in the State of Hawaii.

It is further ordered that for a period commencing on the date this Order becomes final respondent shall cease and desist from entering into, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, any terminalling agreement in the State of Hawaii that takes effect before March 31, 1997.

Provided, however, that nothing in paragraph II of this Order shall require prior approval of the Federal Trade Commission for, or prohibit respondent from:

(a) Acquiring in a transaction (not part of a series of transactions involving the acquistion for $375,000 or more of all or part of a terminal) a terminal the acquisition price of which is not more than $375,000;

(b) Acquiring any gasoline stations from any party who neither owns nor operates all or part of a terminal on the island of the State of Hawaii where such gasoline station or stations are located and has neither owned nor operated a terminal on that island within two (2) years of the time of the proposed acquisition;

(c) Acquiring from any one party any of the following: (i) Not more than ten (10) gasoline stations on the Island of Oahu; (ii) not more than four (4) gasoline stations on the Island of Maui; (iii) not more than three (3) gasoline stations on the Island of Hawaii; (iv) not more than two (2) gasoline stations on the Island of Kauai; (v) not more than one (1) gasoline station on the Island of Molokai;

(d) Leasing or contracting for the use of the petroleum products capacity of a terminal, provided that the lease or contract does not have the effect of excluding others from the use of 50 percent of the petroleum products capacity of the terminal;

(e) Making any lease or contract for the use of a terminal where neither the owner nor operator of that terminal has owned within two (2) years of the lease or contract any gasoline stations located on the same island as the terminal; or

(f) Making any lease or contract for the use of a terminal where the owner and the operator retains ownership of at least the same number of gasoline stations that it owns on the same island as the terminal for at least five (5) years after the lease or contract is consummated.

III.

One (1) year from the date this Order becomes final and annually thereafter, respondent shall file with the Commission a verified written report of its compliance with this Order, as well as a summary of the date, parties, location, volumes, duration and terms of each agreement respondent entered during the year concerning (i) any acquisition or lease from another party of a gasoline station in the state of Hawaii, (ii) any acquisition of a terminal in the state of Hawaii, and (iii) any arrangement that provides respondent with petroleum product storage at a terminal in the state of Hawaii not owned or operated by respondent, including exchange agreements, throughput agreements, leases or similar arrangements.

IV.

Nothing in this Order shall apply to, require Federal Trade Commission prior approval for the exercise of, or otherwise limit the respondent's rights under any terminalling or other agreement in effect prior to the date this Order becomes final, or to any extension of these rights if the assets, capacity, and throughput (as appropriate) available to respondent do not increase as a result of such extension.

V.

For the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent made to its principal offices, respondent shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order; and

2. Upon five (5) days' notice to respondent and without restraint or interference from them, to interview officers or employees or respondent, who may have counsel present, regarding such matters.

VI.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure that may affect compliance obligations arising out of this Order including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change.

The Federal Trade Commission ("Commission") has accepted for public comment from Pacific Resources, Inc. ("PRI"), an agreement containing consent order in settlement of a Complaint challenging the proposed 1987 acquisition of Shell Oil Company's ("Shell") petroleum products terminalling and distribution assets and operations in the Hawaiian Islands.[1]

[1] The Complaint charges that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 and that the proposed acquisition, if completed, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18. Shell was not named as a respondent in the Commission's Complaint.

The Commission has withdrawn this matter from adjudication for the purpose of placing the agreement on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the agreement's Order.

The Commission has reason to believe that the proposed acquisition would have violated section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint alleges an anticompetitive effect in the marketing of gasoline and diesel fuel through terminals and retail service stations on the islands of Oahu, Hawaii, Mauai, Kauai and Molakai in the State of Hawaii.

The proposed Agreement Containing Consent Order ("Order") would, if issued by the Commission, settle the complaint. The Order would prohibit PRI from acquiring, without prior Commission approval, any substantial Hawaiian wholesale terminal from a competitor or from entering into any terminalling agreement (such as a long term lease) for more than fifty percent of the capacity of such a terminal. The Order would also circumscribe PRI's ability to acquire retail gasoline stations from its wholesale competitors.

The Order accepted for public comment contains provisions requiring Commission prior approval of the purchase of any petroleum products terminals over $375,000. Commission prior approval is also required for terminal agreements, leases or contractual arrangements that give PRI more than 50 percent of the capacity of a terminal. PRI is also limited in the number of retail service stations it can purchase at any one time from a particular purchaser on each island.

It is anticipated that the Order would resolve the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment concerning the consent Order, in order to aid the Commission in its determination of whether it should make final the order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and Order, nor is it intended to modify the terms of the agreement and Order in any way.

Donald S. Clark,
Secretary.

[FR Doc. 88-19616 Filed 8-29-88; 8:45 am]
BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 861-0120]

Iowa Chapter of the American Physical Therapy Association; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Iowa Chapter of the American Physical Therapy Association (ICAPTA), a professional association representing physical therapists in Iowa, from restricting any physical therapist from accepting or continuing employment with any physician, or declaring such employment illegal or unethical.

DATE: Comments must be received on or before October 31, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Grady, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 995-5220.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) fo the Commission's Rules of Practice. (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Physical Therapists, Trade practices.

In the matter of Iowa Chapter of the American Physical Therapy Association, a

corporation. Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission having initiated an investigation of certian acts and practices of the Iowa Chapter of the American Physical Therapy Association ("ICAPTA" or "proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between proposed respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. ICAPTA is a corporation, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal business address located at 1454 30th Street, Suite 201, West Des Moines, Iowa 50265.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint attached may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered that for purposes of this Order:

A. "Respondent" means the Iowa Chapter of the American Physical Therapy Association ("ICAPTA"), and its board of directors, officers, councils, committees, representatives, agents, employees, successors, and assigns.

B. "Employment or other contractual arrangement" means an employment or other contractual arrangement, written or unwritten, that is permitted under Iowa and federal law.

C. "Physical therapist" means any person licensed as a physical therapist by the State of Iowa.

II.

It is ordered that respondent shall cease and desist, directly or through any corporate or other device, from restricting, impeding, regulating, declaring unethical or illegal, interfering with, or advising against any physical therapist:

A. Accepting or continuing any employment or other contractual arrangement with any physician, or other health care provider because such physician or health care provider employs or seeks to employ, or has a contractual arrangement with, or seeks to enter into a contractual arrangement with any physical therapist; or

B. Referring patients to, or accepting referrals from, any physician or other health care provider because that physician or health care provider employs or seeks to employ, or has a contractual arrangement with, a physical therapist.

III.

It is further ordered that respondent shall cease and desist, directly or through any corporate or other device, from making, directly or by implication, any representation concerning the legality or illegality of any aspect of physical therapy practice unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for such representation.

IV.

It is further ordered that this Order shall not prohibit respondent from, in good faith, petitioning any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or participating in any federal or state administrative or judicial proceeding.

V.

It is further ordered that respondent shall within sixty (60) days after this Order becomes final:

A. Rescind all resolutions, and remove from any existing ICAPTA policy statements or guidelines, any provision, interpretation or policy statement which is inconsistent with the provisions of Part II of this Order; and

B. Publish a copy of this Order in the *ICAPTA Recap* or any successor publication, and for a period of three (3) years thereafter, annually publish a copy of the Notice attached hereto in the *ICAPTA Recap* or any successor publication.

VI.

It is further ordered that respondent shall:

A. Within ninety (90) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the

manner and form in which it has complied with this Order; and

B. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken by respondent in connection with the activities covered by this Order.

VII.

It is further ordered that the respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligation arising out of this order.

Notice

The Iowa Chapter of the American Physical Therapy Association ("ICAPTA") has entered into a consent agreement with the Federal Trade Commission. Under the terms of the agreement, ICAPTA is required to inform you that it is not unethical or illegal for a physical therapist to accept or continue employment with a physician or physician-owned physical therapy service.

Among other things, the consent agreement forbids any action by ICAPTA that would restrict physical therapists from:

—Accepting or continuing any lawful employment or contractual arrangement with a physician; or
—Making referrals to, or accepting referrals from a physician or other health care provider because that provider employs a physicial therapist.

It would also prohibit ICAPTA from making representations about the legality or illegality of any aspect of physical therapy practice without having a reasonable basis for such statements.

In entering into this consent agreement, ICAPTA has not admitted any liability, or agreed that any law has been violated.

You may obtain a copy of the consent agreement and of the complaint of the Federal Trade Commission from ICAPTA or from the Federal Trade Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Iowa Chapter of the American Physical Therapy Association ("ICAPTA" or "proposed respondent"). ICAPTA is a professional association representing physical therapists in Iowa, and is a component society of the American Physical Therapy Association. The agreement with the proposed respondent would settle charges by the Federal Trade Commission that it violated Section 5 of the Federal Trade Commission Act by acting as a combination of at least some of its members, or conspiring with them, to restrict its members from competing among themselves and with physicians by accepting or continuing employment with physicians or physician-owned clinics.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that ICAPTA is a voluntary association of physical therapists comprising over 65% of the physical therapists licensed to practice in Iowa. It also alleges that ICAPTA's physical therapist members compete for patients among themselves, with other physical therapists, with physical therapy services owned by physicians, and with other health care providers in Iowa. The complaint alleges that the proposed respondent acted as a combination of at least some of its members, or conspired with them, to restrict competition. It alleges that ICAPTA did this by restricting or attempting to prevent members frm accepting or continuing employment with physicians or physical therapy services owned by physicians.

According to the complaint, the proposed respondent adopted and disseminated to its members a resolution stating that it was illegal and unethical for a physical therapist to work for a physician. The complaint alleges that ICAPTA learned shortly thereafter that such employment arrangements were not illegal, but did not provide this corrected information to its members. It also alleges that ICAPTA adopted a second resolution calling for the discipline of members who engaged in direct salary arrangements with physicians. In addition, it alleges that proposed respondent adopted other resolutions that communicated to members that employment by physicians was unethical and would subject the physical therapist to disciplinary action.

The complaint further alleges that the purposes or effects of the combination or conspiracy have been to restrain competition unreasonably and injure consumers in the following ways, among others:

A. By impeding competition among physical therapists, and between physician-owned physical therapy services and other physical therapy services;

B. By deterring physical therapists in Iowa from accepting employment by physicians and offering their services in conjunction with physicians' services;

C. By hindering the development of efficient forms of practice that may reduce costs by offering the combination of physician diagnosis, physical therapy treatment, and physician-physical therapist consultation at one location; and

D. By depriving consumers of their choice of provider and the convenience of obtaining physician services and physical therapy services at the same location.

The Proposed Consent Order

Part I of the proposed order provides definitions. Parts II and III of the proposed order describe the conduct that is prohibited. Part II prohibits proposed respondent from restricting, declaring unethical or illegal, or otherwise interfering with any physical therapist accepting or continuing any employment or other contractual arrangement with any physician, or other health care provider where the reason for the restriction is that the health care provider employs or seeks to employ physical therapists. It also prohibits ICAPTA from restricting, declaring unethical or illegal, or otherwise interfering with any physical therapist referring patients to, or accepting referrals from, any physician or other health care provider, where the reason for the restriction is that the health care provider employs or seeks to employ a physical therapist.

Part III of the proposed order prohibits proposed respondent from making, directly or by implication, any representation concerning the legality or illegality of any aspect of physical thereapy practice unless, at the time of the representation, it possesses and relies upon a reasonable basis for the representation.

Part IV provides that the proposed order does not prohibit proposed respondent from, in good faith, petitioning any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or participating in any federal or state administrative or judicial proceeding.

Part V of the proposed order requires ICAPTA to rescind any resolutions or policy statements that are inconsistent with the proposed order, and to publish in its newsletter a Notice summarizing the terms of the order. The Notice is attached to the proposed order.

Part VI requires that ICAPTA file a compliance report within 90 days after the proposed order becomes final, and for five years, permit Commission staff access to proposed respondent's records for compliance purposes. Part VII requires that the proposed respondent notify the Commission prior to a change in the association which may affect compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 88-19618 Filed 8-29-88; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release No. 33-6797, File No. S7-9-88; Release No. 34-26027, File No. S7-11-88]

Offshore Offers and Sales; Registration Requirements for Foreign Broker-Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from September 15 to October 31, 1988, the date by which comments on Securities Act Release No. 33-6779 (June 17, 1988) [53 FR 22661] regarding offshore offers and sales of securities must be submitted. The Commission also is extending from September 15 to October 31, 1988, the date by which comments on Securities Exchange Act Release No. 34-25801 (June 23, 1988) [53 FR 23645] concerning registration requirements for foreign broker-dealers must be submitted.

DATE: Comments on Release No. 33-6779 and Release No. 34-25801 must be received on or before October 31, 1988

ADDRESS: Comments on Release No. 33-6779 and Release No. 34-25801 should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters on Release No. 33-6779 should refer to File No. S7-9-88, and comment letters on Release No. 34-25801 should refer to File No. S7-11-88. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sara Hanks or Samuel Wolff, (202) 272-3246, Office of International Corporate Finance, Division of Corporation Finance; John Polanin, Jr., (202) 272-2848, Office of Legal Policy, Division of Market Regulation; Securities Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 33-6779, the Commission requested written comments on proposed Regulation S. Proposed Regulation S is intended to clarify the extraterritorial application of the registration provisions of the Securities Act of 1933. In order to receive the benefit of comments from the greatest number of interested persons, and it permit commentators to assess the proposal in light of the Commission's planned Rule 144A initiative, the Commission is extending the comment period for Securities Act Release No. 33-6779 from September 15 to October 31, 1988.

In Securities Exchange Act Release No. 34-25801, the Commission requested written comments on proposed Rule 15a-6 and the accompanying interpretive statement concerning registration requirements for foreign broker-dealers. When issuing Releases No. 33-6779 and No. 34-25801, the Commission decided that both comment periods should run concurrently; therefore, the Commission also is extending the comment period for Release No. 34-25801 from September 15 to October 31, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

August 24, 1988

[FR Doc. 88-19697 Filed 8-29-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing Of FD&C Red No. 3 In Cosmetics And Externally Applied Drugs, And Of Its Lakes In Food, Drugs, And Cosmetics; Proposal To Extend Closing Date

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to postpone the closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food, drugs, and cosmetics. The new closing date for the provisional listing of this color additive will be June 30, 1989. This postponement will provide additional time for FDA to receive and evaluate new information on FD&C Red No. 3 and to prepare appropriate Federal Register documents for the regulation of this color additive.

DATE: Comments by September 29, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Background

The Color Additive Amendments of 1960 (the amendments) established a system of premarket approval for all color additives used in foods, drugs, and cosmetics. Recognizing that many color additives were already in use at the time the amendments were enacted, Congress also established transitional provisions to allow for the provisional listing and continued use of those color additives while the studies necessary to determine whether they should be permanently listed under the standards established in the amendments were conducted and evaluated.

Section 81.1 (21 CFR 81.1) of the color additive regulations designates those color additives that are provisionally listed under section 203(b) of the

transitional provisions of the amendments (Title II, Pub. L. 86-618, 74 Stat. 404-407 (21 U.S.C. 376, note)), along with their respective closing dates. A "closing date" is the last day upon which a provisionally listed color additive can be legally used, absent approval of a color additive petition and the permanent listing of the color additive.

A color additive may be permanently listed only if data establish that it is safe under its intended conditions of use. The transitional provisions permit the provisional listing of color additives for a period of time necessary to complete scientific investigations needed to establish their safety. The closing date for such color additives can be extended if, in the Commissioner's judgment, the scientific investigations are going forward in good faith and will be completed as soon as reasonably practicable, and if the postponement is consistent with the public health. See *McIlwain* v. *Hayes*, 690 F.2d 1041, 1047 (DC Cir. 1982), and *Public Citizen* v. *Department of Health and Human Services*, 831 F.2d 1108, 1122 (DC Cir. 1987).

II. Status Of FD&C Red No. 3

As one of the conditions of the continued provisional listing of FD&C Red No. 3, FDA required on February 4, 1977 (42 FR 6992) that the petitioners perform long-term feeding studies in rats and mice. The data from these studies were evaluated by FDA scientists and by the National Toxicology Program (NTP), Board of Scientific Counselors Technical Reports Review Subcommittee. Both groups of scientists concluded that the rat study showed a treatment-related increased incidence of male rats bearing thyroid follicular cell tumors at the highest feeding level.

Following this finding by agency and NTP scientists, the sponsors of the color additive provided additional data, from short-term studies, to support their contention that the thyroid tumors observed in the test animals resulted from the operation of a secondary mechanism. The sponsors hypothesized that the tumors were caused by hormonal imbalances resulting from ingestion of high levels of FD&C Red No. 3 and thus were not caused directly by ingestion of the color additive. The sponsors further contended that, if a secondary mechanism exists, a threshold or "no-effect" level might be established that would permit use of the color additive. This issue is discussed in greater detail in the proposal and final rule to postpone the closing date for FD&C Red No. 3 (and other color additives) which was published in the **Federal Register** of June 26, 1985 (50 FR 26377), and September 4, 1985 (50 FR 35873), respectively.

The agency concluded that there was some reason to believe that FD&C Red No. 3 may operate through a secondary mechanism, and enlisted the aid of an expert panel of Government scientists to consider the issue. The Commissioner charged the panel to consider whether the data indicate that a secondary mechanism of action exists; if not, what further studies would resolve the issue; and what human health concerns would be posed by continued use until the questions were resolved. Because of the complexity of the issues, the agency again extended the closing date for FD&C Red No. 3, and the extension through November 3, 1987, was upheld in *Public Citizen* v. *Department of Health and Human Services, supra.*

The panel submitted its report in July, 1987. (Availability of the panel report for public review was announced in the **Federal Register** of August 11, 1987 (52 FR 29728). The panel concluded, among other things, that FD&C Red No. 3 "is a rat oncogen with equivocal evidence of carcinogenicity and with some evidence for causing benign thyroid tumors;" that although the panel could not come to any definitive conclusion concerning the exact mechanism by which FD&C Red No. 3 induced thyroid tumors in rats, the color additive's tumorigenic effect "is more likely to be the result of an indirect (secondary) mechanism;" and that if it is assumed that the color additive poses a tumorigenic risk to humans, "the risk from ingesting [FD&C Red No. 3] containing food and drugs is small, that is, the number of people with [FD&C Red No. 3] induced tumors would be too small to be observed by epidemiologic or other human studies." The panel suggested some studies that could be conducted to investigate further the mechanisms of action of FD&C Red No. 3.

The panel also conducted a number of assessments of acceptable daily intake for the color additive. Based on the panel's report, the agency oncluded that it may be necessary to limit the aggregate uses of FD&C Red No. 3 in food, drugs, and cosmetics. To that end, the agency published notices in the **Federal Register** of November 19, 1987 (52 FR 44485), and December 21, 1987 (52 FR 48326), requesting data on the sale and use of FD&C Red No. 3 from persons interested in the continued use of the color additive. The sale and use data were to be submitted by February 21, 1988.

FDA has carefully studied the panel report, and has allowed time for the affected industry and the public to study the report. In the meantime, the agency has extended the provisional listing of FD&C Red No. 3 to August 30, 1988. See 53 FR 25127 (July 1, 1988). The agency has begun to evaluate the data on the sale and use of the color additive that have been submitted by the industry. The agency has as yet been unable to reach a conclusion as to whether FD&C Red No. 3 operates by a secondary mechanism of action. However, the Certified Color Manufacturers' Association (CCMA) has informed FDA, by letter dated June 14, 1988, that it has initiated a rat study designed to "demonstrate that FD&C Red No. 3 produces an increase in serum thyrotropin (TSH) concentrations, and that there is a threshold for this effect." CCMA asserted that the results of this study, along with other information it had supplied, will demonstrate that FD&C Red No. 3 has no direct effect on the thyroid, i.e., that it operates through a secondary mechanism. The association further stated that a final report for the study is expected in November 1988.

FDA has evaluated the protocol for the study that is being conducted by CCMA, and has concluded that the study does address the issue of the mechanism of action of FD&C Red No. 3, and therefore may produce results that are relevant to that issue.

III. Conclusions

FDA believes that it is appropriate to postpone the closing date for the provisional listing of FD&C Red No. 3, so that the agency can consider the results of the CCMA study, as well as the sale and use data, before making a final decision with respect to the status of FD&C Red No. 3 under the color additive amendments. Adequate time will be required for the agency to complete its evaluation of the data from the CCMA study, and of the sale and use data, as well as for preparation of final **Federal Register** documents. The agency has concluded that these activities can be accomplished by June 30, 1989.

Based on the circumstances described above, including communications between agency scientists and the petitioner, the Commissioner concludes that the scientific tests for making a determination as to the permanent listing of FD&C Red No. 3 are being carried forward in good faith and will be completed as soon as reasonably practicable. Similarly, based upon his evaluation of the available data, the Commissioner concludes that extension of the closing date to June 30, 1989, is consistent with the public health and

therefore is in compliance with *McIlwain* v. *Hayes* and *Public Citizen* v. *Department of Health and Human Services, supra.* In addition to the reasons stated above, the Commissioner bases his conclusion on, among other things, the limited uses covered by the provisional listings. As the Commissioner noted in the proposed postponement of the closing date in 1985, terminating the provisional listing before making a decision with respect to the uses of FD&C Red No. 3 that are permanently listed would be an "unnecessary and inappropriate exercise in formalism." (50 FR 26377 at 26380 (June 26, 1985)).

IV. Environmental and Economic Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has determined that extending the provisional listing of these color additives requires no change in the current industry practice concerning the manufacture or use of these ingredients. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action. Further, the economic effects of this proposed rule have been analyzed and it has been determined that it is not a major rule as defined by Executive Order 12291.

V. Comments

In accordance with 21 CFR 10.40(b)(2), FDA is providing 30 days for comment on this proposal. The current closing date for the provisional listing of this color additive is August 30, 1988. Because of the closeness of the closing date, it is necessary for the agency to shorten the comment period on this proposal. Therefore, there is good cause for providing 30 days, rather than 60 days, for comment.

Interested persons may, on or before September 29, 1988, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 81 be amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the table of paragraph (a) by revising the closing date for the entry "FD&C Red No. 3" to read "June 30, 1989."

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table, appearing in the introductory text of paragraph (d), by revising the closing date for the entry "FD&C Red No. 3" to read "June 30, 1989."

Dated: August 23, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–19540 Filed 8–29–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–012A]

Control of Hazardous Energy Sources (Lockout/Tagout); Change of Hearing Date

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of change of date for hearing.

SUMMARY: On August 9, 1988 (53 FR 29920, OSHA announced an informal public hearing on the proposed standard for the control of hazardous energy (lockout/tagout). (The proposal was published on April 19, 1988, at 53 FR 15496.) As indicated in the August 9, 1988 **Federal Register** notice, the hearing will begin in Washington, DC on September 22, 1988, and was to reconvene in Houston, Texas, September 27–28, 1988. However, the portion of the hearing to be held in Houston has been rescheduled from September 27–28, 1988, to October 12–13, 1988, to allow greater public participation. Procedural requirements for submission of written comments, and for participation in the hearing, are set forth in the August 9, 1988 **Federal Register** notice.

DATES: The hearing will begin in Washington, DC, on September 22, 1988, at 9:30 a.m., and may continue for more than one day based on the number of notices of intention to appear. Once all parties who wish to do so have testified in Washington, DC, the hearing will be recessed and reconvened in Houston, Texas, on October 12, 1988, at 9:30 a.m., for the receipt of testimony of those parties who prefer to testify at that location. Notices of intention to appear at the public hearing and testimony and evidence to be introduced into the record must be postmarked by September 8, 1988. Written comments on the issues raised in this notice must be postmarked by September 22, 1988.

ADDRESSES: The informal public hearing will begin in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. The hearing will be reconvened at the Guest Quarters Suite Hotel; 5353 Westheimer Road; Houston, Texas (713–961–9000).

Four copies of written comments must be sent to the Docket Office, Docket No. S–012A; U.S. Department of Labor, Occupational Safety and Health Administration; Room N3439 Rear; 200 Constitution Avenue NW.; Washington, DC 20210.

Four copies of each notice of intention to appear and testimony and evidence that will be introduced into the hearing record must be sent to: Mr. Tom Hall; U.S. Department of Labor, Occupational Safety and Health Administration; Room N3647; 200 Constitution Avenue NW.; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Hearing:* Mr. Tom Hall; U.S. Department of Labor, Occupational Safety and Health Administration; Room N3647; 200 Constitution Avenue NW.; Washington, DC 20210 (202–523–8615).

Proposal: Mr. James F. Foster; U.S. Department of Labor, Occupational Safety and Health Administration; Room N3647; 200 Constitution Avenue

BEST COPY AVAILABLE

NW.; Washington, DC, 20210 (202–523–8148).

Authority: This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued pursuant to Section 8(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, DC, this 24th day of August, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88–19582 Filed 8–29–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is proposing to amend the cooperative agreement between the Department of the Interior and the State of Ohio for the regulation of surface coal mining and reclamation operations on Federal lands in Ohio. This cooperative agreement is authorized under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments would authorize the State of Ohio to regulate coal exploration activities and the surface effects of underground mining on Federal lands in Ohio. 30 CFR 745.14 provides for amendments to cooperative agreements of this type.

This notice sets forth the times and locations that the proposed amendments to the cooperative agreement will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on September 29, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on September 26, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on September 14, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492

Ohio Department of Natural Resources, Division of Reclamation, Fountation Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On March 26, 1982, the State of Ohio requested a cooperative agreement between the Department of the Interior and the State of Ohio to give the State primacy in the administration of its approved regulatory program on Federal lands in Ohio. The Secretary approved the cooperative agreement on February 22, 1984. Approval of the cooperative agreement was published on April 13, 1984 (49 FR 14735). The text of the existing cooperative agreement can be found at 30 CFR 935.30.

The approved cooperative agreement signed by the Secretary and the State of Ohio does not contain specific language regarding coal exploration or the surface effects of underground mining on Federal lands in Ohio. On April 26, 1988, OSMRE sent a letter to the State outlining proposed amendments to the cooperative agreement to include this language and to make other minor changes regarding reference to an appendix to the agreement. In a letter dated May 13, 1988, the State of Ohio indicated that the proposed changes were acceptable to the State.

II. Discussion of the Proposed Amendments

The proposed amendments would modify the following sections of the cooperative agreement:

1. *Article I.A. Authority:* The proposed amendments would include surface effects resulting from underground mining operations under the mining and reclamation activities which the State would regulate.

2. *Article I.A. Authority:* The proposed amendments would include coal exploration operations not subject to 43 CFR Part 3480, subparts 3480 through 3487, under the mining and reclamation activities which the State would regulate.

3. *Article VI. Review of a Permit Application Package:* The proposed amendments would include coal exploration operations under the State's permit application review responsibilities.

4. *Article XV. Reservation of Rights:* The proposed amendments would revise this Article and incorporate a reference to the laws listed in Appendix A. The revised Article would read as follows:

"In accordance with 30 CFR 745.13, this agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expresely addressed in this agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A."

5. *Appendix A:* The proposed amendments would add an Appendix A, which would contain the list of applicable Federal and State laws and regulations referenced in item 4.

III. Public Comment Procedures

OSMRE is now seeking comments on the proposed amendments. If the amendments are deemed adequate, they will become part of the cooperative agreement between the Department of the Interior and the State of Ohio.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person

listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on September 14, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meeting with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 19, 1988.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 88-19619 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 58

[DoD Instruction 1400.xx]

Compliance With Host Nation Human Immunodeficiency Virus (HIV) Screening Requirements for DoD Civilian Employees

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: Some countries require DoD civilian employees be screened for the Human Immunodeficiency Virus (HIV) before they may enter the country. DoD is obligated to comply with such requirements. HIV is the virus associated with the Acquired Immune Deficiency Syndrome (AIDS). To assure the consistent observance of these requirements and the proper treatment of its employees, the Department of Defense proposes to issue this Part. It establishes a single approval authority and uniform policies and procedures. It also provides guidance for personnel administration and protection of employees' rights. The proposed Part would not apply to employees of organizations or business concerns under contract to DoD, nor to dependents or family members of DoD military and civilian personnel. The policy would apply to those members of the general public who apply for and have been tentatively selected for DoD civilian employment in a host nation that requires HIV screening.

DATE: Submit written comments on or before September 29, 1988.

ADDRESS: Send comments to the Director, Workforce Relations, Training and Staffing Policy, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hatheway, telephone (202) 695-2012.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 58

Foreign relations, Civilian employees.

Accordingly, it is proposed that Title 32, Chapter I of the Code of Federal Regulations be amended to add Part 58 as follows:

PART 58—COMPLIANCE WITH HOST NATION HUMAN IMMUNODEFICIENCY VIRUS (HIV) SCREENING REQUIREMENTS FOR DoD CIVILIAN EMPLOYEES

Sec.

58.1 Purpose.
58.2 Applicability ans scope.
58.3 Definitions.
58.4 Policy.
58.5 Responsibilities.
58.6 Procedures.

Authority: 10 U.S.C. 113 and 5 U.S.C. 301.

§ 58.1 Purpose.

This part establishes policies and procedures for screening DoD civilian employees for Human Immunodeficiency Virus (HIV) and for the use of screening results.

§ 58.2 Applicability and scope.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), and the Defense Agencies (hereafter referred to collectively as the "DoD Components").

§ 58.3 Definitions.

(a) *Human Immunodeficiency Virus (HIV).* The virus associated with the Acquired Immune Deficiency Syndrome (AIDS).

(b) *Host Nation.* A foreign nation to which DoD U.S. citizen employees are assigned to perform their official duties.

(c) *DoD Civilian Employees.* For purposes of this part this term includes current and prospective DoD U.S. citizen employees. It includes both appropriated and nonappropriated fund personnel. It does not include employees of or applicants for positions with private sector contractors performing work on behalf of the Department of Defense.

§ 58.4 Policy.

It is the policy of the Department of Defense to comply with operational host nation requirements for HIV screening of DoD civilian employees.

§ 58.5 Responsibilities.

(a) The Assistant Secretary of Defense (ASD(FM&P)) shall establish policies governing HIV screening of DoD civilian employees assigned to host nations, in coordination with the Assistant Secretary of Defense (Health Affairs) (ASD(HA)), the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)), and the DoD General Counsel.

(b) The ASD(ISA) shall identify or confirm host nation HIV screening requirements for DoD civilian employees, and coordinate requests for screening with the Department of State.

(c) Heads of DoD Components shall implement HIV screening policies for DoD civilian employees assigned to overseas areas. Included in this responsibility are the following actions:

(1) Reporting newly established host nation HIV screening requirements to the ASD(FM&P) and providing sufficient background information to support a decision.

(2) Developing and distributing policy implementing instructions.

(3) Establishing procedure to notify individuals who are evaluated as HIV seropositive and providing initial counseling to them.

§ 58.6 Procedures.

(a) Requests for authority to screen DoD employees for HIV shall be directed to the ASD(FM&P). Only those requests will be accepted which are based upon an operational host nation HIV screening requirement. Requests based upon other concerns, such as sensitive foreign policy or medical health care issues, will not be considered under this policy. Approvals will be provided by ASD(FM&P) memorandum.

(b) HIV screening shall be considered a requirement imposed by another nation that must be met prior to final decision to select the individual for a position or prior to approving temporary duty or detail to the host nation. Thus, the Department of Defense has made no official commitment concerning overseas positions to those individuals who refuse to cooperate with the screening requirements or those who cooperate and are diagnosed as HIV seropositive.

(c) Those who refuse to cooperate with the screening requirement shall be treated as follows:

(1) Those who volunteered for the assignment, whether permanent or temporary in nature, shall be returned to their official position without further action and without prejudice with respect to employee benefits, career progression opportunities, or any other personnel actions.

(2) Those who are obligated to accept assignment to the host nation under the terms of an employment agreement, regularly scheduled tour of duty, or similar, prior obligation, may be subjected to an appropriate adverse personnel action under the specific terms of the employment agreement, or other authorities that may apply.

(d) Those who accept the screening and are evaluated as HIV seropositive may be denied the assignment on the basis that evidence of seronegativity is required by the host nation. Such employees shall be returned to their current positions without prejudice. They shall be given proper counseling and shall retain all the rights and benefits to which they are entitled including accommodations for the handicapped as provided in the ASD(FM&P) Memorandum dated January 22, 1988,[1] Federal Personnel Manual Bulletin 792-42, and 29 USC 794. Non-DoD employees should be referred to appropriate support service organizations.

(e) Some host nations may not bar entry to HIV seropositive DoD employees may require reporting such individuals to host nation authorities. In such cases DoD civilian employees who are evaluated as HIV seropositive shall be informed of the reporting requirement. They shall be counseled and given the option of declining the assignment and being returned to their official positions without prejudice.

(f) A positive confirmatory test by Western blot must be accomplished on an individual if the screening test (ELISA) is positive. A civilian employee shall not be identified as HIV antibody positive unless the confirmatory test (Western blot) is positive. The clinical standards contained in ASD(HA) Memorandum dated September 11, 1987,[2] shall be observed during initial and confirmatory testing.

(g) Procedures shall be established by DoD Components to protect the confidentiality of test results for all individuals, consistent with ASD(FM&P) Memorandum dated January 22, 1988 and 32 CFR Part 286a.

(h) Tests shall be provided by the DoD Components at no cost to the employee or applicant.

(i) Employees infected with HIV shall be counseled in accordance with the Secretary of Defense Memorandum dated April 20, 1987.[3]

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 25, 1988.

[FR Doc. 88-19708 Filed 8-29-88; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained from Director, Workforce Relations, Training and Staffing Policy, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), Washington, DC 20301-4000.

[2] See footnote 1 to § 58.6(d).

[3] See footnote 1 to § 58.6(e).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-3436-9]

Hazardous Waste Management System, Identification and Listing of Hazardous Waste; New Data and Use of These Data Regarding the Establishment of Regulatory Levels for the Toxicity Characteristic; and Use of the Model for the Delisting Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comments; supplement to proposed rule; extension of comment period.

SUMMARY: The purpose of this notice is to extend the public comment period on the supplement to the Toxicity Characteristic proposed rule and use of the ground water model for the Delisting Program, which appeared in the Federal Register on August 1, 1988 (53 FR 28982) and would amend the hazardous waste identification regulations under Subtitle C of the Resource Conservation and Recovery Act. Specifically, the Agency will accept comments until September 22, 1988.

EPA received several requests for an extension of the comment period. To ensure that commenters have adequate time to prepare their comments, we are taking this opportunity to lengthen the comment period by 22 days, from August 31 to September 22, 1988.

DATES: The deadline for submitting written comments on the August 1, 1988 notice is extended from August 31, 1988 to September 22, 1988.

ADDRESSES: The original and three copies of all comments, identified by the Docket Number F-88-TC3N-FFFFF, should be sent to the following address: EPA RCRA Docket [S-212], U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA RCRA docket is located in the sub-basement area at the above address, and is open form 9:30 a.m. to 3:30 p.m. Monday through Friday, excluding Federal Holdiays. To review docket materials, members of the public must make an appointment by calling [202] 475-9327. Materials may be copied at a cost of $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general informaion contact the RCRA Hotline by calling [800] 424-9346 toll-free, or [202] 382-3000. For information on specific aspects of this notice, contact Dr. Zubair Saleem [202] 382-4770, Office of Solid Waste [OS-330], U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

Dated: August 23, 1988.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-19629 Filed 8-29-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 88-19]

Rule on Effective Date of Tariff Changes

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its foreign tariff filing rules to require common carriers to publish in their tariffs a rule specifying that rates, rules and charges applicable to a given shipment must be those published and in effect on the date the cargo is received by the carrier or its agent (including a connecting inland carrier in the case of an intermodal through movement).

DATE: Comments due on or before October 14, 1988.

ADDRESS: Comments (Original and fifteen (15) copies) to:

Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (203) 523-5796.

SUPPLEMENTARY INFORMATION: On December 16, 1987, the Trans-Pacific Westbound Rate Agreement ("TWRA") filed a petition for rulemaking ("Petition") requesting that the Commission issue a regulation precluding the application of any carrier tariff rate, charge or rule (other than a destination charge) to cargo physically received by the carrier prior to the effective date of the tariff provision. TWRA proposes that the regulation specifically prescribe the date when a tariff rule or rate becomes applicable to any given shipment.

Notice of the Petition was published in the **Federal Register** on December 30, 1987 (52 FR 49205), providing interested parties the opportunity to submit responses to the Petition. Replies to the Petition were received from: the Asia North America Eastbound Rate Agreement ("ANERA"); Greece/United States Atlantic and Gulf Conference, Mediterranean North Pacific Coast Freight Conference, and South Europe/U.S.A. Freight Conference (filing jointly as the "Mediterranean Conferences"); Pacific Coast/Australia-New Zealand Tariff Bureau ("PANCON"); Ocean Star Container Line ("Ocean Star"); Forest Lines Inc. ("Forest Lines"); Tropical Shipping & Construction Ltd. ("Tropical Shipping"); International Association of NVOCCS ("IANVOCC"); and the Chemical Manufacturers Association ("CMA").

TWRA Petition

TWRA seeks to end "pocket rates," described by TWRA as a tariff practice whereby the carrier negotiates a rate, receives the cargo from the shipper, but thereafter publishes the agreed rate in its tariff after the transportation has begun. TWRA claims that, in effect, the carrier retains the agreed freight rate "in [its] pocket" until after it has secured the cargo for its own carriage. TWRA states that, at the present time, "pocket rate" practices are lawful under Commission tariff regulations.

TWRA claims that a tariff rule banning the use of "pocket rates" would directly serve the purposes which underlie the tariff filing requirement. TWRA states the rationale for its Petition as follows:

> [F]irst, it serves the statutory objective of treating similar shippers similarly by enabling shippers to know what their competitors are paying for ocean transport before themselves committing cargo to a carrier; second, it is designed to permit shippers to know what their own rate is in advance of handing over the cargo; third, if Carrier A has the lower rate and it is publically [sic] available this fact enables the shipper to ask Carrier B for a reduction based thereon and also enables Carrier B to verify the correctness of that claim; fourth, this principle serves fair competition by permitting carriers to note and rely upon the published rate filed by their competitors and to permit competitive responses to such rates in a timely manner that enables other carriers to compete for the cargo.

Equating the use of pocket rates to secret rebates, TWRA argues that the requested tariff regulation would promote rate stability and the certainty of rate application to particular shippers, enhancing fair competition while avoiding unlawful preferences as between shippers.

The regulation suggested by TWRA does, however, permit a later date for destination charges than for other tariff provisions. TWRA contends that "such later dates have traditionally been utilized, normally are not specific to particular commodities, and have not been found to have the adverse effects of 'pocket' rates. * * *"

Responses to the TWRA Petition

Comments supportive of the proposal were filed by ANERA, the Mediterrean Conferences, PANCON, and Ocean Star (a vessel operating common carrier ("VOCC") in the Australia-U.S. and Mediterranean-U.S. trades). These commenters note that current tariff filing practices permit the carrier to publish, after the transportation of the shipment has commenced, a tariff rate which would apply to that shipment. These parties assert that such tariff practices give rise to "secret" rates which are discriminatory as between shipper, and constitute an unfair method of competition as between carriers. While supportive of the need for a uniform rule on tariff effectiveness, the commenters differ on the precise "cut-off" date to be specified for tariff purposes.

Opposing comments were submitted by Tropical Shipping, Forest Line, IANVOCC, and CMA. These commenters contend that the proposed regulation is unnecessary and anti-competitive, as TWRA allegedly has shown no discrimination in fact to have resulted from the current, permissive tariff filing requirements as to rate effectiveness. However, even if discrimination does result, the commenters believe the dominant policy issue must be to permit the "immediate" effectiveness of all rate reductions to shippers, and to allow tariff "flexibility" for carriers to respond quickly to changing market conditions.

Discussion

The pertinent regulation, 46 CFR 580.5(d) [1] currently allows the carrier unilaterally to establish one or more effective dates for rating and compliance purposes, which dates may differ from the time at which the transportation process commences. A carrier's implementation of Tariff Rule 3 thus may operate to give effect to two rates applicable at the same time to the same commodity—one being the rate currently published and made effective in the carrier's tariff at the time of tender of the goods, and the second being an unpublished rate but one no less effective as to the cargo.

Section 8(a) of the Shipping Act of 1984, 46 U.S.C. app. 1707, requires each common carrier and conference to file with the Commission tariffs showing "all" its rates, charges, classifications, rules and practices between all points and ports on its own route and on any through transportation route that has been established. It is questionable whether this statutory obligation is met

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[1] This regulation requires each carrier to publish tariff rules governing its practices on specified key subjects. As relevant, the regulation requires tariff notice of the following:

> (3) Rate applicability rule. A clear and definite statement of the time at which a rate becomes applicable to any given shipment.

46 CFR 580.5(d)(3) (1987) (hereinafter referred to as "Tariff Rule 3"). Commission requirements in this regard have remained virtually unamended since 1975.

by a carrier transporting cargo subject to a rate which will not be tariffed until some later point in the cargo's journey, *e.g.* immediately prior to vessel loading. Such rate practices permit a future act of tariff publication to "relate back" to shipments already in transit, thereby imposing a new rate over the rate then applicable in the carrier's tariff.[2]

In the hiatus between agreement upon the commodity rate and its subsequent publication, the unpublished (but agreed to) rate remains for all intents a secret rate between shipper and carrier. Only that shipper privy to the rate agreement can directly access the rate, *i.e.* tender cargo in the knowledge of the retroactive effect to be extended by the carrier to the new rate under Tariff Rule 3. Such a result appears to defeat the basic purpose of tariff filing. *See, e.g., Ghiselli Bros. v. Micronesia Interocean Line Inc.* 13 F.M.C. 179, 181 (1969).

The Commission proposes to address the issue of "pocket rate" practices by prescribing an effective date for rating purposes which is uniform and consistent with the date on which the carrier assumes its contractual and regulatory obligations with respect to the transportation, *i.e.*, beginning with delivery of the cargo to the carrier for shipment. The regulation here proposed is intended to foreclose a potential avenue for *post hoc* ratemaking, in order to avoid discriminatory effects vis-a-vis shippers and carriers, and to maintain the integrity of the tariff filing system.

The proposed rule does not include TWRA's suggestion as to destination charges. An exception for such charges could threaten objective or uniform application of carrier rates and charges. Moreover, such exception could shift the focus of any unauthorized ratemaking from the initial stages of the transportation to the discharge stage.

The Commission has determined that this regulation is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission finds that the proposed rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601. Section 601(2) of the Act excepts from its coverage any "rule of particular applicability to rates or practices relating to such rates * * *". As the proposed rule relates to particular applications of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). Comments on the information collection aspects of this rule should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

List of subjects in 46 CFR Part 580

Maritime carriers; Rates and fares; Reporting and record keeping requirements.

Therefore, pursuant to 5 U.S.C. 553; secs. 8, 9, 10 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1708, 1709, and 1716, the Federal Maritime Commission proposes to amend part 580 of Title 46 of the Code of Federal Regulations as follows:

PART 580—[AMENDED]

1. The authority citation for Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707–1709, 1712, 1714–1716 and 1718.

2. In § 580.5 revising paragraph (d)(3) to read as follows:

§ 580.5 Tariff contents

* * * * *

(d) * * *

(3) Effective date rule. All tariffs shall provide that the tariff rates, rules and charges applicable to a given shipment must be those published and in effect when the cargo is received by the ocean carrier or its agent (including originating carriers in the case of rates for through transportation).

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–19693 Filed 8–29–88; 8:45 am]

BILLING CODE 6730–01–M

[2] By analogy, Commission tariff regulations currently prohibit the publication of any rate which would "duplicate or conflict with" existing rates in the same tariff on the same commodity. 46 CFR 580.6(k)(1).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–383, RM–6337]

Radio Broadcasting Services; Hinesville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by E. D. Steele, Jr., proposing to allot Channel 284A to Hinesville, Georgia, as its second FM service. Coordinates for Channel 284A are 31–50–59 and 81–36–11.

DATES: Comments must be filed on or before October 7, 1988, and reply comments on or before October 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Anne Thomas Paxson, Borsari & Paxson, 2100 M Street, NW, Suite 610, Washington, DC 20037. (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the commission's Notice of Proposed Rule Making, MM Docket No. 88–383, adopted July 6, 1988, and released August 16, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1208. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-19612 Filed 8-29-88; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-384, RM-6102]

Radio Broadcasting Services; Fort Myers Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Justice Broadcasting—Fort Myers Beach, Inc., licensee of Station WQEZ(FM), Fort Myers Beach, Florida proposing the substitution of Channel 257C2 for Channel 257A at Fort Myers Beach, and the modification of its Class A license accordingly, coordinates 26-25-30 and 82-04-30.

DATES: Comments must be filed on or before October 7, 1988, and reply comments on or before October 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Melodie A. Virtue, Haley, Bailer & Potts, 2000 M Street NW., Suite 600, Washington, DC 20036 (attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-384, adopted July 12, 1988, and released August 16, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. This is a restricted notice and comment rule-making proceeding. *See* 47 CFR 1.1208. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-19614 Filed 8-29-88; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-312; RM-6127; RM-6135]

Radio Broadcast Services; Pearl and Magee, MS; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This action corrects the comment and release dates of the Proposed Rule in this proceeding concerning FM channel allotments for Pearl and Magee, MS.

DATES: Comments are now due on the Proposal by October 17, 1988 and replies by November 1, 1988. In addition, the release date of the full text, mentioned under the "Supplementary Information" portion of the Preamble, is corrected to read: August 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634-6530.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rule Making was published on July 29, 1988 at 53 FR 28673. Due to an oversight, notice of the action was never distributed. As a result, the comment/reply comment dates, as well as the official release date of the full text, are corrected as shown above.

H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88-19606 Filed 8-29-88; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-75; RM-5334]

Television Broadcasting Services; Panama City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission hereby dismisses the request of Nolan Ball, proposing the allotment of UHF television Channel *68 to Panama City, Florida for noncommercial educational use. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-75, adopted July 14, 1988, and released August 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The Complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140 Washington, DC 20037.

Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-19613 Filed 8-29-88; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 548 and 552

[GSAR Notice 5-257]

General Services Administration Acquisition Regulation; Value Engineering

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) which would delete the current material in part 548 and add material to provide: agency policy for the use of value engineering techniques, value engineering proposal submission and processing requirements

for certain types of contracts, agency policy with respect to shared saving on certain types of contracts, and to prescribe a clause entitled "Value Engineering Program—Architect-Engineer." Part 552 would also be amended to add the text of the clause. The intended effect is to implement the requirements in OMB Circular A–131, Value Engineering, dated February 3, 1988, and to provide guidance to GSA contracting activities pending a permanent revision to the regulation.

DATE: Comments should be submittee to the Office of GSA Acquisition Policy and Regulations at the address shown below on or before September 29, 1988 to be considered in the final rule.

ADDRESS: Interested parties should submit written comments to: General Servcies Administration, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Street, NW, Room 4026, Washington, DC 20405. Requests for a copy of the proposal should be addressed to Ms. Marjorie Ashby at the same address or call (202) 523–2322.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations, 18th and F Street, NW, Washington, DC 20405, (202) 523–4916.

SUPPLEMENTARY INFORMATION: The Director, Office of Managment and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibilty Act (5 U.S.C. 601 et seq.). The proposed rule supplements the Federal Acquisition Regulation by providing for the use, where appropriate, of value engineering techniques to identify and eliminate nenessential cost in contracts awarded by the General Services Administration. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 548 and 552.

Government procurement.

Dated: August 18, 1988.

Ida M. Ustad,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 88–19596 Filed 8–29–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Bobcat Taken in 1988 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed in Appendix II of the Convention may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection.

This notice announced proposed findings by the Scientific Authority and Management Authority of the United States on the export of bobcat harvested in the 1988 and subsequent years on the Wind River Indian Reservation, Wyoming, by enrolled members of the Arapahoe and Shoshone Tribes. These proposed findings also stipulate that monitoring procedures previously established for other States and Indian tribes be extended to include Wind River Indian Reservation, Wyoming. The Service intends to make these findings to span a period not limited to a single harvest season. The Service requests comments on these proposed findings.

DATE: The Service will consider comments received by September 14, 1988 in making its final determination and rule.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspections from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, room 537, 1717 H Street NW. Washington, DC or at the Office of Management Authority, room 400, 1375 K Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202–653–5948).

Management Authority Findings—Mr. Marshall P. Jones. Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343–4968.

Export Permits—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Services, Washington, DC 20240, telephone (202) 343–4955.

State Export Programs—Mr. S. Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Services, Washington, DC 20240, telephone (202) 343–4963.

SUPPLEMENTARY INFORMATION: On January 5, 1984 (49 FR 590), the Service published a rule granting export approval for bobcats (*Lynx rufus*) and certain other Convention-listed species from specified States for the 1983–84 and subsequent harvest seasons. On March 24, 1988 (53 FR 9631), Kentucky and the White Mountain Apache Tribe were added to this list of approved export States. The purpose of this proposed rule is to add the Wind River Indian Reservation, Wyoming, to the list of State and Indian Nations for which the export of bobcats is approved.

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other listed species). Appendix III includes native species that any Party nation identified as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

In the January 5, 1984, and the August 18, 1983 (48 FR 37494) **Federal Register** documents, the Service announced the decision from a review of listed species concluded at the Fourth Meeting of the Conference of the Parties in Botswana that each of the species or geographically separate populations including the bobcat, should be regarded as listed in Appendix II because of its similarity in appearance to other listed species or populations. As indicated in those documents, the Conference of the

Parties adopted a resolution accepting the report of the Central Committee on the 10-year review of species listed in Appendices I and II. The report included recommendations that these populations ro species should be considered as listed in Appendix II only because of similarity in appearance, if they were to be retained in that appendix.

The January 5, 1984, document described how the Service, as Scientific Authority, planned to monitor the status of these species and their trade on an annual basis so that it could detect any significant downward trends in populations and, where necessary, institute more restrictive export controls in response to them. The document also described how the Services, as Management Authority, would determine if specimens had been lawfully acquired on the basis of tagging requirements.

Scientific Authority Findings

Article IV of the Convention requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the Scientific Authority and Management Authority of the exporting country. The Scientific Authority must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted by the Management Authority.

The Scientific Authority for the United States must develop such advice on non-detriment for the export of Appendix II animals in accordance with § 1537(c)(2) of the Endangered Species Act of 1973 (the Act), as amended. The Act states that the Secretary of the Interior is required to base export determinations and advice "upon the best available biological information derived from professionally accepted wildlife management practices but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice."

The bobcat is managed by the wildlife agencies of individual States and Indian Tribes and Nations. Those States and Indian Nations from which the Services has approved the export of bobcats in the 1983–84 and subsequent taking seasons were identified in the January 5, 1984, **Federal Register** (49 FR 590), and the March 24, 1988, **Federal Register** (53 FR 9631), and listed in 50 CFR 23.52. Each export-approved State or Indian Tribe or Nation in which this animal is harvested has a program to regulate the harvest. Based on information received from the Wind River Indian Reservation, Wyoming, the Service proposes adding that Indian Reservation to those States and Indian Reservation and Nations from which bobcat export is approved by the Service.

Consistent with the determination that the bobcat is listed to enable trade in other species to be effectively controlled, the Scientific Authority considers this control aspect when advising on non-detriment. Marking of pelts with tags bearing the country and State of origin, year of harvest, name of the species, a unique serial number, and the issuance of export permits naming the species being traded is sufficient to address problems of identification due to similarity in appearance between bobcats and other species (see Management Authority findings for tag specification).

In addition to considering the effect of trade on species or populations other than those being exported from the United States, the Service will monitor the status of the bobcat managed by the Wind River Indian Reservation, Wyoming, to (1) determine whether treatment of these furbearers, listed because of similarity in appearance, remains appropriate, and (2) detect any significant downward trends in the population and, where necessary, advise on more restrictive export controls in response to them. This monitoring and assessment will follow the same procedures adopted for other States and Indian Tribes and Nations (see 49 FR 590). As part of this monitoring program, the States and Indian Tribes and Nations that have been approved for export of bobcats are annually requested to certify that the harvest of bobcats will not be detrimental to the survival of the species and to provide data and/or the basis for support of this assessment. A determination can be made about the treatment of this species and whether a management program needs to be adjusted in a particular State, Indian Tribe or Nation by a review of available information and accumulated data by the Office of Scientific Authority.

Scientific Authority guidelines developed for bobcat export under the provisions of Convention Article II.2(a), which represent professionally-accepted wildlife management practices, are presented in more detail in the August 18, 1983, **Federal Register** document (48 FR 37494). These guidelines are summarized as follows:

A. Minimum requirements for biological information:

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State, Indian Tribe or Nation's choice), and population estimates where such information is available;

(2) Information on total harvest of the species;

(3) Information on distribution of harvest; and

(4) Habitat evaluation.

B. Minimum requirements for a management program:

(1) There should be a controlled harvest, methods and seasons to be a matter of State, Indian Tribe, or Nation's choice;

(2) All skins should be registered and marked; and

(3) Harvest level objectives should be determined annually by the State, Indian Tribe or Nation.

The Wind River Indian Reservation, Wyoming, has provided population estimates based on the relationship between population density from other studies in the State and habitat types and distribution on the Reservation. This information has been supplemented with data on reproductive rates and age structure of the population obtained from harvested bobcats, and with relative number of bobcats trapped per trapping effort.

Bobcat harvest on the Wind River Indian Reservation is limited to enrolled members of the Shoshone and Arapahoe Tribes who must attach a tribal tab to the bobcat pelt immediately at take. Under an interagency agreement between the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service, the Service oversees the wildlife program on the Wind River Indian Reservation. Wind River Agency game wardens monitor and control actual hunting and trapping activities and will replace tribal tags with Convention export tags before the bobcat pelt ownership is transferred or the pelt leaves the Reservation.

Based upon information presented by the Wind River Reservation, Wyoming, including Reservation Agency bobcat regulations, and in consideration of the basis for the species' listing in Appendix II of the Convention, the Service proposes to issue Scientific Authority advice in favor of export of bobcats harvested in 1988 and subsequent harvest seasons from Wind River Reservation, Wyoming.

Management Authority Findings

Exports of Appendix II species are be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws for the protection of the involved species. The Service, therefore, must be satisfied that the bobcat pelts, hides, or products being

exported were not obtained in violation of State, Indian Tribal or Nation, or Federal law in order to allow export. Evidence of legal taking for Alaskan gray wolf, Alaskan brown or grizzly bear, American alligator, bobcat, lynx, and river otter is provided by State and Indian Tribe or Nation tagging programs. The Service annually contracts for the manufacture and delivery of special Convention animal-hide tags for export-qualified States and Indian Nations. The Service has adopted the following Management Authority export guidelines for the 1983–84 and subsequent taking seasons:

(1) Current State and Tribe or Nation hunting, trapping and tagging regulations and sample tags must be on file with the Office of Management Authority;

(2) The tags must be durable and permanently locking, and must show U.S.-CITES logo, State and Indian Tribe or Nation of origin, year of take, species, and be serially unique;

(3) The tag must be applied to all pelts taken within a minimum time after take, as specified by the State and Indian Tribe or Nation, and such time should be as short as possible to minimize movement of untagged pelts;

(4) The tag must be permanently attached as authorized and prescribed by the State and Indian Tribe or Nation;

(5) State and Indian Tribe or Nation registered-dealers or State and Indian Tribe, or Nation-licensed takers allowed to attach export tags must account for tags received and must return unused tags to the State or Indian Tribe or Nation within a specified time after taking season closes; and,

(6) Fully manufactured fur (or hide) products may be exported from the United States only when the Convention export tags, removed from the hides used to manufacture the product being exported, are surrendered to the Service prior to export.

Proposed Export Decision

The Service proposes to approve exports of Wind River Indian Reservation bobcats harvested in the 1988 and subsequent harvest seasons on the grounds that both Scientific Authority and Management Authority guidelines are satisfied.

Comments Solicited

The Service requests comments on these proposed findings. Final findings will take into consideration the comments and any additional information received, and such consideration might lead to final findings that differ from this proposal.

The proposal is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.). The authors are S Ronald Singer, Office of Management Authority, and Dr. Charles W. Dane, Office of Scientific Authority.

Note: The Department has previously determined that the export of bobcats of various States and Indian Tribes or Nations, taken in the 1983–1984 and subsequent harvest seasons, was not a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(1)(c) of the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement was not required (48 FR 37494). Because these proposed findings do not significantly differ from the previous export findings, the previous determination not to prepare an Environmental Impact Statement on export of bobcats taken during the 1983–1984 and subsequent harvest seasons in certain States (49 FR 590) remains appropriate. The Department has also previously determined that such harvest was not a major rule under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because the existing rule treats exports on a State-by-State and Indian Nation-by-Indian Nation basis and proposes to approve export in accordance with a State or Indian Nation management program, the rule will have little effect on small entities in and of itself. This proposed rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend part 23 of Title 50, Code of Federal Regulations, as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 et seq.

2. In Subpart F—Export of Certain Species, § 23.52 is revised to read as follows:

§ 23.52 Bobcat (Lynx rufus).

States for which the export of the indicated season's harvest may be permitted under § 23.15 of this part:

	1977–78	1978–79	1979–80	1980–81	1981–82	1982–83	1983 & subsequent	1987 & subsequent	1988 & subsequent
Alabama	+	+	+	+	+	+	+	+	+
Arizona	+	+	+	+	+	+	+	+	+
Arkansas	+	+	+	+	+	+	+	+	+
California	+	+	+	+	+	+	+	+	+
Colorado	+	+	+	+	+	+	+	+	+
Florida	+	+	E	+	+	+	+	+	+
Georgia	+	+	+	+	+	+	+	+	+
Idaho	+	+	+	+	+	+	+	+	+
Kansas	+	+	+	+	+	+	+	+	+
Kentucky	–	–	–	–	–	–	–	+	+
Klamath Tribe	–	–	–	–	+	+	+	+	+
Louisiana	+	+	+	+	+	+	+	+	+
Maine	+	+	+	+	+	+	+	+	+
Massachusetts	+	+	E	+	+	+	+	+	+
Michigan	+	+	+	+	+	+	+	+	+
Minnesota	+	+	+	+	+	+	+	+	+
Mississippi	+	+	+	+	+	+	+	+	+
Missouri	–	–	–	+	+	+	+	+	+
Montana	+	+	+	+	+	+	+	+	+
Navajo Nation	+	+	+	+	+	+	+	+	+
Nebraska	+	+	+	+	+	+	+	+	+
Nevada	+	+	+	+	+	+	+	+	+
New Hampshire	–	–	–	+	+	+	+	+	+
New York	+	+	+	+	+	+	+	+	+

	1977–78	1978–79	1979–80	1980–81	1981–82	1982–83	1983 & subsequent	1987 & subsequent	1988 & subsequent
North Carolina	+	+	+	+	+	+	+	+	+
North Dakota	+	+	E	+	+	+	+	+	+
Oklahoma	–	–	+	+	+	+	+	+	+
Oregon	+	+	E(1)	+	+	+	+	+	+
Penobscot Nation	–	–	–	–	–	–	+	+	+
South Carolina	+	+	+	+	+	+	+	+	+
South Dakota	+	+	+	+	+	+	+	+	+
Tennessee	+	+	+	+	+	+	+	+	+
Texas	+	+	E(2)	+	+	+	+	+	+
Utah	–	–	+	+	+	+	+	+	+
Vermont	+	+	+	+	+	+	+	+	+
Virginia	+	+	+	+	+	+	+	+	+
Washington	+	+	+	+	+	+	+	+	+
West Virginia	+	+	+	+	+	+	+	+	+
Wisconsin	+	E	+	+	+	+	+	+	+
White Mt Tribe	–	–	–	–	–	–	–	+	+
Wind River Res	–	–	–	–	–	–	–	–	P
Wisconsin	+	+	E	+	+	+	+	+	+
Wyoming	+	+	+	+	+	+	+	+	+

Legend: +—Export approval; –—export not approved; E—1979–80 bobcat enjoined by U.S. District Court, District of Columbia; E(1)—As above but for eastern portion of State; E(2)—As above but for high plains ecological area; P—Proposed.

(b) Condition on export: Each pelt must be clearly identified as to species, State or Indian Tribe or Nation of origin, and season of taking by a permanently attached, serially numbered tag of a type approved and attached under conditions established by the Service. Exception to tagging requirement: finished furs and fully manufactured fur products may be exported from the United States when the State or Indian Tribe or Nation export tags, removed from the hides used to manufacture the product being exported, are surrendered to the Service prior to export. Such tags must be removed by cutting the tag strap on the female side next to the locking socket of the tag so the locking socket and locking tip remain joined.

Dated: August 5, 1988.

Susan Recce

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–19801 Filed 8–29–88; 8:45 am]
BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 53, No. 168
Tuesday, August 30, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Foster Grandparent Program (FGP)

AGENCY: ACTION.

ACTION: Notice of Availability of Funds.

SUMMARY: ACTION announces the availability of funds for Fiscal Year 1989 for new FGP grants. FGP is authorized under Title II, Part B, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L93–113). Grants will be competed only in ACTION Region IV (covering the states of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee) and in ACTION Region VI (covering the states of Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas).

Completed application packages are to be submitted to the appropriate ACTION State Office. FGP project grants will be awarded for a 12-month period and may be renewed.

Application forms and technical assistance are available from ACTION State Offices:

State Offices in Regions IV and V

Region IV

John D. Timmons, ACTION State Program Director, 2121 8th Avenue North, Room 722, Birmingham, AL 35203–2307, Telephone: (205) 254–1908
Henry J. Jibaja, ACTION State Program Director, 930 Woodcock Road, Suite 221, Orlando, FL 32803–3750, Telephone: (407) 648–6117
David A. Dammann, ACTION State Program Director, 75 Piedmont Avenue, N.E., Suite 412, Atlanta, GA 30303–2587, Telephone: (404) 331–4646
Arthur Brown, III, ACTION State Program Director, Federal Building, Room 1005–A, 100 West Capital Street, Jackson, MS 39269, Telephone: (601) 965–4462
Robert L. Winston, ACTION State Program Director, Federal Building, P.O. Century Station, 300 Fayetteville, Street Mall, Rm. 131, Raleigh, NC 27601–1739, Telephone: (919) 856–4731)
Jerome J. Davis, ACTION State Program Director, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430, Telephone: (803) 765–5771
Alfred E. Johnson, ACTION State Program Director, Federal Building/ U.S. Courthouse, 801 Broadway, Room 246, Nashville, TN 37203–3889, Telephone: (615) 251–5561

Region VI

Robert Torvestad, ACTION State Program Director, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201–3291, Telephone: (501) 378–5234
James M. Byrnes, ACTION State Program Director, Federal Building, Room 248 444 S.E. Quincy, Topeka, KS 66603–3501, Telephone: (913) 295–2540
Willard L. Labrie, ACTION State Program Director, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910, Telephone: (504) 389–0471
John McDonald, ACTION State Program Director, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106–2009, Telephone: (816) 374–5256
Ernesto Ramos, ACTION State Program Director, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501–2026, Telephone: (505) 988–6577
H. Zeke Rodriguez, ACTION State Program Director, 200 N.W. 5th, Suite 912, Oklahoma City, OK 73102–6093, Telephone: (405) 231–5201
Jerry G. Thompson, ACTION State Program Director, 611 East Sixth State, Suite 107, Austin, TX 78701–3747, Telephone: (512) 482–5871

A. Background and Purpose

The Foster Grandparent Program (FGP) is authorized under Title II, Part B, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) (the "Act"). The program was established for the purpose of providing opportunities for low-income persons aged 60 or older to provide supportive, person-to-person services in health, education, welfare, and related settings to children having exceptional needs . . . [and] . . . children with special needs." FPG volunteer services are provided in a variety of health, education, and related social settings, in both residential and nonresidential facilities.

FGP grants are awarded to qualified public agencies and private non-profit organizations. Program sponsors in turn recruit and enroll low-income persons aged 60 or older as Foster Grandparents. Volunteers are placed in volunteer stations which ar public agencies, private non-profit organizations, and proprietary health care organizations serving children. Foster Grandparents are assigned on a one-to-one basis to children with special needs as defined under program policy.

B. Programming Emphasis

ACTION will give special consideration to applicants with well developed plans for utilizing Foster Grandparent volunteer services to assist children identified as being at risk of substance abuse, physical/sexual abuse, abandoned/neglected, juvenile delinquency, status offenses, and other destructive behaviors. Children whose need is primarily economic, or whose parent is single and working, do not meet the FGP definition of special needs.

C. Eligible Applicants

Only public agencies or private non-profit organization are eligible to apply for FGP grants. In addition, applicants:

1. Must have the authority to accept, and the capability to administer, the FGP project grant according to ACTION guidelines.

2. Cannot be located in an existing FGP project service area.

3. Must be able to demonstrate that the service area has an adequate number of low-income elderly who can be recruited as Foster Grandparent volunteers, and a sufficient number of special needs children in need of volunteer services.

D. Children/Volunteer Eligibility

1. *Child* is any individual under 21 years of age.

2. *Children with special needs* includes those at risk of substance abuse, those who are abused or neglected, in need of foster care, status offenders, juvenile delinquents, runaway youth, certain teen-age parents, and children in need of protective intervention in their homes. Existence of a child's special need shall be verified by an appropriate professional before a Foster Grandparent is assigned to the child.

3. Persons aged 60 and older whose income do not exceed the levels

specified below are eligible to be Foster Grandparent volunteers.

For family units of	
One	$6,700
Two	9,050
Three	11,400
Four	13,750
Five	16,100
Six	18,450
Seven	20,800
Eight	23,150

E. Scope of Grant

Each grant will support between 40 and 60 volunteer service years. The amount of each grant includes Foster Grandparent direct benefits (stipends, meals, uniforms, insurance, physical examinations, recognitions, and transportation).

Federal cost per Volunteer Service Year (VSY) budgeted shall not exceed $3,300 unless an applicant can provide sufficient justification for a higher cost. The total amount budgeted for volunteer expenses shall be a sum equal to at least 90% of the total Federal funds budgeted.

Applicants are required to provide at least 10% in matching funds from non-Federal sources, either in allowable cash or in-kind dollar equivalents. The FGP project director should serve on a full-time (100% time on project) basis, unless a waiver from ACTION is obtained. Publication of this announcement does not obligate ACTION to award any specific number of grants or any specific amount of funds.

F. General Criteria for Grant Selection

ACTION will use the criteria specified below in the selection of sponsors for these new grants. A number of stated elements must be found in the applicant's proposal. The applicant must:

1. Have experience with either social programs for persons age 60 or older or with children with special needs.
2. Comply with applicable financial and program requirements established by ACTION or other Federal agencies.
3. Develop goals and objectives consistent with the purpose of the program that are specific, time phased, and measurable.
4. Provide for reasonable efforts to recruit and involve males, and hard-to-reach minority, ethnic, and isolated or disabled eligible persons.
5. Produce evidence of non-Federal, public or private support in the form of endorsement letters from public agencies and private non-profit organizations. Information in the letters must contain awareness and willingness to provide funding support to the FGP project sponsor.
6. Include a realistic transportation plan for the project based on the lowest cost, transportation mode(s).
7. Offer a mix of residential, non-residential, or a variety of community settings for Foster Grandparent placements.

G. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income, elderly community? Who will benefit from the project?
2. Does the project show evidence of skillful and careful planning to attain project goals?
3. Did the sponsor answer project application questions with specificity?
4. Sponsoring Organization:

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s)/needs identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are the procedures for staff accountability adequate for the FGP project?

5. Foster Grandparents:

(a) Is the number of volunteers being requested consistent with the goals and objectives specified for the project?

(b) Are the roles of the volunteers designed to enhance or ameliorate the lives of children with special needs to be served?

(c) Are the Foster Grandparent assignments designed to use their time in an efficient manner?

H. Application Review Process

ACTION Regions IV and VI will review and evaluate all applications prior to their submission to Headquarters. The final selection will be made by the Associate Director of Domestic Operations. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed and two copies of all completed applications from Regions IV or VI must be submitted to the respective ACTION State Office (see end of Notice for names/addresses). The deadline for receipt of applications is 5:00 p.m., local time, October 19, 1988. Applications received after October 19, but postmarked five days before the deadline date, will also be accepted for consideration.

Donna M. Alvarado,
Director.

[FR Doc. 88-19602 Filed 8-29-88; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: September 26, 1988.

Place: USDA FGIS Technical Center, 10383 North Executive Hills Blvd., Kansas City, Missouri 64153.

Time: 10:00 a.m.

Purpose: A subcommittee to review and prepare recommendations to the Federal Grain Inspection Service Advisory Committee on the Federal Grain Inspection Service mission statement.

The agenda includes a review of past mission statements; declaration of policy as stated in the United States Grain Standards Act and as modified by the Grain Quality Improvement Act of 1986; and proposed amended mission statements.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Subcommittee Chairman. Persons, other then members, who wish to address the Subcommittee at the meeting or submit written statements before, at, or after the meeting should contact Fred Midcap, Subcommittee Chairman, 5143 Rd. 3, Wiggins, Colorado 80654, telephone (303) 432-5528.

Dated: August 25, 1988.

W. Kirk Miller,
Administrator.

[FR Doc. 88-19640 Filed 8-29-88; 8:45 am]
BILLING CODE 3410-EN-M

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: September 27, 1988.

Place: American Farm Bureau Federation Board Room, 225 Touhy Avenue, Park Ridge, Illinois 60068.

Time: 10:00 a.m.

Purpose: A subcommittee to review and prepare recommendations to the Federal Grain Inspection Service Advisory Committee on whether it is possible to determine incontrovertibly if export grain is likely to deteriorate in condition or quality while in-transit to a foreign destination and whether regulatory action is warranted.

The agenda includes a review of information presented at the August 12, 1988, Federal Grain Inspection Service Advisory Committee meeting and other available information.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Subcommittee Chairman. Persons, other than members, who wish to address the Subcommittee at the meeting or submit written statements before, at, or after the meeting should contact John White, Jr., Subcommittee Chairman, 1701 Townda Avenue, Bloomington, Illinois 61701, telephone (309) 557–3211.

Dated: August 25, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–19641 Filed 8–29–88; 8:45 am]

BILLING CODE 3410-EN-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Regional Forum; California

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the United States Commission on Civil Rights will convene a regional forum at 8:00 a.m. on September 8, 1988, and adjourn at 3:00 p.m. on September 9, 1988, in the Gold Room of the Biltmore Hotel, 506 South Grand Avenue, Los Angeles, California 90071. The purpose of the meeting is to conduct a forum on changing perspectives on civil rights.

Persons desiring additional information, or planning a presentation to the Commission, should contact Susan J. Prado, Acting Staff Director, (202) 523–5571. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Staff Director's office at least five days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 19, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–19591 Filed 8–29–88; 8:45 am]

BILLING CODE 6335-01-M

Massachusetts Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:30 p.m., September 22, 1988, in Room 505, John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, Massachusetts 02203. The purpose of the meeting is to discuss and act upon the draft of a briefing memorandum, entitled Stemming Violence and Intimidation Through the Massachusetts Civil Rights Act, and to review and act upon a draft of ideas for the Committee's next project.

Persons desiring additional information, or planning a presentation to the Commission, should contact Committee Chairperson Philip Perlmutter (617/330–9600) in Boston, Massachusetts or John I. Binkley, Director of the Eastern Regional Division (202/523–5264; TDD 202/376–8117) in Washington, DC. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting. The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, August 19, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–19589 Filed 8–29–88; 8:45 am]

BILLING CODE 6335-01-M

Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Utah Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on September 20, 1988, at the Utah State Office of Education, Board Room, 250 East 5th South, Salt Lake City, Utah 84111. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert E. Riggs or Philip Montez, Director of the Western Regional Division, (213) 894–3437 (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 19, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–19590 Filed 8–29–88; 8:45 am]

BILLING CODE 6335-01-M

South Dakota Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a subcommittee of the South Dakota Advistory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:00 p.m. on September 16, 1988, at the American Indian Council, 331 North Phillips Avenue, Sioux Falls, South Dakota 57102. The purpose of the meeting is to evaluate material and a draft report concerning women's issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Francis Whitebird or Philip Montez, Director of the Regional Division (213) 894–3437, (TDD 213/894/0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, August 23, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–19597 Filed 8–29–88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-703]

Antidumping Duty Order; Granular Polytetrafluoroethylene Resin from Italy

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning granular polytetrafluoroethylene (PTFE) resin from Italy, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that granular PTFE resin from Italy is being sold at less than fair value and that sales of granular PTFE resin from Italy are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption, of granular PTFE resin from Italy made on or after April 20, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: August 30, 1988.

FOR FURTHER INFORMATION CONTACT: Brian H. Nilsson or Louis Apple, Office of Antidumping Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5332 or 377-1769.

SUPPLEMENTARY INFORMATION: The product covered by this order is granular polytetrafluoroethylene resin, filled and unfilled, which is provided for in the *Tariff Schedules of the United States* (TSUS) items 445.54. The corresponding Harmonized System (HS) number is 3904.61.00. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this investigation.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on July 5, 1988, the Department made its final determination that granular PTFE resin from Italy is being sold at less than fair value (53 FR 26096, July 11, 1988). On August 16, 1988, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of granular PTFE resin from Italy. These antidumping duties will be assessed on all unliquidated entries of granular PTFE resin entered, or withdrawn from warehouse, for consumption on or after April 20, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (53 FR 12967).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Manufacturers/producers/exporters	Weighted-average margin (%)
Montefluos S.p.A./Ausimont U.S.A.	46.46
All others	46.46

This determination constitutes an antidumping duty order with respect to granular PTFE resin from Italy, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Timothy Bergan,

Acting Assistant Secretary for Import Administration.

August 24, 1988.

[FR Doc. 88-19890 Filed 8-29-88; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: August 30, 1988.

FOR FURTHER INFORMATION CONTACT: Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with § 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with § 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than August 31, 1989.

	Periods to be reviewed
Antidumping duty proceedings and firms:	
Canada: Certain dried heavy salted codfish (A-122-402)	07/01/87-06/30/88

	Periods to be reviewed
Bon Portage	
Canada Packers	
Island Saltfish	
Sable Fish Packers	
Le Groupe Purdel	
Bay Harbor	
John's Cove Fisheries	
Canadian Saltfish	
Canus Fisheries	
East Germany: Solid urea (A-429-601)	01/02/87-06/30/88
Chemie	
Japan: Fabric expanded neoprene laminate (A-588-404)	07/01/87-06/30/88
Heiwa rubber	
USSR: Solid urea (A-461-601)	01/02/87-06/30/88
Soyuzpromexport	
Countervailing duty proceedings and firms:	
Uruguay: Leather wearing apparel (C-355-001)	01/01/87-12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Date: August 17, 1988.

Joseph A. Spetrini,

Acting Deputy, Assistant Secretary for Compliance.

[FR Doc. 88-19691 Filed 8-29-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke In Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part.

SUMMARY: In response to requests by the petitioners and the respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers seven manufacturers/exporters of this merchandise to the United States and varius periods from April 1, 1980 through February 28, 1987. The review indicates the existence of dumping margins for certain firms during certain periods.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value, and intends to revoke the antidumping finding with respect to Hitachi and Sanyo.

Where we received no company-supplied information or where information was inadequate or untimely, we used the best information available for assessment and cash deposit purposes.

Interested parties are invited to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: August 30, 1988.

FOR FURTHER INFORMATION CONTACT: J.E. Downey, Wendy J. Frankel, or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION: .

Background

On August 18, 1983, and September 27, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 37508 and 48 FR 44101) tentative determinations to revoke in part the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). On February 11, 1988, the Department published in the **Federal Register** (53 FR 4050) the final results of its last administrative review of the finding.

The petitioners and respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct the administrative reviews. We published notices of initiation of the antidumping duty administrative reviews on November 27, 1985 (50 FR 44825), April 18, 1986 (51 FR 13273), July 9, 1986 (51 FR 24883), and May 20, 1987 (52 FR 18937). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has new conducted those administrative reviews.

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units (combination television receivers with other electrical entertainment components such as tape recorders, radio receivers, etc.), and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

This review covers seven manufacturers/exporters of Japanese television receivers, monochrome and color, and various periods from April 1, 1980 through February 28, 1987.

Funai Electric failed to respond to our sales questionnaire for the eight review period, covering March 1, 1986–February 28, 1987. NEC failed to respond to our cost-of-production questionnaire for the eighth review period. Sharp Corporation failed to respond to our supplemental sales questionnaire for the second review period, covering April 1, 1980–March 31, 1981.

Therefore, for these three firms we used the best information available for assessment and estimated antidumping duty cash deposit purposes. As best information available we used information that was adverse to the firms. For Funai, we used its last rate as best information available. For NEC we use that firms' own data as best information available, since this rate is in excees of both its past rates and the highest rate from the prior review of any other firm. For Sharp we used the highest rate from the prior review of other firms as best information available.

United States Price

In calculating United States price the Department used purchase price or exporter's sales priece ("ESP") both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made adjustments where applicable, for ocean freight, marine insurance, U.S. and Japanese land freight, inland freight insurance, U.S. and Japanese brokerage fees, Japanese customs clearance fees, wharfage, export license fees, forwarding and handling charges, export selling expenses incurred in Japan, discounts, royalties, rebates, commissions to unrelated parties, and the U.S. subsidiaries' selling expenses. No other adjustments were claimed or allowed. We accounted for taxes imposed in Japan, but rebated or not collected by reason of the exportation of the merchandise to the United States, by multiplying the ex-factory price of the televisions sold in the United States by the tax rate and adding the result to the U.S. price.

Foreign Market Value

In calculatiang foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, insurance, rebates, credit expenses, discounts, warranties, advertising, sales promotion, royalties, differences in the physical characteristics of the merchandise, and packing. For the sixth review period, we disallowed that portion of Mitsubishi's claimed advertising expense that was not related to telephone sales.

We made further adjustments, where applicable, for indirect selling expenses to offset U.S. commissions to unrelated parties and U.S. selling expenses for ESP calculations. We allowed as indirect selling expenses those selling expenses incurred by the related distributors. Finally, we made circumstances-of-sale adjustments for commodity tax differences, where appropriate. Level-of-trade adjustments were claimed but disallowed. No other adjustments were claimed or allowed.

Preliminary Results of Review and Intent to Revoke in Part

As a result of our review, we preliminarily determine for appraisement purposes that the margins range from 0 to 16.77 percent, 0 to 78.82 percent, and 0 to 301.20 percent for Fujitsu General, Mitsubishi, and NEC, respectively. Also, we preliminarily determine that cash deposit rates are as follows:

Manufacturer/ Exporter	Period of review	Margin (Percent)
Fujitsu General	04/01/83 to 03/31/84	[1] 0.15
	04/01/84 to 02/28/85	.11
Funai Electric	03/01/86 to 02/28/87	21.93
Hitachi	04/01/83 to 09/27/83	[1] .16
	03/01/86 to 02/28/87	[1] .16
Mitsubishi	04/01/83 to 03/31/84	.13
	04/01/84 to 02/28/85	.07
NEC	04/01/83 to 03/31/84	18.18
	04/01/84 to 02/28/85	6.69
	03/01/85 to 02/28/86	7.24
	03/01/86 to 02/28/87	31.14
Sanyo	04/01/83 to 03/31/84	[1] 2.86
	04/01/84 to 02/28/85	[1] 2.86
	03/01/86 to 02/28/87	[1] 2.86
Sharp	04/01/80 to 03/31/81	3.37

[1] No shipments during the period; rate from last review in which there shipments.

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this noticed and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttal comments, limited to issue raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Hitachi had no commercial shipments for six years and Sanyo had no shipments for four years. Therefore, we intend to revoke the antidumping finding with respect to this merchandise manufactured by Hitachi or Sanyo.

As provided for in § 353.54(e) of the Commerce Regulations, Hitachi and Sanyo have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances specified in the written agreement. If this partial revocation is made final, it will apply to all uniliquidated entries of this merchandise manufactured and exported to the U.S. by Hitachi or Sanyo, entered, or withdrawn from warehouse, for consumption on or after August 18, 1983 and September 27, 1983, respectively.

On January 26, 1988, we received allegations from Zenith, a petitioner, that Japanese TV manufacturers might be involved in transshipments through third countries, or final assembly operations in third countries or in the U.S. which use Japanese components, in an attempt to circumvent this antidumping finding. We investigated these allegations as they might relate to Hitachi or Sanyo, and we have no evidence that either firm is attempting to circumvent this finding.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for the above firms, except Fujitsu General and Mitsubishi. The rates for Fujitsu General and Mitsubishi remain unchanged from their rates in the last results of review, published on February 11, 1988 (53 FR 4050). For any shipments of this merchandise manufactured by Toshiba, Matsushita, or Victor, the cash deposit will continue to be at the rates published in the final results of the last administrative review for these firms (52 FR 8940, March 20, 1987 and 50 FR 24278, June 10, 1985, respectively).

For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after February 28, 1987 and who is unrelated to any reviewed firm or any previously reviewed firms, a cash deposit of 31.14 percent shall be required. These deposit requirements are effective for all shipments of Japanese television receivers, monochrome and color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, intent to revoke in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and 19 CFR 353.53a and 353.54.

Date: August 24, 1988.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-19689 Filed 8-29-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Railroad Axles; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products with respect to certain railroad axles.

DATE: Comments must be submitted no later than September 9, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of

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Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Brazil arrangement provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the U.S.A. for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product.

We have received a short-supply request for railroad axles for freight cars, roller bearing, raised wheel seat, classification "F," as described in the Association of American Railroads Manual of Standards and Recommended Practices, Standard 1963, Revised 1984, Effective March 1, 1985.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than September 9, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-19692 Filed 8-29-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Detroit, MI

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first (12) months is estimated at $322,500 in Federal funds and a minimum of $56,912 in non-federal contributions for the budget period April 1, 1988 thru March 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Detroit, Michigan geographic service area. The award number of this MBDC will be 05-10-88004-01.

The funding instrument for the MBDC will be a coopertive agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is October 21, 1988. Applications must be postmarked on or before October 21, 1988.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Date: August 24, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 88-19625 Filed 8-29-88; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Kansas City, Missouri

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first (12) months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-federal contributions for the budget period April 1, 1989 thru March 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Kansas City, Missouri geographic service area. The award number of this MBDC will be 07-10-89003-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDC funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is October 21, 1988. Applications must be postmarked on or before October 21, 1988.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Date: August 24, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 88-19628 Filed 8-29-88; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Cincinnati/Dayton, OH

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-federal contributions for the budget period March 1, 1989 to February 28, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Cincinnati/Dayton, Ohio geographic service area. The award number of this MBDC will be 05-10-89002-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is October 14, 1988. Applications must be postmarked on or before October 14, 1988.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Date: August 24, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 88-19627 Filed 8-28-88; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Cleveland, OH

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MEDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first (12) months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-federal contributions for the budget period April 1, 1989 thru March 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Cleveland, Ohio geographic service area. The award number of this MBDC will be 05-10-89005-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is October 21, 1988. Applications must be postmarked on or before October 21, 1988.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Date: August 24, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 88-19628 Filed 8-29-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Program, Coastal Energy Impact Program, and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Managment.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Mississippi, Alaska, Wisconsin, and Alabama Coastal Management Programs. Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering to the programmatic terms of their financial assistance awards and/or to their approved coastal management program; and to be making progress on award tasks, special award conditions, and significant improvement tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)-(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone 202/673-5104).

Date: August 19, 1988.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

[FR Doc. 88-19593 Filed 8-29-88; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management Programs and Estuarine Sanctuaries: State Programs—Intent to Evaluate Performance

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and

Coastal Resources Management (OCRM), announces its intent to evaluate the performance of the Washington Coastal Management Program (CMP), the North Carolina CMP, and the Rhode Island (Narragansett) National Estuarine Research Reserve through October 31, 1988. Evaluation of the coastal management program will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Evaluation of the National Estuarine Research Reserves will be conducted pursuant to section 315(f) of the CZMA which requires the periodic review of the performance of each reserve with respect to its operation and management. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the Federal Register announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Oceanic Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

Date: August 19, 1988.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog 11.419

[FR Doc. 88–19584 Filed 8–29–88; 8:45 am]

BILLING CODE 3510-08-M

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of an experimental fishing permit to the states of Washington and Oregon for the harvest of soupfin shark and other groundfish species with gillnets north of 38° N. latitude in the exclusive economic zone off the coasts of Washington and Oregon. The permit authorizes the use of experimental fishing gear to harvest groundfish which otherwise would be prohibited by federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

EFFECTIVE DATES: July 15, 1988, through October 31, 1988.

ADDRESS: Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing that otherwise would be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10.

An EFP application to harvest soupfin shark and other groundfish species using gillnets in the exclusive economic zone (EEZ) off the coasts of Washington and Oregon was received from the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW) on May 16, 1988. Current groundfish regulations at § 663.26 do not authorize the use of gillnets north of 38° N. latitude to harvest groundfish. The states of Washington and Oregon are conducting an experimental fishery on thresher shark, a species that is not managed under the FMP, and requested that the vessels issued 1988 permits by the states also be issued a Federal EFP to authorize the retention and marketing of federally-managed sharks (soupfin, leopard, and spiny dogfish sharks) taken incidentally in the state experimental drift gillnet fishery for thresher sharks. A notice acknowledging receipt of the application, describing the proposal, and requesting public comment was published in the Federal Register on June 15, 1988 (53 FR 22371). No public comments were received. The application was considered by the Pacific Fishery Management Council, including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, at its July 1988 public meeting in Portland, Oregon. The Council and its advisory groups recommended that NMFS issue an EFP as requested in the joint application from Washington and Oregon. The NMFS Regional Director, after having considered all factors including the potential for entanglement of non-target species in the experimental gear, issued the EFP as recommended by the Council under the provisions of § 663.10.

The EFP authorizes the 34 state-permitted vessels to harvest soupfin, leopard and spiny dogfish shark taken incidentally in the state-regulated thresher shark drift gillnet fishery from July 15, 1988, through October 31, 1988, in the EEZ off the coasts of Washington and Oregon. Under the terms and conditions of the permit, the vessels must have a valid WDF or ODFW state permit which restricts the fishery to at least 20 miles offshore and limits the vessels to the use of one gillnet that is not to exceed 1,000 fathoms in length with a minimum 16-inch mesh. Permit holders are required to maintain detailed logs and allow a WDF or ODFW observer to accompany the vessel, if so requested.

Further details or a copy of the permit may be obtained from the NMFS Regional Director at the above address.

Authority: 16 U.S.C. 1801 *et seq.*

Ann D. Terbush,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–19653 Filed 8–29–88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 22, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Roadmaps Review will meet on 28 Sept. 88 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to review the roadmaps for the programs in the Air Force S&T base. This meeting will involve discussions of classified defense matters listed in section 552b(c)

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of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–19664 Filed 8–29–88; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

[3710–EN]

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Regional Landfill Expansion in Non-tidal Wetlands in the City of Suffolk, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate project alternatives and the public interest review factors for the proposed regional landfill expansion.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Pamela Painter, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virigina 23510, (804) 441–7654.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Southeastern Public Service Authority proposes a 440 acre expansion of an existing regional landfill which will involve the filling of an estimated 376 acres of non-tidal, seasonally-flooded palustrine forested wetlands which are a part of the Great Dismal Swamp, adjacent to Burnetts Mill Creek, a tributary of the Nansemond River in Suffolk, Virginia. The existing landfill will reach capacity by June 1992 unless measures are taken to increase its useful life (such as vertical expansion, additional recycling efforts and increased sales of refuse derived fuel). The proposed expansion will provide disposal capacity until the year 2016 for 24.5 million cubic yards of garbage.

2. Alternatives

Alternatives which will be investigated include, but will not be limited to, site alternatives in the service area, the construction of a mass burn facility, waste volume reduction through increased refuse derived fuel sales and/or recycling, combinations of some alternatives and no project.

3. Scope Process

A pre-application scoping meeting was held with State and Federal agencies in May 1988 and formal agency scoping comments were requested in July 1988. Significant issues which have been identified thus far include wetland destruction and impacts to a federally listed threatened species (the Dismal Swamp southeastern shrew). A public notice requesting written public comments will be published on or about August 10, 1988.

4. Public Scoping Meeting

If it is determined that a public scoping meeting is necessary to assist the Corps in identifying significant issues which should be addressed in the DEIS, the date and location of the meeting will be announced by separate public notice when scheduled.

5. DEIS Availability

It is estmated that the DEIS will be available to the public for review and comment in the spring of 1989.

Date: August 12, 1988.

J.J. Thomas,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88–19598 Filed 8–29–88; 8:45 am]

BILLING CODE 3710-EN-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before September 29, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invities public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 25, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Education Research and Improvement

Type of Review: New
Title: Survey on the Use of Research and Development Resources—Fast Response Survey System
Affected Public: State or local governments
Frequency: One time only
Reporting Burden:
Responses: 1,000
Burden Hours: 500
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will obtain information from school district concerning their use of research and development resource funded by the Department. The survey will provide information that will assist the Department's decisionmaking about the structure and types of serivces to be offered through the regional

educational laboratory program in the future.

Office of Postsecondary Education

Type of Review: Revison
Title: Student Aid Report
Affected Public: Individuals or households; businesses or other for-profit; non-profit institutions
Frequency: Annually
Reporting Burden:
Responses: 12,366,066
Burden Hours: 2,021,655
Recordkeeping:
Recordkeepers: 6,000
Burden Hours: 438,387
Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by eligible students to the participating institution of their choice. The institution submits Part 3 of the SAR to the Department to receive funds for the applicant.

Office of Postsecondary Education

Type of Review: Extension
Title: Request for Collection Assistance under Federal Insured Student Loan Program
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions
Frequency: On occasion
Reporting Burden:
Responses: 3,000
Burden Hours: 990
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: Lending institutions submit this form to request assistance in obtaining accurate addresses of borrowers under the Federal Insured Student Loan Program. The Department uses this information to obtain the borrower's current address in order for the lender to resume collection activity on the loan.

Office of Postsecondary Education

Type of Review: Extension
Title: Lender's Manifest for Federally Insured Loans
Affected Public: Businesses or other for-profit
Frequency: On occasion
Reporting Burden:
Responses: 27,000
Burden Hours: 5,400
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: Lenders report the conversion of a loan to repayment and loans paid in full to the Department. Department uses the information to tract the status of loans under the Federal Insured Student Loan Program.

Office of Vocational and Adult Education

Type of Review: Revision
Title: State Plan for Adult Education
Affected Public: State or local governments
Frequency: Quadrennially
Reporting Burden:
Responses: 54
Burden Hours: 11,880
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: State educational agencies submit State plans to receive Federal funds for adult education programs. The Department uses the information to determine grant eligibility and to ensure compliance with the Adult Education Act, as amended.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Application for Federal Assistance for the Strengthening Institutions Program
Agency Form Number: ED 851a
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 365
Burden Hours: 9,855
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by institutions of higher education to apply for grants under the Strengthening Institutions Program. The Department uses this information to make grant awards to those institutions that are eligible.

Office of Postsecondary Education

Type of Review: New Collection
Title: Christa McAuliffe Fellowship Program Performance Report
Agency Form Number: NA
Frequency: Annually
Affected Public: Individuals
Reporting Burden:
Responses: 115
Burden Hours: 345
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Department uses this information to determine that the Fellowship carried out the activities described in the approved application and met the service requirement of the Fellowship.

Office of Educational Research and Improvement

Type of Review: New
Title: Survey on Private School Early Estimates—Fast Response Survey System
Affected Public: Businesses or for-profit; non-profit institutions
Frequency: One time only
Reporting Burden:
Responses: 1,000
Burden Hours: 500
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will obtain from a sample of private schools early estimates of key statistics that will be comparable to the Common Core of Data early estimates of public schools. The Department will use the data to develop a descriptive profile of users and providers in the American educational system.

[FR Doc. 88-19679 Filed 8-29-88; 8:45 am]
BILLING CODE 4000-01-M

Meetings: Education Intergovernmental Advisory Council

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: September 20, 1988; 9:30 a.m.–4:00 p.m.

ADDRESS: Department of Education, Room 4003, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Gwen A. Anderson, Executive Director, Intergovernmental Advisory Council on Education, Room 3036, 400 Maryland Avenue, SW., Washington, DC, 20202–7576, 732–3844.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The meeting of the Executive Committee is open to the public. The proposed agenda includes:

Old Business

—Discussion of FY 1988 Conference Report
—Other Old Business
New Business
—Discussion of FY 1989 Conference Report
—Other New Business

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, Room 3036, 400 Maryland Avenue, SW., Washington, DC, 20202–7576, from the hours of 9:00 a.m. to 5:00 p.m.

Dated: August 24, 1988.

Michelle Easton,

Acting Deputy Under Secretary of Intergovernmental and Interagency Affairs.

[FR Doc. 88–19583 Filed 8–29–88; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Finding of No Significant Impact; Transuranic Waste Management Activities at the Savannah River Plant, Aiken, SC

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (EA), DOE/EA–0315, for transuranic (TRU) waste management activities at DOE's Savannah River Plant (SRP), including the construction and operation of a new TRU Waste Processing Facility. Based on the analyses in the EA, DOE has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an environmental impact statement is not required and the Department is issuing this Finding of No Significant Impact (FONSI).

Copies of the EA are available from: Mr. Stephen Wright, Director, Environmental Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29801, (803) 725–3957.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Director, Office of NEPA, Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600

Proposed Action: The proposed action involves: (1) Retrieval of stored TRU waste; (2) construction and operation of the TRU Waste Processing Facility (TMF) to process, if necessary, the SRP retrievably-stored and newly-generated waste; and (3) repackaging, certification and shipment of SRP TRU waste to the Waste Isolation Pilot (WIPP), near Carlsbad, New Mexico. The WIPP is a DOE research and development facility designed to demonstrate the safe and environmentally acceptable disposal of radioactive waste from national defense programs. After a five year demonstration phase of operations, scheduled to begin in late 1988, a decision will be made on conversion of the WIPP to a permanent repository for TRU waste.

The proposed action for the SRP TRU waste is consistent with the objectives stated in the "Final Environmental Impact Statement, Waste Isolation Pilot Plant" (DOE/EIS–0026), and will enable SRP to eliminate interim TRU waste storage and the risk of groundwater contamination or air emissions resulting from storage container failure.

TRU waste is radioactive waste from the production of nuclear materials which is contaminated with more than 100 nCi of transuranium elements per gram of waste. SRP TRU waste includes hazardous waste components, such as used oils, which are classified as mixed wastes and are subject to the requirements of the Resource Conservation and Recovery Act (RCRA). SRP will comply with RCRA requirements for mixed waste treatment, storage, and shipping. Compliance with RCRA requirements will not affect the environmental impacts of the management of stored and retrievable TRU waste at SRP.

Proposed TRU waste retrieval activities at SRP will use earthmoving equipment to remove the top three feet of the four-foot soil cover over burial ground storage pads. The remaining soil will be removed with a remotely operated High Efficiency Particulate Air-filtered soil vacuum. Shielded lifting canisters will be used where possible to lift the waste containers from the pads and into shipping casks for transportation to the new processing facility.

The TWF will be located near the center of the SRP plant site in a chemical separations area which is near SRP burial grounds containing TRU waste. The new facility will process newly-generated and stored TRU waste as necessary to meet WIPP criteria. It is designed to vent, purge, x-ray, and assay the waste storage containers. It will reduce the size of large waste and solidify liquids as necessary. It will then repackage the waste to meet WIPP waste acceptance criteria requirements for shipment and emplacement is the WIPP. TRU waste will be reclassified in an existing SRP waste certification facility (WCF) as either WIPP-certified waste or low-level waste. WIPP-certified waste will be shipped to WIPP and low-level waste will be disposed onsite in accordance with the requirements pertaining to disposal of low-level radioactive waste.

As of December 1987, SRP had approximately 370,000 cubic feet of TRU waste, 56% (207,000 cubic feet) of which is in interim storage. TRU waste which is retrievably stored is in galvanized steel drums on concrete pads or contained in concrete and steel boxes, concrete culverts and galvanized steel drums buried in shallow trenches. The remaining SRP TRU waste is buried as non-retrievable waste. The waste is not currently scheduled to be shipped to WIPP. Management of the nonretrievable TRU waste is not within the scope of the current proposed action but was evaluated in a separate SRP NEPA evaluation, "Final Environmental Impact Statement, Waste Management Activities for Groundwater Protection", (DOE/EIS–0120).

Some newly-generated waste which meets WIPP requirements without processing will be certified in the WCF and is scheduled to be shipped to WIPP starting in 1989. Shipment to WIPP of TRU waste which is retrieved from interim storage is scheduled to begin in 1995. Drums of TRU waste certified to meet WIPP criteria will be transported from SRP to WIPP in double-walled containers referred to as TRUPACTs (Transuranic Package Transporters) which incorporate a double-walled design to protect the cargo against collision, puncture, and fire in case of accident. The TRUPACT design will be certified by the Nuclear Regulatory Commission and will meet the requirements of DOE Order 5480.3 "Safety Requirements for the Packaging and Transportation of Hazardous Materials, Hazardous Substances and Hazardous Wastes."

Distances for shipments to WIPP were estimated using an Oak Ridge National Laboratory highway routing model. Potential routings maximized the use of interstate highways from SRP to the New Mexico area within New Mexico to the WIPP facilities near Carlsbad. Potential rail routings were taken from a DOE transportation assessment and guidance report, "Transuranic Waste Transportation Assessment and Guidance Report", (DOE/TIO–002, 1986).

Environmental Impacts

The potential environmental consequences of the proposed action

were analyzed for several categories of activities which included: (1) Construction of the TWF; (2) waste retrieval and processing operations; and (3) transportation of waste to WIPP. No significant impacts were determined in any category under routine or accident conditions. The results of the analysis are summarized below.

Construction: The TWF will occupy four and a half acres of previously developed land in H-Area. No new land or structures will be required for retrieval activities in SRP burial grounds. Very minor construction impacts will be experienced onsite. The peak construction work force of 28 workers will have minimal effects on area land use, housing and social services. No significant impacts are expected on ecological resources or archaeological or historical sites.

Retrieval and Processing Operations: Once operational, the new facility will employ 40 people, many already employed at SRP. Liquid wastes from TWF processing operations will be recovered to prevent the release to the environment of low-level radioactive materials. After filtering, routine radioactive airborne releases from the new facility will be extremely small and well within applicable Federal standards. Annual releases to the atmosphere are estimated to be less than 6.7E–05 Ci of plutonium 238 and/or 239. At the plant boundary, the annual maximum individual dose from such releases is projected to be 3.5 E–04 mrem, which is several orders of magnitude below the U.S. Environmental Protection Agency standard of 25 mrem/year for routine radiological releases to the atmosphere (40 CFR 61) and the DOE routine operations standard of 100 mrem/year from all potential exposure pathways (DOE Order 5480.1A). No significant offset impacts are anticipated in connection with routine waste retreval operations.

Routine operations will result in small radiation exposures to the operating personnel. The average occupational dose for routine TRU waste retrieval and processing activities was estimated as 0.22 rem/year. This rate of exposure is well below the DOE annual occupational limit of 5 rem (DOE Order 5480.1A).

The most severe credible accident (fire in a storage culvert in an SRP burial ground trench) would result in a maximum individual dose at the SRP boundary) of 4.4 rem, which is well below the DOE siting guidlines of 25 rem for routine postulated accidental releases for nonreactor nuclear facilities (DOE Order 6430.1 Chapter 1).

Transportation Impacts: For truck and rail shipments of TRU wastes from SRP to WIPP the truck drivers, train crew and population along the route are potentially exposed to low levels of radiation penetrating the transportation package. As previously stated, transportation of TRU waste would be conducted in NRC-licensed shipping containers designed to withstand the most severe accidents without releasing their contents. The maximum calculated does to the onsite and offsite population under routine and accident conditions is projected to be 3.9 person-rem/year (by truck), which is insignificant in comparison to a natural background exposure to the same population of 105,000 person-rem/year. The greatest risk from transportation is nonradiological resulting from trauma associated with vehicle collisions/accidents. However, as an added precaution against radiological risk, overall emergency response plans and procedures are being developed by the Department to address WIPP related transportation accidents.

Alternatives Considered

In the EA, DOE considered the following alternatives to the proposed action of retrieving stored TRU waste and constructing the new processing facility at SRP for shipment of SRP TRU waste to WIPP: no action, periodic container overpacking, onsite disposal, and shipment of unprocessed waste to WIPP.

The no action alternative was determined to be unacceptable because storage containers will deteriorate over time, increasing the potential for container failure and contamination of the environment. The container overpack alternative was determined to be undesirable because TRU waste processing and disposal would be postponed until a later date, increasing the potential for container failure and environmental contamination. In addition, neither of these alternatives would provide for the permanent disposal of TRU waste.

Studies have not been conducted at SRP specifically to determine the technical feasibility of disposing of TRU wastes onsite. Although it is believed that TRU wastes could be disposed in properly engineered concrete vaults onsite, no studies are planned to investigate their onsite disposal because DOE believes that offsite geologic disposal of SRP TRU wastes is environmentally preferable to near surface disposal at SRP. The alternative of transporting unprocessed waste to WIPP was not selected because this waste would not meet WIPP acceptance criteria, thus requiring it to be shipped to an existing processing facility at the Idaho National Engineering Laboratory for final processing before shipment to WIPP. This alternative would result in tripling shipping distances, with corresponding increases in environmental and accidental risk and costs.

Determination:

The proposed TRU waste retrieval and processing activities at SRP, including the proposed TRU waste processing facility, and the subsequent transportation of TRU wastes to WIPP, do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act. This finding is based on the analyses in the EA. Therefore, an Environmental impact Statement for the proposed action is not required.

Issued at Washington, DC, this 24th day of August, 1988.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–19711 Filed 8–29–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Civilian Radioactive Waste Management

Start of the Public Comment Period for the Initial Version of the Dry Cask Storage Study

AGENCY: Office of Civilian Radioactive Waste Management; Energy.

ACTION: Notice of public comment period.

SUMMARY: In accordance with the requirements of section 5064 of the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100–203), the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) has prepared an initial version of a report on the study and evaluation of the use of dry cask storage (and other technologies currently being considered) at reactor sites to meet the utility industry's spent nuclear fuel storage needs through the start of operation of a permanent geologic repository (year 2003). As announced in the April 26, 1988 **Federal Register**, the OCRWM, as part of this study, is soliciting the views of State and local governments and the public on this initial version of the report. The public comment period will close on October 28, 1988.

Comments received after that time will be considered to the extent possible. Those interested in receiving a copy of the report or submitting comments should write to the DOE contact listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Head, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, RW–322, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585

SUPPLEMENTARY INFORMATION: This notice is intended to facilitate the participation of State and local governments and the public by informing them of the study and its objectives, and notifying them that the initial version of the report is available for their review and comment. On April 26, 1988, a notice was posted in the **Federal Register** announcing the DOE's intent to release this initial version and requesting that those interested in commenting on the report submit a request for a copy to the DOE.

The initial version of the report is now available, and those who responded to the April 26 notice will automatically receive a copy. Others interested in receiving a copy or submitting comments should write to the DOE contact listed above. The public comment period will close on October 28, 1988.

After reviewing the comments received, the Department will make appropriate modifications to the report before it is submitted to the Congress. Comments received before or during the public comment period will be included in a comment appendix to the report and, if time permits, a summary of comments may be included in the body of the report.

The report is a study and evaluation of the use of dry cask storage (and other technologies currently being considered) at reactor sites to meet the utility industry's spent nuclear fuel storage needs through the start of operation of a permanent geologic repository (year 2003). Consistent with the guidance from the Congress, the objectives of the study are:

1. To consider the costs of dry cask storage technology, the extent to which dry cask storage at reactor sites will affect human health and the environment, the extent to which storage at reactor sites affects the cost and risk of transporting spent nuclear fuel to a central facility such as a monitored retrievable storage facility, and any other factors that are considered appropriate.

2. To consider the extent to which amounts in the Nuclear Waste Fund can be used, and should be used, to provide funds to construct, operate, maintain, and safeguard spent nuclear fuel in dry cask storage at reactor sites.

3. To consult with the Nuclear Regulatory Commission and include its views in the report.

4. To solicit the views of State and local governments and the public.

Issued in Washington, DC August 22, 1988.

Charles E. Kay,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 88–19712 Filed 8–29–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–380–000 et al.]

Minnesota Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Minnesota Power & Light Company

[Docket No. ER88–380–000]

August 24, 1988.

Take notice that on July 18, 1988, Minnesota Power & Light Company tendered for filing, pursuant to a Deficiency Letter dated June 16, 1988, a compliance filing with revised Interchange Service Agreement amendments which contain appropriate modifications.

Comment date: September 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER88–219–000]

August 24, 1988.

Take notice that on July 11, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing a bridge agreement with Turlock Irrigation District (Turlock) for the period of April 1, 1988, through June 30, 1988. PG&E states that is complying with FERC's stated desire to have on file agreements between PG&E and its wholesale customers.

Comment date: September 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket Nos. ER84–705–000 and ER87–581–000]

August 24, 1988.

Take notice that on August 12, 1988, Boston Edison Company (Company) tendered for filing a revision to its Rate S–8/Step C and costs of service studies filed on June 24, 1988. The Company states that it did not reduce the calculation of rate base to reflect the partial deductibility of decommissioning expense as provided for by the Deficit Reduction Act of 1984. The adjustment of the rate base calculation has required the Company to correct the following portions of its June 24 filing:

Enclosure A: Narrative, page 1.
Enclosures B, E and G: Statement BG, Demand Rate and Energy Rate.
Enclsoures C, F and H: Statement AF–1 (not included in the 6/24/88 filing); Statements BK, BK–1 and BK–2; Statement BK–R, Schedules 1, 2, 6, 9, 14 and 18.
Enclosure D: Tariffs, page 1.
Enclosure J: Workpapers 2, 4 and 5; workpaper 6 (new).

Comment date: September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Cogen Technologies, Inc.

[Docket No. QF88–485–000]

August 25, 1988.

On August 9, 1988, Cogen Technologies, Inc. (Applicant), of 1600 Smith Street, Suite 5000, Houston, Texas 77002, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Everett, Massachusetts. The facility will consist of a combustion turbine generating unit, a heat recovery steam generator, and an extraction/condensing steam turbine generating unit. Process steam produced by the facility will be sold to Monsanto Petrochemical complex for its use in various process requirements. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 52.65 MW. Installation of the facility will begin in March 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. Lederle Laboratories

[Docket No. QF88–459–000]

August 25, 1988.

On August 8, 1988, Lederle Laboratories (Applicant), of Middletown Road, Pearl River, New York 10965, submitted for filing an application for certification of a facility as a qualifying

cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Pearl River, New York. The facility will consist of two combustion turbine generating units and two heat recovery steam generators equippped with supplementary firing duct burners. Steam produced by the facility will be used for manufacturing processes, space heating and cooling. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 16.6 MW. Installation of the facility was expected to begin in the second quarter of 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

6. Harold A. Wentworth, Jr.

[Docket No. ID–2372–000]

August 26, 1988.

Take notice that on August 15, 1988, Harold A. Wentworth, Jr. tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position and Corporation

Vice President—Electric Operations; Louisville Gas and Electric Company.
Vice President—Electric Operations; Ohio Valley Transmission Corporation.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER88–571–000]

August 26, 1988.

Take notice that on August 19, 1988, Idaho Power Company (Idaho Power) tendered for filing the Average System Cost (ASC) determined by the Bonneville Power Administration (BPA), BPA's written ASC report, and Idaho Power's ASC schedules (Appendix 1) for Idaho Power's Idaho exchange jurisdiction. Idaho Power also submitted its agreement with and/or objections to BPA's Average System Cost determination.

The ASC rates filed have been determined pursuant to the Revised Average System Cost Methodology approved by the Commission in its Order No. 400 issued October 1, 1984 in Docket No. RM84–16–000, and section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 830–839h). This act provides for the exchange of electric power between Idaho Power and BPA for the benefit of Idaho Power's residential and farm customers.

A copy of the filing has been served upon BPA and all parties to Idaho Power's Appendix 1 filing with BPA.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER88–572–000]

August 26, 1988.

Take notice than on August 22, 1988, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Wholesale Firm Power Contract, between KCPL and Missouri Public Service Company dated August 17, 1988. KCPL states that the Amendatory Agreement provides for an extension of the contract term and modified rate design for firm power service.

KCPL requests an effective date of the date of filing, and therefore requests waiver of the Commission's notice requirements.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 or the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19820 Filed 8–29–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–682–000, et al.]

Trunkline Gas Co. et al.; Natural gas certificate filings

August 23, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88–682–000]

Take notice that on August 15, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–682–000 a prior notice request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on a firm basis on behalf of National Steel Corporation (National), an end-user, under its blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline states that it proposes to transport up to 18,000 Dt of natural gas per day on a firm basis on behalf of National pursuant to a gas transportation agreement dated July 1, 1988, (Agreement). The Agreement provides for Trunkline to transport the gas from various points of receipt on its system in Illinois, Louisiana, offshore Louisiana, Tennessee and Texas and redeliver the gas, less fuel use and unaccounted for line loss, to Panhandle Eastern Piper Line Company (Panhandle) in Douglas County, Illinois for transportation to National.

Trunkline further states that the estimated daily and estimated annual quantities to be transported would be 18,000 Dt and 6,570,000 Dt, respectively. Trunkline asserted that service under § 284.223(a) commenced on July 1, 1988, as reported in Docket No. ST88–4730.

Comment date: October 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP88–681–000]

Take notice that on August 15, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–681–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on a firm basis on behalf of National Steel Corporation (National), an end-user, under its blanket certificate issued in Docket No. CP86–585–000, all as more fully set forth in the request which is on

file with the Commission and open to public inspection.

Panhandle states that it proposes to transport up to 18,000 Dt of natural gas per day on a firm basis on behalf of National pursuant to a gas transportation agreement dated July 1, 1988, (Agreement). The Agreement provides for Panhandle to receive the gas from Trunkline Gas Company (Trunkline), in Douglas County, Illinois and redeliver the gas, less fuel use and unaccounted for line loss, to Michigan Consolidated Gas Company and National, in Wayne County, Michigan.

Panhandle further states that the estimated daily and estimated annual quantities of gas to be transported would be 18,000 Dt and 6,570,000 Dt, respectively. Panhandle asserted that service under § 284.223(a) commenced on July 1, 1988, as reported in Docket No. ST88-4720.

Comment date: October 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP88-674-000]

Take notice that on August 12, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP88-674-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to certain existing jurisdictional sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to partially abandon sales service to seven sales customers: Great River Gas Company (Great River), Michigan Gas Utilities (MGU), Citizens Gas Fuel Company (Citizens), Battle Creek Gas Company (Battle Creek), Northern Indiana Fuel and Light Company, Inc. (NIFL), Southeastern Michigan Gas Company (SEMCO), and Ohio Gas Company (Ohio Gas). Panhandle states that the seven sales customers have elected under § 284.10 of the Commission's regulations to convert a portion of its daily Contract Demand (CD) to firm transportation effective as of April 1, 1988. Panhandle explains that the firm transportation would be rendered under the terms and conditions of its Rate Schedule PT. Accordingly, Panhandle proposes to reduce the seven customers' current daily sales contract quantity as follows, to be effective April 1, 1988.

Customer	Monthly CD (Mcf/d) reduction
Great River	1,049
MGU	3,004
Citizens	1,214
Battle Creek	3,430
NIFL	1,432
SEMCO	3,933
Ohio Gas	3,947

Comment date: September 13, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed wihtin the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19621 Filed 8-29-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3437-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management (OMB) for review and are available to the public for review and comments. The ICRs describe the nature of the information collection and their expected cost and burden; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Health Significance of Bacteria Found in Point-of-Entry Granular Activated Filters. (EPA ICR 1473).

Abstract: The study will provide guidelines for the certification of filter devices used in household potable water lines at point-of-entry. Volunteer respondents will be asked to complete a monthly personal health diary to provide information needed in assessing whether these filters will change the frequency of respiratory illness within the sample population.

Burden Statement: The estimated public reporting burden for this collection of information is 5.2 hours per respondent per year. This estimate includes an initial telephone interview, completing a home identification

questionnaire, and maintaining a monthly health diary.

Respondents: Households

Estimated No. of Respondents: 160

Estimated Total Annual Burden on Respondents: 287 hours

Frequency of Collection: 13 responses per year

Office of Solid Waste and Emergency Response—Region 5

Title: Gray Iron Foundry Waste Management Information. (EPA ICR 1484).

Abstract: This collection is designed to identify gray iron foundries that have not submitted proper notification of facility generation, treatment, storage or disposal of hazardous wastes under the Resource Conservation and Recovery Act (RCRA). Foundries contacted by EPA will be required to respond by letter to question concerning their usage of hazardous materials.

Burden Statement: The estimated public reporting burden for this collection of information is 6 hours per respondent per year. This estimate includes the time to review instructions, researching existing data sources, process/compile data, and complete letter.

Respondents: Gray iron foundries operating within EPA Region 5

Estimated No. of Respondents: 254

Estimated Total Annual Burden on Respondents: 1,524 hours

Frequency of Collection: 1 time per response

Send comments regarding the burden estimates, or any other aspects of these collections of information, including suggestions for reducing the burden, to:

Carla Levesque, Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St., SW., Washington, DC 20460.

and

Nicolas Garcia (ICR) 1473) and Marcus Peacock (IRC 1484), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503. (Telephone (202) 395–3084).

Date: August 21, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–19831 Filed 8–29–88; 8:45 am]

BILLING CODE 6560–50–M

[FIFRA Docket Nos. 625, et al.; (FRL–3436–6)]

Pesticide Products Containing Inorganic Arsenicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Objections and Requests for Hearing.

Notice is hereby given, pursuant to § 164.8 of the Rules of Practice, 40 CFR 164.8, promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.*, that certain registrants have filed objections to and have requested a hearing on the Administrator's notice of intent to cancel the registrations for pesticide products containing inorganic arsenicals registered for non-wood preservative use publish in the **Federal Register** on June 30, 1988, 53 FR 24787. These proceedings have been consolidated for hearing by order of the Chief Administrative Law Judge dated August 24, 1988.

For information concerning the issues involved and other details of these proceedings, interested persons are referred to the dockets of these proceedings on file with the Hearing Clerk, Environmental Protection Agency, (Mail Code A–110); Room 3708, Waterside Mall, 401 M Street, SW., Washington, DC 20460. (202–382–4865).

Dated: August 24, 1988.

Gerald Harwood,

Chief Administrative Law Judge.

[FR Doc. 88–19832 Filed 8–29–88; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–3436–8]

Water Quality Criteria; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Ambient Water Quality Criteria Document.

SUMMARY: EPA announces the availability and provides a summary of the final ambient water quality criteria document for aluminum. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act. These water quality criteria may form the basis for enforceable standards.

Availability of Document:

This notice contains a summary of the final aluminum criteria document containing final ambient water quality criteria for the protection of aquatic organisms and their uses. Copies of the complete criteria document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (phone number ((703) 487–4650). The NTIS publication order number for the document is published below. This document is also available for public inspection and copying during normal business hours at the Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

Copies of this document are also available for review in the EPA Regional Office libraries. Copies of the document are not available from the EPA office listed below. Requests sent to that office will be forwarded to NTIS or returned to the sender.

1. Ambient Water Quality Criteria for Aluminum—EPA 440/5–86–008; NTIS Number PB.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH–585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–7321.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria, beginning in the 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), and February 15, 1984 (49 FR 5831), EPA announced the publication of 65 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act.

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the "National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" was announced at the same time. A bacteriological ambient water quality criteria document was published on

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March 7, 1986 (51 FR 8012). A water quality criteria document for dissolved oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986 which was released by the Office of Water Regulations and Standards on May 1, 1986. Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were issued by EPA on December 3, 1986 (51 FR 43665). A final criteria document for zinc was issued on March 2, 1987 (52 FR 6213). A final criteria document for selenium was issued on January 5, 1988 (53 FR 177). A final criteria document for chlorides was issued on May 26, 1988 (53 FR 19028).

Today EPA is announcing the availability of a final water quality criteria document for aluminum. A draft criteria document for aluminum was made available for public comment on March 11, 1986 (51 FR 8361). These final criteria have been derived after consideration of all comments received and after analysis of additional toxicity data which EPA received after the draft document was published. Inclusion of the additional toxicity data resulted in a lowering of the criteria recommended in the draft document. The new toxicity studies utilized by EPA in deriving the final aluminum criteria are specifically cited in the criteria document. The Agency invites comment on these studies. The Aluminum Association has commented that the toxicity of aluminum may be affected by a number of site-specific factors such as pH, hardness and the presence of organic material in the water, and they are considering a research program which focuses on these relationships. If data on these factors become available, the States may choose to consider them, along with any site specific or other new data that may become available, in setting State water quality standards. Those data as well as any other information which might be useful, will also be evaluated for any future revision of the aluminum criteria.

Dated: August 3, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

Appendix A—Summary of Water Quality Criteria for Aluminum National Criteria

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably, when the pH is between 6.5 and 9.0, if the four-day average concentration of aluminum does not exceed 87 μg/L more than once every three years on the average and if the one-hour average concentration does not exceed 750 μg/L more than once every three years on the average.

Implementation

Because of the variety of forms of aluminum in ambient water and the lack of definitive information about their relative toxicities to freshwater species no available analytical measurement is known to be ideal for expressing aquatic life criteria for aluminum. Previous aquatic life criteria for metals and metalloids were expressed in terms of the total recoverable measurement but newer criteria for metals and metalloids have been expressed in terms of the acid-soluble measurement. Acid-soluble aluminum (operationally defined as the aluminum that passes through a 0.45 um membrane filter after the sample has been acidified to a pH between 1.5 and 2.0 with nitric acid) is probably the best measurement at the present for the following reasons:

1. This measurement is compatible with nearly all available data concerning toxicity of aluminum to, and bioaccumulation of aluminum by, aquatic organisms. It is expected that the results of tests used in the derivation of the criteria would not have changed substantially if they had been reported in terms of acid soluble aluminum.

2. On samples of ambient water, measurements of acid soluble aluminum will probably measure all forms of aluminum that are toxic to aquatic life or can be readily converted to toxic forms under natural conditions. In addition, this measurement probably will not measure several forms, such as aluminum that is occluded in minerals, clays, and sand or is strongly sorbed to particulate matter, that are not toxic and are not likely to become toxic under natural conditions. Although this measurement (and many others) will measure soluble complexed forms of aluminum, such as the EDTA complex of aluminum, that probably have low toxicities to aquatic life, concentrations of these forms probably are negligible in most ambient water.

3. Although water quality criteria apply to ambient water the measurement used to express criteria is likely to be used to measure aluminum in aqueous effluents. Measurement of acid-soluble aluminum is expected to be applicable to effluents because it will measure precipitates, such as carbonate and hydroxide precipitates of aluminum, that might exist in an effluent and dissolve whan the effluent is diluted with receiving water. If desired, dilution of effluent with receiving water before measurement of acid-soluble aluminum might be used to determine whether the reviewing water can decrease the concentration of acid soluble aluminum because of sorption.

4. The acid-soluble measurement is expected to be useful for most metals and metalloids, thus minimizing the number of samples and procedures that are necessary.

5. The acid-soluble measurement does not require filtration of the sample at the time of collection, as does the dissolved measurement.

6. The only treatment required at the time of collection is preservation by acidification to a pH between 1.5 and 2.0, similar to that required for the total recoverable measurement.

7. Ambient waters have much higher buffer intensities at a pH between 1.5 and 2.0 than they do at a pH between 4 and 9.

8. Durations of 10 minutes to 24 hours between acidification and filtration of most samples of ambient water probably will not affect the result substantially.

9. Differences in pH within the range of 1.5 and 2.0 probably will not affect the result substantially.

10. The acid-soluble measurement does not require a digestion step, as does the total recoverable measurement.

11. After acidification and filtration of the sample to isolate the acid-soluble aluminum, the analysis can be performed using either atomic absorption spectrophotometric or ICP-atomic emmission spectrometric analysis, as with the total recoverable measurement.

Thus, expressing aquatic life criteria for aluminum in terms of the acid-soluble measurement has both toxicological and practical advantages. The U.S. EPA is considering development and approval of an analytical method such as acid-soluble.

The 0.45 μm membrane filter is the usual basis for an operational definition of "dissolved", at least in part because filters with smaller holes often clog rapidly when natural water samples are filtered. Some particulate and colloidal material, however, passes through a 0.45 μm filter. The intent of the acid-soluble measurement is to measure the concentrations of metals and metalloids that are in true solution in a sample that has been appropriately acidified. Therefore, material that does not pass through a filter with smaller holes, such as a 0.1 μm membrane filter, should not

be considered acid-soluble even if it passes through a 0.45 μm membrane filter. Optional filtration of appropriately filtered water samples should be considered whenever the concentration of aluminum that passes through a 0.45 μm membrane filter in an acidifed water sample exceeds a limit specified in terms of acid-soluble aluminum.

Metals and metalloids might be measured using the total recoverable method. This would have two major impacts because this method includes a digestion procedure. First, certain species of some metals and metalloids cannot be measured because the total recoverable method cannot distinguish between individual oxidation states. Second, in some cases these criteria would be overly protective when based on the total recoverable method because the digestion procedure will dissolve aluminum that is not toxic and cannot be converted to a toxic form under natural conditions. This could be a major problem in ambient waters that contain suspended clay. Because no measurement is known to be ideal for expressing aquatic life criteria for aluminum or for measuring aluminum in ambient water or aqueous effluents, measurement of both acid-soluble aluminum and total recoverable aluminum in ambient water or effluent or both might be useful. For example, there might be cause for concern if total recoverable aluminum is much above an applicable limit, even though acid soluble aluminum is below the limit.

In addition, metals and metalloids might be measured using the dissolved method, but this would also have several impacts. First, in many toxicity tests on aluminum the test organisms were exposed to both dissolved and undissolved aluminum. If only the dissolved aluminum had been measured, the acute and chronic values would be lower than if acid-soluble or total recoverable aluminum had been measured. Therefore, water quality criteria expressed as dissolved aluminum would be lower than criteria expressed as acid-soluble or total recoverable aluminum. Second, not enough data are available concerning the toxicity of dissolved aluminum to allow derivation of a criterion based on dissolved aluminum. Third, whatever analytical method is specified for measuring aluminum in ambient surface water will probably also be used to monitor effluents. If effluents are monitored by measuring only the dissolved metals and metalloids, carbonate and hydroxide precipitates of metals would not be measured. Such precipitates might dissolve due to dilution or change in pH or both when the effluent is mixed with receiving water. Fourth, measurement of dissolved aluminum requires filtration of the sample at the time of collection. For these reasons, it is recommended that aquatic life criteria for aluminum not be expressed as dissolved aluminum.

As discussed in the Water Quality Standards Regulation and the Foreword to this document, a water quality criterion for aquatic life has regulatory impact if it has been adopted in a State water quality standard. Such a standard specifies a criterion for a pollutant that is consistent with a particular designated use. With the concurrence of the U.S. EPA, States designate one or more uses for each body of water or segment thereof and adopt criteria that are consistent with the use(s). In each standard a State may adopt the national criterion, if one exists, or, if adequately justified, a site specific criterion.

Site-specific criteria may include not only site-specific criterion concentrations but also site-specific, and possibly pollutant-specific, durations of averaging periods and frequencies of allowed excursions. The averaging periods of "one hour" and "four days" were selected by the U.S. EPA on the basis of data concerning how rapidly some aquatic species react to increases in the concentrations of some pollutants, and "three years" is the Agency's best scientific judgment of the average amount of time aquatic ecosystems should be provided between excursions. However, various species and ecosystems react and recover at greatly differing rates. Therefore, if adequate justification is provided, site-specific and/or pollutant specific concentrations, durations, and frequencies may be higher or lower than those given in national water quality criteria for aquatic life.

Use of criteria, which have been adopted in State water quality standards, for developing water quality based permit limits and for designing wastewater treatment facilities requires selection of an appropriate wasteload allocation model. Although dynamic models are preferred for the application of these criteria, limited data or other considerations might require the use of a steady state model. Guidance on mixing zones and the design of monitoring programs is also available.

[FR Doc. 88-19633 Filed 8-29-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

August 24, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0025
Title: Application for Restricted Radiotelephone Operator Permit—Limited Use
Form No.: FCC 755

A revised application form has been approved through 7/31/91.

The October 1985 edition with a previous expiration date of 7/31/88 will remain in use until revised forms are available.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88-19607 Filed 8-29-88; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002605-004.
Title: Port of Oakland Terminal Agreement.
Parties: Port of Oakland, American President Lines, Ltd. (APL).
Synopsis: The agreement amends the basic agreement to provide for the filing with the Commission of further

amendments if APL exercises any option to renew the term of the agreement provided in Agreement No. 224-002605-003.

Agreement No.: 224-002758-007.
Title: Port of Oakland Terminal Agreement.
Parties: Port of Oakland, American President Lines, Ltd. (APL).
Synopsis: The agreement amends the basic agreement to provide for the filing with the Commission of further amendments if APL exercises any option to renew the term of the agreement provided in Agreement No. 224-002758-006.

Agreement No.: 224-002758C-003.
Title: Port of Oakland Terminal Agreement.
Parties: Port of Oakland, American President Lines, Ltd. (APL).
Synopsis: The agreement amends the basic agreement to provide for the filing with the Commission of further amendments if APL exercises any option to renew the term of the agreement provided in Agreement No. 224-002758C-002.

Agreement No.: 224-200148.
Title: Virgin Islands Port Authority Lease Agreement.
Parties: Virgin Islands Port Authority (Port), Tropical Shipping and Construction Co., Ltd.
Synopsis: The agreement revises and consolidates the various rental agreements presently existing between the Port and Tropical with respect to a certain parcel of land and warehouse located in Third Port Facility, St. Croix, Virgin Islands into a single lease agreement with provisions to extend the duration of the terms of the consolidated holdings.

By Order of the Federal Maritime Commission.

Dated: August 25, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-19656 Filed 8-29-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 16 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009968-020
Title: Inter-American Freight Conference Puerto Rico and U.S. Virgin Islands Area
Parties: A. Bottacchi S.A. de Navegacion C.F.I. e I. A/S Ivarans Rederi, Companhia Martima Nacional, Companhia de Navegacao Lloyd Brasileiro, Empresa Lineas Maritimas Argentinas Sociedad Anonima (Elma S/A), Empresa de Navegacao Alianca S.A., Frota Amazonica S.A., Paxicon Line, Suriname Line, Transportacion Maritima Mexicana S.A.
Synopsis: The proposed modification would conform the agreement to the Commission's requirements concerning Docket No. 86-16, service contract provisions.

Agreement No.: 202-010776-034
Title: Asia North America Eastbound Rate Agreement
Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Japan Line, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Orient Overseas Container Lines, Inc., Sea-Land Service, Inc., Yamashita-Shinnihon Steamship Co., Ltd.
Synopsis: The proposed modification would further clarify the provisions applicable to service contracts.

Agreement No.: 212-010286-015
Title: South Europe/U.S.A. Pool Agreement
Parties: Compania Trasatlantica Espanola, S.A., Costa Container Lines, S.p.A., Evergreen Marine Corporation, Farell Lines, Inc., "Italia" di Navigazione, S.p.A., Jugolinija, Lykes Lines, A. P. Moller-Maersk Line, Nedlloyd Lines, Sea-Line Service, Inc., P&O Containerss (TFL) Limited, Zim Israel Navigation Company, Ltd.
Synopsis: The proposed modification would authorize the parties to agree upon uniform contribution level(s) for commodities transported by them within the scope of the agreement.

Agreement No.: 203-011164-002
Title: U.S./Middle East Discussion Agreement
Parties: "8900" Lines, Jugolinija Line
Synopsis: The proposed modification would conform the agreement to the Commission's requirements concerning Docket No. 86-16, service contract provisions.

Agreement No.: 203-011171-001
Title: TFL/Nedlloyd/Sea-Land Agreement ("the Agreement")
Parties: P&O Containers (TFL) Limited, Nedlloyd Lijnen, B.V., Sea-Land Service, Inc.
Synopsis: The proposed modification would authorize the parties to discuss and jointly agree upon the chartering of surplus space on vessels operated under the terms of the Agreement to ocean common carriers not signatories to the Agreement. Any agreement reached with an outside party will be filed with the FMC.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: August 25, 1988.

[FR Doc. 88-19695 Filed 8-29-88; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 88-20]

Atlantis Line, Ltd. v. Australia New Zealand Direct Line; Filing of Complaint and Assignment

Notice is given that a complaint filed by Atlantis Line, Ltd. ("Atlantis") against Australia New Zealand Direct Line (a joint service of Australia New Zealand Container Line and Pacific Australia Direct Line) ("ANZL") was served August 25, 1988. Atlantis alleges that ANZL has published or participated in two tariffs applicable to the same shipments in the westbound U.S./Australia-New Zealand trade and thereby engaged in unfair and discriminatory practices and given unfair preferences to shippers other than Atlantis, all in violation of section 10 of the Shipping Act of 1984, 46 U.S.C. app. 1709.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 25,

1989, and the final decision of the Commission shall be issued by December 25, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88-19696 Filed 8-29-88; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080888 AND 081988

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity,	PMN Number	Date Terminated
The Clayton & Dubilier Private Equity Fund II Ltd Ptnsh, United Centrifugal Pumps, United Centrifugal Pumps	88-2068	08/08/88
Jeffrey H. Smulyan, General Electric Company, five subsidiaries	88-2116	08/08/88
Agway Inc., Robert A. Fischer, Sr., Milford Fertilizer Company	88-2145	08/08/88
Nippon Yusen Kaisha, Ltd., O.P. Adney, Jr., GST Corporation	88-2169	08/08/88
Nippon Yusen Kabushiki Kaisha, W.A. Jones, GST Corporation	88-2170	08/08/88
Theodore F. Perlman, Sysco Corporation, The HAVI Corporation	88-2204	08/08/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080888 AND 081988—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity,	PMN Number	Date Terminated
Inter-Regional Financial Group, Inc., Milwaukee Financial Group, Inc., Milwaukee Financial Group, Inc.	88-2231	08/08/88
Raymond G. Perelman, General Refractories Company, General Refractories Company	88-2193	08/09/88
ML Media Partners, L.P., Jay J. O'Neal, Universal Cable Holdings, Inc	88-2200	08/09/88
Sandoz Ltd., HSP, Inc., HSP, Inc	88-1999	08/10/88
George M. Phillips, The Philp Co. Trust, The Southland Corporation	88-2112	08/10/88
Armstrong World Industries, Inc., The Bydand Corporation, Gordon's, Inc	88-2133	08/10/88
Ford Motor Company, Mariani Financial Co., a California Limited Partnership, MFCO Associates, a California General Partnership	88-2134	08/10/88
Tele-Communications Inc., Cablevision Associates VI, L.P., Cablevision Associates VI, L.P	88-2153	08/10/88
Tele-Communications, Inc., Northeastern Cable Limited Partnership, Taft Cable Partners	88-2158	08/10/88
Anacomp, Inc., Xidex Corporation, Xidex Corporation	88-2165	08/10/88
Tele-Communications, Inc., Cablevision Associates VII, a Limited Partnership, Cablevision Associates VII, a Limited Partnership	88-2221	08/10/88
Pechiney, Tempcraft, Inc., Tempcraft, Inc	88-2226	08/10/88
Alan Bond, The Bell Group Ltd., The Bell Group Ltd	88-2237	08/10/88
Dofasco Inc., Canadian Pacific Limited, The Algoma Steel Corporation, Limited	88-2127	08/11/88
Shiseido Co. Ltd., Leandro P. Rizzuto, Zotos International, Inc	88-2182	08/11/88
Health Care Property Investors, Inc., Beverly Enterprises, Inc., Beverly Enterprises, Inc	88-2195	08/11/88
Castle & Cooke, Inc., MEI Diversified Inc., Bonner Packing Company	88-2113	08/12/88
James M. Fail, Integrated Resources, Inc., Integrated Resources, Inc	88-2152	08/12/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080888 AND 081988—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity,	PMN Number	Date Terminated
Martion Marietta Corporation, Gould Inc., Ocean Systems Divi of Gi—Glen Burnie, MD operations	88-2161	08/12/88
Contel Corporatin, Eaton Corporation, Data Systems Services Div. and Info. Mngmt Systems Divi	88-2183	08/12/88
American General Corporation, Pinnacle West Capital Corporation, Pinnacle West Capital Corporation	88-2184	08/12/88
Societe Nationale Elf Aquitaine, Roy M. Huffington, Huffington Petroleum Corporation	88-2199	08/12/88
H.H. Robertson Company, Star Acquisition Company, Star Acquisition Company	88-2220	08/12/88
Roadmaster Industries, Inc., Fuqua Industries, Inc., Ajay Enterprises Corporation	88-2235	08/12/88
Tele-Communications, Inc., Melia International N.V., Commonwealth Theatres, Inc	88-2246	08/12/88
NYNEX Corporation, U.S. West, Inc., U.S. West, Inc	88-2252	08/12/88
Saratoga Partners II, L.P., AMAX, Inc., Amax Zinc Company, Inc	88-2253	08/12/88
The Morgan Stanley Leveraged Equity Fund II, L.P., Cullum Companies, Inc., Cullum Companies, Inc	88-2263	08/12/88
Union Planters Corporation, UMIC Securities Corporation, UMIC Securities Corporation	88-2270	08/12/88
Nomura Securities Co., Ltd., Wasserstein, Perella & Co. Holdings, Inc., Wasserstein, Perella Group, Inc.	88-2286	08/12/88
Philip F. Anschutz, Santa Fe Southern Pacific Corporation, Southern Pacific Transportation Company	88-2291	08/12/88
Roy E. Disney and Patricia A. Disney, husband & wife, Polaroid Corporation, Polaroid Corporation	88-2166	08/15/88
Dainippon Ink and Chemicals, Incorporated, Technical Tape, Inc., Technical Tape, Inc	88-2219	08/15/88
Drexel Burnham Lambert Incorporated, Tate & Lyle, Staley Commodities International, Inc	88-2306	08/15/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080888 AND 081988—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity,	PMN Number	Date Terminated
Ely S. Jacobs, Beta Partners, Tripac Holding Corp. and Triangle Pacific Corp	88-2180	08/16/88
Standard Federal Savings Bank, Ford Motor Company, First Family Mortgage Corporation	88-2212	08/16/88
Donald J. Trump, The Pillsbury Company, The Pillsbury Company	88-2227	08/16/88
Mark IV Industries, Inc., Armtek Corporation, Armtek Corporation	88-2254	08/16/88
Precision Aerotech, Inc., Bowater Industries plc, R-9 Holdings, Inc	88-2281	08/16/88
The BOC Group plc, Spectramed, Inc., Spectramed, Inc	88-2292	08/16/88
Koninklijke Wessanen N.V., John F. Weeks, Jr., Weeks Dairy Foods, Inc	88-2135	08/17/88
Silicon Valley Group, Inc., Allegheny International, Inc., Thermco Systems, Inc	88-2186	08/17/88
Household International, Inc., Great American First Savings Bank, Certain assets of GAF	88-2275	08/17/88
Parfums Nina Ricci S.A., Societe Nationale Elf Aquitaine, Parfums Nina Ricci U.S.A. Inc	88-2214	08/18/88
Dillard Paper Company, Mr. Donald G. Shields, The Mudge Paper Company	88-2215	08/18/88
Pennant Properties PLC, Bay Financial Corporation, Bay Financial Corporation	88-2233	08/18/88
Saratoga Partners II, L.P., Rolf Ostern, Viking Office Products, Inc	88-2248	08/18/88
J.B. Poindexter, Chemtech Industries, Inc., Chemtech Industries, Inc	88-2277	08/18/88
First Boston, Inc., Insilco Corporation, Insilco Corporation	88-2337	08/18/88
First Boston, Inc., Insilco Corporation, Insilco Corporation	88-2347	08/18/88
M. Lee Pearce, M.D., American Medical International, Inc., American Medical International, Inc	88-2192	08/19/88
Ralph J. Roberts, Tele-Communications, Inc., Heritage Communications, Inc	88-2205	08/19/88
Marks and Spencer p.l.c., Allen I. Bildner, King Super Markets, Inc	88-2243	08/19/88
Itel Corporation, Leaseway Transportation Corp., Leaseway Transportation Corp	88-2295	08/19/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080888 AND 081988—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity,	PMN Number	Date Terminated
Westinghouse Electric Corporation, Westinghouse Electric Corporation, Aptus Partnership	88-2318	08/19/88
Hellman & Friedman Capital Partners, American President Companies, Inc., American President Companies, Inc	88-2323	08/19/88
Westinghouse Electric Corporation, T.L. Meehan, Aptus Partnership	88-2328	08/19/88
Westinghouse Electric Corporation, W.H. Hawks, Aptus Partnership	88-2329	08/19/88
First Boston, Inc., ISC Holdings Inc., ISC Holdings Inc	88-2336	08/19/88
Metropolitan Life Insurance Company, ISC Holdings Inc., ISC Holdings Inc	88-2348	08/19/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-19617 Filed 8-29-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committees; Meeting; Correction

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Correction notice.

SUMMARY: Public notice was given in the Federal Register on August 18, 1988, Volume 53, No. 160, on page 31396, that the Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH, would meet at the Days Inn. The notice is being corrected to read as follows:

The Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH, will meet at the Holiday Inn-Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852

All other information for this committee remains the same.

Date: August 25, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-19680 Filed 8-29-88; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 88N-0272]

Criteria for Determining the Regulatory Status of Foods and Food Ingredients Produced by New Technologies; Announcement of Study; Request for Scientific Data and Information

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office, is about to begin a study of which scientific concepts and considerations are most appropriately used to determine the regulatory status of foods and food ingredients that are produced by new technologies. FASEB is inviting submission of scientific data and information bearing on this topic. FASEB will provide the opportunity for public comment at an open meeting. FDA will announce in the Federal Register the date, time, and place of the meeting.

DATE: Scientific data and information to be submitted by September 30, 1988.

ADDRESSES: Scientific data and information should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the scientific data and information should be submitted to each office.

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030,

or

James H. Maryanski, Center for Food Safety and Applied Nutrition (HFF-

300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–88–2124) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of foods and cosmetics. FDA intends to develop a set of criteria that will permit the agency to determine the regulatory status and the safety of foods and food ingredients produced by new technologies. FDA is announcing that it has asked FASEB, as a task under the contract, to determine the scientific community's views on the safety of foods and food ingredients produced by new technologies. In response, FASEB asked its Life Sciences Research Office to appoint an ad hoc panel to study this matter. The ad hoc panel will report its findings to FASEB through its Life Sciences Research Office. FASEB will then evaluate these findings and submit its own report to FDA.

Many new or modified foods and food ingredients are being developed through new technologies such as recombinant DNA techiques. The degree of novelty associated with foods and food ingredients developed through these technologies will vary widely.

FDA believes that it would help expedite its evaluation of these new products, and would focus agency resources, if the factors that are most appropriate for evaluating the regulatory status and the safety of the new and modified foods and food ingredients were identified and agreed upon by the scientific community.

The agency considers a range of factors in evaluating the status of a product. Some of these factors include whether:

(1) The food ingredients is a reaction product of, or is manufactured from, generally recognized as safe (GRAS) food ingredients, regulated food additives, or substances otherwise considered to be safe (e.g., amino acids).

(2) The food ingredient is chemically similar to an ingredient whose use in food is GRAS but is not identical to that ingredient in all respects.

(3) The food ingredient contains impurities that must be controlled by a specification.

(4) The level of use of the food ingredient requires limitation based on existing safety information.

(5) Only limited published data or information exists to support the safety of the intended use of the food ingredient (e.g., patents, research papers, summary monographs, safety studies).

(6) The food ingredient has a history of use in food in some parts of the world, but the proposed uses are new to the United States.

(7) The food ingredient is derived from a source (e.g., plant or microorganism) that has been used safely in other contexts.

(8) The food ingredient is manufactured by a process that a manufacturer considers to be confidential (specific strains or traits, alternative methods, processing ingredients).

(9) The food ingredient has been genetically modified by a process considered to be confidential.

(10) The food ingredient has been "approved" by an international, national, or other recognized organization outside the United States as safe for use in foods but has not been evaluated by FDA.

(11) The food ingredient (e.g., tomato, potato, corn, wheat, rice, soybean, meat) has been genetically modified to enhance disease or weather resistance, improve nutritional quality, increase yield, or for any other reason.

FDA is interested in an evaluation of the relevance and significance of these and other factors to determine the regulatory status and safety of foods and food ingredients produced by the use of new technologies.

In accordance with 21 CFR 14.15(b)(1), notice is given that the ad hoc panel appointed by FASEB will hold an open meeting in the future, during which an opportunity will be provided for the public to present written and oral views, scientific data, and information on the issues listed above and on similar issues concerning foods and food ingredients produced by new technologies. The exact date, time, and location of the meeting will be announced in the **Federal Register** at a later date.

This notice invites submission of information on scientific concepts and considerations that can be used to devise criteria to determine the appropriate regulatory status and safety of foods and food ingredients produced by new technologies. Two copies of any scientific data and information should be submitted to both FDA's Dockets Management Branch and the Life Sciences Research Office of FASEB (addresses above). The deadline for receipt of such information is September 30, 1988. Pursuant to its contract with FDA, FASEB will provide the agency with a scientific report on these and other issues concerning foods and food ingredients produced by new technologies.

Dated: August 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–19683 Filed 8–29–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88D–0017]

Conditions Under Which Homeopathic Drugs May Be Marketed; Availability of Compliance Policy Guide; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that announced the availability of Compliance Policy Guide 7132.15 entitled "Conditions Under Which Homeopathic Drugs May Be Marketed"—May 31, 1988 (53 FR 21728; June 9, 1988). In 2 places under the heading "**SUPPLEMENTARY INFORMATION**" the number of the Compliance Policy Guide was incorrectly stated as 7132.5 instead of 7132.15. This document corrects these errors to eliminate any ambiguity in ordering the Compliance Policy Guide.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Regulations Editorial Staff (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 88–12949, appearing at page 21728 in the **Federal Register** of Thursday, June 9, 1988, the following corrections are made:

Under the heading "**SUPPLEMENTARY INFORMATION,**" first column, second paragraph, line 1, and in the second column, line 1, "Compliance Policy Guide 7132.5" is corrected to read "Compliance Policy Guide 7132.15".

Dated: August 24, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–19684 Filed 8–29–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88D–0243]

Draft Guidance Document for Class III Contact Lenses; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of a draft "Guidance Document for Class III Contact Lenses," prepared by FDA's Center for Devices and Radiological Health (CDRH). The document provides guidance to the contact lens industry for evaluating the safety and effectiveness of class III contact lenses. The guidance document is being made available for public comment to provide CDRH's Division of Ophthalmic Devices with views to be considered in its development of a final guidance document for class III contact lenses.

DATE: Comments may be submitted at any time; however, comments submitted by October 31, 1988 will be considered during preparation of a final guidance document.

ADDRESS: The "Guidance Document for Class III Contact Lenses" is available for public examination at, and written comments may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Address written requests for single copies of the guidance document to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (NFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–2041, calls from within MD 301–443–6597.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: The draft "Guidance Document for Class III Contact Lenses" is intended to provide the agency's suggested guidance to enable manufacturer of a contract lens to conduct an adquate battery of preclinical tests to ensure that patients are not placed at undue risk in a clinical trial, and to enable a manufacturer to conduct a clinical trial that will adequately demonstrate whether the lens is safe and effective for its intended use.

The draft guidance document is being made available for public comment before being issued in final form. If, following the receipt of comments, the agency concludes that the guidance document reflects acceptable practices and procedures for the preparation and submission of investigational device exemption applications and premarket approval applications for class III contact lenses, the draft guidance document will be made final, and its availability will be announced in the **Federal Register.**

FDA is making the draft guidance document available under 21 CFR 10.90(b). That section provides for use of guidelines to establish procedures of general applicability that are not legal requiements but are acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guidance document. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort on an alternative procedure that the agency may later determine to be unacceptable. Manufacturers are encouraged to use this opportunity to submit comments on the draft guidance document, if they have suggestions for its revision.

Interested persons may submit comments on the draft guidance document at any time. However, comments submitted by October 31, 1988 will be considered during preparation of a final guidance document. Two copies of any comments are to be submitted, except that individuals may submit single copies. Comments should be identified with the document number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–19685 Filed 8–29–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on October 13 and 14, 1988, in Building 31C, Conference Room 8, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 11:15 a.m. on October 13, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Microbiology and Infectious Diseases Research Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 11:15 a.m. until recess on October 13, and from 8:30 a.m. until adjournment on October 14. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. M. Sayeed Quraishi, Executive Secretary, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7465), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: August 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19584 Filed 8–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 26 and 27, 1988, Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 26 from 8:30 a.m. to 12 noon and again on September 27 from 1 p.m. to adjournment to discuss administrative details relating to

Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the subcommittees and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 26 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on September 27 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 675, Bethesda, Maryland 20892. (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31 Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 19, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 88–19585 Filed 8–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on October 6–7, 1988, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on October 5 as follows:

The Extramural Programs Subcommittee, 5th-floor Conference Room, and the Lister Hill Center Subcommittee, 7th-floor Conference Room, in the Lister Hill Center Building, 2 to 4 p.m. The Program Outreach Subcommittee, Conference Room A, Mezzanine, National Library of Medicine, from 4 to 5 p.m.

The meeting of the Board will be open to the public from 9 a.m. to approximately 5 p.m. on October 6 and from 9 to approximately 10:30 a.m. on October 7 for administrative reports and program discussions. The entire meeting of the Program Outreach Subcommittee and the meeting of the Lister Hill Center Subcommittee will be open to the public. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on October 5 will be closed to the public, and the regular Board meeting on October 7 will be closed from approximately 10:30 a.m. to adjournment for the review, discussion, and evaulation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: August 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19586 Filed 8–29–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–8–4212–13; AZA–22880, AZA–23360]

Public Land Exchanges; Mohave and Yavapai Counties, AZ; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice provides a correction of the segregative effect of two notices of realty action published for land exchanges AZA–22880 and AZA–23360 which erroneously failed to include references to the mining and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Mike Berch, Kingman Resource Area, (602) 757–3161.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 88–14747 on page 24804 in the issue of Thursday, June 30, 1988, and **Federal Register** document 88–14224 on page 23696 in the issue of Thursday, June 23, 1988, the first sentence of the next to last paragraph of both documents should read, "Publication of this Notice will segregate the subject lands from operation of the public land laws *and the mining and mineral leasing laws.*".

Henri R. Bisson,

District Manager.

Date: August 19, 1988.

[FR Doc. 88–19587 Filed 8–29–88; 8:45 am]

BILLING CODE 4310–32–M

[CO–942–08–4520–12]

Colorado: Filing of Plats of Survey

August 18, 1988.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., August 18, 1988.

The plat (in five sheets) representing the dependent resurvey of portions of the south, west, and north boundaries, a portion of the subdivisional lines, a portion of the subdivision of section 9, and certain mineral surveys, and the survey of the subdivision of certain sections, T. 46 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group No. 785, was accepted July 29, 1988.

The plat representing the dependent resurvey of portions of the east boundary and the subdivisional lines, and a portion of the metes-and-bounds survey of certain claim lines and the survey of the subdivision of certain sections, T. 1 N., R. 103 W., Sixth Principal Meridian, Colorado, Group No. 821, was accepted August 1, 1988.

The plat representing the dependent resurvey of portions of the south and east boundaries, the subdivisional lines, and a portion of the metes-and-bounds survey of certain claim lines and the survey of the subdivision of sections 35 and 36, T. 2 N., R. 102 W., Sixth Principal

Meridian, Colorado, Group No. 821, was accepted August 1, 1988.

The plat representing the dependent resurvey of portions of the east and north boundaries, the subdivisional lines, a portion of the metes-and-bounds survey of certain claim lines, and a portion of the subdivision lines of section 1, and the survey of the subdivision of certain sections, T. 1 N., R. 102 W., Sixth Principal Meridian, Colorado, Group No. 821, was accepted August 1, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-19595 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-08-4220-11; NM NM 69214]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a 37.13-acre withdrawal of National Forest System land for use in connection with Cabresto Lake Campground and Fishing Area (formerly Lake Cabresto Campground) continue for an additional 20 years. The land will remain closed to mining and will be opened to surface entry. The land has been and remains open to mineral leasing.

DATE: Comments should be received by November 28, 1988.

ADDRESS: Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Forest Service proposes that the existing land withdrawal made by the Secretarial Order dated January 7, 1908, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

T. 29 N., 13 E.,
Sec. 13, NE¼SE¼, excluding approximately 2.87 acres lying within the Latir Peak Wilderness Area (Pub. L. 96-550).

The area described contains 37.13 acres in Taos County.

The purpose of the withdrawal is for use in connection with a developed campground in the Carson National Forest, Questa Ranger District. The area has been developed for recreational use and is heavily utilized for this purpose. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal except to open the land to such forms of disposition that may by law be made of National Forest System land other than under the mining laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Monte G. Jordan,

Associate State Director.

Dated: August 18, 1988.

[FR Doc. 88-19588 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Intention to Negotiate Concession Contract; Carr's Grocery and Canoe Rental

Pursuant to the provisions of section 5 of the Act of October 9, 1965, 79 Stat. 969; 16 U.S.C. 20, public notice is hereby given that sixty (60) days after the date of poublication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Carr's Grocery and Canoe Rental authorizing it to continue to provide canoe rental and shuttle services, merchandising sales, firewood sales, and shower and laundry facilities for the public at Ozark National Scenic Riverways, Missouri, for a maximum period of fifteen (15) years from the date of execution of a contract through December 31, 2002.

This contract renewal has been detrmined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1987, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, MO 63965, for information as to the requirements of the proposed contract.

Warren H. Hill,

Acting Regional Director, Midwest Region.

May 12, 1988.

[FR Doc. 88-19666 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations: Magton, Ltd.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Magton, Ltd., authorizing it to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 31, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the authorization and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: July 18, 1988.

C. W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-19668 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Permit; Michiana Industries

Pursuant to the provisions of section 5 of the Act of October 9, 1965, 79 Stat. 969; 16 U.S.C. 20, public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Michiana Industries authorizing it to continue to provide parking lot services for the public at Indiana Dunes National Lakeshore, Indiana, for a period of 5 years from January 1, 1988 through December 31, 1992.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1987, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Indiana Dunes National Lakeshore, 1100 Mineral Springs, Porter, Michigan 43604, for information as to the requirements of the proposed permit.

Don H. Castleberry,

Regional Director, Midwest Region.

April 12, 1988.

[FR Doc. 88-19667 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations: Milemark, Inc.,

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Milemark, Inc., authorizing it to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 31, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the authorization and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: July 18, 1988.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-19669 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiators: Rainy Lake Cruises, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Rainy Lake Cruises, Inc., authorizing it to continue to provide guided water transportation services for the public on Rainy Lake in Voyageurs National Park, Minnesota, for a period of ten (10) years from May 1, 1988, through April 30, 1998.

EFFECTIVE DATE: October 31, 1988.

ADDRESS: Interested parties should contact the Superintendent, Voyageurs National Park P.O. Box 50, International Falls, MN, 56649, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1987, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

William W. Schenk,

Deputy Regional Director, Midwest Region.

May 18, 1988.

[FR Doc. 88-19670 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-70-M

VOL 53 ISS 168 AUG 30 1988 UMI

Concession Contract Negotiations; Signal Mountain Lodge

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service is canceling its notice published July 27, 1988, to negotiate concessions contracts with Rex G. and Ruth G. Maughan d/b/a Signal Mountain Lodge, authorizing them to continue to provide pack horse service for the public at Grand Teton National Park, Wyoming, and to continue to provide marine services at Leeks Lodge Marina at Grand Teton National Park, Wyoming.

Public notice is hereby given that the National Park Service proposes to extend the concession contracts with Rex and Ruth G. Maughan d/b/a Signal Mountain Lodge and Leeks Lodge Marina, authorizing them to continue to provide lodging accommodations, food services facilities, and automobile services for a period of three (3) years from January 1, 1987, through December 31, 1989; and to continue to provide marina services for a period of one (1) year from October 1, 1988, through September 30, 1989 for the public at Grand Teton National Park, Wyoming.

EFFECTIVE DATE: October 31, 1988.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Lakewood, Colorado 80225, for information as to the requirements of the proposed contracts.

SUPPLEMENTARY INFORMATION: These contracts have been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under existing contracts which expired by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contracts and in the negotiation of two new contracts as defined in 36 CFR 51.1.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: August 10, 1988.

Richard A Strait,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 88-19672 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiators; Southern Seas, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Southern Seas, Inc., authorizing it to continue to provide excursion boat transportation and related services for the public at Buck Island Reef National Monument for a period of five (5) years from May 1, 1988, through April 30, 1993.

EFFECTIVE DATE: October 31, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on April 30, 1988, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the authorization and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: July 18, 1988.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-19671 Filed 8-29-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 20, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 14, 1988.

Beth L. Savage,

Acting Chief of Registration, National Register.

ALABAMA

Etowah County

Legion Park Bowl, 336 1st St., S., Gadsden, 88001581

Tuscaloosa County

First African Baptist Church, 2621 9th St., Tuscaloosa, 88001580

ARIZONA

Apache County

Allentown Bridge, (Vehicular Bridges in Arizona MPS), Indian Rt. 9402 over Puerco River, milepost 9.1, Houck vicinity, 88001617

Petrified Forest Bridge, (Vehicular Bridges in Arizona MPS), Petrified Forest Park Rd. over Rio Puerco, Navajo vicinity, 88001616

Querino Canyon Bridge, (Vehicular Bridges in Arizona MPS), Old US 66 over Querino Canyon, Houck vicinity, 88001623

Sanders Bridge, (Vehicular Bridges in Arizona MPS), Indian Rt. 9402 over the Puerco River, Sanders, 88001618

Cochise County

Canyon Diablo Bridge, (Vehicular Bridges in Arizona MPS), Abandoned grade of US 66 over Diablo Canyon, Winona vicinity, 88001664

Desert Wash Bridge, (Vehicular Bridges in Arizona MPS), Benson Airport Rd. over Desert Wash, Benson, 88001624

Douglas Underpass, (Vehicular Bridges in Arizona MPS), US 80 under Southern Pacific RR, milepost 366.1, Douglas, 88001609

Hereford Bridge, (Vehicular Bridges in Arizona MPS), Hereford Rd. over the San Pedro River, Hereford, 88001659

Coconino County

Canyon Padre Bridge, (Vehicular Bridges in Arizona MPS), Abandoned grade of US 66 over Padre Canyon, Flagstaff vicinity, 88001666

Dead Indian Canyon Bridge, (Vehicular Bridges in Arizona MPS), Abandoned grade of US 64 over Dead Indian Canyon, Desert View vicinity, 88001603

Midgley, W. W., Bridge, (Vehicular Bridges in Arizona MPS), Alt. US 89 over Wilson Canyon, milepost 375.7, Sedona vicinity, 88001614
Pumphouse Wash Bridge, (Vehicular Bridges in Arizona MPS), US 89 over Pumphouse Wash, milepost 387.4, Flagstaff vicinity, 88001605
Walnut Canyon Bridge, (Vehicular Bridges in Arizona MPS), Townsend-Winona Hwy., Winona vicinity, 88001660

Gila County

Black River Bridge, (Vehicular Bridges in Arizona MPS), Indian Rt. 9 over Black River, Carrizo vicinity, 88001619
Cordova Avenue Bridge, (Vehicular Bridges in Arizona MPS), Cordova Ave. over Bloody Tanks Wash, Miami, 88001690
Fossile Creek Bridge, (Vehicular Bridges in Arizona MPS), Forest Service Rd. over Fossil Creek, Stawberry vicinity, 88001620
Inspiration Avenue Bridge, (Vehicular Bridges in Arizona MPS), Inspiration Ave. over Bloody Tanks Wash, Miami, 88001691
Keystone Avenue Bridge, (Vehicular Bridges in Arizona MPS), Keystone Ave. over Bloody Tanks Wash, Miami, 88001692
Miami Avenue Bridge, (Vehicular Bridges in Arizona MPS), Miami Ave. over Bloody Tanks Wash, Miami, 88001693
Reppy Avenue Bridge, (Vehicular Bridges in Arizona MPS), Reppy Ave. over Bloody Tanks Wash, Miami, 88001689
Salt River Bridge, (Vehicular Bridges in Arizona MPS), AZ 288 over Salt River, milepost 262.4, Roosevelt vicinity, 88001604
Salt River Canyon Bridge, (Vehicular Bridges in Arizona MPS), US 60 over Salt River, milepost 292.9, Carrizo vicinity, 88001608

Graham County

Marijilda Canyon Prehistoric Archeological District, Address Restricted, Safford vicinity, 88001572
Solomonville Bridge, (Vehicular Bridges in Arizona MPS), Abandoned Graham Co. rd. over the San Simon River, Safford vicinity, 88001668

Greenlee County

Black Gap Bridge, (Vehicular Bridges in Arizona MPS), 7.8 mi. SW of Clifton on Old Safford Rd., Clifton vicinity, 88001627
Gila River Bridge, (Vehicular Bridges in Arizona MPS), 6.8 mi. SE of Clifton on Old Safford Rd., Clifton vicinity, 88001628
Park Avenue Bridge, (Vehicular Bridges in Arizona MPS), Park Ave. over the San Francisco River, Clifton, 88001661
Solomonville Road Overpass, (Vehicular Bridges in Arizona MPS), 3.6 mi. S of Clifton on Old Safford Rd., Safford vicinity, 88001625
Solomonville Road Overpass, (Vehicular Bridges in Arizona MPS), 4.5 mi. S of Clifton on Old Safford Rd., Clifton vicinity, 88001626

La Paz County

Eagletail Petroglyh Site, Address Restricted, Hyder vicinity, 88001570

Maricopa County

Alchesay Canyon Bridge, (Vehicular Bridges in Arizona MPS), AZ 88 over Alchesay Canyon, milepost 241.1, Roosevelt vicinity, 88001615
Boulder Creek Bridge, (Vehicular Bridges in Arizona MPS), AZ 88 over Boulder Creek, Tortilla Flat vicinity, 88001599
Fish Creek Bridge, (Vehicular Bridges in Arizona MPS), AZ 88, milepost 223.50, Tortilla Flat vicinity, 88001600
Gila Bend Overpass, (Vehicular Bridges in Arizona MPS), Bus. Rt. 8 over Southern Pacific RR, Gila Bend, 88001607
Hassayampa River Bridge, (Vehicular Bridges in Arizona MPS), Old US 60 over the Hassayampa River, Hassayampa, 88001658
Lewis and Pranty Creek Bridge, (Vehicular Bridges in Arizona MPS), AZ 88, milepost 224.60, Tortilla Flat vicinity, 88001601
Mormon Flat Bridge, (Vehicular Bridges in Arizona MPS), AZ 88 over Willow Creek, Tortilla Flat vicinity, 88001598
Pine Creek Bridge, (Vehicular Bridges in Arizona MPS), AZ 88, milepost 233.50, Tortilla Flat vicinity, 88001602
Tempe Bridge, (Vehicular Bridges in Arizona MPS), Abandoned rd. over Salt River, Tempe, 88001606

Mohave County

Bighorn Cave, Address Restricted, Oatman vicinity, 88001571
Old Trails Bridge, (Vehicular Bridges in Arizona MPS), Abandoned US 66 over the Colorado River, Topock, 88001676
Sand Hollow Wash Bridge, (Vehicular Bridges in Arizona MPS), Old US 91 over Sand Hollow Wash, Littlefield vicinity, 88001657

Navajo County

Cedar Canyon Bridge, (Vehicular Bridges in Arizona MPS), US 60 over Cedar Canyon, milepost 323.4, Show Low vicinity, 88001612
Corduroy Creek Bridge, (Vehicular Bridges in Arizona MPS), US 60 over Corduroy Creek, milepost 328.3, Show Low vicinity, 88001613
Holbrook Bridge, (Vehicular Bridges in Arizona MPS), AZ 77 over the Little Colorado River, Holbrook, 88001685
Holbrook Bridge, (Vehicular Bridges in Arizona MPS), Abandoned grade of US 70 over the Little Colorado River, 4.2 mi. SE of Holbrook, Holbrook vicinity, 88001686
Jack's Canyon Bridge, (Vehicular Bridges in Arizona MPS), Abandoned AZ 99 over Jack's Canyon SE of Winslow, Winslow vicinity, 88001678
Lithodendron Wash Bridge, (Vehicular Bridges in Arizona MPS), 13.2 mi. NE of Holbrook on I-40 Frontage Rd., Holbrook vicinity, 88001687
Little Lithodendron Wash Bridge, (Vehicular Bridges in Arizona MPS), 15.8 mi. NE of Holbrook on I-40 Frontage Rd., Holbrook vicinity, 88001688
St. Joseph Bridge, (Vehicular Bridges in Arizona MPS), 4.4 mi. SE of Joseph City on Joseph City-Holbrook Rd., Joseph City vicinity, 88001633
Winslow Underpass, (Vehicular Bridges in Arizona MPS), AZ 87 over Little Colorado River, milepost 344.9, Winslow vicinity, 88001611
Winslow Underpass, (Vehicular Bridges in Arizona MPS), AZ 87 under Atchison, Topeka and Santa Fe RR, milepost 342.1, Winslow, 88001610
Woodruff Bridge, (Vehicular Bridges in Arizona MPS), 4 mi. S of Woodruff on Woodruff-Snowflake Rd., Woodruff vicinity, 88001630

Pima County

Cienega Bridge, (Vehicular Bridges in Arizona MPS), 5.3 mi. SE of Vail on Marsh Station Rd., Vail vicinity, 88001642
Fourth Avenue Underpass, (Vehicular Bridges in Arizona MPS), Fourth Ave., Tucson, 88001654
Sixth Avenue Underpass, (Vehicular Bridges in Arizona MPS), Sixth Ave., Tucson, 88001655
Stone Avenue Underpass, (Vehicular Bridges in Arizona MPS), Stone Ave., Tucson, 88001656

Pinal County

Devil's Canyon Bridge, (Vehicular Bridges in Arizona MPS), Abandoned US 60 over Devil's Canyon, Superior vicinity, 88001681
Kelvin Bridge, (Vehicular Bridges in Arizona MPS), Florence-Kelvin Hwy. over the Gila River, Kelvin, 88001646
Mineral Creek Bridge, (Vehicular Bridges in Arizona MPS), Old US 77 over Mineral Creek, Kelvin, 88001648
Queen Creek Bridge, (Vehicular Bridges in Arizona MPS), Old Florence Hwy. over Queen Creek, Florence Junction vicinity, 88001643
Queen Creek Bridge, (Vehicular Bridges in Arizona MPS), Abandoned US 60 over Upper Queen Creek Canyon, Superior vicinity, 88001679
Sacaton Dam Bridge, (Vehicular Bridges in Arizona MPS), Gila River Indian Reservation Rd., Sacaton vicinity, 88001621
San Tan Canal Bridge, (Vehicular Bridges in Arizona MPS), Gila River Indian Reservation Rd., Sacaton vicinity, 88001622
Winkelman Bridge, (Vehicular Bridges in Arizona MPS), Old AZ 77 over the Gila River, Winkelman, 88001649

Santa Cruz County

Santa Cruz Bridge No. 1, (Vehicular Bridges in Arizona MPS), South River Rd. over the Santa Cruz River, Nogales vicinity, 88001635

Yavapai County

Broadway Bridge, (Vehicular Bridges in Arizona MPS), Broadway St. over Bitter Creek, Clarkdale, 88001651
Hell Canyon Bridge, (Vehicular Bridges in Arizona MPS), Abandoned US 89 over Hell Canyon, Drake vicinity, 88001682
Little Hell Canyon Bridge, (Vehicular Bridges in Arizona MPS), Abandoned US 89 over Little Hell Canyon, Drake vicinity, 88001684
Lynx Creek Bridge, (Vehicular Bridges in Arizona MPS), 5.9 mi. E of Prescott on Old Black Canyon Hwy., Prescott vicinity, 88001641
Perkinsville Bridge, (Vehicular Bridges in Arizona MPS), Perkinsville-Williams Rd. over Verde River, Ash Fork vicinity, 88001671
Verde River Bridge, (Vehicular Bridges in Arizona MPS), 2.7 mi. S of Paulden on

BEST COPY AVAILABLE

Sullivan Lake Rd., Paulden vicinity, 88001639
Walnut Creek Bridge, (Vehicular Bridges in Arizona MPS), Forest Service Rd. over Walnut Creek, Simmons vicinity, 88001673
Walnut Grove Bridge, (Vehicular Bridges in Arizona MPS), 3.5 mi. NW of Walnut Grove on Wagoner Rd., Walnut Grove vicinity, 88001637

CONNECTICUT

New Haven County

Branford Point Historic District, Roughly along Harbor St. N from Curve St. to Branford Point, also Maple St. E. from Reynolds St. to Harbor St., Branford, 88001583

FLORIDA

Volusia County

South Beach Street Historic District, Roughly bounded by Volusia Ave., S. Beach St., South St., and US 1, Daytona Beach, 88001597

INDIANA

Allen County

Wells Street Bridge, Wells St. at the St. Mary's River, Fort Wayne, 88001575

Marion County

YWCA Blue Triangle Residence Hall, 725 N. Pennsylvania St., Indianapolis, 88001574

Parke County

Ewbank, Lancelot C., House, Parke Co. Rds. 102E between 1200N and 300E, Tangier vicinity, 88001578

LOUISIANA

East Baton Rouge Parish

Louisiana State University, Baton Rouge, Highland Rd., Baton Rouge, 88001586

Rapides Parish

McNutt Rural Historic District, Belgard Bend Rd. and LA 121, McNutt, 88001595

MISSISSIPPI

Yazoo County

Home Place, 2 mi. E of MS 433, S side of Midway to Ebeneezer Rd., Benton vicinity, 88001584

NEW YORK

Oswego County

Oswego Theater, 138 W. Second St., Oswego, 88001580

NORTH CAROLINA

Alamance County

US Post Office, 430 S Spring St., Burlington, 88001594

Nash County

Spring Hope Historic District, Roughly bounded by Franklin, Louisburg, Second and Community Sts., Spring Hope, 88001591

TENNESSEE

Benton County

US Post Office, 81 N. Forest St., Camden, 88001577

Cumberland County

Cumberland Homesteads Historic District, Roughly follows County Seat and Valley Rds., Grassy Cove Rd., Deep Draw and Pigeon Ridge Rds., Crossville vicinity, 88001593

Gibson County

US Post Office, 200 S. College St., Trenton, 88001576

Lauderdale County

US Post Office, 17 E. Jackson Ave., Ripley, 88001582

VERMONT

Caledonia County

Lind Houses, Pleasant St., South Ryegate, 88001589

Orange County

Waits River Schoolhouse, VT 25 N of Waits River, Waits River vicinity, 88001592

Rutland County

Perkins, Arthur, House, 242 S. Main St., Rutland, 88001579

WEST VIRGINIA

Jefferson County

Fruit Hill, Shepherd Grade, Shepherdstown vicinity, 88001588
Marshall, James House, Shepherd Grade, Shepherdstown vicinity, 88001596

Kanawah County

Canty House, WV 25, Institute, 88001587
East Hall, West Quadrangle, West Virginia State College, Institute, 88001585

WISCONSIN

Forest County

Franklin Lake Campground, National Forest Rd. 2181, Alvin vicinity, 88001573

Waukesha County

Baer, Albert R., House, (Menomonee Falls MRA), H166 N8990 Grand Ave., Menomonee Falls, 88001645
Barnes, Andrew, House, (Menomonee Falls MRA), N89 W16840 Appleton Ave., Menomonee Falls, 88001652
Camp, Thomas, Farmhouse, (Menomonee Falls MRA), W204 N8151 Lannon Rd., Menomonee Falls, 88001670
Davis, Cyrus, Farmstead, (Menomonee Falls MRA), W204 N7776 Lannon Rd., Menomonee Falls, 88001674
Davis, Cyrus—Davis Brothers Farmhouse, (Menomonee Falls MRA), W204 N7818 Lannon Rd., Menomonee Falls, 88001672
Friederich Farmstead Historic District, (Menomonee Falls MRA), N88 W15009 County Line Rd., Menomonee Falls, 88001631
Henze, LeRoy A., House, (Menomonee Falls MRA), N89 W15781 Main St., Menomonee Falls, 88001638
Hoeltz, Herbert, House, (Menomonee Falls MRA), N87 W15714 Kenwood Blvd., Menomonee Falls, 88001636
Hoos, Elizabeth, House, (Menomonee Falls MRA), W164 N9010 Water St., Menomonee Falls, 88001640
Hoos-Rowell House, (Menomonee Falls MRA), W164 N8953 Water St., Menomonee Falls, 88001644
Koehler, Frank, House and Office, (Menomonee Falls MRA), N88 W16623 Appleton Ave., Menomonee Falls, 88001669
Lincoln High School, (Menomonee Falls MRA), N88 W16913 Main St., Menomonee Falls, 88001662
Mace, Garwin A., House, (Menomonee Falls MRA), W166 N8941 Grand Ave., Menomonee Falls, 88001650
Main Street Historic District, (Menomonee Falls MRA), Main and Appleton Sts., Menomonee Falls, 88001629
Menomonee Falls City Hall, (Menomonee Falls MRA), N88 W16631 Appleton Ave., Menomonee Falls, 88001667
Menomonee Golf Club, (Menomonee Falls MRA), N73 W13430 Appleton Ave., Menomonee Falls, 88001663
Pratt, John A., House, (Menomonee Falls MRA), N88 W15634 Park Blvd., Menomonee Falls, 88001634
Third Street Bridge, (Menomonee Falls MRA), Roosevelt Dr., Menomonee Falls, 88001647
Village Park Bandstand, (Menomonee Falls MRA), Village Park on Garfield Dr., Menomonee Falls, 88001653
Wick, Michael, Farmhouse & Barn, (Menomonee Falls MRA), N72 W13449 Good Hope Rd., Menomonee Falls, 88001665
Zimmer, Johann, Farmhouse, (Menomonee Falls MRA), W156 N9390 Pilgrim Rd., Menomonee Falls, 88001632.

[FR Doc. 88-19665 Filed 8-29-88; 8:45 am]
BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under Clean Water Act to Assess Penalties

In accordance with the policy of the Department of Justice, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Jorge Luhring, Island Petroleum Products, Inc., Bayamon Electroplating, Inc., and Taino Plating Corp.*, Civil Action No. 87-1256 (JP), was lodged with the United States District Court for the District of Puerto Rico on August 19, 1988. This consent decree settles the United States' claims for civil penalties in a lawsuit filed September 17, 1987, pursuant to section 309 of the Clean Water Act (the "Act"), 33 U.S.C. 1319, for injunctive relief and for the assessment of civil penalties against Jorge Luhring, Island Petroleum Products, Inc. ("Island"), Bayamon Electroplating, Inc., and Taino Plating Corp. The complaint is based on, among other things, Island's discharge of pollutants from its electroplating plant in Barrio Las Palmas, Catano, Puerto Rico, in violation of the Act and applicable pretreatment standards. 40 CFR 413.14.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. All comments should refer to *United States* v. *Jorge Luhring, Island Petroleum Products, Inc., Bayamon Electroplating, Inc., and Taino Plating Corp.*, D.J. 90–5–1–1–2834.

The consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

EPA Region II: Contact: David Brook, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–0444.

United States Attorney's Office: Contact: Eduardo E. Toro Font, Assistant United States Attorney, District of Puerto Rico, Frederico Degetau Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918, (809) 753–4656.

Copies of the proposed consent decree may also be examined at the environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 6314, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044–7611. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice. When requesting a copy of the proposed consent decree, please enclose a check for copying costs (at $.10 per page) in the amount of $1.80 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–19592 Filed 8–29–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Managemernt and Budget (OMB)

Background:

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review:

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OBM) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW. Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Departmental Management

National SAS Farmworker Survey (Seasonal Agricultural Services)

Individuals or households; farms; Businesses or other for-profit; 3,700 respondents; 1 hour; 1 hour per response; 1 form

The Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act (IRAC) requires the DOL and the USDA to estimate the departure rate from Seasonal Agricultural Services (SAS) agriculture and to analyze information about wages, working conditions and recruitment practicers. This survey will gather data necessary to make these estimates and carry out these analyses.

Bureau of Labor Statistics

Cognitive Research on the Consumer Expenditure Surveys questionnaire

Nonrecurring (One-time)

Individuals or households; 2800 respondent; 2800 total hours; 60 minutes per response; 3 forms

The proposed "Cognitive Research on CE questionnaires" will determine ways to improve the wording of questions to facilitate the respondents' participation which in turn will reduce the respondent burden. In addition, the results of the research will also guide the next sample redesign efforts.

Signed at Washington, DC, this 25th day of August, 1988.

Terry O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 88–19727 Filed 8–29–88; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 9, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 9, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 22nd day of August 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Accurate Die Casting, Co. (Workers)	Fayetteville, NY	8/22/88	8/9/88	20,880	Alum and zinc castings.
Beehive International (Company)	Salt Lake City, UT	8/22/88	8/9/88	20,881	Computer terminals.
Discovery Systems (Workers)	Dublin, OH	8/22/88	8/3/88	20,882	Audio Compact Discs and CD-rooms.
Electronic Molding Corp. (Workers)	Woonsocket, RI	8/22/88	8/4/88	20,883	Electronic components.
Precision Automatic, Corp. (Workers)	do	8/22/88	8/4/88	20,884	Do.
Wrapex Corp. (Workers)	do	8/22/88	8/4/88	20,885	Do.
F.H. Lawson Co. (Workers)	Cincinnati, OH	8/22/88	8/11/88	20,886	Do.
ITT Power Systems, (IAM&AW)	Galion, OH	8/22/88	8/8/88	20,887	Power systems.
ITT Rayonier, Peninsula Plywood Div. (IWA)	Port Angeles, WA	8/22/88	8/10/88	20,888	Cedar and fir plywood siding.
Jack Cooper Transport (Company)	Arlington, TX	8/22/88	7/29/88	20,889	Transportation of cars.
Reliance Button Co., Inc. (Company)	New York, NY	8/22/88	8/3/88	20,890	Buttons and pins.
Universal Optical Co. (Workers)	Attleboro, MA	8/22/88	8/5/88	20,891	Eyeglass frames.

[FR Doc. 88-19728 Filed 8-29-88; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 8, 1988—August 12, 1988 and August 15, 1988—August 19, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a signficant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,724; Federal Steel & Wire Corp., Cleveland, OH
TA-W-20,725; Ideal Basic Industries, Ada, OK
TA-W-20,726; Lipe Corp., Syracuse, NY
TA-W-20,721; Clearwater Printing & Finishing Co., Clearwater, SC
TA-W-20,762; Pioneer Parachute Co., Manchester, CT
TA-W-20,735; Leeds and Northrup Co., North Wales, PA
TA-W-20,738; Witco Corp., Canton Field Office, Canton, OH
TA-W-20,752; Brevel Motors, Inc., Carlstadt, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,731; At-A-Glance Division of Keith Clark, Inc., Pittsfield, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,754; Huls America (Formerly Dynamit Nobel of America), Rockleigh, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,813; Fashion Barn, Inc., Saddlebrook, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,756; General Electric Co., Motor Business Dept., Decatur, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,753; Consolidation Coal Co., Pursglove, No. 15 Mine, Osage, WV

U.S. imports of coal in 1987 and January through March 1988 were negligible.

Affirmative Determinations

TA-W-20,737; Schlage Lock Co., Rocky Mount, NC

A certification was issued covering all workers separated on or after May 26, 1987.

TA-W-20,736; Martin Shirt Co., Shenandoah, PA

A certification was issued covering all workers separated on or after June 9, 1987 and before July 30, 1988.

TA–W–20,733; Hasley Taylor/Thermos, Taftville, CT

A certification was issued covering all workers separated on or after June 7, 1987.

TA–W–20,748; Stewart Warner Corp., Bassick Div., Bridgeport, CT

A certification was issued covering all workers separated on or after June 13, 1987.

I hereby certify that the aforementioned determinations were issued during the period August 8, 1988—August 12, 1988 and August 15, 1988—August 19, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW. Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 23, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–19729 Filed 8–29–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–157–C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., Pennsylvania Division, P.O. Box 143, Eight Four, Pennsylvania 15330 has filed a petition to modify the applications of 30 CFR 75.1101–1(b) (deluge-type water spray systems) to its 84 Complex, Livingston Portal (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that nozzles attached to the branch lines be full cone, corrosion resistant and provided with blow-off dust covers.

2. As an alternate method, petitioner proposes that—

(a) Blow-off dust covers would be eliminated;

(b) A functional test of the system would be completed once per week; and

(c) A record of these tests would be maintained.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before Septermber 29, 1988. Copies of the petition are available for inspection at that address.

Date: August 24, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–19719 Filed 8–29–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–79–C]

Castle Gate Coal Co.; Petition for Modification of Application of Mandatory Safety Standard (Amendment)

Castle Gate Coal Company, P.O. Box 449, Helper, Utah 84526 has filed an amendment to a petition for modification. On April 3, 1988, Castle Gate Coal Company, submitted a petition to modify the application of 30 CFR 75.503 (permissable electric face equipment) to its Mine No. 3 (I.D. No. 42–00165) located in Carbon County, Utah. On June 1, 1988, MSHA published notice of the petition in the **Federal Register** (53 FR 20029), allowing interested parties 30 days to submit comments. On July 26, 1988, petitioner submitted a request to amend the originally submitted petition for modification. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trailing cables be 500 feet.

2. Development in the 10th East panel will be by means of a three-entry system with crosscuts and entries on 104-foot by 140-foot centers and 140-foot by 100-foot centers. The size of the coal blocks is required due to the geological characteristics of the property. The size of the coal blocks requires the use of either longer trailing cables or distribution boxes. Longer trailing cables would be more easily protected from mechanical damage than distribution boxes. Distribution boxes are difficult to protect due to 16-foot-wide entries dictated by roof conditions and due to pitched seam and water problems.

3. As an alternate method, petitioner proposes to use 800 feet of No. 6 AWG trailing cables on shuttle cars and 650 feet of No. 6 AWG trailing cables on roof bolting machines.

4. Petitioner states that increasing the length of the shuttle car cables to 800 feet, and increasing the length of the roof bolter cables to 650 feet would eliminate the need for backspooling and the addition of junction boxes. Backspooling causes undue wear and damage to the trailing cable which results in premature failure and/or breakdown of the cable. This cable damage creates a greater potential for fire and shock hazards to occur. Elimination of junction boxes reduces required system maintenance and also eliminates another potential sources of fire and shock hazards.

5. Petitioner further states that no voltage-drop, motor overheating, dropping out of contractors, or starting problems due to low-voltage have been encountered with the machines.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 29, 1988. Copies of the amendment and the original petition for modification are available at that address.

Dated: August 24, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–19720 Filed 8–29–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–146–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Rend Lake Mine (I.D. No. 11–00601) located in Jefferson County, Illinois. The petition is filed under

section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuits to assure continuity. The ground check will cause the circuit breaker to open when either the ground or pilot wire is broken.

2. As an alternate method, petitioner proposes to design and install low- and medium-voltage, 3-phase alternating current, resistance grounded circuits underground without ground wire monitoring conditioned upon compliance with the following:

(a) All circuits would be protected by circuit breakers to provide protection against undervoltage, grounded phase, short circuit and overcurrent;

(b) The source resistance grounded system would comply with all the requirements, with the addition of a potential transformer and overvoltage timing relay connected across the grounding resistor;

(c) Petition would apply only to stationary permanently installed equipment;

(d) The wiring and equipment supplied power from the resistance grounded source would be installed and maintained in accordance with any applicable requirements of the 1987 National Electrical Code;

(e) The circuit conductors from the source to the equipment would be installed in grounded rigid metal conduits. If a short section of liquid tight conduit is required, it would be bonded across to assure electrical continuity. All conduit would be installed and maintained in accordance with applicable requirements of the 1987 National Electrical Code; and

(f) In addition to the conduit, a separate grounding conductor would be installed within the conduit enclosing the associated power conductors. The grounding conductor would be used to ground the enclosures of each unit of equipment to the grounded side of the source grounding resistor. The size or capacity of the grounding conductor would be in accordance with the requirements of 30 CFR 75.701–4(a)(b).

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 29, 1988. Copies of the petition are available for inspection at that address.

Date: August 24, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–19721 Filed 8–29–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–153–C]

Granny Rose Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Granny Rose Coal Company, P.O. Box 1098, Barbourville, Kentucky 40906, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15–16215) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The buket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapsed time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure the detection of any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish writen comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 29, 1988. Copies of the petition are available for inspection at that address.

Date; August 22, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–19722 Filed 8–29–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–144–C]

The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

The Helen Mining Company, R.D. No. 2, Box 2110, Homer City, Pennsylvania 15748–9558 has filed a petition to modify the application of 30 CFR 75.1100–3(b) (quantity and location of firefighting equipment) to its Homer City Mine (I.D. No. 36–00928) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federl Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be installed parallel to the entire length of belt conveyors.

2. Petitioner states that, due to severe winter weather, freezing conditions are encountered to fully charged waterlines installed near the slope opening continuing inby approximately 2,000 feet, along the slope belt conveyor.

3. As an alternate method, petitioner proposes to install an automatic dry pipe suppression system incorporating various safeguards as follows:

(a) The automatic dry pipe suppression system would only be used from October through April, and would only apply to the waterline located along the slope belt conveyer;

(b) An electric solenoid water valve would be provided to automatically charge the waterline when the automatic fire warning system for the belt conveyor is activated;

(c) A manual bypass valve would be installed in conjuction with the electric solenoid valve, so that the waterline can be charged during a power failure or in the event that the solenoid valve should fail to operate;

(d) A visual means would be provided to indicate that a supply of water under pressure is available to the electric and manual valve;

(e) The valve would be protected from freezing and would be readily accessible for inspection or manual operation;

(f) The automatic fire warning system, including the electric valve and the manual bypass valve would be inspected weekly and a functional test of the complete system would be made at least annually. The functional test would include charging the waterline by activating the electric valve with the automatic fire warning system for the slope belt. A record of the weekly inspection and annual functional test would be maintained by the operator;

(g) The dry pipe system would be purged of water left in the system as a result of testing or accidential actuation of the system to prevent ice from accumulating in the line and valves;

(h) A responsible person would be located on the surface at all times and would be trained in the procedures to follow in the event it becomes necessary to manualy activate the system; and

(i) All persons in the area of the slope would be instructed as to the operation of the dry pipe system.

4. Petitioner states that the proposed alternate method wil provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 29, 1988. Copies of the petition are available for inspection at that address.

Date: August 23, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-19723 Filed 8-29-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-142-C]

Lisa Lee Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Lisa Lee Coal Company, Box 25, Raven, Virginia 24639 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 2 (I.D. No. 44-03600) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that aircourses and an abandoned panel be examined in their entirety on a weekly basis.

2. Petitioner states that, due to roof falls and adverse conditions within the Left Mains Panel of the 001 Section weekly examinations would result in a serious hazard to the health and safety of certified personnel.

3. As an alternate method, petitioner proposes to take the following measures:

(a) Place barriers (wire fencing) along with danger signs at the entrances to the Left Mains Section;

(b) Setup checkpoints on the intake airway at spad station #G715 and on the return airways which are to both the right and left of the return airway at spad stations #F720 and #F725;

(c) Monitor quantity and quality of air entering and leaving the abandoned section. Methane has never been detected in this mine with either a flame safety lamp or an approved methane detector by mine officials;

(d) Examinations for air quality/ quantity would be conducted on a weekly basis and a log would be kept at the checkpoints. The log would be maintained and updated after weekly examinations; and

(e) Any variation to the "normal" air readings would initiate immediate corrective measures.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 29, 1988. Copies of the petition are available for inspection at that address.

Dated: August 23, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-19724 Filed 8-29-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-145-C]

New Era Coal Co. Inc.; Petition for Modification of Application of Mandatory Safety Standard

New Era Coal Company, Inc., 29501 Mayo Trail, Catlettsburg, Kentucky 41129 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 1 (I.D. No. 15-10753) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petititoner's statement follows:

1. The petition concerns the requirement that intake aircourses be examined in their entirety on a weekly basis.

2. Petitioner states, that, due to unsafe roof conditions and rock falls the idled area of the mine cannot be safely traveled. To restore one entry to a safe travelable condition, would require six months of hazardous work for the miners.

3. As an alternate method, petitioner proposes to establish four evaluation points, one at the beginning, one in the

middle, and two at the end of the idled area, where a qualified person can examine the quantity and quality of air used to ventilate the idled area. These examinations would be made twice a week, instead of weekly, and recorded in the pre-shift/on-shift examination book.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (September 29, 1988. Copies of the petition are available for inspection at that address.

Date: August 23, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-19725 Filed 8-29-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-155-C]

WESCO Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

WESCO Coal Company, Route 1, Box 279-A, Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-16405) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternative method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure the detection of any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 29, 1988. Copies of the petition are available for inspection at that address.

Date: August 22, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-19726 Filed 8-29-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88-87; Exemption Application No. D-7277, 7278, 7279 et al.]

Grant of Individual Exemptions; Harris Trust and Savings Bank (Harris) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: GRANT OF INDIVIDUAL EXEMPTIONS.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Harris Trust and Savings Bank (Harris); Located in Chicago, Illinois

[Prohibited Transaction Exemption 88–87; Exemption Application Nos. D–7277, D–7278 and D–7279]

Exemption

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lending by Harris to Merrill Lynch Canada, Inc. of securities that are assets of employee benefit plans and trusts for which Harris acts as trustee, co-trustee, investment manager, custodian or agent, provided the conditions set forth in the notice of proposed exemption are met.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 7, 1977, at 53 FR 20917.

Written Comments: The Department received a written comment which expressed approval of the proposed transactions that are described in the notice of proposed exemption. Accordingly, the Department has considered the entire record, including the comment letter received, and has determined to grant the exemption as it was proposed.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Morison Securities, Inc. (Morison); Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 88–88; Exemption Application No. D–7336]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the acquisition by various individuals who are clients of Morison of certain public limited partnership units (the Units) from their individual retirement accounts (the IRAs), their Keogh plans (the Keoghs) or their profit sharing plans (the PS Plans) for cash, provided the IRAs, Keoghs and PS Plans receive no less than the fair market value of the Units on the dates of the sales.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1988 at 53 FR 20919.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Mayfield Corporation Defined Benefit Pension Plan and Trust (the Plan) Located in Houston, Texas [Prohibited Transaction Exemption 88–89; Exemption Application No. D–7467]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loans made by the Mary Iris Goldston Corporation to the Plan, provided that the terms and conditions of the loans were at least as favorable to the Plan as those which the Plan would receive in similar transactions with unrelated parties.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 15, 1988 at 53 FR 26912.

Effective Date: August 17, 1987.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Frank Pavel, D.D.S., Inc. Money Purchase Pension Plan (the Plan) Located in San Diego, California [Prohibited Transaction Exemption 88–90; Exemption Application No. D–7498]

Exemption

The restrictions of section 406(a)(1), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase of two limited partnership units by the self-directed account in the Plan of Frank Pavel, D.D.S. (Dr. Pavel), from Dr. Pavel and his wife; provided the terms and conditions of the transaction will be similar to those obtainable by the Plan in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 15, 1988 at 53 Fr 28913.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately described all material terms of the transaction which is the subject of the exemption.

[1] Because the IRAs meet the conditions described in 29 CFR 2510.3–2(d), there is no jurisdiction under Title I of the Act with respect to the IRAs. Because there are no employees covered under the Keoghs and PS Plans, there is no jurisdiction under Title I of the Act with respect to the Keoghs and PS Plans pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction with respect to the IRAs, PS Plans and the Keoghs under Title II of the Act pursuant to section 4975 of the Code.

[1] Since Mr. Jack H. Mayfield, Jr. is the only participant in the Plan there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Signed at Washington, DC, this 25th day of August, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-19713 Filed 8-29-88; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7454 et al.]

Proposed Exemptions; State Street Bank and Trust Company (the Bank) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

State Street Bank and Trust Company (the Bank); Located in Boston, Massachusetts

[Application No. D-7454]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the act shall not apply to: (1) The proposed purchase and sale of equity securities between collective investment index funds (the Index Funds) sponsored by the Bank; (2) the proposed purchase and sale of equity securities between the Index Funds and various model-driven collective investment funds (the Model-Driven Funds) sponsored by the Bank; (3) the proposed purchase and sale of equity securities between the Model-Driven Funds; and (4) the proposed purchase and sale of equity securities between the Index Funds or Model-Driven Funds (together, the Funds) and various large pension plans (the Large Plans), under the terms and conditions set forth in this notice of proposed exemption.

Summary of Facts and Representations

1. The Bank is a Massachusetts trust company which is subject to the supervision and examination of the Massachusetts Commissioner of Banks. The Bank is a member of the Federal Reserve Bank and its depositors' accounts are insured by the Federal Deposit Insurance Corporation. The Bank manages substantial amounts of assets, typically as a trustee or investment manager, for a variety of clients, including employee benefit plans subject to Title I of the Act (the Client Plans). The Bank's client accounts may be managed either as separate accounts for a single client or as commingled accounts (for example, group trusts organized pursuant to Rev. Rul. 81-100) for multiple clients (the Client Accounts).

2. The Bank is one of the largest investment managers in the United States in the area of passive investment management. Passive management involves investment in a fixed portfolio of securities, rather than a portfolio which changes according to an ongoing "active" evaluation of the desirability of particular equity securities. The Bank states that approximately $18.3 billion of its assets under management as of August 21, 1987 consisted of domestic and foreign equity securities being passively managed in the Index Funds and the Model-Driven Funds. Approximately $16.5 billion of the assets of the Funds are assets of the Client Plants.

The Bank has no beneficial ownership interest in any of the Funds. However, the Bank does maintain a defined benefit pension plan and a 401(k) savings plan for its eligible employees (the Bank Plans). The Bank states that the assets of the Bank Plans are invested from time to time in one or more Index Funds or Model-Driven Funds. As of August 31, 1987, the aggregate value of the assets of the Bank Plans was approximately $118.2 million.

3. The assets managed by the Bank in the Index Funds are invested pursuant to a strategy which attempts to replicate the performance of a predetermined third-party index, such as the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index). The assets managed by the Bank in the Model-Driven Funds are invested pursuant to a strategy whereby investments are made in accordance with predetermined computer models. The applicant states that because the Funds are passively managed, the holdings of each Fund remain static unless one of several potential "trigger events" occurs.

First, an independent third party, such as Standard and Poors (S&P), may change the makeup of its index, which would require corresponding changes in the make-up of the portfolio of the Index Funds corresponding to that index.

Second, a threshold screen applied by the Bank may eliminate certain securities from the Index Fund or Model-Driven Fund even though such securities continue to be incldued in the related index or mdoel. Such a screening process may occur when the companies issuing the particular securities declare bankruptcy or are involved in an acquisition or merger. However, the Bank excludes relatively few securities of companies from its Index Fund portfolios for such reasons at any given time. The Bank states that, as a general rule, it will follow the decision of the third party creator of the index and will not exclude a security until it has been dropped from the index by the third party. For example, when Texaco, Inc., went into bankruptcy, its stock was not dropped from the S&P 500 Index and, therefore, the stock was retained in the Bank's S&P Index Funds. However, as an exception to the general rule situations may arise where the Bank's screening process may produce a "trigger event". For example, a successful tender offer may be made for a security that has been held in the Index Fund. In such cases, the Bank states that the Index Fund typically will tender its position in that security. Thus, even though S&P may continue to carry the security in the S&P 500 Index until the tender offer transaction has finally closed, the Bank will not attempt to acquire additional shares of that security in order to maintain its position. Rather, the Bank states that it will invest the cash proceeds of the tendered securities in its short term investment vehicles until a replacement security has been chosen by S&P and will then reposition the Bank's S&P Index Fund in that new security. The Bank notes that relatively few securities held in the Funds' portfolios are subject to tender offer transactions at any particualr time.

Third, the computer model upon which a particular Model-Driven Fund is based may change as a result of a change in the underlying objective criteria. Such criteria for the computer model are either prepared by an independent organization and made available to the Bank or are the product of investment strategies developed by the Bank's personnel.

For example, the investment objective of a particular Model-Driven Fund may be to track as closely as possible the performance of the S&P 500 Index, without having the Fund invest in all 500 securities of the S&P 500 Index. In order to accomplish this result, the Bank may use an "optimizer" computer program, prepared by an independent organization, which selects the 200 representative securities that are most likely to track the performance of the S&P 500 Index. Alternatively, the Bank might utilize an approach whereby those stocks in the S&P 500 Index which have the smallest capitalization would be excluded. Under either of these two approaches, once the approach has been selected for the particular Model-Driven Fund, everything is driven automatically by either the "optimizer" computer program or by the capitalization of the various stocks in the S&P 500 Index.

Fourth, the net amount available for investment in the particular Index Fund or Model-Driven Fund may increase or decrease, either due to the receipt of income which must be reinvested, the addition of assets to the Client Account, or the withdrawal of assets from the Client Account. The applicant states that in the case of the Client Plans, all such additions or deletions are made at the direction of an independent fiduciary. However, in the case of the Bank Plans, the additions or deletions are made at the direction of the Bank.

4. The applicant represents that since the Index Funds and the Model-Driven Funds are passively managed portfolios, the need to purchase or sell a particular security arises as the result of the occurrence of one of the triggering events described above. Such "trigger events" are, in most cases, the result of an event which occurs independent of any exercise of investment discretion by the Bank. Therefore, the Bank states that the amount, nature and timing of trades for both the Index Funds and the Model-Driven Funds, in most cases, are not subject to the exercise of any material degree of discretion by the Bank. The Bank notes that it would be exercising discretion in the context of trades which might arise by reason of the Bank's exercise of its discretion to change the computer models upon which certain of its Model-Driven Funds are based. However, the Bank represents that any cross-trade opportunities which arise by reason of its discretionary changes to the underlying computer models (i.e. the third triggering event described above) for any of the Mode-Driven Funds would not be executed with respect to those Funds. The Bank also notes that it would be exercising discretion in the context of cross-trades which arise as a result of additions or deletions to a Fund made by the Bank Plans. However, the Bank represents further that the Funds would be able to take advantage of cross-trade opportunities with a Fund that has produced a "trigger event" as a result of the additions or deletions made to that Fund by one of the Bank Plans only in certain limited circumstances (see Paragraph #10).

With respect to the timing of the transactions once a "trigger event" has occurred, the Bank states that it attempts to replicate any changes in the underlying index or model as quickly as possible. For example, when assets are deposited in an Index Fund, assets to be invested in domestic securities are typically invested within three days. If the assets are deposited in an international Index Fund, the Bank states that the orders are typically placed with independent brokers within three days, although the actual execution of those orders may take longer depending upon the particular overseas market. The Bank states further that if assets are being withdrawn from a Fund and sales must be made, such sales are typically implemented within three days of the withdrawal.

5. The applicant states that the Funds are often required to sell a particular security when one or more of the other Funds will be in the process of purchasing that same security. If the Funds effect the required transactions on the open market, each Fund incurs substantial transaction costs, including brokerage commissions, the so-called "marketmaker's spread", and the potential adverse market impact which may be caused by the trade itself.

The Bank states that if it were able to effect these transactions by means of a pre-arranged direct cross-trade between the Funds that must sell the particular security and the Funds which must buy that same security, the Bank could substantially reduce the amount of the commission costs for the Funds, and could eliminate entirely the marketmaker's spread and any potential for adverse market impact. Based on a review of the potential direct cross-trade opportunities during the period from January 1, 1987 to September 30, 1987, the Bank estimates that the ability to effect direct cross-trades would generate substantial savings to the Funds. The Banks states that the proposed cross-trading of the securities between the various Funds would be effected as quickly as possible, generally within three days.

6. In addition to transactions arising in connection with the automatic trading activities of the Index Funds and Model-Driven Funds, the Bank states that it is often retained to assist one of the Large Plans in liquidating all or a substantial portion of the securities held by the Large Plan. In such situations, the Bank acts as a "trading adviser" to the Large Plan. Each of the Large Plans has total

assets of at least $50 million. The Bank states that it is not a fiduciary for the Large Plan with respect to the underlying asset allocation decision which results in the Large Plan allocating assets to the Funds. Specifically, the Bank is not a fiduciary by reason of investment advice to the Large Plan when acting in the role of "trading adviser" to the Large Plan. Typically, the Bank's role as a "trading adviser" involves only advice on the mechanical aspects of accomplishing the Large Plan's asset allocation decision, such as arranging for the stock transactions so as to minimize transaction costs. Such liquidations are the result of the decision of an independent plan fiduciary to restructure the portfolio, in some cases to allow such portfolio to be managed by the Bank as an Index Fund or a Model-Driven Fund and in other cases to facilitate the realignment of the portfolio in connection with a change in investment managers or investment strategy. The applicant states that in the course of these restructrurings, the Large Plan will often be selling certain securities which the Funds are simultaneously in the process of purchasing as a result of a "trigger event." In such cases, the Large Plan and the Funds effect the transactions on the open market and, as a result, both the Large Plan and the Funds incur the transaction costs described above.

7. The Bank represents that it would be in the best interest of the Plan Clients and the Large Plan for direct cross-trades to be arranged and effected to the maximum extent possible. The Bank states that the avoidance or reduction of transaction costs made possible by direct cross-trading between the Funds, or between the Funds and the Large Plans, would be an economic benefit to the Plan Clients and the Bank Plans.

8. The Bank represents that it would receive its customary investment management or trustee fees with respect to the Plan Clients and its fee for acting as "trading adviser" to a Large Plan. However, the Bank would not receive any additional compensation on account of its effecting the direct cross-trades. The Bank represents further that to the extent that it is necessary to utilize a broker-dealer, all direct cross-trades would be effected through an independent broker-dealer which is not affiliated with the Bank. The Bank anticipates that the utilization of such an independent broker-dealer may be necessary in some cases to efficiently process the mechanical aspects of the direct cross-trade, particularly when the Bank is not the custodian or trustee for both parties to the transaction. For example, the need for an independent broker-dealer may arise in the context of transactions between the Funds, for which the Bank is the trustee or custodian, and one of the Large Plans, for which the Bank is only a "trading adviser" for the transaction and not a trustee or custodian for the assets of the Large Plan involved. The Bank states that where it is the trustee or custodian for both parties, the Bank may be able to efficiently process the mechanical aspects of the trade without the involvement of any broker-dealer, thereby resulting in the complete avoidance of any brokerage commissions. In no event would the Bank or any of its affiliates receive any brokerage commissions or other additional compensation as result of the direct cross-trades.

9. The Bank represents that all direct cross-trades would be for cash effected at a price equal to the closing price reported by the independent pricing service customarily utilized by the Bank for purposes of valuing the particular equity securities (and in the case of foreign securities, the particular currency). The independent pricing service used by the Bank gathers price information from all the relevant sources (i.e. the New York Stock Exchange, the American Stock Exchange, NASDAQ, etc.) and compiles the information into a format which is usable by the Bank. The Bank states that in the event that the number of shares of a particular security which all of the Funds and Large Plans propose to sell on a given day exceeds the number of shares of such security which all the Funds or the Large Plans propose to buy, or vice versa, the direct cross-trade opportunity would be allocated among potential sellers or buyers on the basis of a queue system.

The Bank proposes to utilize an approach whereby all investment funds would be placed in a queue, initially in alphabetical order. Any new Funds would be placed at the end of the queue as they come on line. Thus, the queue system would merely establish a listing of the Funds as potential buyers or sellers of securities. When cross-trade opportunities arise, the Bank would go down the list matching any buyers and sellers in the order in which they appear on the list until one side of the transaction or the other has been fully exhausted. The Bank states that after each cross-trade opportunity, the Fund at the top of the list would be rotated to the bottom of the list, regardless of whether that Fund participated in the cross-trade. Thus, the applicant states that since the queue moves up by one Fund after each cross-trade opportunity, all the Funds would have an opportunity to participate in direct cross-trading opportunities.

10. The Bank states that when direct cross-trades occur between the Funds and one or more of the Large Plans, the transactions would be effected only if the following conditions are satisfied: 1) The Large Plan's fiduciary, which is independent of the Bank, is fully informed in writing in advance of the cross-trading opportunity; 2) such fiduciary provides advance written approval, authorizing the Bank to engage in a cross-trade transaction; and 3) the Large Plan's fiduciary is informed in writing of the results of all direct cross-trading activity.

With respect to the participation of the Bank Plans in the Funds which would engage in the proposed direct cross-trading program, the Bank states that a Fund would not be eligible to participate in the cross-trading opportunities if the assets of the Bank Plans in the Fund exceed 10% of the total assets of the Fund. In addition, the Bank states that even if the 10% limitation is satisfied with respect to a particular Fund, the Fund would not be eligible to participate in direct cross-trading opportunities if the triggering event for the cross-trade opportunity involves the deposit of assets from a Bank Plan into the Fund or the withdrawal of assets by a Bank Plan from the Fund, and the Bank Plan's assets involved in such deposit or withdrawal constitute more than 5% of the total assets of the Bank Plan.

11. In summary, the applicant represents that the proposed transactions would satisfy the statutory criteria of section 408(a) of the Act because, among other things: (a) The Funds would buy or sell equity securities in direct cross-trading transactions only in response to various "trigger events" which, in most cases, arise independent of the exercise of investment discretion by the Bank; (b) the Large Plans would engage in cross-trades only in situations where the Bank has no discretion with respect to the investment decision; (c) the price for the equity securities would be the closing price for the securities on the day of trading; (d) the direct cross-trading between the Funds, or between the Funds and the Large Plans, would be conducted as quickly as possible, with securities transactions being effected generally within at least three days of the "trigger events" for the Funds; (e) the Funds and Large plans would save significant amounts of money on

brokerage commissions and other expenses normally associated with such transactions; and (f) the Bank would receive no additional fees as a result of the proposed cross-trades.

Notice to Interested Persons: A notice will be mailed by first class mail to each Plan which invests in the Funds. The notice will contain a copy of the notice of pendency of exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment on or request a hearing regarding the proposed exemption. Such notice will be sent to the above-named parties within two weks of the publication of the notice of pendency in the **Federal Register**.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Eastwood Printing and Publishing Company Profit Sharing Plan and Trust (the Plan); Located in Denver, Colorado

[Application No. D–7506]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406 (a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) by the Plan to Siegel Investment Company (SIC), a limited partnership and a party in interest with respect to the Plan, of a certain parcel of real property located in Denver, Colorado (the Property); provided that the terms and conditions of the transaction are at least as favorable to those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 22 participants and total assets of $1,215,547.94 as of September 30, 1987. Noah Siegel (Mr. Siegel) is the Plan trustee and also the owner of the Employer. Mr. Siegel, his wife and two children are the owners of SIC.

2. The Property is located at 3201–3225 Blake Street, Denver, Colorado and covers a total area of 65,826 square feet. On-site improvements include a one-story building providing office and warehouse space and a paved yard with access to a railroad right-of-way. The real estate directly contiguous to the Property is owned by SIC.

On March 31, 1981, the Plan purchased the Property for $200,065 from Alfred J. Zarlengo, who, the applicant represents, is unrelated to the Plan, Mr. Siegel or SIC. During the term of its holding of the Property, the Plan expended $26,000.58 on taxes, insurance and maintenance. In addition, the Plan paid approximately $25,000 for capital improvements to the Property in 1985.

From 1981 to 1985, the Property was leased to Colorado Sheepskin Services, Inc. for $790 per month. The Property's vacant yard was also leased to contractors who were not parties-in-interest. Since August, 1987, a portion of the Property has been leased to Graphic Arts Mailing, Inc., who the applicant represents, is not a party-in-interest. The Plan received rental payments of $1,500 per month, totalling $18,000 annually under the lease. The Plan pays real estate taxes, insurance and maintenance costs estimated to be $8,400 per annum.

3. The Property's fair market value was determined as of November 5, 1985 as $315,000 by Philip J. Barkan, S.R.A. and S.R.E.A., of Denver, Colorado (the Barkan Valuation). The Property was subsequently appraised by Clifford L. Cryer, M.A.I. and S.R.P.A., and W. Earl Wilson, Associate Appraiser, of Cryer & Company Appraisers, Inc. (the Cryer Appraisal). The Cryer Appraisal determined the Property's fair market value as of October 5, 1987 to be $285,000. By update to the Cryer Appraisal as of April 22, 1988, Messrs. Cryer and Wilson considered the special value of the Property to SIC as a contiguous landowner and determined that there was none in this instance.

4. SIC now proposes to purchase the improved Property from the Plan for cash in amount of $315,000, the fair market value determined in the Barkan Valuation. SIC represents that the Plan will pay no real estate commissions or fees of any kind, including legal fees, in connection with the transaction.

5. The applicant represents that the transaction will be in the best interests of the Plan and protective of the rights of the Plan's participants and beneficiaries because it will enable the Plan to divest itself of an illiquid investment which represents approximately 25 percent of the Plan's assets. The Plan's increased liquidity resulting from the Sale will facilitate distributions to terminated employees whose interests have vested in the Plan.

6. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The Plan will receive at least the appraised fair market value for the Property; (b) the Sale will be a one-time transaction; (c) the Sale will be consummated for cash; (d) the Plan will incur no cost or fees with respect to the transaction; and (e) the applicant has represented the Sale to be in the best interest and protective of the Plan and its participants and beneficiaries because it will increase the Plan's liquidity and facilitate distribution of Plan assets to them.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the Plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Review Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The O.C. Tanner Company Retirement and Savings Plan, the O.C. Tanner Manufacturing Retirement and Savings Plan, the O.C. Tanner Manufacturing Sales Representatives' Retirement and Savings Plan, the O.C. Tanner Employees Savings Plan and the O.C. Tanner Retirement and Savings Plan Group Trust (collectively, the Plans); Located in Salt Lake City, Utah

[Application Nos. D–7604 through D–7608]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application for section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a series of loans (the Loans) by the Plans to the O.C. Tanner Company (the Employer), involving up to 25% of each of the Plan's assets, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in arm's-length transactions with unrelated parties.

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Summary of Facts and Representations

1. The Plans are qualified employee profit sharing plans and a qualified group trust with approximately 1,210 participants and total assets of approximately $26.6 million as of December 31, 1987. All of the Plans' assets are commingled in a group trust for investment purposes. The Employer is a closely held corporation engaged in the manufacture and marketing of emblematic jewelry. The trustee of the Plans is Obert C. Tanner and the administrative committee appointed to manage and administer the Plans includes Messrs. O. Don Ostler, W. Lowell Benson and Robert K. Anger, all of whom are employees of the Employer.

2. The Department granted a previous exemption to the applicant effective July 1, 1984 (Prohibited Transaction Exemption (PTE) 84–112, 49 FR 30608, July 31, 1984), to permit a series of loans by the Plans to the Employer involving up to 25% of each of the Plan's assets. The applicant requests that this exemption be expanded to include two new plans of the Employer that were not covered by the prior exemption (i.e., the O.C. Tanner Employees Savings Plan and the O.C. Tanner Retirement and Savings Plan Group Trust). The Plans propose to make the Loans over the remainder of the 10-year period which began July 1, 1984, the effective date of PTE 84–112, to the Employer involving up to, but never in excess of, 25% of the assets of each of the Plans, the amount of the Loans to be adjusted quarterly. The principal amount of the Loans will become fixed for the duration of the Loans at the end of 10 years from July 1, 1984 (i.e., June 30, 1994). That is, no additional loans will be made after June 30, 1994.

3. Loans made from the Plans are documented by one promissory note from the Employer to the group trust. Each calendar quarter representatives of the Employer meet with the Plans' independent fiduciary (see representation 7) to consider adjustment of the Loan balance. If a new Loan is to be allowed, the Employer pays off the previous Loan first and then executes a new promissory note reflecting the increased Loan balance. Prior to executing a new promissory note, the independent fiduciary reviews the process and issues a report stating that the new Loan is appropriate and suitable for the Loans.

4. The Loans will be repaid in quarterly payments of interest and principal to be made through the quarter ending June 30, 1989, each equal to the amount that would be necessary to amortize the current principal amount of the Loans at the then interest rate, in 20 equal consecutive quarterly payments. Since the entire outstanding principal balance on the Loans will vary, payments will be calculated as if the entire outstanding principal balance on the Loans were to be repaid with interest in level payments over 5 years. The Employer will be charged a rate of interest no less than the fair market rate of interest that would be charged by an unrelated lender for arms'-length loans of comparable amount, security, terms and conditions, as determined by the independent fiduciary. The interest rate will be adjusted at least annually and may be adjusted also whenever the principal amount of the Loans is increased or, in the opinion of the independent fiduciary, whenever the market rate for comparable loans changes sufficiently that a lender would reasonably be expected to request that the terms of the Loans be renegotiated. Notwithstanding the foregoing, the rate of interest on the Loans shall always equal or exceed the "prime" rate of interest charged by Chase Manhattan Bank plus two percent (2%).

5. The Loans will be secured by a first mortgage on the Employer's manufacturing facilities and related real property (the Property), located at and in the vicinity of 1930 South State Street, Salt Lake City, Utah. The mortgage will be evidenced by a standard trust deed, designating the Plans as beneficiaries and the independent fiduciary as trustee. The Property has been appraised by George Y. Fujii, an independent MAI appraiser with the firm of Reval Inc., Salt Lake City, Utah, as having a fair market value of $14,060,000 as of June 1988.[1] The Employer represents that it will add any additional collateral that may be required while the Loans are outstanding to assure that the value of the collateral is at all times equal to at least 200% of the outstanding balance of the Loans. A certified MAI appraiser will review this valuation at least annually. During the Loans' outstanding period, the Property will be kept adequately insured for the benefit of the Plans against fire or other loss at the expense of the Employer, and the independent fiduciary will determine at least annually that adequate insurance has been maintained.

6. In the event that the independent fiduciary shall retain or engage an attorney or attorneys to collect, enforce, or protect the Plans' interests with respect to the Loans, the Employer shall pay all of the costs and expenses of such collection, enforcement, or protection, including reasonable attorneys' fees, and the independent fiduciary may take judgement for all such amounts, in addition to the unpaid principal balance of Loans and accured interest thereon.

7. The trustee of the Plans will continue to appoint Kent D. Watson, C.P.A. (Mr. Watson), of Price Waterhouse, Salt Lake City, Utah, a certified public accountant who is experienced with both large and small business operations and who is the managing partner of the Price Waterhouse office in Salt Lake City, to serve as an independent fiduciary for the proposed Loans. Other than his previous service as independent fiduciary under PTE 84–112, Mr. Watson has no other relationship with the Employer or the Plans. Mr. Watson has been advised by legal counsel with regard to his duties, responsibilities, and liabilities as a fiduciary under the Act. Mr. Watson represents that he is aware of and understands the requirements of the Act and his responsibilities under it. In addition to reviewing the specific terms and conditions of the proposed Loans, Mr. Watson has represented that he will (a) Examine the Plans' investment portfolio; (b) consider the cash flow needs of the Plans; (c) give consideration to whether a sale of any of the Plans' assets is necessary; (d) examine the diversification of each Plan's assets in light of the loan investment; and (e) review the terms of the Loans to assure that they comport with the Plan's investment schemes. Mr. Watson will determine, prior to the making or increase of the Loans, that the Loans are appropriate and suitable as an investment for the Plans, that they are sound and reasonable under the circumstances and that any sale or liquidation of assets held by the Plans that might be required in order to make such loan or increase is prudent and reasonable. Mr. Watson will be responsible under the loan agreement for supervising the Loans to ensure that (1) The amount of the Loans never exceeds 25% of each Plan's assets, (2) the interest rate is always at least a fair market rate, (3) the Loans are at all times secured by a first mortgage on property worth at least 200% of the outstanding principal obligation, and (4) installments and repayment of the Loans are timely made. Mr. Waston has examined the terms of the proposed Loans and has initially determined that they are appropriate and suitable for the

[1] This appraisal was based on the premise that the Employer would continue to reside in the buildings acting as collateral. The Employer has agreed, in the case that it moves its offices from the buildings acting as the collateral, to immediately repay all of the Loans.

Plans. He will be required to make the same determination immediately prior to consummation of each of the transactions and will be empowered and required to approve each increase in the principal amount of the Loans. He will further be empowered and directed to enforce the terms of the loan agreement between the Plans and the Employer, including bringing suit or other appropriate process against the Employer in the event of default, allowing 10 days to foreclose on the mortgage; ascertaining at least annually that the Employer is maintaining adequate insurance on the Property in the Plans' favor against fire or other lose; and reporting at least annually to the trustee of the Plans on the performance of the Loans, including whether the value of the collateral remains equal to at least 200% of the outstanding balance of the Loans.

Mr. Watson represents that all of the prior Loans were administered in accordance with the terms set forth in PTE 84–112 and that the Loans were and continue to be an appropriate investment for the Plans. As independent fiduciary, Mr. Watson will be entitled to such information from the Employer and the Plans as may reasonably be necessary to fulfill his responsibilities, and he shall be paid reasonable compensation plus reimbursement for reasonable expenses, if any, including legal or appraisal fees or costs, as agreed upon with the trustee of the Plans. The Employer may also indemnify him for his acts performed reasonably and in good faith, while acting as the independent fiduciary.

8. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Loans are secured by real estate with an appraised value that is and will remain at least twice the amount of the Loans; (b) the Employer will insure the Property and add additional collateral so that the value of collateral securing the Loans is always at least 200% of the outstanding balance of the Loans; (c) the Loans have and will continue to be administered by an independent fiduciary; and (d) the trustee and the independent fiduciary have determined that the transactions are appropriate for the Plans and in the best interest of the Plan's participants and beneficiaries and protective of their interests.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Alton Engineering Profit Sharing Plan (the Plan); Located in Bethesda, Maryland

[Application No. D–7640]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plan of three limited partnership interests (the Interests) and a certain parcel of improved real property (the Property) to George J. Quinn (Mr. Quinn), a disqualified person with respect to the Plan, provided that the sale price is no less than the fair market value of the Interests and the Property as of the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which, as of April 30, 1988, had one participant and total assets of approximately $1,227,725. The trustees of the Plan are Mr. Quinn and his wife, Eileen S. Quinn.

2. The sponsor of the Plan is the Alton Engineering Company (the Employer). The Employer is a Maryland corporation located at 9407 Elsmere Court, Bethesda, Maryland. Mr. Quinn is the sole stockholder of the Employer. The Employer is engaged in the business of providing general contracting services. However, the Employer has been relatively inactive since 1980 and has had only one active employee, Mr. Quinn.

The Employer decided to terminate the Plan effective April 30, 1984. At the time of termination, all of the participants in the Plan, except for Mr. Quinn, had terminated their employment with the Employer. By letter dated July 25, 1986, the Internal Revenue Service determined that the Plan was qualified upon termination. The participant's interests in the Plan were subsequently liquidated, except for the amount due to Mr. Quinn. Therefore, Mr. Quinn is the only remaining participant in the Plan.[1]

3. The Interests are described as follows:

(1) a 1.365% interest in the Columbia Pike Limited Partnership (the Columbia Pike L.P.), which owns a single parcel of improved real property located at 5600 Columbia Pike, Fairfax County, Virginia; (2) a 1.249% interest in a 37.7 acre parcel of unimproved real property located in Montgomery County, Maryland, which is owned by the Wilgus Associates Limited Partnership (Wilgus) and held by the Plan under the Paramount Development Limited Partnership (the Paramount L.P.), which is a partner with Wilgus; and (3) a 2.5% interest in the Cohen-Donnelly Associates Limited Partnership, which owns the following: (i) A garden apartment complex located on Missouri Avenue and 13th Street, NW., Washington, DC; (ii) a 3-story, walk-up apartment building located at 5301 New Hampshire Avenue, NW., Washington, DC; and (iii) and a purchase money deed of trust secured by a 3-story garden apartment development located at 7406 Hancock Avenue, Takoma Park, Maryland.

The Property is a 100% fee simple interest in certain improved real property located at 32 N Street, SE., Washington, DC.

4. The Plan acquired the Interests and the Property from unrelated parties prior to the effective date of the Act. In addition to the Interests owned by the Plan, Mr. Quinn owns a 2.5% interest in the Paramount L.P., and holds or controls, along with the Employer, a 12.6% interest in the Columbia Pike L.P. (together, the Quinn Interests). The applicant represents that the Quinn interests were acquired, in each case, at the same time that the Plan acquired its Interests in those same partnerships, which was prior to the effective date of the Act. The applicant states that part of the Quinn Interests in the Columbia Pike L.P. were later sold to other investors, some of whom are related to Mr. Quinn. The applicant states further that there haved been no additional acquisitions of ownership interests in any of the limited partnerships (the Partnerships) by either Mr. Quinn, the Employer, or the Plan.[2]

The applicant represents that neither the Property nor the underlying properties owned by the Partnerships have ever been leased to, or used by, a party in interest or disqualified person with respect to the Plan.

[1] Because Mr. Quinn is the only participant in the Plan and the employer is wholly-owned by Mr. Quinn, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] In this proposed exemption, the Department expresses no opinion as to whether the continued holding of the Interests by the Plan and the Quinn Interests by Mr. Quinn, subsequent to the effective date of the Act, violated any provision of Part 4 of Title I of the Act.

5. The Interests and the Property were appraised on November 20, 1987 by John E. Gogarty, M.A.I. (Mr. Gogarty), an independent, qualified real estate appraiser and consultant in Washington, DC. Mr. Gogarty states that the Interests and the Property had a fair market value of approximately $347,350 and $45,000, respectively, as of November 20, 1987. Mr. Quinn proposes to purchase the Interests and the Property from the Plan for cash in an amount equal to their fair market value, as estabished by Mr. Gogarty's appraisal. The applicant states that Mr. Gogarty's appraisal will be updated for purposes of the proposed transaction and that there will be no brokerage commissions or other expenses incurred by the Plan in connection with the sale.

6. The applicant represents that the proposed transaction is in the best interests of the Plan because the Interests and the Property are not easily liquidated and that the Plan may not be able to obtain the appraised fair market value for the Interests and the Property if the Plan is forced to sell these assets on the open market. In addition, the applicant states that the Plan may lose its tax qualified status unless it is liquidated shortly. Mr. Quinn has considered taking the Interests and the Property as a distribution in kind as part of his total distribution from the Plan. However, Mr. Quinn represents that he wants to "roll over" his entire distribution from the Plan to an individual retirement account (IRA) and has had difficulty finding a corporate trustee that is willing to hold the Property and the Interests in an IRA. Therefore, Mr. Quinn believes that the proposed transaction will assist the Plan in liquidating its assets and will enable the Plan to expedite the distribution of such assets.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive an amount equal to the fair market value of the Interests and the Property, as established by an independent, qualified appraiser; and (c) the Plan will not pay any brokerage commissions or other expenses with respect to the sale.

Notice to Interested Persons: Because Mr. Quinn is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register**.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of August, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–19714 Filed 8–29–88; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Meeting; Ocean Sciences Research Advisory Panel

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ocean Sciences Research.

Date and Time: September 20–22, 1988.

Place: American Association for the Advancement of Science, 1333 H Street, NW., Washington, DC 20005. Rooms: First Floor Conference Room A, First Floor Conference Room B, Eighth Floor Conference Room, Eleventh Floor Conference Room.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9600.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

August 23, 1988.

[FR Doc. 88–19655 Filed 8–29–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reoganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 11, No. 1).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, specal nuclear, and byproduct material are abnormal occurrences.

The report to Congress is for the first calendar quarter of 1988. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were three abnormal occurrences at the nuclear power plants licensed to operate: a potential for common mode failure of safety-related components due to a degraded instrument air system at Fort Calhoun; common mode failures of main steam isolation valves at Perry Unit 1, and a cracked pipe weld in a safety injection system at Farley Unit 2.

There were six abnormal occurrences at other NRC licensees: a diagnostic medical misadministration; a breakdown in management controls at the Georgia Institute of Technology research reactor facility; the release of polonium–210 from static elimination devices manufactured by the 3M Company; two therapeutic medical misadministrations, and a significant widespread breakdown in the radiation safety program at Case Western Reserve University research laboratories.

There was one abnormal occurrence reported by an Agreement State (Texas) involving radiation injury to two radiographers.

The reports also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 1717 H. Street, NW., Washington DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 11, No. 1 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Bethesda, MD, this 24th day of August 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–19675 Filed 8–29–88; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–315 and 50–316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the approval of a procedure for the disposal of contaminated concrete at the Donald C. Cook Nuclear Plant, pursuant to 10 CFR 20.302, as requested by Indiana Michigan Power Company (the licensee). D.C. Cook Nuclear Plant is located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would approve the onsite disposal of contaminated concrete resulting from the replacement of the steam generators in D.C. Cook Unit No. 2.

The Need for the Proposed Action

To provide access for complete replacement of the four steam generator lower assemblies, a large opening will be cut in each of the reinforced concrete doghouses surrounding the steam generators. Large sections of reinforced concrete will need to be removed from the Unit 2 steam generator doghouse enclosures and must be disposed of. The licensee proposes to decontaminate the concrete to the extent practical. Following decontamination of the concrete, the licensee intends to dispose of the concrete outside the protected area fence, but within the D.C. Cook Nuclear Plant site boundary. The chosen site is presently the site of concrete spoils and other construction remnants left from the construction of the plant.

Environmental Impacts of the Proposed Action

By letter dated February 29, 1988 the licensee submitted an application for the onsite disposal of contaminated concrete slabs, a licensed material not previously considered by the Commission's staff in the D.C. Cook Final Environmental Statement (FES) dated August 1973. The application, prepared in accordance with 10 CFR 20.302(a), contains a detailed description of the licensed material, thoroughly analyzes and evaluates the information pertinent to the effects on the environment of the disposal of the licensed material, and commits the licensee to follow specific procedures to minimize the risk of unexpected or hazardous exposure.

The proposed action would allow the licensee to retain contaminated concrete on site at the D.C. Cook Nuclear Plant. Large sections of reinforced concrete will be removed from the D. C. Cook Unit No. 2 steam generator doghouse enclosures and must be disposed of. Decontamination by mechanical removal of paint, and surface concrete to a depth of 1/16", will eliminate the majority of the contamination accumulated in the concrete. However, the concrete sections will have trace quantities of Cobalt-60 (Co-60), Cesium-134 (Cs-134), and Cesium-137 (Cs-137) distributed in the remaining outer surfaces. The concrete will be removed in 24 to 30 large slabs ranging in weight from 25 to 70 tons each. It is planned to dispose of the material in this form, as large structural segments. The roof sections are three feet thick, and the wall portions are two feet thick. The estimated total weight of the slabs is 920 tons. This total includes an estimated 65 tons of reinforcing steel and steel structural supports.

The outer surfaces of the doghouse structures are in the upper containment volume. The surfaces were painted with nuclear Grade I paint prior to operation of the unit. However, the airborne contamination inside containment, arising due to normal operations, has brought small amounts of radioactive contamination into contact with the surfaces. Over the ten years of plant operation, the small amounts of contamination have diffused through the paint and into the outer layer of concrete. Inside the doghouse structure, airborne contamination again has contributed to the deposition of radioactivity on the walls.

Radiological analysis was performed on samples of paint and underlying concrete from the outside wall of the doghouse structures. Three nuclides were found in the concrete: Cobalt-60, Cesium-134, and Cesium-137. The average of the measured sample concentration of each nuclide is given in the licensee's application and is shown below in Table 1. The licensee indicated in the application that the concentrations represent the activity expected in the surface of the concrete when it is disposed of after decontamination. The licensee used maximum measured sample concentration in portions of the radiological impact assessment to insure conservatism in the calculations, and these values are summarized in Table 1 also.

To calculate the total activity present in the concrete, the licensee's estimate was made, based on the sample data, of the amount of diffusion of the radionuclides into the concrete. Diffusion is a physical phenomena generally applied to gaseous and liquid materials 'migrating' into a host material. The amount of diffusion of one material into another is dependent on the properties of both materials, the temprature, and the concentration of the diffusing material at the surface of contact. Water evaporating into air is an example of diffusion. The process of diffusion for the subject concrete was modeled mathematically according to Fick's Law which is a natural exponental function. The concentration of the diffusing material (i.e., the radioiosotopes) at the contact surface migrates into the host material, here being concrete, and gradually decreases with depth from the surface. The mathematical model never reaches zero concentration due to the properties of exponential functions, therefore practically, one chooses a very small cut off point at which it can be assumed the concentration has essentially reached zero. The licensee chose the cut off in this case to be the depth at which the surface activity concentration was decreased by 100,000 times. Actual activity at this level would be impossible to measure and is several times below natural background levels of radiation. This depth was calculated to be approximately one inch. To be more conservative, the licensee assumed that all of the calculated activity in the one inch of concrete was uniformly near the surface. Based on this conservative assumption it would be contained in the first one-tenth of an inch. This assumption was used in the exposure pathway dose calculations. The licensee calculated the total activity by integrating the concentration to this depth over the entire surface area of the concrete blocks.

The licensee indicated in the application that several conservative assumptions were made in calculating the total activity content of the concrete. First, the surface area was calculated based on total volume of concrete and a uniform thickness of two feet. This effectively creates approximately 25 percent more potentially contaminated surface area than actually exists. Second, all surfaces were assumed to be equally contaminated. Due to the presence of the protective steel liner plate, any contamination on the inner concrete surface is expected to be small relative to that measured on the outer surface. Table 1 indicates the licensee's total calculated activity of each radionuclide based on both the average of the sample concentrations and on the maximum concentrations measured in the surface.

TABLE 1.—RADIOACTIVITY CONTENT OF THE DOGHOUSE CONCRETE

Nuclide	Half-life (years)	Ave. conc. (pCi/gm)	Max. conc. (pCi/Gm)	Ave. based activity (uCi)	Max. based activity (uCo)
Co-60	5.3	1.33	2.70	7.8	16.0
Cs-134	2.1	0.33	0.70	1.9	4.1
Cs-137	30.0	2.60	7.70	15.4	45.6
Total		4.26	11.10	25.1	65.7

Prior to disposal, items embedded in the concrete such as equipment supports, anchor bolts, and conduit and piping restraints shall be cut off flush with the concrete surface. The painted surface of the concrete will be removed to a minimum depth of 1/16" into the underlying concrete by a mechanical scarifying process.

The decontaminated blocks will again be surveyed prior to release for disposal. Any areas on the blocks which do not meet radiation protection release criteria, or exceed the assumptions made in the radiation dose evaluation of the application, will be further decontaminated prior to release for disposal.

The proposed disposal method for the concrete blocks is to remove them to an area outside the protected area fence, but within the Donald C. Cook Nuclear Plant site boundary. The Cook Nuclear Plant is located in Lake Township, Berrien County, Michigan, approximately 11 miles South-Southwest of the center of Benton Harbor, Michigan. The plant site consists of approximately 650 acres situated along the eastern shore of Lake Michigan. A more detailed description of the plant site area can be found in the "Final Environmental Statement Related to Operation of Donald C. Cook Nuclear Plant Units 1 and 2" (FES), August 1973.

The chosen site is presently the site of concrete spoils and other construction remnants left from the construction of the plant. The site is more than 200 yards away from any area occupied by plant personnel on any regular basis, and is 150 yards away from Thornton Road. The site is also surrounded by earthern mounds on all sides, with the exception of the access point.

Once the concrete is in place, it will not be visible except at the access point. It has not yet been determined whether or not the slabs will be stacked or individually laid down, but the maximum actual area occupied by the blocks will be less than 20 x 25 yards.

An evaluation of the potential radioactive dose to a plant site worker and to a member of the general public was performed by the licensee to determine the radiological impact of placing the concrete in the proposed location. The calculations were performed using applicable methodologies in Regulatory Guide 1.109, NUREG/CR-3332, and *Introduction to Health Physics,* Cember.

The licensee, in the application, stated all potential exposure pathways recommended by Regulatory Guide 1.109 were evaluated with the exception of potential dose from incineration of the waste. There is no feasible scenario by which the concrete would be burned. The licensee's evaluation consisted of a determination of the environmental pathways through which radiological exposure could be expected to occur and an evaluation of the radiological consequences of the disposal of the concrete for each of the pathways considered. The following environmental pathways were considered:

(1) External exposure from the concrete—occupational and intruder

(2) Internal exposure due to release of contaminants to surface and ground water—ingestion of drinking water, fish and other aquatic foods, and well water

(3) Internal exposure due to agricultural activities on the disposal site following loss of institutional control—ingestion of vegetables, meat and dairy products

(4) Internal exposure due to inhalation of resuspended contaminated concrete dusts—occupation, and intruder following loss of institutional control.

This evaluation demonstrates that any doses to occupational workers, intruders, and members of the general public would be very small, and far lower than the levels permitted for unrestricted areas by 120 CFR 20.105.

In the FES for the operation of D.C. Cook, the Commissioner's staff considered the potential effects on the environment of licensed material from operation of the plant and, in the summary of radiological impacts, concluded that "* * * the routine operation of the Cook Station is expected to add only a small increment to the natural background dose." ". . . these doses correspond to concentrations which are a small percentage of permissible standareds set forth in 10 CFR Part 20.

Since the disposal proposed in the licensee's application dated February 29, 1988, involves licensed materials containing much less than 0.1 percent of the radioactivity, primarily Cobalt-60, Cesium-134, and Cesium-137, already considered acceptable in the FES, and involve exposure pathways much less significant and radiochemical forms much less mobile than those considered in the FES, the Commisson's staff considers this site-specific application for the D.C. Cook Nuclear plant to have insignificant radiological impact. The Commission's staff accepts the evaluations of the licensee documented in Attachment 1 of the February 29, 1988, application as further assurance that the proposed disposal procedures will have a negligible effect on the environment and on the general population in comparison to normal background radiation.

Alternatives to the Proposed Action

An alternative to on-site burial would be to ship and dispose of the concrete slabs at an offsite licensed disposal site. The overall benefit from the proposed method for the disposal of these slightly contaminated concrete slabs will be cost saving of approximately $1.6 million and a saving of burial site space of approximately 16,000 cubic feet, which can be used for other radwaste of higher activity. The alternative would not be environmentally preferable.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Donald C. Cook Nuclear Plan Units 1 and 2" dated August 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application dated February 29, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Maude Preston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 23rd day of August 1988.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-19676 Filed 8-29-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-55]

Unfair Trade Practices; Icicle Seafoods; USTR Determination

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Proposed Determination and Action Under Section 301.

SUMMARY: Pursuant to 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the United States Trade and Competitiveness Act of 1988, the United States Trade Representative is required to determine whether United States rights under a trade agreement are being denied by Canada's prohibition on the export of unprocessed Pacific herring and pink and sockeye salmon. The Trade Representative is also considering any appropriate action (subject to the Specific direction, if any, of the President) in response to Canada's practice. The USTR welcomes comments regarding such determination or responsive action with respect to current or anticipated Canadain measures.

DATE: Written comments will be accepted through Sept. 30, 1988.

ADDRESS: Comments should be addressed to the Chairman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Les Glad, Economist, Office of the United States Trade Representative, (202) 395-3077.

SUPPLEMENTARY INFORMATION: On April 1, 1986, Icicle Seafoods and nine other companies with fish processing facilities in Washington or southeastern Alaska filed a petition under section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411, et seq.) alleging that Canada prohibits exports of unprocessed Pacific herring and pink and sockeye salmon, and that this policy is an unjustifiable trade practice which violates Article XI of the General Agreement on Tariffs and Trade (GATT). Article XI prohibits most types of export restrictions.

On May 16, 1986, pursuant to 19 U.S.C. 2412(a), the Trade Representative initiated an investigation on the basis of this petition (51 FR 19,648). Also on May 16, the Trade Representative requested bilateral consultations with representatives of the government of Canada.

These consultations were held on Sept. 3 and Oct. 27, 1986. They failed to yield a satisfactory resolution of the issue. The USTR therefore invoked the formal dispute settlement procedures of the GATT and won a favorable decision that was adopted by the GATT Council in March 1988.

Representatives of the United States and Canada again consulted bilaterally on March 9-11, 1988. On March 22, 1988, the government of Canada announced that it would eliminate the export restrictions effective Jan. 1, 1989. However, the government of Canada also announced that it will immediately replace these export restrictions with new landing and inspection requirements prior to export. The requirement will apply to exports of the species of fish at issue in the GATT case, and might also be imposed on other species.

Pursuant to 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the USTR is required to determine whether Canada's export restrictions deny "rights to which the United States is entitled" under the GATT. If this determination is affirmative, he is further required to take appropriate and feasible action in response (subject to the specific

direction, if any, of the President) unless a specified exception applies.

The USTR welcomes comments regarding such determination and responsive action. USTR is particularly interested in comments on the current economic effects of Canada's export restrictions, and on the effects of a new Canadian landing requirement, as applied to: (a) Pacific herring; (b) pink and sockeye salmon; (c) chum, coho, and chinook salmon; and/or (d) Pacific groundfish. Comments should address the probable impact of alternative landing requirements such as those involving: off-loading and inspection in a Canadian port; or transfer of a "fish ticket" from a vessel to Canadian authorities in a Canadian port, without off-loading; or transfer of fish from a Canadian fishing vessel to a tender vessel in Canadian waters. USTR additionally invites comments on the economic impact on U.S. processors of Canadian quality inspection of unprocessed fish before export, and on the utility or necessity of such a program in promoting the quality of U.S.-processed fish products. USTR also invites comments on appropriate U.S. responses to alternative Canadian landing and/or inspection requirements.

Comments should be filed in accordance with the regulations in 15 CFR 2006.8 and are due no later than Sept. 30.

Judith H. Bello,

General Counsel, Chairman, Section 301 Committee.

[FR Doc. 88-19650 Filed 8-29-88; 8:45 am]

BILLING CODE 3190-01-M

Generalized System of Preferences (GSP); Review of Country Practice Petitions and Public Hearings

Summary: The purpose of this notice on the GSP annual review is (1) to announce the acceptance for review of petitions to modify the status of countries as GSP beneficiary countries in regard to their practices as specified in 15 CFR 2007.0(b) and (2) to announce the timetable for public hearings to consider petitions accepted for review.

I. Acceptance of Country Practice Petitions for Review

Notice is hereby given of acceptance for review of country practice petitions requesting modification in the status of countries presently designated as GSP beneficiary countries, as provided for in Title V of the Trade Act of 1974 (the Act) (19 U.S.C. 2461–2465). These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR part 2007.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to a disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the Trade Policy Staff Committee (TPSC), and that such review will take place.

1. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2007.7. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly market at the top and bottom of each and every page (either "public version" or nonconfidential")

2. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395–6971. Questions may be directed to any member of the staff of the GSP Information Center.

II. Deadline for Receipt of Requests To Participate in the Public Hearings

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to any petition listed in this notice. All such submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3).

Hearings will be held on October 3–5 beginning at 10:00 a.m. in the Commerce Department auditorium, 14th and Constitution Avenue, NW., Washington, DC. The hearings will be open to the public and a trascript of the hearings will be made available for public inspection or can be purchased from the reporting company.

Requests to present oral testimony at the public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommitte no later than the close of business Monday, September 19. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submited for the record. Post-hearing briefs or statements will be accepted if submitted in twenty copies, in English, no later than close of business Monday, October 24. Rebutal briefs should be submitted in twenty copies, in English, by close of business Monday, November 21.

Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, in connection with countries under consideration in the public hearings, provided that such submissions are filed by Wednesday, October 26 and conform with the regulations cited above.

III. Cases Accepted for Review Regarding Country Practices, Pursuant to 15 CFR 2007.0(b)

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review petitions to review the status of Burma, Haiti, Israel,[1] Liberia, Malaysia, and Syria as GSP beneficiary countries in relation to their practices relating to worker rights.

In veiw of the fact that a review of the Central African Republic's eligibility in relation to its practices with respect to worker rights is already in progress, and that Paraguay and Chile have been indefinitely suspended from the GSP list of beneficiary countries, comments on the worker rights practices of these three countries will also be welcomed during the public hearing and comment process described in section II. In addition, since the review of Thailand's practices with regard to intellectual property rights has been extended to December 15, 1988, comments will also be welcomed on this issue.

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review a request filed by Occidental Petroleum Corporation to review Venezuela's status as a GSP beneficiary country in

[1] The present decision to accept review of Israeli worker rights practices is without prejudice to the U.S. Government's ultimate position on whether the West Bank and Gaza should be deemed part of the "country of" Israel for purposes of section 502(b)(6). The United States has consistently refrained from any action that would have the effect of recognizing, either impliedly or expressly, the de jure incorporation of the occupied territories into Israel.

relation to its practices regarding the expropriation of Occidental's property without providing compensation.

Sandra J. Krostoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 88-19730 Filed 8-29-88; 8:45 am]

BILLING CODE 3190-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, September 13-14, 1988, at the Omni Shoreham Hotel, 2500 Calvert Street, Northwest, Washington, D.C.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in the Ambassador Room at 9:00 a.m., September 13, 1988. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9:00 a.m. in the Diplomat Room on September 13, 1988.

The Full Commission will convene at 3:00 p.m. on September 13, 1988, in the Diplomat Room. The Commission will meet the following day at 9:00 a.m. in the Diplomat Room where a panel will provide expertise on particular aspects of the Medicare Cost Report and to better understand the implications of using these data for policy purposes.

Donald A. Young,

Executive Director.

[FR Doc. 88-19844 Filed 8-29-88; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26024; File No. 600-24]

Self-Regulatory Organizations; Delta Government Options Corp.; Application for Registration as a Clearing Agency; Extension of Time for Submission of Comments

On July 29, 1988, Delta Government Options Corporation ("Delta") files with the Commission an application for full registration as a clearing ageny under Section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q-1 ("Act"). On August 5, 1988, the Commission published in the **Federal Register** notice of Delta's filing and invited commentators to submit, on or before August 26, 1988, written data, views and arguments ("comments") concerning that application.[1]

Several potential commentators have requested an extension of the time period for submitting comments concerning Delta's application for registration and Delta's requests for exemption from various requirements of section 17A of the Act. Accordingly, the Commission has determined to extend the time for submission of comments to September 9, 1988. All comments received on or before September 9, 1988, will be considered by the Commission in deciding whether to approve Delta's application and grant Delta's exemption requests. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, 450 5th Street, NW., Washington, DC 20549. Reference should be made to File No. 600-24. Copies of the application and of all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 24, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19698 Filed 8-29-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Rel. No. 25956 (August 1, 1988), 53 FR 29536.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #6648]

New York; Declaration of Disaster Loan Area

The City of Rome, New York, constitutes an Economic Injury Disaster Loan Area as a result of damages from a fire which occurred on July 4, 1988 at the Price Chopper Mall. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 19, 1989 at the address listed below: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fairlawn, NJ 07410.

Or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Date: August 19, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-19646 Filed 8-29-88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0518]

Magazine Partners, Inc.; Application for License To Operate as a Small Business Investment Company

An Application for a License to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Magazine Partners, Inc., 457 North Harrison Street, P.O. Box 1155, Princeton, New Jersey 08540, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The proposed officers, directors, and owners of Magazine Partners, Inc. are as follows:

Name and address	Position	Percentage of ownership
William R. Robins, 696 Kingston Road, Princeton, NJ 08540.	President, Treasurer, Director, and Manager.	0
Paul H. DeCoster, 450 West End Avenue, New York, New York 10024.	Secretary and Director.	0
Nancy Hood Robins, 696 Kingston Road, Princeton, NJ 08540.	Director	100% (indirectly).
Magazine Funding, Inc., 457 North Harrison St., Princeton, NJ 08540.		100%.

Magazine Funding, Inc. (MFI), is wholly owned by Bleak House, Inc. 457 North Harrison St., Princeton, NJ 08540. Bleak House, Inc. is controlled by Nancy Hood Robins.

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. Its target client group is small, established, privately-held companies, speciality magazines, newsletters, and periodicals. The Applicant intends to conduct its business in the State of New Jersey and other states throughout the nation.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the Applicant under their management including profitability and financial soundness in

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accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Princeton, New Jersey.

(Catalog of Federal Domestic Assistance Program no. 59.011, Small Business Investment Companies)

Dated: August 24, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-19643 Filed 8-29-88; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting; Public Meeting; Iowa

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Des Moines, will hold a public meeting at 7:00 p.m. on Sunday, October 2, 1988, at the Scheman Center, Iowa State University campus, Ames, Iowa to meet jointly with the Advisory Councils for the Iowa Department of Economic Development and the Iowa Small Business Development Centers to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Conrad Lawlor, District Director, U.S. Small Business Administration, 210 Walnut Street, Seventh Floor, Des Moines, Iowa 50309, (515) 284-4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 22, 1988.

[FR Doc. 88-19645 Filed 8-29-88; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting Public Meeting; Montana

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, will hold a public meeting at 8:30 a.m. on Friday, October 21, 1988, at the Ponderosa Inn, Executive Suite 406, 220 Central Avenue, Great Falls, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626-(406) 449-5381.

Donald Clarey,

Deputy Administrator.

August 23, 1988.

[FR Doc. 88-19644, Filed 8-29-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-88-073]

National Boating Safety Advisory Council Subcommittee on Propeller Guards; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety advisory Council's Subcommittee on Propeller Guards to be held on Thursday and Friday, September 22 and 23, 1988, at the Boston Whaler Company, 1149 Hingham Street, Rockland, Massachusetts, beginning at 8:30 a.m. on both days and ending at 5:00 p.m. on Thursday and at 12:00 noon on Friday. The agenda for the meeting will be as follows:

1. To discuss the issue of propeller guards on recreational watercraft relating to personal safety and performance factors.

The meeting is open to the public. Persons wishing to present oral statements at the meeting should so notify the Executive Director of the Council no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain W.S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Dated: August 19, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-19599 Filed 8-29-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 24, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0089.
Form Number: 1040NR.
Type of Review: Revision.
Title: U.S. Nonresident Alien Income Tax Return.
Description: This form is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident alien individuals, estates, and trusts.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 180,000.
Estimated Burden Hours Per Response: 6 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,111,379 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 88-19603 Filed 8-29-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 24, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Customer Survey on IRS Tax Publications.
Description: The information we get will help us identify who our customers are and how we can better meet their needs. It will point us to possible problem areas in certain publications. We can then produce a more understandable publication that will reduce the burden on taxpayers and help them comply with the tax laws. The random sample will come from taxpayers requesting the targeted publication(s).
Respondents: Individuals or households.
Estimated Number of Respondents: 2,302.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 230 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 88–19604 Filed 8–29–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 24, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Office, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0113.
Form Number: CF 1002.
Type of Review: Extension.
Title: Certificate of Payment of Tonnage Tax.
Description: The Certificate of Payment of Tonnage Tax is generated by U.S. Customs upon payment of tonnage tax and light money by the master of the vessel. It is presented to Customs upon each entry of the vessel during the tonnage year to ensure against overpayment of tonnage taxes.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 233,839.
Estimated Burden Hours Per Recordkeeper: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeep Burden: 11,692 hours.
Clearance Officer: B. J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 88–19605 Filed 8–29–88; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Art of Paolo Veronese 1518–1588

Notice is hereby given of the following determination: Pursuant to the authority versted in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Art of Paolo Veronese 1518–1588" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also detemine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about November 13, 1988, to on or about February 20, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,
Acting General Counsel.
Date: August 24, 1988.
[FR Doc. 88–19659 Filed 8–29–88; 8:45 am]
BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination; Michelangelo: Draftsman, Architect

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Michelangelo: Draftsman, Architect" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, in Washington, DC, beginning on or about October 9, 1988, to on or about December 11, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7988, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7988, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Date: August 24, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-19658 Filed 8-29-88; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination; Pastoral Landscape: The Legacy of Venice et al.

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Pastoral Landscape: The Legacy of Venice (at the Gallery); and The Pastoral Landscape: The Modern Vision (at The Phillips Collection)" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art and at the Phillips Collection in Washington, DC, beginning on or about November 6, 1988, to on or about January 22, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Date: August 24, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-19660 Filed 8-29-88; 8:45 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7988, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Culturally Significant Objects Imported For Exhibition; Determination; Tuscan Drawings

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Tuscan Drawings of the Sixteenth Century from the Uffizi: Fra Bartolommeo to Cigoli" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Detroit Institute of Arts, beginning on or about October 16, 1988 to on or about January 8, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Date: August 19, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-19657 Filed 8-29-88; 8:45 am]

BILLING CODE 8230-01-M

Meeting of the Book and Library Advisory Committee

A meeting of the Book and Library Advisory Committee will take place on September 19, 1988, at 301 Fourth Street SW., Room 849, Washington, DC, from 10:00 a.m. to 12:00 noon.

The committee will be discussing various ongoing international book and library programs.

Please contact Louise Wheeler on (202) 485-8889 for further information.

Dated: August 24, 1988.

Charles N. Canestro,

Committee Management Officer.

[FR Doc. 88-19663 Filed 8-29-88; 8:45 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is (202) 485-8827, and the address is Room 700, U.S. Information Agency, 301-4th Street, SW., Washington, DC 20547.

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held September 14, 1988 at the Voice of America, 330 Independence Avenue, SW., Washington, DC from 9:30 a.m. to 11:30 p.m.

The Commission will meet at the Voice of America for a tour of VOA's Master Control and renovated studios, and to observe VOA's multilingual text processing system. The Commission will meet with VOA Director Richard Carlson and VOA Deputy Director Bob Barry to discuss VOA Modernization.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: August 23, 1988.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 88-19662 Filed 8-29-88; 8:45 am]

BILLING CODE 8230-01-M

Meeting of the Voice of America Broadcast Advisory Committee

A meeting of the Voice of America Broadcast Advisory Committee has been scheduled for September 14, 1988, in Room 3300, 330 Independence Avenue SW., Washington, DC, from 12:00 noon to 2:30 p.m.

Matters to be discussed are:

(1) New program initiatives;

(2) Impact of budget on VOA operations;

(3) Status of VOA modernization;

(4) Progress of studio renovation;

(5) Future purpose and role of the committee.

Please contact Louise Wheeler on (202) 485-8889 for further information.

Dated: August 24, 1988.

Charles N. Canestro,

Committee Management Officer.

[FR Doc. 88-19661 Filed 8-29-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 168
Tuesday, August 30, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

August 25, 1988–G.

FCC To Hold Open Commission Meeting, Thursday, September 1, 1988

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 1, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Mass Media—1—Title: In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service; Review of Technical and Operational Requirements: Part 73–E, Television Broadcast Stations; Reevaluation of the UHF Television Channel and Distance Separation Requirements of Part 73 of the Commission's Rules. Summary: The Commission will consider further action in this proceeidng on the technical, economic, legal, and policy issues relating to authorizing and establishing an advanced television system for terrestrial broadcasting.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632–5050.

Issue date: August 25, 1988.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88–19838 Filed 8–26–88; 3:13 pm]

BILLING CODE 6712-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 29, September 5, 12, and 19, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 29

There are no meetings scheduled for the Week of August 29.

Week of September 5—Tentative

Wednesday, September 7

10:00 a.m.
Briefing on Proposed Rule on Degreed Operators (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 8

2:00 p.m.
Briefing on Final Rule on Emergency Planning and Preparedness Requirements for Nuclear Power Plant Fuel Loading and Initial Low Power Operations (Public Meeting)

Week of September 12—Tentative

Monday, September 12

2:00 p.m.
Briefing on Severe Accident Policy for Future Light Water Reactors (Public Meeting)

Friday, September 16

10:00 a.m.
Briefing by Health Physics Society on Below Regulatory Concern Issues (Public Meeting) (Tentative)

10:15 a.m.
Briefing on Policy Paper on Radiation Risks Which are Below Regulatory Concern (Public Meeting)

11:45 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 19—Tentative

There are no meetings scheduled for the Week of September 19.

ADDITIONAL INFORMATION: Affirmation of "Interim Rule for Collection of Required Fees Mandated by Congress (Public Law 100–203)" (Public Meeting) was held on August 5.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

August 25, 1988.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 88–19823 Filed 8–26–88; 3:18 pm]

BILLING CODE 7590-01-M

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Tuesday
August 30, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960, and 966

Tenancy and Administrative Grievance Procedure for Public Housing; Tenancy and Administrative Grievance Procedure; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960 and 966

[Docket No. R-88-1020; FR-1164]

Tenancy and Administrative Grievance Procedure for Public Housing; Public Housing—Tenancy and Administrative Grievance Procedure

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends lease and grievance procedures for the public housing program under the United States Housing Act of 1937 and complies with Section 204 of the Housing and Urban Rural Recovery Act of 1983 (Pub. L. 98-181).

HUD revises the public housing rules concerning tenant leases and termination of tenancy, and concerning hearings for applicants and tenants. The rule also states when a public housing agency (PHA) may exclude a grievance relating to termination of tenancy or eviction from the PHA's administrative grievance process.

DATES: Effective Date: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Room 4206, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 426-0744. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Note.— The rules affected by this rulemaking were previously located in 24 CFR, Chapter VIII, but were moved to Chapter IX (by a final rule published February 23, 1984, 49 FR 6712) because of a reorganization which established the position of Assistant Secretary for Public and Indian Housing. The changes are as follows: Lease and grievance procedure, previously at 24 CFR Part 866, now at Part 966; tenant income and rent, previously at Part 813, now at Part 913; notice and hearing for applicants, previously at Part 860, § 860.207, now at Part 960, § 960.207; Turnkey III Program, previously at Part 804, now at Part 904; Indian Housing Program, previously at Part 805, now at Part 905.

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Preamble

I. Background

A. History of Old Rule

This final rule amends lease and grievance procedures for the public

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housing program under the United States Housing Act of 1937 (24 CFR Part 966). The lease and grievance procedures state HUD requirements for the lease between a Public Housing Agency ("PHA") and its tenants, and for administrative hearings by the PHA of grievances raised by public housing tenants. In this Preamble, the term "old rule" refers to the lease and grievance regulation in effect before this final rule.

In February 1971, HUD issued circulars with instructions on lease requirements and hearing procedures to all PHAs operating public housing (Circulars RHM 7465.8, "Requirements and Recommendations to be Reflected in Tenant Dwelling Leases to Low-Rent Public Housing Projects", and RHM 7465.9, "Grievance Procedure in Low-Rent Public Housing Projects").

In June 1973, the Department announced "review and evaluation" of the circulars (38 FR 15988). On November 6, 1974, the Department published two proposed rules, one setting forth dwelling lease procedures and requirements, and the other stating grievance procedures and requirements (39 FR 39285, 39287). Following public comment, final rules were published on August 7, 1975, adopting Subparts A and B of 24 CFR Part 866 (40 FR 33402, 33406).

B. History of This Rulemaking

In this rulemaking, HUD published two proposed rules to amend the old lease and grievance procedures. The proposed rules were published in December 1982 and July 1986.

On December 13, 1982 (47 FR 55689), HUD published a first proposed rule to (1) simplify tenant lease requirements, including deletion of existing regulatory requirements for minimum notice of lease termination, (2) limit the requirement for Public Housing Agency (PHA) grievance hearings for tenants to PHA determinations of tenant income or rent, (3) require that evictions be carried out through judicial process and that termination of tenancy must be based on violation of the lease, Federal, State or local law or other good cause.

After publication of the first proposed rule, the Congress enacted section 204 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA) (referred to in this Preamble as the "1983 law"). The 1983 law states new requirements for public housing leases and administrative grievance procedures (Pub. L. 98-181, November 30, 1983, amending section 6 of the U.S. Housing Act of 1937, 42 U.S.C. 1437d(k) and 1437d(1)). The 1983 law is consonant with some aspects of the December 1982 proposed rule, but in other respects severely limits the scope of the regulatory reforms originally proposed by HUD. Section 204 of the 1983 law requires the PHA to establish and implement a tenant grievance procedure for "any proposed adverse public housing agency action", not just a determination of tenant income or rent, and prescribes minimum notice periods for termination of the lease. The legislation allows a PHA to exclude grievances concerning eviction or termination of tenancy from the administrative hearing procedure if HUD determines that local law requires a hearing in court which provides the basic elements of due process before a tenant is evicted.

The Department received extensive public comments on the December 1982 proposed rule, which was published before enactment of the 1983 law. 862 comments were docketed by the HUD Rules Docket Clerk. Comments from legal aid offices and public housing tenants strongly opposed the proposed amendments. Comments from PHAs and the National Association of Housing and Redevelopment Officials were in general strongly in favor of the proposed amendments, although some technical changes were suggested.

Because of the 1983 law, a second proposed rule was published by HUD in July 1986 (51 FR 26504). This rule proposed changes to implement the 1983 law, and also other revisions after consideration of public comment on the original proposed rule. (In this Preamble, "proposed rule" means the July 1986 proposed rule, unless otherwise indicated.)

The Department docketed 87 comments on the July 1986 proposed rule. In general, the direction of public comment is very similar to comment on the initial proposed rule of December 1982. PHAs and PHA organizations support promulgation of the amendments. Comments by the legal aid community, and other comments largely written or inspired by legal aid, vigorously oppose amendment of the old rule.

II. General Character of Rule

The contents of this rule are a historical change in Federal requirements for governance of public housing. The amendments touch every aspect of public housing management, and potentially affect the texture of daily life for the 3.4 million public housing residents.

The new rule removes the burden of Federal regulations which unnecessarily diminish the ability of the 3300 Public Housing Agencies to operate public housing in response to local needs and conditions. At the same time, the regulations faithfully carry out statutory mandates under Federal law

Later sections of this Preamble describe in detail the reasons for particular changes in the old lease and grievance rule, and the reasons for specific provisions of the new rule. In this section, the Preamble discusses the broad context and impetus of the new rule, and general reasons which support many of the specific changes. The justifications for the regulatory changes in this rule are comprised both of the specific reasons described in the discussion of each particular provision, and the general considerations described in this section.

This rule is the culmination of a major enterprise for the deregulation of public housing, in the context of the national movement for deregulation of unneeded and inefficient Federal controls. On August 12, 1981, the Presidential Task Force on Regulatory Relief, chaired by Vice President Bush, designated the HUD Lease and Grievance Procedures for review. In its announcement, the Task Force commented:

> These rules establish compliance procedures that must be incorporated in leases by local public housing authorities (PHAs) assisted by HUD. Not only do they often duplicate and sometimes exceed State and local ordinances, they tend to make it difficult for PHAs to protect the health and safety of tenants. For example, PHAs claim that disruptive tenants that violate their leases, vandalize housing and prey upon other tenants can avoid for months effective remedial actions by the PHA. Reforming these requirements could benefit tenants, PHAs and deserving families seeking public housing.

In the context of deregulation, the reexamination of existing Federal regulation asks whether existing Federal regulation is required by law, or, if not required by law, whether there is a sufficient positive reason to retain the preexisting regulation. In the case of the old lease and grievance rule, HUD regulatory requirements reach far beyond any obligation of law, including the 1983 law. In HUD's view, there is no adequate justification for retaining much of the detailed regulatory apparatus under the old rule. Conversely, there is excellent reason to believe that features of the old rule have severely interfered with the efficient and effective management of public housing.

This final rule is based on a fresh and comprehensive examination of the regulatory scheme imposed by the old lease and grievance rule. All regulation imposes a cost on the entities which are regulated. The final rule removes regulatory limitations for which there is

not now a persuasive positive justification for imposing these costs.

Public comments from the legal aid community protest changes of the various policies embedded in the old rule, and claim that the changes are not substantiated by "new facts". In response, it is important to stress that the relevant factors before HUD in this rulemaking need not turn on the availability of empirical data or "new facts" concerning administration of public housing under the old lease and grievance rule. Rather, the factors properly considered by the Department more characteristically depend on examination of the functions of specific regulatory provisions, and of the allocation of local discretion to the PHAs charged with statutory responsibility for administration of the public housing program.

In this examination, the determination of what regulatory controls should be retained or newly imposed, and in what form, legitimately depends in considerable part on judgments of value, and is not readily reducible to a simple determination of fact, that could be resolved by a study or other data on functioning of PHAs under the old rule. In this rulemaking, HUD's examination is influenced by these broad values:

—That less regulation is better regulation.

—That local control is better than Federal control.

Both values support the view that HUD should not regulate unless there is a legal requirement or persuasive reason for Federal regulation.

The statutory structure of the public housing program is designed to allow local flexibility in the administration of the housing. Public housing projects are owned and run by Public Housing Agencies ("PHA"), which are governmental entities chartered under State law (see, U.S. Housing Act of 1937, section 3(b)(6), 42 U.S.C. 1437a(b)(6)). By Federal statutory policy, Public Housing Agencies are to be vested with "the maximum amount of responsibility in the administration of their housing programs" (U.S. Housing Act of 1937, section 2, 42 U.S.C. 1437). This dynamic policy is not applied and exhausted once and for all at the initial promulgation of a regulatory requirement. HUD has a continuing authority to reexamine existing regulatory requirements, to determine if the existing requirements can be withdrawn or modified, and to allow a broader play to PHA responsibility in administration of its public housing program.

Many PHAs have complained to HUD—in the course of this rulemaking and in other forums—that the requirements of the old rule have hindered or even crippled PHA administration of the public housing program. In this rulemaking, HUD has given a particular weight to this judgment by the entity with statutory responsibility for administration of the program.

For purpose of this rulemaking, there is no need for data on the statistical distribution of PHA difficulties in implementation of the old rule, or other detailed factual data on how the old rule has affected operations at different PHAs. At the level of the individual PHA, experience under the old rule may differ. PHAs may cope with the old rule or the new in very various ways.

When HUD eliminates regulatory obligations under the old rule, PHAs will have a greater freedom to structure local programs in accordance with local desires, without the incubus of a uniform Federal requirement. If a PHA is troubled by aspects of lease and grievance practice which were mandated under the old rule, and which are removed in the new rule, the PHA will presumably structure a different practice, utilizing the new freedom under the new rule. Another PHA may elect to retain aspects of practice no longer prescribed by Federal rule.

Freeing the PHA from a given Federal requirement has two advantages. First, the local consequences of a particular policy can be seen much more clearly from the PHA than from Washington. The PHA can therefore adopt a policy with a better understanding of how the policy will work in the community, and can refine or revise the policy in the light of actual local experience. Second, the PHA can choose a policy that reflects local priority. PHA management policy is a trade-off of different objectives. The removal of Federal regulatory requirements means that the PHA can make the trade-offs in the light of local values. In narrowing the scope of the pre-existing regulatory requirements, HUD defers to local values and to local knowledge of local facts. For this purpose, HUD does not need "new facts" on national operation of the old lease and grievance requirements.

Public comment claims that HUD lacks an adequate "factual basis" for withdrawing requirements under the old rule, citing the decision by the Supreme Court in *Motor Vehicle Manufacturers Asso.* v. *State Farm*, 463 U.S. 29, 103 S. Ct. 2856 (1983). However, so far as opposite to the present rulemaking, *Motor Vehicle* stands merely for the proposition that the revocation of a prior agency regulation is governed by the same standard of judicial review as is the initial promulgation of the regulation—whether the agency action was "arbitrary and capricious". A reviewing court may not set aside an agency rule that is rational, based on consideration of the relevant factors, and within the scope of the authority delegated to the agency by the statute.

In *Motor Vehicles*, the statute directed the agency (Department of Transportation) to issue standards for the purpose of promoting motor vehicle safety, and to consider available motor vehicle safety data for this purpose. The statute provided that the agency finding must be supported by "substantial evidence" on the record of a formal rulemaking proceeding. The Court held that rescission of a motor vehicle safety standard was arbitrary and capricious. In that case, the agency had not shown an adequate factual basis for rescission of the safety standard.

In the present informal rulemaking, HUD is issuing regulations to implement the 1983 law on public housing lease and grievance requirements. At the same time, HUD is removing various pre-existing regulatory requirements of the old lease and grievance rule, which are not mandated by the 1983 law or any other law. The old rule was issued under HUD's broad authority to issue regulations for programs administered by the Department (section 7(d) of the HUD Act, 42 U.S.C. 3535(d)) (as well as other general rulemaking authority no longer contained in the U.S. Housing Act of 1937) (see 40 FR 33402, 33403, August 7, 1975).

In the areas for which HUD is now removing old regulatory requirements, the present rulemaking differs fundamentally from the deregulation at issue in *Motor Vehicles*. HUD is authorized, but is not directed, to issue regulations for the HUD program. Both in the original promulgation of the old rule, and in the present rulemaking to revise or withdraw aspects of the old rule, HUD proceeds from a wide and flexible rulemaking authority. HUD has discretion to issue or withdraw a rule.

In *Motor Vehicles*, the agency was required to adopt standards for a precise empirical purpose (motor vehicle safety) defined in the statute. In the present case, HUD has discretion, but no obligation, to issue regulations reasonably necessary to promote purposes of the programs administered by the Department.

In *Motor Vehicles*, the agency was required by law to consider "data" relevant to the stated statutory purpose.

and to issue a finding supported by "substantial evidence". By contrast, in the present rulemaking, HUD is not directed by law to consider any specific factors, to make a decision based on "data" or "evidence" respecting the factors, or to generate a formal administrative record of the rulemaking proceeding. An agency may consider factors which are relevant to implementation of the particular enabling statutes under which a rule is issued. For HUD, there is wide discretion to decide what elements will be considered in a rulemaking for the public housing program under the United States Housing Act of 1937, including the role of available studies or evidence.

HUD has a plenary authority to modify or withdraw provisions of the old rule, provided only that the agency action may not be "arbitrary and capricious". The regulatory action must be reasonably related to the purposes of the program. HUD's discretion is as broad for the present rulemaking as for promulgation of the original 1975 rule. An agency is not subject to a heavier burden in seeking to deregulate or change an old rule, than for initial promulgation of the rule. The regulation is not frozen in the form originally issued. The Supreme Court has noted that "regulatory agencies do not establish rules of conduct to last forever" (*American Trucking Asso.* v. *Atchison*, 387 U.S. 397, 416, 87 S. Ct. 1608, 1618 (1967)).

In general thrust, this rulemaking seeks to deregulate that which need no longer be regulated, and to devolve to the individual PHA a far broader authority over the local public housing program. In *Motor Vehicles*, the Supreme Court remarked that while deregulation is "not always or necessarily" a sufficient basis for rescission of an existing rule, "it may be easier for an agency to justify a deregulatory action" than to justify enactment of a new regulatory standard (463 U.S. at 42, 103 S. Ct. at 2866). The test in each case is whether the agency can show a reasonable basis for the regulatory action.

This Preamble gives a full explanation of general and particular reasons for each regulatory action.

III. Lease Provisions

A. General

1. Lease Requirements

Lease requirements are simplified and clarified (Part 966, Subpart B). As under the old rule, this final rule describes the types of lease provisions which are required (§ 966.10) or prohibited (§ 966.11). The required and prohibited provisions concern central aspects of the subsidized tenancy.

The rule leaves the drafting of lease provisions which comply with these requirements to the PHA. However, in keeping with historical practice in the public housing program, the rule does not direct PHAs to use a form lease drafted by HUD. In addition to lease provision which are required by the HUD rule, the lease may "contain other provisions which are determined by the PHA and which are not inconsistent with [the HUD rule]" (§ 966.10(a)).

Comments recommend various additions and changes, but do not challenge this general approach.

2. Comments: Objections to Deregulation

Public comment from legal aid and tenant groups objects broadly to the elimination or revision of Federal lease requirements in the old rule, and objects specifically to amendment of particular lease requirements. Comment argues that proposed changes are unconstitutional, unfair or demeaning to tenants. Comment states that the proposed rule eliminates essential tenant protections, and does not protect the tenant from arbitrary PHA action. The proposed rule abdicates Federal power and vests discretionary power in PHAs.

HUD does not dispute that the rule reduces Federal interference in the prerogative of PHA management to develop and revise leases and PHA rules for public housing tenants. The rule enlarges the discretionary power vested in the PHA, and correspondingly reduces Federal prescription of the details of public housing management, and of the relations between the PHA and the tenant. The rulemaking is intended to simultaneously diminish excess Federal controls, and enhance the right and ability of the PHA to run the housing for the benefit of the tenants. Because the lease is the basic contractual instrument which regulates the rights and duties of the PHA and the tenant, the changes in Federal lease requirements allow important and pervasive changes in the relationship between the PHA and tenant, and in day-to-day management of the housing.

HUD does not agree that simplification of leasehold requirements unfairly exposes the tenant to arbitrary PHA action, or deprives the tenant of essential protections. Comments which protest changes in Federal lease requirements appear largely based on a visceral distrust of PHA autonomy, a sense that the PHA cannot be trusted to treat the tenant fairly, that the PHA must therefore be tightly bound by detailed Federal rules for tenant protection in daily management of public housing projects.

HUD does not share this view of the PHA. The establishment of rigid and over-detailed Federal requirements, as under the old lease and grievance rule, is more likely to cause harsh, arbitrary and inefficient action by a PHA, than is a policy that allows the PHA discretion to react to local conditions and local desires, for example, by quickly adopting changes in PHA lease forms or PHA rules. Because of Federal regulation under the old rule, the PHA could not adapt quickly and flexibly to the needs of the tenants, and of effective management of public housing projects. Compliance with Federal requirements is a burden on PHA management, a drain on available administrative and fiscal resources. The burden of compliance with Federal regulation may diminish or exhaust the capacity of PHA management to consider the needs of individual tenants with compassion and consideration.

The revised lease requirements continue to cover many of the most central aspects of the subsidized tenancy. The lease requirements assure that provisions of the public housing lease protect the essential interests of the public housing tenant. These tenant protections include the lease provisions required under the 1983 law (U.S. Housing Act of 1937, section 6(l), 42 U.S.C. 1437d(l)).

A comment by the National Housing Law Project ("NHLP") states that the 1983 law requires PHAs to use the lease forms developed under the old rule, and that HUD's alterations of the lease requirements under the old rule violate a "clear Congressional mandate". This assertion is based on out-of-context language of the May 1983 report by the House authorizing committee, which reports out the public housing lease requirements incorporated in the 1983 law. The Report notes that the bill adds a new provisions under which HUD must require PHAs to utilize fair leases. The House committee language which is quoted in the NHLP comment states that "the committee contemplates that HUD will meet this obligation by retaining the present regulations" (Report 98–123 on H.R. 1, p. 35). In context, it is plain that the committee is only referring to certain specific lease requirements in the old rule, which are covered by the reported bill, and by the statute as enacted in the 1983 law. The House committee report does not contain any language to support an inference, as indicated by the NHLP comment, that the 1983 law was

intended to freeze all then-existing HUD requirements for public housing leases.

The House committee bill requires HUD to retain specific elements of the lease requirements under the old rule: the prohibition of leases which contain unreasonable terms and conditions (called prohibited lease provisions); the obligation to maintain the projects in decent, safe and sanitary condition; requirements for adequate notice of lease termination; and good cause grounds for termination of tenancy (H.R. 1, section 206, reported May 13, 1983). These specific lease requirements were incorporated varbatim in the 1983 law as enacted. The House committee report states (*Id.* at 36):

> Since 1970 HUD has prohibited PHAs from utilizing * * * unfair [lease] clauses * * *. The bill requires that those regulatory prohibitions be retained and that HUD prohibit any additional clauses which are unreasonable. Beyond prohibiting certain unfair clauses, the bill also requires the leases to contain certain basic protections. They include clauses obliging PHAs to maintain the premises in decent, safe and sanitary condition, and to provide adequate notice before evicting tenants. The committee also contemplates that HUD will retain the existing regulations regarding *these provisions* (emphasis supplied).

Under the House bill and the 1983 law, HUD is required to retain specific types of lease provisions required the old rule. (In the proposed lease and grievance rule published in December 1982, HUD had suggested the possible elimination of a number of these provisions.) There was not, however, any broad intention by the House committee, as claimed in the NHLP comment, to force PHAs to continue using leases developed under the old rule, or to bar HUD from changing lease requirements under the old rule. In any event, such intention would not be effective unless implemented in the actual statutory language. The actual language of the law as passed by Congress is very precise as to the elements which must be included in a public housing lease. All of these statutory elements are implemented in this rule. There is no statutory bar against changing other elements of the lease requirements in the old rule.

3. Deregulation: Other Comments

Some comments urge that PHAs be permitted a greater freedom to determine lease provisions. There should be more local control. PHAs should be allowed to structure leases in accordance with State law. HUD should allow a PHA to include any desired provisions in the lease, if the lease is consistent with State law.

HUD is sympathetic to the need for local autonomy. The rule is designed to strip away unnecessary Federal controls on the content of public housing leases. There are, however, legitimate reasons to prescribe minimum Federal requirements for core provisions of a public housing lease.

—First, Federal regulation is necessary to implement lease requirements mandated by the 1983 law, such as the specification of prohibited lease provisions, and of statutory grounds for termination of tenancy.

—Second, other lease provisions are needed to establish a tenancy which reflects the statutory and regulatory character of a public housing tenancy, such a provision for determination of rent in accordance with HUD requirements (which are substantially dictated by Federal statute), and for periodic reexamination of family income for this purpose.

—Third, some lease provisions—while not specifically required by statute—reflect specific characteristics of a public housing tenancy, which are not generally characteristic of a private and unsubsidized tenancy under State law, such as statement of conditions in which the family can be required to move to another public housing unit, and statement of the obligations of an assisted family. For example, the lease prohibits the tenant from receiving other Federal housing subsidy and prohibits fraud in connection with a Federal housing assistance program.

—Fourth, some provisions establish other basic conditions of the subsidized tenancy, for protection of public housing residents, and for protection of the Federal subsidy investment in the housing. For example, the lease provides that the PHA must comply with local code requirements materially affecting safety of the occupants; the PHA may only provide for a "reasonable" security deposit and "reasonable" penalties for late payment of rent of charges; the tenant may only use the unit for residence by the household, and may not use the dwelling unit for unlawful purposes.

In drafting the required lease provisions in this rule, there is conscious and consistent endeavor to minimize the extent of Federal regulation, both as to the subjects covered and as to the amount of detail in the rule. The required provisions are stated in broad terms, which will protect the relevant Federal interest and concern, but with maximum freedom for the PHA to devise lease provisions which satisfy the general requirement. The PHA has great freedom to draft lease provisions which accord with local law and with local practice and preference (cf., § 966.10(a)).

In the main, PHA comments approve the proposed HUD lease requirements, with some suggestions for particular improvements. (The suggestions will be discussed below.) The lease revisions are fair and equitable to both management and tenant. The revisions promote efficiency, but retain without compromise all essential elements of tenant rights. Comments state that the required lease provisions are clear and easy to understand, and approve streamlining of required lease language.

4. Applicability of Lease Requirements

The lease requirements in Subpart B of Part 966 apply to "public housing" § 966.1(b)(1)). Public housing is defined in this rule (§ 966.2) as housing assisted under the U.S. Housing Act of 1937, except housing assisted under section 8 (rent subsidy) or section 17 (housing development or rental rehabilitation grants) or the 1937 Act. The term "public housing" as defined in this rule includes housing assisted under the Leased Housing programs under section 23 or section 10(c) of the U.S. Housing Act of 1937 before the Housing and Community Development Act of 1974. (Because of a printer's typographical error, the definition of "public housing" in the July 1986 proposed rule is appended to the definition of the term "family".) The rule provides (§ 966.1(b)(2)) that the Subpart B lease requirements do not apply to Indian Housing (including Mutual Help and rental projects of Indian Housing Authorities), or to the Turnkey III homeownership program.

Comment recommends that the lease requirements should be applicable to Turkey III and Mutual Help projects, to Indian Housing Authority rental projects, to post-1974 section 23 and section 10(c) projects, and to PHA-owned section 8. The comment does not articulate the reasons for these recommendations. The recommendations are not adopted.

Unlike the public housing rental programs, the Turnkey III program and the Mutual Help program (a program for Indians) use forms of homeownership agreement drafted by HUD. The regulations and HUD form agreements for these programs give the occupant a lease with option to purchase, and define in detail in rights of the occupant respecting occupancy and purchase of the unit. There is no need for overlapping regulation governing the form of a lease in these programs.

Historically, Indian housing, including Indian housing rental projects, was not subject to HUD regulation of dwelling lease provisions. This separate treatment reflects HUD's recognition of the special needs of the Indian housing program. However, lease requirements in the 1988 law are applicable to Indian housing as to other public housing, since there is no statutory exception. Therefore this rule adds provisions necessary to implement lease requirements of the 1988 law for Indian rental projects (now § 905.903). These provisions are intended as the minimum necessary to comply with the statutory requirements for dwelling leases. The rule allows the greatest possible room for Indian Housing Authorities to adapt the 1988 statutory requirements to conditions of reservation or non-reservation Indian housing, including accommodation to tribal courts and tribal law.

Comment recommends applying the lease requirements to post-1974 section 23 or section 10(c) projects. There are no post-1974 section 23 or section 10(c) projects. Section 10(c) and section 23 are sections of the version of the U.S. Housing Act of 1937 before recodification in the Housing and Community Development Act of 1974.

There is no reason to apply the public housing lease requirements to a section 8 project which is owned by a PHA. First, section 8 is not subject to the public housing lease amendments in the 1988 law. Lease requirements in the 1988 law were enacted as section 6(l) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(l)). Pursuant to section 8(h) of the 1937 Act (42 U.S.C. 1437f(h)), section 6 of the Act does not apply to assistance under section 8. Second, the statutory, regulatory and contractual structure of the section 8 rental assistance programs is very different from the public housing program for which the lease provisions are designed. There is also no reason to have different lease requirements if the section 8 owner happens to be a PHA. Third, section 8 project owners, including PHA-owners, are required to use a HUD prescribed model lease. There is therefore no need for overlapping regulation governing the form of section 8 lease. The present regulation only covers the public housing programs, and is issued by the HUD Assistant Secretary for Public and Indian Housing. The section 8 programs are within the jurisdiction of the HUD Assistant Secretary for Housing.

B. PHA Obligations

1. Maintenance

a. Duty to Maintain. The 1988 law provides that a public housing lease must "obligate the public housing agency to maintain the project in a decent, safe, and sanitary condition" (U.S. Housing Act of 1937, section 6(l)(2), 42 U.S.C. 1437d(l)(2)). The provision of "decent, safe, and sanitary" housing is the statutory purpose of the public housing program (U.S. Housing Act of 1937, section 3(b)(1), 42 U.S.C. 1437a(b)(1)).

The rule (§ 966.10(f)) states that a lease must provide that:

(1) The PHA shall provide services and maintenance for the dwelling unit, equipment and appliances, and for the common areas and facilities, which are needed to keep the housing in decent, safe and sanitary condition.

(2) The PHA shall comply with the requirements of applicable State and local building or housing codes concerning matters materially affecting health or safety of the occupants.

This formulation balances the statutory requirement to state in the lease the PHA duty to maintain the unit, and the statutory aim of vesting local PHAs with the maximum amount of administrative responsibility (U.S. Housing Act of 1937, section 2, 42 U.S.C. 1437).

The PHA has the contractual duty to maintain the unit in compliance with the decent, safe and sanitary standard, as applied to circumstances in the locality. This comprehensive obligation removes, however, the need for HUD to require that the PHA include a detailed statement of PHA maintenance obligations in the lease.

b. Compliance with State Codes. The lease requirement to comply with State housing codes supplements the decent, safe and sanitary standard, and applies to code violations which risk the health and safety of the tenant. The PHA's duty to comply with State housing code requirements is enforceable by the tenant as a contractual duty of the PHA under the lease. In most cases, the PHA's breach of this obligation is also a violation of the PHA's duty to maintain the unit in decent, safe and sanitary condition.

Local code violations which do not materially affect health or safety are not enforceable by the tenant under the lease. The enforcement of local code standards is in general appropriately left to the judgement of local officials in the light of local conditions. The Department does not believe there is justification to impose on PHAs a blanket Federal regulatory requirement to incorporate in the lease with an individual tenant the PHA's obligation to comply with local code requirements. However, PHA violation of local code conditions affecting health or safety are so fundamental, and so bound to achievement of decent, *safe* and sanitary housing, that the code violations are properly a subject of Federal regulation.

PHA comment states that the PHA should only be required to maintain the unit in accordance with State or local law. A unit which complies with local code is decent, safe and sanitary. The comment would therefore remove from the lease a separate requirement to maintain the unit in decent, safe and sanitary condition, as distinguished from the PHA's obligation to comply with local code.

Legal aid comment states that the rule should retain the unit maintenance requirements in the old rule. Erosion of minimum safety standards is ill advised and unnecessary. Existing standards were not onerous for PHAs.

The final rule does not modify the proposed provisions expressing the PHA duty for maintenance of the unit.

Compliance with local code overlaps with the duty to provide service and maintenance needed to keep the housing in decent, safe and sanitary condition. Elements necessary to comply with code (e.g., concerning electrical wiring for a unit) may also be necessary so that the unit is decent, safe and sanitary. Depending on comprehensiveness of the local code, and on whether the code is applicable to a public housing unit, satisfaction of local code may also constitute satisfaction of the requirement to keep the housing in decent, safe and sanitary condition.

However, the lease must state, as directed by the 1988 law, that the PHA is obligated to maintain the unit in decent, safe and sanitary condition. This obligation is not wholly subsumed in the PHA's duty to comply with local code, and must be separately expressed in the lease. A community may lack a housing code, or the code may not embrace all elements of service and maintenance necessary to assure that the unit is decent, safe and sanitary. Code may not establish a continuing requirement governing status of existing units, as opposed to requirements imposed when a unit is built, or as a condition for initial grant of a certificate of occupancy. A local code may not be applied or interpreted in a way that satisfies the PHA's maintenance obligations under the U.S. Housing Act of 1937. For a variety of reasons, compliance with local code is not

always or necessarily equivalent to maintaining the unit in decent, safe and sanitary condition.

In a locality where compliance with local code signifies that the unit is decent, safe and sanitary, a lease provision which requires the PHA to maintain the unit up to this standard does not, in principle, subject the PHA to any additional contractual burden. We acknowledge, however, that there is a potential for legal dispute between the PHA and the tenant as to whether compliance with local code satisfies the Federal statutory standard as stated in the lease.

HUD does not agree with comment which claims that the simplification of lease requirements somehow erodes or or diminishes safety standards in the old rule. The requirement that the PHA must provide services and maintenance required for "safe" operation of the housing is simply and explicitly stated in the lease, as is the requirement to comply with local codes affecting "health and safety". The PHA obligation is comprehensively stated, in the language mandated by the 1983 law. There is no reason to add redundant lease verbiage on the subject of tenant safety. Most important, we do not believe that the housing will be made safer by adding more wordage to the lease.

Under the lease, a PHA must comply with local code on matters "materially affecting the health or safety of the occupants". Comment states that a PHA should be obliged to comply with all code requirements, not merely with requirements affecting health and safety. Another comment objects that the PHA lease obligation is restricted to matters "materially" affecting health or safety.

These comments miss the reason for using State code requirements as the basis for establishing PHA obligations under the lease. The purpose is not to empower the tenant to treat all technical violations of local code as violations of the lease. The purpose is to focus on that aspect of local code enforcement which is most directly related to the Federal statutory mission of the public housing program, and is most critically related to the welfare of the public housing tenants. Independent of the lease, local code enforcement authorities have all of the normal powers to enforce code requirements against the PHA in accordance with local law. Moreover, States have the power, if they wish, to grant public housing or other tenants a procedure and standing to enforce local code requirements. The State and locality have the primary role of deciding how to enforce a code scheme which is a creature of State and local choice. Except for specific purposes of the public housing program, HUD has no reason to interfere in the local procedures for enforcement of local code.

Local codes may reflect local policies which have little to do with national policies of the public housing program, or as to which there is no immediate reason for Federal involvement or concern. For example, local code may include elements designed to implement local land use controls, or to encourage use of local labor (by requiring use of stick built techniques, or by prohibiting use of new materials or construction techniques). For the present purpose, we merely assert that local concerns and interests as reflected in the local code are not automatically the business of the Federal government, to be enforced by the tenant through provisions of the public housing lease.

Finally, the Federal interest in enforcement of local code requirements through the public housing lease should only apply when there is "material" violation of local requirements related to health or safety of the occupants. The purpose of the lease provision is not to capture any technical code violation marginally related to tenant safety, but those violations which are likely to result in serious injury to the tenants. The pursuit of minor violations of local code is best left to the enforcement policies and techniques of the local authorities. (The rule provision on compliance with local code is substantially identical to a parallel provision of the Uniform Residential Landlord and Tenant Act. Uniform Act, section 2.104(a)(1).)

c. PHA Obligation When Unit is Dangerous—(1) PHA Duty to Offer Substitute Unit. The final rule provides (§ 966.10(f)(3)):

> If the condition of the dwelling unit is hazardous to the health or safety of the occupants, and the condition is not corrected in a reasonable time, the PHA shall offer the Tenant a replacement dwelling unit if available. The PHA is not required to offer the Tenant a replacement unit if the hazardous condition was caused by fault or negligence of Household members, or of guests, visitors, or other persons under control of Household members.

These provisions reflect the Federal interest in correcting conditions which may endanger health or safety of public housing residents.

The new rule provides that the PHA must offer a replacement unit if a hazardous condition is not corrected "in a reasonable time". The new rule does not require that the PHA offer the tenant a public housing unit.

Comment states that the PHA should not be allowed a "reasonable" time to fix the hazardous conditions. The comment points out that what is "reasonable" to a PHA employee may not be reasonable for a tenant suffering a hazardous condition. HUD appreciates that the perspective of the tenant naturally differs from the perspective of PHA officials. The tenant may have difficulty capturing attention of PHA officials, or persuading them that the unit is dangerous and that the tenant should be offered a new unit. Nevertheless, HUD has not revised the rule in response to this comment. To a considerable degree, the decision on what to do if there is a dangerous condition in the unit should be left to the discretion and good sense of the PHA. The PHA decision should be based on the immediate facts of the case, and the PHA resources on hand. The decision is not readily reducible to a more precise formula, that should be incorporated in the boilerplate of public housing leases.

The statement of tenant obligations under the lease is revised to provide that the tenant must move from a dangerous dwelling unit (§ 966.10(h)(1)(v)(B)). Thus the revised rule defines the correlative duties of the PHA and the tenant in a situation where the tenant's original unit is no longer safe for continued occupancy. The PHA must offer a replacement dwelling unit if available, and the tenant must move.

Comment states that the PHA should not be required to relocate the tenant if dangerous conditions in the unit were caused by action or negligence of the family or its guests (such as a fire caused by the family; leaks not reported to the PHA; hazards resulting from the family's housekeeping habits). The tenant should be evicted, not relocated to destroy another unit. In response to the comment, the rule is amended by specifying that the PHA is not required to offer the tenant a replacement unit if the dangerous condition in the unit was caused by fault or negligence of the household members, or of guests, visitors or other persons under the control of household members (§ 966.10(f)(3)). The PHA may evict the family if the family actions which caused the damage are grounds for termination of tenancy (serious or repeated violation of the lease or other good cause; see § 966.21). It should also be noted that on normal contractual principles, a tenant's breach of the lease (by damage to the unit) may relieve the PHA of reciprocal obligations to the

tenant under the lease, such as the promise to offer replacement housing.

(2) Abatement of Rent. The old rule provided that if the PHA does not correct dangerous conditions in a reasonable time, rent must be abated "in proportion to the seriousness of the damage and loss in value as a dwelling * * *" HUD proposed to delete the requirement for abatement of rent. Comment states that the lease should allow or require abatement for hazardous or substandard conditions. Abatement is an effective and cheap non-judicial mechanism to resolve disputes. The proposed change eliminates a valuable and easily-administered remedy for serious health and safety problems. Abatement enables the tenant to get the attention of a recalcitrant and non-responsive PHA. Eliminating the tenant's right to abate rent for dangerous conditions removes an incentive for management to maintain the property, and puts the tenant family at risk. Abatement is legally and morally justified if the PHA does not render services for which the tenant has paid. Abatement of rent encourages lessors to maintain property. The rule should encourage the PHA to repair public housing units, and should discourage the PHA from transferring the tenant from a dangerous unit.

Comment notes that the abatement remedy (as defined under the law of a particular State) is not useful. The comment thus implies that the Federal regulations should establish a Federal right to abatement in addition to any right of abatement under State law. Other comment states that a PHA should be held responsible for compliance with the same standards as a private landlord. Abatement is a principal tool to enforce health and building codes.

The final rule is silent on the tenant's right to rent abatement to remedy a breach of PHA obligations under the lease. The rule also does not require that the lease include a provision which abates the rent for hazardous or substandard conditions, or which establishes a standard for computing the amount of an abatement.

Abatement is a two edged sword. If rent is abated or withheld, the PHA loses revenue that would otherwise be available for projection operation. Denial of revenue may force the PHA to reduce maintenance and other tenant services. Denial of PHA income, by abatement or other rent withholding techniques may accelerate a downward spiral of project management and maintenance, where each reduction of rental income leads to reduction of necessary tenant maintenance, and the reduction of maintenance leads to additional withholding.

The deterioration of project services affects tenants who pay the rent, as well as those who initially claim that there is justification for refusing to pay the full rent claimed by the PHA. This deterioration may in turn lead to withholding by more and more tenants. This may also occur because tenants who pay rent are naturally infected by the example of other tenants who, rightly or wrongly, claim a right to deny full payment of the rent.

Comment states that HUD should not take away the tenant's right to abatement of rent under State law. Comment claims that in most States, elimination of a Federal abatement requirement conflicts with the State law warranty of habitability.

Because abatement may result in severe and harmful effects on management of the housing, HUD is unable to justify restoration of a Federal right to abatement of the rent. However, the rule does not prohibit or preempt authority for abatement under State statute or caselaw. Absent a Federal requirement or prohibition, the existence or non-existence of a right to abatement is determined by State law. The Federal rule does not take away a right to abatement under State law, and does not interfere with a State law warranty of habitability.

Federal requirements governing the form of a public housing tenancy coexist with State law requirements which spell out incidents of the tenancy, so long as the State requirements do not contradict requirements of the Federal statute and rule. The State law may not destroy or diminish rights of the tenant and the PHA under the Federal rule, but may add additional tenant protections, such as a right to rent abatement as a remedy for breach of PHA obligations in the lease. The rule allows but does not require abatement of rent. The rule therefore defers to State policy, as expressed in State law, concerning the right of the tenant to abate rent as a remedy for PHA breach. If a tenant may abate rent for any landlord, including a public landlord, the tenant may also abate rent payable to a PHA.

Comment asserts that the rule should provide that a PHA must comply with remedies under State law for the PHA's failure to maintain the unit. HUD concludes, however, that there is no sufficient justification for federalizing State remedies. State remedies reflect values and policies in the jurisdiction, not necessarily the purposes of the national public housing program. HUD should not blindly incorporate local remedies into lease requirements for the national public housing program. A jurisdiction which establishes a right to remedies under State law may likewise establish procedures to effectuate the remedies, including a requirement that the remedies must be incorporated in the lease.

The 1983 law requires a lease provision which obligates the PHA to maintain the unit in decent, safe and sanitary condition (U.S. Housing Act of 1937, section 6(l)(2), 42 U.S.C. 1437d(l)(2)). A comment claims the 1983 law does not authorize HUD to eliminate the tenant's right to abatement under the old rule, asserting that the 1983 law requires HUD to retain the lease requirements of the old rule.

The new rule provides that the PHA must provide services and maintenance, for the dwelling unit, equipment and appliances, and for the common areas and facilities, which are needed to keep the housing in decent, safe and sanitary condition (§ 966.10(f)(7)). This provision constitutes literal and complete implementation of the 1983 law, and is substantively similar to parallel provisions of the old rule. Nothing in the text of the 1983 law freezes the lease requirements precisely as framed in the old rule. Nothing in the 1983 law requires inclusion of provision of rent abatement, or requires retention of rent abatement provisions that were contained in the old rule.

d. Maintenance by Tenant. The rule (§ 966.10(j)) states that:

> The lease may provide that the Tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwelling units of a similar design and construction is customary; provided, that such provision is included in the lease in good faith and not for the purpose of evading the obligation of the PHA. The PHA shall exempt the Tenant if the PHA determines that because of age or physical disability members of the Household are unable to perform such tasks.

This provision is substantially drawn from a parallel provision of the old rule.

Comment argues that HUD should delete the rule provision which allows a PHA to require the tenant to perform "customary" maintenance. Maintenance is a PHA function. The PHA should not be allowed to shift this maintenance responsibility to the tenant. The comment also observes that the regulation standard for when maintenance may be shifted to the tenant (i.e., the practice which is "customary" in dwelling units of similar design and construction) is too vague, and should be spelled out in the rule.

Under the lease provisions mandated by the 1983 law, the basic responsibility for maintenance of the project rests with the PHA. The lease must "obligate the public housing agency to maintain the project in a decent, safe, and sanitary condition" (U.S. Housing Act of 1937, section 6(l)(2), 42 U.S.C. 1437d(l)(2)). However, this allocation of responsibility for maintenance of the project under the statute does not mean that the tenant may not be required to perform unit maintenance tasks which help the PHA maintain the project in decent, safe and sanitary condition. If the tenant must perform maintenance for the unit, the tenant may be more likely to clean and care for the unit, and less likely to damage the unit, than if the tenant is the passive recipient of all PHA maintenance services. Each individual tenant is a beneficiary of the PHA duty to maintain the project. In meeting this responsibility, the PHA may be supported by the requirement for all tenants to perform certain maintenance responsibilities respecting their individual units.

The required lease provisions in the 1983 law were enacted verbatim in the form previously reported by the House Banking Committee, and then passed by the House of Representatives (unlike the grievance procedures, for which the law as enacted differs markedly from the Bill previously reported by the House). The Report by the House Banking Committee notes that the reported bill includes a clause obliging the PHA to maintain the premises in decent, safe and sanitary condition. The Report states that "the Committee * * * contemplates that HUD will retain the existing regulations regarding these provisions" (Report 98–123 on H.R. 1, p. 36). Under the "existing regulations" (i.e., the old lease and grievance rule) a requirement for the PHA to "maintain the premises and the project in decent, safe and sanitary condition" co-exists with authority for a lease provision in which the tenant agrees to perform maintenance tasks "according to local custom". Thus the 1983 law is not intended to sweep aside the potential for lease provisions which require the tenant to perform maintenance tasks in accordance with local custom.

The new rule provides, as did the old rule, that an agreement for the tenant to perform maintenance tasks must be included in "good faith" and not for the purpose of evading the PHA obligation for maintenance of the project. The PHA right to transfer maintenance responsibilities to the tenant is not open-ended, but depends on local landlord-tenant practice. The designation of tasks to be performed by the tenant must be customary for units of similar design and construction in the locality. Because this contractual standard depends on tenancy practices in each locality, the definition of what practice is "customary" is not stated in the HUD regulation, but depends on a concrete examination of local practice.

Comment states that the HUD rule should specify that a PHA may not shift tasks to the tenant if the tasks must be performed by the landlord under local law. This comment is not well taken. The HUD rule does not override a local law which requires the landlord to perform specific maintenance tasks.

The PHA must exempt the tenant from tenant maintenance tasks if members of the household are not able to perform the tasks "because of age or physical disability" (§ 966.10(j)). A PHA states that a PHA should not be required to exempt elderly or handicapped from tenant maintenance requirements, such as mowing, if the PHA has elderly or handicapped units, but the tenant wants to live in an area where tenant maintenance is required.

The comment is not adopted. It is not fair or practicable to impose a maintenance requirement on the tenant if members of the household cannot perform the maintenance because of age or disability. The tenant would have to find other persons to perform the tasks, or would be placed in violation of the lease. The tenant may not be able to find or pay someone to perform the tenant maintenance obligation.

The PHA may consider the ability of the tenant to perform tenant maintenance when deciding whether to admit the tenant to a tenant maintenance unit. In addition, if a tenant is already living in a unit, but there is no household member who can perform tenant maintenance tasks appropriate for the unit, the PHA may determine that the unit is inappropriate for the household composition, and require the tenant to move to another public housing unit (§ 966.10(h)(1)(v)(A)(1)).

2. PHA Duty to Comply with Federal and State Requirements

Comment states that a lease should provide that a PHA must comply with Federal law and HUD regulations, including requirements for calculation of rent and utility allowances. In HUD's view, the comment fails to justify importing HUD requirements wholesale into the lease between the PHA and a tenant, to be enforced as a contractual duty of the PHA to the tenant under the public housing lease. Required lease provisions are only a vehicle to express basic responsibilities of the PHA to the tenant.

The lease provisions which are required by the 1983 law regulate key aspects of the assisted tenancy, but do not contemplate that the tenant must have a contractual leasehold right to enforce all statutory and regulatory duties of the PHA across the board. For some HUD regulations, the right to enforcement may be vested in HUD's administrative discretion, but not in the tenant. For other HUD regulations, the tenant may have a direct right of action outside of the lease, to demand benefits owing to the tenant from the PHA. Existence of this right against the PHA does not depend on incorporation in the lease (cf., *Wright v. Roanoke*, 479 U.S.——, 107 S. Ct. 766 (1987)).

With respect to rent, the rule provides that the rent "shall be determined by the PHA in accordance with HUD regulations and requirements" (§ 966.10(c)). Conversely, the tenant may not be required to pay a rent which is not determined in accordance with HUD requirements.

The proposed rule provided that a lease must be "in accordance with State and local law". This provision is not contained in the final rule. In general, State and local law independently determines whether State and local law is applicable to a public housing tenancy, and whether the State requirements must be included in the lease.

Comment states that the rule should provide that State tenant protections control if State protections conflict with requirements under the Federal rule. This recommendation is not adopted. The tenancy must comply with all requirements of this rule. Tenant will have all the leasehold rights provided under the HUD rule, and any additional rights afforded by State and local law.

C. Tenant Obligations

1. Statement of Tenant Obligations

The lease states the key tenant responsibilities concerning use of the unit and behavior of family members and family guests (§ 966.10(h)). The statement is expanded and clarified from the treatment of this subject in the old rule.

Regulations for the section 8 existing housing certificate program state family obligations under that program (§ 882.118; cf. also, § 882.210). Like the public housing program, the section 8 certificate program is run by local PHAs. In the certificate program, the roles of the PHA and owner are separate. In the public housing program, these roles are

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combined. Thus the statement of tenant obligations may be roughly divided into: (1) Items reflecting the common PHA role in the public housing and housing certificate programs, and (2) items reflecting the obligations of the tenant to the PHA as owner of a public housing dwelling unit.

For the first group of items, the statement of tenant obligations in this rule is substantially conformed for the public housing and housing certificate programs (with some technical differences): Requirement to use the dwelling unit for family residence (§ 966.10(h)(1)(i)(A)), prohibition against transferring use of the unit (§ 966.10(h)(1)(ii)), duty to give necessary information to PHA (§ 966.10(h)(1)(iv)), agreement not to commit fraud in connection with a Federal housing assistance program (§ 966.10(h)(2)(v) and § 966.10(h)(3)(i)), prohibition of duplicative Federal housing assistance (§ 966.10(h)(2)(vi)). In the public housing program, these provisions are contained in the lease, and serious or repeated breach of tenant lease obligations is ground for termination of tenancy (see § 966.21).

General comments note that the statement of tenant obligations in the rule is fair to both the PHA and tenant.

The following sections of this Preamble discuss aspects of tenant obligations under the lease:

—Crime or other violation of law. Section III.C.2.
—Damage or disturbance. Section III.C.3.
—Responsibility for third party acts. Section III.C.4.
—Guests. Section III.D.
—Prohibition of fraud. Section III.E.
—Use of unit for family. Section III.F.
—Rent and charges. Section III.G.
—Duty to supply information. Section III.H.
—Transfer to another public housing unit. Section III.I.
—Inspection of unit. Section III.J.
—PHA rules. Section III.Q.3.

2. Violation of Law by Household Members

a. Violation of State Law As Ground for Termination of Tenancy. Comment states that the PHA should be permitted to terminate tenancy for violation of "applicable" Federal, State or local law. The comment asserts that denying enforcement against a resident who violates the law is bureaucratic interference with autonomy of local agency practices, and impedes the efforts of the PHA to protect law-abiding residents.

Federal law prohibits termination of the public housing tenancy "except for serious or repeated violation of the terms or conditions of the lease or for other good cause" (section 6(l)(4) of the U.S. Housing Act of 1937 as amended by the 1983 law, 42 U.S.C. 1437d(l)(4)). Tenant violation of applicable law is not a separate statutory ground for termination of tenancy, but may be a ground for termination of tenancy if the violation of law is also a serious or repeated lease violation, or is "other good cause" for termination of tenancy.

The rule provides (§ 966.10(h)(1)(iii)) that the tenant must "comply with any State or local law which imposes obligations on a tenant *in connection with the occupancy of a dwelling unit and surrounding premises*" (emphasis added) (no change from proposed rule). This requirement is included in the statement of tenant obligations under the lease. Thus violation of this provision is a violation of the lease, and is ground for termination of tenancy if the violation is either serious or repeated. The tenant lease obligation under this provision pertains only to State and local laws which impose obligations on a tenant in connection with occupancy of the unit and premises.

Comments objects that this provision only applies to violation of State law which imposes obligations on a tenant, and that the provision may only allow termination of tenancy for violation of State law on project premises. There should be no distinction between violation of law committed on project grounds or off site (such as homicide in a public park). HUD agrees that the PHA needs, and this rule provides (§ 966.10(i)), clear authority to terminate tenancy for violent crime or drug-dealing by family members, both on and off the project site. However, the present provision (§ 966.10(h)(1)(iii)) is only directed at obligations imposed by State law on a tenant. Other provisions of the rule and lease deal particularly with responsibility for criminal actions by family members on or off the project site. (See discussion at section III.C.2.b of this Preamble.)

The rule allows termination of tenancy for breach of a State law which imposes tenant obligations in connection with the unit and project. Comment suggests, as an alternative formulation, that the rule should allow termination of tenancy for law violation which significantly affects health and safety of PHA tenants. HUD believes that this alternative is too narrow, and would be hard to apply. The PHA would be forced to prove the existence of a significant effect, as well as a simple breach of the State law. The suggestion is not adopted.

Comment claims that to satisfy *due process* a termination for violation of State or local law must be based on a material violation which significantly affects livability of the property, or the health or safety of tenants. The Department finds no Constitutional basis for this assertion. The substantive standard for termination of tenancy is not prescribed by the Constitution. A termination for violation of State or local law concerning occupancy of the dwelling unit or premises is reasonably related to the PHA's statutory and contractual responsibilities for management of the housing.

Comment asserts that the tenant should be obligated to comply with all applicable law, including both statute and caselaw. The rule (§ 966.10(h)(1)(iii)) requires the tenant to comply with any State or local law which regulates tenant behavior concerning occupancy of the housing. The legal obligation under State or local law may arise from any binding source of law, including statute, regulation or caselaw.

b. Tenant Responsibility for Crime—(1) Lease Language. In development of this final rule, HUD has reexamined and substantially revised lease provisions about responsibility of the tenant for criminal acts by members of the family and other persons. In accordance with section 6(c)(4)(C) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(C)), the lease provisions are intended to help "assure that satisfactory standards of tenant security and project maintenance are formulated and that the public housing agency * * * enforces those standards fully and effectively. * * *" The lease language will provide a strong contractual basis for action by the PHA against a tenant who uses the unit or project for criminal activity, or whose household members commit crimes of physical violence or trade in narcotics, on or off project grounds. Full and effective enforcement by the PHA of the family's responsibility for criminal acts under the lease is an important tool in the struggle against public housing crime.

Control of crime in public housing is one of the most urgent issues for public housing residents and managers. The fear and fact of crime have a profound and destructive effect on life in public housing projects. Residents are targets of crime and terror by other residents. Family members suffer violence and intimidation. Units are burglarized and damaged. Crime in public housing leads to the disintegration of project and family life.

The required lease language in the old rule provides that the tenant must

refrain from "illegal activity which impairs the physical or social environment of the project" (old rule § 966.4(f)(12)). The language in the proposed rule provides that the tenant "shall not use the dwelling unit for unlawful purposes, [or] engage in or permit unlawful activities in the unit or project * * *" (proposed rule § 966.10(g)(3)).

Under the final rule, the lease must provide that the tenant and other members of the household "shall not engage in criminal activity in the dwelling unit or premises, and shall prevent criminal activity in the unit or premises by guests, visitors, or other persons under control of Household members" (§ 966.10(h)(2)(iii)). In addition to the required lease language, the final rule clarifies (§ 966.10(i)(1)) that a PHA may include optional lease provisions which state that:

> any of the following criminal activities by any Household member, *on or off the premises*, shall be a violation of the lease, or other good cause for termination of tenancy:
> (i) Any *crime of physical violence* to persons or property.
> (ii) illegal use, sale or distribution of *narcotics*. (Emphasis supplied.)

Finally, the rule provides (§ 966.10(i)(2)) that the PHA may terminate tenancy for criminal activity, and consequently may evict members of the household, "before or after conviction of the crime".

(2) Prohibited Criminal Activity.—The final rule contains a broad and simple prohibition of "criminal activity" in the dwelling unit or "premises". Family members may not engage in criminal activity, and must prevent criminal activity by third parties under control of the family (§ 966.10(h)(2)(iii)). The final rule refers to "criminal" activity, rather than "illegal" (old rule) or "unlawful" (proposed rule) activity.

In the old rule, the prohibition only applied to illegal activity which "impairs the physical and social environment of the project". This limitation is not included in the new rule. The old language is too vague, and creates uncertainty as to what kinds of crime are covered. To terminate tenancy under the old standard, the PHA must, in principle, demonstrate two elements: That there was illegal activity, and that the activity somehow "impairs the physical and social environment". Under the new rule, the PHA only has to demonstrate that there was on-site crime attributable to the family.

The rule does not otherwise describe or restrict the types of on-site crime covered by the prohibition. HUD assumes that in practice PHAs most often want to evict tenants for crimes that cause harm to residents or PHA employees, or which cause damage to project property. The PHA is most concerned with crimes that affect the PHA.

The distinction between a misdemeanor and a felony under State or Federal criminal codes is also not a useful way to designate crimes which constitute a violation of the lease. The line between misdemeanor and felony may be different in different jurisdictions, and some jurisdictions may use other schemes or terminology to distinguish between lesser and greater crimes.

A distinction between termination for acts of greater and lesser importance is built into the general statutory standard for termination of tenancy. The prohibition of "criminal activity" in the unit or project applies both to a single crime (such as a mugging) and an ongoing pattern of criminal activity (such as use of the unit for manufacture, distribution or sale of drugs). The family may be evicted for "serious or repeated" lease violations. If the PHA seeks to evict for a single crime, the PHA must persuade the court that the single crime is a serious violation of the lease. As in other cases where the PHA seeks to evict for a "serious" lease violation, the court will apply the general standard for termination of tenancy against the facts of the particular case.

Language of the proposed rule would prohibit use of the unit for "unlawful purposes" and would also prohibit the PHA from engaging in or permitting "unlawful activities". For a prohibition of on-site crime, the distinction between "purposes" and "activities" is both unclear and unnecessary. The final rule prohibits criminal "activity". The tenant is not evicted for having unlawful "purposes" but for engaging in some concrete criminal activity (accompanied by the *mens rea* for the particular crime).

(3) Third Party Crime. Under the new rule (§ 966.10(h)(2)(iii)), the lease provides that the tenant must "prevent criminal activity in the unit or premises by guests, visitors, or other persons under control of Household members". The tenant's responsibility for third party criminal acts under this lease provision only applies to third party criminal activity "in the dwelling unit or premises". (See section III.C.2.b.(4) concerning responsibility for on or off-site crime by a member of the public housing family.)

The old rule provides that the tenant must refrain from illegal activities. However, there is no explicit provision that the tenant is responsible for illegal activity by a third party on the premises with the tenant's consent. There are provisions which make the tenant responsible for damage by family guests (§§ 966.4(f) (9) and (10) of old rule), and for disruptive conduct by other persons on the premises with the tenant's consent (§ 966.4(f)(11) of old rule).

PHA comment states that the tenant should be responsible for acts by family friends and guests. HUD agrees that the rule should strengthen the contractual responsibility of the tenant for crime and other harmful on-site activity by third parties present on the premises by choice of the family. The existence of contractual responsibility under the lease fortifies a family's incentive not to invite third parties for criminal purposes (e.g., a drug dealer), and the family's incentive to stop guests from committing crimes in the project.

For further discussion of tenant responsibility for acts of third parties, see section III.C.4 of Preamble below.

(4) Off-site Crime by Family Members. In some circumstances, off-site criminal acitvity by family members is a proper ground for termination of tenancy. First, off-site crime by a public housing resident may directly affect the public housing project, and the lives of other project residents. For example, a tenant may sell narotics to another tenant. The effect on the purchaser and the project is substantively the same if the transaction takes place on project property or across the street. To protect public housing projects from criminal activity, serious criminal activity should not be insulated from contractual sanction because of a technicality—that the criminal act or transaction took place over the project boundary.

Second, off-site crime is a basis for termination and eviction because the pattern of off-site behavior may be extended to the project, and is therefore a legitimate management concern of the PHA. At the point of admission, PHAs are authorized to bar admission of applicants whose habits and practices are expected to have a detrimental effect on the project (§ 960.204(b)(2)). The PHA may consider a history of criminal activity involving crimes of physical violence to persons or property (§ 960.205(b)(3)). The logic behind these concerns at the point of admission applies equal to criminal activity by members of families already admitted to the project.

In addition to the broad prohibition of on-site crime by family members or guests, the final rule adds a new provision (§ 966.10(i)(1)) authorizing the PHA to include a lease provision allowing eviction of a family for two categories of on-site or off-site criminal

activity by a family member: (1) "a crime of physical violence to persons or property" or (2) "illegal use, sale or distribution of narcotics." At the election of the PHA, the lease may provide that such criminal activity by a family member—on or off the premises—is a violation of the lease, or is other good cause for termination of tenancy.

(5) Relation Between Eviction and Criminal Prosecution. PHA comment states that if a family member commits a crime the PHA should be able to terminate the tenancy before a conviction in the criminal prosecution. If not, the criminal can continue to prey on other tenants. Other comment objects to eviction for criminal acts when no arrest or conviction has yet occured.

The final rule adds a new provision (§ 966.10(i)(2)) which confirms (as stated in the Preamble to the proposed rule, 51 FR 26506, col. 3) that a PHA may terminate tenancy and evict the family for criminal activity "before or after conviction of the crime". The PHA may evict for violation of the required lease prohibition concerning on-site crime by a family or its guests, or for violation of an optional lease provision allowing termination for off-site crime (narcotic violation or crime of violence). Comment asks for confirmation in the rule text and lease that the PHA may evict for criminal activity irrespective of the existence or stage of a criminal prosecution for the criminal act.

If criminal acts are grounds for termination of tenancy, the PHA does not have to delay going forward with a civil proceeding for termination of tenancy and eviction pending the progress of a criminal prosecution relating to the same set of facts. The PHA may proceed with a civil action to terminate tenancy, and may evict the family because of criminal behavior by family members, regardless of whether a prosecution has commenced, and regardless of the stage of a criminal proceeding. Of course, the tenant is entitled to a fair hearing on the existence of grounds for termination of tenancy, in the PHA's administrative grievance procedure, or in the judicial action for eviction.

In a criminal prosecution, court decision may lead to imprisonment or other criminal penalty, and the elements of the crime must be proved by a criminal standard of proof. However, eviction of a public housing tenant is a civil remedy (§ 966.23(a)). Decision of the court in the action for dispossession of the tenant may lead to eviction from the unit. If the PHA alleges that commission of a "crime" by a household member is a lease violation or other good cause for termination of tenancy, then the PHA must prove the elements of crime by the civil standard of proof used in an eviction proceeding (generally by a preponderance of the evidence). There is no injustice or denial of proper process by allowing the PHA to proceed with civil eviction before conviction of the crime.

3. Prohibited Conduct or Use of Unit

a. Damage or Destruction. The final rule provides (§ 966.10(h)(2)(ii)) that the tenant and other members of the household:

> shall not damage or destroy the dwelling unit or premises, and shall prevent such damage or destruction by guests, visitors, or other persons under control of Household members.

Destruction of property by the tenant, family or guests is expensive for the PHA, and may lead to destruction of the project as a decent place to live. The tenant's duty to avoid destructive behavior must be clearly stated in the public housing lease.

b. Disturbance of Other Residents. The final rule provides (§ 966.10(h)(2)(i)) that the tenant and other members of the household:

> shall not disturb other residents, and shall prevent disturbance of other residents by guests, visitors, or other persons under control of Household members.

In the proposed rule, the prohibition against disturbing other project residents was combined with language which prohibits unlawful activities in the unit or project. For clarity, and for separate emphasis of each theme, the subjects are treated in separate paragraphs of the final rule. The duty to avoid disturbance of other residents is more simply stated.

4. Responsibility of Tenant for Acts of Third Parties

This section discusses when the tenant is responsible for disturbance, damage or crime by persons other than members of the household.

Comment states that the family should be responsible for conduct of any third party in the unit. Comment states that in most cases where a third party damages property, disturbs the neighbors or commits illegal acts, the tenant is an accessory, not an innocent bystander. Almost all burglary and vandalism is by persons invited by the family. Other comment states that the tenant should not be responsible for third party acts if the tenant exercised reasonable care to prevent harm or injury. Comment states that the tenant should not be treated as a guarantor of conduct by third persons on the premises (e.g., the pizza delivery man). The tenant should only be responsible for actions which are under the control of the family.

The old rule provides that the tenant must "cause his guests" to refrain from damaging the unit or project (old rule § 966.1(f)(9)), and must "cause other persons who are on the premises with his consent" not to disturb peaceful enjoyment by neighbors (§ 966.1(f)(11)). Under the old rule, the prohibition of illegal acts by the tenant (§ 966.1(f)(12)) does not refer to commission of illegal acts by third parties.

Thus the old rule does not contain a single consistent formulation of the tenant's responsibility for third party acts. Under the old rule, the tenant is not answerable for illegal acts by third parties, but has a positive obligation to "cause" third parties to act in a way that avoids damage or disturbance. In the latter case, there are different regulatory descriptions of the class of third party actors for whom the tenant is responsible.

In the proposed rule, HUD offered a new formulation of the PHA responsibility for third party acts. The proposed language was based on language of the multifamily model lease (used for some of the non-public housing project-based subsidy programs). Under the proposed lease language, the family may not engage in or "permit" disturbance or unlawful acts. This provision was intended to make the tenant responsible for acts or damage by family guests or persons under control of the family (51 FR 26507, July 23, 1986).

Language of the proposed rule would change the tenant obligation from a responsibility to "cause" appropriate behavior by third parties under the old rule lease, to an obligation not to "permit" injurious acts. Legal aid comment states that the proposed change is an improvement over the old rule. The tenant is often unable to control third party acts. However, the comment also notes concern that the word "permit" is vague and ambiguous.

Comment objects to the proposed change based on the multifamily model lease. A comment states that the change from "cause" to "permit" will do immeasurable harm to a PHA which is attempting to maintain the project as safe place to live for all residents. The tenant should be responsible for all actions by guests or members of the family. The tenant should have to face the consequences of unruly behavior by family members and guests without necessity for the PHA to prove active permission by the tenant. The comment states that under the proposed language, the resident will be able to "passively

condone" third party acts which distrupt the community, and the PHA has to show that the tenant actively allowed the guest to engage in prohibited activity.

The final rule contains a single uniform formulation of the tenant's contractual responsibility for third party acts. The tenant and other members of the household must "prevent" disturbance, damage or illegal acts by "guests, visitors, or other persons under control of Household members" (§ 966.10(h)(2) (i), (ii) and (iii)). The tenant has a positive duty to "prevent" the prohibited activities by third parties. The tenant does not escape responsibility if the tenant and household passively condone prohibited acts. Instead, the tenant and household must do what is necessary to "prevent" the prohibited acts.

The tenant's duty applies to actions by guests, visitors or other persons under control of household members. HUD does not accept the view that the tenant should be responsible for any third party act that occurs in the family unit. The tenant should only be responsible for acts by guests or visitors (i.e., persons who enter the unit with the consent of the household), or by other persons under control of the household. The tenant is not responsible for acts by persons who enter the unit without consent, and who are not under control of household members. Liability for acts of guests or visitors, and for other persons under family control, is a stimulus to encourage the tenant and other family members to be more careful in admitting guests, and induce the family to exercise control over other third parties in the unit. Conversely, liability for acts by third parties whom the family is unable to control may produce a sense of hopelessness and frustration. Third parties may break into the unit. The tenant should not be held answerable under the lease for crimes committed against the family.

D. Guests

The rule provides (§ 966.10(g)(3)) that:

> members of the Household may receive guests or visitors in the dwelling unit. However, such use of the dwelling unit by the Household must be reasonable.

This language is substantially a restatement of the old rule provision that tenant's right to use and occupancy includes "reasonable accommodation" of guests or visitors.

Comment states that a requirement to register guests with the PHA should be prohibited as an invasion of tenant privacy. The PHA has no right to interfere if a person in the unit is a guest rather than an unregistered tenant. Other comment states that guest rules should be left to discretion of the PHA. The PHA should have authority to require registration of guests. Registration is not a hardship for the tenant or the family. Registration of guests helps the PHA deal with the problem of unauthorized occupancy. When the guest registers, the PHA can inform guests about PHA rules and regulations for visitors.

The final rule does not prohibit PHAs from requiring registration of guests or visitors. The rule does not contain any explicit provision concerning PHA registration requirements.

HUD believes that the regulatory lease requirement to use the unit for residence by the household (see §§ 966.10(b)(1), 966.10(g)(1) and 966.10(h)(1)(1)), and the provision for "reasonable" use for guests or visitors of the household (§ 966.10(g)(3)), sufficiently cover the Federal interest that the unit be used only for residence by a lower income family, in accordance with the purpose of the statute.

More detailed regulation of the presence of family guests is most appropriately left to the judgment of the PHA, which may utilize lease provisions or house rules which further regulate the presence of guests or visitors in a public housing unit.

E. Fraud

In the lease, the tenant agrees that the tenant and other members of the household "shall not commit any fraud in connection with any Federal housing assistance program" (§ 966.10(h)(2)(v)). This provision, which is contained in the proposed and the final rule, concerns future fraud by unit occupants. Violation of tenant's promise is a violation of the lease, and is ground for termination of tenancy.

The final rule adds a new separate lease provision to cover past fraud by unit occupants. The final rule is broadened to explicitly cover fraud committed by family members before execution of the public housing lease, or before the PHA approves occupancy by a new family member. Absent this change in the rule, there might be question whether the PHA could terminate the tenancy for past family fraud in the Federal housing assistance programs. The final rule provides (§ 966.10(h)(3)(i)) that the lease must include a certification by the tenant that:

> The Tenant and other members of the Household have not committed any fraud in connection with any Federal housing assistance program, unless any such fraud was fully disclosed to the PHA before execution of the lease, or before PHA approval for occupancy of the unit by the Household member.

The PHA may find out about past fraud after lease execution, or after the PHA approves occupancy by a new family member. For example, the PHA may learn that the tenant deliberately concealed family income in order to gain admission to the PHA's program. To prevent and punish program fraud, the PHA must have a contractual basis to terminate tenancy when fraud is revealed.

The requirement for the tenant to certify to the absence of past fraud by household members permits the PHA to terminate tenancy if the certification is false. The certification requirement is also designed to give tenant some incentive for full advance disclosure to the PHA. If the tenant fully discloses past fraud before execution of the lease, the existence of such past fraud is not a breach of tenant's certification under the lease. When tenant makes advance disclosure of fraud, the PHA can make an informed case-by-case judgment of the appropriate action (for example, by requiring the tenant to enter into an agreement to repay section 8 assistance paid as a result of tenant fraud).

The lease provisions governing past or prospective fraud by the unit occupants (§ 966.10(h)(2)(v) and 966.10(h)(3)(i)) only deal with fraud committed in connection with a "Federal housing assistance program", such as section 8 or public housing. The requirements do not concern fraud unrelated to a Federal housing assistance program. However, the prohibition of housing fraud is not limited to fraud related to the public housing program, or acts to defraud the particular PHA which enters the lease. For example, the lease provisions would cover a fraudulent representation of family income in order to secure admission to the section 8 certificate program of the same PHA or another PHA. The provisions reflect the Federal interest, and HUD's particular role, in preventing and pursuing fraud in any Federal housing assistance program. Fraud wastes Federal housing subsidy dollars, and denies scarce housing assistance for eligible families.

The provision covers fraud by any member of the household—the whole group of persons living in the unit with approval of the PHA. The commission of fraud by any member of the family violates the lease, and is ground for termination of tenancy.

The final rule adds an explicit definition of the term "fraud" as used in the lease (§ 966.2). As used in this rule, the term "fraud" includes "fraud as defined under any Federal or State civil

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or criminal statute". In addition, "fraud" for purpose of this rule is defined to include any other "deliberate misrepresentation to the PHA by the Tenant or other members of the Household".

The regulatory definition of fraud thus embraces the full spectrum of behavior which is treated as fraud under State or Federal law, and whether for civil or criminal purposes. The rule expresses a strong objective of strengthening the hand of the PHA in dealing with behavior defined as fraudulent under Federal law, or under State law in the State where the project is located. The PHA has the assurance that fraudulent actions proscribed by civil or criminal law are grounds for action by the PHA against the tenant under the lease. The PHA has therefore the strongest possible contractual basis to deter family fraud, and to take appropriate action if fraud is revealed. The rule provisions are intended to minimize diversion of Federal housing subsidy resources because of fraudulent misrepresentation.

Comment recommends that the rule prohibit fraud "or misrepresentation" in connection with the programs. As indicated above, the regulatory definition of fraud in the final rule includes intentional deception by "misrepresentation" to the PHA. Misrepresentation is the crux of the concept of fraud. The definition will broadly cover deliberate factual misrepresentation by family members, even if the type of misrepresentation is not otherwise called or treated as "fraud" under Federal or State law.

Public comment supports the prohibition of fraud in connection with Federal housing assistance programs.

F. Use of Dwelling

1. For Members of Household

The names of the tenant and of the other persons who will live in the dwelling unit are stated in the lease (§ 966.10(b)(1)). The only individuals who may live in the unit are the persons who are specifically approved by the PHA for residence in the unit (see § 966.10(h)(1)(i)(A)).

The final rule contains a new definition of the term "Household" (§ 966.2). The "Household" consists of the tenant and other persons who live in the dwelling unit with written approval of the PHA. In the proposed rule, a similar notion was conveyed in a definition of the term "family". However, as generally used in public housing regulations and practice, the term "family" denotes the individual or group of individuals who are eligible for public housing or section 8 assistance under the 1937 Act (see U.S. Housing Act of 1937, section 3, 42 U.S.C. 1437a; 24 CFR Part 912). In two cases (foster children and live-in care attendants), occupants of a public housing unit may include an individual who is not a member of an eligible statutory "family". To avoid confusion, it is therefore helpful to use the separate term "Household" to denote the whole body of authorized unit occupants, including any persons who are not members of the statutory family.

The lease must provide that the Tenant has the right "to exclusive use of the dwelling unit for residence by the Household (§ 966.10(g)(1)). The lease may also provide that with written approval of the PHA, use of the unit may include care of foster children and live-in care of a member of the family (§ 966.10(g)(2)).

The requirement for PHA approval of all unit occupants serves a two-fold purpose: Enforcement of statutory requirements related to unit occupancy, and the PHA management interest in controlling occupancy of the unit.

In public housing, the unit must be occupied by a "family". In applying this statutory requirement, the PHA has broad authority to determine whether a group of individuals constitutes a statutory "family" which is eligible for assistance in a public housing unit. To perform this function, the PHA must control both the initial occupancy of the unit, and the addition of new family members. In addition, the amount of a tenant's rent is determined by a statutory formula, and is based on the amount of family income. To enforce the statutory procedures for computation of the rent, the PHA needs to know when new members are added to the family, so that new member income is counted in the computation of family rent.

The PHA has a strong management interest in controlling occupancy of the unit. The PHA has the right to decide who is admitted to the housing, to assure that the sequence of admission is fair and consistent, to limit density of occupancy in the unit and project, and to assure that unit occupancy accords with PHA tenant selection criteria (§ 960.204). The PHA interest in maintaining control over unit occupancy applies to changes in composition of the family unit, just as to initial admission of the family. For example, the PHA has a continuing interest in preventing occupancy by persons with a history of criminal activity involving crimes of physical violence (cf., § 960.205(b)(3)).

Comment advises that the PHA authority to limit admission of new family members should be limited. The comment suggests that a tenant should not always be required to secure PHA approval for unit occupancy by an additional person. Where PHA approval is required, the rule should provide that PHA consent may not be unreasonably withheld. In particular, the comment states that the rule should provide that the consent for occupancy by a foster child or live-in care of a family member may not be unreasonably withheld.

The recommendations in this comment are not adopted. The PHA's authority to decide who may occupy a public housing unit should not be weakened. For some PHAs, illegal occupancy of public housing units is a massive problem. Failure to control unit occupancy produces a decay in the conditions of project life, including the growth of narcotics use and other criminal activity.

The requirement for a tenant to seek PHA approval of each new unit occupant is reasonable. Consideration of tenant requests is properly addressed to the management discretion of the PHA. All PHA action is subject to the normal judicial standards for review of official action under State law, such as a prohibition of action which is arbitrary or capricious. HUD has no reason to impose a special contractual standard governing a PHA decision to deny approval of a new unit occupant. A provision that approval may not be "unreasonably withheld" may be construed restrictively, in a way that prevents the PHA from making a legitimate and well-founded determination to refuse approval of a new unit occupant.

It should be noted that the rule does not state that the tenant must always obtain PHA approval before the new occupant moves into the unit. In some cases, advance approval is not practicable or possible. A family member may turn up suddenly, in need of immediate shelter. The PHA may need a few days to process a request for approval of the new unit occupant. Thus the PHA may establish rules concerning the procedures and timetable for securing PHA approval for occupancy by a new family member.

2. Use As Household Residence

The proposed rule provided that the family must use the dwelling unit as the family's "principal" place of residence. Comment recommends that the rule should obligate the tenant to use the public housing dwelling unit as the family's "only" place of residence. The comment remarks that HUD should not subsidize a family or individual with another residence, or a vacation home.

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The change is made as recommended. The revised rule provides (§ 966.10(h)(1)(i)) that the tenant:

shall use the dwelling unit (A) solely for residence by the Household, and (B) as the Tenant's only place of residence.

3. Incidental Business Use

The purpose of public housing is to provide housing for poor families. However, the Department has long asserted that some incidental use of a public dwelling unit for profit-making purposes may be consistent with the primary use of the unit as a family residence in accordance with the statute. For example, the family may earn money by babysitting, care of a foster child, or envelope-stuffing. Family income from profit-making activities in the unit can be an important source of self-support by the family.

The final rule adds a new provision to clarify that the requirement to use the unit exclusively for residence by the family does not mean that the family members are always barred from any gainful activity in the dwelling unit (§ 966.10(g)(1)):

The lease may provide that with written approval of the PHA, members of the Household may engage in legal profit-making activities incidental to primary use of the dwelling unit for residence by the Household.

The rule also provides (§ 966.10(h)(1)(i)) that although the dwelling unit may only be used for residence by members of the household:

if approved by the PHA under the lease, members of the Household may engage in incidental profit-making activities [in the dwelling unit].

The new provisions codify the authority for incidental profit-making activities in the dwelling unit.

The regulation does not, however, authorize the conversion of a public housing dwelling unit to a business use, e.g., by changing an apartment to a store or office. The business activity must not prevent the family from living in the unit. The unit must remain as the actual residence of the family members, and the profit making activity must be "incidental" to the primary residential use. HUD recognizes that in marginal cases the determination of what kinds of activities can be permitted, and to what extent, may be difficult, and will require case-by-case determination. In the first instance, it is the responsibility of the PHA to make this determination.

Under the rule, the PHA is not required to permit gainful activity in the dwelling unit by members of the assisted family. The lease "may provide" for such incidental activity if the PHA chooses to incorporate provision for such activity in the lease. If the PHA elects to allow such activity, the household members may only engage in such activity "with written approval of the PHA". The requirement for PHA approval is intended to assure that the PHA retains necessary contractual control over activities which depart from the basic residential use of the unit, which may affect living conditions for other building residents (e.g., because of noise or traffic), and which may affect physical condition and maintenance of the dwelling unit.

Finally it is important to note that the lease may only authorize use of the unit for "legal" profit making activities by household members, and that under the lease members of the household may not engage in criminal activity in the unit, and must prevent criminal activity by guests or visitors (§ 966.10(h)(2)(iii)).

G. Rent and Charges

1. Determination of Rent

a. Amount of Rent. The required lease provisions state that the rent payable by the tenant is an amount determined by the PHA in accordance with HUD regulations and other requirements, and in accordance with PHA policy (§ 966.10(c)(1)). The rule also adds definitions of "Tenant Rent" and "Total Tenant Payment" (§ 966.2). These terms are defined to conform with the definitions and rent determination procedure under the rule on rent calculation procedures in the public housing program (24 CFR Part 913).

PHA rent determinations are largely controlled by HUD procedures which implement the statutory rental formula (see 24 CFR Part 913). Statutory and regulatory rent requirements may change from time to time. The terms of the lease between the tenant and the PHA permit necessary adjustments in the amount of tenant rent because of statutory and regulatory changes. The final rule specifies that the changes must be implemented in accordance with PHA policy, rather than as ad hoc determinations for each tenant.

b. Notice of Rent. The rule provides that any change in the amount of the tenant rent must be stated in a written notice by the PHA to the tenant (§ 966.10(c)(2)). The notice must state the new amount of rent, and the effective date of the change. The notice must also state that the tenant may ask for an explanation of how the rent is computed by the PHA. If the tenant asks for an explanation, the PHA must answer the request in a reasonable time.

The PHA must give a tenant the opportunity for an administrative grievance hearing on a proposed "adverse action". The PHA's proposed decision determining the amount of the tenant rent is a proposed "adverse action" (§ 966.31(a)(2)(iii)(A)). The tenant may ask the PHA for an explanation of the proposed decision (§ 966.10(c)(2)). If the tenant does not agree that the PHA rent determination complies with HUD regulations, the tenant may ask the PHA to change the rent. If the PHA denies the tenant's request to change the proposed determination of tenant rent, the PHA must give the tenant notice of the reasons for the proposed decision, and of the opportunity for an informal hearing (§§ 966.31(b)(1) and 966.31(b)(2)(iii)).

Comment states that the PHA notice of the new rent amount should set out how the rent was calculated, so that the tenant can detect a miscalculation. By giving the calculation, the PHA may reduce the number of explanations needed.

The suggestion is not adopted. Some PHAs may find it helpful to include a statement of the rent calculation with the notice of the new rent amount. This procedure may minimize the number of cases in which tenants need further explanation, and may tend to minimize disputes and the need for grievance hearings over the PHA rent computation. However, other PHAs may find that other techniques are more efficient or informative to let tenants know how the rent is computed, and to avoid unnecessary disputes over the rent.

The PHA may prefer to give the tenant information and explanations on how the rent is computed when the tenant submits the reexamination information; for example, in an interview with the tenant at the time of reexamination. The PHA may conclude that the bare statement of the rent calculation is not helpful, or is more likely to lead to confusion than understanding. HUD does not have a sufficient basis to impose on all PHAs a requirement for routine inclusion of the rent calculation procedure in the PHA rent notice.

2. Interim Reexamination

a. Rent increase. Incomes of all tenants must be reexamined at least annually (U.S. Housing Act of 1937, section 3(a), 42 U.S.C. 1437a(a); 24 CFR 960.209(a)). Comment suggests that the Department should prohibit upward revisions of rent as a result of an interim reexamination (i.e., an examination of family income between regular annual examinations).

The Department has not accepted this suggestion. Most reexaminations are conducted on an annual basis, but there is no reason to prohibit the PHA from adjusting rent on the basis of more current information. The statute only requires that reexaminations are conducted "at least" annually, but does not preclude reexamination at shorter intervals, or adjustments of tenant rent to reflect an earlier reexamination.

The Preamble to the rule governing rent and income reexaminations in the public housing program states that:

> * * * some PHAs need the flexibility to conduct reexaminations more frequently than annually under procedures now provided in HUD handbooks. For example, earlier recertifications are appropriate if the PHA has performed a tenant-requested reexamination for a change in circumstances that is found to have been temporary. (24 CFR Part 913, 49 FR 21476, 21480–81, May 21, 1984.)

PHA comment on the instant rulemaking agrees that PHAs need flexibility to conduct examinations of family income more often than annually.

b. Rent Decrease. Comment states that there should be a reexamination and consequent reduction of rent when there is a decrease of family income, or a change in other factors which would result in a reduction of rent (such as unanticipated medical expense for the elderly) between annual reexaminations. PHA refusal to perform an interim examination for a family with a substantial income loss causes eviction and suffering. PHAs should be encouraged to reduce rents as soon as feasible. Comment recommends that if a tenant reports an income decrease, or other facts which would justify a downward adjustment of the rent, the rent should be adjusted for the month after such report.

Comment argues that the lease should state the conditions when the PHA must perform an interim reexamination for decreases in family income. Section 960.209(b) provides that if the PHA receives information on changes in family income or other circumstances between regularly scheduled reexamination, the PHA must "make any adjustments determined to be appropriate". Comment states that since rent is a basic element of the lease, the tenant should be told that the tenant is entitled to an interim reexamination.

In this rulemaking, HUD has not made, and did not propose, any substantive change in HUD requirements for reexamination of family income or determination of tenant rent. Those requirements are outside the framework and function of the lease and grievance rule, and are not the subject of this rulemaking. The lease requirements in the present rule are only intended to provide the contractual framework for enforcement of HUD rent determination procedures, including requirements regarding reexamination of family income.

HUD will not add new requirements for the PHA to adjust rent payments because of changes in family circumstances between annual reexaminations, and will not require that the lease state the basis for conducting an interim reexamination of family income. Under the present governing regulation (§ 960.209(b)) the PHA must make adjustments "determined to be appropriate" because of a change in family income or other circumstances between regular annual reexaminations. The PHA has the authority and responsibility to determine what adjustments are "appropriate" in different circumstances. The regulation does not require an automatic adjustment of rent for changes in family circumstances. The PHA is expected to devise policies for appropriate response, by interim reexamination and adjustment of rent, to unanticipated changes of income and family composition. The statute does not require that the PHA conduct an interim reexamination. The PHA is only required to conduct a reexamination "at least annually" (U.S. Housing Act of 1937, section 3(a), 42 U.S.C. 1437a(a)).

3. Items Included In Rent

The amount of rent paid by a public housing tenant is set by Federal law (U.S. Housing Act of 1937, section 3(a), 42 U.S.C. 1437a(a)). For most tenants, the rent is 30 per cent of adjusted income. The PHA may not increase the rent over the statutory formula amount, but may charge the tenant for items in addition to rent.

Rent includes service and maintenance needed to keep the housing in decent, safe and sanitary condition. Under HUD administrative implementation of the statutory rent limitation, rent also includes a reasonable allowance for consumption of utilities. Under the required lease provisions, the lease must state the utilities, and the services, maintenance, equipment and appliances, which are included in the rent, and are furnished by the PHA without additional charge to the tenant (§§ 966.10(c)(3) and 966.10(d)(1)).

Utilities may be paid directly by the tenant to the utility supplier or may be paid by the PHA. If the tenant pays for the utility, an allowance for the tenant utility cost is deducted from the rent which must be paid to the PHA (called "tenant rent", definition at § 966.2). If the utility is paid by the PHA, an allowance for reasonable consumption of the utility is included in the rent. If consumption of PHA-paid utilities is measured by an individual checkmeter, the PHA may bill the tenant for consumption in excess of the allowance (§ 966.10(d)(3)(ii)).

Comment recommends requiring a PHA to furnish utilities. This recommendation is not adopted. The factors which determine the mix of utility supplies for the unit (what utilities, and whether the utilities are paid by the tenant or the PHA), and the technical procedures for determination of PHA-wide utility allowances in accordance with HUD requirements, are determined outside of the lease. However, the lease should state what utilities are paid by the PHA, and what utilities are paid for by the tenant. In addition, the tenant needs to know the amount of any allowance for tenant-paid or PHA-paid utilities. The lease states the mix of tenant and PHA paid utilities for the unit, and the lease also requires notice of applicable allowances for PHA-paid or tenant-paid utilities (§ 966.10(d)(5)). In the final rule, treatment of utility costs and rent is expanded and clarified (and is consolidated in § 966.10(d)).

The rule provides that the lease must state what utilities are included in the tenant rent, and are supplied without additional charge to the tenant (called "PHA-furnished utilities") (§ 966.10(d)(1)). The final rule also adds a new parallel provision governing treatment of utilities paid by the tenant. The rule provides that the lease must state what utilities are not included in the tenant rent, and must be purchased by the tenant from the utility suppliers (called "Tenant-purchased utilities") (§ 966.10(d)(2)).

The final rule includes parallel provisions that allowances for PHA-furnished utilities (§ 966.10(d)(3)(i)) and for tenant-purchased utilities (§ 966.10(d)(4)(i)) must be determined in accordance with HUD regulations and requirements. The rule also includes a provision (carried forward without change from the old rule) that surcharges for excess consumption of PHA-furnished utilities are only allowed if the charges are determined by an individual checkmeter for the unit (§ 966.10(d)(3)(ii)).

The final rule includes a new provision for notice and change of utility allowances under the lease (§ 966.10(d)(5)). The PHA must give notice to the tenant of any applicable allowance for PHA-furnished or tenant-

purchased utilities. The PHA may change the allowance at any time during the term of the lease, and must give the tenant written notice of the revised allowance.

4. PHA Charges In Addition to Rent

a. Authority for charges. The final rule provides (§ 966.10(e)(1)):

(i) The lease shall state what types of charges the Tenant is required to pay the PHA in addition to Tenant Rent. The lease shall state how the charges will be determined by the PHA (for example, by a schedule of surcharges for excess consumption of utilities, or by a schedule of repair charges). The PHA's schedules or other procedures for determining Tenant charges shall be made available for inspection and copying by the Tenant.

(ii) The PHA shall give the Tenant written notice of any charge in addition to rent, and of when the charge is due * * * *

(iii) The lease may require the Tenant to pay reasonable charges, as determined by the PHA, for damage other than normal wear or tear, caused by Household members, or by guests, visitors, or other persons under control of Household members.

These provisions are intended to provide a foundation for assessment of PHA charges *in addition to rent.* Comment states that PHA charges in excess of the statutory public housing rent are illegal if the charges are (1) for necessary services, or (2) are for non-essential facilities or services, but are mandatory. Comment asks who is responsible for assuring that a public housing tenant is not paying more than the statutory rent.

Charges for excess utility consumption, or for damages to the unit, are the most important types of non-rent charges. PHA surcharges for excess consumption of utilities are not included in the rent, nor are charges for damages caused by the family or its guests. In addition, the PHA may levy other types of charges, if the charges are not in the nature of rent. In recent cases, courts have held that a tenant may be required to pay for mandatory services not included in the rent. (These cases upheld mandatory meal charges in the section 8 program under the U.S. Housing Act of 1937, where tenants are subject to the same statutory rent limit as in public housing.) The present rule does not amend or in any way affect the operation of the rule on computation of public housing rent (24 CFR Part 913). Further, the rule does not define what types of charges are not included in rent, and may therefore be imposed outside of the statutory limit on public housing rent.

In the first instance, it is the responsibility of the PHA to determine what must be included in the rent, and what charges may be levied by the PHA in addition to tenant rent. If the tenant does not agree with the PHA decision to levy a charge in addition to rent, the tenant may ask for a hearing under the PHA grievance procedure. A challenge to the validity of the PHA charge may also be raised as a defense by tenant if the PHA brings a court action to evict the family for non-payment of the charge.

A PHA recommends deletion of provision that PHA charges are "in addition to rent", so that the additional charges may be collected as rent in a summary nonpayment proceeding. This recommendation is not accepted. As a matter of Federal law, PHA additional charges are not part of the rent subject to the Federal statutory rent limitation. The fact that the special charges do not constitute rent for this Federal purpose is the legal basis which permits imposition of the charges.

This rule does not seek to determine the appropriate State court or proceeding for collection of PHA charges. The procedures and proper forum for collection of rent or charges in State court are determined by State law. State law may permit the collection of rent and charges in a single proceeding or in separate proceedings. A State court will determine as a matter of State law whether the court has jurisdiction to adjudicate issues concerning additional non-rent charges in a proceeding to evict for non-payment of "rent", and whether additional charges are included in "rent" for the purpose of the State statutes or rules governing jurisdiction of the court. This jurisdictional question is wholly distinct from the Federal question of what constitutes rent for purpose of applying the Federal statutory limit on rent payable by a public housing tenant.

Some comment supports promulgation of HUD's proposed provision to provide for charges in addition to rent. Comment recommends various technical revisions of the proposed language.

b. Charge for Damages. The proposed rule stated that a tenant "may" be required to pay PHA charges for damages to the unit. Comment states that the rule should say that the tenant "shall" be required to pay the PHA charges, presumably to clarify that payment of the charges is mandatory. The final rule provides that the lease must state what charges the tenant "is required" to pay in addition to the tenant rent (§ 966.10(e)(1)(i)). Payment of the charges is mandatory. The PHA is responsible for drafting appropriate lease language under the rule, and may craft lease language which will unambiguously express the duty of the tenant to pay charges in addition to rent.

The proposed rule stated that the tenant may be required to pay charges for "maintenance" beyond normal wear and tear. Comment states that the PHA should only charge the tenant for "damage" beyond normal wear and tear. "Maintenance" is necessary to counteract normal wear and tear. The authority to charge for "maintenance" opens doors to inappropriate and punitive charges.

HUD notes that the proposed language was not intended to cover charges for maintenance needed to correct the effects of time and ordinary use, but to allow the PHA to collect charges for harm to the unit that results from negligent or abusive use. As suggested by the comments, this idea is more accurately expressed by referring to charges for "damage" to the unit. The final rule provides that the tenant must pay reasonable charges, as determined by the PHA, for "damage other than normal wear and tear" (§ 966.10(e)(1)(iii)).

Comment states that the tenant should only be responsible for damage caused by persons under the family's control. A tentant should not be responsible for damage caused by vandals or burglars. The final rule states that the lease may provide that the tenant must pay charges for damages "caused by Household members, or by guests, visitors, or other persons under control of Household members" (§ 966.10(e)(1)(iii)).

PHA comment criticizes a requirement that the damages charged to the tenant must be "caused" by the family or its guests. The comment asserts that the rule would place on the PHA the burden of showing who caused the damage. All unit damage beyond normal wear and tear (such as torn screens, broken windows, damaged doors or graffiti) should be charged to the tenant. The comment states that the PHA is not able to establish who caused the damage, or whether the person is a family guest. The determination whether the tenant is required to pay for damage should not be based on who caused the damage. However, charges for damages in common areas should be based on evidence of who caused the damage.

Providing who caused damage is a hard problem, especially for damage inside the unit. After the fact, the PHA can show the damage, but usually has no direct evidence who caused the damage. The family lives in the unit, and is in a better position to know what happened. However, damage in the unit is not always caused by the family or its

guests. Damage may be caused by a storm, by a thief, or by a damage source outside the unit (such as a burst pipe in an upstairs unit). Damage inside the unit may sometimes occur because the PHA has not performed some contractual obligation, for example, water damage because the PHA fails to fix the plumbing; fire damage because the PHA does not install a fire detector required by State law.

Although there are difficult problems of proof, the allocation of responsibility to pay for damage should depend on who caused the damage. The tenant should pay for damage caused by the family. PHA charges for family-caused damages, or the possibility of eviction because of such damages, are an inducement to correct family behavior. On the other hand, if damage is not caused by the family, the family may not have the power to avoid the damage. Charges against the tenant for damages that are not caused by the family are more likely to create a sense of helplessness and resentment, than to produce a salutary correction of family behavior.

Analysis of this problem should distinguish between the tenant's ultimate responsibliity for family-caused damage, and the technique for proving who caused the damage (in the PHA's administrative procedures leading to initial determination of the charge, in the PHA grievance procedure, or in court). The damage provision in this rule only purports to determine the ultimate allocation of responsibility for damage to the unit. The lease may require the tenant to pay charges for damages caused by the family. However, the rule does not state what property has the burden of proving who caused damage to the unit, and does not state how the fact of causation is to be proved.

In the State landlord tenant-court, procedures to prove causation are governed by State law. In proving causation, proof that there is damage to the unit and that the family has possession of the unit may constitute adequate circumstantial evidence to support a finding that the damage was caused by the family. The requirements for proving causation by family members may be affected by provisions of the lease form drafted by the PHA. If permitted by State law, the lease could provide that the tenant is responsible for interior damage beyond normal wear and tear unless the tenant can prove that the damage was caused by persons not on the premises with consent of the family, or was caused by some other factor not attributable to the tenant. The PHA grievance procedure may contain provisions which regulate the burden of proof in the administrative hearing, or the procedures for proving in the hearing who caused the damage to the unit.

c. Notice of Charges; When Charges Are Due. The new rule provides (§ 966.10(e)(1)(ii)):

> The PHA shall give the Tenant written notice of the amount of any charge in addition to Tenant Rent, and of when the charge is due.

The old rule provided that a charge for tenant damage or for excess consumption of PHA-furnished utilities is not due until the second month after the charge is incurred. For example, a charge posted on January 1 could not be collected until March. In the 1986 proposed rule, HUD proposed to eliminate this restriction on when charges in addition to rent may be collected, and to require instead that the PHA must give "reasonable notice" of such charges.

PHA comment approves this proposed change. The PHA should not have to wait to the second month after a cost is incurred. The old rule restriction causes delay in the process for eviction of a tenant. It the charges are not paid when due (at the beginning of the second month after the month when the charge is incurred), the PHA must then give another 30 days notice of termination of the lease. The old restriction is also confusing for tenants. Removal of the restriction gives the PHA increased flexibility for faster collection of charges in addition to rent. PHA comment suggests that charges should be due at the first of the month after work is done.

Legal aid comment objects to changing the old restriction. If allowed flexibility, the PHA may set short periods for notice and payment of charges, and enforce the requirements unevenly. The question of whether the PHA has given "reasonable" notice will be subject to litigation. Comment states that under the present rule may PHAs bill quarterly for utility surcharges. This practice ensures eviction of the most vulnerable, who don't have time to raise the money.

PHA comment objects to the proposed requirement for PHA to give notice of any charges when due. The PHA statement of charges is included in the monthly rent statement. The PHA should not be required to give advance notice of the charge prior to the monthly billing.

The new rule does not require any fixed delay in collection of charges levied by the PHA. The new provision provides simply that the PHA must give the tenant written notice of the amount of the charge, and when the charge is due. To pay the charge, or to request a grievance on the charge, the tenant has to know that the PHA has levied a charge, how much and when due. The rule does not state that the notice must be "reasonable". However, the rule allows the PHA to assess "reasonable fees" for late payment of rent or charges determined by the PHA (§ 966.10(e)(2)).

The PHA should have clear administrative discretion to decide when charges are payable by the tenant under the lease. Different procedures may be appropriate for different types of charges, or because of different family circumstances. In some cases, the PHA may wish to bill for charges as soon as the amount can be determined, for example, to collect damage for destructive behavior by the family. In other cases, the PHA may wish to spread payment over a period of time, to facilitate payment by the tenant, for example, surcharges for excess consuption of PHA-furnished utilities. Examination of the public comments suggests that the proposed provision for "reasonable" notice of charges in addition to rent is likely to be a source of confusion and unnecessary litigation, and may be applied in a way that undesirably limits the ability of the PHA to develop a scheme for assessment of charges other than rent.

d. Legal Fees and Charges. The rule provides (§ 966.11(h)) that the lease may not include:

> [an] agreement by the Tenant to pay lawyer's fees or other legal costs even if the Tenant wins in a court proceeding by the PHA against the Tenant. However, the Tenant may be obligated to pay such costs in the Tenant loses.

Legal aid comment asserts that the tenant should never be required to pay PHA attorney fees or court costs. Allowing the PHA to collect legal fees if the tenant loses deters the tenant from protecting tenant rights in State court. The assessment of cost of the tenant is more troublesome if the PHA excludes eviction from the PHA grievance process, so that the tenant can only contest eviction through the court.

PHA comment states that the tenant should pay legal fees when the tenant loses the court case. Tenant payment of legal fees and charges is a vital ingredient in the fiscal health of the PHA, and helps to promote tenant responsibility. Tenants get free help from legal aid, but the PHA is forced to retain counsel. Comment states that the tenant should be required to pay legal costs regardless of outcome, even if the tenant wins.

The rule retains the prohibition of lease provisions which obligate the

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tenant to pay legal costs even if the tenant wins in a court proceeding by the PHA against the tenant. Thus, for example, the PHA-drafted lease may not provide that the tenant must pay PHA legal costs of an eviction action if the State court finds that the PHA lacks grounds for eviction. The prohibition is consonant with similar prohibitions for other HUD rental subsidy programs.

The rule provides that the tenant may be obligated to pay legal costs if the tenant loses. The tenant should not be insulated from the obligation to pay legal costs if the tenant loses in the court proceeding. The allocation of legal costs should be determined by local law and practice. Payment by the losing party is not unreasonable, and compensates the PHA for the fiscal and administrative burden of conducting the litigation. The fact that the tenant may have to pay legal costs if the tenant loses discourages the tenant from pursuing an unsound or frivolous position. As suggested by PHA comment, the obligation to pay costs encourages tenant responsibility.

The rule does not prohibit imposition of legal costs to the tenant in the absence of litigation, or if litigation does not proceed to judgment, or the use of a lease provision which imposes such costs on the tenant.

PHA may be forced to take steps toward eviction (e.g., by serving a notice to quit) as a technique of inducing tenant compliance with the lease, so that the tenant will pay up the rent, or will stop unacceptable conduct. If the tenant complies, the eviction is not pursued. A PHA comment states that the PHA should be allowed to charge costs to tenant if the PHA stops the eviction action after the tenant pays the amount sued for. If the PHA can only charge costs to the tenant if the tenant loses, the PHA is forced to proceed to judgment, thus damaging the tenant's credit history. The tenant should be able to acknowledge error, remedy the problem, pay costs and avoid the judgement.

It is fair to make the tenant pay PHA legal costs which are incurred because of the tenant's non-compliance with the lease. Equally important, the existence of a penalty for delay (in the form of a requirement to pay the PHA legal costs) will tend to promote compliance with the lease. Conversely, the absence of a penalty tends to undermine the incentive for compliance with the lease. The rule leaves the door open to PHA use of lease clauses which require the tenant to pay PHA legal costs if a legal action does not proceed to judgment.

Comment states that if the tenant is required to pay legal fees if tenant loses, a losing PHA should also be required to pay legal fees. This suggestion is not adopted. The rule does not require payment of legal fees by either tenant or PHA. The rule also does not require that there be symmetry in the imposition of costs, such that the tenant is required to pay costs if costs are imposed on the PHA by State law or the lease, or that the PHA is required to pay costs if costs are imposed on the tenant.

5. Non-Payment

a. Remedy for Non-payment. A tenant may fail to pay rent or charges on time. The delinquency may be for the whole payment due, or only a portion of the payment. The delinquency may occur on an isolated occasion, or may be repeated month after month. There are two sanctions for non-payment. The PHA may evict the tenant, or the PHA may charge a late fee. Legal aid comment aims to restrict the right of the PHA to impose sanctions for tenant non-payment. Comment argues that HUD should narrow the authority of the PHA to terminate tenancy for non-payment of rent or charges, or to impose fees for late payment. PHA comment, on the other hand, welcomes provisions which strengthen the administrative authority of the PHA to devise and impose prompt and effective sanctions for non-payment.

The U.S. Housing Act of 1937 provides (section 6(c)(4)(B), 42 U.S.C. 1437(c)(4)(B)) that a PHA must comply with procedures and requirements prescribed by HUD to:

> assure that sound management practices will be followed in the operation of the [public housing] project, including requirements pertaining to * * * the establishment of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of non-payment.

In this rule, the lease provisions are designed to provide a contractual basis for vigorous enforcement by the PHA of the tenant's responsibility to pay rent and charges under the lease. With respect to non-payment of rent, the lease provisions carry out the statutory directive to assure that PHAs establish satisfactory management procedures for the prompt payment of rents and processing of evictions (see House Committee Report 93–1114, pp. 23–25, June 17, 1974).

The expectation of the tenant that the PHA is ready and able to impose effective penalties for non-payment is the necessary underpinning to induce the tenant to pay on time. The lack of a penalty for late payment is likely to promote a pattern of rent delinquency. The Department has noted that:

> Although the payment of rent is difficult for a poor family, the requirement for payment of the statutory rent contribution could collapse unless enforced by the possibility of effective sanctions. (49 FR at 12218, March 29, 1984.)

Comment states that late payment should not be ground for eviction in assisted housing. Other comment states that chronic inexcusable late payment should be ground for eviction (but that the PHA should not be allowed to assess fees for non-payment).

A public housing tenant does not pay market rent, or an economic rent which covers the costs to provide the housing. The tenant is required to pay as rent a portion of income determined by statute (U.S. Housing Act of 1937, section 3(a), 42 U.S.C. 1437a(a)), and HUD regulation (24 CFR Part 913). The PHA must have the power to enforce the tenant's rent contribution, by assessment of fees for late payment, or by eviction of a tenant. Late payment of rent may have serious consequences for the PHA, including PHA costs to collect the delayed payment. The lack of an effective sanction for late payment will lead to habitual late payment by the tenants.

To enforce the tenant's duty to pay rent, the PHA must be able to terminate the tenancy for non-payment. The prospect of possible eviction is the most drastic and effective sanction for non-payment of rent or charges, and is the most powerful stimulus for the prompt payment of rent. The suggested distinction between non-payment and late payment is not a viable basis for distinguishing cases which should or should not be grounds for termination of tenancy. If a tenant may not be evicted for late payment, the tenant will wait to the last possible moment to pay the rent.

A tenant may be evicted for non-payment (including a single or repeated late payment) for any of the statutory grounds for termination of tenancy: for serious or repeated violation of the lease, or for other good cause. In the next section of this Preamble, we discuss when non-payment of rent or charges may be treated as a serious violation of the lease.

b. Non-payment as Serious Violation of Lease. Under section 6(l)(4) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(l)(4)), the PHA may terminate the tenancy for "serious or repeated violation" of the lease. The proposed rule would provide that "non-payment of rent or charges under the lease (including any portion of such amounts)" is a serious violation of the lease. Non-payment is therefore a ground for termination of tenancy, even if the violation is not repeated.

Legal aid comment states that non-payment of PHA charges should not be treated as a serious violation. Comment states that providing that any non-payment of any rent or any charge is a "serious" lease violation leaves too much room for PHA discretion. Comment objects to allowing the PHA to evict when only a portion of rent or charges is due, or only a small amount is due. PHA comment approves HUD's proposed treatment of termination of tenancy for non-payment. On reconsideration, HUD has decided to revise the provision that any non-payment of any amount of rent or PHA charges is a "serious" lease violation.

The concept of "serious" violation is significant because it determines whether a single lease violation is ground for termination of tenancy under the standard in the 1983 law. The PHA may terminate the tenancy either for "serious" violation or for "repeated" violation of the lease. Any pattern of repeated violation may be ground for termination of tenancy. A single violation is ground for termination only if the violation is "serious".

The PHA needs to determine whether a single non-payment of rent or charges is a serious lease violation, and hence ground for termination of tenancy. This determination may properly be based on an array of factors relating to impact of non-payment on PHA administration of the program. These factors may include the absolute amount of money due from the tenant, the portion of the amount due which is delinquent, PHA administrative and legal costs in collecting delinquent rent or charges, the effect of delinquency on PHA collections, how long the payment is overdue or other factors. In determining seriousness of violation in an individual case, the question is not primarily whether an isolated violation in the particular case will have a serious impact on the PHA program, but whether the type of violation involved would have a serious impact if broadly replicated in the PHA program.

The final rule provides (§ 966.21(b)(2)) that:

> The PHA may determine that non-payment of Tenant Rent or charges is a serious violation of the lease. In making this determination, the PHA may consider factors relating to impact of such non-payment on PHA administration of the program. These factors may include the amount owed, how much of the amount owed is overdue, costs of collection, effect of non-payment on collection of rents and charges, how long the payment is overdue, or other factors. The PHA may establish a policy for determining what type of non-payment will be treated as a serious violation of the lease.

The initial determination of the seriousness of different types of lease violation rests with the PHA. The PHA has a continuing responsibility for management of the local public housing program. The PHA is in the best position to know how non-payment will affect PHA collections, and the PHA's overall strategy for administration of the local program, and therefore whether the non-payment should be treated as a "serious" violation of the lease. The rule specifies that in making this determination the PHA may weigh a broad range of factors relating to management of the program. HUD expects that, in practice, most PHAs will develop a general pattern for handling non-payment cases, rather than handle the cases by an isolated examination of each individual instance of tenant non-payment.

The PHA may elect to adopt a formal policy for determining when non-payment (a single instance) is a serious violation, and thus grounds for termination of tenancy. The adoption of such a policy has several advantages. First, the process of adopting the policy is an occasion for systematic consideration of different types of non-payment, and the relation of non-payment to PHA management policy. Second, the adoption of a formal policy will tend to result in a more consistent treatment of non-payment cases, that is better related to overall PHA management policies.

The rule does not require that the PHA adopt a formal policy on when non-payment is a serious violation. The PHA may choose to determine if the violation is a serious lease violation on an informal or ad hoc basis.

The PHA may terminate tenancy if the tenant commits a "serious or repeated" lease violation by failing to pay rent or charges when due. However, even if there are grounds for termination, the PHA may decide that the tenant should not be evicted.

c. Excuse for Late Payment; Grace Period. Comment argues that non-payment should not be ground for termination of tenancy if the non-payment is excusable, or results from circumstances beyond control of the tenant. Comment states that inability to pay rent on time may result from late receipt of income, or from emergency or other special circumstances. Late payment should not be automatic grounds for eviction.

In public housing, the amount of rent is based on family income. Comment argues that rent should not be payable before the family has received the income on which the rent is based. The family may not receive income on the first of the month. Wages or welfare or other government benefits may be paid late. Wages or welfare payments may be paid twice monthly (rather than on the first of the month), Comment asserts that rent should not be due before some interval following actual receipt of income. Comment states that HUD should allow a "reasonable" time, should allow three days after actual late receipt of regularly scheduled income, or should set a minimum Federal grace period.

Public housing rent is calculated on an estimate of anticipated income over the period to the next scheduled reexamination, and is based on the income information provided by the family. The rent determination essentially "averages out" family income over the reexamination period. Actual income in any particular month may be more or less than the average monthly income over the year, because of changes in family income or because of variations in the time at which the income is received. The rent due to the PHA at the beginning of each month is not based on the income actually received by the family during the month immediately preceding the rental payment, but on the average monthly income for the period covered by the reexamination. Under this system, it is the responsibility of the tenant to put aside enough money to cover the statutory rental payment when the payment is due. This type of system permits practical administration of the statutory requirements for determination or rent based on family income.

Family income may be comprised of income from various sources, received at varying intervals, at varying points of the month and with varying regularity. The time when income is actually received is affected by a host of particular circumstances. Comment indicates that rent due each month should be based on amounts actually received during the preceding month, or should be payable piecemeal over the course of the month, as the family receives the segments of family income on which the rent is based (such as a biweekly payment of welfare benefits).

HUD believes that a system based on these principles would not be workable. Currently, a PHA is required to determine tenant rent "at least annually", as required by statute. Under the proposed change, the PHA would have to separately determine rent payable for each individual month, or even at particular points during the month. Moreover, the determination of how much is due would depend on facts concerning when the income was

received during the month. The PHA would be forced to use new procedures for monthly determination of the monthly rent, and to give opportunity for the tenant to show excuses for nonpayment. Verification of tenant excuses would be burdensome or impossible.

Institution of the proposed changes would vastly increase difficulties of the PHA in projecting and planning for tenant rental income. Receipts would be subject to erratic variations depending on actual or alleged delays in payment.

Comment states that the rule should protect a tenant who cannot pay the rent due to loss of income, or who needs funds to cover a financial emergency, such as desertion by the family breadwinner, delay or wrongful termination of governmental benefits, death in the family, loss of employment. These cases may be divided into two categories: (1) Cases in which the tenant loses some income source originally included in the estimate of family income used to compute the rent, e.g., when a family member loses a job, or (2) cases in which the family needs to use family income for some urgent purpose, e.g., emergency medical expenses.

If there is a decrease in anticipated family income, the tenant may ask for an interim examination. Section 960.209(b) provides that if there is a change in income between regular reexaminations the PHA must "make any adjustments determined to be appropriate" (see discussion at section III.G.2.b of this Preamble).

The need to use rent money for some other urgent and meritorious purpose cannot be accepted as an excuse for non-payment of rent. In the nature of the public housing program, the duty to pay rent is always imposed on a family of slender financial resources. Almost always, the family has many pressing financial needs. The statutory rent formula represents a Congressional determination that all families in public housing must pay a rental contribution based on the amount of family income. There is no statutory exception for a family which alleges a compelling need to use the rental monies for some other purpose, however worthy.

Beyond the fiscal benefits, universal enforcement of rent payment against all assisted families is an element in the education of the families in the personal and financial discipline needed to escape from poverty. Public housing families must learn to plan and save for the monthly rent payment, and so must bear the consequences if they do not. In addition, tough and universal enforcement of the rent requirement is more likely to breed respect and care for the housing.

Comment states that the grace period for payment of rent under the Federal rule should never be less than allowed under State law. Comment notes that protections beyond the Federal rule may be allowed to a tenant under State law, such as the right, in a particular State, to redeem the tenancy by payment of back rent.

Nothing in this rule is intended to override State law protections for a tenant who is delinquent in the payment of rent, or to cut short any grace period which may be required under the State law. The Federal statute and this rule establish minimum procedural and substantive protections for a public housing tenant. These Federal protections may be supplemented by additional protections which are required by State law, and which do not contravene any element of the Federal Scheme.

d. Fees for Late Payment. (1) Authority to Levy Fee for Late Payment. The rule (§ 966.10(e)(2)) permits a PHA to assess the tenant reasonable fees because of late payment of rents or charges to the PHA.

Comment states that penalties for late payment should not be allowed, or should not be allowed for late payment of charges other than rent. Comment states that because public housing tenants are indigent, late charges increase the likelihood that a tenant in arrears will not be able to catch up. Instead of inducing prompt payment, late fees make catching up virtually impossible.

Other comment strongly urges retention of late payment penalties. The imposition of penalties for late payment is a tool to assure timely payment by the tenant. Failure to charge penalties for late payment will result in high delinquency, high turnover and unnecessary use of manpower to collect back rent. The lack of late charges will result in more evictions.

The imposition of late fees is a legitimate way of getting families to put rent or charges on time. The use of late fees for this purpose helps enforce the statutory requirement for PHAs to establish satisfactory procedures "designed to assure the prompt payment and collection of rents" (U.S. Housing Act of 1937, section 6(c)(4)(B), 42 U.S.C. 1437d(c)(4)(B)). By charging fees for late payment of rent or other charges, the PHA may be able to avoid the need for a more drastic sanction against a non-paying tenant—by evicting the family from the unit. The PHA should be able to utilize lesser remedies, to minimize the need for recourse to more severe actions against the tenants.

Comment states that the PHA should not be allowed to levy late fees for non-payment of charges other than rent, such as charges for maintenance or for excess consumption of utilities. The late fee is an unreasonable punishment for a tenant who owes a small amount for charges, or who contests the validity of the charge. If tenant is contesting the charge, non-payment may create a potential liability equal to the contested charge. Comment alleges that a charge for late payment discourages the tenant from contesting the charge.

The final rule allows the PHA to assess late charges for non-payment of rent or other charges. The reasons for permitting the PHA to levy late fees apply equally to late payment of PHA charges as to late payment of monthly rent. The PHA must have a sanction, short of eviction, that gives the tenant an incentive to pay up charges owed to the PHA.

HUD does not agree that the assessment of a late charge is likely to discourage the tenant from contesting PHA charges, either through the PHA grievance process or as a defense in an eviction action brought by the PHA. The tenant can both pay and contest the charge. Alternatively, if the tenant does not pay the charge, the possible imposition of a late fee on top of the original charge may fortify the tenant's incentive to contest the charge. Payment of a charge other than rent, including a late charge (for non-payment of rent or other charges) is not a prerequisite for use of the PHA grievance procedure to contest assessment of the charge.

Comment states that if a tenant contests the claim of non-payment, the PHA should not be allowed to impose charges for non-payment until the tenant is adjudged responsible. This recommendation is not adopted. When the tenant does not pay the rent on time, the PHA suffers administrative and fiscal damage from the time of non-payment, not merely from the time when the tenant is adjudged responsible for non-payment.

(2) Amount of Fee for Late Payment. Comment states that the PHA should only be allowed to impose "reasonable" late fees, or proposes various limits on the amount of such fees. Comment acknowledges that the PHA must charge reasonable late fees as an incentive for prompt payment. However, a requirement that fees must be "reasonable" does not give sufficient guidance. Under this broad standard, PHAs will abuse the authority to determine the amount of the late

payment fee. PHAs will impose late fees which are unreasonable. A more explicit rule would promote more reasonable and predictable action by the PHA.

Comment states that a late fee for non-payment of charges other than rent should bear a relationship to the amount of the charge, should be capped at a percentage of the amount due, or should not be higher than the amount of the charge. Other comment states that late charges should be based on reasonable compensation for delay, but should not be a "penalty". Comment states that the late charge should not exceed the legal rate of interest.

The proposed rule would permit a lease provision which allows the PHA to assess "reasonable penalties" for late payment of rent or charges. The final rule provides that the lease may require the tenant to pay "reasonable fees" for late payment of rent or charges determined by the PHA § 966.10(e)(2)]. The term "fees", rather than "penalties", is used as a more neutral description of charges imposed on a tenant who delays payment of rent or charges. The fees may or may not be intended as a "penalty". The standard controlling the amount of late payment fees is separately and sufficiently expressed by requiring that fees must be "reasonable".

The reasonableness standard is flexible, and allows the PHA to consider any appropriate factors in setting the amount of fees for late payment of rent or charges. For example, the amount of late charges could be designed to meet PHA administrative costs as a result of late payment, or to provide an incentive for prompt payment. The amount of the fee could reflect the amount and period of delinquency by a tenant. The amount of the fees could also reflect PHA experience with particular tenants. The PHA may elect to charge higher fees for a tenant who is habitually delinquent, than for an initial delinquency. The PHA's determination may take into account the motivations or circumstances of a particular tenant, such as the degree of hardship to the family. A system for determination of late fees may be based on a formal and detailed articulation of rules. Alternatively, a system may allow considerable room for case-by-case judgment by PHA management, based on knowledge of the family and of the PHA's management imperatives.

In all cases, the late fees must be "reasonable". HUD finds no reason or advantage for attempting to limit late fees by a more explicit Federal standard. It would be difficult to devise a more elaborate and explicit standard which captures the full range of appropriate considerations summarized in the concise and flexible requirement that late fees must be reasonable.

HUD also finds no reason for stating any more explicit standard governing the relationship between the amount of rent or charge owed by the tenant, and the amount of late fee for non-payment of the amount owed. The reasonableness standard affords a reasonable restriction on the imposition of fees which are disproportionate to the amount of the original rent or charge. Moreover, there may be good reasons for establishing a late fee not directly based on the amount of the original charge. First, the PHA's administrative costs to collect delinquencies may not bear a direct or close relation to the amount of the original charges. Administrative costs to pursue particular delinquencies may exceed the amounts the PHA is trying to collect. Second, fees may be designed to support integrity of the PHA collection system—by imposing additional fees on a tenant who pays late. In this connection, the relevant question in determining the amount of the fee is not, or need not be, how much is owned, but how much late fee will be adequate stimulus for prompt payment.

e. Non-payment of Utility Bill. Sometimes utilities are paid by the PHA and included in rent ("PHA-furnished utilities"). Sometimes utilities are paid by the tenant, and are not included in the rent ("Tenant-purchased utilities") (see generally, § 966.10(d)). If utilities are to be paid by the tenant, a utility allowance is deducted from the tenant's rent to the PHA, so that the tenant will have enough money to pay for utilities. In the final rule, the discussion of utilities is revised by adding a new provision (§ 966.10(d)(4)(ii)) concerning a shut-off of tenant-purchased utilities:

"If there are Tenant-purchased utilities, and the utility supplier shuts off utilities because of Tenant's failure to pay the utility bill, occurrence of the shut-off shall be considered a serious violation of the lease by the Tenant."

A utility shut off may damage the structure, and may result in deterioration of living conditions in the project, for other families as well as the family which fails to pay the utility bill. It is the tenant's responsibility to pay the bill.

H. Information and Certification

1. Duty to Supply

The tenant is required to supply any information which HUD or the PHA determine to be necessary. This includes information needed to determine tenant rent. The rule provides (§ 966.10(h)(1)(iv)) that the tenant must:

Supply any certification, release, information or documentation which the PHA or HUD determines to be necessary, including submissions required by the PHA for an annual reexamination or interim reexamination of Family income and composition in accordance with HUD requirements * * * *

In the final rule, the statement of a tenant's duty is amplified by providing (§ 966.10(h)(3)(ii)) that the lease must include a tenant certification that:

All information or documentation submitted by the Tenant and other members of the Household to the PHA in connection with any Federal housing assistance program (before and during the lease term) are true and complete to the best of the Tenant's knowledge and belief.

This tenant certification in the lease covers both a submission of information by the tenant before execution of the lease (such as information submitted to support tenant's application for admission to public housing), and a submission during the term of the lease (such as information submitted at annual recertification during the term of the lease).

PHA comment agrees that the lease should obligate the tenant to supply information or certification demanded by the PHA. However, legal aid comment asserts that a requirement for submission of any PHA-required documentation is overbroad. Tenant privacy should be protected. Comment states that a PHA may demand open-ended releases, which would enable the PHA to obtain information which is not relevant. The PHA should only be allowed to require submission of "relevant" or "necessary" documentation. The rule should specify that the PHA may only require the tenant to furnish information or releases in connection with family income or family composition.

All public housing tenants must supply information on family income and composition. The information is needed to determine the rent in accordance with Federal requirements. A PHA may, however, legitimately determine that there is need for other information, for example information bearing on the possibility of violent or illegal activity by family members. HUD will not limit the PHA to requiring tenants to furnish information on family income or composition.

The rule provides that the tenant must supply any information "which the PHA or HUD *determines to be necessary*"

(§ 966.10(h)(1)(iv)). Thus the tenant's duty to furnish information to the PHA depends on the PHA's determination that the information is "necessary". HUD finds no need to change this regulatory language. The PHA must be left the discretion to decide what type of information is necessary, over and above the minimum required by HUD. As in most aspects of day-to-day management of public housing, the PHA should have the flexibility to decide what is needed in the local public housing program. HUD has no information or reason to believe that the PHA discretion to decide what information is necessary has been, or will be, widely abused.

2. Failure To Supply—Termination of Tenancy

The PHA may determine that the tenant's failure to supply PHA-required information "timely" is a serious lease violation (§ 966.21(b)(1)). Comment states that the tenant may not know what "timely" means, and that the term can be abused by the PHA.

To submit information "timely", the tenant must be told what must be submitted and when. To clarify this point, the final rule adds a new provision (§ 966.10(f)(4)) that:

> The PHA shall give the Tenant reasonable notice of what certification, release, information or documentation must be supplied to the PHA, and of the time by which any such item must be supplied
> * * * *

The PHA may terminate tenancy for "serious or repeated" violation of the lease (§ 966.21(a)). The proposed rule states that a tenant's failure to timely supply to the PHA any certification, release, information or documentation on family income or composition is a serious violation of the lease.

PHA comment welcomes the clarification that the tenant's failure to supply required information is a "serious" violation, and is grounds for termination of tenancy. The lease should provide that the tenant's refusal to complete reexamination, provide required verification or sign a required release is grounds for eviction. Tenants often fail to respond to the PHA's request for recertification or other information. Tenant delay often holds up timely completion of reexamination, and causes a great administrative burden for the PHA. The old rule does not plainly establish that failure to provide required information is a serious violation of the lease. The new provision helps a PHA secure the cooperation of the tenant, and will support the PHA in court if the PHA is forced to terminate the tenancy.

Legal aid comment states that a delay in furnishing required information should not be grounds for termination of tenancy if the tenant delay is excusable. The rule should not characterize all tenant failure to provide information as a serious lease violation or other good cause. Instead, the rule should provide that a failure to submit the information "may" constitute a substantial violation or other good cause for termination. The rule should recognize PHA discretion to determine whether a failure to provide information to the PHA is ground for termination of tenancy. PHAs should be encouraged to take difficulties in providing the information into account.

It is reasonable to assume that the compliance rate will rise if the sanction for failure to timely deliver required income or other documentation to the PHA is sure and quick eviction of the family, and if this message is effectively communicated to the tenant. Confronted with a tough enforcement policy, the tenant will make the extra effort to produce the documents on time. Confronted with a soft enforcement policy, the tenant will find excuses for failing to produce the documents on time.

In response to comment, the rule is amended to explicitly recognize PHA discretion to determine whether a failure to provide information to the PHA is ground for termination of tenancy. The rule is revised to provide that "the PHA may determine" that the tenant's failure to timely supply required information or documentation is a serious violation of the lease (§ 966.21(b)(1)). The determination whether a failure to provide information should be grounds for termination of tenancy is made by the PHA.

The rule gives the PHA an unambiguous legal right to terminate the tenancy if a tenant does not supply a required document on time. This does not mean that a PHA will automatically evict any tenant who submits a document late or incomplete. Even if the PHA has good cause grounds for termination of tenancy, the PHA has management discretion to decide whether to proceed with termination and eviction. In making this decision, the PHA may consider any relevant factors concerning the program or the family, including whether the tenant is making a good faith effort to produce the documents, or is hindered by external factors beyond the control of the family.

In sum, the PHA has discretion to determine whether the failure to provide required information is a serious lease violation, and also has discretion whether to evict the family because of the violation.

I. Transfer From Unit

1. Regulation

The final rule provides (§ 966.10(h)(1)(v)(A)) that the tenant must move from a public housing unit if:

> (1) The PHA determines the Household is residing in a unit which is larger or smaller than appropriate for the Household size and composition under the PHA unit size standards, or determines that the character of the unit is otherwise inappropriate for the Household size and composition (such as a unit modified for use or accessibility by handicapped, which is currently occupied by a Household whose members are not handicapped), or determines that the unit requires substantial repairs, is scheduled for modernization, or is not in decent safe and sanitary condition, and
> (2) The PHA offers the Tenant another Public Housing dwelling unit. The Public Housing dwelling unit shall be decent, safe and sanitary and of appropriate size under the PHA unit size standards.

The final rule also provides (§ 966.10(h)(1)(v)(B)) that the tenant must move from a dwelling unit if:

> The dwelling unit is hazardous to the health or safety of the occupants.

The rule states (§ 966.10(f)(3)) that if a hazardous condition is not corrected in a "reasonable time":

> * * * the PHA shall offer the Tenant the opportunity to move to a replacement dwelling unit if available. The PHA is not required to offer the Tenant a replacement unit if the hazardous condition was caused by fault or negligence of household members, or of guests, visitors, or other persons under control of household members.

The bulk of public comments concern (1) clarity and breadth of the grounds for transfer, (2) proposals to restrict grounds for transfer, (3) proposals to add restrictions on acceptability of substitute housing.

2. Grounds for Transfer

a. General. The PHA may require the tenant to transfer to a replacement unit if the PHA determines:

—The family is living in a unit that is larger or smaller than appropriate for the family size and composition under the PHA unit size standards, or
—The character of the unit is otherwise inappropriate for the family size and composition, or
—The unit requires substantial repairs, is scheduled for modernization, or is not in decent, safe and sanitary condition (including a unit which is hazardous to health or safety of occupants).

For convenience in this discussion, we refer to the cases when a tenant must

move from the public housing unit, to a replacement unit offered by the PHA, as "grounds for transfer".

The new rule gives the PHA more control over use of public housing stock, by broadening the grounds for transfer which were allowed under the old rule. Comment claims that the authorized grounds for transfer under the proposed rule are too broad, and that the PHA is given too much authority to relocate public housing tenants. Comment states that the proposed grounds for transfer are a PHA rule of convenience, but do not show a proper regard for the traumatic or disruptive effects of family relocation. The PHA should only relocate the tenant in extreme circumstances. The rule should incorporate procedural safeguards to insure that a PHA determination to move the family is reasonable and necessary.

The grounds for transfer stated in this rule are all reasonable bases for requiring the family to move from the unit, and the tenant must be offered a suitable replacement unit, as discussed in section III.I.4 of this Preamble. The grounds reflect the special character of public housing as distinct from private unassisted housing, and the special needs of the PHA in managing the housing.

b. Unit Too Large or Too Small for Family. The first ground for transfer of the tenant to a new unit is a PHA determination that there is a mismatch between the unit presently occupied by the family, and the present size or composition of the family. The PHA determination must be based on the PHA's general policy ("unit size standards") governing the size of dwelling units for public housing families, rather than an ad hoc judgment of the PHA for the individual family required to move. The rule provides that the PHA may require the tenant to move if "the Household is residing in a unit which is larger or smaller than appropriate for the Household size and composition under the PHA unit size standards" (§ 966.10(h)(1)(v)(A)(1)).

In general, such discrepancies most often arise because there is a change in the size or composition of the family since initial occupancy of the unit by the family. A unit may be too large for the family because family members moved out since initial occupancy. A unit may be too small for the family if family size has grown since initial occupancy (for example, by birth of additional children), and the unit is now overcrowded.

The PHA must have the legal right to require the tenant to move from the unit if the family is not the right size for the unit occupied. This authority allows the PHA to make better use of the PHA housing stock, for the overall benefit of eligible families. For example, there may be a severe shortage of large units in the PHA projects and in the local housing market. Assume that a family consisting of a couple with four children was originally allocated a three bedroom unit under the PHA occupancy policy. The children grew up and moved out, and only the parents now remain in the unit. Continued occupancy of the three bedroom unit by the two empty-nesters means that the unit is denied to a large family in urgent need of the unit.

c. Unit Inappropriate for Family. The second ground for transfer of the family is a PHA determination that the "character of the unit" is "otherwise inappropriate" for the household size and composition (§ 966.10(h)(1)(v)(A)(1)). Comment asks for an example of what type of occupancy is "otherwise inappropriate". The final rule adds the following example of a case where the character of the unit may be inappropriate for the household:

> a unit modified for use or accessibility by handicapped, which is currently occupied by a Household whose members are not handicapped.

The PHA may need to move the original family out, so that a handicapped person who needs the special handicapped features can live in the unit. The PHA should have ample authority to assure that a particular unit is occupied by the type of family which may best benefit from special characteristics of the unit.

d. Condition of Unit. The third ground for transfer of the family is a PHA determination that the unit "requires substantial repairs, is scheduled for modernization, or is not in decent, safe and sanitary condition" (§ 966.10(h)(1)(v)(A)(1)). This provision is intended to give the PHA necessary flexibility to accomplish needed work on public housing units. The work may be rendered difficult, expensive or impossible if families in occupancy cannot be moved to other housing.

In addition, the rule provides separate treatment for the special and urgent case where condition of the dwelling unit is hazardous to occupants. In general (as discussed in section III.I.4 of the Preamble), the tenant is only required to move if the PHA offers the tenant occupancy of another *public housing* unit. However, if the unit is hazardous for the occupants (and the condition is not corrected in a reasonable time), the PHA must offer the opportunity to move to a "replacement dwelling unit if available", which may or may not be a public housing unit (§ 966.10(h)(1)(v)(B) and § 966.10(f)(3)). Thus the rule plainly states the correlative obligations of the PHA and the tenant when the unit endangers safety of the occupants. The PHA is required to offer an available replacement unit, and the tenant must move from the original hazardous unit.

The PHA is not required to offer a replacement unit if the dangerous condition was caused by "fault or negligence" of household members or of "guests, visitors, or other persons under control of Household members" (§ 966.10(f)(3)). The PHA should not, and does not, have to offer a new unit if the family created dangerous conditions in the original unit. A family with this history may do the same in a new unit—and, by doing so, cause injury to family members and others, as well as expense and administrative burden for the PHA. If the PHA does not offer a new unit, the family should not continue to live in a unit which endangers health and safety of the occupants. If dangerous conditions are not fixed, the family should be required to move from the unit. Damage or destruction of the unit by fault or negligence of the household is a serious violation of the lease (see § 966.10(h)(2)(ii)), and is ground for termination of tenancy and eviction of the unit occupants.

3. Proposed Restrictions on Transfer

Public comment proposes a number of additional substantive or procedural requirements for transfer of a public housing tenant.

Comment recommends that the PHA should only be allowed to transfer the tenant at lease expiration, or that the PHA should not be allowed to transfer the tenant for at least one year after death of a family member, or should not be allowed to transfer the tenant if a transfer would work an undue hardship on the family. These suggestions are not adopted. The proposed restrictions artificially constrict the ability of the PHA to realize the purposes of the respective grounds for transfer. For example, a delay in transfer of the family may delay modernization of the unit, or may perpetuate underuse of an oversize unit.

The requirement for a tenant to move from the unit is a contractual condition of the assisted tenancy, not a condition which may only be exercised at the end of the lease term. In practice, most PHAs probably use leases which continue month-to-month until terminated for cause. In such cases, a provision that the tenant may only be moved at lease termination would have little practical

effect—at any given time the PHA is no more than a month away from lease expiration.

The death of a family member, or other particular family circumstances, may call for understanding and flexibility by the PHA. These varying circumstances are, however, most properly addressed to the judgment and good sense of local PHA management, and are not to be handled by the imposition of a rigid, Federally imposed rule that cannot possibly reflect the infinite variety of personal and local circumstances.

Comment suggests that the family should have at least 90 days, or at least 120 days, to move from the unit. HUD finds no need to set a uniform Federal notice period, and has no basis for establishing any particular notice period. PHAs can set reasonable notice periods, and do not need Federal guidance. Both consideration for tenants, and the needs of orderly project administration will tend to induce the PHA to give reasonable notice to tenants.

4. Substitute Housing

a. Offer of substitute housing. The existence of grounds for transfer is a necessary, but not a sufficient condition for requiring the tenant to move. The PHA must also offer the tenant replacement housing (§ 966.10(h)(1)(v)(A)).

The proposed rule would have allowed the PHA the option of offering the family either another public housing unit, or the opportunity to rent a private unit with subsidy under the section 8 certificate or voucher programs. Public comment asserts that these alternatives, as framed in the proposed rule, do not afford adequate protection for the interests of the family.

b. Offer of Section 8 Certificate or Voucher. Comment states that the tenant should not be forced to take a section 8 certificate or voucher in place of a public housing unit. Comment claims that the certificate and voucher programs give less protection to the tenant, and are not the equivalent of public housing.

In the certificate and voucher programs, a family must find a unit on the private rental market. Comment notes that a family may not be able to find a unit. Large families, families with single parents, welfare families and minority families have greater difficulty in finding landlords willing to rent. Comment remarks that it will be hard for a PHA to show that a private unit is available for occupancy under the certificate or voucher program. Comment asks if a handicapped tenant should be forced to move out of an accessible public housing unit to an inaccessible unit rented on the local housing market. In the voucher program, the family may be forced to spend more than 30 per cent of income for housing (since there is no statutory limit on the amount of rent paid by an assisted family in that program).

Comment also points out that in the section 8 certificate and voucher programs the family does not have security of tenure which is equivalent to public housing. After one year, the section 8 tenancy can be terminated (for other good cause, such as a business or economic reason for termination of tenancy). A private landlord may decide to remove the unit from the section 8 program. If the section 8 tenancy is terminated, the family may be left high and dry, unable to find another unit.

Comment states that the family should have a right to remain in public housing, or a right to certificate or voucher assistance, or that the PHA should give the family a choice between public housing or assistance under the certificate or voucher programs. The certificate and voucher programs are generally more attractive than public housing. Thus there is usually a good reason if the tenant elects to remain in public housing, instead of choosing voucher or certificate assistance.

After reconsideration, HUD has removed the proposed provision which would require the tenant to move if the PHA issues a section 8 certificate or voucher, and an acceptable unit is available for section 8 assisted occupancy by the family. The final rule provides that the PHA must offer the tenant another public housing unit. As suggested by public comments, there are important differences between public housing and tenant-based housing assistance under section 8. It may also be difficult to determine if a private market unit is in fact available for occupancy by the family with assistance under the certificate or voucher programs, and thus to determine whether the PHA has satisfied the obligation to offer the tenant replacement housing actually available for occupancy by the family.

HUD does not adopt the suggestion that the public housing family should be given a right to issuance of a voucher or certificate.

The final rule does not contain a provision governing the offer of continued assistance under the certificate or voucher programs. The PHA may offer a certificate or voucher in accordance with the regular requirements of these programs, and the tenant may elect to accept such assistance instead of remaining in public housing. However, since the transfer from public housing to section 8 results from the free choice of the PHA and family, and is subject to the ordinary rules governing admission to the section 8 programs, there is no need for a regulation provision on this subject.

c. Offer of Another Public Housing Unit. The tenant must move if the PHA offers the tenant another public housing unit (§ 966.10(h)(1)(v)(A)(2)). The replacement unit must be decent, safe and sanitary, and must be of appropriate size under the PHA occupancy standards. The tenant is not required to move to a public housing unit which is substandard or too small for the family.

Comment advocates establishing further restrictions on the character and location of the public housing unit which must be offered to the tenant. Comment states that the PHA should have to offer the tenant a unit in the same project or neighborhood, or in a comparable neighborhood, or that the PHA should have to allow the tenant a choice of alternative sites. Comment also states that the PHA should be prohibited from offering the tenant a worse unit, and that the unit offered should be of a comparable housing type.

HUD believes the proposed restrictions would be too hard to apply, and would unduly constrict flexibility of the PHA in management of its housing inventory. The interests of the family are adequately protected by requiring that the replacement unit is decent, safe and sanitary, and of appropriate size.

In one circumstance, the tenant may be required to move from a public housing unit even though the PHA has not offered a public housing unit as replacement. If the tenant's public housing unit is hazardous, the PHA must offer a replacement unit if available (§ 966.10(f)(3)), and the tenant must move from the original hazardous unit (§ 966.10(h)(1)(v)(B)). In this circumstance, the PHA is not required to offer a public housing unit as the replacement.

5. Other Comments on Transfer Policy

This section responds to several remaining comments on transfer of public housing tenants.

Comment states that the PHA should be required to reimburse the tenant for out-of-pocket expenses in moving to a new unit. HUD has not adopted this recommendation. The PHA has limited funds to run the public housing program. Like most aspect of day-to-day management, the decision on whether to reimburse the tenant, from the limited

resources available to the PHA, is best left to the PHA.

Comment states that where a family is moved out of a public housing unit to give the PHA access for repairs, the family should have the right to move back into the same unit after repairs are made. HUD has not adopted this recommendation. The most urgent interest of the family is for shelter in a standard unit, not for occupancy of the particular public housing unit previously occupied by the family. The proposed change could considerably complicate the PHA task of coordinating work on public housing units with occupancy of the units. The comment, if adopted, could reduce the number of project units available for occupancy by lower income families.

Comment states that a PHA determination which requires the tenant to move to another public housing unit should be covered by the grievance process. HUD agrees. Under the grievance procedures in this rule, a proposed PHA decision to require the tenant to move to another public housing unit is a grievable subject ("proposed adverse action") (§ 966.31(a)(2)(ii)) (see discussion in section V.B.2.f of this Preamble). The purpose of the grievance hearing is to determine whether the proposed PHA decision requiring the tenant to move violates the lease, or violates other laws or rules. The hearing officer does not have authority to overturn a management decision by the PHA which requires the tenant to move in accordance with the lease.

Comment states that the lease should incorporate standards and procedures regarding a transfer requested by the family. The PHA should grant all transfer requests which are based on health, proximity to work or schools, and other such reasons. Comment states that the PHA should be required to establish written transfer policies.

In this rulemaking, HUD did not propose any new regulation concerning policy on tenant-requested transfers. No public comment was requested on proposals in this area. HUD does not have any regulatory requirements on this subject, and does not know of any compelling need or general demand for regulation on this subject. The chief thrust of this rulemaking is deregulation, and the devolution of additional management flexibility to public housing PHAs. A PHA can establish tenant transfer policies without new HUD guidance or compulsion.

A requirement to grant all tenant transfer requests could be enormously burdensome and expensive for the PHA. Such a requirement could hinder a PHA in the efficient and equitable allocation and use of public housing units. The PHA could incur significant additional expense, such as the expense of fixing up the unit vacated by a tenant who moves to a new unit. Even if a tenant has a substantial reason for wanting a transfer to another public housing unit, the PHA may determine that other applicants or tenants have a more urgent need for available units. HUD has not adopted the recommendation to adopt new requirements on tenant-requested transfers.

J. Obligation To Allow Inspection of Unit

The final rule simplifies old rule provisions concerning entry and inspection of the unit by the PHA. The old rule provides that the PHA may enter the unit during reasonable hours, after reasonable advance notice to the tenant, and specifies that two days notice is reasonable. Under the old rule, the PHA may enter without advance notice if the PHA has reasonable cause to believe that an emergency exists.

In this rulemaking, HUD first proposed to eliminate HUD restrictions on PHA entry of a tenant's unit (proposed rule of December 1982). In response to public comment on this proposal, HUD proposed provisions which would allow the PHA to inspect the dwelling unit at reasonable times and after reasonable notice (proposed rule of July 1986). The proposed provisions are revised in this final rule.

The final rule provides (§ 966.10(k)):

(1) The lease shall state the purposes for which the PHA may enter the dwelling unit. The purposes may include entry to inspect the unit, to make repairs or improvements, or provide other services, to show the unit, or for other purposes stated in the lease.

(2) The PHA shall give the Tenant at least 24 hours written notice that the PHA intends to enter the unit. The PHA may enter only at reasonable times.

(3) The Tenant shall allow the PHA to enter the unit in accordance with the lease.

(4) If the PHA has reasonable cause to believe that there is an emergency, the PHA may enter the unit at any time without advance notice to the Tenant, and may enter without consent of the Tenant. After such entry, the PHA shall give the Tenant a written notice of when the PHA entered the unit, and the reason for such entry.

Legal aid comment states that the proposal for a lease provision which allows PHA to inspect the unit at reasonable times and after reasonable notice would not adequately protect the tenant's privacy and right of possession. Comment states that the proposed requirement for "reasonable" notice is standardless or subjective. The determination on how much notice is reasonable should not be left to the discretion of the PHA. The proposed change invites litigation over invasion of the tenant's right to privacy, and will lead to uncertainty and conflict. The old rule is clear, simple, and avoids unnecessary disputes.

Comment states that unless a minimum notice period is fixed in the HUD rule, a PHA may set inadequate notice periods. The PHA may allow staff to enter a tenant's apartment while the tenant is away. The proposed change will allow PHA employees to discriminate among tenants. The rule change encourages excess involvement by the PHA in the day-to-day lives of the tenants, and PHA spot-checking that violates the tenant's right to privacy.

PHA comment generally supports rule changes to facilitate PHA inspection of the unit. The PHA is responsible for maintaining the unit in decent, safe and sanitary condition. To perform this function, the PHA must make frequent inspections of the unit. The PHA should be allowed to define reasonable notice. The old rule is a hardship for the PHA. However, some PHA comment indicates that the old rule does not present major problems.

Comment states that except for emergencies, a PHA should be required to give at least two days notice of intention to enter the unit. Other comment recommends that the notice period should be shortened to 24 hours. Comment notes that a 24 hour notice period is specific, but not so onerous as to hamstring the PHA.

Language of the July 1986 proposed rule did not explicitly state that the PHA has a right to enter the unit without notice or tenant permission in case of emergency. PHA comment recommends that the PHA be allowed to enter the unit without notice if the PHA has reasonable cause to believe that there is an emergency. A provision to this effect was contained in the old rule. Comment suggests that the PHA should be allowed to enter the unit on 24 hours' notice in emergency cases.

The final rule provides that in non-emergency cases, the PHA must give the tenant at least 24 hours' written notice of intention to enter the unit (§ 966.10(k)(2)). However, if the PHA has reasonable cause to believe there is an emergency, the PHA may enter at any time without advance notice to the tenant, and may enter without consent of the tenant (§ 966.10(k)(4)). However, in this case, the PHA must leave the tenant a written notice of when and why the PHA entered the unit.

The inspection requirements in the final rule will permit the PHA to enter

the unit for purposes stated in the lease—for example, to inspect the unit for tenant-caused damage. At the same time, the 24-hour notice rule for non-emergency cases sets a definite minimum notice period. The revision therefore answers the concern that the lack of a specific minimum notice standard will lead to disputes, and that PHAs will be prone to give inadequate notice to tenants.

The 24-hour notice period in the final rule is more precise than the notice provisions in the old rule. The old rule provided that the PHA must give "reasonable" notice, and that two days notice is considered reasonable notice. The language of the old rule implies that the PHA may give less than two days' notice if the period is reasonable under the circumstances. Implementation of the old rule therefore requires a judgment of what notice of less than two days is "reasonable" as applied to a particular set of facts.

Although the minimum notice period required by this rule is the same for all PHAs, it does not follow that the HUD notice requirements affect all PHAs in the same way. The notice period will have different practical consequences for different PHAs and for different circumstances. Some PHAs may choose to allow a longer notice period, as a matter of management judgment or preference. In many cases, State law may require a longer notice period. For example, the Uniform Residential Landlord and Tenant Act (§ 3.103) provides that "except in cases of emergency or unless it is impracticable to do so" a landlord must give a tenant at least two days' notice of intent to enter.

Public comment in this rulemaking observe that public housing tenants have an equal right and need for privacy as other apartment dwellers. HUD notes that the HUD regulation establishes minimum Federal requirements for notice to a tenant, but does not preempt State laws which require longer notice to the tenant. Since the HUD regulation does not override tenant rights under local law that do not contradict specific provisions of the Federal rule, public housing tenants enjoy tenant rights vouchsafed by State law, as well as Federal protections under the HUD regulations.

The provisions allowing immediate entry to the unit in an emergency afford the PHA flexibility to respond to the most urgent cases, where the PHA should not have to wait for expiration of a set uniform notice period. For example, if there is a flood in the tenant's apartment, the PHA may need quick access to the unit to minimize water damage to the apartment and to other apartments. In the nature of emergency situations, the PHA must have the management discretion to decide when the normal one-day waiting period is not appropriate. HUD does not believe that operation of the emergency provision will commonly be the subject of major dispute. First, the decision that there is ground to enter the unit without advance notice depends on the PHA's own determination that there is "reasonable cause to believe" that there is an emergency. The spot decision by the PHA is not subject to challenge if PHA officials believe there is an emergency, and if there is "reasonable cause" for such belief (whether or not it turns out, in retrospect, that the emergency actually existed). Second, in most cases emergency situations will be clear and unambiguous, such as a fire in the apartment.

Some PHAs state that the PHA should not be required to give advance notice of entry for certain routine PHA functions such as pest control or unit repair. The PHA needs to enter the unit on a scheduled basis to treat for pests. The PHA should be allowed to establish a day of the month when the PHA can enter the unit for this purpose, but without giving notice before each visit.

HUD has not adopted the recommendation to authorize a waiver or exception from the 24-day notice requirement for pest control or other routine functions. The PHA may satisfy the notice requirement by giving definite notice to the tenants of the scheduled dates when the units will be entered for fumigation or other repetitive purposes. The regulation does not require a separate notice for each routine visit, so long as the tenant has received a standing notice of when the visits will be conducted. Similarly, the repair functions where the PHA is not able to schedule a definite appointment, the PHA may give at least 24 hours notice of the period in which the PHA expects that the unit will be entered for performance of the work, such as a notice that the PHA expects to enter the unit for repair work on Thursday or Friday of the week following notice.

Comment states that the rule should require tenant permission for entry to the unit (except in an emergency). The comment notes that while many households are headed by women, most PHA maintenance employees are men. The rule should provide that the tenant may not withhold permission unreasonably (compare Uniform Residential Landlord and Tenant Act, § 3.103(a)).

The final rule provides that the tenant "shall allow the PHA to enter the unit in accordance with the lease" § 966.10(k)(3)). If the PHA seeks admission in accordance with the lease, the tenant is required to admit the PHA representatives. Tenant's refusal to "allow" (i.e., consent) to PHA entry is a violation of the lease. Thus, tenant consent is a prerequisite for PHA entry to the unit. Under the final rule, the PHA may enter the unit "without consent of the Tenant" only if the PHA is entering the unit because of an emergency (§ 966.10(k)(4)).

K. Security Deposit

The old rule provides that a security deposit may not exceed one month's rent or a "reasonable fixed amount" determined by the PHA. The final rule states that a lease may provide for "reasonable security deposits as determined by the PHA in accordance with State and local law" (§ 966.10(e)(3)).

PHA comment states that a PHA should have the right to set the amount of the security deposit. The PHA should have freedom to determine what amount of security deposit is reasonable in accordance with local conditions and State law. The PHA should have the right to increase the security deposit if a tenant damages the unit. This practice protects the PHA from a tenant who damages the dwelling unit, and moves out without notice to the PHA. The PHA should be allowed to require an additional deposit if the tenant makes changes in the unit.

Other comment argues that a requirement that the security deposit must be "reasonable" does not provide sufficient protection for the tenant. Instead, the rule should cap the amount of security deposit which may be collected from a tenant. The deposit should not be more than one month tenant rent. (By Federal law, tenant rent is usually set at 30 per cent of tenant adjusted income.) HUD should establish a specific limit on the amount of security deposit. Some public housing applicants and tenants will not be able to afford the security deposit demanded by the PHA.

HUD concludes that provision that the PHA may determine a "reasonable" security deposit is an adequate standard to govern PHA practice. Further regulatory restriction on the PHA's management discretion is not necessary. In public housing, there should not be a national regulatory restriction which sets a specific and arbitrary formula controlling the amount of security deposit, or which prohibits a security deposit of more than one months' tenant rent, as recommended by some

comments. Because the rule allows the PHA to determine what deposit is reasonable, the PHA is able to balance the benefits of holding a tenant security deposit, including the encouragement of tenant responsibility for care of the leased unit, against the difficulty for the tenant in putting up the amount of security deposit demanded by the PHA.

The PHA can tailor the amount of the security deposit to PHA experience and policy in the administration of the local program, as well as PHA experience with the individual tenant. The PHA may require a higher security deposit from a problem tenant, with a history of destructive family behavior, than from a tenant with a history of cooperative and responsible behavior. As suggested by PHA comments, the PHA may demand an increased deposit if the unit has been damaged, or if tenant has made alterations to the unit. The reasonableness of the security deposit amount may therefore be related to the characteristics and behavior of particular families. The PHA does not need to impose a security deposit requirement which is identical for all tenants in the PHA program, or in a project. It should also be noted that since the amount of public housing rent is statutorily determined by income of the individual family, a security deposit formula based on family income will produce different amounts of security deposit for different families. Thus a rent-based security deposit formula may not provide adequate financial security to the PHA, or an adequate incentive for the family to minimize claims against the security people.

In practice, the right of the PHA to determine what amount of deposit is reasonable does not mean that the PHA is free to impose security deposits at any desired level, or at a level that would deny occupancy of the housing to low income families. All public housing units must be occupied by families which are income eligible at the time of initial occupancy. In order to fill public units with eligible families, the PHA will have to set security deposits at a level that can be borne by eligible families.

Public housing security deposit provisions are not the same as the security deposit requirements for the various section 8 programs. In section 8, the landlord is generally a private profit-motivated entity or individual. In public housing, the landlord (i.e., the PHA) is a governmental entity engaged in performance of a public function. The public housing PHA may therefore be vested with a broader discretionary authority to make decisions affecting the welfare of project tenants. In addition, in the various section 8 programs the source of financial protection for the landlord is not limited to the tenant security deposit held by the PHA. In the section 8 programs, the owner may submit a claim for reimbursement from section 8 funds for damages or other monies owed by the tenant (up to the program maximum). In public housing, there is no parallel source of reimbursement and financial protection to the landlord-PHA.

The old lease and grievance rule states that the lease may allow for gradual accumulation of the security deposit by the tenant and refund of interest earned on security deposits. This provision is not included in the revised rule. Provisions allowing gradual accumulation of deposits, and the refund of interest on deposits, are unnecessary. Nothing in the rule prohibits either practice.

L. Prohibited Lease Provisions

1. Retention of Prohibition

Section 6(l)(1) of the U.S. Housing Act of 1937, as enacted in the 1983 law, provides that a public housing PHA must use leases which "do not contain unreasonable terms and conditions" (42 U.S.C. 1437d(l)(1)). This provision is worded like section 202(b)(3) of the Housing and Community Development amendments of 1978 (Pub. L. 95–557, October 31, 1978), which requires HUD to assure that leases approved by HUD for certain HUD-subsidized multifamily housing programs do not contain unreasonable terms and conditions. The listing of prohibited types of lease provisions promulgated by HUD for these programs 48 FR at 43310, September 23, 1983) is almost the same as the enumeration of prohibited lease provisions in the old public housing lease and grievance rule.

Consistent with the 1983 statutory requirement, and with requirements for other HUD housing subsidy programs, the rule describes the types of provisions which may not be included in a public housing lease (§ 966.11). For the most part, the statement of prohibited provisions bars lease language which could compromise or foreclose the tenant's opportunity for a fair hearing in a State court eviction proceeding, or other court action in connection with the lease.

The statement of prohibited provisions is substantively very similar to the prohibited lease provisions in the old rule. However, the rule now incorporates a number of refinements in the list of prohibited provisions, including changes to make the statement easier to understand. The proposed changes do not substantially impair the common approach in different HUD housing subsidy programs. Public comment generally approves HUD's revision to the statement of prohibited lease provisions.

The rule does not include specific lease language which conforms with the regulatory list of prohibited lease provisions. The PHA is responsible for drafting the language of the lease, and of assuring that the lease does not include any prohibited provision.

Public comment, including comments by PHAs and NAHRO, supports the prohibition of unreasonable lease provisions. However, some comment notes that State law may also provide a similar protection for the tenant, and that the PHA should have maximum responsibility in drafting language of the lease in accordance with State law.

2. Treatment of Family Property

Separate old rule provisions restricting the PHA's authority to hold or sell property of the family are combined and revised (final rule § 966.11(b); see old rule § 966.6(b) on "distraint" for rent and charges, and old rule § 966.6(e) on disposition of family property without a court decision).

The old rule prohibits a lease provision which would authorize the PHA to hold or sell tenant property without notice to tenant and a court decision. PHA comment points out that because of this prohibition, the PHA is not able to dispose of abandoned property when the tenant vacates the unit. The PHA is put to the expense of storing the abandoned property, which is usually junk. PHA comment states that because of the prohibition, the PHA is forced to wait until the end of the eviction proceeding, and place remaining possessions at the curb. The provision causes increased expenses and lost rent revenues.

Comments states that the PHA should be allowed to dispose of abandoned property left by the tenant. Comment suggests alternative techniques for handling the abandoned property: disposition in accordance with State law, disposition with court approval, or disposition in a commercially reasonable manner. The lease should include a provision which allows the PHA to dispose of abandoned property. The prohibition on seizure or sale of tenant property should not apply to abandoned apartments.

HUD concurs that limitations on PHA handling of property abandoned in the unit are not supported by the underlying rationale of the prohibited lease provisions, or, more particularly, of the

prohibited provisions concerning treatment of family property. The prohibition is essentially designed to prevent the seizure or sale of property in the possession of the family, as a PHA self-help remedy for disputes arising under the lease. Once the family vacates the unit and property, the abandoned personal property is no longer in possession of the family. The hindrance of PHA disposition of abandoned property is an unintended and undesirable artifact of a provision designed for a different purpose, and results in unnecessary expense and nuisance for the PHA. In response to PHA comment, the provision on treatment of family property is revised, with the effect that the prohibition does not apply to an agreement concerning disposition of personal property abandoned in the unit.

As revised, the final rule provides (§ 966.11(b)) that the lease may not include a provision on treatment of family property under which the tenant agrees:

> * * * that the PHA may take, hold or sell personal property of Household members, without notice to the Tenant and a court decision on the rights of the parties. However, the prohibition of such agreement does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the dwelling unit after the Tenant has moved out of the unit. The PHA may dispose of such personal property in accordance with State law.

Legal aid comment states that State law may permit a contractual lien on tenant possessions if the rent is not paid. This State-created lien is a self-help remedy by the owner, that does not give a tenant the opportunity for a judicial hearing. The final rule prohibits an agreement in the lease that the PHA may take or sell family property without notice to the tenant and a court decision on the rights of the parties.

3. Waiver of Notice

The old rule prohibition against a waiver of legal notice is clarified and broadened. The old rule prohibits waiving notice of an action for eviction or a money judgment. Similarly, the new rule prohibits an agreement that the PHA does not need to give notice of a court proceeding against the tenant in connection with the lease (§ 966.11(d)). However, the new rule also prohibits an agreement to waive any notice required by HUD. Thus, the tenant may not be required to relinquish in the lease the right to notice of PHA charges (§ 966.10(e)(1)(ii)), of a change in rent (§ 966.10(c)(2)), of lease termination (§ 966.22) or of proposed adverse action (§ 966.31(b)), or to the notice procedures required under the rule (§ 966.10(l)).

4. Waiver of Court Decision Before Eviction

The prohibition against waiver of the opportunity for judicial determination on an eviction is clarified (§ 966.11(e)). The new rule prohibits an agreement by the tenant that:

> the PHA may evict Household members (1) without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or (2) before a decision by the court on the rights of the parties.

The new language is intended to express more fully the prohibition of any lease provision which would deny the family the opportunity for a fair hearing in court before eviction from the unit. This provision supports other related provisions of the rule (§ 966.22(b)(4); § 966.23(a)).

5. Other Revisions of Prohibited Lease Provisions

For clarity, the prohibition of "exculpatory clauses" (old rule § 966.6(c)) is redesignated as a prohibition of a clause "excusing PHA from responsibility" (new rule § 966.11(c)).

The rule includes other editorial changes and refinements in the list of prohibited provisions.

M. Distinction Between "Tenant", "Family" and "Household"

1. General

The old rule uses the term "tenant" to designate the lessee of a public housing unit. The tenant is the party who enters into a lease with the PHA on behalf of the family (see old rule § 966.4). The tenant is also the party who possesses the right to a grievance hearing. In some contexts, the old rule refers to members of the tenant's "household", i.e., the body of family members residing in the unit under the lease.

In the required and prohibited lease provisions of the old rule (old rule Part 966, Subpart A), the term "tenant" is not explicitly defined. However, the term is defined for purpose of the grievance requirements (old rule Part 966, Subpart B). In that context, "tenant" is defined as the "lessee or the remaining head of household" (old rule § 996.53(f)).

The final rule gives separate definitions of the terms "tenant" and "household" (new rule § 966.2). The new definitions express the important technical distinction between the lessee of the unit (the "tenant"), and the whole body of persons who are approved to live in the unit under the lease (the "household"). This distinction is also implicit in the old rule. The new definitions apply to all parts of the revised lease and grievance requirements, including the lease requirements, the provisions on termination of tenancy, and the grievance hearing requirements.

By law, public housing is for the benefit of a "family" (U.S. Housing Act of 1937, 42 U.S.C. 1437 *et seq.*). In this rule, the term "tenant" is defined to denote the legal representative of an assisted family: "the person or persons who execute the lease with the PHA" (§ 996.2). As in conventional landlord-tenant usage and practice, the "tenant" is the person who holds the contractual right to occupancy under the lease, and the right to enforce the obligations of the landlord under the lease (the PHA). The tenant is contractually bound to perform all tenant obligations under the lease.

The proposed rule contained a separate definition of the term "family". This proposed definition compressed two distinct concepts: the proposition that unit occupants must be approved by the PHA, and the proposition that the unit occupants must be a statutory "family" as determined in accordance with HUD requirements, the statutory entity eligible for public housing assistance (see (United States Housing Act of 1937, section 3, 42 U.S.C. 1437a; cf. 24 CFR Part 912). However, the group of approved occupants sometimes includes a person who is not a member of the statutory "family". A live-in aide may reside in the unit to provide care and assistance to an elderly family (U.S. Housing Act of 1937, section 3(b)(3), 42 U.S.C. 1437a(b)(3); § 966.10(g)(2)).

For greater precision, the final rule distinguishes the concepts of "family" and "household". The defined term "household" (§ 966.2) refers to the whole body of unit occupants who are allowed to live in the unit under the lease with the PHA (including a live-in aide):

> *Household.* The Tenant and other persons who live in the dwelling unit with written approval of the PHA.

(See also, § 966.10(b)(1), which provides that the lease must state "the persons who will live in the dwelling unit".) Most lease provisions concern all unit occupants, as opposed to "family" occupants. For example, the lease provides that members of the "household" may not engage in criminal activity in the unit or premises (§ 966.10(h)(2)(iii)). In this context, it is irrelevant whether the household member is also a member of the "family". In most cases, the set of household members is identical with the family.

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in a few contexts, the rule refers to the "family". A number of provisions refer to the reexamination of "family" income and composition; statutory rent is based on income and composition of the family. However, the term "family" is not defined in this rule. First, the lease provisions do not define what persons or body of persons are eligible for assistance, although the PHA must determine statutory eligibility before admitting the family to occupancy of the unit. Second, HUD does not prescribe, in this or any other public housing rule, a comprehensive definition of when a group of persons may be treated by the PHA as a "family" which is eligible for assistance under the public housing program. (HUD regulations only define when an elderly or other single person may qualify as a "family" (see § 912.2).) The PHA has broad discretion to determine what group of persons constitute a family. This rule is not intended to limit or affect PHA authority in this regard.

Throughout the rule, the defined terms "tenant" and "household" are used in the appropriate contexts. For example, the lease provides that the "tenant" shall have the right to exclusive use and occupancy of the dwelling unit "for residence by the Household" (§ 966.10(g)(1)). During the lease term, the PHA may offer the "tenant" a new lease or revision of the lease (§ 966.10(o)(1)).

Public comments object to the explicit regulatory distinction between the tenant and the family under the proposed rule. Comment is concerned with the supposed effects of this distinction on rights of family members other than the tenant signatory, including concerns respecting notice under the lease, and the rights of other family members if the tenant leaves the unit. In the final rule, the central distinction between the tenant signatory and the whole body of unit occupants is retained (although, as indicated above, the terminology has been changed).

2. Rights of Other Family Members

Comment claims that the separate definition of the terms tenant and family denies tenant rights and protections to other family members. Comment states that the family-tenant distinction is artificial since a family is the entity which is eligible for public housing. The PHA should be required to include as parties to the lease all family members, or all adult family members, or all family members who want to sign the lease. The PHA should have "privity of contract" with each adult member of the household.

In HUD's view, the distinction between the person who signs the lease with the landlord, and the body of people who live in the unit in accordance with the lease, is not artificial, but is a real-world distinction that antedates the explicit regulatory definition of these concepts in the new rule. This distinction existed implicitly in implementation of the old rule, notwithstanding the absence of a consistent regulatory definition which applied across the lease and grievance requirements. For example, the lease requirements of the old rule state that the dwelling unit may only be used as a dwelling for the "tenant" and "the tenant's household" (old rule § 966.4(f)(3)). In ordinary landlord-tenant practice, the term "tenant" conventionally applies only to the individual or individuals who execute the lease for a unit, not to all of the individuals who may reside in the unit. A residential lease commonly lists the people who may live in the unit.

The new rule introduces an explicit definition of the distinction between the lessee and the unit occupants. By a conscious and consistent use of the defined terms, the new rule clarifies the intended operation of lease and grievance provisions which use the defined terms, and thus the rights and duties of the tenant under the lease and under the PHA grievance procedure. As under a private market lease, the tenant is the party who holds the contractual right to enforce the lease. The lease provisions required by this rule are not intended to make the non-tenant family members third party beneficiaries, who may directly enforce the obligations of the lease against the PHA.

For administration of the lease, the PHA needs a precise legal definition of the tenant who is the subject of rights and duties under the lease. It is both practical, and consistent with normal landlord-tenant practice, that certain members of the family act as legal representatives of the family. There is nothing in the lease requirements of the 1983 law which alters the normal expectation that the "tenant" is the repository of contractual rights under the lease. In public housing, assistance is for the benefit of a "family". This circumstance supports the implication that the PHA may treat the family as a group, represented by the individual or individuals who executes the lease on behalf of the family, not merely as a collection of individuals residing in the unit.

Under the final rule, the PHA will have the authority to determine which family members will be required or allowed to sign the lease on behalf of the family. This judgment may be legitimately affected by elements of local law and landlord tenant practice, for example, the age of contractual responsibility under State law, or procedural complications by addition of additional signatories under the lease. There is no present reason for establishing a Federal rule defining which family members sign the public housing lease as representatives of the assisted family.

The public housing lease establishes a single tenancy, for the benefit of the whole family. The leasehold is not a set of separate leases for each individual who lives in the unit. For the most part, the determination of which member or members of the family signs the lease as "tenant" on behalf of the family is of little practical importance. Regardless of who signs the lease, public housing rent is based on the income of the whole family, and all members of the family may be evicted if the rent is not paid. Similarly, the whole family may be evicted for breach of tenant obligations by any member of the family. In general, the family's security of occupancy is little affected by who happens to execute the lease as legal representative of the assisted family.

Comment expresses concern that the tenant-family distinction will in some fashion deny to family members other than the tenant the protection against prohibited lease provisions. However, HUD notes that the tenant-family distinction, or the tenant-household distinction, does not permit the PHA to evade the prohibited lease provisions for family members other than the tenant. By virtue of the prohibited lease provisions, certain types of provisions may not be included in the lease between the PHA and tenant. The tenant is not bound by agreement of other family members to relinquish leasehold protections in contravention of prohibited lease provisions. The tenant's tenure of the unit for occupancy by family members is not affected by any side-agreements between the PHA and other family members.

3. Notice

The rule describes how the PHA must serve notice of lease termination or notice of a proposed adverse action (§ 966.10(l)(2)(ii)). Notice must be served on the "tenant", the person who executes a lease on behalf of the family.

Comment states that individual family members should be given separate notices, or that notices should be directed to the tenant "and family". Comment claims that if notice is only

given to the "tenant", the family may have no notice that legal rights are being terminated.

There is a single lease for each family. Similarly, issues which are cognizable under the PHA grievance procedure pertain to the whole family (e.g., computation of family rent), and the tenant has a unitary right to grieve on each grievable issue. Individual family members do not have separate individual leases or separate individual rights to grieve on a proposed adverse action by the PHA (e.g., a proposed termination of the tenant's lease). Corresponding to the unitary character of the rights which are protected by the lease, and by the PHA grievance procedure, the rule requires a single notice to the tenant, rather than separate notices to individual family members. The tenant is the legal representative of the family, both for purposes of the lease and for purposes of the grievance procedure.

Comment states that notice should be given to individual family members. Mechanically, this could mean either that notice is given by multiple separate notices to the individual members, or that a single notice is addressed to more individuals or to the "family".

Multiple notices to an individual family will evidently multiply the burden and expense of giving a notice (of adverse action or lease termination) which is required under the 1983 law. Imposition of this extra burden and expense is not justified. Multiplication of the number of individual notices does not multiply the underlying right which is protected by the notice. Indeed, the use of separate notices to individual family members would lead to confusion as to who is entitled to act for the family. HUD does not believe that the use of multiple notices will substantially increase the likelihood of actual notice to the family, and—most important—the likelihood of effective action to protect family interests. PHAs are already burdened by substantial procedural requirements not borne by a private landlord, including the duty to give notice of lease termination or notice of adverse action in accordance with the 1983 law. HUD will not add to that burden by requiring the PHA to give multiple notices to an individual family.

Adding additional names as addressees of a single notice to the assisted family does not impose the same administrative burden and expense as multiple separate notices to the family. However, HUD does not believe that a requirement to address additional family members is likely to produce any substantial benefit. As already remarked, there is only one lease and one right to grieve, not separate rights for each member of the family. All notice should go to the tenant—who is the only family member who may exercise rights under the lease or the PHA grievance procedure.

4. Rights of Remaining Family Members

Comment claims that the tenant-family definitions prejudice the interest of family members remaining in the unit after death or departure of the "tenant". Comment objects that the tenant is the only family member who is entitled to legal notice and continued possession of the unit. If the husband-tenant dies or leaves the unit, the wife and child have no legal right to continued occupancy. If a grandparent-tenant dies or leaves, the fate of remaining family members is left to the "whimsey" of the project manager. Comment notes that the goal of the public housing law is to provide decent, safe and sanitary housing for "families". If a family is devastated by loss of an adult member, or if composition of the family is changed by divorce, family stability should not be undermined by loss of the only housing the family can afford.

Comment states that other family members should be allowed to remain in the unit after departure of the tenant if the remaining family members meet established PHA occupancy criteria—such as whether the remaining family member is a PHA-approved occupant who has lived continuously in the unit, and is a blood relation of the named lessee. Comment states that remaining family members should automatically succeed to rights of the tenant, and that a new lease should not be required. Other comment asks clarification whether a remaining person is automatically eligible to sign a new lease. Comment suggests that the treatment of remaining family members should be left to PHA discretion.

In this rulemaking, HUD did not propose any substantive change in the rights of remaining family members after death or departure of the tenant-lessee. The introduction of the new definition of term "tenant" does not substantially alter the position of remaining family members under the old rule and other prior HUD regulatory requirements.

Under the U.S. Housing Act of 1937 assistance is provided to a "family". The statutory term "family" is defined to include the "remaining member of a tenant family" (U.S. Housing Act of 1937, section 3(b)(3)(C), 42 U.S.C. 1437a(b)(3)(C)). Under the statutory definition, the remaining member or members of the original family (after departure of the tenant or other family members) constitutes an entity within the statutory definition of "family", and therefore an entity which is statutorily eligible for public housing assistance.

However, the existence of statutory eligibility does not mean that the remaining family members (or the remaining adult members) should automatically succeed to the interests of the prior lessee. Nor does it mean that the PHA is or should be required to offer a new lease to remaining members of the family. The PHA may only admit a family if the family is eligible. However, the PHA is also charged with the crucial management responsibility and discretion to decide whether the remaining members of a family, as presently constituted after departure of the original tenant, should be assisted, either in the same unit or another unit.

After departure of the original tenant, the PHA has a legitimate management interest in determining whether the remaining family members constitute a viable or stable household, or whether continued occupancy by the family presents dangers to other residents or the project, or to the welfare of family members (for example, if there is no adult who can undertake to act as tenant and head of household, and care for minor members of the family). As at the point of initial admission, the PHA may consider that the presence of a reliable household head is essential for continued occupancy by the family. Remaining family members may not include any non-minor with legal capacity to execute a lease, or may not include any persons who can serve as the stable core of the reconstituted family, and who can answer for the legal responsibilities of tenant under the lease.

As indicated by public comment, death or departure of the named tenant often presents profound difficulties to the remaining family members. In these varied situations, the PHA has the hard job of deciding whether the remaining members can stay in the unit. However, as under the old lease and grievance rule, the decision on the appropriate solution is properly vested in the administrative discretion of the PHA. In practice, most PHAs are probably inclined to permit continued occupancy by remaining family members unless there is a compelling reason to refuse continued occupancy by the family.

N. General Notice Procedures

During the lease term, the PHA and the tenant need a mechanism to give notice to each other on subjects related to the tenancy under the lease. For example, the PHA may give notice of a reexamination of family income, or of

the new rent determined as a result of reexamination. The tenant may give notice that the tenant requests a grievance hearing on the PHA's proposed determination of tenant rent.

The rule provides (§ 966.10(l)(1)):

"The PHA shall adopt a notice procedure which is consistent with State and local law, and which shall be incorporated into the lease. The notice procedure shall state how the PHA and Tenant may give notice to each other concerning termination of the lease, and other matters under the lease".

O. Notice of Adverse Action or Lease Termination—How Served

1. Service of Statutory Notice—Methods

The PHA must give the tenant notice of lease termination (§ 966.22), or notice of a proposed adverse action (§ 966.31(b)). These notices implement statutory requirements under the 1983 law. The PHA must give minimum notice of lease termination (U.S. Housing Act of 1937, section 6(l)(3), 42 U.S.C. 1437d(l)(3)). The tenant must also be advised of the specific grounds of any proposed adverse action by the PHA (U.S. Housing Act of 1937, section 6(k)(1), 42 U.S.C. 1437d(k)(1)). A notice of adverse action informs the tenant of the reasons for a proposed adverse action (§ 966.31(b)(1)(i)). The rule establishes the same procedures for service on the tenant of both types of notice required under the 1983 law (§ 966.10(l)(2)(ii)).

A PHA may use any one of three alternative methods to serve the notice. The rule provides (§ 966.10(l)(2)(ii)) that a notice of lease termination, or a notice of proposed adverse action, shall be given to the tenant:

(A) by mailing the notice by first class mail addressed to the Tenant at the dwelling unit, or

(B) by handing a copy of the notice to the Tenant or to any adult answering the door at the dwelling unit, or

(C) by other means which the PHA determines to be reasonably likely to give the Tenant actual notice. Posting on the outside of the unit door, and which is not supported by other notice to the Tenant does not constitute sufficient notice.

2. Notice by Mail

a. When Notice Is Effective. If notice is mailed, the PHA does not have direct knowledge of the date when the notice is received by the tenant. For a notice of lease termination, a tenant must be given notice of lease termination for the minimum periods stated in the 1983 law (e.g., 14 days notice of termination for non-payment). It is therefore helpful to specify when the mailed notice is deemed effective, starting the countdown of the 14 day notice period.

The proposed rule contains provisions which specify the point at which a notice sent by mail is effective. The proposed rule provides that a mailed notice (of adverse action or lease termination) is "deemed given" five days after the notice is mailed by first class mail. The five day notice period was intended to allow time for the tenant to receive the notice through the mails, and define the time at which the termination notice is legally effective.

PHA comment states that the five day notice period is excessive allowance for delivery by first class mail. Legal aid comment recommends adding an additional five days for response by the tenant.

PHA comment accurately points out that the proposed five day initial period (running from the date of mailing to the date when the notice is "deemed given") effectively lengthens the notice of lease termination required by the statute (running from the date the notice is given to the date of lease termination) (U.S. Housing Act of 1937, section 6(l)(3), 42 U.S.C. 1437d(l)(3)), § 966.22(a)). The initial notice period would be added on top of the statutory notice of lease termination. In this way, the PHA would have to give 19 days notice of lease termination for nonpayment of rent (14 days statutory notice, plus a 5 day period for delivery of the notice), and 35 days notice of lease termination in other cases (30 days statutory notice, plus a 5 day delivery period).

PHA comment states that the additional 5 day delivery period delays PHA action which is necessary to collect rent or deal with residents who create disturbances, or are otherwise a detriment to the health and safety of staff and other residents. These delays are costly, and increase tenant receivables and collection losses. HUD requirements in the old rule already give the tenants too long to pay. The rule should not give the tenants more time. Comment remarks that the new notice period requirement is pyramided on top of the time necessary to accomplish other steps to initiate legal action and schedule a hearing for tenant non-payment (PHA grace period, delivery period, 14 days notice of lease termination, period for scheduling court hearing).

In response to the public comment, the rule is revised to provide that a notice of lease termination or notice of proposed adverse action is treated as given when mailed. The rule provides (§ 966.10(1)(2)(iii)):

If a notice of lease termination or a notice of proposed adverse action is sent by mail, the notice is deemed given when mailed.

Allowance of an initial period for delivery of the lease termination notice (in addition to the statutory lease termination notice periods specified in section 6(l)(3) of the U.S. Housing Act of 1937, 42 U.S.C. 1437d(l)(3)) is not required under the 1983 law. The old rule did not require that the PHA make any additional allowance of a period for delivery of a lease termination notice which is sent by mail. The lease termination notice provisions in the 1983 law codify the notice requirements in the old rule. The 1983 House Committee Report states that the bill requires that the lease contain certain basic protections, including:

* * * clauses obliging PHAs to * * * provide adequate notice before evicting tenants. The Committee also contemplates that HUD will retain the existing regulations regarding these provisions (Report 98–123 on H.R. 1, p. 36).

(Provisions on public housing leases, including provisions which require the PHA to give notice of lease termination, were enacted verbatim in the form reported by the House Committee. These provisions therefore differ from the grievance hearing requirements, which were substantially modified in the law as finally passed.)

b. Use of Registered or Certified Mail. The proposed rule states that where the notice is mailed, the notice is "deemed given" (1) five days after mailing, or (2) when sent return receipt requested, the date of actual receipt as stated on the return receipt. PHA comments note significant technical problems with this provision when the notice is sent by registered or certified mail. PHAs request clarification that a notice by registered or certified mail is effective no later than the effective date for a notice sent by regular mail.

Under the final rule, a notice is deemed given at the time the notice is mailed (rather than five days *after* mailing) (§ 966.10(l)(2)(iii)). The same simple rule applies to registered or certified mail as to ordinary mail. The final rule does not include the proposed provision which would make the notice effective upon the actual receipt date shown on a return receipt. This provision is not needed, since the notice is effective when mailed.

Some comment states that notice should always be sent by registered or certified mail. Other comment points out that tenants often refuse to accept registered or certified mail, since such mail often contains a legal notice or

claim. PHA comment states that notice by registered or certified mail is prohibitively expensive.

The rule does not require use of registered or certified mail. In a court proceeding for eviction, the PHA will have to prove that the PHA has given the tenant the notice required by Federal law, including satisfaction of the minimum notice periods under the statute and regulation. The Department considers it unnecessary to specify, as a matter of Federal regulation, the form of proof to be offered by the PHA (by affidavit of service, return receipt, testimony or other probative means), just as the Department does not seek to prescribe the manner in which the PHA must prove the factual existence of good cause grounds as required under the statute. Each PHA may decide whether it is best to give notice by registered or certified mail, or by ordinary mail, or by other authorized methods of service.

3. Notice by Personal Service

The rule provides that the PHA may serve a notice of lease termination or proposed adverse action "by handing a copy of the notice to the Tenant or to any adult answering the door at the dwelling unit" (§ 966.10(l)(2)(ii)(B)).

The December 1982 proposed rule would have allowed service by delivering a copy of the notice to any person answering the door at the dwelling unit. Comment states that the PHA should not be permitted to serve notice on a child who answers the door. In response to this comment, the rule was revised to provide that the PHA may only serve the notice on an adult who answers the door. HUD agrees that service of notice on a minor child who answers the door, and not supported by some other form of notice to the tenant, may not not provide adequate notice. If the PHA is unable to serve an adult at the dwelling unit, the PHA can use an alternative mode of service allowed under the rule, such as service by mail.

The old rule provided that notice must be delivered to the tenant, or to an adult member of the tenant's household residing in the dwelling unit. Comment on the December 1982 rule objects to allowing the PHA to leave notice with any adult who answers the door, and states that the rule should require service on an adult member of the household, as under the old rule. Delivery to any adult in the unit does not afford a sufficient likelihood of actual notice. Comment asks how the person delivering the notice is to know the age of a person who answers the door.

The final rule allows the PHA to make service on any adult who answers the door. HUD believes that in most cases such service will provide actual notice to the tenant, regardless of whether the person is a member of the household. Indeed, it is doubtful that service on a household member other than the tenant is more likely to provide actual notice than service on any adult who answers the door.

HUD recognizes that a person who answers the unit door may be an unauthorized occupant of the unit. Some PHAs have high levels of occupancy by persons not admitted by the PHA. However, it is fair that a tenant who permits illegal occupancy should bear the risk that these persons may not inform the tenant of PHA notices.

In many projects, a PHA representative who serves the notice may not know the family members. Consequently, the server may not know whether a person who answers the door is a member of the household, i.e., a person whose occupancy in the unit is approved by the PHA. The server also may not know, other than by appearance and common sense judgment, whether the person who answers the door is a minor.

The PHA should not be burdened with the necessity of determining or proving that an adult who opens the door to the unit is a member of the household. In most cases, the person will be a member of the household, or a person who will pass the notice on to members of the household. Thus this mode of service is reasonably likely to give the tenant actual knowledge of the PHA notice. If notice is handed to a person other than a member of the household, the person is usually in the unit with consent of household members. The risk that such a person may not transmit the notice to the tenant is most reasonably apportioned to the tenant who granted the person access to the unit, either as an illegal occupant or as a guest of the family.

There is some risk that in some cases the PHA representative may not know if the person who opens the door is a minor. However, this problem may arise in relatively few cases. In many cases, the server will know, without serious ground of doubt, that the person who answers the unit door is an adult. In other cases, it will be equally clear that the person who answers the door is a minor. The problem therefore only arises in the limited proportion of cases where it is not clear to the server that the person is either a minor or an adult. In such cases, the problem may often be solved by further inquiry, or by re-serving the notice at another time, when the tenant or another adult is present. Alternatively, the PHA may solve the problem by serving the notice by some other authorized means, commonly by sending the notice by first class mail addressed to the tenant.

4. Notice by Other Means

The proposed and the final rule provide that the PHA may make service "by other means which the PHA *determines to be reasonably likely to give the Tenant actual notice*" (§ 966.10(l)(2)(ii)(C)) (emphasis supplied). Legal aid comment contends that this formula would allow the PHA to make service by posting notice on the unit door, a service technique held unconstitutional by the Supreme Court in *Greene v. Lindsey*, 456 U.S. 444, 102 S. Ct. 1874 (1982). Comment also claims that the rule will allow eviction without actual notice, and will result in sewer service. HUD should require service of notice in-hand or by return receipt notice.

In the *Greene* case, the Supreme Court held that posting of an eviction notice on the apartment door of housing project residents does not satisfy minimum standards of procedural due process. The Court states that due process in any proceeding which is to be accorded finality is notice which is "reasonably calculated, under all the circumstances" to give actual notice of the proceeding (456 U.S. at 449, 102 S. Ct. at 1878).

The service standard stated in the HUD rule (for use of a service technique other than mail, or delivery of notice to an adult who answers the unit door) is a close restatement of the Constitutional standard enunciated in *Greene*. The rule directs that the alternative service technique used by the PHA must be reasonably calculated to provide actual notice. Since posting on the unit door (not supported by other means of giving notice) is not a technique which is reasonably likely to give actual notice, such service is not permitted under the standard stated in the proposed and final rule.

Nevertheless, because the question was raised in public comment, and for absolute clarity as to HUD's intention, the final rule adds—in addition to the general standard governing adequacy of alternative service techniques—an explicit statement that "posting on the outside of the unit door, and which is not supported by other notice to the Tenant, does not constitute sufficient notice" (§ 966.10(l)(2)(ii)(C)). The final rule retains the general standard in the form previously stated, since the standard is necessary for evaluation of the adequacy of alternative service techniques not specifically described in the rule.

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Comment objects to allowing the PHA to make service by sliding the notice under or through the door. The rule does not mention or prohibit service by sliding the notice under or through the door. For alternative modes of service not described in the proposed rule, the question is whether the PHA determines that the method of service used by the PHA is "reasonably likely" to give actual notice to the tenant.

All of the service techniques allowed under the rule meet the standards of procedural due process as they would be applied to a proceeding for deprivation of tenant's right to occupancy of the property. However, HUD believes that the standards for service of a notice of adverse action, or of a notice of lease termination, are not subject to due process requirements, since they are not necessary to assure a due process hearing before deprivation of the tenant's property right to occupancy of the unit. The rule provides that a PHA may only evict the family from the dwelling unit through a civil judicial proceeding in which the family has the opportunity to present a defense (§ 966.23(a)). The judicial procedure for eviction of the tenant is subject to all the panoply of procedural due process, including the Constitutional requirements for adequate notice of the eviction proceeding. The instant rule does not attempt to prescribe notice procedures respecting the State judicial proceeding for eviction of the tenant. Those notice procedures are established by State law, and are subject to due process requirements under the Fourteenth amendment.

Under the 1983 law, the tenant has a statutory right to notice of lease termination. Satisfaction of this Federal notice requirement is a statutory and regulatory prerequisite for termination of the lease and eviction of the tenant. Similarly, the tenant has a statutory and regulatory right to notice of a proposed adverse action. The question respecting adequacy of the process for service of these statutory notices is whether the notice procedure satisfies the statute and regulation. However, since the statutory notice does not finally determine the tenant's right to continued occupancy of the unit (which is determined in the judicial proceeding for eviction of the tenant, after Constitutional notice and opportunity to be heard) the adequacy of the statutory lease termination notice is not tested by Constitutional standards for procedural due process, but by consistency with the statute and regulation.

The rule provides that service must be by other means which "The PHA determines" are reasonably likely to give actual notice. This does not mean that PHA discretion to determine adequacy of alternative means of service is absolute. The PHA determination is subject to judicial review, under Constitutional, statutory or common law principles governing review of administrative action.

5. Notice to Handicapped

A tenant may be handicapped. The final rule adds a new provision which encourages the PHA to give supplemental notice to a handicapped tenant if the PHA has reason to believe that the ordinary forms of notice may not give actual notice to a handicapped tenant. Section 966.10(l)(3) provides that:

> If the PHA believes that the notice procedure otherwise used by the PHA may not give adequate notice to handicapped Tenants, the PHA notice procedure may incorporate additional procedures for giving notice to such Tenants.

6. Relation Between Forms of Notice

Comment states that the PHA should be required to attempt personal service, before using mailing or another method of service. Comment also states that the PHA should combine notice by mail with another service method likely to provide actual notice to the tenant, such as personal service or service at the dwelling.

Notice by mail, or by any of the other service procedures authorized in this rule, will generally communicate actual notice to the tenant. Any of the authorized services techniques is likely give adequate notice to the tenant.

HUD finds no justification for preferring one service technique to another, or for requiring use of one type of permitted service before using another type of service. HUD does not require that the PHA attempt personal service before trying another type of service. A requirement that the PHA must first try to make personal service would delay PHA action to terminate the lease, or take adverse action. The requirement would also impose a considerable administrative burden on the PHA.

HUD also will not require that mailed service must be supplemented by service through other means. Mailed service is generally an effective procedure for notice to the tenant.

7. State Law Requirements for Serving Termination Notice

Comment states that a notice of termination of tenancy under the rule should be given in accordance with State or local law, instead of federally imposed standards. The service requirements stated in this rule are intended to assure that the tenant has "adequate written notice" of lease termination, as required by section 6(l)(3) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(l)(3)), and to give the family notice of proposed adverse action (pursuant to section 6(k) of the U.S. Housing Act of 1937, 42 U.S.C. 1437d(k)).

The HUD regulation does not override service requirements imposed by State law. For termination of tenancy and eviction of the unit occupants, the PHA must satisfy any notice requirements imposed by State law and procedure. State law notices must be given in compliance with State law. Notices required in connection with the judicial termination procedure under State law must of course fulfill the requirements of procedural due process.

P. Tenant Comment on Lease Form or PHA Rules

The rule eliminates old rule requirements that a PHA allow 30 days for tenant comment on changes in the PHA lease form (old rule § 966.3), or on changes in PHA rules or schedules of PHA special charges (old rule § 995.5). Legal aid comment objects to the elimination of tenant comment requirements. PHA comment supports this revision of the rule.

Legal aid comment notes that tenants are affected by changes in the PHA lease and rules. The tenants should have the opportunity for basic input into a document which governs how they live. They are best able to determine the effect of PHA rules, and to propose alternatives. The elimination of tenant comment deprives the tenant of a meaningful opportunity for input.

Legal aid comment states that giving tenants a chance to comment on proposed revisions of the PHA lease form or PHA rules is good management practice, and creates a better dialogue between the PHA and its tenants. PHA commissioners are not intimately familiar with how the lease is administered. Consideration of tenant comment, as required by the old rule, improves the lease used by the PHA, but permits the PHA to implement necessary policies. PHAs often make changes requested by the tenants. The 30 day period for tenant comment does not cause significant delay in implementation of justifiable changes in the PHA lease or rules. Under the old rule, the PHA is not forced to accept a tenant comment, only to explain the proposed change and solicit tenant reaction. This process avoids misunderstanding and tension. The PHA

and the tenants benefit from weeding out unworkable proposals.

PHA comment approves removal of the old rule requirement to offer opportunity for tenant comment on changes in the PHA lease form or PHA rules. The old rule tenant comment requirement was an exercise in futility. Elimination of the tenant comment requirement will allow the PHA to change the lease or PHA rules more quickly. Lease changes are often required by HUD, and the lease changes which are directed by HUD may not be modified in response to tenant comment. PHA house rules and charges must be kept current with changing circumstances. However, a PHA comment notes that the PHA intends to continuing offering a 30 day opportunity for public comment, whether or not required by HUD.

The new rule does not retain the requirement to give the tenant an opportunity to comment on the PHA's adoption of a new lease form, or on changes in PHA schedules or rules. The degree and type of consultation with project residents is decided by the PHA, in the light of local circumstances. HUD does not have sufficient reason to impose a broad Federal requirement that PHAs allow tenant comment on revisions in the PHA lease form, or in PHA schedules and rules. (Section 965.473(c) requires a PHA to allow tenant comment before changing the PHA allowances for PHA-furnished and tenant-purchased utilities.)

It may be that giving tenants a full chance to comment and to be consulted on changes in PHA rules or lease forms is often good management practice, and may improve relations between the PHA and tenants. However, the national public housing rule does not seek to mandate all aspects of a presumed good management practice. The rule leaves much to the discretion and good management judgment of the PHA, in the spirit of the statutory objective of allowing a PHA maximum local responsibility in administration of its programs (U.S. Housing Act of 1937, section 2, 42 U.S.C. 1437). A procedure for soliciting tenant comment on a new lease or PHA rule is most useful if employed at the free volition of the PHA, and not for compliance with a Federal requirement.

Some comment asserts that elimination of tenant comment requirements is inconsistent with Federal statutory requirements for tenant participation in subsidized housing. Section 202 of the Housing and Community Development Amendments of 1978 (Pub. L. 95–557, October 1, 1978, 12 U.S.C. 1715z–1b) provides that tenants in certain HUD-subsidized multifamily projects must have an opportunity to comment on requests by a project owner to HUD for approval of certain procedures (such as the owner's request for a rent increase). This statute does not apply to public housing. For the programs covered by section 202, the statute does not require opportunity for tenant participation concerning a change in the lease form or project rules.

Comment suggests that the removal of tenant comment procedures is somehow contrary to the intent of Congress in section 6(c)(4)(C) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(C)). This law provides that a PHA must comply with procedures and requirements prescribed by HUD for sound management of public housing projects, including establishment of effective tenant-management relationships designed to assure satisfactory standards of tenant security and project maintenance. The law does not require that tenant must be given opportunity to comment on the PHA lease form or PHA rules.

Comment also cites section 3(c)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(c)(2)), which defines the term "operation", as used in reference to public housing in the 1937 Act. Under the Act, HUD may pay operating subsidy for "operation" of a public housing project. In section 3(c)(2) of the 1937 Act, the term "operation" is defined to include financing of tenant services, particularly where the tenants participate in development and operation of the services. This means that HUD operating subsidy may to used to finance tenant services. However, the statute does not mandate tenant participation in project management, and does not require that public housing tenants must be given an opportunity to comment on decisions of PHA management, including development of a new lease form or PHA rules.

Comment claims that elimination of the tenant comment requirement is inconsistent with HUD's rule concerning tenant participation and management in public housing projects (51 FR 44055, December 8, 1986). However, that rule does not require tenant participation in management of public housing, or in the development of the tenant lease or PHA rules. Instead, the form and extent of tenant participation is a local decision, which is made by a PHA after consultation with its tenants (24 CFR 964.9). The PHA must consult with the tenants, to ascertain if the tenants want to participate in project management, and to determine mutually-agreeable methods of tenant participation. In the consultation, the tenants may propose tenant participation in the development of the lease form or PHA rules, which might include the opportunity for tenant comment on a proposed lease or proposed rule. However, under the lease and grievance rule or the tenant participation rule, the nature and form of consultation between the tenants and the PHA is for local determination by the PHA.

Finally, comment suggests that tenants have a due process right to comment on a proposed lease form or PHA rules. It is true that the tenant has a practical interest in the terms of a PHA lease form or PHA rules. The lease and PHA rules affect administration of the project in which the tenant lives, and also establish rights and duties of the tenant. In the case of the lease, the tenant is bound by terms of the PHA lease form when the tenant executes a lease on that form. The tenant is bound by PHA rules when the rules are adopted by the PHA. Once the lease and rules are in place, the lease and rules establish rights and duties of the tenant, and those rights or duties may define property interests which are protected by the Constitution. However, the tenant does not have a property right, and consequently does not have a due process protected interest, to participate in the original shaping of the lease or rule by the PHA. There is no property right to comment on the making of a PHA rule, or on development of the form of lease that will be offered for execution by the tenant.

Q. Changes in Rent or PHA Rules

1. Changes During Lease Term

During the course of the lease term, a PHA has authority to make important changes which affect the tenant, by adopting new PHA rules, and also by revising the tenants rent or utility allowances. For clarity and ease of reference, provisions governing such PHA changes during the lease term are gathered in a new § 966.10(n):

(1) From time to time during the course of the lease, the PHA may revise the amount of Tenant Rent or of PHA allowances to the Tenant for PHA-furnished or Tenant-purchased utilities. The revised amounts are binding on the Tenant.

(2) From time to time during the course of the lease, the PHA may revise PHA rules. The revised rules are binding on the Tenant.

2. Rent Increase

PHA comment states that the tenant should not be allowed to delay rent increases by delaying acceptance of a new lease. However, prompt implementation of a rent increase does not require offer and acceptance of a

new lease or lease amendment. The lease provides that the amount of tenant rent is determined by the PHA in accordance with HUD regulations and requirements. The PHA may change the amount of rent previously determined by the PHA (§ 966.10(c) and § 966.10(n)(l)). The final rule also provides that the PHA may revise the amount of PHA allowances to the tenant (for PHA-furnished or tenant-purchased utilities) (§ 966.10(d)(5) and § 966.10(n)(1)). A rent change as determined by the PHA after annual or interim reexamination is not an amendment of the lease, but is a change in the rent amount in accordance with the terms of the existing lease. Rent changes are made by notice to the tenant, and do not require any change in the terms of the lease. Upon PHA notice of the new amounts, the revised amounts are binding on the tenant.

Although not required by this rule, the lease may state the current rent amount (and not merely the requirement for rent computation in accordance with HUD requirements). Inclusion of the actual amount may be required by State law, or may assist in enforcement of rent payment requirements in the local landlord-tenant courts. If desired by the PHA, the lease may provide that the amount of rent stated in the lease may be revised by a PHA notice to tenant (which states the new rent amount), and that such notice constitutes an amendment of the lease.

3. PHA Rules

The proposed rule provides that the PHA rules must be available for inspection by a family, but does not require the use of any particular procedure (posting or otherwise) for this purpose. Public comment states that the PHA should be required to post the rules, or furnish the rules to the tenant. A tenant must have notice of PHA rules so that the tenant can comply. The tenant should be given a copy of the rules. Unless PHA rules are furnished to the tenant, the rules may be unenforceable. However, other comment states that posting of rules is not necessary.

The final rule provides that the tenant must comply with "necessary and reasonable PHA rules, on conduct of Household members, or on use and treatment of the unit and premises by the Tenant and Household" (§ 966.10(h)(2)(iv)). The final rule requires the PHA to give the tenant a copy of these PHA rules—including any changes in the rules. The purpose of this requirement is to give the tenant fair notice of the rules with which the tenant must comply.

R. Offer of Lease or Revision

1. Offer and Acceptance

A public housing tenancy continues indefinitely until terminated for cause. During the term of an ongoing lease, the PHA may need to revise the lease terms, or to enter a new lease with the tenant. For example, the PHA may want to incorporate new lease provisions because of a change in State statutes, or because of new court decisions.

The lease is a contract between the tenant and the PHA. The lease may only be revised by the tenant's agreement to be bound by new lease provisions. The rule (§ 966.10(o)2)) states that "the Tenant is not bound by a new lease or lease revision unless the PHA's offer is accepted by the Tenant". Thus a revision of the lease is not accomplished by unilaterial act of the PHA, or without assent of the tenant. By contrast, the PHA has unilateral authority to revise PHA rules or the tenant rent, and these revisions do not require assent of the tenant (see § 966.10(n) of the rule, and section III.Q of this Preamble).

Comment states that in California a landlord may give notice of new lease terms. If the tenant remains in possession for 30 days, the tenant is deemed to have accepted the new terms offered by the owner. Under the HUD rule, a new lease is not binding unless accepted by the tenant. Moreover, the rule provides that the PHA's offer of a new lease or lease revision must state how to accept the PHA offer (§ 966.10(o)(3)). However, the HUD rule does not seek to define what constitutes an offer and acceptance, thus forming a binding contract between the PHA and the tenant. The HUD rule leaves this question to the general law of offer and acceptance, as determined by State statute or common law.

Comment states that tenant acceptance of a new lease should be assumed. The tenant should have the burden of refusing the offer. This recommendation is not adopted. HUD acknowledges that the content of the lease is not ordinarily determined by individual negotiation between the tenant and the PHA, and that a tenant may sign the lease without much understanding of what the document means. HUD acknowledges also that the procedure proposed by this comment may be convenient for both the PHA and the tenant, and avoids the risk that the tenancy may be terminated for tenant's failure to accept the PHA offer by the PHA deadline. However, the public housing lease is an important contractual undertaking by the tenant, and should be the product of a positive act of acceptance in accordance with State law and the PHA offer, not simply the product of tenant's failure to submit a formal refusal of the offer of a new lease.

Comment advises that the requirement for a tenant to execute a new lease in accordance with this rule should not apply to modifications of the lease provisions which were previously required by HUD under the old rule. However, the Department does not have the power to unilaterally bind the tenant contractually to new or different lease provisions. To change a lease executed under the old rule, the tenant has to agree to the new lease terms. (HUD has, however, power to establish new regulatory or other requirements, e.g., respecting tenant rent, which affect the tenant's occupancy under an existing lease.)

2. Timely Acceptance

The final rule states (§ 966.10(o)(3)):

The offer of a new lease or lease revision shall state that failure to timely accept the PHA's offer is grounds for termination of tenancy. The offer shall state how to accept the offer. The offer may state that the Tenant must accept the lease by a PHA-established deadline which is stated in the offer. Failure to timely accept the PHA offer shall be "other good cause" for termination of tenancy.

The rule provides that tenant's failure to "timely accept" the PHA offer of a new lease or revision is grounds for termination. Comment states that the rule should specify what period is "timely", and states that the period for tenant acceptance should be short (five working days or two weeks).

The final rule does not set a uniform period for acceptance of the PHA lease. HUD agrees, however, that the PHA should be able to fix a definite deadline for the tenant to accept the new lease. For orderly and uniform administration of the transition to a new lease form, and for prompt implementation of the new lease provisions, the PHA should be able to set a date certain for return of the executed lease. The PHA needs to know when the deadline has expired, and the PHA may proceed to terminate the tenancy for failure to accept the new lease. The imposition of a clear deadline will also help the PHA push for prompt return of the executed lease by a tenant.

The final rule is revised to state that the PHA has the right to establish a deadline for the tenant to accept the offer of a new lease (§ 966.10(o)(3)). The tenant does not have a right to postpone lease acceptance beyond the PHA established deadline. Late acceptance of the lease by a tenant does not remove the grounds for termination of tenancy.

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Comment states that if failure to accept a new lease is good cause for termination of tenancy, this should be stated in the PHA's written offer. HUD agrees. The tenant should know what will happen if the tenant does not return the executed lease in time. Clear notice to the tenant will also tend to help produce the desired result—prompt return of the executed lease by the tenant. The final rule provides that the PHA's offer must state that failure of timely acceptance is grounds for termination of tenancy (§ 966.10(o)(3)).

3. Failure to Accept is Grounds for Termination of Tenancy

As leverage to induce a public housing tenant to accept lease changes proffered by PHA, the PHA must have the right to terminate the tenancy if the tenant declines to accept the offered changes. The old rule does not explicitly state that the PHA may offer a new lease to the tenant, and that failure to sign a new lease is good cause for termination of tenancy. The new rule provides that the PHA may offer the tenant a new lease or revision of the lease (§ 966.10(o)(1)), and that failure to timely accept the PHA offer shall be "other good cause" for termination of tenancy (§ 966.10(o)(3)).

PHA comment strongly supports clarification that non-acceptance of the PHA offer of a new lease is ground for termination of tenancy. Many tenants do not sign new leases. The failure to sign a new lease is an administrative burden for the PHA.

Comment criticizes the provision that the tenant's failure to return the new lease in time "shall" be good cause for eviction. Comment claims that in some situations failure to return the new lease is excusable. The rule should recognize that failure to return the lease "may" be ground for termination. The PHA should have flexibility to decide whether the tenant will be evicted.

Such comment is based on a misunderstanding of the new provision. If the tenant does not accept the lease offered by the PHA, the PHA has legal grounds to evict. However, a PHA does not have to terminate tenancy in every instance where there is legal good cause for termination. The determination to terminate tenancy and evict the tenant is not automatic. The PHA has managerial discretion to consider special circumstances of the individual case, and to decide whether to evict the tenant. In practice, most PHAs will be loath to evict for minor or excusable delay in accepting the PHA offer of a lease. The authority for termination of tenancy where the tenant fails to accept the PHA offer of a new lease or revision will probably be chiefly used as a stimulus for prompt return of executed leases.

4. When Offered

The proposed rule provides that the PHA must give written notice of the offer of a new lease or revision at least *thirty* days before the proposed date when the new provisions will be effective. Under the final rule, there is no requirement for specific minimum notice before the proposed effective date. (But see section III.T of Preamble, concerning required notice at the end of a fixed term lease.) Since the new lease does not go into effect without acceptance by the tenant, a specified minimum notice is not necessary. The PHA can work out the mechanics of scheduling offer and acceptance of a new lease before a desired effective date.

S. Term of Lease—Fixed Term or Periodic Tenancy

Comment states that the new rule requires the PHA to lease the unit for a fixed term, rather than for a lease term which continues indefinitely until terminated for cause. Comment states that the rule should retain leases that renew automatically each month until terminated for cause. The use of fixed term leases causes unnecessary paperwork and administrative burden in order to renew the lease at the end of the fixed term.

In reality, the proposed rule did not require or encourage the use of fixed term leases. Under the new rule, as under the old, the PHA has a choice whether to enter a lease for a periodic tenancy (month-to-month or other interval chosen by the PHA), or for a fixed term. Both options are equally available to the PHA under the old rule or the new. HUD did not propose any change in this system, and no such change is included in this final rule. Under either form of lease, the public housing tenancy continues indefinitely until terminated for cause (see U.S. Housing Act of 1937, section 6(l)(4), 42 U.S.C. 1437d(l)(4); § 966.21).

The old rule provides that a PHA may not "terminate or *refuse to renew* the lease" other than for cause. Thus, if a PHA chooses to use a fixed term lease, the PHA is required to renew the lease unless there is good cause for termination of tenancy. Similarly, under the new rule the PHA may not terminate the tenancy except for good cause grounds (§ 966.21). The phrase "termination of tenancy" is defined (§ 966.2) as termination of the tenant's "legal right to occupancy of the dwelling unit", including "a decision not to renew the lease at the end of the lease term".

Comment notes that HUD has eliminated authority for use of fixed lease terms in the section 8 certificate program (as well as the section 8 voucher program) because of the problems of fixed term leases. In substance, the comment asks why the same logic does not support elimination of fixed term leases in public housing. It is true that in public housing, as in the certificate program, the assisted tenancy continues indefinitely unless terminated for cause. There is, however, a central structural distinction between the programs. In the section 8 program, the flow of housing assistance payments to the owner can only continue so long as there is a lease. Where there is a fixed term lease, the section 8 assistance payments immediately terminate at the end of the fixed lease term if a new lease (and assistance contract) is not entered (see Preamble section VIII.A in 49 FR 12215, 12231–12232, March 29, 1984). In public housing, there is no parallel problem of assuring that the flow of Federal subsidy, and consequently assisted occupancy by the tenant, is not interrupted on termination of a fixed term lease. In the public housing program, the PHA is the owner of the dwelling unit. If the PHA has not entered a new lease, the tenant may continue to live in the unit unless the tenancy is terminated for cause. There is no interruption of subsidy or of the assisted occupancy. The PHA may only evict the tenant on a showing of good cause.

HUD has not surveyed the extent to which PHAs use fixed term leases or periodic leases. It is HUD's impression that most PHAs do not use fixed term leases, but use leases that renew periodically unless terminated for cause. As stated in public comment on this rule, use of periodic leases reduces the administrative burden of the PHA, since the existing leases extend automatically until there is a particular reason for changing the lease. As under the old rule, the choice whether to use a fixed term or a periodic lease is best left to the PHA, since the PHA can weigh the additional administrative burdens of a fixed term lease, and any other factors supporting use of either form of tenancy. In making the decision, the PHA may be influenced by procedural or substantive incidents of the tenancy under State law.

Because comment exhibits considerable confusion on the type of tenancy which is allowed by the new rule, the final rule adds a new provision to clarify that the PHA has the choice of a fixed term or periodic tenancy. The rule now provides (§ 966.10(b)(2)):

The term of the lease may be for a fixed term tenancy or for a periodic tenancy (e.g., month-to-month). In either case, the PHA shall not terminate the tenancy except in accordance with [HUD requirements].

The PHA may only evict the family on a showing of good cause.

T. Fixed Term Lease—Notice at End of Lease term

A PHA may use a fixed term lease or a periodic lease. In the case of a fixed term lease, the lease does not extend automatically. At the end of the stated lease term, the lease ends unless the PHA and tenant enter into a new lease.

The final rule adds a new provision which requires notice to the tenant before the end of a fixed term lease (§ 966.10(o)(4)). At the end of a fixed term lease, the tenant loses the tenure and occupancy protections provided by the lease. The end of a fixed term lease is a major change in the legal occupancy rights of the former tenant. For this reason, the concept of termination of tenancy is specifically defined to include "a decision not to renew the lease at the end of the lease term" (§ 966.2). The PHA must have good cause grounds for termination of tenancy (serious or repeated lease violation or other good cause) (§ 966.21).

For protection of the tenant at the end of a fixed term lease, the rule provides that at least sixty days before the end of the fixed lease term, the PHA must either offer the tenant a lease renewal (on the same or revised terms), or must notify the tenant that the PHA has decided not to renew the lease (including a statement of the good cause grounds for not renewing the lease).

The rule (§ 966.10(o)(4)) provides that:

at least 60 days before the end of the [fixed] lease term, the PHA shall give written notice to the tenant containing either:

(i) the offer of renewal (on the same or revised terms), or

(ii) notice that the PHA has decided not to renew the lease, including a statement of the [good cause] grounds * * * for not renewing the lease.

As the end of the fixed term approaches, the tenant needs to know if the PHA intends to renew the lease, or intends to refuse a renewal on appropriate good cause grounds. Statutory and regulatory requirements for notice of lease termination do not apply, since the natural end of the fixed lease term is not a termination of the lease. The sixty day notice required by this rule informs the tenant whether the PHA intends to renew the lease at the end of the fixed term, or to terminate the tenancy for cause. If the PHA has decided to terminate the tenancy, the tenant can prepare to leave the unit, or to contest the grounds for termination.

The sixty day notice requirement only applies at the end of a fixed term lease, but does not apply to a periodic tenancy—which renews automatically unless terminated for cause (such as a periodic tenancy from month-to-month or year to year). In the case of a periodic tenancy, the leasehold will continue indefinitely unless the PHA gives notice of lease termination (see § 966.22), or gives notice that the PHA is offering a new lease or revision (see § 966.10(o)). By contrast, a fixed term lease expires automatically at the end of the predetermined fixed term, and the rule requires sixty day notice so that the tenant will know what will happen at the end of the fixed term, and can take appropriate action.

Comment recommends that the PHA be required to state good cause grounds for refusal to renew a fixed term lease at the end of the lease term. This recommendation is adopted.

U. Transition—Applicability of New Lease Requirements

The rule provides that the new regulatory lease requirements are applicable to any lease which is executed by a tenant after the effective date of the rule, including the execution of a revision or extension after that date (§ 966.12). The new lease requirements do not automatically apply to preexisting leases, but become applicable by the positive contractual action of the tenant in executing a new lease, a lease revision, or a lease extension offered by the PHA.

New lease requirements apply to all leases executed after the rule is effective. However, there is no requirement to terminate existing leases wholesale, or to execute new leases by a HUD-imposed regulatory deadline. The PHA is permitted to phase in the use of the new regulatory lease requirements by determining when tenants execute new lease documents. The PHA may schedule execution of leases and lease revisions in accordance with prior PHA practice, or other PHA policy on conversion to use of new leases. Under the new rule, the PHA will have considerable freedom in working out timing of a process to convert existing leases to new leases developed under the new rule. The PHA is free to pick an appropriate period or point in time for execution of new leases, and thus for conversion of existing leases to requirements of the new rule.

PHA comment expresses a preference for conversion at the next reexamination of a tenant, to avoid the administrative burden of operating for a period under different lease forms. HUD agrees that the regular annual reexamination may be a convenient conversion point. The offer of a new lease may be handled at the same time as other communications with tenant in connection with the reexamination. If tenant reexamination dates are staggered through the PHA fiscal year (to even out the workload of processing reexaminations), the use of the annual reexamination as the point of conversion would have the effect of staggering the lease conversion through the PHA fiscal year. During this period, the PHA will have some tenants on the old lease form, and some on the new. Alternatively, the PHA may choose to set a single date for conversion of the whole PHA program, to diminish the period of overlap between use of old and new lease forms.

The speed and form of the conversion process is affected by the terms of existing leases, as well as by procedural and substantive requirements under State law. The conversion process must be consistent with contractual rights of tenants under existing leases. Many PHAs use month-to-month periodic leases, which extend automatically until the leases are terminated for cause. It appears that in general a lease may be readily and rapidly converted by offering a new lease, and giving thirty day notice that the old lease is terminated in order to permit conversion to the new lease.

Legal aid comment states that PHAs should be allowed to retain current leases developed for use under the old rule. HUD notes that the new rule does not grandfather lease forms developed under the old rule. All new leases must comply with the new rule. However, few changes will be necessary. Most regulatory changes from the old lease rule remove or relieve lease requirements which are too detailed, or which overly constrain the managerial discretion of the PHA. Therefore, most provisions which satisfied the requirements of the old rule will also satisfy requirements of the new rule. The PHA may elect to continue use of the old lease form, after making those few modifications necessary to comply with the new rule.

The old rule provided that the PHA grievance procedure must be incorporated in the PHA dwelling lease (old rule § 966.50). Therefore changes in the scope and shape of the old PHA grievance procedure pursuant to this rule (see Part V and Part VI of this Preamble) should be accompanied by corresponding revisions in the grievance requirements incorporated in the PHA dwelling lease form, or by removing the

grievance procedure from the lease form. The new rule does not require incorporation of the PHA grievance procedure in the tenant lease.

Because the grievance procedure was incorporated in the old lease, the PHA may have to revise existing leases in order to implement changes in the grievance procedure. Under the old lease, the tenant has a contractual right to use the grievance procedure stated in the lease. These contractual rights of the tenant under the existing lease may therefore prevent the PHA from making changes in the grievance process with respect to the tenant (for example, excluding termination of tenancy and eviction from the PHA grievance procedure). The right of an existing tenant to use the old grievance procedure under an existing lease depends on the particular contractual language by which the grievance procedure was incorporated in the lease. For example, a simple incorporation by reference which binds the PHA to use the current PHA grievance procedure does not freeze the grievance procedure in effect at the time of lease execution, but will accommodate the grievance procedure changes which are authorized under this rule. In any event, execution of a new lease will wipe out any rights to use of the old grievance procedure as incorporated in the old lease.

V. Turnkey III and Indian Housing—Lease Requirements

1. Turnkey III and Mutual Help

In the Turnkey III and Mutual Help homeownership opportunity programs, PHAs are required to use the forms of homeownership agreement prescribed by HUD. In each program the agreement with the homebuyer is a long-term lease with option to purchase (for a term of 25 or 30 years). The form agreement does not contain any of the unreasonable provisions prohibited for the HUD housing subsidy programs, or any other provisions deemed unreasonable by the Department. Thus, no new regulatory action is necessary for compliance with the prohibition of unreasonable lease provisions in the 1983 law.

Under the 1983 law, a PHA must give adequate written notice of lease termination, for a minimum period specified in the law (42 U.S.C. 1437d(l)(3)). HUD-prescribed form homeownership agreements require adequate 30 day notice if a homeownership agreement is terminated by the PHA for breach of the agreement by the homebuyer (Turnkey III and Mutual Help), or for loss of homeownership potential (Turnkey III) (see § 904.107(m) and (o), and 905.424(b) of the present rules). These existing notice procedures satify the statutory requirements for notice of lease termination under the 1983 law.

The Turnkey III and Mutual Help agreements also provide that the PHA may terminate an agreement if there is no qualified successor (on death, mental incapacity or abandonment by the homebuyer) (§ 904.107(l)(3) and 905.425(g)). However, the existing regulations do not explicitly require notice of termination on this ground. The regulations are therefore amended to require adequate written notice of termination in compliance with the 1983 law. For consistency with the other termination provisions in the Turnkey III and Mutual Help regulations, the rule requires 30 days notice of termination if there is no qualified successor to the homebuyer.

The Turnkey III and Mutual Help regulations and forms of homeownership agreement provide (§ 904.107(m)(l) and 905.424(a)) that the PHA may terminate the homebuyer agreement if the homebuyer violates the agreement. To accord with the statutory standard for termination of tenancy under the 1983 law (U.S. Housing Act of 1937, section 6(l)(4), 42 U.S.C. 1437d(l)(4)), this rule amends the regulations for these homeownership programs to specify that the homeownership agreement may be terminated for *"serious or repeated* violation" of the agreement.

The Turnkey III and Mutual Help homebuyer agreements may also be terminated if there is no qualified successor (§ 904.107(1)(3) and 905.425(g)), or (in Turnkey III) if the homebuyer has lost homeownership potential (§ 904.107(o)). Both of these grounds for termination are comprised in the concept of "other good cause" for termination of tenancy, and no amendment is necessary for compliance with the standards for termination of tenancy in the 1983 law.

2. Indian Rental Projects

Historically, Indian housing rental projects have not been covered by regulatory lease requirements for non-Indian rental projects (Part 966), nor are such requirements contained in the Indian Housing regulation (see Part 905, Subpart C). The new statutory lease requirements must be implemented for the Indian housing rental program.

This rule requires full compliance with the statutory lease requirements enacted in 1983 (42 U.S.C. 1437d(l)), but does not require use of the more elaborate set of regulatory lease requirements imposed by HUD under the 1983 law for non-Indian rental projects. The rule provides (§ 905.303) that a written lease shall be entered between the Indian Housing Authority (IHA) and the tenant of a rental unit.

The lease must:

—Obligate the IHA to maintain the project in a decent, safe and sanitary conditon.

—Require the IHA to give adequate written notice of termination of the lease in accordance with the requirements (§ 966.22) for non-Indian projects.

—Require that the IHA may not terminate the tenancy except for the statutory good cause grounds (§ 966.21).

The lease may not include any of the lease provisions prohibited by HUD (section 966.11).

IV. Termination of Tenancy

A. Grounds

1. Statute and Rule

Under section 6(l)(4) of the U.S. Housing Act of 1937 (42 U.S.C. 1437(l)(4)), the lease must require that the PHA may not terminate the tenancy "except for serious or repeated violation of the terms or conditions of the lease or for other good cause." This statement of the grounds for termination of tenancy was added in the 1983 law.

Under the rule (§ 966.21(a)), a housing lease must require that:

"The PHA shall not terminate the tenancy, and shall not evict occupants from the dwelling unit, except for (1) serious or repeated violation of the lease, or (2) other good cause."

2. Other Good Cause

a. When PHA May Terminate for Other Good Cause. Comment recommends that the PHA should be required to give advance notice of family behavior which will *in the future* be good cause for termination of tenancy, as in the current regulations for some of the project-based HUD subsidy programs. The comment states that a tenant should not be threatened with eviction for grounds which are not foreseeable. The tenant should be given thirty days notice that specified future conduct and action will be "other good cause" for termination of tenancy.

This recommendation is not adopted. The PHA should be able to respond immediately to family behavior which justifies a termination of tenancy, and should not have to wait for a repetition of the behavior. Types of undesirable family behavior which are anticipated by the PHA are ordinarily prohibited in the lease or in PHA rules. The statutory category of "other good cause" is most

usefully applied to permit a termination of tenancy for grounds not readily foreseeable by the PHA.

Comment states that there should be a more explicit regulatory definition of "other good cause", and that good cause should be explicitly defined in the lease. Comment complains that PHAs may use other good cause as a catch-all category that substantially negates good cause.

HUD believes that the concept of other good cause should be left broad and flexible, as authorized by the statute, for application by PHAs and the courts to a variety of facts and circumstances—including other good cause related to the behavior or characteristics of the family, and other good cause related to requirements for the PHA's management of the housing.

Comment says other good cause should be limited to material violations which affect livability of the property, or tenant health or safety. The suggestion is not adopted. The proposed change would unduly constrict the use of termination for other good cause.

b. Termination At End of Lease Term. In the private rental market, a landlord may terminate the lease *during the lease term* if the tenant violates the lease. At the end of the lease term, the landlord may generally refuse to renew for any reason or no reason (although this common law principle may be modified by state statute). In the public housing program, a tenancy continues indefinitely until terminated for cause. At the end of a lease term (including a periodic or a fixed term), the PHA must renew unless there is good cause for refusing to renew. The public housing tenancy is open-ended, and the PHA therefore needs a flexible authority to terminate the tenancy at the end of the lease term, for reasons which may not have been expected or included in the lease.

During the term of the lease, the PHA is bound by the lease with the tenant. Like any landlord, the PHA needs authority to evict a tenant who breaches a term of the lease. It is, however, less important that the PHA should have the broad authority to evict *during the lease term*, for grounds other than violation of the lease by the tenant. The final rule is therefore revised to provide that the PHA may only terminate the lease for other good cause "at the end of a lease term" (§ 966.21(c)(1)).

The rule also describes how this broad rule applies to a fixed term lease or to a lease for a periodic tenancy (§ 966.21(c)(2)):

> A fixed term lease may be terminated for other good cause at the end of the fixed term. A lease for a periodic tenancy may be terminated for other good cause at the end of each periodic term. For example, in the case of a month-to-month tenancy, the lease may be terminated for other good cause at the end of each month.

3. Violation of lease

a. Comment on Statutory Standard. Some comment asserts that the PHA should be permitted to terminate tenancy for any lease violation, not only for a "serious or repeated" violation as provided under the 1983 law. The standard for termination of tenancy will be subject to varying judicial interpretation, and will hinder ability of PHAs to evict. Comment suggests that while any lease violation should be grounds for eviction, the tenant should have a reasonable time (not more than 30 days) to correct the violation. Comment claims that the serious or repeated violation standard is useless and ambiguous.

Provision that a PHA may only terminate tenancy for serious or repeated violation of the lease (and thus may not terminate for a lease violation which is not serious or repeated) is necessary to comply with the 1983 law (U.S. Housing Act of 1937, section 6(l)(4), 42 U.S.C. 1437d(l)(4)). The rule must follow the statutory standard.

The concrete day-to-day operation of the statutory standard depends on how the standard is applied by State landlord-tenant courts in individual cases. Under this rule, the Federal statutory standards for termination of tenancy must be included in the public housing lease. Local landlord-tenant courts will apply the Federal standards for termination of tenancy (as terms of the public housing lease) to the facts of individual cases. A court has recently noted that claims under the termination of tenancy and other lease provisions required by the 1983 law "belong in local court" (*Edwards v. D.C.*, 821 F.2d 651, 653–54 n.2 (DC Cir. 1987)). It is the sense of the Department that the "serious or repeated" violation standard under the 1983 law is a reasonably workable basis for termination of tenancy in the public housing program.

b. What is a Serious or Repeated Violation? Comment states that HUD should further define or give examples of what is a "serious" or "repeated" violation of the lease.

Under the lease, the PHA may evict for a single "serious" violation of the lease, even if the violation is not repeated. The rule does not attempt a comprehensive definition of what types of violation are "serious". In general, application of this concept is best left to decisions by the State landlord-tenant court in individual cases.

However, the rule clarifies that the PHA may treat several specific types of lease violation by the tenant as a serious violation, and so as grounds for termination of tenancy:

(1) Failure to supply information or certification (§ 966.21(b)(1)) (see discussion at section III.H.2 of Preamble).

(2) Non-payment of rent or charges (§ 966.21(b)(2)) (see discussion at section III.G.5.b of Preamble).

(3) Utility shut-off when tenant fails to pay utility bill (§ 966.10(d)(4)(ii)) (see discussion at section III.G.5.e of Preamble).

The rule states that the concept of serious lease violation "includes, but is not limited to" the three mentioned cases (§ 966.21(b)).

Issues concerning termination of tenancy for non-payment of rent or charges, or for failure to provide income or other information, are of particular importance to PHA management of the program. The payment of rent, and the submission of required information on family information and composition, are necessary to implement statutory requirements, and for sound management of public housing projects. The rule provides that where the tenant fails to pay rent or charges, or fails to supply information required by the PHA, "the PHA may determine" that the failure is a "serious" violation of the lease (§ 966.21(b)). See discussion at section III.G.5.b (non-payment) and section III.H.2 (failure to provide information) of this Preamble. These provisions are a contractual affirmation that the determination to treat a lease violation as a serious violation warranting termination of tenancy is vested in the first instance in the administrative judgment of the PHA. The PHA has a contractual right to make the determination in accordance with the lease.

The final rule states that a utility shut-off because of tenant's failure to pay the utility bill is a serious lease violation. See discussion at section III.G.5.e of this Preamble.

The concept of "repeated" lease violation is usually easy to apply. Tenant's obligations are stated in the lease. Any lease violations may be grounds for termination if the violations are "repeated". It should be noted that the lease does not provide that the tenancy may only be terminated for repeated violation of the same provision of the lease, or for repetition of the same violation. Any set of repeated violations may be ground for termination of tenancy.

The old rule provides that the PHA may terminate the tenancy for serious or repeated violation of "material" terms of the lease. Comment criticizes elimination of the provision that the violation must be of a "material" term of the lease. Elimination broadens the base for eviction, and encourages the PHA to evict for minor infractions.

The final rule follows the statute, and does not include the limitation to violation of "material" terms. All terms of the lease are part of the contractual arrangement between the PHA and the tenant. Tenant's violation of any lease may result in termination of tenancy if the violation is either serious or repeated. The limitation to serious or repeated violation is a sufficient safeguard against eviction for trivial or minor reasons. The proposed restriction to "material" terms of the lease implies that there are non-material terms. The tenant should not be encouraged to believe that there are any lease requirements which may be safely ignored. The lease is a contract, and all provisions of the contract are binding. The retention of the old "material terms" limitation may encourage judges to reject eviction on subjective grounds, rather than to enforce the plain and literal requirements of the lease.

4. Grounds for Termination—Other Issues

a. PHA Discretion to Evict. Some comment states that the PHA should have discretion in deciding whether to evict the family. HUD agrees that the decision to evict is a discretionary management decision by the PHA. The statute and rule establish minimum grounds for termination of tenancy. The PHA is not required to terminate tenancy and evict in every case where there is ground for termination of tenancy.

b. Effect of Federal Rule on State Procedures. Comment states that the rule should require compliance with procedural protections for a tenant under State law, or should provide that State law controls where the Federal rule interferes with tenant protections under State law. Comment expresses concern that the rule deprives a public housing tenant of rights of a private tenant under State law. Other comment is concerned that the Federal rule may preempt State protections.

At a minimum, tenants are entitled to all the protections afforded by Federal law and this rule. State law may not override rights under Federal law or regulation, but may give a tenant the right to additional protections. Federal statute and regulation governing lease rights and termination of tenancy in the public housing program is not a comprehensive scheme that precludes other State regulation concerning this subject. To the contrary, it is assumed that the procedural and substantive law affecting a tenancy in the public housing program is compounded of elements established by both Federal and State law.

State laws are binding without incorporation in a Federal rule, or in the Federally-required lease requirements. State tenant protections may be enforced through the State courts or other procedures available under State law, without any need to create a Federal right to State law protections.

B. Notice of Lease Termination

1. Notice Period

Section 6(l)(3) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(l)(3)), which was added by the 1983 law, provides that a public housing PHA must use leases that require "adequate written notice of termination of the lease" by the PHA. The law prescribes minimum notice periods:

> (A) a reasonable time, but not to exceed 30 days, when the health or safety of other tenants or public housing agency employees is threatened;
>
> (B) 14 days in the case of nonpayment of rent; and
>
> (C) 30 days in any other case * * *.

The statutory notice periods required by the 1983 law are essentially the same as under the old rule. The new rule requires a PHA to give notice of lease termination in accordance with the 1983 law (§ 966.22(a)).

The rule requires fourteen days notice in case of non-payment of rent. PHA comment states that HUD should not require written notice for non-payment of rent. Comment from a tenant organization says that ten days is ample. In answer to these comments, HUD notes that the requirement for notice of lease termination, and the fourteen day notice period for non-payment of rent, are statutory. The notice may not be eliminated or shortened.

The rule provides that if health or safety of tenants or employees is threatened, the notice period must be a "reasonable time" (§ 966.22(a)(1)). The statute and rule do not state any fixed minimum period for "reasonable" notice. However, the PHA is never required to give more than thirty days notice.

Comment recommends that the PHA should have to give notice for a minimum of ten days, but not more than thirty days. Comment requests further definition of "reasonable time", and states that a reasonable time should never exceed twenty-four hours.

HUD acknowledges that the application of the statutory "reasonable time" standard to particular cases may be a subject of dispute. The PHA has a legitimate need to know that the PHA's good faith judgment of what is a reasonable time as applied to a concrete set of facts will be sustained by the local landlord-tenant court. The PHA may be torn between the PHA's perception of urgency, and uncertainty whether the PHA's perception, and consequently the PHA's decision on what is a reasonable time, will be upheld by the local landlord-tenant court. If the court disagrees, the PHA may be forced to re-trace procedural steps for eviction of the tenant, prolonging time needed to evict the tenant and prolonging also the danger to tenants or PHA employees.

HUD has no basis for defining a fixed reasonable time, where the notice period is less than thirty days. The determination of reasonableness should be based on the facts of individual cases. HUD also believes that the "reasonable time" standard is intended by the Congress to leave room for practical seat-of-the-pants judgments by PHA officials. HUD should not impose an arbitrary national standard.

However, the rule explicitly recognizes that the original judgment of what is a reasonable time can only be exercised by the PHA, which is responsible for day-to-day management of the program. The final rule provides that in health and safety cases notice of lease termination may not be less than "a reasonable time, *as determined by the PHA* * * *." (§ 966.22(a)(1)). In addition, the final rule states that "the PHA may establish a policy for determining what is a 'reasonable' time in different types of cases" *(Id.)*. The PHA is responsible for determining what is a "reasonable time".

2. Requirement for Adequate Notice

In accordance with section 6(l)(3) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(l)(3)), the rule provides that the PHA's notice of lease termination must give the tenant "adequate written notice" of a termination of the lease (§ 966.22(a)). The rule also prohibits use of a lease provision which would waive the statutory and regulatory requirement for adequate notice of lease termination (§ 966.11(d), see section III.L.3 of Preamble).

Comment states that the rule should specify that the PHA may only evict after complying with HUD requirements for a lease termination notice. HUD believes that further rule language is not necessary for this purpose. The rule provides that the PHA must give notice

of lease termination to the tenant, and describes what is required for such notice. The lease, and therefore the tenant's right to occupancy under the lease, does not terminate unless the Federally required notice has been given. Consequently, the PHA may not evict until expiration of the required lease termination notice.

Comment states that the requirement for "adequate written notice" is too loose, and will result in inconsistent enforcement. However, the rule lists the principal elements which must be included in the lease termination notice § 966.22(b) on contents of termination notice), and also states the minimum notice periods required by the 1983 law. The rule will provide adequate instruction to the PHA.

The notice must "contain a specific statement of the reasons for lease termination" (§ 966.22(b)(3)). Comment states that the notice should provide enough information so that the tenant can prepare a defense, and that the notice should state the factual basis for the reasons, and the source of the facts.

A simple requirement to state the reasons for lease termination adequately conveys the need for an informative statement on the reasons why the PHA is terminating the lease. HUD will not burden the PHA with the need to draft elaborate pleadings setting forth factual and legal reasons for termination of the lease. The Federal notice of lease termination does not replace any pleadings or notices required in the State proceeding for eviction of the tenant. The State court eviction proceeding is subject to procedural requirements under State law, and to requirements for procedural due process under the fourteenth amendment that allows the tenant adequate notice and opportunity to present a defense.

Comment notes that the lease termination notice should state that the PHA can only evict the tenant for good cause. This recommendation is adopted.

Under the final rule the contents of the lease termination notice must:

—State that the PHA may only terminate the tenancy for serious or repeated violation of the lease, or other good cause" (§ 966.22(b)(2)).

—Contain a specific statement of the reasons for lease termination" (§ 966.22(b)(3)).

—State that the PHA may only evict occupants from the dwelling unit (i) through a civil court proceeding in which the Tenant has the opportunity to present a defense, and (ii) after a decision by the court on the rights of the parties" (§ 966.22(b)(4)).

3. When Lease Terminates

The October 1982 proposed rule (proposed § 866.13(b)(1)) provided that a notice of termination of tenancy must state the "date the tenancy shall terminate". A technical comment noted that under termination procedure in some States the actual date of lease termination is not or cannot be known at the time the PHA gives the HUD-required termination notice. This may occur, for example, because the date of lease termination depends on future events (such as actions by the local landlord tenant court after commencement of the eviction proceeding) whose dates are not known by the PHA at the time the PHA gives notice to the tenant. In response to this comment, the rule provides that the notice of lease termination must state "when" the lease will terminate (§ 966.22(b)(1)). If the date of lease termination is not known, the notice may state "the event by which the lease terminates under local procedures".

4. Relation to Notices Under State Law

The 1983 law does not describe the relationship between notice procedures under State and local law, and the notice of lease termination required by Federal law. The rule provides (§ 966.22(d)(1)) that:

"A notice to vacate or other notice under State or local law may be combined with, or run concurrently with, the notice of lease termination * * * * However, the lease shall in no event terminate before expiration of [the minimum lease terminatice notice periods under the Federal statute and this rule]."

Under the old lease and grievance rule, courts held that the PHA may only serve a State notice to quit after satisfaction of the lease termination notice required by the Federal rule. Under the 1983 law and the new rule, the Federal minimum notice period and any State notice periods may be run at the same time. The new rule provides that the State and Federal notices "may run concurrently". The rule also provides that although the Federal and State notices may be combined, the lease does not terminate before the end of the federally required notice of lease termination. As recommended by comment, the rule provides that the HUD mandated notice may actually be "combined with" any notice under State or local law.

Comment endorses the change to permit concurrent running of State and Federal notice. The added time for sequential running of the Federal and State notices, as required by the courts under the old rule, is not necessary for the tenant to prepare a defense or rectify violation. The PHA should file in State court immediately on completion of the HUD-required notice. Delay in commencement of State proceedings causes loss of PHA income, and increase in tenant abuse. The National Association of Housing and Redevelopment Officials (NAHRO) comments that the prior requirement for completion of fourteen days notice for nonpayment of the rent before the PHA could initiate State and local notice procedures created tremendous delays in removing residents. NAHRO states that the new rule provides PHAs much needed relief and control in carrying out eviction more expeditiously.

Comment claims that a provision for concurrent running of State and Federal notices is contrary to law. However, it is the view of the Department that the notice procedures under the rule comply literally and completely with applicable Federal statutory requirements, and with the requirements of procedural due process as enunciated by the Supreme Court. Unless HUD determines that State and local law require that a tenant have the opportunity for a fair hearing in court before eviction from the unit, no family may be evicted until the tenant has the opportunity for a PHA grievance hearing.

This rule seeks to avoid establishment of Federally imposed termination procedures which are not required by Federal law, and which will impede prompt processing of evictions by the PHA. Factors which lengthen the eviction process increase administrative burdens on the PHA, interfere with enforcement of contract requirements against the tenant, result in financial loss to the PHA (for example, by increasing the PHA collection loss), and are harmful to management of the project (for example by prolonging the period for eviction of a family which disturbs other residents or which damages the unit). HUD believes that the explicit authorization in this rule for concurrent running of State and Federal notices will contribute to efficient and effective management of public housing for the benefit of the residents.

Comment states that if State and Federal notices run concurrently, the PHA will not negotiate in good faith with the tenant. HUD believes that excessive built-in procedural delays in the eviction process undercut the incentive of the tenant to pay the rent and comply with other requirements of the lease. Thus the pyramiding of the Federal and State notice periods, pursuant to judicial construction of the old rule, probably tended to weaken the

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incentive of the tenant to negotiate in good faith for payment of back rent or correction of family behavior.

Comment says that allowing the PHA to combine the Federal and State notices will be confusing to the tenant. HUD is acutely aware that the existence of separate Federal and State notice procedures, as well as other separate Federal and State requirements for termination of tenancy, may result in some confusion. At the level of each individual PHA, the uniform national lease termination notice, which is required to implement the 1983 Federal law, interacts with different State procedures and requirements for termination of tenancy. For this reason, the Federal notice requirement will operate in different ways in different localities. Although the public housing lease termination notice is the same for all PHAs, the mean period for eviction of a public housing tenant will differ for different PHAs because of differences in local law and local courts.

In 1982 HUD proposed to eliminate Federally mandated minimum periods for termination of a public housing lease, thus eliminating confusion resulting from the overlay of Federal notice requirements on top of existing State notice procedures. Because of the 1983 law, elimination of the Federal notice periods is no longer an option. In this context, the rule is designed to permit the PHA to discover the best possible way to integrate Federal and State notice procedures. The rule therefore seeks to avoid unnecessary or over-elaborate Federal regulatory requirements that will complicate or unreasonably delay the eviction of a family.

Where Federal and State notices run concurrently, or are combined, the PHA must nevertheless comply with requirements of each regulatory scheme—and therefore the policies reflected in Federal and State notice requirements. Sequential stacking of Federal and State notices distorts the policy behind the separate notices, by forcing the PHA to give a longer notice than intended by either Federal or State law. For example, under the 1983 law and this rule, the PHA must give fourteen days notice for nonpayment of rent. This period reflects a legislative judgment that this period is adequate notice in non-payment cases.

Similarly, under the Uniform Residential Landlord and Tenant Act, the landlord may terminate a rental agreement after fourteen days written notice (Uniform Act, § 4.201). This period may be presumed to reflect a similar legislative judgment. If a PHA is forced to run the Federal and State termination notices consecutively (rather than concurrently), the tenant receives not fourteen days notice, as contemplated by each separate legislation, but twenty-eight days aggregate notice, double the period contemplated by State or Federal law. Conversely, the concurrent running of State and Federal notices permits full satisfaction of notice requirements under both State and Federal law.

Comment objects to requiring fourteen days notice before filing a State "warrant for non-payment". The rule does not instruct the PHA when to file or serve any document required by State law or procedure for eviction of a family. State process is wholly an artifact of State law, and may be issued at any time allowed by the State law. The rule does, however, remove any Federal impediment to filing or serving the State process at the earliest time allowed by the State law.

If State process may not be issued until the lease has been terminated, then the issuance of State process may be delayed by notice periods required by the Federal statute and this rule. For example, if State process for non-payment cannot be issued until the lease has terminated, the PHA must wait until the end of the fourteen day Federal notice period for non-payment of rent. Since the lease termination notice periods are statutory, HUD has no power to shorten or eliminate the required notice periods under the 1983 law.

5. Relation to PHA Rent Bill

A PHA suggests that to avoid delays in lease termination for non-payment of rent, the monthly rent statement should include a notice that the lease will terminate on a stated day if rent is not paid in accordance with the lease. This procedure would satisfy the lease termination notice requirement, as well as the PHA problems in collection of rent.

The PHA recommendation is adopted. The regulation provisions concerning notice of lease termination are amended to add new provisions which allow the PHA to give notice with the regular monthly rent bill that the lease will be terminated if tenant does not pay the rent bill on time. The revised rule provides (§ 966.22(d)(2)):

> The PHA rent bill may be combined with a notice of lease termination for nonpayment of rent. The notice of lease termination shall state that the lease will terminate if the rent bill is not paid when due.

The notice must be in accordance with all requirements for a notice of lease termination (§ 966.22), including the requirement for fourteen days notice of termination for nonpayment of rent (§ 966.22(a)(2)), and requirements concerning contents of a lease termination notice (§ 966.22(b)). The lease termination notice must be served in accordance with the requirements for service of a lease termination notice (§ 966.10(l)(2)(ii)). If the termination of tenancy is not excluded from the PHA grievance process, the PHA must also give notice of adverse action (in accordance with § 966.31(b)(2)(i)(B)). If the PHA elects to give notice of lease termination together with the monthly rent bill, the period of the 14 day lease termination notice runs from the date the notice is given.

6. Relation to Notice of Proposed Adverse Action

A proposed decision to terminate the tenancy is an adverse action by the PHA (§ 966.31(a)(2)(i)). Lease termination is included in the regulatory definition of termination of tenancy (§ 966.2). Upon timely request, a tenant has the statutory right to a grievance hearing on a proposed lease termination (U.S. Housing Act of 1937, section 6(k)(2), 42 U.S.C. 1437(k)(2)) (unless the PHA has elected to exclude the grievance from the administrative grievance procedure; see section VI of this Preamble).

The PHA must notify the tenant of the opportunity for a hearing on the proposed lease termination, by giving notice of proposed adverse action before or combined with the statutory notice of lease termination (§ 966.22(d)(3) and § 966.31(b)(2)(i)(B)). The tenant must be given the opportunity for a hearing before expiration of the applicable lease termination notice period. If the tenant makes a timely request for a hearing, the lease does not terminate, and the occupants may not be evicted from the unit before completion of the PHA grievance hearing (§ 966.31(e)(1)).

A comment generally agrees with these requirements, but is concerned that the tenant may be able to delay eviction by delaying the grievance hearing. HUD agrees that there is some potential for deliberate tenant-caused delay, and that such delay could hold up eviction. However, the PHA grievance procedure should be designed for prompt scheduling and completion of hearings (see § 966.32(f)). The PHA can structure the hearing process to minimize or avoid unnecessary tenant-caused delay.

The PHA grievance procedure may establish deadlines for submission of tenant grievance requests (§ 966.31(c)(2)). The grievance officer

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has authority to regulate conduct of the hearing, including the power to proceed promptly with the hearing (§ 966.32(c)). The hearing officer has ample authority to control or sanction dilatory tactics by the tenant (or tenant's attorney), or by the PHA. Both the PHA and the tenant have a legitimate interest in expeditious handling of grievances. Where a grievance hearing is required under the statute and this rule, the tenant must be given the "opportunity" for a grievance hearing. However, the fair opportunity for a hearing does not entail acquiescence to deliberate or unreasonable delay by either party.

C. Eviction by Judicial Process

1. Prohibition of "Self-Help" Eviction

The rule provides that the PHA may only evict the unit occupants through a "civil court proceeding" (§ 966.23(a)). In State court, the PHA must show that there is ground for eviction, and the tenant may present a defense. To safeguard the tenant's opportunity for a judicial hearing before eviction, the rule prohibits the PHA from requiring tenant to agree to lease provisions which would sign away in advance the tenant's right to a judicial hearing (§ 966.11(e); see also prohibited lease provisions *passim* (§ 966.11)). To give the tenant notice of the opportunity for judicial hearing before eviction, a notice of lease termination must advise the tenant that the PHA may only evict the occupants through a civil court proceeding in which the tenant has the opportunity to present a defense (§ 966.22(b)(4)).

The requirement for eviction through court process is intended to bar the use of "self-help" evictions, in which the landlord evicts the tenant before a court has decided that there is ground for termination of tenancy. The rule precludes the use by a PHA of non-judicial process for eviction of a tenant, even if self-help evictions are permitted under State law.

Legal aid comment states that the rule should prohibit use of any self-help remedies, and should prohibit any waiver of the tenant's right to exclusive use of judicial process for eviction. Comment asserts that some States allow self-help eviction tactics, such as lockout or utility shut-off, which effectively deprive tenants of possession without judicial hearing, and that under the law in at least one State landlords may recover possession of the premises under criminal procedure, which includes a requirement for the tenant to post bond, and authorization for jail or criminal fines.

Under the rule, the occupants may not be evicted unless the tenant has the opportunity for a judicial hearing on the tenant's defenses to eviction, and there is a judicial decision that the PHA has good cause for termination of tenancy (serious or repeated violation of the lease or other good cause). The rule does not seek to enumerate and proscribe PHA practices which impermissibly interfere with the tenant's possession and enjoyment of the unit before a judicial decision on the termination of tenancy. The requirement for eviction through judicial action is amply stated in the rule. Actions by a PHA which amount to a dispossession without judicial action, e.g., a lockout, are covered by the regulations.

Evidently, there is a whole spectrum of possible actions by a PHA respecting the tenant's continuing occupancy. The question of whether PHA actions so interfere with the tenant's possession as to compromise the tenant's right to a judicial determination before deprivation of full enjoyment and possession of the unit is best applied by individual courts in individual cases (or in the PHA administrative grievance procedure where the PHA has not opted to exclude a grievance on an eviction or termination of tenancy), rather than by imposing additional Federal regulatory restrictions. Until a judicial determination on the tenant's right of occupancy under the lease, the tenant possesses all of the rights stated in the lease, embracing the right to the services, maintenance and utilities specified in the lease, and the right to use and occupancy of the unit in accordance with the lease.

Comment objects to the prohibition of self-help eviction, and to the requirement for eviction through court process. The recommendation to delete these provisions is not accepted. Occupancy rights of assisted families should not be abridged or denied without the opportunity for a fair hearing in court.

Comment asks authority to evict without a court hearing if the tenant violates a court-approved settlement. This recommendation is not adopted. In all cases, the tenant should have the opportunity for a court hearing prior to eviction from the unit.

In the rule, the term "eviction" is defined as "forcing the occupants to move out of the dwelling unit" (§ 966.2). A separate provision, utilizing the defined concept of eviction, prohibits the PHA from evicting the tenant other than through a court proceeding (§ 966.23(a)). Comment states that "eviction" should be defined as forcing the tenant out through "court action". The change is not adopted. It is most precise to define the concept of a forced dispossession (in the definition of "eviction"), and to state separately the prohibition of a dispossession (eviction) other than through court action.

2. Prohibition of Criminal Process for Eviction

The rule provides (§ 966.23(a)):

> The PHA may only evict occupants from the dwelling unit: (1) Through a civil court proceeding in which the Tenant has the opportunity to present a defense, and (2) after a decision by the court on the rights of the parties.

The PHA may only evict by using a "civil court proceeding". The rule does not allow the use of criminal process for eviction of the tenant. There are several reasons for this prohibition:

—The State's designation of particular court process as a "criminal" proceeding indicates that the process is designed and intended by the State for punishment and deterrence of crime. The prime function of the eviction remedy in public housing should not be to punish or deter criminal action, but to restore the unit to the PHA for rental to another tenant.

—Remedies in a criminal process are more drastic than in a civil proceeding, and are not proportioned to the simple correction of the injury caused by the defendant. Criminal penalties such as jailing and criminal fines are not necessary or appropriate remedies for removal of a public housing tenant who violates the lease.

—Criminal process is designed to determine if the defendant has violated a criminal statute. In eviction of a public housing family, the central question should be whether the tenant has violated the lease, or there is other good cause for termination of tenancy.

—Use of criminal process for eviction may tag the tenant or family members with the onus of criminal violation, or a criminal record. Behavior which justifies termination of tenancy (e.g., injury to other residents) may or may not be criminal in character. If criminal, the crime may be prosecuted. However, the immediate benefit of eviction for the PHA is not the prosecution of crime, but the possession of the unit. The function of regaining possession of the unit may be accomplished through a civil eviction process.

—HUD is not aware that any State lacks an adequate civil eviction process.

While some comment urges that PHAs should be allowed to use criminal procedures to gain possession of the unit in some circumstances, comment does not allege the absence of an effective civil eviction process in any jurisdiction.

Comment states that the PHA should be allowed to use criminal process to evict a tenant who damages PHA property or equipment, who is a serious threat to health or safety of other tenants or PHA employees, or who commits criminal offenses.

The Preamble to the proposed rule stated (51 FR 26514, July 23, 1986) that the prohibition of resort to criminal proceedings for eviction is not intended to regulate or interfere with the use of the criminal process by the PHA to remedy a breach of peace by members of the family, or resort to criminal process for ejectment of a family which is damaging the unit or project, or endangering other families or PHA personnel. Comments recommend that this interpretation of the prohibition should be added to the text of the regulation.

The final rule is revised to describe the intended relation between the prohibition on use of criminal process for eviction of the occupants, and the ordinary and continuing role of criminal process to remedy criminal behavior by individual members of the family. The final rule provides (§ 966.23(b)):

> The requirement for eviction through a civil court proceeding is binding on the PHA, but is not intended to limit arrest, prosecution or other criminal enforcement activities by Federal, State or local law enforcement authorities against members of the Household for any crime. The PHA and its officers, employees or agents may act as complainants or witnesses in any criminal enforcement activity, and may cooperate with law enforcement authorities in any criminal enforcement activity.

This new language is intended to clarify that the prohibition against PHA use of a criminal proceeding for eviction of the occupants does not in any way insulate the occupants from ordinary criminal process or prosecution for any criminal act. Criminal enforcement may result in arrest or confinement, and therefore the removal of a family member from the unit for the period of confinement. Criminal enforcement against individual family members does not, however, directly determine the contractual right of the tenant to continued occupancy of the unit for residence by the family under the lease.

Crime or conviction of a crime by a family member does not automatically terminate the right to occupancy of the unit. The contractual right to occupancy of the unit is determined by decision of the landlord-tenant court in a civil eviction proceeding brought by the PHA against the tenant. In the civil eviction proceeding, criminal activity or criminal conviction is ground for termination of the legal right of the tenant to occupy the unit. The PHA may evict after the court in the civil eviction action decides that the crime is good cause for the eviction.

V. Administrative Grievance Procedure

A. Legislation

Section 6(k) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(k); added in 1983 by section 204 of the 1983 law) provides:

> The Secretary shall by regulation require each public housing agency * * * to establish and implement an administrative grievance procedure under which tenants will—
>
> (1) be advised of the specific grounds of any proposed adverse public housing agency action;
>
> (2) have an opportunity for a hearing before an impartial party upon timely request within [the statutory period for a notice of lease termination];
>
> (3) have an opportunity to examine any documents or records or regulations related to the proposed action;
>
> (4) be entitled to be represented by another person of his choice at any hearing;
>
> (5) be entitled to ask questions of witnesses and have others make statements on his behalf; and
>
> (6) be entitled to receive a written decision by the public housing agency on the proposed action.
>
> An agency may exclude from its procedure any grievance concerning an eviction or termination of tenancy in any jurisdiction which requires that, prior to eviction, a tenant be given a hearing in court which the Secretary determines provide the basic elements of due process.

B. Subject of Grievance Hearing

1. New Rule

The old rule contained a sweeping requirement to give a grievance hearing on "any dispute" concerning PHA action or non-action affecting the individual tenant. In accordance with section 6(k) of the U.S. Housing Act of 1937, the final rule requires a PHA to establish an administrative grievance procedure for hearing on *any proposed PHA adverse action* affecting the individual tenant (§ 966.30(b)).

The final rule provides (§ 966.31(a)(2)) that proposed adverse action means any of the following proposed decisions by the PHA concerning an individual tenant:

> (i) A proposed decision to terminate the tenancy, or to evict occupants from the dwelling unit.
>
> (ii) A proposed decision to require the Tenant to move to another dwelling unit * * *,
>
> (iii) A proposed decision determining:
>
> (A) The amount of the Tenant Rent payable by the Tenant to the PHA or the amount of utility reimbursement by the PHA to the Tenant,
>
> (B) The amount of PHA charges in addition to Tenant Rent * * *, or
>
> (C) The amount the Tenant owes the PHA for Tenant Rent or PHA charges.
>
> (iv) A proposed decision to take over specific, concrete, and affirmative individualized action contrary to the interests of a Tenant.

2. Scope of Right To Grieve

a. Legislative History—Distinction Between PHA Action and PHA Failure to Act. The statutory grievance requirement under the 1983 law finally enacted by the Congress applies to "any proposed adverse public housing agency action" (Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, November 30, 1983, section 204; section 6(k) of the U.S. Housing Act of 1937, 42 U.S.C. 1437d(k)). As originally reported by the House Banking Committee in May 1983, the House bill would have required PHAs to provide tenants the opportunity to be heard in accordance with grievance safeguards in the HUD lease and grievance rule in effect at that date, i.e., the old lease and grievance rule. Under the House Committee bill, the grievance requirement would have applied to "public housing agency actions *or failures to act* that adversely affect [tenant and applicant] *rights, duties, welfare or status*" (emphasis supplied) (Report 98–123 on H.R. 1, p. 175). The House Committee Report states that "the bill provides that the grievance procedures shall be available for *all disputes* between a PHA and * * * a tenant or former tenant" (emphasis supplied) (*Id.*, p. 35). The House Committee Report also states that the "Committee contemplates that HUD will meet this obligation [to require PHAs to maintain grievance procedures] *by retaining the present regulations*" (emphasis supplied) (*Id.*, p. 35).

The bill originally passed by the House of Representatives (H.R. 1, section 206, passed House on July 13, 1983) contains the same language on the statutory grievance requirement as the bill previously reported by the House Banking Committee. The language of the House bill would have required PHA administrative hearings in almost every case in which a tenant contests a PHA action or failure to act that affects a tenant's rights, duties, welfare or status. Thus the original House bill would have essentially codified the grievance requirement under the old HUD rule. This language was not, however, enacted by Congress.

The law finally enacted by the Congress in November 1983 deleted the broad grievance language in the original House bill (Pub. L. 98-181, see legislative history at 97 Stat. 1299). The 1983 law eliminated the proposed requirement, contained in the original House bill, to establish a grievance procedure subject to requirements of the old rule, to grieve on disputes pertaining to a PHA's "failures to act", or on "all disputes" concerning acts or failures to act that adversely affect tenant "rights, duties, welfare or status".

The Congress deleted the proposed requirement to grieve on PHA "failures to act", and added instead a requirement to grieve on a "proposed adverse action" (U.S. Housing Act of 1937, section 6(k), 42 U.S.C. 1437d(k)). The legislative history supports the conclusion that the statute only requires a PHA to give the tenant the opportunity to grieve on specific proposed PHA actions concerning the individual tenant, as opposed to PHA failure to act.

The legislative history also indicates that the grievance requirement in the 1983 law does not apply broadly to "all disputes" that adversely affect a tenant's rights, duties, welfare or status, as under the old rule. Unlike the old rule, the statutory grievance requirement does not broadly cover cases in which a tenant asserts the existence of a dispute or potential dispute with the PHA (see old rule § 966.51(a) and 966.53(a)). The grievance requirement applies to a case where the PHA is considering whether to take specific, concrete and affirmative individualized "action", and the action is "adverse", i.e., contrary to the interests of an individual tenant.

A decision by the United States Court of Appeals for the District of Columbia Circuit, in *Samuels v. D.C. et al.*, 770 F.2d 184 (DC Cir. 1985), has expressed a different conclusion on the reach of the statutory grievance requirement. The DC Court of Appeals says that Congress intended to preserve HUD's existing regulatory grievance structure, and that the statutory grievance requirement applies to all tenant disputes covered under the then-extant HUD regulation. The *Samuels* court rejects the position that the new statutory grievance requirement applies only to proposed affirmative future action against a tenant, and denies that there is a statutory distinction between action and failure to act.

HUD was not a party to this case. Therefore, the court had no opportunity to consider the interpretation of the statute by the agency which administers the statute. Many decisions affirm that the interpretation of the administering agency is entitled to deference by the courts. The Supreme Court recently remarked that "HUD's opinion as to available tenant remedies under the Housing Act is entitled to some deference by this Court" (*Wright v. Roanoke*, 479 U.S. —, —, 107 S. Ct. 766, 772 (1987)).

The decision by the *Samuels* court is based on a plain misunderstanding of the legislative history of the statutory grievance requirement. The court's reading of legislative intent is based on *the original House Bill*, not on the bill actually passed by the Congress. To support the court's view of the meaning of Section 6(k), the decision repeatedly cites the House Committee Report (and also cites a statement by a Congressman on the floor of the House). The court did not know, and was not informed by the parties, that the actual language of the law finally passed by the Congress differs radically from the language originally approved by the House and the House Committee. (The briefs and record on appeal in *Samuels* do not contain any mention or explanation of the difference between the House bill and the final statute.) Indeed, the changes from the bill proposed by the House demonstrate that Congress rejected the broad grievance requirement originally proposed by the House. The changes show that Congress did not intend to codify the broad existing regulatory grievance requirement for disputes between the PHA and a tenant, and that the statutory grievance requirement only applies to an adverse *action* proposed by a PHA.

In accordance with the 1983 law passed by the Congress, the final rule (§ 966.31(a)) requires the PHA to provide the tenant the opportunity for a hearing on any proposed *adverse action*. The rule (§ 966.31(a)(2)) specifies what proposed PHA actions are adverse actions on which the tenant must be given the opportunity for a hearing.

Comment from the legal aid community vehemently protests the distinction between PHA action and non-action, asserting that the tenant should have a broad right to grieve on the PHA's failure to act. Comment objects to HUD's reading of the legislative history of the 1983 law, and objects that HUD does not acquiesce in the decision of the DC Court of Appeals in *Samuels*.

The House bill provided that the PHA must grieve on any PHA "actions *or failures to act*." The law finally passed by the Congress and signed by the President provides that tenants must have the right to grieve on any proposed "adverse public housing agency *action*." Legal aid comment states that HUD relies too much on this change in the wording of the statute, and that HUD should instead rely (as did the court in *Samuels*) on the Report of the House Banking Committee in reporting out the original language. Comment states that the PHA's *denial* of the tenant's request for action amounts to affirmative action.

Comment states that the 1983 law did not enact a new grievance requirement, but codified the language "always used" to define what is grievable under the old rule. This assertion is false. The old rule provided that a grievance is *"any dispute"* a tenant may choose to raise "with respect to PHA *action or failure to act"* concerning the individual tenant (§ 966.53(a) of the old rule). The law passed in 1983 only requires a grievance hearing on a proposed "adverse action". The language of the old rule is sharply different from the language of the 1983 law.

In substance, legal aid comment asks HUD to ignore the actual language and history of the 1983 law. The legal aid position does not square with the plain and literal language of the statute, which in terms requires a grievance hearing only for a proposed adverse *"action"*. Treating the PHA *refusal to act* as an affirmative proposed adverse *action*, as proposed by public comment, erases the deliberate statutory distinction between PHA action and non-action.

The fact that Congress did not require a grievance hearing for a PHA failure to act is clearly shown by deletion of the prior House bill language that mandated a grievance hearing on a PHA "failure to act". This legislative history was not known to the court in *Samuels*. HUD will follow the law. HUD will not pretend, as suggested by the comment, that the law passed by the Congress was the same as the bill originally passed by the House.

The law finally enacted by the Congress in 1983 does not define "adverse action". The differences between the original House bill and the 1983 law as passed indicate that the Congress intended to leave the Department a degree of administrative discretion in defining the ambit and operation of the new grievance requirement, rather than bind HUD to continue the specific grievance requirements under the old rule.

On February 5, 1988, the President signed into law a broad housing bill, titled the Housing and Community Development Act of 1987 (HCD Act of 1987) (Pub. L. 100-242, February 5, 1988). During the process leading to enactment of the HCD Act of 1987, there was an unsuccessful attempt to amend the grievance requirement under the U.S. Housing Act of 1937. The bill first

passed by the House of Representatives would have amended the grievance provision to require a grievance hearing on PHA "failure to act", in addition to proposed PHA adverse "action" (proposed amendment of section 6(k) of the U.S. Housing Act of 1937 at section 119 of S. 825, as passed by the House of Representatives on 6/17/87; Congressional Record 6/17/87, H 5110). This proposed amendment was eliminated in Conference, and was not included in the law finally enacted by the Congress. The Conference Report states (Rpt. 100-428, p. 167):

> The House amendment contained a provision that was not contained in the Senate bill to clarify that the mandatory public housing grievance procedure cover[s] a PHA's failure to act, as well as its actions. *The conference report does not contain the House provisions.*
>
> Congress has always intended that the mandatory public housing grievance procedure apply to failures to act, such as failure to maintain housing in decent condition, failure to provide timely subsidy increases when incomes drop, or failure to provide appropriate utility allowances. In fact, the court ruling in *Samuels v. District of Columbia*, 770 F.2d 184 (DC Cir 1985) confirmed that PHA omissions or failures to act are grievable. HUD, however, has published proposed regulations [HUD's proposed lease and grievance rule of July 23, 1986] which create an artificial distinction between actions and omissions. Therefore, the conferees intend that HUD revise these regulations to be consistent with the ruling in *Samuels*. (Emphasis supplied.)

HUD must respectfully demur to the interpretation of the 1983 law stated in the Conference Report on the HCD Act of 1987. First, the proposed amendment of the statutory grievance requirement was not included in the 1987 Conference Report, and was not passed by the Congress. HUD is only bound by law enacted by the Congress. Second, the Conference Report is not law in itself. Third, the 1987 Conference Report language does not construe language of the 1987 law, but purports to construe language passed in a prior Congress. These after-the-fact remarks in 1987 are not part of the legislative history of the 1983 law. They are not evidence of the legislative process and thinking that led to enactment of the 1983 law. Fourth, the construction posed by the 1987 Conference is inconsistent with the actual legislative history and legislative language of the 1983 law.

b. PHA Adverse Action—(1) Proposed Rule and Comments. The rule requires a PHA to grieve on an adverse action. The rule defines (§ 966.31(a)(2)) what PHA actions are adverse actions. The PHA must give the tenant the opportunity for a grievance hearing on any proposed adverse action.

In the proposed rule, HUD defined adverse action to cover three specific cases when the PHA proposes to take action contrary to interests of the family: When the PHA seeks to evict the family, requires the family to transfer from one public housing unit to another, or determines rent or PHA charges.

Legal aid comment contends that adverse action is too narrowly defined in the proposed rule. HUD should not shave the grievance requirement to the bare minimum. Comment claims that restricting the grievance right to specific PHA actions defined in the rule violates the statutory requirement for grievance on any proposed adverse action.

Legal aid comment urges HUD to vastly open-up the types of PHA actions which must be treated as grievable adverse actions. Comment states that the rule should contain an open-ended definition of adverse action. The rule should give examples of adverse action, but recognize that other—non-listed—actions may be adverse. The family should have a broad right to grieve on PHA actions, including a PHA claim that the family has violated PHA rules, PHA issuance of a warning to the family, or a PHA demand to inspect the unit. HUD should retain a very broad grievance requirement similar to the grievance requirement under the old rule.

The PHA should give the tenant notice of the opportunity for hearing when the PHA sends any notice "adverse" to the tenant.

Legal aid comment states that grievance hearings benefit the PHA and tenant families:

—The grievance hearing is a remedy for lawless and arbitrary action by a PHA. The grievance process deters PHA misconduct.

—Tenants feel alienated and powerless. The grievance process is an outlet for tenant frustration.

—The grievance process is a good mechanism to resolve disputes. The grievance process helps PHA management, and can save time and money.

—Narrowing the grievance process is a hardship to tenants. Tenants must risk eviction to challenge PHA action.

Some comment states that the language of the rule is not clear as to whether the list of three cases which constitute adverse action under the proposed rule is an exclusive list. PHA comment asserts that the rule invites the conclusion that *any* PHA action is adverse. Legal aid comment objects to the implication that the listed cases are the only grievable adverse actions by a PHA.

In general, PHAs and PHA organizations strongly support the new grievance process proposed by HUD, and HUD's proposed definition of adverse action. The tenant should not be allowed to grieve on "any dispute" concerning PHA action or non-action. A broad grievance requirement is cumbersome, and interferes with operation by the PHA.

PHA comment on the expense and administrative burden of the old grievance requirement is also discussed in section VI.B of this Preamble (which deals with the procedure for excluding eviction cases from the PHA's administrative grievance process). Public comment on the original proposed rule (published in December 1982) discusses many of the arguments for and against changes in the scope of the old grievance procedure. Comment is summarized in the Preamble to the proposed rule published in July 1986 (Preamble, section IV.A, 51 FR 26504, 26514-15, July 23, 1986).

(2) Right to Grieve on PHA Adverse Action—(a) Definition of Adverse Action. Under the language of the 1983 law, the PHA must grieve on any proposed *adverse action* by a PHA. On the face of the statutory language, there is no duty to grieve unless three elements are present: (1) That the PHA proposes some "action" (as discussed above in section V.B.2.a of this Preamble), (2) that the action is "proposed" by the PHA, and (3) that the proposed action is "adverse" to the tenant. The statute does not obligate the PHA to give a hearing on *any* action, as urged by legal aid comment, but only on actions which are "proposed" by the PHA, and which are "adverse" to the interest of the tenant. The concept of proposed adverse action only applies to a case where the PHA is considering taking ("proposes" to take) specific, concrete and affirmative individualized action contrary to ("adverse" to) the interests of a tenant.

PHAs and tenants need to know what kinds of PHA action are "adverse" action for which the PHA must give the opportunity for a hearing. The statute does not precisely define how to apply the concept of adverse action. HUD has authority to issue a legislative rule which defines what types of PHA action must be treated as "adverse" action. This authority is based on HUD's broad power to issue rules concerning HUD programs (section 7(d) of the HUD Act, 42 U.S.C. 3535(d)), and also on HUD's specific statutory responsibility to issue regulations which implement the

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administrative grievance requirement (U.S. Housing Act of 1937, section 6(k), 42 U.S.C. 1437d(k)).

Under the proposed and final rules, adverse action includes a PHA decision which affects the critical interest of the assisted tenant in continuing to live in public housing (eviction), in living in the same unit (requiring tenant to move to another public housing unit), and in the amount the tenant must pay to the PHA (rent or PHA charges). The rule provides that proposed adverse action includes § 966.31(a)((2)):

—A proposed decision to terminate the tenancy, or to evict the occupants.
—A proposed decision to require the Tenant to move to another dwelling unit.
—A proposed decision determining the amount of rent or PHA charges, or the amount the Tenant owes the PHA for rent or charges.

In practice, these three types of PHA decision and action comprise the vast majority of instances in which a PHA contemplates taking concrete action adverse to the individual tenant. Indeed, it is difficult to imagine plausible scenarios of proposed PHA adverse action other than the three specified cases. However, to assure that the opportunity for a grievance hearing is not denied for "any" proposed adverse action in accordance with the 1983 law, the final rule adds to the definition of adverse action a provision that adverse action also includes a "proposed decision to take other specific, concrete, and affirmative individualized action contrary to the interests to a Tenant" § 966.31(a)(2)(iv)).

Comment states that the tenant should have the right to grieve if the PHA refuses to abate the rent for alleged PHA non-performance of unit maintenance. A PHA proposed decision determining "the amount the Tenant owes the PHA for Tenant Rent * * * *" is included in the definition of proposed adverse action § 966.31(a)(2)(iii)(C)). The PHA is therefore required to grieve on the decision. A PHA's decision that the rent will not be abated is part of the positive determination of how much the tenant owes to the PHA, and is grievable under the rule.

(b) PHA Warnings. Comment suggests that the PHA should have to give the tenant a hearing if the PHA issues a warning. The PHA may tell the tenant that behavior by family members is a violation of the project rules, and that if the behavior continues the PHA may take action to evict the tenant. If the PHA ultimately takes action to terminate the tenancy, the tenant will have the right to a hearing on the proposed termination of tenancy. The question therefore is not whether the PHA must give a grievance hearing if the PHA finally decides to take action to terminate the tenancy. The question is whether the PHA must give a hearing on preliminary statements by the PHA which may or may not ever lead to any concrete action by the PHA against the tenant, whether HUD must therefore accelerate tenant's right to a grievance hearing.

HUD believes that the 1983 law does not require, and program policy does not support, imposing a Federal requirement to grieve on warnings or other initial statements by the PHA that may possibly be followed by PHA action adverse to the tenant. Acceleration of the PHA's duty to give a grievance hearing inhibits the day-to-day effort of the PHA to work out problems with tenant families, and to educate families in the responsibilities of tenancy. The issuance of a warning can be a constructive tool to induce the tenant to comply with the lease or PHA rules, avoiding the need for eviction of the family.

If the right to grieve is available too early—before a PHA has definitively decided to evict a family—the grievance requirement may inhibit frank and free communication between the PHA and the tenant. The grievance process takes up the time of PHA personnel, including the time to prepare for administrative hearings and the time to give evidence at the hearings. For this reason, PHA personnel may be reluctant to warn tenants that family behavior violates the lease or PHA rules, or that the family could be evicted if the behavior is continued. The consequence of such reluctance leads in two directions. First, the general level of project discipline may decline. PHA officials may relax the pressure for a tenant to comply with PHA requirements. Second, PHAs may proceed directly to eviction. Instead of counselling or warning a tenant, the PHA may move more rapidly to evict a family which fails to comply with the lease.

c. PHA Non-Action—Denial of Right to Grieve. Legal aid comment argues that it is bad policy to deny a sweeping right to grieve on a PHA's refusal to take action desired by a tenant. PHA failure to act should be a required grievance subject. Often PHA wrongs against a tenant take the form of the PHA's failure to act. PHA inaction can harm public housing residents. The availability of the grievance remedy should not be limited to cases of conscious proposed action by the PHA.

Comment claims that broadening the grievance right to cover PHA inaction is best for the PHA and for the tenant, or that refusal to provide a grievance process for PHA inaction is poor management. Comment states that the grievance process is an effective tool to make the PHA take necessary action, such as action to maintain tenant units. If the PHA's failure to act is not grievable, the grievance process is almost useless as a vehicle to improve conditions for individual tenants, for example by requiring a PHA to repair units that violate local code. The tenant must risk eviction to challenge PHA non-action, by raising the PHA's non-action as a defense to eviction.

According to comment, the following are examples of the types of PHA non-actions on which the PHA should be compelled to grieve: PHA violation of the lease, refusal to maintain or repair (obligations under the lease or State law), refusal to abate rent if a unit is not repaired, refusal to grant a request for transfer to another unit, refusal to adjust rent, refusal to add new family members (as authorized residents of the unit), refusal to take action against offending neighbors.

In the final rule, the PHA is required to give a grievance hearing to the tenant on any *proposed adverse action.* However, the rule does not exceed the Federal grievance right beyond the requirements of the 1983 law. A tenant does not have the right to a grievance to challenge a PHA's non-action or refusal to act.

Federal law only requires a grievance hearing on a decision by the PHA to take positive action adverse to a tenant. The law does not require grievance hearing on a PHA non-action. Public comment recommends that HUD broadly extend the hearing right to cases of PHA inaction. However, comment does not make a persuasive argument for broadly expanding the grievance requirement beyond PHA adverse action, as required by the law. The Congress has implicitly weighed the putative advantage of creating a broader grievance right against the restriction of local autonomy, and against the problems of operating a grievance apparatus that applies to PHA non-actions. HUD does not have sufficient reason to impose a duty for the PHA to grieve on PHA non-action, and PHA non-action is beyond the reach of the 1983 law.

Coverage of PHA non-action would vastly enlarge the sphere of project management potentially subject to determination by hearing officers in individual grievance hearings. Allocation of authority to hearing officers fragments the process of making

decisions affecting project management and the lives of project residents. Extension of the sphere controlled by PHA hearing officers is correspondingly a contraction of the sphere controlled by PHA management. Where hearings are required, day to day actions by PHA management may be reviewed and reversed by decision of a hearing officer. For effective management, the PHA needs a broad right and ability to determine how projects are run. Dramatic extension of the grievance process dramatically diminishes the ability of the PHA to manage the housing for the over-all benefit of the residents.

An administrative hearing is sometimes a suitable process to decide if the PHA has rightly applied laws or rules to the case of a particular tenant. However, an administrative hearing is not a suitable process for determining matters committed to management discretion. The PHA decision whether or not to take action desired by a tenant most often involved matters properly committed to the judgment and discretion of the PHA, not matters that can be or should be decided by the simple and unambiguous application of a governing legal rule.

Comment states that a PHA should have to give a hearing if the PHA refuses to take action against a neighboring family. This is preeminently a type of case where the PHA must exercise a difficult and properly discretionary management judgment, that should properly be tempered by compassion for both of the families, and by the interest of other project families. The basis of decision is not readily reducible to any formula or legal rule.

Comment states that the PHA should have to give a hearing on the tenant's request for transfer to another unit (not just when the PHA has decided to make the tenant move). Comment notes, for example, that an old couple may ask for transfer to a bigger unit so that a relative can move in; a tenant may request transfer on advice of a doctor; a disabled tenant may request transfer to a suitable unit. However, these are all cases where the PHA should have administrative discretion to respond to varied circumstances. They are not cases which should be controlled by precise and inflexible rules determined in advance. Consequently also, they are not cases that should be assigned to decision by a hearing officer.

A PHA has at its disposal a limited number of units. Typically, the demand is much larger than the supply. A unit is only occupied by one family at a time. Therefore a decision to use the unit for occupancy by some particular family, such as a family that wants to move to a better unit or a bigger unit, is effectively a decision to deny the unit to other families, including families on the PHA waiting list. Thus the decision to grant or deny the transfer request is not usually controlled by a simple rule. HUD should not require that such decisions be placed in the hands of a hearing examiner.

In some cases, a tenant may claim that a PHA's failure to act is a violation of a rule—for example, a PHA's failure to maintain the unit in decent, safe and sanitary condition in accordance with the lease. Even in such cases, PHA funds and maintenance resources are limited. It is impossible for the PHA to fix all units at the same time. The PHA legitimately needs to decide the relative priority of different maintenance demands. In a context of scarce resources, the decision on how to allocate maintenance resources between different units and tenants is a legitimate management decision, not a decision that should be mechanically handed over to a hearing officer.

PHA failure to perform concrete obligations to the tenant under the law or the lease may present difficult problems, for which there is no easy or universal solution, and for which the tenant may not have any simple remedy, short of litigation. Nevertheless, the Department is not convinced that these problems can be facilely solved by imposing a national grievance requirement for PHA inaction.

Since 1975, PHAs have been subject to the extensive administrative grievance requirement under the old lease and grievance rule. This grievance requirement applied to the PHA's failure to act. Legal aid comment urges HUD to retain the substance of the grievance coverage under the old rule. However, experience under the old rule does not demonstrate that this broad grievance coverage results in a higher level of PHA compliance with the lease and the law. In comment on this rulemaking, and in other forums, PHAs assert that the old grievance requirement has been difficult and expensive to administer, and has contributed to management problems of the PHAs.

In this rule, the definition of "adverse" action is not indiscriminately extended, as advocated by legal aid comment, to all manner of miscellaneous PHA non-actions. Rather, the final rule follows the line of distinction enacted by the Congress in 1983. The rule requires a PHA to grieve on any proposed adverse action, but not on PHA nonaction. PHA comment indicates that the over-broad extension of the right to grieve can drain PHA resources, and can distort the management of public housing projects. The statutory concept of *adverse* action exhibits Congressional recognition that the grievance rights should be limited to critical and central cases when the PHA proposes to take positive action against the tenant.

Legal aid comment objects to HUD's review that the statutory concept of adverse action applies to conscious and specific individualized action contrary to the interests of the tenant. The comment states that when a PHA *denies a request* for transfer, the PHA is acting consciously, is considering an individualized matter, and is acting contrary to interests of the family. However, this example concerns a PHA *non-action* in response to a family request. The example does not concern a *proposed action* by the PHA. The tenant does not convert a PHA non-action into a grievable proposed action by submitting a request to be refused by the PHA.

The notion of "proposed" adverse action clearly conveys the statutory sense that the type of action which is grievable under the law proceeds initially from the initiative of the PHA, such as the action of the PHA in seeking to evict the tenant. In a common sense understanding, the PHA does not oridinarily "propose" to take a non-action (such as not sending a plumber to the unit).

The PHA also does not "propose" to deny action requested by the tenant. The PHA simply fails or refuses to take the requested action.

Comment assumes that the statutory requirement to grieve on "proposed adverse action" applies to PHA non-action. In this view, then, the scope of matters to be grieved would include "proposed adverse non-actions". In the real world, this concept has little meaning or potential practical application. PHAs do not "propose" to take non-action adverse to the interest of the tenant. The assertion that proposed "action" includes proposed "non-action" is not supported by the text of the statute, or by the legislative history. Rather, the test of the statute refers only to "action", and not to non-action. Further, the Congress deleted the proposed requirement to grieve on PHA non-action under the original House bill.

Comment protests that the distinction between action and non-action is somehow arbitrary. HUD remarks that the distinction proceeds directly from the plain and literal language of the statute. The Congress made this distinction by eliminating the coverage of PHA *failure to act* contained in the original House bill (see discussion of

legislative history in section V.B.2.a of this Preamble). The Congress also expressed this distinction by adding to the original language of the House bill the requirement that the PHA must give the opportunity to grieve on a "proposed" adverse action. A PHA does not, in the normal sense of the term, "propose" to do nothing. The PHA proposes to take some "action", and the grievance right only applies when the PHA is proposing to take action that is also "adverse" to the tenant.

The 1983 law provides that the tenant must be advised of the "specific grounds of any proposed adverse public housing agency action" (U.S. Housing Act of 1937, section 6(k)(1), 42 U.S.C. 1437d(k)(1)). Thus the PHA must give the tenant notice of grounds for a "proposed" action. The statute contemplates notice to the tenant of a specific adverse action which the PHA expects to take in the future respecting the tenant, not notice of an already existing non-action (e.g., an alleged failure to maintain the unit) which the tenant may want to challenge.

Comment claims it is arbitrary to distinguish between a case when the PHA charges the tenant for repairs (a grievable adverse action) and when the PHA refuses to make repairs (a non-grievable non-action). Similarly comment states that it is arbitrary to distinguish between a case when the PHA requires the tenant to move (grievable) and a case when the PHA denies the tenant's request for a transfer (non-grievable). However, in these examples, there are plain and substantial differences between the actions which are grievable and the non-actions which are not. The cases which are grievable under the rule each involve a proposal by the PHA to take away something which the tenant already possesses—a public housing unit or money in the tenant's pocket. The cases which are not grievable under the rule involve the desire of a tenant for something which the tenant wants but does not yet have (such as repair of the unit, or a move to a new unit). The distinction between grievable and non-grievable cases under the statute and this rule is both reasonable and practical.

d. Termination of Tenancy or Eviction. Section 6(k) of the U.S. Housing Act of 1937, as added by the 1983 law, states the circumstances in which the PHA may exclude from its administrative grievance procedure "any grievance concerning any eviction or termination of tenancy" (42 U.S.C. 1437d(k)). Conversely, the statutory language implies that unless so excluded a PHA decision for eviction or termination of tenancy is an adverse action upon which the tenant may ask for a grievance hearing.

A PHA must have a good cause reason for action to terminate legal rights of occupancy ("termination of tenancy"), or to force the occupants to move from the unit ("eviction") (definitions in § 966.2). The statutory grievance scheme assures that the tenant may not be compelled to move from the unit without the opportunity for either an administrative grievance hearing before the PHA, or a due process hearing in State court, on the question of good cause.

"Termination of tenancy" (§ 966.2) includes a termination of the lease during the term, or a decision not to renew the lease at the end of the term.

e. Rent or PHA Charges (1) What is Grievable? The PHA must grieve on a proposed adverse action. The rule provides (§ 966.31(a)(2)(iii)) that adverse action includes a PHA's determination of:

1. The amount of tenant rent payable by the tenant to the PHA or the amount of utility reimbursement by the PHA to the tenant.

2. The amount of PHA charges in addition to tenant rent.

3. The amount the tenant owes the PHA for tenant rent or PHA charges.

The final rule clarifies that the tenant may grieve if the PHA does not conduct a reexamination of family income (i) for more than a year after the last examination or reexamination, or (ii) after receiving information concerning a change in family income or composition between regularly scheduled reexaminations (§ 966.31(a)(4)). The rule provides that the PHA's determination of the amount of tenant rent payable by the tenant to the PHA in the absence of a reexamination is included in the concept of adverse actions affecting determination of tenant rent. The PHA's decision to continue charging the amount of rent determined at a prior examination, without conducting a reexamination of tenant rent, is a positive determination of tenant rent, and is grievable under the rule.

The definition of what is grievable under the final rule covers both the PHA's determination of the tenant's rent and the PHA's determination of charges other than rent. Potentially, there are two types of issues concerning the PHA determination of rent or charges. First, the tenant may question whether PHA has correctly computed the amount of the tenant rent or PHA charge. For example the tenant may claim that the PHA has overstated family income, and that the tenant rent based on the family income should be less than the amount determined by the PHA. Second, the tenant may assert that the tenant owes less than the amount claimed by the PHA. The tenant may assert that the tenant has already paid the amounts claimed by the PHA. Both types of issues are covered by the grievance process under the rule.

(2) Need for Hearing on Determination of Rent. The amount of rent paid by a public housing tenant is determined by a statutory formula (U.S. Housing Act of 1937, section 3(a), 42 U.S.C. 1437a(a)). For most public housing tenants, the rent is 30 per cent of adjusted income. (The HUD regulation on how to determine tenant rent is 24 CFR Part 913.) Under HUD regulations, the total rent paid by the tenant ("total tenant payment") includes an allowance ("utility allowance") for a reasonable amount of utilities that must be paid directly by the tenant to the utility supplier. The tenant must pay the PHA the difference between the total rent and the utility allowance. (The difference is called "tenant rent".)

Under the rule, the tenant may ask for a grievance hearing to examine if the PHA has correctly computed the rent (but not to grieve the PHA's determination of the utility allowances for the program; see section V.D.2.b of this Preamble.) The hearing may also consider whether the tenant paid the rent determined by the PHA.

Comment suggests that the PHA should not have to give a hearing on the PHA calculation of the amount of rent, or on the PHA's determination that the tenant has not paid the rent. Comment notes that the PHA rent calculation is based on information supplied by the tenant or on third party verification. If the tenant questions the calculation, the issue can be handled by the PHA's internal supervisory review. With respect to grievance on non-payment of rent, comment states that non-payment is an objective and readily determinable fact. The hearing requirement gives a delinquent more time to pay than other tenants, and results in loss of income to the PHA.

HUD disagrees with the suggestion that non-payment of rent should not be a subject of the grievance process. There may be legitimate factual or legal questions bearing on the correctness of the PHA's decision on the amount owed by a tenant.

The final rule requires that the PHA grieve on the PHA's calculation of the amount of rent, or on the PHA's determination that the tenant has not paid the rent. For both types of question,

it is often easy to decide whether the PHA determination is correct. Review of the PHA determination is the proper office of the hearing process. The tenant may raise significant and legitimate questions. In the case of a rent determination, the tenant may be able to show that the PHA misapplied HUD requirements for calculation of tenant rent to the information supplied by the tenant. In the case of a PHA claim that the tenant has not paid the rent, the tenant may be able to show that the PHA has not entered a tenant payment in the PHA books (e.g., by showing a receipt or check). If the tenant claim is frivolous or ill-founded, the claim may be quickly and readily rejected by the hearing officer.

The hearing process has a price. A hearing inevitably involves cost and administrative effort for the PHA. However, PHA determinations that a tenant must pay a specific amount of rent or charges to the PHA are clearly adverse to the tenant, and are properly identified in this rule as "adverse actions" under the 1983 law. Rent and other charges by the PHA directly affect the pocketbook of the tenant. Because families in public housing are poor, a requirement for the tenant to pay a given amount has a more serious effect on the family budget than for a family of a higher income.

Use of the hearing process may avoid the later need for eviction of the family. A tenant's non-payment of the amounts assessed by the PHA as rent or charges is one of the most common grounds for a termination of tenancy or eviction. If the hearing officer finds that the tenant is right, non-payment is generally removed as a potential ground for termination. If the hearing officer finds that the amount assessed by the PHA must be paid, then the tenant knows that the money must be paid.

The final rule provides that the tenant may grieve on the PHA's determination of the amount of rent that the tenant must pay the PHA (or the amount of utility reimbursement by the PHA to the tenant) § 966.31(a)(2)(iii)(A)).

(3) Tenant Request to Change Rent or PHA Charges—*(a) Submission of Request.* When the PHA redetermines tenant rent, the PHA must give written notice of the new rent to the tenant (§ 966.10(c)(2)). Similarly, the PHA must give written notice of any charges which are not included in the rent (§ 966.10(e)(1)(ii)). The notice informs the tenant when the new rent or charge must be paid.

After receiving notice of the rent or charge, the tenant may claim that the rent or charge is mistaken, and ask the PHA to change the determination. For example, if the PHA notifies the tenant of a charge for claimed damage to the unit, the tenant may assert that the unit was damaged because the PHA failed to perform required maintenance, and that the charge should be removed. After the PHA receives the tenant's request to change rent or charges stated in a PHA notice, the PHA may grant or deny the requested change.

The provisions of the proposed rule was intended to give the tenant the opportunity for a grievance hearing if the PHA denies a change in rent or charges when requested by the tenant. However, comment correctly notes that there is a discrepancy between the proposed rule text and Preamble. In the Preamble, a PHA's proposed decision denying a request to modify the PHA's determination of rent or PHA charges was included in the definition of proposed adverse action. In the proposed rule text, however, adverse action was defined as the PHA's proposed decision determining tenant rent or charges. Comment objects to defining adverse action as the refusal of a family's request for modification of the PHA's determination or rent or tenant charges, rather than as the original imposition of the rent or charge.

In the final rule, HUD substantially follows the approach of the regulation text in the proposed rule—the tenant may grieve the PHA's determination of rent, or of PHA charges in addition to rent (§ 966.31(a)(2)(iii)). In this approach, there is a clearer distinction between definition of the cases when the tenant has the right to grieve ("proposed adverse action"), as against definition of the PHA's authority to establish the procedures by which a tenant may exercise the right.

HUD must issue regulations which require a public housing PHA to establish and implement an administrative grievance procedure for proposed adverse action (U.S. Housing Act of 1937, section 6(k), 42 U.S.C. 1437d(k)). The PHA grievance procedure may include rules on how and when the tenant may exercise the right to a grievance hearing. The administrative grievance procedure may provide that a tenant who wants to challenge the PHA determination in an administrative grievance hearing must first ask the PHA to change the determination.

The rule provides that a tenant's request to change the PHA determination of rent or charges must be submitted in the form and manner prescribed in the PHA's administrative grievance procedure (§ 966.31(c)(1)(iv)).

(b) Deadline for Requesting Change in Rent or Charges. The administrative grievance procedure may provide that a request to change the PHA determination of rent or charges must be submitted by a reasonable deadline as determined by the PHA (§ 966.31(c)(1)(i)). Comment criticizes the absence of a requirement to notify a tenant of the deadline to request a change. The PHA should give notice that the tenant will lose the right to a grievance hearing if the tenant misses the deadline.

Comment asserts that the lack of notice violates due process. This assertion does not properly distinguish between the right to an administrative grievance hearing and the right to occupy the unit. The PHA may not repossess the unit unless the tenant has opportunity for a due process hearing to determine whether there is good cause for termination of tenancy. A due process hearing may take the form of a judicial process for eviction of the family. If the tenant does not submit a timely request to change the PHA determination, the tenant loses the opportunity for an administrative grievance hearing before the PHA. The tenant does not lose the right or opportunity for a due process judicial hearing. If the PHA moves to terminate tenancy for non-payment of the rent or charges determined by the PHA, the tenant may challenge the determination in court.

HUD agrees, however, that if the PHA wants to set a deadline for tenant to request a change in rent or charges, the PHA should give notice that the tenant will lose the opportunity for an administrative grievance hearing unless the tenant meets the PHA deadline. The final rule states (§ 966.31(c)(1)) that:

(i) The administrative grievance procedure may provide that a Tenant who wants a change in the rent or charges determined by the PHA, as stated in the PHA notice of rent or charges, must ask the PHA to change the determination by a reasonable deadline as determined by the PHA.

(ii) The PHA notice of rent or PHA charges must give notice of the deadline. The time for the Tenant to ask for a change in the rent or charges runs from the PHA notice of the deadline. The notice shall provide in substance:

(A) If the Tenant believes the proposed determination is not correct, the Tenant may ask the PHA to change the determination.

(B) The deadline to ask for a change.

(C) The Tenant may ask for a grievance hearing on the proposed determination. If the Tenant misses the deadline to ask for a change, the Tenant loses the right to a grievance hearing.

(iii) If the Tenant does not submit by the PHA deadline a request to change the rent or PHA charges stated in the PHA notice of rent or charges, the Tenant loses the right to a hearing on the proposed determination, and

the PHA is not required to give notice of proposed adverse action concerning the determination.

(iv) A request to change a proposed determination of rent or PHA charges shall be submitted in the form and manner prescribed in the PHA's administrative grievance procedure.

The rule does not require a PHA to establish a deadline for a tenant to request a change in the PHA determination of rent or charges. The choice is left to the management judgment of the individual PHA. (See also Preamble, section V.E.5, concerning establishment of a deadline for requesting a hearing.)

(4) Notice of Rent or Charges. Comment argues that the original PHA notice, which informs the tenant of proposed rent or charges, should also advise that the tenant may request modification of the proposed decision, and advise that the tenant may ask for a grievance hearing if the modification is denied. If a tenant does not ask the PHA to modify a decision that increases rent or charges, the tenant will never get notice of the opportunity to grieve (notice of proposed adverse action). Comment claims that failure to inform the tenant that there is a process to dispute the adverse action is a violation of due process (citing *Memphis Light* v. *Craft*, 436 U.S. 1(1978)).

For the following reasons, the final rule does not require notification of the right to request a modification, or of the opportunity to grieve, *at the time the PHA gives original notice of rent or charges*:

—For the most part, the rent determination is—as PHAs point out—the mechanical application of HUD requirements to information supplied by the tenant family. The suggested language tends to invite baseless requests to change routine PHA determinations of family rent, or to grieve on the determinations.

Answering a large number of ill-founded requests for modification or hearing on PHA rent determination may be a significant waste of administrative resources and money. Under the rule, the PHA's notice of rent determination states that the tenant may ask for an explanation, but does not solicit or encourage the tenant to request change in the rent. If the tenant does not agree with the PHA explanation, the tenant may then request a grievance hearing. The use of this two-step procedure tends to minimize submission of baseless tenant requests to modify the PHA rent determination. The PHA explanation may convince the tenant that the rent has been correctly computed.

Bundling additional information in a routine notice of the PHA determination of rent or charges may blur the impact of the information. The tenant may ignore notice of the opportunity to seek modification and hearing if included in the boilerplate of the annual rent determination notice. The information may have more impact if given by a separate notice of adverse action.

The procedure suggested in the comment may sometimes induce frivolous and unsupported challenges to the PHA determination, and sometimes cause a tenant to ignore real and substantial error in the PHA determination.

—Not including the suggested language (tenant may request modification, and may obtain hearing) in the original notice of rent or charges does not limit the tenant's opportunity for a statutory grievance hearing. The tenant does not lose the right to a hearing unless the PHA either (1) gives notice of a deadline to ask for a change in the PHA determination, or (2) give notice of adverse action, which explains the PHA determination of rent or charges and informs the tenant of the opportunity for a hearing.

The tenant's right to a grievance hearing is wholly preserved until the tenant receives the prescribed PHA notice. On the other hand, accelerating the notice of adverse action accelerates also the point at which the tenant loses the right to grieve on the PHA determination.

—In the public housing program, the PHA must give the tenant information about the PHA grievance procedure. The information includes a description of the circumstances in which the PHA has to give a grievance hearing—such as a dispute over the determination of rent or charges (see section V.E.2 of this Preamble). This general information is disseminated to tenants without regard to a particular adverse action or occasion of dispute.

In practice, tenants are well aware of the right to grieve—from information circulated by the PHA, and from prior personal experience, advice of legal aid or contact with other families. Since the tenant already has general knowledge of the grievance procedure, there is less need to remind the tenant that there is a grievance procedure each time the PHA gives notice of a determination of rent or charges. (By contrast, in the *Memphis Light* case cited in public comment the affected public did not know there was a procedure for protecting utility bills, a written account of the procedure was not accessible to the public, and the opportunity to invoke the procedure depended on word of mouth referral. In *Memphis Light*, utility service could be terminated for non-payment of the utility bills without notice of the administrative procedure for challenging the proposed determination (436 U.S. 1, 14 n. 14.))

—In the case of a PHA's proposed determination of rent or charges, the PHA may not evict the tenant from the unit, for non-payment of the rent or charges assessed by the PHA without the opportunity for a due process judicial hearing.

—Due process does not require notice of hearing rights at the time of the original notice of the PHA determination of rent or charges. Due process calls for such protections as particular circumstances demand, considering the private and government interest affected, and the value of procedural protections. The balance of affected interests does not support a claim that there is any due process right to notice of adverse action when the PHA gives original notice of a proposed determination of rent or PHA charges.

(5) Payment of Rent as Condition for Grievance Hearing—*(a) General—(i) Regulation.* The old rule provides that the PHA does not have to schedule a grievance hearing on the PHA determination of tenant rent unless the tenant pays the PHA in escrow the amount of the rent due on the first of the month before the "act or failure to act" (e.g., a proposed rent increase) on which the tenant wants to grieve, and then continues to pay the same monthly rent until the grievance is decided. If a tenant wants to challenge a rent increase determined at the annual reexamination, the tenant pays the pre-increase rent until the hearing officer renders a decision on the grievance.

The new rule (§ 966.31(d)) also allows the PHA to require payment of tenant rent, as determined by the PHA, as a condition for granting the tenant a hearing to grieve on the rent. The tenant must pay the amount of rent due, and must continue to pay the rent promptly until the grievance is decided (§ 966.31(d)(1)(i)). However, if the tenant disputes an increase in the rent, the tenant pays the pre-increase rent until the hearing officer renders a decision (§ 966.31(d)(1)(ii)).

The effect of the new rule is broadly similar to the old rule. Under both versions, a tenant who wants a grievance hearing to challenge a proposed increase in the rent pays the

pre-increase rent until the grievance is resolved. Except for an increase, the tenant must pay up rent due the PHA pending completion of the grievance hearing. The new rule provides (§ 966.31(d)(1)):

(i) The Tenant may request a grievance hearing on a proposed adverse action * * * concerning Tenant Rent * * *. Unless the Tenant has paid the PHA the full amount of the rent the Tenant owes, as determined by the PHA * * *, and continues to make such payments promptly until completion of the grievance hearing, the PHA is not required to commence or continue a grievance hearing concerning Tenant Rent.

(ii) The Tenant may challenge an increase in the Tenant Rent as determined by the PHA at reexamination. As a condition for obtaining a grievance hearing on the increase, the PHA may require the Tenant to pay the PHA the amount of the Tenant Rent in effect before the increase until completion of the grievance hearing.

(iii) The Tenant may challenge the amount of a decrease in the Tenant rent as determined by the PHA at reexamination, or may challenge a determination at reexamination that the Tenant Rent will not increase or decrease. As a condition for obtaining a grievance hearing on the amount of Tenant Rent, the PHA may require the Tenant to pay the amount of the Tenant Rent, as determined by the PHA at reexamination, until completion of the hearing.

(ii) Interest of Tenant and PHA. Legal aid comment objects to allowing the PHA to require a tenant to pay rent as a prerequisite for grievance on the rent. Comment objects to requiring payment of rent, to requiring payment of rent which is disputed, or to requiring payment of back rent (accrued before the tenant seeks a hearing). On the other hand, PHA comment states that the tenant should not have the right to a hearing unless the tenant pays all disputed rent, including a rent increase determined by the PHA.

The purpose of the grievance hearing is to secure a decision on how much the tenant owes the PHA. In HUD's view, the question of when a PHA should be allowed to make the tenant pay rent as a prerequisite for a grievance hearing, and how much, depends on a balance of interests.

The tenant has an interest in securing a hearing on the issue, and in minimizing encumbrances on the opportunity for a hearing. A requirement to pay disputed rent, before the tenant has a hearing on whether the rent should be paid, is a burden for the tenant. The tenant must put up the disputed rent or give up the opportunity for an administrative hearing.

The PHA has an interest in prompt payment and collection of rents. Promoting this end accords with statutory policy expressed in the U.S. Housing Act of 1937 (section 6(c)(4)(B), 42 U.S.C. 1437d(c)(4)(B)). Nonpayment of rent reduces amounts available for operation of the housing. Allowing the tenant to delay the payment of rent pending hearing diminishes the tenant's incentive for prompt payment, and increases tenant delinquencies in payment of rent.

(b) Payment of Disputed Rent. Legal aid comment asserts that the tenant should not be required to pay disputed rents until there is a decision whether the disputed amounts should be paid. The PHA can collect the amounts after a hearing. If the PHA miscalculates rent, the tenant may not have the money to pay the amount assessed by the PHA. Legal aid comment objects to requiring the tenant to pay money tenant may not have, in order to get a hearing on whether tenant has it. If the tenant cannot pay the amount demanded, the tenant is denied the right to grieve.

PHA and NAHRO comment states that public housing residents should pay whatever rent or charges are assessed by the PHA. After a hearing decision, the PHA can retroactively adjust the amounts paid by the tenant.

In the view of this Department, it is not true, as claimed by the legal aid comment, that the PHA can simply wait and later collect unpaid rents after a hearing decision is rendered. In many cases, the PHA will not be able to collect, or will not be able to collect the full amount owing. A PHA will have a harder time collecting a large amount than a small amount. A tenant will have more difficulty in paying amounts owed to the PHA the larger the accumulated debt. During the hearing process, a tenant may vacate the unit or may be evicted. It may then be too expensive or impractical for the PHA to find and collect from a tenant who no longer resides in the housing. It is common sense that a delay in rent collection can reduce the amount that is ultimately collected. The collection loss because of delay in collection is more marked in a population of poor families.

Any payment—including payment of the statutory rent—is a demand on limited family resources. Many poor families will not have the financial discipline to put away money to cover the accumulated rent debt that will be owing if the hearing officer sustains the PHA determination of rent owed by the tenant. A tenant may be able to make current monthly payment of the amounts claimed by the PHA, and which the tenant wants to contest. If the tenant does not have to make disputed monthly rent payments during the hearing process, and if the hearing decision finally supports the PHA, the tenant may not have money to pay the accumulated debt.

Allowing the tenant an effective moratorium on payment of disputed amounts during the hearing process encourages the tenant to run up a debt the tenant will not be able to pay. If the tenant does not pay up back rent after a hearing, the PHA is confronted with a hard choice between allowing the tenant to stay without payment, or evicting. Failure to evict a tenant who does not pay will stimulate rent delinquency by other tenants. To preserve rent collections, the PHA may be forced to evict. Permitting a tenant to withhold payment of disputed rent during the hearing process, building up an unpayable debt to the PHA, may finally lead to eviction of the tenant.

Permitting withholding during hearing creates an incentive for mis-use of the hearing process. Tenants will be tempted to file grievances in order to delay the payment of rent, not just to raise bona fide disputes over the PHA rent calculation.

(c) Payment of Increase or Decrease in Rent. At a reexamination, the rent may increase, decrease, or stay the same. Under the old rule, a tenant who wants to grieve the rent determined by the PHA at reexamination continues to pay the same monthly rent as before the reexamination ("the rent due and payable as of the month preceding the month in which the act or failure to act [the reexamination] took place" (old rule § 966.55(e)), regardless of whether the change at reexamination is an increase or a decrease of the prior rent. If the PHA has determined a lower rent at reexamination (because of a fall in family income), but the tenant alleges that the decreased rent is still too high, the tenant would have to pay the old rent pending hearing, rather than the lower rent determined at reexamination.

This rule provides that if the tenant challenges an *increase* in the rent at a reexamination, the tenant must pay the pre-increase rent until the issue is decided at hearing (§ 966.31(d)(1)(ii)). Otherwise the tenant must pay the rent determined by the PHA at the reexamination (§ 966.31(d)(1)(iii)). If the PHA decreases the rent, the tenant pays the decreased rent determined at reexamination. The tenant gets the immediate benefit of the decreased rent initially determined by the PHA.

Legal aid comment asserts that if the rent is decreased, and if the tenant challenges the amount of the decrease, the tenant should only be required to pay the undisputed portion of rent. PHA and NAHRO comment argues that pending outcome of a grievance hearing

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a tenant should have to pay whatever rent is determined by the PHA, including an increase. Allowing the tenant to pay the pre-increase rent gives the tenant an incentive to postpone payment of rent by filing a grievance. Consequently, this practice causes an increase in filed grievances, in tenant receivables, and in non-productive use of PHA staff.

According to PHA comment, the greater the increase in rent, the more likely that a tenant will initiate a request for a grievance hearing. A tenant will face substantial payments if the tenant loses at the hearing. Allowing the tenant to pay pre-increase rent causes hardship to a tenant who cannot pay accumulated back rent. Increased rent should be effective immediately, even if the tenant wants to grieve. If the grievance is upheld, the PHA can grant a credit or refund to the family.

HUD is impressed by the argument that allowing a tenant to hold back any part of the rent produces an incentive to grieve for the sake of delaying payment, and therefore an incentive for assertion of phony grievances. A PHA which delays collection of rents due from public housing families will suffer a collection loss because of the delay. Reducing pressure for payment from a public housing tenant will affect collection of rent from other tenants in the PHA's program. The authority for a tenant to postpone payment of rent during a grievance generates administrative burden for the PHA in processing delinquencies and handling grievances. Permitting a tenant to put off payment of rent determined by the PHA can eventually cause a hardship when the tenant must pay the accumulated rent. A postponement of collection may lead to eventual eviction of the family.

In this final rule, the tenant is not required to pay a rent increase determined by the PHA at reexamination in order to grieve on the PHA determination. Otherwise, the tenant must pay the amount determined by the PHA, even if the tenant seeks a reduction in the amount determined by the PHA. This posture is a reasonable balance of the interests affected.

Respecting the desire of the PHAs for immediate collection of a rent increase determined at reexamination, we note that a PHA can attempt to accelerate the grievance process in order to mimimize rent loss and other harmful effects. The PHA can set a deadline for requesting modification of the rent determined by the PHA (§ 966.31(c)(l)(i)), or a deadline for seeking a grievance hearing after notice of adverse action (§ 966.31)(c)(2)). By moving up the point at which the PHA gives notice of adverse action, the PHA can also move up the time for the tenant to seek a grievance hearing on the adverse action, and the time for conducting the hearing.

The PHA can give notice of adverse action (explaining the specific grounds for the PHA rent redetermination) at the same time that the PHA gives notice of the new rent redetermined by the PHA (§ 966.31(b)(2)(iii)). The PHA may be able to complete the grievance hearing before or soon after the scheduled effective date of reexamination, thus avoiding delay in the point at which the tenant must pay the rent increase determined by the PHA, but without compromising the right of the tenant to a grievance hearing on the PHA determination.

Several factors tend to minimize the incentive for a tenant to abuse the grievance process as an excuse for delaying payment of a rent increase. A tenant who holds back any part of the rent does not have a free ride.

—*First*, contrary to recommendations in legal aid comment, the rule does not prohibit the PHA from imposing late charges for a tenant who holds back payment of a rent increase during the grievance process. If the hearing officer sustains the increase, the tenant may have to pay additional charges assessed because of the late payment of rent.

—*Second*, there is nothing that precludes the PHA from taking steps to terminate the lease and evict the tenant for failing to pay the increased rent determined by the PHA. If eviction is excluded from the PHA grievance process, the PHA may bring the court action for dispossession, without any prior grievance hearing. Of course, the tenant can contest the PHA's rent determination in the State court eviction proceeding.

HUD does not adopt the legal aid recommendation that a tenant should only pay amounts which are undisputed. Under the final rule, a tenant who wants the opportunity for a hearing on a rent increase at reexamination must at least continue to pay the rent the tenant was paying before the reexamination. Continunance of rent at the level previously determined (and on which the tenant had the prior opportunity to grieve) is not a new and unexpected burden for the tenant.

The legal aid position would effectively destroy the requirement for the tenant to pay rent as a condition for hearing. If a tenant does not have to pay rent which is "disputed", the tenant has carte blanche to dispute any or all of the rent and to obtain a grievance hearing. Unlike the authority to withhold an *increase* in the rent assessed by the PHA, there is no external objective criterion governing the amount that may be withheld. The tenant unilaterally decides what is to be disputed and withheld.

If the tenant can hold back any portion of the rent, a tenant may be greatly tempted to raise insubstantial disputes for the sake of delaying the payment of rent, and tempted to enlarge the portion of the rent which is ostensibly disputed. The practice of withholding rent is likely to spread, as other tenants discover that rent payments can be disputed and postponed. The threat of late charge or eviction may not stem the flow of frivolous claims. Tenants may not appreciate the risks of PHA adverse action. If a tenant expects to move from the unit before arrearage is collected, the tenant may deliberately seek to string out the need for payment as long as possible.

Open-ended withholding of rent by public housing tenants may dramatically damage PHA finances. Authority to withhold a rent increase is intrinsically limited to the amount of the increment over prior rent. By contrast, a withholding of all disputed amounts potentially reaches the PHA's whole stream of rental income. Any delay in collection of rent may harm the financial interests of the PHA. The greater the amount that is withheld, the greater the potential damage to finances of the PHA.

The U.S. Housing Act of 1937 (section 6(c)(4)(B), 42 U.S.C. 1437d(c)(4)(B)) authorizes HUD to prescribe procedures and requirements for PHAs to establish:

> satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent * * *.

The PHA should not be required to grieve on issues related to a PHA determination of tenant rent while the tenant is refusing to pay the rent in effect prior to the determination.

(d) Payment of Back Rent. Under the proposed rule, a family which wants to grieve on the PHA rent determination must pay the full amount, as determined by the PHA, of the tenant rent due and payable by the family (except for a rent increase). Legal aid comment objects to imposing a requirement for payment of back rent as a condition for hearing. Comment claims that requiring payment of back rent is objectionable if the tenant is disputing the rent claimed by the PHA, and that the requirement violates both due process and the statutory grievance right.

Comment alleges that the burden on the tenant from requiring payment of back rent is disproportionate to the benefit to the PHA. Comment asserts that the PHA's sole interest is to assure that the grievance process doesn't result in financial detriment by accumulation of additional rent during the grievance process. The comment argues that if the PHA is conceded a right to demand payment of rent as a condition of hearing, the PHA should only be allowed to require payment of rent accruing after the tenant's request for a hearing.

Legal aid comment which objects to requiring payment of back rent also objects to requiring payment of any disputed rent. Thus the PHA would only be allowed to require payment of rent which is undisputed, and which accrues after the tenant's request for a grievance hearing. The PHA would not be allowed to collect back rent—even if the tenant's obligation to pay the back rent is undisputed—accrued before the tenant's request for a hearing. Comment also objects to allowing the PHA to impose any penalty for late payment of rent, objects to imposing any deadline for requesting a grievance, objects to permitting the PHA to evict while the tenant is grieving the nonpayment of rent, objects to allowing a PHA to bypass the grievance process for a termination of tenancy, and urges the adoption of elaborate grievance procedures that will afford the tenant ample opportunities to delay the hearing process.

If adopted in tandem, the positions urged in legal aid comment will systematically encourage a tenant to withhold rent payable to the PHA, and to dispute the PHA's computation of the rent for the sake of enlarging the amounts that may be safely withheld. Tenants will put off payment of rent to the last possible moment, when the hearing officer has rendered a decision. The position advocated by comment is an invitation to financial disaster for the PHA, and will undermine the encouragement of tenant responsibility for payment of rent.

Comment states that the PHA should only be able to collect undisputed rent which accrues after the tenant requests a hearing. This approach allows the tenant to manipulate the amount which must be paid as a condition for hearing, by putting off the point at which a hearing is requested. The tenant is offered an incentive to delay the hearing request as long as possible, and thus to hold off the payment of rent. The proposal discourages prompt payment of rent, and is contrary to the spirit of the statutory directive to establish procedures designed to assure prompt payment and collection of rent (U.S. Housing Act of 1937, section 6(c)(4)(B), 42 U.S.C. 1437d(c)(4)(B)).

Under the final rule, the amount of rent which must be paid by the tenant in order to get a hearing is not affected at all by the point at which the tenant decides to request a hearing. Whenever the tenant requests a hearing, the tenant must pay the amount due, as determined by the PHA. Thus the tenant has no reason to delay requesting a hearing, or to hold back the payment of rent. Instead, a tenant with a bona fide cause of grievance has an incentive to have the grievance heard as soon as possible, so that the rent paid is reduced as soon as possible, upon a favorable resolution of the grievance.

The final rule provides that the tenant must pay the full amount owed, as determined by the PHA (except for a challenged increase in the rent as determined at reexamination). The tenant must pay back rent accrued before the tenant's request for a hearing.

Comment acknowledges that the PHA has a financial interest in collecting amounts accrued during the hearing process, but claims that the PHA does not have a sufficient interest to justify requiring payment of back rent as a condition for hearing. HUD rejects the artificial distinction between the PHA interest in collecting back rents, as against the PHA interest in collecting additional amounts that come due during the hearing process. The amounts owed by a tenant before the grievable event (proposed adverse action), or before the tenant's request for a hearing, may exceed amounts that accrue subsequently and prior to hearing.

The PHA has a financial stake in collecting any amount that the tenant owes to the PHA. If the PHA does not collect rent promptly, rent revenues will be lost. Requiring the tenant to pay rent as a condition for hearing helps to maintain pressure for payment of rent. This proposition applies equally to back rent, as to rents which accrue during the hearing process.

(e) Legality and Constitutionality of Requiring Rent Payment as a Condition for Hearing. Comment claims that requiring the tenant to pay rent as a condition for hearing is unconstitutional, and deprives the tenant of the statutory right to a hearing under the 1983 law.

Comment wrongly asserts that the requirement amounts to an unconstitutional seizure of family property. In fact, however, no property is seized by the PHA. The tenant either deposits the amounts required, or fails to make the deposit. If the tenant fails to make the deposit, the tenant is not entitled to an administrative grievance hearing. The tenant does not lose possession of the money. The tenant loses the right to an administrative grievance hearing on whether the money is owed to the PHA.

Foreclosure of the right to an administrative grievance hearing before the PHA does not foreclose the opportunity for a hearing. If the tenant does not pay the rent, the PHA may bring a judicial action seeking repossession of the unit, or seeking a judgment for amounts owed by the tenant. The rule does not authorize the PHA to seize a tenant's funds or other property without the opportunity for hearing. To the contrary, the rule provides (§ 966.11) that the lease may not include provisions which would allow the PHA to take or hold family property without notice to the tenant, and a court decision on the rights of the parties. The right of the PHA to take money or other personal property of the tenant and household prior to judgment is governed by State law and State procedures for pre-judgment seizure. Operation of the State law and procedures for pre-judgment seizures is subject to Constitutional requirements. The HUD rule does not attempt to prescribe rules for pre-judgment attachment or other creditor remedies.

The requirement to pay rent as a condition for an administrative hearing does not deny tenant the opportunity to grieve on a PHA adverse action. The payment of rent is merely a reasonable condition governing the tenant's access to the administrative grievance process. HUD has plain statutory authority to regulate the prerequisites and procedures for a grievance hearing (U.S. Housing Act of 1937, section 6(k), 42 U.S.C. 1437d(k); HUD Act, section 7(d), 42 U.S.C. 3535(d)).

Comment asserts that a requirement to escrow rent penalizes a tenant for exercising the right to a grievance hearing, and will chill tenant's exercise of the grievance right. However, the tenant is required to pay the rent determined by the PHA whether or not the tenant seeks a hearing on the PHA determination. Payment of rent is not a special requirement or penalty imposed on a tenant who wants a hearing, but is a regular incident of the assisted tenancy.

The U.S. Supreme Court has specifically rejected the contention that a requirement to pay disputed rent pending hearing is a denial of due process. In *Lindsey* v. *Normet*, 405 U.S. 56, 66–67, 92 S. Ct. 862, 870–71 (1972),

tenants claimed a denial of due process of law:

> Because the rental payments are not suspended while the alleged wrongdoings of the landlord are litigated. *We see no Constitutional barrier to [the State's] insistance that the tenant provide for accruing rent pending judicial settlement of his disputes with the lessor.*

The Supreme Court held that requiring a tenant to pay rent to obtain continuance of an eviction hearing is not irrational or oppressive (405 U.S. at 56).

In *Head* v. *Jellico Housing Authority*, Civ. No. 3–87–339 (E.D. Tenn, filed February 17, 1988), the U.S. District Court rejects the claim of a public housing tenant that a grievance hearing was improperly terminated because of tenant's failure to pay rent into an escrow account pursuant to the old lease and grievance rule. The District Court holds that a tenant may be required to pay both disputed and undisputed rent into escrow as a condition for obtaining a grievance hearing. "The failure to make escrow payment terminates the grievance procedure and constitutes a waiver of the tenant's rights under the grievance procedure."

In the *Head* case, the District Court also rejects tenant's contention that due process entitles the tenant to a hearing before the assessment of public housing rent increases. The court states that "the Fifth Amendment does not require that public housing tenants be accorded an opportunity for a due process hearing before their rents can be increased".

(f) *Elimination of Requirement to Deposit Tenant Payments in Escrow.* The old rule provided that tenant payments which are required as a condition for scheduling a grievance which involves the amount of rent must be deposited in an "escrow account" until the grievance is decided. The new rules does not require the PHA to put the tenant payments in an "escrow account" or require any special procedure for segregating or handling the monies paid by the tenant.

Of course, once the grievance is decided, the PHA will have to act in accordance with the grievance decision, including a decision requiring the PHA to refund collected amounts in excess of the amounts owed by the tenant to the PHA.

(6) Grievances Other Than Disputes Over Rent—Requiring Payment as a Condition for Hearing—(a) *Payment of Disputed Charges.* The proposed rule would allow a PHA to require payment of rent as a condition for granting a hearing on the PHA's determination of rent. The Preamble noted that, as under the old rule, this authority "applies only to rent, not to the PHA's determination respecting other charges imposed on the family" (51 FR 26518, 1st col., July 23, 1986). Comment poses questions concerning authority of a PHA to require some payment as a condition for hearing on matters other than rent.

Comment states that the rule is not clear on whether a tenant must pay disputed PHA charges other than rent to get a hearing on the PHA's assessment of the charges. Comment observes that payment of disputed charges will be a hardship for the tenant. The final rule (§ 966.31(d)(2)) explicitly states that the PHA may not require payment of charges as a condition for granting a grievance hearing. The rule provides that:

> The PHA may not deny the opportunity for a grievance hearing on a proposed adverse action * * * concerning the PHA's proposed decision determining the amount of PHA charges in addition to rent, or the amount the Tenant owes the PHA for PHA charges in addition to rent, on the ground that the Tenant has not paid the PHA the full amount, as determined by the PHA, of the charges the Tenant owes to the PHA.

This revision is in accordance with the old rule, and with the intention of the proposed rule, as expressed in the Preamble.

The rule does not treat PHA non-rent charges the same as rent. The PHA has less interest in demanding payment of charges prior to hearing, than in requiring payment of rent. First, the aggregate amount of regular rent collections is ordinarily much greater than the aggregate amount of tenant charges. For this reason, a delay in payment of tenant charges during the time necessary for hearing will have a much less severe effect on the flow of revenues needed to operate public housing projects. Second, the PHA's determination of charges other than rent is more likely to hinge on special circumstances, or legitimately disputable facts, than the PHA's routine determination of the rent. There is probably a considerably greater rate of error in determination of PHA charges, and consequently a greater likelihood that the charge will be reversed or denied at hearing. The tenant has therefore a greater interest in having the grievance heard before paying the amount determined by the PHA.

(b) *Grievance on Termination of Tenancy.* PHA comment recommends that the requirement to pay rent as a condition for hearing should apply to a grievance on any termination of tenancy, not just to a grievance on payment of rent. The PHA states that a tenant who wants to grieve on a termination of tenancy should be required to remain current in rent, so that the grievance process is not used to delay an inevitable eviction and provide free rent for the tenant.

The PHA recommendation is not adopted. The PHA's financial interests are adequately protected by requiring payment of rent determined by the PHA as a condition for a grievance hearing on the PHA's determination of the rent.

(7) Relation of Grievance on Non-payment of Rent to Administrative Hearing on Termination of Tenancy. The PHA determination of rent, or the PHA determination to terminate tenancy or evict the occupants, are both subjects on which the PHA is required to grieve. Non-payment of rent is a common ground for the PHA decision to evict. The tenant's grievance on the PHA's rent determination may turn on some of the same issues as a grievance on the PHA's decision to terminate the tenancy for non-payment of rent, or as a judicial action to evict for non-payment. Here we consider the relation between a tenant's right to an *administrative* grievance hearing on rent and the right to an *administrative* grievance hearing on a termination of tenancy.

Non-payment and termination are separate grievable subjects, but the regulation does not require duplicative grievance hearings on the same facts or issues. Issues concerning non-payment of rent may be heard in a grievance hearing process before or separate from a grievance hearing for termination of tenancy for non-payment. Alternatively, issues concerning non-payment and termination may be bundled in a single hearing process, where the tenant challenges the PHA's decision to terminate the tenancy for non-payment of rent. Once resolved by decision of the PHA-hearing officer, issues concerning determination and payment of rent need not be reheard in a grievance hearing on termination of tenancy.

If the PHA decides to terminate the assisted tenancy for non-payment of rent previously determined by the PHA, the tenant's right to grieve on the proposed decision to terminate does not enlarge the tenant's right to grieve on the original determination of tenant rent. If the tenant does not request a grievance hearing by a deadline imposed by the PHA (§ 966.31(c)(2)), the tenant loses the right to grieve on the PHA's determination of rent. Once lost, the right to grieve on that issue is not restored by the PHA's subsequent act to terminate the tenancy for non-payment of the rent so determined. The tenant may grieve the fact of non-payment, or the existence of legal grounds for termination because of the non-

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payment. However, in the hearing on termination of tenancy, the tenant is not entitled to re-open the barred issues concerning correctness of the PHA rent determination.

The procedure for handling overlapping grievance issues may be regulated in the grievance procedures adopted by a PHA. The power of the hearing officer to manage the conduct of the grievance hearing under the PHA grievance procedure may encompass the power to decide how different grievable issues may be fairly and efficiently heard.

f. Requiring Tenant to Move. In certain circumstances, the tenant must move to another public housing until when requested by the PHA (§ 966.10(h)(1)(v); see discussion at section III.I of this Preamble). The rule provides that the PHA's decision requiring the tenant to transfer to another dwelling unit is an adverse action—that is, a subject on which the PHA is required to grieve (§ 966.31(a)(2)(ii)). The PHA's decision to move the tenant does not terminate public housing assistance on behalf of the tenant. Nevertheless, the decision so directly affects the tenant's security of occupancy that the proposed decision is treated as a proposed adverse action.

If a PHA has properly excluded eviction from the PHA grievance process, the PHA may bring action for eviction without a prior grievance hearing (see Preamble, section VI.D.5). After a State court decision that a tenant may be evicted, the PHA will ordinarily take whatever action is necessary to force the tenant and other occupants to move from the unit in accordance with State law. PHA and NAHRO comment requests clarification that the PHA does not have to give a grievance hearing when the tenant is forced to move pursuant to the court decision in the eviction proceeding. The final rule clarifies, as originally intended, that the PHA is obliged to grieve when the PHA decides to require the tenant to move *to another dwelling unit* (§ 966.31(a)(2)(ii), cf. also section III.I of this Preamble).

Conversely, however, the PHA is not obligated to grieve if eviction is properly excluded from the PHA grievance process, and the PHA takes action to execute a judicial decision which allows the PHA to evict the tenant from the unit in accordance with eviction process under State or local law. The statute and rule allow exclusion of "eviction" from the PHA grievance process. "Eviction" is defined as "forcing the occupants *to move out* of the dwelling unit" (§ 966.2). Once the landlord-tenant court decides that the PHA may evict the occupants, the PHA may proceed with the eviction—that is may force the occupants to move. Since eviction is excluded from the grievance process, the PHA has no obligation to provide any further opportunity for a grievance hearing on the eviction.

C. Who May Grieve?

The 1983 law requires the PHA to establish a grievance procedure in which "tenants" have the opportunity to be heard in an administrative grievance hearing on proposed adverse action (U.S. Housing Act of 1937, section 6(k); 42 U.S.C. 1437d(k)). However, grievance requirements in the proposed rule were vested in the "family", thus leaving room for the PHA to determine in its grievance procedures how the family will exercise the grievance right, and through which family members.

The final rule specifies that the right to grieve rests with the "tenant", the member of the assisted family who leases the unit from the PHA. References to "family" in the proposed grievance regulations are systematically replaced by references to the "tenant". This revision assures that the PHA grievance procedure places the grievance right in the tenant, in accordance with the literal terms of the 1983 law. The revision also removes ambiguity as to who holds rights under the grievance procedure. For example, the revision makes clear that the PHA's notice of the grounds for proposed adverse action must be directed to the "tenant", as required under the 1983 law (U.S. Housing Act of 1937, section 6(k)(1), 42 U.S.C. 1437d(k)(1); section 966.31(b)).

The change in the grievance procedure is parallel to changes in the statement of regulatory lease requirements. As under the PHA grievance procedure, the "tenant" is the subject of all rights under the lease.

D. Purpose of Hearing on Proposed PHA Adverse Action

1. Regulation Provisions

The hearing process under section 6(k) of the U.S. Housing Act of 1937 is intended to assure that decisions by the PHA with respect to an individual tenant comply with applicable rules. The hearing process does not displace the regular PHA administrative process for matters committed to PHA discretion and management judgment. The rule states that the purpose of the hearing on a proposed PHA adverse action "shall be to review whether the proposed adverse action by the PHA is in accordance with the lease, or with law, HUD regulations or PHA rules" (§ 966.31(a)(3)(i)).

The concept of adverse action, and the requirement for hearings on a proposed adverse action, apply only to proposed decisions by the PHA "concerning an individual Tenant" (§ 966.31(a)(2)). The rule provides (§ 966.31(a)(3)(ii)) that:

> "PHA action or non-action concerning general policy issues or class grievances (including determination of the PHA's schedules of allowances for PHA-furnished utilities or of allowances for Tenant-purchased utilities) does not constitute adverse action by the PHA, and the PHA is not required to provide the opportunity for a hearing to consider such issues or grievances."

2. Response to Comment

a. Exclusion of Policy Issues and Class Grievances From Hearing Process. Some comment agrees with HUD that the rule should include an explicit and unequivocal statement describing the purpose of a grievance hearing. The wisdom or appropriateness of policy, rule, regulation or law are not at issue in the hearing. Other comment argues that the grievance hearing should be used for policy issues and class grievances, since these questions affect a whole class of residents. Where many tenants have disputes which affect each tenant individually, but in roughly the same manner, it is more efficient to handle disputes on a class action basis.

The exclusion of class grievances and policy issues in this rule is essentially similar to the old lease and grievance rule. Although the old rule allowed the tenant to grieve on almost any manner of individual dispute with the PHA, the grievance process was only a forum for determination of individual grievances. (See especially § 966.51(b) of the old rule.) The Supreme Court has noted that public housing grievance procedures" * * * are open to individual grievances but not to class actions" (*Wright* v. *Roanoke*, 479 U.S. ___, ___, 107 S. Ct. 766, 772 (1987)). The Supreme Court also stated that the local PHA grievance processes required under the U.S. Housing Act of 1937" * * * are not open to class grievances * * *." (*Wright* v. *Roanoke*, 479 U.S. at ___, 107 S. Ct. at 773 (1987)).

The 1983 statute requires a PHA to establish and implement an administrative grievance process for proposed adverse action against a tenant. The law was intended to open a forum to resolve issues raised by individualized PHA action concerning the individual tenant. The law was not intended to convert the administrative

grievance process into a forum for resolution of broad class and policy grievances.

Comment which proposes that the grievance process should be a vehicle for decision on class issues is plainly motivated by the desire to maximize the capacity to mount broad challenges to PHA decision and PHA authority. Those who attack PHA determinations would have a greater power to overturn PHA actions with a minimum expenditure of resources and funds, in particular with a minimum use of available legal aid resources.

The proposed change, as proposed by such comment, in the purpose of the grievance process would, however, diminish the authority and discretion of the PHA to manage the public housing program. The proposed change would very greatly increase the risk of major distortion and damage in administration of the PHA program. The PHA should instead retain management authority to develop appropriate local procedures to handle class and policy issues. In the case of policy issues, there is no governing legal rule, and the authority for management decisions should rest with project management (including authority of a resident management corporation under section 20 of the U.S. Housing Act of 1937, as added by section 122 of the Housing and Community Development Act of 1987, Pub. L. 100-242, February 5, 1988). The authority to decide policy for management of public housing should not be transferred to a hearing officer. The hearing officer does not have ongoing responsibility for project management. In the case of legal issues, a question which could affect many tenants can be considered and tested in a hearing for a single tenant.

A PHA has the freedom to develop a variety of local procedures to handle legal or policy issues that affect tenants as a whole, or large groups of tenants. The PHA may elect to assign issues for decision by tenant management, or may develop procedures for submission and consideration of public and tenant views. This rule should not divest the PHAs of local autonomy to work out different kinds of processes for determination of different kinds of issues. HUD will not force PHAs to resolve class and policy issues through a forum designed for the resolution of particular legal disputes between the tenant and the PHA.

b. Tenant Allowance for Utilities. The rule provides (§ 966.31(a)(3)(ii)) that the grievance process does not apply to the PHA's determination of the schedule of allowances for utilities (including allowances for Tenant-purchased or PHA-furnished utilities). Comment asserts that there is no basis for excluding determination of utility allowances from the grievance process, and that the exclusion will lead to avoidable litigation.

A PHA determination of utility allowances for the public housing program is a technical determination by PHA management, based on the pattern of utility costs and consumption in the PHA jurisdiction (see Part 965, Subpart E). This process is and should be different from the process for determining whether the PHA has violated some law or rule respecting the individual tenant, such as a determination whether the PHA made a mistake in determining family income, or in computing rent based on the family income. HUD regulations establish a separate procedure specially designed for the determination of utility allowances, and for soliciting tenant comments on the determinations (§ 965.473). The Supreme Court has noted HUD's consistent historical position that the grievance procedures do not apply to determination of a PHA's utility allowance schedule (*Wright v. Roanoke*, 479 U.S. ——, ——, 107 S. Ct. 766, 773 n. 8 (1987)). The Supreme Court held that a tenant has an enforceable right to a reasonable utility allowance, and may bring a judicial action to enforce the right under 42 U.S.C. 1983.

E. Hearing Procedure

1. General—Administrative Grievance Procedure

The 1983 law states requirements for a hearing on proposed adverse action (section 6(k) of the U.S. Housing Act of 1937, 42 U.S.C. 1437d(k)). The statute does not, however, incorporate the procedural details of the old lease and grievance rule. The new rule requires the PHA to establish a hearing procedure which complies with the basic elements described in the 1983 law.

The rule provides (§ 966.30(b)) that the PHA must establish and implement an administrative grievance procedure for any proposed adverse action. The PHA is required to adopt a written administrative grievance procedure in accordance with HUD requirements (§ 966.30(c)).

2. Information for Tenant—General Description of PHA Grievance Procedure

The rule provides that the PHA must give each tenant in the PHA's public housing program a "general written description" of the nature and coverage of the administrative grievance procedure, including a description of the circumstances when the PHA must give the opportunity for an informal hearing, and how to request a hearing (§ 966.30(d)(1)). The text of the administrative grievance procedure must be made available for inspection and copying by any tenant (§ 966.30(d)(2)).

A legal aid office commends the requirement that a PHA must adopt a written grievance procedure, must provide the family a general written description of the procedure, and must make the procedure available for inspection by the family.

PHA comment states that the PHA should not be required to furnish every family a copy of the PHA administrative grievance procedure, or a general description of the grievance procedure. Furnishing the grievance procedure to every family is an administrative and financial burden. A copy of the procedure should only be given to a family in danger of adverse action, or in case of a formal hearing, or only at the time a unit is leased to the family. PHA comment states that posting on the PHA office bulletin board is sufficient notice of grievance requirements.

PHA comment reflects a misreading of the requirement to give the tenant a "general written description" of the PHA's grievance procedures. The rule does not require the PHA to give every public housing tenant a copy of the PHA "administrative grievance procedure", i.e., the full text of the grievance procedure adopted by the PHA, in advance of a concrete grievance or at any other time. Rather, the rule appropriately distinguishes between the types of information the tenant needs at different stages, so that the tenant can understand and invoke the right to a hearing under the PHA grievance procedure. Consequently, the rule distinguishes between three classes of communication by the PHA to the tenant about the administrative grievance procedure:

—A "general written description" of the grievance procedure (§ 966.30(d)(1)). The general description is given to every tenant in the PHA public housing program.

—The "administrative grievance procedure" adopted by the PHA (§ 966.30(d)(2)). The tenant can inspect or copy the procedure at any time.

—The "notice of proposed adverse action" which informs a particular tenant that the PHA intends to take specific adverse action affecting the tenant (§ 966.31(b)). The notice informs the tenant of the reasons for the

proposed action. The notice also tells the tenant about the opportunity for a hearing, and tells the tenant how to request a hearing.

The "general description" gives the tenant a broad understanding of how the grievance process works, and when the tenant has the right to a grievance hearing. The description must be given to every tenant, even if there is no concrete dispute or expectation of dispute between the tenant and the PHA.

The general description should be drafted in clear and simple language. If the tenant wants more detailed information, the tenant can examine the PHA administrative grievance procedure. Under the rule, the individual PHA will be able to develop and use general description literature, such as a brief pamphlet or booklet, that briefly and effectively communicates to public housing tenants the basic elements of a tenant's right to a grievance hearing.

The requirement to distribute a general description to every tenant in the PHA public housing program poses a reasonable administrative burden for the PHA. The requirement is an important link in implementation of the PHA's grievance obligation under the 1983 law. Together with the tenant's right to full examination of the PHA grievance procedure, and the right to notice of specific adverse action respecting the tenant, the general description helps the tenant know how and when to exercise the right to a grievance hearing on PHA adverse action.

The rule does not require the PHA to give the general description to a tenant on repeated occasions, or at any particular time. The requirement is satisfied by giving the general description only one time, such as at the time a tenant is first admitted to the PHA's public housing program. The PHA could give the general description at the time of initial lease-up to a tenant, as recommended by PHA comment. The PHA does not have to repeat or supplement the general description first provided to a tenant, unless there are changes in the PHA's administrative procedure which change elements described in the original general description given to the tenant. For example, there could be a change in the procedure for requesting a hearing described in the original notice to the tenant. If so, the PHA must give the tenant general information on the PHA's currently operative procedure to request a hearing.

HUD expects that most PHAs will give a tenant the general description of the PHA grievance procedure at the time of some other regular communication by the PHA with the tenant. This practice minimizes the PHA's administrative burden. For example, the general description can be handed to a tenant when the tenant is admitted to the PHA public housing program, together with other orientation materials for new participants. For tenants already admitted to the PHA's public housing program, the general description can be give to each tenant at the annual reexamination (when the PHA must communicate with the tenant about family income and composition, and about the PHA's determination of the tenant rent).

Comment suggests that the tenant should be given a form for requesting a hearing at the time of annual reexamination. Comment remarks that the reasons for a hearing must be clearly defined, to prevent nuisance grievances.

The suggestion is not adopted. For easy administration of the grievance requirement, a PHA may elect to develop a form to be submitted by a tenant who wants a grievance hearing. The HUD regulations establish minimum requirements for the PHA administrative grievance procedure. The PHA will have broad authority to work out the details of the local grievance process. HUD will not mandate the use of grievance forms, and will not require that grievance forms be distributed at specified times.

3. Notice of Proposed Adverse Action

a. Requirement for Notice—Statute and Rule. Section 6(k)(1) of the U.S. Housing Act of 1937 provides that a tenant must "be advised of the specific grounds" of a proposed adverse action by the PHA (42 U.S.C. 1437d(k)(1)). Notice of the proposed action is also necessary to give the tenant an actual opportunity to request a hearing under the PHA grievance procedure.

The rule provides (§ 966.31(b)(1)):

> The PHA shall give the Tenant written notice of a proposed adverse action. The notice shall:
>
> (i) Contain a specific statement which describes the proposed adverse action, and the reasons for the proposed adverse action.
>
> (ii) State that the Tenant may request a hearing under the PHA's administrative grievance procedure.
>
> (iii) State how to request a hearing, and the deadline for requesting a hearing.

b. When PHA Gives Notice of Adverse Action—(1) Termination of Tenancy. The final rule adds new language providing that occupants may not be evicted until the PHA has given the tenant notice of proposed adverse action (new § 966.31(b)(2)(i)(A)) (unless eviction is excluded from the PHA grievance process). The rule also provides (§ 966.31(e)(1)(ii)):

> If the Tenant makes a timely request for a hearing on a proposed decision to terminate the tenancy or to evict the occupants * * * the occupants shall not be evicted from the dwelling unit before completion of the PHA grievance hearing.

If the PHA terminates the lease, the notice of adverse action must be given before or combined with the notice of lease termination (§ 966.31(b)(2)(i)(B)). This procedure is designed to allow time for a hearing within the period of the statutory notice of lease termination. The 1983 law provides that tenants must have an opportunity for a grievance hearing within the period of the applicable notice of lease termination (U.S. Housing Act of 1937, section 6(k)(2), 42 U.S.C. 1437d(k)(2)).

If a tenant is given notice of adverse action, and makes timely request for a grievance hearing, it is possible that the grievance hearing may not be completed before expiration of the notice of lease termination (e.g., fourteen days notice for non-payment of rent). The rule therefore provides (§ 966.31(e)(1)(i)):

> For a proposed termination of the lease by the PHA, or a proposed PHA decision not to renew the lease at the end of the lease term, the lease shall not terminate before completion of the PHA grievance hearing.

For a proposed decision to evict the family from the dwelling unit after the end of the lease term, the statute and rule do not specify any minimum period of notice (from service of the notice of adverse action to commencement of the eviction proceeding). However, a tenant who makes a timely request for a grievance hearing after receiving notice of adverse action may not be evicted before completion of the hearing (§ 966.31(e)(1)(ii)).

(2) Requiring Tenant to Move. A decision by the PHA to make the tenant transfer from one public housing unit to another is an adverse action. The rule provides (§ 966.31(b)(2)(ii)):

> * * * the Tenant may not be required to move until the PHA has given the Tenant notice of proposed adverse action. If the Tenant makes a timely request for a hearing on the proposed decision, the Tenant may not be required to move until Tenant is given the opportunity for a grievance hearing.

Comment notes that a tenant should not be required to move to another public housing unit until the PHA gives notice of adverse action, and until the grievance hearing is completed. Both of these elements were already included in the proposed rule. No revision is required.

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Comment states that the PHA should be required to give notice to the family at least thirty days prior to move (with additional time for mailing). HUD finds no need to impose a special notice period for this purpose. If a tenant refuses to transfer to another unit, the PHA may terminate the lease on the original unit. If so, the PHA must give thirty days notice of the lease termination (for grounds other than health or safety or non-payment of rent) (§ 966.22(a)). The PHA must also give notice of this proposed adverse action to terminate the lease, and this notice must be given no later than service of the notice of lease termination (§ 966.31(b)(2)(i)(B) and § 966.22(d)(3)). The result is to effectively require notice of adverse action at least thirty days before termination of the lease. In addition, the rule provides that a tenant is not obligated to move until the tenant has the opportunity for a grievance hearing (§ 966.31(b)(2)(ii)).

To avoid delay, the PHA may give a combined notice of proposed adverse action: (1) Requiring the tenant to move to another dwelling unit, and (2) terminating the lease for this reason. The notice of adverse action may be combined with the thirty day notice of lease termination.

(3) Rent or Charges. A PHA determination of rent or PHA charges is an adverse action. The rule provides that the PHA may give notice of proposed adverse action when the PHA gives the tenant notice of a proposed decision determining rent or charges (§ 966.31(b)(2)(iii)).

The tenant may request a change in rent or charges determined by the PHA (see § 966.31(c)(1)). The rule provides that the PHA must give notice of adverse action no later than the time when the PHA denies the tenant's request for a change of the PHA's proposed determination of rent or charges (§ 966.31(b)(2)(iii).

(4) Other Adverse Action. Under the final rule, "adverse action" includes other specific, concrete and affirmative individualized action contrary to the interests of a tenant (§ 966.31(a)(2)(iv)). For such other adverse action, the final rule provides that the PHA must give notice of adverse action to the tenant at a time that gives the tenant the opportunity for a grievance hearing before the action is taken (§ 966.31(b)(2)(iv)).

C. Reasons for Adverse Action. The rule provides that the notice of adverse action must contain "a specific statement which describes * * * the reasons" for a proposed adverse action (§ 966.31(b)(1)(i)). The provision implements the requirement in the 1983 law that tenants must be advised of the "specific grounds" for a proposed adverse action (U.S. Housing Act of 1937, section 6(k)(1), 42 U.S.C. 1437d(k)(1)).

The provision in the final rule is substantively identical to the provision as proposed, but substitutes reference to "reasons" for proposed adverse action in place of the prior reference to "grounds" for such action. Although "grounds" is the statutory term, "reasons" is a more colloquial and less legalistic way of expressing the same idea. In addition, the change conforms with the regulation provisions concerning a notice of lease termination (stating "reasons" for lease termination); and concerning a hearing decision (stating "reasons" for the decision).

Comment recommends that the regulation require a fuller statement of the basis for adverse action. Comment states that the notice should include a statement of facts and the sources of facts, that the notice should state specific grounds for adverse action, and that the PHA notice should provide clear and precise notice to the tenant.

HUD has not made any change in response to such comment. The rule as promulgated requires that the notice of adverse action must contain a "specific statement" which describes the reasons for the proposed PHA action. A notice conforming to this standard affords clear and precise notice to the tenant, so that the tenant can decide whether to request a grievance hearing on the PHA adverse action. After receiving the notice, the tenant will know what was decided and why. In the grievance hearing, the tenant can effectively pursue redress of the grievance.

The notice of adverse action is not the sole source of information available to the tenant so that the tenant can prepare for a hearing. In most cases, the tenant had direct and personal knowledge of the matters to be decided at hearing, e.g., respecting family income or family conduct. In addition, the tenant has a right of access to relevant documents in the possession or control of the PHA § 966.32(d)). The notice of adverse action is a statement of the specific reasons for the proposed PHA determination. The notice gives the tenant sufficient information so that the tenant can—if tenant wishes—exercise the right to an informal grievance hearing before the PHA.

4. Procedure To Request Hearing

Comment states that the notice of adverse action should include a form for requesting the hearing. The PHA should be required to accept an oral request for hearing unless the PHA supplies a form to the tenant. HUD has not adopted these recommendations. There is no need for HUD to minutely dictate details of the local grievance process.

A requirement for the tenant to submit a grievance form or other written request to grieve may offer significant advantages for the PHA and the tenant. A requirement for some written submission, or for submission in a prescribed form, tends to minimize issues as to whether the tenant requested a grievance before the PHA deadline. A standard grievance form may help the tenant exercise the right to grieve. Use of a grievance form may also help the PHA, since grievance requests will be submitted in a common format, and my be easier to process. Some public housing tenants may not know how to fill out a grievance form. However, the tenant may be able to get assistance, for example from PHA counselors, tenant organizations or local legal aid.

A PHA can develop techniques for handling the grievance request. The PHA can best work out procedures to fit the local situation. There is no compelling reason to prescribe or prohibit a requirement for the tenant to request a hearing in writing, or on a form supplied by the PHA.

Comment states that the notice of adverse action should specify the PHA deadline, and the procedure for requesting a hearing. HUD agrees. The rule states that the notice must state "how to request a hearing, and the deadline for requesting a hearing" (§ 966.31(b)(1)(iii)). The tenant's opportunity to grieve is assured by requiring the PHA to first give the tenant a general description of the grievance process, and then a notice of adverse action that also tells the tenant how to request a hearing.

5. Deadline to Request Hearing

a. Statute and Rule—Authority to Establish Deadline. The 1983 law directs HUD to promulgate regulations which require each PHA to establish and implement an administrative grievance procedure which gives a tenant an opportunity for a grievance hearing "upon timely request" (U.S. Housing Act of 1937, section 6(k)(2), 42 U.S.C. 1437d(k)(2)). The PHA may set a deadline for the tenant to request a hearing. The PHA must grieve on a proposed adverse action if the tenant submits a "timely request" for a hearing. Conversely, the PHA has no statutory duty to grieve if the tenant does not submit a timely request.

The time for a tenant to submit the request for hearing is determined by the

administrative grievance procedure adopted by the PHA in compliance with the statute. A tenant who misses the deadline for timely submission of a grievance request under the PHA grievance procedure loses the statutory right to grieve.

The rule provides (§ 966.31(c)(2)):

(i) The PHA administrative grievance procedure may provide that the Tenant must request a hearing by a reasonable deadline as determined by the PHA.

(ii) The PHA may establish different rules for determining the deadline for requesting a hearing in different circumstances, or for different types of grievance. The deadline for the Tenant to request a hearing shall be stated in the notice of proposed adverse action. The PHA administrative grievance procedure may provide that the PHA may grant a Tenant an exception from the deadline if the PHA determines that the exception is justified by individual circumstances.

b. Reason for Establishing Deadline. The proposed rule provided that the notice of adverse action must state how the family can request a hearing, and the "time by which" the request must be made. Comment objects to allowing the PHA to establish any maximum period (deadline) for a tenant to request a hearing in cases other than eviction. Comment claims that the PHA does not have a sufficient interest to justify establishing a deadline in non-eviction cases. Problems can be rectified through the grievance process. The establishment of strict deadlines forces the tenant into court for resolution of a grievance.

The PHA has a powerful management interest in having a right to define the time by which a tenant must exercise the right to grieve on an adverse action. For all types of adverse action, the fixing of a deadline to grieve means that the PHA knows when the right to grieve is exhausted, and the PHA can go forward with appropriate management action on that basis. Absent a deadline, legitimate PHA management actions and decisions may be interrupted or upset at any time by tenant's belated exercise of the opportunity to grieve. The PHA may be compelled to reverse or halt management actions in progress pending completion of the grievance hearing, or as a result of the grievance decision.

The point of the statutory opportunity to grieve is to give the tenant a fair chance to be heard on a proposed PHA decision, not to permit the tenant an open-ended right to seek a grievance hearing at the tenant's leisure. The statutory scheme explicitly contemplates that the PHA should only be required to grieve upon a "timely request" by the tenant. The statute thus recognizes the interest of the PHA and the public housing program in establishing a time limit for submission of a request to grieve.

When the PHA determines rent or charges, the PHA should be able to confront points of dispute when issues are fresh. Passage of time may also compound points at issue between the tenant and the PHA, for example, by adding subsequent disputes on non-payment (or other questions) to an original issue concerning computation of the tenant rent at reexamination. If the tenant does not timely exercise the right to grieve on the determination of rent at annual reexamination, the PHA may cut off the right to grieve on that subject. After expiration of the deadline to grieve on the PHA rent determination, the PHA knows that the tenant may not thereafter seek a grievance hearing on that issue. If the tenant fails to pay the redetermined rent, the PHA may terminate the tenancy for non-payment of rent, but is not obliged to grant an administrative grievance hearing on the PHA's determination or rent.

When the tenant is asked to transfer to another public housing unit, the PHA needs to know if the tenant is going to dispute the move. If the move is not disputed (i.e., the tenant does not submit a request for grievance by the deadline stated in the notice of adverse action) the PHA may proceed on the assumption that a new unit must be prepared and available for occupancy by the tenant, and that the tenant's original unit will be available for occupancy by another program family.

In the case of a grievance on the PHA's proposed termination of the lease, the law (U.S. Housing Act of 1937, section 6(k)(2)) provides that a tenant must be given the opportunity for a hearing upon "timely request [by the tenant] within any period applicable [for giving a notice of lease termination as required under the 1983 law (U.S. Housing Act of 1937, section 6(l)(3), 42 U.S.C. 1437d(l)(3)]". To assure this opportunity, the rule provides that the notice of adverse action must be served with or before the lease termination notice (§ 966.31(b)(2)(i)(B)). The PHA may establish a deadline for requesting a hearing on the PHA's proposed decision to terminate the lease and evict the family. After the deadline has run, the PHA can freely proceed with the eviction action.

The proposed rule provided that the notice of adverse action must state the "time by which" a family must request a hearing. The final rule refers instead to a "deadline" for requesting a hearing. This is merely an editorial change. The "deadline" is the "time by which" the tenant must submit the request—the end of the period during which the tenant can ask for a hearing.

A notice of adverse action states the deadline by which the tenant must request a hearing. A tenant loses the right to a hearing on the PHA determination of rent or charges if the tenant either (1) does not ask for a change in the determination before the deadline recited in PHA notice of the determination (§ 966.31(c)(1)); or (2) does not ask for a hearing by the deadline recited in a notice of adverse action (which states the grounds for the determination, and advises the tenant of the opportunity for a grievance hearing) (see § 966.31(c)(2)).

c. Setting Deadline. Comment contends that under the statute, the tenant may request a hearing at any time within the period of the lease termination notice. Under this reading of the 1983 law, the tenant may elect to request a hearing at the very end of the lease termination notice period. This reading of the law would pyramid the lease termination notice and the period needed to complete the grievance at the tenant's request, thus delaying the lease termination until both periods have run. For example, if the PHA is required to give a thirty day lease termination notice, the request to grieve is submitted on the last day of the thirty day period, and the grievance process consumes fifteen days, the period for lease termination is effectively extended to forty five days (thirty days plus fifteen days).

HUD does not agree with this reading of the statute. Under the language of the statute, the tenant request must be submitted "timely", as well as within the period of the lease termination notice. The requirement for "timely" submission of the grievance request is a separate element of the right to grieve pursuant to the 1983 law (and applies to grievances on any type of adverse action, not only a grievance relating to termination of the lease).

Comment objects that the rule does not set any minimum period for the tenant to ask for a hearing. Comment claims that a PHA can nullify the opportunity for a hearing by setting short and unrealistic time frames for requesting a grievance. The regulation should prohibit use of unreasonable limits. After receipt of the PHA notice, the tenant should have at least ten or fifteen days to request a grievance hearing. The rule should either specify minimum periods, or should establish a regulatory standard by which the PHA deadline can be measured.

HUD has not adopted the recommendation to set a specific minimum period for submission of the tenant grievance request. HUD has no basis to impose an arbitrary minimum period. Different PHAs may legitimately establish different deadlines. Each individual PHA is better able to weigh the consequences of different grievance request periods for the PHA and for the tenants. In the statute, the Congress elected to prescribe specific periods for the notice of lease termination (e.g., fourteen days for non-payment), but declined to prescribe a specific minimum time period for a tenant to submit the request for a hearing. The law posits only that the tenant request must be "timely". Similarly, the Department declines to impose specific minimum time periods in this rule.

HUD is concerned that the minimum ten or fifteen day request periods proposed in public comment could considerably distort and delay the process for eviction of a public housing tenant. For example, the Congress recognized that the PHA should have quick access to the courts where a tenant threatens health or safety of tenants or employees.

The Congress therefore provided that in such cases the lease termination notice may not be less than a "reasonable time". In these cases, the law does not define a fixed minimum period for termination of the lease. The fixed grievance request periods proposed by public comment are not consistent with the statutory requirement for "timely" request within the period of the lease termination notice. Moreover, the proposed request periods could considerably extend the time for eviction of these tenants, and thereby prolong the danger for tenants and employees.

In an eviction for non-payment of rent, delay in completion of the grievance hearing tends to delay the process for eviction of the tenant. In practice, the PHA may not be able to commence the judicial eviction action until expiration of a total period comprised of the period for tenant to request a grievance hearing, plus the period for determination of the grievance on the tenant's request. To facilitate prompt processing of evictions for non-payment of rent, in accordance with the statutory objective (U.S. Housing Act of 1937, section 6(c)(4)(B), 42 U.S.C. 1437(d)(4)(B)), the PHA should be able to establish an accelerated deadline for the tenant to submit a request for hearing.

The notice of adverse action informs the tenant that the PHA intends to take some action contrary to the tenant's interest, and how and when to ask for a hearing. After receiving the notice, a tenant does not need a long period to submit a simple request to grieve on a PHA action. There is no reason to believe that a uniform minimum period of ten days or fifteen days is more effective than a shorter period in assuring that the tenant has a practical opportunity to ask for a grievance hearing on PHA adverse action. We also remark here, as in other contexts, that a termination of the tenant's right to an administrative grievance hearing before the PHA does not mean that the tenant loses the chance for a hearing on the issue. If the PHA seeks eviction of the tenant, the tenant will have the opportunity for a due process hearing in State court.

In the final rule, HUD adopts the recommendation that the regulation should set a general standard governing establishment by a PHA of a deadline for the tenant to request a hearing, and that the regulation should not allow the use of unreasonable limits. The final rule adds a provision that the hearing must be requested by a "reasonable deadline as determined by the PHA" (§ 966.31(c)(2)(i)).

An individual PHA may have good reason to set different deadlines for different types of grievance. The rule therefore provides that "the PHA may establish different rules for determining the deadline for requesting a hearing in different circumstances, or for different types of grievance" (§ 966.31(c)(2)(ii)).

Under the language of the rule, the decision on how long a period to allow the tenant for requesting a hearing fundamentally rests in the sound administrative discretion of the PHA. The reasonableness of the deadline is "determined by the PHA". The language of the rule is not intended as an invitation for courts to freely second-guess the PHA on what deadlines are reasonable. The PHA is in the best position to balance the administrative and program consequences of different deadlines, as against the tenant interest in securing a grievance hearing on proposed adverse action. Under common State standards for judicial review of agency action, the PHA determination of an appropriate request deadline should stand unless the determination is arbitrary and capricious, i.e., there is no reasonable basis for the determination.

d. *PHA Grant of Exceptions to Deadline.* Comment states that the PHA should have authority to grant good cause exceptions where a tenant fails to request a hearing by the PHA deadline, or that the PHA should be required to approve deadline exceptions for good cause. The final rule permits the PHA to grant an exception from the deadline "if the PHA determines that the exception is justified by individual circumstances" (§ 966.31(c)(2)(ii)). However, the rule does not require the PHA to grant exceptions.

The general decision to provide for good cause exceptions in the PHA grievance process, as well as the decision to grant or deny an exception in a particular case, should rest in the administrative judgment of the PHA. The authority for grant of exceptions (to the PHA's generally applicable deadline for requesting a hearing) affords the PHA leeway to respond to special circumstances in individual cases. The rule allows the PHA flexibility to respond to special problems not accounted for in determination of the PHA deadline policy.

The Department does not find sufficient reason to direct the grant of deadline exceptions in the PHA grievance process. A PHA may properly judge that the benefits that may flow from allowing exceptions in special cases do not outweigh the benefits of a policy that flatly denies access to the grievance process for a tenant who misses the grievance deadline.

First, if a PHA elects to allow exceptions, the PHA partially forgoes the advantages of imposing a grievance deadline. The PHA loses the administrative certainty that the grievance process is past once the deadline is past. The PHA therefore loses the ability to take appropriate action on this basis. The PHA's uncertainty on the outcome of a grievance request is extended while the PHA is deciding whether to grant an exception. If an exception is granted, the uncertainty is further extended through completion of the grievance hearing. In contrast, if the PHA decides to deny grant of any deadline exceptions, the PHA knows the grievance process is over as soon as the deadline has expired.

Second, the PHA may properly consider the administrative burden of processing requests for exception—with the need to sift through individual exception requests to determine if there is good cause for exception. Processing of exception requests burdens the PHA with the need to determine that individual requests are bona fide, and are based on grounds which justify an exception. By deciding to allow exceptions, the PHA is necessarily exposed to the administrative burdens of the process for grant of exceptions, as well as the burden of carrying forward the hearing process if the exception is granted. The PHA may lack, or believe

that it lacks, ability to readily distinguish between good faith claims for exception, and specious excuses for missing the deadline.

Third, opening the door to PHA consideration of requests for exception on behalf of tenants who miss the deadline may diminish the pressure for tenants to comply with the deadline.

In short, a PHA may have good and sufficient reason to establish a flat deadline for requesting a hearing under the PHA grievance process, without allowing any exception.

6. Elements of Hearing

a. Person Conducting Hearing—(1) Selection of Hearing Officer—Statute and Rule. Section 6(k)(2) of the U.S. Housing Act of 1937 provides that the hearing on a proposed PHA adverse action must be held "before an impartial party" (42 U.S.C. 1437d(k)(2)).

The rule (§ 966.32(a)) states that:

(1) A hearing under the PHA's administrative grievance procedure shall be conducted by a person or persons (who may be an employee or officer of the PHA) designated by the PHA in the manner required under the PHA's grievance procedure.

(2) The hearing officer shall be someone other than the person who made or approved the decision for the proposed adverse action under review or a subordinate of such person.

(2) Designation of PHA Officer or Employee As Hearing Officer. PHA comment broadly supports the hearing procedures. Comment approves the PHA's broad authority to designate a hearing officer, and to appoint an officer or employee of the PHA. The PHA may designate a hearing officer who has knowledge and experience of the PHA and the public housing program. Comment notes that this background will help a hearing officer arrive at a solid, responsible and impartial decision.

The Department believes that the PHA should have wide discretion to appoint as hearing officer a person with knowledge of the program, and of technical program requirements and procedures (such as technical procedures for determination of the tenant rent in accordance with the U.S. Housing Act of 1937 and HUD rules). The Department has stated that:

this familiarity can assist in a more rapid, more economical and more accurate determination on the points at issue. The PHA hearing process should be able to benefit from the experience of the hearing officer, especially knowledge concerning program requirements and procedures. (49 FR 12229, March 29, 1984.)

The rule prohibits use of a hearing officer participated in ("made or approved") the challenged decision, or a subordinate of that person. By prohibiting use of a subordinate of the original decision-maker, HUD seeks to assure that the hearing officer is not subject to the pressures of a superior, and to thus enhance the independence and objectivity of the hearing process. The rule specifies that a person who "approved" the original decision may not conduct the informal hearing.

Legal aid comment asserts that the authority of the PHA to designate a hearing officer is too broad. Comment especially objects to appointing an officer or employee of the PHA as the hearing officer. Comment claims that a PHA officer or employee is not impartial and disinterested. A tenant will see the grievance hearing as a kangaroo court. Comment objects to permitting the PHA to use a hearing officer who is a *superior* of the decision-maker, or is a *co-worker* or *peer* of the decision-maker.

HUD has not revised the proposed provisions on designation of the hearing officer. In the context of the administrative grievance process for the public housing program, the standards stated in the proposed rule are a sufficient guarantee of impartiality.

The purpose of the grievance hearing is to give the tenant a chance for a review of the PHA decision, to see if the PHA has violated an applicable law or rule. In the administrative hearing, the tenant gets the benefit of a second look at the challenged decision, by someone other than a person who made or approved the original decision.

Since the hearing officer—including a superior, peer or co-worker of the decision-maker—did not make or approve the original decision challenged in the grievance hearing—the review is not prejudiced by the mind-set of the original decision-maker. Through this review, PHA error can be uncovered and rectified.

In objecting to the authority for the PHA to use a superior of the decision-maker as the hearing officer, legal aid comment suggests that a grievance may arise from application of a faulty *policy* by the decision maker. The hearing officer may be the person who promulgated the PHA policy. If the policy is flawed, the person who implemented the policy cannot be an independent hearing officer.

In response, several points should be remarked:

—The purpose of a grievance hearing is to decide whether the PHA has violated some law or rule. The grievance hearing is not a forum for consideration of general policy issues or class grievances (for reasons discussed elsewhere in this Preamble. See section V.D.2.a). The question whether the PHA policy is or is not "faulty" is not at issue in the grievance hearing.

—If a tenant challenges the application of a policy to the tenant (i.e., whether the application of the policy violates some law or rule), a person involved in original issuance of the policy may properly consider whether the policy has been properly carried out with regard to the tenant. Indeed, there may be considerable advantage in using as hearing officer a person who has direct and intimate knowledge of the policy.

The 1983 law provides that a statutory grievance hearing must be conducted "before an *impartial* party". A hearing officer who is an officer or employee of the PHA, or who is a superior, peer of co-worker of the decision-maker, is able to provide an impartial second look at the challenged decision. In *Lopez v. Phipps Plaza* (498 F.2d 937, 943 (2d Cir. 1974)) (rejecting due process objection to appointment of hearing officer in subsidized housing), the opinion by Judge Friendly notes that a housing authority official does not lack impartiality simply because he is an officer of the housing authority. The opinion states that:

As the hearing requirement is imposed on more and more agencies * * *, there will be greater and greater necessity for entrusting decision to agency personnel * * * * Moreover, confiding the [hearing] decision * * * to a person with experience in the management of housing projects has positive factors * * * *

In *Lopez*, the court also notes approvingly that under prior public housing grievance procedures there are no specific restrictions on who the PHA may appoint as an "impartial hearing officer" (498 F.2d at 944 n. 5).

In considering the elements of a due process administrative hearing, the Supreme Court has concluded that an agency official is not barred from acting as impartial hearing officer, so long as the hearing officer has not "participated in making the determination under review" (*Goldberg v. Kelly*, 397 U.S. 254, 271, 90 S. Ct. 1011, 1022 (1970)). This rule prohibits the designation of a hearing officer who participated in ("made or approved") the challenged decision.

Comment asks that the rule be revised to make sure that the hearing officer has no *ex parte* contacts with PHA officials. HUD sees no need for a provision barring contacts with PHA officials. The PHA should have flexibility in structuring the administrative grievance process. PHA discretion should not be

constricted by unnecessary or over-detailed Federal rules; or by rules modelled on judicial procedures. There should be room for adoption of hearing procedures which allow considerable informality in conduct of the hearing, or which allow a PHA to organize a hearing process in unconventional ways—for example, with authority for the hearing officer to actively investigate the facts, and question persons, including PHA employees or officials, who may have knowledge of the facts.

Of course, the PHA's hearing procedure, and the actions of a hearing officer under the procedure, must be consistent with the purpose of the hearing process—to provide the tenant with the opportunity for a fair hearing on grievable issues. The hearing officer may not collude with the PHA to deny the tenant a real "opportunity for an informal hearing", as required by the law and the rule § 966.31(a)(1)).

(3) Elimination of Requirements For Use of Hearing Panel and For Tenant Participation In Selection. Under the old lease and grievance rule, the PHA and the tenant participate on equal terms in selection of a hearing officer or hearing panel. Under the new rule, the hearing is conducted by a "person or persons" selected by the PHA (§ 966.32(a)(1)). The PHA decides whether to use a panel or single hearing officer.

Legal aid comment objects to eliminating the old rule requirement to use a hearing panel (unless the tenant and PHA agree on appointment of a single hearing officer). Comment also objects to eliminating the requirement for the tenant to participate in selecting the officer. Comment claims that tenant participation insures impartiality.

PHA comment favors permitting the PHA to designate the hearing officer, and the related authority to appoint a PHA employee or official as the hearing officer. PHA comment points out practical problems in administration of the old system. There are problems finding citizens to serve as hearing officers. The old rule does not provide a mechanism to appoint a grievance officer when local volunteers cannot be found. PHA comment notes that with elimination of the panel requirement hearings can be conducted more expeditiously. Under the old rule, hearing panel selection can take weeks.

The procedure for selection of hearing officers under the old rule is expensive, cumbersome and slow. The old procedure is structured in a way that gives opportunities for the tenant to hamstring the hearing process, by refusing to cooperate in expeditious appointment of panel members (allowing, for example, the tenant or tenant counsel to delay the point at which the PHA can commence judicial action to evict a tenant for non-payment of rent). In HUD's view, there is no justification for retention of the unsatisfactory system under the old rule.

(4) Authority of Hearing Officer. To operate a practical and orderly hearing machinery, the hearing officer must have authority to regulate the conduct of the hearing, including determinations on the relevance of proof that may be offered, and of the manner in which evidence is presented. The rule therefore states (§ 966.32(c)):

"The hearing officer may regulate the conduct of the administrative grievance hearing in accordance with the PHA's administrative grievance procedure."

b. Right of Tenant to Examine Relevant PHA Materials—(1) Statute and Regulation. Section 6(k)(3) of the U.S. Housing Act of 1937 provides that in an administrative grievance hearing on proposed PHA adverse action the tenant must "have an opportunity to examine any documents or records of regulations related to the proposed [adverse] action" (42 U.S.C. 1437d(k)(3)).

The final rule provides (§ 966.32(d)):

The Tenant shall be permitted to examine and copy any relevant non-privileged documents in the possession or control of the PHA, including records or regulations. This opportunity shall be given at a time that will give the Tenant a reasonable opportunity to make use of the information in the grievance proceeding. If the PHA fails to produce documents timely, in response to the Tenant's request for examination, the hearing officer may prohibit the PHA from using the documents at the hearing.

(2) When PHA Must Produce Documents. Some comment endorses proposed provisions requiring the PHA to make relevant documents available for examination by the tenant. Other comment recommends that the PHA should be required to produce documents before hearing, so that the tenant can make effective use of documents produced by the PHA. Comment states that the regulation should specify a minimum period of access by the tenant before the grievance hearing (such as 5 days).

Comment which recommends that HUD require the PHA to produce documents prior to the "hearing" are not adopted in the final rule. The rule does not regulate in detail the procedure for making the information available to the tenant. The proposed rule also does not assume a clear and neat distinction between a pre-hearing "discovery" phase, and the "hearing" proper. The informal hearing may unfold as a meeting, or a series of informal meetings or exchanges, between the parties and the hearing officer. The PHA will possess considerable discretion to determine the incidents of the hearing process, so long as the process is consistent with the minimum elements defined in the statute and the rule. In addition, the hearing officer has a broad authority to decide issues concerning the production of documents.

Given the variable character of the local hearing process, and of the particular matters to be examined, the rule does not specify the point of the hearing process at which information in the hands of the PHA must be furnished to the tenant. Rather, the rule focuses on a practical question—whether the information is given at a time that provides a "reasonable opportunity" to make use of the information for purposes of the hearing.

Comment which urges that the PHA should have to produce the documents in advance of the hearing" assume that the hearing process is structured with a clear distinction between a pre-hearing phase, and the hearing itself. This position is implicitly modelled on the conventional judicial process for trial of a lawsuit, where there is characteristically a clear distinction between the pre-trial discovery phase and the trial.

The 1983 law does not dictate that the PHA administrative grievance hearing must be so structured. The PHA should be allowed to structure a grievance process which conforms with the minimum elements prescribed in the 1983 law, and which reflects the judgment and management discretion of the PHA. The grievance process should not be rigidly cast in the mold of a judicial trial, with a requirement for pre-hearing discovery. The tenant has a statutory right to "some kind of hearing" (see generally Friendly, "Some Kind of Hearing", 123 U. Pa. L. Rev. 1267 (1975)), so that the grievance can be fairly considered by the hearing officer. The tenant does not have a right or need for a hearing process patterned on a judicial trial.

The purpose of the tenant's right to examine PHA documents is to allow the tenant to use the documents for purposes of the hearing, such as to show the hearing officer that the tenant's rent is not rightly computed; or to show the hearing officer that the PHA does not have grounds to terminate the tenancy. This objective is wholly protected by providing that the tenant must have a "reasonable opportunity" to use the information in the proceeding. Of course, the PHA and the tenant may dispute, in a particular instance,

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whether the tenant has or has not had a reasonable opportunity for examination of the document for use in the hearing proceeding. The PHA and tenant may also dispute the proper cure for the problem—e.g., by a delay in the proceedings so that the tenant has more time for preparation. These issues may be decided by the hearing officer.

Comment states that the PHA should be prohibited from relying on documents not produced by the PHA for examination by the tenant. HUD agrees that a PHA which fails to make discovery of documents should be subject to appropriate remedy, including the possibility that the PHA may be precluded from using the documents in the hearing. The nature of the remedy should be decided by the hearing officer, in light of the particular circumstances and the requirements of the PHA administrative grievance procedure. The rule should not prohibit PHA use of the documents across the board, in all cases. The existence or degree of PHA fault, the harm to the tenant, and the most appropriate cure for the failure, will differ in different cases. In some cases, the PHA failure to produce a document may be inadvertent and innocuous. In other cases, the failure may proceed from deliberate concealment by the PHA, and may severely hinder the tenant's presentation of the grievance. The final rule adds a new provision that if the PHA fails to produce documents timely, in response to the tenant's request for examination, the hearing officer may prohibit the PHA from using the documents at the hearing.

(3) Possession or Control of Documents. The proposed rule required the PHA to produce relevant documents "in the possession of the PHA". Comment states that the rule should require the PHA to discover documents *under control of* the PHA. This provision would guard against the possibility of a PHA evading production of documents by transferring the documents to another party, such as the PHA attorney.

The final rule provides that the PHA must produce documents which are "in the possession *or control*" of the PHA.

(4) Relevance of Documents; Privileged Documents. Comment objects to giving the tenant a right of access to "any" relevant material, and notes that the rule does not say who determines "relevance". The tenant should not be allowed to "rummage at random" through PHA documents, which may violate the privacy and confidentiality of tenant records. Comment recommends revising the rule to provide that the PHA has an absolute right to refuse access to confidential files.

Under the rule, the tenant has no right to "rummage at random", only a right to examine relevant documents. If there is a dispute on relevance of documents demanded, the hearing officer may decide the relevance of documents sought by the tenant. The PHA may establish procedures needed to safeguard privacy and confidentiality of tenant records.

The final rule clarifies that the tenant does not have a right to examine PHA documents which are privileged. The PHA must give the tenant the opportunity to examine any relevant "non-privileged" documents. The rule does not disturb the PHA's right to deny production of privileged documents in accordance with State law, for example a State-created right to withhold documents subject to attorney client privilege. At the same time, however, the rule does not establish any Federal privilege against production, or any rules governing the circumstances in which a privilege arises. Rather, the rule defers to State law determining the existence or non-existence of privilege, and therefore to State policy underlying the grant or denial of a privilege. The tenant's Federal right to examine PHA documents related to proposed adverse action does not sweep aside State-law privileges against production of documents.

c. Evidence—(1). Statute and Rule. Section 6(k)(5) of the U.S. Housing Act of 1937 provides that in a hearing on proposed adverse action the tenant will "be entitled to ask questions of witnesses and have others make statements on his behalf" (42 U.S.C. 1437d(k)(5)).

The final rule provides (§ 966.32(e)):

(1) The Tenant and the PHA may present evidence, and may question any witnesses. The Tenant and the PHA may have others make statements at the hearing.

(2) Evidence may be considered without regard to admissibility under the rules of evidence which apply in judicial proceedings."

(2) Acceptability of Evidence. In receiving and weighing evidence offered by the parties, the hearing officer is not bound by the rules of evidence which apply in a court (§ 966.32(e)(2)). The formal rules of evidence in a judicial proceeding are not suitable for the informal grievance hearings required under this rule.

Comment states that the rule should prohibit use hearsay evidence, or use of hearsay as the "primary" evidence. The PHA may try to establish a case at hearing by written declaration, or other hearsay testimony, thus avoiding cross-examination of witnesses. The PHA and the tenant should be required to produce any witnesses on whose statements they propose to rely. Comment also claims that lack of standards on acceptability of hearsay evidence is an invitation to untested innuendo.

The final rule does not prohibit use of "hearsay" evidence, or add any additional rules on admissibility of evidence. Public comment does not demonstrate a need to complicate PHA administration of the grievance process by imposing technical rules of evidence. The HUD regulation should not import into the informal grievance hearing the arcane and artificial complexities of the evidentiary rules applied in a court trial, or even a simplified version of those rules. When applied in the administrative grievance process, a broad hearsay prohibition may force the rejection of valid and probative evidence of the truth.

The use of more complicated hearing rules, including technical restrictions on the reception and use of certain types of evidence, would tend to force PHAs to use hearing officers who are able to understand and work with the rules. Imposition of complicated evidentiary and other procedural requirements tends to promote PHA employment of lawyers and other law-trained professionals as hearing officers. The national public housing grievance requirements should be stated as simply as possible, to permit the broadest freedom to choose lay hearing officers, including tenants, PHA employees, or other persons drawn from the community. Persons who are not expert in the law are well able to serve as administrative hearing officers, so long as HUD does not burden the informal hearing process with unneeded technical requirements.

The purpose of the hearing on any question of fact is to determine the truth respecting the question at issue. A prohibition against use of technical "hearsay" may prevent the use of valuable evidence which could properly inform the decision of the hearing officer. In the context of an administrative grievance proceeding, the use of evidence other than direct testimony by a witness to the events or facts at issue may properly influence the judgment of the hearing officer on the weight or significance of the evidence.

In deciding to admit and consider a written declaration or other "hearsay" as evidence on some issue of fact, the hearing officer may discount the probative value of evidence as to which the parties or the hearing officer have not had the opportunity to cross-

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examine the witness in the course of the hearing. The hearing officer may refuse to receive hearsay evidence, or may decline to believe the evidence received. The decision of the hearing officer should be based on good judgment and common sense as to the force of the information offered in proof. As a matter of local choice, the PHA administrative grievance procedure may restrict or regulate use of hearsay in the local grievance process. However, HUD should not nationally impose this restriction on the local grievance process.

(3) Use of Statements. The statute requires, and the rule correspondingly provides, that the tenant may "have others make *statements*" on behalf of the tenant (U.S. Housing Act of 1937, section 6(k)(5), 42 U.S.C. 1437d(k)(5); § 966.32(e)(1)). The statute and rule also provide that the tenant is entitled to representation by a person of his choice. (U.S. Housing Act of 1937, section 6(k)(4), 42 U.S.C. 1437d(k)(4); § 966.32(b); see section V.E.6.d of this Preamble.)

The rule separately states that the tenant (as well as the PHA) "may present evidence, and may question any witnesses" (§ 966.32(e)(1)).

Comment expresses concern that the rule language on use of tenant "statements" is not clear. Comment asks if the language means that the tenant may submit written statements by persons not present at the hearing, or only means that the tenant has a right to have people appear and testify for the tenant. If the tenant has a right to submit written statements, the PHA should have the same right. Comment asks clarification that the PHA has a right to question tenant statements, and the people who make the statements.

The statutory authority for a tenant to have "others" make "statements" on behalf of the tenant does not explicitly distinguish between statements offered as proof of some fact, i.e., as evidence, or other statements offered in support of the tenant's position, e.g., as argument or discussion. In this rule, HUD finds no present need to distinguish between these possible applications of the statutory requirement. Rather the rule broadly allows the submission of "statements"—whether or not offered as evidence of a fact. Where the statement is in the nature of evidence, the right to have "others" make "statements" overlaps the regulatory right to present "evidence" supporting the position of the tenant. Where the statement is in the nature of argument, the right to make statements partially overlaps the right of the tenant to have representation chosen by the tenant.

The final rule is revised to provide that the right to submit "statements"—like the right to present evidence at the hearing—applies symmetrically to both the PHA and the tenant (§ 966.32(e)(1)). The PHA should have an equal right to present its position at the hearing, both in presentation of evidence, and in presentation of arguments that support the position of the PHA.

Comment on the tenant's right to submit written statements, and on the right of the PHA to question persons who make statements, fundamentally raises the same issue treated above in the discussion of "hearsay" evidence. The administrative grievance procedure adopted by a PHA may regulate the use of statements (for the tenant or for the PHA) by persons not present at the hearing. Insofar as statements are offered as evidence, here too there is no need for HUD to establish rules on the treatment of evidence by declaration of persons who are not present at the hearing, and thus are not available to be questioned by the parties.

(4) Basis of Decision. The rule provides (§ 966.33(a)) that "factual determinations [by the hearing officer] concerning the individual circumstances of the Tenant and Household shall be based on evidence presented at the hearing". The rule does not prohibit the hearing officer from making use of knowledge about the project or about program requirements and procedures.

Comment objects to allowing the hearing officer to base a hearing decision on the officer's general information, or otherwise on facts not presented at the hearing, and which are not included in the hearing record. (This concern was expressed by public comment on the December 1982 proposed rule, as well as the July 1986 proposed rule.) Comment states that allowing the hearing officer to rely on prior information makes a mockery of the hearing. The tenant is not able to confront and cross-examine witnesses. The hearing decision should be solely based on evidence presented at the hearing.

HUD believes that the PHA hearing process should be able to benefit from the experience of the hearing officer. Indeed the ability to select hearing officers with relevant knowledge about the project and program is one of the important advantages of using the informal administrative grievance procedure instead of the courts.

For the types of issues most often raised in a public housing grievance hearing, the special knowledge of the hearing officer may be of great help in reaching a decision which is accurate, fair and fast. PHA management and hearing resources are not wasted by the need to prove common points at each successive individual hearing before the same hearing officer. For example, grievance hearings often involve the question whether a tenant's rent was correctly computed under HUD regulations and procedures. The hearing officer may develop some expertise in HUD regulations and procedures for these computations.

The PHA is not required to obtain for each new hearing a hearing officer who is innocent of relevant general program knowledge. If the officer possesses general program knowledge relevant to the issue at hearing, the officer should not pretend, in each new hearing, that points of general information are novel and must be demonstrated anew (by receiving in evidence the same HUD regulations and procedures, or by hearing the same testimony by the same witnesses).

Allowing the hearing officer to rely on prior general or program knowledge and experience does not, as implied by comment, intrinsically bias the hearing in favor of the PHA. The use of a hearing officer with better general knowledge or expertise will tend to produce better decisions—decisions based on a correct understanding of the relation between the individual circumstances of the tenant (shown by evidence presented at the hearing) and general program requirements or circumstances. If the hearing officer is knowledgeable, the hearing officer may be better able to penetrate PHA mistakes in applying technical procedures, may be less likely to defer to the PHA's assumed expertise. In addition, permitting reliance on the officer's prior general knowledge dose not preclude the tenant or the PHA from presenting witnesses or documentary evidence on any point at issue, e.g., to challenge the PHA's construction of HUD requirements as applied to the individual tenant.

Allowing the hearing officer to make use of general program information not presented at the hearing is supported by the legislative history of the grievance hearing requirement under section 6(k) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(k)). The bill reported by the House Banking Committee would have required a PHA to establish an administrative grievance procedure that would provide tenants an opportunity to be heard "in accordance with the basic safeguards of due process" (Report 98–123 on H.R. 1, P. 175). The bill did not state the list of administrative hearing requirements contained in the law as

finally enacted. However, in reporting out the bill, the Housing Banking Committee stated a list of elements which must be included in the PHA hearing process under the bill (Report 98–123 on H.R. 1, p. 36), which is generally similar to the list of administrative hearing requirements in the law as passed by the Congress. The hearing requirements listed in the Report of the House Committee included "a decision *based solely on the record* and explained in writing". The requirement of a decision "based solely on the record" was deleted in the final legislation. This legislative history supports the conclusion that in reaching a decision the hearing officer may use general information already known to the hearing officer, and not contained in the record of the proceeding.

Comment challenges HUD's reading of the legislative history. The comment claims that if the Congress intended a break from past practice under the HUD lease and grievance requirements the Congress *would have said so* explicitly. This comment does not support a change in HUD's analysis of the law and legislative history. The duty of the Department is to carry out the law actually enacted by the Congress, not to imagine what the Congress would have or should have done, or to invent supposed statutory restrictions not stated in the law.

In reading the legislative history, HUD properly points to the fact that the text of the law actually passed by the Congress does not include the requirement for a decision exclusively based on the record, although this element was explicitly considered and mentioned by the House committee. The regulation here promulgated is a fair implementation of the statutory hearing requirements finally passed by the Congress, and contained in the law presented for signature by the President.

Comment expresses concern that the tenant will not have a chance to correct inaccurate information (based on prior information of the hearing officer). Comment states that if a hearing officer has prior knowledge of program policies and procedures, the officer should indicate an intention to take administrative notice of the facts, and give the parties an opportunity to dispute the facts during the hearing.

The final rule does not require the hearing officer to give advance notice of intention to take notice of non-record facts. Under the rule, the hearing officer has ample authority and opportunity to inform the parties that the hearing officer may rely on general information not included in the hearing record, and to give an opportunity for the parties to dispute assumptions or information of the hearing officer. The value of this procedure depends on the particular facts and issues which are subject to the grievance hearing, and should be left to the sound judgment and discretion of the hearing officer in each informal hearing. HUD sees no sufficient reason to universally impose on the PHA grievance hearing a cumbersome two-step process in which the hearing officer must in all cases first announce that the decision may include non-record elements (followed by the opportunity to offer evidence on these elements), in addition to issuing a final written decision stating the basis for the decision of the hearing officer.

d. *Representation of Tenant.* Section 6(k)(4) of the U.S. Housing Act of 1937 provides that in a hearing on proposed PHA adverse action the tenant is "entitled to be represented by another person of his choice at any hearing" (42 U.S.C. 1437d(k)(4)). The rule (§ 966.32(b)) provides that "at its own expense, the Tenant may be represented at the hearing by a person of the Tenant's choice."

e. *Promptness of Hearing.* When a hearing is required, the PHA must proceed with the hearing "in a reasonably expeditious manner and in accordance with the PHA's administrative grievance procedure" (§ 966.32(f)).

The final rule eliminates superfluous language stating that the expeditious hearing requirement applies in cases where a grievance hearing is required under the rule. All of the hearing procedures apply to a grievance hearing required under the rule.

f. Fees or Costs for Hearing. Comment recommends that the rule prohibiting the PHA from requiring a tenant to pay any costs of the grievance hearing, or to pay a fee of the hearing officer. This proposal is adopted.

The final rule provides § 966.31(f)):

Prohibition of hearing fees. The PHA may not require a Tenant to pay any hearing fees or hearing costs as a condition for providing the Tenant the opportunity for an administrative grievance hearing under the PHA grievance procedure, and may not impose any hearing fees or hearing costs on the Tenant. (However, the PHA may require the payment of Tenant Rent as a condition for a hearing concerning Tenant Rent in accordance with §966.31(d).)

The prohibition of hearing fees or costs helps to preserve the practical ability of tenants to be heard in the statutory grievance process. Imposition of hearing fees or costs may discourage tenants from raising proper grievances which are cognizable in the administrative grievance process. By definition, families participating in the program are poor. A tenant may be reluctant to ask for a grievance hearing because the tenant fears exposure to possible hearing fees.

Unlike rent owed by a participant tenant, hearing fees or costs are not items the tenant is obligated to pay in the absence of a hearing. In addition, unlike back rents, possible hearing fees are not a major potential source of PHA income.

7. Hearing Decision

a. Informing Tenant of Decision. Section 6(k)(6) of the U.S. Housing Act of 1937 requires that in a hearing on proposed PHA adverse action the tenant is "entitled to receive a written decision by the public housing agency on the proposed [adverse] action" (42 U.S.C. 1437d(k)(6)). The rule provides § 966.33(a)):

The hearing officer shall issue a written decision which states the basic reasons for the decision * * * A copy of the hearing decision shall be furnished promptly to the Tenant.

(For discussion of the evidentiary basis of a determination concerning individual tenant circumstances, see section V.E.6.c.(4) of Preamble)

The Preamble to the July 1986 proposed rule notes that:

the statement of decision * * * tells the family what was decided, and the reasons for the decision. It is intended that the written statement of decision must be truly informative as to the reasons for the decision. A bare and conclusory statement of the hearing decision, that does not let the family know the basic reasons for the decision, would not satisfy the decision requirement under the proposed rule. (51 FR at 26520)

PHA comment approves the provision of the proposed rule on the form of a hearing decision.

Other comment argues that a regulatory requirement to state "basic reasons" for the grievance decision is not adequate. The decision requirement should be expanded or clarified. Comment states that a tenant should get notice of "specific" reasons for decision. The decision should set out the factual basis for the determination. Comment states that the regulation text should incorporate the HUD interpretation (in Preamble to the July 1986 proposed rule) that a decision must include a "truly informative" statement of the basic reasons for decision.

The language of the proposed rule is not changed. A simple requirement to state "basic reasons" for the decision fully carries out the purpose of the written decision.

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First, because the hearing officer must write and issue a decision, the officer is compelled to consider and articulate the basic reasons for the decision. Thus the officer is more likely to issue a decision properly based on the facts and the law at issue in the grievance hearing.

Second, the authority of PHA administrative process, and of the hearing decision on the tenant's challenge to PHA adverse action, is enhanced if a tenant is presented with the basic reasons for the hearing decision, rather than a bare statement of the hearing result. Whether or not a tenant agrees with the particular decision, the tenant and other families are more likely to accept the decision as a legitimate product of a legitimate process.

It does not follow, however, that a more extensive or more legalistic statement of decision will improve the quality of decision, or the degree of tenant satisfaction and acceptance. A more demanding statement of the decision requirement may be harder to write, harder to understand and harder to administer.

HUD also finds not need to incorporate in text of the rule the explanatory language in the Preamble of the proposed rule (which asserts that the statement of decision must be truly informative, and may not be limited to a bare and conclusory statement of the hearing decision). The Preamble language does not add any additional substantive requirement, but merely spells out the implications of the requirement to give "basic reasons" for the hearing decision.

HUD recognizes that questions will arise as to what is a sufficient statement of "basic reasons" in a concrete case. Such issues naturally arise in application of any regulatory standard, and will not be avoided by a more verbose statement of the rule.

b. Effect of Decision on PHA or Tenant—(1) When PHA Is Not Bound By Decision—*(a) PHA Determination.* The rule states circumstances in which the PHA is not bound by a decision of the hearing officer (§966.33(b)):

> The PHA is not bound by a hearing decision if:
>
> (1) The decision concerns a matter for which an administrative grievance hearing is not required * * * or otherwise in excess of the authority of the hearing officer, or
>
> (2) The decision is contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law.

The rule also provides (§ 966.33(c)) that:

> If the PHA determines that it is not bound by the decision of the hearing officer, the PHA shall promptly notify the Tenant in writing of the determination, and of the reasons for the determination.

Legal aid comment objects to giving the PHA power to determine that the PHA is not bound by decision of a hearing officer in the grievance process. Comment objects to authorizing the PHA to repudiate a decision which exceeds the authority of the hearing officer. The PHA should be bound by the hearing decision unless the decision is contrary to law.

Comment asserts that the hearing process is useless if a PHA can unilaterally reject the hearing decision. Comment suggests that the decision that a grievance determination is contrary to law, and is therefore not binding, must be made by an impartial party, and may not be made by the PHA.

PHA comment welcomes the provisions authorizing a PHA to determine that the PHA is not bound by a hearing decision. Comment notes that clarification of this issue is overdue.

The final rule does not change the proposed provisions which define when the PHA is not bound by the grievance decision. These provisions are important to insure that the hearing officer operates within the role assigned by the PHA grievance procedure under this rule, and to specify that the PHA is not bound by illegal decisions.

The purpose of the hearing process is to give the tenant the opportunity for a fair hearing—to ascertain whether a proposed adverse action by the PHA is in accordance with law, HUD regulations or PHA rules. It is the proper function of the hearing officer to decide the propriety of the PHA's proposed adverse action under the grievance scheme established by the 1983 Federal law (section 6(k) of the U.S. Housing Act of 1937, 42 U.S.C. 1437(k)), the HUD rule which implements the law, and the administrative grievance procedure adopted by the PHA under the rule.

The charge of the grievance officer is to determine the grievance assigned for the officer's decision in accordance with this scheme. The PHA should not be bound by a decision that strays from this charge, or which otherwise invades the sphere entrusted to administrative determination by the PHA. For example, the PHA is not bound by a grievance determination on a matter other than a proposed adverse action, by a determination concerning general policy issues or class grievances, or by a determination on a matter not properly referred to the hearing officer in accordance with the PHA grievance procedure.

The rule provides that a PHA is not bound by a decision contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law (§ 966.33(b)(2)). The PHA has final responsibility to act in accordance with controlling Federal, State or local law, and this obligation may not be altered by any decision of the hearing officer (compare § 966.57(b) of the old lease and grievance rule).

HUD does not agree with comment which argues that the right of the PHA to reject the hearing decision in specified circumstances means that the hearing process is useless. In practice, a PHA will not and can not casually reject the decision of the hearing officer.

—The hearing is conducted under the PHA's own grievance procedure, and decided by a hearing officer appointed by the PHA. A PHA will generally accept that the grievance hearing is a legitimate process for determination of disputes, even if PHA mangement doesn't agree with the particular decision. Once the grievance is decided by the local hearing officer, the decision possesses a moral force—the sense that the dispute has been decided by the proper person in the proper way.

—The hearing decision possesses, as well, the force of inertia. The PHA can not overturn the grievance decision without taking positive action. The PHA must make the requisite determination under this rule (e.g., that the decision is beyond the authority of the hearing officer) and must notify the tenant of the reasons for the determination.

—The requirement to state the reasons in writing tends to compel the PHA to examine whether there is good legal reason to reject the hearing determination. The determination that the PHA is not bound by a grievance decision is issued by the PHA officials to whom the responsibility for making the determination is allocated under the PHA grievance procedure, usually the executive director or the PHA Board). This allocation of responsibility brings the issue up for explicit examination and decision by these PHA officials.

—The PHA does not have open-ended authority to decide that the PHA is not bound by grievance decisions—only an authority to reject the grievance determination in an individual hearing, for one of the reasons allowed under this rule.

—Abusive exercise of this authority by PHA management is potentially subject to objection or legal challenge from various sources—tenants or tenant legal representatives, internal legal or management reviews, HUD

management reviews. The PHA may have to respond to lawsuits alleging that the PHA has not made good faith determinations, or that the determinations are arbitrary and capricious.

—Repudiation of a hearing decision adverse to the PHA characteristically does not avoid the issue that was the subject of hearing. the PHA may proceed with the adverse action, such as a termination of tenancy or determination of rent, but may again confront the issue in a legal action to enforce the PHA decision. If a hearing officer concludes that the PHA adverse action is not justified, a court may also independently reach the same conclusion.

In sum, the claim that PHAs will commonly, casually or capriciously overturn valid hearing decisions is not plausible. By and large, PHAs will use the authority for the purpose intended by the rule—to avoid distortion of the hearing procedure by hearing decisions which are *ultra vires* or contrary to law. The old lease and grievance procedure included a similar provision permitting the PHA to issue a determination that a hearing decision is not binding. Public comment on the present rulemaking does not indicate that this authority has been widely used or widely abused. Legal aid comment objects to allowing a PHA to determine that the PHA is not bound by a hearing decision. However, the same legal aid comment also advocates retention of the old lease and grievance rule, which contains similar provisions.

(b) Decision Contrary to PHA Rules and Policy. PHA comment urges that the authority for a PHA to repudiate the hearing decision should be extended to cases where the hearing decision is contrary to PHA rules and policies (as well as decisions contrary to Federal, State or local law). NAHRO comment notes that the PHA needs to uphold and enforce the PHA's own rules and regulations for effective and efficient management of the PHA program.

HUD has not adopted the change recommended by the PHA comment. The issue presented to a hearing officer may raise the question whether application of PHA rules to an individual tenant is a violation of Federal law. Thus the hearing officer should have jurisdiction to determine whether the local rules as applied to the tenant are in violation of Federal law, and the PHA should be bound by the hearing decision on this issue.

HUD respects the PHA concern, as reflected in public comment, with maintaining the authority of the local rules developed by the PHA for management of its public housing projects, and the particular concern that decisions of the hearing officer may infringe on the operation of these local rules. Nevertheless, at this time the Department believes that these interests do not justify allowing the PHA to override the decision of the hearing officer in the grievance process for PHA adverse action.

(c) Who May Decide Hearing Decision Is Not Binding? Under the old lease and grievance rule, the authority to determine that a hearing decision is not binding is vested in the Board of the PHA. Comment on this rulemaking states that the rule should clarify what officers or level of authority may act for the PHA in issuing a determination that the PHA is not bound by a hearing decision. Comment states that the decision that a PHA is not bound should only be issued by the highest PHA officials. The authority to repudiate hearing decisions should only be exercised by the PHA Board. Comment recommends that the rule specify that the decision to disclaim a hearing decision rests in the sole discretion of the PHA Board or Executive Director.

The final rule does not contain any additional clarification or restriction on what body within the PHA may determine that a hearing decision is not binding. The locus of this authority may therefore be determined and specified by the PHA in the PHA administrative grievance procedure.

PHAs differ considerably in program size and PHA organization. There are very large PHAs and very small ones. PHAs do not always have a Board of Commissioners. The PHA may, for example, be a Department of the municipal government, run by an appointee of the mayor. HUD does not find sufficient justification for a universal regulatory requirement to locate the authority to reject a grievance decision in any specific level of PHA management, or any PHA office. There is no special magic to placing authority for rejection of the hearing decision at any particular point in the PHA organization. For example, in a large PHA public housing program it may be appropriate to place the PHA authority to reject a hearing decision in the hands of an administrator with line authority over a portion of the PHA program, rather than in the PHA Board, or the executive director of the whole PHA program.

Comment states that the determination that the PHA is not bound should be made by an impartial party, and should not be a unilateral decision by the PHA. This recommendation is not adopted. In the circumstances described in the rule, the PHA should have ultimate authority to determine whether the decision will bind the PHA. There is no more reason to place this authority in some non-PHA "impartial party" than to allow a final authority to the decision of the original hearing officer. The decision of the impartial party may also be contrary to law. The proposal is also too cumbersome, inserting an additional level into the hearing process to determine if the original hearing decision was either *ultra vires* or contrary to law. The PHA decision that the PHA is not bound by a grievance decision is not the last word on the point at issue in the grievance. Where there is no binding hearing decision, the issue may be finally addressed and resolved in litigation between the tenant and the PHA—such as in the judicial process for eviction of the tenant.

(d) Voluntary Grievance Procedure. Under this rule, a PHA is generally only required to grieve on a proposed adverse action, but may elect to grieve in other circumstances. HUD regulations do not control the form or content of discretionary grievance procedures beyond the scope of the rule (see § 966.35). Comment argues that a PHA which expands the grievance right beyond the field required by HUD should be bound by the hearing decision. Commenters believe that though the decision to grieve in the first place is voluntary, the PHA should be forced to follow the hearing decision. Comment notes the "anomalous possibility" that a PHA which has elected to expand the grievance process might decide that it is not bound by the grievance decision.

HUD believes it would be anomalous for HUD to make binding on the PHA a decision in a hearing process not mandated at all by Federal law or rule. If the PHA is free to grieve or not to grieve on any subject, the PHA should also be free to determine the effect of the decision in the review process voluntarily established by the PHA. A HUD rule which provides that the PHA is bound by the hearing decision, though the decision to establish the hearing process lies in the discretion of the PHA, would inhibit PHAs from setting up grievance procedure beyond the minimum sphere required by HUD.

As described above, the HUD rule (§ 966.33 (b) and (c)) states the circumstances when the PHA is not bound by a hearing decision in the administrative grievance process set up by the PHA in compliance with this rule. The rule does not deal at all with the effect of decisions under discretionary

PHA grievance process not required by HUD, including voluntary extension to additional subjects of the administrative grievance procedure under this rule (see § 966.35).

(2) Effect of Decision on Tenant—When Tenant is Bound. Under the old lease and grievance rule, a tenant who chooses to grieve is nevertheless not bound by a grievance decision in favor of the PHA, or which denies the relief sought by the tenant. The old rule provides that the grievance decision does not affect the tenant's right to a *de novo* trial of the matter at issue in the grievance hearing—a new judicial trial which disregards the administrative grievance decision in favor of the PHA.

PHAs point out that the old grievance procedure is a one-way street. The grievance decision is binding on the PHA, but not binding on the tenant. For the tenant, the decision to seek a grievance hearing carries no risk. Under the old rule, the grievance hearing can be exploited to effectively delay judicial eviction of the tenant, since the PHA may not give notice to vacate before the decision of the hearing officer is issued. In the old system, the tenant has a built-in incentive to grieve, even if the tenant does not expect to prevail at the hearing.

This new rule does not carry forward the old provision that a tenant is not bound by a decision in favor of the PHA. The new rule is silent on whether the tenant is bound by the grievance decision in a subsequent judicial action.

Comment recommends that the rule should restore the tenant's unilateral right to judicial trial *de novo* on the issue decided at the grievance hearing. This recommendation is rejected. HUD believes that the old system was inequitable as between the PHA and the tenant. The old system also tended to promote misuse of the grievance process as a technique to delay legitimate contractual sanctions against the tenant, and also tended to waste administrative resources used in the grievance process.

In the final rule, HUD is silent on whether the grievance decision is in any respect binding *on a tenant* who elects to grieve. HUD leaves this question open to determination by the courts, on the basis of independent State-law principles—whether derived from common-law or State statute—governing the effect of a prior administrative decision on a subsequent judicial action. At this time, HUD does not seek to regulate and impose a uniform Federal rule of law on this question.

Different States may therefore have different answers on whether the grievance decision is binding on the tenant. State law may provide that the decision is always binding, is binding if there is substantial evidence to support the decision, or is not binding (and the tenant entitled to a trial *de novo*). The standard of judicial review may be determined by the type of procedure used in the administrative hearing, including whether there is a written record of the hearing (thus allowing administrative review of the record). In leaving the resolution of these issues to State law, HUD places the public housing administrative grievance hearing on the same footing as the treatment of other administrative hearings under State law.

c. Non-use of Grievance Process—Effect on Tenant. Comment states that the regulations should specify that a tenant's non-use of the PHA grievance process does not bar the tenant from raising a grievable matter in court. Comment states that the tenant should not be required to use the grievance process either (1) as a pre-condition for judicial remedy, or (2) as an alternative to a judicial remedy. Comment states that a tenant who does not use the greivance process should have a regulatory right to judicial trial on the issues. The tenant should have a right to judicial trial *de novo*.

In response to public comment, the rule is amended to add a new provision (§ 966.31(g)):

Tenant non-use of grievance process. The Tenant is not required to use the administrative grievance procedure for review of any PHA adverse action. The Tenant is not barred from using any otherwise available judicial procedure for review of PHA adverse action because of the Tenant's failure to use the PHA administrative grievance procedure for review of such action. Such failure shall not waive or affect the Tenant's right to trial on the issues.

The statute requires that the tenant must be given the "opportunity" for an informal hearing on proposed adverse action. The statute does not mandate that the tenant must invoke this opportunity for administrative review. As a matter of policy, HUD believes that availability of an opportunity for administrative review through the PHA grievance procedure should not constrict the tenant's otherwise available access to the courts. The statutory grievance right assures that there is an administrative forum for review of PHA adverse action. The tenant should retain the right to decide whether to use the PHA's administrative hearing process.

8. Existing Grievance Procedure

The new grievance regulation authorize PHAs to make very significant changes in existing grievance procedure—notably by limiting the tenant's right to grieve to a proposed adverse action § 966.31(a)), and by excluding eviction cases from the PHA grievance process (Part 966, Subpart E, see discussion in Preamble, Part VI below). However, the new rule only mandates very modest change in existing grievance procedure.

Grievance requirements under the old rule are more far-reaching, and more complicated than the new regulatory grievance requirements now promulgated by HUD in accordance with the 1983 law. A grievance procedure adopted by a PHA in accordance with the old rule will in most respects satisfy requirements under the 1983 law and the new rule.

A grievance procedure adopted under the old rule applies broadly to individual disputes between the PHA and a tenant. An existing PHA grievance procedure for matters outside the coverage of the mandatory grievance procedure under the final rule is not controlled by the new administrative grievance requirement. For such matters, no change is compelled by the proposed rule.

With respect to PHA proposed adverse action, it appears that in general a PHA will only need to modify the existing grievance procedure in two major respects:

First. Under the old rule (§ 966.51(a)), the PHA may exclude from its grievance procedure a grievance concerning an eviction or termination of tenancy if tenant action threatens health or safety of tenants or PHA employees. The PHA may only use this exclusion authority if State law requires a due process court hearing before eviction of a tenant. Although the 1983 law (section 6(k) of the U.S. Housing Act of 1937, 42 U.S.C. 1437d(k)) contains a broader authority to exclude grievances concerning termination of tenancy or eviction than under the old rule, the exclusion depends on a determination by HUD on due process adequacy of the State procedures. Until the HUD determination is issued pursuant to this rule, the PHA must give a tenant the opportunity for an administrative hearing on any proposed termination of tenancy, *including* a termination where the tenant has created a threat to health or safety of tenants or employees.

Second. The new rule requires that the PHA give notice of a proposed adverse action (§ 966.31(b)). The PHA must implement this new requirement.

It might also be necessary to modify procedures for selection of a hearing officer or hearing panel, where the old procedure for designating a hearing

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officer does not comply with the new rule.

Some PHAs may be largely content with operation of the grievance requirements under the old rule. A PHA may conclude that changing the PHA grievance procedure would be harmful to project management or tenant relations. A PHA may wish to retain, in whole or in part, the PHA's existing grievance procedure under the old rule.

Comment states that a PHA should be allowed to keep the present grievance procedure adopted under the old rule. Comment states that the rule text should specify that a PHA may retain the present grievance procedure with minimal modification.

In fact, PHAs may largely retain present grievance procedures with modest modification. Once HUD has made the required statutory due process determination, a PHA may, as in the past, deny a grievance right for cases which present a threat to health or safety of tenants and employees (but without necessarily adopting the broader exclusion of termination of tenancy and eviction allowed under the new rule). HUD finds no need to clutter the rule text with transitional references to ability of the PHA to retain its existing grievance procedure, since there are no special rules for transition cases.

Comment recommends that a PHA which wants to modify an existing grievance procedure should be required to give notice to tenants, and that tenants should be adequately represented in the process for determining the changes to be made. HUD finds no reason to mandate an additional notice to the tenant, other than the required general description of the PHA grievance procedure (discussed in section V.E.2 of this Preamble). To the extent that the PHA's revised grievance procedure differs from the procedure described in tenant information materials previously distributed by the PHA (or if the PHA has not previously given the tenant a general description of the PHA grievance process), then the PHA must give the tenant a general description of the revised grievance procedure adopted by the PHA in accordance with this rule (§ 966.30(d)).

With respect to tenant participation, this rule broadly leaves decisions on the extent and mode of consultations with residents to the administrative discretion and management judgment of the PHA. HUD lacks any plausible reason for adopting a different and more prescriptive definition of the PHA's process for adopting a new grievance procedure in accordance with this rule.

9. Settlement of Disputes—Informal Settlement of Disputes and Voluntary Grievance Procedures.

Comments point to the advantages of an administrative procedure to resolve disputes between the PHA and its tenants. By using a grievance procedure, disputes can be resolved without litigation. The grievance procedure offers a less adversarial way of working out problems.

The old lease and grievance rule required by the PHA to provide a formal administrative grievance hearing for disputes with tenants. The old rule also required that the PHA grievance procedures give opportunity for informal discussion and settlement of the grievance without a hearing.

The instant rule requires the PHA to grieve on a proposed adverse action. The rule does not require the PHA to provide a grievance hearing on other disputes with the tenant. The rule also does not direct the PHA to give opportunity for discussion and settlement of disputes, either those on which the PHA must grieve (i.e., PHA adverse actions), or those which are outside the scope of the grievance requirement. However, the PHA and the tenants may develop other mechanisms for avoidance and settlement of disputes. The rule provides (§ 966.35):

"At its discretion, a PHA may provide additional means for Tenant opportunity to comment upon, or for Tenant opportunity to request PHA consideration of, *any matter pertaining to the Tenant's occupancy or the Tenant's rights or obligations.* The discretionary PHA procedures may be designed for the purpose of affording an opportunity for informal clarification and resolution of disputes or potential disputes." (emphasis supplied).

PHA comment largely supports the grievance procedure proposed by HUD, including limitation of occasions on which the PHA is required to grieve, and the discretion of the individual PHA to decide whether and how to extend opportunities for resolution of disputes with the tenants.

Legal aid comment objects to narrowing the scope of a tenant's right to grieve. Comment also criticizes elimination of the PHA duty to provide an opportunity for informal settlement of disputes. PHA-tenant disputes are often solved in the informal settlement procedure under the old rule. Informal settlement avoids the need for a full blown grievance hearing. A PHA's administrative grievance procedure may be better than the courts in crafting a solution to public housing disputes.

The rule only directs a PHA to give a tenant grievance hearing for proposed adverse action, as required by the 1983 law. However, the PHA may choose to give grievance hearings not required by statute or regulation. In the spirit of the statutory policy to vest maximum administrative discretion in the PHA (U.S. Housing Act of 1937, section 2; 42 U.S.C. 1437), the PHA should enjoy the discretion to determine whether to broaden the administrative hearing right. The informal and creative local resolution of disputes is more likely to be favored by allowing a broad play to local experience and judgment, than by requiring the PHA to use a formal grievance mechanism imposed by HUD.

The rule does not require the PHA to provide a structured opportunity for settlement of tenant disputes that do not stem from proposed adverse action, or to provide opportunity for informal pre-hearing discussion with the tenant. The individual PHA is well able to devise procedures for communication with tenants, and for heading off and solving disputes. The search for appropriate local techniques to prevent or resolve PHA-tenant disputes is not aided by shaping the local process of tenant-management relations in a Federal mold. Above all, the process depends on the good faith, flexibility and openness of the local parties.

Comment states that the compromise embedded in the 1983 law does not show an intent to abandon the informal conference in the old lease and grievance procedure. To this, HUD responds that nothing in the legislative history shows any intention by the Congress to make the old informal conference requirement an element of the statutory grievance process under the 1983 law. The silence of the Congress cannot be read, as the comment suggests, an implicit enactment or endorsement of all procedures required under the old lease and grievance rule. The Department is not and should not be bound to retain elements of the old lease and grievance rule which were omitted from the law passed by the Congress in 1983.

HUD supports development by each PHA of local channels and procedures for venting tenant concerns, or for resolution of disputes between the PHA and project residents. The PHA may establish locally devised procedures to avoid or resolve disputes or potential disputes between the management and the tenants.

F. Mutual Help and Turnkey III Homeownership Opportunity Programs—Grievance Procedure

1. Mutual Help and Turnkey III—Applicability of Grievance Procedure

Grievance requirements under the statute and this rule are applicable to Turnkey III and to Indian housing, including Mutual Help.

The rule provides that grievance requirements (Part 966), Subparts D and E) are applicable both to "public housing" and to "Indian housing" (§ 966.1(c)).

"Public housing", as defined in this rule, is "housing assisted under the U.S. Housing Act of 1937" (definition at § 966.2). The Turnkey III Program is developed and operated with assistance under the U.S. Housing Act of 1937, and is within the definition of public housing. The proposed rule stated that "public housing" includes the Turnkey III Homeownership Opportunity Program. In the final rule, the specific reference to Turnkey III is deleted from the definition of "public housing". Turnkey III falls within the broad definition of public housing, and a specific reference to Turnkey III is not needed.

The rule provides that grievance hearing requirements are applicable to Indian housing (§ 966.1(c)). "Indian housing" is defined (§ 966.2) to include the Mutual Help Program (administered by an Indian Housing Authority ("IHA") under Part 905).

The Turnkey III and Mutual Help regulations are amended to state (§ 904.107(p)(1), and § 905.424(g)(1)) that the public housing administrative grievance regulations are applicable to these programs.

2. Mutual Help and Turnkey III—Special Provisions

Because of the special characteristics of the Turnkey III and Mutual Help homeownership programs there are a few technical differences between the grievance procedure used for these programs and the procedure used for public housing rental projects. These differences concern (1) the definition of proposed adverse action, and (2) the notice by the PHA to the homebuyer of a proposed adverse action (see § 966.34).

Proposed Adverse Action

The rule separately states the cases which are "proposed adverse action" (for which the PHA must give the opportunity for a grievance hearing) in the Turnkey III Program and in the Mutual Help Program (§ 966.34(a); § 904.107(p)(2); § 905.424(g)(2)). The following cases are considered adverse actions by the PHA:

(1) For Mutual Help, a proposed PHA (IHA) decision determining the amount of credits to the homebuyer's MH contribution accounts.

(2) For Mutual Help and Turnkey III, a proposed PHA decision determining the amount of the required monthly payment, or determining the amount owing on account of the required monthly payment; a proposed PHA decision determining charges by the PHA against the homebuyer accounts (Turnkey III EHPA or NRMR; Mutual Help MEPA, VEPA or MH reserve accounts); or a proposed decision determining the PHA's proposed settlement at termination of the homeownership agreement or at purchase of the home by the homebuyer.

(3) For Turnkey III, a proposed decision that the homebuyer has lost homeownership potential and should be transferred to a rental unit.

(4) For Mutual Help and Turnkey III, a proposed decision to terminate the homebuyer agreement (Turnkey III Homebuyers Ownership Opportunity Agreement or Mutual Help and Occupancy Agreement), or to evict the homebuyer from the home after such termination.

Notice of Proposed Adverse Action

A PHA must give the homebuyer-tenant notice of a proposed adverse action (§ 966.31(b)). For Turnkey III, the rule clarifies that a notice terminating the homebuyer agreement or giving notice that the homebuyer has lost homeownership potential (and should therefore be transferred to another unit) may be combined with a notice of proposed adverse action (§ 966.34(b)(1)). For Mutual Help, the rule clarifies that a notice terminating the MHO Agreement may be combined with a notice of proposed adverse action (§ 966.34(b)(2)).

VI. Termination of Tenancy or Eviction—Exclusion From PHA Administrative Grievance Procedure

A. When PHA Can Evict Without Grievance Hearing—Requirement for Due Process Determination

The 1983 amendments require a public housing PHA to establish and implement an administrative grievance procedure (U.S.H. Act of 1937, section 6(k), 42 U.S.C. 1437d(k)). The amendments also provide that a PHA:

* * * may exclude from its [administrative grievance] procedure any grievance concerning an eviction or termination of tenancy in any jurisdiction which requires that, prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process.

Under this law, the PHA does not have to offer tenant a grievance hearing before eviction if HUD has first determined that the law of the jurisdiction requires due process protection before eviction. A PHA may remove grievances over termination of tenancy or eviction from the PHA's grievance process. Part 966, Subpart E of the rule establishes the procedure for these determinations by HUD.

In the final rule, the HUD determination that local law provides the opportunity for a pre-eviction due process hearing in court is called a "due process determination" (definition at § 966.2; *cf.*, § 966.41(a)(1)). This is a change of terminology from the proposed rule, in which the statutory HUD determination was called a "determination of recognition". No substantive change is intended by substitution of the new term. The term "due process determination" better conveys the purpose of the HUD determination—a determination that State law requires the elements of due process.

The due process determination will be made at the request of an individual PHA. To make a due process determination, HUD Counsel will examine legal requirements for eviction in the PHA jurisdiction. If there are alternative legal processes for eviction in the PHA jurisdiction, the HUD due process determination may be issued for different eviction procedures within the PHA jurisdiction.

This rule sets up a procedure for issuing the HUD determinations with the least extra or unnecessary difficulty or delay. The procedure allows a full opportunity for tenant comment before issuance of a HUD due process determination.

For a PHA to exclude grievances concerning termination or tenancy or eviction from the administrative grievance procedure, HUD must determine that specified procedures for judicial eviction under State and local law require that before eviction from the dwelling unit a tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (§ 966.41(a)(1)).

The PHA's decision to exclude grievances concerning termination of tenancy or eviction must be stated in the written grievance procedure adopted by the PHA (§ 966.41(a)(3)).

B. Public Comment—General

Comment from PHAs strongly supports issuance of a rule which

authorizes a PHA to exclude eviction cases from the PHA administrative grievance process in accordance with the 1983 law. Comment from legal aid offices strongly opposes this new authority for the PHA to evict without an administrative grievance hearing.

Comment in opposition asserts that HUD should reject the "statutory invitation" to take eviction out of the grievance process. Comment acknowledges that exclusion is permitted by Federal statute, but claims that exclusion is poor policy.

Comment states that tenants are vulnerable, and need the protection of the PHA grievance process. A tenant has the greatest need for the administrative grievance process when the PHA is trying to terminate the tenancy. Disputes can be resolved in the grievance process. If the eviction is dropped, the PHA saves litigation costs.

Comment states that exclusion will force disputes into court. The tenant can't adequately defend against eviction in the court proceeding. Comment also expresses lack of faith that the tenant will really get a fair hearing in the local court eviction process.

Comment in favor of exclusion states that exclusion will be very helpful to PHAs, and will be welcome to tenants who want to live in a good and peaceful environment. Comment points out that the old rule requirement to use the administrative grievance process for an eviction is burdensome and expensive, that the grievance requirement delays eviction of tenants, and that the tenant can get a fair hearing in the State court. The National Association of Housing and Redevelopment Officials (NAHRO) states that HUD should be commended for allowing the use of State court evictions instead of a HUD-regulated grievance process. NAHRO comment remarks that the rule will return PHAs to local control, and will decrease PHA administrative burden and costs resulting from the old grievance rule.

PHA comment states that it has become increasingly difficult to evict tenants under the current grievance regulation. Tenants and the community wonder why the PHA does not act. The grievance requirement undermines respect for the PHA.

PHA comment asserts that the administrative grievance process adds cost and time for PHA enforcement of the law. Exclusion will halve PHA legal costs. A PHA hails HUD for proposing elimination of administrative grievance procedure for termination of tenancy. The PHA gives a strong statement of arguments for allowing a PHA to exclude termination of tenancy from the grievance process:

> The only way a tenant can be evicted in [the PHA's State] is by judicial decision, after a full due process hearing in justice court. If a tenant is dissatisfied with an adverse decision in the justice court, the tenant can appeal for a trial de novo in the county court at law, and have a second full due process hearing on the eviction. The current Rules give the tenant two preliminary administrative hearings before the two full due process trials in the state courts. During the last ten years, the currently required grievance hearing procedures have cost the Housing Authority literally tens of thousands of dollars in administrative costs and legal fees, not to mention the tremendous drain on Housing Authority manpower. Tenants have learned that requesting an informal and formal grievance hearing before a three member panel is an easy way to delay a trial in the justice court. This tenant abuse of the grievance procedures and the tremendous burden on the Housing Authority to provide the administrative grievance hearings, are completely unwarranted in light of the due process hearings allowed tenants in state courts.

HUD will implement the statutory grievance exclusion under the 1983 law, and will not reject the statutory "invitation". Congress simultaneously enacted the statutory grievance requirement for a PHA adverse action, and the authorization for PHA to exclude termination of tenancy from the eviction process (where HUD determines that State law requires basic due process before eviction from the unit). This statutory scheme evidently reflects a Congressional sense of the balance between the benefits and burdens of a grievance process to challenge adverse actions by the PHA. Where the tenant can get a pre-eviction due process hearing in State court, the benefits of providing a duplicative administrative hearing for the tenant do not match the burdens.

PHAs have day to day experience in administration of the old grievance hearing requirement. Comment by PHAs persuades the Department that implementation of grievance exclusion as permitted under the 1983 law will greatly assist in effective management of public housing projects for the general benefit of public housing tenants. Prompt processing of evictions through judicial process will enforce compliance with tenancy requirements, including rent payment, care of the units and compliance with project rules. Families are more likely to comply with obligations of the assisted tenancy if eviction, the most serious potential sanction for non-compliance, can be surely and quickly carried out—without the added delay and uncertainty of the administrative grievance process.

PHA comment also indicates that elimination of the grievance requirement for a termination of tenancy will relieve the PHA of a considerable expense and administrative burden.

HUD concludes that implementation of exclusion under the 1983 law carries out a Congressional judgment of the appropriate balance of interests, and is very good practical policy. Implementation of exclusion is fair to the tenants affected—who have the legal right to a fair hearing in State court. Exclusion favors as well the general interest of public housing tenants that projects should be well and effectively managed.

We consider also a number of other particular questions on the exclusion procedures under the 1983 law.

Comment claims that the exclusion of termination of tenancy and eviction from the grievance process is a violation of due process. HUD sees no plausible basis for this claim. A public housing tenant has a property right to occupy the unit in accordance with terms of the lease.

Under Federal law, the tenant may not be evicted without statutory good cause (lease violation or other good cause). Where the PHA seeks to evict, the tenant must be given a due process hearing on whether there is good cause for eviction.

There is not, however, any Constitutional right to an *administrative* pre-judicial hearing on eviction of a public housing tenant, much less a Constitutional right to duplicative administrative and judicial hearings on the grounds for termination of tenancy. Many cases have concluded that existence or non-existence of good cause for eviction of an assisted tenant may be determined by a State court hearing, and that there is no Constitutional requirement for a prior administrative hearing on the eviction. The right to a grievance hearing in public housing is purely statutory. The restriction on availability of this statutory right (the statutory provision that the right to a grievance hearing does not apply where HUD has determined that State law requires the elements of due process) is merely a statutory limitation on a statutory right. Congress was not Constitutionally compelled to provide any administrative grievance hearing on a termination of tenancy, and may Constitutionally establish any limitation on availability of the hearing right.

Comment recommends that the grievance exclusion should be limited to those types of eviction most determinable by objective evidence—that is, deciding whether the tenant has paid the rent. HUD finds no justification

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for this proposed restriction of the cases eligible for exclusion from the PHA grievance process. State courts customarily consider a vast variety of contractual or other legal issues in connection with landlord-tenant relations and other issues. HUD finds no reason to believe that State courts cannot competently consider the whole range of legal issues connected with eviction of a public housing tenant, including whether the tenant has violated obligations of the assisted tenancy other than the simple obligation to pay rent. There is no reason at all to believe that these broader issues would be better handled in the PHA's administrative grievance process.

Comment states that in a particular State, the State mandates a grievance process for residents of State-aided low income projects. The comment states that the same grievance requirements should also be applicable to tenants of Federal public housing projects. Otherwise, tenants in different projects will have different rights, depending on whether the tenants live in State or Federal projects.

A State may establish a grievance procedure or other management requirements for State-aided projects. That is the prerogative of the State. HUD should not, however, attempt to mimic State hearing requirements for State-aided projects. The State may, if it wishes, establish additional procedural protections for public housing tenants that do not conflict with Federal public housing requirements under the Federal statute and rule. The State may choose to require the public housing PHA to offer the tenant an administrative grievance hearing when there is no Federal requirement for such a hearing. HUD has not pre-empted the field of action in this respect. The State may properly decide what additional procedural protections are appropriate for assisted tenants, and whether the additional protections should be identical in Federal and State-aided projects.

C. What is a Due Process Determination?

1. What HUD Determines

Under the 1983 statute, HUD must determine whether a jurisdiction "requires" a hearing that provides the basic elements of due process before eviction of a tenant (U.S. Housing Act of 1937, section 6(k), 42 U.S.C. 1437d(k)). To implement the law, HUD will determine whether *State or local law* requires the elements of due process.

To carry out the statute, a "Due Process Determination" is defined (§ 966.2) as:

> A determination by HUD that specified procedures for judicial eviction under State and local law require that a tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit.

2. Elements of Due Process

a. Definition of Elements. The 1983 law specifies the minimum elements of an administrative grievance hearing by the PHA. However, the statute does not list the "basic elements of due process" in a court proceeding to evict the tenant. Definition of these elements is left to administrative determination by HUD. The regulation therefore defines (§ 966.2) the "elements of due process". The elements in the HUD definition will assure, in accordance with the statutory purpose, that before eviction from the unit the tenant has the right under local law to a judicial hearing on the grounds for termination of tenancy, and that a hearing in accordance with the local law would meet the requirements of procedural due process under the Constitution.

In response to public comment and further consideration by the Department, the proposed due process definition has been refined in the final rule. The reasons for the changes are described in this section.

The final rule (§ 966.2) provides that "elements of due process" means that:

> The court procedures for eviction under State and local law require all of the following before eviction from the dwelling unit:
>
> (a) The opportunity for a hearing on the existence of serious or repeated lease violation or other good cause reasons for eviction * * *.
>
> (b) Advance notice of the hearing, and of the alleged reasons for eviction.
>
> (c) Hearing before an impartial party.
>
> (d) The opportunity to be represented by counsel.
>
> (e) The opportunity to present evidence and question witnesses.
>
> (f) A decision on the reasons for eviction before the occupants are evicted.

Some comment asserts that HUD's proposed definition of minimum due process elements does not give sufficient protection for the tenant. Comment questions specific elements in the definition. Comment states that the 1983 statute does not prohibit HUD from establishing broader safeguards for the tenant family, and states that the interests of an indigent family should have greater protection.

It is the sense of the Department that the regulation definition in the final rule carries out the letter and spirit of the statutory requirement. The HUD definition conforms with Constitutional standards for procedural due process as applied to a judicial proceeding for eviction of a tenant. HUD's definition of the basic due process elements affords notice and the opportunity to be heard on the existence of a statutory basis for termination of the assisted tenancy (section 6(l)(4) of the U.S. Housing Act of 1937, 42 U.S.C. 1437d(l)(4)).

The definition of due process elements in this rule provides the appropriate level of procedural protection for the assisted tenant. The further accretion of elaborate procedural safeguards in the definition of basic due process is not needed to protect the central legitimate interest of an assisted tenant faced with the prospect of eviction—a fair chance to be heard in court. The interest of the tenant does not justify preserving the tenant's opportunity for a dual hearing as mandated under the old rule—first in an administrative grievance process, and then again in State court. "Due process does not, of course, require two hearings" (*Goldberg* v. *Kelly*, 397 U.S. 254, 267, n. 14, 90 S. Ct. 1011, 1020 (1970)). PHA comment testifies to the waste, delay and administrative burden of precluding PHAs from direct resort to the courts. The price for denying the PHA direct and immediate access to judicial eviction procedures is primarily paid by those who live in public housing, and who must put up with continued residence by other tenants who violate the lease and program requirements.

In the old lease and grievance rule, there is a definition of "elements of due process" (old rule § 966.53). In a jurisdiction which requires a pre-eviction judicial hearing containing the elements of due process as defined in that rule, the PHA was not required to grieve on the eviction of a tenant who creates a threat to health or safety of PHA tenants or employees. In 1983, the House first passed a bill requiring HUD to establish an administrative grievance procedure "in accordance with the basic safeguards of due process" (Rpt. 98–123 at 175, 5/13/83). Comment on the proposed rule states that in 1983 the House of Representatives intended HUD to retain the pre-existing regulatory definition of due process, and that there is "no indication" that the Congress repudiated the intention of the House.

There is no statutory requirement for HUD to use the old regulatory due process definition in determining "basic elements of due process" under the 1983 law. The House bill and associated legislative history does not indicate any

proposed legislative determination on the point.

First, the original House bill required the establishment of an administrative grievance process, but did not—unlike the law actually enacted by the Congress—allow a PHA to bypass the grievance process if due process procedures are available in State court. Thus the House legislative history does not express any intention on the meaning or implementation of due process where the PHA elects to bypass the administrative grievance procedure.

Second, the House bill required the PHA to adopt administrative grievance procedures "in accordance with the basic safeguards of due process" but not less than as set forth in specific provisions of the old lease and grievance rule ("§ 866.56 through 866.59"). The list of enumerated regulation provisions in the House bill does not include the old rule provision (§ 866.53) which defines "elements of due process". This suggests that the House bill did not intend to freeze this aspect of the old lease and grievance procedure.

HUD has the authority and obligation to implement the law passed by the Congress. The due process terminology of the statute is drawn from the Constitution. HUD is not bound to the elements of due process once defined by HUD regulation, but by the elements of procedural due process under the Constitution. The HUD administrative definition in this rule is consonant with the Constitutional balancing of interests in determining the requisites of a due process hearing in a court proceeding for eviction of an assisted tenant (cf. *Matthews* v. *Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976)).

b. Notice. The proposed rule definition provided that elements of due process includes "advance notice of the grounds for eviction or termination of tenancy". The definition in the final rule has been revised to require "advance notice of the hearing, and of the alleged reasons for eviction" (§ 966.2).

The change clarifies what must be included in a due process notice. The notice must include notice of the hearing proceeding, as well as notice of the matter to be determined at the hearing—whether there are good cause reasons for termination of tenancy or eviction. The tenant has to know that there will be opportunity for a hearing, and has to know what questions may be tested at the hearing.

The concept of due process "notice" implies that the notice must be given in a manner reasonably calculated to inform the interested parties that the action is pending (*Greene* v. *Lindsey*, 456 U.S. 444, 102 S. Ct. 1874 (1982)). This rule does not seek to specify what procedure for service of notice is Constitutionally adequate. However, when making a due process determination, HUD will determine both whether the *content* of the notice gives adequate notice of the proceeding and the reasons for termination of tenancy, and whether the State-law *procedure* for serving the notice is Constitutionally adequate.

Comment objects that the proposed rule does not specify that notice must be "adequate". Comment states that there should be specific pleading of the good cause grounds for eviction, or that the notice must be detailed and complete enough so that the tenant can prepare a defense.

HUD does not see a need for more detailed pleading rules. The Constitution does not require any particular form of pleading, so long as the pleading or other State notice gives reasonable notice of the hearing proceeding and of the hearing subject. There is no doubt many possible ways to express the requirement for notice of what is to be determined in a hearing. The rule states that the due process notice must state the "alleged reasons for eviction". The statement tells the tenant what is to be decided in the hearing. This formulation is similar to the statement by the Supreme Court, in *Goldberg* v. *Kelly*, that a beneficiary of assistance must have notice "detailing the reasons for a proposed termination" (397 U.S. 254, 267–268, 90 S. Ct. 1011, 1020 (1970)).

Comment objects that the rule does not specify that the due process notice must go to the *family*, as well as to the *tenant* (the family member who executes the lease on behalf of the family (§ 966.2)). HUD does not agree with this comment. In determination of matters under the lease, the PHA may serve notice on the tenant. The tenant is the legal representative of the family. In accordance with conventional landlord-tenant practice, the tenant is the holder of legal rights under the lease, and exercises the leasehold rights on behalf of the occupants, including both adults and children residing in the unit. It is not practical or Constitutionally necessary that the PHA should have to separately serve other individual members of the family, in addition to the tenant.

The requirement for due process "notice" does not signify that there must be a *single* document or *single* process that conveys the necessary information to the tenant. State landlord-tenant laws commonly mandate a two-step notice process to maintain an action for eviction of a tenant. Landlord must first serve a "notice to quit" the property by the end of a specified notice period defined by State law. After expiration of the notice, landlord may commence the legal action for possession of the property, by service of the complaint or other appropriate process. For purpose of determining whether the State-law notice meets the requirements of basic due process, it does not matter whether State law requires one notice or two, or (if there is more than one required notice) which of the State-law notices holds the necessary information. In making the due process determination, the question for HUD is whether—under State law—the tenant must be given the necessary information in advance of the hearing.

Assume, for example, that the contents of the complaint contain all the necessary due process information, and that the complaint is served in a manner reasonably calculated to give notice of the hearing. In such a case, HUD does not have to consider whether the information is also given in a State-law notice to quit, or whether the process for delivery of the notice to quit is Constitutionally adequate to afford notice of the hearing. HUD's due process determination may be solely based on the adequacy of the notice given by service of the complaint.

In another type of case, the notice to quit and the pleading in the eviction proceeding may be separately insufficient, but may be complementary elements of the due process notice. For example, the notice to quit may adequately state the grounds for termination of tenancy, and the complaint may give notice of the hearing proceeding which is to determine the validity of the grounds for termination. The HUD due process determination may conclude that proper due process notice is contained in the combination of the two State-required notices, although in isolation neither of the State-law notices would afford complete and Constitutionally adequate notice of the hearing proceeding.

Comment states that the list of due process elements should require notice of a summary ejectment action fourteen days before trial. The rule (§ 966.22) requires that the PHA must give Federal statutory notice of lease termination in accordance with the 1983 statute (U.S. Housing Act of 1937, section 6(l)(3), 42 U.S.C. 1437d(l)(3); see discussion at Preamble, section IV.B). In a termination for non-payment of rent, the tenant must be given the Federally-required fourteen days notice.

In a non-payment case, the tenant will have at least fourteen days Federal statutory notice of lease termination,

plus whatever notices are required by State law. The tenant's interest in adequate notice of the eviction trial does not justify extending the minimum notice requirement under Federal law, by prescribing another fourteen day State-law notice of trial after or independent of the HUD-required notice of lease termination. The due process determination by HUD should not be used as a vehicle to federalize the incidents of a possessory process established by State law.

c. Discovery. The elements of due process listed in the proposed rule (§ 966.2) provided that the eviction procedures must include "the opportunity to examine relevant evidence in the possession of the PHA". This provision was intended to allow tenant the opportunity for discovery of PHA evidence during the course of the eviction action, but without attempting to insist on any particular discovery process.

Comment advocates that the definition of due process elements should include a stronger and more precise statement of the tenant's right to discovery—both as to the point at which discovery must be made available, and as to the matters which must be disclosed. Comment states that there should be a right to full *pretrial* discovery, that tenant discovery should be long enough before hearing so that the tenant can prepare a defense, and that that full pre-trial discovery must include the right to subpoena third parties, and the right to depose PHA employees and potential witnesses. Comment states that discovery should not be limited to evidence in possession of the PHA, that the PHA must be under a duty to provide all relevant evidence in the tenant's file, and that the tenant must be given the opportunity to examine governing regulations.

Comment remarks that State law may not allow for pretrial discovery in eviction proceedings. Comment observes that HUD has gone beyond the requirements of procedural due process as articulated by the Supreme Court, in demanding that the State procedure offer an advance opportunity to examine evidence in the hands of the landlord. The comment notes that in *Goldberg v. Kelly*, 397 U.S. 254, 266–270, 90 S. Ct. 1011, 1020–1021 (1970), which contains the most demanding and explicit statement by the Supreme Court of procedural due process requirements for termination of federal subsidy, "there is no mention of depositions, admissions or document production". Since *Goldberg*, the Supreme Court has suggested a more cautious and case-by-case approach to the judgment of what elements are required for a due process hearing in different contexts. In *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976), the Supreme Court states that in cases after *Goldberg* "the Court has spoken sparingly about the requisite procedures".

Some States has adopted procedures for fast trial of eviction actions, called summary proceedings. These accelerated procedures may not include any provision for pre-trial discovery. In *Lindsey v. Normet*, 405 U.S. 56, 92 S. Ct. 862 (1972), the Supreme Court upheld the authority of a State to establish summary eviction proceedings which provide for expedited trial, and which limit the defenses which may be presented by the tenant at trial. "We are unable to conclude that either the early-trial provision or the limitation on litigable issues is invalid on its face under the Due Process Clause of the Fourteenth Amendment" (405 U.S. at 64, 92 S. Ct. at 869).

As we have noted, comment on the proposed lease and grievance rule claims that the opportunity for pre-trial discovery is necessary so that a tenant can prepare for trial. In *Lindsey*, the Supreme Court rejects the similar claim that provision for expedited trial in a summary proceeding "allows an unduly short time for trial preparation".

> *Tenants would appear to have as much access to relevant facts as their landlord, and they can be expected to know the terms of their lease, whether they have paid the rent, whether they are in possession of the premises, and whether they have received a proper notice to quit, if one is necessary."* (405 U.S. at 65, 92 S. Ct. at 869–870) (emphasis supplied)

By parity of logic, due process does not require that a tenant must be given pre-hearing access to information in the possession of the PHA, much less the full discovery procedures demanded in certain comment.

The old lease and grievance rule provides (§ 966.53(b)(4)) that "elements of due process" in an eviction action includes an opportunity for pre-trial discovery of relevant documents, records and regulations of the PHA. In a jurisdiction where State law requires a pre-eviction hearing that comports with the HUD due process definition, the PHA was not required to give a grievance hearing to a tenant who creates a threat to health or safety of tenants or employees. In *King v. Housing Authority*, 670 F. 2d 952 (11th Cir. 1982), Alabama law did not require that a tenant must be given pre-eviction discovery according with the due process definition in the HUD regulation. The court held that the PHA must therefore afford tenant an administrative hearing before bringing an action for eviction in the State court. It is plain, however, that the court's decision was not based on a determination that Constitutional due process requires an opportunity for pretrial discovery, but on the PHA's duty to comply with the regulatory due process definition promulgated by HUD. The *King* court states that it is:

> *immaterial that [State] eviction proceedings comport with fourteenth amendment due process requirements.* The Secretary of HUD in his discretion can promulgate regulations which preclude subsidized housing authorities from denying tenants administrative hearings when state eviction proceedings do not require any 'elements of due process' which are deemed necessary by the Secretary. This is so *regardless of whether the regulatory elements of due process are Constitutionally mandated."* (670 F.2d at 955) (emphasis supplied)

The final rule eliminates the proposed provision that elements of due process must include the opportunity to examine evidence in the PHA's possession. The final rule does not require that the tenant must have the opportunity for discovery in the State eviction proceeding.

A proceeding for eviction of any tenant, subsidized or unsubsidized, tests the property right of the tenant to live in the housing. Nevertheless, the Constitution does not require that a proceeding for dispossession must allow opportunity for discovery prior to hearing. HUD should not deny to PHAs which administer public housing projects the ability to use State summary eviction procedures that accord with the requirements of due process.

Public housing PHAs have a strong management interest in the use of the same expedited eviction procedures which may be used by a private landlord. The need of the PHA for use of such procedures may be more compelling than the need of a private landlord. Management of public housing is typically more difficult than management of private and unassisted housing. The PHA selects its tenants from the universe of eligible poor families, and therefore does not have the same latitude as a private owner to select tenants who meet the owner's admission standards. The public housing population includes many families with serious social problems. If public housing tenants know that the sanction for non-payment or other breach is sure, fast and effective, tenants are more likely to pay rent

promptly and to fulfill other obligations under the lease. The PHA should have the management tools to cope with the difficult problems of public housing project management, including the availability of State summary judicial process to evict a tenant who violates obligations of the assisted tenancy.

d. Other Proposed Elements. Comment states that the list of due process elements should include the opportunity for jury trial and review by a law-trained judge. HUD finds no justification for adding these elements. Neither element is a prerequisite of Constitutional due process. Neither is necessary to assure a fair hearing on the merits.

We are mindful that under the 1983 law HUD is only called to determine the "basic" elements of due process, not to devise and impose a Federal civil procedure for eviction of a public housing tenant.

Comment states that due process should include the right to a written decision with specific findings of fact and conclusions of law. We do not agree that a written decision is an element of Constitutional due process in a judicial proceeding for termination of tenancy. A written decision, or a statement of the legal basis for opinion, is not an element of the opportunity to be heard in the eviction action, and the existence of a written decision does not as such change or affect the character of the decision. It may be that a written decision, or especially a reasoned statement of decision, enhances the authority and acceptance of the hearing process, or that existence of a written decision may facilitate appeal of the decision. However, the Constitution does not require a written decision as an element of procedural due process in a judicial proceeding for repossession of real property.

Comment states that the regulations must require a judicial hearing where a tenant may raise *any issue* regarding termination, including rent calculation. Comment also avers that judicial process deprives tenants of a full due process hearing if the court may issue an order excluding particular issues from consideration.

The rule provides that due process requires the opportunity for a hearing on the good cause reasons for termination of tenancy. If the alleged reason for termination is non-payment of rent, then a due process hearing should consider germane defenses, such as tenant's allegation that the rent was not calculated in accordance with HUD requirements, or that the tenant has paid the proper amount. The rent calculation procedure bears directly on the issue which must be heard—whether the PHA has adequate reasons for eviction of the tenant. We do not think that there is a need for further emphasis or explanation in the rule that the opportunity for a judicial hearing and decision on the reasons for termination imports that the court must consider issues necessary to that determination.

It does not follow, however, that the tenant must be allowed to raise in the eviction proceeding all issues concerning the tenancy. In *Lindsey v. Normet*, the Supreme Court held that a State does not deny due process of law by restricting the issues in an action for summary dispossession to whether the tenant has paid rent and honored tenant's covenants under the lease (405 U.S. at 64–69, 92 S. Ct. 870–872). State law may bar the tenant from raising in the summary non-payment proceeding a claim that the owner has failed to maintain the premises or failed to perform other obligations under the lease.

Comment claims that a requirement that tenant pay rent into court pending final judgment is a deprivation of due process. In *Lindsey v. Normet*, the Supreme Court rejected the claim that a requirement for the tenant to provide security for accruing rent (as a condition for delay in trial) is a violation of procedural due process. "A requirement that the tenant pay or provide for the payment of rent during the continuance of the action is hardly irrational or oppressive" (405 U.S. at 65, 92 S. Ct. at 870).

There may be cases where State law allows the landlord to use eviction procedures which truncate litigable issues, or which require the tenant to post security, in such a way that under these procedures the tenant is effectively denied a fair opportunity for hearing on the Federal grounds for termination of tenancy. If State law on its face permits a landlord to use procedures that effectively deny tenant's opportunity to a hearing, then an eviction process by use of such procedures does not require the elements of due process. HUD will not issue a due process determination for those procedures.

e. Revision and Reorganization of Definition. In the final rule, the definition of due process elements is reorganized, and is slightly rewritten for emphasis and clarity. All of the separate listed due process elements ultimately pertain to the question whether the State law requires that the tenant has the chance to be heard in court on the grounds for termination of tenancy. The revised listing of due process elements in the HUD rule now starts with the most general and fundamental proposition, that under the State court procedures the tenant must have:

> the *opportunity for a hearing* on the existence of serious or repeated lease violation or other good cause reasons for eviction * * * *" (emphasis supplied)

The other due process elements listed in the rule are all fundamental elements necessary to secure the opportunity for a hearing. For example, notice is a practical prerequisite of the opportunity to be heard (see *Greene v. Lindsey*, 456 U.S. 444, 449–50, 102 S. Ct. 1874, (1982)). Thus the other due process elements are separately listed because they are key elements inherent in the opportunity for hearing.

In the final rule, the requirement for "hearing before an impartial party" is separately listed as a distinct due process element to stress that the requirement for decision by an "impartial" party is a key prerequisite in affording the opportunity for a hearing.

3. Determination Applies to Specific Eviction Procedures

HUD's due process determination is for *specific eviction procedures*—a set of procedural requirements for eviction under State law.

The PHA does not have to give a grievance hearing on termination or eviction if HUD determines "*specified procedures* for judicial eviction under State and local law" (definition of "due process determination" in § 966.2) require a pre-eviction hearing containing the elements of due process. The rule states (§ 966.41(c)(2)(ii)) that a HUD due process determination must describe "the specific eviction procedures which are covered by the due process determination".

If HUD issues a due process determination, the PHA may exclude grievances concerning termination of tenancy or eviction from the PHA administrative grievance procedures (§ 966.41(a)(1)). In the final rule, HUD adds a new provision to clarify that the PHA may only evict the tenant without a grievance hearing, if the PHA uses the specific procedures which are the subject of a HUD due process determination. The rule provides (§ 966.41(a)(2)):

> If HUD issues a due process determination, the PHA may evict the occupants of a dwelling unit through the specified procedures for judicial eviction which are the subject of the determination. The PHA is not required to give notice of proposed adverse action concerning a termination of tenancy or eviction, and is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure. Unless

the PHA uses the specified eviction procedures which are the subject of a due process determination, the PHA may not evict the occupants without providing to the Tenant the opportunity for an administrative grievance hearing * * * prior to eviction.

4. HUD Review Is Limited to Legal Requirements for Eviction

The due process determination by HUD under the 1983 law is not based on HUD's investigation of the empirical workings of the State judicial process for eviction of a tenant. The question for HUD under the 1983 Federal law is whether State law in the PHA jurisdiction "requires" a pre-eviction due process hearing (U.S. Housing Act of 1937, section 6(k), 42 U.S.C. 1437d(k)).

Comment on the July 1986 proposed rule states that HUD's due process determination should not be restricted to an examination by HUD of requirements for eviction under State law. Comment asserts that HUD's due process analysis should also consider actual operation of the local landlord-tenant courts. Comment alleges that State judges are not familiar with Federal law, and are not concerned with the Constitutional rights of poor people. Comment states that because of the volume of eviction cases in local landlord-tenant court, tenants do not get a fair hearing. To carry out the 1983 statute, HUD's review may not be based on a formal review of State law on paper, but not in practice.

Comment on the December 1982 rulemaking also claims that the practical operation of State court eviction procedures denies the tenant a fair hearing. The tenant may not receive a due process hearing because of such factors as lack of capability or bias of the judges, refusal or failure by judges to recognize or understand Federal law or Federal defenses concerning a public housing tenancy, rushed hearings, and chaos in local landlord-tenant courts.

Like the July 1986 proposed rule, this final rule provides that HUD's due process determination is only a determination of whether basic due process is required by local law. The HUD due process determination under this rule will examine legal requirements governing operation of the eviction process under State law. HUD will not examine how the local court processes work in practice.

First, HUD's statutory role is only to examine what eviction procedures are required by State law. The 1983 law does not imply that the Department should or must enter into an examination of practices in the local landlord-tenant court, rather than an examination of what State law requires in the jurisdiction of the PHA.

Second, it is not practicable for HUD to ascertain uniformly or with assurance the actual functioning of the eviction process under State law in PHA jurisdictions all over the country. In many or most jurisdictions, reliable studies or information on how the courts work may not be available. At a minimum, researching the operation of the local courts would impose a great cost and administrative burden on HUD offices, a burden not required or contemplated under the 1983 law.

Third, extending the scope of the HUD due process determination to cover empirical operation of local eviction courts would undoubtedly cripple implementation of the statutory authority to exclude termination and eviction from a PHA's grievance process. The need for HUD to gather factual information on operation of local courts would prevent or greatly delay issuance of the statutory due process determinations. This result would frustrate implementation of the statute, and deny the benefits of the PHA's direct access to judicial eviction process in accordance with the 1983 law.

Fourth, if the practical operation of State judicial process does not comply with State law, the remedy should be directed to correction of the judicial process. The remedy for defects in court process does not lie in requiring the PHA to afford an administrative hearing to cure defects in the State court proceeding.

Comment states that HUD should require that State judicial boards educate local court judges on good cause for eviction of public housing tenants. It is HUD's view that this proposal entails an unacceptable and impractical Federal intrusion in administration of the local courts, and is not HUD's proper role in implementing the 1983 law. Under the Federal Constitution, State courts are bound to issue decisions which comply with Federal law, including the Federal statutory good cause requirements for eviction of a public housing tenant. Pursuant to HUD's function under the 1983 law, HUD will determine whether State law requires that the tenant be given the opportunity for a pre-eviction hearing on Federal good cause grounds for eviction.

5. Defects of State Eviction Process

a. Court Orders Which Deny Due Process Hearing. Comment states that before HUD makes a due process determination HUD should consider not only the specific judicial procedures for eviction, but also "authority" of the trial court to issue orders which deprive the tenant of a due process hearing. This comment misconceives the role of the Department in making the due process determination under the 1983 statute and this rule.

To carry out the 1983 statute, HUD will have to analyze due process adequacy of many local eviction procedures. In making the determination, HUD will consider whether *under State law* requirements the specific eviction procedures must be carried out in accordance with all the elements of due process. The State-law requirements are not necessarily located in the State landlord-tenant statutes or in the State rules for the landlord-tenant courts, but may proceed from a variety of sources, including the due process clause of the State Constitution.

State law is binding upon the State judge in the eviction proceeding. Where it appears upon HUD examination of State law that due process (i.e., all the elements of due process as defined in the HUD rule) must be provided before eviction, then HUD may issue the due process determination. In this instance, by hypothesis, the State judge has no "authority" to issue an order that deprives the tenant of due process. The issuance of such an order would be a violation of State law.

Assume, by contrast, that so far as State law is concerned, the State judge has legal authority to issue an order that infringes on one of the elements of due process—that such an order is not a violation of State law (whether or not the order violates Federal due process under the Fourteenth Amendment). Then in this instance, also by hypothesis, State law does not require a hearing which provides all the elements of due process. HUD may not issue a due process determination allowing the use of specific State law eviction procedures in circumstances where the judge has legal authority under State law to issue an order that violates the elements of due process. In the HUD due process determination, the question is not whether a State judge may *in fact* or *in practice* issue an order which infringes due process, but whether the order is a violation of State law.

b. PHA Use of Eviction Procedures Not Covered By Due Process Determination. When a PHA or other owner wants to evict a tenant, State law may proffer a menu of possible ways to evict the tenant. Some procedural avenues may satisfy all elements of due process. Other procedures may be wanting. The due process determination, and therefore the PHA's right to evict without giving the tenant an

administrative grievance hearing, applies if HUD has determined that the specific procedures used by the PHA provide the elements of due process (§ 966.41(a)(1)).

Comment proposes that the lease should recite HUD's permission [due process determination] for the PHA to exclude eviction from the PHA's grievance procedure, and should also set out any limitation on the HUD permission. Comment states that if HUD has only authorized the PHA to use a particular judicial procedure, and does not permit the PHA to use other criminal or summary proceedings, the lease should list what procedures may not be used. The restrictions on what eviction procedures may be used should be stated in the lease, so that State courts will respect the limitations of HUD's due process determination.

HUD has not adopted the proposal to list in the lease eviction procedures which may not be used. The proposal will not produce substantial benefits for tenants, will be a nuisance for the PHA, and may limit the opportunity of the PHA for direct recourse to State eviction procedures that meet the requirements of due process. Even if the regulatory requirements for exclusion are not stated in the lease, the requirements are binding on the PHA in State court as a matter of Federal law. The obligation of the PHA to follow the HUD requirements does not depend on contractual incorporation in the lease.

When the PHA seeks to evict the tenant in State court, the tenant may claim that the PHA has not satisfied the Federal requirement for exclusion. This contention may be raised in the eviction proceeding, or in any other judicial procedure which is available to challenge the right of the PHA to proceed with the eviction. There is no reason to believe that the Federal defense cannot be effectively asserted in whatever proceedings may be brought in the State courts (cf., *Thorpe* v. *Housing Authority*, 393 U.S. 268, 284, 89 S. Ct. 518, 527 (1969)). There is also no reason to believe that State courts would be more likely to follow Federal law restrictions on a PHA's authority to evict without providing a grievance hearing if the restrictions were stated in the lease.

If accepted, the proposal would impose a burdensome requirement for a negative listing of all those eviction processes for which HUD has not made a due process determination. A complete listing of eviction processes that cannot be used may be difficult and subject to argument. By design, the HUD procedures to carry out the 1983 statute focus instead on a more precise and positive determination—whether the PHA is evicting through specific processes for which HUD has made a due process determination.

A public housing lease should not be encumbered with a statement of the specific State court procedures that may be used by the PHA for eviction of the tenant. State law procedures may change from time to time during the course of the tenancy. HUD may also issue new due process determinations. A requirement to incorporate in the lease a listing of the eviction procedures approved by HUD at the time of initial lease execution is excessively rigid, and not at all necessary for protection of the tenant.

c. PHA Use of Multi-Tier Eviction Procedure. Some States have a multi-tier judicial eviction procedure which provides a summary process in the initial stage, with subsequent opportunity for rehearing. Comment poses the possibility that in a two tier system, the State may provide an inadequate summary process in the initial phase, followed by a due process hearing in the second phase. The comment states that a PHA should not be able to rely on procedural protections in the second tier of the State proceeding to cure deficiencies in the initial stage. The comment states that if a PHA wishes to exclude eviction from the grievance process, the PHA must bypass procedurally inadequate summary process. The PHA should be required to file directly in a higher level court which provides a due process hearing.

HUD will not prohibit the PHA from using any eviction process available under local law and procedure, on the ground that some segment or phase of the local process does not contain the elements of due process. That is not the proper role of the HUD requirements for exclusion of termination and eviction from the PHA's administrative grievance procedure. The purpose of the exclusion requirements is to assure that the tenant has a legal right under State law to a due process hearing in court before the tenant is evicted. The purpose is not to impose a HUD procedure on the State proceeding prior to eviction, or to prohibit a State from using certain kinds of pre-eviction procedural sequences. The attempt to define or limit pre-eviction procedures would entangle HUD in a thicket of local eviction practices, and interfere with local prerogatives to determine the incidents of the proceedings leading to dispossession of a tenant.

To implement the 1983 law, HUD's task is to determine what pre-eviction court procedures require the elements of due process, not to determine what procedures are best. If the PHA does not use the specific eviction procedures for which HUD has made a due process determination, the PHA must offer a grievance hearing before evicting the tenant (§ 966.41(a)(2)). If the PHA uses the specified procedures covered by a due process determination, the PHA may evict without providing the prior opportunity for an administrative grievance hearing (§ 966.41(a)(2)). For this purpose, there is no need to determine at what stage of judicial process prior to eviction tenant has been given the opportunity for a hearing which comports with due process, or to prohibit the use of certain pre-eviction judicial processes.

However, in a two tier eviction process, a PHA will have a practical incentive to bypass—if possible—use of local procedures for which HUD has not made a determination of due process. If the first summary phase does not afford due process as determined by HUD, the PHA will not be able to evict on the basis of the judicial decision in the first phase. Therefore, where allowed under local law, the PHA will probably choose to file directly in the higher level court that provides a due process hearing.

Finally, we do not assume that summary process is not due process. In *Lindsey* v. *Normet*, the Supreme Court sustained State summary eviction proceeding against a due process challenge.

6. Relation Between HUD Review and Judicial Function

Comment contends that the 1983 law unwisely allots to HUD an essentially judicial function. The comment objects that the law allocates to the executive (HUD) an examination of whether legislative determinations are Constitutionally sufficient. This task is assigned to the judiciary by the Constitution, and is limited to actual cases and controversies. The comment observes that:

> Congress has assigned this critical and intrusive examination of state laws and judicial procedures to HUD's sole discretion. In so doing, Congress has made a mistake which it should rectify forthwith. If not an overtly unconstitutional delegation, this is surely a remarkably awkward mandate.

HUD's role is to carry out the law passed by the Congress, not to second-guess the policy of the law. The 1983 law is not an unconstitutional delegation of judicial powers, and does not infringe on the jurisdiction of the courts to decide whether an eviction complies with procedural due process in an actual case or controversy. Executive branch

agencies are often called to consider Constitutional issues in order to execute the laws of the United States. In examining due process adequacy of State procedures, HUD carries out a role explicitly assigned to HUD by the Congress.

In performing the role assigned by the 1983 statute, HUD will seek to determine whether State law *on its face* lacks some requisite of basic due process. This inquiry solely bears on the question whether a PHA may bypass administrative grievance proceedings for eviction of the tenant, and proceed directly to eviction of the tenant in State court.

In the judicial eviction proceeding, a tenant may claim that State procedures generally do not satisfy due process or that the procedures violate due process as applied to the particular case. This is a new due process inquiry in the State court, and is not affected or limited by the HUD due process determination. The purpose of the HUD due process determination under the 1983 statute is merely to satisfy a threshold question—whether the PHA has a Federal *statutory* duty to afford a prior administrative hearing. Once this threshold is passed, the eviction court has the same powers to address Constitutional due process issues in the eviction case as in any other case.

In *King* v. *Housing Authority*, 670 F.2d 952, 955 (11th Cir. 1982), the Eleventh Circuit upheld the old lease and grievance rule, which allows a PHA to bypass the administrative grievance procedure if State law requires a due process hearing in court. The *King* court concluded that the HUD regulation did not infringe on the Constitutional responsibility of the State courts to determine due process issues.

> * * * this case does not involve an attempt by HUD to impose its definition of due process on state courts. [T]he HUD regulations in no way purport to dictate the elements of due process which the state courts must provide in eviction proceedings. The regulations simply say that if state law does not require certain elements of due process in eviction proceedings, the Housing Authority cannot deny the tenant an administrative grievance hearing prior to initiating an eviction action in state court.

The statutory requirement for a HUD due process determination does not limit the opportunity for the State courts to address Constitutional issues in a judicial eviction trial. The statutory requirement under the 1983 law is an additional procedural protection for the tenant—a statutory pre-condition for the ability of the PHA to evict the tenant without giving the opportunity for an administrative grievance.

D. How HUD Makes a Due Process Determination

1. Elimination of Two-Step Process for HUD Due Process Determination

a. Description and Purpose of Proposed Two-Step System. In July 1986, HUD proposed to establish a system in which two separate HUD actions would be required before a PHA is allowed to exclude eviction cases from the PHA's administrative grievance process. In the first step of the proposed process, HUD issues a determination that specified eviction procedures require a due process hearing before eviction. In the second step, a PHA requests authorization to exclude evictions using those procedures from the PHA's administrative grievance process.

The first step of the proposed process was designed by HUD to make it easier for HUD to make a due process determination on legal factors affecting many PHAs. HUD could make a single determination on due process adequacy of eviction procedures which apply to many PHAs in a State.

The second step of the proposed process was intended as a final check, an occasion for HUD to consider whether a due process determination is applicable for the eviction procedures to be used by the individual PHA which is asking authorization to exclude. HUD could consider any local legal factors or peculiarities relating to due process adequacy of the eviction requirements in the jurisdiction of the individual PHA.

b. Public Objections to Proposed Two-Step Process—(1) General Character of Objections. Public comment objects to different aspects of the proposed two-step process for a due process determination. In general, comment generated by legal aid offices seeks to make the process for exclusion of eviction grievances as slow and difficult as possible, while PHA-generated comments are interested in making the process as easy and quick as possible.

Like the PHAs, HUD believes that the rule should facilitate due process determinations under the 1983 statute. The process must not, however, compromise HUD's statutory responsibility to carry out due process determinations in full accordance with the 1983 law, after rendering a careful due process analysis of State eviction requirements.

(2) PHA by PHA Determination Is Not Required by 1983 Law. The proposed rule provided that where HUD has *already determined that specific eviction procedures provide the basic elements of due process before eviction*, HUD has sixty days to respond to a PHA request for authorization to exclude. If HUD fails to respond by the end of this period, the PHA request for authorization is deemed granted. Legal aid comment alleges that this procedure evades HUD's statutory responsibility to determine due process adequacy of State procedures. Comment asserts that the grievance process is required by law unless HUD makes an affirmative decision on the exclusion request of *each individual PHA.*

By contrast, PHA comment states that a PHA should not be required to ask HUD for approval to exclude if HUD has already determined that State eviction procedures provide basic due process. Under the 1983 law, HUD is only responsible for determining due process adequacy of eviction procedures. The PHA should be responsible for deciding whether to exclude. Comment points out that in some States eviction laws are the same Statewide. It is therefore a waste of time to require PHA by PHA requests for approval to exclude.

There is no question that under the 1983 law HUD must make an affirmative decision on due process adequacy of the State eviction procedure. However, the law does not mandate a two/step process for making the statutory determination, and does not mandate that there must be a separate determination for each individual PHA. The statute is entirely silent on how HUD is to go about making a determination that a jurisdiction requires a hearing with the basic elements of due process. The Department has complete discretion to define the incidents of a procedure to implement the statute.

In the proposed rule, the automatic authorization to exclude if HUD does not respond in sixty days solely applies if HUD has already made an affirmative due process determination pursuant to the 1983 law. The PHA is only authorized to exclude when using the specific eviction procedures for which HUD has made the statutory determination. If a PHA instead uses other local eviction procedures, for which HUD has not yet made a statutory due process determination, the PHA is not authorized to exclude (even if the eviction procedures required by State law require a pre-eviction hearing with the basic elements of procedural due process). The proposed procedure for the HUD due process determination was therefore in full accordance with the 1983 law.

Under the final rule, the PHA may only exclude evictions from the PHA's grievance process if HUD has issued a due process determination on the request of the individual PHA. The PHA

is never authorized to exclude if HUD has not responded to the PHA's request (§ 966.41).

c. Elimination of Two-Step Process. HUD has decided to promulgate a simple one-step process to authorize a PHA to exclude eviction from the PHA's administrative grievance procedure. HUD will issue a statutory due process determination at the request of a PHA, and for the specific eviction procedures covered by the PHA request. HUD has collapsed the proposed distinction between the due process determination proper, and the final authorization for PHA exclusion pursuant to the determination.

There is no statutory requirement to issue due process determinations for individuals PHAs, or for HUD to passively await a PHA request before issuing a determination. Legal issues involved in the separate due process determinations for different PHAs in a State may often be substantially or wholly identical. State law may establish uniform eviction procedures that apply anywhere in the State, or for all PHAs operating in certain areas of the State. However, there are substantial advantages to using individual PHA requests to trigger the statutory due process determination by HUD, and to requiring localized PHA by PHA determinations on due process adequacy of available State eviction process.

While eviction requirements may often be the same Statewide, HUD has no prima facie knowledge that this is always and everywhere the case. HUD needs a reliable way to ascertain if there are special features of the eviction process in the jurisdiction of each individual PHA. HUD should have a means to learn whether the eviction procedures defined by State law for the PHA jurisdiction are identical to procedures which apply elsewhere in the State, or else that the procedures which apply elsewhere in the State, or else that the procedures are in some respect different.

Information on eviction procedures in the PHA jurisdiction will be submitted by the PHA when the PHA requests the local due process determination. This information consists of two elements:

(1) Legal analysis or other information furnished by the PHA.

(2) Tenant comments on the PHA request.

HUD can and will make use of legal analysis submitted in connection with requests by other PHAs, as well as HUD's own legal analysis and research. Nevertheless, the information and comments submitted by the PHA are a valuable check on other available information. Local parties are most likely to possess complete and reliable knowledge of local legal requirements.

Under the final rule, a PHA may not bypass the administrative grievance procedure until HUD issues the due process determination at the PHA's request (§ 966.41(a)(2)). There is no exception to this requirement. There is no authorization for a PHA to exclude if HUD does not answer the PHA request in a specified time. Under the law, there must be an affirmative due process determination by HUD, and under the revised rule (unlike the proposed rule) the HUD determination will only be issued when HUD receives a request from the particular PHA (§ 966.41(b)(1)). HUD will try to expedite the due process determinations.

2. PHA Request for Due Process Determination

a. General. A PHA which wants to exclude grievances concerning termination of tenancy or eviction from the PHA's administrative grievance process may request a due process determination from HUD. The PHA submits the request to HUD Field Counsel for the jurisdiction. A request for due process determination may be submitted at any time (§ 966.41(b)(1)).

The PHA request states the eviction procedures under State or local law for which the PHA wants a due process determination (§ 966.41(b)(3)(i)). The PHA must notify public housing tenants that the PHA intends to request a due process determination by HUD (§ 966.41(b)(2)). The PHA submits the tenant and other public comments to HUD (§ 966.41(b)(3)(ii)).

The PHA must submit any legal analysis or information requested by the Field Counsel for issuance of a due process determination (§ 966.41(b)(4)(ii)). The HUD Field Counsel may issue instructions on materials to be submitted to support the PHA request.

b. HUD Approval to Exclude Is Not Required. Under the proposed rule, HUD must make two separate determinations for a PHA to exclude eviction from the PHA grievance procedure: first, a HUD determination that State eviction procedures provide basic due process, and second, HUD approval for the individual PHA to exclude eviction from the administrative grievance procedure. Under the final rule, the HUD due process determination is a single-step process. A PHA requests a statutory due process determination. Once HUD issues the due process determination for the PHA, the decision whether to exclude or not to exclude pursuant to the determination rests with the PHA, and not with HUD. The PHA does not have to ask for HUD approval. The PHA may elect to exclude grievances on all or any terminations, so long as the PHA evicts through procedures covered by the HUD determination.

The proposed requirement for a PHA to ask for HUD approval to exclude was only intended to serve as an occasion for HUD to consider interaction of general State law requirements and any local legal considerations. In the revised procedure under the final rule, a due process determination is issued at the request of the individual PHA. There is no longer need for a separate step to allow for submission and consideration of information on local legal requirements in the PHA's jurisdiction. The PHA submits necessary analysis and information requested by the HUD Field Counsel (§966.41(b)(4)(ii)), and also submits public comments on the proposed due process determination (§ 966.41(b)(3)(ii)). The PHA submission and tenant comment furnish information on characteristics of eviction requirements in the PHA jurisdiction.

The grant or denial of a HUD due process determination is solely based on legal considerations pertaining to due process adequacy of the eviction procedures to be used by the PHA. HUD will not seek to second guess the PHA on the management judgment to take termination of tenancy or eviction out of the PHA grievance process. HUD has no desire or intention to impinge on the PHA's management judgment whether to take evictions out of the PHA grievance process.

c. Initiative for Due Process Determination—(1) Comment—Initiatives By PHA and HUD. Under the proposed rule, HUD counsel could initiate due process determinations, but PHAs would have to specifically request approval to take evictions out of the PHA's grievance process. PHA comment recommends that the HUD Regional Office should take the initiative to review State laws within the Region, and that HUD should eliminate the requirement for a PHA to request authority for exclusion.

Legal aid comment asserts that HUD should not initiate determinations recognizing adequacy of the State process. A HUD due process determination should follow a PHA request for exemption from the grievance requirement. Comment claims that the scheme in the proposed rule is designed to encourage or pressure PHAs to request authorization to exclude. According to the comment, HUD should be strictly neutral on whether PHAs

request determinations allowing exclusion from the grievance process.

On the other hand, another legal aid comment states that a PHA should not be permitted to request exclusion until HUD has first determined that State court procedures provide due process for tenants. Thus HUD would presumably take the initiative to make the due process determinations. Following the determinations, HUD could (2) Response—Role of PHA and HUD. Under the final rule, HUD will make a due process determination at the request of a PHA. The PHA furnishes HUD information on eviction requirements in the locality. The PHA must submit any legal analysis or information requested by HUD Field Counsel for issuance of a due process determination, including legal analysis of local eviction requirements. The PHA must also furnish to HUD public comments on the local eviction procedures (so long as the comments are received by the PHA within thirty calendar days after notice to the tenants).

The PHA submission may furnish significant insights or information on local legal considerations that might be missed in a wholesale examination by HUD of eviction requirements under State law. For this reason, HUD will not make a due process determinations for a PHA's jurisdiction exclusively at HUD's own initiative, and without receiving a request from the PHA.

However, HUD field counsel may take the initiative to research and analyze State eviction procedures, or to encourage PHAs or PHA groups to submit information and opinions on State eviction requirements. Such broad initiatives by HUD counsel can lay the groundwork for efficient and expeditious consideration of individual PHA requests for due process determinations under the 1983 law.

The statute and rule do not require HUD to passively await the receipt of a PHA request for a due process determination. HUD may properly initiate action to facilitate and encourage the process leading to HUD due process determinations in accordance with the 1983 law. The exclusion of eviction cases from a PHA's internal grievance process under this law may produce substantial management benefits in administration of public housing projects for the benefit of public housing tenants.

Ultimately, however, the choice to request a due process determination under the rule lies with the PHA. Under the rule, HUD cannot force the PHA to request the determination, or to bypass the administrative grievance procedure after the determination is made. The election to exclude is properly left to the local autonomy and discretion of the PHA.

If a PHA decides to request a due process determination, HUD has independent responsibility to make the statutory determination on due process adequacy of State procedures. These HUD determinations will be rendered objectively, based on HUD's judgment of whether State law requirements meet the elements of procedural due process.

d. PHA Submission of Request—A PHA submits the request for a due determination to HUD field counsel. The request may be submitted at any time. (§ 966.41(b)(1).) The request for a due process determination must (§ 966.41(b)(3)):

> (i) State the specific eviction procedures under State or local law for which the PHA is requesting a due process determination.
>
> (ii) Certify that the PHA has given required general notice to Tenants * * *. The PHA shall furnish to HUD copies of all written public comments on the PHA request which are received by the PHA within 30 calendar days of notice to the Tenants.

In addition, the PHA must submit "any legal analysis or information requested by the HUD Field Counsel for issuance of a due process determination" (§ 966.41(b)(4)(ii)). The request for a due process determination must be submitted "in the form required by HUD Field Counsel" (§ 966.41(b)(4)(i)).

To expedite the legal determinations by HUD, the rule leaves maximum flexibility for practical local arrangements between HUD field counsel and PHAs. State law often establishes common legal requirements for eviction, which apply to more than a single PHA. Some requirements may apply everywhere in a State, such as a Statewide landlord-tenant act. PHAs should not have to make duplicative submissions on common legal requirements, and HUD counsel should not have to repeat from scratch the same analysis of common legal issues. The rule therefore does not impose detailed and mechanical requirements for all PHAs to submit specific legal materials. The rule also does not require duplicative or unnecessary submissions by PHAs. Instead, the regulation broadly defines the due process elements which will be considered by HUD on a PHA's request for a due process determination. Field counsel in each area will determine the types of legal materials which must be supplied by a PHA to support a request for HUD's due process determination.

To facilitate due process determinations, PHAs may wish to arrange for coordinated submission of necessary legal materials and legal analysis to HUD, or for common representation on issues in connection with the due process determination. Such common submissions or representation could be arranged by groups of PHAs or by PHA organizations. The rule provides (§ 966.41(b)(4)(ii)):

> To avoid the need for duplicative submissions of relevant materials affecting more than one PHA, PHAs may arrange for consolidated submissions to HUD Field Counsel.

(2) Public Inspection of PHA Submission. The PHA must make available for inspection and copying by any person copies of the PHA request for a due process determination, and of the materials submitted to HUD in support of the PHA's request for a due process determination (§ 966.41(b)(5)).

In answer to public comment, the final rule adds an explicit statement that the PHA must allow public copying of the materials submitted by the PHA.

e. Tenant Comment on PHA Request—(1) Regulation. The final rule gives opportunity for tenant notice and tenant comment before HUD makes a due process determination. Federal law does not require that HUD ask for tenant comment on a proposed due process determination. However, information from tenant comments can help HUD decide whether State law eviction procedures comply with due process.

The rule provides that before requesting a due process determination, a PHA must ask for comments from tenants in the PHA's public housing program (§ 966.41(b)(2)):

> A PHA shall give Tenants in the PHA's [public housing] program reasonably effective general notice that the PHA intends to request a due process determination. The notice shall identify the eviction procedures for which a due process determination will be requested, and shall invite Tenant and other public comment on the proposed determination.

When the PHA requests a due process determination, the PHA must certify to HUD that the PHA has given the required notice to public housing tenants. The PHA must give HUD copies of all written public comments received within thirty calendar days of notice to the tenants (§ 966.41(b)(3)(ii)).

(2) Notice—How and To Whom Given. The rule does not require individual notice to each tenant or family. The rule also does not require any set procedure for giving notice to project tenants. The PHA must use a process that gives "reasonably effective

general notice" to public housing tenants that the PHA intends to request a due process determination (§ 966.41(b)(2)). The notice must be given "through means determined by the PHA (e.g., posting in project offices, notice to Tenant organizations, or notice to individual Tenants in the program)."

HUD does not adopt a public recommendation that notice should be mailed or delivered to each individual tenant. In providing the opportunity for tenant comment, HUD is trying to secure information on eviction laws in the locality. In general, the applicable local laws are the same for all tenants of a particular PHA. Under the rule, the PHA has the authority to decide what notice procedures will be reasonably effective in giving general notice to the tenants.

Under the proposed rule, a PHA would be required to publish notice of the PHA request in a newspaper or other medium of general circulation in the jurisdiction (as well as reasonably effective general notice to families in the PHA program). PHA comment asserts that the PHA should not have to publish notice to the general public. Notice to public housing residents is sufficient.

The final rule eliminates the proposed requirement to publish in a medium of general circulation. Current public housing tenants are the primary universe immediately interested in a due process determination. Publication in a general circulation newspaper is not a necessary or generally effective means of giving notice to public housing tenants. The target of a broader local publication is unclear, and the benefit of such publication is doubtful.

Legal aid comment recommends that the PHA should be required to give notice to tenant organizations and legal aid programs. This proposal is not adopted. The rule does not require that the PHA notify tenant organizations or legal aid organizations. The PHA's notice to tenants is an adequate vehicle to give notice to both tenants and tenant organizations. Notice to the tenants is a reasonable and effective way to get tenant views on local legal requirements before HUD issues a due process determination. In practice, organizations which authentically act for tenants, and which have strong roots and contacts in the tenant community, will learn about a prospective PHA request for a due process determination when the PHA gives notice to the tenants. These organizations can submit comments to the PHA, and the comments must be submitted by the PHA to HUD with the request for a due process determination.

Elimination of Requirement To Publish Notice in "Federal Register"

In this rulemaking, HUD proposed to publish three types of notices in the **Federal Register**: (1) Notice of sixty days for public comment on a proposed HUD determination on State eviction procedures; (2) notice of a PHA request to remove eviction from the PHA grievance procedure; and (3) a summary annual listing of HUD determinations and PHA requests. Provisions for these **Federal Register** notices has been eliminated in the final rule.

On reconsideration, HUD doubts the benefits of national **Federal Register** publication of notices concerning the local due process determination. The requirement to process additional **Federal Register** notices will impose a significant internal administrative burden on the Department, apparently without affording any significant advantage to the public. Any delays in **Federal Register** publication, and any required period for public comment on a proposed determination, will delay the issuance of HUD due process determinations under the 1983 law.

In the nature of the process required under the 1983 law, HUD needs to determine the due process adequacy of the local eviction procedures available to the PHA under State law. National notice in the **Federal Register** is not a necessary, effective or economical means of securing information on eviction requirements in each PHA jurisdiction. **Federal Register** publication is not a good vehicle to furnish notice to public housing tenants. Comment notes that tenants do not receive the **Federal Register** (and indeed most PHAs also do not receive the **Federal Register**). Information on local eviction requirements can be obtained by HUD from materials submitted by PHAs or tenants, or from independent research or other information available to the Field Counsel. Finally, interested parties can readily obtain information on any outstanding due process determinations, either from the affected PHA or from HUD (**see** § 966.41(c)(3)(iii)).

PHA comment objects to a requirement for local notice to tenants, and asserts that HUD publication in the **Federal Register** is sufficient opportunity for public comment. HUD disagrees. Notice by the PHA to its tenants is a better vehicle to elicit local comment on local procedures than national notice in the **Federal Register**.

(3) Purpose and Use of Tenant Comment. The procedures in the final rule give a reasonable opportunity for tenant comment on the PHA request for a due process determination. HUD rejects comments suggesting that HUD should not ask for public comment. The purpose of the process for soliciting public comment is to help the Department make the due process determinations under the 1983 law and this rule. HUD will consider pertinent tenant or other public comment before issuing a due process determination.

Comments on a proposed due process determination should address the issue to be determined by HUD—whether State law eviction procedures require basic due process before a tenant is evicted. Other issues are not germane. The comment process is not directed to securing views on the PHA's local policy decision to take eviction out of the PHA grievance process.

Some comment on the proposed rule objects to the requirement for a PHA to give local notice of the PHA's request, or find the proposed procedures burdensome. PHA comment states that local notice is best left to PHA discretion.

The Department believes that tenant comment on law in the PHA jurisdiction will be very helpful to HUD in making due process determinations. Comments can give HUD valuable information on legal requirements for eviction in a State or a PHA jurisdiction. By requiring that public housing residents have an opportunity to comment on the PHA request for a due process determination, HUD has a better chance of getting full and balanced information on legal requirements for eviction under State law. Obviously, public housing tenants have a powerful and legitimate interest in whether a PHA can evict the tenant in State court without giving the opportunity for a PHA grievance hearing.

Direct notice by a PHA to the tenants is a good way to assure that the PHA's tenants know that the PHA is asking HUD for a due process determination. Local notice will induce comments by tenants and tenant representatives.

The PHA submits tenant comments to HUD. The final rule does not adopt a recommendation that tenant comments should be submitted directly to HUD. While the regulation does not prohibit tenants from sending comments to HUD, the PHA can readily package tenant comments with the PHA's request for a due process determination. Materials related to HUD's due process determination will be easier for HUD to handle if contained in a single PHA submission, which includes tenant comments and any PHA responses to the tenant comments. Bundling tenant comments in the PHA submission does not compromise the integrity of the

comments. Comments must be submitted to HUD as received by the PHA.

The PHA must certify to HUD that the PHA has given the required notice to tenants in the PHA program, and must send HUD copies of written comments received within thirty calendar days after completion of notice to the tenants. Thus, the PHA request may be submitted to HUD after completion of the thirty day notice period (§ 966.41(b)(3)(ii)). HUD does not require, as recommended by comment on this rule, that the PHA continue to submit to HUD public comments on the PHA's request for due process determination which are received by the PHA until HUD grants the PHA request. HUD will receive comments and information from the public at any time, even after a due process determination is issued, but does not think that the regulation should minutely regulate alternative scenarios for PHA submission of local tenant comments.

3. HUD Examination of State Eviction Procedures

a. Flexible Procedure for HUD Determination. The rule establishes a flexible framework for HUD to make the statutory due process determination on adequacy of eviction procedures required under State law. There may be a great variety of legal procedures and legal authorities governing eviction in different States and PHA jurisdictions. There may be many local or special factors affecting HUD's ability to issue a due process determination for a specific set of eviction procedures under State law.

To minimize delay and administrative bottlenecks, HUD has decentralized the authority to make the statutory due process determination by HUD. The determinations will usually be made by HUD field counsel, in the HUD offices responsible for day-to-day administration of HUD's functions in the public housing program. This process will be conducted under the direction of the HUD Regional Counsel in each HUD Region, with oversight by the HUD General Counsel. Under the rule, the HUD field lawyers have considerable room to work out efficient procedures for analysis of State legal requirements for eviction of a tenant.

b. Examination of Local Law. To make a due process determination, HUD field counsel will consider relevant information on legal requirements governing procedures for eviction in a PHA's jurisdiction under State law (§ 966.41(c)(1)). All available sources of law or legal authority may be considered, including the State Constitution, State or local laws and ordinances, State or local regulations, court rules and court decisions, and opinions of a State attorney general.

Comment urges that HUD's determination should be based on independent and thorough analysis of State law by HUD counsel. HUD agrees. HUD will carefully review probative legal sources to determine, for the specific eviction procedures which are the subject of the requested due process determination, whether State law comports with basic due process.

In this endeavor, HUD will consider tenant or other public comments, and legal materials and analysis submitted by the PHA. HUD may also make use of information gleand by HUD legal research, or other relevant legal materials available to HUD.

Comment urges that the rule should instruct HUD field counsel to cooperate with tenants and tenant representatives, and should specify that HUD must give equal consideration to submissions by tenants and the PHA. The comment reflects a fear that the HUD analysis will be tilted toward PHA interests. The comment reflects a deep misunderstanding of HUD's position. HUD is primarily concerned that each HUD due process determination must result from a conscientious, scrupulous and accurate analysis of eviction requirements under State law.

HUD respects and will respond to the desire of PHAs for smooth and expeditious issuance of due process determinations. However, the weight of comments or analysis submitted to HUD depends on the intrinsic force of the legal arguments, not on whether the arguments are submitted by the PHA or by tenants. In making due process determinations, HUD will objectively carry out the role assigned to HUD by the 1983 law. The rule adequately states the elements and procedures for a due process determination by HUD.

Comment states HUD should hold administrative hearings before issuing due process determinations, and asserts hearings are necessary if there are substantial questions on whether the PHA follows the eviction procedure recognized by HUD.

The recommendation is not adopted. Before HUD issues a due process determination, there is no procedure recognized by HUD. Consequently there is no need for a hearing to determine whether the PHA is following the HUD recognized procedure. Once the HUD determination is issued, the PHA may only bypass administrative grievance process when using the procedure recognized by HUD.

HUD believes that formal administrative hearings on a proposed due process determination would be cumbersome and time-consuming, and would not improve the quality of the HUD determination. The due process determination is not designed to determine issues of fact, but issues of law—namely whether State law mandates a due process hearing in advance of eviction. For this purpose, HUD does not need public testimony on the facts. HUD needs information on State law.

Information on State law can be efficiently gathered without a structured hearing process for gathering testimony and other evidence. The regulation provides a flexible procedure for obtaining and considering all available information and views on State law. The procedure is open to submission of relevant legal materials by anyone at any time. There is no reason to believe that structuring the process as a "hearing" would obtain better or more complete information, or would result in better-founded decisions by HUD. In the administration of Federal programs, administrative agencies are often charged with making important determinations to carry out a statutory scheme. It does not follow that the process for making any determination required by law should be structured as a hearing—that is a structured public process for the submission and consideration of testimony and other evidence bearing on the determination.

It is important to remark that the HUD due process determination does not determine whether any particular tenant is evicted from a unit. After HUD issues the determination, the PHA may proceed to evict the tenant by judicial process. In the judicial eviction process, the tenant has the Constitutional right to a hearing, to determine whether the tenant has a right to remain in the unit. In the judicial hearing, the State court can consider both issues of fact and issues of law which bear on the eviction.

4. Due Process Determination by HUD

a. Statement of Due Process Determination. When HUD decides to issue a due process determination on request from a PHA, HUD will give the PHA a statement of the determination. The final rule provides (§ 966.41(c)(2)) that the statement must include:

(i) The name of the PHA.

(ii) A description of the specific eviction procedures covered by the due process determination (such as eviction actions brought in a particular local landlord-tenant court).

(iii) A statement that HUD has determined that the procedures provide the elements of due process prior to eviction.

(iv) A statement which summarizes the legal basis for HUD's due process determination. The statement will briefly describe the basis for HUD's conclusion that the procedures meet each of the due process elements.

b. Revision or Withdrawal of Due Process Determination. At any time, HUD will receive information relevant to a due process determination, including a due process determination previously issued (§ 966.41(c)(1)). HUD may revise or withdraw a due process determination at any time § 966.41(c)(4)(i)). Such action may be based on any available information which is relevant to the determination, including any changes in applicable State law or any court decisions since the original due process determination.

A change in a due process determination may be appropriate because of new court decisions or a change of State or local law since the original determination. Other information or new analysis could justify re-opening a prior determination.

The final rule adds a provision that if HUD decides to revise or withdraw a due process determination, HUD will give the PHA a statement of the decision. The change is effective immediately when the statement is given to the PHA. (§ 966.41(c)(4)(ii).)

Comment recommends that the rule should state that HUD retains the power to review a prior determination that State law satisfies due process, and should further state that affected parties have a right to reconsideration. The proposed rule and the final rule directly recognize that HUD may revise or withdraw a due process determination. HUD does not, however, agree that the rule should create a "right" to reconsideration. HUD will decide whether a request for reconsideration, or a submission of new information on State law procedures justifies reopening a due process determination. The issue is properly left to HUD's administrative discretion.

c. Copies of Due Process Determination. At the request of any tenant, the PHA must make available for inspection and copying copies of the due process determinations issued by HUD for the PHA (§ 966.41(c)(3)(iii)). The HUD Field Office for any jurisdiction must also make available for inspection and copying by any interested person copies of due process determinations for PHAs in the Field Office jurisdiction.

d. Requirement for Decision and Statement of Reasons. Under the two-step process described in the proposed rule (see section VI.D.1 of this Preamble), HUD would first issue the statutory determination that State law procedures afford the elements of due process. A PHA would then separately ask for permission to exclude pursuant to the HUD determination.

Comment objects to proposed provisions allowing a PHA to exclude where HUD has already made the due process determination, but then fails to answer in time a PHA request for permission to exclude. Comment states that HUD should make an affirmative decision on each PHA request, with a written statement of decision and supporting analysis. The HUD analysis should be available to the public.

In the one-step system under the final rule, HUD will issue an affirmative due process determination for an individual PHA. The PHA may not exclude until the determination is issued. As described above, HUD will issue a summary statement of the legal basis for the determination, and the statement may be examined by any interested party.

5. Effect of Due Process Determination

a. Excludion of Eviction From Grievance Process. The rule provides that the due process determination is effective immediately when the statement of determination is given to the PHA by HUD (§ 966.41(c)(3)(i)). After HUD issues a due process determination, the PHA is no longer required to grieve on the decision to evict a family through the eviction procedures covered by the determination. After receiving the determination, the PHA may exclude from the PHA administrative grievance procedure any grievances concerning termination of tenancy or eviction if the PHA uses the specific eviction procedures which are the subject of the determination (§ 966.41(a)(1), 966.41(a)(2) and 966.41(c)(3)(ii)).

If the PHA evicts through eviction procedures covered by the due process determination:

> The PHA is not required to give notice of proposed adverse action concerning a termination of tenancy or eviction, and is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure. Unless the PHA uses the specific eviction procedures which are the subject of a due process determination, the PHA may not evict the occupants without providing to the Tenant the opportunity for an administrative grievance hearing * * * * " (§ 966.41(a)(2)).

b. Other Grievable Subjects. Apart from a proposed eviction, the PHA must grieve on a proposed determination of rent or charges, on a proposed determination to transfer the tenant to another unit, or on other proposed adverse action by the PHA. The PHA must give the opportunity to grieve on these other subjects even if eviction is excluded from the grievance procedure, and the PHA is therefore no longer required to grieve on that subject. For this reason, there is a need to define the relation between the grievance process (for subjects which remain subject to that process), and the judicial process for eviction of the tenant from the unit. It is especially important to determine the relation between a grievance concerning the PHA's determination of rent, and a judicial action to evict the tenant for non-payment of rent.

PHA comment expresses concern that a landlord-tenant court will not order eviction of a tenant for non-payment if the judge knows that the PHA rent determination is the subject of an ongoing and unresolved administrative grievance process. A PHA representative notes that availability of an administrative remedy to contest the rental payment will frustrate the purpose of the authority to exclude grievance cases from the PHA grievance process "by delaying the judicial process/and or by subjecting the parties to the risk of inconsistent outcomes".

HUD shares these concerns. The statute and rule allow a PHA to bypass the administrative grievance process for eviction of a tenant, but only where the tenant has the legal right to a due process hearing in State court. If the PHA chooses to use this exclusion procedure, the judicial action for eviction should not be delayed by a pending grievance process. All outstanding issues involved in eviction of the tenant may be litigated in court. The decision and actions of the court in the action for eviction or the tenant for non-payment of rent or for other grounds should not be delayed or affected by a pending grievance process not decided prior to commencement of the court action, or by a grievance decision rendered after commencement of the action. Once the eviction action is remitted to State court, as contemplated by the 1983 law, the matter should be wholly determined in the State court proceeding, without regard to any parallel grievance proceeding, regardless of whether the grievance process was commenced before or after the commencement of the judicial action.

To evict a tenant, the PHA gives the lease termination notice required by HUD, and any other notices required under State law, including the complaint

or other pleading that commences the judicial action for eviction. At the time the PHA serves the notice, the PHA and the tenant may be at any point along the continuum of the grievance process (notice of adverse action by PHA, timely request for grievance hearing by tenant (or failure of tenant to make timely request), decision by hearing officer on tenant grievance). Similarly, the grievance process over the PHA determination of rent or charges may also be unfold during the further progress of the judicial action for eviction of the tenant, through the trial and the decision of the court to grant or deny eviction of the tenant from the unit.

The final rule includes provisions designed to solve problems which stem from the relation between the tenant right to grieve on the PHA's determination of rent or charges or on other grievable adverse action, and the PHA's right to exclude eviction from the PHA grievance process.

First, the PHA may establish deadlines for the tenant to request a change in the PHA determination of rent or other charges (§ 966.31(c)(1)), or to request a hearing after PHA notice of adverse action (§ 966.31(c)(2)). If the tenant fails to submit the request in time, the tenant loses the right for a grievance hearing on correctness of the PHA determination. If the deadline has expired, and if the PHA then brings action to evict the tenant, there is no longer any danger that the judicial process for eviction of the tenant will overlap an administrative grievance process for review of the rent or other determination by the PHA.

Second, the final rule adds a new provision (§ 966.41(a)(4)) stating that where eviction is exluded from the grievance process:

> "In a court action for eviction of the occupants, the PHA is not bound by a grievance hearing decision issued after commencement of the eviction action. The Tenant shall not be entitled to any delay in or continuance of the court action because of a pending grievance hearing proceeding."

These provisions will apply both to cases where a grievance is in process at the time the PHA brings action to evict the tenant (i.e., a hearing was requested, but not decided), and cases where a grievance is brought after commencement of the eviction action, but prior to judgment in the action.

Since the PHA is not required to grieve on the eviction, the tenant may not use the grievance decision as the basis for determination of issues in the eviction action. The tenant has no right to delay the judicial eviction process, and the tenant will not be able to use or abuse the administrative grievance process as a technique to delay the court process for eviction of the tenant. Instead, as intended by the grievance exemption in the 1983 law, the existence or non-existence of grounds for eviction will be wholly determined in the judicial eviction proceeding.

The rule establishes the simple and workable principle that a grievance decision issued after commencement of the eviction action does not affect the determination in the action. This approach avoids the very difficult issues of how to treat grievance decisions issued at different points of the judicial eviction process: e.g., after commencement but prior to trial, during trial, after trial but prior to entry of judgment, after judgment but prior to eviction.

VII. Applicability of Lease and Grievance Requirements; Applicability of Definitions

HUD lease and grievance requirements are located in 24 CFR Part 966. The rule covers two main subjects: tenant leases (Subpart B and Subpart C), and grievance hearings for tenants (Subpart D and Subpart E).

In the 1937 Act, the term "public housing" means non-section 8 housing which is assisted under the Act (U.S. Housing Act of 1937, section 3(b)(1)). The statutory term "public housing" applies to both Indian and non-Indian housing which is assisted under the Act. Under this rule, Part 966 tenant lease requirements (Part 966, Subparts A and B) do not apply to Indian Housing. However, Part 966 grievance hearing requirements apply to both Indian and non-Indian housing.

In the final rule (§ 966.2), there are separate and mutually exclusive definitions of the terms "public housing" and "Indian housing." As defined in the rule, the term "public housing" includes "housing assisted under the U.S. Housing Act of 1937 * * * other than housing assisted under section 8 or section 17 of the U.S. Housing Act of 1937." However, the definition of public housing also explicitly provides that the term "public housing" as used in Part 966 "does not include Indian Housing." As defined in the rule, the term "Indian Housing" means the rental or Mutual Help programs administered by Indian Housing Authorities under Part 905 (the Indian Housing Regulations).

The use of separate and exclusive definitions facilitates a clearer specification of what parts of the lease and grievance requirements are applicable to the HUD Indian Housing Program. The final rule provides that Subparts B (lease requirements) and C (termination of tenancy and eviction) are applicable to "public housing" (i.e., not including Indian Housing) (§ 966.1(b)(1)), and that Subparts B and C are not applicable to "Indian housing" (§ 966.1(b)(2)). The rule also provides that Subparts D and E (grievance hearing requirements) are applicable to both public housing and Indian housing as defined in the rule (§ 966.1(c)).

To exclude coverage of Indian housing, the definition of public housing used in the rule is narrower than the statutory definition of public housing in the U.S. Housing Act of 1937. The use of separate regulatory definitions does not, of course, change the scope of statutory provisions which govern public housing as more broadly defined in the 1937 Act. The lease and hearing provisions in the 1983 law (section 6(k) and section 6(l) of the 1937 Act, 42 U.S.C. 1437d (k) and (l)) apply to all statutory public housing, including Indian housing.

Therefore, although Part 966 Subparts B and C do not apply to Indian housing, the Indian housing regulations contain separate provisions which are consistent with the statutory requirements for leases and termination of tenancy under the 1983 law (U.S. Housing Act of 1937, section 6(l), 42 U.S.C. 1437d(l)). With respect to the Mutual Help Program, the Mutual Help Homeownership Opportunity Agreement in accordance with the existing program rule (Part 905, Subpart D) is in accordance with lease and termination requirements of the 1983 law. With respect to Rental Projects of Indian Housing Authorities, this rule adds a simple statement of lease requirements which implement all requirements of the 1983 law.

Subpart A (§ 966.2) defines terms used in Part 966. The final rule specifies that the definitions apply to the defined terms when used in Part 966 (§ 966.1(a)). The definitions are uniform for all purposes of Part 966.

VIII. Hearing for Applicants

In the December 1982 original rulemaking, the Department proposed to combine provisions regarding informal hearings for applicants and for tenants in occupancy (see discussion at 47 FR 55689, 55691–92, December 13, 1982). In the case of applicants, section 6(c)(3)(i) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(c)(3)(i)) provides that, where the PHA determines that an applicant is ineligible for admission to a public housing project, the PHA must:

> promptly notify * * * any applicant determined to be ineligible for admission to the project of the basis for such determination and provide the applicant upon request, within a reasonable time after the

determination is made, with an opportunity for an informal hearing on such determination * * * *

Enactment in 1983 of the more detailed and demanding statutory hearing requirement for public housing tenants (implemented in this rule) makes it impracticable to combine the regulatory hearing requirements for applicants and tenants. For this reason, the final rule (§ 960.207(a)) separately states notice and hearing requirements for ineligible applicants under section 6(c)(3)(i) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(3)(i)).

As noted in the Preamble to the original rulemaking, "the legislative history of the statutory requirement that the PHA provide an informal hearing for applicants determined ineligible for admission strongly indicates that the Congress did not intend to impose an elaborate hearing requirement" (see discussion of legislative history at 47 FR 55689, 55692). In 1983, the bill as reported by the House Banking Committee would have imposed the same administrative grievance procedures for "tenants and applicants" (Report 98–23 on H.R. 1, p. 175). However, the law as finally passed by the Congress (section 6(k) of the U.S. Housing Act of 1937, 42 U.S.C. 1437d(k)) adds new administrative hearing requirements only for tenants, and leaves undisturbed the applicant hearing requirement under prior law.

Comment says PHAs need HUD guidance on informal hearing requirements for applicants. The old rule (§ 960.207(a)) merely repeats the statutory language.

Comment says that a notice that the PHA is denying admission should state the basis for the PHA determination with enough specificity so that the applicant can respond.

The rule requires a PHA to establish a simple but effective procedure to notify an applicant if the PHA decides the applicant is ineligible for any reason (§ 960.207(b)(1)), and to give the applicant an opportunity for an informal hearing on the decision (§ 960.207(b)(2)). These procedures are very similar to the review procedures for applicants to a PHA's certificate program (§ 882.216(a), 49 FR 12215, March 29, 1984; for parallel factors considered by the Department in determining the appropriate level of procedural protection for a subsidized housing applicant, see preamble to rule for certificate program.)

The rule (§ 966.207(a) provides that:

(1) The PHA shall give an applicant for admission prompt written notice of a decision that the applicant is not eligible for admission for any reason. The notice shall inform the applicant of the basic reasons for the decision. The notice shall also state that the applicant may request an informal hearing on the decision, and shall describe how to obtain the informal hearing.

(2) The PHA shall give the applicant an opportunity for an informal hearing on the decision, in accordance with procedures adopted by the PHA. The hearing shall be held within a reasonable time of the decision. The informal hearing shall be conducted by a person or persons (who may be an officer or employee of the PHA) designated by the PHA in accordance with the applicant hearing procedures adopted by the PHA. The hearing officer shall be someone other than the person who made the decision under review or a subordinate of such person. The applicant shall be given an opportunity to present written or oral objections to the PHA decision. The PHA shall promptly notify the applicant in writing of the final PHA decision after the informal hearing. The notice shall state the basic reasons for the decision.

IX. Civil Rights Requirements.

The final rules adds a provision to affirm that a PHA is bound by civil rights statutes and regulations in administering the lease and grievance requirements. The rule provides (§ 966.3):

PHA policies and actions with respect to leases and administrative grievance procedures under [Part 966] shall be consistent with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Executive Order 11063 and with related regulations and requirements.

This rule gives PHAs increased discretion in administering the lease and grievance procedure. However, PHAs are reminded that all applicable civil rights laws and regulations remain in full force. Each PHA's adherence to the civil rights authorities will continue to be monitored by the Department.

In particular, PHAs are cautioned against implementing any policies or practices which have, or may have, the effect of treating individual tenant families differently by race, national origin, sex or religion, or which produce a diparate impact based on these factors.

X. Other Matters

The Department has determined that this rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the office of the Rules Docket Clerk, at the address listed above.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act) the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The lease and grievance requirements are directed to public housing agencies (including Indian Housing Authorities) administering the public housing program, and will reduce the administrative burden of the PHA under the present lease and grievance procedures.

Information collection requirements in this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number(s), when assigned, will be announced by separate notice in the Federal Register. Estimated public reporting burden for this collection of information is as follows:

(1) Total annual report and recordkeeping burden: 152,373 hours.

(2) Burden per response: .05 hour. (3) Proposed frequency of response: varies.

(4) Estimate of likely number of respondents (annual): 3,300

The rule was listed as Item 1038 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 at 53 FR 13854, 13893 pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title is 14.146, Low Income Housing Assistance Program (public housing).

List of Subjects in 24 CFR Parts 904, 905, 913, 960 and 966

Public housing.

Accordingly, 24 CFR Chapter IX is amended as follows:

1. Part 966 is revised to read as follows:

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PART 966—TENANCY AND ADMINISTRATIVE GRIEVANCE PROCEDURE

Subpart A—General

Sec.
966.1 Applicability.
966.2 Definitions.
966.3 Civil rights requirements.

Subpart B—Lease

966.10 Required lease provisions.
966.11 Prohibited lease provisions.
966.12 Applicability of lease requirements.

Subpart C—Termination of Tenancy and Eviction

966.20 Purpose.
966.21 Termination of tenancy—grounds.
966.22 Notice of lease termination.
966.23 Eviction.

Subpart D—Administrative Grievance Procedure

966.30 Establishment of grievance procedure.
966.31 Grievance on proposed adverse action by PHA.
966.32 Hearing procedure.
966.33 Hearing decision.
966.34 Special provisions for Turnkey III and Mutual Help Projects.
966.35 Additional grievance procedures.

Subpart E—Excluding Grievance on Eviction or Termination of Tenancy from Administrative Grievance Procedure

966.40 Purpose.
966.41 Procedure for HUD determination.

Authority: U.S. Housing Act of 1937 (42 U.S.C. 1437–1437r); section 204 of the Housing and Urban-Rural Recovery Act of 1983, P.L. 98–181, November 30, 1983; section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 966.1 Applicability.

(a) *Applicability of definitions.* The definitions in § 966.2 apply to the defined terms when used in Part 966.

(b) *Applicability of lease and termination requirements.* (1) Subpart B (lease requirements) and Subpart C (termination of tenancy and eviction) of this Part are applicable to Public Housing (definition at § 966.2).

(2) Subparts B and C are not applicable to Indian Housing (definition at § 966.2) or to the Turnkey III Homeownership Opportunity Program (see Part 904). (For provisions applicable to Rental Projects of Indian Housing Authorities, see § 905.303.)

(c) *Applicability of grievance hearing requirements.* Subpart D and Subpart E of this Part (administrative grievance procedure) are applicable to Public Housing and to Indian Housing (For special provisions for Turnkey III and Mutual Help projects, see § 966.34.)

§ 966.2 Definitions.

Due process determination. A determination by HUD that specified procedures for judicial eviction under State and local law require that a tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit.

Elements of due process. The court procedures for eviction under State and local law require all of the following before eviction from the dwelling unit:

(a) The opportunity for a hearing on the existence of serious or repeated lease violation or other good cause reasons for eviction (see § 966.21).

(b) Advance notice of the hearing, and of the alleged reasons for eviction.

(c) Hearing before an impartial party.

(d) The opportunity to be represented by counsel.

(e) The opportunity to present evidence and question witnesses.

(f) A decision on the reasons for eviction before the occupants are evicted.

Eviction. Forcing the occupants to move out of the dwelling unit.

Fraud. Fraud means fraud as defined under any Federal or State civil or criminal statute, or any other deliberate misrepresentation to the PHA by the Tenant or other members of the Household.

Household. The Tenant and other persons who live in the dwelling unit with written approval of the PHA.

Indian Housing. The Mutual Help Homeownership Opportunity Program (which is administered by Indian Housing Authorities under 24 CFR Part 905, Subpart D) and Rental Projects of Indian Housing Authorities (under 24 CFR Part 905).

Public Housing. Housing assisted under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) other than housing assisted under section 8 or section 17 of the U.S. Housing Act of 1937. "Public Housing" includes housing assisted under the Leased Housing programs under section 23 or section 10(c) of the U.S. Housing Act of 1937 as in effect before amendment by the Housing and Community Development Act of 1974. However, Public Housing does not include Indian Housing.

Public Housing Agency (PHA). Any State, county municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of housing for lower income families. As used in this Part, PHA includes an Indian Housing Authority (as defined at § 905.102).

Tenant. The person or persons who execute the lease with the PHA.

Tenant Rent. The amount payable monthly as rent to the PHA, as defined in, and determined in accordance with, 24 CFR Part 913.

Termination of tenancy. Termination of the legal right to occupancy of the dwelling unit. Termination of tenancy includes a termination of the lease, or a decision not to renew the lease at the end of the lease term.

Total Tenant Payment. The monthly amount defined in, and determined in accordance with 24 CFR Part 913.

§ 966.3 Civil rights requirements.

PHA policies and actions with respect to leases and administrative grievance procedures under this Part shall be consistent with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Executive Order 11063 and with related regulations and requirements.

Subpart B—Lease

§ 966.10 Required lease provisions.

(a) *Lease.* The PHA and the Tenant shall enter into a written lease of the dwelling unit. The lease shall be in accordance with the requirements of Subpart B and Subpart C. The lease shall contain the provisions described in Subpart B and Subpart C, and may contain other provisions which are determined by the PHA and which are not inconsistent with these Subparts.

(b) *Basic information.* (1) The lease shall state the name of the Tenant, the identification of the dwelling unit leased, the term of the lease, and the persons who will live in the dwelling unit.

(2) The term of the lease may be for a fixed term tenancy or for a periodic tenancy (e.g., month-to-month). In either case, the PHA shall not terminate the tenancy except in accordance with § 966.21.

(c) *Rent.* (1) The amount of the Total Tenant Payment and the Tenant Rent shall be determined by the PHA in accordance with HUD regulations and requirements, and in accordance with PHA policy (see § 966.10(n)(1)).

(2) When the PHA makes any change in the amount of the Total Tenant Payment or Tenant Rent, the PHA shall give written notice to the Tenant. The notice shall state the new amount, and the date from which the new amount is applicable (see § 966.31(c)(1) concerning deadline to ask for a change in the PHA's proposed decision on rent or PHA charges). The notice shall also state that the Tenant may ask for an

explanation of how the amount is computed by the PHA. If the Tenant asks for an explanation, the PHA shall answer the request in a reasonable time.

(3) The lease shall state the services, maintenance, equipment and appliances which are included in the Tenant Rent, and are furnished by the PHA without additional charge to the Tenant. (For treatment of utilities see § 966.10(d).)

(d) *Utilities.* (1) The lease shall state what utilities are included in the Tenant Rent, and are furnished by the PHA without additional charge to the Tenant ("PHA-furnished utilities").

(2) The lease shall state what utilities are not included in the Tenant Rent, and must be purchased by the Tenant from the utility suppliers ("Tenant-purchased utilities").

(3)(i) If there are PHA-furnished utilities, the lease shall provide that the PHA's allowance for PHA-furnished utilities shall be determined in accordance with HUD regulations and requirements (see Part 965, Subpart E).

(ii) If there are PHA-furnished utilities, the lease may provide that the Tenant shall pay surcharges for excess consumption of PHA-furnished utilities. The surcharges are only permissible if the charges are determined by an individual checkmeter which measures utility consumption of the dwelling unit, or if the charges are attributable to occupant-owned major appliances or to optional functions, such as air-conditioning, of PHA-furnished equipment.

(4)(i) If there are Tenant-purchased utilities, the lease shall provide that the PHA's allowance for Tenant-purchased utilities shall be determined in accordance with HUD regulations and requirements (see Part 965, Subpart E).

(ii) If there are Tenant-purchased utilities, and the utility supplier shuts off utilities because of Tenant's failure to pay the utility bill, occurrence of the shut-off shall be considered a serious violation of the lease by the Tenant.

(5) The PHA shall give written notice to the Tenant of any applicable allowance for PHA-furnished or Tenant-purchased utilities. The PHA may change the allowance at any time during the term of the lease, and shall give Tenant written notice of the revised allowance (see § 966.10(n)(1)).

(e) *Charges not included in Tenant Rent; security deposits.* (1)(i) The lease shall state what types of charges the Tenant is required to pay the PHA in addition to Tenant Rent. The lease shall state how the charges will be determined by the PHA (for example, by a schedule of surcharges for excess consumption of utilities, or by a schedule of repair charges). The PHA's schedules or other procedures for determining Tenant charges shall be made available for inspection and copying by the Tenant.

(ii) The PHA shall give the Tenant written notice of the amount of any charge in addition to Tenant Rent, and of when the charge is due (see § 966.31(c)(1) concerning deadline to ask for a change in the PHA's proposed decision on rent or PHA charges).

(iii) The lease may require the Tenant to pay reasonable charges, as determined by the PHA, for damage other than normal wear or tear, caused by Household members, or by guests, visitors, or other persons under control of Household members.

(2) The lease may require the Tenant to pay reasonable fees for late payment of rent or charges determined by the PHA.

(3) The lease may provide for reasonable security deposits determined by the PHA in accordance with State and local law.

(f) *PHA obligations.* The lease shall provide that:

(1) The PHA shall provide services and maintenance for the dwelling unit, equipment and appliances, and for the common areas and facilities, which are needed to keep the housing in decent, safe and sanitary condition.

(2) The PHA shall comply with the requirements of applicable State and local building or housing codes concerning matters materially affecting the health or safety of the occupants.

(3) If the condition of the dwelling unit is hazardous to the health or safety of the occupants, and the condition is not corrected in a reasonable time, the PHA shall offer the Tenant a replacement dwelling unit if available. The PHA is not required to offer the Tenant a replacement unit if the hazardous condition was caused by fault or negligence of Household members, or of guests, visitors, or other persons under control of Household members.

(4) The PHA shall give the Tenant reasonable notice of what certification, release, information or documentation must be supplied to the PHA, and of the time by which any such item must be supplied (see § 966.10(h)(1)(iv) concerning the Tenant's obligation to supply the required item).

(g) *Tenant's right to occupy unit.* (1) The lease shall provide that the Tenant shall have the right to exclusive use of the dwelling unit for residence by the Household. The lease may provide that with written approval of the PHA, members of the Household may engage in legal profitmaking activities incidental to primary use of the dwelling unit for residence by the Household.

(2) With written approval of the PHA, use of the dwelling unit may include care of foster children and live-in care of a member of the Household.

(3) Members of the Household may receive guests or visitors in the dwelling unit. However, such use of the dwelling unit by the Household must be reasonable. The members of the Household shall comply with PHA rules on use of the dwelling unit by guests or visitors.

(h) *Obligations of the Tenant.* (1) The lease shall provide that the Tenant:

(i) Shall use the dwelling unit (A) solely for residence by the Household, and (B) as the Tenant's only place of residence (if approved by the PHA under the lease, members of the Household may engage in incidental profit-making activities in accordance with § 966.10(g)(1));

(ii) Shall not sublease or assign the lease, or provide accommodations for boarders or lodgers;

(iii) Shall comply with any State or local law which imposes obligations on a tenant in connection with the occupancy of a dwelling unit and surrounding premises;

(iv) Shall supply any certification, release, information or documentation which the PHA or HUD determines to be necessary, including submissions required by the PHA for an annual reexamination or interim reexamination of Family income and composition in accordance with HUD requirements; and

(v) Shall move from the dwelling unit in either of the following circumstances:

(A) The PHA determines the Household is residing in a unit which is larger or smaller than appropriate for the Household size and composition under the PHA unit size standards, or determines that the character of the unit is otherwise inappropriate for the Household size and composition (such as a unit modified for use or accessibility by handicapped, which is currently occupied by a Household whose members are not handicapped), or determines that the unit requires substantial repairs, is scheduled for modernization, or is not in decent, safe and sanitary condition, and the PHA offers the Tenant another Public Housing dwelling unit. The Public Housing dwelling unit shall be decent, safe and sanitary and of appropriate size under the PHA unit size standards.

(B) The dwelling unit is hazardous to the health or safety of the occupants. In accordance with Section 966.10(f)(3), the PHA must offer the Tenant a replacement dwelling unit if available.

(2) The lease shall provide that the Tenant and other members of the Household:

(i) Shall not disturb other residents, and shall prevent disturbance of other residents by guests, visitors, or other persons under control of Household members;

(ii) Shall not damage or destroy the dwelling unit or premises, and shall prevent such damage or destruction by guests, visitors, or other persons under control of Household members;

(iii) Shall not engage in criminal activity in the dwelling unit or premises, and shall prevent criminal activity in the unit or premises by guests, visitors, or other persons under control of Household members;

(iv) Shall comply with necessary and reasonable PHA rules, on conduct of Household members, or on use and treatment of the unit and premises by the Tenant and Household. The PHA shall give a copy of the rules to the Tenant (including any changes in the rules);

(v) Shall not commit any fraud in connection with any Federal housing assistance program; and

(vi) Shall not receive assistance for occupancy of any other unit assisted under any Federal housing assistance program during the term of the lease.

(3) The lease shall include a certification by the Tenant that:

(i) The Tenant and other members of the Household have not committed any fraud in connection with any Federal housing assistance program, unless any such fraud was fully disclosed to the PHA before execution of the lease, or before PHA approval for occupancy of the unit by the Household member.

(ii) All information or documentation submitted by the Tenant and other members of the Household to the PHA in connection with any Federal housing assistance program (before and during the lease term) are true and complete to the best of the Tenant's knowledge and belief.

(i) *Crime.* (1) In addition to the provisions required by § 966.10(h)(2)(iii), the lease may provide that any of the following criminal activities by any Household member, on or off the premises, shall be a violation of the lease, or other good cause for termination of tenancy:

(i) Any crime of physical violence to persons or property.

(ii) Illegal use, sale or distribution of narcotics.

(2) The PHA may terminate tenancy for criminal activity (for violation of the lease provisions required by § 966.10(h)(2)(iii), or pursuant to the optional lease provisions allowed by this § 966.10(i)) before or after conviction of the crime.

(j) *Tenant maintenance.* The lease may provide that the Tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwelling units of a similar design and construction is customary; provided, that such provision is included in the lease in good faith and not for the purpose of evading the obligation of the PHA. The PHA shall exempt the Tenant if the PHA determines that because of age or physical disability members of the Household are unable to perform such tasks.

(k) *Entry and inspection.* (1) The lease shall state the purposes for which the PHA may enter the dwelling unit. The purposes may include entry to inspect the unit, to make repairs or improvements, or provide other services, to show the unit, or for other purposes stated in the lease.

(2) The PHA shall give the Tenant at least 24 hours written notice that the PHA intends to enter the unit. The PHA may enter only at reasonable times.

(3) The Tenant shall allow the PHA to enter the unit in accordance with the lease.

(4) If the PHA has reasonable cause to believe that there is an emergency, the PHA may enter the unit at any time without advance notice to the Tenant, and may enter without consent of the Tenant. After such entry, the PHA shall give the Tenant a written notice of when the PHA entered the unit, and the reason for such entry.

(l) *Notice procedure.* (1) The PHA shall adopt a notice procedure which is consistent with State and local law, and which shall be incorporated into the lease. The notice procedure shall state how the PHA and Tenant may give notice to each other concerning termination of the lease, and other matters under the lease.

(2)(i) Notice of lease termination shall be in accordance with § 966.22, and notice of proposed PHA adverse action shall be in accordance with § 966.31(b).

(ii) A notice of lease termination, or a notice of proposed adverse action, shall be given to the Tenant:

(A) By mailing the notice by first class mail addressed to the Tenant at the dwelling unit, or

(B) By handing a copy of the notice to the Tenant or to any adult answering the door at the dwelling unit, or

(C) By other means which the PHA determines to be reasonably likely to give the Tenant actual notice. Posting on the outside of the unit door, and which is not supported by other notice to the Tenant, does not constitute sufficient notice.

(iii) If a notice of lease termination or a notice of proposed adverse action is sent by mail, the notice is deemed given when mailed.

(3) If the PHA believes that the notice procedure otherwise used by the PHA may not give adequate notice to handicapped Tenants, the PHA notice procedure may incorporate additional procedures for giving notice to such Tenants.

(m) *Termination of tenancy and eviction.* The lease shall state the requirements for termination of tenancy and eviction under Subpart C of this Part.

(n) *Changes during lease term.* (1) From time to time during the course of the lease, the PHA may revise the amount of Tenant Rent or of PHA allowances to the Tenant for PHA-furnished or Tenant-purchased utilities. The revised amounts are binding on the Tenant.

(2) From time to time during the course of the lease, the PHA may revise PHA rules. The revised rules are binding on the Tenant.

(o) *PHA offer of lease or revision.* (1) During the lease term, the PHA may offer the Tenant a new lease, or a revision of the lease.

(2) The Tenant is not bound by a new lease or lease revision unless the PHA's offer is accepted by the Tenant.

(3) The offer of a new lease or lease revision shall state that failure to timely accept the PHA's offer is grounds for termination of tenancy. The offer shall state how to accept the offer. The offer may state that the Tenant must accept the lease by a PHA-established deadline which is stated in the offer. Failure to timely accept the PHA offer shall be "other good cause" for termination of tenancy.

(4) For a fixed term lease, at least 60 days before the end of the lease term, the PHA shall give written notice to the Tenant containing either:

(i) The offer of renewal (on the same or revised terms), or

(ii) Notice that the PHA has decided not to renew the lease, including a statement of the grounds, in accordance with § 966.21, for not renewing the lease.

§ 966.11 Prohibited lease provisions.

The following types of lease provisions shall not be included in the lease:

(a) *Agreement to be sued.* Agreement by the Tenant to be sued, to admit guilt, or to a judgment in favor of the PHA, in a court proceeding against the Tenant in connection with the lease.

(b) *Treatment of property.* Agreement by the Tenant that the PHA may take, hold or sell personal property of Household members, without notice to the Tenant and a court decision on the rights of the parties. However, the prohibition of such agreement does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the dwelling unit after the Tenant has moved out of the unit. The PHA may dispose of such personal property in accordance with State law.

(c) *Excusing PHA from responsibility.* Agreement by the Tenant not to hold the PHA or the PHA's agents responsible for any action or failure to act, whether intentional or negligent.

(d) *Waiver of notice.* Agreement by the Tenant that the PHA does not need to give notice of a court proceeding against the Tenant in connection with the lease, or does not need to give any notice required by HUD.

(e) *Waiver of court proceeding for eviction.* Agreement by the Tenant that the PHA may evict Household members (1) without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or (2) before a decision by the court on the rights of the parties.

(f) *Waiver of jury trial.* Agreement by the Tenant to waive any right to a trial by jury.

(g) *Waiver of appeal.* Agreement by the Tenant to waive the right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

(h) *Tenant chargeable with legal costs regardless of outcome.* Agreement by the Tenant to pay lawyer's fees or other legal costs even if the Tenant wins in a court proceeding by the PHA against the Tenant. However, the Tenant may be obligated to pay such costs if the Tenant loses.

§ 966.12 Applicability of lease requirements.

The requirements of Subpart B shall be applicable to any lease executed by a Tenant after [*insert effective date of rule*], including the execution of a revision or extension after that date.

Subpart C—Termination of Tenancy and Eviction

§ 966.20 Purpose.

This subpart states the requirements for termination of tenancy and eviction. The lease shall contain the requirements stated in this part.

§ 966.21 Termination of tenancy—grounds.

(a) *Grounds for termination.* The PHA shall not terminate the tenancy, and shall not evict occupants from the dwelling unit, except for serious or repeated violation of the lease, or other good cause.

(b) *Serious violation of lease.* Serious violation of the lease includes, but is not limited to, the following cases:

(1) The PHA may determine that failure of the Tenant to timely supply to the PHA any certification, release, information or documentation on Family income or composition is a serious violation of the lease.

(2) The PHA may determine that non-payment of Tenant Rent or charges is a serious violation of the lease. In making this determination, the PHA may consider factors relating to impact of such non-payment on PHA administration of the program. These factors may include the amount owed, how much of the amount owed is overdue, costs of collection, effect of non-payment on collection of rents and charges, how long the payment is overdue, or other factors. The PHA may establish a policy for determining what type of non-payment will be treated as a serious violation of the lease.

(3) See § 966.10(d)(4)(ii) concerning treatment of shut-off of Tenant-purchased utilities as a serious violation of the lease.

(c) *Other good cause.* (1) The PHA may only terminate the lease for other good cause (under § 966.21(a)(2)) at the end of a lease term.

(2) A fixed term lease may be terminated for other good cause at the end of the fixed term. A lease for a periodic tenancy may be terminated for other good cause at the end of each periodic term. For example, in the case of a month-to-month tenancy, the lease may be terminated for other good cause at the end of each month.

(d) *Eviction based on income.* For restrictions on eviction of families based on income, see § 960.210.

§ 966.22 Notice of lease termination.

(a) *Notice period.* The PHA shall give the Tenant adequate written notice of a termination of the lease. The period from the date the notice is given to the date of lease termination may not be less than:

(1) A reasonable time, as determined by the PHA, but not to exceed thirty days, when the health or safety of other residents or of PHA employees is threatened. The PHA may establish a policy for determining what is a "reasonable time" in different types of cases.

(2) Fourteen days for nonpayment of rent.

(3) Thirty days in any other case.

(b) *Contents of notice.* The notice of lease termination shall:

(1) State when the lease will terminate. If the date of lease termination is not known, the notice may specify the event by which the lease terminates under local procedures.

(2) State that the PHA may only terminate the tenancy for serious or repeated violation of the lease, or other good cause.

(3) Contain a specific statement of the reasons for lease termination.

(4) State that the PHA may only evict occupants from the dwelling unit through a civil court proceeding in which the Tenant has the opportunity to present a defense, and after a decision by the court on the rights of the parties.

(c) *How notice is given.* Notice of lease termination shall be given to the Tenant in accordance with the PHA's notice procedure under § 966.10(1)(2).

(d) *Relation to rent bill and to other notices*—(1) *Relation to State law notices.* A notice to vacate or other notice under State or local law may be combined with, or run concurrently with, the notice of lease termination under this section. However, the lease shall in no event terminate before expiration of the notice period under paragraph (a) of this section.

(2) *Relation to PHA rent bill.* The PHA rent bill may be combined with a notice of lease termination for nonpayment of rent. The notice of lease termination shall state that the lease will terminate if the rent bill is not paid when due.

(3) *Relation to notice of adverse action.* If termination of tenancy is not excluded from the PHA grievance process pursuant to Subpart E of this Part, the PHA shall also give notice of proposed adverse action in accordance with § 966.31(b)(2)(i)(B). As provided in that section, the notice of adverse action must be given before, or must be combined with, the notice of lease termination.

§ 966.23 Eviction.

(a) The PHA may only evict occupants from the dwelling unit: through a civil court proceeding in which the Tenant has the opportunity to present a defense, and after a decision by the court on the rights of the parties.

(b) The requirement for eviction through a civil court proceeding is binding on the PHA, but is not intended to limit arrest, prosecution or other criminal enforcement activities by Federal, State or local law enforcement authorities against members of the

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Household for any crime. The PHA and its officers, employees or agents may act as complainants or witnesses in any criminal enforcement activity, and may cooperate with law enforcement authorities in any criminal enforcement activity.

Subpart D—Administrative Grievance Procedure

§ 966.30 Establishment of grievance procedure.

(a) *Purpose.* Section 6(k) of the U.S. Housing Act of 1937 (as amended by section 204 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, November 30, 1983) provides that HUD shall by regulation require that a PHA establish and implement an administrative grievance procedure concerning any proposed adverse PHA action. Subpart D implements this statutory requirement.

(b) *Establishment of grievance procedure.* The PHA shall establish and implement an administrative grievance procedure for Tenants residing in Public Housing or Indian Housing to provide the opportunity for hearing on any proposed PHA adverse action as described in § 966.31(a)(2).

(c) *Adoption of procedure.* The PHA shall adopt a written administrative grievance procedure in accordance with this Subpart. If a PHA decides to exclude grievances concerning termination of tenancy of eviction from the PHA's administrative grievance procedure (see Subpart E), the administrative grievance procedure shall provide that these grievances are excluded from the procedure.

(d) *Information for Tenant.* (1) The PHA shall provide each Tenant a general written description of the PHA's administrative grievance procedure, including a description of when the PHA is required to provide the opportunity for an informal hearing, and how to request a hearing.

(2) The administrative grievance procedure shall be made available for inspection and copying by any Tenant.

§ 966.31 Grievance on proposed adverse action by PHA.

(a) *Subject and purpose of informal hearing.* (1) The grievance procedure shall provide the Tenant an opportunity for an informal hearing on any proposed PHA adverse action.

(2) Proposed adverse action means any of the following proposed decisions by the PHA concerning an individual Tenant:

(i) A proposed decision to terminate the tenancy, or to evict occupants from the dwelling unit.

(ii) A proposed decision to require the Tenant to move to another dwelling unit (see § 966.10(h)(1)(v) and § 966.10(f)(3)).

(iii) A proposed decision determining:

(A) The amount of the Tenant Rent payable by the Tenant to the PHA or the amount of utility reimbursement by the PHA to the Tenant,

(B) The amount of PHA charges in addition to Tenant Rent (see § 966.10(e)), or

(C) The amount the Tenant owes the PHA for Tenant Rent or PHA charges.

(iv) A proposed decision to take other specific, concrete, and affirmative individualized action contrary to the interests of a Tenant.

(3)(i) The purpose of the informal hearing shall be to review whether the proposed adverse action by the PHA is in accordance with the lease, or with law, HUD regulations or PHA rules.

(ii) PHA action or non-action concerning general policy issues or class grievances (including determinations of the PHA's schedules of allowances for PHA-furnished utilities or of allowances for Tenant-purchased utilities) does not constitute adverse action by the PHA, and the PHA is not required to provide the opportunity for a hearing to consider such issues or grievances.

(4) If the PHA does not conduct a reexamination of Family income and composition: (i) For more than a year after the last examination or reexamination, or (ii) after receiving information concerning a change in Family income or composition between regularly scheduled reexaminations, the PHA's determination of the amount of Tenant Rent payable by the Tenant to the PHA in the absence of a reexamination shall constitute a proposed adverse action under § 966.31(a)(2)(iii)(A). The PHA shall give the Tenant the opportunity for an informal hearing on the PHA failure to conduct a reexamination.

(b) *Notice of proposed adverse action*—(1) *Contents of notice.* The PHA shall give the Tenant written notice of a proposed adverse action. The notice shall:

(i) Contain a specific statement which describes the proposed adverse action, and the reasons for the proposed adverse action.

(ii) State that the Tenant may request a hearing under the PHA's administrative grievance procedure.

(iii) State how to request a hearing, and the deadline for requesting a hearing.

(2) *When notice is given*—(i) *Termination of tenancy.* (A) The occupants shall not be evicted from the dwelling unit until the PHA gives the Tenant notice of proposed adverse action.

(B) For a proposed decision by the PHA to terminate the lease, the notice of proposed adverse action shall be given before, or shall be combined with, the notice of lease termination under § 966.22. If the Tenant makes a timely request for a hearing on the proposed decision, the Tenant shall be given the opportunity for a grievance hearing before expiration of the applicable notice period under § 966.22(a).

(ii) *Requiring Tenant to move.* For a proposed decision by the PHA to require the Tenant to move from the dwelling unit to another dwelling unit, the Tenant may not be required to move until the PHA gives the Tenant notice of proposed adverse action. If the Tenant makes a timely request for a hearing on the proposed decision, the Tenant may not be required to move until the Tenant is given the opportunity for a grievance hearing.

(iii) *Rent or PHA charges.* For a proposed decision by the PHA determining the amount of rent or PHA charges (as described in § 966.31(a)(2)(iii) (A), (B), or (C)), the PHA may give notice of adverse action when the PHA gives Tenant written notice of the proposed decision (see § 966.10(c)(2)). The PHA shall give notice of adverse action no later than the time when the PHA denies a request to change the PHA's proposed decision.

(iv) *Other PHA adverse action.* For a proposed decision by the PHA (as described in § 966.31(a)(2)(iv)) concerning other PHA adverse actions, the PHA shall give notice of adverse action to the Tenant at a time that gives the Tenant the opportunity for a grievance hearing before the adverse action is taken.

(c) *Deadlines*—(1) *Deadline to ask for a change in proposed PHA decision on rent or PHA charges.* (i) The administrative grievance procedure may provide that a Tenant who wants a change in the rent or charges determined by the PHA, as stated in the PHA notice of rent or charges, must ask the PHA to change the determination by a reasonable deadline as determined by the PHA.

(ii) The PHA notice of rent or PHA charges must give notice of the deadline. The time for the Tenant to ask for a change in the rent or charges runs from the PHA notice of the deadline. The notice shall provide in substance:

(A) If the Tenant believes the proposed determination is not correct, the Tenant may ask the PHA to change the determination.

(B) The deadline to ask for a change.

(C) The Tenant may ask for a grievance hearing on the proposed determination. If the Tenant misses the deadline to ask for a change, the Tenant loses the right to a grievance hearing.

(iii) If the Tenant does not submit by the PHA deadline a request to change the rent or PHA charges stated in the PHA notice of rent or charges, the Tenant loses the right to a hearing on the proposed determination, and the PHA is not required to give notice of proposed adverse action concerning the determination.

(iv) A request to change a proposed determination of rent or PHA charges shall be submitted in the form and manner prescribed by the PHA in the PHA's administrative grievance procedure.

(2) *Deadline for requesting hearing.* (i) The PHA administrative grievance procedure may provide that the Tenant must request a hearing by a reasonable deadline as determined by the PHA.

(ii) The PHA may establish different rules for determining the deadline for requesting a hearing in different circumstances, or for different types of grievance. The deadline for the Tenant to request a hearing shall be stated in the notice of proposed adverse action. The PHA administrative grievance procedure may provide that the PHA may grant a Tenant an exception from the deadline if the PHA determines that the exception is justified by individual circumstances.

(d) *Payment of rent as condition for hearing on rent.* (1)(i) The Tenant may request a grievance hearing on a proposed adverse action (as described in § 966.31(a)(2)(iii)) concerning Tenant Rent (the PHA's proposed decision determining the amount of Tenant Rent, or the amount the Tenant owes the PHA for Tenant Rent). Unless the Tenant has paid the PHA the full amount of rent the Tenant owes, as determined by the PHA (except as provided in § 966.31(d)(1)(ii)), and continues to make such payments promptly until completion of the grievance hearing, the PHA is not required to commence or continue a grievance hearing concerning Tenant Rent.

(ii) The Tenant may challenge an increase in the Tenant Rent as determined by the PHA at reexamination. As a condition for obtaining a grievance hearing on the increase, the PHA may require the Tenant to pay the amount of the Tenant Rent in effect before the increase until completion of the grievance hearing.

(iii) The Tenant may challenge the amount of a decrease in the Tenant Rent as determined by the PHA at reexamination, or may challenge a determination at reexamination that the Tenant Rent will not increase or decrease. As a condition for obtaining a grievance hearing on the amount of Tenant Rent, the PHA may require the Tenant to pay the PHA the amount of the Tenant Rent, as determined by the PHA at reexamination, until completion of the grievance hearing.

(2) The PHA may not deny the opportunity for a grievance hearing on a proposed adverse action (as described in § 966.31(a)(2)(iii) (B) or (C)) concerning the PHA's proposed decision determining the amount of PHA charges in addition to rent, or the amount the Tenant owes the PHA for PHA charges in addition to rent, on the ground that the Tenant has not paid the PHA the full amount, as determined by the PHA, of the charges the Tenant owes to the PHA.

(e) *Effect of grievance proceeding on eviction.* (1) If the Tenant makes a timely request for a hearing on a proposed decision to terminate the tenancy or to evict the occupants:

(i) For a proposed termination of the lease by the PHA, or a proposed decision not to renew the lease at the end of the lease term, the lease shall not terminate before completion of the PHA grievance hearing. (For provisions concerning notice of lease termination, see § 966.22.)

(ii) The occupants shall not be evicted from the dwelling unit before completion of the PHA grievance hearing.

(2) Where the PHA elects to exclude grievances concerning a termination of tenancy or eviction from the PHA's administrative grievance procedure in accordance with Subpart E of this Part:

(i) The requirement to give notice of a proposed adverse action under § 966.31(b), and the requirement to provide the opportunity for a grievance hearing on such action, does not apply to a termination of tenancy or eviction. (However, the PHA must give notice of lease termination in accordance with § 966.22.)

(ii) In a court action for eviction of the occupants, the PHA is not bound by a grievance hearing decision which is issued after commencement of the eviction action. The Tenant is not entitled to any delay in or continuance of the eviction action because of any pending grievance hearing proceeding.

(f) *Prohibition of hearing fees.* The PHA may not require a Tenant to pay any hearing fees or hearing costs as a condition for providing the Tenant an opportunity for an administrative grievance hearing under the PHA grievance procedure, and may not impose any hearing fees or hearing costs on the Tenant. (However, the PHA may require the payment of Tenant Rent as a condition for a hearing concerning Tenant Rent in accordance with § 966.31(d).)

(g) *Tenant non-use of grievance process.* The Tenant is not required to use the administrative grievance procedure for review of any PHA adverse action. The Tenant is not barred from using any otherwise available judicial procedure for review of PHA adverse action because of the Tenant's failure to use the PHA administrative grievance procedure for review of such action. Such failure shall not waive or affect the Tenant's right to trial on the issues.

§ 966.32 Hearing procedure.

(a) *Hearing officer.* (1) A hearing under the PHA's administrative grievance procedure shall be conducted by a person or persons (who may be an employee or officer of the PHA) designated by the PHA in the manner required under the PHA's grievance procedure.

(2) The hearing officer shall be someone other than the person who made or approved the decision for the proposed adverse action under review or a subordinate of such person.

(b) *Representation of Tenant.* At its own expense, the Tenant may be represented at the hearing by a person of the Tenant's choice.

(c) *Authority of hearing officer.* The hearing officer may regulate the conduct of the administrative grievance hearing in accordance with the PHA's administrative grievance procedure.

(d) *Examination of relevant materials.* The Tenant shall be permitted to examine and copy any relevant non-privileged documents in the possession or control of the PHA, including records or regulations. This opportunity shall be given at a time that will give the Tenant a reasonable opportunity to make use of the information in the grievance proceeding. If the PHA fails to produce documents timely, in response to the Tenant's request for examination, the hearing officer may prohibit the PHA from using the documents at the hearing.

(e) *Evidence.* (1) The Tenant and the PHA may present evidence, and may question any witnesses. The Tenant and the PHA may have others make statements at the hearing.

(2) Evidence may be considered without regard to admissibility under the rules of evidence which apply in judicial proceedings.

(f) *Expeditious hearing.* The PHA shall proceed with the hearing in a reasonably expeditious manner and in

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accordance with the PHA's administrative grievance procedure.

§ 966.33 Hearing decision.

(a) The hearing officer shall issue a written decision which states the basic reasons for the decision. Factual determinations concerning the individual circumstances of the Tenant and Household shall be based on evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the Tenant.

(b) The PHA is not bound by a hearing decision if:

(1) The decision concerns a matter for which an administrative grievance hearing is not required under this Subpart (see § 966.31(a) for required coverage) or otherwise in excess of the authority of the hearing officer, or

(2) The decision is contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law.

(c) If the PHA determines that it is not bound by the decision of the hearing officer, the PHA shall promptly notify the Tenant in writing of the determination, and of the reasons for the determination.

§ 966.34 Special provisions for Turnkey III of Mutual Help Projects.

Pursuant to § 966.1(c), grievance hearing requirements (24 CFR Part 966, Subparts D and E) are applicable to the Turnkey III Program and the Mutual Help Program. However, the following modifications shall be applicable for these programs, and shall be reflected in the administrative grievance procedure established by the PHA in accordance with § 966.30:

(a) Section 966.31(a)(2) (which defines the meaning of proposed adverse action) shall not be applicable for these programs. For provisions stating cases which constitute proposed adverse action in the Turnkey III Program, see § 904.107(p)(2), and in the Mutual Help Program, see § 905.424(g)(2).

(b)(1) In the Turnkey III Program, either of the following notices may be combined with a notice of proposed adverse action (§ 966.31(b)):

(i) The notice under § 904.107(m)(2) (that the PHA is terminating the Homebuyers Ownership Opportunity Agreement).

(ii) The notice under § 904.107(o)(2) (that the homebuyer has lost homeownership potential and should be transferred to a rental unit).

(2) In the Mutual Help Program, the notice under § 905.424(b) (that the IHA is terminating the MHO Agreement) may be combined with a notice of proposed adverse action (§ 966.31(b)).

§ 966.35 Additional grievance procedures.

Infomal PHA administrative grievance hearings to review proposed PHA adverse action are required under this Subpart (§ 966.30 and § 966.31). At its discretion, a PHA may provide additional means for Tenant opportunity to comment upon, or for Tenant opportunity to request PHA consideration of, any matter pertaining to the Tenant's occupancy or the Tenant's rights or obligations. The discretionary PHA procedures may be designed for the purpose of affording an opportunity for informal clarification and resolution of disputes or potential disputes. The PHA may elect to make the administrative grievance procedures adopted by the PHA under § 966.30(c), or the hearing procedures stated in § 966.32, applicable to such additional discretionary procedures adopted by the PHA.

Subpart E—Excluding Grievance on Eviction or Termination of Tenancy From Administrative Grievance Procedure

§ 966.40 Purpose.

The purpose of this Subpart E is to implement the statutory authority for a PHA to exclude grievances concerning termination of tenancy or eviction from the PHA's administrative grievance procedure if HUD determines that applicable law requires that a tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (section 6(k) of the United States Housing Act of 1937, as added by section 204 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181). This subpart establishes a procedure for the HUD determination whether State and local law requires a hearing which provides the basic elements of due process.

§ 966.41 Procedure for HUD determination.

(a) *Exclusion from grievance procedure.* (1) A PHA may exclude grievances concerning termination of tenancy or eviction from the PHA administrative grievance procedure under Subpart D if HUD issues a determination ("due process determination") (under § 966.41(c)) that specified procedures for judicial eviction under State and local law require that a tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit (see definitions of "due process determination" and "elements of due process" in § 966.2).

(2) If HUD issues a due process determination, the PHA may evict the occupants of a dwelling unit through the specified procedures for judicial eviction which are the subject of the determination. The PHA is not required to give notice of proposed adverse action concerning a termination of tenancy or eviction, and is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure. Unless the PHA uses the specified eviction procedures which are the subject of a due process determination, the PHA may not evict the occupants without providing to the Tenant the opportunity for an administrative grievance hearing (in accordance with Subaprt D) prior to eviction.

(3) The PHA's decision to exclude grievances concerning termination of tenancy or eviction from the PHA's administrative grievance procedure adopted by the PHA under Subpart D shall be stated in the grievance procedure.

(4) In a court action for eviction of the occupants, the PHA is not bound by a grievance hearing decision issued after commencement of the eviction action. The Tenant shall not be entitled to any delay in or continuance of the court action because of a pending PHA grievance hearing proceeding.

(b) *PHA request for due process determination.* (1) A due process determination is issued by HUD at the request of the PHA. A PHA which wants a due process determination submits the request for a due process determination to the HUD Field Counsel. A request for a due process determination may be submitted at any time.

(2) A PHA shall give Tenants in the PHA's program reasonably effective general notice that the PHA intends to request a due process determination. The notice shall identify the eviction procedures for which a due process determination will be requested, and shall invite Tenant and other public comment on the proposed determination. The notice shall be given through means determined by the PHA (e.g., posting in project offices, notice to Tenant organizations, or notice to individual Tenants in the program).

(3) A PHA request for a due process determination shall:

(i) State the specific eviction procedures under the State and local law for which the PHA is requesting a due process determination.

(ii) Certify that the PHA has given required general notice to Tenants (in accordance with section 966.41(b)(2)). The PHA shall furnish to HUD copies of

all written public comments on the PHA request which are received by the PHA within 30 calendar days of notice to the Tenants.

(4) (i) The PHA request for a due process determination shall be submitted in the form required by HUD Field Counsel.

(ii) The PHA shall submit any legal analysis or information requested by the HUD Field Counsel for issuance of a due process determination. To avoid the need for duplicative submissions of relevant materials affecting more than one PHA, PHAs may arrange for consolidated submissions to HUD Field Counsel.

(5) Copies of the PHA request for a due process determination, and of the materials submitted to HUD by the PHA in support of the request, shall be made available by the PHA for public inspection and copying by any person.

(c) *Procedure for due process determination by HUD.* (1) In making a due process determination, HUD may use all available relevant information on legal requirements governing procedures for judicial eviction under State and local law, including (without limitation) the test of State or local laws and ordinances, State or local regulations, court rules and court decisions or opinions of a State attorney general. Anyone may submit at any time information relevant to a due process determination.

(2) HUD will give the PHA a statement of the due process determination. The statement shall include:

(i) The name of the PHA.

(ii) A description of the specific eviction procedures which are covered by the due process determination (such as eviction actions brought in a particular local landlord-tenant court).

(iii) A statement that HUD has determined that the procedures provide the elements of due process prior to eviction.

(iv) A statement summarizing the legal basis for HUD's due process determination. The statement will briefly describe the basis for HUD's conclusion that the eviction procedures meet each of the due process elements.

(3) (i) The due process determination is effective when HUD's statement of the determination is given to the PHA.

(ii) After receiving the determination, the PHA may exclude from the PHA administrative grievance procedure any grievances concerning termination of tenancy or eviction by use of the specific eviction procedures which are the subject of the determination.

(iii) At the request of any Tenant, the PHA shall make available for inspection and copying copies of the due process determination issued by HUD. The HUD Field Office shall also make available for inspection and copying by any person copies of HUD's due process determinations for PHAs in the Field Office jurisdiction.

(4) (i) HUD may revise or withdraw a due process determination at any time. Such action may be based on any available information, including any changes in applicable State or local law, or any court decisions since the original due process determination.

(ii) If HUD decides to revise or withdraw a due process determination, HUD will give the PHA a statement of the decision. The change is effective immediately when the statement is given to the PHA.

PART 960—[AMENDED]

2. The heading for Part 960 is revised to read as follows:

PART 960—ADMISSION TO AND OCCUPANCY OF PUBLIC HOUSING

3. The authority citation for 24 CFR Part 960 is revised to read as follows:

Authority: U.S. Housing Act of 1937 (42 U.S.C. 1437–1437r); section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 960.207, the section heading and paragraph (a) are revised to read as follows:

§ 960.207 Notice and hearing for applicants.

(a) *Ineligible applicant.* (1) The PHA shall give an applicant for admission prompt written notice of a decision that the applicant is not eligible for admission for any reasons. The notice shall inform the applicant of the basic reasons for the decision. The notice shall also state that the applicant may request an informal hearing on the decision, and shall describe how to obtain the informal hearing.

(2) The PHA shall give the applicant an opportunity for an informal hearing on the decision, in accordance with procedures adopted by the PHA. The hearing shall be held within a reasonable time of the decision. The informal hearing shall be conducted by a person or persons (who may be an officer or employee of the PHA) designated by the PHA in accordance with the applicant hearing procedures adopted by the PHA. The hearing officer shall be someone other than the person who made the decision under review or a subordinate of such person. The applicant shall be given an opportunity to present written or oral objections to the PHA decision. The PHA shall promptly notify the applicant in writing of the final PHA decision after the informal hearing. The notice shall state the basic reasons for the decision.

(3) The informal review provisions for the denial of a Federal preference under § 960.211 are contained in paragraph (k) of that section.

* * * * *

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

5. The authority citation for Part 913 continues to read as follows:

Authority: Secs. 3, 6, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437d, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. The definition of "Total Tenant Payment" in § 913.102 is revised to read as follows:

§ 913.102 Definitions.

* * * * *

Total Tenant Payment. The monthly amount calculated under § 913.107. Total Tenant Payment does not include any PHA charges to Tenant in addition to Tenant Rent, including surcharges for excess consumption of PHA-furnished utilities or other PHA charges.

* * * * *

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

7. The authority citation for 24 CFR Part 904 is revised to read as set forth below:

Authority: U.S. Housing Act of 1937 (42 U.S.C. 1437–1437r); section 204 of the Housing and Urban-Rural Recovery Act of 1984, Pub. L. 98–181, November 30, 1983; section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. In § 904.107, the section heading is revised, paragraph (l)(3) is revised, paragraph (m)(1) is revised, and paragraph (p) is added, to read as follows:

§ 904.107 Responsibilities of homebuyer; administrative grievance hearing.

* * * * *

(l) * * *

(3) If there is no qualified successor in accordance with paragraph (l)(2) of this section, the LHA shall terminate the Agreement and another family shall be selected except in the following circumstances: Where a minor child or children of the homebuyer family are in occupancy, then in order to protect their continued occupancy and opportunity

for acquisition of ownership of the home, the LHA may approve as occupants of the unit, an appropriate adult(s) who has been appointed legal guardian of the children with a duty to perform the obligations of the Homebuyers Ownership Opportunity Agreement in their interest and behalf. To terminate the Agreement in accordance with this paragraph (l)(3), the LHA shall give adequate written notice of termination, which shall not be less than 30 days.

(m) *Termination by LHA.* (1) The LHA may terminate the Homebuyers Ownership Opportunity Agreement, 30 days after giving the homebuyer notice in accordance with paragraph (m)(2) of this section, if there is any serious or repeated violation by the homebuyer of the homebuyer's obligations under the Agreement. The LHA may determine that failure to make the required monthly payment within ten days after its due date, or misrepresentation or withholding of information in applying for admission or in connection with any subsequent reexamination of family income and composition, constitutes a serious breach of the homebuyer's obligations under the Agreement.

* * * * *

(p) *Administrative grievance procedure.* (1) Pursuant to § 966.1(c) and § 966.34, administrative grievance requirements (24 CFR Part 966, Subparts D and E, as modified in accordance with § 966.34) are applicable to the Turnkey III Program.

(2) The following shall be considered proposed adverse actions by the LHA under 24 CFR Part 966:

(i) A proposed LHA decision determining the amount of the required monthly payment or of the utility reimbursement by the LHA to the homebuyer, the amount of charges by the LHA against the homebuyer's EHPA or NRMR, or the amount the homebuyer owes the PHA for the required monthly payment, or determining the LHA's proposed settlement at termination of the homeownership agreement or at purchase of the home by the homebuyer.

(ii) A proposed decision that the homebuyer has lost homeownership potential and should be transferred to a rental unit (see § 904.107(o)(2)).

(iii) A proposed decision to terminate the Homebuyers Ownership Opportunity Agreement, or to evict the family from the home.

(iv) A proposed decision to take other specific, concrete and affirmative individualized action contrary to the interests of a homebuyer.

PART 905—INDIAN HOUSING

9. The authority citation for 24 CFR Part 905 is revised to read as set forth below and any authority citation following any section in Part 905 is removed:

Authority: U.S. Housing Act of 1937 (42 U.S.C. 1437–1437r); section 204 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, November 30, 1983; section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. Section 905.303 is revised to read as follows:

§ 905.303 Tenant leases for rental projects.

A written lease shall be entered into between the IHA and the tenant of a dwelling unit in an IHA Rental Project. The lease:

(a) Shall obligate the IHA to maintain the project in a decent, safe and sanitary condition,

(b) Shall require the IHA to give adequate written notice of termination of the lease in accordance with § 966.22,

(c) Shall require that the IHA may not terminate the tenancy except for the grounds stated in § 966.21, and

(d) Shall not include any of the types of lease provisions prohibited in § 966.11.

11. In § 905.424, the section heading is revised, paragraph (a) is revised, paragraph (f)(3) is revised, and a new paragraph (g) is added, to read as follows:

§ 905.424 Termination of MHO Agreement; administrative grievance procedure.

(a) *Termination upon breach.* The IHA may terminate the MHO Agreement if there is any serious or repeated violation by the Homebuyer of the Homebuyer's obligations under the MHO Agreement. The IHA may determine that misrepresentation or withholding of material information in applying for admission or in connection with any subsequent reexamination of income and family composition constitutes a serious breach of the Homebuyer's obligations under the MHO Agreement. "Termination" as used in the MHO Agreement does not include acquisition of ownership by the Homebuyer.

* * * * *

(f) * * *

(3) Compliance with the plan shall be checked by the IHA not later than 30 days from the date thereof. If the Homebuyer refuses to agree to such a plan, or fails to comply with the plan, the IHA shall issue a notice of termination of the MHO Agreement in accordance with paragraph (b) of this section, and shall proceed to evict the Homebuyer. The IHA may only evict the Homebuyer from the Home: (i) Through a civil court proceeding in which the Homebuyer has the opportunity to present a defense, and (ii) after a decision by the court on the rights of the parties.

* * * * *

(g) *Administrative grievance procedure.* (1) Pursuant to § 966.1(c) and § 966.34, administrative grievance requirements (24 CFR Part 966, Subparts D and E, as modified in accordance with § 966.34) are applicable to the Mutual Help Program.

(2) The following shall be considered proposed adverse actions by the IHA under 24 CFR Part 966:

(i) A proposed decision determining the amount of the Homebuyer's MH Contribution credits.

(ii) A proposed decision determining the amount of the Required Monthly Payment, the amount the Homeowner owes the IHA for the Required Monthly Payment, or the amount of charges by the IHA against the Homebuyer's reserves and accounts under § 905.421, or determining the IHA's proposed settlement at termination of the MHO Agreement or at purchase of the Home by the Homebuyer.

(iii) A proposed decision to terminate the Mutual Help and Occupancy Agreement, or to evict the family from the Home.

(iv) A proposed decision to take other specific, concrete and affirmative individualized action contrary to the interests of the Homebuyer.

(3) The IHA's determination (under § 905.419) of the Administration Charge for the IHA's Mutual Help Program does not constitute adverse action by the IHA, and the IHA is not required to provide the opportunity for a hearing to consider such determination (see also § 966.31(a)(3)).

12. In § 905.425, paragraph (g) is revised to read as follows:

§ 905.425 Succession upon death, mental incapacity or abandonment.

* * * * *

(g) *Termination in absence of qualified successor or occupant.* If there is no qualified successor in accordance with any of the foregoing paragraphs of this section, the IHA shall terminate the MHO Agreement. To terminate the Agreement in accordance with this paragraph (g), the IHA shall give adequate written notice of termination, which shall not be less than 30 days.

Date: August 17, 1988.

J. Michael Dorsey,

Acting Secretary of Housing and Urban Development.

[FR Doc. 88–19287 Filed 8–29–88; 8:45 am]

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August 30, 1988

Part III

Environmental Protection Agency

40 CFR Parts 257 and 258
Solid Waste Disposal Facility Criteria; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL-3227-7]

Solid Waste Disposal Facility Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency today is proposing revisions to the Criteria for Classification of Solid Waste Disposal Facilities and Practices set forth in 40 CFR Part 257. These revisions were developed in response to the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA). This proposed action would amend Part 257 by including information requirements for certain solid waste disposal facilities and by excluding municipal solid waste landfills (MSWLFs) from Part 257. In addition, this action would add a new Part 258, which spells out specific requirements for MSWLFs.

Amended Part 257 would establish notification and exposure information requirements for owners and operators of industrial solid waste disposal facilities and construction/demolition waste landfills. The new Part 258 sets forth revised minimum Criteria for MSWLFs, primarily in the form of performance standards, including location restrictions, facility design and operating criteria, ground-water monitoring requirements, corrective action requirements, financial assurance, and closure and post-closure care requirements.

EPA believes that the provisions in today's proposal are necessary for the protection of human health and the environment and take into account the practicable capability of owners and operators of municipal solid waste landfills. The Agency is requesting comment on the overall approach proposed and on specific components of the proposal.

Today's proposal also is intended to fulfill a portion of EPA's mandate under section 405(d) of the Clean Water Act (CWA) to promulgate regulations governing the use and disposal of sewage sludge. Under today's proposal, Part 258 would be co-promulgated under the authority of the CWA; this authority would apply to all municipal solid waste facilities in which sewage sludge is co-disposed with household wastes. A separate regulation for sludge monofills (landfills in which only sewage sludge is disposed of) is being prepared for future proposal under 40 CFR Part 503.

DATES: Comments on this proposed rule must be submitted on or before October 31, 1988.

Public hearings are scheduled as follows:

(1) October 13, 1988, 9:00 a.m. to 4:30 p.m., at the Sheraton National Hotel, 900 Orme Street, Arlington, VA. 22204, (703) 521–1900.

(2) October 18, 1988, 9:00 a.m. to 4:30 p.m., at the Sheraton Century Center Hotel, 2000 Century Boulevard, NE, Atlanta, Georgia. 30345–3377, (404) 325–0000.

(3) October 20, 1988, 9:00 a.m. to 4:30 p.m., at the Sheraton Anaheim, 1015 West Ball Rd., Anaheim, CA. 92802, (714) 778–1700

(4) October 25, 1988, 9:00 a.m. to 4:30 p.m., at the O'Hare Hilton Hotel, P.O. Box 66414, O'Hare International Airport, Chicago, Illinois. 60666 (312) 686–8000.

The meetings may be adjourned earlier if there are no remaining comments. Requests to present oral testimony should be received by EPA at least 10 days before each public meeting.

A block of rooms has been reserved at the above mentioned hotels for the convenience of individuals requiring lodging. Please make room reservations directly with the hotel and refer to the EPA hearings. The hearing registration will be at 8:00 a.m., with the hearings beginning at 9:00 a.m. and running until 4:30 p.m., unless concluded earlier. Anyone wishing to make a statement at the hearing must notify, in writing, Public Participation Officer, Office of Solid Waste (WH–562A), U.S. Environmental Protection Agency, 401 M Street, SW; Washington, DC 20460. Those wishing to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

The Agency is tentatively planning to coordinate these Subtitle D Criteria public meetings with the public meetings on EPA's Draft National Strategy for Municipal Waste which is expected to be issued in the near future. EPA will announce these meetings in a separate FR notice. For information on the strategy please see 53 FR 13316 (April 22, 1988).

ADDRESSES: Commentors must send an original and two copies of their comments to: RCRA Docket Information Center, (OS–305), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW; Washington, DC 20460. Comments should include the docket number F–88–CMLP–FFFFF. The public docket is located at EPA Headquarters (sub-basement) and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 475–9327. Copies cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW; Washington, DC 20460, (800) 424–9346, toll-free, or (202) 382–3000, local in the Washington, DC metropolitan area.

For information on specific aspects of this proposed rule, contact either Allen Geswein or Paul Cassidy, Office of Solid Waste (OS-323), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4859 or 382-3346.

SUPPLEMENTARY INFORMATION:

Copies of the following Subtitle D Criteria background documents are available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4650. EPA and NTIS numbers and NTIS prices are listed below. Documents cannot be obtained directly from EPA.

(1) U.S. EPA, Office of Solid Waste (OSW). Notification Requirements for Industrial Solid Waste Disposal Facilities—Criteria for Classification of Solid Waste Disposal Facilities and Practices (40 CFR Part 257)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). August 1988 (draft). EPA/530-SW-88-044, PB88-242 508, $12.95.

(2) U.S. EPA, OSW. Location Restrictions (Subpart B)—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft). EPA/530-SW-88-036, PB88-242 425, $19.95.

(3) U.S. EPA, OSW. Operating Criteria (Subpart C)—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft). EPA/530-SW-88-037, PB88-242 433, $19.95.

(4) U.S. EPA, OSW. Closure/Post-Closure Care and Financial Responsibility Requirements (Subpart C, §§ 258.30-258.32)—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft). EPA/530-SW-88-041, PB88-242 474, $19.95.

(5) U.S. EPA, OSW. Design Criteria (Subpart D)—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft). EPA/530-SW-88-042, PB88-242 482, $19.95.

(6) U.S. EPA, OSW. Ground-Water Monitoring and Corrective Action (Subpart E)—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft). EPA/530-SW-88-043, PB88-242 490, $19.95.

(7) U.S. EPA, OSW. Case Studies on Ground-Water and Surface Water Contamination from Municipal Solid Waste Landfills—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft). EPA/530-SW-88-040, PB88-242 466, $14.95.

(8) U.S. EPA, OSW. Summary of Data on Municipal Solid Waste Landfill Leachate Characteristics—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft). EPA/530-SW-88-038, PB88-242 441, $19.95.

(9) U.S. EPA, OSW. Updated Review of Selected Provisions of State Solid Waste Regulations—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft). EPA/530-SW-88-039, PB88-242 458, $14.95.

(10) U.S. EPA, OSW. Regulatory Impact Analysis (RIA) of Proposed Revisions to Subtitle D Criteria for Municipal Solid Waste Landfills—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft). EPA/530-SW-88-045, PB88-242 516, $25.95.

All documents can be microfiched for $6.95.

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I. Authority

These regulations are being proposed under the authority of sections 1008, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976. Section 1008 directed EPA to publish guidelines for solid waste management, including criteria that define solid waste management practices that constitute open dumping and are prohibited under Subtitle D of RCRA. Section 4004 further required EPA to promulgate regulations containing criteria for determining which facilities are sanitary landfills and which are open dumps. In response, EPA promulgated the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257) in 1979. Section 4010, added by the Hazardous and Solid Waste Amendments of 1984 (HSWA), directs EPA to revise those Criteria promulgated under sections 1008 and 4004 for facilities that may receive household hazardous waste (HHW) or small quantity generator (SQG) hazardous waste.

For municipal solid waste landfills in which sewage sludge is disposed of together with household wastes, the Part 258 regulations also are being proposed under the authority of section 405 (d) and (e) of the CWA. Section 405 regulates the use and disposal of sewage sludge generated by treatment works treating domestic sewage. Section 405 requires that EPA develop standards for sludge use and disposal, including: An identification of the major use and disposal practices, factors to be taken into account in determining applicable measures and practices for each use or disposal, and concentrations of pollutants that interfere with each use or disposal. When the CWA was amended in February 1987, additional requirements were added to section 405. Congress directed EPA to identify toxic pollutants that may be present in sewage sludge in concentrations that may adversely affect public health and the environment and to establish numerical limitations and management practices for each identified pollutant for each use of disposal option. The numerical limitations and management practices are to be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Further, the amendments require that these section 405(d) sludge standards be implemented through National Pollutant Discharges Elimination System (NPDES) permits issued to publicly owned treatment works (POTWs) or other treatment works treating domestic sewage unless the standards have been included in a permit issued under RCRA Subtitle C; the Safe Drinking Water Act; the Marine Protection, Research and Sanctuaries Act; the Clean Air Act; or a State permit where the State program has been approved as ensuring compliance with section 405. In addition section 405(e) prohibits any person from disposing of sludge from a POTW or other treatment works treating domestic sewage except in accordance with the section 405(d) regulations.

II. Background

Subtitle D of RCRA establishes framework for Federal, State, and local government cooperation in controlling the management of nonhazardous solid waste. The Federal role in this arrangement is to establish the overall regulatory direction, to provide minimum standards for protecting human health and the environment, and to provide technical assistance to States for planning and developing environmentally sound waste management practices. The actual planning and direct implementation of solid waste programs under Subtitle D, however, remain State and local functions.

Section 405(d)–(f) of the CWA establishes a comprehensive framework for regulating the use and disposal of sewage sludge. Section 405(d) provides for the Federal promulgation of numerical limitations and management practices governing the use and disposal of sludge. Section 405(e) provides for Federal enforcement of these standards. Section 405(f) requires the implementation of these regulations through permits issued to POTWs under section 402 of the CWA, unless they have been included in a permit issued under Subtitle C of RCRA or other authority listed in that section. The permits are to be issued by EPA or by a State with a program that has been approved as ensuring compliance with section 405 of the CWA.

A. Current Subtitle D Criteria

Under the authority of sections 1008(a)(3) and 4004(a) of RCRA, EPA promulgated the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257) on September 13, 1979. EPA issued minor modifications to these Criteria on September 23, 1981. These Subtitle D Criteria establish minimum national performance standards necessary to ensure that "no reasonable probability of adverse effects on health or the environment" will result from solid waste disposal facilities or practices. A facility or practice that meets the Criteria is classified as a "sanitary landfill"; a facility failing to satisfy any of the Criteria is considered an "open dump" for purposes of State solid waste management planning. State plans developed under the "Guidelines for Development and Implementation of State Solid Waste Management Plans" (40 CFR Part 256) must provide for closing or upgrading all existing "open dumps" within the State.

The existing Part 257 Criteria include general environmental performance standards addressing eight major topics: Floodplains (§ 257.3–1), endangered species (§ 257.3–2), surface water (§ 257.3–3), ground water (§ 257.3–4), land application (§ 257.3–5), disease (§ 257.3–6), air (§ 257.3–7), and safety (257.3–8). The following briefly summarizes these provisions.

Section 257.3–1 specifies that facilities or practices in floodplains shall not interfere with the floodplain or result in washout of solid waste so as to pose a hazard to human life, wildlife, or land or water resources. Section 257.3–2 prohibits solid waste disposal facilities and practices that cause or contribute to the taking of any endangered or threatened species or result in the destruction or adverse modification of the critical habitats of such species. The surface water provision, § 257.3–3, specifies that disposal facilities shall not cause a discharge of pollutants or dredged or fill material to waters of the United States that is in violation of section 402 or 404 of the CWA. Section 257.3–4 lays out the ground-water protection standards, which require that facilities and practices not exceed the Safe Drinking Water Act maximum contaminant levels (MCLs) in an underground drinking water source beyond the solid waste unit boundary or beyond an alternative boundary specified by the State.

Section 257.3–5 requires that a facility or practice meet certain restrictions with respect to the concentrations of cadmium and polychlorinated biphenyls (PCBs) contained in waste applied to land used for producing food chain crops. Section 257.3–6 specifies that waste disposal facilities and practices must institute appropriate disease vector controls, such as periodic application of cover material. In

addition, § 257.3–6 requires pathogen reduction processes for sewage sludges and septic tank pumpings applied to land.

The air criterion in § 257.3–7 prohibits open burning of solid waste (with certain exceptions) and specifies that the applicable requirements of the State Implementation Plans developed under section 110 of the Clean Air Act must be met. Finally, the safety provisions of § 257.3–8 require control of explosive gases, fires, bird hazards to aircraft, and public access to the facility.

Currently, EPA does not have the authority to enforce these existing Part 257 Criteria directly, except in situations involving the disposal or handling of POTW sludge. Federal enforcement of POTW sludge handling facilities is authorized under the CWA. The existing Criteria, as they apply to non-sludge-handling facilities, are enforced by the States through State regulatory programs or by citizens through the citizen suit provisions of section 7002 of RCRA.

B. Hazardous and Solid Waste Amendments of 1984

In 1984, Congress made significant modifications to Subtitle D of RCRA through the Hazardous and Solid Waste Amendments. As described below, the major modifications to Subtitle D include requirements that EPA complete a Subtitle D study and revise the Part 257 Criteria, and that States implement revised permitting programs.

1. Subtitle D Study and Report to Congress

HSWA added a new section 4010 to RCRA, which requires EPA to "conduct a study of the extent to which the guidelines and Criteria under this Act (other than guidelines and Criteria for facilities to which Subtitle C applies) which are applicable to solid waste management and disposal facilities * * * are adequate to protect human health and the environment from ground water contamination." This study is to include a detailed assessment of the adequacy of the Criteria regarding monitoring, prevention of contamination, and remedial action for protecting ground water and also is to identify "recommendation with respect to any additional enforcement authorities which the Administrator, in consultation with the Attorney General, deems necessary." EPA anticipates submitting a Report to Congress on the results of the study shortly.

2. Criteria Revisions

Section 4010 also required EPA to revise the Subtitle D Criteria by March 31, 1988, for facilities that may receive household hazardous waste or hazardous waste from small quantity generators. These revisions must be those necessary to protect human health and the environment, but, at a minimum, should require ground-water monitoring as necessary to detect contamination, establish location standards for new or existing facilities, and provide for corrective action, as appropriate. Section 4010 further states that EPA may take into account the "practicable capability" of facilities to implement the Criteria. Today's proposal represents the first phase of the Agency's promulgation of these mandated revisions.

3. Implementation and Enforcement

HSWA amended section 4005 of RCRA to require States to establish by November 8, 1987, a permit program or other system of prior approval to ensure that facilities that receive HHW or SQG hazardous waste are in compliance with the existing Part 257 Criteria. Within 18 months of promulgation of revised Criteria, each State must modify its permit program to ensure compliance with the revised Criteria. If the Administrator determines that a State has not adopted an adequate permit program, EPA may enforce the revised Criteria at facilities that may receive HHW or SQG waste.

C. Current Sewage Sludge Criteria

The existing Part 257 Criteria discussed above were co-promulgated under the joint authority of RCRA and section 405(d) of the CWA. The Part 257 regulations thus apply to all sludge land disposal practices, except distributing and marketing sludge. Because these regulations apply to sewage sludge, they are directly enforceable by EPA against any person found to be in violation of them.

In February 1987, Congress enacted the Water Quality Act of 1987, which amended portions of the CWA, including section 405. First, Congress expanded section 405(d) to impose new standard-setting requirements with associated deadlines. Second, Congress established new sludge permitting requirements in section 405(f) along with State program requirements. EPA currently is developing sludge regulations to be proposed under section 405(d) and published in 40 CFR Part 503. In addition, EPA already has published a proposed regulation in 40 CFR Part 501 that would implement the requirements of section 405(f) (53 FR 7642, March 9, 1988). The comment period for these latter regulations closed on May 9, 1988.

The Part 503 regulations, when promulgated, will address the incineration, ocean disposal, land application, and distribution and marketing of sludge. Lastly, and most relevant here, they also will regulate sludge monofills, which are landfills in which only sewage sludge is disposed of (i.e., no other type of solid waste is co-disposed of with the sewage sludge). Those regulations will not, however, contain regulations for the co-disposal of sewage sludge with household wastes. Regulations for the co-disposal of sewage sludge and household wastes, rather, are part of today's proposal. By this action, the Agency seeks to achieve consistency in its regulation under two legal authorities of a single disposal practice—the co-disposal of sewage sludge and other solid wastes in municipal solid waste landfills.

III. Nature and Scope of the Problem

To fulfill its responsibilities under HSWA, EPA has conducted a series of studies and analyses of solid waste characteristics, waste disposal practices, and environmental and public health impacts resulting from solid waste disposal. Preliminary results of these studies were summarized in the "Subtitle D Study Phase I Report," issued in October 1986 (Ref. 34). Final results, which form the basis for Agency decision making for this rule, are incorporated in EPA's Subtitle D report to Congress, which is expected to be issued shortly. The key studies pertinent to today's proposal are summarized below. Copies of the reports mentioned below are available for public review in the docket for this rulemaking.

A. EPA Studies of Solid Waste Management

1. Analysis of Solid Waste Characteristics

To analyze the characteristics of solid waste, EPA conducted numerous studies to determine the volume, characteristics, and management methods of wastes regulated under Subtitle D. These studies revealed that more than 11 billion tons of solid waste are generated each year, including 7.6 billion tons of industrial nonhazardous waste (which includes about 55.8 million tons of electric utility wastes), 2 to 3 billion tons of oil and gas waste (including both drilling wastes and produced wastes), more than 1.4 billion tons of mining waste, and nearly 160 million tons of municipal solid waste.

Several Subtitle D wastes currently are being addressed under separate Agency efforts and thus were not

examined in detail in EPA's Subtitle D study. In particular oil and gas wastes, utility wastes, and mining waste have been the subject of special studies conducted under section 8002 of RCRA and are being considered separately for rulemaking. In addition, the Agency currently is closely evaluating, in a separate effort, the characteristics and management practices for municipal waste combustion ash. Thus, the following discussion focuses on the characteristics of municipal solid waste, household hazardous waste, and small quantity generator hazardous waste, which are the primary waste streams addressed by today's proposal, as well as industrial solid waste.

In 1986, EPA sponsored a study entitled "Characterization of Municipal Solid Waste in the United States, 1960 to 2000" (Ref. 16). This study examined the quantity and composition of municipal solid wastes and forecast the characteristics of municipal solid wastes in the U.S. through the end of the century. The study found that, on average, more than 50 percent of municipal solid waste comprises paper, paperboard, and yard wastes; nearly 40 percent is metals, food wastes, and plastics; and the remaining 10 percent is wood, rubber, leather, textiles, and miscellaneous inorganics. Waste composition was found to be highly site-dependent and influenced significantly by climate, season, and socioeconomic factors. The study determined that approximately 150 million tons of municipal solid waste were generated in 1984 (of which more than 126 million tons were landfilled) and that the waste volume was expected to increase significantly by the end of the century. EPA recently completed an update to this study entitled, "Characterization of Municipal Solid Waste in the United States, 1960–2000 (Update 1988)" (Ref. 17). This update estimated that 158 million tons of municipal solid waste were generated in 1986.

In October 1986, EPA published "A Survey of Household Hazardous Wastes and Related Collection Programs," which analyzed the existing information on characteristics of HHW and reviewed HHW collection programs (Ref. 30). This study indicated that common discarded household products, such as household cleaners, automotive products, paint thinners, and pesticides, may contain hazardous wastes that are either listed under Subtitle C or exhibit one or more hazardous characteristics. Household wastes, including HHW, currently are exempt from regulation under Subtitle C of RCRA.

A third study, "Summary of Data on Industrial Nonhazardous Waste Disposal Practices," compiled available data on industrial solid waste characteristics and land disposal practices in 22 major manufacturing industries (Ref. 29). This study estimated that roughly 390 million metric tons of industrial nonhazardous waste are generated by these industries each year, that 35 percent of these wastes are managed on site, and that 75 percent of these wastes are generated by four industries: Iron and steel, electric power generation, industrial inorganic chemicals, and plastics and resins. Additional information on industrial nonhazardous waste quantities was provided by the Industrial Facility Screening Survey (Ref. 35), which estimated that approximately 7.6 billion tons of industrial nonhazardous wastes are generated each year. The survey is described in more detail below.

In 1985, EPA also conducted the "National Small Quantity Generator Survey," which characterized SQG waste volumes and disposal practices (Ref. 14). (For purposes of this study, SQGs were defined as those operations yielding less than 1,000 kilograms of hazardous waste per month.) This survey indicated that SQGs annually produce 940,000 metric tons of hazardous waste, consisting largely of lead-acid batteries, solvents, and strongly acidic or alkaline wastes. Furthermore, the survey found that solid waste disposal facilities, including MSWLFs, are the second most frequent destination for SQG hazardous waste shipped off site. EPA estimates that MSWLFs may receive from 5 percent to 16 percent of the SQG hazardous waste produced.

Existing information on MSWLF leachate, summarized in the background document on MSWLF leachate quality (Ref. 8), indicates that leachate from MSWLFs generally contain a wide range of inorganic and organic hazardous constituents in varying concentrations. Landfill gas comprises 50 to 60 percent methane, 40 to 50 percent carbon dioxide, and less than 1 percent hydrogen, oxygen, nitrogen, and other trace gases.

2. Review of Waste Disposal Practices

EPA conducted numerous studies to gather existing information on the numbers of Subtitle D facilities, facility design and operating characteristics, leachate and gas characteristics, and environmental and human health impacts associated with different types of facilities. EPA relied on several key sources of information on the number and design and operating characteristics of Subtitle D facilities for this proposal. The first major source was an EPA mail survey of State solid waste management programs conducted in 1985 to gather information on State Subtitle D programs and facilities. The final report on the survey, "Census of State and Territorial Subtitle D Nonhazardous Waste Programs" (State Census), was issued in 1986 (Ref. 46).

The State Census indicated that there are about 227,000 Subtitle D disposal facilities, excluding waste piles (which were not included in the survey). This total includes approximately 16,500 landfills, 191,500 surface impoundments, and 19,000 land application units. In addition, the State Census indicated that there are more than 145,000 oil and gas waste or mining waste facilities, which EPA is addressing in separate efforts.

The States estimated that roughly 37,000 Subtitle D facilities (or 16 percent of all the facilities) may receive hazardous wastes from households or from small quantity generators. The States' estimate of 16,500 landfills included approximately 9,300 MSWLFs; however, the States subsequently identified errors in the numbers reported for MSWLFs and submitted revised figures. These revised State figures and the results from EPA's 1986 municipal solid waste landfill survey, which was a random sample of approximately 1,250 MSWLFs nationwide, indicate that there are a total of 6,034 MSWLFs (as of 1986). The MSWLF survey also provided detailed information on MSWLF design and operation.

In developing this rule, EPA also utilized the results of an industrial facility screening survey, which involved a telephone screening of nearly 30,000 establishments in 22 industries. The primary purpose of this screening survey was to provide EPA with basic information on the universe and characteristics of industrial solid waste disposal facilities.

In general, information on Subtitle D disposal facilities is limited, except for MSWLFs. While new MSWLFs are expected to be better located, designed, and operated, the following observations can be made regarding the universe of existing MSWLFs. According to the State Census, MSWLFs are distributed throughout the country, occurring in virtually every hydrogeologic setting, and generally concentrated near more populated areas; they are owned predominantly by local governments (80 percent), with the remainder owned by private entities (15 percent), the Federal Government (4 percent), and State governments (1 percent). Approximately 42 percent are

small (less than 10 acres) and 52 percent dispose of small amounts of waste (less than 17.5 tons per day); only 15 percent are designed with liners (natural or synthetic) and only 5 percent have leachate collection systems. Current data also indicate that only 25 to 30 percent of MSWLFs have some type of ground-water monitoring system. Results from the 1986 MSWLF survey generally are consistent with these results.

3. Assessment of Impacts

Impacts associated with MSWLFs and industrial Subtitle D facilities are described below. Existing data indicate that some MSWLFs are adversely affecting the environment and could harm human health. Industrial solid waste facilities need to be examined more closely to determine their impacts.

a. Municipal Solid Waste Landfills. State inspection data, case study evidence, risk characterization studies, waste and leachate characteristics, and the current limited use of design controls indicate that some MSWLFs have degraded the environment and that this degradation could continue. Older landfills are of most concern because they may have received large volumes of hazardous waste and, in general, their use of design controls was very limited; however, existing data are not sufficient to conclusively demonstrate that MSWLFs currently are harming human health, other than data indicating acute impacts associated with methane releases. Current human health impacts from past exposure to contaminant releases from MSWLFs are difficult to isolate due to the complex interaction of factors that affect human health. However, the Agency's recently completed risk assessments indicate that MSWLFs present future potential risks to human health.

More than 500 MSWLFs, or about 25 percent of MSWLFs with ground-water monitoring systems, were reported by States to be violating a State ground-water protection standard, although the nature and extent of these violations are unknown. In some States, any detectable degradation of the ground water is considered a violation. Most facilities do not monitor for organic hazardous constituents in ground water, so these violations represent analyses for a limited set of pollutants. States also reported that 845 MSWLFs were cited for air-related violations (many of which are likely to be odor-related incidents), and 660 MSWLFs were cited for surface water contamination. Some of these violations may have been reported at sites established before existing State and Federal regulations were in place.

EPA has summarized case study information documenting ground-water and surface water contamination incidents (Ref. 7). Evaluation of 163 MSWLF case studies revealed ground-water contamination at 146 facilities and surface water contamination at 73 facilities. For most of these landfills, information on the waste received either was not available or was incomplete, although a limited number are known to have received hazardous waste before the Subtitle C regulations were issued. At about 50% of the facilities with ground-water contamination, specific contaminants were identified. The most common constituents were iron, chloride, manganese, trichloroethylene, benzene, and toluene. At several sites, drinking water sources were contaminated. Ground-water contaminant plumes characterized at three of the sites extended to (or nearly to) the base of an aquifer at depths of approximately 70 feet (at two sites) and 300 feet (at one site).

The plume from one site migrated one-half mile downgradient of the landfill, while the plume at another site migrated almost one and one-half miles downgradient.

Typically, those facilities causing ground-water contamination were more than 10 years older than facilities reporting no impacts. Ground-water impacts appeared to be more severe in locations characterized by high net infiltration rates and high ground-water flow rates. Most facilities that had contaminated ground water were located close to the ground-water table, underlain by highly permeable soils, or had no or very limited engineering controls. The case study information identifies several factors that may be related to failure at a particular facility, specifically the landfill's age, location, and engineering design; however, it is unknown whether this sample is representative of the universe of MSWLFs, and it is not possible to isolate the specific factors responsible for each failure.

Analysis of damage cases involving methane indicates that methane must be controlled to protect human health. Methane is produced in MSWLFs through anaerobic decomposition of organic waste and is explosive at sufficiently high concentrations (the lower explosive limit). Existing Federal regulations require that the concentration of explosive gases should not exceed 25 percent of the lower explosive limit in facility structures and should not exceed the lower explosive limit at the facility boundary. Methane is produced in such abundance that methane collection projects are in place at approximately 100 landfills for the primary purpose of resource recovery and energy production. Where methane is not controlled, fires and explosions have occurred. In 23 of 29 damage cases studied, methane has been measured in concentrations above the lower explosive limit at distances up to 1,000 feet off site. Explosions and fires, both on site and off site, have occurred in 20 of the 29 cases, loss of life has been documented in five instances, and injuries have been reported in several others. Most of these sites where injuries or death occurred did not have a landfill gas control system.

EPA also examined the characteristics of landfills on the Superfund National Priorities List (NPL) in May 1986 (Ref. 26). Of the 850 sites listed or proposed for listing on the NPL (in May 1986), 184 sites (22 percent) were identified as MSWLFs. In addition, of the 27,000 sites in the Superfund data base, almost one fourth are MSWLFs. In general, the MSWLFs on the NPL were poorly located and designed. Because most of the NPL sites were in operation before 1980 (the effective date of EPA's hazardous waste rules) and may have received hazardous wastes in addition to Subtitle D wastes, they are not representative of newer, better designed and operated MSWLFs; however, these sites indicate the extent to which older and poorly located, designed, and managed landfills can harm the environment. Current data indicate that 70 percent of existing MSWLFs were in operation prior to 1980.

The State data, case study information, and NPL study were supplemented by a risk assessment of MSWLFs (Ref. 10). The risk assessment was completed using the Subtitle D Risk Model, which was developed to evaluate the risks and resource damage associated with ground-water contamination at MSWLFs and to identify the factors that affect the nature, extent, and severity of environmental impacts from these facilities. The model simulates pollutant release, fate, and transport; exposure; impacts; and corrective action. The model is described in more detail in Section XI of this preamble.

Caveats to the risk and resource damage analysis results presented in the risk assessment need to be recognized. First, the risk and resource damage modeling includes considerable uncertainty. The model components that introduce the most uncertainty are those that predict leachate quality for trace

organics, the probability and consequences of containment system failure, and the human health risk resulting from exposure to toxic substances (e.g., the dose-response models). Second, the model estimates effects from new landfills, but does not analyze the risk and resource damage impacts from existing facilities.

The risk analysis estimates the human health risk for the maximum exposed individual (i.e., the mean of the average lifetime risk over the 300-year modeling period of the facility) and the total population using ground water as a drinking water source within one mile of the facility. Current data indicate that 54 percent of existing MSWLFs have no downgradient drinking water wells within one mile, a finding that strongly influences model results because current data and model limitations do not allow the risk to be estimated at facilities with drinking water wells beyond one mile. Thus, under this model, such facilities are considered to pose no risk.

Using the well distribution indicated by the MSWLF survey (i.e., no drinking water wells located within one mile of 54 percent of the landfills), the risk model estimates that, in the baseline, fewer than 1 percent of MSWLFs pose risk greater than $1\times10_{-4}$ (i.e., an exposed individual would have a greater than one in ten thousand chance of contracting cancer in his or her lifetime as a result of the exposure), 5.5 percent pose risk in the $1\times10_{-4}$ to $1\times10_{-4}$ range, and 11.6 percent pose risk in the $1\times10_{-4}$ to $1\times10_{-5}$ range. Overall, approximately 17 percent of MSWLFs pose risks greater than $110\times_{-5}$. Out of the eight leachate constituents modeled, the three principal constituents contributing to human health risk are vinyl chloride, 1,1,2,2-tetrachloroethane, and dichloromethane.

For landfills located within one mile of a drinking water well (46 percent of all landfills), 14 percent pose risk exceeding $1\times10_{-5}$, and nearly 40 percent pose risk greater than $1\times10_{-4}$. If future wells are located near existing MSWLFs (or new sites are located near current wells), the overall risk distribution may be closer to the estimates for this subgroup. The overall risk distribution changes significantly if it is assumed that all drinking water wells are located at the facility boundary (assumed to be 10 meters from the landfill unit). Using this conservative scenario, it is estimated that approximately 35 percent would pose risk greater than $1\times10_{-5}$, and about 67 percent of MSWLFs would pose risk exceeding $1\times10_{-6}$.

Because risk is the result of a complex interaction among many factors (some of which have not been accounted for in this analysis), no single factor is responsible for most of the variation. Thus, in addition to well distance, the results of the analysis identified other risk-contributing factors, which include infiltration rate, facility size, and aquifer characteristics. These factors are similar to those identified in the case studies discussed above. More detailed discussion of EPA's risk assessment is provided later in this preamble.

b. Sewage Sludge Disposal in MSWLFs. EPA estimates that approximately 6,800 POTWs dispose of their sludge in MSWLFs. This represents the sludge disposal practice used by 44 percent of all POTWs. The total volume of co-disposed sewage sludge is slightly under 3 million tons per year, which is approximately 40 percent of the volume generated annually by POTWs.

EPA has not performed a separate risk assessment addressing the sludge component of municipal solid waste landfills. Sludge typically is a small component of the landfill (i.e., 5 percent). It is not technically feasible to monitor separately the fate and transport of the sludge and its constituents from the fate and transport of other wastes in the landfill and their constituents. Moreover, while there has been some research on the interaction of sludge and other wastes in a co-disposal situation, there are as yet no definitive results from such work. Therefore, the discussion above on the practices and risks associated with MSWLFs constitutes the best current information on those landfills that receive sludge together with the other wastes.

c. Industrial Subtitle D Facilities. In 1985, about 28,000 industrial solid waste land disposal facilities handled approximately 7.6 billion tons of waste. Although few data on specific health and environmental impacts of these facilities are available, the large volume of waste and number of facilities present concerns about actual and potential threats from these facilities. More than half of these facilities are surface impoundments, which create concerns because of the mobility and physical driving force of liquids in impoundments and the current limited use of design controls. Current data are insufficient, however, to determine the extent of potential problems.

Study results indicate only sporadic use of design and operating controls at industrial solid waste landfills and surface impoundments, with only 12 percent and 22 percent, respectively, employing any type of liner system. Study findings also revealed that few of these facilities have monitoring systems and only 35 percent were inspected by States in 1984, the latest year for which data are available.

Limited data on violations of State requirements, coupled with these statistics on design and operating controls, suggest that releases may be occurring, but more data are needed to determine the impacts of industrial Subtitle D facilities. The notification and exposure information requirements in Part 257 proposed today are a first step toward gathering this information.

B. State Controls on Solid Waste Management

Through the State Census, EPA gathered information on State Subtitle D programs in areas such as organization and resources, regulations and permit programs, and enforcement. In addition, EPA completed a detailed review of State regulations in 1984 (Ref. 25) and a supplemental review in 1987 (Ref. 9). The following is a brief overview of State solid waste regulatory programs.

MSWLFs are the Subtitle D facilities most closely regulated by the States. Most States and Territories impose some set of overall facility performance standards; however, among the States and Territories, specific design and operating standards vary greatly. For example, the 1987 regulatory review determined that 24 States and Territories require liners and 27 States and Territories require leachate collection systems. As of 1984, 28 States and Territories required gas control systems, and 38 specified some sort of run-on/run-off controls. Nearly all allow case-by-case exemptions and variances.

Many States and Territories impose some location standards or restrictions on MSWLFs. These usually include floodplain siting restrictions, which range from prohibitions on siting in the 100-year floodplain to specific design or performance standards for operations within the floodplain to a general directive to avoid sites subject to flooding. Although minimum distances from surface and ground waters and from airports and utility lines sometimes are specified, they too vary widely. For example, prescribed distances from habitable residences vary from 200 feet to three-quarters of a mile and required distances from community water supplies range from 400 feet to one mile.

Thirty-eight States and Territories specifically require ground-water monitoring systems, and an additional 12 States have general authority to impose ground-water monitoring on a site-specific basis. With regard to corrective action, 21 States have requirements in their regulations, while 22 others have general authority to

impose corrective action. Approximately half of the States and Territories require methane gas monitoring and/or surface water monitoring. While most States and Territories have general guidelines or requirements for facility closure and post-closure maintenance requirements, these requirements vary widely in stringency. Finally, some form of financial assurance for closure and post-closure care is required in about half of the States and Territories.

As can be seen from the above information, there are certain gaps in some State and Territorial regulatory programs, which may result in inadequate protection of human health and the environment in some parts of the country. In some cases, the gaps in State and Territorial programs may be linked both to the inadequate implementation of the existing Federal Criteria by certain States and Territories and to the absence of certain key regulatory provisions in the current Federal Subtitle D Criteria themselves. For example, the current Criteria do not require ground-water monitoring or monitoring for methane releases, so MSWLF owners and operators may choose not to install monitoring devices (if the State or Territory does not specifically require them) and thus may not detect problems before significant problems have occurred. The existing Criteria also do not require corrective measures in the event contamination above levels of concern occurs. Furthermore, MSWLF owners and operators are not required to provide continued protection of human health and the environment through effective closure procedures and post-closure care. Agency experience since 1979 in both the hazardous waste regulatory program and response actions under Superfund has confirmed the importance of such preventive measures for long-term protection of human health and the environment.

C. Need for Revisions to the Part 257 Criteria

The evidence briefly described above indicates that MSWLFs, when improperly designed and operated, may present threats to human health and the environment. The evidence further indicates that the Federal Criteria are missing several key regulatory provisions. These provisions include location restrictions, ground-water monitoring, and corrective action, which all are mandated by HSWA. In addition, current data point to the need for the addition of methane monitoring, closure and post-closure care, and financial assurance requirements. The Agency believes that the available data clearly indicate that the current Federal Criteria have not proved adequate to protect human health and the environment and must be revised to ensure such protection.

These revisions to the Subtitle D Criteria come at a time when heightened concern is directed at issues of solid waste management. This concern derives from State, Territorial, and local government difficulties in ensuring adequate capability for municipal solid waste management as well as public concern regarding potential hazards presented by waste disposal facilities. EPA is aware of the crisis in solid waste management and believes that these proposed Criteria revisions should be a major step toward alleviating public concern with respect to inadequate controls on solid waste disposal. In addition, EPA believes these proposed revisions provide States and Territories with the flexibility needed to address the practicable capacity of the regulated community.

IV. Public Participation in This Rulemaking

Given the number and diversity of MSWLFs and the potentially significant impacts that the revised Criteria may have on them, EPA involved the public and private sector in the rulemaking process. This effort included public meetings and outreach activities aimed at encouraging participation in the process.

Since the spring of 1985, EPA has hosted or participated in a series of public meetings, workshops, conferences, and other activities focusing on issues in the Subtitle D program. In August 1985, EPA sponsored a conference explaining the major provisions of the Hazardous and Solid Waste Amendments of 1984 that affected three key RCRA programs—Subtitle D, small quantity generators, and underground storage tanks. During the conference, EPA held workshops on the following Subtitle D issues: 1) Identification of available information and case studies, 2) ground-water monitoring and protection requirements, 3) closure and post-closure care and financial responsibility requirements, 4) waste restrictions and liquids management requirements, and 5) liner and location requirements. The workshops provided a forum for EPA and the participating State and local governments, public interest groups, industry, and trade associations to exchange information and discuss significant regulatory issues.

On June 27, 1986, EPA hosted a public meeting in Washington, DC, on the issues and options being considered for the revisions to the Subtitle D Criteria. At that time, EPA presented the Agency's initial thinking on the revised Criteria, solicited comments, and responded to questions from representatives of States, local governments, public interest groups, and private organizations.

On November 18 to 20, 1986, EPA held a three-day conference in Arlington, Virginia, on solid waste disposal facilities and HHW collection programs. At this conference, EPA presented interim results of the Subtitle D Study, reported on the status of the Subtitle D Criteria revisions, and discussed issues associated with HHW collection programs. Conference participants also made presentations on State regulatory perspectives and public- and private-sector views.

EPA also sponsored a series of policy discussion meetings in 1986 involving high-level representatives of the principal interest groups affected by the Subtitle D program, including State and local governments, citizen and environmental groups, and industry and trade associations. The broad objectives of these meetings, which were coordinated for EPA by the Conservation Foundation, were to examine the effectiveness of the Subtitle D program, identify issues likely to affect implementation of the revised Criteria, and suggest innovative strategies to address problems identified.

V. Scope and Structure of Today's Proposal

The revised Criteria EPA is proposing today vary considerably in scope and content from the current Criteria in Part 257. This section explains the basis for EPA's decisions with respect to the scope and structure of today's proposal.

A. Scope of the Existing Part 257

The existing Part 257 Criteria are applicable to all solid waste disposal facilities and practices regulated under Subtitle D of RCRA. With certain exceptions listed in § 257.1(c), the Criteria apply to all types of facilities (i.e., landfills, surface impoundments, land application units, and waste piles) used for disposal of solid waste, as well as all types of solid wastes (i.e., municipal, industrial, commercial, agricultural, mining, and oil and gas waste) regulated under Subtitle D of RCRA.

Part 257 also applies to the disposal of sewage sludges from POTWs, but the Agency currently is developing specific standards for managing POTW sewage sludge under section 405(d) of the CWA.

These standards will establish pollutant concentration limits and management practices for sludge monofills, land application units, (including distribution and marketing), incineration, and ocean dumping. The Agency plans to propose these standards in 1989. At that time, EPA will propose amending Part 257 to exclude POTW sewage sludge from its requirements. As previously discussed, today's revised Criteria proposal governs the co-disposal of sewage sludge with household wastes.

B. Scope of Today's Proposal

HSWA directs EPA to develop revisions to the Part 257 Criteria for the subset of solid waste disposal facilities that "may receive hazardous household wastes or hazardous wastes from small quantity generators." Congress thus identified for EPA the scope of the revised Criteria. Based on the studies performed to date, EPA has found that the HSWA-mandated scope includes all MSWLFs, which may receive HHW and SQG hazardous waste, and some industrial solid waste disposal facilities and certain other Subtitle D facilities, which may receive SQG hazardous waste. However, as noted above, EPA has obtained extensive information on only the characteristics of MSWLFs and the risks they may pose to human health and the environment. Neither EPA nor the States have comparable information on industrial solid waste disposal facilities at this time. For this reason, EPA has decided to undertake the revisions to the Part 257 Criteria in phases.

The first phase will apply to MSWLFs (landfills that receive household waste) and is the subject of today's proposal. A second phase will apply to industrial solid waste disposal facilities (disposal facilities that receive solid waste generated by manufacturing or industrial processes), including those that receive SQG hazardous waste, and will be proposed at such time as EPA has adequate data on which to base its decisions. Because of EPA's concern about industrial solid waste disposal facilities (including landfills, surface impoundments, waste piles, and land application units), however, EPA already has initiated data collection, described later in this preamble, to determine the potential impacts of certain of these facilities. In addition, EPA today is taking the first regulatory step in addressing industrial facilities by proposing to require notification and exposure information from owners and operators of certain of these facilities. The Agency recognizes that additional regulatory efforts will be necessary to regulate other disposal facilities not included in the first two phases.

C. Structure of Today's Proposal

Because today's proposal is substantially different in scope and content from the Part 257 Criteria, EPA has chosen to create a new Part 258 for the revised Criteria the Agency is proposing today. EPA considered simply amending Part 257 to include the revised Criteria for MSWLFs, but decided against that option because of the confusion that might be created by having Criteria of general applicability alongside revised Criteria applicable only to MSWLFs. Placing the revised Criteria in a separate Part 258 tracks the distinction made by Congress, which indicated that the revisions only apply to facilities that may receive HHW or SQG hazardous waste. It also leaves the Part 257 Criteria in place for all other solid waste disposal facilities besides MSWLFs.

D. Scope and Effect of Today's Proposal on MSWLFs That Co-dispose of Sludge

The regulations proposed today would apply, under the authority of section 405 (d) and (e) of the Clean Water Act, to all MSWLFs that co-dispose of sludge. Section 405(d) requires EPA to promulgate regulations providing guidelines for the use and disposal of sludge. In general, these regulations must identify numerical limitations and management practices that are adequate to protect public health and the environment from reasonably anticipated adverse effects; however, if, in EPA's judgment, it is not feasible to prescribe or enforce a numerical limitation for a pollutant, EPA may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, that in EPA's judgment is adequate to protect public health and the environment from reasonably anticipated adverse effects.

Today's proposal reflects EPA's tentative determination that it is not feasible to prescribe concentrations of pollutants in co-disposed sludge that are protective of public health and the environment. Sludge typically is a minor portion of a co-disposal MSWLF (e.g., 5 percent). It is not feasible to separately evaluate the fate, transport, and health and environmental effects of the sludge as distinguished from the remaining majority of wastes in the landfill. Nor does it make sense to try to regulate this small portion of a landfill's waste on a concentration basis, while regulating the entire landfill on a comprehensive management basis. EPA has concluded that today's proposal, which establishes a variety of management and operation requirements (including numerical limitations in the form of ground-water protection standards), will protect public health and the environment from reasonably anticipated adverse effects.

A significant effect of the promulgation of these regulations under section 405(d) of the CWA would be the renewed eligibility of certain POTWs to grant removal credits to their industrial users under section 307(b) of the CWA. Section 307(b) requires EPA to promulgate pretreatment standards for industrial users of POTWs. Section 307(b) also allows an individual POTW to relax these standards for its industrial users by giving them a "removal credit" reflecting the POTW's removal capability, provided that the credit will not prevent the POTW from using or disposing of its sludge in accordance with section 405(d) of the CWA. EPA has promulgated removal credit regulations in 40 CFR Part 403. On April 30, 1986, the United States Court of Appeals for the Third Circuit invalidated the version of the removal credits regulations promulgated in 1984. (*Natural Resources Defense Council* v. *EPA*, 790 F.2d 289 (3d Cir. 1986).) EPA has amended the regulations to respond to all but one of the Third Circuit's four holdings (52 FR 42434, November 5, 1987).

The Third Circuit's fourth holding was that EPA may not authorize POTWs to grant removal credits to their industrial users until EPA promulgates the sludge regulations required by section 405(d) of the CWA. EPA considers the regulations proposed today to respond adequately to the Third Circuit's decision with respect to POTWs that dispose of all their sewage sludge through co-disposal in MSWLFs. These regulations would comprehensively regulate this sludge disposal practice; no further regulation of this practice is required by law or contemplated by the Agency. Thus, upon promulgation of today's regulations, the POTWs that dispose of all their sludge in co-disposal MSWLFs may apply to EPA for removal credits authority, and EPA may grant such authority to any POTW that complies with the procedural and substantive requirements of the removal credits regulations.

VI. General Approach to Today's Proposal

EPA's primary goals in developing today's proposal were to develop standards that are protective of human health and the environment, that are within the practicable capability of the regulated community, and that provide State flexibility in implementation. In

order to meet these goals, EPA considered four options for the approach to today's proposal. First, EPA considered uniform design and operating standards for application to all MSWLFs. Second, EPA considered a performance standards approach that defines goals for the design and operation of MSWLFs. The third and fourth options are methodology-based decision frameworks for determining design and operating requirements. In the third option, facility requirements are specified for facilities in various location categories. The fourth option utilizes a risk assessment algorithm to delineate the necessary design and operating controls. These options are not necessarily mutually exclusive; given that this proposal contains many facets, different options could be employed for different parts of the rule (e.g., performance standards for location requirements and a methodological approach to design requirements). However, in general, EPA chose the performance standards approach for today's proposal.

The uniform national design and operating standards option would impose specific design standards and operating requirements on all units regardless of location and other relevant factors. The Agency believes that such an approach would not adequately account for variability across the country. For instance, this approach would require EPA to assume that all facility locations are "poor" and impose comprehensive design standards on all facilities based on what is necessary to protect human health and the environment in the "poorest" of locations. A rule that does not take into account site-specific location characteristics would likely over-regulate MSWLFs in "good" locations; however, a uniform standards approach may be easier to implement and enforce by States because of the specificity of the standard.

The Agency also considered adopting the uniform national standards option with variances, in order to account for site-specific characteristics. Under this option, variances would be granted if the owner or operator could demonstrate that equivalent protection is provided by site-specific location, design, and operating characteristics. This approach parallels the one adopted for hazardous waste facilities under Subtitle C of RCRA, which imposes virtually identical requirements (e.g., double liners and leachate collection systems) at all new hazardous waste landfills. Variances are then allowed, under Subtitle C, based on an adequate demonstration by the owner or operator that the specific standard is not necessary. While variances add some flexibility, EPA has two concerns about this approach. First, variance demonstrations often require substantial resources on the part of the owner and operator and the States. Second, EPA is concerned that public pressure would limit State or local flexibility in granting variances, even though they may be warranted for a specific site. While this option might provide a high assurance of protection of human health and the environment, it could over-regulate some facilities by requiring unnecessary controls. In addition, this approach does not fully take into account the practicable capability of the regulated community.

The second approach considered was to impose overall performance standards for each facility requirement. These performance goals or standards would require site-specific analyses to determine appropriate controls. EPA chose this approach for this rulemaking because it allows the greatest flexibility for the State to consider numerous location-specific factors in tailoring facility requirements. In addition, performance standards are less disruptive of existing State programs and give facilities some needed latitude to meet requirements within the bounds of their practicable capability. Finally, a performance standard, as opposed to a strict design standard, allows for the consideration of innovative technologies that may be developed in the future.

The third approach, a methodological one, was to impose a decision framework based on location categories to determine the applicable requirements for a specific facility. This approach would categorize all locations on the basis of certain characteristics, then set individual requirements for each category. Under this approach, appropriate requirements could be matched to specific categories of locations. Methods of establishing location categories and their corresponding requirements would be specified in the revised Criteria; then States, using information submitted by the owner or operator, could determine the category and apply the associated requirements to a given facility. A key advantage to the categorical rule approach is that it establishes uniform criteria for matching requirements to potential problems. For example, facilities in areas of the country characterized by abundant rainfall could be required to collect generated leachate. Conversely, facilities in the more arid areas of the country do not necessarily generate leachate in quantities sufficient to warrant leachate control systems, and could be regulated accordingly.

The Agency believes this categorical requirements approach would provide protection without over-regulation; however, a complex, sophisticated scheme would be necessary to address every location consideration and to match appropriate requirements. Furthermore, it would be difficult to develop a technically defensible approach for all requirements for MSWLFs, particularly those requirements that necessitate site-specific analyses (e.g., ground-water monitoring). In addition, this approach would restrict State flexibility because it would specify which designs are necessary for each location.

The fourth option, also a methodological approach, is based on a risk assessment algorithm. This approach would require the use of a predictive equation to determine the necessary facility requirements. The predictive equation would include some simplifying assumptions, but would utilize site-specific values for some of the parameters. Like the categorical approach, this option has the advantages of employing a uniform national standards approach that could be easy to implement; however, it would be difficult to develop a technically sound risk algorithm and could restrict State flexibility.

EPA intends to provide guidance on how to design MSWLFs to meet the proposed performance standards. The agency believes the categorical approach is one viable method for determining landfill design, and is considering developing this method as guidance along with the risk algorithm method. Both of these approaches to design requirements are discussed in more detail in section IX.D of this preamble. The Agency requests comments on the approach proposed today and on the alternatives presented.

VII. Major Issues

A. Ground-Water Resource Value

Resource value refers to the current and future importance of ground water as a water supply and as an ecological resource. Highly saline ground water or ground water with very low yield may have a low resource value. Pristine ground water or ground water in high demand that cannot easily be replaced or restored similarly may have a high resource value. As EPA was developing the framework for the revised Criteria, the Agency considered at length the

subject of differential protection of ground water based on its resource value. Specifically, EPA considered applying different engineering controls, monitoring, and corrective action requirements according to the resource value of the ground water.

In 1984 EPA issued the Ground-water Protection Strategy, which established the concept of differential protection of ground water depending on its resource value. Accordingly, three classes of ground water were identified. Class I ground waters are defined as special ground waters that are highly vulnerable to contamination and that are either irreplaceable sources of drinking water or are ecologically vital. Class II ground waters are defined as current and potential sources of drinking water and those having other beneficial uses. Class III ground waters are defined as heavily saline ground water or ground water otherwise contaminated beyond the level allowing cleanup through methods commonly used by public water supply treatments. The Agency expects to issue final Guidelines for Ground-Water Classification during 1988. States then may use this document for reference in making ground-water classification and resource evaluation decisions.

With respect to facility design for MSWLFs, today's proposal would establish facility design Criteria that give States the flexibility to address the value of ground-water resources in setting facility-specific design requirements. Section IX.D of today's preamble describes the Agency's approach for incorporating resource value considerations into facility design decisions. EPA is not mandating use of the ground-water classification system set forth in EPA's Ground-water Protection Strategy. Rather, under this proposal, States would have the discretion to assess the value of ground-water resources. In developing Subtitle D guidance in the future, however, the Agency may draw upon the Guidelines for Ground-Water Classification to provide examples of appropriate resource evaluation and classification decisions.

The Agency also is proposing to allow consideration of resource value in the corrective action and, to a lesser extent, the ground-water monitoring components of today's rule. Specifically, today's proposal would allow the ground-water protection standards to be adjusted by States in situations where MSWLFs are located over aquifers that meet certain conditions (see section IX.E of today's preamble). These conditions include the following: (1) The aquifer is not a current or potential source of drinking water; and (2) the aquifer is not interconnected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that represents a statistically significant increase over background concentrations. Adjustments made to the ground-water protection standard or cleanup standard would be made on a site-specific basis by the State after determining that the above conditions are met. Furthermore, the time allowed for corrective action could vary based on the value placed on the ground water.

In addition, EPA is proposing that any frequency of ground-water monitoring (above the minimum required) be specified by the State based on site-specific factors, including the resource value of the ground water. The proposed approach, however, would not allow exemptions from all ground-water monitoring for facilities located over low value ground water. The Agency believes that at least minimal ground-water monitoring is necessary at all MSWLFs to evaluate the performance of facility design and operation and to identify potential threats to human health and the environment. Furthermore, HSWA specifically mandates that the revised Criteria require ground-water monitoring as necessary to detect contamination at facilities that may receive HHW or SQG waste. The Agency requests comment on whether ground-water monitoring should be waived for MSWLFs located over ground water of low resource value.

Finally, EPA believes ground-water resource value already plays an important role in local and State decisions regarding the siting of MSWLFs. In this proposal EPA has not established Federal siting Criteria specifically based on resource value because EPA recognizes that resource value considerations in facility siting are more appropriately made at the State and local levels.

The Agency also recognizes that many States are implementing various ground-water protection strategies, including wellhead protection programs. EPA believes today's proposal provides the States the flexibility to implement these programs and encourages them to increase certain requirements, as necessary, to meet the objectives of their wellhead protection programs. These requirements could range from more stringent design controls for mimimizing migration out of a unit to establishing certain location restrictions, such as minimum setback distances from vulnerable municipal well fields.

Comments are requested specifically on how the resource value of ground water should be accounted for in setting the various requirements proposed today for MSWLFs.

B. Exclusion of Closed MSWLFs

EPA considered whether to apply the requirements proposed in Part 258 to MSWLF units that close prior to the effective date of the final rule. Closed units are defined in § 258.2 as those units that no longer receive wastes and have a final layer of cover material. EPA believes that inclusion of closed facilities in this rulemaking would raise numerous technical, legal, and implementation complexities that could not be resolved within the time frame of this rule. For example, inclusion of closed units could overtax State implementation capabilities because identification of closed facilities would be difficult and time consuming and complicated by issues such as changes in ownership. Thus, EPA proposes that closed units be excluded from regulation at this time. The Agency is in the process of examining questions regarding closed facilities, however, and will consider further action once this effort has been completed.

According to the State Census, a reported 32,000 closed solid waste disposal facilities are located across the U.S., but EPA does not know how many of these are closed MSWLFs. In the absence of closed MSWLF regulations, these facilities, which represent potential threats to human health and the environment because of their number and because many were poorly designed and managed, may be addressed under EPA's Superfund program or by RCRA enforcement provisions for imminent hazards.

Because the Agency is concerned about closed MSWLFs, EPA today encourages each State to develop a long-term regulatory strategy to deal with these closed facilities. EPA believes that developing a closed MSWLF strategy should include at least the following steps: 1) Review of the State's legal authority to address closed facilities; 2) an inventory of closed facilities to identify the location of these facilities and to gather available information on facility age and size, waste types disposed of, and known local ground-water usage; 3) ranking of sites by the present danger to human health and the environment; 4) determination of the adequacy of the existing regulatory controls for closed sites and their ability to respond to any problems; and 5) use of the available legislative and regulatory authorities to address

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problems identified with closed sites. EPA specifically is interested in comments on Federal and State strategies that may be used in addressing these closed MSWLFs.

C. Practicable Capability

The Congressional directive to revise the existing Criteria (§ 4010 of RCRA as amended) states that EPA may consider the "practicable capability" of owners and operators of facilities that may receive HHW or SQG waste in determining what these revisions should entail. Congress recongnized that the universe of owners and operators of solid waste disposal facilities included many with limited economic and technical capabilities. For example, many MSWLFs are owned and operated by small local governments with limited resources. Development of today's proposal, therefore, included an analysis of how the "practicable capability" of owners and operators should be taken into account when setting appropriate controls for protection of human health and the environment.

The Agency believes that practicable capability encompasses both technical and economic components. The technical component includes both the availability of technology for addressing a particular problem (i.e., technical feasibility), as well as the technical capability of the owner or operator to implement that technology. The economic component refers to the economic resources available to the owner or operator to implement the revised standards.

To assist in characterizing the practicable capability of MSWLFs, EPA collected data on waste disposal, demographics, landfill size, and landfill ownership. These data indicate that most MSWLFs handle relatively small volumes of municipal solid waste (measured in tons per day). EPA estimates that 52 percent of all landfills manage less than 17.5 tons per day (TPD) and account for less than 2 percent of the waste handled by all MSWLFs. However, the largest landfills (2.6 percent of all MSWLFs) handle more than 1,125 TPD and manage 40 percent of all municipal landfill waste.

These data also clearly indicate that most MSWLFs are located in rural areas and these MSWLFs typically serve a limited number of communities relative to landfills located in more urban areas. EPA matched 1982 Census data with geographic location data (longitude and latitude coordinates) to determine whether landfills are located in low- (rural) or high- (urban) density counties. EPA estimates that 69 percent of existing landfills are in counties with population densities of fewer than 100 people per square mile, supporting the conclusion that most landfills are located in "rural" areas. In addition, EPA Facility Survey data (Ref. 36) show that, on average, only 1.8 communities share a landfill at the village or town level, but that at the city level, there are 3.8 communities per landfill.

To address the economic component of practicable capability, EPA assessed the financial capability and current spending practices of municipal governments. EPA assembled financial and demographic data from the "1982 Census of Governments" and the "1983 County and City Data Book." Based on the 1982 Census data, EPA estimates that communities typically spend less than 1 percent of their budgets on solid waste disposal. In comparison with other municipal services, costs at this level represent a very small obligation. For example, as an average percentage of total community expenditures, communities spend 36 percent on education, 5 percent on police protection, and 3 percent on sewage disposal. The 1982 Census data also were used to develop a composite score of nine various financial and economic vitality measures. This score categorizes communities' financial capabilities as weak, average, or strong. EPA used the score to assess the baseline financial condition of governments and the economic impact of various regulatory scenarios. The development and categorization of the composite score and the economic impact analysis is described in detail in Section XI of this preamble and in the draft regulatory impact analysis for today's proposal.

EPA believes that significant disruptions of solid waste management could result unless these technical and economic factors are taken into account where necessary. The Agency, therefore, examined the range of MSWLFs to determine which, if any, might be especially susceptible to technical difficulties or economic hardship. Owners and operators of two classes of MSWLFs were identified as possible candidates for consideration of practicable capability—existing MSWLF units and small MSWLFs.

EPA estimates that there are more than 6,000 MSWLFs currently in operation. Of these existing facilities, about 20 percent are expected to close before 1990 and almost 75 percent are expected to close within 15 years (Ref. 10). EPA evaluated whether requirements should be the same for these facilities as for new MSWLF units.

Regulating new and existing MSWLF units differently allows consideration of practicable capability of the existing MSWLF, although some problems at existing facilities may not be addressed if these units face less stringent requirements. Regulating new and existing units the same way, while conceptually offering greater assurance of protection, could impose very high costs, creating implementation difficulties and posing the prospect of solid waste management disruptions. Comments that EPA received prior to proposal from States, industry groups, and private firms favored different requirements for new and existing units.

Based on these considerations, EPA is proposing today to vary some requirements for new and existing landfill units. These differences fall in three major areas. First, the majority of the location restrictions proposed today would be applicable only to new landfill units (that is, units that have not received wastes prior to the effective date of the rule). EPA believes the application of today's location restrictions to existing units would result in significant disruption of solid waste management in certain areas of the country. However, existing units would be required to comply with the unstable area restrictions (§ 258.15) because the Agency believes these areas pose particular concerns for protection of human health and the environment.

Second, today's proposal does not require that existing units be retrofitted with liners and leachate collection systems. EPA believes that such a requirement would: (1) Exceed the economic capabilities of the majority of owners and operators of existing facilities, (2) present additional public health problems from the excavation of waste, and (3) disrupt existing solid waste management activities.

Third, today's proposal provides a phase-in period of 18 months for all requirements not only to allow States to put in place revised regulations, but also to provide lead time for owners and operators to comply with the new requirements. Furthermore, additional phase-in time is provided for ground-water monitoring due to the resources needed by States and owners and operators to implement this provision. Detailed discussion of the ground-water monitoring provision is provided in Section IX.E of this preamble.

In today's proposal, EPA has not varied requirements for new and existing units in cases where such requirements are equally feasible, technically and economically, at both new and existing landfill units, except existing facilities would have more time to comply with certain requirements. For

example, the operating criteria (Subpart C) and ground-water monitoring and corrective action requirements (Subpart E) are applicable equally to new and existing units, although new facilities must comply with Subpart E's ground-water monitoring requirements before they can accept wastes, while existing units may have up to five years to comply.

EPA also considered varying requirements for small MSWLFs. The Agency estimates that, of the approximately 6,000 active MSWLFs, just over half handle 17.5 TPD or less (Ref. 10). In contemplating whether to regulate small MSWLFs differently from large ones, EPA determined that practicable capability considerations did not outweigh potential health and environmental threats. Specifically, the Agency believes that size represents only one factor in determining potential risk, and that other variables, such as design and operating controls, location and climate characteristics, and waste streams, can be significant determinants of risk regardless of MSWLF size. Based on the risk assessment for this rulemaking, EPA concluded that no single factor factor is responsible for most of the variability in risk across MSWLFs; rather, there is a complex interaction among the factors that govern leachate flux and flow through the underlying aquifer (Ref. 10). As a result, EPA is not proposing any special exceptions for small MSWLFs. However, the Agency believes that today's proposal provides States adequate flexibility to address particular site-specific conditions present at MSWLFs, including small MSWLFs. In addition, the 18-month phase-in period, along with a State-specified ground-water monitoring compliance schedule, should provide owners and operators of small MSWLFs adequate time to comply with the requirements proposed today or to make other arrangements for solid waste disposal.

D. Extent of the Criteria Revisions

HSWA directs that, at a minimum the Criteria revisions require "groundwater monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate." The statute further specifies that the revised Criteria shall be "those necessary to protect human health and the environment and may take into account the practicable capability of solid waste disposal facilities." Because of EPA's mandate to protect human health and the environment, the Agency was not confined to these minimum statutory requirements (i.e., location restrictions, ground-water monitoring, and corrective action requirements) in developing today's proposal. Limiting the Criteria revisions to the statutory minimum would omit important preventive measures (e.g., gas controls) necessary for long-term protection of human health and the environment. Moreover, exceeding the mimimum reduces the reliance on detection systems for protecting human health and the environment and thus results in a higher level of protection.

Furthermore, going beyond the statutory minimum allows the Agency to consider other requirements that can prevent failures and corrective actions, even though these additional requirements may add costs for preventive measures at facilities that would not have failed and thus did not need the preventive measures; however, the Agency has taken into account the practicable capability of municipal solid waste landfills in specifying the required level of environmental controls.

During the development of these Criteria revisions, EPA received comments on whether or not the revised Criteria should exceed the statutory minimum. In general, industry advocated confining the scope of the rule to the statutory minimum. Several industry associations, however, supported an expanded scope as long as flexibility was built into the rule and site-specific factors could be considered in determining what controls should be imposed. State views were divided. Some preferred requiring the statutory minimum only, while others suggested varying subsets of additional requirements, and still others wanted comprehensive controls.

In today's action, EPA has proposed revisions that go beyond those minimally required by HSWA (i.e., location restrictions, ground-water monitoring, and corrective action). In addition to the statutory minimum, today's proposal includes an update of the design and operating criteria in the existing Part 257 Criteria, and adds new requirements for closure and post-closure care and financial responsibility. The rationale for each of these new provisions, which the Agency believes are necessary for the protection of human health and the environment, is discussed in detail later in this preamble. The Agency seeks comments on the extent of the revisions proposed today.

E. Requirements for Facilities Other Than MSWLFs

EPA is concerned about the estimated 28,000 industrial solid waste disposal facilities and 2,600 construction/demolition waste landfills, as discussed previously. However, today's proposal would limit the applicability of the revised Criteria to MSWLFs because there are insufficient data currently available to develop requirements for these other facilities. For this reason, the Agency considered the information-reporting requirements that might be appropriate for identifying and assessing the risks associated with industrial waste disposal facilities and construction/demolition waste landfills, and for determining the need for additional controls on these facilities.

EPA contemplated three information-reporting options for these facilities. The first option was a notification requirement. Notification could provide information on these solid waste disposal facilities, including data on their locations, ownership, and waste management practices. This information could be used to answer basic questions about these facilities without placing significant resource demands on the owners and operators of these affected facilities or the States. This option, however, provides no specific data on the potential environmental or human health impacts posed by these facilities.

A notification requirement with an exposure information component was the second option. Facilities would be required to supply exposure information, such as distance to the property boundary and available data on the population that could readily be exposed. This information could help EPA and the States roughly assess the potential risks currently posed by these facilities and use this information to select facilities that need more careful examination and analysis. States should use this information especially to help set priorities; however, information defining potential exposed population may be of limited utility if not backed by monitoring results indicating the extent of any releases that may be occurring.

A ground-water monitoring requirement was the third option considered by the Agency. Comprehensive ground-water monitoring data could provide a strong foundation on which to base analyses in support of rulemaking applicable to facilities other than MSWLFs. However, this effort would be resource-intensive for States and much more costly to the regulated community then simpler options. Given the diversity and size of

this universe of facilities, ground-water monitoring may not be necessary for all facilities. While ground-water monitoring could generate substantial data, EPA believes there are more cost-effective ways of establishing a data base for rulemaking. EPA believes that the risks posed by these facilities should be evaluated more closely before taking the significant step of requiring ground-water monitoring at all 28,000 industrial solid waste disposal facilities and construction/demolition waste landfills nationwide. The advantage of a strong information base is offset by the added costs and burden imposed on these facilities for monitoring and the resulting potential for exceeding the practicable capability of marginally profitable operations. Moreover, most States would have difficulty implementing the program due to the extensive resources it would require and the fact that even the basic data (e.g., location) on these facilities are very limited in many States.

Instead, EPA is contemplating a phased approach to data collection. The proposed amendment to Part 257, which is described in more detail in section VIII of this preamble, calls for a notification requirement with a limited amount of exposure information. Once these basic data are compiled and analyzed, the Agency can determine what further information requirements or regulatory controls should be pursued for industrial solid waste disposal facilities and construction/demolition waste landfills.

VIII. Amendments to Part 257

Today's proposal includes amendments to 40 CFR Part 257. These amendments include: (1) Conforming changes to Part 257 that would make it consistent with the proposed Part 258; (2) an update to the MCLs listed in Appendix I of Part 257; and (3) a notification requirement for certain types of facilities.

A. §§ 257.1–2 Conforming Changes to Part 257

Today's proposal adds municipal solid waste landfills to the list of exceptions to the Part 257 Criteria contained in § 257.1(c). Because MSWLFs would be covered by the proposed Part 258 Criteria, they would no longer be subject to the Part 257 Criteria that are generally applicable to solid waste disposal facilities and practices. The Part 257 Criteria would otherwise be unchanged with respect to their applicability, and would remain in full effect for all other facilities and practices.

Today's proposal also would add certain facility definitions to Part 257. Included are definitions of the four types of solid waste disposal facilities that would be regulated by the Part 257 Criteria: Landfills, surface impoundments, land application units, and waste piles. These new definitions would clarify that these types of solid waste disposal facilities are subject to the Part 257 Criteria.

B. §§ 257.3–4 Revisions to Ground-Water Requirements

EPA is proposing to update the MCLs, which are used as ground-water protection criteria in Part 257, to include any MCLs that have been established by EPA since the promulgation of Part 257 in 1979. Currently, Part 257 imposes basic environmental criteria for the protection of human health and the environment. At the time Part 257 was promulgated, the available interim MCLs for the protection of human drinking water were included as ground-water protection criteria. MCLs are developed by EPA under section 1412 of the Safe Drinking Water Act (SDWA), which was amended in 1986. Under the 1986 Amendments to the SDWA, EPA is mandated to promulgate drinking water regulations for a large number of constituents; these regulations generally include MCLs. Accordingly, this notice would revise the Part 257 regulations to include any new MCLs as ground-water protection criteria (including the MCLs for eight volatile organics that were promulgated on July 8, 1987; see 52 FR 25690). Because the development of MCLs is an ongoing process, EPA is proposing to simply reference the MCL regulations (40 CFR Part 141) directly, rather than update Appendix I, which now includes only the MCLs promulgated prior to 1979. Therefore, today's action proposes to eliminate Appendix I and to incorporate the MCLs by reference to 40 CFR Part 141. Using this approach, the Agency avoids the need to update the Part 257 Criteria every time EPA issues a new MCL. The public would have the opportunity to comment on whether it would be appropriate to use each new MCL as a ground-water protection standard under Part 257.

C. § 257.5 Notification and Exposure Information Requirements

The proposed amendments to Part 257 also include a notification and exposure information requirement for certain solid waste disposal facilities (§ 257.5). As discussed above, under this requirement, EPA intends to obtain notification and exposure information from a set of solid waste disposal facilities of particular concern: Industrial landfills, surface impoundments, land application units, and waste piles, as well as construction/demolition waste landfills.

As explained earlier, these facilities are of concern to the Agency because they represent a large and diverse set of solid waste disposal facilities, and little information is available on these facilities at either the State or Federal level. In addition, some of these sites may be used for disposal of SQG hazardous waste and may pose unknown risks to human health and the environment. EPA plans to undertake data collection efforts on these facilities to establish the basis for future rulemaking. Today's proposed requirement for notification and exposure information from these facilities is a first major step toward revising the current regulatory program for these facilities.

The information EPA is proposing to require from these facilities consists of two parts: Basic notification information for facility identification purposes and limited exposure information to be used to estimate potential risks posed by these facilities. The notification information is necessary because neither EPA nor the State have adequate information on these facilities to support fully revised Criteria for these facilities at this time. EPA's recent survey of the States clearly indicates the scarcity of data on industrial solid waste disposal facilities and construction/demolition waste landfills. The proposed notification requirement would provide EPA and the States the mechanism to identify the universe of facilities and, at the same time, indicate to the facilities that they are subject to Subtitle D.

The notification also would request very basic data for determining the potential risks the facilities present to human health and the environment. For example, in addition to seeking general facility information, the proposed notification includes two questions relating to the potential risks posed by the facility: The number of households within one mile of the facility, and the number of on-site monitoring wells. Information submitted in response to these risk-based questions could be used by the States in setting priorities for inspections and other activities. EPA requests comments on whether to include other risk-related questions in the proposed notification, such as questions concerning the use of local waters (ground and surface), the number of local drinking water wells, and the number of municipal water intakes downstream from the facility. In addition, EPA requests comments generally on the appropriate questions

to be included on the notification form, and whether the form should be sent to both EPA and the State.

The proposed notification and exposure information requirement is only one part of EPA's data collection efforts with respect to industrial solid waste disposal facilities. The Agency recently has completed a major telephone survey, and other efforts are under consideration, such as an in-depth mail survey, a closer examination of State regulatory programs, and collection of available ground-water monitoring data. The Agency intends to develop revised Criteria for these facilities as soon as adequate data are available to support rulemaking.

IX. Section-by-Section Analysis of Part 258

A. Subpart A—General

Subpart A discusses the purpose, scope, and applicability of the proposed Part 258. It provides definitions necessary for the proper interpretation and implementation of the rule and identifies what Federal laws are to be considered in complying with these rules.

1. § 258.1 Purpose, Scope, and Applicability

Part 258 sets forth minimum national criteria for the location, design, operation, cleanup, and closure of municipal solid waste landfills. An MSWLF that does not meet these criteria would be considered an open dump for purposes of State solid waste management planning under RCRA. Open dumping is prohibited under section 4005 of RCRA.

Part 258 would apply to all new and existing municipal solid waste landfills, as defined in § 258.2, except MSWLF units that closed prior to the effective date of the rule. As specified in § 258.2, a closed unit is any solid waste disposal unit that no longer receives solid waste and has received a final layer of cover material. As discussed in more detail later, the Agency believes that final covers are essential for closure of MSWLF units. This definition would ensure that the owner or operator cannot escape these regulations by simply refusing to accept additional waste and abandoning the MSWLF. Part 258 requirements do not apply to units that are created within the area of contamination during Superfund actions. In addition, Part 258 would not apply to other landfills, or surface impoundments, waste piles, or land application units used for solid waste disposal; these facilities will continue to be covered under Part 257.

Landfills that receive municipal waste combustion (MWC) ash regulated under Subtitle D of RCRA, including MWC ash monofills, would be considered municipal solid waste landfills for the purposes of this rule (see section IX.A.2 of today's preamble). Therefore, today's proposal applies to any Subtitle D landfill that receives MWC ash. However, legislation is currently pending in Congress which, if enacted, would require specific standards for the design of MWC ash disposal facilities which differ from today's proposed design requirements. In addition, the Agency is concerned that certain requirements proposed today may not be adequate or appropriate for MWC ash disposal facilities. For example, today's proposed air criteria do not specifically require fugitive dust controls during MWC ash transportation. Also, certain ground-water monitoring parameters (e.g., volatile organic constituents) and the methane gas controls proposed today for MSWLFs may not be appropriate for MWC ash monofills due to the characteristics of MWC ash. In addition, the proposed daily cover requirements may not be necessary at MWC ash monofills that utilize operating controls, such as the periodic application of moisture to the landfill surface. The Agency specifically requests comments on the adequacy and appropriateness of today's proposed requirements for MWC ash disposal.

In a separate effort, the Agency is developing guidance on MWC ash disposal. This guidance will provide additional information regarding the proper location, design, and operation of MWC ash disposal facilities.

2. Section 258.2 Definitions

Aquifer. EPA has defined aquifer for this proposal as a geologic formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs. This definition is the same one currently used in EPA's hazardous waste program and differs from the original Criteria definition (40 CFR 257.3–4(c)(1)) only in that it substitutes the term "significant" for "usable." The Agency has selected this definition for two reasons: First, because of several comments received on the ambiguity of the word "usable," especially with respect to resource value, and second, because the delineation of the aquifer is a site-specific determination. Some concern has been expressed, however, that this new definition also is vague and that the rule should define "significant." One possible approach would be to define "significant" as a minimum sustained yield of a certain amount (e.g., one gallon per minute); however, EPA does not have sufficient information to determine the amount of ground water that must be produced to be considered "significant" in all cases and believes, therefore, that such a determination at this time would be arbitrary. EPA believes such a determination should be site-specific and has structured the definition of aquifer accordingly. The Agency specifically requests comments on this approach to defining "aquifer."

Household Waste. Any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households is defined as a household waste. Household include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgounds, picnic grounds, and day-use recreation areas. This definition is consistent with the RCRA Subtitle C regulations found at 40 CFR 261.4.

Lateral Expansion. The Agency has defined this term to mean any horizontal expansion of the waste boundary of an existing landfill unit. Under this proposal, lateral expansions are treated as new units and must meet the requirements applicable to new units. Under this proposed definition, any area of any existing unit that has not received waste by the effective date of this rule and later receives waste, is a lateral expansion.

Liquid Waste. Liquid waste, either bulk or containerized, is defined under proposed § 258.28(c)(2) as any waste that is determined to contain free liquids according to Method 9095 (Paint Filter Liquids Test) (Ref. 42). This method has been adopted by the Subtitle C program in 40 CFR Parts 264 and 265. Because the solids content of sewage sludge is readily determined, the Agency considered using a different definition of liquids for sewage sludge from publicly owned treatment works. Under that alternative, sludges that have a solids content of 20 percent or greater would not be considered liquid. That alternative was considered inferior to the Paint Filter Liquids Test for two reasons. First, the variability of sludges may result in certain sludges meeting the 20-percent criterion and still being in a liquid state or containing free liquids. Second, the Agency believes that the Paint Filter Liquids Test is adequate to ensure that "dry" sludges will not be eliminated from disposasl at MSWLFs. However, the Agency recognizes that using a solids content measure would allow easier implementation because it is a measure commonly used by POTWs. EPA currently is conducting

research to determine if a solids content measure would be an acceptable substitute for the Paint Filter Liquids Test for municipal sewage sludges. EPA specifically requests any data that will assist in evaluating the use of a solids content measure for purposes of this rule.

Municipal Solid Waste Landfill. A municipal solid waste landfill is defined as any new or existing landfill or landfill unit that receives household waste. These may be publicly or privately owned. Landfills owned by municipalities that do not accept household waste are not MSWLFs. MSWLFs also may accept other types of Subtitle D wastes, such as commerical waste, nonhazardous POTW sewage sludge, construction/demolition waste, and industrial solid waste. (Units that accept only these wastes will be addressed in future rulemaking activities.) For example, a unit that receives primarily construction/demolition waste, but also receives some household waste, is an MSWLF under this rule. This definition does not include landfills regulated as hazardous waste units under Subtitle C of RCRA and is not meant to capture industrial solid wate landfills that may receive office, sanitary, or cafeteria wastes generated at the site. Finally, the definition of MSWLFs includes any landfill that receives MWC ash including ash monofills (i.e., landfills that receive only ash from MWC facilities) to the extent that MWC ash is generated from the combustion of household waste alone or in combination with other nonhazardous wastes.

3. § 253.3 Consideration of Other Federal Laws

Section 258.3 provides that the owner or operator of an MSWLF unit must comply with any other applicable Federal laws, regulations or requirements. There are numerous other Federal laws that must be considered in siting, designing, and operating MSWLFs. The owner or operator is responsible for ensuring that the requirements of all applicable statutes and regulations, as well as any other requirements, are met. Applicable statutes include, but are not limited to, the following:

- National Historical Preservation Act of 1966, as amended.
- Endangered Species Act.
- Coastal Zone Management Act.
- Wild and Scenic Rivers Act.
- Fish and Wildlife Coordination Act.
- Clean Water Act.
- Clean Air Act.
- Toxic Substances Control Act.

B. Subpart B—Location Restrictions

EPA has identified six types of locations that require special restrictions: sites in the vicinity of airports, 100-year floodplains, wetlands, fault areas, seismic impact zones, and unstable areas. Restrictions for sites near airports and floodplains are included in the original Part 257 Criteria. EPA is proposing to add to the revised Criteria restrictions on siting in wetlands, fault areas, unstable areas, and seismic impact zones because, as discussed below, EPA believes that the additional information that has been developed and reviewed since promulgation of the current Part 257 Criteria supports the need for additional controls in these locations. References to "new MSWLFs" in this section and throughout this preamble refer to new units, as well as to lateral expansions of existing units.

1. Section 258.10 Airport Safety

Under today's proposal, new and existing MSWLFs located within the distance limits specified in Federal Aviation Administration (FAA) Order 5200.5 (10,000 feet for airports handling turbojets and 5,000 feet for airports handling piston-type aircraft) may not pose a bird hazard to aircraft. The proposed requirement is identical to the current § 257.3–8 and is included because MSWLFs receive putreacible wastes that can attract birds despite controls such as daily cover. When solid wastes are disposed of near airports, the birds attracted to the area can present a significant risk of collisions with aircraft. The FAA Order 5200.05, "FAA Guidance Concerning Sanitary Landfills on or Near Airports" (October 16, 1974) states that solid waste disposal facilities have been found by study and observation to be attractive to birds and, therefore, "may be incompatible with safe flight operations" when located near an airport. The background document relevant to this section (Ref. 2) discusses instances of damage resulting from bird strikes that have occurred near landfills.

The distances derived from Order 5200.5 are based on the fact that over 62 percent of all bird strikes occur below altitudes of 500 feet (150 meters) and that aircraft generally are below this altitude within the distances specified.

EPA wishes to make it clear that the "bird hazard" of concern is "an increase in the likelihood of bird/aircraft collisions." Thus, EPA expects that solid waste disposal within the specified distances would occur only if the operation can be managed in such a way as to not increase the risk of collision within the specified distances. EPA recommends that owners and operators of MSWLFs consult with the Fish and Wildlife Service to determine whether specific facilities pose a bird hazard to aircraft. Where appropriate, this determination should be made in consultation with FAA, as well as with the owners and operators of the airports of concern.

2. Section 258.11 Floodplains

EPA proposes to include a floodplain requirement in Part 258 that is identical to the requirement in the current Part 257 Criteria. Thus, EPA is proposing that new and existing MSWLFs located in the 100-year floodplain shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in the washout of solid waste so as to pose a hazard to human health and the environment. The Agency's thinking today is consistent with the rationale for the original Criteria, as discussed in 44 FR 53438, dated September 13, 1979. Namely, disposal of solid waste in floodplains may have significant adverse impacts: (1) If not adequately protected from washout, wastes may be carried by flood waters and flow from the site, affecting downstream water quality; (2) filling in the floodplains may restrict the flow of flood waters, causing greater flooding upstream; and (3) filling in the floodplain my reduce the size and effectiveness of the temporary water storage capacity of the floodplain, which may cause a more rapid movement of flood waters downstream, resulting in higher flood levels and greater flood damages downstream. For these reasons, EPA believes that it is desirable to locate disposal facilities outside floodplains. EPA estimates that 14 percent of all existing MSWLFs are located in 100-year floodplains. The Agency made this estimate by mapping MSWLFs nationwide and determining how many MSWLFs fell in areas mapped as floodplains. Case studies, discussed in the background document for this section (Ref. 2), indicate that landfills are subject to design and operational failures as a result of flooding.

Today's proposal would require that new and existing MSWLFs, if located in a 100-year floodplain, be designed and operated to prevent the adverse effects described above. EPA recognizes that locating MSWLFs in floodplains can be expected to have some impact on the flow of the 100-year flood and water storage capacity, regardless of precautions taken. The intent of today's proposed requirement is to require that

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MSWLFs not cause significant impacts on the 100-year flood flow and water storage capacity. Site-specific information should be used to evalute whether a facility has met this standard.

Consistent with the original Criteria, Part 258 as proposed today would define the floodplain using the 100-year flood level. This criterion would limit the chance for site inundation and increased flood levels and damages. The intent of this criterion is the same for Part 258 as it was for the original Criteria: (1) To require an assessment of any new or existing disposal site or expansion of any existing site in a floodplain to determine the potential impact of the disposal site on downstream and upstream waters and land; (2) to prohibit such disposal activities if the site, as designed, may cause increased flooding during the 100-year flood; and (3) if the disposal site is located in a floodplain, to require the use of available technologies and methods to protect against inundation by the base flood and minimize potential for adverse effects on water quality and on the flood-flow capacity of the floodplain.

This approach conforms with the intent of Executive Order 11988, dated May 24, 1977, concerning floodplain management. Federal agencies are required to comply with this Executive Order, and State agencies are encouraged to develop and apply similar policies and to consider the provisions of the Unified National Program for Floodplain Management of the Water Resources Council in formulating and applying State policies.

In order to determine whether a unit is located in the 100-year floodplain, owners and operators should use flood insurance rate maps (FIRMs) developed by the Federal Emergency Management Agency (FEMA) under the Federal Insurance Administration (FIA) pursuant to the National Flood Insurance Act of 1986. FEMA has developed FIRMs for approximately 99 percent of the flood-prone communities in the United States. FIRMs can be obtained at no cost from the FEMA Flood Map Distribution Center, 6930 (A–F) San Tomas Road, Baltimore, Maryland, 21227–6227. In areas of the country where FIRMs are not available, there are numerous other sources of floodplains maps, which include: The U.S. Army Corps of Engineers, the Soil Conservation Service, the National Oceanic and Atmospheric Administration, the U.S. Geologic Survey, the Bureau of Land Management, the Bureau of Reclamation, the Tennessee Valley Authority, and State and local flood control agencies or other departments. When floodplains maps cannot be obtained from any of these sources, the owner or operator, with the assistance of a qualified professional firm, can determine flood-flow frequency using Water Resources Council Bulletin Number 17A (1977), Guidelines for Determining Flood-Flow Frequency.

EPA is requesting information on the problems associated with locating facilities in areas subject to frequent flooding (e.g., in five- or ten-year floodplains). The Agency is concerned about locating facilities in such areas because EPA believes that frequent flooding may result in erosion, undermining, and eventual washout of the facility. Engineered systems for preventing such occurrences, therefore, would be subject to frequent maintenance. EPA's existing Subtitle C regulations allow facilities in a 100-year floodplain if precautions to prevent washout have been taken similar to today's proposal. However, the Agency currently is considering revisions to its Subtitle C requirements for locating hazardous waste facilities in floodplains. A ban on MSWLFs in areas subject to frequent flooding could affect large portions of the nation, including the majority of some States, and, thus, could strain the regulated community's ability to provide adequate disposal capacity for municipal solid waste in those areas. Therefore, a total ban on siting in floodplains for Subtitle D is not deemed appropriate. The Agency is requesting comment on locating facilities in areas of frequent flooding.

3. Section 258.12 Wetlands

Today's proposal includes provisions that no new MSWLF units can be placed in wetlands unless the owner or operator makes specific demonstrations to the State that the new unit: (1) Will not result in "significant degradation" of the wetlands as defined in the CWA section 404(b)(1) guidelines, published at 40 CFR Part 230, and (2) will meet other requirements derived from the section 404(b)(1) guidelines. Existing facilities that are located in wetlands could continue to operate.

EPA believes that these stringent restrictions are necessary to protect human health and the environment because of the potential damage caused by siting MSWLFs in wetlands. The background document to the rule describes the threats posed when MSWLFs are located in wetlands (Ref. 2). Moreover, within recent years the Agency has identified wetlands protection as a top priority, specifying aggressive implementation of the Clean Water Act section 404 program, increased coordination with and consistency of Federal and State policies, and other measures as may be necessary. To this end, the Agency considers today's proposed action as essential measure for protecting wetland resources.

Today's proposed action is based on existing Agency wetland policy as expressed in the 40 CFR Part 230 guidelines; Executive Order No. 11990, Protection of Wetlands; and the January 23, 1986, Memorandum of Agreement (MOA) between EPA and the Army Corps of Engineers, which addresses the disposal of solid waste in wetlands under RCRA. The 1986 MOA represents an interim arrangement for controlling solid waste disposal in waters of the U.S., including wetlands. In the long term, the expanded RCRA solid waste regulations proposed herein will help play a key role in protecting wetlands from the unregulated disposal of waste materials.

EPA's Part 230 guidelines are the regulations that specify the analytical tools and environmental criteria to be used when determining whether to issue Clean Water Act section 404 permits for proposed discharges of dredged or fill material in waters of the United States, which include most wetlands. To be consistent with the Act, the provisions proposed today in § 258.12 adopt the definition of wetlands contained in the Army Corps of Engineers (the Corps) section 404 implementing regulations (33 CFR Parts 320 through 330) and the EPA section 404(b)(1) guidelines (40 CFR Part 230). EPA believes that consistency with this definition will aid in implementing the MSWLF provisions. As defined by EPA and the Corps, wetlands are those "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalance of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas."

Today's proposed action adopts the four major requirements of the guidelines: (1) The practicable alternatives test, (2) lack of significant degradation; (3) compliance with other applicable laws, and (4) minimization of adverse effects. The guiding precept of the guidelines is that discharges into wetlands should not be allowed unless the owner or operator can demonstrate that such discharges: (1) Are unavoidable, i.e., there are no practicable alternatives to discharging in wetlands; and (2) will not cause or contribute to significant degradation of

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wetlands. In particular, the guidelines identify filling operations in wetlands as among the most severe environmental impacts covered. For this reason, EPA believes that these guidelines should be used to provide the basis for today's proposal. Moreover, these guidelines are in keeping with Agency policy of maintaining consistency among different EPA programs.

The guidelines in § 230.10(a) state that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge would less adversely impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." An alternative is practicable if it is: (1) Available and (2) feasible, i.e., capable of satisfying the basic or overall purpose of the proposed project, taking cost, logistics, and technology into consideration. For activities that are not water-dependent, i.e., do not require access or proximity to wetlands to fulfill their basic purpose, the guidelines further provide that: (1) Practicable alternatives that do not involve wetlands are presumed to be available, unless clearly demonstrated otherwise; and (2) where a discharge is proposed for a wetland, all practicable alternatives that do not involve a discharge to a wetland are presumed to have a less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise. Both of these rebuttable presumptions place a burden on the permit applicant to demonstrate that no practicable alternatives exist.

In addition to the practicable alternatives test, the guidelines also require that "no discharge of dredged or fill material shall be permitted which would cause or contribute to significant degradation of the waters of the United States," including wetlands (40 CFR 230.10(c)). Under the guidelines, effects contributing to significant degradation considered individually or cumulatively include significant adverse effect on: (1) Human health or welfare; (2) life stages of aquatic life and other wetland-dependent wildlife; (3) aquatic ecosystem diversity, productivity, and stability, e.g., a wetland's capacity to assimilate nutrients, purify water, or reduce wave energy, and (4) recreational, aesthetic, and economic values.

Third, § 230.109(c) of the guidelines states that a discharge of dredged or fill material shall not be permitted if it: (1) Causes or contributes to violations of any State water quality standards; (2) violates applicable toxic effluent standards or other Clean Water Act Section 307 standards; (3) jeopardizes species or habitat protected under the Endangered Species Act; or (4) violates any requirement imposed by the Secretary of Commerce to protect marine sanctuaries under the Marine Protection, Research, and Sanctuaries Act.

Moreover, the guidelines provide that a permit should not be issued unless appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge into wetlands (40 CFR 230.10(d)). Subpart H of the guidelines lists examples of the many types of actions that can be undertaken to minimize the adverse effects of discharges of dredged or fill material.

Because construction of a new landfill essentially is a filling operation, it destroys the wetland, which generally cannot be restored due to the complexities and fragility of the ecosystem. EPA also believes that it is essential to preserve the ecological function of the remaining wetland at an existing facility. Thus, unless the owner or operator can make the demonstration specified in § 258.12(a), new facilities and lateral expansions of existing facilities into wetlands are banned. This demonstration is similar to those established by EPA in the section 404(b)(1) guidelines at 40 CFR 230.10. The importance of these demonstrations is discussed below.

With regard to an owner or operator who wishes to site a new facility or expand an existing facility in wetlands, today's proposal essentially adopts the restrictions on discharges contained in § 230.10 of the guidelines and requires them in the form of prior demonstrations to be made to the State. Failure to make any of the following demonstrations will bar the MSWLF from being sited in a wetlands.

First, the MSWLF owner or operator must consider and evaluate alternative sites outside of wetlands and demonstrate that no environmentally acceptable "practicable alternative" is available. As discussed above, § 230.10(a) of the guidelines provides guidance on the meaning of the term "practicable alternatives." Since a landfill is not a water-dependent activity, the guidelines presume that: (1) Alternatives that do not involve locating MSWLFs in wetlands are available, and (2) such alternatives have a less adverse impact on the aquatic ecosystem. These presumptions make the alternatives analysis a rigorous test for the MSWLF owner or operator to meet.

Second, the MSWLF owner or operator must demonstrate that siting the landfill in the wetland will not cause or contribute to "significant degradation" of the wetlands, as defined in 40 CFR 230.10(b). Third, the owner or operator must ensure that siting in the wetlands does not violate any provisions of the applicable laws specified in § 230.10(c).

Fourth, the MSWLF owner or operator must demonstrate that, if the MSWLF is sited in the wetland after satisfying 40 CFR 230.10 (a), (b), and (c), appropriate and practicable steps have been taken to minimize potential adverse impacts of the MSWLF on the wetlands. These may include careful decisions with respect to the solid waste to be disposed of, any protective technology employed, attention to plant and animal populations, and measures that mitigate unavoidable impacts on wetland values. The guidelines identify a number of possible measures.

Finally, the owner or operator must show that sufficient information is available for making reasonable determinations with respect to these demonstrations; otherwise, the owner or operator cannot make the demonstrations necessary to qualify for the waiver to the ban. This last requirement places the burden for making the required demonstrations squarely on the MSWLF owner or operator.

EPA recognizes the burden that these requirements place on the MSWLF owner or operator who wishes to site a new facility, or expand an existing one, in wetlands. EPA believes, however, that the nation's wetlands are sensitive ecosystems that merit the protection afforded by these requirements. For this reason, the Agency proposes that no new MSWLFs (including internal expansions of existing MSWLFs) should be located in wetlands unless the MSWLFs meet the stringent waiver requirements. Comments are requested on the proposed ban and on the demonstration Criteria for the waiver.

Since the EPA section 404(b)(1) guidelines are prospective in nature, they do not address, or apply to, the question of existing facilities located in wetlands. The issue is whether, and to what extent, the revised Criteria should prohibit or otherwise restrict the operation of existing MSWLFs.

EPA recognizes that requiring existing MSWLFs in wetlands to close would not generally restore the ecological function of the wetland. Further, requiring existing units in wetlands to close would adversely imapct waste disposal capacity. EPA estimates that approximately 6 percent of all MSWLFs are in wetlands. This estimate was

developed by correlating maps of wetland areas with MSWLF locations. The Agency welcomes additional data that commenters may wish to supply concerning the number of MSWLFs sited in wetlands.

In developing the wetlands requirements for this proposal, EPA sought to balance the need to protect the fragile ecosystem with the practicable capability of owners and operators of MSWLFs. EPA recognizes that in some parts of the country, large areas fall within the definition of wetland. In these areas, a ban on the maintenance of existing facilities in wetlands could have great detrimental effects on waste management in communities and could possibly encourage inadequate alternatives to be implemented.

For existing facilities, EPA is not proposing to require closure and/or removal of waste. The existing Subtitle C standards do not specifically address wetlands, but the Agency intends to propose revisions to these standards in the future. The Agency believes that closure and/or removal of waste is not viable for MSWLFs located in or adjacent to wetlands because this approach would result in significant impacts on disposal capacity and cause major disruptions in current municipal solid waste management. There would be reduced capacity if MSWLFs located in wetlands were required to close and siting of MSWLFs in those States where large areas are included under the definition of wetlands would be substantially hindered. The Agency believes the approach proposed today for existing MSWLFs in wetlands properly considers disposal capacity concerns and the practicable capability of MSWLF owners and operators.

4. Section 258.13 Fault Areas

EPA proposes to ban the siting of new units of MSWLFs in locations within 60 meters (200 feet) of faults that have had displacement in Holocene time. (The Holocene is a geologic time unit, known as an epoch, that extends from the end of the Pleistocene to the present and includes approximately the last 11,000 years.) This requirement would be consistent with the existing location standard for hazardous waste facilities under Subtitle C; EPA has concluded that it is appropriate to impose the same requirement on MSWLFs because EPA believes that faults also may adversely affect the structural integrity of MSWLFs.

Earthquakes present a threat to public safety and welfare in a significant portion of the United States. Damage and loss of life in earthquakes occur as a result of surface displacement along faults (surface faulting) and ground motion (shaking), as well as secondary effects of the shaking such as ground or soil failure. Today's proposed standard is designed to protect facilities from deformation (i.e., bending and warping of the earth's surface) and displacement (i.e., the relative movement of any two sides of a fault measured in any direction) of the earth's surface that occur when the fault moves. The best protection for MSWLFs is to avoid faults subject to displacement and the zone of deformation.

The Agency is not proposing a standard for existing MSWLFs located over faults. EPA considered requiring existing units located over faults to close over a period of time; however, insufficient information exists that would justify the closure of these units. EPA requests comment on this issue.

The effects of deformation drop off rapidly as distance from the fault increases. Since the greatest degree of deformation occurs along the fault with the greatest displacement (usually the main fault), the farther away the MSWLF is from the main fault, the less likely it will be affected by deformation. Studies of main fault traces (i.e., faults that had most displacement in an area) suggest that most deformation occurs within 60 to 90 meters of faults that have had displacement in Holocene time. Since the 60-meter setback is measured from any fault, not just the main fault trace, EPA believes that a 60-meter distance from any Holocene fault (surface or subsurface) would provide ample protection against the effects of deformation. If a facility is located near a fault, containment structures (liners, leachate collection systems, and final covers) may be inadequate to prevent release of solid waste and hazardous constituents during an earthquake. Outside of this zone, ground motion will be less severe, and containment structures designed to withstand ground motion, as specified in § 258.14 (described below), should be adequate to protect human health and the environment.

Holocene faults are faults that either were created or experienced displacement in Holocene time. The faults are a concern because the geologic evidence indicates that faults that have been moved in recent times, i.e., during Holocene time, are the ones most likely to move in the future. Faults that have had displacement in Holocene time are easier to identify and date in the field than older faults because this epoch produced recognizable geological deposits, and erosion and deposition surfaces. These faults are identifiable by fault scarps, offset streams, mole tracks, furrows, and fault traces on young surfaces with ground-water barriers marked by spring alignments and vegetation contrasts.

EPA's definition of "fault" is intended to include main, branch, or secondary faults. This definition would include both faults that appear at the surface and those that do not have surface expression (including the small fault planes associated with surface faults). Because only faults that have experienced displacement in Holocene time are of concern in this standard, a subsurface or surface fault that has not disturbed the Holocene deposits is not included in the definition.

In some areas of the country, Holocene deposits and landforms are scarce, such as areas where glacial activity has stripped the surficial ground cover and left highly resistant rock, so inspection of Holocene deposits and landforms will not yield enough evidence to conclusively determine whether there has been recent faulting activity. In these situations, reference to seismic epicenter plots and historic records may be needed, and identification and close examination of possible fault-related features expressed in Pleistocene and older deposits may be necessary as well.

In 1978, the U.S. Geological Survey mapped the location of Holocene faults in the United States (Ref. 2). Maps of identified Holocene faults in the United States also are available from the States of California and Nevada. Based on these maps and maps of MSWLFs, EPA estimates that 35 percent of all MSWLFs are in counties that contain faults that have been active in the Holocene, putting a large number of MSWLFs in potentially threatened areas. However, the Agency does not have data showing how close landfills located in these counties are to the active faults.

The current Subtitle C regulations for hazardous waste facilities have the same location restriction being proposed in today's rulemaking. The Agency believes that this standard also is appropriate for MSWLFs because faults also present concerns relating to failure of containment structures for MSWLFs. In addition, the Agency believes that a similar ban is within the practicable capability of new MSWLFs because the area of the nation within 60 meters from a Holocene fault, i.e., the banned area, is limited. EPA requests comment on both the general concept of a location restriction based on fault areas and the specific 60-meter setback requirement.

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5. Section 258.14 Seismic Impact Zones

Today's proposal would require the owner or operator of a new MSWLF unit in a seismic impact zone to design the unit to resist the maximum horizontal acceleration in hard rock at the site. Seismic impact zones are defined as areas having a 10 percent or greater probability that the maximum expected horizontal acceleration in hard rock, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

The National Oceanic and Atmospheric Administration and others have documented structural damages resulting from earthquakes. The potential for damage to MSWLFs from earthquakes can be deduced from similar structures damaged by earthquakes. Such damage includes cracks in foundations and complete collapse of structures. EPA believes that the adverse impact of siting MSWLFs in seismic areas justifies the need for a comprehensive standard to prevent releases from these facilities. Types of failure that may result from ground motion are: (1) Failure of structures from ground shaking; (2) failure of unit components due to soil liquefaction, liquefaction-induced settlement and landsliding, and soil slope failure in foundations and embankments; and (3) landsliding and collapse of surrounding structures. The background document supporting this section of the rule (Ref. 2) provides examples of the potential adverse effects on MSWLFs that may occur in seismic impact zones. The Agency believes that these failures may result in contamination of air, ground water, surface water, and soil. Therefore, in order to protect human health and the environment, all containment structures, including any liners, leachate collection systems, and surface water control systems at new MSWLFs, must be designed to withstand the stresses created by peak ground acceleration at the site from the maximum earthquake based on regional studies and site-specific analyses.

The Agency's proposed requirement translates to a 4-percent probability of exceeding the maximum horizontal acceleration in 100 years. The Agency believes that the areas affected by the proposed "seismic impact zone" requirement represent the areas of the United States with the greatest seismic risk, and, therefore, this proposal would be protective of human health and the environment.

The proposed performance requirement would minimize the risk of slope and liner failure due to seismic activity. By minimizing the risk of failure of the landfill slopes, the potential for exposure of solid waste to the atmosphere and the possible contamination of run-off by contacting exposed solid waste also would be reduced. The Agency further believes that today's proposal would reduce the potential for contamination of ground water beneath the landfill resulting from failure of a liner.

Although § 258.13 of today's proposal would prohibit siting new units on or adjacent to active Holocene faults (faults that have had displacement in Holocene time) to protect against releases of wastes from facility failure due to fault rupture, this standard does not address damage that may occur as a result of earthquake-induced ground motion. Studies indicate that ground motion is more important as a failure mechanism than fault rupture, and not all earthquakes are manifested by surface faulting (Ref. 2). Ground motion resulting from earthquakes without associated surface faulting has been found in some cases to be two or three times that associated with quakes with faulting.

Maps depicting the potential seismic activity across the United States at a constant-probability level have been prepared (U.S. Geological Survey Open-File Report 82–1033). The maps indicate that certain portions of the country are at a higher level of seismic hazard than other areas. For example, portions of the eastern U.S., although not subject to frequent earthquakes, are at a higher level of seismic hazard than portions of the western U.S.

The process of designing earthquake-resistant components may be divided into three steps: (1) Determining expected peak ground acceleration at the site from the maximum quake, based on regional studies and site-specific seismic risk analysis; (2) determining site-specific seismic hazards (e.g., soil liquefaction); and (3) designing the facility to withstand peak ground accelerations. Various methods for accomplishing the above steps are available. Methods appropriate to individual MSWLFs should be selected by the owner or operator, subject to State approval.

While the existing Part 257 Criteria and current Subtitle C requirements do not address seismic impact zones, additional location restrictions for hazardous waste disposal facilities under Subtitle C of RCRA are being developed, and a standard consistent with today's proposal is being considered. The Agency believes that this standard is appropriate for MSWLFs because the concerns relating to failure of containment structures are the same for any landfill regardless of waste type. The Agency requests comment on the approach proposed today.

6. Section 258.15 Unstable Areas

EPA is proposing to require owners and operators of new and existing MSWLF units located in unstable areas to demonstrate to the State the structural stability of the unit. This demonstration must show that engineering measures have been incorporated into the design of the unit to mitigate the potential adverse impacts on the structural components of the unit that may result from destabilizing events.

Structural components include liners, leachate collection systems, final covers, and run-on and run-off collection systems. Facilities located in unstable areas may require extensive repairs and/or corrective action following the occurrence of a natural or human-induced destabilizing event. EPA has reviewed documented events that illustrate the problems of locating waste management units in unstable areas (Ref. 2). The impacts resulting from natural or human-induced destabilizing events observed include rapid dispersion of contaminants over a large area, contamination of municipal water supplies, and seepage of contaminants into basements.

EPA is proposing to define an unstable area as a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of the landfill structural components responsible for preventing releases. These areas could include: (1) Subsidence-prone areas, such as areas subject to the lowering or collapse of the land surface either locally or over broad regional areas; (2) areas susceptible to mass movement where the downslope movement of soil and rock under gravitational influence occurs; (3) weak and unstable soils, such as soils that lose their ability to support foundations as a result of expansion or shrinkage; and (4) Karst terrains, which are areas where solution cavities and caverns develop in limestone or dolomitic materials.

National maps are available that locate Karst terrains and landslide-susceptible areas, but weak and unstable soils and subsidence-prone areas appear to be mapped only individually or at the local level. Thus, identification of existing MSWLFs in these unstable areas, and determination of whether the proposed site of a new MSWLF is in an unstable area, would

take place on a case-by-case basis where geographic delineation of these areas is not available on a national scale.

A detailed description and discussion of each of the types of unstable areas identified is contained in a background document (Ref. 2) and a brief summary of each type and the potential threats to MSWLFs follow.

Subsidence-prone areas are those subject to surface subsidence because of natural subsurface conditions, such as Karst formations, or human-made subsurface activities, such as fluid withdrawal or mining. Subsidence at a facility can result in rupture, deformation, or other damage to liners or final covers that may release waste directly into the environment.

Areas susceptible to mass movements include areas with evidence of ongoing slope failure; areas where a small increase in shear stress or a small decrease in shear strength might cause slope failure; areas where geologically similar locations in the same general areas have failed; and areas in the vicinity of pre-existing slope failures. Susceptibility to mass movement is determined from geotechnical and geologic studies.

"Mass movement" covers a variety of slope failures and rapid movement of materials downslope by gravitational influences including landslides, avalanches, flows, creeps, solifluction, block sliding, or a combination of these. Mass movements are caused by imbalances between the forces of gravity (shear stress) acting on the mass of soil or rock composing the slope and the shear strength of the mass. Human activity and natural events can increase the shear stress acting on the mass and/or reduce the mass' shear strength, thereby causing failure. Human-induced causes of mass movement include, but are not limited to, construction operations, seepage from human-made sources of water, and stormwater drainage. Naturally occurring slope failures may be caused by large volumes of water from intense rains or melting snows, vibrations and shock waves generated by earthquakes, frost and freeze/thaw cycles, or intense drying of soils. Mass movements, whether naturally occurring or induced, can carry a facility downslope, rupture a facility in place, or destroy facility control and monitoring systems.

Weak and unstable soils include unconsolidated deposits subject to differential and excessive settlement. This movement under and around a facility can tear liners, rupture dikes, render leachate collection systems inoperable, and possibly alter the ground-water flow.

Karst terrains are areas underlain by limestone and dolomite and often are characterized by extensive solution cavities, sinkholes, and fractures. Sinkhole formation, which may occur in certain types of Karst terrains, can cause rupture of unit liners and covers and can result in collapse of the facility. Karst terrains also promote more rapid movement of leachate from the landfill due to extensive fractures and secondary porosity. Based on map overlays of Karst areas and MSWLF locations, EPA estimates that 4-percent of all existing MSWLFs are in Karst terrain; however, not all Karst terrains would be considered unstable under today's proposal.

Under the proposed requirement, the owner or operator of a new MSWLF must determine, and demonstrate to the State, that the proposed site is not subject to any of these destabilizing events. This demonstration should be maintained in the facility file by the owner or operator as part of the permit application. The following factors should be considered in determining whether an area is unstable: (1) Soil conditions that may result in significant differential settling resulting in damage and failure of dikes, berms, or containment structures (for example, the presence of expansive clays that expand when wet and shrink when dry); (2) geologic or geomorphologic features such as mass-movement-prone areas, Karst terrains, or fissures that may result in sudden or nonsudden ground movement and subsequent failure of dikes, berms, or containment structures; (3) human-induced features or events (both surface and subsurface) such as areas of extensive withdrawal of oil, gas, or water from subsurface formations or construction operations that may result in sudden or nonsudden ground movement and subsequent failure of dikes, berms, or containment structures; and (4) any other features that historically indicate that a natural or human-induced event may impair the engineered structures of the unit and for which protective measures cannot be designed to withstand the event, such as volcanic activity areas.

EPA is proposing to require this case-by-case determination of instability because of the difficulty of clearly delineating unstable areas on a broad scale. EPA believes that case-by-case decisionmaking allows the soundest analysis under the circumstances. Subtitle C currently does not address unstable areas; however, the Subtitle C rules are being reviewed and standards consistent with today's proposal are being considered. EPA believes that today's standard is appropriate for MSWLFs because the concerns relating to failure of containment structures are the same for any landfill regardless of waste type.

Because failure of existing units as a result of destabilizing events in unstable areas poses potential threats to human health and the environment, the Agency is proposing that units that cannot make the structural stability demonstration be closed over time. In EPA's view, continued operation of such units would only increase the possible contaminant loading on the environment in the event of failure. In recognition of the practicable capability of the owner or operator to secure a replacement site, EPA is proposing that existing units in unstable areas close within five years of the effective date of the rule. Upon closure, the owner or operator of these facilities would not be required to remove the waste from the unit because removal of the wastes involves certain risks, and EPA believes removal of the wastes would be a great burden and expense to owners and operators and would exceed the practicable capability of the regulated community.

EPA has selected five years as a phase-out period based upon the belief that five years is adequate time for proper facility closure and for siting and construction of a new facility in an acceptable location. The activities that EPA expects to occur during this period include hydrogeologic investigations and site selection, land acquisition, and design, permitting, and construction of the new facility. The Agency is unable to estimate the number of facilities that would be affected by this requirement. EPA requests comments on the concept of a phase-out period, the appropriate length of the phase-out period, and the number of facilities affected.

EPA recognizes that, in some cases, it may not be possible to find a suitable site and construct a replacement MSWLF within five years. To address this situation, EPA also is proposing a variance to the required phase-out that would allow the State to extend (but not waive) the five-year period if no "practicable alternative" is available and if the existing MSWLF unit will not pose a substantial risk to human health and the environment. The Agency believes this variance is appropriate and justifiable under section 4010 of RCRA, which allows EPA to consider the "practicable capability" of facilities to comply with the Criteria. The variance would allow for State flexibility to determine the length of the time extension and to require any interim

controls necessary to protect human health and the environment. During the extension period, the owner or operator would be responsible for meeting all other applicable requirements in today's proposal.

In deciding whether to grant a variance, EPA would expect the State to consider whether (1) it currently is not economically feasible to find, develop, and operate a new site; (2) it currently is not logistically feasible to locate a new MSWLF in a more suitable area (e.g., the only suitable property is already developed or is located too far from collection centers); or (3) legal barriers exist to the siting, acquisition, or operation of the landfill in suitable areas (e.g., jurisdictional restrictions do not allow wastes from one municipality to be disposed of in the jurisdiction of another). If such conditions exist, and the risks associated with continued operation during the extended period of time do not pose undue threats to human health and the environment, a variance may be appropriate. A specific risk level is not being proposed because the Agency believes that such a decision is best left to the States, who must weigh the various alternatives.

The Agency recognizes that States may interpret the above criteria in various ways, and that decisions may be based on site-specific conditions. The Agency believes that this is appropriate, since the States are in a better position than EPA to determine whether a specific facility should be granted an extension.

Although it may be difficult to site a new MSWLF within the proposed five-year period, EPA does not intend that States grant unlimited time extensions to units located in unstable areas. Various alternatives, such as regionalization of disposal facilities, recycling and source reduction, municipal waste combustion (i.e., incineration), and the use of transfer stations, are available to manage wastes. These alternatives can be used to overcome environmental, logistical, legal, or economic barriers to siting new landfills.

EPA requests comments on whether other location restrictions such as these or others in addition to those proposed today should be imposed for MSWLFs.

C. Subpart C—Operating Criteria

The requirements of this Subpart would apply to all new and existing MSWLFs. These requirements address day-to-day activities, such as application of daily cover (necessary to reduce immediate threats to public health), and long-term activities, such as post-closure care (necessary to minimize or eliminate the possibility of the release of contaminants to the environment).

1. Section 258.20 Procedures for Excluding the Receipt of Hazardous Waste

Section 258.20 of today's proposal would require the owner or operator of an MSWLF to implement a program to detect and prevent attempts to dispose of hazardous wastes (regulated under Subtitle C of RCRA) and PCB wastes at the facility (regulated under the Toxic Substances Control Act). EPA does not intend for this regulation to limit the legal disposal in MSWLFs of very small quantity generator (VSQG) hazardous waste (hazardous waste generated at a rate of less than 100 kg per month), certain wastes containing PCBs at concentrations less than 50 ppm, and empty pesticide containers that have been properly rinsed in accordance with the label instructions as specified under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and regulations in 40 CFR Part 165. Today's proposal also does not restrict the disposal in MSWLFs of HHW, which is exempt from EPA's hazardous waste rules; however, the Agency strongly endorses HHW collection programs and recommends the management of collected HHW in hazardous waste management facilities.

With regard to the disposal of PCBs, regulations promulgated under the Toxic Substance Control Act (TSCA) specify MSWLF disposal as proper for limited categories of PCB materials. Such materials include drained PCB-contaminated electrical equipment (i.e., equipment that formerly contained 50 to 500 ppm of PCBs in dielectric fluids), drained hydraulic and heat transfer equipment, and "PCB articles" (see 40 CFR 761.3 and 761.60(b)(5)) that previously contained 50 to 500 ppm of PCBs and that have been drained of free-flowing liquids. Most significantly, TSCA disposal regulations generally allow the disposal in MSWLFs of "small capacitors" that contain less than three pounds of PCB dielectric. These small capacitors frequently are found in fluorescent light ballasts, high-intensity discharge lighting power supplies, and a variety of consumer appliances, such as microwave ovens and air conditioners.

Measures that MSWLF owners and operators must incorporate in their programs to exclude receipt of hazardous waste include, at a minimum, random inspections of incoming loads, inspection of suspicious loads, recordkeeping of inspection results, training of personnel to recognize hazardous waste, and procedures for notifying the proper State authorities if a regulated hazardous waste is found at the facility. The State may require additional program elements.

The random load checking program is a crucial deterrent to illegal disposal. Such a program might include designation of an inspector to examine several random loads throughout facility operations. The loads could be discharged at a designated location separate from landfilling operations, broken down with hand tools, and visually inspected for indications that suspicious containers may hold Subtitle C hazardous wastes. The rule could require that records be kept of each load inspection. The records should include the date, time, name of the hauling firm, driver, source of the waste, vehicle identification numbers, and all observations made by the inspector.

Each MSWLF would be required to train all necessary personnel to identify potential sources of Subtitle C hazardous wastes. At a minimum, this should include supervisors, spotters, designated inspectors, equipment operators, and weigh station attendants. The training should emphasize familiarity with containers and labels typically used for hazardous wastes and other hazardous materials. If Subtitle C hazardous waste is found in any load inspected, or otherwise found at the facility, the owner or operator should promptly notify the State. The owner or operator should cordon off the area where the material was deposited and make efforts to carry out proper cleanup, transport, and disposal of the material at a permitted hazardous waste management facility.

In developing this proposal, EPA considered specifying the program in detail, delineating all activities and procedures needed to exclude hazardous waste. The Agency decided against a strictly defined program because each landfill will receive different amounts of waste that could contain questionable material. Today's proposal gives States and MSWLF owners and operators flexibility in implementing this requirement.

2. Section 258.21 Cover Material Requirements

EPA proposes to strengthen the cover material criterion imposed under § 257.3–6 of the existing Subtitle D Criteria to require the application of suitable cover material at the end of each operating day, or at more frequent intervals, if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. MSWLFs receive wastes that consist of a wide variety of materials. In particular, such facilities

receive wastes that contain putrescible materials. As discussed in the background document for this section of the proposal (Ref. 3), the disposal of such materials in MSWLFs results in conditions conducive to the harborage of rodents and other disease vectors. EPA is proposing this requirement because problems associated with putrescible waste at MSWLFs are alleviated in part by cover material. In addition, 45 States and Territories require daily cover, suggesting that this is an effective procedure and that, by not requiring daily cover, the current Criteria are not sufficient.

Cover material serves several specific purposes for protecting human health and the environment: (1) It helps in disease vector and rodent control; (2) it helps contain odor, litter, and air emissions, which may threaten human health and environment and/or be aesthetically displeasing; (3) it lessens the risk and spread of fires; and (4) it reduces infiltration of rainwater by increasing run-off and thereby decreases leachate generation and surface and ground-water contamination. As an additional benefit, cover enhances the site appearance and utilization after completion.

EPA has not specified the type or amount of cover material to be used, leaving the determination of "suitable material" and minimum depth up to the State; however, EPA recommends that a six-inch depth of compacted earthen material be used as cover material. Tests have shown that 6 inches of compacted sandy loam prevent fly emergence; daily (or more frequent) cover has been shown to reduce the attraction of birds and to discourage rodents from burrowing into the waste. In addition, 45 States and Territories already specifically require 6 inches of daily cover and it is considered an accepted practice at most MSWLFs. This and other aspects of cover material are discussed in the background document for this section (Ref. 3).

Today's proposal allows the States to temporarily waive the daily cover requirement on a case-by-case basis in the event of extreme seasonal climate conditions, such as heavy snow or severe freezing, that make meeting the requirement impractical. This provision would allow the State to consider the practicable capability of the regulated community. EPA requests comments on the appropriateness of the frequency and depth of cover application and on whether there are other reasons for exempting daily cover. EPA also is requesting comments on the acceptability of cover materials other than earthen materials (e.g., foams).

3. Section 258.22 Disease Vector Control

Today's proposal would require that each owner or operator of an MSWLF prevent or control on-site disease vector populations using appropriate techniques to protect human health and the environment. This requirement is consistent with existing § 257.3–6, which states that "[t]he facility or practice shall not exist or occur unless the on-site population of disease vectors is minimized through the periodic application of cover material or other techniques as appropriate so as to protect public health."

Municipal wastes are known to contain pathogenic bacteria, parasites, and viruses that can infect humans and animals. These wastes also provide food and harborage from rodents, flies, and mosquitoes that then transmit disease organisms to humans and animals.

The performance criterion set forth in this section would provide States and MSWLF owners and operators flexibility in meeting this requirement to accommodate site-specific differences in vectors and in appropriate control technologies and mechanisms. Today's proposed standard to control disease vectors is intended to prevent the facility from being a breeding ground, habitat, or a feeding area for disease vector populations. The requirements for vector control are to be undertaken in conjunction with the cover material requirements in § 258.21. Cover material applied at the end of each operating day reduces the availability of food and harborage for rodents and other vectors and thus may be adequate in most cases to meet the performance criterion for disease vector control; however, if cover material requirements prove insufficient to ensure vector control, this criterion would require that other steps be taken by the owner or operator to ensure such control. The background document for this section discusses various methods for minimizing disease vectors (Ref. 3).

4. Section 258.23 Explosive Gases Control

The decomposition of solid waste (in particular, household waste) produces methane, an explosive gas. The accumulation of methane gas in MSWLF structures or nearby off-site structures can result in fire and explosions, potentially injuring or killing employees, users of the disposal site, and occupants of nearby structures, in addition to damaging containment structures resulting in the emission of toxic fumes. Several incidents resulting in deaths are discussed in the background document (Ref. 3).

For this reason, EPA established an explosive gas criterion in § 257.3–8 of the original Subtitle D Criteria to regulate the concentration of methane in facility structures and at the property boundary. This requirement is expanded in today's proposal. The lower explosive limit (LEL) of a gas is the lowest percent, by volume, of that gas in a mixture of explosive gases that will propagate a flame in air at 25°C and atmospheric pressure at sea level. Today's proposal would require that the concentration of methane generated by the MSWLFs not exceed 25 percent of the LEL in facility structures (excluding gas control or recovery system components) and the LEL itself at the property boundary. EPA based its selection of the 25 percent figure for the Criteria on a safety factor recognized by other Federal agencies as being appropriate for similar situations (Ref. 3); however, the Agency concluded that a 25 percent criterion was unnecessary at the property boundary because gases at or below the LEL at the property boundary will become somewhat diffused before passing into a structure beyond the property boundary. For these reasons, EPA continues to believe that the LEL standard would provide an adequate safety margin against off-site explosions. The Agency believes that these limits are protective of human health and the environment while not being unduly restrictive.

Further, the proposal includes routine subsurface and facility structure gas monitoring requirements and a requirement that, if methane exceeds the limits specified, the owner or operator must take necessary steps to ensure protection of human health and immediately notify the State of the level detected and the steps taken to protect human health. Such steps could include evacuation and ventilation of affected buildings. In addition, the Agency is proposing that the owner or operator submit a remediation plan to the State within 14 days of limits having been exceeded. This remediation plan must describe the nature and extent of the problem and the proposed remedy. Examples of appropriate remedies include installation of interceptor gas collection trenches, venting in structures, and subsurface gas withdrawal. The owner or operator would be required to implement the plan after State approval.

In reviewing damage cases that have occurred as a result of methane migration from landfills, the Agency has noted that many of these incidents have occurred since promulgation in 1979 of

the existing Criteria, which do not require routine gas monitoring. The Agency believes many of these instances could have been prevented if routine monitoring had been conducted to detect the dangerous levels prior to the incident. This issue is further discussed in the background document (Ref. 3). Early warning would allow the owner or operator to take action to prevent catastrophic events.

Because methane has been the principal source of explosions associated with solid waste disposal, EPA proposes to require monitoring only for methane at this time. EPA may require monitoring for other gases if new information develops at a later time indicating that there are other gases that pose problems; however, EPA currently does not have sufficient information on other gases generated to justify requiring owners and operators to monitor for them.

EPA is proposing that methane monitoring be conducted at least quarterly. As mentioned earlier, monitoring would provide early warning of potential methane build-up that may lead to explosions. The Agency believes that quarterly monitoring is a reasonable minimum frequency that accounts for the seasonal variations in subsurface gas migration patterns. The Agency recognizes that site-specific conditions may require more frequent monitoring, e.g., when facilities are near residential areas or enclosed in structures, and encourages States to require additional monitoring as necessary. There also may be limited situations (e.g., in very remote areas) where less frequent monitoring may be sufficient. EPA requests comment on these situations and the appropriateness of the minimum monitoring frequency specified in today's proposal.

Monitoring is intended to ensure that the performance standard is being met at the MSWLF. EPA considered specifying the type of monitoring and monitoring devices, but such an approach would not allow the consideration of site-specific factors in establishing the appropriate monitoring system. The proposal would allow State flexibility in determining the appropriate monitoring requirements on a case-by-case basis.

Site-specific factors to be considered when determining the type and frequency of monitoring are discussed in an Agency guidance manual (Ref. 12). Factors to be considered in determining the type and frequency of monitoring include: soil conditions, hydrogeologic conditions surrounding the disposal site, hydraulic conditions surrounding the disposal site, and the location of facility structures and relative to property boundaries. These factors control the rate and extent of gas migration and are discussed further in the guidance manual (Ref. 12).

Monitoring in a facility structure normally should be performed after the building has been closed overnight or for a weekend because these are the times when the most dangerous conditions are likely to exist. Sampling should be done in confined areas where gas may accumulate, such as in basements, crawl spaces, attics near floor cracks, and ground subsurface utility connections. Gas recovery and gas control equipment, however, need not be sampled. If all the readings are less than 25 percent LEL, the MSWLF would be in compliance; however, the presence of any methane in a facility structure, even in concentrations below 25 percent LEL, should be considered a problem that deserves attention and steps should be taken to ensure that the level of methane does not reach explosive levels. EPA recommends that continuous monitoring devices be used in facility structures at the landfill site.

For monitoring along property boundaries, at least two monitoring points should be located along the property boundaries closest to residences or other potentially affected structures. The exact location of these points should take into account any gas-permeable seams. In selecting the sampling points, some of the factors to consider include dry sand or gravel pockets, alignment with an off-site point of concern, proximity of the waste deposit, areas where there is dead or unhealthy vegetation that might be due to gas migration, and areas where underground construction may have created a natural path for gas flow (e.g., utility lines).

Monitoring should be conducted at the property boundaries ideally when the soil surface has been wet or frozen for several days because this is when levels are expected to be greatest (Ref. 12). The results, location, date, and time of monitoring should be recorded. If any of the readings are equal to or greater than the LEL, the facility would not be in compliance. It may be necessary to repeat the tests at a later date or under different climatic conditions to verify the readings. Where active control systems are being used, samples should be taken when all pumps have been shut down for their maximum time during normal operation.

Monitoring at the property boundary could be accomplished by using a permanent well or a portable monitoring device. The device should be determined by the State on a case-by-case basis. EPA has provided additional guidance on types of monitoring devices that could be used (Ref. 12). The Agency suggests that methane at a concentration just below the LEL at a monitoring point may indicate a major problem and should not be ignored. The appropriate action would depend on the proximity of off-site structures, possible pathways, and other factors. In all cases, an evaluation should be made so that the danger of explosion is minimized.

5. Section 258.24 Air Criteria

The existing Criteria in Part 257 prohibit the open burning of solid waste but allow infrequent burning of agricultural wastes, silvicultural wastes, land clearing debris, diseased trees, debris from emergency cleanup operations, and ordnance. Today's proposal under § 258.24 maintains this standard. Requirements for compliance with State Implementation Plans (SIPs) under section 110 of the Clean Air Act (CAA) would remain unchanged from the Part 257 Criteria.

The Agency believes that any infrequent burning of the waste types listed above should be conducted in areas dedicated for that purpose and at a distance away from the landfill unit so as to preclude the accidental burning of other solid waste. For the purposes of this proposal, agricultural waste does not include empty pesticide containers or waste pesticides.

Open burning, which is the uncontrolled or unconfined combustion of solid wastes, is a potential health hazard, damages property, and can be a threat to public safety. For example, smoke from open burning can reduce aircraft and automobile visibility and has been linked to automobile accidents and death on expressways. The air emissions associated with open burning are much higher than those associated with incinerators equipped with air pollution control devices. Combustion in a trench or pit incinerator is considered the equivalent of open burning because particulate emissions from trench and pit incinerators equal or exceed those from open burning.

As stated earlier, EPA originally established the ban on open burning in the 1979 Criteria. Commenters on the proposal to the 1979 Criteria questioned the necessity for that ban, stating that open burning reduces the volume of solid waste and helps control disease vectors. The Agency recognized that some volume reduction is achieved, but no data were provided that disease vectors were significantly reduced. EPA established the ban on open burning of

these wastes because the hazards posed to human health (e.g., increase in particulate emissions, decreased safety) outweighed any benefits derived from the practice. Since the promulgation of the current Part 257 Criteria, the Agency has not received any new data that would contradict this conclusion. Therefore, EPA is retaining the open burning prohibition in today's proposal.

The Agency is aware that some States allow certain communities to open burn routinely municipal solid waste under certain circumstances. Such communities usually generate small amounts of waste and are in remote areas. The major advantage claimed is substantial volume reduction in the waste to be disposed of, thus extending landfill life. These communities assert that disposal costs would increase dramatically if there were strict enforcement of the Federal ban on open burning; however, these communities have not addressed the impacts on human health and the environment resulting from the practice on open burning, and, because health and environmental concerns are the underlying reason for the ban, the Agency does not intend to change the requirement from the 1979 Criteria. However, because EPA has received these comments stating that open burning is a necessary disposal practice, the Agency is specifically requesting comment on this issue.

This proposal retains the requirement that new and existing MSWLFs not violate applicable requirements developed under a SIP approved or promulgated by the Administrator under the CAA Section 110, as amended. EPA originally instituted this requirement because regional health concerns addressed through the SIPs clearly are of concern under RCRA as well as the CAA. Obviously, RCRA regulations should not undermine the provisions that implement the CAA.

Recent studies conducted by the Agency indicate that MSWLFs also appear to be a source of air pollutants. Gases of decomposition originate within the landfill and vent to the atmosphere by vertical migration and/or lateral migration. Landfill gas is generated by chemical reactions and by microbial degradation of refuse materials into a variety of simpler compounds. Typically, landfill gas consists of approximately 50 percent methane, 50 percent carbon dioxide, and trace constitutents of volatile organic compounds (VOCs) and other toxic constituents. Pollutants commonly found in MSWLF gas include vinyl chloride, benzene, trichloroethylene, and methylene chloride. It is estimated that approximately 200,000 metric tons of nonmethane organics per year are emitted nationwide from existing MSWLFs. Some of these compounds can create an odor nuisance while the VOCs and other toxic emissions can constitute a health hazard. This is in addition to the dangers from the explosion potential of methane (as described above).

Air emissions from MSWLFs can be controlled by collecting and controlling (or recovering) the extracted landfill gas. At approximately 100 landfills, gas is collected and used as recovered energy. Control systems can be economically attractive due to the energy recovery benefits, especially at larger landfills. There are sites controlling or recovering landfill gas in many States, including California, Maryland, New Jersey, New York, Ohio, Oregon, Texas, Wisconsin, and Washington.

EPA has decided to regulate MSWLF air emissions under the CAA Section 111(b) for new landfills and Section 111(d) for existing landfills. Under Section 111(d), EPA is preparing air emission guidelines that are to be adopted by States; they will prepare plans for controlling existing sources of MSWLF air emissions according to the EPA guidelines. The regulations will be based on both collecting and controlling landfill gas. EPA plans to propose air emission standards for MSWLFs in the near future.

6. Section 258.25 Access Requirements

EPA is proposing to require control of public access at new and existing MSWLFs to prevent illegal dumping of wastes and public exposure to hazards at MSWLFs as well as to prevent unauthorized vehicular traffic. Access control is a key element in preventing injury or death at these facilities. Because EPA also is concerned with the unauthorized dumping of hazardous waste, the proposed requirement expands on the existing 257.3–8 health and safety criteria, which prohibit uncontrolled public access, by adding requirements to control illegal dumping of wastes and unauthorized vehicular traffic.

EPA proposes that MSWLF owners or operators control public access, illegal dumping, and unauthorized vehicular traffic using natural and/or artificial barriers, as appropriate, to protect human health and the environment. Steps needed to comply with this standard would be determined by the State on a site-specific basis. At some facilities, it may not be necessary to construct any artificial barriers, such as fences, in order to comply with this criterion. Such facilities include, for example, those located in remote areas away from the general public or in areas with mountainous terrain or cliffs that would make access by the general public difficult. Posting signs and gates across access roads may be sufficient in remote areas to prevent public access that could lead to injuries; however, facilities that are located near residential areas or other public areas may be required to construct fences in order to control access. Unauthorized vehicular traffic and illegal dumping could be prevented by placing gates with locks at all entrances to a remote site. Other provisions may be necessary on a site-by-site basis.

Under the Subtitle C regulations, the owner or operator must prevent unknowing entry, and minimize the possibility for unauthorized entry, onto the active portions of the facility. At a minimum, a hazardous waste facility must have a 24-hour surveillance system or an artificial or natural barrier, such as a fence in good repair or a fence in combination with a cliff that completely surrounds the active portion of the facility, and a means to control entry at all times. The requirements may be waived under Subtitle C if it can be demonstrated that physical contact with the waste or equipment will not injure unauthorized persons or livestock and disturbance of the waste or equipment will not threaten human health and the environment.

These Subtitle C requirements are considered unnecessary for MSWLFs because EPA believes the risks associated with direct contact with municipal solid wastes are less than those associated with hazardous waste. Today's proposal allows greater consideration of site-specific conditions in establishing the appropriate controls than the Subtitle C regulations do. For example, as discussed above, the remoteness of a site may serve as an adequate "natural barrier" to facility access. EPA believes that simply requiring owners or operators to control public access allows the owner or operator to implement a system tailored to site-specific characteristics.

7. Section 258.26 Run-on/Run-off Control Systems

EPA is proposing run-on and run-off control requirements. These requirements are interrelated in that diversion of run-on reduces the amount of run-off that needs to be collected. The proposal would require that the owner or operator of an MSWLF design, construct, and maintain a run-on control system to prevent flow onto the active portion of the MSWLF during the peak

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discharge of a 25-year storm. The purpose of the run-on standard is to minimize the amount of surface water entering the landfill facility. Run-on controls prevent: (1) Erosion, which may damage the physical structure of the landfill (2) the surface discharge of wastes in solution or suspension, and (3) the downward percolation of run-on through wastes, creating leachate. Control is accomplished by constructing diversion structures to prevent surface water run-on from entering the active portion of the facility. Diversion structures help prevent liquids, which will eventually generate leachate or leave the site as contaminated run-off, from coming into contact with the waste.

The Agency believes that the main area of concern, with respect to run-on, is the active portion of the landfill, not the landfill facility as a whole. In this proposal, that part of the facility or unit that has received or is receiving wastes and has not been closed as required in § 258.30 is defined as the active portion. It is at active portions that run-on is most likely to: (1) Seep into the exposed waste, contributing to the formation of leachate, or (2) erode wastes, or constituents of them, and carry them away in surface water run-off. Seepage and erosion would not be a problem at inactive portions that have been closed in accordance with the closure Criteria specified in § 258.30. The Agency proposes that surface water run-on be diverted from active portions. Diversion of run-on may be accomplished by locating the active portion in areas where the topography naturally prevents run-on, by sloping or contouring the land, or by constructing ditches, culverts, or dikes. The capacity of diversion structures should be determined by the owner or operator considering site topography, size of the drainage area, and size of the active portions. The Agency chose the 25-year storm as the design parameter to be consistent with the standard in 40 CFR Part 264, which requires active portions of hazardous waste landfills to be protected from the peak discharge of a 25-year storm.

The quantity of run-off from active portions of landfills can be minimized by (1) minimizing run-on, (2) preventing disposal of liquid wastes in the landfill, and (3) minimizing the size of the active portion of the landfill. To address run-off that is generated, the Agency proposes to require that the owner or operator of an MSWLF design, construct, and maintain a run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. Run-off from the active portion of the unit must be handled in accordance with § 258.27 of this proposal in order to ensure that the CWA NPDES requirements and CWA Section 208 and 319 requirements are not violated. Again, the Agency chose the 24-hour, 25-year storm design parameter to be consistent with the standards for Subtitle C facilities in 40 CFR Part 264.

By design, almost all trench and area fills in depressions or pits control most run-off because of surface contours. Owners and operators having area fills that do not use depressions can control run-off by building a berm or dike on the low elevation side; however, when landfills using either the trench or area methods become large or substantially above grade, both run-off and leachate seeps, which often occur on the outer slopes of the fill, need to be collected. Run-off that does emerg from active portions may be collected by ditches, berms, dikes, or culverts, which direct it (sometimes by sump pump) to surface impoundments, basins, tanks, or treatment facilities. These collection devices may consist of temporary structures around active portions. because run-off usually has been in contact with waste or leachete seeps from active portions and sometimes is collected via a leachate collection system, it probably will be contaminated. It is difficult to differentiate between rainwater run-off and leachate run-off at the active portion of a landfill unless an elaborate or expensive sampling program is conducted. Once collected, a number of options exist for treating and disposing of run-off. These include land treatment, treatment in surface impoundments (e.g., evaporation), or discharge to a sewer, other treatment facility, or surface waters (if permitted). The background document supporting this section of the rule (Ref. 3) discusses in further detail 25-year storm events and run-on and run-off control requirements.

8. Section 258.27 Surface Water Requirements

Today's proposal would prohibit any MSWLF unit from (1) causing a discharge of pollutants into waters of the U.S., including wetlands, that violates any requirements of the CWA, including, but not limited to, NPDES requirements; and (2) causing a nonpoint source of polution to the waters of the U.S., including wetlands, that violates any requirements of a State-wide or area-wide water quality management plan under Section 208 or Section 319 of the CWA. The surface water criterion currently in Part 257 was retained in today's proposal because EPA believes it provides necessary protection for human health and the environment.

EPA considers it essential that solid waste activities not adversely affect the quality of the nation's surface waters. Rivers, lakes, and streams are important sources of drinking water, recreational resources, and habitat for a wide variety of fish with other aquatic organisms. Solid waste disposal has led to surface water contamination from run-off of leachate, accidential spills, and drift of spray occurring at landfills. In the proposed Criteria, EPA seeks to coordinate its surface water requirements under RCRA, including programs developed under the CWA to restore and maintain the integrity of the waters of the United States.

Under Section 1006 of RCRA, EPA is required to integrate, to the maximum extent practicable, the provisions of RCRA with other statutes, including the CWA Under the CWA, EPA conducts programs designed "to restore and maintain the chemical, physical, and biological integrity of the nation's water." EPA believes that this goal also is a legitimate objective for its regulatory activity under RCRA and that the Agency should use its authority under RCRA to see that CWA goals are achieved. Thus, in establishing the surface water criteria, EPA employed concepts and approaches use under the CWA. The discharge of a nonpoint source of pollution from solid waste disposal activities would be required to conform with any established water quality management plan developed under Section 208 or Section 319 of the CWA. Not all portions of a Section 208 or Section 319 plan are applicable to solid waste disposal activities, and the State would determine which requirements under these plans apply. Similarly, the discharge of pollutants from solid waste disposal activities would be required to comply with other provisions of the CWA, including the NPDES requirements under Section 402.

The provision of § 257.3–3 of the current Criteria, which states that "a facility shall not cause a discharge of dredged material or fill material to waters of the United States that is in violation of the requirements under Section 404 of CWA, as amended," has been included under the wetlands section of today's proposed Part 258 Criteria.

9. Section 258.28 Liquids Restrictions

EPA is proposing a new requirement for liquids restrictions because the intentional introduction of liquids into

landfills can be a significant source of leachate generation. Today's proposal would prohibit bulk or noncontainerized liquid waste that are not household waste (other than septic waste) from being disposed of in MSWLFs. Leachate and gas condensate that is derived from the MSWLF unit and recirculated would be exempt from this prohibition if the unit has been equipped with a composite liner and a leachate collection system designed and constructed to maintain less than 30cm of leachate over the liner in order to ensure that the recirculated liquids are managed properly. Containers of liquid waste could be placed in MSWLFs only when the containers: (1) Are small containers of the size typically found in household waste, (2) are designed to hold liquids for use other than storage, such as a battery or capacitor, or (3) hold household waste.

By restricting the introduction of liquids into landfills through a ban on the disposal of bulk and containerized liquid waste, EPA expects to minimize the leachate generation potential of the landfills, and thus minimize the risk of gound-water contamination. Twenty-one States and Territories already prohibit disposal of liquids and semiliquid wastes in MSWLFs. EPA believes, therefore, that this restriction is a sound MSWLF management practice.

The problems associated with the landfill disposal of containerized liquid wastes arise upon the eventual deterioration of the waste container. Liquids escaping from leaking containers will migrate to the bottom of the landfill, acting as a transport and leaching medium for the wastes contained in the landfill. Liquids accumulating on landfill liners can contribute to liner failure through increased hydraulic pressure and/or chemical interactions. Increased hydraulic head due to liquid accumulation can increase the amount and rate of contaminant movement from the landfill to the ground water. Additionally, when waste containers degrade, allowing their contents to escape, they collapse under the pressure of the landfill. This situation can create voids in the landfill, which can lead to slumping and subsidence of the final cover. Once the integrity of the landfill cover is lost, infiltration of precipitation will increase, contributing to the leachate generation in the landfill. Collapse of deteriorated waste containers and subsequent damage to the cover material could occur after the post-closure care period of the landfill, when ground-water monitoring systems are not maintained to detect ground-water contamination.

Disposal of bulk or noncontainerized liquids in landfills present the same problems that disposal of containerized liquids present once they have leaked from this containers, namely, increased mobility of wastes in the landfill, increased risk of loss of liner integrity through greater pressure and/or chemical interactions, and increased hydraulic head, which can increase the rate and quantity of movement of contaminants to the ground water.

EPA believes that the proposed ban on the disposal of bulk or noncontainerized liquids (except nonseptic waste from households and recirculated leachate and gas condensate at facilities with specific designs) will greatly reduce the quantity of free liquids to be managed in MSWLFs, which, in turn, will reduce the risk of liner failure and subsequent contamination of the ground water. The ban on containerized free liquids (except those from households) will achieve the same purposes as the ban on bulk liquids, and, in addition, will reduce the problem of subsidence and possible damage to the final cover upon eventual deterioration of the waste containers.

EPA recognizes that landfills are, in effect, biological systems that require moisture for decomposition to occur and that this moisture promotes decomposition of the wastes and stabilization of the landfill. Therefore, adding liquids may promote stabilization of the unit. Some concern has been expressed that the Agency requirements would effectively place landfills in a state of "suspended animation," impeding stabilization by minimizing introduction of liquids. EPA does not agree with this argument for several reasons. Wastes received at landfills already contain moisture (10 percent to 35 percent by volume). The Agency believes that this moisture is sufficient for decomposition to proceed. In addition, moisture is added from rainfall, and more moisture is generated during the decomposition process. Finally, although the Agency recognizes that moisture is necessary for waste decomposition, it does not have data that indicate that allowing the deliberate introduction of liquids into a unit for stabilization purposes is beneficial and outweighs the potential problems incurred from increased volumes of leachate.

The intent of today's proposal is to prohibit the disposal of bulk or noncontainerized liquid waste at new and existing MSWLFs units. Household waste (other than septic waste) is exempted because it is beyond the practicable capability of owners and operators to effectively restrict the disposal of all household liquid waste. Furthermore, the primary purpose of today's liquids restrictions is to limit the disposal of large-volume liquids in the landfill. Septic wastes would not be exempted because they are easily identifiable and restricted if they do not pass the liquids test described below.

Certain small containers (e.g., paint cans) and other wastes (e.g., batteries) would be exempt from the containerized liquids ban because they are not likely to contribute substantial amounts of liquids at most landfills and the difficulty of opening and emptying them appears to outweigh the small benefit gained (Ref. 3). EPA believes that the 18-month period between the promulgation date and the effective date of the rule would allow liquid waste disposers adequate time to develop alternatives to liquids disposal in MSWLFs.

Under this proposal, the owner or operator would be required to determine if wastes (e.g., septic wastes, municipal wastewater sludge) are liquid waste by using the Paint Filter Liquids Test method. This test method (Method 9095) already has been adopted by the Subtitle C hazardous waste program (Ref. 34). As discussed earlier under the explanation for the proposed definition for "liquid waste," the Agency requests comments on the appropriateness of the solids content measure as an alternative to the Paint Filter Liquids Test for POTW sludges for defining liquid waste.

The Agency is proposing to allow leachate and gas condensate recirculation at MSWLF units that incorporate a composite liner and leachate collection system into their design. Studies have indicated that leachate recirculation has certain benefits, which include increasing the rate of waste stabilization, improving leachate quality, and increasing the quantity and quality of methane gas production. Leachate recirculation also provides a viable on-site leachate management method. Other methods for managing leachate include disposal in off-site POTWs or on-site treatment facilities. These other methods, however, may not be available or practical because of limited POTW capacity, institutional constraints, or costs. Recent studies conducted by EPA indicate that of those facilities collecting leachate (481 MSWLFs or 5 percent of total), 42 percent (205 MSWLFs) are recirculating leachate. The Agency expects that the number of MSWLFs collecting leachate would increase with

the implementation of today's proposed design Criteria (Subpart D of today's proposal).

The Agency recognizes that there are potential operational problems associated with leachate and gas condensate recirculation that may result in adverse impacts on human health and the environment. These problems include: (1) An increase in leachate production, (2) clogging of the leachate collection system (LCS), (3) buildup of hydraulic head within the unit, (4) an increase in air emissions and odor problems, and (5) an increase in the potential of leachate polluant releases due to drift and/or run-off. Therefore, EPA is proposing that only MSWLF units designed and equipped with composite liners and an LCS constructed to maintain less than a 30-cm depth of leachate over the liner be allowed to recirculate leachate and gas condensate.

A composite liner is a system consisting of two components. The upper component must contain a flexible membrane liner (FML), and the lower component must contain at least a three-foot layer of compacted soil with hydraulic conductivity of no more than 1×10^{-7} centimeters per second. The FML component must be installed in direct and uniform contact with the compacted soil component so as to minimize the migration of leachate through the FML if a break should occur. Because of the increased leachate generation due to the increased amounts of liquids and subsequent hydraulic head buildup, EPA believes that the added protection provided by a composite liner is necessary to ensure that contaminant migration to the aquifer is controlled. First, the FML portion of the liner will increase leachate collection efficiency and provide a more effective hydraulic barrier. Second, the soil portion will provide support for the FML and the leachate collection system and act as a back-up in the event of failure of the FML.

The standard for the LCS, i.e., the requirement that it be constructed to maintain less than 30 cm of leachate over the liner, is the same standard required for LCSs at Subtitle C hazardous waste units, and various technologies are available for meeting this requirement (Ref. 3). The appropriate technology depends on the size of the unit, waste permeability, and climatic conditions. LCS design normally consists of a permeable material placed on a sloping surface so as to allow the leachate to be removed and collected. For large units, a pipe drainage system also may be necessary.

The Agency believes that, because of the potential problems associated with leachate recirculation discussed earlier, the design requirements specified above generally are necessary to ensure protection of human health and the environment; however, because the data that EPA has collected on leachate recirculation are limited to laboratory studies (Ref. 24), the Agency is requesting aditional data on leachate recirculation, including pilot studies and field data.

Prior to selecting today's proposed approach, the Agency considered a wide range of options for leachate and gas condensate recirculation and is requesting comment on two additional options. EPA considered allowing waivers to the requirement that an MSWLF have a composite liner in order to recirculate leachate. For example, the waiver could be granted if the owner or operator could demonstrate that: (1) The unit is located over ground water that is not a potential or current underground source of drinking water, and such ground water is not interconnected to a potential or current drinking water source; or (2) recirculation of leachate or gas condensate in the absence of a composite liner or leachate collection system would not result in contamination of ground water; or (3) recirculation of leachate or gas condensate in an existing unit not equipped with a composite liner or leachate collection system would pose lower risks to human health and the environment than disposal of this leachate without recirculation.

Because of the previously mentioned operational problems associated with leachate and gas condensate recirculation and the limited data available, the Agency also is considering a ban on leachate and gas condensate recirculation as an alternative to today's proposal. Under this alternative, for new MSWLF units, the ban could be instituted on the effective date of the revised Criteria and could be phased in for existing units over a period of time, possibly five years, to allow for alternative leachate management practices to be implemented. The Agency recognizes that the area of leachate and gas condensate recirculation will be controversial and, therefore, is seeking comment on a number of issues. The Agency is seeking comment on the appropriateness of the proposed design requirements and whether other designs would provide adequate protection, and whether today's proposed requirement should be modified to allow the State greater flexibility in establishing appropriate design controls. The Agency is requesting comment on the above approaches to granting the waivers and is interested in receiving information on how to develop the necessary waiver demonstrations. Finally, EPA is specifically requesting comments on banning leachate and gas condensate recirculation.

10. Section 258.29 Recordkeeping Requirements

EPA has included a recordkeeping requirement in these proposed Criteria to ensure that a historical record of MSWLF performance is maintained. The owner or operator would be required to maintain the following records: Groundwater monitoring, testing, or analytical data as specified under Subpart E of today's proposal; gas monitoring results; inspection records, training procedures, and State notification procedures as specified under § 258.20 of today's proposal; and closure and post-closure care plans required under proposed §§ 258.30(b) and 258.31(c), respectively. The required information would be recorded as it becomes available, and maintained by the owner or operator of new and existing MSWLFs. This section consolidates the recordkeeping requirements of other sections of today's proposal.

EPA believes that this requirement would ensure the availability of basic types of information that demonstrates compliance with today's requirements. EPA has not defined the time period for retaining these records, required that reports should be submitted, nor specified in what form records should be maintained because the Agency believes it is more appropriate for these requirements to be specified by States, which are directly responsible for implementing these provisions. EPA believes this requirement is flexible enough to allow the States to establish specific requirements for recordkeeping and to determine if additional records should be maintained.

11. Section 258.30 Closure Criteria

Because of the potential threats to human health and the environment posed by MSWLFs, the Agency believes that is necessary to prescribe minimum standards for closing these landfills. Improperly closed landfills, as discussed in a background document (Ref. 3), have the potential for contaminating the environment due to inadequate controls to contain the wastes (e.g., a final cap that erodes and fails to protect the wastes from being exposed). For this

reason, the Agency is proposing criteria for closure of MSWLFs in § 258.30 of today's proposal to ensure that owners and operators prevent threats to human health and the environment caused by improper landfill closure.

The closure criteria proposed today specify a closure performance standard that the owner of operator must meet that will minimize the need for maintenance after closure and minimize the formation and release of leachate and explosive gases during the post-closure care period. Owners or operators must prepare a closure plan, to be approved by the State, that describes the activities to be undertaken at the landfill to close it in accordance with the closure performance standard. Because prompt closure of a landfill is important to minimize potential threats to human health and the environment, the Agency is proposing that closure must begin promptly after the final receipt of waste at each landfill unit. To further ensure that closure is conducted properly and in a timely manner, the owner or operator also would be required to submit a certification for each unit at which closure had been completed in accordance with the closure plan. Other details regarding closure (such as deadlines and procedures for submitting, approving, and modifying closure plans; schedules and deadlines for completing closure; and other procedural requirements) would be left to the States in order to allow maximum flexibility without compromising the intent of the closure criteria.

a. Closure Performance Standard. The closure performance standard proposed by the Agency § 258.30(a) of today's rule is designed to ensure that long-term protection of human health and the environment is achieved while providing States with the flexibility to require more specific technical closure requirements. The Agency is proposing a health-based performance standard for the final cover, which is discussed in Section IX. D of this preamble. States are encouraged to specify technical standards for satisfying the closure performance standard (e.g., final cover design and materials, cap permeability) and may wish to refer to technical guidance materials applicable to Subtitle C hazardous waste facilities.

The components of the proposed closure performance standard are consistent with the closure performance standard for Subtitle C hazardous waste treatment, storage, and disposal facilities. First, the MSWLF owner or operator must close each landfill unit (i.e., discrete cells or trenches in a manner that minimizes the need for further maintenance after operations cease. Second, closure activities must minimize the formation and release of leachate and explosive gases after the closure performance standard to the extent necessary to protect human health and the environment. This dual requirement establishes the standard for the closure applicable to all MSWLFs and, at the same time, allows owners or operators and the States to determine the site-specific technical requirements necessary to achieve these general goals of protecting human health and the environment.

The Agency recognizes that many owners and operators manage their landfills in phases and close units (e.g., discret cells or trenches) as they are filled. To ensure that the entire landfill is closed in an environmentall sound manner, the Agency is proposing that all units of the landfill be closed in a manner that satisfies the closure performance standard, including units closed prior to cessation of all operations at the landfill. This requirement also is consistent with the Subtitle C requirements applicable to hazardous waste facilities.

b. Closure Plan. To ensure that the activities and resources necessary to close MSWLFs in a way that will protect human health and the environment have been adequately considered, today's proposed § 258.30(b) would require the owner or operator of each new and existing MSWLF to prepare a written closure plan describing how all units of the landfill will be closed in accordance with the closure performance standard. The closure plan also would serve as a basis for enforcing the closure performance standard and other closure requirements under § 258.30. In addition, this plan would serve as the basis for determining site-specific cost estimates and the amount of financial assurance required under § 258.32. The proposed requirement for a detailed written closure plan is consistent with many State solid waste regulations. A survey of selected State programs indicated that many States currently require the owner or operator to demonstrate that it has prepared for closure of the facility.

Section 258.30(b) of today's proposal specifies the minimum information that must be provided in the closure plan. States are encouraged to supplement these requirements to ensure more complete and adequate closure plans. States may wish to refer to the regulatory and preamble language in 40 CFR Parts 264 and 265, Subpart G, applicable to closure and post-closure care standards for hazardous waste facilities, for guidance in developing more detailed closure plan requirements.

Today's proposal specifies that the closure plan must include (1) an overall description of the methods, procedures, and processes that will be used to close each unit to the landfill in accordance with the closure performance standard, including procedures for decontaminating the MSWLF, (2) an estimate of the maximum extent of operation that will be open during the active life of the landfill, (3) an estimate of the maximum inventory of wastes ever on-site over the active life of the landfill, (4) description of the final cover designed in accordance with § 258.40(b) and § 258.40(c), and (5) a schedule for competing all activities necessary to satisfy the closure performance standard.

The closure plan should provide enough detail to allow the State to evaluate its adequacy. For example, the description of the activities necessary to complete all closure activities should address removing, transporting, treating, or disposing of any waste inventory remaining at the landfill; monitoring the ground-water and managing gas and leachate during the closure period; controlling run-on an run-off; and decontaminating or removing contaminated structures, equipment, and soils. Decontamination procedures include the methods for decontaminating the MSWLF, sampling and testing procedures, and criteria to be used for evaluating contamination levels. The estimate of the maximum extent of operation of the landfill should account for the largest portion of the landfill ever open at any time over the active life of the MSWLF. An area of a landfill is considered open if it has not been closed in accordance with the technical closure requirements in §§ 258.30 and 258.40 (i.e., final cover). Therefore, areas that receive daily cover but are not otherwise closed in accordance with today's provisions would be included in the estimate of the maximum extent of operation. The active life of the facility is defined in § 258.2 as the period from the initial receipt of wastes until certification of closure in accordance with the requirements in § 258.30(e) has been submitted and approved by the State. The estimate of the maximum amount of waste inventory ever handled at the MSWLF at any time over the landfill's active life should be included all wastes awaiting landfilling as well as run-off in trenches, ditches, or collection ponds. The requirements to provide an estimate of the maximum extent of landfill

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operation and an estimate of the maximum amount of waste on site over the active life of the landfill are important to accurately estimate the cost of closure. Financial assurance for closure must be based on the maximum cost of closing the landfill based on site-specific factors. Knowing the maximum cost of closure ensures that adequate funds for closure are available even if closure takes place earlier than expected.

The description of the final cover should include the design of the final cover, the types of materials to be used, and how the final cover will achieve the objectives of the closure performance standard. Finally, the closure schedule should include the total time required to close each landfill unit and the time for intervening closure activities that will allow the progress of closure to be tracked (e.g., estimates of the time required to decontaminate the MSWLF and to place a final cover).

Because today's rule applies only to MSWLFs, the estimate of the maximum extent of operation, maximum amount of inventory, and the corresponding description of procedures for handling these wastes refer only to those wastes and units that are integrally a part of the operation of the MSWLF (e.g., run-off collection ponds). These regulations are not intended to address closure of other structures or units at the facility that may not be part of the landfill operation (e.g., a surface impoundment used as a sludge drying bed).

c. Closure Plan Deadline and Approval. EPA is proposing in § 258.30(c) to require that the closure plan be prepared as of the effective date of the rule or by the initial receipt of solid waste at the landfill, whichever is later. Based on experience with hazardous waste facilities under Subtitle C, the Agency believes that the proposed deadline for preparing the closure plan is sufficient. A responsible owner or operator already should have considered many of the types of activities required at closure as part of routine operations, especially if the landfill is operated on a cell-by-cell basis and cells are filled and closed successively. The owner or operator of an existing MSWLF may be able to rely extensively on records of closure activities of areas no longer active in preparing the plans (e.g., in developing an appropriate final cover or in determining the type of final cover used).

The Agency also is proposing in § 258.30(c) that the closure plan, and any subsequent modifications to the plan, must be approved by the State to ensure that the plan adequately addresses all of the required activities. This proposal is particularly important because the closure cost estimate and the amount of financial responsibility required are based directly on the activities described in the closure plan. To allow the States maximum flexibility in developing procedures for implementing these rules, the Agency is not proposing specific deadlines and procedures for submitting, approving, and modifying closure plans. The Agency recognizes that many States already have approval procedures in place, making specific Federal requirements unnecessary and potentially burdensome. For example, most of the States surveyed approve closure plans as part of the permitting process and require that subsequent modifications to the plans be subject to State approval. Other States require that owners or operators apply for closure permits prior to closure. In developing an approval process, States may wish to review the procedures included in Subpart G of 40 CFR Parts 264 and 265, and the permitting requirements in 40 CFR Parts 124 and 270 that apply to hazardous waste facilities.

For recordkeeping purposes, the Agency is proposing in § 258.30(c) that the owner or operator maintain a copy of the most recently approved closure plan at the MSWLF facility, or at some other place designated by the owner or operator, until the owner or operator has been notified by the State that it has been released from financial assurance for closure of the entire landfill under § 258.32(f).

d. Triggers for Closure. To ensure that MSWLF units are closed in a timely manner after operations at the unit have ceased and to protect against threats to human health or the environment posed by open but inactive landfills, the Agency is proposing in § 258.30(d) that the owner or operator begin closure activities at each unit, in accordance with the approved closure plan, no later than 30 days after the final receipt of wastes at each landfill unit. Thus, if the MSWLF is operated on an individual cell or trench basis, closure of each cell or trench must begin within 30 days following the final receipt of waste at that unit. Extensions may be granted at the discretion of the State, if the owner or operator of the MSWLF demonstrates that the open landfill unit will not pose a threat to human health or the environment. These closure trigger provisions in § 258.30(d) are consistent with the closure trigger mechanisms for hazardous waste facilities under Subtitle C. States may wish to refer to the language in 40 CFR Parts 264 and 265, Subpart G as guidance for developing more detailed provisions.

The Agency encourages States to define "final receipt of wastes" to preclude MSWLF units from remaining inactive for an indefinite period of time without closing. For example, States may wish to adopt the provisions applicable to hazardous waste facilities that specify that closure of each unit must begin no later than 30 days after the final receipt of hazardous wastes, no later than one year after the most recent receipt of hazardous wastes at that unit. Furthermore, States are encouraged to establish specific criteria for granting extensions of the deadline for beginning closure. For example, the Subtitle C regulations for hazardous waste facilities specify that an extension will be granted only if the owner or operator demonstrates, among other requirements, that (1) the facility has remaining capacity, and (2) the owner or operator is operating in compliance with all applicable regulations and will continue to do so.

As noted above, the Agency is allowing the States to develop their own procedural requirements, imcluding provisions for owners or operators to notify the States of their intent to close their landfill units. States are encouraged to establish notification requirements that provide them with sufficient advance notice to inspect the facility and to ensure that the approved closure plan is still applicable to the facility's current conditions. States may wish to adopt the notification provisions included in the Subtitle C regulations that require advance notice prior to closure of each unit of the landfill. If the State allows the owner or operator to gradually fund a trust fund as demonstration of financial assurance, notice of closure is particularly important to ensure that the trust fund is fully funded at the tme of closure. For example, Subtitle C requires an estimate of the expected year of closure to be included in the closure plan if the owner or operator expects to close the landfill prior to the end of the required trust fund pay-in period.

While today's proposal specifies when closure must begin, the Agency is not proposing deadlines for completing closure of an MSWLF unit. However, the Agency is concerned that the completion of closure not be delayed unnecessarily and is encouraging States to specify deadlines and interim milestones. For example, the Subtitle C regulations for hazardous waste facilities specify a six-month deadline for completing closure and an interim milestone of three months for managing all inventory at the site. Extensions to these deadlines may be granted if (1) the closure activities

will take longer than six months to complete or (2) there is a reasonable likelihood that the owner or operator or a person other than the owner or operator will recommence operation of the facility, the landfill has additional capacity to receive waste, and closure would be incompatible with continued operation of the facility. In all cases, if an extension for completing closure is granted, the owner or operator of a Subtitle C facility remains subject to all applicable permit requirements and must take all the necessary steps to ensure protection of human health and the environment. The Agency requests comment on the extent to which the revised Criteria should specify deadlines for completing closure.

e. Closure Certification. The Agency is proposing in § 258.30(e) that following closure of each MSWLF unit, the owner or operator must submit to the State a certification that closure of that unit has been completed in accordance with the approved closure plan. The closure certification must objectivaly verify that closure has been performed in accordance with the closure requirements, based on a review of the landfill unit by a qualified party. State approval of closure certification will trigger the release of the owner and operator from closure financial responsibility requirements under § 258.32(f) (see Section 13.e below.)

The Agency is leaving to the discretion of the State the types of certifications that satisfy the regulations; in all cases, however, the certification must provide an objective evaluation of site closure, based on a direct review of the MSWLF unit by a party qualified to make such an assessment. Certifications that may satisfy the criteria in today's proposal include written verification by an independent qualified party (e.g., an independent registered professional engineer) or a qualified in-house registered professional engineer at the MSWLF with knowledge about the facility's operations who can objectively evaluate the closure activities, or an on-site review by State inspection officials. While this certification requirement allows the States more discretion than under Subtitle C, the intent of today's proposed rule is consistent with the Subtitle C regulations, which require a hazardous waste facility owner or operator to submit a certification signed by himself and an independent registered professional engineer that closure has been conducted in accordance with the approved plan.

The Agency also is leaving to the States the discretion to specify a deadline for submitting the certification. States may wish to adopt the Subtitle C regulations that require the certifications to be submitted no later than 60 days after the completion of closure of each unit.

12. Section 258.31 Post-Closure Care Requirements

The closure performance standard requires the owner or operator of an MSWLF to close each landfill unit in a manner that minimizes the need for further maintenance and minimizes leachate and gas formation. Even when properly carried out, however, closure cannot guarantee against long-term environmental problems at landfills. For this reason, the Agency is proposing that the owner or operator conduct post-closure monitoring and maintenance as necessary to minimize future threats to human health and the environment following closure of each landfill unit. The post-closure care requirements proposed in § 258.31 of today's rule specify the minimum activities necessary to minimize deterioration of the final cover and to detect problems before they pose a threat to human health and the environment. These activities must be described in the post-closure care plan under proposed § 258.31(c).

An owner or operator must begin post-closure care activities following closure of each landfill unit. The Agency is proposing that this post-closure care period comprise two phases. In the first phase, the owner or operator must perform the post-closure care activities specified in § 258.31(a) for a minimum of 30 years; during the second phase, the owner or operator must continue to conduct certain post-closure care activities specified in § 258.31(b). The length of this second phase would be specified by the State. The post-closure care plan must describe the activities in both phases of post-closure care.

a. Post-Closure Care Activities. During the first 30 years of the post-closure care period, the Agency is proposing that the owner or operator conduct routine maintenance of any final cover, and continue any leachate collection, ground-water monitoring, and gas monitoring requirements as necessary to control the formation and release of leachate and explosive gases into the environment and maintain the integrity of these monitoring systems. Routine maintenance of the integrity and effectiveness of the final cover, proposed in § 258.31(a)(1), is necessary to prevent liquids from penetrating into the closed landfill and creating the potential for leachate migration. Required activities include repairs to the final cover to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or damaging the cover. Cover maintenance also includes periodic cap replacement, which is necessary to remediate the effects of routine deterioration. These activities are intended to promote the Agency's overall goal of minimizing liquids in landfills and are the minimum steps the Agency believes are necessary to protect human health and the environment in the long term. The Agency believes that these requirements also should provide an incentive to properly manage solid wastes (e.g., ensuring proper compaction of wastes) during the active life of the landfill.

The Agency is proposing in § 258.31(a)(2) that owners or operators of MSWLFs designed with liner(s) and leachate collection systems continue to operate and maintain the leachate collection system during the post-closure care period in accordance with the requirements of § 258.40(b). Experience has shown that leachate generation in landfills continues long after closure. Therefore, to avoid leachate collecting on top of the liner and causing the "bathtub effect," the owner or operator must continue to remove leachate from the collection system during the post-closure care period until leachate no longer is collected in the system.

Proposed § 258.31(a)(3) would require the owner or operator to conduct ground-water monitoring during the first 30-year post-closure care period in accordance with the requirements in § 258.50 and maintain the ground-water monitoring system. The fundamental purpose of monitoring during the post-closure care period is to detect ground-water contamination in a timely fashion should the waste containment structures fail and to trigger corrective action as soon as contamination occurs. Long-term monitoring is essential to detect releases due to design or operating errors (e.g., tearing of liners or disposing of wastes that are incompatible with the liner) and routine deterioration of liner. Particularly for landfills designed with advanced containment systems (e.g., liners, leachate collection systems, or synthetic final caps), ground-water contamination may be delayed for many years, thus increasing the need for long-term monitoring. Because ground-water monitoring wells are subject to routine deterioration, post-closure activities also should include the periodic replacement of these wells as needed.

Finally, § 258.31(a)(4) proposes to require the owner or operator to monitor

for methane in accordance with § 258.23. That section requires the owner or operator to ensure that methane generated by the landfill unit does not accumulate in landfill structures (excluding gas control or recovery system components) in concentrations in excess of 25 percent of the lower explosive limit for methane. The concentration of methane gas at the MSWLF facility property boundary also must not exceed the LEL.

Following completion of the first phase of post-closure care at each landfill unit, today's proposal would require the owner or operator to conduct a second, less-intensive phase of care. The purpose of this second phase is to ensure that a minimum level of care is continued to detect any release that might occur at an MSWLF in the long term, while at the same time minimizing the burden on the owner or operator of continuing extensive post-closure care activities for an extended period of time. Therefore, the Agency is proposing under § 258.31(b) that the owner or operator must continue, at a minimum, ground-water monitoring and gas monitoring in order to detect any contamination that might occur beyond the first 30 years of post-closure care. States would have the responsibility of specifying the duration of this second phase.

The Agency is proposing this second phase of post-closure care for a number of reasons. First, even the best liner and leachate collection systems will ultimately fail due to natural deterioration, and recent improvements in MSWLF containment technologies suggest that releases may be delayed by many decades at some landfills. For this reason, the Agency is concerned that while corrective action may have already been triggered at many facilities, 30 years may be insufficient to detect releases at other landfills. The Agency, therefore, wants to ensure that any potential release will be detected regardless of when it occurs. Finally, in the absence of sufficient data to follow the Agency to predict with certainty when containment systems are likely to fail, a second phase of reduced post-closure care ensures that releases will be detected while minimizing costs to the regulated community.

The Agency is proposing minimum requirements for this second phase of care to allow States maximum flexibility in tailoring the scope of the requirements and the duration of this period to site-specific circumstances. For example, if a release is detected at an MSWLF during the second phase of care, the State may specify increased post-closure activities to be carried out as necessary. For facilities located in vulnerable environmental settings, the State may wish to require the owner or operator to continue during this second phase of care many of the activities conducted during the first phase. In addition, for vulnerable or high hazard settings, the Agency expects States to specify extended second-phase care periods. In those cases in which corrective action is still underway at the end of the first phase of post-closure care, the Agency expects States to require the second phase of post-closure care to extend for the duration of the corrective action period, at a minimum.

In addition to the minimum post-closure activities specified in today's proposal, the Agency encourages States to specify more detailed post-closure care requirements, such as maintaining the vegetative cover through periodic mowing, replanting, and regrading to preclude erosion that occurs naturally over time and as a result of servere storms, and repairing the cap when necessary to prevent the cap from becoming permeable. Other post-closure care requirements could include security measures if access to the MSWLF facility could pose a health hazard. In addition, the Agency encourages the States to specify deadlines for submitting monitoring data and other recordkeeping requirements to facilitate the detection of potential problems at the site in a timely manner. The Agency requests comment on the appropriateness of incorporating these and other post-closure care requirements.

The types of post-closure care requirements proposed today closely parallel those applicable to Subtitle C facilities. In addition, the post-closure care activities proposed in today's rule are consistent with existing State solid waste management requirements based on the Agency's review of several States' solid waste regulations (Ref. 21). All of the State programs reviewed require, at a minimum, post-closure site maintenance, leachate control, and ground-water monitoring. In addition to these activities, many States surveyed require additional post-closure activities such as surface water monitoring. The Agency in no way means to preclude States from requiring such activities.

b. Length of Post-Closure Care Period. As noted above, the Agency is proposing that, following closure of each MSWLF unit, the owner or operator must conduct two phases of post-closure. In the first phase of post-closure care, the owner or operator must conduct all of the post-closure care activities specified under ¶ 258.31(a) for a minimum of 30 years. The State has the discretion to extend the period beyond 30 years. Subtitle C establishes a 30-year post-closure period and allows the Regional Administrator to either reduce or extend the length of the period based on site-specific demonstrations. As discussed above, the Agency is concerned that releases may not occur until after 30 years. In fact, the Agency currently is considering extending the length of the post-closure care period well beyond 30 years for hazardous waste facilities located in certain environments likely to pose significant threats to human health and the environment. Therefore, today's rule proposes that the first phase of post-closure care must continue for a minimum of 30 years, with the option for States to require a longer period if deemed appropriate.

Section 258.31(b) proposes a second, less intensive phase of post-closure care designed to ensure the detection of releases, but leaves to the States the flexibility to specify the appropriate length of this period. States may specify a standard period of care for all landfill units, or determine an appropriate period on a case-by-case basis (e.g., at the time the MSWLF is applying for a permit or within a specified period after the effective date of the regulations). While the first option would reduce the burden on the States, the second option could allow for better protection against releases of hazardous constituents to the environment by adapting the post-closure care period to site-specific circumstances.

The Agency considered requiring an extended post-closure care period for MSWLFs with an option to reduce the period only if the owner or operator could demonstrate that a reduction in the period would not pose any threat to human health and the environment; however, the Agency was concerned that this approach could be overly stringent and potentially burdensome to the owner or operator and to the State to establish the criteria for terminating the post-closure care period. The Agency also considered allowing the State the discretion of reducing the 30-year post-closure care period based on cause, consistent with the Subtitle C requirement for hazardous waste facilities. As discussed above, however, because improvements in containment technology may delay the detection of releases, the Agency is concerned that reducing the period to less than 30 years could result in future releases not being detected. Finally, the Agency considered requiring periods consistent with some

of the State post-closure care periods (e.g., 5, 10, or 20 years). In the absence of empirical data from the States, however, the Agency is not convinced that these shorter periods are adequate to ensure the protection of human health and the environment.

EPA is not proposing criteria and procedures for determining the length of the second phase of the post-closure care period although States are encouraged to do so. States may wish to consider several criteria when evaluating the appropriate length of the second phase of the post-closure period. For instance, the liner and cover design, age, stability, and operating record (including ground-water monitoring results that show changes in constituent concentrations over time) of existing landfills are useful factors in estimating the potential for leachate and gas release. Other factors include leachate quality (e.g., volume and physical characteristics), hydrogeologic characteristics of the site, the potential for human exposure, and the expected future use of the facility and surrounding land. The State also may wish to list in the regulation the types of demonstrations that owners or operators must make to terminate the post-closure care period.

The Agency is requesting comments on the appropriate length of the post-closure care period for MSWLFs. In particular, the Agency is requesting comments on the two-phased approach and information on the frequency and timing of releases from MSWLFs, criteria that should be used to evaluate the length of the post-closure care periods, appropriate demonstrations for terminating the post-closure care period, and other information based on experiences with closed landfills.

c. Post-Closure Plan. EPA is proposing in § 258.31(c) to require the owner or operator of an MSWLF to prepare a written post-closure plan that includes descriptions of the monitoring and maintenance activities required in § 258.31(a) and (b) for each MSWLF unit and the frequency with which these activities will be performed during both phases of post-closure care. The fundamental objective of monitoring is to ensure that any migration of contaminants is detected in a timely fashion. In many instances, post-closure monitoring will be a continuation of the monitoring activities conducted during the landfill's active life. The description of maintenance activities necessary to ensure the integrity of the waste containment systems should include routine maintenance that reasonably can be expected to be required after closure of each unit (e.g., mowing, fertilization, erosion control, and rodent control) and the frequency with which these activities will be performed. These monitoring and maintenance requirements are consistent with State regulations examined by the Agency.

EPA is proposing in § 258.31(c)(2) that the post-closure plan also include the name, address, and telephone number of the person or office to contact about the MSWLF during both phases of the post-closure care period. This requirement would ensure that, if emergency measures or long-term corrective measures are necessary after closure, a person familiar with the landfill design, the types of wastes handled, past operating problems, etc., will be available.

The Agency also is proposing under § 258.31(c)(3) that the post-closure plan include a description of the planned uses of the property during both phases of the post-closure care period. One example of an acceptable use of a closed landfill would be a recreational park, provided the park complies with the requirements of § 258.31(c)(3). Under the proposed § 258.31(c)(3), the post-closure use of the property must not disturb the integrity of the final cover, waste containment system, or function of the monitoring systems unless the State determines that the activities (1) will not increase the potential threat to human health or the environment or (2) are necessary to reduce a threat to human health or the environment. For example, a foundation structure installed in a closed MSWLF may disturb the integrity of the cap, present potential safety problems as result of migrating landfill gas, and result in structure failure. Interference with the operation of the monitoring systems could prevent timely detection of ground-water contamination or gas concentrations greater than the established health-based limit. Unmonitored access to the property after closure also could result in the release of hazardous constituents or actual exposure of buried wastes as a result of disturbances of the site. If an owner or operator wishes to remove any wastes, waste residues, the liner, or contaminated soils at any time during the post-closure care period, it must obtain approval from the State and demonstrate that disturbing the site will not increase the threat to human health and the environment. These requirements are consistent with the Subtitle C requirements for hazardous waste facilities.

d. Post-Closure Plan Deadline and Approval. Consistent with the closure plan requirements, the Agency is proposing to require under § 258.31(d) that the post-closure plan be prepared as of the effective date of the rule or by the initial receipt of solid waste at the MSWLF, whichever is later. This section also requires that the post-closure plan, and any subsequent modification to the plan, be approved by the State. As described above, the Agency is leaving specific procedural requirements such as deadlines and procedures for submitting, approving, and modifying post-closure care plans to the individual States. Finally, proposed § 258.31(d) requires the owner or operator to maintain a copy of the most recent approved post-closure plan at the MSWLF facility or at some other location designated by the owner of operator. The plan must be maintained from the onset of the post-closure care period until completion of the post-closure care period has been certified in accordance with § 258.31(f) (see Section 12.f below) and the owner or operator has been notified by the State that it has been released from financial assurance for post-closure care for the entire landfill under § 258.32(g).

e. Notation on the Deed to Property. The Agency is proposing in § 258.31(e) that, following closure of the entire MSWLF, the owner or operator must record a notation on the deed or some other instrument normally examined during a title search that will notify any potential purchaser that: (1) The land has been used as an MSWLF and (2) its use is restricted under § 258.31(c)(3). This notation on the deed is intended to assure that the land use is restricted in perpetuity. The owner or operator may ask permission to remove the notation on the deed if all wastes are removed in accordance with the provisions in § 258.31(c)(3). Under the Subtitle C requirements for hazardous waste disposal facilities, an owner or operator must record a notice on the deed following closure of the first unit and after final closure to provide additional assurance that all parties are aware of the use of the property. While today's proposed rule does not require that a notation to the deed by filed after closure of each landfill unit in order to minimize burdens on the owner or operator, States may wish to adopt this more stringent requirement.

According to the Agency's survey of State requirements, some States already have procedures for ensuring that the post-closure use of landfill property is restricted. Some States require a notation to be put on the property deed; other States require that proposed future

land use be subject to Agency review and approval.

States may wish to specify additional notification requirements for MSWLFs as required under Subtitle C. For example, submission of a survey plat indicating the location and dimension of landfill units, a record of waste including the type, location, and quantity of waste disposed of in each landfill unit, and a certification that the deed notation has been recorded are all required under Subtitle C regulations.

f. Post-Closure Care Certification. The Agency is proposing in § 258.31(f) that following the completion of the second phase of the post-closure care period for each unit, the owner or operator submit to the State, a certification that both phases of post-closure care have been conducted in accordance with the approved post-closure plan. Consistent with the closure certification, the post-closure care certification must objectively verify that post-closure care has been performed in accordance with the post-closure care requirements based on a review of the landfill unit by a qualified party. As discussed above for closure certifications, the Agency is proposing to leave to the State the discretion to specify the types of certfications that would provide such an objective assessment.

Today's proposal requires that the certification be submitted at the completion of the second phase of the post-closure care period for each unit. This requirement is consistent with these for hazardous waste facilities under Subtitle C. Because of the duration of the post-closure care period, the States may wish to require periodic interim certifications (e.g., every five or 10 years or at the time of the permit renewal, if applicable) to confirm that activities are being conducted properly. Alternatively, States may wish to consider requiring a certification after the end of each of the two phases of post-closure care.

13. Section 258.32 Financial Assurance Criteria

Under today's proposed rule, the owner or operator of a new or existing MSWLF would be required to demonstrate financial assurance for the costs of conducting closure, post-closure care, and, if applicable, corrective action for known releases. (Under proposed § 258.57, whenever the ground-water protection standard is exceeded, an owner or operator must conduct a corrective action program to treat in place or remove any Appendix II hazardous constituents exceeding the standard.) The purpose of financial assurance is to ensure that the owner or operator adequately plans for the future costs of closure, post-closure care, and corrective action for known releases, and to ensure that adequate funds will be available when needed to cover these costs if the owner or operator is unable or unwilling to do so. To demonstrate to the State that it has planned for future costs, the owner or operator must prepare written cost estimates. These cost estimates would serve as the basis for determining the amount of financial assurance that must be demonstrated.

Today's proposed financial assurance requirements for closure, post-closure care, and corrective action for known releases at MSWLFs are patterned after the financial assurance provisions for hazardous waste facilities under Subtitle C and proposed provisions for underground storage tanks under Subtitle I. Financial assurance for closure and post-closure care for MSWLFs is currently required in numerous States. Although financial assurance for corrective action is less frequently required by States, the Agency believes that provision of financial assurance to cover the costs of corrective action for known releases is important to ensure that funds for long-term remedial activities are provided by the owner or operator.

The Agency is not proposing at this time to require financial assurance for other than known releases due to the complexity of the analysis that would be required to estimate probable corrective action costs associated with releases from MSWLFs. For example, to require a facility with a high probability of a release to demonstrate financial assurance for corrective action costs in the event of a release would require a characterization of the risks posed by a facility as well as the potential size, impact, and costs to remedy such releases. Such facility risk analyses could require considerable time to complete and also could delay the adoption and implementation of regulations by States. The Agency requests comments on this decision and information concerning how such cost estimates could be derived in the event additional corrective action financial responsibility requirements are proposed in the future.

The Agency also considered requiring owners or operators of MSWLFs to demonstrate financial assurance for third-party liability to compensate injured third parties. For a number of reasons, however, the Agency has decided to defer proposing such liability requirements at this time. First, the Agency is concerned that it does not have sufficient data at this time to specify the amount of liability coverage that would be appropriate for an MSWLF. Unlike Subtitle I, which mandates a minimum level of coverage for underground storage tanks, the statute does not specify any minimum financial assurance requirements for MSWLFs. To date, few claims data exist concerning third-party awards resulting from releases at MSWLFs. While more data are available to assess potential claims from Subtitle C facilities, the Agency is reluctant to extrapolate from these data or to adopt directly the levels of coverage required for Subtitle C facilities without further analysis comparing the risks and resultant third-party claims from MSWLFs and Subtitle C hazardous waste facilities.

Second, RCRA Section 4010(c) allows the Agency discretion to take into account the practicable capability of MSWLFs when developing the new criteria. Today's proposal applies an extensive set of new regulations to a large universe of waste facilities. Therefore, in light of the costs associated with implementing today's proposed requirements, the lack of available data on awards for third-party damages, and the current constraints in the insurance market, the Agency has tentatively decided to defer any third-party liability requirements. Instead, the Agency has chosen to focus on financial assurance requirements for costs of activities that are certain to be incurred (i.e., closure, post-closure care, and corrective action for known releases). In deferring these requirements, the Agency hopes to provide more time for the liability insurance market to adjust to a new potential market. The Agency adopted a similar approach when promulgating liability coverage requirements for Subtitle C requirements when it phased in the requirements over a three-year period to allow the market to adjust to the demand for increased capacity.

Deferring third-party liability coverage requirements at the time, however, does not preclude the Agency from promulgating such a requirement for MSWLFs at a later date. Further, the Agency encourages States to consider requiring such coverage if they choose. This decision to defer these financial assurance requirements in no way relieves an owner or operator of liability should injury to third parties be shown to have resulted from the operation of MSWLFs.

The Agency requests comments on this decision to defer requirements for financial assurance for third-party liability costs at this time. In particular, the Agency requests information to

assist in setting appropriate levels of liability coverage for MSWLFs, including data on the number of claims filed, the size of settlements or awards resulting from injuries associated with releases from MSWLFs, the causes of such injuries, and the number of persons harmed. Data concerning the nature, size, probability of, and potential exposures to releases from MSWLFs could also be used in developing liability coverage requirements. EPA also requests information on the likely availability and cost of insurance coverage and other financial instruments for liability coverage, the factors that might affect the cost and availability coverage, the factors that might affect the cost and availability of financial assurance instruments, the potential burden on owners or operators of obtaining financial assurance, and the advisability of phasing in financial responsibility requirements for third-party liability as done under Subtitle C.

Today's rule proposes that the amount of financial assurance for closure, post-closure care, and corrective action for known releases be based on site-specific cost estimates. The Agency is not proposing in today's rule the types of mechanisms that may be used to demonstrate financial assurance. Rather, today's proposal establishes a performance standard that specifies a set of criteria that must be satisfied by any mechanism that is used. Regardless of the mechanism chosen, it must ensure that adequate funds are available in a timely manner whenever they are needed. This approach provides the regulatory community and the States the maximum flexibility in satisfying the financial assurance requirements.

a. Applicability. Today's proposal would apply to each owner and operator of an MSWLF except for an owner or operator who is a State or Federal government entity. Although these proposed requirements would apply to both the MSWLF owner and the operator, only one would be required to demonstrate financial assurance for the MSWLF. This requirement is consistent with those under Subtitles C and I. This option provides flexibility to the regulated community by allowing them to choose which party will demonstrate financial assurance while, at the same time, giving the State the additional assurance that funds will be available by holding both parties ultimately responsible. EPA considered, but rejected, the option of requiring both the owner and operator to demonstrate financial assurance. While such an approach might provide somewhat greater assurance that the costs of closure, post-closure care, and corrective action for known releases would be covered in the event that one party failed to provide adequate funds, the Agency believes that, in most cases, this "double" coverage would be unnecessary and would substantially increase the burden on owners and operators of MSWLFs.

EPA recognizes that because Federal and State government entities are permanent and stable institutions that exist to safeguard health and welfare, they have the requisite financial strength and incentives to cover the costs of closure, post-closure care, and corrective action for known releases. The Agency believes, therefore, that it is not necessary to impose financial assurance requirements on MSWLFs owned or operated by government entities whose debts and liabilities are the debts and liabilities of a State or the United States. This exemption also extends to cases in which an MSWLF is owned by a State or Federal government entity and operated by a private party (or operated by a State or Federal government entity while owned privately). A State or Federal owner may, of course, require the private operator by contractual agreement to provide financial assurance. The exemption for MSWLFs owned or operated by Federal or State governments is consistent with the approach adopted under both the Subtitle C regulations applicable to owners or operators of hazardous waste facilities and the proposed Subtitle I rules for underground storage tanks containing petroleum.

The Agency also is considering whether to treat Indian Tribes, having Federally recognized governing bodies that carry out substantial governmental duties and powers over any area, as States. If so, they would be considered exempt from financial assurance requirements. If Indian Tribes are not exempt, they would be required to demonstrate financial assurance similar to local governments. The Agency requests comment on whether to exempt Indian Tribes from financial responsibility requirements. Specifically, the Agency requests information on whether Indian Tribes have the requisite financial strength and incentives to cover the costs of closure, post-closure, and corrective action for known releases.

With regard to financial assurance requirements for local governments, EPA carefully considered whether to require municipal owners and operators of MSWLFs to demonstrate financial assurance for the costs of closure, post-closure care, and corrective action for known releases. While the Agency recognizes that many local governments, like Federal and State governments, are permanent entities and act to secure the well-being of their citizens, the Agency is concerned that local governments cannot provide the same guarantee that they will be able to access adequate funds to pay for environmental costs in a timely manner.

EPA has determined that, relative to Federal and State government entities, local government entities generally: (1) Have more limited financial resources and less flexibility in their annual budgets, making reallocation of a substantial amount of funds for a specific purpose in a given year extremely difficult; (2) cannot necessarily access the traditional sources of municipal financing (i.e., intergovernmental transfers, bond issues, and taxes) quickly enough to ensure funding in a timely manner; and (3) have been more prone to fiscal emergencies than Federal and State government entities. The Agency believes, therefore, that local government entities should be subject to financial assurance requirements as a tool to induce advanced planning for the future environmental costs of closure, post-closure care, and corrective action for known releases. Moreover, the Agency believes that requiring local governments to demonstrate financial assurance may help them to raise funds for these costs that they ultimately will have to cover.

b. Cost Estimates. EPA is proposing in § 258.32 (b), (c), and (d) that the owner or operator of each MSWLF develop written site-specific estimates of the costs of conducting closure, post-closure care, and corrective action for known releases that would be used to determine the amount of financial assurance required under § 258.32 (f), (g), and (h). These cost estimates must account for the costs, in current dollars, of a third party conducting the activities described in the closure and post-closure plans and in the corrective action program as specified in §§ 258.30, 258.31, and 258.58. The "third party" provision ensures that adequate funds will be available for the State to hire a third party to conduct closure, post-closure care, and corrective action in the event that the owner or operator fails to fulfill these obligations. These requirements parallel the requirements or proposed requirements under Subtitles C and I.

The closure cost estimate must be based on the cost of closing the MSWLF at the point in the landfill's active life

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when the extent and manner of its operation would make closure (as described in the closure plan) the most expensive. For example, if an owner or operator operates the MSWLF on a cell-by-cell basis, the estimate should account for closing the maximum area of the landfill ever open at any time.

The Agency is proposing that the owner or operator develop estimates of the costs of hiring a third party to conduct post-closure care activities for each phase of the post-closure care period. The cost estimate for each phase must be based directly on the activities described in the post-closure care plan required under § 258.31(c) and account for the entire landfill. The estimate for each phase would be derived by multiplying the annual costs (in current dollars) of the activities by the number of years of care required in that phase. This approach is similar to the Subtitle C calculation of the post-closure care cost estimate, in which the cost estimate is determined by multiplying the annual post-closure cost estimate by the number of years of post-closure care. Because not all post-closure care activities are conducted on an annual basis (e.g., cap replacement or monitoring well replacement may only be required periodically), the total cost estimate must be adjusted to include these periodic costs as well as the annual costs. To ensure that adequate funds would be available for the entire post-closure care period, the Agency is requiring that the post-closure care cost estimates for each phase of post-closure care account for the most expensive costs of routine post-closure care. For example, the costs of monitoring during the first 30-year phase should account for the most extensive monitoring likely to be required.

As noted above, Subpart E of today's rule proposes to require that whenever the ground-water protection level at the MSWLF is exceeded, an owner or operator must conduct corrective action. Once a release has been detected, the owner or operator must prepare an estimate of the cost of the corrective action program, calculated by multiplying the annual costs of remedial actions and the number of years required to complete the corrective action program.

The proposed rule would require the closure and post-closure cost estimates to be adjusted annually for inflation until the entire landfill has been closed. The cost estimate for corrective action activities must be updated for inflation until the end of the corrective action period even if it extends beyond closure of the MSWLF. These requirements are consistent with the Subtitle C requirements. Also consistent with Subtitle C requirements, today's proposal would not require the owner or operator to update the post-closure cost estimate after the entire landfill has been closed; however, the Agency requests comment on the desirability of requiring annual adjustments of the post-closure cost estimate during the post-closure care period to prevent a significant shortfall in funds, which could result from not accounting for future inflation.

The Agency suggests that the States require the use of inflation factors that are readily available to owners and operators (e.g., Implicit Price Deflator for Gross National Product as published in the "Survey of Current Business," a Department of Commerce publication) or specify other inflation factors that must be used to adjust the estimates. States may wish to refer to the provisions in 40 CFR 264.142 and 264.144 and the accompanying guidance materials in developing these requirements.

In addition to updating estimates for inflation, today's proposed rule also would require that the owner or operator increase the closure and post-closure cost estimates when changes to the plans or changes at the facility during the active life increase the cost estimates (e.g., increase in design capacity, increase in the maximum area open, more extensive monitoring requirements). Similarly, today's rule proposes that an owner or operator must increase the corrective action cost estimate anytime a change in the corrective action program or in the facility conditions increases the cost estimate.

Whenever the cost estimates are increased, the owner or operator must increase the level of financial assurance required under § 258.32 (f), (g) and (h). If the owner or operator can demonstrate that changes in the facility result in a decrease in the maximum costs of closure over the active life of the landfill (e.g., reduction in size of the area to be used for the landfill), the owner or operator may submit a request to the State to reduce the closure cost estimate. The owner or operator may request a reduction in the amount of the post-closure care cost estimate if the owner or operator can demonstrate that the cost estimate exceeds the maximum cost of post-closure care over the remaining post-closure care period. Because the proposed rule would not require the post-closure cost estimate to be adjusted for inflation during the post-closure care period, the State should account for future inflation in determining if the estimate exceeds the remaining costs to be incurred over the length of the period. Because the corrective action cost estimate is adjusted for inflation until the completion of the program, the owner or operator may more easily be able to demonstrate that the original estimate exceeds the remaining costs to be incurred.

The Agency is not proposing procedures or deadlines for estimating and adjusting cost estimates. However, the Agency encourages States to do so and refers them to the Subtitle C provisions in 40 CFR 264.142 and 264.144 for guidance. In addition, the Agency strongly encourages States to consider carefully all requests for reductions in cost estimates to ensure that shortfalls in coverage do not result. The Agency asks for comments on whether the revised Criteria should include procedures or deadlines for estimating and adjusting cost estimates.

For recordkeeping purposes, the owner or operator must maintain copies of the most recent cost estimates for closure, post-closure care, and corrective action for known releases at the landfill unit until the owner or operator has been released from financial assurance for that activity under § 258.32 (f), (g), and (h). These provisions are consistent with requirements under Subtitle C.

c. Performance Standard for Financial Assurance. In order to minimize the number of specific procedural requirements applicable to demonstrating financial assurance and provide maximum flexibility to the States, the Agency is not specifying in the proposed regulation the types of financial assurance mechanisms that would be allowable; however, the Agency is concerned that the mechanisms allowed by the States (e.g., trust funds, letters of credit, State fund) satisfy the overall ojbectives of financial assurance, i.e., to ensure that adequate funds are readily available to cover the costs of conducting closure, post-closure care, and corrective action for known releases if the owner or operator fails to do so. Therefore, the Agency is proposing in § 258.32(e) of today's rule a performance standard for financial assurance that must be satisfied to demonstrate financial assurance under § 258.32 (f), (g), and (h).

Under the performance standard, financial assurance mechanisms allowed by a State must: (1) Ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for

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known releases when needed; (2) ensure that funds will be available in a timely fashion when needed; (3) guarantee the availability of the required amount of coverage from the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, until the owner or operator is released from financial assurance requirements under § 253.32(f), (g), and (h); (4) provide flexibility to the owner or operator; and (5) be legally valid and binding and enforceable under State and Federal law.

The financial assurance mechanisms authorized under Subtitle C and proposed under Subtitle I, if properly drafted, satisfy these performance criteria. Subtitle C allows the use of a trust fund, letter of credit, surety bond, insurance, financial test, corporate guarantee, State-required mechanism, State assumption of responsibility, or a combination of certain mechanisms to demonstrate financial assurance for closure and post-closure. (Insurance was not proposed for corrective action financial assurance under Subtitle C because the Agency determined that it would not be available.) The proposed Subtitle I regulations (52 FR 12766, April 17, 1987) allow a similar set of instruments to demonstrate financial assurance for corrective action and liability coverage. States may wish to refer to the background document for closure and post-closure care and financial responsibility (Ref. 4) for more information on the use of these mechanisms in other EPA financial assurance programs and guidance on how these mechanisms could be structured to satisfy the performance standard discussed below.

The financial assurance performance standard in today's proposal would require States to adopt a program under which the selected range of financial assurance mechanisms ensures that sufficient funds will be available to cover the costs of conducting closure, post-closure care, and corrective action for known releases whenever such funds are needed. In most cases, the amount of funds assured should equal the full amount of the current site-specific cost estimates for closure, post-closure care, and corrective action at the time the mechanism is established. For example, if a letter of credit issued by a bank is an allowable mechanism, its face value must equal the site-specific cost estimate. To minimize the burdens on small owners or operators who may have to set aside funds in a trust to demonstrate financial assurance, States may wish to adopt the approach used under Subtitle C. Under Subtitle C, an owner or operator is allowed to build up the trust fund over the life of the facility or over 20 years (10 years for permitted facilities), whichever is shorter. To meet the performance standard criteria under today's proposal, if a build-up period is allowed for trust funds, the State must require the trust to be fully funded no later than the end of the landfill's active life. States may wish to adopt stricter trust fund requirements (e.g., shorter build-up period, accelerated payments into the trust in the earlier years of operations) to avoid potential shortfalls if the MSWLF is closed earlier than expected. If a State chooses to develop a State fund to be used for the costs of closure, post-closure care, and corrective action for known releases, the size of the fund must be commensurate with the expected costs likely to be incurred to satisfy the performance standard.

To ensure that funds will be available when needed, States also may need to take into account potential legal and political constraints on accessing funds guaranteed by financial mechanisms. For example, because the U.S. EPA Regional Administrator does not have the authority to directly receive funds from third-party financial assurance mechanisms (i.e., all monies received must be directed to the U.S. Treasury), under Subtitle C a standby trust fund must be established when certain instruments are used (e.g., letter of credit and surety bond) to serve as a depository for the funds if the Regional Administrator draws on the instrument. Some States may face similar constraints in accepting funds directly from third parties and may need to establish standby trust fund requirements for certain mechanisms (e.g., letters of credit) to ensure that the State has access to the funds whenever they are needed.

Because of the long period between the initial establishment of the financial assurance mechanism and the time that the costs are incurred, the performance standard requires that the mechanisms guarantee continued availability of coverage until the owner or operator establishes an alternate financial assurance mechanism or is released from financial assurance requirements to avoid potential gaps in coverage. To ensure reliability over time, States should establish provisions that address contingencies such as (1) bankruptcy or incapacity of the financial assurance provider or the landfill owner or operator and (2) cancellation or termination of mechanisms by the provider. To prevent gaps in coverage in the event of these contingencies, States must ensure that owners or operators establish alternate financial mechanisms in a timely manner. For example, States could require that only after obtaining alternate assurance could the present mechanism be cancelled or terminated. States also could specify notification requirements and time limits for providing alternate financial assurance, similar to provisions under Subtitle C. Furthermore, States may wish to adopt provisions similar to Subtitle C regulations that require certain mechanisms to be automatically renewed unless an alternate financial assurance mechanism has been established, or else the third party offering the instrument becomes liable for the obligation. Finally, States must ensure that owners or operators of MSWLFs cannot terminate financial assurance at will, which could jeopardize the availability of funds when necessary. For example, Subtitle C requires that financial assurance cannot be terminated until after the certifications of closure or post-closure care have been received and approved.

In authorizing financial assurance mechanisms for demonstrating financial assurance, States should provide a range of mechanisms to provide owners or operators of MSWLFs with flexibility for demonstrating compliance while at the same time ensuring that they meet the regulatory requirements. For example, the Agency would not consider a program sufficiently flexible if that program restricted owners or operators to using only a financial test or insurance because such restrictions would likely impose a significant burden on much of the regulated community.

Finally, under the performance standard, the financial assurance mechanisms must be legally valid and binding. The validity of such mechanisms will largely be a matter of State law. However, to be legally valid, a financial assurance mechanism must be issued by an institution that has the legal authority to issue the mechanism and that is legally acceptable and/or regulated by a Federal or State agency. Financial assurance mechanisms also must be enforceable under State and Federal law. To help ensure that the mechanisms are enforceable, States may wish to specify wording for the mechanisms consistent with the regulations found in 40 CR 264.151. These mechanisms are discussed in a background document to this proposed rule (Ref. 4).

In proposing a financial assurance performance standard rather than specific financial assurance

mechanisms, the Agency has sought to minimize inconsistencies with the approximately 20 States that already have financial assurance requirements for MSWLFs. The Agency recently conducted case studies of nine such programs (Ref. 19). The study found considerable variation among State programs both in the types of mechanisms allowed and in the procedural requirements for the financial assurance mechanisms. For additional detail on the results of the case studies, see the financial assurance background document to this rulemaking (Ref. 19). Today's proposal is, therefore, designed to accommodate the variations among existing State programs, while ensuring that all programs meet the performance standard for financial assurance. The Agency requests comments on the proposed financial assurance performance standard, including the use of this standard rather than identifying a list of acceptable financial assurance mechanisms.

d. Financial Assurance Provisions for Local Governments. As noted in the previous section, the Agency is not proposing specific financial mechanisms in today's rule in order to provide maximum flexibility to the States. The Agency believes that the Subtitle C provisions can be used as models for States in developing their rules. Unlike Subtitle C, however, the majority of MSWLFs are owned by local governments. While Subtitle C allows a financial test to be used to demonstrate financial assurance, the test in 40 CFR 264.143 and 264.145 is designed primarily for corporate firms and is not directly applicable to local governments. Therefore, because of the large number of MSWLFs owned by local governments, the Agency considered for today's rule the feasibility of developing a financial test that would exempt local governments able to pass the test from having to obtain a third-party financial assurance mechanism (or contribute to a State Fund, if applicable).

A financial test designed specifically for local governments was considered during the development of the Subtitle C regulations but was not included due to difficulties in interpreting and verifying municipal accounting information, concern over the use of bond ratings as a measure of fiscal strength, and concern over the accessibility of allocated tax revenues. However, since the promulgation of the Subtitle C requirements, many local governments have developed more sophisticated financial management practices. Because of these changes, the Agency is examining possible approaches a State might use in developing such a test specifically for lcoal governments. For example, the Agency is examining the feasibility of developing a special test that takes into account fiscal, institutional, and other factors. Although the Agency is not proposing a financial test for local governments in today's rule, the financial assurance background document discusses a framework that States may wish to use in specifying criteria for a financial test for local governments (Ref. 4). If a State decides to allow a financial test for local governments, the framework should be useful in choosing appropriate measures of a local government's financial strength.

The Agency requests comments on the use of a financial test for local governments. Specifically, EPA requests information on standards that might be used to measure a local government's financial strength, the measures that might be taken to establish such a financial test, and whether any States currently allow a financial test for local governments.

e. Financial Assurance Requirements. As noted in Sections 13.b and c, site-specific cost estimates are used to determine the amount of financial assurance required. The mechanisms used to demonstrate this amount of coverage must satisfy the performance standard specified in § 258.32(e).

The amount of closure financial assurance must be based directly on the most recent closure cost estimate adjusted for inflation in accordance with § 258.32(b). Financial assurance for post-closure care must cover the costs of conducting both phases of the post-closure care period for the entire landfill. The amount of financial responsibility required for each phase of post-closure care is calculated by multiplying the most recent annual post-closure cost estimate for each phase of post-closure care by the number of years in that phase. The sum of these two estimates is the amount of financial assurance required for post-closure care. This approach is similar to the Subtitle C calculation of the post-closure care cost estimate, in which the cost estimate is determined by multiplying the annual post-closure cost estimate by the number of years of post-closure care.

EPA is proposing in § 258.32(h) to require corrective action financial assurance for known releases in an amount equal to the most recent annual corrective action cost estimate in § 258.32(d) times the number of years required to complete the corrective action program. The Agency is proposing that financial assurance for corrective action be demonstrated after the cost estimate has been prepared in accordance with § 258.32(d), consistent with Subtitle C. Before adopting this timing requirement, the Agency considered the feasibility of requiring some minimal level of financial responsibility for corrective action as soon as the need for corrective action was demonstrated but before the corrective action measures and costs were determined. This latter approach has been proposed for Subtitle I because the statute requires financial assurance for corrective action for a specified amount ($1 million) before there is any known contamination. The Agency concluded, however, that it still does not have the data sufficient to estimate the cost of corrective action in advance and is delaying the requirement until a release has been detected and the estimates of costs have been developed. States may wish to require some level of financial assurance to cover the costs of interim measures that may be taken prior to the completion of the corrective action plan and the approved cost estimate.

Release from financial assurance requirements for closure, post-closure care, and corrective action is triggered by State approval of the certifications submitted to the State under §§ 258.30(e), 258.31(f), and 258.32(h). Following the receipt of the certification from the owner or operator that verifies that closure, post-closure care, or corrective action have been completed in accordance with the approved plans, today's rule proposes in § 258.32 (f), (g), and (h) that the State notify the owner or operator in writing that he no longer is required to demonstrate financial responsibility for these activities. If the State has reason to believe that the activities have not been conducted in accordance with the approved plan, it must notify the owner or operator and include a detailed statement of reasons for not releasing the owner or operator from the financial assurance requirements.

D. Subpart D—Design Criteria

1. Overview of Proposed Standards

a. New Units. Section 258.40(a) of today's proposal would require that new MSWLF units be designed with liner systems, LCS, and final cover systems as necessary to meet the design goal in the aquifer at the waste management unit boundary or an alternative boundary specified by the State. The two key components of this performance standard are the design goal, which is a human health- and environmental-based

ground-water risk level, and the point of compliance (POC) in the aquifer (i.e., the waste management unit boundary or an alternative boundary specified by the State). Today's proposal provides States considerable flexibility in establishing both of these key components. As discussed below, the State establishes the design goal within the protective risk range and also may set an alternative boundary as the point of compliance; however, this boundary shall not exceed 150 meters from the waste management unit and shall be located on land owned by the owner or operator of the MSWLF.

In this proposal the Agency is considering three alternative risk ranges. These are 1×10^{-4} to 1×10^{-7}, a fixed level of 1×10^{-5}, or an upper bound risk level of 1×10^{-4} (with States having discretion to be more stringent). EPA is proposing to use the range of 1×10^{-4} to 1×10^{-7} because the Agency currently uses this range in clean-up activities at sites and because this will provide a margin for consideration of site specific factors in setting the risk level. A fixed risk level of 1×10^{-5} would provide a uniform level of protection across all States. On the other hand, setting an upper bond risk level of 1×10^{-4} would allow States greater flexibility in establishing more stringent risk levels based on site specific conditions.

In its regulatory actions EPA generally uses a case-by-case approach, depending on the surrounding issues, uncertainties, and information bases. Such a case-by-case approach allows flexibility in judging the variety of factors and uncertainties included in the risk assessments. For example, the following risk levels have been embraced by EPA since 1984:

- The Superfund Clean-up policy—10^{-4} to 10^{-7}.
- Alternate Concentration Limits (ACLs)—10^{-4} to 10^{-7} with 10^{-6} target.
- Drinking water standards/ Maximum Contaminant Level (MCL)—10^{-4} to 10^{-6}.
- Pesticides in groundwater strategy—10^{-6} trigger.
- National Emission Standards for Hazardous Air Pollutants (NESHAPS)—10^{-3} to 10^{-6}.

The Agency intends to examine closely the nature of the Subtitle D universe while keeping in mind the capability of State programs and feasibility of achieving lower risks. The Agency requests comment on these alternatives.

The design goal is an overall ground-water carcinogenic risk level that must be established by the State. At a minimum, the goal must lie within the protective risk range; however, the States would, under any option, have the discretion to select a risk level that is more protective than the proposal. The focus for the design goal is on carcinogenic risk. Results of EPA's Subtitle D risk model indicate that carcinogens drive the risks posed by releases to ground water by MSWLFs. Non-carcinogens, along with carcinogens, will be addressed by the ground-water monitoring and corrective action programs.

The design goal is consistent with the requirements proposed today for determining the ground-water trigger levels (see proposed 258.52) and the ground-water protection standards (GWPSs) (see proposed 258.57(e)). However, unlike the trigger levels and the GWPSs, the design goal is not constituent-specific. Rather, the design goal represents the overall ground-water risk level (i.e., the combined risk from all constituents) that the State believes is necessary to protect human health and the environment.

The possible use of the risk range for a design goal is meant to give the States the flexibility to consider the practicable capability of the owner or operator in establishing design requirements.

The design goal (in conjunction with the point of compliance) is used to determine what design is necessary for the facility. For example, if 1×10^{-6} were chosen by the State as the design goal, the facility must be designed to prevent releases to the ground water that would cause the overall risk posed by the ground water to exceed 1×10^{-6} at the waste management unit boundary or alternative State-specified boundary.

Section 258.40(d) specifies that the State could establish an alternative boundary as the compliance point for a new unit; however, this alternative boundary cannot go beyond the 150 meters from the waste management unit boundary and must be on land owned by the owner or operator of the MSWLF. The State must consider at least the following factors in establishing this alternative boundary: (1) The hydrogeologic characteristics of the facility and surrounding land; (2) volume and physical and chemical characteristics of the leachate; (3) the quantity, quality, and direction of ground-water flow; (4) the proximity and withdrawal rate of the ground-water users; (5) availability of alternative drinking water supplies; (6) the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water; and (7) public health, safety, and welfare effects. EPA's intent in allowing States to establish alternative boundaries is to allow site-specific characteristics to be considered in meeting the design goal. For example, the State may wish to set an alternative boundary in situations where the aquifer is of low quality and has little or no potential for future use.

In considering the various factors specified in § 258.40(d) for establishing this alternative boundary, States will determine which factors are the most important at each facility and are provided the flexibility to use a different ranking system at each facility. The consideration of these site-specific factors should ensure that establishing the alternative boundary would not result in contamination of ground water needed or used for human consumption that would result in adverse impacts on human health or the environment. Such adverse impacts include contamination of drinking water supplies, degradation of sensitive ecosystems, or degradation of recreational areas.

EPA considered setting the maximum alternative boundary at the property boundary without a distance limit. However, under such an approach, great expanses of ground water could be contaminated before detection. EPA believes that this practice would, in effect, circumvent the intent of today's proposal. EPA chose a distance of 150 meters as the maximum alternative boundary to allow for consideration of the practicable capability of owners and operators and to allow for greater State flexibility in setting design requirements. The 150-meter limit also is expected to have minimum impact on existing facilities. The 150-meter value represents the third quartile (75th percentile) from the distribution of distances between the unit and property boundary for MSWLFs determined from EPA's facility survey results (Ref. 30). EPA also is proposing to require that the alternative boundary be located on land owned by the owner or operator of the MSWLF to prevent contamination of ground water off-site.

The consequence of giving States the flexibility to use a POC at a distance greater than the unit boundary is that it allows contaminant concentrations to diminish (due to degradation, dispersion, and attenuation) over distance and, thus, potentially decrease the stringency of design criteria needed to meet the design goal. In this manner, the alternative boundary provides States the opportunity to take into account the practicable capability of the facility owners or operators. For example, EPA estimates (based on risk modeling described later) that the percentage of new MSWLFs exceeding a 1×10^{-6} risk level drops from 43 percent at the unit boundary to 23 percent at 150 meters.

For the above reasons, EPA believes the 150-meter maximum alternative POC allows for consideration of the practicable capability of the regulated community and State flexibility in setting design criteria while ensuring protection of human health and the environment. The Agency requests comment specifically on the use of this distance to establish an alternative boundary.

In implementing today's proposed performance standard under § 258.40(a), States have two options. Under the first option, the State may establish a performance standard (including the design goal and point of compliance within the limits prescribed in § 258.40(a)) for each facility on a case-by-case basis. For example, after considering site-specific factors, the State may set a performance standard for one MSWLF that specifies a design goal of 1×10^{-5} risk to be met at the waste management unit boundary, while at another MSWLF, the State may require a design goal of 1×10^{-6} to be met at an alternative boundary. In setting this alternative boundary, the State must fully consider the factors specified in § 258.40(d).

Under the second option, a State may establish one performance standard (including the design goal and point of compliance) that applies to all MSWLFs in the State. For example, the State may elect to establish a performance standard that requires all new MSWLFs in the State to be designed to meet a risk level of 1×10^{-6} at the waste management unit boundary. If a State wishes to incorporate an alternative boundary (i.e., other than the waste management unit) into its State-wide performance standard, the State must carefully consider all the facility-specific factors required under § 258.40(d). The Agency believes that this method may be difficult in States that have a large number of MSWLFs.

Regardless of whether the performance standard is set on a site-specific basis or a State-wide basis, the State must still determine MSWLF designs that meet the performance standard. Section 258.40(d) requires the State to consider at least the following factors in determining the specific design necessary to meet the performance standard: (1) The hydrogeologic characteristics of the facility and surrounding land, (2) the climatic factors of the area, (3) the volume and physical characteristics of the leachate, (4) proximity of ground-water users, and (5) ground-water quality. Various methods for considering these factors and determining appropriate designs are discussed later in this preamble (see Part 5 of this section).

In certain cases, the State may find that MSWLF designs required under its existing regulations adequately meet a State-wide performance standard established in accordance with Subpart D of today's proposal. In such cases, the State may use its existing regulations to implement today's proposed requirements for new MSWLF design. The Agency specifically requests comments on the approach to State implementation of today's proposed § 258.40(a) performance standard.

b. Existing Units. The Agency is proposing a different performance standard for existing units than for new units. For existing units, § 258.40(e) of today's proposal would require installation of a final cover system that prevents infiltration of liquids through the cover and into the waste. In proposing a different standard for existing units, the Agency is taking into account the practicable capability of owners and operators of MSWLFs. EPA recognizes that most existing units have not been specifically designed to meet the design goal at the waste management unit boundary. However, some States have design and performance requirements for MSWLFs that, if properly implemented, may have resulted in landfill designs that are capable of meeting the design goal for new units. Further, MSWLFs constructed after the promulgation of the 1979 Criteria (40 CFR Part 257) should have been designed and operated to ensure that the concentration of contaminants introduced to the ground water did not exceed the MCLs specified in the Part 257.

EPA believes that to require existing units to meet the same performance standard as new units would seriously strain the resources of the regulated community. First, the data necessary to make the determination of whether the existing unit meets the design goal, such as the geology beneath the unit or the original design specifications, may not be readily available or may be very costly to obtain. This lack of information was evident in several of the case studies EPA reviewed in developing of this proposal. Second, if the design of the existing unit was determined to be incapable of meeting the design goal, retrofitting would be necessary. The Agency believes retrofitting for Subtitle D facilities should not be required because (1) the procedure is impractical because it requires the excavation and temporary storage or disposal of wastes, (2) the excavation of the waste may create its own set of public health problems (e.g., dangers to workers, contaminated run-off), and (3) such retrofitting would disrupt existing solid waste management activities. Retrofitting may be particularly disruptive if a large number of existing facilities are found to be unable to meet the design goal.

The final cover requirement for existing units could be met by a wide range of designs based on site-specific conditions. These designs range from a cap consisting of soils with adequate moisture-holding capacity, planted with the proper vegetative cover to handle the wettest month at this location and sloped to maximize surface run-off without causing significant erosion problems, to a cap containing a hydraulic barrier, such as a flexible membrane liner to prevent infiltration into the waste.

As with new units, many factors are involved in designing the final cover. These include precipitation, potential and actual evapotranspiration soil moisture holding capacity, vegetation, and run-off. There are several methodologies available that use these factors to estimate the amount of infiltration that may enter the waste. These methods are discussed in the background documents that support today's rule (Ref. 5).

2. Rationale for Proposed Approach

The primary goals of this rule are to establish standards that are protective of human health and the environment, provide flexibility to the States, and minimize disruption of current solid waste management practices by considering the practicable capability of the regulated community. The Agency believes that a performance standard approach for the design of MSWLF units best ensures that these goals can be achieved.

Today's proposed requirements would allow the owner or operator to take into account site-specific conditions when designing the unit to ensure that the concentration of contaminants at a specified compliance point (e.g., the waste management unit boundary) meets the design goal. Furthermore, use of a performance standard allows for the consideration of innovative technologies that may be developed in the future.

Today's performance standard would also provide States the flexibility to make the final decision as to how the standard would be achieved. Many States currently have standards that utilize a performance standard approach

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for design of MSWLFs and strongly support the performance standard approach proposed today. The Agency believes that, in many cases, only minor modifications to existing State standards would be necessary to make them consistent with today's proposal. Therefore, EPA believes that the proposed standard allows consideration of practicable capability and will result in minimal disruption to State programs. A review of current State regulations is included in background documents supporting this proposal (Ref. 9).

a. Differences from Existing Part 257 Criteria. Today's proposed standard for MSWLFs is similar to the current requirements under 40 CFR 257.3–4, which prohibits Subtitle D facilities from contaminating ground water beyond the solid waste boundary or an alternative boundary specified by the State. There are, however, several major differences in today's proposal.

First, today's proposal specifically would require the owner or operator to design new units to meet a protective ground water risk level. (See discussion in Section IX.D.1.a. of today's preamble concerning the design goal and EPA's request for comment on alternative risk ranges.) Under the existing Criteria, if a facility contaminates the ground water, the facility is classified as an "open dump" and must be upgraded or closed under a State-approved compliance schedule. Today's proposal, by establishing a design goal tied to ground-water protection, is intended to be preventive rather than reactive.

Second, the proposed design goal is an overall risk level that encompasses risks from a comprehensive set of constituents (i.e., Appendix II), which form the basis of the ground-water protection standard. The standard for the existing Criteria is limited to the contaminants identified in the National Interim Primary Drinking Water Regulations (NIPDWRs), now National Primary Drinking Water Regulations (NPDWRs). The Agency recognized in the preamble when it promulgated the existing Part 257 Criteria that this list did not serve as a comprehensive ground-water quality standard because it did not include all potentially harmful substances that might be associated with leachate from solid waste. Today's proposal requires that an overall risk level (i.e., design goal) be selected and used in new unit design and that, during ground-water monitoring, a more comprehensive list of constituents (i.e., more comprehensive than the existing Part 257 Criteria) be used to ensure that the design goal is being met. This list includes many constituents that may be found in landfill leachate, thereby providing more protection to human health and the environment than the existing Criteria. This proposal is discussed in greater detail in Section IX.E of today's preamble.

Third, EPA is proposing to establish a maximum limit on the distance the alternative boundary may be from the waste management unit boundary. Under the original Criteria, the maximum limit for the alternative boundary was left to the State's discretion. The Agency has chosen to propose a limit of 150 meters from the unit boundary in establishing the alternative boundary. The site-specific factors to be used in establishing an alternative boundary that were identified in the original Criteria, however, have been maintained.

Fourth, today's action proposes ground-water monitoring and corrective action requirements for both new and existing municipal waste landfills. The monitoring requirements would allow continuous evaluation of whether facilities are complying with the design goal, while the corrective action requirements ensure that appropriate responses are taken to protect public health from exposure to contaminated ground water and minimize resource damage.

Finally, today's action proposes different design standards for new and existing MSWLF units, unlike the original Criteria, which established one design standard for both types of units. EPA made this decision for the reasons discussed earlier (e.g., practicable capability); however, when this different standard for existing units is considered in context with other requirements of the proposal (e.g., corrective action), the overall protection is the same.

b. Differences From Subtitle C Standard. There are two major differences between the current Subtitle C standards for hazardous waste landfills and today's proposal. First, the overall performance standard for the design of hazardous waste landfills is more stringent than the performance standard for MSWLFs. Subtitle C landfills must be designed to prevent hazardous waste or hazardous constituents from entering the surrounding soils and ground water. The proposed performance standard for MSWLFs, which would require that the design goal not be exceeded at the compliance point, allows the mitigating effects of the surrounding soils and aquifer material to reduce the concentrations of contaminants. The Agency believes today's standard is appropriate for MSWLFs because it allows for consideration of the practicable capability of the regulated community.

The second major difference between today's proposal and the current Subtitle C standards is the strict Subtitle C design standard. Although there are certain very stringent variances available, location characteristics (e.g., climate and hydrogeology) generally do not reduce the design requirements for Subtitle C facilities as they do under the Subtitle D proposal. Therefore, Subtitle C specifies one design (i.e., double liners, LCSs, and leak detection systems) for almost all locations, while the proposed Subtitle D performance standard would allow location characteristics to be considered when designing the MSWLF unit so that the location and design of the unit complement each other. This proposed standard would allow consideration of the practicable capability of the owner or operator.

3. Alternatives Considered

The Agency considered a number of alternatives to the design requirements proposed today. Various performance standards, uniform design standards (with and without variance provisions), location categories approach, and risk-based approach were considered in developing today's design requirements. The Agency requests comments on all the alternatives presented below. EPA specifically is interested in comments on the advantages and disadvantages of the alternatives in relation to today's proposed approach.

a. Other Performance Standards. EPA considered two alternative performance standards to those contained in today's proposal: (1) Require MSWLFs to be designed to meet the design goal at the unit boundary but make no allowance for an alternative boundary and (2) require MSWLFs to be designed to meet the design goal at the unit boundary or any alternative boundary specified by the State (current standard in 40 CFR Part 257). These alternatives were evaluated based on the potential extent of ground-water contamination that may result, ability to enforce the standard through citizen suits, the practicable capability for the regulated community to comply, and flexibility afforded the States.

The first alternative, requiring MSWLFs to meet the design goal at the unit boundary, would provide the greatest protection to ground water because, by strictly defining the point of compliance as the unit boundary with no alternative allowed, it limits the real extent of ground-water contamination.

This alternative could be enforced easily through citizen suits; however, this option does not allow consideration of the practicable capabilities of the regulated community and could limit State flexibility by not allowing States to consider site-specific conditions when determining the point of compliance. Further, by not allowing consideration of site-specific conditions, this alternative could result in over-regulation and could exceed the practicable capability of the regulated community to comply.

The second alternative, requiring MSWLFs to meet the design goal at the unit boundary or a State-selected alternative, would provide more flexibility to account for the practical capability of the regulated community. It would be less burdensome to the regulated community because site-specific factors could be considered, thereby avoiding over-regulation and increased costs; however, it would be less protective of ground water because it would allow for a greater area extent of ground water to be contaminated than the first alternative. This alternative also could be difficult to enforce through citizen suits because no one alternative boundary would be specified in the rule for all MSWLFs.

The Agency believes that today's proposal provides a balance of the positive aspects of the above alternatives. It limits the potential area extent of ground-water contamination by placing a distance cap on the alternative boundary. In addition, it provides State flexibility, minimizes the potential for over-regulation, and considers the practicable capability of the regulated community. Finally, it would be enforceable at the Federal level or through citizen suits because it would set limits at the point of compliance.

b. Uniform Design Standards. The Agency also considered establishing uniform design standards for MSWLFs. Under this approach, requirements for liners, LCSs, and final cover systems would have been delineated in the regulation and would have been the same for all units. This approach is the same as that used in the Subtitle C regulations. This approach can simplify permitting because the same specific design requirement applies to all units regardless of site-specific differences. The Agency rejected this type of standard for MSWLFs because it would not consider site-specific location factors nor the practicable capability of the regulated community to comply, resulting in possible over-regulation in some areas. Further, it would severely limit State flexibility.

The Agency also considered uniform design standards with variances to allow variation of designs based on site-specific factors. In particular, the Agency considered proposing for all new MSWLFs composite liner and leachate collection system requirements similar to those proposed today only for those MSWLFs that recirculate leachate or gas condensate. As stated previously, the composite liner system would consist of a flexible membrane liner as the upper component and a compacted soil layer as the lower component. The soil layer would be at least three-feet thick with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The leachate collection system would need to be constructed to maintain less than a 30-cm depth of leachate over the liner. A variance mechanism would be provided to allow use of alternative designs based on site-specific considerations. These variances would be based on the hydrogeological characteristics of the landfill, alternative operating methods, the resource value of ground water, the nature of the alternative design, and other factors. The combination of these factors would have to provide a level of environmental protection equal to the standard design.

The Agency recognizes that this approach would likely be easier to implement and enforce and may provide greater assurance of protection of human health and the environment than other options considered; EPA is not proposing this approach because of concern regarding the difficulty in granting variances and the resulting potential over-regulation of some facilities. The Agency also is concerned that this approach would limit the States' ability to adequately consider the practicable capability of the regulated community.

c. Risk-Based Algorithm. The use of a risk-based algorithm is based on the development of a predictive equation that can be used to determine, on a site-specific basis, the potential human health risks from a proposed landfill. Such an approach could be simple to implement and could incorporate a large number of site-specific factors; however, the development of a valid predictive equation is difficult and its reliability would be limited by the quality of data employed in it. Furthermore, one equation may not be appropriate for all site-specific situations.

d. Categorical Approach. Another alternative considered by EPA, which is described in detail in the next section of this preamble, is an approach that would categorize locations based on hydrogeologic and climatic conditions. Specific designs would be identified for each category, and methods for categorizing locations and their corresponding requirements would be specified. This approach would be relatively easy to implement and would allow the consideration of site-specific conditions. The approach allows the consideration of climatic factors and geologic conditions, but no aquifer characteristics and ground-water resource value. Also, this approach might not adequately account for the practicable capability of the regulated facilities to comply. In addition, this approach would restrict State flexibility by prescribing a methodology States would use in establishing design requirements for various locations. While EPA has not proposed this approach today, EPA also is presenting this approach, along with the risk algorithm, as possible methods for determining adequate designs for meeting the performance standard proposed in § 258.40(a).

The Agency recognizes that the choice of a particular type of standard is a very controversial decision and is interested in obtaining public comment on today's selection. The selection was based on an attempt to balance several factors including the practicable capability of the regulated community to comply, States flexibility in implementing Subtitle D regulatory programs, and Federal or citizen suit enforceability. Commentors may wish to consider additional factors when providing comment and/or submit other factors for EPA's consideration.

4. Implementation of Performance Standard for New Units

Today's proposal would require that new MSWLF units be designed with liners, LCSs, and final cover systems as necessary to meet the performance standard described above. The specific type of design needed would vary depending on the characteristics of the particular location. In some settings, comprehensive liners and LCSs would be needed, whereas in other settings, minimal engineering controls may be needed. This section provides a brief background on engineering controls and describes various methods for determining the landfill design necessary to achieve today's proposed performance standard.

a. Overview of Engineering Controls. The purpose of lining an MSWLF unit is to prevent leachate from seeping from the site and entering the aquifer. A liner is a hydraulic barrier that prevents or

greatly restricts migration of liquids, thus allowing leachate to be removed from the unit by the LCS. Liners function by two mechanisms: (1) They impede the flow of leachates into the subsoil and to the aquifer and (2) they adsorb or attenuate pollutants thus retarding the migration of contaminants. This adsorptive or attenuating capability is dependent largely upon the chemical compositions of the liner material and its mass. Most liner materials function by both mechanisms but to different degrees depending on the type of liner material and the nature of the liquid to be contained. Liners may be grouped into two major types: synthetic (flexible membrane liners) and natural (soil or clay liners).

Flexible membrane liners are the least permeable of the liner materials, but have little capacity to attenuate dissolved pollutants. Natural liners can have a large capacity to attenuate materials of different types, but they are considerably more permeable than the FMLs. Both types of liner materials can prevent or limit leachate migration out of the MSWLF.

A review of the MSWLF case studies identified various types of liners currently being used, including compacted native and imported soils, compacted mixtures of native soils and bentonite, and FMLs. The liner designs used varied somewhat from region to region.

In landfills designed with liners, a leachate collection and removal system is necessary to relieve the hydraulic pressure within the landfill. Without a collection and removal system, the leachate will accumulate, increasing the driving force for migration through the base of the fill. Leachate could eventually back up into the unit (i.e., the "bathtub" effect), resulting in seepage near the surface and possibly affecting surface waters or other receptors. Collection systems also may be needed when a landfill is located in saturated soils. Water from this saturated material eventually will seep into the waste and generate leachate if not removed by an LCS.

The collection and removal of leachate from the unit will assist in meeting the overall performance goal for the unit. An LCS generally consists of perforated drain pipe installed in gravel-filled trenches above the liner at the base of the unit. The collection system is drained by gravity to a sump or series of sumps from which the leachate is withdrawn for treatment or disposal. Additional details on the design and construction of LCSs can be found in "Lining of Waste Impoundment and Disposal Facilities" (Ref. 36).

The Agency believes that placement of a final cover over closed portions of an MSWLF is necessary to: (1) Minimize infiltration of rainwater; (2) minimize dispersal of wastes by human, animal, or physical interactions; and (3) minimize the need for further maintenance at the facility during the post-closure period and beyond. The types and amounts of cover material needed to accomplish these goals and to achieve compliance with the design goal are highly dependent on the location of the landfill. The amount of infiltration of water into the final cover and any subsequent percolation through the waste can be affected by surface conditions such as soil type, soil thickness, final grade, type of vegetation, and climatic factors such as amount of precipitation, temperature, and evapotranspiration. For example, in areas with limited rainfall and high evapotranspiration, minimizing infiltration may be achieved by: (1) Grading the unit in such a way as to promote run-off, (2) using the proper type and thickness of soil to maximize moisture-holding capacity, and (3) establishing vegetation to promote plant transpiration of water. In areas of high rainfall and low evapotranspiration, these design factors may not substantially reduce the amount of water entering the waste after closure. In such cases, additional design factors, such as hydraulic barriers, either synthetic or compacted soils, and/or drainage layers, may be required in the final cover to reduce infiltration to acceptable levels. Further information on the design of cover systems is available in a background document (Ref. 5).

b. Methods for Evaluating Designs. Today's proposal does not prescribe a single method for designing a facility to meet the performance standard. Because the Subtitle D program is implemented by the States, the Agency believes that the appropriate method for implementing the design performance standard is best determined by the States; however, EPA is providing guidance on three methods for determining what design is necessary to comply with the performance standard (i.e., to meet the design goal at the point of compliance). These methods include: (1) A risk-based algorithm, (2) a categorical approach, and (3) an empirical method. A fourth method not discussed involves using a State-selected risk model. Although this last method is not described, the data needed and assumptions made for the risk-based algorithm may be similar to what would be necessary for the State-selected risk model.

For the risk-based algorithm (and the State-selected risk model), the design goal is expressed as a risk level. The risk level selected as the design goal is not directly involved in applying the categorical approach but is used to determine compliance and to establish clean-up levels for corrective action. The categorical approach presented today is based on preventing any leachate from migrating to the aquifer. Because of this no-migration concept, this approach is generally more conservative than the risk-based algorithm and in some cases would require more extensive engineering controls than would be determined from the risk-based algorithm.

The empirical methodology uses historical ground-water monitoring data to assess the effectiveness of existing designs in meeting the design goal. The ground-water monitoring data would be used to calculate a risk level that would be compared to the design goal.

These three methods are described below and in more detail in the background document on facility design (Ref. 5). EPA plans to issue a guidance document addressing facility design after the final rule is promulgated.

(1) Risk-Based Algorithm. Using the Subtitle D Risk Model, EPA derived an algorithm that characterizes a site's potential for ground-water contamination. This algorithm uses information on a facility's potential leachate release rate and the characteristics of the site's hydrogeology to estimate the level of ground-water contamination that would result from an MSWLF operating at that site. The level of contamination is represented in the algorithm by the excess lifetime cancer risk associated with human consumption of ground water at the landfill's compliance point. States and landfill owners or operators can use this algorithm as a screening tool to determine whether a new MSWLF at a given site is likely to achieve compliance with the State-established design goal if constructed with no bottom liner and a vegetative cover. The risk-based algorithm cannot be used to analyze the reduction in human health risks that would be achieved through the use of more stringent control technologies.

The steps involved in using the risk-based algorithm are displayed in Figure 1. The State would establish the design goal that is tied to the trigger levels for hazardous constituents specified in § 258.56 for the landfill. If the calculated risk is lower than the design goal, this would imply that the proposed landfill

would be in compliance with the performance standard. If the calculated risk exceeds the design goal, the owner or operator could choose a new site for the landfill, change the proposed dimensions of the landfill, or employ more stringent control systems (e.g., bottom liners, leachate collection systems, different cover types). The effects of changes in location on risk potential could be calculated using the risk-based algorithm, while the effects of more stringent containment and cover systems could not. EPA recommends that a more rigorous State-selected assessment (either risk- or technology-based) be used to specify the mix of containment and cover system components capable of meeting the design goal.

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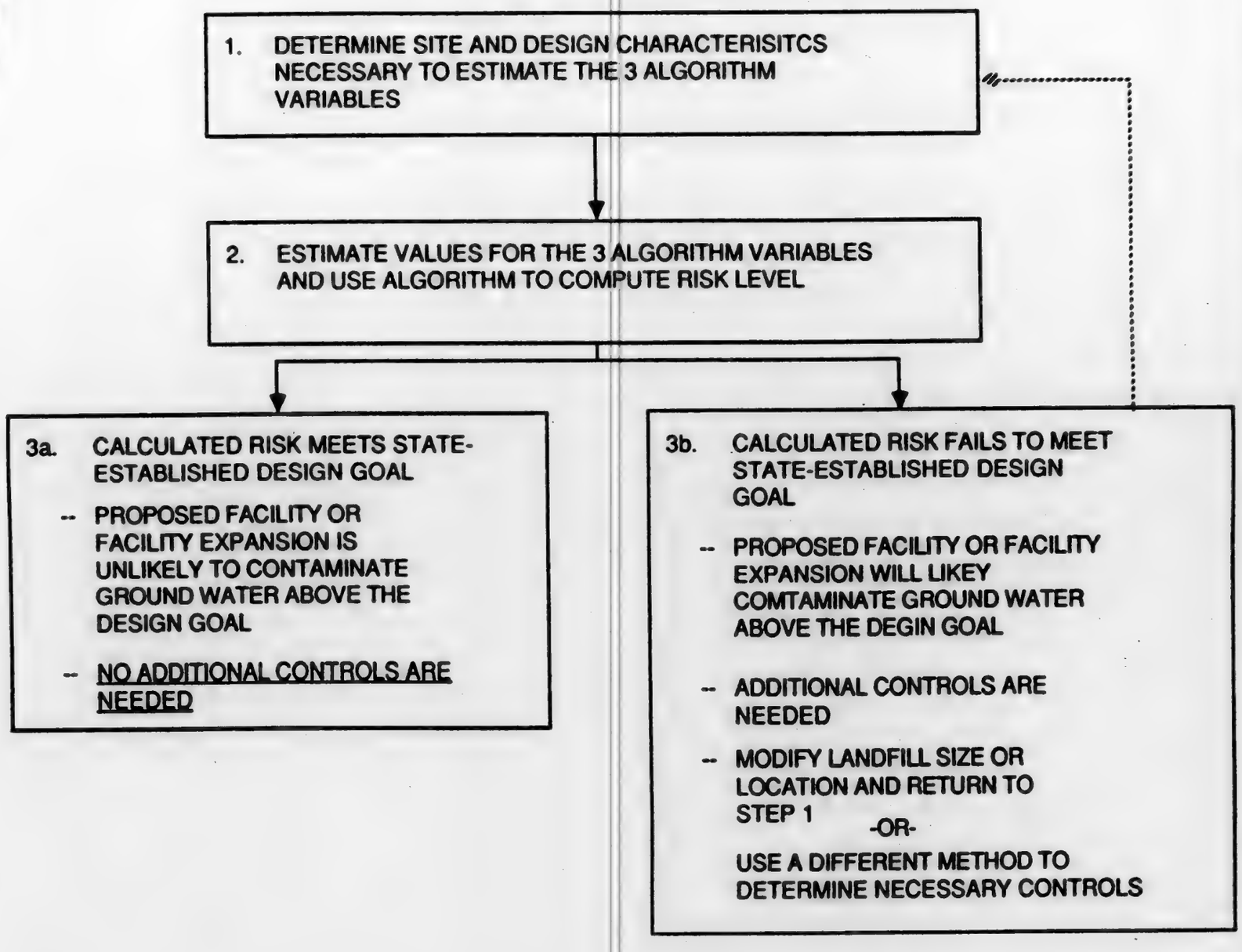
FIGURE 1

APPLICATION OF RISK-BASED ALGORITHM



The risk-based algorithm is as follows:

$$R = 4.5 * 10^{-6}(Q_R/Q_A)^* e^{(TOT)(-8.096)}$$

where:

R = lifetime risk posed by consumption of ground water at designated compliance point.
Q_R = predicted leachate release rate to the uppermost aquifer, m^3/yr.
Q_A = ground-water flow rate for the uppermost aquifer, m^3/yr.
TOT = time-of-travel for leachate in this aquifer from the unit boundary to the compliance point, years (TOT = 0 for unit boundary compliance point).

In essence, the risk-based algorithm states that the risk associated with ground-water contamination from an MSWLF is a function of the rate of leachate release from the site and the attenuation (i.e., dispersion and degradation) of this leachate in the aquifer. Q_R represents the annual leachate release rate, while Q_A and TOT account for the dilution, dispersion and degradation of contaminants in ground water. Methods for calculating Q_R, Q_A, and TOT are described later.

EPA acknowledges several limitations of this approach. First, this approach is dervied by assuming that the MSWLF risk results produced by the Subtitle D Risk Model represent "true" risks and fitting a simplified mathematical model (i.e., the risk-based algorithm) to these results. The Subtitle D Risk Model is currently unverified for predicting ground-water contamination resulting from MSWLFs. However, EPA believes the model is technically correct and believes that it can adequately characterize the risk from MSWLFs.

Second, the approach assumes that the leachate produced from a particular landfill will have a composition and constituent concentrations similar to that used in the Subtitle D Risk Model. The initial leachate constituent concentrations used in the model represent the median concentrations for six constituents found in samples of leachate from numerous MSWLFs (see Section XI of preamble). (A complete discussion of the leachate constituent selection process, including the dose-response parameters used for the constituents, is contained in the draft Regulatory Impact Analysis.) The risk-based algorithm should not be used for proposed MSWLFs that have expected leachate characteristics substantially different from those used in the Subtitle D Risk Model. EPA recommends that, at these landfills, a State-selected Risk Model or other approach be used.

Third, the risk-based algorithm never predicts risks higher than 4.5×10^{-4}. This value was derived from the Subtitle D Risk Model results for approximately 500 distinct combinations of landfill size, environmental and hydrogeologic setting, and exposure distance. In about 5 percent of these scenarios, the modeled risks were higher, although none exceeded 10^{-3}.

Fourth, although the risk-based algorithm is relatively powerful in a statistical sense (i.e., its predicted risks correlate well to the Subtitle D Risk Model's predicted risks), its use introduces some additional uncertainty.

The State might account for some of the uncertainty in the approach by setting the risk-based algorithm goal somewhat lower than the actual design goal. For instance, if the State determines that the actual design goal should be 1×10^{-4}, it could state that any MSWLF with calculated risks exceeding 1×10^{-5} would be required to perform a more detailed site-specific assessment. Such a margin of safety (in this example, one order-of-magnitude) would allow the States and owners and operators to identify low-risk MSWLFs relatively quickly and focus more effort on borderline or high-risk MSWLFs. EPA recommends that the States determine the acceptable margin of safety between the risk-based algorithm-predicted risk and the design goal.

Fifth, the risk-based algorithm does not apply to sites with complex hydrogeology. The ground-water concentrations in sites characterized by fractured, folded, or faulted rock, karst terrain, tidally-induced changes in ground-water flow, or similar complex conditions are not represented in the underlying Subtitle D Risk Model, and thus the risk-based algorithm does not predict them. In these conditions, EPA recommends more sophisticated analytical techniques be used.

Sixth, characterizing the variables needed to solve the algorithm for an individual site may be both costly and difficult. However, some simple methods are available to make these determinations, as discussed later.

These limitations thus relate to the ease of implementation and the uncertainty embodied in the approach. EPA has attempted to propose the risk-based algorithm in a form that strikes a reasonable balance between the desire for accuracy and certainty on the one hand, and timely, moderate-cost implementation on the other.

In order to develop the risk-based algorithm, the Agency identified from case studies, damage cases, field observation, Subtitle D risk modeling results, and other sources several environmental factors that affect leachate generation, leachate release, migration, exposure, and risk. These factors include landfill size, net infiltration, subgrade permeability, depth to ground water, aquifer flow rate, and time-of-travel from the unit to a potential exposure point. Using the list of key environmental factors, EPA conducted an analysis of variance (ANOVA) and a regression analysis. The ANOVA allowed EPA to determine the importance of each of the environmental variables in explaining the variation in the predicted MSWLF's risk. The regression analysis, coupled with an understanding of the physiochemical processes that affect risk, allowed EPA to establish a simple equation, using the key environmental variables identified in the ANOVA, to predict a facility's risk.

For the purpose of the ANOVA and regression analysis, EPA used the risks predicted from the Subtitle D Risk Model. For this application, the model simulated approximately 500 exposure scenarios comprising unique combinations of infiltration rates, facility size, depth to water table, hydrogeologic conditions (aquifer velocity and configuration), and exposure point. For each scenario, EPA predicted the highest lifetime health risk that would be experienced over a 300-year simulation period.

In establishing the importance of the environmental variables, the Agency generated a series of ANOVA tables displaying the relationship between the identified (independent) environmental variables and risk, the dependent variable. The ANOVA tables provided EPA with a means to evaluate the strength of the association between risk and the various independent variables.

The ANOVA results indicated that none of the environmental variables alone explains more than 10 percent of the variability in risk. EPA then combined some of the related variables to test the relationship between risk and three "top" parameters: leachate flux (Q_R), aquifer flux (Q_A), and TOT. Q_R is a function of several variables including the facility size, the infiltration rate, and the subgrade permeability. Q_A is a function of the aquifer velocity (i.e., permeability and hydraulic gradient), aquifer thickness, and effective porosity. It accounts for the dilution and attenuative capacity of the aquifer, and is measured at the downradient point of compliance. TOT is a function of the aquifer velocity and distance to the downgradient compliance point. Using these "top" parameters, EPA analyzed several forms of the equation used to predict MSWLF risks.

As with most regression equations, the chosen algorithm omits some independent variables that could increase the explanatory power of the model; however, EPA believes that it is better to use fewer variables and keep the classification scheme simple. EPA believes that the relationship is conceptually valid and realistically depicts the actual physical relationships between these parameters.

To apply the risk-based algorithm at a given site, the owner or operator must calculate three variables: leachate flux (Qr), aquifer flux (Qa), and ground-water TOT. Several methods exist for calculating TOT, Q_A, and Q_R. TOT equals the distance between the landfill unit boundary and the compliance point; this distance is then divided by the ground-water velocity. Thus, TOT will equal zero whenever a unit boundary compliance point is selected. Calculation of ground-water velocity requires either field measurement or obtaining estimates of hydraulic conductivity, hydraulic gradient, and effective porosity from available literature. Ground-water velocity equals KI/n, where K is the hydraulic conductivity, I is the hydraulic gradient, and n is the effective porosity.

Q_A also can be determined either by field measurement or by empirical calculation. Q_A equals KIA, where K is the hydraulic conductivity, I is the hydraulic gradient, and A is the cross-sectional are of the aquifer.

Q_R can be calculated as the product of the surface area of the MSWLF and the annual recharge. The surface area of the landfill can be taken from site maps and plans. Recharge can be estimated either empirically or through use of a water balance method. EPA recognizes that this approach of calculating Q_R does not account for the potential effects of low-permeability wastes or subgrades in limiting the rate at which leachate can be released from a landfill. In most cases, the leachate release rate will be limited by the recharge rather than the permeability of the waste or the subgrade.

EPA realizes that the cost of estimating values for some of these variables can be high, depending on the method used. EPA believes, however, that at least some of these costs would be incurred independently of the use of the algorithm (e.g., hydrogeologic studies).

EPA requests comments on this approach, particularly on the utility of the approach; the difficulty in implementing it; the leachate characterization; environmental transport; the technical accuracy of the risk-based algorithm; and methods for addressing the uncertainty inherent throughout the risk assessment that is the conceptual foundation for this approach.

(2) Categorical Approach. The categorical approach is an engineering approach for determining whether a facility will meet the performance standard and is based on the ability to match location characteristics to specific design requirements. The intent is to present a simplified methodology that accounts for liquid migration in the overburden (the material between the bottom of the unit and the top of the aquifer). The categorical approach is designed to achieve minimal releases to the aquifer, which is somewhat more stringent than the performance goal proposed today (i.e., meet design goal at unit boundary or alternative boundary). A relative comparison of the (estimated) necessary designs, costs, and benefits of the categorical approach to the proposal is contained in the draft Regulatory Impact Analysis.

The approach uses two basic elements. First, the design selected for use during the active life, takes into account local hydrogeologic and climatic conditions to prevent liquids from reaching the aquifer. Second, at closure, a final cover system is used that minimizes the generation of leachate by preventing the infiltration of liquid into the waste. The Agency recognizes that the final cover will not stop leachate from migrating to the aquifer, but the final cover will minimize the amount of water that moves through the waste into the aquifer. By reducing the amount that enters the aquifer, EPA believes that the performance standard specified in § 258.40(a) can be met because the dilution and attenuation that occurs in the aquifer will reduce the concentrations of the small amounts of contaminants that escape the landfill.

Because the categorical approach seeks to minimize constituent releases to aquifers, it is conservative approach to designing facilities to meet today's performance standard. The State and the owner or operator should be aware of this when using this approach to identify designs necessary to meet today's performance standard.

The categorical approach is based on the potential for contaminants in leachate to migrate from the MSWLF. Leachate is formed by rainwater and other liquids percolating through the solid waste in the landfill. Different hydrogeologic and climatic settings influence both the rate at which leachate is generated and the potential for leachate to escape from the unit and eventually reach ground water. Under this approach, location categories are established based on the migration potential of water from the landfill unit. Once the location categories are defined, design requirements are specified to offset the effects of "poor" locational factors to counteract the rapid movement of contaminants from the MSWLF to the aquifer that these "poor" locations promote.

Under this approach, locations are categorized based on the climate and geology, which determine the potential for contaminants to migrate into the aquifer. In developing this approach, climate and geology were evaluated to determine their contribution and importance to the generation and migration of leachate from landfills. Because this approach is based on preventing the migration of leachate to the aquifer during the active life of the unit, aquifer characteristics do not play a role in the selection of design requirements necessary to meet the design standard.

(a) Climatic Factors. The Agency believes that climatic conditions are key factors in determining the rate and amount of leachate that will be generated in an MSWLF unit. The climate of a particular area is dependent upon the interrelationships of numerous conditions. The factors that the Agency evaluated in developing the categorical approach are: Precipitation, potential evaporation, potential evapotranspiration, temperature, and run-off. Each factor is discussed briefly below.

Precipitation normally is expressed as the amount of rainfall and snowfall that occurs at a specific location. Precipitation is the primary climatic factor affecting the generation of leachate at landfills. When precipitation enters a landfill, it infiltrates the wastes and dissolves contaminants to form leachate. As more leachate is formed, hydraulic head is built up at the base of the landfull that acts as a driving force for migration to the subsurface. Both the rate and degree to which this process occurs will vary, based on the location of the MSWLF.

Potential evaporation (PE), measured as pan evaporation, is normally expressed as the amount of water that potentially will evaporate from a free water surface at a specific location. This factor often is similar to lake evaporation and is not representative of MSWLF conditions. Potential evapotranspiration (PET) is normally expressed as the potential amount of water that will evaporate from soil surfaces and transpire through plants at a given area. Normally, PET is lower than PE in a given area. Temperature

plays an important role in potential evaporation and potential evapotranspiration for a given location; the values for these factors incorporate the effects of temperature.

Run-off, although not a climatic factor, normally is expressed as the amount of water that will migrate from the site in the form of overland flow. Major land surface conditions affecting surface run-off include topography, cover material, vegetation, soil permeability, antecedent soil moisture, and artificial drainage.

In order to achieve the overall goal of this methodology (preventing leachate from reaching the aquifer during the active life of the unit), it is necessary to determine the factor or factors that best represent the potential amount of moisture available for entering the waste, thereby generating leachate. The Agency evaluated the above factors to determine which factor or factors best characterized the climatic elements relevant to leachate generation. The objective of the evaluation was to determine the potential for leachate generation during the active life of a unit. As stated earlier, the Agency believes that once the MSWLF is properly closed and covered, leachate generation should be minimal. No single factor or combination of factors could be found that adequately characterized climatic elements such that leachate generation during the active life could be estimated. EPA, therefore, selected a simple two-step process that can be used to categorize locations based on climate. This process uses mean annual precipitation as the factor in the first step.

The first step of the process requires that the mean annual precipitation (P) for an area be determined. P was chosen because: (1) It is easily determined, (2) it does not necessarily require the collection of new data, and (3) it conservatively describes the amount of water potentially available for infiltration and leachate generation. Using P conservatively estimates the amount of leachate formed because it does not consider evaporation or run-off. Values of P can be obtained from the National Weather Service, the National Oceanographic and Atmospheric Administration (NOAA), and/or USGS Water Atlases. These sources have collected rainfall data over extended periods of time, so values from these sources should be representative of annual rainfall in an area.

The Agency believes that there is a relationship between precipitation and leachate generation. Based on an evaluation of MSWLFs in different climatic settings, EPA has concluded that areas that receive more than 40 inches or precipitation per year generate leachate in quantities sufficient to warrant collection. Therefore, under the categorical approach, units located in areas that receive more than 40 inches of precipitation annually would be required to have leachate collection. For areas that receive less than 40 inches of precipitation per year, the evaluation indicates that leachate may not always be generated in amounts necessitating collection. Therefore, the second step of the process is to estimate the amount of leachate formed in areas receiving less than 40 inches of precipitation to determine if enough leachate is generated to warrant collection.

This estimate incorporates factors that determine the potential for leachate accumulation at a specific landfill. The factors used include P, PET, actual evapotranspiration, soil moisture holding capacity, waste moisture holding capacity, and run-off. Because MSWLFs are ongoing construction projects, the relationship among these factors relative to leachate accumulation continually changes. Therefore, a demonstration method that evaluates the potential amount of leachate accumulation at different stages of landfill construction is necessary. Under this method, the evaluation would be based on the projected landfill configuration at the end of each operating year. The Agency believes that some facilities in low precipitation locations may be able to eliminate the need for leachate collection by adjusting operational characteristics of the site.

The following steps are needed to determine when an LCS is necessary:

Step 1: Estimate topographic contours of the unit at the end of each operating year throughout the active life until final cover has been installed.

Step 2: Compute the quantity of leachate generated for each year of active life using the water balance method. This step may require dividing the landfill unit into discrete areas to take into account differing grades and variations in surface run-off. If so desired, the moisture-holding capability of soil layers used for cover could be considered. Most active portions of a landfull will have no vegetative cover, so moisture loss by evapotranspiration should not be considered in the water balance calculation. Moisture loss from active portions should be accounted for by using estimates of evaporation from bare soil as described in an EPA guidance document (Ref. 35).

Step 3: Calculate the total accumulation of leachate at the base of the unit by adding the amount of leachate generated to the amount predicted for each previous year.

Step 4: If total accumulation of leachate at the base of the unit (as determined by Step 3) exceeds or equals one foot at any stage of the landfill construction, an LCS is necessary. For example, for a unit that has a three-year active life: for year one, it is estimated that one foot of field capacity of the waste remains and no leachate is generated. For year two, it is determined that one foot of field capacity remains and, again, no leachate is generated. However, for year three, before final cover is installed, it is determined that field capacity for the portion of unit planned to be built that year will be exceeded and four feet of leachate will be generated. Presuming that the year three portion of the unit is on top of the year two and year one portions of the unit, the total effect will be to negate the unused moisture holding capacity of the previous two years and result in a head build-up of two feet at the base of the unit, which is sufficient to require the installation of an LCS. This method is further discussed in the backgound document supporting this proposal (Ref. 5).

(b) Geologic Factors. The nature and extent of the geologic material underlying a given MSWLF site strongly influence the fate of any leachate generated. The categorical approach estimates the effects of various geologic materials based on the time it takes water to move through the material above the aquifer. Because leachate is an aqueous solution EPA believes it is reasonable to model water movement rather than leachate movement in the subsurface. The Agency believes this simplifying assumption is conservative. This simplified approach does not include consideration of the variability of MSWLF leachate over time. Also some factors that retard constituent movement, such as absorption, chemical precipitation, degradation, and attenuation, that can result in slower movement of the constituent than the solute (i.e., water) are not a part of this simplified approach. Therefore, the Agency believes that considering only the rate of liquid movement is a conservative approach.

Certain geologic characteristics control the rate at which leachate will migrate to the aquifier. For the categorical approach, the rate must be determined so that design features can be added when the natural conditions do not give adequate protection to the aquifier. The geologic factors evaluated included the following: Depth, saturated

hydraulic conductivity, effective porosity, and linear velocity.

Depth (D) refers to the thickness of the geologic material between the bottom of the unit and the top of the aquifer. This zone is referred to as the overburden. Saturated hydraulic conductivity (Ksat) is a measure of the ability of porous media (soils or rock) to transmit liquids under saturated conditions. Effective porosity (N_e) is a measure of the interconnected pore space in the geologic material. Porosity has a controlling influence on the linear velocity of water in the overburden media. Linear velocity (V) is the speed at which ground water travels in the subsurface under saturated conditions.

Different methodologies were evaluated that could be used to estimate the time for liquids to migrate through the overburden to the aquifer, known as time of travel (T) to the aquifer. The methodologies involve: (1) Calculation of T based on a detailed time-of-travel measurement through the overburden (for saturated and unsaturated geologic material) using the approaches prescribed for determining vulnerable hydrogeology under Subtitle C (Ref. 11), (2) calculation based on Darcy's law, expressed as T=D/Ksat, (3) calculation to T=D/V (based on the linear velocity of water in the overburden with an assumed hydraulic gradient of one), and (4) a wetting front approach for unsaturated soil only.

The detailed time-of-travel analysis results in the most accurate prediction of when leachate may reach the aquifer under ideal conditions; however, it is very data-intensive and complex, particularly for unsaturated conditions. It also requires the development of flow nets.

The second and third methods are more straightforward because the necessary data are readily available from literature and field tests. Because of their simplicity, these methods could be used to pre-screen locations with data available from the literature. These data should be verified by field tests prior to site design because field verification is necessary to ensure that site-specific conditions match conditions predicted by the literature.

D-Ksat is the simpler method to use because it needs only two easily obtained pieces of data: Saturated hydraulic conductivity and depth. Numerous methods are available for determining saturated hydraulic conductivity. For example, in fractured consolidated rock, pressure tests or falling head tests can be used to evaluate Ksat. In unconsolidated materials, constant head gravity tests are commonly used. These and other methods are available and documented. It is important, however, to ensure that the proper methods are used in the material being evaluated. Depth may be obtained easily from a preliminary subsurface exploratory program and/or from boring and drilling logs from surrounding areas.

The third method, D/V, is believed to be more accurate than the second method because the velocity (V) incorporates effective porosity (N_e) in the calculation. As mentioned above, effective porosity is a measure of the interconnected pore space in geologic material. It can be an important controlling influence on hydraulic conductivity (and thus rate of flow) in both unconsolidated and consolidated formations. Porosity values range from 0 to 5 percent for dense crystalline rock, 25 to 40 percent for gravel, and 40 to 70 percent for clay. In fractured rock, secondary porosity also must be considered. When determining the porosity of the overburden at a specific site, both primary and secondary porosity should be considered as warrented.

Although more accurate than D/Ksat, the D/V method has some features that make it less accurate than the detailed time-of-travel calculation discussed earlier. First, it assumes that the hydraulic gradient (a major influence on ground-water velocity) is equal to one. This assumption will result in a conservative time-of-travel value (i.e., the actual time may be longer). Second, it assumed fully saturated conditions, which in most cases will result in a conservative value.

The fourth method involves a wetting front equation and may be a better predictor of flow in the unsaturated zone. The method requires the collection of more data than either the second or third method. This method is based on equations developed for infiltration of water into dry soil and applies simplifying assumptions to calculate the time of travel. The equation used to calculate the time of travel is given as:

$$T=(LWr)/q$$

where:

T=time of travel (T).
L=length of the unsaturated zone (L).
Wr=change in moisture content from soil behind the wetting front to dry soil ahead of the wetting front.
q=infiltration rate (L/T).

The length of the unsaturated zone (L) can be determined from boring logs and piezometer measurements. Moisture content behind and ahead of the wetting front can be calculated, and, therefore, Wr can be determined from field measurements or estimated from empirical equations. The infiltration rate is (q) approximated by using the net precipitation.

The principle assumption of this approach is that there exists a distinct and definable wetting front, and that behind the wetting front the soil is uniformly wet and of constant conductivity. The wetting front approach is applicable for a limited range of conditions. In particular, the approach is useful when a constant water flux is applied to initially dry soil. The approach may not be applicable for soils that are initially moist or that are uniform in moisture content under natural infiltration conditions. The principle value of the approach is in predicting unsaturated flow.

The Agency believes that the D/V method of calculating T is conservative and easy to calculate. The categorical approach assumes saturated flow because the available methodologies that can be used to estimate the flow time of water through unsaturated materials are complex and require extensive data collection. Calculating the time of flow for saturated materials involves less complex equations and requires fewer resources to obtain the required data inputs. Furthermore, the use of saturated conditions is generally conservative in predicting time-of-travel in the overburden because, for the most part, K values increase as soil moisture content increases for a given soil type. The Agency recognizes that in certain unsaturated soils, particularly clays, saturation may not be a conservative assumption. Initial breakthrough of leachate, in small amounts, may occur prior to the prediction, assuming saturation. For the purpose of categorization, EPA believes that it is more important to predict when a major amount of leachate may enter the aquifer. However, the owner or operator has the option of using an alternative method, including the detailed Subtitle C time-of-travel calculation or the wetting front approach.

Under this simplified approach (D/V method), the value selected for T can be used to determine which locations require liners and the type of liner that may be required. The methodology is based on the active life of the unit. A value of T equal to or greater than the active life of the MSWLF unit is classed as "long" and a T less than the active life as "short." A minimum cut-off value for T of 20 years has been selected because a minimum T precludes the siting of short duration units in relatively poor locations. This minimum value of 20 years for T was chosen because the average active life of a

facility is approximately 30 years, and a facility usually consists of more than one unit. EPA therefore selected 20 years as the average life of a unit. T values that are long when compared to the active life of the unit would not need liner systems, while units with T values shorter than the active life of that unit would need liners.

The T value should be determined for each unit rather than for an entire facility. For example, an MSWLF may have a total life of 50 years but comprise several units with active lives less than 50 years each. The T for each of these units is a separate calculation.

(c) Relationship to Design Requirements. Combining P and T values results in a matrix comprising four blocks that correspond to separate categories, as shown in Figure 2. Each location category describes a hydrogeologic and climatic setting with unique characteristics that affect landfill design. For example, Category I has both good climatic characteristics for a landfill (limited precipitation indicated by the low P) and good hydrogeology (acceptable overburden characteristics evidenced by high T value). On the other hand, Category IV represents locations with poor climate and hydrogeology that require specific landfill designs (liners and LCSs) to compensate for the poor locational characteristics. The two key measures of precipitation and time-of-travel to the aquifer are used not only to establish the location categories, but to identify the landfill design requirements needed for a particular location.

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FIGURE 2

CATEGORICAL APPROACH

PRECIPITATION (P)	< Active Life*	≥ Active Life*
> 40 in./yr.	**IV** • LCS required • Liner required	**II** • LCS required • Liner not required unless needed for LCS
≤ 40 in./yr.	**III** • LCS not required unless need demonstrated • Liner required	**I** • LCS not required unless need demonstrated • Liner not required unless needed for LCS

TIME OF TRAVEL TO AQUIFER
(T)

* MINIMUM T VALUE IS 20 YEARS

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In Categories I and III, the low P value indicates that the potential for leachate generation is less than in Categories II and IV. This low potential is not to imply that leachate will not be generated in quantities sufficient to warrant a collection system at facilities in low P areas. The demonstration described earlier to determine if an LCS is necessary should be conducted.

In Categories II and IV, high P values indicate that climatic conditions are conducive to the continual generation of leachate. Leachate control, therefore, is necessary in order to prevent the buildup of a hydraulic head within the unit during the active life of the facility. Any leachate generated after the active life of the unit also must be collected.

In addition, the Agency believes that LCSs are necessary when flexible membrane liners are installed. FMLs are very efficient hydraulic barriers, and an LCS is necessary to remove the hydraulic head that accumulates over time. FMLs installed without such systems will ultimately result in the "bathtub" effect.

Facilities sited in Category I and II locations have overburdens that already satisfy the requirements that T at least equals the active life of the unit. Therefore, modifications to the overburden would not be necessary at these sites. Some Category I and II locations, however, may need a liner if they need an LCS and if the natural overburden material does not have a permeability low enough to allow the LCS to properly function. For example, a site may have an adequate thickness of silty sand to be classified as Category II, but the permeability of this silty sand may be inadequate to allow the LCS to function properly. The base of the unit may need to be modified.

Facilities sited in Category III and IV locations have overburden materials that do not have T values that are at least equal to the active life of the unit or 20 years, whichever is greater. These units should install earthen or synthetic liners or modify the existing subbase such that, in combination with the overburden, the composite T value meets the standard. This may require measures such as soil amendments, recompaction of existing materials, and installation of synthetic membranes.

As discussed earlier, under this approach a final cover system that prevents liquid filtration into the water after closure is necessary. Acceptable methods for determining the design for such a final cover were discussed in a previous section.

(3) Empirical Methodology. A third approach for determining the landfill design characteristics necessary to comply with this rule's design goal relies on the use of ground-water monitoring data from existing MSWLFs. Under this approach, an owner or operator planning lateral expansions of an existing facility or planning to build new units in similar locations to an existing unit could use ground-water monitoring results from existing units to determine if the new or expanded units need to employ designs that are more protective than the existing unit. If the concentration of constitutents detected in the existing units' ground-water monitoring wells do not exceed the design goal (and leachate from the unit could be reasonably expected to have reached the monitoring wells), then the new or expanded unit would not have to apply a more elaborate containment design than the existing unit has to comply with this rule's design goal.

Four conditions would have to be met before this approach could be used. First, the new or expanded unit must have sufficiently similar location and waste characteristics to the existing unit to not pose greater threats to human health and the environment than the existing unit. Second, the existing unit must have operated ground-water monitoring wells over a long enough period to allow for leachate generation and release (accounting for the time required for failure of any liners) and migration through the unsaturated and saturated zones to the monitoring wells. Third, the ground-water monitoring data must address the Phase I parameters (and Phase II parameters, if Phase II has been triggered). Fourth, the monitoring data must be supplemented with appropriate modeling to predict the fate of hazardous constituents over a time period equivalent to the post-closure care period proposed today. This approach would be used most frequently for expansions of existing MSWLFs that have conducted ground-water monitoring over a long period of time.

The Agency recognizes that all three approaches are new methodologies that have not been a part of permitting programs. Comment is requested on the appropriateness of these approaches to a specific permit program or an individual landfill design. Comment is requested on the overall approaches and on ways to modify any approach to make it easier to incorporate into an existing permitting program.

E. Subpart E—Ground-Water Monitoring and Corrective Action

EPA today is proposing ground-water monitoring and corrective action requirements to ensure that ground-water contamination at new and existing MSWLFs will be detected and cleaned up as necessary to protect human health and the environment. These requirements reflect Congressional intent, as interpreted through HSWA and the accompanying legislative history, that protection of ground water be a prime concern of the revised Criteria. HSWA specifically directed EPA to require ground-water monitoring as necessary to detect contamination and corrective action, as appropriate, to protect human health and the environment.

The existing Criteria under § 257.3–4 require that a facility or practice shall not contaminate an underground drinking water source beyond the solid waste boundary or beyond an alternate boundary established by the State. The existing Criteria define "contaminate" to mean the introduction of a substance that would cause: (1) An MCL for any of 10 inorganic chemicals, four chlorinated hydrocarbons, or two chlorophenoxys to be exceeded or (2) a background level to be exceeded for any of these 16 constituents when such background concentration already exceeds an MCL. The existing Part 257 does not specifically require facilities to monitor ground water beneath their units or to implement a corrective action program when ground-water contamination has occurred. Facilities that are in violation of the current Criteria, however, are required to close or enter into a compliance schedule with their respective State.

Today's proposed Criteria revisions completely replace the existing criteria for MSWLFs under 40 CFR 257.3–4, providing ground-water monitoring and corrective action requirements under 40 CFR Part 258 for all new and existing MSWLF units. The proposed requirements call for assessment of the hydrogeology beneath landfill units, ground-water monitoring, reports on ground-water quality, the establishment of ground-water trigger levels and ground-water protection standards, and corrective action. These requirements are discussed separately below.

The corrective action program proposed today addresses releases to ground water only. In section 4010 of HSWA, Congress specifically instructs the Agency to evaluate the current Subtitle D criteria (40 CFR Part 257) for their adequacy to protect human health and the environment from ground-water contamination. Congress clearly considers ground-water contamination to be the major concern, and indeed, requires the new criteria (today's proposal) to provide for ground-water monitoring to detect contamination and corrective action, as appropriate. For

this reason, the corrective action program envisioned today addresses releases to ground water. In addition, there are other authorities the Agency may use to address corrective action at MSWLFs. These authorities (e.g., CERCLA, RCRA Section 7003, the Clean Water Act) may be used to address media other than ground water.

The Agency did, however, consider addressing corrective action for all media while developing today's proposal. The Agency requests comment on the need for corrective action requirements for surface water and soil contamination at MSWLFs. (The Agency currently is assessing the risks associated with releases to air from MSWLFs and is considering proposing regulations to control these emissions.) Currently, the Agency has very little data describing the extent or the risks posed by soil or surface water contamination at MSWLFs.

If corrective action requirements were deemed necessary for surface water and soils, the Agency would most likely consider provisions similar to those required for ground water. Specifically, the Agency would consider requiring monitoring, trigger levels, a corrective measures study, cleanup standards, and criteria for selecting remedies. Appropriate trigger levels for surface water may be water quality standards (WQS) (developed by the State based on Federal Water Quality Criteria) or, if a WQS was unavailable, MCLs may be appropriate (for surface waters used for drinking water). If neither MCLs nor WQS has been established, an appropriate trigger level may be a concentration that meets the criteria specified in § 258.52 of today's proposal, assuming consumption of the contaminated water. If the surface waters are designated for a use other than drinking water, the appropriate trigger level may be a concentration established by the State that meets the criteria specified in § 258.52 of today's proposal and takes into consideration the use or uses of the receiving waters.

Appropriate trigger levels for contaminants in soils might be concentrations that meet the criteria specified in § 258.52 of today's proposal and that assume exposure through consumption of the contaminated soil.

If trigger levels for soils and/or surface water cannot be developed (because a concentration that meets the criteria in § 258.52 is not available), an appropriate trigger level might be a State-developed concentration that serves as an indicator for protection of human health and the environment and incorporates the above-referenced exposure assumptions. If not health-based trigger level is available, the appropriate trigger may be the background concentration.

If the Agency expands the critiera to address corrective action for releases to all media, it may consider using the following compliance points. For soils, the point of compliance for achieving the cleanup level may be any point where direct contact exposure to the soils may occur. The State may specify the locations or methods for determining appropriate locations where soil samples should be taken to demonstrate compliance with the soil cleanup standard(s). For surface water, the criteria might require that the surface water cleanup standard be achieved at the point where the release(s) enters the surface water in its highest concentration. The State may specify the location where surface water or sediment samples should be taken to monitor surface water quality and to demonstrate that compliance with the surface water cleanup standard has been achieved.

1. Section 258.50 Applicability

Today's proposed ground-water monitoring and corrective action requirements apply to the owners or operators of all new and existing MSWLFs. The Agency has several reasons for applying ground-water monitoring requirements to all new and existing MSWLFs. First, the Agency believes that the Congressional intent was to require ground-water monitoring at all MSWLFs that may receive HHW or SQG waste. Section 4010(c) directs EPA specifically to include ground-water monitoring "as necessary to detect contamination" among the revisions to the criteria and, while allowing the Agency to consider practicable capability, does not identify any exceptions to this requirement. The legislative history also is silent with respect to any exemptions from ground-water monitoring.

Second, as discussed earlier in this preamble, EPA has evidence that gound water has been contaminated by MSWLFs on a local basis in many parts of the nation and on a regional basis in some heavily populated and industrialized areas. Evaluation of 163 MSWLF case studies has indicated ground-water contamination or adverse trends in ground-water quality at 146 of these landfills. The Agency recognizes that these case studies may not be representative of the universe of MSWLFs; however, they do provide examples of the impacts of improperly designed or operated MSWLFs.

Current data from a 1986 survey indicate that only 25 to 30 percent of MSWLFs currently are equipped with ground-water monitoring systems; therefore, the total number of MSWLFs that are contaminating gorund water is unknown. Information submitted by the States in 1984, however, indicated that ground-water contamination has been detected at 586 active MSWLFs or roughly 25 percent of those facilities that currently are monitoring ground water. The nature and extent of the contamination from these sites is unknown. In addition, as of May 1986, EPA has included 184 MSWLFs on the Superfund National Priorities List.

The case studies and risk assessments indicate that these failing landfills are located in a wide range of hydrogeologic and climatic settings, making it virtually impossible, on a regional basis, for the Agency to predict which existing landfills may be contaminating ground-water resources. Therefore, the ground-water monitoring requirements are not restricted to landfills of a particular age or region.

Third, ground-water monitoring is the most reliable method for determining whether a landfill is in compliance with the overall performance standard of the proposed Criteria revisions, i.e., to meet health-based limits for hazardous constituents in the ground water at the waste management boundary or alternative boundary specified by the State. Even the best designs, operating practices, and quality control procedures cannot always prevent unexpected failure of a landfill. Therefore, ground-water monitoring at all facilities, including those that are properly designed and operated, is viewed by the Agency as an essential measure to ensure protection of human health and the environment.

Because this proposal requires MSWLFs to conduct ground-water monitoring, today's action effectively prohibits the location of MSWLFs in areas where subsurface conditions prevent monitoring of contaminant migration from the landfill unit. MSWLFs in such unmonitorable areas will be unable to receive an operating permit from the State. Some geologic settings that could preclude effective ground-water monitoring are fractured bedrock where complex fractures and joint systems impede flow direction prediction, and areas where extensive subsurface mining or faulting has modified flow direction. The ability to perform corrective action as necessary also must be considered. It is the responsibility of the owner or operator to prove that a landfill unit can be monitored. The Agency requests comment on adding a specific locatior

restriction for unmonitorable areas in the final rule.

Section 258.50(b) specifies that ground-water monitoring requirements of § 258.50 through § 258.55 will be suspended for owners and operators who can demonstrate that there is no potential for migration of hazardous constituents from the landfill unit to the uppermost aquifer during the active life, closure, or post-closure periods. The requirements of § 258.56 through § 258.58 are never suspended, however. The proposed limited suspension of the ground-water monitoring requirements provided in the § 258.50(b) is designed for MSWLF units located in hydrogeologic settings that prevent leachate migration to ground water for very long periods of time. In such a setting, leachate from the MSWLF should not be able to reach the uppermost aquifer during the active life, closure, or during post-closure care. Because of the very favorable hydrogeologic conditions, such settings are highly desirable for the location of MSWLFs and the Agency wishes to encourage the use of these settings. Furthermore, requiring ground-water monitoring in these settings would place an additional financial burden on the owner or operator with very little added protection to human health and the environment. The financial burdens placed on owners or operators in these settings would be high because of increased drilling costs caused by the extreme depths to ground water that are typical in these settings.

The Agency intends to ensure that there is a high degree of confidence in the demonstration that no leachate will reach the uppermost aquifer before an exemption from the ground-water monitoring requirements is allowed. Therefore, today's proposal requires that the demonstration be conducted by a qualified geologist or geotechnical engineer based on site-specific hydrogeologic information or, where that is insufficient, based on assumptions that maximize the rate of hazardous constituent migration.

While § 258.50(a) of today's proposal requires ground-water monitoring at all MSWLFs, except in the rare circumstances described above, the Agency is proposing to ease the burden of this requirement by phasing in the ground-water monitoring requirements over time. The Agency is proposing this approach because the thousands of wells that will be needed at the approximately 6,000 existing MSWLFs are expected to cause shortfalls in the availability of competent hydrogeologists and drilling companies who must assist the owner or operator in sampling and analyzing the landfill's hydrogeology, provide recommendations on well placement, drill the appropriate bore holes and monitoring well holes, and install the monitoring wells.

Furthermore, the Agency recognizes that the proper review and evaluation of proposed ground-water monitoring programs will place significant demands on State resources. Therefore, § 258.50(c) of today's proposal requires States to establish compliance schedules for each facility within six months of the effective date of this rule. This six-month period is the maximum amount of time that a State should take in setting compliance schedules. The sooner an owner or operator knows when the MSWLF must be in compliance with the ground-water monitoring requirements, the better the necessary activities can be planned. The Agency has set goals for the percentage of existing units that must be in compliance after the effective date of this rule. Within two years of the effective date, 25 percent of the existing landfill units must be in compliance; within three years of the effective date, 50 percent of the existing landfill units must be in compliance; within four years of the effective date, 75 percent of the existing units must be in compliance; and all landfill units must be in compliance within five years of the effective date. Any new unit must be in compliance with the ground-water monitoring requirements before accepting waste.

States should set compliance schedules for each facility based on an evaluation of the potential risks posed by the facility. Risks posed to human health and the environment can be weighed by considering the proximity of human and environmental receptors, design of the landfill unit, age of the landfill unit, and resource value of the underlying aquifer. The Agency believes that ground-water monitoring is critical at existing facilities that pose a threat to human health or the environment and expects States to move aggressively to address these facilities as soon as possible.

If a State does not set a schedule of compliance for MSWLF units, § 258.50(d) specifies a compliance schedule for owners or operators of landfills. This "fall-back" schedule is based on distance to the nearest drinking water intake. While this method of setting priorities does not ascertain potential risk as well as the method outlined in § 258.50(c), it is objective and easy for an owner or operator to determine.

2. Sections 258.51–55 Overview of Ground-Water Monitoring Requirements

Today's proposed Criteria revisions require a system of monitoring wells to be installed at new and existing MSWLFs. The proposed Criteria revisions also provide procedures for sampling these wells and methods for statistical analysis of analytical data derived from the well samples to detect the presence of hazardous constituents released from MSWLFs. The Agency is proposing a two-phased ground-water monitoring program and a corrective action program. This phased approach to ground-water monitoring allows proper consideration of the transport characteristics of MSWLF leachates in ground water, while protecting human health and the environment. As shown in Figure 3, the proposed monitoring and corrective action programs provide for a graduated response over time to the problem of ground-water contamination as the evidence of such contamination increases, thereby keeping down costs.

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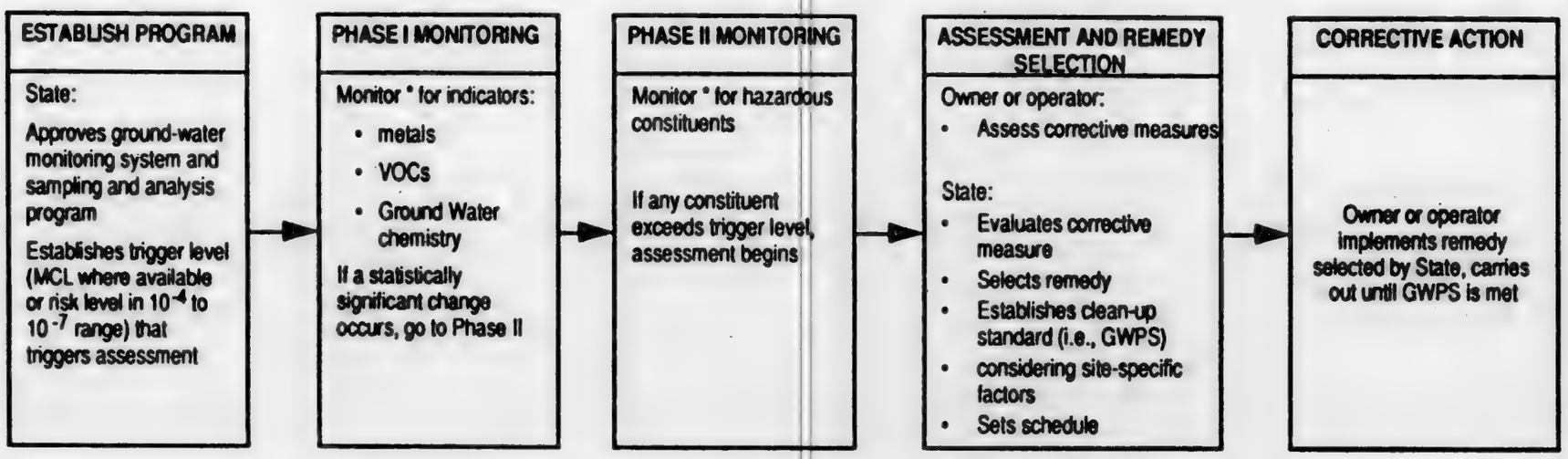
FIGURE 3

SUBTITLE D GROUND-WATER MONITORING AND CORRECTIVE ACTION



* Minimum monitoring frequencies: Semiannual during Phase I and quarterly during Phase II for constituents found above background.

The proposal requires that all new and existing MSWLFs begin their ground-water monitoring programs by complying with the Phase I monitoring requirements. When a change in ground-water chemistry is indicated by an increase or decrease of two in more of parameters (1) to (15), or when any one of parameters (16) to (24) or the volatile organics (VOCs) listed in Appendix I is detected at statistically significant levels above background, Phase II monitoring is triggered. Phase II requires monitoring an expanded list of hazardous constituents (see Appendix II). If any of the Phase II parameters are detected at statistically significant levels above background, the owner or operator must compare those levels to the appropriate ground-water trigger levels. The State will set the ground-water trigger levels as specified in § 258.52. These "trigger levels" trigger the assessment of corrective measures and establishment of the ground-water protection standard. Corrective action continues until the owner or operator demonstrates compliance with the GWPS for a period of time determined by the State to be appropriate, based on site-specific factors. The Agency is considering changing its Subtitle C requirements from a three-year period to one that is site-specific. EPA requests comment on the appropriateness of a minimum period of compliance for Subtitle D.

The Agency is proposing that ground-water monitoring, once initiated, continue through post-closure care. Adequate post-closure care is essential for continued protection of human health and the environment, and ground-water monitoring is necessary in determining the effectiveness of post-closure care. The Agency has not set minimum monitoring frequencies during the post-closure period, instead leaving that determination entirely up to the State. This decision was based on the idea that the appropriate frequency at which to monitor during post closure will vary significantly not only among units, but also over time. Site-specific information should be evaluated by the State when determining post-closure monitoring frequency. Factors that should be considered by the State include the hydrogeology of the site, the age and design of the landfill, and the operating history of the landfill. During the early years of post-closure care (e.g., 10 years), it may be appropriate to monitor as frequently as during the operating period. In many cases it may be appropriate to lessen the frequency of monitoring in the latter years of post-closure care. If during post closure a unit triggers the next phase of ground-water monitoring, it would be appropriate for the State to set a monitoring frequency the same as the minimum frequency designated for the operating period.

Comments are requested on whether individual monitoring wells at a landfill unit should be allowed to be in different phases of monitoring. The Agency is not proposing this option today, but believes that this option could be appropriate in situations where the unit is very large, and only a few monitoring wells have triggered the next phase of monitoring. Once corrective action had been triggered in one well, however, all of the ground-water surrounding the particular unit would be subject to corrective action provisions.

a. § 258.51 Ground-Water Monitoring Systems. Section 258.51 of the proposed Criteria specifies requirements pertaining to appropriate methods for constructing and placing ground-water monitoring wells. The purpose of these requirements is to ensure that consistent, reliable ground-water monitoring systems are installed at all MSWLFs. The Agency has specified the use of well systems because other technologies may not be as reliable as well systems for detecting changes in ground-water quality. In making this determination, the Agency reviewed many other methods of ground-water monitoring, including resistivity, ground penetrating radar, and lysimeters. Detailed discussions of the strengths and weaknesses of these methods for use in monitoring ground water at MSWLFs are provided in the background document for Subpart E of today's proposal.

The monitoring well system must be designed so as to monitor the performance of the landfill design in terms of its ability to meet the design goal (as defined in § 258.40(b)) in the aquifer at the waste management unit boundary or the alternative boundary as specified by the State pursuant to § 258.40. As such, well location is linked directly to the performance standard for the design of the landfill unit. If the unit is designed to meet the design goal at the waste management unit boundary, wells should be installed at the waste management unit boundary. On the other hand, if the unit is designed to meet the design goal at an alternative boundary, the wells should be installed at the alternative boundary.

Section 258.51 allows the placement of wells at the closest practical distance from the waste management unit or alternative boundary to account for the presence of important structures, such as run-off controls, anchors for liners, and gas lines, that would be impaired or destroyed by well installations in the area. Other factors can affect the exact placement of monitoring wells. In some hydrogeologic settings, perched water tables and/or other hydrogeologic phenomena may cause leachate from an MSWLF to travel horizontally for a significant distance before reaching the uppermost aquifer. Therefore, § 258.51(a) specifies that the State may select the closest practical distance downgradient from the waste management unit boundary or the alternative boundary (as specified by the State) if the State determines, based on site-specific hydrogeologic evaluations required in § 258.51, that the uppermost aquifer would not be affected directly beneath the appropriate boundary by release of leachate from the MSWLF.

In some cases, several discrete units may constitute the MSWLF. Because of topographic conditions and design limitations, constructing discrete cells may be the only means of constructing a landfill on the property. Section 258.51(c) states that separate monitoring systems are not required for each landfill unit at a multi-unit facility if the State approves the grouping of units. Such approval would be allowed only if the multi-unit ground-water monitoring system will be protective of human health and the environment. If local conditions make it infeasible or impractical to install a monitoring system around each landfill unit, the State may allow the grouping of units within one monitoring system. Factors that the State should consider when deciding whether more than one unit should be within a monitoring system include: the number of units, the spacing of the units, the orientation of the units to one another, the age of the units, and the hydrogeologic setting. The State should not approve the grouping of units within one monitoring system if the downgradient portion of the system would be located more than 150 meters from any landfill unit.

The Agency does not believe that there are any differences between MSWLFs and hazardous waste land disposal units with respect to the factors used to determine appropriate types of well materials or well construction techniques. Therefore, today's proposed performance standards for ground-water monitoring system design found in § 258.51(d) are similar to those specified for hazardous waste disposal facilities in 40 CFR Part 264. This similarity ensures consistent design and construction standards for monitoring wells at all RCRA landfill facilities.

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Because hydrogeologic conditions vary widely from one site to another, it is not possible to establish requirements specifying the exact number, location, and depth of monitoring wells needed to adequately monitor ground water in the aquifer. Such requirements are dependent on actual site-specific aquifer and geologic conditions. Therefore, in § 258.51(e) the Agency has proposed that specifics of the system be based on aquifer thickness, flow rate, and flow direction, and the characteristics of the material overlying the aquifer. For example, a complex aquifer flow system may require multilevel wells to effectively monitor ground water. A facility located in an area of very low hydraulic gradient may be better monitored by a ring of wells, since mounding could cause contaminant flow in all directions.

b. Section 258.52 Determination of Ground-Water Trigger Level. This section discusses what procedures the State must follow when establishing appropriate trigger levels. Trigger levels must be established by the State before the Phase I monitoring program is initiated. The levels established are health- and environmental-based levels that are determined by the State to be indicators for protection of human health and the environment. Where appropriate, these levels are based on promulgated standards; otherwise, they are established by the State on the basis of general criteria described below.

Contamination exceeding trigger levels indicates a potential threat to human health or the environment that may require further study. Therefore, the owner or operator must conduct an assessment of corrective measures whenever concentrations of hazardous constituents in the ground water exceed trigger levels. Trigger levels provide the owner or operator a point of reference for suggesting and supporting alternative remedies during the assessment of corrective measures (see preamble discussion for § 258.56). Trigger levels must be distinguished from ground-water protection standards, which are established during the remedy selection process.

Under § 258.52 of today's proposal, the concentration limits for the trigger levels are: (1) Maximum contaminant levels promulgated under § 1412 of the Safe Drinking Water Act, or (2) if an MCL has not been established, the concentration limit is a health-based limit established by the State that meets the proposed criteria described in § 258.52(b)(2) (i–iv), or (3) if levels under (1) or (2) are not available, the concentration limit is a level established by the State that is an indicator for protection of human health and the environment, or (4) background levels, if such levels are higher than concentrations under (1), (2), or (3), or if concentrations under (1), (2), or (3) have not been established.

The MCLs are maximum concentrations of contaminants allowed in water used for drinking. They are based upon toxicity, treatment technologies, and other feasibility factors such as availability of analytical methods. The MCLs are set following an analysis based on health considerations as guided by the SDWA.

The use of MCLs is consistent with current ground-water protection standards under 40 CFR Part 264, Subpart F (Releases from hazardous waste disposal facilities). Under the 1986 Amendments to the SDWA, MCLs must be set for 83 specific contaminants by 1989 as well as for any other contaminants in drinking water that may have any adverse effect upon people's health and that are known or anticipated to occur in public water systems. Currently, there are 28 MCLs promulgated; relevant MCLs to these requirements are listed below in Table 2.

TABLE 2—MAXIMUM CONTAMINANT LEVELS

CAS No.	Chemical name	MCL (mg/L)
7440-38-2	Arsenic	0.05
7440-39-3	Barium	1.0
71-43-2	Benzene	.005
7440-43-9	Cadmium	.01
56-23-5	Carbon tetrachloride	.005
1308-38-9	Chromium (III)	.05
1333-82-0	Chromium (VI)	.05
106-46-7	para-Dichlorobenzene	.075
107-06-2	1,2-Dichloroethane	.005
75-35-4	1,2-Dichloroethylene	.007
72-20-8	Endrin	.0002
7439-92-1	Lead	.05
58-89-9	Lindane	.004
7439-97-6	Mercury	.002
72-43-5	Methoxychlor	.1
7782-49-2	Selenium	.01
7440-22-4	Silver	.05
93-72-1	Silvex (2,4,5-TP)	.01
8001-35-2	Toxaphene	.005
71-55-6	1,1,1-Trichloroethane	.2
79-01-6	Trichloroethylene	.005
75-01-4	Vinyl chloride	.002

The Agency is proposing that health-based concentrations established by the State be used for the trigger level when MCLs are not available. These health-based levels must meet four criteria listed under § 258.52(b)(2) (i–iv). First, they must be consistent with principles and procedures set forth in Agency guidelines for assessing the health risks of environmental pollutants, which were promulgated on September 24, 1986 (51 FR 33992, 34006, 34014, 34028).

Second, the levels must be based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792) or other equivalent standards. The Good Laboratory Practice Standards prescribe good laboratory practices for conducting studies related to health effects, environmental effects, and chemical fate testing and are intended to assure quality data of integrity. In addition, the Agency guidelines for assessing the health risks of environmental pollutants (cited above) cite several publications that outline procedures for evaluating studies for scientific adequacy and statistical soundness. Third, for carcinogens, these levels must be associated with a risk level within the protective risk range. (See discussion in Section IX.D.1.a. of today's preamble concerning the design goal and EPA's request for comment on alternative risk ranges.) Finally, for toxic chemicals that cause effects other than cancer or mutations, the levels must be equal to a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis without appreciable risk of deleterious effects during a lifetime. These criteria will ensure that the trigger level represents valid and reasonable estimates of levels in ground water that are safe for human consumption.

Health-based levels that have undergone extensive Agency scientific review, but that have not been formally promulgated, are available for many chemicals. The four criteria proposed in § 258.52 and discussed above will enable the State to use these nonpromulgated levels to derive trigger levels. Appendix III provided health-based levels that the Agency believes meet these four criteria for selected hazardous constituents. These levels may be used to determine trigger levels. EPA established these levels by an assessment process that evaluated the quality and weight-of-evidence of supporting toxicological, epidemiological, and clinical studies. These levels are discussed below.

For noncarcinogens, health-based limits based on Reference Doses (RfDs) have been developed by the Agency's Risk Assessment forum. An RfD is an estimate of the daily exposure a sensitive individual can experience without appreciable risk of health effects during a lifetime. The experimental method for estimating the RfD is to measure the highest test dose for a substance that causes no

statistically or biologically significant effect in an animal bioassay test. The RfD is derived by dividing the "no observed adverse effect level" (NOAEL) by a suitable scaling or uncertainty factor. Confidence in the RfD is dependent on a number of factors, including the quality and duration of the animal study. The derivation of RfDs has been evaluated and verified by internal Agency review. Applying the standard drinking water exposure assumptions (i.e., a 70 kg person drinks two liters of water a day for 70 years) to RfDs yields the ground-water concentration limit. Appendix III lists the RfDs (mg/kg-day) for several hazardous constituents.

The use of the RfD is appropriate only for noncarcinogenic constituents. EPA science policy suggests that no threshold dose exists for carcinogens; in other words, no matter how small the dose, some risk remains. The dose-response assessment for carcinogens usually entails an extrapolation from an experimental high-dose range where carcinogenic effects in an animal bioassay have been observed, to a dose range where there are no observed experimental data by means of a preselected dose response model. The carcinogenic slope factors (CSFs), estimated by EPA's Carcinogen Assessment Group, may be used to calculate a dose that corresponds to a given risk level by dividing the risk level (e.g., 1×10^{-6}) by the CSF. CSFs for selected carcinogens are provided in Appendix III. This dose is called a risk-specific dose (RSD). An RSD is an estimate of the daily dose of a carcinogen that, over a lifetime, will result in an incidence of cancer equal to a given risk level.

The ground-water concentration, in milligrams per liter, can be calculated by multiplying the RSD by the average adult body weight (70 kg) over the average water intake (two liters of water per day). Chemicals that cause cancer also may evoke other toxic effects. These constituents may have both an RfD and RSD available. In these cases, the lower level (i.e., more protective) should be used as the trigger level.

EPA has developed a classification scheme for carcinogens based on the weight of evidence for carcinogenicity. This scheme is presented in the Agency's cancer guidelines (51 FR 3992). Appendix III includes the class for each carcinogen listed. Known or probable human carcinogens are designated as Class A and Class B carcinogens, respectively, under the Agency guidelines. Constituents for which the weight of evidence of carcinogenicity is weaker are known as Class C, or possible human carcinogens under the Agency's guidelines.

Examples are included in Appendix III to illustrate how the States may use RfDs and CSFs to set trigger levels. For carcinogens, the State may use the CSF to determine a trigger level anywhere within the protective risk range. (See discussion in Section IX.D.1.a. of today's preamble concerning the design goal and EPA's request for comment on alternative risk ranges.)

The Agency believes that the protective risk range is appropriate for setting a trigger level for carcinogens without a MCL. For new MSWLFs, the State should consider using the same risk level for trigger levels as was used for the design goal. For example, if the MSWLF was designed to meet a 1×10^{-6} risk level at the chosen boundary, then the MSWLF should be triggered into an assessment of corrective measures once that risk level (for carcinogens with no MCL) is exceeded. For existing MSWLFs, to ease implementation, the Agency suggests that the State choose one risk level to be used at an MSWLF for all carcinogens that do not have an MCL. The State may consider choosing a risk level to use at all MSWLFs within the State. As discussed in the preamble discussion for the design goal, the Agency is requesting comment on two alternatives to the protective risk range. Any change made to the proposed design goal criteria would most likely be made for the trigger level. For example, if a fixed risk level of 1×10^{-6} was required as a design goal, then the trigger levels for carcinogens without MCLs would also be required to be set at 1×10^{-6}.

RfDs and RSDs will be available soon through the Integrated Risk Information System (IRIS), a computer-housed, electronically communicated catalogue of Agency risk assessment and risk management information for chemical substances. IRIS is designed especially for Federal, State, and local environmental health agencies as a source of the latest information about Agency health assessments and regulatory decisions for specific chemicals. The risk assessment information (i.e., RfDs and RSDs) contained in IRIS, except as specifically noted, has been reviewed and agreed upon by intra-Agency review groups, and represents an Agency consensus. As EPA continues to review and verify risk assessment values, additional chemicals and data components will be added to IRIS. A hard copy of IRIS soon will be available through the National Technical Information Service. The background document for Subpart E contains further information on IRIS.

If MCLs or other health-based levels meeting the proposed criteria are not available or cannot be developed for use as trigger levels, § 258.52(b)(3) allows the State to establish a trigger level that acts as an indicator for protection of human health and the environment. In many cases, partial data or data on structural analogs will allow the State to estimate whether the detected level of a contaminant is likely to cause a problem. In other cases, other contaminants will be present at high levels (triggering an assessment of corrective measures in any case), and it will be clear that the constituent for which no level is available is not a driving factor in determining the risk at the site, even under worst-case assumptions concerning its toxicity. In such cases, it may not be necessary to specify a trigger level for that constituent.

Finally, background concentrations may be used as the trigger level when no health-based level or indicator is available or when background is higher than any health-based level.

c. Section 258.53 Ground-Water Sampling and Analysis. Section 258.53 of today's proposed Criteria revisions includes requirements for consistent sampling and analysis procedures that are designed to ensure accurate ground-water monitoring results. Also included in this section are requirements for determining ground-water flow rate and direction, establishing background ground-water quality and applying appropriate statistical analyses to detect any changes in ground-water quality beneath an MSWLF.

Section 258.53(a) requires that the sampling and analysis techniques used by owners and operators of MSWLFs be sufficient to provide an accurate representation of ground-water quality in the uppermost aquifer beneath the landfill. At a minimum, these procedures must address sample collection, preservation, shipment, chain-of-custody, and quality assurance and quality control (QA/QC). The Agency recommends Chapter 2 of the "RCRA Technical Enforcement Guidance Document" (TEGD) for use in complying with this section. Although this chapter of the TEGD contains a number of references to the hazardous waste requirements under 40 CFR Part 264, the recommended sampling and analytical procedures are appropriate for any solid waste disposal facilities, including MSWLFs. These recommendations provide clear descriptions of how to

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conduct ground-water sampling and analysis and also allow the use of alternate procedures on a site-specific basis. Therefore, by recommending the TEGD, the Agency is not ignoring the use of alternate procedures that are consistent with the level of performance reflected in the TEGD.

In the RCRA Subtitle C program, the Agency has observed problems with ground-water sampling procedures, monitoring well network design, laboratory analyses, and data interpretation. EPA believes that a rigorously enforced, comprehensive quality assurance program based on sound quality objectives and backed up with an appropriate set of reference methods and procedural guidance will assist in remedying these problems. As a result, the Agency is considering adding QA/QC requirements to the sampling and analytical methods for Subtitle C facilities under § 264.97(e). To avoid duplicating the problems of Subtitle C, § 258.53(a)(5) of today's proposal requires that QA/QC procedures be included in sampling and analysis techniques. Owners or operators should refer to EPA guidance on "Test Methods for Evaluating Solid Waste (Physical/Chemical Methods)" for information on QA/QC procedures (Ref. 34).

Section 258.53(d) of today's proposal requires that ground-water elevations be measured immediately prior to sampling. In addition, the owner or operator must determine the rate and direction of ground-water flow in the uppermost aquifer each time ground-water gradient changes. These requirements for determining ground-water flow rate and direction are included to ensure that any unexpected changes in these parameters will be recognized and that changes in the location or spacing of monitoring wells will be made as needed to maintain the integrity of ground-water monitoring systems. Ground-water flow rates and directions may vary seasonally or over a number of years due to human-made or natural causes and, because the spacing and location of wells are highly dependent on these parameters, the Agency has decided not to rely entirely on the measurements of these parameters made prior to well installation. In selecting a site-specific frequency, i.e., tied to changes in ground-water gradient, the Agency has attempted to strike a balance between areas where aquifers exhibit no variability and those that exhibit frequent changes in flow rate and direction. At facilities that overlie aquifers with little or no variability in gradient, these assessments may be fairly infrequent. At facilities overlying aquifers with more variable ground-water gradients, more frequent assessments of flow rate and direction may be required, based on measurements of piezometric surface taken at least semiannually. Ground-water flow rate and direction data should be presented in the form of a flow net.

Today's proposed ground-water sampling and analysis procedures also include requirements for establishing background ground-water quality. Information on background ground-water quality is essential for determining whether the presence of monitoring parameters or constituents beneath an MSWLF indicates leakage from the landfill unit. Section 258.53(e) requires the owner or operator to establish background values for those monitoring parameters or constituents included in the monitoring phase applicable to that MSWLF. For example, if the MSWLF currently is in the Phase I monitoring program, background values must be established for all of the Phase I parameters. Background values of all of the Phase II parameters must be established if Phase II monitoring is triggered. The minimum number of background samples needed to fulfill the statistical requirements will depend on the statistical procedures selected.

Background ground-water quality must be established in wells that are hydraulically upgradient of the MSWLF, except as allowed in §§ 258.53 (f) and (g). Section 258.53(f) states that background quality at landfill units may be based on samples from wells that are not upgradient from the landfill if hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient, and sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by upgradient wells. Areas with no hydraulic gradient and those with reversing hydraulic gradient (such as those influenced by tides) are examples of hydrogeologic conditions that could make it impossible to determine which direction is upgradient.

Section 258.53(g) of today's proposal gives the State flexibility in determining background ground-water quality on a site-specific basis where such levels cannot be measured on the facility. An example of such a situation would be a landfill unit that is leaking and causing a mounding effect (where leachate is flowing out of the unit in all directions). If the leachate flowed far enough from the unit, it could contaminate all of the ground water between the unit and the property boundary, thus leaving no uncontaminated ground water from which to determine background ground-water quality. The State would be able to set background values for this site. Background ground-water quality should be based on actual monitoring data from the aquifer of concern. A State may have well data from another landfill site that overlies the same aquifer, or the data may be from another type of well from which the State can obtain data. The reader is referred to the background document for Subpart E for a full discussion of this provision.

The requirements for applying the statistical procedures contained in §258.53(h) are the same as the procedures proposed on August 24, 1987, for hazardous waste disposal facilities under Subtitle C of RCRA (see 52 FR 31948). The Agency believes that the revised Subtitle C procedures are also appropriate for MSWLFs and provide sufficient flexibility to allow effective State implementation at MSWLFs. The final statistical procedures promulgated under § 258.53(h) will reflect comments received on this proposal as well as the final statistical package promulgated under Part 264.

The required statistical procedures for comparing background ground-water quality data to those samples taken at downgradient wells are included in today's Criteria revisions to clarify the purpose and timing of statistical comparisons and their relation to ground-water sampling events at MSWLFs. These requirements ensure that statistical comparisons of analytical results between background and downgradient monitoring wells will be made promptly after each sampling event, and will cover all applicable parameters and constituents at MSWLFs. For further discussion of the statistical requirements, the reader is referred to the preamble for the proposed Subtitle C procedures found at 52 FR 31948.

d. Section 258.54 Phase I Monitoring Requirements. The Phase I monitoring parameters proposed today in § 258.54 were developed with the dual objectives of providing a reliable means of detecting the possible presence of releases from MSWLFs while avoiding unnecessary analytical costs to the regulated community. The proposed list of Phase I parameters is consistent with the results of research conducted under the direction of EPA's Office of Research and Development and other institutions. These research results reveal that Phase I parameters (1)–(15) are reliable indicators of ground-water

chemistry and possible precursors to other more hazardous constitutents that may be released later from MSWLFs. Furthermore, States typically require routine monitoring of one or more of these parameters (1) to (15) at MSWLFs as the primary means of detecting ground-water contamination. The major cations and anions on the Phase I parameter list are those used to classify ground water into geochemical facies. These parameters are, therefore, useful for tracking changes in the ground-water geochemistry that may occur as the result of leakage from an MSWLF. In addition, the Agency is proposing to require semiannual monitoring for the metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver), cyanide, and 46 VOCs.

The Agency believes that these VOCs in Appendix I constitute the first group of potentially hazardous constituents that would be present in the ground water prior to other, less mobile, constituents proposed for Phase II (see Appendix II of the proposed rule.) Due to their chemical nature, these VOCs generally would not migrate any faster than the non-VOC Phase I parameters, but do migrate faster than most of the Phase II constituents. Research by EPA and other institutions that supports these statements is summarized in the background document to this Subpart.

Heavy metals and cyanide also can exist under certain conditions in a well-defined leachate ground-water plume, depending on the waste present in the landfill. It is not certain whether heavy metal concentration would be as significant in leachate plumes from newer MSWLFs as they tend to be attenuated more than other constituents, such as VOCs. MSWLF leachates containing heavy metals can, however, pose serious threats to human health and to aquatic environments; therefore, the Agency is proposing to include the heavy metals that are included in the primary drinking water standards along with cyanide and the VOCs as the minimum Phase I monitoring parameters.

The reader is referred to the background document for this Subpart for more information.

The Agency is proposing to include the following as the minimum Phase I parameters that must be monitored for at least semiannually:

(1) Ammonia (as N)
(2) Bicarbonate (HCO_3)
(3) Calcium
(4) Chloride
(5) Iron
(6) Magnesium
(7) Manganese (dissolved)
(8) Nitrate (as N)
(9) Postassium
(10) Sodium
(11) Sulfate
(12) Chemical Oxygen Demand (COD)
(13) Total Dissolved Solids (TDS)
(14) Total Organic Carbon (TOC)
(15) pH
(16) Arsenic
(17) Barium
(18) Cadmium
(19) Chromium
(20) Cyanide
(21) Lead
(22) Mercury
(23) Selenium
(24) Silver
(25) Volatile Organic Compounds listed in Appendix I

The Agency specifically requests comment on the proposed set of Phase I monitoring parameters and the monitoring frequency. EPA is proposing that the frequency of monitoring during Phase I be determined by considering aquifer flow rates in the vicinity of the monitoring wells and the resource value of the aquifer. Semiannual sampling is proposed as a minimum frequency during the active life and closure of a unit. This frequency also is the minimum specified in the ground-water monitoring requirements (40 CFR Part 264) for hazardous waste landfills. The Agency believes that a six-month maximum interval between sampling events is reasonable in terms of protection of human health and the environment and the burden on the regulated community. During post-closure care, a State may set a different minimum monitoring frequency.

Today's proposal does not set a minimum frequency for ground-water monitoring during post-closure care. Because of the variable length of the post-closure care period and the variability of site-specific conditions, the Agency believes it is more appropriate to allow States to determine the frequency of ground-water monitoring on a site-specific basis.

Section 258.54(d) states that a Phase I ground-water monitoring program must be expanded to Phase II ground-water monitoring when two or more of the parameters (1) to (15) are detected at levels that significantly differ from background levels. Because the parameters (1) to (15) are monitored to detect changes in ground-water chemistry beneath an MSWLF, both increases and decreases in these parameters may be significant. The Agency is not implying that decreased levels of any of these parameters indicate degradation of ground water, just that further monitoring should be done to determine what is causing the change in ground-water chemistry. For example, a change in water chemistry, such as a decrease in pH and sulfate, may indicate the release of liquids from a landfill. The Agency is proposing to use increases or decreases of any two or more of the parameters (1) to (15) to trigger Phase II monitoring because preliminary analysis of ground-water samples taken at MSWLFs show that: (1) Substantiated leachate contamination of ground water from MSWLFs normally involves more than one of those Phase I parameters and (2) levels of a single one of those Phase I parameters in backgroud ground-water samples in some areas of the country are highly variable, which could lead to false indications of contamination. Section 258.55(a) states that if anyone of parameters (16) to (24) or the VOCs listed in Appendix I is detected at levels that are statistically significant above background, the unit must begin Phase II monitoring. During Phase II monitoring, the owner and operator has the opportunity to revert back to Phase I monitoring if it is found that there has not been a statistically significant increase over background levels of relevant parameters (see § 258.55(e)).

Once an MSWLF has triggered Phase II monitoring, the owner or operator is not required to monitor parameters (1) to (15). States may require an owner or operator who has entered a Phase II monitoring program to continue occasional monitoring for parameters (1) to (15), particularly if that State has established corrective action requirements that involve those parameters. The Agency does not intend to require any corrective action for Phase I parameters (1) to (15) because: (1) It is not apparent that these parameters would ever occur at high levels without corresponding increases over background levels for many of the constitutents listed in Appendix II of the proposed regulations, (2) it is difficult to assign a target level for cleanup of the non-VOC, nonmetal Phase I parameters, since none of them are hazardous to human health at levels found in MSWLF leachate, and (3) cleanup of any Appendix II constituents is likely to result in concurrent cleanup of the other Phase I parameters to acceptable levels.

Section 358.54(d)(3) of today's proposal allow the MSWLF owner or operator to demonstrate that detection of significant changes in ground-water quality during Phase I monitoring was caused by sampling and analytical error or by a source other than the MSWLF. The Agency included this provision in

today's proposal because it is known that sampling and analytical errors are made with sufficient frequency that they cannot be ignored. This provision avoids unnecessary costs to the owner or operator who would otherwise be required to begin Phase II monitoring. Furthermore, this provision is consistent with the RCRA Subtitle C regulations governing hazardous waste landfills. Owners or operators of MSWLFs attempting to make this demonstration must notify the State of their intent, submit the demonstration to the State in the form of a report, and continue the Phase I monitoring program. If the demonstration is not successful, the owner or operator must establish a Phase II monitoring program within a reasonable time period.

The Agency specifically requests comments on the list of Phase I monitoring parameters, methods for setting triggering mechanisms, and potential required actions at MSWLFs that are contaminating ground water only with non-VOC, nonmetal parameters (1) to (15) Phase I constituents. The Agency also requests information about any MSWLFs that are known to be causing significant contamination of ground water with only non-VOC, nonmetal Phase I constituents.

e. Section 258.55 Phase II Monitoring Requirements. If it is determined that the ground water contains significant increases (or decreases) over background levels of Phase I parameters, the Phase II monitoring program is triggered. The purpose of this phase of ground-water monitoring is to determine the concentration of hazardous constituents specified in Appendix II of today's proposal. Therefore, Phase II monitoring is initiated by sampling all wells and analyzing each sample for all of the constituents listed in Appendix II of today's proposal.

Triggering into Phase II does not necessarily indicate a threat to human health and the environment. Rather, entering Phase II monitoring signals the need to more fully analyze ground water to determine if any constituent has exceeded health-based levels (i.e., trigger levels). The technical basis for selection of the Appendix II parameters for Phase II monitoring is presented below and in the background document for Subpart E of today's proposal.The Agency's major objective on identifying the constituents for Phase II monitoring was to include those hazardous constituents that pose risk to human health and the environment, are present in MSWLF leachate, and may potentially migrate to ground water. The proposed constituents (Appendix II of today's proposal) are the same as those used for the GWPS at hazardous waste disposal facilities under Subtitle C of RCRA. The Agency considered several options for the specific list of Phase II constituents. The regulatory alternatives included: (1) The list of constituents in the current Subtitle D Criteria, (2) the list of priority pollutants, (3) a list of all constituents that have been found in MSWLF leachates, (4) a site-specific list of constituents, based on analyses of leachate samples, and (5) the list of constituents in Appendix II.

The first option the Agency considered was the 10 inorganic chemicals, four chlorinated hydrocarbons, and two chlorophenoxys specified in the current Criteria (40 CFR Part 257). This option was rejected because the Agency's analytical leachate data indicate the presence of numerous other toxic organic compounds that would not be addresed by this option.

The second option considered was the list of priority pollutants under section 307(a)(1) of the CWA. The constituents on this list are toxic, and many have been found in leachate samples from MSWLFs. Because the list fails to include many constituents that have been detected in MSWLF leachate, however, the priority pollutant list was rejected for use as the GWPS.

The Agency considered a third option of developing a new list of constituents for Phase II monitoring at MSWLFs. The new list would have been compiled from existing data on the types of toxic compounds that have been detected in leachate samples from MSWLFs. EPA's current data on MSWLF leachate are limited but indicate the tremendous range of constituents and concentrations that may be found in MSWLF leachate. Altogether, data were received for 59 landfills, with 37 landfills providing both organic and inorganic leachate analyses, 7 landfills providing only organic analysis, and 15 landfills providing only inorganic analysis. Sixty-four hazardous organic constituents were identified as well as 49 hazardous inorganic constituents and other parameters. In most cases, the list of constituents analyzed for was unknown, so these data may not indicate the full range of constituents that may be found in the leachate even from these MSWLFs. Thus, this option was rejected because of data limitation, particularly for hazardous organic constituents.

The fourth option the Agency considered was developing site-specific Phase II monitoring constituents through the analysis of leachate samples from each MSWLF. This approach would allow owners and operators of MSWLFs to limit their analyses to only those hazardous constituents present in the leachate of their landfill. The Agency has the following concerns with this approach: (1) It is unworkable for sites with no leachate collection system (including the majority of existing landfills), (2) it does not account for degradation processes occurring during constituent migration through the unsaturated zone and ground water, and (3) it would require periodic resampling of the leachate to account for the wide variations in leachate quality over time. The Agency is interested in comments on the efficacy of this approach for facilities that have leachate collection systems.

The option adopted in today's proposal was to use the Appendix II constituents. Sixty-nine of the constituents in Appendix II have been found in MSWLF leachate. This number is based on limited data, particularly for hazardous organic constituents. In examining the variability of substances appearing in landfill leachate samples and all the potential waste streams that may be placed in MSWLFs, the Agency has concluded that any of the Appendix II constituents potentially could be present in ground water beneath an MSWLF at levels that may pose threats to human health and the environment. The Agency requests comments on the constituents proposed for Phase II monitoring at MSWLFs.

Section 258.55(c) requires the MSWLF owner or operator to sample the ground water in all monitoring wells and determine which, if any, of the Appendix II constituents are present in the ground water at concentrations that significantly exceed background levels. This activity must be done within 90 days after triggering Phase II. If the owner or operator concludes on the basis of the Appendix II constituent scan that none of the constituents significantly exceed background levels, pursuant to § 258.54(d), the State must determine the frequency for any subsequent Appendix II constituent scans to be conducted at the MSWLF during the active life or post-closure care.

Section 258.55(e) of today's proposal allows MSWLFs to revert to a previous phase of ground-water monitoring after the owner or operator determines that there has not been a statistically significant increase over the background levels of the relevant monitoring parameters. This proposal is similar to changes being considered for ground-

water monitoring under Subtitle C of RCRA, and is particularly applicable to Subtitle D, under which the practicable capability of the owner or operator can be considered. The Agency realizes that it can be very difficult to prove that error in sampling or analysis caused the indication of a statistically significant increase above background levels of a ground-water monitoring parameter. If such an error were to occur and could not be proven to be the cause, a unit would be triggered into a higher and more costly phase of ground-water monitoring. The owner or operator would be forced to pay for a more costly monitoring program for an indefinite time period, with no added benefit to human health or the environment. Allowing a unit to revert to a previous phase of monitoring when no constituents have been detected above background levels eases the financial burden of the owner or operator without harming human health or the environment. A specific time period over which monitoring must be conducted before reverting to a previous monitoring phase has not been proposed, based on the concept that the appropriate time period should be site-specific. A minimum time period also was not proposed, but the Agency requests comments on the appropriateness of a minimum time period.

It should be noted that the criterion for returning to Phase I monitoring (i.e., background levels for Appendix II constituents) is consistent with those for facilities that have never entered Phase II monitoring. Therefore, an MSWLF may not return to Phase I monitoring merely by maintaining concentration levels at the trigger levels that initiate corrective measures assessment. Instead, before returning to Phase I monitoring, the concentration levels for Appendix II constituents must be at or below the background, which is the level that initiates phase II monitoring for a reasonable time period determined by the State.

If any Appendix II constituents are detected at statistically significant levels above background, § 258.55(f) requires the owner or operator of the MSWLF to notify the State of this fact in writing within 14 days; and, within 90 days of the finding, he or she must submit to the State a report containing all data necessary for establishing a ground-water trigger level.

Section 258.55(f)(2) of today's proposal requires that each hazardous constituent that is present at levels exceeding background concentrations must be analyzed from ground-water samples taken on a quarterly basis. The Agency believes that the presence of hazardous constituents over background signals the need for a more thorough assessment of the ground-water condition, necessitating more frequent monitoring than for Phase I. Thus, the Agency is proposing quarterly monitoring at a minimum to provide the earliest possible indication of when the trigger level has been excceeded. This approach is consistent with the approach taken in other Agency ground-water monitoring programs, such as under Subtitle C of RCRA. More frequent monitoring may be required by the State depending on site-specific conditions, such as ground-water flow rates and directions. The Agency considered alternatives that would require more stringent minimum frequencies, but these alternatives would have been unnecessarily burdensome at sites where ground water travels a distance of only a few feet per year. Therefore, today's proposed minimum frequency balances the need for early detection and thorough assessment with the statutory need to consider the "practicable capability" of the regulated community.

In addition to the quarterly monitoring for those constituents exceeding background, § 258.55(d) requires that each MSWLF monitor other Phase II constituents (Appendix II constituents) on a periodic basis to determine if any additional constituents have entered the ground water at concentrations that significantly exceed background levels. The frequency for monitoring these other Phase II constituents is determined by the State. These periodic analyses are essential for use in determining whether the design of an ongoing corrective action program must be changed to accommodate the treatment or removal of additional constituents. The Agency considered requiring annual Appendix II analyses at all MSWLFs, but the Agency believes selecting an appropriate frequency based on site-specific factors is essential given that Phase II constituent analyses may approach $3,000 per sample. The "practicable capability" of the owner or operator needs to be considered. The Agency's decision to allow State determination of the frequency for periodic Appendix II analyses also is based on the fact that site-specific conditions will have a significant impact on the release of any new constituents to the ground water from an MSWLF. The State also must determine the frequency for Phase II constituent analyses during post-closure care for those constituents that have exceeded background concentrations.

Under § 258.55(g), if the periodic analyses of Appendix II constituent reveals additional constituents in the ground water that are present at above-background levels, the owner or operator must notify the State within 14 days and, within 90 days, must submit a report on the concentrations of these new constituents. The MSWLF also must begin monitoring these new constituents at the minimum quarterly rate, which is required for all Phase II parameters that have exceeded background levels. Under § 258.55(h), if any Phase II parameters are detected at concentrations that exceed the ground-water trigger level, the MSWLF owner or operator must notify the State of this finding within 14 days. The owner or operator of the MSWLF also must begin to assess corrective measures as required under § 258.56 and continue to follow the Phase II monitoring program requirements.

The proposed Phase II monitoring requirements under § 258.55(h)(4) allow the owner or operator to demonstrate that an increase over the ground-water trigger level was caused by a sampling or analytical error or by a source other than the MSWLF. The rationale for including this demonstration in today's proposal is provided under the discussion of the Phase I monitoring program in this preamble.

3. Section 258.56 Assessment of Corrective Measures

An assessment of corrective measures is required whenever concentrations of hazardous constitutents in the ground water exceed trigger levels. Trigger levels are health- and environmental-based levels established by the State as indicators for protection of human health and the environment (see preamble discussion for § 258.52).

The State shall specify the scope of the corrective measures study. Factors that generally may be appropriate are listed in § 258.56(c). The purpose of the assessment is to study potential corrective measures. In general, the extensiveness of the assessment (i.e., the number and type of alternatives evaluated) should be commensurate with the complexity of the site. (The reader is directed to the Background Document for Subpart E for a more detailed discussion of what may be appropriate for specific situations.) There may be some situations where a limited assessment is appropriate. For example, if the ground water is known to be Class III ground water (see preamble discussion for § 258.57(f)(2))

and remediation will not be required, the assessment may be limited to an evaluation of institutional-type controls to limit exposure.

Under § 258.56(c), the Agency specifies several activities that the State may include in the scope of the assessment. First, the State may require the owner or operator to assess the effectiveness of potential remedies in meeting the requirements and objectives of the remedy (for a discussion of these requirements and objectives, see the preamble discussion for § 258.57 (b) and (c)). Next, the State may require the owner or operator to perform an evaluation of the performance, reliability, ease of implementation, and impacts (including safety, intermedia contaminant transfer, and control of exposures to residual contamination) associated with any potential remedy evaluated. In evaluating the performance of each remedy, the owner or operator should evaluate the appropriateness of specific remedial technologies to the contamination problem being addressed. During this assessment, the owner or operator may need to conduct additional monitoring to characterize the nature and extent of the plume of contamination.

Analysis of a remedy's performance, reliability, and ease of implementation may include an assessment of its effectiveness in achieving intended functions of containment, treatment, remediation, or disposal of the hazardous constituents and the degree of protection afforded human health and the environment. In addition, consideration should be given to the frequency and complexity of necessary operation and maintenance and the extent to which the technology has been successfully demonstrated under analogous conditions. The technical feasibility for the remedial strategy should also be considered in terms of ability to construct and operate the remedial technologies and the availability of necessary treatment, storage, or disposal services, and capacity.

The Agency is particularly concerned about potential cross-media impacts (intermedia transfer of contaminants) of remedies, and, therefore, the Agency specifically identified them as an area that the State may require the owner or operator to consider. Some remedial technologies may cause secondary impacts. For example, in some circumstances, air stripping of VOCs from ground water may release these VOCs to the air unless specific emissions control devices are installed on the air stripper.

In today's proposal, the State also may require the owner or operator to evaluate the timing of the potential remedy (§ 258.56(c)(3)), including construction, start-up, and completion time. Timing will be important in distinguishing among remedies. The State ultimately determines the compliance schedule for final cleanup of the ground water under § 258.57(d).

The owner or operator may be required by the State to include cost estimates for alternatives considered (§ 258.56(c)(4)). Cost estimates will be very important to the State when approving the selected remedy. The practicable capabilities of the facility, including the capability to finance and manage a corrective action program may be considered by the State in determining the duration of the clean-up. Therefore, the cost of the remedy may affect the remedy selected and the timing of the cleanup (see preamble discussion of § 258.57(d)).

The owner or operator may be required to consider institutional requirements under § 258.56(c)(5). For example, local governments may have specific requirements related to the remedial activities that may affect implementation of the remedies evaluated.

Finally, the State may require the owner or operator to evaluate the public acceptability of alternatives. The consideration of community concerns is a decision factor that the State will use in selecting a remedy (see § 258.57(c)(5)).

Under the proposed § 258.56(d), the State may require the owner or operator to evaluate one or more specific potential remedies. These potential remedies may include innovative technologies. The State may know of technologies that have been successful at other landfills with similar contamination problems. The proposed § 258.56(e) requires that, after all remedies have been evaluated, the owner or operator must submit a report to the State on the assessments so that the State may choose which remedy should be implemented.

Under proposed § 258.56(f), if the State determines at any time that human health or the environment are being threatened by the release of hazardous constituents from the MSWLF, the State may require the owner or operator to implement the measures required in proposed § 258.58 (a)(3) or (a)(4) (see preamble discussion of § 258.58(a)).

4. Section 258.57 Selection of Remedy and Establishment of Ground-Water Protection Standard

The proposed § 258.57 outlines the general requirements for selection of remedies for MSWLFs. As structured, it establishes four basic standards that all remedies must meet and specifies decision criteria that will be considered by the State in selecting the most appropriate remedy. In addition, decision factors for setting schedules for initiating and completing remedies are outlined, and specific requirements for establishing ground-water protection standards, including requirements for achieving compliance with them, are contained in this section.

Proposed § 258.57(b) specifies that all remedies must: Be protective of human health and the environment; attain ground-water protection standards as specified pursuant to § 258.57 (e) and (f); control the sources of releases so as to reduce or eliminate, to the maximum extent practicable, further releases that may pose a threat to human health or the environment; and comply with standards for management of wastes as specified in § 258.58(d).

These standards reflect the major technical components of remedies: cleanup of releases, source control, and appropriate management of wastes that are generated by remedial activities. The first standard—protection of human health and the environment—is a general mandate derived from the RCRA statute. This overarching standard requires remedies to include those measures that are needed to be protective, but are not directly related to ground-water protection, source control, or management of wastes. An example would be a requirement to provide alternate drinking water supplies in order to prevent exposure to releases to ground water used for drinking water. Another example would be barriers or other controls to prevent direct contact with the unit.

Remedies will be required to attain the ground-water protection standards that will be specified for the remedy by the State according to the requirements outlined below. The GWPS for a remedy often will play a large role in determining the extent of and technical approaches to the remedy. In some cases, certain technical aspects of the remedy, such as the practicable capabilities of remedial technologies, may influence to some degree the GWPS that are established. It is because of this interplay between cleanup standards and other remedy goals and limitations that today's rule establishes requirements for GWPS within the overall remedy selection structure of § 258.57. Thus, the standard setting process and the remedy selection process occur concurrently with both processes affecting the other.

Section § 258.57(b)(3) is the source control standard for remedies. A critical objective of remedies must be to reduce further environmental degradation by controlling or eliminating further releases that may pose a threat to human health and the environment. In some cases, unless source control measures are taken, efforts to clean up releases may be ineffective. EPA is persuaded that effective source control actions are an essential part of ensuring the effectiveness and protectiveness of corrective actions at MSWLFs.

The standard of § 258.57(b)(3) requires that further releases from sources of contamination that may pose a threat to human health or the environment be controlled to the "maximum extent practicable." This qualifier is intended to account for the practicable capabilities of the owner or operator and the technical limitations that may, in some cases, be encountered in achieving source controls. For some very large MSWLFs. engineering solutions such as treatment or capping to prevent further leaching may not be technically feasible or completely effective in eliminating further releases above health-based contamination levels. In such cases, source control may need to be combined with other measures, such as plume management or exposure controls, to be an effective and protective remedy.

The Agency does not intend this source control requirement to disrupt solid waste disposal at operating MSWLFs that have contaminated ground water. The Agency believes that, until the MSWLF is closed with an appropriate final cover (pursuant to § 258.40), other effective measures may be implemented. For example, depending on the source(s) of the release(s), capping inactive cells or units may help to control further releases. As mentioned above, plume management and exposure controls also may be needed, especially while the facility is continuing to receive waste.

The concept of effective source control as a remedial objective, as expressed by this remedy standard in § 258.57(b)(3), is closely linked to the CERCLA preference for Superfund remedial actions that utilize "permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable."

The proposed remedy standard of § 258.57(b)(4) requires that remedial activities that involve management of wastes must comply with the requirements for solid waste management, as specified in § 258.58(d) in today's proposed rule. Remedies may involve treatment, storage, or disposal of wastes, particularly in the context of source control actions. This standard will ensure that management of wastes during remedial activities will be conducted in a protective manner. The Agency requests comment on the four proposed standards for remedies.

Proposed § 258.57(c) specifies general factors to be considered by the State in selecting a remedy that meets the four standards for remedies. These factors, which generally are consistent with the evaluation criteria specified in SARA, are discussed briefly below. The Agency requests comment on these factors.

These factors are meant to aid the States in evaluating the data provided by the owner or operator as a result of the assessment of corrective measures. The general decision factors are: (1) Long- and short-term effectiveness and protectiveness, (2) reduction of future releases, (3) implementability, (4) practicable capability of the owner or operator, and (5) community concerns.

The first two factors described under § 258.57(c) are directly linked to the standards for the remedy. The long- and short-term effectiveness and protectiveness of the remedy is a measure of whether human health and the environment will be protected while the remedy is being implemented and once it is completed. It also is a measure of whether the GWPS can be met. The second factor, the reduction of future releases, should be used in evaluating how well the source control standard has been met. The practicable capability of the owner or operator also may be considered when evaluating to what extent source control can be achieved.

The Agency believes that the implementability of potential remedies also must be considered by the State when evaluating remedies. Factors that may affect the implementability of a remedy included: (1) The degree of difficulty associated with constructing the technology, (2) the expected operational reliability of the technologies, (3) the availability of necessary equipment and specialists, and (4) the available capacity and location of needed treatment, storage, and disposal services.

The practicable capability of the owner or operator is another remedy selection factor. As described elsewhere in this preamble, practicable capability includes both economic and technical capability of the owner or operator. The consideration of practicable capability allows the State to choose the remedy or combination of remedies that can meet the overall goal of protection of human health and the environment. This may affect the timing of corrective action, and, therefore, practicable capability has been listed as a factor for the States to consider in establishing the cleanup time frame (see preamble discussion of § 258.57(d)). In addition, as mentioned previously, the practicable capability of the owner or operator may be considered by the State in defining to what extent the source of releases will be controlled.

Community concerns is another factor that the Agency believes must be considered by the State when selecting a remedy. It is very important that the community has confidence in the remedy, how it was chosen, and the party responsible for implementation. The success of the corrective action process with regard to community involvement may significantly affect the siting of future MSWLFs in that community.

Any remedy proposal developed during the assessment of corrective measures presented to the State for final remedy selection must, at a minimum, meet the four standards of § 258.57(b). The State then will evaluate those remedies. The decision factors discussed above will be used by the State in selecting the appropriate remedy. The relative weight given to any one of the factors will vary from facility to facility. For example, short-term effectiveness considerations may be of particular concern where remedial activities will be conducted in densely populated areas, or where waste characteristics are such that risks to workers are high and special protective measures are needed. Implementability factors will often play a substantial role in shaping remedies—some technologies will require State or local permits prior to construction, which may increase the time needed to implement the remedy.

Proposed § 258.57(d) would require the State to specify a schedule for initiating and completing remedial activities as a part of the selection of remedy process. This provision gives the States the flexibility to prioritize MSWLF cleanups within their borders. The Agency believes that the flexibility these factors (described below) allow is essential considering the practicable capability of many MSWFs. Further, the Agency believes that the use of these factors will not in any way compromise protection of human health or the environment.

The Agency is proposing that the State consider numerous factors in determining the cleanup time frame. First, threats to human health or the environment from exposure to contamination during implementation of the corrective action program must be

considered. Ground-water cleanup should be hastened if protection of human health and the environment cannot be ensured. Current ground-water users and actual or potential ecological damages must be identified. Second, the extent and nature of the contamination should be considered to determine what remedies and time frames are technically feasible.

The resource value of the contaminated aquifer is a third factor. Resource value is broadly defined as the value of the aquifer as a current and future water supply for domestic, industrial, agricultural, and other beneficial uses. This provision allows the States to balance the resource value of the affected ground water against the corrective action costs to determine the corrective action time period. States then can determine and require, at a minimum, that owners or operators implement the combination of replacement and corrective actions that most efficiently address the short- and long-term protection of human health and the environment. When evaluating the resource value of the aquifer, States should consider the value of the regional aquifer, not just the value of the portion of the aquifer affected by the facility. In addition, local values with respect to maintaining uncontaminated aquifers should be considered.

A fourth factor to be used by the state in determining the corrective action time period is the availability of treatment or disposal capacity for any waste managed during the corrective action program. Capacity should be ensured before removal or treatment of the wastes or ground water begins. In addition to ensuring capacity, the owner or operator must also ensure that wastes will be managed in compliance with requirements in § 258.58(d).

The fifth and sixth factors concern remedial technologies. New and innovative corrective action technologies are being investigated continually and it may be appropriate for the State to postpone ground-water remediation if a new technology (i.e., one that currently is not available) offers significant advantages over current technologies. Along the same lines, the State must consider the practicable capabilities of existing remedial technologies before setting up a compliance schedule. For example, the amount and complexity of construction needed to implement a particular remedical technology could be an important factor or the amount of time that would routinely be needed to achieve the GWPS given a specified technology.

The States also may consider, in dtermining a cleanup time schedule, the practicable capability of the owner or operator of the MSWLF. These capabilities include both the economic and technical capabilities of the owner and operator to initiate the corrective action program. As mentioned previously EPA does not intend to tradeoff environmental or human health protection for cost considerations. The use of practicable capability as a remedy decision factor was described earlier. Using the practicable capability of the owner or operator as well as other cost considerations (e.g., discussed in relation to resource value) in combination with the other factors described above to determine the cleanup time frame, allows the State to choose the combination of actions that will effectively and erfficiently protect human health and the environment and ensure that ground-water remediation is completed.

The proposed factors undr § 258.57(d) would allow the State to accept a combination of remedies to be implemented in discrete phases. This phased approach may affect the time required to achieve the final cleanup. Such an approach will ensure that important environmental problems are addressed first (interim measures may also be used; see preamble discussion of § 258.58(a)(4)). This phased approach may be frequently necessary at operating facilities to prevent the disruption of solid waste disposal. Initial actions would always include steps to prevent exposure to the contaminated ground water (e.g. make alternative water available). An initial remedial step may be to install a pump and treat system that would minimize further migration of the plume. These steps could continue until more active remediation or source control could be implemented.

Section 258.57(e) of today's proposal requires the State to establish a GWPS for each Appendix II constituent detected above trigger levels. The GWPS represents constituent concentrations that remedies must achieve. The GWPS is set on a constituent-specific basis during the remedy selection process.

The State must set the GWPS within the overall context of the remedy selection process. During the assessment of corrective measures (§ 258.56) the owner or operator should design remedies to meet target cleanup levels. These target cleanup levels may start out as trigger levels, but, as pertinent site-specific information becomes available, the State should modify the target levels. The remedies analyzed by the owner or operator should generally be designed to meet the target levels. The State will ultimately select a remedy and set a ground-water protection standard that must be achieved.

The State's primary consideration in setting ground-water protection standards will be to ensure that human health and the environment are protected. As in the case of trigger levels, the State should generally use promulgated health-based standards (e.g., MCLs) and GWPS, where they are available.

Where MCLs or other such standards are not available, the State may rely on RfDs and RSDs in developing ground-water protection standards (see preamble discussion of Determination of Trigger Levels for more information about RfDs and RDSs). For noncarcinogens, the State may set a level based on the RfD. States have flexibility to select a GWPS within the protective risk range (see preamble discussion of risk range alternatives being considered and of Determination of Trigger Levels).

A variety of site-specific and/or remedy-specific considerations may enter into the determination of where within the cancer risk range the ground-water protection standard for a given hazardous constituent will be established. The most appropriate level for cancer risk must be determined through an analysis of factors related to exposure, uncertainty, and technical limitations. Proposed § 258.57(e) lists five factors the State may consider in establishing GWPSs.

The first site-specific factor is multiple contaminants in the ground water. To ensure that individuals exposed to ground water will be protected, it may be necessary to consider the risks posed by other constituents in the ground water before a GWPS for a single constituent can be extablished. In considering the risks posed by multiple contaminants, the State should follow the procedures and principles established in the Agency's "Guidelines for the Health Risk Assessment of Chemical Mixtures" (51 FR 34014) issued on September 24, 1986. All other factors being the same, the GWPS for a constituent present in ground water that is contaminated with other constituents that pose significant risks should be established at a lower concentration than if that constituent were the sole contaminant in the ground water. Taken as a whole, once final remediation is completed, ground water must not pose a risk greater than 1×10^{-4}. To the extent practicable for new MSWLFs, the overall risk level for the ground water (not for each constituent) should be equivalent to the risk level used in

meeting the design standard (see preamble discussion of § 258.40).

The second factor is actual or potential exposure threats to sensitive environmental receptors. Frequently, levels set for protection of human health also will be protective of the environment. However, there may be instances where adverse environmental effects may occur at or below levels that are protective of human health. Sensitive ecosystems or threatened or endangered species' habitats should be considered in establishing the GWPS.

The next factor is other site-specific exposures to the contaminated ground water. For example, residents living near a municipal solid waste landfill may receive unusually high exposures of hazardous constituents from other sources (e.g., lead from a lead smelter). These other exposures should be considered when developing the GWPS.

The last consideration is remedy-specific factors. The State must consider the reliability, effectiveness, practicability, and other relevant factors of the remedy when establishing a GWPS. For example, a remedy that can treat constituents in ground water down to concentrations posing a 1×10^{-5} risk level may be selected in preference to another remedy that might achieve a 1×10^{-6} risk level, but that relies on technology that has not been successfully demonstrated or may be unreliable for other reasons.

There also are technical limitations that must be considered, in addition to scientific information about the hazards to human health and the environment, in establishing ground-water protection standards. For example, GWPSs should not be set lower than detectable levels.

Proposed § 258.57(e)(5)(i) establishes that a GWPS hould not be set below background levels unless the State determines that cleanup to levels below background is necessary to protect human health or the environment. In general, the Agency believes that it may not be reasonable to require the owner or operator to reduce the concentrations of hazardous constituents to levels below background. In many cases such a reduction would not be technically feasible. Today's proposal, however, does not allow MSWLFs located in contaminated areas to ignore incrementally significant facility contributions to the contamination unless a determination is made under proposed § 258.57(f) that remediation is not required.

Proposed § 258.57(f) identifies three situations in which the State may decide not to require cleanup of a release to ground water of hazardous waste or hazardous constituents from an MSWLF, thus obviating the need to establish ground-water protection standards. These situations are limited to cases where there is no threat of exposure to releases from MSWLFs, or cases where cleanup will not result in any reduction in risk to human health or the environment. In any case, the State may impose under § 258.57(g) source control requirements to minimize or eliminate further releases from the MSWLF even if remediation is not required. The Agency does not believe that continued further degradation of the environment is warranted, even in those situations where cleanup may not be required.

In some cases, MSWLFs releasing hazardous constituents to the ground water will be located in areas that already are significantly contaminated. Where releases from the MSWLFs are trivial compared to the overall area-wide contamination, or where remedial measures aimed at the MSWLF would not significantly reduce risk, EPA believes that remediation of releases from the MSWLF would not be necessary or appropriate. In these situations, proposed § 258.57(f)(1) would allow the facility owner or operator to provide the State information demonstrating that remediation would provide no significant reduction in risk. If the demonstration were made, the State should determine that remediation is not necessary.

For example, ground water below a leaking MSWLF might be heavily contaminated from off-site sources. In this case, removal of the MSWLFs contribution to the contamination might have very limited benefit, particularly if that contribution was relatively minor. Control of the MSWLF releases might do very little, in such a case, to improve the overall situation in the area, yet (in the case of an operating unit) might be extremely burdensome to the owner or operator.

Two points should be stressed here, however. First, the facility owner or operator would be required to remediate the ground water where it could have a significant effect on reducing risks—for example, as part of an area-wide cleanup strategy. Second, in any case, under § 258.57(g) source control may be required to prevent further releases.

The Agency has not attempted to define "significant reductions" in risk in this rulemaking, and believes the decision is best made on a case-by-case basis by the State. However, the Agency seeks comment on whether a more specific definition is necessary for the purposes of this rulemaking.

Under proposed § 258.57(f)(2), the State may determine that a hazardous constituent that has been released from an MSWLF to ground water does not pose a threat to human health and the environment and, therefore, does not require remediation if: (1) The ground water is not a current or potential source of drinking water and (2) the ground water is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that represents a statistically significant increase over background concentrations.

In interpreting whether the aquifer meets these criteria, the State may use the approach outlined in the Agency's Ground-Water Protection Strategy (August 1984) as guidance. Typically, Class III ground waters will be considered to meet the requirements specified in § 258.57(f)(2)(i). Class III ground waters are ground waters not considered potential sources of drinking water. They are ground waters that are heavily saline, with TDS levels over 10,000 mg/l, or are otherwise contaminated beyond levels that allow cleanup using methods reasonably employed in public water system treatment. These ground waters also must not migrate to Class I or II ground waters or have a discharge to surface water that could cause degradation. The need to remediate Class III ground waters should be assessed on a case-by-case basis.

Proposed § 258.57(f)(3) would allow the State to make a determination that remediation of a release is not required when remediation is technically impracticable or when remediation presents unacceptable cross-media impacts. Such a determination may be made, for example, in some cases where the nature of the hydrogeologic setting would prevent installation of a ground-water pump and treat system (or other effective cleanup technology), e.g., in Karst formations or where heavily fractured bedrock lies under the facility. In these situations, the installation of such a system could possibly increase environmental degradation by introducing the contaminant into ground water that was not previously affected by the release. The Agency is persuaded that in this and other situations remediation should not be required. The Agency is specifically soliciting comment today on the types of situations that might warrant a determination that remediation of a release is technically impracticable or presents unacceptable impacts and would not, therefore, be required.

Proposed § 258.57(h) outlines the Agency's proposed approach to

establishing conditions the owner or operator must fulfill to achieve and demonstrate compliance with the GWPS established by the State during the remedy selection process.

First, the GWPS must be achieved at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 258.51(a). The ground-water monitoring well system is established at the boundary chosen for the design (i.e., at the unit boundary or a State alternative boundary that does not exceed 150 meters from the waste management unit boundary and is on land owned by the owner or operator of the MSWLF (see preamble discussion of § 258.51(a)). It is logical that cleanup be required up to the boundary for which the facility was designed to meet a health-based risk level.

The Agency also is proposing under § 258.57(h)(2) that the State specify in the remedy the length of time during which the owner or operator must demonstrate that concentrations of hazardous constituents have not exceeded specified concentrations in order to achieve compliance with GWPSs. Under existing Subtitle C regulations (§ 264.100), the Agency has required that facility owners or operators remediating ground-water contamination from regulated hazardous waste units continue corrective action until the designated GWPSs have not been exceeded for a period of three years. The Agency has found that, given the variety of hydrogeologic settings of facilities and characteristics of the hazardous constituents, it is difficult to demonstrate reliably that the GWPSs have been achieved by imposing a uniform time for demonstrating compliance. Consequently, the Agency is considering proposing changes to the Subtitle C program.

In today's proposal for MSWLFs, the Agency is proposing that the State specify the length of time required to make such a demonstration on a site-specific basis. As described under proposed § 258.57(h)(2), the State may consider four factors in setting this timing requirement: (1) The extent and concentration of the release, (2) the behavior characteristics of the hazardous constituents in the ground water, (3) the accuracy of the monitoring techniques, and (4) characteristics of the ground water. The Agency believes that consideration of these factors will allow the State to set an appropriate time period for demonstrating compliance with GWPSs rather than relying on an arbitrary time period for all facilities or all situations at the same facility.

One example of how these considerations might affect a decision on the time a ground-water protection standard must not be exceeded to demonstrate compliance is given here. The Agency expects that pump and treat systems will be necessary at many MSWLFs. Experience in the RCRA Subpart F program (which addresses releases of hazardous constituents to ground water from regulated hazardous waste units) has shown that continuous operation of a pump and treat system may interfere with the owner or operator's ability to obtain accurate sampling data on constituent concentration levels. Allowing natural restoration of chemical equilibrium in the affected ground water after the pump and treat system is turned off will be necessary to obtain accurate readings of constituent concentrations. If the concentration(s) rise to unacceptable levels after the remedial technology is disconnected, reinitiation of treatment may be required. This process would have to be repeated until acceptable concentration levels are achieved after chemical equilibrium has been reached in the ground water with the treatment system suspended.

5. Section 258.58 Implementation of the Corrective Action Program

Implementation of a corrective action program is required when hazardous constituents are detected at levels higher than the GWPS. Several activities are required of the owner or operator under proposed § 258.58. First, a corrective action ground-water monitoring program is required under proposed § 258.58(a)(1). This program must meet the requirement of the Phase II monitoring program (§ 258.55), demonstrate the effectiveness of the remedy(s), and demonstrate compliance with the GWPS.

Second, under § 258.58(a)(2), the owner or operator must implement the remedy(s) selected by the State under § 258.57. As described under § 258.57, the "remedy" encompasses not only the technology to be used to remediate the ground water (if remediation is to be conducted), but also the GWPSs to be reached and the time the owner or operator has to reach the standards (see preamble discussion of § 258.57).

Next, under § 258.58(a)(3), the owner or operator must notify all persons who own or reside on the land that overlies any part of the plume of contamination. The State may require the owner or operator to notify such persons any time the trigger level has been exceeded (i.e., before the GWPS has been established) if the State determines it necessary to protect human health or the environment (see § 258.58(f)).

Under the proposed § 258.58(a)(4) the State may require the owner or operator to conduct interim measures at an MSWLF whenever the State determines such actions are necessary to protect human health or the environment. The interim measures would serve to mitigate actual threats and prevent potential threats from being realized while a long-term comprehensive response can be developed. Interim measures should, when possible, be consistent with the expected final remedy. The State should consider the immediacy and magnitude of the threat to human health or the environment as primary factors in determining whether an interim measure(s) is required. Proposed § 258.58(a)(4)(i)–(vii) lists factors that the State may consider in determining whether an interim measure is required.

Interim measures may encompass a broad range of actions. For example, an owner or operator responsible for contamination of a drinking water well may be required to make available an alternative supply of drinking water as an interim measure in an effort to protect human health. This replacement action could be temporary or permanent. The duration of the period over which replacement supplies must be provided can affect the type of action selected. Replacement actions may include hooking up affected aquifers, relocating wells, and treating contaminated ground water at the point of use.

During the implementation stage, other factors may arise that make the chosen remedy technically impracticable. For example, the unexpected occurrence of an area of unstable soils may render the chosen source control remedy impossible to construct. Proposed § 258.58(b) describes factors the State must consider in making such a determination. In these instances, the State may require that the owner or operator implement other alternatives to control exposure to residual contamination as described under § 258.58(c). The State also may require the owner or operator to implement other source control options and other equipment, unit, device, or structure decontamination activities. The State will evaluate these alternative activities for their technical practicability and their consistency with the overall objectives of the original remedy. The GWPS will not be changed; however, the State may want to adjust the time allowed for completion of the remedy.

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Proposed § 258.58(d) requires that wastes generated during the implementation of corrective action be managed in a manner that is protective of human health and the environment. In particular, the waste management practices must be in compliance with all applicable RCRA requirements.

According to proposed § 258.58(e), the remedy is considered complete when the GWPS has been achieved according to the requirements of § 258.57(h) and all other actions required in the remedy have been completed (e.g., source control measures). After the required remedy is complete, the owner or operator must submit a statement that certifies that the remedy has been completed in accordance with requirements under § 258.58(e). In addition to the owner or operator's signature the certification must contain the signature of an independent professional engineer geologist, or other appropriate technically trained person. According to § 258.58(g), after the State receives the certification and is satisfied that the remedy is complete, the State releases the owner or operator from the requirements for financial assurance for corrective action.

The Agency considered an alternative approach to the corrective action program proposed today. The alternative would involve the following steps. First: the owner or operator would be required to do three activities: (1) Report to the State any concentration of hazardous constituents in the ground water above trigger levels, (2) investigate the nature and extent of the contamination, and (3) take all necessary actions to abate any immediate risks to human health and the environment. Second, after the owner or operator submitted the results of the investigation, the State would assess, site-specifically, the risks to human health and the environment posed by the ground water contamination. Based on this assessment, the State would set site-specific requirements for clean up of the ground water (including cleanup levels). Next the owner or operator would be required to submit to the State for approval a plan for meeting the cleanup requirements. The owner or operator then must implement the approved plan. Modifications to the plan would be allowed, if needed, based on site-specific considerations. The approach would present fewer specific Federal requirements for cleanup. The Agency requests comment on this alternative approach as well as the proposed corrective action requirements discussed above.

X. Effective Date, Implementation, and Enforcement of the Revised Criteria

Subtitle D of RCRA, as amended by HSWA in 1984, requires the Administrator to revise the Criteria for sanitary landfills under § 4004(a) and the solid waste management guidelines under section 1008(a) for facilities that may receive HHW or hazardous wastes from SQGs. Subtitle D also contains specific requirements with respect to the implementation and enforcement of the revised Criteria for facilities that may receive these wastes. Of particular significance is the provision in § 4005(c) requiring that States adopt and implement, within 18 months of the promulgation of the revised Criteria, a facility permit program or other system of prior approval to ensure compliance with the revised Criteria. In addition, this section provides that "in any state that the Administrator determines has not adopted an adequate program * * * the Administrator may use the authorities available under section 3007 and 3008 of [Subtitle C] to enforce the prohibition contained in subsection (a) of this section with respect to such facilities." A discussion of the issues regarding the implementation and enforcement of the revised Criteria and the options the Agency is considering for addressing these issues is set forth below.

A. Effective Date of the Revised Criteria

EPA today is proposing that the revised Criteria become effective 18 months after their promulgation. The Agency considered an alternative two-stage approach, which is described below, but decided that 18 months is the most appropriate time period for several reasons.

1. Eighteen-month Period

First, the 18-month time period would coincide with the period within which States, under section 4005(c) of RCRA, are to adopt and implement a permit program or other system of prior approval to ensure that facilities comply with the revised Criteria. Congress provided this 18-month period after the promulgation of the revised Criteria to provide States adequate time in which to adopt new or revise existing applicable State standards and to institute a permit process for ensuring facility compliance. Because the States are given the lead responsibility for implementing the revised Criteria under these provisions, EPA believes it is critical to set an effective date for the revised Criteria that coincides with the date the States are required by RCRA to have their implementation mechanisms in place.

Second, the 18-month period would provide MSWLF owners and operators with sufficient time to take the necessary measures at their facilities to bring them into compliance. EPA recognizes that certain of the revised Criteria proposed today may require substantial efforts on the part of the facility owner and operator both in modifying management practices at an existing MSWLF and in planning full compliance for a new one. The fact that most MSWLFs are owned and run by local governments, which have limited resources, also is a consideration. Congress directed EPA to take into account the "practicable capability" of facilities in revising the Criteria. EPA believes that the proposed 18-month period for allowing MSWLFs to come into compliance recognizes the practicable capability of MSWLFs to meet certain of the revised Criteria.

Although EPA recognizes that some of the revised Criteria could be implemented in shorter periods of time, i.e., six or 12 months, EPA believes that a uniform effective date of 18 months would minimize confusion on the part of the regulated community. Also, while the 18-month period before the effective date proposed today would postpone application of the revised Criteria to MSWLFs, it would not leave these facilities unregulated. The current part 257 Criteria and applicable State standards would remain in effect for these facilities until the revised Criteria become effective. In addition, some States may adopt the revised Criteria, making them effective under their own authorities, before the 18-month period expires.

EPA recognizes that there are some limitations with this approach. EPA is concerned that the 18-month period between the promulgation and the effective date of the revised Criteria might allow some MSWLFs to close to avoid meeting the new requirements. The Agency does not intend for this period to be a window of escape for marginal MSWLFs. Experience shows, however, that MSWLFs do not open and close overnight. In fact, the long operating lives of most existing MSWLFs and years of advance planning needed for siting and permitting new facilities significantly mitigate against such actions. The Agency is aware that some closures may occur, however, and intends to work with the States to guard against closures performed in an unsatisfactory manner that may pose threats to human health and the environment.

2. Two-stage Approach

The 18-month approach would preclude enforcement of the revised Criteria through the citizen suit provisions of RCRA § 7002 pending their becoming effective. Thus, for 18 months, citizens will be unable to use RCRA to enforce the revised Criteria. For this reason, EPA is considering the option of establishing two stages of effective dates. The first stage of effective dates would be for only those requirements that can be implemented by the facility owner or operator in less than 18 months and are self-implementing on their face, thus, leading themselves to more immediate effective dates. The effective date would be set at six or 12 months after the promulgation date as appropriate for the specific requirement. The self-implementing provisions of this rule include the general operating criteria such as the liquids management restrictions, the disease vector and explosive gas controls, recordkeeping, and closure and post-closure planning requirements. The second-stage effective date would be limited to those requirements that require interactions with or determinations by the State and substantial efforts on the part of the facility owner or operator for effective implementation. These requirements include the ground-water monitoring and corrective action requirements. The two-tiered approach would maximize the use of citizen suit provisions during the 18-month period because some of the requirements would be in effect sooner, i.e., in 6 12 months; however, this approach runs the risk of causing considerable confusion on the part of regulated facilities and inconsistent application of the revised Criteria nationwide.

Although EPA has decided to propose an effective date for all the revised Criteria of 18 months after the date of promulgation, EPA specifically solicits public comment on the alternative two-stage effective date approach described above.

B. Review of State Permit Programs

Section 4005(c) of RCRA, as amended in 1984 by HSWA, requires the Administrator to determine whether each State has developed an adequate permit program or other system of prior approval and conditions to ensure that each solid waste disposal facility that receives HHW or SQG hazardous waste will comply with the revised Criteria. The Administrator also is given the discretionary authority to preform these reviews in conjunction with the reviews of State solid waste management plans under RCRA § 4007.

The Agency solicits comments concerning the most appropriate means for determining the adequacy of State permit or other prior approval programs. Issues include whether the Agency should confine its review to assessement of a State's permit or other prior approval program or whether the Agency should expand this review to include all the components of the State's solid waste management plan. Under the first option, the Agency only would review the State's permit or approval program that incorporated the revised Criteria. The Agency's review of the State program would be limited to that portion of the State's Subtitle D program. The Agency recognizes that an expanded review under the second option would provide the State with the flexibility to present additional elements of its solid waste management program, outside of the permit or other prior approval program, that help ensure the proper management of solid waste disposal facilities. In addition, this broader evaluation would provide the Agency with a better understanding and appreciation of State implementation activities under Subtitle D.

The latter option, however, would require all of the States to either develop or modify their solid waste management plans to reflect the revised Criteria. The development and/or modification of these plans is a lengthy, and resource-intensive process. The States may not be able to meet the HSWA requirement to adopt and implement a permit program or other system of prior approval within 18 months from promulgation of the revised Criteria if they also must revise their solid waste management plans.

Depending on the outcome of the above issues, the Agency may need to modify the Guidelines for Development and Implementation of State Solid Waste Management Plans (40 CFR Part 256), which delineate the requirements and procedures for State solid waste management plan review. The current Part 256 guidelines comprehensively address program requirements, solid waste management plan submittal procedures, organizational issues, permit programs, legislative and regulatory authorities, and public participation requirements. The Agency may need to modify Part 256 to clearly specify the Agency's evaluation criteria and review procedures for the revised Subtitle D Criteria.

There are two other issues on which the Agency specifically requests comments. The first issue relates to what evaluation criteria the Agency should use to determine the adequacy of State permit programs. One option is for the Agency to base its determination of program adequacy on the content of the State's statutory and regulatory requirements. Under this approach, the Agency would develop evaluation criteria for determining whether these State requirements ensure that the revised Criteria are met.

On the other hand, the Agency could assess State programs on the basis of legislative and regulatory mechaniams together with an evaluation of program effectiveness. This review would include an assessment of the State's past performance (i.e., enforcement, permitting) in managing solid waste disposal activities. In particular, the Agency would consider State resource and technical capabilities in evaluating State program adequacy.

The second issue concerns the extent of public participation that should be provided for in the Agency's review of State program adequacy. The Agency is soliciting comments on whether there should be opportunities for public review and comment on the Agency's evaluation of the adequacy of State solid waste permitting programs or other aspects of the State's solid waste management plan. While the Agency recognizes that such participation opportunities may significantly extend the review period, EPA nevertheless is interested in providing such opportunities when appropriate. EPA will publish a more specific proposal addressing these issues at a later date.

C. Enforcement of the Revised Criteria

States that have adopted the revised Criteria under State law may enforce them in accordance with State authorities. Under today's proposal, there would be no authority for EPA enforcement of the revised Criteria until, 18 months after the date of promulgation of the revised Criteria, the Agency determines that a State's program is inadequate. Also, citizens would be precluded from enforcing the revised Criteria via citizen suits until the Criteria become effective.

1. Citizen Suits

As with the Part 257 Criteria, citizens may seek enforcement of the Part 258 revised Criteria (independently of any State program for their enforcement) by means of citizen suits. The citizen suit provisions of RCRA contained in section 7002 provide an important mechanism for ensuring compliance with the requirements of the statute and its implementing regulations. They authorize individuals, environmental groups, and local governments, among

others, to bring legal actions for noncompliance with RCRA requirements. Thus, once the revised Criteria become effective, they have the full force of law and may constitute the basis for citizen enforcement actions against facilities that fail to comply. Citizens would be able to bring actions against facilities for failure to comply with the Criteria and actions against States for failure to develop and implement permit or other prior approval programs as required by RCRA section 4005.

2. Federal Enforcement

Section 4005(c)(2) of RCRA, as amended by HSWA in 1984, provides authority for EPA enforcement of the revised Criteria under authority of sections 3007 and 3008 of Subtitle C. This provision is significant in that it represents the first authority for EPA enforcement of regulatory requirements under Subtitle D. According to section 4005(c)(2), EPA enforcement is contingent on an EPA determination that a State has not adopted an adequate permit or other prior approval program to ensure the compliance of facilities with the revised Criteria by 18 months from the date of promulgation of the revised Criteria. Having made this determination, EPA may use the inspection and enforcement authorities under sections 3007 and 3008 to enforce against facilities failing to comply with the revised Criteria. Disposal of solid waste at facilities that do not comply with the revised Criteria constitutes open dumping. These authorities provide EPA with the necessary tools to enforce Subtitle D's prohibition against open dumping.

EPA expects the States to assume the primary responsibility for implementing and enforcing the revised Criteria, and a major EPA enforcement program for Subtitle D is not envisioned. If States fail to assume their responsibility with respect to the revised Criteria, however, EPA may step in to ensure compliance with Part 258 as necessary to protect human health and the environment. As explained above, EPA is soliciting comments on the criteria and procedures that it should use to determine whether a State has adopted an adequate program.

EPA has determined that it is necessary to formulate an enforcement strategy with respect to the revised Criteria and welcomes public comment on the overall role of EPA enforcement under Subtitle D, the proper elements of an enforcement policy for ensuring compliance with the revised Criteria, and strategies for targeting MSWLFs that pose the greatest threat to human health and the environment. EPA is soliciting public comment on the specific circumstances and situations of facility noncompliance with the revised Criteria that should precipitate direct EPA enforcement actions. In addition, the Agency is particularly interested in comments on circumstances under which the Agency should act to enforce criteria once the Administrator has determined that the State's program is inadequate pursuant to section 4005(c)(1)(C).

D. Other Implementation Issues

1. Implementation Strategy

In conjunction with the development of this rule, the Agency is preparing an implementation strategy. This strategy will serve as a planning document for EPA and the States in understanding what actions are necessary to modify the management of their regulatory programs to accommodate the revised Criteria. This strategy is designed to limit future implementation problems by anticipating potential problems or obstacles and crafting implementation options to resolve or minimize these issues before they emerge.

The Agency currently is identifying implementation issues and needs concerning permitting, compliance monitoring, and enforcement activities; public education and outreach activities; guidance and training needs; resource needs; and EPA/State roles and responsibilities. In particular, the Agency requests comments on the following implementation concerns: (1) What types of education-outreach programs are needed for State and local officials, the regulated community, and the general public? (2) In what areas is there a need for guidance and training? What types of technical assistance activities are needed? (3) What is an appropriate and practical EPA role if the States do not adopt and implement the revised Criteria?

The Agency also solicits comment on whether additional issues should be considered in developing this strategy.

2. Co-disposal of Sewage Sludge

One of the major disposal practices for sewage sludge is disposal at a municipal solid waste landfill. Approximately 6,800 POTWs dispose of their sewage sludge in this manner. By promulgating the Part 258 requirements jointly under RCRA and CWA section 405, questions arise as to the extent to which the Part 258 criteria would be implemented through NPDES permits issued to POTWs. Under RCRA Subtitle D (section 4005(c)), the Part 258 criteria are to be imposed by States on the owner or operator of an MSWLF. States are to impose the criteria by a system of prior approval and conditions, such as issuance of a permit to the MSWLF. The Agency has selected this approach to reconcile the two programs in a way that would minimize duplicative regulation while best ensuring complete coverage under both statutes. This approach would be consistent with section 1008(b) of RCRA, which requires EPA to integrate the provisions of RCRA for purposes of administration and enforcement, and to avoid duplication to the maximum extent practicable, with the appropriate provisions of the CWA and other environmental laws administered by EPA.

Under this proposal, the Part 258 criteria applicable to the characteristics of sewage sludge that must be met if sewage sludge is placed in an MSWLF would be implemented through permits issued to POTWs pursuant to section 405(f) of the CWA. The Part 258 criteria applicable to the landfill site would be implemented under the RCRA Subtitle D program. This would mean that the POTW permit would prohibit the disposal in an MSWLF of sludge found to be hazardous (§ 258.20), and would require that the sludge pass the Paint Filter Liquids Test (§ 258.28). The POTW permit also would prohibit the POTW from sending its sludge to MSWLFs that are not in compliance with the applicable Federal and State regulations. Thus, to obtain a permit authorizing disposal of sludge at a landfill, the POTW would have to ascertain that the MSWLF either has a permit under Part 258 or otherwise is authorized to operate as an MSWLF by the State in which it exists, as prescribed by RCRA.

EPA believes that this implementation scheme fulfills the goals and policies of both RCRA and the CWA and is a rational way to reconcile overlapping programs. EPA also considered separate implementation of the Part 258 criteria under each program. Under the sludge management program of the CWA, this method would involve implementation of all Part 258 criteria, including those applicable to location, design, and operation of the landfill, through permits issued to the POTWs. The Agency decided against this approach for two reasons. First, it would establish duplicative coverage without apparent corresponding environmental benefits. Typically, sewage constitutes a small proportion of the wastes disposed at an MSWLF. Compared to other wastes sent to an MSWLF, such as household hazardous waste and hazardous waste from very small quantity generators,

sewage sludge is unlikely to be the source of environmental problems at the landfill. In fact, the presence of sewage sludge in a co-disposal facility may even improve the quality of the leachate at least in the short run (Ref. 15). Second, holding POTWs liable for compliance by the landfill with the Part 258 standards may not be appropriate because other solid waste contributors are not similarly held liable.

EPA invites comment on whether the approach proposed here is an appropriate and effective means to ensure proper management of sewage sludge disposed of in a landfill.

XI. Regulatory Requirements

A. Executive Order No. 12291

1. Purpose

The Agency estimated the costs, benefits, and economic impacts of today's proposed rule. These analyses are required for "major" regulations as defined by Executive Order No. 12291. The Agency also is required under the Regulatory FLexibility Act to assess small business impacts resulting from the proposed rule. The cost and economic impact analyses also are a measure of the "practicable capability" of facilities to comply with the proposed rule.

The cost, benefit, and economic impact results indicate that today's rule is a "major" regulation and it would likely impose differential impacts on a significant number of small entities. This section of the preamble discusses the results of the analyses of the proposed rule as detailed in the draft Regulatory Impact Analysis of Proposed Revisions to Subtitle D Criteria for Municipal Solid Waste Landfills. The draft RIA is available in the public docket. This rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. No. 12291.

2. Regulatory Alternatives

E.O. No. 12291 requires EPA to estimate the costs and benefits for the proposed rule as well as any viable alternatives. Several current provisions (e.g., performance standards for existing units, post-closure care, ground-water monitoring parameters) of the proposed rule do not exactly reflect what was analyzed in the RIA. For this reason, the results presented in this section and the RIA may understate the fraction of existing landfills requiring more stringent covers (and the resulting costs of these covers), overstate costs for post-closure care, and understate the sampling costs for ground-water monitoring. Nonetheless, the Agency believes the basic conclusions of the draft RIA are accurate estimators of the effects of the proposed rule.

In addition to the proposed rule, EPA analyzed the effects of three regulatory alternatives in the RIA. The analysis of the regulatory options provides a comparison of the proposed rule in the context of other regulatory scenarios. The alternatives predominantly differ with respect to the stringency and uniformity of the containment and cover requirements. Corrective action (the benefits of which currently are modeled for new units only) and extended post-closure care are required for all regulatory options.

Alternative 1 consists of a uniform set of technology-based requirements that are imposed on all MSWLFs irrespective of location or migration potential. This alternative has the most stringent design requirements and essentially reflects the Subtitle C regulations for land disposal. New units are required to have a double composite containment system (i.e., two synthetic liners over a clay liner) with two LCSs and a composite cover. New and existing units are required to close with a composite cover. Ground-water monitoring (as detailed in Subpart F of 40 CFR Part 264), gas monitoring, run-on and run-off controls, and exclusion plan for nonmunicipal solid waste, corrective action, and extended post-closure care are required for both new and existing units under this regulatory alternative.

Alternative 2 requires cover and containment designs based on the migration potential at the site. This categorical approach is described in Section D of this preamble. General facility standards are identical to those for the proposed rule. Corrective action and extended post-closure care are required for all units.

Alternative 3 imposes ground-water monitoring, corrective action, and extended post-closure care on both new and existing units. This alternative is similar to the statutory minimum described under Section D of this preamble except that location standards are not analyzed.

Costs, economic impacts, and risk estimates (including resource damage) are presented in this section for the proposal and the three regulatory alternatives; primary emphasis will be on results for the proposed rule.

3. Cost Analysis

a. Methodology. The Agency developed an engineering cost model to estimate total costs for an MSWLF under a variety of technical and regulatory scenarios. This model estimates the cost to design, construct, operate, close, and provide post-closure care for an MSWLF. The model allows for user-specified input variables such as waste throughput, operating life, type and depth of fill operation, number of phases of construction, containment and cover systems, waste density, environmental monitoring and control, post-closure care, and a variety of unit costs and fees for construction and operation of the facility. Based on these inputs, the model calculates the necessary landfill dimensions (e.g., active area), capital costs, operating and maintenance costs, closure costs, and post-closure costs of the facility. In addition, the model assigns these costs to specific years of the operating life and post-closure care and then calcualtes a present value (in 1986 dollars) based on a 3 percent real disocunt rate. The model can estimate costs for any landfill size between 10 and 1,500 TPD. National costs for a given option then are calcualted using these unit costs and a size distribution of MSWLFs.

EPA selected a limited number of generic user inputs to the model and held these constant across the regulatory options so that cost differences in the environmental controls would be highlighted. EPA selected seven model facility sizes for modeling costs. Preliminary results form the Subtitle D Solid Waste (Municipal) Landfill Survey (referred to here as the Facility Survey) were used to assign a frequency distribution to each size category. The seven model sizes used (and the assigned frequency of MSWLFs) are: 10 TPD (51.4 percent), 25 TPD (16.9 percent), 75 TPD (12.7 percent), 175 TPD (7.1 percent), 375 TPD (6.5 percent), 750 TPD (3.2 percent), and 1,500 TPD (2.3 percent). (Although the 1,500 TPD category includes only 2.3 percent of all MSWLFs, these facilities handle 36.5 percent of all waste.) EPA assumed for the cost analysis that all MSWLFs opertate in one phase and use a cut-and-fill method of operation.

EPA estimated corrective action costs separately using the failure and release component of the risk model (described in Section X1.A.4 of this section). EPA's approach to estimating corrective action costs partially reflects the flexibility of this requirement in the proposed rule. EPA estimated costs based on aggessive cleanup of new contamination and either aggressive or passive cleanup of existing plumes. This approach to estimating corrective action costs was used for all regulatory alternatives in addition to the proposed rule.

For new contamination, EPA modeled the effects of ground-water recovery wells as the selected corrective action technology. The recovery wells are

assumed to be installed one year after the corrective action has been triggered.

For existing contamination, EPA estimated corrective action costs for two types of responses. The first response consists of active restoration of the plume using ground-water recovery wells (i.e., the approach modeled for new facilities). EPA assumed that this approach will be utilized for larger plume sizes as the most effective remedial measure. To partially account for the flexibility provided by the corrective action requirement in terms of the timing and response to contaminant plumes, the second response represents a passive approach for smaller plumes. EPA assumed that this passive approach would consist of providing an alternative water supply to affected user of the gound water. EPA recongizes that alternative technologies or remedies may be employed for cleanup of affected ground water. Corrective action costs were added to the design and operating costs to derive total costs for a given regulatory option.

To obtain incremental regulatory costs, EPA first characterized MSWLF baseline practices. Baseline practices are those design and operating practices that exist prior to the imposition of the requirements in today's proposed rule. EPA characterized baseline conditions using preliminary results from the Facility Survey and results from the State Census. For purposes of this analysis (including the economic impact and risk analyses discussed later), EPA characterized the baseline facility as an unlined landfill with a vegetative cover at closure, no environmental monitoring, no post-closure care, and no corrective action. However, as described below, EPA adjusted compliance costs to account for existing State requirements with respect to liners, leachate collection systems, and ground-water monitoring well requirements. The MSWLF population is extremely diverse in terms of its technical characteristics (e.g., presence of environmental controls, design capacity, remaining life), which is due in part to a broad range of State requirements that vary in both scope and detail. EPA reviewed the State requirements to identify those States that require containment (i.e., liners, leachate collection systems) and ground-water monitoring well requirements that would likely satisfy the conditions in today's proposed rule. EPA identified 22 States with similar liner and LCS requirements and 24 States that have similar ground-water monitoring well requirements. EPA adjusted the regulatory compliance cost estimates for facilities in these States. The adjustment for State liner and leachate collection system requirements was made only for analyzing the costs of the proposed rule; the costs for all regulatory options accounted for the existence of State requirements for ground-water monitoring wells. To the extent that other existing State requirements are similar to those in today's proposed rule, the estimated compliance costs will be overstated. Although EPA adjusted the national compliance cost estimates to reflect these State requirements, the risk and resource damage estimates were not adjusted to reflect the presence of containment systems in the baseline. The benefits of the regulatory options in protecting ground water as a drinking water source (presented in this section and in the RIA) will likely be overstated by not incorporating the presence of these State requirements; however, EPA has not analyzed the benefits of the regulatory options in reducing risk from other routes of exposure (e.g., surface water, subsurface gas, risks to the ecosystem). Therefore, the net benefits of the rule will likely be understated.

The Agency estimated compliance costs for each Facility Survey respondent. EPA assigned each respondent a weighting factor that represents the frequency of that type of facility in the total national regulated population of 6,034 active MSWLFs. The weighting factors were used to scale respondent facility costs up to national compliance costs for the regulatory options. EPA estimated compliance costs separately for new and existing requirements. In addition, EPA combined the new and existing MSWLF estimates to produce a compliance cost figure that represents an average cost for existing units and their new replacement landfills. New landfills are assumed to be perpetually replaced for this combined estimate.

For new MSWLFs, all regulatory costs are assumed to apply from the time construction begins. A new landfill is assumed to operate for 20 years and compliance costs (in present value terms) are annualized over this time period. For those facilities with longer operating lives (approximately 60 percent of all MSWLFs as reported in the Facility Survey), the annualized costs will be lower due to an increased amortization period for capital costs.

For existing MSWLFs, the regulatory costs are applied over the remaining operating life as reported in the Facility Survey. (Existing MSWLFs that were reported in the Facility Survey to be closing before the effective date of the proposed rule were not assigned existing requirement costs. These landfills were assumed to be replaced with new facilities to which appropriate requirements were applied.) EPA annualized the regulatory costs for an existing MSWLF over the remaining life of the facility. EPA assumed that revenues are generated to pay for regulatory costs during the operating life. Although this is likely to be true for private landfills, publicly owned facilities may have the option of passing on the costs (for facilities with short remaining lives) to future facilities and thus reduce the cost impact. Existing landfill costs will tend to be overstated for these facilities that amortize the costs over a period that extends past the reported remaining life.

To develop a combined estimate of average annualized compliance costs for the regulatory options, costs for existing units plus their new replacement landfills have been discounted to one present value that spans the existing landfill's remaining life plus the ongoing life of a new landfill that is replaced every 20 years. (Replacement of all existing MSWLFs with new MSWLFs does not account for the current trend away from siting new landfills; moreover, it is unlikely that each of the existing 6,034 MSWLFs will have a replacement landfill in perpetuity. Regionalization, recycling, shifts to resource recovery, and better siting of landfills in "good" locations will result in fewer new MSWLFs than estimated in this analysis. EPA has not incorporated these factors into the analysis because they involve simulating site-specific local decisions that are difficult to analyze. EPA's costs will tend to be overstated by not including these factors.) EPA assumed that the new MSWLF would be built at the same location such that the required designs remain the same. EPA then annualized this present value as a perpetuity to obtain an annualized combined compliance cost estimate for a given regulatory option. Although this figure does not represent the actual cash flow (i.e., for capital outlays) that would likely result from regulation, it does represent a level annual payment as if the facility operator had borrowed funds to pay the capital costs. This annualized combined cost estimate is used in the economic impact analysis of the regulatory options. Compliance costs specific to new and existing requirements are presented in detail in the RIA; however, costs (and economic impacts) presented in this section of the preamble only reflect the combined estimates.

For the proposed rule, EPA estimated the effect of the design goal on new MSWLFs by analyzing the baseline risks (a detailed discussion of the risk methodology is presented later in this section). For the purposes of this analysis, EPA assumes all MSWLFs would comply with a design goal of 10^{-6} from the allowable protective range of 10^{-4} to 10^{-7}. Actual costs (and benefits) of the proposed rule will vary depending on the state-selected design goal. Landfills with an average most exposed individual risk below 1×10^{-6} in the baseline (i.e., unlined with a vegetative cover) were excluded from any further design requirements. EPA estimated that these facilities would not trigger corrective action since risks at these units would never exceed the 1×10^{-5} trigger level used for this regulatory analysis.

Those new facilities that exceeded a 1×10^{-6} risk level in the baseline then were modeled with a synthetic cover. EPA assigned these facilities a synthetic cover if risks were reduced to below 1×10^{-6}. For the subset of facilities that still exceeded the design goal, EPA assigned a synthetic containment system with leachate collection and a synthetic cover. Those landfills that still exceeded the risk threshold with this more stringent design would trigger corrective action. EPA selected these designs for the purpose of conducting this analysis. These designs are neither specifically required by the proposed rule nor do they represent the only designs that could satisfy the performance standard; however, the chosen designs do represent features that would be applicable and effective in a wide range of environmental settings.

EPA only assigned liners and leachate collection systems to new units: no lateral expansion was assumed to occur at existing facilities so that covers would be the only applicable design requirement to meet the performance standard. Under the proposed rule, existing units must have a cover that prevents infiltration. In the RIA, EPA assigned a vegetative cover if baseline risks were less than 1×10^{-6}; for the subset of facilities that exceeded this baseline risk level, EPA assigned a synthetic cover. Other cover systems besides these two modeled in the RIA could be used to comply with the performance standard. EPA moedled the proposed rule at one design goal (1×10^{-6}) and two POCs: The waste unit management boundary (modeled as the 10-meter POC) and the maximum allowed alternative boundary of 150-meters (the 150-meter POC).

For compliance at the 10-meter POC, EPA estimated that 61 percent of the MSWLFs would require an unlined unit with a vegetative cover design, 11 percent an unlined unit with a synthetic cover, and the remaining 28 percent a synthetic liner with leachate collection and a synthetic cover. At the 150-meter POC, EPA estimated the resulting percentages as 79, 9, and 13 percent, respectively. In addition to the design requirements necessary to achieve the design goal, EPA assigned compliance costs to both new and existing units for the general facility standards and other requirements. These requirements include: Developing procedures for excluding hazardous waste from the landfill, monitoring for methane in the subsurface and in structures, run-on and run-off controls, developing and implementing a closure plan, and ground-water monitoring. Although EPA modeled an extended post-closure care period (including cover and slope maintenance, cover inspection, and ground-water monitoring) the proposal requires a two-phased post-closure care period at a minimum of 30 years. In addition, the ground-water monitoring parameters modeled in the RIA differ from those under the proposed rule. EPA did not estimate costs for financial responsibility requirements. Detailed discussion on how EPA estimated compliance costs for these requirements is provided in the RIA.

Under the proposed rule, States may take into account the resource value of ground-water supplies when determining ground-water monitoring requirements. EPA assumed in this cost analysis that ground-water monitoring systems include one upgradient (three-well) cluster and a number of downgradient clusters that vary with the length of the downgradient boundary (e.g., four clusters for a 10 TPD MSWLF, 20 clusters for a 1,500 TPD facility). EPA assumed that ground-water monitoring would be conducted on a semiannual basis. For existing MSWLFs, the ground-water monitoring requirements were phased in over five years. Under the proposed rule, States may vary the number of wells, frequency of monitoring, and timing of ground-water monitoring implementation. To the extent that actual ground-water monitoring requirements specified by the States differ from what was modeled in this analysis, the actual compliance costs will vary from those estimated by EPA.

Alternative 1 imposes uniform standards on all MSWLFs. Existing unit requirements are the same as for new units except that the containment and LCS requirements were not assigned. Ground-water monitoring is not phased in, and the Phase II list of parameters under the proposed rule is used as the list of constituents for which all units must monitor. EPA assigned a composite cover to all new and existing units (similar to that described in 40 CFR 264.310) and a double composite containment system with two LCSs (similar to that described in 40 CFR 264.301) to all new units. EPA assumed that clay for the cover and containment systems was obtained off site unless the survey respondent reported that clay or sandy clay was available at the facility.

Alternative 2 represents a categorical approach, based on location, to determine the necessary containment and cover requirements. This categorical approach is described in Section IX.D of this preamble. Landfills are assigned designs based on the local climate and hydrological factors that control the potential for leachate contamination (i.e., the migration potential at the site).

To estimate the effects of Alternative 2, EPA used respondent-supplied data on location, primary soil type, saturated permeability, and porosity to determine the distribution of MSWLFs across the four location categories. EPA used the location data to assign an annual precipitation figure obtained from the nearest National Weather Station. The annual cutoff value for high and low precipitation under Alternative 2 is 40 inches. To determine the split between short and long time-of-travel, the Agency used either a saturated time-of-travel equation or an alternative equation (a wetting-front approach) depending on whether the site was reported to be in a saturated environment. The cutoff for short versus long time-of-travel is the greater the active life or 20 years. Using this approach, the Agency estimates that the percentages of all MSWLFs in location Categories I, II, III, and IV are 29.2 percent, 5.8 percent, 37.8 percent, and 27.2 percent, respectively.

Cover and containment requirements, which are performance-based for Alternative 2, were assessed for each survey respondent as described below. Alternative 2 requires facilities to use a water-balance method to select the proper cover that will minimize infiltration through the cover at any time in the future. There are several measures that the facility owner or operator could undertake to meet this performance standard if the vegetative cover by itself is not sufficient. For example, in order to minimize infiltration, the owner or operator could vary the type of vegetation to increase

the evapotranspiration, vary the slope of the cover to increase run-off, use heavier soils from off site, or install a clay or synthetic layer with a drainage collection system beneath the vegetative cover. These decisions involve site-specific factors and are difficult to analyze. Thus, EPA limited the options for cover type to either vegetative or synthetic. EPA assumed that MSWLFs with positive annual net precipitation (precipitation minus potential evapotranspiration) will use a synthetic cover. EPA assumed that landfills with zero or negative net precipitation use the same cover design that was simulated for the baseline, except that the cost includes additional fees for quality assurance. (Potential evapotranspiration was determined using the Thornwaithe-Mather equation.) Using this approach, EPA estimates that 67 percent of all MSWLFs have positive net precipitation and thus are assigned synthetic covers; the remaining 33 percent are assumed to achieve the performance standard with vegetative covers. EPA applied costs for these covers to both new and existing units.

Alternative 2 assumes that all MSWLFs in location Categories II and IV (34 percent of all facilities) must have a leachate collection system; units in location Categories I and III must collect leachate if more than one foot of leachate is generated over the active life. The Agency determined the leachate generation for Facility Survey respondents in Categories I and III using the approach described in EPA publication 530/SW–168. The Agency estimates that 63 percent of the landfills in these two categories (or 41 percent of all facilities) would need an LCS. Thus, across all MSWLFs, the Agency estimates that 75 percent will be required to have an LCS.

Under Alternative 2, the need for a containment system for MSWLFs in location Categories I and II only is related to the need for an LCS since they already have a long time-of-travel. A containment system is necessary if the native soil does not have a sufficiently low permeability to allow the LCS to function properly. EPA assumed that MSWLFs in these categories that need an LCS and that reported clay as their primary natural soil type in the Facility Survey do not need a liner (estimated as 10 percent of all MSWLFs). EPA assigned the remaining units (four percent of all facilities) that need an LCS in these categories a synthetic liner so that the LCS would perform efficiently.

MSWLFs in Categories III and IV that need an LCS (estimated as 61 percent of all facilities) also must have a containment system that will increase the time of travel to greater than the active life or 20 years. Although a clay liner could possibly meet the performance standards, EPA assigned a synthetic liner, which would be less expensive in most cases, to these units.

MSWLFs that do not need an LCS (estimated as 25 percent of all MSWLFs) are all in Categories I and III. Those facilities that are in Category I (20 percent of all MSWLFs) have a long time of travel, and thus do not need a liner. For those in Category III (five percent of all MSWLFs), EPA assigned a two-foot thick clay liner that should provide sufficient delay to meet the performance standard. Moreover, even if clay had to be brought from off site, a clay liner is less expensive than synthetic given that a synthetic liner would also require installation of a leachate collection system.

Although these assignments of designs to meet the performance standards for Alternative 2 do not reflect the inherent flexibility of performance requirements, EPA believes that they do provide an indication of how these standards would be met. The general facility standard requirements (and resulting compliance costs) for Alternative 2 are identical to those analyzed for the proposed rule.

Alternative 3 consists of uniform criteria applied to both new and existing landfills. This regulatory alternative is similar to the statutory minimum mandated under HSWA and includes analysis of ground-water monitoring (throughout an extended post-closure care period) and corrective action requirements; however, EPA has not incorporated any location standards into the analysis for this alternative. Alternative 3 is the only regulatory option that does not include general facility standards. EPA assumed that ground-water monitoring would begin on the effective date of the regulation. A more detailed discussion of the cost analysis for each of the regulatory options is included in the RIA.

b. Cost Results. The Agency estimates that the proposed rule will result in an annualized cost of approximately $880.0 million at the 10-meter POC and $691.4 million at the 150-meter POC. Thus, based on the $100 million annual cost threshold established in E.O. 12291, today's proposal is a "major" regulation.

Table 3 shows the size distribution of MSWLFs across the seven facility sizes modeled in the cost analysis, as well as the annualized cost of the proposed rule for each facility size. EPA estimates that the smallest size category (i.e., 10 TPD), while accounting for 51.3 percent of all MSWLFs, only accounts for 6-percent and 7-percent of the total cost of the proposed rule under the 10-meter and 150-meter POCs, respectively. The two largest size categories modeled (750 and 1,500 TPD) account for only 5.7 percent of all MSWLFs, but 35 percent to 38 percent of the total cost under either POC.

TABLE 3.—ANNUALIZED COMBINED COST BY SIZE, PROPOSED RULE

[Dollars in millions]

Size category (TPD)	Percentage of all MSWLFs	Annualized cost	
		10-meter POC	150-meter POC
10	51.3	$52.3	$47.3
25	17.0	85.8	72.2
75	13.1	134.0	107.6
175	7.3	128.5	95.6
375	5.5	148.7	130.3
750	3.1	137.3	93.4
1,500	2.6	193.4	145.0
Total	[1] 100.0	880.0	691.4

[1] Does not add due to rounding.

EPA estimates that, under the 10-meter (150-meter) POC, approximately 46.7 percent (52.5 percent for the 150-meter POC) of all MSWLFs will incur an incremental cost increase of less than $10 per ton; 49.2 percent (45 percent for 150-meter POC) face an increase between $10 and $25 per ton, and 4.8 percent (1.4 percent for 150-meter POC) will incur a compliance cost between $25 and $50 per ton. Under the 150-meter POC, EPA estimates that 1.2 percent of all MSWLFs will incur cost increases of greater than 50 percent per ton due to expensive corrective actions that are triggered.

Table 4 shows the total annualized combined costs for today's proposed rule and the three regulatory alternatives. The annualized costs, including corrective action, range from $419 million for Alternative 3 up to $3,341 million for Alternative 1. The costs for the proposed rule, under either POC, falls near the lower end of the range. Corrective action is triggered under all the regulatory options and represents from 2-percent (under Alternative 1) to 72 percent (under Alternative 3) of the total costs. Corrective action represents 11 percent and 19 percent of the total cost of the proposed rule for the 10-meter and 150-meter POCs, respectively. The relative costs across options are affected by the stringency of the requirements only,

since the facility size distribution and the range of remaining lives are constant across all regulatory scenarios. The wide range in contribution of corrective action costs across the options reflects the reactive or preventive nature of a given regulatory scenario. Alternative 3, representing a reactive approach to releases, has the largest percentage of corrective action costs to total costs among the regulatory options.

TABLE 4.—TOTAL ANNUALIZED COSTS FOR REGULATORY SCENARIOS

[Dollars in millions]

Regulatory scenario	No corrective action	Including corrective action
Proposal:		
10-meter POC	$782.2	$880.0
150-meter POC	562.0	691.0
Alternative 1	3,268.6	3,341.0
Alternative 2	1,336.9	1,426.9
Alternative 3	117.1	419.4

Table 5 presents the incremental cost per ton for the regulatory scenarios. The median, minimum, and maximum estimates are shown for each option.

TABLE 5.—ANNUALIZED INCREMENTAL COSTS PER TON BY OPTION

	Proposal		Alt. 1	Alt. 2	Alt. 3
	10-meter POC	150-meter POC			
Median	$11.01	$9.54	$47.58	$15.62	$5.17
Maximum	40.61	81.39	108.11	48.38	54.45
Minimum	0.76	0.75	4.01	0.75	0.06

4. Economic Impact Analysis

a. Methodology. Preliminary results from the Facility Survey indicate that 80 percent of all MSWLFs are owned by local governments (e.g., counties, cities, towns, villages). These governments will incur the initial costs and impacts attributable to the revised Criteria; however, ultimately the governments will likely pass on the regulatory costs to their citizens and to other governments that also may use the landfill. The compliance costs will be passed on in the form of increased taxes or fees or decreased services of other types if the community is operating under tight budgetary constraints. Thus, local citizens (the households that use the landfills to dispose of their wastes) will eventually pay the increased costs of landfill operation. The Agency assessed these short- and long-term impacts in a two-phase economic impact analysis. In the first phase, the ability of governmental entities to pay for the regulatory costs was assessed. The second phase was an assessment of the ability of citizens to pay for the increased compliance costs.

The first phase, an assessment of impacts on local governments, consisted of two components. First, the cost of compliance was reviewed relative to the overall financial capability of the community. Financial capability (or financial health) was determined from the "1982 Census of Governments" and the "1983 County and City Data Book." These data bases represent the most recent available and complete information on local government finances (as government censuses are conducted every five years). As described in the RIA, the Agency assessed financial capability by developing a composite score. The score categorizes communities' financial capabilities as weak, average, or strong.

The financial capability score of a community will not change significantly due to compliance costs from the imposition of the proposed rule because many of the indicators used to develop the score are not directly affected by increased operating expenditures. In addition, it would not be appropriate to presuppose the reaction of a community to higher landfill costs. Some communities will increase taxes while others will reallocate available funds to meet the regulatory burden. In the area of debt impact, it also is not clear how a given project will be financed. Many communities will use pay-as-you-go financing as they always have, others will incur debt, and the remainder will turn to private contractors who will raise their own capital.

The development and categorization of the composite score is described in detail in the RIA. The economic impact analysis results presented in this section of the Preamble focus on comparisons of compliance costs to government and demographic indicators as described below.

The second component of the community impact analysis consisted of calculating compliance costs as a percentage of total current community expenditures (CPE) and comparing this ratio to a threshold level. The CPE indicator serves as a convenient summary of the local government's ability to pay.

The second phase of the economic impact analysis consisted of comparing compliance costs to the ability of citizens to pay. This comparison is appropriate because, ultimately, the burden will fall on the citizens, regardless of whether the local government pays for the increased MSWLF costs by increasing taxes, reducing other services, increasing debt levels, or turning to private contractors. EPA has assessed the absolute impact in terms of total cost per household (CPH). EPA has measured the relative impact using costs as a percentage of median household income (CPMHI). Both CPH and CPMHI are compared to selected threshold levels. When combined, these various analyses produce an overall indication of the significance of municipal economic impacts for specific regulatory options.

For this analysis, the Agency selected threshold levels to identify high impacts for the three primary economic measures (i.e., CPE, CPH, CPMHI). For CPE, preliminary results from the Facility Survey indicate that municipal solid waste disposal costs average approximately 0.5 percent of communities' total expenditures. In comparison to other municipal services, costs at this level represent a very small obligation. Data from the "1982 Census of Governments" indicate that the average community spends 36 percent of its total budget on education, 5-percent of its total budget for police protection, 3-percent for sewage disposal, 2-percent for fire protection, and 1-percent for sanitation services other than sewage (including solid waste collection and disposal and street cleaning). Based on these data, the Agency established a threshold for identifying high impacts as one percent of compliance costs relative to total community expenditures.

The Agency used two threshold levels to assess the severity of costs per household. An incremental regulatory cost of $100 per household per year was selected as a threshold for moderate impacts. Although this cost represents a large percentage increase in many households' disposal costs, it represents a relatively small absolute charge. An annual threshold of $220 per household was used to identify severe impacts. This threshold level is equivalent to one percent of the median household income of all the communities in the country according to the "1983 City and County Data Book."

The Agency has previously selected a threshold level for costs as a percentage of median household income under the Construction Grants Program. The criteria ranged from one percent of median household income for low-income communities to 1.75 percent of MHI for high-income communities. The Agency selected one percent in this analysis to identify a high impact level for CPMHI.

b. Economic Impact Results. Table 6 shows the percentage of communities

under each regulatory scenario that have compliance costs exceeding one percent of total current community expenditures, the percentage of all people that reside in these communities, and the maximum CPE under each option.

TABLE 6.—COSTS AS PERCENTAGE OF EXPENDITURES

[Regulatory Options]

Regulatory scenario	Percent of communities with CPE>1%	Percent of people with CPE>1%	Maximum CPE (percent)
Proposal: 10-meter POC	16	7	4.0
Proposal: 150-meter POC	11	4	5.3
Alternative 1	68	34	14.0
Alternative 2	33	12	6.3
Alternative 3	10	3	8.6

EPA estimates that greater than one-half of all communities under Alternative 1 have CPE exceeding one percent. Under Alternative 2, 33 percent of all governmental entities have CPEs that fall in this category. The percentage of municipalities with costs above 1-percent of current expenditures under the proposal is much lower: 16 percent and 11 percent, given the 10-meter POC and 150-meter POC, respectively. Because most of these severely-impacted communities are small, the percentage of the total U.S. population that resides in these communities is much smaller than the percentage of communities affected (as shown in Table 6).

Several factors will tend to mitigate the actual impact of the alternatives on communities with high CPE. One important factor is the relatively small proportion of the municipal budget that is usually devoted to municipal solid waste disposal. Although CPE greater than 1-percent indicates that municipal solid waste disposal expenditures may double in many communities, after regulation these expenditures will still represent less than 2-percent of the total municipal budget in most communities. Although it may be difficult for communities to cope with large percentage increases in municipal solid waste disposal costs in the short run, once the initial adjustment is made, these costs should be easier for communities to absorb because they comprise a very small portion of communities' total budgets.

Table 7 shows the average CPH across the entire nation, maximum CPH, and percentage of all communities with costs per household exceeding $100 per year (the moderate impact level). The Agency estimates that average incremental CPH across the entire nation ranges from $5 under Alternative 3 to $40 under Alternative 1. For the proposal, EPA estimates that the average CPH is $11 at the 10-meter POC and $8 at 150-meter POC.

TABLE 7.—AVERAGE COST PER HOUSEHOLD PER YEAR

(Regulatory Options)

Regulatory scenario	Average CPH	Percent of communities with CPH < $100 (percent)	Maximum CPH
Proposal: 10-meter POC	$11	0.2	$119
Proposal: 150-meter POC	8	2.1	253
Alternative 1	40	23.5	335
Alternative 2	17	0.1	160
Alternative 3	5	0.2	178

EPA has selected, for this analysis, a threshold level for severe impacts on households of $220 per year. The Agency estimates that this threshold is exceeded under Alternative 1 and at the 150-meter POC for the proposal, but only by fewer than 0.1 percent of all communities in both cases. When the $100 per year threshold is considered, EPA estimates that, for all regulatory options except Alternative 1, the percentage of communities that exceed this level is low (i.e., less than 3-percent). However, under Alternative 1, EPA estimates that 23.5 percent of all communities experience increases in CPH of greater than $100 per year.

Cost per household as a percentage of MHI is relatively low across all of the regulatory options. The Agency estimates that the 1-percent threshold level is exceeded under the proposal at the 150-meter POC and under Alternative 1. Even under these regulatory options, fewer than 2-percent of all households fall into the high impact-category (0.1 percent exceed the threshold at the 150-meter POC and 1.1 percent for Alternative 1). EPA estimates that the maximum CPMHI is 1.3 percent under the proposal at the 150-meter POC and 1.7 percent under Alternative 1.

Impacts on households also depend on who owns the landfill that serves those households. Table 8 indicates the number of communities and landfills by each major ownership category—county, city, village or town, private, and other. (The other category covers landfills owned by nonlocal governments including special districts, States, and the Federal government.) The distribution of communities by ownership type looks somewhat different than the distribution of landfills by ownership type because county-owned and private landfills tend to serve a larger number of communities than city or town landfills. The table indicates that communities served by village or town landfills have much higher CPH than average. These landfills tend to serve only one or two communities and are commonly very small, thus the CPH is higher. Communities served by private landfills tend to have lower than average CPH. These landfills usually serve many communities and, on average, are larger than publicly owned landfills. Smaller communities could reduce the regulatory burden by participating in larger regional landfills.

TABLE 8.—NUMBER OF COMMUNITIES AND LANDFILLS BY TYPE OF OWNER

[Average Community CPH for Proposed Rule]

Owner	Communities		Landfills		Average number of communities per landfill	Average Community CPH	
	Number	Percent	Number	Percent		Fed POC	State POC
County	10,618	37	1,760	29	6.0	$18	$13
City	6,622	23	1,743	29	3.8	16	15
Village or Town	2,115	7	1,182	20	1.8	34	31
Private	8,556	30	912	15	9.4	10	10
Other	1,087	4	427	8	2.6	15	15
Total	28,998 [b]	100 [a]	6,024 [b]	100 [a]	4.8	$16	$14

[a] Totals may not add to 100 percent because of rounding.

[b] Data are missing for 10 landfills in 19 communities.

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As stated previously, the costs used in the economic impact analysis represent a reasonable upper-bound estimate. Several opportunities exist for communities to reduce the regulatory burden: Regionalization to share the economies of scale at larger landfills, shifts to resource recovery facilities, increases in the rate of recycling to reduce the waste volume for disposal, and better siting of new MSWLFs in "good" locations. (As explained above, EPA has not incorporated these mitigating factors into the analysis because they involve site-specific local decisions that are difficult to predict.)

5. Risk Assessment

a. Methodology. The Subtitle D MSWLF universe consists of a diverse group of facilities that occur in a wide variety of environmental settings. Hundreds of factors affect the nature, extent, and severity of environmental impacts from these facilities. To identify and evaluate some of the most important factors, EPA developed the Subtitle D Disk Model. This model couples information from case studies and other sources with a series of mathematical formulations of engineering, physiochemical, hydrologic, toxicologic, and socioeconomic processes that govern impacts to provide a framework that allows evaluation of regulatory options.

Although the Subtitle D Risk Model has been neither peer reviewed nor verified, EPA has used it in its preliminary form to help analyze: (1) Problems associated with Subtitle D facilities under the current set of Criteria (i.e., baseline), (2) estimates of the level of risk reduction available from preventive measures (liners, leachate collection systems and covers), and (3) remedial measures (corrective action) under various regulatory options. For each regulatory alternative, risk and resource damage has been modeled in hundreds of scenarios that represent unique combinations of landfill size and design, environmental setting, and exposure distance. EPA has estimated the frequency for which each scenario occurs in the total population of MSWLFs and weighted the results for each scenario reflect the frequency of occurrence. The following is an overview of the risk model.

(1) The Subtitle D Risk Model. The Subtitle D Risk Model provides: (1) An analytic framework for estimating human health risk reduction and other benefits of regulatory options, (2) a direct link between estimates of benefits and costs of regulations, and (3) scenarios that contain different combinations of design, waste, environment, and response. The model builds directly on the Subtitle C Liner Location Risk and Cost Analysis Model (Ref. 20), and has adopted many of its basic characteristics. It is a dynamic model. For this analysis, EPA simulated 100 years of leachate release and 200 years of gound-water transport for each year's release. Environmental fate and transport and dose-response relationships are modeled as deterministic processes, while containment system failure and some hydrologic events are considered stochastic phenomena. The model only assesses effects on ground water as the environmental medium of concern: ecosystem risks and subsurface gas and surface water pathways (which also would contribute to risk) are not analyzed. Some parameters can be varied over a wide range; for others, the user selects from specified, generic values.

The model includes a series of submodels that simulate pollutant release (liner failure and leachate quality submodels), fate and transport (unsaturated zone and saturated zone transport submodels), exposure, impacts (dose-response and resource damage submodels), and corrective action. Following are brief summaries of each of these submodels.

(a) Pollutant Release. The Agency used Monte Carlo simulation in the failure/release submodel to estimate the probability and time of failure (defined as release to the unsaturated zone) for MSWLFs and to estimate the quantity of leachate released. The submodel uses a fault tree structure that traces each possible failure event from all possible combinations of basic events (e.g., liner failure, infiltration of liquid) that could combine to cause failure. Each of these basic events is assumed to occur at random, following specified probability distributions. The model provides distributions of the year of failure and the release rate. EPA used the model to simulate the performance of several combinations of containment and cover systems in eight environmental settings.

The leachate quality submodel simulates the concentrations of chemical constituents in leachate released from the MSWLF between years 1 and 100. Given differences in the leaching behavior of constituents, the submodel utilizes three different modeling approaches to simulate the concentrations of inorganics, biodegradable organics, and synthetic organics in leachate. The submodel applies the appropriate algorithm to calculate the concentration of each leachate constituent for each year. The concentration then is combined with the release volume calculated by the failure/release submodel to calculate the mass flux of the constituent across the landfill/subgrade boundary.

One representative leachate, consisting of eight constituents of concern (COC), was simulated. This leachate is intended to represent typical leachates generated from co-disposal of municipal solid waste, nonhazardous industrial waste, and VSQG hazardous waste. EPA selected the COC based on analyzing limited leachate data from only 44 operating MSWLFs. The COC were selected based on potential for causing human health risk or resource damage given their observed median concentrations in municipal solid waste leachate, toxicity to humans, regulatory limits under SDWA taste and odor thresholds, and mobility and persistence in the subsurface environment. The eight COC and the effect of concern for each are given below:

Constituent	Criterion effect
Vinyl chloride	Human health risk (cancer).
Arsenic	Human health risk (cancer).
Iron	Resource damage (taste and odor).
1,1,2,2, - tetrachloroethane.	Human health risk (cancer).
Dichloromethane	Human health risk (cancer).
Antimony	Human health risk (systemic).
Carbon tetrachloride	Human health risk (cancer).
Phenol	Resource damage (taste and odor).

(b) Fate and Transport. Subsurface transport modeling addresses transport through both the unsaturated zone and the saturated zone. The Subtitle D Risk Model uses the McWhorter-Nelson wetting front equation to calculate the delay between the time of failure and the time that contaminants reach an underlying aquifer. The mass that breaks through the unsaturated zone then disperses through the ground water. Using an adaptation of the Random-Walk Solute Transport Model (Ref. 25) developed by Prickett, Naymik, and Londquist, the saturated zone model simulates downgradient ground-water concentrations over time.

To model the transport of constituents, EPA developed eight environmental settings consisting of four net infiltration regimes (0.25-inch, 1-inch,

10-inch, and 20-inch) and two categories of ground-water depths (deep and shallow). These two parameters are important in affecting the release rate of leachate to the unsaturated zone and ultimately the aquifer. Net infiltration represents the amount of water that can enter the landfill as a result of precipitation. Ground-water table depth represents the potential for pollutant attenuation and degradation to occur in the unsaturated zone. In addition, for facilities that are seasonally inundated with ground water, the inundation depth determines the rate at which ground water can flow through the waste.

EPA performed a statistical analysis of USGS data for each infiltration category to determine the mean depth to ground water and the average annual ground-water fluctuation. Shallow and deep water table depths are represented by the 50th and 90th percentiles, respectively.

For transport through the saturated zone, EPA developed 11 generic ground-water flow fields to represent the range of hydrogeologic conditions in the United States. The flow fields are based on data collected from ground-water supply reports for each of the USGS regions. The flow fields vary in terms of aquifer configuration, materials, and flow velocity. Five of the flow fields are single-layer aquifer systems, two contain two adjacent aquifers, three consist of an aquifer overlaid with a nonaquifer, and one contains two aquifers separated by a nonaquifer.

EPA assigned each surveyed landfill to a net infiltration region based on its precipitation level (obtained from the nearest National Weather Station) and other climatic data. Each of these MSWLFs also was assigned a DRASTIC (Ref. 39) setting to select appropriate ground-water table depths and flow fields. These assignments were used to develop a frequency distribution for each environmental setting. EPA used these frequency weights to scale up the risk model results to obtain national estimates.

(c) Exposure Distance and Populations. EPA selected seven well distances for modeling risk: 10 meters, 60 meters, 200 meters, 400 meters, 600 meters, 1,000 meters, and 1,500 meters. Preliminary results from the Facility Survey were used to develop a frequency distribution of distance from the MSWLF to the closest drinking water well at each site. This distribution (i.e., distance to closest well) was used to estimate risk to the maximum exposed individual (MEI). Approximately 54 percent of the MSWLFs were reported to have no downgradient drinking water well within one mile of the facility. For the other 46 percent of MSWLFs: 12.8 percent reported wells within 300 meters, 22.5 percent reported wells within 500 meters, and 40.3 percent reported wells within 1,250 meters of the facility boundary.

EPA used the preliminary Facility Survey data on distance to all wells within one mile downgradient and the number of people served at each well to calculate the total population risk (i.e., number of predicted cancer cases). EPA calculated the mean number of well-using people per acre (i.e., 1.6) using facility survey results for private and/or public wells. The land area associated with each exposure well was multiplied by this population density to estimate the size of the exposed population for each affected well.

Ground-water concentrations of chemical constituents released from landfills can cause human exposure via drinking water. All exposed individuals are assumed to weigh 70 kilograms and drink two liters of water per day. The lifetime dose is calculated as the running 70-year average over an individual's lifetime.

(d) Impacts: Human Health Risk. For this analysis, reported risk is the average lifetime maximum exposed individual risk (i.e., the mean of the average lifetime (70-year) risks over the 300-year modeling period).

Of the eight COC selected for modeling human health risk, five are carcinogens and one is a noncarcinogen. The approach for estimating risks for carcinogenic effects is consistent with the Agency's cancer risk assessment guidelines. Carcinogenic potencies are from the Agency's Carcinogenic Assessment Group (i.e., 95th percentile upper-bound slopes based on a linearized multistage model).

For noncarcinogenic effects, the Weilbull equation was used with a threshold to predict a probability of effect. Below the threshold, risk equals zero. At doses above the threshold, risk depends on the dose, the constituent-specific threshold, and the shape of the dose-response curve.

(e) Impacts: Resource Damage. The measure of resource damage in the model is based on the cost to replace contaminated ground water that currently is used, or may be used, for drinking water. Resource damage is determined by plume area, the density of drinking water wells, the source of replacement water and its distance from the affected wells, the time the plume first appears, and whether ground water currently is used.

The Agency assumed that the replacement source is nearby ground water located one mile distant. The replacement well system was designed using the mean population density of 1.6 people per acre that also was used for the human health risk estimates.

Resource damage was estimated under two scenarios: use value and option value. Use value assumes that the population currently is using the ground water, whereas option value is used when the population is not currently using the resource but may wish to do so in the future. For option value, the resource damage measure recognizes the probabilistic nature of future use; replacement costs are multiplied by an estimated probability of use in each time period. The present value for both option and use value is then determined at a 3-percent real discount rate.

(f) Corrective Action. Under the proposed rule, corrective action can be triggered if a constituent of concern is detected in the uppermost aquifer at levels exceeding the applicable MCL; if an MCL does not exist, a risk-based or background level is used as the standard.

In the corrective action analysis for this RIA, ground-water monitoring wells are located at the POC, which can vary between the landfill unit and the property boundary depending on the regulatory scenario. EPA estimated the effects of corrective action based on detection of constituents of concern in the uppermost aquifer at levels exceeding a 1×10^{-5} risk level.

As stated in the cost methodology, only ground-water recovery wells were modeled as the corrective action technology. The submodel assumes that the corrective action technology is in place one year after the trigger levels are reached and operates at its specified efficiency for the remainder of the modeling period. The model calculates downgradient well concentration profiles following implementation of the corrective action and recalculates risk and resource damage estimates. These results are compared to the estimates calculated for the baseline (i.e., no corrective action scenario) to determine the reductions in risk and resource damage achieved by corrective action.

(2) Risk Model Inputs. EPA modeled three MSWLF sizes for risk and resource damage: 10 TPD, 175 TPD, and 750 TPD. Each size category is characterized by the total volume of waste placed in the landfill, the number of phases used to dispose of the waste, and the dimensions of the landfill at capacity (e.g., surface area, depth, height). The waste volumes and dimensions for each capacity category are consistent with

the cost model described earlier. The number of phases in the risk analysis are 2, 5, and 10 for the 10, 175, and 750 TPD landfills, respectively.

As with the cost model, EPA used the Facility Survey to estimate the frequency with which each landfill size category occurs nationwide. Landfills with capacities of up to 30 TPD are included in the 10 TPD category, 30 to 500 TPD landfills are in the 175 TPD units, and those with larger capacities are modeled as 750 TPD. Using this approach, 61.5 percent of the landfills were modeled at 10 TPD, 33.1 percent as 175 TPD, and 5.5 percent as 750 TPD. The Agency assumed that facility size is independent of hydrogeologic and exposure attributes.

All new MSWLFs are assumed to operate for 20 years. The baseline facility is the same as that used in the cost analysis but risks and resource damage estimates (for the proposal) were not adjusted to reflect existing State requirements for containment systems. This adjustment for liners and leachate collection systems would affect no more than 17 percent of all MSWLFs. To assess the effectiveness of a regulatory option, EPA assumed that a new landfill is constructed at the same site and operated for 20 years plus post-closure care according to the applicable requirements.

Under the proposed option, MSWLF units are required to meet a performance standard by applying appropriate cover and containment designs. Owners or operators have the freedom to choose the type of design they think will meet the performance standard. Because the performance and costs of design elements such as liners and covers are highly dependent on site-specific factors, there are likely to be several types of designs (and combinations of designs) chosen by the regulated community to comply with the performance standard.

As stated previously, to analyze the proposed rule, EPA assigned containment and cover designs to new MSWLFs according to a 10^{-5} design goal (chosen from the allowable protective range of 1×10^{-4} to 1×10^{-7}). In addition, EPA assigned one of three containment and cover designs under the assumption that owners or operators will use the least stringent design capable of meeting the design goal (EPA recognizes that other control technologies beyond the three analyzed could be used to comply with the performance standard). If the most stringent of the three designs did not reduce risk to this level, corrective action would be triggered.

Landfills with average lifetime risks below 1×10^{-5} given the baseline design (unlined with a vegetative cover) were excluded from further design requirements. Landfills with higher risks were assigned a synthetic cover and, if risks for an MSWLF unit still exceeded the design goal, the most stringent design of a synthetic liner, synthetic cover, and leachate collection system was assigned. For existing facilities, EPA used the baseline risks with a 1×10^{-5} cutoff to assign either a synthetic cover (for those with greater than 1×10^{-5} baseline risks) or a vegetative cover (for those with less than 1×10^{-5} baseline risks).

For this analysis, EPA assumed that extended care continues for 80 years after the end of the active life of the MSWLF, and includes maintenance of the vegetative portion of the cover, ground-water monitoring, and corrective action (although an extended care period is analyzed in the RIA, the actual proposed rule requires a two-phased post-closure care period of at least 30 years). For designs with synthetic covers, EPA assumed that the synthetic components would be maintained and replaced if necessary until the end of the first 30 years of post-closure care.

EPA modeled Alternatives 1 through 3 in a manner consistent with the cost analysis. A detailed discussion on how EPA estimated risk and resource damage for the regulatory alternatives is included in the RIA.

b. Risk Results. This part presents results of the risk analysis (including resource damage) for the baseline and each of the regulatory options.

(1) Baseline. For the baseline, EPA estimates that average MEI risks over the 300-year modeling period range from approximately 1×10^{-4} to zero. Results from the Facility Survey indicate that about 54 percent of landfills have no drinking water wells within one mile of the facility boundary. Because the model only estimates human health risks at drinking water wells within one mile of the facility, EPA assigned these facilities (54 percent of all MSWLFs) no human health risk. EPA recognizes that if future wells are located near existing landfills, this subgroup (54 percent) of all MSWLFs would face potential risks in the baseline from contaminated ground water similar to those that currently have nearby wells. Another 6 percent have nearby wells, but have no risk (MEI less than or equal to 1×10^{-15}) because no constituents reach the wells within the modeling period. Risks are low (1×10^{-6} to 1×10^{-5}) or very low (less than 1×10^{-6}) for a total of 82.8 percent of MSWLFs (these MSWLFs include the 54 percent of all facilities) that have no drinking water wells within one mile and, therefore, have an assigned zero health risk). Of the remainder, 11.6 percent have moderate risk (i.e., in the 1×10^{-6} to 1×10^{-5} range), 5.5 percent have high risk (1×10^{-5} to 1×10^{-4}), and a negligible 0.05 percent exceed 1×10^{-4}. Across all units in the baseline, less than 20 percent have risks greater than 1×10^{-6}. EPA recognizes that future increases in well density near MSWLFs would increase baseline risks from those estimated.

The principal constituents contributing to the risk estimates from the model are vinyl chloride, 1,1,2,2-tetrachloroethane, and dichloromethane (methylene chloride). These risk (and resource damage) estimates are based on observed median concentrations. The Agency estimates that the risk associated with the 90th percentile levels in the leachate data would be about one order of magnitude higher than that simulated for the median concentrations. This risk occurs because carcinogens are the primary contributors to risk in this analysis, cancer risk varies linearly with dose, and the reported 90th percentile concentrations are about one order of magnitude higher than the median levels. The leachate data on which these risk estimates are made are extremely limited. Therefore, the risk estimates could change significantly with more comprehensive leachate data.

The Agency estimates that 0.0770 cancer cases per year in the baseline can be expected over the 300-year modeling period. EPA has only estimated risks from drinking ground water, and, therefore, additional risks would exist from other routes of exposure (e.g., surface water, subsurface gas, and ecosystem risk). Risks attributable to existing contamination also are not considered.

Moreover, if future wells are located near existing MSWLFs (or new sites are located near current wells), the overall risk distribution will reflect the estimates for the subset of landfills that currently have wells within one mile of the facility boundary. For this subgroup of the population, nearly 40 percent of landfills have risks exceeding 1×10^{-6}. In addition, the median risk is about 4.3×10^{-7}.

EPA performed a sensitivity analysis of the baseline risk results to the well distance distribution. When all landfills are assumed to have wells at the facility boundary (modeled as 10 meters downgradient from the waste unit boundary for this sensitivity analysis) risk changes dramatically. While less than 20 percent of all MSWLFs have risks exceeding 1×10^{-6} for the actual well distribution, over 67 percent exceed

this risk level when all exposure is assumed to occur at the 10-meter boundary.

The results of the analysis identify several factors that are important in determining risk, namely facility size, distance to nearest well, and environmental setting. These factors interact with many others in a complex manner to produce risk.

Higher levels of contamination and, thus, higher risks are associated with larger facilities that have a greater mass of waste. The high percentage of small facilities (less than 30 tons per day) in the regulated universe tends to weigh the overall distribution to lower risk levels. However, the Agency's economic impact results indicate that smaller communities will have incentive to regionalize their landfill operations in order to share the burden of cost increases with other communities as well as to take advantage of the economies of scale associated with larger facilities. Regionalization would shift the overall risk distribution towards the higher risks associated with larger facilities, although the total number of facilities would be reduced.

All other factors held constant, risk decreases with increasing distance from the facility. Contaminant concentrations diminish over distance due to degradation, dispersion, and attenuation. While the closest wells present the greatest risk, results from the Facility Survey indicate that this occurrence is relatively rare: 54 percent of existing MSWLFs have no wells within one mile, 15 percent have wells within 300 meters, and 25 percent have wells within 500 meters. However, as stated above, the proximity of wells to MSWLFs likely will increase in the future and thus baseline risks and the risk reduction attributable to the proposal would be greater than the estimates based on the current well distribution.

Wetter climates are associated with higher release volumes and consequently greater risks. However, because landfills are almost equally likely to be found in wet or arid climates, no one infiltration rate setting has a dominant influence on the overall risk distribution. Hydrogeologic characteristics of the aquifer also exert a strong influence on risk. Aquifer properties affect the extent of dilution of the leachate and the retardation and degradation of specific pollutants. Aquifers with slow velocities (i.e., one meter per year) generally allow for no pollutant breakthrough at the more distant wells and for considerable pollutant degradation before breakthrough at nearby wells. In the high-velocity flow fields (i.e., 1,000 and 10,000 meters per year), considerably more water flows through the aquifer, which affords more dilution of the leachate. Intermediate velocity aquifers (i.e., 10 and 100 meters per year) have higher risk profiles because they neither allow for much degradation nor provide for much dilution or pollutant dispersion.

Although these factors (i.e., facility size, distance from the facility, infiltration rate, aquifer characteristics) are strong determinants of risk, no single factor is responsible for most of the variability. All of these factors, plus others that were not accounted for in EPA's risk modeling, interact in a complex manner to produce risk.

(2) Regulatory Options. This Subpart will present first the results for the 10-meter POC modeled at 10 meters from the waste boundary and then the 150-meter POC modeled at 150 meters from the waste boundary.

For the 10-meter POC, EPA estimated that, for about 61 percent of all landfills, vegetative covers alone are sufficient to meet a 1×10^{-6} risk-based performance standard. Synthetic covers are sufficient for 11 percent of the landfills, while synthetic liners with leachate collection systems and synthetic covers are needed at the remaining 28 percent. About 40 percent of the landfills with synthetic liners and covers (11 percent of all landfills) trigger corrective action under the proposal.

About 0.1 percent of the landfills have risks exceeding 1×10^{-6} under the proposal, compared to 5.6 percent in the baseline and about 35 percent have risks between 1×10^{-6} and 1×10^{-5}. Population risks for the proposal are 0.0210 cancer cases per year (over the 300-year modeling period), down from a baseline of 0.0770 cases per year.

At the 150-meter POC, EPA estimated that about 79 percent of the landfills are in compliance with the performance standard in the baseline (compared to 61 percent with the 10-meter POC). About 9 percent need synthetic covers and the remaining 13 percent need synthetic liners and covers. About 5 percent of all landfills trigger corrective action.

As with the 10-meter POC, the number of landfills with risks exceeding 1×10^{-6} is reduced from 5.6 percent in the baseline to about 0.1 percent at the 150-meter POC. About 88 percent of the landfills have risks lower than 1×10^{-6} under this option, compared to 83 percent in the baseline. Population risks are 0.0227 cancer cases per year (over the 300-year modeling period), down from a baseline of 0.0770 cases per year.

Under Alternative 1, less than 1 percent of the MSWLFs have high risk (greater than 1×10^{-5}), compared to 5.6 percent in the baseline. Approximately 6.1 percent have moderate risks (1×10^{-6} to 1×10^{-5}) compared to 11.6 percent in the baseline; 15.2 percent have low risks (1×10^{-6} to 1×10^{-6}); and the remaining 78.7 percent have very low or no risks.

Corrective action is never triggered during the first 50 years under Alternative 1, so all of the risk reduction results from the containment system and cover. Overall, about 9 percent of the landfills trigger corrective action under Alternative 1. The cover reduces the amount of infiltration entering the landfill. Before leachate is released from the MSWLF, both synthetic membranes must fail, and the leachate then must travel through three feet of clay. Due to this delay, which ranges from 52 to over 100 years, some of the pollutant mass that would otherwise have been released is not released during the modeling period. The delay also results in additional pollutant degradation prior to release. The leachate collection systems remove some of the pollutant mass from the landfill.

EPA estimates that population risks under Alternative 1 are 0.0086 cancer cases per year (over the 300-year modeling period), reduced from the estimate of 0.0770 cancer cases per year in the baseline.

Under Alternative 2, risk shifts from the moderate- and high-risk ranges to the low and very low categories. Only 0.03 percent of the landfills have risks exceeding 1×10^{-5}, and 7.9 percent have risks between 1×10^{-6} and 1×10^{-5}, compared to 5.6 and 11.6 percent in the baseline, respectively. The percentage of landfills with risks below 1×10^{-6} increases from about 83 percent in the baseline to about 92 percent under Alternative 2. The expected number of cancer cases under Alternative 2 is 0.0105 per year (over the 300-year modeling period), compared to 0.0770 in the baseline.

Under Alternative 3, 0.003 percent of landfills have risks higher than 1×10^{-4}, and 1.8 percent have risks between 1×10^{-5} and 1×10^{-4}. The percentage with risks between 1×10^{-6} and 1×10^{-5} decreases from 11.6 in the baseline to 8.7 percent under Alternative 3. Population risks under this alternative are 0.0216 cancer cases per year over the 300-year modeling period.

Of all the alternatives considered, EPA believes the proposed rule is likely to effectively reduce risk because of the performance standard nature of the proposal. Risk depends on a complex interaction among site-specific factors. This variability affects not only the occurrence of risk, but also the

effectiveness of a particular design. Expressing a regulation in terms of performance allows for the implementation of design and operating procedures that best address site-specific risk factors. Overall, EPA believes that risk is likely to be very low under the proposed option.

Although Alternative 3 requires extended care, it does not require liners or leachate collection systems. With this design, many landfills, particularly those located in the wetter climates, will release leachate to the aquifer during the unit's active life. As a result of these early releases, EPA estimates that corrective action will be triggered more often than under the proposal (39 percent compared to 5 and 11 percent). Because of the uncertainty in the effectiveness of corrective action, risk may be higher under this alternative than estimated in the RIA (this uncertainty, however, is not easily modeled). Alternative 3 represents a reactive approach to potential contamination compared to preventive approaches such as the proposed or Alternative 2, in which landfill design is based in part on achieving a performance standard.

Table 9 shows the number of cancer cases expected annually over the 300-year modeling period, and the reduction in annual population risk for each regulatory option. As estimated by EPA, the reductions in risk are similar among all the regulatory options.

TABLE 9.—PREDICTED POPULATION RISK ACROSS 6,034 NEW MSWLF'S

Regulatory scenario	Cases per year [1]	Reduction (Cases/year)
Baseline	0.0770	
Proposal: 10-meter POC	.0210	0.0560
Proposal: 150-meter POC	.0227	.0543
Alternative 1	.0036	.0659
Alternative 2	.0105	.065
Alternative 3	.0216	.0554

[1] Total population risk over the 300-year simulation period divided by 300.

c. Resource Damage Results. Consistent with the risk analysis, resource damage estimates are made for the baseline, proposed rule, and each regulatory alternative. As discussed in the methodology section, resource damage is measured as the replacement cost (expressed in present value terms) to provide water to users whose supply is contaminated by releases of leachate from MSWLFs. Similar to the risk analysis, EPA has not considered the surface water pathway in the resource damage analysis. Resource damage estimates (modeled for new facilities only) do not take into account existing State requirements for containment systems.

(1) Baseline. The Agency estimates significant resource damage in the baseline for MSWLFs ranging from $0 to more than $4 million. The majority of MSWLFs, however, have resource damages valued at less than $200,000; this result largely reflects the option value estimate for the 54 percent of all MSWLFs that have no drinking water wells within one mile of the facility. EPA predicts that about 29 percent of MSWLFs will have no resource damage. Approximately 31 percent of landfills have resource damage exceeding $200,000, and about 13 percent have resource damage in excess of $1 million. The two components of resource damage are not option value and use value. Because option value is based on the probability that a ground-water source may someday be used, it tends to be much lower than use value for a given set of conditions; option value is estimated to be typically one-tenth of use value. Option value dominates at lower levels of resource damage while use value is the only measure to appear at levels exceeding $400,000.

When both use and option value are considered, the median resource damage is about $79,000. 13-percent of the MSWLFs have damages exceeding $1 million, and 7-percent have damages exceeding $2 million. If only use value is considered, the median estimate for resource damage for this subset of landfills (i.e., the 46 percent of all MSWLFs that report drinking water wells within one mile) is about $485,000, and almost 28 percent of these MSWLFs have damages that exceed $1 million.

The total resource damage for all 6,034 MSWLFs in the baseline is approximately $2.58 billion.

Facility size, distance to nearest well, and environmental setting have an influence on resource damage similar to their influence on the risk estimates presented earlier.

Generally, the resource damage estimates are heavily dependent on the current status of ground-water use, plume size, and the timing of contamination. Because ground water in the vicinity of more than half the MSWLFs is not currently used, most contamination causes resource damage that has relatively low present value. In some cases, however, resource damage can be extensive, valued at as much as $5 million. Environmental factors have an impact on resource damage by affecting plume size and its timing.

(2) Regulatory Options. Resource damage under the proposal reduces the replacement costs from the baseline. Under the proposal at the 10-meter POC, EPA estimates that no landfills will have replacement costs exceeding $3 million (present value), compared to over 3 percent in the baseline. The fraction of landfills with replacement cost between $1 million and $3 million decreases from 9.5 percent in the baseline to 6.5 percent under the proposal. The percentage of landfills with no resource damages is the same for both the baseline and proposal (28.6 percent). EPA estimates that the total resource damage across all landfills is $1.27 billion, a reduction of $1.31 billion from the baseline estimate of $2.58 billion.

Under the proposal at the 150-meter POC, the shift to lower replacement costs is smaller than with the 10-meter POC. Under the 150-meter POC, EPA estimates that there are no landfills with resource damage greater than $3 million. Seven percent have replacement costs between $1 and $3 million, and 64.3 percent have positive resource damage less than $1 million. The total resource damage across all landfills is $1.6 billion, which is $980 million less than the baseline but $33 million more than under the 10-meter POC.

Under Alternative 1, no MSWLFs have replacement costs exceeding $1 million, whereas about 13 percent have replacement costs exceeding $1 million in the baseline. The fraction of MSWLFs with replacement costs between $0.2 million and $1 million decreases from one-fifth to one-tenth under Alternative 1. Over half of the MSWLFs have zero resource damage with Alternative 1 requirements in place, compared to 29 percent in the baseline. The total resource damage across all MSWLFs is $410 million, a reduction of $2.17 billion from the baseline.

The synthetic/composite liner, double leachate collection system, and composite cover reduce resource damage for the same reasons that they reduce risk. As with risk, there is no resource damage estimated in the 0.25-inch net infiltration region because releases do not occur within the first 100 years. If the pollutant release period in the model were extended, it is likely some resource damage would be simulated. None of the reduction in resource damage results from corrective action, which is never triggered during the first 50 years under Alternative 1.

EPA estimates that Alternative 2 effectively reduces resource damage. Virtually none of the landfills have resource damages exceeding $1 million, compared to about 17 percent in the

baseline. The percent of landfills with resource damage between $0.2 million and $1 million decreases from 15.1 percent in the baseline to 12.8 percent under Alternative 2. About 35 percent of the landfills have no resource damage. The total resource damage across all landfills decreases from $2.58 billion in the baseline to $570 million under Alternative 2 for a reduction of $2.01 billion.

Alternative 3 eliminates the occurrence of replacement costs higher than $4 million. About 6.4 percent of the landfills have replacement costs between $1 million and $4 million. The number of landfills with no resource damage remains virtually unchanged from the baseline at about 29 percent. The total resource damage across all landfills under Alternative 3 drops from $2.58 billion to $1.57 billion as a result of corrective action.

In summary, all of the regulatory options reduce resource damage from baseline levels. For each option, the largest reductions occur for those facilities that currently have downgradient wells (i.e., resource damage is measured in terms of use value) and install preventive measures to control releases. At these facilities, the reduction and delay in releases to the subsurface reduce plume size and/or delay formation of plumes. Because replacement costs are discounted, delay in plume formation translates directly into reduced resource damage. Those facilities with no current wells have smaller baseline resource damage (measured as option value), but also have proportionately smaller damage reductions because they are not as strongly affected by the delay in leachate release. Table 10 presents the resource damage results, across all 6,034 new MSWLFs, for the regulatory options.

TABLE 10.—TOTAL RESOURCE DAMAGES FOR 6,034 NEW FACILITIES

[Present value in billions of dollars]

Regulatory scenario	Resource damage	Damage reduction
Baseline	$2.58	
Proposal (10-meter POC)	1.27	$1.31
Proposal (150-State POC)	1.60	0.98
Alternative 1	0.41	2.17
Alternative 2	0.57	2.01
Alternative 3	1.57	1.01

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal regulatory agencies to evaluate the impacts of regulations on small entities. The RFA requires an initial screening analysis to determine whether the proposed rule will have a significant impact on a substantial number of small entities.

This section presents the methodology and results of the Agency's screening analysis for the proposed rule at the 10-meter point of compliance.

1. Methodology

The RFA provides some guidance in developing definitions of what constitutes a substantial number of small entities, what size criteria define a small entity, and what is a significant impact, although it allows the Agency to develop a more appropriate definition if necessary. The Act defines a "substantial number" as more than 20 percent of the affected population of small entities. The RFA provides a definition of a small governmental entity as any government serving a population of less than 50,000.

The RFA allows for several indicators (e.g., compliance costs as a percentage of production costs, compliance costs as a percentage of sales, number and proportion of small entities likely to close) to be used to assess significant impacts. When a recommended threshold is exceeded for a given indicator, this constitutes a "significant impact."

For this RFA screening analysis, the Agency used the same measures and threshold levels as those used in the economic impact analysis. These indicators (and the corresponding threshold values) are cost as a percentage of expenditures (1-percent), cost per household ($220 per year), and cost as a percentage of median household income (1-percent).

2. Results

As stated in the economic impact analysis results, the threshold values are never exceeded for CPH or at the 10-meter POC for the proposed rule. Tables 11 and 12 present data on cost per household and cost as a percentage of expenditures for the proposed rule at the 10-meter POC. (The pattern of impacts is very similar for costs as a percentage of median household income and is not displayed.) The two indicators show similar patterns of impact with the greatest impacts on communities with populations of 5,000 or less. The threshold value for significant impact is exceeded for the cost as a percentage of expenditures indicator.

TABLE 11.—COST PER HOUSEHOLD PER YEAR FOR PROPOSED RULE (10-METER POC)

[Percent of households by community size]

Population size	CPH range (in percent)			
	<$25	$25–$50	$50–$100	>$100
Less than 1,000	72.9	25.2	1.9	0.0
1,001–5,000	80.8	15.9	3.1	0.3
5,001–15,000	87.5	10.8	1.7	0.0
15,001–50,000	88.9	9.9	1.1	0.0
50,001–100,000	88.5	11.5	0.0	0.0
More than 100,000	98.0	2.0	0.0	0.0

TABLE 12.—COMPLIANCE COST AS PERCENTAGE OF EXPENDITURES FOR PROPOSED RULE (10-METER POC)

[Percent of communities by community size]

Population size	Percent of expenditures		
	0–1%	1–2%	>2%
Less than 1,000	78.8	18.9	2.3
1,001 to 5,000	85.6	10.5	4.0
5,001 to 15,000	90.0	7.8	2.2
15,001 to 50,000	90.9	5.6	3.6
50,001 to 100,000	87.7	12.3	0.0
Greater than 100,000	100.0	0.0	0.0

Although the RFA is aimed primarily at mitigating adverse effects on small businesses, it also includes a definition of small governmental entities as any government serving a population of less than 50,000. The municipal data base of primary providers of local government services used for this analysis contains about 29,017 entities, 97.8 percent of these represent a population of 50,000 or smaller. Because such a large proportion of affected entities under the proposed rule meets the 50,000 population criterion suggested in the RFA, and since significant adverse impacts are less on entities with a population larger than 5,000, an alternative definition of a small entity is appropriate. There are 22,191 entities in the data base with populations of 5,000 or less; this represents 77 percent of the total. The proposed regulation will have its most severe impacts on governments serving less than 1,000 people, which include 46 percent of primary local governments. Therefore, the Agency determined that an appropriate size definition for small entities for the purpose of this analysis falls somewhere between governments of 5,000 persons and 1,000 persons.

The Agency determined that the proposed rule is likely to impose

differential economic impacts, although not significant impacts, on a substantial number of small entities. The impacts are more severe on small governments than those on larger communities. The Agency determined that the effects of the proposed rule on small entities should be analyzed in greater detail as part of the final rulemaking effort.

C. Limitations

There are several important caveats to the results presented in this section. Costs and benefits for the proposed rule as estimated in the RIA represent a 1×10^{-5} design goal, actual effects of the proposal will vary as the State-specified-design goal varies within the allowable protective range of 1×10^{-4} to 1×10^{-7}. Moreover, other designs besides the three modeled in the RIA would be sufficient to meet the performance standard and would influence the resulting costs and benefits. Although several provisions (e.g., post-closure care, ground-water monitoring parameters, performance standard for existing units) of the proposal do not exactly reflect what was analyzed in the RIA, the Agency believes that the basic conclusions of the RIA are accurate estimators of the effects of the proposed rule.

Compliance costs represent upper-bound estimates. Factors that may act to reduce the cost estimates including regionalization, waste shifts to resource recovery facilities, recycling, and better siting of new landfills in "good" locations. As noted earlier, EPA has not incorporated these factors into the analysis because they involve site-specific local decisions that are difficult to analyze.

It is unlikely that each of the existing MSWLFs will have a replacement landfill in perpetuity as EPA has assumed in this analysis due to such forces as regionalization. Smaller MSWLFs can achieve substantial economies of scale that will help to reduce their compliance costs by participating in larger regional landfills with other local governments. The economies of scale likely will remain positive even with additional costs due to transfer stations and increased transportation distances. Although these economies of scale exist, there are many local, noneconomic (e.g., political, technical) factors that enter into landfill siting that may inhibit the forces of regionalization.

Future waste shifts to resource recovery facilities will divert the waste volume that potentially needs to be landfilled, and, thus, costs presented in this section will tend to be overstated. It is likely that solid waste combustion will become more attractive in the future due to competitive costs with landfilling or favorable environmental conditions at a given site. EPA has estimated that resource recovery could divert as much as 18 percent of the solid waste stream away from land disposal given future population growth and increases in the volume of solid waste generated (Ref. 16). Alternatives to land disposal other than energy recovery also exist (e.g., recycling, composting). These programs, although often successful due to their inherent flexibility and cost-effectiveness, have historically diverted only modest amounts of municipal solid waste from the waste stream.

EPA has adjusted the compliance costs to reflect State requirements for liners, leachate collection systems, and ground-water monitoring wells; no adjustment was made in the benefits analysis, which used an unlined unit with a vegetative cover to represent baseline conditions. Estimated costs may be overstated for landfills in States with other requirements that may be similar to the proposed rule.

There are also several caveats related to the risk analysis. There is considerable uncertainty in the risk modeling. The model components that introduce the most uncertainty are those that predict: (1) Leachate quality for trace organics, (2) the probability and consequences of containment system failure, (3) the effectiveness of corrective action, and (4) the human health risk resulting from exposure to toxic substances (i.e., the dose-response models).

The risk analysis also considers only the current population that is using the ground water as a drinking water source. In the future, greater numbers of people and wells may be located near MSWLFs. Future population growth would increase the risk reduction estimates presented in this discussion. If regionalization occurs so that the total number of landfills that needs to be sited is reduced, the total exposed population may also be reduced. However, EPA has shown that larger risks are associated with larger facilities. Future population growth, and a corresponding increase in solid waste generation that may be land disposed, will also increase compliance costs over the current estimates.

EPA estimated only risks that are attributable to drinking contaminated ground water. Other risks from MSWLFs were not analyzed (e.g., surface water, subsurface gas, risks to the ecosystem). Analyzing these risks would result in greater risk reduction than currently estimated. The aggregate costs already include some of the controls that would prevent these other forms of risk. The bulk of the compliance costs are for requirements that serve to protect the ground water from leachate contamination.

EPA's modeling period in the risk analysis is 300 years. Greater risk reduction would be obtained if this period were extended.

Many assumptions, such as those discussed above, enter into the risk analysis. Thus, strong reliance on the absolute risk estimates without full realization of the limitations of the analysis should be avoided. Comparisons of the risk estimates across regulatory options are more reliable and valid than absolute estimates for a single option. EPA solicits comments and additional data regarding the assumptions, costs, risks, and potential impacts identified in the regulatory analysis.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW; Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

XII. References

A. Background Documents

(1) *U.S. EPA, OSW.* Notification Requirements for Industrial Solid Waste Disposal Facilities—Criteria for Classification of Solid Waste Disposal Facilities and Practices (40 CFR Part 257)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). August 1988 (draft).

(2) *U.S. EPA, OSW.* Location Restrictions (Subpart B)—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft).

(3) *U.S. EPA, OSW.* Operating Criteria (Subpart C)—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft).

(4) *U.S. EPA, OSW.* Closure/Post-Closure Care and Financial Responsibility Requirements (Subpart C, §§ 258.30–258.32)—Criteria for Municipal Solid Waste Landfills (40 CFR

Part 258)—Subtitle D of the Resource Conervation and Recovery Act (RCRA). July 1988 (draft).

(5) *U.S. EPA, OSW.* Design Criteria (Subpart D)—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft).

(6) *U.S. EPA, OSW.* Ground-Water Monitoring and Corrective Action (Subpart E)—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988.

(7) *U.S. EPA, OSW.* Case Studies on Ground-Water and Surface Water Contamination from Municipal Solid Waste Landfills—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988 (draft).

(8) *U.S. EPA, OSW.* Summary of Data on Municipal Solid Waste Landfill Leachate Characteristics—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988.

(9) *U.S. EPA, OSW.* Updated Review of Selected Provisions of State Solid Waste Regulations—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988.

B. Regulatory Impact Analysis

(10) *U.S. EPA, OSW.* Draft Regulatory Impact Analysis (RIA) of Proposed Revisions to Subtitle D Criteria for Municipal Solid Waste Landfills—Criteria for Municipal Solid Waste Landfills (40 CFR Part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). August 1988.

C. Guidance Documents

(11) *U.S. EPA, OSW.* Criteria for Identifying Areas of Vulnerable Hydrogeology Under the Resource Conservation and Recovery Act, Statutory Interpretative Guidance, Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities, Interim Final. July 1986.

(12) *U.S. EPA, OSW.* Guidance Document on Classifying Solid Waste Disposal Facilities, SW–828. March 1980.

(13) *U.S. EPA, OSW.* Permit Writers' Guidance Manual for Hazardous Waste Land Storage and Disposal Facilities, Phase I Criteria for Location Acceptability and Existing Applicable Regulations, final draft. February 1985.

D. Other References

(14) *Abt Associates Inc.* National Small Quantity Generator Survey. Contract No. 68–01–6892. U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 1985.

(15) *Farrell, J. B. and G. K. Dotson.* "The Effects of Municipal Wastewater Sludge on Leachates and Gas Production From Sludge-Refuse Landfills. U.S. EPA/ORD. 1987.

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XIII. List of Subjects

A. 40 CFR Part 257

Reporting and record keeping requirements, Waste disposal.

B. 40 CFR Part 258

Reporting and record keeping requirements, Household hazardous waste, Waste disposal, Security measures, Water pollution control, Liquids in landfills, Small quantity generators, Corrective action, Liner requirements.

Date: August 23, 1988.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

1. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6944(a) and 6949a(c), 33 U.S.C. 1345 (d) and (e).

2. Section 257.1 is amended by adding paragraph (c)(10) to read as follows:

§ 257.1 Scope and purpose.

* * * * *

(c) * * *

(10) The criteria of this part do not apply to municipal solid waste landfills, which are subject to the revised criteria contained in Part 258 of this title.

* * * * *

3. Section 257.2 is amended by revising the definition for "facility," and adding definitions in alphabetical order for "construction/demolition waste," "industrial solid waste," "industrial solid waste disposal facility," "land application unit," "landfill," "municipal solid waste landfill," "surface impoundment," and "waste pile" to read as follows:

§ 257.2 Definitions.

* * * * *

"Construction/demolition waste" means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures. Such wastes include, but are not limited to, bricks, concrete, other masonry materials, soil, rock, lumber, road spoils, rebar, paving materials, and tree stumps.

* * * * *

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial solid waste disposal facility" means any landfill, surface impoundment, land application unit, or waste pile used for the disposal of industrial solid wastes.

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural pruposes or for treatment and disposal.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

* * * * *

"Municipal solid waste landfill" means any landfill or landfill unit that receives household waste. This landfill also may receive other types of Subtitle D wastes, such as commercial wastes, nonhazardous sewage sludge from publicly owned treatment works, construction/demolition waste, and industrial solid wastes. Such a landfill may be publicly or privately owned.

* * * * *

"Surface impoundment" or "impoundment" means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

* * * * *

"Waste pile" or "pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

* * * * *

4. Section 257.3–4 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 257.3–4 Ground Water.

* * * * *

(c) * * *

(2) * * *

(i) The concentration of that substance in the ground water to exceed the Maximum Contaminant Level promulgated under section 1412 of the Safe Drinking Water Act (codified under 40 CFR Part 141, Subpart B), or

(ii) An increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the Maximum Contaminant Level promulgated under section 1412 of the Safe Drinking Water Act (codified under 40 CFR Part 141, Subpart B).

* * * * *

5. Section 257.5 is added to read as follows:

§ 257.5 Notification and exposure information requirements for industrial solid waste disposal facilities and construction/demolition waste landfills.

(a) The owner or operator of a construction/demolition waste landfill or industrial solid waste disposal facility must submit the notification and exposure information, specified on EPA Form No. 9410–1 in Appendix I of this Part, to the appropriate State solid waste management agency and to EPA. The notification form must be signed and certified by the owner or operator or an authorized representative of the owner or operator.

(b) Existing facilities must submit the form within six months of the promulgation date of this rule.

6. In 40 CFR Part 257, Appendix I is revised to read as follows:

BILLING CODE 6560-50-M

APPENDIX I

EPA

United States Environmental Protection Agency
Washington, D.C. 20460

Notification for Industrial Solid Waste Disposal Facilities and Construction/Demolition Waste Landfills

Form Approved

Agency Use Only

ID Number

Date Received

I. Owner and Locational Information

1. Facility Owner	2. Location of Facility
Owner Name *(Corporation, Individual, Public Agency, or Other Agency).* Street Address or P.O. Box, City, State, and Zip Code	Establishment or Facility Name and Address *(Street Address or Location Description (not P.O. Box) (e.g., 3 miles west of the intersection of Highway 355 and Route 54), City/County, State, and Zip Code)* Telephone Number *(Including Area Code and Extension)*

Telephone Number *(Including Area Code and Extension)*	Latitude		Longitude	
	Degrees	Minutes	Degrees	Minutes

3. Name of Contact Person *(Mark the box if contact person is owner)* ☐ — Telephone Number *(Including Area Code and Extension)*

4. If this establishment is a facility operated or owned by the Federal Government, enter the GSA Identification Number | | | | | | | | | |

II. General Facility Information

1. Which of the Following Unit Types Are at This Facility? *Enter the number of each unit type at this facility. If this facility does not have a unit type, enter "0."*

Type of Unit	Number at Facility
Construction/Demolition Waste Landfill	
Industrial Solid Waste Landfill	
Industrial Solid Waste Surface Impoundment	
Industrial Solid Waste Land Application Unit	
Industrial Solid Waste Pile	

2. Waste Types Disposed of at This Facility *(Check all that apply. Include wastes that currently are accepted or have been accepted in the past)*

☐ Municipal Solid Waste
☐ Asbestos-Containing Waste Material
☐ Infectious Wastes
☐ Small Quantity Generator Waste
☐ Sewage Sludge
☐ Municipal Incinerator Ash
☐ Other Incinerator Ash
☐ Industrial Solid Waste
☐ Construction/ Demolition Waste
☐ Other

3. Total Annual Amount Disposed of at This Facility *(Enter the quantity and check the appropriate unit of measurement.)*

☐ Tons ☐ Gallons
☐ Cubic Yards

Quantity

EPA Form 9410-1 (7-88)

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III. Exposure Information (You may need to contact a local planning agency, water authority, or health department for information needed to complete question 1.)	
1. Number of Households Within One Mile of the Facility *(Mark an "X" in the box if the number is an estimate)* ☐	2. Number of Upgradient and Downgradient Ground-water Monitoring Wells at this Facility *(If none of a type, enter "0" for that type)* Upgradient Wells | Downgradient Wells

IV. State Information

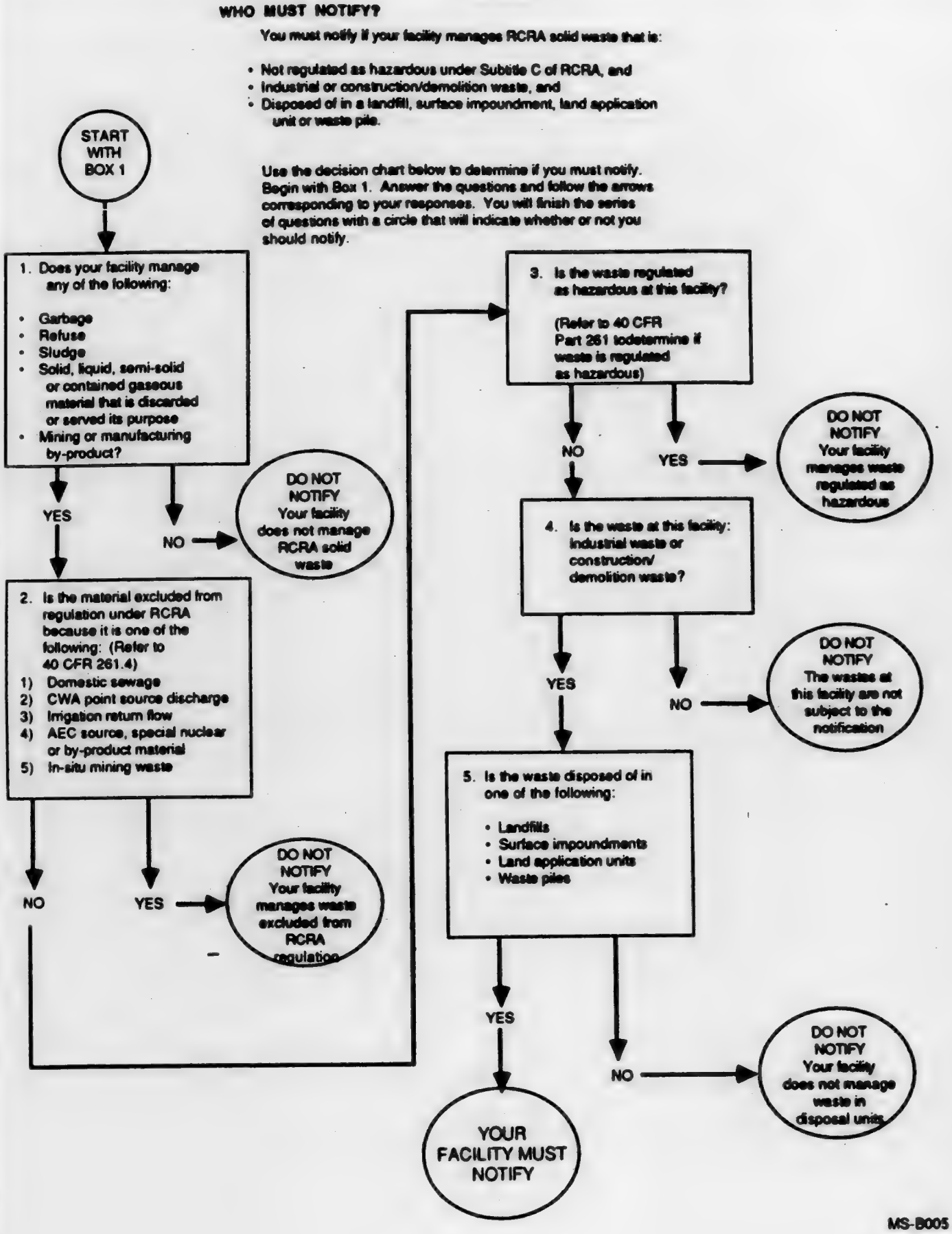
V. Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner, operator or authorized representative	Signature	Date Signed

EPA Form 9410-1 (7-88) MS-B004/2

EXHIBIT A


WHO MUST NOTIFY?
You must notify if your facility manages RCRA solid waste that is:
• Not regulated as hazardous under Subtitle C of RCRA, and
• Industrial or construction/demolition waste, and
• Disposed of in a landfill, surface impoundment, land application unit or waste pile.
Use the decision chart below to determine if you must notify. Begin with Box 1. Answer the questions and follow the arrows corresponding to your responses. You will finish the series of questions with a circle that will indicate whether or not you should notify.
START WITH BOX 1
1. Does your facility manage any of the following:
• Garbage
• Refuse
• Sludge
• Solid, liquid, semi-solid or contained gaseous material that is discarded or served its purpose
• Mining or manufacturing by-product?
YES
NO
DO NOT NOTIFY Your facility does not manage RCRA solid waste
2. Is the material excluded from regulation under RCRA because it is one of the following: (Refer to 40 CFR 261.4)
1) Domestic sewage
2) CWA point source discharge
3) Irrigation return flow
4) AEC source, special nuclear or by-product material
5) In-situ mining waste
NO
YES
DO NOT NOTIFY Your facility manages waste excluded from RCRA regulation
3. Is the waste regulated as hazardous at this facility?
(Refer to 40 CFR Part 261 todetermine if waste is regulated as hazardous)
NO
YES
DO NOT NOTIFY Your facility manages waste regulated as hazardous
4. Is the waste at this facility: industrial waste or construction/ demolition waste?
YES
NO
DO NOT NOTIFY The wastes at this facility are not subject to the notification
5. Is the waste disposed of in one of the following:
• Landfills
• Surface impoundments
• Land application units
• Waste piles
YES
NO
DO NOT NOTIFY Your facility does not manage waste in disposal units
YOUR FACILITY MUST NOTIFY
MS-B005

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Notification for Industrial Solid Waste Disposal Facilities and Construction/Demolition Waste Landfills

The U.S. Environmental Protection Agency (EPA) is evaluating solid waste landfills, surface impoundments, land application units, and waste piles in response to the Hazardous and Solid Waste Amendments of 1984 (HSWA). These amendments modified Subtitle D of the Resource Conservation and Recovery Act of 1976 (RCRA), under which EPA sets Federal standards and guidelines for solid waste disposal facilities. Subtitle D facilities manage solid wastes that are not regulated as hazardous wastes under Subtitle C of RCRA. As part of this evaluation, EPA is compiling data on industrial solid waste disposal facilities and construction/demolition waste landfills that manage Subtitle D wastes by requiring those facilities to complete and return the notification form found on pages 3 through 5 of this booklet.

General Information

Authority: Authority for this notification is found in Sections 2002, 3007, and 4010 of the Resource Conservation and Recovery Act, as amended.

Purpose: The primary purpose of this notification is to provide EPA with data on the number and types of industrial solid waste disposal facilities and to evaluate the potential exposure to wastes managed at these facilities.

Who Must Notify: Facilities with existing construction/demolition waste landfills and industrial solid waste landfills, waste piles, surface impoundments, and land application units that manage nonhazardous Subtitle D wastes are required to notify. Do not include units used to manage hazardous wastes regulated under Subtitle C of RCRA. Refer to Exhibit A to help you determine whether you must notify.

Where To Notify: The owner or operator of a construction/demolition waste landfill or an industrial solid waste landfill, surface impoundment, waste pile, or land application unit must send the completed notification form to EPA and the State (address, name, and phone number of State and EPA contracts are attached). Facilities have six months after the effective date of the rule to notify.

When To Notify: Existing facilities have six months after the effective date of the rule to notify.

Penalties: Any owner or operator who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed $25,000 for each unit at the facility for which notification is not given or for which false information is submitted.

Additional Information: For additional information, the notifier may contact the RCRA/CERCLA Hotline at (800) 424-9364 or (202) 382-3000.

Definitions

Please read the following before answering the questions.

Commercial solid waste is all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding any residential or industrial wastes.

Construction/Demolition Waste is waste building materials, packaging, and rubble resulting from the construction, remodelling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures. Such wastes include, but are not limited to, bricks, concrete, other masonry materials, soil, rock, lumber, road spoils, rebar, paving material, and tree stumps.

Disposal is the discharging, depositing, injecting, dumping, spilling, leaking, or placing solid waste into or on any land or water so that such solid waste or any constituent thereof, may enter the environment, be emitted into the air, or discharged into any waters, including ground waters.

Downgradient Well is a well located in the flow path of ground water that has passed under a facility.

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste. A facility may include more than one unit. Units found at a facility include the following.

- *Land application unit* is an area where wastes are applied onto or into the soil surface (excluding manure-spreading operations) for agricultural purposes or for treatment and disposal. Common names are landspreading, landfarming, or land treatment.

- *Surface impoundment* is a natural or human-made depression in the ground formed mainly of earthen materials and is designed to hold liquid wastes or wastes containing free liquid. Common names are ponds, pits, or lagoons.

- *Waste pile* is a noncontainerized mass of solid, nonflowing waste material that may or may not be enclosure by a fence, a cover, or some other structure. Waste piles can be used for treatment or storage.

- *Landfill* is an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

Hazardous Waste is solid waste regulated under 40 CFR Part 261. The regulatory definition of hazardous waste is found at 40 CFR 261.3.

Household Solid Waste is any solid waste including garbage, trash, and sanitary wastes in septic tanks generated by single or multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, or any recreational areas such as campgrounds and picnic grounds.

Industrial Solid Waste is solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, wastes resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Infectious Waste is any disposable equipment, instruments, utensils, or fomites (substances that may carry pathogenic organisms) from rooms of patients who have been diagnosed or are suspected of having a communicable disease; laboratory wastes such as tissues, blood specimens, excreta, and secretions from patients or laboratory animals;

disposable fomites; and surgical operating room pathologic specimens, fomites, and other materials from outpatient areas and emergency rooms.

Municipal Incinerator Ash is the residue from burning municipal solid waste. The ash is usually produced in two fractions, fly ash and bottom ash, but typically is disposed of in a combined form.

Municipal Solid Waste is any household, residential, and commercial solid waste.

Residual is any material left over at the end of an industrial process that is not sold as a product. Residuals can include solids, liquids, and sludges.

RCRA is the Resource Conservation and Recovery Act of 1976, the Federal statute that regulates the treatment, storage, and disposal of hazardous and nonhazardous solid waste.

Small Quantity Generator is a generator that generates no more than 100 kg/month of hazardous waste.

Solid Waste is any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under 33 USC 1342 or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

Storage is the temporary holding of waste, after which it is treated, disposed of, or stored elsewhere.

Treatment is any process that changes the chemical, physical, or biological character of a waste.

Upgradient Well is a well located in the flow path of groundwater before it passes under a facility.

Waste is any material that results from a production or treatment process and is not sold as a product. This includes wastes that are managed in waste piles and surface impoundments even if they are eventually recycled.

Wastewater is any water that is used in an industrial process but is not part of the product after the industrial process is complete. Wastewater includes water that has been used to clean equipment or in a boiler blowdown, but wastewater excludes noncontact cooling water.

7. A new Part 258 is added as set forth below:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

Subpart A—General

Sec.
258.1 Purpose, scope, and applicability.
258.2 Definitions.
258.3 Consideration of other Federal laws.
258.4–258.9 [Reserved].

Subpart B—Location Restrictions

258.10 Airport safety.
258.11 Floodplains.
258.12 Wetlands.
258.13 Fault areas.
258.14 Seismic impact zones.
258.15 Unstable areas.
258.16–258.19 [Reserved].

Subpart C—Operating Criteria

258.20 Procedures for excluding the receipt of hazardous waste.
258.21 Cover material requirements.
258.22 Disease vector control.
258.23 Explosive gases control.
258.24 Air criteria.
258.25 Access requirements.
258.26 Run-on/run-off control systems.
258.27 Surface water requirements.
258.28 Liquids restrictions.
258.29 Recordkeeping requirements.
258.30 Closure criteria.
258.31 Post-closure care requirements.
258.32 Financial assurance criteria.
258.33–258.39 [Reserved].

Subpart D—Design Criteria

258.40 Design criteria.
258.41–258.49 [Reserved].

Subpart E—Ground-Water Monitoring and Corrective Action

258.50 Applicability.
258.51 Ground-water monitoring systems.
258.52 Determination of ground-water trigger level.
258.53 Ground-water sampling and analysis requirements.
258.54 Phase I monitoring program.
258.55 Phase II monitoring program.
258.56 Assessment of corrective measures.
258.57 Selection of remedy and establishment of ground-water protection standard.
258.58 Implementation of the corrective action program.
258.59 [Reserved].
Appendix I—Volatile Organic Constituents for Ground-Water Monitoring.
Appendix II—Hazardous Constituents.
Appendix III—Carcinogenic Slope Factors (CSFs) and Reference Doses (RfDs) for Selected Hazardous Constituents.

Authority: 42 U.S.C. 6907(a)(3), 6944(a) and 6949(c); 33 U.S.C. 1345 (d) and (e).

Subpart A—General

§ 258.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish minimum national criteria under the Resource Conservation and Recovery Act (RCRA or the Act), as amended, for municipal solid waste landfills and under the Clean Water Act, as amended, for municipal solid waste landfills that are used to dispose of sludge. These minimum national criteria ensure the protection of human health and the environment.

(b) These criteria apply to owners and operators of new and existing municipal solid waste landfills, except as otherwise specifically provided in this part; all other solid waste disposal facilities and practices that are not regulated under Subtitle C of RCRA are subject to the criteria contained in Part 257.

(c) These criteria do not apply to closed units (as defined in this section) of municipal solid waste landfills that close prior to the effective date of this part.

(d) Municipal solid waste landfills failing to satisfy these criteria are considered open dumps for purposes of State solid waste management planning under RCRA.

(e) Municipal solid waste landfills failing to satisfy these criteria constitute open dumps, which are prohibited under section 4005 of RCRA.

(f) Municipal solid waste landfills containing sewage sludge and failing to satisfy these criteria violate sections 309 and 405(e) of the Clean Water Act.

(g) The effective date of this part is [*insert date 18 months after the promulgation date*], unless otherwise specified.

§ 258.2 Definitions.

Unless otherwise noted, all terms contained in this part are defined by their plain meaning. This section contains definitions for terms that appear throughout this part; additional definitions appear in the specific sections to which they apply.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with § 258.30 of this part.

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with § 258.30 of this part.

"Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs.

"Closed unit" means any solid waste disposal unit that no longer receives solid waste as of the effective date of this part and has received a final layer of cover material.

"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

"Existing unit" means any solid waste disposal unit that is receiving solid waste as of the effective date of this part and has not received a final layer of cover material.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Ground-water" means water below the land surface in a zone of saturation.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2.

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing landfill unit.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Municipal solid waste landfill" means any landfill or landfill unit that receives household waste. This landfill also may receive other types of RCRA Subtitle D wastes, such as commercial

waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned.

"New unit" means any solid waste disposal unit that has not previously received solid waste prior to the effective date of this part. A new unit also means lateral expansions as defined in this section.

"Open burning" means the combustion of solid waste without:

(1) Control of combustion air to maintain adequate temperature for efficient combustion,

(2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(3) Control of the emission of the combustion products.

"Operator" means the person responsible for the overall operation of a facility or part of a facility.

"Owner" means the person who owns a facility or part of a facility.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

"Solid waste disposal unit" means a discrete area of land used for the disposal of solid wastes.

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands.

"Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

§ 258.3 Consideration of other Federal laws.

The owner or operator of a municipal solid waste landfill unit must comply with any other applicable Federal rules, laws, regulations, or other requirements.

§§ 258.4–258.9 [Reserved].

Subpart B—Location Restrictions

§ 258.10 Airport safety.

A municipal solid waste landfill unit that may attract birds and is located within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway used by only piston-type aircraft shall not pose a bird hazard to aircraft.

§ 258.11 Floodplains.

(a) A municipal solid waste landfill unit located in the 100-year floodplain shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment.

(b) For purposes of this section:

(1) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) "100-year flood" means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(3) "Washout" means the carrying away of solid waste by waters of the base flood.

§ 258.12 Wetlands.

(a) New municipal solid waste landfill units shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the State:

(1) There is no practicable alternative that would have less adverse impact on the wetlands and would have no other significant adverse environmental consequences;

(2) The landfill will not:

(i) Cause or contribute to violations of any applicable State water quality standard,

(ii) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act,

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973, and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The landfill will not cause or contribute to significant degradation of wetlands;

(4) Appropriate and practicable steps have been taken to minimize potential adverse impacts of the landfill on the wetlands; and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) As used in this section, "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

§ 258.13 Fault areas.

(a) New units of a municipal solid waste landfill shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time.

(b) For the purposes of this section:

(1) "Fault" means a fracture along which strata on one side have been displaced with respect to that on the other side.

(2) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(3) "Holocene" means the most recent epoch of the Quarternary period, extending from the end of the Pleistocene to the present.

§ 258.14 Seismic impact zones.

(a) At a new municipal solid waste landfill unit located in a "seismic impact zone," all containment structures, including liners, leachate collection systems, and surface water control systems, must be designed to resist the maximum horizontal acceleration in lithified material for the site.

(b) As used in paragraph (a) of this section, "seismic impact zone" means an area with a 10 percent or greater probability that the maximum horizontal acceleration in hard rock, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

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(c) As used in paragraph (a) of this section, the "maximum horizontal acceleration in lithified material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

§ 258.15 Unstable areas.

(a) The owner or operator of a municipal solid waste landfill unit located in an unstable area must demonstrate to the State that engineering measures have been incorporated into the unit's design to ensure the stability of the structural components of the unit. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events (both surface and subsurface).

(b) As used in this section, "structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component necessary for protection of human health and the environment.

(c) Existing units of a municipal solid waste landfill located in unstable areas that cannot make the demonstration specified in paragraph (a) of this section must close within 5 years of the effective date of this part in accordance with § 258.30 of this part and conduct post-closure activities in accordance with § 258.31 of this part.

(d) The deadline for a closure required by paragraph (c) of this section may be extended by the State after considering, at a minimum, the following factors:

(1) Availability of alternative disposal capacity; and

(2) Potential risk to human health and the environment.

§§ 258.16–258.19 [Reserved].

Subpart C—Operating Criteria

§ 258.20 Procedures for excluding the receipt of hazardous waste.

(a) The owner or operator of a municipal solid waste landfill unit must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in Part 261 of this title and polychlorinated biphenyls (PCB) wastes as defined in Part 761 of this title. This program must include at a minimum:

(1) Random inspections of incoming loads;

(2) Inspection of suspicious loads;

(3) Records of any inspections;

(4) Training of facility personnel to recognize regulated hazardous waste; and

(5) Procedures for notifying the proper authorities if a regulated hazardous waste is discovered at the facility.

(b) As used in this section, "regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in § 261.5 of this title.

§ 258.21 Cover material requirements.

(a) The owner or operator of a municipal solid waste landfill unit must cover disposed solid waste with suitable materials at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(b) The State may grant a temporary waiver from the requirement of paragraph (a) of this section if the State determines that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

§ 258.22 Disease vector control.

(a) The owner or operator of a municipal solid waste landfill unit must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(b) For purposes of this section, "disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

§ 258.23 Explosive gases control.

(a) The owner or operator of a municipal solid waste landfill unit shall ensure that:

(1) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(b) The owner or operator of a municipal solid waste landfill unit must implement a routine methane monitoring program to ensure that the standards of paragraph (a) of this section are met.

(1) The type and frequency of monitoring must be determined based on the following factors:

(i) Soil conditions;

(ii) The hydrogeologic conditions surrounding the disposal site;

(iii) The hydraulic conditions surrounding the disposal site; and

(iv) The location of facility structures and property boundaries.

(2) The minimum frequency of monitoring shall be quarterly.

(c) If methane gas levels exceeding the limits specified in paragraph (a) of this section are detected, the owner or operator must:

(1) Take all necessary steps to ensure immediate protection of human health;

(2) Immediately notify the State of the methane gas levels detected and the immediate steps taken to protect human health; and

(3) Within 14 days, submit to the State for approval a remediation plan for the methane gas releases. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall be implemented upon approval by the State.

(d) As used in this section, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

§ 258.24 Air criteria.

(a) A municipal solid waste landfill shall not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act, as amended.

(b) Open burning of solid waste, except for the infrequent burning of agricultural wastes, silvicultural wastes, land-clearing debris, diseased trees, debris from emergency clean-up operations, or ordnance, is prohibited at municipal solid waste landfill units.

§ 258.25 Access requirement.

The owner or operator of a municipal solid waste landfill unit must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes to protect human health and the environment using artificial barriers, natural barriers, or both, as appropriate.

§ 258.26 Run-on/run-off control systems.

(a) The owner or operator of a municipal solid waste landfill unit must design, construct, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge form a 25-year storm;

(2) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the landfill unit must be handled in accordance with § 258.27(a) of this Part.

§ 258.27 Surface water requirements.

A municipal solid waste landfill unit shall not:

(a) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to section 402.

(b) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved under section 208 or 319 of the Clean Water Act, as amended.

§ 258.28 Liquids restrictions.

(a) Bulk or noncontainerized liquid waste may not be placed in a municipal solid waste landfill unit unless:

(1) The waste is household waste other than septic waste; or

(2) The waste is leachate or gas condensate derived from the municipal solid waste landfill unit and the landfill unit is equipped with a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner.

(b) Containers holding liquid waste may not be placed in a municipal solid waste landfill unit unless:

(1) The container is a small container similar in size to that normally found in household waste;

(2) The container is designed to hold liquids for use other than storage, such as a battery or capacitor; or

(3) The waste is household waste.

(c) As used in this section:

(1) "Composite liner" means a system consisting of two components; the upper component must consist of a flexible membrane liner (FML), the lower component must consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The FML component must be installed in direct and uniform contact with the compacted soil component so as to minimize the migration of leachate through the FML if a break should occur.

(2) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846 [1]).

(3) "Leachate recirculation" means the recycling or reintroduction of leachate into or on a municipal solid waste landfill unit.

(4) "Gas condensate" means the liquid generated as a result of the gas collection and recovery process at the municipal solid waste landfill unit.

§ 258.29 Recordkeeping requirements.

The following information must be recorded, as it becomes available, and retained by the owner or operator of each municipal solid waste landfill unit:

(a) Any monitoring, testing, or analytical data required by Subpart E;

(b) Gas monitoring results from monitoring required by § 258.23 of this part;

(c) Inspection records, training procedures, and notification procedures required in § 258.20 of this part; and

(d) Closure and post-closure care plans as required by § 258.30(b) and § 258.31(c) of this part.

§ 258.30 Closure criteria.

(a) The owner or operator of a municipal solid waste landfill must close each landfill unit in a manner that minimizes the need for further maintenance and minimizes the post-closure formation and release of leachate and explosive gases to air, ground water, or surface water to the extent necessary to protect human health and the environment.

(b) The owner or operator must prepare a written plan that describes the steps necessary to close all units of the muncipal solid waste landfill at any point during its active life in accordance with the closure performance standard in § 258.30(a). The closure plan, at a minimum, must include the following information:

(1) An overall description of the methods, procedures, and processes that will be used to close each unit of a municipal solid waste landfill in accordance with the closure performance standard in § 258.30(a), including procedures for decontaminating the landfill;

(2) An estimate of the maximum extent of operation that will be open at any time during the active life of the landfill;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill;

(4) A description of the final cover, designed in accordance with §§ 258.40(b) and 258.40(c), and;

(5) A schedule for completing all activities necessary to satisfy the closure performance standard.

(c) The closure plan must be prepared as of the effective date of this part, or by the initial receipt of solid waste, whichever is later, and must be approved by the State. Any subsequent modification to the closure plan also must be approved by the State. A copy of the most recent approved closure plan must be kept at the facility or at an alternate location designated by the owner or operator until closure of the municipal solid waste landfill has been certified in accordance with § 258.30(e) and the owner or operator has been released from financial assurance requirements for closure under § 258.32(f).

(d) The owner or operator must begin closure activities of each landfill unit, in accordance with the approved closure plan, no later than 30 days following the final receipt of wastes at that landfill unit. Extensions of the deadline for beginning closure may be granted at the discretion of the State if the owner or operator of a municipal solid waste landfill demonstrates that the landfill will not pose a threat to human health and the environment.

(e) Following closure of each municipal solid waste landfill unit, the owner or operator must submit to the State a certification that objectively verifies that closure has been completed in accordance with the approved closure plan, based on a review of the landfill unit by a qualified party.

§ 258.31 Post-closure care requirements.

(a) Following closure of each municipal solid waste landfill unit, the owner or operator must conduct two phases of post-closure care. The first phase must be for a minimum of 30 years and consist of at least the following:

(1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) Maintaining and operating the leachate collection system in accordance with the requirements in

[1] Copies may be obtained from: Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair St., Cincinnati, Ohio 45268.

§ 258.40(a)–(b), if applicable, until leachate no longer is generated;

(3) Monitoring the ground-water in accordance with the requirements of § 258.50 and maintaining the ground-water monitoring system; and,

(4) Maintaining and operating the gas monitoring system in accordance with the requirements of § 258.23.

(b) Following the period described in § 258.31(a), the owner or operator must conduct a second phase of post-closure care at each municipal solid waste landfill unit that consists of, at a minimum, ground-water monitoring and gas monitoring. The length of this period is determined by the State and must be sufficient to protect human health and the environment.

(c) The owner or operator of a municipal solid waste landfill must prepare a written post-closure plan that describes monitoring and routine maintenance activities that will be carried out during each phase of the post-closure care period in accordance with the requirements of § 258.31(a) and (b). The post-closure plan must include, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in § 258.31 (a) and (b) for each unit, and the frequency at which these activities will be performed;

(2) Name, address, and telephone number of the person or office to contact about the facility during both phases of the post-closure period; and

(3) A description of the planned uses of the property during both phases of the post-closure care period. Post-closure use of the property must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems, unless, upon the demonstration by the owner or operator, the State determines that the activities will not increase the potential threat to human health or the environment or the disturbance is necessary to reduce a threat to human health or the environment. The owner or operator must obtain approval from the State in order to remove any wastes or waste residues, the liner, or contaminated soils from the land.

(d) The post-closure plan must be prepared as of the effective date of the rule, or by the initial receipt of solid waste, whichever is later, and must be approved by the State. Any subsequent modification to the post-closure plan must also be approved by the State. A copy of the most recent approved post-closure plan must be kept at the facility or at an alternate location designated by the owner or operator until completion of the post-closure care period has been certified in accordance with § 258.31(f) and the owner or operator has been released from financial assurance for post-closure care under § 258.32(g).

(e) Following closure of the entire municipal solid waste landfill, the owner or operator must record a notation on the deed to the landfill property, or some other instrument that is normally examined during title search. The owner or operator may request permission from the State to remove the notation from the deed if all wastes are removed from the facility in accordance with paragraph (c)(3) of this section. The notation on the deed must in perpetuity notify any potential purchaser of the property that:

(1) The land has been used as a municipal solid waste landfill; and

(2) Its use is restricted under paragraph (c)(3) of this section.

(f) Following completion of the two-phase post-closure care period for each unit, the owner or operator of an MSWLF must submit to the State a certification that objectively verifies that both phases of post-closure care have been completed in accordance with the approved post-closure plan, based on a review of the landfill unit by a qualified party.

§ 258.32 Financial assurance criteria.

(a) The requirements of this section apply to the owner and operator of each municpal solid waste landfill, except an owner or operator who is a State or Federal government entity whose debts and liabilities are the debts and liabilities of a State or the United States.

(b) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the municipal solid waste landfill in accordance with the closure plan developed to satisfy the closure requirements in § 258.30 of this part.

(1) The estimate must equal the cost of closing the landfill at the point in the municipal solid waste landfill's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 258.30(b) of this part).

(2) During the active life of the municipal solid waste landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(3) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under paragraph (f) of this section if changes to the closure plan or landfill conditions increase the maximum cost of closure at any time over the active life of the municipal solid waste landfill.

(4) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under paragraph (f) of this section if he can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the landfill.

(5) The owner or operator must keep a copy of the latest closure cost estimate at the landfill until the owner or operator has been notified by the State that he has been released from closure financial assurance requirements under paragraph (f) of this section.

(c) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct each phase of post-closure monitoring and maintenance of the municipal solid waste landfill in accordance with the post-closure plan developed to satisfy the post-closure requirements in § 258.31 (a) and (b) of this part. The post-closure cost estimate for each phase of post-closure care used to demonstrate financial assurance in paragraph (g) of this section is calculated by multiplying the annual cost estimate for each phase of post-closure care by the number of years of post-closure care required in that phase.

(1) The cost estimate for each phase of post-closure care must be based on the most expensive costs of post-closure care during that phase.

(2) During the active life of the municipal solid waste landfill, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(3) The owner or operator must increase the amount of the post-closure care cost estimate and the amount of financial assurance provided under paragraph (g) of this section if changes in the post-closure plan or landfill conditions increase the maximum costs of post-closure care.

(4) The owner or operator may request a reduction in the post-closure cost estimate and the amount of financial assurance provided under paragraph (g) of this section if he can demonstrate that the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period.

(5) The owner or operator must keep a copy of the latest post-closure care cost estimate at the landfill until he has been notified by the State that he has been released from post-closure financial assurance requirements for the entire landfill under paragraph (g) of this section.

(d) An owner or operator of a municipal solid waste landfill required to undertake a corrective action program under § 258.58 of this part must

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have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under § 258.58 of this part. The corrective action cost estimate is calculated by multiplying the annual costs of corrective action by the number of years of the corrective action program.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed.

(2) The owner or operator must increase the amount of the corrective action cost estimate and the amount of financial assurance provided under paragraph (h) of this section if the annual corrective action costs, in current dollars, for the remaining period over which corrective action will be conducted exceed the cost estimate.

(3) The owner or operator may request a reduction in the amount of the corrective action cost estimate and the amount of financial assurance provided under paragraph (h) of this section if he demonstrates that the cost estimate exceeds the maximum remaining costs of corrective action.

(4) The owner or operator must keep a copy of the latest estimate of the costs of performing corrective action at the landfill until he has been notified by the State that he has been released from corrective action financial assurance requirements under paragraph (h) of this section.

(e) The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available in a timely manner whenever they are needed. Financial assurance requirements must satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds ensured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must guarantee the availability of the required amount of coverage from the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, until the owner or operator establishes an alternative financial assurance mechanism or is released from the financial assurance requirements under paragraphs (f), (g), and (h) of this section;

(4) The financial assurance mechanisms that may be used to satisfy the requirements in paragraphs (f), (g), and (h) of this section must provide flexibility to the owner or operator; and

(5) The financial assurance mechanisms must be legally valid and binding and enforceable under State and Federal law.

(f) The owner or operator of each municipal solid waste landfill must establish, in a manner in accordance with paragraph (e) of this section, financial assurance for closure of the landfill, in an amount equal to the most recent closure cost estimate prepared in accordance with paragraph (b) of this section. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements in accordance with this paragraph. The owner or operator may be released from financial assurance requirements for closure after the State has received certification that closure has been completed in accordance with the approved closure plan, as required under § 258.30(e) of this part. Following receipt of the closure certification, the State will:

(1) Notify the owner or operator in writing that he/she is no longer required to maintain financial assurance for closure, or;

(2) Provide the owner or operator with a detailed written statement of any reason to believe that closure has not been conducted in accordance with the approved closure plan.

(g) The owner or operator of each municipal solid waste landfill must establish, in a manner in accordance with paragraph (e) of this section, financial assurance for the costs of each phase of post-closure care as required under § 258.31 (a) and (b) of this part, in an amount equal to the sum of the most recent cost estimates for each phase of post-closure care, prepared in accordance with paragraph (c) of this section. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care under paragraph § 258.31(g) of this section. The owner or operator may be released from financial assurance requirements for post-closure care requirements after the State has received a certification that the two-phase post-closure care period has been completed in in accordance with the approved plan, as required under § 258.31(f) of this part. Following receipt of the post-closure care certification, the State will:

(1) Notify the owner or operator in writing that he is no longer required to maintain financial assurance for post-closure care, or;

(2) Provide the owner or operator with a detailed written statement of any reason to believe that post-closure care has not been conducted in accordance with the approved post-closure plan.

(h) The owner or operator of each municipal solid waste landfill required to undertake a corrective action program under § 258.58 of this part must establish, in a manner in accordance with paragraph (e) of this section, financial assurance for the most recent corrective action program, in an amount equal to the corrective action cost estimate prepared in accordance with paragraph (d) of this section. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action in accordance with this paragraph. The owner or operator may be released from financial assurance requirements for corrective action after the State has received certification that the corrective action remedy has been completed in accordance with the approved corrective plan, as required by § 258.58(e) of this part. Following receipt of the corrective action certification, the State will:

(1) Notify the owner or operator in writing that he is no longer required to maintain financial assurance for corrective action, or;

(2) Provide the owner or operator with a detailed written statement of any reason to believe that corrective action has not been completed in accordance with the approved corrective action plan.

§§ 258.33–258.39 [Reserved].

Subpart D—Design Criteria

§ 258.40 Design Criteria.

(a) New municipal solid waste landfill units must be designed with liners, leachate collection systems, and final cover systems, as necessary, to ensure that the design goal established under paragraph (b) of this section is met in the aquifer at the waste management unit boundary, or an alternative boundary, as specified by the State under paragraph (d) of this section.

(b) The State must establish a design goal for new MSWLF units. This design shall, at a minimum, achieve a ground-water carcinogenic risk level with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the 1×10^{-4} to 1×10^{-7} range.

[Note to § 258.40(b): EPA is considering alternatives to the 1×10^{-6} to 1×10^{-4} risk range. The Agency specifically requests comment on a fixed risk level of 1×10^{-5} or an upper bound risk level of 1×10^{-4} (with the States having discretion to be more stringent) as alternatives to the proposed risk range. A fixed risk level of 1×10^{-5} would provide a uniform level of protection across all States. On the other hand, setting an upper bound risk level of 1×10^{-4} would allow States greater flexibility in establishing more stringent risk levels based on site specific conditions].

(c) When establishing the design necessary to comply with paragraph (a) of this section, the State shall consider at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The climatic factors of the area;

(3) The volume and physical characteristics of the leachate;

(4) Promixity of gound-water users; and

(5) Quality of ground water.

(d) A State may establish an alternative boundary to be used in lieu of the waste management unit boundary. The alternative boundary shall not exceed 150 meters from the waste management unit boundary and shall be located on land owned by the owner or operator of the MSWLF. The establishment of the alternative boundary shall be based on analysis and consideration of at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The volume and physical and chemical characteristics of the leachate;

(3) The quantity, quality, and direction of flow of ground water;

(4) The proximity and withdrawal rate of the ground-water users;

(5) The availability of alternative drinking water supplies;

(6) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water;

(7) Public health, safety, and welfare effects; and

(8) Practicable capability of the owner or operator.

(e) Existing municipal solid waste landfill units must be equipped at closure with a final cover system that is designed to prevent infiltration of liquid through the cover and into the waste.

§§ 258.41-258.49 [Reserved]

Subpart E—Ground-Water Monitoring and Corrective Action

§ 258.50 Applicability.

(a) The requirements in this Part apply to municipal solid waste landfill units, except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under § 258.51 through § 258.55 of this Part will be suspended for an MSWLF unit if the owner or operator can demonstrate to the State that there is no potential for migration of hazardous constituents from that unit to the uppermost aquifer during the active life, including the closure period, of the unit and during post-closure care. This demonstration must be certified by a qualified geologist or geotechnical engineer, and must incorporate reliable site-specific data. If detailed hydrogeologic data are unavailable, the owner or operator must provide an adequate margin of safety in the prediction of potential migration of hazardous constituents by basing such predictions on assumptions that maximize the rate of hazardous consitutent migration.

(c) Within 6 months of the effective date of the rule, the State must specify a schedule for the owners or operators of MSWLF units to comply with the ground-water monitoring requirements specified in §§ 258.51–258.55. This schedule must be specified to ensure that 25 percent of MSWLF units are in compliance within 2 years of the effective date of this rule; 50 percent (50%) of landfill units are in compliance within 3 years of the effective date of this rule; 75 percent of the landfill units are in compliance within 4 years of the effective date of this rule; and all landfill units are in compliance within 5 years of the effective date of this rule. In setting the compliance schedule, the State must consider potential risks posed by the MSWLF unit to human health and the environment. The following factors should be considered in determining potential risk:

(1) Proximity of human and environmental receptors;

(2) Design of the landfill unit;

(3) Age of the landfill unit; and

(4) Resource value of the underlying aquifer, including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users; and

(iii) Ground-water quality and quantity.

(d) If the State does not set a schedule for compliance as specified in paragraph (c) of this Section, the following compliance schedule shall apply:

(1) Existing landfill units less than 1 mile from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51–258.55 within 3 years of the effective date of this rule;

(2) Existing landfill units greater than 1 mile but less than 2 miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51–258.55 within 4 years of the effective date of this rule;

(3) Existing landfill units greater than 2 miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51–258.55 within 5 years of the effective date of this rule; and

(4) A new landfill unit must be in compliance with the ground-water monitoring requirements specified in §§ 258.51–258.55 before waste can be placed in the unit.

(e) Once established at a unit, ground-water monitoring shall be conducted throughout the active life and post-closure care of that municipal solid waste landfill unit as specified in § 258.31.

§ 258.51 Ground-water monitoring systems.

(a) A ground-water monitoring well system approved by the State must be installed at the closest pacticable distance from the waste management unit boundary or the alternative boundary specified by the State under § 258.40. Where subsurface conditions cause hazardous constituents to migrate horizontally past the boundary specified under this paragraph before descending to the uppermost aquifer, the State can designate another appropriate downgradient location for the ground-water monitoring wells.

(b) A ground-water monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer that:

(1) Represent the quality of background ground water that has not been affected by leakage from a landfill unit; and

(2) Represent the quality of ground water passing the locations specified under paragraph (a) of this section.

(c) If approved by the State, separate ground-water monitoring systems are not required for each landfill unit when the facility has several landfill units, provided the multi-unit ground-water monitoring system will be as protective of human health and the environment as individual monitoring systems for each unit.

(d) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This

casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices must be documented in the operating record; and

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(e) The number, spacing, and depths of monitoring systems shall be proposed by the owner or operator and approved by the State based upon site-specific technical information that must be developed by the owner or operator and must include thorough characterization of:

(1) Aquifer thickness, flow rate, and flow direction; and

(2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, and porosities.

§ 258.52 Determination of ground-water trigger level.

(a) The State must establish, before a Phase I monitoring program is initiated, ground-water trigger levels that are protective of human health and the environment for all Appendix II constituents.

(b) The levels are to be specified by the State as:

(1) Maximum Contaminant Level (MCL) promulgated under § 1412 of the Safe Drinking Water Act (codified) under 40 CFR Part 141, Subpart B; or

(2) For constituents for which MCLs have not been promulgated, an appropriate health-based level established by the State that satisfies the following criteria:

(i) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028);

(ii) Is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792) or equivalent;

(iii) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the 1×10^{-4} to 1×10^{-7} range; and

(iv) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime.

[Note to § 258.52(b)(2)(iii): EPA is considering alternatives to the 1×10^{-4} to 1×10^{-7} risk range. The Agency specifically requests comment on a fixed risk level of 1×10^{-5} or an upper bound risk level of 1×10^{-4} (with the States having discretion to be more stringent) as alternatives to the proposed risk range. A fixed risk level of 1×10^{-5} would provide a uniform level of protection across all States. On the other hand, setting an upper bound risk level of 1×10^{-4} would allow States greater flexibility in establishing more stringent risk levels based on site specific conditions].

(3) For constituents for which no health-based level is available that meets the criteria in § 258.52(a)(1) or (2) the State may establish a trigger level that shall be:

(i) An indicator for protection of human health and the environment, using the exposure assumptions specified under § 258.52(a)(2), or

(ii) The background concentration.

(4) For constituents for which the background level is higher than health-based levels established under § 258.52(b)(1)–(3), the trigger level shall be the background concentration.

§ 258.53 Ground-water sampling and analysis requirements.

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells installed in compliance with § 258.51(b) of this part. At a minimum, the program must be documented in the operating record and must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples.

(c) The sampling procedures and frequency must be protective of human health and the environment. The sampling requirement must ensure that the statistical procedure used to evaluate samples has an acceptably low probability of failing to identify contamination.

(d) Ground-water elevations must be measured in each well immediately prior to sampling.The owner or operator must determine the rate and direction of ground-water flow in the uppermost aquifer each time ground-water gradient changes as indicated by previous sampling period elevation mesurements.

(e) The owner or operator must establish background ground-water quality on a hydraulically upgradient well(s) for each of the monitoring parameters or constituents required in the particular ground/water monitoring program that applies to the municipal solid waste landfill unit, as determined under § 258.54(a), or § 258.55(a) of this part. The minimum number of samples used to establish background ground-water quality must be consistent with the appropriate statistical procedures determined pursuant to paragraph (h) of this section.

(f) Background ground-water quality at existing units may be based on sampling of wells that are not upgradient from the waste management area where:

(1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; and

(2) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by upgradient wells.

(g) The State may determine alternate background ground-water quality on a site-specific basis if true background ground-water quality cannot be detected on site. The alternate background ground-water quality should be based on monitoring data from the uppermost aquifer that is available to the State.

(h) Statistical procedures are as follows:

(1) Ground-water monitoring data for each phase of the monitoring programs of §§ 258.54, 258.55 and any other applicable section of this rule will be collected from background wells (except as allowed in § 258.53(g)), and at monitoring wells as specified pursuant to § 258.53(a). Based on the site-specific conditions identified in § 258.54(c), the owner or operator must select the appropriate statistical procedure to determine if a statistically significant increase over background value for each parameter or constituent has occurred.

(2) The owner or operator must employ one of the following statistical

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procedures, in combination with the designated sampling requirement, to determine a statistically significant increase:

(i) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The procedure must include estimation and testing of the contrasts between each downgradient well's mean and the background mean level for each constituent;

(ii) An analysis of variance based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The procedure must include estimation and testing of the contrasts between each downgradient well's mean and the background mean level for each constituent;

(iii) Tolerance or prediction interval procedure in which a tolerance interval for each constituent is established from the distribution of the background data, and the level of each constituent in each downgradient well is compared to the upper tolerance or prediction limit;

(iv) A control chart approach that gives control limits for each constituent; and

(v) Another statistical test procedure that is protective of human health and the environment and meets the ground-water protection standard of § 258.52(b).

(3) The State may establish an alternative sampling procedure and statistical test for any of the constituents listed in Appendix II or parameters listed in § 258.54(b), as required to protect human health and the environment. Factors to consider for establishing this alternative statistical procedure include:

(i) If the distributions for different constituents differ, more than one procedure may be needed. The owner or operator must show that the normal distribution is not appropriate if using a nonparametric or other methodology not requiring an assumption of normality. For any statistic not based on a normal distribution, a goodness of fit test shall be conducted to demonstrate that the normal distribution is not appropriate. Other tests shall be conducted to demonstrate that the assumptions of the statistic or distribution are not grossly isolated;

(ii) Each parameter or constituent is to be tested for separately. Each time that a test is done, the test for individual constituents shall be done at a type I error level or less than 0.01. A multiple comparison procedure may be used at a type I experiment-wide error rate no less than 0.05. The owner or operator must evaluate the ability of the method to detect contamination that is actually present and may be required to increase the sample size to achieve an acceptable error level.

(iii) The monitoring well system should be consistent with § 258.51. The owner or operator must ensure that the number, location, and depth of monitoring wells will detect hazardous constituents that migrate from the municipal solid waste landfill unit;

(iv) The statistical procedure should be appropriate for the behavior of the parameters or constituents involved. It should include methods for handling data below the limit of detection. The owner or operator should evaluate different ways of dealing with values below the limit of detection and choose the one that is most protective of human health and the environment. In cases where there is a high proportion of values below limits of detection, the owner or operator may demonstrate that an alternative procedure is more appropriate; and

(v) The statistical procedure used should account for seasonal and spatial variability and temporal correlation.

(4) If contamination is detected by any of the statistical tests, and the State or the owner or operator suspects that detection is an artifact caused by some feature of the data other than contamination, the State may specify that statistical tests of trend, seasonal variation, autocorrelation, or other interfering aspects of the data be done to establish whether the significant result is indicative of detection of contamination or resulted from natural variation.

(i) The owner or operator must determine whether or not there is a statistically significant increase (or decrease, in the case of Phase I) over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the landfill unit, as determined under §§ 258.54(a) or 258.55(a) of this part. The owner or operator must make these statistical determinations each time he assesses ground-water quality at the boundary designated under § 258.40 of this part.

(A) In determining whether a statistically significant increase or decrease has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated pursuant to § 258.51 to the background value of that parameter or constituent, according to the statistical procedures specified under paragraph (h) of this section.

(B) Within a reasonable time period after completing sampling (as determined by the State), the owner or operator must determine whether there has been a statistically significant increase or decrease over background at each monitoring well.

§ 258.54 Phase I monitoring program.

(a) Phase I monitoring is required at municipal solid waste landfill units except as otherwise provided in §§ 258.55 and 258.58 of this Part.

(b) At a minimum, a Phase I monitoring program must include the following monitoring parameters or constituents:

(1) Ammonia (as N)
(2) Bicarbonate (HCO_3)
(3) Calcium
(4) Chloride
(5) Iron
(6) Magnesium
(7) Manganese, dissolved
(8) Nitrate (as N)
(9) Potassium
(10) Sodium
(11) Sulfate (SO_4)
(12) Chemical Oxygen Demand (COD)
(13) Total Dissolved Solids (TDS)
(14) Total Organic Carbon (TOC)
(15) pH
(16) Arsenic
(17) Barium
(18) Cadmium
(19) Chromin
(20) Cyanide
(21) Lead
(22) Mercury
(23) Selenium
(24) Silver
(25) The volatile organic compounds (VOCs) listed in Appendix I of this part.

(c) The State must determine an appropriate monitoring frequency on a site-specific basis by considering aquifer flow rate and resource value of the ground water. The minimum monitoring frequency for all parameters specified in paragraph (b) of this section is semiannual except during the post-closure care when minimum monitoring frequency shall be determined by the State on a site-specific basis.

(d) If the owner or operator determines, pursuant to § 258.53(h) of this part, that there is a statistically significant increase or decrease over background for two or more of parameters (1) to (15) specified in paragraph (b) of this section, at any monitoring well at the boundary specified under § 258.51(a), or a statistically significant increase over background for any one or more of parameters (16) to (24) specified in paragraph (b) of this section or the VOCs listed in Appendix I, at any

monitoring well at the boundary specified under § 258.51(a), (s)he:

(1) Must notify the State within 14 days of this finding. The notification must indicate what Phase I parameters have shown statistically significant changes from background levels;

(2) Must establish a Phase II monitoring program meeting the requirements of § 258.55 this part within a reasonable time period as determined by the State; and

(3) May demonstrate that a source other than a municipal solid waste landfill unit cause the contamination or that the contamination resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in lieu of establishing a Phase II monitoring program, the owner or operator is not relieved of the requirement to establish a Phase II monitoring program within a reasonable time period unless the demonstration made under this paragraph successfully shows that a source other than the municipal solid waste landfill unit caused the change or that the change resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) Notify the State in writing within 7 days of determining statistically significant evidence of contamination that (s)he intends to make a demonstration under this paragraph;

(ii) Within 90 days, or an alternative time period approved by the State, submit to the State a report that demonstrates that a source other than a municipal solid waste landfill unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation; and

(iii) Continue to monitor in accordance with the Phase I monitoring program.

§ 258.55 Phase II monitoring program.

(a) Phase II monitoring is required whenever statistically significant increases or decreases over background have been detected for two or more of parameters (1) to (15) specified under § 258.54(b); or whenever statistically significant increases over background have been detected for one or more of parameters (16) to (24) specified under § 258.54(b), or the VOCs listed in Appendix I; or the State determines, pursuant to § 258.58, that a corrective action remedy has been completed.

(b) At a minimum, Phase II monitoring program must include the constituents in Appendix II of this part.

(c) Within 90 days of triggering a Phase II monitoring program or an alternative time period approved by the State, the owner or operator must sample the ground water in all monitoring wells identified pursuant to § 258.51 of this part and analyze those samples for all constituents identified in Appendix II of this part.

(d) If Appendix II constituents are not detected in response to paragraph (c), the State shall specify an appropriate frequency for repeated sampling and analysis for Appedix II constituents during the active life, closure, and post-closure care of the unit. The following factors should be considered by the State when setting an appropriate frequency for a full Appendix II analysis:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Aquifer flow velocities;

(4) Minimum distance between upgradient edge of unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Nature of any constituents detected in response to this section.

(e) If, after conducting Phase II monitoring or an appropriate time period approved by the State, the owner or operator determines that there has not been a statistically significant increase over background of parameters or constituent specified pursuant to § 258.55(b) of this part at any monitoring well at the boundary specified under § 258.51(a), that unit may return to Phase I monitoring. The following factors should be considered by the State when determining an appropriate time period for sampling before allowing a unit to return to Phase I monitoring:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Aquifer flow velocities; and

(4) Maximum distance between upgradient edge of unit and down-gradient monitoring well screen (potential maximum distance of travel).

(f) If any Appendix II constituents are detected at statistically significant levels above background response to (c) or (d) of this section, the owner or operator must:

(1) Notify the State in writing within 14 days, or an alternative time period approved by the State, which Appendix II constituents have been detected at statistically significant levels above background; and

(2) Within 90 days, and on a quarterly basis thereafter during the active life and closure of the unit, resample all wells and conduct analyses for those constituents in Appendix II of this part that are determined to be present at levels above background concentrations at the boundary specified under § 258.51(a) of this part.

(3) The State shall determine an appropriate minimum monitoring frequency for these Appendix II constituents during the post-closure period. The following factors should be considered by the State when setting a minimum monitoring frequency:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of aquifer and unsaturated zone;

(iii) Aquifer flow velocities;

(iv) Minimum distance between upgradient edge of unit and downgradient monitoring well screen (minimum distance of travel); and

(v) Nature of the constituents detected in response to this section.

(g) If any Appendix II parameters or constituents are identified under paragraph (d) of this section that had not been identified previously under (c) or (f)(2) of this section, the owner or operator must, within 14 days, submit to the State a report on the concentration of any Appendix II constituents detected at statistically significant levels above background concentrations.

(h) If any Appendix II constituent is detected at statistically significant levels above the ground-water trigger level established under § 258.52 of this section, the owner or operator:

(1) Must notify the State of this finding in writing within 14 days. The notification must indicate what Phase II parameters or constituents have exceeded the ground-water trigger level;

(2) Must meet the requirements of § 258.56 of this part within a time period determined by the State; and

(3) Must continue to monitor in accordance with the Phase II monitoring program established under this section; or

(4) May demonstrate that a source other than a municipal solid waste landfill unit caused the contamination, or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in lieu of establishing a corrective action program, (s)he is not relieved of the requirement to establish a corrective action program within a reasonable time period unless the demonstration made under this paragraph successfully shows that a source other than the municipal solid waste landfill unit caused the increase, or that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration

under this paragraph, the owner or operator must:

(i) Notify the State in writing within 7 days of determining statistically significant evidence of contamination that (s)he intends to make a demonstration under this paragraph;

(ii) Within 90 days, or an alternate time period approved by the State, submit to the State a report that demonstrates that a source other than a municipal solid waste landfill unit caused the contamination or that the increase resulted from error in sampling, analysis, or evaluation; and

(iii) Continue to monitor in accordance with the Phase II monitoring program.

§ 258.56 Assessment of corrective measures.

(a) An assessment must be conducted by the owner or operator when any of the constituents listed in Appendix II has been detected at a statistically significant level exceeding the ground-water trigger levels defined under § 258.52 of this part during the Phase II monitoring program.

(b) The owner or operator must continue to monitor in accordance with the Phase II monitoring program. The State may require the owner or operator to conduct additional monitoring in order to characterize the nature and extent of the plume.

(c) The State shall specify the scope of the assessment, which may include the following:

(1) Assessment of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 258.57;

(2) Evaluation of performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(3) Assessment of the time required to begin and complete the remedy;

(4) Estimation of the costs of remedy implementation;

(5) Assessment of institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s); and

(6) Evaluation of public acceptability.

(d) The State may require the owner or operator to evaluate as part of the corrective measure study one or more specific potential remedies. These remedies may include a specific technology or combination of technologies, that, in the State's judgment, achieve the standards for remedies specified in § 258.57.

(e) The owner or operator shall submit a report to the State on the remedies evaluated pursuant to paragraphs (a)–(d). The State shall then select a remedy based on the criteria described in § 258.57.

(f) If at any time during the assessment described under paragraphs (a)–(e) of this section the State determines that the facility poses a threat to human health or the environment, the State may require the owner or operator to implement measures defined under § 258.58(a)(3) and/or (a)(4) to protect human health and the environment.

§ 258.57 Selection of remedy and establishment of ground-water protection standard.

(a) Based on the results of the corrective measure study conducted under § 258.56, the State must select a remedy that, at a minimum, meets the standards listed in paragraph (b) below.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to paragraphs (e) and (f) of this section;

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in § 258.58(d).

(c) In selecting a remedy that meets the standards of § 258.57(b), the State, as appropriate, shall consider the following evaluation factors:

(1) Any potential remedy(s) shall be assessed for the long- and short-term effectiveness and protectiveness it affords, along with the degree of certainty that the remedy will provide successful. Factors to be considered include:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) Effectiveness of the remedy in controlling the source to reduce further releases. The following factors should be considered:

(i) The extent to which containment practices will reduce further releases;

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) shall be assessed by considering the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s) shall be assessed.

(d) The State shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. The State will consider the following factors in determining the schedule of remedial activities;

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under § 258.57(e) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of

effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy; and

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;

(v) The hydrogeologic characteristic of the facility and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Practicable capability of the owner or operator.

(8) Other relevant factors.

(e) The State shall specify concentration levels for each Appendix II constituent detected in the ground water above trigger levels that the remedy must achieve. Such ground-water protection standards (GWPSs) will be established by the State as follows:

(1) The standard(s) shall be concentration levels in the ground water that protect human health and the environment;

(2) Unless another level is deemed necessary to protect environmental receptors, standards shall be established as follows:

(i) For known or suspected carcinogens, standards shall be established at concentration levels that represent an excess upper bound lifetime risk to an individual of between 1×10^{-4} and 1×10^{-7}, and

(ii) For systemic toxicants, standards shall represent concentration levels to which the human population (including sensitive subgroups) could be exposed on a daily basis without appreciable risk of deleterious effect during a lifetime.

[Note to § 258.57(e)(2)(i): EPA is considering alternatives to the 1×10^{-4} to 1×10^{-7} risk range. The Agency specifically requests comment on a fixed risk level of 1×10^{-5} or an upper bound risk level of 1×10^{-4} (with the States having discretion to be more stringent) as alternatives to the proposed risk range. A fixed risk level of 1×10^{-5} would provide a uniform level of protection across all States. On the other hand, setting an upper bound risk level of 1×10^{-4} would allow States greater flexibility in establishing more stringent risk levels based on site specific conditions.]

(3) In establishing ground-water protection standards that meet the requirements of § 258.57(e) (i) and (ii), above, the State may consider the following:

(i) Multiple contaminants in the ground water;

(ii) Exposure threats to sensitive environmental receptors;

(iii) Other site-specific exposure or potential exposure to ground water; and

(iv) The reliability, effectiveness, practicability, or other relevant factors of the remedy.

(4) For ground water that is a current or potential source of drinking water, the State shall consider maximum contaminant levels promulgated under the Safe Drinking Water Act in establishing ground-water protection standards; and

(5) If the owner or operator can demonstrate to the State that an Appendix II constituent already is present in the ground water at a background level, then the GWPS will not be set below background levels unless the State determines that:

(i) Cleanup to levels below background levels is necessary to protect human health and the environment; and

(ii) Such cleanup is in connection with an area-wide remedial action under other authorities.

(f) The State may determine that remediation of a release of an Appendix II constituent from a municipal solid waste landfill is not necessary if the owner or operator demonstrates to the State's satisfaction that:

(1) The ground water also is contaminated by substances that have originated from a source other than a municipal solid waste landfill unit and those substances are present in concentrations such that cleanup of the release from the municipal solid waste landfill unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not a current or potential source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that represents a statistically significant increase over background concentrations; or

(3) Remediation of the release(s) is technically impracticable or results in unacceptable cross-media impacts.

(g) A determination by the State pursuant to subparagraph (2) above shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water, or to remediate the ground water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

(h) The State shall specify in the remedy requirements for achieving compliance with the ground-water protection standards established under § 258.57(e) as follows:

(1) The ground-water protection standard shall be achieved at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 258.51(a).

(2) The State shall specify in the remedy the length of time during which the owner or operator must, in order to achieve compliance with a ground-water protection standard, demonstrate that concentrations of Appendix II constituents have not exceeded the standard(s). Factors that may be considered by the State in determining these timing requirements include:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the ground water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground water.

§ 258.58 Implementation of the corrective action program.

(a) If any constituent is detected at statistically significant levels above the ground-water protection standard established under § 258.57(e), the owner or operator must:

(1) Establish and implement a corrective action ground-water monitoring program that must:

(i) At a minimum, meet the requirements of a Phase II monitoring program under § 258.54;

(ii) Demonstrate the effectiveness of the corrective action remedy; and

(iii) Demonstrate compliance with ground-water protection standard pursuant to § 258.57(f).

(2) Implement the corrective action remedy selected under § 258.57;

(3) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination; and

(4) Take any interim measures deemed necessary by the State to ensure the protection of human health

and the environment. Interim measures should, to the extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 258.57. The following factors may be considered by the State in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) The State may determine, based on information developed by the owner or operator after implementation of the remedy has begun or other information, that compliance with a requirement(s) for the remedy selected under § 258.57 is not technically practicable. In making such determinations, the State shall consider:

(1) The owner or operator's efforts to achieve compliance with the requirement(s); and

(2) Whether other currently available or new and innovative methods or techniques could practicably achieve compliance with the requirements.

(c) If the State determines that compliance with a remedy requirement is not technically practicable, the State may require that the owner or operator:

(1) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(2) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures required to implement the remedy that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(d) All solid wastes that are managed pursuant to a remedy required under § 258.57, or an interim measure required under § 258.58(a)(4), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 258.57 shall be considered complete when the State determines that:

(1) Compliance with the ground-water protection standards established under § 258.57(e) have been achieved, according to the requirements of § 258.57(f); and

(2) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator shall submit to the State a certification that the remedy has been completed in accordance with the requirements of § 258.58(e). The certification must be signed by the owner or operator and by an independent professional(s) skilled in the appropriate technical discipline(s).

(g) When, upon receipt of the certification, and in consideration of any other relevant information, the State determines that the corrective action remedy has been completed in accordance with the requirements under paragraph (e) of this section, the State shall release the permittee from the requirements for financial assurance for corrective action under § 258.32.

§ 258.59 [Reserved].

Appendix I—Volatile Organic Constituents for Ground-Water Monitoring

Acetone
Acrolein
Acrylonitrile
Benzene
Bromochloromethane
Bromodichloromethane
cis-1,3-Dichloropropene
Trans-1,3-Dichloropropene
1,4-Difluorobenzene
Ethanol
Ethylbenzene
Ethyl methacrylate
4-Bromofluorobenzene
Bromoform
Bromomethane
2-Butanone (Methyl ethyl ketone)
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Chlorodibromomethane
Chloroethane
2-Chloroethyl vinyl ether
Chloroform
Chloromethane
Dibromomethane
1,4-Dichloro-2-butane
Dichlorodifluoromethane
1,1-Dichloroethane
1,2-Dichloroethane
2-Hexanone
Iodomethane
Methylene chloride
4-Methyl-2-pentanone
1,1-Dichloroethene
trans-1,2-Dichloroethene
Styrene
1,1,2,2-Tetrachloroethane
Toluene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene
Trichlorofluoromethane
1,2,3-Trichloropropane
Vinyl acetate
Vinyl chloride
Xylene

Appendix II—Hazardous Constituents

Systematic name	CAS RN	Common name
Acenaphthylene	208-96-8	Acenaphthalene.
Acenaphthylene, 1,2-dihydro-	83-32-9	Acenaphthene.
Acetamide, N-(4-ethoxphenyl)-H	62-44-2	Phenacetin.
Acetamide, N-9H-fluoren-2-yl	53-96-3	2-Acetylaminofluorene.
Acetic acid ethenyl ester	108-05-4	Vinyl acetate.
Acetic acid (2,4-5-trichloro-phenoxy)-	93-76-5	2,4,5-T.
Acetic acid (2,4-dichloro-phenoxy)-	94-75-7	2,4-Dichlorophenoxy-acetic acid.
Acetronitrile	75-05-8	Acetonitrile.
Aluminum	7429-90-5	Aluminum (total).
Anthracene	120-12-7	Anthracene.
Antimony	7440-36-0	Antimony (total).
Aroclor 1016	12674-11-2	Aroclor 1016.
Aroclor 1221	11104-28-2	Aroclor 1221.
Aroclor 1232	11141-16-5	Aroclor 1232.
Aroclor 1242	53469-21-9	Aroclor 1242.
Aroclor 1248	12672-29-6	Aroclor 1248.
Aroclor 1254	11097-69-1	Aroclor 1254.

Systematic name	CAS RN	Common name
Aroclor 1260	11096-82-5	Aroclor 1260.
Arsenic	7440-38-2	Arsenic (total).
Barium	7440-39-3	Barium total).
Benz[a]anthracene, 7,12,-dimethyl-	57-97-6	7,12-Dimethylbenz[a] anthracene.
Benz[j]aceanthrylene, 1,2-dihydo-3-methyl	56-49-5	3-Methylcholanthrene.
Benz[e]acephenanthrylene	205-99-2	Benzo[b]fluoranthene.
Benzamide, 3,5-dichloror-N-(1,1-dimethyl-2-propyni)-	23950-58-5	Benzo[b]fluoranthene.
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5	Pronamide.
Benz[a]anthracene	56-55-3	Benz[a]anthracene.
Benzenamine	62-53-3	Aniline.
Benzenamine, 2-methyl-5-nitro	99-55-8	5-Nitro-o-toluidine.
Benzenamine, 2-nitro	88-74-4	2-Nitroaniline.
Benzenamine, 3-nitro	99-09-2	3-Nitroaniline.
Benzenamine, 4-chloro	106-47-8	p-Chloroaniline.
Benzenamine, 4-nitro-	100-01-6	p-nitroaniline.
Benzenamine, 4,4'-methylenebis [2-chloro	101-14-4	4,4'-Methylenebis (2-chloroaniline).
Benzenamine, N-nitroso-N-phenyl	86-30-6	N-Nitrosodiphenylmamine.
Benzenamine, N-phenyl-	122-39-4	Diphenylamine.
Benzenamine, N,N-dimethy-4-(phenylazo)-	60-11-7	p-Dimethylamino-azobenzene.
Benzene	71-43-2	Benzene.
Benzene, 1-bromo-4-phenoxy-	101-55-3	4-Bromophenyl phenyl ether.
Benzene, 1-chloro-4-phenoxy-	7005-72-3	4-Chlorophenyl phenyl ether.
Benzene, 1-methyl-2,4-dinitro	121-14-2	2,4-Dinitrotoluene.
Benzene, 1,1'-(2,2,2,-trichloro-ethylidene)bis[4-chloro-	50-29-3	DDT.
Benzene, 1,1'-(2,2,2-trichloro-ethylidene)bis[4-methoxy	72-43-5	Methoxychlor.
Benzene 1,1'-(2,2-dichloro-ethylidene)bis[4-chloro-	72-54-8	DDD.
Benzene 1,1'-(2,2-dichloro-ethenylidene)bis[4-chloro	72-55-9	DDE.
Benzene 1,2-dichloro-	95-50-1	o-Dichlorobenzene.
Benzene 1,2,4-trichloro	120-82-1	1,2,4-trichlorobenzene.
Benzene 1,2,4,5-tetrachloro	95-94-3	1,2,4,5-Tetrachloro-benzene.
Benzene 1,3-Dichloro-	541-73-1	M-Dichlorobenzene.
Benzene 1,4-dichloro-	106-46-7	p-Dichlorobenzene.
Benzene 1,4-dinitro-	100-25-4	meta-Dinitrobenzene.
Benzene, 2-methyl-1,3-dinitro-	606-20-2	2,6-Dinitrotoluene.
Benzene, chloro	108-90-7	Chlorobenzene.
Benzene, dimethyl-	1330-20-7	Xylene (total).
Benzene, ethenyl-	100-42-5	Styrene.
Benzene, ethyl-	100-41-4	Ethyl benzene.
Benzene, hexachloro-	118-74-1	Hexachlorobenzene.
Benzene, methyl	108-88-3	Toluene.
Benzene, nitro-	98-95-3	Nitrobenzene.
Benzene, pentachloro-	608-93-5	Pentachlorobenzene.
Benzene, pentachloronitro-	82-68-8	Pentachloronitrobenzene.
Benzeneacetic acid, 4-chloro-a-(4-chlorophenyl)-a-hydroxy-, ethyl ester	510-15-6	Chlorobenzilate.
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester	117-81-7	Bis(2-ethylhexyl) phthalate.
1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7	Butyl benzyl phthalate.
1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	Di-n-butyl phthalate.
1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2	Diethyl phthalate.
1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	Dimethyl phthalate.
1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	Di-n-octyl phthalate.
1,3-Benzenediol	108-46-3	Resorcinol.
Benzeneethanamine, a, a-dimethyl-	122-09-8	alpha, alpha-Dimethyl-phenethylamine.
Benzenemethanol	100-51-6	Benzyl alcohol.
Benzenethiol	108-98-5	Benzenethiol.
1,3-Benodioxole, 5-(1-propenyl)-	120-58-1	Isosafrole.
1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7	Safrole.
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene.
Benzoic acid	65-85-0	Benzoic acid.
Benzo[rst]pentaphene	189-55-9	Dibenzo[a,i]pyrene.
Benzo[ghi]perylene	191-24-2	Benzo(ghi)perylene.
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene.
Beryllium	7440-41-7	Beryllium (total).
1,1'-Biphen[yi]-4,4'-diamine, 3,3'-dichloro-	91-94-1	3,3'-Dichlorobenzidine.
1,1'-Biphen[yi]-4,4'-diamine, 3,3'-dimethoxy-	119-90-4	3,3'-Dimethoxybenzidine.
1,1'-Biphen[yi]-4,4'-diamine, 3,3'-dimethyl-	119-93-7	3,3'-Dimethylbenzidine.
1,1'-Biphenyl[-4-amine	92-67-1	4-Aminobiphenyl.
1,1'-Biphenyl[-4-4-amine	92-87-5	Benzidine.
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	Hexachorobutadiene.
1,3-Butadiene, 2-chloro-	126-99-8	2-Chloro-1,3-butadine.
1-Butanamine, N-butyl-N-nitroso-	924-16-3	N-Nitrosodi-n-butylamine.
2-Butanone	78-93-3	Methyl ethyl ketone.
2-Butene, 1,4-dichloro-, (E)-	110-57-6	trans-1,4-Dichloro-2-butene.
Cadmium	7440-43-9	Cadmium (total).
Calcium	7440-70-2	Calcium (total).
Carbon disulfide	75-15-0	Carbon disulfide.
Chromium	7440-47-3	Chromium (total).
Chrysene	218-01-9	Chrysene.
Cobalt	7440-48-4	Cobalt (total).
Copper	7440-50-8	Copper (total).
Cyanide	57-12-5	Cyanide.
2,5-Cyclohexadiene-1,4 dione	106-51-4	p-Benzoquinone.
Cyclohexane, 1,2,3,4,5,6-hexachloro-(1a,2a,3B,4a,5B,6B)-	319-84-6	alpha-BHC.

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Systematic name	CAS RN	Common name
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1a,2B,3a,4B,5a,6B)-	319-85-7	beta-BHC.
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1a,2a,3a,4B,5a,6B)-	319-86-8	delta-BHC.
Cyclohexane, 1,2,3,4,5,6-hexachloro-(1a,2a,3B,4a,5a,6B)-	58-89-9	gamma-BHC.
2-Cyclohexen-1-one, 3,5,5-trimethyl	78-59-1	Isophorone.
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4	Hexachlorocyclopent-adiene.
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene.
Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-	1746-01-6	2,3,7,8-Tetrachlorodi benzo-p-dioxin; Hexachlorodibenzo-p-dioxin; Pentachlorodi-benzo-p-dioxins; Tetra-chlorodibenzo-p-dioxins.
Dibenzo[b,def]chrysene	189-64-0	Dibenzo[a,h]pyrene.
Dibenzofuran	132-64-9	Dibenzofuran, Hexa-chloro-dibenzofurans; Penta-chlorodibenzo-furans; Tetrachlorodi-benzofurans.
2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-la,2,2a,3,6,6a,7,7a-octahydro, 1aa,2B,2aa,3B,6B,6aa,7B,7aa)-.	60-57-1	Dieldrin.
2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro, 1aa,2B,2aB,3a,6a,6aB,7B,7aa)-.	72-20-8	Endrin.
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, 1aa,4a,4aB,5a,8a,8aB)-.	309-00-2	Aldrin.
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, 1aa,4a,4aB,5B,8B,8aB)-.	465-73-6	Isodrin.
1,4-Dioxane	123-91-1	1,4-Dioxane.
Ethanamine, N-ethyl-N-nitroso	55-18-5	N-Nitrosodiethylamine.
Ethanamine, N-methyl-N-nitroso-	10595-95-6	N-Nitrosomethylethylamine.
Ethane, 1,1-dichloro-	75-34-3	1,1-Dichloroethane.
Ethane, 1,1'-[methylenebis (oxy)]bis[2-chloro-	111-91-1	Bis(2-chloroethoxy) methane.
Ethane, 1,1'-oxybis[2-chloro-	111-44-4	Bis(2-chloroethyl) ether.
Ethane, 1,1'-trichloro-	71-55-6	1,1,1-Trichloroethane.
Ethane, 1,1,1,2-tetrachloro-	630-20-6	1,1,1,2-Tetrachloroethane.
Ethane, 1,1,2-trichloro-	79-00-5	1,1,2-Trichloroethane.
Ethane, 1,1,2,2-tetrachloro-	79-34-5	1,1,2,2-Tetrachloroethane.
Ethane, 1,2-dibromo-	106-93-4	1,2-Dibromoethane.
Ethane, 1,2-dichloro-	107-06-2	1,2-Dichloroethane.
Ethane, chloro-	75-00-3	Chloroethane.
Ethane, hexachloro-	67-72-1	Hexachloroethane.
Ethane, pentachloro-	76-01-7	Pentachloroethane.
1,2-Ethanediamine, N,N-dimethyl-N'-'2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5	Methapyrilene.
Ethanone, 1-phenyl-	98-86-2	Acetophenone.
Ethene, (2-chloroethoxy)-	110-75-8	2-Chloroethyl vinyl ether.
Ethene, 1,1-dichloro-	75-35-4	1,1-Dichloroethylene.
Ethene, 1,2-dichloro- (E)-	156-60-5	trans-1,2-Dichloro ethene.
Ethene, chloro-	75-01-4	Vinyl chloride.
Ethene, tetrachloro-	127-18-4	Tetrachloroethene.
Ethene, trichloro-	79-01-6	Trichloroethene.
Fluoranthene	206-44-0	Fluoranthene.
Fluoride	12984-48-8	Fluoride.
9H-Fluorene	86-73-7	Fluorene.
2-Hexanone	591-78-6	2-Hexanone.
Hydrazine, 1,2-diphenyl-	122-66-7	1,2-Diphenylhydrazine.
Indeno[1,2,3-cd]pyrene	193-39-5	Indeno(1,2,3-cd)pyrene.
Iron	7439-89-6	Iron (total).
Lead	7439-92-1	Lead (total).
Magnesium	7439-94-4	Magnesium (total).
Manganese	7439-96-5	Manganese (total).
Mercury	7439-97-6	Mercury (total).
Methanamine, N-methyl-N-nitroso	62-75-9	N-Nitrosodimethylamine.
Methane, bromo-	74-83-9	Bromomethane.
Methane, bromodichloro-	75-27-4	Bromodichloromethane.
Methane, chloro-	74-87-3	Chloromethane.
Methane, dibromo-	74-95-3	Dibromomethane.
Methane, dibromochloro-	124-48-1	Chlorodibromomethane.
Methane, dichloro-	74-09-2	Dichloromethane.
Methane, dichlorodifluoro-	75-71-8	Dichlorodifluoromethane.
Methane, iodo-	74-88-4	Iodomethane.
Methane, tetrachloro-	56-23-5	Carbon tetrachloride.
Methane, tribromo-	75-25-2	Tribromomethane.
Methane, trichloro-	67-66-3	Chloroform.
Methane, trichlorofluoro-	75-69-4	Trichloromonofluoromethane.
Methanesulfonic acid, methyl ester	66-27-3	Methyl methanesulfonate.
Methanethiol, trichloro-	75-70-7	Trichloromethanethiol.
4,7-Methano-1H-indene-1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro.	57-74-9	Chlordane.
4,7-Methano-1H-indene-1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8	Heptachlor.
2,5-Methano-2H-indeno[1,2-b] oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aa,1bB,2a,5a,5aB,6B,6aa).	1024-57-3	Heptachlor epoxide.
6,9-Methano-2,4,3-benzo-dioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3a,5aB,6a,9a,9aB).	959-98-8	Endosulfan I.
6,9-Methano-2,4,3-benzo-dioxathiepin, 6,7,8,9,10,10-hexachloro,1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3a,5aa,6B,9B,9aa).	33213-65-9	Endosulfan II.
1,3,4-Methano-2H-cyclobutal [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachloro-octahydro-.	143-50-0	Kepone.
1,2,4-Methanocyclopenta[cd] pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachloro-decahydro-, (1a,2B,2aB,4B,4aB,5B,6aB,6aB,7R*).	7421-93-4	Endrin aldehyde.
Morpholine, 4-nitroso-	59-89-2	N-Nitrosomorpholine.

Systematic name	CAS RN	Common name
1-Naphthalenamine	134-32-7	1-Naphthylamine.
2-Naphthalenamine	91-59-8	2-Naphthylamine.
Naphthalene	91-20-3	Naphthalene.
Naphthalene, 2-chloro-	91-58-7	2-Chloronaphthalene.
Naphthalene, 2-methyl-	91-57-6	2-Methylnaphthalene.
1,4-Naphthalenedione	130-15-4	1,4-Naphthoquinone.
Naphtho[1,2,3,4-def]chrysene	192-65-4	Dibenzo[a,e]pyrene.
Nickel	7440-02-0	Nickel (total).
Osmium	7440-04-2	Osmium (total).
Oxirane	75-21-8	Ethylene oxide.
2-Pentanone, 4-methyl-	108-10-1	4-Methyl-2-pentanone.
Phenanthrene	85-01-8	Phenanthrene.
Phenol	108-95-2	Phenol.
Phenol, 2-(1-methylpropyl)-4,6-dinitro	88-85-7	2-sec-Butyl-4,6-dinitro-phenol.
Phenol, 2-chloro-	95-57-8	2-Chlorophenol.
Phenol, 2-methyl-	95-48-7	ortho-Cresol.
Phenol, 2-methyl-4,6-dinitro-	534-52-1	4,6-Dinitro-o-cresol.
Phenol, 2-nitro-	88-75-5	2-Nitrophenol.
Phenol, 2,2'-methylenebis [3,4,6-trichloro-	70-30-4	Hexachlorophene.
Phenol, 2,3,4,6-tetrachloro-	58-90-2	2,3,4,6-Tetrachlorophenol.
Phenol, 2,4-dichloro-	120-83-2	2,4-Dichlorophenol.
Phenol, 2,4-dimethyl-	105-67-9	2,4-Dimethylphenol.
Phenol, 2,4-dinitro-	51-28-5	2,4-Dinitrophenol.
Phenol, 2,4,5-trichloro-	95-95-4	2,4,5-Trichlorophenol.
Phenol, 2,4,6-trichloro-	88-06-2	2,4,6-Trichlorophenol.
Phenol, 2,6-dichloro-	87-65-0	2,6-Dichlorophenol.
Phenol, 4-chloro-3-methyl-	59-50-7	p-Chloro-m-cresol.
Phenol, 4-methyl-	106-44-5	para-Cresol.
Phenol, 4-nitro-	100-02-7	4-Nitrophenol.
Phenol, pentachloro-	87-86-5	Pentachlorophenol.
Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio) methyl] ester	298-02-2	Phorate.
Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio) ethyl] ester	298-04-4	Disulfoton.
Phosphorothioic acid, O-[4-[(dimethylamino) sulfonyl)] phenyl] 0,0-dimethyl ester.	52-85-7	Famphur.
Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	56-38-2	Parathion.
Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	297-97-2	0,0-Diethyl 0,2-pyrazinyl phosphorothioate.
Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0	Methyl parathion.
Piperidine, 1-nitroso-	100-75-4	N-Nitrosopiperidine.
Potassium	7440-09-7	Potassium (total).
1-Propanamine, N-nitroso-N-propyl-	621-64-7	Di-n-propylnitrosamine.
Propane, 1,2-dibromo-3-chloro	96-12-8	1,2-Dibromo-3-chloro-propane.
Propane, 1,2,-dichloro-	78-87-5	1,2-Dichloropropane.
Propane, 12,3-trichloro-	96-18-4	1,2,3-Trichloropropane.
Propane, 2,2'-oxybis[1-chloro-	108-60-1	Bis(2-chloroisopropyl) ether.
Propanedinitrile	109-77-3	Malononitrile.
Propanenitrile	107-12-0	Ethyl cyanide.
Propanenitrile, 3-chloro-	542-76-7	3-Chloropropionitrile.
Propanoic acid, 2-(2,4,5-trichlorophenoxyl)-	93-72-1	Silvex.
1-Propanol, 2,3-dibromo-phosphate (3:1)	126-72-7	Tris(2,3-dibromopropyl) phosphate.
1-Propanol, 2-methyl-	78-83-1	Isobutyl alcohol.
2-Propanone	67-64-1	Acetone.
2-Propenal	107-02-8	Acrolein.
1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7	Hexachloropropene.
1-Propene, 1,3-dichloro-, (E)-	10061-02-6	trans-1,3-Dichloropropene.
1-Propene, 1,3-dichloro-, (Z)-	10061-01-5	cis-1,3-Dichloropropene.
1-Propene, 1,3-chloro-	107-05-1	3-Chloropropene.
2-Propenenitrile, 2-methyl-	126-98-7	Methacrylonitrile.
2-Propenenitrile	107-13-1	Acrylonitrile.
2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2	Ethyl methacrylate.
2-Propenoic acid, 2-methyl-, methyl ester	80-62-6	Methyl methacrylate.
2-Propen-1-ol	107-18-6	Allyl alcohol.
2-Propyn-1-ol	107-19-7	2-Propyn-1-ol.
Pyrene	129-00-0	Pyrene.
Pyridine	110-86-1	Pyridine.
Pyridine, 2-methyl-	109-06-8	2-Picoline.
Pyridine, 1-nitroso-	930-55-2	N-Nitrosopyrrolidine.
Selenium	7782-49-2	Selenium (total).
Silver	7440-22-4	Silver (total).
Sodium	7440-23-5	Sodium (total).
Sulfide	18496-25-8	Sulfide.
Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl) phenoxy)-1-methylethyl ester.	140-57-8	Aramite.
Thallium	7440-28-0	Thallium (total).
Thiodiphosphoric acid ([HO)$_2$ P(S)]$_2$O), tetraethyl ester	3689-24-5	Tetraethyldithiopyro-phosphate.
Tin	7440-31-5	Tin (total).
Toxaphene	8001-35-2	Toxaphene.
Vanadium	7440-62-2	Vanadium (total).
Zinc	7440-66-6	Zinc (total).

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APPENDIX III.—CARCINOGENIC SLOPE FACTORS (CSF's) AND REFERENCE DOSES (RfD's) FOR SELECTED HAZARDOUS CONSTITUENTS

CAS No.	Class	Chemical name	Health based levels for	
			Systemic toxicants—RFD (mg/kg/day)	Carcinogens—CSF (mg/kg/day)
67-64-1		Acetone	1.0×10^{-1}	
75-05-8		Acetonitrile	6.0×10^{-2}	
98-86-2		Acetophenone	1.0×10^{-1}	
107-13-1	(B1)	Acrylonitrile		5.4×10^{-1}
309-00-2	(B2)	Aldrin	3.0×10^{-5}	17
62-53-3	(C)	Aniline		2.6×10^{-2}
7440-36-0		Antimony	4.0×10^{-4}	
7440-39-3		Barium [a]	5.0×10^{-2}	
71-43-2	(A)	Benzene [a]		2.9×10^{-2}
7440-41-7		Beryllium	5.0×10^{-3}	
111-44-4	(B2)	Bis(chloroethyl)ether		1.1
117-81-7	(B2)	Bis(2-ethylhexyl)phthalate	2.0×10^{-2}	8.4×10^{-3}
75-27-4		Bromodichloromethane	2.0×10^{-2}	
75-25-2		Bromoform	2.0×10^{-2}	
74-83-9		Bromomethane	4.0×10^{-4}	
75-15-0		Carbon disulfide	1.0×10^{-1}	
56-23-5	(B2)	Carbon tetrachloride [a]	7.0×10^{-4}	1.3×10^{-1}
57-74-9	(B2)	Chlordane	5.0×10^{-4}	1.3
108-90-7		Chlorobenzene	3.0×10^{-2}	
67-66-3	(B2)	Chloroform	1.0×10^{-2}	6.1×10^{-3}
16065-83-1		Chromium (III) [a]	1	
7440-47-3		Chromium (VI) [a]	5.0×10^{-3}	
108-39-4		Cresol, meta	5.0×10^{-2}	
95-48-7		Cresol, ortho	5.0×10^{-2}	
106-44-5		Cresol, para	5.0×10^{-2}	
57-12-5		Cyanide	2.0×10^{-2}	
72-55-9	(B2)	DDE		3.4×10^{-1}
72-54-8	(B2)	DDD		2.4×10^{-1}
50-29-3	(B2)	DDT	5.0×10^{-4}	3.4×10^{-1}
124-48-1		Dibromochloromethane	2.0×10^{-2}	
84-74-2		Dibutyl phthalate	1.0×10^{-1}	
924-16-3	(B2)	Dibutylnitrosamine (N-Nitrosodi-n-butylamine)		5.4
75-71-8		Dichlorodifluoromethane	2.0×10^{-1}	
107-06-2	(B2)	1,2-Dichloroethane [a]		9.1×10^{-2}
75-35-4	(C)	1,1-Dichloroethylene [a]	9.0×10^{-3}	0.6
120-83-2		2,4-Dichlorophenol	3.0×10^{-3}	
60-57-1	(B2)	Dieldrin	5.0×10^{-5}	16
84-66-2		Diethyl phthalate	8.0×10^{-1}	
55-18-5	(B2)	Diethylnitrosamine (N-Nitrosodiethylamine)		150
60-51-5		Demethoate	2.0×10^{-2}	
62-75-9	(B2)	Dimethylnitrosamine (N-Nitrosodimethylamine)		51
51-28-5		2,4 Dinitrophenol	2.0×10^{-3}	
88-85-7		Dinoseb	1.0×10^{-3}	
122-39-4		Diphenylamine	3.0×10^{-2}	
298-04-4		Disulfotan	4.0×10^{-5}	
100-41-4		Ethylbenzene	1.0×10^{-1}	
76-44-8	(B2)	Heptachlor	5.0×10^{-4}	4.5
1024-57-3	(B2)	Heptachlor epoxide		9.1
87-68-3	(C)	Hexachlorobutadiene	2.0×10^{-3}	7.8×10^{-2}
319-84-6	(B2)	Hexachlorocyclohexane—alpha (alpha—BHC)		6.3
319-85-7	(C)	Hexachlorocyclohexane—beta (beta—BHC)		1.8
58-89-9	(C)	Hexachlorocyclohexane—gamma (Lindane) [a]	3.0×10^{-4}	1.3
77-47-4		Hexachlorocyclopentadiene	7.0×10^{-3}	
67-72-1	(C)	Hexachloroethane	1.0×10^{-2}	1.4×10^{-2}
78-83-1		Isobutyl alcohol	3.0×10^{-1}	
78-59-1		Isophorone	2.0×10^{-1}	
126-98-7		Methacrylonitrile	1.0×10^{-4}	
78-93-3		Methyl ethyl ketone	5.0×10^{-2}	
108-10-1		Methyl isobutyl ketone	5.0×10^{-2}	
298-00-0		Methyl parathion	3.0×10^{-4}	
75-09-2	(B2)	Methylene chloride	6.0×10^{-2}	7.5×10^{-3}
10595-95-6	(B2)	N-Nitroso-N-methylethylamine		22
621-64-7	(B2)	N-Nitrosodi-N-propylamine		7.0
86-30-6	(B2)	N-Nitrosodiphenylamine		4.9×10^{-3}
930-55-2	(B2)	N-Nitrosopyrrolidine		2.1
7440-02-0		Nickel	2.0×10^{-2}	
98-95-3		Nitrobenzene	5.0×10^{-4}	
56-38-2		Parathion	3.3×10^{-4}	
608-93-5		Pentachlorobenzene	8.0×10^{-4}	
82-68-8		Pentachloronitrobenzene	3.0×10^{-3}	
87-86-5		Pentachlorophenol	3.0×10^{-2}	
108-95-2		Phenol	4.0×10^{-2}	
1336-36-2	(B2)	Polychlorinated biphenyls		7.7
23950-58-5		Pronamide	8.0×10^{-2}	
110-86-1		Pyridine	1.0×10^{-3}	
7440-22-4		Silver [a]	3.0×10^{-3}	
100-42-5	(B2)	Styrene	2.0×10^{-1}	3.0×10^{-2}

APPENDIX III.—CARCINOGENIC SLOPE FACTORS (CSF's) AND REFERENCE DOSES (RfD's) FOR SELECTED HAZARDOUS CONSTITUENTS—Continued

CAS No.	Class	Chemical name	Health based levels for	
			Systemic toxicants—RFD (mg/kg/day)	Carcinogens—CSF (mg/kg/day)
95-94-3		1,2,4,5-Tetrachlorobenzene	3.0×10^{-4}	
79-34-5	(C)	1,1,2,2-Tetrachloroethane		0.2
127-18-4	(C)	Tetrachloroethylene	1.0×10^{-2} [b]	5.1×10^{-3}
58-90-2		2,3,4,6-Tetrachlorophenol	3.0×10^{-2}	
108-88-3		Toluene	3.0×10^{-1}	
8001-35-2	(B2)	Toxaphene [a]		1.1
120-82-1		1,2,4-Trichlorobenzene	2.0×10^{-2}	
71-55-6		1,1,1-Trichloroethane [a]	9.0×10^{-2}	
79-00-5	(C)	1,1,2-Trichloroethane	2.0×10^{-2} [b]	5.7×10^{-2}
79-01-6	(B2)	Trichloroethylene [a]		1.1×10^{-2}
75-69-4		Trichloromonofluoromethane	3.0×10^{-1}	
95-95-4		2,4,5-Trichlorophenol	1.0×10^{-1}	
88-06-2	(B2)	2,4,6-Trichlorophenol		0.02
96-18-4		1,2,3-Trichloropropane	1.0×10^{-3}	
1330-20-7		Xylenes	2	

[a] MCL's are available for these constituents (see Table 2). MCL's should be used as trigger levels.
[b] Constituent is considered a carcinogen by the oral route. RfD is based on non-carcinogenic effects only. Trigger levels should be based on the lower of the two levels (unless an MCL exists).

How to calculate trigger levels from RfDs and RSDs:

I. Systemic Toxicants:

To calculate a trigger level based on a reference dose (RfD), multiply the RfD by the average adult body weight (70 kg) over the average water intake (2 liters of water per day).

Example for acetonitrite:

RfD = 6.0×10^{-3} mg/kg/day

$$\frac{6.0\times10^{-3}\text{ mg}}{\text{kg-day}} \times \frac{70\text{ kg}}{2\text{L/day}} = 0.2\text{ mg/L}$$

II. Carcinogens:

To calculate a trigger level based on a carcinogenic slope factor (CSF), derive a risk-specific dose (RSD), then multiply the RSD by the average adult body weight (70 kg) over the average water intake (2 liters of water per day).

example of aldrin:

A. Aldrin is classified as a Group B2 carcinogen; it has a CSF of 17 $(mg/kg/day)^{-1}$. Using a 10^{-6} risk level, the RSD is:

$$\frac{1\times10^{-6}}{17\ (mg/kg/day)^{-1}} = 5.9\times10^{-8}\text{ mg/kg/day}$$

The trigger level is:

$$\frac{5.9\times10^{-8}\text{ mg}}{\text{kg-day}} \times \frac{70\text{ kg}}{2\text{L/day}} = 2.1\times10^{-6}\text{ mg/L}$$

B. Using a 10^{-4} risk level, the RSD is:

$$\frac{1\times10^{-4}}{17\ (mg/kg/day)^{-1}} = 5.9\times10^{-6}\text{ mg/kg/day}$$

The trigger level is:

$$\frac{5.9\times10^{-6}\text{ mg}}{\text{kg-day}} \times \frac{70\text{ kg}}{2\text{L/day}} = 2.1\times10^{-4}\text{ mg/L}$$

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Federal Register

Tuesday
August 30, 1988

Part IV

Department of Education

34 CFR Part 30
Debt Collection; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 30

Debt Collection

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary of Education (Secretary) amends Part 30 of Title 34 of the Code of Federal Regulations. The amendments implement revisions to the Federal Claims Collection Standards (FCCS), which require each Federal agency to issue its own debt collection regulations, adapted to the agency's particular requirements, implementing those aspects of the FCCS that require further regulation. The regulations are intended to strengthen the ability of the Secretary to collect outstanding debts.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: James A. Nielson, U.S. Department of Education, Office of Management, 400 Maryland Avenue, SW., Room 3017 FOB–6, Washington, DC 20202. (202) 732–4149.

SUPPLEMENTARY INFORMATION: The Federal Claims Collection Standards (FCCS) (4 CFR Parts 101–105) were revised on March 9, 1984 (49 FR 8889), to reflect changes made by the Debt Collection Act of 1982 to the Federal Claims Collection Act of 1966. The FCCS, published jointly by the Department of Justice and the General Accounting Office, require agencies to publish implementing regulations.

The Secretary has already published various rulemaking documents to implement some of the revised FCCS requirements, including—

1. Proposed regulations regarding the charging of interest, published in the **Federal Register** on July 11, 1984 (49 FR 28284). (That NPRM proposed to amend various regulations, including the Education Department General Administrative Regulations. However, the Department now plans to publish those regulations in Subpart D of Part 30);

2. Final regulations regarding referral of debts to the Internal Revenue Service (IRS) for offset against tax refunds, published in the **Federal Register** on July 1, 1986 (51 FR 24095) (34 CFR 30.33);

3. Final regulations providing for: (a) offset of debts owed under programs and activities of the Department or referred to the Department by other Federal agencies; and (b) referral of debts to other Federal agencies for offset, published in the **Federal Register** on October 7, 1986 (51 FR 35645) (34 CFR Part 30, Subpart C); and

4. Final regulations regarding the reporting of debts to Consumer Reporting Agencies, published in the **Federal Register** on October 7, 1986 (51 FR 35645) (34 CFR 30.35).

The Department has also published final regulations in Parts 31 and 32 that provide salary offset procedures. The Department recently published an NPRM proposing to revise some of the procedures under Part 31 (see 53 FR 15336, April 28, 1988). The current offset procedures in Part 31 are used to recover debts owed under the Department's financial assistance programs by employees of all Federal agencies. The offset procedures in Part 32 are used to collect debts, other than those covered by Part 31 or 30, that are owed by the Department's current and former employees.

This rulemaking document establishes regulations on debt collection matters not covered by the other rulemaking documents. This rulemaking action, together with most of the other debt collection rules of the Department, will complete a unified set of debt collection regulations in 34 CFR Part 30.

Unless otherwise provided in these rules, the Secretary adopts the standards and procedures in the FCCS. Thus, these regulations supplement the FCCS in those instances where the FCCS requires agency-specific rules or the nature of a particular debt collection activity administered by the Department calls for further clarification of the FCCS. In some cases, these regulations clarify the relationship between the laws administered by the Secretary and the requirements of the FCCS.

The citations of legal authority appearing after the various sections of these regulations include references to 31 U.S.C. 3711(e), 20 U.S.C. 1221e–3(a)(1), and the Secretary's general debt collection authority under 20 U.S.C. 1226a–1. Various other statutory provisions contain authority for the promulgation of these rules with respect to particular programs administered by the Secretary. See, e.g., 20 U.S.C. 1082(a) (Guaranteed Student Loan Program). These supplemental authorities have been omitted from the citations of legal authority contained in these rules for the sake of brevity. This omission is not intended to limit in any way the programs or activities under which the Secretary is authorized to engage in debt collection under these or other procedures. Further, the Secretary reserves the right to rely on these other authorities to support these regulations.

In response to the NPRM, the Secretary received two telephone inquiries and no written comments. Therefore, the Secretary publishes these final regulations without any changes from the NPRM other than a technical change to § 30.1(c)(3) removing a cross reference to Subpart D to reflect that fact that the Department has not yet published a Subpart D to Part 30. Also, as promised in the preamble to the NPRM for this rulemaking action, a technical amendment is made to the introduction section to Subpart C, "What Provisions Apply to Administrative Offset?" Without the revision, certain provisions in that section would duplicate portions of § 30.2 "On what authority does the Secretary rely to collect a debt under this Part?"

The rationale supporting these provisions is explained in detail in the preamble to the proposed regulations, at 53 FR 5136–5138. That rationale is adopted here by reference.

Part E of the General Education Provisions Act was revised by Public Law 100–297. Under the revised Part, the Secretary will have authority to compromise debts in which the amount to be repaid is within $200,000 of the disputed amount. Because P.L. 100–297 became law after the publication of the NPRM for this rulemaking action, regulations to implement the new authority have not yet been developed. The Secretary intends to publish a rulemaking document to implement the new authority in the near future

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major regulations because they do not meet the criteria for major regulations established in that Order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Education Impact

In the notice of proposal rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rule and on its own review, the

Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 30

Claims, Debt collection.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: July 20, 1988.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 30 of Title 34 of the Code of Federal Regulations, as follows:

1. The table of contents is amended by adding Subparts A, E, and F, and revising the authority citation, to read as follows:

PART 30—DEBT COLLECTION

Subpart A—General

Sec.

30.1 What administrative actions may the Secretary take to collect a debt?
30.2 On what authority does the Secretary rely to collect a debt under this Part?
* * * * *

Subpart E—What Costs and Penalties Does the Secretary Impose on Delinquent Debtors?

30.60 What costs does the Secretary impose on delinquent debtors?
30.61 What penalties does the Secretary impose on delinquent debtors?
30.62 When does the Secretary forego interest, administrative costs, or penalties?

Subpart F—What Requirements Apply to the Compromise of a Debt or the Suspension or Termination of Collection Action?

30.70 How does the Secretary exercise discretion to compromise a debt or to suspend or terminate collection of a debt?

Authority: 20 U.S.C. 1221e–3(a)(1), and 1226a–1, 31 U.S.C. 3711(e), 31 U.S.C. 3716(b) and 3720A, unless otherwise noted.

2. New Subpart A is added, to read as follows:

Subpart A—General

§ 30.1 What administrative actions may the Secretary take to collect a debt?

(a) The Secretary may take one or more of the following actions to collect a debt owed to the United States:

(1) Collect the debt under the procedures authorized in the regulations in this part.

(2) Refer the debt to the General Accounting Office for collection.

(3) Refer the debt to the Department of Justice for compromise, collection, or litigation.

(4) Take any other action authorized by law.

(b) In taking any of the actions listed in paragraph (a) of this section, the Secretary complies with the requirements of the Federal Claims Collection Standards (FCCS) at 4 CFR Parts 101–105 that are not inconsistent with the requirements of this part.

(c) The Secretary may—

(1) Collect the debt under the offset procedures in Subpart C of this part;

(2) Report a debt to a consumer reporting agency under the procedures in Subpart C of this part;

(3) Charge interest on the debt as provided in the FCCS;

(4) Impose upon a debtor a charge based on the costs of collection as determined under Subpart E of this part;

(5) Impose upon a debtor a penalty for failure to pay a debt when due under Subpart E of this part;

(6) Compromise a debt, or suspend or terminate collection of a debt, under Subpart F of this part;

(7) Take any other actions under the procedures of the FCCS in order to protect the United States Government's interests; or

(8) Use any combination of the procedures listed in this paragraph (c) as may be appropriate in a particular case.

Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e).

§ 30.2 On what authority does the Secretary rely to collect a debt under this part?

(a)(1) The Secretary takes an action referred to under § 30.1(a) in accordance with—

(i) 31 U.S.C. Chapter 37, Subchapters I and II;

(ii) Other applicable statutory authority; or

(iii) The common law.

(2) If collection of a debt in a particular case is not authorized under one of the authorities described in paragraph (a)(1) of this section, the Secretary may collect the debt under any other available authority under which collection is authorized.

(b) The Secretary does not use a procedure listed in § 30.1(c) to collect a debt, or a certain type of debt, if—

(1) The procedure is specifically prohibited under a Federal statute; or

(2) A separate procedure other than the procedure described under § 30.1(c) is specifically required under—

(i) A contract, grant, or other agreement;

(ii) A statute other than 31 U.S.C. 3716; or

(iii) Other regulations.

Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e)

* * * * *

2. Section 30.20 is amended by revising paragraph (a)(1), removing paragraph (b), and redesignating paragraphs (c), (d), and (e) as paragraph (b), (c), and (d), respectively, to read as follows:

§ 30.20 To what do §§ 30.20–30.31 apply?

(a)(1)(i) Sections 30.20–30.31 establish the general procedures used by the Secretary to collect debts by administrative offset.

(ii) The Secretary uses the procedures established under other regulations, including § 30.33, What procedures does the Secretary follow for IRS tax refund offsets?, 34 CFR Part 31, Salary Offset for Federal Employees Who Are Indebted to the United States Under Programs Administrated by the Secretary of Education, and 34 CFR Part 32, Salary Offset to Recover Overpayments of Pay or Allowances from Department of Education Employees, if the conditions requiring application of those special procedures exists.

3. New Subparts E and F are added, to read as follows:

* * * * *

Subpart E—What Costs and Penalties Does the Secretary Impose on Delinquent Debtors?

§ 30.60 What costs does the Secretary impose on delinquent debtors?

(a) The Secretary may charge a debtor for the costs associated with the collection of a particular debt. These costs include, but are not limited to—

(1) Salaries of employees performing Federal loan servicing and debt collection activities;

(2) Telephone and mailing costs;

(3) Costs for reporting debts to credit bureaus;

(4) Costs for purchase of credit bureau reports;

(5) Costs associated with computer operations and other costs associated with the maintenance of records;

(6) Bank charges;

(7) Collection agency costs;

(8) Court costs and attorney fees; and

(9) Costs charged by other Governmental agencies.

(b) Notwithstanding any provision of State law, if the Secretary uses a collection agency to collect a debt on a contingent fee basis, the Secretary charges the debtor, and collects through

the agency, an amount sufficient to recover—

(1) The entire amount of the debt; and

(2) The amount that the Secretary is required to pay the agency for its collection services.

(c)(1) The amount recovered under paragraph (b) of this section is the entire amount of the debt, multiplied by the following fraction:

$$\frac{1}{1-cr.}$$

(2) In paragraph (c)(1) of this section, cr equals the commission rate the Department pays to the collection agency.

(d) If the Secretary uses more than one collection agency to collect similar debts, the commission rate (cr) described in paragraph (c)(2) of this section is calculated as a weighted average of the commission rates charged by all collection agencies collecting similar debts, computed for each fiscal year based on the formula

$$\sum_{i=1}^{N} \left(\frac{Xi \cdot Yi}{Z} \right)$$

where—

(1) Xi equals the dollar amount of similar debts placed by the Department with an individual collection agency as of the end of the preceding fiscal year;

(2) Yi equals the commission rate the Department pays to that collection agency for the collection of the similar debts;

(3) Z equals the dollar amount of similar debts placed by the Department with all collection agencies as of the end of the preceding fiscal year; and

(4) N equals the number of collection agencies with which the Secretary has placed similar debts as of the end of the preceding fiscal year.

(e) If a debtor has agreed under a repayment or settlement agreement with the Secretary to pay costs associated with the collection of a debt at a specified amount or rate, the Secretary collects those costs in accordance with the agreement.

(f) The Secretary does not impose collection costs against State or local governments under paragraphs (a) through (d) of this section.

Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e), 3717(e)(1), 3718).

§ 30.61 What penalties does the Secretary impose on delinquent debtors?

(a) If a debtor does not make a payment on a debt, or portion of a debt, within 90 days after the date specified in the first demand for payment sent to the debtor, the Secretary imposes a penalty on the debtor.

(b)(1) The amount of the penalty imposed under paragraph (a) of this section is 6 percent per year of the amount of the delinquent debt.

(2) The penalty imposed under this section runs from the date specified in the first demand for payment to the date the debt (including the penalty) is paid.

(c) If a debtor has agreed under a repayment or settlement agreement with the Secretary to pay a penalty for failure to pay a debt when due, or has such an agreement under a grant or contract under which the debt arose, the Secretary collects the penalty in accordance with the agreement, grant, or contract.

(d) The Secretary does not impose a penalty against State or local governments under paragraphs (a) and (b) of this section.

Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e).

§ 30.62 When does the Secretary forego interest, administrative costs, or penalties?

(a) For a debt of any amount based on a loan, the Secretary may refrain from collecting interest or charging administrative costs or penalties to the extent that compromise of these amounts is appropriate under the standards for compromise of a debt contained in 4 CFR Part 103.

(b) For a debt not based on a loan the Secretary may waive, or partially waive, the charging of interest, or the collection of administrative costs or penalties, if—

(1) Compromise of these amounts is appropriate under the standards for compromise of a debt contained in 4 CFR Part 103; or

(2) The Secretary determines that the charging of interest or the collection of administrative costs or penalties is—

(i) Against equity and good conscience; or

(ii) Not in the best interests of the United States.

(c) The Secretary may exercise waiver under paragraph (b)(1) of this section without regard to the amount of the debt.

(d) The Secretary may exercise waiver under paragraph (b)(2) of this section if—

(1) The Secretary has accepted an installment plan under 4 CFR 102.11;

(2) There is no indication of fault or lack of good faith on the part of the debtor; and

(3) The amount of interest, administrative costs, and penalties is such a large portion of the installments that the debt may never be repaid if that amount is collected.

(e)(1) The Secretary does not charge interest on any portion of a debt, other than a loan, owed by a person subject to 31 U.S.C. 3717 if the debt is paid within 30 days after the date of the first demand for payment.

(2) The Secretary may extend the period under paragraph (e)(1) of this section if the Secretary determines that the extension is appropriate.

Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e).

Subpart F—What Requirements Apply to the Compromise of a Debt or the Suspension or Termination of Collection Action?

§ 30.70 How does the Secretary exercise discretion to compromise a debt or to suspend or terminate collection of a debt?

(a) The Secretary uses the standards in the FCCS, 4 CFR Part 103, to determine whether compromise of a debt is appropriate if—

(1) The debt must be referred to the Department of Justice under this section; or

(2) The amount of the debt is less than or equal to $20,000 and the Secretary does not follow the procedures in paragraph (e) of this section.

(b) The Secretary refers a debt to the Department of Justice to decide whether to compromise a debt if—

(1) The debt was incurred under a program or activity subject to section 452(f) of the General Education Provisions Act and the initial determination of the debt was more than $50,000; or

(2) The debt was incurred under a program or activity not subject to section 452(f) of the General Education Provisions Act and the amount of the debt is more than $20,000.

(c) The Secretary may compromise the debt under the procedures in paragraph (e) of this section if—

(1) The debt was incurred under a program or activity subject to section 452(f) of the General Education Provisions Act; and

(2) The initial determination of the debt was less than or equal to $50,000.

(d) The Secretary may compromise a debt without following the procedure in paragraph (e) of this section if the amount of the debt is less than or equal to $20,000.

(e) The Secretary may compromise the debt pursuant to paragraph (c) of this section if—

(1) The Secretary determines that—

(i) Collection of any or all of the debt would not be practical or in the public interest; and

(ii) The practice that resulted in the debt has been corrected and will not recur;

(2) At least 45 days before compromising the debt, the Secretary publishes a notice in the **Federal Register** stating—

(i) The Secretary's intent to compromise the debt; and

(ii) That interested persons may comment on the proposed compromise; and

(3) The Secretary considers any comments received in response to the **Federal Register** notice before finally compromising the debt.

(f)(1) The Secretary uses the standards in the FCCS, 4 CFR Part 104, to determine whether suspension or termination of collection action is appropriate.

(2) The Secretary—

(i) Refers the debt to the Department of Justice to decide whether to suspend or terminate collection action if the amount of the debt at the time of the referral is more than $20,000; or

(ii) May decide to suspend or terminate collection action if the amount of the debt at the time of the Secretary's decision is less than or equal to $20,000.

(g) In determining the amount of a debt under paragraphs (a) through (f) of this section, the Secretary excludes interest, penalties, and administrative costs.

(h) Notwithstanding paragraphs (b) through (f) of this section, the Secretary may compromise a debt, or suspend or terminate collection of a debt, in any amount if the debt arises under the Guaranteed Student Loan Program authorized under Title IV, Part B, or the Higher Education Act of 1965, as amended, or the Perkins Loan Program authorized under Title IV, Part E, of the Higher Education Act of 1965, as amended.

(i) The Secretary refers a debt to the General Accounting Office (GAO) for review and approval before referring the debt to the Department of Justice for litigation if—

(1) The debt arose from an audit exception taken by GAO to a payment made by the Department; and

(2) The GAO has not granted an exception from the GAO referral requirement.

(j) Nothing in this section precludes—

(1) A contracting officer from exercising his authority under applicable statutes, regulations, or common law to settle disputed claims relating to a contract; or

(2) The Secretary from redetermining a claim.

Authority: 20 U.S.C. 1082(a) (5) and (6), 1087hh, 1221e–3(a)(1), 1226a–1, and 1234a(f), 31 U.S.C. 3711(e).

[FR Doc. 88–19677 Filed 8–29–88; 8:45 am]

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Part V

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends Subpart B of the Student Assistance General Provisions regulations. These amendments make technical corrections, simplify procedures, and reduce administrative burden while not diminishing existing controls over fraud, waste, and abuse in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Andrade, U.S. Department of Education, 400 Maryland Ave., SW. (Regional Office Building 3, Room 4318), Washington, DC 20202. Telephone (202) 732–4888.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that are common to the participation of the postsecondary institutions in the Title IV, HEA programs. The Title IV, HEA programs include the Pell Grant, Guaranteed Student Loan (GSL), PLUS, Supplemental Loans for Students (SLS) (formerly ALAS), Consolidation Loan, State Student Incentive Grant (SSIG), Robert C. Byrd Honors Scholarship (Byrd Scholarship), Income Contingent Loan (ICL), Perkins Loan (formerly National Direct Student Loan (NDSL)), College Work-Study, and Supplemental Educational Opportunity Grant (SEOG) programs. The last three programs are known collectively as "the campus-based programs." Public Law 100–297 has renamed the Guaranteed Student Loan (GSL) Program, the Stafford Loan Program. This change will be reflected in a later document.

On December 1, 1987, the Secretary published final regulations for the Student Assistance General Provisions in the **Federal Register** (52 FR 45712). Section 668.19 of the regulations requires an institution to provide to another institution upon request, information on the financial aid transcript that relates to the eligibility requirements contained in section 484(a)(3) of the Higher Education Act of 1965, as amended. That section provides that in order for a student to receive financial assistance under any Title IV, HEA program at any institution, the student may not be in default on any Title IV, HEA loan and must not owe a refund on a Title IV, HEA grant received for attendance at any institution.

Under § 668.19(b), an institution must provide to another institution information in its possession regarding whether the student for which the information was requested attended another eligible institution. In addition, § 668.19(c) (4), (6), (8), (11), and (13) require the institution providing the transcript to provide to the requesting institution specific information it has in its possession on whether the student is in default on a Title IV, HEA loan or owes a refund on a Title IV, HEA grant received for attendance at another institution and the loan amounts at another institution.

The information requirements of § 668.19(c) (4), (6), (8), (11), and (13) were designed to cross-check information provided to an institution by another institution. However, the Secretary believes that the administrative burden imposed by these requirements outweighs the benefits, and in many cases, the data provided may be dated, not reflective of the student's current situation, and thus of questionable value. Therefore, the Secretary is deleting the requirements of § 668.19(c) (4), (6), (8), (11), and (13) because they may constitute an unnecessary administrative burden on many institutions providing transcripts.

An institution requesting a transcript is still required under § 668.19(a)(3) to receive a financial aid transcript from each eligible institution the student previously attended, and an institution providing a financial aid transcript under § 668.19(b) is still required to provide information on whether the student attended another eligible institution. Therefore the Secretary believes that adequate safeguards to protect against fraud, waste, and abuse are maintained.

The Secretary is also making a technical correction to § 668.19(c)(9) to correspond to the definition of Perkins Loan found in § 668.2. These regulations clarify that the institution providing the transcript must inform the requesting institution whether the student owed an outstanding balance on a Defense loan or Direct loan on July 1, 1987.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the Secretary has received numerous letters from the postsecondary educational community concerning the implementation of the financial aid transcript requirements in the regulations which became effective on July 1, 1988. The Secretary has determined that some of the financial aid transcript requirements which were published in the December 1, 1987 regulations are not needed to meet adequately the statutory provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, are duplicative and an administrative burden on institutions, may seriously delay the timely delivery of student aid to needy students, and may leave institutions open to potential liabilities for providing outdated and inaccurate information which subsequently may lead to the denial of Federal student financial assistance to an otherwise qualified student. The changes made in this document remove these requirements. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations as to these changes is unnecessary, impracticable, and contrary to the public interest.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Assessment of Education Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Education Grant Programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032;

PLUS Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

Dated: August 3, 1988.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.19 is amended by revising paragraph (c) and adding an OMB Control Number to read as follows:

§ 668.19 Financial aid transcript.

* * * * *

(c) A financial aid transcript must be signed by an official authorized by the institution providing the transcript to disclose information in connection with Title IV, HEA programs and must include, for any award year for which that institution has or is required to keep records—

(1) The student's name and social security number;

(2) Whether the student was treated as an independent student under any Title IV, HEA program in the award year preceding the award year for which a financial aid transcript is requested;

(3) Whether the student is in default on any loan made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs for attendance at the institution;

(4) To the extent that the institution is aware, whether the student is in default on any loan made under the GSL, PLUS, or SLS programs for attendance at the institution or any loan made under the Consolidation Loan Program;

(5) Whether the student owes a refund on any grant made under the Pell Grant or SEOG programs and, to the extent that the institution is aware, the SSIG Program, for attendance at the institution;

(6) For the award year for which a financial aid transcript is requested, the student's Scheduled Pell Grant and the amount of Pell Grant funds disbursed to the student;

(7) The total amount of loans made under the ICL Program to the student for attendance at the institution;

(8) The total amount of loans made under the National Defense/Direct Student Loan and Perkins Loan programs to the student for attendance at the institution;

(9) Whether the student owed an outstanding balance on July 1, 1987 on either a Defense loan or Direct loan made for attendance at the institution;

(10) The amount of and period covered by each loan made to the student under the GSL, PLUS, or SLS programs for attendance at the institution; and

(11) The amount of and period covered by each loan made under the PLUS Program on behalf of the student for attendance at the institution.

Authority: 20 U.S.C. 1094

(Approved by the Office of Management and Budget under control number 1840-0537)

[FR Doc. 88-19678 Filed 8-29-88; 8:45 am]

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H.R. 2213 / Pub. L. 100–394

Hearing Aid Compatibility Act of 1988. (Aug. 16, 1988; 102 Stat. 976; 3 pages) Price: $1.00

H.R. 2629 / Pub. L. 100–395

To amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the conveyance and ownership of submerged lands by Alaska Natives, Native Corporations and the State of Alaska. (Aug. 16, 1988; 102 Stat. 979; 3 pages) Price: $1.00

S.J. Res. 294 / Pub. L. 100–396

Designating August 9, 1988, as "National Neighborhood Crime Watch Day". (Aug. 16, 1988; 102 Stat. 982; 1 page) Price: $1.00

S.J. Res. 350 / Pub. L. 100–397

Designating Labor Day Weekend, September 3–5, 1988, as "National Drive for Life Weekend." (Aug. 16, 1988; 102 Stat. 983; 2 pages) Price: $1.00

H.R. 3932 / Pub. L. 100–398

Presidential Transitions Effectiveness Act. (Aug. 17, 1988; 102 Stat. 985; 4 pages) Price: $1.00

H.R. 3980 / Pub. L. 100–399

Agricultural Credit Technical Corrections Act of 1988. (Aug. 17, 1988; 102 Stat. 989; 21 pages) Price: $1.00

H.J. Res. 138 / Pub. L. 100–400

To authorize and request the President to issue a proclamation designating the third Sunday of August 1988 as "National Senior Citizens Day." (Aug. 17, 1988; 102 Stat. 1010; 1 page) Price: $1.00

H.J. Res. 140 / Pub. L. 100–401

Designating August 12, 1988, as "National Civil Rights Day." (Aug. 17, 1988; 102 Stat. 1011; 1 page) Price: $1.00

S. 2200 / Pub. L. 100–402

To amend Public Law 90–498 to provide for the designation of National Hispanic Heritage Month. (Aug. 17, 1988; 102 Stat. 1012; 1 page) Price: $1.00

H.R. 4676 / Pub. L. 100–403

To amend the Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986 to extend through the fiscal year 1989 the authorities contained in such Act. (Aug. 19, 1988; 102 Stat. 1013; 1 page) Price: $1.00

H.R. 4800 / Pub. L. 100–404

Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989. (Aug. 19, 1988; 102 Stat. 1014; 26 pages) Price: $1.00

H.J. Res. 525 / Pub. L. 100–405

To designate the month of November 1988 as "'National Hospice Month." (Aug. 19, 1988; 102 Stat. 1040; 1 page) Price: $1.00

S. 1979 / Pub. L. 100–406

To establish the Grays Harbor National Wildlife Refuge. (Aug. 19, 1988; 102 Stat. 1041; 3 pages) Price: $1.00

S. 2561 / Pub. L. 100–407

Technology-Related Assistance for Individuals With Disabilities Act of 1988. (Aug. 19, 1988; 102 Stat. 1044; 22 pages) Price: $1.00

H.R. 1414 / Pub. L. 100–408

Price-Anderson Amendments Act of 1988. (Aug. 20, 1988; 102 Stat. 1066; 20 pages) Price: $1.00

H.R. 1860 / Pub. L. 100–409

Federal Land Exchange Facilitation Act of 1988. (Aug. 20, 1988; 102 Stat. 1086; 9 pages) Price: $1.00

H.R. 3431 / Pub. L. 100–410

To release a reversionary interest of the United States

in a certain parcel of land located in Bay County, Florida. (Aug. 22, 1988; 102 Stat. 1095; 2 pages) Price: $1.00

H.R. 3617 / Pub. L. 100–411

To settle certain land claims of the Coushatta Tribe of Louisiana against the United States, to authorize the use and distribution of the settlement funds, and for other purposes. (Aug. 22, 1988; 102 Stat. 1097; 3 pages) Price: $1.00

H.R. 3880 / Pub. L. 100–412

To extend the authorization of the Upper Delaware Citizens Advisory Council for an additional ten years. (Aug. 22, 1988; 102 Stat. 1100; 1 page) Price: $1.00

H.R. 4458 / Pub. L. 100–413

Parimutuel Licensing Simplification Act of 1988. (Aug. 22, 1988; 102 Stat. 1101; 1 page) Price: $1.00

H.R. 4694 / Pub. L. 100–414

To amend the Perishable Agricultural Commodities Act to increase the statutory ceilings on license fees. (Aug. 22, 1988; 102 Stat. 1102; 2 pages) Price: $1.00

H.R. 4754 / Public Law 100–415

To amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes (Aug. 22, 1988; 102 Stat. 1104; 1 page) Price: $1.00

H.R. 5141 / Public Law 100–416

To delay temporarily certain regulations relating to sea turtle conservation (Aug. 22, 1988; 102 Stat. 1105; 1 page) Price: $1.00

H.J. Res. 417 / Public Law 100–417

Designating May 1989 as "Neurofibromatosis Awareness Month" (Aug. 22, 1988; 102 Stat. 1106; 1 page) Price: $1.00

H.R. 4848 / Pub. L. 100–418

Omnibus Trade and Competitiveness Act of 1988. (Aug. 23, 1988; 102 Stat. 1107; 468 pages) Price: $13.00

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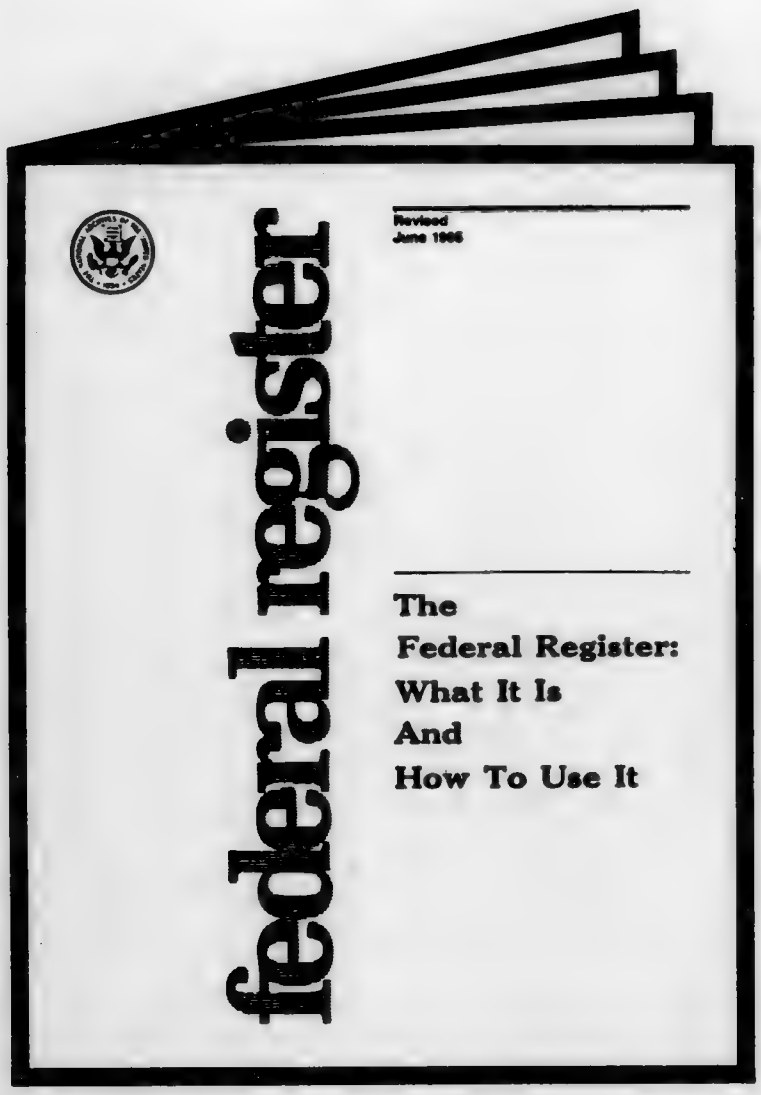

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Rules and Regulations

Federal Register
Vol. 53, No. 169
Wednesday, August 31, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 844

Federal Employees' Retirement System—Disability Retirement

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on the rules governing disability retirement under the Federal Employees' Retirement System Act of 1986. These rules establish the requirements for eligibility to receive a disability annuity, application procedures for disability annuities, the methodology for computing a disability annuity, and the conditions and procedures under which a disability annuity is terminated and reinstated.

DATES: Interim rules effective January 1, 1987; comments must be received on or before October 31, 1988.

ADDRESS: Send comments to Reginald M. Jones, Jr.; Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gay Gardner, (202) 632–4682.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, established a new retirement system for some Federal employees. This system consists of a basic annuity plan, social security benefits, and a thrift savings plan. OPM is responsible for administering the basic annuity plan, including disability benefits. Social security benefits are administered by the Social Security Administration. The Federal Retirement Thrift Investment Board will manage the thrift savings plan.

Part 844 is one part of a series of interim regulations being published by OPM to implement the FERS Act of 1986. This part governs disability retirement under the new system.

In brief, FERS provides disability benefits to employees with at least 18 months of creditable civilian service who are unable to provide "useful and efficient service." During the first year of disability, the annuitant is entitled to 60 percent of his or her highest 3-years' average salary, minus 100 percent of the approximate social security disability benefit to which the annuitant may be entitled. After the first 12 months of disability, the benefit is 40 percent of the "high-three" salary, minus 60 percent of the approximate social security disability benefit, if any. Annuitants who receive benefits under these provisions will have their benefits recomputed at age 62. These computation provisions do not apply to disability annuitants who meet the age and service requirements for normal voluntary retirement at the time their annuities begin; these individuals will have their benefits computed under the appropriate formula for immediate annuities. They, like all disability annuitants, will receive cost-of-living adjustments regardless of their age. The computation of disability annuities is described more fully in the explanation of Subpart C of these regulations.

I. General Provisions

Subpart A of Part 844 contains general provisions regarding disability retirement under FERS. Section 844.101 describes the purpose of the regulations, and § 844.102 defines terms used in the regulations.

Section 844.103 sets forth the conditions for eligibility for a FERS disability annuity. These conditions, with the exception of the requirement that the individual must have performed 18 months of creditable civilian service, do not apply to military reserve technicians. These technicians are members of reserve components of the armed forces working as civilians in administrative or training positions or in supply maintenance and, as a condition of employment, they are required to maintain membership in the particular reserve component at a specified military grade. Section 8457 of Title 5, United States Code, allows a reserve technician to receive a disability annuity under FERS if the technician is not disabled for his or her civilian duties but loses, because of a disabling condition, membership in the reserve component or the military grade that is required for the individual to remain qualified for the technician position.

Section 844.105 clarifies the relationship between FERS annuities and workers' compensation benefits under subchapter I of chapter 81 of Title 5, United States Code. An individual entitled to both a FERS annuity and recurring compensation payments must elect one benefit or the other. There are only two exceptions to this rule. An individual may concurrently receive a FERS annuity based on his or her own service and compensation benefits based on the death of another individual. Also, an individual may receive compensation because of his or her own disability and a FERS survivor annuity covering the same period of time. An individual who elects to receive compensation benefits retains the right to elect a FERS annuity when his or her compensation payments terminate or are reduced, provided he or she has not received a refund of FERS contributions. These rules conform to the current relationship between annuities under the Civil Service Retirement System (CSRS) and workers' compensation benefits.

II. Applications for Disability Retirement

Subpart B of Part 844 sets forth the requirements for disability retirement applications under FERS. The law requires a FERS disability annuity to be reduced by an approximation of any social security disability benefit to which the individual may be entitled during the first year of FERS benefits, and by a portion of the approximate social security benefit thereafter. Consequently, OPM is requiring applicants for disability retirement under FERS to apply for social security disability benefits or to provide a statement from the Social Security Administration that the individual is not entitled to social security disability benefits because he or she lacks insured status under the Social Security Act. This requirement is needed to enable OPM to comply with 5 U.S.C. 8452(a)(2),

which requires that a FERS disability annuity be reduced as described above. If the applicant does not apply for social security disability benefits or does not supply proof that he or she is not entitled to such benefits, OPM cannot begin disability retirement payments under FERS because we will not know the correct amount to pay.

The Social Security Administration is, of course, responsible for evaluating applications for social security disability benefits. The determination of entitlement to social security benefits is entirely distinct from the determination of entitlement to a FERS disability annuity. The principal difference is that, while an individual must be disabled for his or her position in order to be considered "disabled" under FERS, he or she must be totally disabled for any employment in order to qualify for social security disability benefits.

Section 844.202 governs disability retirement applications filed by agencies on behalf of employees. Section 8451(a)(1)(A) of Title 5, United States Code, provides for agency-filed applications for disability retirement. These regulations require an agency to apply on the employee's behalf when (1) it has decided to remove the employee; (2) it has medical evidence indicating that disease or injury is causing the employee's service deficiency and that the employee is incapable of deciding to file a disability application; and (3) the employee has no personal representative, guardian, or family member who is willing to apply on the employee's behalf. OPM will not act on the application until it receives notice that the employee has been separated. We believe applying these strict criteria to agency-filed applications will ensure that the disability retirement program will be used appropriately and not in place of the normal procedures for separating an employee whose performance or conduct is unsatisfactory.

III. Computation of Disability Retirement Annuities

Subpart C of Part 844 sets forth rules concerning the computation of disability annuities. Disability annuities being on the day after the employee separates or pay ceases and the employee meets the requirements for title to an annuity, but in no case may an annuity begin before January 1, 1987, the effective date of FERS. For the first 12 months that a disability annuity is payable, the annuity is equal to 60 percent of the annuitant's highest 3-years' average pay. At the end of 12 months, the annuity becomes 40 percent of the retiree's "high-three" salary. During the first 12 months, if the retiree is also entitled to social security disability benefits, his or her annuity under FERS is reduced by the entire amount of the individual's "assumed" social security disability benefit, and by 60 percent of the "assumed" social security benefit after the first 12 months. The reduction applies only in months for which the individual is entitled to social security disability benefits. This "assumed" amount is equal to the amount of the social security benefit that would have been payable if the benefit had begun with the month in which the FERS disability annuity began (or was reinstated under Subpart D), increased by any FERS cost-of-living adjustments that were effective on and after the commencing date of the FERS annuity. This means that the 5-month waiting period required by the Social Security Act between the onset of the disabling condition and the commencement of benefit payments will be ignored in computing the assumed social security disability benefit.

When a disability annuitant reaches age 62, his or her annuity is redetermined as set forth in § 844.303. A normal retirement annuity is computed with respect to the annuitant, including credit for the period during which the disability annuity was payable, and adjusting the "high-three" average salary by FERS cost-of-living adjustments that were effective during the period or periods the disability annuity was payable. This redetermined annuity is compared to the disability annuity that has been reduced by the appropriate portion (i.e., either 100 percent or 60 percent) of the assumed social security disability benefit, and the lesser of the two amounts is payable beginning on the annuitant's 62nd birthday. As required by 5 U.S.C. 8452(b)(3), § 844.303(b)(1) specifies that, if the annuitant reaches 62 during the first year of disability, the reduced disability annuity used in this comparison cannot be greater than the reduced disability annuity that would be payable after the first 12 months of disability. Finally, as provided in § 844.303(b)(3), if the annuitant is not entitled to social security disability benefits and, therefore, his or her FERS disability annuity is not being reduced, it must be assumed for the sake of the redetermination at age 62 that the FERS annuity *is* being reduced by the assumed social security disability benefit. If this annuity, with the reduction by the appropriate portion of the hypothetical social security disability benefit, is less than the redetermined annuity described at the beginning of this paragraph, this hypothetically reduced disability annuity is the amount that will actually be payable on and after the annuitant's 62nd birthday. Consequently, it is possible for a disability annuitant to experience a substantial reduction in income at age 62, particularly if the annuitant has no entitlement to social security benefits.

Section 844.304 provides that, regardless of any other provision, a disability annuity, after any social security offset has been applied, may not be less than a normal voluntary retirement annuity based on the annuitant's actual service (excluding any reduction for age).

Section 844.305 provides that a disability annuity will be computed under the rules for computing nondisability annuities if the annuity commences or is reinstated on or after the annuitant satisfies the age and service requirements for immediate voluntary retirement or reaches age 62.

IV. Termination of Disability Annuities

Subpart D of Part 844 sets forth the conditions under which disability annuities are terminated and resumed or reinstated. Section 844.401 governs termination of a disability annuity because of the annuitant's recovery. OPM will also terminate the annuity if the annuitant refuses to cooperate with OPM's requests for information needed to evaluate his or her continuing entitlement to benefits. Annuity payments will be resumed if and when the individual provides the requested information demonstrating that he or she is still disabled.

Section 844.402 provides for terminating a disability annuity when the annuitant's earning capacity has been restored. Under 5 U.S.C. 8455(a)(2), the annuity of a disability annuitant under age 60 stops if his or her earning capacity is restored. By law, earning capacity is considered to be restored if "income of the annuitant from wages or self-employment or both" during a calendar year equals at least 80 percent of the "current rate of pay of the position occupied immediately before retirement." The disability annuity stops on the next June 30, or on reemployment in Federal service, whichever is earlier. These interim regulations define the rate of basic pay of the position from which the annuitant retired on disability, provide the means of updating the rate for comparison to income earned in future years, and define the term "income from wages or self-employment or both" for earning capacity determination purposes.

A. Current Rate of Pay of the Position Occupied Immediately Before Retirement

Basic pay is all pay subject to FERS withholdings and is defined by 5 U.S.C. 8401(4). It includes, for example, administratively uncontrollable overtime premium pay for firefighters and law enforcement officers and night shift differential for Federal Wage System employees.

Generally, the "current rate of pay of the position occupied immediately before retirement" is the rate of basic pay, as of December 31 of the year for which earning capacity is being determined, for the grade and step of the position the employee held on the date of separation from the employing agency. In determing the rate of pay of the position occupied immediately before retirement, the employing agency, at the time the disability retirement application is approved, will first determine the total rate of basic pay for the position held on the date of separation for retirement. This will include any additional basic pay authorized on that date for which FERS deductions are made (subject to the statutory limitation on the premium pay rate (the GS–10, step 1 rate) under 5 U.S.C. 5545(c) (1) and (2)). The total amount of the rate of basic pay on the date of separation will then be converted into a grade and step under the provisions of § 844.402(b).

B. Disability Annuitants Whose Basic Pay Rates Do Not Equate to a Grade and Step in Their Pay Schedule

(1) *Senior Executive Service employees and Merit Pay System employees.* For some employees, such as those in the Senior Executive Service or the Merit Pay System, basic pay rates usually do not equate to a grade and step in their pay schedule. In these cases, the regulations simply put the rate of pay at retirement at the next higher step if it falls between steps (see § 844.402(b)(2)). Then the grade and step will be updated the same way as for other employees. The grade and step OPM sets for this purpose will be used only in deciding whether an annuitant's earning capacity is restored.

(2) *Employees on retained pay.* Employees who have a retained pay rate may also have a rate of pay that does not equate to a specific grade and step. While under pay retention, the employee legally has the grade of the actual position occupied, but, based on a formula included in the law, receives a rate of pay above the highest rate for the grade of that position. Taking into account the fact that this rate may fall under more than one grade in the pay schedule, the regulations set the grade in these cases at the grade nearest the actual grade of the position held, for purposes of determining the rate of pay of the position occupied immediately before retirement. When the grade has been set, the step then is set at the step above the employee's rate of basic pay, unless it exactly matches the rate for a step in that grade.

For example, using General Schedules rates in effect in 1986, OPM would set the grade and step of an employee retiring in 1986 from a GS–5 position with retained pay of $27,105 at GS–9, step 9. (GS–9 is the closest grade to the employee's position within which the employee's retained rate falls. Step 9, at $27,620, is the step above the retained rate of pay.) In future years, OPM can compare the retiree's income to the current rate of pay for GS–9, step 9, for any calendar year.

(3) *Employees on special pay rates.* Employees who retire from positions covered by special pay rates authorized under 5 U.S.C. 5303 are treated like employees on retained pay. In fixing the rate of pay at retirement, one must use the grade of the position occupied, unless the employee's actual rate of basic pay exceeds the highest rate payable for his or her grade. In such a case, the grade will be set at the next highest grade within which the actual rate of pay falls. The step will be set at the lowest step in that grade that equals or exceeds the employee's actual rate of basic pay. (See § 844.403(b)(2)).

C. Updating the Rate of Pay of the Position Occupied Immediately Before Retirement

Once the grade and step set as "the rate of pay of the position occupied immediately before retirement" is determined at the time the employee retires on disability, the regulations state that OPM will determine the rate in effect on December 31 of each future year for the designated grade and step. General pay increases, such as percentage adjustments in the General Schedule, are included to update the rate of pay. General increases in local wage grade pay schedules are also included. These two kinds of increases cover the vast majority of cases. Potential increases based on length of service and quality of performance or reclassification of position (such as promotions or within-grade increases), which the employee may have received if he or she had not retired but had continued working, are not included.

D. Income for Earning Capacity Purposes: General Concept

Because disability retirement is not a permanent retirement benefit for individuals under age 60, but protects the individual against the loss of earning capacity because of a disabling medical condition, the regulations base earning capacity determinations on the annuitant's ability to earn income from his or her personal work efforts actually rendered in the open labor market despite the disability (see § 844.402(c)). Consequently for determining restoration of earning capacity, "income" is calculated separately from "income" for Federal income tax or FICA (Federal Insurance Contributions Act) tax purposes. For example, while unearned income such as inheritances and interest on personal savings accounts are part of income for tax purposes, these kinds of income do not reflect an individual's earning capacity and, therefore, are not considered income for purposes of these regulations. Also, the use of either the Federal income tax or FICA tax law definitions of wages and net earnings provides numerous opportunities to adjust income that, while permitted under those laws, are not valid for determining whether the disability annuitant has demonstrated an ability to earn income.

E. Definition of "income"

"Income," for purposes of earning capacity, is the total of the gross amount of wages earned as an employee from one or more employers and earnings from self-employment during the calendar year for which the earning capacity determination is being made (see § 844.442(c)). Income is counted in the calendar year in which it is earned, even if receipt is deferred. In calculating an annuitant's total income, the regulations provide that losses in one self-employment endeavor do not offset income from another source, either wages earned from working in an employee/employer relationship or net earnings from another self-employed business (see § 844.442(c)). If an annuitant has demonstrated an ability to earn a salary from an employer and/or net earnings from one business that are equal to or greater than the 80-percent statutory limitation, that fact is not diminished by the failure to turn a profit while also engaged in a separate business.

V. Resumption and Reinstatement of Terminated Disability Annuities

Under the provisions governing reemployment of FERS annuitants in s

U.S.C. 8468, if a disability annuitant is reemployed in any position in the Federal Government, his or her annuity terminates on the date of reemployment. To facilitate the employment of disability annuitants without prejudice to their benefits, if the reemployment ends within 12 months, OPM will resume the disability annuity automatically without requiring additional medical documentation. In these cases, the annuity will be resumed at the rate that would have been payable if the annuity had not been terminated. Usually this will be 40 percent of average pay unless the resumption occurs before the end of the 12th month after the annuity commenced.

This differs from the practice in cases where a disability annuity was terminated because of a medical finding of recovery or because the annuitant's earning capacity was restored. In these cases, if OPM makes a medical finding that the disability has recurred or determines that the individual has again lost his or her earning capacity, the annuity will be reinstated at the rate of 60 percent of average salary for the first 12 months after reinstatement. If the individual is also entitled to social security disability benefits during this period, the benefit is offset by 100 percent of the assumed social security disability benefit. At the end of the first 12 months after reinstatement, the annuity equals 40 percent of average pay, minus 60 percent of the assumed social security disability benefit if the individual is also entitled to a social security disability benefit. Reinstatement takes effect on the date of medical documentation showing that the disability has recurred or on January 1 of the year following the year in which earning capacity again fell below 80 percent of the current rate of basic pay of the position from which the individual retired.

It is important to distinguish between resumption and reinstatement of a disability annuity as described in the two preceding paragraphs. Section 8452(a)(1)(A)(i) of Title 5, United States Code, requires the annuity to be reinstated at the higher rate (60 percent of average pay) for 12 months when reinstatement follows a medical finding by OPM that the annuitant recovered from his or her disability and a subsequent finding that the disability recurred. No such findings will have been made under the circumstances set forth in § 844.405(a) (i.e., resumption of a disability annuity that was terminated because of Federal reemployment that ends within 12 months). The annuity will have been terminated because all FERS annuities must terminate on Federal reemployment, and not because of a medical finding that the individual has recovered. The annuity will have been resumed automatically, based on termination of the reemployment within 12 months, and not on any medical finding that the disability has recurred. Under 5 U.S.C. 8452(a)(1)(A)(i), these cases can be treated differently from cases in which the annuity must be reinstated at the 60 percent rate because a new medical finding of disability has been made.

The need for a provision like § 844.405(a) is clear. It is important to encourage those disability annuitants who are able and motivated to seek reemployment in the Federal Government to do so without first requiring a medical finding by OPM that the individual has recovered from his or her disability. Moreover, if the individual becomes reemployed and finds within a reasonable period (12 months) that he or she is unable to continue working, we believe the disability annuity should be resumed without question. Requiring the individual to submit new medical documentation at his or her own expense demonstrating that he or she has again become disabled before the annuity can be restored would discourage many individuals from seeking reemployment in the first place. At the same time, it would be unreasonable to reinstate the annuity at the higher rate for 12 months in these cases, since this would create a serious potential for abuse. It would be fairly simple for a disability annuitant to obtain reemployment in any Federal job (not necessarily resembling the position from which he or she retired) and then to resign shortly thereafter in order to begin another 12-month period of annuity payments at the higher (60 percent) rate. In order to preclude this possibility, the annuity will be automatically resumed at the lower rate in these cases, unless the reemployment ends within 12 months after the disability annuity commenced.

An individual in these circumstances will, however, retain the option of presenting medical evidence, at the end of the Federal reemployment, which demonstrates that he or she has again become disabled. If OPM makes a new finding of disability based on this documentation, the individual will be entitled to have the disability annuity reinstated at the 60 percent rate for 12 months, at the end of which the annuity will drop back to 40 percent of average pay. In this way, the individual's right to have the annuity reinstated at the higher rate will be protected, provided he or she accepts the burden of proving that he or she has again become disabled.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. OPM must issue regulations to implement an entire new retirement system that was effective on January 1, 1987. There is an urgent need for firm rules on disability retirement to deal with applications from employees who were automatically covered by FERS on January 1, 1987. In addition, clear rules must be in place to allow preparation of materials and worldwide distribution of them to employees who are eligible to elect FERS coverage during the "open season" between July 1 and December 31, 1987. These tasks, along with the need to prepare, publish, and distribute essential forms and informational materials, make the publication of proposed rules impracticable.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only disability retirement benefits for Federal employees.

List of Subjects in 5 CFR Part 844

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, to add a new Part 844 to read as follows:

PART 844—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—DISABILITY RETIREMENT

Subpart A—General Provisions

Sec.

844.101 Purpose.
844.102 Definitions.
844.103 Eligibility.

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Sec.

844.104 Administrative review of OPM decisions.
844.105 Relationship to workers' compensation.

Subpart B—Applications for Disability Retirement

844.201 General requirements.
844.202 Agency-filed disability retirement applications.
844.203 Supporting documentation.

Subpart C—Computation of Disability Annuity

844.301 Commencing date of a disability annuity.
844.302 Computation of disability annuity before age 62.
844.303 Redetermination of disability annuity at age 62.
844.304 Minimum disability annuity.
844.305 Computation of disability annuity for those otherwise eligible to retire.

Subpart D—Termination and Reinstatement of Disability Annuity

844.401 Recovery from disability.
844.402 Restoration of earning capacity.
844.403 Reemployment of disability annuitants.
844.404 Annuity rights after a disability annuity terminates.
844.405 Resumption and reinstatement of disability annuity.

Authority: 5 U.S.C. 8461.

Subpart A—General Provisions

§ 844.101 Purpose.

This part establishes the requirements under the Federal Employees' Retirement System (FERS) for eligibility to receive a disability annuity, application procedures for disability annuities, rules for computing a disability annuity, and the conditions and procedures under which a disability annuity is terminated and reinstated.

§ 844.102 Definitions.

In this part—

"Accommodation" means a reasonable adjustment made to an employee's job or work environment that enables the employee to perform the duties of the position. Accommodation may include modifying the worksite; adjusting the work schedule; restructuring the job, obtaining or modifying equipment or devices; providing interpreters, readers, or personal assistants; and retraining the employee.

"Basic pay" means the pay an employee receives that is subject to deductions under FERS.

"Commuting area" has the same meaning given the term "local commuting area" in § 351.203 of this chapter.

"Disabled" and "disability" mean unable or inability, because of disease or injury, to render useful and efficient service in the employee's current position.

"FERS" means the Federal Employees' Retirement System established under chapter 84 of Title 5, United States Code.

"Medical condition" means a health impairment resulting from a disease or injury, including a psychiatric disease. This is the same definition of "medical condition" that is found in § 339.102 of this chapter.

"Medical documentation" has the same meaning given this term in § 339.102 of this chapter. Medical documentation supplied under this part must be obtained from a physician.

"Military reserve technician" has the same meaning given this term in 5 U.S.C. 8401(30).

"OPM" means the Office of Personnel Management.

"Permanent position" means an appointment without time limitation.

"Physician" has the same meaning given this term in § 339.102 of this chapter.

"Qualified for reassignment" means able to meet the minimum requirements for the grade and series of the vacant position in question."Same grade or pay level" means able to meet the minimum requirements for the grade and series of the vacant position in qustion.

"Same grade or pay level" means, in regard to a vacant position within the same pay system as the employee currently occupies, the same grade and an equivalent amount of basic pay. A position under a different pay system or schedule is at the same pay level if the representative rate, as defined in § 532.401 of this chapter, equals the representative rate of the employee's current position.

"Useful and efficient service" means (a) acceptable performance of the critical or essential elements of the position; and (b) satisfactory conduct and attendance.

"Vacant position" means an unoccupied position of the same grade or pay level and tenure for which the employee is qualified for reassignment that is located in the same commuting area and is serviced by the same appointing authority of the employing agency. The vacant position must be full time, unless the employee's current position is less than full time, in which case the vacant position must have a work schedule of no less than that of the current position. In the case of an employee of the United States Postal Service, a vacant position does not include a position in a different craft or a position to which reassignment would be inconsistent with the terms of a collective bargaining agreement covering the employee.

§ 844.103 Eligibility.

(a) Except as provided in paragraph (c) of this section, an individual must meet the following requirements in order to receive a disability annuity:

(1) The individual must have completed at least 18 months of civilian service that is creditable under FERS;

(2) The individual must, while employed in a position subject to FERS, have become disabled because of a medical condition, resulting in a deficiency in performance, conduct, or attendance, or if there is no such deficiency, the disabling medical condition must be incompatible with either useful and efficient service or retention in the position;

(3) The disabling medical condition must be expected to continue for at least 1 year from the date the individual became disabled;

(4) Accommodation of the disabling medical condition in the position held must be unreasonable; and

(5) The individual must not have declined an offer of reassignment to a vacant position.

(b) The employing agency must consider a disability applicant for reassignment to any vacant position. The agency must certify to the Office of Personnel Management (OPM) either that there is no vacant position or that, although it made no offer of reassignment, it considered the individual for a vacant position. If an agency offers a reassignment and the individual declines the offer, the individual may appeal the agency's determination that the individual is not disabled for the position in question to the Merit Systems Protection Board under 5 U.S.C. 7701.

(c)(1) Paragraphs (a) (2) through (5) of this section do not apply to a military reserve technician who retires under 5 U.S.C. 8457.

(2) An individual who separates from employment as a military reserve technician under circumstances set forth in 5 U.S.C. 8457(a)(1) after reaching age 50 and completing 25 years of service is not entitled to a disability annuity under this part.

§ 844.104 Administrative review of OPM decisions.

(a) Any individual whose rights or interests under FERS are affected by an initial decision of OPM may request OPM to review its initial decision. A request for reconsideration must be made in writing and must be received by OPM within 30 calendar days from the

date of the initial decision. A decision will be considered an initial decision when rendered by OPM in writing and stating the right to request reconsideration.

(b) An individual whose rights or interests under FERS are affected by a final decision of the Associate Director for Retirement and Insurance of OPM or the Associate Director's representative may request the Merit Systems Protection Board to review such decision in accord with procedures prescribed by the Board.

§ 844.105 Relationship to workers' compensation.

(a) Except as provided in paragraph (b) of this section, an individual who is eligible for both an annuity under Part 842 or 844 of this chapter and compensation for injury or disability under subchapter I of chapter 81 of Title 5, United States Code (other than a lump-sum payment under 5 U.S.C. 8135 or a scheduled award under 5 U.S.C. 8107(c)), covering the same period of time must elect to receive either the annuity or compensation.

(b) Notwithstanding the provisions of paragraph (a) of this section, an individual may concurrently receive an annuity based on the individual's service under Part 842 or 844 of this chapter and a benefit under subchapter I of chapter 81 of Title 5, United States Code, on account of the death of another individual. An individual may also receive an annuity under Part 843 of this chapter and compensation for injury or disability to himself or herself under such subchapter I covering the same period of time.

(c) An individual who elects to receive compensation payments under paragraph (a) of this section and who has not received a refund of contributions under § 843.202 retains the right to elect to receive an annuity under Part 842 or 844, as the case may be, in the event that the individual's compensation payments cease or are reduced.

Subpart B—Applications for Disability Retirement

§ 844.201 General requirements.

(a) An application for disability retirement must be filed with the Office of Personnel Management (OPM), on a form prescribed by OPM, within one year after the employee or Member separates from service. An employee or Member who has not yet separated must file the application through the employing agency. OPM may waive the time limit if the employee or Member was mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative may file the application with OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier. OPM may accept, as an informal claim, an application for annuity submitted in an incorrect form, or on a correct form incorrectly or incompletely filled out.

(b)(1) Before an application for disability retirement under this part can be approved, the applicant must provide OPM with—

(i) Satisfactory evidence that the applicant has filed an application for disability insurance benefits under section 223 of the Social Security Act; or

(ii) An official statement from the Social Security Administration that the individual is not insured for disability insurance benefits as defined in section 223(c)(1) of the Social Security Act.

(2) A disability retirement application under this part will be dismissed when OPM is notified by the Social Security Administration that the application referred to in paragraph (b)(1)(i) of this section has been withdrawn. All rights to an annuity under this part terminate upon withdrawal of an application for social security disability benefits.

(c) An application for disability retirement will not preclude or delay any other appropriate personnel action by the employing agency.

§ 844.202 Agency-filed disability retirement applications.

(a) *Basis for filing an application for an employee.* An agency must file an application for disability retirement of an employee who has 18 months of Federal civilian service when all of the following conditions are met:

(1) The agency has issued a decision to remove the employee;

(2) The agency concludes, after its review of medical documentation, that the cause for unacceptable performance, attendance, or conduct is disease or injury;

(3) The employee is institutionalized, or the agency concludes, based on a review of medical and other information, that the employee is incapable of making a decision to file an application for disability retirement;

(4) The employee has no personal representative or guardian; and

(5) The employee has no immediate family member who is willing to file an application on his or her behalf.

(b) *Agency procedures.* (1) When an agency issues a decision to remove an employee and not all of the conditions described in paragraph (a) of this section have been satisfied, but the removal is based on reasons apparently caused by a medical condition, the agency must advise the employee in writing of his or her possible eligibility for disability retirement.

(2) If all of the conditions described in paragraph (a) of this section have been met, the agency must inform the employee in writing at the same time it informs the employee of its removal decision, or at any time before the separation is effected, that—

(i) The agency is submitting a disability retirement application on the employee's behalf to OPM;

(ii) The employee may review any medical information in accordance with § 294.106(d) of this chapter; and

(iii) The action does not affect the employee's right to submit a voluntary application for disability retirement or any other retirement benefit to which the employee is entitled under FERS.

(3) When an agency submits an application for disability retirement to OPM on behalf of an employee, it must provide OPM with copies of the decision to remove the employee, the medical documentation, and any other documents needed to show that the cause for removal results from a medical condition. Following separation, the agency must provide OPM with a copy of the documentation of the separation.

(c) *OPM procedures.* (1) OPM will not act on any application for disability retirement filed by an agency on behalf of an employee until it receives the appropriate documentation of the separation. When OPM receives a complete application for disability retirement under this section, it will notify the former employee that it has received the application and that he or she may submit medical documentation. OPM will determine entitlement to disability benefits under § 844.203.

(2) OPM will cancel any disability retirement when a final decision of an administrative authority or court reverses the removal action and orders the reinstatement of an employee to the agency rolls.

§ 844.203 Supporting documentation.

(a) An individual or agency filing an application for disability retirement is responsible for providing OPM with the evidence described in § 844.201(b)(1), as well as whatever documentation OPM requires in order to establish that the individual meets the eligibility requirements set forth in § 844.103. The documentation must be provided in a form prescribed by OPM. Failure to submit the documentation required is grounds for dismissing the application. It is also the responsibility of the disability

annuitant to obtain and submit evidence OPM requires to show continuing entitlement to disability benefits. Unless OPM orders an examination by a physician of its choice under paragraph (b) of this section, the cost of providing medical documentation rests with the applicant or disability annuitant.

(b) OPM will offer the applicant a medical examination only when it determines that an independent evaluation of medical evidence is needed in order to make a decision regarding an application for a disability annuity or a disability annuitant's entitlement to continuing benefits. The medical examination will be conducted by a medical officer of the United States or a qualified physician or board of physicians designated by OPM. The applicant's refusal to submit to an examination is grounds for dismissal of the application or termination of payments to an annuitant.

(c)(1) OPM will review the documentation submitted under paragraph (a) of this section to determine whether the individual has met the eligibility requirements set forth in § 844.103. OPM will issue its decision in writing to the individual and to the employing agency. The decision will include a statement of OPM's findings and conclusions and an explanation of the applicant's right to request reconsideration or MSPB review under § 844.104.

(2) OPM may rescind a decision to allow an application for disability retirement at any time if OPM determines that the original decision was erroneous due to fraud, misstatement of fact, or upon the acquisition of additional medical documentation. OPM will provide the individual and the employing agency with written notification of the rescission, including a statement of OPM's findings and conclusions and an explanation of the individual's right to request reconsideration or MSPB review under § 844.104.

(d) Subject to 5 U.S.C. 552a, any supporting documentation provided to OPM under this section may be shared with the Social Security Administration and the Office of Workers' Compensation Programs of the U.S. Department of Labor.

Subpart C—Computation of Disability Annuity

§ 844.301 Commencing date of disability annuity.

A disability annuity under this part commences on the day after the employee separates or the day after pay ceases and the employee meets the requirements for title to an annuity.

§ 844.302 Computation of disability annuity before age 62.

(a) For the purposes of this subpart, the assumed social security disability benefit is the benefit determined under section 223 of the Social Security Act, with respect to an annuitant—

(1) As if the annuitant were insured for disability benefits, as determined under section 223(c)(1) of the Social Security Act, in the month in which the annuity under this part commenced or was reinstated under § 844.405;

(2) As if the annuitant became disabled as defined in section 223(d) of the Social Security Act on the date the annuity under this part commenced or was reinstated under § 844.405 (unless the annuitant actually became disabled before the annuity commenced);

(3) Without regard to the 5-month waiting period requirement defined in section 223(c)(2) of the Social Security Act;

(4) Including, where appropriate, a reduction under section 224 of the Social Security Act, based on the amount of the disability annuity under this subpart without regard to paragraphs (b)(2) and (c)(2) of this section; and

(5) Adjusted by each cost-of-living increase effective under 5 U.S.C. 8462 on and after the commencing date or reinstatement date of the annuity under this part.

(b)(1) Except as otherwise provided in this part, the annuity payable under this subpart until the end of the 12th month beginning after the annuity commences is equal to 60 percent of the annuitant's average pay.

(2) For months for which the annuitant is also entitled to a social security disability benefit, the amount computed under paragraph (b)(1) of this section is reduced by 100 percent of the annuitant's assumed social security disability benefit.

(c)(1) Except as otherwise provided in this part, the annuity under this subpart after the period described in paragraph (b)(1) of this section is equal to 40 percent of the annuitant's average pay.

(2) For months after the period described in paragraph (b)(1) of this section for which the annuitant is also entitled to a social security disability benefit, the amount computed under paragraph (c)(1) of this section is reduced by 60 percent of the annuitant's assumed social security disability benefit.

§ 844.303 Redetermination of disability annuity at age 62.

Except as provided in §§ 844.304 and 844.305, effective on the annuitant's 62nd birthday, the rate of annuity payable to a disability annuitant will be the lesser of the amount computed under paragraph (a) of this section or the amount computed under paragraph (b) of this section.

(a) The amount under this paragraph is the amount of an annuity computed with respect to the annuitant under 5 U.S.C. 8415 (including subsection (g) of that section), including credit for the period or periods before the annuitant's 62nd birthday during which the annuitant was entitled to a disability annuity. The average pay used in computing the annuity under 5 U.S.C. 8415 is adjusted by all cost-of-living increases effective under 5 U.S.C. 8462(b) during the period or periods before the annuitant's 62nd birthday during which the annuitant was entitled to a disability annuity under this part.

(b)(1) The amount determined under this paragraph with respect to an annuitant whose annuity, as of the day before the annuitant's 62nd birthday, is being reduced under § 844.302(b)(2) is equal to the lesser of—

(i) The rate of annuity then payable under § 844.302(b); or

(ii) The rate of annuity that would be payable under § 844.302(c) at the expiration of the 12-month period described in § 844.302(b)(1).

(2) The amount determined under this paragraph with respect to an annuitant whose annuity, as of the day before the annuitant's 62nd birthday, is being reduced under § 844.302(c)(2) is equal to the amount then payable under § 844.302(c).

(3) The amount determined under this paragraph with respect to an annuitant whose annuity, as of the day before the annuitant's 62nd birthday, is not being reduced under § 844.302 (b)(2) or (c)(2) is equal to the amount that would be applicable under paragraph (b) (1) or (2) of this section if the annuity were being reduced under § 844.302 (b)(2) or (c)(2), as appropriate.

§ 844.304 Minimum disability annuity.

Notwithstanding any other provision of this part, an annuity payable under this part cannot be less than the amount of an annuity computed under 5 U.S.C. 8415 (excluding subsection (f) of that section) based on the annuitant's service.

§ 844.305 Computation of disability annuity for those otherwise eligible to retire.

Notwithstanding any other provision of this part, an annuity payable under this part will be computed under 5 U.S.C. 8415 if it commences or is reinstated under § 844.405 (b) or (c) of this part on or after—

(a) The annuitant has satisfied the age and service requirements for retirement under 5 U.S.C. 8412 (a) through (f); or

(b) The annuitant has reached age 62.

Subpart D—Termination and Reinstatement of Disability Annuity

§ 844.401 Recovery from disability.

(a) A disability annuitant may request medical reevaluation at any time. OPM may reevaluate the medical condition of disability annuitants age 60 or over only on their own request.

(b) When OPM determines on the basis of medical documentation or other evidence that a disability annuitant has recovered from the disability, OPM will terminate the annuity effective on the first day of the month beginning 1 year after the date of the medical documentation or other evidence showing recovery.

§ 844.402 Restoration of earning capacity.

(a) *Earning capacity determinations.* If a disability annuitant is under age 60 on December 31 of any calendar year and his or her income from wages or self-employment or both during that calendar year equals at least 80 percent of the current rate of basic pay of the position occupied immediately before retirement, the annuitant's earning capacity is considered to be restored. The disability annuity will terminate on the June 30 after the end of the calendar year in which earning capacity is restored. When an agency reemploys a disability annuitant whose earning capacity is restored at any grade or rate of pay within the 180-day waiting period pending termination of the disability retirement benefit, OPM will terminate the annuity effective on the date of reemployment.

(b) *Current rate of basic pay for the position occupied immediately before retirement.* (1) A disability annuitant's income for a calendar year is compared to the gross annual rate of basic pay in effect on December 31 of that year for the position occupied immediately before retirement. The income limitation for most disability annuitants is based on the rate for the grade and step that reflects the total amount of basic pay (both the grade and step and any additional basic pay) in effect on the date of separation from the agency for disability retirement. Additional basic pay is included subject to the premium pay restrictions of 5 U.S.C. 5545 (c)(1) and (c)(2).

(2) In the case of an annuitant whose basic pay rate on the date determined under paragraph (b)(1) of this section did not match a specific grade and step in the pay schedule—

(i) For those retiring from a Senior Executive Service position, a merit pay position, a position for which a special pay rate is authorized (except as provided in paragraph (b)(2)(ii) of this section), or any other position in which the rate of basic pay is not equal to a grade and step in a pay schedule, the grade and step will be established for this purpose at the lowest step in the pay schedule grade that is equal to or greater than the actual rate of basic pay payable.

(ii) For those retiring with a retained rate of basic pay or from a position for which a special pay rate is in effect but whose rate of basic pay exceeds the highest rate payable in the pay schedule grade applicable to the position held, the grade is established for this purpose at the highest grade in the schedule that is closest to the grade of the position held and within which the amount of the retained pay fails. The step is established for this purpose at the lowest step in that grade that equals or exceeds the actual rate of pay payable.

(3) For annuitants retiring from the United States Postal Service, only cost-of-living allowances subject to FERS deductions are included in determining the current rate of basic pay of the position held at retirement.

(c) *Income.* (1) Earning capacity for the purposes of this section is demonstrated by an annuitant's ability to earn post-retirement income in exchange for personal services or a work product, or as a profit from one or more businesses wholly or partly owned by the disability annuitant and in the management of which the annuitant has an active role. Income for the purposes of this section is not necessarily the same as income for the purposes of the Internal Revenue Code.

(2) Income earned from one source is not offset by losses from another source. Income earned as wages is not reduced by a net loss from self-employment. The net income from each self-employment endeavor is calculated separately, and the income earned as net earnings from one self-employment endeavor is not reduced by a net loss from another self-employment endeavor. Thus, a net loss from one endeavor is considered to be a net income of zero, and the net incomes from each separate self-employment endeavor are added together to determine the total amount of income from self-employment for a calendar year.

(3) Income is counted in the calendar year in which it is earned, even though receipt may be deferred.

(d) *Requirement to report income.* All disability annuitants who, on December 31 of any calendar year, are under age 60 must report to OPM their income from wages or self-employment or both for that calendar year. Each year as early as possible, OPM will send a form to annuitants to use in reporting their income from the previous calendar year. The form specifies the date by which OPM must receive the report. OPM will determine entitlement to continued annuity on the basis of the report. If an annuitant fails to submit the report, OPM may stop annuity payments until it receives the report.

§ 844.403 Reemployment of disability annuitants.

An agency may reemploy a disability annuitant in any position for which the annuitant is qualified. The employing agency must notify OPM of the reemployment. The disability annuity terminates on the date of reemployment in the Government.

§ 844.404 Annuity rights after a disability annuity terminates.

(a) When a disability annuity is terminated because of recovery or restoration of earning capacity and the individual is not reemployed in the Government, the individual is entitled to an annuity—

(1) Under 5 U.S.C. 8414(b) if the individual—

(i) Is at least age 50 when the disability annuity ceases and had 20 or more years of service at the time of retiring for disability; or

(ii) Has 25 or more years of service at the time of retiring for disability, regardless of age; or

(2) Under 5 U.S.C. 8412(g) if the individual is at least the minimum retirement age applicable under 5 U.S.C. 8412(h) when the disability annuity ceases and had 10 or more years of service at the time of retiring for disability.

(b) When a disability annuitant whose annuity was terminated because of Federal reemployment is separated and meets the age and service requirements for immediate retirement under 5 U.S.C. 8412 or 8414, the individual is entitled to an annuity computed under 5 U.S.C. 8415.

§ 844.405 Resumption and reinstatement of disability annuity.

(a) *Resumption of annuity.* (1) Except as provided in § 844.404(b) and paragraph (b)(2) of this section, when a disability annuitant whose annuity was terminated under § 844.403 on the basis of Federal reemployment is separated within 1 year after becoming reemployed, OPM will resume the disability annuity beginning on the first day after separation. Except as provided in §§ 844.304 and 844.305, the annuity will be resumed at the rate provided under § 844.302(c) unless the reemployment ends within the 12-month period described in § 844.302(b)(1), in which case the annuity will be resumed at the rate provided under § 844.302(b) until the end of the 12-month period. The resumed rate will be increased by any adjustment that was effective under 5 U.S.C. 8462 during the period of reemployment, unless a higher annuity rate is obtained by simply adjusting the individual's average salary to reflect his or her earnings during reemployment.

(2) When an individual whose annuity payments were terminated because of failure to submit medical or earnings information requested by OPM provides evidence that demonstrates to OPM's satisfaction that the individual is disabled or that the individual's earning capacity has not been restored, OPM will resume the annuity on the date of the medical documentation or other evidence showing that the individual is still entitled to a disability annuity. Except as provided in §§ 844.304 and 844.305, the annuity will be resumed at the rate provided under § 844.302(c) unless the resumption occurs within the 12-month period described in §§ 844.302(b)(1), in which case the annuity will be resumed at the rate provided under ¶ 844.302(b) until the end of the 12-month period.

(b) *Reinstatement of annuity based on new evidence of disability.* (1) When a disability annuitant whose annuity was terminated because the annuitant was found recovered on the basis of medical evidence is not reemployed in the Government and, based on current medical documentation, OPM finds that the disability has recurred, OPM will reinstate the disability annuity as provided in paragraph (d) of this section. The right to the reinstated annuity begins on the date of the medical documentation showing that the disability has recurred, or if the medical documentation clearly shows that the disability recurred on an earlier date, the annuity will be reinstated on that earlier date.

(2) If a disability annuitant whose annuity is terminated on the basis of Federal reemployment provides, when the reemployment ends, medical documentation or other evidence that demonstrates to OPM's satisfaction that the individual has again become disabled, the disability annuity will be reinstated at the rate provided in paragraph (d) of this section, regardless of the duration of the Federal reemployment, effective on the day after the reemployment ends.

(c)(1) *Reinstatement of annuity based on new evidence of loss of earning capacity.* OPM will reinstate the disability annuity as provided in paragraph (d) of this section when a disability annuitant whose annuity was terminated under § 844.402(a)—

(i) Is not reemployed in the Government;

(ii) Has not recovered from the disability for which retired; and

(iii) Again loses his or her earning capacity, as determined by OPM.

(2) The reinstated annuity is payable from January 1 of the year following the calendar year in which earning capacity was lost. Earning capacity is lost if, during any calendar year, the individual's income from wages or self-employment or both is less than 80 percent of the current rate of basic pay of the position held at retirement.

(d) Except as provided in §§ 844.304 and 844.305, a disability annuity reinstated under paragraph (b) or (c) of this section is paid at the rate provided under § 844.302(b) until the end of the 12th month beginning after the annuity is reinstated. Thereafter, the rate determined under § 844.302(c) is payable.

(e) Notwithstanding paragraphs (b) and (c) of this section, an annuity may not be reinstated under this section if the individual is receiving an annuity under Part 842 of this chapter.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 299

[INS Number: 1045-88]

Display of Control Numbers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: A new § 299.5 is being added to 8 CFR Part 299.5. The new section, titled, Display of Control Numbers, will allow the Immigration and Naturalization Service (Service), to compile, in one centralized location within its regulations, a listing of it's current public use forms and their respective control numbers as assigned by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The consolidated identification of public use forms will enable both Service officials and the public to easily identify those public use forms in current use by the Immigration and Naturalization Service.

DATE: August 31, 1988.

FOR FURTHER INFORMATION CONTACT: Sharon A. Andrade, Management Analyst, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, (202) 633-3049.

SUPPLEMENTARY INFORMATION: A new § 299.5 is being added to 8 CFR Part 299 in order that the Immigration and Naturalization Service's regulations might list, in one specific area, all Public Use Forms along with their respective OMB control numbers. This addition to Part 299 is being made as a matter of convenience and efficiency to both the Service and the public in the identification of public use forms which are cited throughout 8 CFR. These technical changes simply compile all public use forms and corresponding control number and list them in one specific section of Part 299. Public participation in this regulatory change, therefore, is unnecessary, as the identification of these forms in a separate Section of 8 CFR is merely a change in the way the Service organizes and presents materials in 8 CFR.

The Immigration and Naturalization Service is invoking the exception to the notice and comment rulemaking procedures established by the Administrative Procedures Act under 5 U.S.C. 553 (b) (A) and (d).

In accordance with 5 U.S.C. 605 (b), the Commissioner of Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 299

Aliens, Government publications, Reporting and recordkeeping requirements.

Accordingly, Part 299, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 299—IMMIGRATION FORMS

1. The authority citation for Part 299 is revised to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

2. A new § 299.5 is added to read as follows:

§ 299.5 Display of control numbers.

The following listing includes those Immigration and Naturalization Service public use forms which are cited for use throughout Title 8. The Information collection requirements contained in this title have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The form numbers, titles, and OMB control numbers read as follows:

INS form No.	INS form title	Currently assigned OMB control No.
AR-4	Alien Registration Fingerprint Chart	1115-0002
AR-11	Alien's Change of Address Card	1115-0003
G-27	Request for Representation Before the BIA and I&N Service	1115-0026
G-79A	Data Relating to Beneficiary of Private Bill	1115-0044
G-868	Immigration Reform and Control Act of 1986 Questionnaire to solicit public input for INS Implementation Plans	1115-0124
G-146	Nonimmigrant Checkout Letter	1115-0075
G-325	Biographic Information	1115-0066
G-340	Report of Alien Person Institutionalized	1115-0050
G-639	Freedom of Information/Privacy Act Request	1115-0087
G-641	Application for Verification of Information from INS Records	1115-0088
G-767	Civilian Complaint Form English/Spanish	1115-0103
G-777	Supplemental Qualifications Statement Immigration Inspector, GS 1816-5	1115-0107
G-845	Document Verification Request	1115-0122
I-9	Employment Eligibility Verification	1115-0136
I-17	Petition for Approval of School for Attendance by Nonimmigrant Students	1115-0070
I-20AB	Certificate of Eligibility for Nonimmigrant (F-1) student status for Academic & Language Study	1115-0021
I-120ID	I-120ID	1115-0051
I-120MN	Verification of Eligibility for Nonimmigrant (M-1) student status for Vocational Students	1115-0051
I-43	Baggage and Personal Effects of Detained Alien	1115-0063
I-68	Canadian Border Boat Landing Permit	1115-0065
I-71	Revalidation Letter	1115-0058
I-90	Application by lawful permanent resident for an alien registration receipt card, Form I-551	1115-0004
I-92	Aircraft/Vessel Report	1115-0078
I-94	Arrival-Departure Record	1115-0077
I-94T	Arrival-Departure Record (Transit without VISA)	1115-0139
I-95AB	Crewman's Landing Permit	1115-0040
I-102	Application for Nonimmigrant Alien for replacement of arrival document	1115-0079
I-104	Alien Address Report Card	1115-0115
I-126	Report of status by Treaty Trader or Investor	1115-0023
I-129B	Petition to classify nonimmigrant as temporary worker or trainee	1115-0038
I-129F	Petition to classify status of alien fiancee for issuance of a nonimmigrant VISA	1115-0071
I-129L	Petition to Employ Intracompany Transferee	1115-0127
I-129S	Intracompany Transferee Certification of Eligibility	1115-0128
I-130	Petition to classify status of alien relative for issuance of immigrant VISA	1115-0054
I-131	Application for issuance of permit to reenter the U.S.	1115-0005
I-134	Affidavit of support	1115-0062
I-140	Petition to classify preference status of alien on basis of profession or occupation	1115-0061
I-175	Application for nonresident alien's Canadian Border Crossing Card	1115-0047
I-190	Application for nonresident alien's Mexican Border Crossing Card	1115-0019
I-191	Application for advance permission to return to unrelinquished domicile	1115-0032
I-192	Application for advance permission to enter as nonimmigrant	1115-0028
I-193	Application for waiver of passport and/or VISA	1115-0042
I-212	Application for permission to reapply for admission into the U.S. after deportation or removal	1115-0099
I-243	Application for removal	1115-0020
I-246	Application for stay of deportation	1115-0055
I-256A	Application for suspension of deportation	1115-0025
I-259A	Agreement by Transportation line to assume responsibility for removal of aliens	1115-0036
I-287AB	Special care and attention for alien	1115-0043
I-352A	Immigration Bond	1115-0065
I-356	Request for cancellation of public charge bond	1115-0046
I-360	Petition to classify P.L. 97-359 Amerasian as a child, son or daughter of a U.S. citizen	1115-0117
I-361	Affidavit of financial support and intent to petition for legal custody for P.L. 97-359 Amerasian	1115-0118
I-363	Request to enforce affidavit of financial support and intent to petition for legal custody for P.L. 97-359 Amerasian	1115-0116
I-408	Application to pay off or discharge alien crewman	1115-0073
I-418	Passenger List-Crew List	1115-0083
I-438	Departure information card	1115-0080
I-485	Application for status as permanent resident	1115-0053
I-485A	Application by Cuban Refugee for permanent residence	1115-0067
I-485C	Application for creation of a record of lawful admission for an Indochina refugee	1115-0089
I-488	Affidavit of witness	1115-0034
I-506	Application for change of nonimmigrant status	1115-0033
I-508A	Waiver of rights, privileges, exemptions, and immunities	1115-0037
I-510	Guarantee of payment	1115-0029
I-515	Notice to student or exchange visitor admitted without I-20 or IAP-66	1115-0068
I-526	Request for determination that prospective immigrant is an investor	1115-0081
I-538	Application by nonimmigrant students for extension of stay, school transfer, and permission to accept or continue employment or practice training.	1115-0060
I-539	Application to extend time of temporary stay	1115-0093
I-566	Application for employment by a spouse or unmarried son or daughter of G-4 official	1115-0090

INS form No.	INS form title	Currently assigned OMB control No.
I-570	Application for issuance of refugee travel document	1115-0084
I-589	Request for asylum in the U.S.	1115-0086
I-590	Registration for classification as refugee (section 207, I&N Act)	1115-0057
I-591	Assurance by a U.S. sponsor in behalf of an applicant for refugee status	1115-0056
I-600	Petition to classify orphan as an immediate relative	1115-0049
I-600A	Petition to classify orphan as an immediate relative/Application for advance processing of orphan petition	1115-0049
I-601	Application for waiver of grounds of excludability	1115-0048
I-602	Application by refugee for waiver of grounds of excludability	1115-0098
I-612	Application for waiver of the foreign residence requirement	1115-0059
I-643	Health and Human Services Statistical Data	1115-0104
I-644	Supplementary statement for graduate medical trainees	1115-0108
I-687	Application for status as Temporary Residence	1115-0133
I-690	Waiver of Exclusion	1115-0132
I-693	Medical Examination of aliens seeking adjustment of status	1115-0134
I-694	Notice of Appeal	1115-0135
I-695	Application of Temporary Replacement Card	1115-0129
I-697	Changes of Address Notice	1115-0130
I-700	Application for status of temporary status	1115-0131
I-705	Affidavit confirming seasonal agricultural employment of an applicant for temporary residence status	1115-0137
I-721	Student Status Form/Student Listing	1115-0119
I-730	Refugee/Asylum Relative Petition	1115-0121
I-735	Special agricultural workers program pre-application claim to eligibility	1115-0126
I-736	Guam Visa Waiver Information	1115-0141
I-751	Joint petition to remove the conditional basis of alien's permanent resident status	1115-0145
I-752	Application for waiver of requirement to file joint petition for removal of conditions	1115-0146
I-760	Guam Visa Waiver Agreement	1115-0140
I-772	Declaration of Intending Citizen	1115-0138
	User Fee	1115-0142
N-14A	Arrival Information	1115-0082
N-25	Request for verification of Naturalization	1115-0007
N-300	Application to file declaration of intention	1115-0008
N-400	Application to file petition for naturalization	1115-0009
N-400B	Supplement to application to file petition for naturalization	1115-0031
N-402	Application to file petition for naturalization on behalf of child	1115-0010
N-422	Form letter re: Information from selective service file	1115-0011
N-426	Request for certification of military or naval service	1115-0022
N-430	Request that Applicant for Naturalization appear for Interview	1115-0064
N-445	Questionnaire submitted by Petitioner at Final Hearing	1115-0052
N-445B	Notice of Final Naturalization Hearing (Children)	1115-0076
N-455	Application for Transfer of Petition for Naturalization	1115-0035
N-458	Application to Correct Certification of Naturalization	1115-0030
N-470	Application to Preserve Residence for Naturalization Purpose	1115-0014
N-565	Application for a New Naturalization or Citizenship Paper	1115-0015
N-577	Application for a special certificate of naturalization to obtain recognition as a citizen of the U.S. by a foreign state	1115-0016
N-600	Application for certification of citizenship	1115-0018
N-610	Application for clarification of status by members of the Texas band of Kickapoo Indians (P.L. 97-429 of 1-8-83)	1115-0114

Dated: July 8, 1988.

Elizabeth Chase MacRae,

Associate Commissioner, Information Systems.

[FR Doc. 88-19801 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-10-M

[INS Number: 1115-88]

8 CFR Parts 299 and 499

Immigration Forms and Nationality Forms

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises the listings of forms (Immigration Forms, and Nationality Forms) that are contained in 8 CFR Parts 299 and 499. This revision is necessary to ensure that the Immigration and Naturalization Service uses and accepts only the current editions of the forms shown in §§ 299.1 and 499.1 of this chapter.

EFFECTIVE DATE: This rule is effective August 31, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond R. Jaroneski, Jr., Senior Immigration Examiner, Immigration & Naturalization Service, 425 I Street NW., Rm. 7215, Washington, DC 20536, Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: Sections 299.1 and 499.1 list the prescribed forms to be used in compliance with Subchapters A,B, and C of this chapter. This revision is necessary to ensure that the listing of Immigration Forms and Nationality Forms remain current.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule provides an up-to-date listing of Immigration Forms and Nationality Forms to be used and accepted by the Immigration and Naturalization Service.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment Analysis in accordance with E.O. 12612.

List of Subjects

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

8 CFR Part 499

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 299—IMMIGRATION FORMS

1. The authority citation for Part 299 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103.

2. Section 299.1 is revised to read as follows:

§ 299.1 Prescribed forms.

The forms listed below are hereby precribed for use in compliance with the provisions of Subchapter A and B of this chapter. To the maximum extent feasible the forms used should bear the edition date shown or as subsequent edition date.

Form No., Title and description

AR-4 (6-30-72)—Alien Registration Fingerprint Chart.
AR-11 (3-21-79)—Alien's Change of Address Card.
CDC 4.417 (11-74)—(Formerly HSM-240 or PHS-124) Medical Certificate.
CDC 4.422-1 (10-84)—Statement in Support of Application for Waiver of Excludability under section 212(a)(1), Immigration and Nationality Act.
CDC 4.422-2 (10-84)—Statement in Support of Application for Waiver of Excludability under section 212(a)(3), Immigration and Nationality Act.
CDC 4.422-4 (10.84)—Statement in Support of Application for Waiver of Excludability under section 212(a)(1), Immigration and Nationality Act-Military Dependent.
CDC 4.422-5 (10-84)—Statement in Support of Application for Waiver of Excludability under section 212(a)(3), Immigration and Nationality Act-Military Dependent.
CDC 42.1 (4-81)—Interstate Reciprocal Notification of Disease.
CDC 75.17 (4-82)—Report on Alien with Tuberculosis not considered active.
CDC 75.18 (4-82)—Report on Alien with Tuberculosis Waiver.
IAP-66 (10-78)—Certificate of Eligibility for Exchange Visitor Status.
FD-258 (4-25-72)—Applicant Card.
OF-157 (5-78)—Medical Examination of Applicants for United States Visas.
G-27 (9-30-82)—Request for Recognition as a Non-Profit Religious, Charitable, Social Service, or Similar Organization Established in the United States under 8 CFR 292.2.
G-28 (10-25-79)—Notice of Entry of Appearance as Attorney or Representative.
G-56 (5-1-83)—Call-in Notice.
G-296 (9-12-58)—Report of Violation.
G-297 (5-28-70)—Order to Seize Aircraft.
G-298 (9-12-58)—Public Notice of Seizure.
G-325 (10-1-82)—Biographic Information.
G-325A (10-1-82)—Biographic Information.
G-325B (5-1-79)—Biographic Information.
G-325C (10-1-82)—Biographic Information.
G-639 (6-12-82)—Freedom of Information Act/Privacy Act Request.
G-641 (5-5-83)—Application for Verification of Information from Immigration and Naturalization Records.
G-652 (2-1-78)—Affidavit of Identity.
G-658 (11-1-75)—Record of Information Disclosure (Privacy Act).
I-17 (4-4-83)—Petition for Approval of School for Attendance by Nonimmigrant Students.
I-17A (5-1-83)—Designated School Officials.
I-17B (5-1-83)—System Attachment.
I-20 A-B (5-1-83)—Certificate of Eligibility for Nonimmigrant (F-1) Student Status—For Academic and Language Students.
I-20 M-N (5-1-83)—Certificate of Eligibility for Nonimmigrant (M-1) Student Status—For Vocational Students.
I-20ID (8-26-83)—Form I-20 ID Copy.
I-38 (7-25-77)—Decision of the Immigration Judge.
I-39 (9-22-78)—Decision of the Immigration Judge.
I-68 (9-1-84)—Canadian Border Boat Landing Permit.
I-71 (11-30-82)—Inquiry form sent to Employer for Revalidation of Continuing Intent to Hire Alien.
I-72 (4-1-83)—Form letter for Returning Deficient Applications/Petitions.
I-79 (5-15-70)—Notice of Intention to Fine under Immigration and Nationality Act.
I-90 (8-1-85)—Application by Lawful Permanent Resident for New Alien Registration Receipt Card.
I-92 (6-1-73)—Aircraft/Vessel Report.
I-94 (10-1-85)—Arrival-Departure Record.
I-95AB (9-1-84)—Crewman's Landing Permit.
I-102 (5-5-83)—Application by Nonimmigrant Alien for Replacement of Arrival Document.
I-122 (5-4-79)—Notice to Applicant for Admission Detained for Hearing before Immigration Judge.
I-126 (10-30-82)—Report of Status by Treaty Trader of Investor.
I-129B (7-1-83)—Petition to Classify Nonimmigrant as Temporary Worker or Trainee.
I-129F (10-7-87)—Petition for Alien Fiance(e).
I-129L (1-14-87)—Petition to Employ Intracompany Transferee.
I-129S (1-14-87)—Intracompany Transferee Certificate of Eligibility (Blanket Petitions Only).
I-130 (2-28-87)—Petition for Alien Relative.
I-131 (5-5-83)—Application for Issuance of Permit to Reenter the United States.
I-134 (7-1-83)—Affidavit of Support.
I-138 (7-1-83)—Subpoena.
I-140 (8-1-85)—Petition for Prospective Immigrant Employee.
I-141 (4-21-69)—Medical Certificate.
I-147 (10-30-83)—Notice of Temporary Exclusion.
I-151 (7-1-72)—Alien Registration Receipt Card.
I-171 (3-4-82)—Notice of Approval of Relative Immigrant Visa Petition.
I-171C (7-1-83)—Notice of Approval or Extension of Nonimmigrant Visa Petition of H or L Alien.
I-171F (10-14-76)—Notice of Approval of Nonimmigrant Visa Petition for Fiance or Fiancee.
I-171H (12-15-82)—Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition.
I-175 (4-1-75)—Application for Nonresident Alien's Canadian Border Crossing Card.
I-180 (9-1-81)—Notice of Voidance of Form I-186.
I-181 (3-1-83)—Memorandum of Creation of Record of Lawful Permanent Residence.
I-184 (4-1-58)—Alien Crewman Landing Permit and Identification Card.
I-185 (1-1-75)—Nonresident Alien Canadian Border Crossing Card.
I-186 (6-1-72)—Nonresident Alien Mexican Border Crossing Card.
I-190 (3-1-75)—Application for Nonresident Alien Mexican Border Crossing Card.
I-191 (5-5-83)—Application for Advance Permission to Return to Unrelinquished Domicile.
I-192 (5-5-83)—Application for Advance Permission to Enter as Nonimmigrant.
I-193 (5-5-83)—Application for Waiver of Passport and/or Visa.
I-194 (2-1-82)—Notice of Approval of Advance Permission to Enter as Nonimmigrant (Pursuant to Sec. 212(d)(3)(A) or (B) of the Act.
I-197 (5-1-76)—U.S. Citizen Identification Card.
I-202 (11-15-79)—Authorization for Removal.
I-212 (11-20-85)—Application for Permission to Reapply for Admission Into the United States After Deportation or Removal.
I-221 (7-1-73)—Order to Show Cause and Notice of Hearing.
I-221S (8-1-77)—Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien.
I-243 (9-27-75)—Application for Removal.
I-246 (3-31-83)—Application for Stay of Deportation.
I-256A (12-30-83)—Application for Suspension of Deportation.
I-259 (10-1-69)—Notice to Detain, Deport, Remove or Present Aliens.
I-259A (2-12-55)—Agreement by Transportation Line to Assume Responsibility for Removal of Aliens. (One-time basis.)
I-260 (6-1-73)—Notice to Take Testimony of Witness.
I-284 (12-20-66)—Notice to Transportation Line Regarding Deportation and Detention Expenses of Detained Alien.
I-286 (4-1-79)—Notification to Alien of Conditions of Release of Detention.
I-287 (4-10-72)—Special Care and Attention for Alien.
I-288 (2-20-62)—Notice to Transportation Line Regarding Deportation Expenses of Alien Completely Ready for Deportation.
I-290A (10-31-79)—Notice of Appeal to the Board of Immigration Appeals.
I-290B (10-3-83)—Notice of Appeal to Commissioner.
I-290C (9-30-66)—Notice of Certification.
I-292 (10-1-83)—Decision.
I-296 (12-15-82)—Notice to Alien Ordered Excluded by Immigration Judge.
I-305 (5-1-76)—Receipt of Immigration Officer—United States Bonds or Notes, or Cash, Accepted as Security on Immigration Bond.
I-310 (4-16-62)—Bond for Payment of Sums and Fines Imposed under Immigration and Nationality Act (Term or Single Entry).
I-312 (4-15-76)—Designation of Attorney in Fact.

I–323 (3–15–77)—Notice—Immigration Bond Breached.
I–328 (6–5–74)—Order on Motion to Reopen Proceedings.
I–342 (4–25–79)—Determination of the Immigration Judge with Respect to Custody.
I–351 (6–1–74)—Bond Riders.
I–352 (6–1–84)—Immigration Bond.
I–356 (9–27–75)—Request for Cancellation of Public Charge Bond.
I–360 (7–1–84)—Petition to Classify Public Law 97–359 Amerasian as the Child, Son, or Daughter of a United States Citizen.
I–361 (7–1–84)—Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian.
I–365 (7–1–84)—Notice of Completion of Preliminary Processing of Petition for Public Law 97–359 Amerasian.
I–391 (3–14–77)—Notice—Immigration Bond Cancelled.
I–408 (4–1–83)—Application to Pay off or Discharge Alien Crewman.
I–410 (5–1–83)—Receipt for Crew List.
I–418 (7–1–74)—Passenger List–Crew List.
I–420 (3–15–67)—Agreement (Land-Border) between Transportation Line and United States.
I–421 (6–29–58)—Agreement (Overseas) Between Transportation Line and United States.
I–425 (3–24–77)—Agreement for Preinspection at Places Outside United States.
I–426 (5–1–65)—Immediate and Continuous Transit Agreement Between a Transportation Line and United States of America (special direct transit procedure).
I–444 (4–1–83)—Mexican Border Visitors Permit.
I–464 A/E (10–20–80)—Notice of Third/Sixth Preference Petition Approved Under section 203(a) of the Immigration and Nationality Act, as amended.
I–485 (2–27–87)—Application for Permanent Residence.
I–485A (3–25–81)—Application by Cuban Refugee for Permanent Residence.
I–506 (7–1–84)—Application for Change of Nonimmigrant Status.
I–508 (10–1–80)—Waiver of Rights, Privileges, Exemptions, and Immunities.
I–508F (6–1–70)—Waiver of Rights, Privileges, Exemptions, and Immunities (Under section 247(b) of the Act and under the Convention between the United States of America and the French Republic with respect to Taxes on Income and Property).
I–509 (5–31–83)—Notice of Proposed Change of Status.
I–510 (11–15–82)—Guarantee of Payment.
I–512 (10–1–82)—Authorization for Parole of an Alien into the United States.
I–526 (12–22–79)—Request for Determination that Prospective Immigrant is an Investor.
I–538 (4–1–83)—Application by Nonimmigrant Student for Extension of Stay, School Transfer or Permission to Accept or Continue Exployment.
I–539 (5–5–83)—Application to Extend Time of Temporary Stay.
I–551 (Jan. 77)—Alien Registration Receipt Card.
I–566 (9–21–79)—Application for Employment by Spouse or Unmarried Dependent Son or Daughter of A–1 or A–2 Official or Employee of Diplomatic or Consular Establishment or G–4 Officer or Employee of International Organization.
I–570 (10–1–84)—Application for Issuance of Refugee Travel Document.
I–571 (11–1–79)—Refugee Travel Document.
I–586 (Apr. 77)—Nonresident Alien Border Crossing Card.
I–589 (3–1–81)—Request for Asylum in the United States.
I–590 (5–1–80)—Registration for Classification as Refugee.
I–591 (5–1–84)—Assurance by a United States Sponsor in Behalf of an Applicant for Refugee Status.
I–600 (5–5–83)—Petition to Classify Orphan as an Immediate Relative.
I–600A (5–5–83)—Application for Advance Processing of Orphan Petition.
I–601 (6–20–80)—Application of Waiver of Grounds of Excludability.
I–602 (9–10–80)—Application by Refugee for Waiver of Grounds of Excludability.
I–612 (3–30–83)—Application for Waiver of the Foreign Residence Requirement of section 212(e) of the Immigration and Nationality Act, as amended.
I–613 (3–30–83)—Request for United States Information Agency Recommendation section 212(e) Waiver.
I–687 (4–1–87)—Application for Status as a Temporary Resident (section 245A INA).
I–688 (5–87)—Temporary Resident Card.
I–688A (5–87)—Employment Authorization Card.
I–690 (2–14–87)—Application for Waiver of Grounds of Excludability under sections 245A or 210 of the Immigration and Nationality Act.
I–691 (5–5–87)—Notice of Approval of Status as a Temporary Resident.
I–692 (5–5–87)—Notice of Denial for Status as a Temporary Resident.
I–693 (9–1–87)—Medical Examination of Aliens Seeking Adjustment of Status.
I–694 (4–1–87)—Notice of Appeal of Decision under section 210 or 245A of the Immigration and Nationality Act.
I–695 (2–24–87)—Application for Replacement of Form I–688A, Employment Authorization, or Form I–688, Temporary Residence Card (Under Pub. L. 99–603).
I–697 (2–14–87)—Change of Address Card for Legalization and Special Agricultural Workers (SAW).
I–700 (4–1–87)—Application for Temporary Resident Status as a Special Agricultural Worker (SAW) (Section 210 of the Immigration and Nationality Act).
I–705 (3–12–87)—Affidavit Confirming Seasonal Agricultural Employment of an Applicant for Temporary Residence Status Under section 210 of the Immigration and Nationality Act.
I–730 (11–1–85)—Refugee/Asylee Relative Petition.
I–736 (7–23–87)—Guam Visa Waiver Information.
I–760 (7–22–87)—Agreement Between Transportation Line, Operating Between Foreign Territory and Guam, and United States.
ICAO—International Civil Aviation Organization's General Declaration.
MA 7–50 (4–70)—Application for Alien Employment Certification. (Part I—Statement of Qualifications of Aliens MA 7–50A). (Part II—Job Offer for Alien Employment MA 7–50B).
7507 (3–69)—Bureau of Customs' General Declaration.

PART 499—NATIONALITY FORMS

3. The authority citation for Part 499 continues to read as follows:

Authority: 8 U.S.C. 1103.

4. Section 499.1 is amended by revising the entry for N–400 to read as follows:

§ 499.1 Prescribed forms.

* * * * *

N–400 (12–5–86)—Application to File Petition for Naturalization.

* * * * *

Dated: May 25, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88–19802 Filed 8–30–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–16–AD; Amdt. 39–6010]

Airworthiness Directives; British Aerospace Model BAC 1–11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1–11 series airplanes equipped with R.F.D. Type AES–12B inflatable escape slides, which requires installation of a longer operating cable on the emergency escape slide deployment system. This modification will increase the clearance between the outboard edge of the forward passenger door and the slide during the slide inflation sequence. This amendment is prompted by a report of an incident where it was found that, if the passenger entrance door is pushed open slowly, it is possible for the slide to inflate before sufficient clearance between the door and doorway sill has been achieved. This condition, if not corrected, could result in improper slide deployment during emergency evacuation procedures.

EFFECTIVE DATE: October 10, 1988.

BEST COPY AVAILABLE

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-1967.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to British Aerospace Model BAC 1-11 series airplanes equipped with R.F.D. AES-12B inflatable escape slides, to require installation of a longer operating cable on the emergency escape slide deployment system, was published in the **Federal Register** on May 19, 1988 (53 FR 17956).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received. Both commenters supported the proposed rule.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $600.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act tha this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($100). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Admistrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 series airplanes equipped with R.F.D. AES-2B inflatable escape slides, identified in British Aerospace BAC 1-11 Service Bulletin 25-PM5943, Revision 1, dated May 8, 1987, certificated in any category. Compliance is required within 5 months after the effective date of this AD, unless previously accomplished.

To prevent failure of the emergency escape slide deployment system, accomplish the following, unless previously accomplished:

A. Modify the R.F.D. Type AES-12B emergency escape slide system in accordance with BAC 1-11 Service Bulletin 25-PM5943, Revision 1, dated May 8, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 10, 1988.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19762 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-46-AD; Amdt. 39-6008]

Airworthiness Directives; Empresa Brazileira de Aeronautica S.A. (Embraer) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Embraer Model EMB-120 series airplanes, which currently requires a change to the Airplane Flight Manual (AFM) procedures for emergency/abnormal operations, an inspection of the flap actuator, and replacement of the flap actuator, if necessary. That action was prompted by a report of an uncommanded extension of the outboard flap actuator. This action requires the installation of new and improved hydraulic filters in the actuator solenoid valves, actuator inlet fitting, and flap hydraulic system; and use of revised AFM operational procedures. This action is prompted by results of an investigation of the reported incident, which revealed that hydraulic fluid contamination caused malfunction of the actuator to occur. This condition, if not corrected, could lead to flap asymmetry, which could result in loss of control of the airplane during a critical phase of flight.

EFFECTIVE DATE: October 7, 1988.

ADDRESSES: The applicable service information may be obtained from Embraer, 276 S.W. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. William Trammell, Systems Branch (ACE-130A), Atlanta Aircraft

Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991–3020.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 87–11–03, Amendment 39–5663 (52 FR 24136; June 29, 1987), applicable to Embraer Model EMB–120 series airplanes, to require installation of new and improved hydraulic filters in the actuator solenoid valve, actuator inlet fitting, and flap hydraulic system, and use of a revised AFM operational procedure, was published in the Federal Register on May 18, 1988 (53 FR 17721).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurred with the proposal, but suggested that the wording used to describe the effect of this AD be changed from ". . . prevent flap asymmetry," to ". . . reduce the possibility of flap asymmetry," since there may be other causes of flap asymmetry. The FAA concurs and has revised the wording of the final rule accordingly.

Two commenters suggested that the in-line filters in the airplane hydraulic systems will not introduce any significant improvement in the hydraulic fluid filtration because of the filter already existing in the hydraulic reservoir outlet and the filter in the actuator inlet fitting. The FAA does not concur. Since fluid contamination was judged to be the cause of the actuator malfunction, the FAA has determined that increased filtration capacity is justified.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously described.

This airplane is manufactured in Brazil and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 40 airplanes of U.S. registry will be affected by this AD. Parker Hannifin has indicated that it plans to supply and install the solenoid valve and inlet fitting for each actuator at no cost to operators. Additionally, the modification for the hydraulic system in-line filter is to be supplied at no cost by the manufacturer. Therefore, the only cost to operators will be the installation of the flap hydraulic system in-line filters. It will take approximately 20 manhours per airplane to accomplish the required installation, and the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $32,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($800). A final evaluation has been prepared for this action and is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87–11–03, Amendment 39–5663 (52 FR 24136; June 29, 1987), with the following new airworthiness directive:

Empresa Brazileira de Aeronautica S.A. (EMBRAER): Applicable to all Model EMB–120 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To reduce the potential for flap asymmetry that could lead to loss of control of the airplane in a critical phase of flight, accomplish the following:

A. Within 15 days after the effective date of this AD, revise the FAA-approved Airplane Flight Manual (AFM) to include Revision 9 (for EMB–120RT AFM 120/794) or Revision 14 (for EMB–120 AFM 120/624), as applicable.

B. Within 90 days after the effective date of this AD accomplish the following:

1. Replace the flap actuator solenoid valves with new valves equipped with new filters, in accordance with Embraer Service Bulletin 120–027–0050, dated April 13, 1988;

2. Replace the inlet filter fitting of the flap actuators, in accordance with Embraer Service Bulletin 120–027–0042, dated February 10, 1988; and

3. Install in-line filters to the flap control hydraulic plumbing, in accordance with Embraer Service Bulletin 120–027–0038, dated November 16, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note.—The request for an alternate means of compliance should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Atlanta Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Embraer, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

This amendment supersedes AD 87–11–03, Amendment 39–5663.

This amendment becomes effective October 7, 1988.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–19765 Filed 8–30–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87-NM-174-AD; Amdt. 39-6012]

Airworthiness Directives; SAAB-Scania AB Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to SAAB-Scania AB Model SF-340A series airplanes, which currently requires modification to the wiring and connectors associated with separation (explosive) bolts in the main landing gear (MLG) emergency extension system. This action, in addition to the previously required modifications, requires the separation bolt wiring harness to be lengthened and the existing harness to be re-routed and secured. This action is necessary to prevent failure of the separation bolt wiring harness, which could prevent activation of the separation bolt. This in turn, could prevent full extension of the MLG and, subsequently, cause main gear collapse upon landing, in the event the main gear emergency extension system is utilized.

EFFECTIVE DATE: October 10, 1988.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania, Aircraft Division, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 87-13-07, Amendment 39-5662 (53 FR 23947; June 26, 1987), applicable to SAAB-Scania Model SF-340A series airplanes, to require certain modifications of the wiring and connectors of the main landing gear (MLG) emergency extension system, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on March 8, 1988 (53 FR 7373).

Based on comments received in response to that NPRM, the FAA issued a Supplemental NRPM on June 14, 1988 (53 FR 23771; June 24, 1988), which proposed to revise the applicability of the original NPRM to include additional affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No additional comments were received in response to the Supplemental NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that a total of 61 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost of parts per airplane is $1,475. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,735.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($1,635). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superceding AD 87-13-07, Amendment 39-5662 (53 FR 23947; June 26, 1987), with the following new airworthiness directive:

SAAB-SCANIA: Applies to Model SF-340A airplanes, manufacturer's serial numbers SF340A-003 through -108 inclusive, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the reliability of the emergency main landing gear extension system, accomplish the following:

A. For airplanes, serial numbers SF340A-003 to -078, inclusive: Within 90 days after the effective date of this AD, modify the wiring and connectors of the main landing gear emergency extension system in accordance with SAAB Service Bulletin SF340-32-028, Revision 1, dated November 25, 1986.

B. For airplanes with serial numbers SF340A-003 to -108, inclusive: Within 90 days after the effective date of this AD, lengthen the electrical harnesses for the separation bolts, and re-route and secure the existing harnesses, in accordance with SAAB Service Bulletin SF340-32-041, Revision 1, dated October 9, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania, Aircraft Division, S-58188 Linkoping, Sweden. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment supersedes AD 87-13-07, Amendment 39-5662.

This amendment becomes effective October 10, 1988.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness

[FR Doc. 88-19763 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-61-AD; Amdt. 39-6011]

Airworthiness Directives; Short Brothers, PLC, Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Short Brothers, PLC, Model SD3-60 series airplanes, which currently requires inspection of interference bushings for looseness in each of four fittings on the rear fuselage used for attachment of the horizontal stabilizer. Looseness of these fittings, if not detected and corrected, could lead to failure of the horizontal stabilizer attachment fittings. This amendment revises the existing AD to limit the applicability only to specific airplanes.

EFFECTIVE DATE: October 10, 1988.

ADDRESSES: The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 88-01-10, Amendment 39-5819 (53 FR 14; January 4, 1988), applicable to Short Brothers Model SD3-60 series airplanes, to revise the applicability statement to exclude certain U.S.-registered airplanes that have been determined not to be affected by the unsafe condition addressed in that Ad, was published in the Federal Register on June 21, 1988 (53 FR 23250).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,040.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($160). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the applicability statement of AD 88-01-10, Amendment 39-5819 (53 FR 14; January 4, 1988), as follows:

Short Brothers: Applies to Model SD3-60 series airplanes, Serial Numbers SH3801 through SH3867, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude failure of the horizontal stabilizer attach fittings, accomplish the following:

A. Within the next 3 months after the effective date of this AD, inspect the interference fit bushings in each of the four horizontal stabilizer attach fittings in accordance with Shorts Service Bulletin Number SD360-55-10, dated November 1985.

B. If the bushing is found to be loose in its fitting and the movement exceeds 0.005 inch, replace the fitting before further flight.

C. If the bushing is found to be loose in its fitting and the movement does not exceed 0.005 inch, replace the fitting within the next 60 days.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then sent it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends AD 88-01-10, Amendment 39-5819.

This amendment becomes effective October 10, 1988.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19764 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-3]

Establishment of Red Bluff, CA; Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a control zone and extension at the Red Bluff Municipal Airport, Red Bluff, CA. The intended effect is to provide controlled airspace for aircraft executing published instrument approach procedures to the Red Bluff Municipal Airport.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:

History

On May 18, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone at the Red Bluff Municipal Airport, Red Bluff, CA (53 FR 17723). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a control zone and extension at Red Bluff Municipal Airport, Red Bluff, CA. This action will provide controlled airspace for aircraft executing published instrument approaches to the Red Bluff Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Red Bluff, CA [New]

Within a 5-mile radius of Red Bluff Municipal Airport, Red Bluff, CA, (lat. 40°09'04"N., long. 122°15'05"W) and within two miles each side of the Red Bluff VORTAC 167° Radial, extending from the 5-mile radius zone to eight miles south of the VORTAC.

Issued in Los Angeles, California, on August 17, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 88-19770 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-8]

Amend Transition Area, Lewistown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Lewistown, Montana, transition area to provide additional controlled airspace for a new approach procedure. The intent is to segregate aircraft operating in visual flight rules conditions (VFR) and aircraft operating in instrument flight rules conditions.

EFFECTIVE DATE: 0901 u.t.c., September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 88-ANM-8, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

History

On May 16, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace at Lewistown, Montana (53 FR 17223).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is required to contain a new instrument approach procedure at Lewistown. The area will be depicted on appropriate aeronautical charts for pilot reference. Pilots operating in visual flight conditions may thereby circumnavigate the area or otherwise comply with instrument flight rules.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lewistown, Montana, Transition Area [Revised]

That airspace extending 700 feet above the surface within a 7 mile radius of the Lewistown Municipal Airport (lat. 47°02'56.9"N., long. 109°28'08.1"W) and within 4 miles each side of the Lewistown VORTAC 289° radial, extending from the 7 mile radius area to 10.5 miles west of the VORTAC; and within 4 miles each side of the Lewistown VORTAC 255° radial, extending from the 7 mile radius area to 17.5 miles west of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 16 miles north and 11 miles south of the Lewistown VORTAC 289° radial extending 31 miles west of the VORTAC, and within 5 miles north and 8 miles south of the Lewistown VORTAC 109° radial extending from the VORTAC to 7 miles east of the VORTAC; and excluding overlapping controlled airspace.

Issued in Seattle, Washington, on August 10, 1988.

F.E. Davis,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–19769 Filed 8–30–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASO–15]

Alteration of VOR Federal Airway V–437; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V–437 located in the vicinity of Melbourne, FL. Federal Airway V–437 would be extended from Pahokee, FL, to Biscayne Bay, FL. This alteration permits Patrick Air Force Base Approach Control to establish aircraft on an airway within a departure transition area, thereby reducing radar vectors. This action improves traffic flows in the terminal area and reduces controller workload.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On May 16, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–437 located in the vicinity of Melbourne, FL (53 FR 17224). The currently preferred routing to Miami is via Melbourne V–437, Pahokee V–267, to GREMM Intersection to the Miami terminal area. The realignment of V–437 improves the traffic flow within the Miami and Patrick Air Force Base terminal areas. This action improves traffic flow and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of Federal Airway V–437 located in the vicinity of Melbourne, FL. Federal Airway V–437 would be extended from Pahokee, FL, to Biscayne Bay, FL. This alteration permits Patrick Air Force Base Approach Control to establish aircraft on an airway within a departure transition area, thereby reducing radar vectors. This action improves traffic flows in the terminal area and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–437 [Amended]

By removing the words "From Pahokee, FL; Melbourne, FL;" and substituting the words "From Biscayne Bay, FL; INT Biscayne Bay 340° and Pahokee, FL, 150° radials; Pahokee; INT Pahokee 352° and Melbourne, FL, 217° radials; Melbourne;"

Issued in Washington, DC, on August 16, 1988.

William C. Davis,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–19767 Filed 8–30–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AGL–21]

Alteration of VOR Federal Airways; Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of VOR Federal Airways V–10, V–100, V–173, V–227, V–233 and V–429 located in the state of Illinois. These airway changes are the recommendations of a study group to improve the use of airspace in the Chicago, IL, metropolitan area. This action improves the arrival/departure traffic flow in the O'Hare terminal area.

EFFECTIVE DATE: 0901 u.t.c. October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operation Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On March 28, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of V–10, V–100, V–173, V–227, V–233, and V–429, located in the state of Illinois (53 FR 9949). This amendment is the culmination of an airspace utilization improvement study for the Chicago, IL, area. These changes are adjustments to O'Hare approach control arrival and departure routes. In conjunction with these airspace changes, resectorization at the O'Hare Air Traffic Control Tower and the Air Route Traffic Control Center will be completed so that the airway changes and resectorization will be simultaneous. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–10, V–100, V–173, V–227, V–233, and V–429, located in the state of Illinois. These airways changes are the recommendations of a study group to improve the use of airspace in the Chicago, IL, metropolitan area. This action improves the arrival/departure traffic flow in the O'Hare terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–10 [Amended]

By removing the words "INT Bradford 056° and Joliet, IL, 351° radials." and substituting the words "INT Bradford 058° and Joliet, IL, 287° radials."

V–100 [Amended]

By removing the words "INT Rockford 080° and Northbrook, IL, 190° radials;" and substituting the words "INT Rockford 074° and Janesville, WI, 112° radials; INT Janesville 112° and Northbrook, IL, 290° radials;"

V–173 [Revised]

From Capital IL; to Peotone, IL.

V–227 [Revised]

From Boiler, IN; Roberts, IL; Pontiac, IL; INT Pontiac 006° and Bradford, IL, 058° radials.

V–233 [Amended]

By removing the words "From Capital, IL, via Roberts, IL;" and substituting the words "From Capital, IL; INT Capital 063° and Roberts, IL, 233° radials; Roberts;"

V–429 [Amended]

By removing the words "Joliet, IL; INT Joliet 351° and Chicago O'Hare, IL, 237° radials." and substituting the words "to Joliet, IL."

Issued in Washington, DC, on August 17, 1988.

William C. Davis,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–19768 Filed 8–30–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–AWP–2]

Revision to Glendale, AZ, and Phoenix-Luke AFB, AZ, Control Zone; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the final rule that was published in the **Federal Register** on July 6, 1988 (53 FR 25322) (Airspace Docket No. 88–AWP–2). This action corrects that error.

EFFECTIVE DATE: 0901 u.t.c., August 31, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–1642.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88–AWP–2, published on Wednesday, July 6, 1988, revised the description of the Glendale, AZ, and Phoenix-Luke AFB, AZ. An error was discovered in the geographical coordinates for the Phoenix-Luke AFB, AZ, control zone and this action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small

entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 77

Aviation safety, Control zones.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document (88–AWP–2), as published in the **Federal Register** on July 6, 1988, is corrected as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Corrected]

2. The amendment to § 71.171, as published at 53 FR 25323, is corrected as follows:

Phoenix-Luke AFB, AZ [Amended]

By removing "(lat. 33°32'06" N, long. 122°22'56" W)" and substituting "(lat. 33°32'06" N, Long. 112°22'56" W)."

Issued in Los Angeles, California, on August 5, 1988.

Merle D. Clure,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88–19766 Filed 8–30–88; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 80514–8114]

Special South Africa and Namibia Export Controls; Clarification

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Commodity Control List, Supplement No. 1 to § 399.1 of the Export Administration Regulations, to ensure that exporters are aware of the special controls for South Africa and Namibia that apply to certain unilaterally controlled commodities. This rule, which neither expands nor limits the provisions of the Regulations, amends various Export Control Commodity Numbers by adding a reference to these South African and Namibian controls.

EFFECTIVE DATE: This rule is effective August 31, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule mentions a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under Control Number 0625–0001.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 39—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 399—[AMENDED]

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), the "*Validated License Required*" paragraph for each of the Export control Commodity Numbers (ECCNs) listed below is revised to read "*Validated License Required*: Country Groups S and Z, Iran, and as required by Special South Africa policy below."

Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 6294F;
Commodity Group 3 (General Industrial Equipment), ECCN 6394F;
Commodity Group 4 (Transportation Equipment), ECCN 6498F;
Commodity Group 5 (Electronics and Precision Instruments), ECCN 6598F; and
Commodity Group 9 (Miscellaneous), ECCN 6994F.

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 5406 is amended by revising the "*Validated License Required*" paragraph to read "*Validated License Required*: Country Groups QSWYZ, Afghanistan, Iran, The People's Republic of China, and as required by Special South Africa policy below."

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 6494F is amended by revising the "*Validated License Required*" paragraph and by adding a "*Special South Africa and Namibia Controls*"

paragraph immediately after the *"Special License Available"* paragraph to read as follows:

6494F Other marine engines both inboard and outboard; n.e.s.; and specially designed parts.

* * * * *

Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below.

* * * * *

Special South Africa and Namibia Controls: A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(a).

Dated: August 25, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-19618 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-78]

Issuance; Staff Accounting Bulletin No. 78 Regarding Quasi-Reorganizations and Deficit Eliminations

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding certain matters relating to quasi-reorganizations, including deficit eliminations.

FOR FURTHER INFORMATION CONTACT: Kenneth V. Moreland, Office of the Chief Accountant (202/272-2130) or Howard P. Hodges, Jr., or Nathan Cheney, Division of Corporation Finance (202/272-2553), Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practice followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

August 25, 1988.

Jonathan G. Katz,

Secretary.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 78 to the table found in Subpart B.

Staff Accounting Bulletin No. 78

The staff hereby adds Section S to Topic 5 of the Staff Accounting Bulletin Series. Section S discusses the staff's views regarding certain matters relating to quasi-reorganizations, including deficit eliminations.

Topic 5: Miscellaneous Accounting

* * * * *

S. *Quasi-Reorganization.*

Facts: As a consequence of significant operating losses and/or recent write-downs of property, plant and equipment, a company's financial statements reflect an accumulated deficit. The company desires to eliminate the deficit by reclassifying amounts from paid-in-capital. In addition, the company anticipates adopting a discretionary change in accounting principles [1] that will be recorded as a cumulative-effect type of accounting change. The recording of the cumulative effect will have the result of increasing the company's retained earnings.

Question 1: May the company reclassify its capital accounts to eliminate the accumulated deficit without satisfying all of the conditions enumerated in section 210 [2] of the Codification of Financial Reporting Policies for a quasi-reorganization?

Interpretive Response: No. The staff believes a deficit reclassification of any nature is considered to be a quasi-reorganization. As such, a company may not reclassify or eliminate a deficit in retained earnings unless all requisite conditions set forth in section 210 [2] for a quasi-reorganization are satisfied.[4]

Question 2: Must the company implement the discretionary change in accounting principle simultaneously with the quasi-reorganization or may it adopt the change after the quasi-reorganization has been effected?

Interpretive Response: The staff has taken the position that the company should adopt the anticipated accounting change prior to or as an integral part of the quasi-reorganization. Any such accounting change should be effected by following generally accepted accounting principles with respect to the change.[5]

Chapter 7A of Accounting Research Bulletin (ARB) No. 43 indicates that, following a quasi-reorganization, a "company's accounting should be substantially similar to that appropriate for a new company." The staff believes that implicit in this "fresh-start" concept is the need for the company's accounting principles in place at the time of the quasi-reorganization to be those planned to be used following the reorganization to avoid a misstatement of earnings and retained earnings after the reorganization.[6] Chapter 7A of ARB

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[1] Discretionary accounting changes require the filing of a preferability letter by the registrant's independent accountant pursuant to Item 601 of Regulation S-K and Rule 10-01(b)(6) of Regulation S-X, 17 CFR 229.601 and 210.10-01(b)(6), respectively.

[2] Accounting Series Release No. 25 (May 29, 1941).

[3] Section 210 indicates the following conditions under which a quasi-reorganization can be effected without the creation of a new corporate entity and without the intervention of formal court proceedings:

(1) Earned surplus, as of the date selected, is exhausted;

(2) Upon consummation of the quasi-reorganization, no deficit exists in any surplus account;

(3) The entire procedure is made known to all persons entitled to vote on matters of general corporate policy and the appropriate consents to the particular transactions are obtained in advance in accordance with the applicable laws and charter provisions;

(4) The procedure accomplishes, with respect to the accounts, substantially what might be accomplished in a reorganization by legal proceedings—namely, the restatement of assets in terms of present conditions as well as appropriate modifications of capital and capital surplus, in order to obviate so far as possible the necessity of future reorganizations of like nature.

[4] In addition, Accounting Research Bulletin (ARB) No. 43, Chapter 7A, outlines procedures that must be followed in connection with and after a quasi-reorganization.

[5] Accounting Principles Board Opinion No. 20 provides accounting principles to be followed when adopting accounting changes. In addition, many newly-issued accounting pronouncements provide specific guidance to be followed when adopting the accounting specified in such pronouncements.

[6] Certain newly-issued accounting standards do not require adoption until some future date. The staff believes, however, that if the registrant intends or is required to adopt those standards within 12 months following the quasi-reorganization, the registrant should adopt those standards prior to or as an integral part of the quasi-reorganization. Further, registrants should consider early adoption of standards with effective dates more than 12 months subsequent to a quasi-reorganization.

No. 43 states, in part, "* * * in general, assets should be carried forward as of the date of the readjustment at fair and not unduly conservative amounts, *determined with due regard for the accounting to be employed by the Company thereafter* (emphasis added)."

In addition, the staff believes that adopting a discretionary change in accounting principle that will be reflected in the financial statements within 12 months following the consummation of a quasi-reorganization leads to a presumption that the accounting change was contemplated at the time of the quasi-reorganization.[7]

Question 3: In connection with a quasi-reorganization, may there be a write-up of net assets?

Interpretive Response: No. The staff believes that increases in the recorded values of specific assets (or reductions in liabilities) to fair value are appropriate providing such adjustments are factually supportable, however, the amount of such increases are limited to offsetting adjustments to reflect decreases in other assets (or increases in liabilities) to reflect their new fair value. In other words, a quasi-reorganization should not result in a write-up of net assets of the registrant.

[FR Doc. 88-19807 Filed 8-30-88; 8:45 am]
BILLING CODE 8010-01-M

[7] Certain accounting changes require restatement of prior financial statements. The staff believes that if a quasi-reorganization had been recorded in a restated period, the effects of the accounting change on quasi-reorganization of adjustments should also be restated to properly reflect the quasi-reorganization in the restated financial statements.

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17 CFR Part 240

[Release No. 33-6798; 34-26028; File No. S7-18-87]

Short Sales in Connection With a Public Offering

AGENCY: Securities and Exchange Commission.

ACTION: Temporary rule.

SUMMARY: The Commission today announced the adoption, on a temporary basis, of Rule 10b-21(T) under the Securities Exchange Act of 1934, pertaining to certain short sales in connection with a public offering of securities. Rule 10b-21(T) prohibits a person who effects short sales of an equity security during the period beginning at the time that a registration statement or Form 1-A relating to the same class of equity securities is filed and ending at the time that sales may be made in the offering, from covering such short sales with offered securities purchased from an underwriter or other broker or dealer participating in the offering of such securities.

EFFECTIVE DATE: September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Burke or Ivette Lopez at (202) 272-2848, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has adopted, on a temporary basis, Rule 10b-21(T) ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act"),[1] which is designed to prevent manipulative short selling of securities in anticipation of a public offering of the same securities. The Commission proposed the Rule for public comment [2] in response to a petition ("NASD Petition") for rulemaking filed by the National Association of Securities Dealers, Inc. ("NASD").[3] The Rule prohibits a person who effects one or more short sales of equity securities of the same class as securities distributed for cash pursuant to a registration statement filed under the Securities Act of 1933 ("Securities Act") [4] or pursuant to a notification on Form 1-A [5] under the Securities Act, from covering such short sale or sales with offered securities purchased from an underwriter or broker or dealer participating in such public offering, if such short sale or sales took place during the period beginning at the time that the registration statement or Form 1-A is filed and the time that sales are permitted to be made pursuant to the registration statement or Form 1-A.[6]

After considering the public comments received on the Proposing Release, the Commission has adopted the Rule substantially as proposed.

The NASD Petition was based on concerns relating to short selling prior to a public offering.[7] Such short sales may result in a decrease in the price of the security and consequently a lower offering price. The short sellers are then able to cover their sales and realize a profit by purchasing securities in the offering at the reduced price. Because of the availability of securities at a fixed price from the public offering, the risks entailed in covering those short sales are reduced substantially. The NASD indicated that this practice deprives the issuer of offering proceeds that otherwise would have been realized.

The Commission suggested in the Proposing Release that certain drafting changes could improve the NASD proposal ("Alternative A"). Accordingly, an alternative formulation ("Alternative B") was presented that: (1) Reflected the scope of the Commission's authority to promulgate the Rule by substituting the phrase "it shall be unlawful" for the proposed reference solely to section 10(b) of the Exchange Act; [8] (2) deleted paragraph (b) of Alternative A since it was virtually identical to the definition of "short sale" contained in Rule 3b-3 under the Exchange Act; [9] (3) inserted the term "offered securities" since the Commission understood the NASD Petition to be addressed only to covering purchases involving the securities that are offered pursuant to a registration statement or Form 1-A; [10] and (4) substituted the term "offering" for "distribution" since the latter term has a specific definition in Rule 10b-6 under the Exchange Act.[11]

II. Discussion

A. The Need for the Rule

The Commission received thirty-six comment letters submitted by thirty-two

[1] 15 U.S.C. 78a *et seq.*

[2] Securities Exchange Act Release No. 24485 (May 20, 1987), 52 FR 19885 ("Proposing Release").

[3] The NASD Petition was filed with the Commission on June 12, 1986 pursuant to section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), and Rule 4(a) of the Commission's Rules of Practice, 17 CFR 201.4(a), and is publicly available in File No. S7-18-87 in the Commission's Public Reference Room.

[4] 15 U.S.C. 77a *et seq.*

[5] 17 CFR 239.90. Form 1-A is used in connection with offerings made pursuant to Regulation A under the Securities Act. 17 CFR 230.251-230.264.

[6] The Commission previously proposed three different versions of the Rule, none of which has been adopted. *See* Securities Exchange Act Release No. 10636 (February 11, 1974), 39 FR 7806; Securities Exchange Act Release No. 11328 (April 2, 1975), 40 FR 16090; and Securities Exchange Act Release No. 13092 (December 21, 1976), 41 FR 56542; File No. S7-510. For further discussion of these proposals, see Proposing Release, 52 FR 19886. In light of today's adoption of the Rule as proposed in 1987, the Commission is withdrawing all three prior proposals.

[7] The NASD's study, "Short-Sale Regulation of NASDAQ Securities" (Novermber 2, 1986), headed by former Commissioner Irving M. Pollack, endorsed the NASD Petition and the proposed Rule.

[8] The Commission observed that the notational convention of using "10b-" to designate a rule is not a reflection of the scope of the rule's statutory authority. *See* Proposing Release, 52 FR 19987 n.19.

[9] 17 CFR 240.3b-3.

[10] The NASD urged the Commission to regulate only those covering purchases made out of the public offering to avoid affecting the operation of the market for the securities already outstanding. The Commission agrees that covering short sales in the open market exposes the short seller to the risk that securities to cover the short sale will not be readily available in the amount required, or will be priced higher than the public offering price, and that such purchases should not be restricted by the Rule.

[11] *See* 17 CFR 240.10b-6(c)(5).

commentators.[12] The majority of the commentators supported the adoption of the Rule.[13] Commentators favoring adoption stated that short selling in anticipation of a public offering can and does have the effect of driving down the price of the securities to be distributed. These commentators also indicated that, unlike the traditional short sale, persons selling short in anticipation of a public offering are not subject to the usual market risk accompanying the covering transaction, but are assured of covering with offered securities purchased in the public offering at a fixed, and generally lower, price. Only three commentators opposed adoption of the Rule, stating that manipulative short selling practices already are proscribed by existing laws, and that the Rule would have an adverse impact on normal market operations and result in unnecessary compliance burdens.

Nine commentators responded to the Commission's request for comment regarding the extent of pre-offering short selling activity and the impact of such sales on the costs to issuers of completing an offering. Seven of these commentators described first-hand experiences with the adverse effects of short selling activity, which caused them to cancel proposed offerings, or to complete offerings even though they were deprived of proceeds that would have been realized had the market not been subject to such activity. They noted that the market price of the security to be offered had declined significantly just prior to the public offering, allegedly as a result of short selling, and caused them to forfeit substantial proceeds that they otherwise would have received.

The NASD submitted information relating to investigations of three separate public offerings, and stated that, based on these investigations and others involving similar circumstances, it believed that the practice of short selling before a public offering with the intention of covering with shares purchased in the public offering is not uncommon. The investigations revealed substantial short selling activity by certain firms after the filing of the registration statement and a decline in the price of the stock prior to the effective date of the registration statement[14] In each investigation, the short sellers covered their short positions immediately after the offering at a profit with shares purchased from entities that had obtained them in the public offering. The NASD stated that the timing and prices involved in these transactions may indicate prearrangement.[15]

The NASD also pointed to problems it faces in pursuing enforcement actions in such cases. The NASD does not have jurisdiction over certain non-broker-dealer entities from whom its members may routinely acquire offered securities to cover short positions established prior to an offering. Thus, the NASD may have difficulty obtaining information from those entities necessary to develop cases against such members. In addition, the NASD indicated that, since this abuse has not been specifically prohibited by a Commission rule, it must bring such cases under general anti-manipulation provisions of the federal securities laws which entail the difficult step of proving specific intent to depress the market price of the issuer's stock.

B. Decision to Adopt Rule 10b–21(T)

In light of the comments discussed above, the Commission believes there is sufficient reason to adopt the Rule on a temporary basis,[16] and has determined to adopt Alternative B with slight modifications. The Rule will help deter a practice that the Commission views as manipulative and destructive of issuers' capital raising activities.[17] The Commission believes that the Rule will serve an important purpose by avoiding the difficult proof problems involved in demonstrating manipulative purpose.[18]

[12] The letters of comment, as well as a summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room. *See* File No. S7–18–87.

[13] The six commentators who discussed the alternative proposed formulations, including the NASD, endorsed Alternative B.

[14] The Commission had requested that commentators provide statistical analysis demonstrating the extent to which short selling prior to public offerings results in a decrease in the market price of the security to be offered. In response, the NASD conducted a study ("NASD Study") that analyzed the price movements of 194 NASDAQ issues (*i.e.*, securities quoted in the National Association of Securities Dealers Automated Quotation system) and 158 exchange-listed issues immediately prior to and subsequent to non-initial public offerings of common stock conducted from May 1, 1986 to May 31, 1987 and priced at $5 or more.

The NASD Study also examined equity audit trail data for NASDAQ/NMS securities (*i.e.*, NASDAQ securities designated as national market system securities under Rule 11Aa2–1 under the Exchange Act, 17 CFR 240.11Aa2–1), and National Securities Clearing Corporation (NSCC) clearing short position data for many of the 194 NASDAQ securities included in the price performance analysis.

The NASD Study concluded that its findings provide evidence of unusual short selling, as well as the possible effect of Rule 10b–6 under the Exchange Act, 17 CFR 240.10b–6, on the market price of securities subject to non-initial public offerings. Rule 10b–6 precludes persons participating in a distribution from bidding for or purchasing the security to be distributed, absent an exception to or exemption from the rule. The NASD further concluded that the price data reviewed are consistent with the widely held view that a pattern exists of short selling prior to a non-initial public offering, with covering transactions made from offered securities.

The NASD Study, along with two other studies it references, Barclay and Litzenberger, "Announcement Effects of New Equity Issues and the Use of Intraday Price Data," and Barclay, "Common Stock Returns Preceding Seasoned New Equity Offerings on the New York Stock Exchange," are attached as exhibits to the NASD's comment letter dated November 2, 1987, included in File No. S7–18–87.

[15] Any prearrangement between short sellers and those purchasing from underwriters or broker-dealers participating in the offering would be an "indirect" covering transaction with offered securities and would violate the Rule. *See* Section II.D. *infra*.

[16] The Commission is adopting the Rule on a temporary basis to give it the opportunity to analyze, at a later date, whether the Rule is achieving its intended purpose. In this regard, the Commission's staff will request the NASD and the exchanges to furnish statistical information for non-initial public offerings conducted after adoption of the Rule for an eighteen-month period. The staff will then review this data and report to the Commission, within twenty-four months of adoption, whether the pricing impact the NASD believes is indicative of short selling persists and whether any new pricing impacts are observed. At that time, the Commission may revisit Rule 10b–21(T), including whether the Rule should continue to apply to exchange-traded securities.

[17] In 1972, the Commission published a staff opinion that addressed short selling activities prior to a public offering. Securities Exchange Act Release No. 9824 (October 16, 1972). The release observed that such short selling may be "disruptive of fair and orderly markets in the securities" and, where the short sales are intended to depress the market price of the security so that the short position can be covered at a lower price, the activity would violate the anti-manipulation provisions of the Exchange Act.

Short selling schemes of the type addressed by Rule 10b–21(T) have been the subject of enforcement actions by the Commission as violations of the anti-manipulation provisions of the Securities Act and the Exchange Act. *E.g., J.A.B. Securities Co., Inc.*, Securities Exchange Act Release No. 15948 (June 25, 1979); *A.P. Montgomery & Co., Inc.*, Securities Exchange Act Release No. 10909 (July 9, 1974).

The Commission has also cautioned that "any person intending to purchase securities in any registered secondary offering should be on notice that his selling short the same securities prior to the offering may be subject to the registration requirements of Section 5 of the Securities Act [15 U.S.C. 77e], as well as other applicable statutes and rules." Securities Exchange Act Release No. 10636 (February 11, 1974). *Accord*, Securities Exchange Act Release Nos. 11328 n.1 (April 2, 1975) and 9824 (October 16, 1972).

[18] The Commission has on other occasions recognized the need to protect the market for offered securities from the manipulative influences of certain market participants by adopting such rules as Rules 10b–6 and 10b–7 under the Exchange Act, 17 CFR 240.10b–6 and 240.10b–7. These rules limit bids and purchases, including stabilizing transactions, by persons participating in a distribution of securities to prevent their artificially conditioning the market to facilitate the distribution.

A few commentators, including the NASD in its comment letter dated November 2, 1987, suggested

Continued

Short selling involves sales of stock that the seller does not own. These sales are made with the expectation that the market price of the stock will be lower at the time of the covering transactions. This selling entails the risk that the security's price might increase or the security's supply might be limited. The Commission believes that legitimate short selling activity contributes to the efficient pricing of securities. The activity prohibited by the Rule differs, however, from short selling as usually practiced because a short seller who covers from an offering has access to a pool of securities obtainable from identifiable sources at prices based upon market values that can be adversely affected by the short seller's activity. No such pool of securities or pricing relationships are, however, available for short selling activity as usually practiced. The market risk facing short sellers who cover their positions from the offering can therefore be less than the market risk that generally faces short sellers. This lower degree of risk can, in turn, provide the incentive for manipulative short selling. Because it results in a level of short selling activity greater than that which would otherwise occur in the secondary market for the issuer's shares, that manipulative short selling can cause an artificial price decline around the time of the offering.

The Rule will not adversely affect legitimate market activity. It does not proscribe short selling, nor does it prevent covering transactions made in the open market. Moreover, the Rule does not prevent using securities acquired in a public offering to cover short sales effected prior to the time that the registration statement was filed, or short sales effected after the time that sales may be made in the offering.[19] The Rule is narrowly drawn to impede the particularly abusive conduct of short selling in anticipation of a public offering and covering with offered securities. As a result, all short sellers will be exposed to the risks inherent in short selling, namely, that the necessary securities may not be readily available, or that if available, they may be priced higher than the public offering price.

C. Time Period Covered by the Rule

As proposed, the Rule would have applied to short sales effected during the period "between the filing date of the registration statement or Form 1–A and the date that sales may be made pursuant to the registration statement or Form 1–A." The Commission believes that this period is overly broad in that it captures short sales made (1) on the date of filing, but prior to the time of filing, and (2) on the date of effectiveness, but after the time of effectiveness. Short sales made at those times, however, do not implicate the abuses to which the Rule is addressed. Accordingly, the period specified in the Rule has been refined to begin at the time that the registration statement or Form 1–A is filed with the Commission and end at the time that sales may be made pursuant to the registration statement or Form 1–A.[20]

D. Indirect Covering Purchases

The Rule as proposed would have prohibited a short seller from "directly or indirectly" covering short sales with securities purchased in the public offering, if the short sales took place between the filing date of the registration statement or Form 1–A and the time that sales may be made. Several commentators objected to the term "indirectly," particularly as it would apply in the context of market making activities, and suggested that the Commission include an exemption for market makers from the Rule's restrictions.[21]

Specifically, one commentator stated that the word "indirectly" was undefined and ambiguous, leaving open to question exactly what types of transactions were prohibited by the Rule. Several commentators suggested that the term "indirectly" could be read to require a market maker who had established a short position in the normal course of business to ascertain whether the shares purchased in the market following an offering had been issued in that offering. This was described as an insurmountable compliance burden that might severely restrict the legitimate activities of market makers during the period from the filing date of the registration statement and its effectiveness. Commentators remarked that, because no market maker would want to assume such a burden, trading would be disrupted, thereby adversely affecting the liquidity of the market and the stability of security prices. Such result, it was argued, would not be in the public interest.

The NASD, in its letter dated June 8, 1988, however, urged the Commission not to remove market makers from the Rule's coverage, although it acknowledged that prior proposals of the Rule did provide for an exemption for *bona fide* market makers. According to the NASD, the term "indirectly" was intended to cover the situation where a short seller interjects an intermediary for the purpose of covering a short sale with securities purchased in a public offering. In the NASD's opinion, normal market making purchases would not constitute the type of conduct meant to be covered by the term "indirectly." Consequently, it believed that no special compliance procedure to determine the source of the securities purchased would be required. Any exemption for market makers, stated the NASD, would shield market makers engaged in manipulative short selling and would hinder successful enforcement of the Rule.

The Commission agrees with the NASD that a market maker exemption may allow certain persons who engage in manipulative pre-offering short selling to continue that activity free of the Rule's restrictions. Nonetheless, the Commission recognizes the adverse effects that the reading of the proposed Rule suggested by some commentators might have on market makers and securities markets, and has modified the Rule to address those concerns. The "indirectly" language of the proposed Rule was intended to address circumstances where a person covers his short sale by an arrangement or understanding to obtain offered

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that Rule 10b–6, which requires distribution participants to cease market making in the security to be distributed two or nine business days prior to the offering's commencement, may also play a role in a decline of the security's price immediately preceding the offering. The NASD, in its comment letter dated June 2, 1988, stated that its investigation of a corporation that experienced a lower stock price prior to an offering demonstrated that such decline is not necessarily due to the withdrawal of market makers for Rule 10b–6 purposes, but may be due to short selling. The Commission believes that adoption of Rule 10b–21(T) will prevent price declines due to abusive short selling activity related to the ability to cover from the offering, independent of price effects, if any, that may result as a consequence of Rule 10b–6.

[19] *See* Section II.C. *infra* for a discussion of the time period covered by the Rule.

[20] In most registered offerings, the time that sales may be made occurs on the date of effectiveness of the pricing amendment to the registration statement. However, for offerings conducted pursuant to Rule 430A under the Securities Act, 17 CFR 230.430A, the time that sales may first be made is on the date of pricing, which may be later than the effective date.

Where a short position is held immediately prior to the time of filing, and one or more subsequent short sales and covering transactions occur, it will not always be evident whether the short sales associated with a current short position were effected before the time of filing or subsequently. Under these circumstances, it is intended that holders of short positions prior to the time of filing may cover, with offered shares purchased from a broker or dealer participating in an offering, the lesser of the short position that existed immediately prior to the filing time or the smallest short position held subsequent to that time. *Cf. Letter regarding Bernard H. Raoul, Jr.*, [1985–1988 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶ 78,144, at 76,637 (June 7, 1985).

[21] Previous versions of the Rule included an exemption for *bona fide* market makers, exchange specialists, odd-lot dealers, and *bona fide* arbitrageurs. *See* note 6 *supra*.

securities from another person who acquires the securities in the primary offering. However, that language could have been interpreted broadly to bring within the Rule transactions in which a person acquired in the marketplace offered securities from persons who had purchased in the offering, but where there was no arrangement or understanding as described above. In order to avoid this ambiguity and possible uncertainty on the part of market participants, the phrase "directly or indirectly" has been deleted from the Rule.

The Rule as adopted prohibits purchases of offered securities to cover short sales made during the specified period, as originally intended. The Rule proscribes such covering purchases effected directly from an underwriter, broker, or dealer participating in the offering. Moreover, such covering purchases effected by prearrangement or other understanding through other purchasers in the primary offering are proscribed through the operation of section 20(b) of the Exchange Act,[22] which prohibits a person from doing indirectly any act that he is prohibited from doing directly by the Exchange Act or any rule thereunder. Thus, the "prearrangement" of the sort that the NASD believes may have been present in the cases it investigated [23] would be prohibited by Rule 10b–21(T) through the operation of section 20(b).[24]

E. Other Issues

The Commission requested commentators to address various other issues related to the Rule including the specified time period of the Rule, and application of the Rule to exchange-traded securities and to shelf offerings conducted pursuant to Rule 415 under the Securities Act.[25]

Two commentators expressed concern about the time period specified in the Proposing Release, *i.e.*, from the filing date of a registration statement or Form 1–A until the time that sales may be made. They noted that a significant period of time could occur between those two events and suggested the period begin on the later of a specified number of days prior to the date sales may be made or the date of filing of the registration statement or Form 1–A. The Commission recognizes that, where, for example, extended review of a registration statement is involved, a substantial period of time could elapse before the public offering commences. Nevertheless, use of a lesser time period would create compliance problems because short sellers would not necessarily be aware of the effective date planned for an offering. Accordingly, the Commission is adopting the Rule with the time period essentially as proposed.[26]

There was little comment on the propriety of applying the Rule to exchange-traded securities. Two commentators noted that the "tick test" of Rule 10a–1 [27] may not be a proper deterrent to short selling prior to an offering of exchange-listed securities and that the Rule should apply to such securities. One commentator pointed out that, in light of the differences between the over-the-counter and exchange markets, the Rule should apply to over-the-counter securities only. The NASD specifically declined to comment on the issue. The Commission believes that the potential for manipulative short selling based on the ability to cover in the offering exists both on an exchange and in the over-the-counter market. Accordingly, the Rule as adopted applies to both over-the-counter and exchange-listed securities.[28]

Several commentators stated that the Rule should not apply to shelf offerings conducted pursuant to Rule 415 under the Securities Act. The Commission agrees that such offerings are not normally conducive to the abuse at which the Rule is directed. Accordingly, the Commission has decided to except Rule 415 offerings from the coverage of the Rule. The Commission has also determined to limit the applicability of the Rule to firm commitment offerings, as these offerings present a greater potential for manipulative short selling.[29]

III. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, which relates to Rule 10b–21(T), has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis ("IRFA") is contained in the Proposing Release.[30] No comments on the IRFA were received.

A. The Need for and Objectives of the Rule

Rule 10b–21(T) prohibits a person who effects short sales of an equity security during the period beginning at the time that a registration statement or Form 1–A relating to the same class of equity securities is filed and ending at the time that sales may be made pursuant to such registration statement or Form 1–A, from covering such short sales with securities purchased from an underwriter or broker or dealer participating in the public offering of such equity securities. The Rule excludes offerings conducted pursuant to Rule 415 under the Securities Act and offerings conducted otherwise than on a firm commitment basis. The Rule is designed to prevent manipulative short selling by market participants in anticipation of underwritten public offerings.

Manipulative opportunities exist in such offerings because outstanding securities can be sold short prior to the commencement of a public offering of such securities with the motive that such selling activity will lower the price of the offered security and enable the short seller to cover at a depressed price. The ability to purchase shares in the public offering substantially reduces the risks entailed in such short selling. Because the shares in a public offering are generally priced at or slightly below the price of securities of the same class and series in the existing trading market as of a given date shortly before the public offering commences, the issuer and underwriting group may be forced to offer the security at a lower price if the market price decreases during the registration process, especially in the period immediately before the offering price is fixed. As a result, the issuer may

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[22] 15 U.S.C. 78t(b). Section 20(b) provides:

It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this title or any rule or regulation thereunder through or by means of any other person.

Although Section 20 is entitled "Liabilities of Controlling Persons," paragraph (b) is not limited to situations involving persons in control relationships.

[23] *See* note 15 *supra*.

[24] Trading volume in a security subject to an offering may be greater than usual on the offering's effective date, indicating that a significant number of shares sold in the public offering have entered the secondary market. Customers of the distribution participants may have purchased in the offering and have decided to sell shortly thereafter. Moreover, certain distribution participants may resume market making as soon as the distribution is completed. However, a person with a short position is not required by the Rule to inquire whether any covering purchases he makes in the secondary market (*e.g.*, from a market maker who had participated in the distribution) include shares that had been acquired in the offering.

[25] 17 CFR 230.415.

[26] *See* Section II.C. *supra*.

[27] 17 CFR 240.10a–1.

[28] *See* note 16 *supra*.

[29] One commentator suggested adding to the Rule a prohibition on covering purchases made from an issuer to prevent manipulative short selling in connection with rights offerings. The Commission is not aware of this type of abuse occurring in rights offerings and is therefore not adopting the suggested change. The Commission will, however, continue to review whether the Rule should be extended to rights offerings, shelf offerings, and best efforts offerings.

[30] 52 FR 19688.

realize lower than expected proceeds while the short sellers may cover their short sales with lower priced securities purchased in the public offering.

The Rule addresses the concerns created by the type of short selling activity described above without affecting open market activities. It is designed to deter a practice that does not involve legitimate short selling activity. The Rule only prohibits covering short sales with offered securities purchased from an underwriter or broker or dealer participating in a public offering of such securities. Short sellers will still be able to cover their short sales with purchases outside the public offering. Such purchases would expose short sellers to the risks inherent in short selling, namely, that the necessary securities may not be available in the amount required, or that if available, the securities may be priced higher than the public offering price.

B. Issues Raised by Public Comment

No comments were received on the IRFA. Several commentators remarked, however, that the Rule would impose difficult compliance burdens on market makers as it applied to their purchases to cover short positions established in the course of normal market making activities. The Commission does not intend that market makers establish specific procedures to ensure that shares purchased in normal market making transactions did not originate from a public offering. The Rule is designed to address those situations in which a person covers his short sale by an arrangement or understanding to obtain offered securities from another person who acquired the securities in the primary offering.

C. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives to the Rule consistent with the stated objectives of the applicable statutes and designed to minimize any significant economic impact of the Rule on small entities. The Rule has the potential to affect small businesses that engage in short sales prior to a distribution, small businesses with an existing market for their stock that anticipate a public offering of stock, and small broker-dealers that participate in the offering of securities.

The Rule prohibits the covering of a short sale from a broker or dealer participating in a public offering of the security sold short. The Commission has previously proposed three different versions of the Rule, none of which were adopted. In the Commission's opinion, the Rule adopted today is the least intrusive to deal with the practice of manipulative short selling prior to a public offering. Indeed, small issuers with an existing market for the stock may benefit from the Rule since it should remove an incentive to engage in short selling of the issuer's stock before a public offering. The Commission continues to believe that any adverse economic impact on small entities will be outweighed by the primary objective of the Rule, which is to prevent manipulative short selling of an issuer's securities by market participants in anticipation of an underwritten public offering.

IV. Cost-Benefit Analysis

The Commission indicated in the Proposing Release that the cost associated with the Rule would be a reduction in the ability of market participants to sell short in advance of offerings that they believed to be overpriced, resulting in an increased incidence of such offerings. The NASD questioned the assumption underlying this statement, namely, that there is a correct price for securities distributed in a public offering, and stated that the criteria to be used in determining when an offering is overpriced are not well defined. The NASD pointed out that the Rule is intended to ensure that a short seller will not use the distribution process to eliminate the market risk associated with short sale transactions. Another commentator pointed out that the Rule does not prohibit short selling, but merely restricts covering transactions in the context of a registered offering and for a limited and well-defined period. A third commentator acknowledged that short selling could benefit the public by allowing a security to be purchased at a more attractive price, but also was of the opinion that to allow the short seller to cover through the public offering represented an unfair advantage and could result in manipulative conduct.

Although the Commission recognizes that the Rule will diminish a short seller's ability to effect a covering transaction by restricting the source of securities from which he may cover, it believes the Rule will not prevent the beneficial effects of short selling from reaching the market. If legitimate market forces would have driven down the price of a security before a public offering in the past, those same forces are free to operate in the same manner today.

The Commission believes that the cost of restricting a short seller's ability to cover is balanced by the benefits derived from preventing manipulative short selling activity before a public offering. Several commentators described instances of such selling resulting in the withdrawal of proposed public offerings or in lower proceeds than anticipated. In the case of a withdrawn public offering, an issuer faces out-of-pocket expenses that have been incurred by the time the offering is filed. When an issuer completes a public offering despite lower proceeds, it may have been forced to do so because of an urgent need for the funds or the higher cost of alternative financing. The Rule adopted today will allow an issuer to proceed with a proposed offering without facing the situations described above. The Commission believes that the resulting benefit to issuers outweighs the limited cost imposed on short sellers.

V. Effects on Competition

Section 23(a)(2) of the Exchange Act [31] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered Rule 10b–21(T) in light of the standards cited in section 23(a)(2) and believes for the reasons stated in this release that adoption of Rule 10b–21(T) will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities, Issuers, Fraud.

Statutory Authority and Text of Rule

The Commission hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation.

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w, * * * § 240.10b–21(T) is also issued under Secs. 2, 3, 9(a)(6), 10(a), 10(b), 15(c), 23(a), and 30(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), 78w(a), and 78dd(a).

2. By adding § 240.10b–21(T) to read as follows:

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[31] 15 U.S.C. 78w(a)(2).

§ 240.10b–21(T). Short Selling in connection with a public offering.

(a) It shall be unlawful for any person who effects one or more short sales of equity securities of the same class as securities offered for cash pursuant to a registration statement filed under the Securities Act of 1933 ("Securities Act") or pursuant to a notification on Form 1–A under the Securities Act ("offered securities") to cover such short sale or sales with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sales or sale took place during the period beginning at the time that the registration statement or Form 1–A is filed and ending at the time that sales may be made pursuant to the registration statement or Form 1–A.

(b) This rule shall not apply to offerings filed under Rule 415 under the Securities Act (17 CFR 230.415) or to offerings that will not be conducted on a firm commitment basis.

(c) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions either unconditionally or on specified terms and conditions.

By the Commission.

Jonathan G. Katz,

Secretary.

Date: August 25, 1988.

[FR Doc. 88–19809 Filed 8–30–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8221]

Income Tax; Applications for Exemption From Self-Employment Taxes for Ministers, Certain Members of Religious Orders, and Christian Science Practitioners

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and withdrawal of temporary regulations.

SUMMARY: This document provides final regulations and withdraws temporary regulations relating to applications for exemption from self-employment taxes filed by ministers, members of a religious order who are not under a vow of poverty, and Christian Science practitioners. The final regulations reflect changes to the applicable tax law made by section 1704(a) of the Tax Reform Act of 1986 and provide guidance on the manner of applying for exemption from self-employment taxes under section 1402(e) of the Internal Revenue Code of 1986.

EFFECTIVE DATE: The regulations contained in this document are effective with respect to applications filed after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T (LR–154–86)). Telephone 202–566–3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0168. The collections of information contained in this final rule have been incorporated into Form 4361 under the same control number. The estimated average burden associated with Form 4361 is 31 minutes. The collections of information contained in this final rule will not increase that burden.

This estimate is an approximation of the average time expected to be necessary for the collections of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

Section 1402(e)(1) of the Internal Revenue Code of 1986 provides that ministers, members of a religious order who are not under a vow of poverty, or Christian Science practitioners may file an application for exemption from self-employment taxes. That section requires any individual seeking the exemption to file an application together with a statement that he or she is either conscientiously opposed to, or because of religious principles opposed to, the acceptance (with respect to services performed as a minister, member, or practitioner) of any public insurance that makes payments in the event of death, disability, old age or retirement, or makes payments toward the cost of, or provides services for, medical care.

Section 1704(a) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 2779) amended section 1402(e)(1) of the Code to require an individual (other than a Christian Science practitioner) who applies for exemption from self-employment taxes to state in the application that the individual has informed his or her church or order that he or she is opposed to receiving such insurance. In addition, section 1704(a) of the Act added a new paragraph (2) to section 1402(e) of the Code to require verification that all applicants (including Christian Science practitioners) are aware of the grounds for which an exemption may be granted and that they seek the exemption on such grounds. No application for exemption will be approved without this verification. The amendments made by section 1704(a) of the Act are effective with respect to applications filed after December 31, 1986.

On April 15, 1987, the Federal Register published temporary regulations (52 FR 12161) and a cross-referencing notice of proposed rulemaking (52 FR 12194) containing proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1402(e) of the Code. These amendments were proposed to conform the regulations to section 1704(a) of the Act. Several comments were received. No public hearing was held because none was requested. After consideration of all comments regarding the proposed amendments, those proposed amendments are adopted as revised by this Treasury decision and redesignated as § 1.1402(e)–5A. The final regulations also revise § 1.1402(e)–1A to include a cross-reference to § 1.1402(e)–5A. The temporary regulations are withdrawn.

Comments

The proposed and final regulations provide that any application for exemption under section 1402(e) filed after December 31, 1986, by a minister, member of a religious order not under a vow of poverty, or Christian Science practitioner may be approved by the Service only after verification that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption pursuant to section 1402(e) and that the individual seeks exemption on such grounds. The proposed and final regulations set forth the procedure to be followed for such verification.

One commenter stated that verification of an application on Form 4361 should be conducted by the Department of Health and Human Services and not the Internal Revenue Service. The Department of Health and Human Services has declined to verify such applications.

Another commenter requested clarification as to the status of an applicant who does not return the signed verification statement within 90 days of the date on which the statement is mailed to the applicant. Paragraph (c)(2) of the proposed regulation provided that in such circumstances the "application for exemption will not be effective until the date that the signed copy of the statement is received" by the Service. The commenter requested clarification as to whether this would result in the application being treated as not timely filed under section 1402(e)(3) or in the exemption not being effective until such later date under section 1402(e)(4). The final regulations remove the words "application for" to clarify that the latter interpretation was intended. Thus, the applicant will be liable for self-employment taxes with respect to services performed by him or her as a minister, member of a religious order, or Christian Science practitioner prior to the effective date of the exemption.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although a notice of proposed rulemaking soliciting public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects

26 CFR 1.1401–1—1.1403–1

Income tax, Self-employment income.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation.

Authority: 26 U.S.C. 7805. * * * Section 1.1402(e)–5A also issued under 26 CFR 1402(e) U.S.C. (1) and (2).

Par. 2. The authority for Part 1 is amended by removing the following citation:

Authority: * * * Section 1.1402(e)–5T also issued under 26 U.S.C. 1402(e) (1) and (2).

§ 1.1402 [Amended]

Par. 3. Section 1.1402(e)–5T is removed.

Par. 4. The temporary regulations (§ 1.1402(e)–5T) published at 52 FR 12161 are adopted as final regulations, with the following changes:

1. The section number is changed to 1.1402(e)–5A.

2. Paragraph (c)(2) of § 1.1402(e)–5A is amended by removing from the last sentence the words "application for."

Par. 5. Section 1.1402(e)–1A is revised to read as follows:

§ 1.1402(e)–1A Application of regulations under section 1402(e).

The regulations in §§ 1.1402(e)–2A through 1.1402(e)–4A relate to section 1402(e) as amended by section 115(b)(2) of the Social Security Amendments of 1967 (81 Stat. 839) and apply to taxable years ending after 1967. Section 1.1402(e)–5A reflects changes made by section 1704(a) of the Tax Reform Act of 1986 (100 Stat. 2085, 2779) and applies to applications for exemption under section 1402(e) filed after December 31, 1986. For regulations under section 1402(e) (as in effect prior to amendment by the Social Security Amendments of 1967) applicable to taxable years ending before 1968, see §§ 1.1402(e)(1)–1 through 1.1402(e)(6)–1.

OMB Control Numbers Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 6. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by removing from the appropriate places in the table "1.1402(e)–5T * * * [1545–0168]."

Par. 8. Section 602.101(c) is amended by inserting in the appropriate places in the table "1.1402(e)–5A * * * [1545–0168]."

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved:

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

August 15, 1988.

[FR Doc. 88–19834 Filed 8–30–88; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R, Amdt. No. 13]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Changes to the CHAMPUS DRG-Based Payment System and Fiscal Year 1989 Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8-R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

This final rule changes the proposed amendment of rule which was published on June 3, 1988 (53 FR 20576). It revises the comprehensive CHAMPUS regulation, DoD 6010.8-R (32 CFR Part 199), pertaining to payment for inpatient hospital services. This final rule changes the CHAMPUS DRG-based payment system which was implemented on October 1, 1987. Some of the changes are necessary to conform to recent statutory changes affecting the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based

payment system is modeled. Other changes expand the scope of the CHAMPUS DRG-based payment system.

EFFECTIVE DATE: This final rule is effective for inpatient hospital admissions occurring on or after October 1, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the Federal Register containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the Federal Register is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

To obtain copies of this document, see the "Address" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: On June 3, 1988, we published a proposed amendment of rule to modify the CHAMPUS DRG-based payment system which was implemented on October 1, 1987. This rule included a number of changes to conform to statutory or regulatory changes to the Medicare PPS as well as changes to expand the CHAMPUS DRG-based payment system to alcohol/drug abuse services, children's hospitals, and neonate services. We refer the reader to the proposed rule for more detailed explanations of the proposed changes to the CHAMPUS DRG-based payment system and the implementing regulations in 32 CFR Part 199.

We provided a 30-day comment period on the proposed amendment of rule. This final rule announces our decisions on the issues raised by commenters in response to our proposed rule.

I. Background

A. Summary

In 1983, Congress called on DoD to establish a new method to pay hospitals for inpatient care under CHAMPUS, to be modeled after the recently established prospective payment system for the Medicare program. Rather than just paying billed charges, the new method was to pay fixed rates for particular categories of medical care, grouped into diagnosis-related groups, or DRGs. This Congressional action was followed by a 1986 law giving CHAMPUS the practical ability to adopt a prospective payment method by linking hospital participation in Medicare with that in CHAMPUS.

Paying hospitals on the basis of prospectively determined amounts per discharge limits the financial liability of CHAMPUS, yet at the same time provides fair treatment and positive incentives for hospitals. Instead of paying hospitals whatever they charge for whatever services they provide, CHAMPUS now pays hospitals fixed rates in general regardless of how long the patient stays or how many procedures the hospital provides. By paying hospitals according to DRGs, this system recognizes the different amount of resources required to care for patients with different diagnoses, demographic characteristics, and specific procedures performed. Hosptials may keep the difference between the amount paid for care and the amount it cost to provide the care. Thus, efficient hosptials have the opportunity to enhance their financial position.

On September 1, 1987, we published a final rule (52 FR 32992) to implement the CHAMPUS DRG-based payment system. On September 15, 1987, we published an amendment to the final rule (52 FR 34775) which contained the final adjusted standardized amounts (ASA). This was followed by a notice on March 1, 1988, (53 FR 6182) which implemented a new Grouper Program and the resultant revised weights and rates as well as certain provisions of the 1988 Department of Defense Appropriations Act which exempted certain services from the CHAMPUS DRG-based payment system. The regulations governing the CHAMPUS DRG-based payment system are located in 32 CFR Part 199.

This October, Medicare will be entering its sixth year under the DRG payment system and CHAMPUS will be entering its second. It has been found to be a fair, effective method for paying for quality hospital care.

B. Summary of Proposed Amendment to Rule

In the proposed rule we set forth changes which would be effective for the second year of operation of the CHAMPUS DRG-based payment system beginning on October 1, 1988. Following are the major changes that we proposed to make to the system.

1. Exemption of Certain Pediatric Services From the CHAMPUS DRG-Based Payment System

We proposed that discharges involving pediatric bone marrow transplants, children determined to be HIV seropositive, and pediatric cystic fibrosis be exempt from the CHAMPUS DRG-based payment system.

2. Reclassification of Areas for the Adjusted Standardized Amounts

We proposed to implement three adjusted standardized amounts—for large urban areas, other urban areas, and rural areas. This is similar to the change implemented under the Medicare PPS and published on April 5, 1988 (53 FR 11134), which provided for 3 separate update factors to be applied.

3. Redesignation Relating to Certain Rural Areas

We proposed to adopt the changes made for the Medicare PPS under which certain hospitals in rural areas, because of their proximity to urban areas, are redesignated as urban hospitals.

4. Medicare Cost-to-Charge Ratio

We proposed to use a cost-to-charge ratio more closely associated with our base year. The ratio we will use was calculated by the Health Care Financing Administration (HCFA) and published in the Federal Register on May 27, 1988.

5. Alcohol/Drug Abuse Services

We proposed to begin coverage initially deferred for alcohol/drug abuse services and include them under the CHAMPUS DRG-based payment system. Generally, payment for these services would be made using the DRGs in use under the Medicare PPS and using weights and rates developed by CHAMPUS and published in this final rule. The one exception to the Medicare approach is that DRG 435, which represents the majority of CHAMPUS alcohol/drug abuse cases, would be split into two age groups.

6. Children's Hospitals

We proposed to begin coverage initially deferred for these hospitals. Payment to these hospitals would be made under the CHAMPUS DRG-based payment system, but, in recognition of the higher costs of care in these hospitals, a "children's hospital differential" would be developed which would be used to increase each DRG-based payment to children's hospitals.

7. Neonate Services

We proposed to begin coverage initially deferred for these services.

When incorporated into the CHAMPUS DRG-based payment system, payment for these services would take into consideration infants' birthweights as incorporated in the Children's DRGs (now known as Pediatric Modified DRGs or PM-DRGs) developed by the National Association of Children's Hospitals and Related Institutions (NACHRI). We also proposed to consider modifying the outlier policy for these services.

8. Outliers

We proposed to revise our outlier procedures in accordance with most of the changes proposed for the Medicare PPS in the Health Care Financing Administration's (HCFA) May 27, 1988, proposed rule.

9. Burn Outliers

We proposed to use the Medicare PPS burn outlier procedures published on April 5, 1988 (53 FR 11137).

10. Other Minor Changes and Clarifications to the Existing Procedures.

There are a number of minor changes or clarifications to the provisions currently in the CHAMPUS regulation which we proposed. These are:

—We proposed to use the new Grouper Program used under the Medicare PPS beginning October 1, 1988.

—We proposed to use the same update factors used by Medicare.

—We proposed to use a revised formula for calculating the indirect medical education adjustment factor to reflect the revisions made in the Medicare formula.

—We proposed that the per diem cost-sharing amount for beneficiaries other than dependents of active-duty members include an amount to recognize hospitals' costs for capital and direct medical education.

—We proposed to eliminate the requirement that a hospital's request for payment of capital and direct medical education costs be submitted to the CHAMPUS contractor within three months of the end of the hospital's Medicare cost-reporting period.

—We proposed clarifications to the definitions of "total inpatient days" and "total CHAMPUS inpatient days" which are required on hospitals' requests for capital and direct medical education payments.

We clarified how the percentage reductions for capital payments which are required under the Medicare PPS will be applied under the CHAMPUS DRG-based payment system.

—We proposed to use the wage index amounts published for the Medicare PPS in their proposed rule for FY 1989.

—We clarified a cross-reference regarding our intention that hospital-based professionals are to be reimbursed using the allowable charge methodology.

C. Congressional Action on Children's Hospitals and Neonatal Care.

In June 1988, the House Appropriations Committee reported that although DoD's preliminary progress is encouraging, the Committee has retained its provision to exclude neonatal care and children's hospitals from the CHAMPUS PPS. (See House Report No. 100–681, 100th Congress, 2nd Session, page 34.)

The Senate Appropriations Committee, however, permits inclusion of these categories once the Department of Defense has resolved certain inequities (H.R. 4781, 100th Congress, 2nd Session, page 86).

The proposed rule changes on children's hospitals and neonates set forth in the June 3, 1988 Notice were consistent with Senate direction. However, because Congressional intent is still unclear, we intend to separately publish the final rule changes for these services in the near future in order to allow consideration of further developments in Congress regarding this matter.

D. Number and Types of Public Comments

We received a total of 33 individual comments on the proposed rule. The types and volume of commenters were as follows:

—National Hospital Associations—5
—National Medical Associations—3
—Other National Associations—2
—Hospitals—22
Other Healthcare Organizations—1

We received a number of general comments which do not relate to any specific provision of our proposed rule, but relate to our proposed changes as a whole and our implementation plans for them. We will address those comments here before we respond to the comments regarding specific sections of our proposed rule.

In the proposed rule we stated that "the procedures * * * are to be applicable to all discharges occurring on or after October 1, 1988." Although we did not receive any comments on this, we are modifying the effective date for this rule to be for *admissions* occurring on or after October 1, 1988. Accordingly, hospitals will be reimbursed for these services under the same payment methodology they expected to be used when the patient was admitted. In addition, since certain of these services previously excluded from the DRG system may have already involved an interim billing prior to the effective date, it would be administratively difficult, and fiscally unfair to hospitals, to attempt to reconcile the total payments with the DRG-based allowed amounts.

Several commenters suggested that implementation of the proposed changes should be postponed for one year until a study of the potential impact can be conducted.

This was a common comment, overall and specific to certain aspects. We think delay in the implementation of these changes is unnecessary for two reasons. First, a number of the changes (e.g., the reclassification of the areas, burn outliers, etc.) already have been implemented under the Medicare PPS or will be implemented effective October 1, 1988. Thus, hospitals are already adjusting to these changes under Medicare and the inclusion of them for CHAMPUS will result in a marginal increase in workload for hospitals. In fact, these changes may result in a decrease in workload for hospitals, since they will not have to maintain two distinct payment systems for government beneficiaries in these areas. Second, the purpose of delay is stated to be to allow OCHAMPUS time to study those changes which end exemptions under our DRG-based payment system—i.e., the inclusion of alcohol/drug abuse services. However, that is precisely what we intended when we delayed implementation of these areas last year, and we have accomplished just that during the past year. The RAND Corporation has studied this under a contract with the Department of Defense and we have analyzed their results. We think that the alcohol/drug abuse approach is equitable to hospitals and acceptable to the government.

Several commenters suggested that the comment period on the proposed rule should be no less than 60 days.

The comment period conforms to statutory requirements, and we believe it is adequate to permit interested parties to consider the proposed rule and provide substantive comments. We have also had a number of meetings with interested parties regarding the issues contained in our proposed rule. These meetings have provided the opportunity to share information and facilitate meaningful input on the proposed rule. Additionally, we received, and have considered, a number of comments well after the official close of the comment period. As a result, the comment period was effectively significantly longer than thirty days. Lastly, we have received no

indication that additional comments would have been received, or additional issues raised, had the comment period been longer.

Several commenters suggested that the proposed weights and rates should be published more than 30 days in advance.

We do not believe this is necessary. Hospitals were given the same 30-day advance notice last year when the changes were more significant. The final weights and rates are attached to this final rule for information (Tables 1 and 2).

One commenter suggested that a standard pricer program which does not vary by fiscal intermediary should be made available to all vendors and hospitals. The commenter believed that this "would go far toward eliminating the confusion that exists in current CHAMPUS billing systems."

Unlike Medicare, CHAMPUS does not have a uniform processing system among our fiscal intermediaries. Each FI is allowed to develop its own system to process claims, and these systems are proprietary. As a result, it would be impossible for us to develop a standard pricer program which would be compatible with each FI's system or which vendors and hospitals could obtain. Nor is this necessary for vendors and hospitals, since our DRG-based payment system essentially requires no changes in the providers' billing systems. In fact, since there are no required changes, we aren't aware that any confusion exists. Moreover, we do know that some software vendors have developed pricer programs for the CHAMPUS DRG-based payment system, and these are available to hospitals which wish to use them.

One commenter suggested CHAMPUS should pay on a reasonable cost basis for DRGs in which an individual hospital has fewer than ten cases in the base year.

We don't see that anything could be gained from this—certainly such a procedure has not been adopted under other DRG-based payment systems. We think the payment amounts under the CHAMPUS DRG-based reimbusement system are reasonable. Since CHAMPUS has a relatively limited number of admissions to most hospitals, this would effectively negate our DRG-based reimsbursement system and the incentives for efficiency it creates which we discussed in last year's rules.

One commenter was concerned that CHAMPUS was considering rebasing rates at this time, since this would penalize efficient hospitals for their cost cutting efforts.

We fully agree with this comment, and we do not intend to rebase our rates at this time. However, we do intend to recalibrate the rates using the same database. We believe this is necessary as a result of several major policy changes in this rule which will affect the adjusted standardized amounts. These are the inclusion of alcohol/drug abuse and psychiatric services under the CHAMPUS DRG-based payment system, and the refinement of the outlier payment policies and thresholds.

One commenter suggested that a disproportionate share adjustment should be adopted under the CHAMPUS DRG-based payment system.

This was discussed in last year's rule, and our position is unchanged. Since CHAMPUS has no disproportionate share adjustment, we use a higher indirect medical education adjustment formula to compensate. Beginning October 1, 1988, we will use the formula which is to be effective for Medicare as of October 1, 1990, i.e., once the disproportionate share adjustment is eliminated.

Some commenters suggested that a provision for prompt payment of CHAMPUS claims by fiscal intermediaries should be adopted.

For a number of years CHAMPUS has had a provision for prompt payment of CHAMPUS claims by our fiscal intermediaries. Specifically, we require that a minimum of seventy-five (75) percent of all claims and adjustment claims processed shall be completed within twenty-one (21) calendar days from the date of receipt. We continuously monitor and emphasize this requirement, and it is tied to financial incentives in each fiscal intermediary's contract. In fact, our FIs are currently processing more than 83 percent of the claims within twenty-one days.

A number of commenters suggested that the study results from the RAND Corporation should be made available. This has been our intention all along and the report will shortly be available.

Below we briefly summarize each of the major provisions of the proposed amendment of rule on which we received comments and provide an analysis of the comments and our responses. We have also provided a reference to each provision's designation in the proposed regulation. Section IX of this preamble summarizes the changes we are making to the regulation as a result of the comments we received. We received no comments on many of our proposed changes, and we will not address those changes unless we are making some further change or clarification on our own.

II. Exemption of Certain Pediatric Services From the Champus DRG-Based Payment System (Sections 199.14(a)((1)(ii)(C)(8), (9), and (10))

Discharges involving pediatric bone marrow transplants, children determined to be HIV seropositive, and pediatric cystic fibrosis will continue to be exempt from the CHAMPUS DRG-based payment system.

Comment—The exemptions should be expanded to all transplant procedures including heart, lung, liver, and kidney.

Response—We have already exempted heart and liver transplants and lung transplants are not covered by CHAMPUS. Kidney transplants are subject to our DRG-based payment system, but we have very few of them since most are covered under Medicare. Moreover, kidney transplants have been an accepted medical practice for sufficient time so that procedures and charges are stabilized, and the DRG-based payment amounts accurately reflect average costs.

III. Redesignation of Certain Rural Hospitals As Urban Hospitals

Certain rural hospitals which have been so identified by Medicare will be paid at the higher urban adjusted standardized amount.

Comment—Which urban ASA will be used for these rural hospitals—large urban or other urban?

Response—Medicare has redesignated the rural hospitals because they meet certain conditions and are adjacent to urban areas. The urban ASA to be used will be the one used for the adjacent urban area, and, where the rural area is adjacent to more than one urban area, the ASA for the urban area to which the most workers commute will be used.

IV. Alcohol/Drug Abuse Services (Sections 199.4(e)(4)(i), 199.4(e)(4)(ii)(A), and 199.14(a)(1)(i)(A))

Payment for alcohol/drug abuse services, in all hospital settings including specialty hospitals and units, would be made using the DRGs in use under the Medicare PPS and using weights and rates based on the CHAMPUS database. DRG 435 would be split into two age-based DRGs.

Comment—The proposed rule states that for rehabilitative care "coverage during a single benefit period is limited to no more than one inpatient stay in hospitals subject to the CHAMPUS DRG-based payment system * * *." Currently CHAMPUS allows up to 21 days of rehabilitative care during a benefit period, regardless of the number of admissions involved. If a beneficiary

leaves against medical advice, the stay will be less than 21 days—often significantly less—and prohibition of a subsequent admission would be reducing the benefit.

Response—This revision was not intended to be a change in the actual benefit for rehabilitative care but was simply a provision to recognize that length-of-stay is irrelevant under DRG-based payments. The intent of the current policy and of the revision is that only one full rehabilitative stay should be covered during a benefit period, but we agree that the revision as written could reduce the benefit in cases where the beneficiary leaves the hospital before the end of the treatment period. All cases where the beneficiary leaves against medical advice will be classified into DRG 433, and this would incorporate all those cases where the beneficiary leaves the hospital early. Therefore, we are revising the regulatory language to exempt all stays which group into DRG 433 from the limit of one stay per benefit period.

Additionally, CHAMPUS is currently planning an independent review of the overall benefit available for the treatment of both substance abuse and alcohol addiction. Based upon the results of this effort, future refinement in the reimbursement methodology may be necessary.

Comment—DRG 435 will be divided into two age-based DRGs, but it is not clear which DRG will include patients who are 21 years old.

Response—DRG 900 will be for beneficiaries 21 years old and younger, while DRG 901 will be for beneficiaries older than 21.

Comment—A number of commenters opposed payment under the CHAMPUS DRG-based payment system for inpatient alcohol and drug abuse services delivered to CHAMPUS beneficiaries in PPS-exempt hospitals and distinct part hospital units, and also in alcohol and drug abuse hospitals and distinct part units. They contended that current DRGs do not adequately capture or reflect legitimate differences in treatment practices and resource use in exempt and specialty alcohol and drug abuse facilities and units.

Response—Last year when Medicare issued its final rule to include coverage of alcohol/drug abuse cases under DRGs this same concern was addressed. HCFA indicated that there was a diversity of medical opinion regarding the efficacy of various treatment practices and that evidence had not been presented that some treatments are the optimum or preferred or, conversely, that other treatment modalities are ineffective and, therefore, should be deemed noncovered.

HCFA further indicating that there is as much diversity in treatment patterns and modalities among specialized alcohol/drug hospitals and units as there is between prospective payment hospitals and specialized facilities and that, in the face of such diversity, it is neither necessary nor appropriate to preserve old payment distinctions or to establish new ones. (52 FR 33038)

Nevertheless, we believe that valid arguments have been made to reimburse *all* services in psychiatric specialty hospitals under the same procedures. Therefore, we have decided that DRG-based payments will apply only to alcohol/drug abuse services provided in a general hospital setting (scatter beds) and alcohol and drug abuse hospitals and distinct units, while alcohol/drug abuse services provided in psychiatric specialty hospitals and units will be reimbursed under the mental health reimbursement procedures (a final rule on these procedures is being published separately).

It should be noted that with this change in coverage of alcohol/drug abuse cases in psychiatric facilities along with the changes in the outlier policy of last year and other technical adjustments, payment for those alcohol/drug abuse cases remaining under the DRG system will reflect about the same reduction from charges as other DRG system cases. This differs from the impact projected in the notice of proposed rule making, which stated that implementation of DRG-based reimbursement would result in no reduction in total payment for these services. Nevertheless, when alcohol/drug abuse cases in psychiatric hospitals are also considered, the overall reimbursement for these cases in both payment systems is substantially above the average DRG impact.

Comment—It is premature to institute a DRG payment system for alcohol/drug abuse services for all ages of CHAMPUS beneficiaries with the only accommodation being the splitting of DRG 435 into two age groups.

Response—We disagree. As promised in last year's final rule, we have spent the past year studying the effect of DRG-based payments on alcohol/drug abuse services. As a result of this study, which incorporated the results of the RAND Corporation analysis, we concluded that, with the exception of DRG 435, application of our DRG-based payment system to alcohol/drug abuse services would result in equitable payments for these services. Moreover, in light of our decision to apply the DRG-based payments only to those services provided in general hospital settings and alcohol/drug abuse hospitals and distinct units, we are actually implementing a system essentially identical to Medicare's, upon which our entire DRG-based payment system is modeled.

Comment—CHAMPUS did not consult the alcohol and drug treatment industry about the study results or the impact of the proposed changes.

Response—That is the purpose of publishing a proposed rule—to solicit comments from the industry and from other interested entities.

Comment—The proposal would underpay specialty hospitals and overpay treatment in medical-surgical beds. This would redistribute payments from specialty hospitals to general hospitals.

Response—The DRG system distinguishes by type of care and not by type of hospital. As stated previously, Medicare found it inappropriate to establish payment distinctions between alcohol/drug specialty hospitals and general hospitals for such care.

Comment—Assuming the DRG weights are similar to the weights established by the Medicare Program, this will result in substantial losses to some hospitals.

Response—Just as for all DRG-based payments, those hospitals which provide services efficiently will fare better than inefficient hospitals. That is one of the primary incentives behind DRG-based payments, and we think this is a positive, rather than a negative, aspect of this payment system.

Comment—The position CHAMPUS has taken is contradictory to the results of the RAND Corporation study which indicated these services should be exempt.

Response—This is incorrect. The RAND Corporation study did not indicate that these services should be exempt and reported that alcohol/drug abuse admissions under CHAMPUS appear to be relatively homogeneous.

Comment—The proposal to split DRG 435 based on age should be made by increasing the relative weight of the DRG. The proposed split of this DRG by the fiscal intermediary will result in unnecessary administrative duties for the provider and intermediary.

Response—We are splitting this DRG because our data indicates that there is a clear dichotomy in the costs of treating older and younger patients who are grouped into this DRG. Increasing the relative weight of this DRG would not recognize this difference—it would either consistently overpay or underpay one group depending on how high the

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relative weight is set. Moreover, since patient age is already always on CHAMPUS claims, this split with create little additional administrative work for the fiscal intermediaries and no additional work for providers.

V. Children's Hospitals (Section 199.14(a)(1)(iii)(E)(4))

Implementation of this area has been postponed and a separate final rule will be published in the near future.

VI. Neonate Services (Sections 199.14(a)(1)(i)(A) and 199.14(a)(1)(i)(B)(1))

Implementation of this area has been postponed and a separate final rule will be published in the near future.

VII. Outliers (Sections 199.14(a)(1)(iii)(E)(1), 199.14(a)(1)(iii)(E)(1)(i)(bb), and 199.14(a)(1)(iii)(E)(1)(ii))

The outlier policy is changed to increase the outlier thresholds, but retain the higher marginal cost factor for cost outliers, and to give precedence to whichever type of outlier results in the greater payment.

Comment—The outlier thresholds applied under Medicare are not necessarily appropriate for CHAMPUS. CHAMPUS should develop a separate outlier policy based on the CHAMPUS population only.

Response—We agree that the actual threshold amounts applied under Medicare are not appropriate for CHAMPUS because of the differences in patient populations. However, we think that the procedures and policies established by Medicare for calculating cost and long-stay outlier thresholds are reasonable and that the policies should continue to be the same for both the Medicare PPS and for the CHAMPUS DRG-based payment system. Of course, the actual thresholds used under our system will be different from Medicare's, since we will use the CHAMPUS database to calculate the thresholds. In addition, unlike Medicare, we use short-stay outliers as well. The short-stay outlier policy remains unchanged.

Comment—The thresholds should be lower and total payments should be higher, since CHAMPUS has few patients and civilian hospitals tend to get a selective, referred population of sicker patients.

Response—We don't agree that lowering the thresholds and raising the payments is necessary. For the most part, treatment of CHAMPUS beneficiaries at military treatment facilities is determined based on the services available rather than the condition of the individual patients. Moreover, any tendency toward sicker patients will be reflected in the ASAs calculated from the CHAMPUS database. If, in fact, civilian hospitals are treating sicker CHAMPUS patients, the ASAs will be higher, and this, in turn, will automatically increase outlier payments proportionately.

Comment—The outlier per diem rates should be increased to 90% (for cost outliers) and 75% (for day outliers).

Response—We have increased the marginal cost factor for cost outliers in accordance with those used in the Medicare PPS, and we think the rationale provided by the Health Care Financing Administration for making these changes is equally applicable to CHAMPUS. We don't think further increases are justified.

Comment—CHAMPUS should make interim payments for outliers.

Response—We agree. There are cases which involve either long-stay or cost outliers for which we believe interim payments are justified. Accordingly, we will make interim payments on certain claims if the following conditions are met:

1. The claim must qualify as either a long-stay or cost outlier.
2. The *billed* charge for the interim bill must not be less than $90,000 nor greater than $99,999.99.
3. Multiple claims for single individuals must be submitted in chronological order.

In submitting interim bills, hospitals must ensure that the parameters in condition 2 are met. Moreover, it will be imperative that hospitals ensure that, in cases where interim bills have been submitted, the final bill is annotated as such.

Comment—The threshold has been increased by 100% and will result in additional financial burden being placed on the hospital.

Response—The threshold for both long-stay and cost outliers has been increased, but not by 100% for long-stay outliers. Even so, just as Medicare has done, we have simultaneously increased the marginal cost factor for cost outliers. Also, instead of always giving precedence to day outliers, the outlier which results in the greater payment will take precedence. The net effect of these changes is likely to be to increase the number of cases which qualify as cost outliers, and the payment amounts to cost outliers, thereby better recognizing high cost cases. These changes are not likely to result in additional financial burden on hospitals. It is noteworthy to point out that unlike Medicare, we are not using hospital-specific cost-to-charge ratios to determine cost outlier payments. The relatively small number of CHAMPUS cost outlier cases and the fact that they are located largely in areas with cost-to-charge ratios below the national average, makes use of a national ratio an appropriate approach.

VIII. Other Minor Changes and Clarifications to the Existing Procedures

A. Grouper Program (Section 199.14(a)(1)(i)(A))

The CHAMPUS DRG-based payment system will use the most recently available grouper for the Medicare PPS.

There is a typographical error on the eleventh line of the middle column on page 20581 of the proposed rule. It states that "we are proposing to use the FY 1988 Medicare Grouper beginning October 1, 1988." It should be the FY 1989 Medicare Grouper.

B. ASA Update Factor (Section 199.14(a)(1)(iii)(F))

CHAMPUS will use the same update factors used for the Medicare PPS.

Comment—HCFA's calculation of the market basket is erroneous. CHAMPUS should recalculate the hospital market basket to reflect properly wage and salary costs. Update factors should reflect the full market basket inflation index.

Response—We think it is important that the government promulgate a uniform DRG update factor for both DRG systems, Medicare and CHAMPUS. Congress establishes this factor each year after considering input from PROPAC, the health care industry, and HCFA. HCFA will be evaluating the appropriateness of the market basket components in the future. The review will not be limited to one component but will cover the market basket as a whole, since changes in one component could be offset by opposite changes in other components.

C. Submission of Request for Payment of Capital and Direct Medical Education Costs (Section 199.14(a)(1)(iii)(G)(3))

CHAMPUS will reimburse hospitals for CHAMPUS' share of their capital and direct medical education expenses annually based on a request submitted from the hospital. The requirement that such requests must be submitted within ninety (90) days of the end of the hospital's Medicare cost reporting period has been eliminated.

We want to emphasize that hospitals are still required to submit a request for payment in order to be reimbursed for capital and direct medical education costs. Our proposed rule only changed

the requirement involving the deadline for submitting the request.

Comment—CHAMPUS should introduce some kind of interim payment or pay interest on capital/DME payments.

Response—The payments for these items will be sufficiently small, particularly relative to total hospital revenues, that the administrative cost of more frequent payments is not justified. Moreover, CHAMPUS does not have hospital cost information with which to formulate accurate estimates of interim payments for capital and direct medical education. Nor do we have the authority to pay interest on these costs.

D. Clarification of Total Inpatient Days and CHAMPUS Inpatient Days (Section 199.14(a)(1)(iii)(G)(3)(vi) and 199.14(a)(1)(iii)(G)(*3*)(*vii*))

Payment for capital and direct medical education will be based on the ratio of CHAMPUS inpatient days to total inpatient days. These two items have been clarified to ensure understanding that they apply only to days in units subject to the CHAMPUS DRG-based payment system.

Comment—CHAMPUS should use a real cost finding methodology or use a different ratio—e.g., CHAMPUS PPS-related charges to total charges.

Response—The per diem capital payment policy provides reasonable payments for capital and direct medical education costs, is consistent with the current Medicare capital per diem payment methodology for routine costs, and results in minimal reporting requirements for hospitals. A cost-finding method similar to Medicare's cost reporting mechanism is not in hospitals' interests, because it would burden them with extensive reporting requirements for CHAMPUS patients, a payer that generally accounts for a very small percentage of each hospital's total revenues. The method based on days is preferable to the second alternative—payments based on the ratio of CHAMPUS charges to total charges—since CHAMPUS days relate soley to CHAMPUS beneficiaries while CHAMPUS charges may reflect cost-shifting from other patients.

Comment—Reimbursement for capital and direct medical education costs is to be made only for units subject to DRG reimbursement. This precludes providers from receiving reimbursement for capital and direct medical education costs associated with exempt units. We suggest that inpatient days provided in units not subject to DRG reimbursement also be included in this computation.

Response—This is not correct. CHAMPUS payments for units exempt from the CHAMPUS DRG-based payment system continue to be made based on the hospital's billed charges. Capital and direct medical education expenses are two of many items which comprise a hospital's charges.

E. Percentage Reductions in Capital Payments (Section 199.14(a)(1)(iii)(G)(1))

Capital payments under the CHAMPUS DRG-based payment system will be reduced according to the statutorily-required reductions under the Medicare PPS.

Comment—Any reduction in payment for capital is inappropriate since this is a fixed cost and not subject to incentive-based controls.

Response—Just as for the update factor, the capital reduction percentages are congressionally-established for Medicare. As a similar government program, we think it is important to comply with these requirements.

Comment—Pub.L. 100-119, the Debt Limit Extension Act, provides that the capital payment reduction used under Medicare for October 1, 1987, through November 20, 1987, is to be 3.5 percent rather than 7 percent. Since CHAMPUS is following Medicare in this area, this change should be made.

Response—We agree, and we will make the necessary change. Actually, this will not require a regulatory change, since the actual percentage reductions are not contained in the regulation.

F. Payment for Hospital-Based Professional and Nurse Anesthetist Services (Section 199.14(a)(1)(ii)(C)

We corrected a cross-reference in this section.

Comment—Revised paragraph (a)(1)(ii)(C) refers to paragraph (f) of § 199.14. Paragraph (e) discusses reimbursement of individual health-care professionals and other non-institutional healthcare providers using the allowable charge methodology. Would the correct cross-reference be to section (e) rather than to section (f)?

Response—The reference to paragraph (f) is correct. A new paragraph (e) regarding birthing centers was recently added, and the existing paragraph (e) was changed to (f).

IX. Mental Health Services

In our proposed rule we proposed continuing the exemption for all services which would otherwise be paid under one of the psychiatric DRGs which are numbers 424–432. We noted that we had developed an alternative payment system for these services, and we would publish a separate Notice of Proposed Rulemaking on it. That proposed rule was also published on June 3 (53 FR 20585).

As a result of the comments we received on that proposed rule, as well as discussions with interested organizations which we have had since publication of the proposed rule, we have decided to make a number of changes to the procedures for reimbursing psychiatric services. These changes will be discussed in detail in a final rule to be published on or about the same date this final rule is published.

One change which we have made which impacts the CHAMPUS DRG-based payment system involves psychiatric services provided in general hospital settings. These services will no longer be exempt from the CHAMPUS DRG-based payment system. They will be reimbursed using existing DRGs 424—432 and the weights and rates attached to this final rule. Psychiatric hospitals and psychiatric units will continue to be exempt, so psychiatric services provided in them also will continue to be exempt from DRG-based reimbursement.

This change conforms to the Medicare PPS on which the CHAMPUS DRG-based payment system is modeled. Under the Medicare PPS, all mental health services provided in general hospital settings are subject to DRG-based payments.

X. Summary of Regulation Changes

For the convenience of the reader, following is a summary of the changes we are making to the proposed rule as a result of public comments. The reader is referred to the detailed discussions above for a complete explanation of the rationale for these changes.

A. Alcohol/Drug Abuse Services

Alcohol/drug abuse services in Medicare PPS-exempt psychiatric hospitals and units will continue to be exempt from the CHAMPUS DRG-based payment system. Stays classified in DRG 433 will not count toward the limit of one rehabilitative stay per benefit period.

B. Children's Hospitals

Inclusion of children's hospitals will be addressed in the final rule to be published shortly.

C. Neonate Services

Inclusion of neonate services will be addressed in the final rule to be published shortly.

D. Outlier Payments

We will begin making interim payments for outliers under certain conditions.

E. Psychiatric Services

Psychiatric services provided in general hospital settings will be subject to the CHAMPUS DRG-based payment system.

F. Effective Date

The effective date has been changed to apply to admissions occurring on or after October 1, 1988.

XI. Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

Result in annual effect on the national economy of $100 million or more;

Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we consider small entities to include many nonprofit and for-profit hospitals.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

We do not consider this final rule to be a major rule under Executive Order 12291. Moreover, this rule will not significantly affect a substantial number of small entities. The changes set forth in this final rule, taken as a whole, would have an annual impact on the hospital industry of substantially less than $100 million. Additionally, the economic impact, which is solely a function of revised federal payments, on almost all individual hospitals is very little in view of the small percentage of hospital revenue provided by CHAMPUS and the small change in CHAMPUS payments represented by this final rule.

Therefore, no regulatory impact analysis is required.

XII. Other Required Information

A. Effective Date

This final rule is effective for inpatient hospital admissions occurring on or after October 1, 1988.

B. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by revising paragraphs (e)(4)(i) and (e)(4)(ii)(A) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(4) * * *

(i) *Emergency and inpatient hospital services.* Emergency and inpatient hospital services are covered when medically necessary for the active medical treatment of the acute phases of alcohol withdrawal (detoxification), for stabilization, and for treatment of medical complications of alcoholism. Emergency and inpatient hospital services are considered medically necessary only when the patient's condition is such that the personnel and facilities of a hospital are required. Stays provided for alcohol rehabilitation in a hospital-based rehabilitation facility are covered, subject to the provisions of paragraph (e)(4)(ii) of this section. Inpatient hospital services also are subject to the provisions regarding the limit on inpatient mental health services.

* * * * *

(ii) * * *

(A) *Rehabilitative care.* Rehabilitative care in an authorized alcohol rehabilitative facility, whether free-standing or hospital-based, is covered on either a residential or partial care (day or night program) basis. Coverage during a single benefit period is limited to no more than one inpatient stay (exclusive of stays classified in DRG 433) in hospitals subject to the CHAMPUS DRG-based payment system or 21 days in a DRG-exempt facility for rehabilitation care. If the patient is medically in need of alcohol detoxification, but does not require the personnel or facilities of a general hospital setting, detoxification services are covered in addition to the rehabilitative care, but in a DRG-exempt facility detoxification services are limited to 7 days. The medical necessity for the detoxification must be documented. Any detoxification services provided by the alcohol rehabilitation facility must be under general medical supervision.

* * * * *

3. Section 199.14 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i)(A), (a)(1)(i)(C)(*3*), and (a)(1)(ii)(C) introductory text; by removing paragraphs (a)(1)(ii)(C)(*2*) and (a)(1)(ii)(C)(*3*) and redesignating paragraphs (a)(1)(ii)(C) (*4*) through (*8*) as paragraphs (a)(1)(ii)(C) (*2*) through (*6*); by adding new paragraphs (a)(1)(ii)(C)(*7*), (a)(1)(ii)(C)(*8*) and (a)(1)(ii)(C)(*9*); by removing paragraph (a)(1)(ii)(D)(*3*) and redesignating paragraphs (a)(1)(ii)(D) (*4*) through (*9*) as paragraphs (a)(1)(ii)(D) (*3*) through (*8*); by revising redesignated paragraph (a)(1)(ii)(D)(*3*); by revising paragraphs (a)(1)(iii) introductory text; (a)(1)(iii)(A)(*3*), (a)(1)(iii)(D)(*1*), (a)(1)(iii)(D)(*2*), (a)(1)(iii)(D)(*4*), a(1)(iii)(D)(*5*), (a)(1)(iii)(E)(*1*) introductory text, (a)(1)(iii)(E)(*1*)(*i*)(*bb*), (a)(1)(iii)(E)(*1*)(*ii*), (a)(1)(iii)(G)(*3*) introductory text, (a)(1)(iii)(G)(*3*)(*vi*), and (a)(1)(iii)(G)(*3*)(*vii*) to read as follows:

§ 199.4 Basic program benefits.

(a) * * *

(1) *CHAMPUS DRG-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system is made on the basis of prospectively-determined rates and applied on a per discharge basis using Diagnosis Related Groups (DRGs). Payments under this system will include a differentiation for urban (using large urban and other urban areas) and rural hospitals and an adjustment for area wage differences and indirect medical education costs. Additional payments will be made for capital costs, direct medical education costs, and outlier cases.

(i) * * *

(A) *DRGs used.* The CHAMPUS DRG-based payment system will use the same DRGs used in the most recently available grouper for the Medicare

Prospective Payment System, except as necessary to recognize distinct characteristics of CHAMPUS beneficiaries and as described in instructions issued by the Director, OCHAMPUS.

* * * * *

(C) * * *

(*3*) *Claims priced as of date of admission.* Except for interim claims submitted for qualifying outlier cases, all claims reimbursed under the CHAMPUS DRG-based payment system are to be priced as of the date of admission, regardless of when the claim is submitted.

* * * * *

(ii) * * *

(C) *Services exempt from the DRG-based payment system.* The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system. The services in paragraphs (a)(1)(ii)(C) (*1*) through (*4*) and (*7*) through (*9*) of this section shall be reimbursed under the procedures in paragraph (a)(2) of this section, and the services in paragraphs (a)(1)(ii)(C) (*5*) and (*6*) of this section shall be reimbursed under the procedures in paragraph (f) of this section.

* * * * *

(*7*) All services related to discharges involving pediatric bone marrow transplants (patient under 18 at admission).

(*8*) All services related to discharges involving children who have been determined to be HIV seropositive (patient under 18 at admission).

(*9*) All services related to discharges involving pediatric cystic fibrosis (patient under 18 at admission).

(D) * * *

(*3*) *Psychiatric and rehabilitation units (distinct parts).* A psychiatric or rehabilitation unit which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a distinct unit which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

* * * * *

(iii) *Determination of payment amounts.* The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the appropriate adjusted standardized amount (adjusted to account for area wage differences using the wage indexes used in the Medicare program) by a weighting factor specific to each DRG.

(A) * * *

(*3*) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43\times\left\{\left(1.0+\frac{\text{number of interns+residents}}{\text{number of beds}}\right)^{.5795}-1.0\right\}$$

* * * * *

(D) * * *

(*1*) *Differentiate large urban, other urban, and rural charges.* All charges in the database shall be sorted into large urban, other urban, and rural groups (using the same definitions for these categories used in the Medicare program). The following procedures will be applied to each group.

(*2*) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43\times\left\{\left(1.0+\frac{\text{number of interns+residents}}{\text{number of beds}}\right)^{.5795}-1.0\right\}$$

* * * * *

(*4*) *Apply the cost to charge ratio.* Each charge is to be reduced to a representative cost by using the Medicare cost to charge ratio. This amount shall be increased by 1 percentage point in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries.

(*5*) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban, other urban, or rural group and dividing by the total number of discharges in the respective group.

* * * * *

(*1*) *Outliers.* The DRG-based payment to a hospital shall be adjusted for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG. Cases which qualify as both a length-of-stay outlier and a cost outlier shall be paid at the rate which results in the greater payment.

(*i*) * * *

(*bb*) *Long-stay outliers.* Any discharge which has a length-of-stay (LOS) exceeding the lesser of 3.00 standard deviations or 24 days (1.94 standard deviations or 17 days for neonate services and for services in children's hospitals) from the DRG's geometric mean LOS shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus 60 percent (90 percent for DRGs related to burn cases) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier cutoff. The per diem rate shall equal the DRG amount divided by the geometric mean LOS for the DRG.

(*ii*) *Cost outliers.* Any discharge which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $27,000 ($13,500 for neonate services and for services in children's hospitals) shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the

total charges by the factor described in paragraph (a)(1)(iii)(D)(*4*) of this section and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus 80 percent (90 percent for DRGs related to burn cases) of all costs exceeding the threshold. Additional payment for cost outliers shall be made only upon request by the hospital.

* * * * *

(G) * * *

(*3*) *Information necessary for payment of capital and direct medical education costs.* Any hospital subject to the CHAMPUS DRG-based payment system which wishes to be reimbursed for allowed capital and direct medical education costs must submit a request to the CHAMPUS contractor. Such request shall cover the one-year period corresponding to the hospital's Medicare cost-reported period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

* * * * *

(*vi*) Total inpatient days provided to all patients in units subject to DRG-based payment.

(*vii*) Total allowed CHAMPUS inpatient days provided in units subject to DRG-based payment.

* * * * *

Linda Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense, August 25, 1988.

Table 1—CHAMPUS Weights and Threshold Summary.

Editorial Note: This Table will not appear in the Code of Federal Regulations.

The following summary shows the final CHAMPUS DRG weights as well as arithmetic mean lengths of stay, geometric mean lengths of stay, and outlier thresholds.

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CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.8906	14.3	11.1	1	35
2	CRANIOTOMY FOR TRAUMA AGE >17	5.1928	14.9	9.0	1	32
3	CRANIOTOMY AGE 0-17	2.7063	10.8	6.7	1	30
4	SPINAL PROCEDURES	2.4109	11.3	8.7	1	32
5	EXTRACRANIAL VASCULAR PROCEDURES	1.6679	6.3	5.4	1	29
6	CARPAL TUNNEL RELEASE	0.5342	1.9	1.6	1	8
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.7686	15.4	8.9	1	32
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	0.8351	3.5	2.4	1	26
9	SPINAL DISORDERS & INJURIES	2.7306	17.0	9.5	1	33
10	NERVOUS SYSTEM NEOPLASMS W CC	1.4240	8.8	6.1	1	30
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.9136	6.0	4.1	1	28
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.7589	12.5	6.9	1	30
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	1.1730	9.3	6.5	1	30
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.5439	8.4	5.6	1	29
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.7171	3.8	3.0	1	22
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.6307	6.7	4.9	1	28
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.9857	5.7	3.3	1	27
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9851	6.8	5.0	1	29
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6634	4.8	3.5	1	27
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.8410	10.6	7.5	1	31
21	VIRAL MENINGITIS	0.5536	3.7	3.3	1	15
22	HYPERTENSIVE ENCEPHALOPATHY	0.7190	4.6	3.7	1	27
23	NONTRAUMATIC STUPOR & COMA	1.2273	6.3	3.6	1	27
24	SEIZURE & HEADACHE AGE >17 W CC	0.9142	5.0	3.7	1	27
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.5800	3.9	2.9	1	26
26	SEIZURE & HEADACHE AGE 0-17	0.4421	3.0	2.3	1	18
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	2.9875	9.9	5.5	1	29
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	2.6994	9.8	5.4	1	29
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.7859	4.3	2.8	1	26

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.4660	2.7	1.8	1	18
31	CONCUSSION AGE >17 W CC	0.7054	3.5	2.9	1	20
32	CONCUSSION AGE >17 W/O CC	0.4183	2.3	1.8	1	12
33	CONCUSSION AGE 0-17	0.2783	1.5	1.3	1	5
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.4616	7.6	4.5	1	28
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.7799	5.4	3.0	1	27
36	RETINAL PROCEDURES	0.7856	2.8	2.4	1	13
37	ORBITAL PROCEDURES	0.6762	2.6	2.0	1	14
38	PRIMARY IRIS PROCEDURES	0.3685*	2.8	2.2	1	17
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.6504	1.9	1.6	1	8
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.5523	2.1	1.7	1	11
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4337	1.6	1.3	1	6
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.8381	2.8	2.3	1	14
43	HYPHEMA	0.2382	3.6	3.0	1	19
44	ACUTE MAJOR EYE INFECTIONS	0.5113	4.3	3.6	1	21
45	NEUROLOGICAL EYE DISORDERS	0.6579	3.5	2.9	1	20
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.5494	3.8	2.9	1	26
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.4877	3.5	2.6	1	22
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.3925	3.1	2.4	1	20
49	MAJOR HEAD & NECK PROCEDURES	3.3305	12.5	9.1	1	33
50	SIALOADENECTOMY	0.6846	2.2	1.9	1	8
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.6547	2.2	1.8	1	10
52	CLEFT LIP & PALATE REPAIR	0.6624	2.8	2.4	1	13
53	SINUS & MASTOID PROCEDURES AGE >17	0.6499	2.1	1.6	1	10
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.7388	2.5	1.8	1	17
55	MISCELLANEOUS EAR, NOSE & THROAT PROCEDURES	0.5092	1.5	1.3	1	5
56	RHINOPLASTY	0.5126	1.5	1.3	1	5
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6051	2.1	1.8	1	10
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3544	1.2	1.1	1	2

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.3538	1.2	1.1	1	2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3189	1.1	1.1	1	2
61	MYRINGOTOMY W TUBE INSERTION AGE >17	0.5744	1.6	1.3	1	6
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.4248	2.0	1.5	1	10
63	OTHER EAR, NOSE & THROAT O.R. PROCEDURES	1.1101	3.5	2.6	1	23
64	EAR, NOSE & THROAT MALIGNANCY	1.0747	5.9	3.6	1	27
65	DYSEQUILIBRIUM	0.4757	3.1	2.6	1	15
66	EPISTAXIS	0.4990	3.6	3.0	1	18
67	EPIGLOTTITIS	1.0454	4.4	3.3	1	27
68	OTITIS MEDIA & URI AGE >17 W CC	0.6708	4.1	3.4	1	20
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.5092	3.5	2.8	1	18
70	OTITIS MEDIA & URI AGE 0-17	0.3873	3.0	2.6	1	14
71	LARYNGOTRACHEITIS	0.3329	2.4	2.1	1	11
72	NASAL TRAUMA & DEFORMITY	0.4465	1.8	1.4	1	7
73	OTHER EAR, NOSE & THROAT DIAGNOSES AGE >17	0.6613	3.8	2.7	1	26
74	OTHER EAR, NOSE & THROAT DIAGNOSES AGE 0-17	0.4953	2.8	2.1	1	19
75	MAJOR CHEST PROCEDURES	3.2017	11.3	9.8	1	33
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.2876	10.4	7.7	1	31
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2508	5.5	3.7	1	27
78	PULMONARY EMBOLISM	1.4055	8.6	7.5	1	31
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	2.9321	11.9	9.4	1	33
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.4588	8.3	6.8	1	30
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.5904	7.7	5.6	1	29
82	RESPIRATORY NEOPLASMS	1.4845	8.2	5.7	1	29
83	MAJOR CHEST TRAUMA W CC	1.5288	8.1	6.9	1	30
84	MAJOR CHEST TRAUMA W/O CC	0.7899	4.4	3.4	1	27
85	PLEURAL EFFUSION W CC	1.2645	7.6	6.0	1	29
86	PLEURAL EFFUSION W/O CC	0.7541	4.9	3.7	1	27
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.2541	7.7	5.6	1	29

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.3298	6.9	5.5	1	29
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.5597	7.6	6.4	1	30
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.9142	5.5	4.7	1	26
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.5839	4.0	3.5	1	17
92	INTERSTITIAL LUNG DISEASE W CC	1.4641	6.4	5.0	1	29
93	INTERSTITIAL LUNG DISEASE W/O CC	0.9596	5.3	3.7	1	27
94	PNEUMOTHORAX W CC	1.6712	7.3	5.6	1	29
95	PNEUMOTHORAX W/O CC	0.7197	5.5	4.3	1	28
96	BRONCHITIS & ASTHMA AGE >17 W CC	1.1963	6.4	5.3	1	29
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.7552	4.5	3.8	1	22
98	BRONCHITIS & ASTHMA AGE 0-17	0.5233	3.4	2.9	1	16
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.9279	4.5	3.5	1	27
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5613	2.9	2.4	1	15
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.8780	7.1	5.1	1	29
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.8728	4.4	3.0	1	27
103	HEART TRANSPLANT	-	-	-	-	-
104	CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	7.8309	17.0	14.4	2	38
105	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	5.9088	12.0	10.4	1	34
106	CORONARY BYPASS W CARDIAC CATH	5.7833	11.9	11.0	3	35
107	CORONARY BYPASS W/O CARDIAC CATH	4.9034	10.0	9.3	3	28
108	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	4.8146	10.6	9.0	1	32
109	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3.8267	10.8	8.1	1	32
110	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W CC	3.8511	11.7	9.8	1	33
111	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2.6178	8.6	7.8	2	30
112	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2.1252	5.5	4.4	1	28
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	3.5725	19.1	15.8	2	39
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	2.0421	10.7	7.5	1	31
115	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.9884*	15.2	12.8	1	37
116	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	3.0480	6.7	5.3	1	29

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	3.0794	6.7	5.5	1	29
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	2.5978	4.1	3.1	1	25
119	VEIN LIGATION & STRIPPING	0.7157	3.0	2.4	1	16
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	3.1701	12.5	7.9	1	31
121	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	2.2611	8.4	6.7	1	30
122	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.5538	6.1	4.9	1	28
123	CIRCULATORY DISORDERS W AMI, EXPIRED	2.6100	5.1	2.8	1	26
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1405	4.5	3.3	1	27
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	0.7335	2.5	2.0	1	13
126	ACUTE & SUBACUTE ENDOCARDITIS	2.5882	13.5	9.6	1	33
127	HEART FAILURE & SHOCK	1.2991	6.8	5.3	1	29
128	DEEP VEIN THROMBOPHLEBITIS	0.8803	7.9	7.0	1	30
129	CARDIAC ARREST, UNEXPLAINED	2.3905	6.3	3.5	1	27
130	PERIPHERAL VASCULAR DISORDERS W CC	1.0276	6.6	4.8	1	28
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.6555	4.5	3.2	1	27
132	ATHEROSCLEROSIS W CC	1.0915	3.4	2.7	1	20
133	ATHEROSCLEROSIS W/O CC	0.9141	2.8	2.2	1	16
134	HYPERTENSION	0.6419	4.1	3.2	1	24
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	1.0508	4.8	3.4	1	27
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7185	3.0	2.3	1	18
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.8386	4.0	2.3	1	26
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	1.0496	4.8	3.5	1	27
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6438	3.2	2.5	1	19
140	ANGINA PECTORIS	0.8137	3.4	2.8	1	19
141	SYNCOPE & COLLAPSE W CC	0.6970	3.9	3.1	1	22
142	SYNCOPE & COLLAPSE W/O CC	0.5484	3.6	2.5	1	19
143	CHEST PAIN	0.6488	2.8	2.3	1	14
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.4879	6.7	4.7	1	28
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7975	3.9	2.9	1	26

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
146	RECTAL RESECTION W CC	2.8738	13.3	12.1	3	36
147	RECTAL RESECTION W/O CC	2.1735	9.5	8.6	2	32
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.2908	13.2	11.5	2	35
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2.0133	9.8	8.9	2	32
150	PERITONEAL ADHESIOLYSIS W CC	2.3419	11.0	9.1	1	33
151	PERITONEAL ADHESIOLYSIS W/O CC	1.4400	7.8	6.7	1	30
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.6413	7.7	6.2	1	30
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0630	6.4	5.3	1	29
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3.7886	12.8	10.5	1	34
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.9447	8.9	8.0	1	31
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.1014	6.5	4.7	1	28
157	ANAL & STOMAL PROCEDURES W CC	1.0358	5.4	4.1	1	28
158	ANAL & STOMAL PROCEDURES W/O CC	0.5837	3.2	2.6	1	18
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.5256	6.8	5.2	1	29
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.7851	3.8	3.1	1	21
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.7187	3.4	2.8	1	19
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.5501	2.3	1.9	1	10
163	HERNIA PROCEDURES AGE 0-17	0.4494	1.7	1.4	1	7
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3429	10.3	9.3	2	33
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.3788	6.8	6.1	1	26
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.3268	5.6	4.8	1	24
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.7007	3.4	3.1	1	11
168	MOUTH PROCEDURES W CC	1.1942	4.7	3.0	1	26
169	MOUTH PROCEDURES W/O CC	0.6373	2.3	1.8	1	14
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.6777	11.3	7.8	1	31
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.4286	6.9	5.0	1	29
172	DIGESTIVE MALIGNANCY W CC	1.6251	9.2	6.5	1	30
173	DIGESTIVE MALIGNANCY W/O CC	0.9008	6.8	4.3	1	28
174	G.I. HEMORRHAGE W CC	1.1294	5.4	4.3	1	28

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
175	G.I. HEMORRHAGE W/O CC	0.7295	4.0	3.3	1	21
176	COMPLICATED PEPTIC ULCER	0.9612	5.9	5.0	1	26
177	UNCOMPLICATED PEPTIC ULCER W CC	0.9500	5.7	4.6	1	28
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6508	4.1	3.4	1	20
179	INFLAMMATORY BOWEL DISEASE	0.9589	6.8	5.5	1	29
180	G.I. OBSTRUCTION W CC	0.9706	6.3	5.0	1	29
181	G.I. OBSTRUCTION W/O CC	0.5526	3.9	3.2	1	21
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.7255	4.6	3.6	1	27
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5577	3.6	2.9	1	21
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.3309	2.9	2.4	1	14
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.7296	4.0	2.8	1	26
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.4865	3.0	2.4	1	17
187	DENTAL EXTRACTIONS & RESTORATIONS	0.6841	2.4	2.1	1	11
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0194	5.6	4.2	1	28
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5477	3.5	2.6	1	25
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.3674	2.5	1.8	1	13
191	MAJOR PANCREAS, LIVER & SHUNT PROCEDURES	6.0579	21.4	17.3	2	41
192	MINOR PANCREAS, LIVER & SHUNT PROCEDURES	3.1866	12.5	10.4	1	34
193	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W CC	3.5776	15.6	13.1	2	37
194	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W/O CC	2.1535	10.1	8.7	1	32
195	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	1.8450	9.0	7.9	1	31
196	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.5126	7.3	6.8	2	21
197	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	1.4562	7.0	6.2	1	25
198	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0410	5.3	5.0	1	15
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	3.0438	15.2	12.8	2	36
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.5893	9.1	6.6	1	30
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.3709	8.6	6.2	1	30
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.6708	8.8	6.1	1	30
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.2468	7.6	4.9	1	28

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2518	7.1	5.4	1	29
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.7774	8.5	5.7	1	29
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.6487	4.5	3.0	1	27
207	DISORDERS OF THE BILIARY TRACT W CC	1.0304	5.4	4.0	1	27
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.5522	3.3	2.7	1	20
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.9237	10.5	9.8	3	28
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.7024	13.0	11.1	2	35
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.8874	9.3	7.9	1	31
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.5887	8.9	6.2	1	30
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	2.3629	11.4	7.9	1	31
214	BACK & NECK PROCEDURES W CC	2.0402	10.4	8.6	1	32
215	BACK & NECK PROCEDURES W/O CC	1.3175	6.9	5.9	1	29
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.8298	9.1	5.0	1	28
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.5665	11.9	6.4	1	30
218	LOWER EXTREM & NUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.9567	9.1	7.0	1	31
219	LOWER EXTREM & NUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.0607	4.7	3.9	1	25
220	LOWER EXTREM & NUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.8503	3.7	2.6	1	26
221	KNEE PROCEDURES W CC	1.6061	6.8	4.8	1	28
222	KNEE PROCEDURES W/O CC	0.8888	3.2	2.6	1	17
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.9542	3.7	2.8	1	23
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.7684	2.6	2.1	1	12
225	FOOT PROCEDURES	0.7505	2.9	2.3	1	16
226	SOFT TISSUE PROCEDURES W CC	1.1823	5.7	3.4	1	27
227	SOFT TISSUE PROCEDURES W/O CC	0.7165	3.0	2.3	1	18
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	0.8480	2.9	2.2	1	19
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.6313	2.1	1.7	1	10
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.6652	3.1	2.0	1	21
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	0.8556	3.6	2.3	1	26
232	ARTHROSCOPY	0.7381	2.8	2.0	1	19

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0759	10.4	7.5	1	31
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.0062	4.5	3.2	1	27
235	FRACTURES OF FEMUR	1.2289	12.3	6.9	1	30
236	FRACTURES OF HIP & PELVIS	1.1686	10.4	6.5	1	30
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.6258	4.3	3.1	1	27
238	OSTEOMYELITIS	1.4859	11.3	8.7	1	32
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.3933	9.5	6.8	1	30
240	CONNECTIVE TISSUE DISORDERS W CC	1.6972	9.5	7.1	1	31
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.7487	5.7	4.5	1	28
242	SEPTIC ARTHRITIS	1.2300	8.6	7.1	1	31
243	MEDICAL BACK PROBLEMS	0.6452	5.0	3.6	1	27
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.9941	6.4	4.8	1	28
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.7360	4.7	3.4	1	27
246	NON-SPECIFIC ARTHROPATHIES	0.8838	6.1	4.0	1	27
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5930	4.3	3.1	1	27
248	TENDONITIS, MYOSITIS & BURSITIS	0.5749	4.1	3.1	1	27
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.5694	4.0	2.7	1	26
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.9778	6.2	4.4	1	28
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.5888	3.0	2.0	1	21
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.3151	1.3	1.2	1	3
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	1.0754	6.8	4.5	1	28
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.4753	3.5	2.6	1	26
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.4006	2.9	2.0	1	19
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.6488	4.0	2.7	1	26
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.0861	5.1	4.6	1	20
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.9334	4.4	4.0	1	15
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	1.1331	4.8	3.7	1	27
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7416	2.9	2.5	1	14
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	0.9167	2.7	2.3	1	13

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.5041	2.1	1.7	1	10
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	3.0922	19.0	12.5	1	36
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.8215	13.1	9.3	1	33
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.7986	7.5	5.6	1	29
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C	0.8904	4.1	3.1	1	27
267	PERIANAL & PILONIDAL PROCEDURES	0.5057	2.6	2.1	1	14
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	0.6778	2.9	1.9	1	18
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6362	7.5	5.4	1	29
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7786	3.4	2.4	1	26
271	SKIN ULCERS	1.7878	11.1	8.3	1	32
272	MAJOR SKIN DISORDERS W CC	1.1128	7.3	5.6	1	29
273	MAJOR SKIN DISORDERS W/O CC	0.7338	5.7	4.1	1	28
274	MALIGNANT BREAST DISORDERS W CC	1.6943	9.5	5.9	1	29
275	MALIGNANT BREAST DISORDERS W/O CC	0.8495	6.0	4.2	1	28
276	NON-MALIGANT BREAST DISORDERS	0.6040	3.5	2.7	1	24
277	CELLULITIS AGE >17 W CC	1.1753	7.5	6.3	1	30
278	CELLULITIS AGE >17 W/O CC	0.7188	5.1	4.3	1	25
279	CELLULITIS AGE 0-17	0.5161	4.1	3.4	1	20
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.6925	4.1	2.6	1	26
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.4715	2.9	2.2	1	18
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.3433	1.9	1.6	1	8
283	MINOR SKIN DISORDERS W CC	1.2224	6.6	4.4	1	28
284	MINOR SKIN DISORDERS W/O CC	0.4594	3.5	2.6	1	24
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	4.3254	21.6	15.3	1	39
286	ADRENAL & PITUITARY PROCEDURES	2.3578	8.6	7.9	2	27
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.3225	15.2	11.1	1	35
288	O.R. PROCEDURES FOR OBESITY	1.7995	6.0	5.6	1	16
289	PARATHYROID PROCEDURES	1.1615	4.9	4.0	1	26
290	THYROID PROCEDURES	0.7642	3.0	2.6	1	13

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
291	THYROGLOSSAL PROCEDURES	0.4850	1.3	1.2	1	3
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	3.2008	12.2	9.1	1	33
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2284	6.4	5.1	1	29
294	DIABETES AGE >35	0.7553	5.8	4.9	1	27
295	DIABETES AGE 0-35	0.7125	4.6	3.8	1	27
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	1.1088	6.9	4.9	1	28
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.6680	5.0	3.4	1	27
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.4180	3.5	2.7	1	20
299	INBORN ERRORS OF METABOLISM	0.8314	5.1	3.9	1	27
300	ENDOCRINE DISORDERS W CC	0.9499	6.2	4.8	1	28
301	ENDOCRINE DISORDERS W/O CC	0.5407	4.1	2.7	1	26
302	KIDNEY TRANSPLANT	5.7970	16.9	14.9	3	38
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.3908	10.5	9.6	2	33
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.3113	9.8	7.8	1	31
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.4377	6.2	4.7	1	28
306	PROSTATECTOMY W CC	1.3672	6.4	5.4	1	29
307	PROSTATECTOMY W/O CC	0.8715	3.9	3.5	1	16
308	MINOR BLADDER PROCEDURES W CC	1.8341	8.1	5.5	1	29
309	MINOR BLADDER PROCEDURES W/O CC	1.1595	5.9	4.3	1	28
310	TRANSURETHRAL PROCEDURES W CC	1.0101	4.2	3.2	1	27
311	TRANSURETHRAL PROCEDURES W/O CC	0.7474	2.9	2.4	1	16
312	URETHRAL PROCEDURES, AGE >17 W CC	0.7786	3.4	2.8	1	20
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.5733	3.0	2.1	1	23
314	URETHRAL PROCEDURES, AGE 0-17	0.5143	2.7	2.0	1	21
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.2674	9.2	6.6	1	30
316	RENAL FAILURE	1.4627	7.7	5.3	1	29
317	ADMIT FOR RENAL DIALYSIS	0.3507*	2.8	2.0	1	18
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.4447	7.8	5.3	1	29
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.9054	5.3	3.5	1	27

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	1.0164	5.9	4.9	1	28
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6618	4.4	3.8	1	20
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.5100	4.1	3.4	1	20
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.8514	3.0	2.2	1	19
324	URINARY STONES W/O CC	0.4695	2.2	1.8	1	11
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.6597	4.2	3.4	1	27
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.5591	3.3	2.7	1	18
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3919	2.4	2.0	1	12
328	URETHRAL STRICTURE AGE >17 W CC	0.6250*	5.1	3.9	1	28
329	URETHRAL STRICTURE AGE >17 W/O CC	0.9328	3.9	3.0	1	26
330	URETHRAL STRICTURE AGE 0-17	0.2788*	0.0	1.6	1	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.1772	6.7	4.5	1	28
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6556	3.9	2.8	1	26
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.5482	3.9	2.9	1	26
334	MAJOR MALE PELVIC PROCEDURES W CC	2.3274	10.4	9.4	2	33
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.9043	8.5	8.1	2	22
336	TRANSURETHRAL PROSTATECTOMY W CC	1.0447	5.1	4.6	1	18
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7646	4.0	3.7	1	12
338	TESTES PROCEDURES, FOR MALIGNANCY	0.9438	4.7	3.1	1	27
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.5433	2.0	1.6	1	10
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.4157	1.5	1.3	1	4
341	PENIS PROCEDURES	1.0106	4.1	3.1	1	27
342	CIRCUMCISION AGE >17	0.4508*	2.9	2.1	1	20
343	CIRCUMCISION AGE 0-17	0.3788*	0.0	1.7	1	6
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.2011	5.8	4.1	1	28
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.9157	4.8	3.3	1	27
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.2654	8.9	5.9	1	29
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.6387	4.1	2.3	1	26
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.6474	3.1	2.7	1	14

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.5763	2.5	2.0	1	13
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6341	4.0	3.3	1	22
351	STERILIZATION, MALE	0.3333*	0.0	1.3	1	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.3204	2.0	1.6	1	10
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.0619	9.6	8.9	2	27
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4248	6.9	6.4	1	20
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.9596	5.1	4.8	1	14
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.8778	4.9	4.5	1	17
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.8065	8.5	7.6	1	30
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2243	5.9	5.4	1	17
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9322	4.7	4.4	1	11
360	VAGINA, CERVIX & VULVA PROCEDURES	0.6164	2.8	2.1	1	19
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.7058	3.0	2.3	1	20
362	ENDOSCOPIC TUBAL INTERRUPTION	0.3874	1.4	1.3	1	4
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.6745	3.3	2.6	1	18
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4521	1.8	1.5	1	8
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.2856	6.5	5.2	1	29
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.3112	8.2	5.1	1	29
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.6218	3.2	2.4	1	21
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.6294	4.0	3.5	1	17
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.4622	2.8	2.3	1	16
370	CESAREAN SECTION W CC	0.9573	5.5	5.0	1	16
371	CESAREAN SECTION W/O CC	0.7653	4.4	4.2	1	9
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5868	3.5	3.0	1	15
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3890	2.4	2.2	1	7
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.6202	2.7	2.6	1	7
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.8026	3.8	3.4	1	15
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4767	3.0	2.5	1	15
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.6844	2.9	2.2	1	19

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
378	ECTOPIC PREGNANCY	0.7900	3.6	3.3	1	11
379	THREATENED ABORTION	0.3205	2.6	1.9	1	16
380	ABORTION W/O D&C	0.2918	1.6	1.4	1	5
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.3770	1.3	1.2	1	4
382	FALSE LABOR	0.1510	1.3	1.2	1	3
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.3525	3.2	2.6	1	18
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.3290	2.7	1.9	1	18
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	-	-	-	-	-
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	-	-	-	-	-
387	PREMATURITY W MAJOR PROBLEMS	-	-	-	-	-
388	PREMATURITY W/O MAJOR PROBLEMS	-	-	-	-	-
389	FULL TERM NEONATE W MAJOR PROBLEMS	-	-	-	-	-
390	NEONATE W OTHER SIGNIFICANT PROBLEMS	-	-	-	-	-
391	NORMAL NEWBORN	0.1260	2.5	2.3	1	8
392	SPLENECTOMY AGE >17	3.3608	10.8	8.6	1	32
393	SPLENECTOMY AGE 0-17	1.8887	8.3	6.5	1	30
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	0.8992	4.6	2.7	1	26
395	RED BLOOD CELL DISORDERS AGE >17	0.8911	5.8	4.1	1	28
396	RED BLOOD CELL DISORDERS AGE 0-17	0.5805	4.3	3.4	1	27
397	COAGULATION DISORDERS	0.7868	4.4	3.4	1	27
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.6930	9.0	7.0	1	30
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.8057	5.3	4.0	1	28
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.4706	10.6	7.8	1	31
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3.3245	12.3	9.1	1	33
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	1.0319	4.8	3.5	1	27
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2.2708	11.3	7.1	1	31
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	1.0173	5.3	3.8	1	27
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.4140	7.3	4.6	1	28
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	3.4379	14.0	9.7	1	33

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.7617	7.3	5.9	1	29
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.0159	4.5	3.3	1	27
409	RADIOTHERAPY	0.8907	6.3	4.0	1	28
410	CHEMOTHERAPY	0.6344	2.9	2.3	1	16
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4555	3.9	2.6	1	26
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.4319*	3.1	2.2	1	22
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.8235	10.3	6.7	1	30
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.9272	6.1	3.9	1	27
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.1118	13.5	9.1	1	33
416	SEPTICEMIA AGE >17	2.0554	9.2	7.0	1	30
417	SEPTICEMIA AGE 0-17	0.7030	5.2	4.3	1	28
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.9336	6.3	5.1	1	29
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.9898	5.7	4.4	1	28
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.8489	5.2	4.3	1	28
421	VIRAL ILLNESS AGE >17	0.6091	4.0	3.3	1	21
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.3944	3.1	2.7	1	15
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.2390	7.0	4.6	1	28
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.1681	20.3	13.0	1	37
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	0.6305	5.8	3.4	1	27
426	DEPRESSIVE NEUROSES	1.3160	10.9	6.9	1	30
427	NEUROSES EXCEPT DEPRESSIVE	1.1697	12.1	6.8	1	30
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	1.6647	14.0	8.4	1	32
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.4711	11.7	7.5	1	31
430	PSYCHOSES	1.4643	13.6	9.4	1	33
431	CHILDHOOD MENTAL DISORDERS	2.7466	23.5	16.3	1	40
432	OTHER MENTAL DISORDER DIAGNOSES	2.2490	22.5	16.0	1	40
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.7802	9.5	6.2	1	30
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	1.3447	11.9	7.5	1	31
435	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC	-	-	-	-	-

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CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.8070	24.2	21.3	3	45
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.4470	21.5	17.6	1	41
438	NO LONGER VALID	-	-	-	-	-
439	SKIN GRAFTS FOR INJURIES	2.3054	8.9	6.5	1	30
440	WOUND DEBRIDEMENTS FOR INJURIES	1.8700	8.9	5.6	1	29
441	HAND PROCEDURES FOR INJURIES	0.7800	2.6	2.0	1	15
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.7865	11.0	6.7	1	30
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.2434	5.3	3.1	1	27
444	MULTIPLE TRAUMA AGE >17 W CC	0.7886	3.9	3.2	1	25
445	MULTIPLE TRAUMA AGE >17 W/O CC	0.6648	4.1	2.8	1	26
446	MULTIPLE TRAUMA AGE 0-17	0.5024	3.2	2.2	1	23
447	ALLERGIC REACTIONS AGE >17	0.4398	2.2	1.8	1	10
448	ALLERGIC REACTIONS AGE 0-17	0.3995	2.1	1.8	1	9
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.8738	4.4	2.8	1	26
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.5016	2.8	1.9	1	18
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.3452	2.1	1.6	1	10
452	COMPLICATIONS OF TREATMENT W CC	1.2139	6.4	4.1	1	28
453	COMPLICATIONS OF TREATMENT W/O CC	0.5103	3.4	2.4	1	26
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	1.9011	5.6	2.9	1	26
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3824	2.2	1.7	1	12
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.5713	4.7	3.7	1	27
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	2.5594*	8.3	3.6	1	28
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.5707	16.3	12.2	1	36
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.8076	11.3	7.1	1	31
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.9225	6.2	3.8	1	27
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	0.8749	4.1	2.5	1	26
462	REHABILITATION	2.5561	25.0	21.2	2	45
463	SIGNS & SYMPTOMS W CC	0.8551	7.0	4.7	1	28
464	SIGNS & SYMPTOMS W/O CC	0.6036	3.9	2.9	1	26

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CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.3450*	2.5	1.9	1	14
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.5313	3.2	2.2	1	24
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.4055	3.0	2.0	1	21
468	UNRELATED OPERATING ROOM PROCEDURES	2.1569	8.5	5.1	1	29
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	-	-	-	-	-
470	UNGROUPABLE	-	-	-	-	-
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	5.0053	16.9	15.8	5	39
472	EXTENSIVE BURNS W O.R. PROCEDURE	12.3422*	33.6	19.1	1	43
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	4.9052	17.7	8.8	1	32
474	RESPIRATORY SYSTEM DIAGNOSIS WITH TRACHEOSTOMY	11.0155	25.2	20.0	2	43
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.5943	10.2	8.9	1	32
476	UNRELATED PROTASTIC OR PROCEDURE	1.9600	10.9	10.0	2	33
477	UNRELATED NON-EXTENSIVE OR PROCEDURE ONLY	0.9988	5.5	3.4	1	27
900	ALC/DRUG ABUSE OR DEP, DETOX, OTH W/O CC AGE 0-21	1.8144	22.2	13.7	1	37
901	ALC/DRUG ABUSE OR DEP, DETOX, OTH W/O CC AGE > 21	1.2235	13.8	8.6	1	32

Consistent with Medicare practice the weights have been normalized so that the average case weight in FY89 is equal to the average case weight in FY88

Table 2—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, and Cost Share Per Diem.

Editorial note: This table will not appear in the Code of Federal Regulations.

FY 89 CHAMPUS Adjusted Standardized Amounts

National Large Urban adjusted standardized amount	$2,890.20
Labor portion	$2,134.12
Nonlabor portion	$756.08
National Other Urban adjusted standardized amount	$2,782.75
Labor portion	$2,054.78
Nonlabor portion	$727.97
National Rural adjusted standardized amount	$2,568.42
Labor portion	$2,011.33
Nonlabor portion	$557.09
Cost-share per diem for beneficiaries other than dependents of active duty members	$209.64

The adjusted standardized amounts are similar to those for FY 1988 in part because of the use of a lower cost-to-charge ratio which largely offsets the update factor.

[FR Doc. 88-19686 Filed 8-30-88; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3600/R975; FRL-3434-9]

Pesticide Tolerances for Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide clopyralid on the raw agricultural commodities (RACs) sugar beet roots and tops at 0.5 part per million (ppm). This regulation was requested by Dow Chemical U.S.A. and establishes the maximum permissible level for residues of the herbicide in or on these RACs.

EFFECTIVE DATE: August 31, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 9, 1988 (53 FR 7569), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, proposed amending 40 CFR 180.431 by establishing a regulation to permit the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on sugar beet roots and tops at 0.5 ppm.

No comments were received in response to the notice of filing.

A related document (FAP 8H5551/R976) establishing a regulation permitting residues of clopyralid in or on certain feed items appears elsewhere in this issue of the **Federal Register.**

The Agency has evaluated the data submitted in the petition and other relevant material. the data considered included:

1. Plant and animal metabolism studies.

2. A rat oral lethal dose (LD_{50}) with an LD_{50} of 4,300 milligrams/kilogram (mg/kg) of body weight.

3. A 13-week mouse feeding study with a no-observed-effect level (NOEL) of 750 mg/kg/day.

4. A 180-day dog feeding study with a NOEL greater than (<) 150 mg/kg/day, the highest dose treated (HDT).

5. A pilot rabbit teratology and a rabbit teratology study with a developmental NOEL < 250 mg/kg/day (HDT).

6. A rat teratology study with a developmental NOEL of 250 mg/kg/day (HDT) and a maternal toxicity NOEL of 75 mg/kg/day.

7. A two-generation rat reproduction study with a reproductive NOEL of < 1,500 mg/kg/day.

8. A 1-year dog feeding study with a NOEL of 100 mg/kg/day.

9. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 50 mg/kg/day with no oncogenic potential observed under the conditions of the study at doses up to and including 150 mg/kg/day (HDT).

10. A repeat 2-year rat chronic feeding/oncogenicity study with a NOEL of 15 mg/kg/day with no oncogenic potential observed under conditions of the study up to 1,500 mg/kg/day (HDT).

11. A 2-year mouse oncogenicity study with no oncogenic potential observed under the conditions of the study up to and including 2,000 mg/kg/day (HDT).

12. A dominant lethal assay, negative.

13. *In vivo* rat cytogenic study, negative.

14. *In vitro Salmonella* and *Saccharomyces* assay, negative.

15. An *in vivo* mouse host-mediated assay, negative.

Based on a NOEL of 50 mg/kg/day in a 2-year chronic feeding/oncogenicity study in the rat and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.5 mg/kg/day. These tolerances, and those established elsewhere in this issue of the **Federal Register**, have a theoretical maximum residue contribution of 0.007882 mg/kg/day and would utilize 1.6 percent of the ADI.

There are no regulatory actions pending against the registration of clopyralid. The metabolism of clopyralid in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the *Pesticide Analytical Manual*, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Service Branch, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Established tolerances are adequate to cover residues that would result in meat, milk, poultry, and eggs. The Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agriculture commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 12, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.431 is amended by adding and alphabetically inserting the raw agricultural commodities sugar beet roots and sugar beet tops in the list of commodities, to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Sugar beet roots	0.5
Sugar beet tops	0.5
* * * * *	

[FR Doc. 88–19297 Filed 8–30–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 186

[FAP 8H5551 R976; FRL–3435–2]

Pesticide Tolerance For Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a regulation to permit the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) calculated as parent in the feed commodity sugar beet molasses at 7 parts per million (ppm). This regulation to establish a maximum permissible level for the herbicide in this commodity was requested by Dow Chemical U.S.A.

EFFECTIVE DATE: August 31, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 9, 1988 (53 FR 7569), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641–1706, had filed a feed additive petition (8H5551) proposing to amend 21 CFR 561.439 (feed commodity) by establishing a regulation to permit the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on sugar beet molasses at 7.0 parts per million.

In the **Federal Register** of June 29, 1988 (53 FR 24666), EPA redesignated former 21 CFR Part 561 into new 40 CFR Part 186, and former 21 CFR 561.439 is now 40 CFR 186.1100.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related final rule document (PP 8F3600/R975) establishing tolerances in or on sugar beet roots and tops that appears elsewhere in this issue of the **Federal Register**.

The pesticide is considered useful for the purpose for which the regulation is sought. The nature of the residue is adequately understood for the purpose of establishing the feed additive regulation. An adequate analytical method, gas chromatography, is available for enforcement purposes.

Because of the long lead-time from establishing this tolerance to publication of the enforcement methodology in the *Pesticide Analytical Manual*, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Service Branch, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Room 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751 (7 U.S.C. 136 *et seq.*)). Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601–612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950). (Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(c))

List of Subjects in 40 CFR Part 186

Feed additives, pesticides and pests.

Dated: August 12, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 186—[AMENDED]

1. Part 186 is amended as follows:

a. The authority citation for Part 186 continues to read a follows:

Authority: 21 U.S.C. 346.

b. In § 186.1100 by adding and alphabetically inserting in the list of commodities the following entry to read as follows:

§ 186.1100 Clopyralid.

* * * * *

Commodity	Parts per million
* * * * *	
Sugar beet molasses	7.0
* * * * *	

[FR Doc. 88-19298 Filed 8-30-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3436-4]

Ocean Dumping; Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a dredged material disposal site located in the Gulf of Mexico offshore of Port Aransas, Texas for the disposal of dredged material removed from the U.S. Navy Homeport project at Corpus Christi/Ingleside, Texas. This action is to designate the most environmentally acceptable and economically feasible area for ocean disposal of construction and future maintenance material from the proposed Homeport project.

DATE: This designation shall become effective September 30, 1988.

ADDRESSES: The file supporting this designation is available for public inspection at the following location: U.S. EPA Region VI (E-F), 1445 Ross Avenue, 10th floor, Dallas, Texas 72502-2733.

FOR FURTHER INFORMATION CONTACT: Norm Thomas, 214/655-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by publication in Part 228. This site designation is being published as the Final Rule in accordance with § 228.4(e) of the Ocean Dumping Regulations regarding the designation of an ocean dredged material disposal site (ODMDS).

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA's Ocean Dumping Program, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations (39 FR 16186: May 7, 1974).

EPA has prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) Ocean Dredged Material Disposal Site Designation U.S. Navy Gulf Coast Strategic Homeporting Corpus Christi/Ingleside, Texas." On December 4, 1987, a notice of availability of the Draft EIS for agency and public review was published in the **Federal Register.** The comment period on this Draft EIS closed on January 18, 1988. The Agency received ten comment letters on the Draft (EIS) and responded to them in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments, other than errata or minor changes, were addressed point by point in the Final EIS. On July 1, 1988, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register.** The public comment period on the Final EIS closed on August 1, 1988. One letter on the Final EIS was received from the U.S. Department of Health and Human Services documenting the Final EIS adequately considered their comments made on the Draft EIS. The Final EIS is available for public inspection at the address given above.

The action discussed in the EIS is the designation of an ocean site for disposal of dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis, as part of the process of issuing permits for ocean disposal, in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal laws.

The EIS discussed the need for and alternatives to the proposed action. These included the eleven alternatives considered by the U.S. Navy in a previously published EIS (i.e., United States Navy Gulf Coast Strategic Homeporting Final Environmental Impact Statement, January 1987). Five ocean disposal alternatives were also evaluated. These included a mid-shelf site, a continental slope site and three near-shore sites, including the Galveston District Corps of Engineers (COE) interim ODMDS. Both the mid-shelf and continental slope sites involve increased transportation costs at no environmental advantage. Because of the increased economic costs and lack of environmental benefit, the mid-shelf and continental slope sites were eliminated from consideration. In addition to ocean disposal, upland disposal, beach nourishment, as well as shallow, deep, and confined bay disposal were considered. The use of any single alternative for disposal of all material was not feasible and sufficient upland sites were not available to accommodate both: (1) The virgin and maintenance from the Homeport Project; and (2) the Corps routine maintenance material. The Navy's preferred alternative is a combination of upland disposal and ocean disposal for the 20.8 million cubic yards (mcy) of construction and future maintenance material. Of this total amount, 15.5 mcy will be disposed of inshore, and 5.3 mcy will be disposed of offshore.

EPA coordinated with the National Marine Fisheries Service (NMFS) in accordance with the requirements of section 7 of the Endangered Species Act. EPA determined that no adverse impacts will occur to listed endangered or threatened species as a result of site designation, and the NMFS concurred with this determination.

On December 28, 1987, EPA proposed designation of the Homeport ODMDS for disposal of 5.3 mcy of dredged material. The public comment period on this proposed rule closed on February 11, 1988. No comments were received on the proposed rule. This final rulemaking notice serves the same purpose as a Record of Decision required under regulations promulgated by the Council on Environmental Quality for federal agencies subject to NEPA.

C. Site Designation

The disposal site is located approximately four miles offshore of Port Aransas, Texas. Water depths within the area range from 47-55 feet. The coordinates of the site are as follows: 27°47'42" N., 97°00'12" ' W., 27°47'15" N., 96°59'25" W., 27°46'17" N., 97°01'12" W., 27°45'49" N., 97°00'25" W.

D. Regulatory Requirements

Five general and eleven specific criteria are used in the evaluation and

approval of ocean disposal sites. The general and specific criteria are given in §§ 228.5 and 288.6, respectfully, of the EPA Ocean Dumping Regulations. General criteria considerations include minimizing interference with other marine activities, keeping any temporary perturbations from the dumping from causing impacts outside the disposal site, and allowing effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If EPA determines that disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or liminations placed on the use of the site to reduce the impacts to acceptable levels.

EPA has determined, based on the information and analysis presented in the Draft and Final EISs, that the Homeport ODMDS is acceptable under the five general criteria. The characteristics of the site are reviewed below in terms of the eleven specific criteria.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).)

The geographical position, (i.e., coordinates) of the disposal site is given above. The water depth ranges from 47 to 55 feet, the bottom topography is flat, and the site is approximately 3.7 miles from the coast at its closest point.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).)

The Corpus Christi Ship Channel (CCSC) serves as a migratory route for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. This area, including a 1.5 mile buffer zone, is excluded as a migratory passage.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

The site is approximately 3.7 miles offshore of Mustang and San Jose Islands. Other local amenities include Mustang Island State Park, Caldwell Pier, and the Padre Island Natural Seashore, approximately 20 miles away.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).)

Virgin construction and maintenance materials (totaling approximately 5.3 mcy) from the Homeport Project would be disposed of at the preferred ODMDS. Roughly 2.4 mcy of construction material is proposed for disposal in the two-year or less construction interval. Approximately 2.9 mcy of maintenance material is proposed for disposal through project year 50 (estimated at 290,000 cubic yards during every five-year maintenance cycle). Based on chemical analyses and biological toxicity studies of past maintenance material and virgin material from near the Homeport Project area, there are no pollution or toxicological problems associated with these sediments.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6 (a)(5).)

The site is amenable to surveillance and monitoring. The proposed monitoring and surveillance program for virgin material consists of ship-riding surveillance for disposal site location; bathmetric surveys; grain size analysis; sediment chemical characterizing; and benthic infaunal analysis at selected stations. For future maintenance material, the proposed program consist of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).)

Predominant longshore current, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred with discharged maintenance material, although significant short-term mounding of construction material is possible. Steady longshore transport and occasional storms, including hurricanes, are expected, on a long-term basis, to remove the disposed material from the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).)

The discussion of the results of chemical and bioassay testing of past maintenance material and material from the near the interim-designated ODMDS plus chemical analyses of water from the area concluded that there were no indications of water or sediment quality problems in the Zone of Siting Feasibility (ZSF). Testing of past maintenance material from the CCSC in Corpus Christi Bay and virgin sediment from the area indicates that it was, or would be, acceptable for ocean disposal under 40 CFR Part 227. Studies of the benthos at the interim-designated ODMDS and nearby areas, however, have indicated that the composition of the benthos at the interim-designated ODMDS is significantly different from that in nearby "natural bottom" areas, due primarily to the fact that the substrate at the ODMDS is almost pure sand versus the mixed grain size of the "natural bottom". Since the grain-size composition of the proposed material, both virgin and maintenance, indicates a high percentage of fines, the site, was not located near shore, in the sand province, but further offshore in the sand/silt/clay province.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, area of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).)

Shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites were considered in the siting feasibilty process. As a result, the preferred site will not interfere with these or other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

Chemical studies conducted for or by the COE have shown only short-term water-column perturbations of turbidity, and perhaps Chemical Oxygen Demand (COD) resulted from disposal operations. No short-term sediment quality perturbation, except grain size, could be directly related to disposal operations. In general, the water and sediment quality is good throughout the ZSF. This indicates that there have been no long-term adverse impacts on water and sediment quality from past maintenance material disposal. The disposal material has sediment composition similar to the site and therefore no long-term benthic impacts are likely.

10. *Potentiality for the development of recruitment or nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

With a disturbance to any benthic community, initial recolonization will be by opportunistic species. The benthos at the interim-designated site is different, because of grain size influences, from the surrounding "natural bottom" areas. Nevertheless, the disposal of dredged material in the past has not, and disposal of the proposed material should not, attract or promote the development or recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance. 40 CFR 228.6 (a)(11).*

The location and types of areas and features of historical importance were considered and these areas are excluded. The nearest site of historical importance is located near the Port Aransas, Texas jetties, which are over two miles from the preferred site

boundary. Therefore, use of the preferred site would not impact any known sites of historical importance. As a part of the NEPA/EIS process, EPA coordinated with the Texas Historical Commission regarding cultural/historic resources.

E. Action

Based on the completed EIS process and available data, EPA concludes that the U.S. Navy's preferred alternative site may be appropriately designated for disposal of dredged material from the Homeport Project. The site is compatible with the general criteria and specific criteria used for site evaluation.

Before ocean dumping of dredged material at the site may occur, the Crops of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228.

Water pollution control.

Dated: August 18, 1988.

Robert E. Layton, Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(70) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(70) Homeport Project Dredged Material Site—Region VI. Location: 27°47'42" N., 97°00'12" W., 27°47'15" N., 96°59'25" W., 27°46'17" N., 97°01'12" W., 27°45'49" N., 97°00'25" W.

Size: 1.4 square miles.

Depth: Ranges from 45–55 feet.

Primary Use: Dredged material.

Period of Use: 50 years.

Restriction: Disposal shall be limited to dredged material from the U.S. Navy Homeport Project, Corpus Christi/Ingleside, Texas.

§228.12 [Amended]

3. Section 228.12 is amended by redesignating paragraphs (b)(48), (b)(49), and (b)(50) (Calcasieu River) as paragraphs (b)(51), (b)(52), and (b)(53).

[FR Doc. 88-19781 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-471; RM-5920]

Radio Broadcasting Services; Lynnville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 296A to Lynnville, Illinois as its first FM channel at the request of Illinois Bible Study Group. Coordinates for Channel 296A are 39–41–13 and 90–20–45. With this action, this proceeding is terminated.

DATES: Effective September 26, 1988; the window period for filing applications will open on September 27, 1988, and close on October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–471, adopted July 14, 1988, and released August 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Lynnville, Illinois, Channel 296A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-19608 Filed 8-30-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-396; RM-5955]

Radio Broadcasting Services; Gregory, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Gregory, Texas, as that community's first local FM service, at the request of Gregory Associates. The channel can be allocated in compliance with § 73.207 of the Commission's Rules at reference coordinates 27–55–30 and 97–17–36. Concurrence by the Mexican government has been obtained. With this action, this proceeding is terminated.

DATES: Effective September 26, 1988; The window period for filing applications will open on September 27, 1988 and close on October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–396, adopted July 14, 1988, and released August 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas by adding Channel 283A, Gregory.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–19610 Filed 8–30–88; 8:45 am]

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Proposed Rules

Federal Register
Vol. 53, No. 169
Wednesday, August 31, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster Loans

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify the procedures which SBA would used to impose the statutory penalty on disaster loan recipients who misapply disaster loan funds. At present, the statutory penalty and SBA's procedures under the statute are not defined or explained. The rule would clarify for the public what would be considered by SBA to be a misapplication of disaster loan funds and would set forth the procedures which will be followed before the statutory penalty is imposed on a borrower.

DATE: Comments must be received on or before October 31, 1988.

ADDRESS: Written comments should be sent to the Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L. Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Tel. (202) 653–6879.

SUPPLEMENTARY INFORMATION: The statute, reprinted below, imposes a liability equal to one-and-one half times the original principal amount of a disaster loan, on a borrower who wrongfuly misapplies the proceeds of such loan. At present, the statute is reflected in 13 CFR 123.24(d) with respect to physical disaster loans, in § 123.41(g)(3) with respect to economic injury disaster loans. These references would be deleted, and a new section inserted. At present the terms employed by the statute are not defined, and the details of its use by SBA are not explained. The proposed new section would make clear that use of disaster loan proceeds contrary to the use schedule in the Loan Authorization and Agreement (hereafter "Agreement") will be deemed a misapplication of funds. Non-use of loan proceeds for authorized purposes after a specified maximum period of time will also be deemed a misapplication; the proposed rule sets a maximum term of 60 days from the date of the disbursement check, unless otherwise approved by SBA in writing. Since disaster loan installments usually are disbursed as the borrower requires them, the 60-day leeway seems ample.

The proposed rule also defines "wrongful misapplicaiton" as the willful use of proceeds contrary to the Agreement. These words are intended to exclude from the statutory term minor shifts within the use schedule of the Agreement such as the expenditure of a smaller sum on one item, and a larger sum on another item of the use schedule. In its discretion, SBA may give the borrower some leeway for the reallocation of funds if, for example, in the course of the repair work or the economic readjustment after the disaster, the borrower realizes that his or her needs differ somewhat from those anticipate at the time the Agreement was signed.

The rule would also define the statutory terms "one-and-one-half times the original amount of the loan" as one hundred and fifty percent of the total amounts disbursed up to the time that SBA notifies the borrower of the misapplication. The reason for this interpretation is found in the legisalative history. Senate Report No. 92–1008 (August 1, 1972) explained that

> * * * the legislation provides that if the proceeds of the loan are misapplied, the borrower shall be liable to the Small Business Administration in an amount equal to 1½ times the amount of the loan.

This language precludes an interpretation that would add a penalty of 150% to the original liability.

The procedure proposed herein would offer the borrower the opportunity, upon notice from SBA by certified mail, to refute within a stated time period of at least thirty (30) days, or more if SBA permits, the allegation of misapplication, or in the alternative to show that such misapplication has been cured. Failure to submit such rebuttal or evidence within the alloted time would be deemed an admission of misapplication.

If such rebuttal or evidence is submitted, the manager (or deputy manager) of the SBA office named in the notice would determine, within 30 days of receipt, whether the answer dispels or confirms the allegations of misapplication. If misapplication is determined, the authorized loan amount would be reduced to the aggregate amounts disbursed, and the case transferred to liquidation with a recommendation that the statutory penalty be imposed. If, on the contrary, the determination is that no misapplication has occurred or that it has been cured, the borrower would be promptly notified accordingly by certified mail.

Regulatory Impact

This proposed rule is not a major rule for purposes of E.O. 12291, because it adds no regulatory requirement to the existing rule, but merely clarifies the procedures used to implement an existing regulatory requirement. It cannot increase costs to consumers, individual industries, Federal and State government agencies or geographic regions, nor can it have an adverse effect on competition, employment, investment, productivity, innovation or the ability of U.S. based businsses to compete with foreign based businesses in domestic or export markets. For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities, for the same reason as stated with respect to E.O. 12291. For purposes of the Paperwork Reduction Act, 42 U.S.C. Chapter 35, SBA certifies that the proposed rule, if adopted, would not impose any additional reporting or record-keeping requirements.

List of Subjects in 13 CFR Part 123

Disaster assistance; Loan programs/business—small business.

PART 123—[AMENDED]

Accordingly, Part 123 of 13 CFR is proposed to be amended as follows:

1. The authority citation for Part 123 continues to read as follows:

> **Authority:** Secs. 5(b)(6); 7 (b), (c) and (f) of the Small Business Act, 15 U.S.C. 634(b)(6); 636 (b), (c) and (f); Pub. L. 98–270, Title III; Pub. L. 99–272, Sec. 18006.

2. The Table of contents of Part 123 would be amended by adding at the end of Subpart A—Conditions Applicable to

All Loans Under This Part, a new entry as follows:

Sec.

* * * * *

123.19 Misapplication of Loan Proceeds.

§ 123.24 [Amended]

3. a. Section 123.24(d) would be amended by removing the second sentence thereof and adding: "(See § 123.19)."

b. Section 123.41(g)(3) would be amended by removing the second sentence thereof and adding: "(See § 123.19)."

4. A new § 123.19 would be added to Subpart A of Part 123 to read as follows:

§ 123.19 Misapplication of loan proceeds.

(a) *Statute.* "Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection (15 U.S.C. 636(b)) shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan." Pub. L. 92–385, approved August 16, 1972; 86 Stat. 554.

(b) *Terms defined.* For purposes of this section:

(1) "Wrongful misapplication" means the willful use, without SBA approval, of any part or all of the loan proceeds contrary to the Loan Authorization and Agreement (hereafter "misapplication"). Non-use for authorized purposes of disbursed loan funds after a reasonable time not to exceed sixty (60) days from the date of the disbursement check, unless otherwise approved by SBA in writing, shall be deemed such misapplication.

(2) "Original principal amount" means the aggregate amount disbursed by SBA under such Agreement.

(3) "One-and-one-half times" means the original principal amount (together with accrued interest) plus one-half of such original principal amount.

(c) *Procedure.* (1) The SBA officer servicing the loan shall notify the borrower at the borrower's last known address by certified mail, return receipt requested, of the evidence in SBA's possession (including information supplied by the borrower) which indicates misapplication under this section.

(2) Such notice shall offer the borrower an opportunity to submit to the SBA office indicated in the notice, within a stated time limit of at least 30 days from the date of such notice, in person or in writing, *pro se* or otherwise, whatever evidence borrower wishes to offer that the misapplication has been cured, or, in the alternative, to rebut the allegation contained in the notice. Failure or refusal to submit such evidence or rebuttal within the stated time limit (or any extension thereof, for good cause shown, in SBA's discretion) shall be deemed an admission of such misapplication. If such evidence or rebuttal is submitted, the director or manager of the SBA office indicated in the notice, or his or her deputy, shall determine within thirty days of receipt of the borrower's answer, whether or not a misapplication has occurred.

(3) If such determination is that a misapplication has occurred, the approved loan amount shall be reduced to the original principal amount, the borrower notified accordingly by certified mail, return receipt requested, and the case referred for liquidation with the recommendation that the statutory penalty be imposed.

(4) If the determination under paragraph (c)(2) of this section is that no misapplication has occurred, the borrower shall be promptly notified accordingly, by certified mail, return receipt requested.

(Catalog of Federal Domestic Assistance Nos. 59002 Economic Injury Loans; 59008 Physical Disaster Loans.)

Date: August 4, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–19692 Filed 8–30–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–105–AD]

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Airbus Industrie Model A310 series airplanes, which would require repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This proposal is prompted by reports of cracks found during routine inspection of an airplane of similar design. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

DATES: Comments must be received no later than October 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–105–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability Of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–105–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the

airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that exists on Airbus Model A310 series airplanes. There have been three reports of cracks found during routine inspections in the inner flange of door frame 73A in the area of the lower hinge arm attachment fitting on Airbus Model A300 airplanes. The Model A300 and Model A310 designs are similar with respect to this area. This condition, if not corrected, could lead to separation of the rear passenger/cargo door and subsequent rapid decompression.

Airbus Industrie has issued Service Bulletin A310–53–2043, dated August 3, 1987, which describes procedures for the inspection of the rear passenger/crew door; and Service Bulletin A310–53–2038, Revision 2, dated March 3, 1988, which describes procedures for modification of the door frame structure. Accomplishment of the modification terminates the need for the repetitive inspections. The DGAC has classified both service bulletins as mandatory, and has issued French AD 88–061–083(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the rear passenger/cargo door, and modification, if necessary, in accordance with the service bulletins described above.

It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,520.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A310 series airplanes, as listed in Airbus Industrie Service Bulletin A310–53–2043, dated August 3, 1987, and Change Notice Number OA, dated October 15, 1987. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A310–53–2043, dated August 3, 1987.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A310–53–2038, Revision 2, dated March 3, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A310–53–2038, Revision 2, dated March 3, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A310–53–2038, Revision 2, dated March 3, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure in accordance with Airbus Service Bulletin A310–53–2038, Revision 2, dated March 3, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88–19773 Filed 8–30–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–104–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which would require repetitive inspections of the rear passenger/crew door for cracks, and

modification, if necessary. This proposal is prompted by reports of cracks found during routine inspection of this airplane. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

DATE: Comments must be received no later than October 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–104–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–104–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that exists on Airbus Model A300 series airplanes. There have been three reports of cracks found during routine inspections in the inner flange of door frame 73A in the area of the lower hinge arm attachment fitting. This condition, if not corrected, could lead to separation of the rear passenger/crew door and subsequent rapid decompression.

Airbus Industrie has issued Service Bulletin A300–53–220, dated August 3, 1987, which describes procedures for the inspection of the rear passenger/crew door; and Service Bulletin A300–53–221, dated September 18, 1987, which describes procedures for modification of the door frame structure. Accomplishment of the modification terminates the need for the repetitive inspections. The DGAC has classified both service bulletins as mandatory, and has issued French AD 88–061–083(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the rear passenger/cargo door, and modification, if necessary, in accordance with the service bulletins described above.

It is estimated that 53 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $19,080.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–220, dated August 3, 1987. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A300–53–200, dated August 3, 1987.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A300–53–221, dated September 18, 1987, and Change Notice No. 0A, dated January 4, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A300–53–221, dated September 18, 1987, and Change Notice No. 0A, dated January 4, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight,

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modify the frame in accordance with Airbus Industrie Service Bulletin A300–53–221, dated September 18, 1987, and Change Notice No. 0A, dated January 4, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure, in accordance with Airbus Industrie Service Bulletin A300–53–221, dated September 18, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–19774 Filed 8–30–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–106–AD]

Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Airbus Industrie Model A300–600 series airplanes, which would require repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This proposal is prompted by reports of cracks found during routine inspection of an airplane of similar design. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

DATES: Comments must be received no later than October 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–106–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-Public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–106–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that exists on Airbus Model A300–600 series airplanes. There have been three reports of cracks being found on routine inspection in the inner flange of door frame 73A in the area of the lower hinge arm attachment fitting on Airbus Model A300 series airplanes. The Models A300 and A300–600 are similar with respect to this area. This condition, if not corrected, could lead to separation of the rear passenger door and subsequent rapid decompression.

Airbus Industrie has issued Service Bulletin A300–53–6024, dated August 3, 1987, which describes procedures for the inspection of the rear passenger/crew door; and Service Bulletin A300–53–6019, dated September 18, 1987, which describes procedures for modification of the door frame structure. Accomplishment of the modification terminates the need for the repetitive inspections. The DGAC has classified both service bulletins as mandatory, and has issued French AD 88–061–083(B) addressing this subject.

The airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the rear passenger/cargo door, and modification, if necessary, in accordance with the service bulletins described above.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,080.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have

federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300–600 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–6024, dated August 3, 1987, and Change Notice Number OA, dated October 15, 1987, Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A300–53–6024, dated August 3, 1987, and Change Notice Number OA, dated October 15, 1987.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A300–53–6019, Revision 1, dated October 20, 1987, and Change Notice No. 1C, dated February 16, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A300–53–6019, Revision 1, dated October 20, 1987, and Change Notice No. 1C, dated February 16, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A300–53–6019, Revision 1, dated October 20, 1987, and Change Notice No. 1C, dated February 16, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure in accordance with Airbus Service Bulletin A300–53–6019, Revision 1, dated October 20, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–19775 Filed 8–30–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–112–AD]

Airworthiness Directives; Gulfstream Aerospace Model G–IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an exisung airworthiness directive (AD), applicable to Gulfstream Model G–IV series airplanes, which currently requires discontinuing all autopilot/flight director instrument landing system (ILS) operations, and disabling of the approach mode in the autopilot/flight director. This proposal would add an optional modification which, if installed, would remove the restrictions on use of the autopilot/flight director established by the existing AD, and reestablish normal ILS operations. This proposal would also limit the applicability of the AD to airplanes, Serial Numbers 1000 through 1059 only. This proposal is prompted by recent modifications to the design of the Sperry/Honeywell SPZ–8000 flight guidance computer (FGC), which have corrected the deficiencies addressed in the existing AD.

DATES: Comments must be received no later than October 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–112–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, Aerospace Engineer, Atlanta Aircraft Certification Office, Systems and Equipment Branch, ACE–130A, FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991–3020.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-112-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On January 15, 1988, the FAA issued AD 88-02-01, Amendment 39-5849 (53 FR 3737; February 9, 1988), applicable to certain Gulfstream Model G-IV series airplanes, to require the discontinuance of all autopilot/flight director ILS operations, and the disabling of the approach mode in the autopilot/flight director. That action was prompted by reports of a software design problem identified in the Sperry/Honeywell SPZ-8000 FGC, which can result in unannunciated, hazardously misleading flight director and autopilot commands during ILS operations.

Since issuance of that AD, Sperry/Honeywell has conducted an indepth review of the FGC software and has designed a modification which corrects the previous problem. Simulator testing and flight testing have been conducted to verify and validate the new software configuration. The FAA has participated in this testing and has determined that, with this modified software installed, the conditions which warranted the original AD are eliminated.

The FAA has reviewed and approved Gulfstream Aircraft Service Change (ASC) #53A, dated May 12, 1988, which describes procedures for installation of the modified Sperry/Honeywell SPZ-8000 FGC, and restoration of the airplane to fully operational configuration.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 88-02-01 to provide for an optional terminating action for the requirements of that AD by installing the modification of the FGC in accordance with the service bulletin previously mentioned. Once this modification is installed, normal autopilot/flight director ILS operations may be resumed.

Additionally, this proposal would limit the applicability of the existing AD to only those airplanes with Serial Numbers 1000 through 1059. Beginning with Serial Number 1060, a modification to the FGC software was made in production, which eliminates the unsafe condition addressed in this AD action.

It is estimated that 50 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification kits would be provided by the manufacturer at no charge. Based on these figures, the total cost of impact of the AD on U.S. operators is estimated to be $9,600.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Gulfstream Model G-IV series airplanes are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-02-01, Amendment 39-5849 (53 FR 3737; February 9, 1988), by revising the applicability statement, redesignating existing paragraph E. as F., and adding a new paragraph E., as follows:

Gulfstream Aerospace: Applies to Model G-IV series airplanes, Serial Numbers 1000 through 1059, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the potential display and use of hazardously misleading information from the flight guidance computer (FGC) during an ILS approach, accomplish the following:

A. Prior to further flight, add the following to the limitations section of the airplane flight manual (AFM) and notify all crewmembers. This may be accomplished by inserting a copy of this AD in the AFM: "ILS approaches utilizing the flight director and/or autopilot are prohibited."

B. Prior to further flight, affix an appropriate placard(s) on the instrument panel in full view of both crewmembers stating: "FLIGHT DIRECTOR/COUPLED ILS APPROACHES PROHIBITED."

C. Prior to further flight, affix an appropriate placard to the Approach Mode Arm (APR) switch on the autopilot control panel stating: "USE PROHIBITED."

D. Within 15 days after the effective date of this AD, disable the approach mode in the autopilot/flight director in a manner approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

E. Installation of the modification of the autopilot/radio altimeter in accordance with Gulfstream Aerospace Aircraft Service Change (ASC) #53A, dated May 12, 1988, constitutes terminating action for the requirements of paragraphs A. through D. above.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402-2206. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19772 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-CE-14-AD]

Airworthiness Directives; Piper Models PA-28 and PA-32 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to rescind Airworthiness Directive (AD) 87-08-08 (Amendment 39-5615), which was suspended September 28, 1987, by AD 87-08-08R2 (Amendment 39-5731), applicable to certain Piper Models PA-28 and PA-32 series airplanes. The AD was issued following an in-flight wing failure on a Piper PA-28 airplane. Subsequent to its issuance, the FAA has, through an extensive evaluation of the fracture surfaces from other in-service airplanes, determined that an extraordinary stress level is required to produce the growth rate of these cracks and that the in-flight failure was an isolated occurrence. Therefore, such failure is not likely to exist or develop in other Piper Model airplanes of the same type design.

DATES: Comments must be received on or before October 31, 1988.

ADDRESSES: Information pertaining to this action may be obtained from or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, Atlanta Aircraft Certification Office, ACE-120A, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a requeset to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 87-08-08, Amendment 39-5615 (52 FR 15302, April 28, 1987), was issued to require on certain Piper Model PA-28 and PA-32 series airplanes (1) removal of both wings and a visual inspection with a ten-power magnifying glass and a dye-penetrant inspection of the lower spar cap for both wings; (2) replacement of any spars found to be cracked; and (3) visual inspection of the wing upper skin for cracks and repair as required. AD 87-08-08R1, Amendment 39-5669 (52 FR 29505, August 10, 1987), which was issued with an effective date of August 12, 1987, revised the AD to delete the Model PA-28-201T since it was verified that its spar design configuration was different in detail and should not have been affected. On September 28, 1987, the AD was suspended by AD 87-08-08R2 (Amendment 39-5731, 52 FR 35907) pending further evaluation, since it was becoming apparent from the relevant data being collected that only those airplanes used in a severe operating environment were susceptible to fatigue cracks.

The original AD was issued following an in-flight wing separation of a Piper PA-28-161, S/N 8090115, on March 30, 1987, near Marlin, Texas. The airplane was flying low level pipeline patrol at the time of the accident. Investigation revealed that the left wing separated from the airplane at the lower spar wing root attachment to the fuselage. The National Transportation Safety Board, the FAA, and Piper Aircraft Corporation personnel determined that the lower cap on the main spar had sustained a fatigue failure. The lower cap had a fatigue crack across its forward face just outboard of the outboard attachment hole.

During the time that the unrevised AD was in effect, approximately 560 spar inspections were performed. These inspections resulted in three additional reports of spar cracks in two (2) PA-32-300 airplanes operated in Alaska. It was determined that these airplanes had been operated in a severe environment based on repairs recorded on the airplanes and their present general condition. The environment included rough rock/gravel fields and over-weight operation. Prior to the accident which led to the issuance of the original AD, neither the FAA nor the Piper Service Department had received a report of problems in the area where the crack occurred. However, the FAA realized that the inspections required would necessitate the removal and reinstallation of high tolerance critical wing spar attachment bolts; and, that if this was not done carefully, could cause damage to the wing spar cap material that could in turn result in a future fatigue failure. There are airplanes in the fleet with 19,000 plus hours time-in-service (TIS) tha complied with the inspections of the AD and reported no cracks found.

Fatigue tests were conducted on a full-scale test article in the late 1950's and early 1960's prior to certification of the PA-28. These tests were run to the equivalent of 300,000 unfactored cycles with no failure. The FAA has carefully reviewed all of the available information including a credible fracture mechanics analysis. Striation counts on the fracture surface of the spar cap removed from one airplane showed that it would require extraordinary stress levels to produce the growth rate found. Airplanes operated in a normal general aviation type environment would not be expected to be exposed to sufficient

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loads to create these types of stress levels. Therefore it is concluded that the cracks found were isolated occurrences and those failures are not likely to exist or develop in other PA-28 series or PA-32 series airplanes operated in a normal manner.

In addition Piper has recently conducted an extensive fracture mechanics and fatigue analysis program to establish more accurately an inspection threshold and appropriate reinspection intervals based on different categories of airplane operations. Their study shows that airplanes used for low level pipeline patrol have a fatigue life approximately 20 times less than airplanes used for normal operations. Piper has issued Service Bulletin (SB) No. 886, dated June 8, 1988, addressing the spar damage that can occur from different types of operational usage and providing applicable inspection thresholds, intervals, and procedures for detecting damage. This SB will serve as the vehicle for alerting owners and operators of PA-28 series or PA-32 series airplanes used in operations that the continued airworthiness maintenance program must include an inspection of the wing spar/fuselage attachment. In addition to this SB, information will be provided in the appropriate Maintenance Manuals to fully ensure that pilots and mechanics are aware of the affect severe operational usage has on the structural durability of their airplane, and the need for repetitive inspections of the wing spar attachment area for cracks. The SB also specified an initial inspection threshold of 30,600 hours TIS for normal usage airplanes which was also based on the above mentioned study. Since the high time airplane in the fleet has only accumulated approximately 19,000 hours TIS and, furthermore, only a relatively few airplanes have accumulated more than 10,000 hours TIS, no action is deemed necessary at this time. The FAA will continue to track the service history of these high time airplanes and as the 30,600 hour TIS threshold is approached, appropriate regulatory action may be considered. Consequently, at this time the FAA proposes to rescind AD 87-08-08.

There are approximately 38,500 airplanes affected by the proposed action. Since Revision 2 of the AD suspended the effective date of the AD, the cost of complying with the proposed rescission is estimated to be negligible to the private sector.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By rescinding AD 87-08-08, Amendment 39-5615; AD 87-08-08R1, Amendment 39-5669; and AD 87-08-08R2, Amendment 39-5731.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19776 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AWP-15]

Proposed Removal of Transition Area, South Kauai, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at South Kauai, Hawaii. This instrument approach serving Port Allen Airport has been cancelled. No instrument operations are conducted at this airport. The intended effect of this proposal is to return that controlled airspace no longer required for instrument approaches to public use.

DATES: Comments must be received on or before October 24, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Daniel K. Martin, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Branch, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, Telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments as self-addressed, stamped postcard on which the following statement is made: "Comments to Airpace Docket No. 88-AWP-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 15000 Aviation Blvd.,

Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration.

Federal Aviation Administration, Airspace and Procedures Branch, AWP–530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (145 CFR Part 71) to remove the transition area located at South Kauai, Hawaii. This proposed action is necessary based on the fact that the instrument approach procedure to the Port Allen Airport has been cancelled, negating the need for transition airspace. No instrument operations are conducted to or from this airport.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Part 71 of the Federal Aviation Regulations (14 Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

South Kauai, Hawaii [Removed]

Issued in Los Angeles, California on August 17, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division.

[FR Doc. 88–19777 Filed 8–30–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ASW–41]

Proposed Establishment of Transition Area; Ruidoso, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Ruidoso, NM. The development of a new standard instrument approach procedure (SIAP) to the Sierra Blanca Regional Airport, utilizing the new Capitan Nondirectional Radio Beacon (NDB), has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new SIAP. If this proposal is adopted, the status of the airport would be changed from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before October 4, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88–ASW–41, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions in the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknolwedge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ASW–41." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

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The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at Ruidoso, NM. The development of a new SIAP to the Sierra Blanca Regional Airport, utilizing the new Capitan NDB, has necessitated this proposal. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new SIAP. Coincident with this proposal would be the changing of the status of the Sierra Blanca Regional Airport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ruidoso, NM [New]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Sierra Blanca Regional Airport (latitude 33°27'42"N., longitude 105°31'31"W.).

Issued in Fort Worth, TX on August 15, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-19771 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-18]

Proposed Amendment, Denver Transition Area, Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend the Denver, Colorado, 700 foot transition area. Additional controlled airspace is required to contain the missed approach segment of a new instrument landing procedure at the Denver Front Range Airport. The area will be depicted on aeronautical charts to provide reference for VFR pilot purposes.

DATES: Comments must be received on or before October 20, 1988.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 88-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NRPM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace for instrument flight rules procedures at the Denver Front Range Airport. The airspace is intended to segregate aircraft operating in visual flight rules conditions from other aircraft operating in instrument flight rules conditions. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules procedures.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory

Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Denver, Colorado, [Amended]

On the third line and on the fifth line change 078° to read 065°.

Issued in Seattle, Washington, on August 11, 1988.

F.E. Davis,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-19778 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Automatic Emergency-Parking Brakes for Rubber-Tired, Self-Propelled Electric Face Equipment; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed Rule; Extension of comment period.

SUMMARY: The Mine Safety and health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule for automatic emergency-parking brakes for rubber-tired, self-propelled electric face equipment in 30 CFR Part 75.

DATES: Written comments on the proposed rule for automatic emergency-parking brakes must be received on or before September 30, 1988.

ADDRESS: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631, Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On March 1, 1988, MSHA published a proposed safety standard that would require automatic emergency-parking brakes on rubber-tired, self-propelled electric face equipment used in underground coal mines (53 FR 6512). The automatic emergency-parking brakes described in the proposal engage when there is a loss of power to such equipment, and could be activated by the equipment operator in an emergency situation. The brakes also act automatically as a parking brake when the equipment is intentionally deenergized. The standard was proposed under section 101 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 811).

On June 16, 1988, MSHA published in the **Federal Register** (53 FR 22502) a Notice of Public hearing which stated that the record would remain open until July 29, 1988 for the submission of post hearing comments. In response to requests from the mining community, MSHA extended the comment period to August 29, 1988 (53 FR 28673). Due to further requests, MSHA is extending the comment period to September 30, 1988. All interested parties are encouraged to submit comments prior to this date.

Date: August 25, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-19756 Filed 8-30-88; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3438-8]

New Mexico Regulations for Nonattainment Area Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval of a revision to the State of New Mexico Implementation Plan (SIP) to include Air Quality Control Regulation (AQCR) 709, Permits—Nonattainment Areas. This regulation was submitted to EPA on November 5, 1985, in order to satisfy the conditional approval of New Mexico's Part D SIP (45 FR 24509). The regulation establishes a program under which new and modified sources may be constructed in areas where a National Ambient Air Quality Standard (NAAQS) is being exceeded, without interfering with the continuing progress toward attainment of that standard.

DATES: Comments must be received on or before September 30, 1988.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, at the EPA Region 6 Air Programs Branch (Address below). Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202-2733.

New Mexico Environmental Improvement Division, Air Quality Bureau, 1190 St. Francis Dr., Santa Fe, New Mexico 87504-0968.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, State Implementation Plan/New Source Review Section, Air Programs Branch (6T-AN), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-7214, FTS 255-7214, Reference docket file number SIP 1-3-2-12.

SUPPLEMENTARY INFORMATION: A New Source Review (NSR) program is one which assures that a new or modified industrial plant (source) meets industrial equipment standards and operating procedures that protect air quality. NSR regulations were and are established as a check point through which plans for a source must pass. The equipment and processes of these plans are compared to the standards for equipment and processes of an industrial category into which the plant falls. If all of the elements of the proposed process are in compliance with the guidelines of the NSR regulation, it is reasonable to predict that the environmental harm will be minimal for such a plant being built.

The State of New Mexico seeks to establish NSR regulations that would allow the State to issue permits to allow sources to construct or modify processes in areas where a NAAQS is being

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exceeded, without interfering with the continuing progress toward attaining the standard. The EPA approved the New Mexico Control Strategy demonstrating attainment of the NAAQS (Part D SIP) on April 10, 1980 (45 FR 24509) with a condition that revisions to permit regulations be submitted to EPA. The Governor of New Mexico (The Governor), in an May 20, 1980, letter to EPA, committed to continue (in the meantime) the policy of not issuing permits to new or modified major sources in all New Mexico nonattainment areas. The Governor submitted the adopted regulation to EPA on November 5, 1985, for incorporation into the SIP.

This regulation (AQCR 709) applies to all the State of New Mexico with the exception of Bernalillo County. In accordance with Section 74–2–4 of the State of New Mexico Air Quality Control Act, this county is authorized to provide for the local administration and enforcement of the Act.

The Clean Air Act (as amended August 1977) (Act) sets forth requirements for plans for nonattainment areas in Part D of the Act. Section 172 sets forth nonattainment plan provisions and section 173 sets forth permit requirements. The Act requires that EPA develop regulations to filfill the requirements of the Act. The regulations that fulfill this requirement are found in 40 CFR Part 51, Subpart I, Review of New Sources and Modifications. A State Implementation Plan (SIP) satisfying sections 172(b)(6) and 173 of the Act is required to meet the conditions as set forth in 40 CFR 51.165(a).

The State of New Mexico submitted a SIP revision in 1979 to fulfill the nonattainment area requirements of the Act. The SIP revision was conditionally approved. It had a shortcoming in that it did not have a NSR program for nonattainment areas. As a temporary substitution for this requirement, the Governor agreed to institute a construction ban on all new major sources and modifications until such time as a NSR permitting program for nonattainment areas could be instituted and approved. EPA agreed to this. The State has fulfilled the requirements of this deficiency by submitting the permitting program regulations for nonattainment areas in the form of New Mexico AQCR 709.

The sources to which New Mexico AQCR 709 apply are new and modified sources that: (1) Are in a nonattainment area and would emit the nonattainment pollutant in a specific amount (10 lb/hr or 25 tpy), or (2) are located within an attainment area, but their emissions would have a significant impact on a neighboring nonattainment area. The nonattainment areas for New Mexico are: (1) Grant County for sulfur dioxide (SO_2) and total suspended particulates (TSP); and (2) Bernalillo County for carbon monoxide (CO) and TSP. Pursuant to 74–2–4 of New Mexico's Air Quality Control Act, Bernalillo County is authorized to administer an independent program, however, and AQCR 709 does not apply to Bernalillo County.

EPA reviewed AQCR 709 for compliance with the requirements of Title 40 of the Code of Federal Regulations (40 CFR), Part 51, and for compliance with Part D of Title I of the Clean Air Act, as amended.[1] This review is available at the EPA Region 6 address listed above. The highlights of the review are given below.

New Mexico AQCR 709 applies to the same types of sources as New Mexico AQCR 702, the permitting regulation for sources in all areas of the state, which EPA approved as a SIP requirement in 1973 (38 FR 12704). New Mexico AQCR 702 is for sources in NAAQS attainment areas, whereas New Mexico 709 is for sources in NAAQS nonattainment areas. Consequently, both regulations require permits of new or modified sources with new or increased emissions greater than 10 pounds per hour or 25 tons per year or with emissions of a hazardous pollutant.

The baseline in AQCR 709 for calculating emission reduction credit for offsets is the most stringent emission limitation applicable to the source, whether federal or state, including a federally enforceable permit which is applicable and in effect at the time the application to construct is filed. Where there is no emission limitation for the particular source of offsets in either a state AQCR or federally enforceable permit, actual emissions from which offset credit is obtained will form the baseline. Where the allowable emissions from the offsetting source are greater than its potential to emit, the potential to emit forms the baseline. Shutdown credits for offsetting are also allowed by AQCR 709 with the same restrictions currently found at 40 CFR 51.165(a)(3)(ii)(c) (formerly 40 CFR 51.18(J)(3)(ii)(c)). The regulation requires, as a general rule, an emission reduction (offset) that is at least 20 percent greater than the proposed new allowable emissions, allowing the requirement of EPA regulations for a net air quality benefit to be achieved. Provision is made for the excess to be either greater or lelss than 20 percent if circumstances indicate another amount is more appropriate.

New sources and modifications are required by AQCR 709 to meet and maintain the Lowest Achievable Emission Rate (LAER). Additionally, all major stationary sources owned or operated in the State by owners or operators of the proposed new source or modification must be in compliance with or on a compliance schedule for all applicable emission limitations.

Section B.6 of AQCR 709 requires new sources and modifications to undergo performance testing. The section allows a source to be exempted from this requirement, however, at the discretion of the Director of the New Mexico Environmental Improvement Division (NMEID). A source is further allowed, subject to approval of the NMEID, to propose its own type of performance test. On its face, section H would allow New Mexico to waive or amend performance testing required by NSPS and NESHAPS. Discussions with the staff of NMEID, however, indicate that the regulation was not adopted with such an intent and will not be administered in that fashion. Prior to EPA's final approval of the regulation, however, it will be necessary for the State to supplement the record with a written commital letter agreeing not to waive or amend NSPS or NESHAPS mandated performance testing.

Section H of AQCR 709 contains a provision for banking of emission reductions that will be used as offset credits. The regulation contains requirements to ensure the reductions are surplus, permanent, enforceable, and quantifiable.

New Mexico contains only one area, Bernalillo County, which was granted an extension until December 31, 1987, for attainment of the NAAQS for carbon monoxide. Section 172(b)(11)(A) of the Clean Air Act requires nonattainment area permitting regulations for extension areas to contain a provision requiring proposed new major sources or major modifications to perform alternate siting analysis. This analysis must demonstrate that the benefits of locating the source of modification in the extension nonattainment area significantly outweigh the environmental cost. Under the provisions of State law, Bernalillo County and the City of Albuquerque, through their joint Air Quality Control Board, have the sole authority to issue new and modified source permits within the geographical limits of Bernalillo County. The nonattainment area permitting regulations for Albuquerque/

[1] Evaluation Report for New Mexico Air Quality Control Regulation 709, Permits Nonattainment Areas, February 1988.

Bernalillo County will address alternate siting. AQCR 709 is not required to and does not contain such a provision.

Proposed new major stationary sources or major modifications which would locate in a nonattainment area and which could potentially degrade visibility in Mandatory Federal Class I areas would be required by AQCR 709 to demonstrate consistency with progress toward the national visibility goal. Sources may take into account costs and time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. The state regulation also contains a provision requiring notification of the affected Federal Land Managers and for modeling of the environmental effects of the source or modification and associated growth. The visibility protection regulations contained in AQCR 709 pertain only to nonattainment area sources and are one element of a comprehensive visibility protection plan.

The definitions in AQCR 709 all either exactly or substantially correlate with the federal definitions found in the CFR and the Clean Air Act. There is, however, no definition of volatile organic compound (VOC). Resolution of this deficiency is addressed below.

NM AQCR 709, section L(7), defines the term "Building, structure, facility, or installation". The Federal definition for "Building, structure, facility, or installation", 40 CFR 51.165(a)(1)(ii), was affected by a court decision on January 17, 1984. On this date the Court of Appeals for the D.C. Circuit (NRDC vs. EPA) reaffirmed the exclusion of the "to and from" vessel emissions from the secondary emissions calculations (40 CFR 51.165(a)(1)(viii)), but overturned the applicability exclusion for all dockside vessel emissions that could be attributable to stationary sources (i.e. marine terminals), and the court remanded the issue of whether dockside vessel emissions should be included in primary emission calculations to the agency for further consideration. EPA has not yet completed that consideration, but current agency policy dictates that states not exempt dockside vessels from their definitions of "building, structure, facility, or installation." New Mexico's definition, at section L(7) of AQCR 709 does not exempt dockside vessels and is approvable.

It is necessary that regulation 709 be in compliance with the Federal Stack Height and Dispersion Technique Regulations. The Governor of New Mexico submitted to EPA on August 15, 1986, a SIP revision for Stack Height and Disperson Technique Regulations. EPA proposed to approve the State Stack Height Regulations on September 25, 1987, (52 FR 36054), contingent upon NMEID resolving and correcting certain deficiencies. The State has incorporated the EPA comments and revised the regulation, and is in the process of adopting and submitting it to EPA for final approval.

The EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A); and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).''

Under this program, New Mexico will be issuing permits and establishing emission limitations that may be affected by the court ordered reconsideration of the stack height regulations promulgated on July 8, 1985 (50 FR 27892). For this reason, the EPA requires that the State include the following caveat in all potentially affected permit approvals until the EPA completes its reconsideration of remanded portions of the regulations and promulgates any necessary revisions:

> In approving this permit, New Mexico Environmental Improvement Division has determined that the application complies with the applicable provisions of the stack height regulations as revised by the EPA on July 8, 1985 (50 FR 27892). Portions of the regulations have been remanded by a panel of the U.S. Court of Appeals for the D.C. Circuit in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). Consequently, this permit may be subject to modification if and when the EPA revises the regulation in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

New Mexico must make an enforceable commitment to include this caveat in all affected permits before the EPA can take final action approving the NSR program.

Before EPA finally approves the States NSR regulation, AQCR 709 should be amended to address four potential problems. These, along with the State's "plantwide definition of source", are discussed below:

(1) 40 CFR 51.165(a)(3)(ii)(e) requires that the State's plan provide that all emission reductions claimed as offset credit be federally enforceable. In States with dual permitting requirements, this means that such reductions must be reflected in preconstruction permits which are federally enforceable, as opposed to other types of permits, e.g., operating permits, which generally are not. Section G(3) of AQCR 709, however, simply states that "such reductions shall be incorporated as modifications to pertinent permits." Because New Mexico will not issue separate construction and operating permits under AQCR 709, its failure to specify that "pertinent" meant "federally enforceable" appears reasonable. In an abundance of caution, however, and to eliminate the possibility of confusion in the future, EPA suggests the State add the words "federally enforceable" to the regulation between "pertinent" and "permits."

(2) New Mexico AQCR 709 has provisions for offset exemptions in Section J (Exemptions to D.4. and D.5.), number 1, part b. (resource recovery facilities). Attainment demonstrations to show attainment of the NAAQS do not exist for all pollutants in all nonattainment areas (secondary TSP and SO_2 for Grant County). Without an attainment demonstration there can be no growth allowance, which is required for an offset exemption. A qualifying statement must be placed into the regulations that there can be no exemption from the requirements of D.4 and D.5 for resource recovery facilities in nonattainment areas unless there exists a Federally approved attainment demonstration and a Federally approved growth allowance for that nonattainment area.

(3) New Mexico AQCR 709, under Section H (Banking of Emission Reductions) must have language inserted to the effect that banked emissions shall be treated the same as all other emission reduction credits (ERCS).

(4) The regulations must contain a defintion of Volatile Organic Compound (VOC). The EPA recommended definition of VOC is as follows:

> *Volatile Organic Compound (VOC)*—Any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the Administrator designates as having negligible photochemical reactivity.

With regard to Section L, Definition number 16, "Major Stationary Source": The State has selected the "plantwide

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definition." On October 14, 1981, the Environmental Protection Agency (EPA) revised the new source review (NSR) regulations in 40 CFR Part 51 to give States the option of adopting the "plantwide" definition of stationary source in nonattainment areas (see 46 FR 50766). This definition provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant increased emissions at one piece of process equipment but reduced emissions by the same amount at another piece of process equipment at the plant there would be no net increase in emissions at the plant, and therefore no modification to the source. The plantwide definition is in contrast to the so-called "dual" definition (or a definitional structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition); under the dual definition, the emissions from each physical or operational change are guaged without regard to reductions elsewhere at the plant.

In the October 1981 **Federal Register** notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–50769). In its view, allowing use of the plantwide definition was a reasonable accomodation of the conflicting goals of Part D of the Clean Air Act (Act); on the one hand, reasonable further progress (RFP) and timely attainment of national ambient air quality standards (NAAQS), and on the other, maximum State flexibility and economic growth. The EPA recognized that use of the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the States under the demands of Part D eventually would have adequate State implementation plans (SIP's) in place. For instance, EPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D (46 FR 50767 col. 2).

The EPA added that in any event the use of a dual definition, by bringing more plant modifications through the NSR Process or subjecting them to the construction ban (40 CFR 52.24), may discourage replacement of older, dirtier processes and hence retard not only economic growth, but also progress toward clean air. The EPA also pointed out that under the plantwide definition new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, as against the advantages from the standpoints of State flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans, and at the best the potential for air quality improvements driven by the market place.

As a result, EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 col. 2, 50769 col. 1).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of Part D of the Act, and hence well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S. Ct. 2778. Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S. Ct. at 2792). The EPA today generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision. Further, EPA has not received any empirical information since the 1981 rulemaking that would require a departure from the basic reasoning in support of the plantwide definition.

On November 5, 1985, the State of New Mexico submitted a SIP revision that would add a NSR program for nonattainment areas to the SIP. This program uses a plantwide definition of source. The EPA previously approved the Part D SIP for the relevant nonattainment areas on the basis of an attainment demonstration, and the State relied in that demonstration on the construction ban to avoid increases in emissions from new sources. The State, however, has adjusted its attainment strategy demonstration by accounting for any increases in emissions caused by the removal of the construction ban by requesting an additional 20% emissions offset when sources are subject to major NSR requirements. Therefore, EPA here proposes to approve the adoption of a plantwide definition in accordance with its 1981 action inasmuch as the State has modified its attainment plan to assure RFP and attainment of the NAAQS on the original schedule approved in the plan.

Proposed Action

EPA is proposing to approve New Mexico AQCR 709. This approval is contingent upon the State making the changes discussed at the end of the Supplemental Information Section.

Regulatory Flexibility

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (see 46 FR 8709.)

Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7642.

Date: March 28, 1988.

Robert E. Layton, Jr.,

Regional Administrator (6A).

[FR Doc. 19784 Filed 8–30–88; 8:45 a.m.]

BILLING CODE 6560–50

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40 CFR Part 60

[AD–FRL–3438–4]

Standards of Performance, for New Stationary Sources; Reference Methods; Amendments to the Introduction and Methods 6, 6C, 7A, 8, and 10A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to amend the introduction and Methods 6, 6C, 7A, 8, and 10A of Appendix A. The introduction is amended by revising obsolete wording. Method 6 is amended by adding procedures for testing in the presence of ammonia; Method 6C is amended to expand the allowable mid- and high-calibration gas ranges. Methods 7A and 10A are amended to revise inaccurate wording, and Method 8 is amended to add quality assurance (QA) and quality control (QC) procedures. The intended effect is to update portions of Appendix A to make them more applicable to current testing needs.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before November 14, 1988.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by September 21, 1988, a public hearing will be held October 17, 1988, beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a meeting will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by September 21, 1988.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–87–17, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Foston Curtis, Emission Measurement Branch, Technical Support Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

Docket. Docket No. A–87–17, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measureable Branch, Technical Support Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Where ammonia is encountered under Method 6 testing conditions, acceptable alternative procedures are required for removing its interference effects. Specific procedures or examples of how this may be done are not given in the method. The proposed addition to Method 6 will list a procedure that has been shown to work in this case.

The QA procedures that are currently a part of Method 6 are being added to Method 8 since both methods employ the same analytical technique. The tester will be required to analyze samples with each set of compliance samples, in order to improve the quality of compliance data. The current regulations includes only limited QA requirements. The amendments to Methods 6C, 7A, and 10A are minor and editorial in nature.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, this rulemaking amends testing procedures to which the affected facilities are already subject. A slight increase in the Method 8 testing costs will be incurred as a result of implementing the new QA and QC procedures

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) Allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review except for interagency review materials (Section 307(d)(7)(A)).

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking would not result in any of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a "major rule." It will not have an annual effect on the economy of $100 million or more; nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few additional costs will be incurred. The anticipated increase in costs due to implementing the amendments to Method 8 should be 5 percent or less for a typical test.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Fossil-fuel-fired steam generators, and Sulfuric acid plants.

Dated: August 29, 1988.

Richard Wilson,

Assistant Administrator for Air and Radiation.

It is proposed that Appendix A of 40 CFR Part 60 be amended as follows:

PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read as follows:

Authority: Secs. 101, 111, 113, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix A—Amended

2. By revising the title of Appendix A from "Reference Methods" to read "Test Methods".

3. By amending the introduction which follows the list of test methods as follows:

a. By revising the first sentence of the second paragraph to read as follows:

Within each standard of performance, a section titled "Test Methods and Procedures" is provided to: (1) Identify the test methods to be used as reference methods to the facility subject to the respective standard and (2) identify any special instructions or conditions to be followed when applying a method to the respective facility.

b. By revising the last sentence of the second paragraph, to read as follows:

Similarly, for sources subject to emission monitoring requirements, specific instructions pertaining to any use of a test method as a reference method are provided in the subpart or in Appendix B.

c. By removing the word "reference" wherever it occurs, and in its place, inserting the word "test" in the following places:

(1) First paragraph, first and second sentences.

(2) Second paragraph, second sentence.

(3) Third paragraph, first sentence.

(4) Fourth paragraph, first sentence.

(5) Fifth paragraph, first, second, and fourth sentences.

(6) Sixth paragraph, first sentence and second from last sentence.

4. By amending Method 6 as follows:

a. By removing the last sentence in section 1.2 and inserting, in its place, the following sentence: "If free ammonia is present (this can be determined by knowledge of the process and the presence of white particulate matter in the probe and isopropanol bubbler), the procedures in section 7.2 shall be used."

b. In section 3.1.1, by adding a sentence at the end of the section to read as follows:

"Unless otherwise specified, this water shall be used throughout this method."

c. By removing the words "deionized, distilled" or "distilled," wherever they occur in the following places:

(1) Section 3.1.2, first and third sentences.

(2) Section 3.1.3, first sentence.

(3) Section 3.1.4, first sentence.

(4) Section 3.2.2, first sentence.

(5) Section 3.3.3., first sentence.

(6) Section 3.3.4, first sentence.

(7) Section 4.2, fourth sentence.

(8) Section 4.3. second paragraph, first sentence.

d. By revising section 3.2.1 to read as follows:

3.2.1 Water. Same as in section 3.1.1.

e. By revising section 3.3.1, to read as follows:

3.3.1 Water. Same as in section 3.1.1.

f. By adding a new section 3.3.7. to read as follows:

3.3.7 Hydrochloric Acid (HCl) Solution, 0.1 N (For use in section 7.2). Carefully pipette 8.6 ml of concentrated HCl into a 1-liter volumetric flask containing water. Dilute to volume with mixing.

g. By adding a new section 7.2 to read as follows:

7.2 Elimination of Ammonia Interference. The following procedures shall be used in addition to those specified in the method when sampling at sources having ammonia emissions.

7.2.1 Sampling. The probe shall be maintained at 275° and equipped with a high-efficiency in-stack filter (glass fiber) to remove particulate matter.

7.2.2 Sample Recovery. Recover the sample according to section 4.2 except for discarding the contents of the midget bubbler. Add the bubbler contents to the polyethylene bottle containing the rest of the sample, and rinse the bubbler with water. If sulfur trioxide is present in the gas stream, transfer the contents of the midget bubbler to a spearate polyethylene bottle.

7.2.3 Sample Analysis. Follow the procedures in section 4.3, except add 0.5 ml of 0.1 N HCl t the Erlenmeyer flask and mix before adding the indicator. For samples containing sulfur trioxide, use the following analysis procedure.

Analyze the peroxide and isopropanol sample portions separately. Analyze the peroxide portion as descibed in Section 4.3. Sulfur trioxide is determined by difference using sequential titration of the isopropanol portion of the sample. Transfer the contents of the isopropanol storage container to a 100-ml volumetric flask, add 0.5 ml of 0.1 N HCl, and dilute to exactly 100 ml with water. Pipette a 20-ml aliquot of this solution into a 250-ml Erlenmeyer flask, add 80 ml of 100 percent isopropanol and two t four drops of thorin indicator, and titrate to a pink endpoint using 0.0100 N barium perchlorate. Repeat and average the titration volumes that agree within 1 percent or 0.2 ml., whichever is larger. Use this volume in Equation 6–2 to determine the sulfur trioxide concentration.

From the flask containing the remainder of the isopropanol sample, determine the fraction of SO_2 collected in the bubbler by pipetting 20-ml aliquots into 250-ml Erlenmeyer flasks. Add 5 ml of 3 percent hydrogen peroxide, 100 ml of 100 percent isopropanol, and two to four drops of thorin indicator, and titrate as before. From this volume, subtract the titrant volume determined for sulfur trioxide, and add the titrant volume determined for the peroxide portion. This final volume constitutes V_t, the volume of barium perchlorate used for the SO_2 sample.

5. By revising sections 5.3.1 and 5.3.2 of Method 6C to read as follows:

5.3.1 High-Range Gas. Concentration equivalent to 80 to 100 percent of the span.

5.3.2 Mid-Range Gas. Concentration equivalvent to 40 to 60 percent of the span.

6. In Method 7A, by removing the word "analysis" in the last sentence of section 4.2 and inserting, in its place, the word "recovery".

7. In Method 8, by adding new sections 3.3.6, 4.4., 4.5, and 6.9 to read as follows:

3.3.6 Quality Assurance Audit Samples. Same as in Method 6, section 3.3.6.

4.4 Quality Control Procedures. Same as in Method 5, section 4.4.

4.5 Audit Sample Analysis. Same as in Method 6, section 4.4.

6.9 Relative Error (RE) for QA Audit Samples. Same as in Method 6, section 6.4

8. In Method 10A, by removing the word "month" in the last sentence of section 1.5.3 and inserting, in its place, the word "week".

[FR Doc. 88–19783 Filed 8–30–88; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 53, No. 169
Wednesday, August 31, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 26, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of respondes; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 95–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W, Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMS Desk Officer of your intent as early as possible.

New Collection

Farmers Home Administration

7 CFR 1910–A, Receiving and Processing Applications
None
Recordkeeping, On occasion
Individuals or households, Farms, Businesses or other for-profit; 225,000 responses; 200,900 hours.
Jack Holston, (202) 382–9736

Revisions

Rural Electrification Administration

Financial and Statistical Report
REA Form 479
Annually
Small businesses or organizations; 1,000 responses; 14,000 hours
Monte Heppe, Jr, (202) 382–8530

Rural Electrification Administration

7 CFR 1765, Telephone Materials, Equipment, and Construction—Telephone Program
REA Forms 281, 527, 563 and 25 other misc. forms
On occasion
Small businesses or organization; 2765 responses; 1898 hours
John D. Some, (202) 382–8529

Food and Nutrition Service

WIC Monthly Financial and Program Status Report
FNS–498
Monthly
State or local governments; 1,044 responses; 33,304 hours
Maxine McMillian or Barbara Jendrysik, (703) 756–3710

Extensions

Forest Service

Insert and Disease Detection
FS–34001
On occasion
Individuals or households, State or local governments; 219 responses; 55 hours
Richard Fowler, (703) 235–1554

Agricultural Marketing Service

7 CFR Part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards
LS–313 and LS–315
On occasion
Businesses or other for-profit; 38,724 responses; 778 hours
Patricia L. Griffith, (202) 382–1246

Agricultural Marketing Service

Tomatoes Grown in Florida (Marketing Order No. 966)
Administrative Committee forms
Recordkeeping, On occasion, Weekly, Monthly, Annually, Daily
Businesses or other for-profit; 170 responses; 18 hours
Virginia M. Olson, (202) 447–5057

Food and Nutrition Service

Issuance Reconciliation Report (Revision of current FNS–46, ATP Reconciliation Report)
FNS–46
Recordkeeping Monthly
State or local governments; 4,182 responses; 38,781 hours
Paul Jones, (703) 756–3385

Rural Electrification Administration

7 CFR Part 1770, Accounting, Subpart A, Accounting System Requirements
Recordkeeping
Non-profit institutions; Small businesses or organizations; 992 recordkeepers; 257,920 hours

FNS/FDD

Destination Data Sheet
FNS–7
On occasion
State or local governments; 3,395 responses; 1,698 hours
Bessie Bradford/Susie Proden, (703) 756–3660

Food and Nutrition Service

Participation by Charitable Institutions
FNS Instruction 706–1
Semi-annually
State or local governments; 57 responses; 171 hours
Susan Proden, (703) 756–3660

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 88–19846 Filed 8–30–88; 8:45am]
BILLING CODE 3410–01–M

Forest Service

Implementation of Management Activities in the Jim-Fatty Area; Flathead National Forest, Montana

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose

the environmental impacts of site-specific forest management activities necessary for implementation of the Flathead National Forest Land and Resource Management Plan (EIS and Record of Decision, January 22, 1986) in the Jim-Fatty area of the Swan Lake Ranger District, Flathead National Forest, Lake and Missoula Counties, Montana. Management activities may include wilderness access site construction, trailhead renovation, wildlife habitat improvement, timber harvest, recreational lake access development, livestock grazing, road construction and reconstruction, timber stand improvement, and road management for the approximate period from 1989 to 1998. The agency invites written comments and suggestions on the scope of the analysis and management opportunities. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by September 30, 1988.

ADDRESS: Send written comments to William L. Pederson, District Ranger, Swan Lake Ranger District, P.O. Box 370, Bigfork, MT 59911.

FOR FURTHER INFORMATION CONTACT: The Jim-Fatty Interdisciplinary Team Leader, Swan Lake Ranger District, Flathead National Forest, P.O. Box 370, Bigfork, MT 59911.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to implement forest management activities in the Jim-Fatty area over the approximate period from 1989 to 1998. These management activities may include wilderness access site construction, trailhead renovation, wildlife habitat improvement, timber harvest, recreational lake access development, livestock grazing, road construction and reconstruction, timber stand improvement, and road management.

Management activities under consideration would occur in an area encompassing approximately 28,000 acres of multi-ownership lands in the northwestern portion of the Upper Swan Geographic Unit, as delineated in the Flathead Forest Plan. Of this total, approximately 11,500 acres are National Forest System lands.

Included in the area of analysis are all or portions of the following drainages: Fatty, Cedar, Moore, Piper, Jim, and North Fork Cold Creeks. The area is bordered on the west by the Mission Mountains Wilderness and on the east by the Swan River. Proposed management activities will be considered in all or portions of section 1, 2, 11–14, and 24, T21N, R18W; section 3–10, and 18, T21N, R17W; sections 1–4, 9–15, 23–26, 35, and 36, T22N, R18W; sections 5–8, 17–21, and 28–34, T22N, R17W; and sections 33–35, T23N, R18W, Principal Montana Meridian.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which all activities would be deferred during the decade. Other alternatives may include management activities which vary in time and space to provide emphasis on non-timber resources, emphasis on development of the biological potential of the resources, or emphasis on timber production. The analysis will disclose the environmental effects of alternative ways of implementing land and resource management direction contained in the Flathead National Forest Land and Resource Management Plan (EIS and Record of Decision, January 22, 1986).

Public participation is important during the analysis. The first point of public participation is during the scoping process (40 CFR 1501.7). The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives (ie., direct, indirect, and cumulative effects, and connected actions).
6. Determination of potential cooperating agencies and task assignments.

Scoping has already been utilized for the development of an environmental assessment (EA). Initial scoping began on January 8, 1987 through letters sent to potentially affected parties. Numerous newspaper articles have described the analysis process. An open house and field trip were also offered to the public in order to solicit comments and information. An EA was prepared in April, 1988. Approximately 50 copies of the EA were distributed to persons or groups indicating interest in the analysis. Numerous written responses to the assessment have been received.

Notwithstanding the scoping that has been done to date, additional comments or questions are being solicited at this time. Comments received by September 30, 1988 will be considered in the preparation of the DEIS. The Forest Service has not yet determined whether any public meetings will be held.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November, 1988. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period in the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Jim-Fatty area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed (40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978)). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS) (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

Following the comment period for the DEIS the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The FEIS is scheduled to be completed in January, 1989.

The responsible official will consider the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding the proposal. The responsible official will document the decision and the rationale for the

decision in the Record of Decision. That decision will be subject to review under applicable Forest Service regulations.

William L. Pederson, District Ranger for the Swan Lake Ranger District, Flathead National Forest, is the Responsible Official.

Date: August 23, 1988.

William L. Pederson,

District Ranger, Swan Lake Ranger District, Flathead National Forest.

[FR Doc. 88-19831 Filed 8-30-88; 8:45 am]

BILLING CODE 3410-11-M

Kenai Management Area Analysis

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

Background: The Department of Agriculture, Forest Service published a Notice of Intent to prepare an Environmental Impact Statement for the Kenai Management Area Analysis on July 22, 1988 (53 FR 27737). The Management Area Analysis will identify if, how and where management activities specified by area in the Chugach National Forest Land and Resource Management Plan are to be implemented.

The Notice of Intent did not identify the responsible official. Dalton Du Lac, Forest Supervisor Chugach National Forest is the responsible official.

Date: August 23, 1988.

Ken Rice,

Acting Forest Supervisor.

[FR Doc. 88-19731 Filed 8-30-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Survey of Income and Program Participation—1987 Panel Wave 7.
Form Number: SIPP 7700 Wave 7 Questionnaire, SIPP 84/7705(L) Introductory Letter.
Type of Request: Revision.
Burden: 11,760.
Avg Hours Per Response: 30 minutes.
Needs and Uses: This survey provides data on income, employment and household composition, taxes, assets, in-kind income, and related subjects to estimate the effects of Executive and Legislative decisions.
Affected Public: Individuals or households.
Frequency: One-time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19819 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.
Title: Annual Survey of Foreign Direct Investment in the United States.
Form Number: Agency—BE-15; OMB—0608-0034.
Type of Request: Reinstatement of a previously approved collection for which approval has expired.
Burden: 3,300 responsents; 30,000 reporting hours.
Average Hours Per Response: 9 hours.
Needs and Uses: The survey collects data on the financial and operating characteristics of U.S. companies that are foreign owned. Universe estimates are developed from the reported sample data. The data are needed to measure the size of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. economy, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the U.S.
Affected Public: Businesses or other for-profit institutions.
Frequency: Annually (except years in which a BE-12 benchmark survey is taken).
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19820 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration.
Title: Quarterly Report on Guaranteed Loans.
Form Number: Agency—ED 700; OMB—0610-0010.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 45 respondents; 180 reporting hours.
Average Time Per Response: .33 hours.
Needs and Uses: This application provides information and assurances necessary for awarding EDA loan guaranty.
Affected Public: Financial institutions servicing an EDA guaranteed loan.
Frequency: Quarterly.
Respondents Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearanace Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19821 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration.

Title: Preapplication and Application for Public Works Awards from Governmental and Non-Governmental Applicants.

Form Number: Agency—ED-101P and ED-101A; OMB—0610-0011.

Type of Request: Revision of a currently approved collection.

Burden: 101P-308 respondents; 9240 reporting hrs. 101A-238 respondents; 20944 reporting hrs.

Average Hours Per Response: 30 hours—101P; 88 hours—101A.

Needs and Uses: This preapplication and application provide information and assurances necessary for the selection and award of public works grants.

Affected Public: State and local units of government, Indian tribes, public authorities and nonprofit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19822 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-CW-M

Minority Business Development Agency

Business Development Center Applications; Phoenix, AZ

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period February 1, 1989 to January 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Phoenix, Arizona geographical service area.

The I.D. Number for this project will be 09-10-89001-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is October 5, 1988. Applications must be postmarked on or before October 5, 1988.

ADDRESS: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. September 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

August 25, 1988.

[FR Doc. 88-19803 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; Sacramento, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period March 1, 1989 to February 28, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Sacramento, California geographic service area.

The I.D. Number for this project will be 09–10–89003–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDC funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is November 16, 1988. Applications must be postmarked on or before November 16, 1988.

ADDRESS: San Francisco Regional Office, Minority Business Development Agency, U. S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U. S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

August 25, 1988.

[FR Doc. 88–19804 Filed 8–30–88; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; San Jose, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $276,250 in Federal funds and a minimum of $48,750 in non-Federal contributions for the budget period February 1, 1989 to January 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the San Jose, California, geographic service area.

The I.D. Number for this project will be 09–10–89002–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a

standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is October 21, 1988. Applications must be postmarked on or before October 21, 1988.

ADDRESS: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. September 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

August 25, 1988.

[FR Doc. 88–19805 Filed 8–30–88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Identification of Marine Vertebrate and Invertebrate Candidate Species for Listing Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of development of list of candidate species.

SUMMARY: NMFS identifies vertebrate and invertebrate marine species as candidates for possible addition to the List of Endangered and Threatened Wildlife and Plants. NMFS is soliciting information concerning the status of these species and nominations of additional species that appear to warrant listing consideration. This notice is not a proposal for listing and the involved species do not receive substantive or procedural protection under the Endangered Species Act of 1973. NMFS does, however, encourage Federal agencies and other appropriate parties to take these species into account in project planning. This candidate list identifies only animal species; NMFS will identify candidate marine plant species in a future notice.

DATE: Comments may be submitted until further notice.

ADDRESS: Comments should be sent to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio, Protected Species Management Division, Office of Protected Resources and Habitat Programs, NMFS (202/673–5351).

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) requires determinations of whether species of wildlife and plants are endangered or threatened based on the best available scientific and commercial data. "Species" includes any species or subspecies of fish, wildlife or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. NMFS and the U.S. Fish and Wildlife Service share responsibilities under the ESA. With some exceptions, NMFS is responsible for species that reside all or the major portion of their lifetime in marine waters. Candidate species are those species identified for listing consideration. NMFS will conduct comprehensive reviews of the status of each species to determine which warrant listing as endangered or threatened under the ESA. NMFS is also developing guidelines to be used to assign listing priorities to candidate species.

NMFS requests comments and solicits information concerning the status of species in the accompanying table, especially in regard to past and present population status and distribution; threats affecting the species; and, if appropriate, identification of critical habitat. NMFS solicits nominations of additional species that appear to warrant listing consideration; information on taxonomic changes for any of the listed species; and more appropriate common names.

NMFS intends to consider all data received in response to this notice, to make appropriate amendments to the accompanying table, and to indicate intentions with regard to future listing actions.

In the future, NMFS will compile and publish a list of candidate marine plant species. To ensure that the list is complete, NMFS is soliciting biological information and recommendations on candidate marine plants native to U.S. waters. Proposed candidates should be categorized as fully marine, fully aquatic estuarine, or inter-tidal estuarine.

In the following table of candidate species, the common name appears as the first entry followed by the scientific name, the family name, and the area of distribution under consideration for listing.

Date: August 26, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

LIST OF CANDIDATE VERTEBRATE AND INVERTEBRATE MARINE SPECIES

Common name	Scientific name	Family	Area under construction
Marine Mammals			
Amazon River Dolphin [1]	*Inia geoffrensis*	Iniidae	South America.
Ganges River Dolphin [1]	*Plantanista Gangetica*	Plantanistidae	India, Bangladesh, Nepal, Bhutan.

LIST OF CANDIDATE VERTEBRATE AND INVERTEBRATE MARINE SPECIES—Continued

Common name	Scientific name	Family	Area under construction
Indus River Dolphin [1]	*Plantanista minor*	....do	Pakistan.
La Plata Dolphin [1]	*Pontoporia blainvillei*	Pontoporiidae	Brazil, Uruguay, Argentina.
Bottlenose Dolphin [2]	*Tursiops truncatus*	Delphinidae	U.S. Mid-Atlantic (Coastal Stock).
Northern Bottlenose Whale	*Hyperoodon ampullatus*	Ziphiidae	North Atlantic.
Beluga Whale	*Delphinapterus leucas*	Monodontidae	AK (Cook Inlet population).
Juan Fernandez Fur Seal	*Arctocephalus philippii*	Otariidae	Chile.
Japanese Sea Lion	*Zalophus californianus japonicus.*	....do	Japan, North and South Korea.
Northern (Steller) Sea Lion [3]	*Eumetopias jubatus*	....do	AK.
Northern Fur Seal [3]	*Callorhinus ursinus*	....do	AK.
Saimaa Seal	*Phoca hispida saimensis*	Phocidae	Finland.
Kuril Seal	*Phoca vitulina stejnegeri*	....do	USSR (Kuril Sea).
Reptiles			
Flatback Turtle	*Chelonia depressa*	Cheloniidae	Australia.
Fishes			
Gulf of Mexico Sturgeon [4]	*Acipenser oxyrhynchus desotoi*	Acipenseridae	AL, FL, MS, LA.
Atlantic Sturgeon	*Acipenser oxyrhynchus oxyrhynchus.*	....do	North America—Atlantic Coastal Waters.
Largetooth Sawfish	*Pristas perotteti*	Pristidae	North and South America—Tropical and Sub-tropical Waters.
Smalltooth Sawfish	*Pristas pectinata*	....do	Do.
Mollusks			
Southern Giant Clam	*Tridacna derasa*	Tridacnidae	Indo-Pacific.
Giant Clam	*Tridacna gigas*	....do	Do.
Starlet Sea Anemone	*Nematostella vectensis*	Edwardsiidae	U.K. and North America.

[1] Status review under Endangered Species Act in progress (52 FR 13280, April 22, 1987).
[2] Status review under Marine Mammal Protection Act in progress.
[3] Status review under Marine Mammal Protection Act completed.
[4] Currently identified by USFWS as a candidate species (50 FR 37960, September 18, 1985).

[FR Doc. 88-19816 Filed 8-30-88; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals: Permit Modification; Hyatt Regency Waikoloa Resort (P407)

Modification No. 1 to Permit No. 625

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), public display permit No. 625 issued to Hytatt Regency Waikoloa Resort, Waikoloa, Hawaii 96743, on February 2, 1988 (53 FR 5614, February 25, 1988) is modified by deleting Special Condition B.2., which disallowed a human/dolphin swim program, and by adding the following:

Section D. Special Conditions on Human/Dolphin Swim Programs

D. 1. The Permit Holder is authorized to use dolphins in an experimental human/dolphin swim program until December 31, 1989. The National Marine Fisheries Service (NMFS) may revoke this authority before December 31, 1989 if this program is found to have an adverse effect on the health or well-being of the animals, if an ongoing review of public display permit authorities, procedures and criteria results in new regulations that disallow such programs, or if the terms of the following conditions are not being met.

D. 2. At least 45 days before beginning the authorized activities, the Permit Holder must identify the individual animals to be used in the program and submit: (a) a detailed description of the planned human/dolphin swim program, including (1) descriptions of the planned nature of the human/dolphin encounters and the anticipated maximum, minimum, and average frequency and duration of encounters per animal, per day, and per week, and (2) the content and planned methods for conducting the pre-encounter orientation and instructions for human swimmers regarding, among other things, any restrictions on physical contact with the dolphins and proper response in the event of aggressive dolphin behavior; (b) a detailed description of the facilities that will be used to house the dolphins and to conduct the human/dolphin swim program, and how the dolphins have been or will be trained to participate in the program; (c) curriculum vitae for the dolphin trainers, the attending veterinarian(s), and any other persons responsible for handling, feeding or otherwise insuring the welfare of the animals; and (d) an assessment by the attending veterinarian of the current (baseline) health and behavior patterns of each animal and a description of the monitoring program that will be used to detect and determine the cause(s) and significance of any changes in the health or behavior of the dolphins as a result of the authorized activities.

D. 3. Human/dolphin swim operations must be continuously supervised by experienced trainers. An appropriately qualified and locally available veterinarian must be on call, but not necessarily present, during each human/dolphin encounter. The animals must be provided with adequate escape access from the swimming area should they choose to terminate the human/dolphin encounter and adequate security arrangements must be provided at all times to prevent harassment or injury to the dolphins. NMFS may inspect facilities and monitor swim operations.

D. 4. The Permit Holder must develop and implement a monitoring program to detect any changes in the health or behavior of the animals involved in the human/dolphin swim program. Animals that respond adversely to encounters with humans must be removed from the

program until such time as their health is restored and/or their behavior poses no risk to humans involved in the program. The program must be suspended immediately if the dolphins show signs of program/related health problems or undesirable behavioral modifications that are a result of the human/dolphin swim program.

D. 5. The Permit Holder must advise NMFS immediatley of any injuries to dolphins or humans resulting from the authorized activities, any program changes that might cause additional stress or otherwise have an adverse effect on the health or behavior of the dolphins involved in the program, and any removals or additions of animals to the program and the reasons for such removals or additions. In addition, the Permit Holder must submit quarterly reports describing the nature and extent of the program in the preceding quarter, any problems that may have developed, and steps taken to overcome such problems. Among other things, the quarterly progress report should provide: (a) summary statistics on (1) the number of people by age and sex that participated in the program during the reporting period and (2) the number of times, by day and week, that each dolphin participated in the program; (b) descriptions of any encounters that resulted in, or possibly could have resulted in, injury to a human or dolphin and any change made in the program to improve the safety, educational or other aspects of the program; and (c) a brief summary and assessment of the results of the required dolphin monitoring program. Reports must be submitted to the Director, Office of Protected Resources and Habitat Programs, NMFS, Washington, DC 20235. Failure to submit adequate and timely reports may result in revocation of the Permit Holder's authority to use dolphins in an experimental human/dolphin swim program.

D. 6. By authorizing this experimental program, NMFS assumes no liability for physical or other injuries or harm to individuals participating in the experimental human/dolphin swim program. This fact must be reflected in any liability waivers or program instructions prepared by and for the Permit Holder.

Documents submitted in connection with the above modification are available for review in the Office of Protected Resources, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue NW., Washington, DC 20235.

Dated: August 19, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-19852 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending Coverage of Export Visa and Exempt Certification Requirements for Silk Blend and Other Vegetable Fiber Apparel Exported from India

August 26 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending coverage of export visa and exempt certification requirements.

EFFECTIVE DATE: September 1, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: The existing visa and exempt requirements are being extended to cover certain silk blend and other vegetable fiber apparel exported from India on and after January 1, 1988.

A copy of the current bilateral textile agreement between the Governments of the United States and India is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 44 FR 68504, published on November 29, 1979.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 1979, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. You were directed to prohibit entry and withdrawal from warehouse for consumption in the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in India for which the Government of India has not issued an appropriate export visa or exempt certification.

Effective on September 1, 1988, the directive of November 27, 1979 is amended further to require that silk blend and other non-cotton vegetable fiber apparel produced or manufactured in India in Categories 831-859 also be visaed if exported from India on and after January 1, 1988.

Shipments entered or withdrawn from warehouse on or after September 1, 1988 and exported on and after January 1, 1988 which are not accompanied by an appropriate export visa shall be denied entry and a visa waiver must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-19853 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act: Record of Decision for Remedial Actions at the Former Climax Uranium Company Uranium Mill Site, Grand Junction, CO

AGENCY: Department of Energy.

ACTION: Decision to relocate the residual radioactive materials from the former Climax Uranium Company uranium mill site for long-term stabilization and control at the Cheney Reservoir site, southeast of Grand Junction, Colorado. The mode of tailings transportation (truck or truck/train combination) will be determined by a competitive bidding process.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1505) implementing the procedural provisions of the National Environmental Policy Act (NEPA) and the U.S. Department of Energy (DOE) guidelines for compliance with the NEPA (52 FR 47662, December 15, 1987), the Office of the Assistant Secretary for Nuclear Energy of the DOE is issuing a Record of Decision on remedial actions at the former Climax Uranium Company uranium mill site at Grand Junction, Colorado. The Final Environmental Impact Statement, Remedial Actions at the Former Climax Uranium Company Uranium Mill Site, Grand Junction, Mesa County, Colorado, (DOE-EIS 126-F), was issued in December, 1986. Since that time, new information has been collected on tailings transport by slurry pipeline, the potential economic impacts of the proposed action, and the ability of the proposed action to comply with

proposed U.S. Environmental Protection Agency (EPA) groundwater protection standards. In addition, the location of the disposal cell and volumes of contaminated, borrow, and restoration materials have changed. As a result of the new information and potentially significant changes to the proposed action, an analysis was prepared to determine whether to supplement the Environmental Impact Statement (EIS). The analysis indicated that the proposed changes were not relevant to environmental concerns and that the new information would have little bearing on the proposed action or its impacts.

Background

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95–604, as amended, was enacted in order to address a Congressional finding that uranium mill tailings located at inactive processing sites may pose a potantial health hazard to the public. On November 8, 1979, the DOE designated 24 inactive processing sites for remedial action under Title I of the UMTRCA, including the former Climax Uranium Company Uranium Mill site (hereinafter the Grand Junction Site) in Grand Junction, Colorado (44 FR 74892).

Pursuant to the UMTRCA, the DOE and the state of Colorado entered into a cooperative agreement effective October 19, 1981, for remedial action at the Grand Junction site and at eight other inactive uranium mill sites in Colorado. Under this cooperative agreement, the state and the Nuclear Regulatory Commission (NRC) must concur with the remedial action plan developed by the DOE for relocation to the Cheney Reservoir site, and the DOE and the state will cost-share the remedial action. Under the cost-sharing provisions, the DOE will pay 90 percent and the state 10 percent of the tailings and/or site acquisition, engineering, and construction costs.

Also, the UMTRCA requires the U.S. Environmental Protection Agency (EPA) to promulgate remedial action standards for inactive uranium mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and nonradiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR Part 192) were promulgated with an effective date of March 7, 1983. However, on September 3, 1985, the U.S. Tenth Circuit Court of Appeals set aside parts of the final EPA standards concerning groundwater protection, 40 CFR Part 192.20(a) (2) and (3) (see American Mining Congress V. Thomas 772 F. 2d 617, Tenth Circuit Court, 1985). The groundwater protection standards were remanded to the EPA for further consideration in light of the Court's opinion that the groundwater standards promulgated by the EPA on March 7, 1983, were site-specific rather than of general application as required by the UMTRCA. The EPA issued proposed groundwater protection standards for comment on September 24, 1987.

Section 108(a)(3) of the UMTRCA provides that if the EPA has not promulgated final standards by October 31, 1982, remedial actions taken by the DOE shall comply with the proposed standards until such time as the standards are promulgated in final form. This section also applies to the proposed groundwater protection standards. The DOE intends to comply with the provisions of Subparts A and C of the proposed groundwater protection standard (40 CFR 192.21) immediately. When the EPA groundwater protection standards are finalized, the DOE will reevaluate its groundwater protection plan and undertake such action as is necessary to ensure that the requirements of Subpart B, which addresses aquifer restoration, are met. The need for aquifer restoration at the Grand Junction site will be evaluated after the tailings have been relocated and stabilized. The need for and extent of aquifer restoration will be evaluated in a separate NEPA document.

Project Description

The Grand Junction site is a 104-acre property adjacent to the south side of the city of Grand Junction, Colorado, and adjacent to the north side of the Colorado River. The Grand Junction site consists of the tailings area, mill site, and effluent ponds from the former mill site, which was operated by the Climax Uranium Company between 1951 and 1970.

The Grand Junction site contains an estimated 4.06 million cubic yards of uranium mill tailings in the form of finely-ground sand, slimes, and contaminated soils. The tailings are covered with approximately 6 inches of soil and sparse vegetation. Concrete and brick from the demolished mill buildings were placed as riprap along the north bank of the Colorado River.

The State of Colorado presently uses a portion of the site, the State Repository, for temporary storage of contaminated materials obtained from remedial action at vicinity properties in the Grand Junction area. Vicinity properties are homes, businesses, public buildings, and vacant lots that may have been contaminated during construction by the use of tailings as a building material or as fill material before the hazards associated with this material were known. The use of the tailings for these purposes is no longer allowed.

Remedial action is being performed at vicinity properties under the state-operated Grand Junction Remedial Action Program (GJRAP) and the DOE-operated Uranium Mill Tailings Remedial Action (UMTRA) Project. Approximately 4009 properties in Mesa County are estimated to have levels of radiation in excess of EPA standards and will be formally included on the vicinity property list. It is estimated that 3937 properties will be remediated; 1482 properties were remediated as of February 28, 1988. Of the remaining 2455 properties, it is estimated that 72 will not be remediated due to refusals by owners to participate in the project. Any additional vicinity properties identified prior to closure of the disposal cell will also be remediated. Survey work is scheduled to be completed by September of 1990. Vicinity property estimates are subject to ongoing revision. The differences in the number of vicinity property estimates in the Grand Junction Environmental Impact Statement (EIS) and this Record of Decision are not significant.

The Cheney Reservoir site, the selected disposal site, is approximately 18 miles southeast of the Grand Junction site and 5 miles southeast of the community of Whitewater. The Cheney Reservoir site lies between Grand Mesa and the Gunnison River and is approximately 2 miles east of U.S. Highway 50. The Cheney Reservoir site is named for the closet geographic feature of distinction, Cheney Reservoir, 1.5 miles southeast of the disposal site.

The Cheney Reservoir site is used primarily for low-density grazing although there is an existing oil and gas lease on the site. The terrain is very flat and the area is sparsely covered with grasses and shrubs. The area north of the site, along Kannah Creek, is intensely farmed. Privately owned land lies to the north, west, and south of the site.

The Chene Reservoir site, which is on land administered by the Bureau of Land Management (BLM), will be permanently withdrawn from public use. The BLM published a notice of proposed withdrawal (49 FR 30801) for the Cheney Reservoir site in 1984, which proposed to withdraw an area of about 360 acres in Township 3 South, Range 2 East, sections 11, 12, 13, and 14 (Figure 1). Although the stabilized tailings pile will only cover about 80 acres, adjacent lands are required for stockpiling of

materials, equipment, water retention basins, and other construction-related activities. During the development of the conceptual design, the area immediately adjacent (south) to the proposed withdrawal area was selected as the ultimate disposal area. The DOE has subsequently amended the withdrawal application to decrease the area required in sections 11 and 12 and to increase the area required in sections 13 and 14; the total amended withdrawal area will encompass about 340 acres (Figure 1).

Although the amended area of withdrawal represents a modification from the area discussed in the EIS, the analyses in the EIS are applicable to the amended area for several reasons:

- The site characterization activities (e.g., test pits, monitoring wells, radiological surveys, seismic analysis, and flora and fauna surveys) for many environmental components were representative of the general area rather than restricted to the limits of the original withdrawal area.

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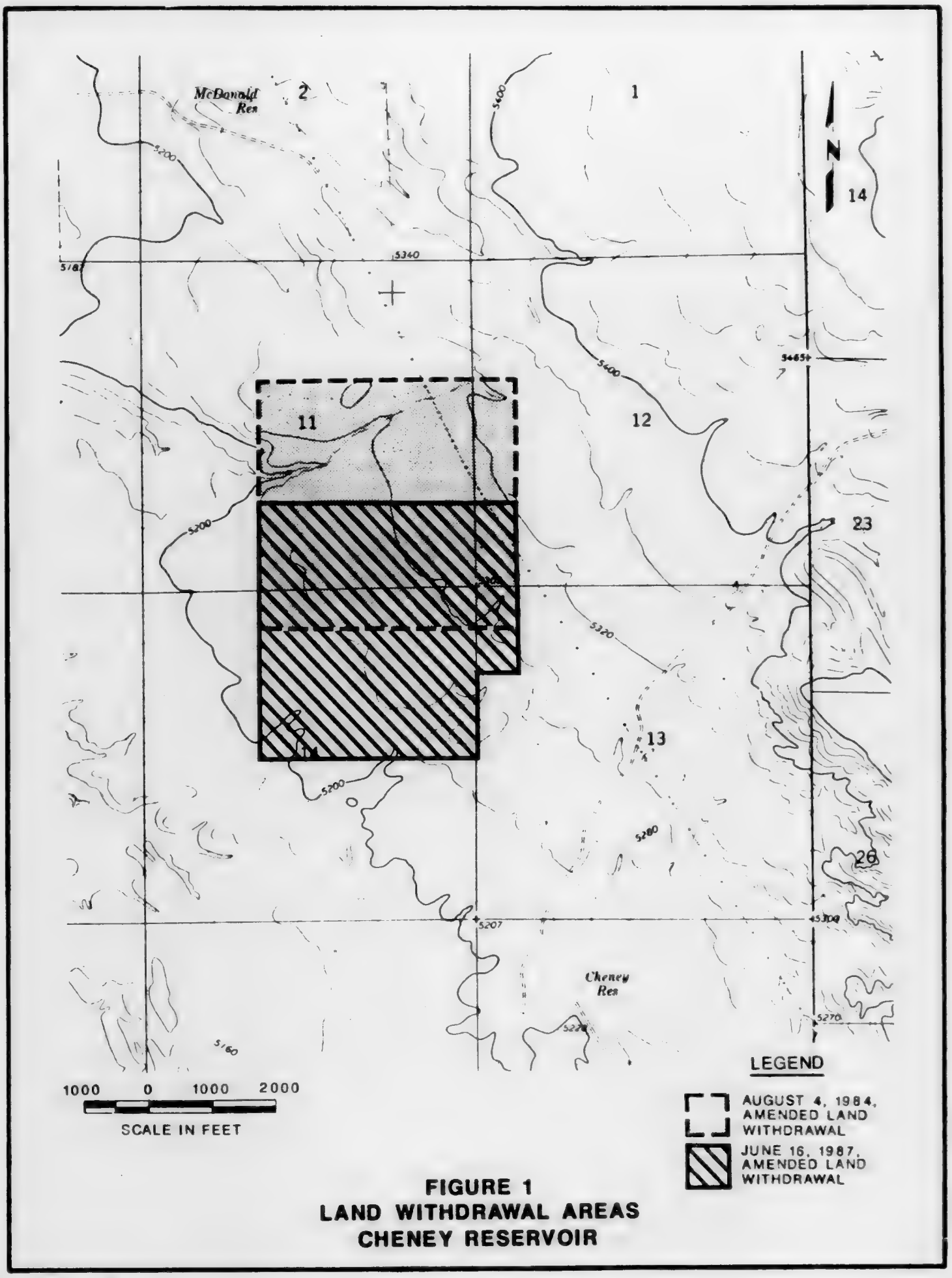

FIGURE 1
LAND WITHDRAWAL AREAS
CHENEY RESERVOIR

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• Impacts analyses for most environmental components are primarily affected by volumes of materials handled rather than by minor location modifications. These components include radiation; air quality; noise; population and work force; housing, social structure, and community services; economic structures; transportation networks; energy, water, and fuel use; and accident probabilities.

• For the environmental components typically affected by location modifications (flora and fauna, soils and mineral resources, hydrology, land use, and scenic and cultural resources), the impacts analyses are representative of the area rather than of a limited, site-specific nature because of the broad characterization of the activities.

• As stated in the EIS, the impacts analyses are based on conservative assumptions and represent a reasonable uppler limit on the severity of the impacts that may occur.

For these reasons, the description of the affected environment and the impacts analyses of the EIS are representative of the amended area of withdrawal.

The purpose of the remedial action is to stabilize and control the residual wastes from the Grand Junction site at the Cheney Reservoir site in a manner that complies with the EPA standards (40 CFR Part 192). The principal feature of the selected alternative is the relocation of the tailings and other contaminated materials by truck or truck/rail combination (Alternatives 3 and 4 in the EIS, respectively) for isolation and stablization in the approximately 80-acre Cheney Reservoir disposal cell.

The Cheney Reservoir disposal site will be permanently withdrawn from public use. Access to the Grand Junction site and the tailings will be provided by the State of Colorado pursuant to section 104 of UMTRCA. The current owner will retain title to the mill site. The materials obtained in the cleanup of vicinity properties will be delivered to the Grand Junction site and later transported to the Cheney Reservoir site for final stabilization.

Remedial action is planned in two phases. Phase I will begin with site preparation and demolition at the Grand Junction Site. Phase II will follow with excavation, transportation, placement, and construction of the necessary support facilities. Phase I will be performed at the mill site and will include construction of: fencing, temporary roads, drainage ditches, and the wastewater retention basin. Phase II construction consists of: excavating the tailings embankment and processing the cover material at Cheney; installation of the slurry wall at the Climax Site for dewatering, loading/hauling/placement of the tailings; and construction of miscellaneous construction facilities. The construction facilities include decontamination pads, fencing, the water retention pond at Cheney Site, and so on to support the work. The radon barrier and erosion protection cover will be placed over the tailings. Excavated disposal site material will be processed and used for cover. The maximum sideslopes of the embankment will be five horizontal to one vertical, and the top of the embankment will have a maximum slope of four percent. An unpaved road from U.S. Highway 50 will remain as permanent access.

The disturbed area at the Grand Junction site will be backfilled with clean soil, contoured for surface drainage, and seeded. The Grand Junction site will be available for uses as permitted by applicable local land use ordinances, following completion of the remedial action. Additional details are available in Sections 3.2.4 and 3.2.5 of the Final EIS.

Subsequent to the December, 1986, publication of the Final EIS, the DOE, at the request of Mesa County and the city of Grand Junction, conducted additional studies of projected socioeconomic impacts and a slurry pipeline transportation. An Environmental Analysis was prepared in May 1988 to examine these studies and to determine whether or not the Final EIS should be supplemented. In addition, the Environmental Analysis contains a detailed evaluation of the ability of the proposed action to comply with the newly proposed groundwater protection standards.

Description of Alternatives

The following alternatives to the selected action (Alternative 3 or 4) were considered in detail) in the EIS by the DOE in reaching its decision to relocate the wastes and to stabilize them at the Cheney Reservoir site. All of the alternatives, except no action, include remedial action at an estimated 3937 vicinity properties in Mesa County.

Alternative 1—No Action: This alternative consists of performing no remedial action. Radon emanation and gamma radiation from the Grand Junction site will continue to exceed EPA standards on or near the site. Without remedial action, the DOE cannot ensure that the tailings would not be dispersed by wind, water, or humans, and cause considerably higher health effects than those that may presently exist. Therefore, the no action alternative is unacceptable since the UMTRCA requires that the DOE ensure the site is in compliance with EPA standards.

Alternative 2—Stabilization at the Grand Junction Site: Under this alternative, the tailings and other contaminated materials would be stabilized at their present location adjacent to the city of Grand Junction. The tailings and contaminated alluvium beneath the tailings would be excavated and stockpiled. A subbase consisting of a fill layer, a capillary break layer, and a low-permeability layer would be constructed. The tailings and other contaminated materials would be place on the subbase. The tailings and contaminated materials would be covered with an earth radon barrier and an erosion protection layer of small rock. All sides of the pile would be covered with rock armoring (large boulders) to protect against the erosional forces of flooding in the Colorado River. All areas not occupied by the stabilized tailings would be recontoured and revegetated.

Alternative 5—Disposal at the Two Road Site with Truck Transport: Under this alternative, the tailings and of the contaminated material would be relocated to the Two Road site 33 miles northwest of the Grand Junction site. A pit, averaging nine feet in depth, would be excavated at the Two Road site and a low-permeability layer would be constructed in the bottom of the pit. The tailings and other contaminated materials would be relocated by truck to the Two Road site, placed on the low-permeability layer, and be covered with an earth radon barrier and an erosion protection layer of small rock. After removal of the tailings and other contaminated materials, the Grand Junction site would be recontoured and revegetated.

Alternative 6—Disposal at the Two Road Site with Train and Truck Transport: This alternative is the same as Alternative 5 except that the tailings and contaminated material would be transported partially by train and partially by truck. The tailings and contaminated materials would be loaded onto a train at the Grand Junction site and transported to Mack, where the tailings would be loaded onto trucks and transported west on U.S. Highway 6 & 50 to Two Road and north to the Two Road site approximatley 3.4 miles. One trainload of tailings and contaminated materials would be transported each day. All other aspects of the alternative are identical to Alternative 5.

Comments Received

Comments on the Final EIS were received from 95 individuals, various local businesses, the Mesa County Health Department, the Mesa County Commissioners, Mesa County Planning Commission, local agencies, elected officials, the state of Colorado, and the U.S. Department of Interior (DOI). Comments from the majority of the commentors focused on the selection of the disposal site (preference for Two Road), the mode of transportation (preference for truck/rail), the route for truck transportation, costs, and requests for an extension to allow for additional input prior to the issuance of this Record of Decision. These issues are responded to in summary form below. All comments will be addressed specifically during the final design process, through consultation with the state of Colorado and the DOI.

• Preference for the Two Road site—As discussed in greater detail below, the Cheney Reservoir site is selected for disposal of the tailings and other wastes due to environmental considerations. The Cheney Reservoir site would cause fewer impacts to threatened and endangered species and would result in fewer transportation-related accidents.

• Preference for truck/train transport—Although the analyses in the EIS indicate that truck/train transport is considerably more expensive than truck transport, the DOE acknowledges that these cost estimates may vary substantially when construction contractors have an opportunity to submit price quotations. In addition, the potential for accidents is slightly less for the truck/train option than for the truck option.

• The U.S. Senate Appropriations Committee, in its 1988 report, calls on the DOE to "take into consideration the impacts of the method of transportation selected, including, but not limited to, the negative economic impact on the community, the adverse transportation impacts caused by haul route traffic on arterial roads and highways including traffic safety; and the projected damage to streets and highways along the haul route" in considering the altenatives for disposal of the uranium mill tailings at Grand Junction, Colorado. The DOE, with the input of community representatives, has conducted such a socioeconomic impact/benefit study.

The DOE's Remedial Action Contractor (RAC) will specify the measures that must be taken by the contractor conducting the remedial action to mitigate adverse impacts related to the transportation options.

• Truck transportation route—Since publication of the Final EIS and in support of a design option, the DOE has evaluated in detail other proposed inner city transportation route options. These options have in turn been addressed with the state of Colorado Department of Highways, the local task force, city and country agencies, the local Development Authority, the Chamber of Commerce, and a majority of potentially affected citizens. In the event that the contractor selected by the RAC uses truck transportation, trucks will exit from the northwest corner of the site onto 9th Street, turn west (left) onto 4th Avenue, and then travel southbound onto U.S Highway 50 to the Cheney Reservoir site (Figure 2). This route was selected to minimize use of local streets, provide safe ingress and egress from the roads, and to avoid residential areas. The actions necessary to mitigate adverse traffic impacts are discussed below under CONSIDERATIONS IN THE IMPLEMENTATION OF THE DECISION.

• Truck/Train Transportation Route—Since publication of the Final EIS, the DOE has established a truck/train transportation route. Trains will leave the processing site in Grand Junction to an unloading facility south of Whitewater using existing rail lines (Figure 3). Trucks will transport the tailings from the unloading facility to Cheney Reservoir via U.S Highway 50. Actions necessary to mitigate adverse traffic impacts of the truck/train option are discussed below under CONSIDERATIONS IN THE IMPLEMENTATION OF THE DECISION.

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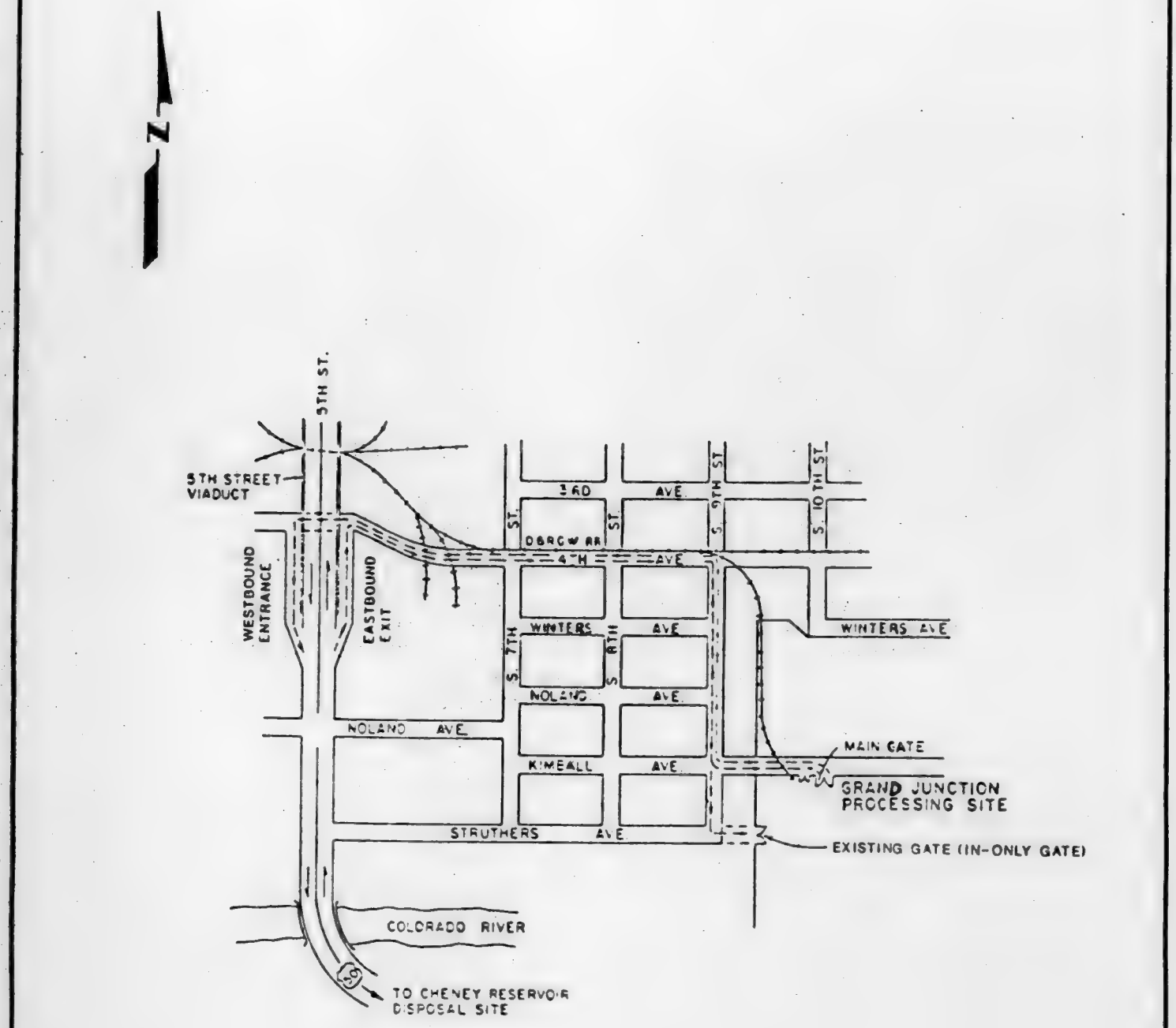

FIGURE 2
ALL TRUCK TRANSPORTATION ROUTE

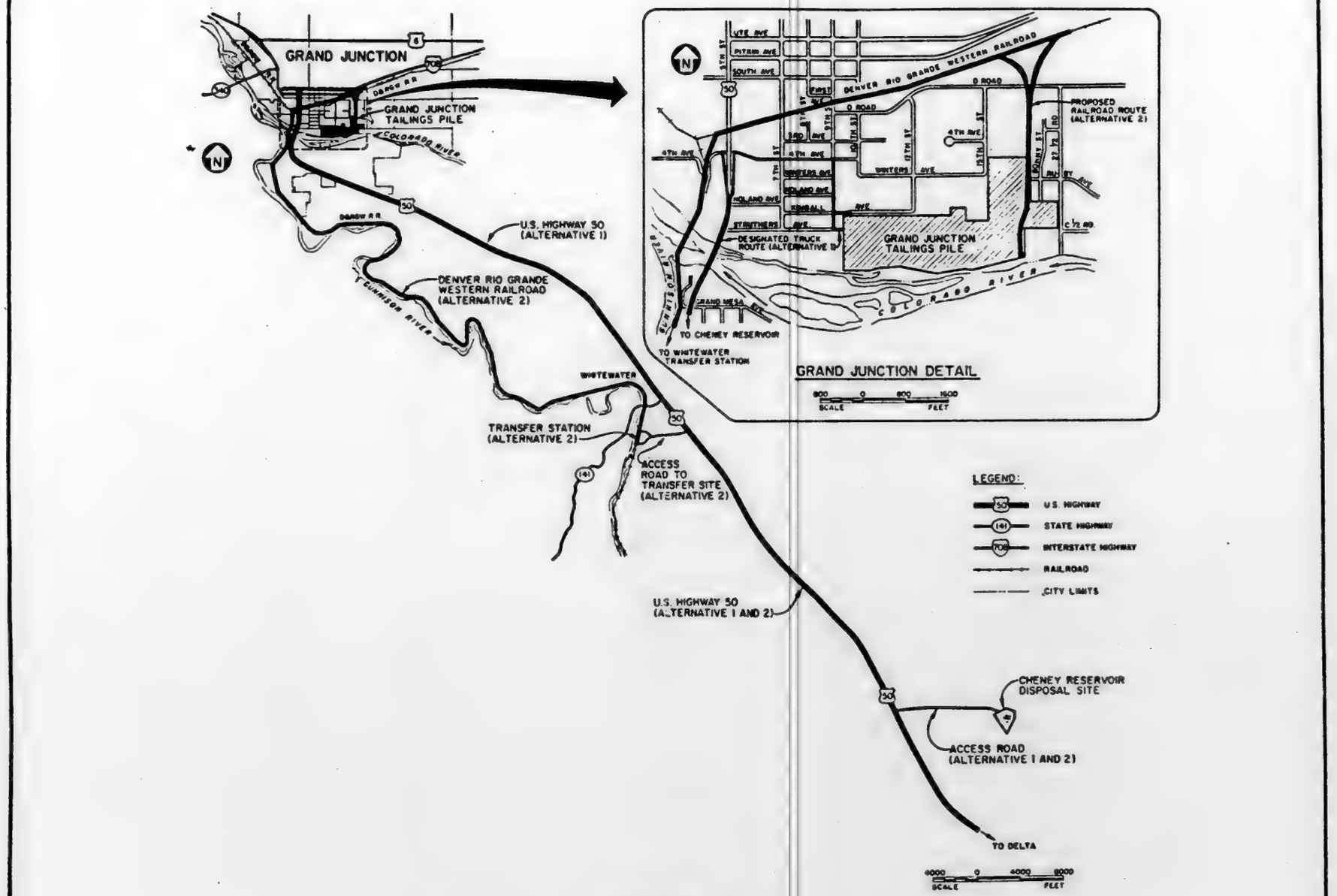

FIGURE 3
TRUCK/TRAIN TRANSPORTATION ROUTE

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• Cost estimates—Since completion of the Final EIS, additional cost estimates for various truck and truck/train transport options have been prepared by the DOE and presented to the public. These estimates indicate that the truck/train option remains substantially more costly (as much as $12 million) than truck only transportation. In addition, the DOE, at the request of the city of Grand Junction, has evaluated the transportation of tailings by slurry pipeline. The slurry pipeline alternative was found to be approximately $42 million more costly than truck transportation to Cheney Reservoir alternative and was subsequently rejected. In addition to its high cost, the slurry pipeline option has a number of adverse environmental consequences associated with it. The construction of a pipeline from the Grand Junction mill site to Cheney Reservoir would entail disturbance along the pipeline right-of-way. Slurried tailings would be wet and require dewatering at the disposal site, creating a new source of contaminated water. Pipeline failure could result in spillage of wet tailings in otherwise uncontaminated areas. Thus the slurry pipeline proposal has a greater adverse environmental impact than using existing roads or rail lines.

• Schedule Extension—The DOE has deferred issuance of this Record of Decision in order to re-examine socioeconomic impacts and to evaluate a slurry pipeline transportation alternative, which was not examined in the Final EIS. An Environmental Analysis was prepared to examine the significance of these issues, and to determine if a supplement to the Final EIS was warranted.

Basis for Decision

Pursuant to the requirements of the UMTRCA, the EPA has promulgated health and environmental standards to govern cleanup, stabilization, and control of residual radioactive materials at inactive uranium mill tailings sites. The standards establish requirements for long term stability, limit radiation emanation, and protect groundwater quality. The EPA also determined that significant public health risks associated with inactive tailings were posed by prolonged exposure (to radon daughter products) to people living and working in structures contaminated by relocated mill tailings. As a result of these conclusions, prevention of misuse and dispersion of tailings is an important objective of the EPA standards. Accordingly, long-term stability was emphasized in the development and promulgation of the standards. This is consistent with the guidance provided by the legislative history of the UMTRCA, which stresses the importance of avoiding remedial action that would be effective for only a short period of time and that would require future Congressional consideration.

The EPA standard-setting process distinguished "passive controls" (e.g., thick earthen and rock covers) from "active controls" (e.g., semipermanent covers, fences, signs and restrictions on land use) that would require frequent replacement or other major repairs requiring the expenditure of public funds. The standard is framed as a longevity requirement that recognizes the difficulty in predicting very long-term performance with a high degree of confidence. Therefore, the EPA established a design objective of 1000 years with a minimum period of 200 years, a time span that is more consistent with engineering experience. In establishing the standards, the EPA determined that the radon emission limitation could be achieved by well-designed thick earthen covers.

The standards recognize the need of institutional controls, such as custodial maintenance, surveillance, and emergency response measures. In its preamble to the rules, the EPA calls for such controls to be provided as an essential back-up to the primary, passsive controls.

On September 3, 1985, the U.S. Tenth Circuit Court of Appeals set aside the EPA standard applicable to the protection of waterways and goundwater, 40 CFR Part 192.20(a) (2) and (3) (see American Mining Congress v. Thomas, 772 F. 2nd, Tenth Circuit Court). The goundwater protection standards were remanded to the EPA for further consideration in light of the Court's opinion that the groundwater protection standards promulgated by the EPA on March 7, 1983, were site-specific rather than of general application as required by the UMTRCA. The EPA issued proposed groundwater protection standards for comment on September 24, 1987. Remedial action taken with regard to the Grand Junction site will not preclude subsequent design enhancements if needed to achieve compliance and will not limit the selection of reasonable groundwater restoration methods that may be necessary when final standards are promulgated. When the final EPA standards are promulgated, the DOE will evaluate groundwater protection requirements and undertake such action as is necessary to ensure that the final standards are met. The need for and extent of aquifer restoration will be evaluated in a separate NEPA process.

The DOE has characterized the Cheney Reservoir site to determine whether the proposed conceptual design would be in compliance. The studies indicate that the proposed conceptual design will not result in any substantive environmental impacts in violation of the proposed standards.

Under the proposed action, tailings will be placed at the Cheney Reservoir disposal site in a partically below-grade cell. The disposal cell foundation will consist of 10 to 20 feet of silty clay, zero to 10 feet of silty gravel, 10 to 20 feet of weathered Mancos Shale, and Mancos Shale bedrock to a depth of about 780 feet below the surface. Drilling of a 1760-feet deep exploratory water well at the disposal site showed that there is no groundwater beneath the Cheney Reservoir disposal site to a depth of at least 1521 feet.

Shallow, perched goundwater is present beneath the proposed disposal site. The depth of the perched water table is about 15 feet beneath the proposed base of the excavation. The shallow groundwater saturates a zone of approximately 10 feet of weathered Mancos Shale. The quantity of water that can be withdrawn from a well completed in this shallow aquifer is estimated to be well below the 150 gallons per day or greater required for an aquifer to be considered a goundwater resource (40 CFR Part 192.21(g)), meaning the groundwater is class III and not suitable for domestic use.

In addition to being extremely slow moving and of poor quality, the shallow, perched groundwater beneath the disposal site is spotty in occurrence, and a discreet surface discharge location for the water has not been located downgradient of the site. The small quantity of groundwater that is perched beneath the site probably discharges diffusely downgradient and into the underlying Mancos Shale.

To protect groundwater at the site, the disposal cell design and location make maximum use of favorable natural conditions. Some of these favorable design and disposal site features include the following:

• Partially below-grade disposal of the tailings to limit the exposed area of the pile.

• A low hydraulic conductivity radon barrier to limit infiltration through the tailings.

• Abundant, naturally occuring, minerals in the foundation soils that will reduce or remove contaminants from the tailings leachate.

An absence of groundwater resources for at least 1760 feet below and peripheral to the disposal site.

Five constituents, arsenic (As), molybdenum (Mo), selenium (Se) uranium (U), and gross alpha activity, are expected to exceed the proposed EPA Maximum Concentration Limits (MCLs) at the edge of the disposal cell. Concentrations of these constituants are anticipated to be below the MCLs less than 5000 feet downgradient from the edge of the disposal cell. The remaining constituants are predicted to have concentrations less than the EPA MCLs at the edge of the disposal cell.

Supplemental standards will be requested for the Cheney Reservoir Site because the aquifer contains Class III groundwater. Class III groundwater is not a potential source of drinking water and is of limited beneficial use.

At the Cheney Reservoir site, the shallow aquifer would yield less than 150 gallons per day to a water well because of the very limited saturated thickness, limited areal extent, and relatively low permiability of the aquifer. A Class III designation is further justified by the fact that background water quality of the aquifer is not suitable for drinking water since background concentrations of selenium and gross alpha activity, at some locations, exceed EPA National Primary Drinking Water Quality Standards. Table 1 shows the EPA MCL's, background concentrations, and proposed supplemental standards for the five constituents of concern.

TABLE 1.—PROPOSED SUPPLEMENTAL STANDARDS FOR THE CHENEY RESERVOIR DISPOSAL SITE

Constituent	MCLs (mg/l)	Background (mg/l)	Proposed supplemental standards (mg/l)	Distance to meet MCL (ft)
AS	0.05	0.005	0.10	<5000
Mo	0.1	0.043	0.20	<5000
Se	0.01	0.01	0.25	<5000
U	0.044	0.017	0.066	<5000
Gross alpha activity	15 pCi/l	13.9 pCi/l	26 pCi/l	<5000

Given these desirable natural and design features, the proposed remedial action will comply with the EPA proposed groundwater standards at the Cheney Reservoir site.

Although EPA standards would also be met at the Two Roads disposal site, it is believed that relocation of the tailings to the Cheney Reservoir site would result in fewer potential impacts. Negative impacts to threatened and endangered species and the number of traffic accidents are expected to be higher at the Two Roads site. Therefore, relocation of tailings to the Cheney Reservoir site is considered the preferable alternative.

In comparison to relocation to the Cheney Reservoir site and as noted in the EIS, the no action alternative is unacceptable since, without remedial action, the DOE cannot ensure that the tailings would not continue to be dispersed by wind, water, or man. Radiation levels at and nearby the Grand Junction site also would continue to exceed the EPA standards and contamination of the environment would continue.

In comparing relocation to the Cheney Reservoir site with stabilization on site, the EIS indicates that relocation would result in an increase in short-term (i.e., during remedial action) environmental impacts beyond those identified for stabilization on the Grand Junction site. These impacts include health effects to the remedial action worker, particulate and combustion emissions, and vehicular traffic injuries.

However, also as indicated in the EIS, relocation will provide long-term environmental benefits in a cost-effective manner and assure total compliance with the EPA standards. For example, health effects over 1000 years will be much lower if tailings are disposed of at the Cheney Reservoir site compared to the no action alternative. In addition, the Grand Junction tailings are within the floodplain of the Colorado River; stabilization on site may require additional long-term site maintenance because of the tailings' proximity to the river.

Considerations in the Implementation of the Decision

The DOE is aware of the many concerns that have been expressed about the environmental and health impacts from the remedial action. In implementing its decision, the DOE will comply with applicable Federal reguations to avoid or minimize health and environmental impacts. The following monitoring and mitigation measures will be employed to avoid or minimize impacts during the remedial action:

Transportation—If truck transport is selected through a competitive bidding process, the selected transport route descried above (9th Street to 4th Avenue to U.S. Highway 50) will include a variety of safety mitigative measures to minimize undue traffic congestion, damage to road surfaces, and accidents and injuries. These measures include city street upgrades, air quality monitoring, construction of on/off ramps at key locations, implementation of noise management measures, establishment of specified intervals between trucks, relocation of the food distribution center, routine truck inspections, placement of additional traffic signs, regular safety training sessions for truck drivers formal emergency response procedures, and the restriction of hauling activities to daylight hours.

If the truck/train option is selected, other mitigative measures will be implemented including training classes, establishment of emergency response procedures, rail upgrades, highway widening to channel traffic at Whitewater and Cheney Reservoir, air quality monitoring, implementation of noise management procedures, routine safety inspections, and for the truck portion, hauling will be restricted to daylight hours with minimum specified intervals between trucks.

Radiation release—The release of contaminated particulates will be reduced by dampening contaminated materials with water and/or dust suppressants, by stopping contaminated material-handling operations during adverse wheather conditions, and by using trucks or railcars with tight-fitting seals, covers and/or chemical surfactants. Both processing and disposal sites will be shut down during the winter months.

The inadvertent off-site transportation of radioactively contaminated material will be prevented by the use of decontamination facilities (e.g., truck and/or railcar wash stations) to clean vehicles before leaving the sites. On the Grand Junction site, waste-water streams will be monitored and treated

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as necessary to meet permit requirements before off-site disposal; disturbed areas (Grand Junction and Cheney Reservoir sites) will be isolated from surface-water systems by erosion control methods.

Human exposure to residual radioactive materials will be reduced by restricting access, and by providing the monitoring and protective equipment and training programs necessary for use by remedial action workers. An extensive environmental monitoring program will be implemented during remedial action to monitor radon and particulates in air.

Air emissions—Construction areas and roads will be sprayed as required during the remedial action period with water and/or a dust suppressant. Contaminated material will be transported in covered vehicles. Tailings will not be transported, spread, or otherwise disrupted during adverse weather conditions in compliance with applicable regulations.

Water contamination—To minimize impact during a flood the excavation will be performed to minimize the exposure of contaminated material to surface water by the installation of protective dikes to isolate the material from surface-water systems. The construction of retention basins will permit the excavated area to be dewatered and will allow collection and evaporation of waste water resulting from washing vehicles and equipment. All effluent water will be monitored and evaporated or treated before release. The sediment from the retention basins will be buried in the disposal cell at the Cheney Reservior site.

Water use—Sufficient water for use at the Cheney Reservior site will not be available from an on-site well(s). Preliminary discharge test results from the exploratory production well indicate that 18 gallons per minute may be produced from the Entrada and Wingate Sandstone at a depth of 1521 to 1760 feet below land surface. The method of obtaining water for construction at the Cheney Reservoir site is a design decision that will be made by the Remedial Action Subcontractor. Water may be trucked to the site from a commercial water source or piped to the site from the nearby public water supply pipeline. Since the impacts analyses are conservative and represent a reasonable upper limit of their severity, additional water truck trips are within the range of impacts predicted in the EIS. Assuming that 50 percent of the water needs (36,274,000 gallons) would be delivered from Grand Junction to the Cheney Reservoir site (36 miles round trip) by water trucks (4000-gallon capacity), the total miles travelled (326,466 miles) is only 3.4 percent of the total vehicle miles travelled as estimated in the EIS. Since a commercial water source is available in Whitewater (14 miles round trip), it is clear that the analyses of the EIS are representative of the "all-water-truck scenario."

Cultural resources—As noted in the EIS, four lithic scatters that require additional data to determine their eligibility to the National Register of Historic Places (NRHP) are present in the former withdrawal area. In addition, portions of the amended withdrawal area and the access road have not yet been surveyed for cultural resources. Therefore, prior to remedial action, a Class III survey and additional testing of the lithic scatters will be conducted. If the resources are determined to be eligible to the NRHP and would be affected by the remedial action, a data recovery plan will be designed and implemented in consultation with the State Historic Preservation Office and the BLM.

Threatened and endangered species—Pursuant to section 7 of the Endangered Species Act and as indicated in the EIS, the DOE has prepared biological assessments for remedial actions at the Cheney Reservoir and Grand Junction sites. The U.S. Fish and Wildlife Service (USFWS) has issued a final biological opinion. Based on the analyses in the EIS and through consultation with the USFWS, the remaining issues of concern are the low potential that the black-footed ferret occurs on the Cheney Reservoir site and potential impacts to the Colorado squawfish. In response to these concerns, the DOE established an interagency agreement with the USFWS to conduct spotlight surveys during the summer of 1987, prior to remedial action, to ascertain the presence of the ferret. The surveys found no ferrets in the area of interest. In addition, the DOE will not work in the Colorado River from July 1 through September 30, and will avoid use of Colorado River water at the Grand Junction site.

Floodplains/wetlands—As shown in the floodplain and wetland assessment, limited remedial actions would take place within the 100-year floodplain of the Colorado River and in the wetlands along the river. Pursuant to Executive Orders 11988 and 11990 , and 10 CFR Part 1022, the DOE published a Statement of Findings in the final EIS (Appendix G). Remedial actions will be conducted in compliance with applicable permits and will incorporate mitigative measures to reduce impacts, including excavation during low flow, rapid initiation of revegetation efforts, use of sediment control techniques, and others.

Details of the monitoring plans and mitigative measures specified above will be contained in several documents scheduled to be prepared prior to remedial action. These documents include the Remedial Action Plan (containing the final design and specifications), the UMTRA Project Environmental, Health, and Safety Plan, and other measures that the DOE and the state of Colorado deem appropriate pursuant to the Cooperative Agreement.

Conclusion

After consideration of all reasonable project alternatives, the DOE has decided to relocate the residual radioactive materials from the Grand Junction site to the Cheney Reservoir site for long-term stabilization and control in compliance with the EPA standards.

Issued in Washington, DC, on August 4, 1988.

Theodore J. Garrish,

Assistant Secretary for Nuclear Energy.

[FR Doc. 88-19042 Filed 8-30-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Proposed Establishment of a Federally Funded Research and Development Center; Inhalation Toxicology Research Institute, Albuquerque, NM

AGENCY: Department of Energy.

ACTION: Notice No. 2 of Proposed Establishment of a Federally Funded Research and Development Center (FFRDC).

SUMMARY: In accordance with paragraph 6.b.(2) of Office of Federal Procurement Policy, Policy Letter No. 84-1, the Department of Energy (DOE) announces its intention to establish the Inhalation Toxicology Research Institute (ITRI) located in Albuquerque, New Mexico, as an FFRDC. Early programs at ITRI concentrated on the study of radionuclide toxicity problems associated with the development, manufacture, testing and potential use of nuclear weapons, particularly the study of inhaled fission products. Today, the programs at ITRI include: (1) The physical and chemical characterization of airborne toxicants; (2) the disposition of inhaled materials within the body; (3) development of improved understanding of dose-response relationships for inhaled radionuclides; (4) studies of dose-response relationships for inhaled chemical toxicants; (5) studies on human health risks from combined exposure to

radiation sources and industrial chemicals; and (6) studies on the biological factors that influence responses to inhaled materials.

The nature of the research requires specialized facilities to conduct the integrated program of inhalation toxicology research needed to examine these issues. The ITRI facilities include three major inhalation exposure laboratory suites designed for the safe use and control of highly radioactive or potentially carcinogenic materials as well as specialized aerosol research laboratories. ITRI also has modern facilities for the care and housing of 10,000 contaminated and control animals, hospital facilities for specialized medical evaluation and treatment of laboratory animals and extensive pathology facilities. Based upon the long-term, multidisciplinary research programs of this laboratory which are supportive of DOE's mission, the Department has determined that ITRI should be designated as an FFRDC.

DATE: Any comments on this proposed action must be received on or before September 30, 1988.

ADDRESS: Comments should be addressed to Kristine Forsberg, Deputy Director, Acquisition and Assistance Management, Office of Energy Research, ER–64, U.S. Department of Energy, Washington, D.C. 20545.

Issued in Washington, DC, on August 24, 1988.

David Nelson,

Executive Director, Office of Energy Research.

[FR Doc. 88–19843 Filed 8–30–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP88–141–003]

East Tennessee Natural Gas Co.; Filing

August 26, 1988.

Take notice that on August 17, 1988, East Tennessee Natural Gas Company (East Tennessee) filed certain tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1988.

East Tennessee states that the purpose of this filing changes the effective date of the tariff sheets from July 1, 1988 to June 1, 1988 and requests that this filing replace the filing previously made on July 29, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before September 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19799 Filed 8–30–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP 88–232–000]

Phillips Gas Pipeline Co.; Proposed Changes in Rates and Charges

August 25, 1988.

Take notice that on August 18, 1988, Phillips Gas Pipeline Company ("PGPL") filed, pursuant to section 4 of the Natural Gas Act and § 154.63 of the Federal Energy Regulatory Commission's ("Commission") regulations, a Notice of Proposed Changes in Rates and Charges, a Third Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1 and supporting documentation. The proposed effective date of the revised tariff sheet is the above stated date of filing.

PGPL states that the sole purpose of this filing is to decrease PGPL's firm and interruptible transportation rates to reflect a change in its depreciation and amortization rate from four percent (4%) per year to two and one-half percent (2.5%) per year. PGPL states that this decrease is justified by the unique nature of its pipeline and by the fact that due to market conditions its transportation services rates must be discounted substantially below present maximum rates. PGPL further requests that the change in depreciation and amortization be allowed to become effective as of January 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedue (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–19800 Filed 8–30–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3438–3]

California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity for public hearing.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has amended its emission standards and test procedures to establish certification procedures for 1975 and later model year used (two model years old or older) imported nonconforming passenger cars, light-duty trucks and medium-duty vehicles (hereinafter "vehicles") which have been modified to conform to U.S. Federal emission standards. California has requested that EPA grant a waiver of Federal preemption for these amendments pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). This notice announces that EPA has tentatively scheduled a public hearing for September 30, 1988, to consider CARB's request and to hear comments from interested parties regarding CARB's amendments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to presenting written comments, must notify EPA by September 20, 1988. If no party informs EPA that it wishes to testify on these certification procedures for used modified imported vehicles, no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

It should be noted that these amendments are in addition to California's certification procedures for *new* modified imported vehicles (less than two years old) for which a waiver has already been granted (See Docket EN–86–15). Therefore, parties wishing to comment should confine the scope of their comments to issues pertaining to

the certification procedures for *used* modified imported vehicles.

DATES: EPA will hold a public hearing on September 30, 1988, beginning at 9:00 a.m., if any party notifies EPA by September 20, 1988, that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's request by October 31, 1988.

ADDRESSES: EPA will hold the public hearing announced in this notice at: U.S. Environmental Protection Agency, Regional Office (Region IX), 215 Fremont Street, San Francisco, California. For the name of the hearing room in the Regional Office contact Ms. Joan Baxter, Attorney/Advisor, U.S. Environmental Protection Agency, (EN–340–F), 401 M Street SW., Washington, DC 20460, (202) 382–2522. Parties wishing to present oral testimony at the public hearing should notify in writing Charles N. Freed, Director, Manufacturers Operations Division at the same address. Any party may also submit written comments regarding the waiver request in duplicate to U.S. Environmental Protection Agency, Central Docket Section, to the attention of Docket EN–88–08, LE–131, Room 4, South Conference Center, Waterside Mall, 401 M Street SW., Washington, DC 20460. Copies of material relevant to the waiver request (Docket EN–88–08) will be available for public inspection during normal working hours (8:00 a.m. to 3:30 p.m., Monday through Friday) at the same docket address noted above.

FOR FURTHER INFORMATION CONTACT: Joan S. Baxter, Attorney/Advisor, Manufacturer Operations Division (EN–340–F), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 382–2522.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part: "No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions as condition precedent * * * to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the State determines that [it] * * * standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such * * * standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanuing enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has received a waiver of the application of the prohibitions of section 209(a) for its standards and enrforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class vehicles without the necessity of receiving a further waiver of Federal preemption.

By letter dated August 5, 1987, CARB submitted to EPA a request for waiver of Federal preemption for certain amendments to its emission standards and test procedures. These amendments provide for the certification of used (two model years old or older) modified imported vehicles. The amendments establish a new program with two distinct elements: (1) Certification requirements and procedures for used imported vehicles; and (2) licensing and enforcement provisions applicable to vehicle emission test laboratories.

The certification procedures provide that only modifiers registered as California automotive repair dealers may apply to licensed laboratories for certification of these vehicles. Licensed laboratories will issue Certificates of Conformance to owners of vehicles meeting the certification requirements. The licensed laboratory will be responsible for determining whether the vehicle meets the emission standards, complies with fill pipe requirements, has been furnished with an owner's manual containing maintenance instructions for the newly modified vehicles, complies with California's tune-up label specifications and has tamper-resistant idle mixture adjustments. The certificate, which will contain information about applicable standards, test results and the modifier, will then be used by the vehicle owner to register the vehicle.

The emission standards applicable to used modifier-certified motor vehicles will be the California new vehicle exhaust and evaporative emission standards for the model year of the vehicle. No deterioration factor will be applied and the vehicle will have to meet the standards regardless of mileage.

Under CARB's licensing requirements, laboratories are required to:

1. Submit to random inspections of the test facility and any vehicle on the premises;
2. Keep records for both testing and quality control;
3. Agree to perform correlation testing at the CARB's request; and
4. Agree to hold each vehicle for up to five calendar days for inspection and testing.

In addition, there are provisions for suspending or revoking licenses, confirmatory testing by the CARB and collection of fees for issuing certificates and licensing.

California has stated in its August 5, 1987, letter that it has determined that its amended standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards and that this determination is not arbitrary or capricious. Further, California states that it continues to need its standards to meet compelling and extraordinary conditions. Finally, California states that these amendments are not inconsistent with section 202(a) of the Act, since the procedures are technologically feasible given the available lead time and they do not impose certification requirements such that manufacturers would be unable to meet the two sets of requirements with the same test vehicle.

California's request will be considered according to the requirements for a full waiver determination, and therefore an opportunity for a hearing is being provided to consider comments from interested parties. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether or not California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether or not California's needs its standards to meet compelling and extraordinary conditions; and

(3) Whether or not California standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information concerning the amendments at issue. Any party desiring to make an oral statement should file ten (10) copies of its proposed testimony and other relevant

material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than September 20, 1988. In addition, the party should submit 25 copies, if feasible, of the planned statement to the Presiding Officer at the time of the hearing.

If EPA does hold the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. EPA will base its determination with regard to CARB's request on the record of the public hearing, if any, and on any other relevant written submissions and other pertinent information. This information will be available for public inspection at the EPA Central Docket Section.

Dated: August 24, 1988.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-19797 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240082; FRL-3435]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 26 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Owen F. Beeder, Registration Division (TS-766C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. Office location and telephone number: Rm. 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7893.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in May and June of 1988. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-used pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AZ 88 0003. FMC Corp. Agricultural Chemical Group. Registration is for Furadan 4F Insecticide-Nematicide to be used on grain sorghum to control chinch bugs. June 10, 1988.

Arizona

EPA SLN No. AZ 88 0010. Rohm and Haas Co. Registration is for Kelthane 35 Agricultural Miticide to be used on cantaloupes, cucumbers, melons, pumpkins, squash and watermelons. may 17, 1988.

EPA SLN No. AZ 88 0011. Gowan Co. Registration is for Gowan Methyl Parathion 7.5 to be used on Bermuda grass seed crop to control thrips and flugorids. May 19, 1988.

EPA SLN No. AZ 88 0012. Merrill Farms dba Yuma Farming Co. Registration is for Prokil Ethyl-Methyl Parathion 6-3E to be used on Chinese cabbage to control aphids. June 21, 1988.

EPA SLN No. AZ 88 0013. Insecta Paint, Inc. Registration is for Insecta to be used on sewer manholes to control cockroaches and spiders. June 1, 1988.

EPA SLN No. AZ 88 0014. Uniroyal Chemcial Co., Inc. Registration is for Dimlin-2F to be used on cotton to control boll weevils. June 3, 1988.

EPA SLN No. AZ 88 0015. Merrill Farms dba Yuma Farming Co. Registration is for Manzate D to be used on Chinese cabbage to control downy mildew. June 21, 1988.

EPA SLN No. AZ 88 0016. Merrill Farms dba Yuma Farming Co. Registration is for Prokil Methyl Parathion 5 to be used on Chinese cabbage to control aphids. June 21, 1988.

EPA SLN No. AZ 88 0017. Merrill Farms dba Yuma Farming Co. Registration is for D-Z-H Ciba-Geigy Diazinon 50W to be used on Chinese cabbage to control aphids. June 21, 1988.

California

EPA SLN No. CA 88 0012. Uniroyal Chemical Co., Inc. Registration is for Omite-6 to be used on pear and apple orchard floors to control spider mites and weeds. June 8, 1988.

Connecticut

EPA SLN No. CT 88 0006. UAP Special Products. Registration is for Fenvalerate Concentrate 2357 to be used on *Taxus* species to control adult black vine weevils. June 2, 1988.

EPA SLN No. CT 88 00007. CT Agricultural Experiment Station. Registration is for Menthol to be used on honey bee colonies to to control tracheal mites. June 22, 1988.

Georgia

EPA SLN No. GA 88 0004. Chevron Chemical Co. Registration is for Orthene 75S Soluble Powder to be used on southern pine seed orchards to control thrips, coneworms, coneborers, and seedbugs. June 17, 1988.

Florida

EPA SLN No. FL 88 0005. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Lannate Insecticide to be used on Chinese broccoli to control cabbage loopers, imported cabbageworms, and diamond back moths. June 15, 1988.

Idaho

EPA SLN No. ID 88 0005. BASF Corp. Chemicals Div. Registration is for Poast Herbicide to be used on selective broad spectrum for postemergence control of certain grasses. June 10, 1988.

Indiana

EPA SLN No. IN 88 0001. Dow Chemical Co., Inc. Registration is for Dow Antimicrobial to be used on publicly owned treatment work to control bacteria, fecal coliform bacteria, fungi, and yeasts. May 15, 1988.

EPA SLN No. IN 88 0002. Pennwalt Corp. Registration is for Penncap-M Microencapsulated Insecticide to be used on field corn to control stink bugs. April 20, 1988.

EPA SLN No. IN 88 0003. Uniroyal Chemical Co., Inc. Registration is for Omite 6E to be used on apples to control mites. May 27, 1988.

Maine

EPA SLN No. ME 88 0002. Sandoz Corp Protection Co. Registration is for Trident Biological Insecticide to be used on potatoes to control Colorado potato beetles. June 15, 1988.

Michigan

EPA SLN No. MI 88 0004. Gustafson, Inc. Registration is for Gustafson Thiram 50 WP Dyed to be used on onion seed to control smut. May 17, 1988.

EPA SLN No. MI 88 0005. Gustafson, Inc. Registration is for Pennwalt Topsin M 70% WP to be used on dry edible beans to control anthracnose. May 17, 1988.

EPA SLN No. MI 88 0006. Michigan Dept. of Agriculture, Pesticide and Plant Pest Management Div. Registration is for Menthol to be used on honey bee colonies to control tracheal mites. May 23, 1988.

EPA SLN No. MI 88 0007. Gustafson Inc. Registration is for Gustafson Thiram 50 WP Dyed to be used on onion seed to control smut. May 17, 1988.

Minnesota

EPA SLN No. MN 88 0001. Metropolitan Mosquito Control District, St. Paul. Registration is for Zoecon Altosid Liquid Larvicide Mosquito Growth Regulator to be used on field sites as larvacide growth regulator for control of mosquitos. June 30, 1988.

Mississippi

EPA SLN No. MS 88 0004. Mobay Corp. Agricultural Chemicals Div. Registration is for Guthion 35% Wettable Powder to be used on southern pine orchards to control coneworms and seedworms. April 26, 1988.

EPA SLN No. MS 88 0005. Ciba-Geigy Corp., Agricultural Division. Registration is for D–Z–N Diazinon 50W Insecticide to be used on nursery stock, including nonbearing fruits and nuts, to control fire ants. May 23, 1988.

EPA SLN No. MS 88 0006. Ciba-Geigy Corp., Agricultural Division. Registration is for D–Z–N Diazinon AG500 to be used on nursery stock to control imported fire ants. May 23, 1988.

Montana

EPA SLN No. MT 88 0004. Rohm and Haas Co. Registration is for Kerb 50W Herbicide to be used on seeded lettuce for preemergence control of certain grasses and annual broadleaf weeds. April 18, 1988.

Nebraska

EPA SLN No. NE 88 0002. Elanco Products Co. Registration is for Treflan EC, Treflan 5, and Treflan M.T.F. to be used on crambe (for seed production only) to control weeds. April 26, 1988.

EPA SLN No. NE 88 0004. Mobay Corp. Agricultural Chemicals Div. Registration is for Furdan 4F to be used on grain sorghum to control chinchbugs and greenbugs. June 16, 1988.

Nevada

EPA SLN No. NV 88 0002. Sandoz Corp Protection Co. Registration is for Spur 22 EW Insecticide to be used on alfalfa to control aphids and lygus. April 26, 1988.

EPA SLN No. NV 88 0003. Fairfield American Corp. Registration is for Permanone 40% EC to be used on rodent nesting and bedding materials to control fleas and other ectoparasites associated with squirrels and mice. May 13, 1988.

EPA SLN No. NV 88 0004. Fairfield American Corp. Registration is for Pyrenone (4–0.05) and Permanone 0.5 Dust to be used on rodent burrow openings to control fleas and other ectoparasites associated with squirrels and mice. May 16, 1988.

EPA SLN No. NV 88 0005. Fairfield American Corp. Registration is for Permanone Pyrenone Liquid Dust to be used on rodent burrow openings to control fleas and other ectoparasites associated with squirrels and mice. May 16, 1988.

EPA SLN No. NV 88 0006. An-Tech International Livestock Products, Inc. Registration is for Turbo Insecticidal Ear Tags to be used on beef and nonlactating dairy cattle to control horn flies. May 16, 1988.

New Jersey

EPA SLN No. NJ 88 0001. Dow Chemical Co. Registration is for Lorsban 4E Insecticide to be used on cranberries to control various insects. April 28, 1988.

New Mexico

EPA SLN No. NM 88 0002. U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service. Registration is for Compound DRC–1339 98% Concentrate 10% Solution to be used on livestock and crops to control ravens. April 19, 1988.

EPA SLN No. NM 88 0003. Fairfield American Corp. Registration is for Permanone Pyrenone Liquid Dust to be used on rodent habitats to control fleas. May 9, 1988.

EPA SLN No. NM 88 0004. Fairfield American Corp. Registration is for Pyrenone (4–0.05) Permanone 0.5 Dust to be used on rodent burrow openings to control fleas and other ectoparasites associated with squirrels, chipmunks, rats, and mice. May 9, 1988.

EPA SLN No. NM 88 0005. Fairfield American Corp. Registration is for Permanone Pyrenone Liquid Dust to be used on insect-bait tubes to control fleas and other ectoparasites associated with squirrels, chipmunk, rats, and mice. May 9, 1988.

North Carolina

EPA SLN No. NC 88 0002. Griffin Corp. Registration is for Linex 4L to be used on clary sage to control chickweed. April 6, 1988.

EPA SLN No. NC 88 0003. Chevron Chemical Co. Registration is for Cobra Herbicide to be used on soybeans to control Witchweed. April 6, 1988.

EPA SLN No. NC 88 0006. Rhone-Poulenc Ag. Co. Registration is for Larvin (R) Brand 3.2 Thiodicarb Insecticide to be used on soybeans to control several pests. June 15, 1988.

Ohio

EPA SLN No. OH 88 0002. ICI Americas, Inc., Agricultural Products. Registration is for Gramoxone Super Herbicide to be used on lettuce to control annual broadleaf weeds and grasses. April 9, 1988.

Oklahoma

EPA SLN No. OK 88 0002. Mobay Corp. Agricultural Chem. Div. Registration is for DI-Syston 8 to be used on wheat to control aphids and mites. May 16, 1988.

EPA SLN No. OK 88 0003. FMC Corp. Registration is for Command 4EC Herbicide to be used on soybeans to control various weeds and grasses. May 25, 1988.

Oregon

EPA SLN No. 88 0004. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Vendex 4L Mitcide to be used on raspberries to control two-spotted spider mites. May 12, 1988.

EPA SLN No. OR 88 0005. E.I. du Pont de Nemours & Co., Inc. Registration is for for Du Pont Vendex 50 WP Miticide to be used on raspberries to control two-spotted spider mites. May 12, 1988.

EPA SLN No. OR 88 0006. Platte Chemical Co. Registration is for Clean Crop Dimethoate 267 EC to be used on cherries to control western cherryfruit flies. April 28, 1988.

EPA SLN No. OR 88 0008. Uniroyal Chemical Co., Inc. Registration is for Omite–6E to be used under pear trees and apple trees to control mites. May 31, 1988.

EPA SLN No. OR 88 0009. Prentiss Drug & Chemical Co., Inc. Registration is for Prentox Diazinon AG–500 Insecticide to be used on grass seed fields to control cranberry girdler. June 22, 1988.

Pennsylvania

EPA SLN No. PA 88 0002. Sandoz Crop Protection Co. Registration is for Trident Biological Insecticide to be used on potatoes to control Colorado potato beetles. May 23, 1988.

EPA SLN No. PA 88 0003. Uniroyal Chemical Co., Inc. Registration is for

Omite-6E to be used on apples to control mites. June 8, 1988.

Tennessee

EPA SLN No. TN 88 0004. Chevron Chemical Co. Registration is for Ortho Monitor 4 Spray to be used on cotton to control aphids, thrips, fleahoppers, and whiteflies. April 26, 1988.

Virginia

EPA SLN No. VA 88 0003. Uniroyal Chemical Co., Inc. Registration is for Omite 6E to be used on apples to control European red and two-spotted spider mites. May 25, 1988.

Washington

EPA SLN No. WA 88 0011. Sandoz Crop Protection Corp. Registration is for Spur 22 EW Insecticide to be used on alfalfa grown for seed only to control several pests. June 7, 1988.

EPA SLN No. WA 88 0012. FMC Corp. Agricultural Chemical Group. Registration is for Thiodia 3 EC to be used on seeded alfalfa to control spotted alfalfa aphids. June 21, 1988.

Wisconsin

EPA SLN No. WI 88 0003. Platte Chemical Co. Registration is for Clean Crop Diazionon G-14 to be used as soil application to control several worms. May 16, 1988.

EPA SLN No. WI 88 0004. Hopkins Agricultural Chemical Co. Registration is for Diazinon 14G Granular Insecticide to be used on cranberries to control cranberry girders (*chrysotecuchia topiaria*). June 14, 1988.

EPA SLN No. WI 88 0005. Platte Chemical Co. Registration is for Diazinon G-14 to be used on cranberries to control cranberry girdler. June 6, 1988.

EPA SLN No. WI 88 0006. Howard Johnson's Enterprises, Inc. Registration is for Diazinon 14G Granules to be used on cranberries to control cranberry girdler. June 6, 1988.

EPA SLN No. WI 88 0007. Pratt-Garbiel Div., Miller Chemical & Fertilizer Corp. Registration is for 14% Diazinon Granular to be used on cranberries to control cranberry girdlers. June 24, 1988.

EPA SLN No. WI 88 0008. Fairfield American Corp. Registration is for Permanone Tick Repellent to be used as clothing treatment for personal protection to control ticks, chiggers, and mosquitoes. May 23, 1988.

EPA SLN No. WI 88 0010. Platte Chemical Co. Registration is for Clean Corp Malathion 57 EC to be used on alfalfa and *plagiognathus* to control aphids, plant bugs, and other pests. June 27, 1988.

(Sec. 24 as amended, 92 Stat. 835 (7 U.S.C. 136).)

Dated August 15, 1988.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 88-19299 Filed 8-30-88 8:45 am]

BILLING CODE 6560-50-M

[OPP-42028E; FRL-3437-3]

Delaware State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of March 2, 1988 (53 FR 6691), the Agency announced its intention to approve proposed amendments to Delaware's State Plan for Certification of Applicators of Pesticides Classified for Restricted Use. The comment period for the proposed amendments ended April 1, 1988; no comments were received. This notice announces the completion of the notice and comment period for Delaware's proposed amendments. Upon passage of the amendments by the State legislature, a notice will be published in the **Federal Register** announcing final approval of the amendments by EPA. Until the notice of final approval is published in the **Federal Register** the existing plan will remain in effect.

ADDRESSES: Copies of the Delaware State Plan and the proposed amendments are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.
2. Pesticide Compliance Supervisor, 2320 S. DuPont Highway, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).

SUPPLEMENTARY INFORMATION: The Delaware State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was approved on January 31, 1978, and notice of the approval appeared in the **Federal Register** of February 14, 1978 (43 FR 6320). Delaware requested to amend its Plan by establishing additional requirements for the training and recertification of pesticide applicators.

In addition, Delaware proposed the subdivision of the category Industrial, Institutional, Structural, and Health Related Pest Control to include the sub-categories "Fumigation," "Wood Preservative Treatments," and "Miscellaneous Pest Control."

The Agency published a notice of intent to approve these proposed amendments; no comments were received. The issue has been referred back to the State for legislative action. Upon passage of the revised plan by the State legislature, EPA will issue a notice approving the revision of the plan.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88-19793 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42027E; FRL-3437-7]

District of Columbia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amendments to plan.

SUMMARY: In the **Federal Register** of March 2, 1988 (53 FR 6691), the Agency announced its intention to approve certain amendments to the District of Columbia's State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended April 1, 1988; no comments were received. This notice announces the Agency's approval of the District of Columbia's proposed amendments.

DATE: This approval is effective August 31, 1988.

ADDRESSES: Copies of the revised District of Columbia State Plan are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.
2. Department of Consumer & Regulatory Affairs, Pesticides and Hazardous Waste Management Branch, Pesticides Section, 5010 Overlook Ave. SW., Suite 114, Washington, DC 20032-5397.

FOR FURTHER INFORMATION CONTACT: Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).

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SUPPLEMENTARY INFORMATION: The District of Columbia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved November 24, 1978, and notice of the approval appeared in the Federal Register of December 8, 1978 (43 FR 57656). The District of Columbia requested to amend its Plan by updating the requirements for pesticide applicator certification and recertification and updating the penalties for civil infractions.

In addition, the District of Columbia proposed to further subdivide Category 3 to include a new subcategory, "Interior Plantscapes."

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88-19791 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42023D; FRL-3437-6]

Maryland State Plan for Certification of Pesticide Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amendments to plan.

SUMMARY: In the Federal Register of March 2, 1988 (53 FR 6692), the Agency announced its intention to approve certain amendments to Maryland's State Plan for Certification of Pesticide Applicators. The comment period for the proposed amendments ended April 1, 1988; no comments were received. Accordingly, this notice announces the Agency's approval of Maryland's proposed amendments.

DATE: This approval is effective August 31, 1988.

ADDRESSES: Copies of the revised Maryland State Plan are available for review at the following location.

1. Toxics and Pesticide Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19197.
2. Pesticide Applicators Law Section, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).

SUPPLEMENTARY INFORMATION: The Maryland State Plan for Certification of Pesticide Applicators was approved April 25, 1977, and notice of the approval appeared in the Federal Register of May 18, 1977 (42 FR 25521). Maryland requested to amend its plan by updating the requirements for pesticide applicator certification and recertification. In addition, Maryland proposed the addition of two new commercial applicator categories, Category 11, Miscellaneous (Wood Treatment) and Category 12, Consulting.

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88-19785 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42011E; FRL-3437-8]

Pennsylvania State Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the Federal Register of March 2, 1988 (53 FR 6692), the Agency announced its intent to approve certain proposed amendment to Pennsylvania's State Plan for Certification of Pesticide Applicators. The comment period for the proposed amendments ended on April 1, 1988; no comments were received. This notice announces completion of the notice and comment period for Pennsylvania's proposed amendments. Upon passage of the amendments by the State legislature, a notice will be published in the Federal Register announcing final approval of the amendments by EPA. Until the notice of final approval is published in the Federal Register the existing plan will remain in effect.

ADDRESSES: Copies of the Pennsylvania State Plan and the proposed amendments are available for review at the following locations.

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 17120.
2. Pesticide Operations Coordinator, Bureau of Plant Industry, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17120.

FOR FURTHER INFORMATION CONTACT: Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).

SUPPLEMENTARY INFORMATION: The Pennsylvania State Plan for Certification of Pesticide Applicators was approved August 8, 1977, and notice of the approval appeared in the Federal Register of August 19, 1977 (42 FR 410907). Pennsylvania requested to amend its Plan by establishing additional requirements for the certification and recertification of pesticide applicators.

In addition, Pennsylvania proposed the addition of several new commercial categories including wood preservation technology, commodity fumigation, soil fumigation, interior plantscapes, and park pest control, with specific update training requirements for each. Prior notification will be required of commercial applicators using restricted use pesticides as well.

The Agency published a notice of intent to approve these proposed amendments; no comments were received. The issue has been referred back to the State for legislative action. Upon passage of the revised plan by the State legislature, EPA will issue a notice approving the revision of the plan.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88-19786 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42017C; FRL-3437-5]

Virginia State Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amendments to plan.

SUMMARY: In the Federal Register of March 2, 1988 (53 FR 6692), the Agency announced its intent to approve certain amendments to Virginia's State Plan for Certification of Pesticide Applicators. The comment period for the proposed amendments ended April 1, 1988; no comments were received. Accordingly, this notice announces the Agency's approval of Virginia's proposed amendments.

DATE: This approval is effective August 31, 1988.

ADDRESSES: Copies of the revised Virginia State Plan are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection

Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.
2. Virginia Department of Agriculture and Consumer Services, Division of PAIR, Room 403, or Pesticide, Paint, and Hazardous Substances Section, P.O. Box 1163, Room 403, Richmond, VA 23209.

FOR FURTHER INFORMATION CONTACT: Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215–597–8067).

SUPPLEMENTARY INFORMATION: The Virginia State Plan for Certification of Pesticide Applicators was approved on June 14, 1976. Virginia requested to amend its Plan by updating the requirements for pesticide applicator certification and recertification and adding reciprocal certification for government employees.

In addition, Virginia proposed the further subdivision of commercial category 7, Industrial, Institutional, Structural, and Health Related Pest Control to include sub-category 7A, "General Pest Control"; sub-category 7B, "Wood Infesting Organisms"; sub-category 7B–1, "Wood Preservation and Wood Product Treatment"; sub-category 7C, "Food Processing Pest Control" and sub-category 7D, "Fumigation."

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88–19787 Filed 8–30–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–42006E; FRL–3437–4]

West Virginia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amendments to plan.

SUMMARY: In the **Federal Register** of March 2, 1988 (53 FR 6693), the Agency announced its intent to approve certain amendments to West Virginia's State Plan for certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended April 1, 1988; no comments were received. Accordingly this notice announces the Agency's approval of West Virginia's proposed amendments.

DATE: This approval is effective August 31, 1988.

ADDRESSES: Copies of the revised West Virginia State Plan are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.
2. Plant West Division, Capitol Building, West Virginia Department of Agriculture, Charleston, WV 25305

FOR FURTHER INFORMATION CONTACT: Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215–597–8067).

SUPPLEMENTARY INFORMATION: The West Virginia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved May 26, 1976, and notice of the approval was published in the **Federal Register** of June 24, 1976 (41 FR 26068). West Virginia requested to amend its Plan by updating the requirements for pesticide applicator certification and recertification and updating the citations concerning civil penalties.

In addition, West Virginia proposed the further subdivision of commercial Category 8, Industrial, Institutional, Structural, and Health Related Pest Control, to include sub-category 8B–WP, "Wood Preservation Only"; sub-category 8D, "Industrial, Institutional Vegetation Management"; and sub-category 8E, "Health Related Pest Control."

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88–19792 Filed 8–30–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30000/43B; FRL–3438–1]

Captafol; Decision to Terminate Special Review for Pesticide Products Containing Captafol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; decision to terminate special review.

SUMMARY: On July 22, 1987, EPA issued a Proposed Decision to Terminate a Special Review for Pesticide Products Containing Captafol. This action was based on the fact that the Agency had issued cancellation letters to all registrants of captafol products on May 1, 1987, in response to registrant requests. All cancellations were effective April 30, 1987. Since there are no remaining registrations for captafol, the Agency has determined that continuing the Special Review is unnecessary. With this Notice, the agency is publicly announcing its decision to terminate the Special Review of captafol.

EFFECTIVE DATE: August 31, 1988.

FOR FURTHER INFORMATION CONTACT:

By Mail: Karis L. North, Special Review Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office Location and Phone Number: Room 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–7400.

SUPPLEMENTARY INFORMATION:

Unit I. Introduction and Background

Captafol was registered as a fungicide for the control of foliar and fruit diseases of certain fruits and vegetables and peanuts. It was also registered for application to seeds of corn, cotton, peanuts, rice and sorghum; to pineapple planting stock as a preplant treatment; and to wood as a preservative treatment.

Captafol was manufactured as a 97 percent technical solely by Chevron Chemical Company. Captafol registrations are also held by the University of Hawaii and Osmose Wood Preserving, Inc., as formulators of the product. Captafol was an ingredient in 16 products registered under section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended September 30, 1978. It was also used in 19 products registered under section 24(C), and in intrastate product pending registrations.

On January 9, 1985, the Agency issued a notice in the **Federal Register** (50 FR 1103) initiating a Special Review of captafol pursuant to 40 CFR 154.7(a), based on Agency concerns over data showing that captafol causes oncogenic effects in laboratory animals and is highly toxic to fish. Following initiation of the Special Review, the three registrants of Captafol products, Chevron Chemical Company, Osmose Wood Preserving, Inc., and the University of Hawaii requested voluntary cancellation. In response to these requests for voluntary cancellation of captafol product registrations, the Agency, on May 1, 1987, issued cancellation letters to each of the registrants, which outlined the terms of

the cancellation. Therefore, as of April 30, 1987, the effective date of the cancellation, there was no longer any active United States pesticide registrations for captafol.

Since there are no remaining registrations for products containing captafol, on July 22, 1987, the Agency issued a Proposed Decision to Terminate a Special Review for Pesticide Products Containing Captafol. The 30 day comment period provided for in that notice has expired. One set of comments in response to the Notice were submitted to the Agency; those comments are addressed herein.

Unit II. Comments, Agency Response to Comments and Agency Decision

The only set of comments received in response to the notice of intent to terminate the Special Review of pesticide products containing captafol was submitted by Chevron Chemical Company, the sole United States registrant of technical captafol.

Chevron Comment: "The first statement of concern appears under Part III C, *Rick Reduction Measures and Regulatory Status.* The error is in reference to 'the World Health Organization, which banned the use of captafol on all food crops.' WHO is not a regulatory agency, therefore it does not have the authority to ban products. It is true that in September, 1985 the Joint FAO/WHO Meeting on Pesticide Residues (JMPR), acting under the auspices of WHO, withdrew the captafol Acceptable Daily intake (ADI) and recommended that captafol not be used where residues in food could arise but even this action was advisory only."

EPA Response: The Agency agrees that WHO is not a regulatory organization. However, concern about the carcinogenicity of captafol influenced the JMPR, acting under the auspices of WHO, to recommend withdrawal of the ADI for captafol. Consequently, the use of captafol in international markets has been severely limited.

Chevron Comments: "The second statement appears under Part V, *Agency's Decision Regarding Special Review.* The error is in the sentence which ends 'the sale of existing stocks of captafol in the United States is allowed only until December 31, 1987.' Please refer to the Agency's May 1, 1987 response to Chevron's request for voluntary cancellation. The letter states that the registrant may not sell captafol after December 31, 1987, but that 'Other persons may continue to distribute and sell and use existing stocks of these product(s) until the supply is exhausted.'"

EPA Response: The Agency agrees with the comment. The existing stocks provision was specified in the Agency's letter of May 1, 1987 and as stated in Chevron's comment is correct. Identical letters were sent to each captafol registrant.

The Agency has concluded that neither of these comments have a bearing on whether to terminate the Special Review. Therefore, the Agency has not altered its view regarding the termination of the Special Review.

Decision: Accordingly, this notice is being issued to publicly announce the Agency's decision to terminate the Special Review of pesticide products containing captafol. The decision is effective upon the date of signature of this Notice.

Unit III. Availability of Public Docket

The agency has established a public docket (OPP–30000/43B) for the captafol Special Review. This public docket will include this Notice; any other Notices pertinent to the captafol Special Review and the Agency's decision regarding the termination of the Special Review of captafol; non-CBI documents and copies of written comments or other materials submitted to the Agency in response to the initiation of the Special Review and the notice of intent to terminate the Special Review; and a current index of materials in the public docket.

Dated: August 22, 1988.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–19794 Filed 8–30–88; 8:45 am]

BILLING CODE 6560–50–M

[PP 7G3547/T568; FRL–3439–1]

Amitraz; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the insecticide/miticide amitraz and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Nor-Am Chemical Co.

DATE: These temporary tolerances expire June 21, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–2386.

SUPPLEMENTARY INFORMATION: Nor-Am Chemical Company, P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, has requested in pesticide petition (PP) 7G3547 the establishment of temporary tolerances for the combined residues of the insecticide/miticide amitraz N′-(2,4-dimethylphenyl)-N-[[(2,4-dimethylphenyl)imino]methyl]-N-methylmethanimidamide and its metabolites containing the 2,4-dimethylaniline moicty in or on the raw agricultural commodities cottonseed at 0.3 parts per million (ppm), in eggs at 0.01 ppm, and in the meat, fat, and meat by-products of poultry, goats, horses, and sheep at 0.01 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provision of the experimental use permit 45639–EUP–39, which is being used under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined the establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. That total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 21, 1989. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such

revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 23, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–19798 Filed 8–30–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44515; FRL–3437–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,2,3–trichlorobenzene (CAS No. 87–61–6), 1,2,4–trichlorobenzene (CAS No. 120–82–1)) vinylidene fluoride (CAS No. 75–38–7), and vinyl fluoride (CAS No. 75–02–5), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

A. Trichlorobenzenes

Test data for 1,2,3–trichlorobenzene and 1,2,4–trichlorobenzene was submitted by Standard Chlorine Chemical Company pursuant to a test rule at 40 CFR 799.1053. It was received by EPA on August 15, 1988.

The reports submitted describe the acute toxicity of 1,2,3–trichlorobenzene to fathead minnow (*Pimephales promelas*), the Atlantic silverside (*Menidia menidia*), and mysid shrimp (*Mysidopsis bahia*) under flow-through conditions, the acute toxicity of 1,2,4–trichlorobenzene to mysid shrimp (*Mysidopsis bahia*) under flow-through conditions, and the chronic toxicity of 1,2,4–trichlorobenzene to mysid shrimp (*Mysidopsis bahia*). Environmental effects testing is required by this test rule.

These chemicals are used in organic intermediates, solvents, dye carriers, transformer and dielectric fluids.

B. Fluoroalkenes

Test data for vinyl fluoride was submitted by E.I. du Pont de Nemours and Company, Inc., pursuant to a test rule at 40 CFR 799.1700. It was received by EPA on August 16, 1988. The submission describes a sex-linked recessive lethal test in *Drosophila melanogaster.*

Test data for vinylidene fluoride was submitted by Pennwalt Corporation pursuant to a test rule at 40 CFR 799.1700. It was received by EPA on August 16, 1988. The submission describes a sex linked recessive lethal test in *Drosophila melanogaster.*

Mutagenic effects testing is required by this test rule. Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the submissions' completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44515). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: August 23, 1988.

Frank D. Kover,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88–19795 Filed 8–30–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51711; FRL–3438–9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of eighty-one such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88–1721, 88–1722, 88–1723, 88–1724, 88–1726, 88–1727, 88–1729, 88–1730—October 23, 1988.

P 88–1731, 88–1732, 88–1733, 88–1734, 88–1735, 88–1736—October 24, 1988.

P 88–1737, 88–1738—October 25, 1988.

P 88–1739—October 2, 1988.

P 88–1740, 88–1741, 88–1742, 88–1743—October 26, 1988.

P 88–1744, 88–1745, 88–1746, 88–1747—October 29, 1988.

P 88–1748, 88–1749, 88–1750, 88–1751, 88–1752, 88–1753, 88–1754, 88–1755, 88–1756, 88–1757—October 30, 1988.

P 88–1758, 88–1759—October 31, 1988.

P 88–1760—October 30, 1988.

P 88–1761, 88–1762, 88–1763—October 31, 1988.

P 88–1764, 88–1765, 88–1766, 88–1767, 88–1768, 88–1769—November 1, 1988.

P 88–1770—November 6, 1988.

P 88–1771, 88–1772, 88–1773, 88–1774, 88–1775—November 2, 1988.

P 88–1776, 88–1778, 88–1779, 88–1780, 88–1781, 88–1782, 88–1783, 88–1784, 88–1785—November 5, 1988.

P 88–1786, 88–1787, 88–1788, 88–1789, 88–1790, 88–1791, 88–1792, 88–1793, 88–1794, 88–1795, 88–1796, 88–1797, 88–1798, 88–1799, 88–1800, 88–1801, 88–1802, 88–1803—November 6, 1988.

P 88–1804—November 7, 1988.

Written comments by:

P 88–1721, 88–1722, 88–1723, 88–1724, 88–1726, 88–1727, 88–1729, 88–1730—September 23, 1988.

P 88–1731, 88–1732, 88–1733, 88–1734, 88–1735, 88–1736—September 24, 1988.

P 88–1737, 88–1738—September 25, 1988.

P 88–1739—September 2, 1988.

P 88–1740, 88–1741, 88–1742, 88–1743—September 26, 1988.

P 88–1744, 88–1745, 88–1746, 88–1747—September 29, 1988.

P 88–1748, 88–1749, 88–1750, 88–1751, 88–1752, 88–1753, 88–1754, 88–1755, 88–1756, 88–1757—September 30, 1988.

P 88–1758, 88–1759—October 1, 1988.

P 88–1760—September 30, 1988.

P 88–1761, 88–1762, 88–1763—October 1, 1988.

P 88–1764, 88–1765, 88–1766, 88–1767, 88–1768, 88–1769—October 2, 1988.

P 88–1770—October 7, 1988.

P 88–1771, 88–1772, 88–1773, 88–1774, 88–1775—October 3, 1988.

P 88–1776, 88–1778, 88–1779, 88–1780, 88–1781, 88–1782, 88–1783, 88–1784, 88–1785—October 6, 1988.

P 88–1786, 88–1787, 88–1788, 88–1789, 88–1790, 88–1791, 88–1792, 88–1793, 88–1794, 88–1795, 88–1796, 88–1797, 88–1798, 88–1799, 88–1800, 88–1801, 88–1802, 88–1803—October 7, 1988.

P 88–1804—October 8, 1988.

ADDRESS: Written comments, indentified by the document control number "[OPTS–51711]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Enviromental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the noncomfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88–1721

Importer. Roure, Inc.
Chemical. (S) Bicyclo(3,2,1) octan-8-ol, 1,5,8-trimethyl.
Use/Import. (S) Fragrance ingredient. Import range: 100–150 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 2,500 species (Rat). Eye irritation: moderate species (Rabbit). Phototoxicity: negative species (Guines pig). Photoallergenicity: negative species (Guines pig).

P 88–1722

Importer. Hoechst Cleanese Corporation.
Chemical. (G) Polyester resin.
Use/Import. (S) Coating resin. Import range: 50,000–100,000 kg/yr.

P 88–1723

Importer. Hoechst Celanese Corporation.
Chemical. (G) Saturated polyester resin.
Use/Import. (S) Coating resin. Import range: 50,000–100,000 kg/yr.

P 88–1724

Manufacturer. Henkel Corporation Process Chemical.
Chemical. (G) Vinyl acid polymer.
Use/Production. (G) Dispersant intermediate. Prod. range: Confidential.

P 88–1726

Manufacturer. Confidential.
Chemical. (G) Mercaptan terminated polyether polymer.
Use/Production. (S) Adhesive and sealant. Prod. range: 400,000–1,500,000 kg/yr.

P 88–1727

Importer. Confidential.
Chemical. (S) 2-(5-Ethyltetrahydro-5 (tetrahydro-3-5-(tetrahydro-6-hydroxy-6-(hydroxymethyl)-3,5-dimethyl-2H-pyran-2-yl)-2-furyl)-2-furyl)-9-hydro-beta-methoxy-alpha,gramma,2,8-tetramethyl-1,8-dioxaspiro(4,5)decano-7-butyric acid, monosodium salt.
Use/Import. (S) Testing media. Import range: 10 kg/yr.

P 88–1729

Importer. Confidential.
Chemical. (G) Polyurethane prepolymer with isocyanate reactive end group.
Use/Import. (S) Laminating adhesive. Import range: Confidential.

P 88–1730

Manufacturer. Confidential.
Chemical. (G) Chormium complex of sulfonated monoazo dyes, sodium salt.
Use/Production. (S) Wool or nylon dye. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 2,000 mg/kg species(Rabbit). Static acute toxicity: EC50 23.5 mg/l time 48 h species(Daphnia magna). Eye irritiation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: positive.

P 88–1731

Manufacturer. Confidential.
Chemical. (G) Copolymer of two quaternary salts.
Use/Production. (G) Contained consumer use. Prod. range: 30,000–45,000 kg/yr.

P 88–1732

Manufacturer. Confidential.
Chemical. (G) Alkenyl succinimide.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–1733

Manufacturer. Confidential.
Chemical. (G) Alkenylsuccinic anhydride.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–1734

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Acrylic polymer containing quaternary ammonium salts.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1735

Manufacturer. Tennant Company.
Chemical. (G) Modified epoxy resin.
Use/Production. (G) Open, nondespersive. Prod. range: Confidential.

P 88–1736

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1737

Manufacturer. Confidential.
Chemical. (G) Mercaptan terminated polyether polymer.
Use/Production. (S) Adhesive and sealants. Prod. range: 400,000–1,500,000 kg/yr.

P 88–1738

Importer. Confidential.
Chemical. (G) Parfluoroalkyl ethylacrylate oligomer.
Use/Import. (G) Resin. Import range: Confidential.

P 88–1739

Manufacturer. Confidential.
Chemical. (G) Branched hydrocarbon.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 88–1740

Importer. Degussa Corporation.
Chemical. (S) Trimethoxyoctylsilane.
Use/Import. (G) Waterproofing agent. Import range: Confidential.

P 88–1741

Importer. Rhone-Poulenc Inc.
Chemical. (G) Platinum alkene complex.

Use/Import. (G) Chemical intermediate. Import range: 1,800–14,000 kg/yr.

P 88–1742

Manufacturer. NL Chemicals.
Chemical. (G) Urethane prepolymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1743

Manufacturer. The Aqualon Company.
Chemical. (G) Amino alkyl substituted hydroxypropylcellulose.
Use/Production. (S) Film former. Prod. range: Confidential.

P 88–1744

Manufacturer. Confidential.
Chemical. (G) (Nitroaromatic alkyl)halosubstituted heterocycle.
Use/Production. (G) Chemical intermediate. Prod. range: 1,800–14,000 kg/yr.

P 88–1745

Manufacturer. Confidential.
Chemical. (G) Alkoxylated dialkyl-diethylene triamine, aklyl sulfate salt.
Use/Production. (G) Cellulose softener. Prod. range: 13,500–45,000 kg/yr.

P 88–1746

Manufacturer. Confidential.
Chemical. (G) Amino alkyl alkamide with urea, alkylsufate salt.
Use/Production. (G) Cellulose softener. Prod. range: 13,500-45,000 kg/yr.

P 88–1747

Importer. Ricoh Electronics Inc.
Chemical. (G) 1,4-Bis(2-(alkenoxy)alkoxy benzene.
Use/Import. (G) Paper manufacture. Import range: 3,700–7,400 kg/yr.

P 88–1748

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Metal resinate.
Use/Production. (S) Binder for gravure inks. Prod. range: Confidential.

P 88–1749

Manufacturer. Confidential.
Chemical. (G) Aromatic, polyether urethane.
Use/Production. (S) Coating/adhesive. Prod. range: 20,000–40,000 kg/yr.

P 88–1750

Importer. Confidential.
Chemical. (G) Heteromonocyclic derivative of a substituted oxoalkanamide.
Use/Import. (S) Paper dye. Import range: Confidential.
Toxicity Data. Mutagenicity: positive.

P 88–1751

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid, metal salt.
Use/Production. (G) Polymerization catalyst. Prod. range: 6,000–40,000 kg/yr.

P 88–1752

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Aluminum alkyl.
Use/Import. (G) Catalyst. Import range: Confidential.

P 88–1753

Importer. Confidential.
Chemical. (G) Bis(substituted)carbomonocyclic azo)-carbomonocyclicol.
Use/Import. (S) Paper dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2610 mg/kg species(Rat). Acute dermal toxicity: LD50 32 mg/1 species(Rabbit). Static acute toxicity: LC50 32 mg/l time 74 h species(Raintrout). Eye irritation: none species(Rabbit). Mutagenicity: positive.

P 88–1754

Importer. Confidential.
Chemical. (G) Sulfonyl benzene substituted naphthalene alkali salt.
Use/Import. (S) Acid textile dye. Import range: Confidential.

P 88–1755

Manufacturer. Chattem Chemicals.
Chemical. (S) Aluminum di n-butoxy ethylacetoacetate chelate.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–1756

Importer. Confidential.
Chemical. (G) Substituted phenyl tetrazole.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 88–1757

Manufacturer. Confidential.
Use/Production. (S) Adhesive for promotor for coating. Prod. range: Confidential.

P 88–1758

Manufacturer. Rohm and Haas Company.
Chemical. (G) Modified acrylic polymer.
Use/Production. (S) Processing additive for polyolefins. Prod. range: Confidential.

P 88–1759

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted bis-styryl derivative.
Use/Import. (S) Flourescent whitening agent for detergents. Import range: Confidential.

P 88–1760

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organosilicone.
Use/Import. (S) Additive for filler. Import range: 2,000–3,000 kg/yr.

P 88–1761

Importer. Confidential.
Chemical. (G) Isoparaffin.
Use/Import. (G) Solvent. Import range: Confidential.

P 88–1762

Manufacturer. Confidential.
Chemical. (G) Alkoxylated dialkyl-diethylene triamine, alkyl sulfate salt.
Use/Production. (G) Softening of cellulose. Prod. range: 13,500–45,000 kg/yr.

P 88–1763

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Hydrochlorofluoro alkane.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–1764

Manufacturer. Ciba-Geigy Corporation.
Chemical. Ethanone, 1-(4-chlorophenyl)-2,2 2-trifluoro-omega-(1,3-dioxolan-2-yl-methyl)oxime.
Use/Production. (S) Seed treatment product. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 669 mg/kg species(Rat). Acute dermal toxicity: LD50 1544 mg/kg species(Rabbit). Inhalation toxicity: LC50 >1.21 mg/1 species(Albino rat). Eye irritation: none species(Rabbit). Skin irritation: moderate species(Rabbit). Mutagenicity: negative. Skin sensitization: negative species(Guinea pig).

P 88–1765

Manufacturer. Hercules Incorporated.
Chemical. (G) Epoxy resin.
Use/Production. (G) Manufacture of carbon/epoxy prepegs. Prod. range: Confidential.

P 88–1766

Manufacturer. Confidential.

Chemical. (G) Condensation polymer of glycols and organic acids.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

P 88–1767

Manufacturer. Confidential.
Chemical. (G) Condensation polymer of glycols and organic acids.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

P 88–1768

Manufacturer. Products Research & Chemical Corporation.
Chemical. (G) Polysulfide phenolic adduct.
Use/Production. (S) Resin for adhesion promotion. Prod. range: 31,800–50,000 kg/yr.

P 88–1769

Manufacturer. Products Research & Chemical Corporation.
Chemical. (G) Polysulfide phenolic adduct.
Use/Production. (S) Resin for adhesion promotion. Prod. range: 43,138 kg/yr.

P 88–1770

Manufacturer. Products Research & Chemical Corporation.
Chemical. (G) Polysulfide phenolic resin adduct.
Use/Production. (S) Resin for adhesion promotion. Prod. range: 33,636 kg/yr.

P 88–1771

Manufacturer. Ciba-Geigy Corporation.
Chemical. (S) 2,2,2-trifluoro-4'-chloroacetophenone oxime.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 500–5,050 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,020 mg/kg species(Rabbit). Eye irritation: strong species(Rabbit). Skin irritation: strong species(Rabbit). Mutagencity: negative.

P 88–1772

Manufacturer. Confidential.
Chemical. (G) Graft copolymer on polyvinylalcohol.
Use/Production. (G) Contained consumer use. Prod. range: 25,000 kg/yr.

P 88–1773

Manufacturer. Confidential.
Chemical. (G) Epoxy modified silicone.
Use/Production. (G) Site limited, intermediate. Prod. range: Confidential.

P 88–1774

Manufacturer. Confidential.
Chemical. (G) Amino modified silicone, halide salt.
Use/Production. (G) Finishing agent for fibers and fabrics. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1.87 ml/kg species(Rat). Acute dermal toxicity LD50 0.765 ml/kg species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit).

P 88–1775

Manufacturer. Confidential.
Chemical. (G) Halogenated naphthalic dicarboxylic acid sodium salt.
Use/Production. (G) Intermediate (site-limited). Prod. range: Confidential.

P 88–1776

Importer. Tosoh USA, Inc.
Chemical. (G) Chlorosulfonated polymer.
Use/Import. (S) Raw material for auto, wire, and lining. Import range: Confidential.

P 88–1778

Manufacturer. Hercules Incorporation.
Chemical. (G) Polysilazane.
Use/Production. (G) Manufacture of ceramics. Prod. range: Confidential.
Toxicity Data. Eye irritation: moderate species(Rabbit). Skin irritation: strong species(Rabbit).

P 88–1779

Manufacturer. AT&T Bell Laboratories.
Chemical. (G) Transition metal chalcognide.
Use/Production. (G) Battery cathode material. Prod. range: 5,000 kg/yr.

P 88–1780

Manufacturer. Amoco Chemical Corporation.
Chemical. (G) Alkenyl aromatic hydrocarbon.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: LD50 2 g/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: slight species(Rabbit).

P 88–1781

Manufacturer. Amoco Chemical Corporation.
Chemical. (G) Alkenyl aromatic hydrocarbon.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: LD50 2 g/kg species(Rabbit). Inhalation toxicity: LC50 0.28 mg/1 species(Rat). Eye irritation: slight species(Rabbit). Skin irriation: moderate species(Rabbit).

P 88–1782

Manufacturer. Alco Chemical Corporation.
Chemical. (G) Vinyl modified nonionic surfactant.
Use/Production. (G) Surfactant for thickener. Prod. range: Confidential.

P 88–1783

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene sulfonic acid, sodium salt.
Use/Production. (S) Detergent disperseant. Prod. range: Confidential.

P 88–1784

Manufacturer. Confidential.
Chemical. (G) Isocyanate reaction with cyclic primary amines and alkylamines.
Use/Production. (G) Oil thickner. Prod. range: Confidential.

P 88–1785

Manufacturer. Amoco Chemical Corporation.
Chemical. (G) jones dkyl aromatic hydrocarbon.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: LD50 2 g/kg species(Rabbit). Inhalation toxicity: LC50 0.28 mg/l species(Rat). Eye irritation: slight species(Rabbit). Skin irriation: strong species(Rabbit).

P 88–1786

Importer. Confidential.
Chemical. (G) Cycloalkane carboxylic acid alkenyl ester.
Use/Import. (S) Fragrance Component. Import range: Confidential.

P 88–1787

Manufacturer. Huls America.
Chemical. (G) 2,4,6,8-tetrahydroxy-2,4,6,8-tetraphenylcyclotetrasiloxane.
Use/Production. (G) Surface modifier. Prod. range: Confidential.

P 88–1788

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Extruded and molded parts. Prod. range: Confidential.

P 88–1789

Importer. Confidential.
Chemical. (G) Indoaniline dye derivative.
Use/Import. (G) Coloring agent. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88–1790

Importer. Confidential.

Chemical. (G) Indoaniline dye derivative.
Use/Import. (G) Coloring agent. Import range: Confidential.

P 88–1791

Importer. Confidential.
Chemical. (G) Indoaniline dye derivative.
Use/Import. (G) Coloring agent. Import range: Confidential.

P 88–1792

Importer. Confidential.
Chemical. (G) Indoaniline dye derivative.
Use/Import. (G) Coloring agent. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88–1793

Importer. Confidential.
Chemical. (G) Imidazolazo dye derivative.
Use/Import. (G) Coloring agent. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88–1794

Importer. Confidential.
Chemical. (G) Styryl dye derivative.
Use/Import. (G) Coloring agent. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88–1795

Importer. Confidential.
Chemical. (G) Quinophthalon dye derivative.
Use/Import. (G) Coloring agent. Import range: Confidential.
Toxicity Data. Static acute toxicity: LC50 time. Mutagenicity: negative.

P 88–1796

Importer. Confidential.
Chemical. (G) Styryl dye derivative.
Use/Import. (G) Coloring agent. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88–1797

Importer. Confidential.
Chemical. (G) Quinophthalon dye derivative.
Use/Import. (G) Coloring agent. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88–1798

Manufacturer. Confidential.
Chemical. (G) Substituted alkylphenyl ether.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 88–1799

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organosiloxane.
Use/Import. (S) Additive for plastics/waxes. Import range: 1,000–2,000 kg/yr.

P 88–1800

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Additive rubber compound. Import range: 100–300 kg/yr.

P 88–1801

Manufacturer. Confidential.
Chemical. (G) Glycol substituted heterocylic amide.
Use/Production. (S) Cellulosis fabric treatment. Prod. range: 2,000,000–6,000,000 kg/yr.

P 88–1802

Manufacturer. Confidential.
Chemical. (G) Polyhydric alcohol substituted heterocyclic amide.
Use/Production. (S) Cellulosis fabric treatment. Prod. range: 2,000,000–6,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 20 ml/kl species (Rat).

P 88–1803

Importer. Confidential.
Chemical. (G) Ethylene copolymer.
Use/Import. (S) Industrial auxillaries. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>10,000 species (Rat).

P 88–1804

Manufacturer. Hercules Incorporated.
Chemical. (G) Hexadienoyl chloride.
Use/Production. (S) Isolated intermediate. Prod. range: Confidential.

Dated: August 18, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–19788 Filed 8–30–88; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–51712; FRL–3439–2]

Toxic and Hazardous Substances; Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-one such PMNs and provides a summary of each.

DATES: Close of Review Periods:
P 88–1805—November 8, 1988.
P 88–1806, 88–1807, 88–1808, 88–809, 88–1810, 88–1811, 88–1812, 88–1813—November 7, 1988.
P 88–1814—November 8, 1988.
P 88–1815—November 7, 1988.
P 88–1816—November 6, 1988.
P 88–1817, 88–1818, 88–1819, 88–1820, 88–1821—November 8, 1988.
P 88–1822, 88–1824, 88–1825, 88–1826, 88–1827—November 9, 1988.
P 88–181828, 88–1829, 88–1830—November 12, 1988.
P 88–1831, 88–1832, 88–1833, 88–1834, 88–1835, 88–1836, 88–1837, 88–1838, 88–1839, 88–1840, 88–1841, 88–1842, 88–1843—November 13, 1988.
P 88–1844, 88–1845, 88–1846—November 14, 1988.
Written comments by:
P 88–1805—October 9, 1988.
P 88–1806, 88–1807, 88–1808, 88–1809, 88–1810, 88–1811, 88–1812, 88–1818—October 8, 1988.
P 88–1814—October 9, 1988.
P 88–1815—October 8, 1988.
P 88–1816—October 7, 1988.
P 88–1817, 88–1818, 88–1819, 88–1820, 88–1821—October 9, 1988.
P 88–1822, 88–1824, 88–1825, 88–1826, 88–1827—October 10, 1988.
P 88–1828, 88–1829, 88–1830—October 13, 1988.
P 88–1831, 88–1832, 88–1833, 88–1834, 88–1835, 88–1836, 88–1837, 88–1838, 88–1839, 88–1840, 88–1841, 88–1842, 88–1843—October 14, 1988.
P 88–1844, 88–1845, 88–1846—October 15, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS–51712]" and the specific PMN number should be sent to:

Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88–1805

Importer. American Cyanamid Company.
Chemical. (G) Carbamic acid ester derivative.
Use/Import. (G) Mineral processing. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 461 mg/kg species (Rat). Acute dermal toxicity: LD50 2.0 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: slight species (Guinea pig). Mutagenicity: negative.

P 88–1806

Manufacturer. Confidential.
Chemical. (G) 2,4-Disubstituted-2-alkyalkane.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 431 mg/kg species (Rat). Acute dermal toxicity: LD50 1.6–2 g/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: strong species (Rabbit).

P 88–1807

Manufacturer. Ashland Chemical Company.
Chemical. (G) Polymeric phosphino carboxylic acid.
Use/Production. (S) Water antiscalant. Prod. range: Confidential.

P 88–1808

Manufacturer. Ashland Chemical Company.
Chemical. (G) Phosphono carboxylic acid.
Use/Production. (S) Water corrosion inhibitor antiscalant. Prod. range: Confidential.

P 88–1809

Manufacturer. Ashland Chemical Company.
Chemical. (G) Polymeric additive.
Use/Production. (S) Water antiscalant. Prod. range: Confidential.

P 88–1810

Manufacturer. Ashland Chemical Company.
Chemical. (G) Polymer based maleic anhydride potassium hydroxide.
Use/Production. (S) Water antiscalant. Prod. range: Confidential.

P 88–1811

Manufacturer. Ashland Chemical Company.
Chemical. (G) Polymer based maleic anhydride sodium hydroxide.
Use/Production. (S) Water antiscalant. Prod. range: Confidential.

P 88–1812

Manufacturer. Mazer Chemicals Division.
Chemical. (G) Alkylene polyalkoxyethanol.
Use/Production. (G) Copolymerization. Prod. range: Confidential.

P 88–1813

Manufacturer. Mazer Chemicals Division.
Chemical. (G) Derivatized alkylene polyalkoxylate.
Use/Production. (G) Chemcial intermediate. Prod. range: Confidential.

P 88–1814

Manufacturer. Mazer Chemicals Division.
Chemical. (G) Derivatized polyalkylene glycal.
Use/Production. (G) Chemcial intermediate. Prod. range: Confidential.

P 88–1815

Manufacturer. Mazer Chemicals Division.
Chemical. (G) Alkylene polyalkoxyethyl sulfonate.
Use/Production. (G) Monomer for copolymerization. Prod. range: Confidential.

P 88–1816

Manufacturer. Mazer Chemicals Division.
Chemical. (G) Alkylene polyalkoxyethyl, ammonium salt.
Use/Production. (G) Monomer for copolymerization. Prod. range: Confidentjal.

P 88–1817

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester polyurethane-polyacrylate.
Use/Production. (S) Coating, modifier for coatings, inks, and adhesives. Prod. range: Confidential.

P 88–1818

Manufacturer. Shell Oil Company.
Chemical. (G) Modified styrene, ciene copolymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1819

Manufacturer. Confidential.
Chemical. (G) Styrenated functional methacrylated acrylate.
Use/Production. (S) Automative refinish resin. Prod. range: 210,000–250,000 kg/yr.

P 88–1820

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester anhydride.
Use/Production. (G) Industrial curing agent. Prod. range: 50,000–100,000 kg/yr.

P 88–1821

Importer. Uniroyal Chemical Co., Inc.
Chemical. (S) Substituted p-phenylene diamine.
Use/Import. (S) Chemical intermediate. Import range: Confidential.

P 88–1822

Importer. Confidential.
Chemical. (G) Alkenedioic acid, diester.
Use/Import. (S) Additive for wood coating. Import range: 13,500–15,500 kg/yr.

P 88–1824

Manufacturer. Confidential.
Chemical. (G) Polyoxypropylene amine derivative.
Use/Production. (G) Resin component. Prod. range: Confidential.

P 88–1825

Manufacturer. Confidential.
Chemical. (G) Polyoxypropylene amine derivative.
Use/Production. (G) Resin component. Prod. range: Confidential.

P 88–1826

Manufacturer. Confidential.
Chemical. (G) Acrylic and methcrylic functionalized polymer.
Use/Production. (G) Industrial dispersive. Prod. range: 28,000–30,000 kg/yr.

P 88–1827

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Acid red 299.
Use/Import. (S) Coloring. Import range: 2,000–6,000 kg/yr.

P 88–1828

Importer. DSM Resins U.S., Inc.
Chemical. (G) Aliphatic polyuretane elastomers.
Use/Import. (S) Formulation of elastomers coatings. Import range: Confidential.

P 88–1829

Importer. Confidential.
Chemical. (G) Hydroxy functional acrylic acid.

Use/Import. (S) Coastings. Import range: Confidential.

P 88–1830

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 88–1831

Importer. Sherex Chemical Company.
Chemical. (S) Di-aminebis (cyanato-N) zinc.
Use/Import. (S) Rubber accelerator and curing agent. Import range: Confidential

P 88–1832

Manufacturer. Confidential.
Chemical. (G) Sulfurized trialkyl phosphite.
Use/Production. (G) Industrial lubricant additive. Prod. range: Confidential.

P 88–1833

Manufacturer. General Electric Company.
Chemical. (G) Aromatic polycarbonate oligomers.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–1834

Manufacturer. General Electric Company.
Chemical. (G) Bisphenol-A-polycarbonate aryl end-capped.
Use/Production. (G) Engineering thermoplastic resin. Prod. range: Confidential.

P 88–1835

Manufacturer. General Electric Company.
Chemical. (G) Bisphenol-A-polycarbonate, alkylaryl alkyl end-capped.
Use/Production. (G) Engineering thermoplastic resin. Prod. range: Confidential.

P 88–1836

Manufacturer. General Electric Company.
Chemical. (G) Bisphenol-A-polycarbonate, alkylaryl end-capped.
Use/Production. (G) Engineering thermoplastic resin. Prod. range: Confidential.

P 88–1837

Manufacturer. General Electric Company.
Chemical. (G) BPA chloroformates.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–1838

Importer. Roure, Inc.
Chemical. (S) Cyclohexanone, 2–(1–mercaptoacetyl–1–methyl–ethyl)–5–methyl–, (E) + (Z) in a ratio 60/40.
Use/Import. (S) Consumer product. Import Range: 100 kg/yr.

P 88–1839

Importer. Additives Div., (Ciba-Geigy Corp.).
Chemical. (S) Benzenepropanoic acid, 3–(2h–benzotriazol–2–yl)–5–(1, 1–diethylethyl)–4–hydroxy–, methyl ester.
Use/Import. (G) Component for polymers. Import range: Confidential.

P 88–1840

Manufacturer. Mazer Chemicals division.
Chemical. (G) Modified alkylene polyalkoxyethanol.
Use/Production. (G) Monomer for copolymerization. Prod. range: Confidential.

P 88–1841

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene sulfonic acid, barium salt.
Use/Production. (G) Lube oil additive. Prod. range: Confidential.

P 88–1842

Manufacturer. FMS Corporation.
Chemical. (S) 1–Ethanol–2–oxy–agarose.
Use/Production. (S) Purified gelling medium. Prod. range: Confidential.

P 88–1843

Manufacturer. FMC Corporation.
Chemical. (G) Propenyl (alkyl) agarose derivative.
Use/Production. (S) Purified gelling medium. Prod. range: Confidential.

P 88–1844

Manufacturer. Confidential.
Chemical. (G) Fatty acids, tall-oil compounds with substitute 1H–imidazole.
Use/Production. (G) Debonding agent for paper. Prod. range: Confidential.

P 88–1845

Manufacturer. Confidential.
Chemical. (G) End-capped polyether.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–1846

Manufacturer. Confidential.
Chemical. (G) End-capped polyether.
Use/Production. (G) Intermediate. Prod. range: Confidential.

Date: August 25, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–19789 Filed 8–30–88; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–59849; FRL–3439–3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substance Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 Fr 56066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eight such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 88–242—September 5, 1988.
Y 88–243—September 1, 1988.
Y 88–244—September 4, 1988.
Y 88–245, 88–246, 88–247—September 5, 1988.
Y 88–248, 88–249—September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 88-242

Manufacturer. Phillips Petroleum Company.

Chemical. (G) Polyolefin copolymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 88-243

Manufacturer. Phillips Petroleum Company.

Chemical. (S) 4-Methyl-1-pentene; hydrogen.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 88-244

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic resin.

Use/Production. (S) Coatings. Prod. range: Confidential.

Y 88-245

Manufacturer. GE Plastics.

Chemical. (G) Aromatic polyester resin.

Use/Production. (S) Thermoplastic resin modifier. Prod. range: Confidential.

Y 88-246

Manufacturer. GE Plastics.

Chemical. (G) Aromatic polyether esterified with hydroxyacid or polyester.

Use/Production. (S) Thermoplastic resin for extrusion and molding. Prod. range: Confidential.

Y 88-247

Manufacturer. GE Plastics.

Chemical. (G) Vinyl polymer and aromatic polyether esterified with aromatic hydroxy acid polyester.

Use/Production. (S) Thermoplastic resin for extrusion and molding. Prod. range: Confidential.

Y 88-248

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester urethane.

Use/Production. (G) Used in coatings applied by industrial manufactures. Prod. range: Confidential.

Y 88-249

Manufacturer. Confidential.

Chemical. (G) Ester-aldehyde.

Use/Production. (G) Coating. Prod. range: Confidential.

Date: August 23, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-19790 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3438-2]

Water Pollution Control: Dredged and Fill Discharge Program, Jurisdiction; Special Cases, List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of amendment to consolidated list of special cases.

SUMMARY: This notice amends the consolidated list of special cases published in the **Federal Register** on October 24, 1980 (45 FR 70564) to include pocosin wetlands found at the First Colony Farms tract in Tyrell, Hyde, and Washington Counties, North Caroline. The original consolidated list of special cases was developed pursuant to the April 23, 1980, Memorandum (MOU) between the U.S. Army Corps of Engineers (Corps) and EPA. This MOU established policies and procedures that the Corps and EPA utilize in resolving geographical jurisdictional problems arising in connection with the section 404 program regulating the discharge of dredged or fill materials into the waters of the United States. Special cases are those situations where significant issues or technical difficulties exist concerning the jurisdictional scope of section 404 waters, the environmental consequences of jurisdiction are significant and EPA has declared a special interest. The Corps refers jurisdictional questions involving these special cases to EPA for determination of extent of jurisdiction.

DATES: This amendment to the consolidated list of special cases was effective February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Clifford Rader, Environmental Protection Agency, Office of Wetlands Protection (A-104F), 401 M Street SW., Washington, DC 20460, (202) 382-5087.

SUPPLEMENTARY INFORMATION: On November 25, 1986, EPA Region IV designated pocosin wetlands in nineteen North Carolina counties as interim special cases under the MOU. This designation included the roughly 35,000 acre First Colony Farms tract in Tyrell, Hyde, and Washington Counties.

The MOU defines special cases as "those situations where significant issues or technical difficulties exist concerning the jurisdictional scope of section 404 waters, the environmental consequences of jurisdiction are significant, and EPA has declared a special interest." EPA has identified significant issues regarding, in particular, the appropriate hydrologic indicators to use in determining whether pocosins are waters of the United States. The First Colony Farms tract raises specific issues in light of ditching on the tract, which may or may not have altered the hydrology on all or parts of the site.

Additionally, there are significant environmental consequences of the determination of jurisdiction or lack of jurisdiction on this tract. This is one of the largest remaining continuous areas of pocosins. Pocosins are highly valuable for wildlife habitat and water quality improvement, which is particularly significant for the Albermarle and Pamlico Sounds. Further, the precedential nature of this decision reinforces the environmental significance of this determination.

On February 5, 1988, EPA Headquarters concurred with Region IV's designation of the First Colony Farms tract as a special case. Due to continuing discussions with the Corps on the remainder of the interim special case, final action on all but the First Colony Farms tract has been deferred.

Dated: August 22, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 88-19796 Filed 8-30-88; 8:45 a.m.]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1746]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

August 25, 1988.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed September 19, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Nighttime Operations on Canadian, Mexican, and Bahamian Clear Channels. (MM Docket No. 84-281)

Number of petitions received: 1

Subject: Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and

Broadcast Industries. (Gen. Docket No. 87-24)

Number of petitions received: 12

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-19839 Filed 8-30-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0132
Title: Cost Allocation Plan
Abstract: The Federal Emergency Management Agency (FEMA) provides funding to assist State and local governments with the indirect costs associated with the Civil Defense—State and Local Emergency Management Assistance Program (EMA). This information collection enables FEMA to verify the legitimacy of charges for indirect costs, by providing pertinent information needed in both the accounting and billing process.
Type of Respondents: State governments
Estimate of Total Annual Reporting and Recordkeeping Burden: 112
Number of Respondents: 56
Estimated Average Burden Hours Per Response: 1
Frequency of Response: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, the the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: August 23, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-19757 Filed 8-30-88; 8:45 am]

BILLING CODE 6718-21-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0138
Title: State Administrative Plan
Abstract: A State administrative plan is a one-term submission with periodic amendments to keep it current. The plan is a formal description of each participating State's total civil defense program and related State and local laws, executive directives, rules, plans, and procedures. This information collection is required to determine the eligibility for Federal contributions to a State and its political subdivisions for up to one half of the necessary and essential State and local civil defense personnel and administrative expenses.
Type of Respondents: State governments
Estimate of Total Reporting and Recordkeeping Burden: 2,240
Number of Respondents: 56
Estimated Average Burden Hours Per Response: 20
Frequency of Response: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: August 23, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-19758 Filed 8-30-88; 8:45 am]

BILLING CODE 6718-21-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44) U.S.C. Chapter 35).

Type: Extension of 3067-0146
Title: State Administrative Plan for Individual and Family Grant Program
Abstract: This information collection is necessary for the Federal Emergency Management Agency (FEMA) to carry out its role in the Individual and Family Grant (IFG) program. FEMA must approve the States' IFG administrative plan, in order for the States to receive Federal grants. These Federal grants are intended to provide individual and family grants for disaster-related necessary expenses.
Type of Respondents: State governments
Estimate of Total Annual Reporting and Recordkeeping Burden: 168
Number of Respondents: 56
Estimate Average Burden Hours Per Response: 3
Frequency of Response: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: August 23, 1988.

Wesley G. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-19759 Filed 8-30-88; 8:45 am]

BILLING CODE 6718-21-M

Transportation Accident Planning and Preparedness; Availability of Guidance Document

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of a transportation accident planning and preparedness guidance document and invitation for submittal of comments.

BEST COPY AVAILABLE

SUMMARY: A draft emergency planning document, *Guidance for Developing State and Local Radiological Emergency Response Plans and Preparedness for Transportation Accidents*, commonly known as "FEMA–REP–5", is available for public distribution and comment. Copies will be distributed to State, Tribal and local governments, and other organizations, by FEMA for review and comment.

This document provides voluntary planning and preparedness guidance in the form of 14 planning objectives and guidance considerations for use by State, Tribal and local governments in developing emergency response plans for transportation accidents involving radioactive materials. The document also provides information on the application of the guidance to other types of emergencies and makes the distinction between elements that are unique to transportation accidents and those that are common to the other types of emergencies. This draft document incorporates comments received from many organizations of the 1983 interim-use edition. This revision emphasizes the voluntary nature of the guidance and the need to tailor planning and preparedness to the unique characteristics and needs of the involved jurisdictions.

This document has been developed by the Federal Radiological Preparedness Coordinating Committee's Subcommittee on Transporation Accidents which is co-chaired by representatives from the U.S. Department of Transportation and FEMA. In addition to the co-chairs, other Committee members include representatives from the Department of Energy, Environmental Protection Agency, Department of Health and Human Services, Nuclear Regulatory Commission, United States Department of Agriculture, Sandia National Laboratories, the Southern States Energy Board and the Western Interstate Energy Board. A copy of this document may be obtained from: Federal Emergency Management Agency, P.O. Box 8181, Washington, DC 20024. Please reference the title and number (FEMA–REP–5) of the document in your request. Comments on this document are requested by November 30, 1988, and should be addressed to: Rules Docket Clerk, Federal Emergency Management Agency, Room 835, 500 C St. SW. Washington, DC 20472. For further information on this document contact: Vern Wingert, Federal Emergency Management Agency, 500 C Street, SW., Room 630, Washington, DC 20472, Telephone No. (202) 646–2872.

Issued at Washington, DC.

Grant Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 88–19755 Filed 8–30–88; 8:45 am]

BILLING CODE 6718–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 79N–0423, 79N–0424, and 79N–0425; DESI 5773]

Sulfanilamide-Aminacrine-Allantoin Combination for Vaginal Use; Drug Efficacy Study Implementation; Withdrawal of Approval of Portions of a New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of those portions of the new drug application (NDA) for AVC Cream that provide for the combination of sulfanilamide, aminacrine hydrochloride, and allantoin. The basis of the withdrawal is that this combination drug product lacks substantial evidence of effectiveness for its labeled indications. A reformulation of the product containing sulfanilamide alone has been approved as safe and effective.

EFFECTIVE DATE: September 30, 1988.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 5773 and directed to the Division of Drug Labeling Compliance (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Hazard, Jr., Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 22, 1983 (48 FR 38093), the Director of the National Center for Drugs and Biologics (now the Center for Drug Evaluation and Research) evaluated AVC Cream containing sulfanilamide, aminacrine, and allantoin as lacking substantial evidence of effectiveness for its labeled indications. The Director also proposed to withdraw approval of the new drug application for this product and offered an opportunity for a hearing on the proposal. FDA also announced the conditions for marketing an effective reformulation of AVC Cream (sulfanilamide alone labeled only for use in the 30-day treatment of vulvovaginitis caused by *Candida albicans*).

In response, hearing requests were submitted by Merrell Dow Pharmaceuticals, Inc., the holder of the NDA for AVC Cream, and manufacturer of generic versions of the product.

FDA has approved a supplement to NDA 6–530, which provides for the reformulation of AVC Cream to sulfanilamide alone. FDA has also approved many abbreviated NDA's submitted by generic manufacturers. As a consequence, all hearing requests have now been withdrawn. Accordingly, the Director of the Center for Drug Evaluation and Research is withdrawing approval of pertinent parts of the following NDA:

NDA 6–530, AVC Cream, except insofar as it pertains to the formulation containing sulfanilamide alone; Merrell Dow Pharmaceuticals, Inc., Subsidiary of Dow Chemical Co., 2110 E. Galbraith Rd., Cincinnati, OH 45215.

Any drug product that is identical, related, or similar to this product and is not the subject of an approved new drug application is covered by NDA 6–530 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to this product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evtdence that this product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing findings, approval of those portions of NDA 6–530 that pertain to the old formulation containing sulfamilamide, aminacrine, and allantoin are withdrawn effective September 30, 1988.

Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: August 17, 1988.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 88-19840 Filed 8-30-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. 88-1851]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 24, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Manufactured Home Construction and Safety Standards Act Reporting Requirements.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The National Manufactured Housing Construction and Safety Standards Act authorizes HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. The standards require pertinent information in the form of labels and notices to be placed in each manufacturered home. HUD needs this information to make sure manufacturers are complying with the standards.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, and Businesses or Other For-Profit.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
SAA Reports	34		12		1		406
IPIA Reports	16		12		1		192
Consumer Information Cards	240,000		1		.48		115,200
State Plans	2		1		160		320
Consumer Manuals	240,000		1		.08		19,200
Labels and Notices	240,000		1		.30		72,000
Recordkeeping	240,000		1		.16		38,400

Total Estimated Burden Hours: 245,720

Status: Reinstatement.

Contact: Donald R. Fairman, HUD, (202) 755-6590 John Allison, OMB, (202) 395-6880.

Date: August 24, 1988.

[FR Doc. 88-19835 Filed 8-30-88; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-88-1852]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its

proposed use; (4) the agency form number, if applicable; (5) what membes of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 25, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Mortgagee Interview and Questionnaire and Lender Questionnaire
Office: Housing
Description of the Need for the Information and Its Proposed Use: HUD conducts periodic on-site reviews of HUD/FHA approved lenders and their branch offices to determine compliance with HUD/FHA origination and servicing requirements and policies. These reviews are necessary to protect FHA borrowers and HUD's insurance funds from lender abuse through neglience and fraudulent business practices.
Form Number: HUD–9080A and 9080B
Respondents: Business or Other For-Profit
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Questionnaire	1,200		1		1		1,200

Total Estimated Burden Hours: 1,200
Status: Extension
Contact: J. Parker Deal, HUD, (202) 755–6830; John Allison, OMB, (202) 395–6880

Dated: August 25, 1988.

Proposal: Description of Materials
Office: Housing
Description of the Need for the Information and Its Proposed Use: This information is needed so that builders and sponsors can describe the materials and assembly of dwellings and other improvements to the property. This form, Description of Materials, and attached drawings define the scope and limits of the construction. The information is used by HUD to estimate the value for FHA mortgage insurance.
Form Number: HUD–92005
Respondents: Business or Other For-Profit, Federal Agencies or Employees, and Small Businesses or Organizations
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Description of materials	2,500		40		1/2		50,000

Total Estimated Burden Hours: 50,000
Status: Extension
Contact: Kenneth L. Crandall, HUD (202) 755–6720; John Allison, OMB, (202) 395–6880

Dated: August 25, 1988.

Proposal: Restriction on Use of Assisted Housing (FR–1588/2383)
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: This rule prohibits Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) from making housing assistance available to persons other than U.S. citizens, nationals, and certain categories of eligible aliens. It also requires that an automated system of verifying immigration status be implemented. The information collection consists primarly of recordkeeping requirements imposed on PHAs/IHAs to assure compliance with Federal statutes.
Form Number: None
Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions
Frequency of Submission: On Occasion and Recordkeeping
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Notices	3,300		700		.01		23,100
Verification	3,300		19		.10		6,270
Policies and Procedures	3,300		1		12		39,600
Recordkeeping	3,300		791		.01		25,113

Total Estimated Burden Hours: 94,083
Status: Revision
Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB (202) 395–6880

Dated: August 24, 1988.

[FR Doc. 88–19836 Filed 8–30–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–08–5101–14–FB20; CA 13198]

California; Emergency Area Closure; Riverside County, CA

The following order affecting the lands captioned below, was issued on August 15, 1988.

T. 3 S., R. 3 E., SBM,
Sec. 18, N½, N½ N½ NE¼ SE¼.

I have determined that the operation of off-road vehicles in this area poses a significant threat to public safety. Furthermore, off-road vehicle use has caused adverse impacts to the operation and security of wind energy sites located on public lands. Under the authority of 43 CFR 8341.2(a), I hereby order the above captioned public lands closed to all motor vehicles until the adverse effects and threat to public safety has been eliminated.

Persons exempt from this order shall include law enforcement personnel, persons performing the official administrative functions of the Bureau of Land Management, and persons acting under specific authorizations granted by the Bureau of Land Management.

This area closure shall remain in effect until further notice.

Date: August 23, 1988.

James W. Abbott,

Acting Area Manager.

[FR Doc. 88–19748 Filed 8–30–88; 8:45 am]
BILLING CODE 4310–40–M

[NV–060–4321–02]

Battle Mountain District Advisory Council Meeting in Tonopah, Nevada

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday and Wednesday, October 4 and 5, 1988. The meeting will convene at 1:00 p.m. in the Blue Room at the Tonopah Convention Center.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Discussion of the wild horse situation in Stone Cabin Valley and a review of the University of Minnesota study.
2. Discussion of the Gilbert Creek Allotment grazing situation.
3. Field trip to Stone Cabin Valley on October 5, 1988.

The meeting is open to the public. Interested persons may make oral statements between 4:00 and 4:30 p.m. on October 4, 1988. If you wish to make an oral statement, please contact Terry L. Plummer by 4:30 p.m., September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain Nevada 89820 or phone (702) 635–5181.

Date Signed: August 19, 1988.

Terry L. Plummer,

Battle Mountain, Nevada.

[FR Doc. 88–19739 Filed 8–30–88; 8:45 am]
BILLING CODE 4310–HC–M

[ID–943–08–4220–11; I–15320 et al]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that 279.25 acres of land withdrawn for Public Water Reserve Nos. 47, 66, 107 and 156, continue for an additional 20 years. The water involved would remain withdrawn and the lands would closed to surface entry, but would be opened to non-metalliferious mining through this action. The lands have been and will continue to be open to the mineral leasing laws and the location of metalliferous minerals.

DATE: Comments should be received by November 29, 1988.

ADDRESS: Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 American Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

The Bureau of Land Management proposes that those portions of Public Water Reserve No. 107, created by the Executive Order, dated April 17, 1926, and further designated by Secretarial Order of Interpretation No. 169, dated August 4, 1932 and Public Water Reserve Withdrawals 47, 66, and 156, created by the Executive Orders of August 15, 1919, April 7, 1917, and August 10, 1934, respectively, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, on the following-described land:

Boise Meridian, Idaho

(I–15320)
Public Water Reserve No. 156
T. 13 N., R. 24 E.,
Sec. 21, SE¼SW¼;
Sec. 28, NE¼NW¼.
(I–15325)
Public Water Reserve No. 47
T. 13 N., R. 23 E.,
Sec. 30, lot 2, SE¼NW¼, NE¼SE¼.
(I–15354)
Public Water Reserve No. 107
Secretarial Order of Interpretation No. 169
T. 13 N., R. 27 E.,
Sec. 4, SW¼SW¼.
(I–15593)
Public Water Reserve No. 66
T. 10 N., R. 22 E.,
Sec. 17, SE¼SE¼.

The areas described aggregate 279.25 acres in Custer, Lemhi and Owyhee Counties.

The purpose of the withdrawals is to protect the springs located on the lands for livestock water use.

The withdrawals segregate the lands from the location of non-metalliferious minerals and operation of the land laws, but not the mineral leasing laws, and withdraw the public waters involved. The lands would be opened to non-metalliferous mining location, only, through this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whther or not the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: August 23, 1988.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 88–19747 Filed 8–30–88; 8:45 am]
BILLING CODE 4310–GG–M

Fish and Wildlife Service

Availability of Draft Legislative Environmental Impact Statement; National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft legislative environmental impact statement on the Proposed Acquisition of Inholdings on National Wildlife Refuges in Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared, for public review, a Draft Legislative Environmental Impact Statement (LEIS) on the Proposed Acquisition of inholdings on National Wildlife Refuges in Alaska pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The draft statement describes five alternatives for acquiring refuge inholdings and the environmental consequences of implementing each alternative.

DATES: All comments and testimony, both oral and written, will be accepted until October 24, 1988, for consideration in the preparation of the final plan. Public hearings will be held in Washington, DC; Anchorage, Kodiak, Fairbanks, Bethel, Arctic Village, Kaktovik, and Galena, Alaska; during September 1988.

ADDRESS: Comments should be sent to Regional Director, U.S. Fish and Wildlife Service; 1011 East Tudor Road; Anchorage, Alaska 99503–6199 [Attention Ann Rappoport].

FOR FURTHER INFORMATION CONTACT: Ann Rappoport, Acting 1002 Project Manager; U.S. Fish and Wildlife Service; 1011 East Tudor Road; Anchorage, Alaska 99503; telephone (907) 786–3411.

SUPPLEMENTARY INFORMATION: A copy of the draft statement will be sent to all persons and organizations who participated in any part of the planning process, or in other types of communication with the Service. Copies of the draft statement will also be sent to Federal and State agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies are available upon request from Ms. Rappoport.

Written and oral testimony will be accepted at the public hearings and will be transcribed for the official record. All comments and testimony, both oral and written, received postmarked by or prior to October 24, 1988, will be considered in the preparation of the final statement.

In addition to the issues raised by this draft LEIS, there have been indications that interested persons may wish to comment on subjects clearly outside of the scope of this draft LEIS. Additional subjects may include:

- The methodology for valuing the privately owned inholdings in the seven national wildlife refuges;
- The methodology for valuing oil and gas interests to be exchanged by the Department;
- The suitability for refuge purposes of the inholdings to be acquired;
- The adequacy of section 22(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(g)) which provides for the continuing application of refuge land use laws and regulations to inholdings in pre-ANCSA refuges as a substitute for acquisition; and
- The desirability of acquiring subsurface interests underlying the inholdings to be acquired.

Persons interested in commenting on issues outside of the scope of the draft LEIS may do so by separately addressing those issues and forwarding their comments to the individual designated in this notice to receive comments. Comments will be considered by the Secretary on whether the proposed exchange agreements should be modified through further negotiations or signed in their current form and then sent to Congress for approval, whether any alternatives for acquiring these lands should be adopted, or whether no action should be taken.

Copies of the draft statement are available for public review at the office of the Regional Director, at the above address, and at the following locations:

U.S. Fish and Wildlife Division of Refuge Management; U.S. Department of the Interior Bldg., Room 2343; 18th and C Streets, NW.; Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife; 500 NE. Multnomah Street, Suite 1692; Portland, Oregon 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife; 500 Gold Avenue SW., Room 1306; Albuquerque, New Mexico 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife; Federal Building, Fort Snelling; Twin Cities, Minnesota 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife; Richard B. Russell Federal Bldg.; 75 Spring Street NW.; Atlanta, Georgia 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife; One Gateway Center, Suite 700; Newton Corner, Massachusetts 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife; 134 Union Blvd.; P.O. Box 25486; Denver Federal Center; Denver, Colorado 80225

Date: August 26, 1988.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 88–19841 Filed 8–30–88; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, September 29, 1988, at Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The first agenda item will be a presentation of Golden Gate National Recreation Area staff recommendations on the United States Army proposal to expand the Post Exchange at the Presidio of San Francisco, Building T–135, to provide increased retail space and a consolidation of services and activities presently found elsewhere on post. The addition will be to the west and south of the existing building. It will contain the Garden Shop from the Four Seasons Store, Building 609, which has

been demolished. The former Branch Exchange and the Four Seasons Store have been demolished for the site clearance. Total demolition is equivalent in square feet to the proposed one-story addition (26,000 square feet). An initial Army presentation of the proposal was made to the GGNRA Advisory Commission at the July 7, 1988 meeting.

The second agenda item will be a presentation by the Golden Gate Bridge District of a proposal to add approximately 6,000 square feet to the existing maintenance shop facility at the west end of the Golden Gate Bridge Toll Plaza, and to remove the temporary storage containment structures at the site.

The meeting is open to the public. Persons wishing to receive environmental documents and fact sheets for any of the above-mentioned projects should contact the office of the Staff Assistant Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or telephone (415) 556–4484.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after October 14, 1988. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: August 24, 1988.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88–19751 Filed 8–30–88; 8:45 am]

BILLING CODE 4310-70-M

Management Policies; Chapter 2—Criteria for Parklands; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of proposed revised management policies on Criteria for Parklands with request for review and comments; correction.

SUMMARY: The National Park Service is correcting errors in the notice which appeared in the **Federal Register** on August 23, 1988 (53 FR 32113). The NPS is proposing revised management policies for new area studies and criteria for determining national significance. These policies, in their final form, will be incorporated in the revised National Park Service Management Policies as a part of chapter 2. The corrections are mainly minor but important editorial changes and a modification of the definition for suitability to consider that resources may be adequately protected, represented and presented for public enjoyment by another land managing entity. The revised text as shown below should be the one commented on. The comment date has also been changed from September 23, 1988 to September 30, 1988 to allow 30 days for comment from the date of publication of this corrected notice.

DATES: Written comments will be accepted until September 30, 1988.

ADDRESS: Comments should be directed to: Chief, Office of Policy, National Park Service, P.O. Box 37127, MIB–MS1226, Washington, DC 20013–7127.

Single copies of the draft management policies may be requested from National Park Service, Office of Policy, 18th & C Streets, NW., MIB–MS1226, Washington, DC 20013–7127. Copies are available for review in the National Park Service Washington Office and all regional offices. Addresses of the Washington Office and regional offices are:

National Park Service, 18th & C Streets, NW., Main Interior Building, Room 1226, Washington, DC 20013–7127

Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503

Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, PA 19106

Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, NE 68102

National Capital Parks, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242

North Atlantic Regional Office, National Park Service, 15 State Street, Boston, MA 02109–3572

Pacific Northwest Regional Office, National Park Service, 83 South King Street, Suite 212, Seattle WA 98104

Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Lakewood, CO 80225

Southeast Regional Office, National Park Service, 75 Spring Street, SW, Atlanta, Ga 30303

Southwest Regional Office, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728

Western Regional Office, National Park Service, 450 Golden Gate Ave., Box 36063, San Francisco, CA 94102

FOR FURTHER INFORMATION CONTACT: Office of Policy, 202/343–4298 or 7456.

SUPPLEMENTARY INFORMATION: The proposed policies for studying potential additions to the national park system reflect revised criteria for national significance adopted since 1978 for National Historic Landmarks and National Natural Landmarks. This statement updates the policy in effect since 1978 to more clearly distinguish significance considerations from questions of suitability, feasibility, and management alternatives. The proposed policy outlines four basic significance factors that apply to natural, cultural, and recreation resources and provides examples for each category of resource. This approach replaces the separate criteria for national recreation areas that appeared in the 1978 policies. The revised policy outlines criteria for new national park system units, but does not address what designation (park, monument, seashore, recreation area) would be most appropriate. Introductory material in the 1978 policy has been condensed to avoid duplication with other chapters in the new management policies. The new policy statement also includes a definition and criteria for affiliated areas.

The Service is hereby soliciting comment from any and all interested groups or individuals on these policies. We urge you to be specific as to how the policy might be changed or strengthened. All comments will be reviewed and, when appropriate, incorporated. The policies will remain on review for 30 days. The revised final policy and an explanation of how comments were addressed will be published in the **Federal Register**. These policies, in final form, will become a part of chapter 2 of the National Park Service Management Policies.

Denis P. Galvin,

Acting Director.

August 25, 1988.

New Area Studies and Criteria

The National Park Service identifies nationally significant natural, cultural, and recreational resources and assists in their preservation both inside and outside the national park system. The areas managed by the National Park Service are only one part of a national inventory of special and protected areas managed by innumerable federal, state, and local agencies and the private sector. Consequently, addition to the national park system is only one of many alternatives for ensuring the preservation of significant national resources for public enjoyment and benefit. A great variety of specially designated areas, including natural landmarks, historic landmarks, wild and scenic rivers, trails, wilderness areas, areas of critical environmental concern, biosphere reserves, and recreation areas, managed by the U.S. Forest Service, Fish and Wildlife Service,

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Bureau of Land Management, other federal, state, county, and local agencies, Indian tribes, and the private sector, complete the broader national inventory.

As directed by Congress, the National Park Service will study and monitor areas to determine if they are nationally significant and if so, whether they have potential for inclusion in the national park system. Planning for the future of the national park system is guided by a framework of themes representing all the aspects of America's natural and cultural heritage. Additions to the system recognize new understanding of natural resources, national recreational trends, and the continuing progress of history. New area studies may be initiated within the Service or may be conducted in response to requests from Congress, other federal, state, or local agencies, or the private sector. The Service will review all proposals and provide advice about planning, studies, or other appropriate actions. Where formal new area studies are appropriate, the Service will establish priorities and conduct studies as funds are available.

To be eligible for favorable consideration as a unit of the national park system, an area must (1) possess nationally significant natural, cultural, or recreational resources, (2) be a suitable and feasible addition to the system, and (3) require direct Park Service management instead of alternative protection by other agencies or the private sector. These criteria are designed to ensure that the national park system includes only outstanding examples of the nation's natural, cultural, and recreational resources. They also recognize that inclusion in the national park system is not the only option for preserving the nation's outstanding resources.

Criteria for National Significance

A natural, cultural, or recreational resource will be considered nationally significant if it meets all of the following criteria:

It is an outstanding example of a particular type of resource.

It possesses exceptional value or quality in illustrating or interpreting the natural or cultural themes of our nation's heritage.

It offers opportunities for recreation, public use, and enjoyment or for scientific study superior to other resources of the same type.

It retains integrity as a true, accurate, and relatively unspoiled example of a resource.

Examples of natural resources that may be nationally significant include:

An outstanding site that illustrates the characteristics of a landform or biotic area that is still widespread;

A rare remnant natural landscape or biotic area of a type that was once widespread but is now vanishing due to human settlement and development;

A landform or biotic area that has always been extremely uncommon in the region or nation;

A site possessing exceptional diversity of ecological components (species, communities, habitats) or geologic features (landforms, observable manifestations of geologic processes);

A site containing biotic species or communities whose natural distribution at that location makes them unusual (a relatively large population at the limit of its range, or an isolated population);

A site harboring a concentrated population of a rare plant or animal species, particularly one officially recognized as threatened or endangered;

A critical refuge necessary for the continued survival of a species;

A site containing a rare or unusually abundant fossil deposits;

An area with outstanding scenic qualities, such as dramatic topographic features, unusual contrasts in landforms or vegetation, spectacular vistas, or other landscape features;

A site that is an invaluable ecological or geological benchmark due to an extensive and long-term record of research and scientific discovery.

Nationally significant cultural resources include districts, sites, buildings, structures, or objects that possess exceptional value or quality in illustrating or interpreting our heritage and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association. Examples of cultural resources that may be nationally significant include those that—

Are associated with events that have made a significant contribution to and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained;

Are associated importantly with the lives of persons nationally significant in the history of the United States;

Represent some great idea or ideal of the American people;

Embody the distinguishing characteristics of an architectural type specimen, exceptionally valuable for study of a period, style, or method of construction or that represent a significant, distinctive, and exceptional entity whose components may lack individual distinction;

Are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture;

Have yielded or may be likely to yield information of major scientific importance by revealing new cultures or by shedding light upon periods of occupation over large areas of the United States.

Ordinarily cemeteries, birthplaces, graves of historic figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, and properties that have achieved significance within the past 50 years are not considered appropriate for addition to the national park system unless they have transcendent importance, unless they possess inherent architectural or artistic significance, or unless no other site associated with that theme remains.

Examples of recreation resources that may be nationally significant include—

A natural or cultural feature providing a special setting for a variety of recreational activities different from those available at the local or regional level;

A spacious area located near a major population center with the potential to provide exceptional recreational opportunities and to serve visitors from around the nation rather than solely from the immediate vicinity;

An area that protects a unique recreation resource that is scarce and disappearing in a multi-state region, such as an outstanding recreational river, a unique maritime environment or coastline, or a unique scenic area;

A unique combination of natural, cultural, and recreational resources that collectively offer outstanding opportunities for public use and enjoyment even through each feature might not individually be considered nationally significant.

Suitability and Feasibility

To be suitable for addition to the national park system an area must represent a natural/cultural theme or type of recreational resource that is not already adequately represented in the national park system unless such an area is adequately represented, protected, and presented for public enjoyment by another land managing entity. Adequacy or representation will

be determined on a case-by-case basis by evaluating the proposed addition in relation to other units in the national park system.

To be feasible as a new unit of the national park system an area must be of sufficient size and appropriate configuration to ensure long-term protection of resources and to accommodate public use, and it must have potential for efficient administration at a reasonable cost. Important feasibility factors include landownership, acquisition costs, access, threats to the resource, and staff or development requirements.

Management Alternatives

Studies of potential new park units will evaluate an appropriate range of management alternatives, which may include—

Continued management by states, local governments, Indian tribes, the private sector, or other federal agencies;

Technical or financial assistance to others through established NPS programs or special projects;

Management by others as a designated national natural landmark, national historic landmark, national wild and scenic river, national trail, biosphere reserve, state or local park, or other specially designated and protected area;

Cooperative management, including designation as an affiliated area.

New additions to the national park system will not usually be recommended if other arrangements can provide adequate protection for the resource and opportunities for public enjoyment.

Affiliated Areas

Congress and the Secretary of the Interior have given special recognition to a small group of areas that are affiliated with but not technically part of the national park system. These affiliated areas are protected and managed by other organizations and agencies, but they have some formal financial or legal relationship with the National Park Service, often including technical or financial assistance beyond what is normally available to national landmarks.

To be eligible for affiliated status, areas must meet the same criteria for national significance as national landmarks or potential units of the national park system. However, affiliated areas are not necessarily suitable or feasible as new units of the system. Designation as an affiliated area is a management alternative appropriate for resources that can be most effectively protected by others through a cooperative arrangement with the National Park Service. Although the National Park Service does not have direct management responsibility for affiliated areas, the Service usually enters into an agreement to assure that management and operations meet Park Service standards.

[FR Doc. 88-19752 Filed 8-30-88; 8:45 am]
BILLING CODE 4310-70-M

Minerals Management Service

[FES 88-26]

Gulf of Mexico; Availability of the Final Environmental Impact Statement Regarding Proposed Central and Western Gulf of Mexico Lease Sales 118 and 122

The Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to proposed 1989 Outer Continental Shelf (OCS) oil and gas lease sales in the central and western Gulf of Mexico. Proposed Central Gulf of Mexico Sale 118 and Western Gulf of Mexico Sale 122 will offer for lease approximately 33.5 million acres and 27.9 million acres, respectively. Single copies of the final EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Copies of the final EIS are available for review at the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Texas State Library, United States Documents Section, 1200 Brazos Street, Austin, Texas; University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin, Texas; University of Texas, General Libraries/Documents, 21st and Speedway Streets, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; University of Houston-University Park, Library Documents Unit, 4800 Calhoun Boulevard, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southwest College Library, 1825 May Street, Brownsville, Texas; Rosenburg Library, 2310 Sealy Street, Galveston, Texas; Texas A & M University, Evans Library, Documents Division, Spence and Lubbock Streets, College Station, Texas; The University of Texas at Dallas Library, 2801 North Floyd Road, Richardson, Texas; Lamar University, Gray Library, Virginia Avenue, Beaumont, Texas; Texas Tech University Library, United States Documents, 18th and Boston Streets, Lubbock, Texas; Texas Tech University, Law Library, 1802 Hartford Street, Lubbock, Texas; East Texas State University Library, 2600 Neal Street, Commerce, Texas; Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches, Texas; Baylor University Library, Documents Department, 13125 Third Street, Waco, Texas; University of Texas-Arlington, Library Documents, 701 South Cooper Street, Arlington, Texas; University of Texas at El Paso, Library Documents Division, Wiggins Road and University Avenue, El Paso, Texas; Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene, Texas; University of Texas at San Antonio Library, John Peace Boulevard, San Antonio, Texas; Tulane University, Howard Tilton Memorial Library, Documents Department, 7001 Freret Street, New Orleans, Louisiana; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston, Louisiana; Louisiana State Library, 760 Riverside, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress, Lafayette, Louisiana; Calcasieu Parish Library, Downtown Branch, 411 Pujo Street, Lake Charles, Louisiana; Nicholls State Library, Nicholls State University, Leighton Drive, Thibodaux, Louisiana; Harrison County Library, 14th and 21st Avenue, Gulfport, Mississippi; Auburn University at Montgomery Library, Taylor Road, Montgomery, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; University of Alabama Libraries, Government Documents, 809 University Boulevard East, Tuscaloosa, Alabama; Mobile Public Library, 701 Government Street, Mobile, Alabama; University of Florida Libraries, Documents Department, University Avenue, Gainesville, Florida; University of Florida, Holland Law Center Library, Legal Information Center, Southwest 25th Street and 2nd Avenue, Gainesville, Florida; Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Florida Atlantic University Library, Division of Public Documents, 20th Street, Boca Raton, Florida; University of Miami Library, Government Publications, 4600 Rickenbacker Causeway, Miami, Florida; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg,

Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 Northwest Aaron Street, Port Charlotte, Florida; Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida.

William D. Battenberg,

Director, Minerals Management Service.

Approved:

Date: August 26, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-19837 Filed 8-30-88; 8:45 am]

BILLING CODE 4320-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on Tuesday, September 27th in conjunction with the release of their report on "PVO Effectiveness."

Date: September 27, 1988
Time: 9:30 a.m.–11:20 a.m.
Place: The National Press Club, 14th and F Streets, NW., Washington, DC 20045.

The meeting is free and open to the public. However, notification by September 21, 1988 through the Advisory Committee Headquarters is required.

Persons wishing to attend the meeting must call (703) 875-4407, or write, not later than September 21. The address is: The Advisory Committee on Voluntary Foreign Aid, Room 305, SA-8, Agency for International Development, Washington, DC 20523

Date: August 22, 1988.

Thomas A. McKay,

Deputy Assistant Administrator for Private and Voluntary Cooperation, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 88-19732 Filed 8-30-88; 8:45 am]

BILLING CODE 6116-01-M

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) is considering the authorization of the guaranty of a loan to the Government of Jamaica as part of A.I.D.'s development assistance program. The proceeds of this loan would be used to support a shelter program for low-income families in Jamaica. The Government of Jamaica has requested A.I.D. to advise eligible investors that Jamaica is seeking expressions of interest for an amount to be borrowed of up to $10 million plus the dollar amount to capitalize the first three years of interest payments. The name and address of the Borrower's representative to be contacted by interested U.S. lenders of investment bankers, the amount of the loan and project number are indicated below:

Government of Jamaica

Project: 532-HG-013—$10 Million plus 3 years capitalized interest.

Attention: (1) Harry Milner, Financial Secretary, Ministry of Finance and Planning, 30 National Heroes Circle, P.O. Box 512, Kingston 4, Jamaica. Telex No.: 2447 Finance. Telefax No.: 809/924-9291. Telephone No.: 809/922-3388 or 8601.

(2) Audley Sailsman, Ministry of Finance and Planning, 30 National Heroes Circle, P.O. Box 512, Kingston 4, Jamaica. Telex No.: 2447 Finance. Telefax No.: 809/924-9291. Telephone No.: 809/922-8784.

Investors should contact the borrower as soon as possible during the week of September 5, 1988 and indicate their interest in providing financing for the Housing guaranty Program. Following discussions with interested investors, the Borrower's representative will come to New York to finalize procedures to be followed in selecting a loan proposal. The Borrower intends to be in New York during the week of September 12, 1988. The intention of the Borrower is to close the loan and obtain disbursement by September 30, 1988.

Expressions of interest should also be sent to the following:

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N.S., Washington, DC 20523. Telephone: 202/647-8235. Telex No.: 892703 AID WSA. Telefax No.: 202/647-4958 (preferred communication).

Mr. Lane Lee Smith, Assistant Director/Caribbean, RHUDO/Kingston, USAID/Kingston, American Embassy, Washington, DC 20523-3210 (street address: 6B Oxford Road, Kingston, Jamaica). Telephone No.: 809/929-8572 or 3125. Telefax No.: 809/929-3752.

For your information the Borrower is currently considering the following terms:

1. *Amount:* U.S. $10 million.

2. *Maturity:* Up to 30 years

3. *Interest Rate:* Option of either fixed or variable rate or variable with Borrower's right to convert to fixed rate.

4. *Grace Period on Principal:* Ten years with repayment amortizing gradually over the remaining life of the loan.

5. *Capitalization of Interest:* Capitalization of interest for first three years.

6. *Prepayment:* Expressions should include the possibility of partial or total prepayment of the loan by the Borrower, if pricing is not materially affected.

7. *Notes:* Preference to limit number of noteholders.

8. *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. would enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans would be guaranteed by A.I.D. The A.I.D. guaranty would be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 315, SA-18 Center Building, Washington, DC 20523. Telephone: 703/875-4808.

Date: August 29, 1988.

Fredrik A. Hansen,

Deputy Director, Office of Housing and Urban Programs, Agency for International Development.

[FR Doc. 88-19945 Filed 8-30-88; 10:17 am]
BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-275]

Certain Nonwoven Gas Filter Elements; Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order under 19 U.S.C. 1337(d) to prevent the unauthorized importation into the United States of certain nonwoven gas filter elements that infringe claims of 1, 2, 3, 6, 7, or 8 of U.S. Letters Patent 4,056,375 ("the '375 patent").

ADDRESSES: Copies of the limited exclusion order, the Commission opinion on remedy, the public interest, and bonding, and all other nonconfidential documents on the record of the above-captioned investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1061. Hearing-impaired persons are advised that information on the aforesaid limited exclusion order and the subject investigation can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: As a result of the subject investigation, the Commission determined that the unauthorized U.S. importation and sale of the subject nonwoven gas filter elements violates section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). *See* 52 FR 32182 (Aug. 26, 1987), as amended by 52 FR 44234 (Nov. 18, 1987); 53 FR 12200 (Apr. 13, 1988); 53 FR 27408 (June 20, 1988). The Commission accordingly solicited written submissions from the parties to the investigation, other Federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding. *See* 53 FR 27408 (June 20, 1988). The only submissions the Commission received were those filed by the parties. After considering the parties' submissions and examining the record developed during the investigation, the Commission determined that the appropriate remedy for the section 337 violations found in this investigation consists of a limited exclusion order prohibiting the importation of Dutch respondent Filtrair B.V.'s infringing gas filter elements for the remaining term of the '375 patent, except under license from the patent holder. (The Commission majority determined to deny complainant's request for an order directing domestic respondent APB Corporation to cease and desist from marketing, distributing, selling, or offering for sale in the United States its existing inventory of Filtrair B.V.'s imported infringing nonwoven gas filter elements.[1] The Commission also determined that the public interest considerations listed in subsection (d) of section 337 do not preclude issuance of a limited exclusion order and that while the order is under review by the President pursuant to subsection (g) of section 337, the excluded articles will be entitled to enter the United States under a bond in the amount of 12 percent of the articles' entered value.

The authority for the aforesaid Commission determinations and the limited exclusion order is contained in subsections (d) and (j) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(d) and 19 U.S.C. 1337(j), as amended by the Omnibus Trade and Competitiveness Act of 1988) and in interim §§ 210.57 and 210.58(a) of Part 210 of the Commission's Rules of Practice and Procedure (which will be published in the **Federal Register** on or about August 29, 1988) (interim 19 CFR 210.57 and 210.58(a)).

Issued: August 26, 1988.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-19849 Filed 8-30-88; 8:45 am]
BILLING CODE 7020-02-M

[1] Commissioner Liebeler dissented on this issue. She would have issued a cease and desist order in addition to the limited exclusion order to prevent the repondents from selling the infringing nonwoven gas filter elements they currently have in their inventory.

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-97]

Passenger Train Operation; Elgin, Joliet and Eastern Railway Co. and Wisconsin Central Ltd.

To: Elgin, Joliet and Eastern Railway Company and Wisconsin Central Ltd.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois and Seattle, Washington. The operation of these trains requires the use of the tracks and other facilities of Soo Line Railroad Company (SL). A portion of the SL tracks near Elm Grove, Wisconsin, are temporarily out of service because of a derailment. An alternate route is available via the Joliet and Eastern Railway Company and Wisconsin Central Ltd. between Rondout, Illinois and Duplainville, Wisconsin.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Elgin, Joliet and Eastern Railway Company (EJE) and Wisconsin Central Ltd. (WC) are directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Rondout, Illinsos and a connection with Soo Line Railroad Company (SL) at Duplainville, Wisconsin.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority

conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 4:45 p.m. (EDT), August 10, 1988.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (EDT), August 13, 1988, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Joliet and Eastern Railway Company and Wisconsin Central Ltd., the Association of American Railroads—Transportation Division, The American Short Line Railroad Association, and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, August 10, 1988.

By Bernard Gaillard, agent.

Noreta R. McGee,

Secretary.

[FR Doc. 88-19617 Filed 8-30-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Clean Air Act; A-1 Disposal Corp., etal

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on August 9, 1988 proposed four consent decrees in *United States v. A-1 Disposal Corporation, et al.*, Civil Action No. 86 C 9107, were lodged with the United States District Court for the Northern District of Illinois. The proposed consent decrees require the defendants to pay EPA $162,568 to reimburse EPA for costs incurred in responding to releases and threatened releases of hazardous substances at the Alburn Incinerator site in Chicago, Illinois.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. A-1 Disposal Corporation, et al.*, D.J. Ref. 90-11-3-97A.

The proposed consent decrees may be examined at the office of the United States Attorney, Everett McKinley Dirksen Bldg., Rm. 1500 S., 219 S. Dearborn St., Chicago, Illinois 60604 and the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decrees may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent decrees may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19740 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree In Action To Enjoin Discharge of Water Pollutants; Fansteel, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Fansteel, Inc.*, Civil Action No. 88-471C, was lodged with the United States District Court for the Eastern District of Oklahoma on August 17, 1988. The consent decree establishes a compliance schedule for the metal processing facility, located at Number Ten Tantalum Place, Muskogee, Oklahoma and owned and operated by Fansteel, Inc. ("Fansteel"), to bring the facility into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, Fansteel's National Pollutant Discharge Elimination System Permit, and the applicable regulations relating to the discharge of pollutants. The consent decree also requires payment of a civil penalty of $99,000. The consent decree calls for Fansteel to achieve compliance by January 31, 1990.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave. NW., Washington, DC 20530 and should refer to *United States* v. *Fansteel, Inc.*, D.J. Ref. No. 90-5-1-1-2921.

The consent decree may be examined at the office of the United States Attorney, Eastern District of Oklahoma, 333 Federal Courthouse and Office Building, Muskogee, Oklahoma 74401 and at the Region VI office of the Environmental Protection Agency, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202. A copy may be obtained by mail by written request to the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19741 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Hardinsburg, KY, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed consent decree in *United States* v. *City of Hardinsburg, Kentucky, et al.*, C 88-0500-L-A, was lodged with the United States District Court for the Western District of Kentucky. The action was brought pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.* and alleged violations by the City of its National Pollutant Discharge Elimination System (NPDES) permit. The complaint prayed for civil penalties and injunctive relief.

The consent decree requires the City to pay a civil penalty of $6,000, to achieve final compliance with its NPDES permit by April 1, 1990, to initiate and complete necessary construction in accordance with a fixed schedule and to pay stipulated penalties for violations of the schedule.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. All comments should refer to *United States* v. *City of Hardinsburg*, D.O.J. Ref. 90-5-1-1-3086.

The proposed consent decree may be examined at the office of the United States Attorney, Bank of Louisville Building, 10th Floor, Louisville, Kentucky 40202 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. Copies of the

proposed decree can be obtained by mail from the Environmental Enforcement Section, Land & Natural Resources Division, United States Department of Justice, Washington, DC 20530. Any request for a copy should be accompanied by a check in the amount of $1.70 for copying costs payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19733 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree, Hodgenville, KY, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed consent decree in *United States v. City of Hodgenville, Kentucky, et al.*, C 88-0499 LA, was lodged with the United States District Court for the Western District of Kentucky. The action was brought pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.* and alleged violations by the City of its National Pollutant Discharge Elimination System (NPDES) permit. The complaint prayed for civil penalties and injunctive relief.

The consent decree requires the City to pay a civil penalty of $10,000, to achieve final compliance with its NPDES permit by April 1, 1990, to initiate and complete necessary construction in accordance with a fixed schedule and to pay stipulated penalties for violations of the schedule.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land & Natural Resources Division, Department of Justice, Washington, DC. All comments should refer to *United States v. City of Hodgenville,* D.O.J. Ref. 90-5-1-1-3087.

The proposed consent decree may be examined at the office of the United States Attorney Bank of Louisville Building, 10th Floor, Louisville, Kentucky 40202 and at the Region IV Office of The Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed decree can be obtained by mail from the Environmental Enforcement Section, Land & Natural Resources Division, United States Department of Justice, Washington, DC 20530. Any request for a copy should be accompanied by a check in the amount of $1.70 for copying costs payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General Land & Natural Resources Division.

[FR Doc. 88-19734 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree; Kevil, KY, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed consent decree in *United States v. City of Kevil, Kentucky, et al.*, C 88-0172 P(J), was lodged with the United States District Court for the Western District of Kentucky. The action was brought pursuant to the Clean Water Act, 33 U.S.C. 1251 et seq. and alleged violations by the City of its National Pollutant Discharge Elimination System (NPDES) permit. The complaint prayed for civil penalties and injunctive relief.

The consent decree requires the City to pay a civil penalty of $2,750, to achieve final compliance with its NPDES permit by July 1, 1990, to initiate and complete necessary construction in accordance with a fixed schedule and to pay stipulated penalties for violations of the schedule.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land & Natural Resources Division, Department of Justice, Washington, DC. All comments should refer to *United States v. City of Kevil* D.O.J. Ref. 90-5-1-1-3085.

The proposed consent decree may be examined at the office of the United States Attorney, Bank of Louisville Building, 10th Floor, Louisville, Kentucky 40202 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed decree can be obtained by mail from the Environmental Enforcement Section, Land & Natural Resources Division, United States Department of Justice, Washington, DC 20530. Any request for a copy should be accompanied by a check in the amount of $1.70 for copying costs payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19735 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree; Seymour Recycling Corp., et al.

In accordance with the Policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Seymour Recycling Corp., et al.*, Civil Action No. IP-80-457-C, was lodged with the United States District Court for the Southern District of Indiana, on August 18, 1988. The action was filed pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607, section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, and section 311 of the Clean Water Act, 33 U.S.C. 1321. The complaint sought injunctive relief and the recovery of costs incurred by the United States in connection with federal clean-up activities at the site of the former Seymour Recycling Corporation facility in Seymour, Indiana.

The Consent Decree provides that the settling defendants will fund and implement the remedial action for the permanent cleanup of the Site. The remedial action plan includes treatments for soil and groundwater contamination. The Consent Decree also provides that the settling defendants will pay $6.5 million to the United States for costs incurred by the federal government in conducting investigatory, removal, and remedial activities at the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Seymour Recycling Corp., et al.*, DOJ Reference No. 62-26S-19.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 274 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the

Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice. The proposed Consent Decree package consists of a 195-page Consent Decree and 372 pages of Exhibits. You may request a copy of the Consent Decree with or without exhibits. Please specify in the letter of request whether or not exhibits are requested. A request for a copy of the proposed Consent Decree with exhibits should be accompanied by a check in the amount of $56.70 (ten cents (10¢) per page copying costs) payable to the "United States Treasurer." A request for a copy of the proposed Consent Decree without exhibits should be accompanied by a check in the amount of $19.50 payable to the "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19742 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; State of Washington v. Time Oil Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 18, 1988, a proposed consent decree in *United States and State of Washington* v. *Time Oil Co.*, Civil Action Nos. C85-476TB and C86-990T (consolidated), was lodged with the United States District Court for the Western District of Washington. The Complaint filed by the United States alleged that defendant Time Oil Co. was the owner or operator of the Time Oil facility, from which there have been releases of hazardous substances into the environment, which releases have caused the United States to incur response costs. The complaint sought the reimbursement of the money that EPA has spent and will spend in remedying the Time Oil property, the contaminated groundwater beneath the property, and the contaminated groundwater in the City of Tacoma's wellfield.

The consent decree requires the defendant to pay $8.5 million to be divided among the United States, the State of Washington, and the City of Tacoma, in proportion to the costs that each has incurred and is anticipated to incur.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States and State of Washington* v. *Time Oil Co.*, D.J. Ref. 90-11-2-129A.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Washington, 3600 Seafirst Fifth Avenue, Plaza, 36th floor, Seattle, Washington 98104, and at the Region X office of the Environmental Protection Agency, 1200 Sixth Avenue, 12th floor, Seattle, Washington 98101. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. When requesting a copy, please refer to *United States and State of Washington* v. *Time Oil Co.*, D.J. Ref. 90-11-2-129A, and enclose a check in the amount of $1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19743 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

United States Trustee Program; Notice of Certification, Sixth Circuit

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Sixth Circuit on this date that, in the region specified in paragraph 581(a)(8) of title 28, United States Code, composed of the federal judicial districts for the States of Tennessee and Kentucky, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapters 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee, having been appointed pursuant to 28 U.S.C. 581(a), is responsible for implementing the amendments made by the Act in the region hereby certified.

Date: August 8, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-19744 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research; the Industry/University Cooperative Research Center for Simulation and Design Optimization of Mechanical Systems

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Industry/University Cooperative Research Center for Simulation and Design Optimization of Mechanical Systems, located at the University of Iowa, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Industry/University Cooperative Research Center for Simulation and Design Optimization of Mechanical Systems and its general areas of planned activities, are given below.

The parties to the Industry/University Cooperative Research Center for

Simulation and Design Optimization of Mechanical Systems are as follows:

Alliant Computer Systems
Apollo Computer, Inc.
Boeing Computer Services
CADSI, Inc.
Case/IH
Caterpillar, Inc.
Contraves Goertz Group
Eastman Kodak Company
Evans & Sutherland
FMC Corporation
CPC General Motors Corportion
Intergraph Corporation
Silicon Graphics

The objectives of the Industry/University Cooperative Research Center for Simulation and Design Optimization of Mechanically Systems are as follows:

To sponsor research and development that focuses on methods for simulation and design optimization of dynamic and structural performance of mechanical systems, and on the development of advanced software into a data base and command processor system that will serve as a national research software system to permit research teams to carry out their work in an interdisciplinary simulation and design optimization environment.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-19745 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

Proposed Termination of Final Judgment; American Body & Trailer, Inc., et al.

Notice is hereby given that Great Dane Trailers, Inc. ("Great Dane") has filed with the United States District Court for the Western District of Oklahoma a motion to terminate the final judgment in *United States v. American Body and Trailer, Inc., Utility Trailer Manufacturing Company, and Great Dane Trailers, Inc.;* and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on June 16, 1958) alleged that the defendants engaged in a combination and conspiracy to allocate territories and fix prices for the sale of trailers in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The judgment (also entered on June 16, 1958) enjoined the defendants from allocating territories or markets and fixing prices for the sale of trailers; referring inquiries from prospective customers to another trailer manufacturer; and exchanging with any trailer manufacturer any element of defendant's sale price of trailers. The judgment also enjoins defendants from agreeing not to utilize distributors in any territory or location and from restricting the territories in which distributors may sell trailers.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Great Dane's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, United States Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Western District of Oklahoma, 3210 United States Courthouse, Oklahoma City, Oklahoma 73102. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 555 4th Street, NW., Judiciary Center Building, Room 10-437, Washington, DC 20001 (telephone 202/724-7966).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88-19746 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-1]

Edwin Dale Moses, M.D.; Revocation of Registration

On December 3, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Edwin Dale Moses, M.D. (Respondent), 4974 North Holt, Fresno, California 93705, proposing to revoke his DEA Certificate of Registration AM8594120. The statutory basis for the Order to Show Cause was the revocation to practice medicine by the California Board of Medical Quality Assurance on March 20, 1987. This action renders Respondent without authority to prescribe, administer, dispense or otherwise handle controlled substances in the State of California.

By letter dated December 26, 1987, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was docketed before Administrative Law Judge Francis L. Young. On January 25, 1988, Government counsel filed a motion for summary disposition. Judge Young provided Respondent until February 29, 1988, to file a response to the Government's motion for summary disposition. Upon realizing that the Government's motion and Judge Young's memorandum had been sent to an incorrect address, Respondent was permitted until June 15, 1988, to file a response to the Government's motion for summary disposition. Respondent filed no response.

On August 5, 1988, Administrative Law Judge Francis L. Young issued a memorandum and order terminating the proceedings. The Administrative Law Judge concluded that since Respondent has presented no defense or objection to the Government's motion for summary disposition, no contest is presented between the parties calling for an adjudicatory decision. All proceedings before the Administrative Law Judge were concluded so that the matter could be presented to the Administrator for entry of a final order pursuant to 21 CFR 1301.54 (d) and (e).

The Administrator finds that on October 27, 28, 29, and 30, 1986, and January 6, 1987, hearings were conducted before a California Administrative Law Judge regarding an accusation made by the California Board of Medical Quality Assurance concerning Respondent's license to practice medicine in the State of California. The state judge found that Respondent prescribed controlled substances to patients without good faith medical examination and medical indication. The Administrative Law Judge also found that Respondent had sexual relations with patients under his care, and that he obtained Preludin, a Schedule II stimulant controlled substance for his own use using deceptive means. The California Board of Medical Quality Assurance adopted the findings and recommendation of the Administrative Law Judge that Respondent's medical license be revoked. By order dated February 18, 1987, the medical board revoked

Respondent's California medical license effective March 20, 1987.

The Controlled Substances Act, at 21 U.S.C. 823(f), requires that in order to be registered with DEA as a practitioner, an individual must be "authorized to dispense * * * controlled substances under the laws of the State in which he practices." DEA does not have the statutory authority under the Controlled Substances Act to maintain a registration issued to a practitioner who is not authorized by the state in which he practices to handle controlled substances. The Administrator of DEA has consistently so held. See *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–5, 50 FR 34208 (1985); *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). The Administrator finds that Respondent's lack of a license to practice medicine in California constitutes lack of authorization to prescribe, administer, dispense or otherwise handle controlled substances in that state. Respondent is, therefore, not authorized to maintain his DEA Certificate of Registration. The Administrator concludes that Respondent's DEA registration must be revoked.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM8594120, previously issued to Edwin Dale Moses, M.D., be, and it hereby is, revoked. Any outstanding applications for registration submitted by Respondent are denied.

This order is effective September 30, 1988.

Dated: August 25, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–19750 Filed 8–30–88; 8:45 am]

BILLING CODE 4410–09–M

Cecil Smith, M.D.; Revocation of Registration

On March 31, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Cecil Smith, M.D., 272 State Road, N. Dartmouth, Massachusetts 02747. The Order to Show Cause sought to deny Dr. Smith's application for a DEA Certificate of Registration dated March 19, 1987, based upon his lack of authorization to handle controlled substances in Massachusetts, and the previous surrender of a DEA Certificate of Registration in April 1986 based upon prescribing of controlled substances to known drug abusers.

The Order to Show Cause was received by Dr. Smith on April 6, 1988. More than 30 days have passed since the order to show cause was received, and there has been no response. The Administrator finds that Dr. Smith has waived his opportunity for a hearing and issues this final order based upon the findings of fact and conclusions of law as hereinafter set forth. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that Dr. Smith is not licensed to handle controlled substances by the Department of Public Health for the Commonwealth of Massachusetts. This resulted from Dr. Smith's surrender of his DEA Certificate of Registration in Schedules 2 and 2N in 1980, and in Schedules 3, 3N, 4 and 5 in 1986. Dr. Smith has not applied to the Massachusetts Department of Public Health for reinstatement of his state license. The Administrator of DEA has consistently held that DEA does not have the authority to issue a registration to an individual who is not authorized to handle controlled substances by the state or jurisdiction in which he seeks to practice. See *Emerson Emery, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). The Administrator concludes that there is a lawful basis to deny Dr. Smith's application based on lack of state authorization alone.

The Administrator notes, however, that Dr. Smith surrendered Schedules 2 and 2N of his DEA registration on September 18, 1980, following an investigation of his prescribing of various Schedule 2 narcotic drugs. The Massachusetts State police and DEA had received several complaints about Dr. Smith's excessive prescribing of narcotics. When Dr. Smith was questioned about his prescribing practices he agreed to surrender the Schedule 2 portion of his DEA registration. Dr. Smith retained his DEA registration in Schedules 3, 3N, 4 and 5.

An investigation conducted in April and May of 1986, revealed that Dr. Smith was continuing to prescribe controlled substances to individuals who he knew were drug abusers. Several area pharmacists were interviewed. Many of these pharmacists would not fill prescriptions for controlled substances written by Dr. Smith because of the questionable nature of the prescriptions. On April 24, 1986, Dr. Smith was interviewed by DEA investigators and Massachusetts State Troopers. The doctor agreed that he was writing prescriptions for controlled substances to drug addicts. At that time he surrendered his DEA Certificate of Registration. The Administrator finds that in addition to lacking authorization from the State of Massachusetts to handle controlled substances, Dr. Smith has history of prescribing controlled substances to drug abusers, and that his application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration submitted by Cecil Smith, M.D., on March 19, 1987, be, and it hereby is, denied. Any other outstanding applications for registration submitted by Dr. Smith are also denied.

This order is effective August 31, 1988.

Dated: August 25, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–19749 Filed 8–30–88; 8:45am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Notice of Establishment of JTPA Native American Programs' Advisory Committee

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the establishment of the Job Training Partnership (JTPA) Native American Programs' Advisory Committee is in the public interest in regard to the consultation responsibilities imposed on the Department under Title IV, section 401, of JTPA.

The Committee will provide advice to the Assistant Secretary for Employment and Training on rules, regulations, and performance standards specifically and solely for Native American programs authorized under Title IV, section 401, of JTPA. The Assistant Secretary seeks this advice, as one of several means of consultation with the Indian and other Native American community, in order to develop such rules, regulations, and performance standards. The Committee will provide the Assistant Secretary with a summary report of the advice offered on these matters within 30 days of its scheduled meetings.

As Paragraph 401(h)(1) of JTPA directs, the Committee shall be comprised of representatives of the Indian and other Native American community. The Committee will include, but not limited to, JTPA section 401, grantees and members of national organizations representing the Indian and other Native American community. An equitable geographic distribution will be sought in addition to appropriate representation of both tribes and nontribal organizations. The members shall not be compensated and shall not be deemed to be employees of the United States.

The Committee will function solely as an advisory body, not a policy formulating or decision making body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter has been filed under the Act concurrently with this publication.

Interested persons are invited to submit comments regarding the establishment of the JTPA Native American Programs' Advisory Committee. Such comments should be addressed to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, U.S. Department of Labor, Employment & Training Administration, Room N–4641, 200 Constitution Ave., NW., Washington, DC 20210, Telephone: (202) 535–0500.

Signed at Washington, DC, this 26th day of August, 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88–19815 Filed 8–30–88; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Museum Advisory Panel to the National Council on the Arts

Pursuant to section 10(a)(2) of the Federal advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge II Section) to the National Council on the Arts will be held on September 19–20, 1988, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

August 25, 1988.

[FR Doc. 88–19828 Filed 8–30–88; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Presenters Section) to the National Council on the Arts will be held on September 14, 1988, from 9:00 a.m.–5:00 p.m.; on September 15, 1988, from 9:00 a.m.–6:00 p.m.; and on September 16, 1988 from 9:00 a.m.–5:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 16, from 1:00–4:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on September 14, from 9:00 a.m.–5:00 p.m.; on September 15, from 9:00 a.m.–6:00 p.m.; and on September 16, from 9:00 a.m.–1:00 p.m., and from 4:00 p.m.–5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations dur to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts 1100 Pennsylvania Avenue, NW., Washington 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

August 23, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–19737 Filed 8–30–88; 8:45 am]

BILLING CODE 7537–01–M

Meeting of the Visual Arts Advisory Panel to the National Council on the Arts

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Challenge II Section) to the National Council on the Arts will be held on September 21, 1988, from 9:00 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965 as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

August 25, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–19829 Filed 8–30–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On June 21, 1988, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued to the following individuals on August 18, 1988: Paul K. Dayton, J. Ward Testa, Gary D. Miller, Wayne Trivelpiece, and Douglas Wartzok.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 88-19736 Filed 8-30-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.59, Operators' Licenses, Requalification relative to Facility Operating License No. DPR-73, issued to GPU Nuclear Corporation (the licensee), for the Three Mile Island Nuclear Station Unit 2 (TMI-2), located in Londonderry Township, Dauphin County, Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

Environmental Assessment

Identification of Proposed Action

The actions being considered by the Commission are exemptions from requirements of 10 CFR 55.59 pertaining to the Licensed Operator Requalification Program. The licensee has requested, in a letter dated December 28, 1987, that the requirements of 10 CFR 55.59(c)(2), subsections (iv) and (v) and 10 CFR 55.59(c)(3)(i), items (A) through (AA) be eliminated. Specifically, 10 CFR 55.59(c)(2), subsections (iv) and (v) require that the licensee's operators' requalification program include lectures covering plant protection systems and engineered safety systems, respectively. Items (A) through (AA) of 10 CFR 55.59(c)(3)(i) require that the operators' requalification program include, as part of on-the-job training, control manipulations for an identified list of conventional reactor evolutions.

The Need for the Proposed Action

TMI-2 is currently in a post-accident, cold shutdown, long-term recovery mode, with sufficient decay heat removal assured by direct heat loss from the reactor coolant system (RCS) to the reactor building atmosphere. The present unconventional configuration of the TMI-2 plant does not allow the conventional evolutions normal to an operating facility. As such, the staff does not consider the evolutions listed in 10 CFR 55.59(c)(3)(i) items (A) through (AA) applicable for TMI-2. Since conventional events are not applicable for TMI-2, conventional plant protection systems and engineered safety systems are not required by TMI-2 and are in fact disabled.

Therefore, training lectures on conventional plant protection systems and engineered safety systems would be irrelevant to TMI-2. Similarly, conventional manipulations, such listed in 10 CFR 55.59(c)(3)(i) items (A) through (AA) would not be applicable to the present TMI-2 configuration. As such, exercises attempting these manipulations would not be relevant to the TMI-2 operating staff.

Environmental Impact of the Proposed Action

The staff has evaluated the proposed exemptions and concludes that in light of the current and future condition of the facility described above, there are no significant radiological or nonradiological impacts to the environment as a result of this action. The exemptions remove the specific training requirements which are no longer applicable to the TMI-2 configuration.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Programmatic Environmental Impact Statement for TMI-2, dated March 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see the letter from GPUN dated December 28, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 23rd day of August, 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects I-II.

[FR Doc. 88-19824 Filed 8-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co.; and The Cleveland Electric Illuminating Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specification (TS's) relating to response times and surveillance requirements for the Main Steam Isolation Valves, Safety Features System, and Steam and Feedwater

Rupture Control System. The proposed changes would ensure consistent closure response time requirements throughout the Appendix A TS's, would delete redundant response time requirements, and would clarify the meaning of the response time requirement.

The Need for the Proposed Action

The proposed changes are needed to make the MSIV closure time requirements consistent throughout the technical specifications under the assumptions applied in the analyses in the Updated Safety Analysis Report (USAR). The changes also would eliminate requirements where they are not necessary to satisfy the assumptions applied in the USAR.

The MSIV's are installed in both main-steam lines between the steam generators (SG's) and the turbine, and provide isolation of the steam generators when required. Automatic closure of these valves is through the Safety Features Actuation System (SFAS) or the Steam and Feedwater Rupture Control System (SFRCS). SFAS will initiate MSIV closure upon a high-high containment pressure signal, and SFRCS will initiate closure upon either low steam pressure, high SG level, or a high pressure differential between the SG and main feedwater line.

Operability and closure time requirements for the MSIV's are specified in four sections of the Technical Specifications; however the closure and response times stated are not consistent between sections because the requirements were developed for certain sections independently of the others. Therefore, the proposed amendment would specify a consistent closure requirement where closure times are necessary to be specified. Where it is not necessary to specify such a requirement for the MSIV's, nonapplicability would be indicated.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined. The proposed amendment does not otherwise affect radiological plant effluents during normal operation. In addition, the proposed amendment does not have any influence upon occupational radiation exposure.

Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiologcial environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 23, 1988 (53 FR 9527). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would only result in continuing the specification of inconsistent requirements for closure and response times for the MSIV's.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 27, 1987, and supplemental information submitted March 31, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 25th day of August, 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III—3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–19825 Filed 8–30–88; 8:45 am]

BILLING CODE 7590–01–M]

[Docket No. 50–346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to Steam and Feedwater Rupture Control System Instrumentation Trip Setpoints, in accordance with Toledo Edison Company's application dated December 7, 1987. Specifically, the proposed amendment would:

(1) Reduce the Steam Generator low-level Steam and Feedwater Rupture Control System trip setpoint from not less than 20 inches to not less than 16.4 inches.

(2) Clarify the datum for measuring the Steam Generator level.

The Need for the Proposed Action

The proposed changes are needed to support the determination made in the Davis-Besse Course of Action document that the margin between the Steam and Feedwater Rupture Control System low level trip setpoint and the Integrated Control System low level limit should be increased.

Environmental Impacts of the Proposed Action

The Davis-Besse Steam and Feedwater Rupture Control System is designed to mitigate the consequences of a main steam line or main feedwater line break. The low level trip setpoint initiates the Steam and Feedwater Rupture Control System when insufficient feedwater is present in the Steam Generator. Lowering the setpoint

will decrease the likelihood of an inadvertent Steam and Feedwater Rupture Control System actuation during operation at or near the Integrated Control System low level limit.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined. The proposed amendment does not otherwise affect radiological effluents during normal operation. In addition, the proposed amendment does not have any influence upon occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves a change in a safety system trip setpoint. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 3, 1988 (53 FR 15759). No request for hearing or petition for leave to interviene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in increased probability of spurious Steam and Feedwater Rupture Control System actuations and potential transients.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 25th day of August, 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–19826 Filed 8–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 117 to Facility Operating License No. NPF–3, issued to The Toledo Edison Company and the Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications related to the main steam safety valve setpoints and ASME Code requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 24, 1988 (53 FR 18631). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated March 4, as supplemented May 4, 1988, (2) Amendment No. 117 to License No. NPF–3, (3) the Commission's related Safety Evaluation dated August 24, 1988, and (4) the Environmental Assessment dated July 19, 1988 (53 FR 28081). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 24th day of August 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–19827 Filed 8–30–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of SF 3108; Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a new information collection from the public. SF 3108, Application to Make Service Credit Payment for Civilian Service, is completed by employees, former employees, and Members of Congress who wish to pay for any period of civilian service performed before 1989 and for which no Federal Employees Retirement System (FERS) deductions were previously made. These individuals may also pay for any period of civilian service during which retirement deductions were withheld from pay and refunded to the person based on an application filed before they became covered by FERS. Annual use by these individuals is estimated at 1,000 forms. The total annual burden is 500 hours. For copies of this proposal, call C. Ronald

Trueworthy, Agency Clearance Officer, on (202) 632-7714.

DATES: Comments on this proposal should be received on or before September 12, 1988.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415,

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-19855 Filed 8-30-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26029; SR-BSE-87-1]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change

I. Introduction

The Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Commission on January 30, 1987, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change that would establish an automated communication, order routing and execution system for use by Exchange member organizations. The proposed system, known as "BEACON",[2] is a small order execution system similar in many ways to systems already in place on other regional stock exchanges such as the Midwest Stock Exchange's ("MSE") "MAX" system, the Pacific Stock Exchange's ("PSE") "SCOREX" system, and the Philadelphia Stock Exchange's ("Phlx") "PACE" system.

As proposed by the Exchange, BEACON would route orders in eligible stocks from member firms to the BSE floor. For stocks traded on the Intermarket Trading System ("ITS"),[3] BEACON would guarantee either an automatic or manual execution of up to either 599 or 1299 shares, depending on the classification of the stock, at the BEACON quotation. To accomplish this, a BEACON order electronically entered into the system by a member firm is transmitted to a BSE specialist's post where it is displayed on the specialist's terminal together with the automatically assigned BEACON quote at which the order would be automatically executed. The order is displayed on the specialists's terminal for up to 15 seconds to permit the specialist to intervene in the automatic execution of the order should he wish to improve on the BEACON quotation. Where the specialist does not intervene, the order automatically will be executed at the BEACON quote.

II. Description of Proposed Rule

The BSE's proposed BEACON rules, described below, define the specific procedures for the entry and executions of orders in the system. These include how orders are entered into the system, the types of orders that may be entered, how orders will be executed, how the execution price will be determined, and how the system may be used to route orders.

Section 1 of the proposed rule provides that BEACON is available to BSE member organizations and to foreign stock exchanges with which BSE has established a trading link.[4] All issues traded on the Exchange will be eligible for BEACON but only agency orders (orders executed on behalf of a member organization's client) will be eligible for automatic execution.

Section 2 provides that BEACON will permit offers to be routed to specialists or to floor brokers.[5] The system also will allow floor brokers to transmit orders to specialists. Under subparagraph (c), member firms may send market and marketable limit orders to BSE over the system in size parameters established by the BSE.[6] Once orders are routed to the specialist, they may be executed either automatically (if eligible) or manually.

Execution parameters for BEACON are set out in Section 3 of the proposed rule. Market and marketable limit orders in issues traded over ITS transmitted to the specialist prior to the BSE's opening will be provided the opening price on the primary market on which it is traded. The primary market opening price usually will be the NYSE or Amex opening price for the stock. The only exception to applying the primary market opening price to an opening transaction would be where the member firm entering the order asks, instead, for the order to be provided the consolidated opening price.

Market and marketable limit orders entered after the opening will receive an execution price based upon the BEACON quotation.[7] As noted previously, these orders, when transmitted to the specialist for execution, will be displayed on the specialist's video display terminal for up to 15 seconds (so called "exposure period") to allow the specialist to improve on the BEACON quotation that

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[1] 15 U.S.C. 78s(b).

[2] The term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network. The initial set of rules proposed for BEACON (File No. SR-BSE-87-1) was noticed in Securities Exchange Act Release No. 24187, March 6, 1987; 52 FR 86892. No comments were received on this proposal. Subsequently, the Commission received amendments to the BSE's proposed BEACON rules. These amendments were noticed in Securities Exchange Act Release No. 14690, July 9, 1987, 52 FR 26612. On December 8, 1987, June 10, 1988, July 1, 1988, and August 10, 1988, the Commission received additional amendments to the proposed BEACON rules. These amendments were not separately noticed by the Commission.

[3] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. Specifically, ITS links the participating markets (American Stock Exchange, BSE, Cincinnati Stock Exchange, MSE, New York Stock Exchange, PSE, Phlx, and the National Association of Securities Dealers) and provides facilities and procedures for: (1) Display of composite quotation information from each participating market so that brokers are able to determine the best bid and offer available from any participating market for a multiply traded security; (2) efficient routing of orders and administrative messages between participating markets; and (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets, as of June 30, 1988, 1,639 stocks were traded over ITS.

[4] The Exchange currently has a trading link with the Montreal Stock Exchange. The BSE has informed the Commission, however, that it has no plans to make BEACON available for transactions over the Montreal linkage. Should the BSE subsequently decide that it wants to make access to BEACON available over the Montreal linkage, a proposed rule change would have to be submitted to the Commission for consideration under the requirements of section 19(b) of the Act and Rule 19b-4 thereunder.

[5] A floor broker receiving such an order would bring the order to the trading crowd for execution.

[6] The BSE has informed the Commission that there are currently no size limits for orders routed on BEACON and that it has no plans to adopt such limits. Telephone conversation between George Mann, Senior Vice President and General Counsel, BSE, and Howard Kramer, Assistant Director, Division of Market Regulation, on June 30, 1988. Automatic execution limits for BEACON are discussed *infra* at 5.

[7] The BEACON quotation, defined in section 5(c) of the proposed rule, is the primary market quotation price, except that, where bids and offers from other markets are displayed that are superior to the BEACON price, the BEACON order will be executed at that superior price up to the size of the quote displayed.

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was automatically determined when the system received the order. Certain types of orders entered on BEACON always would be manually executed. These include cross orders entered in the system; nonmarketable limit orders; orders that are "stopped"; and orders entered prior to opening, which are executed at the primary market opening price.

The circumstances under which orders entered on BEACON are eligible for automatic execution are set out in section 5 of the proposed rule.[8] The system automatically will execute all market and marketable limit orders in ITS issues up to 1,299 shares for Tier I stocks and 599 shares for Tier II stocks.[9] This section also permits specialists to provide guaranteed automatic execution of 2,500 shares on specific stocks.[10] Automatic execution guarantee levels for BEACON orders will be published in BEACON and in hard copy. Guarantee levels in excess of 2,500 shares may be made by arrangement between a specialist and a specific member organization. These guarantees will not be published in BEACON unless requested by the specialist.

Market orders that would be executed outside the primary market price range for the day will be "stopped" and will be executed at the BEACON quotation or better as subsequent trades occur on the consolidated tape. An order that has been "stopped" must be executed by the close of trading.

III. Discussion

Section 6(b)(5) of the Act provides that the rules of an exchange must be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, * * * *" The Commission has examined closely the proposed rule for the BSE's BEACON system and has concluded that it is consistent with the requirements of the Act, particularly section 6(b)(5). Accordingly, the Commission has determined that it is appropriate to permit the BSE to proceed with implementation and operation of BEACON for a 6 month trial period.

As discussed previously, the proposed BEACON system is similar in many respects to automatic execution systems currently in operation on the MSE, PSE, and Phlx. These systems are all designed to receive small orders electronically from member firms and route them to the appropriate specialist for automatic or manual execution. These systems provide the primary means of handling the vast majority of small orders executed on these regional exchanges.

Currently, the BSE is virtually unique among the regional exchanges because it only has manual systems for the routing and execution of small orders. BEACON is a key element in the BSE's overall effort to automate a substantial portion of its operations. The Exchange's development of BEACON represents a major improvement for the BSE in terms of the speed and efficiency with which it can process and execute retail orders and provide reports of executed trades. BEACON, once it is fully operational, will interface with the BSE's BASE system,[11] a computerized back office system that currently processes all orders executed on the Exchange floor. Once the BEACON and BASE interface is completed, BASE will be able to generate a report immediately confirming the execution of a BEACON order, including the number of shares and the execution price, and transmit it to the member firm that enter the order. The new system will also be able to provide BSE specialists with continuous update of their position, average costs, concentrations (short or large), and a computerized limit order book.

On July 15, 1988, the Commission gave approval to the BSE to proceed with the initial stages of the implementation of BEACON.[12] The Commission's order allowed the Exchange to bring up to 20 stocks on to BEACON but provided that only market orders could be entered on BEACON for execution during that period. The order stated that the Commission intended to closely review results of operational tests on the system as the Exchange added stocks and connected more specialist posts and member firms to BEACON. In addition, the order stated that the BSE would submit results of stress tests on the system to demonstrate that BEACON has the capacity to handle transaction and order volume levels similar to those encountered by the Exchange during the October 1987 market break without experiencing significant order queues or delays in execution.

The Commission has received and reviewed the preliminary test results from the initial implementation stages of BEACON. From the data provided by the Exchange and discussions with BSE officials, the Commission is satisfied with the results from the initial implementation phase of BEACON. In addition, the BSE has provided the Commission with the results of a simulated traffic stress test.[13] This test was conducted by SIAC and designed to test the performance of vendors and other market participants such as the BSE to receive output from the consolidated transaction and quotation lines for equities and options. The BEACON system adequately handled the sustained output message traffic from SIAC.

On the basis of BEACON's initial implementation phase, the Commission has concluded that it is appropriate to permit the BSE to proceed with implementation of BEACON up to full scale operational levels for a six month trial period. During this trial period the Commission will continue to review closely the BSE's operational test results as more stocks, specialists, and member firms are brought on to the system. Once the system is fully operational test results as more stocks, specialists, and member firms are brought on to the system. Once the system is fully operational BSE should be able to provide the Commission with stress test data to ensure that BEACON has the capacity to handle order and transaction levels like those BSE encountered in the October 1987 market break without experiencing significant queues or execution delays.

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[8] As noted previously, automatic execution guarantees under BEACON are available to agency orders only.

[9] Subparagraph (b) of section 5 provides that all ITS issues will be deemed Tier I stocks. Tier II stocks will be comprised of exceptions from Tier I. Those exceptions may be requested by specialists who must submit a statement to the BSE's Market Performance Committee that would set forth the specific reasons that would cause Tier I classification of the stock to be burdensome (*e.g.*, a high priced, lightly traded stock).

[10] The Exchange currently has an execution guarantee under Chapter II, section 33 of the BSE Rules. Under this provision, BSE specialists guarantee execution on all agency orders from 100 up to 1,299 shares in all issues traded through ITS registered to a BSE member specialist. For the 100 most actively traded stocks reported to the consolidated tape, BSE specialists must guarantee execution on all agency orders of up to 2,500 shares. Market orders filled under this guarantee must be filled on the basis of the best Consolidated Quotation System ("CQS") bid or offer or better.

[11] "BASE" is an acronym for Brokerage Accounting Systems Element.

[12] Securities Exchange Act Release No. 25918, July 15, 1988, 53 FR 27584.

[13] *See* letter from George Mann, Senior Vice President and General Counsel, BSE, to Howard Kramer, Assistant Director, Division of Market Regulation, dated July 12, 1988.

Accordingly, the Commission has determined that the BSE may proceed with implementation of BEACON up to full scale operational levels, operating under the procedures outlined in the proposed BEACON rule, as amended, for a six month trial period.

In view of the above, the Commission concludes that a six month trial period for implementation of the BSE's proposed BEACON system is reasonable and is consistent with the requirements of the Act, particularly section 6(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved with the limitations cited above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19810 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26030; File No. SR-GSCC-88-1]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Relating to an amendment to the Shareholder's Agreement of Government Securities Clearing Corporation ("GSCC")

Pursuant to section 19(b)(1) of the Securities Exhange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 11, 1988 GSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change may be examined at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On May 5, 1988, the Securities and Exchange Commission approved the registration of Government Securities Clearing Corporation ("GSCC") as a clearing agency. On May 20, 1988, GSCC closed its offering of Class A and Class B common stock of GSCC. As part of that offering, a Shareholder's Agreement, as amended by Amendment No. 1, was required to be entered into by the Shareholders.

The Amendment makes certain technical changes to the allocation and class of director seats, the method of nomination, election and replacement of directors, and the allocation of residual loss and annual cap for Brokers. In addition, the Amendment sets forth requirements for amending the Shareholder's Agreement or the Certificate of Incorporation, and for changing GSCC's business from that of a registered clearing agency.

(b) The proposed rule change ("Amendment") provides for a fair representation of GSCC Shareholders and participants in the selection of its directors and administration of its affairs. It also clarifies the allocation of residual losses and enables GSCC to better protect itself against losses. Therefore, the proposed rule change will protect investors and the public interest and is consistent with the requirements of the Securities Exchange Act of 1943, as amended ("the Act").

B. Self-Regulatory Organization's Statement on Burden on Competition.

GSCC does not perceive that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others.

All GSCC Shareholders have signed the amendment.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making a written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 540 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 21, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

August 25, 1988.

[FR Doc. 88-19808 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26025; File No. SR-MBS-88-7, MBS-88-9, and MBS-88-11]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Temporarily Approving Proposed Rule Changes

On April 11, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission three proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposals would

[1] 15 U.S.C. 78s(b)(1).

amend various MBSCC Depository Division rules including those pertaining to participant accounts, transfers of mortgage-backed securities, the MBSCC participant fund, and the MBSCC certificate withdrawal policy. The Commission published notice of the proposals in the Federal Register on May 11, 1988.[2]

The Commission preliminarily believes that the proposals are consistent with the Act and is approving the proposals on a temporary basis. The Commission believes that the proposals are designed appropriately to clarify MBSCC's rules and to strengthen MBSCC's procedures, thereby enhancing MBSCC's ability to safeguard securities and funds and promote prompt and accurate clearance and settlement. The Commission, however, intends to continue to analyze the proposals and to discuss with MBSCC the actual operation of the proposals and the need for any refinements or enhancements to the proposals. For those reasons, the Commission is temporarily approving the proposals through September 30, 1988.

It is therefore ordered, pursuant to section 19(b) of the Act, that MBSCC's proposed rule changes be, and thereby are approved temporarily through September 30, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 24, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19611 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26033; File No. SR-NASD-88-27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Inclusion of Qualification as Limited Representative-Corporate Securities as Alternative Prerequisite for Qualification as Registered Options Principal and Registered Options Representative

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on July 1, 1988, pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Schedule C of the NASD By-Laws to permit qualification as a Limited Representative-Corporate Securities to serve as an alternative prerequisite for qualifying as a Registered Options Representative or a Registered Options Principal.

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25919, July 15, 1988) and by publication in the Federal Register (53 FR 27589, July 21, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, SR-NASD-88-27, be, and hereby is, aproved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19613 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26031; File No. SR-NSCC-88-4]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change; Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules Concerning Mutual Fund Membership

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1988 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Proposed Rule Change

The proposed rule change would amend NSCC's Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. On October 14, 1987, NSCC filed a proposed rule change concerning the Mutual Fund Settlement, Entry and Registration Verification ("Fund/Serv") Service, (NSCC-87-12).

The purpose of NSCC-87-12 was to establish a special limited category of membership for broker-dealers who use only Fund/Serv, and to formulate the method by which NSCC calculates Fund/Serv Clearing Fund Requirements.

Included in NSCC 87-12 were certain technical changes to NSCC Rule 4 (Clearing Fund) to clarify the use of deposits made in respect of the Fund/Serv Service.

The purpose of the proposed rule change is to make further technical clarifications to Rule 4 regarding Fund/Serv deposits and to change the references throughout the rules from "Fund/Serv Member" to "Fund Member".

The proposed rule change clarifies the use of the Clearing Fund and therefore will enable NSCC to better protect itself against losses. The proposed rule change will ultimately provide protection to investors and public interest and is therefore consistent with the requirements of the Securities Exchange Act of 1934, as amended, ("the Act").

B. *Self-Regulatory Organization's Statement on the Burden on Competition.* NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.* While comments on the proposed rule change have not been solicited or received, Participants were notified by Important Notice. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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[2] Securities Exchange Act Release Nos. 25660 (May 4, 1988) 53 FR 16812; 25662 (May 4, 1988) 53 FR 16808; 25659 (May 4, 1988) 53 FR 16818.

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securites and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to NCSS–88–4 and should be submitted by September 21, 1988. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–19812 Filed 8–30–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24704]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 25, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 19, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70–5503)

Appalachian Power Company ("Appalachian") an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to section 9(a), 10, and 12(d) of the Act and Rule 44(b)(3) thereunder.

By Commission order dated December 10, 1974 (HCAR No. 18703), Appalachian was authorized to enter an agreement of sale ("Agreement") with the Industrial Development Authority of Russell County, Virginia ("Authority") concerning the financing of pollution control facilities ("Facilities") at Appalachian's Glen Lynn and Clinch River plants. Under the Agreement the Authority is to issue and sell its pollution control revenue bonds ("Revenue Bonds"), in one or more series, the proceeds from which sales are to be deposited by the Authority with the trustee ("Trustee") under the indenture ("Indenture") entered into between the Authority and the Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the costs of construction of the Facilities, originally estimated at $45 million or, in the case of proceeds from the sale of refunding bonds, to the payment of principal, premium (if any) and/or interest on Revenue Bonds to be refunded. Appalachian conveyed an undivided interest in a portion of the Facilities to the Authority, which portion the Authority sold to Appalachian under an installment sales arrangement requiring Appalachian to pay as the purchase price semi-annual installments in such an amount (together with other monies held by the Trustee under the Indenture for the purpose) as to enable the Authority to pay, when due, the interest and principal on the Revenue Bonds. Jurisdiction was reserved in the order of December 10, 1974, with respect to the payment of the purchase price of the Facilities by installment payments insofar as such payments were affected by the interest rates of the Revenue Bonds to be issued and sold by the Authority.

By orders dated December 27, 1974, December 17, 1975, November 14, 1979, November 21, 1980 and Februray 20, 1981 (HCAR Nos. 18736, 19303, 21295, 21802 and 21924), such jurisdiction was released concerning the sales of Revenue Bonds in the principal amounts of $24 million, $17 million, $11 million, $6.24 million and $6.5 million, respectively, as such sales affected the purchase price to Appalachian.

It is now stated that the Authority will issue and sell an additional series of Revenue Bonds in the aggregate principal amount of $19.5 million, the net proceeds from the sale of which will be used to provide for the principal payment required for the refunding, prior to their stated maturity, of $19.5 principal amount of Revenue Bonds previously issued by the Authority. The Revenue Bonds will be issued under and secured by the Indenture and a fifth supplemental indenture, will bear interest semiannually and will mature at a date or dates not more than thirty years from the date of issuance. It is contemplated that the Revenue Bonds will be sold by the Authority pursuant to arrangements with Goldman Sachs & Co. as underwriter. Appalachian requests authority to alter the terms of their payments of the purchase price of the Facilities insofar as such payments will reflect the new terms of the Revenue Bonds.

Conesville Coal Preparation Company (70–7257)

Conesville Coal preparation Company ("Conesville"), 215 North Front Street, Columbus, Ohio 43215, a subsidiary of Columbus Southern Power Company ("CSPCo"), a public utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application pursuant to sections 9(a)(1) and 10 of the Act.

Conesville presently provides coal washing and related services to CSPCo. For the years 1985 through 1989, the annual amounts of clean coal produced or estimated to be produced by Conesville and the annual amounts paid or estimated to be paid by CSPCo to Conesville are as follows:

	Clean coal (tons)	Amounts paid
Year:		
1985	1,145,000	$6,019,000
1986	1,755,000	8,046,000
1987	1,589,000	7,671,000
1988	1,600,000	8,016,000
1989	1,600,000	8,352,000

Conesville now requests authorization to perform coal washing and related services at the Conesville Plant for nonaffiliate entities in an amount of up to $4.5 million per calendar year through December 31, 1991. The revenue derived from providing services to nonaffiliate companies, after payment of incremental costs, would be used to reduce the amount paid to Conesville by CSPCo pursuant to the Amended coal Washing Agreement.,

Vermont Yankee Nuclear Power Corporation (70-7537)

Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), P.O. Box 169, Ferry Road, Brattleboro, Vermont 05301, and nuclear generating subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed a declaration pursuant to sections 6(a) and 7 of the Act.

Vermont Yankee proposes to issue and sell to Marine Midland Bank, N.A. ("Bank"), pursuant to a loan agreement to be entered into with the Bank, up to $10.5 million aggregate principal amount of its short-term promissory notes ("Notes"). The Notes will be issued for an initial term of up to 360 days and may be extended, with the consent of the Bank, for an additional term ending on February 18, 1990. The Notes will be unsecured and will bear interest at an annual rate, selected by Vermont Yankee.

The proceeds of the Notes will be used by Vermont Yankee solely for the purpose of paying the fabrication and installation costs of certain computer equipment, called an Emergency Response Facility Information System ("ERFIS"), a computer software and hardware installation which serves as a diagnostic aid for control room operators at Vermont Yankee's nuclear generating plant. Vermont Yankee has arranged for the ERFIS equipment to be purchased by ComPlan, Inc., which will lease the ERFIS equipment back to Vermont Yankee for a ten-year term. The proceeds of the sale to ComPlan will be used to repay the Notes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19814 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1079]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: Periodically natural disasters occur and/or security deteriorates in countries abroad to the degree that the life of U.S. citizens residing or traveling there becomes endangered and the United States Government is requested to evaculate them to a safe haven. This information collection is used to execute the emergency evacuation and to recover Federal funds expended on behalf of the citizens to complete their evacuation. The following summarizes the information collection proposal submitted to OMB:

1. *Type of request*—Extension.
Originating office—Bureau of Consular Affairs.
Title of information collection—Evacuation Documentation.
Form number—Optional Form 28.
Frequency—Annual/On occasion.
Respondents—U.S. citizens traveling or residing abroad.
Estimated number of respondents—16,800.
Average hours per response—4.9 minutes.
Total estimated burden hours—1,344.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Date: August 16, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration and Information Management.

[FR Doc. 88-19830 Filed 8-30-88; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/1210]

U.S. Organization for the International Telegraph and Telephone Consultative Committee, (CCITT) National Committee, Chairman's Ad Hoc Group for Communications Development; Meeting

The Department of State announces that the Chairman's Ad Hoc Group on International Communications Development of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), National Committee, will meet September 19, 1988 at 10:00 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on International Communications Development reviews issues pertaining to the improvement and/or expansion of the communications infrastructure in developing countries.

This meeting will review recent developments concerning the Center for Telecommunications Development, specifically the status of fund raising efforts and a proposal to combine its functions with the Technical Cooperation Department of the International Telecommunication Union (ITU). These and other matters will be considered at the Center's Advisory Board at its October 6-7 session. It will also review the progress of U.S. preparations for the 1989 ITU Plenipotentiary Conference regarding Communications development matters.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All attendees must use the C Street entrance to the building. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. All persons wishing to attend should call (202) 647-4629.

Request for further information should be directed to Mr. D. Clark Norton, State Department, Washington, DC, telephone (202) 647-4629.

Date: August 23, 1988.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 88-19754 Filed 8-30-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-6/1211]

Shipping Coordinating Committee, Subcommittee on Ocean Dumping; Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on Friday, September 16, 1988, at the Office of Marine and Estuarine Protection of the Environmental Protection Agency. The meeting will convene at 2:00 p.m. in the OMEP Conference Room, 8th Floor, 499 South Capitol Street, Washington, DC 20003. Members of the public are invited and free to attend up to the seating capacity of the room.

The purpose of the meeting is to review and discuss the U.S. positions for the Eleventh Consultative Meeting of the London Dumping Convention, to be held in London October 3-7, 1988.

For further information, contact Dr. Al Wastler, Office of Marine and Estuarine Protection (WH-556F), Environmental Protection Agency, Washington, DC 20460. His telephone number is (202) 382-7166.

Date: August 24, 1988.

Alford Cooley,

Acting Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-19753 Filed 8-30-88; 8:45 am]

BILLING CODE 4710-09-M

Corrections

Federal Register
Vol. 53, No. 169
Wednesday, August 31, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

Shrimp Fishery of the Gulf of Mexico

Correction

In proposed rule document 88-19157 appearing on page 32264 in the issue of Wednesday, August 24, 1988, make the following correction:

In the third column, in the first line, "94509" should read "9450".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3422-7; TN-055]

Approval and Promulgation of Implementation Plans, Tennessee; Revisions to the Nashville TSP Plan

Correction

In rule document 88-17245 beginning on page 32049 in the issue of Tuesday, August 23, 1988, make the following corrections:

PART 52—[CORRECTED]

1. On page 32050, in the third column, in amendatory instruction 2, in the second line, "(c)(81)" should read "(c)(86)".

§ 52.2220 [Corrected]

2. On the same page, in the same column, in § 52.2220(c), in the first line, "(81)" should read "(86)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-08-7122-10-1018; CA-20338]

Realty Action; Exchange of Public and Private Lands in Riverside County, CA

Correction

In notice document 88-9953 appearing on page 16198 in the issue of Thursday, May 5, 1988, make the following correction:

In the second column, under **SUMMARY**, immediately following the land description, insert:

In exchange for these lands, the United States will acquire the following described non-federal lands from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 7 E.
Sec. 8: NW¼SW¼, W½NE¼SW¼.
Containing 60 acres, more or less.

BILLING CODE 1505-01-D

federal register

Wednesday
August 31, 1988

Part II

Environmental Protection Agency

Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act (AHERA); Notice

VOL 53 ISS 169 AUG 31 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62068; FRL-3435-8]

Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under The Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In section 206(c)(3) of Title II, the Administrator, in consultation with affected organizations, was directed to publish (and revise as necessary) a list of asbestos courses and tests in effect before the date of enactment of this title which qualify for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determines are consistent with the Model Plan and which will qualify a contractor for accreditation. In addition, under the amendment to TSCA Title II, section 206(f) was added which requires the Administrator to publish quarterly, beginning August 31, 1988, a list of EPA-approved asbestos training courses. The Administrator is also required to publish on a quarterly basis beginning August 31, 1988, a list of laboratories which have received accreditation from EPA.

This **Federal Register** notice includes the cumulative fourth list of course approvals and a list that includes State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. Additionally, this notice includes the first list of accredited laboratories.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 382–3790, TDD: (204) 554–0551.

SUPPLEMENTARY INFORMATION: Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Contractor Accreditation Plan by April 20, 1987. The plan was issued on April 20, and was published in the **Federal Register** of April 30, 1987 (52 FR 15875), as Appendix C to Subpart E, 40 CFR Part 763.

To conduct asbestos-related work in schools, persons must receive accreditation in order to inspect school buildings for asbestos, develop management plans, and design or conduct response actions. Such persons can be accredited by States, which are required to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Contractor Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the **Federal Register** of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials In Schools" rule (40 CFR Part 763, Subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially-trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The new rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR Part 763, Subpart E, Appendix C.I.1.A through E.

In section 206(c)(3) of Title II, and as amended by section 206(f), the Administrator, in consultation with affected organizations, is directed to publish quarterly a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determined were consistent with the Model Plan and which qualify a contractor for accreditation. In addition, the Agency has included in this notice a list of laboratories which have received interim accreditation from EPA for the analysis of bulk materials for asbestos by polarized light microscopy.

The **Federal Register** notice of October 30, 1987, included the initial list of course approvals. In addition, the list included State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. The second *Federal Register* notice of February 10, 1988 (53 FR 3982), and the third **Federal Register** notice of June 1, 1988, (53 FR 20066), were cumulative listings of EPA course approvals and EPA approved State accreditation programs.

This **Federal Register** notice is divided into five units. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses EPA approval of training courses for interim accreditation. Unit IV provides the list of State accreditation programs and training courses approved by EPA as of July 1988. Unit V contains a listing of all laboratories, under the EPA Interim Accreditation Program for laboratories that are conducting analysis of bulk samples of asbestos-containing material. Subsequent **Federal Register** notices will add other State programs and training courses as well as accredited laboratories to this fourth cumulative list.

I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA is able to approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval. EPA can also approve State training programs that do not fully meet the Model Plan's requirements but do meet the requirements for interim accreditation.

As listed in Unit IV, Arkansas, Iowa, Kansas, Massachusetts, New Jersey, and Rhode Island have received EPA full approval for two accreditation disciplines, abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan.

In addition, the States of Massachusetts and Iowa have received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA-approved courses for purposes of accreditation. These training courses are EPA-approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for that discipline. Current lists of training courses approved by Massachusetts, New Jersey, and Rhode Island are listed under Unit IV. Arkansas, Iowa, and Kansas have no separate provider listings because none of the States have independently approved any additional courses.

Each State accreditation program may have different requirements for State accreditation. For example, New Jersey requires participants of their courses to take the State exam. Therefore, those New Jersey approved course sponsors who are contemplating presenting the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination as required by the Model Plan to the Regional Asbestos Coordinator in their region for EPA approval.

EPA has also approved a number of State programs for purposes of providing interim accreditation for persons who have met the training and examination requirements of these State programs. Persons meeting such requirements in these States have completed a training course and examination similar to the Model Plan's requirements before December 14, 1987. However, these individuals must become fully accredited within the time period specified in the Model Plan.

States that have approval for interim accreditation purposes for abatement contractors, supervisors and workers include Alaska, Arkansas, Kansas, and Washington. Michigan and Illinois have approval for interim accreditation purposes for abatement workers only. Recently, Arkansas and Kansas that have had programs suitable only for interim accreditation of abatement contractors, supervisors and workers have upgraded their accreditation programs to be at least as stringent as the Model Plan. Both States are now fully approved in these disciplines. Persons with interim accreditation in these States are eligible to conduct work during the time period specified in the Model Plan. However, these persons must eventually become fully accredited. All States programs nationwide that do not fully meet the Model Plan's requirements must be upgraded within the time period specified in TSCA Title II to be at least as stringent as the Model Plan.

II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA are listed under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. Courses approved for interim accreditation will be discussed in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not effect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered. Although several sponsors offer their courses in various locations throughout the United States, a large number of course sponsors provide most of their training within their own Region.

EPA-approved State accreditation programs have the authority to have more stringent accreditation requirements than the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation or are seeking accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered by several universities before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being fully approved. It should be noted that persons who have successfully completed these courses are fully accredited; they are not limited only to being accredited on an interim basis.

III. EPA Approval of Training Courses For Interim Accreditation

TSCA Title II enables EPA to permit persons to be accredited on an interim basis if they have attended previous EPA-approved asbestos training and have passed (or pass) an asbestos examination. As a result, the Agency has approved training courses offered previously for purposes of accrediting persons on an interim basis. Only those persons who have taken training courses since January 1, 1985, will be considered under these interim accreditation provisions. In addition, EPA will not grant interim accreditation to any person who takes an equivalent training course after the date on which the asbestos-in-schools rule took effect (i.e., December 14, 1987). This accreditation is interim since the person shall be considered accredited for only 1 year after the date on which the State where the person is employed establishes an accreditation program at least as stringent as the EPA Model Plan. If the State does not adopt an accreditation program within the time period required by Title II, persons with interim accreditation must become fully accredited within 1 year after the date the State was required to have established a program.

For purposes of the Model Plan, an equivalent training course is one that is essentially similar in length and content to the curriculum found in the Model Plan. In addition, an equivalent examination must be essentially similar to the examination requirements found in the Model Plan.

Persons who have taken equivalent courses in their discipline for purposes of interim accreditation, and can produce evidence that they have successfully completed the course by passing an examination, are accredited on an interim basis under TSCA Title II. Evidence of successful completion of a course would include a certificate or photo identification card that showed

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the person completed the training course on a certain date and passed the examination.

For persons who took one of the EPA-approved courses for interim accreditation listed under Unit IV, but did not take the course's examination, these persons may become accredited on an interim basis by passing an examination at an EPA-funded training center. These EPA-funded training centers are listed under Unit IV. Before taking the examination, persons must provide evidence to the EPA-funded center that they previously had taken one of the training courses listed under Unit IV that is approved by EPA for interim accreditation.

The New York City Department of Environmental Protection, Bureau of Air Resources has a training program for asbestos abatement workers and contractors/supervisors that does meet the requirements for EPA approval of training courses for interim accreditation (See Unit IV, Region II). As a result, persons who have met the training and examination requirements of the New York City Abatement Worker (i.e., "handler") or Contractor/Supervisor program between April 1, 1987 and December 14, 1987, are accredited as listed under Unit IV on an interim basis.

Courses approved by EPA as of July 1988 for interim accreditation are listed under Unit IV. Examinations offered by these courses also are approved for purposes of interim accreditation.

IV. List of EPA-Approved State Accreditation Programs and Training Courses

The fourth cumulative listing of EPA-approved State accreditation programs and training courses are listed in Unit IV. As discussed above, quarterly notifications of EPA approval of State accreditation programs and EPA approval of training courses will be published in subsequent **Federal Register** notices. The closing date for the acceptance of submissions to EPA for inclusion in this fourth notice was August 1, 1988. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes). Unless otherwise specified by an alternative date, interim approvals are issued from January 1, 1985.

As of August 1, 1988, a total of 222 training providers are offering 375 EPA-approved training courses for accreditation under TSCA Title II. There are 142 asbestos abatement worker courses, 109 contractor/supervisor courses, 93 inspector/management planner courses, 9 inspector only courses, and 6 project designer courses. Ten States have either interimly or fully approved State accreditation programs.

The recently developed EPA-funded model course for inspectors and management planners is now available in final form. In addition, a previous EPA developed course for asbestos abatement contractors and supervisors is available for interested parties that plan to offer training courses. Interested parties should contact the following firm to receive copies of the training courses: ATLIS Federal Services, Inc., EPA AHERA Program, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468–1916.

A fee for each course will be charged to cover the reproduction costs for the written and visual aid materials. The model inspector/management planner course curriculum is now final. All who have paid for the draft student manual will automatically receive the instructor manual and the accompanying slides.

The following is the cumulative list of EPA-approved State accreditation programs and training courses:

Approved State Accreditation Programs

(1)(a) *State:* Alaska.
State Agency: Department of Labor
Address: P.O. Box 1149, Juneau, AK 99802
Contact: Richard Arab
Phone: (907) 465–4856

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim from 10/1/85).
Contractor/Supervisor (interim from 10/1/85).

(2)(a) *State:* Arkansas.
State Agency: Arkansas Dept. of Pollution Control and Ecology
Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209
Contact: Wilson Tolefree
Phone: (501) 562–7444

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim from 11/22/85).
Abatement Worker (full from 1/22/88).
Contractor/Supervisor (interim from 11/22/85).
Contractor/Supervisor (full from 1/22/88).

(3)(a) *State:* Illinois.
State Agency: Illinois Dept. of Public Health
Address: 525 West Jefferson St., 3rd. Floor, Springfield, IL 62702
Contact: Don Anderson
Phone: (217) 782–5830

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim from 11/29/85).

(4)(a) *State:* Iowa.
State Agency: Iowa Department of Education Administrative Finance School Plant Facilities
Address: Grimes State Office Bldg., Des Moines, IA 50319–0146
Contact: C. Milt Wilson
Phone: (515) 281–4743

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (full from 11/30/87).
Contractor/Supervisor (full from 11/30/87).
Inspector (full from 11/30/87).
Inspector/Management Planner (full from 11/30/87).
Project Designer (full from 11/30/87).

(5)(a) *State:* Kansas.
State Agency: Kansas Dept. of Health and Environment Environmental Toxicology Section
Address: Forbes Field Building 321, Topeka, KS 66620–7430
Contact: John C. Irwin
Phone: (913) 296–1500

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim from 11/6/86).
Abatement Worker (full from 12/16/87).
Contractor/Supervisor (interim from 11/6/86).
Contractor/Supervisor (full from 12/16/87).

(6)(a) *State:* Massachusetts.
State Agency: Massachusetts Department of Labor & Industries; Division of Occupational Hygiene
Address: 1001 Watertown St., West Newton, MA 02165
Contact: Dick Levine
Phone: (617) 727–3567

(b) *Approved Accreditation Program Discipline:*
Abatement Worker [1] (full from 10/30/87).

[1] Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.

Contractor/Supervisor (full from 10/30/87).
Inspector (full from 10/30/87).
Inspector/Management Planner (full from 10/30/87).
Project Designer (full from 10/30/87).

Massachusetts Department of Health, EPA-Approved Courses For Abatement Workers, Contractors/Supervisors, Inspector/Management Planners, and Project Designers

(i)(a) *Training Provider:* Abatement Technical Corp c/o ECO Systems Inc.
Address: 5 North Meadow Rd., Medfield, MA 02052
Contact: Joseph C. Mohen
Phone: (609) 795–7834
(b) *Approved Course:* Contractor/Supervisor.
(c) *Date of Certification:* 4/28/88.
(ii)(a) *Training Provider:* Asbestos Workers Union Local #6.
Address: 1725 Revere Beach Pwy., Everett, MA 02149
Contact: James P. McCourt
Phone: (617) 387–2679
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor.
(c) *Date of Certification:* 4/25/88.
(iii)(a) *Training Provider:* Astoria Industries.
Address: 538 Stewart Ave., Brooklyn, NY 11222
Contact: Gary Dipaolo
Phone: (718) 387–0011
(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 4/8/88.
(iv)(a) *Training Provider:* BCM Engineering.
Address: 1 Plymouth Meeting, Plymouth Meeting, PA 19462
Contact: Peter R. Charrington
Phone: (215) 825–3800
(b) *Approved Courses:* Inspector/Management Planner. Project Designer.
(c) *Date of Certification:* 4/28/88.
(v)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028
Contact: Brenda Bolduc
Phone: (413) 525–1198
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor. Inspector/Management Planner.
(c) *Date of Certification:* 2/25/88.
(vi)(a) *Training Provider:* Dennison Environmental, Inc.
Address: 35 Industrial Hwy. Woburn, MA 01880
Contact: Joan Ryan
Phone: (617) 932–9400
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor.
(c) *Date of Certification:* 4/8/88.
(vii)(a) *Training Provider:* Environmental Training Services.
Address: 12 Wallnut Hill Park, Woburn, MA 01801
Contact: Kenneth P. Martin, Jr.
Phone: (617) 389–0348
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor.
(c) *Date of Certification:* 4/8/88.
(viii)(a) *Training Provider:* Howard School of Public Health.
Address: 677 Huntington Ave., Boston, MA 02115
Contact: William A. Burgass
Phone: (617) 732–1171
(b) *Approved Courses:* Contractor/Supervisor. Inspector/Management Planner.
(c) *Date of Certification:* 2/25/88.
(ix)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4340 West 15th St., Lawrence, KS 66046
Contact: Alice Hart
Phone: (800) 346–2860
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor. Inspector/Management Planner. Project Designer.
(c) *Date of Certification:* 4/25/88.
(x)(a) *Training Provider:* JF Walton & Company.
Address: 201 Marginal St., Chelsea, MA 02150
Contact: Richard King
Phone: (617) 884–0350
(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 3/28/88.
(xi)(a) *Training Provider:* Kaselaan & D'Angelo Associates.
Address: 515 Grove St., Haddon Heights, NJ 08035
Contact: Paul Heffernan
Phone: (212) 213–1188
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor.
(c) *Date of Certification:* 2/25/88.
(xii)(a) *Training Provider:* N.A.A.C.O.
Address: 757 A Turnpike St., North Andover, MA 01845
Contact: Jerome W. Vitta
Phone: (617) 681–8711
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor.
(c) *Date of Certification:* 3/18/88.
(xiii)(a) *Training Provider:* New England Laborers' Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748–2699
Contact: James Merloni, Jr.
Phone: (617) 435–6316
(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 2/25/88.
(xiv)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155
Contact: Brenda Cole
Phone: (617) 381–3531
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor. Inspector/Management Planner.
(c) *Date of Certification:* 3/16/88.
(xv)(a) *Training Provider:* National Training Fund of Sheetmetal and Air Conditioning Industry/Workers Institute for Safety and Health.
Address: 1126 16th St., NW., Washington, DC 20036
Contact: Matthew Gillen
Phone: (617) 887–1980
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor.
(c) *Date of Certification:* 4/28/88.
(xvi)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Park, Woburn, MA 01801
Contact: Lisa Stammer
Phone: (617) 935–7370
(b) *Approved Courses:* Abatement Worker. Contractor/Supervisor. Inspector/Management Planner.
(c) *Date of Certification:* 4/28/88.
(7)(a) *State:* Michigan.
State Agency: State of Michigan Dept. of Public Health
Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909
Contact: Bill DeLiefde
Phone: (517) 335–8186
(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim from 7/2/86).
(8)(a) *State:* New Jersey.
State Agency: State of New Jersey Dept. of Health
Address: CN 360, Trenton, NJ 08625–0360
Contact: James Brownlee
Phone: (609) 984–2193
(b) *Approved Accreditation Program Discipline:*
Abatement Worker (full from 6/18/85).
Contractor/Supervisor (full from 6/18/85).

New Jersey Department of Health, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

Please note: New Jersey approved course providers who present the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination, as required by the Model Plan, to the Regional Asbestos Coordinator in their Region for EPA approval.

(i)(a) *Training Provider:* Alternative Ways.
Address: 100 Essex Ave., Ballmawr, NJ 08031
Contact: John Smith
Phone: (609) 933–3300
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 4/25/85.
(ii)(a) *Training Provider:* National Asbestos Training Institute.
Address: 1776 Bloomsbury Ave., Ocean, NJ 07712
Contact: Doris Adler
Phone: (201) 918–0610
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/3/85.
(iii)(a) *Training Provider:* Asbestos Training Academy.
Address: 218 Central Hwy., Pennsauken, NJ 08109
Contact: Marianne Brady
Phone: (609) 488–9200
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/1/88.
(iv)(a) *Training Provider:* Kaselaan and D'Angelo Associates.
Address: 215 White Horse Pike, Hadden Heights, NJ 08035
Contact: Elizabeth Vanek
Phone: (609) 547–6500
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/8/85.
(v)(a) *Training Provider:* Princeton Testing Laboratory.
Address: Rt. 1 Princeton Service Ctr., Princeton, NJ 08540
Contact: Anne Coogan
Phone: (609) 452–9050
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/8/85.
(vi)(a) *Training Provider:* A & S Insulation Co., Inc.
Address: 2213 North Delsea Dr., Vineland, NJ 08360
Contact: William Clark
Phone: (609) 692–0883
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/20/85.
(vii)(a) *Training Provider:* Northeastern Analytical.
Address: 234 Route 70, Medford, NJ 08055
Contact: Skip Harris
Phone: (609) 654–1441
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/20/85.
(viii)(a) *Training Provider:* New York/New Jersey White Lung Assoc.
Address: 12 Warren St., New York, NY 10007
Contact: Beth Garner
Phone: (212) 619–2270
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/21/85.
(ix)(a) *Training Provider:* Hunter College of Health Sciences.
Address: 425 East 25th St., New York, NY 10010
Contact: Dr. Jack Caravanos
Phone: (212) 481–4352
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/23/85.
(x)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705
Contact: Marian Meiselman
Phone: (301) 369–3900
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 6/12/85.
(xi)(a) *Training Provider:* Building Laborers of N.J.—Training Center.
Address: P.O. Box 163, Jamesburg, NJ 08831
Contact: Emmanuel Riggi
Phone: (201) 521–0200
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 7/19/85.
(xii)(a) *Training Provider:* International Association of Heat and Frost Insulators and Asbestos Workers Local No. 14.
Address: 6513 Bustleton Ave., Philadelphia, PA l9149
Contact: James Aikens
Phone: (215) 533–0395
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 8/9/85.
(xiii)(a) *Training Provider:* IT Corporation.
Address: 336 West Anaheim St., Wilmington, CA 90744
Contact: Ron Freeman
Phone: (213) 830–1720
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 8/29/85.
(xiv)(a) *Training Provider:* International Association of Heat and Frost Insulators and Asbestos Workers Local No. 42.
Address: 1188 River Rd., New Castle, DE 19720
Contact: Robert Holden
Phone: (302) 328–4203
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 10/30/85.
(xv)(a) *Training Provider:* E.I. DuPont deNemours and Co.
Address: Chamber Works, Deepwater, NJ 08023
Contact: Charles Battle
Phone: (609) 540–2434
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/1/87.
(xvi)(a) *Training Provider:* International Association of Heat and Frost Insulators and Asbestos Workers Local No. 89.
Address: 2733 Nottingham Way, Trenton, NJ 08619
Contact: Charles DaBronzo
Phone: (609) 587–0092
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/13/86.
(xvii)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ.
Address: 675 Hoes Ln., Piscataway, NJ 08854
Contact: Lee Laustsen
Phone: (201) 463–4500
(b) *Approved Courses*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 7/1/86.
(xviii)(a) *Training Provider:* National Asbestos Council.
Address: 2786 North Decatur Rd., Decatur, GA 30033
Contact: Tom Laubenthal
Phone: (404) 292–0629
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 1/13/87.
(xix)(a) *Training Provider:* Asbestos Training Institute—HRF, Inc.
Address: 247 Hayler St., South Hackensack, NJ 07606
Contact: Robert Tetzlaff
Phone: (201) 489–3200
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 3/4/87.
(xx)(a) *Training Provider:* LOMA Environmental, Inc.
Address: 717 Fellowship Rd., Mount Laurel, NJ 08054
Contact: Laurence Ferrier
Phone: (609) 778–5757
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 4/13/87.
(xxi)(a) *Training Provider:* Asbestos Worker Local No. 32.
Address: 870 Broadway, Newark, NJ 07104
Contact: Paule Ielmini
Phone: (201) 485–3626
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 5/8/87.
(xxii)(a) *Training Provider:* Advanced Design and Technology Corp.
Address: 1300 Macdade Blvd., Folsom, PA 19033
Contact: Greg Santo
Phone: (215) 583–0660
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 6/27/87.
(xxiii)(a) *Training Provider:* Association of Wall and Ceiling Industries.
Address: 25 K St., NE., Washington, DC 20002
Contact: Carol Paquin
Phone: (202) 783–2924
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 6/17/87.
(xxiv)(a) *Training Provider:* BCM Eastern, Inc.
Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462
Contact: Robert Ferguson
Phone: (215) 825–3800
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 6/7/87.
(xxv)(a) *Training Provider:* Certified Abatement Technologies, Inc.
Address: 47 Midland Ave., Elmwood Park, NJ 07407
Contact: Daniel Curtin
Phone: (201) 796–9589
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 6/3/87.
(9)(a) *State:* Rhode Island.
State Agency: State of Rhode Island & Providence Plantations, Department of Health
Address: 206 Cannon Bldg., 75 Davis St., Providence, RI 02908
Contact: James C. Hickey
Phone: (401) 277–3601
(b) *Approved Accreditation Program Discipline:*
Abatement Worker (full from 2/4/86).
Contractor/Supervisor (full from 2/4/86).

Rhode Island Department of Health, EPA-Approved Courses For Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* Tufts University, Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155
Contact: Brenda Cole
Phone: (617) 381–3531
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 7/1/86.
(ii)(a) *Training Provider:* New England Laborers' Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748
Contact: James Merloni
Phone: (617) 435–6316
(b) *Approved Course:*
Abatement Worker.
(c) *Date of Certification:* 7/1/86.
(iii)(a) *Training Provider:* Georgia Tech Research Institute Environmental Health and Safety Division.
Address: Room 129 O'Keefe Building, Atlanta, GA 30332
Contact: Mark Demyanek
Phone: (404) 894–3806
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 7/22/88.
(iv)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028
Contact: Brenda Bolduc
Phone: (413) 525–1198
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 3/1/86.
(v)(a) *Training Provider:* National Asbestos Council.
Address: 2786 North Decatur Rd., Decatur, GA 30033
Contact: Tom Laubenthal
Phone: (404) 292–0629
(b) *Approved Course:*
Abatement Worker.
(c) *Date of Certification:* 9/5/86.
(vi)(a) *Training Provider:* National Surface Cleaning, Inc.
Address: 49 Danton Dr., Methuen, MA 01844
Contact: Anthony Mesiti
Phone: (617) 686–6417
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 10/3/86.
(vii)(a) *Training Provider:* Heat Frost and Asbestos Union Local #6.
Address: 1725 Revere Beach Pwy., Everett, MA 02149
Contact: Bud McCort
Phone: (617) 387–0809
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 12/8/86.
(viii)(a) *Training Provider:* Analytical Testing Services.
Address: 180 Weeden St., Pawtucket, RI 02860
Contact: Robert Weisberg/Marie Stoeckel
Phone: (401) 723–7973
(b) *Approved Course:*
Contractor/Supervisor.
(c) *Date of Certification:* 12/10/86.
(ix)(a) *Training Provider:* Covino Environmental Consultants, Inc.
Address: 12 Walnut Hill Park, Woburn, MA 01801
Contact: Sam Covino
Phone: (617) 933–2555
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 1/15/87.
(x)(a) *Training Provider:* Community College of Rhode Island.
Address: 1762 Louisquisset Park, Lincoln, RI 02865
Contact: Americo Ottavino
Phone: (401) 333–7060
(b) *Approved Course:*
Abatement Worker.
(c) *Date of Certification:* 11/13/87.
(xi)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Park, Woburn, MA 01801
Contact: Mary Beth Carver
Phone: (617) 935–7370
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 9/9/87.

(xii)(a) *Training Provider:* National Training Fund of Sheetmetal & Air Conditioning Industry/Workers' Institute for Safety and Health.
Address: 1126 16th St., NW., Washington, DC 20036
Contact: Mat Gillan
Phone: (202) 887–1980
(b) *Approved Course:*
Abatement Worker.
(c) *Date of Certification:* 2/2/88.
(xiii)(a) *Training Provider:* NAACO, Inc.
Address: 757 A Turnpike St., North Andover, MA 01845
Contact: Martin Levitt
Phone: (617) 681–8711
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 4/28/88.
(xiv)(a) *Training Provider:* Quality Control Service, Inc.
Address: 1 Andrew Cir., North Andover, MA 01845
Contact: Ajay Pathak
Phone: (508) 475–0623
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date or Certification:* 4/27/88.
(10)(a) *State:* Washington.
State Agency: State of Washington Dept. of Labor and Industries, Division of Industrial Safety and Health
Address: 805 Plum SE., Olympia, WA 98504
Contact: Steve Cant
Phone: (206) 753–6497
(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim from 11/21/85).
Contractor/Supervisor (interim from 11/21/85).

EPA-Approved Training Courses

Region I—Boston, MA

Regional Asbestos Coordinator: Allison Roberts, EPA, Region I, Air and Management Division (APT–2311), JFK Federal Building, Boston, MA 02203. (617) 565–3273 (FTS) 835–3273.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* Abatement Technology Corporation.
Address: 1 Boston Pl., Suite 1025, Boston, MA 02108
Contact: Scott Keyes
Phone: (617) 723–3100
(b) *Approved Course:*
Contractor/Supervisor (contingent).
(2)(a) *Training Provider:* Con-Test.
Address: P.O. Box 591, East Longmeadow, MA 01028
Contact: Brenda Bolduc
Phone: (413) 525–1198
(b) *Approved Courses:*
Abatement Worker (contingent).
Abatement Worker Refresher Course (contingent).
Contractor/Supervisor (contingent).
Contractor/Supervisor Refresher Course (contingent).
Inspector/Management Planner (contingent).
Inspector/Management Planner Refresher Course (contingent).
(3)(a) *Training Provider:* Enviromed Services, Inc.
Address: 25 Science Park, New Haven, CT 06515
Contact: Michael Carey
Phone: (203) 786–5580
(b) *Approved Course:*
Abatement Worker (contingent).
(4)(a) *Training Provider:* Environmental Training Services.
Address: 12 Walnut Hill Pk., Woburn, MA 01801
Contact: Kenneth P. Martin
Phone: (617) 398–0348
(b) Approved Course:
Abatement Worker (contingent).
(5)(a) *Training Provider:* Hygientics Inc.
Address: 150 Causeway St., Boston, MA 02114
Contact: John W. Cowdery
Phone: (617) 723–4664
(b) *Approved Course:*
Inspector (contingent).
(6)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Park, Woburn, MA 01801
Contact: Lisa Stammer
Phone: (617) 935–7370
(b) *Approved Courses:*
Abatement Worker (contingent).
Abatement Worker Refresher Course (contingent).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (contingent).
Inspector/Management Planner (contingent).
(7)(a) *Training Provider:* International Association of Heat & Frost Insulators Asbestos Workers, Union Local #33.
Address: 15 South Elm St., Wallingford, CT 06492
Contact: Joseph V. Soli
Phone: (203) 235–3547
(b) *Approved Course:*
Contractor/Supervisor (contingent).
(8)(a) *Training Provider:* Maine Labor Group on Health, Inc.
Address: P.O. Box 5, Augusta, ME 04330
Contact: Dianna White
Phone: (207) 289–2770
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Contractor/Supervisor Refresher Course (full from 3/28/88).
(9)(a) *Training Provider:* New England Laborers' Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748
Contact: Jim Merloni, Jr.
Phone: (617) 435–6316
(b) *Approved Courses:*
Abatement Worker (contingent).
Abatement Worker Refresher Course (contingent).
(10)(a) *Training Provider:* Tufts University, Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155
Contact: Brenda Cole
Phone: (617) 381–3531
(b) *Approved Courses:*
Contractor/Supervisor (interim from 9/1/85 to 5/31/87).
Contractor/Supervisor (full from 6/1/87).
Inspector/Management Planner (full from 11/16/87).

Region II—Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 10, (ES–PTS), Edison, NJ 08837. (201) 321–6668, (FTS) 340–6671.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* ATC Environmental, Inc.
Address: 104 East 25th St., New York, NY 10036
Contact: David Schwartz
Phone: (212) 353–8280
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(2)(a) *Training Provider:* Abatement Safety Training Institute (ASTI).

Address: 323 West 39th St., New York, NY 10018
Contact: Jay Sall
Phone: (212) 629–8400

(b) *Approved Course:*
Inspector/Management Planner (full from 3/21/88).

(3)(a) *Training Provider:* Alternative Ways, Inc.
Address: 100 Essex Ave., Bellmawr, NJ 08031
Contact: Robert C. Hasiuk
Phone: (609) 933–3300

(b) *Approved Course:*
Inspector/Management Planner (full from 5/26/88).

(4)(a) *Training Provider:* Asteco, Inc.
Address: P.O. Box 2204, Niagara University, Niagara, NY 14109
Contact: John Larson
Phone: (716) 297–5992

(b) *Approved Course:*
Abatement Worker (full from 4/13/88).

(5)(a) *Training Provider:* Astoria Industries Inc.
Address: 538 Stewart Ave., Brooklyn, NY 11222
Contact: John Gajeski
Phone: (718) 387–0011

(b) *Approved Course:*
Abatement Worker (full from 4/18/88).

(6)(a) *Training Provider:* Buffalo Laborers' Training Fund.
Address: 481 Franklin St., Buffalo, NY 14202
Contact: Victor J. Sansanese
Phone: (716) 884–7157

(b) *Approved Course:*
Abatement Worker (contingent).

(7)(a) *Training Provider:* Calibrations Laboratories Training Center.
Address: P.O. Box 11286, Albany, NY 12211
Contact: James Percent
Phone: (518) 381–1893

(b) *Approved Course:*
Project Designer (full from 5/23/88).

(8)(a) *Training Provider:* Cayuga-Onondaga BOCES.
Address: 234 South Street Rd., Auburn, NY 13021
Contact: Peter Pirnie
Phone: (315) 253–0361

(b) *Approved Course:*
Abatement Worker (contingent).

(9)(a) *Training Provider:* Hygeia of New York Inc.
Address: P.O. Box 206, 100 Oriskany Blvd., Whitesboro, NY 13492
Contact: Richard A. Gigliotti
Phone: (315) 736–8980

(b) *Approved Course:*
Abatement Worker (full from 4/13/88).

(10)(a) *Training Provider:* Institute of Asbestos Technology Corp.
Address: 5900 Butternut Dr., East Syracuse, NY 13057
Contact: Doreen E. Bianchi
Phone: (315) 437–1307

(b) *Approved Course:*
Abatement Worker (full from 6/27/88).

(11)(a) *Training Provider:* Kaselaan and D'Angelo Associates, Inc.
Address: 515 Grove St., Grove Plaza, Haddon Heights, NJ 08035
Contact: Lance Fredericks
Phone: (212) 213–1188

(b) *Approved Course:*
Inspector/Management Planner (full from 3/7/88).

(12)(a) *Training Provider:* Laborer's Local No. 91, Educational and Training Fund.
Address: 2556 Seneca Ave., Niagara Falls, NY 14305
Contact: Joel Cicero
Phone: (716) 297–9253

(b) *Approved Course:*
Abatement Worker (full from 7/27/87).

(13)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ Robert Wood Johnson Medical School.
Address: 675 Hoes Lane, Piscataway, NJ 08854–5635
Contact: Lee Laustsen
Phone: (201) 463–4500

(b) *Approved Courses:*
Abatement Worker (full from 7/28/86).
Contractor/Supervisor (full from 7/28/86).
Inspector/Management Planner (full from 11/16/87).

(14)(a) *Training Provider:* National Asbestos Training Institute (NATI).
Address: 1776 Bloomsbury Ave., Ocean, NJ 07712
Contact: Doris L. Adler
Phone: (201) 918–0610

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(15)(a) *Training Provider:* National Institution Abatement Science and Technology (NIAST).
Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607–1780
Contact: Glenn W. Phillips
Phone: (800) 422–2836

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(16)(a) *Training Provider:* Niagara County Community College.
Address: 3111 Saunders Settlement Rd., Sanborn, NY 14132
Contact: Eugene Zinni
Phone: (716) 731–3271

(b) *Apprroved Courses:*
Abatement Worker (full from 1/25/88).
Contractor/Supervisor (full from 2/19/88).
Inspector/Management Planner (contingent).

(17)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.
Address: Box 4873/1304 Buckley Rd., Syracuse, NY 13221
Contact: Robert Bellandi
Phone: (315) 451–4700

(b) *Approved Course:*
Inspector (full from 6/21/88).

(18)(a) *Training Provider:* Princeton Testing Laboratory, Inc.
Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543
Contact: Anne Coogan
Phone: (609) 452–9050

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(19)(a) *Training Provider:* Safe Air Environmental Group, Inc.
Address: P.O. Box 457, Depew, NY 14043
Contact: Reza Farrokh
Phone: (800) 634–7234

(b) *Approved Courses:*
Abatement Worker (full from 4/4/88).
Contractor/Supervisor (full from 4/4/88).

(20)(a) *Training Provider:* Tri-Cities Laborers Training Program.
Address: 5 Lombard St., Schenectady, NY 12304
Contact: Joseph Zappone
Phone: (518) 370–3463

(b) *Approved Course:*
Abatement Worker (full from 3/21/88).

(21)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).
Address: 450 Grider St., Buffalo, NY 14215
Contact: Jeanne Reilly
Phone: (716) 897–2110

(b) *Approved Course:*
Abatement Worker (full from 1/24/88).

Region III—Philadelphia, PA

Regional Asbestos Coordinator: Staphanie Branche, EPA, Region III (3HW–40), 841 Chestnut Bldg., Philadelphia, PA 19107. (215) 597–9859, (FTS) 597–9859.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the

course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.
Address: P.O. Box 667, Hunt Valley, MD 21030
Contact: D.R. Twilley
Phone: (301) 785–5615

(b) *Approved Courses:*
Abatement Worker (full from 7/14/87).
Contractor/Supervisor (full from 7/14/87).
Inspector/Management Planner (full from 3/31/88).

(2)(a) *Training Provider:* Alice Hamilton Center for Occupational Health, Committees on Occupational Safety and Health.
Address: 801 Pennsylvania Ave. SE, Washington, DC 20003–2155
Contact: Brian Christopher
Phone: (202) 543–0005

(b) *Approved Courses:*
Abatement Worker (full from 1/16/88).
Contractor/Supervisor (full from 1/16/88).
Inspector/Management Planner (full from 6/20/88).

(3)(a) *Training Provider:* Asbestos Abatement Council of the Association of Wall & Ceiling Industries.
Address: 25 K St. NE, Suite 300, Washington, DC 20002
Contact: Carol Paquin
Phone: (202) 783–2924

(b) *Approved Courses:*
Abatement Worker (full from 5/19/87).
Contractor/Supervisor (full from 5/19/87).

(4)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705
Contact: Norma D. Stanford
Phone: (301) 369–3900

(b) *Approved Courses:*
Abatement Worker (full from 10/1/87).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (contingent).

(5)(a) *Training Provider:* Delaware Technical & Community College.
Address: P.O. Box 897, Dover, DE 19903
Contact: David Stanley
Phone: (302) 736–4821

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(6)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.
Address: 32nd & Chestnut Sts., Philadelphia, PA 19104
Contact: Robert Ross
Phone: (215) 895–2156

(b) *Approved Courses:*
Abatement Worker (full from 6/9/88).
Contractor/Supervisor (full from 6/9/88).
Inspector/Management Planner (contingent).

(7)(a) *Training Provider:* Dynamac Corporation.
Address: 11140 Rockville Pike, Rockville, MD 20852
Contact: Robert C. Wyatt, Jr.
Phone: (301) 468–2500

(b) *Approved Course:*
Inspector (contingent).

(8)(a) *Training Provider:* Facilities Management Consultants, Inc.
Address: P.O. Box 309, Cecil, PA 15321
Contact: Edward Monaco
Phone: (412) 745–1770

(b) *Approved Course:*
Contractor/Supervisor (contingent).

(9)(a) *Training Provider:* Galson Technical Services, Inc.
Address: 5170 Campus Dr., Suite 200, Plymouth Meeting, PA 19462
Contact: Janet Oppenheim-McMullen
Phone: (213) 834–7288

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(10)(a) *Training Provider:* Hazard Abatement Training Center.
Address: 101 East Lancaster Ave., Wayne, PA 19087
Contact: Robert Mautner
Phone: (215) 971–0830

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(11)(a) *Training Provider:* IND TRA CO., A Subsidiary of WACO, Inc.
Address: 5450 Lewis Rd., P.O. Box 836, Sandston, VA 23150
Contact: William Belanich
Phone: (804) 222–8440

(b) *Approved Courses:*
Abatement Worker (full from 9/15/87).
Contractor/Supervisor (full from 9/15/87).

(12)(a) *Training Provider:* Jenkins Professionals, Inc.
Address: 5022 Campbell Blvd., Suite F, Baltimore, MD 21236
Contact: Larry Jenkins
Phone: (301) 529–3553

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(13)(a) *Training Provider:* Laborer's District Council of Eastern Pennsylvania.
Address: 2163 Berryhill St., Harrisburg, PA 17104
Contact: Gerald D. Temarantz
Phone: (717) 564–2707

(b) *Approved Course:*
Abatement Worker (contingent).

(14)(a) *Training Provider:* Laborer's District Council of Western Pennsylvania.
Address: 1101 Fifth Ave., Pittsburgh, PA 15219
Contact: Paul Quarantillo
Phone: (412) 391–1712

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(15)(a) *Training Provider:* Laborers' District Council, Education Training Fund of Philadelphia & Vicinity.
Address: 500 Lancaster Ave., Exton, PA 19341
Contact: Jerry Roseman
Phone: (215) 836–1175

(b) *Approved Courses:*
Abatement Worker (interim from 11/1/87 to 12/14/87).
Abatement Worker (contingent).

(16)(a) *Training Provider:* Medical College of Virginia, Virginia Commonwealth University, Dept. of Preventive Medicine.
Address: P.O. Box 212, Richmond, VA 23298
Contact: Leonard Vance, Phd
Phone: (804) 786–9785

(b) *Approved Courses:*
Contractor/Supervisor (full from 11/2/87).
Inspector/Management Planner (full from 2/29/88).

(17)(a) *Training Provider:* NOVATEC, Inc.
Address: 505 Drury Lane, Baltimore, MD 21229
Contact: Robert Olcerst
Phone: (301) 566–0859

(b) *Approved Course:*
Abatement Worker (contingent).

(18)(a) *Training Provider:* National Training Fund of Sheet Metal & Air Conditioning Industry/Workers' Institute for Safety & Health (WISH).
Address: 1126 Sixteenth Street NW., Washington, DC 20036
Contact: Scott Schneider
Phone: (202) 887–1960

(b) *Approved Courses:*
Abatement Worker (interim from 11/1/86 to 8/1/87).
Abatement Worker (full from 9/18/87).

Contractor/Supervisor (interim from 11/1/86 to 8/1/87).
Contractor/Supervisor (full from 9/18/87).
Inspector (contingent).
(19)(a) *Training Provider:* Old Dominion University, Office of Continuing Education, College of Health Services.
Address: Norfolk, VA 23529–0290
Contact: Shirley Glover
Phone: (804) 440–4256
(b) *Approved Course:*
Abatement Worker (contingent).
(20)(a) *Training Provider:* Oneil M. Banks, Inc.
Address: 336 South Main St., Bel Air, MD 21014
Contact: Oneil M. Banks
Phone: (301) 879–4676
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector (contingent).
(21)(a) *Training Provider:* Paskal Environmental Services.
Address: 1400 South Joyce St., Suite C 1701, Arlington, VA 22202
Contact: Steven Paskal
Phone: (703) 920–8653
(b) *Approved Course:*
Abatement Worker (contingent).
(22)(a) *Training Provider:* S.G. Brown Inc.
Address: 2701 Sonic Dr., Virginia Beach, VA 23456
Contact: Sandra A. Akers
Phone: (804) 468–0027
(b) *Approved Course:*
Abatement Worker (contingent).
(23)(a) *Training Provider:* STI, Inc.
Address: P.O. Box 1029, Aberdeen, MD 21001
Contact: Terry F. Carraway, Jr.
Phone: (301) 575–7844
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
(24)(a) *Training Provider:* Safety Management Institute.
Address: P.O. Box 2267, Altoona, PA 16603
Contact: Christopher Tate
Phone: (814) 946–8778
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 2/8/88).
(25)(a) *Training Provider:* Temple University, College of Engineering.
Address: 12th & Norris Sts., Philadelphia, PA 19122
Contact: Lester Levin
Phone: (215) 787–6479
(b) *Approved Courses:*
Abatement Worker (full from 9/28/87).
Contractor/Supervisor (full from 9/28/87).
Inspector/Management Planner (full from 10/13/87).
(26)(a) *Training Provider:* United Environmental Systems, Inc.
Address: 14 Stella Dr., Churchville, PA 18966
Contact: Michael Yaron
Phone: (215) 829–9454
(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(27)(a) *Training Provider:* University of Pittsburgh, Graduate School of Public Health.
Address: Department of Industrial Environmental Health Sciences, Pittsburgh, PA 15261
Contact: Dietrich A. Weyel
Phone: (412) 624–3850
(b) *Approved Courses:*
Abatement Worker (full from 6/6/88).
Contractor/Supervisor (full from 6/6/88).
(28)(a) *Training Provider:* West Virginia University Extension Service.
Address: 812 Knapp Hall, Morgantown, WV 26506
Contact: Rudy Filek
Phone: (304) 293–5691
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(29)(a) *Training Provider:* White Lung Association.
Address: 1114 Cathedral St., Baltimore, MD 21201
Contact: James Fite
Phone: (301) 727–6029
(b) *Approved Courses:*
Abatement Worker (full from 6/6/88).
Contractor/Supervisor (full from 6/6/88).
Inspector/Management Planner (full from 2/15/88).
(30)(a) *Training Provider:* William L. James Enterprises, Inc.
Address: 710 Capouse Ave., Scranton, PA 18509
Contact: William L. James
Phone: (717) 346–2837
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

Region IV—Atlanta, GA

Regional Asbestos Coordinator: Jim Littell, EPA Region IV, 345 Courtland Street NE. (P&TSB), Atlanta, GA 30365. (404) 347–5053, (FTS) 257–5053.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* A.T.C., Inc.
Address: 1635 Pumphrey Ave., Auburn, AL 36830–4303
Contact: David L. Elam, Jr.
Phone: (205) 826–6100
(b) *Approved Courses:*
Abatement Worker (contingent).
Inspector/Management Planner (contingent).
(2)(a) *Training Provider:* AHP Research, Inc.
Address: 1501 Johnsons Ferry Rd., Suite 230, P.O. Box 71926, Marietta, GA 30007
Contact: Dwight Brown
Phone: (404) 565–0061
(b) *Approved Courses:*
Inspector/Management Planner (interim from 5/28/86 to 12/13/87).
Inspector/Management Planner (full from 12/14/87).
(3)(a) *Training Provider:* ATI Environmental Services.
Address: P.O. Box 3044, Louisville, KY 40201
Contact: Tim Ellis
Phone: (502) 589–5308
(b) *Approved Courses:*
Abatement Worker (full from 1/12/88).
Contractor/Supervisor (full from 1/12/88).
(4)(a) *Training Provider:* Asbestos Consultants, Inc.
Address: P.O. Box 9054, Greensboro, NC 27408
Contact: Thomas Petty
Phone: (919) 275–3907
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(5)(a) *Training Provider:* Asbestos Consulting & Training.
Address: 903 Northwest 6th Ave., Fort Lauderdale, FL 33311
Contact: Jim Stump
Phone: (305) 524–7206
(b) *Approved Course:*
Abatement Worker (full from 5/8/88).
(6)(a) *Training Provider:* Asbestos Workers Local Union #48 Joint Apprenticeship Training Program.
Address: 7815 Old Morrow Rd., Jonesboro, GA 30236
Contact: Timothy Fuller
Phone: (404) 478–1393
(b) *Approved Courses:*
Abatement Worker (full from 5/4/88).

Contractor/Supervisor (full from 6/27/88).

(7)(a) *Training Provider:* BCM Engineers, Inc.

Address: 108 St. Anthony St., P.O. Box 1784, Mobile, AL 36633
Contact: Gail Conner
Phone: (205) 433–3981

(b) *Approved Courses:*
Inspector/Management Planner (full from 11/11/87).
Project Designer (full from 12/8/87).

(8)(a) *Training Provider:* DPC General Contractors, Inc.

Address: 250 Arizona Ave., NE., Bldg. A, Atlanta, GA 30307
Contact: Glen Kahler
Phone: (404) 373–0561

(b) *Approved Course:*
Abatement Worker (full from 5/9/88).

(9)(a) *Training Provider:* ELB & Associates, Inc.

Address: 605 Eastowne Dr., Chapel Hill, NC 27514
Contact: Michael L. Cannon
Phone: (919) 493–4471

(b) *Approved Course:*
Abatement Worker (contingent).

(10)(a) *Training Provider:* Georgia Tech. Research Institute Environmental Health & Safety Division.

Address: O'Keefe Building, Room 029, Atlanta, GA 30332
Contact: Robert D. Schmitter
Phone: (404) 894–3806

(b) *Approved Courses:*
Contractor/Supervisor (interim from 6/1/85 to 5/10/87).
Contractor/Supervisor (full from 5/11/87).
Contractor/Supervisor Refresher Course (full from 7/7/88).
Inspector/Management Planner (full from 10/1/87).
Project Designer (full from 6/7/88).

(11)(a) *Training Provider:* Great Barrier Insulation Co.

Address: Meador Warehouse, Western Dr., Mobile, AL 36607
Contact: Thomas Knotts
Phone: (205) 476–0350

(b) *Approved Course:*
Abatement Worker (contingent).

(12)(a) *Training Provider:* Howard L. Henson Training Institute.

Address: 3592 Flat Shoals Rd., Decatur, GA 30034
Contact: Stephen Henson
Phone: (404) 243–5107

(b) *Approved Course:*
Abatement Worker (full from 2/16/88).

(13)(a) *Training Provider:* Laborers' District Council of Southeast Florida.

Address: 799 Northwest 62nd St., Miami, FL 33510
Contact: Albert Houston
Phone: (305) 754–2659

(b) *Approved Course:*
Abatement Worker (full from 3/15/88).

(14)(a) *Training Provider:* Mississippi State University.

Address: P.O. Drawer 5247, Mississippi State, MS 39762–5247
Contact: Dr. Margaret V. Naugle
Phone: (601) 325–2677

(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 6/20/88).

(15)(a) *Training Provider:* National Asbestos Council (NAC) Training Department.

Address: 2786 North Decatur Rd., Decatur, GA 30033
Contact: Tom Laubenthal
Phone: (404) 209–0629

(b) *Approved Courses:*
Abatement Worker (interim from 7/1/86 to 6/1/87).
Abatement Worker (full from 7/1/87).

(16)(a) *Training Provider:* Occup. Safety & Hlth. Educ. Resource Center/Dept. of Environ. Sci. & Eng. Sch. of Public Hlth. Univ. of NC.

Address: 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514
Contact: Ted Williams
Phone: (919) 962–2101

(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 11/9/87).

(17)(a) *Training Provider:* South Carolina Research and Training Center.

Address: 300 Gervais St., Annex III, Columbia, SC 29201
Contact: Jan Temple
Phone: (803) 737–2060

(b) *Approved Courses:*
Contractor/Supervisor (full from 3/8/88).
Inspector/Management Planner (full from 3/1/88).

(18)(a) *Training Provider:* The Environmental Institute.

Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067
Contact: Eva Clay
Phone: (404) 425–2000

(b) *Approved Courses:*
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (full from 2/1/88).
Contractor/Supervisor Refresher Course (full from 5/19/88).
Inspector/Management Planner (full from 1/25/88).
Project Designer (full from 2/9/88).

(19)(a) *Training Provider:* University of Alabama, College of Continuing Studies, Division of Environmental and Industrial Programs.

Address: P.O. Box 2967, Tuscaloosa, AL 35486–2967
Contact: William Weems
Phone: (205) 348–3033

(b) *Approved Course:*
Contractor/Supervisor (full from 12/14/87).

(20)(a) *Training Provider:* University of Alabama-Birmingham Deep South Center.

Address: Birmingham, AL 35294
Contact: Elizabeth Lynch
Phone: (205) 934–7032

(b) *Approved Course:*
Inspector/Management Planner (full from 3/21/88).

(21)(a) *Training Provider:* University of Florida, TREEO Center.

Address: 3900 South West 63rd Blvd., Gainesville, FL 32608
Contact: Sandra Scaggs
Phone: (904) 392–9570

(b) *Approved Courses:*
Contractor/Supervisor (interim from 2/9/87 to 4/30/87).
Contractor/Supervisor (full from 5/1/87).
Inspector/Management Planner (interim from 1/27/87 to 12/14/87).
Inspector/Management Planner (full from 2/15/88).

(22)(a) *Training Provider:* University of Kentucky, College of Engineering Continuing Education.

Address: 305 Slone Bldg., Lexington, KY 40506–0053
Contact: A.B. Broderson
Phone: (606) 257–4300

(b) *Approved Course:*
Inspector/Management Planner (full from 2/15/88).

(23)(a) *Training Provider:* Williams and Associates, Inc. Environmental Training Center.

Address: 460 Tennessee St., Memphis, TN 38103
Contact: Ruth Williams
Phone: (901) 521–9030

(b) *Approved Courses:*
Abatement Worker (full from 4/18/88).
Contractor/Supervisor (full from 4/18/88).

Region V—Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA Region V, 230 S. Dearborn St., (T–SPTB–7), Chicago, IL 60604. (312) 886–6003 (FTS) 886–6003.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the

course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Training Institute, Inc.
Address: P.O. Box 26835, Columbus, OH 43226–0835
Contact: Steven Ritchie
Phone: (614) 267–0908

(b) *Approved Course:*
Abatement Worker (contingent).

(2)(a) *Training Provider:* Advanced Environmental, Inc.
Address: 1216 Selby Ave., St. Paul, MN 55104
Contact: James D. Risimini
Phone: (612) 641–1101

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).

(3)(a) *Training Provider:* Affiliated Environmental Services, Inc.
Address: 3606 Venice Rd., Sandusky, OH 44870
Contact: Jack Dauch
Phone: (419) 627–1976

(b) *Approved Course:*
Abatement Worker (contingent).

(4)(a) *Training Provider:* Alderink & Associates, Inc.
Address: 3221–3 Mile Rd., NW., Grand Rapids, MI 49504
Contact: Deborah C. Alderink
Phone: (616) 791–0730

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(5)(a) *Training Provider:* Applied Environmental Sciences, Inc.
Address: Minneapolis Business & Technology Center, 511 11th Ave. So., Minneapolis, MN 55415
Contact: Franklin H. Dickson
Phone: (612) 339–5559

(b) *Approved Course:*
Abatement Worker (contingent).

(6)(a) *Training Provider:* Aries Environmental Services, Ltd.
Address: 1550 Hubbard, Batavia, IL 60510
Contact: Dennis Cesarotti
Phone: (312) 879–3006

(b) *Approved Course:*
Abatement Worker (contingent).

(7)(a) *Training Provider:* Asbestos Abatement, Inc.
Address: 2420 N. Grand River, Lansing, MI 48906
Contact: Shawn O'Callaghan
Phone: (517) 323–0053

(b) *Approved Course:*
Abatement Worker (contingent).

(8)(a) *Training Provider:* Asbestos Consulting Group, Inc.
Address: P.O. Box 3157, La Crosse, WI 54602–3157
Contact: Larry Lienau
Phone: (608) 782–1670

(b) *Approved Course:*
Contractor/Supervisor (contingent).

(9)(a) *Training Provider:* Asbestos Management, Inc. (AMI).
Address: 36700 South Huron, Suite 104, New Boston, MI 48164
Contact: Kary S. Amin
Phone: (313) 961–6135

(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 2/1/88).

(10)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI).
Address: 809 East 11th St., Michigan City, IN 46360
Contact: Bruce H. Connell
Phone: (219) 874–7348

(b) *Approved Courses:*
Abatement Worker (full from 5/18/88).
Contractor/Supervisor (full from 6/20/88).
Inspector/Management Planner (contingent).

(11)(a) *Training Provider:* Astesco Laboratory Incorporated.
Address: RR 1 Box 328, Reelsville, IN 46171
Contact: Donald Allen
Phone: (317) 672–8400

(b) *Approved Course:*
Abatement Worker (contingent).

(12)(a) *Training Provider:* BDN Industrial Hygiene Consultants.
Address: 8105 Valleywood Lane, Portage, MI 49002
Contact: Keith Nichols
Phone: (616) 329–1237

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 2/15/88).

(13)(a) *Training Provider:* Carnow, Conibear & Associates, Ltd.
Address: 333 West Wacker Dr., Suite 1400, Chicago, IL 60606
Contact: Victoria Musselman
Phone: (312) 782–4486

(b) *Approved Course:*
Abatement Worker (full from 2/29/88).

(14)(a) *Training Provider:* Clayton Environmental Consultants, Inc.
Address: 22345 Roethel Dr., Novi, MI 48050
Contact: Michael Coffman
Phone: (313) 344–1770

(b) *Approved Course:*
Inspector/Management Planner (full from 2/16/88).

(15)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.
Address: 505 King Ave., Columbus, OH 43201–2693
Contact: John Simpkins
Phone: (614) 424–6424

(b) *Approved Course:*
Inspector/Management Planner (full from 4/11/88).

(16)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.
Address: P.O. Box 31, Oregon, WI 53575–0031
Contact: Alice J. Seeliger
Phone: (608) 835–5781

(b) *Approved Course:*
Inspector/Management Planner (full from 4/18/88).

(17)(a) *Training Provider:* DeLisle Consulting & Laboratories, Inc.
Address: 2401 East Milham Ave., Kalamazoo, MI 49002
Contact: Mark DeLisle
Phone: (616) 343–9696

(b) *Approved Courses:*
Contractor/Supervisor (full from 10/20/87).
Inspector/Management Planner (full from 12/22/87).

(18)(a) *Training Provider:* Dore & Associates Contracting, Inc.
Address: 900 Harry S. Truman Parkway, P.O. Box 146, Bay City, MI 48707
Contact: Joseph Goldring
Phone: (517) 684–8358

(b) *Approved Course:*
Abatement Worker (full from 6/27/88).

(19)(a) *Training Provider:* Environmental Professionals, Inc.
Address: 1405 Newton St., Tallmadge, OH 44278
Contact: Timothy E. Walsh
Phone: (216) 633–4435

(b) *Approved Course:*
Contractor/Supervisor (contingent).

(20)(a) *Training Provider:* Foley Occupational Health Consulting.
Address: 4060 Echo Cove, Manitou Beach, MI 49253
Contact: E.D. Foley, Jr.
Phone: (517) 547–7399

(b) *Approved Course:*
Contractor/Supervisor (contingent).

(21)(a) *Training Provider:* Gandee & Associates, Inc.
Address: 4488 Mobile Dr., Columbus, OH 43220
Contact: Kurt Varga
Phone: (614) 459–8338

(b) *Approved Courses:*
Abatement Worker (contingent).

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Contractor/Supervisor (contingent).
(22)(a) *Training Provider:* Hazardous Materials Institute.
Address: 540 Frontage Rd., Northfield, IL 60093
Contact: Al Wilson
Phone: (312) 501–2195
(b) *Approved Course:*
Contractor/Supervisor (contingent).
(23)(a) *Training Provider:* Heat and Frost Insulators Local 17 Apprentice Training Center.
Address: 3850 South Racine Ave., Chicago, IL 60609
Contact: John P. Shine
Phone: (312) 247–1007
(b) *Approved Courses:*
Abatement Worker (full from 11/8/87).
Contractor/Supervisor (full from 3/22/88).
(24)(a) *Training Provider:* I.P.C. Chicago.
Address: 4309 West Henderson, Chicago, IL 60641
Contact: Robert G. Cooley
Phone: (312) 975–3495
(b) *Approved Course:*
Abatement Worker (contingent).
(25)(a) *Training Provider:* Illinois Laborers' & Contractors' Training Program, Training Trust.
Address: Rural Route 3, Mount Sterling, IL 62353
Contact: Tony Romolo
Phone: (217) 773–2741
(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Contractor/Supervisor (full from 3/14/88).
(26)(a) *Training Provider:* Indiana Laborers' Training Trust Fund.
Address: P.O. Box 758, Bedford, IN 47421
Contact: Richard Fassino
Phone: (812) 279–9751
(b) *Approved Courses:*
Abatement Worker (full from 2/22/88).
Contractor/Supervisor (contingent).
(27)(a) *Training Provider:* Indianapolis Center For Advanced Research, Inc.
Address: 611 North Capitol Ave., Indianapolis, IN 46204
Contact: William Berdnek Jr.
Phone: (317) 262–5027
(b) *Approved Course:*
Inspector/Management Planner (full from 6/6/88).
(28)(a) *Training Provider:* Industrial Environmental Consultants.
Address: 2875 Northwind, Suite 113, East Lansing, MI 48823
Contact: James C. Fox
Phone: (517) 332–7026
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(29)(a) *Training Provider:* Kemron Environmental Services.
Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018
Contact: Thomas J. Martin
Phone: (313) 626–2426
(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(30)(a) *Training Provider:* Lepi Enterprises, Inc.
Address: 917 Main St., Dresden, OH 43821
Contact: James R. Lepi
Phone: (614) 754–1162
(b) *Approved Course:*
Abatement Worker (contingent).
(31)(a) *Training Provider:* Lyle Laboratories.
Address: 1327 King Ave., Columbus, OH 43212
Contact: Terri L. Williams
Phone: (614) 488–1022
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(32)(a) *Training Provider:* Michigan Laborers Training Institute.
Address: 11155 South Beardslee Rd., Perry, MI 48872
Contact: Edwin H. McDonald
Phone: (517) 625–4919
(b) *Approved Courses:*
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (full from 5/6/88).
(33)(a) *Training Provider:* Midwest Center for Occupational Health and Safety.
Address: 640 Jackson St., St. Paul, MN 55101
Contact: Kathleen Vork
Phone: (612) 221–3992
(b) *Approved Course:*
Inspector/Management Planner (full from 5/23/88).
(34)(a) *Training Provider:* Midwest Health Training.
Address: 3920 Central, Western Springs, IL 60558
Contact: H.C. Brown
Phone: (312) 246–9527
(b) *Approved Course:*
Abatement Worker (full from 4/25/88).
(35)(a) *Training Provider:* Morraine Valley Community College.
Address: 10900 South 88th Ave., Palos Hills, IL 60465
Contact: Richard Kukac
Phone: (312) 974–4300
(b) *Approved Course:*
Inspector/Management Planner (full from 2/9/88).
(36)(a) *Training Provider:* National Institute for Abatement Education.
Address: 5501 Williamsburg Way #305, Madison, WI 53719
Contact: Dean Leischow
Phone: (608) 271–7281
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
(37)(a) *Training Provider:* Northern Safety Consultants, Inc.
Address: 1406 Lincoln Ave., Marquette, MI 49855
Contact: Christopher M. Baker
Phone: (906) 228–5161
(b) *Approved Courses:*
Abatement Worker (full from 5/31/88).
Contractor/Supervisor (full from 5/31/88).
(38)(a) *Training Provider:* Nova Environmental Services.
Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318
Contact: Steven B. Cummings
Phone: (612) 448–8888
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(39)(a) *Training Provider:* Nova Environmental, Inc.
Address: 704 Wesley, Ann Arbor, MI 48103
Contact: Kary S. Amin
Phone: (313) 769–3585
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(40)(a) *Training Provider:* Ohio Asbestos Workers Council.
Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206
Contact: Larry Briley
Phone: (513) 221–5969
(b) *Approved Course:*
Contractor/Supervisor (full from 4/25/88).
(41)(a) *Training Provider:* Ohio Laborers' Training & Upgrading Trust Fund.
Address: 25721 Coshocton Rd., P.O. Box 218, Howard, OH 43028
Contact: John L. Railing
Phone: (614) 599–7915
(b) *Approved Course:*
Contractor/Supervisor (contingent).
(42)(a) *Training Provider:* Professional Asbestos Labor Services, Inc.
Address: 2955 West 5th Ave., Gary, IN 46404
Contact: George Bradley
Phone: (219) 949–5008
(b) *Approved Course:*

Abatement Worker (contingent).
(43)(a) *Training Provider:* Professional Service Industries, Inc.
Address: 510 East 22nd St., Lombard, IL 60148
Contact: W.K. Swartzendruben
Phone: (312) 691–1490
(b) *Approved Course:*
Inspector (full from 5/3/88).
(44)(a) *Training Provider:* S.Z. Mansdorf & Assoc., Inc.
Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223–1323
Contact: A.L. Lott
Phone: (216) 928–5434
(b) *Approved Courses:*
Contractor/Supervisor (full from 1/26/88).
Inspector/Management Planner (contingent).
(45)(a) *Training Provider:* Safety Training of Illinois.
Address: 1515 South Park, Springfield, IL 62704
Contact: S. David Farris
Phone: (217) 787–9091
(b) *Approved Course:*
Abatement Worker (full from 12/18/87).
(46)(a) *Training Provider:* South East Michigan Committee on Occupational Safety and Health (SEMCOSH).
Address: 1550 Howard St., Detroit, MI 48216
Contact: Barbara Boylan
Phone: (313) 961–3345
(b) *Approved Course:*
Abatement Worker (contingent).
(47)(a) *Training Provider:* Testing Engineers & Consultants, Inc.
Address: 1333 Rochester Rd., P.O. Box 249, Troy, MI 48099
Contact: Karl D. Agee
Phone: (313) 588–6200
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(48)(a) *Training Provider:* University of Cincinnati Medical Center Institute of Environmental Health Kettering Laboratory.
Address: 3223 Eden Ave., Cincinnati, OH 45267–0056
Contact: Susan L. Millman
Phone: (517) 872–5733
(b) *Approved Courses:*
Contractor/Supervisor (full from 10/20/87).
Inspector/Management Planner (full from 11/16/87).
(49)(a) *Training Provider:* University of Illinois at Chicago M.A.I.C. School of Public Health.
Address: 2035 Taylor, Chicago, IL 60612
Contact: Tony Billotti
Phone: (312) 996–5762
(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (full from 4/5/88).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (full from 10/21/87).
(50)(a) *Training Provider:* University of Wisconsin-Extension.
Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703
Contact: Neil DeClercq
Phone: (608) 262–2111
(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 2/22/88).

Region VI—Dallas, TX

Regional Asbestos Coordinator: John West, 6t-Pt, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. (214) 655–7244, (FTS) 255–7244.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* Asbestos Surveys and Training, Inc.
Address: Three Riverway, Suite 760, Houston, TX 77056
Contact: Jesse Ashley
Phone: (713) 623–0025
(b) *Approved Course:*
Abatement Worker (full from 10/22/87).
(2)(a) *Training Provider:* CERL, Inc.
Address: 1611 Calle Lorca, Suite B, Santa Fe, NM 87501
Contact: Michael Curtis
Phone: (505) 988–4143
(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(3)(a) *Training Provider:* Carpenters Apprenticeship Training School.
Address: 8505 Glen Vista, Houston, TX 77061
Contact: S.C. Strunk, Jr.
Phone: (713) 641–1011
(b) *Approved Courses:*
Abatement Worker (contingent).
Abatement Worker Refresher Course (contingent).
(4)(a) *Training Provider:* Certified Asbestos Training Institute, Inc.
Address: 4202 Argentina Cir., Pasadena, TX 77504
Contact: Maurice Hoffpowier
Phone: (713) 487–3155
(b) *Approved Course:*
Abatement Worker (contingent).
(5)(a) *Training Provider:* Critical Environmental Training Center.
Address: 5815 Gulf Fwy., Houston, TX 77023
Contact: Charles M. Flanders
Phone: (713) 921–4600
(b) *Approved Courses:*
Abatement Worker (full from 4/14/88).
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 3/21/88).
(6)(a) *Training Provider:* Environmental Institute.
Address: P.O. Box 270278, Dallas, TX 75227
Contact: R. Michael Wheeler
Phone: (214) 324–0774
(b) *Approved Courses:*
Contractor/Supervisor (full from 1/11/88).
Inspector/Management Planner (full from 1/25/88).
(7)(a) *Training Provider:* Environmental Monitoring Service, Inc. (EMS).
Address: 13008 Amarillo Ave., Austin, TX 78729
Contact: Rick Pruett
Phone: (512) 335–9116
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
(8)(a) *Training Provider:* Fort Worth Independent School District.
Address: 3210 West Lancaster, Fort Worth, TX 76107
Contact: H.D. Duncan
Phone: (817) 336–8311
(b) *Approved Courses:*
Abatement Worker (contingent).
Abatement Worker Refresher Course (contingent).
(9)(a) *Training Provider:* GEBCO Associates, Inc.
Address: 805–A Elizabeth Dr., Bedford, TX 76022
Contact: Ed Kirch
Phone: (817) 268–4006
(b) *Approved Courses:*
Abatement Worker (interim from 4/15/87 to 8/19/87).
Abatement Worker (full from 8/20/87).
Contractor/Supervisor (contingent).
Contractor/Supervisor Refresher Course (contingent).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (contingent).

(10)(a) *Training Provider:* International Association of Heat and Frost Insulators, Asbestos Workers Union Local 22.

Address: 3219 Pasadena Blvd., Pasadena, TX 77503
Contact: Owen Tilley
Phone: (713) 473–0888

(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (full from 3/22/88).
Abatement Worker Refresher Course (contingent).
Contractor/Supervisor (contingent).

(11)(a) *Training Provider:* Lamar University, Hazardous Materials Program.

Address: P.O. Box 10008, Beaumont, TX 77710
Contact: Marion Foster
Phone: (409) 880–2369

(b) *Approved Course:*
Contractor/Supervisor (contingent).

(12)(a) *Training Provider:* Louisiana Laborers Union—AGC Training Fund.

Address: P.O. Box 376, Livonia, LA 70755–0376
Contact: Jamie Peers
Phone: (504) 637–2311

(b) *Approved Course:*
Abatement Worker (contingent).

(13)(a) *Training Provider:* Louisiana State University, Agricultural and Mechanical College.

Address: 361 Pleasant Hall, Baton Rouge, LA 70803–1520
Contact: George Smith
Phone: (504) 388–6621

(b) *Approved Courses:*
Abatement Worker (full from 1/1/88).
Contractor/Supervisor (full from 4/7/88).
Inspector/Management Planner (full from 1/18/88).

(14)(a) *Training Provider:* Meador-Wright and Associates, Inc.

Address: 5520 LBJ Freeway, Suite 204, Dallas, TX 75240
Contact: Paul Teel
Phone: (214) 788–1804

(b) *Approved Course:*
Inspector (contingent).

(15)(a) *Training Provider:* Moore-Norman Area Vocational Training School.

Address: 4701–12th Ave., NW., Norman, OK 73069
Contact: Frank Coulter
Phone: (405) 364–5763

(b) *Approved Courses:*
Abatement Worker (full from 5/16/88).
Contractor/Supervisor (full from 5/16/88).
Inspector/Management Planner (full from 4/4/88).

(16)(a) *Training Provider:* Nelson/Imel, Inc.

Address: 3900 Morrison Cir., Norman, OK 73072
Contact: Deborah Nelson
Phone: (405) 364–3278

(b) *Approved Course:*
Abatement Worker (contingent).

(17)(a) *Training Provider:* Occonor-McMahon, Inc.

Address: 1210 Riverbend Dr., Suite 202, Dallas, TX 75247
Contact: James M. Walley
Phone: (214) 638–7322

(b) *Approved Course:*
Abatement Worker (contingent).

(18)(a) *Training Provider:* Occupational Safety Training Institute.

Address: 4335 South Main # B, Stafford, TX 77477
Contact: Eva Bonilla
Phone: (713) 261–0212

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(19)(a) *Training Provider:* Region 6 Environmental Training.

Address: 13900 I.H. 35 North, Suite 2–1, Austin, TX 78728
Contact: Andrew Ramvel
Phone: (512) 251–2637

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(20)(a) *Training Provider:* SETCO Safety, ET.

Address: 1308 Upland, Houston, TX 77043
Contact: James Hoffpauir
Phone: (713) 468–4393

(b) *Approved Course:*
Abatement Worker (contingent).

(21)(a) *Training Provider:* Southwest Environmental Institute.

Address: P.O. Box 295, Abileene, TX 79604
Contact: Tom Dye
Phone: (915) 691–0189

(b) *Approved Course:*
Abatement Worker (contingent).

(22)(a) *Training Provider:* Texas Engineering Extension Service Building Codes Inspection Training Div.

Address: Texas A&M University System, College Station, TX 77843–8000
Contact: Richard Thompson
Phone: (409) 845–6682

(b) *Approved Courses:*
Abatement Worker (full from 9/28/87).
Contractor/Supervisor (interim from 5/26/88 to 9/13/87).
Contractor/Supervisor (full from 9/14/87).
Inspector/Management Planner (full from 10/19/87).

(23)(a) *Training Provider:* Tulane University, School of Public Health and Tropical Medicine, Dept. of Environmental Health Sciences.

Address: 1430 Tulane Ave., New Orleans, LA 70112
Contact: Dr. Shau-Wong-Chang, Ph.D, CIH
Phone: (504) 588–5374

(b) *Approved Courses:*
Contractor/Supervisor (interim from 3/17/87 to 9/14/87).
Contractor/Supervisor (full from 9/15/87).

(24)(a) *Training Provider:* University of Arkansas at Little Rock Biology Department.

Address: 33rd & University, Little Rock, AR 72204
Contact: Phyllis Moore
Phone: (501) 569–3270

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(25)(a) *Training Provider:* University of Texas at Arlington Bureau of Engineering Research.

Address: P.O. Box 19020, Arlington, TX 76019
Contact: Ernest C. Crosby
Phone: (817) 273–2557

(b) *Approved Courses:*
Contractor/Supervisor (full from 7/14/86).
Inspector/Management Planner (full from 10/19/87).

(26)(a) *Training Provider:* Veltmann Engineering.

Address: 2403 Emerson Ct., Midland, TX 79705
Contact: Clyde Veltmann
Phone: (915) 682–6072

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(27)(a) *Training Provider:* Young Insulation Group of Amarillo, Inc.

Address: P.O. Box 5098, Amarillo, TX 79117
Contact: Dennis C. Clayton
Phone: (806) 372–4329

(b) *Approved Courses:*
Abatement Worker (contingent).
Abatement Worker Refresher Course (contingent).

Region VII—Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA Region VII, 726 Minnesota Ave., Kansas City, KS 66101, (913) 236–2834, (FTS) 757–2834.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed

under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AGC—Eastern Missouri Laborers' Joint Training Fund.
Address: Rt. 1 Box 79H, High Hill, MO 63350
Contact: Jerald Pelker
Phone: (314) 585–2391

(b) *Approved Course:*
Abatement Worker (full from 1/19/88).

(2)(a) *Training Provider:* Aerostat Asbestos Engineering Consulting, Inc.
Address: P.O. Box 12037, Kansas City, KS 66112
Contact: Damir Joseph Stimac
Phone: (913) 788–3307

(b) *Approved Courses:*
Abatement Worker (full from 5/9/88).
Contractor/Supervisor (full from 5/9/88).
Inspector/Management Planner (contingent).

(3)(a) *Training Provider:* Asbestos Consulting Testing (ACT).
Address: 14953 West 101st Ter., Lenexa, KS 66215
Contact: Jim Pickel
Phone: (913) 492–1337

(b) *Approved Courses:*
Abatement Worker (full from 1/25/88).
Contractor/Supervisor (full from 1/25/88).

(4)(a) *Training Provider:* CHART Services, Ltd.
Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322
Contact: Mary A. Finn
Phone: (515) 276–3642

(b) *Approved Courses:*
Abatement Worker (full from 11/17/87).
Contractor/Supervisor (full from 11/17/87).
Inspector/Management Planner (full from 2/22/88).

(5)(a) *Training Provider:* Construction Laborers Building Corporation.
Address: Box 34549, Omaha, NE 68134
Contact: Jack Budd
Phone: (402) 572–0826

(b) *Approved Course:*
Abatement Worker (full from 11/2/87).

(6)(a) *Training Provider:* Enviro-Impact Inspections.
Address: 1515 North Wason, Suite 213, St. Louis, MO 63132
Contact: Denis Boles
Phone: (314) 426–0087

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(7)(a) *Training Provider:* Environmental Technology, Inc.
Address: 4315 Merriam Dr., Overland Park, KS 66203
Contact: Mike Franano
Phone: (913) 236–5040

(b) *Approved Course:*
Abatement Worker (full from 2/29/88).

(8)(a) *Training Provider:* Flint Hills Area Vocational-Technical School.
Address: 3301 West 18th Ave., Emporia, KS 66801
Contact: Jim Krueger
Phone: (316) 342–8404

(b) *Approved Course:*
Abatement Worker (full from 3/7/88).

(9)(a) *Training Provider:* Greater Kansas City Laborers Training Fund.
Address: 8944 Kaw Dr., Kansas City, KS 66111
Contact: James D. Barnett
Phone: (913) 441–6100

(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Contractor/Supervisor (full from 5/2/88).

(10)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4840 West 15th St., Lawrence, KS 66046
Contact: Alice Hart
Phone: (913) 749–2381

(b) *Approved Courses:*
Abatement Worker (full from 8/17/87).
Contractor/Supervisor (full from 8/17/87).
Inspector/Management Planner (full from 8/17/87).
Project Designer (full from 8/17/87).

(11)(a) *Training Provider:* Insulators and Asbestos Workers Midwest States Health and Training Council.
Address: Rural Route #2, Wahoo, NE 68066
Contact: Ray Richmond
Phone: (402) 443–4810

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(12)(a) *Training Provider:* Iowa Laborers District Council Training Fund.
Address: 5806 Meredith Dr., Des Moines, IA 50322
Contact: Jack G. Jones
Phone: (515) 272–6965

(b) *Approved Course:*
Abatement Worker (full from 2/22/88).

(13)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.
Address: 2430 Marlatt Ave., Manhattan, KS 66502
Contact: Fred Tipton
Phone: (913) 539–7902

(b) *Approved Courses:*
Abatement Worker (full from 1/5/88).
Contractor/Supervisor (full from 5/2/88).

(14)(a) *Training Provider:* MITON, Inc.
Address: P.O. Box 1582, Branson, MO 65616
Contact: Tony Williams
Phone: (417) 335–6743

(b) *Approved Course:*
Inspector/Management Planner (full from 3/14/88).

(15)(a) *Training Provider:* Maple Woods Community College.
Address: 10771 Ambassador Dr., Kansas City, MO 64133
Contact: James C. Lauer
Phone: (816) 436–6500

(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Contractor/Supervisor (full from 3/28/88).
Inspector/Management Planner (full from 5/2/88).

(16)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).
Address: P.O. Box 1961, Lawrence, KS 66044
Contact: Brad Mayhew
Phone: (913) 842–6382

(b) *Approved Courses:*
Abatement Worker (full from 10/20/87).
Contractor/Supervisor (full from 10/20/87).

(17)(a) *Training Provider:* Midwest Environmental Testing & Training.
Address: 3500 Northeast Independence Ave., Lee's Summit, MO 64064
Contact: Steve Minshall
Phone: (816) 525–6681

(b) *Approved Courses:*
Abatement Worker (full from 5/9/88).
Contractor/Supervisor (full from 5/9/88).

(18)(a) *Training Provider:* State of Iowa Department of Education.
Address: Grimes State Office Building, Des Moines, IA 50319–0146
Contact: C. Milton Wilson
Phone: (515) 281–4743

(b) *Approved Course:*
Inspector/Management Planner (full from 4/4/88).

(19)(a) *Training Provider:* University of Kansas, Division of Continuing Education.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211
Contact: Lani Himegarner

Phone: (913) 491–0181

(b) *Approved Courses:*
Abatement Worker (full from 7/27/87).
Contractor/Supervisor (interim from 6/1/85 to 7/26/87).
Contractor/Supervisor (full from 7/27/88).
Inspector/Management Planner (full from 10/26/87).

Region VIII—Denver, CO

Regional Asbestos Coordinator: David Combs, [8AT–TS], EPA, Region VIII, 1 Denver Place, 999–18th St., Room 1300, Denver, CO 80202–2413. (303) 293–1744, (FTS) 564–1744.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Colorado State University Dept. of Industrial Sciences, Office of Research, Development, and Training.
Address: Fort Collins, CO 80523
Contact: Birgit Wolff
Phone: (303) 491–1551

(b) *Approved Course:*
Inspector/Management Planner (full from 5/23/88).

(2)(a) *Training Provider:* Energy Insulation, Inc.
Address: P.O. Box 1996, Casper, WY 82602
Contact: David K. Fox
Phone: (307) 473–1247

(b) *Approved Course:*
Abatement Worker (contingent).

(3)(a) *Training Provider:* Envir-o-tech.
Address: 300 Moore Ln., Billings, MT 59102
Contact: Les Nelson
Phone: (800) 225–4899

(b) *Approved Course:*
Abatement Worker (contingent).

(4)(a) *Training Provider:* Hager Laboratories, Inc.
Address: 11234 East Caley Ave., Englewood, CO 80111
Contact: Steve Herron
Phone: (303) 790–2727

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 5/2/88).

(5)(a) *Training Provider:* Industrial Health, Inc.
Address: 640 East Wilmington Ave., Salt Lake City, UT 84106
Contact: Donald E. Marano
Phone: (801) 466–2223

(b) *Approved Course:*
Contractor/Supervisor (contingent).

(6)(a) *Training Provider:* Major Safety Inc.
Address: 6390 Joyce Dr. #201, Golden, CO 80403
Contact: Tom Major
Phone: (303) 424–7874

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
Project Designer (contingent).

(7)(a) *Training Provider:* Misers Inspection & Training, Inc.
Address: 1600 South Cherokee St., Denver, CO 80223
Contact: Michael DiRito
Phone: (303) 761–8860

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(8)(a) *Training Provider:* NATEC International.
Address: 2761 West Oxford Ave. #7, Englewood, CO 80110
Contact: James Maxwell
Phone: (303) 825–6513

(b) *Approved Course:*
Abatement Worker (contingent).

(9)(a) *Training Provider:* Northern Engineering and Testing, Inc.
Address: 600 South 25th St., P.O. Box 30815, Billings, MT 59107
Contact: Kathleen Smit
Phone: (406) 248–9161

(b) *Approved Course:*
Abatement Worker (full from 12/8/87).

(10)(a) *Training Provider:* Power Masters, Inc.
Address: 13205 South State St., Draper, UT 84020
Contact: Debora Bastian
Phone: (801) 571–9321

(b) *Approved Course:*
Abatement Worker (contingent).

(11)(a) *Training Provider:* Rocky Mountain Center for Occupational and Environmental Health, University of Utah.
Address: Building 512, Salt Lake City, UT 84112
Contact: Jeffery Lee
Phone: (801) 581–5710

(b) *Approved Courses:*
Contractor/Supervisor (full from 11/16/87).
Contractor/Supervisor Refresher Course (contingent).
Inspector/Management Planner (full from 2/8/88).

(12)(a) *Training Provider:* South Dakota State University College of Engineering.
Address: Box 2218, Brookings, SD 57007–0597
Contact: James Ceglian
Phone: (605) 688–4101

(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).

Region IX—San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, [T–52], EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974–7290, (FTS) 454–7290.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* ABMS/Excel Environmental, Inc.
Address: 5506 San Pablo Ave., Oakland, CA 94608
Contact: Otis Wong
Phone: (415) 547–7144

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(2)(a) *Training Provider:* Center for Accelerated Learning.
Address: 400 Buck Ave., Suite G, Vacaville, CA 95688
Contact: David Esparza
Phone: (707) 446–7996

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(3)(a) *Training Provider:* Dan Napier and Associates.
Address: 15342 Hawthorne Blvd., Suite 207, Lawndale, CA 90260–2105
Contact: Dan Napier
Phone: (214) 316–1058

(b) *Approved Course:*
Abatement Worker (contingent).

(4)(a) *Training Provider:* Diagnostic Engineering, Inc.
Address: 55 West Sierra Madre Blvd., Sierra Madre, CA 91024
Contact: Jane P. Rowcliffe
Phone: (818) 355–8011

(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).

(5)(a) *Training Provider:* Environmental Sciences.

Address: 375 South Meyer, Tucson, AZ 85701
Contact: Paula Keyes
Phone: (602) 792–0097

(b) *Approved Course:*
Inspector/Management Planner (full from 10/5/87).

(6)(a) *Training Provider:* Hawaii Laborers' Training School.
Address: P.O. Box 457, Aiea, HI 96701
Contact: Norman Jimeno
Phone: (808) 488–6161

(b) *Approved Course:*
Abatement Worker (contingent).

(7)(a) *Training Provider:* Insulators and Asbestos Industry of Northern California.
Address: 2829 Fillmore St., A1ameda, CA 94501
Contact: Michael R. Mellin
Phone: (415) 522–7048

(b) *Approved Course:*
Abatement Worker (contingent).

(8)(a) *Training Provider:* International Technology Corporation.
Address: 336 West Anaheim St., Wilmington, CA 90744
Contact: Keith Soebe
Phone: (213) 830–1781

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(9)(a) *Training Provider:* KELLCO Training Institute.
Address: 44814 Osgood Rd., Fremont, CA 94539
Contact: Charles W. Kellogg
Phone: (415) 651–7401

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(10)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Northern California.
Address: 21321 San Ramon Valley Blvd., San Ramon, CA 94583
Contact: Marvin D. Johnson
Phone: (415) 828–2513

(b) *Approved Course:*
Abatement Worker (contingent).

(11)(a) *Training Provider:* Laborors Training and Trust Fund for Southern California.
Address: P.O. Box 76, Anza, CA 92306–0076
Contact: Mary Lacy
Phone: (714) 763–4341

(b) *Approved Course:*
Abatement Worker (contingent).

(12)(a) *Training Provider:* MED–TOX Associates, Inc.
Address: 1431 Warner Ave., Suite A, P.O. Box 2054, Tustin, CA 92681
Contact: Linda Cassidy
Phone: (714) 259–0620

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector (contingent).

(13)(a) *Training Provider:* National Abatement Technology Employment Center (NATEC).
Address: 13692 Newhope Ave., Garden Grove, CA 92643
Contact: Ronald Sandlin
Phone: (714) 530–0407

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(14)(a) *Training Provider:* National Institute for Asbestos Training.
Address: 1019 West Manchester Blvd., Inglewood, CA 90301
Contact: Jim McFarland
Phone: (213) 645–4516

(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).
Contractor/Supervisor (full from 12/7/87).

(15)(a) *Training Provider:* National Institute for Asbestos & Hazardous Waste Management.
Address: 1019 West Manchester Blvd., Inglewood, CA 90301
Contact: Paul Jackson
Phone: (213) 645–4516

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(16)(a) *Training Provider:* Pacific Asbestos Information Center, U.C. Extension.
Address: 2223 Fulton St., Berkeley, CA 94720
Contact: Debra Dobin
Phone: (415) 643–7143

(b) *Approved Courses:*
Contractor/Supervisor (full from 2/2/87).
Inspector/Management Planner (full from 11/16/87).

(17)(a) *Training Provider:* The Asbestos Institute.
Address: 2701 East Camelback #381, Phoenix, AZ 85016
Contact: William T. Cavness
Phone: (602) 381–0896

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).

(18)(a) *Training Provider:* University of Southern California Institute of Safety and Systems Management.
Address: University Gardens, 3500 South Figueroa #202, Los Angeles, CA 90007
Contact: James O. Pierce
Phone: (213) 743–6523

(b) *Approved Course:*
Inspector/Management Planner (contingent).

Region X—Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (AT–083), Seattle, WA 98101. (206) 442–4762, (FTS) 399–2870.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.
Address: 911 Western Ave., Suite 206, Seattle, WA 98104
Contact: Eileen Kirkpatrick
Phone: (206) 783–9506

(b) *Approved Course:*
Inspector (contingent).

(2)(a) *Training Provider:* Engineering Continuing Education University of Washington.
Address: GG–13, Seattle, WA 98195
Contact: Creighton Depew
Phone: (206) 543–5339

(b) *Approved Course:*
Inspector/Management Planner (full from 2/8/88).

(3)(a) *Training Provider:* Environmental Health Sciences Lake Washington Vo-Tech.
Address: 11605 132nd Avenue NE., Kirkland, WA 98304
Contact: Dave Rodewald
Phone: (206) 828–5643

(b) *Approved Course:*
Inspector/Management Planner (full from 4/11/88).

(4)(a) *Training Provider:* Environmental Management, Inc.
Address: P.O. Box 91477, Anchorage, AK 99509
Contact: Kenneth Johnson
Phone: (907) 272–8056

(b) *Approved Course:*
Inspector/Management Planner (full from 4/18/88).

(5)(a) *Training Provider:* Hazcon, Inc., Health Hazard Control Services.
Address: 5950 6th Ave., S., Suite 216, Seattle, WA 98108
Contact: Mike Krause
Phone: (206) 763–7364

(b) *Approved Course:*
Inspector/Management Planner (full from 4/4/88).

(6)(a) *Training Provider:* Northwest Envirocon, Inc.

Address: 181 A St., Washougal, WA 98671
Contact: Randy Hall
Phone: (206) 835–8576

(b) *Approved Course:* Inspector/Management Planner (contingent).

(7)(a) *Training Provider:* PBS Environmental Building Consultant, Inc.
Address: 1220 South West Morrison, Portland, OR 97205
Contact: John Perkins
Phone: (503) 248–1939

(b) *Approved Course:* Inspector/Management Planner (full from 3/14/88).

(8)(a) *Training Provider:* University of Alaska, Mining and Petroleum Training Services.
Address: 155 Smith Way, Suite 104, Soldotna, AK 99669
Contact: Dennis D. Steffy
Phone: (907) 262–2788

(b) *Approved Course:* Inspector/Management Planner (full from 4/11/88).

V. List of EPA-Accredited Bulk Sample Analysis Laboratories

Section 206(d) of Title II states that EPA must provide for the development of an accreditation program through the National Bureau of Standards (NBS) for laboratories conducting analysis of bulk samples of asbestos-containing materials by October 17, 1987. Due to a delay in funding, the NBS program will not be fully operational until October 1988. In order to provide schools with a listing of accredited laboratories, EPA has established the "Interim Asbestos Bulk Sample Quality Assurance Program." EPA announced the program in the **Federal Register** of September 30, 1987 (52 FR 33470).

The listing of laboratories has been developed from the results of the final round of the EPA Interim Accreditation Program and is compiled by State within each EPA Region. The laboratories have received interim accreditation from EPA by successfully meeting the requirements of the EPA Interim Asbestos Bulk Sample Quality Assurance Program in the April 1988 round of the program.

LEAs should note that the laboratory listing is continually being updated as laboratories are accredited by NBS. The NBS evaluation may result in laboratories either being added or deleted from the listing as the accreditation process is completed. The NBS evaluation process will begin in October 1988. EPA will maintain current listings of the accredited laboratories. LEAs should confirm a laboratory's accredited status by contacting both the laboratory and EPA. An up-to-date listing of a laboratory's accredited status may be obtained by phoning (202) 554–1404 or contacting the local EPA Regional Asbestos Coordinator.

EPA is examining the feasibility of developing an "electronic bulletin board" for the purpose of providing weekly updates on recent NBS accreditation actions. Further information on this subject will be made available in November 1988.

EPA Approved Laboratories

Region I—Boston, MA

Regional Asbestos Coordinator: Allison Roberts, EPA, Region I, Air and Management Division (APT–2311), JFK Federal Building, Boston, MA 02203, (617) 565–3273 (FTS) 835–3273.

(1) *Laboratory:* ACMAT.
Address: 116 Stoner Dr., West Hartford, CT 06107
Contact: Arthur C. Cosmas
Phone: (203) 289–6493

(2) *Laboratory:* AXIOM Laboratories.
Address: 97 Ocean Dr., E., Stamford, CT 06902
Contact: Sally E. Reffner
Phone: (203) 356–8977

(3) *Laboratory:* Aetna Life & Casualty, Engineering Department W101.
Address: 151 Farmington Ave., Hartford, CT 06156
Contact: Edward B. Engel
Phone: (203) 683–3665

(4) *Laboratory:* Air Quality Consultants.
Address: 406 Libbey Parkway, Weymouth, MA 02189
Contact: John E. O'Malley
Phone: (617) 337–7320

(5) *Laboratory:* Alliance Technologies Corp., Air Quality Assessments.
Address: 213 Burlington Rd., Medford, MA 01730
Contact: David R. Cogley
Phone: (617) 275–5444

(6) *Laboratory:* Analytical Testing Services.
Address: 180 Weeden St., Pawtucket, RI 02860–1804
Contact: Robert F. Weisberg
Phone: (401) 723–7978

(7) *Laboratory:* Applied Occupational Health Systems.
Address: 29 River Rd., Suite 18, Concord, NH 03301
Contact: Richard R. Kretovich
Phone: (603) 228–3610

(8) *Laboratory:* Axiom Laboratories.
Address: 97 Ocean Dr., E., Stamford, CT 06904
Contact: John A. Reffner
Phone: (203) 348–8098

(9) *Laboratory:* Balsam Environmental Consultants, Inc.
Address: 59 Stiles Rd., Salem, NH 03079
Contact: Tara E. Smith
Phone: (603) 893–0616

(10) *Laboratory:* Barnes and Jarvis, Inc.
Address: 216 Tremont St., Boston, MA 02116
Contact: Linda Goudreau
Phone: (617) 542–8521

(11) *Laboratory:* Baron Consulting Co. Analytical Services.
Address: P.O. Box 663, Orange, CT 06477
Contact: Harry Agahigian
Phone: (203) 874–5678

(12) *Laboratory:* Briggs Associates, Inc.
Address: 400 Hingham St., Rockland, MA 02370
Contact: James Litrides
Phone: (617) 871–8040

(13) *Laboratory:* Brooks Laboratories, Inc.
Address: 44 Codfish Lane, Weston, CT 06883
Contact: Margaret Y. Brooks
Phone: (203) 226–8970

(14) *Laboratory:* CON-TEST, Inc.
Address: 126 Shaker Rd., East Longmeadow, MA 01028
Contact: Thomas E. Veratti
Phone: (413) 525–1198

(15) *Laboratory:* CT State Dept. of Health Lab.
Address: P.O. Box 1689, Hartford, CT 06101
Contact: Janet B. Kapish
Phone: (203) 566–5628

(16) *Laboratory:* Certified Engineering & Testing Co., Inc.
Address: 25 Mathewson Dr., Weymouth, MA 02189
Contact: Glenn Sylvester
Phone: (617) 337–7887

(17) *Laboratory:* Certified Engineering & Testing Co., Inc.
Address: 400 Smith St., Providence, RI 02908
Contact: Deborah A. Pereira
Phone: (401) 831–8090

(18) *Laboratory:* Chem Scope Inc.
Address: P.O. Box 389, Fair Haven Station, New Haven, CT 06513
Contact: Ronald D. Arena
Phone: (203) 468–0055

(19) *Laboratory:* Covino Environmental Consultants, Inc.
Address: 12 Walnut Hill Park, Woburn, MA 01801
Contact: Samuel J. Covino, Jr.
Phone: (617) 933–2555

(20) *Laboratory:* Dennison Enviromental, Inc.
Address: 35H Industrial Pkwy., Woburn, MA 01801
Contact: James E. Dennison
Phone: (617) 932–9400

(21) *Laboratory:* EHL Division of Cigna Corp.
Address: 94 Murphy Rd., Hartford, CT 06114
Contact: Jim Kenny
Phone: (203) 522–3814

(22) *Laboratory:* ESA Laboratories.
Address: 43 Wiggins Ave., Bedford, MA 01730
Contact: Reg Griffin
Phone: (617) 275–0100

(23) *Laboratory:* Eastern Analytical Laboratories, Inc.
Address: 149 Rangeway Rd., North Billerica, MA 01862
Contact: Drew Killius
Phone: (617) 272–5212

(24) *Laboratory:* Enviro-Lab, Inc.
Address: 154 Grove St., Chicopee, MA 01020
Contact: Peter R. Tuttle
Phone: (413) 592–0030

(25) *Laboratory:* Enviromed Services, Inc.
Address: 25 Science Park, New Haven, CT 06511
Contact: William G. Oldman
Phone: (203) 786–5580

(26) *Laboratory:* Environmental Associates, Inc.
Address: 1222 Fairfield Ave., Bridgeport, CT 06605
Contact: Ralph B. Wiech
Phone: (203) 368–6064

(27) *Laboratory:* Environmental Field Services, Inc.
Address: 63 Elm St., Topsham, ME 04086
Contact: Joanna L. Eaton
Phone: (207) 725–4112

(28) *Laboratory:* Envirosciences, Inc.
Address: 220 Tollgate Rd., Warwick, RI 02886
Contact: Theodore Lemek
Phone: (401) 737–0633

(29) *Laboratory:* Hitchcock Gas Engine Co.
Address: 50 Cross St., Bridgeport, CT 06610
Contact: John F. Sieckhaus
Phone: (203) 334–4812

(30) *Laboratory:* Hub Testing Laboratory.
Address: 95 Beaver St., Waltham, MA 02154
Contact: Fred Boyle
Phone: (617) 893–8330

(31) *Laboratory:* Hunter Environmental Sciences, Inc.
Address: P.O. Box 284, Lincoln, MA 01773
Contact: W. Bruce Hunter
Phone: (617) 259–0800

(32) *Laboratory:* Hygeia, Inc.
Address: 303 Bear Hill Rd., Waltham, MA 02154
Contact: John R. Pilling
Phone: (617) 647–9475

(33) *Laboratory:* Hygenix, Inc.
Address: 40 Hoyt St., Stamford, CT 06905
Contact: Robert C. Brown
Phone: (203) 324–2222

(34) *Laboratory:* Hygienetics Analytical Services, Inc.
Address: 150 Causeway St., Boston, MA 02114
Contact: Jack Yee, Sr.
Phone: (617) 723–4664

(35) *Laboratory:* Industrial Hygiene/ New England.
Address: P.O. Box 947, Kennebunk, ME 04043
Contact: Thomas F. Hatch
Phone: (207) 985–6110

(36) *Laboratory:* Kaselaan & D'Angelo Asso., Inc.
Address: 500 Victory Rd., Marina Bay N., Quincy, MA 02171
Contact: Louis P. Solebello, Jr.
Phone: (617) 523–2211

(37) *Laboratory:* Liberty Mutual Insurance Co. Analytical Laboratory.
Address: 71 Frankland Rd., Hopkinton, MA 01748
Contact: Kenneth J. Muzal
Phone: (617) 435–9061

(38) *Laboratory:* MICROTHERM
Address: P.O. Box 7, Walthan, MA 02254
Contact: Arthur M. Coates
Phone: (617) 891–1113

(39) *Laboratory:* MMR, Inc.
Address: P.O. Box 810, 241 West Boylston St., West Boylston, MA 01583
Contact: Donald Pellegrino
Phone: (617) 835–6262

(40) *Laboratory:* Massachusetts Institute of Technology Industrial Hygiene Office.
Address: 77 Massachusetts Ave., Rm. 20C–204, Cambridge, MA 02139
Contact: Bonnie L. Weeks
Phone: (617) 253–2596

(41) *Laboratory:* Mystic Air Quality Consultants, Inc.
Address: 1085 Buddington Rd., Groton, CT 06340
Contact: Christopher J. Eident
Phone: (203) 449–8903

(42) *Laboratory:* New England Testing Lab., Inc.
Address: 1254 Douglas Ave., North Providence, RI 02904–5392
Contact: Robert T. Legere
Phone: (401) 353–3420

(43) *Laboratory:* Northeast Environmental Testing Lab., Inc.
Address: 51 Sockanossett Crossroads, Cranston, RI 02910
Contact: Carmine J. Spinella
Phone: (401) 785–1720

(44) *Laboratory:* Northeast Research Institute, Inc.
Address: 309 Farmington Ave., Suite A–100, Farmington, CT 06032
Contact: Linda Hemsen
Phone: (203) 677–9666

(45) *Laboratory:* Northeast Test Consultants.
Address: 587 Spring St., Westbrook, ME 04092
Contact: Stephen Broadhead
Phone: (207) 854–3939

(46) *Laboratory:* R.I. Analytical Laboratories, Inc.
Address: 231 Elm St., Warwick, RI 02888
Contact: Anthony E. Perrotti
Phone: (401) 467–2452

(47) *Laboratory:* Shelburne Laboratories, Inc.
Address: P.O. Box 458, Shelburne, VT 05482
Contact: Robert J. Emerson
Phone: (802) 985–3379

(48) *Laboratory:* TRC Environmental Consultants, Inc.
Address: 800 Connecticut Blvd., East Hartford, CT 06108
Contact: Paul Hunt
Phone: (203) 289–8631

(49) *Laboratory:* The Hartford Insurance Group Environmental Sciences Lab.
Address: Hartford Plaza, Hartford, CT 06115
Contact: Stephan W. Campbell
Phone: (203) 547–4557

(50) *Laboratory:* The Hartford Steam Boiler I & I Co. Environmental Services Laboratory.
Address: One State St., Hartford, CT 06102
Contact: Floyd B. Parsons, Jr.
Phone: (203) 722–5476

(51) *Laboratory:* The Water Works Laboratories.
Address: 60 Elmhill Ave., Leominster, MA 01453
Contact: Eric J. Koslowski
Phone: (617) 534–1444

(52) *Laboratory:* Travelers Insurance-Engr. Lab.
Address: 248 Constitution Plaza, Hartford, CT 06183
Contact: Amita Sanghvi
Phone: (203) 277–7533

Region II—Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 10, (ES–PTS), Edison, NJ 08837. (201) 321–6668, (FTS) 340–6671.

(1) *Laboratory:* AMA of New York/New Jersey, Inc.
Address: Suite 307, 1090 King George's Post Rd., Edison, NJ 08837–3728
Contact: Robert M. Powell
Phone: (201) 417–0660

(2) *Laboratory:* ASTECO, Inc.
Address: P.O. Box 2204, Niagara University, NY 14109
Contact: Fred Smith
Phone: (716) 297–5992

(3) *Laboratory:* ATC Environmental, Inc.
Address: 104 East 25th St., New York, NY 10010
Contact: Robert Adamson
Phone: (212) 353–8280

(4) *Laboratory:* Adelaide Environmental Health Associates.
Address: 117 East Pond Rd., Suite 200, White Plains, NY 10601
Contact: Ernest Coon
Phone: (914) 949–3109

(5) *Laboratory:* Adelaide Environmental Health Associates.
Address: 61 Front St., Binghamton, NY 13905–4705
Contact: Brian Donnelly/Steve Karpinski
Phone: (607) 722–6839

(6) *Laboratory:* Alpha Environmental, Inc.
Address: 27 Gerritsen Ave., Bayport, NY 11705
Contact: Scott B. Mosher
Phone: (516) 472–3499

(7) *Laboratory:* Alternative Ways, Inc.
Address: P.O. Box 1147, 100 Essex Rd., Bellmawr, NJ 08031
Contact: John Luxford
Phone: (609) 933–3300

(8) *Laboratory:* Ambient Labs, Inc.
Address: 85 Chambers St., New York, NY 10007
Contact: William A. Esposito
Phone: (212) 962–4242

(9) *Laboratory:* Analytical Electron Microscopy, Inc.
Address: P.O. Box 1147, 100 Essex Rd., Bellmaur, NJ 08031
Contact: Perry Cohn
Phone: (609) 933–1663

(10) *Laboratory:* Applied Environmental Technology, Inc.
Address: 218 Cooper Center, Pennsauken, NJ 08109
Contact: Willard Kingsley
Phone: (609) 488–9200

(11) *Laboratory:* Applied Geo Services, Inc.
Address: 300 Park Ave., S., 15th Fl., New York, NY 10010
Contact: Jeffrey A. Forgang
Phone: (201) 750–4514

(12) *Laboratory:* Applied Respiratory Technology.
Address: P.O. Box 1132, Peekskill, NY 10566
Contact: Paul M. Madigan
Phone: (914) 431–6421

(13) *Laboratory:* Asbesto-Tech.
Address: 140–30 Elgar Pl., Suite 30–B, Bronx, NY 10475
Contact: Solomon Mate
Phone: (212) 671–5266

(14) *Laboratory:* Asbestos Analysis of Central New York.
Address: 211 Dorothy St., Syracuse, NY 13203
Contact: Mark Franey
Phone: (315) 479–8793

(15) *Laboratory:* Asbestos Consultancy Service, Inc., Holiday Bldg.
Address: 121 State Highway 36, West Long Branch, NJ 07764
Contact: George Forrest
Phone: (201) 571–1400

(16) *Laboratory:* Assessment Technologies, Inc.
Address: 323 West 39th St., New York, NY 10018
Contact: Richard W. Holmes
Phone: (201) 391–1495

(17) *Laboratory:* Astech, Inc.
Address: 317 West Milton Ave., Rahway, NJ 07065
Contact: Michael Matarazzo CIH
Phone: (201) 396–4455

(18) *Laboratory:* Atlantic Environmental, Inc.
Address: 2 East Blackwell St., Suite 24, Dover, NJ 07801
Contact: Robert Sheriff
Phone: (201) 366–4660

(19) *Laboratory:* Barnes and Jarnis/Hygeia Joint Office.
Address: 116 East 27th St., 5th Fl., New York, NY 10016
Contact: Carllett Grey-Golding
Phone: (212) 532–6433

(20) *Laboratory:* Brad Associates.
Address: 1 Rosanne Ct., Lake Ronkonkoma, NY 11779
Contact: Benito P. San Pedro
Phone: (516) 467–4539

(21) *Laboratory:* Buck Engineering & Environmental Laboratory.
Address: 100 Tompkins St., Courtland, NY 13045
Contact: John H. Buck
Phone: (607) 753–3403

(22) *Laboratory:* Buffalo Testing Labs., Inc.
Address: 902 Kenmore Ave., Buffalo, NY 14216
Contact: Edward J. Kris
Phone: (716) 873–2302

(23) *Laboratory:* Bulava Environmental, Inc.
Address: 13 Hunt Club Rd., Belle Mead, NJ 08502
Contact: Edward J. Bulava
Phone: (201) 874–6207

(24) *Laboratory:* C & F Underwriters Group Occupational Health Services.
Address: 211 Mt. Airy Rd., Basking Ridge, NJ 07920
Contact: W. P. Osen
Phone: (201) 953–3000

(25) *Laboratory:* CS Environmental Laboratory, Inc.
Address: 5854 Butternut Dr., East Syracuse, NY 13057
Contact: Ida J. Bennett
Phone: (315) 446–8795

(26) *Laboratory:* Calibrations.
Address: P.O. Box 11266, Albany, NY 12211
Contact: Sascha Percent
Phone: (518) 786–1865

(27) *Laboratory:* Call the Experts.
Address: 820 Coney Island Ave., Brooklyn, NY 11218
Contact: Robert Traktman
Phone: (718) 941–7600

(28) *Laboratory:* Carmel Industrial Health, Inc.
Address: 12 Hoffman St., Maplewood, NJ 07040
Contact: Matthew Carmel
Phone: (201) 378–8011

(29) *Laboratory:* Certified Engineering & Testing Company of Upstate New York, Inc.
Address: 284 Genesee St., Utica, NY 13502
Contact: Mark S. Evans
Phone: (315) 732–3826

(30) *Laboratory:* Charles M. Shapiro and Sons, P.C. Consulting Engineers.
Address: 6315 Mill Ln., Brooklyn, NY 11234
Contact: Elliot J. Shapiro
Phone: (718) 531–8400

(31) *Laboratory:* Chemical Samples & Analytical Services Company.
Address: P.O. Box 514, Thorofare, NJ 08086
Contact: Donovan Chambers
Phone: (609) 848–7227

(32) *Laboratory:* Chenango Environmental Laboratory, Inc.
Address: 349 Chenango St., Binghamton, NY 13901
Contact: John D. Meade
Phone: (607) 723–7968

(33) *Laboratory:* Clayton Environmental Consultants, Inc.
Address: 160 Fieldcrest Ave., Raritan Center, Edison, NJ 08837
Contact: Kirit H. Vora
Phone: (201) 225–6040

(34) *Laboratory:* Consulting Engineer.
Address: P.O. Box 102, Bronx, NY 10471
Contact: George Kan
Phone: (212) 796–4761

(35) *Laboratory:* Corning Eng. Environmental Services Corning Glass Works.
Address: One Malcolm Ave., Teterboro, NJ 07608
Contact: John C. Walton
Phone: (201) 393–5647

(36) *Laboratory:* Dames & Moore.
Address: 12 Commerce Dr., Cranford, NJ 07016–1101
Contact: Jim Conway
Phone: (201) 272–8300

(37) *Laboratory:* Detail Associates, Inc.
Address: 601 Piermont Rd., Demarest, NJ 07627
Contact: Stephen A. Jaraczewski
Phone: (201) 786–7059

(38) *Laboratory:* Doerffel Associates.
Address: 1011 Highland Ave., Cinnaminson, NJ 08077
Contact: Gene W. Doerffel
Phone: (609) 829–7362

(39) *Laboratory:* Dunn Geoscience Corp.
Address: 12 Metro Park Rd., Albany, NY 12205
Contact: James R. Dunn
Phone: (518) 458–1313

(40) *Laboratory:* ENTEK Environmental & Tech. Services Rennselaer Technology Park.
Address: 125 DeFreest Dr., Troy, NY 12180
Contact: Arthur N. Rohl
Phone: (518) 283–9200

(41) *Laboratory:* Eastern Analytical Services, Inc.
Address: 7 Ringler Dr., East Northport, NY 11731
Contact: Paul Stascavage
Phone: (516) 368–3867

(42) *Laboratory:* Eastern Analytical Services, Inc.
Address: 225 Westchester Ave., Port Chester, NY 10573
Contact: Christopher Corrado
Phone: (914) 939–6992

(43) *Laboratory:* Ecology & Environment, Inc.
Address: 4285 Genesee St., Buffalo, NY 14225
Contact: Gary Hahn
Phone: (716) 631–0360

(44) *Laboratory:* Electron-Microscopy Service Laboratories, Inc.
Address: 108 Haddon Ave., Westmont, NJ 08108
Contact: Peter Frasca
Phone: (609) 858–4800

(45) *Laboratory:* Enviro-Probe, Inc.
Address: 17 Heritage Dr., Edison, NJ 08820
Contact: Ved P. Kukreja
Phone: (201) 769–0274

(46) *Laboratory:* Enviro-Probe, Inc.
Address: 2917 Bruckner Blvd., Bronx, NY 10461
Contact: Ved P. Kukreja
Phone: (212) 863–0045

(47) *Laboratory:* Environmental Concerns Labs.
Address: Box 78, High Bridge, NJ 08829
Contact: Rita I. Buchanan
Phone: (201) 638–5338

(48) *Laboratory:* Environmental Health Protection Consultants, Inc.
Address: 46 Ivy Ln., Cherry Hill, NJ 08002
Contact: Joseph E. Wilson
Phone: (609) 779–1372

(49) *Laboratory:* Environmental Management Systems, Inc.
Address: 14 Sarafian Rd., New Paltz, NY 12561
Contact: Martin S. Rutstein
Phone: (914) 255–1034

(50) *Laboratory:* Environmental Monitoring and Consulting Services.
Address: P.O. Box 872, Somerville, NJ 08876
Contact: Joel Russell
Phone: (201) 249–3005

(51) *Laboratory:* Exxon Biomedical Sciences, Inc. IH Analytical Laboratory.
Address: Mettlers Road: CN2350, East Millstone, NJ 08875–2350
Contact: John E. Stillman
Phone: (201) 873–6033

(52) *Laboratory:* Friends Laboratory, Inc.
Address: 446 Broad St., Waverly, NY 14892–1445
Contact: Douglas Friend
Phone: (607) 565–2893

(53) *Laboratory:* Galson Technical Services.
Address: 6601 Kirkville Rd., East Syracuse, NY 13057
Contact: Eva Galson
Phone: (315) 432–0506

(54) *Laboratory:* Glomar Corp.
Address: 29–09 Queens Plaza N., Long Island City, NY 11101
Contact: Richard J. Deliberto
Phone: (718) 786–6660

(55) *Laboratory:* Hall-Kimbrell Environmental Services.
Address: 129–09 26 Ave., Flushing, NY 11354–1166
Contact: John F. Cesario
Phone: (718) 445–9090

(56) *Laboratory:* Hillman Environmental Co.
Address: 427 Chestnut St., Union, NJ 07083
Contact: Joseph P. Hillman
Phone: (201) 686–3335

(57) *Laboratory:* Independent Asbestos Labs, Inc.
Address: 5900 Butternut Dr., East Syracuse, NY 13057
Contact: Fred Terracina
Phone: (315) 437–1122

(58) *Laboratory:* Independent Testing & Consultation, Inc.
Address: P.O. Box 539, Holmdel, NJ 07733
Contact: Anthony Matthews
Phone: (201) 583–2538

(59) *Laboratory:* Independent Testing Laboratory.
Address: 129–11 18th Ave., College Point, NY 11356
Contact: Anthony Gugleota
Phone: (718) 961–8530

(60) *Laboratory:* Industrial Testing Laboratories.
Address: 50 Madison Ave., New York, NY 10010
Contact: Kenneth J. Kohlhof
Phone: (212) 685–8788

(61) *Laboratory:* Inter-City Testing & Consulting Corp.
Address: 167 Willis Ave., Mineola, NY 11501
Contact: Malcolm Newman
Phone: (516) 747–8400

(62) *Laboratory:* International Asbestos Testing Laboratories (IATL).
Address: 36 North Pine Ave., Maple Shade, NJ 08052
Contact: Emil M. Ondra
Phone: (609) 779–7792

(63) *Laboratory:* Jesse H. Bidanset and Associates.
Address: 167 Willis Ave., Mineola, NY 11501
Contact: Jesse H. Bidanset
Phone: (516) 747–8400

(64) *Laboratory:* Kaselaan and D'Angelo Associates, Inc.
Address: P.O. Box 165, Haddonfield, NJ 08033
Contact: James J. Weitzman
Phone: (609) 547–8500

(65) *Laboratory:* Kemron Environmental Services.
Address: 755 New York Ave., Huntington, NY 11743
Contact: Joseph Mannetta
Phone: (516) 427–0950

(66) *Laboratory:* Laboratories for Environmental Testing.
Address: P.O. Box 8381, Long Island City, NY 11101
Contact: Michael A. Martucci
Phone: (718) 786–5583

(67) *Laboratory:* Laboratory Testing Services, Inc.
Address: 75 Urban Ave., Westbury, NY 11590
Contact: Kevin Tumulty
Phone: (516) 334–7770

(68) *Laboratory:* Lozier Laboratories.
Address: 23 North Main St., Fairport, NY 14450
Contact: Alan J. Laffin
Phone: (716) 223–7610

(69) *Laboratory:* Marine Chemists, Inc.
Address: P.O. Box 2089, Perth Amboy, NJ 08862–2089
Contact: James Wadatz
Phone: (201) 826–3233

(70) *Laboratory:* Material Analysis.
Address: 54 Sylvania Ave., Cardiff, NJ 08232
Contact: Brian James
Phone: (609) 646–8643

(71) *Laboratory:* Micro Investigations.
Address: 1102 Western Ave., #5, Albany, NY 12203
Contact: Cathryn L. Oakes
Phone: (518) 489–6524

(72) *Laboratory:* Microscopy Research Laboratories. Inc.
Address: 1167 Highway 28, P.O. Box 5115, North Branch, NJ 08876
Contact: Edwin R. Levin
Phone: (201) 526–9192

(73) *Laboratory:* National Testing Laboratories, Inc.
Address: 27–14 39th Ave., Long Island City, NY 11101
Contact: Allen Ross
Phone: (718) 784–2626

(74) *Laboratory:* Northeastern Analytical Corp.
Address: Evesham Corporation Center, 4 East Stow Rd., Unit 10, Marlton, NJ 08053
Contact: William Harris
Phone: (609) 651–1441

(75) *Laboratory:* O'Brien and Gere Engineers, Inc.
Address: Box 4873, 1304 Buckley Rd., Syracuse, NY 13221
Contact: Swiatoslav W. Kaczmar
Phone: (315) 451–4700

(76) *Laboratory:* PMK Eng. and Testing, Inc.
Address: 516 Bloy St., Hillside, NJ 07205
Contact: James Ferris
Phone: (201) 686–0044

(77) *Laboratory:* PSE & G Research Corporation.
Address: 200 Boyden Ave., Maplewood, NJ 07040
Contact: Douglas Campbell
Phone: (201) 761–1390

(78) *Laboratory:* Pedneault Associates, Inc.
Address: 1615 Ninth Ave., Bohemia, NY 11716
Contact: John Pedneault
Phone: (516) 467–8477

(79) *Laboratory:* Phoenix Safety Associates, Ltd.
Address: 37–41 30th St., Long Island City, NY 11101
Contact: F. Michael Finnerty
Phone: (718) 786–5522

(80) *Laboratory:* Powel Environmental Services, Inc.
Address: Suite 9A, Camp Meeting Grounds, Delanco, NJ 08075
Contact: Michael D. Moschella
Phone: (609) 764–8886

(81) *Laboratory:* Princeton Testing Laboratory.
Address: P.O. Box 3108, Princeton, NJ 08540
Contact: David Kichula
Phone: (609) 452–9050

(82) *Laboratory:* Professional Service Ind., Inc.
Address: 423A New Karner Rd., Albany, NY 12205
Contact: Mark Wysin
Phone: (518) 452–0777

(83) *Laboratory:* Professional Testing Labs, Inc. Regulatory Agency Consultant.
Address: 18 Seaview Blvd., Port Washington, NY 11050–4610
Contact: Mark Levinn
Phone: (516) 484–7878

(84) *Laboratory:* Public Service Testing Laboratories, Inc.
Address: 37–31 57th St., Woodside, NY 11377
Contact: Stephen DiMartino
Phone: (718) 476–9202

(85) *Laboratory:* Shimel and Sor Testing Labs.
Address: 98 Sand Park Rd., Cedar Grove, NJ 07009
Contact: Kamil Sor
Phone: (201) 239–6001

(86) *Laboratory:* TAKA Asbestos Analytical Services.
Address: P.O. Box 208, Greenlawn, NY 11740
Contact: Thomas A. Kubic
Phone: (516) 261–2117

(87) *Laboratory:* Testwell Craig Lab, Inc.
Address: 47 Hudson St., Ossining, NY 15062
Contact: Marco J. Pedone
Phone: (914) 762–9000

(88) *Laboratory:* Testwell Craig Laboratories of Albany, Inc.
Address: 518 Clinton Ave., Albany, NY 12206
Contact: Stanley P. Purzycki
Phone: (518) 436–4114

(89) *Laboratory:* Testwell Craig Laboratories, Inc.
Address: 50 Passaic Ave., Fairfield, NJ 07006
Contact: Marco J. Pedone
Phone: (201) 882–8377

(90) *Laboratory:* Testwell-Craig Testing Laboratories.
Address: 565 East Harding Highway, Mays Landing, NJ 08330
Contact: Joseph Gigliotti
Phone: (609) 625–1700

(91) *Laboratory:* U.S. Testing Company, Inc., Environmental Sciences Division.
Address: 1415 Park Ave., Hoboken, NJ 07030
Contact: Ellen McCabe Noyes
Phone: (201) 792–2400

(92) *Laboratory:* United States Testing, Inc., Textiles Services Division.
Address: 1415 Park Ave., Hoboken, NJ 07030
Contact: Ray Robinson
Phone: (201) 792–2400

(93) *Laboratory:* Xerox Analytical Laboratories.
Address: Xerox Corporation 0114–42D, Joseph C. Wilson Center of Technology, Rochester, NY 14644
Contact: Judy A. Coene
Phone: (716) 422–3675

Region III—Philadelphia, PA

Regional Asbestos Coordinator: Staphanie Branche, EPA, Region III (3HW–40), 841 Chestnut Bldg., Philadelphia, PA 19107. (215) 597–9859, (FTS) 597–9859.

(1) *Laboratory:* A.F. Meyer and Associates, Inc.
Address: 6845 Elm St., Suite 700, McLean, VA 22101
Contact: Jorge Rangel, Jr.
Phone: (703) 734–9093

(2) *Laboratory:* AGX, Inc.
Address: Freedom Professional Bldg., Suite 3B, 1341 Old Freedom Rd., Mars, PA 16046
Contact: Kimberly Allison
Phone: (412) 776–1905

(3) *Laboratory:* AMA Analytical Services.
Address: 4475 Forbes Blvd., Lanham, MD 20706
Contact: Bruce Lippy
Phone: (301) 459–2640

(4) *Laboratory:* ASBESTECH Division.

Address: P.O. Box 98, Dunbar, WV 25064
Contact: John Richard Hart
Phone: (304) 766–6224

(5) *Laboratory:* ATEC Associates of Virginia, Inc.
Address: 2551 Eltham Ave., Suite "Z", Norfolk, VA 23513
Contact: Richard A. Vogel, Jr.
Phone: (804) 857–6765

(6) *Laboratory:* ATEC Associates, Inc., Industrial Hygiene Division.
Address: 8989 Herrmann Dr., Columbia, MD 21045–8780
Contact: Paul A. Esposito
Phone: (301) 381–0232

(7) *Laboratory:* Academy of IRM, Inc.
Address: 1600 Winchester Rd., Annapolis, MD 21401
Contact: Bobby E. Leonard
Phone: (301) 757–6503

(8) *Laboratory:* Accredited Environmental Technologies Incorporated.
Address: 28 North Pennell Rd., Lima, PA 19037
Contact: Jack Carney
Phone: (215) 891–0114

(9) *Laboratory:* Advanced Analytical Laboratories, Inc.
Address: RD–1 Rt 309, P.O. Box E, Drums, PA 18222
Contact: Thomas Martinelli
Phone: (717) 788–5110

(10) *Laboratory:* Air Quality Analysis Associates.
Address: 1337 Perry Ave., Morgantown, WV 26505
Contact: John T. Jankovic
Phone: (304) 599–0023

(11) *Laboratory:* Air Quality Services.
Address: 4527 Clairton Blvd., Pittsburgh, PA 15236
Contact: Nancy Kotsko
Phone: (412) 881–5630

(12) *Laboratory:* Allegheny Mountain Research, Occupational Health Division.
Address: RD 1, Box 243A, Berlin, PA 15530–9546
Contact: Victor Kawchak
Phone: (814) 267–4404

(13) *Laboratory:* Altest Environmental Labs.
Address: 28 West Main St., Plymouth, PA 18651
Contact: Frank Egenski
Phone: (717) 779–5377

(14) *Laboratory:* Ambric Testing, Inc.
Address: 3600 Crawford St., Philadelphia, PA 19129
Contact: Walter M. Stein
Phone: (215) 438–7944

(15) *Laboratory:* American Medical Laboratories, Inc.
Address: 2000 Bremo Rd., Suite 204, Richmond, VA 23226
Contact: Robert Murphy
Phone: (703) 691–9100

(16) *Laboratory:* Analytics.
Address: P.O. Box 25249, Richmond, VA 23260
Contact: James Calpin
Phone: (804) 353–8973

(17) *Laboratory:* Analytics Laboratory, Inc., Subs. of Roche Biomedical Laboratories Inc.
Address: 2843 Duke St., Alexandria, VA 22314
Contact: Eugene Buie
Phone: (703) 370–7900

(18) *Laboratory:* Analytics Laboratory, Inc., Subs. of Roche Biomedical Laboratories Inc.
Address: 1003 Norfolk Square, Norfolk, VA 23502
Contact: Christie Buie
Phone: (804) 857–0675

(19) *Laboratory:* Apex Environmental, Inc.
Address: 7930 Old Georgetown Rd., Bethesda, MD 20814
Contact: Frank G. Fitzpatrick
Phone: (301) 657–2739

(20) *Laboratory:* Applied Environmental Health & Safety Inc.
Address: Reston International Center, 11800 Sunrise Valley Dr., Suite 1230, Reston, VA 22091
Contact: Jana Ambrose
Phone: (703) 648–0822

(21) *Laboratory:* Asbestos Testing Inc., Industrial Hygienist.
Address: 5207 Noyes Ave., Charleston, WV 25304
Contact: John S. Ferrell
Phone: (304) 925–6795

(22) *Laboratory:* BCM Lab Division.
Address: 1850 Gravers Rd., Norristown, PA 19401
Contact: John J. Tobin
Phone: (215) 275–1190

(23) *Laboratory:* Batta Environmental Associates.
Address: P.O. Box 9722, Newark, DE 19711–9722
Contact: Steve Cahill
Phone: (302) 737–3376

(24) *Laboratory:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705
Contact: Len Burelli
Phone: (301) 369–3900

(25) *Laboratory:* Briggs Associates, Inc.
Address: 8300 Guilford Rd., Suite E, Columbia, MD 21046
Contact: J. Ross Voorhees
Phone: (301) 621–8730

(26) *Laboratory:* Brujos Scientific, Inc.
Address: 505 Drury Ln., Baltimore, MD 21229
Contact: Robert Olcerst
Phone: (301) 566–0859

(27) *Laboratory:* C & B Laboratories.
Address: 420 Ellwell Ct., Glen Burnie, MD 21061
Contact: G. Edward Carney
Phone: (301) 760–6111

(28) *Laboratory:* Camtech, Inc.
Address: McKnight-Ivory Bldg., Suite #202, 4550 McKnight Rd., Pittsburgh, PA 15237
Contact: Michael A. Campbell
Phone: (412) 931–1210

(29) *Laboratory:* Cohen.
Address: 215 Oak Ave., Baltimore, MD 21208
Contact: Frances H. Cohen
Phone: (301) 484–6391

(30) *Laboratory:* Commonwealth Laboratory, Inc.
Address: Chemists Bldg., P.O. Box 8025, Richmond, VA 23223
Contact: Edwin Cox, III
Phone: (804) 648–8358

(31) *Laboratory:* Criterion Laboratories, Inc.
Address: 1035 Mill Creek Dr., Suite A2, Feasterville, PA 19047–7320
Contact: James A. Weltz
Phone: (215) 322–2776

(32) *Laboratory:* Cumberland Analytical Labs., Inc.
Address: 56 North Second St., Chambersburg, PA 17201
Contact: D.R. Richner, Jr.
Phone: (717) 263–5943

(33) *Laboratory:* Eagle Industrial Hygiene Association Incorporated.
Address: 10220 Selmer Place, Philadelphia, PA 19116
Contact: Keith Crawford
Phone: (215) 677–9736

(34) *Laboratory:* Enviro Dynamics, Inc., Occupational & Environmental Health Consultants.
Address: 3800 Fairfax Dr., Suite 8, Arlington, VA 22203
Contact: Michele M. Cody
Phone: (703) 522–2622

(35) *Laboratory:* Environmental Laboratories, Inc.
Address: 103 South Leadbetter Rd., Ashland, VA 23005
Contact: Terry W. Hall
Phone: (804) 798–1589

(36) *Laboratory:* Environmental Management Group, Inc.
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Phone: (919) 852–0318

(94) *Laboratory:* TTL, Inc.
Address: 3516 Greensboro Ave., P.O. Box 1094, Tuscaloosa, AL 35403
Contact: Jack E. Davis
Phone: (205) 345–0816

(95) *Laboratory:* Tennessee Valley Authority
Address: T105, NFDC, Muscle Shoals, AL 35660
Contact: Robin M. Scheib
Phone: (205) 386–2544

(96) *Laboratory:* Testwell Craig Laboratories of Florida, Inc.
Address: 7104 Northwest 51st St., Miami, FL 33166
Contact: Robert Schuler
Phone: (305) 593–0561

(97) *Laboratory:* Testwell Craig Laboratories of Tampa, Inc.
Address: 11553 U.S. Hwy. 41, S., Gibsonton, FL 33534–9720
Contact: Michael Williamson
Phone: (813) 677–0242

(98) *Laboratory:* Thompson Engineering Testing
Address: 3707 Cottage Hill Rd., P.O. Drawer 9637, Mobile, AL 36691
Contact: Emery E. Baya
Phone: (205) 666–2443

(99) *Laboratory:* Thornton Laboratories, Inc.
Address: 1145 East Cass St., Tampa, FL 33602
Contact: Laure Taylor
Phone: (813) 223–9702

(100) *Laboratory:* University of Alabama, Toxic Substances Control Lab
Address: P.O. Box 2967, Tuscaloosa, AL 35486
Contact: W. Paul Harrison
Phone: (205) 348–4666

(101) *Laboratory:* Weston/ATC, Inc., Analytical Services
Address: 1635 Pumphrey Ave., Auburn, AL 36830–4303
Contact: Leonard H. Nelms
Phone: (205) 826–6100

(102) *Laboratory:* Wilson Analytical, Inc.
Address: 253 Forkner Dr., Decatur, GA 30030
Contact: John Wilson
Phone: (404) 377–3886

Region V—Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA Region V, 230 S. Dearborn St., (T–SPTB–7), Chicago, IL 60604. (312) 886–6003 (FTS) 886–6003.

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Phone: (313) 961–4122

(2) *Laboratory:* ALEX.
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Contact: Erol Roth
Phone: (312) 789–6060

(3) *Laboratory:* ATEC Associates, Inc.
Address: 1501 East Main St., Griffith, IN 46319
Contact: Roger S. Berkowitz
Phone: (219) 924–6690

(4) *Laboratory:* ATEC Associates, Inc.
Address: 5150 East 65th St, Indianapolis, IN 46220–4871
Contact: Richard A. Gehlbach
Phone: (317) 849-4990

(5) *Laboratory:* Affiliated Environmental Services, Inc.
Address: 3606 Venice Rd., Sandusky, OH 44870
Contact: Don Dauch
Phone: (419) 627–1974

(6) *Laboratory:* Air Quality Testing
Address: 236 South Washington St., Naperville, IL 60540
Contact: J.D. Stubblefield
Phone: (312) 369–8987

(7) *Laboratory:* AirTech Associates, Inc.
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(8) *Laboratory:* Aires Environmental Services.

Address: 1550 Hubbard, Batavia, IL 60510
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(9) *Laboratory:* Albert L. Caskey.

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(10) *Laboratory:* Alderink and Associates, Inc.

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Phone: (616) 791–0730

(11) *Laboratory:* Alloway Testing.

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Contact: John R. Hoffman
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(12) *Laboratory:* American Analytical Laboratories.

Address: 100 Lincoln St., Akron, OH 44308
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(13) *Laboratory:* Analytical Testing and Consulting Services, Inc.

Address: 5715 West G Ave., Kalamazoo, MI 49009
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Phone: (616) 342–2026

(14) *Laboratory:* Anasbestics Co.

Address: 7206 West 90th Pl., Bridgeview, IL 60455
Contact: Gary Kentgen
Phone: (312) 598–2921

(15) *Laboratory:* Applied Environmental Sciences, Inc.

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(16) *Laboratory:* Asbestos Compliance Technology, Inc.

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(17) *Laboratory:* Asbestos Compliance Technology, Inc.

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(18) *Laboratory:* Asbestos Control Methods, Inc.

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(19) *Laboratory:* Asbestos Management, Inc.

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(20) *Laboratory:* BCA Laboratory.

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(22) *Laboratory:* Badger Labs. & Eng. Co., Inc.

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(23) *Laboratory:* Beling Consultants, Inc.

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(24) *Laboratory:* Best Lab IH Associates.

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(25) *Laboratory:* Bowser-Morner Testing Laboratories, Inc.

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(30) *Laboratory:* CAE Asbestos.

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Phone: (513) 772–2818

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(57) *Laboratory:* Fibertec, Inc.
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(58) *Laboratory:* Foley Occupational Health Consulting.
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Contact: E.D. Foley, Jr.
Phone: (517) 547–7399

(59) *Laboratory:* Gabriel Laboratories, Inc.
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(60) *Laboratory:* Hazardous Materials Management, Inc.
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(67) *Laboratory:* Laboratory Consultant.
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Phone: (216) 291–1751

(68) *Laboratory:* Larry Jackson and Associates.
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Phone: (312) 978–5554

(69) *Laboratory:* Lyle Laboratories.
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Contact: Tom Eggers
Phone: (614) 488–1022

(70) *Laboratory:* MJH Mineralogical Consultants, Inc.
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(71) *Laboratory:* Materials Testing Consultants, Inc.
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Phone: (616) 456–5469

(72) *Laboratory:* Mathes Asbestos Services, Inc.
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Phone: (618) 281–7173

(73) *Laboratory:* Micro Air, Inc.
Address: 7132 Lakeview Pkwy. West Dr., Indianapolis, IN 46268
Contact: Harold Eitzen
Phone: (317) 293–1533

(74) *Laboratory:* Micro-Fiber Laboratories, Inc.

Address: 635 Landwehr Rd., Northbrook, IL 60062
Contact: Phillip G. Pekron
Phone: (312) 498–4127

(75) *Laboratory:* MicroAnalytics Co.
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Contact: Gary Kentgen
Phone: (312) 598–2921

(76) *Laboratory:* MicroView Consulting.
Address: 416 East Catawba Ave., Akron, OH 44301
Contact: Frank S. Karl
Phone: (216) 773–8330

(77) *Laboratory:* Microbac Laboratories, Inc., Seaway Industrial Laboratory Subsidary.
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Phone: (219) 932-1770

(78) *Laboratory:* Monarch Analytical Laboratories, Inc.
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Phone: (419) 535–1780

(79) *Laboratory:* NATLSCO K–2.
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Contact: Joan Wronski
Phone: (312) 540–2488

(80) *Laboratory:* National Petrographic Services.
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Contact: Bonnie Awan
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(81) *Laboratory:* Northbrook Services.
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(82) *Laboratory:* Northern Indiana Public Services Company.
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(83) *Laboratory:* Northern Safety Consultants.
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(84) *Laboratory:* Northland Environmental Services, Inc.
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Phone: (715) 341–9699

(85) *Laboratory:* Nova Environmental Services, Inc.
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Contact: Steven B. Cummings
Phone: (612) 448–9393

(86) *Laboratory:* Nova Environmental, Inc.
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(89) *Laboratory:* Pace Laboratories, Inc.
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(90) *Laboratory:* Particle Data Laboratories, Ltd.
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Phone: (312) 449–5050

(95) *Laboratory:* Professional Service Ind., Inc., Pittsburgh Testing Laboratory Division.
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(99) *Laboratory:* S.E.A., Inc.
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(100) *Laboratory:* S.H. Gelles Associates.
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(102) *Laboratory:* Sentry Insurance Co.
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Contact: Sandy VanHoldt
Phone: (715) 346–6389

(103) *Laboratory:* Shaw Environmental Analytical Laboratory.
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Phone: (312) 973–4447

(104) *Laboratory:* Sierra Analytical and Consulting Services, Inc.
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(105) *Laboratory:* Stat Analysis Corporation.
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(108) *Laboratory:* TEM, Inc.
Address: 110 West Park Ave., Suite 210, Elmhurst, IL 60126
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Phone: (312) 530–2390

(109) *Laboratory:* Testing Engineers and Conultants, Inc.
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Contact: Scott Chandler
Phone: (313) 588–6200

(110) *Laboratory:* The St. Paul Insurance Co.
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(114) *Laboratory:* Twin City Testing Corporation.
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Contact: Don Brown
Phone: (512) 836–0131

(21) *Laboratory:* Building Environmental Systems, Inc.
Address: 3501 North MacArthur, Suite 400B, Irving, TX 75062
Contact: Amy L. Smith
Phone: (214) 257–0787

(22) *Laboratory:* Central Analytical Laboratories, Inc.
Address: 2600 Marietta Ave., Kenner, LA 70062
Contact: David R. Lasater
Phone: (504) 469–3511

(23) *Laboratory:* Chemron, Inc.
Address: 3038 Orchard Hill, San Antonio, TX 78230–3057
Contact: Ronald G. Oldham
Phone: (512) 493–2247

(24) *Laboratory:* Chemtex Environmental Laboratory.
Address: 1747 7th Ave., Port Arthur, TX 77642
Contact: C.N. Reddy
Phone: (409) 983–4575

(25) *Laboratory:* Continental Technical Services, Environmental Health Division.
Address: 9742 Skillman, Dallas, TX 75243
Contact: Carolyn Vercell
Phone: (214) 343–2025

(26) *Laboratory:* Diversified Environmental Technologies Incorporated.
Address: 132 West Main, Norman, OK 73069
Contact: Dan Tutt
Phone: (405) 360–7929

(27) *Laboratory:* EEG, Inc.
Address: 220A North Knoxville, Russellville, AR 72801
Contact: Anne Woker
Phone: (501) 968–6767

(28) *Laboratory:* EIRA, Inc.
Address: 161 James Dr. West, St. Rose, LA 70087
Contact: Margaret Metcalf
Phone: (504) 469–0333

(29) *Laboratory:* ENTEK Environmental Laboratories.
Address: 14285 Airline Highway, Baton Rouge, LA 70817–6232
Contact: Sham L. Sachdev
Phone: (504) 292–2900

(30) *Laboratory:* Earth Tech, Inc.
Address: RR #4, Box 4 Wagoner, OK 74467
Contact: Daryl L. Lessin
Phone: (918) 485–4910

(31) *Laboratory:* East Texas Testing Laboratory, Inc.
Address: 1717 East Erwin, Tyler, TX 75702
Contact: Gary G. LaFrance
Phone: (214) 595–4421

(32) *Laboratory:* Ensco Environmental Services.
Address: P.O. Box 8513, 333 Executive Ct., Little Rock, AR 72205
Contact: Charles F. Fowler
Phone: (501) 223–4100

(33) *Laboratory:* Entek Laboratories.
Address: 12th and Marshall, Room 281, Little Rock, AR 72202
Contact: Norma James
Phone: (501) 375–0249

(34) *Laboratory:* Environmental Analysis, Inc.
Address: Route 1, Box 12, Plainview, AR 72857
Contact: Jimmy Cunningham
Phone: (501) 272–4241

(35) *Laboratory:* Environmental Analytical Consultants.
Address: 432 North Anthony St., New Orleans, LA 70119
Contact: Michael J. Landry
Phone: (504) 482–1717

(36) *Laboratory:* Environmental Consultants, Inc.
Address: P.O. Box 17867, Shreveport, LA 71138–0867
Contact: Rhonda L. Dillingham
Phone: (318) 687–3771

(37) *Laboratory:* Environmental Management, Inc.
Address: 414 West California, Ruston, LA 71270
Contact: Robert W. Flournoy
Phone: (318) 255–0060

(38) *Laboratory:* Environmental Monitoring Service, Inc.
Address: 13008 Amarillo Ave., Austin, TX 78729
Contact: Rick Pruet
Phone: (512) 335–9116

(39) *Laboratory:* Environmental Occupational Safety, Inc.
Address: 408 North Bowser, 100A, Richardson, TX 75081
Contact: Thomas J. Palet
Phone: (214) 644–2072

(40) *Laboratory:* Environmental Research Institute, Inc.
Address: P.O. Box 2024, Tyler, TX 75710
Contact: Thomas R. McKee
Phone: (214) 877–9314

(41) *Laboratory:* Envirotest, Inc.
Address: P.O. Box 42812–414, Houston, TX 77042
Contact: Daniel J. Gerhardt
Phone: (713) 782–4101

(42) *Laboratory:* FKS Laboratory.
Address: P.O. Box 838, Hallsville, TX 75650
Contact: Fred K. Smith
Phone: (214) 668–3693

(43) *Laboratory:* Falkner Laboratories, Inc.
Address: 1039 Pearl Dr., P.O. Box 5438, Bossier City, LA 71171–5438
Contact: John I. Falkner
Phone: (318) 746–2404

(44) *Laboratory:* Geo-Environmental Services, Inc., Austin Office.
Address: 1106 Clayton Ln., Suite 523W, Austin, TX 78723
Contact: C. Wade Mullin
Phone: (512) 454–8378

(45) *Laboratory:* Gerald Garrett and Associates, Inc.
Address: 2720 Stemmons Freeway, Suite 805 South, Dallas, TX 75207
Contact: J.W. Knuckles
Phone: (214) 688–4457

(46) *Laboratory:* Hanby Analytical Labs, Inc.
Address: 4400 South Wayside St., Suite 107, Houston, TX 77087
Contact: John D. Hanby
Phone: (713) 649–4500

(47) *Laboratory:* Huey, Martin, and Associates.
Address: 5613 Bruyninckx Rd., Alexandria, LA 71303
Contact: Ben F. Martin
Phone: (318) 473–6431

(48) *Laboratory:* IHST.
Address: 6709 Parkside Ct., Arlington, TX 76016
Contact: Larry Liukonen
Phone: (817) 572–6336

(49) *Laboratory:* Institute for Research, Inc.
Address: 8330 Westglen Dr., Houston, TX 77063
Contact: Benjamin Mosier
Phone: (713) 783–8400

(50) *Laboratory:* Inter-Mountain Labs, Inc.
Address: 2506 West Main, Farmington, NM 87401
Contact: April Gil
Phone: (505) 326–4737

(51) *Laboratory:* Kemron Environmental Services.
Address: 16550 Highland Rd., Baton Rouge, LA 70810
Contact: Thomas Bauckham
Phone: (504) 293–8650

(52) *Laboratory:* Kiser Engineering, Inc.
Address: 211 North River St., Sequin, TX 78155
Contact: Roy C. Mills
Phone: (800) 426–2102

(53) *Laboratory:* Law Engineering Testing Co.
Address: 5500 Guhn Rd., Houston, TX 77040
Contact: C.H. Byrd
Phone: (713) 939–7161

(54) *Laboratory:* Loflin Environmental Services, Inc.
Address: 701 Bradfield, Houston, TX 77060
Contact: James A. Murray
Phone: (713) 931-9316

(55) *Laboratory:* Marshall Environmental Management.
Address: 6161 North May Ave., Suite 133, Oklahoma City, OK 73112
Contact: Charles L. Marshall
Phone: (405) 842–3415

(56) *Laboratory:* Martin Marietta Manned Space Systems Quality Evaluation Laboratory.
Address: P.O. Box 29304, New Orleans, LA 70189
Contact: Reginald G. Salloum
Phone: (504) 257–1766

(57) *Laboratory:* Maxim Engineers, Inc.
Address: 2342 Fabens, P.O. Box 59902, Dallas, TX 75229
Contact: Steve Moody
Phone: (214) 247–7575

(58) *Laboratory:* Maxim Engineers, Inc.
Address: 11601 North Lamar, Austin, TX 78753
Contact: Fernando Yepez
Phone: (512) 837–8851

(59) *Laboratory:* McClelland Management Services.
Address: 6100 Hillcroft, Suite 220, Houston, TX 77081
Contact: Jaye R. Stanley
Phone: (713) 995–9000

(60) *Laboratory:* McKee Environmental Health Services.
Address: 11114 Sage Park, Houston, TX 77089
Contact: Ron McKee
Phone: (713) 481–3501

(61) *Laboratory:* NUS Corporation.
Address: 900 Gemini, Houston, TX 77058
Contact: John W. McCormick
Phone: (713) 488–1610

(62) *Laboratory:* National Asbestos Consultants Inc.
Address: 4619 North Santa Fe, Oklahoma City, OK 73118
Contact: Jerry Bowerman
Phone: (405) 528–6224

(63) *Laboratory:* New Mexico State University, Department of Biology.
Address: Box 3AF, Las Cruces, NM 88003
Contact: Joseph LaPointe
Phone: (505) 646–1531

(64) *Laboratory:* Oklahoma Asbestos Analytic Laboratory, Inc.
Address: 15939 Southeast 29th, Choctaw, OK 73020
Contact: Brian E. Gordon
Phone: (405) 390–3501

(65) *Laboratory:* Oklahoma City-County Health Department Laboratory Health Services.
Address: 921 Northeast 23rd St., Oklahoma City, OK 73105
Contact: Cheryl Ball
Phone: (405) 427–8651

(66) *Laboratory:* Oklahoma State Department of Health Special Hazard Division.
Address: P.O. Box 53551, Oklahoma City, OK 73152
Contact: William M. Kemp
Phone: (405) 271–5221

(67) *Laboratory:* Oxford Environmental Corp.
Address: 3224 26th St., Metairie, LA 70002
Contact: J. Robert Paterek
Phone: (504) 391–0795

(68) *Laboratory:* Palet Environmental Labs.
Address: 8351 Southwestern Blvd. #237, Dallas, TX 75206
Contact: Thomas Palet
Phone: (214) 696–0230

(69) *Laboratory:* Professional Service Ind., Inc., BioSearch Laboratories.
Address: 1178 Corporate Dr. West, Arlington, TX 76011
Contact: Sharon G. Winders
Phone: (817) 640–4162

(70) *Laboratory:* Professional Service Ind., Inc., PTL/Shilstone Eng. Testing Lab. Div.
Address: 1714 Memorial Dr., Houston, TX 77007
Contact: Charles Remkes
Phone: (713) 224–2047

(71) *Laboratory:* Putnam Laboratories.
Address: 2100 Road to Six Flags East, Arlington, TX 76011
Contact: Dan B. Weeks
Phone: (817) 265–7535

(72) *Laboratory:* R. Jon Laboratories.
Address: 6203 Reed Rd., Houston, TX 77087
Contact: John R. Speich
Phone: (713) 645–4141

(73) *Laboratory:* Raba-Kistner Consultants, Inc.
Address: P.O. Box 690287, San Antonio, TX 78269–0287
Contact: Frank B. Schweitzer
Phone: (512) 699–9090

(74) *Laboratory:* Regional Labs.
Address: 919 Glen Key, Denison, TX 75020
Contact: Cliff Wood
Phone: (214) 463–6666

(75) *Laboratory:* Rod Cole and Associates, Asbestos Control Division.
Address: 4516 Lovers Lane, Suite 212, Dallas, TX 75225
Contact: Rod Cole
Phone: (214) 520–2925

(76) *Laboratory:* Southwestern Laboratories, Inc.
Address: 2575 Lone Star Dr., Dallas, TX 75212
Contact: Lawrence M. Thompson
Phone: (214) 631–2700

(77) *Laboratory:* Southwestern Laboratories, Inc., EES Division.
Address: P.O. Box 8768, Houston, TX 77249
Contact: Phillip Yokley
Phone: (713) 692–9151

(78) *Laboratory:* Southwestern Public Service Co., Systems Laboratory.
Address: P.O. Box 1261, Amarillo, TX 79170
Contact: Ronald H. Dutton
Phone: (806) 378–2121

(79) *Laboratory:* Standard Environment Controls, Inc.
Address: 5805 Callaghan Rd., Suite 201, San Antonio, TX 78228
Contact: Al Dooley
Phone: (512) 647–1228

(80) *Laboratory:* Standard Testing and Eng. Co.
Address: 660 Distributors Row, Harahan, LA 70123
Contact: Robert E. Jones
Phone: (504) 734–8378

(81) *Laboratory:* Standard Testing and Engineering Co.
Address: 3400 North Lincoln Blvd., Oklahoma City, OK 73105
Contact: Cheri Marcham
Phone: (405) 528–0541

(82) *Laboratory:* Stanley Engineering Inc. and Alpha Analytical Labs, Inc.
Address: 2700 Northwest 39th St., Oklahoma City, OK 73112
Contact: Keith L. Stanley
Phone: (405) 948–6505

(83) *Laboratory:* Sunbelt Associates, Inc.
Address: 6961 Mayo Rd., New Orleans, LA 70126
Contact: Gary C. Allen
Phone: (504) 242–5026

(84) *Laboratory:* Texas Department of Health, Asbestos Abatement Branch.
Address: 1100 West 49th St., Austin, TX 78756–3199
Contact: Joel H. Smith
Phone: (512) 458–7255

(85) *Laboratory:* Texas Research Institute, Environmental Division.

Address: 9063 Bee Cave Rd., Austin, TX 78733
Contact: Gary Rolls
Phone: (512) 263–2101

(86) *Laboratory:* The Hartford Steam Boiler Inspection and Insurance Co.
Address: 15415 Katy Fwy., Suite 300, Houston, TX 77094
Contact: Diana Spence
Phone: (713) 578–7300

(87) *Laboratory:* Tulane University Medical Center, Department of Environmental Health Sciences.
Address: 1430 Tulane Ave., New Orleans, LA 70012
Contact: Shau Nong Chang
Phone: (504) 588–5374

(88) *Laboratory:* U.S. Analytical, Inc.
Address: P.O. Box 801, Abilene, TX 79604
Contact: L. Keith Davis
Phone: (915) 698–3293

(89) *Laboratory:* U.S. Analytical, Inc.
Address: P.O. Box 81311, Midland, TX 79709
Contact: Donald Anderson
Phone: (915) 561–4045

(90) *Laboratory:* W.C. Runnels Consultants.
Address: Route 9, P.O. Box 1459, Beaumont, TX 77706
Contact: W. C. Runnels
Phone: (409) 866–3019

(91) *Laboratory:* Waldemar S. Nelso and Co., Inc.
Address: 1200 St. Charles Ave., New Orleans, LA 70130
Contact: Laura E. Yager
Phone: (504) 523–5281

(92) *Laboratory:* Weckerling Scientific Laboratories, Inc.
Address: 2602 Electronic Ln., Suite 606, Dallas, TX 75220
Contact: Alan B. Weckerling
Phone: (214) 353–9494

(93) *Laboratory:* Weintritt Testing Laboratories, Inc.
Address: 305 Andrew Guidry Rd., P.O. Box 30162, Lafayette, LA 70593
Contact: Richard G. Tietz
Phone: (318) 981–1560

(94) *Laboratory:* West-Paine Laboratories, Inc.
Address: 7979 G. S. R. I. Ave., Baton Rouge, LA 70820
Contact: Jonny H. Vickers
Phone: (504) 769–4900

(95) *Laboratory:* Western Atlas International.
Address: 1733 North Padre Island Dr., Corpus Christi, TX 78408–2329
Contact: Craig Hawkins
Phone: (512) 289–2673

Region VII—Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236–2834, (FTS) 757–2834.

(1) *Laboratory:* A.T. Laboratory.
Address: 2449–A Iowa St., Suite 208, Lawrence, KS 66046
Contact: Terron E. Jones
Phone: (913) 749–2794

(2) *Laboratory:* ACM Labs, Inc.
Address: 304 North Main, P.O. Box 2073, Fairfield, IA 52556
Contact: David Fleshman
Phone: (515) 472–7402

(3) *Laboratory:* ALERT Analytical Laboratories.
Address: 1900 West 47th Pl. #302, Westwood, KS 66205
Contact: Kevin Santee
Phone: (913) 831–4795

(4) *Laboratory:* Abshier and Associates, Ltd.
Address: 524 Northeast Malibu Dr., Lee's Summit, MO 64063
Contact: Shirley A. Abshier
Phone: (816) 524–9203

(5) *Laboratory:* Ames Environmental.
Address: 3910 Lincoln Way, Ames, IA 50010
Contact: David Fairchild
Phone: (515) 292–3400

(6) *Laboratory:* Asbestos Consulting and Testing.
Address: 15001 West 101st Ter., Lenexa, KS 66215
Contact: Jim A. Pickel
Phone: (913) 492–1337

(7) *Laboratory:* Baird Scientific.
Address: P.O. Box 842, Carthage, MO 64836
Contact: Gary Baird
Phone: (417) 358–5567

(8) *Laboratory:* Certified Environmental Management, Inc.
Address: P.O. Box 504, Salina, KS 67402–0504
Contact: Brenda A. Tolson
Phone: (913) 536–8315

(9) *Laboratory:* Chart Services, Ltd.
Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322
Contact: Mary A. Finn
Phone: (515) 276–3642

(10) *Laboratory:* ERG Consultants, Inc.
Address: 402 C Bannister Rd., Kansas City, MO 64131
Contact: Andrew F. Oberta
Phone: (816) 444–5804

(11) *Laboratory:* Environmental Analysis South.
Address: 1209 Broadway, Cape Girardeau, MO 63702
Contact: David Warren
Phone: (314) 334–8817

(12) *Laboratory:* Environmetrics, Inc.
Address: 10679 Midwest Industrial Blvd., St. Louis, MO 63132
Contact: Mario Vaenberg
Phone: (314) 427–0550

(13) *Laboratory:* Groundwater Technologies Environmental Laboratories, Midwest Region.
Address: 902 West 2nd St., Wichita, KS 67203
Contact: Robert K. Kennedy
Phone: (316) 264–4480

(14) *Laboratory:* Hall-Kimbrell Environmental Services, Inc.
Address: 4840 West 15th St., Lawrence, KS 66046
Contact: W. David Kimbrell
Phone: (913) 749–2381

(15) *Laboratory:* Health & Architectural Assoc., Inc.
Address: 503 Main St., Belton, MO 64012
Contact: George S. McDowell
Phone: (816) 331–0002

(16) *Laboratory:* Industrial Testing Laboratories, Inc.
Address: 2350 Seventh Blvd., St. Louis, MO 63104
Contact: William J. Lowry
Phone: (314) 771–7111

(17) *Laboratory:* Iowa State University of Science and Technology Department of Environmental Health & Safety.
Address: 251 Nuclear Engineering Lab, Ames, IA 50011–2230
Contact: Louis J. Mitchell
Phone: (515) 294–5359

(18) *Laboratory:* Kansas City Testing Laboratory, Chemical Division.
Address: 1669 Jefferson, Kansas City, MO 64108
Contact: Jeffery L. Jenkins
Phone: (816) 842–7350

(19) *Laboratory:* King Environmental Services, Inc.
Address: 1287 Parkway Dr., St. Clair, MO 63077
Contact: Bonnie King
Phone: (314) 629–1546

(20) *Laboratory:* Langston Laboratories, Inc.
Address: 2005 West 103rd Ter. (B), Leawood, KS 66206
Contact: Alan Kerschen
Phone: (913) 341–7800

(21) *Laboratory:* Larron Laboratory.
Address: 529 Broadway, Cape Girardeau, MO 63701
Contact: David J. Roth
Phone: (314) 334–8910

(22) *Laboratory:* MD Chemical and Testing Co., Inc.

Address: 5205 Southwest Dr., Suite B&C, P.O. Box 67094, Topeka, KS 66667
Contact: Michael A. Dalrymple
Phone: (913) 862–1503

(23) *Laboratory:* Mayhew Environmental Training Associates.
Address: 901 Kentucky, Suite 305A, Lawrence, KS 66044
Contact: Robert G. Williams
Phone: (913) 842–6382

(24) *Laboratory:* Microscopic Analysis, Inc.
Address: 989 Gardenview Office Pky., St. Louis, MO 63141
Contact: Douglas N. Nimmo
Phone: (314) 993–2212

(25) *Laboratory:* Midwest Environmental Testing and Training, Inc.
Address: 3500 Northeast Independence Ave., Lee's Summit, MO 64064
Contact: Steve Minshall
Phone: (816) 525–6681

(26) *Laboratory:* Midwest Research Institute.
Address: 425 Volker Blvd., Kansas City, MO 64110
Contact: Gaylord Atkinson
Phone: (816) 753–7600

(27) *Laboratory:* Midwestern Testing Labs, Inc.
Address: P.O. Box 1657, Fairfield, IA 52556
Contact: Dennis Greenley
Phone: (515) 472–1881

(28) *Laboratory:* Nebraska Testing Laboratories, Inc.
Address: 4123 South 67th St., Omaha, NE 68117–1086
Contact: Lynn A. Knudtson
Phone: (402) 331–4453

(29) *Laboratory:* Net Midwest Inc., Cedar Falls Division.
Address: 1922 Main St., P.O. Box 625, Cedar Falls, IA 50613
Contact: Michael McGee
Phone: (319) 277–2401

(30) *Laboratory:* Professional Service Ind., Inc., PTL Division.
Address: 5445 Highland Park Dr., St. Louis, MO 63110
Contact: W.H. Beckerman
Phone: (314) 652–4420

(31) *Laboratory:* St. Louis Testing Laboratories, Inc.
Address: 2810 Clark Ave., St. Louis, MO 63103–2574
Contact: Rudolph B. Spanholtz
Phone: (314) 531–8080

(32) *Laboratory:* The University of Iowa, University Hygienic Laboratory.
Address: Iowa City, IA 52242
Contact: I.A. Schwabbauer
Phone: (319) 353–5990

(33) *Laboratory:* Wilson Laboratories.
Address: 525 North 8th St., P.O. Box 1820, Salina, KS 67402–1820
Contact: Gregory J. Groene
Phone: (913) 825–7186

(34) *Laboratory:* metaTrace, Inc.
Address: 13715 Rider Trail North, Earth City, MO 63045
Contact: Marleah M. Martin
Phone: (314) 398–8566

Region VIII—Denver, CO

Regional Asbestos Coordinator: David Combs, [8AT–TS], EPA, Region VIII, 1 Denver Place, 999–18th St., RM 1300, Denver, CO 80202–2413. (303) 293–1744, (FTS) 564–1744.

(1) *Laboratory:* ATC Environmental, Inc.
Address: 1515 East Tenth St., Sioux Falls, SD 57103
Contact: Donald Beck
Phone: (605) 338–0555

(2) *Laboratory:* Analytica, Inc.
Address: 5930 McIntyre St., Golden, CO 80403
Contact: Daniel M. Benecke
Phone: (303) 279–2583

(3) *Laboratory:* Associated Laboratories, Inc.
Address: 1275 Ithaca Dr., Boulder, CO 80303
Contact: Robert M. Stieha
Phone: (303) 691–2335

(4) *Laboratory:* Bison Engineering/ Research.
Address: P.O. Box 1703, Helena, MT 59624
Contact: Patricia E. Groll
Phone: (406) 442–5768

(5) *Laboratory:* Colorado State University Department of Environmental Health.
Address: B120 Microbiology Building, Fort Collins, CO 80523
Contact: Roy C. Warbington
Phone: (303) 491–7038

(6) *Laboratory:* DCM Science Laboratory.
Address: 12975 West 24th Pl., Golden, CO 80401
Contact: Donna C. Mefford
Phone: (303) 237–0110

(7) *Laboratory:* Datachem, Inc.
Address: 960 West LeVoy Dr., Salt Lake City, UT 84123
Contact: Lance Eggenberger
Phone: (801) 266–7700

(8) *Laboratory:* Davis Consulting.
Address: 4022 Helen Court, Rapid City, SD 57702
Contact: Briant L. Davis
Phone: (605) 342–4320

(9) *Laboratory:* Dixon Information, Inc.
Address: 4806 Quail Point Roads, Salt Lake City, UT 84124
Contact: Willard C. Dixon
Phone: (801) 278–7233

(10) *Laboratory:* Environmental Safety Systems, Inc.
Address: 11435 West 48th Ave., Wheat Ridge, CO 80033–2101
Contact: Douglas J. Fitzgerald
Phone: (303) 232–0707

(11) *Laboratory:* Grand Junction Laboratories.
Address: 435 North Ave., Grand Junction, CO 81501
Contact: Brian S. Bauer
Phone: (303) 242–7618

(12) *Laboratory:* HTI Laboratories and Industrial Consultants.
Address: 1806 Main Ave., Fargo, ND 58103
Contact: Constance S. Hodny
Phone: (701) 232–1399

(13) *Laboratory:* HTI Laboratories and Industrial Consultants, Inc.
Address: 7727 West 6th Ave., Bay E, Lakewood, CO 80215
Contact: Constance S. Hodny
Phone: (303) 773–9616

(14) *Laboratory:* HTI Laboratories and Industrial Consultants, Inc. (Mobile Lab).
Address: Box 8192, Fargo, ND 58109
Contact: Constance S. Hodny
Phone: (701) 237–9750

(15) *Laboratory:* Hager Laboratories, Inc.
Address: 11234 E. Caley Ave., Englewood, CO 80111
Contact: Patricia Manning
Phone: (303) 790–2727

(16) *Laboratory:* J&M Analytical Services, Inc.
Address: 1221 West 3200 South, Utah Branch, Nibley, UT 84321
Contact: William R. McManus
Phone: (801) 752–7516

(17) *Laboratory:* Northern Engineering and Testing, Inc.
Address: 600 South 25th St., Billings, MT 59107
Contact: Kathleen Smit
Phone: (406) 248–9161

(18) *Laboratory:* Occupational Health Technologies, Inc.
Address: 171 University Circle, Pueblo, CO 81005
Contact: Thomas F. Antonson
Phone: (719) 566–0422

(19) *Laboratory:* Professional Service Ind., Inc., Pittsburgh Testing Lab. Div.
Address: 2955 South West Temple St., Salt Lake City, UT 84115
Contact: Herb Ritzman
Phone: (801) 484–8827

(20) *Laboratory:* Sathe Analytical Lab., Inc.
Address: P.O. Box 1527, Williston, ND 58801
Contact: Neal Falk
Phone: (701) 572–3632

(21) *Laboratory:* South Dakota School of Mines and Tech Engineering and Mining Exp. Station.
Address: Rapid City, SD 57701
Contact: Charles K. Shearer
Phone: (605) 394–2291

(22) *Laboratory:* Survey, Management, and Design.
Address: P.O. Box 8021, Fargo, ND 58109
Contact: Peter L. Mehl
Phone: (701) 234–9556

(23) *Laboratory:* Technology Management, Inc.
Address: 685 West Gunnison, Suite #108, Grand Junction, CO 81505–7249
Contact: Carlon C. Chambers
Phone: (303) 242–6154

(24) *Laboratory:* University of North Dakota Energy Research Center.
Address: Box 8213, University Station, Grand Forks, ND 58202
Contact: Gale G. Mayer
Phone: (701) 777–5108

Region IX—San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, [T-52], EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974–7290, (FTS) 454–7290.

(1) *Laboratory:* ASBESTECH.
Address: 6801 Fair Oaks Blvd., Suite H, Carmichael, CA 95608
Contact: Tommy G. Conlon
Phone: (916) 481–8902

(2) *Laboratory:* Analytical Research Laboratories, Inc.
Address: 160 Taylor St., P.O. Box 2360, Monrovia, CA 91016
Contact: D.W. Kohlenberger
Phone: (818) 357–3247

(3) *Laboratory:* Applied Petrography, Inc.
Address: 8520 Sorenson Ave., Suite E, Santa Fe Springs, CA 90670
Contact: Joanna Deane
Phone: (213) 945–3468

(4) *Laboratory:* Asbestos Management Services, Inc.
Address: 14829 Proctor Ave., Industry, CA 91746
Contact: Joseph Johnson
Phone: (818) 961–4303

(5) *Laboratory:* Associated Safety Consultants.
Address: 13363 Saticoy St., #204, North Hollywood, CA 91605
Contact: Dan Flaherty
Phone: (818) 503–0471

(6) *Laboratory:* BSE Labs, Inc.
Address: 50 East Foothill Blvd., Arcadia, CA 91006
Contact: Charles Redinger
Phone: (818) 355–0818

(7) *Laboratory:* Brown and Caldwell Analytical Lab.
Address: 1255 Powell St., Emeryville, CA 94608
Contact: Pat Sheppard
Phone: (415) 428–2300

(8) *Laboratory:* California Water Labs.
Address: 1430 Carpenter Ln., Modesto, CA 95352
Contact: Gloria Poling
Phone: (209) 527–4050

(9) *Laboratory:* Cam Lab.
Address: 3435 Artesia Blvd., Suite 41, Torrance, CA 90504
Contact: Michael R. Tiffany
Phone: (213) 327–8879

(10) *Laboratory:* Casalina Associates, Inc.
Address: 47–345 Mahakea Rd., Kaneohe, HI 96744
Contact: Sam L. Casalina
Phone: (808) 239–6514

(11) *Laboratory:* Certified Testing Laboratories, Inc.
Address: 2905 East Century Blvd., South Gate, CA 90280
Contact: Stuart E. Salot
Phone: (213) 564–2641

(12) *Laboratory:* Clark Geological Services.
Address: 3479 Edison Way, Fremont, CA 94538
Contact: Joyce Lucas-Clark
Phone: (415) 659–1784

(13) *Laboratory:* Clayton Environmental Consultants, Inc.
Address: 1252 Quarry Ln., Pleasanton, CA 94566
Contact: Warren C. Steele
Phone: (415) 426-2600

(14) *Laboratory:* Consulting Health Services.
Address: P.O. Box 1625, El Cajon, CA 92022
Contact: Kenneth S. Cohen
Phone: (619) 579–6233

(15) *Laboratory:* Conteck.
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(19) *Laboratory:* E and A Env'l Service, Inc.
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(24) *Laboratory:* Environmental In Ovations.
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(27) *Laboratory:* Firemans Fund, Environmental Laboratory.
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(38) *Laboratory:* Industrial Analytical Lab, Inc.
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(44) *Laboratory:* Meixa Tech.
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(46) *Laboratory:* Microanalytical Services, Inc.
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Phone: (509) 332–8894

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Phone: (503) 639–9006

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(8) *Laboratory:* Cascade Analytical Service.
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(9) *Laboratory:* Coffey Laboratories, Inc.
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(10) *Laboratory:* Columbia Analytical Svcs., Inc.
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(58) *Laboratory:* Chemex Labs Alberta (1984) Ltd.
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Dated: August 19, 1988.

Joseph J. Merenda,

Acting Director, Office of Toxic Substances.

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Part III

Environmental Protection Agency

Draft State Hazardous Waste Capacity Assurance Guidance; Notice

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EVIRONMENTAL PROTECTION AGENCY

[FRL-3435-5]

Draft State Hazardous Waste Capacity Assurance Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of Draft Guidance for Review and Comment.

SUMMARY: The Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response (OSWER) is making available for review and comment draft guidance to States for meeting the capacity assurance requirements under section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9604(c)(9). Comment is especially sought on alternative approaches to achieving interstate agreements for future hazardous waste management. The final document will provide guidance to State officials on how to prepare a State Capacity Assurance Plan (CAP) to comply with the requirements of the statute.

The provision of such guidance to the States is necessary so that each State will be fully aware of the criteria and content the Agency will use to determine what constitutes in "adequate assurance" of hazardous waste treatment/disposal capacity for wastes reasonably expected to be generated within their State for the next 20 years.

Should a State fail to provide such an assurance, monies for Superfund remedial action will be withheld from that State after the statutory deadline for the assurance, i.e., October 17, 1989.

DATE: Comments must be submitted (postmarked) no later than September 30, 1988.

ADDRESSES: Comments on the document may be addressed to Patricia Mercer, Mail Code OS-110, Office of Solid Waste and Emergency Response, Cross-Media Analysis Staff, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Malcolm Bliss (Project Manager) at (202) 475-8829.

SUPPLEMENTARY INFORMATION: Recognizing that many States have extensive experience in defining hazardous waste treatment and disposal capacity needs and plans, EPA determined it should utilize this State expertise to help develop hazardous waste treatment and disposal capacity assurance guidance. To further this objective, EPA entered into a cooperative agreement with the National Governor's Association (NGA) to develop a forum to discuss capacity related issues and make recommendations to EPA on the nature of capacity assurance guidance. NGA was to examine alternatives in four broad areas: (1) Data and projections; (2) the role of waste minimization; (3) interstate agreements; and (4) plans for developing new capacity. In light of the substantial interest and debate which occurred on the interstat issues, (e.g., interstate agreements and resolution of differences among States) it was determined that alternative approaches to these issues should be examined. The documents published today for public comment are the result of work products received under the NGA Cooperative Agreement and the alternative discussed above (See Chapters 1 and 2 and note the deletion of Appendix A).

Summary of Capacity Assurance Plan Contents

The following is a summary of the key elements identified as critical in the development of capacity assurance plans (CAPs):

Data and Projections

Estabishes procedures for States to use to determine the amount of hazardous waste generated within their borders, the amount of treatment and disposal capacity available within their state; the amount of waste imported and exported from and to other States; and the amount of generation and capacity projected to be available over a twenty year period. Extensive use is made of EPA's biennial report data, TSDRF survey data, and technical support prepared by EPA's Office of Solid Waste.

Uses of Waste Minimization

Explains how States may use waste minimization as part of their strategy for making capacity assurances, and establishes procedures for reporting to EPA on elements of waste minimization programs, estimating the effects of such programs on long-term capacity needs, communicating with industry, and measuring the effects of waste minimization programs.

Plans for Developing New Capacity

Explains how States whose data and projections indicate the need for additional in-state capacity can demonstrate to EPA that they have an adequate plan for developing new capacity; also establishes reporting procedures for State facility siting programs and milestones for capacity development.

Interstate Agreements

Explains how States which must rely on the availability of treatment and disposal capacity in another State can make a CERCLA section 104(c)(9) capacity assurance. In accordance with the Statute, a valid interstate agreement is necessary for an exporter State to assure availability of out-of-State capacity.

Summary of Interstate Alternative Approaches

The following summary identifies key differences in the interstate alternatives articulated in the documents that follow:

Nature of the Interstate Agreement

NGA Recommendation

All States should be required to provide a generic interstate agreement (1) recognizing current levels of imports/exports; (2) agreeing to participate in the planning and resolution procedure outlined in the guidance; and (3) agreeing to carry out the siting activities contained in their capacity assurance plan.

Alternative

All exporting and importing States should provide generic interstate agreements. This agreement acknowledges the waste management practices contained in their capacity assurance documentation including all import and export waste flows. In the event that some importing States cannot sign the generic agreement, affected exporting States should seek separate bilateral agreements with another State with excess treatment and/or disposal capacity.

Who Shall Sign an Interstate Agreement?

NGA Recommendation

EPA should require each State to sign a generic interstate agreement as a necessary condition for obtaining EPA's approval of its CAP. States failing to provide the generic interstate agreement should be subject to CERCLA 104(c)(9) sanctions. Failure of an importing State to provide a generic agreement would not necessarily impose a obligation on exporting States to secure a specific interstate agreement.

Alternative

Exporting States must have an interstate agreement from the importing State that acknowledges available treatment and/or disposal capacity in

that State. Failure of an exporting State to obtain such an interstate agreement would make its CERCLA 104(c)(9) assurance statutorily insufficient. Exporting States could obtain an interstate agreement with any other importing State that demonstrates it has surplus capacity.

Nature of Conflict Resolution Procedures

NGA Recommendation

EPA should develop a formal process to deal with interstate disputes over a period of four years beginning with the submittal of the CAPs. Steps in the process should include:

(1) National analysis and publication of data on interstate waste flows;

(2) Convening of a forum to raise and discuss interstate issues which may lead to regional or multi-state planning efforts;

(3) Refinement of "reasonableness" criteria for export practices;

(4) Resolution of interstate conflicts;

(5) Application of CERCLA 104(c)(9) sanctions against States not meeting "reasonableness" criteria;

(6) EPA's concurrence under RCRA consistency for importing States to restrict quantity of waste transported from an exporting State found to be unreasonable.

Alternative

This version of the guidance acknowledges EPAs responsibility only to ensure that States provide adequate assurances of capacity. All conflicts should be negotiated and resolved at the State level prior to submittal of the CAPs. EPA will not undertake to determine the reasonableness of levels of interstate waste flows.

Final Authority to Determine Unreasonable Exports

NGA Recommendations

If interstate issues cannot be resolved informally or through regional or multi-state planning efforts, importing States would have the ability to petition EPA for a formal hearing on whether or not a particular exporting State violates "reasonableness" criteria. EPA is expected to define objective criteria for application to individual State conflicts. EPA would develop a formal record and issue a determination supporting or denying the aggrieved State's petition. The EPA finding would be the basis for applying CERCLA 104(c)(9) sanctions.

Alternative

The final authority for determining unreasonable export practices should rest with importing States. Importing States may exercise this simply by withholding, or revoking, their interstate agreement with an exporting State. Exporting States not able to execute an agreement for available treatment and/or disposal capacity in another importing State would then be subject to CERCLA 104(c)(9) sanctions.

Date: August 22, 1988.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

NGA Recommendations on Draft State Hazardous Waste Capacity Assurance Guidance

Chapter I—Introduction and Overview of the Capacity Assurance Process

This document provides guidance to state officials on how to prepare a state Capacity Assurance Plan (CAP). Each state must complete a CAP by October 17, 1989 to comply with the requirements of section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. This section requires each state to assure the Administrator that adequate capacity will exist to manage the hazardous waste created in the state over the next twenty years (see below). A state's failure to submit an approved CAP by the October 1989 deadline will prohibit the state from receiving Superfund money for remedial actions until such time as assurance is approved by EPA. The availability of funds for emergency removal action is not affected by this requirement.

"*SITING.*—Effective 3 years after enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) Have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) Are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

(C) Are acceptable to the President, and

(D) Are in compliance with the requirements of Subtitle C of the Solid Waste Disposal Act."

—Section 104(k) of the Superfund Amendments and Reauthorization Act of 1986 amending section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund").

Legislative Background on SARA Section 104(k)

The Congress added these requirements to CERCLA through the Superfund Amendments and Reauthorization Act of 1986 (SARA). The purpose of this provision was straightforward: Superfund money should not be spent in states that are taking insufficient steps to avoid the creation of future Superfund sites. The Congress recognized that a safe and rational hazardous waste management program for the nation depended in part on the creation of new facilities employing the most advanced technologies. While many states enacted or planned to enact siting legislation, Congress concluded that few, if any, were developing policies and siting programs that would assure continued facility capacity in the long term.

Congress stressed that a successful state siting program should recognize three key principles. First, the program should require a complete technical analysis of all proposed sites prior to their selection. Second, site selection must be accompanied by full public participation. Third, the process of site selection should find a way to transcend blanket local vetoes. The Congress further stressed, however, that merely having such programs in place would not satisfy the requirements of this section. Each state must provide assurances that their legislative program can work and will be used. The siting process may differ between states, but each program should make the best of existing facilities in the short term and assure continued facility capacity in the long term.

Finally, Congress did not envision that every state would need to develop redundant or unneeded capacity. A site in every state is not required. In some cases, multi-state efforts may be appropriate, requiring some assurance that access exists to out-of-state facilities. Such access is to be assured through "an interstate agreement or regional agreement or authority."

In passing this statute, Congress did not explicitly address what should constitute a state assurance to EPA.

Much was left to interpretation. Moreover, the nature of the data available, the interstate market, and methods to predict future waste generation demand a flexible approach in interpreting and implementing this requirement.

In EPA's view, the CAP should serve a threefold purpose. First, it should effectively demonstrate to the Agency that each state is taking measures to ensure that the hazardous waste created within its borders are and will be effectively managed. Second, it should establish a process under which interstate issues related to hazardous waste management are properly resolved and multi-state planning efforts are encouraged. Third, the CAP should serve as a document to educate and inform the public on the state's strategy for managing the hazardous waste generated by its industry and other sources.

EPA's Responsibility To Implement the SARA Section 104(k) Requirements

The Agency is responsible for developing a procedure for implementing the requirements of CERCLA Section 104(c)(9). The Administrator plans to carry out this process through three major efforts: (1) Publish guidance explaining how to prepare a state Waste Capacity Assurance Plan (CAP) for submission to EPA; (2) provide technical assistance and limited financial resources to the states; and (3) review and approve the state submissions.

Because of the many complex issues involved, EPA sought the advice of state officials, industry, private citizens, and public interest groups as part of developing this guidance package. The recommendations contained in this document reflect the views of these affected parties and specifically address the following problem areas:

- Data used throughout the states varies in uniformity. To help states convert their data to a uniform and consistent format for reporting purposes, EPA will provide technical assistance for states that use the New Biennial Report System, the Old Biennial Report System, or equivalent data from state reports or manifest data.
- Waste projections techniques are uncertain and under development. To accommodate the different approaches available to project waste generation, the guidance permits states to develop their own procedures as long as they meet general criteria.
- Waste minimization is a valuable waste management tool but its results are difficult to predict. To encourage states to develop waste minimization programs, the assurance process grants maximum flexibility to states in calculating the effects of such programs on the demand for future management capacity.
- The current waste management market is multi-state, and privately-run for the most part. To allow states to effectively assure the availability of capacity in other states without executing complicated interstate agreements the guidance requires states to enter into a process to resolve interstate waste management issues and assure the availability of management capacity over the long term.

The Role of the States in Implementing the Capacity Assurance Requirements

Approximately 90 percent of the hazardous waste generated by industry today is handled in facilities owned by the generator and dedicated to that firm's waste; the remainder of the waste is handled in commercial facilities located throughout the U.S. The EPA recognizes that while states regulate, they do not control the development or operation of hazardous waste management facilities both privately and commercially operated. The requirement that states "assure" the availability of management capacity to future hazardous waste generators ostensibly requires states to control what is beyond their current purview.

The Agency believes the intent of the law was far more pragmatic. In a practical sense, states may not control the current hazardous waste market system, but state policies can influence it. To fulfill the intent of the law, a state must use the CAP as an opportunity to review its policies regarding the development and maintenance of sound hazardous waste management facilities. A state must look to the needs of its industry and determine whether current state policies allow or facilitate the development of environmentally safe treatment and disposal options for that industry. It must determine whether a lack of adequate capacity in the state is a result of restrictive policies that encourage industry to send their waste elsewhere. Finally, if substantial capacity shortfalls are projected in the CAP, the state must employ one or more of the options outlined in this guidance: create new capacity in the state through changes in state policy, institute programs to reduce the amount of waste generated in the state, or enter into multi-state planning efforts to site management capacity.

Evaluation Criteria to be Used by EPA

To comply with section 104(c)(9), each state must complete the reporting requirements outlined in this guidance document. The CAP submitted by the state will not be approved unless it meets the following criteria:

1. The state must submit complete and accurate information showing current generation, waste management capacity, imports, and exports.

2. The state must show that its projection of waste generation and demand capacity meet the following guidelines:

(a) The underlying economic assumptions used in the projections should reflect existing or official projections of state economic activity unless otherwise justified by the state;

(b) The projections must account for major waste producing industries and the range of possible changes in the economic behavior of these industries;

(c) The projections must account for one-time only wastes (e.g., CERCLA or RCRA remedial corrective actions);

(d) The projections must correctly incorporate effects of waste minimization as outlined in the state's plan; and

(e) The projections must document assumptions regarding waste imports and exports.

3. For states that rely on waste minimization to reduce the demand for capacity, the state must demonstrate that:

(a) The estimated reductions in wastes are based on a sound technical evaluation of the potential effects of waste minimization in the state. (Available information, such as existing surveys of specific industries and engineering analysis of potential reductions, may be used in this evaluation);

(b) The resources committed to implementing the waste minimization strategy are consistent with the plan set forth by the state; and,

(c) The milestones for projected accomplishments in waste minimization are reasonable and there is a plan to implement these activities.

4. States must execute the agreement set forth in Chapter II and described in Appendix A if they plan to use management capacity in other states at any time over the 20-year "assurance" timeframe.

5. For states showing capacity shortfalls in its projections, the state must meet the following requirements:

(a) It must document the type and quantity of capacity needed and the state procedures that would result in the development of such capacity, including participation in interstate or regional planning efforts;

(b) If additional capacity is to be created inside the state, the CAP must show that state and local laws, regulations, practices, and policies will not hinder the development of additional capacity, when needed, and are consistent with the proposed plan submitted in the CAP. Laws, regulations, policies, and practices that may be found to hinder development of additional capacity include, but are not limited to the following:

(i) Local preemption powers not based on environment, health, or safety concerns with no ability for the state to appeal or rectify local decisions;

(ii) Absence of a siting procedure with clearly defined steps, including opportunity for public review and comment, and clear time periods between permit review, comment, and approval/denial;

(iii) The enactment of rules that may be viewed as discriminatory, such as limits on facility size, types of waste allowed based on origin of waste, and prohibition of waste facilities not based on environmental, health, or safety considerations; and

(iv) A demonstrated history of failed efforts to create additional capacity in the presence of sufficient demand for that capacity.

(c) For states that plan to rely upon capacity outside the state to address the projected shortfall, the CAP must show that such reliance does not conflict with the "reasonableness" criteria set forth in Appendix A.

EPA expects the states to prepare and submit an assurance to the Administrator no later than October 17, 1989. EPA also plans to request revised assurances on a periodic basis, most likely in concert with the biennial report from TSD facilities. At this time, EPA plans to request the first revision by October 1991. Each time a state enters into a cooperative agreement with EPA to obligate Superfund monies, the state must certify that their current assurance represents current policy to the best of their understanding. EPA will establish a standard certification paragraph on compliance with SARA section 104(k), which will appear on all SARA cooperative agreements for remedial action funding.

Chapter II—Basic Instructions For Completing The State Capacity Assurance Plan

This chapter provides states with the basic instructions needed to complete their Capacity Assurance Plan (CAP) in accordance with this guidance document. Each chapter in the guidance provides specific instructions for reporting information to EPA. This chapter outlines the format of the CAP, the technical assistance provided by EPA to complete portions of the CAP, and instructions for transmitting the state's final CAP to EPA.

Capacity Assurance Plan Format

The state should submit its CAP to EPA as a single document consisting of five Parts, based on the information required in the guidance document:

- Part 1 should contain the results of Chapter III of the Guidance Document, which requests information on current generation, management capacity, imports and exports. This chapter asks each state to demonstrate an understanding of its current hazardous waste generation, treatment, and disposal system, and provides a format for all states to manipulate their data internally and report key information to EPA.
- Part 2 should incorporate the results of Chapter IV of the Guidance Document concerning state waste minimization plans. This Part will provide information on each state's use of waste minimization in the capacity assurance process. States that plan to use waste minimization to help them assure the availability of adequate management capacity must supply more detailed documentation on their ongoing and planned efforts.
- Part 3 should incorporate the results of Chapter V of the Guidance Document, which requires states to project hazardous waste generation and the demand for management capacity. This chapter also requires states to estimate the amount of capacity needed in the state over the next 20 years.
- Part 4 should incorporate the results of Chapter VI of the Guidance Document, which covers state laws and procedures for creating management capacity within the state. All states showing a shortfall in management capacity in Part 3 must describe their plans for addressing this shortfall in this Part.

Technical Assistance Available From EPA

EPA recognizes an adequate CAP includes a thorough understanding of current generation, management capacity, waste imports, and waste exports. This is the critical information required in Chapter III (Part 1 of the CAP) and used in all subsequent calculations concerning future waste management practices. EPA realizes that developing this information may be difficult for some states because of differences in data collection and management systems. To help states complete Chapter III of the Guidance Document, and to ensure that all states assemble data into the same format for the CAP, EPA has provided three forms of technical assistance. This assistance is located in a *Technical Reference Manual*, which will be issued by EPA in October, 1988.

The *Technical Reference Manual* will cover the following major topics:

1. Optional conversion methodologies will be detailed to allow the 700 RCRA waste codes to be aggregated into 17 common reporting categories used in the CAP. These conversion methodologies will allow states using the new Biennial Report, the Old Biennial Report (including comparable data obtained from state reports and manifests), and the California UCD codes to convert their waste data into 17 common categories.

2. An optional default methodology will be described to allow states to assign the 17 waste categories to the 15 waste management categories used in the CAP. This default methodology will be based on current waste management practices; states will be free to choose different alternatives and must adjust the default methodology for when used to project future practices.

3. A procedure will be described for converting EPA-supplied data on waste management capacity in your state (by facility ID number) to the 15 waste management categories of the CAP. The facility-by-facility information will be supplied under separate cover and will include information on facility status (on-site, commercial, or captive) and capacity (currently used, currently available, and future plans). States will be required to review, correct, and assemble this information for reporting their capacity needs.

Finally, EPA will be developing computer-based programs to facilitate the calculations described in the *Technical Reference Manual*. The programs will be designed to utilize a common software system and will be made available in the fall of 1988.

Additional technical assistance can be obtained by using the EPA Hotline, which is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

Executing The Interstate Agreement

Those states that will use out-of-state capacity to meet their waste

management needs at any time over the 20-year assurance timeframe must execute the Interstate Agreement attached to this chapter. The background, intent, and terms of the agreement are explained in Appendix A. Failure to execute this agreement (as appropriate) will result in disapproval of the CAP.

Transmitting The CAP To EPA

A state's capacity assurance plan should be transmitted to EPA on or before October 17, 1989. Please send XX copies of the CAP to the following address: United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attn: XXXXXXX.

INTERSTATE AGREEMENT

Pursuant to the requirements of Section 104(k)(9) of the Superfund Amendments and Reauthorization Act of 1986, and the Waste Capacity Assurance Guidelines issued by the U.S. Environmental Protection Agency pursuant thereto; and

In recognition of the fact that this state is both an importer and exporter of hazardous waste; and

In accordance with similar agreements on behalf of other state governments respecting interstate transport and disposal of hazardous waste:

The state of ———— hereby agrees to the following:

1. The government of this state is aware of the status quo of interstate waste shipments;

2. In accordance with other state agreements, the government of this state agrees to participate in the planning, analysis, and resolution process to address interstate transport and disposal of hazardous waste as outlined in Appendix A of the Waste Capacity Assurance Guidelines issued by the U.S. Environmental Protection Agency; and

3. The government of this state intends to carry out the activities described in the state's Capacity Assurance Plan, which will include programs and/or milestones relevant to waste minimization and the management of hazardous waste.

Nothing in this Agreement shall be construed to affect the existing obligations of the states in a manner that would subject this Agreement to the purview of Clause 3, Section 10, Article I of the United States Constitution.

Governor or Designee

Chapter III—Reporting the Current Status of Generation, Management Capacity, Imports, and Exports

Purpose

This chapter asks each state to demonstrate an understanding of its current hazardous waste generation, treatment, and disposal system. It requires a strong technical knowledge of your state's hazardous waste management and tracking information systems, including data needed to meet federal reporting requirements. The key items to be reported are as follows:

- The type and quantity of federally regulated (under RCRA) hazardous waste generated within the state from both continuous industrial processes as well as one-time events, such as "batch" cleanups and RCRA and CERCLA corrective actions.
- The type and quantity of federally regulated hazardous waste shipped out-of-state.
- The type and quantity of federally regulated hazardous waste received from other states.
- The type and quantity of in-state capacity to manage RCRA-regulated hazardous waste and other waste not regulated by the EPA that consumes the state's hazardous waste management capacity, including state-regulated waste and non-hazardous waste.

Much of the information developed in this chapter will serve as a baseline for projecting future waste generation and disposal patterns. For example, information developed on the unused capacity available at instate facilities will be useful when assessing future capacity needs. Similarly, current patterns of waste imports and exports can be used to project future behavior.

General Instructions

This chapter provides guidance to states on their responsibilities for reporting information on current waste generation, handling, and disposition. Personnel completing this chapter should consult the separate *Technical Reference Manual* for more detailed instructions on sources of data, data manipulation, and translation of raw data into the reporting formats provided in this chapter.

The following worksheets must be completed to fulfill the minimum requirements of Part I of the CAP:

- Worksheet III–1 summarizing in-state generation of 17 types of RCRA-hazardous waste.
- Worksheet III–2 summarizing in-state waste management capacity.
- Worksheets III–3, III–4, III–5, and III–6 reporting the demands imposed by each of the 17 types of hazardous waste on each of the 15 waste management categories (as applicable) in total and for on-site, off-site captive, and commercial facilities.
- Worksheet III–7 providing detail on waste exports.
- Worksheet III–8 providing detail on waste imports.

States may develop their own report forms (computer-driven reports are satisfactory) but they must follow the general formats of the worksheets listed above. Other worksheets and interim results may be included in the CAP at the discretion of the state unless otherwise noted.

Only RCRA-regulated wastes are to be reported in the Worksheets. If a state compiles figures for state-regulated waste, they should not be reported in the Worksheets submitted as part of the state CAP. Similarly, although a state may wish to track such quantities separately, the waste generated by small quantity generators (less than 1000 kilograms of waste per month) should not be entered into the Worksheets to be submitted in a state's CAP.

The individual or individuals responsible for completing this chapter should be thoroughly familiar with both state and federal hazardous waste reporting systems. In almost all states, these individuals will be part of the state's RCRA program office. However, staff from the state's Superfund office or the equivalent EPA regional Superfund Office must be consulted to obtain information concerning site cleanups.

Technical assistance is available from EPA in several forms. A hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA regional office serving your state has assigned several individuals to answer questions; names and addresses are provided in the *Technical Reference Manual*. EPA has provided direct technical assistance through regional efforts to coordinate compliance with SARA section 104(k). If states are unaware of these on-going initiatives, they should contact the RCRA coordinators in their regional offices for additional information.

Technical Reference Manual

The *Technical Reference Manual* that accompanies this guidance is designed to help extract and manipulate raw data from Biennial Reports and similar state sources and produce reports for

inclusion in a state's CAP. It provides four sets of instructions, one of which will be applicable to your state, based on whether your state computerizes the Biennial Report or the equivalent data and whether your state uses the old or new Biennial report forms (or equivalent data).

Evaluation Criteria

The Agency plans to judge this document primarily on the accuracy of the data and supporting material used to complete the worksheets. In most cases—unless otherwise noted by the state—EPA expects the waste generation data contained in the worksheets to correspond with information obtained by EPA through its major reporting system, the Biennial Report. The Agency recognizes that differences will exist, however, between the state and federal reporting systems. States showing wide disparity between the amount of waste reported for the CAP and that reported to meet other federal requirements may be asked for more details.

EPA plans to provide individualized state reports with detail on hazardous waste management capacity in that state as reported in the agency's recent *Treatment, Storage, Disposal, and Recycling Survey* (TSDR). This will allow states to report consistent and relatively accurate baseline information on waste management capacity. Recognizing that some information from the TSDR survey may be up to three years obsolete at the time of the first CAP, states are encouraged to check these data and augment or correct them before presenting them in the CAP. Any corrections should be documented with a simple narrative discussion of changes.

Reporting Waste Generation

Most states now report the generation of hazardous waste by EPA waste code. More than 700 waste streams comprise EPA's list of regulated industrial residuals. Two states—California and Washington—report waste flows using a more aggregated set of waste codes developed at the University of California, Davis (these comprise the so-called UCD codes). For purposes of capacity assurance, all waste streams are to be grouped into 17 SARA waste types, which provide sufficient information for assignment to management methods.

Tables XX, XX, and XX of the *Technical Reference Manual* provide conversion factors to aggregate the EPA and UCD waste codes into this new waste type system. These tables match waste streams in either the EPA or UCD categories to the capacity assurance waste streams on the basis of waste phase (liquid, sludge, or solid) and major constituent (organic components, metals, halogenated compounds). Several miscellaneous categories convert directly.

States using the new 1987 Biennial Report forms should use appropriate tables and procedures described in the *Technical Reference Manual* to transfer EPA waste codes into their 17-waste type equivalent. This method uses the data on waste stream characteristics in conjunction with the designated EPA waste code to create a relatively precise mapping procedure.

States using the old Biennial Report forms should use a different set of tables and procedures presented in the *Technical Reference Manual* to convert EPA waste codes into the 17 SARA waste types. These conversions are generally considered less precise because less is known about waste stream characteristics. Where necessary, the procedures use a national profile of waste characteristics to facilitate the conversion.

Table XX of the *Technical Reference Manual* maps UCD waste codes into the capacity assurance waste streams based on waste phase and major constituent.

Waste Streams To Be Reported

States should report only RCRA-regulated waste in the worksheets that present waste generation. States need not report the following when describing waste generation: waste volumes that are regulated only by state law; wastes generated and handled through exempt onsite NPDES processes; exempt onsite in-process recycling (closed loop); exempt onsite treatment and discharge to municipal treatment works; direct discharge to publicly owned treatment works without treatment; and exempt onsite recycling through stills. For planning purposes, states may wish to account for these or other types of regulated waste, but they should include such wastes in separate forms from those used to report RCRA-only regulated waste.

Sources of Data To Report Waste Generation

For purposes of the 1989 assurance, all states should use the 1987 Biennial Report or the equivalent data elements collected in state reports to estimate 1987 calendar year generation of these 17 waste types. While availability will vary from state-to-state, equivalent sources of data include state surveys of generators, waste management facility inventories, state-modified biennial report forms, or waste manifest reports.

Establishing A Base Year

The EPA requests that states use 1987 as the base year to report waste generation. However, if a state has more accurate data for 1985 or 1986 and feels that these data more precisely represent waste generation in their state (because, for example, the state spent considerable resources to collect and analyze that data), they should present these figures and identify the alternate base year. States that choose an alternate base year need not estimate waste generation in 1987.

Units To Report Waste Generation

All waste quantities should be reported in tons per year. Waste expressed in volumetric terms, such as gallons, should be multiplied by the density of the waste in question (tons per gallon, for example) to yield the most accurate conversion into tons. Those states using the new Biennial Report forms will find density information for each waste stream in form GM of Package B, Section III, Question D. In the absence of exact density characteristics, states may use the information presented in the *Technical Reference Manual* (Table XX, based on the density of water) to convert from volume into tons. Table XX also provides several common mass-to-mass conversion factors.

Instructions For All Worksheets

A prototype state hazardous waste generation and handling system is depicted in Figure III–1. States should quantify the waste flows, for each of the 17 capacity assurance waste types, for each of the boxes presented in Figure III–1. Waste quantities should be reported in the worksheets noted below the boxes on the figure. On-site handling, for example, should be reported in Worksheet III–4; all exports should be summarized in Worksheet III–7. Each worksheet is introduced in a general sense in this chapter. The *Technical Reference Manual* describes procedures to complete each worksheet from raw data.

The *Technical Reference Manual* is divided into four sections, based on whether a state computerizes Biennial Report data or not and whether a state is using the old or new Biennial Report forms for the 1987 reporting cycle. States with computerized processing of new Biennial Report data should consult Chapter 1 of the *Technical Reference Manual*. These states will be directed to ensure that their Biennial Report data are arranged in a standard format, consistent with the specifications of the Biennial Report Data System. Once so

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arranged, these states can access EPA-provided software that automatically generates all of the required worksheets in their proper formats. Because of the richness of the data collected under the new reporting system, EPA's capacity assurance software will enable states to complete many optional analyses (consult the *Technical Reference Manual* for details).

States with computerized old Biennial Report data should consult Chapter 2 of the *Technical Reference Manual.* They will be directed to follow a similar computer-driven procedure to complete the Worksheets III–1 through III–6. Because the data are generally more limited in the old Biennial Reporting system, fewer optional analyses will be available.

States with manual processing of new Biennial Report data should consult Chapter 3 of the *Technical Reference Manual.* Simplifed procedures will be presented to work directly from the Biennial report forms themselves. These states face perhaps the most time consuming task in completing the current generation and handling worksheets.

States that process old Biennial Report data manually should consult Chapter 4 of the *Technical Reference Manual.* A similar set of simplified procedures will help states make the linkage between raw data and the completed worksheets.

States for which Biennial Report data collection and processing is handled by the appropriate EPA regional office should contact the regional EPA Biennial Report coordinator to determine the applicable set of instructions to follow.

For each of the four sets of the instructions, the *Technical Reference Manual* describes methods to ensure that all states (except as noted below) are able to complete the following types of data manipulations:

- Translating Biennial Report waste codes into 17 waste types;
- Translating UCD waste codes into 17 waste types;
- Translating TSDR Survey and Biennial Report waste management codes to 15 management categories;
- Matching SARA waste types to SARA management categories based either on a national profile or new Biennial report data;
- Separating one-time waste generation from recurrent generation based on new Biennial Report data;
- Presenting both old and new Biennial Report data in the formats specified in Worksheets III–1 through III–6;
- Sorting of exported waste by waste type;
- Sorting of exported waste by management category;
- Summarizing imported waste by state of origin and management category; and
- Summarizing exported waste quantities by type of waste and state receiving waste.

In addition to these manipulations, the *Technical Reference Manual* provides flow diagrams describing the logic used to abstract data from both the old and new Biennial Report and report waste quantities as (1) generated and managed onsite, (2) generated onsite and managed offsite, or (3) imported for management in state.

Instructions For Worksheet III–1

Worksheet III–1 asks states to summarize total in-state generation of RCRA-regulated waste. Total generation is comprised of primary generation (waste by-products of manufacturing processes) and secondary generation (waste by-products of waste treatment processes). While states need not draw this distinction in the worksheet, states accessing EPA's capacity assurance software will be able to generate a separate worksheet for each component.

Worksheet III–1 also asks states to separate total generation into recurrent and one-time waste quantities. Recurrent wastes include both primary and secondary streams attributable to on-going industrial activity. One-time wastes include those that result from isolated events such as equipment cleaning or decommissioning, site cleanup, or off-spec product disposal. Only states using the new Biennial Report forms will be able to separate recurrent from one-time waste generation. States using the old Biennial Report forms, which do not directly support such an analysis, should estimate one-time generation to the best of their ability, following directly support such an analysis should estimate one-time generation to the best of their ability, following instructions in the *Technical Reference Manual.* The *Technical Reference Manual* presents both computerized and manual procedures to assist in this separation.

Instructions for Worksheet III–2

Worksheet III–2 asks states to summarize the waste handling capacity currently available in their state. EPA will supply all the necessary figures to complete this worksheet for the 1989 CAP. Because the basis for EPA's data, however, are the results of the 1986 National TSDR Survey, some capacity figures may be obsolete. It is the state's responsibility to determine whether data supplies by EPA are appropriate for use in the CAP. Therefore, states should use their own capacity figures if they represent a more complete assessment of capacity than the EPA data. States should briefly explain in footnotes to the appropriate worksheets any differences between more recent capacity data and those supplied by EPA.

In subsequent years, states will be responsible for collecting all capacity data is part of their normal biennial reporting requirements.

Instructions For Worksheets III–3 Through III–6

Together, Worksheets III–3 through III–6 constitute the core data describing a state's current hazardous waste management system. In these four worksheets, states are asked to link waste generation to demand for in-state waste management capacity. Waste exports and the effect of waste imports also must be shown, and four types of management capacity must be examined: Total in-state; in-state, on-site, in-state, captive; and instate commercial. Completing these worksheets requires numerous data transactions; states should consult the *Technical Reference Manual* for detailed instructions on their completion.

For convenience, Worksheet III–3 through III–6 also present a separate capacity block to display current and planned future capacity figures. For the 1989 CAP, all capacity data will be supplied by the EPA in individual state reports. Thereafter, states will be expected to collect these data as part of the normal biennial reporting process.

The "exports" column on these worksheets summarizes waste residuals generated as a by-product of waste management processes and exported for further management at out-of-state facilities.

Instructions For Worksheets III–7 and III–8

Worksheet III–7 and III–8 ask states to provide additional detail on their waste exports and imports, respectively. Both old and new Biennial Reports support the presentation of exported waste quantities by waste type and receiving state. Similiary, both reports support the presentation of waste import quantities by waste type and state of origin. All states should consult the *Technical Reference Manual* for details on procedures to complete these worksheets.

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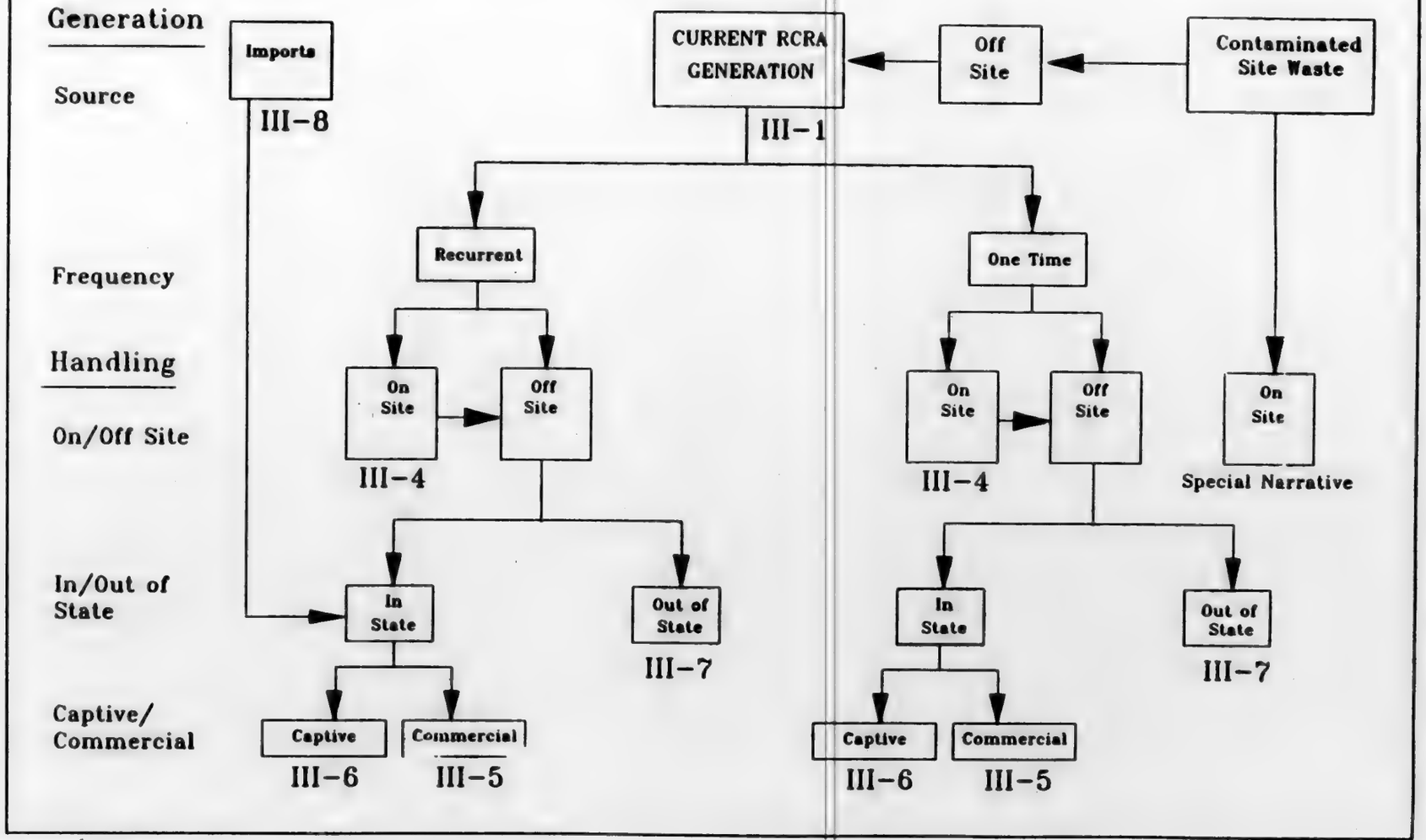
Figure III–1. Prototypical State Waste Management System



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WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987 (THOUSANDS OF TONS/YEAR)

Waste types	One-time generation	Recurrent generation	Total generation
1. Contaminated Soil			
2. Halogenated Solvents			
3. Nonhalogenated Solvents			
4. Halogenated Organic Liquids			
5. Nonhalogenated Organic Liquids			
6. Organic Liquids, NEC[a]			
7. Mixed Organic/Inorganic Liquids			
8. Inorganic Liquids with Organics			
9. Halogenated Organic Solids/Sludges			
10. Nonhalogenated Organic Solids/Sludges			

WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987 (THOUSANDS OF TONS/YEAR)—Continued

Waste types	One-time generation	Recurrent generation	Total generation
11. Organic Solids/Sludges, NEC[a]			
12. Inorganic Liquids with Metals			
13. Inorganic Liquids, NEC[a]			
14. Inorganic Solids/Sludges with Metals			
15. Inorganic Solids/Sludges, NEC[a]			
16. Mixed Inorganic/Organic Solids/Sludges			
17. Other Wastes, NEC[b]			
Total			

[a] NEC = Not Elsewhere Classified.

[b] Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

WORKSHEET III-2.—SUMMARY OF IN-STATE WASTE MANAGEMENT PRACTICES (1987 Capacity in Thousands of Tons)[a] CAPACITY

Management category	Capacity			Remaining capacity after 1987
	Utilized	Maximum	Available	
1. Metals Recovery				
2. Solvents Recovery				
3. Other Recovery				
4. Incineration—Liquids				
5. Incineration—Solids/Sludges				
6. Energy Recovery				
7. Aqueous Inorganic Treatment				
8. Aqueous Organic Treatment				
9. Sludge Treatment				
10. Other Treatment				
11. Stabilization				
12. Land Treatment				
13. Landfill				
14. Deep-Well Injection				
15. Other Disposal				

[a] All data provided by EPA for the 1989 CAP.

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Worksheet III–3:

Summary of All In–State Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep–well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
TOTAL																		
Imports																		
GRAND TOTAL																		

CAPACITY DATA– TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

Worksheet III–4:

In–State, On–Site Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																		
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep–well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
TOTAL																		
GRAND TOTAL																		

CAPACITY DATA– TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

Worksheet III–5:

In–State, Captive Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
TOTAL																		
Imports																		
GRAND TOTAL																		

CAPACITY DATA– TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

Worksheet III–6:

In–State, Commercial Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration – Liquids	Incineration – Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep–well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
TOTAL																		
Imports																		
GRAND TOTAL																		

CAPACITY DATA– TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

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WORKSHEET III-7.—SUMMARY OF EXPORTED WASTE QUANTITIES IN 1987 BY WASTE TYPE AND RECEIVING STATE (IN THOUSANDS OF TONS)

Waste types	Receiving State (List each relevant State)
1. Contaminated Soil	
2. Halogenated Solvents	
3. Nonhalogenated Solvents	
4. Halogenated Organic Liquids	
5. Nonhalogenated Organic Liquids	
6. Organic Liquids, NEC [a]	
7. Mixed Organic/ Inorganic Liquids	
8. Inorganic Liquids with Organics	
9. Halogenated Organic Solids/Sludges	
10. Nonhalogenated Organic Solids/ Sludges	
11. Organic Solids/ Sludges NEC [a]	
12. Inorganic Liquids with Metals	
13. Inorganic Liquids, NEC [a]	
14. Inorganic Solids/ Sludges with Metals	
15. Inorganic Solids/ Sludges, NEC [a]	
16. Mixed Inorganic/ Organic Solids/ Sludges	
17. Other Wastes, NEC [b]	

[a] NEC = Not Elsewhere Classified.
[b] Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

WORKSHEET III-8.—SUMMARY OF IMPORTED WASTE QUANTITIES IN 1987 BY MANAGEMENT CATEGORY AND STATE OF ORIGIN (IN THOUSANDS OF TONS)

State of origin	Tons utilized	Waste Management Category (List all relevant categories)

Definitions Section

Available Capacity. The amount of waste which a treatment, storage, disposal, or recovery facility determines it can process within a single reporting year, or the amount allowed by all relevant EPA permits, whichever is less.

Captive Management Facility. Any treatment, storage, disposal, or recovery unit, process, or operation that is used exclusively to manage the waste produced by another operating unit or units under the same ownership of any facility from which it receives waste.

Commercial Management Facility. Any hazardous waste treatment, storage, disposal, or recovery unit, process, or operation that is generally available to manage the waste of other facilities and is not under the ownership of any facility from which it receives waste.

Equivalent State Data. This phrase refers to common state data, derived from official surveys or manifests, that use the RCRA waste codes to report generation and capacity information. This data is similar to that collected under the old Biennial Report.

Future Available Capacity. The amount of waste a treatment, storage, disposal, or recovery facility determines it can process within a prescribed time period.

New Biennial Report. This refers to the revised EPA reporting system, issued for the 1987 reporting cycle. States may choose whether or not to use the new Biennial Report. New information required by the 1987 Biennial Report include data on waste stream constituents, details on a state's waste minimization activities, and facility capacity information.

Old Biennial Report. This refers to the current official EPA reporting system, last used by all states in 1985. Data requested from the states included quantities of waste generated and amounts of waste treated, stored, or disposed. The same data are still required for the 1987 reporting cycle as minimum requirements.

On-site Management. Any hazardous waste not transferred from the site of its generation for treatment, storage, or disposal. By definition, such facilities are captive.

Utilized Capacity. The actual amount of waste managed by a treatment, storage, disposal, or recovery system within a single year.

Chapter IV—State Waste Minimization Plans

Purpose

The purpose of this chapter is to obtain information on each state's use of waste minimization in the capacity assurance process. (For the CAP definition of waste minimization see the Definitions Section at the end of the Chapter.) While the Agency believes a waste minimization program is a key step toward sound hazardous waste management, EPA recognizes that some states may choose to assure adequate capacity without claiming waste reduction benefits. These states must supply only brief information on their ongoing or planned waste minimization efforts. Such information will be evaluated for completeness only; EPA will not evaluate the waste minimization programs of these states.

States that plan to use waste minimization to help them assure the availability of adequate management capacity must supply documentation on their ongoing and planned efforts. These states must describe the overall strategy of their programs, how they plan to account for waste minimization in their waste generation projections, and how these programs might affect waste generation for the projection years.

General Instructions

To complete the requirements of this chapter, states should respond to the questions contained in the attached forms. States should copy and complete the appropriate forms and include them—along with additional documentation—in their CAP. Not all forms must be completed.

States not using waste minimization programs to reduce capacity demand must complete the following form:

Form I: Legislative Authority. This form requests information on the present legislative authority for a waste minimization program, its general make up, funding, staffing, and any anticipated legislative or programmatic changes.

States that anticipate using waste minimization programs to reduce capacity demand must complete Form I and the following forms:

Form II: Waste Minimization Reduction Estimates. This form requests detailed information on the state's anticipated effect of state and industrial waste minimization efforts, technical basis of these estimates, and measures of effectiveness.

Form III: Program Components Descriptions. This form requests more detailed information on the individual components that comprise the state's waste minimization program.

The information requested in Forms II and III will enable the EPA to assess the reasonableness of the state's proposed goals and activities and to monitor the progress of the state's programs.

A glossary of the terms used to describe the waste minimization program components is contained in the Definitions Section at the end of the chapter. In addition, technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has

assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

Evaluation Criteria

EPA plans to evaluate each state's waste minimization plan differently. For states not choosing to incorporate any waste minimization estimates into projections of capacity need, the Agency will simply review the state's submittal for accuracy and completeness. In these cases, the Agency will make no judgment on the adequacy of the particular waste minimization program operated by the state, if any such program is operating or planned.

For states that rely on waste minimization to reduce the demand for waste treatment capacity, the Agency must conduct a more detailed evaluation. For these states, the following must be demonstrated in the CAP:

- The estimated reductions in waste are based on a sound technical evaluation of the potential effects of waste minimization in your state. This does not require a technical analysis of waste minimization potential but an examination from available information to determine how it might apply to your state.
- The resources committed to implementing the waste minimization strategy are consistent with the plan set forth by the states; and,
- The activities for projected accomplishments in waste minimization are reasonable and there is a plan to implement these activities.

Form I: Legislative Authority

All states must fill out this form. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to anwer any question.

Name of Respondent _____
Telephone Number _____
Address _____

1. Does legislative authority exist to implement a waste minimization program in your state? If authority exists through general broad authority, please answer yes and site the authority if known.
—Yes —No?

1a. If yes, what are the titles of the legislation and when was it enacted?

1b. Is future legislation anticipated and when does the state plan to have it enacted?

2. Indicate which of the following waste minimization program components are specifically in use or authorized in your state:

In use	Authorized	
_____	_____	Technical Assistance
_____	_____	Economic Incentives
_____	_____	Waste Exchange
_____	_____	Research and Development
_____	_____	Regulatory Requirements
_____	_____	Education
_____	_____	All programs are authorized under a broad legislative enactment
_____	_____	Other:

3. In your state, are there any pending statutes, or regulations relating to waste minimization that are expected to be enacted within the next two years?
—Yes —No?

3a. Please briefly describe the anticipated changes and their expected impacts on waste minimization in your state.

4. What administrative agency or agencies implement your state's waste minimization program (list all applicable agencies and the waste minimization component they are responsible for).
Agency

Component

5. What is the amount of funding received from the following sources (in thousands of dollars) for your waste minimization program?
—General revenues
—Dedicated taxes (e.g., waste end, feedstock)
—Tipping fees
—Federal Grants
—Other

6. Please estimate the number of person-years of staff supported by the state working on waste minimization.
—State professionals on staff
—Consultants
—Other

7. Do you plan to show any effect on future waste management capacity demand from waste minimization activities in your state?
—Yes —No?

If *Yes* Proceed to Form II, Waste Minimization Reduction Estimates.

If *No* Stop Here

The Waste Minimization Portion of the Capacity Assurance Submittal is Completed.

Form II. Waste Minimization Reduction Estimates

Only those states that anticipate incorporating waste minimization estimates in their capacity projections must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP/Please attach additional information if more space is needed to answer any question.

Name of Respondent _____
Telephone number _____
Address _____

1. Please estimate, using Worksheet IV-1, the amount of waste expected to be reduced (in tons or percent reduction) by waste minimization for each of the 17 waste types of Chapter III for projection years 1989, 1995, and 2009. These estimates should illustrate how you plan to incorporate waste minimization into your waste projection of Chapter V. They should not include anticipated changes in production rates, but should show only those reductions based on waste minimization efforts.

2. Please briefy describe the basis of your technical estimates. A list of bibliographic references and a short narrative describing how they were used in sufficient. Examples of appropriate materal that might be used to develop waste minimization estimates include:

- State surveys of waste generation trends.
- Waste minimization plans prepared by industry in your state (Please describe or include these plans).
- Reports from Advisory Councils on the potential effect of waste minimization for the state.
- Reports from Federal Agencies and Trade and Technical Associations estimating trends in waste minimization applicable to the industries in your state.
- Engineering studies and analysis of potential waste stream changes applicable to industries in your state.
- Programs conducted by non-state agencies such as non-profit organizations that affect the industries in your state.

3. How do you intend to measure the effectiveness of your Waste Minimization Program? (In addition to the information provided in the Biennial Report, indicate which of the following do you plan to evaluate to determine the effectiveness of your waste minimization program.)
—No other measures besides that obtained from EPA's biennial report
—Number of information requests handled
—Number of industries/plants participating
—Savings to industry (cost ratios)
—Change in waste quantity generated
—Change in ratios of waste generated per unit product
—Other

4. How will you acquire this information?
—By examining waste minimization program records
—By conducting industry surveys
—New EPA Biennial Report
—By examining state regulatory files
—Other

5. Briefly describe your comunication strategy with the industrial community.

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6. In addition to your waste reduction estimates, are there any other activities in your state (announced programs by one or more key industries to reduce waste pending legislation or regulations component implementation schedule) that might be useful in evaluating your waste minimization program?

Date	Activity
_____	_____
_____	_____
_____	_____

If You Have Shown Waste Reduction Estimates Based on the Effects of Your Waste Minimization Program, Proceed to Form III, Program component descriptions.

Form III: Program Component Descriptions

Only those states that anticipate incorporating waste minimization estimates in their capacity projections and have indicated employing individual waste minimization components in Form I Question 2 must complete this form. This section requests information on the specific components of your waste minimization program. Please complete the sections that are applicable to your state program. Questions on different waste minimization components are presented separately so that they may be distributed to different program officials if necessary. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to answer any question.

Form III includes the following:
- III-a Technical Assistance
- III-b Economic Incentives
- III-c Waste Exchange
- III-d Research and Development
- III-e Regulatory Requirements
- III-f Education

Respondents to each set of questions in this form should attach their name and telephone number should additional information be necessary.

Name of Resopnent _____
Telephone number _____
Address _____
_____
_____

1. Please indicate the approximate emphasis that your state places on the following waste minimization components as a percent of your waste minimization budget.

Component	Appoximate percent of budget
Technical Assistance	_____
Economic Incentives	_____
Waste Exchange	_____
Research and Development	_____
Regulatory Requirements	_____
Education	_____
Other	_____
Total	100%

III-a Technical Assistance

1. Indicate which of the following Technical Assistance components are currently in use or proposed for use in your waste minimization program.

Technical Assistance		
On-going	Proposed	
_____	_____	On-site assistance
_____	_____	Information clearinghouse/ Library
_____	_____	Technical workshops
_____	_____	Feasibility studies
_____	_____	Other:

2. For Technical Assistance, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Technical Assistance program (e.g., waste streams, industry categories, or both).

_____
_____

2b. Why did you choose to implement this program?

_____
_____

2c. What problems to implementing the Technical-Assistance program do you anticipate or have you experienced?

_____
_____

III-b Economic Incentives

1. Indicate which of the following Economic Incentives components are currently in use or proposed for use in your waste minimization program.

Economic Incentives		
On-going	Proposed	
_____	_____	Awards/matching grants
_____	_____	Taxes/Fees (e.g., waste-end, front-end, point-of-use)
_____	_____	Low-interest loans
_____	_____	Tax credits
_____	_____	Other:

2. For Economic Incentives, please provide the following information for existing or proposed programs:

2a. Indicate the number of grants provided in the base year as part of this component.

_____
_____

2b. What is the current (or projected) annual budget for grants provided in your waste minimization program as part of Economic Incentives (in thousands of dollars)?

_____
_____

2c. Describe the specific target of the Economic Incentives program (e.g., waste streams, industry categories, or both).

_____
_____

2d. Why did you choose to implement this program?

_____
_____

2e. What problems to implementing the Economic Incentives program do you anticipate or have you experienced?

_____
_____

III-c Waste Exchange

1. Indicate which of the following Waste Exchange components are currently in use or proposed for use in your waste minimization program.

Waste Exchange		
On-going	Proposed	
_____	_____	State-promoted
_____	_____	State-managed
_____	_____	State-financed
_____	_____	Regional or multi-state effort
_____	_____	Other:

2. For Waste Exchange, please provide the following information for existing programs or proposed programs:

2a. What is the current (or projected) annual contribution to the Waste Exchange (in thousands of dollars) that you participate in?

_____
_____

2b. What is the name of the Waste Exchange that you participate in?

_____
_____

2c. Which states participate in this Waste Exchange (Please list)?

_____
_____

2d. Describe the specific target of the Waste Exchange program (e.g., waste streams, industry categories, or both).

_____
_____

2e. Why did you choose to implement this program?

_____
_____

2f. What problems to implementing the Waste Exchange program do you anticipate or have you experienced?

_____
_____

III–d Research and Development

1. Indicate, which of the following Research and Development components are currently in use or proposed for use in your waste minimization program.

Research and Development		
On-going	Proposed	
_____	_____	Options development/ feasibility studies
_____	_____	Pilot scale or demonstration projects
_____	_____	Economic or policy analysis
_____	_____	Manuals for audits or technology implementation
_____	_____	Other:

2. For Research and Development, please provide the following information for existing programs or proposed programs:

2a. What is the current (or projected) annual budget for Research and Development (in thousands of dollars)?

2b. Describe the specific target of the Research and Development program (e.g., waste streams, industry categories, or both).

2c. Why did you choose to implement this program?

2d. What problems to implementing the Research and Development program do you anticipate or have you experienced?

III–e Regulatory Requirements

1. Indicate, which of the following Regulatory Requirement components are currently in use or proposed for use in your waste minimization program.

Regulatory Requirements	
On-going	Proposed
_____	_____ Reporting requirements
_____	_____ Reduction standards
_____	_____ Design or operating standards (e.g. required chemical substitutions) Management standards (e.g. mandatory waste reduction audits, listing on waste exchanges)
_____	_____ Other:

2. For Regulatory Requirements, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Regulatory Requirements program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Regulatory Requirements program do you anticipate or have you experienced?

III–f Education

1. Indicate, which of the following Education components are currently in use or proposed for use in your waste minimization program.

Education	
On-going	Proposed
_____	_____ Governor's or other award programs
_____	_____ Public education (e.g. seminars, workshops, pamphlets)
_____	_____ Outreach
_____	_____ Other:

2. For Education, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Education program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Education program do you anticipate or have you experienced?

WORKSHEET IV–1.—ESTIMATE REDUCTIONS (IN TONS OR PERCENT REDUCTION)

Waste types	Projection years		
	1989	1995	2009
1. Contaminated Soil			
2. Halogenated Solvents			
3. Nonhalogenated Solvents			
4. Halogenated Organic Liquids			
5. Nonhalogenated Organic Liquids			
6. Organic Liquids, NE *			
7. Mixed Organic/ Inorganic Liquids			
8. Inorganic Liquids with Organics			
9. Halogenated Organic Solids/ Sludges			
10. Nonhalogenated Organic Solids/ Sludges			
11. Organic Solids/ Sludges NEC *			
12. Inorganic Liquids with Metals			
13. Inorganic Liquids, NEC *			
14. Inorganic Solids/ Sludges with Metals			
15. Inorganic Solids/ Sludges, NEC *			
16. Mixed Inorganic/ Organic Solids/ Sludges			
17. Other Wastes, NEC ▷			
Total			

* NEC = Not Elsewhere Classified.
▷ Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

Definitions Section

Definition of Waste Minimization

Waste minimization. The reduction, to the extent feasible, of hazardous waste that is generated or subsequently treated, stored, or disposed. Waste minimization includes any source reduction or recycling activity undertaken by a generator that results in: (1) the reduction of total volume or quantity of hazardous waste; (2) the reduction of toxicity of hazardous waste; or (3) both, as long as the reduction is consistent with the goal of minimizing present and future threats to human health and the environment.

Source reduction. The reduction or elimination of waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process. Source reduction implies any action that reduces the amount of waste exiting from a process.

Recycling. The use or reuse of a waste as an effective substitute for a commercial product, or as an ingredient or feedstock in an industrial process. It also refers to the reclamation of useful constituent fractions within a waste material or removal of contaminants from a waste to allow it to be reused. As used in this report, recycling implies use, reuse, or reclamation of a waste either on site or off site after it is generated by a particular process.

Characterization of Waste Minimization Terms

Technical Assistance

On-Site Assistance. Comprehensive technical assistance to aid industry in reducing the volume or toxicity of wastes generated. May include consultation on industrial and waste management practices and waste minimization options.

Information Clearinghouse/Library. A data base (electronic or hardcopy) made available to managers involved in waste minimization. Clearinghouses provide access to documents, references, and telephone assistance.

Technical Workshops. Information dissemination programs designed to keep industry and the community up-to-date on programs, technology, waste minimization activities and appropriate regulatory information.

Feasibility Studies. Technical assistance, provided off-site, consisting of process analysis and engineering study utilizing general knowledge. May be based on information gathered from similar industries or previous on-site technical assistance. Project results are usually applicable to assist in solving select ranges of manufacturing or institutional problems.

Economic Incentives

Awards/Matching Grants. Direct payments from the state to hazardous waste generators or others engaged in waste minimization activities. May be structured to encourage various types of waste minimization activities, to assist specific types of firms, or to focus on particular waste streams.

Taxes/Fees. A means by which states create an economic incentive for waste minimization. Front-end taxes can be imposed at or near the beginning of commercial chain of production, throughout the distribution network, and at the point of consumption of selected chemicals and substances. Waste-end taxes may believed on the generation, transportation, storage, treatment, or disposal of wastes.

Low-Interest Loans. Financial assistance that enables firms to reduce the cost of financing investments in processes and technologies that reduce wastes. Usually directed to both small and mid-sized hazardous waste generators who may be unable to obtain commercial credit at an affordable price.

Tax-Credits. A direct reduction in the tax liability of the firm, generally rewarding only capital investments.

Waste Exchanges

Waste generated by one company are provided or sold to another company that can use the waste material in their operation. Recipient companies usually use the waste untreated or subject it to a minimal amount of treatment prior to reuse.

Research and Development

Involves applied hazardous waste research, development, and demonstration projects and may include feasibility studies, pilot- and bench-scale demonstration projects, and economic and policy analyses. Usually funded by government and in some cases the private sector, these projects are typically undertaken by universities and other academic insitutions.

Regulatory Requirements

Reporting Requirements. Requests by the government for generator information sufficient to determine the effectiveness of waste minimization programs. In some cases the companies involved in waste minimization are required to submit their plan as a part of a permit application to the regulating authority for adequacy.

Reduction Standards. Specific targets for reduction over time in the quantity and/or toxicity of certain waste streams.

Design or Operating Standards. Limitations or criteria applied to process design and manufacturing operations, usually specific to particular industries and/or waste streams, to minimize waste generation.

Management Standards. Directed to encourage waste minimization. Requires good management practice standards which may include mandatory audits or listing of wastes on a waste exchange.

Education

Governor's or Other Award Programs. A low-cost means to recognize and honor companies and institutions that have demonstrated outstanding achievement in hazardous waste management.

Public Education/Outreach. Promotional activities designed to keep the public informed of the need for a commitment to hazardous waste minimization. Targeted in general to citizen groups, trade associations, and professional organizations.

Chapter V—Projecting Hazardous Waste Generation, The Demand for Management Capacity, and Capacity Needs

Purpose

This chapter outlines procedures for states to use when projecting hazardous waste generation and its subsequent demand for waste management capacity. Projected total demands are then compared to projected capacities for each of the 15 waste management categories presented in Chapter III. The result is an estimate of projected capacity needs for each waste management category. The completed worksheets and narrative should represent Part 3 of the CAP.

States must project waste generated within their borders in 1989, 1995, and 2009. The 1989 projection year corresponds to the next biennial reporting year. The 1995 projection will present a near-term estimate of demands for waste management after most of the current hazardous waste regulations—the land disposal restrictions in particular—take effect. The law specified that states assure adequate waste management capacity for 20 years, hence the year 2009 projection.

The methods contained in this chapter reflect procedures commonly used today to project waste generation. The Agency recognizes the inherent uncertainty of projections and the limitations of all procedures. For this reason, the Agency does not endorse any one system; states are free to choose the approach that best represents their particular situation. However, all projections must adhere to the following general guidelines:

- Projections must take into account economic expansion or contraction and its effect on the quantity of waste generated by the major sources within the state.
- Projection must account for the effects of waste minimization activities on future waste generation, based on clear documentation as described in Chapter IV and quantified in this chapter.
- Projections must account for non-recurrent wastes (from equipment decommissioning or replacement, materials or product disposal, materials or product spills, closure actions, remedial or corrective actions, or other non-routine sources) as well as waste generated from continuous industrial processes.
- To the extent possible, the state must address the potential effect of regulatory change on future waste generation and management options. EPA will provide a list of key regulations that the states should include in their analysis.

General Instructions

For each of the projection years, states should summarize their projections of waste quantities and effects on waste management capacity using worksheets V–1 and V–2, respectively. Worksheet V–2 is used to calculate waste management demand from in-state waste after subtracting waste exports. Worksheet V–3 is similar to Worksheet V–2, except that it requires states to estimate management capacity demand based on total instate waste generation (including projected exports). Final potential capacity needs are determined in Worksheet V–4, which asks states to report estimated capacity needs after incorporating the effect of waste imports and exports. While the combined effect of imports and exports are used to estimate capacity needs, states also must report the balance of total in-state generated waste (including potential exports) against total in-state available capacity (excluding potential exports). This calculation, also required in Worksheet V–4, will be used by EPA to examine the effect of waste imports and exports on each state's capacity balance.

The following sections provide general instructions on projecting waste from continuous industrial processes using common economic indicators and procedures; and projecting waste generated intermittently, such as that resulting from RCRA and CERCLA cleanups. Much of the analysis conducted for Chapter III will be used to complete this chapter, and similar

expertise will be needed. In addition, states should coordinate their efforts with other state offices responsible for projecting and/or tracking state industrial activity or revenues. To the extent possible waste generation should be based on the same economic forecast information used to project general business activity in the state or region.

Technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals and phone numbers.

Evaluation Criteria

The Agency recognizes that no single methodology exists that is universally acceptable for projecting hazardous waste generation. Considerable discretion is left to the states to formulate reasonable projection methods. However, the Agency plans to evaluate the waste projections portion of the state's CAP on the following points:

- The underlying economic assumptions used in the projections should reflect existing or official projections of state economic activity unless otherwise justified by the state;
- The projections must account for major waste producing industries and the range of possible changes in the economic behavior of these industries;
- The projections must account for non-recurrent wastes (e.g., CERCLA or RCRA remedial or corrective actions);
- The projections must correctly incorporate the predicted effects of waste minimization as outlined in Chapter IV; and
- The projections must document assumptions regarding waste imports and exports as required in the CAP.

Many states will have the capabilities to provide detailed estimates of future waste generation amounts and their demand for management capacity. Others may not have these capabilities or may choose not to make detailed estimates either because they have limited industrial sources or do not foresee significant economic changes taking place. EPA will accept all projections as long as they show that the state has considered all relevant factors and is not in conflict with other official state policy on economic development.

EPA recognizes that projections made for year 20 will be far less certain than those made over the short term. In the absence of additional information, the EPA will accept linear extrapolation of trends developed through the 1995 projection period.

Projecting Recurrent Waste Generation From Industrial Sources

Using 1987 generation as a baseline, states should first estimate expected generation for projection years 1989, 1995, and 2009 solely on the basis of economic changes. States should then make adjustments to these estimates to account for the expected effects of waste minimization as described in Chapter IV. Finally, states should, to the best of their ability, adjust their projections to account for the effects of pending regulations (listed subsequently in this chapter) on the demand for waste management capacity.

Projecting Waste Generation Based on Economic Expansion or Contraction

Economic change is a combination of two measures: changes in economic base (reflected by the basic composition of the region's industry, including new entrants and closures) and changes in industrial output (defined as the total value of goods and services from current industrial production). The agency does not expect states to forecast changes in their state's economic base, unless such changes are likely and critical—announced plant closures or start-ups of key industries are examples of such critical changes. However, absent such information, states should assume that the set of industries responsible for generating the majority of the state's hazardous waste in the base year will exist over the projection period.

The states should account for the effects of economic forces specific to each state and, ideally, to those industries currently responsible for the majority of waste generated. This involves two steps. First, states should compile a list of those industries that are responsible for generating the majority of waste (as defined by the 17 CAP waste categories) in their state. For states using EPA's new Biennial Report forms, these data are available in Form IC, Section IV (SIC code identification) and either GM or GS (waste quantities).

Second, the waste generation characteristics of these industries should be normalized to some indicator of economic output (discussed subsequently). Projections of the same economic indicator (or growth factors) then can be used to project waste from the industrial category in question. For states in which most of the 17 waste categories are dominated by a single industry or ones having similar growth potential, these growth factors simply may be applied to each of the 17 waste categories as appropriate.

Industries of Interest. Ideally, industrial activity should be forecast for each 4-digit SIC (Standard Industrial Classification) code industry responsible for one percent or more of a state's total waste volume. There are about 450 4-digit SIC industries represented in the Office of Management and Budget's Standard Industrial Classification system. While the mix of major waste generating industries will vary from state to state, most states should find that less than 100 4-digit SIC industries will account for 95 percent to 99 percent of total state generation. In many states, particularly the smaller ones, the majority of hazardous waste quantities will be attributable to perhaps 20 industry groups.

Even though economic projections at the 4-digit SIC code level of detail may provide the most accurate basis for projecting future waste quantities attributable to economic change, states are not required to build sophisticated projections models to track changes at this level. States should choose the level of detail in their economic projections best suited to their industrial bases, level of detail in baseline waste generation data, and technical support available within the state to make projections. Some states may find, for example, that projections at the 2-digit SIC code level are most appropriate. Others may not have access to SIC code information linked to waste generation and may thus choose to project economic change using a statewide growth index such as total state product. All of these methods will be acceptable to the Agency if they are appropriately documented.

Factors for Projection. Actual records of the number of product units manufactured—tons of steel or barrels of oil, for example—are the most certain measures of industrial output because they capture, by definition, actual manufacturing activity within the plant. But using these measures to project future output in 70 to 100 industries would be unnecessarily complex. In the past few years, states have chosen to project economic changes using the following indicators, specific to a target group of 4-digit SIC industries:

- Total employment;
- Production employment;
- Value added by manufacture;
- Value of shipments; and
- Personal income from manufacturing (wages).

States should choose the indicator that most closely approximates in-plant industrial activity, and for which adequate data is available. None of the

indicators above are perfect in this respect but some are better than others. Availability of the data may be the overriding factor influencing the state's decision.

Value of shipments, for example, is routinely reported in national aggregate statistics and at the individual plant level. But this measure does not distinguish between manufacturing and inventories as the source of shipments. Waste generation would be overestimated, for example, if waste was normalized to data that represented shipments from inventories instead of production, since actual production levels (and, hence, waste) in that year would be lower than shipments would indicate. In addition, the double counting associated with cross-shipments in value of shipments data may account for overestimates of plant activity.

Total employment also is routinely reported in national statistics and by individual plants, but changes in employment can misrepresent manufacturing activity if management and production employment change at different rates. In addition, waste generation estimates based on employment will be significantly overestimated if a company headquarters, representing largely management as opposed to production labor, constitutes a significant share of total employment within a given SIC code.

Value added closely parallels manufacturing activity because this measure avoids the problem of inventories associated with value of shipments data. These data are more limited, however, as the national level and they are rarely reported by individual manufacturing establishments.

While production employment is an input measure of manufacturing and not an output measure, it remains a good overall indicator insofar as it parallels manufacturing activity and is generally available at the 4-digit SIC code level regionally. It is important to account for changes in labor productivity, however, in projections of waste generation as a function of production employment. As industries automate, the ratio of waste per production employee may change, leading to over- or underestimates of future waste production if these adjustments are overlooked. In general, as labor productivity increases (the output per production employee rises), more waste will be created per employee in future years than in the baseline year.

Personal income from manufacturing, or simply wages, is another good overall indicator of plant activity. Estimates of personal income from manufacturing are available in national aggregate form, by 4-digit SIC code, and by state.

Sources of Data. The U.S. Department of Commerce (Bureau of the Census) and the U.S. Department of Labor (Bureau of Labor Statistics) collect and publish historical data on value of shipments, value added, total employment, production employment and income from manufacturing at the 4-digit SIC code level, by state or by county. At a minimum, all states can use these data to project future trends based on trends over the past five years. Alternatively, the Bureau of Industrial Economics prepares similar projections for groups of 4-digit SIC industries for the nation as a whole in its annual publication, *U.S. Industrial Outlook*. States can adapt these national projections if they so choose or they can adjust them with state-specific data. The Bureau of the Census' publication, *County Business Patterns*, provides a source of historical data on employment and sales, by industry and by county. Projections of personal income from manufacturing by SIC code and state through the year 2000 are available through the U.S. Bureau of Labor Statistics. Similar projections at the state level may be available from state agencies responsible for employment or labor trends.

Typically, a state economic development office or office of the Governor responsible for revenue projections will prepare its own forecast of industry growth. These productions may be incorporated directly into capacity assurance projections.

Reporting Projections. States should report the results of hazardous waste projections attributable to economic change in column A of Worksheet V–1. A separate Worksheet should be presented for each projection year.

Documenting Projections. States should develop narrative support for the projections of waste generation and demand for management types presented in Worksheet V–1. In particular, the narrative documenting the effects of economic change should explain how growth factors were applied to project waste.

Incorporating the Effects of Waste Minimization

States have the option to reduce demands for waste management capacity in 1989, 1995, and 2000 by promoting waste reduction and projecting its effects. Plans for implementing and accounting for such activities must be documented in Chapter IV. In that chapter, states must identify two key parameters of their waste reduction adjustments: (1) Target percent or tonnage reductions by waste type, and (2) a schedule over which these reductions are expected to take place. In this chapter, states must show how the factors developed in Chapter IV have been incorporated in their projections.

The most straightforward approach is to adjust the expected waste quantities generated in a target year by the quantity expected to be reduced through waste reduction. A simple narrative explanation of how waste reduction factors were applied should be included to support the adjustments made in column B of Worksheet V–1.

Incorporating the Effects of Regulatory Changes on Waste Generation

EPA anticipates that changes in regulations over the projection period will affect both waste quantities (the demand for waste management capacity) and the allowable alternatives for management. Both are expected to affect a state's ability to assure adequate capacity. This section identifies the extent to which states should include the effects of regulatory changes on projections of waste generation. A subsequent section addresses the effects of regulatory changes on capacity supply and on the allowable matching of waste types to management categories.

The effects of regulatory changes on the demand side should be incorporated in column C of Worksheet V–1. Regulatory effects on waste generation also should be documented separately in a narrative statement.

Because of the uncertainty in projecting these effects over a 20-year period, EPA expects the states to account for regulatory change only to the extent that the Agency has published and can make available to the states its Regulatory Impact Analysis (RIA) for each rule, as of October 1, 1988. The RIA will describe likely quantitative effects on waste generation and consequent demands for management technologies. The following is a list of rules that EPA expects to have an impact on capacity assurance, and for which publication of an RIA is expected by October 1.

Land Disposal Restrictions, First Third. Should affect virtually all listed and characteristic wastes and, by extension, all industries generating them. Expected to shift the management of certain waste streams away from land disposal and toward incineration and other treatment options. Also expected to stimulate waste reduction.

Treatment standards must be promulgated by May 8, 1990.

New Listings. Should expand the number of waste streams under regulation; six new wood preserving waste streams will be proposed in September 1988, including two wastewater streams (1.1 million tons/year) and four process streams (45,000 tons/year); two new waste streams to be added in summer 1988 from methyl bromide manufacture (amounts confidential); one new waste stream from petroleum refining to be added in 1988 (200,000 tons/year).

States should estimate the additions (or deletions) to regulated waste volumes attributable to the above rules and record these results in Column C of Worksheet V–1.

Projecting Non-Recurrent and One-Time Only Waste Generation

Non-recurrent waste generation can result from periodic industrial operations (boiler and other process unit maintenance) and RCRA and CERCLA corrective actions and cleanups. Waste generated from these sources—while possibly significant—are much more difficult to project than waste from continuous industrial processes. In the long run, the demand for capacity imposed by one-time wastes may be less important to capacity assurance than the demand imposed by recurrent wastes. Separating one-time from recurrent wastes, therefore, should be in the state's best interest.

EPA recognizes that data for projecting the generation of one-time waste are generally less available and less reliable than data on recurrent waste generation. This section describes possible methods that states may use to make such projections, given current data inadequacies. States are encouraged to develop alternative methods to project one-time waste generation and to fully document their assumptions and procedures.

While data may not always be available to support realistic calculations, states—at a minimum—should attempt to estimate RCRA-hazardous waste produced from the following classes of activities:

- Site remedial actions (from federal Superfund and state clean-ups);
- RCRA corrective actions;
- Underground storage tank cleanup; and
- Site remediation as a result of real estate transfer statutes.

The projected sum of all non-recurrent waste quantities should be reported by waste type in column D of Worksheet V–1 (one worksheet for each projection year). Calculations should be documented in a separate narrative.

Notice of Corrective Actions to Receiving State

To assist states in accounting for the amounts of CERCLA corrective action waste imported into their state, the EPA will inform the recipient state regarding its intention to fund remedial actions and immediate removals that will cause wastes to be shipped to that state. This information will include the source of waste, waste quantity, waste characteristics, proposed treatment or disposal facility to receive waste, and anticipated shipment date. This information will be provided to the recipient state's environmental regulatory agency at least 45 days in advance of the anticipated shipment date. This action will allow the recipient state an opportunity to comment on the consistency of the removal with both the exporting state's CAP and its own plan.

Site Remedial Actions

For many Superfund sites, estimates of the quantities of contaminated site wastes (soils and groundwater) that may require off-site treatment and disposal are available in Records of Decision (RODS). Where RODS have not yet been prepared, more limited information regarding quantities likely to be encountered at Superfund sites may be available in Remedial Investigations, Feasibility Studies, or Hazard Ranking System listings. These documents are available for review in EPA's 10 regional offices. The annual volume of wastes to be removed from these sites is largely a function of the extent of contamination (and hence the decision to ship waste off-site or handle it on-site) and rate of expenditures for site cleanup activities. EPA recognizes that these estimates will be highly uncertain, especially for those sites without approved RODs or for state cleanup sites without comparable documentation.

Where data permit, states should prepare a list of all federal and state Superfund sites for which reliable estimates of the quantity to be handled is available and estimate a time interval over which actual remedial work will be completed. Such estimates may be best made by the State Superfund office or the EPA regional Superfund coordinator. For each site, prepare a listing of the contaminants that predominate and match them as closely as possible to one (or more) of the 17 capacity assurance waste categories. Much of this information should be available in site investigation and decision documents referenced above. In the absence of such information, exclude this site from further consideration.

States should then estimate the quantity of Superfund waste expected to be handled off-site at in-state facilities versus that quantity to be exported. Superfund waste shipped off-site must be manifested like any other waste stream regulated under RCRA. An analysis of current waste manifests may be used to project future in-state handling from exported Superfund waste. Regardless of how states make this estimate, however, it should be fully documented with descriptions of procedures and explanations of assumptions.

RCRA Corrective Action Sites

States should assemble the following information:

(1) From the regional EPA office or the state RCRA permitting office (depending on your state's authorization), compile a list of potential RCRA sites that will require corrective action (be sure to include corrective action as a condition of obtaining a Part B permit plus corrective action as a condition of closure). In most cases, states will be unable to estimate waste quantities or waste volumes to be removed unless a Corrective Measures Study (CMS) has been prepared. The Agency recognizes that as relatively few corrective action sites have progressed to the CMS stage (several years may elapse before a potential site has been fully evaluated), states may be limited in their ability to incorporate the effects of RCRA corrective action into their 1989 CAP. In the absence of these data, states may wish to assume that a proportion of RCRA facilities will require corrective action and document that assumption to the best of their ability.

(2) Estimate the amounts and timing of expected on-site management demands and off-site demands using methods described above for Superfund site estimates.

(3) Estimate the proportion of off-site waste expected to be shipped to in-state facilities and that shipped out of state using information on waste manifest forms. In the absence of an historical record of shipments from RCRA corrective action sites, the states should assume that all removed material will be shipped to in-state facilities, if they now exist. Otherwise assume that they will be exported.

Underground Storage Tanks

While they are regulated separately, corrective action requirements for releases from tanks containing petroleum or hazardous substances are

similar to other cleanup requirements—visibly contaminated soils must be removed. If residual contamination of groundwater or surrounding soils persists, additional cleanup is necessary. Actual levels of cleanup are determined on the basis of site-specific environmental risks and potential exposure. States should include estimates of RCRA-hazardous waste quantities likely to be generated as a result of underground storage tank remediation, only if sufficient data are available. The types of data needed include:

- Inventory of tanks subject to regulation
- Statistics on leakage rates, preferably by type of tank
- Characterization of tank inventory by contents (gasoline, solvents, other organics, inorganics)
- Field estimates of extent of contamination. If these data are available, states should estimate quantities and timing of demand for waste management services using methods similar to those presented for estimating Superfund demands.

Site Remediation from Real Estate Transaction Laws

If applicable, states should include estimates of RCRA-regulated waste generated from site remediation pursuant to state real estate transfer statutes (i.e. New Jersey's ECRA statute) based on trends in past rates of generation, if such data are available.

Total Projected Demands

States should record the sum of columns A through D in column E of Worksheet V–1. This quantity represents the total projected demand for waste management capacity without consideration for the location of handling or of the effects of imports or exports.

Matching Waste Types to Management Categories and Incorporating the Effects of Regulatory Change on Capacity Supply

Total demands for waste management capacity should be brought forward from Column E of Worksheet V–1 and distributed among the 15 waste management categories in Worksheet V–2 in such a way that none of the rules expected to be in place in each projection year would be violated. Most untreated liquid and sludges, for example, should be banned from land disposal by 1995; thus, no waste of this nature should be matched with land disposal in Worksheet V–2, unless it first undergoes some treatment. States should briefly describe the assumptions behind their projected matches of waste types to management categories.

States also should estimate the demand for RCRA capacity imposed by non-regulated waste. EPA will provide estimates of these data as of 1986 from the TSDR Survey. States can hold this level of demand steady over the projection period or adjust it up or down, consistent with state policies on the proper handling of non RCRA-regulated waste. These entries should be documented in a separate narrative.

Projecting Efforts. States may show level, reduced, or increased exports (relative to 1987 levels) in the final column of Worksheet V–2, to the extent that they do not violate the "reasonableness" criteria of Appendix A. EPA will assume that the pattern of exports (the states to which different quantities of exports are sent) in the projection years will remain the same as the pattern of exports in 1987 as noted in Worksheet III–7. If a state believes that this pattern will change in any projection year, a narrative statement should accompany worksheet V–2, explaining the changes. For example, a state might enter into an agreement with another state that changes the pattern of export flows to that state, as reflected in both states' CAPs.

Worksheet V–3 is similar to V–2, except that it asks states to determine the effect on management capacity of all projected in-state waste, including exports. The results of both Worksheets will be used to estimate capacity need in Worksheet V–4.

Calculating Hazardous Waste Management Capacity Needs

Using Worksheet V–4, states must determine the amount of management capacity potentially needed in the state over the next 20 years. In determining these needs, the state must make adjustments to account for on-site and captive handling and describe assumptions on waste imports and exports.

Adjustments for On-Site and Captive Handling

For purposes of assuring capacity, states can assume that all waste (or the proportion of total waste) currently managed on-site will continue to be managed on-site, unless the state believes regulatory changes or market forces will alter this pattern. If such shifts are anticipated, states should document the assumptions leading to this conclusion. Similarly, states can assume that all waste (for the proportion of total waste) now handled in captive facilities will be handled in captive facilities in the projection years.

In either case, states should retrieve the appropriate data from Chapter III, Worksheets III–3 and III–4 and present their best estimate of on-site and captive handling in Worksheet V–4 (a separate worksheet for each projection year). The first row of Worksheet V–4 should be brought forward from the column totals of Worksheets V–2 and V–3.

Projecting Commercial Capacity Needs

States should calculate their potential need for additional in-state waste management capacity using the top block of rows in Worksheet V–4.

These calculations use the demand projection figures obtained from Worksheet V–2, which subtract the quantities of waste projected to be exported by the state (see "Projecting Exports," page V–7). To calculate "Total Demand With Imports, Excluding Exports," total demand estimates first must be transferred from the last row of Worksheet V–2 (for each appropriate projection year). Capacity demand directed to on-site and captive facilities next must be subtracted (see discussion above), and demand due to projected waste imports must be added.

Projecting Waste Import Demand. States may hold imports constant to 1987 levels—or allow them to grow—in their demand projections without providing additional narrative to EPA. If imports are shown to decline. The assumption of declining imports would be acceptable if it corresponds with CAP of the state exporting the waste, or if it is based on the importing state's assumption that export practices from other states will change over time in accordance with the process of Appendix A. If an assumption of declining imports is not supported by other states' CAPs, then the importing state must fully document the basis of its assumption.

Final Calculation of Demand. In estimating final demand, states may claim all available capacity projected as available through 1989, based on their analysis in Chapter III. Data on 1989 commercial capacity should be obtained from Worksheet III–6. The predicted 1989 commercial capacity should be subtracted from the total commercial demand figures in Worksheet V–4 to obtain an estimate of capacity shortfall (or excess) in each projection year. These figures will form the basis of capacity need plans as described in Chapter VI.

Calculating the In-State Capacity Balance. The bottom block of rows in Worksheet V–4 are used to calculate the balance of total in-state commercial capacity (excluding import demand)

against total in-state waste generation (including potential waste exports). To complete these calculations, states first should transfer the demand estimates from Worksheet V–3 (for each appropriate year) to Worksheet V–4 (for each appropriate year). Subsequent calculations then are similar to those described above (for the top block of rows), except that import effects are neglected.

The result of these calculations will be used by EPA to assess the effect of waste imports and exports on the commercial capacity contained in each state. They will not be used as a basis for assessing future need.

Plans to Address Capacity Shortfalls

States that show an excess of management capacity in Worksheet V–4 for the projection years 1989, 1995, and 2009 are not required to present plans for addressing capacity shortfalls. These states must only supply brief information in Chapter VI.

States that show a shortfall of management capacity in Worksheet V–4 for projection years 1989, 1995, and 2009 must describe their procedures in Chapter VI to create new capacity through either new or expanded facilities in the state. States may choose not to meet the entire shortfall by creating new capacity. In this case they must revise their numbers for waste minimization (Chapter IV) and waste exports and recalculate Worksheet V–4.

WORKSHEET V–1.—SUMMARY OF IN-STATE WASTE QUANTITIES PRODUCED IN PROJECTION YEAR ——

[All in tons/year]

Management Technology	Projected Demand From Recurrent Waste Generation A	Adjustment of Waste Reduction B	Adjustment of Regulatory Change C	Demand from One-Time Waste D	Total Demand (A+B+C+D) E
1. Contaminated Soil					
2. Halogenated Solvents					
3. Nonhalogenated Solvents					
4. Halogenated Organic Liquids					
5. Nonhalogenated Organic Liquids					
6. Organic Liquids, NEC					
7. Mixed Organic/Inorganic Liquids					
8. Inorganic Liquids with Organics					
9. Halogenated Organic Solids/Sludges					
10. Nonhalogenated Organic Solids/Sludges					
11. Organic Solids/Sludges NEC					
12. Inorganic Liquids with Metals					
13. Inorganic Liquids, NEC					
14. Inorganic Solids/Sludges with Metals					
15. Inorganic Solids/Sludges, NEC					
16. Mixed Inorganic/Organic Solids/Sludges					
17. Other Wastes, NEC*					
Total					

*Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams invidually on a separate line if their waste quantity exceeds 5 percent of the total stated waste quantity.

Note: NEC=not elsewhere classified.

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Worksheet V–2:

Demand for Waste Management in Projection Year ____
After All Adjustments

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	EXPORTS	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
Non-RCRA Waste																		
TOTAL																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

Worksheet V-3:

Demand for Waste Management Capacity from All (Including Exports) In-State Generation in Projection Year _____

WASTE TYPES	MANAGEMENT CATEGORIES																
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	TOTAL
Contaminated soil																	
Halogenated solvents																	
Nonhalogenated solvents																	
Halogenated organic liquids																	
Nonhalogenated organic liquids																	
Organic liquids, NEC[a]																	
Mixed organic/inorganic liquids																	
Inorganic liquids w/organics																	
Halogenated organic solids/sludges																	
Nonhalogenated organic solids/sludges																	
Organic solids/sludges, NEC																	
Inorganic liquids w/metals																	
Inorganic liquids, NEC																	
Inorganic solids/sludges w/metals																	
Inorganic solids/sludges, NEC																	
Mixed organic/inorganic solids/sludges																	
Other wastes, NEC[b]																	
Non-RCRA Waste																	
TOTAL																	

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

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WORKSHEET V–4.—SUMMARY OF DEMAND FOR COMMERICAL HAZARDOUS WASTE MANAGEMENT CAPACITY IN PROJECTION YEAR

	Waste Management Category						
	Thermal Destruction (all in tons/year)			Final Disposition			
	Liquids Incineration	Solids Incineration	Energy Recovery	Land Treatment (in tons/year)	Deepwell Injection (in tons/year)	Landfill (tons)	Other disposal
Total Demand with Imports, Excluding Exports – waste handled on-site – waste handled in captive facilities + waste imports = Demand for Off-Site Commercial Waste Management Capacity – commercial capacity available 1989 = Estimated Capacity Shortfall (if positive) Estimated Capacity Remaining (if negative)							
Total Demand Excluding Imports, Including Exports – waste handled on-site – Waste handled in captive facilities = Demand for Off-Site Commerical Waste Management Capacity – commercial capacity available 1989 = In-state Capacity Balance							

WORKSHEET V–4 (CONTINUED).—SUMMARY OF DEMAND FOR COMMERICAL HAZARDOUS WASTE MANAGEMENT CAPACITY IN PROJECTION YEAR ——

	Waste Management Category							
	Reuse/Recovery (all in tons/year)			Treatment (all in tons/year)				
	Metals	Solvents	Others	Organic *	Inorganic *	Sludge	Stabilization	Other
Total Demand with Imports, Excluding Exports – waste handled on-site – waste handled in captive facilities + waste imports = Demand for Off-Site Commercial Waste Management Capacity – commercial capacity available 1989 + Estimated Capacity Shortfall (if positive) Estimated Capacity Remaining (if negative)								
Total Demand Excluding Imports, Including Exports – waste handled on-site – waste handled in captive facilities = Demand for Off-Site Commercial Waste Management Capacity – commercial capacity available 1989 = In-State Capacity Balance								

*Note: Separate reporting for aqueous inorganic and aqueous organic treatment is optional in 1989, but mandatory in and there after.

Chapter VI—Documenting State Plans for Increasing In-State Capacity

Purpose

This chapter requests information on each State's procedures that affect or facilitate the development of hazardous waste management capacity. Because the CAP addresses a 20 year timeframe, most states will not have adequate capacity in-place today to handle all the hazardous waste generated over the next 20 years, making it necessary for States to document their procedures to allow or facilitate capacity development.

Chapter V of the guidance document asked each state to summarize their projected need for hazardous waste management capacity over the next twenty years, after taking into account waste minimization efforts and waste exports. All states showing a shortfall in their hazardous waste management capacity in their projection years must describe their plans for addressing this shortfall through their facility siting process and their procedures to process existing facility expansion applications. States projecting hazardous waste capacity shortfalls within the projection period through 1995 also must report key interim and final siting milestones, such as site designation, permit submission, permit approval, and expected construction start.

General Instructions

To complete the requirements of this chapter, states should respond to the questions contained in the attached forms. States should copy and complete the appropriate forms and include them in the CAP. Additional documentation should be included as needed.

Not all forms must be completed. States that project sufficient capacity through year 20 must only complete

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Form I, "General Siting Description". This form requests general information on state procedures that affect or facilitate the development of new hazardous waste capacity. It covers such items as the state's general siting process, preemption and override authority of local and state government, and laws that restrict the operation or configuration of a facility.

States that project a capacity shortfall in any projection year after taking into account waste minimization and waste exports must complete both Form I and Form II, "Capacity Development Plans", requests a more detailed description of topics covered under Form I.

Finally, those states that project a shortfall in 1989 or 1995 must complete all forms up through Form III, "Milestones and State Review". This form requests information on the state's anticipated progress in meeting its shortfall.

A glossary of the terms used in this Chapter is contained in the Definition Section at the end of the chapter. In addition, technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

Evaluation Criteria

The EPA recognizes that many different state approaches exist for planning and overseeing the development of new hazardous waste management capacity. Each state has and probably will employ a different strategy to ensure that it has adequate capacity now and in the future. The Agency therefore will focus its evaluation on two key areas:

- the ability of a state program to allow or facilitate the development of adequate capacity when needed; and,
- The degree of a state's reliance on out-of-state capacity as a substitute for developing in-state capacity.

If a state has shown in Chapter V that it plans to construct new capacity to meet projected needs, EPA will evaluate the ability of a state program to meet the expected shortfall. Because the Agency recognizes that states can do many things to promote, facilitate, or simply allow the development of new capacity, the Agency will concentrate its review on items that may indicate a flawed program or that actually hinder siting. Practices or policies that may either hinder new capacity development or indicate program difficulties include the following:

- A state siting process that is subject to strong local preemption powers not firmly gounded in environmental, health, and safety concerns. An inability of the state to appeal or rectify such preemption.
- The absence of a siting program having clearly defined steps and procedures. A lack of sufficient opportunity for public review and comment. The absence of clear time lines between permit review, comment, and approval or denial.
- The enactment of rules that may be viewed as discriminatory, such as placing limits on facility size, type of waste allowed at the facility based on origin of the waste, or outright prohibition of waste management facilities if not based on environmental, health, and safety concerns. (This would not include limitations that may be agreed to by the facility developer and the host community as part of siting process negotiation.)
- A state having sufficient demand for new hazardous waste capacity accompanied by a history of failed siting efforts.

The Agency also will examine the states reliance on out-of-state hazardous waste management capacity to determine if it conflicts with the requirements set forth in Appendix A.

Form I: General Siting Description

All states must fill out this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent _____
Telephone number _____
Address _____

1. Does your State have a formal hazardous waste management facility siting process in addition to the RCRA permitting process?
—Yes —No?
If Yes,
1a. What are the titles of the legislative authorities and when were they enacted?

2. Does your State have a siting agency that is distinct from the RCRA regulatory agency?
—Yes —No?
If Yes,
2a. What are the titles of the legislative authorities and when were they enacted?

3. Please describe (in a brief narrative) the procedure used to review facility applications, select sites (if applicable), review permits, and provide public comment. Please indicate the time required to complete major steps, such as the time required between permit application and approval/denial. Include an explanation of the appeals process available to the siting applicant, the host community, and siting opponents. (Where applicable, please note how a particular activity differs for expansion of existing facilities compared to siting of new facilities. If the process is significantly different for new sitings and expansions, please prepare two separate descriptions.)

3a. If possible, please construct a flowchart showing the major steps of the siting process as described in your narrative. Where known, indicate the time necessary for an application to proceed through each required step. (See example contained in back of this chapter.)

4. Please describe (in a brief narrative) the outcome of recent siting applications since 1986.

5. The following questions address basic laws and rules that may affect the siting or expansion of new facilities. When answering the following questions, please note the relevant law or rule (if applicable) and briefly describe any special circumstances or constraints that apply.

5a. Do local governments in your State have the authority to approve RCRA permits?
—Yes —No?
If Yes, please list the applicable regulation or authority.

5b. Do local governments in your State have the power to prohibit facility siting by the use of zoning ordinances?
—Yes —No?
If Yes, please list the applicable regulation or authority.

5c. Does your State have the power to override local zoning authority and/or preempt local zoning powers?
—Yes —No?
If Yes, please list the applicable regulation or authority.

5d. Does your State have the power to override and/or preempt any other local authorities that could prohibit or restrict capacity development?
—Yes —No?
If Yes, please list the applicable regulation or authority.

5e. Are there State restrictions on the size or number of new or expanded facilites?
—Yes —No?
If Yes, please explain.

5f. Does the State allow facilities to be built that have greater capacity than that needed to treat in-State waste?
—Yes —No?
If No, please explain.

6. The following pertain to laws and regulations that affect interstate transportation of hazardous waste.

6a. Does your State assess a fee on the generation of hazardous waste?
—Yes —No?
If Yes, please explain.

6b. Does your State assess a fee for the treatment or disposal of hazardous waste?
—Yes —No?
If Yes, please explain.

6c. Does your State have the power to establish differential fees on waste that is imported for treatment and/or disposal?
—Yes —No?
If Yes, please explain.

6d. Are any limits placed on the size of the differential fee?
—Yes —No?
If Yes, please explain.

6e. Do local or county governments have the power to establish differential fees on waste that is treated and/or disposed of in their jurisdiction?
—Yes —No?
If Yes, please explain.

7. In addition to the CAP, has the State conducted a needs assessment?
—Yes —No?
7a. Does your State plan to use the CAP to assess need?
—Yes —No?
7b. If not, what do they plan to use to determine the need for new facility capacity?

8. Does the needs assessment indicate a potential shortfall (in commercial capacity)?
Projection Year 1989 —Yes —No
Projection Year 1995 —Yes —No
Projection Year 2009 —Yes —No

If You Answered Yes to Any Part of Question 8, You Must Complete Form II.

Form II. Capacity Development Plans

Only those states that project a capacity shortfall in any projection year must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent _____
Telephone number _____
Address _____

1. How much new commercial facility capacity will be needed by 1989, 1995, and 2009 to meet the shortfall anticipated for hazardous waste management capacity? See Worksheet VI–1.

2. How does your State intend to develop new in-State capacity as identified in its needs assessment?
—By siting new facilities
—Through the expansion of existing facilities
—Both
—Other, please explain

3. If you intend to meet new capacity needs by increasing waste exports beyond the 1987 levels, please explain why. Please indicate whether such plans are based on management planning efforts with other states, industries increasing exports to captive facilities, any environmental or economic considerations that restrict development of in-State capacity, or projections of current patterns.

3a. Have you contacted states that now receive your waste exports prior to completing your CAP?
—Yes —No?
3b. If Yes, will the CAPs of these states reflect your projected export patterns?
—Yes —No?
Please list the states that you have contacted.

3c. Are you participating in a multi-state hazardous waste management planning effort?
—Yes —No?
3d. Please list the participating states.

4. Does your State have siting criteria?
—Yes —No?
If Yes, please attach information describing your siting criteria.

5. Are any of the following methods used in your State to select sites or encourage site development (check all that apply)?
—State selection of specific site
—State purchase of specific site
—State inventory of suitable sites
—Private nomination of site
—Local nomination of site
—Permit fast tracking
—Other, please list:

6. How is the public allowed to participate in the siting process in order to affect the siting decision?
—Adjudicatory public hearings
—Informational public hearings
—Local advisory committee
—Local representatives on siting board
—Other, please explain

7. Is financial assistance provided to the local community to allow it to review the siting application and conduct an environmental or health assessment?
— Yes — No?
If Yes,
7a. Who supplies the funds?
—State
—Siting applicant
—Other, please explain

7b. What is the maximum amount of funding a community may receive?
$———
7c. Are there any restrictions on the use of the funds?
— Yes — No?
If Yes, what are they?

8. Does your State use negotiation in its siting process?
— Yes — No?
If Yes, please explain.

9. Are dispute resolution procedures used in your State to settle differences on siting issues?
— Yes — No?
If Yes, please explain.

10. Is compensation to host communities used in your State?
— Yes — No?
If Yes, please explain.

10a. Who is responsible for providing the compensation?
—The site developer
—The State
—Other, please explain

10b. What type(s) of compensation is used?
—Cash payments
—Fees based on waste management activities
—Insurance
—Emergency training and equipment
—Operating concessions
—Other, please list:

11. Is your State authorized to build and/or operate a hazardous waste management facility?
— Yes — No?
If Yes, please explain (also please indicate if you presently own or operate any facilities).

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States Projecting a Capacity Shortfall in 1989 or 1995 Must Complete Form III, Milestones and State Review.

States Only Projecting a Shortfall in 2009 Stop Here.

Form III: Milestones and State Review

Those states that have projected a shortfall for 1989 or 1995 must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please copy this form if more space is needed to describe your State's milestones.

Name of Respondent _____
Telephone number _____
Address _____

1. States must complete a schedule of capacity development milestones for each type of management capacity needed. These milestones should reflect key decision dates for different types of capacity. It is not necessary to list specific facilities. Please use Worksheet VI–2 to report these milestones. However, states should also include milestones for approval of RCRA Part B permits for established facilities now operating under interim status.

The schedule of milestones in Worksheet VI–2 can include any steps in the State siting process that would indicate the development of needed capacity. For example, states with developed programs could define their milestones by specifying dates by which the following activities should be completed:

- Enter in a multi-state hazardous waste planning effort.
- Designation of candidate sites.
- Letter of intent to develop a facility from a private party (or equivalent commitment from a public entity).
- Identification of host community.
- Permit submission.
- Draft permit approval.
- Final permit approval.
- Construction start.
- Operation start.

States without a formal siting program also should report the above activities. However, they also may indicate key milestone dates for developing their own siting program. This would include activities such as the following:

- Passage of siting legislation.
- Establishment of statewide siting criteria.
- Creation of a State board or authority.
- Development of siting regulations.

States are not restricted to the program elements suggested here, but are encouraged to achieve a level of specificity in defining milestones.

2. What are the likely measures your state will take if you do not meet an anticipated milestone?

—The State will become more active in capacity development

—The State will change its siting process

—The State will temporarily increase exports

—Other, please explain

_____

_____

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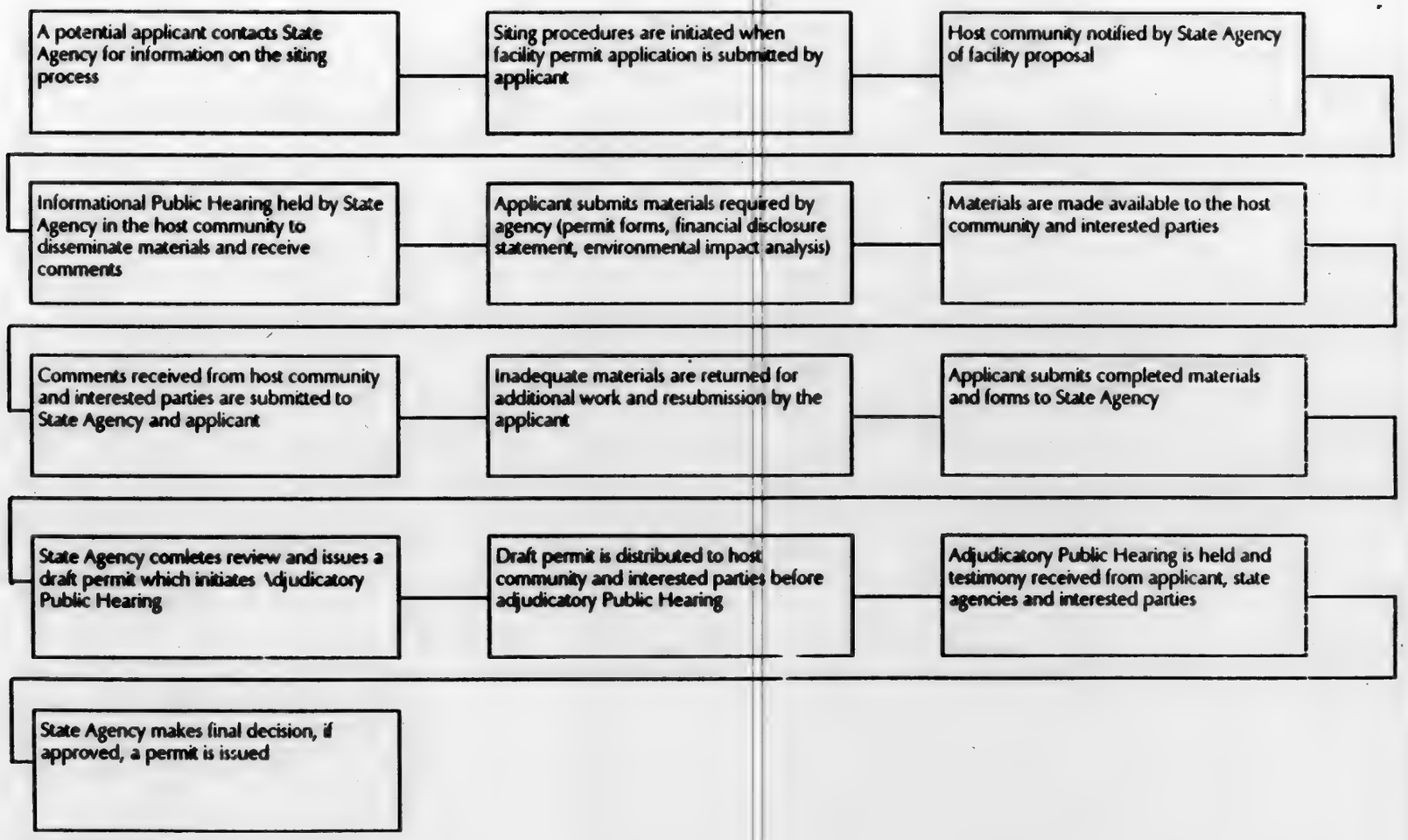
SITING PROCESS FLOWCHART

(See Form I, Question 3a.)



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WORKSHEET VI-1.—TYPE OF MANAGEMENT CAPACITY NEEDED

[Tons per year]

Waste Management Categories	Projection Years		
	1989	1994	2009
1. Metals Recovery			
2. Solvents Recovery			
3. Other Recovery			
4. Incineration: Liquids Only			
5. Incineration: Solids/Sludges			
6. Energy Recovery: Kilns, Boilers, Furnaces			
7. Aqueous Inorganic Treatment			
8. Aqueous Organic Treatment			
9. Sludge Treatment			
10. Other treatment			
11. Stabilization			
12. Land Treatment			
13. Landfill			
14. Deep-well Injection			
15. Other Disposal			

WORKSHEET VI-2.—CAPACITY MILESTONES

Type of management capacity (from list of 15 categories):	
Date	Milestone Description

Definitions Section

Siting Process. This encompasses all elements of screening and evaluation involved in gaining approval for a specific hazardous waste facility at a specific site. The process includes site selection (when required), application for the various required state, national, and local permits, review of those applications by the appropriate government agencies in accordance with criteria previously specified, hearings, other forms of public involvement where applicable (local advisory committees, negotiation), submission and review of application amendments and revisions, and final decision (approval or denial of the application).

Siting Criteria. These are constraints and guidelines specified by each state for evaluating the suitability of individual sites proposed for hazardous waste management facilities. These criteria can include outright prohibitions against siting facilities in certain environments (in 100 year flood plains) or can be more general and list the variables that should be taken into consideration in evaluating proposed sites (population density and evacuation plans).

Milestone. This is a task or achievement to be accomplished by a specific point in time. Milestones can be stated quantitatively, such as tons of incineration capacity in operation by a certain date, or can be described qualitatively as unique policy components, such as implementation of certain defined procedures in a state siting program by a specified date.

Needs Assessment. This is an evaluation of current and future needs for hazardous waste management capacity. An assessment includes estimation of current and projected future waste generation, evaluation of current and imminent capacity, and calculation of capacity shortfalls or needs for increased management capacity. It may also include an analysis of current and suggested state policies in hazardous waste management. A needs assessment provides a basis for state planning for future hazardous waste management, helping the state to choose among alternative approaches to satisfying demand for sound management capacity, and publicizes the state's market needs to private sector suppliers. A needs assessment is a statement of the state's position in waste management and does not necessarily lead to the state's active involvement in capacity expansion or site selection.

Negotiation. This consists of mediated and nonmediate interactions between the proponents of a specific hazardous waste management facility and representatives of the host community and other communities that are likely to be affected by the proposed facility. Negotiation can entail clarification and resolution of issues and concerns, development of alternatives, and specification of compensation and mitigation measures accepted by both parties.

Compensation. This includes services and payments made to a host community and other affected communities to help allay burdens imposed by their proximity to a harzardous waste management facility. Compensation can be cash payments (a given payments per ton processed) or provided in-kind (free clean-up of public hazardous waste spills, company maintenance of access roads).

Mitigation. These are measures implemented to minimize the impact of a hazardous waste facility on the surrounding population and the environment. Whereas compensation is meant to balance burdens, mitigation is intended to reduce the burdens carried by host and nearby communities. Mitigation includes restrictions on operating hours and procedures, limitations on types and volumes of waste accepted, stricter engineering specifications, and construction of additional safety features.

Preemption. The state has the authority to make a decision in an area normally reserved for local or county government. That is, the state substitutes its authority for local or county authority in a specified policy area so that a decision normally left to a lower level of government is taken at a higher level of government which is not required, under preemption, to defer to local preferences.

Override. The state has the authority to overrule a decision made at a lower level of government. With regard to hazardous waste management, the local jurisdiction first evaluates the case and makes a decision; this decision can then be appealed to the higher authority which has the right to overturn the decision if it feels justified.

Facility Expansion. This is any increase in capacity of an existing hazardous waste facility. This can refer to contruction of plant additions or substitution of new equipment for older equipment with a concomitant ability to handle greater volumes to waste.

Siting Application. This is a request for state agency approval of a specific hazardous waste facility on a designated site. Application contains engineering specifications of the facility, description of wastes and technical processes, information on the developer, as well as environmental and geological description of the site and surrounding area.

Adjudicatory Hearing. This is a public hearing to gather evidence and arrive at a decision on a proposed facility, structured like a judicial review. Interested parties present evidence to influence the final decision and are generally subject to cross examination as part of the process. Based on evaluation of the evidence presented the hearing examiner rules on the suitability of the proposed facility (granting or denying a permit) or makes a recommendation to the permitting authority on whether or not the facility should be approved.

Informational Hearing. This is a public hearing for dissemination of information and airing of opinions on a proposed facility. Representatives of all interest parties can make presentations and discuss areas of concern; evidence

is collected and turned over to permitting authories for consideration; the hearing administrator presides and ensures proper procedures but does not rule on the proposed facility.

Appendix A.—The Interstate Agreement and EPA's Role in Analyzing and Resolving Interstate Issues

This appendix outlines the procedure through which states that claim the availability of out-of-state waste management capacity in their CAP can assure EPA of this availability. It establishes a system under which commercial management capacity will be available on a national basis to all states, but includes a process to correct possible failures of net exporting states' to reduce out-of-state waste shipments because of a current and projected lack of native waste management capacity (in the absence of economic and environmental reasons for its absence).

Summary

The process begins with the initial CAP submittal. Each CAP must be accompanied by the Interstate Agreement of Chapter II signed by the Governor of the state or designee. By executing the agreement, the Governor or designee indicates an awareness of the current status quo of interstate waste shipments; promises participation in the EPA process to plan, analyze, and address the interstate transport and disposal of hazardous waste; and confirms the state's willingness to carry out the activities described in the CAP. The Agency then will institute the following procedures to address interstate waste management issues:

1. After submission of the CAPs in October 1989; EPA will prepare and publish a national analysis of the current and projected interstate waste flows contained in each states' CAP.

2. Based on the results of the first CAP submissions, EPA will refine the reasonableness criteria set forth in this appendix and publish them for review and comment. The reasonableness criteria will be used, in part, to identify states showing high levels (in net terms) of waste exports possibly due to capacity shortfall in the exporting state. States may be in "violation" of the reasonableness criteria if their export volumes are encouraged by state policies, if they are sufficient to support the development and operation of a commercial facility (for a particular waste stream), or if they result from state policies that discourage the creation of in-state management capacity. Violations would not apply to states that have entered into arrangements with other states supporting these export practices, that intend to lower waste exports through waste minimization or through new or expanded capacity, or that export waste in quantities not sufficient to support a commercial treatment or disposal facility. To help in the analysis of potential export violations, EPA will publish initial estimates of waste stream volumes sufficient to support development and operation of a new commercial management facility under acceptable practices. These estimates will be used as guidelines for further analysis and cannot, in themselves, be used to determine violations. Actual violations of the reasonableness criteria will be determined by EPA only, as described in Step 5.

3. A forum (or forums) to raise and discuss interstate issues will be convened under the auspices of EPA. This forum will be used to address the reasonableness criteria published by EPA and to identify those states that may be in violation. States will be encouraged to resolve possible violations by entering into multi-state planning efforts and by revising their initial CAP submissions. The nature of the forum (or forums) will be determined by EPA after publication of the initial CAP analysis and refinement of the reasonableness criteria.

4. If interstate issues between affected states cannot be resolved through discussion, a process for resolving such issues will be implemented under the auspices of EPA at the request of the states affected. This process may include third-party facilitation, mediation, arbitration, or other informal dispute resolution mechanisms.

5. States will be given an opportunity to revise their initial CAPs to correct possible violations of the reasonableness criteria identified in Steps 3 and 4. If, after a specified period of time, potential violations and disputes cannot be resolved, EPA—upon a petition from an affected state or on its own initiative—will conduct an adjudication (which may include fact-finding) to determine whether any state is engaging in actions violating the reasonableness criteria. If EPA concludes that the actions are not consistent with the reasonableness criteria, EPA will withdraw approval of the offending state's CAP, which may result in withholding of Superfund monies.

6. If a state continues to violate the reasonableness criteria, and such actions jeopardize an importing state's ability to assure capacity, the importing state eventually may take appropriate action to limit the offending quantity of waste from the exporting state. These actions would not be found to be "inconsistent" under RCRA if prior approval of such actions were obtained from EPA. EPA would allow such actions only under the most narrow of circumstances.

This above process only addresses issues relating to interstate transport and disposal of waste. Compliance with this section alone does not assure adequate capacity or complete a CAP submission. Other criteria also must be fulfilled (as listed in Chapter I) to fulfill the requirements of a CAP.

Background

Section 104(k) of SARA requires states to assure the availability of adequate waste treatment or disposal facilities which "are within the state or outside the state in accordance with an interstate agreement or regional agreement or authority". EPA interprets this provision as providing the Agency with discretion in defining an interstate agreement that would meet the requirements of the law. Such discretion is needed to construct an agreement that takes into account the following:

- States, for the most part, do not control the amount of commercial hazardous waste management capacity available. The amount and location of waste management capacity chiefly is determined by private market decisions, which include considerations of market volumes available to the facility. States, however, can influence these decisions to expand or build new capacity by supporting policies that may either hinder or facilitate the development of management capacity in that state.
- Some states are net exporters of hazardous waste while others are net importers. But virtually all states both receive and ship some hazardous waste. For the commercial hazardous waste management industry to operate most efficiently, unreasonable barriers to the interstate flow of waste cannot be permitted. (By "state", we mean chiefly the waste generation and management industry contained in the state. Governments create waste only if the waste is generated by a government facility or if it arises from government-funded cleanups.)
- Some states that receive substantial net imports of hazardous waste believe such imports may arise partly from practices in other states that hinder the creation of their own waste management capacity. These importing states believe greater pressure should be placed on the appropriate exporting states to create the needed capacity.
- Many net exporting states do not export in quantities sufficient to support

a commercial management facility. These states must rely on out-of-state capacity or be forced to construct uneconomical facilities. The requirement that such states build new management capacity to support their own waste to assure capacity would not be appropriate.

Problems of Requiring Each State To Execute a Formal Agreement With Another State

In developing an approach to assuring out-of-state capacity, EPA needed to reconcile the above practical concerns against the ostensible mandate of SARA Section 104(k)(9), which requires states relying on out-of-state capacity to do so pursuant to an interstate agreement or regional authority. While most states appear to be willing to accept the status quo of interstate waste management, few—if any—appear willing to sign unconditional agreements guaranteeing that they will hold their borders open to imports of hazardous waste. The reason for this is that such agreements would hold little promise that was volumes to the importing state would, in fact, be reduced over time. Instead, by not signing such an agreement, the importing state forces the affected exporting states to reduce their exports or face potential disapproval of its CAP and, thus, loss of Superfund monies. The result might be greater amounts of Superfund monies available to the importing states that can assure capacity.

Moreover, the failure of several key states to execute a binding agreement with the states that import waste to them eventually could undermine the effectuation of the provision. Most states, even net importers, export significant quantities of waste to other states. If only a few importing states refuse to sign such agreements, it could create a series of reactions that would be difficult to sort out. (For example, in 1986, Illinois received 68,587,000 gallons of waste from 42 states and sent 21,590,000 gallons of waste to 28 states).

Finally, coupled with the above considerations is the Agency's belief that barriers to interstate waste shipments also can undermine the intent of SARA 104(k)(9) by forcing states to manage all waste created within its borders, even when it is uneconomical to do so. Such a result would obviate the efficiencies of a national market for waste management. Yet, by requiring states to execute explicit "assurances" with each other, many states with small quantities of exports could be forced to create unnecessary management capacity if they cannot obtain agreements with importing states. The Agency did not wish to sanction a process that might encourage such a response.

The Benefits of Requiring States To "Sign On" to a Common Process That Assures Capacity

It was the judgement of the Agency that it was essential to bring all states fully into the program in a progressive way. The option chosen is to require states to enter into a process that results in equitable consideration of interstate issues. The agreement fashioned is one that places all states under a common system; the Agency believes the common principles that bind all states under the agreement would motivate all to sign. This is, in part, because the process associated with the agreement provides a fair mechanism for raising, discussing, analyzing, resolving, and adjudicating interstate disputes. However, to ensure that all states do sign, the Agency requires that the agreement be executed by all states exporting waste at any time over the 20-year projection horizon of the CAP. EPA considers this a necessary step toward submitting an approvable CAP.

While the agreement set forth in this Guidance is the minimum required agreement, it should be emphasized that more concrete bilateral or multi-state agreements are encouraged and are not precluded under this process. In fact, it is hoped that the process will facilitate states to engage in joint planning efforts which may eventually lead to regional agreements.

The process outlined in this appendix constitutes an attempt to reconcile all of the above-mentioned practical concerns. The process is intended to result in agreements regarding interstate movement of waste that are nonbinding between states, but satisfy the intent of the Section 104(k)(9). The consequence of failing to enter into the agreement or failing to abide by the process is that a state may lose funding under the Superfund cooperative agreements. No state can enforce the agreements other than by requesting that EPA take action. EPA's role will be to perform an initial analysis of the CAPs, refine the reasonableness criteria that will be used to assess the actions of significant exporting states, convene a forum for airing interstate issues, help set up informal mechanisms for resolving disputes, and, finally, act on petitions submitted by affected states where disputes cannot be resolved informally.

While EPA plans to facilitate the resolution of interstate issues, it will not micro-manage the disposition of waste or prescribe waste management practices in individual states. Instead, EPA's role will be limited to determining whether a state is acting in accordance with the reasonableness criteria and, if not, whether the CAP should be disapproved. If the CAP is not approved, EPA can withhold Superfund monies as appropriate. EPA also plans only to facilitate resolution of significant disputes, when large quantities of waste are being exported and when an exporting state is not meeting the milestones in its CAP or is otherwise taking action that encourages exports at the expense of creating additional capacity.

The only actions affecting waste movement and disposition that EPA guidance would recognize as valid (pursuant to the process) are narrowly targeted actions to limit imports of hazardous waste when the importing state is in serious jeopardy of not adequately assuring capacity. Such actions may be considered a lawful exercise of police power authority as reasonably related both to avoidance of a specific harm (the potential cutoff of money necessary to clean up toxic sites) and compliance with a federal statute. In addition, the fact that such limited, narrowly targeted actions would be taken under the authority of a federal statute, as implemented by a federal agency, lends additional legitimacy to the actions. Such actions, as outlined in this appendix, would be permitted only under the most extreme of circumstances and only after resolution mechanisms have been implemented and failed.

Fulfilling the Intent of the Law

The agency believes the intent, if not the literal mandate, of section 104(k)(9) would be satisfied by the process chosen. By executing the agreement of Chapter I, each state would acknowledge the status quo of interstate waste shipments and would participate in a process to address disputes over access to capacity. Thus, the agreement would provide the assurances that capacity was available now and would be available in the future. The process is one that is effectuated by a federal agency pursuant to its authority to implement SARA. Thus, the agreements and the process are conceived as the implementing mechanism of EPA and do not constitute binding agreements that rise to the level of an interstate compact.

Finally, this process may provide a more effective means of resolving interstate issues than arise under RCRA and the requirement in RCRA that state programs be consistent. EPA's recent experience with this issue shows the difficulty of entering into adjudication without clearly defined criteria and

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without an attempt to first discuss the real issues. The process set forth therein attempts to fill these gaps in the current RCRA regulatory scheme. The RCRA requires a regulatory decision without a process that allows full exposition of the facts relating to all of the state's activities. By contrast, the process set forth in this guidance anticipates a regulatory decision only as a last resort. Prior to any decision, there will have been a review and discussion of the entire state program, and development of specific evidence that a state is not issuing permits for new capacity despite existing markets for such capacity, and that the state's action is specifically burdening another state.

The Process

The following sections illustrate implementation of the process over a four-year time frame. Most of the key activities will begin immediately upon submission of the initial CAPs and will be in-place at the end of the first year. Many of the resolution efforts, however, will be ongoing.

Initial Assurance Plan—1989

The initial assurance submission will concentrate on each state supplying the best possible information on its current and projected waste generation and how that waste will be served by the current and projected management capacity of the state. In estimating their waste flows, states will be allowed to hold imports at current levels and continue to export waste according to current patterns if these assumptions are reasonable. States will be required to document expected exports and their disposition, but will not be expected to obtain assurances from each state.

All Governors (or their designates) will provide with their initial assurance submissions a signed agreement stating the following:

1. The government of the state is aware of the status quo of interstate waste shipments;

2. In accordance with other state agreements, the government of the state agrees to participate in the planning, analysis, and dispute resolution process designed to address interstate transport and disposal of hazardous waste as outlined in the waste capacity assurance guidelines; and

3. The government of the state intends to carry out the activities described in the assurance plan, which will include programs and/or milestones relevant to waste minimization and management of hazardous waste.

This signed agreement from the Governors, agreeing to participate in the process and acknowledging the status quo of interstate waste movements, will serve as the interstate agreement required under section 104(k)(9). This process referred to in the agreement (as described herein) would not make any affirmative allowances for the erection of barriers to interstate movement of waste until at least four years after the first CAP submittal, and then only if specific conditions or criteria are satisfied. The initial agreement contained in this first assurance submittal will remain in effect and will be required as a condition of EPA acceptance of a state's capacity assurance plan (CAP) with regard to interstate capacity.

Second Year—1990

EPA will prepare and publish an analysis of data submitted with the initial CAPs from each state. The analysis will highlight interstate waste flows. EPA will then publish for notice and comment a refinement of the reasonableness criteria set forth in this Appendix. The refined reasonableness criteria will include guidelines published by the agency indicating waste stream volumes sufficient to support development and operation of a new commercial management facility under acceptable practices. These guidelines will be used to highlight so-called "high volume" net exports that could subject a state to further review under this process. By themselves, however, the guidelines would not be used to determine violations of the reasonableness criteria.

A forum (or forums) will be convened under the auspices of EPA to discuss EPA's analysis and any interstate issues which arise out of the comparison of waste flows against the reasonableness criteria. This forum will be used to examine further the application of all of the reasonableness criteria.

It is anticipated that his forum will identify certain state waste streams and corresponding waste management practices which should be subject to further examination. Among other outcomes, regional planning efforts will be encouraged. One important aspect of the reasonableness criteria is that a state's waste exports and waste management practices will not be deemed unreasonable if they are subject to regional planning efforts or interstate or regional agreements. It is further anticipated that in cases for which potential violations have been identified, the affected states will conduct further examinations and will attempt to discuss these problems directly with the exporting states in question. EPA also may conduct further examination of the most potentially serious problems.

States will not be authorized to rescind the initial agreements (in the sense that EPA would not use the rescission at this time as a basis for a finding that state CAPs are unacceptable). Instead, as a result of the initial forum, EPA may, at the request of affected states, require certain states to take appropriate corrective actions (where there are clear violations of the reasonableness criteria) or provide reports of progress in meeting the milestones in order to facilitate analysis of progress over the coming year.

Third Year—1991

In the third year, the forum will be convened for a second time to consider actions over the past year to resolve interstate issues. This meeting will occur after the 1989 biennial report cycle has been completed. Progress in meeting milestones related to siting and waste minimization and otherwise reducing exported waste volumes will be examined for those states identified as violating the reasonableness criteria. Informal alternative dispute resolution mechanisms will be implemented under the auspices of EPA to develop discrete solutions between affected states.

If the interstate issues cannot be resolved by agreements worked out between the affected states within a specified period of time, EPA, on its own, or pursuant to a petition submitted by an affected state, will determine whether an "offending" state is failing to comply with the "reasonableness" criteria. EPA's determination will take into account the "offending" state's adherence to milestones set forth in the initial capacity assurance plan. If EPA determines that the "reasonableness" criteria are not being met, it will issue such a determination and indicate that if the "offending" state fails to take specified actions within a specified period of time, EPA will deem the state's capacity assurance plan to be inadequate. If the state fails to come into compliance, EPA will deem the capacity assurance plan inadequate. This finding will result in withholding of Superfund money in the year following its failure to achieve compliance.

EPA's determination that a state's capacity assurance plan is not adequate will be taken after notice published in the **Federal Register** and an opportunity for the affected state to submit comments. The final determination will be published in the **Federal Register** and will constitute final agency action, permitting the affected state to seek

judicial review in a federal district court.

Fourth Year and Beyond

If, despite EPA's final action to disapprove an exporting state's capacity assurance plan, the state continues to export significant quantities of waste to an "aggrieved" state, the aggrieved state may find it necessary to control imported waste from the exporting state. This situation will arise if the quantity of wastes exported into the "aggrieved" state significantly and adversely affects the ability of the "aggrieved" state to assure capacity for the waste generated within its borders. If this can be demonstrated, the "aggrieved" state may submit a revised capacity assurance plan which contains a restriction on the amount of waste imported from the exporting state, implemented through legislation or regulations. Such restrictions will only be allowed on the amount of waste specifically found to threaten the "aggrieved" state's capacity; unless, otherwise demonstrated, this amount will be defined as the excess of that received by the "aggrieved" state in 1987 (as described in the 1989 CAP of that state).

EPA, pursuant to this guidance and after notice and comment, will approve the capacity assurance plan with the restriction on imported waste if the Agency agrees with the aggrieved state's determination that—without the proposed restriction on the exporting state's waste—the importing state's ability to assure capacity would be seriously jeopardized. EPA would not find such action to be inconsistent with RCRA, regardless of what consistency criteria may be developed by EPA.

The imprimatur for the affected state to restrict imports from a particular exporting state comes under section 104(k)(9), as implemented by the guidance and also as necessary to assure safe and effective management capacity for the state. It is provided only under the most narrow of circumstances, and only as a last resort. The state taking action must demonstrate to EPA that the action is necessary for it to demonstrate adequate capacity to dispose of in-state generated wastes.

"Reasonableness" Criteria

The reasonableness criteria are intended to define the circumstances under which state action will be found to be inadequate to satisfy EPA's capacity assurance guidance with respect to out-of-state capacity. The criteria are intended to help identify instances in which a state might be found to place undue reliance on out-of-state waste management capacity as a substitute for creating necessary in-state capacity. Such criteria are not intended to penalize state's that have insufficient waste volumes to support a commercial facility, that have agreements or planning efforts with other states to support such waste management patterns, or that are net exporters of waste because of in-state industry shipments to captive facilities in other states.

Within the first year of the initial CAP submission, a review panel of state, federal, industry, and other interested parties will refine the definitions and terms of the so-called "reasonableness" criteria. The reasonableness criteria will include, but not be limited to, the following principles:

1. It is unreasonable for a state that needs to create capacity (as defined below) to fail to create that capacity for whatever reason.

2. A state will be deemed to need to create capacity under the following conditions:

a. It is exporting significant quantities of waste (by waste stream) in excess of that being imported to and managed by the state for treatment or disposal, or it is otherwise exporting quantities that adversely affect another state's CAP;

b. It is economically feasible to create and maintain a commercial or public facility (including optimum use of mobile incineration technology) to dispose or treat the waste in question; and,

c. it is unable to demonstrate that:

i. It has entered into any multi-state or regional planning efforts that allow it to maintain its level of exports;

ii. Its failure to reduce its waste exports is caused by special environmental, health, or safety conditions significantly more serious than those existing in other states; and

iii. It has procedures in place that are likely to create capacity within a specified period of time.

3. "Creating capacity" means:

a. Reduction of waste generated in-state through waste minimization programs;

b. Use of out-of-state facilities pursuant to interstate or regional agreements or planning efforts; or

c. Construction of new or expanded waste treatment or disposal facilities.

4. For those states that export (in net terms) significant quantities of waste, it shall be considered unreasonable if the State has incentives in place to encourage in-State generators to export waste.

ALTERNATIVE RECOMMENDATIONS ON DRAFT STATE HAZARDOUS WASTE CAPACITY ASSURANCE GUIDANCE

Chapter I—Introduction and Overview of the Capacity Assurance Process

This document provides guidance to State officials on how to prepare a State Capacity Assurance Plan (CAP). The CAP provides the documentation necessary to provide the assurances required by Section 104(c)(9) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended (Pub. L. 96-510). This section requires each State to assure the Administrator that adequate capacity will exist to manage the hazardous waste created in the State over the next twenty years (see box below). A State's failure to submit an approved CAP by the October 1989 deadline will prohibit the State from receiving Superfund money for remedial actions until such time an assurance is approved by EPA. The availability of funds for emergency removal actions is not affected by this requirement.

"Siting.—Effective 3 years after enactment of the Superfund Amendments and the Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) Have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated with the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) Are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

(C) Are acceptable to the President, and

(D) Are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act."

—Section 104(k) of the Superfund Amendments and Reauthorization Act of 1986 amending Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund"). 40 U.S.C. 9604(c)(9).

Legislative Background on CERCLA Section 104(c)(9)

The Congress added these requirements to CERCLA through the Superfund Amendments and Reauthorization Act of 1986 (SARA). The purpose of this provision was straightforward: Superfund money should not be spent in States that are taking insufficient steps to avoid the creation of future Superfund sites. The Congress recognized that a safe and rational hazardous waste management program for the nation depended in part of the creation of new facilities employing the most advanced technologies. While many States enacted or planned to enact siting legislation, Congress concluded that few, if any, were developing policies and siting programs that would assure continued facility capacity in the long term.

Congress stressed that a successful State siting program should recognize three key principles. First, the program should require a complete technical analysis of all proposed sites prior to their selection. Second, site selection must be accompanied by full public participation. Third, the process of site selection should find a way to transcend blanket local vetoes. The Congress further stressed, however, that merely having such programs in place would not satisfy the requirements of this section. Each State must provide assurances that their legislative program can work and will be used. The siting process may differ between States, but each program should make the best use of existing facilities in the short term and assure continued facility capacity in the long term.

Finally, Congress did not envision that every State would need to develop redundant or unneeded capacity. A site in every State is not required. In some cases, multi-State efforts may be appropriate, requiring some assurance that access exists to out-of-State facilities. Such access is to be assured through "an interstate agreement or regional agreement or authority."

In passing this statute, Congress did not explicitly address what should constitute a State assurance to EPA. Much was left to interpretation. Moreover, the nature of the data available, the interstate market, and methods to predict future waste generation demand a flexible approach in interpreting and implementing this requirement.

In EPA's view, the CAP should serve a twofold purpose. First, it should effectively demonstrate to the Agency that each State is taking measures to ensure that the hazadous waste created within its borders is and will be effectively managed. Second, the CAP should serve as a document to educate and inform the public on the State's strategy for managing the hazardous waste generated by its industry and other sources.

EPA and State Responsibilities in Implementing the CERCLA 104(C)(9) Requirements

The Agency is responsible for developing a procedure for implementing the requirements of CERCLA Section 104(c)(9). The Administrator plans to carry out this process through three major efforts: (1) Publish guidance explaining how to prepare a State Waste Capacity Assurance Plan (CAP) for submission to EPA; (2) provide technical assistance and limited financial resources to the States; and (3) review and approve the State submissions. States, for their part, are responsible for full and accurate submissions. In evaluating submissions, EPA intends to return to the States any which include volume estimates which are inconsistent with other States with whom they have import/export relationships. In this process, EPA will certainly apply a rule of reason: since many States will have reciprocal relationships with a number of other States, EPA generally, will confine its examination for consistent estimates to the top five volume import and export States for each submission.

Because of the many complex issues involved, EPA sought the advice of State officials, industry, private citizens, and public interest groups as part of developing this guidance package. The recommendations contained in this document reflect the views of these affected parties and specifically address the following problem areas:

- Data used throughout the States varies in uniformity. To help States convert their data to a uniform and consistent format for reporting purposes, EPA will provide technical assistance for States that use the New Biennial Report System, the Old Biennial Report System, or equivalent data from State reports or manifest data.
- Waste projections techniques are uncertain and under development. To accommodate the different approaches available to project waste generation, the guidance permits States to develop their own procedures as long as they meet general criteria.
- Waste minimization is a valuable waste management tool but its results are difficult to predict. To encourage States to develop waste minimization programs, the assurance process grants maximum flexibility to States in calculating the effects of such programs on the demand for future management capacity.
- The current waste management market is multi-State, and privately-run for the most part. To allow States to effectively assure the availability of capacity in other States without executing complicated interstate agreements, the guidance requires States to resolve interstate waste management issues.

Evaluation Criteria To Be Used by EPA

To comply with CERCLA Section 104(c)(9), each State must complete the reporting requirements outlined in this guidance document. The CAP submitted by the State will not be approved unless it meets the following criteria:

1. The State must submit complete and accurate information showing current generation, waste management capacity, imports, and exports.

(a) Full and accurate submissions shall constitute those in which a State demonstrates its ability to coordinate with import and export partners in developing consistent estimates of waste volumes; as noted above, EPA will return to the States for review submissions containing inconsistencies, particularly those involving large waste volumes.

2. The State must show that its projection of waste generation and demand capacity:

(a) Is based on existing or official projections of State economic activity or are otherwise justified by the State;

(b) Accounts for major waste producing industries and takes into account the range of possible changes in the economic behavior of these industries;

(c) Accounts for one-time only wastes (e.g., CERCLA or RCRA remedial corrective actions); and

(d) Incorporates effects of waste minimization as outlined in the State's plan.

3. For States that rely on waste minimization to reduce the demand for capacity, the State must demonstrate that:

(a) The estimated reductions in wastes are based on a sound technical analysis, such as surveys of specific industries and engineering analysis of potential reductions;

(b) The resources committed to implementing the waste minimization strategy are consistent with the plan set forth by the State; and,

(c) The milestones for projected accomplishments in waste minimization

are reasonable and there is a plan for action if the milestones are not met.

4. States must execute the interstate agreement set forth in Chapter II if they plan to use management capacity in other States at any time over the 20-year "assurance" timeframe.

5. For States showing capacity shortfalls in its projections, the State must meet the following requirements:

(a) It must submit a plan and milestones for creating additional capacity inside the State or otherwise show how capacity needs will be addressed through interstate or regional planning efforts:

(b) If additional capacity is to be created inside the State, the CAP must show that State and local laws, regulations, practices, and policies will not hinder the development of additional capacity, when needed, and are consistent with the proposed plan submitted under (a) above. Laws, regulations, policies, and practices that may be found to hinder development of additional capacity include, but are not limited to the following:

(i) Local preemption powers not based on environment, health, or safety concerns with no ability for the State to appeal or rectify local decisions;

(ii) Absence of a siting procedure with clearly defined steps, including opportunity for public review and comment, and clear time periods between permit review, comment, and approval/denial;

(iii) Discriminatory rules such as limits on facility size, types of waste allowed based on origin of waste, and prohibition of waste facilities not based on environmental, health, or safety considerations; and

(iv) A demonstrated history of failed efforts to create additional capacity in the presence of sufficient demand for that capacity.

(c) For States that plan to rely upon capacity outside the State to address the projected shortfall, the CAP must show that such reliance does not conflict with the plans of the State receiving the waste.

EPA expects the States to prepare and submit an assurance to the Administrator no later than October 17, 1989. EPA plans to request revised assurances every two years, in concert with the biennial report already required of TSD facilities. Thus, the first reassurance will be required in October of 1991. Each time a State enters into a cooperative agreement with EPA to obligate Superfund monies, the State must certify that their current assurance represents current policy to the best of their understanding. EPA will establish a standard certification paragraph on compliance with CERCLA section 104(c)(9), in compliance with RCRA Subtitle C, which will appear on all CERCLA cooperative agreements for remedial action funding.

Interstate Dialogue and Coordination

EPA recognizes that many States presently depend to some extent on hazardous waste treatment and/or disposal capacity in other States. In order to meet the CERCLA section 104(c)(9) requirements for an acceptable capacity assurance, waste exported by one State for treatment and/or final disposition in another State must be acknowledged and documented by the "importing" State in its own capacity assurance plan (CAP). Therefore, States which either export or import significant amounts of waste to or from another State (or States), are advised to begin dialogue and information exchange relative to these issues well in advance of the October 19, 1989 deadline for submission of their CAPs to EPA. Such exchanges should include information on both present and projected imports and/or exports between States reasonably anticipated through the 20-year period requirement under CERCLA section 104(c)(9). Consideration should be given to the compatibility of each State's projection methodology, as well as any projected waste minimization and/or source reduction. Agreement and acceptance of the data and projections may require substantial negotiations among importing exporting States. It should be noted that after the October 17, 1989 statutory deadline failure of an exporting State to obtain such an agreement will result in the loss of remedial action funding for the exporting State unless the State can successfully conclude an equivalent interstate agreement with another State with demonstrated capacity sufficient to manage the exporters needs.

Reasonable Levels of Exports

In order to promote interstate dialogue, EPA suggests that States use the following criteria as a starting point for determining what constitutes a "reasonable" level of exports:

1. It is unreasonable for a State that needs to create capacity (as defined below) to fail to create that capacity for whatever reason.

2. A State will be deemed as needing to create capacity under the following conditions:

(a) It is exporting significant quantities of waste (by waste stream) in excess of that being imported to or managed by the State for treatment or disposal or it is otherwise exporting quantities which adversely affect another State's CAP; and

(b) It is economically feasible to create and maintain a commercial or public facility (including optimum use of mobile incineration technology) to dispose of or treat the waste in question, and;

(c) The State is unable to demonstrate that:

(i) It has entered into any multi-State or regional planning effort which allow it to maintain its level of exports; or,

(ii) Its failure to reduce its waste exports is caused by special environmental, health, or safety considerations significantly more serious than those existing in other States; or,

(iii) It has procedures in place that are likely to create capacity within a specified period of time.

3. "Creating capacity" means:

(a) Reduction of waste generated in-State through waste minimization programs;

(b) Use of out-of-State facilities pursuant to interstate or regional agreements or planning efforts; or

(c) Construction of new or expanded waste treatment or disposal facilities.

4. For those States that export (in net terms) significant quantities of waste, it shall be considered unreasonable if the State has incentives in place to encourage in-State generators to export waste.

EPA Administrative Assistance

EPA, through the Regional offices, will provide administrative assistance to assist States in these dialogues to facilitate timely assurances. Such assistance will include convening of interstate and regional workgroups, regional import/export data access and manipulation and facilitation services. This support is already available in several Regions (specifically IV and X) and should be funded in other Regions by the end of this fiscal year. In addition, assistance is expected to be available to western States through an EPA grant to the Western Governors' Association. Several State pilot projects are also in progress, the results of which will be made available to all States to aid in completing their assurances.

Chapter II—Basic Instructions for Completing the State Capacity Assurance Plan

This chapter provides States with the basic instructions needed to complete their Capacity Assurance Plan (CAP) in accordance with this guidance document. Each chapter in the guidance provides specific instructions for

reporting information to EPA. This chapter outlines the format of the CAP, directions for completing the interstate agreement, technical assistance provided by EPA to complete portions of the CAP, and instructions for transmitting the State's final CAP to EPA.

Capacity Assurance Plan Format

The State should submit its CAP to EPA as a single document consisting of five Parts, based on the information required in the guidance document:

- Part 1 should contain the results of Chapter III of the guidance document, which requests information on current generation, management capacity, imports and exports. This chapter asks each State to demonstrate an understanding of its current hazardous waste generation, treatment and disposal system, and provides a format for all States to manipulate their data internally and report key information to EPA.
- Part 2 should incorporate the results of Chapter IV of the Guidance Document concerning State waste minimization plans. This Part will provide information on each State's use of waste minimization in the capacity assurance process. States that plan to use waste minimization to help them assure the availability of adequate management capacity must supply more detailed documentation on their on-going and planned efforts.
- Part 3 should incorporate the results of Chapter V of the Guidance Document, which requires States to project hazardous waste generation and the demand for management capacity. This chapter also requires States to estimate the amount of capacity needed in the State over the next 20 years.
- Part 4 should incorporate the results of Chapter VI of the Guidance Document, which covers State laws and procedures for creating management capacity within the State. All States showing a shortfall in management capacity in Part 3 must describe their plans for addressing this shortfall in this Part.

The Interstate Agreement

Section 104(c)(9) of CERCLA requires States to assure the availability of adequate waste treatment or disposal facilities which "are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority." EPA has determined that this interstate agreement must acknowledge current as well as projected hazardous waste imports and exports and their treatment and/or disposal disposition. It is expected that the governor or his/her designee will recognize the present waste handling practices in their State as outlined in their capacity assurance plan as developed in accordance with these documents. To the extent that those waste handling practices involve treatment and/or disposal in another State, the CERCLA section 104(c)(9) assurance can be made by the exporting State only if the importing State accepts the fact of that treatment and/or disposal within its capacity assurance plan.

States can fulfill the requirements of CERCLA section 104(c)(9) with regard to out-of-State capacity by executing an interstate agreement as provided on pages II–3, 4, and 5 of this chapter. Two types of interstate agreements are suggested. Once, a generic agreement, can be completed where there has been adequate dialogue between importing and exporting States and importing State's capacity assurance plan adequately describes its hazardous waste management system including treatment/disposal of the exporting States wastes. EPA encourages all States to negotiate generic agreements using criteria such as that recommended in Chapter 1 for determining reasonable levels of exports.

Certain groups of States may want to reach agreements that go beyond the language suggested by the generic agreement. These groups of States are encouraged to develop separate addenda or other separate agreements in addition to the generic interstate agreement that satisfy their regional concerns.

In some instances, an exporting State may be unable to obtain or negotiate a generic agreement. In this case the State should negotiate separate "one-on-one" agreements with States that have adequate excess capacity. A model "one-on-one" agreement is provided for this purpose.

Generic Interstate Agreement

Pursuant to the requirements of the section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act and the State Hazardous Waste Capacity Assurance Guidance issued by the U.S. Environmental Protection Agency pursuant thereto; and

In recognition of the fact that this State is both an importer and exporter of hazardous waste; and

In accordance with similar agreements on behalf of other State governments respecting interstate transport and disposal of hazardous waste:

The State of ———— hereby agrees as follows:

1. The government of this State acknowledges the waste management practices for the hazardous waste generated within this State as well as those hazardous wastes which are imported into this State as outlined in our documentation to the CERCLA 104(c)(9) assurance, and

2. The government of this State intends to carry out the activities described in the State's Capacity Assurance Plan, which will include programs and/or milestones relevant to waste minimization and the management of hazardous waste.

Nothing in this Agreement shall be construed to affect the existing obligation of the States in a manner that would subject this Agreement to the purview of Clause 3, Section 10, Article I of the United States Constitution.

Governor or Designee

Interstate Agreement Between the States of (A) and (B)

Whereas hazardous wastes are articles in interstate commerce; and

Whereas the United States Congress enacted Section 104(c)(9) of the Comprehensive Environmental Response, Compensation and Liability Act (hereinafter referred to as "CERCLA"), 42 U.S.C. section 9604(c)(9); and

Whereas section 104(c)(9) of CERCLA requires, for remedial actions to be provided after October of 1989, that States enter into contacts or cooperative agreements that provide assurances that adequate capacity exists for the destruction, treatment, or secure disposition of hazardous wastes that are generated within the State for twenty years following contracts or cooperative agreements for the revision of such actions; and

Whereas section 104(c)(9)(B) of CERCLA requires that such assurances reflect the availability of hazardous waste treatment or disposal facilities within the State or outside the State in accordance with an interstate agreement or Regional agreement or authority; and

Whereas the United States Environmental Protection Agency (hereinafter referred to as "EPA") has been delegated authority to administer section 104(c)(9) by the President of the United States; and

Whereas the States of (A) and (B) have prepared plans for submission to EPA (hereinafter referred to as "104(c)(9) State Hazardous Waste Capacity Assurance Plans"); and

Whereas hazardous wastes are transported between the States of (A) and (B).

Be It Therefore Resolved and Agreed

1. The State of (A), having evaluated the 104(c)(9) State Hazardous Waste Capacity Assurance Plan of the State of (B) finds no factual or legal obstacle to accessing and utilizing that capacity within the State of (A) described in the 104(c)(9) State Hazardous Waste Capacity Assurance Plan of the State of (B).

2. The State of (B), having evaluated the 104(c)(9) State Hazardous Waste Capacity Assurance Plan of the State of (A) finds no factual or legal obstacle to accessing and utilizing that capacity within the State of (B) described in the 104(c)(9) State Hazardous Waste Capacity Assurance Plan of the State of (A).

Signed that — day of ———, 1989

Governor or Authorized Person*
State of (A)

Governor or Authorized Person*
State of (B)

Technical Assistance Available From EPA

EPA recognizes an adequate CAP includes a thorough understanding of current generation, management capacity, waste imports, and waste exports. This is the critical information required in Chapter III (Part 1 or the CAP) and used in all subsequent calculations concerning future waste management practices. EPA realizes that developing this information may be difficult for some States because of differences in data collection and management systems. To help States complete Chapter III of the Guidance Document, and to ensure that all States assemble data into the same format for the CAP, EPA has provided three forms of technical assistance. This assistance is located in a Technical Reference Manual, which will be issued by EPA in October, 1988.

The Technical Reference Manual will cover the following major topics:

1. Optional conversion methodologies will be detailed to allow the more than 700 RCRA waste codes to be aggregated into 17 common reporting categories used in the CAP. These conversion methodologies will allow States using the New Biennial Report, the Old Biennial Report (including comparable data obtained from State reports and manifests), and the California UCD codes to convert their waste data into 17 common categories.

2. An optional default methodology will be described to allow States to assign the 17 waste categories to the 15 waste management categories used in the CAP. This default methodology will be based on current waste management practices; States will be free to choose different alternatives and must adjust the default methodology for when used to project future practices.

3. A procedure will be described for converting EPA-supplied data on waste management capacity in your State (by facility ID number) to the 14 waste management categories of the CAP. The facility-by-facility information will be supplied under separate cover and will include information on facility status (on-site, commercial, or captive) and capacity (currently used, currently available, and future plans). States will be required to review, correct, and assemble this information for reporting their capacity needs.

Finally, EPA will be developing computer-based programs to facilitate the calculations described in the Technical Reference Manual and will be made available in the fall of 1988.

Additional technical assistance can be obtained by using the EPA Hotline, which is available during the hours of 8:00 a.m. and 4:30 p.m. Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your States has assigned several individuals to answer questions. Please consult the Technical Reference Manual for more details, including a list of individuals and phone numbers.

Transmittal of Capacity Assurance Plan to EPA

By Executive Order #12580, the President has delegated approval of the CIRCLA section 104(c)(9) assurances to the Administrator of the U.S. Environmental Protection Agency. Using the evaluation criteria discussed in Chapter 1 as a basis, EPA regional and headquarters personnel will evaluate the Capacity Assurance Plans in making a recommendation for final agency decision.

It is expected that the Governor of each State will transmit its State's Capacity Assurance Plan and Interstate Agreement to the EPA Administrator. These documents should be transmitted to EPA on or before October 17, 1989. A suggested transmittal letter for States to use in transmitting their Capacity Assurance Plan is shown on Page II–8.

Five copies of CAP should be sent to:
U.S. Environmental Protection Agency
401 M Street, SW.
Washington, DC 20460
Attn: ———————

Sample Letter to Transmit CERCLA section 104(c)(9) Capacity Assurance Plan

Dear Administrator:

Section 104(c)(9) of the Comprehensive Environmental Response, Comprehensive, and Liability Act (CERCLA) requires States to assure you that they have sufficient hazardous waste treatment and disposal capacity to take care of all wastes expected to be generated within their borders for the next twenty years.

On the basis of the Capacity Assurance Plan that I am providing you today, I can assure you that my administration has in place a comprehensive hazardous waste management system. The attached planning document will show you that:

- This State understands its hazardous waste system and interdependence with other States.
- This State has significant in-State waste management capability and/or processes in place to acquire same.
- This State has a viable waste minimization program.
- This State has not erected an legislative barriers that materially affect our ability to manage hazardous waste.
- This State has coordinated and cooperated with other States to find treatment and disposal capacity for our exported wastes.

Since this state relies on out-of-State treatment and disposal capacity, an interstate agreement addressing the availability of these facilities is also included.

Based on the forgoing, I hereby provide my assurance that my State is in compliance with CERCLA section 104(c)(9).

Sincerely

Governor

Chapter III—Reporting the Current Status of Generation, Management Capacity, Imports, and Exports

Purpose

This chapter asks each state to demonstrate an understanding of its current hazardous waste generation, treatment, and disposal system. It requires a strong technical knowledge of your state's hazardous waste management and tracking information systems, including data needed to meet federal reporting requirements. The key items to be reported are as follows:

- The type and quantity of federally regulated (under RCRA) hazardous waste generated within the state from

* [Authorized Person means a person authorized under the law of that State to sign this agreement on behalf of that State].

both continuous industrial processes as well as one-time events, such as "batch" cleanups and RCRA and CERCLA corrective actions.

- The type and quantity of federally regulated hazardous waste shipped out-of-state.
- The type and quantity of federally regulated hazardous waste received from other states.
- The type and quantity of in-state capacity to manage RCRA-regulated hazardous waste and other waste not regulated by the EPA that consumes the state's hazardous waste management capacity, including state-regulated waste and non-hazardous waste.

Much of the information developed in this chapter will serve as a baseline for projecting future waste generation and disposal patterns. For example, information developed on the unused capacity available at in-state facilities will be useful when assessing future capacity needs. Similarly, current patterns of waste imports and exports can be used to project future behavior.

General Instructions

This chapter provides guidance to states on their responsibilities for reporting information on current waste generation, handling, and disposition. Personnel completing this chapter should consult the separate *Technical Reference Manual* for more detailed instructions on sources of data, data manipulation, and translation of raw data into the reporting formats provided in this chapter.

The following worksheets must be completed to fulfill the minimum requirements of Part I of the CAP:

- Worksheet III–1 summarizing in-state generation of 17 types of RCRA-hazardous waste.
- Worksheet III–2 summarizing in-state waste management capacity.
- Worksheets III–3, III–4, III–5, and III–6 reporting the demands imposed by each of the 17 types of hazardous waste on each of the 15 waste management categories (as applicable) in total and for on-site, off-site captive, and commercial facilities.
- Worksheet III–7 providing detail on waste exports.
- Worksheet III–8 providing detail on waste imports.

States may develop their own report forms (computer-driven reports are satisfactory) but they must follow the general formats of the worksheets listed above. Other worksheets and interim results may be included in the CAP at the discretion of the state unless otherwise noted.

Only RCRA-regulated wastes are to be reported in the Worksheets. If a state compiles figures for state-regulated waste, they should not be reported in the Worksheets submitted as part of the state CAP. Similarly, although a state may wish to track such quantities separately, the waste generated by small quantity generators (less than 1000 kilograms of waste per month) should not be entered into the Worksheets to be submitted in a state's CAP.

The individual or individuals responsible for completing this chapter should be thoroughly familiar with both state and federal hazardous waste reporting systems. In almost all states, these individuals will be part of the state's RCRA program office. However, staff from the state's Superfund office or the equivalent EPA regional Superfund Office must be consulted to obtain information concerning site cleanups.

Technical assistance is available from EPA in several forms. A hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA regional office serving your state has assigned several individuals to answer questions; names and addresses are provided in the *Technical Reference Manual.* EPA has provided direct technical assistance through regional efforts to coordinate compliance with SARA section 104(k). If states are unaware of these on-going initiatives, they should contact the RCRA coordinators in their regional offices for additional information.

Technical Reference Manual

The *Technical Reference Manual* that accompanies this guidance is designed to help extract and manipulate raw data from Biennial Reports and similar state sources and produce reports for inclusion in a state's CAP. It provides four sets of instructions, one of which will be applicable to your state, based on whether your state computerizes the Biennial Report of the equivalent data and whether your state uses the old or new Biennial report forms (or equivalent data).

Evaluation Criteria

The Agency plans to judge this document primarily on the accuracy of the data and supporting material used to complete the worksheets. In most cases—unless otherwise noted by the state—EPA expects the waste generation data contained in the worksheets to correspond with information obtained by EPA through its major reporting system, the Biennial Report. The Agency recognizes that differences will exist, however, between the state and federal reporting systems. States showing wide disparity between the amount of waste reported for the CAP and that reported to meet other federal requirements may be asked for more details.

EPA plans to provide individualized state reports with detail on hazardous waste management capacity in that state as reported in the agency's recent *Treatment, Storage, Disposal, and Recycling Survey* (TSDR). This will allow states to report consistent and relatively accurate baseline information on waste management capacity. Recognizing that some information from the TSDR survey may be up to three years obsolete at the time of the first CAP, states are encouraged to check these data and augment or correct them before presenting them in the CAP. Any corrections should be documented with a simple narrative discussion of changes.

Reporting Waste Generation

Most states now report the generation of hazardous waste by EPA waste code. More than 700 waste streams comprise EPA's list of regulated industrial residuals. Two states—California and Washington—report waste flows using a more aggregated set of waste codes developed at the University of California, Davis (these comprise the so-called UCD codes). For purposes of capacity assurance, all waste streams are to be grouped into 17 SARA waste types, which provide sufficient information for assignment to management methods.

Tables XX, XX, and XX of the *Technical Reference Manual* provide conversion factors to aggregate the EPA and UCD waste codes into this new waste type system. These tables match waste streams in either the EPA or UCD categories to the capacity assurance waste streams on the basis of waste phase (liquid, sludge, or solid) and major constituent (organic components, metals, haolgenated compounds). Several miscellaneous categories convert directly.

States using the new 1987 Biennial Report forms should use the appropriate tables and procedures described in the *Technical Reference Manual* to transfer EPA waste codes into their 17-waste type equivalent. This method uses the data on waste stream characteristics in conjunction with the designated EPA waste code to create a relatively precise mapping procedure.

States using the old Biennial Report forms should use a different set of tables and procedures presented in the *Technical Reference Manual* to convert EPA waste codes into the 17 SARA waste types. These conversions are

generally considered less precise because less is known about waste stream characteristics. Where necessary, the procedures use a national profile of waste characteristics to facilitate the conversion.

Table XX of the *Technical Reference Manual* maps UCD waste codes into the capacity assurance waste streams based on waste phase and major constituent.

Waste Streams To Be Reported

States should report only RCRA-regulated waste in the worksheets that present waste generation. States need not report the following when describing waste generation: waste volumes that are regulated only by state law; wastes generated and handled through exempt onsite NPDES processes; exempt onsite in-process recycling (closed loop); exempt onsite treatment and discharge to municipal treatment works; direct discharge to publicly owned treatment works without treatment; and exempt onsite recycling through stills. For planning purposes, states may wish to account for these or other types of regulated waste, but they should include such wastes in separate forms from those used to report RCRA-only regulated waste.

Sources of Data To Report Waste Generation

For purposes of the 1989 assurance, all states should use the 1987 Biennial Report or the equivalent data elements collected in state reports to estimate 1987 calendar year generation of these 17 waste types. While availability will vary from state-to-state, equivalent sources of data include state surveys of generators, waste management facility inventories, state-modified biennial report forms, or waste manifest reports.

Establishing A Base Year

The EPA requests that states use 1987 as the base year to report waste generation. However, if a state has more accurate data for 1985 or 1986 and feels that these data more precisely represent waste generation in their state (because, for example, the state spent considerable resources to collect and analyze that data), they should present these figures and identify the alternate base year. States that choose an alternate base year need not estimate waste generation in 1987.

Units to Report Waste Generation

All waste quantities should be reported in tons per year. Waste expressed in volumetric terms, such as gallons, should be multiplied by the density of the waste in question (tons per gallon, for example) to yield the most accurate conversion into tons. Those states using the new Biennial Report forms will find density information for each waste stream in form GM of Package B, Section III, Question D. In the absence of exact density characteristics, states may use the information presented in the *Technical Reference Manual* (Table XX, based on the density of water) to convert from volume into tons. Table XX also provides several common mass-to-mass conversion factors.

Instructions for All Worksheets

A prototype state hazardous waste generation and handling system is depicted in Figure III–1. States should quantify the waste flows, for each of the 17 capacity assurance waste types, for each of the boxes presented in Figure III–1. Waste quantities should be reported in the worksheets noted below the boxes on the figure. On-site handling, for example, should be reported in Worksheet III–4; all exports should be summarized in Worksheet III–7. Each worksheet is introduced in a general sense in this chapter. The *Technical Reference Manual* describes procedures to complete each worksheet from raw data.

The *Technical Reference Manual* is divided into four sections, based on whether a state computerizes Biennial Report data or not and whether a state is using the old or new Biennial Report forms for the 1987 reporting cycle. States with computerized processing of new Biennial Report data should consult Chapter 1 of the *Technical Reference Manual*. These states will be directed to ensure that their Biennial Report data are arranged in a standard format, consistent with the specifications of the Biennial Report Data System. Once so arranged, these states can access EPA-provided software that automatically generates all of the required worksheets in their proper formats. Because of the richness of the data collected under the new reporting system, EPA's capacity assurance software will enable states to complete many optional analyses (consult the *Technical Reference Manual* for details).

States with computerized old Biennial Report data should consult Chapter 2 of the *Technical Reference Manual*. They will be directed to follow a similar computer-driven procedure to complete the Worksheets III–1 through III–8. Because the data are generally more limited in the old Biennial Reporting system, fewer optional analyses will be available.

States with manual processing of new Biennial Report data should consult Chapter 3 of the *Technical Reference Manual*. Simplified procedures will be presented to work directly from the Biennial Report forms themselves. These states face perhaps the most time consuming task in completing the current generation and handling worksheets.

States that process old Biennial Report data manually should consult Chapter 4 of the *Technical Reference Manual*. A similar set of simplified procedures will help states make the linkage between raw data and the completed worksheets.

States for which Biennial Report data collection and processing is handled by the appropriate EPA regional office should contact the regional EPA Biennial Report coordinator to determine the applicable set of instructions to follow.

For each of the four sets of the instructions, the *Technical Reference Manual* describes methods to ensure that all states (except as noted below) are able to complete the following types of data manipulations:

- Translating Biennial Report waste codes into 17 waste types;
- Translating UCD waste codes into 17 waste types;
- Translating TSDR Survey and Biennial Report waste management codes to 15 management categories;
- Matching SARA waste types to SARA management categories based either on a national profile or new Biennial Report data;
- Separating one-time waste generation from recurrent generation based on new Biennial Report data;
- Presenting both old and new Biennial Report data in the formats specified in Worksheets III–1 through III–8;
- Sorting of exported waste by waste type;
- Sorting of exported waste by management category;
- Summarizing imported waste by state of origin and management category; and
- Summarizing exported waste quantities by type of waste and state receiving waste.

In addition to these manipulations, the *Technical Reference Manual* provides flow diagrams describing the logic used to abstract data from both the old and new Biennial Reports and report waste quantities as (1) generated and managed onsite, (2) generated onsite and managed offsite, or (3) imported for management in state.

Instructions for Worksheet III–1

Worksheet III–1 asks states to summarize total in-state generation of

RCRA-regulated waste. Total generation is comprised of primary generation (waste by-products of manufacturing processes) and secondary generation (waste by-products of waste treatment processes). While states need not draw this distinction in the worksheet, states accessing EPA's capacity assurance software will be able to generate a separate worksheet for each component.

Worksheet III–1 also asks states to separate total generation into recurrent and one-time waste quantities. Recurrent wastes include both primary and secondary streams attributable to on-going industrial activity. One-time wastes include those that result from isolated events such as equipment cleaning or decommissioning, site cleanup, or off-spec product disposal. Only states using the new Biennial Report forms will be able to separate recurrent from one-time waste generation. States using the old Biennial Report forms, which do not directly support such an analysis, should estimate one-time generation to the best of their ability, following instructions in the *Technical Reference Manual.* The *Technical Reference Manual* presents both computerized and manual procedures to assist in this separation.

Instructions for Worksheet III–2

Worksheet III–2 asks states to summarize the waste handling capacity currently available in their state. EPA will supply all the necessary figures to complete this worksheet for the 1989 CAP. Because the basis for EPA's data, however, are the results of the 1986 National TSDR Survey, some capacity figures may be obsolete. It is the state's responsibility to determine whether data supplied by EPA are appropriate for use in the CAP. Therefore, states should use their own capacity figures if they represent a more complete assessment of capacity than the EPA data. States should briefly explain in footnotes to the appropriate worksheets any differences between more recent capacity data and those supplied by EPA.

In subsequent years, states will be responsible for collecting all capacity data as part of their normal biennial reporting requirements.

Instructions for Worksheets III–3 Through III–6

Together, Worksheets III–3 through III–6 constitute the core data describing a state's current hazardous waste management system. In these four worksheets, states are asked to link waste generation to demand for in-state waste management capacity. Waste exports and the effect of waste imports also must be shown, and four types of management capacity must be examined: total in-state; in-state, on-site; in-state, captive; and in-state commercial. Completing these worksheets requires numerous data transactions; states should consult the *Technical Reference Manual* for detailed instructions on their completion.

For convenience, Worksheets III–3 through III–6 also present a separate capacity block to display current and planned future capacity figures. For the 1989 CAP, all capacity data will be supplied by the EPA in individual state reports. Thereafter, states will be expected to collect these data as part of the normal biennial reporting process.

The "exports" column on these worksheets summarizes waste residuals generated as a by-product of waste management processes and exported for further management at out-of-state facilities.

Instructions for Worksheets III–7 and III–8

Worksheets III–7 and III–8 ask states to provide additional detail on their waste exports and imports, respectively. Both old and new Biennial Reports support the presentation of exported waste quantities by waste type and receiving state. Similarly, both reports support the presentation of waste import quantities by waste type and state of origin. All states should consult the *Technical Reference Manual* for details on procedures to complete these worksheets.

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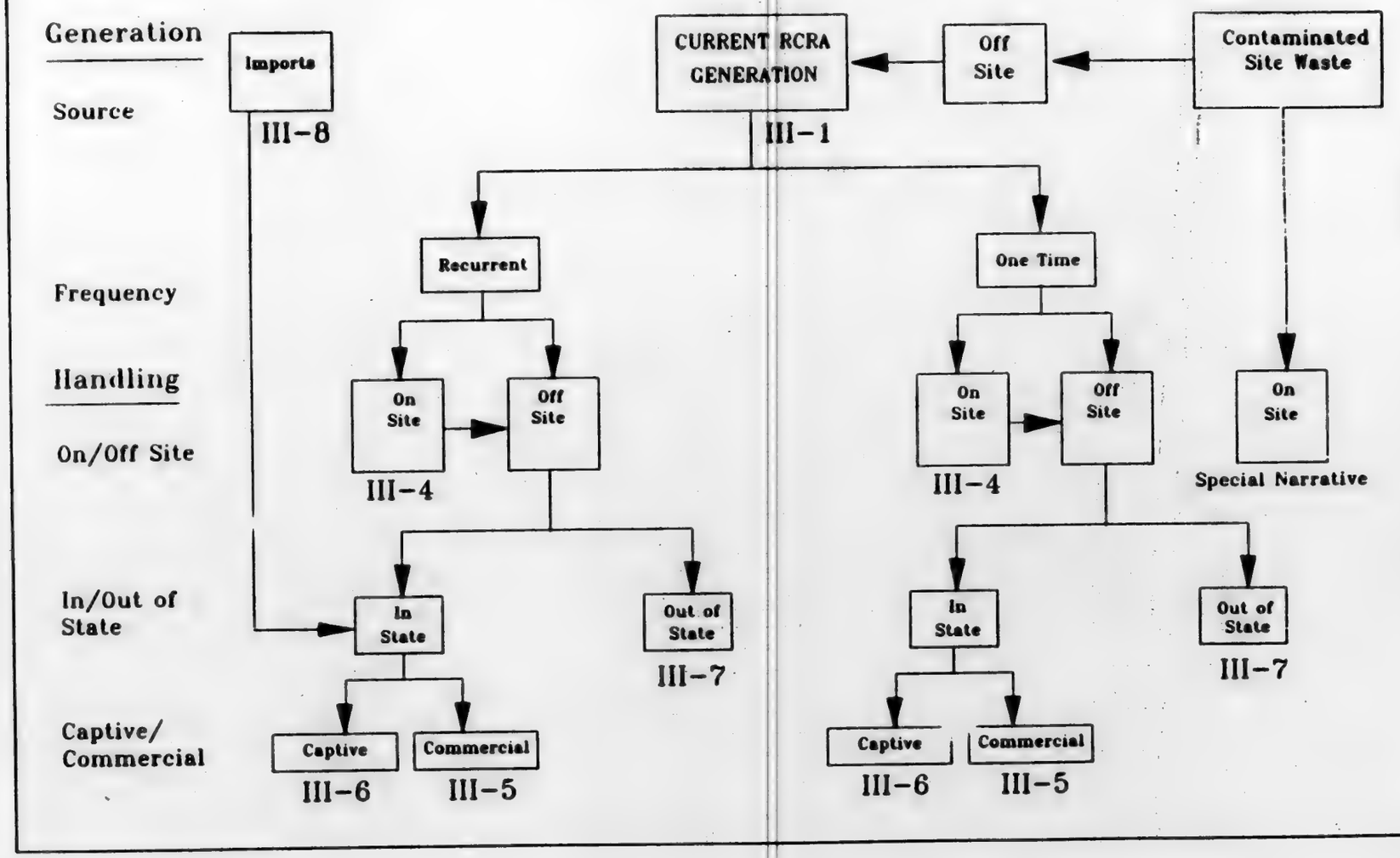
Figure III–1. Prototypical State Waste Management System



WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987

[Thousands of tons/year]

Waste Types	One-Time Generation	Recurrent Generation	Total Generation
1. Contaminated Soil			
2. Halogenated Solvents			
3. Nonhalogenated Solvents			
4. Halogenated Organic Liquids			
5. Nonhalogenated Organic Liquids			
6. Organic Liquids, NEC[a]			
7. Mixed Organic/Inorganic Liquids			
8. Inorganic Liquids with Organics			

WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987—Continued

[Thousands of tons/year]

Waste Types	One-Time Generation	Recurrent Generation	Total Generation
9. Halogenated Organic Solids/Sludges			
10. Nonhalogenated Organic Solids/Sludges			
11. Organic Solids/Sludges NEC[a]			
12. Inorganic Liquids with Metals			
13. Inorganic Liquids, NEC[a]			
14. Inorganic Solids/Sludges with Metals			

WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987—Continued

[Thousands of tons/year]

Waste Types	One-Time Generation	Recurrent Generation	Total Generation
15. Inorganic Solids/Sludges, NEC[a]			
16. Mixed Inorganic/Organic Solids/Sludges			
17. Other Wastes, NEC[b]			
Total			

[a] NEC = Not Elsewhere Classified.

[b] Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

WORKSHEET III-2.—SUMMARY OF IN-STATE WASTE MANAGEMENT PRACTICES (1987 CAPACITY IN THOUSANDS OF TONS)[a] Capacity

Management Category	Capacity			Remaining Capacity After 1987
	Utilized	Maximum	Available	
1. Metals Recovery				
2. Solvents Recovery				
3. Other Recovery				
4. Incineration—Liquids				
5. Incineration—Solids/Sludges				
6. Energy Recovery				
7. Aqueous Inorganic Treatment				
8. Aqueous Organic Treatment				
9. Sludge Treatment				
10. Other Treatment				
11. Stabilization				
12. Land Treatment				
13. Landfill				
14. Deep-Well Injection				
15. Other Disposal				

[a] All data provided by EPA for the 1989 CAP.

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Worksheet III-3:

Summary of All In-State Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration -- Liquids	Incineration -- Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
TOTAL																		
Imports																		
GRAND TOTAL																		

CAPACITY DATA- TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

Worksheet III–4:

In–State, On–Site Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep–well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
TOTAL																		
GRAND TOTAL																		

CAPACITY DATA– TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

Worksheet III–5:

In–State, Captive Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep–well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
TOTAL																		
Imports																		
GRAND TOTAL																		

CAPACITY DATA– TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

Worksheet III–6:

In–State, Commercial Waste Management Activities in 1987

	MANAGEMENT CATEGORIES																	
WASTE TYPES	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep–well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
TOTAL																		
Imports																		
GRAND TOTAL																		

CAPACITY DATA– TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

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WORKSHEET III-7.—SUMMARY OF EXPORTED WASTE QUANTITIES IN 1987 BY WASTE TYPE AND RECEIVING STATE

[In thousands of tons]

Waste Types	Receiving State (List Each Relevant State)
1. Contaminated Soil	
2. Halogenated Solvents	
3. Nonhalogenated Solvents	
4. Halogenated Organic Liquids	
5. Nonhalogenated Organic Liquids	
6. Organic Liquids, NEC[a]	
7. Mixed Organic/ Inorganic Liquids	
8. Inorganic Liquids with Organics	
9. Halogenated Organic Solids/Sludges	
10. Nonhalogenated Organic Solids/ Sludges	
11. Organic Solids/ Sludges NEC[a]	
12. Inorganic Liquids and Metals	
13. Inorganic Liquids, NEC[a]	
14. Inorganic Solids/ Sludges with Metals	
15. Inorganic Solids/ Sludges, NEC[a]	
16. Mixed Inorganic/ Ocean Solids/Sludges	
17. Other Wastes, NEC[b]	

[a]NEC = Not Elsewhere Classified.
[b]Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCDs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

WORKSHEET III-8.—SUMMARY OF IMPORTED WASTE QUANTITIES IN 1987 BY MANAGEMENT CATEGORY AND STATE OF ORIGIN

[In thousands of tons]

State of Origin	Tons Utilized	Waste Management Category (List all Relevant Categories)

Definitions Section

Available Capacity. The amount of waste which a treatment, storage, disposal, or recovery facility determines it can process within a single reporting year, or the amount allowed by all relevant EPA permits, whichever is less.

Captive Management Facility. Any treatment, storage, disposal, or recovery unit, process, or operation that is used exclusively to manage the waste produced by another operating unit or units under the same ownership of any facility from which it receives waste.

Commercial Management Facility. Any hazardous waste treatment, storage, disposal, or recovery unit, process, or operation that is generally available to manage the waste of other facilities and is not under the ownership of any facility from which it receives waste.

Equivalent State Data. This phrase refers to common state data, derived from official surveys or manifests, that use the RCRA waste codes to report generation and capacity information. This data is similar to that collected under the old Biennial Report.

Future Available Capacity. The amount of waste a treatment, storage, disposal, or recovery facility determines it can process within a prescibed time period.

New Biennial Report. This refers to the revised EPA reporting system, issued for the 1987 reporting cycle. States may choose whether or not to use the new Biennial Report. New information required by the 1987 Biennial Report include data on waste stream constituents, details on a state's waste minimization activities, and facility capacity information.

Old Biennial Report. This refers to the current official EPA reporting system, last used by all states in 1985. Data requested from the states included quantities of waste generated and amounts of waste treated, stored, or disposed. The same data are still required for the 1987 reporting cycle as minimum requirements.

On-site Management. Any hazardous waste not transferred from the site of its generation for treatment, storage, or disposal. By definition, such facilities are captive.

Utilized Capacity. The actual amount of waste managed by a treatment, storage, disposal, or recovery system within a single year.

Chapter IV—State Waste Minimization Plans

Purpose

The purpose of this chapter is to obtain information on each state's use of waste minimization in the capacity assurance process. (For the CAP definition of waste minimization see the Definitions Section at the end of the Chapter.) While the Agency believes a waste minimization program is a key step toward sound hazardous waste management, EPA recognizes that some states may choose to assure adequate capacity without claiming waste reduction benefits. These states must supply only brief information on their ongoing or planned waste minimization efforts. Such information will be evaluated for completeness only; EPA will not evaluate the waste minimization programs of these states.

States that plan to use waste minimization to help them assure the availability of adequate management capacity must supply documentation on their ongoing and planned efforts. These states must describe the overall strategy of their programs, how they plan to account for waste minimization in their waste generation projections, and how these programs might affect waste generation for the projection years.

General Instructions

To complete the requirements of this chapter, states should respond to the questions contained in the attached forms. States should copy and complete the appropriate forms and include them—along with additional documentation—in their CAP. Not all forms must be completed.

States not using waste minimization programs to reduce capacity demand must complete the following form:

Form I: Legislative Authority. This form requests information on the present legislative authority for a waste minimization program, its general make up, funding, staffing, and any anticipated legislative or programmatic changes.

States that anticipate using waste minimization programs to reduce capacity demand must complete Form I and the following forms:

Form II: Waste Minimization Reduction Estimates. This form requests detailed information on the state's anticipated effect of state and industrial waste minimization efforts, technical basis of these estimates, and measures of effectiveness.

Form III: Program Components Descriptions. This form requests more detailed information on the individual components that comprise the state's waste minimization program.

The information requests in Forms II and III will enable the EPA to assess the reasonableness of the state's proposed goals and activities and to monitor the progress of the state's programs.

A glossary of the terms used to describe the waste minimization program components is contained in the Definitions Section at the end of the chapter. In addition, technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has

assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

Evaluation Criteria

EPA plans to evaluate each state's waste minimization plan differently. For states not choosing to incorporate any waste minimization estimates into projections of capacity need, the Agency will simply review the state's submittal for accuracy and completeness. In these cases, the Agency will make no judgment on the adequacy of the particular waste minimization program operated by the state, if any such program is operating or planned.

For states that rely on waste minimization to reduce the demand for waste treatment capacity, the Agency must conduct a more detailed evaluation. For these states, the following must be demonstrated in the CAP.

- The estimated reduction in waste are based on a sound technical evaluation of the potential effects of waste minimization in your state. This does not require a technical analysis of waste minimization potential but an examination from available information to determine how it may apply to your state.
- The resources committed to implementing the waste minimization strategy are consistent with the plan set forth by the states; and,
- The activities for projected accomplishments in waste minimization are reasonable and there is a plan to implement these activities.

Form I: Legislative Authority

All states must fill out this form. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent _____
Telephone number _____
Address _____

1. Does legislative authority exist to implement a waste minimization program in your state? If authority exists through general broad authority, please answer yes and site the authority if known.

— Yes — No?

1a. If yes, what are the titles of the legislation and when was it enacted?

1b. Is future legislation anticipated and when does the state plan to have it enacted?

2. Indicate which of the following waste minimization program components are specifically in use or authorized in your state:

In use	Authorized	
_____	_____	Technical Assistance
_____	_____	Economic Incentives
_____	_____	Waste Exchange
_____	_____	Research and Development
_____	_____	Regulatory Requirements
_____	_____	Education
_____	_____	All programs are authorized under a broad legislative enactment
_____	_____	Other:

3. In your state, are there any pending statutes, or regulations relating to waste minimization that are expected to be enacted within the next two years?

— Yes — No?

3a. Please briefly describe the anticipated changes and their expected impacts on waste minimization in your state.

4. What administrative agency or agencies implement your state's waste minimization program (list all applicable agencies and the waste minimization component they are responsible for).

Agency

Component

5. What is the amount of funding received from the following sources (in thousands of dollars) for your waste minimization program?

—General revenues
—Dedicated taxes (e.g. waste end, feedstock)
—Tipping fees
—Federal Grants
—Other

6. Please estimate the number of person-years of staff supported by the state working on waste minimization.

—State professionals on staff
—Consultants
—Other

7. Do you plan to show any effect on future waste management capacity demand from waste minimization activities in your state?

— Yes — No?

If *Yes* Proceed to Form II. Waste Minimization Reduction Estimates.

If *No* Stop Here

The Waste Minimization Portion of the Capacity Assurance Submittal is Completed.

Form II. Waste Minimization Reduction Estimates

Only those states that anticipate incorporating waste minimization estimates in their capacity projections must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent _____
Telephone number _____
Address _____

1. Please estimate, using Worksheet IV-1, the amount of waste expected to be reduced (in tons or percent reduction) by waste minimization for each of the 17 waste types of Chapter III for projection years 1989, 1995, and 2009. These estimates should illustrate how you plan to incorporate waste minimization into your waste projections of Chapter V. They should not include anticipated changes in production rates, but should show only those reductions based on waste minimization efforts.

2. Please briefly describe the basis of your technical estimates. A list of bibliographic references and a short narrative describing how they were used is sufficient. Examples of appropriate material that might be used to develop waste minimization estimates include:

- State surveys of waste generation trends.
- Waste minimization plans prepared by industry in your state (Please describe or include these plans).
- Reports from Advisory Councils on the potential effects of waste minimization for the state.
- Reports from Federal Agencies and Trade and Technical Associations estimating trends in waste minimization applicable to the industries in your state.
- Engineering studies and analysis of potential waste stream changes applicable to industries in your state.
- Programs conducted by non-state agencies such as non-profit organizations that affect the industries in your state

3. How do you intend to measure the effectiveness of your Waste Minimization Program? (In addition to the information provided in the Biennial Report, indicate which of the following do you plan to evaluate to determine the effectiveness of your waste minimization program.)

—No other measures besides that obtained from EPA's biennial report
—Number of information requests handled
—Number of industries/plants participating
—Savings to industry (cost ratios)
—Change in waste quantity generated

—Change in ratios of waste generated per unit product
—Other

4. How will you acquire this information?
—By examining waste minimization program records
—By conducting industry surveys
—New EPA Biennial Report
—By examining state regulatory files
—Other

5. Briefly describe your communication strategy with the industrial community.

6. In addition to your waste reduction estimates, are there any other activities in your state (announced programs by one or more key industries to reduce waste, pending legislation or regulations, component implementation schedule) that might be useful in evaluating your waste minimization program?

Date	Activity

If You Have Shown Waste Reduction Estimates Based on the Effects of Your Waste Minimization Program, Proceed to Form III, Program Component Descriptions.

Form III: Program Component Descriptions

Only those states that anticipate incorporating waste minimization estimates in their capacity projections and have indicated employing individual waste minimization components in Form I Question 2 must complete this form. This section requests information on the specific components of your waste minimization program. Please complete the sections that are applicable to your state program. Questions on different waste minimization components are presented separately so that they may be distributed to different program officials if necessary. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to answer any question.

Form III includes the following:
III-a Technical Assistance
III-b Economic Incentives
III-c Waste Exchange
III-d Research and Development
III-e Regulatory Requirements
III-f Education

Respondents to each set of questions in this form should attach their name and telephone number should additional information be necessary.

Name of Respondent
Telephone number
Address

1. Please indicate the approximate emphasis that your state places on the following waste minimization components as a percent of your waste minimization budget.

Component	Approximate percent of budget
Technical Assistance	
Economic Incentives	
Waste Exchange	
Research and Development	
Regulatory Requirements	
Education	
Other	
Total	100%

III-a Technical Assistance

Indicate which of the following Technical Assistance components are currently in use or proposed for use in your waste minimization program.

Technical Assistance		
On-going	Proposed	
		On-site assistance
		Information clearinghouse/ Library
		Technical workshops
		Feasibility studies
		Other:

2. For Technical Assistance, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Technical Assistance program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Technical Assistance program do you anticipate or have you experienced?

III-b Economic Incentives

1. Indicate which of the following Economic Incentives components are currently in use or proposed for use in your waste minimization program.

Economic Incentives		
On-going	Proposed	
		Awards/matching grants
		Taxes/Fees (e.g., waste-end, front-end, point-of-use)
		Low-interest loans
		Tax credits
		Other:

2. For Economic Incentives, please provide the following information for existing or proposed programs:

2a. Indicate the number of grants provided in the base year as part of this component.

2b. What is the current (or projected) annual budget for grants provided in your waste minimization program as part of Economic Incentives (in thousands of dollars)?

2c. Describe the specific target of the Economic Incentives program (e.g., waste streams, industry categories, or both).

2d. Why did you choose to implement this program?

2e. What problems to implementing the Economic Incentives program do you anticipate or have you experienced?

III-c Waste Exchange

1. Indicate, which of the following Waste Exchange components are currently in use or proposed for use in your waste minimization program.

Waste Exchange		
On-going	Proposed	
		State-promoted
		State-managed
		State-financed
		Regional or multi-state effort
		Other:

2. For Waste Exchange, please provide the following information for existing programs or proposed programs:

2a. What is the current (or projected) annual contribution to the Waste Exchange (in thousands of dollars) that you participate in?

2b. What is the name of the Waste Exchange that you participate in?

2c. Which states participate in this Waste Exchange (Please list)?

2d. Describe the specific target of the Waste Exchange program (e.g., waste streams, industry categories, or both).

2e. Why did you choose to implement this program?

2f. What problems to implementing the Waste Exchange program do you anticipate or have you experienced?

III-d Research and Development

1. Indicate, which of the following Research and Development components are currently in use or proposed for use in your waste minimization program.

Research and Development

On-going	Proposed	
_____	_____	Options development/ feasibility studies
_____	_____	Pilot scale or demonstration projects
_____	_____	Economic or policy analysis
_____	_____	Manuals for audits or technology implementation
_____	_____	Other:

2. For Research and Development, please provide the following information for existing programs or proposed programs:

2a. What is the current (or projected) annual budget for Research and Development (in thousands of dollars)?

2b. Describe the specific target of the Research and Development program (e.g., waste streams, industry categories, or both).

2c. Why did you choose to implement this program?

2d. What problems to implementing the Research and Development program do you anticipate or have you experienced?

III-e Regulatory Requirements

1. Indicate, which of the following Regulatory Requirement components are currently in use or proposed for use in your waste minimization program.

Regulatory Requirements

On-going	Proposed	
_____	_____	Reporting requirements
_____	_____	Reduction standards
_____	_____	Design or operating standards (e.g. required chemical substitutions)
_____	_____	Management standards (e.g. mandatory waste reduction audits, listing on waste exchanges)
_____	_____	Other:

2. For Regulatory Requirements, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Regulatory Requirements program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Regulatory Requirements program do you anticipate or have you experienced?

III-f Education

1. Indicate, which of the following education components are currently in use or proposed for use in your waste minimization program.

Education

On-going	Proposed	
_____	_____	Governor's or other award programs
_____	_____	Public education (e.g. seminars, workshops, pamphlets)
_____	_____	Outreach
_____	_____	Other:

2. For Education, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Education program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Education program do you anticipate or have you experienced?

WORKSHEET IV-1.—ESTIMATE REDUCTIONS

[In tons or percent reduction]

Waste Types	Projection years—		
	1989	1995	2009
1. Contaminated Soil			
2. Halogenated Solvents			
3. Nonhalogenated Solvents			
4. Halogenated Organic Liquids			
5. Nonhalogenated Organic Liquids			
6. Organic Liquids, NEC [a]			
7. Mixed Organic/Inorganic Liquids			
8. Inorganic Liquids with Organics			
9. Halogenated Organic Solids/Sludges			
10. Nonhalogenated Organic Solids/Sludges			
11. Organic Solids/Sludges NEC [a]			
12. Inorganic Liquids with Metals			
13. Inorganic Liquids, NEC [a]			
14. Inorganic Solids/Sludges with Metals			
15. Inorganic Solids/Sludges, NEC [a]			
16. Mixed Inorganic/Organic Solids/Sludges			
17. Other Wastes, NEC [b]			
Total			

[a] NEC = Not Elsewhere Classified

[b] Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

Definitions Section

Definition of Waste Minimization

Waste Minimization. The reduction, to the extent feasible, of hazardous waste that is generated or subsequently treated, stored, or disposed. Waste minimization includes any source reduction or recycling activity undertaken by a generator that results in: (1) the reduction of total volume or quantity of hazardous waste; (2) the reduction of toxicity of hazardous waste; or (3) both, as long as the reduction is consistent with the goal of minimizing present and future threats to human health and the environment.

Source reduction. The reduction or elimination of waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process. Source reduction implies any action that reduces the amount of waste exiting from a process.

Recycling. The use or reuse of a waste as an effective substitute for a commercial product, or as an ingredient or feedstock in an industrial process. It also refers to the reclamation of useful constituent fractions within a waste material or removal of contaminants from a waste to allow it to be reused. As used in this report, recycling implies use, reuse, or reclamation of a waste either on site or off site after it is generated by a particular process.

Characterization of Waste Minimization Terms

Technical Assistance

On-Site Assistance. Comprehensive technical assistance to aid industry in reducing the volume or toxicity of wastes generated. May include consultation on industrial and waste management practices and waste minimization options.

Information Clearinghouse/Library. A data base (electronic or hardcopy) made available to managers involved in waste minimization. Clearinghouses provide access to documents, references, and telephone assistance.

Technical Workshops. Information dissemination programs designed to keep industry and the community up-to-date on programs, technology, waste minimization activities and appropriate regulatory information.

Feasibility Studies. Technical assistance, provided off-site, consisting of process analysis and engineering study utilizing general knowledge. May be based on information gathered from similar industries or previous on-site technical assistance. Project results are usually applicable to assist in solving select ranges of manufacturing or institutional problems.

Economic Incentives

Awards/Matching Grants. Direct payments from the state to hazardous waste generators or others engaged in waste minimization activities. May be structured to encourage various types of waste minimization activities, to assist specific types of firms, or to focus on particular waste streams.

Taxes/Fees. A means by which states create an economic incentive for waste minimization. Front-end taxes can be imposed at or near the beginning of the commercial chain of production, throughout the distribution network, and at the point of consumption of selected chemicals and substances. Waste-end taxes may be levied on the generation, transportation, storage, treatment, or disposal of wastes.

Low-Interest Loans. Financial assistance that enables firms to reduce the cost of financing investments in processes and technologies that reduce wastes. Usually directed to both small and mid-sized hazardous waste generators who may be unable to obtain commercial credit at an affordable price.

Tax Credits. A direct reduction in the tax liability of the firm, generally rewarding only capital investments.

Waste Exchanges

Waste generated by one company are provided or sold to another company that can use the waste material in their operation. Recipient companies usually use the waste untreated or subject it to a minimal amount of treatment prior to reuse.

Research and Development

Involves applied hazardous waste research, development, and demonstration projects and may include feasibility studies, pilot- and bench-scale demonstration projects, and economic and policy analyses. Usually funded by government and in some cases the private sector, these projects are typically undertaken by universities and other academic institutions.

Regulatory Requirements

Reporting Requirements. Requests by the government for generator information sufficient to determine the effectiveness of waste minimization programs. In some cases the companies involved in waste minimization are required to submit their plan as a part of a permit application to the regulating authority for adequacy.

Reduction Standards. Specific targets for reduction over time in the quantity and/or toxicity of certain waste streams.

Design or Operating Standards. Limitations or criteria applied to process design and manufacturing operations, usually specific to particular industries and/or waste streams, to minimize waste generation.

Management Standards. Directed to encourage waste minimization. Requires good management practice standards which may include mandatory audits or listing of wastes on a waste exchange.

Education

Governor's or Other Award Programs. A low-cost means to recognize and honor companies and institutions that have demonstrated outstanding achievement in hazardous waste management.

Public Education/Outreach. Promotional activities designed to keep the public informed of the need for a commitment to hazardous waste minimization. Targeted in general to citizen groups, trade associations, and professional organizations.

Chapter V—Projecting Hazardous Waste Generation, the Demand for Management Capacity, and Capacity Needs

Purpose

This chapter outlines procedures for states to use when projecting hazardous waste generation and its subsequent demand for waste management capacity. Projected total demands are then compared to projected capacities for each of the 15 waste management categories presented in Chapter III. The result is an estimate of projected capacity needs for each waste management category. The completed worksheets and narrative should represent Part 3 of the CAP.

States must project waste generated within their borders in 1989, 1995, and 2009. The 1989 projection year corresponds to the next biennial reporting year. The 1995 projection will present a near-term estimate of demands for waste management after most of the current hazardous waste regulations—the land disposal restrictions in particular—take effect. The law specifies that states assure adequate waste management capacity for 20 years, hence the year 2009 projection.

The methods contained in this chapter reflect procedures commonly used today to project waste generation. The Agency recognizes the inherent uncertainty of projections and the limitations of all procedures. For this reason, the Agency does not endorse any one system; states are free to choose the approach that best represents their particular situation. However, all projections must adhere to the following general guidelines:

- Projections must take into account economic expansion or contraction and its effect on the quantity of waste generated by the major sources within the state.
- Projections must account for the effects of waste minimization activities on future waste generation, based on clear documentation as described in Chapter IV and quantified in this chapter.
- Projections must account for non-recurrent wastes (from equipment decommissioning or replacement, materials or product disposal, materials or product spills, closure actions, remedial or corrective actions, or other non-routine sources) as well as waste generated from continuous industrial processes.
- To the extent possible, the state must address the potential effect of regulatory change on future waste generation and management options. EPA will provide a list of key regulations that the states should include in their analysis.

General Instructions

For each of the projection years, states should summarize their projections of waste quantities and effects on waste management capacity using worksheets V–1 and V–2, respectively. Worksheet V–2 is used to calculate waste management demand from in-state waste after subtracting waste exports. Worksheet V–3 is similar to Worksheet V–2, except that it requires states to estimate management capacity demand based on total in-state waste generation (including projected exports). Final potential capacity needs are determined in Worksheet V–4, which asks states to report estimated capacity needs after incorporating the effect of waste imports and exports. While the combined effect of imports and exports are used to estimate capacity needs, states also must report the balance of total in-state generated waste (including potential exports) against total in-state available capacity (excluding potential exports). This calculation, also required in Worksheet V–4, will be used by EPA to examine the

effect of waste imports and exports on each state's capacity balance.

The following sections provide general instructions on projecting waste from continuous industrial processes using common economic indicators and procedures; and projecting waste generated intermittently, such as that resulting from RCRA and CERCLA cleanups. Much of the analysis conducted for Chapter III will be used to complete this chapter, and similar expertise will be needed. In addition, states should coordinate their efforts with other state offices responsible for projecting and/or tracking state industrial activity or revenues. To the extent possible, waste generation should be based on the same economic forecast information used to project general business activity in the state or region.

Technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

Evaluation criteria

The Agency recognizes that no single methodology exists that is universally acceptable for projecting hazardous waste generation. Considerable discretion is left to the states to formulate reasonable projection methods. However, the Agency plans to evaluate the waste projections portion of the state's CAP on the following points:

- The underlying economic assumptions used in the projections should reflect existing or official projections of state economic activity unless otherwise justified by the state;
- The projections must account for major waste producing industries and the range of possible changes in the economic behavior of these industries;
- The projections must account for non-recurrent waste (e.g., CERCLA or RCRA remedial or corrective actions);
- The projections must correctly incorporate the predicted effects of waste minimization as outlined in Chapter IV; and
- The projections must document assumptions regarding waste imports and exports as required in the CAP.

Many states will have the capabilities to provide detailed estimates of future waste generation amounts and their demand for management capacity. Others may not have these capabilities or may choose not to make detailed estimates either because they have limited industrial sources or do not foresee significant economic changes taking place. EPA will accept all projections as long as they show that the state has considered all relevant factors and is not in conflict with other official state policy on economic development.

EPA recognizes that projections made for year 20 will be far less certain than those made over the short term. In the absence of additional information, the EPA will accept linear extrapolation of trends developed through the 1995 projection period.

Projecting Recurrent Waste Generation From Industrial Sources

Using 1987 generation as a baseline, states should first estimate expected generation for projection years 1989, 1995, and 2009 solely on the basis of economic changes. States should then make adjustments to these estimates to account for the expected effects of waste minimization as described in Chapter IV. Finally, states should, to the best of their ability, adjust their projections to account for the effects of pending regulations (listed subsequently in this chapter) on the demand for waste management capacity.

Projecting Waste Generation Based on Economic Expansion or Contraction

Economic change is a combination of two measures: changes in economic base (reflected by the basic composition of the region's industry, including new entrants and closures) and changes in industrial output (defined as the total value of goods and services from current industrial production). The agency does not expect states to forecast changes in their state's economic base, unless such changes are likely and critical—announced plant closures or start-ups of key industries are examples of such critical changes. However, absent such information, states should assume that the set of industries responsible for generating the majority of the state's hazardous waste in the base year will exist over the projection period.

The states should account for the effects of economic forces specific to each state and, ideally, to those industries currently responsible for the majority of waste generated. This involves two steps. First, states should compile a list of those industries that are responsible for generating the majority of waste (as defined by the 17 CAP waste categories) in their state. For states using EPA's new Biennial Report forms, these data are available in Form IC, Section IV (SIC code identification) and either GM or GS (waste quantities).

Second, the waste generation characteristics of these industries should be normalized to some indicator of economic output (discussed subsequently). Projections of the same economic indicator (or growth factors) then can be used to project waste from the industrial category in question. For states in which most of the 17 waste categories are dominated by a single industry or ones having similar growth potential, these growth factors simply may be applied to each of the 17 waste categories as appropriate.

Industries of Interest. Ideally, industrial activity should be forecast for each 4-digit SIC (Standard Industrial Classification) code industry responsible for one percent or more of a state's total waste volume. There are about 450 4-digit SIC industries represented in the Office of Management and Budget's Standard Industrial Classification system. While the mix of major waste generating industries will vary from state to state, most states should find that less than 100 4-digit SIC industries will account for 95 percent to 99 percent of total state generation. In many states, particularly the smaller ones, the majority of hazardous waste quantities will be attributable to perhaps 20 industry groups.

Even though economic projections at the 4-digit SIC code level of detail may provide the most accurate basis for projecting future waste quantities attributable to economic change, states are not required to build sophisticated projections models to track changes at this level. States should choose the level of detail in their economic projections best suited to their industrial bases, level of detail in baseline waste generation data, and technical support available within the state to make projections. Some states may find, for example, that projections at the 2-digit SIC code level are most appropriate. Others may not have access to SIC code information linked to waste generation and may thus choose to project economic change using a statewide growth index such as total state product. All of these methods will be acceptable to the Agency if they are appropriately documented.

Factors for Projection. Actual records of the number of product units manufactured—tons of steel or barrels of oil, for example—are the most certain measures of industrial output because they capture, by definition, actual manufacturing activity within the plant. But using these measures to project future output in 70 to 100 industries would be unnecessarily complex. In the

past few years, states have chosen to project economic changes using the following indicators, specific to a target group of 4-digit SIC industries:

- Total employment;
- Production employment;
- Value added by manufacture;
- Value of shipments; and
- Personal income from manufacturing (wages).

States should choose the indicator that most closely approximates in-plant industrial activity, and for which adequate data is available. None of the indicators above are perfect in this respect but some are better than others. Availability of the data may be the overriding factor influencing the state's decision.

Value of shipments, for example, is routinely reported in national aggregate statistics and at the individual plant level. But this measure does not distinguish between manufacturing and inventories as the source of shipments. Waste generation would be overestimated, for example, if waste was normalized to data that represented shipments from inventories instead of production, since actual production levels (and, hence, waste) in that year would be lower than shipments would indicate. In addition, the double counting associated with cross-shipments in value of shipments data may account for overestimates of plant activity.

Total employment also is routinely reported in national statistics and by individual plants, but changes in employment can misrepresent manufacturing activity if management and production employment change at different rates. In addition, waste generation estimates based on employment will be significantly overestimated if a company headquarters, representing largely management as opposed to production labor, constitutes a significant share of total employment within a given SIC code.

Value added closely parallels manufacturing activity because this measure avoids the problem of inventories associated with value of shipments data. These data are more limited, however, at the national level and they are rarely reported by individual manufacturing establishments.

While production employment is an input measure of manufacturing and not an output measure, it remains a good overall indicator insofar as it parallels manufacturing activity and is generally available at the 4-digit SIC code level regionally. It is important to account for changes in labor productivity, however, in projections of waste generation as a function of production employment. As industries automate, the ratio of waste per production employee may change, leading to over- or underestimates of future waste production if these adjustments are overlooked. In general, as labor productivity increases (the output per production employee rises), more waste will be created per employee in future years than in the baseline year.

Personal income from manufacturing, or simply wages, is another good overall indicator of plant activity. Estimates of personal income from manufacturing are available in national aggregate form, by 4-digit SIC code, and by state.

Sources of Data. The U.S. Department of Commerce (Bureau of the Census) and the U.S. Department of Labor (Bureau of Labor Statistics) collect and publish historical data on value of shipments, value added, total employment, production employment and income from manufacturing at the 4-digit SIC code level, by state or by county. At a minimum, all states can use these data to project future trends based on trends over the past five years. Alternatively, the Bureau of Industrial Economics prepares similar projections for groups of 4-digit SIC industries for the nation as a whole in its annual publication, *U.S. Industrial Outlook*. States can adapt these national projections if they so choose or they can adjust them with state-specific data. The Bureau of the Census' publication, *County Business Patterns*, provides a source of historical data on employment and sales, by industry and by county. Projections of personal income from manufacturing by SIC code and state through the year 2000 are available through the U.S. Bureau of Labor Statistics. Similar projections at the state level may be available from state agencies responsible for employment or labor trends.

Typically, a state economic development office or office of the Governor responsible for revenue projections will prepare its own forecast of industry growth. These projections may be incorporated directly into capacity assurance projections.

Reporting Projections. States report the results of hazardous waste projections attributable to economic change in column A of Worksheet V–1. A separate Worksheet should be presented for each projection year.

Documenting Projections. States should develop narrative support for the projections of waste generation and demand for management types presented in Worksheet V–1. In particular, the narrative documenting the effects of economic change should explain how growth factors were applied to project waste.

Incorporating the Effects of Waste Minimization

States have the option to reduce demands for waste management capacity in 1989, 1995, and 2000 by promoting waste reduction and projecting its effects. Plans for implementing and accounting for such activities must be documented in Chapter IV. In that chapter, states must identify two key parameters of thier waste reduction adjustments: (1) target percent or tonnage reductions by waste type, and (2) a schedule over which these reductions are expected to take place. In this chapter, states must show how the factors developed in Chapter IV have been incorporated in their projections.

The most straightforward approach is to adjust the expected waste quantities generated in a target year by the quantity expected to be reduced through waste reduction. A simple narrative explanation of how waste reduction factors were applied should be included to support the adjustments made in column B of Worksheet V–1.

Incorporating the Effects of Regulatory Changes on Waste Generation

EPA anticipates that changes in regulations over the projection period will affect both waste quantities (the demand for waste management capacity) and the allowable alternatives for management. Both are expected to affect a state's ability to assure adequate capacity. This section identifies the extent to which states should include the effects of regulatory changes on projections of waste generation. A subsequent section addresses the effects of regulatory changes on capacity supply and on the allowable matching of waste type to management categories.

The effects of regulatory changes on the demand side should be incorporated in column C of Worksheet V–1. Regulatory effects on waste generation also should be documented separately in a narrative statement.

Because of the uncertainty in projecting these effects over a 20-year period, EPA expects the states to account for regulatory change only to the extent that the Agency has published and can make available to the state its Regulatory Impact Analysis (RIA) for each rule, as of October 1, 1988. The RIA will describe likely quantitative effects on waste generation and consequent demands for

management technologies. The following is a list of rules that EPA expects to have an impact on capacity assurance, and for which publication of an RIA is expected by October 1:

Land Disposal Restrictions, First Third. Should effect virtually all listed and characteristic wastes and, by extension, all industries generating them. Expected to shift the management of certain waste streams away from land disposal and toward incineration and other treatment options. Also expected to stimulate waste reduction. Treatment standards must be promulgated by May 8, 1990.

New Listings. Should expand the number of waste streams under regulation; six new wood preserving waste streams will be proposed in September 1988, including two wastewater streams (1.1 million tons/year) and four process streams (45,000 tons/year); two new waste streams to be added in summer 1988 from methyl bromide manufacture (amounts confidential); one new waste stream from petroleum refining to be added in 1988 (200,000 tons/year).

States should estimate the additions (or deletions) to regulated waste volumes attributable to the above rules and record these results in Column C of Worksheet V–1.

Projecting Non-Recurrent and One-Time Only Waste Generation

Non-recurrent waste generation can result from periodic industrial operations (boiler and other process unit maintenance) and RCRA and CERCLA corrective actions and cleanups. Waste generated from these sources—while possibly significant—are much more difficult to project than waste from continuous industrial processes. In the long run, the demand for capacity imposed by one-time wastes may be less important to capacity assurance than the demand imposed by recurrent wastes. Separating one-time from recurrent wastes, therefore, should be in the state's best interest.

EPA recognizes that data for projecting the generation of one-time waste are generally less available and less reliable than data on recurrent waste generation. This section describes possible methods that states may use to make such projections, given current data inadequacies. States are encouraged to develop alternative methods to project one-time waste generation and to fully document their assumptions and procedures.

While data may not always be available to support realistic calculations, states—as a minimum—should attempt to estimate RCRA-hazardous waste produced from the following classes of activities:

- Site remedial actions (from federal Superfund and state clean-ups);
- RCRA corrective actions;
- Underground storage tank cleanup; and
- Site remediation as a result of real estate transfer statutes.

The projected sum of all non-recurrent waste quantities should be reported by waste type in column D of Worksheet V–1 (one worksheet for each projection year). Calculations should be documented in a separate narrative.

Notice of Corrective Actions to Receiving State

To assist states in accounting for the amounts of CERCLA corrective action waste imported into their state, the EPA will inform the recipient state regarding its intention to fund remedial actions and immediate removals that will cause wastes to be shipped to that state. This information will include the source of waste, waste quantity, waste characteristics, proposed treatment or disposal facility to receive waste, and anticipated shipment date. The information will be provided to the recipient state's environmental regulatory agency at least 45 days in advance of the anticipated shipment date. This action will allow the recipient state an opportunity to coment on the consistency of the removal with both the exporting state's CAP and its own plan.

Site Remedial Actions

For many Superfund sites, estimates of the quantities of contaminated site wastes (soils and groundwater) that may require off-site treatment and disposal are available in Records of Decision (RODS). Where RODS have not yet been prepared, more limited information regarding quantities likely to be encountered at Superfund sites may be available in Remedial Investigations, Feasibility Studies, or Hazard Ranking System listings. These documents are available for review in EPA's 10 regional offices. The annual volume of wastes to be removed from these sites is largerly a function of the extent of contamination (and hence the decision to ship waste off-site or handle it on-site) and rate of expenditures for site cleanup activities. EPA recognizes that these estimates will be highly uncertain, especially for those sites without approved RODs or for state cleanup sites without comparable documentation.

Where data permit, states should prepare a list of all federal and state Superfund sites for which reliable estimates of the quantity to be handled is available and estimate a time interval over which actual remedial work will be completed. Such estimates may be best made by the State Superfund office or the EPA regional Superfund coordinator. For each site, prepare a listing of the contaminants that predominate and match them as closely as possible to one (or more) of the 17 capacity assurance waste categories. Much of this information should be available in site investigation and decision documents referenced above. In the absence of such information, exclude this site from further consideration.

States should then estimate the quantity of Superfund waste expected to be handled off-site at in-state facilities versus that quantity to be exported. Superfund waste shipped off-site must be manifested like any other waste stream regulated under RCRA. An analysis of current waste manifests may be used to project future in-state handling from exported Superfund waste. Regardless of how states make this estimate, however, it should be fully documented with descriptions of procedures and explanations of assumptions.

RCRA Corrective Action Sites

State should assemble the following information:

(1) From the regional EPA office or the state RCRA permitting office (depending on your state's authorization), compile a list of potential RCRA sites that will require corrective action (be sure to include corrective action as a condition of obtaining a Part B permit plus corrective action as a condition of closure). In most cases, states will be unable to estimate waste quantities or waste volumes to be removed unless a Corrective Measures Study (CMS) has been prepared. The Agency recognizes that as relatively few corrective action sites have progressed to the CMS stage (several years may elapse before a potential site has been fully evaluated), states may be limited in their ability to incorporate the effects of RCRA corrective action into their 1989 CAP. In the absence of these data, states may wish to assume that a proportion of RCRA facilities will require corrective action and document that assumption to the best of their ability.

(2) Estimate the amounts and timing of expected on-site management demands and off-site demands using methods described above for Superfund site estimates.

(3) Estimate the proportion of off-site waste expected to be shipped to in-state facilities and that shipped out of state using information on waste manifest

forms. In the absence of an historical record of shipments from RCRA corrective action sites, the state should assume that all removed material will be shipped to in-state facilities, if they now exist. Otherwise assume that they will be exported.

Underground Storage Tanks

While they are regulated separately, corrective action requirements for releases from tanks containing petroleum or hazardous substances are similar to other cleanup requirements—visibly contaminated soils must be removed. If residual contamination of groundwater or surrounding soils persists, additional cleanup is necessary. Actual levels of cleanup are determined on the basis of site-specific environmental risks and potential exposure. States should include estimates of RCRA-hazardous waste quantities likely to be generated as a result of underground storage tank remediation, only if sufficient data are available. The type of data needed include:

- Inventory of tanks subject to regulation
- Statistics on leakage rates, preferably by type of tank
- Characterization of tank inventory by contents (gasoline, solvents, other organics, inorganics)
- Field estimates of extent of contamination. If these data are available, states should estimate quantities and timing of demand for waste management services using methods similar to those presented for estimating Superfund demands.

Site Remediation From Real Estate Transaction Laws

If applicable, states should include estimates of RCRA-regulated waste generated from site remediation pursuant to state real estate transfer statutes (i.e. New Jersey's ECRA statute) based on trends in past rates of generation, if such data are available.

Total Projected Demands

States should record the sum of columns A through D in column E of Worksheet V–1. This quantity represents the total projected demand for waste management capacity without consideration for the location of handling or of the effects of imports or exports.

Matching Waste Types to Management Categories and Incorporating the Effects of Regulatory Change on Capacity Supply

Total demands for waste management capacity should be brought forward from Column E of Worksheet V–1 and distributed among the 15 waste management categories in Worksheet V–2 in such a way that none of the rules expected to be in place in each projection year would be violated. Most untreated liquid and sludges, for example, should be banned from land disposal by 1995; thus, no waste of this nature should be matched with land disposal in Worksheet V–2, unless it first undergoes some treatment. States should briefly describe the assumptions behind their projected matches of waste types to management categories.

States also should estimate the demand for RCRA, capacity imposed by non-regulated waste. EPA will provide estimates of these data as of 1986 from the TSDR Survey. States can hold this level of demand steady over the projection period or adjust it up or down, consistent with state policies on the proper handling of non RCRA-regulated waste. These entries should be documented in a separate narrative.

Projecting Efforts. States may show level, reduced, or increassed exports (relative to 1987 levels) in the final column of Worksheet V–2, to the extent that they do not violate the "reasonableness" criteria of Appendix A. EPA will assume that the pattern of exports (the states to which different quantities of exports are sent) in the projection years will remain the same as the pattern of exports in 1987 as noted in Worksheet III–7. If a state believes that this pattern will change in any projection year, a narrative statement should accompany worksheet V–2, explaining the changes. For example, a state might enter into an agreement with another state that changes the pattern of export flows to that state, as reflected in both states' CAPs.

Worksheet V–3 is similar to V–2, except that it asks states to determine the effect on management capacity of all projected in-state waste, including exports. The results of both Worksheets will be used to estimate capacity need in Worksheet V–4.

Calculating Hazardous Waste Management Capacity Needs

Using Worksheet V–4, states must determine the amount of management capacity potentially needed in the state over the next 20 years. In determining these needs, the state must make adjustments to account for on-site and captive handling and describe assumptions on waste imports and exports.

Adjustments for On-Site and Captive Handling

For purposes of assuring capacity, states can assume that all-waste (or the proportion of total waste) currently managed on-site will continue to be managed on-site, unless the state believes regulatory changes or market forces will alter this pattern. If such shifts are anticipated, states should document the assumptions leading to the conclusion. Similarly, states can assume that all waste (for the proportion of total waste) now handled in captive facilities will be handled in captive facilities in the projection years.

In either case, states should retrieve the appropriate data from Chapter III, Worksheets III–3 and III–4 and present their best estimate of on-site and captive handling in Worksheet V–4 (a separate worksheet for each projection year). The first row of Worksheet V–4 should be brought forward from the column totals of Worksheet V–2 and V–3.

Projecting Commercial Capacity Needs

States should calculate their potential need for additional in-state waste management capacity using the top block of rows in Worksheet V–4. These calculations use the demand projection figures obtained from Worksheet V–2, which subtract the quantities of waste projected to be exported by the state (see "Projecting Exports," page V–7). To calculate "Total Demand With Imports, Excluding Exports," total demand estimates first must be transferred from the last row of Worksheet V–2 (for each appropriate projection year). Capacity demand directed to on-site and captive facilities next must be subtracted (see discussion above), and demand due to projected waste imports must be added.

Projecting Waste Import Demand. States may hold imports constant to 1987 levels—or allow them to grow—in their demand projections without providing additional narrative to EPA. If imports are shown to decline. The assumption of declining imports would be acceptable if it corresponds with CAP of the state exporting the waste, or if it is based on the importing state's assumption that export practices from other states will change over time in accordance with the process of Appendix A. If an assumption of declining imports is not supported by other states' CAPs, then the importing state must fully document the basis of its assumption.

Final Calculation of Demand. In estimating final demand, states may claim all available capacity projected as available through 1989, based on their

analysis in Chapter III. Data on 1989 commercial capacity should be obtained from Worksheet III–6. The predicted 1989 commercial capacity should be subtracted from the total commercial demand figures in Worksheet V–4 to obtain an estimate of capacity shortfall (or excess) in each projection year. These figures will form the basis of capacity need plans as described in Chapter VI.

Calculating the In-State Capacity Balance. The bottom block of rows in Worksheet V–4 are used to calculate the balance of total in-state commercial capacity (excluding import demand) against total in-state waste generation (including potential waste exports.) To complete these calculations, states first should transfer the demand estimates from Worksheet V–3 (for each appropriate year) to Worksheet V–4 (for each appropriate year). Subsequent calculations then are similar to those described above (for the top block of rows) except that import effects are neglected.

The result of these calculations will be used by EPA to assess the effect of waste imports and exports on the commercial capacity contained in each state. They will not be used as a basis for assessing future need.

Plans To Address Capacity Shortfalls

States that show an excess of management capacity in Worksheet V–4 for the projection years 1989, 1995, and 2009 are not required to present plans for addressing capacity shortfalls. These states must only supply brief information in Chapter VI.

States that show a shortfall of management capacity in Worksheet V–4 for projection years 1989, 1995, and 2009 must describe their procedures in Chapter VI to create new capacity through either new or expanded facilities in the state. States may choose not to meet the entire shortfall by creating new capacity. In this case they must revise their numbers for waste minimization (Chapter IV) and waste exports and recalculate Worksheet V–4.

WORKSHEET V–1.—SUMMARY OF IN-STATE WASTE QUANTITIES PRODUCED IN PROJECTION YEAR ——

[All in tons/year]

Management Technology	Projected Demand From Recurrent Waste Generation	Adjustment for Waste Reduction	Adjustment for Regulatory Change	Demand from One-Time Waste	Total Demand (A+B+C+D)
	A	B	C	D	E
1. Contaminated Soil					
2. Halogenated Solvents					
3. Nonhalogenated Solvents					
4. Halogenated Organic Liquids					
5. Nonhalogenated Organic Liquids					
6. Organic Liquids, NEC					
7. Mixed Organic/Inorganic Liquids					
8. Inorganic Liquids with Organics					
9. Halogenated Organic Solids/Sludges					
11. Organic Solids/Sludges NEC					
12. Inorganic Liquids with Metals					
13. Inorganic Liquids, NEC					
14. Inorganic Solids/Sludges with Metals					
15. Inorganic Solids/Sludges, NEC					
16. Mixed Inorganic/Organic Solids/Sludges					
17. Other Wastes, NEC *					
Total					

* Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

Note: NEC = not elsewhere classified.

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Worksheet V-2:

Demand for Waste Management in Projection Year ____
After All Adjustments

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	EXPORTS	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NEC[a]																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC[b]																		
Non-RCRA Waste																		
TOTAL																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

Worksheet V-3:

Demand for Waste Management Capacity from All (Including Exports) In-State Generation in Projection Year _____

WASTE TYPES	MANAGEMENT CATEGORIES																
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	TOTAL
Contaminated soil																	
Halogenated solvents																	
Nonhalogenated solvents																	
Halogenated organic liquids																	
Nonhalogenated organic liquids																	
Organic liquids, NEC[a]																	
Mixed organic/inorganic liquids																	
Inorganic liquids w/organics																	
Halogenated organic solids/sludges																	
Nonhalogenated organic solids/sludges																	
Organic solids/sludges, NEC																	
Inorganic liquids w/metals																	
Inorganic liquids, NEC																	
Inorganic solids/sludges w/metals																	
Inorganic solids/sludges, NEC																	
Mixed organic/inorganic solids/sludges																	
Other wastes, NEC[b]																	
Non-RCRA Waste																	
TOTAL																	

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.

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WORKSHEET V-4.—SUMMARY OF DEMAND FOR COMMERCIAL HAZARDOUS WASTE MANAGEMENT CAPACITY IN PROJECTION YEAR——

	Waste Management Category						
	Thermal Destruction (all in tons/year)			Final Disposition			
	Liquids incineration	Solids Incineration	Energy Recovery	Land Treatment (in tons/year)	Deepwell Injection (in tons/year)	Landfill (tons)	Other disposal
Total Demand with Imports, Excluding Exports							
– waste handled on-site							
– waste handled in captive facilities							
+ waste imports							
= Demand for Off-Site Commercial Waste Management Capacity							
–commercial capacity available 1989							
= Estimated Capacity Shortfall (if positive) Estimated Capacity Remaining (if negative)							
Total Demand Excluding Imports, Including Exports							
– waste handled on-site							
– waste handled in captive facilities							
= Demand for Off-Site Commercial Waste Management Capacity							
– commercial capacity available 1989							
= In-State Capacity Balance							

WORKSHEET V-4 (CONTINUED).—SUMMARY OF DEMAND FOR COMMERCIAL HAZARDOUS WASTE MANAGEMENT CAPACITY IN PROJECTION YEAR ——

	Waste Management Category							
	Reuse/Recovery (all in tons/year)			Treatment (all in tons/year)				
	Metals	Solvents	Others	Organic *	Inorganic *	Sludge	Stabilization	Other
Total Demand with Imports, Excluding Exports								
– waste handled on-site								
– waste handled in captive facilities								
+ waste imports								
= Demand for Off-Site Commercial Waste Management Capacity								
– commercial capacity available 1989								
= Estimated Capacity Shortfall (if positive) Estimated Capacity Remaining (if negative)								
Total Demand Excluding Imports, Including Exports								
– waste handled on-site								
– waste handled in captive facilities								
= Demand for Off-Site Commercial Waste Management Capacity								
– commercial capacity available 1989								
= In-State Capacity Balance								

* Note: Separate reporting for aqueous inorganic and aqueous organic treatment is optional in 1989, but mandatory in and thereafter

Chapter VI—Documenting State Plans for Increasing in-State Capacity

Purpose

This chapter requests information on each State's procedures that affect or facilitate the development of hazardous waste management capacity. Because the CAP addresses a 20-year timeframe, most states will not have adequate capacity in-place today to handle all the hazardous waste generated over the next 20 years, making it necessary for States to document their procedures to allow or facilitate capacity development.

Chapter V of the guidance document asked each state to summarize their projected need for hazardous waste management capacity over the next twenty years, after taking into account waste minimization efforts and waste exports. All states showing a shortfall in their hazardous waste management capacity in their projection years must describe their plans for addressing this shortfall through their facility siting process and their procedures to process existing facility expansion applications. States projecting hazardous waste capacity shortfallls within the projection period through 1995 also must report key interim and final siting milestones, such as site designation, permit submission, permit approval, and expected construction start.

General Instructions

To complete the requirements of this chapter, states should respond to the questions contained in the attached forms. States should copy and complete the appropriate forms and include them in the CAP. Additional documentation should be included as needed.

Not all forms must be completed. States that project sufficient capacity through year 20 must only complete Form I, "General Siting Description". This form requests general information

on state procedures that affect or facilitate the development of new hazardous waste capacity. It covers such items as the state's general siting process, preemption and override authority of local and state government, and laws that restrict the operation or configuration of a facility.

States that project a capacity shortfall in any projection year after taking into account waste minimization and waste exports must complete both Form I and Form II, "Capacity Development Plans," requests a more detailed description of topics covered under Form I.

Finally, those states that project a shortfall in 1989 or 1995 must complete all forms up through Form III, "Milestones and State Review". This form requests information on the state's anticipated progress in meeting its shortfall.

A glossary of the terms used in this Chapter is contained in the Definition Section at the end of the chapter. In addition, technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

Evaluation Criteria

The EPA recognizes that many different state approaches exist for planning and overseeing the development of new hazardous waste management capacity. Each state has and probably will employ a different strategy to ensure that it has adequate capacity now and in the future. The Agency therefore will focus its evaluation on two key areas:

- The ability of a state program to allow or facilitate the development of adequate capacity when needed; and,
- The degree of a state's reliance on out-of-state capacity as a substitute for developing in-state capacity.

If a state has shown in Chapter V that it plans to construct new capacity to meet projected needs, EPA will evaluate the ability of a state program to meet the expected shortfall. Because the Agency recognizes that states can do many things to promote, facilitate, or simply allow the development of new capacity, the Agency will concentrate in review on items that may indicated a flawed program or that actually hinder siting. Practices or policies that may either hinder new capacity development or indicate program difficulties include the following:

- A state siting processs that is subject to strong local premption powers not firmly grounded in environmental, health, and safety concerns. An inability of the state to appeal or rectify such preemption.
- The absence of a siting program having clearly defined steps and procedures. A lack of sufficient opportunity for public review and comment. The absence of clear time lines between permit review, comments, and approval or denial.
- The enactment of rules that may be viewed as discriminatory, such as placing limits on facility size, type of waste allowed at the facility based on origin of the waste, or outright prohibition of waste management facilities if not based on environmental health, and safety concerns. (This would not include limitations that may be agreed to by the facility developer and the host community as part of siting process negotiation.)
- A state having sufficient demand for new hazardous waste capacity accompanied by a history of failed siting efforts.

The Agency also will examine the states reliance on out-of-state hazardous waste management capacity to determine if it conflicts with the requirements set forth in Appendix A.

Form I: General Siting Description

All states must fill out this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent _____
Telephone number _____
Address _____

1. Does your State have a formal hazardous waste management facility siting process in addition to the RCRA permitting process?
— Yes — No?
If Yes,
1a. What are the titles of the legislative authorities and when were they enacted?

2. Does your State have a siting agency that is distinct from the RCRA regulatory agency?
— Yes — No?
If Yes,
2a. What are the titles of the legislative authorities and when were they enacted?

3. Please describe (in a brief narrative) the procedure used to review facility applications, select sites (if applicable), review permits, and provide public comment. Please indicate the time required to complete major steps, such as the time required between permit application and approval/denial. Include an explanation of the appeals process available to the siting applicant, the host community, and siting opponents. (Where applicable, please note how a particular activity differs for expansion of existing facilities compared to siting of new facilities. If the process is significantly different for new sitings and expansions, please prepare two separate descriptions.)

3a. If possible, please construct a flowchart showing the major steps of the siting process as described in your narrative. Where known, indicate the time necessary for an application to proceed through each required step. (See example contained in back of this chapter.)

4. Please describe (in a brief narrative) the outcome of recent siting applications since 1986.

5. The following questions address basic laws and rules that may affect the siting or expansion of new facilities. When answering the following questions, please note the relevant law or rule (if applicable) and briefly describe any special circumstances or constraints that apply.

5a. Do local governments in your State have the authority to approve RCRA permits?
— Yes — No?
If Yes, please list the applicable regulation or authority.

5b. Do local governments in your State have the power to prohibit facility siting by the use of zoning ordinances?
— Yes — No?
If Yes, please list the applicable regulation or authority.

5c. Does your State have the power to override local zoning authority and/or preempt local zoning powers?
— Yes — No?
If Yes, please list the applicable regulation or authority.

5d. Does your State have the power to override and/or preempt any other local authorities that could prohibit or restrict capacity development?
— Yes — No?
If Yes, please list the applicable regulation or authority.

5e. Are there State restrictions on the size or number of new or expanded facilities?
— Yes — No?
If Yes, please explain.

5f. Does the State allow facilities to be built that have greater capacity than that needed to treat in-State waste?
— Yes — No?
If No, please explain.

6. The following pertain to laws and regulations that affect interstate transportation of hazardous waste.

6a. Does your State assess a fee on the generation of hazardous waste?
— Yes — No?
If Yes, please explain.

6b. Does your State assess a fee for the treatment or disposal of hazardous waste?
— Yes — No?
If Yes, please explain.

6c. Does your State have the power to establish differential fees on waste that is imported for treatment and/or disposal?
— Yes — No?
If Yes, please explain.

6d. Are any limits placed on the size of the differential fee?
— Yes — No?
If Yes, please explain.

6e. Do local or county governments have the power to establish differential fees on waste that is treated and/or disposed of in their jurisdiction?
— Yes — No?
If Yes, please explain.

7. In addition to the CAP, has the State conducted a needs assessment?
— Yes — No?
7a. Does your State plan to use the CAP to assess needs?
— Yes — No?
7b. If not, what do they plan to use to determine the need for new facility capacity?

8. Does the needs assessment indicate a potential shortfall (in commercial capacity)?
Projection Year 1989 — Yes — No
Projection Year 1995 — Yes — No
Projection Year 2009 — Yes — No

If You Answered Yes to any Part of Question 8, You Must Complete Form II.

Form II. Capacity Development Plans

Only those states that project a capacity shortfall in any projection year must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent _____
Telephone number _____
Address _____

1. How much new commercial facility capacity will be needed by 1989, 1995, and 2009 to meet the shortfall anticipated for hazardous waste management capacity? See Worksheet VI–1.

2. How does your State intend to develop new in-State capacity as identified in its needs assessment?
—By siting new facilities
—Through the expansion of existing facilities
—Both
—Other, please expain

3. If you intend to meet new capacity needs by increasing waste exports beyond the 1987 levels, please explain why. Please indicate whether such plans are based on management planning efforts with other states, industries increasing exports to captive facilities, any environmental or economic considerations that restrict development of in-State capacity, or projections of current patterns.
3a. Have you contacted states that now receive your waste exports prior to completing your CAP?
—Yes —No?
3b. If Yes, will the CAPs of these states reflect your projected export patterns?
—Yes —No?
Please list the states that you have contacted.

3c. Are you participating in a multi-state hazardous waste management planning effort?
—Yes —No?
3d. Please list the participating states.

4. Does your State have siting criteria?
—Yes —No?
If Yes, please attach information describing your siting criteria.

5. Are any of the following methods used in your State to select sites or encourage site develoment (check all that apply)?
—State selection of specific site
—State purchase of specific site
—State inventory of suitable sites
—Private nomination of site
—Local nomination of site
—Permit fast tracking
—Other, please list:

6. How is the public allowed to participate in the siting process in order to affect the siting decision?
—Adjudicatory public hearings
—Informational public hearings
—Local advisory committee
—Local representatives on siting board
—Other, please explain

7. Is financial assistance provided to the local community to allow it to review the siting application and conduct an environmental or health assessment?
—Yes —No?
If yes,
7a. Who supplies the funds?
—State
—Siting applicant
—Other, please explain

7b. What is the maximum amount of funding a community may receive?
$_____
7c. Are there any restrictions on the use of the funds?
—Yes —No?
If Yes, what are they?

8. Does your State use negotiation in its siting process?
—Yes —No?
If Yes, please explain.

9. Are dispute resolution procedures used in your State to settle differences on siting issues?
—Yes —No?
If Yes, please explain

10. Is compensation to host communities used in your State?
—Yes —No?
If Yes, please explain.

10a. Who is responsible for providing the compensation?
—The site developer
—The State
—Other, please explain

10b. What type(s) of compensation is used?
—Cash payments
—Fees based on waste management activities
—Insurance
—Emergency training and equipment
—Operating concessions
—Other, please list:

11. Is your State authorized to build and/or operate a hazardous waste management facility?
—Yes —No?
If Yes, please explain (also please indicate if you presently own or operate any facilities).

States Projecting a Capacity Shortfall in 1989 or 1995 Must Complete Form III, Mile-Stones and State Review.

States Only Projecting a Shortfall in 2009 Stop Here.

Form III: Milestones and State Review

Those states that have projected a shortfall for 1989 or 1995 must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please copy this form if more space is needed to describe your State's milestones.

Name of Respondent _____
Telephone number _____
Address _____

1. States must complete a schedule of capacity development milestones for each type of management capacity needed. These milestones should reflect key decision dates for different types of capacity. It is not necessary to list specific facilities. Please use Worksheet VI–2 to report these milestones. However, states should also include milestones for approval of RCRA Part B permits for established facilities now operating under interim status.

The schedule of milestones in Worksheet VI–2 can include any steps in the State siting process that would indicate the development of needed capacity. For example, states with

developed programs could define their milestones by specifying dates by which the following activities should be completed:

- Enter in a multi-state hazardous waste planning effort.
- Designation of candidate sites.
- Letter of intent to develop a facility from a private party (or equivalent commitment from a public entity).
- Identification of host community.
- Permit submission.
- Draft permit approval.
- Final permit approval.
- Construction start.
- Operation start.

States without a formal siting program also should report the above activities. However, they also may indicate key milestone dates for developing their own siting program. This would include activities such as the following:

- Passage of siting legislation.
- Establishment of statewide siting criteria.
- Creation of a State board or authority.
- Development of siting regulations.

States are not restricted to the program elements suggested here, but are encouraged to achieve a level of specificity in defining milestones.

2. What are the likely measures your State will take if you do not meet an anticipated milestone?

—The State will become more active in capacity development

—The State will change it siting process

—The State will temporarily increase exports

—Other, please explain

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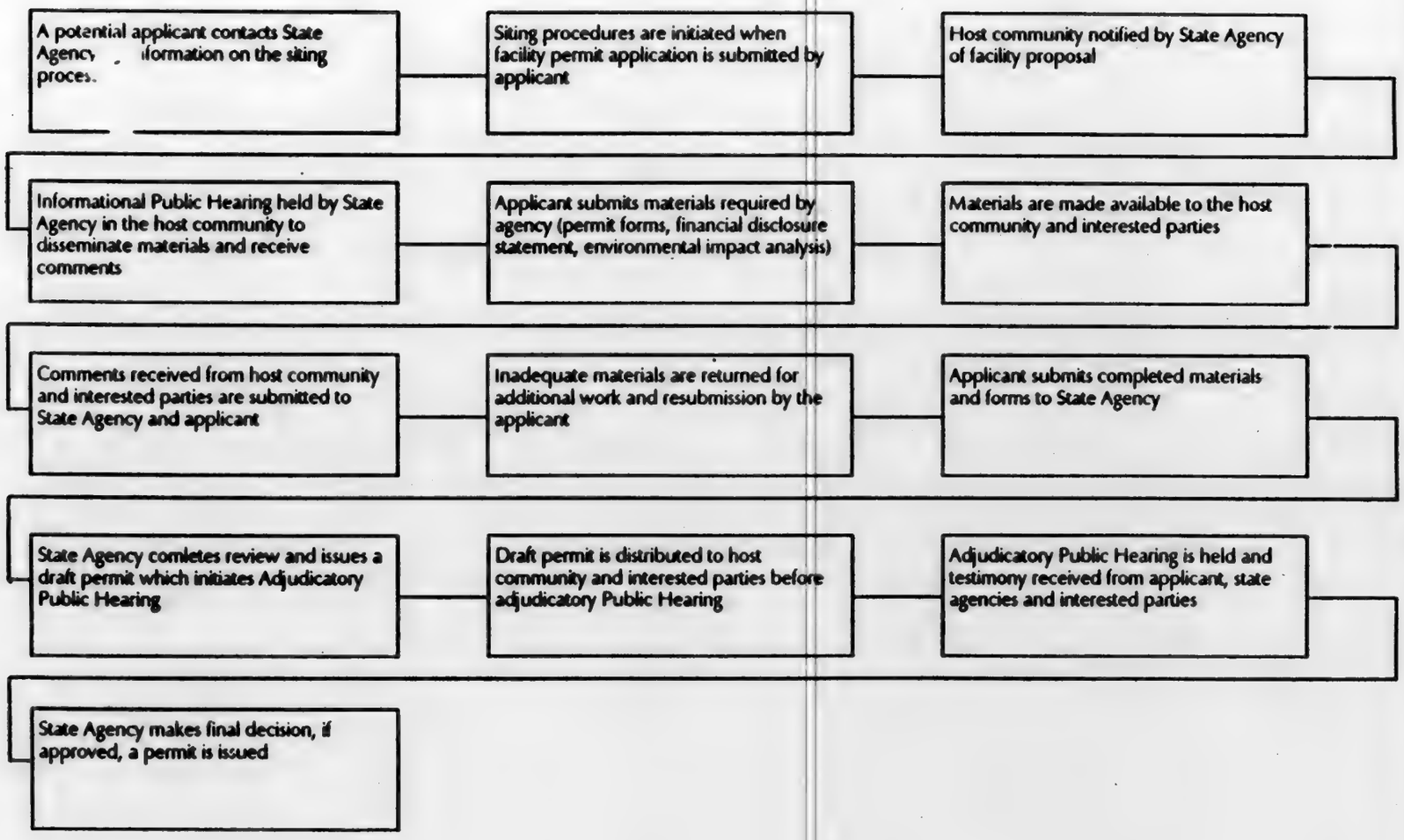
SITING PROCESS FLOWCHART

(See Form I, Question 3a.)



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WORKSHEET VI-1.—TYPE OF MANAGEMENT CAPACITY NEEDED

[Tons per year]

Waste Management Categories	Projection Years		
	1989	1994	2009
1. Metals Recovery			
2. Solvents Recovery			
3. Other Recovery			
4. Incineration: Liquids Only			
5. Incineration: Solids/Sludges			
6. Energy Recovery: Kilns, Boilers, Furnaces			
7. Aqueous Inorganic Treatment			
8. Aqueous Organic Treatment			
9. Sludge Treatment			
10. Other Treatment			
11. Stabilization			
12. Land Treatment			
13. Landfill			
14. Deep-well Injection			
15. Other Disposal			

WORKSHEET VI-2.—CAPACITY MILESTONES

Type of management capacity (from list of 15 categories): ————

Date	Milestone Description

Definitions Section

Siting Process. This encompasses all elements of screening and evaluation involved in gaining approval for a specific hazardous waste facility at a specific site. The process includes site selection (when required), application for the various required state, national, and local permits, review of those applications by the appropriate government agencies in accordance with criteria previously specified, hearings, other forms of public involvement where applicable (local advisory committees, negotiation), submission and review of application amendments and revisions and final decision (approval or denial of the application).

Siting Criteria. These are constraints and guidelines specified by each state for evaluating the suitability of individual sites proposed for hazardous waste management facilities. These criteria can include outright prohibitions against siting facilities in certain environments (in 100 year flood plains) or can be more general and list the variables that should be taken into consideration in evaluating proposed sites (population density and evacuation plans).

Milestone. This is a task or achievement to be accomplished by a specific point in time. Milestones can be stated quantitatively, such as tons of incineration capacity in operation by a certain date, or can be described qualitatively as unique policy components, such as implementation of certain defined procedures in a state siting program by a specified date.

Needs Assessment. This is an evaluation of current and future needs for hazardous waste management capacity. An assessment includes estimation of current and projected future waste generation, evaluation of current and imminent capacity, and calculation of capacity shorfalls or need for increased management capacity. It may also include an analysis of current and suggested state policies in hazardous waste management. A needs assessment provides a basis for state planning for future hazardous waste management, helping the state to choose among alternative approaches to satisfying demand for sound management capacity, and publicizes the state's market needs to private suppliers. A needs assessment is a statement of the state's position in waste management and does not necessarily lead to the state's active involvement in capacity expansion or site selection.

Negotiation. This consists of mediated and nonmediated interactions between the proponent of a specific hazardous waste management facility and representatives of the host community and other communities that are likely to be affected by the proposed facility. Negotiation can entail clarification and resolution of issues and concerns, development of alternatives, and specification of compensation and mitigation measures accepted by both parties.

Compensation. This includes services and payments made to a host community and other affected communities to help allay burdens imposed by their proximity to a hazardous waste management facility. Compensation can be cash payments (a given payment per ton processed) or provided in-kind (free clean-up of public hazardous waste spills, company maintenance of access roads).

Mitigation. These are measures implemented to minimize the impact of a hazardous waste facility on the surrounding population and the environment. Whereas compensation is meant to balance burdens, mitigation is intended to reduce the burdens carried by host and nearby communities. Mitigation includes restrictions on operating hours and procedures, limitations on types and volumes of waste accepted, stricter engineering specifications, and construction of additional safety features.

Preemption. The state has the authority to make decisions in an area normally reserved for local or county government. That is, the state substitutes its authority for local or county authority in a specified policy area so that a decision normally left to lower level of government is taken at a higher level of government which is not required, under preemption, to defer to local preferences.

Override. The state has the authority to overrule decision made at a lower level of government. With regard to hazardous waste management, the local jurisdiction first evaluates the case and makes a decision; this decision can then be appealed to the higher authority which has the right to overturn the decision if it feels justified.

Facility Expansion. This is any increase in capacity of an existing hazardous waste facility. This can refer to construction of plant additions or substitution of new equipment for older equipment with a concomitant ability to handle greater volumes of waste.

Siting Application. This is a request for state agency approval of a specific hazardous waste facility on a designated site. Application contains engineering specifications of the facility, description of wastes and technical processes, information on the developer, as well as environmental and geological description of the site and surrounding area.

Adjudicatory Hearing. This is a public hearing to gather evidence and arrive at a decision on a proposed facility, structured like a judicial review. Interested parties present evidence to influence the final decision and are generally subject to cross examination as part of the process. Based on evaluation of the evidence presented, the hearing examiner rules on the suitability of the proposed facility (granting or denying a permit) or makes a recommendation to the permitting authority on whether or not the facility should be approved.

Informational Hearing. This is a public hearing for dissemination of information and airing of opinions on a proposed facility. Representatives of all interested parties can make presentations and discuss areas of concern, evidence is collected and turned over to permitting authorities for consideration; the hearing administrator presides and ensures proper procedure but does not rule on the proposed facility.

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federal register

Wednesday,
August 31, 1988

Part IV

Department of Health and Human Services

Office of Human Development Services

Fiscal Year 1989 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications; Notice

BEST COPY AVAILABLE

VOL 53 ISS 169 AG 31 1988 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Office of Human Development Services

[Program Announcement No. HDS-88-3]

Fiscal Year 1989 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCY: Office of Human Development Services, HHS.

- Administration for Children, Youth and Families
- Administration on Developmental Disabilities
- Administration for Native Americans

ACTION: Announcement of availability of funds and request for applications under the Office of Human Development Services' (HDS) Coordinated Discretionary Funds Program (CDP).

SUMMARY: HDS announces its Coordinated Discretionary Funds Program (CDP) for Fiscal Year 1989. Funding for HDS grants and cooperative agreements is authorized by legislation governing the discretionary programs of the three Program Administrations within HDS—the Administration for Children, Youth and Families (ACYF); the Administration on Developmental Disabilities (ADD); and the Administration for Native Americans (ANA). This year the Administration on Aging (AoA) and the National Center for Child Abuse and Neglect (NCCAN) will not be participating in HDS' CDP announcement. They will be issuing separate announcements later in the year.

This program announcement consists of three parts. Part I, the Preamble, discusses the purpose of the HDS CDP and lists the statutory funding authorities. Part II describes the programmatic priorities under which HDS solicits applications for funding of projects. Part III describes in detail how to prepare and submit an application.

All of the forms necessary to submit an application follow Part III. *No separate application kit is either necessary or available for submitting an application.* If you have a copy of this announcement, you have all the information and forms required to submit an application.

Grants will be made under this program announcement subject to the availability of funds for support of these activities.

DATES: The closing date for receipt of applications under this announcement is November 10, 1988.

ADDRESSES: Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 724-F, Washington, DC 20201 Attn: HDS-88-3.

This program announcement is available as an electronic document through the HDS Computer Bulletin Board. Organizations equipped with computers and modems may link to the bulletin board by calling (202) 755-1642. Most popular communications programs will work. The correct settings are 8 data bits, one stop bit, no parity, 1,200 bits per second (BAUD).

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, HDS/Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724-F, Washington, DC 20201. Telephone (202) 755-4560. To provide 24-hour coverage, calls to this number may be answered by an answering machine.

SUPPLEMENTARY INFORMATION:

Part I—Preamble

A. Goals of the Office of Human Development Services (HDS)

The Program Administrations within the Office of Human Development Services (HDS), although different from one another in the specific populations they serve and the varied programs which they administer, share a common mission: to reduce dependency and increase self-sufficiency among our most vulnerable citizens. Emphasis on this mission, and progress toward it, will help more Americans live independent lives. In the end, it will reduce their need for services.

We have left an era when the trend was to assign to the Federal government an ever-increasing responsibility for identifying the needs for social services and for designing programs to meet those needs. Current public policy dictates that decisions are best made at the level of government closest to the target populations served—by elected State and local officials, by those who manage social services at the State and local levels, including Government officials, Tribal leaders, private organizations, voluntary organizations, schools or religious organizations. Therefore, HDS supports a policy that social service needs are more effectively and efficiently defined and addressed at the State and local community levels. With this in mind, HDS has identified three goals to help families and individuals achieve self-sufficiency and independence. These goals are:

- To increase family and individual self-sufficiency and independence through social and economic development strategies;
- To target Federal assistance to those most in need; and
- To improve the effectiveness and efficiency of State, local and tribally-administered human services.

In order to be considered for funding each applicant must describe activities that meet the goals of HDS.

The National Center on Child Abuse and Neglect (NCCAN), an agency of the Administration on Children, Youth and Families (ACYF), and the Administration on Aging (AoA) have in the past participated in the HDS Coordinated Discretionary Funds Program (CDP). However, because of recent legislation, these two programs will not be included in this solicitation.

As in previous years, NCCAN must solicit public comment on proposed research and demonstration projects in the area of child abuse and neglect. The timing of the reauthorization of the Child Abuse Prevention and Treatment Act, signed into law on April 25, 1988, precluded participation in this announcement. NCCAN will publish a separate request for comment and a separate grant announcement for FY 1989. The National Center may be contacted directly at the following address: National Center on Child Abuse and Neglect, Children's Bureau, Administration for Children, Youth and Families, Donohoe Building, Room 2030-D, 400 6th Street SW., Washington, DC 20024.

Contact person: Susan A. Weber, *Telephone:* (202) 755-7600.

AoA will also publish a separate grant announcement in the fall of 1988. AoA should be contacted directly at the following address for information regarding its announcement: Administration on Aging, Office of Program Development, Room 4256, Cohen Building, 300 Independence Avenue SW., Washington, DC 20201.

Contact person: Ed Marcus, *Telephone:* (202) 245-0441.

B. The HDS Program Administration

Below is a brief description of the HDS programs related to this solicitation for applications.

Administration For Children, Youth and Families

The Administration for Children, Youth and Families (ACYF) serves as the focal point within the Federal government for programs, activities and concerns designed to improve the quality of life for children, youth and

families. ACYF administers the following programs which relate to discretionary grants under this announcement:

÷ *Head Start* provides comprehensive services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. Head Start programs provide comprehensive educational health, nutritional, social and other services.

÷ *Child Welfare Services* assists State public social service agencies to provide services with the goal of keeping families together. State services include preventive intervention; services to develop alternative placements such as foster care or adoption; and reunification services so that children can return home if at all possible.

÷ *Child Welfare Training* provides discretionary grants to public and private nonprofit institutions of higher learning to develop and improve educational and training programs as well as resources for child welfare services providers by upgrading their skills and qualifications.

÷ *Adoption Opportunities* provides discretionary demonstration grants to eliminate barriers to adoption and find permanent homes for children, particularly children with special needs.

÷ *Runaway and Homeless Youth* addresses the crisis needs of runaway and homeless youth and their families through the establishment or strengthening of community-based programs providing temporary shelter, counseling, and aftercare services. It also provides support to coordinated network grants designed to share information, expertise, and resources among service providers; and to a toll-free, 24-hour National Runaway Switchboard which serves as a neutral channel of communication between young people and their families as well as a source of referral to needed services.

Administration on Developmental Disabilities

The Administration of Developmental Disabilities (ADD), provides assistance to States and public and private nonprofit agencies and organizations to assure that all persons with developmental disabilities can receive the services, assistance and other opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity and integration in the community. Recent changes made by the Developmental Disabilities and Bill of Rights Act of 1987 emphasized that persons with developmental disabilities include those with severe functional limitations attributable to physical impairments, mental impairments and combinations of physical and mental impairments. In addition, ADD seeks to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential as well as ensuring the protection of their legal and human rights. ADD funds projects of national significance to States and public and private nonprofit agencies for projects relating to persons with dvelopmental disabilities.

Administration For Native Americans

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Native Hawaiians and Alaska Natives. ANA defines self-sufficiency as the level of development at which a Native American community can control and internally generate resources to provide for the needs of its members and meet its own short and long range social and economic goals.

C. Goals Of The HDS Coordinated Discretionary Funds Program and Its Cross-Program Focus

For the past seven years, the HDS CDP has brought the major portion of the research and demonstration funding under one announcement.

The CDP allows HDS to expand the boundaries of human service knowledge by drawing on the testing new ideas, disseminating the findings, and incorporating the same new ideas in a "cross-program" approach within HDS. In this way, the CDP becomes an integral part of the policy making process.

In addition to facilitating "cross-program" approaches, these research and demonstration projects provide the basis for modifying current policy and practice in order to address changing social service needs. The CDP allows HDS, together with States, nonprofit, voluntary and philanthropic organizations, and local communities, to analyze trends and anticipate social issues that will become paramount in the future; and to improve the effectiveness and efficiency of human services by developing innovative alternate techniques and approaches to address social service needs. Additionally, the CDP makes possible a coordinated use of information systems in a more efficient and less costly grant making activity than would be possible if done independently.

The HDS CDP is based on the principle that the well-being of a specific target population is the responsibility of individuals, families, and the communities in which the target populations live. Human service needs are best defined, as well as more effective and efficiently served, through institutions and organizations at the level closest to the individual-State, Tribal, and local governments, public agencies, businesses, private sector and voluntary organizations, religious institutions, communities, and families.

HDS is primarily interested in providing funds for projects offering immediate impact, or which can become self-sustaining in a short period of time. The CDP is not intended to provide funds for ongoing social services, or to serve as a supplemental source of funds for local activities which need operating subsidies.

Through the CDP, two or more Program Administrations within HDS have jointly addressed issues or needs in which each has program and discretionary interest. For example: early childhood education has program/descretionary interest not only to ACYF's Head Start program, but also for ADD because it deals with children who may have developmental disabilities. More than a few such social service issues and needs fit into such a "Cross-Program" category.

In addition to those topics identified as major agency-wide interests of HDS in the crosscutting section, there are several other priority areas which address multi-service system issues. Examples are the priority areas targeting on: Children in homeless families living in shelters and the mental health needs of developmentally disabled children being served by the child welfare system.

D. Youth 2000 Initiative

Some of the priority areas in this announcement relate to a special initiative which was lauched in July 1986 as a joint effort between the Department of Health and Human Services and the Department of Labor. Designed as a nationwide "call to action" between now and the year 2000, the purpose of the initiative is to enlist the involvement of all sectors of society in helping vulnerable and at-risk youth achieve social and economic self-sufficiency and fulfill their potential as viable, contributing members of society. The goals of Youth 2000 are:

- To increase the employability and self-sufficiency of young people;
- To improve their literacy and educational attainment;
- To reduce the incidence of teenage pregnancy;

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• To promote lifestyles free from alcohol and other substance abuse; and

• To reduce violent and accidental injuries and deaths among young people.

Within HHS, the Office of Human Development Services has been assigned the legal responsibility for managing and coordinating this initiative under the Secretary's Agenda for promoting the "Future of the Family." The Public Health Service has the lead responsibility for the Youth 2000 goals related to reducing the youth mortality rate. The Family Support Administration has the lead responsibility for the Youth 2000 goal related to reducing the incidence of teenage pregnancy.

E. Technical Assistance Workshops for Prospective CDP Applicants

Technical assistance workshops will be held in Washington, DC, and several other cities to provide guidance and technical assistance to prospective applicants. The proposed schedule for the three-hour workshops is as follows:

City	Date/time/location
Albuquerque, NM	September 29/1:00 p.m., Doubletree Albuquerque, 201 Marquette, NW.
Harlingen, TX	September 22/1:00 p.m., Sheraton Harlingen Inn, Expressway 83 at Stuart Place Road.
New York, NY	October 5/9:30 a.m., Room 305 (3rd Floor) 26 Federal Plaza, Federal Office Building, Junius Scott, (212) 264-3472.
Portland, OR	October, Ed Singler, (206) 442-2430.
Seattle, WA	October, Ed Singler, (206) 442-2430.
Tulsa, OK	September 27/1:00 p.m., Sheraton Inn Tulsa Airport, 2201 North 77th East Ave.
Washington, DC	October 6 and October 11, 2:00 p.m., Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, SW.

F. Dissemination Conferences on CDP Projects

HDS annually sponsors Dissemination Conferences in Washington, DC and around the country to showcase the findings and products of funded projects in specific topical areas. This year's workshops will be held in the following cities:

City	Date	Contact and telephone
Albuquerque, NM.	Sept. 29..... 9:00 am	Eddie Falcon, (214) 767-6596. Doubletree Albuquerque, 201 Marquette, NW.
Braintree, MA	Jan. 1989	Bob Briggs, (617) 565-1138.
Chicago, IL	Oct. 2-5..... Dec. 8-9.....	Hich Yamagata, (312) 353-8322.
Denver, CO	Oct. 26-28	Harry Frommer, (303) 844-2622.
Harlingen, TX	Sept. 29	Sheraton Harlingen Inn, Expressway 83 at Stuart Place Road.
Kansas City, MO.	Aug. 23	Dan Sakata, (816) 426-3981.
Portland, OR	Feb./Mar. 1989.	Judith Wood, (206) 442-2439.
Sacramento, CA.	Oct. 20	George Buford, (415) 556-7408.
Seattle, WA	Oct. 22	Judith Wood, (206) 442-2439.
Tulsa, OK	Sept. 27, 9:00 am.	Sheraton Inn Tulsa Airport, 2201 North 77th East Ave.

In order to be placed on a mailing list for information about other upcoming workshops, send a name and mailing address to Richard Jakopic, Division of Research and Demonstration/OPPL, Room 721B, Office of Human Development Services/HHS, 200 Independence Avenue SW., Washington, DC, 20201.

G. Statutory Authorities

The individual statutory authorities under which grants and cooperative agreements will be awarded through the HDS Coordinated Discretionary Funds Program are as follows:

• Head Start: Head Start Act, as amended (42 U.S.C. 9831 *et seq.*);

• Child Welfare Services: section 426 of the Social Security Act, as amended (42 U.S.C. 626);

• Runaway Youth Program: Runaway and Homeless Youth Act, as amended (42 U.S.C. 5701 *et seq.*);

• Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended (42 U.S.C. 5111 *et seq.*);

• Native Americans: Native American Programs Act of 1974, as amended (42 U.S.C. 2991 *et seq.*);

• Developmental Disabilities Assistance and Bill of Rights Act of 1987, as amended (42 U.S.C. 6000); and

• Family Violence Prevention and Services Act, as amended (42 U.S.C. 10401 *et seq.*).

Part II—Priority Areas

This part contains the information needed in order to successfully apply for funding. Failure to comply with the eligibility criteria and minimum requirements of a particular priority area will result in an application being screened out.

HDS experience has shown that an application which is broad and general in concept does not score as well as one which is directly responsive to and which addresses the concerns of a specific priority area. Applicants should carefully read each relevant priority area description before they begin to write their narratives.

Applicants must identify under which specific priority area they wish to have their application considered. Applications that are general in nature or which do not specifically address the "Minimum Requirements" section of a priority area will be screened out. These and other screening criteria can be found in Part III. C., Application Screening Criteria.

Applications that are developed jointly by State, local and community-based social services agencies, foundations or universities are encouraged, since this helps to coordinate local resources and assure continuation of the project after Federal funding ends. On all applications developed jointly, one organization must be identified as the lead organization and applicant.

A. Eligible Applicants

Each priority area description contains information about the types of organizations which are eligible to apply under that priority area. Since eligibility varies from priority area to priority area, it is critical that you read the "Eligible Applicants" section under each priority area carefully. Applications from organizations that do not meet the eligibility restrictions for the specific priority area will not be reviewed. Only organizations, not individuals, are eligible to apply under any of the priority areas.

For-profit organizations may be eligible for certain grants to be found under the authority of the Native American Programs Act, the Runaway and Homeless Youth Act and the Head Start Act. For-profit organizations may also participate as contractors under grants to eligible applicants on all projects.

Nonprofit agencies which have not previously received HDS support must submit proof of nonprofits status with their grant applications. This can be done either by making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from IRS (IRS Code section 501 (c)(3)). HDS cannot fund a nonprofit applicant without acceptable proof of its status.

B. Available Funds

The availability of funds for FY 1989 is dependent on an enactment of an appropriations Act. HDS expects to award new grants and cooperative agreements resulting from this announcement during the second and third quarters of FY 1989.

Applicants should be aware that HDS receives 2,000 to 3,000 applications annually in response to the CDP announcement. HDS expects to make approximately 200 new awards pursuant to this announcement. The Federal share of these projects ranges from $10,000 to a maximum of $150,000 per budget period (except where noted in the priority area descriptions), with an average award of $100,000.

Applications with budgets that exceed the Federal share listed under the applicable priority area will be automatically screened out. Actual awards may vary widely. HDS encourages eligible applicants requesting smaller awards (or awards for projects of less than 12 months duration) to apply. Unless specifically stated in the priority area description, there is no predetermined number of applications to be funded in the various priority areas.

C. Indexes of Priority Areas

To simplify use of this announcement, two indexes are presented below for easy reference by potential applicants. The first index lists the priority areas which relate to specific key words. The second index lists the priority areas in numerical order.

FY 1989 Key Words Index.

Abuse 1.4, 4.5
Adoption 4.1, 4.2, 4.3
Alcoholism 1.2, 1.4, 2.3
At-Risk Youth 1.1, 1.2, 2.1, 2.3, 4.8, 4.9
Challenge Grants 1.1
Children 1.1, 1.2, 1.3, 2.1, 2.3, 3.1, 3.2, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9
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Community-Based 1.1, 1.3, 2.1, 3.2, 3.3, 3.4, 4.1
Community Foundation 1.1
Developmental Child Care 1.3, 4.6
Developmental Disabilities 1.3, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3
Elderly Persons 1.4
Employment 2.1, 2.2
Evaluation 4.7
Family 1.3, 1.4, 2.2, 2.3, 3.1, 3.2, 3.4, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 4.8
Family Violence 1.4
Foundations 1.1
Head Start 1.3, 4.7
Historically Black Colleges and Universities 4.4.D
Homeless 4.6, 4.9
Independent Living 3.2, 3.4, 4.9
Mental Health 4.2
Minorities 1.2, 1.4, 2.1, 2.2, 2.3, 4.4.C, 4.4.D
Native Americans 1.1, 1.2, 2.1, 2.2, 2.3, 4.4.C
Runaway Youth 4.8, 4.9
Sexual Abuse 1.4
Special Needs Adoption 1.3, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3
Training 4.4.A, 4.4.B, 4.4.C, 4.4.D, 4.4.E
Treatment 4.8
Tribally Controlled Community Colleges 1.1, 4.4.C
Youth 1.1, 1.2, 2.1, 2.3, 4.8, 4.9

List of the FY 1989 Priority Areas

I. Crosscutting

1.1 Challenge Grants to Community Foundations/Agencies to Coordinate With Public, Private and Tribal Educational Agencies for the Prevention of Youth Problems
1.2 Prevention and Treatment of Alcohol Abuse Among Minority Youth
1.3 Collaborative Training Efforts to Support Children with More Severe Handicaps in Head Start
1.4 Training and Technical Assistance for Family Violence Prevention and Services Programs

II. Administration for Native Americans

2.1 Innovative Community Approaches to Entrepreneurial Activity with Native American Youth
2.2 Development of Models Applying the Enterprise Zone Concept to Native Americans
2.3 Resolving Alcohol and Substance Abuse within Native American Communities

III. Administration on Developmental Disabilities

3.1 Early Intervention
3.2 Family Support Practices
3.3 Technical Assistance Projects to Assist State Planning Councils, University Affiliated Programs, and the State Protection and Advocacy System
3.4 Community Integration

IV. Administration for Children, Youth and Families

4.1 Adoptive Parent Groups-Partners in the Adoption of Special Needs Children
4.2 Special Needs Adoption Services and the Mental Health System
4.3 Collaboration Among Special Needs Adoption, Mental Health and Developmental Disabilities Service System
4.4 Child Welfare Training
4.4.A. Traineeships
4.4.B. In-Service Training
4.4.C. Special Grants for Indian Child Welfare Traineeships and In-Service Training
4.4.D. Special Grants for Historically Black Colleges and Universities Traineeships and In-Service Training
4.4.E. Collaboration Between Schools of Social Work and Child Welfare Agencies
4.5 Liability and Legal Issues in Child Welfare and Child Abuse
4.6 Collaborative Effort to Establish Developmental Child Care for Children in Homeless Families
4.7 Adaptation of Early Childhood State-of-the-Art Methods, Materials and Technologies for Head Start
4.8 Development and Testing of Integrated Treatment for Dysfunctional Families of At-Risk Youth by Runaway and Homeless Youth Centers
4.9 Transitioning Homeless Youth from Emergency Homeless Centers to Independent Living Programs and Self-Sufficiency

I. Crosscutting Priority Area Descriptions

1.1 Prevention of Pre-Teen Problems within Educational Systems

Eligibility Criteria:

(1) Applicants must qualify as community foundations or community agencies. This includes nonprofit community-based Native American organizations.

(2) Applicants must be able to set aside $2 for every $1 of Federal funds in an interest bearing account for the life of the Federal grant.

(3) Community agencies which apply must have the capability of establishing an endowment for this specific grant, either within their own organization or through a partnership with a local community foundation or educational system.

Purpose(s): to enable the community foundations and agencies to form viable coalitions with local school systems and other social service agencies to address the numerous problems of pre-teens within the educational systems (truancy, school dropouts, drug and alcohol abuse). Once the period of Federal funding has ended, the funds set aside along with accured interest would be available to continue the work of the coalition. The coalitions should specifically target high-risk pre-teens, ages 9–12.

HDS intends to give challenge grants to small to medium-sized Community Foundations/Agencies to coordinate with public, private and educational agencies and Indian-controlled academic institutions to stimulate the development of restricted endowments. These endowments will be used to support the planning and implementation of collaborative efforts aimed at preventing pre-teen problems within the educational systems.

Duration of projects: Not to exceed three years.

Federal Share of Project Costs: Not to exceed $50,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Identify the public, private, Tribal educational agencies or Indian-controlled academic institution as well as other local community agencies (Boys and Girls Clubs, for example) that are collaborating with the community foundation, community agency or nonprofit community-based Native American organization. The application must provide evidence of the collaboration (letters of commitment).

—Discuss the extent of the collaboration effort (commitment of resources, identification and distribution of responsibilities, etc.). Collaboration is defined as the substantive involvement of at least three major organizations within a community.

—Discuss how this collaborative network will provide for early identification and intervention to prevent dysfunctional behaviors for pre-teens ages 9–12.

—Provide a detailed discussion of the local network, including a description of the services to be offered, criteria for determining the pre-teens to be served, qualifications of provider(s), and costs involved.

—Explain how this network differs from other pre-teen intervention services available within the community and what makes it innovative.

—Discuss an evaluation methodology to determine the effectiveness of the collaborative network.

Background Information: Statistics abound on the conditions of troubled youth—levels of illiteracy, poor school performance, failure to complete high school, drug and alcohol abuse, unemployment, suicides and homicides.

Attempted solutions to these problems have been typically reactive and targeted on youth during their later teen years. Little attention has been given to early identification and intervention at the primary and junior high school levels to prevent future teen problems.

Schools have generally viewed their role as being educational, exclusive of health or social services. Early identification by schools of children at-risk and a coordinated approach to intervention or remediation can best be achieved through strong working relationships and interagency agreements among the school, health, social service agencies and local community foundations.

Local community foundations and/or community agencies should have the latitude of pulling together these and other divergent resources to develop a local network that can serve all high-risk children in their community, regardless of the school they attend.

1.2A Prevention and Treatment of Alcohol Abuse among Minority Youth

Eligibility Criteria: State, local, Tribal or private organizations/agencies, Alaska Native Villages, nonprofit community based Native American organizations or Indian-controlled academic institutions. These organizations must have significant experience in dealing with one or more minority groups.

Purpose: To develop innovative models which use culturally sensitive intervention, treatment and/or prevention techniques aimed at minority youth who abuse alcohol.

Duration of projects: Not to exceed 2 years

Federal Share of Project Costs: Not to exceed $50,000 per year

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Indicate the minority(ies) being addressed; provide a statistical overview of alcohol abuse within the culture; provide specific statistics for the minority population within the geographic service area.

—Identify cultural and/or sociological factors which encourage alcohol abuse and inhibit the effectiveness of current prevention and/or intervention and treatment techniques.

—Outline the proposed intervention, treatment and/or prevention techniques aimed at the minority youth group. Treatment by existing programs is encouraged, rather than the development of new services to be supported by this grant. It should include a discussion of how this methodology is culturally sensitive.

—Identify any partnerships or coalitions that are formed to undertake this demonstration project. The types and amount of participation and commitment by different groups should be clearly outlined.

—Describe how the proposed project builds upon the existing service delivery system and expands its capabilities, if appropriate.

—Discuss an evaluation methodology to determine the effectiveness of the project and to validate the local statistical data used.

—Describe how the project will continue after Federal funds are exhausted. HDS will give preference to applications which include this information.

Background Information: The 1986 *Report on the Secretary's Task Force on Black and Minority Health* clearly stated that there are major problems involving minority youth and alcohol which have not been sufficiently addressed. The Report continues, "there is also emerging consensus among scientists and clinicians that alcoholism and related problems are coupled, and involve a wide range of medical, social, and legal problems which impact different populations at risk in different ways."

Studies on the impact of alcoholism within Black families show that intervention techniques which are effective within non-minority families fail with Black families. Similarly, the Secretary's Report found that any intervention strategies must be sensitive to the Black culture.

Over 50 percent of the Hispanic population is under the age of 25 and the median age is getting lower. Alcohol consumption is widely regarded within the Hispanic community as a sign of "machismo." Male adolescents are particularly susceptible not only to peer pressure but also to adult pressure to abuse alcohol. Alcohol is also used to cope with stresses caused by unemployment, alienation from the surrounding society, separation from family, discrimination in employment and housing. The Secretary's Report urges the targeting of prevention efforts on Hispanic youth and young adult males.

There have been extensive studies and on-going demonstration projects on the alcohol problem within the Native American and Alaska Native populations. HDS is particularly interested in developing culturally sensitive intervention and/or prevention strategies which are focused on Native American youth. For example, in the Alaska Native community, alcoholism can be considered the number one health problem among Alaskan youth. One major obstacle in providing intervention and treatment is the distance between the source of help and the youth.

During the last couple of years the Administration on Native Americans (ANA) has funded demonstration grants in the area of alcohol prevention among all segments of the Native American population. We are now interested in funding culturally sensitive prevention and/or intervention strategies for Native American youth in either urban and rural areas that build on this prior work.

The 1986 *Report on the Secretary's Task Force on Black and Minority Health* can be obtained by contacting: DHHS/Public Health Service, Office of Minority Health, Room 118–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 245–0020.

1.2B Prevention and Treatment of Alcohol Abuse Among Native American Youth in Runaway and Homeless Youth Centers

Eligibility Criteria: Runaway and Homeless Youth Centers, Alaska Native Villages, nonprofit community based Native American organizations or Indian-controlled academic institutions.

Purpose: To build upon and adapt the experience of 6 projects funded in 1986 by ACYF to "Improve Shelter Staff Capacity to Deal with Problems of Alcohol Abuse Among Runaway and Homeless Youth" to benefit Native American youth.

Duration of projects: Not to exceed 2 years.

Federal Share of Project Costs: Not to exceed $50,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Describe how the original project design will be used including where adaptation is called for. The need for adaptation should be documented and the actual adaptation required should be outlined.

—Identify any partnerships or coalitions that are to be formed to undertake this demonstration project. The types and amount of participation and commitment by different groups should be clearly outlined.

—Describe how the proposed project builds upon the existing service delivery system and expands its capabilities, if appropriate.

—Discuss an evaluation methodology to determine the effectiveness of the project and to validate the local statistical data used. Time for testing and evaluation must be included in the project design.

—Describe how the project will continue after Federal funds are exhausted. HDS will give preference to applications which include this information.

Background Information: The Administration for Children, Youth and Families funded six projects during Fiscal Year 1986 to "Improve Shelter Staff Capacity to Deal with Problems of Alcohol Abuse Among Runaway and Homeless Youth." These projects developed programs and strategies, materials and staff training curricula. HDS is interested in applications that will adapt the models along with the training materials for staff of youth centers or other institutions that serve predominantly Native American youth. Information on this model can be obtained from: National Resource Center for Youth Services, University of Oklahoma, 131 North Greenwood Avenue, Tulsa, Oklahoma 74120.

1.3 Collaborative Training Efforts to Support Children with More Severe Handicaps in Head Start

Eligibility Criteria: Only Head Start grantees and delegate agencies or University Affiliated Programs (UAPs) for the developmentally disabled may apply. Applicants must show that this is a collaborative partnership among a Head Start grantee, a UAP and a Resource Access Project (RAP) from project design through implementation. It is also desirable to show active participation of a Parent and Child Center (PCC) serving infants, toddlers and their parents.

Purpose: To increase the capability of Head Start grantees to serve more severely handicapped children through collaborative support efforts involving UAPs and RAPs. These Head Start/UAP/RAP collaborations should include multiethnic, multicultural populations in rural or in urban areas. Products from the project should include training materials for Head Start staff which will enhance their capacity to serve children with more severe handicaps.

Several UAPs currently have relationships with Head Start grantees to provide training for Head Start staff to increase their capacity to serve handicapped children. HDS would consider funding both existing UAP/Head Start collaborations as well as new collaborations.

The applicant must be willing to work with an independent contractor which will be selected at a later date and funded by HDS. The independent contractor will be responsible for evaluating the funded projects. An integral part of the evaluation will be the collection and analysis of data on costs, services, staffing and training materials.

Duration of projects: Not to exceed 2 years.

Federal Share of Project Costs: Not to exceed $50,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Describe the combined expertise and resources of the Head Start grantee, the UAP and the RAP to provide training to Head Start teachers, aides, and parents that will enable them to work more effectively with more severely handicapped children. Evidence of this collaboration in both project design and implementation must be provided as well as collaboration with a PCC and Protection and Advocacy agency, if appropriate.

—Describe the level of disability of the children to be served.

—Reflect informed family involvement in the development and implementation of the Individual Education Plan for preschoolers and the Individual Family Service Plan for infants and toddlers.

—Specify collaborative activities with other related public and private agencies (State Developmental Disabilities Councils, Protection and Advocacy Agencies, crippled children's services, local disability affiliates of organizations such as the United Cerebral Palsy or the Association for Retarded Citizens, community mental health centers, local education agencies, etc.). Their levels of involvement must be described and documented.

—Describe how other sources of special assistance or related services for which the children or programs are eligible will be located and used, such as crippled children's services, Medicaid, or third party insurers. Donated volunteer assistance should be documented also, as it is a factor in determining which costs must be incurred directly and which can be accessed at no or little cost to Head Start. For example, Head Start uses community resources and seeks to receive services which other agencies provide prior to expending Head Start funds.

—Describe the types, numbers and level of disability for each of the children currently being served by the Head Start grantee(s) as well as the target number of children to be enrolled by specific severe handicap.

—Describe the role(s) of the Head Start agency, UAP and RAP in terms of support (financial and in-kind) and training.

—Ensure that services for children with handicapping conditions in the least restrictive environment should be the goal of the project, including the provision of on-site training and intensive follow-up assistance by the UAP and RAP.

Background Information: The 1986 Amendments to the Education of the Handicapped Act, Pub. L. 99-457, established additional incentives to provide services for all children with handicaps below school age by 1990-1991. To provide Federal leadership in the implementation of this law, the Office of Special Education and Rehabilitative Services in the Department of Education, ACYF and ADD in HDS, and the Division of Maternal and Child Health (MCH) in the Public Health Service signed a Memorandum of Understanding to

mobilize and access national resources for the implementation of Pub. L. 99–457.

The agencies signing this Memorandum of Understanding agreed to develop and utilize a coordinated interagency approach to sharing information and resources in the areas of regulation, program guidance and priorities; parent participation; identification of handicapped children, materials and resources; and training and technical assistance. The implementation of these projects by a coalition of Head Start grantees, UAPs, and RAPs should address all of these areas. MCH will participate with HDS in funding the grants to be awarded under this priority area.

ACYF's interests in this priority area include Head Start, the PCCs and RAPs. The Head Start program serves children from three to the age of compulsory school attendance, 12 percent of whom are handicapped based on national statistics. Approximately 60 percent of these children have speech handicaps. Head Start has a successful history of serving mildly disabled children. This priority area is designed to increase Head Start's capacity to serve children with more severe handicapping conditions than they are now able to serve.

ACYF also funds PCCs to serve infants and toddlers from birth through age three with the parent serving as the main intervention agent to foster the child's development. To assist Head Start grantees and PCCs in serving children with handicaps and their families, ACYF supports a national network of training and technical assistance providers, the RAPs.

Both MCH and ADD support UAPs which provide interdisciplinary training for personnel, demonstrate exemplary services and disseminate findings and identify future research needs. There are currently 48 UAPs and satellites funded by either MCH or ADD or both in 40 States and the District of Columbia. A listing of UAPs and satellites is available from the American Association of University Affiliated Programs, (301) 588–8252.

1.4 Training and Technical Assistance for Family Violence Prevention and Services Programs

Eligibility Criteria: National, multi-State, or State Coalitions or Councils of State Directors of Family Violence Programs. To the extent possible, applications should include as participants the Directors of Family Violence Prevention and Services Programs for Indian Tribes located in the State(s) for which application is made.

Purpose: To provide training and/or technical assistance on a multi-State basis in the conduct of both State and Indian Tribal programs for the prevention and treatment of family violence. In addition to the provision of training and technical assistance, an expected outcome is the establishment of an on-going process of coordination and peer assistance among participants that will continue after the conclusion of the Federal grant.

Duration of projects: Not to exceed one year.

Federal Share of Project Costs: Not to exceed $15,000 per project.

HDS plans to fund no more than 5 projects in this priority area with Federal funding of between $10,000–$15,000 for each project. HDS may give preference to those multi-State efforts which were not funded in FY 1988. Information on these States can be obtained from William Riley at (202) 245–2892. A directory of contact persons for Indian Tribal family violence programs is also available from Mr. Riley.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Be responsive to the identified priority needs of the participating State coalitions including Indian Tribal family violence programs, if any. Therefore, the application must clearly articulate those needs and show sufficient expertise to provide the training and technical assistance.

—Clearly describe the training and technical assistance to be provided, e.g., the exchange of information on model programs, management and operational techniques, community relations, fund raising and specialized services. The applications must also describe the methods to be used to accomplish the training and technical assistance, e.g., the combined use of workshops, the distribution of informational materials and teleconferencing.

—To the extent possible, describe how they will utilize the considerable expertise currently available at the national, State or local levels.

—Describe their plans for establishing an on-going process of coordination and peer assistance among the parties involved that will continue after Federal funding.

Background: Programs to prevent and treat family violence have been established in all States, typically by local public and nonprofit private organizations (including religious, charitable and voluntary associations). These programs provide emergency shelter and related assistance to victims of family violence and their dependents in safe houses or shelters. Adjunct services and treatment programs may also be available in the community. These services include counseling and self help services to victims, dependents, and abusers, and health care services, such as, drug and alcohol abuse treatment.

Section 305(b)(3) of the Family Violence Prevention and Services Act requires that the Department provide training and technical assistance in the conduct of programs for the prevention and treatment of family violence.

II. Administration For Native Americans

2.1 Innovative Community Approaches to Entrepreneurial Activity with Native American Youth

Eligibility Criteria: Applicants must be American Indian Tribes, Alaska Native Villages, Hawaiian Native groups or other Native American organizations including Indian-controlled academic institutions.

Purpose: To operate a formal program through which work-related skills are transmitted in the classroom, through summer activities and/or through extra-curricular activities geared to business operations. Such projects can provide for skills acquisition not only for the youth themselves but also for the community's need for persons with entrepreneurial orientations and management skills. Projects can include a component addressing the exposure to business opportunities or business activities.

Duration of projects: Not to exceed 3 years.

Federal Share of Project Costs: Not to exceed $200,000 per project for the total 3-year project period

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Promote entrepreneurship among Native American junior and/or senior high school students.

—Include enterprises that are student operated and that include the expectation of income producing enterprises. These activities may include the development of a service needed by the community or the organization, co-ops providing for the needs of the participants, and/or individual or group-managed businesses for which markets may be identified.

—Include an implementation plan with specific measurable outcomes such as a decline in the rates of school drop out or increased competency in employment-related skills among the

population identified, to name a few examples.

—Include a budget for each year for which Federal funding is requested.

—Include and document the collaboration with local resources such as local banks, Private Industry Councils, colleges, universities, etc.

—Describe how it relates to programs in boarding schools, public schools or reservation day schools or after school type activities unrelated to the school setting.

Background Information: The Department's 1980 report entitled "Indian People in Indian Lands" states that the Native American population is younger than the overall population of the country and that Native Americans have the highest birth rate. More than one out of three Native Americans is under the age of twenty.

Recent studies have pointed out that the lack of entrepreneurial and management know-how among the Native American community is a barrier to economic development. Reservation economic development in particular is still in an embryonic stage of development offering tremendous economic potential for the future. Since a large segment of the Native American population is young and will provide the leadership of tomorrow, an entrepreneurial experience for training future leaders is critical.

Few Native American children have been exposed to entrepreneurial activity through their school experience or through community role models. Native American youth have not had the opportunity to develop entrepreneurial and management skills through traditional avenues.

HDS funded 4 projects under this same priority area in 1987 and 3 in 1988 because of the continuing concern about the need to develop entrepreneurial skills among young Native Americans as well as the need for a variety of models for replication.

Applicants are encouraged to contact Sharon McCully, (202) 245–7776, for information concerning specific programmatic issues in this priority area.

2.2 Development of Models Applying the Enterprise Zone Concept to Native Americans

Eligibility Criteria: Eligibility is restricted to Federally-recognized Indian Tribes, Alaska Native villages as defined in the Alaska Native Claims Settlement Act, nonprofit Alaska Native Regional Corporations, Alaska Native Indian communities as recognized by the Bureau of Indian Affairs and urban Indian organizations.

Purpose: To test the enterprise zone concept of attracting business and investment capital to an economically-distressed area primarily through packaging and marketing of local resources, governmental attributes and certain location advantages. Enterprise zones seek to increase employment in targeted locations by removing tax and regulatory obstacles to business.

ANA is interested in addressing the enterprise zone concept in two parts. Section I focuses on Federally recognized Tribes and Section II looks at urban Indian organizations. Alaska Native villages, Alaska Native Indian communities and nonprofit Alaska Native Regional Corporations may refer to Sections I and II where appropriate. Please refer to Background Information below for a full discussion of Parts I and II.

Duration of projects: Not to exceed 3 years.

Federal Share of Project Costs: Not to exceed $275,000 per project for the total 3-year project period.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Address the planning and setting up of an enterprise zone structure and the implementation of a zone.

—Show that the project will be completed or self-sustaining or supported by other than ANA funds at the end of the project period.

—Demonstrate that financing for the enterprise zone will be secured or will soon be in place at the end of the project period.

—Include a budget for each year for which Federal funding is requested.

Background Information: The concept of enterprise zones as a means of attracting business and capital to Indian reservations is getting increased attention. American Indian Tribes have many of the attributes conducive to enterprise zone application, such as tax immunities, jurisdictional prerogatives, and natural and human resources.

HDS funded 5 projects in FY 1987 to test the application of the enterprise zone concept on reservations. These projects are well underway with code development and the testing and exploration of incentives to attract industry. In FY 1988 the enterprise zone concept was expanded to apply to urban settings and the Alaska Native community, as well as reservations. Five projects were funded in FY 1988 and this effort will continue in FY 1989.

Section I

Tribes, like State governments, have the necessary attributes of sovereignty to create their own enterprise zones prior to passage of Federal enterprise zone legislation. Tribes also have the option to explore jointly-sponsored enterprise zones with their State or other local governments.

According to a comprehensive 1981 report entitled "The Applicability of Enterprise Zones to American Indian Reservations," certain principal factors are important to industry in determining where to locate. Copies of this study may be obtained by writing to the Administration for Native Americans, 330 Independence Avenue, SW., Room 5309, North Building, Washington, DC 20201 Attention: Sharon McCully.

Additional Requirements for Section I: In order to successfully compete under Section I of this priority area, the application should:

—Fully describe the basic economic factors involved in the demonstration (location, labor availability and skills, land, resource availability, market demand and availability of private capital).

—Address the degree of civil order within the reservation (personal safety, property security, enforcement of contracts and political stability);

—Describe the impact of the reservation's applicable taxes and regulations (Federal, State, Tribal and local);

—Describe the reservation's infrastructure/service delivery (transportation access, utilities, site preparation, fire protection, schools and street maintenance); and,

—Describe assistance programs that are available or that will be developed (job training, management assistance services, and grants and low-interest loans).

—Include a letter of commitment if the Tribe proposes to engage in a jointly sponsored enterprise zone with another governmental entity. Letters of commitment must clearly state the amount of financial or in-kind contribution to be made.

Section II

For an enterprise zone concept to work effectively for an urban Indian community, that population should be concentrated in a specific area of the city. An urban Indian organization must use the enterprise zone to address the Indian unemployment problem by: (1) Bringing the job opportunities to the community, and (2) assuring strong affirmative action programs geared to employing Indian people in the businesses attracted to the zone.

It must be remembered that "Indian preference" in hiring, although legally

practiced in certain Federal agencies and by Tribes on Indian reservations, is generally looked upon as against equal opportunity laws when applied outside the reservations and in specific Federal agencies. Therefore, an enterprise zone created to address unemployment problems among an urban Indian community cannot discriminate against non-Indians seeking employment inside their zone.

Additional Requirements for Section II: In order to successfully compete under Section II of this priority area, the application should:

—Consider creating a special board to handle the enterprise zone program in order to ensure that there is no intra-community factionalism and no political interference between business conducted with the private sector and municipal governments.

—Describe how it plans to utilize Federal, State, local and Native American resources and programs which are currently available. These include but are not limited to:

(1) Targeted assistance programs such as: SCORE, JPTA, ACE; bond issuance for manufacturing facilities and equipment; tax and regulatory relief incentives, and improved municipal services (trash removal, security, etc.);

(2) Local and regional private sector resources (i.e., financial contributions for venture capital fund, technical and management assistance, other creative corporate philanthropy);

(3) Federal Government assistance programs, such as: BIA, SBA, EDA and other programs available for technical and financial assistance, minority preference in securing contracts; and

(4) Resources available through the urban Indian organization such as employment and training programs, employee counseling and support programs, and creation of venture capital fund (i.e. UIDA's BIDCO fund, the Dakota Fund, etc.).

—Include a letter of commitment from their municipal and State governments if they are from urban Indian centers. Letters of commitment must clearly state the amount of financial or in-kind contribution to be made.

Applicants are encouraged to contact Sharon McCully, (202) 245–7776, for information concerning specific programmatic issues in this priority area.

2.3 Resolving Alcohol and Substance Abuse within Native American Communities

Eligibility Criteria: American Indian Tribes, Alaska Native villages, Hawaiian groups and other Native American organizations.

Purpose: To address the reduction or prevention of alcohol and substance abuse through innovative prevention projects. Demonstrations should show positive measurable outcomes in preventing or reducing alcohol and substance abuse. ANA hopes that projects will build on traditional Indian values and practices.

Duration of projects: Not to exceed 3 years.

Federal Share of Project Costs: Not to exceed $160,000 per project for the total 3-year project period.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—To the extent possible, present a comprehensive prevention approach involving the family and the entire community. Or applicants may focus on a particular segment within the family or community, such as the workplace or school.

—State how the application relates to or could relate to their Tribal Action Plan (TAP) if applicant is an Indian Tribe or Alaska Native village. The application, however, cannot duplicate an existing funded element of the TAP or propose to develop or coordinate the TAP.

—Describe cooperative efforts including general public and private agencies and/or organizations

—To the extent possible, have a cultural approach focusing on traditional Native American practices.

—Include a budget for each year for which Federal funding is requested.

—*Not* provide for on-going social service delivery, expansion or continuation of existing social service delivery programs, or direct services.

Background Information: Widespread problems associated with alcohol and substance abuse among the Native American population have been documented by various studies/reports through the Indian Health Service and the Bureau of Indian Affairs. The costs of alcohol and substance abuse measured in terms of physical, mental, social and economic indices have been enormous to Native Americans.

Historically, the health status of Native Americans has been substantially below that of the U.S. population especially in terms of alcohol and alcohol-related health problems. Indians die from alcoholism at over four times the age-adjusted rates for the U.S. population. Misuse of alcohol and substance abuse result in a rate of years of potential life lost nearly five times that of the general U.S. population. Four of the top ten causes of death among Indians are alcohol and drug related injuries (18 percent of all deaths), chronic liver disease and cirrhosis (5 percent), suicide (3 percent), and homicide (3 percent).

Alcohol and substance abuse is especially hazardous to Indian youth. Indians between the ages of 15 and 24 are more than two times as likely to commit suicide as the general population and approximately 80 percent of those suicides are alcohol-related. Indians between the ages of 15 and 24 are twice as likely as the general population to die in automobile accidents, 75 percent of which are alcohol-related.

Alcohol abuse affects and is associated with not only the abuser, but also the abuser's family. In most Native American communities family is defined as the extended family—parents, their children, grandparents, aunts, uncles, etc. It also affects and is associated with the abuser's friends and peers, therefore impacting on the condition of the workplace and the school environment. Therefore a comprehensive approach is needed. Community support through public awareness as one means might prove useful in the problem solving process.

Another useful factor is incorporating traditionally held Indian values in reducing the use of alcohol and other substances. A 1980 study by E.R. Oetting, et al., found that Native American youth who did not use drugs or alcohol consistently came from homes that had strong family sanctions against substance abuse. These families were perceived as being more successful in the "Indian way." A 1985 study of 2,000 Native American youth ages 11 to 18, conducted by Velma Mason, showed that youth who did not use drugs or alcohol exhibited a high degree of family-oriented identity and perceived their families as maintaining traditional values. The reverse was found for Indian youth who reported drug or alcohol involvement.

HDS funded 5 prevention projects in FY 1987 and 4 in 1988 under this same priority area. Applicants are encouraged to contact Sharon McCully, (202) 245–7776, for information concerning specific programmatic issues in this priority area.

III. Administrative on Developmental Disabilities

On April 21, 1988, a notice soliciting comments on ADD's proposed priority areas for Fiscal Year 1989 Projects of National Significance was published in the **Federal Register**. A 60-day period was required to allow the public to comment on the proposed areas. After

review and analysis of these comments, ADD published its final priorities.

ADD received 31 letters and a total of 44 specific comments from national and local human service organizations, advocacy groups, educators, representatives from State and local government offices, and private citizens. The comments received were helpful in highlighting the concerns of the developmental disabilities field and have been extensively used in refining the final priority areas.

The comments received were also the basis for excluding the following priority areas from the final solicitation: Personnel Shortages, Integrated Child Development and Educational Environment, and Substance Abuse.

The Ongoing Data Collection System Priority Area was included in the Fiscal Year 1988 Projects of National Significance announcement. A grantee has been selected and is scheduled for two year funding. This priority area, therefore, is not included in this announcement.

3.1 Early Intervention

Eligibility Criteria: State, public or private nonprofit organizations, institutions or agencies.

Purpose: To develop tools and procedures to enable the analysis and assessment of the adequacy of existing State policies and practices on early intervention; and to develop models of interdisciplinary training and multi-organizational involvement (Head Start, University Affiliated Programs, and Maternal and Child Health centers) needed to ensure measurable progress in ameliorating the effects of developmental disabilities through early intervention.

This information is needed by policymakers who may make decisions on critical issues pertaining to early intervention. Policymakers include individuals in decision-making positions in business, local/State government, associations, and community organizations.

Duration of Projects: Not to exceed 12 months.

Federal Share of Project Costs: Not to exceed $100,000 per project.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—*For Postnatal*—explore and document the effect of neonatal and postnatal prevention opportunities on reducing the incidence of developmental disabilities. Within this area, the following themes may be selected for study:

(1) Projects which will provide screening for early identification and referral of newborns and infants who are at-risk due to biological or environmental factors. Such risks can contribute to unfulfilled parental responsibilities which may increase the incidence of developmental disabilities; and

(2) Projects designed to reduce and prevent child abuse and neglect which contributes to the incidence of developmental disabilities.

—*For Education/Public Awareness*—provide education and information for public and professional audiences regarding available early intervention activities related to genetic, environmental, and other factors related to the well-being of individuals with developmental disabilities. Such activities may include the use of maternal transport of Neonatal Intensive Care Units, the value of early intervention, the use of teratogen registries, and the role of community nursing.

Background Information: Developmental disabilities are chronic life long conditions which cause significant functional impairment in several areas of life activity. Developmental disabilities can have great impact upon the lives of many individuals and families. The tragedy of developmental disabilities is that a highly significant percentage of these impairments are caused by factors which are preventable through early intervention.

HDS encourages collaboration among agencies at the State and local level in this priority area.

3.2 Family Support Practices

Eligibility Criteria: State, public or private nonprofit organizations, institutions or agencies.

Purpose: To assist policymakers to resolve specific barriers to the delivery of home-based care, such as third party insurance payments, home-health care practices, funding mechanisms, and other relevant barriers without disrupting the important involvement or informal, natural sources of family support; and to promote cost effectiveness and quality in the provision of family support service and activities. Policymakers include individuals in decision-making positions in business, local/State government, associations, and community organizations.

Duration of Projects: Not to exceed 12 months.

Federal Share of Project Costs: Not to exceed $100,000 per project.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Contain a specific focus on the resolution of barriers to home-based care in insurance practices and home-health care standards.

—Outline an effective process for evaluating and synthesizing the available information on this issue.

—Include as an outcome the development of a guide which can be used by policymakers and program developers to select successful models or components of models which would be appropriate for replication within their jurisdictions.

—Provide evidence of collaboration with human service and/or private sector organizations.

Background Information: The projects sited below are among numerous efforts at the local, State and national level which have focused on the family support isssue. Following are examples of projects which ADD has funded in the past several years:

- "PRO Family Support Project", New Mexico Parents Reaching Out (PRO), in 1986–1988.
- "Community-Based Respite Care Project for Families Providing Care to Developmentally Disabled Children at Home," Maine Department of Mental Health and Mental Retardation, in 1985–1988.
- "Life Service Plans for the Elderly and the Developmentally Disabled—National and Local Self-Help Models," American Bar Association, in 1985–1987.

Additional information about these projects may be obtained by contacting Ray Sanchez, ADD, at (202) 2456–1961.

3.3 Technical Assistance Projects to Assist State Planning Councils, University Affiliated Programs (UAP), and the State Protection and Advocacy System (P&A)

Eligibility Criteria: State, public or private nonprofit organizations, institutions or agencies.

Purpose: To expand or improve:

- The advocacy functions of the State Planning Council;
- The functions performed by University Affiliated Programs and Satellite Centers; and
- The protection and advocacy services relating to the State protection and advocacy system.

This includes arranging for and coordinating the provision of technical assistance to UAPs, PAs and State Developmental Disabilities Planning Councils on program development, planning and policy analysis across

developmental disabilities agencies and programs.

ADD expects to fund one project in each of the categories identified above.

Duration of Projects: Not to exceed 12 months.

Federal Share of Project Costs: Not to exceed $100,000 per project.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Demonstrate the ability to expand or otherwise improve either the advocacy functions of the State Planning Council; or the functions performed by UAPs and Satelitte Centers; or the protection and advocacy services relating to the State P&A system.

—Provide evidence of partnerships with community agencies and local advocacy agencies to emphasize productivity, independence, and integration into the community of individuals with developmental disabilities.

Background Information: Section 162(a)(2) of the Developmental Disabilities and Bill of Rights Act of 1987 provides that the Secretary may make grants and enter into contracts with public or nonprofit private agencies for technical assistance or demonstration projects which hold the promise to expand or improve State Planning Councils, UAPs, and State P&As.

3.4 Community Integration

Eligibility Criteria: State, public or private nonprofit organizations, institutions or agencies.

Purpose: To identify, evaluate and synthesize community-based models of successful social integration which have brought about the acceptance of persons with developmental disabilities as neighbors and friends; and to identify models which were successful with other target populations that could be adapted for use with persons with developmental disabilities.

Duration of Projects: Not to exceed 12 months.

Federal Share of Project Costs: Not to exceed $100,000 per project.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Indicate how the project would build upon or depart from current state-of-the-art practices.

—Contain an evaluation plan focusing on the project products, including a plan of dissemination and utilization of project findings.

Background Information: Further development, enhancement and dissemination of successful models of community integration are needed to support persons with developmental disabilities so they can live and be accepted in the neighborhoods in which they live.

HDS is particularly interested in examining successful models serving other target populations which can be replicated to serve the developmentally disabled. These models could include: community residential programs, programs supporting employment within the community and other generic social integration programs, such senior nutrition/multi-service centers.

Administration for Children, Youth and Families

4.1 Adoptive Parent Groups—Partners in the Adoption of Special Needs Children

Eligibility Criteria: Eligibility is limited to voluntary or public social service agencies, adoption exchanges or other national, regional or Statewide adoption related organizations.

Purpose: To continue support for the development of new or involvement of existing adoptive parent groups and to utilize them in the adoption process for children with special needs.

Duration of Projects: Not to exceed 17 months.

Federal Share of Project Costs: Not to exceed $75,000 per project.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Establish that the organization has Statewide, regional (i.e., inter-state) or national membership to assist local or State adoptive parent groups to work with child welfare agencies. These adoptive parent groups will be responsible for activities which may include, but are not limited to: Adoptive information and referral services, recruitment and orientation for prospective adoptive parents, and support to families following placement and legalization. Of particular interest will be their ability to support and develop minority adoptive family groups.

—Include the rationale for choosing to work with existing adoptive parent groups, or developing new adoptive parent groups, which will focus on problems or issues of importance to special needs adoption.

—Establish procedures and criteria for the award of subgrants to incorporated nonprofit local or State adoptive parent groups, and for working with newly formed groups, to assist them in incorporating. Subgrants may be awarded to groups only once they are incorporated and may not exceed $5,000.

Background: Through the years, adoptive parents have continued to promote and support the adoption of children with special needs. They have been effective advocates for children and have challenged the term "unadoptable" by demonstrating that children with special needs can be placed with a family of their own. The 600 adoptive parent organizations are comprised of volunteers and have limited funds to develop their interests on behalf of children with special needs. Support for these groups is important as they historically have been productive and successful in the activities they pursue. They bring to the adoption field the perspective of consumers of services, and, are on the cutting edge between the children to be served and the agencies that serve them. Adoptive parent groups and social service agencies have worked together to assist and provide support to new adoptive families to integrate these special needs children into their families.

4.2 Special Needs Adoption Services and the Mental Health System

Eligibility Criteria: Public adoption and mental health agencies as well as private nonprofit adoption or mental health agencies are encouraged to apply. Consortia of private and public agencies that demonstrate collaborative planning and joint commitment of resources, including personnel, are encouraged. Emphasis should be placed on involvement of existing community mental health facilities.

Purpose: To support collaborative efforts between adoption agencies and community mental health services for the development or expansion of treatment skills and resources for special needs children and families in adoption. These services and resources should address issues that occur prior to adoption, during placement and after legalization.

Duration of Projects: Not to exceed 24 months.

Federal Share of Project Costs: Not to exceed $125,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Provide for a process to achieve inter-agency coordination and improved mental health services to the adoption community from a child's preparation for adoption through placement, legalization and post adoption.

—Describe methods to be used for coordinated planning, resource

development and systems intergration that will provide a continuum of home and community based services to assist the child to be adopted, the prospective adoptive family and the adopted child in this family.

—Describe methods to document whether goals and objectives have been met and to assess the effectiveness of the project.

—Provide written assurances from the collaborating agencies of intent to participate in the project.

Background: Children in the child welfare system for whom adoption is the goal and their prospective adoptive families, as well as children now in adoption and their families, often need access to the skills and expertise of mental health services in addition to child welfare services. This is especially true with children who are older and have other special needs are being or have been adopted. Because the professional mental health service provider is often not aware of the special issues related to the adoption experience, special efforts must be made to expand existing treatment skills to fully serve this group.

Types of mental health problems related to adoption are not unique, but these clients exist in a family environment that is different from other mental health clients. For example, the issues of loss, separation and attachment are part of the adoption experience and must be viewed in that context. The development of appropriate services to meet the needs of these children and their families is necessary.

Information on special needs adoption projects can be obtained from: National Resource Center for Special Needs Adoption, Spaulding for Children, 366 Waltrous Road, P.O. Box 337, Chelsea, Michigan 48118, (313) 475–8693.

4.3 Collaboration among Adoption, Mental Health and Developmental Disabilities Service Systems

Eligibility Criteria: Agencies administering any of the three public programs (Child Welfare (CW), Mental Health (MH) or Developmental Disabilities (DD)) at the State, regional or local level with written commitment from the other two agencies can apply.

Purpose: To promote systems change which provide for increasing collaboration among the three programs identified above as related to the adoption of special needs children with developmental disabilities.

Duration of projects: Not to exceed 24 months.

Federal Share of Project Costs: Not to exceed $75,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Describe the development and institutionalization of a three-way collaborative model on either a State-wide, regional (intra-State) or local basis.

—Provide clear and specific written commitments to the collaborative effort from the two agencies which are not the lead agency.

—Provide for complete development of a collaborative model suitable for dissemination and replication in other locations.

Background: Adoption services have changed dramatically over the past two decades as children with special needs from a variety of settings are considered for and placed with permanent families. Traditionally, all children for adoption were served in the child welfare system, but in the past few year there has been real movement in considering children in mental health and developmental disabilities facilities for permanent family life. For children with developmental disabilities who cannot remain with nor return to their birth parents, regardless of which system (CW, MH, or DD) has responsibility, adoption is a viable option.

Although there are exemplary models of cooperation between CW and MH and CW and DD, there has been very little done in the way of establishing a three-way collaborative model. Even in States with an "umbrella agency," where CW, DD and MH are part of the same State-wide department, there are no established cooperative procedures for children with developmental disabilities in need of adoption. In States with separate departments, there is even greater need to develop such procedures.

Information on special needs adoption projects can be obtained from: National Resource Center for Special Needs Adoption, Spaulding for Children, 366 Waltrous Road, P.O. Box 337, Chelsea, Michigan 48118, (313) 475–8693.

Child Welfare Training

Eligibility Criteria: For Traineeships, In-Service Training and Collaboration among Agencies, applicants must be institutions of higher education which are accredited by the Council of Social Work Education and which train bachelors or masters level students in social work. Training *must be* for candidates for bachelors or masters degress in social work. For Indian Child Welfare Training, applicants must be two and four year colleges controlled by Tribes or serving reservations and accredited by the appropriate accrediting authorities. For Historically Black Colleges and Universities (HBCUs), applicants must qualify under Executive Order 12320. Generally institutions qualify as HBCUs, if they were established before 1964 with their principal mission having been and continuing to be the education of Black Americans.

Institutions may apply for traineeship grants and one other type of grant (either collaboration or in-service.) Institutions may not apply for both in-service and collaboration.

Purpose: To ensure the availability of adequately trained and skilled staff for public child welfare services. These priority areas promote effective collaboration between schools of social work and public child welfare agencies, and expand the number of professionally trained and qualified individuals who manage and provide services in the public child welfare system.

Duration of projects: See specific priority area.

Federal Share of Project Costs: See specific priority area.

Background: As the child welfare field is increasingly involved with an older, and more difficult to serve population of children and their families, it is critical that public child welfare staff are adequately trained and skilled. Yet the most recently available data indicate that the vast majority of individuals who are employed in public child welfare lack the professional preparation which would equip them to perform this demanding work.

The social work profession has historically taken a lead role in the professional preparation of child welfare workers. However, as the field and the profession have evolved, fewer graduates of social work programs have taken positions in public agencies and some agencies have either been unable to find qualified persons to fill positions or have declassified positions and hired individuals with no professional credentials. The combination of these and other factors has created a critical problem in child welfare service delivery.

Applications are sought in five priority areas: (4.4.A) traineeships for students pursuing degrees in social work or child welfare; (4.4.B) in-service training for persons employed in the field of child welfare; (4.4.C) special grants for Indians; (4.4.D) special grants for HBCUs; and (4.4.E) demonstration projects which involve collaborative efforts between schools of social work and public child welfare agencies.

Dissemination is not appropriate to these priority areas. Therefore, application narratives should respond to the following sections:

(a) Need for the Project (20 points/5 pages).

(b) Project Methodology (30 points/7.5 pages).

(c) Expected Outcomes (30 points/7.5 pages).

(d) Level of Effort (20 points/5 pages).

Only these four criteria will be used to evaluate applications under these Child Welfare Training priority areas.

4.4.A. Traineeships

Traineeship grants will provide financial support for the education and professional training of students pursuing undergraduate or graduate social work degrees or graduate degrees in child welfare who have a stated interest in practice in public child welfare after graduation. Traineeships are intended to support the education of professionals who will assume leadership positions in the field of public child welfare. All traineeships must include a field placement component that provides the student with direct experience in a child welfare related setting, preferably in the public sector. HDS is especially interested in applications for traineeships for minority students.

Applicants are encouraged to seek cooperative agreements with public child welfare agencies in order to provide traineeships to public agency employees who demonstrate potential for leadership in child welfare and who wish to return to school to obtain an undergraduate or graduate level degree in social work and have indicated a desire to remain in public child welfare for a peroid of time at least equal to the period of the traineeship.

Applications should describe the curriculum utilized and how it relates to the needs of child welfare practitioners. Applicants must specify the number of students to receive traineeships.

Traineeships grants may only be used for student financial support and not for any other direct or indirect costs for the applicant institution. Applicants should include the cost of an annual grantees meeting, to be held in Washington, DC, in their budgets.

Traineeship grants will be awarded for up to 24 months, for stipends with a maximum of $5,000 per student not to exceed a total of $25,000 per year per institution. No matching funds are required for traineeships. Institutions having current Child Welfare Traineeship grants which will continue beyond September 30, 1989, are not eligible to apply under this priority area.

4.4.B. In-Service Training

In-Service training grants will support training for personnel employed in public/Tribal child welfare agencies. Topics for training should address specific high priority training needs identified by the public/Tribal agency and may focus on any level of personnel, including front line workers, supervisors or administrators. HDS is especially interested in leadership training for persons in management and senior supervisory positions and for other agency employees who demonstrate potential for leadership in the child welfare field and have indicated a desire to remain in public child welfare for a period of time at least equal to the period of in-service training.

The training program should be described in detail and include specific measurable outcomes and a plan for evaluation of effectiveness. Applicants must demonstrate and document that Indian Tribal or State child welfare agencies have actively participated in the selection of training topics and in the planning and implementation of the project. Participating agencies are encouraged to contribute resources toward the completion of the project goals. HDS anticipates funding 17-month training grants having a Federal share not to exceed $100,000 per grant. Matching funds are required.

4.4.C. Special Grants for Indian Child Welfare Training

Eligibility Criteria: Two and four year colleges controlled by Indian Tribes or serving Indian reservations. Applications from non-Indian colleges which focus on the education and training of American Indians must be submitted under child welfare training priority areas 4.4.A, 4.4.B, or 4.4.E. Institutions having a current child welfare training traineeship grant which will continue beyond September 30, 1989 are not eligible to apply for traineeship grants.

Eligible applicants for this priority area may apply for the following:

1. Traineeships

Traineeship grants will provide financial support for the education and professional training of Indian students pursuing undergraduate or graduate social work degrees who have a stated interest in practice in public child welfare after graduation. All traineeships must include a field placement component that provides the student with direct experience in a child welfare related setting.

Applicants are encouraged to seek cooperative agreements with Tribal and other child welfare agencies in order to provide traineeships to agency employees who demonstrate potential for leadership in child welfare and have indicated a desire to remain in public child welfare for a period of time at least equal to the period of the traineeship. Agreements between two year and four year colleges are encouraged to assist child welfare trainees in two year colleges to enter advanced degree programs.

Applications should describe the curriculum utilized and how it relates to the needs of child welfare practitioners.

Traineeship grants may only be used for student financial support and for limited additional support and advisory services which may be necessary to maintain Indian Students in school, such as remedial assistance, but not for any other direct or indirect costs for the applicant institution. Applicants are asked to include funds for an annual grantee meeting in Washington, DC, as a part of their budget.

Traineeship grants will be awarded for up to 36 months, for a maximum of $5,000 per student, not to exceed a Federal share of $25,000 per school, per year. Applicants must specify the number of students to receive traineeships. No matching funds are required for these Traineeships.

2. In-Service Training

In-Service training grants will support training projects from two and four year colleges controlled by Indian Tribes or serving Indian reservations for personnel employed in Tribal child welfare agencies who have indicated a desire to remain in public child welfare for a period of time at least equal to the period of training.

Topics for training should address specific high priority training needs identified by the Tribal agency and may focus on any level of personnel, including front line workers, supervisors or administrators.

The training program should be described in detail including specific measurable outcomes and a plan for evaluation of effectiveness. Applicants must show that Tribal child welfare agencies have actively participated in the selection of training topics and in the planning and implementation of the project. Emphasis should be placed on administrative and practical skills such as interviewing, case management, therapeutic intervention techniques, interagency coordination and networking with other service agencies, liability issues, records maintenance,

community needs assessment and community planning. Participating agencies are encouraged to contribute resources toward the completion of the project goals.

HDS anticipates funding 17-month grants having a Federal share not to exceed $100,000 per grant. Matching funds are required.

4.4.D. Special Grants for Historical Black Colleges and Universities

Eligibility Criteria: Historically Black Colleges and Universities (HBCU) as defined in Executive Order 12374 which offer baccalaureate and masters degree programs which have been accredited by the Council of Social Work Education. Generally, institutions qualify as HBCUs if they were established before 1964 with their principal mission having been and continuing to be the education of Black Americans. Institutions having a current child welfare traineeship grant which will continue beyond September 30, 1989, are not eligible to apply for traineeship grants.

Eligible applicants for this priority area may apply for the following:

1. Traineeships

Traineeship grants will provide financial support for the education and professional training of students within an HBCU pursuing undergraduate or graduate social work degrees who have a stated interest in practice in public child welfare programs after graduation and have indicated a desire to remain in public child welfare for a period of time at least equal to the period of the traineeship. All traineeships must include a field placement component that provides the student with direct experience in a child welfare services related setting.

Applicants are encouraged to seek cooperative agreements with child welfare agencies in order to provide traineeships to agency employees who demonstrate potential for leadership in child welfare and have indicated a desire to remain in public child welfare for a period of time at least equal to the period of the traineeship.

Applications should describe the curriculum utilized and how it relates to the needs of child welfare practitioners.

Traineeship grants may only be used for student financial support and not for any other direct or indirect costs for the applicant institution, except to pay for one person to travel to grantees meeting in Washington, DC.

Traineeship grants will be awarded for up to 24 months, for a maximum of $5,000 per student, not to exceed a Federal share of $25,000 per school, per year. Applicants must specify the number of students to receive traineeships. No matching funds are required for these traineeships.

2. In-Service Training

In-Service training grants will support training projects for personnel employed in public child welfare agencies. Topics for training should address specific high priority training needs identified by the public agency and may focus on any level of personnel, including front line workers, supervisors or administrators. The training program should be described in detail including specific measurable outcomes and a plan for evaluation of effectiveness. Emphasis should be placed on administrative and practical skills such as interviewing, case management, therapeutic intervention techniques, interagency coordination and networking with other service agencies, liability issues, records maintenance, community needs assessment and community planning.

Applicants must demonstrate and document that public child welfare agencies have actively participated in the selection of the training topics and in the planning and implementation of the project. Participating agencies are encouraged to contribute resources toward the completion of the project goals.

HDS anticipates funding 17-month grants having a Federal share not to exceed $100,000 per grant. Matching funds are required.

4.4.E. Collaboration Between Schools of Social Work and Child Welfare Agencies

Grants will be awarded in this priority area to support special projects of national significance from institutions of higher education that demonstrate creative, innovative, organizationally sound and economically feasible methods of facilitate continuing interaction between schools of social work and public child welfare agencies in order to promote child welfare training objectives. These collaborative efforts may also include professional associations with significant involvement in public child welfare. The only eligible applicant, however, is the school of social work. HDS encourages formulation of projects which ensure full input and participation of both parties in the collaborative effort; which maximize the role of public child welfare agencies in pursuit of child welfare training objectives; and which ultimately improve the level of child welfare services in the country. Letters of commitment, not support, must be included with the application.

Some examples are:

(a) Demonstration of a model to share or exchange staff and faculty in order to enrich teaching and promote improvement in the quality of agency services;

(b) Efforts to promote the upgrading of State and/or local merit system procedures for classifying professional social work positions;

(c) Efforts to improve the extent to which interdisciplinary services are provided to child welfare clients;

(d) Development of uniform certification standards for child welfare workers;

(e) Definition of competencies for supervisors in child welfare practice, including child protective services; and

(f) Development and implementation of strategies to recruit and train individuals with the characteristics, motivation and ability to become supervisors and administrators in child welfare agencies.

These examples are meant to be illustrative only and HDS encourages the field to generate additional concepts.

Projects which are primarily in-service training or traineeships will not be funded under this priority area. HDS anticipates funding 24-month collaborative grants having a Federal share not to exceed $100,000 per grant per year. Matching funds are required.

4.5 Liability and Legal Issues in Child Welfare and Child Abuse

Eligibility Criteria: Organizations with a national perspective and knowledge of the liability and legal issues affecting child welfare and child protection programs are encouraged to apply.

Purpose: To support the conduct of a symposium on liability and legal issues affecting child welfare and child protective services programs designed to inform the field about current trends in law suits and judicial findings; and to prepare a report on the symposium which describes both the nature of the trends and risks to agencies and workers and proposes the types of procedures and processes that represent not only best practice, but also the most effective ways to defend agency decisions and practices in judicial proceedings.

Duration of Project: Not to exceed 12 months.

Federal Share of Project Costs: Not to exceed $75,000.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Indicate an understanding of the types of liability and legal issues

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affecting child welfare and child protection services programs, both directly and through laws and precedents established in related fields, and of their impact upon the functioning and practices of child welfare and child protection services agencies.

—Refer to relevant publications and articles related to liability and legal issues in the field.

—Describe how the symposium would be structured, including duration, estimated number of participants, proposed location, proposed date(s), whether the symposium will be held in conjunction with a national meeting related to child welfare and child protection, etc.

—Describe the types of participants who would be involved (e.g., attorneys, judges, child welfare and child abuse professionals and administrators, academicians) and their roles in the preparation and conduct of the symposium.

—Outline the type of report that would be developed following the symposium.

Background Information: In the past few years numerous law suits have challenged the traditional sovereign immunity of public agencies with respect to liability, wrongful death and the like. Suits against law enforcement agencies have left many with judgments for damages due to actions of its officers. Suits against caseworkers in the child welfare and child protection agencies have also been taken to court. Suits may be brought for not removing a child who should have been, for removing a child who should not have been, or for doing nothing. Liability insurance costs for social service agencies have caused some localities to resort to self-insurance. All of these issues can have an impact on the behavior of social service personnel, on the ability to recruit professionals, on the costs of liability and malpractice insurance and on the quality control and decision making structures of public agencies.

4.6 Collaborative Effort to Establish Development Child Care for Children in Homeless Families

Eligibility Criteria: Head Start grantees, child protective services agencies, public or nonprofit child care agencies, and other community service agencies

Purpose: To develop and provide developmental child care to homeless children from age one through the age for mandatory entry into public school who are residing with their families in welfare hotels, homeless shelters, or other temporary shelters for homeless families. These children have very limited opportunity for developmental experiences due to the environmental and social restrictions inherent in these living arrangements. The lead coordinating agency must be able to coordinate the agencies so that a package of full day developmental child care services is available for all children in the family below mandatory school age regardless of the number, ages or special needs. The full day services are necessary not only to provide the physical and social space for optimum development, but also to provide parents with respite time to seek or train for employment and attend to other personal needs. Projects funded under this priority area can help to find ways to ensure the availability of a wide range of services for these homeless children.

Duration of Projects: Not to exceed 24 months.

Federal Share of Project Costs: Not to exceed $100,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Provide for a collaborative arrangement which includes the public agency responsible for the families, the child protective services agency, Head Start, a Parent and Child Center (PCC) or a developmental child care program for special needs children, as appropriate, to establish a full day program with parental involvement to meet the physical, social, emotional and educational development needs of these children. Letters of commitment, not of support, must be included.

—Describe how the child care programs will enhance the child's development.

—Provide for adequate liaison through the homeless program to continue work with children when/if the family is moved from shelter to shelter. The provision of follow-up services, when they leave the shelter for a permanent home (especially in the identification of other child development arrangements for preschool children) must be addressed in the application.

—Explain how maximum use will be made of existing community services, utilizing community donated services, such as volunteers for transportation or working with children, etc. All involved groups must provide a letter of commitment.

—Provide for an evaluation component which will clearly assess the effectiveness of the developmental child care project.

Background: The effects of poverty on children's development is well documented. The lack of a permanent home, the restricted environment of alternative shelters and the inability to count on the stability of services in the same community add additional stress. Because of the inherent mobility in the situation, these children and families often "fall through the cracks" for services that benefit low-income families with a permanent address.

4.7 Adaptation of Early Childhood State-of-the-Art Methods, Models and Curricula in a Head Start Setting

Eligibility Criteria: Institutions of higher education, research and training organizations or other organizations which have existing program models, materials or curricula ready for demonstration in Head Start in one of the following areas:

(1) Curricula including materials, in areas such as science or math or a developmental area such as problem solving or logical thinking;

(2) Materials, models or methods for parent/child interaction or family dynamics;

(3) Materials, models or methods to assist staff in assessing preschool children;

(4) Materials, methods or demonstrations focusing on leadership development or training for preschool staff; or

(5) New models or materials for child or program assessment.

These models, methods or materials shall either be new to Head Start or have had limited prior use in Head Start programs.

Purpose: To provide the field of child development with new ideas and methods for enhancing child, parent and staff development, and for keeping Head Start grantees current with new ideas, methods and technology in the field of child development and early childhood education.

Duration of Project: Not to exceed 24 months.

Federal Share of Project Costs: Not to exceed $150,000 per year per project.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Include signed consent from one or more Head Start programs in which the applicant can mount the demonstration.

—Include a strong justification if the entire demonstration will not be carried out at Head Start site(s).

—Provide a justification for how their project would improve the portion of the Head Start program on which it is targeted, how it will benefit Head Start children, parents and staff, and how it

will contribute to the child development field.

—Include in the methodology sufficient specificity on the numbers of classrooms, children, parents, or staff participating so that judgments can be made about the potential to generalize the applicability of the models, materials or technologies to other child development settings.

Background: With the growing interest in the provision of preschool experiences for all children and especially low-income children, Head Start's role as a model child development program becomes increasingly important. Therefore, as new knowledge, technologies and theories develop and are accepted by professionals in early childhood development, their introduction into Head Start is important to the field as well as to the maintenance of Head Start's role as a leader and model in the field of child development. It is also critical in providing Head Start children and their families with the best services possible based on state-of-the-art thinking and technologies.

For the past several years Head Start has been funding innovative ideas which have been generated by Head Start programs, a grass roots approach. This was done in order to infuse Head Start with new programmatic possibilities and options. While this effort has generated a number of stimulating innovations, it has precluded the infusion of new innovations from the child development field at-large and particularly those institutions engaged in state-of-the-art child development research.

During the final year of the project, each project may be evaluated to determine the general applicability of the model, material or technology. Those projects which seem to have potential for general applicability may be supplemented to test its transferability during a third year.

4.8 Development and Testing of Integrated Treatment for Dysfunctional Families of At-Risk Youth by Runaway and Homeless Youth Centers

Eligibility Criteria: Applicants must be runaway and homeless youth shelters that are currently funded under the Runaway and Homeless Youth Act or would qualify under the Act's program requirements.

Purpose: To develop and test model programs of treatment for dysfunctional families that enable the family to remain as the primary care giver and still protect the interests and well being of at-risk youth.

Duration of Projects: Not to exceed 36 months.

Federal Share of Project Costs: Not to exceed $100,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Emphasize development of integrated services program design which supports families in their role as primary caregiver. The applicant must demonstrate the ability to put into place a treatment program that covers three major service components:

- In-home treatment—intensive intervention;
- Treatment services while the youth is out of the home; and
- Outpatient services that are accessible.

—Have all three service capabilities or have agreement(s) with appropriate service providers to provide missing components(s). Documentation of the agreement(s) should be included with the application.

—Provide for a third party evaluation of the impacts of the treatment components. The evaluation design should include some common measures to provide pre- and post-treatment assessments of family dysfunction. The specific common measures to be used in the evaluation will be agreed upon at a project briefing at the outset of the project period.

Background Information: One of the major causes of runaway behavior and homelessness among youth is dysfunctional family situations. Family treatment programs can be successful to the extent of helping families remain the primary care giver of their children. While integrated treatment may not dispel deeply rooted dysfunction, it can assist in developing a level of maintenance that permits the family to remain as the primary care giver for the youth. Successful programs, however, need to be integrated in their efforts. HDS is interested in the development of model integrated treatment programs for use by runaway and homeless youth shelters in working with at-risk youth and their families.

4.9 Transitioning Homeless Youth from Emergency Homeless Center to Independent Living Programs and Self-Sufficiency

Eligibility Criteria: Partnership projects between Federally-funded Community Action Agencies and Runaway and Homeless Youth Center. Applications that do not include partnership arrangements with Runaway and Homeless Youth Centers are ineligible and will not be reviewed. Letters of commitment, not support, for the partner agency which is not the lead agency should be included with the application.

Purpose: To stimulate self-sufficiency by developing and testing new models for working with homeless, older, at-risk adolescents which: (1) Integrate emergency services and (2) coordinate social service efforts that improve independent living and self-sufficiency skills.

Duration of projects: Not to exceed 36 months.

Federal Share of Project Costs: Not to exceed $60,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Identify Federal, State and local impediments to the development and implementation of independent living/self-sufficiency models and describe the process to be used to overcome them in developing a comprehensive community wide planning process that will become institutionalized.

—Build on the knowledge gained from ACYF funded demonstrations and recent studies. Information on such studies is available through the National Reources Center for Youth Services, operated by the University of Oklahoma, 131 North Greenwood Avenue, Tulsa, Oklahoma 74120.

—Include an evaluation component which must be conducted by an independent evaluator.

Background Information: The challenge to applicants for funds under this priority area is to develop and test new models that deal with the range of problems encountered by homeless adolescents receiving emergency shelter services when they attempt to live independently. One problem to overcome is the lack of a comprehensive support system covering the full period of time needed by adolescents to develop the skills necessary to achieve self-sufficiency. Most often, existing systems are not part of an integrated network that combines emergency services for the homeless and longer range planning for independent living and self-sufficiency. Whatever specific problem or combination of problems the applicant chooses to address, the applicant will be expected to propose solutions that eliminate the "networking of services" problems which cause youth to remain in emergency service or temporary placement situations for protracted periods of time.

Part III—General Information and Guidelines for the Application Process and Review

This part contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement.

Application forms are provided along with detailed instructions for developing and assembling the application package for submittal. Specific guidelines on applicant eligibility and grantee matching requirements are provided in Part II under each priority area.

A. General Information

1. Review Process and Funding Decisions

Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the published evaluation criteria by experts in the field, generally persons from outside of the Federal Government. The results of this review are a primary factor in making funding decisions.

HDS reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. HDS also solicits comments from other Federal Departments, from Central and Regional Office staff, from interested foundations, national organizations, specialists, experts, States and the general public. These comments will be considered by the Assistant Secretary for Human Development Services and the HDS Senior Staff in making funding decisions.

Preference may be given to applications which focus on or feature: Minority populations; a substantial innovation that has the potential to improve theory or practice in the field of human services; a model practice or set of procedures that hold the potential for dissemination to, and utilization by, organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the possibility of a large degree of benefit for a small Federal investment; a programmatic focus on those most in need; and substantial involvement in the proposed project by national or community foundations.

To the extent possible, final decisions will reflect the equitable distribution of assistance among the States, geographical areas of the nation, rural and urban areas, and ethnic populations. HDS Senior Staff also take into account the need to avoid wasteful duplication of effort in making funding decisions.

2. Required Notification of State Single Point of Contact

It is imperative that the applicant submit all required materials to the Single Point of Contact (SPOC) and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a. SPOCs will be notified of any applicant not indicating SPOC contact on the application, when SPOC contact is required. SPOCs have sixty (60) days starting from the application deadline to comment on applications for financial assistance under this program. Comments are, therefore, due no later than January 10, 1989. This process is required when the program is covered under Executive Order 12372 "Intergovernmental Review of Federal Programs" and 45 CFR Part 100 "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alaska, Idaho, Kansas, Minnesota, Nebraska, American Samoa and Palau, have elected to participate in the Executive Order process and have established SPOCs. Applicants from these seven areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF 424. When comments are submitted directly to HDS, they should be addressed to the application mailing address in Part I.

A list of the State Single Points of Contact is included at the end of this announcement.

3. Notification of State Developmental Disabilities Councils

A copy of the application must be submitted to the State Developmental Disabilities Council for its review and comment when individuals with developmental disabilities who reside in that State are included among the target populations of the proposed project. A listing of the Councils may be obtained by calling (202) 755-4560. This requirement is in addition to the SPOC notification required by Executive Order 12372.

B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is November 10, 1988. Applications must be either mailed or hand-delivered to the address in Part I of this announcement.

Hand-delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received at the mailing address on or before the deadline date; or

2. Postmarked before midnight of the deadline date and received in time to be considered during the competitive review process. Applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above deadline are considered late applications. HDS will notify each late applicant that its application will not be considered in the current competition.

HDS may extend the deadline for all applicants because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail or when HDS determines an extension to be in the best interest of the government. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant(s).

C. Application Screening Requirements

Applications that meet the deadline for submittal will be screened to determine completeness and conformity to the requirements of this program announcement. Complete, conforming applications will be reviewed and scored competitively against the

evaluation criteria. In order for an application to be complete and in conformance, it must meet the following screening requirements:

(1) Priority Area Eligibility

The application must meet any eligibility requirements specific to the priority area under which it is being submitted. This includes eligibility of the organization, duration of project, maximum Federal funding to be requested and matching or cost sharing requirements. An application can be submitted under only one priority area.

(2) Priority Area Responsiveness

The application must be responsive to the priority area under which it is being submitted as identified at the top of page one of the SF 424. In order to be considered responsive, the application must address each of the minimum requirements for an application specified in the priority area description.

(3) Application Form

The application must be submitted on single-sided reproduced copies of the SF 424: page 1, Application Cover Sheet; Part II, Project Approval Information; and Part III, Budget Information.

(4) Copies Required

Applicant must submit an original and two copies of the complete application, prepared according to the instructions provided. A complete application includes: the form identified in (3) above, a summary description of the proposed project, and the program narrative.

(5) Signature

The signature of the Certifying Representative must be handwritten (preferably in blue ink) and the signer's name and title must be typed in Item 23 of the original SF 424.

(6) Length

All narrative sections of the application must meet format specifications and minimum and maximum length requirements as specified in the instructions later in this Part. Appendices/attachments must not exceed 10 pages.

(7) State Single Point of Contact

Item 22a or 22b must be completed for State Single Point of Contact (SPOC) certification as required under Executive Order 12372.

Applications which do not meet these screening requirements will not be reviewed and the applicant will be so informed.

D. Evaluation Criteria

These evaluation criteria correspond to the outline for the Part IV narrative section of the application and the descriptions of the five criteria below should be used as headings in developing the program narrative.

Applications which pass the screening will be reviewed by a panel of at least three individuals. These reviewers will be primarily experts from outside the Federal government. Reviewers will comment on and score the applications, basing their comments and scoring decisions on the criteria below.

(a) Need for the Project (Objectives) 20 points

State the specific objectives and needs addressed by the project in terms of its national or regional significance, its theoretical importance and its applicability to practices and subordinate objectives of the project. Provide a detailed discussion of the "state-of-the-art" relative to the problem or area addressed by the proposal and indicate how the proposed effort will impact on it. For research projects, state the hypothesis(es) to be tested or the specific questions to be answered. For demonstration, training, technical assistance, and evaluation projects, state the goals or service objectives of the proposal. Provide supporting documentation or other testimonies from concerned interests other than the applicant. Summarize, evaluate and relate relevant data, based on planning or demonstration studies, to the proposed project.

Give a precise location of the project or area to be served by the proposed project.

(b) Project Methodology (Project Implementation Plan): 30 points

Tasks to be performed. Describe in detail the tasks to be performed including the events, activities and expected products. Identify the key staff member who will be the lead person. Relate each task to each of the objectives. Provide a chart indicating the timetable for completing each task, the lead person and the time committed.

Approach. Explain, in detail, the approach to be used for accomplishing each task and how this approach will accomplish the project objectives as well as how these objectives will solve the problem(s). Also, fully describe the research methodology, demonstration plan, design of training program or other appropriate techniques to be used.

(c) Excepted Outcomes: 15 points

Identify, in specifc terms, the results and benefits—for target groups and human service programs—to be derived from implementing the proposed project. Describe how the expected results and benefits will relate to previous research and/or demonstration efforts. Also describe in specific terms the anticipated contribution that this project will make to policy, practice, theory and/or future research.

Describe in detail evaluation plans and procedures which are capable of measuring the degree to which the project objectives have been accomplished. Provide an explanation on why these evaluation techniques will be used.

(d) Dissemination and Utilization: 15 points

Describe in detail the product(s) resulting from the proposed project that will be disseminated. Also describe the steps to be taken to disseminate and promote the utilization of these products and findings. State what resources will be used to disseminate these projects and findings. Finally, explain why these steps are expected to be successful in disseminating the products and findings. The specific audiences to whom the products and findings will be disseminated must be specified as well as the reason why these audiences will benefit from these results. State in detail the steps to be taken to have the products and findings adopted by these audiences.

(e) Level of Effort: 20 points

Staffing Pattern. Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contributions to be made by key staff.

Competence of Staff. Describe the qualifications of the project team including any experiences working on similar projects. Also describe the variety of skills to be used, relevant research experience, educational background and the demonstrated ability to produce final results that are readily comprehensible and usable. One or two pertinent paragraphs on each key staff member are preferred to vitae/resumes. However, vitae/resumes may be included in the ten pages allowed for attachments/appendices.

Adequacy of Resources. Specify the adequacy of the available facilities, resources and organizational experience with regard to the tasks of the proposed project.

List the financial, physical and other resources to be provided by other profit and nonprofit organizations. Explain how these organizations will participate in the day to day operations of the

project. Also explain the available resources or commitments for the continuation of the project after the federal funding period terminates or the demonstration is concluded.

Budget. Relate the proposed budget to the level of effort required to attain project objectives and provide a cost/benefit analysis. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Collaborative Efforts. Discuss in detail and provide documentation for any collaborative and coordinated efforts with other agencies or organizations. Identify these agencies or organizations and explain how these will enhance the project. Letters of commitment must be included with the application. Also explain in detail the coordination efforts to bring community agencies to work together in support of the proposed project.

Authorship. The authors of the application must be clearly identified together with their current relationship to the applicant organization and any future project role they may have if the application is funded.

E. The Components of an Application

A complete application consists of the following in this order:

1. Application Cover Sheet, SF 424, page 1;
2. Part II, Project Approval Information;
3. Part III, Budget Information: Section A (Budget Summary), Section B (Budget Categories), and Section E (Budget Estimates of Federal Funds Needed for Balance of the Project);
4. Budget justification not to exceed three pages;
5. Project summary description with listing of key words;
6. Part IV, Program Narrative, organized with sections addressing the following five areas: (a) Need for the project, (b) project methodology, (c) expected outcomes, (d) dissemination and utilization, and (e) level of effort;
7. An Organizational Capability statement;
8. Part V, Assurances; Standard Form 441, Civil Rights Assurance; HHS 641, Rehabilitation Act Assurance; and HHS 596, Human Subjects Certification; and
9. Appendices/attachments not to exceed 10 pages.

F. Preparing the Application

The SF 424 has been reprinted for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You must reproduce single-sided copies from the reprinted form and type your application on the copies. Please do not use forms directly from the Federal Register announcement as they are printed on both sides of the page.

To assist applicants in correctly completing the SF 424, included in this announcement are samples of page 1 and the budget section (Part III) of the SF 424 which have been completed. These samples are to be used as a guide only. Please submit your application on the blank copies.

When specific information is not required under this program, N/A (not applicable) has been preprinted on the form. These items are not to be completed. Prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation for each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted.

Item 1. Preprinted on the form.

Item 2a. Applicant's application identifier number, if desired.

Item 2b. Date application is signed.

Item 3a. Enter the number assigned, if any, by the State Single Point of Contact (SPOC). Applications submitted to HDS must contain this identifier, if provided by the SPOC prior to application submittal. Item 22 of this form must also be completed for programs covered by E.O. 12372.

Item 3b. Date identifier is assigned by SPOC.

Item 4a. Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application. Use abbreviations to limit the organization name to 30 characters, including spaces and punctuation.

Item 4b. Enter the name of the primary organizational unit which will actually carry out the project activity. If 4a and 4b are the same, leave 4b blank. Use abbreviations to limit this line to 30 characters, including spaces and punctuation.

Items 4c–4g. Enter the complete address that the organization actually uses to recieve mail, as this is where all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

Item 4h. Enter the name and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given in 4c–4g. All corresponsence will be sent to the attention of this individual.

Item 5. Enter the employer identification number of the applicant organization as assigned by the Internal Revenue Service (IRS). If the applicant organization has been assigned a DHHS Entity Number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full Entity Number. If the applicant has other grants with DHHS and has been assigned a Payee Identification Number (PIN), enter the PIN in parenthesis () beside the employer identification number.

Item 6a. Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested. If more than one program could be involved in funding the project, check "multiple." A list of CFDA numbers is included at the end of this announcement.

Item 6b. Enter the program title from the CFDA. Abbreviate if necessary.

Item 7. Enter the project title. The title is generally short but should be no more than 200 characters long, including spaces and punctuation, typed in not more than four lines of 50 characters each.

Summary Description. Item 7 above asks for a one-page summary description of the project using Section IV. In place of Section IV, use a separate sheet of 8½ x 11 plain paper to provide this summary description of the project. Clearly mark this separate page with the applicant name as shown in item 4a and the priority area number as shown at the top of the page. The summary description should not exceed 1,200 characters, including spaces and puntuation. These 1,200 characters will become part of the computer data base on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposals. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project (such as software packages, materials, management procedures, data collection instruments, training packages or videos). This information in conjunction with the information on the SF 424 becomes the project's "abstract" and will be the major source of information about the proposed project; it is the first information that the reviewers read in evaluating the application.

At the bottom of the page, apart from the summary description, type up to 10 key words describing the service(s) and target population(s) to be covered by the proposed project. The key words are to be selected from the list at the end of Part III of this announcement. These key words will be used for computer searchers for specific types of proposed and funded projects.

Items 8a–8e. Self-explanatory with the exception of 8e, "City," which includes a town, township, or other municipality.

Item 9. Enter the governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit is affected, list it rather than subunits.

Item 10. Enter the estimated number of persons to be directly benefited or served during the life of the project, as described in the Part IV, Program Narrative.

Item 11. Preprinted on the form.

Items 12a–12f. Enter the amounts requested or to be contributed by Federal and nonfederal sources for the total project period, if that period is 17 months or less; if the proposed project period exceeds 17 months, enter budget for the first 12 months.

Item 12a. Enter the amount of Federal funds requested. This amount should be no greater than the maximum amount specified in the priority area description.

Items 12b–12e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. These items (b-e) are considered cost-sharing or "matching funds." It is important that the dollar amounts entered here (the non-Federal share) total at least 25 percent of the total project cost (the requested Federal funds plus funds from non-Federal sources) for the project period if that period is 17 months or less or for the first 12 months if the project period exceeds 17 months.

Item 12f. Enter the sum of items 12a–12e.

Item 13a. Enter the number of the Congressional District where the principal office is located.

Item 13b. Enter the number of the Congressional districts(s) where the project will be located. If State-wide, a several state effort, or nationwide, enter "00."

Item 14. Preprinted on the form.

Item 15. Enter the desirable start date for the project, beginning on or after February 1, 1989. Most awards made from this program announcement will have start dates between February 1 and September 30, 1989.

Item 16. Enter the estimated number of months to complete the project after Federal funds are available. Projects are generally for 12 months, 24 months or 36 months or for the duration specified in the priority area description. Ensure that this number does not exceed the limitation indicated in the priority area description.

Item 17. N/A.

Item 18. Enter deadline date for submittal of applications as specified in Part III, B.

Item 19. Preprinted on the form.

Item 20. N/A.

Item 21. Preprinted on the form.

Item 22a. Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the attached listing. Review of the application is at the discretion of the SPOC. The SPOC will verify the data noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay and proposed funding until the full review time of 60 days is afforded.

Item 22b. Check the appropriate box if application is not covered by E.O. 12372.

Item 23a. Enter the name and title of the Certifying Representative of legal applicant.

Item 23b. Original signature of the Certifying Representative named in Item 23a.

Items 24–33. Leave blank.

2. SF 424, Part II, Project Approval Information

Negative answers will not require an explanation unless HDS requests more information at a later date. All "yes" answers must be explained on a separate page in accordance with these instructions.

Item 1. Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2. Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3. Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 4. Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with plan. If the plan is not available, explain why.

Item 5. Show the population residing or working on the Federal installation who will benefit from this project. Federally recognized Indian reservations are not "Federal installations."

Item 6. Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7. Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8. State the number of individuals, families, businesses or farms this project will displace.

Item 9. Show the CFDA number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

3. SF 424, Part III—Budget Information

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs in column (f). Enter total of (e) and (f) in column (g).

Section B—Budget Categories. This budget which includes the Federal as well as non-Federal funding for the proposed project covers: (1) The total project period of 17 months or less or (2) the first year if the proposed project exceeds 17 months. It should relate to item 12f, total funding, on page one of the SF 424. Under column (5), enter the total (Federal and non-Federal) funds, by object class category, for the total project period.

A budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should not exceed three typed pages and should follow Part III—Budget Information.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. In the budget justification, identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project as part of the budget justification. Do not include the costs of consultants, which should be included on line h, Other.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits unless treated as part of an approved indirect

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cost rate. Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc., in the budget justification.

Travel—Line 6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation. Provide a break-down for requested travel costs in the budget justification. Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. "Equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition, provided that it would at least include all non-expendable personal property as defined in the preceding sentence.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d. Specify general categories of supplies and costs in the budget justification.

Contractual—Line 6f. Enter the total costs of all contracts, including: (1) Procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award as part of the budget justification.

Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying the name of contractor, purpose of contract and major cost elements.

Construction—Line 6g. Leave blank since new construction is not allowable and HDS funds are rarely used under this program announcement for either renovation or repair.

Other—Line 6h. Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, medical and dental costs, noncontractual fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, postage, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i. Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j. Enter the total amount of indirect costs. If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency. Enclose a copy of this agreement as part of the amount of indirect costs determined in accordance with HHS requirements.

In the case of training grants to other than State or local governments (as defined in 45 CFR Part 74), the reimbursement of indirect costs will be limited to the lesser of the negotiated or actual indirect cost rate or 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations. It should be noted that when indirect charges are included, these charges should not *also* be charged as direct charges to the grant.

Total—Line 6k. Enter the total amounts of Lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature, source, and anticipated use of income in the Program Narrative.

In-Kind Contributions—Line 8. After program income, enter the value of in-kind contributions. In-kind contributions are defined in Title 45 of the Code of Federal Regulations, § 74.51 as, "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant." These in-kind contributions are part of the total budget. Total direct costs (Federal plus non-Federal), plus indirect costs (Federal plus non-Federal), plus in-kind contributions equal the total approved budget.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Columns (d) and (e) are not applicable since HDS limits funding under this announcement to a three year maximum.

4. SF 424, Part IV, Program Narrative

Describe the project proposed in response to this announcement addressing the specific concerns mentioned under the priority area description in Part II. The narrative should provide information on how the application meets the evaluation criteria which are the same as the format below. This narrative should be no less than 6 double-spaced pages and not more than 25 double-spaced pages. It should be typed on a single-side of 8½" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Need for the Project" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The Part IV, Program Narrative, is a very important part of the application. It should be clear, concise and specific to the priority area under which the application is being submitted.

For the FY 1988 CDP process, HDS developed an "Exemplary Composite Application Narrative" to provide prospective applicants with samples of narratives from funded applications. This has been updated for FY 1989 to include portions of applications funded in FY 1988. The comments made by the reviewers using the evaluation criteria are indicated in the margins. This document is available upon request by contacting HDS at the application mailing address.

Applicants (except those under priority areas 4.4.A, 4.4.B, 4.4.C, 4.4.D and 4.4.E) are required to follow the format described below in preparing their applications, using the five headings for sections of the application. However the number of pages for each section is given as a suggestion only.

More information on the exceptions follows the five sections listed below. The specific information to be included under each heading was discussed previously under the "Evaluation Criteria."

The five sections are:

(a) *Need for the Project (Objectives):* (five pages double-spaced);

(b) *Project Methodology—Project Implementation Plan:* (seven pages double-spaced);

(c) *Expected Outcomes:* (four pages double-spaced);

(d) *Dissemination and Utilization:* (four pages double-spaced); and

(e) *Level of Effort:* (five pages double-spaced).

Applications submitted under the following priority areas: Child Welfare Traineeships (4.4.A), In-Service Training (4.4.B), Indian Child Welfare Training (4.4.C), Special Grants for HBCUs (4.4.D), and Collaboration Between Schools of Social Work and Child Welfare Agencies (4.4.E) should not be prepared using this format since the dissemination and utilization criterion has been eliminated. The Child Welfare Training Background section describes how the 15 points for the eliminated criterion have been redistributed.

5. Organizational Capability Statement

A brief (maximum two pages double-spaced) background description of how the applicant organization, or the unit within the organization that will have responsibility for the project, is organized and the types and quantity of services it provides or research capabilities it possesses. This description should cover capabilities not included in the program narrative under "level of effort." It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable.

6. Part V—Assurances

Applicants are required to file Part V, Assurances, and the Assurance of Compliance with the DHHS Regulations under Title VI of the Civil Rights Act of 1964 and the Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended. Copies of these assurances are reprinted at the end of this announcement.

For research grants involving Head Start and Runaway and Homeless Youth populations, an Assurance of Protection of Human Subjects is required. For other research projects for which human subjects may be at risk (for instance, research involving Head Start children), an assurance may also be needed. If there is a question regarding the applicability of this assurance (located at the end of this announcement), contact the Office of Research Risks of the National Institutes of Health at (301) 496–7041.

G. The Application Package

Once an application is completed, it is ready to be submitted to HDS. In order to expedite the processing of applications, we request that you *adhere to the following instructions exactly.* Each application package must include:

1. A single copy of the *Checklist for a Complete Application* with all the items checked as being included in the application.

2. An original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Need for the Project" as page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as, agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation. In any case, appendices/attachments should not exceed 10 pages and may include resumes, letters of commitment, or position descriptions.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be automatically notified of receipt and of the four digit identification number assigned to their application. This number and the priority area must be referred to in *ALL* subsequent communication with HDS concerning the application. If acknowledgment is not received within eight weeks after the deadline date, please notify HDS by telephone at (202) 755–4560. After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for HDS staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

H. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It is for your use to ensure that your application has been properly prepared.

Checklist

I have checked my application package to ensure that it includes the following:

——A single copy of the Checklist, with all items checked off;
——One original application signed and dated plus two copies;
——A completed SPOC certification with the date of SPOC contact entered in item 22, page 1 of the SF 424.
——Each package contains the application (original and 2 copies) for one priority area;

The original and both copies of the application include the following:

——SF-424, page 1, Application Cover Sheet;
——SF-424, Parts II and III;
——Budget justification;
——Summary description and key words;
——SF-424, Part IV, Program Narrative;
——Organizational Capability Statement;
——SF-424, Part V, Assurances; and
——Appendices/attachments.

(Federal Catalog of Domestic Assistance Numbers: 13.600 Head Start; 13.608 Child Welfare Research and Demonstration; 13.648 Child Welfare Services Training; 13.623 Runaway and Homeless Youth; 13.652 Adoption Opportunities; 13.631 Developmental Disabilities Projects of National Significance; 13.661 Native Americans Program Act; 13.647 Social Services Research—Section 1110; and 13.671 Family Violence Prevention and Services).

Dated: August 9, 1988.

Sydney J. Olson,
Assistant Secretary for Human Development Services.

William L. Engles,
Commissioner, Administration for Native Americans.

Dodie Truman Borup,
Commissioner, Administration for Children, Youth and Families.

G. Barry Nielsen,
Director, Office of Policy, Planning and Legislation.

Carolyn Doppelt Gray,
Commissioner, Administration on Developmental Disabilities.

Executive Order 12372—State Single Points of Contact

Alabama

Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, AL 36105–0939, (205) 284–8905

Alaska

None

Arizona

Janice Dunn, Arizona State Clearinghouse, 1700 West Washington

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Avenue, Fourth Floor, Phoenix, AZ 85007, (602) 255–5004

Arkansas

Joe Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, AK 72203, (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, CA 95814, (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, CO 80203, (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, CT 06106–4459, (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, DE 19903, (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004, (202) 727–9111

Florida

George H. Meier, Director of Intergovernmental Coordination, State Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, FL 32399–0001, (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, GA 30334, (404) 656–3855

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, Honolulu, HI 96813, (808) 548–3016 or 548–3085

Idaho

None

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, IL 62706, (217) 782–8639

Indiana

Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, IN 46204, (317) 232–5610

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, IA 50309, (515) 281–3725

Kansas

Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Rm. 152–E, State Capitol Bldg., Topeka, KS 66612, (913) 296–2436

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, (502) 564–2382

Louisiana

Colby S. LaPlace, Assistant Secretary, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, LA 70804, (504) 342–9790

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station No. 38, Augusta, ME 04333, (207) 289–3161

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, MD 21201–2365, (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Rm. 904, Boston, MA 02202, (617) 727–3253

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, MI 48909, (517) 373–1838

Note: Please direct correspondence and questions to: Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, MI 48911, (517) 334–6190

Minnesota

None

Mississippi

Marlan Baucum, Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Building., 500 High Street, Jackson, MS 39202, (601) 359–3150

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, MO 65102, (314) 751–4834

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, MT 59620, (406) 444–5522

Nebraska

None

Nevada

Jean Ford, Nevada Office of Community Services, Capitol Complex, Carson City, NV 89710, (702) 885–4420

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator

New Hampshire

John E. Dabuliewicz, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, NH 03301, (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, NJ 08625–0803, (609) 292–6613

Note: Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Divison of Local Government Services, CN 803, Trenton, NJ 08625–0803, (609) 292–9025

New Mexico

Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Room 424, State Capitol Building, Santa Fe, NM 87503, (505) 827–3885

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224, (518) 474–1605

North Carolina

Chrys Baggett, Director, Intergovernmental Relations, North Carolina Department of Administration, 116 West Jones Street, Raleigh, NC 27611, (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, ND 58505, (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, OH 43266–0411, (614) 466–0698

Note: Please direct correspondence and questions to: Linda E. Wise

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, OK 73116, (405) 843–9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE., Salem OR 97310, (503) 373–1998

Pennsylvania

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg PA 17108, (717) 783–3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, RI 02907, (401) 277–2656

Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, SC 29201, (803) 734–0435

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, SD 57501, (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, TN 37219, (615) 741–1676

Texas

Thomas C. Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, TX 78711, (512) 463–1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, UT 84114, (801) 533–5245

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion, Office Building, 109 State Street, Montpelier, VT 05602, (802) 828–3326

Virginia

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, VA 23219, (804) 786–4474

Washington

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, Ninth and Columbia Building, Olympia, WA 98504–4151, (206) 753–4978

West Virginia

Fred Cutlip, Director, Commmunity Development Division, Governor's Office of Community and Industrial Development, Building No. 6, Rm. 553, Charleston, WV 25305, (304) 348–4010

Wisconsin

James R. Krauser, Secretary, Wisconsin Department of Administration, 101 South Webster, GEF 2, P.O. Box 7864, Madison, WI 53707–7864, (608) 266–1741

Note: Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, WY 82002, (307) 777–7574

American Samoa

None

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, GU 96910, (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patricia G. Custodio/Isael Soto Marrero, Chairman/Director, Minillas Government Center, P.O. Box 41119, San Juan, PR 00940–9985, (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 and 33 Kongens Gade, Charlotte Amalie, VI 00802, (809) 774–0750

List of Key Words

Abused
Accreditation
Adoption
Advocacy and guardianship
Adult day care (use home care with aging and elderly)
Adults
Aging and elderly
Aging-out
Agriculture
Alcoholism
Allied professional education
Alternative financing
Asians
At-Risk Youth
Audio-visual
Barrier-free design
Blacks
Board and care
Budgeting and finance
Buisness development training
Cable television
Career and vocational education
Case Management
Challenge Grants
Child abuse and neglect
Child care
Child care centers
Child Development
Child Welfare
Children
Clearinghouse
Client outcome measures
Collaboration
Colleges and Universities

Community Care
Community-based
Community Foundation
Competitive employment
Comprehensive care
Computer networks
Computers
Conferences
Congregate housing
Consumer education
Continuing education
Contracting
Cooperatives
Coordination
Corrections
Counseling
Courts
Crisis intervention
Cross-cultural
Cross-cutting
Cultural activities
Curriculum
Curriculum development
Data collection
Day care
Day care centers
Deinstitutionalization
Design
Developmental Child Care
Disabled
Developmental Disabilities
Dissemination
Dropouts
Dsyfunctional Families
Economic development
Education and training
Effectiveness measures
Efficiency
Elderly Persons
Emergency services
Emergency shelters
Employer-supported human services
Employment
Entrepreneurship
Environment
Environmental design
Evaluation
Exploited youth
Families
Family counseling
Family day care
Family Preservation
Family support/Caregiving
Family Violence
Films
Finance
Fire safety
Fiscal management
Food and nutrition
Food banks
Forecasting
Foster care
Foster grandparents
Foundations
Frail elderly
Friendly visitors
Gerontology training
Group homes
Guardianship
Handbooks
Historically Black Colleges and Universities (use HBCU)
Head Start
Head Start Children with Handicaps
Health
Hispanics
Home care
Home equity conversions
Homeless
Hospitals
Hospices and nursing homes
Housing
Human services
Immigrants and refugees
Income generation
Independent living
Indians
Infants and toddlers
Informal caregivers
Information centers
Information and referral
In-home care
Institutionalization
Information transfer
Interagency cooperation
Interdisciplinary
Intergenerational
Interstate agreements
Investigations
Isolated elderly
Job bank
Job clubs
Job placement
Judicial system
Juvenile justice
Latchkey and school-age children
Law enforcement
Legal
Legal counseling
Legislation and model codes
Liability and Legal Issues
Linkages
Living skills
Local Government
Low-cost alternatives
Low-income
Mainstreaming
Management
Management Information Systems
Management training
Manuals
Marketing
Materials
Meals
Media
Medical
Mental Health
Mental health and Special Needs Adoption
Mentally disabled
Mentors
Microcomputers
Minorities
Native Alaskans
Native Americans
Native Hawaiians
Needs assessment
Neglect
Newsletters
Newspapers
Nursing Homes
Nutrition counseling
Older Persons
On-the-job training
Outreach
Parent
Parent education
Peer counseling
Performance-based contracting
Permanency planning
Placement Prevention
Physically disabled
Planning
Preschools
Prevention
Preventive care
Primary schools
Private sector
Prostitution
Public education
Public/Private Partnership
Public-private cooperation
Radio
Rate-setting
Readiness skills
Recreation
Recruitment
Recycling
Referral
Refugees
Research
Residential care
Resource allocation
Respite care
Retirement
Runaways
Rural
Samoans
School-age children
Secondary schools
Self-care
Self-help
Self-Sufficiency
Sexual Abuse
Seminars
Sheltered workshops
Single parents
Small business
Social services
Software
Special education
Special needs adoption
Speech impairment
Standards
Support groups
Target populations
Television
Taxes
Technical assistance
Technology transfer
Teenage parents
Teenage pregnancy
Telecommunications
Therapeutic day care
Toddlers
Training

Training of trainers
Transitioning
Transportation
Treatment
Tribally Controlled Community Colleges
Unemployed
Urban
User fees
Video
Visual Impairment
Vocational training
Volunteers
Vouchers
Women
Workplace
Youth
Youth 2000

BILLING CODE 4130-01-M

Priority Area Number: 4.1

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☒ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
a. NUMBER
b. DATE (Year month day): 19 88 11 10

3. STATE APPLICATION IDENTIFIER (NOTE TO BE ASSIGNED BY STATE)
a. NUMBER: 051884
b. DATE ASSIGNED (Year month day): 19 88 10 15

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name: Department of Human Services
b. Organization Unit: Division of Youth and Family Services
c. Street/P.O. Box: One S. Montgomery Street
d. City: Trenton
e. County: Mercer
f. State: NJ
g. ZIP Code: 08625
h. Contact Person (Name & Telephone No.): Harriet Thomas (609) 671-8237

5. EMPLOYER IDENTIFICATION NUMBER (EIN): 14 387 7129

6. PROGRAM (From CFDA)
a. NUMBER: 13.608
MULTIPLE ☐
b. TITLE: Child Welfare R&D

7. TITLE OF APPLICANT'S PROJECT (Use section IV of the form to provide a summary description of the project.)
Partners in Foster Care

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter: A

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)
Newark, NJ

10. ESTIMATED NUMBER OF PERSONS BENEFITING: 100

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s): A

12. PROPOSED FUNDING

a. FEDERAL	$ 125,000 .00
b. APPLICANT	42,000 .00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	$ 167,000 .00

13. CONGRESSIONAL DISTRICTS OF
a. APPLICANT: 5
b. PROJECT: 5, 6 & 7

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter: A

15. PROJECT START DATE (Year month day): 19 89 07 01

16. PROJECT DURATION: 24 Months

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify): N/A
Enter appropriate letter(s): N/A

18. DATE DUE TO FEDERAL AGENCY (Year month day): 19 88 11 10

19. FEDERAL AGENCY TO RECEIVE REQUEST: Department of Health and Human Services
a. ORGANIZATIONAL UNIT (IF APPROPRIATE): Office of Human Development Svcs.
b. ADMINISTRATIVE CONTACT (IF KNOWN): Division of Grants & Contracts
c. ADDRESS: 200 Independence Avenue, SW., HHH Building, Room 724-F Washington, D. C. 20201 ATTN: HDS-88-3

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER: N/A

21. REMARKS ADDED
☒ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶ To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

YES. THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE 88 10 15
b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE: Rex Calhoun, Commissioner
b. SIGNATURE: Rex Calhoun

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED (Year month day): 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE ▶ (Year month day): 19

30. STARTING DATE (Year month date): 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE (Year month date): 19

33. REMARKS ADDED
☐ Yes ☐ No

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88 OCT 15 P1:32

OMB NO 0348-0006

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1 N/A	N/A	$ N/A	$ N/A	$ N/A	$ N/A	$ N/A
2 N/A	N/A	N/A	N/A	N/A	N/A	N/A
3 N/A	N/A	N/A	N/A	N/A	N/A	N/A
4 N/A	N/A	N/A	N/A	N/A	N/A	N/A
5 TOTALS HDS/CDP		$ - 0 -	$ - 0 -	$ 125,000	$ 42,000	$167,000

SECTION B - BUDGET CATEGORIES

(Federal & non-Federal)

6 Object Class Categories	Grant Program Function or Activity (1)	(2)	(3)	(4)	Total (5)
a Personnel	$ N/A	$ N/A	$ N/A	$ N/A	$ 95,000
b Fringe Benefits	N/A	N/A	N/A	N/A	16,250
c Travel	N/A	N/A	N/A	N/A	2,000
d Equipment	N/A	N/A	N/A	N/A	4,000
e Supplies	N/A	N/A	N/A	N/A	7,350
f Contractual	N/A	N/A	N/A	N/A	5,000
g Construction	N/A	N/A	N/A	N/A	0
h Other	N/A	N/A	N/A	N/A	11,500
i. Total Direct Charges	N/A	N/A	N/A	N/A	141,000
j. Indirect Charges	N/A	N/A	N/A	N/A	19,000
k. TOTALS	N/A	N/A	$ N/A	$ N/A	$ 160,000
l. In-Kind Contri.		N/A	N/A	N/A	$ 7,000
m. Total Budget	N/A	N/A	N/A	N/A	$ 167,000
7. Program Income	N/A	N/A	N/A	N/A	$ 0

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS) (b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16 N/A	$ N/A	$ N/A	$ N/A	$ N/A
17 N/A	N/A	N/A	N/A	N/A
18 N/A	N/A	N/A	N/A	N/A
19 N/A	N/A	N/A	N/A	N/A
20 TOTALS HDS/CDP	$ 125,000	$ 0	$ N/A	$ N/A

Priority Area Number: [ ]

OMB Approval No 0348-0006

FEDERAL ASSISTANCE

1 TYPE OF SUBMISSION (Mark appropriate box)	☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☒ APPLICATION	2. APPLICANT'S APPLICATION IDENTIFIER	a. NUMBER / b. DATE Year month day 19
		3. STATE APPLICATION IDENTIFIER NOTE TO BE ASSIGNED BY STATE	a. NUMBER / b. DATE ASSIGNED Year month day 19
		Leave Blank	

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person (Name & Telephone No.)

5 EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA) a. NUMBER [ ] MULTIPLE ☐ b. TITLE

7 TITLE OF APPLICANT'S PROJECT (Use section IV of the form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter [ ]

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) [A]

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter [A]

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

17 TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify): N/A
Enter appropriate letter(s) [N/A]

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19 88 11 10

19. FEDERAL AGENCY TO RECEIVE REQUEST: Department of Health and Human Services

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER: N/A

a. ORGANIZATIONAL UNIT (IF APPROPRIATE): Office of Human Development Svcs.

b. ADMINISTRATIVE CONTACT (IF KNOWN): Division of Grants & Contracts

c. ADDRESS: 200 Independence Avenue, SW., HHH Building, Room 724-F
Washington, D. C. 20201 ATTN: HDS-88-3

21 REMARKS ADDED ☒ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE: a. TYPED NAME AND TITLE; b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27 ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE► Year month day 19

30. STARTING DATE Year month day 19

31 CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month day 19

33. REMARKS ADDED ☐ Yes ☐ No

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PART II
PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State [ ] Local [ ] Regional [ ]
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided.

OMB NO 0348-0006

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. N/A	N/A	$ N/A	$ N/A	$ N/A	$ N/A	$ N/A
2. N/A	N/A	N/A	N/A	N/A	N/A	N/A
3. N/A	N/A	N/A	N/A	N/A	N/A	N/A
4. N/A	N/A	N/A	N/A	N/A	N/A	N/A
5. TOTALS HDS/CDP		$ -0-	$ -0-	$	$	$

SECTION B - BUDGET CATEGORIES

(Federal & non-Federal)

6. Object Class Categories	- Grant Program, Function or Activity (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ N/A	$ N/A	$ N/A	$ N/A	$
b. Fringe Benefits	N/A	N/A	N/A	N/A	
c. Travel	N/A	N/A	N/A	N/A	
d. Equipment	N/A	N/A	N/A	N/A	
e. Supplies	N/A	N/A	N/A	N/A	
f. Contractual	N/A	N/A	N/A	N/A	
g. Construction	N/A	N/A	N/A	N/A	
h. Other	N/A	N/A	N/A	N/A	
i. Total Direct Charges	N/A	N/A	N/A	N/A	
j. Indirect Charges	N/A	N/A	N/A	N/A	
k. TOTALS	$ N/A	$ N/A	$ N/A	$ N/A	$
l. In-Kind Contri.	N/A	N/A	N/A	N/A	$
m. Total Budget	N/A	N/A	N/A	N/A	$
7. Program Income	N/A	N/A	N/A	N/A	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS) (b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16. N/A	$ N/A	$ N/A	$ N/A	$ N/A
17. N/A	N/A	N/A	N/A	N/A
18. N/A	N/A	N/A	N/A	N/A
19. N/A	N/A	N/A	N/A	N/A
20. TOTALS HDS/CDP	$	$	$ N/A	$ N/A

PART V

ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

   Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

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10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant") HEREBY
Name of Applicant (type or print)

AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date _____ By _____
Signature and Title of Authorized Official

_____
Area Code — Telephone Number

_____
Applicant (type or print)

_____
Street Address

_____
City State Zip

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for federal financial assistance that were approved before such date. The recipient recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

_____
Name of Designee(s) — Type or Print

_____ _____
Name of Recipient — Type or Print — Street Address

_____ _____
(IRS) Employer Identification Number — City

_____ _____
Area Code — Telephone Number — State — Zip

I certify that the above information is complete and correct to the best of my knowledge.

_____ _____
Date — Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

OMB No. 0925-0637

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PROTECTION OF HUMAN SUBJECTS ASSURANCE/CERTIFICATION/DECLARATION

☐ ORIGINAL ☐ FOLLOWUP ☐ EXEMPTION (previously undesignated)

☐ GRANT ☐ CONTRACT ☐ FELLOW ☐ OTHER

☐ New ☐ Competing continuation ☐ Noncompeting continuation ☐ Supplemental

APPLICATION IDENTIFICATION NO. *(if known)*

POLICY: A research activity involving human subjects that is not exempt from HHS regulations may not be funded unless an Institutional Review Board (IRB) has reviewed and approved the activity in accordance with Section 474 of the Public Health Service Act as implemented by Title 45, Part 46 of the Code of Federal Regulations (45 CFR 46—as revised). The applicant institution must submit certification of IRB approval to HHS unless the applicant institution has designated a specific exemption under Section 46.101(b) which applies to the proposed research activity. Institutions with an assurance of compliance on file with HHS which covers the proposed activity should submit certification of IRB review and approval with each application. (In exceptional cases, certification may be accepted up to 60 days after the receipt date for which the application is submitted.) In the case of institutions which do not have an assurance of compliance on file with HHS covering the proposed activity, certification of IRB review and approval must be submitted within 30 days of the receipt of a written request from HHS for certification.

1. TITLE OF APPLICATION OR ACTIVITY

2. PRINCIPAL INVESTIGATOR, PROGRAM DIRECTOR, OR FELLOW

3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION *(see reverse side)*

4. HHS ASSURANCE STATUS

☐ This institution has an approved assurance of compliance on file with HHS which covers this activity.

_____ Assurance identification number _____ IRB identification number

☐ No assurance of compliance which applies to this activity has been established with HHS, but the applicant institution will provide written assurance of compliance and certification of IRB review and approval in accordance with 45 CFR 46 upon request.

5. CERTIFICATION OF IRB REVIEW OR DECLARATION OF EXEMPTION

☐ This activity has been reviewed and approved by an IRB in accordance with the requirements of 45 CFR 46, including its relevant Subparts. This certification fulfills, when applicable, requirements for certifying FDA status for each investigational new drug or device. *(See reverse side of this form.)*

_____ Date of IRB review and approval. *(If approval is pending, write "pending." Followup certification is required.)*
(month/day/year)

☐ Full Board Review ☐ Expedited Review

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by 45 CFR 46 will be reviewed and approved before they are initiated and that appropriate further certification *(Form HHS 596)* will be submitted.

☐ Human subjects are involved, but this activity qualifies for exemption under 46.101(b) in accordance with paragraph _____ *(insert paragraph number of exemption in 46.101(b), 1 through 5)*, but the institution did not designate that exemption on the application.

6. Each official signing below certifies that the information provided on this form is correct and that each institution assumes responsibility for assuring required future reviews, approvals, and submissions of certification.

APPLICANT INSTITUTION	COOPERATING INSTITUTION
NAME, ADDRESS, AND TELEPHONE NO.	NAME, ADDRESS, AND TELEPHONE NO.
NAME AND TITLE OF OFFICIAL *(print or type)*	NAME AND TITLE OF OFFICIAL *(print or type)*
SIGNATURE OF OFFICIAL LISTED ABOVE *(and date)*	SIGNATURE OF OFFICIAL LISTED ABOVE *(and date)*

HHS 596 (Rev. 1/82)

(If additional space is needed, please use reverse side under "Notes.")

3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION *(from front side)*
According to 45 CFR 46.121, if an application is made to HHS requiring certification and involving use of an investigational new drug or device, additional information is required. In addition, according to 21 CFR 312.1(a)(2), 30 days must elapse between date of receipt by FDA of Form FD-1571 and use of the drug, unless the 30 day delay period is waived by FDA.

3a. INVESTIGATIONAL NEW DRUG EXEMPTION *(if more than one is involved, list others below under NOTES)*:

SPONSOR NAME

DRUG NAME

DATE OF END OF 30-DAY EXPIRATION OR WAIVER	NUMBER ISSUED

3b. INVESTIGATIONAL DEVICE EXEMPTION

SPONSOR NAME

DEVICE NAME

Unless notified otherwise by FDA, under 21 CFR 812.2(b) (ii) a sponsor is deemed to have an approved IDE if: (1) the IRB has agreed with the sponsor that the device is a nonsignificant risk device; and (2) the IRB has approved the study. *(Check applicable box.)*

☐ The IRB agrees with the sponsor that this device is a nonsignificant risk device.
OR
☐ The IDE application was submitted to FDA on *(date)*_____. Number issued_____.

NOTES.

HHS 596 (Rev. 1/82) BACK

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232, 251, 252 and 255

Full Insurance and Coinsurance of Mortgages Covering Nursing Homes and Similar Projects; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232, 251, 252, and 255

[Docket No. R-88-1361; FR-2256]

Full Insurance and Coinsurance of Mortgages Covering Nursing Homes and Similar Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends 24 CFR Part 232 to implement HUD's statutory authority to insure the purchase or refinancing of existing nursing homes, intermediate care facilities and board and care homes. It also adds a new 24 CFR Part 252 to authorize a program of coinsurance for nursing homes, intermediate care facilities and board and care homes. Very generally, the new coinsurance program tracks the Part 232 full insurance program (including the new program provisions for the purchase or refinancing of existing projects). Where there are coinsurance provisions, they track as much as possible provisions in the coinsurance programs now applicable to multifamily housing projects, i.e., 24 CFR Parts 251 and 255, with some major differences including changes in the Sound Capital Resources requirements, the creation of a dedicated account for coinsurance obligations, and other changes, all of which are discussed in detail below. This rule also makes several conforming changes to 24 CFR Parts 251 and 255.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW. Washington, DC 20410. Telephone (202) 755-6500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 307 of the Housing and Community Development Act of 1974 (Pub. L. 93-383) amended the National Housing Act by adding a new section 244 entitled, "Coinsurance." Section 244 authorizes the Secretary of Housing and Urban Development to insure, under any provision of Title II of the National Housing Act, any mortgage otherwise eligible under that title, pursuant to a Coinsurance Contract that provides that the lender (1) assume a percentage of any loss (and share in Mortgage Insurance Premium income) and (2) carry out (subject to audit and review requirements) such delegated processing functions as the Secretary approves.

The Department has previously undertaken a number of coinsurance initiatives under the section 244 authority and is currently operating three coinsurance programs. Regulations issued on February 12, 1976 (41 FR 6446) added a new Part 204 in Title 24 of the CFR that initiated a program of coinsurance for one-to-four family dwellings insured under section 203 of the National Housing Act. Regulations originally issued on July 2, 1980 (45 FR 45117) added a new Part 255 that authorized a program of "Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects." Part 255 permits qualified lending institutions to coinsure and perform delegated processing on mortgage loans on existing multifamily projects using sections 207 and 223(f) of the National Housing Act as the insuring authorities. It was extensively amended on March 31, 1982 (47 FR 13519), May 25, 1983 (48 FR 23399), and June 24, 1985 (50 FR 25924).

A new Part 251 was added on August 9, 1984 (49 FR 32023) as a companion to Part 255. It authorizes a program of coinsurance for newly constructed or susbstantially rehabilitated multifamily projects insured under section 221(d)(3) or section 221(d)(4) of the National Housing Act. Part 251, along with current Part 255, is available to HUD-approved private lenders and State Housing Agencies; both programs are in operation and very active.

The Department has moved forward in implementing multifamily coinsurance based on a general policy of delegating to participating FHA lenders those processing and underwriting functions that lenders are capable of performing in accordance with HUD criteria, but without HUD staff involvement. Based on the Department's successful experience with Parts 251 and 255, it is now extending the coinsurance concept to another currently active multifamily full insurance program—Section 232 for nursing homes, intermediate care facilities and board and care homes.

The addition of this new Part 252 will result in a comprehensive HUD policy with respect to delegated processing. For the lender groups now eligible to coinsure section 223(f) and/or section 221(d) mortgages, it offers a coinsurance vehicle for also financing nursing homes and similar facilities now eligible only under section 232 full insurance. For the most part, this new Part 252 does not differ in substance from 24 CFR Part 232 (full insurance nursing homes). It has, however, been reorganized and rewritten to follow the format and "plain English" style of Parts 251 and 255 in order to emphasize the fact that all coinsurance programs share the same coinsurance policy framework, one in which lenders agree to share the insurance risk and in return are permitted to perform underwriting and servicing functions with minimal Federal involvement.

In this Part 252, the requirements concerning property eligibility, mortgage terms and cost limits, eligibility and regulation of mortgagors, insurance of advances, inspections and cost certification primarily track similar requirements found in the section 232 full insurance program. With respect to lender eligibility and contract rights, Part 252 draws upon the existing Parts 251 and 255 coinsurance provisions with some significant revisions which are discussed below. There are similar provisions with respect to authorization of full or partial reinsurance at the lender's option; acquisition and sale of properties by the lender (not HUD) after default—including claims settlement formula and risk share; restrictions on the assignment of coinsured mortgages to other lenders; lender obligation to bear a deductible of 5 percent of unpaid mortgage balance at default; and HUD guarantees to GNMA providing protection against coinsurance losses.

On December 31, 1987 a proposed rule was published in the **Federal Register** which would authorize under Part 232 the refinancing or purchase of existing presently HUD-insured nursing homes and related facilities and which would establish a new Part 252 authorizing the coinsurance of nursing homes and related facilities. This rule makes final—with significant modifications described below—that proposed rule.

A careful review of the public comments received on the December 31, 1987 proposed rule, as well as internal HUD reassessment of that proposal, has

resulted in a number of significant revisions to the original proposed rule. Among the revisions reflected in this final rule are:

(1) A requirement to establish a dedicated account, funded initially with at least $500,000 of the initial $1.5 million in liquid funds required for Sound Capital Resources. The account will be increased by a deposit at the time each case is closed in an amount of $1 for each $150 of principal indebtedness until the account reaches $3 million. Thereafter, a deposit of $1 for each $300 in newly closed principal indebtedness will be required. In addition, an amount equivalent to four years of the lender's share of annual MIP must be deposited in the dedicated account.

(2) Individual mortgage limitations based on the lender's Sound Capital Resources will be imposed. A new § 252.110 has been added providing that mortgages may not exceed $10 million per case until Sound Capital Resources reach $2 million; $15 million per case until Sound Capital Resources reach $2.5 million; and $20 million per case until Sound Capital Resources reach $3 million. Once Sound Capital Resources reach $3 million, there will be no specific limitations on mortgage amount.

(3) Under the existing coinsurance provisions, when a lender disposes of a project through a competitive bid procedure, the amount which may be deducted for purposes of calculating the insurance claims payment is the sales price of the property, even if this price is lower than the property's appraised value. This was revised in the proposed rule to base the deduction on the higher of the sales price or the appraised value as is now done in negotiated sale situations. This final rule does not follow the proposed rule but rather tracks the existing coinsurance provisions.

(4) Under the proposed rule, the current HUD claims settlement of 85 percent of loss (72.25 percent if the lender carries reinsurance at more than 50 percent or the maximum permitted by State law) would have been revised to provide HUD settlement at 75 percent of loss (or 62.25 percent for reinsurance). A corresponding change would have been made in the proposed rule to share mortgage insurance premiums on a basis of 70 percent to HUD and 30 percent to the Lender. This final rule maintains the current HUD claims settlement of 85 (72.25) percent of loss as well as the 80:20 MIP share ratio.

(5) The proposed rule would have allowed a mortgagor to refinance an existing property up to 70 percent of the lender's estimated value of the property without cost justification. The final rule eliminates that criterion as a limiting factor.

Comparison of This Final Rule to Earlier Proposed Rule

This final rule consists of two parts. First, a new Subpart E is added to 24 CFR Part 232—Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, and Board and Care Homes—to implement HUD's authority to offer full insurance of purchases or refinancings covering currently insured projects under that part. Second, the rule establishes a new program of coinsurance of mortgages covering newly constructed, substantially rehabilitated or currently insured nursing homes, intermediate care facilities and board and care homes.

In addition, several conforming changes to Parts 251 and 255 have been included in this rulemaking.

New Subpart E to 24 CFR Part 232

This subpart consists of six sections. Section 232.901 states that notwithstanding the otherwise applicable requirement that mortgages insured under Part 232 cover only newly constructed or substantially rehabilitated Projects, a mortgage insured under this subpart may be executed in connection with the purchase or refinancing of presently insured Projects pursuant to section 223(f) of the National Housing Act. Section 232.902 describes what is meant by an existing Project and distinguishes such projects from those which are "substantially rehabilitated." Section 232.903 sets forth maximum insurable mortgage amounts. Section 232.904 sets a mortgage term of not less than 10 nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the project. This requirement is similar to that in the existing multifamily coinsurance program (see § 255.205). Section 232.905 exempts mortgages insured under this new Subpart E from the otherwise applicable labor standards and prevailing wage requirements found in §§ 232.70–74. A similar provision is contained in Part 255 (see § 255.209). Section 232.906 sets forth processing and commitment procedures. It is based upon § 207.32a(a) in title 24 of the CFR, which authorizes full FHA insurance for the purchase or refinancing of existing multifamily housing projects.

The provisions of this new Subpart E in the final rule are the same as those contained in the proposed rule with the significant exception that the final rule strikes the provision in § 232.903(e)(1) authorizing a refinancing mortgage without cost justification of up to 70 percent of the Commissioner's estimate of the value of the project.

New Part 252 to Title 24 of the CFR

As was noted earlier in this Preamble, this new coinsurance program follows the existing full insurance nursing homes program and tracks existing coinsurance provisions found in 24 CFR Parts 251 and 255 with some significant coinsurance revisions. The revisions are limited to this new program. They relate mainly to the coinsuring lender's financial requirements and are described in detail below.

Subpart A—General Provisions

Section 252.1 Purpose and Scope

In the proposed rule, coinsurance provisions comparable to those in §§ 251.1 and 255.1 would apply under the new part. (No comparable Part 232 section.)

The final rule removes paragraph (c) referencing Section 244(c) of the National Housing Act. The Housing and Community Development Act of 1987 repealed section 244(c), therefore this rule deletes the referencing paragraph in this new Part 252.

Section 252.2 Coinsurance Contract

In the final rule, as in the proposed rule, provisions comparable to §§ 251.2 and 255.2 would apply under the new part. (No comparable Part 232 section.)

Section 252.3 Definitions

In the final rule, as in the proposed rule, the definitions in Part 251 of "Builder's and Sponsor's Profit and Risk Allowance", "Builder-seller Mortgagor", "Cooperative Mortgagor", "General Mortgagor", "Investor-sponsor Mortgagor", "Limited Distribution Mortgagor", and "Sponsor's Profit and Risk Allowance", contained in Parts 251 and 255 would not be used in this section.

The definitions in Parts 251 and 255 of "Coinsured Mortgage", "Distribution", "Firm Commitment", "Sound Capital Resources", and "Substantial Rehabilitation" are adopted for use in this section except that the $6,500 per dwelling unit requirement for "substantial rehabilitation" is deleted as inapplicable to the types of projects covered in the new Part 252.

Definitions of "Nursing Home", "Intermediate Care Facility", "Board and Care Home", "Project", and "State" would be added in this section. They are essentially the same as the definitions used in the Part 232 full insurance program.

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The final rule also adds to this section definitions of "Public mortgagor" and "Residual receipts". The latter had been omitted inadvertently from the proposed rule. "Public mortgagor" has been added to the final rule based on statutory changes in mortgagor eligibility made in the Housing and Community Development Act of 1987.

Section 252.4 Effect of Amendments

In the proposed rule, provisions comparable to §§ 251.4 and 255.4 would apply under the new part. [The comparable Part 232 section is § 232.96.]

Final rule makes no change in this provision.

Subpart B—Lender Requirements

Section 252.101 Eligible Lender

The proposed rule contained outdated provisions from §§ 251.101 and 255.101. (The comparable Part 232 section is 232.1(c).)

The final rule has been corrected to include provisions from the current §§ 251.101 and 255.101.

Section 252.102 Review and Approval as Coinsuring Lender

In the proposed rule, except for the Sound Capital Resources Requirement, provisions comparable to §§ 251.102 and 255.102 would apply to mortgagees approved as coinsuring lenders under the new part. (No comparable Part 232 section.)

Under the proposed rule, liquid assets of $1,500,000 (rather than $500,000 as in the 221(d) and 223(f) coinsurance programs) would have been required to meet the Sound Capital Resources requirement. Also, an additional one dollar in liquid assets would have been required for each $200 (rather than $300) in outstanding principal indebtedness of a lender's coinsured mortgages.

Under the final rule, liquid assets of $1,500,000 will still be required to meet the Sound Capital Resources requirement. The lender must also establish and maintain a dedicated account for coinsurance obligations, funded initially with at least $500,000 of the liquid funds. The lender must make deposits to and maintain the dedicated account at a level of an additional $1 for each $150 of newly closed principal indebtedness until the account reaches $3 million and $1 per $300 thereafter. An amount equivalent to four years of the lender's share of annual MIP must also be deposited in the dedicated account. At the lender's option, the deposit may be made at closing or in increments within four years of closing. Potential sources for the additional deposit include the lender's share of annual MIP, the lender's premium, or letters of credit converted to cash at the end of the four-year period. The dedicated account will be credited toward the lender's Sound Capital Resources requirement.

Withdrawals from the dedicated account will be restricted to purposes of meeting the lender's coinsurance obligations as specified in the program handbook.

Further, the final rule adds a paragraph similar to that contained in the corresponding sections in Parts 251 and 255 requiring HUD approval before any transfer of lender assets which would affect Sound Capital Resources.

Finally, the proposed rule would have required that *technical* staff experienced in the operation and management of the facilities covered under this Part 252, be in the direct employ of the lender. The final rule requires that the lender have in its own employ staff who have broad experience in the development/management/operation of residential healthcare facilities and who are able to analyze data on an individual project provided by technical experts (who may be under contract or in the employ of the lender).

Section 252.103 Duration of Approval

In the proposed rule, provisions comparable to §§ 251.103 and 255.103 would also apply to coinsuring lenders approved under the new part. (No comparable Part 232 section.)

No change in final rule.

Section 252.104 Withdrawal of Approval

In the proposed rule, provisions comparable to §§ 251.104 and 255.104 would apply to coinsuring lenders approved under the new part. No change in final rule. In addition, specific langauge regarding non-maintenance of the dedicated account for coinsurance obligations (§ 252.102(a)(3)) has been added to the final rule. Failure to properly maintain this account is added as a ground for withdrawal of lender approval, and increased deposit requirements as a potential condition of a lender's probation. (No comparable Part 232 section.)

Section 252.105 Delegation of Servicing

In the proposed rule, provisions comparable to §§ 251.105 and 255.105 would apply under the new rule. (No comparable Part 232 section.)

Final rule makes no change in this provision.

Section 252.106 Assignment of and Participation in Coinsured Mortgages

The proposed rule contained outdated provisions from §§ 251.106 and 255.106.

Final rule reflects minor changes from proposed to track verbatim revised §§ 251.106 and 255.106.

Section 252.107 Reinsurance

In the proposed rule, provisions comparable to §§ 251.107 and 255.107 would apply to coinsuring lenders approved under the new part. (No comparable Part 232 section.)

Final rule makes no change in this provision.

Section 252.108 Pledging and Other Security Arrangements

In the proposed rule, provisions comparable to §§ 251.108 and 255.108 would apply to coinsuring lenders approved under the new part. (No comparable Part 232 section but 232 does reference back to Part 207. See §§ 232.251 and 207.261.)

Final rule makes no change in this provision.

Section 252.109 Minimum Principal Loan Amount.

Section 419 of the Housing and Community Development Act of 1987 prohibits a mortgagee or lender from requiring, as a condition of providing a loan insured under the NHA or secured by a mortgage insured under the NHA, that the principal amount of the loan exceed a minimum amount established by the mortgagee or lender. The provision also prohibits a mortgagee from requiring a minimum principal amount to be outstanding on the loan secured by the existing mortgage. The final rule adds this section implementing these statutory provisions.

Section 252.110 Limitations on Individual Mortgage Amounts

The final rule adds a provision not found in the proposed rule providing that mortgages may not exceed $10 million per case until Sound Capital Resources reach $2 million, $15 million per case until Sound Capital Resources reach $2.5 million, and $20 million per case until Sound Capital Resources reach $3 million. Once $3 million is reached, there will be no specific limitations on the mortgage amount.

Subpart C—Program Requirements

Section 252.201 Eligible Project

In the proposed rule, paragraph (a) of this section generally would have tracked the existing § 232.39. However, the Department sought public comment

on alternative versions of subparagraph (a)(2) as it related to occupancy density requirements for board and care homes. Alternative A of the rule text would have provided for a maximum ratio of four persons per bedroom and per full bathroom in the facility. Alternative B would have offered this four-person per bedroom and per bathroom standard as a suggested norm, but it would only be the rule in those States where specific standards, as promulgated under section 1616(e) of the Social Security Act, did not exist. Where State standards were in place, Alternative B would defer to the State requirement.

Alternative A is contained in the final rule. This alternative conforms with the provision in Part 232 which governs the full insurance program. The full insurance provision was adopted in 1985 after considerable public comment, and given the limited public comment to the alternatives presented in the proposed rule (2 in support of Alternative B and 1 in support of a more restrictive Alternative A), we do not feel it is appropriate to change the outstanding policy as contained in Part 232. This will provide a uniform underwriting base for all HUD-insured and coinsured board and care homes.

The occupancy density and facility-type standards established by States and localities, by a large, address health and safety concerns. They vary widely from State to State, and from locality to locality (each State may designate one *or more* State or local authorities which can establish and enforce standards). The requirements tend to be more restrictive in many jurisdictions than those in Alternative A. While the Department equally shares the concern for human safety, our standards must also address the property as security for a coinsured mortgage. Therefore, we have decided to retain the one-to-four person per bedroom occupancy and to set the maximum ratio of four persons to every full bath. The facility must also adhere to State and local occupancy requirements if a stricter degree of regulation is required under State or local law.

(b) Provisions comparable to §§ 251.201(b) and 255.201(b) would apply to mortgages coinsured under the new part. (No comparable Part 232 section.) The final rule makes no change in this paragraph.

(c) Provisions comparable to §§ 251.201(c) and 255.201(c) would apply to mortgages coinsured under the new part. (No comparable Part 232 section.) The final rule makes no change in this paragraph.

(d) Provisions comparable to §§ 251.201(d) and 255.201(d) would apply to mortgages coinsured under the new part. (No comparable Part 232 section.) The final rule makes no change in this paragraph.

(e) Provisions comparable to §§ 251.201(e) and 255.201(e) would apply to mortgages coinsured under the new part. (No comparable Part 232 section.) The final rule makes no change in this paragraph.

Section 252.202 Eligible Mortgagors

In the proposed rule, this section tracked the existing § 232.20.

The word "public" is added to this section in the final rule based on statutory changes imposed by the HCD Act of 1987 expanding mortgagor eligibility under the nursing home program to "public mortgagors".

Section 252.203 Maximum Mortgage Limitations

In the proposed rule, the mortgage is limited to a principal obligation not in excess of 90 percent of the lender's estimate of the value of the property or project, including equipment to be used in its operation, when the proposed improvements are completed and the equipment is installed. (This section is based upon § 232.30.)

The final rule retains the 90 percent of value wording and also includes the specific provisions in § 255.203 (b) and (c) regarding Value and Debt Service Limits. Additional limits imposed on rehabilitation projects track those in § 232.32 although the wording has been changed to the plain English style of Parts 251 and 255.

Section 252.204 Maximum Interest Rate

In the proposed rule, provisions comparable to §§ 251.204 and 255.204 would apply to mortgages coinsured under the new part. (The comparable Part 232 section is 232.29.)

The final rule makes no change in this section.

Section 252.205 Term of the Mortgage

In the proposed rule, provisions comparable to §§ 251.205 and 255.205 would apply to mortgages coinsured under the new part. (The comparable Part 232 section is 232.27.)

The final rule makes no substantive change in this section.

Section 252.206 Lenders Fees and Premiums

In the proposed rule, provisions comparable to §§ 251.206 and 255.206 would apply to mortgages coinsured under the new part. (The comparable Part 232 sections are 232.10 and 232.12.)

The final rule makes no change in this section.

Section 252.207 Coinsurance of Mortgages in Lender's Portfolio

In the proposed rule, generally, the provisions of §§ 251.207 and 255.207 would apply to mortgages coinsured under the new part. The only difference is that mortgages in which no equity is removed would not be subject to the one fourth limitation of paragraph (a)(2).

The final rule makes no change in this section.

Section 252.208 Nondiscrimination in Occupant Eligibility and Employment

In the proposed rule, paragraphs (a), (b) and (c) of this section would be based upon § 232.34. Paragraphs (d), (e) and (f) would be based upon §§ 251.208(c), (d) and (e) and 255.208 (c), (d) and (e).

The final rule adds a paragraph requiring the mortgagor to certify it will not sell the project as long as the mortgage is coinsured unless the purchaser agrees to comply with the requirements of this Part 252. (Based on §§ 251.208(g) and 255.208(g).)

Section 252.209 Labor Standards and Prevailing Wage Requirements

In the proposed rule, with the exception of mortgages coinsured under Subpart J, the provisions of § 251.209 would be applicable to mortgages coinsured under the new part. (The comparable Part 232 sections are 232.70 through 232.74.)

The final rule makes no change in this section.

Subpart D—Processing and Commitment

Section 252.301 Processing and Development Responsibilities

In the proposed rule, provisions comparable to §§ 251.301 and 255.301 would be applicable to mortgages coinsured under the new part. (No comparable Part 232 section.)

The final rule adds two provisions making the FHA Commissioner responsible for a market/submarket impact analysis of the proposed project and making the lender responsible for initiating the intergovernmental review process in certain cases.

Section 252.302 Processing and Commitment

In the proposed rule, provisions comparable to §§ 251.302 and 255.302 would be applicable to mortgages coinsured under the new part. (No comparable Part 232 section.)

The final rule makes no change in this section.

Section 252.303 Required Certificates

The proposed rule added a section to the basic Part 251 structure based upon the current § 232.6. It set forth the State certification requirements contained in Part 232.

Section 410 of the Housing and Community Development Act of 1987 revised the State certification requirements for nursing homes and related facilities. The final rule reflects these new statutory provisions.

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

Section 252.401 Insurance of Advances or Insurance Upon Completion; Applicability of Requirements

In the proposed rule, provisions comparable to §§ 251.401 and 255.401 would apply to mortgages coinsured under the new part. (No comparable Part 232 section.)

The final rule makes no change in this section.

Section 252.402 Insurance of Advances

In the proposed rule, provisions comparable to §§ 251.402 and 255.402 would apply to mortgages coinsured under the new part. (The comparable Part 232 provision for paragraph (a) of this section is 232.61; for paragraph (b) of this section it is § 232.55; for paragraph (c) it is § 232.57; and for paragraph (d) it is § 232.56.)

The final rule makes no substantive changes in this section.

Section 252.403 Insurance Upon Completion

In the proposed rule, provisions comparable to §§ 251.403 and 255.403 would apply to mortgages coinsured under the new part. (The closest comparable Part 232 provision is § 232.50(a)(3).)

The final rule makes no change in this section.

Section 252.404 Requirements Applicable to Both Insurance of Advances and Insurance Upon Completion Cases

In the proposed rule, provisions comparable to §§ 251.404 and 255.404 would apply to mortgages coinsured under the new part. Comparable Part 232 provisions for each paragraph of this section are as follows:

(a)—§ 232.56 is closest comparable, (b)—no comparable provision, (c)(1)—232.80, (c)(2)—§ 232.80, (c)(3)—§ 232.82, (c)(4)—§ 232.83, (d)(1)—§ 232.85(a), (d)(2)—§ 232.84, § 232.85, (e)—232.85, (f)—§ 232.86, (g)—§ 232.87, (h)—§ 232.91, (i)—§ 232.92.

The final rule makes no substantive change in this section.

Section 252.405 Lender Review of Mortgage Amount

In the proposed rule, provisions comparable to §§ 251.405 and 255.405 would apply to mortgages coinsured under the new part. (Closest comparable Part 232 provision is § 232.89.)

The final rule makes no change in this section.

Section 252.406 Application of Net Income Received Before Beginning of Amortization

In the proposed rule, provisions comparable to §§ 251.406 and 255.406 would apply to mortgages coinsured under the new part. (Comparable Part 232 provision is § 232.62.)

The final rule makes a technical correction changing the word "Commissioner" to "lender" regarding the determination of the application of net income prior to the beginning of amortization.

Section 252.407 Endorsement by Commissioner

In the proposed rule, provisions comparable to §§ 251.407 and 255.407 would apply to mortgages coinsured under the new part. (No comparable Part 232 provision.)

The final rule makes no change in this section.

Subpart F—Mortgage and Closing Requirements

Section 252.501 Mortgage Requirements—Real Estate

In the proposed rule, provisions comparable to §§ 251.501 and 255.501 would apply. (Comparable Part 232 section is § 232.25e.)

The final rule makes no substantive change in this section.

Section 252.502 Title

In the proposed rule, provisions comparable to §§ 251.502 and 255.502 would apply. (Comparable Part 232 sections are §§ 232.595 and 232.600.)

The final rule makes no substantive change in this section.

Section 252.503 Mortgage Provisions

In the proposed rule, except for paragraphs (i), (j) and (k), provisions comparable to §§ 251.503 and 255.503 would apply. The new paragraph 503(i) was based upon § 232.37 and related to prepayment privileges and prepayment charges for the various categories of projects covered in the new part, and allowed a prepayment lock-out and penalty as agreed upon between the mortgagor and the coinsuring lender consistent with HUD requirements. This differs from § 232.37 where the mortgagor may prepay up to 15 percent in any calendar year without penalty. Paragraph (j) relating to late charges, was the same as § 232.38a. Paragraph (k), on retaining property for residential purposes, was deleted.

In the final rule, paragraph (j) relating to late charges was revised to track the provisions found in §§ 251.503(j) and 255.503(j). Also, paragraph (k) is inserted, similar to Parts 251 and 255, prohibiting use of the project for any purpose other than as a residential care facility eligible under this Part.

Section 252.504 Mortgage Lien and Other Obligations

In the proposed rule, this section was based upon § 232.26.

The final rule is similar except it has been modified to conform with § 251.504.

Section 252.505 Regulatory Agreement.

In the proposed rule, provisions comparable to §§ 251.505 and 255.505 would apply. (Comparable Part 232 provision is § 232.45.)

The final rule makes no change in this section.

Section 252.506 Other Closing Documents

In the proposed rule, provisions comparable to §§ 251.506 and 255.506 would apply. (No comparable Part 232 provision.)

The final rule makes no change in this section.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

Section 252.601 Requirements Applicable to all Projects

In the proposed rule, provisions comparable to §§ 251.601 and 255.601 would apply. (Closest comparable Part 232 sections are §§ 232.20 and 232.13a.)

The final rule makes no change in this section.

Subpart H—Program Requirements Relating to Project Operation

Part 232 is silent concerning the various operating requirements set forth in Subpart H of our current coinsurance programs except for a general grant of regulatory authority provided the Commissioner in § 232.45. With respect to this new coinsurance program, the following express operating requirements found in Parts 251 and 255 will apply.

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Section 252.701 General

In the proposed rule, provisions comparable to §§ 251.701 and 255.701 would apply to mortgages coinsured under the new part.

The final rule makes no change in this section.

Section 252.702 Reserve for Replacements and General Operating Reserve

(a) In the proposed rule, provisions comparable to paragraph (a) of §§ 251.702 and 255.702 would apply to mortgages coinsured under the new part.

The final rule inserts a requirement to include funds for the repair and replacement of major movable equipment in the reserve for replacements, but is otherwise unchanged.

(b) This paragraph remains reserved in the final rule.

(c) In the proposed rule, provisions comparable to paragraph (c) of §§ 251.702 and 255.702 would apply to mortgages coinsured under the new part. (No comparable Part 232 provision.) The final rule makes no substantive change in this paragraph.

Section 252.703 Charges for Facilities and Services

In the proposed rule, the mortgagor would determine charges taking into account facilities and services offered by the Project.

The final rule retains that provision and adds a new provision prohibiting the collection of admission, founder, life-care or similar fees or payments. This prohibition has been a long-standing administrative policy and is consistent with the similar prohibition at § 251.703.

Section 252.704 Use of Project Funds

In the proposed rule, provisions comparable to §§ 251.704 and 255.704 would apply to mortgages coinsured under the new part.

The final rule makes no change in this section.

Section 252.705 Distribution and Residual Receipts

(a) In the proposed rule, provisions comparable to paragraph (a) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(b) In the proposed rule, provisions comparable to paragraph (b) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(c) [Reserved]

(d) [Reserved]

(e) In the proposed rule, provisions comparable to paragraph (e) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(f) In the proposed rule, provisions comparable to paragraph (f) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(g) In the proposed rule, provisions comparable to paragraph (g) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

The final rule adds a paragraph (c) prohibiting distributions on projects owned by nonprofit or public mortgagors and reorganizes the section.

Section 252.706 Project Management

(a) In the proposed rule, provisions comparable to paragraphs (a) through (i) of §§ 251.706 and 255.706 would apply to mortgages coinsured under the new part. The remaining paragraphs of that section would not apply.

The final rule makes no substantive change in this section.

Subpart I—Contract Rights and Obligations

In Part 232, the subject matter of Subpart I is covered by a reference back to a similar subpart in Part 207. In developing the Part 251 and 255 coinsurance programs, the Department considered what modifications in "Contract Rights and Obligations" as found in Part 207, would be needed for coinsurance and promulgated them as a Subpart I in both parts. In the proposed version of this new Part 252, the Department incorporated the existing coinsurance Subpart I with the following major exceptions.

(1) The coinsurance share ratios found in §§ 251.820 and 255.820 (85 percent of loss—72.25 percent if the lender carries the maximum allowable reinsurance) were changed to a basic 75 percent of loss ratio. With reinsurance the new ratio would have been 62.25 percent (see new § 252.820).

(2) The provisions in §§ 251.822(f) (1) and (2) and 255.822(f) (1) and (2), relating to amounts deductible where the lender must dispose of the project, were changed to require a deduction equal to the higher of the sales price or the appraised value of the property in every case (see new § 252.822(f)).

(3) Insurance benefits would be paid in cash unless the lender files a written request for payment in debentures (see § 252.819).

In the final rule, items (1) and (2) above are changed. Instead of the proposed rule items, the analogous provisions found in Parts 251 and 255 are adopted. The mortgage insurance premium split is also revised in the final rule to conform to Parts 251 and 255.

Subpart J—Coinsurance of Mortgages Covering Existing Projects

In the proposed rule, this subpart consisted of six sections similar in sequence and substance to those found in the new Subpart E to 24 CFR Part 232 which was described above.

The final rule strikes the provision in § 252.903(c)(1) authorizing a refinancing mortgage without cost justification of up to 70 percent of the lender's estimate of value of the project.

Public Comments

A total of 18 public comments were received on this rule. Twelve were from private businesses or corporations, five from national trade associations or organizations, and one from a public entity. The comments raised the following issues.

1. *Coinsurance Risk Sharing Ratio*—The proposed rule set forth a change in the risk sharing ratio from the 85:15 formula under the 221(d) and 223(f) Coinsurance programs to a 75:25 ratio under this Part. This was done not because the likelihood of default might be greater in this program, but rather that the relative loss on a healthcare facility might be greater than a housing project due to its limited reuse potential should a default occur.

Six commenters strongly urged that the 75–25 percent coinsurance loss sharing ratio contained in the proposed rule be changed to an 85–15 ratio—the same as that which applies in the Part 251 and 255 multifamily rental coinsurance programs. They argued that the substantial financial exposure of the first 5% of the outstanding mortgage balance plus 15% of any loss to the coinsurer is sufficient to assure that coinsurers will properly underwrite the project. They feel the current risk-sharing formula is fair and any increase would be unwarranted.

The commenters also pointed to the inconsistency among the coinsurance programs. It was felt also that this increase in liability on the part of the coinsurer would discourage participation by the larger, more highly capitalized lenders based on a perceived increased likelihood of default.

Many commenters cited historically lower rates of default in the fully insured nursing home program and the increasing elderly population as good reasons for retaining the current 85:15 ratio which they consider incentive enough for prudent underwriting.

Two commenters stated that their members have no experience to indicate that healthcare facilities are more difficult to dispose of, or have a lesser

resale vale, in the event of default. In fact, one contends that there is a very strong market among nonprofit and proprietary healthcare chains for the acquisition of existing facilities.

The Department believes that with the addition of further mortgage limitations (§ 252.903(c)(1)) and increased lender Sound Capital Resources requirements (§ 252.102) in this final rule, the risk share can be maintained at the 85:15 ratio urged by the commenters. This will, of course, result in consistency with the Part 251 and 255 Coinsurance programs. The final rule therefore provides for an 85:15 risk share ratio and the corresponding 80:20 MIP split of Parts 251 and 255.

2. *Section 233(f) Coinsurance and Full Insurance Should Not Be Limited To Previously Insured Projects.*—Nine commenters, while approving the provisions in the proposed rule authorizing FHA insurance or coinsurance for the purchase or refinancing of existing, HUD-insured nursing homes and similar facilities, strongly urged that this authority be expanded to also cover existing uninsured projects.

All of the commenters who provided comments on this issue indicated that allowing purchase/refinancing of previously uninsured facilities under this program would not increase the Department's risk.

Most respondents indicated that uninsured existing facilities with proven "track records" would provide a sound, low-risk portfolio for the lender which would increase capitalization and improve the lender's ability to sustain projects in default.

The coinsurance programs under both Parts 251 and 255 were patterned on full insurance programs which had been operating for some time. The Department does not have experience in the full insurance program with the purchase and refinance of existing healthcare facilities. We feel that some experience is necessary before we expand this program beyond the scope of previously insured facilities. Therefore, the expansion of the program to uninsured projects shall not occur at this time.

In addition, we believe there is a need for more restrictive mortgage limitations on existing project refinancings to eliminate equity take-out.

One argument (reiterated by several commenters) for expansion of HUD's residential care programs into the purchase/refinancing of existing projects has been that many facilities are substantially supported through Medicare/Medicaid payments. By allowing refinancing of existing facilities to reduce interest rates (thereby lowering debt service), Federal dollars would be saved through lowered Medicare/Medicaid reimbursement-based payments.

However, HUD's experience has been that, where equity take-out is allowed, HUD's share of the coinsurance risk will likely be greater than its current exposure under full insurance on the same project as equity take-out creates a major upward force on mortgage amounts. So not only is the Department's exposure actually increased, the Medicare/Medicaid payments which are based in part on the pass-through of debt service are increased also.

By eliminating the mortgage criterion which allows for equity take-out in the refinancing of existing projects, as is done in this final rule, HUD will focus the coinsurance program on lowering financing costs (and Federal expenditures) while supporting needed repairs and rehabilitation. This is consistent with substantial rehabilitation mortgage limitations which do not allow equity take-out.

HUD, therefore, is revising the final rule so that only currently insured existing projects will be eligible for refinancing and purchase with the maximum mortgage amount limited to the lower of value (85%), debt service (85%), and cost to refinance (100%) or cost to acquire (85%).

3. *Technical Staff Requirement.* Thirteen commenters objected to the provision in the rule requiring a lender to have in its own employ technical staff who are experienced in the operation/management and governmental requirements relating to nursing homes and similar facilities and urged that the lender be allowed to obtain such technical expertise on a contract basis.

Of the thirteen, twelve strongly supported the position of contracting for technical expertise in healthcare delivery, with in-house staff having broad experience in the field with the ability to review, analyze and evaluate data provided by the technical experts.

Several commenters indicated that there are a limited number of individuals with the technical skills and knowledge required, and that program implementation could be delayed by lenders competing for these limited resources. In addition, the Mortgage Bankers Association commented that there may be some reluctance among these experts to go from the healthcare industry to the banking/real estate industry on a full-time basis. The Healthcare Financing Study Group indicated that the non-FHA financiers typically rely on contract personnel for technical input in this area.

Many commenters pointed out that HUD does not have in-house technical expertise to analyze fully insured facilities. Furthermore, the coinsurance programs allow for contract personnel in other areas requiring technical expertise (e.g., management analysis, architectual) and they could see no difference in principle here. Because certification, licensing and reimbursement practices vary so widely among States, it is also unlikely that any one or two individuals would be familiar with all areas in which a lender may do business.

The Department believes these comments have some validity. It also believes, however, that a coinsurer must have at lease one individual in its own employ who has a *strong* background in the development, management and operation of the various types of residential healthcare facilities and who can analyze and evaluate various technical inputs such as certifications, reimbursement schedules, market analyses, operational reviews, etc. to determine project feasibility.

Technical experts may be contracted on a retainer basis or for an individual project, but must be familiar with certification and licensing requirements, reimbursement procedures, reasonable and customary charges and all other aspects of healthcare delivery for the locality of the project. The final rule reflects this policy.

4. *Mortgage Insurance Premium Split (§ 252.801).*—Six commenters questioned the validity of a change to a mortgage insurance premium split of 70% to HUD and 30% to the coinsurer. They did not believe it to be adequate or equitable in light of the increased risk sharing ratio being imposed under the proposed regulation. They urged the Department to maintain current coinsurance program requirements thereby lending consistency to, and a sense of confidence in, the programs.

As noted above, this final rule establishes a risk sharing ratio of 85:15, the same as that provided in the other coinsurance programs. In light of this change from the proposed rule, the mortgage insurance premium split is also retained at an 80:20 ratio (which takes into account the lender's responsibility for the first 5 percent of the loss).

5. *Seventy percent loan to value ratio on refinancing.*—One commenter recommended deletion of § 232.903(c) of the proposed rule. The commenter states: "there is no reason to maintain a 70% loan to value on a refinance. The 85% loan to value should be kept for all

situations. The 70% rule under section 223(f) was meant to be a test for three to five years and then change to 85%. Keeping the 70% figure tends to encourage higher appraisals so that the actual mortgage is closer to 85% of a more realistic value. It would be better to mandate accurate appraisals and have 85% of value for all transactions."

Item number 2, above, explains HUD's policy with respect to mortgage limits to refinancings. The final rule eliminates the 70% of value test for refinancing existing facilities under this part.

6. *Disposition of a Project.*—Under the current coinsurance programs, when a lender disposes of a project through a competitive bid procedure, the amount which may be deducted for the claim payment computation is the sales price. Under the proposed nursing home regulation (§ 252.822), a deduction would be made from the claim payment consisting of the higher of the proceeds from the sale of the project *or* the appraised value of the project.

Nine commenters took exception to this change from the current coinsurance programs. They argue that a competitive bid sales price is clearly the most accurate measure of the value of the property because it evidences the willingness of a buyer to acquire a property whereas use of an appraisal is much more "subjective" and likely to be out of date in a very short period of time.

In light of other changes made from the proposed rule in this final rule—*i.e.*, increased Sound Capital Resources requirements, mortgage limitations—we believe the position of the commenters is reasonable. As in the existing coinsurance programs, this final rule provides that the amount which may be deducted for a claim payment computation *in a competitive bid situation* is the sales price.

7. *Sound Capital Resources (§ 252.102).*—Three commenters opposed the proposed rule's requirement that liquid assets of $1,500,000 (rather than $500,000) would be needed to meet the Sound Capital Resources requirement. They argue that this increase will have a negative impact in attracting highly qualified participants to the nursing home coinsurance program.

One commenter had no objection to the increased liquidity requirement for sound capital resources, but did find the logic stated in the Preamble's "Description of Proposed Rule" to be faulty. "Inasmuch as HUD permits the addition of loan loss reserves to stated net worth in the determination of a coinsurer's sound capital resources, the establishment of loan loss reserves by the coinsurer does not necessarily indicate that the coinsurer believes that the loan risk is greater than HUD. It may reflect the coinsurer's business policy, tax considerations or other matters, particularly with the new tax treatment of loss reserves." The commenter did believe, however, that coinsured nursing home lending is somewhat riskier than other coinsurance programs primarily because of the service business nature of eligible projects and the regulatory oversight by agencies other than HUD."

The final rule retains the $1.5 million net worth requirement, all of which must be liquid. In addition, it requires that a dedicated account be established—initially with $500,000 of the liquidity requirement, and with additional deposits as cases are closed and based on the lender's share of annual MIP for four years of a project's mortgage term. Further, individual mortgage amounts will be limited by Sound Capital Resources level (toward which the dedicated account will be credited) until a $3 million level is reached.

Our goal regarding all financial requirements is to ensure that in the event of a default, there are funds available to cover the lender's obligations; otherwise, the Department may be faced with being liable for the whole loss through the GNMA mortgage-backed securities program. Only adequately funded dedicated reserves can ensure this.

Therefore, as mentioned above, the final rule will require that $500,000 of the initial $1.5 million in liquid funds be placed in a dedicated account. Additions to the account will be funded from a deposit at the time each case is closed. The amount of the deposit at closing will slide from $1 for each $150 of mortgage amount until the account reaches a balance of $3 million to $1 per $300 (the present 221(d)/223(f) ratio) thereafter. All funds in this dedicated account will be credited toward the lender's Sound Capital Resources requirement.

Withdrawals from the dedicated account could only be made for the purpose of meeting the lender's coinsurance obligations, including claims, GNMA passthroughs and certain other expenditures (but not payment of MIP or similar full insurance charges), as specified by HUD in the program handbook. HUD may develop standards, based upon actuarial experience, for reducing dedicated account requirements. Such standards would be implemented by notice published in the **Federal Register.**

We also concur with the concept of mortgage limitations based on Sound Capital Resources levels and include in the final rule the following schedule proposed by the Healthcare Financing Study Group.

(1) Mortgages may not exceed $10 million per case until $2.0 million in Sound Capital Resources is established;

(2) Mortgages may not exceed $15 million per case until $2. 5 million is attained;

(3) Mortgages may not exceed $20 million per case until $3 million is attained; and

(4) Limit mortgages only by prudent underwriting after $3 million in Sound Capital Resources is attained.

These changes are intended to strengthen the financial ability of coinsuring lenders to meet their program responsibilities, particularly their share of possible coinsurance losses.

8. *Labor Standard and Prevailing Wage Requirements.* Three commenters noted that the Department of Labor (DOL) is responsible for the final determination of a project's prevailing wage rates. They strongly urged HUD to discuss at great length with DOL the nursing home program description, intent and effect in order to ensure that DOL understands how nursing homes are intended to facilitate the living accommodations of elderly and handicapped persons.

We request the Department's consideration to utilize multifamily residential rates rather than commercial prevailing wage rates for nursing homes and related facilities after negotiations with the Department of Labor. The lower residential rate would greatly reduce the overall construction costs of a project. It would assist greatly in delivering these types of facilities to house the nation's increasing elderly population and, at the same time, reduce any risk to the insurance fund.

The Department acknowledges the differences in prevailing wage rates and their significant impact on the economic feasibility of some projects. In those instances where it is possible to achieve a residential wage rate determination, this approach will be highlighted with the Department of Labor.

9. *Substantial Rehabilitation of Nursing Homes*—One commenter asked that the maximum mortgage limitations relating to substantial rehabilitation in Part 252 parallel the 251 coinsurance program (§ 251.203(d)) for refinancing of substantial rehabilitation projects. It argued that this revision to the regulation in determining the maximum mortgage amount will facilitate the use of the substantial rehabilitation portion of the program and encourage existing projects to apply for the 232 coinsurance program relieving FHA of existing nursing home projects in their portfolio.

The Part 252 substantial rehabilitation mortgage limitations test is based on the section 232 full insurance program. The terms and conditions for full insurance and for coinsurance must remain substantially similar.

10. *Inclusion of the 1987 Housing Provisions*—Five commenters requested that HUD include in the rule the provisions contained in section 410 of the Housing and Community Act of 1987 relating to the inclusion of public mortgagors as eligible mortgage entities and new provisions regarding State Approval requirements.

Changes made in section 410 of the Housing and Community Development Act of 1987 are included in the final rule.

11. *Co-coinsurance*—Two commenters noted that from the inception of the Housing coinsurance programs, there has been a concern with the inability of coinsurers to locate companies with an interest in reinsuring the lender's coinsurance risk. They proposed that the Department consider a "co-coinsurance" program by which an approved coinsurer could jointly participate with other approved coinsurers on a specific coinsured loan. Such participations would not be considered "reinsurance" for purposes of changing the risk sharing ratios. Coinsurance participation would be a function of the joint capitalization of the participants. They argue that permitting joint coinsured loans would enhance program quality and reduce the likelihood of a financial default by coinsurers to GNMA or FHA.

Co-insurance can be accomplished now through the approved sale of coinsured servicing to another coinsurer, however the originating lender must meet all Sound Capital Resources requirements to close a loan.

12. *Reinsurance*—One commenter noted that the reinsurance provisions under the regulations are generally ineffective because they do not match the economic incentives reflected elsewhere in the regulations. It argued that reasons to reinsure would be:

(a) To substitute insurer reserves for cash reserves held by the lender; and

(b) To increase the capital strength of the lender (the equivalent of Sound Capital Resources).

The commenter went on to state that both of these purposes would benefit HUD. However, as the regulations now read, reinsurance is neither recognized as an offset to the required reserves nor to Sound Capital Resources. In addition, the establishment of reinsurance has a direct and substantial impact on the lender by *increasing* its loss exposure.

The commenter believes it would be appropriate to consider economic incentives which will encouage lenders to reinsure a portion of their risk. The alternatives are:

(a) Provide a credit against the Sound Capital Resources and/or liquid assets provided that the reinsurer qualifies as to assets or claims paying capacity in a manner similar to the definition of "a supervised financial institution with assets of not less than $100,000,000"; and

(b) Eliminate the reduction from HUD's portion of the loss or increase the allocation of premium to the lender; *if* the reinsurer will make HUD, GNMA, and the holder of the HUD insured mortgage, a direct beneficiary of the reinsurance.

The final rule remains unchanged regarding reinsurance. The optional 25 basis points remain available to the lender to purchase reinsurance should it so desire. Because of increasing the liquidity in Sound Capital Resources, as well as the establishment of the dedicated account, we do not feel that additional incentives to purchase reinsurance are necessary at this time. The final rule conforms to Parts 251 and 255 on reinsurance.

13. *Proposal for Interim Settlement of Insurance Benefits.*—Two commenters asserted that after default, but prior to receipt of insurance benefits, the coinsuring lender must continue to make payments on the GNMA or other securities issued to fund the coinsured loan and cover necessary expenses to maintain and preserve projects. They point out that this period may be as long as several years and only at its conclusion is the coinsurer reimbursed for the Department's share of costs.

This result, it is argued, creates a severe capital drain and jeopardizes the coinsurer's economic survival. "It would seem that as the Federal Government already guarantees the payment of the GNMA securities used to finance the loan in the event of a lender default on such securities, and as it appears in no one's interest to drain the coinsurer's capital during the default period (only to reimburse it thereafter) that HUD should consider an interim settlement program. One basis for such settlement would be to pay the coninsurer at the commencement of foreclosure proceedings, no less than quarterly, a sum which would provide the coinsurer with an estimated portion of the insurance benefits that it will ultimately receive. Such amounts would then be used to service the GNMA securites or otherwise be applied to project preservation. To the extent that the Department is concerned with an overpayment of benefits, the interim settlement can be limited to a percentage of the debt service on the GNMA securities or other reasonable standard. Nevertheless, any proposal that would reduce the stress on a coinsurer's capital during the default period would significantly reduce the likelihood of financial defaults by coinsurers."

In response to this concern the Department has prepared a coinsuring lender letter that will announce an interim settlement procedure for claims in each of the coinsurance programs.

14. *Three Year Requirement for Refinancing (§ 232.902).* One commenter stated that the requirement that three years have elapsed from the date of completion of construction or substantial rehabilitation of the project to the date of refinancing is acceptable as a general rule, but there should be room for some exceptions.

Reasons to include exceptions to the three year limit involve individual or unusual circumstances. For example, an insured facility may have been recently substantially rehabilitated and managed by a single owner who becomes incapacitated or dies prior to the three year limit. In this case, the facility may be for sale but disadvantaged in the market because of the arbitrary prohibition on the HUD 232 insurance refinancing.

Another reason to remove the three year period is the fluctuating interest rate. The three year restriction may impede a facility's ability to take advantage of the best and most timely opportunity to refinance and thereby lower costs.

The three-year rule should not prevent any project from refinancing in a declining interest rate market. The section 223(a)(7) program is available without a three-year restriction.

15. *Integrate Board and Care and Nursing Beds.* One commenter urged HUD to allow facilities to integrate board and care beds with nursing beds. It argues that this allows couples to share rooms and receive the appropriate level of care. SNF and ICF beds should be allowed to be integrated for the same reasons. The commenter notes that at least one state, New Jersey, requires new nursing homes to include board and care homes.

The same commenter objects to the maximum ratio in the rule of four persons per full bathroom (§ 252.201(a)). It says many state regulations do not require "residents to full bathroom" ratios. In these states, some facilities have been constructed with a greater person to full bath ratio. Other facilities have sink, toilet, and shower or tub facilities in separate locations and therefore do not have "full baths".

The final rules does not preclude a combination of the various facilities within the same project. It does, however, prohibit the integration of board and care with the nursing home or intermediate care facility beds. Nursing home and intermediate care beds may be integrated but must be clearly designated and identified.

The major reason for requiring a separation in these facilities is the difference in the services and level of care provided to and required by the residents. Staffing and skill levels necessary to operate the facilities certainly vary widely between board and care and the other types. In addition, certification requirements differ among the various types of facilities and monitoring and inspection would be difficult, if not impossible, if all levels of care were integrated.

16. *Liberalize Portfolio Coinsurance.*—One commenter objects to the provision in § 252.207 of the rule limiting the refinancing of a lender's portfolio loans to no more than one fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period. It argues that the demand for refinancing increases as interest rates fall. Limiting refinancing of loans to twenty five percent may unnecessarily restrict the coinsurance available during low interest times.

Portfolio coinsurance currently excepts cases insured by HUD under full insurance programs, where the lender's sole involvement is servicing and in which no equity is being removed. The Department feels that no additional flexibility is needed at this time.

17. *Operating Loss Loans.*—Two commenters strongly urged that the rule provide for operating loss loans in connection with newly constructed or substantially rehabilitated projects.

Operating loss loans are not being considered for coinsurance at this time.

18. *Permit Deed-in-Lieu of Foreclosure at Closing.*—One commenter noted that § 252.817(a) of the rule effectively prohibits the coinsurer from obtaining a deed-in-lieu of foreclosure at initial endorsement. It strongly suggests that this provision be modified. "As the proposed rule would seem to indicate, the Department is concerned with the difficulties in operating and selling nursing home projects after foreclosure. In order to reduce the time frame of the foreclosure period, particularly because of the difficulties anticipated in managing a defaulted Nursing Home occupied by elderly and other chronically ill patients, it would be advisable to obtain deeds-in-lieu of foreclosure at closing where permitted by state law. At a minimum, HUD's required Regulatory Agreement should permit the inclusion of procedures by which a lender in the event of default can immediately obtain the facility operating license and obtain other rights necessary to operate the project during this period. This will be an important right in the event of default because of the unique operating features of nursing homes."

The use of deed-in-lieu of foreclosure is now provided for in the regulations. The Department will encourage the prompt action by a coinsurer to acquire operational control of a property in order to maintain a high standard of healthcare operations for the residents. The assignment of Lessee privileges will be permitted.

19. *Operating Deficit Fund (§ 252.902(b)).*—One commenter stated that, in the case of the acquisition or refinancing of existing projects under the nursing home program, the coinsuring lender should establish the amount of the initial operating deficit, if any, rather than this amount being established by the Commissioner. The commenter had no objection to the Commissioner establishing criteria to be used by the coinsuring lender in reaching its determination.

A technical correction in the final rule provides that operating deficit calculations will be performed by the coinsuring lender.

20. *Occupancy Density Requirements for Board and Care Homes (§ 252.201(a)).*—In the proposed rule public comment was sought on alternative occupancy requirements for Board and Care Homes. Two options were listed. Due to the lack of substantive comments on this issue, the Department will continue to administer its current policy of providing for a maximum of four residents per bedroom and per bath, under Part 232.

21. Numerous "technical" revisions are made in this final rule—many of them in response to the public comments. Among the more significant revisions are:

Section 252.203 Maximum Mortgage Limitations

This section was reorganized to conform in structure with the other coinsurance programs. However, in the final rule, the mortgage amount, in connection with substantial rehabilitation, has been changed to conform with the additional limits set forth in Part 232.

Section 252.301 Processing and Development Responsibilities

The final rule adds an additional provision making the Commissioner responsible for a market/submarket impact analysis of the proposed facility. Also, the responsibility for the intergovernmental review process pursuant to 24 CFR Part 52 has been added to this section.

Section 252.303 Required Certificates

This section has been modified to reflect the requirements set forth in section 410 of the HCDA of 1987.

Section 252.503 Mortgage and Note Provisions

The requirement for the mortgage to contain a covenant prohibiting the use of the property for any purpose other than a residential care facility was inadvertently omitted in the proposed rule. It appears in the final rule.

Section 252.501 Mortgage Requirements—Real Estate

The proposed rule stated that if the mortgage is on real estate which is under lease, the lease must have a term of not less than 55 years from the execution date of the mortgage.

The final rule will extend that term to 75 years beyond the mortgage execution date. This will conform this part to Parts 251 and 255.

Section 252.703 Charges for Facilities and Services

The final rule has been amended to include a prohibition against the collection of an admission fee, founder's fee, life care fee or any similar payment by the mortgagor in exchange for accommodations or services to a current or prospective resident.

Section 252.705 Distributions and Residual Receipts

There are no substantive changes to this section in the final rule except to add "public mortgagor" where appropriate. However, the entire section has been reorganized to more clearly describe the distributions to the various mortgagor types.

Section 252.907 Payment of MIP by Mortgagor and Lender

This section was inadvertently omitted from the proposed rule. It has been added to the final rule based on language in § 255.801.

Conforming Amendments to Parts 251 and 255

In developing this new Part 252, we discovered two technical flaws in the

current coinsurance regulations which should be corrected in conjunction with the publication of this final rule. One flaw is the inadvertent omission of the longstanding requirement (found in both full insurance and coinsurance programs) that the lender annually inspect the project and provide the Commissioner a report on its physical condition. (See § 207.260 Protection of mortage security, paragraph (a), Annual inspection of property by mortgagee.)

This requirement was originally included in the section 223(f) Coinsurance regulations at § 255.216, Hazard insurance and physical condition. When the Section 221(d) Coinsurance regulations were drafted, there was a major restructuring of the rule, the insurance requirements were folded into § 251.503, Mortgage provisions, and the annual physical inspection requirement fell by the wayside. Subsequently, when Part 255 was restructured to conform to Part 251, the inspection requirement for section 223(f) coinsurance disappeared. Similarly, when Part 252 was drafted following the order and content of Parts 251 and 255, the annual inspection requirement was not included.

The final rule corrects this omission, under the heading "Protection of Mortgage Security", by adding a new section 806 to each of the Parts 251, 252 and 255.

The final rule also amends § 252.819, as well as the corresponding provisions of Parts 251 and 255, in order to correct another technical flaw concerning the computation of coinsurance benefits. Section 252.819 of the proposed rule, as well as 24 CFR 251.819 and 255.819, incorporate by reference 24 CFR 207.259(e), which describes the characteristics of debentures issued in the settlement of insurance benefits under the insurance programs. Section 207.259(e)(1) and (6) states that debentures shall be issued as of the date of default and will collect interest from the date of issue. Inadvertently, 24 CFR 251.819 and 255.819 did not exclude from the cross-reference the date of default provision. If debentures issued under the coinsurance programs were likewise issued as of the date of default, the mortgagee would receive two unintended windfalls. First, the mortgagee would receive both mortgage interest and debenture interest ("double interest") covering the same period of time with respect to the principal amount included in the debentures. Second, the mortgagee would earn debenture interest on the mortgage interest ("interest on interest") included in the face amount of the debenture. As a result, debenture settlements would have a considerably greater dollar value to the mortgagee than cash settlements. These consequences would be inconsistent with the basic principles of HUD's multifamily mortage insurance programs. HUD does not pay double interest or interest on interest in either full insurance cash or debenture settlements. Moreover, in full insurance claims the benefits paid to the lender under a cash settlement are equivalent to the benefits paid under a debenture settlement; it has always been HUD's intent that this parity be maintained in the coinsurance program. Finally, the payment of double interest and interest on interest would violate the basic statutory principle in section 244(a)(1) of the National Housing Act that the mortgagee will assume a fixed percentage of the loss on the insured mortgage "in direct proportion to the amount of the coinsurance * * *." The revisions included in this final rule clarify the original intent that in debenture settlements, as in cash settlements, the mortgage is entitled to receive only mortage interest for the period from the date of default until the date of settlement.

To allow double interest and interest on interest would create a result that was never intended under the coinsurance program and that would be irrational. A court would not enforce a "plain meaning" interpretation of a regulation which produced an unreasonable result. *See United States v. American Trucking Assn.*, 310 U.S. 534, 543 (1940). This technical correction to 24 CFR 251.819 and 255.819 will not interfere with the legitimate expectations of coinsuring lenders on the amount of HUD's insurance claim settlement. The purpose of the insurance is to guarantee to lenders reimbursement for HUD's share of the loss. Computation of insurance benefits under 24 CFR 251.820–251.822 and 255.820–251.823 fully compensates the lenders for HUD's share of the loss. In any event there is no basis for lenders to expect that a debenture settlement should result in a substantially greater payment than a cash settlement.

Procedural Requirements

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Experience under HUD section 232 full insurance has not demonstrated any substantial impact on small entities. The new coinsurance program would supplement and be carried out in coordination with this full insurance program.

This rule was listed as item H–32–86 [Sequence Number 949] in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The OMB control numbers, when assigned will be announced by separate publication in the **Federal Register.**

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

The catalog of Federal Domestic Assistance program numbers are 14.129, 14.173 and 14.176.

List of Subjects

24 CFR Part 232

Fire prevention, Health facilities, Mortgage insurance, Nursing homes, Intermediate care facilities, Board and care homes.

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

24 CFR Part 252

Mortgage insurance, Coinsurance of nursing homes, intermediate care facilities, and board and care homes.

24 CFR Part 255

Mortgage insurance, Coinsurance for multifamily mortgages.

Accordingly, 24 CFR Parts 232, 251 and 255 are amended and a new Part 252 is added to title 24 of the CFR, as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR Part 232 is revised to read as follows:

Authority: Secs 211, 232 and 244, National Housing Act (12 U.S.C. 1715b, 1715w, and 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The table of contents for 24 CFR Part 232 is amended by adding in appropriate sequence a new Subpart E consisting of the following new sections:

Subpart E—Insurance of Mortgages Covering Existing Projects

Sec.
232.901 Mortgages covering existing insured projects are eligible for insurance.
232.902 Eligible project.
232.903 Maximum mortgage limitations.
232.904 Term of the mortgage.
232.905 Labor standards and prevailing wage requirements.
232.906 Processing and commitment.

3. Paragraph (a)(2) of § 232.6 is revised to read as follows:

§ 232.6 Required certificates.

(a)(1) * * *

(2) If an appropriate State agency does not exist, or if the State agency exists but is not empowered to provide a certification that there is a need for the nursing home or intermediate care facility or combined home and facility as required by paragraph (a)(1)(i), the lender shall not coinsure any mortgage under this section unless the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that (i) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (ii) assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentages of excess beds, demographic projections, alternative health care delivery systems and the reimbursement structure of the home, facility, or combined home and facility; (iii) is certified as acceptable by an appropriate State official, and is addressed to and acceptable to the Secretary in form and substance; and (iv) in the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for insurance and is approved by the Secretary. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required by this paragraph.

* * * * *

4. 24 CFR Part 232 is amended by adding at the end thereof a new subpart E to read as follows:

Subpart E—Insurance of Mortgages Covering Existing Projects

§ 232.901 Mortgages covering existing insured projects are eligible for insurance.

Notwithstanding the generally applicable requirement that mortgages insured under this part be limited to Projects to be constructed or substantially rehabilitated after commitment for insurance, a mortgage executed in connection with the purchase or refinancing of an existing Project covered by a mortgage insured by the Commissioner may be insured under this subpart pursuant to section 223(f) of the Act. A mortgage insured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

§ 232.902 Eligible project.

(a) Existing Projects covered by a mortgage insured under section 232 of the Act (with such repairs and improvements as are determined by the Commissioner to be necessary) are eligible for insurance under this subpart. The Project must not require substantial rehabilitation as defined in paragraph (b) of this section and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the Project, or from the beginning of occupancy, whichever is later, to the date of application for insurance. In addition, the Project must have attained sustaining occupancy (occupancy that would produce income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the Commissioner, before endorsement of the Project for insurance; alternatively, the mortgagor must provide an operating deficit fund at the time of endorsement for insurance, in an amount, and under an agreement, approved by the Commissioner.

(b) "Substantial rehabilitation" consists of repairs, replacements, improvements and additions:

(1) The cost of which exceeds the greater of fifteen percent (15%) of the Project's value after completion of all repairs, replacements, improvements, and additions, or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term major building component includes:

(i) Roof structures;

(ii) Ceiling, wall, or floor structures;

(iii) Foundations;

(iv) Plumbing systems;

(v) Heating and air conditioning systems;

(vi) Electrical systems.

§ 232.903 Maximum mortgage limitations.

Notwithstanding the maximum mortgage limitations set forth in § 232.30, a mortgage within the limits set forth in this section shall be eligible for insurance under this subpart.

(a) *Value limit.* The mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) of the Commissioners estimate of the value of the Project, including major movable equipment to be used in its operation and any repairs and improvements. The Commissioner's estimate of value shall result from consideration of:

(1) Estimated market value of the Project by capitalization,

(2) Estimated market value of the Project by direct sales comparison, and

(3) Total estimated replacement cost of the Project.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The insured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) of net projected Project income available for payment of debt service. Net projected Project income available for debt service shall be determined by reducing the Commissioner's estimated gross income for the Project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes.

(c) *Project to be refinanced—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be refinanced by the insured mortgage (*i.e.*, without a change of ownership or with

the Project sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller with the purchase to be financed with the insured mortgage), the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(1) The amount required to pay off the existing indebtedness;

(2) The amount of the initial deposit for the reserve fund for replacements;

(3) Reasonable and customary legal, organization, title, and recording expenses, including mortgagee fees under § 232.15;

(4) The estimated repair costs, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum amount must not exceed eighty-five percent (85%) of the cost of acquisitions as determined by the Commissioner. The cost of acquisition shall consist of the following items, to the extent that each item (except for item numbered (1)) is paid by the purchaser separately from the purchase price. The eligibility and amounts of these items must be determined in accordance with standards established by the Commissioner.

(1) Purchase price is indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including mortgagee fees under § 232.15;

(4) The estimated repair cost, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

§ 232.904 Term of the mortgage.

Notwithstanding the provisions of § 232.27, a mortgage insured under this subpart must have a maturity satisfactory to the Commissioner which is not less than 10 years, nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for insurance.

§ 232.905 Labor standards and prevailing wage requirements.

The provisions of §§ 232.70–232.74 of this part shall not apply to mortgages insured under commitments issued in accordance with this subpart.

§ 232.906 Processing and commitment.

Notwithstanding the provisions of §§ 232.5, 232.10 and 232.12 of this part, a mortgage insured under this subpart shall meet the following application's commitment, inspection and fee requirements.

(a) *Application.* An application for a conditional or firm commitment for insurance of a mortgage on a Project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD office on an FHA approved form. No application shall be considered unless accompanied by the exhibits required by the form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of the improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completing of specified repairs and improvements after endorsement.

(b) *Application fee—conditional commitment.* An application-commitment fee of $2 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee of $3 per thousand dollars of the requested mortgage amount to be insured less the amount of any fee previously received for a conditional commitment.

(d) *Inspection fee.* Where an application provides for the completion of repairs and improvements, an inspection fee of up to one percent (1%) of the cost of the repairs and improvements may be charged by the Commissioner.

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

3. The authority citation for 24 CFR Part 251 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z(9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. 24 CFR Part 251 is amended by adding a new undesignated center heading and new § 251.806 to read as follows:

Protection of Mortgage Security

§ 251.806 Annual physical inspection.

As long as the mortgage is coinsured by the Commissioner, the lender must ascertain the general physical condition of the property at least once in each calendar year. The lender must furnish the Commissioner and the mortgagor a copy of its inspection report, which must contain the lender's recommendations for any corrective actions.

5. Section 251.819 is revised to read as follows:

§ 251.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the provisions of 24 CFR 207.259(e) will apply, except that the debentures will be dated as of the date of settlement of the claim.

6. Title 24 of the Code of Federal Regulations is amended by adding a new Part 252, to read as follows:

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

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Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)), Sec. 211, National Housing Act, 12 U.S.C. 1715(b), and Sec. 244, National Housing Act, 12 U.S.C. 1715z(9).

Subpart A—General Provisions

§ 252.1 Purpose and scope.

(a) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act (the Act) by adding a new section 244 entitled, "Coinsurance". Section 244 authorizes the Department to insure, under a Coinsurance Contract, any Mortgage otherwise eligible for insurance under Title II of the Act. The Coinsurance Contract provides that the approval lender:

(1) Assume a percentage of any loss, and

(2) Carry out (subject to monitoring) underwriting, commitment, loan servicing, management oversight, property disposition and other functions that the Federal Housing Commissioner (Commissioner) approves.

(b) HUD expects that the sharing of risk and the assumption by the lender of major processing functions under Coinsurance will reduce processing time and HUD staff burden, and increase lender involvement in all phases of the HUD mortgage insurance process.

(c) This part provides for the Coinsurance of Mortgages under section 232 of the Act, which covers nursing homes, intermediate care facilities and board and care homes. With the exception of mortgages coinsured under Subpart J of this part, Projects covered by a coinsurance mortgage under this part must be newly constructed or substantially rehabilitated.

(d) No full insurance authorized under any provision of the Act will be withdrawn, denied, or delayed because of the availability of Coinsurance under this part.

(e)(1) If the Commissioner determines that Coinsurance under this part is having an adverse effect on the availability of Mortgage credit to older and declining neighborhoods, the Commissioner will discontinue the program after due notice. In such a case, no further Coinsurance applications will be accepted nor will any further commitments under the program be authorized.

(2) If the Commissioner determines that coinsurance under this part is disrupting (or will disrupt) the market for projects under this part and related facilities or mortgage markets, or is adversely impacting (or will adversely impact) other federally insured projects in a market area, the Commissioner will modify, suspend, or discontinue coinsurance activities in such area after due notice.

(f) Neither the Coinsuring lender nor the Mortgagor shall have any vested or other right in the General Insurance Fund.

§ 252.2 Coinsurance contract.

The Contract of Coinsurance is the agreement between the lender and the Commissioner to coinsure a Mortgage under this part. It is evidenced by an endorsement on the Mortgage note by the Commissioner, or by the Commissioner's authorized Departmental representative, and includes the terms, conditions and provisions of this part.

§ 252.3 Definitions.

(a) "Act" means the National Housing Act, as amended.

(b) "Board and Care Home" means a proprietary residential facility, or a residential facility owned by a private nonprofit corporation or association, providing room, board and continuous protective oversight, which facility is regulated by a State in accordance with section 1616(e) of the Social Security Act. Said facility will be located in a

State that, at the time an application is made for coinsurance under this part, has demonstrated to the coinsuring lender that it is in compliance with the provisions of section 1616(e). Continuous protective oversight involves a range of activities or services, which services might include such services for relatively independent occupants as awareness on the part of management and staff of an occupant's condition and whereabouts and the ability to intervene in the event of crisis, or for relatively dependent occupants, such services as supervision of nutrition or medication, assistance as necessary with activities of daily living, such as bathing, dressing, shopping, or eating, or a twenty-four hour responsibility for the welfare of the occupant. Continuous protective oversight is not limited to the above activities, nor must it include the examples given.

(c) "Coinsured mortgage" means a Mortgage concerning which the risk of loss is shared by the lender and the Commissioner. The coinsurance is evidenced by an endorsement of the mortgage note by the Commissioner or by the Commissioner's authorized representative.

(d) "Distribution" means the withdrawal of any cash or asset of the Project, excluding outlays for:

(1) Any payment due under the Mortgage or regulatory agreement.

(2) Reasonable expenses necessary for proper operation and maintenance of the Project; and

(3) Repayment of advances from the owner, when such repayments are authorized by the Commissioner.

(e) "Firm commitment" means the commitment from the lender to the Mortgagor that contains final determinations by the lender of the maximum insurable Mortgage, which determination is based upon complete working drawings, specifications and cost estimates, and is prepared in a manner specified by the Commissioner. The Firm Commitment may not be issued for longer than sixty days, by which time the Project must be initially endorsed for insurance of advances cases, or construction started for insurance upon completion cases. The Firm Commitment may be extended by the lender as provided in § 252.4.

(f) "Intermediate Care Facility" means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State, or if there is no State law providing for such licensing and regulation, then by the municipality or other political subdivision in which the facility is located. The facility will provide for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.

(g) "Mortgage" means a first lien on real estate and other property commonly given to secure either advances on real estate or the unpaid balance of the purchase price of real estate under the laws of the jurisdiction in which the real estate is located. "Mortgage" includes any credit instrument(s) secured by the real estate.

(h) "Mortgage Insurance Premium" (MIP) means the mortgage insurance premium collected under §§ 252.801 and 252.802 of this part.

(i) "Mortgagor" means the original borrower under a Mortgage and its successors, and any assigns approved by the Commissioner.

(j) "Nonprofit mortgagor" means an entity that is organized for reasons other than financial gain and that the lender finds is not controlled or directed by persons or firms seeking to derive financial gain from it. The operation of a Nonprofit Mortgagor must be regulated under Federal or State law, and by the lender by means of a regulatory agreement.

(k) "Nursing Home" means a public facility, proprietary facility or a facility of a private nonprofit corporation or association, licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services. In all such facilities the nursing care and medical services must be prescribed by, or under general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

(l) "Project" means a Nursing Home, Intermediate Care Facility or Board and Care Home, or any combination of Nursing Home, Intermediate Care Facility, or Board and Care Home approved by the lender under provisions of this subpart. A Project includes the land on which it is situated and, subject to standards established by the Commissioner, a Project may include:

(1) Such additional facilities as may be authorized by the lender for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day and

(2) Such major movable equipment as may be authorized by the lender as necessary for the operation of the Project.

(m) "Proprietary mortgagor" means an owner that is profit motivated, and may be a corporation, partnership, trust, individual, or any other qualified legal entity.

(n) "Public Mortgagor" means a Federal or State instrumentality, a municipal corporate instrumentality of one or more states, or a redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State banking or insurance department as to charges, capital structure, rate of return, or methods of operation.

(o) "Residual Receipts" means all surplus cash of projects owned by nonprofit or public mortgagors.

(p) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(q) "Substantial rehabilitation" consists of repairs, replacements, and improvements and additions:

(1) The cost of which exceeds fifteen percent (15%) of the Project's value after completion of all repairs, replacements, improvements, and additions, or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term major building component includes:

(i) Roof structures;

(ii) Ceiling, wall, or floor structures;

(iii) Foundations;

(iv) Plumbing systems;

(v) Heating and air conditioning systems;

(vi) Electrical systems.

(r) "Sound capital resources" means the excess of the coinsuring lender's assets (minus any valuation allowances) over its liabilities (generally referred to as its net worth), plus allowed letters of credit. Net worth includes paid-in capital stock, surplus reserves, undistributed earnings and any other unencumbered resources of the coinsuring lender. Sound capital resources may include (up to the limit specified in § 252.102(b)(2)) an unconditional and irrevocable firm letter of credit from a supervised financial institution with assets of not less than $100,000,000. For purposes of determining sound capital resources, an account established to cover coinsurance obligations under this part that is treated as a liability in the lender's balance sheets may be deemed a capital item rather than a liability.

(s) "Surplus cash" means any unrestricted cash remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of the Mortgage coinsured by the Commissioner;

(ii) All amounts required to be deposited in any replacement or operating reserve; and

(iii) All other obligations of the Project, unless funds for payment are set aside or deferral of payment has been approved by the lender; and

(2) The segregation and recording of an amount equal to:

(i) The aggregate of any special funds required to be maintained by the Project; and

(ii) The Project's total liability for patient or resident security deposits.

In computing Surplus Cash, the Mortgagor must follow any administrative requirements prescribed by the Commissioner.

§ 252.4 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments will not adversely affect the interests of a lender under a Contract of Coinsurance on any Mortgage already coinsured or on any Mortgage to be coinsured on which the lender has already issued a firm commitment to insure, provided the Mortgage is initially endorsed (insurance of advances) or construction starts (insurance upon completion) within 60 days after issuance of the Firm Commitment. The 60 days will run from the date of the original issuance of the Firm Commitment or from the date of any amendment, reissuance, or extension of a commitment that occurred before the effective date of the amendment of the regulation.

Subpart B—Lender Requirements

§ 252.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6 or 203.7(c); and (b) meets the requirements of § 252.102. A lender approved as a coinsuring lender under the provisions of 24 CFR Part 255 may be approved for coinsurance for the purchase or refinancing of Nursing Homes, Intermediate Care Facilities or Board and Care Homes only if the lender has also been approved as a coinsuring lender under provisions of this part.

§ 252.102 Review and approval as coinsuring lender.

The Commissioner will review an applicant lender's technical staff and procedures before granting approval as a coinsuring lender under this part. This review, which may include an on-site review of the lender's operations, will establish the adequacy of technical staff, processing procedures, development and management oversight, mortgage servicing, and any disposition functions.

(a) A fee of $5,000 is charged for each application for approval as a coinsuring lender. This fee will not be refunded once the application has been determined acceptable for initial review.

(b) An applicant lender must submit:

(1) A written opinion of its counsel that it has the necessary powers to participate in the coinsurance program under this part.

(2) Evidence acceptable to the Commissioner of Sound Capital Resources of not less than $1,500,000, in liquid funds. Up to $500,000 of the Sound Capital Resources may be met by an unconditional and irrevocable firm letter of credit. The lender must agree that, for the period of the coinsurance, it will maintain the basic Sound Capital Resources requirement.

(3) A statement agreeing to establish and maintain on its books as a portion of its Sound Capital Resources a designated and dedicated account in liquid assets which could only be used for the purpose of meeting the lender's coinsurance obligations as defined in the Commissioner's administrative requirements. The dedicated account within the lender's liquid Sound Capital Resources must be established initially in an amount not less than $500,000. Thereafter, the lender must deposit and maintain the following additional assets in the dedicated account:

(i) A deposit at the time of each loan closing, in accordance with the following schedule:

(A) $1 for each $150 of principal indebtedness on mortgages it coinsures under this part, until the dedicated account reaches $3 million; and

(B) $1 per $300 thereafter.

(ii) An amount equivalent to four years of the lender's share of the annual mortgage insurance premium for each project to be deposited at the time of each loan closing or in increments within four years of closing.

The Commissioner may provide by Notice published in the Federal Register program-wide standards for reduced deposits to the dedicated account based on program and lender actuarial experience.

(4) Evidence acceptable to the Commissioner that:

(i) The lender has the operating procedures, internal management controls, and technical staff necessary to discharge full Mortgage underwriting, oversight, servicing, management, property repair and disposition, and other functions. It must employ adequate staff to monitor contract work and make final underwriting conclusions.

(ii) The lender has staff in its own employ who are experienced in the development and operation/management of Nursing Homes, Intermediate Care Facilities and Board and Care Homes and can analyze and evaluate various technical factors such as:

(A) The certificates required under the provisions of § 252.303 of this part,

(B) Reimbursement schedules for Nursing Homes, Intermediate Care Facilities and Board and Care Homes under Federal or State funded programs and other third party payors, and

(C) Market analyses, operational reviews, etc., for arriving at overall feasibility determinations.

(5) A statement agreeing to notify HUD of any changes in its operating procedures and principal staff and to make no changes that are inconsistent with this part.

(6) The lender's most recent detailed audit report of its financial records, supplemented as the Commissioner may require. The audit must be made by an independent certified public accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970.

(7) A statement agreeing to file periodic certifications on lender financial condition and annual audits similar to those described in paragraph (a)(6) of this section, and monthly reports on its processing and commitment activities, coinsured loan portfolio and loan servicing activities. The certifications, annual audits and reports must be prepared in formats acceptable to the Commissioner and submitted within the time limits established by the Commissioner.

(8) A statement agreeing to auditing by the Commissioner, the HUD Inspector General, and the Comptroller General of the United States with respect to its activities under this part. For this purpose, the Commissioner, the HUD Inspector General, the Comptroller General and their authorized agents shall have access to the financial records of the lender.

(9) A statement agreeing to comply with the provisions of Title VIII of the Civil Rights Act of 1968 as amended, the Equal Credit Opportunity Act, Executive Order 11063 as amended, and other Federal laws and regulations issued

under these authorities with respect to the lending, investing of funds in mortgages, or the lender's activities as a coinsuring lender under this part.

(10) A statement agreeing to retain all its legal obligations under this part, if it delegates servicing functions, as provided in § 252.105.

(11) A statement agreeing to abide by all applicable requirements issued by the Commissioner for performing the lender's functions under this part.

(12) A statement agreeing to notify HUD immediately whenever the lender's Sound Capital Resources fall below the level required by paragraph (b)(2) of this section. In addition, the lender must agree that it will request and receive approval from HUD before implementing any voluntary transfer or series of transfers of the lender's assets which would cause the lender's Sound Capital Resources to fall below the required level. Finally, the lender must agree that if such transfer does take place without prior HUD approval, the remaining assets of the lender and any assets disbursed without such approval will be deemed to be held in trust for the benefit of HUD, and consequently, HUD would have a cause of action against any of the original principals of the lender or any other party for any transfer not made in accordance with these requirements.

(13) A statement agreeing to file at each loan closing a certification with supporting documentation that an addition has been made to the lender's dedicated account for coinsurance obligations.

§ 252.103 Duration of approval.

Initial approval as a coinsuring lender will continue in force until one of the following occurs:

(a) Expiration of the Secretary's authority to coinsure under this part. A temporary lapse in this authority will not terminate the lender's approved coinsurer status or affect outstanding firm commitments or coinsurance in force. However, lenders are responsible for suspending issuance, extension, or reopening of commitments during these periods.

(b) Suspension or withdrawal of approval under § 252.104.

§ 252.104 Withdrawal of approval.

(a) Approval as a coinsuring lender under this part may be withdrawn or suspended for any of the following causes:

(1) Failure to maintain satisfactory Sound Capital Resources and/or dedicated account for coinsurance obligations balances;

(2) Failure to operate the program in a prudent manner or to discharge its responsibilities under any regulatory agreement, coinsurance contract, or administrative procedures including handbooks and other issuances published by the Commissioner under this part.

(3) Payment or receipt by the lender, in any insurance transaction, of any fee, kickback, or other consideration, directly or indirectly, to or from any person who has received any consideration from another person for services related to the transaction; however, compensation may be paid for the actual performance of services approved by the Commissioner;

(4) Submission of a false, fraudulent or incomplete report to HUD or the incurring of any indebtedness to HUD for which no satisfactory repayment plan or agreement is in effect;

(5) Failure to pay any amount owed to a holder of securities guaranteed by the Government National Mortgage Association (GNMA) and backed by a coinsured loan;

(6) Assigning a Coinsured Mortgage to an entity that is not a HUD-approved coinsuring lender;

(7) Other reasons the Commissioner determines to be justified in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

(8) Failure to comply with the provisions of Executive Order 11063 as amended, the Equal Credit Opportunity Act, Title VIII of the Civil Rights Act of 1968, as amended, and regulations issued under these authorities with respect to the lending, investing of funds in mortgages, or the lender's activities as a coinsuring lender under this part.

(b) HUD may place a coinsuring lender on probation for a specified period of time for the purpose of evaluating the lender's compliance with the requirements of the coinsurance program. During the probation period the lender may continue to issue commitments for insurance, subject to conditions required by HUD. Such conditions may include, but are not limited to, submission of the processing to HUD for its approval before issuance of the commitment, increased requirements for the dedicated account for coinsurance obligations, and additional financial reports.

(c) Coinsuring lenders will be notified in writing by the Commissioner, or designee, when a probation, suspension or withdrawal action is taken. The notice will specifically state the cause, effect, and duration of the action. Lenders must comply with the conditions of the notice immediately, but may request an informal hearing on the action within 10 working days of receipt of the notice. The hearing shall be held by the Commissioner or designee. The lender shall be given the opportunity to be heard within 10 days of receipt of the request and may be represented by counsel. The Commissioner or designee will notify the lender in writing of the results of the hearing within 10 working days of the hearing and receipt of any materials. A decision to withdraw, suspend, or continue probation following a hearing constitutes final agency action.

(d) Probation, withdrawal or suspension of approval as a coinsuring lender will not affect any coinsurance or commitments in effect at the time of the probation, withdrawal or suspension of approval.

(e) Serious misconduct or noncompliance with the requirements of the coinsurance program may also result in action against coinsuring lenders in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

§ 252.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsured loans or arrange for another entity to service the Mortgages, provided the contract servicer is a HUD-approved lender under §§ 203.1 through 203.6, or § 203.7(c) of this chapter, and the coinsuring lender retains its obligations under this part.

(b) The lender must inform HUD of any delegation of servicing on a form prescribed by the Commissioner.

(c) If HUD considers the servicer's performance to be unsatisfactory, HUD may require the lender to cancel the servicing agreement after giving the lender a 30-day written notice.

§ 252.106 Assignment of and participation in Coinsured Mortgages.

(a) *Assignment of coinsured mortgage.* (1) A lender may assign a Coinsured Mortgage to another lender if the following requirements are satisfied:

(i) The assignee is a HUD-approved coinsuring lender;

(ii) The lender shows good cause for the assignment;

(iii) The Commissioner finds that the assignment is for good cause and that there will be no disadvantage to HUD; and

(iv) The Commissioner gives prior written approval for the assignment and

any risk allocation between the assignor and assignee.

(2) The lender must inform HUD promptly following the assignment of any coinsured mortgage. The lender will not be relieved of its obligation to pay Mortgage Insurance Premiums until HUD has received this notice.

(b) *Transfer of partial interest under participation agreement.* A partial interest in a coinsured mortgage or pool of coinsured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates) without obtaining the approval of the Commissioner, if the following conditions are met:

(1) Legal title to the coinsured mortgage or mortgages shall be held by an approved coinsuring lender, which shall for purposes of this paragraph (b), be referred to as the principal lender;

(2) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(i) The principal lender shall remain the lender of record under the contract of coinsurance;

(ii) The Commissioner shall have no obligation to recognize or do business with anyone other than the principal lender with respect to the rights, benefits and obligations of the lender under the contract of coinsurance; and

(iii) The mortgagor shall have no obligation to recognize or do business with anyone other than the principal lender or its servicing agents with respect to the rights, benefits and obligations of the mortgagor or the lender under the coinsured mortgage; and

(3) The participation agreement, declaration of trust or other instrument under which the interest is transferred shall disclose:

(i) That the principal lender has assumed a stated percentage of the risk of loss under the coinsured mortgage or mortgages;

(ii) Whether the transfer of the partial interest will shift any portion of the risk of loss to the holder of the partial interest; and

(iii) That no insurance fund administered by HUD will pay benefits to protect against any risk of loss assumed by the principal lender and transferred to the holder of the partial interest.

(c) *Government National Mortgage Association requirements.* (1) If the coinsured mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval is required for the assignment of the pooled mortgage.

(2) When a coinsured mortgage is to be in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates, the lender-issuer and the holder of a partial interest under paragraph (b) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

§ 252.107 Reinsurance.

(a) The lender may reinsure its potential loss with respect to a particular Project. Reinsurance may be obtained for:

(1) Up to and including 50 percent of its risk;

(2) Above 50 percent; or

(3) That percentage of its risk that equals the maximum amount the reinsurer is authorized by State law to reinsure.

(b) The effect of reinsurance on the insurance benefits payable by the Commissioner is governed by § 252.820.

(c) Any reinsurance policy must name the Commissioner as contingent beneficiary where default by the lender compels the Commissioner under § 252.824 to reimburse the Government National Mortgage Association for the amount that the GNMA had to pay securities holders as a result of the lender's default in payment, subject to the ceilings provided in § 252.824.

§ 252.108 Pledging and other security arrangements.

A lender may pledge the beneficial interests in a Coinsured Mortgage as security under the terms of a reinsurance contract, trust indenture, third party guarantee agreement, or similar financing arrangement directly related to the coinsurance transaction, subject to the following conditions:

(a) The lender must retain legal title to the note and the Mortgage, subject to the security interest created, unless the title is otherwise transferred in accordance with § 252.108. Legal title to the note and Mortgage may not, at any time, be held by other than a coinsuring lender approved by the Commissioner.

(b) The Commissioner will have no obligation to recognize or deal with anyone other than the coinsuring lender of record or any successor to the lender's title to the Mortgage and mortgage note with respect to the rights, benefits, and obligations of the coinsuring lender.

(c) The Mortgagor will have no obligation to recognize or deal with anyone other than the coinsuring lender or an approved coinsuring lender succeeding to title to the Mortgage or Mortgage note, or to such other person or entity servicing the Mortgage loan under § 252.105, except that the mortgagor may be directed to make payments under the Mortgage and the Mortgage note to a successor lender or to one or more custodial accounts.

(d) A lender may not pledge the beneficial interests of Coinsured Mortgages backing Government National Mortgage Association (GNMA) Construction or Project Loan Certificates except as authorized by GNMA.

§ 252.109 Minimum principal loan amount.

A lender may not require, as a condition of providing a loan secured by a mortgage coinsured under this part, that the principal amount of the loan exceed a minimum amount established by the lender.

§ 252.110 Limitations on individual mortgage amounts.

(a) Notwithstanding maximum mortgage limitations set forth in §§ 252.203 and 252.903, individual mortgage amounts will be limited by the level of the lender's Sound Capital Resources (as defined in § 252.102) as follows:

(1) Mortgages are limited to $10 million per case where Sound Capital Resources are $2.0 million or less;

(2) Mortgages are limited to $15 million per case where Sound Capital Resources are $2.5 million or less;

(3) Mortgages are limited to $20 million per case where Sound Capital Resources are $3 million or less; and

(4) There is no specified limit where Sound Capital Resources exceed $3 million.

(b) In the event Sound Capital Resources diminish at any time, per case mortgage limits would apply according to the above schedule.

Subpart C—Program Requirements

§ 252.201 Eligible project.

(a) Except as provided in Subpart J, to be eligible for coinsurance under this part a Project must be newly constructed or substantially rehabilitated. A Project must conform to standards established by the Commissioner, including limitations on commercial space, and comply with all applicable zoning or deed restrictions, and applicable building and other government regulations.

(1) If a nursing home or intermediate care facility, a Project shall consist of not fewer than 20 beds after completion

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of the construction or rehabilitation. The nursing home or intermediate care beds must be clearly separate from any board and care beds in the facility.

(2) If a board and care home, a Project shall contain not fewer than five residential accommodations after completion of the construction or substantial rehabilitation. A maximum ratio of four persons per full bathroom shall be permitted in each board and care home. Group dining facilities shall be available. Kitchen facilities are not required in each accommodation or per full bathroom. Only one to four person occupancy will be permitted in each bedroom accommodation. A board and care home owner must also meet State and local occupancy requirements permitting fewer than four persons per accommodation or per full bathroom. The board and care beds will be clearly designated and separate from any nursing home or intermediate care beds in the facility.

(b) The Commissioner must review all projects proposed for coinsurance under this part for compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities as set forth in Part 50 of this title.

(c) No insurance will be made available under this part for any building located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The jurisdiction in which the project is located is participating in the National Flood Insurance Program and is subject to 44 CFR Parts 59 through 79 or

(2) Less than a year has passed since FEMA notification regarding such hazards, and flood insurance is obtained in compliance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) No insurance will be made available under this part with respect to a property within the Coastal Barriers Resources Systems established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

(e) Wherever applicable, projects under this part must comply with the National Historic Preservation Act (16 U.S.C. 470).

§ 252.202 Eligible mortgagors.

Public, nonprofit, and proprietary mortgagors approved by the coinsuring lender in accordance with standards established by the Commissioner are eligible under this part. The mortgagor must possess the legal powers necessary and incidental to operating the Project except where it leases the Project to a qualified operator, in which case the lessee shall be approved by the coinsuring lender and must possess the legal powers necessary and incidental to operating the Project.

§ 252.203 Maximum mortgage limitations.

The maximum mortgage coinsurable under this part is the lowest of the amounts determined under the following limits:

(a) *Value limit.* An amount not exceeding 90 percent of the lender's estimate of value of the project, including major movable equipment to be used in its operation.

(1) The final estimate of value for the purpose of this section results from consideration of three indicators of value:

(i) *The estimated market value of the project by capitalization.* Capitalization will use net income attributable to land, building improvements and major movable equipment (not business operations), capitalized at rates extracted from market transactions involving comparable properties.

(ii) *The estimated market value by direct sales comparison.* Market value by direct sales comparison will be estimated by comparison of the subject property with competing properties recently sold, using at least two other properties for the comparison.

(iii) *The total estimated replacement cost of the project* (without deducting depreciation). The total estimated replacement cost of the project (before depreciation) provides only an upper limit. The final estimate of value must be between that indicated by capitalization and that indicated by direct sales comparison, but may not exceed the total estimated replacement cost of the project.

(2) In the event the Mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the Mortgage shall be the value of the leasehold estate (as determined by the lender) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The net projected project income available for payment of debt service is determined by reducing the estimated gross income of the project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacement, taxes and distributions, and by the return attributable to business operations. The maximum Coinsurable Mortgage cannot exceed the amount that could be amortized by 90 percent of net projected project income.

(c) *Rehabilitation projects—additional limits.* In addition to the limits of paragraphs (a) and (b) of this section, the following additional limits apply to projects to be substantially rehabilitated.

(1) Where the property is owned by the mortgagor in unencumbered fee simple or is subject to existing indebtedness to be refinanced by part of the proceeds of the coinsured mortgage, the maximum coinsurable mortgage may not exceed the sum of:

(i) The cost of rehabilitation plus

(ii) The lesser of the existing indebtedness or 90 percent of the lender's estimate of the value of the property before rehabilitation and installation of major movable equipment.

(2) Where the property is to be acquired and the purchase price to be financed with part of the proceeds of the coinsured mortgage, the maximum coinsurable mortgage may not exceed 90 percent of the sum of:

(i) The cost of rehabilitation plus

(ii) The lesser of the actual purchase price of the property or the lender's estimate of the value of the property before rehabilitation and installation of major movable equipment.

§ 252.204 Maximum interest rate.

The interest rate in a commitment to coinsure, including a commitment for Mortgage increase, shall be at such rate as may be agreed upon by the Mortgagor and the coinsuring lender at the time the commitment is issued. The interest rate may be increased or decreased only after reprocessing and issuance of an amended commitment. The interest rate may not be increased after initial endorsement (insurance of advances) or start of construction (insurance upon completion), except that where a Mortgage increase is requested, processed, and approved, a higher rate may be applied to the amount of the increase only.

§ 252.205 Term of the mortgage.

The Mortgage term may not exceed the lesser of 40 years from the date of first payment to principal or 75 percent of the lender's estimate of the project's remaining economic life.

§ 252.206 Lender's fees and premiums.

(a) The lender may collect from the mortgagor, and include in the coinsured mortgage, an application fee, financing fee, permanent placement fee, and inspection fee. These fees may not exceed the maximums approved by the Commissioner. The lender may collect additional fees, approved by the

Commissioner, that are outside the coinsured mortgage and that must be disclosed at initial endorsement (insurance of advances) or endorsement (insurance upon completion). In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance program under section 232 of the Act.

(b) The coinsuring lender may collect a lender's premium of up to .25 percent per year of the average outstanding principal balance of the Mortgage (without regard to delinquent payments or prepayments) beginning not earlier than 12 months after the date of initial endorsement (insurance of advances) or the date of endorsement (insurance upon completion). This premium will be for the account of the lender or an insurer of the lender.

§ 252.207 Coinsurance of Mortgages in lender's portfolio.

(a) Coinsurance under this part is available for Mortgages that the lender (or a related entity) already holds in its own portfolio only if:

(1) The loan is current and has not been in default, modification, or forbearance at any time during the two years preceding the submission of the application to the lender.

(2) Refinancing of portfolio loans makes up no more than one-fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period; and

(3) The entire loan transaction is reviewed and approved by the Commissioner (in his or her discretion) before any commitment is issued.

(b) The following loans will not be subject to the one-fourth limitation in paragraph (a)(2) of this section:

(1) Mortgages insured by HUD under its full insurance programs; and

(2) Mortgages in which the lender's sole involvement is servicing.

(3) Mortgages in which no equity is removed.

§ 252.208 Nondiscrimination in housing and employment.

The mortgagor shall certify to the lender and to the Commissioner that, as long as the mortgage is coinsured under this part:

(a) Neither it, nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, sex, religion, or national origin;

(b) Any restrictive covenant on such property relating to race, color, sex, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed;

(c) Civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification;

(d) It will comply with title VIII of the Civil Rights Act of 1968, as amended, and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin; administer the Project and related activities to further fair housing in an affirmative manner; and comply with State and local fair housing laws;

(e) It will comply with Executive Order 11063 and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin in housing and related facilities provided with Federal financial assistance; and

(f) It will not discriminate because of race, color, religion, sex, or national origin against any employee or applicant for employment. Provisions to this effect, and, in addition, the provisions of Executive Order 12246 and 41 CFR Chapter 60, where appropriate, will apply to any contract or subcontract for project repairs and improvements over the life of the mortgage.

(g) Marketing will be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan.

(h) It will not sell the project as long as the mortgage is coinsured under this part, unless the purchaser agrees to comply with the requirements of this section and with applicable transfer of physical asset requirements.

§ 252.209 Labor standards and prevailing wage requirements.

With the exception of mortgages coinsured under Subpart J of this part, the following labor standards and prevailing wage requirements shall be applicable to Mortgages coinsured under this part. The Commissioner shall assure compliance with those standards and requirements and the lender must obtain, evaluate, and submit any information or certifications required by the Commissioner to assist the Commissioner in carrying out this function.

(a) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project to be constructed or substantially rehabilitated under this part shall comply with all applicable labor standards and provisions of 29 CFR Parts 1, 3 and 5, issued by the Secretary of Labor.

(b) *Ineligible advances.* No advance under the Mortgage shall be eligible for coinsurance after the lender determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to 29 CFR 5.12, issued by the Secretary of Labor.

(c) *Wage certificate.* No advance under any Mortgage shall be coinsured under this part unless there is filed with the application for the advance, and no mortgage shall be coinsured under this part unless there is filed with the Commissioner after completion of the construction or Substantial Rehabilitation, a certficate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or Project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor before the beginning of construction and after the date of filing of the application for insurance.

(d) *Waiver of compliance with contract requirements—nonprofit mortgagors.* In the case of a nonprofit mortgagor, the Commissioner may waive the requirement for compliance with the contract provisions prescribed in paragraph (a) of this section in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction or rehabilitation of the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and where the Commissioner determines that full credit has been received by the mortgagor for any amounts saved through such donated services.

Subpart D—Processing and Commitment

§ 252.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this

part, including acceptance and review of applications, issuance of commitments, inspections and closings, except those functions specified in paragraphs (b), (d) and (e) of this section.

(b) Certain functions are retained by the Commissioner. The lender must submit any information or certifications required by the Commissioner to permit determinations of compliance with requirements concerning:

(1) Previous participation of the principals of the Mortgagor, general contractor, consultant, and management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218;

(2) Environmental impact under the National Environmental Policy Act of 1969 and related laws and authorities set forth in 24 CFR Part 50;

(3) Equal opportunity considerations in the development and operation of the proposed project in accordance with the provisions of Executive Order 11063, as amended, the Equal Credit Opportunity Act, Title VIII of the Civil Rights Act of 1968, as amended, and regulations issued under these authorities.

(4) The National Historic Preservation Act, 16 U.S.C. 470, where applicable.

(5) Market/submarket review to determine the impact upon that market of the addition of the proposed healthcare facility.

(6) The intergovernmental review procedures of 24 CFR Part 52.

(c) The lender must also submit any information required by the Commissioner for tracking or monitoring purposes.

(d) The Commissioner's authorized Departmental representative must endorse the Mortgage for coinsurance.

(e) With the exception of mortgages coinsured under Subpart J of this part, the Commissioner retains responsibility for enforcement of labor standards and prevailing wage requirements set out in § 252.209. The Commissioner will perform all functions under § 252.209 except that he may delegate to the lender information collection (e.g., payroll review and routine interviews) or other routine administration and enforcement functions, subject to monitoring by the Commissioner.

§ 252.302 Processing and commitment.

(a) After acceptance of an application for a commitment to coinsure, the lender will determine the maximum coinsurable Mortgage, review plans and specifications for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from the Commissioner of (1) the acceptability of the Project in the areas of responsibility retained by the Commissioner under § 252.301(b) and (2) completion of any case review requirements of the Commissioner that are part of its lender approval process.

(c) Subject to standards established by the Commissioner, the lender is responsible for extending commitments, assuring commitments are updated when appropriate, and amending commitments. The lender may also reopen commitments within 90 days of the expiration of an earlier commitment, reconsider previously rejected applications, and may charge a reopening or reexamination fee acceptable to the Commissioner.

§ 252.303 Required certificates.

(a)(1) Except as provided in paragraph (a)(2) of this section, every application for coinsurance of a nursing home or an intermediate care facility shall be accompanied by a certificate executed by the appropriate State agency for the State in which the project is or will be located, designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. Such certificate shall evidence that:

(i) There is need for the project.

(ii) There are in force in the State or other political subdivision of the State reasonable minimum standards for licensure and for methods of operation for the project.

(2) If an appropriate State agency does not exist, or if the State agency exists but is not empowered to provide a certification that there is a need for the nursing home or intermediate care facility or combined home and facility as required by paragraph (a)(1)(i) of this section, the lender shall not coinsure any mortgage under this section unless the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that:

(i) Is prepared in accordance with the principles established by the American Institute of Certified Public Accountants;

(ii) Assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentages of excess beds, demographic projections, alternative health care delivery systems and the reimbursement structure of the home, facility, or combined home and facility;

(iii) Is certified as acceptable by an appropriate State official, and is addressed to and acceptable to the Secretary in form and substance; and

(iv) In the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for coinsurance and is approved by the Secretary.

The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required by this paragraph.

(b) In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, the State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the certification of need requirement of paragraph (a)(1)(i) of this section, provide the Secretary with written support identifying the need for the facility or home.

(c) Every application for coinsurance involving a board and care home shall be accompanied by a statement executed by the appropriate State agency for the State in which the project is or will be located, certifying that the State is in compliance with section 1616(e) of the Social Security Act.

(d) No mortgage shall be coinsured under this subpart unless the Commissioner has been furnished with acceptable assurance from the appropriate State agency that the prescribed standards of licensure and operation will be applied and enforced with respect to any project for which mortgage insurance is provided.

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

§ 252.401 Insurance of advances or insurance upon completion; applicability of requirements.

Either insurance of advances or insurance upon completion procedures may be used under this part. In insurance upon completion cases, only the permanent loan is coinsured and a single endorsement is required after satisfactory completion of construction or Substantial Rehabilitation. In insurance of advances cases, progress payments approved by the lender are also coinsured and both an initial and final endorsement on the Mortgage are required. The requirements of §§ 252.404 through 252.406 apply in either case and

the Mortgage and other closing documents must meet the requirements of Subpart F.

§ 252.402 Insurance of advances.

(a) *Financial requirements.* (1) Before initial endorsement, the Mortgagor (other than a Nonprofit Mortgagor) must make a working capital deposit of two percent of the face amount of the Mortgage. The deposit must be made to the lender or be controlled by the lender in a depository acceptable to it. Unless the Commissioner approves exceptions, this deposit may be used only for equipping and rent-up of the project and, during construction, for allocation by the lender to accruals for taxes, ground rents, MIP, property insurance premiums, and assessments required by the terms of the Mortgage.

(2) Before initial endorsement, the Mortgagor must deposit with the lender cash that the lender deems sufficient, when added to the proceeds of the insured Mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to construction of the project. This cash will be held by the lender under an appropriate agreement. The agreement will require all cash held to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any Mortgage money. If all or part of the funds required under this paragraph (a)(2) are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, Mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of the grant or loan funds, to pay cost of work, material or other charges and expenses. However, if any portion of these funds is to be provided by the Mortgagor, that portion must be disbursed in full before the disbursement of the Mortgage proceeds.

(3) Charges to be paid by the Mortgagor in connection with the financing that are in excess of the initial service charge and that are acceptable to the Commissioner must be deposited with the lender in cash at or before initial endorsement. Alternatively, a note, in a form prescribed by the Commissioner, may be accepted by the lender. The note must evidence the obligations of a party other than the Mortgagor and may not be secured by the assets of the Mortgagor entity.

(4) The lender must require assurance of completion of offsite public utilities and streets. (An exception is made where a public body has agreed to install offsite improvements without cost to the Mortgagor and this agreement is acceptable to the lender.) The assurance must be either a cash escrow deposit or the retention by the lender at initial closing of a specified amount of the Mortgage proceeds allocated to land in the project analysis. If a cash escrow is used, it must be deposited with the lender or a depository designated by the lender. The lender may also require a surety bond.

(5) The lender may accept, in lieu of a cash deposit required by paragraphs (a)(1), (3) and (4) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. If all or part of the funds required under paragraph (a)(2) of this section are to be provided through a grant or loan from a Federal, State, or local governmental agency or instrumentality, the lender may accept for the portion so provided, in lieu of a cash deposit required by paragraph (a)(2) of this section, either an unconditional irrevocable letter of credit issued to the lender by a banking institution or an agreement, as described in § 207.19(c)(7) of this chapter, entered into by HUD, the governmental agency or instrumentality, the Mortgagor and the lender. The lender of record may not be issuer of any letter of credit referred to in this paragraph (a)(5) without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the lender must provide cash equivalent to the undrawn balance under the letter of credit.

(b) *Building loan agreement.* Before initial endorsement, the lender and Mortgagor must execute a building loan agreement in a form approved by the Commissioner. This agreement sets out the terms and conditions under which progress payment may be advanced during construction. To be covered by coinsurance, each progress payment must be approved by the lender and must contain a certificate that the prevailing wage requirements of § 252.209 have been met.

(c) *Insured advances of components stored off-site.* The provisions of 24 CFR 232.57 apply to projects coinsured under this part, except that the lender performs the functions otherwise performed by the Commissioner.

(d) *Assurance of completion.* (1) The Mortgagor must furnish assurance of completion of the Project. The lender may establish more stringent criteria, but, at minimum, must require assurance by bonds issued by a surety company acceptable to the lender, pursuant to requirements established by the Commissioner for payment and performance each in the amount of 100 percent of the established construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent (or 25 percent where the structure contains an elevator and is four stories or more) of the amount of the estimated construction or rehabilitation cost. An unconditional and irrevocable letter of credit may be substituted for this cash deposit under the same terms and conditions as provided in paragraphs (a)(5) of this section.

(2) Alternatively, where the estimated cost of construction or rehabilitation is $500,000 or less, the lender may accept assurance of completion in the form of a personal indemnity agreement executed by the controlling principals of the general contractor.

§ 252.403 Insurance upon completion.

A commitment to coinsure upon completion prescribes a designated period during which the Mortgagor must start construction or Substantial Rehabilitation. If construction or rehabilitation is started as required, the commitment will be valid for an additional period no longer than the lender's estimate of the construction period plus six months, except as extended as provided § 252.302(c).

§ 252.404 Requirements applicable to both insurance of advances and insurance upon completion cases.

(a) *Latent defects escrow.* (1) In insurance upon completion cases, the Mortgagor must make a cash escrow deposit at endorsement of two and one-half percent of the principal amount of the mortgage, or provide a surety bond of 10 percent of the lender's estimate of the cost of construction or Substantial Rehabilitation, as a latent defects escrow. An unconditional and irrevocable letter of credit may be substituted for this cash escrow deposit under the same terms and conditions as provided in § 252.402(a)(5). This escrow must be retained by the lender for 15 months after substantial completion.

(2) In insurance of advances cases, if a completion assurance agreement referred to in § 252.402(d) was used at initial endorsement, an amount equal to two and one-half percent of the construction contract must be retained in cash or a letter of credit for a period of 15 months following substantial completion as a latent defects escrow.

(b) *Inspections during construction.* The lender must inspect projects under this part at such times during

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construction or Substantial Rehabilitation as the lender determines, within standards established by the Commissioner. The inspections must be conducted to assure compliance with the contract documents.

(c) *Cost certification requirements—Mortgagor.* (1) Before initial endorsement (insurance of advances) or start of construction (insurance upon completion) the Mortgagor and the lender must enter into an agreement satisfactory to the Commissioner that precludes any excess of Mortgage proceeds over statutory and regulatory limitations. In this agreement, the Mortgagor must also disclose its relationship with the builder, including any collateral agreement, and agree to:

(i) Enter into a construction contract that:

(A) Complies with the requirements of § 232.81 of this Chapter (as to whether the contract should be lump sum or cost-plus) and

(B) Is approved by the lender and acceptable to the Commissioner as to form and content;

(ii) Execute a certificate of actual costs when all physical improvements are complete; and

(iii) Reduce the Mortgage if necessary in accordance with § 252.405.

(2) The provisions of paragraph (c)(1) of this section relating to disclosure and the requirement of a construction contract do not apply where the Mortgagor and the general contractor are one and the same.

(3) If the Mortgagor, the general contractor, or their officers, directors, or stockholders have any interest, financial or otherwise, as defined by the Commissioner, in any subcontractor, material supplier, or equipment lessor, the Mortgagor must disclose the identity of interest before start of the construction. The lender may approve the use of a subcontractor, material supplier or equipment lessor having an identity of interest if the amounts paid to that entity do not exceed the rate prevailing in the locality for similar types of labor and materials.

(4) The Mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, must be submitted to the lender when the improvements are completed to the satisfaction of the lender and before final endorsement (or before endorsement in the case of insurance upon completion). The certificate must show the actual cost to the Mortgagor of:

(i) The cost-plus construction contract or the lump sum construction contract or the cost of the construction of the Project where the Mortgagor and the general contractor are one and the same and no construction contract is executed;

(ii) The architect's fee;

(iii) The offsite public utilities and streets not included in § 252.402(a)(4) of this part.

(iv) The organizational and legal expenses; and

(v) Other items of expense approved by the Commissioner.

(d) *Cost certification requirements—general contractor.* (1) Where a cost-plus form of contract is used, the Mortgagor must also submit to the lender a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, and subcontract work under the general contract, exclusive of the builder's fee;

(2) Where there is a cost-plus contract and the lender determines that an identity of interest (as defined by the Commissioner) exists between the Mortgagor or general contractor or any of their officers, directors, stockholders, or partners and any subcontractor, material supplier, or equipment lessor, the lender may require the Morgagor to submit a certification by the subcontractor, material supplier, or equipment lessor, as to the actual costs paid for labor, materials, subcontractors and overhead. This certification must be in a form prescribed by the Commissioner.

(e) *Exclusions.* The certifications required by paragraphs (c) (4) and (d) of this section may not include any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the Mortgagor or any of their officers, directors, stockholders or partners.

(f) *Records.* The Mortgagor must maintain adequate records of all costs of any construction or other cost items that do not represent work under the general contract and, in the case of a lump sum contract, must require the builder to keep similar records and, if requested by the lender or the Commissioner, must make these records (including any collateral agreements) available for examination, including examination by the Inspector General of HUD or the Comptroller General.

(g) *Certificate of public accountant.* In all Projects, cost certifications must be supported by an audit of the cost certification statement and accompanying financial statements by an independent Certified Public Accountant or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970. The audit must include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent necessary to verify that they present fairly the actual costs.

(h) *Requisites of agreement and certification.* Any agreement, statement or certification required by this section must specifically state that it has been prepared for the purpose of influencing an official action of the Commissioner and may be relied upon by the Commissioner and the lender as true.

(i) *Cost certification incontestable.* Upon the lender's approval of the Mortgagor's certification, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the Mortgagor.

§ 252.405 Lender review of mortgage amount.

When the cost certifications submitted under § 252.404 are reviewed and approved by the lender, the lender must determine, in accordance with standards set by the Commissioner, whether a mortgage reduction is necessary and whether any requests for a mortgage increase are approvable.

§ 252.406 Application of net income received before beginning of amortization.

(a) If prior to the beginning of amortization, net income, as defined by the Commissioner, is received as a result of the operation of the Project, such net income, to the extent determined by the lender, shall be applied in one or more of the following ways:

(1) To advance amortization.

(2) To offset construction costs approved by the lender.

(3) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly deposits required by the regulatory agreement.

(b) The provisions of paragraph (a) of this section shall not be applicable to a mortgagor that is a private nonprofit corporation or association.

§ 252.407 Endorsement by Commissioner.

Before start of construction in insurance of advances cases, and in all cases after completion of construction or Substantial Rehabilitation and completion of the lender's review of the Mortgage amount, the lender will hold a closing and submit required documentation to the Commissioner or the Commissioner's authorized Departmental representative for coinsurance of the Mortgage by endorsement of the Mortgage note. The note must identify the section of the

regulations under which the Mortgage is coinsured, the percentage of risk assumed by the lender and the Commissioner, and the date of coinsurance, *i.e.*, the date of HUD endorsement of the Project Mortgage. The lender's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 252.301(b) and any additional documents and information required by the Commissioner's administrative procedures.

Subpart F—Mortgage and Closing Requirements

§ 252.501 Mortgage requirements—real estate.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 252.3(n).

(a) The mortgage must be on real estate held:

(1) In fee simple; or

(2) Under a lease for not less than 99 years which is renewable; or

(3) Under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or

(4) Under a lease executed by a governmental agency, an Indian, an Indian tribe, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such a lease, provided that the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

(b) The property must be held by an eligible Mortgagor and must, at the time the mortgage is coinsured, be free and clear of other liens except those approved by the lender in accordance with § 252.504.

(c) The mortgage must cover the entire property included in the facility.

§ 252.502 Title.

(a) *Eligibility of title.* Title to the mortgaged property must be vested in the Mortgagor on the date the Mortgage is filed for record.

(b) *Title evidence.* Before coinsurance of the Mortgage, the Mortgagor must furnish the lender with a survey, satisfactory to the lender, of the Mortgaged property and a title insurance policy covering the property. If, for reasons that are satisfactory to the lender, title insurance cannot be furnished, the Mortgagor must furnish evidence of title in accordance with paragraph (b)(2) of this section. The types of title evidence are:

(1) A title insurance policy issued by a company, and in a form, satisfactory to the lender. The policy must name the lender and the Commissioner as the insureds, as their interests may appear. The policy must also provide that, upon acquisition of title by the lender, it will become an owner's policy running to the lender.

(2) An abstract of title satisfactory to the lender, prepared by an abstract company or an individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the lender as to the quality of the title, signed by an attorney experienced in the examination of titles.

§ 252.503 Mortgage and note provisions.

(a) The mortgage and note must be executed on a form approved by the Commissioner for use in the jurisdiction in which the property is located. The form must not be changed without prior written approval of the Commissioner.

(b) The Mortgage must be executed by an eligible Mortgagor.

(c) The Mortgage must be a first lien on property that conforms with property standards prescribed by the Commissioner.

(d) The note must provide for equal monthly payments of interest and principal due on the first day of each month in accordance with a level annuity amortization plan agreed to by the Mortgagor and lender and acceptable to the Commissioner.

(e) The lender will determine the date of first payment to principal. The lapse of time between completion of the project and beginning of amortization must not be longer than the lender determines, in accordance with standards established by the Commissioner, to be necessary to obtain sustaining occupancy.

(f)(1) The Mortgage must provide that all monthly payments made by the Mortgagor to the lender be added together into a single payment made by the Mortgagor on each monthly payment date. The lender must apply payments received from the Mortgagor or for the account of the Mortgagor to the following items in the order listed:

(i) MIP under Contract of Coinsurance;

(ii) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(iii) Interest on the Mortgage; and

(iv) Principal on the Mortgage.

(2) Any deficiency in the amount of the aggregate monthly payment required under paragraph (f)(1) of this section will constitute a fiscal default. The Mortgage will further provide for a grace period of 30 days within which time the default must be made good.

(g) The Mortgage must provide for payments by the Mortgagor to the lender, on each monthly payment date, of an amount sufficient to accumulate the next annual MIP one payment period before the MIP is due. These payments will continue only as long as the Contract of Coinsurance is in effect.

(h) The Mortgage must provide for equal monthly payments sufficient to pay any ground rents, estimated taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month before these items become due. The Mortgage must also make provision for adjustments in case the estimated amount of any of these items differs from amounts actually payable by the Mortgagor.

(i) Partial or full prepayment of the mortgage is subject to the following standards and restrictions.

(1) *Proprietary facilities.* In the case of the mortgagor operating a proprietary facility, the following provisions shall be applicable:

(i) *Prepayment privilege.* Except as otherwise provided in paragraph (3), the mortgagor may prepay the mortgage in whole or in part upon any interest payment date after giving to the lender 30 days' notice in writing in advance of its intention to so prepay.

(ii) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and the coinsuring lender, in accordance with standards adopted by the Commissioner. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(2) *Nonprofit facility.* In the case of a facility operated by a nonprofit corporation or association, the following provisions shall be applicable:

(i) *Prepayment in full.* The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent is obtained as he may prescribe.

(ii) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balances as recast over the remaining portion of the original mortgage term.

(iii) *Optional provision.* The mortgage may, if required by the lender, contain a provision that prior to maturity and with

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the approval of the Commissioner, partial prepayments may be made after 30 days' written notice to the lender on any principal payment date. A reasonable charge may be allowed as agreed upon between the mortgagor and the lender in accordance with standards adopted by the Commissioner.

(3) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the lender as to terms, amount, and conditions in accordance with standards adopted by the Commissioner.

(j) The note may provide for the collection by the lender of a late charge, not to exceed four percent of each payment to interest and principal that is more than 15 days late, or such other charges as may be agreed to by the lender and the Commissioner, to cover the extra expense of handling delinquent payments. Late charges must be separately charged to and collected from the Mortgagor and may not be deducted from any total monthly payment.

(k) The mortgage must contain a covenant prohibiting the use of the property for any purpose other than as a residential care facility eligible for coinsurance under this part.

(l) The mortgage must contain a covenant, accepable to the Commissioner, that binds the mortgagor to keep the property insured by one or more standard policies for fire or other hazards stipulated by the Commissioner or the lender. The amount must comply with the coinsurance clause applicable to the location and character of the property, but may not be less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage must be in the amount estimated by the lender after completion of the project. A standard mortgagee clause making loss payable to the lender and the Commissioner as their interests may appear must be included in the insurance policy. The lender is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. If the mortgagor does not obtain the required insurance, the lender must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the Coinsurance Contract is in force.

§ 252.504 Mortgage lien and other obligations.

The mortgagor and the lender must certify at endorsement of the loan for insurance, and the lender must determine:

(a) That the mortgage is a first lien upon and covers the entire Project, including the equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed, and the equipment financed with mortgage proceeds, are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the lender in accordance with standards established by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the Project or the purchase of the equipment financed with mortgage proceeds.

§ 252.505 Regulatory agreement.

The lender and the Mortgagor must execute a regulatory agreement in a form acceptable to the Commissioner. The regulatory agreement must require the Mortgagor to comply with the requirements of Subparts G and H and other applicable provisions of this part for as long as the Commissioner coinsures the Mortgage. In the regulatory agreement, the lender may regulate the Mortgagor on other matters if the Commissioner determines that the additional lender controls or requirements do not conflict with the requirements of this part or requirements contained in the administrative instructions issued under this part.

§ 252.506 Other closing documents.

The lender will require execution of such other closing documents as the Commissioner may require.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

§ 252.601 Requirements applicable to all projects.

(a) The Mortgagor may issue shares of capital stock, partnership participations or beneficial certificates of interest, as applicable, only in the number and form approved by the lender.

(b) The Mortgagor must comply with the Commissioner's administrative procedures for previous participation clearance and Transfers of Physical Assets before conveying, assigning or transferring any ownership interest in the project or any beneficial interest in any trust holding title to the project.

(c) The Mortgagor must obtain the Commissioner's and the lender's written approval before:

(1) Conveying, assigning, transferring, encumbering or disposing of any legal interest in the project, including rents and security deposits;

(2) Engaging, except for natural persons, in any business or activity, including the operation of any other project, or incurring any liability or obligation not in connection with the project.

(d) The Mortgagor may not resign or withdraw from the Project until the lender has approved a substitute Mortgagor.

Subpart H—Program Relating to Project Operation

§ 252.701 General.

In order to be eligible for the benefit of coinsured financing under this part, the Mortgagor must agree to be regulated and restricted by the lender with respect to the ongoing operation of the project as set forth in this subpart.

§ 252.702 Reserve for replacements and general operating reserve.

(a) The Mortgagor must establish and maintain a reserve for replacements to cover the cost of major repairs to and replacement of structural elements, mechanical equipment and major movable equipment of the facility. This reserve will be held and administered by the lender only as provided in the regulatory agreement and Commissioner's administrative procedures.

(b) [Reserved]

(c) To the extent consistent with the project's liquidity needs, money placed in a reserve for replacements must be invested in United States Treasury securities, securities issued by a Federal agency, or deposits that are insured by an agency of the Federal Government.

§ 252.703 Charges for facilities and services.

(a) The Mortgagor will determine charges, taking into account facilities and services offered by the Project.

(b) The Mortgagor may not collect from residents or prospective residents an admission fee, founder's fee, life-care fee, or similar payment pursuant to any agreement, oral or written, whereby the Mortgagor agrees to furnish accommodations or services in the project to persons making such payments.

§ 252.704 Use of project funds.

(a) The Mortgagor must deposit all rents and other receipts of the project in the name of the project in accounts that are fully insured as to principal by an agency of the Federal Government. Project funds in excess of these needed to meet short-term project operating expenses may be invested in accordance with the administrative instructions of the Commissioner.

(b) The Mortgagor may use project funds only for:

(1) Payment of Mortgage obligations;

(2) Payment of reasonable expenses necessary to the proper operation and maintenance of the project;

(3) Deposits to the reserve for replacements and other required reserves;

(4) Repayment of Mortgagor advances authorized by the Commissioner's administrative procedures.

(5) Distributions of Surplus Cash permitted under § 252.705;

(c) The Mortgagor may not use project funds to liquidate liabilities related to the construction of the project, other than the Coinsured Mortgage, unless the lender authorized this use in accordance with the Commissioner's administrative procedures.

(d) The Mortgagor must deposit and maintain residents' security deposits in a trust account separate and apart from all other funds of the Project. The trust account must be held in the name of the Project and the balance in the account must as all times equal or exceed the Project's liability for residents' security deposits. The owner must comply with any State or local laws regarding investment of security deposits and the Distribution of interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the Project or the Project residents.

§ 252.705 Distributions and residual receipts.

(a) The Mortgagor may make, receive or retain Distributions only as provided in this section. The Mortgagor must compute Surplus Cash and Distributions in accordance with the Commissioner's administrative requirements.

(b) *Proprietary Mortgagors.* (1) Distributions may be paid only from Surplus Cash that exists as of the end of a semiannual or annual fiscal period.

(2) Initial Distributions may be paid only after construction has been completed and the Mortgagor has submitted the cost certifications required by § 252.402.

(3) No Distribution may be paid from borrowed funds, or when payments due under the note, Mortgage, or regulatory agreement have not been made.

(4) If any of the conditions listed below applies, the Mortgagor may distribute Surplus Cash only after obtaining the lender's written approval to do so;

(i) The Mortgagor has not satisfactorily responded to any lender or HUD on-site review report, annual financial statement correspondence or any other correspondence that requires the Mortgagor to implement corrective action, and that was received at least 30 days before the end of the fiscal period for which the Surplus Cash computation is made;

(ii) The lender determines and gives the owner written notification that the project has significant uncorrected physical deficiencies; or

(iii) There is a covenant default (as defined in § 252.806(b)) under the provisions of the Mortgage or the regulatory agreement.

(c) *Nonprofit and public mortgagors.* No distributions are permitted on projects owned by nonprofit or public mortgagors. (1) Any Surplus Cash generated by such project must be deposited in the Residual Receipts account with the lender within 60 days after the end of each fiscal year in which the Surplus Cash is generated.

(2) Residual Receipts must at all times remain under the control of the lender. The lender must administer the Residual Receipts account in accordance with the Commissioner's administrative requirements.

(3) The lender must invest Residual Receipts in accordance with the administrative requirements of the Commissioner. All earnings on these investments must be added to the Residual Receipts account unless other disposition of such earnings has been approved by the Commissioner, or by the lender in accordance with the Commissioner's administrative requirements.

(4) When the contract of coinsurance is terminated any funds remaining in the Residual Receipts account must be distributed in accordance with the Commissioner's administrative requirements.

§ 252.706 Project management.

The Mortgagor must:

(a) Provide for management satisfactory to the lender and the Commissioner, execute a management contract that meets the requirements of the Commissioner, and deliver to the lender such certifications and information regarding project management as the Commissioner and lender may require.

(b) Maintain the project in good repair and condition and promptly complete necessary repairs and maintenance as required by the lender.

(c) Assure that all project expenses are reasonable in amount and necessary to the operation of the project.

(d) Obtain the lender's and the Commissioner's written approval before undertaking self-management, contracting for management services, or paying (or incurring any obligation to pay) fees for management services.

(e) Establish and maintain the Project's books, accounts and records in accordance with the Commissioner's and lender's administrative requirements. Books and accounts must be maintained for such periods of time as the Commissioner may prescribe.

(f) Permit the lender, the Commissioner, the HUD Inspector General, the Comptroller General of the United States, or their authorized agents to inspect the project's property, equipment, buildings, plans, offices, apparatus, devices, books, accounting records, contracts, and documents during reasonable business hours. This right to inspect extends to the records of the Mortgagor, as well as to the records of any companies with which the Mortgagor has an identity of interest, as defined in the regulatory agreement.

(g) Furnish the lender and the Commissioner with a financial report on the project's operations within 60 days following the end of each fiscal year, unless the lender authorizes the Mortgagor to submit the report on a later date. Unless the Commissioner authorizes the lender to accept an unaudited report, the report must be made by an independent certified public accountant or by an independent public accountant licensed by a State or other political subdivision on or before December 31, 1970.

(h) Upon request, furnish the lender with operating budgets; occupancy, accounting and other reports; properly certified copies of minutes of meetings of the directors, officers, shareholders, or beneficiaries of the Mortgagor entity; and specific answers to questions raised from time to time by the lender relative to income, assets, liabilities, expenses, operation, and condition of the project. The Mortgagor must furnish a response to the lender's or HUD's on-site review reports and written inquiries regarding annual or monthly financial statements no later than 30 days after receipt of the lender's report or inquiries.

(i) In advertising accommodations and services and in admitting residents, adhere to civil rights and equal

opportunity requirements set forth in § 252.208.

Subpart I—Contract Rights and Obligations Mortgage Insurance Premiums

§ 252/801 MIP In insurance of advances cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before the intial endorsement of the Mortgage for coinsurance, the lender must collect a MIP from the Mortgagor equal to one percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of initial endorsement, the lender must, before each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, collect from the Mortgagor an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Before the first principal payment, the lender must collect from the Mortgagor an amount equal to 0.5 percent of the average outstanding principal balance of the Mortgage for the year following the first principal payment.

(4) Beginning with the first principal payment and continuing until the Coinsurance Contract terminates, the lender must collect and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal that will be outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 252.804.

(5) The MIP required under paragraphs (a) (1) and (2) of this section may be included in the Mortgage. The Mortgagor must pay the MIP required under paragraphs (a) (3) and (4) of this section from its own funds.

(b) *Payment of MIP by the lender.* (1) At initial endorsement, the lender must pay to the Commissioner an initial MIP equal to .65 percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of the initial endorsement, the lender must, on each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, pay to the Commissioner an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Following final endorsement, the Commissioner will adjust the MIP so that it equals .65 percent per year of the average outstanding principal balance for the year following the date of initial endorsement plus 0.5 percent per year of the average outstanding principal balance for the period from the first anniversary of initial endorsement to the date of the first principal payment. If the adjusted amount is less than the amount previously paid by the lender, the Commissioner will refund the excess amount to the lender for application to the mortgagor's account.

(4) On the date of the first principal payment and each year thereafter on the anniversary of the date on which the first principal payment was due, and continuing until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance of the mortgage for the 12 months following the date the premium becomes payable. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 252.804.

§ 252.802 MIP In insurance upon completion cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor a MIP equal to 0.5 percent per year of the average outstanding principal balance of the Coinsured Mortgage from the date of the endorsement to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor monthly MIP sufficient to accumulate and place in escrow 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 252.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.5 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.5 percent per year of the average outstanding balance of the Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 252.804.

§ 252.803 Duration and method of payment of MIP.

(a) MIP payments must continue annually until one of the following occurs:

(1) The Mortgage is paid in full;

(2) A deed to the lender is filed for record; or

(3) The Contract of Coinsurance is otherwise terminated with the consent of the Commissioner.

(b) The lender may pay any MIP required under this part in cash or debentures.

§ 252.804 Pro rata refund of annual MIP.

If the Coinsurance Contract is terminated by prepayment in full or by termination with the consent of the Commissioner after the due date of the first annual MIP, the Commissioner will refund any MIP paid for the period after the effective date of the termination of insurance. The refund will be mailed to the lender for credit to the Mortgagor's account. In computing the pro rata portion of the annual MIP, the date of termination of coinsurance will be the last day of the month in which the Mortgage is prepaid or the Commissioner receives a termination request. No refund will be made if insurance was terminated because of a default or if termination occurs before the date the first annual MIP is due.

§ 252.805 Late charges—MIP.

(a) If the Commissioner receives a MIP payment more than 15 days after the later of the billing date or due date, the lender must pay a late charge of four percent of the amount due.

(b) If the Commissioner receives a MIP payment more than 30 days after the later of the billing date or due date, the lender must pay both the four percent late charge and interest. Interest will be charged from the later of the billing date or the due date at a rate set

in conformity with the Treasury Fiscal Requirements Manual.

Protection of Mortgage Security

§ 252.806 Annual physical inspection.

As long as the mortgage is coinsured by the Commissioner, the lender must ascertain the general physical condition of the property at least once in each calendar year. The lender must furnish the Commissioner and the mortgagor a copy of its inspection report, which must contain the lender's recommendations for any corrective actions.

Delinquency and Default Under the Mortgage

§ 252.807 Notice of delinquency.

If the lender has not received the Mortgagor's monthly Mortgage payment by the 16th day of the month in which the payment is due, the lender must give the Commissioner and the mortgagor written notice of the delinquency. This notice must include the information required by the Commissioner's administrative procedures. The lender must mail this notice in time for it to be received by the Commissioner by the 20th day of that month.

§ 252.808 Definition of default.

(a) A monetary default exists when the Mortgagor fails to make any payment due under the Mortgage.

(b) A covenant default exists when the Mortgagor fails to perform any other covenant under the provisions of the Mortgage or the regulatory agreement, which is incorporated in the Mortgage. A lender becomes eligible for insurance benefits on the basis of a covenant default only after the lender has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

§ 252.809 Date of default.

For purposes of this subpart, the date of default is:

(a) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(b) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

§ 252.810 Notice of default.

If a default (as defined in § 252.808) continues for a period of 30 days, the lender must notify the Commissioner within 30 days thereafter, unless the default is cured. Unless waived by the Commissioner, the lender must submit this notice monthly on a form prescribed by the Commissioner until the default has been cured, the lender has acquired title to the property, or the coinsurance contract has been terminated.

§ 252.811 Financial relief to cure a default.

(a) To reinstate a defaulted Mortgage, the lender may use one or more of the forms of financial relief described in this section. The lender's efforts to cure a default will not result in a curtailment of interest as provided by § 252.821(b) in any subsequent claim for insurance benefits, if the lender complies with the conditions set forth in this section and the notice requirements set forth in §§ 252.810 and 252.815. The lender must service delinquent loans in accordance with the Commissioner's administrative requirements.

(1) *Temporary adjustment of Mortgage payments.* Without obtaining the Commissioner's approval, the lender may agree to hold the Mortgage in default and temporarily adjust payments, if a temporary payment plan meets the conditions listed below. The lender may approve a payment plan that does not meet all of these conditions only after obtaining the Commissioner's written approval.

(i) The temporary payment plan will last no longer than 18 months.

(ii) Payments will be set at less than the debt service and escrows required by the Mortgage for no more than six months.

(iii) The plan requires the Mortgagor to pay a specific dollar amount each month toward the Mortgage delinquency, but also gives the lender the right (subject to the Commissioner's administrative requirements) to require that the Mortgagor also apply any net operating income to the Mortgage delinquency.

(iv) The Plan requires the Mortgagor to furnish the lender monthly accounting reports until the Mortgage is reinstated.

(v) The Mortgagor agrees that, even if the project is current under the terms of a temporary payment plan, no distributions will be paid until the Mortgage itself has been brought current and the Mortgagor has complied with all terms of the temporary payment plan and any broader reinstatement plan, including the completion of any maintenance work or management initiatives.

(2) *Withdrawal from the reserve for replacements.* If the Mortgage is more than 25 days delinquent, the lender may withraw reserve funds without prior Commissioner approval to pay up to one month's debt service and Mortgage escrows. The lender must obtain the Commissioner's written approval for withdrawals that, individually or cumulatively over a 12-month period, would exceed one month's Mortgage payment.

(3) *Suspension of deposits to the reserve for replacements.* The lender may suspend up to six month's reserve deposits for up to six months during any 36 month period. The lender must obtain the Commissioner's written approval for suspensions in excess of six months during any 36-month period.

(4) *Recasting the Mortgage.* The lender may recast delinquent principal and interest over the remaining Mortgage term so long as the sum of the outstanding principal balance of the Mortgage and the delinquency being recast does not exceed the original Mortgage amount, and the lender obtains the Commissioner's written approval before executing an agreement permanently modifying the terms of the Mortgage.

(b) For any project comprising a GNMA pool, the lender-issuer must continue to pay the securities holders the full amount of scheduled payments due under the securities, even if the lender does not collect the full amount from the Mortgagor.

§ 252.812 Reinstatement of a defaulted mortgage.

If the Mortgagor cures the default before the completion of any foreclosure proceedings, the insurance will continue as if a default had not occurred. The mortgagor must pay all reasonable expenses that the lender incurs in connection with the foreclosure proceedings. The lender must give written notice of reinstatement to the Commissioner.

Termination

§ 252.813 Termination of coinsurance contract.

(a) The Contract of Coinsurance will terminate if any of the following occurs:

(1) The Mortgage is paid in full;

(2) The lender acquires the Mortgaged property and notifies the Commissioner that it will not make a claim for insurance benefts;

(3) The Mortgagor redeems the property after foreclosure;

(4) A party other than the lender acquires the property at a foreclosure sale;

(5) The Mortgagor and lender jointly request termination and the Commissioner grants approval; or

(6) The lender or its successors or assigns commit fraud or make a material misrepresentation to the Commissioner with respect to the Contract of Coinsurance on the Mortgage.

(b) The Contract of Coinsurance may, at the option of the Commissioner, be terminated in the event of the assignment or transfer of interest of a Coinsured Mortgage which does not meet the requirements of § 252.106.

(c) When the Coinsurance Contract is terminated, all of the rights and obligations of the Mortgagor and the lender, including the obligation to pay MIP, will terminate.

§ 252.814 Notice and date of termination by Commissioner.

The Commissioner will notify the lender that the contract of coinsurance on a Mortgage has been terminated and will establish the effective date of the termination. The termination date will be the last day of the month in which any one of the events specified in § 252.813 occurs.

Claim Procedure and Payment of Insurance Benefits

§ 252.815 Notice of election to acquire property and file a claim.

Unless the Commissioner has given the lender a written extension, the lender must notify the Commissioner of its election to acquire the property and its intention to file a claim for insurance benefits within 75 days of the date of default. The Commissioner will approve an extension of the 75-day deadline if the Commissioner determines that: (a) the lender and the Mortgagor are diligently pursuing reinstatement of the Mortgage, and (b) reinstatement of the Mortgage and resolution of the problems that led to the default are feasible.

§ 252.816 Acquisition of property.

Unless the Commissioner has given the lender a written extension, within 30 days after submitting the notice required by § 252.815, the lender must institute action either to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure. The lender must exercise reasonable diligence in pursuing this action, and must promptly report to the Commissioner any developments that might delay the completion of acquisition. During the period that the lender controls the property, it must adhere to the Commissioner's requirements for project management, as set forth in the regulatory agreement and the Commissioner's administrative procedures.

§ 252.817 Deed in lieu of foreclosure.

In lieu of instituting or completing a foreclosure, the lender may acquire the property by voluntary conveyance from the Mortgagor. The lender may accept a deed-in-lieu of foreclosure if:

(a) The Mortgage is in default at the time the deed is executed and delivered;

(b) The credit instrument is cancelled and surrendered to the Mortgagor;

(c) The Mortgage of record is satisfied as a part of the consideration for the conveyance; and

(d) The deed from the Mortgagor conveys marketable title and contains a covenant that warrants against the acts of the grantor and all claims by, through, or under the grantor.

§ 252.818 Disposition of property and application for insurance benefits.

(a) After the acquisition of marketable title to the property, the lender must obtain two appraisals of the property performed by independent appraisers. The lender must select the appraisers from a panel approved by the Commissioner. The appraisals must estimate the market value of the property, as of the date of acquisition, for its highest and best use. The higher of the two appraisal values shall be deemed the appraisal value for purposes of this subpart.

(b) After the lender sells the property, or after the end of 12 months from the date of acquisition of title, whichever occurs first, the lender may file a claim for any insurance benefits to which it is entitled under § 252.820. The lender must file the claim no later than 15 days after the sale, or expiration of the 12-month period, whichever is applicable, or Mortgage interest will be curtailed in accordance with § 252.821(b).

(c) The lender must file the claim on a form approved by the Commissioner and must state the sales price and the income and expenses incurred in connection with the acquisition, repair, operation, and sale of the property. The lender must also submit evidence in support of the claim, as prescribed by the Commissioner, including the appraisals required by paragraph (a) of this section, and ledger records and documentation for all accounts relating to the Mortgage transaction.

(d) If the property has not been disposed of at the time of the lender's request for payment, the lender must use the higher of the two appraised values of the property secured in accordance with paragraph (a) of this section in its notification to the Commissioner, in lieu of the sales price.

§ 252.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the provisions of 24 CFR 207.259(e) will apply, except that the debentures will be dated as of the date of settlement of the claim.

§ 252.820 Amount of payment.

(a) The basis for the computation of insurance benefits will be:

(1) The principal balance of the Mortgage unpaid as of the date of the institution of foreclosure proceedings or the date of acquisition of the property by deed-in-lieu of foreclosure;

(2) Plus all items set forth in § 252.821;

(3) Less all items set forth in § 252.822.

(b) The Commissioner will pay insurance benefits equal to 85 percent of the amount computed under paragraph (a) of this section if the lender:

(1) has obtained no insurance of its coinsurance risk,

(2) has insured 50 percent or less of its coinsurance risk or

(3) is a State Housing Agency eligible as a lender under § 203.7(c) of this chapter that obtained reinsurance from an authorized public mortgage insurer for any portion or all of its coinsurance risk, where the Commissioner finds an identity of interest exists between the State Housing Agency and the public mortgage insurer.

(c) The Commissioner will pay insurance benefits equal to 72.25 percent of the amount computed under paragraph (a) of this section if the lender has obtained insurance for either more than 50 percent of its coinsurance risk or that portion of its coinsurance risk that equals the maximum amount that the insurer is authorized to insure.

(d) This paragraph sets forth the amount of coinsurance benefits to be paid when the amount of reinsurance obtained by the lender changes. If reinsurance is increased after initial or final endorsement, HUD's insurance benefits will be reduced accordingly. HUD's insurance benefits will not be increased if reinsurance is reduced or cancelled after final endorsement.

§ 252.821 Items included in payment.

In computing insurance benefits, the following items will be added to the amount described in § 252.820(a)(1):

(a) The amount of all payments that the lender made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage;

(2) Fire and hazard insurance on the property; and

(3) Any Mortgage insurance premiums paid after the date of default. However, HUD will not reimburse the lender for any interest, late charge or other penalties imposed because of the

lender's failure to make the required payments when due.

(b) An amount equivalent to Mortgage interest on the unpaid principal balance of the Mortgage on the date the lender initiated foreclosure proceedings or on the date the lender acquired title to the property through deed-in-lieu of foreclosure. This interest will be payable from the date of default to the date of payment of the insurance benefits. However, if the lender fails to meet any of the requirements of §§ 252.810, 252.815, 252.816, or 252.818(b), within the specified time (including any permissible extension of time), the accrual of interest allowance on the cash payment will be curtailed by the number of days by which the required action was late.

(c) An amount not in excess of two-thirds of the costs actually paid by the lender and approved by the Commissioner of acquiring the property. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(d) Reasonable payments that the lender made from its own funds and not from project income for:

(1) Ordinary and necessary preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD minimum property standards, those required by local law, and additional repairs that HUD specifically approved in advance; and

(3) Ordinary and necessary expenses in connection with the sale of the property.

§ 252.822 Items deducted from payment.

In computing insurance benefits, the following items will be deducted from the amount described in § 252.820(a)(1):

(a) An amount equal to five percent of the outstanding principal balance of the Mortgage on the date the lender instituted foreclosure proceedings or acquired title to the property through deed-in-lieu of foreclosure;

(b) All amounts received by the lender on account of the Mortgage after the institution of foreclosure proceedings or the acquisition of the property through deed-in-lieu of foreclosure after default, and any other reimbursement to the lender, other than under the Coinsurance Contract;

(c) All cash or funds related to the mortgaged property that the lender holds (or to which it is entitled) including deposits and escrows made for the account of the Mortgagor. However, for any Mortgage comprising a GNMA pool, this deduction must exclude any funds in the lender-issuer's custodial accounts and collateral funding a GNMA Deposit Agreement relating to the lender-issuer loss exposure during the GNMA Indemnity Period;

(d) The amount of any undrawn balance under a letter of credit that the lender accepted in lieu of a cash deposit for an escrow agreement;

(e) Any net income from the Mortgaged property that the lender received after the date of default;

(f) The proceeds from the sale of the project or the appraised value of the project as provided in § 252.818, as follows:

(1) If the lender disposes of the Project through a negotiated sale, the amount deducted will be the higher of the sales price or the appraised value;

(2) If the lender disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted will be the sales price, even if it is lower than the appraised value.

(3) If the lender has not disposed of the project within 12 months from the date of acquisition, the amount deducted will be the appraised value; and

(g) Any and all claims that the lender has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from cancelled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

§ 252.823 [Reserved]

Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program

§ 252.824 Indemnification of GNMA.

(a) If, after the Commissioner pays a coinsurance claim, the lender-issuer fails to pay the full amount owed to a holder of securities guaranteed by GNMA and backed by a coinsured loan, the Commissioner will reimburse the Association for the amount the Association must pay securities holders as a result of the lender's default in payment.

(b) This amount will not exceed 25 percent or 37.75 percent (whichever is appropriate) of the amount computed under § 252.820, plus the amount referenced in § 252.822(a). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will have no claim against the Commissioner for any such funds.

§ 252.825 Withdrawal of lender approval.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the Commissioner may request that the Mortgagee Review Board withdraw approval of the lender-issuer as HUD-approved Mortgagee, under the provisions of Part 25 of this title.

§ 252.826 HUD recourse against lender-issuer.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the lender-issuer will be liable for reimbursing the Commissioner for the payments.

§ 252.827 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right, notwithstanding the requirements of § 252.106, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer or to itself.

(a)(1) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers.

(2) If GNMA rejects all offers or no offers are received, GNMA will have the right to perfect an assignment of the Mortgage to itself.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice within 30 days after taking a Mortgage by assignment in accordance with this

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section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR Part 232. Any future insurance claim by GNMA or any assignment of the fully insured Mortgage will be governed by the appropriate provisions of 24 CFR Part 232, except that any payment will be made in cash instead of debentures.

§ 252.828 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

(a) If, as a result of a default by a lender-issuer on its obligations under the GNMA Mortgage-Backed Securities (MBS) program, GNMA must pay any amount owed to a securities holder, GNMA as substitute lender-issuer shall be entitled to file a claim for and to receive coinsurance benefits in accordance with this subpart. GNMA may file a claim with the Commissioner immediately upon its declaration of the lender-issuer's default under the GNMA MBS program, if the defaulting lender-issuer has acquired legal title to property previously covered by a coinsured mortgage ("coinsured property") but has not received coinsurance benefits under this subpart, and if the defaulting lender-issuer cannot or will not convey legal title to the coinsured property to GNMA. Such a claim may be filed by GNMA notwithstanding the requirements of § 252.818(b) that claims be submitted after the sale of the coinsured property or the expiration of 12 months from the acquisition of title. The claim shall be based upon property appraisals obtained by the lender-issuer at the time of acquisition of title, or, in the absence of such appraisals, upon appraisals obtained by GNMA after default of the lender-issuer. The lender-issuer will have no claim against the Commissioner for any payment pursuant to this section.

(b) If, as a result of the lender-issuer's default, the full amount paid by GNMA to one or more securities holders exceeds the amount of coinsurance benefits paid by the Commissioner to GNMA under paragraph (a) with respect to the Coinsured Mortgage that backed the securities, then the Commissioner shall reimburse GNMA for such additional amount in accordance with § 252.824(b).

(c) For any Coinsured Mortgage that is to be included in a GNMA MBS pool, GNMA shall obtain an assignment by contract of any future right of the lender-issuer to collect coinsurance benefits on the Coinsured Mortgage followng the lender-issuer's acquisition of legal title to the underlying coinsurance property on behalf of securities holders and GNMA. Such assignment shall become effective upon default by any lender-issuer after its acquisition of legal title to the coinsured property.

(d) If the lender-issuer is unable or unwilling to transfer legal title to the coinsured property promptly to GNMA, GNMA shall take all necessary and appropriate action to obtain legal title to it. Upon receipt of legal title, GNMA shall convey the coinsured property to the Commissioner. In the event GNMA cannot acquire legal title, GNMA shall transfer to the Commissioner any other rights or interests it possesses in the coinsured property.

(e) GNMA shall reimburse the Commissioner in an amount not to exceed the amount of any payment by the Commissioner to GNMA under paragraph (a) if the Commissioner is required to pay coinsurance proceeds under this subpart to any party other than GNMA with respect to the Coinsured Mortgage.

Subpart J—Coinsurance of Mortgages Covering Existing Projects

§ 252.901 Mortgages covering existing insured projects eligible for coinsurance.

Notwithstanding the generally applicable requirement that mortgages coinsured under this part be limited to Projects to be constructed or substantially rehabilitated after commitment for coinsurance, a mortgage executed in connection with the purchase or refinancing of an existing Project covered by a mortgage insured by the Commissioner may be coinsured under this subpart pursuant to section 223(f) of the Act. A mortgage coinsured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

§ 252.902 Eligible project.

(a) Notwithstanding the requirements set forth in § 252.201, existing Projects covered by a mortgage insured by the Commissioner (with such repairs and improvements as are determined by the lender to be necessary) are eligible for coinsurance under this subpart. The Project must not require substantial rehabilitation as defined in § 252.3 and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the Project, or from the beginning of occupancy, whichever is later, to the date of application for coinsurance. In addition:

(b) The Project must presently be at sustaining occupancy (occupancy that would produce income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the coinsuring lender, before endorsement of the Project for coinsurance; alternatively, the mortgagor must provide an operating deficit fund at the time of endorsement for coinsurance, in an amount, and under an agreement, approved by the coinsuring lender in accordance with standards established by the Commissioner.

§ 252.903 Maximum mortgage limitations.

Notwithstanding the maximum mortgage limitations set forth in § 252.203, a mortgage within the limits set forth in this section shall be eligible for coinsurance under this subpart.

(a) *Value limit.* The coinsured mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) of the coinsuring lender's estimate of the value of the Project, including major movable equipment to be used in its operation and any repairs and improvements. The coinsuring lender's estimate of value shall result from consideration of:

(1) Estimated market value of the Project by capitalization,

(2) Estimated market value of the Project by direct sales comparison, and

(3) Total estimated replacement cost of the Project.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the lender) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The coinsured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) of net projected Project income available for payment of debt service. Net projected Project income available for payment of debt service shall be determined by reducing the coinsuring lender's estimated gross income for the Project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes, and by the return attributable to business operations.

(c) *Project to be refinanced—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be refinanced by the coinsured mortgage

(*i.e.*, without a change of ownership or with the Project sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller with the purchase to be financed with the coinsured mortgage), then the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the coinsuring lender:

(1) The amount required to pay off the existing indebtedness;

(2) The amount of the initial deposit for the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including lender fees under § 252.206;

(4) The estimated repair costs, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum amount must not exceed eighty-five percent (85%) of the cost of acquisition as determined by the lender. The cost of acquisition shall consist of the following items, to the extent that each item (except for item numbered (1)) is paid by the purchaser separately from the purchase price. The eligibility and amounts of these items must be determined in accordance with standards established by the Commissioner.

(1) Purchase price as indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including mortgages fees under § 255.206;

(4) The estimated repair cost, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

§ 252.904 Term of the mortgage.

Notwithstanding the provisions of § 252.205, a mortgage coinsured under this subpart must have a maturity satisfactory to the coinsuring lender, which is not less than 10 years, nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for coinsurance.

§ 252.905 Labor standards and prevailing wage requirements.

The provisions of §§ 252.209 and 252.301(e) of this part shall not apply to mortgages coinsured under commitments issued in accordance with this subpart.

§ 252.906 Processing and commitment.

Except where otherwise specified in this section, the provisions of § 252.302 shall not apply to mortgages coinsured under this subpart.

(a) After acceptance of an application for a commitment to coinsure, the coinsuring lender will determine the maximum coinsurable Mortgage, review any list of repairs for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed Project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) Paragrah (b) of § 252.302 applies to mortgages coinsured under this subpart.

(c) Paragraph (c) of § 252.302 applies to mortgages coinsured under this subpart.

(d) An application may be made for a commitment that provides for the coinsurance of the mortgage after completion of repairs and improvements or for a commitment that provides, in accordance with standards established by the Commissioner, for the completion of specified repairs and improvements after endorsement.

§ 252.907 Payment of MIP by Mortgagor and lender.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor an initial MIP which shall not exceed the sum of one percent per year of the average outstanding principal balance of the Coinsured Mortgage, calculated from the date of endorsement for Coinsurance to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage, except as provided in § 252.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.65 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.65 percent per year of the average outstanding balance of the Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments, or Mortgage prepayments, except as provided in § 252.804.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

7. The authority citation for 24 CFR Part 255 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z-(9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. 24 CFR Part 255 is amended by adding a new undesignated center heading and new § 255.806 to read as follows:

Protection of Mortgage Security

§ 255.806 Annual physical inspection.

As long as the mortgage is coinsured by the Commissioner, the lender must ascertain the general physical condition of the property at least once in each calendar year. The lender must furnish the Commissioner and the mortgagor a copy of its inspection report, which must contain the lender's recommendations for any corrective actions.

9. Section 255.819 is revised to read as follows:

§ 255.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the

provisions of 24 CFR 207.249(e) will apply, except that the debentures will be dated as of the date of settlement of the claim.

10. Section 255.822 is amended by revising the introductory text and paragraph (f) introductory text to read as follows:

§ 255.822 Items deducted from payment.

In computing insurance benefits, the following items will be deducted from the amount described in § 255.820(a)(1):

* * * * *

(f) The proceeds from the sale of the project, or the appraised value of the project as provided in § 255.818 as follows:

* * * * *

11. Section 255.824(b) is revised to read as follows:

§ 255.824 Indemnification of GNMA.

* * * * *

(b) This amount will not exceed 15 percent or 27.75 percent (whichever is appropriate) of the amount computed under § 255.820, plus the amount computed under § 255.822(a), except that, in the case of mortgages for which insurance benefits are payable under § 255.823, the amount will not exceed 10 percent of the unpaid principal balance and 10 percent of the interest arrears under the mortgage determined under § 255.823(b). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will have no claim against the Commissioner for any such funds.

Date: August 5, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

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Part VI

Department of Health and Human Services

Office of Human Development Services

45 CFR Parts 1321, 1326 and 1328

Grants for State and Community Programs on Aging; and Grants to Indian Tribes and Organizations Serving Older Native Hawaiians for Supportive and Nutrition Services; Final Rules

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1321, 1326 and 1328

Grants for State and Community Programs on Aging; and Grants to Indian Tribes and Organizations Serving Older Native Hawaiians for Supportive and Nutrition Services

AGENCY: Administration on Aging (AoA), Human Development Services Office, HHS.

ACTION: Final rules.

SUMMARY: The Administration on Aging (AoA) is issuing final regulations for Part 1321 for grants to State and Community programs on aging, redesignating former Part 1328 for grants to Indian Tribes and organizations as Part 1326, and adding a new Part 1328 for grants to Native Hawaiians. The basis for these changes is the passage of Pub. L. 100–175 (the Older Americans Act Amendments of 1987), comments on the AOA Notice of Proposed Rulemaking (NPRM) published on March 29, 1988 (53 FR 10107), and the Department's commitment to regulatory reform.

These rules implement Titles III and VI of the Older Americans Act, including the amendments to the Act which modify the current program. The changes emphasize the strengthened roles of the State and area agencies on aging in the development of community-based systems of services.

DATE: The final regulations are effective on August 31, 1988.

FOR FURTHER INFORMATION CONTACT: Frederick Luhmann, Office of State and Tribal Programs, Administration on Aging, Room 4739, 330 Independence Ave., SW., Washington, DC 20201, (202) 245–0011.

SUPPLEMENTARY INFORMATION

Background

The Older Americans Act was first enacted in 1965. The President signed the Older Americans Act Amendments of 1987 (Pub. L. 100–175) on November 29, 1987. The Act was amended eleven times between 1965 and 1987.

As first enacted, the Act authorized funding under Title III to support in each State a State Agency on Aging. Title III also provided funds for each State agency to initiate local community projects to provide social services to older persons.

In 1972, a new Title VII was enacted which authorized funds for local community projects to provide nutrition services to the elderly. The projects were designed to provide persons aged 60 and older with at least one hot nutritious meal five or more days a week. In 1973, the amendments revised the Title III State Grant Program by requiring the State agency to: (1) Divide the entire State into planning and service areas, (2) determine in which areas an area plan would be developed, and (3) designate an area agency on aging to develop and administer the plan in each area. The 1973 amendments also added a new Title V to the Act which authorized the Commissioner to make grants directly to local community agencies to pay part of the cost of the construction, acquisition, renovation, alteration, or initial staffing of facilities for use as a multipurpose senior centers.

The 1978 amendments consolidated under Title III the social services, nutrition services, and multipurpose senior center programs formerly authorized under Titles III, V and VII. This consolidation was designed to eliminate duplicative and overlapping functions that had been conducted under each Title. It also reemphasized the concept of a single focal point for service delivery within each community. The 1978 amendments enacted a new Title VI, a direct grant program to Indian tribal organizations for older Indians. The 1981 amendments made several technical amendments to the Act and reinforced the basic direction established under the 1978 amendments. Most of the changes expanded the capacity of State agencies, area agencies and tribal organizations through increased administrative flexibility.

The 1984 amendments included a number of changes in the various service programs under Title III, including provisions to increase further the ability of States to transfer funds between their separate allotments for supportive and nutrition services; to specify particular attention to the needs of low-income minority older persons; to require area agencies to conduct activities to facilitate coordination of community-based long-term care services; and to strengthen the long-term care ombudsman program. In addition, the 1984 amendments modified the manner in which funds for State administration are allocated to State agencies on aging, specified a statutory limitation on the amount of funds which could be used for administration of Title V, and created a new title for health education and training activities for older persons.

In 1986, legislation increased the authorization of appropriations for the United States Department of Agricluture (USDA) cash and commodity subsidy program for fiscal years 1985–87 and set the level of reimbursement at 56.76 cents for each meal served under Title III for each of those years. The 1987 amendments removed the former provision under which the USDA reimbursement rate was related to changes in the Consumer Price Index. A new fixed reimbursement rate was established for the four year authorization created by the 1987 amendments.

The 1987 amendments provide a strong basis for Older Americans Act supported activities that are responsive to the complex and changing environment which is emerging with the aging of American society. With enactment of these amendments, the Act continues to underscore the collaborative efforts that are needed to ensure that every community in this nation provides the opportunity for individuals to live and mature with dignity and independence. The reauthorized Act reaffirms expectations that AoA, State agencies on aging and area agencies on aging provide leadership at their respective levels and work to establish strong partnerships with other public, private and voluntary sector organizations to assure that the nation is responding to the challenge of an aging society. The role of the State agency on aging is reinforced as the developer of policies and procedures to guide and direct area agencies. The amendments also further enhance the role of the area agency on aging as an advocate on behalf of the elderly and catalyst for ensuring the existence of community-based systems of services for older persons in every community in the planning and service area.

The 1987 amendments authorize the initiation of a number of activities including the establishment in the Administration on Aging of an Office for American Indian, Alaskan Native and Hawaiian Native Programs headed by an Associate Commissioner responsible for Title VI and for chairing an interagency task force related to older Indians. The amendments also establish a separate Title VI–B program of grants for supportive and nutritional services to older Hawaiian Natives. Under Title III, the amendments create: A new Part D to support non-medical in-home services for frail older persons; a new Part E providing grants to States to assist them in meeting special needs of older persons; a new Part F supporting preventive health services for the elderly; and a new Part G providing grants to States for programs to prevent

abuse, neglect and exploitation of older individuals. The new amendments require each State to establish an Office of State Long-Term Care Ombudsman. The Commissioner on Aging is required to conduct a study of the ombudsman program and report to Congress on the findings and recommendations of the study.

Written Comments

During the 60 day comment period following publication of the NPRM, we received over 700 letters; however, only one joint letter from members of Congress and a few other letters addressed the Title VI program. All of the other comments pertained to Title III programs. The numbers of letters received were: Members of Congress (12), national organizations (15), State units on aging (43), State human services agencies (3), Area agencies on aging (184), community service provider agencies (237), and individuals (191). Many of the letters supported the changes which were proposed in order to strengthen the development of community based services. However, a number of commenters indicated that there are provisions in current regulations which we proposed to delete and which they wish to see retained.

As a result of the comment review process, a number of regulatory sections were revised or added. Changes were made in areas where we believed that such changes met a compelling Federal interest and/or were necessary to maintain the integrity of the Title III programs.

Discussion of Comments and Changes Made From the NPRM

Section 1321.3 Definitions.

Commenters most frequently raised questions about the definition proposed for "direct services." Several comments were received about the definition for in-home services and severe disability. Single comments were offered about the following other terms, some of which were not included in the NPRM: greatest social need, means test, periodic, official duties, reservation, rural and significant population.

Typical of the comments offered about the definition of "direct services" was that it was both too vague and too broad. Some commenters stated that *all* activities of area agencies benefit older persons and, thus, would be precluded by the proposed definition. Some commenters also indicated that they understood the definition to prevent area agencies from providing any direct services, although in the view of these commenters it would be appropriate for area agencies to engage in such activities as case management or information and referral.

A few commenters made suggestions about the proposed definition of "in-home services." One commenter suggested that the definition be restricted to Part D since this would permit a fuller range of in-home support services to be offered through Part B. Another commenter requested the removal of the $150 limit on home modifications which was included in the proposed definition.

One commenter requested the inclusion of the complete language of the statute in the definition of "severe disability" so it is clear that individuals with lifelong mental and/or physical disabilities are covered.

AoA Response: We agree that the proposed definition of "direct service" was too broad. Therefore, we have modified the definition in these final regulations to sharpen the intended meaning. The definition neither permits nor precludes area agencies from engaging in such activities; it simply describes what activities constitute direct services. The determination as to whether or not it is appropriate for an area agency to engage in any form of direct service is a responsibility which section 307(a)(10) of the Older Americans Act assigns to the State agency on aging.

We considered the comments offered about the definition of "in-home service"; but concluded that there was merit for reporting, and other purposes, in having a common definition of in-home services for both Part B and Part D. The $150 limit on home modifications is required by section 342(1)(E) of the Act; and, therefore, we could not change it.

The definition of "severe disability" has been modified to include the statutory reference in section 102(9) of the Act to mental and/or physical disability.

One commenter who addressed the definition of "reservation" requested that we include the word "former" in the definition when referring to reservations in Oklahoma. We have made that change. Another commenter stated that the proposed definition of "significant population," as it applied to section 306(a)(6)(N) of the Act, was too restrictive because it was based solely on the number of Indians a tribal organization must represent (that is 50 older Indians) in order to be eligible for a Title VI grant. The commenter indicated that the term could have different meanings in various parts of the nation. We accepted the idea that flexibility should be permitted in defining the term. Therefore, we have not included a standard definition in these rules. However we expect State policies to address this matter. Accordingly, we have added a State plan assurance requiring this at § 1321.17(b)(15). The remaining comments suggested that additional terms be defined; but we determined that no additional definitions are necessary.

Section 1321.7 Mission of the State agency.

Many commenters were supportive of the fact that the proposed regulations included for the first time clear mission statements for the State and area agencies on aging. A few commenters, however, believed that the discussion of State agency responsibilities found in the Act was adequate, and that a further discussion of State agency mission was not required. A significant number of area agencies who commented on this section, and some Members of Congress, objected to any reference to area agencies on aging as "agents of the State agency." A concern also was expressed by some that the term "agents" might have inappropriate connotations of legal liability. A number of commenters requested that the term "agents" be deleted; others requested that the term "partners" be used to describe the relationship between the State agency and area agencies.

AoA Responses: The term "agents" was intended to convey the fact that under the Older Americans Act it is the responsibility of the State agency on aging to designate area agencies to carry out within specific planning and service areas the statutory functions and responsibilities necessary to foster the development in communities throughout the State of comprehensive systems of services for older persons. The State agency has the overall statewide responsibility to assure that such systems are developed in each community and designates area agencies for the purpose of carrying out the State agency mission in designated geographic areas of the State. However, because of the concern expressed about the term "agents of the State," we have revised § 1321.7(b) to delete the term "agents" and to express more clearly the purpose for which area agencies are designated by the State agency. We also deleted the term "agent" from § 1321.1(c) where it had appeared in the proposed rules. This revision is intended to more clearly reflect that the State agency provides overall policy and program guidance. Area agencies have

flexibility to carry out their mission within that framework.

Section 1321.9 Organization and staffing of the State agency.

One Member of Congress expressed concern that proposed regulations did not prohibit the designated State agency on aging from directly operating the ombudsman program when that agency also has responsibility for licensing or certifying long-term care services. The commenter noted that AoA has chosen to interpret the statute as prohibiting the ombudsman function from being located in the same agency as the licensing and certification function only when the ombudsman program is contracted to another agency or organization. The concern of the commenter was that every appearance of conflict of interest related to the ombudsman program should be avoided; and that the potential for such an appearance of conflict of interest existed when the State agency on aging also had responsibilities related to licensing and certification.

AoA Response: We are sensitive to the concern expressed that the operation of the ombudsman program be free from even the slightest appearance of conflict of interest. Nevertheless, given the structure of section 307(a)(12)(A) of the Act, we believe that we have no alternative but to reaffirm our interpretation that the statutory constraint on operation of the ombudsman program by an agency which also has licensing and certification responsibilities does not extend to the State agency on aging. We agree, however, that in those situations where the State agency on aging also has responsibilities for licensing and certification, special care must be taken and consideration given to assure the protection of the ombudsman program from even a hint of conflict of interest. We believe that the policies which the State agency develops under § 1321.11 of these regulations provide the means to achieve this goal. Those policies must provide strong measures to guarantee the integrity of the ombudsman program on every point intended by the Congress. In these final regulations, we are requiring that State policies be developed in consultation with appropriate parties within the State. It is our expectation that in the development of policies governing the ombudsman program there will be full and ample discussion of the issue of conflict of interest and that the policies developed by each State will contain clear and explicit provisions to prevent any such situation from arising, or if it did, to assure appropriate and timely action to correct any abuse of this nature.

Section 1321.11 State agency policies.

Comments were received from a relatively small number of States and national aging organizations on this section. Several commenters supported the concept that States should be responsible for the development of State policies, particularly for the ombudsman program. Comments from a few States were supportive of AoA's proposal to delete the provision prohibiting the State agency from requiring the area agencies on aging to submit to it subgrants or contracts for prior review or approval. Area agencies on aging were strongly against deleting this prohibition on prior review and approval authority of the States. Many area agencies expressed the belief that State agencies, if free to mandate prior review and approval, would politicize the decision-making process with regard to subgrants and contracts.

AoA Response: We have included language to the effect that State policies governing Title III programs are to be developed in consultation with other appropriate parties in the State. We have given careful consideration to the comments regarding deletion of the prohibition against prior review and approval by the State agency. AoA is not imposing a requirement that States now begin to review and approve subgrants and contracts by their area agencies on aging. Neither are we prohibiting the States from developing such a requirement. We recognize the State's responsibility for developing rules and guidelines in this area. In deleting this provision from the current regulations, AoA is adhering to the principle of providing maximum flexibility to State governments to respond to the needs of their respective populations.

Sections 1321.13 Advocacy responsibilities and 1321.61 Advocacy responsibilities of the area agency.

Several commenters indicated concern about language in the existing regulations (§§ 1321.33(b) and 1321.65(b)), which are carried over to §§ 1321.13(b) and 1321.61(d) in the proposed regulations, and which they believe unjustifiably restricts lobbying and other political advocacy activities by State and area agencies on aging. Several State agencies, Members of Congress, and national organizations, expressed concern that we either clarify or delete language stating that "no requirements in this section shall be deemed to supersede statutory or other regulatory restrictions regarding lobbying or political advocacy with Federal funds." Commenters pointed out that this provision appears not only to be contrary to the intent of Congress, but also to contradict policies stated in this same section that give State agencies the responsibility to review, monitor, evaluate and comment on Federal, State and local programs, laws, policies and other actions which affect or may affect older individuals.

AoA Response: We revised the language which had appeared in proposed §§ 1321.13(b) and 1321.61(d) to reflect more precisely our intent with regard to lobbying or other political advocacy by State and area agencies on aging. The revised language appears in §§ 1321.13(b) and 1321.61(d).

Section 1321.17 Content of State plan.

By far the greatest number of comments received on this section of the proposed rules focused not on what was in the proposed rule, but what was proposed to be deleted from the existing regulations. A large number of commenters, including: Some Members of Congress, the national associations representing State and area agencies, some individual State agencies, and all area agencies who addressed this point, opposed the proposed deletion of existing § 1321.9(e)(5). That section permits a State agency to approve the use by area agencies of Part B service funds for program development and coordination, provided that the State agency first spends 8.5 percent (now 10%) of its total combined supportive and nutrition services for the administration of area plans. On the other hand, a large number of service providers wrote in favor of the deletion on the basis that it would free up scarce service funds for needed services to older persons. Our reason given in the NPRM for proposing to delete this provision was that the 1987 amendments to the Act increased the amount of funding available for administration of area plans from 8.5 to 10 percent of the State's allotments for services. Also, the 1987 amendments added new Parts to the Act, such as Part D for in-home services, which provided a broader basis upon which the 10 percent could be computed. We, therefore, felt that the existing authority for area agencies to use service funds for program development and coordination was no longer necessary or appropriate.

The most common reason offered by commenters for retention of the existing rule was that the increase from 8.5 to 10 percent for area plan administration was inadequate to offset the amount of funds currently used for program

development and coordination. Commenters also contended that the 1987 amendments to the Older Americans Act added significant new responsibilities for area agencies and that continued use of service funds for program development and coordination was necessary to properly carry out these responsibilities.

AoA Response: Because of the strong sentiments expressed about the proposal to delete the program development and coordination authority, we conducted a survey of State agencies to obtain a clearer perception of the extent to which services funds currently are used for program development and coordination. Our findings indicated that 23 State agencies permit such use, while the remainder do not currently use funds for this purpose. As reported by the States, in FY 1987 a total of approximately $10.25 million nationally was approved for program development and coordination purposes. By comparison, the increase in the amount of funds available in FY 1988 for area plan administration nationally as a result of the increase from 8.5 to 10 percent of each State's Title III allotment equaled $9.85 million. We concluded, therefore, that on a national basis the deletion of the program development and coordination authority would have resulted in only a modest reduction in the overall funds available for area plan administration purposes. However, because of the diverse pattern among States in the use of the existing program development and coordination authority, we recognized that deletion of this authority might have adverse effects in some States. As a result, we decided to retain the existing authority to use service funds for program development and coordination, but have added a requirement that the State agency must certify that the area agency which proposes to use supportive service funds for program development and coordination has demonstrated to the satisfaction of the State agency that the use of such funds will enhance the services available to older persons in the planning and service area. The program development and coordination provision appears at § 1321.17(f)(14).

A few commenters discussed the topic of outreach to older Indians under Title III and the question of coordination between Title III and Title VI of the Act In response to the comments which were concerned with outreach to older Indians as required by section 306(a)(6)(N) of the Act, we added language to § 1321.17(f)(8) which emphasizes the responsibility of the State agency to assure outreach to older Indians. As for cordination, we added in § 1321.17(f)(13) a new requirement that the State agency assure that services provided under Title III will be coordinated, where appropriate, with the services provided under Title VI of the Act. We also added similar requirements for coordination in §§ 1326.19(d)(6) and 1328.19(d)(6).

Section 1321.35 Withdrawal of area agency designation.

National aging organizations were the primary commenters submitting responses to this section of the proposed regulations. Several comments supported the proposed new language which would permit States to withdraw area agency on aging designation when the activities of the area agency are inconsistent with its statutory mission or in conflict with the requirement of the Act that it funciton only as an area agency on aging. Several other commenters suggested deletion of this new language because it was deemed to be unnecessary and because withdrawal of designation was not considered to be the intent of Congress.

AoA Response: In adding new language to section 305(c) of the Older Americans Act, Congress specified that an area agency is to function only for the purpose of serving as an area agency. The regulations make clear that it is the State agency's responsibility to ensure that area agencies adhere to this statutory mission and that the ultimate sanction by the State agency for noncompliance is withdrawal of designation as an area agency on aging. Therefore, we have not modified this provision.

Section 1321.51(d) Confidentiality and disclosure of information.

Many comments were received objecting to the inclusion of the requirement that the director of the State agency, or other legitimately authorized superior of the State ombudsman and of representatives of the Ombudsman Office, be given access to the ombudsman files. A number of Members of Congress were particularly concerned that this provision be deleted because of the belief that it authorizes unwarranted expansion of those individuals who would have access to the records of residents of long-term care facilities. Congressional commenters expressed the belief that the effectiveness of the ombudsman program would be decreased under the process proposed, since the effectiveness of the program is tied to confidentiality of complainants or residents of long-term care facilities.

AoA Response: Under section 307(a)(12) of the Older Americans Act, the State agency is required to "establish and operate" an ombudsman program. AoA proposed to include a provision at § 1321.51(d) allowing access to files by the State agency director and other authorized individuals to ensure that the State agency had the ability to monitor the quality and effectiveness of the program. Most commenters expressed the belief that access to ombudsman records by the State agency was not needed in order to properly monitor the program. However, we remain committted to the concept that it is the State agency on aging that is charged with its effective and high quality implementation; regular monitoring of this program by the State agency is essential to that end. We believe that access to the ombudsman files on a highly selective basis, without disclosure of the identity of any complainant or resident of a long-term care facility, is an essential element in determining the effectiveness and quality of this important service. Likewise, we are dedicated to maintaining the confidentiality of any complainant or resident of a long-term care facility. Therefore, proposed § 1321.51(d) has been deleted, and a carefully controlled and limited provision for access to the files has been added in § 1321.11(b). While a State agency on aging is not required to review the ombudsman files, when the director of the State agency determines that it must have access to the files to verify effectiveness and quality of programs, access will be under very limited and controlled circumstances, prohibiting disclosure of the identity of any complainant or resident of a long-term care facility to the individuals conducting the monitoring.

Section 1321.52 Evaluation of unmet need.

Some Members of Congress, as well as State agencies on aging and national organizations, requested that this section of the regulations be revised to include more specific directions relative to geographic and other factors that should be taken into consideration by States in their evaluations of unmet need.

AoA Response: We recognize that State agencies are in need of further guidance in this area. However, we determined that the level and type of guidance that State agenices would find most helpful would be too detailed to include in regulations; and that, to include in the regulations such detailed guidance for a one-time study would be

inconsistent with the Department-wide fundamental principle of regulatory simplicity. We do intend through our regular methods of information dissemination to make such guidance available to State agencies on aging.

Section 1321.53 Mission of the area agency.

As with § 1321.7, Mission of the State agency, many commenters expressed strong support for the fact that the proposed regulations include a clear statement of the mission of the area agency. State agencies on aging and service provider agencies were particularly supportive of this section. However, other commenters, mostly area agencies, requested that the mission statement be deleted. In the view of these commenters, the Act provides sufficient guidance on this topic. A few area agency commenters suggested that if a mission statement were necessary, it should be developed by each area agency, or by each State agency for its area agencies; and should not be included in regulations. Typical of several comments was the statement that the Older Americans Act emphasizes local decision-making and that it is inappropriate to impose a mission statement from above. Another perspective reflected was a concern that the mission statement was restrictive and would impede area agencies from taking advantage of opportunities to receive funding from commerce, industry and local governments. A few commenters suggested that the mission statement would restrict the latitude of area agencies to mirror and respond to the changing population trends among older persons.

AoA Respose: Our reason for including this mission statement and the mission statement for the State agency in the proposed rules was to articulate in a unified fashion the provisions concerning State and area agency functions and responsibilities which are found in various places throughout the Older Americans Act. We fully support the concept of local decision-making under the Older Americans Act in matters which bear upon the manner in which each community responds to the needs of its older people; but in the case of area agencies on aging there is a common statutory mission which must guide such decision-making. We do not agree with the comment that the mission statement for area agencies in any manner restrains the ability of area agencies to take advantage of new opportunities or to be fully responsive to the challenges of a changing aging population. Rather, we believe that the mission statement, as proposed, sets a benchmark against which each area agency can measure its progress in serving as a leader for the communities in the planning and service area for which it is responsible. We believe firmly that the mission statements for State and area agencies will prove to be significant and influential provisions, not because they impose any new requirements, but because they present a clear, well articulated vision of the mission of State and area agencies which other entities, communities and individuals can easily understand. Therefore, the statement of mission is essentially the same as that proposed in the NPRM.

However, in response to several commenters, we have made a minor revision in the mission statement. Some commenters were concerned that the term "community leadership" in proposed subsection (c) was subject to a degree of ambiguity. They indicated that it was not always clear who constituted the community leadership. In response to these comments, we have changed the term to "elected community officials."

Section 1321.55 Organization and staffing of the area agency.

Many of the commenters on this section requested that the language on organization and staffing in the existing regulations at § 1321.57 be retained, rather than the language in the proposed regulations. A number of the comments also focused on the fact that proposed subsection (a)(2) used the term "single" rather than "separate" in referring to the ogranizational unit within a multi-purpose agency. The commenters correctly noted that the Act uses the term "separate." The concern of the commenters, however, extended beyond the semantic difference between the terms "single" and "separate." A number of commenters expressed the opinion that the proposed regulations were too restrictive in interpreting the statutory requirement that the "separate organizational unit" within a multi-purpose agency, rather than the multi-purpose agency itself, be recognized as the designated area agency. In the view of these commenters, the intent of the Act in requiring a separate organizational unit within a multi-purpose agency was to assure the visibility of the aging program but not to require that the unit be the designated area agency. The commenters who expressed this view noted with concern that implementation of the proposed rule, in their opinion, could cause widespread de-designations of existing area agencies which are presently housed in regional planning districts, councils of governments, county and private nonprofit umbrella agencies. Some commenters also suggested that subsection (c) of the proposed rule which discussed the circumstances under which an area agency would cease to function as an area should be deleted. The comments on this subsection were similar to those which were offered with regard to proposed § 1321.35, withdrawal of area agency designation.

AoA Response: We did not accept the request of those commenters who asked that we retain the language on organization and staffing of the area agency as found in the existing regulations. The language in those regulations does not adequately reflect the 1987 amendments to the Act. For technical accuracy, we have accepted the request to change the term "single" to "separate" in subsection (a)(2). However, we could not accept the interpretation of those commenters who suggested that the Act, in identifying the separate unit in a multi-purpose agency as the area agency, was merely intending that such a unit serve as a visible focal point for aging, but that the unit was not to be recognized as the designated area agency on aging. The requirement to consider the separate organizational unit within a multi-purpose agency as the designated area agency is a statutory provision found in section 305(c)(4) of the Act. We have simply restated this statutory provision in the regulations because of its importance. We do not concur with the views of those who expressed concern that recognizing the separate organizational unit as the designated area agency will result in widespread de-designation and disruption within the aging network. Each State agency on aging has the responsibility and the ability to assure that the requirements of the Act on this point are met, while at the same time avoiding major disruption, using the State's own appropriate policies and procedures. We expect that those States agencies which have designated multi-purpose agencies as area agencies on aging will move expeditiously to take whatever actions are necessary to comply with the requirements of the Act concerning the types of agencies or units which legally may be designated as area agencies on aging.

In order to avoid unnecessary disruption in the implementation of this provision, we have modified § 1321.55(a)(2) to provide that State action to comply with the requirement for designation of separate organizational units within multi-

purpose agencies currently serving as area agencies shall not be considered "designation of a new area agency" for purposes of section 305(b)(5)(B) of the Act. This section of the Act provides that whenever a State agency designates a new area agency, the State agency shall give the right of first refusal to a unit of general purpose local government if: (1) Such unit can meet the requirements of serving as an area agency; and (2) if the boundaries of such a unit and the boundaries of the planning and service area are reasonably contiguous. We believe that in the 1987 amendments Congress indicated to reaffirm the necessity for separate area agency identity in the case of a multi-purpose agency but did not intend to open the possibility for major changes of the type that might occur should the provisions of section 305(b)(5)(B) apply in this situation. Therefore, we have determined that the right of first refusal does not apply in the following limited circumstance: Where the State agency on aging designates as an area agency on aging a separate organizational unit of a multipurpose agency which has been serving as an area agency. The right of first refusal provision, of course, would be applicable in all other situations where the State agency designates an area agency.

Section 1321.57 Area agency advisory council.

A few commenters expressed their views about area agency advisory councils. Several commenters commended the fact that the membership of the advisory council was required to include more than 50 percent older persons, including minority individuals. One commenter indicated that the language of the proposed rules which stated that advisory councils "shall carry out functions" implied an incorrect role for advisory councils. This commenter stressed that advisory councils are, as their name implies, to provide advice to the area agency; but they do not have responsibility for implementing and carrying out functions of the area agency. The commenter requested that the language be changed to reflect this "advisory role," rather than an implementing role. Some area agency commenters also took exception to the proposed inclusion on the advisory council of representatives of health care provider organizations and representatives of supportive services providers. The reasons given for excluding these two groups were two: the Act does not mention them and their participation as advisory council members might create conflict of interest situations. A large number of provider agencies commented favorably on the proposed regulations as written.

AoA Response: The fact that a small number of commenters chose to offer negative observations on this topic was offset by the fact that many others found the proposed regulation in this area to be highly satisfactory. It was not our intention to imply that the role of advisory councils was other than "to advise." However, we did wish to emphasize the potential resource represented by advisory councils and to urge area agencies to make greater use of their advisory councils in a variety of ways which further the development of systems of services at the community level. To avoid any possible ambiguity, we have clarified in subsection (a) that the functions of the council are "advisory" functions. However, we have not changed the language of the proposed rules concerning membership of the advisory council. We believe that health care providers and supportive services providers have essential roles to play in the development of responsive service systems at the community level; and we believe that it is important for all of the significant parties who must participate in the development of service systems for older persons to be actively involved in the process of planning for and implementing decisions directed to that end. Therefore, we have retained the requirement that representatives of health care providers and supportive services providers be included on the advisory council. We believe that the area agency can establish appropriate measures to assure that the presence of these representatives on the advisory council does not lead to any conflict of interest situations. As necessary, the State agency also can establish State policy on this matter.

Section 1321.63 Purpose of service allotments.

One Member of Congress and several other commenters indicated that the list of services found in § 1321.63(a) of the proposed regulations should be expanded to include "Outreach services." The reason offered by these commenters was that subsection (a) lists the categories of services for which funds are distributed by formula to State agencies on aging; and that outreach is one such service. A national organization pointed out that the language in subsection (a) should be modified to reflect the fact that area agencies, as well as the State agency, are involved in the development or enhancement of community systems building.

AoA Response: We accepted the points made by commenters and revised subsection (a) both to include "Outreach services" and to include reference to area agencies on aging.

Section 1321.67 Service contributions.

A number of commenters expressed concern that the proposed regulations, like earlier rules, permit contributions for supportive services. They pointed out that the Act speaks explicitly only of contributions for nutrition services and concluded from this fact that it was not proper to include in the regulations any provisions which dealt with contributions for supportive services. In addition to a general concern about contributions for supportive services, some commenters noted that in the case of certain types of services, such as information and referral, it is not practical to expect contributions. A few commenters indicated that providing an opportunity to contribute in some instances might serve as a disincentive for older persons to avail themselves of needed services. Another concern expressed by a few commenters was a fear that service providers might charge older persons for a service, rather than provide them with an opportunity to contribute voluntarily. These commenters cited examples of such abuse. Finally, a request was made by a few commenters to change the wording in subsection (a)(1) from "contribute voluntarily" to "voluntarily contribute" However, a large number of service provider agencies wrote favoring the proposed rules as written.

AoA Response: The question of whether or not it is allowable in regulations to provide an opportunity for contributions for supportive services was considered some time ago when we issued the original regulation on this matter. It was our conclusion then, and remains so now, that while the Act does not explicitly mention contributions for supportive services, it is permissible in regulations to provide a basis for the receipt of such contributions. The rule as it appeared in the NPRM repeated the rule which has been in effect for a number of years without any perceived difficulties. On the contrary, the voluntary contributions of program participants have allowed for a significant increase in the level of services provided in conjunction with the Title III program. The language of the regulation is clear: All contributions are voluntary; the privacy of each older person must be protected with respect to his or her contribution; and, no older person may be denied a service because of unwillingness or inability to

contribute. State and area agencies are expected to assure that older persons fully understand the voluntary nature of contributions and that the voluntary contribution provision does not present a disincentive for any older person to receive a service. If there is abuse, as some commenters noted, it is the responsibility of the respective State and area agency to take appropriate measures to assure that service providers do not misinterpret the rule as allowing, or even requiring, charges of services. We recognize that certain services, such as information and referral, do not lend themselves as readily as do other services to the idea of contributions. This fact in itself, however, need not preclude a service provider from providing "an opportunity" to contribute.

We also have clarified in these final rules the permissible alternatives for the use of service contributions which a State agency may establish through State policy. In order to assure that contributions made by program participants result in an expansion of services, a State agency may authorize the use by service providers of either or both of the alternatives described in 45 CFR 92.25(g) (2) and (3).

We will not permit States to use the deduction alternative described in 45 CFR 92.25(g)(1) since that alternative would be inconsistent with the requisite expansion of services under this part. Further, use of the deduction alternative would seriously jeopardize the continuance of the totally voluntary contributions which the participants make to the program. In the period between FY 1981 and FY 1987 voluntary contributions have risen from $79 million to $163.6 million per year. We do not wish to provide a disincentive for the continued growth in contributions.

Section 1321.71 Legal assistance.

The public comments on the legal assistance provisions of the proposed regulations focused on four points: (1) Limitation on services to individual clients; (2) legal services performed at the request of public officials; (3) activities taken in the provider's self-interest; and (4) limitation on the use of private funds.

1. Lobbying on behalf of a client.

Several commenters stated that the proposed regulations did not include the Legal Services Corporation (LSC) provisions for lobbying on behalf of a client. Section 1612.5 of the LSC regulations ("Permissible activities on behalf of eligible clients") covers that subject at length.

2. Activities requested by public officials.

Section 1612.6 of the LSC regulations, like the LSC Act, permits certain legal activities to be undertaken at the request of public officials. Our proposed regulations did not include this provision.

3/4. Activities in the provider's interest; restriction on use of private funds.

The commenters also expressed concern about the lack of an exception, from the general prohibition on lobbying, for self-help by the organization. Section 1321.71(i)(2)(i) of the proposed rules—like § 1612.13 of the LSC regulations—would have permitted lobbying with private funds and pertaining to measures directly affecting activities of the provider. Thus, there was a self-help exception, but only with respect to the use of private funds. The commenters also criticized the proposed restrictions on the use of private funds.

AoA Response: 1. *Lobbying on behalf of a client.* We intended to encompass these activities by the broad statement in proposed § 1321.71(b) that the regulations do not prohibit "any form of legal assistance to an eligible client * * *" nor may they interfere with "the fulfillment of any attorney's professional responsibilities to a client." However, in response to the comments, we have added to § 1321.71(i) new subsections (5) and (6), which reflect the substance of § 1612.5 of the LSC regulations. These additional subsections are being added to the regulations to clarify the point for the benefit of those who expressed concern in their comments.

2. *Activities requested by public officials.* We believe that it would not be appropriate to use Title III funds to assist public officials with respect to issues other than aging. However, we agree that under certain circumstances, responding to a request from a public official or body on issues related to aging may be appropriate. Therefore, we have added to § 1321.71(i), a new subsection (7), which permits such actions on condition that the legal assistance provider first obtain the written approval of the responsible area agency.

3/4. *Activities in the provider's interest; restriction on use of private funds.* We have responded to the concerns of commenters in these areas by deleting proposed § 1321.71(i)(2) as well as the words "by private entities or by a recipient, directly or through a subrecipient" in subsection (j). The effect of these deletions is that in these final rules there is no reference to—and thus, no limitation on—the use of private funds for any purpose. We agree that AoA has no particular interest in regulating the use of funds from other sources, so long as the activities undertaken with those funds do not conflict with the provider's responsibilities toward its clients. Thus, providers may use private funds for self-help activities, as is permissible under the LSC regulations.

Other Comments

In addition to the areas of comments noted above, some commenters addressed other topics. For example, some commenters asked that interim final regulations be issued in order to provide further opportunity for comment. A small number of other commenters requested under greater level of detail and specificity in many areas of the regulations. A few commenters asked that the regulations include matters which are of an internal administrative nature, such as a description of the duties and functions of the Associate Commissioner for American Indians, Alaskan Natives, and Hawaiian Natives.

AoA Response: We provided a 60 day comment period on the proposed regulations and have carefully reviewed over 700 letters of comment submitted by persons from all parts of the nation who represented widely divergent points of view. We have accepted and incorporated in these final regulations those comments which in our judgment served to strengthen and clarify the regulations. We do not believe that any useful purpose would be served by issuance of interim final regulations with another comment period. While a few commenters encouraged that we include greater detail and stringency in these regulations, we have not accepted that suggestion. Our principle in writing these regulations has been to provide maximum flexibility and in accordance with Department policy, to avoid needlessly burdensome requirements. Finally, we have not acceded to the request to include in the regulations matters which relate to the internal operation of the Administration on Aging and the Department of Health and Human Services. We do not consider matters of that nature to be proper

material for inclusion in program regulations.

Liquidation of obligations

Several commenters expressed concern regarding the impact of §92.23(b) of the HHS regulation—"Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." 45 CFR 92.23(b) requires States to liquidate obligations no later than 90 days after the end of the period during which the State is permitted to obligate the federal funds. The commenters stated that the multi-tiered grant structure of Title III (AoA, State unit on aging, area agency on aging and service provider) prohibits compliance with this common rule requirement.

AoA response: This matter affects all federal programs that permit sub-awards with performance periods that run beyond the period during which grant funds are available to the State for obligation. Consequently it will be covered in a separate rule.

Other Technical Changes (§§ 1321.3, 1321.23, 1321.29, 1321.79 and 1321.83)

We have deleted the proposed definition for "Administrative action" in § 1321.3 because it was pointed out to us that the 1987 amendments deleted the word "administrative" from section 307(a)(12)(i) of the Act and there is no longer a need for this definition. Also, based on a suggestion from a commenter, we added the words "or State law" following the word "Act" the second time it appears in the definition of "Official duties" because in some instances State law may specify official duties of the State Ombudsman Office representatives.

We have moved §§ 1321.23 (c) and (d) of the proposed regulations. They have now become §§ 1321.29 (c) and (d). These sections are related to the designation of planning and service areas which is discussed under § 1321.29.

We have deleted the redundant statement regarding the effective date of a decision to withhold funds which appeared in § 1321.79(a) of the NPRM as follows: "* * * or later than the first date of the Commissioner's decision * * *". The corrected sentence in which the redundancy appeared now reads as follows: "This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter."

We have inserted a phrase pertaining to the reallotment of funds withheld from the State which was inadvertently omitted from the first paragraph of § 1321.83. After the phrase "* * * or political subdivision of the State * * *," we have inserted: "* * * that has the authority and capacity to carry out the functions of the State agency * * *."

These regulations require compliance with certain sections of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, at 45 CFR Part 92. Since the regulations in Part 92 will not be effective until October 1, 1988, these final regulations should be understood as referring to the corresponding predecessor provisions of OMB Circular A–102 for the period prior to that date.

Impact Analysis

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that these rules do not constitute a major rule because they will not have an annual effect on the economy of $100 million or more; result in major increase in costs or prices for consumers, any industries, any governmental agency or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets. We do not believe that there will be any additional costs under these rules since the types of statutorily mandated data we will collect are ordinarily utilized by States for efficient program management.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, requires that an agency prepare a regulatory flexibility analysis for a proposed or final rule if the rule would have significant economic impact on a substantial number of "small entities", i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

The responsibility for meeting the requirements of these regulations is on the State agencies and to a lesser extent on area agencies. Actual delivery of services may be provided in some circumstances by proprietary, public and not-for-profit agencies or organizations under grants or contracts from State or area agencies. Although area agencies and most service delivery agencies and organizations are "small entities" within the meaning of the Act, this rule will impose no significant burdens on State agencies, area agencies or other affected parties and will provide flexibility to State and area agencies in implementing the provisions of the Act. For these reasons, the Secretary hereby certifies that these regulations will not have a significant impact on a substantial number of small entities.

Recordkeeping and Reporting Requirements

Sections 202, 305, 306, 307, 614, and 623 of the Act require collection of data, area and State plans and Native American organization applications. These rules at §§ 1321.17, 1326.19 and 1328.19 contain revised information collection requirements. The Act requires the Commissioner each fiscal year to collect from States statistical data on programs and activities carried out with funds provided under the Act. The data must include for each type of service: The aggregate amount of funds expended, the number of individuals served, and the number of units of service provided. Additionally, the data must indicate the number of senior centers funded and the extent to which area agencies statisfied their statutory requirements concerning expenditure of adequate funds on specified services and targeted services to older persons in greatest need. In responding to new statutory data collection requirements, AoA will be sensitive to avoiding any needless burden on State and area agencies. AoA will provide States with an opportunity to comment on revised information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of these revised information collection requirements to the Office of Management and Budget (OMB) for its review.

OMB has not yet approved the revised information collection requirements contained in these rules. The new information collection requirements contained in §§ 1321.17, 1326.19 and 1328.19 will not go into effect until OMB approval has been obtained. Although OMB has not yet approved the sections of these regulations associated with the development of State and area plans and Native American organization applications, those statutory activities required to maintain eligibility for funding remain in effect. When OMB assigns information collection approval numbers, we will publish a notice in the **Federal Register**.

List of Subjects

45 CFR Part 1321

Administrative practice and procedure, Aged, Grant program/social

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programs, Nutrition, Reporting and recordkeeping requirements.

45 CFR Part 1326

Administrative practice and procedures, Aged, Grant programs, Indians, Reporting and recordkeeping requirements.

45 CFR Part 1328

Administrative practice and procedures, Aged, Grant programs, Hawaiian Natives, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special Programs for Aging, Title III Part A and B—Grants on Aging: 13.635 Special Programs for Aging, Title III Part C—Nutrition Services); (13.655 Special Programs for Aging, Title VI—Grants for Indian Tribes)

Dated: June 22, 1988.

Carol Fraser Fisk,

Commissioner on Aging.

Approved: July 11, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set forth in the Preamble, Chapter XIII, Subchapter C, of Title 45, Subtitle B, Code of Federal Regulations is amended as follows:

1. Part 1321 is revised as follows:

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

Subpart A—Introduction

Sec.
1321.1 Basis and purpose of this part.
1321.3 Definitions.
1321.5 Applicability of other regulations.

Subpart B—State Agency Responsibilities

1321.7 Mission of the State agency.
1321.9 Organization and staffing of the State agency.
1321.11 State agency policies.
1321.13 Advocacy responsibilities.
1321.15 Duration, format and effective date of the State plan.
1321.17 Content of State plan.
1321.19 Amendments to the State plan.
1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.
1321.23 Notification of State plan or State plan amendment approval.
1321.25 Restriction of delegation of authority to other agencies.
1321.27 Public participation.
1321.29 Designation of planning and service areas.
1321.31 Appeal to Commissioner.
1321.33 Designation of area agencies.
1321.35 Withdrawal of area agency designation.
1321.37 Intrastate funding formula.
1321.41 Single State planning and service area.
1321.43 Interstate planning and service area.
1321.45 Transfer between congregate and home-delivered nutrition service allotments.
1321.47 Statewide non-Federal share requirements.
1321.49 State agency maintenance of effort.
1321.51 Confidentiality and disclosure of information.
1321.52 Evaluation of unmet need.

Subpart C—Area Agency Responsibilities

1321.53 Mission of the area agency.
1321.55 Organization and staffing of the area agency.
1321.57 Area agency advisory council.
1321.59 Submission of an area plan and plan amendments to the State for approval.
1321.61 Advocacy responsibilities of the area agency.

Subpart D—Service Requirements

1321.63 Purpose of services allotments under Title III.
1321.65 Responsibilities of service providers under area plans.
1321.67 Service contributions.
1321.69 Service priority for frail, homebound or isolated elderly.
1321.71 Legal assistance.
1321.73 Grant related income under Title III-C.
1321.75 Licenses and safety.

Subpart E—Hearing Procedures for State Agencies

1321.77 Scope.
1321.79 When a decision is effective.
1321.81 How the State may appeal.
1321.83 How the Commissioner may reallot the State's withheld payments.

Authority: 42 U.S.C. 3001 et seq.; Title III of the Older Americans Act, as Amended.

Subpart A—Introduction

§ 1321.1 Basis and purpose of this part.

(a) This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under Title III of the Older Americans Act, as amended (Act). These requirements include:

(1) Designation and responsibilities of State agencies;

(2) State plans and amendments;

(3) Services delivery; and

(4) Hearing procedures for applicants for planning and services area designation.

(b) The requirements of this part are based on Title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans, to stimulate the development or enhancement of comprehensive and coordinated community-based systems resulting in a continuum of services to older persons with special emphasis on older individuals with the greatest economic or social need, with particular attention to low-income minority individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation and delivery of a comprehensive array of services and opportunities for all older Americans in the community. The intent is to use Title III funds as a catalyst in bringing together public and private resources in the community to assure the provision of a full range of efficient, well coordinated and accessible services for older persons.

(c) Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area for the purpose of building comprehensive systems for older people throughout the State. Area agencies in turn make subgrants or contracts to service providers to perform certain specified functions.

§ 1321.3 Definitions.

"Act" means the Older Americans Act of 1965 as amended.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department" means the Department of Health and Human Services.

"Direct services," as used in this part, means any activity performed to provide services directly to an individual older person by the staff of a service provider, an area agency, or a State agency in a single planning and service area State.

"Fiscal year," as used in this part, means the Federal Fiscal Year.

"Frail," as used in this part, means having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or which threatens the capacity of an individual to live independently.

"Human services," as used in § 1321.41(a)(1) of this part, with respect to criteria for designation of a statewide planning and service area, means social, health, or welfare services.

"In-home service," as used in this part, includes: (a) Homemaker and home health aides; (b) visiting and telephone reassurance; (c) chore maintenance; (d) in-home respite care for families, incluidng adult day care as a respite service for families; and (e) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs, except that not more than $150 per client may be expended under this part for such modification.

"Means test," as used in the provison of services, means the use of an older person's income or resource to deny or limit that person's receipt of services under this part.

"Official duties," as used in section 307(a)(12)(J) of the Act with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act or State law and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

"Periodic," as used in sections 306(a)(6) and 307(a)(8) of the Act with respect to evaluations of, and public hearings on, activities carried out under State and area plans, means, at a minimum, once each fiscal year.

"Reservation," as used in section 305(b)(4) of the Act with respect to the designation of planning and service areas, means any federally or State recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaskan Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

"Service provider," as used in section 306(a)(1) of the Act with respect to the provison of supportive and nutrition services, means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

"Severe disability," as used to carry out the provisions of the Act, means a severe chronic disability attributable to mental and/or physical impairment of an individual that:

(a) Is likely to continue indefinitely; and

(b) Results in substantial functional limitation in 3 or more of the following major life activities:

(1) Self-care,

(2) Receptive and expressive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for independent living, and

(7) Economic self-sufficiency.

§ 1321.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board;

(b) 45 CFR Part 74—Administration of Grants, except Subpart N;

(c) 45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(d) 45 CFR Part 81—Practice and Procedures for Hearings Under Part 80 of this Title;

(e) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation;

(f) 45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;

(g) 45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(h) 45 CFR Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities; and

(i) 5 CFR Part 900, Subpart F, Standards for a Merit System of Personnel Administration.

Subpart B—State Agency Responsibilities

§ 1321.7 Mission of the State agency.

(a) The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) The State agency shall designate area agencies on aging for the purpose of carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as its area agencies on aging only those sub-state agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.53 below.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Older Americans Act are used to carry out the mission described for area agencies in § 1321.53 below.

§ 1321.9 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part and serve as the effective visible advocate for the elderly within the State.

(b) The State agency shall have an adequate number of qualified staff to carry out the functions prescribed in this part.

(c) The State agency shall have within the State agency, or shall contract or otherwise arrange with another agency or organization, as permitted by section 307(a)(12)(A), an Office of the State Long-Term Care Ombudsman, with a full-time State ombudsman and such other staff as are appropriate.

(d) If a State statute establishes a State ombudsman program which will perform the functions of section 307(a)(12) of the Act, the State agency continues to be responsible to assure that all of the requirements of the Act for this program are met regardless of the State legislation or source of funds. In such cases, the Governor shall confirm this through an assurance in the State plan.

1321.11 State agency policies.

(a) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the ombudsman program whether operated directly by the State agency or under contract. These policies shall be developed in consultation with other appropriate parties in the State. The State agency is responsible for enforcement of these policies.

(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness. In monitoring the ombudsman program, access to files, minus the identity of any complainant or resident of a long-term care facility, shall be available only to the director of

the State agency on aging and one other senior manager of the State agency designated by the State director for this purpose. In the conduct of the monitoring of the ombudsman program, the confidentiality protections concerning any complainant or resident of a long term care facility as prescribed in section 307(a)(12) of the Act shall be strictly adhered to.

§ 1321.13 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate and comment on Federal, State and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals and recommend any changes in these which the State agency considers to be appropriate;

(2) Provide technical assistance to agencies, organizations, associations, or individuals representing older persons; and

(3) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby the Congress.

§ 1321.15 Duration, format and effective date of the State plan.

(a) A State may use its own judgment as to the format to use for the plan, how to collect information for the plan, and whether the plan will remain in effect for two, three or four years.

(b) An approved State plan or amendment, as indentified in § 1321.17, becomes effective on the date designated by the Commissioner.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval, as identified in § 1321.17 and § 1321.19, until it is approved.

§ 1321.17 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification by the State of the sole State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan indicating the proposed use of all Title III funds administered by a State agency, and the distribution of Title III funds to each planning and service area.

(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if appropriate.

(e) Provision of prior Federal fiscal year information related to low income minority and rural older individuals as required by sections 307(a) (23) and (29) of the Act.

(f) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under §§ 1321.5 through 1321.75 of this part, and the following assurances as prescribed by the Commissioner:

(1) Each area agency engages only in activities which are consistent with its statutory mission as prescribed in the Act and as specified in State policies under § 1321.11;

(2) Preference is given to older persons in greatest social or economic need in the provision of services under the plan;

(3) Procedures exist to ensure that all services under this part are provided without use of any means tests;

(4) All services provided under Title III meet any existing State and local licensing, health and safety requirements for the provision of those services;

(5) Older persons are provided opportunities to voluntarily contribute to the cost of services;

(6) Area plans shall specify as submitted, or be amended annually to include, details of the amount of funds expended for each priority service during the past fiscal year;

(7) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies where area agencies have been designated;

(8) The State agency will require area agencies on aging to arrange for outreach at the community level that identifies individuals eligible for assistance under this Act and other programs, both public and private, and informs them of the availability of assistance. The outreach efforts shall place special emphasis on reaching older individuals with the greatest economic or social needs with particular attention to low income minority individuals, including outreach to identify older Indians in the planning and service area and inform such older Indians of the availability of assistance under the Act.

(9) The State agency shall have and employ appropriate procedures for data collection from area agencies on aging to permit the State to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such form as the Commissioner directs; and

(10) If the State agency proposes to use funds received under section 303(f) of the Act for services other than those for preventive health specified in section 361, the State plan shall demonstrate the unmet need for the services and explain how the services are appropriate to improve the quality of life of older individuals, particularly those with the greatest economic or social need, with special attention to low-income minorities.

(11) Area agencies shall compile available information, with necessary supplementation, on courses of post-secondary education offered to older individuals with little or no tuition. The assurance shall include a commitment by the area agencies to make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places.

(12) Individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under this part shall be provided a meal on the same basis that meals are provided to volunteers pursuant to section 307(a)(13)(I) of the Act.

(13) The services provided under this part will be coordinated, where appropriate, with the services provided under Title VI of the Act.

(14)(i) The State agency will not fund program development and coordinated activities as a cost of supportive services for the administration of area plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

(ii) State and area agencies on aging will, consistent with budgeting cycles (annually, biannually, or otherwise), submit the details of proposals to pay for program development and coordination as a cost of supportive services, to the general public for review and comment; and

(iii) The State agency certifies that any such expenditure by an area agency will have a direct and positive impact on the enhancement of services for older persons in the planning and service area.

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(15) The State agency will assure that where there is a significant population of older Indians in any planning and service area that the area agency will provide for outreach as required by section 306(a)(6)(N) of the Act.

§ 1321.19 Amendments to the State plan.

(a) A State shall amend the State plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations,

(2) A material change in any law, organization, policy or State agency operation, or

(3) Information required annually by sections 307(a) (23) and (29) of the Act.

(b) Information required by paragraph (a)(3) of this section shall be submitted according to guidelines prescribed by the Commissioner.

(c) If a State intends to amend provisions of its plan required under §§ 1321.17 (a) or (f), it shall submit its proposed amendment to the Commissioner for approval. If the State changes any of the provisions of its plan required under § 1321.17 (b) through (d), it shall amend the plan and notify the Commissioner. A State need only submit the amended portions of the plan.

§ 1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.

Each State plan, or plan amendment which requires approval of the Commissioner, shall be signed by the Governor or the Governor's designee and submitted to the Commissioner to be considered for approval at least 45 calendar days before the proposed effective date of the plan or plan amendment.

§ 1321.23 Notification of State plan or State plan amendment approval.

(a) The Commissioner approves a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor in writing, giving the reasons for the proposed disapproval, and informs the State agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in Subpart E of this part.

§ 1321.25 Restriction of delegation of authority to other agencies.

A State or area agency may not delegate to another agency the authority to award or administer funds under this part.

§ 1321.27 Public participation.

The State agency shall have a mechanism to obtain and shall consider the views of older persons and the public in developing and administering the State plan.

§ 1321.29 Designation of planning and service areas.

(a) Any unit of general purpose local government, region within a State recognized for area wide planning, metropolitan area, or Indian reservation may make application to the State agency to be designated as a planning and service area, in accordance with State agency procedures.

(b) A State agency shall approve or disapprove any application submitted under paragraph (a) of this section.

(c) Any applicant under paragraph (a) of this section whose application for designation as a planning and service area is denied by a State agency may appeal the denial to the State agency, under procedures specified by the State agency.

(d) If the State denies an applicant for designation as a planning and service area under paragraph (a) of this section, the State shall provide a hearing on the denial of the application, if requested by the applicant, as well as issue a written decision.

§ 1321.31 Appeal to Commissioner.

This section sets forth the procedures the Commissioner follows for providing hearings to applicants for designation as a planning and service area, under § 1321.29(a), whose application is denied by the State agency.

(a) Any applicant for designation as a planning and service area under § 1321.29(a) whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Commissioner in writing within 30 days following receipt of a State's hearing decision.

(b) The Commissioner, or the Commissioner's designee, holds a hearing, and issues a written decision, within 60 days following receipt of an applicant's written request to appeal the State agency hearing decision to deny the applicant's request under § 1321.29(a).

(c) When the Commissioner receives an appeal, the Commissioner requests the State Agency to submit:

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(d) The procedures for the appeal consist of:

(1) Prior written notice to the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(e) The Commissioner may:

(1) Deny the appeal and uphold the decision of a State agency;

(2) Uphold the appeal and require a State agency to designate the applicant as a planning and service area; or

(3) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(f) The Commissioner will uphold the decision of the State agency if it followed the procedures specified in § 1321.29, and the hearing decision is not manifestly inconsistent with the purpose of this part.

(g) The Commissioner's decision to uphold the decision of a State agency does not extend beyond the period of the approved State plan.

§ 1321.33 Designation of area agencies.

An area agency may be any of the types of agencies under section 305(c) of the Act. A State may not designate any regional or local office of the State as an area agency. However, when a new area agency on aging is designated, the State shall give right of first refusal to a unit of general purpose local government as required in section 305(b)(5)(B) of the Act. If the unit of general purpose local government chooses not to exercise this right, the State shall then give preference to an established office on aging as required in section 305(c)(5) of the Act.

§ 1321.35 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act or of this part or policies and procedures established and

published by the State agency on aging; or

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or in conflict with the requirement of the Act that it function only as an area agency on aging.

(b) If a State agency withdraws an area agency's designation under paragraph (a) of this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend the 180-day period if a State agency:

(1) Notifies the Commissioner in writing of its action under paragraph (c) of this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Commissioner a need for the extension.

§ 1321.37 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, shall develop and use an intrastate funding formula for the allocation of funds to area agencies under this part. The State agency shall publish the formula for review and comment by older persons, other appropriate agencies and organizations and the general public. The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals. The State agency shall review and update its formula as often as a new State plan is submitted for approval.

(b) The intrastate funding formula shall provide for a separate allocation of funds received under section 303(f) for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(1) Which are medically underserved; and

(2) In which there are large numbers of individuals who have the greatest economic and social need for such services.

(c) The State agency shall submit its intrastate formula to the Commissioner for review and comment. The intrastate formula shall be submitted separately from the State plan.

§ 1321.41 Single State planning and service area.

(a) The Commissioner will approve the application of a State which was, on or before October 1, 1980, a single planning and service area, to continue as a single planning and service area if the State agency demonstrates that:

(1) The State is not already divided for purposes of planning and administering human services; or

(2) The State is so small or rural that the purposes of this part would be impeded if the State were divided into planning and services areas; and

(3) The State agency has the capacity to carry out the responsibilities of an area agency, as specified in the Act.

(b) Prior to the Commissioner's approval for a State to continue as a single planning and service area, all the requirements and procedures in § 1321.29 shall be met.

(c) If the Commissioner approves a State's application under paragraph (a) this section:

(1) The Commissioner notifies the State agency to develop a single State planning and service area plan which meets the requirements of section 306 and 307 of the Act.

(2) A State agency shall meet all the State and area agency function requirements specified in the Act.

(d) If the Commissioner denies the application because a State fails to meet the criteria or requirements set forth in paragraphs (a) or (b) of this section, the Commissioner notifies the State that it shall follow procedures in section 305(A)(1)(E) of the Act to divide the State into planning and service areas.

§ 1321.43 Interstate planning and service area.

(a) Before requesting permission of the Commissioner to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State, governing the administration of the interstate planning and service area.

(b) The lead State shall request permission of the Commissioner to designate an interstate planning and service area.

(c) The lead State shall submit the request together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Commissioner's approval for States to designate an interstate planning and service area, the Commissioner shall determine that all applicable requirements and procedures in § 1321.29 and § 1321.33 of this part, shall be met.

(e) If the request is approved, the Commissioner, based on the agreement between the States, increases the allotment of the State with lead responsibility for administering the programs within the interstate area and reduces the allotment(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallotment of funds in proportion to the number of individuals age 60 and over for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallotment of funds based on the intrastate funding formula of the State(s) without lead responsibility.

§ 1321.45 Transfer between congregate and home-delivered nutrition service allotments.

(a) A State agency, without the approval of the Commissioner, may transfer between allotments up to 30 percent of a State's separate allotments for congregate and home-delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 30 percent of a State's separate allotments for congregate and home-delivered nutrition services. A State agency desiring such a transfer of allotment shall:

(1) Specify the percent which it proposes to transfer from one allotment to the other;

(2) Specify whether the proposed transfer is for the entire period of a State plan or a protion of a plan period; and

(3) Specify the purpose of the proposed transfer.

§ 1321.47 Statewide non-Federal share requirements.

The statewide non-Federal share for State or area plan administration shall not be less than 25 percent of the funds usesd under this part. All services statewide, including ombudsman services and services funded under Title III–B, C, D, E and F, shall be funded on a statewide basis with a non-Federal share of not less than 15 percent. Matching requirements for individual

area agencies are determined by the State agency.

§ 1321.49 State agency maintenance of effort.

In order to avoid a penalty, each fiscal year the State agency, to meet the required non-federal share applicable to its allotments under this part, shall spend under the State plan for both services and administration at least the average amount of State funds it spent under the plan for the three previous fiscal years. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for supportive and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures.

§ 1321.51 Confidentiality and disclosure of information.

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an order person, or obtained from an older person by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A State or area agency on aging may not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

§ 1321.52 Evaluation of unmet need.

Each State shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to section 307(a)(3)(A) of the Act to the Commissioner. The evaluations for each State shall consider all services in these categories regardless of the source of funding for the services. This information shall be submitted not later than June 30, 1989 and shall conform to guidance issued by the Commissioner.

Subpart C—Area Agency Responsibilities

§ 1321.53 Mission of the area agency.

(a) The Older Americans Act intends that the area agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the planning and service area. This means that the area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) A comprehensive and coordinated community based system described in paragraph (a) of this section shall:

(1) Have a visible focal point of contact where anyone can go or call for help, information or referral on any aging issue;

(2) Provide a range of options:

(3) Assure that these options are readily accessible to all older persons: The independent, semi-dependent and totally dependent, no matter what their income;

(4) Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

(5) Involve collaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in the community;

(6) Offer special help or targetted resources for the most vulnerable older persons, those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information or assistance is received, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

(9) Have a unique character which is tailored to the specific nature of the community;

(10) Be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Older Americans Act are to be used to finance those activities necessary to achieve elements of a community based system set forth in paragraph (b) of this section. For the purpose of assuring access to information and services for older persons, the area agency shall work with elected community officials in the planning and service area to designate one or more focal points on aging in each community, as appropriate. The area agency shall list designated focal points in the area plan. It shall be the responsibility of the area agency, with the approval of the State agency, to define "community" for the purposes of this section. Since the Older Americans Act defines focal point as a "facility" established to encourage the maximum collocation and coordination of services for older individuals, special consideration shall be given to developing and/or designating multi-purpose senior centers as community focal points on aging. The area agency on aging shall assure that services financed under the Older Americans Act in, or on behalf of, the community will be either based at, linked to or coordinated with the focal points designated. The area agency on aging shall assure access from the designated focal points to services financed under the Older Americans Act. The area agency on aging shall work with, or work to assure that community leadership works with, other applicable agencies and institutions in the community to achieve maximum collocation at, coordination with or access to other services and opportunities for the elderly from the designated community focal points. The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State under § 1321.11.

§ 1321.55 Organization and staffing of the area agency.

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A separate organizational unit within a multi-purpose agency which functions only for purposes of serving as the area agency on aging. Where the State agency on aging designates, as an area agency on aging, a separate organizational unit of a multipurpose agency which has been serving as an area agency, the State agency action

shall not be subject to section 305(b)(5)(B) of the Act.

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to perform all of the functions prescribed in this part.

(c) The designated area agency continues to function in that capacity until either:

(1) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency; or

(2) The State agency withdraws the designation of the area agency as provided in § 1321.35.

§ 1321.57 Area agency advisory council.

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. The council shall advise the agency relative to:

(1) Developing and administering the area plan;

(2) Conducting public hearings;

(3) Representing the interest of older persons; and

(4) Reviewing and commenting on all community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:

(1) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part;

(2) Representatives of older persons;

(3) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(4) Representatives of supportive services providers organizations;

(5) Persons with leadership experience in the private and voluntary sectors;

(6) Local elected officials; and

(7) The general public.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

§ 1321.59 Submission of an area plan and plan amendments to the State for approval.

The area agency shall submit the area plan and amendments to the State agency for approval following procedures specified by the State agency in the State policies prescribed by § 1321.11.

§ 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(2) Solicit comments from the public on the needs of older persons;

(3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;

(4) Consult with and support the State's long-term care ombudsman program; and

(5) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with all other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons; and

(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. Such activities may include location of services and specialization in the types of services must needed by these groups to meet this requirement. However, the area agency may not permit a grantee or contractor under this part to employ a means test for services funded under this part.

(d) No requirement in this section shall be deemed to supersede a prohibition contained in the Federal appropriation on the use of Federal funds to lobby the Congress; or the lobbying provision applicable to private nonprofit agencies and organizations contained in OMB Circular A–122.

Subpart D—Service Requirements

§ 1321.63 Purpose of services allotments under Title III.

(a) Title III of the Older Americans Act authorizes the distribution of Federal funds to the State agency on aging by formula for the following categories of services:

(1) Supportive services;

(2) Congregate meals services;

(3) Home delivered meals services;

(4) In-home services;

(5) Ombudsman services;

(6) Special needs services;

(7) Elder abuse services;

(8) Preventive health services; and

(9) Outreach services.

Funds authorized under these categories are for the purpose of assisting the State and its area agencies to develop or enhance for older persons comprehensive and coordinated community based systems as described in § 1321.53(b) throughout the State.

(b) Except for ombudsman services, State agencies on aging will award the funds made available under paragraph (a) of this section to designated area agencies on aging according to the formula determined by the State agency. Except where a waiver is granted by the State agency, area agencies shall award these funds by grant or contract to community services provider agencies and organizations. All funds awarded to area agencies under this part are for the purpose of assisting area agencies to develop or enhance comprehensive and coordinated community based systems for older persons in, or serving, communities throughout the planning and service area.

§ 1321.65 Responsibilities of service providers under area plans.

As a condition for receipt of funds under this part, each area agency on aging shall assure that providers of services shall:

(a) Provide the area agency, in a timely manner, with statistical and other information which the area agency requires in order to meet its planning, coordination, evaluation and reporting requirements established by the State under § 1321.13;

(b) Specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population serviced by the provider;

(c) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.67;

(d) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;

(e) Where feasible and appropriate, make arrangements for the availability of services to older persons in weather related emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

§ 1321.67 Service contributions.

(a) For services rendered with funding under the Older Americans Act, the area agency on aging shall assure that each service provider shall:

(1) Provide each older person with an opportunity to voluntarily contribute to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contributions; and

(3) Establish appropriate procedures to safeguard and account for all contributions.

(b) Each service provider shall use supportive services and nutrition services contributions to expand supportive services and nutrition services respectively. To that end, the State agency shall:

(1) Permit service providers to follow either the addition alternative or the cost sharing alternatives as stated in 45 CFR 92.25(g) (2) and (3); or

(2) A combination of the two alternatives.

(c) Each service provider under the Older Americans Act may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the provider shall consider the income ranges of older persons in the community and the provider's other sources of income. However, means tests may not be used for any service supported with funds under this part. State agencies, in developing State eligibility criteria for in-home services under section 343 of the Act, may not include a means test as an eligibility criterion.

(d) A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

§ 1321.69 Service priority for frail, homebound or isolated elderly.

(a) Persons age 60 or over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services under this part.

(b) The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

§ 1321.71 Legal assistance.

(a) The provisions and restrictions in this section apply only to legal assistance providers and only if they are providing legal assistance under section 307(a)(15) of the Act.

(b) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) The area agency shall award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) shall:

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to provide legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(f) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(g) No provider shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(1) "Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when:

(i) Recovery of damages is not the principal object of the client; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, Supplemental Security Income for Aged, Blind, and Disabled.

(3) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.

(4) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter.

(h) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) No provider or its employees shall contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(2) No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity;

(i) No funds made available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by any nonjudicial Federal, State or local individual or body. Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, Title III regulations or other applicable law. This provision does not authorize publication of lobbying materials or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(4) Making direct contact with the area agency for any purpose;

(5) Providing a client with administrative representation in adjudicatory or rulemaking proceedings or negotiations, directly affecting that client's legal rights in a particular case, claim or application;

(6) Communicating with an elected official for the sole purpose of bringing a client's legal problem to the attention of that official; or

(7) Responding to the request of a public official or body for testimony, legal advice or other statements on legislation or other issues related to aging; provided that no such action will be taken without first obtaining the written approval of the responsible area agency.

(j) While carrying out legal assistance activities and while using resources provided under the Act, no provider or its employees shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation;

(2) Encourage, direct, or coerce others to engage in such activities; or

(3) At any time engage in or encourage others to engage in:

(i) Any illegal activity; or

(ii) Any intentional identification of programs funded under the Act or recipient with any political activity.

(k) None of the funds made available under the Act may be used to pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations unless such dues are not used to engage in activities for which Older Americans Act funds cannot be used directly.

§ 1321.73 Grant related income under Title III–C.

States and sub-grantees must require that their subgrantees' grant related income be used in either the matching or cost sharing alternative in 45 CFR 92.25(g)(2) or the additive alternative in § 92.25(g)(3) or a combination of the two. The deductive alternative described in § 92.25(g)(1) is not permitted.

§ 1321.75 Licenses and safety.

The State shall ensure:

(a) That, in making awards for multipurpose senior center activities, the area agency will ensure that the facility complies with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes; and

(b) The technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

Subpart E—Hearing Procedures for Stawte Agencies

§ 1321.77 Scope.

(a) Hearing procedures for State plan disapproval, as provided for in section 307(c) and section 307(d) of the Act are subject to the previsions of 45 CFR Part 213 with the following exceptions:

(1) Section 213.1(a); § 213.32(d); and § 213.33 do not apply.

(2) Reference to SRS Hearing Clerk shall be read to mean HHS Hearing Clerk.

(3) References to Administrator shall be read to mean Commissioner on Aging.

(b) Instead of the scope described in § 213.1(a), this subpart governs the procedures and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment:

(2) Determination that a State agency does not meet the requirements of this part:

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements, including failure to comply with any assurance required under the Act or under this part.

§ 1321.79 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.81 How the State may appeal.

A State may appeal the final decision of the Commissioner disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State shall file the appeal within 30 days of the Commissioner's final decision.

§ 1321.83 How the Commissioner may reallot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-federal share requirements.

2. Part 1328 is redesignated as Part 1326 and is revised to read as follows:

PART 1326—GRANTS TO INDIAN TRIBES FOR SUPPORT AND NUTRITION SERVICES

Sec.

1326.1 Basis and purpose of this part.
1326.3 Definitions.
1326.5 Applicability of other regulations.
1326.7 Confidentiality and disclosure of information.
1326.9 Contributions.

Sec.

1326.11 Prohibition against supplantation.
1326.13 Supportive services.
1326.15 Nutrition services.
1326.17 Access to information.
1326.19 Application requirements.
1326.21 Application approval.
1326.23 Hearing procedures.

Authority: 42 U.S.C. 3001; Title VI, Part A of the Older Americans Act.

§ 1326.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of American Indian elders on Indian reservations. This part implements Title VI (Part A) of the Older Americans Act, as amended, by establishing the requirements that an Indian tribal organization shall meet in order to receive a grant to promote the delivery of services for older Indians that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

§ 1326.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1326.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Indian reservation," means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (84 Stat. 688).

"Indian tribe," means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

"Means test," as used in the provision of services, means the use of an older Indian's income or resources to deny or limit that person's receipt of services under this part.

"Older Indians," means those individuals who have attained the minimum age determined by the tribe for services.

"Project period," as used in § 1326.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1326.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the tribal organization provides supportive and nutritional services to older Indians residing there. A service area may include all or part of the reservation or any portion of a county or counties which has a common boundary with the reservation. A service area may also include a non-contiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization.

"Service provider," means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

"Tribal organization," as used in § 1326.7 and elsewhere in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite to the letting or making of the contract or grant (25 U.S.C. 450b).

§ 1326.5 Applicability of other regulations.

The following regulations in Title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16—Procedures of the Departmental Grant Appeals Board;

(b) Part 74—Administration of Grants;

(c) Part 75—Informal Grant Appeals Procedures;

(d) Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(e) Part 81—Practice and Procedure for Hearings under Part 80 of this Title;

(f) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation; and

(g) Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

§ 1326.7 Confidentiality and disclosure of information.

A tribal organization shall have confidentiality and disclosure procedures as follows:

(a) A tribal organization shall have procedures to ensure that no information about an older Indian or obtained from an older Indian by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1326.9 Contributions.

(a) Each tribal organization shall:

(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Indian with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all services contributions to expand comprehensive and coordinated services systems supported under this part, while using nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the tribal organization shall consider the income ranges of older Indians in the service area and the tribal organization's other sources of income. However, means tests may not be used.

(c) A tribal organization that receives funds under this part may not deny any older Indian a service because the older Indian will not or cannot contribute to the cost of the service.

§ 1326.11 Prohibition against supplantation.

A tribal organization shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1326.13 Supportive services.

(a) A tribal organization may provide any of the supportive services mentioned under Title III of the Older Americans Act, and any other supportive services that are necessary for the general welfare of older Indians.

(b) If an applicant elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The tribal organization shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The tribal organization shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior centers assisted under this part. The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If an applicant elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1326.15 Nutrition services.

(a) In addition to providing nutrition services to older Indians, a tribal organization may:

(1) Provide nutrition services to the spouses of older Indians;

(2) Provide nutrition services to non-elderly handicapped or disabled Indians who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Indians, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.

(b) Each tribal organization may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the tribal organization shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the tribal organization shall work with agencies responsible for administering other programs to facilitate participation of older Indians.

§ 1326.17 Access to information.

A tribal organization shall:

(a) Establish or have a list of all services that are available to older Indians in the service area,

(b) Maintain a list of services needed or requested by the older Indians; and

(c) Provide assistance to older Indians to help them take advantage of available services.

§ 1326.19 Application requirements.

A tribal organization shall have an approved application. The application shall be submitted as prescribed in section 604 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 604(a)(5) of the Act, and any objectives established by the Commissioner.

(b) A description of the geographic boundaries of the service area proposed by the tribal organization:

(c) Documentation of the ability of the tribal organization to deliver supportive and nutrition services to older Indians, or documentation that the tribal organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under Title III of the Act.

(e) A tribal resolution(s) authorizing the tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the tribe.

§ 1326.21 Application approval.

(a) Approval of any application under section 604(e) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuaton, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to grantees which have effectively administered such grants in the prior year.

§ 1326.23 Hearing procedures.

In meeting the requirements of section 604(d)(3) of the Act, if the Commissioner disapproves an application from an eligible tribal organization, the tribal organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the tribal organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond with 30 days to the merits of the tribal organization's request.

(c) The Commissioner notifies the tribal organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the tribal organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designated official decides.

(e) The Commissioner or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissoner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

3. A new Part 1328 is added to read as follows:

PART 1328—GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER HAWAIIAN NATIVES

Sec.

1328.1 Basis and purpose of this part.
1328.3 Definitions.
1328.5 Applicability of their regulations.
1328.7 Confidentiality and disclosure of information.
1328.9 Contributions.
1328.11 Prohibition against supplantation.
1328.13 Supportive services.
1328.15 Nutrition services.
1328.17 Access to information.
1328.19 Application requirements.
1328.21 Application approval.
1328.23 Hearing procedures.

Authority: 42 U.S.C. 3001; Title VI Part B of the Older Americans Act.

§ 1328.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of Older Hawaiian Natives. This part implements Title VI (Part B) of the Older Americans Act, as amended, by establishing the requirements that a public or nonprofit private organization shall meet in order to receive a grant to promote the delivery of services for older Hawaiian Natives that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these agrants.

§ 1328.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease of 10 years or more for use as a multipurpose senior center.

"Act," means the Older Americans Act of 1965, as amended.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1328.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modificaitons to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Eligible organization," means a public or nonprofit private organization having the capacity to provide services under this part for older Hawaiian Natives.

"Grantee," as used in this part, means an eligible organization that has received funds to provide services to older Hawaiians.

"Hawaiian Native," as used in this part, means any individual any of whose ancestors were native of the area which consists of the Hawaiian Islands prior to 1778.

"Means test," as used in the provision of services, means the use of an older Hawaiian Native's income or resources to deny or limit that person receipt of services under this part.

"Older Hawaiian," means any individual, age 60 or over, who is an Hawaiian Native.

"Project period," as used in § 1328.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1328.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the grantee provides supportive and nutritional services to older Hawaiian Natives residing there.

§ 1328.5 Applicability of other regulations.

The following regulations in Title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16-Procedures of the Departmental Grant Appeals Board;

(b) Part 74-Administration of Grants;

(c) Part 75-Informal Grant Appeals Procedures;

(d) Part 80-Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(e) Part 81-Practice and procedures for hearings under Part 80;

(f) Part 84-Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financing Participation; and

(g) Part 91-Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

§ 1328.7 Confidentiality and disclosure of information.

A grantee shall have confidentiality and disclosure procedures as follows:

(a) The grantee shall have procedures to ensure that no information about an older Hawaiian Native or obtained from an older Hawaiian Native is disclosed in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal monitoring agencies.

(b) A grantee is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1328.9 Contributions.

(a) Each grantee shall:

(1) Provide each older Hawaiian Native with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Hawaiian Native with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each grantee may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the grantee shall consider the income ranges of older Hawaiian Natives in the service area and the grantee's other sources of income. However, means tests may not be used.

(c) A grantee may not deny any older Hawaiian a service because the older Hawaiian will not or cannot contribute to the cost of the service.

§ 1328.11 Prohibition against supplantation.

A grantee shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1328.13 Supportive services.

(a) A grantee may provide any of the supportive services specified under Title III of the Older Americans Act and any other supportive services, approved in the grantee's application, that are necessary for the general welfare of older Hawaiian Natives.

(b) If a grantee elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The grantee shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The grantee shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The grantee shall assure technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If a grantee elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1328.15 Nutrition services.

(a) In addition to providing nutrition services to older Hawaiian Natives, a grantee may:

(1) Provide nutrition services to the spouses of older Hawaiian Natives;

(2) Provide nutrition services to non-elderly handicapped or disabled Hawaiian Natives who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Hawaiian Natives, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.

(b) Each grantee may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the grantee shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the grantee shall work with agencies responsible for administering other programs to facilitate participation of older Hawaiian Natives.

§ 1328.17 Access to information.

A grantee shall:

(a) Establish or have a list of all services that are available to older Hawaiian Natives in the service area;

(b) Maintain a list of services needed or requested by the older Hawaiians; and

(c) Provide assistance to older Hawaiian Natives to help them take advantage of available services.

§ 1328.19 Application requirements.

To receive funds under this part, an eligible organization shall submit an application as prescribed in section 623 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 623(a)(6) of the Act, and any objectives established by the Commissioner;

(b) A description of the geographic boundaries of the service area proposed by the eligible organization;

(c) Documentation of the organization's ability to serve older Hawaiian Natives;

(d) Assurances as prescribed by the Commissioner that:

(1) The eligible organization represents at least 50 older Hawaiian Natives who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities on behalf of older Hawaiian natives in close coordination with the State agency and Area Agency on Aging;

(3) The eligible organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in §§ 1328.7 through 1328.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under Title III of the Act.

(e) Signature by the principal official of the eligible organization.

§ 1328.21 Application approval.

(a) Approval of any application under section 623(d) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to eligible applicant organizations that have prior experience in serving Hawaiian Natives, particularly older Hawaiian Natives.

§ 1328.23 Hearing procedures.

In accordance with section 623(c)(3) of the Act, if the Commissioner disapproves an application from an eligible organization, the organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all

documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond within 30 days to the merits of the organization's request.

(c) The Commissioner notifies the organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or the Commissioner's designee decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or the Commissioner's designee decides.

(e) The Commissioner or the Commissioner's designee conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or the Commissioner's designee issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the organization.

(i) Either the organization or the staff of the Administration on Aging may request, for good cause, an extension of any of the time limits specified in this section.

[FR Doc. 88-19624 Filed 8-30-88; 8:45 am]

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Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 13

Airport-Related Proceedings; Final Rule; Request for Comments

VOL 53 ISS 169 AG 31 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25687; Amdt. No. 13-17]

Airport-Related Proceedings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule revises several applicability sections of the investigative and enforcement procedures regarding airport-related proceedings. The revision is intended to update the procedures to refer to the 1982 airport funding statute and recent Congressional amendments to the 1982 Act. This revision is needed to make it clear that the procedural rules for enforcement actions and investigations apply to actions commenced against airports, alleging violations of the 1982 Act, the 1982 Act as amended, and apply to airport grants entered into pursuant to the authority of the 1982 Act, and the 1982 Act as amended.

DATES: The final rule is effective on September 30, 1988. Comments must be received on or before September 30, 1988.

ADDRESS: Comments on this final rule may be delivered or mailed, in duplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25687, 800 Independence Avenue SW., Room 915G, Washington, DC 20591. Comments submitted on this final rule must be marked: Docket No. 25687. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Denise Daniels Ross, Office of the Chief Counsel, Regulations and Enforcement Division, Certification Law Branch (AGC-240), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Comments Invited

The revisions contained in this final rule are purely procedural revisions that are needed to conform the general applicability sections of Part 13 to existing and recently-enacted statutory authority. Therefore, the final rule is being adopted without notice and an opportunity for prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, Department of Transportation (DOT) operating administrations should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in the rulemaking by submitting any written data, views, or arguments as they may desire. Comments must include the regulatory docket or amendment number identified in this final rule and be submitted in duplicate to the address above. All comments received will be available in the Rules Docket for examination by interested persons. The rule may be changed in light of the comments received on the final rule.

Commenters who want the Federal Aviation Administration (FAA) to acknowledge receipt of comments submitted on this final rule must submit a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 25687." The postcard will be date stamped by the FAA and returned to the commenter. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence, Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The revisions contained in this final rule are necessary to update Part 13 to provide expressly that procedural rules for enforcement and investigation apply to all existing statutory authority of the Secretary of Transportation and the Federal Aviation Administration (FAA) concerning airport-related proceedings. Insofar as airport-related proceedings are involved, the current rules in Part 13 refers specifically only to the Airport and Airway Development Act of 1970. The current rule lacks technical reference to the Airport and Airway Improvement Act of 1982 which succeeded the 1970 Act. Similarly, it lacks reference to the recent amendment of the 1982 Act, the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub.L. 100-223; December 30, 1987).

The revision of the pertinent applicability sections contained in Part 13 is a minor, conforming, procedural change to those sections. However, the FAA believes that this change should be made to make it clear that the agency may, in investigation and enforcement proceedings, apply Part 13 procedures when airports are charged with violations of the 1982 Act, the 1982 Act as amended, and grants entered into under those statutes, in addition to matters involving the Airport and Airway Development Act of 1970.

Reason for No Notice

The revisions contained in this final rule are needed to ensure that the language of the regulations conforms to the statutory authority given to the Secretary in the Airport and Airway Improvement Act of 1982 and continuing amendments enacted by Congress in the Airport and Airway Safety and Capacity Expansion Act of 1987. The final rule is necessary to ensure that due process procedures contained in Part 13 are available to individuals and entities involved in airport-related investigation and enforcement proceedings. Because the final rule merely conforms the regulations to the existing statutory authority provided in the 1982 Act and the 1987 amendments, notice and public comment procedures are unnecessary and thus not required by the Administrative Procedure Act, 5 U.S.C. 553. In addition, publication of a notice for prior public comment on the final rule would not reasonably be anticipated to result in the receipt of useful information regarding the revisions. In accordance with the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979), an opportunity for public comment after publication of the final rule is being provided.

Economic Assessment

This final rule makes only minor conforming changes to the procedural regulations contained in Part 13. Because of the editorial and procedural nature of the revisions, no economic impact is expected to result from the promulgation of the final rule. Accordingly, a full Regulatory Evaluation is not warranted and a regulatory evaluation has not been prepared prior to publication of this final rule. Because the final rule is a purely procedural, conforming

amendment and the cost, if any, of complying with the final rule is minimal, I certify that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980.

Federalism Implications

The final rule contained herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Conclusion

Because the revisions contained in this final rule are not expected to have any economic impact, the FAA has determined that the final rule is not a major regulation under Executive Order 12291. Also, this regulation is not considered to be a significant regulation under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). Since the cost of complying with these rules, if any, is minimal, I certify, under the criteria of the Regulatory Flexibility Act of 1980, that these rules will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

The Amendment

Accordingly, the Federal Aviation Administration amends Part 13 of the Federal Aviation Regulations (14 CFR Part 13), effective September 30, 1988, to read as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for Part 13 is revised to read as follows:

Authority: 49 U.S.C. 1354 (a) and (c), 1374(d), 1401–1406, 1421–1428, 1471, 1475, 1481, 1482 (a), (b), and (c), and 1484–1489 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1475, Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act) (Revised, 49 U.S.C. 106(g)); 49 U.S.C. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety and Capacity Expansion Act of 1987); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); 49 CFR 1.47 (f), (k), and (q) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.1(a) is revised to read as follows:

§ 13.1 Reports of violations.

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act relating to the transportation or shipment by air of hazardous materials, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, should report it to appropriate personnel of any FAA regional or district office.

* * * * *

3. Section 13.3 (a) and the first sentence of (b) are revised to read as follows:

§ 13.3 Investigations (general).

(a) Under the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301 *et seq.*), the Hazardous Materials Transportation Act (49. U.S.C. 1801 *et seq.*), the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 *et seq.*), the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2201 *et seq.*), the Airport and Airway Improvement Act of 1982 (as amended, 49 U.S.C. App. 2201 *et seq.*, Airport and Airway Safety and Capacity Expansion Act of 1987), and the Regulations of the Office of the Secretary of Transportation (49 CFR 1 *et seq.*), the Administrator may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) For the purpose of investigating alleged violations of the Federal Aviation Act of 1958, as amended (except Title V of that Act), the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, the Airport and Airway Development Act of 1982, the Airport and Airway Development Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, the Administrator's authority has been delegated to the various services and or offices for matters within their respective areas for all routine investigations. * * *

* * * * *

4. Section 13.20(a) is revised to read as follows:

§ 13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders.

(a) This section applies to orders of compliance, cease and desist orders, orders of denial, and other orders issued by the Administrator to carry out the provisions of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, or the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987. This section does not apply to orders issued pursuant to section 602 or section 609 of the Federal Aviation Act of 1958, as amended.

* * * * *

Issued in Washington, DC, on 26 August 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–19847 Filed 8–29–88; 10:03 am]

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Part VIII

Department of Transportation

Federal Railroad Administration

49 CFR Part 218 and 236

Automatic Train Control; Departure Testing; Prohibiting Tampering With Safety Devices; Notice of Proposed Rulemaking

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VOL 53 ISS 169 AUG 31 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket No. RSOR-10, Notice No. 1]

RIN 2130-AA55

Prohibiting Tampering With Safety Devices

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend its existing rules concerning railroad operating practices to: (i) Explicitly prohibit tampering with safety devices and operational monitoring devices installed on locomotives and (ii) make it unlawful to operate any train whose devices have been disabled. The FRA is issuing this NPRM because of the grave risks posed by disabled safety devices on trains. The intended effect would be to deter such disabling in the future.

DATES: (1) Written comments must be received no later than September 14, 1988. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(2) FRA will hold a public hearing on this proposal on September 8, 1988. The hearing will commence at 10:00 a.m. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the hearing.

(3) FRA proposes to issue a final rule in this proceeding no later than September 21, 1988.

ADDRESSES: Hearing location—Room 4436 of the Nassif Building located at 400 Seventh Street SW., Washington, DC.

Written comments should be submitted to the Docket Clerk, Office of the Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION:

Background

There are approximately 25,000 locomotives in service on the nation's railroads. Many are equipped with one or more devices intended either to record data concerning the unit's operation or to directly improve the safety of its operation. Within this latter category of devices, the range of equipment extends from devices designed to audibly alert a person at the controls to changing conditions to devices that automatically impose sanctions if the operator fails to take appropriate responsive action. The devices of concern in this proceeding include equipment known as "event recorders," "alerters," "deadman controls," "automatic cab signals," "cab signal whistles," "automatic train stop equipment," and "automatic train control equipment."

FRA has historically exercised some degree of regulatory control over nearly all of these devices under the provisions of either its locomotive safety standards or its signal safety standards. Prior to 1987, FRA had little hard evidence of instances in which a train was being operated with these devices in a disabled or impaired condition. During the investigation of the January 4, 1987, Amtrak/Conrail accident at Chase, Maryland, however, FRA found evidence indicating that the effectiveness of two critical safety devices installed on the Conrail locomotive had been impaired. An alerter whistle, designed to warn the operator of a need to respond to a more restrictive signal aspect, had been muted by the use of tape. In FRA's view, disabling of the alerter whistle was a principal cause of the tragedy.

Chase was not the only recent accident in which there is a reason to suspect that the disabling of one of these devices was a causal factor. On February 8, 1986, a collision occurred at Hinton, Alberta, in which a Canadian National freight train struck a VIA Rail passenger train. The Canadian Transport Commission report of investigation contains information suggesting there is evidence to support a conclusion that a "deadman pedal" on the freight train failed to function, and thereby didn't prevent that accident, because it had been improperly nullified. On March 21, 1988, two Chicago & North Western freight trains collided at Dixon, Illinois. In this accident there is preliminary evidence to suggest that one of the automatic train control devices had been improperly nullified.

Following discovery of the taped whistle at Chase, FRA initiated several nationwide spot checks to determine whether the evidence found at Chase represented an isolated instance or whether it indicated a more widespread problem. During those inspections, FRA inspectors reported more than 100 instances in which they found evidence of deliberate action to negate the proper functioning of one of the identified safety devices.

Response to the Problem

These findings prompted FRA to initiate civil penalty action in approximately 70 cases and to make its preliminary information available to Congress, which was then considering adoption of rail safety legislation. The following is a summary of what occurred in both contexts.

Those inspectors who had observed instances of what they believed to be "tampering" reduced their observations to writing and filed violation reports with FRA's Office of Chief Counsel recommending assessment of civil penalties against the relevant railroads. Subsequent detailed review of the reports led FRA to conclude that some 70 observations warranted further action because the available evidence supported a conclusion that FRA could establish at least a prima facie case of noncompliance with an FRA rule.

In each of these instances, FRA instituted legal action to impose a civil penalty against the railroad that had operated or permitted to be operated a locomotive with a device in noncompliance with this existing rules. Since, at that time, FRA lacked authority to impose any sanctions against an individual for either operating a train with a disabled device or for the more serious situation of actually disabling the device, FRA took the indirect approach of holding the principal, the railroad, responsible for the conduct of its employees and relied on the railroad to take disciplinary action against the individual.

Concluding that FRA's legal authority to respond to such situations should be enhanced, Congress passed the Rail Safety Improvement Act of 1988 granting FRA enforcement authority over individuals. With that authority, FRA can now assess civil penalties against individuals for willful violations of FRA rules. FRA has recently issued interim rules and an interim policy statement detailing the manner in which it will implement this new civil penalty authority. These changes became

effective on August 1, 1988. (See the July 28, 1988, issue of the Federal Register; 53 FR 28594).

The Statutory Requirement

Section 21 of the RSIA requires that within 90 days of the law's enactment, FRA adopt regulations addressing three related but distinct aspects of the problem. It requires that FRA make it unlawful for: (1) Any individual to willfully tamper with or disable a device; (2) any individual to operate or permit to be operated a train with a tampered or disabled device; and (3) any railroad to operate such a train. Note that the statute sets forth three distrinct levels of culpability for instances in which a device has been tampered with or disabled.

FRA's Proposal

Since the principal thrust of the provisions is directed at train operations, and since the legislative concepts are difficult to reconcile with FRA's existing regulatory approaches to locomotive-mounted equipment under the locomotive and signal rules (see 49 CFR Parts 229 and 236), FRA proposes to place these rules in its existing set of provisions concerning railroad operating practices (49 CFR Part 218). FRA proposes to add a new subpart to its existing rules and to recite the purpose of the subpart in the initial section of this subpart (see proposed § 218.101). FRA is also proposing to adopt three separate sections that respond to the three distinct aspects of the statute.

Section-by-Section Analysis

Proposed § 218.103 contains the substantive provision that addresses the first of the statutory objectives: prohibiting conduct that nullifies the effectiveness of these safety devices. It is structured to preclude all actions or inactions that would result in a device's not functioning as intended. Hence, it prohibits a wide range of actions such as removing recording tapes from event recorders, taping alerter whistles so as to mute them, and unplugging or disconnecting wires that result in signal-related devices not activating brake systems.

FRA's proposed wording for this provision contains the statutory formulation of culpability for such conduct. Under the statute and FRA's proposal, an individual must be engaged in "willful" behavior in order for FRA to assess a civil penalty against that person. As FRA previously stated in its policy statement (see the July 28, 1988 issue of the Federal Register), FRA considers a "willful" act to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or with reckless disregard for whether the act violated the requirements of the law. Accordingly, a showing of neither evil purpose (as is sometimes required in criminal law) nor actual knowledge of the law is necessary before FRA can prove that the conduct constitutes a violation. However, a level of culpability higher than simple negligence must be demonstrated. In summary, to access a civil penalty, FRA would need proof that the individual had intended to disable one of these devices, had acted voluntarily, had in fact disabled the device, and either had knowledge of the law or had recklessly disregarded the law.

This provision gives FRA an effective way to respond to those individuals who consciously place themselves and others at risk by defeating the very safety devices that were installed to improve the safety of all concerned. FRA anticipates that as a matter of policy, FRA will seek to have the responsible individual disqualified from holding any safety-sensitive function, whenever it encounters situations where there is clear evidence of tampering. The message that the individual is now placing his or her employment in railroad operations on the line, in addition to placing their life on the line by such conduct, hopefully will help deter such conduct in the future. FRA reserves the right to both disqualify those who willfully tamper with safety devices and to impose a civil penalty for such conduct.

FRA proposes in § 218.105 to address the second situation identified in the statute: instances in which one individual tampers with the device and a second individual knowingly operates or permits to be operated the disabled or tampered with unit. The most common occurrence addressed by this provision would be instances in which a train crew encounters a locomotive with a safety device that has been tampered with prior to the crew's assuming responsibility for the locomotive. Under the statutory ("knowingly operates or permits to be operated") and proposed regulatory wording of this provision, individuals would be held to a simple negligence standard of conduct. The responsible members of that crew would be culpable if either: (1) Due to their failure to exercise reasonable care, they failed to determine that the safety device was not functioning, or (2) having ascertained that the device was not functioning, still elected to operate the train. Railroad supervisors who permit or direct that a train with a disabled device be operated after having learned that the safety device is not functioning would also be subject to sanction.

As a matter of policy, if FRA encounters situations where there is clear evidence that an individual willfully operated a train after some other person had nullified a safety device, FRA will consider disqualifying that individual from holding a safety-sensitive function on the railroad.

FRA proposes in § 218.107 to address the third situation identified by the statute: instances in which a railroad operates a train with a disabled or tampered with unit. This provision makes the railroad strictly liable for the conduct of its employees when they operate a train with a disabled device. Under the strict liability standard of conduct, FRA will not be obligated to prove any level of knowledge or intent on the part of the railroad. Once FRA can prove that a train with a disabled device operated on that railroad, FRA has a legal basis for imposing a civil penalty for that conduct.

Finally, FRA is proposing to add several new definitions to existing § 218.5. Unlike most definitions, which are intended to provide a clear and uniform frame of reference for those whose have to use this rule, FRA is proposing to employ these new definitions to meld this proposal with FRA's existing regulatory provisions concerning safety devices mounted on locomotives and to ameliorate some of the regulatory anomalies inherent in the statute.

The devices that are of concern in this proceeding are currently addressed either by FRA's locomotive regulations (49 CFR Part 229) or by its signal rules (49 CFR Part 236). On-board devices that are not integrated with a railroad's signal system are covered by FRA's locomotive rules. Although FRA does not require any railroads to equip their locomotives with "deadman controls," "alerters," or "event recorders," when a locomotive is so equipped, FRA makes it unlawful for the railroad to use the unit unless such appurtenances are in proper condition (§ 229.7). In the signal systems arena, FRA does require that railroads install signal systems in some instances, thus indirectly requiring the installation of locomotive-mounted signal devices (see § 236.0). In other instances, railroads have elected to install such systems on their own initiative. In either case, once a railroad installs a signal system that employs cab signals, automatic train stop, automatic train control, or a combination of those systems, the railroad is obligated to have the controlling locomotive of trains traversing equipped territory outfitted

with a functioning device responsive to the system installed on the wayside. Both sets of rules require that the relevant devices installed on a locomotive be inspected to determine their condition (see §§ 229.21 and 236.588).

Because of differences in the nature of the equipment and the operational safety implications for diverse types of noncomplying conditions, FRA accords different regulatory treatment to locomotives under each rule. The minor differences in the manner in which FRA calculates the roughly 24-hour intervals at which locomotives must be inspected and the permissible courses of action when a railroad encounters defective conditions are relevant in the context of this proposal.

There are two special situations which also need to be addressed. The first involves instances in which a railroad could legitimately assert that the functioning of a device has become a distraction and hence a detriment to safety. FRA has encountered this argument in situations where alerter or deadman controls have been nullified while the locomotive was used exclusively to perform yard switching service. FRA also believes that there is a need to address what will be a fairly common problem for individuals who are conscientiously trying to comply with the requirements of proposed § 218.105. That section implicitly requires that train crew members determine that their safety devices are functioning. FRA is alert to the fact that certain operational realities will result either in the physical separation of some train crew members from the locomotive on which the devices are mounted or in crew members mounting equipment at a crew change location while the equipment is constantly moving at a slow speed. In such settings, there simply may not be a practical alternative method for affording people an appropriate opportunity to determine the condition of the locomotive's safety devices.

FRA proposes to address all of these concerns by defining the phrase "operate a train" in terms of conducting train airbrake tests. Under this approach, responsibility for compliance with both § 218.105 and § 218.107 would occur only if FRA rules would have imposed a duty on the crew and the railroad to perform either an initial terminal airbrake test or an intermediate terminal air brake test. In both situations, there would be ample opportunity to determine that the devices were indeed functioning and would permit devices to be nullified for true switching operations. It would also appropriately meld the enroute defect provisions of FRA's locomotive and signal rules, while retaining their valid distinctions for daily inspection intervals. FRA proposes to place this definition in a new paragraph (o) in § 218.5.

FRA also proposes to define both types of locomotive-mounted devices this rule would apply to and to specify the kinds of conduct that would constitute tampering under this rule. In both cases, FRA is proposing fairly expansive definitions. In this way, FRA intends to capture under this rule devices currently in service as well as those that may appear in the near future (particularly those associated with advanced train control systems now in the research and development stages) and to cover all means by which one could defeat such systems. FRA proposes to place these in paragraphs (p) and (n), respectively, of § 218.5.

Public Participation

FRA proposes to amend Part 218 as set forth below. FRA solicits comments on all aspects of the proposed rule, whether through written comments or through participation in the public hearing. FRA may make changes in the final rule based on comments received in response to this proposal. All potential commenters are reminded that the statute mandates issuance of rules on this subject within 90 days of enactment of the legislation. Since FRA must issue such a rule no later than September 21, 1988, only a minimum period for public comment is being provided in this proceeding.

The final rule in this proceeding will include a revised penalty schedule for Part 218 reflecting the higher maximum penalties now available and adding entries for the new sections proposed herein. See the recent revisions to the penalty provisions and penalty schedule of Part 218 required by the RSIA published in the **Federal Register** on July 28, 1988 (53 FR 28594). Because FRA's penalty schedules are statements of policy, notice and comment are not required to revisions of those schedules (see 5 U.S.C. 553(b)(3)(A)). Nevertheless, interested parties are welcome to submit their views on what penalties may be appropriate.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies

This proposed rule has been evaluated in accordance with existing policies and procedures. The proposal is considered to be non-major under Executive Order 12291 but a significant proposal under the Department's policies and procedures (44 FR 11034, February 26, 1979).

The proposed rule would not have any direct or indirect economic impact because it does not impose any additional regulatory burden on either railroads or individuals. To the degree that potential imposition of a civil penalty serves as a deterrent to individuals who might contemplate disabling one of these devices, the proposed rule might serve to reduce expenses by avoidance of exposure to accidents that can be prevented or minimized by a functioning device. FRA welcomes any comments on this issue.

Regulatory Flexibility Act

These proposed regulations will not have any economic impact on small entities. FRA therefore certifies that this proposal will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations proposed in this notice do not contain directly or indirectly any information collection requirements.

Comment Period

Section 21 of the Rail Safety Improvement Act of 1988 (Pub. L. 100-342) requires that these regulations be issued by September 21, 1988. Accordingly, the period provided for public comment on this notice must close before that date. Normally, a minimum of 30 days is provided for public comments on rulemaking proposals. In this case, as a result of the complexity of developing a notice of proposed rulemaking, this proposed rule is not being published more than 30 days prior to the statutory limit. However, the proposal was placed on public display at the Federal Register as early as possible, and a substantial comment period has been provided. In consideration of the statutory 30-day limit of September 21, FRA finds that good cause exists to publish this notice with a comment period of less than 30 days.

Environmental Impact

These proposed rules will not have any identifiable environmental impact.

Federalism Implications

These proposed rules will not have a substantial effect on the states, on the relationship between the states and the national government, or on the distribution of power and responsibilities among the various levels

of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 218

Railroad safety, Railroad operating practices.

The Proposed Rule

Therefore, in consideration of the foregoing, FRA proposes to amend Part 218, Title 49, Code of Federal Regulations as follows:

PART 218—[AMENDED]

1. The authority citation for Part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. By amending the table of contents to add Subpart D as follows:

Subpart D—Prohibition Against Tampering With Safety Devices

218.101 Purpose and scope.
218.103 Tampering prohibited.
218.105 Responsibilities of individuals.
218.107 Responsibilities of railroads.

3. Amend § 218.5 by adding new paragraphs (n), (o), and (p) to read as follows:

§ 218.5 Definitions.

* * * * *

(n) "Disable" means to render a device incapable of proper and effective action or to materially impair the functioning of the device.

(o) "Operate a train" means to move a locomotive or group of locomotives coupled to one or more cars after the occurrence of any event identified in Part 232 of this Chapter that requires the performance of a train air brake test in order to comply with that Part.

(p) "Safety device" means any locomotive-mounted equipment that is used either to assure that the locomotive operator is alert, not physically incapacitated, aware of and complying with the operational directives of a signal system or other operational control system or to record data concerning the operation of that locomotive or the train it is powering.

4. Add Subpart D, consisting of §§ 218.101 through 218.107.

Subpart D—Prohibition Against Tampering With Safety Devices

§ 218.101 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties that can result from the operation of trains that are equipped with safety devices intended to improve the safety of their movement that have been nullified through unauthorized human intervention.

(b) This subpart establishes the standards of conduct for railroads and individuals when locomotives are equipped with such devices.

§ 218.103 Tampering prohibited.

Any individual who willfully disables or materially impairs the functioning of a safety device is subject to a civil penalty of up to $20,000, as provided for in Appendix A of this part, and is subject to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties.

§ 218.105 Responsibilities of individuals.

When the controlling locomotive of a train is equipped with a disabled or materially impaired safety device, any individual who knowingly operates that train or permits it to be operated is subject to a civil penalty as provided for in Appendix A of this part and is subject to disqualification from performing safety-sensitive functions on a railroad if found to be unfit for duties.

§ 218.107 Responsibilities of railroads.

When the controlling locomotive of a train is equipped with a disabled safety device, any railroad that operates that train is subject to a civil penalty as provided for in Appendix A of this part.

Issued in Washington, DC on August 26, 1988.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 88–19760 Filed 8–29–88; 10:24 am]
BILLING CODE 4910–26–M

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49 CFR Part 236

[FRA Docket No. SI–5, Notice No. 1]

Automatic Train Control; Departure Testing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to section 9 of the Rail Safety Improvement Act of 1988, FRA proposes to amend its railroad signal regulations (49 CFR Part 236) to require that whoever performs any test required by FRA rules of an automatic train stop, train control, or cab signal apparatus prior to entering territory where such apparatus will be used shall certify in writing that such test was properly performed. The certification will be kept and maintained in the same manner and place as the daily inspection report for that locomotive. FRA is issuing this NPRM to address the need to assure that train control devices are operating before a train departs. The intended effect would be to improve the safety of rail operations.

DATES: (1) A public hearing regarding this proposed rule will begin at 10:00 a.m. on September 9, 1988. Any persons who desire to make a statement at the hearing should submit their prepared statements to the Docket Clerk at least five days before the hearing date.

(2) Written comments must be received no later than September 14, 1988. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(3) FRA proposes to issue a final rule in this proceeding no later than September 21, 1988.

ADDRESSES: (1) Hearing location—Room 4234, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

(2) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: S.H. Stotts, Jr., Chief, Standards Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0495), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: On June 22, 1988, the President signed into law the Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100–342). Section 9 of the RSIA amends section 202 of the Federal Railroad Safety Act of 1970 by adding new subsections (j), (k), and (l) dealing with automatic train control and related systems.

New subsection 202(j) provides for the issuance of rules as may be necessary to require that "(1) whoever performs any test required by the Secretary of an automatic train stop, train control, or cab signal apparatus prior to entering territory where such apparatus will be used, shall certify in writing that such test was property performed; and (2) that such certification shall be kept and maintained in the same manner and place as the daily inspection report for that locomotive."

Present FRA regulations governing testing of ATC and related safety systems are found at 49 CFR 236.587. Subsection (a) establishes the types of tests that are permissible, (b) establishes when the test are required (on departure from an initial terminal or upon entering equipped territory) and (c) states how often the tests are required

(maximum of once every 24 hours). Subsection (d) currently states: "If a departure test is made by an employee, other than the engineer, the engineer shall be informed of the results of the test and the a record kept thereof."

FRA proposes to amend § 236.587 by revising subsection (d) to require that everyone, including engineers, performing the test certify in writing that that test was properly performed. The certification and the results of the test will be posted in the cab of the locomotive in the same manner as is presently done for daily locomotive inspections under 49 CFR Part 229.

Under current practice, the departure test results are retained if the test is performed by someone other than the engineer. The individual performing the test would normally carry a copy of the test results off the locomotive for filing with his or her supervisory official. The proposed rule change ensures the consistency of this procedure, whether the test is performed by an engineer or some other individual, by requiring that the certification and test results be left at the test location for filing with the appropriate supervisory official.

Paragraph "b" requires a test on departure from an initial terminal unless ATC or related safety systems will be cut out between the initial terminal and equipped territory. If the apparatus is cut out between the initial terminal and the equipped territory the test must be made prior to entering equipped territory. In that case, and in the situation where a locomotive's initial terminal does not have a railroad office, the engineer will be permitted to transmit the test information to the dispatcher, who will keep a written record of the test results and the name of the employee performing the test. Thus, in all situations, a copy of the test results and certification would be in both the locomotive cab and a railroad office, thereby ensuring the integrity of the records.

FRA is also proposing a technical change to § 236.110. This section governs the manner in which railroad signal test results are recorded and filed by the railroad. FRA proposes to require that § 236.110 apply to tests made in compliance with § 236.587. This will provide consistent treatment of all railroad signal test results required under Part 236.

Regulatory Impact

FRA has evaluated the proposed action and its potential impacts in accordance with existing regulatory policies. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

FRA has further concluded that the proposed rule will have no significant impact on the environment.

The proposed rule has information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. Any comments on these revised information collection requirements should be provided to Mr. Gary Waxman, Regulatory Policy Branch, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

The proposed rule would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Request for Public Comment

FRA proposes to amend 49 CFR Part 236 as set forth below. FRA solicits comments on the proposed rule change, whether through written submissions, or participation in the public hearing, or both. FRA may make changes in the final rule based on information comments received in response to this notice. Section 9 of the RSIA requires that these regulations be issued by September 21, 1988. Accordingly, the period provided for public comment on this notice must close before that date. Normally, a minimum of 30 days is provided for public comments on rulemaking proposals. In this case, as a result of the complexity of developing a notice of proposed rulemaking, this proposed rule is not being published more than 30 days prior to the statutory limit. However, the proposal was placed on public display at the Federal Register as early as possible, and a substantial comment period has been provided. In consideration of the statutory 30-day limit of September 21, FRA finds that goods cause exists to publish this notice with a comment period of less than 30 days.

List of Subjects in 49 CFR Part 236

Railroad safety, Signal systems.

The Proposed Rule

Therefore, in consideration of the foregoing, FRA proposes to amend 49 CFR Part 236 as follows:

PART 236—[AMENDED]

1. The authority citation for Part 236 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

2. By revising the first sentence of § 236.110 to read as follows:

§ 236.110 Results of tests.

Results of tests made in compliance with §§ 236.102 to 236.109, inclusive; 236.376 to 236.387, inclusive; 236.576; 236.577; and 236.586 to 236.589, inclusive, shall be recorded on preprinted or computerized forms provided by the railroad. * * *

3. By revising § 236.587(d) to read as follows:

§ 236.587 Departure test.

* * * * *

(d)(1) Whoever performs the test shall certify in writing that such test was properly performed. The certification and the test results shall be posted in the cab of the locomotive and a copy of the certification and test results left at the test location for filing in the office of the supervisory official having jurisdiction.

(2) If it is impractical to leave a copy of the certification and test results at the location of the test, the test results shall be transmitted to the dispatcher who shall keep a written record of the test results and the name of the person performing the test.

Issued in Washington, DC on August 26, 1988.

John H. Riley,

Administrator.

[FR Doc. 88-19761 Filed 8-29-88; 10:24 am]

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August 31, 1988

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands; Final Rule

VOL 53 ISS 169 AUG 31 1988 UMI

Department of the Interior

Fish and Wildlife Servive

50 CFR Part 20

Migratory Bird Hunting; Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules; sea ducks in certain defined areas of the Atlantic Flyway; wood ducks in September in Florida, Kentucky and Tennessee; Canada geese in September in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; a special Canada goose season in Southwestern Wyoming; migratory game birds in Alaska, Puerto Rico and the Virgin Islands; and extended falconry seasons during 1988–89. The taking of these migratory birds is prohibited unless hunting seasons are specifically provided. The rules will permit the hunting of these species within specified periods of time beginning as early as September 1, as has been the case in past years.

DATE: Effective on August 31, 1988.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of Interior, Room 536, Matomic Building, 1717 H Street NW., Washington, DC, telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 9, 1988, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (53 FR 7702) a proposal to amend 50 CFR Part 20, with comment periods ending June 22, 1988, for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; July 18, 1988, for other early-season proposals; and August 25, 1988, for the late-season proposals. The March 9 document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under § 20.101 through 20.107, 20.109 and 20.110 of Subpart K. On June 7, 1988, the Service published in the **Federal Register** (53 FR 20674) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 11, 1988, the Service published for public comment in the **Federal Register** (53 FR 26198) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. The document also reopened and extended the comment period for the proposed frameworks for Alaska, Puerto Rico and Virgin Islands from June 22, 1988, to July 20, 1988. All three documents, March 9, June 7, and July 11, indicated that special consideration was being given to possible restrictive regulations for all aspects of the 1988–89 hunting season dependent upon the continuing poor status of ducks. On August 9, 1988, the Service published a fourth document (53 FR 29897) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the State, Puerto Rico and the Virgin Islands selected early-season hunting dates, hours, areas and limits for 1988–89. The fifth document in the series deals specifically with proposed frameworks for the 1988–89 late-season migratory bird hunting regulations. The final rule described here is the sixth in a series of proposed, supplemental and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules; sea ducks in certain defined areas of the Atlantic Flyway; wood ducks in September in Florida, Kentucky and Tennessee; Canada geese in September in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyway; a special Canada goose season in southwestern Wyoming; migratory game birds in Alaska, Puerto Rico and the Virgin Islands; and extended falconry seasons.

Nontoxic Short Regulations

In the June 28, 1988 **Federal Register** (53 FR 24284), the Service published a final rule describing zones in which use of lead shot would be prohibited for hunting waterfowl, coots and certain other species in the 1988–89 hunting season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", filed with CEQ on June 9, 1988. Notices of Availability were published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727), and the Service's Record of Decision was published on August 18, 1988 (53 FR 31341).

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of [critical] habitat * * *."

Subsequently, the Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 17, 1988, the Division of Endangered Species and Habitat Conservation gave a biological opinion that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 9, 1988, (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 9, 1988, (53 FR 29897).

Authorship

The primary author of this rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

After analysis of migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the early proposals (53 FR 7702, March 9, 1988; 53 FR 20874, June 7, 1988; and 53 FR 26198, July 11, 1988), the Service published in the **Federal Register** on August 9, 1988, (53 FR 29897) final early-season frameworks for the United States, including Alaska and Hawaii, and Puerto Rico and the Virgin Islands. Copies of the final frameworks were sent to the officials of the State conservation agencies and to conservation agency officials in Puerto Rico and the Virgin Islands who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 1, as has been the case in past years.

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 9, June 7, and July 11, 1988, the Service established what it believed were the longest periods possible for public comment. In doing this the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each State conservation agency have had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting Imports, Transportation, Wildlife.

For these reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04.

Note.—The following annual hunting regulations provided for by §§ 20.101 through 20.108 and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits, and areas for hunting the species designated in this section are prescribed as follows:

(a) *Puerto Rico.*

	Doves	Pigeons
Daily bag limit	10 singly or in the aggregate of all permitted species.	5
Possession limit	10 singly or in the aggregate of all permitted species.	5
Season dates	Sept. 3 to Nov. 7, 1988.	
Shooting hours	One-half hour before sunrise to sunset daily.	

Restrictions: Only the following species of doves and pigeons may be hunted during the open season: Zenaida dove—Tortola cardosantera; white-winged dove—Tortola aliblanca o cubanita; mourning dove—Tortola rabilarga o rebiche; and scaly-naped pigeon—Paloma turca o torcaz.

Closed Areas

No season is prescribed for doves and pigeons on Mana Island in order to give the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as Paloma cabeciblanca, a chance to recover.

No season is prescribed for doves and pigeons in the Municipality of Culebrala and on Desecheo Island.

No season is prescribed in the El Verde Closure Area consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National

Forest Boundary whether private or public.

No season is prescribed for doves and pigeons of any species in all of Cidra Municipality and in portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavata, west along the Rio Guavata to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning.

Check Commonwealth regulation for additional restrictions.

(b) *Puerto Rico.*

	Ducks	Common moorhens (Gallinules)	Common Snipe
Daily bag limits	3	6	6
Possession limits	6	12	12
Season dates	Nov. 5 to Dec. 5, 1988 and Feb. 4 to Feb. 27, 1989.		
Shooting hours daily	One-half hour before sunrise until sunset.		

Restrictions: No season is prescribed for waterfowl in the Municipality of Culebra and on Desecheo Island. The season is closed on the ruddy duck (*Oxyura jamaicensis*); Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*); purple gallinule (*Porphyrula martinica*); American coot (*Fulica americana*); and Caribbean coot (*Fulica carbaea*).

Check Commonwealth regulations for additional restrictions.

Note: Local names for game birds: Ruddy duck (*Oxyura jamaicensis*)— Patro rojo (protected); purple gallinule (*Porphyrula martinica*)—Gallareta azul (protected); and Puerto Rican plain pigeon (*Columba inornata wetmorei*)—Paloma sabanera (protected).

(c) *Virgin Islands.*

	Zenaida Dove	Scaly-naped Pigeon	Ducks
Daily bag limits	10	5	3
Possession limits	10	5	6
Season dates:			
Zenaida dove and scaly-naped pigeon	September 1 through October 30, 1988.		
Ducks only	December 7, 1988, through January 30, 1989.		
Shooting hours	One half-hour before sunrise until sunset.		

Restrictions: Seasons are closed for ground or quail doves and pigeons (except scaly-naped pigeon) in the Virgin Islands. The season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*), and purple gallinule (*Porphyrula martinica*).

Note.—Local names for game birds: Zenaida dove-mountain dove; Bridled quail dove-Barbary dove, partridge (protected); Ground dove-stone dove, tobacco dove, rola, tortolita (protected); Scaly-naped pigeon-red-necked pigeon, scaled pigeon.

Check Commonwealth regulations for additional restrictions.

3. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Shooting and hawking hours: One-half hour before sunrise to sunset daily.

Check state regulations for additional restrictions, including area descriptions.

Open seasons	Ducks, Geese (including Brant), Cranes, and Snipe
Areas:	
State Game Mgmt. Units: 11–13 and 17–26.	Sept. 1–Dec. 16.
State Game Mgmt. Units: 5–7, 9, 14–16 & 10 (Unimak Island only).	Sept. 1–Dec. 16.
State Game Mgmt. Units: 1–4	Sept. 1–Dec. 16.
State Game Mgmt. Unit 10 (except Unimak Island).	Oct. 8–Jan. 22.
State Game Mgmt. Unit 8	Oct. 8–Jan. 22.

Daily Bag and Possession Limits

Area	Ducks (1)	Geese (2)	Emperor geese	Bryant	Common Snipe	Sandhill Cranes
Units 11–13 & 17–26	8–24	6–12	Closed	2–4	8–16	Units 11–13 & 18–26, 3–6; Unit 17, 2–4.
Units 5–7, 9, 14–16 & 10 (Unimak Island only)	6–18	6–12	Closed	2–4	8–16	2–4.
Units 1–4	5–15	6–12	Closed	2–4	8–16	2–4.
Unit 10 (except Unimak Island)	5–15	6–12	Closed	2–4	8–16	2–4.
Unit 8	5–15	6–12	Closed	2–4	8–16	2–4.

(1) In Units 1–26 (Statewide) the season on canvasbacks will be closed and the basic daily bag and possession limits may include not more than 2 and 6 pintails, respectively. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers.

(2) No more than 4 daily, or 8 in possession may be any combination of Canada and/or white-fronted geese, provided that: in Units 1–9 and 14–18, no more than 2 daily, or 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is only permitted from September 21 through December 16. In Units 8, 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Unit 1(C), the taking of snow geese is prohibited. In Units 1–26 (Statewide) the

taking of Aleutian and cackling Canada geese and emperor geese is prohibited.

Special Tundra Swan Season: In Unit 22 there will be an experimental tundra swan season from September 1 through October 30, 1988, with a limit of 1 swan per hunter per season. This season is by registration permit (300 only).

4. Section 20.103 is revised to read as follows:

§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

Subject to the applicable provisions of the preceding sections of this part, the area open to hunting, the respective open seasons (dated inclusive), the shooting and hawking hours and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) Mourning Doves—Eastern Management Unit.

In Delaware, Florida, Georgia, Louisiana, Maryland, Pennsylvania, Rhode Island, South Carolina, Virginia and West Virginia:	
Daily bag limit	12
Possession limit	24
In Illinois, Indiana, Kentucky, Mississippi, North Carolina and Tennessee:	
Daily bag limit	15
Possession limit	30
In Alabama:	
North Zone:	
Daily bag limit	15
Possession limit	15
South Zone:	
Daily bag limit	12
Possession limit	12
Shooting and hawking hours: One-half hour before sunrise to sunset except as noted otherwise:	
Alabama:	
North Zone: (1)	
12 Noon to sunset	Sept. 10.
½ hour before sunrise to sunset.	Sept. 11-Oct. 15 & Dec. 23-Jan. 15.
South Zone: (1)	
½ hour before sunrise to sunset.	Sept. 24-Sept. 25 & Oct. 8-Nov. 25.
12 noon to sunset	Dec. 23-Jan. 8.
Connecticut	Closed.
Delaware (12 noon to sunset).	Sept. 3-Sept. 24 & Oct. 17-Oct. 29 & Dec. 8-Jan. 11.
Florida (2):	
12 noon to sunset	Oct. 1-Oct. 23.
½ hour before sunrise to sunset.	Nov. 12-Nov. 27 & Dec. 10-Jan. 8.
Georgia:	
North Zone (3):	
12 noon to sunset	Sept. 3
½ hour before sunrise to sunset.	Sept. 4-Oct. 2 & Nov. 24-Nov. 27 & Dec. 10-Jan. 14.
South Zone (3):	
12 noon to sunset	Sept. 24
½ hour before sunrise to sunset.	Sept. 25-Oct. 23 & Nov. 24-Nov. 27 & Dec. 10-Jan. 14.
Illinois (12 noon to sunset)	Sept. 1-Oct. 30.
Indiana:	
12 noon to sunset	Sept. 1-Oct. 16.
½ hour before sunrise to sunset.	Nov. 4-Nov. 13 & Nov. 24-Nov. 27.
Kentucky:	
11 a.m. to sunset	Sept. 1-Sept. 30 & Oct. 8-Oct 31.
Sunrise to sunset	Dec. 1-Dec. 6.
Louisiana:	
12 noon to sunset	Sept. 3-Sept. 4 & Oct. 15-Oct. 16 & Dec. 10-Dec. 11.
½ hour before sunrise to sunset.	Sept. 5-Sept. 11 & Oct. 17-Nov. 13 & Dec. 12-Jan. 9.
Maine	Closed.
Maryland:	
12 noon to sunset	Sept. 1-Oct. 22.
½ hour before sunrise to sunset.	Nov. 11-Nov. 19 & Dec. 16-Dec. 24.
Massachusetts	Closed.
Michigan	Closed.
Mississippi (½ hour before sunrise to sunset).	Sept. 3-Sept. 18 & Oct. 22-Nov. 12 & Dec. 25-Jan. 15.
New Hampshire	Closed.
New Jersey	Closed.
New York	Closed.
North Carolina:	
½ hour before sunrise to sunset.	Sept. 3-Oct. 8 & Nov. 23-Nov. 26 & Dec. 19-Jan. 7.
Ohio	Closed.
Pennsylvania:	
12 noon to sunset	Sept. 1-Oct. 15.
½ hour before sunrise to sunset.	Oct. 29-Nov. 19.
Rhode Island:	
12 noon to sunset	Sept. 12-Sept. 25.
Sunrise to sunset	Oct. 15-Nov. 18 & Dec. 19-Jan 8.
South Carolina (½ hour before sunrise to sunset).	Sept. 3-Oct. 8 & Nov. 19-Nov. 26 & Dec. 17-Jan. 11.
Tennessee:	
½ hour before sunrise to sunset.	Sept. 1-Sept. 29 & Oct. 8-Oct. 22 & Dec. 10-Dec. 25.
Vermont	Closed.
Virginia:	
12 noon to sunset	Sept. 3-Nov. 5.
½ hour before sunrise to sunset.	Dec. 24-Dec. 26 & Dec. 31-Jan. 2.
West Virginia:	
12 noon to sunset	Sept. 1-Oct. 31.
½ hour before sunrise to sunset.	Dec. 26-Jan. 3.
Wisconsin	Closed.

(1) In Alabama, the South Zone is defined as: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: remainder of the State.

(2) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is 24 mourning and white-winged doves in the aggregate, of which not more than 8 may be white-winged doves.

(3) In Georgia, the North Zone is defined as that area lying north of a division line as follows: U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; tence southwesterly along the Ocmulgee River to the western border to Jeff David County, south along the western border of Jeff Davis County, east along the southern border of Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east to the eastern border of Tattnall County; north along the eastern boundary to Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western border of Bulloch County to Highway

301, then northeast along Highway 301 to the South Carolina line.

(b) *Mourning Doves—Central Management Unit.*

In Missouri:	
Daily bag limit	10
Possession limit	20
In Texas:	
Daily bag limit	12 (3)
Possession limit	24 (3)
In Arkansas, Colorado, Kansas, Nebraska, North Dakota, New Mexico, Oklahoma, South Dakota, Wyoming and Montana:	
Daily Bag limit	15 (1)
Possession limit	30 (1)

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check state regulations for additional restrictions, including area descriptions.

Arkansas	Sept. 3–Sept. 25 and Oct. 8–Oct. 23 and Dec. 17–Jan. 6.
Colorado	Sept. 1–Oct. 30.
Iowa	Closed.
Kansas	Sept. 1–Oct. 30.
Minnesota	Closed.
Missouri	Sept. 1–Nov. 9.
Montana	Sept. 3–Oct. 12.
Nebraska	Sept. 1–Oct. 30.
New Mexico (1)	Sept. 1–Sept. 30 and Dec. 1–Dec. 30.
North Dakota	Sept. 1–Oct. 30.
Oklahoma	Sept. 1–Oct. 30.
South Dakota	Sept. 1–Oct. 21.
Texas: (2)(3)	
North Zone	Sept. 1–Nov. 9.
Central Zone	Sept. 1–Oct. 30 and Jan. 7–Jan. 16.
South Zone (4)	Sept. 20–Nov. 18 and Jan. 7–Jan. 16.
Wyoming	Sept. 1–Oct. 15.

(1) In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged and morning doves, singly or in the aggregate of these species.

(2) In Texas, the three zones are North, South and Central as follows:

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Central Zone—That portion of the State lying between the North and South Zones.

(3) In Texas, the daily bag limit is 12 mourning, white-winged and white-tipped doves in the aggregate, of which no more than 2 can be white-winged doves and 2 can be white-tipped doves; and the possession limit is 24, of which no more than 4 may be whitewings, and 4 may be whitetips.

(4) In Texas, the mourning dove season in the Special White-winged Dove Area of the South Zone is Sept. 20–Nov. 14 and Jan. 7–Jan. 16.

(c) *Mourning Doves—Western Management Unit.*

In Arizona, California, Idaho, Nevada, Oregon, Washington and Utah:	
Daily bag limit	10 (1)(2)
Possession limit	20 (1)(2)

Shooting and hawking hours: One-half hour before sunrise until sunset.

Check state regulations for additional restrictions, including area descriptions.

Arizona (1)	Sept. 1–Sept. 11 and Nov. 21–Jan. 8.
California (2)	Sept. 1–Sept. 15 and Nov. 12–Dec. 26.
Idaho	Sept. 1–Sept. 30.
Nevada (2)	Sept. 1–Sept. 30.
Oregon	Sept. 1–Sept. 30.
Utah	Sept. 1–Sept. 30.
Washington	Sept. 1–Sept. 15.

(1) In Arizona, during September 1 through 11 the daily limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. During November 21 through January 8, the bag and possession limits are 10 and 20 mourning doves, respectively.

(2) In those counties of California (Imperial, Riverside, and San Bernardino) and Nevada (Clark and Nye) having a season on white-winged doves, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves, singly or in the aggregate of these species.

Hawaii Regulations. Subject to the applicable provisions of the preceding sections of this part, mourning doves may be taken in accordance with the State regulations.

(d) *White-winged Doves.*

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check state regulations for additional restrictions, including area descriptions.

Seasons in	Season dates	Limits	
		Bag	Poss.
Arizona (Statewide).	Sept. 1–Sept. 11.	6(1)	12(1)
California: (2)			
Imperial, Riverside, and San Bernardino Counties.	Sept. 1–Sept. 15 and Nov. 12–Dec. 26.	10(2)	20(2)
Remainder of State.	Closed.		
Florida:	See Mourning dove regulations.		
Nevada: (2)			
Clark and Nye Counties.	Sept. 1–Sept. 30.	10(2)	20(2)
Remainder of State.	Closed.		
New Mexico: (3)	Sept. 1–Sept. 30 and Dec. 1–Dec. 30.	15(3)	30(3)
Texas: (4)			
Area in South Zone.	Sept. 3, 4, 10 and 11.	10(5)	20(5)
Remainder of State.	See Mourning dove regulations.		

(1) In Arizona, during September 1 through 11 the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves.

(2) In designated counties of California and Nevada, the daily bag limit is 10 and the possession limit is 20 white-winged and mourning doves, singly or on the aggregate of both species.

(3) In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species.

(4) Special White-Winged Dove Area in the South Zone—That portion of State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway

20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville, east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

(5) In Texas, the daily bag limit in the Special White-winged Dove Area is 10 white-winged, mourning and white-tipped doves in the aggregate of which no more than 2 may be mourning doves and 2 may be white-tipped doves. Possession limit is twice the daily bag limit.

(e) *Band-tailed Pigeons.*

Shooting and hawking hours: One-half hour before sunrise until sunset.

Check state regulations for additional restrictions, including area descriptions.

Seasons in	Season dates	Limits	
		Bag	Poss.
Arizona (1)	Oct. 7–Nov. 5	5	10
California:			
Alpine, Butte, Del Norte, Glen, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.	Sept. 24–Oct. 9	4	4
Remainder of State.	Dec. 10–Dec. 25.	4	4
Colorado:			
In all lands west of U.S. Interstate 25 and Small Game Management Units 128, 129, 133–136 and 140–142.	Sept. 1–Sept. 30.	5	10
Nevada:			
Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey Counties only.	Sept. 15–Sept. 30.	4	4
New Mexico:			
North Zone (2).	Sept. 1–Sept. 20.	5	10
South Zone (2).	Oct. 1–Oct. 20	5	10
Oregon	Sept. 15–Sept. 30.	4	4
Utah	Sept. 1–Sept. 30.	5	10
Washington	Sept. 17–Sept. 25.	4	4

(1) In Arizona, each hunter must have a special bird permit stamp issued by the State.

(2) In New Mexico, the *North Zone* is defined as that area lying north and east of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The *South Zone* is that area lying south and west of the North Zone.

5. Section 20.104 is revised to read as follows:

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora and Virginia)	Rails (Clapper and King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	See footnote (2).	5 (3) 8	
Possession limit	25 (1)	See footnote (2).	10 (3) 16	
Shooting Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.				
Check state regulations for additional restrictions, including area descriptions.				
Seasons in the Atlantic Flyway:				
Connecticut	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 15–Nov. 28	Oct. 15–Nov. 28.
Delaware	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Nov. 21–Jan. 4	Nov. 21–Jan. 31.
Florida	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Dec. 10–Jan. 23	Nov. 1–Feb. 15.
Georgia	Sept. 24–Dec. 2	Sept. 24–Dec. 2	Nov. 26–Jan. 9	Nov. 20–Feb. 28.
Maine	Sept. 1–Nov. 9	Closed	Oct. 1–Nov. 14	Sept. 1–Dec. 16.
Maryland	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 12–Nov. 25	Oct. 1–Nov. 25 and Nov. 28–Jan. 17.
Massachusetts	Sept. 1–Nov. 7	Closed	Oct. 10–Nov. 23	Sept. 1–Dec. 12.
New Hampshire	Closed	do	Oct. 1–Nov. 14	Sept. 15–Nov. 30.
New Jersey (4):				
North Zone	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 15–Nov. 18	Oct. 1–Jan. 15.
South Zone	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Nov. 12–Dec. 3 and Dec. 17–Dec. 29.	Oct. 1–Jan. 15.
New York	Sept. 1–Nov. 9	Closed	Oct. 1–Nov. 14	Sept. 1–Dec. 16.
North Carolina	Sept. 3–Nov. 11	Sept. 3–Nov. 11	Nov. 19–Jan. 2	Nov. 14–Feb. 28.
Pennsylvania	Sept. 1–Nov. 7	Closed	Oct. 22–Nov. 12	Oct. 22–Dec. 10.
Rhode Island	Sept. 12–Nov. 20	Sept. 12–Nov. 20	Oct. 15–Nov. 28	Sept. 12–Dec. 2 and Dec. 12–Jan. 5.
South Carolina	Sept. 12–Nov. 23	Sept. 15–Nov. 23	Nov. 24–Dec. 10 and Dec. 24–Jan. 20.	Nov. 14–Feb. 28.
Vermont	Sept. 24–Dec. 2	Closed	Oct. 1–Nov. 14	Sept. 24–Dec. 2.
Virginia	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Nov. 7–Nov. 29 and Dec. 21–Jan. 11.	Oct. 17–Jan. 31.

	Rails (Sora and Virginia)	Rails (Clapper and King)	Woodcock	Common Snipe
West Virginia	Sept. 1–Nov. 9	Closed	Oct. 15–Nov. 28	Sept. 1–Dec. 16.
Seasons in the Mississippi Flyway:				
Alabama (10)	Nov. 12–Jan. 20	Nov. 12–Jan. 20	Nov. 28–Jan. 31	Nov. 14–Feb. 28.
Arkansas	Sept. 13–Nov. 12	Closed	Nov. 5–Dec. 11 and Jan. 7–Feb. 3.	Nov. 14–Feb. 28.
Illinois	Sept. 3–Nov. 11	do	Oct. 1–Dec. 4	Sept. 3–Dec. 16.
Indiana	Sept. 1–Nov. 9	do	Sept. 17–Sept. 23 and Oct. 1–Nov. 27.	Sept. 1–Dec. 16.
Iowa (5)	Sept. 3–Nov. 11	do	Sept. 17–Nov. 20	Sept. 3–Dec. 18.
Kentucky	Deferred	do	Oct. 1–Dec. 4	Oct. 1–Dec. 4.
Louisiana	Nov. 19–Jan. 20	Nov. 19–Jan. 20	Dec. 10–Feb. 12	Nov. 12–Feb. 26.
Michigan (6)	Sept. 15–Nov. 14	Closed	Sept. 15–Nov. 14	Sept. 15–Nov. 14.
Minnesota	Sept. 1–Nov. 4	do	Sept. 1–Nov. 4	Sept. 1–Nov. 4.
Mississippi	Oct. 15–Dec. 23	Oct. 15–Dec. 23	Dec. 26–Feb. 28	Nov. 14–Feb. 28.
Missouri	Sept. 1–Nov. 9	Closed	Oct. 15–Dec. 18	Sept. 1–Dec. 16.
Ohio	Sept. 1–Nov. 9	do	Sept. 23–Nov. 26	Sept. 1–Nov. 26 and Dec. 5–Dec. 24.
Tennessee	Deferred	do	Oct. 22–Nov. 27 and Feb. 1–Feb. 28.	Nov. 14–Feb. 28.
Wisconsin	Oct. 8–Nov. 20	do	Sept. 17–Nov. 20	Oct. 8–Nov. 20.
Seasons in the Central Flyway:				
Colorado (7)	Sept. 1–Nov. 9	do	Closed	Sept. 1–Dec. 2.
Kansas	Sept. 1–Nov. 9	do	Oct. 1–Dec. 4	Sept. 1–Dec. 16.
Montana (7)	Closed	do	Closed	Oct. 1–Jan. 1.
Nebraska (8)	Sept. 1–Nov. 9	do	Sept. 15–Nov. 18	Sept. 1–Dec. 15.
New Mexico (7) (11)	Oct. 8–Dec. 14	do	Closed	Oct. 8–Jan. 8.
North Dakota	Closed	do	do	Oct. 1–Nov. 27.
Oklahoma	Sept. 1–Nov. 9	do	Oct. 24–Dec. 27	Oct. 1–Jan. 15.
South Dakota (9)	Closed	do	Closed	Sept. 1–Oct. 31.
Texas	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Deferred	Deferred.
Wyoming (7)	Sept. 17–Nov. 25	Closed	Closed	Sept. 17–Jan. 1.
Seasons in the Pacific Flyway:				
Colorado (7)	Sept. 1–Nov. 9	do	do	Sept. 1–Dec. 2.
Montana (7)	Closed	do	do	Oct. 1–Jan. 1.
New Mexico (7) (11)	Oct. 8–Dec. 14	do	do	Oct. 8–Jan. 8.
Wyoming (7)	Sept. 17–Nov. 25	do	do	Sept. 17–Dec. 18.

Note: No seasons are prescribed for woodcock. Snipe seasons have been deferred by all other States in the Pacific Flyway.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession of limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) For description of zones or management units within a State, see State regulations.

(5) In Iowa, rail limits are 15 daily and 25 in possession.

(6) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.

(7) The Central Flyway portion consists of: *Colorado* and *Wyoming*—the area lying east of the Continental Divide; *Montana*—the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; *New Mexico*—the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

(8) In Nebraska, the rail limits are 10 daily and 20 in possession.

(9) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(10) In Alabama, the rail limits are 15 daily and 15 in possession.

(11) In New Mexico, the rail limits are 10 daily and 10 in possession.

Note: Some States may select rail, woodcock, and snipe seasons at the time they select their duck seasons in August. Consult waterfowl regulations to be published later for information concerning these seasons.

6. Section 20.105 is amended by revising paragraphs (a) through (c) and by amending paragraph (d) to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and common moorhens and purple gallinules

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Sea Ducks.* (1) An open season for taking scoter, eider and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1988, and January 20, 1989, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated and designated as special duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

(2) The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the regular season limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

(3) Shooting hours are one-half hour before sunrise until sunset daily.

Check state regulations for additional restrictions.

Seasons in:	
Connecticut	Deferred.
Delaware	Sept. 24–Jan. 7.
Georgia	Deferred.
Maine	Deferred.
Maryland	Oct. 6–Jan. 20.
Massachusetts	Deferred.
New Hampshire	Sept. 15–Dec. 30.
New Jersey	Oct. 1–Jan. 15.
New York (Long Island only).	Sept. 24–Jan. 6.
North Carolina	Deferred.
Rhode Island	Deferred.
South Carolina	Deferred.
Virginia	Deferred.

(4) Notwithstanding the provisions of this Part 20, the shooting of *crippled* waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated and designated in their respective hunting regulations as being open to sea duck hunting.

Note: States with deferred seasons may select sea duck seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(b) *Teal.* The September teal season is suspended in 1988.

(c) *Common Moorhens and Purple Gallinules.*

Daily bag limit	15 singly or in the aggregate of the two species
Possession limit	30 singly or in the aggregate of the two species

Shooting hours: One-half hour before sunrise to sunset.

Check state regulations for additional restrictions.

Seasons in the Atlantic Flyway:	
Connecticut	Sept. 1–Nov. 9.
Delaware	Sept. 1–Nov. 9.
Florida (1)	Sept. 1–Nov. 9.
Georgia	Deferred.
Maine	Sept. 1–Nov. 9.
Maryland	Closed.
Massachusetts	Closed.
New Hampshire	Closed.
New Jersey (2)	Sept. 1–Nov. 9.
New York:	
Long Island	Closed.
Remainder of State	Sept. 1–Nov. 9.
North Carolina	Sept. 3–Nov. 11.
Pennsylvania	Sept. 1–Nov. 7.
Rhode Island	Sept. 12–Nov. 20.
South Carolina	Sept. 15–Nov. 23.
Vermont	Sept. 24–Dec. 2.
Virginia	Deferred.
West Virginia	Deferred.
Seasons in the Mississippi Flyway	
Alabama (3)	Nov. 12–Jan. 20.
Arkansas	Sept. 1–Nov. 9.
Illinois	Closed.
Indiana	Sept. 1–Nov. 9.
Iowa	Closed.
Kentucky	Deferred.
Louisiana	Nov. 19–Jan. 20.
Michigan	Deferred.
Minnesota	Oct. 8–Nov. 6.
Mississippi	Oct. 15–Dec. 23.
Missouri	Closed.
Ohio	Sept. 1–Nov. 9.
Tennessee	Deferred.
Wisconsin	Oct. 8–Nov. 20.
Seasons in the Central Flyway:	
Colorado (4)	Closed.
Kansas	Closed.
Montana (4)	Closed.
Nebraska	Closed.
New Mexico (4)(5)	Oct. 8–Jan. 8.
North Dakota	Closed.
Oklahoma	Sept. 1–Nov. 9.
South Dakota	Closed.
Texas	Sept. 1–Nov. 9.
Wyoming (4)	Closed.
Seasons in the Pacific Flyway:	
All States and portions thereof.	Deferred.

(1) The season in Florida applies to the common moorhen only. There is no open season on the purple gallinule in Florida.

(2) In New Jersey, the bag limit is 10 daily and 20 in possession.

(3) In Alabama, the bag limit is 15 daily and 15 in possession.

(4) Seasons apply to Central Flyway portion of State only.

(5) In New Mexico, the bag limit is 5 common moorhens daily and 10 in possession; there is no open season on the purple gallinule in New Mexico.

Note: States with deferred seasons may select gallinule seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

Atlantic Flyway

Flywaywide Restrictions.

Shooting (including hawking) hours: One half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season dates	Limits: Bag	Limits: Possession
* * * * *			
Florida			
Wood ducks.	Sept. 24–Sept. 28.	3	6
* * * * *			
Mississippi Flyway			
* * * * *			
Illinois (1)			
Canada Geese.	Sept. 1–Sept. 10.	5	10
* * * * *			
Kentucky			
Wood ducks.	Sept. 7–Sept. 11.	2	4
* * * * *			
Michigan (1)			
Canada Geese.	Sept. 1–Sept. 10.	3	6
* * * * *			
Minnesota (1)			
Canada Geese.	Sept. 1–Sept. 10.	4	8
* * * * *			
Tennesse			
Wood ducks.	Sept. 10–Sept. 14.	2	4
* * * * *			

(1) Check State regulations for areas open to the hunting of Canada geese.

* * * * *

7. Section 20.106 is revised to read as follows:

§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes (unless otherwise noted), and with shooting hours from one-half hour before sunrise until sunset (unless otherwise noted) in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive dates are October 1 through November 27, 1988.

(b) In New Mexico (1) in the counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, the inclusive dates for the regular season are October 22, 1988, through January 22, 1989; (2) in the Middle Rio Grande Valley Hunt Area (described in State regulations) the inclusive dates for the experimental season are October 15 through October 30, 1988; and (3) in the Hatch-Deming Zone in the counties of Sierra, Luna, and Dona Ana the inclusive dates are January 1–January 8; January 13–January 15; January 20–January 22; and January 27–29, 1989.

Hunting in the experimental seasons is by State permit only, the daily bag limit is 3 sandhill cranes and the seasonal bag limit is 9, and shooting hours are sunrise to sunset.

(c) In Oklahoma (that portion west of I–35) the inclusive dates are October 22, 1988, through January 22, 1988.

(d) In Texas that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S.

283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary the season has been deferred.

(e) In North Dakota (that portion west of U.S. Highway 281) the inclusive dates are September 10 through November 6, 1988.

(f) In South Dakota, the inclusive season dates are September 24 through October 30, 1988.

(g) In Montana (the Central Flyway portion except that area south of I–90 and west of the Bighorn River), the inclusive dates are October 1 through November 27, 1988.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 17 through November 13, 1988.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

Pacific Flyway

(a) In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season selection has been deferred.

(b) In Wyoming's sandhill crane-Canada goose hunt areas: Hunting by State permit only.

Bear River area in Lincoln County—the season dates are September 3 through September 4, 1988. Season limits are 2 sandhill cranes per hunter.

Riverton Boysen Unit in Fremont County—the season dates are September 10 through September 11, 1988. Season limits are 2 sandhill cranes per hunter.

Salt River (Star Valley) area in Lincoln County—the season dates are September 3 through September 4, 1988. Season limits are 1 sandhill crane and 2 Canada geese per hunter.

Eden—Farson Agricultural Project in Sweetwater and Sublette Counties—the season dates are September 3 through September 4, 1988. Season limits are 2 sandhill cranes and 1 Canada goose per hunter.

8. Section 20.109 is revised to read as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate.
Possession limit	6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily.

Check state regulations for additional restrictions.

Atlantic Flyway	
Florida:	
Mourning doves and white-winged doves.	Sept. 24–Dec. 2.
Woodcock	Oct. 22–Dec. 4.
Snipe	Nov. 1–Feb. 15.
Common moorhens and rails.	Sept. 24–Dec. 3.
Maryland:	
Mourning doves	Sept. 1–Oct. 23 and Nov. 1–Dec. 24.
Rails	Sept. 1–Dec. 16.
Woodcock	Oct. 5–Jan. 19.
Snipe	Oct. 1–Nov. 25 and Nov. 28–Jan. 17.
New Jersey:	
Ducks	Oct. 3–Dec. 31 and Mar. 1–Mar. 10.
Pennsylvania:	
Mourning doves	Sept. 1–Dec. 16.
Ducks and geese	Oct. 8–Jan. 8.
Virginia:	
Woodcock and snipe.	Oct. 17–Jan. 31.
Mourning doves and rails.	Sept. 1–Nov. 30 and Dec. 19–Jan. 3.
Mississippi Flyway	
Illinois:	
Mourning doves, woodcock, rails and snipe.	Sept. 1–Dec. 16.
Ducks, mergansers and coots.	Oct. 8–Jan. 8.
Indiana:	
Mourning doves	Oct. 17–Nov. 3 and Jan. 1–Jan. 29.
Woodcock	Sept. 1–Sept. 16.
Iowa:	
Ducks, coots, and geese.	Sept. 1–Dec. 16.
Michigan:	
Snipe, rails and moorhens.	Sept. 1–Dec. 16.
Ducks, coots, and geese.	Oct. 4–Jan. 18.
Minnesota:	
Woodcock, snipe, and rails.	Sept. 1–Dec. 16.
Missouri:	
Mourning doves	Sept. 1–Dec. 16.
Wisconsin:	
Rails, woodcock, snipe, and gallinules.	Sept. 1–Dec. 16.
Ducks, mergansers, and coots.	Nov. 6–Jan. 22.
Geese	Oct. 1–Dec. 31.
Central Flyway	
Colorado:	
Ducks, mergansers, coots and geese.	Sept. 1–Oct. 7 and Oct. 19–Nov. 4.
Montana:	
All migratory game birds excluding doves.	Sept. 17–Jan. 1.
New Mexico: (1)	
Mourning doves	Sept. 1–Nov. 6 and Nov. 22–Dec. 30.
Band-tailed pigeons	Sept. 1–Nov. 30.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.	Oct. 8–Jan. 22.
Ducks	Oct. 8–Jan. 15.
Canada and white-fronted geese.	Oct. 8–Jan. 15.
Snow, blue, and Ross' geese.	Nov. 28–Feb. 28.
North Dakota:	
All legal migratory game species.	Sept. 1–Nov. 6.
Oklahoma:	
Duck, mergansers, and coots.	Oct. 8–Jan. 22.
Texas:	
Mourning doves (statewide).	Sept. 1–Nov. 20 and Jan. 1–Jan. 26.
Rails and gallinules	Sept. 1–Nov. 20 and Jan. 1–Jan. 26.
White-winged doves	Sept. 1–Nov. 20 and Jan. 1–Jan. 26.
Wyoming:	
Mourning doves	Sept. 1–Oct. 15.
Snipe and rails	Sept. 17–Nov. 25.
Pacific Flyway	
Colorado:	
Ducks, mergansers, coots and geese.	Sept. 1–Oct. 7 and Oct. 15–Oct. 24.
New Mexico (1)	
Mourning doves	Sept. 1–Nov. 6 and Nov. 22–Dec. 30.
Band-tailed pigeons	Sept. 1–Nov. 30.
Ducks	Oct. 8–Jan. 8.
Canada and white-fronted geese.	Oct. 8–Jan. 15.
Snow, blue and Ross' geese.	Oct. 8–Jan. 8.
Oregon:	
Doves and pigeons	Sept. 1–Dec. 16.
Wyoming:	
Mourning doves	Sept. 1–Oct. 15.
Snipe and rails	Sept. 17–Nov. 25.

Note: See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Date: August 25, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

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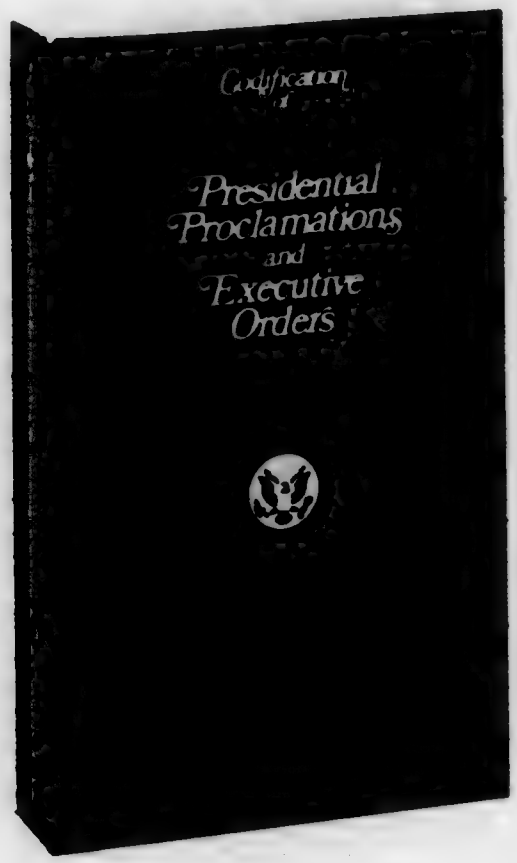

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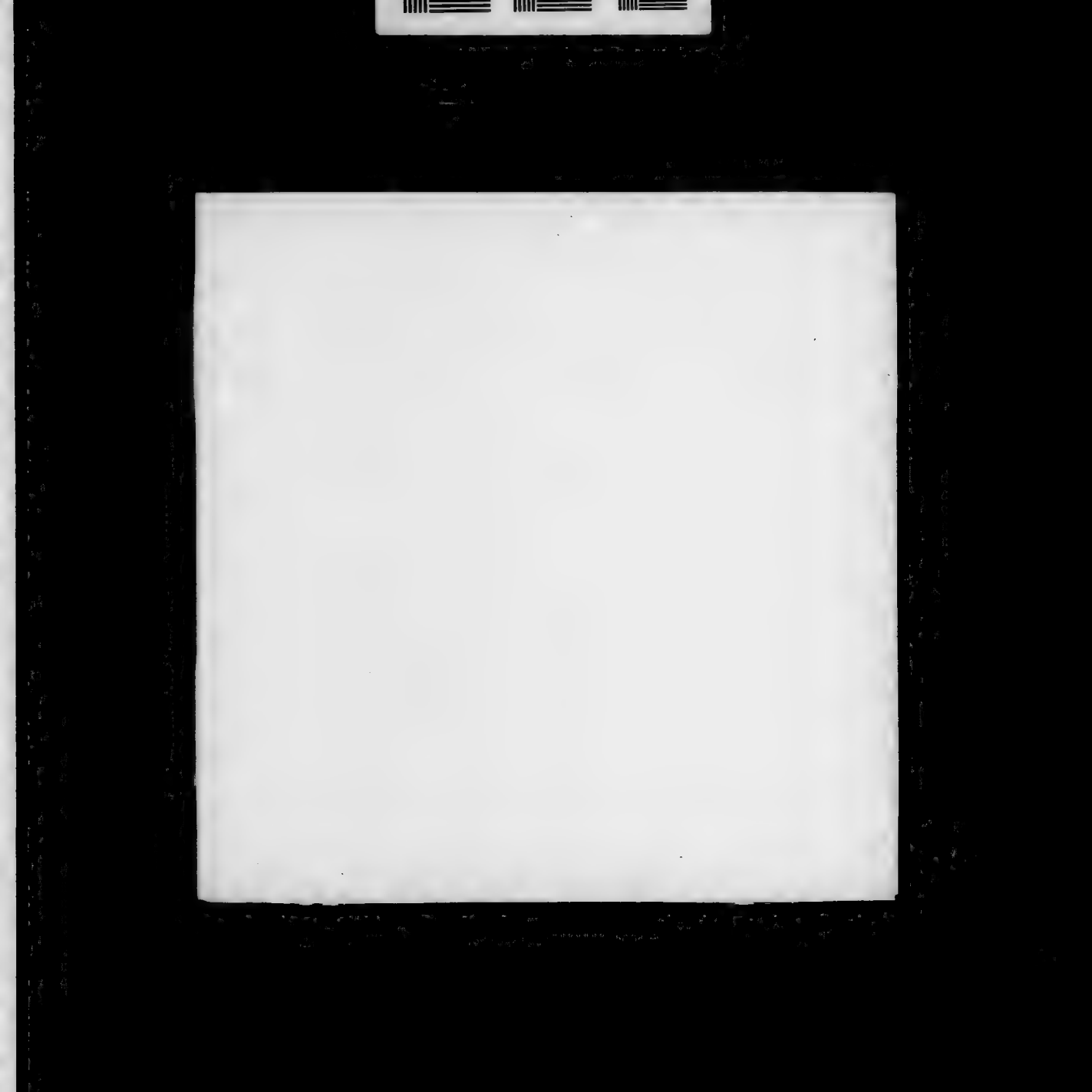

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Federal Register
Vol. 53, No. 170
Thursday, September 1, 1988

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Title 3—

The President

Presidential Determination No. 88–20 of July 26, 1988

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State, United States Coordinator for Refugee Affairs

Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, in order to meet unexpected urgent refugee and migration needs in Africa, I hereby determine that it is important to the national interest that $10.5 million be made available from the United States Emergency Refugee and Migration Assistance Fund (Emergency Fund) for assistance to persons in Africa, including, as appropriate, contributions to the International Committee of the Red Cross (ICRC), the United Nations High Commissioner for Refugees (UNHCR), and other international organizations and voluntary agencies providing assistance to such persons. Within the total, approximately $5.0 million will be contributed to the UNHCR/League of Red Cross Societies for urgent African appeals and approximately $5.5 million will be contributed to the ICRC for Africa.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority.

This Determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, July 26, 1988.

cc: The Attorney General
The Secretary of Health and Human Services
Commissioner, Immigration and Naturalization Service

[FR Doc. 88–20005
Filed 8–30–88; 12:18 pm]
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Rules and Regulations

Federal Register
Vol. 53, No. 170
Thursday, September 1, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

California Kiwifruit; Increase in Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule regarding California kiwifruit will increase and revise the authorized expenses under Marketing Order 920 for the 1988–89 fiscal period. Amending this budget will allow the Kiwifruit Administrative Committee to incur expenses reasonable and necessary to administer the program. Funds for this program will be derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1988 through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–5610.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (17 CFR Part 920) regulating the handling of kiwifruit grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit under this marketing order, and approximately 1225 California kiwifruit producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable kiwifruit handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of kiwifruit. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Kiwifruit Administrative Committee (KAC) met on July 12, 1988, and revised the budget for the fiscal period which began August 1, 1988. The amended budget will total $129,025 instead of the currently approved $112,618. The amended budget will revise several major expense items, including an increase in field staff salaries from $29,650 to $41,010, and an increase in the pension plan from $2,860 to $5,337. Also, an additional $5,000 was recommended for the purchase of microwave ovens and digital scales, to be used by the KAC field staff to demonstrate a new method of measuring kiwifruit maturity. It will be useful to introduce the testing procedure to the handlers now, since it is under consideration as a future regulatory requirement.

The recommended assessment rate of $0.0125 is unchanged and the same as last year. Projected shipments of 8.7 million trays will yield $108,750 in assessment income. This income, when added to approximately $20,000 from the reserve, will be adequate to cover budgeted expenses.

While this action will impose some additional costs to handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (53 FR 30289, August 11, 1988). That document contained a proposal to amend § 920.204 to revise and increase expenses for the Kiwifruit Administrative Committee. That rule provided that interested persons could file comments through August 22, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses

which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit (California).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.204 is revised to read as follows: [*this section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations*]:

§ 920.204 Expenses and assessment rate.

Expenses of $129,025 by the Kiwifruit Administrative Committee are authorized and an assessment rate of $0.0125 per 7½ pound tray or equivalent is established for the fiscal year ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: August 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–19935 Filed 8–31–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1951

Endorsement of Checks for Deposit in Concentration Banking System

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to reflect changes in the internal handling of collections. This action is necessary because of the requirement of the Federal Reserve Board's Regulation CC. FmHA offices under Regulation CC must endorse checks/money orders in a specific way. The intended effect of this amendment is to provide for clear and uniform endorsements of checks. This will facilitate the identification of the depository bank and expedite the return of unpaid checks.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Douglas, Financial Analyst, Farmers Home Administration, U.S. Department of Agriculture, Room 5507, South Agriculture Building, Washington, DC 20250, Telephone (202) 475–4425.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and, since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves internal agency management and publication for comment is unnecessary.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

For reasons set forth in the Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this activity is related to the following programs that are subject to intergovernment consultations with State and local officials:

10.405—Farm Labor Housing Loan and Grants
10.411—Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.414—Resource Conservation and Development Loans
10.415—Rural Rental Housing Loans
10.416—Soil and Water Loans
10.418—Water and Waste Disposal System for Rural Communities
10.419—Watershed Protection and Flood Prevention Loans
10.420—Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
10.422—Business and Industrial Loans
10.423—Community Facilities Loans
10.427—Rural Rental Assistance Payment (Rental Assistance)

In turn, the following programs to which this activity is also related, are not subject to Executive Order 12372:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low-Income Housing Loans (Section 502 Rural Housing Loans)
10.417—Very Low-Income Housing Repair Loans and Grants (Section 504 Rural Housing Loans and Grants)
10.421—Indian Tribes and Tribal Corporation Loans
10.428—Economic Emergency Loans

List of Subjects in 7 CFR Part 1951

Accounting, Credit, Loan programs-Agriculture, Loan programs—Housing and community development, Mortgages, Collection of loan payments and depositing payment through the Concentration Banking System (CBS), Financial Institutions.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Collections

2. Section 1951.55 is revised to read as follows:

§ 1951.55 Receiving and processing collections.

FmHA offices receive borrower payments either through the mail or in person in the form of checks, money orders, and cash. Payments are recorded on the appropriate accounting forms which are Form FmHA 451–2, Form FmHA 1944–9, or a payment coupon. These documents are used to transmit accounting information to the Finance Office. In addition, the FmHA office records payments on either a management system card, a servicing card, or a rental assistance tracking form, as appropriate.

Date: August 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-19938 Filed 8-31-88; 8:45 am]

BILLING CODE 3410-07-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 204

Housing Guaranty Standard Terms and Conditions

AGENCY: Agency for International Development (A.I.D.), IDCA.

ACTION: Final rule.

SUMMARY: Title 22 U.S.C. 2181–2183 establishes a housing guaranty program to assist developing countries. 22 U.S.C. 2182 authorizes the issuance of guaranties to eligible investors who meet certain prescribed criteria. The Standard Terms and Conditions set out in this Final Rule are those pursuant to which the United States of America would issue its guaranty.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Michael G. Kitay, Assistant General Counsel, Agency for International Development, GC/PRE, Room 3328 NS, Washington, DC 20523, Telephone: 202/647-8235 (FTS 647-8235).

SUPPLEMENTARY INFORMATION: Since the inception of the Housing Guaranty Program, the Office of Housing (now known as the Office of Housing and Urban Programs) of the Agency for International Development (A.I.D.) has used separately executed Contracts of Guaranty which contain the terms and conditions under which the United States of America will issue its guaranty. Preparing and executing separate Contracts of Guaranty is a cumbersome repetitive process, the purpose of which can be equally well served by publishing a standard rule. Once the rule (i.e., terms and conditions of A.I.D.'s guaranty) is published, a simple cross reference to the CFR rule in the guaranty legend signed on the reverse side of each guarantied note will suffice to advise noteholders of their contractual rights against A.I.D. as guarantor.

A proposed rule on this subject was published in the **Federal Register** on April 11, 1988, at FR 11872. The final date for receipt of comments was May 11, 1988. The final rule now published reflects technical changes resulting from comments received, but no substantive comments were received.

The rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory analysis under Executive Order 12291 because it involves a foreign affairs function of the United States.

As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) (1982) do not apply. An environmental impact statement is not required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 22 CFR Part 204

Loan programs, Foreign relations, Health, Housing and community development, Finance, Guaranteed loans.

Accordingly, a new Part 204 is added to Title 22, Chapter II of the Code of Federal Regulations as follows:

* * * * *

PART 204—HOUSING GUARANTY STANDARD TERMS AND CONDITIONS

Subpart A—Definitions

Sec.

204.1 Definitions.

Subpart B—The Guaranty

204.11 The guaranty.
204.12 Guaranty eligibility.
204.13 Non-impairment of the guaranty.
204.14 Transferability of guaranty; Note register.
204.15 Paying agent obligation.

Subpart C—Procedure for Obtaining Compensation

204.21 Event of default; Application for compensation; Payment.
204.22 Right of A.I.D. to cure default.
204.23 Payment to A.I.D. of excess amounts received by the lender or any assignee.

Subpart D—Covenants

204.31 Prosecution of claims.
204.32 Change in agreements.
204.33 A.I.D. approval of acceleration of notes.

Subpart E—Administration

204.41 Arbitration.
204.42 Notice.
204.43 Governing law.
Exhibit A—Application for compensation.
Exhibit B—Assignment.

Authority: 22 U.S.C. 2361.

Subpart A—Definitions

§ 204.1 Definitions.

Wherever used in these standard terms and conditions:

(a) "A.I.D." means the United States Agency for International Development or its successor with respect to the housing guaranty authorities contained in Title III, Chapter 2 of Part I of the Foreign Assistance Act of 1961, as amended (the "Act").

(b) "Eligible Note(s)" means (a) Note(s) meeting the eligiblity criteria set out in § 204.12 hereof.

(c) "Eligible Investor" means an "eligible investor" as defined in section 238(c) of the Act.

(d) "Lender" means an Eligible Investor who initially provides loan funds to the Borrower in exchange for Eligible Note(s).

(e) "Investment" respecting any Eligible Note means the principal amount of such Eligible Note.

(f) "Assignee" means the owner of an Eligible Note who is registered as an Assignee on the Note Register of Eligible Notes required to be maintained by the Paying Agent and who is an "Eligible Investor."

(g) "Outstanding Investment" respecting any Eligible Note means the Investment less the net amount of any repayments of principal of the Investment made by or on behalf of the Borrower or A.I.D.

(h) "Further Guaranteed Payments" means the amount of any loss suffered by the Lender or by any Assignee by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless the Lender and Assignee from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Note in the country of the Borrower.

(i) "Loss of Investment" respecting any Eligible Note means an amount in Dollars equal to the total of the (1) Application, (2) Further Guaranteed Payments unpaid as of the Date of Application, and (3) interest accrued at the rate(s) specified in the Note(s) and unpaid on the Outstanding Investment and Further Guaranteed Payments to and including the date on which full payment thereof is made to the Lender or any Assignee.

(j) "Application for Compensation" means an executed application in the form of Exhibit A hereto which the Lender or any Assignee files with A.I.D. pursuant to § 204.21 of this part.

(k) "Applicant" means a Lender or Assignee who files an Application for Compensation with A.I.D.

(l) "Date of Application" means the effective date of an Application for Compensation filed with A.I.D. pursuant to § 204.21 of this part.

(m) "Business Day" means a date on which banks of the District of Columbia of the United States of America are open for business.

(n) "Guaranty Payment Date" means a Business Day not more than sixty (60) calendar days after the related Date of Application; provided that (1) compensation to the party filing the related Application for Compensation is due and payable on such date, in accordance with the terms of this Guaranty and (2) tender of assignment referred to in subsection 204.21(f) is made as therein provided.

Subpart B—The Guaranty

§ 204.11 The Guaranty.

Subject to these standard terms and conditions, the United States of America, acting through A.I.D., agrees to pay to any Lender or Assignee who has been determined to be an Eligible Investor compensation in Dollars equal to its Loss of Investment under the Eligible Note; provided, however, that no such payment shall be made for any such loss arising out of fraud or misrepresentation for which such Lender or Assignee is responsible or of which it had knowledge at the time it became such Lender or Assignee.

This Guaranty shall apply to each Eligible Note registered on the Note Register required to be maintained by the Paying Agent.

§ 204.12 Guaranty eligibility.

(a) Eligible Notes only may be guarantied hereunder, and Eligible Investors only are entitled to the benefits of this Guaranty. Notes in order to achieve Eligible Note status must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower; and they must contain a guaranty legend incorporating these standard terms and conditions signed on behalf of A.I.D. by either a manual signature or a facsimile signature or an authorized representative of A.I.D. together with a certificate of authentication manually executed by a Paying Agent whose appointment by the Borrower is consented to by A.I.D. in a Paying and Transfer Agency Agreement.

(b) A.I.D. shall designate in a certificate delivered to the Lender and to the Paying Agent, the person(s) whose signature shall be binding on A.I.D. The certificate of authentication of the Paying Agent issued pursuant to the Paying and Transfer Agency Agreement shall, when manually executed by the Paying Agent, be conclusive evidence binding on A.I.D. that the Note has been duly executed on behalf of the Borrower and delivered.

§ 204.13 Non-impairment of the guaranty.

The full faith and credit of the United States of America is pledged to the performance of this Guaranty. The Guaranty shall not be affected or impaired by any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by the Lender, A.I.D., the Paying Agent or the Borrower in connection with the transactions contemplated by this Guaranty. This non-impairment of the guaranty provision shall not, however, be operative with respect to any amount arising out of fraud or misrepresentation for which the Lender or Assignee is responsible or of which it had knowledge prior to the time it became such Lender or Assignee.

§ 204.14 Transferability of guaranty; Note Register.

The Lender of any Assignee may assign, transfer or pledge the Eligible Notes to any Eligible Investor. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Assignee is entered on the Note Register required to be maintained by the Paying Agent pursuant to the Paying and Transfer Agency Agreement. A.I.D. shall be entitled to treat the persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guaranty and A.I.D. shall not be affected by notice to the contrary.

§ 204.15 Paying agent obligations.

Failure of the Paying Agent to perform any of its obligations pursuant to the Paying and Transfer Agency Agreement shall not impair the Investor's or any Assignee's rights under this Contract of Guaranty, but may be the subject of action for damages against the Paying Agent by A.I.D. as a result of such failure or neglect; provided, however, that the Paying Agent is not authorized to issue and authenticate and have Notes outstanding at any time in excess of the principal amount of the Loan.

Subpart C—Procedure for Obtaining Compensation

§ 204.21 Event of default; Application for compensation; Payment.

(a) Within one year after an Event of Default, as this term is defined in an Eligible Note, the Lender or Assignee may file with A.I.D. an Application for Compensation in form as provided in Exhibit A. A.I.D. shall make the required payment not later than sixty (60) days after the Date of Application unless A.I.D. has cured the default under § 204.22.

(b) Guaranty Payment. On or before the Guaranty Payment Date, the Applicant shall tender assignment of all Applicant's right, title and interest as of the Date of Application in and to all sums for which Application has been made. A.I.D. shall accept the assignment and pay or cause to be paid to Applicant and compensation due to the Applicant pursuant to the Guaranty.

§ 204.22 Right of A.I.D. to cure default.

Within sixty (60) days after the Date of Application for Compensation, A.I.D. may at any time make payments to the Lender or any Assignee equal to all installments of principal due and unpaid under any Note (other than installments whose maturity has been accelerated), together with interest on the unpaid principal amount of the Note to the date of such payment by A.I.D., and any Further Guaranteed payments due and unpaid, and thereby prevent or cure any default under the Note. Upon such a payment by A.I.D., if the Lender or Assignee shall have accelerated such Note, such acceleration shall be immediately rescinded or, if such Note shall not have been accelerated, such Note shall not thereafter be accelerated as a result of such Event of Default.

§ 204.23 Payment to A.I.D. of excess amounts received by the lender of any assignee.

If the Lender or Assignee shall, as a result of A.I.D. paying compensation under this Guaranty, receive an excess payment, it shall refund the excess to A.I.D.

Subpart D—Covenants

§ 204.31 Prosecution of claims.

After an assignment to A.I.D. by the Lender or any Assignee pursuant to § 204.21(b), A.I.D. shall have exclusive power to prosecute all claims related to the outstanding Eligible Notes so assigned. If the Lender or such Assignee continues to have an interest in the outstanding Eligible Notes, the Lender or such Assignee and A.I.D. shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 204.32 Change in agreements.

Neither the Lender nor any Assignee will consent to any change or waiver of

any provision of any document contemplated by this Guaranty without the prior written consent of A.I.D.

§ 204.33 A.I.D. approval of acceleration of notes.

Without the prior approval of A.I.D., the Lender or any Assignee shall not accelerate any Eligible Notes held by it on account of the happening of an Event of Default other than failure to make a payment when due on the note.

Subpart E—Administration

§ 204.41 Arbitration.

Any controversy or claim between A.I.D. and the Lender or any Assignee arising out of this Guaranty shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 204.42 Notice.

Any communication to A.I.D. pursuant to this Guaranty shall be in writing in the English language, shall refer to the A.I.D. Housing Guaranty Project Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by A.I.D. at the address specified below:

Mail Address:

Office of Housing and Urban Programs, Agency for International Development, Washington, DC 20523.

Re: A.I.D. Housing Guaranty Project ____-HG-____ [1]

Telex Nos.: ITT 440001 (Answer back is AIDWNDC) RCA 248379 (Answer back is 248379 AID UR) WU 892703 (Answer back is AID WSH) WU 64154 (Answer back is AID 64154)

Fax No.: 202/647-4958

Cable Address: AID WASH DC

Other addresses may be substituted for the above upon the giving of notice of such substitution to each Lender or Assignee by first class mail at the addresses set forth in the Note Register.

§ 204.43 Governing law.

This Guaranty shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

[1] Enter title and numerical designation of the relevant A.I.D. Housing Guaranty Project as inscribed on each Note guaranty legend.

Exhibit A

Application for Compensation

Office of Housing and Urban Programs,
Agency for International Development,
International Development Cooperation Agency, Washington, D.C. 20523

Ref: Guaranty dated as of ____, 19____:
A.I.D. Housing Project HG-_____

Gentlemen:

You are hereby advised that payment of $_____ (consisting of $_____ of principal, $_____ of interest and $_____ in Further Guaranteed Payments as defined in Section 204.01(i) of the Standard Terms and Conditions of the above-mentioned Guaranty [1]) was due on _____, 19____, on $_____ principal amount of Notes held by the undersigned of the _____ ___ (the "Borrower"), issued pursuant to the Loan Agreement, dated as of _____, _____, between the Borrower and _____. Of such amount $_____ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guaranty, the undersigned hereby applies, under Section 204.21 of said Guaranty, for payment of a total of $_____, representing $_____, the outstanding principal amount of the presently outstanding Notes of the Borrower held by the undersigned issued pursuant to said Loan Agreement, and $_____ in Further Guaranteed Payments,[2] plus accrued and unpaid interest thereon to and including the date payment in full is made by you pursuant to said Guaranty. Such payment is to be made at your office in Washington, DC.

[Name of Applicant]

By _____
Name _____
Title _____
Dated _____

Exhibit B

Assignment

The undersigned, being the registered owner of a Note in the principal amount of $_____ issued by the _____ (the "Borrower"), pursuant _____, and guaranty, dated as of _____, _____ the "Guaranty"), between the Lender and the United States of America, acting through the Agency for International Development ("A.I.D."), hereby assigns to A.I.D., without recourse (i) its entire right, title and interest in and to the Note of the Borrower referred to above (which Note is attached hereto), including its rights to unpaid interest on such Note, and (ii) its entire outstanding right, title and interest arising out of said Loan Agreement with respect to such Note, except the undersigned's right to receive payments under the Loan Agreement in respect of which A.I.D. has made no payment to the undersigned as of the date hereof.

[Name of Applicant]

[1] Strike inapplicable portion.

[2] In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

By _____
Name _____
Title _____
Dated _____

Accepted:

UNITED STATES OF AMERICA

By _____
Name _____
Title _____
Dated _____

Date: August 22, 1988.

Fredrik A. Hansen,

Deputy Director, Agency for International Development, Office of Housing and Urban Programs.

[FR Doc. 88-19861 Filed 8-31-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of deferral of effective date for certain laboratories.

SUMMARY: This notice defers the effective date of the standard on occupational exposure to formaldehyde (29 CFR 1910.1048) for all laboratories except for those classified as anatomy, histology, or pathology laboratories, until January 1, 1989. This action is necessary to allow additional time for the Occupational Safety and Health Administration (OSHA) to reach a decision on whether to cover these laboratories under the scope of the Formaldehyde Standard or to include them under the Toxic Substances in Laboratories Standard, which has not yet been published.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3649, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On December 4, 1987, a revised standard for occupational exposure to formaldehyde was published in the **Federal Register** (52 FR 46168). That standard, among other things, divided all laboratories into two groups: (a) Anatomy, histology, and pathology laboratories, and (b) all

other laboratories ("other laboratories"). Effective February 2, 1988, the Formaldehyde Standard, as promulgated, covered occupational exposure to formaldehyde in anatomy, pathology, and histology laboratories. In addition, the revised permissible exposure levels became effective on that date for other laboratories. The effective date of the remaining provisions of the Formaldehyde Standard was deferred for these other laboratories until September 1, 1988.

OSHA believed that the deferred effective date would give it time to complete the generic rulemaking covering Toxic Substances in Laboratories (51 FR 26660, July 24, 1986). As part of that generic rulemaking, OSHA would decide whether formaldehyde exposures in other laboratories would be covered under the Formaldehyde Standard or the Toxic Substances in Laboratories Standard (51 FR 26660, July 24, 1986; see also 52 FR at 46289, December 4, 1987). OSHA deferred this decision, pending the completion of the generic Toxic Substances in Laboratories Standard, since it might be more appropriate to cover the use of formaldehyde in these other laboratories under the generic rule for laboratories than under the substance-specific Formaldehyde Standard.

The Toxic Substances in Laboratories Standard has not yet been finalized. OSHA projects that the final rule may not be issued until January 1, 1989. To avoid possible start-up costs which these other laboratories might incur to comply with the ancillary provisions of the Formaldehyde Standard which may be superseded by the generic laboratory standard, the effective date for coverage of other laboratories under the ancillary provisions of the Formaldehyde Standard is being deferred until January 1, 1989. In the interim period, other laboratories whose employees are exposed to formaldehyde need only comply with the revised permissible exposure limits in the Formaldehyde Standard.

Due to the short deferral period, notice and opportunity for public comment is impractical and unnecessary under 5 U.S.C. 553 and 29 U.S.C. 655(b).

Signed at Washington, DC this 29th day of August 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88-19904 Filed 8-31-88; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Participation Requirements for Residential Treatment Centers (RTC)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule amendment; Change of effective date.

SUMMARY: Amendment No. 12 to DoD 6010.8-R, published in the **Federal Register** on August 1, 1988 (53 FR 28873), clarified participation requirements and established a new reimbursement system for payment of RTC care to be in effect as of September 1, 1988. This amendment postpones the effective date of the final rule to October 1, 1988. This extension will provide sufficient time to meet with interested parties to discuss those issues and concerns surrounding the new reimbursement methodology.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. David Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303) 361-3537.

SUPPLEMENTARY INFORMATION: Revised participation agreements were sent out to the RTCs.on July 29, 1988, in anticipation of final rule publication. The RTCs were required to sign and return the participation agreement with the Director, Office of Civilian Health and Medical Program of the Uniformed Services, or his designee, by August 25, 1988, would no longer be considered a CHAMPUS-authorized provider and no benefits would be paid for any services rendered by such facilities. This postponement extends the requirement for signature and return of the participation agreement to September 26, 1988. Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079; 1086; 5 U.S.C. 301.

2. The "Effective Date" section in the preamble is revised to read: "October 1, 1988."

August 29, 1988.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 88-19933 Filed 8-31-88; 8:45 a.m.]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3426-5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On March 3, 1988 (53 FR 6845), USEPA proposed to approve revisions to the Indiana State Implementation Plan (SIP) for sulfur dioxide (SO_2) under USEPA's "parallel processing" procedures. The revisions consist of Indiana's SO_2 emission limits and plans for Jefferson, LaPorte, Marion, Posey, Sullivan, Vermillion, Vigo, and Wayne Counties. USEPA's action was based upon revision requests which were submitted by the State to satisfy the requirements of Part D and Section 110 of the Clean Air Act (Act). USEPA, today, is approving the plans for all of these counties.

DATE: This final rulemaking becomes effective October 3, 1988.

ADDRESSES: Copies of the SIP revisions, comments, and support documentation are available at the following addresses for review: [It is recommended that you telephone Kent Wiley, at (312) 886-6034, before visiting the Region V office.]

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015

A copy of today's revision is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kent Wiley, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

SUPPLEMENTARY INFORMATION: On March 3, 1988, USEPA proposed to approve revisions to the Indian SIP for Jefferson, LaPorte, Marion, Posey, Sullivan, Vermillion, Vigo, and Wayne Counties. These plans consist of the provisions and requirements in Indiana's general SO_2 rule 325 IAC 7-1, approved or reinstated for these counties on January 19, 1988 (53 FR

1354), any SO_2 emission limits in 325 IAC 7–1–2 applicable in these counties, and the site-specific SO_2 emission limits and other requirements in 325 IAC 7–1–13 (Jefferson County), 325 IAC 7–1–12 (LaPorte County), 325 IAC 7–1–9 (Marion County), 325 IAC 7–1–14 (Sullivan County), 326 IAC 7–1–15 (Vermillion County), 326 IAC 7–1–10.1 (Vigo County), and 325 IAC 7–1–11 (Wayne County).[1]

Background information for USEPA's rulemaking action is contained in the March 3, 1988, **Federal Register** notice and will not be repeated here. The specific emission limitations and plan requirements for these counties are also discussed in the March 3, 1988, notice. In addition to the information identified in the notice of proposed rulemaking, this final action covers the following:

Jefferson County—February 3, 1988, submittal of final State promulgated rule

LaPorte County—February 3, 1988, submittal of final State promulgated rule. June 27, 1988, letter from the State clarifying the application of 325 IAC 7–1–3,1(c) in LaPorte (and Marion) Counties.

Marion County—February 3, 1988, submittal of final State promulgated rule. June 27, 1988, letter from the State clarifying the application of 325 IAC 7–1–3,1(c) in Marion (and LaPorte) Counties

Posey County—(No new information.)

Sullivan County—February 3, 1988, submittal of final State promulgated rule

Vermillion County—March 23, 1988, submittal of final State promulgated rule

Vigo County—August 1, 1988, submittal of final State promulgated rule

Wayne County—February 3, 1988, submittal of final State promulgated rule

For a discussion on the plans for these eight counties, the reader should consult the March 3, 1988, notice of proposed rulemaking.

(Note.—USEPA also proposed in the March 3, 1988, notice to redesignate portions of Marion County. USEPA will take final rulemaking action on this redesignation request in a future **Federal Register** notice).

Although USEPA today approves the emission limits for these sources on the ground that they satisfy the section 110 (and Part D, where applicable) requirements of the Clean Air Act, USEPA also today provides notice that the emission limits are subject to review and possible revision as a result of *NRDC v. Thomas*, 838 F.2d 1224 (1988). In that case the U.S. Court of Appeals for the D.C. Circuit held that USEPA had not adequately explained certain provisions of its July 8, 1985, stack height regulations and remanded these provisions to USEPA for further proceedings consistent with its opinion. If USEPA's response to the *NRDC* remand modifies the applicable July 8, 1985, provision(s), USEPA will notify the State of Indiana whether the emission limit for General Electric—Mt. Vernon in Posey County, PSI—Wabash River in Vigo County, and/or Hoosier Energy—Merom in Sullivan County must be reexamined for consistency with the modified provision. USEPA's approval of these facilities' emission limits today is intended to avoid delay in the establishment of federally enforceable emission limits for all sources in Posey, Vigo, and Sullivan Counties, respectively, while awaiting resolution of the *NRDC* remand. This issue is discussed further in the Stack Height section of today's notice below.

[1] There is no site-specific rule for Posey County. Posey County sources are, of course, subject to the general limits in 325 IAC 7–1.

Response to Public Comments

The Indiana Department of Environmental Management (IDEM), the Indianapolis Power and Light Company (IPALCO), the Peabody Coal Company (Peabody), and the Save the Dunes Council (SDC) submitted comments in response to the Notice of Proposed Rulemaking. A summary of the public comments, and USEPA's responses, are provided below.

LaPorte County

Comment: SDC objected to the proposed LaPorte County plan, especially the emission limit for Unit 12 at NIPSCO-Michigan City, for the following reasons:

(a) IDEM's air quality analysis did not consider lake effects, did not consider the synergistic effects of plant emissions and the cooling tower emissions leading to the formation of acid rain or acid mist, and relied on upper air data from Flint, Michigan.

(b) IDEM did not consider the impact of the increased allowable emissions from Unit 12 on the adjacent Indiana Dunes National Lakeshore, an area where, according to the commentor, the effects of air pollution on vegetation have been observed and the existing rainfall is already more acid than normal.

(c) The rule does not impose any restriction on annual hours of operation on Unit 12.

Response: USEPA has reviewed the issues raised by the commentor and has concluded that the proposed plan is approvable. Each issue is addressed below:

(a) IDEM followed USEPA's modeling guidelines pertaining to attainment demonstrations. The models and input data (including mixing height data from the closest National Weather Service Station, i.e., Flint, Michigan) were selected and applied consistent with USEPA's guidelines. Although USEPA's models are designed to predict concentrations under a wide variety of conditions, USEPA does not have refined techniques to address the additional effects (e.g., lake-induced fumigation and cooling tower interactions) cited by the commentor. Because the commentor has provided no evidence that these effects will result in ambient concentrations which violate any applicable requirements of the Act, USEPA accepts the State's attainment demonstration.

(b) While the proposed emission limit for Unit 12 (i.e., 6.0 pounds of sulfur dioxide per million British Thermal Units—lbs/MMBTU) does represent an increase from the previous State rule (i.e., 5.3 lbs/MMBTU), it is not an increase from the plan which USEPA conditionally approved on March 12, 1982, i.e., an emission limit of 6.0 lbs/MMBTU for Unit 12. On May 11, 1984, the U.S. Court of Appeals for the Seventh Circuit set aside this approval, effectively revoking the federally enforceable emission limit. Thus, USEPA has proposed to establish a Federal limit where none now exists; not to increase a limit.

In any case, the Act requires demonstration that this limit ensures attainment and maintenance of the SO_2 NAAQS. Under section 109 of the Act, USEPA set the NAAQS to protect both the public health and welfare, e g., vegetation. Thus, USEPA must assume, based on its analyses in setting the standards, that a proposed set of emission limits that protect the NAAQS will also protect the public health and welfare. As noted above, IDEM has provided a modeled demonstration of attainment of the primary and secondary SO_2 NAAQS, which USEPA is accepting as sufficient technical support for the LaPorte County plan.

(c) A restriction on hours of operation per year is required only if needed to demonstrate attainment of the NAAQS. The State's modeling analysis assumed all sources, including Unit 12, operating every hour of the year at full load. This modeling showed attainment of the 3-hour, 24-hour and annual NAAQS at the proposed emission limits under these conditions. Therefore, there is no need

to impose any restriction on annual operating hours on any source.

Marion County

Comment: In response to a discussion in USEPA's March 3, 1988, proposal on Indiana's Marion County dispersion modeling technique, IDEM emphasized that its "hybrid" modeling approach in Marion County is more conservative than if urban and rural areas were modeled separately and the monitored background concentrations were used. (For a description of this modeling approach, please see USEPA's proposal and technical support documents.)

Response: USEPA acknowledges and accepts the State's modeling approach in Marion County.

Comment: IPALCO objected to USEPA's proposed reliance on a February 1, 1988, letter from the State in the SIP. This letter clarified how the State intends to enforce its rules for sources with variable operating limits. IPALCO claimed that the letter is without legal status because it was never the subject of any public notice or hearing, never included in any administrative record or public hearing record, and does not reflect the intentions of the Indiana Air Pollution Control Board. Consequently, it cannot be regarded as a part of the Indiana SIP. IPALCO requested that USEPA (1) approve the Mario County plan, and (2) make it clear in the notice of final rulemaking that the February 1, 1988, letter is merely a statement of IDEM enforcement policy and that the primary method of compliance will be a stack test.

Response: USEPA agrees that the primary method of compliance will be a stack test and that this is the sole methodology which assures that the Indiana SO_2 plan will assure the attainment and maintenance of the SO_2 NAAQS.

USEPA acknowledges that IDEM's February 1, 1988, letter, as clarified by the State's June 24, 1988, letter, represents the State's enforcement policy. The policy explains how the 30-day averaging provisions of 325 IAC 7–1–3 will be applied to sources with variable operating limits. Because these letters reflect State policy and not State regulation, USEPA agrees that it is not necessary to include them within the SIP. USEPA does, however, intend to enforce the 30-day averaging provisions in 325 IAC 7–1–3 for the four affected sources consistent with the State's intent expressed in its February 1, 1988, and June 24, 1988, letters. USEPA notes that attainment and maintenance of the NAAQS are not dependent upon the methodology by which Indiana (and USEPA) enforces the 30-day averaging provisions of Indiana's rule, but on the stack test compliance methodology.

IDEM intends to submit this methodology, as detailed in its February 1, 1988, letter, to the Indiana Air Pollution Control Board for its consideration as a revision to Indiana rules. See IDEM's June 24, 1988, letter. USEPA will rulemake on this addition to the Indiana SIP upon the State's submittal of it as a revision.

Finally, the variable nature of the emission limits for IPALCO-Perry K, IPALCO-Stout, and Allison Gas Turbine in Marion County and NIPSCO-Michigan City in LaPorte County necessitates special recordkeeping and reporting requirements. The recordkeeping and reporting requirements included in the Marion and LaPorte County plans for these four sources are approvable.

Vermillion County

Comment: Peabody supported the proposed rule for Vermillion County. The Company noted that the March 1, 1989, compliance date will allow Peabody to continue to supply coal to the Public Service of Indiana Cayuga plant while it makes the changes to its mining operations necessary to meet the proposed emission limit in an economical manner.

Response: USEPA acknowledges this comment.

Vigo County

Comment: On February 3, 1988, IDEM submitted a revised Vigo County plan for parallel processing. IDEM stated in its comments that it anticipated that the Indiana Air Pollution Control Board would adopt this revised Vigo County rule in final on June 8, 1988. However, IDEM noted that the rule may not be promulgated and effective at the State level until at least August 1988. IDEM will attempt to expedite the State process.

Response: The Board did adopt the revised Vigo County plan on June 8, 1988, and submitted it to USEPA on the date the plan was published in the *Indiana Register*, August 1, 1988. USEPA is currently under court order to take final rulemaking on Vigo County by July 29, 1988. However, USEPA delayed slightly its final rulemaking action on Indiana's Vigo County plan in order to accommodate Indiana's delayed rulemaking schedule.

Stack Height Issues

Comment: IDEM questioned USEPA's characterization of the potential impact of the reent court remand of portions of USEPA's stack height regulations. IDEM believes that, even if the regulations are subsequently revised, it is not certain that the emission limits for the sources identified in the Notice of Proposed Rulemaking would change. IDEM disagreed with USEPA's implication that a change in limits is more likely than not.

Response: On January 22, 1988 the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *NRDC v. Thomas*, 838 F.2d 1224 (1988), regarding the stack height regulations published on July 8, 1985 (50 FR 27892). Subsequent petitions for rehearing were denied. Although the court upheld most provisions of the rules, three portions were remanded to USEPA for review: (1) Grandfathering pre-October 11, 1983, within formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)]; (2) Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and (3) Grandfathering of pre-1979 use of the refined "H + 1.5L formula height" [40 CFR 51.100(ii)(2)]. If USEPA were to change any of these provisions, then the emission limitations for some sources might need to be revised. At this time, USEPA has not determined whether or how the regulations would be changed. Consequently, it is premature to speculate on the need for or degree of emission limit changes. USEPA merely wishes to notify the State that the emission limits for some sources may be affected by the *NRDC* remand and may require changes at a later date.

General (Non-Court Specific) Comments

Comment: IDEM urged USEPA to approve the rules for these eight counties in final form.

Response: USEPA acknowledges this comment.

Conclusion: USEPA is approving Indiana's rules and the plans for Jefferson, Marion, LaPorte, Posey, Sullivan, Vermillion, Vigo, and Wayne Counties. This approval for LaPorte, Marion, Vigo, and Wayne Counties includes USEPA's approval of these counties as meeting, for SO_2, all the requirements of Part D.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today.). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: August 2, 1988.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, INDIANA

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.770 [Amended]

2. Section 52.770 is amended by removing the county name "Posey," from the list of counties in the last sentence in paragraph (c)(66).

3. Section 52.770 is amended by adding new paragraph (c)(67) to read as follows:

§ 52.770 Identification of plan.

(c) * * *

(67) On February 3, 1988, Indiana submitted its SO_2 plans for Jefferson, LaPorte, Marion, Sullivan, and Wayne Counties; on March 23, 1988, it submitted its SO_2 plan for Vermillion County; and on August 1, 1988, it submitted its SO_2 plan for Vigo County. These plans consist of the provisions and requirements in 325 IAC 7–1 approved or reinstated for these counties at Paragraph (c)(66), any SO_2 emission limits in 325 IAC 7–1–2 applicable in these counties [as incorporated by reference at (c)(66)(i)(A)], and the site-specific SO_2 emission limits and other requirements in 325 IAC 7–1–13 (Jefferson County), 325 IAC 7–1–12 (LaPorte County), 325 IAC 7–1–9 (Marion County), 325 IAC 7–1–14 (Sullivan County), 326 IAC 7–1–15 (Vermillion County), 326 IAC 7–1–10.1 (Vigo County), and 325 IAC 7–1–11 (Wayne County).

(i) Incorporation by reference.

(A) 325 IAC 7–1–13, Jefferson County Sulfur Dioxide Emission Limitations, as published in the January 1, 1988, *Indiana Register* (IR) at 11 IR 1251.

(B) 325 IAC 7–1–12, LaPorte County Sulfur Dioxide Emission Limitations, as published on January 1, 1988, at 11 IR 1251.

(C) 325 IAC 7–1–9, Marion County Sulfur Dioxide Emission Limitations, as published on January 1, 1988, at 11 IR 1242.

(D) 325 IAC 7–1–14, Sullivan County Sulfur Dioxide Emission Limitations, as published on January 1, 1988, at 11 IR 1252.

(E) 326 IAC 7–1–15, Vermillion County Sulfur Dioxide Emission Limitations, as published on March 1, 1988, at 11 IR 1735.

(F) 326 IAC 7–1–10.1, Vigo County Sulfur Dioxide Emission Limitations, as published on August 1, 1988, at 11 IR 3785.

(G) 325 IAC 7–1–11, Wayne County Sulfur Dioxide Emission Limitations, as published on January 1, 1988, at 11 IR 1250.

(H) 326 IAC 7–1–1, Applicability, as published on August 1, 1988, at 11 IR 3785.

§ 52.773 [Amended]

4. Section 52.773(b) is amended by removing the phrase "strategies for Lake, LaPorte, Marion, and Vigo Counties satisfy" and replacing it with the revised phrase "strategy for Lake County satisfies".

5. Section 52.773 is amended by adding new paragraph (h) to read as follows:

§ 52.773 Approval Status.

* * * * *

(h) The Administrator finds that the SO_2 strategies for LaPorte, Marion, Vigo, and Wayne Counties satisfy all requirements of Part D, Title 1 of the Clean Air Act, as amended in 1977. See § 52.770(c)(67).

[FR Doc. 88–18374 Filed 8–31–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 300

[FRL–3436–5]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of sites from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of two sites from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NLP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Florida have determined that no further fund-finance remedial actions are appropriate at these sites and actions taken to date are protective of the public health, welfare, and the environment.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Allen Dotson, State Requirements Section, State and Local Coordination Branch, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone (202) 382–5755.

SUPPLEMENTARY INFORMATION: The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

The two sites EPA deletes from the NPL are:

1. Tri-City Oil Conservationist, Inc., Tampa, Florida
2. Varsol Spill, Miami, Florida.

An explanation of the criteria for deleting sites from the NPL was presented in section II of the March 14, 1988 Notice of Intent to Delete (53 FR 8223). A description of each of the two sites, and how each meets the criteria for deletion was presented in section IV of that notice.

The closing date for comments on the Notice of Intent to Delete was April 13, 1988. No comments were received concerning the two sites.

List of Subjects in 40 CFR Part 300

Hazardous waste.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows.

Authority: Section 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B [Amended]

2. The NPL Part 300; Appendix B is amended as follows:

In Group 9 remove:

Tri-City Oil Conservationist, Inc., Tampa, Florida

In Group 6 remove:

Varsol Spill, Miami, Florida

Upon publication of this Notice of Deletion, and pending publication of the next Final Update of the NPL, the NPL will consist of 797 sites.

Date: July 12, 1988.

Jack W. McGraw,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-19532 Filed 8-31-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 519

[APD 2800.12 CHGE 57]

General Services Administration Acquisition Regulation; Implement FAC 84-31 and Monitoring Contractor Compliance with Subcontracting Plans

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5 (APD 2800.12), is amended to revise § 519.502-1 to delete material which is repetitive of the Federal Acquisition Regulation (FAR) and inconsistent with the intent of Congress in enacting Pub. L. 99-661; to add §§ 519.706, 519.706-70 and 519.770-3 to permanently incorporate material in Acquisition Circular AC-87-3 into the regulation, and to cancel the circular. Section 519.770-1 is also revised to clarify to whom the SF-295 is to be submitted. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: September 20, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations on (202) 523-4916.

SUPPLEMENTARY INFORMATION:

Background

This rule was not published in the **Federal Register** for public comment because the rule is establishing internal agency procedure which has no impact on offerors or contractors and is implementing a higher level regulation which has already undergone the public comment process.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. This rule simply deletes material which is inconsistent with the Federal Acquisition Regulation as amended by FAC 84-31 and revises GSA's internal operating procedures. The revision is not a "significant revision" as defined in FAR 1.501-1. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations, solicitation of public comments on this revision is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply. The rule does not contain information collection requirements that are subject to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 48 CFR Part 519

Government procurement.

1. The authority citation for 48 CFR Part 519 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. The table of contents for Part 519 is amended by adding §§ 519.706, 519.706-70 and 519.770-3 to read as follows:

Subpart 519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

Sec.

519.706 Responsibilities of the cognizant administrative contracting offices.

519.706-70 Monitoring contractor compliance with subcontracting plans.

* * * * *

519.770-3 Reporting on contractual actions under section 211 of Public Law 95-507.

3. Section 519.502-1 is revised to read as follows:

519.502-1 Requirements for setting aside acquisitions.

Contracting officers shall set aside all procurements qualifying therefor, as provided in FAR Subpart 19.5. Where the contracting officer determines that a small business set-aside of a procurement is not feasible, the procedures defined in § 519.502-70 must be followed. Contracting officers shall periodically review individual set-asides to identify commodities and services suitable for class set-asides.

4. Sections 519.706 and 519.706-70 are added to read as follows:

519.706 Responsibilities of the cognizant administrative contracting officer.

519.706-70 Monitoring contractor compliance with subcontracting plans.

(a) Contract administration may be performed by the procuring contracting officer who awarded the contract or it may be delegated to an administrative contracting officer (ACO). When contract administration is delegated, the subcontracting plan must be included in the contract file transmitted to the contract administration office.

(b) The contracting officer administering contracts with subcontracting plans shall monitor timely receipt of SF 294 and/or SF 295 reports and review the reports for progress in meeting subcontracting plan goals. If goals are not met, the contractor must be required to explain the shortfall on the subcontracting reports and may be required to submit evidence of their outreach efforts to locate and provide subcontracting opportunities to small business and small disadvantaged business concerns. The requirement for compliance with plans may be fulfilled by evidence of satisfactory outreach efforts, as described in the plan, as well as by meeting plan goals.

(c) In the case of company-wide plans approved by GSA, the first contracting officer who enters into a contract with a company during the company's fiscal year approves the plan and monitors receipt of reports and compliance with the plan. This responsibility is generally assigned to the ACO if contract administration is delegated. Subsequent GSA contracts awarded during the company's same fiscal year and incorporating the previously approved plan will not require submission of subcontracting reports.

(d) In the case of company-wide plans approved by another agency, the first GSA contracting officer entering into a contract with the company during company's same fiscal year in which the plan was approved required the contractor to submit the SF 295 report and monitors receipt of the report. No other monitoring of this plan is required by GSA.

(e) Contractor compliance with plans must be documented in accordance with FAR 19.706 and must be considered by the contracting officer when determining contractor responsibility for future awards. In case on noncompliance, the contracting officer shall notify the Office of Small and Disadvantaged Business Utilization (AU) through the appropriate Small Business Technical Advisor (SBTA).

5. Section 519.770-1 is revised to

amend subparagraph (b)(1)(i) to read as follows:

519.770–1 Report forms.

(b) * * *

(1) * * *

(i) Contractors shall submit the SF 295 reports to the contracting office administrating the contract and to the Office of Small and Disadvantaged Business Utilization (AU).

* * * * *

6. Section 519.770–3 is added to read as follows:

519.770–3 Reporting on contractual actions under section 211 of Pub. L. 95–507.

(a) *Contracting office reporting requirements.* A quarterly report of the number and dollar value of contracts awarded in excess of $500,000 ($1 million for construction) requiring subcontracting plans must be prepared and submitted as indicated below. Report Control Symbol ADM 64 is assigned to this report. Negative reports are required.

(1) *Regional contracting offices.* The reports must be submitted to the regional Business Service Centers (BSC's) by the 10th calendar day after the end of each quarter. The BSC's will forward the reports to AU by the 20th calendar day following the end of the quarter.

(2) *Central Office contracting offices.* The reports must be submitted to the appropriate SBTA by the 10th calendar day after the end of each month. The SBTA's will forward the reports to AU by the 20th calendar day following the end of the quarter.

(b) *Report format.* The following format is prescribed for the quarterly report.

Reporting Office _____

Quarter beginning _____

ending _____

Report on Contracting Actions Under Section 211 of Public Law 95–507

(contracts estimated or actual value over $500,000 [$1 million for construction])

Note.—Do not include Contracts with Small Business Concerns.

1. Total number of contracts awarded over $500,000 ($1 million for construction)	No._____ $ value _____
2. Contracts awarded over $500,000 ($1 million for construction) which contain subcontracting plans	No._____ $ value _____
Contracts awarded over $500,000 ($1 million for construction) without subcontracting plans. (Attach written justification for each contract awarded without a plan, see FAR 19.705–2)	No._____ $ value _____

(End of format)

Dated: August 22, 1988.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88–19860 Filed 8–31–88; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 6)]

Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—1988 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is required by the regulators in 49 CFR 1002.3 to update user fees annually. In this proceeding the Commission adopts the 1988 user fee update as set forth in 53 FR 19969 (June 1, 1988). The Commission also adopts the proposals which increase some fees that were set at less than full cost in *Regulations Governing Fees For Services,* 1 I.C.C. 2d (60) (1984). The proposal to revise the costing and the resulting fee for Fee Item (100) involving the ICC Practitioner's Exam also is adopted here. However, the Commission has determined that any increase in the fees for complaint and declaratory order proceedings will be deferred pending further study.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202–275–7428.

For Costing Information: William W. England, 202–275–7472, or, Michael A. Stolica, 202–275–7765.

TDD for the hearing impaired: 202–275–1721.

SUPPLEMENTARY INFORMATION:

The Commission has reviewed the 15 comments submitted in this proceeding. The commentors primarily object to the increased filing fee for formal complaints and other complaint proceedings [Fee Items (60), (61), (62)(i) and (76)] and declaratory orders [Fee Item (62)(ii)] because they believe that the increased fees will have a chilling effect on those who file such proceedings before the Commission. After a thorough review of the comments, the Commission has decided that resolution of the issues raised by the commentors with respect to these types of proceedings will necessitate a comprehensive review of all complaints and declaratory order proceedings filed after July 1, 1984. Since any revision of the Commission's fee schedule needs to be published by October 1, 1988, to be published in the 1988 edition of the Code of Federal Regulations sufficient time does not exist to complete such a review and still meet the publication deadline. Therefore, the Commission will defer the proposed increases for complaint and declaratory order proceedings pending further study of the issues raised in this proceeding with respect to those fees. The fees for Fee Items (60) and (62)(i) will remain at $500. Fee Items (61), (62)(ii) and (76) will remain at the direct labor levels of $1,500, $850 and $100, respectively.

The Commission adopts the proposals to increase the other capped or reduced fees and the 1988 fee update proposal. The revised costing and resulting fee for Fee Item (100) involving the ICC Practitioner's Exam also is adopted.

The Commission has determined that the decision to increase the capped and reduced fees will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for waiver of filing fee for entities which can make the required showing of financial hardship.

This decision will not have a significant impact upon the quality of the human environment or conservation of energy resources.

Additional information is contained in the Commission decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2227, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359. Assistance for the hearing impaired is available through TDD services (202) 275–1721.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedures, Fees, Freedom of information.

It is ordered:

Title 49 of the Code of Federal Regulations is amended as set forth below.

Decided: August 29, 1988

BEST COPY AVAILABLE

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Simmons did not participate in the disposition of this proceeding. Commissioner Phillips was absent and did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for Part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.1 [Amended]

2. In § 1002.1, the dollar amount of "$17.00" in paragraph (b) is revised to read "$18.00".

3. In § 1002.1, the table in paragraph (f)(6) is revised to read as follows:

GS–1	$5.33
GS–2	5.80
GS–3	6.54
GS–4	7.34
GS–5	8.21
GS–6	9.15
GS–7	10.17
GS–8	11.26
GS–9	12.44
GS–10	13.70
GS–11	15.05
GS–12	18.04
GS–13	21.45
GS–14	25.35
GS–15 and above	29.82

4. In § 1002.2, paragraph (a) is revised to read as follows:

§ 1002.2 Filing fees.

(a) *Manner of payment.* (1) Except as specified in paragraph (a)(2) of this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract or other document is tendered for filing.

(2) When emergency temporary operating authority applications [Item 9] and emergency temporary operating authority extensions [Item 10] are initiated by telegram or telephone, the fee or fees are due when the OCCA–95 application is submitted to the appropriate Commission regional office.

(3) Fees will be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or credit cards (Visa or Master Card).

* * * * *

5. In § 1002.2, paragraph (f) is revised to read as follows:

* * * * *

(f) *Schedule of filing fees.*

Type of Proceedings	Fees
Part 1: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority	$200
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	100
(3) A petition to interpret or clarify an operating authority under 49 U.S.C. 1160.64	2,000
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plantsite, or the change of a highway name or number	30
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	150
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1160.107–1160.114	200
(7) An application for authority to deviate from authorized regular route authority under 49 U.S.C. 10923(a)	100
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	90
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1)	70
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	17
(11) Request for name change of carrier, broker, or household goods freight forwarder	8
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.4	60
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5)	60
(14) [Reserved]	
(15) A joint petition to substitute applicant in a pending operating rights proceeding	20
(16) [Reserved]	
Part II: Non-Rail Applications to Discontinue Transportation	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908	8,200
(18) A petition to discontinue motor carrier of passenger transportation in one state	1,000
(19) [Reserved]	
Part III: Non-Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic	1,600
(21) An application involving the purchase, lease, consolidation, merger or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343	750
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706	10,100
(23) An application for approval of an amendment to a non-rail rate association agreement	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	150
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544	200
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d)	150
(27) A petition for exemption under 49 U.S.C. 11343(e)	200
(28) [Reserved]	
(29) [Reserved]	
(30) [Reserved]	
(31) [Reserved]	
(32) [Reserved]	
Part IV: Rail Applications for Operating Authority	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	2,600
(ii) Exempt transaction under 49 CFR 1150.31	550
(34) Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i)	3,200
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii)	1,600
(36) [Reserved]	
(37) [Reserved]	
Part V: Rail Applications to Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act, bankrupt railroads or exempt abandonments under 49 CFR 1152.50)	2,100
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act	150
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40	650
(41) Exempt abandonments. 49 CFR 1152.50	800
(42) A notice or petition to discontinue passenger train service	8,200
(43) [Reserved]	
Part VI: Rail Application to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103	6,900
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	4,700

Type of Proceedings	Fees
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343.	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exempt transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,300
(47) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 CFR 11343.	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor Transaction	2,300
(iv) Exemption transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,300
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343.	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exemption transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,300
(49) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exemption transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,300
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a)(2) or (b)	27,000
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	25,500
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	250
(54) (i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for exemption for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175. 49 U.S.C. 11301	1,200
(ii) An exempt transaction under 49 CFR 1175	550
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505	650
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180.40–49, 45 U.S.C. 915	1,400
(57) [Reserved]	
(58) [Reserved]	
(59) [Reserved]	

Type of Proceedings	Fees
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods	500
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A)	1,500
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding	500
(ii) All other petitions for declaratory order	850
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increase	5,600
(64) A petition for exemption from filing tariffs by bus carriers	150
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	2,600
(66) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501	1,000
(67) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501	1,000
(68) [Reserved]	
(69) [Reserved]	
(70) [Reserved]	
(71) [Reserved]	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for aplications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster)	400
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	40
(74) The filing of tariffs, rate schedules and contracts including supplements	([1])
(75) Special docket application from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less)	50
(76) Informal complaint about rail rate application	100
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BIPD)	2,700
(ii) An application for original qualification as self-insurer for cargo insurance	250
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a broker surety bond)	([2])
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR. 1057	300
(80) A petition for reinstatement of revoked operating authority	50
(81) [Reserved]	
(82) [Reserved]	

Type of Proceedings	Fees
(83) Petition for reinstatement of a dismissed operating rights application	250
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c)	([3])]
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings	1,000
(86) Informal opinions about rate applications (all modes)	40
(87) [Reserved]	
(88) [Reserved]	
(89) [Reserved]	
(90) [Reserved]	
(91) [Reserved]	
(92) [Reserved]	
(93) [Reserved]	
(94) [Reserved]	
(95) [Reserved]	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	([4])
(97) Request for service list for proceedings	([5])
(98) Request for copies of the one-percent carload waybill sample	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation	([6])
(100) Application fee for Interstate Commerce Commission Practitioners' Exam	60

[1] 7 per series transmitted.
[2] 10 per accepted certificate or other instrument submitted in lieu of a broker surety bond.
[3] 13 per document.
[4] 10 per delivery.
[5] 7 per list.
[6] 14 per movement verified.

[FR Doc. 88–19989 Filed 8–30–88; 1:37 pm]
BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export and American Ginseng Harvested in 1988–90 Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plants species. Export of animals and plants listed in Convention Appendix II may occur only if the Scientific Authority has advised the permit-issuing Management Authority that (1) such export will not be detrimental to the survival of the species, and (2) this export will maintain the species throughout its range at a level consistent with its role in the ecosystem in which it occurs, and if the Management Authority is satisfied that

the animals or plants being exported were not obtained in violation of laws of their protection. Export of cultivated specimens of plants listed in Appendix II may occur under certificates issued by the Management Authority if it is satisfied that the plants being exported were artificially propagated.

This final rule announces the United States Scientific Authority and Management Authority findings on export of American ginseng (*Panax quinquefolius*), listed on Convention Appendix II, from certain States for the 1988–90 harvest seasons.

The U.S. Fish and Wildlife Service (Service) began to make multi-year findings for the export of American ginseng on a State-by-State basis when it issued Scientific Authority and Management Authority findings covering the 1982–84 harvest seasons. This was followed by multi-year findings for ginseng harvested from certain States for the 1985–87 harvest seasons.

The Service herein approves multi-year ginseng export form 19 States for the 1988, 1989, and 1990 harvest seasons (a season ends with the calendar year). The Service continues to seek data and information on topics described in this rule as a basis for determining whether to initiate or to continue approval of exports from permitted States for subsequent seasons.

Monitoring State ginseng programs since 1977 has shown the Service that States from which ginseng export has been approved will continue to satisfy Convention requirements. To ensure that this is so, the Service will continue annual monitoring in accordance with the procedures described herein. This monitoring will include analysis of data made available to the Service no later than May 31 every year from each State from which ginseng export is approved. These data document the most recent harvest and current status of ginseng management in that State.

The export of American ginseng is a necessary portion of a State's ginseng management program as the foreign markets for this species are dependent upon this final rule. The buying season will begin September 1, 1988, in the permitted States. The rule announced in this notice is to become effective upon publication so that export can begin as soon as possible. This will enable all these approved States to compete for the foreign markets needed to sell their ginseng and enable the ginseng farmers, diggers, and dealers to realize a greater monetary return for their product.

DATE: September 1, 1988.

ADDRESS: Please send correspondence concerning this document to the Office of Management Authority; U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 400, 1375 K Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop: Room 527 Matomic Building, Washington, DC 20240, telephone (202) 653–5948.

Management Authority: Marshall P. Jones, Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329, telephone (202) 343–4968.

Export Programs: S. Ronald Singer, Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329, telephone (202) 343–4963.

SUPPLEMENTARY INFORMATION: The Convention listing of this species (February 22, 1977 (42 FR 10462) and November 22, 1985 (50 FR 48212)) continues to regulate ginseng exports, including plants, whole roots, basically intact roots, and root chunks or slices.

Export of Convention Appendix II listed species from the United States may only occur under Federal permit or certificate issued upon approval of both the U.S. Scientific Authority and Management Authority. These responsibilities are functions of the U.S. Fish and Wildlife Service. The United States Department of Agriculture, Animal and Plant Health Inspection Service, is responsible for enforcing the Convention for terrestrial (nonmarine) plants (see final rule of October 25, 1984, 49 FR 42907).

This is the second of two publications concerning the Service's Scientific Authority and Management Authority findings on export of American ginseng collected in the 1988–1990 harvest seasons. The previous final rule for export of ginseng was published September 30, 1985 (50 FR 39691).

The States of Alabama and Pennsylvania have requested initial export approval of ginseng harvested from those States for the 1988–1990 harvest seasons. New York has requested approval for initial export approval of ginseng harvested in that State for the 1987–1990 harvest seasons.

Public Comment

No comment was received concerning the proposed rule published in the Federal Register on July 15, 1988 (53 FR 26802).

Scientific Authority Criteria

General criteria used by the Scientific Authority in advising the Management Authority on whether export will or will not be detrimental to the survival of species are as follows (originally described in a notice of July 11, 1977; 42 FR 35800):

1. Whether such export has occurred in the past and has or has not reduced numbers or distribution of the species, caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystems;

2. Whether such export is expected to increase, remain constant, or decrease; and

3. Whether the life history parameters of the species and the relevant structure and function of its ecosystem indicate that present or proposed levels of export will or will not appreciably reduce the numbers or distribution of the species, or cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystems.

For ginseng, the evaluation for nondetriment by the Scientific Authority, in accordance with these general criteria, will continue to be based on the following information for each affected State, to the extent it is available in State data (with the States providing the sources and accuracy for new data, and indicating which information from previously submitted material is still valid) or from other suitable sources:

1. Historic, present, and potential distribution of wild ginseng by county using State maps with county outlines; distribution of optimal natural habitat on a regional basis in the State, and description of recent trends in loss and/or protection of habitat; and map of locations and information on approximate acreage and percentage of wild ginseng that is on statute-protected lands where collecting is permanently prohibited. (Ginseng is considered as wild if it occurs in naturally perpetuated habitat, where the species is naturally propagated or with only limited planting of local seed by people at or near the site of collection with no subsequent tending of the species or habitat before harvest.);

2. Map of the approximate number or density of wild ginseng populations per county or region, and information on the total number of wild ginseng localities in the State;

3. Map of the average number of plants per population or patch, or local

abundance of wild ginseng, per county or region of the State; map and information on the population trends per county or region, indicating if populations of wild ginseng are increasing, stable, decreasing, extirpated, or unknown; and discussion of any recent changes from previous years or differences from historical population sizes;

4. A description of the State's annual harvest practices and controls on wild ginseng including a regulated harvest season (States are urged not to permit local harvest until seeds are mature), and harvest requirements such as minimum size or age of collected plants [3-leaf (3-prong) minimum recommended] and on planting seeds at the collection site;

5. Map of the harvest intensity by county or region, indicating if collecting is heavy, moderate, light, none, or unknown, and discussion of any changes from previous years; information on the number of ginseng collectors (diggers) in the State, and on the amount of wild ginseng plants and roots harvested in the State and the amount certified for export, in pounds (dry weight) per year;

6. Information on the average number of wild roots per pound (dry weight) harvested, preferably on a county or regional basis or, if not available, on a statewide basis; and an assessment of any trend in number of wild roots per pound (dry weight) or root sizes over previous years;

7. A description of the State's ongoing research program on wild ginseng and its progress, including a summary of results obtained; and

8. State maps showing those counties in which ginseng is commercially cultivated; and information on the amount of cultivated ginseng plants or roots harvested in the State and the amount certified in pounds (dry weight) per year. (Ginseng is considered cultivated when it is artificially propagated and maintained under controlled conditions, for example, the intensively or intermittently prepared or managed gardens or patches, under artificial or natural shade.)

Documents containing information that provided the basis for the nondetriment findings are available for public inspection at the Office of Scientific Authority at the address given above.

Management Authority Criteria

In addition to Scientific Authority advice that ginseng exports will not be detrimental to the survival of the species, the Management Authority must be satisfied that (1) the ginseng was not obtained in contravention of laws for its protection, and (2) it was of wild or of artificially propagated origin.

Criteria used by the Management Authority in determining a State program's qualifications for export are that the State has adopted and is implementing the following regulatory measures (see publication of September 30, 1985, 50 FR 39691).

1. A State ginseng law and regulations mandating State licensing or regulation of persons purchasing or selling ginseng collected or grown in that State;

2. State requirements that these licensed or registered ginseng dealers maintain true and complete records of their commerce in ginseng and provide copies of such records of commerce to the State in a signed and dated statement at least every 90 days (generally within 15 days of the end of each quarter of the calendar year) and a year-end accounting;

3. Dealer records required to show date of transaction, whether plants and roots were wild or artificially propagated, if roots were dried or green (fresh) at time of transaction, weight of roots, weight or number of plants, State of origin of plants or roots, and the identification numbers of the State certificates used to ship ginseng from the State of origin. The name and address of the seller or buyer of the ginseng of record shall be maintained by the dealer on his or her own copy of commerce record forms supplied by the State(s) of licensing, and shall be made available to the State ginseng program manager(s) if requested;

4. Inspection and certification by State personnel of *all* ginseng harvested in the State and of the dealer's ginseng commerce records to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. (Experience has shown the value of an inspection and certification program by a State official who can verify both the weight of the ginseng roots (weight or number of plants) in question and that the roots or the plants were legally taken from the wild or artificially propagated in that State);

5. Ginseng unsold by March 31 of the year after harvest must be weighed by the State and the dealer, digger, or root owner given a State weight receipt. Future State export certification of this stock is to be issued against the State weight receipt;

6. The certificate of origin forms must remain in State control until issued at certification and must contain the following information:

—State of origin,
—Serial number of certificate,
—Dealer's State registration number,
—Dealer's shipment number for that harvest season,
—Year of harvest of ginseng being certified,
—Designation as wild or artificially propagated plants or roots,
—Designation as dried or green (fresh) roots, or live plants,
—Weight of roots and plants (or number of plants) separately expressed both numerically and in writing,
—Verified statement by State ginseng official that the ginseng was obtained in that State in accordance with State law of that harvest year,
—Name and title of State-certifying official,
—Date of certification, and
—Signatures of both dealer and State official making certification.

This certificate should be issued in triplicate, with the original designated for dealer's use in commerce, first copy for dealer records, and second copy retained by the State for reference; and

7. State regulations that (a) prohibit export of its ginseng from the State without certification by the State of origin, and (b) require uncertified ginseng supplied to State-registered dealers to be returned to the State of origin within 30 calendar days for certification. Failure to have such ginseng certified will render this root illegal for export.

Each State from which ginseng export is approved shall make program information, identified by harvest year, available on an annual basis to the Service's Office of Management Authority no later than May 31 (for example, the 1988 State ginseng data should be available by May 31, 1989). These data should be sufficient to satisfy the Scientific Authority criteria and should contain the following information to satisfy the Management Authority criteria.

1. Reaffirm State ginseng program and indicate modifications, if any, concerning:

(a) State ginseng laws and regulations;

(b) Season of ginseng harvest and commerce;

(c) State dealer, digger, and/or grower license or registration rules;

(d) Sample of required ginseng-related licenses, including cost of license and dates of authorized use;

(e) Fees for any ginseng-related license or registration;

(f) Dealer, digger, or grower record-maintenance and reporting requirements;

(g) Sample of current year dealer certificates and reporting forms;

(h) Description of State certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or out of the State; and

(i) Name, address, and telephone number of State official to contact concerning such information.

2. The State data should also include information on the following:

(a) Pounds dry weight of wild and of cultivated ginseng roots and weight or number of live plants (i) harvested and (ii) certified by the State, and (iii) the pounds of each bought and sold from in-State and out-of-State sources;

(b) Indicate how dealers not resident in the State obtain certification for ginseng roots harvested in that State and how this type of commerce is controlled by State law;

(c) Indicate ginseng law enforcement procedures, violations discovered, and remedies; and

(d) Sample of current-year State certificate of legal take and origin.

Documents containing information that provided the basis for the Service's findings of legal take are available for inspection at the Office of Management Authority at the address given above.

Program for Artificially Propagated Ginseng

In an October 21, 1980, rule (45 FR 68944), the Service announced it would approve export of artifically propagated ginseng only from States for which export of wild-collected ginseng was approved because those States had programs that could adequately document the source of the ginseng. The Service announced in an October 4, 1982, rule (47 FR 43701) that it would approve export of artificially propagated ginseng from other States if procedures had been implemented to minimize the risk that wild-collected plants would be claimed as cultivated. The Service will continue to consider granting such approval.

Previous Export Approval

The export of wild and/or cultivated ginseng harvested from 1982 through 1984 was approved from States listed in 50 CFR 23.51(e). On September 30, 1985, (50 FR 39691) the Service approved multi-year export of 1985–1987 harvested ginseng only from States with a legally regulated ginseng program that provided for a State inspection and certification system and that otherwise satisfied all other criteria of the Scientific Authority and Management Authority.

Muti-year Findings

From monitoring State ginseng programs and the biological status of the plant since 1977, the Service finds that States previously approved for the export of ginseng would continue to satisfy Convention requirements. The Service grants export approval to all previously approved States.

The States of Alabama and Pennsylvania have requested initial export approval of ginseng harvested from those States for 1988–1990 harvest seasons. New York submitted a request for initial export approval of ginseng harvested in that State for the 1987–1990 harvest seasons. However, New York neither certified nor weight-receipted its 1987 harvested ginseng for export so 1987 New York harvested ginseng may not be exported from the United States. After reviewing the information provided by Alabama, New York, and Pennsylvania, the Service finds that the export of ginseng harvested in these States during the 1988–1990 harvest seasons will not be detrimental to the survival of the species. Therefore, the Service grants ginseng export approval to Alabama, New York, and Pennsylvania for the 1988–1990 harvest seasons.

States wishing to initiate export programs for ginseng harvested in 1989 or thereafter should begin work with the Service as soon as possible so that their finalized application can be submitted by March 31 of the year in which they anticipate certifying harvested ginseng for subsequent export.

Service ginseng export approval would be subject to revision prior to the 1989 and 1990 harvest seasons in any approved State if a review of information reveals that Management Authority or Scientific Authority findings in favor of export must be changed. The Service does not grant general approval for export of ginseng originating in any State not named in 50 CFR 23.51(e) because: (1) The species does not occur there, (2) no harvest of the species is allowed by the State, (3) the Service does not have current information needed for Management Authority or Scientific Authority findings, or (4) the State has not applied for such export approval. To ensure Service-approved States maintain successful programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State programs and of information on the status of ginseng populations, especially by the evaluation of annual data from the States and of export documents returned from the ports. Notices will be published in the **Federal Register** in 1989 and 1990 only if new information or changed conditions show reason for revised findings or guidelines.

Export Procedures

Valid Federal Convention documents are necessary to export wild or artificially propagated ginseng plants or roots. Applications for these documents should be sent to the Office of Management Authority at the address given above.

Ginseng eligible for export may only be exported through ports with personnel and/or facilities of the U.S. Department of Agriculture ("USDA ports") and designated by the U.S. Department of Interior (see 49 FR 49238; October 25, 1984). For each export, the exporter must present to the Port Inspector of the U.S. Department of Agriculture Animal and Plant Health Inspection Service, Plant Protection and Quarantine, proof that the exporter has a valid General Permit, available from the U.S. Department of Agriculture, and the following:

(1) Ginseng plants or roots being exported;

(2) Original State certificates of origin for the ginseng (or foreign export documents for American ginseng imported to the United States). An exporter or dealer may split an original State certificate by striking a line through the original weight, and identify by numbers and writing the lower weight or ginseng being imported. This change in certificate weight must be certified with the written words "I made these changes on (date)" followed by full legal signature of the dealer or exporter. The modified State certificate must bear this certification in original ink form;

(3) Three completed Federal Convention export documents; and

(4) One copy of executed shipper's invoice.

The Plant Protection and Quarantine port inspector may sign and validate the Convention documents only after a satisfactory inspection of the State certificate of origin, shipper's invoice, Convention export documentation and contents of the shipment. Once the Convention documents are validated, the inspector will then forward State certificates, one Convention export document, and shipper's invoice to the Office of Management Authority for recordkeeping and reporting. The Second Federal export document is for the exporter, and the remaining Convention export document will authorize the international shipment of

the ginseng and will be collected by the importing country.

The Department has determined that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act for making these findings and rule effective immediately. This publication represents the final administrative step in authorizing the export of ginseng in accordance with the Convention. This action has been delayed because of the need to gather and evaluate the best available information on the species. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the harvest season that already has begun. A delay could adversely affect the species by reducing compliance with State certification requirements. Good cause also exists for making these findings effective as soon as possible to avoid economic injury to individual diggers, dealers, or other small entities that are directly affected by the findings. Because this final rule removes a restriction on export, it can be made effective immediately upon publication under 5 U.S.C. 553(d)(1). It should be noted that making these findings and rule effective immediately will not adversely affect the species involved in view of the findings on nondetriment contained herein.

Note.—The Department has determined that this rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. The Department determined that the findings for the 1978–87 harvest seasons were not major rules under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Exporters normally derive their product from the ginseng harvested in a number of States. Therefore, the approval or disapproval of wild ginseng export from any one State would not significantly affect the industry. Furthermore, because the rule treats exports on a State-by-State basis and approve export in accordance with State management programs, the rule would have little effect on small entities in and of itself. For the 1988 through 1990 harvest seasons, the Service has analyzed the impacts and again concludes that this would not be a major rule and would not have a significant economic effect on a substantial number of small entities. This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq*; 87 Stat. 884, as amended), and was prepared by S Ronald Singer, Office of Management Authority, and Dr. Wayne Milstead, Office of Scientific Authority.

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, Part 23, Subchapter B of Chapter 1, Title 50, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*

Subpart F—Export of Certain Species

2. In § 23.51 American ginseng (*Panax quinquefolius*) paragraph (f) is removed and paragraph (e) is revised to read as follows:

§ 23.51 American Ginseng (Panax quinquefolius).

* * * * *

(e)(1) 1982–1990 harvests (wild and cultivated roots for each year unless noted).

Harvest Years

State (1)	1982	1983	1984	1985	1986	1987	1988	1989	1990
Alabama	—	—	—	—	—	—	x	x	x
Arkansas	x	x	x	x	x	x	x	x	x
Georgia	x	x	x	x	x	x	x	x	x
Indiana	x	x	x	x	x	x	x	x	x
Illinois	x	x	x	x	x	x	x	x	x
Iowa	x	x	x	x	x	x	x	x	x
Kentucky	x	x	x	x	x	x	x	x	x
Maryland	x	x	x	x	x	x	x	x	x
Minnesota	x	x	x	x	x	x	x	x	x
Missouri	x	x	x	x	x	x	x	x	x
North Carolina	x	x	x	x	x	x	x	x	x
New York	—	—	—	—	—	—	x	x	x
Ohio	x	x	x	x	x	x	x	x	x
Pennsylvania	—	—	—	—	—	—	x	x	x
Tennessee	x	x	a	x	x	x	x	x	x
Vermont	a	a	x	x	x	x	x	x	x
Virginia	x	x	x	x	x	x	x	x	x
West Virginia	x	x	x	x	x	x	x	x	x
Wisconsin	x	x	x	x	x	x	x	x	x

(1) Service export-approved State.
x Exported approval granted for wild and cultivated ginseng.
— Export not requested or not granted.
a Export approval only for artificially propagated (cultivated) ginseng.

(2) Conditions on export: All plants and roots must be documented as to State of origin, season of collection, and dry or green (fresh) weight. The State must certify whether roots and plants originated in that State, are wild or cultivated (artificially propagated) specimens, and were legally obtained in a particular season. Such State certification, a current Federal export document, an executed dealer or exporter's invoice, and the ginseng must be presented upon export. All other export procedures must be followed as described by the Service in this rule. The State must maintain ginseng management and harvest programs, as described by the Service in this rule, and

annual ginseng program data for the preceding harvest season should be available to the Office of Management Authority by May 31 of each year. Export procedures must be completed as outlined and discussed in this paragraph.

Note.—American ginseng purchased from non-export approved States by State-registered ginseng dealers for domestic use and commerce must be reported to the State of registration, along with all other ginseng commerce. Such ginseng is not eligible for export from the United States and must be dealer-maintained physically separated from that ginseng eligible for export from this country so that there is no chance of intermingling the specimens.

Date: August 25, 1988

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19994 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 80852-8152]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: The Secretary of Commerce issues this final rule to implement a technical amendment to the regulations requiring shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the Southeastern United States to use measures to reduce the incidental catch and mortality of sea turtles in shrimp trawls. This rule adds an additional "soft" turtle excluder device (TED) to the approved TEDs. The intended effect is to increase the options of fishermen required to use TEDs.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813-893-3366, or Charles Karnella, 202-673-5349.

SUPPLEMENTARY INFORMATION:

a. Background

The Secretary of Commerce issued a final rule on June 29, 1987 (52 FR 24244) which requires shrimp trawlers 25 feet and longer to use qualified turtle excluder devices (TEDs) in certain offshore waters of the Southeastern United States during certain times of the year and to limit trawl tow times to 90 minutes (or use TEDs) in inshore waters during these same times. Shrimp trawlers less than 25 feet in length are required to limit trawl tow times to 90 minutes in inshore and offshore waters during certain times.

The final rule was designed to reduce the incidental catch and mortality of sea turtles in shrimp trawls. The rule allows the use of four types of TEDs. It also contains a provision for qualification of new TEDs if these TEDs are tested according to specified procedures and found to be 97 percent effective in releasing sea turtles from trawls. On October 5, 1987, the Secretary issued a final rule (52 FR 37152) which changed the definitions of "inshore" and "offshore" to more clearly delineate the two areas, and added an additional "soft" TED (known as the "Morrison TED") to the approved turtle excluder devices.

b. Soft TED Testing

In October 1987, tests of three "soft" TEDs were conducted in the Cape Canaveral, Florida, navigation channel aboard the University of Georgia research vessel R/V GEORGIA BULLDOG. The tests were conducted under NMFS supervision according to a research protocol developed by NMFS. Of the three "soft" TEDs tested, the Parrish TED was found to effectively release turtles.

Steve Parrish, the designer of the Parrish TED, and Jim Bahen, Marine Advisory Service Agent with the University of North Carolina (UNC) Sea Grant Program, asked NMFS to test this device for possible certification. UNC Sea Grant provided NMFS with results of seven comparative tows (Parrish TED on one side, standard net on the other) for North Carolina. In those tests, the net equipped with the Parrish TED caught 26 percent less shrimp than the standard net. These are the only data NMFS has on shrimp retention when the Parrish TED was used under normal shrimping operations.

During the turtle exclusion test at Cape Canaveral, the Parrish TED captured a sea turtle in the early stages of the test. The unit was then modified by increasing the size of the exit opening, removing one of the two bungee cords holding the webbing flap over the opening, and reducing the cord tension of a second bungee cord. The modified Parrish TED was tested against a standard net during 10 paired tows; no turtles were captured in the Parrish TED while the control net captured 42 turtles. These catch rates satisfied the requirements for a 97 percent turtle exclusion rate at the 90 percent confidence level.

However, during the Canaveral testing, the modified Parrish TED caught 79.5 percent fewer shrimp than the standard net. The shrimp catch during those tests was too small to be significant, two pounds in the Parrish TED net compared to nine and one half pounds in the control net. The Parrish TED also released 73.3 percent of the total biomass when compared to the control net. Based on available data, NMFS believes that shrimpers may experience a substantial shrimp loss when using this device. Anyone with questions concerning operation of the Parrish TED should contact Steve Parrish (919/842-9179) or Jim Bahen (919/458-5498).

The modified Parrish TED (Figure 7) consists of three major components (the extension, the deflector panel and the frame) which are installed between the body of the trawl and the bag. Turtles are released through an opening in the bottom of the TED. The Parrish TED as installed in a net extension costs about $115.00.

c. TED Certification

Because the modified Parrish TED was found to be at least 97 percent effective in releasing sea turtles from trawls, NMFS adds this device as an approved TED for use whenever or wherever a TED is required.

Shrimp loss with some TEDs has been a complaint of some fishermen who have been required to use them. Although NMFS believes that the majority of TEDs now certified do not have a significant loss when used properly, the Morrison and Parrish soft TEDs in the few shrimp retention studies completed, show shrimp losses of 17 and 26 percent respectively. NMFS will continue to certify TEDs that meet turtle exclusion requirements and will provide information about shrimp loss gathered during the testing of the TED. In this way, shrimp fishermen will be provided the widest latitude in complying with the requirements of the regulations. They may use any of the six approved TEDs that meet their fishing strategies, or they may limit tow time in inshore waters and, on smaller vessels, in offshore waters.

In the appendix to the final rule published on June 29, 1987, sampling guidelines and statistical procedures for TED certification are described. These procedures test only for turtle exclusion.

Classification

This action is in compliance with Executive Order 12291. Notice and

comment on this final rule are unnecessary and contrary to the public interest because it merely gives the public notice that the Parrish TED has passed the test and may be used lawfully. Delayed effectiveness is not required because this technical amendment relieves a restriction.

As no statute requires notice and comment on this final rule, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

The rule does not contain a collection-of-information requirement for the purpose of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 227

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

William Matuszeski,

Executive Director.

For the reasons set out in the preamble, 50 CFR Part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, a new paragraph (e)(4)(ii)(F) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * * *

(e) * * *

(4) * * *

(ii) * * *

(F) *Parrish TED (Figure 7).* This TED is a unit that is installed between the body of the trawl and the bag. The unit consists of three major components: the extension, the deflector panel, and the frame. The extension is a piece of netting of 1¾ inch stretch mesh, No. 15 thread, treated nylon, measuring 150 meshes by 100 meshes. When installed in the trawl, the extension is cylindrically shaped with a circumference of 150 meshes and a depth of 100 meshes. The deflector panel, which slopes down the inside of the extension, is a rectangular piece of 8 inch stretched mesh, 3 mm diameter, braided polyethylene netting. The deflector panel measures 8 meshes across the leading and trailing edges of the deflector panel and is 15½ meshes deep. The 8 meshes at the leading edge of the deflector panel are sewn into the small mesh (1¾ inch) of the extension 3 meshes down from the top edge of the extension. The 8 meshes at the trailing edge of the deflector panel are attached to the top edge of the frame. Each side edge of the panel is attached at 5⅝ inch intervals to a ⅜ inch diameter, 3 strand polydacron rope which is attached to the small mesh of the extension at 5⅝ inch intervals. The deflector panel must form a complete barrier to large objects inside the extension forward of the frame. The frame is a rectangular ⅜ inch diameter welded galvanized steel rod unit with a 40 x 4 inch opening and small pad eyes at the top corners. The trailing edge meshes of the deflector panel are attached to the top of the frame, and 50 lateral meshes of the extension netting (1¾ inch mesh) are centered and sewn to the bottom and sides of the frame. The escape opening consists of a lateral slit, measuring 40 meshes, cut from the leading edge at the bottom of the frame. A 50 inch, ¼ inch diameter, bungee cord is laced through the meshes at the cut. Opposing ends of the bungee cord are secured to the opposing pad eyes at the top of the frame. One end of a flap measuring 50 meshes across by 30 meshes deep is attached to the meshes at the cut.

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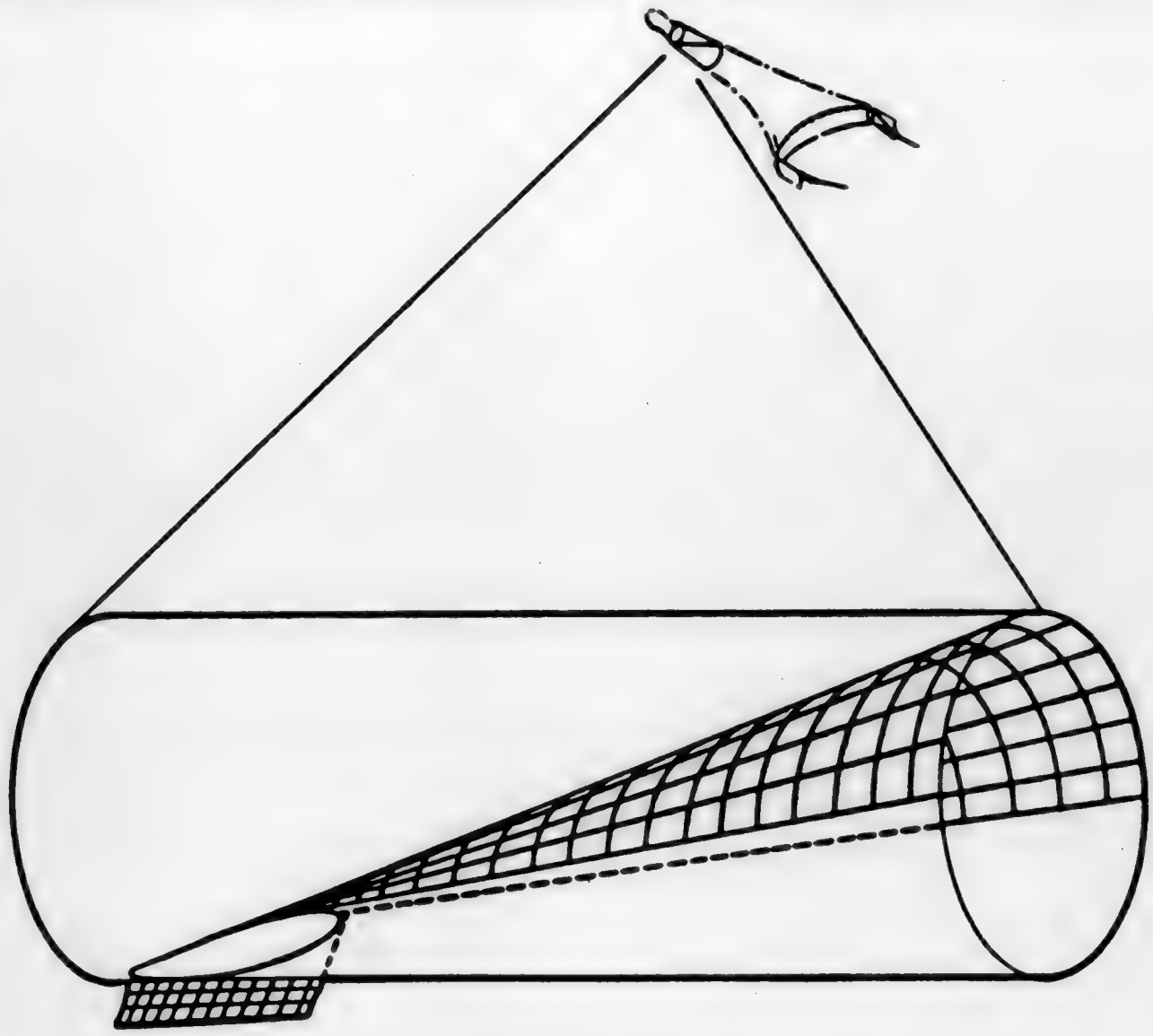

Figure 7. (PARRISH T.E.D.)

[FR Doc. 88-19652 Filed 8-31-88; 8:45 am]
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DEPART

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7 CFR Pa

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Proposed Rules

Federal Register
Vol. 53, No. 170
Thursday, September 1, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[DA-88-120]

Milk in the Oregon-Washington Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites public comments on a proposal to suspend for the months of September through November 1988 the requirement that at least 40 percent of a supply plant's receipts be delivered to pool distributing plants or be disposed of as fluid milk products on routes in the marketing area in order to qualify the supply plant for pooling under the Oregon-Washington order. The action was requested by a cooperative association that represents producers who supply a significant amount of milk for the market. The association claims that this action is necessary to assure that its member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's fluid milk sales.

DATE: Comments are due on or before September 8, 1988.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Department Regulations 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Oregon-Washington marketing area is being considered for the months of September through November 1988:

In § 1124.9(b), the words "not less than 40 percent in any month of September through November and" and "other".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1988 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove for the months of September through November 1988 the requirement that at least 40 percent of a supply plant's receipts be delivered to pool distributing plants or disposed of as fluid milk products on routes in the marketing area in order to qualify the supply plant for pooling. The suspension was requested by Tillamook County Creamery Association (TCCA), a cooperative association that represents a large number of the market's producers.

According to the cooperative, conversion of a significant number of TCCA's manufacturing grade producers to Grade A on July 1, 1988, increased the cooperative's grade A milk supply without a comparable increase in milk sales. TCCA states that as a result of this increase it will be impossible for the cooperative to meet the 40-percent delivery requirement during the months of September through November 1988 without inefficient, costly, and quality-reducing milk transfers to fluid milk plants in the market. The cooperative states that it would be forced to move milk in an uneconomic and inefficient manner solely to maintain the pool status of its producers who historically have supplied the fluid needs of the Oregon-Washington marketing area.

Accordingly, it may be appropriate to suspend the requested order language for the months of September through November 1988.

List of Subjects in 7 CFR Part 1124

Milk marketing orders. Milk, Dairy products.

The authority citation for 7 CFR Part 1124 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on August 25, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-19936 Filed 8-31-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1918

[Docket No. C-02]

General Safety and Health Programs; Request for Comments and Information

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period.

SUMMARY: This notice extends the time in which written comments may be submitted in response to the request for comments and information which OSHA issued on July 15, 1988 on general safety and health programs used by employers in general industry, shipyard employment, and longshoring.

DATE: Written comments must be postmarked by September 28, 1988.

ADDRESS: Comments must be submitted in quadruplicate to the Docket Office, Room N–2439, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–7894. The data, views, and arguments that are submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: OSHA issued a request for information and comments on July 15, 1988 (53 FR 26790) which requested comments and information which could lead to the development and promulgation of an occupational safety and health guideline or other means of encouraging and assisting employers in general industry, shipyard employment, and longshoring to use management methods to provide workplaces free of recognized hazards. Interested persons were given until August 29, 1988 to submit comments pertaining to the request.

OSHA has received requests for an extension of the comment period, based on the complexity of the subject matter and the extent of the proposed guidelines. To ensure the fullest participation of interested persons, OSHA is extending the period in which written comments may be submitted on the guidelines until September 28, 1988. The comments should be sent in quadruplicate to the Docket Office at the above address. Commenters are requested to provide substantive data and documentary evidence in support of their views and arguments on the proposals.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued under Sec. 41, Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Signed at Washington DC, this 26th day of August, 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–19896 Filed 8–29–88; 12:55 pm]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3439–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Supplemental proposed rulemaking.

SUMMARY: On November 21, 1986 (51 FR 42111), USEPA proposed to disapprove a revision to the Illinois State Implementation Plan (SIP) for total suspended particulates (TSP). The proposed revision pertains to a variance from Illinois Pollution Control Board (IPCB) Rule 203(d)(5)(J) until July 1, 1988, for hot scarfing operations at LTV Steel Corporation's (LTV) Chicago Works. USEPA's action was based upon a revision which was submitted by the State. During the public comment period, a comment received from the legal counsel of LTV caused USEPA to re-evaluate its proposed rulemaking action. Today's **Federal Register** notice supplements USEPA's earlier notice of proposed rulemaking with additional information. It announces a revised proposed rulemaking action to approve the SIP revision as requested by the States. Finally, it solicits public comment on the requested SIP revision and USEPA's proposed approval of it.

The USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, USEPA continues to proces TSP SIP revisions which were in process at the time the new PM_{10} standard was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2), USEPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM_{10}. Thus, USEPA is proposing this TSP SIP for approval.

DATE: Comments on this revision and on the proposed USEPA action must be received by October 3, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at 886–6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6036

SUPPLEMENTARY INFORMATION: On February 13, 1985, the Illinois Environmental Protection Agency (IEPA) submitted to USEPA a proposed temporary revision to the Illinois State Implementation Plan (SIP). The proposed SIP revision would grant LTV Steel Corporation (LTV) a variance from Rule 203(d)(5)(J) [recodified as 35 IAC 212.451]. The variance would expire on July 1, 1988, or 60 days after any final Illinois Pollution Control Board (IPCB) Order on a request for site-specific relief for LTV's 44-inch hot scarfing machine.[1] Rule 203(d)(5)(J) requires that all hot scarfing machines shall be controlled by pollution control equipment. Emissions from this equipment shall not exceed 0.03 grain per dry standard cubic foot (gr/dscf) during hot scarfing operations. LTV's Chicago Works is located in an area in Cook County which is classified as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for particulate matter.

History of the LTV Variance Request

LTV (formerly Republic Steel) submitted an Alternative Control Strategy Permit Application (ACS) to IEPA on February 5, 1982. The ACS would offset excess emissions from the basic oxygen furnace shop (Q–BOP) and hot scarfing machine with over control

[1] The IPCB did not approve such "site-specific relief" before the variance expired on July 1, 1988.

of blast furnace casthouse emissions.[2] On March 16, 1982, IEPA issued a "Notice of Incompleteness" contesting the sufficiency of information in the ACS application. IEPA and LTV have subsequently had numerous discussions on the feasibility of applying an ACS to the hot scarfer, but have not reached an agreement.

LTV filed a petition with the IPCB for a variance from Rule 203(d)(5)(I) on July 30, 1984. On January 10, 1985, the IPCB granted the variance until July 1, 1986, or until 60 days after any final Board Order on a request for site-specific regulatory relief for LTV's 44-inch hot scarfing machine, whichever is earlier.

On June 7, 1985, USEPA notified IEPA by letter that the variance could not be approved because it did not contain an emission limitation for the hot scarfer and because the variance would relax the SIP in a nonattainment area without a demonstration of attainment. IEPA responded on July 9, 1985, to request that USEPA remove the proposed SIP revision from further consideration until IEPA provided additional information.

On July 18, 1985, IEPA submitted to USEPA an amended petition filed by LTV and a June 27, 1985, IPCB Order in which the IPCB granted a 0.6 gr/dscf emission limitation for the hot scarfer. However, the State failed, at that time, to submit a modeled demonstration that approval of this variance will not cause the NAAQS to be exceeded.

On November 21, 1986, USEPA proposed disapproval of and solicited public comment on this variance. The basis of USEPA's proposed disapproval was the State's failure to provide the above described modeled attainment demonstration.

USEPA's policy precludes the approval of a relaxed emission limit in an area designated nonattainment, unless it can be demonstrated that the area in which a source is located and has impacts is actually attaining the NAAQS and that the SIP is adequate to attain and maintain the NAAQS, even with the relaxed emission limit. Otherwise, USEPA would have no assurance that the relaxation did not jeopardize the attainment and maintenance of the NAAQS in the source's impact area. This USEPA policy is contained in July 29, 1983, memorandum on Source Specific SIP Revisions from Sheldon Meyers, then Director of USEPA's Office of Air Quality Planning and Standards.

[2] The variance which is the subject of today's proposed rulemaking only concerns emissions from hot scarfing. It does not concern emissions from the Q-BOP

On September 26, 1985, Illinois submitted a modeling analysis as additional information for the variance request. This modeling indicates that the increased emissions which would be allowed by the variance would not have a significant impact (i.e., less than 5 micrograms per cubic meter, 24-hour average) on the particulate level around the plant. This modeling analysis addresses only emissions from the hot scarfer and does not provide an attainment demonstration in the nonattainment area. It, therefore, does not satisfy USEPA's requirement for a modeled demonstration of attainment in the impact area of the source, as specified in the Sheldon Meyers' policy memorandum. USEPA proposed a disapprove the incorporation of this variance for LTV into the Illinois SIP because the State failed to demonstrate that the SIP, as a whole despite the relaxation, would provide for the attainment and maintenance of the NAAQS in the area in which the hot scarfer is located and has an impact.

Public comments were invited on this proposed SIP revision and on USEPA's proposed disapproval. A public comment received from LTV's legal counsel caused USEPA to re-evaluate its proposed rulemaking action as discussed below.

Site Specific RACT Determination

USEPA's earlier analysis indicated that a site-specific rule change could be approved as a site-specific Reasonably Available Control Technology (RACT) determination if it were supported by a technical and economic demonstration that the revised limit was RACT for this source. This rule change would redefine RACT as it applies to the source. Such a RACT demonstration would include:

A. Data reflecting expected emissions in terms of the methodology specified in the applicable RACT-based rules.

B. A detailed technical explanation of why the source cannot meet the current RACT-based emission limit, including any control system specifications. This should include a discussion of controls that are in place on other similar emission sources.

C. A detailed estimate of the minimum costs required to improve (or replace) the existing control system(s) in order to meet the current RACT-based emission limits.

D. An analysis of the marginal cost-effectiveness (in $/ton of pollutant controlled) of improving or replacing the existing control system(s) to meet the current limits.

USEPA believed that the State failed to make this showing and, therefore, proposed rulemaking based on the other possible method of approving the plan, i.e., that the SIP with the relaxation would still assure the attainment and maintenance of the NAAQS.

In its public comments, counsel for LTV Steel Corporation asserted that the record submitted with the comments contains all the information necessary to support the site-specific RACT determination. This record included all of the information that LTV submitted to support a site-specific rule change for this source as well as IPCB orders and testimony on that action. In fact, the record does contain most of the information required to support a site-specific RACT determination, with two exceptions.

First, the IEPA supplemented the record by calculating the marginal cost-effectiveness of upgrading the scrubber and submitted these calculations as support for the site-specific rule change. The calculations indicate that the additional cost of meeting the current limit would be 289,060 dollars per year. The marginal cost would be 29,600 dollars per ton of additional particulate matter removed ($289,060/9.75 = $29,600).

This cost is based on:

1. The historical maximum operating rate of 33 scarfs per hour.

2. The cost of additional electricity required to increase the pressure drop across the venturi scrubber by 20 inches.

3. An equipment life of 20 years with a 10 percent salvage value after 20 years.

4. A 10 percent cost of money.

Second, USEPA received information from LTV that the hot scarfer and the scrubber were installed several years before the 0.03 gr/dscf limit was adopted by the State.

USEPA has revaluated the record, including this additional information, and agrees that it now supports the proposed limit, 0.06 gr/dscf, as a site-specific RACT limit for this source. For a nonattainment area, a modeled demonstration of attainment would also be required to secure USEPA approval of a SIP relaxation and continue overall approval status of the SIP. (July 29, 1983, memorandum from Sheldon Meyers, then Director of the Office of Air Quality Planning and Standards, to Directors of the Air Management Divisions). However, the Illinois SIP was approved on the basis of requiring RACT for all traditional sources of particulate matter and non-traditional fugitive dust studies. Since LTV has demonstrated that this SIP revision would be RACT, a modeled demonstration of attainment is not required.

Further, as stated above, the modeling analysis submitted by the State

indicates that the increased emissions which would be allowed by the variance would not have a significant effect (i.e., less than 5 micrograms per cubic meter, 24 hour average) on the particulate levels around the plant. For this reason, USEPA believes that progress toward attainment of the NAAQS would not be significantly affected.

Revised Proposed Rulemaking Action

For the above cited reasons, USEPA proposes to approve this requested SIP revision as a site specific RACT determination. Public comment is solicited on the requested SIP revision and on USEPA's proposed approval of it as a site specific RACT determination. Public comments received by the date indicated above will be considered in the development of USEPA's final rule.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: June 30, 1987.

Editorial Note: This document was received at the Office of the Federal Register August 29, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88–19885 Filed 8–31–88; 8:45am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL–3439–8; KY–035]

Approval and Promulgation of Implementation Plans; Jefferson County, Kentucky; SOCMI Air Oxidation Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a regulation submitted by the Commonwealth of Kentucky pertaining to the Air Pollution Control District of Jefferson County (APCDJC). The regulation 6.38 "Standard of performance for existing air oxidation processes in synthetic organic chemical manufacturing industries", constitutes a revision to Kentucky's ozone State Implementation Plan (SIP) for Jefferson County, and relates to the Group III control techniques guideline (CTG) document for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Processes. The intent of the regulation is to apply reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from SOCMI air oxidation processes.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before October 3, 1988.

ADDRESSES: Written comments should be addressed to Jill Perry of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Commonwealth of Kentucky, Division of Air Pollution Control, Natural Resources and Environmental Protection Cabinet, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Jill Perry, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864.

SUPPLEMENTARY INFORMATION: In accordance with the Kentucky Division of Air Pollution Control's commitment to adopt Group III CTG regulations, the Commonwealth of Kentucky submitted, on March 20, 1987, a revision to the Jefferson County ozone SIP to adopt Regulation 6.38. The regulation is consistent with Group III document, "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry".

Specifically, Regulation 6.38 requires the use of combustion to reduce the total organic compound emissions by 98 weight percent or to 20 ppm by volume, or maintenance of the total resource effectiveness index value (TRE) greater than 1.0. The TRE is calculated in accordance with Appendix H of the CTG. Final compliance with the regulation must be demonstrated no later than December 31, 1987.

Proposed action

This regulation is consistent with the requirements specified in the CTG document (EPA–450/3–84–015). Therefore, EPA is today proposing to approve Jefferson County, Kentucky's Group III regulation for SOCMI air oxidation processes.

The public is invited to participate in this rulemaking by submitting written comments on the proposed actions.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: September 25, 1987.

Charles H. Sutfin,

Acting Regional Administrator.

[FR Doc. 88–19888 Filed 8–31–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Dockets No. 78–72, Phase I, RM 6252; FCC 88–273]

MTS and WATS Market Structure, NECA Board of Directors

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice proposes to modify the Commission's rules to require that the Board of Directors of the National Exchange Carrier Association, Inc. (NECA) consists of three members representing subset I companies, three representing subset II companies, and nine representing subset III companies commencing January 1, 1989, to better reflect the interests of the NECA member companies in NECA's operations.

DATES: Comments are due on or before September 26, 1988, and reply comments are due on or before October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Diane Cornell, Policy and Program Planning Division, Common Carrier Bureau, tel: (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in CC Docket No. 78–72, Phase I, RM 6252, FCC 88–273, adopted August 11, 1988, and released August 23, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service.

(202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In this *Notice of Proposed Rulemaking* (*NPRM*), we are proposing to amend § 69.602 of the Commission's rules governing the composition of the National Exchange Carrier Association, Inc. (NECA) Board of Directors to provide that, as of January 1, 1989, NECA's Board would have three members representing subset I companies, three representing subset II companies, and nine representing subset III companies. This *NPRM* is initiated in response to a Petition for Rule Change filed by NECA. In its petition, NECA asserted that a rule change prescribing a NECA Board structure of three subset I members, three subset II members, and nine subset III members effective January 1, 1989, properly balances the interests of the NECA subset companies given the advent of voluntary non-traffic sensitive (NTS) pooling as a result of this Commission's May 1987 *NTS Recovery Order*, 2 FCC Rcd 2953 (1987).

2. Our current rules provide that, for 1988, and thereafter, six directors shall represent subsets I and II jointly, and nine directors shall represent subset III. The proposed rule modification would not change the total number of directors provided for in our rules to represent subsets I and II, but would ensure that representatives of both subset I and subset II companies would serve on the Board. We consider that this proposed approach would more accurately reflect the interests of member companies in NECA's operations in the pooling structure that will be implemented in 1989, since the subset I and subset II groupings may have different interests in specific NECA functions. Accordingly, the *NPRM* tentatively concludes that the proposed rule changes should be adopted and invites interested persons to comment on this tentative conclusion.

3. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping labeling, disclosure, or record retention requirements that are applicable to the public, and will not increase or decrease burden hours on the public.

4. It is certified that the requirements contained in the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to the rules that may result from this proceeding.

Procedural Matters

5. Accodingly, it is ordered, pursuant to sections 1, 4(i)–(j), and 403 of the Communications Act of 1934, as amended, and section 553 of the Administrative Procedure Act, that a notice or proposed rulemaking is instituted to amend Part 69 of this Commission's Rules.

6. It is further ordered, pursuant to the procedures set forth in § 1.415 of our Rules, that all interested persons may file comments on the proposal discussed in this Notice no later than September 26, 1988, and reply comments may be filed not later than October 17, 1988. In accordance with the provisions of § 1.419 of our Rules, an original and five copies of all statements, briefs, comments, or reply comments shall be filled with the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. All such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC offices.

7. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases that text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding.

8. In general, and *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates *See generally* 47 CFR 1.1202–1.1206 (1987).

Proposed Rule Changes

Part 69 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1006, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.602 is amended by revising paragraphs (c)–(f), effective January 1, 1989, to read as follows:

§ 69.602 Board of Directors.

* * * * *

(c) In 1989 and thereafter, three directors shall represent the first subset, three directors shall represent the second subset, and nine directors shall represent the third subset.

(d) Each subset shall select the directors who will represent it through an annual election in which each member of the subset shall be entitled to vote for the number of directors that will represent such members' subset.

(e) For each access element or group of access elements for which voluntary pooling is permitted, there shall be a committee composed only of directors from companies participating in the pooling for that element or group of access elements. Each such committee shall be reponsible for the preparation of charges for the associated access elements that comply with all applicable sections of this part.

(f) Directors shall serve for a term of one year commencing January 1.

* * * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–19687 Filed 8–31–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 170
Thursday, September 1, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Louisville (KY), Minot (ND), and Tri-State (OH) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Louisville Grain Inspection Services, Inc. (Louisville), Minot Grain Inspection, Inc. (Minot), and Tri-State Grain Inspection Service, Inc. (Tri-State), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: October 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Louisville's, Minot's, and Tri-State's designations terminate on September 30, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the March 31, 1988, **Federal Register** (53 FR 10411). Applications were to be postmarked by May 2, 1988. Louisville and Tri-State were the only applicants for designation and each applied for designation renewal in the entire area currently assigned to that agency. There were two applications for the Minot designation; Minot applied for designation renewal in the entire area currently assigned to that agency, except for Farmers Elevator Company, Bottineau, Bottineau County, and Farmers Union, Rugby, Pierce County, both in North Dakota. A neighboring official agency, Robert J. Bohlman dba Grand Forks Grain Inspection Department, in whose territory these grain elevator facilities are located applied only for those points.

The Service announced the applicant names in the June 1, 1988, **Federal Register** (53 FR 19975) and requested comments on the applicants' designation. Comments were to be postmarked by July 18, 1988; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Louisville, Minot, and Tri-State are able to provide official services in the geographic area for which the Service is renewing their designations. Effective October 1, 1988, and terminating September 30, 1991, Louisville and Tri-State will provide official inspection services in their specified geographic areas, previously described in the March 31 **Federal Register**. For that same time period, Minot will provide official inspection services in the specified geographic area previously described in the March 31 **Federal Register**, with the exception of Farmers Elevator Company, Bottineau, Bottineau County, and Farmers Union, Rugby, Pierce County, both in North Dakota. Grand Forks is able to provide official services to Farmers Elevator Company, Bottineau, Bottineau County, and Farmers Union, Rugby, Pierce County, both in North Dakota, for which the Service is selecting it for designation. Grand Forks will provide official inspection services to those two points effective October 1, 1988, and terminating March 31, 1990, when that agency's current designation terminates.

Interested persons may obtain official services by contacting the agencies at the following telephone number: Louisville at (502) 585–2358; Minot at (701) 838–1734; Tri-State at (513) 251–6571; and Grand Forks at (701) 722–0151.

(Pub. L. 94–582, 90 Stat. 2867, as amended 7 U.S.C. 71 *et seq.*)

Date: August 25, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–19700 Filed 8–31–88; 8:45 am]

BILLING CODE 34–10–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the States of Minnesota (MN) and Mississippi (MS)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Minnesota Department of Agriculture (Minnesota) and Mississippi Department of Agriculture and Commerce (Mississippi).

DATE: Comments to be postmarked on or before October 18, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows: TO: Lewis Lebakken, TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within the specified geographic areas in the June 31, 1988, **Federal Register** (53 FR 24753). Applications were to be postmarked by August 1, 1988. Mississippi was the only applicant for designation in its area and

applied for designation renewal in the entire area currently assigned to that agency.

There were four applications for the Minnesota designation. Minnesota applied for designation renewal for inspection and weighing functions in the entire area currently assigned to that agency. The other three applicants for designation were:

1. Aberdeen Grain Inspection, Inc., Aberdeen, South Dakota, applying for inspection functions only in Rock and Pipestone Counties, Minnesota;

2. North Dakota Grain Inspection Service, Inc., Fargo, North Dakota, applying for inspection functions only in the following area: East from North Dakota border on County Road 1 to Highway 89; south from Winger on Highway 59 to Elbow Lake; West from Highway 59 on County Road 55 to North Dakota border; and

3. David W. Puetz, West Lafayette, Indiana, proposing to do business as Licensed Inspection for Minnesota (LIM) applying for inspection functions only in the entire State of Minnesota or a portion thereof.

This notice provides interested persons the opportunity to present their comments concerning the applicants' designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended, 7 U.S.C. 71 *et seq.*)

Date: August 25, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–19701 Filed 8–31–88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Frankfort (IN), Jinks (IL), and Paris (IL) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Frankfort Grain Inspection, Inc. (Frankfort), Robert H. Jinks, dba Jinks Grain Weighing Service (Jinks), and Robert R. Beals, dba Paris Illinois Grain Inspection (Paris).

DATE: Applications to be postmarked on or before October 3, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Frankfort, located at R.R. #2, Box 126, Frankfort, IN 46041; Jinks, located at R.R. 1, Box 81, Homer, IL 61849; and Paris, located at 1020 North Central Avenue, Paris, IL 61944; were each designated under the Act as an official agency on March 1, 1986. Frankfort was designated to provide official inspection and weighing functions, Jinks was designated to provide official weighing functions, and Paris was designated to provide official inspection functions.

Each official agency's designation terminates on February 28, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Frankfort, in the State of Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the north by the northern Fulton County line;

Bounded on the east by the eastern Fulton County line south to State Route 19; State Route 19 south Route 114; State Route 114 southeast to the eastern Fulton and Miami County lines; the northern Grant County line east to County Highway 900E; County Highway 900E south to State Route 18; State Route 18 east to the Grant County line; the eastern and southern Grant County lines; the eastern Tipton County line; the eastern Hamilton County line south to State Route 32;

Bounded on the south by State Route 32 west to the Boone County line; the eastern and southern Boone County lines; the southern Montgomery County line; and

Bounded on the west by the western and northern Montgomery County lines; the western Clinton County line; the western Carroll County line north to State Route 25; State Route 25 northeast to Cass County; the western Cass and Fulton County lines.

Exceptions to Frankfort's assigned geographic area are the following locations inside Frankfort's area which have been and will continue to be serviced by the following official agency:

Titus Grain Inspection, Inc.: The Andersons, Delphi, Carroll County; Buckeye Feed and Supply Company, Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County.

The geographic area presently assigned to Jinks, in the States of Illinois and Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the Iroquois County line east to Illinois State Route 1; Illinois State Route 1 south to U.S. Route 24; U.S. Route 24 east into Indiana, to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the southern Fountain County line; the Fountain County line west to Vermillion County (in Indiana); the eastern Vermillion County line south to U.S. Route 36;

Bounded on the South by U.S. Route 36 west into Illinois, to the Douglas County line; the eastern Douglas and Coles County lines; and southern Coles County line; and

Bounded on the West by the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line; a straight line running north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the Champaign County line; the northern Champaign County line; the western Vermillion (in Illinois) and Iroquois County lines.

The following locations, all in Illinois, outisde of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, all in Farmer City, Dewitt County; Moultrie Grain Association, Lovington, Moultrie County; Monticello Grain Company, Monticello, Piatt County; and Pittwood Grain Company, Pittwood, Iroquois County (located inside Decatur Grain Inspection, Inc.'s area).

Exceptions to Jinks' assigned geographic area are the following locations inside Jinks' area which have been and will continue to be serviced by the following official agencies;

1. Paris Illinois Grain Inspection: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana; and

2. Titus Grain Inspection, Inc.: Boswell Grain Company, Boswell, Benton County, Indiana; Dunn Grain, Dunn, Benton County, Indiana; York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana; and Raub Grain Company, Raub, Benton County, Indiana.

The geographic area presently assigned to Paris, in the States of Illinois. and Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by U.S. Route 36 east across the Illinois-Indiana State line to the western Parke County line; the northern Parke and Putnam County lines;

Bounded on the East by the eastern Putnam, Owen, and Greene County lines;

Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(15) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the western Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the western Edgar County line north to U.S. Route 36.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana (located inside Champaign-Danville Grain Inspection Departments, Inc.'s area for inspection services and Jinks Grain Weighing Service's area for weighing services, respectively).

Interested parties, including Frankfort, Jinks, and Paris, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning March 1, 1989, and ending February 28, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended 7 U.S.C. 71 *et seq.*)

Date: August 25, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–19702 Filed 8–31–88; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Tish Tang A Tang Analysis Area; Six Rivers National Forest, Humboldt County, CA; Intent To Prepare an Environmental Impact Statement

The Six Rivers National Forest will prepare an environmental impact statement to explore the environmental consequences of proposed projects within the Tish Tang A Tang analysis area. The analysis area is located in the North Trinity, Red Cap, Horse Trail and Crogan Compartments on the Lower Trinity Ranger District. These compartments are located along the east side of the Hoopa Valley Indian Reservation, 13 air miles northeast of Willow Creek, California in sections 1 and 12, T8N, R5E; sections 13, 14, 23, 24, 25, 26 and 36, T9N, R5E; sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30 and 32, T8N, R6E; and sections 7, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33, T9N, R6E; HBM, Humboldt County, California.

The EIS will evaluate the environmental effects of timber management on water quality, old growth management and old-growth related wildlife species. Native American contemporary use and spiritual values, and other affected resources. Of the 16,000 acres which are included within the analysis area, approximately 1,250 acres are being considered for timber management.

A range of alternatives, from multiple-use activities to deferring timber harvesting at this time will be considered. The alternatives will emphasize timber, wildlife, recreation and visual resource values and Native American contemporary use.

We invite other Federal agencies, Native American tribes, state and local agencies and interested individuals to participate in the project including the initial session, which is scheduled at the Trinity Valley School in Willow Creek, California, at 7:00 p.m. on September 29, 1988.

The draft EIS should be completed by January 30, 1988 and the Final EIS by early May 1989. If approved, development of sales would begin immediately thereafter.

Written comments and questions should be received by October 21, 1988 and directed to Larry Cabodi, District Ranger, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, California, 95573. The phone number is 916–629–2118.

James L. Davis, Jr.,

Forest Supervisor.

[FR Doc. 88–19897 Filed 8–31–88; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Dead Creek Bank Stabilization Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service,

U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dead Creek Bank Stabilization RC&D Measure, Iosco County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 2,600 ft. of bank slope excavation, 360 tons of rock riprap, 3 acres of seeding, .75 tons of fertilizer, 6 tons of mulch and one project sign. Total construction cost is $18,000; RC&D funds will pay 64% and local funds will pay 36%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until on or before October 3, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: August 24, 1988.

Jerry L. Keller,

Deputy State Conservationist.

[FR Doc. 88–19856 Filed 8–31–88; 8:45 am]

BILLING CODE 3410–16–M

Mattawan Creek Erosion Control Critical Area Treatment Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mattawan Creek Erosion Control RC&D Measure, Van Buren County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 140 ft. of treated wood tie (retaining wall), 200 ft. of rock riprap, 0.2 acres of critical area planting and the removal of 140 ft. of concrete walls. Total construction cost $17,400; RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until on or before October 3, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Jerry L. Keller,

Deputy State Conservationist.

Date: August 24, 1988.

[FR Doc. 88–19857 Filed 8–31–88; 8:45 am]

BILLING CODE 3410–16–M

Rifle River High Banks Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rifle River High Banks RC&D Measure, Ogemaw County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and

archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 360 ft. of fencing, 150 ft. of stairs, 3 platforms, 250 ft. of guard rail, 350 yds. of riprap, 300 yds. of topsoil, 150 yds. of gravel, 2 surface inlets, 2 acres of seeding, 4 tons of mulch, 1 ton of fertilizer, 1,100 sq. ft. of erosion control netting, 12 shrubs and one project sign. Total construction cost is $30,000; RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until on or before October 3, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Jerry L. Keller,

Deputy State Conservationist.

Date: August 24, 1988.

[FR Doc. 88-19858 Filed 8-31-88; 8:45 am]

BILLING CODE 3410-16-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting Rescheduling

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces that the previously announced Wednesday, September 21, 1988, meeting of the President's General Advisory Committee on Arms Control and Disarmament has been rescheduled to Wednesday, October 12, 1988. (See 52 FR 32266, August 24, 1988.)

The previously announced purpose, authority, and agenda items for this closed meeting are unchanged.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 88-19916 Filed 8-31-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of U.S. Travelers Visiting Canada; and Expenditures of U.S. Travelers in Mexico.

Form numbers: Agency—BE-536 and BE-575; OMB—0608-0001.

Type of request: Extension of a currently approved collection.

Burden: 35,000 respondents; 2,500 reporting hours.

Average Time Per Response: 5 minutes.

Needs and Uses: These surveys collect data on the average travel and passage fare expenditures of U.S. persons traveling to Canada, and on the average travel expenditures of U.S. persons traveling overland to Mexico. The data are used to develop international travel estimates in the U.S. balance of international payments and the U.S. national income and product accounts.

Affected public: Individuals or households.

Frequency: Daily.

Respondent's Obligation: Voluntary.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20530.

Dated: August 26, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19909 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-CW-M

New Members of the Departmental Performance Review Board

This notice announces the new members of the Departmental Performance Review Board (PRB) in the Department of Commerce. The purpose of the Departmental PRB is to review the performance of appointing authorities and their immediate deputies who are in the SES and SES members whose ratings are initially prepared by their respective appointing authorities.

These Departmental PRB members are appointed for a two year term ending November 30, 1990. The list of new members eligible to serve on the Departmental PRB is as follows:

General Counsel

Stephen J. Powell, Chief Counsel for Import Administration
Linda A. Townsend, Deputy General Counsel

Economic Affairs

Harry A. Scarr, Statistical Coordinator for Under Secretary

International Trade Administration

Genevieve M. Ryan, Deputy Assistant Secretary for U.S. and Foreign Commercial Service
John F. Mizroch, Deputy Assistant Secretary for Trade Adjustment Assistance
Timothy M. Bergan, Deputy Assistant Secretary for Import Administration
Timothy F. Ashby, Director, Office of Mexico and the Caribbean Basin

Bureau of Export Administration

Lee W. Mercer, Deputy Under Secretary for Export Administration
William Skidmore, Director, Office of Antiboycott Compliance

Travel and Tourism

Eric Peterson, Deputy Under Secretary for Travel and Tourism

Congressional and Intergovernmental Affairs

Mary Ann Knauss, Deputy Assistant Secretary for Intergovernmental Affairs
Kristin Paulson, Deputy Assistant Secretary for Congressional Affairs

Economic Development Administration

James L. Perry, Deputy Assistant Secretary for Grant Programs
Craig M. Smith, Deputy Assistant Secretary for Management Support

National Bureau of Standards

Burton H. Colvin, Director for Academic Affairs

George A. Sinnott, Associate Director for Technical Evaluation

Minority Business Development Agency

John Christian, Associate Director for Operations
Thomas Francis, Assistant Director for Program Support

National Oceanic and Atmospheric Administration

James W. Brennan, Assistant Administrator for National Marine Fisheries Service
B. Kent Burton, Director, Office of Legislative Affairs
Dennis F. Geer, Director, Office of Administration
Thomas Pyke, Assistant Administrator for Satellite and Information Services
Timothy R. Keeney, General Counsel

Persons desiring any further information about the Departmental PRB or its membership may contact Mr. Thomas J. Lambiase, Executive Secretary to the Departmental PRB, Office of Personnel and Civil Rights, Herbert C. Hoover Building, Room 5102, Washington, DC 20230, (202) 377–3453.

Dated August 23, 1988

Thomas J. Lambiase,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 88–19859 Filed 8–31–88; 8:45 am]
BILLING CODE 3510–BS–M

Bureau of Export Administration

[Docket Nos. 81–8104, 81–8015]

Actions Affecting Export Privileges; William T. Newkirk et al.

Summary

Pursuant to the July 28, 1988 Default Decision and Order of the Administrative Law Judge, which Decision and Order is affirmed by me, William T. Newkirk, individually and doing business as Kal Tek Labs, with an address at 250 Bonita Glen Drive, #3D, Chual Vista, California 92010, is denied all U.S. export provileges for a period of twenty (20) years from the date hereof.

Default Order

On July 28, 1988, the Administrative Law Judge entered his recommended Default Decision and Order in the above referenced matter. That Default Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Date: August 26, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

Default Decision and Order

Appearance for Respondent: William T. Newkirk, 250 Bonita Glen Drive, #3D, Chula Vista, California 92010.

Appearance for Agency: Joan L. MacKenzie, Esq., Anthony K. Hicks, Esq., Attorney-Advisors, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Avenue NW., Washington, DC 20230.

Preliminary Statement

On February 26, 1988, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Agency), issued a charging letter to William T. Newkirk, individually and doing business as Kal Tek Labs (the Respondent). These charges were made pursuant to the authority of the Export Administration Act, as amended (50 U.S.C. App. 2401–2420 (1982 and Supp. III 1985))) (the Act), and the Export Administration Regulations (currently codified at 15 CFR Parts 368–389 (1987)) (The Regulations). The record reflects that the charging letter was served upon Respondent on March 10, 1988.

Since no answer has been filed, the Agency counsel moved that a default order be entered in these proceedings pursuant to § 388.8 of the Regulations. Section 388.8 of the Regulations provides:

Default (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

In accordance with this section, Agency counsel filed a Motion for Default Judgment on June 3, 1988. The Agency also submitted documentary evidence to support the allegations made in the charging letter. A copy of the above-mentioned Motion for Default Judgment was also sent to the Respondent on June 3, 1988. Thereafter, on June 13, 1988 an Order to Show Cause why a default order should not be entered was sent to the Respondent, to which no response has been made.

On April 5, 1984, the Respondent was charged in a Grand Jury Indictment, entered in the United States District Court for the Central District of California, with seventeen counts of conspiring with Man Chung Tong (Tong) to knowingly export electronic testing and calibration equipment from the United States to the Republic of Hong Kong without first obtaining the required validated export license from the Department of Commerce, and with knowingly submitting false statements to the Department. On or about August 21, 1984, the Respondent pled guilty to five of these counts (Counts One through Five of the Indictment) and was sentenced to two years' imprisonment and fined $50,000.

On February 26, 1988, the Agency issued a charging letter alleging the same violations that were charged in the Grand Jury Indictment, specifically that Respondent conspired and acted in concert with Tong to acquire U.S.-origin electronic equipment on false representations regarding the licensing of the commodities, and then to export the electronic goods to Hong Kong without obtaining from the Agency the validated export license that he knew was required by § 372.1(b) of the Regulations. The charging letter describes in paragraphs 1 through 6 the unlawful export of six specific sets of equipment exported in ten shipments, and the false statements that were made to the Agency for the purpose of obtaining licenses to export the equipment.

Findings and Discussion

The evidence shows that these alleged unlawful exports and false statements did indeed take place.

The Indictment and guilty plea describe the scheme the Respondent and Tong used to implement the conspiracy. Tong would place orders with the Respondent for U.S.-origin electronic equipment wanted by Tong's customers. The Respondent purchased the equipment from U.S. manufacturers, took delivery of it, and exported the equipment to Tong in Hong Kong, either directly from the United States, or indirectly through Mexico, knowing that he did not have the requisite export authorization from the Agency. The Respondent effected these exports by knowingly submitting false statements to the Agency on the export documents. After the equipment arrived in Hong Kong, Tong resold the electronic equipment to customers in the People's Republic of China and elsewhere. The Respondent has admitted these facts by

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pleading guilty to Count One of the Indictment.

Paragraph 1 of the charging letter alleges that, on or about October 14, 1982, the Respondent exported a Hewlett Packard computer system from the United States through Mexico to Tong in Hong Kong without the validated export licesne that he knew or had reason to know was required by the Regulations. Respondent obtained the goods by representing that he had a customer in Mexico, and preparing a false invoice showing such a sale. Respondent has admitted these facts by pleading guilty to Count One of the Indictment (paragraphs 1, 2 and 4) and is therefore collaterally estopped from denying those facts. Those facts establish that the Respondent has violated § 387.4 and 387.6 of the Regulations in connection with this transaction, in the context of this administrative proceeding.

Paragraph 2 of the charging letter alleges that another unlawful export occurred on or about Januay 14, 1983. On or about November 17, 1982, Tong, doing business as Stillwell Development Company, Ltd., submitted Purchase Order No. ST00051 to the Respondent for the purchase of two spectrum analyzers with options. The Respondent submitted an export license application to the Agency on or about November 22, 1982, to export these spectrum analyzers to Stillwells, Ltd. in Hong Kong. On or about January 14, 1983, while the license application was still pending, the Respondent exported the two spectrum analyzers from the United States to Tong in Hong Kong, stating on the Shippers' Export Declaration that this shipment was authorized under "G–DEST". Because Respondent had applied for an individual validated license, he clearly knew that one was required. Subsequently, the license application was denied by the Agency on May 26, 1983. The documentary evidence fully supports the allegations in the charging letter. The Respondent pled guilty to the corresponding count in the Indictment (Counts Two and Three), and Respondent is therefore collaterally estopped from denying the facts in those counts. Those facts establish that the Respondent violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Paragraph 3 of the charging letter alleges another violation that follows a similar pattern. On or about November 11, 1982, Tong, doing business as Scientific Data Systems, Ltd., submitted Purchase Order No. SDS037 to the Respondent for electronic computer equipment. On or about November 16, 1982, Respondent submitted two export license applications (A659118 and A659955) to the Agency to export that electronic computer equipment to Scientific Data Systems, Ltd., in Hong Kong. While these license applications were still pending, on or about February 26, 1983, Respondent exported the electronic computer equipment from the United States to Tong in Hong Kong, again stating on the Shippers' Export Declaration that this shipment was authorized under "G–DEST". The license applications were denied by the Agency on May 19, 1983. Since the Respondent applied for a validated export license, he knew that one was required. The documentary evidence fully supports the allegations in the charging letter. The Respondent pled guilty to the corresponding count in the Indictment, and he is therefore collaterally estopped from denying the facts in those counts. Those facts establish that the Respondent violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Paragraph 4 of the charging letter alleges that, on or about December 31, 1982, Tong, doing business as Equipment Rental Company, Ltd., submitted Purchase Order No. ER001 to the Respondent for electronic equipment including oscilloscopes and spectrum analyzers. On or about January 3, 1983, Respondent submitted two export license applications (A669213 and A669214) to the Agency seeking authorization to export this equipment to Equipment Rental Company, Ltd., in Hong Kong. While these license applications were still pending, the Respondent exported the equipment in two shipments from the United States to Tong in Hong Kong on or about April 9, 1983 and on or about June 4, 1983. He effected these exports by stating on the Shippers' Export Declaration accompanying each shipment that these shipments were authorized by validated export license A663561, an export license application unrelated to these exports. The license applications for this equipment were denied by the Agency on July 29, 1983. The documentary evidence clearly supports the charges that the Respondent violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Paragraph 5 of the charging letter alleges another similar violation. On or about February 4, 1983, Tong, doing business as Scientific Data Systems, Ltd., submitted Purchase Order No. SDS063 to the Respondent for electronic equipment, including cathode ray oscilloscopes. On or about January 3, 1983, the Respondent submitted an export license application (A677421) to the Agency seeking authorization to export that electronic equipment to Scientific Data Systems, Ltd., in Hong Kong. This license application was denied by the Agency on May 19, 1983. Both while the license application was still pending, and after it was denied by the Agency, however, the Respondent exported the equipment in four shipments on or about May 7, May 28, June 25 and July 3, 1983, from the United States to Tong in Hong Kong, stating on the Shippers' Export Declaration accompanying each shipment that validated export license A663561 authorized these shipments. In applying for a validated exported license and exporting without it, he acted with knowledge that he was violating the Regulations. The documentary evidence clearly supports the charges that the Respondent violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Paragraph 6 of the charging letter alleges that the Respondent submitted to the Agency a validated export license application (A648884) on or about October 7, 1982, to ship 20 cathode ray oscilloscopes to a customer in Mexico. On or about June 22, 1983, the Respondent exported from the United States through Mexico to Tong in Hong Kong two oscilloscopes and two plug-in units on the false representation that export license A648884 authorized the export. License application A648884 related to a different export to Mexico. The Respondent has admitted these facts by pleading guilty to Count One of the Indictment (paragraph 3), and is therefore collaterally estopped from denying those facts. Those facts establish that the Respondent has violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Conclusion

The exhibits and representations by Agency counsel and the Respondent's guilty plea fully support the charges made by the Agency in the February 26, 1988 charging letter, which alleged that the Respondent knowingly exported electronic testing and calibration equipment from the United States to the Republic of Hong Kong without first obtaining the required validated export license from the United States Department of Commerce (§ 372.1(b) of the Regulations), and knowingly submitted false statements to the Agency. By doing so the Respondent violated §§ 387.4, 387.5 and 387.6 of the Regulations with respect to the

aforementioned shipments. (15 CFR 387.4, 387.5 and 387.6)

The pattern of conduct demonstrated by the violations shows a deliberate and willful intent to violate United States export laws and regulations. The goods unlawfully exported to Hong Kong by the Respondent were controlled for national security purposes. I find that an Order denying export privileges for 20 years from the date that a final order is entered in this proceeding is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act, and the Regulations.

Order

I. For a period of 20 years from the date of the final Agency action, Respondent and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, deliverying, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Hugh J. Dolan,

Administrative Law Judge.

Date: July 28, 1988.

[FR Doc. 88-19906 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held September 20, 1988, 9:00 a.m., Herbert C. Hoover Building, Room B-841, 14th & Constitution Avenue NW., Washington, DC.

The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion of 1988 Report and 1989 Work Plan.
4. Comments on ICOTT Proposal on CCL 1565.
5. Report by the Supercomputer Task Force.
6. Discussion of CSTAC Role Within the Requirements of Omnibus Trade & Comparative Act.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or protions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377-2583.

Date: August 26, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff Office of Technology & Policy Analysis.

[FR Doc. 88-19926 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures & Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held Sept. 21, 1988, 1:00 p.m., Room B-841, Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC. The subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation on 1988 Annual Report and 1989 Work Plan.
4. Presentation on Export Documentation and Filing Requirements Proposal.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, contact Betty Anne Ferrell at 202/377-2583.

Date: August 26, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-19929 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held September 20, 1988, 3:00 p.m. in Room B-841 of the Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC.

The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Presentation of 1988 Annual Report and 1989 Annual Plan.
4. Response on the Ruggedized Parameters.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the subcommittee. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2583.

Date: August 26, 1988

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-19927 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held September 21, 1988, at 9:00 a.m., Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue NW., Washington, DC. The Software Subcommittee was formed with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Briefing by Office of General Counsel on New Draft Proposed Technical Data Regulations.
4. Discussion on Data Enscription Standard.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty A. Ferrell at (202) 377-2583.

Date: August 26, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-19928 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Antidumping or Countervailing Duty Order, Funding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than September 30, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceeding	
Canada: Replacement Parts for Self-Propelled Bituminous Paving Equipment (A-122-057)	9/01/87-8/31/88
Canada: Carbon Steel Bars and Structural Shapes (A-122-005)	9/01/87-8/31/88
Canada: Steel Jacks (A-122-006)	9/01/87-8/31/88
Federal Republic of Germany: Certain Forged Steel Crankshafts (A-428-604)	5/13/87-8/31/88
Italy: Pads for Woodwind Instrument Keys (A-475-017)	9/01/85-8/31/86

	Period
Japan: Amorphous Silica Filament Fabric (A-588-607)	5/13/87-8/31/88
Japan: Metal-Walled Above-Ground Swimming Pools (A-588-058)	9/01/87-8/31/88
People's Republic of China: Greige Polyester/Cotton Printcloth (A-570-101)	9/01/87-8/31/88
United Kingdom: Certain Forged Steel Crankshafts (A-412-612)	5/13/87-8/31/88
Countervailing Duty Proceeding	
Israel: Fresh Cut Roses (C-08-064)	10/01/86-9/30/87
Mexico: Portland Hydraulic Cement and Cement Clinker (C-201-013)	1/01/87-12/31/87
Mexico: Lime (C-201-402)	1/01/87-12/31/87
New Zealand: Lamb Meat (C-614-503)	4/01/87-3/31/88
New Zealand: Steel Wire (C-614-601)	7/01/87-6/30/88
Peru: Cotton Shop Towels (C-333-401)	1/01/87-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **FEDERAL REGISTER** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by September 30, 1988.

If the Department does not receive by September 30, 1988 a request for reivew of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Compliance.

Date August 25, 1988.

[FR Doc. 88-19925 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

August 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 6, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Group II and the fabric group, as well as certain specific limits, are being adjusted, variously, for swing and carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49186, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 29, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of certain cotton, wood, man-made fiber, silk blend and other vegetable figer textiles and textile products, produced or manufactured in Malaysia and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on Sept. 6, 1988, the directive of December 24, 1987 is hereby amended to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the governments of the United States and Malaysia:

Category	Adjusted 12-month limit [1]
Fabric Group	
218, 219, 220, 225-227, 313-315, 317, 326, 613/614/615/617, as a group.	74,113,984 square yards equivalent.
Group II	
201, 222-224, 229, 239, 330, 332, 349, 350, 352-354, 359-362, 369-O [2], 400-434, 436, 438-O [3], 440, 443, 444, 447, 448, 459, 464-469, 600-603, 606, 607, 611, 618-622, 624-630, 632, 633, 643, 644, 649, 650, 652-654, 659, 665,-670, 831-834, 836, 838, 840 and 843-859, as a group.	31,432,277 square yards equivalent.
Other Specific Limits	
300/301	3,989,195 pounds.
331/631, 333/334/335/835.	1,282,500 dozen pairs, 147,075 dozen of which not more than 73,538 dozen shall be in Category 333, 71,331 dozen shall be in Category 334, 73,538 dozen shall be in Category 335, 73,538 dozen shall be in Category 835.
336/636	271,952 dozen.
337/637	247,641 dozen.
338/339	642,074 dozen.
340/640	789,964 dozen.
341/641	1,068,738 dozen of which not more than 381,274 dozen shall be in Category 341.
342/642/842	242,149 dozen.
345	95,888 dozen.
347/348	261,181 dozen.
351/651	158,841 dozen.
363	3,338,680 numbers.
369-S [4]	635,271 pounds.
435	14,640 dozen.
442	19,577 dozen.
445/446	31,074 dozen.

Category	Adjusted 12-month limit [1]
604	1,770,672 pounds.
634/635	498,811 dozen of which not more than 217,671 dozen shall be in Category 635.
638/639	277,955 dozen.
645/646	224,745 dozen.
647/648	1,036,457 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 369–0, all TSUSA numbers except 366.2840.
[3] In Category 438–0, only TSUSA numbers 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640.
[4] In Category 369–S, only TSUS number 366.2840.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

James H. Babb,

Chairman, Committee for the Implemention of Textile Agreements.

[FR Doc. 88–19908 Filed 8–31–88; 4:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Realignment and Closure Commission; Meetings

ACTION: Notice of business meeting and public hearing.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold a business meeting at 9:00 a.m., September 14, 1988 in the Dirksen Senate Office Building, Room 628. This will immediately be followed by a hearing to take testimony on lessons learned from former Defense Department executives regarding previous base realignments and closures.

For further information, please contact: Russel Milnes, (202) 653–0180, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street NW., Suite 310, Washington, DC 20006.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 26, 1988.

[FR Doc. 88–19893 Filed 8–31–88; 8:45 am]

BILLING CODE 3810-01-M

Base Realignment and Closure Commission; Closed Meeting

ACTION: Closed meeting.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold a closed meeting at 2:00 p.m., September 14, 1988 to receive a classified Defense Department briefing. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.

FOR FURTHER INFORMATION, PLEASE CONTACT: Russel Milnes, (202) 653–0180, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street, NW., Suite 310, Washington, DC 20006.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 29, 1988.

[FR Doc. 88–19934 Filed 8–31–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Public Meeting and Extension of Public Comment Period

AGENCY: Department of the Army, DOD.

ACTION: Notice of public meeting and extension of the public comment period on the draft environmental impact statement for the Biological Defense Research Program.

SUMMARY: In the April 8, 1987 Notice of Intent, the Department of the Army stated that, as executive agent for the Department of Defense, it is responsible for the ongoing conduct of research and product development in the biological defense field. The Biological Defense Research Program involves research and product development in equipment, devices, drugs, substances, and biologics that are used to detect biological substances, protect soldiers from the adverse effects of biological substances, treat exposed individuals, and decontaminate exposed individuals, areas and equipment. The work is being carried out at a number of Government and university laboratories throughout the country.

The proposed action for EIS evaluation purposes is the continuation of the ongoing program in its current form. Alternatives considered to the proposed action for consideration in the EIS are:

(1) Modification in program scope and

(2) Modification in program implementation.

A public meeting was held on July 25, 1988 at the Rosslyn West Park Hotel, 1900 North Fort Myer Drive, Arlington, Virginia, to elicit comments and suggestions on the draft EIS. The time period for the public comment period was originally scheduled to close on August 12, 1988. Several individuals and organizations have requested a public meeting be held in the State of Utah and an extension of the public comment period.

To ensure full public involvement, a public meeting has been scheduled on September 19, 1988 at Tooele Army Depot, Tooele, Utah 84074, and public comment period has been extended to October 4, 1988, to elicit comments and suggestions on the draft EIS. The public meeting will begin at 7:00 p.m. MDT and will be held in the Post Theater (Bldg 1005). Individuals wishing to present oral comments at the meeting may register in advance by calling (301) 663–2732 up through September 16, 1988, during normal business hours of 8:00 a.m. EDT to 4:00 p.m. EDT. Collect calls will be accepted. On-site registration at the meeting may also be available depending upon the availability of time and number of individuals registered in advance. All commenters are asked to bring a written copy of their remarks for submission to the meeting record. Persons or organizations unable to attend the public meeting may submit written comments for inclusion in the public meeting record to the following address: Commander, U.S. Army Medical Research and Development Command, Attn: SGRD–PA (Mr. Charles Dasey), Fort Detrick, MD 21701–5012. The time period for providing written comments for inclusion in the meeting record will end October 4, 1988.

The draft EIS for the Biological Defense Research Program is still available for public review and comment. A copy of the document may be obtained by contacting Mr. Charles Dasey at the following address: Commander, U.S. Army Medical Research and Development Command, Attn: SGRD–PA (Mr. Charles Dasey), Fort Detrick, MD 21701–5012. Written comments should be submitted to the same address. The time period for providing written comments for consideration in preparing the final EIS is extended to October 4, 1988.

Lewis D. Walker,

Deputy for Environment, Safety, and Occupational Health, OASA (I&L).

[FR Doc. 88–19907 Filed 8–31–88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice Inviting Preapplications and Applications for New Awards Under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1989-Correction.

On August 12, 1988, the Secretary of Education published in the **Federal Register** (53 FR 30462–63) a notice inviting preapplications and applications under the Comprehensive Program of the Fund for the Improvement of Postescondary Education (FIPSE) for Fiscal Year 1989. This document corrects a typographical error in the heading that was made in the notice. The correction is as follows:

1. In the last line of the heading "Fiscal Year 1988" is corected to read "Fiscal Year 1989."

FOR FURTHER INFORMATION CONTACT: Constance Ewing Cook, Program Officer, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3100, ROB–3, Washington, DC 20202. Telephone: (202) 732–5750 or 732–5766.

Dated: August 23, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–19944 Filed 8–31–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to Massachusetts Institute of Technology

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 36-month Cooperative Agreement to Massachusetts Institute of Technology (MIT), Energy Laboratory, 77 Massachusetts Avenue, Cambridge, MA 02139, in the amount of $234,617. The pending award is based on an unsolicited application for a cooperative research project to develop practical, simplified scaling laws of bed dynamics and heat transfer for use in the bubbling and circulating Fluidized-Bed Combustors (FBCs). With the federal financial assistance from DOE, MIT will determine experimentally the validity and the limits of the scaling simplification. The simplified scaling laws allow simulation of bed dynamics and heat transfer in FBCs relatively easily and without significant loss of accuracy. Results from this cooperative research will eventually help design and operation of large size FBCs.

FOR FURTHER INFORMATION CONTACT: Laura E. Brandt, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Viriginia 26507–0880, Telephone: (304) 291–4079, Procurement Request No. 21–88MC25049.000.

Louie L. Calaway,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

Date: August 22, 1988.

[FR Doc. 88–19939 Filed 8–31–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–34–NG]

Encor Energy (America) Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Encor Energy (America) Inc. (Encor) blanket authorization to import Canadian natural gas for sale in the domestic spot market. The order issued in ERA Docket No. 88–34–NG authorizes Encor to import up to 29.2 Bcf of gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 26, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–19940 Filed 8–31–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–569–000 et al.]

Pacific Gas and Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 26, 1988.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Co.,

[Docket No. ER88–569–000]

Take notice that on August 19, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing the following four documents:

"Settlement of Disputes Between Pacific Gas And Electric Company and Sacramento Municipal Utility District" (Dispute Settlement)

"Amendment to the Power Sale, Exchange and Integration Contract Between Pacific Gas And Electric Company and Sacramento Municipal Utility District" (1988 Amendment)

"Power Sale Agreement Between Pacific Gas And Electric Company and Sacramento Municipal Utility District" (Power Sale Agreement)

A letter agreement, dated August 12, 1988, amending the above three agreements (letter agreement).

(1) *The Dispute Settlement* resolves certain disputes relating to the June 4, 1970 Power Sale, Exchange and Integration Contract, (FERC Rate Schedule 45) as amended from time to time, including the amendment embodied in the August 29, 1985 Settlement Agreement (collectively, Integration Contract). Specifically, the parties settle and resolve all disputes and claims related to outages or curtailment of the Rancho Seco Nuclear Generating Station (Rancho Seco).

(2) *The 1988 Amendment* amends the Integration Contract as to the treatment of Rancho Seco operation, sales and purchases of capacity and energy between PG&E and Sacramento Municipal Utility District (SMUD) and treatment of exchange accounts.

(3) *The Power Sale Agreement* provides for sale of capacity and energy to SMUD from January 1, 1990 through December 31, 1999.

(4) *The letter agreement* amends each of the above three agreements in order to clarify and make explicit the intents of the parties with regard to terminating Docket No. EL86-27-002.

Copies of this filing were served upon SMUD and the California Public Utilities Commission.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Indiana, Inc.

[Docket No. ER88-573-000]

Take notice that on August 22, 1988, Public Service Company of Indiana, Inc. (PSI) tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1 (8th Revision); FERC Electric Tariff, Original Volume No. 2 (6th Revision) and Electric Rate Schedules FERC Nos. 234 and 236. Such changes in rates are the result of an uncontested rate decrease negotiated between PSI and the following parties:

1. Cities and Towns (meaning the municipal utilities who are direct customers of PSI).
2. City of Logansport, Indiana.
3. Henry and Jackson County Rural Electric Membership Corporations.
4. Indiana Municipal Power Agency.

The proposed changes would provide a two-step annual decrease in revenues of $5.9 million based upon the twelve-month period ending March 1984.

As part of the negotiations between the parties, PSI has requested the following:

1. Waiver of the notice requirements under Section 35.3 of the Commission's Regulations under the Federal Power Act and an effective date of September 1, 1988, without suspension, for the first step of the rate decrease.
2. Waiver of the notice requirements under Section 35.3 of the Commission's Regulations under the Federal Power Act and an effective date of September 1, 1990, without suspension, for the second step of the rate decrease.
3. Waiver of the requirements under Section 35.13 of the Commission's Regulations under the Federal Power Act not specifically addressed or complied with in the filing.

Copies of the filing were served upon the Indiana Utility Regulatory Commission, the City of Logansport, Indiana, Henry and Jackson County Rural Electric Membership Corporation, the Indiana Municipal Power Agency, and the Indiana municipalities of Advance, Bainbridge, Brooklyn, Coatesville, Dublin, Dunreith, Edinburg, Hagerstown, Knightstown, Ladoga, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spiceland, Straughn, Thorntown, Veedersburg, Waynetown and Williamsport.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company

[Docket No. ER88-574-000]

Take notice that on August 22, 1988, Northern States Power Company—Minnesota, on behalf of Northern States Power Company—Minnesota and Northern States Power Company—Wisconsin and Northwestern Wisconsin Electric Company tendered for filing the Power Sale Agreement among Northern States Power Company—Minnesota and Northern States Power Company—Wisconsin and Northwestern Wisconsin Electric Company (Power Sale Agreement).

The Power Sale Agreement is an initial rate schedule filing. The power Sale Agreement provides for electric power and energy transactions among Northern States Power Company—Minnesota and Northern States power Company—Wisconsin and Northwestern Wisconsin Electric Company. The power Sale Agreement initially sets forth three energy transactions schedules, and the terms and conditions under which these transactions may take place.

Northern States power Company—Minnesota and Northern States power Company—Wisconsin and Northwestern Wisconsin Electric Company request this power Sale Agreement become effective on August 1, 1988, and therefore, requests waiver of the Commission's notice requirements.

Copies of this filing have been provided to the respective parties and to the State Commissions of Minnesota and Wisconsin.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Louisiana Power & Light Company

[Docket No. ER88-398-001 and FA86-063-002]

Take notice that on August 22, 1988, Louisiana Power & Light Company tendered for filing, pursuant to Commission Order dated July 15, 1988, a compliance report showing the particulars of the refunds ordered.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Arkansas Power and Light Company

[Docket No. ER88-546-000]

Take notice that on August 23, 1988, Arkansas Power & Light Company (Company) tendered for filing a notice of withdrawal of its filing made August 1, 1988 in Docket No. ER88-546-000.

The Company requests that Rate Schedule M33A filed August 1, 1987 in Docket No. ER87-568-000 remain in effect until a Grand Gulf Settlement Agreement (Settlement) incorporating revisions to the recovery provisions of the Settlement and the directive set out by the Financial Accounting Standards Board in its Statement of Accounting Standards No. 92 has been approved by the Arkansas Public Service Commission, at which time the Company will file a revised Rate Schedule M33A for North Arkansas Electric Cooperative reflecting the revisions to that Settlement Agreement.

Copies of this filing have been sent to the wholesale customer affected by the filing and the Arkansas Public Service Commission.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Public Service Company

[Docket No. ER88-552-000]

Take notice that on August 8, 1988, Iowa Public Service Company IPS) tendered for filing an executed Firm Capacity Sales Agreement dated July 7, 1988, whereby IPS will supply Interstate Power Company (IPW) with firm electric capacity and associated energy, commencing May 1, 1988 and ending on October 31, 1988. IPS requests that the negotiated Agreement be made effective as of May 1, 1988.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Arkansas Power & Light Company

[Docket No. ER88-313-000]

Take notice that on August 22, 1988, Arkansas Power & Light Company (AP&L) tendered for filing an amendment to its March 31, 1988 filing, as amended June 15, 1988, in response to a deficiency letter from the Director of the Division of Electric Power Application Review. The filing concerns the allocation of refunds to AP&L's wholesale customers and co-owners of the White Bluff and Independence Coal Plants of amounts received by AP&L from Burlington Northern Railroad Company. AP&L proposes to make refunds, with interest, in accordance with the Refund Payment Schedule (as amended) 30 days after Commission authorization.

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Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER88-575-000]

Take notice that on August 22, 1988, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Municipal Participation Agreement, between KCPL and the City of Marshall, Missouri dated August 1, 1988. KCPL states that the Amendatory Agreement provides for an extension of the contract term and a modified rate design for firm power service.

KCPL requests an effective date of the date of filing, and therefore requests waiver of the Commission's notice requirements.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Power Company

[Docket No. ER88-576-000]

Take notice that on August 23, 1988, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Ohio Power Company (OPCO) a Transmission Agreement, dated as of July 1, 1988, between American Municipal Power-Ohio, Inc. (AMPC) and OPCO.

The Transmission Agreement provides a service whereby AMPO may transmit power and energy from its Richard H. Gorsuch Station to Patrons of its via OPCO's transmission facilities. This Service affords AMPO Patrons an alternate source of power for the next twenty years. Copies of this filing have been sent to the Pubiic Utility Commission of Ohio.

AEP requests an effective date of September 1, 1988.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accor dance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19930 Filed 8-31-88; 8:45am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-689-000 et al.]

Southern Natural Gas Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

Docket No. CP88-689-000]

August 25, 1988.

Take notice that on August 17, 1988, Southern Natural Gas Company Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, pursuant to its blanket certificate of public convenience and necessity issued in Docket No. CP82-406-000, filed in Docket No. CP88-689-000 a request pursuant to section 157.205 of the Relgulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate an additional point of delivery for an existing customer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it provides natural gas service to the Alabaster Water and Gas Board (Alabaster), at points of delivery (Alabaster Nos. 1 and 2) in Shelby County, Alabama, as specified in the Service Agreement between Southern and Alabaster dated September 16, 1969. Southern proposes to install and operate an additional point of delivery (Alabaster No. 3) in Shelby County, Alabama. Southern states that Alabaster has informed Southern that the additional point of delivery will be used to provide natural gas service to an industrial customer of Alabaster at its plant in Shelby County, Alabama.

In order to implement the new point of delivery, Southern states that it plans to construct, install, and operate a new meter station and appurtenant facilities. The total estimated cost of the proposed construction and installation of these facilities is $80,000. Alabaster has agreed to reimburse Southern for the total actual cost of the proposed construction and installation.

Southern states that the total volumes to be delviered to Alabaster after the proposed installation will not exceed the total volumes authroized prior to the implementation of the point of delivery so that the activities are not prohibited by any existing tariff of Southern. Southern proposes to provide Alabaster No. 3 with a contract delivery pressure of 60 psig.

Southern also states that it has sufficient capacity to accomplish the deliveries proposed by the installation and operation of the new point of delivery without detriment to Southern's other customers, and that the construction and operation of the facilities will not result in any termination of service and will have a de minimis impact on Southern's peak day and annual deliveries.

Comment date: October 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP88-680-000]

August 25, 1988.

Take notice that on August 15, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-680-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove wellhead measurement facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the facilities proposed to be abandoned were originally required and installed for the measurement and connection of natural gas purchased by Northern from producers at the wellhead at locations in the States of Kansas, Oklahoma and Montana. Northern further states that such wells have been plugged and abandoned, as documented by reports filed with the respective State Public Utilities Commission. Northern asserts that the facilities proposed to be abandoned are no longer required and their abandonment would not result in the termination of service or detriment to any of Northern's customers. Northern further asserts that it has operational requirements to use these proposed abandoned facilities elsewhere on its system to avoid the purchase of new facilities to perform the required function. Northern indicates that the removal cost of wellhead metering facilities would average approximately $100.00 each.

Northern states that although the producer has ceased the production and sale of gas to Northern at each of the various wells, the producer has not received, or in most cases even requested, Commission authorization

permitting the abandonment of its sale to Northern. Without evidence of Commission approved abandonment, on behalf of the producer, Northern claims it is unable to utilize its blanket certificate (Docket No. CP82–401–000) and § 157.216 of the Commission's Regulations to abandon and remove the facilities. Northern states it has attempted, without success, to persuade the producers to secure the necessary abandonment authority. However, Northern indicates it is aware of a report required to be filed by a producer with a state utility commission before a well can be plugged and abandoned by the producer. This report provides documented proof that such wells have been plugged and abandoned and are physically incapable of any future gas production. It is further indicated that these reports describe the procedure used in plugging the wells, along with pertinent information concerning the owner/operator, their addresses and location of the wells. Northern submits that the Commission can accept the respective States' plugging and abandoning reports as an appropriate basis for Northern to abandon the idled wellhead facilities serving the wells.

Comment date: September 15, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP88–708–000]

August 25, 1988.

Take notice that on August 22, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP88–708–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of major new pipeline and compression facilities which, in conjunction with certain existing facilities, would permit Natural to establish an interconnect between its Amarillo and Gulf Coast mainlines, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to construct and operate:

- 97 miles of 30-inch pipeline to be located in Carter, Murray, Johnston and Bryan Counties, Oklahoma.
- 94 miles of 30-inch pipeline to be located in Lamar, Red River, Franklin, Titus, Morris and Cass Counties, Texas.
- 8700 horsepower of compression at a new compressor station to be located in Carter County, Oklahoma at the interconnection of the western end of the proposed 97-mile segment and Natural's existing Oklahoma Extension.

It is indicated that the proposed facilities, together with 39 miles of existing 30-inch pipeline already owned and operated by Natural pursuant to general section 7(c) certification in Bryan County Oklahoma and Fannin and Lamr Counties, Texas with which they would be connected, would be known as the "NGPL Interconnect". Natural states that the project would result in the interconnection for the first time of Natural's two main transmission systems, the Amarillo Line and the Gulf Coast Line.

Natural states that its Amarillo and Gulf Coast mainlines do not interconnect in the producing regions of Texas and Oklahoma, and that over the years it has experienced periods of gas supply imbalance between the two lines which have restricted the supply available to meet market requirements. Natural notes that while past efforts to connect the mainlines have never materialized, there is now a greater need for the systems to be connected than at any time in the past.

Natural states that the proposed NGPL Interconnect is needed primarily to alleviate the substantial unmet demand for transportation service out of the Oklahoma Triangle area of Natural's Amarillo system and also to provide needed system-wide operational flexibility. Natural asserts that its experience as an open access transporter under the Order 436/500 program has demonstrated that there is substantial unsatisfied demand for transportation out of the Oklahoma Triange area and that the proposed NGPL Interconnect would provide the necessary additional pipeline capacity in an efficient manner. Natural states that the proposed project would also be important to the management of its system supply as well as the general operation of its two large field storage facilities, the Sayre Field in Oklahoma and the North Lansing Field in Texas.

Natural states that while it requires the proposed facilities primarily for movement of gas to the Gulf Coast Line, it has designed the project to allow for reverse flow in certain circumstances.

Natural states that the capacity of the proposed pipeline facilities, including compression, would be approximately 350,000 Mcf per day. It is estimated that the cost of the project would be $107,713,000, which would be financed from corporate funds on hand. Natural proposes to charge incremental rates for transportation service across the segments of the NGPL Interconnect based on a cost of service using a Modified Fixed Variable cost allocation, designed on a 90 percent load factor basis and using a three-year average rate base. Natural further proposes to establish maximum and minimum rates for each of the two new pipeline segments. Natural notes that it does not seek a determination in this proceeding as to whether the cost of the proposed facilities (and the existing 39-mile segment) should be included in its rate base. Natural asserts that while it would be inclined to eventually seek rate base treatment, this issue can be resolved at a later time.

Comment date: September 15, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP88–695–000]

August 26, 1988.

Take notice that on August 18, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP88–695–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct, install, and operate certain pipeline facilities under its blanket certificate issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it has the right to purchase natural gas reserves produced in the Carthage, Joaquin, Logansport, and Spider Fields in De Soto Parish, Louisiana and Panola and Shelby Counties, Texas. Southern further states that based on the daily deliverability dedicated to Southern in these fields, Southern needs additional pipeline capacity to deliver supplies to points downstream of the fields on its pipeline system. Accordingly, Southern proposes to construct, install, and operate approximately 45 miles of 16-inch loop pipeline to extend from its Logansport Compressor Station in De Soto Parish, Louisiana, to a point of interconnection near Mile Post 80 on Southern's 14-inch Logansport Line in Bienville Parish, Louisiana. Southern states that the estimated cost of the proposed facilities would be $10,664,700; which Southern expects to finance initially from short-term loans and/or cash on hand, and ultimately from permanent financing.

Comment date: October 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP88-691-000]

August 26, 1988.

Take notice that on August 17, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-691-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place and by sale approximately 0.8 miles of 2-inch lateral pipeline in Anderson County, Kansas, and the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the pipeline is no longer in use and proposes to abandon in place 0.5 miles and to abandon by sale 0.3 miles of 2-inch lateral pipeline. WNG further states that the reclaim cost is estimated to be $270, the salvage value $0 and the sales price $1.

Comment date: October 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP88-694-000]

August 26, 1988.

Take notice that on August 18, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-694-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Hadson Gas Systems, Inc. (Hadson), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport, on an interruptible basis, up to 75,000 MMBtu of natural gas on a peak day, plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, and 18,250,000 MMBtu on an annual basis for Hadson. It is stated that Natural would receive the gas for Hadson's account at various existing receipt points in Oklahoma, Texas, Illinois, Louisiana, offshore Louisiana, New Mexico and Wyoming. Natural then proposes to deliver equivalent volumes of gas in Louisiana, New Mexico, Illinois and Iowa. It is asserted that the transportation service would be effected using existing facilities and would not require the construction of additional facilities. It is explained that the service commenced June 16, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations.

Comment date: October 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Jubilee Pipeline Company

[Docket No. CP88-646-000]

August 26, 1988.

Take notice that on August 12, 1988,[1] Jubilee Pipeline Company (Jubilee) filed in Docket No. CP88-646-000, pursuant to § 157.14, 157.201, and 284.221 of the Commission's Regulations under the Natural Gas Act and the Natural Gas Policy Act, its application requesting (1) authorization to construct and operate a total of approximately 81.6 miles of various diameter pipeline, ranging in size from 8 inches to 24 inches in diameter, together with metering and appurtenant facilities and 6,000 horsepower (HP) of compression, extending from a point onshore in Mobile County, Alabama to offshore federal waters, in order to connect reserves to be produced in the vicinity of Mobile Bay; (2) approval of its FERC Gas Tariff, Original Volume No. 1, including its proposed transportation Rate Schedules, FT and IT, and initial rates, all as more fully described therein; (3) a blanket certificate authorizing Jubilee to render self-implementing, open access transportation services; and (4) a blanket facilities certificate authorizing minor additions and other transactions, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Jubilee proposes to construct and operate approximately 81.6 miles of pipeline extending from a point near Bayou La Batre, Alabama on the west bank of Mobile Bay, where Jubilee proposes to connect with the pipline systems of Citrus Interstate Pipeline Company (CIPCO) and Transcontinental Gas Pipe Line Corporation (Transco) to points on production platforms in the federal offshore area, in Mobile Blocks 870, 908, 914, and 960 and Viosca Knoll Blocks 31 and 203. Jubilee also proposes to construct and operate metering facilities on such platforms and 6,000 HP of compression at an onshore facility in Mobile County.

Jubilee's proposed pipeline would connect gas reserves to be produced generally from the Mobile Bay and Viosca Knoll Areas. Jubilee states that estimates of proven and probable reserves in the Mobile Bay Area range from 3.5 Tcf to 10 Tcf. Estimates of the shallow Miocene production, which Jubilee's proposed pipeline would attach, currently indicate a maximum levelized production of 315 MMcf per day, Jubilee states. Jubilee asserts that proven and probable reserves from these blocks are now estimated at 366 Bcf, of which 146 Bcf is committed to Jubilee's system.

Jubilee states that the proposed pipeline is designed to transport 315 MMcf of natural gas per day with the proposed compression.

The total estimated cost of the proposed facilities is $66.91 million. Jubilee states that the facilities are scheduled to be constructed and in service by January 1, 1990 assuming all regulatory approvals are received before March 1, 1989.

Jubilee states that the proposed offshore pipeline route would parallel, in part, an existing pipeline right-of-way. The pipeline has been designed to minimize the crossing of offshore shipping lanes to the extent possible, and avoids wetland areas, oyster reefs, shell beds, and artificial reefs. The onshore segment, for most of its length, would also be adjacent to an existing pipeline right-of-way. Land use would not be significantly affected, and no heavily populated areas would be disturbed by the proposed pipeline or related facilities. The only adverse effects of the project, Jubilee asserts, would be insignificant and of limited duration, occurring during the construction of the proposed facilities.

Jubilee proposes to finance the proposed facilities with one hundred percent of equity contributions from its owners. Although Jubilee proposes to finance the project totally with equity contributions, its proposed rates assume a capitalization ratio of 40% debt and 60% equity for the initial three years of operation of the facilities.

Jubilee also requests a blanket certificate, under § 284.221, of the Commission's Regulations, authorizing it, on a self-implementing basis, to transport gas from one or more receipt points offshore to the proposed interconnections with the facilities of CIPCO and Transco in Mobile County, for possible further transportation.

Jubilee states it received a number of requests for information concerning

[1] The application was tendered for filing on July 29, 1988, however, the fees required by § 381.207 of the Commission's Rules (18 CFR 381.207) were not paid until August 12, 1988. Section 381.103 of the Commission's Rules provides that the filing date is the date on which fees are paid.

transportation services. Jubilee states it has provided and is in the process of providing such information as well as furnishing precedent agreements to those potential shippers indicating a desire for such. Jubilee advises that it has received several executed agreements and that it is maintaining a log of all requests received.

In order to provide all potential shippers an opportunity to obtain initial transportation services, Jubilee is proposing, for a period of 30 days following publication of this notice in the **Federal Register** (Request Period), to accept requests for both firm and interruptible transportation services. Jubilee states that it will file all executed precedent agreements as a supplement to Exhibit I to this application, shortly after the end of the Request Period.

For shippers requiring downstream transportation services, Jubilee anticipates that any applications required for authorization to render such services for these shippers would be filed with the Commision. At Docket No. CP87–415–001, CIPCO has filed for downstream transportation authorization for a number of shippers.

In an attempt to accommodate both the Commission's existing (18 CFR 284.221, *et seq.*) as well as its proposed policies (see Notice of Proposed Rulemaking issued on April 1, 1988 in Docket No. RM88–15–000) for offshore transportation services and to incorporate a pro rata allocation of capacity to the extent equitable and administratively feasible, Jubilee is proposing a modified pro rata allocation program. As to firm service, Jubilee proposes to allocate capacity on a pro rata basis if the total of firm requests received during a thirty-day open season period exceeds Jubilee's capacity. Shippers requesting firm transportation services subsequent to the open season period would, however, be allocated on a pro rata basis among all shippers with unsatisfied requests on Jubilee's log at the time any such capacity is released. As to interruptible transportation services, Jubilee is proposing to allocate capacity on a pro rata basis, based on daily volumes scheduled by Jubilee at the request of shippers.

Jubilee states that its proposed tariff is designed to generally reflect the Commission's current policies regarding the rendering of transportation services on a nondiscriminatory basis.

The maximum rates being proposed for firm transportation service under Rate Schedule FT consist of three charges: (1) A Reservation Charge, (2) a Commodity Charge, and (3) an Overrun Charge. The Reservation Charge, Jubilee states, is designed to recover all fixed costs associated with providing the firm transportation service including fixed operation and maintenance expense, return, income taxes, and taxes other than income. Jubilee is proposing a Commodity Charge designed to recover all variable costs, including the cost of compression facilities and depreciation expense which are proposed to be computed and recognized on a unit of throughput basis. In addition, Jubilee is proposing an Overrun Charge designed to be equal to the IT Commodity Charge for quantities received from a shipper in excess of its maximum contract quantity for any receipt point.

The maximum rate being proposed for interruptible transportation service under Rate Schedule IT consists of a Commodity Charge designed to recover all fixed and variable costs associated with providing the interruptible transportation service.

Under both the FT and IT Rate Schedules, a shipper is also required to reimburse Jubilee for any incidental charges incurred by Jubilee in connection with providing the transportation service. The proposed initial rates are based on the average costs of service and throughput for the first three years of operation following construction.

Jubilee is proposing, at its sole discretion, to charge any Shipper for transportation service, under either Rate Schedule FT or IT, a rate which is lower than the applicable maximum rates described above, provided that the total rate charged will not be less than the minimum rate which is designed to recover the variable cost associated with such service. Jubilee requests approval of its proposed minimum rates. Jubilee states this rate flexibility would allow Jubilee to respond to changing economic conditions that may exist from time to time.

Jubilee also requests a blanket certificate pursuant to Section 157.204 of the Commission's Regulations, authorizing the construction, operation, and abandonment of facilities, as well as other minor transactions eligible thereunder. Jubilee states that such a certificate would allow it, among other things, to make minor alterations and additions to its facilities with a minimum of delay, in order to connect its system to additional suppliers or to interconnect with the systems of other pipeline companies holding blanket transportation certificates under § 284.221.

Jubilee states that the Mobile Bay Area is expected to prove a significant source of long-term domestic gas supplies in the near future. Jubilee's proposed pipeline would provide facilities to move a portion of this gas onshore, thus allowing the country's major interstate pipeline systems access to such supplies. Jubilee asserts that the pipeline represents a crucial segment of the transportation network necessary for the ultimate distribution of this gas to markets throughout the country.

Comment date: September 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commisson's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19931 Filed 8-31-88; 8:45 am]

BILLING 6717-01-M

[Docket Nos. RP86-63-011 and RP86-114-006]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 29, 1988.

Take notice that on August 22, 1988, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets to be effective September 1, 1988.

Southern states that the purpose of the tariff filing is to revise Southern's currently effective rates in Docket Nos. RP86-63-000 and RP86-114-000 to comport with the Commission's decision in Docket No. RP83-58. As required by the Commission's decision in that case, Southern has revised its rates to reflect, among other things, use of the Modified Fixed Variable methodology for cost classification, allocation and rate design, a two-part demand rate with the D-2 rate calculated on the basis of customer D-2 nominations, use of a 37.5% imputed load factor in the design of the G rates and volumetric allocation of costs associated with Southern's Savannah-Wrens Line and unconnected production area segments.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19919 Filed 8-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-014]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 29, 1988.

Take notice that on August 22, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective September 1, 1988:

Third Revised Sheet No. 4C
Third Revised Sheet No. 4D
Third Revised Sheet No. 4E
Third Revised Sheet No. 4F
Third Revised Sheet No. 4G
Third Revised Sheet No. 4H

Southern states that the purpose of the filing is to revise Southern's currently effective transportation rates as established in Docket No. RP88-17-000 in compliance with the Commission's decision in Docket No. RP83-58. Consistent with that decision, Southern states that its rates have been designed on the basis of the Modified Fixed Variable methology with a two-part demand rate for its FT Rate Schedules including a D-2 component based on customer D-2 nominations. Southern further states that D-2 costs have been reallocated among and rates designed for its sales and transportation customers based on D-2 nominations received by Southern from its customers.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19920 Filed 8-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP 88-135-001]

Valley Gas Transmission, Inc., Compliance Filing

August 29, 1988.

Take notice that on August 22, 1988, Valley Gas Transmission, Inc. (Valley), 9311 San Pedro Avenue, Suite 1200, P.O. Box 795099, San Antonio, TX 78279-5099, tendering for filing and acceptance the following tariff sheets as part of Original Volume No. 1 of its FERC Gas Tariff:

Substitute Second Revised Sheet Nos. 177-180
Substitute First Revised Sheet Nos. 180A and 180B.
Original Sheet No. 180C.

Valley states that these tariff sheets, which reflect a proposed effective date of June 1, 1988, are being filed in compliance with the Commission's letter order of July 21, 1988 in the above-captioned docket, which directed Valley to make certain corrections to its Revised PGA Clause to bring that Clause into compliance with Order Nos. 483 and 483-A. Valley states that these sheets comply with that directive. Valley further states that this filing has been served on its two jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 Northwest Capitol Street NE., Washignton, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19921 Filed 8-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-236-000]

Williston Basin Interstate Pipeline Co.; Change in Rates

August 29, 1988.

Take notice that on August 24, 1988, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing the following tariff sheets, proposed to be effective September 24, 1988:

First Revised Volume No. 1

Thirteenth Revised Sheet No. 10

Original Volume No. 1-A

Ninth Revised Sheet No. 11
Twelfth Revised Sheet No. 12
Fourth Revised Sheet No. 97A

Original Volume No. 1-B

Second Revised Sheet No. 10
Second Revised Sheet No. 11

Original Volume No. 2

Fifteenth Revised Sheet No. 10
Seventh Revised Sheet No. 11B

Williston Basin states that the instant filing effects changes to its proposed rates filed on August 22, 1988 in Docket No. RP88-197-001 to reflect the development of revised rates for Rate Schedules S-2 and T-3. This action is proposed in order to conform the rates applicable to Rate Schedules S-2 and T-3 with its generally available rates to be implemented under NGPA section 311 authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19922 Filed 8-31-88; 8:45 am]

BILLING CODE: 6717-01-M

[Docket No. RP88-197-001]

Williston Basin Interstate Pipeline Co. Compliance Filing for Self-Implementing Transportation Under NGPA Section 311

August 29, 1988.

Take notice that on August 22, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff. These revised tariff sheets, along with supporting workpapers, are filed in compliance with the Commission's Order of July 22, 1988 in Docket No. RP88-197-000 and to correspond to the purchased gas cost levels approved by a Letter Order of July 29, 1988 in Docket No. TA88-4-49-000.

Copies of the instant filing were served upon Williston Basin's affected jurisdictional customers, interested state regulatory agencies and intervenors herein.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before Sept. 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19918 Filed 8-31-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3439-7]

Fuels and Fuel Additives; Waiver Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 211(f) of the Clean Air Act (Act), the Administrator of EPA is conditionally granting a waiver for a fuel consisting of a blend of up to 15 percent methyl tertiary butyl ether (MTBE) in unleaded gasoline submitted by the Sun Refining and Marketing Company (Sun).

ADDRESS: Copies of documents relevant to this waiver application, including the Administrator's decision document, are available for inspection in public docket EN-88-02 at the Central Docket Section (LE-131) of the EPA, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light-duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38528 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1), if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case, September 12, 1988), the statute provides that the waiver shall be treated as granted.

Methyl tertiary butyl ether (MTBE) is already permitted in gasoline in volumes up to approximately 11 percent under EPA's substantially similar interpretive rule. Sun Refining and Marketing Company (Sun) has requested that EPA grant a waiver for the introduction into

commerce of an ether-gasoline fuel blend containing up to 15 percent MTBE by volume as measured by gas chromatograph or equivalent techniques. The waiver application specifies that the ether-gasoline blend must conform with the requirements of ASTM D–2 Proposal P–176, "Proposed Specification for Automotive Spark Ignition Engine Fuel" (subsequently adopted as ASTM D4814), and the fuel manufacturer must take all reasonable precautions, including identification and description of the product on shipping manifests, to ensure that the finished fuel is not used as a base gasoline to which other oxygenated materials are added, according to EPA limitations and guidelines. The application states that the marketing of the waiver blend would be handled in the same way as current marketing with other MTBE concentrations up to 11 percent.

For reasons specified in the decision document (available as described above), EPA has decided to conditionally grant Sun's request for a waiver. This decision is based on the determination that Sun has demonstrated that the ether-gasoline fuel, when used as specified in the decision documents, will not cause or contribute to a failure of 1975 or subsequent model year vehicles or engines to comply with the emission standards with respect to which such vehicles or engines were certified under section 206 of the Act. Thus, the waiver request is granted provided the following conditions are met:

(1) The final fuel consists of up to 15 percent by volume MTBE in unleaded gasoline;

(2) The final fuel must meet ASTM D4814 "Standard Specification for Automotive Spark Ignition Fuel" (a copy of which is in the docket);

(3) The fuel manufacturer must take all reasonable precautions, including identification and description of the product on shipping manifests, to ensure that the finished fuel is not used as a base gasoline to which other oxygenated materials are added.

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 54 U.S.C. 601 *et seq.*, because EPA has not published, and is not required to publish, a Notice of Proposed Rulemaking under the Administrative Procedure Act, 5 U.S.C. 553(b), or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small entities.

This is a final Agency action of national applicability. Jurisdiction to review this action lies exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of September 1, 1988. Under section 307(b)(2) of the Act, today's action may not be challenged later in separate judicial proceeding brought by the Agency to enforce the statutory prohibitions.

John Moore,

Acting Administrator.

[FR Doc. 88–19884 Filed 8–31–88; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Friday, September 23, 1988 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Congressional Status Report, Report on Tied Aid Study, Financial Institution Subcommittee, State/City Update, and other topics.

Public Participation: The meeting will be open to public participation; and the last 20 mintues will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871, not later than September 22, 1988. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to September 16, 1988 the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566–8871 or TDD: (202) 535–3913.

Further Information: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 88–19917 Filed 8–31–88; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Amendment to Proposed New System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of Amendment to Proposed New System of Records: "Fitness Center Records System."

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the FDIC previously gave notice of the establishment of a new system of records entitled "Fitness Center Records System," to become effective September 26, 1988. This amendment deletes three routine uses from the system that have proven to be unnecessary.

DATE: The system, as amended, will become effective on September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Deputy Executive Secretary, (202) 898–3811, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On July 12, 1988, the FDIC published notice in the **Federal Register** of a proposed new system of records entitled "Fitness Center Records System" pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and indicated that the system would become effective on September 26, 1988, unless a superseding notice to the contrary is published before that date. *See* 53 FR 26310. This notice amends the system notice published July 12, but the system, as amended herein, will still become effective September 26.

The first three routine uses in the system notice published July 12 are as follows:

Information in the system may be disclosed:

(1) To the FDIC's staff nurse for inclusion in Health Unit files.

(2) To a physician retained by the FDIC in order to determine whether a physical examination is necessary before a program of exercise is undertaken by a member.

(3) To a member's personal physician where it is determined that a physical

examination is necessary before commencement of a program of exercise.

Upon further analysis, all three routine uses are unnecessary. The FDIC's staff nurse is an employee of the FDIC within the meaning of subsection (b)(1) of the Privacy Act, 5 U.S.C. 552a(b)(1), who has a need for Fitness Center records in the performance of her duties. This type of disclosure satisfies subsection (b)(1) of the Privacy Act, which provides that records in a system of records may be disclosed "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties," therefore making a routine use unnecessary. No disclosures of Fitness Center records will be made to a physician retained by the FDIC. The provision of a routine use for such disclosures in the original system notice was in error. Nor will disclosure of Fitness Center records be made to the Fitness Center member's personal physician without the prior written consent of the member. Disclosure is permitted to others under the Privacy Act with the prior written consent of the individual who is the subject of the records, 5 U.S.C. 552a(b). It is the policy of the Fitness Center to consult only with a member's personal physician about appropriate exercise programs, but only with the prior written consent of the member.

Accordingly, the Board of Directors of the FDIC revises the "Fitness Center Records System" to read as follows:

FDIC 30-64-0021

SYSTEM NAME:

Fitness Center Records System.

[Complete text appears at 53 FR 26310 (Jul. 12, 1988)]

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed:

(1) To the individual listed as an emergency contact, in the event of an emergency.

* * * * *

By direction of the Board of Directors.

Dated at Washington, DC, this 25th day of August 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-19890 Filed 8-31-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 88-21]

Allsouth Stevedoring Co., et al. v. Georgia Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by Allsouth Stevedoring Company, Carolina Shipping Company, Ceres Corporation (Maryland), Palmetto Shipping & Stevedoring Co., Inc., Ryan-Walsh, Inc., Smith & Kelly Company, Southeast Alantic Cargo Operators, Southeastern Maritime Company, Stevens Shipping & Terminal Company, and Strachan Shipping Company ("Complainants") against the Georgia Ports Authority ("Respondent") was served August 26, 1988. Complainants allege that Respondent's practices in connection with the leasing of marine terminal facilities have resulted in violations of the Shipping Act, 1916 and the Shipping Act of 1984. Specifically, Complainants allege violations of sections 16, First, and 17, Shipping Act, 1916, 46 U.S.C. app. 815 and 816, and sections 10(d)(1), (d)(2), (d)(3), 10(b)(11), and (b)(12), 46 U.S.C. app. 1709(d)(1), (d)(2), (d)(3), (b)(11), and (b)(12).

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the future terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 28, 1989, and the final decision of the Commission shall be issued by December 28, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88-19889 Filed 8-31-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Corestates Financial Group; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent

Corestates Financial Group, Philadelphia, Pennsylvania ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage through Corestates Securities Corp., Philadelphia, Pennsylvania ("Company"), in the activities of underwriting and dealing in, to a limited degree, as well as privately placing as agent, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Applicant has also applied to underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("eligible securities") (U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)). Company would conduct the proposed activities on a nationwide basis. Company is currently authorized under section 4(c)(8) of the BHC Act to provide discount securities brokerage services, related activities pursuant to the Board's Regulation T (12 CFR Part 220) and incidental activities such as offering custodial services, individual retirement accounts and cash management services.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to underwrite, deal in and place ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987); *Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 138 (1987); and *First Chicago Corporation,* 74 Federal Reserve Bulletin —— (Order dated August 4, 1988).

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as The Philadelphia

National Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (1,2 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Philadelphia.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 20, 1988.

Board of Governors of the Federal Reserve System, August 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19870 Filed 8-31-88; 8:45 am]

BILLING CODE 6210-01-M

First & Peoples Bancshares, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 16, 1988.

A. **Federal Reserve Bank of Cleveland**, (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First & Peoples Bancshares, Inc., Russell, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of First & Peoples Bank, Russell, Kentucky.

2. National City Corporation, Cleveland, Ohio, and FKYN Acquisition Corporation, Louisville, Kentucky; to acquire 100 percent of the voting shares of American Security Company of Bedford, Incorporated, Bedford, Indiana, and thereby indirectly acquire Farmers-Citizens Bank, Bedford, Indiana. Comments on this application must be received by September 22, 1988.

B. **Federal Reserve Bank of Chicago**, (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Quad Cities First Company, Rock Island, Illinois, and thereby indirectly acquire First National Bank of the Quad Cities, Rock Island, Illinois, and Southpark National Bank of the Quad Cities, Moline, Illinois. In connection with this application, First of America Bancorporation, Illinois, Inc., Libertyville, Illinois, has applied to merge with Quad Cities First Company. Comments on this application must be received by September 22, 1988.

2. Hale Banking Corporation, Hale, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants State Bank of Hale, Hale, Michigan.

3. Mechanicsville Trust & Savings Bank, Trustee of The Mechanicsville Trust and Savings Bank Employee Stock Ownership Plan & Trust, Mechanicsville, Iowa; to become a bank holding company by acquiring 75 percent of the voting shares of Mechanicsville Bancshares, Inc., Mechanicsville, Iowa, and thereby indirectly acquire the Mechanicsville Trust & Savings Bank, Mechanicsville, Iowa. Comments on this application must be received by September 22, 1988.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Raymond Bancorp, Inc., Raymond, Illinois; to acquire 100 percent of the voting shares of S.B.V. Banc Shares, Inc., Virden, Illinois, and thereby indirectly acquire State Bank of Virden, Virden, Illinois. Applicant will acquire the holding company through an interim holding company merger, and thereby form a new holding company to be called Raymond Acquisition Corporation.

2. Tritten Bancshares, Inc., St. Robert, Missouri; to acquire at least 80 percent of the voting shares of Bank of Plato, Plato, Missouri.

D. **Federal Reserve Bank of Minneapolis**, (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Valley BankCorp., Seeley Lake, Montana; to become a bank holding company by acquiring 81.31 percent of the voting shares of First Valley Bank, Seeley Lake, Montana. Comments on this application must be received by September 22, 1988.

E. **Federal Reserve Bank of San Francisco**, (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. Mission Valley Bancorp, Pleasanton, California; to merge with Lamorinda Financial Corporation, Lafayette, California, and thereby indirectly acquire Lamorinda National Bank, Lafayette, California.

2. U.S. Bancorp, Portland, Oregon; to acquire 100 percent of the voting shares of Bank of Loleta, Eureka, California. Comments on this application must be received by September 22, 1988.

Board of Governors of the Federal Reserve System, August 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19871 Filed 8-31-88; 8:45 am]

BILLING CODE 6210-01-M

First Bank System, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.,* Minneapolis, Minnesota; to acquire approximately $66 million of commercial loans and participations from Columbia Savings, Denver, Colorado, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for the account of the applicant or for the account of others, such as would be made by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Colorado.

Board of Governors at the Federal Reserve System, August 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19872 Filed 8-31-88;8:45am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the changes in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 15, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Bruce D. Howe, Lake Ariel, Pennsylvania; to acquire an additional 5.69 percent of the voting shares of Lake Ariel Bancorp, Inc., Lake Ariel, Pennsylvania, and thereby indirectly acquire First National Bank of Lake Ariel, Lake Ariel, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. C.D. Roberts, Pikeville, Kentucky; to retain 15.11 percent of the voting shares of Trans-Kentucky Bancorp, Inc., Pikeville, Kentucky, and thereby indirectly acquire The Citizens Bank of Pikeville, Pikeville, Kentucky.

C. **Federal Reserve Bank of St. Louis** (Randall, C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Walter J. Carlson, Josephine Carlson, William A. Carlson, and Ralph C. Carlson, all of Marion, Arkansas; to acquire an additional 17.80 percent of the voting shares of Fidelity Bancorp, Inc., West Memphis, Arkansas, and thereby indirectly acquire Fidelity National Bank of West Memphis, West Memphis, Arkansas.

1. Earl R. Wilson, Jackson, Mississippi; to acquire 21.53 percent of the voting shares of Citizens Financial Corporation, Belzoni, Mississippi, and thereby indirectly acquire Citizens Bank & Trust Company, Belzoni, Mississippi.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Barbara A. Kimbrough, Broken Arrow, Oklahoma; to acquire an additional 7.50 percent of the voting shares of Arkansas Valley Bancshares, Broken Arrow, Oklahoma, and thereby indirectly acquire The Arkansas Valley State Bank, Broken Arrow, Oklahoma.

Board of Governors of the Federal Reserve System, August 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19873 filed 8-31-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Family Support Administration, Statement of Organization, Functions and Delegations of Authority

Parts A, the Office of the Secretary (OS) and Part M, the Family Support Administration (FSA) statement of organizations, functions and delegation of authority of the Department of Health and Human Services are being amended to reflect the transfer of the State data systems review, payment integrity and quality assurance functions from the OS to the FSA.

Specifically, Part A, Chapter AMH, Office of the Assistant Secretary for Management and Budget, Office of Procurement Assistance and Logistics, as last amended at 52 FR 866, 1/9/87; and Part M, Chapters M, the Family Support Administration, MB, the Office of Management and Information Systems and MH, the Office of Family Assistance at 51 FR 35561, 10/6/86.

Part M, Chapter MH, Office of Family Assistance as last amended at 52 FR 35960, 9/24/87, for changes within the Division of Work Programs.

Below is a list of the changes:

A. Amend Part A as follows:

1. Under Chapter AMH, Paragraph AMH.00 Mission, delete the last sentence.

2. Under Chapter AMH, paragraph AMH.10 Organization, delete line 18, "Division of State Data Systems," line 20, "Payment integrity Staff" and line 21, "Integrated Quality Control Assurance Staff."

3. Under Chapter AMH, AMH.20 Functions make the following changes, under: (1) First paragraph, delete Item #15; (2) paragraph "C. Office of Assistance Policy and State Systems Review" delete Items #1, #4 and #7 and renumber Items #2, #3, #5 and #6 as Items #1 through #4; (3) Delete paragraphs "C.(a) The Division of State Data Systems," C.(c) "The Payment Integrity Staff" and C.(d) "The integrated Quality Control Assurance Staff in their entirety; and (4) change paragraph C. (b) "Division of Assistance and Cost Policy" to C.(a).

B. Amend Part M as follows:

1. Amend Chapter M, M.00 Mission, by adding the following paragraph at the end of the last sentence.

Provides leadership and guidance for the Department in the development and implementation of policies and standards applicable to State data systems development, payment

integrity, and quality assurance activities.

2. Delete Chapter MB, Office of Management and Information Systems in its entirety and replace with the following:

MB.00 Mission. The Office of Management and Information Systems (OMIS), a staff office of the FSA, advises the Administrator in the areas of internal administration and management of FSA, internal information systems in FSA and external state automated systems designed to support all FSA programs except the Child Support Enforcement program. It establishes policy, requirements, standards and guildelines for information systems for the Department to support programs funded under the Social Security Act and management improvement initiatives (i.e., Income Eligibility Verification System-IEVS and Systematic Alien Verification for Entitlement-SAVE) involved in the administration and operation of federally funded programs. The Office provides leadership, guidance and liaison throughout FSA on administrative policies, procedures and activities including: Personnel management, employee development, management studies and assessments, facilities, telecommunications, material management and similar supporting services. The Office serves as the focal point for liaison with FSA regional offices.

MB.10 Organization. The Office of Management and Information Systems is headed by the Associate Administrator who reports directly to the Administrator. The Associate Administrator also serves as the Associate Deputy Director for Information Systems Managment, Office of Child Support Enforcement. The Deputy Associate Administrator assists the Associate Administrator in carrying out his/her responsibilities. The Office is organized as follows:

Office of the Associate Administrator (MB)
State Data Systems Staff ( )
State Eligibility Systems Staff ( )
Division of Management and Regional Operations (MB1)
Division of State Systems Management (MB2)
Division of Federal Systems Management (MB3)
Division of Facilities and Telecommunications Management (MB4)

MB.20 Functions. A. Office of the Associate Administrator directs and coordinates all elements of the Office of Management and Information Systems; provides guidance and services to FSA staff and program components, in accordance with HHS and other federal policy, in the following areas: Personnel; administrative procedures, policies and requirements; support services; facilities and telecommunications; and management analysis. The Office directs activities to plan, budget, direct, promote and control information technology for AFDC, Refugee and Community Services programs and internal operations. It provides oversight of relationships between FSA headquarters and FSA regional offices to insure effective operations, communications and regional representation on FSA issues. The Office coordinates implementation of the Equal Opportunity and Affirmative Action programs for FSA in accordance with Departmental policies and procedures.

1. State Data Systems Staff is responsible for developing departmental policies and procedures under which States obtain Federal financial participation in the cost of Automatic Data Processing (ADP) systems to support programs funded under the Social Security Act. Acts as a central receiving point for, and coordinates the Departmental review and approval of, State requests, for Federal Funding in the cost of ADP systems acquisition. Coordinates the provision of technical assistance to States on information systems projects that will advance the use of computer technology in the administration of walfare and social services programs in the States.

2. State Eligibility Systems Staff is responsible for planning, designing, coordinating and implementing major departmental and governmentwide management improvement initiatives (i.e., Income Eligibility Verification System—IEVS, Systematic Alien Verification for Entitlement—SAVE) involved in the administration and operation of federally funded programs. Serves as the departmental focal point for the development and implementation of strategies and policies related to payment integrity (IEVS), welfare system integration and the associated areas of management improvements. Convenes and provides leadership to workgroups and task forces to assess current grantee or contractor systems with the goal of examining the extent of wasteful redundancy and inefficient systems design and promoting creative solutions to these problems. Establishes minimum uniform standards for the approval of integrated and appropriately interacted welfare managment systems. Identifies and assesses grantee management and operational approaches and policies in the areas of payment integrity and systems management. Promotes the rapid adoption of successful and effective approaches by States and the integration of such approaches into existing and evolving State systems. Integrates the dissemination and transfer of recognized and acceptable cost effective best approaches with current agency and departmental meetings, forums and expositions for review and consideration by State welfare agencies. Provides leadership and guidance to interagency work groups in the area of payment integrity initiatives when senior officials of the Executive Branch request it of the Department.

B. Division of Management and Regional Operations provides oversight and direction to meet the administrative, management and operational needs of FSA components. The Division provides liaison between FSA components and the Office of the Assistant Secretary for Personnel to provide personnel services including position management, recruitment, employee relations and staff development. It manages the performance recognition systems and the system of awards for FSA. It maintains systems to track personnel actions and to keep FSA informed about employee programs and benefits.

The Division provides administrative and support services to FSA components including coordination of services for equipment, supplies, mail, messenger, printing, property inventory, publication distribution, small purchases, forms/records management, payroll and travel. It controls ADP funds, ADP inventory and ADP project approvals. It provides staff work for the Associate Administrator by advising and reviewing advisory and assistance services contract proposals. It provides meeting and conference planning services to FSA employees. It plans, organizes and conducts management studies, analysis and evaluations of administrative, management and functional processes. It studies structural, functional and operational problems of interest to the Administrator. The Division acts as liaison with the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval and to coordinate and track OMB reports clearance requirements and other organization management requirements; maintains official organizational files for FSA; prepares formal program, administrative and personnel delegations of authority for the Administrator. The Division

coordinates and tracks administrative plans for personnel, management improvement plans and productivity improvement plans.

It serves as the FSA focal point for liaison between FSA regional offices and the Administrator on region-related matters; supports the FSA Regional Administrators in administering regional office activities and establishing and implementing crosscutting program and operational initiatives; develops and implements systems and procedures for communicating with the regional offices and for monitoring and evaluating regional office operations; plans for the utilization of regional resources to accomplish approved objectives; develops work measurement techniques and tools and provides tracking and evaluation of the use of regional resources; works with FSA components to plan and clarify requirements placed on regional offices; monitors regional involvement in operational planning initiatives to assure fulfillment of FSA goals and objectives; collects and analyzes information on regional program, operational and administrative issues for submission to the Administrator.

C. Division of State Systems Management reviews and analyzes state requests for federal financial participation for automated systems development activities which support FSA's programs, except the Child Support Enforcement programs. It provides assistance to states in developing or modifying automation plans to conform to federal requirements; recommends approval/disapproval of state funding requests. The Division monitors approved state systems development activities; conducts periodic reviews to assure state compliance with regulatory requirements applicable to automated systems supported by federal financial participation. It provides guidance to states on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve FSA through the use of automated systems. It provides guidance to states on automated systems security and privacy protection and monitors state compliance with data utilization and safeguarding requirements.

D. The Division of Federal Systems Management oversees and coordinates computer systems design, development, maintenance and services to FSA programs. It provides technical assistance on automated systems to state and local agencies for Federal Parent Locator Services, Federal Tax Refund Offset Service and Project 1099; designs, develops and implements application systems to support FSA program requirements; manages and maintains management information systems for all FSA components.

The Division coordinates the design, development and implementation of the National Integrated Quality Control System with the Food and Nutrition Service of the Department of Agriculture and the Health Care Financing Administration. The Division manages, maintains and operates the agency mainframe computer center and telecommunications network; provides for the planning, procurement, and implementation of computer center upgrades as appropriate for support of FSA program initiatives. It develops long-range ADP plans; develops the information resource management (IRM) policy, procurement plan and budget. The Division coordinates the development of the FSA ADP Security Management Plan and enforces ADP directives to ensure compliance; maintains an inventory of ADP software; develops and implements procurement strategies for major ADP acquisitions. The Division manages, maintains and operates FSA's minicomputers and network of personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing and for executive information systems; manages an information center offering services such as design assistance, application evaluation, user training, new product evaluation, and specialized technical assistance.

E. The Division of Facilities and Telecommunications Management directs and coordinates services and support to meet FSA's space management, facilities services and voice and data telecommunications needs. It develops and implements policies, standards, programs and procedures to assure adequate general services for FSA. The Division develops and implements FSA's space and facilities management plans and activities, including identification and negotiations for office space, allocations of space, coordination of physical moves, and planning and design of office layouts. It serves as liaison with HHS, General Services Administration (GSA) and outside vendors to provide facilities services including acquisition of facilities and equipment, building security, property management, inventory control, health and safety programs, labor services, facilities for handicapped employees and parking. In coordination with FSA program and staff offices, the Division develops telecommunications plans and places orders for voice and data communications services; provides liaison with HHS, GSA and private communications firms on telecommunications matters; provides assistance to FSA components to identify telecommunications needs and to use communications equipment and systems; monitors standard level user charges and telecommunications charges; and assists with budgetary projections and cost estimates for telecommunications services.

3. Amend Chapter MH, Office of Family Assistance, Section MH.00 Mission by deleting it in its entirety and replacing it with the following:

MH.00 Mission. The Office of Family Assistance (OFA) provides direction and technical guidance to the nationwide administration of the following public assistance programs; Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the Emergency Assistance Program, the U.S. Repatriate Programs and the Work Incentive Program (WIN) which is jointly administered by FSA and the Assistant Secretary for Employment and Training, Department of Labor. Provides management oversight for the Department in the implementation of major management improvement initiatives directed toward improving quality control in the administration of federally funded programs.

OFA develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. Develops and implements standards and policies for regulating integrated quality control activities of the Department and the Operating Divisions. The Office assesses the performance of states in administering these programs; reviews State planning for administrative and operational improvements; and supports actions to improve program effectiveness. It directs reviews; provides consultations; and conducts necessary negotiations to achieve adherence to federal law and regulations in State plans for public assistance program administration.

4. Amend Chapter MH, Section MH.10 Organization to (1) remove "The U.S. Repatriate Program Staff (MHC)" and (2) replace the Division of Work Programs (MHC4) with "The Division of Special Initiatives (MHC4)."

5. Amend Chapter MH, Section MH.20 Functions by deleting paragraph "B. The

Immediate Office of the Director for Family Assistance" in its entirety and replacing it with the following:

B. The Immediate Office of the Director for Family Assistance provides the Director and Deputy Director with staff assistance on the full range of their responsibilities. It provides management support for OFA; ensures coordination and integration of operational activities among OFA components; receives, controls and coordinates replies to all public, congressional and federal inquiries on administrative and national welfare issues; and provides liaison with the Office of Communications to promote FSA's public affairs programs and initiatives.

Provides management oversight to the Department in the implementation of major management improvement initiatives directed toward improving quality control in the administration of federally funded programs. Administers the day-to-day aspects of major quality control initiatives which involve several departmental components or, in the case of interagency initiatives, several departments and/or independent agencies, when senior officials of the Executive Branch request the Department to provide this management direction. Develops, and implements standards and policies for regulating integrated quality control activities of the Department and the Operating Divisions. Monitors quality assurance communication between officials and staff to affected Federal and State agencies to assure open lines of communication.

6. Amend Chapter MH, Section MH.20 Functions by removing paragraph "C. The U.S. Repatriate Program Staff" in its entirety.

7. Amend Chapter MH, Section MH.20 Functions, by deleting paragraph "G. Division of Work Programs" and replacing it with the following:

G. Division of Special Initiatives provides direction, consultation and guidance to promote cost-effective work opportunity programs for AFDC applicants and recipients as an alternative to welfare dependency. The Division develops program instructions on the day-to-day administration of FSA's responsibilities for the Work Incentive Program (WIN); and provides liaison with States, FSA regional offices, the Congress, other federal agencies and public interest groups to develop consistent work program policies and appropriate related services for welfare applicants/recipients. Provides policy development and operational direction for the U.S. Repatriate Programs and State Emergency Welfare Preparedness. It develops and implements strategies to assist States in establishing, expanding and/or improving work programs including: The conduct of needs assessments; identification of successful practices; and information exchange through technology transfers, publications and resource networks.

Dated August 24, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-19878 Filed 8-31-88; 8:45 am]

BILLING CODE: 4110-60-M

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is hereby given that Chapter S3 is being amended to reflect the deletion of the Office of Legislative and Regulatory Policy (OLRP). Chapter S5 is being amended to reflect acquisition of OLRP responsibilities and other functional and organizational realignments within the Office of the Deputy Commissioner, Policy and External Affairs (ODCPEA). The new material and changes are as follows:

Chapter S3

Office of the Deputy Commissioner, Programs

S3.00 Mission
S3.10 Organization
S3.20 Functions

Section S3.00 *The Office of the Deputy Commissioner, Programs*—(Mission):

Delete second sentence:

"Directs the development and conduct of legislative planning for the Agency, and the formulation and issuance of program objectives and policies across program lines."

Section S3.10 *The Office of the Deputy Commissioner, Programs*—(Organization):

Delete:

C. The Office of Legislative and Regulatory Policy (S3H).

Reletter the remaining Subsections C. through G.

Section S3.20 *The Office of the Deputy Commissioner, Programs*—(Functions):

Delete:

C. The Office of Legislative and Regulatory Policy (S3H) in its entirety.

Reletter the remaining Subsections C. through G.

Subchapter S3H

Office of Legislative and Regulatory Policy

Delete the subchapter in its entirety.

Section S5.00 (Mission) *The Office of the Deputy Commissioner, Policy and External Affairs,* add the following sentence to the current paragraph:

"Directs the development and conduct of legislative planning for the Agency, and the formulation and issuance of program objectives and policies across program lines."

Section S5.10 Organizations. *The Office of the Deputy Commissioner, Policy and External Affairs,* add the following:

E. The Management Staff (S5A-1).

F. The Office of Legislation and Congressional Affairs (S5B).

Section S5.20 Functions. *The Office of the Deputy Commissioner, Policy and External Affairs,* add the following:

E. The Management Staff (S5A-1) plans, coordinates and provides a broad range of administrative services for DCPEA and the managerial staff within the components that comprise the Office of Policy and External Affairs organization. Provides management support in the areas of human, financial and materiel resources management, including compilation and execution of DCPEA budgets and the conduct of management studies resulting in recommendations for improving management practices and operations. Designs, implements and maintains DCPEA-automated information and communications systems.

F. The Office of Legislation and Congressional Affairs (S5B) develops and conducts the legislative planning program of SSA and serves as the focal point for all legislative activity in SSA. The Office evaluates the effectiveness of programs administered by SSA in terms of legislative needs, and analyzes and develops recommendations on related proposals. It provides advisory service to SSA and HHS officials on legislation of interest to SSA pending in Congress. It also provides legislative specification drafting services.

Delete Subchapter S5E *The Office of Governmental Affairs* in its entirety and replace with the following:

Subchapter S5E

Office of Governmental Affairs

S5E.00 Mission
S5E.10 Organization
S5E.20 Functions

Section S5E.00 *The Office of Governmental Affairs*—(Mission): The Office of Governmental Affairs (OGA)

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implements and directs a program designed to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, the media, other Federal agencies and State and local governments, for purposes of securing understanding, cooperation and acceptance for SSA programs, policies and procedures and of providing avenues of public participation in the decisionmaking processes of SSA. Plans, directs, coordinates, implements and evaluates SSA's nationwide public affairs program, which involves interaction with other Federal and State agencies, and other organizations concerned with public affairs programs and activities. Develops programs and materials to ensure public knowledge and understanding of protections, rights and responsibilities under programs administered by SSA. Administers SSA activities under the Freedom of Information Act (FOIA), including policy decisions. Establishes, promulgates and assesses SSA policy for answering public, congressional and other sensitive inquiries. Controls analyzes and responds to inquiries and conducts a quality appraisal of written responses prepared throughout SSA. Directs the internal communications program in SSA.

Section S5E.10. *The Office of Governmenal Affairs*—(Organization): OGA, under the leadership of the Associate Commissioner for Governmental Affairs, includes:

A. The Associate Commissioner for Governmental Affairs (S5E).

B. The Deputy Associate Commissioner for Governmental Affairs (S5E).

C. The Immediate Office of the Associate Commissioner for Governmental Affairs (S5E).

D. The Office of Communications Technology (S5EB), which includes:

1. The Technical Services Staff (S5EB1).

2. The Visual Graphics Staff (S5EB3).

3. The Media Production Staff (S5EB4).

4. The Media Development Group (S5EB5).

E. The Office of Information (S5EH), which includes:

1. The Editorial Planning and Evaluation Staff (S5EH2).

2. The Internal Communications Staff (S5EH3).

F. The Office of Public Inquiries (S5EP), which includes:

1. The Division of Correspondence Appraisal and Policy (S5EP5).

2. The Inquiries Processing Divisions I (S5EP6) and II (S5EP7).

3. The Freedom of Information Staff (S5EM1).

G. The Office of External Affairs (S5EM).

1. The Community Affairs Staff (S5EP1).

2. The External Liaison Staff (S5EM2).

3. The Regional External Affairs Staff (S5EM3).

4. The Regional Support and Special Projects Staff (S5EM4).

Section S5E.20 *The Office of Governmental Affairs*—(Functions):

A. The Associate Commissioner for Governmental Affairs (S5E) is directly responsible to DCPEA for carrying out OGA's mission and provides managerial direction to the major components of OGA.

B. The Deputy Associate Commissioner for Governmental Affairs (S5E) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Governmental Affairs (S5E) provides the Associated Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Communications Technology (OCT) (S5EB) directs and implements technical information communications functions for the Agency. The Office develops the Agency's goals and objectives for using the media to promote SSA programs and policies. The Office is responsible for the design and production of audiovisual and graphics materials. The Office utilizes state-of-the-art technological theories, principles and methodologies, in determining and creating the most effective means of communicating the Agency's information. OCT includes the following components and functions:

1. The Technical Services Staff (S5EB1).

a. Plans, develops and directs electronic systems required for the Agency's television and audiovisual productions and mangement communications.

b. Coordinates all technical activities related to the Agency's television and audiovisual production system.

2. The Visual Graphics Staff (S5EB3).

a. Plans and designs public information audiovisual materials. Provides advice and consultation to other components concerning the design of audiovisual materials.

b. Directs the preparation of specifications for media materials produced by professional specialists under contract.

c. Produces materials in various media for the observance of special ceremonial events.

3. The Media Production Staff (S5EB4).

a. Plans, writes, directs and edits motion picture and television productions covering all aspects of Social Security for public information, SSA training and management information purposes.

E. The Office of Information (S5EH) directs SSA's information activities to ensure public knowledge and understanding of programs administered by SSA. The Office develops and evaluates goals, objectives, policies, standards and guidelines for SSA public information needs, and carries out programs to inform the public of the purposes and provisions of SSA-administered programs, program changes and people's rights and responsibilities under these programs. The Office prepares and determines distribution of a wide variety of public information materials on all phases of SSA-administered programs, evaluates the quality of informational materials to ensure a high-quality product and helps in public affairs training in SSA. The Office of Information (OI) includes the following components and functions:

1. The Editorial Planning and Evaluation Staff (S5EH2).

a. Develops and evaluates goals and objectives, policies, standards and guidelines for SSA public information needs. Prepare public information workplans and SSA's National Communications Objectives.

b. Provides direction and quality control of information materials for the administration of SSA public affairs and public information programs.

c. Writes, edits and produces a variety of public information materials. Provides advice and consultation to other components on editorial policy and methods of initiating and developing informational programs.

d. Conducts editorial reviews and approves content, format and style of Social Security information materials for use in all media.

e. Plans and conducts a public information management program. Determines public information strategies for a wide variety of public information materials on all phases of SSA-administered programs.

f. Designs and conducts broad evalaution programs, incorporating and coordinating various evaluation methods, techniques and efforts.

2. The Internal Communications Staff (S5EH3).

a. Directs the internal communications program in SSA. Publishes a variety of information materials, including a monthly national employee magazine and Central Office Bulletin. Prepares and edits administrative reports and presentations.

b. Provides assistance to and appraises internal communications activities in SSA field organizations; identifies weaknesses in communications SSA-wide, and recommends improvements.

c. Writes and produces periodic taped programs used nationwide on SSA television monitors for purposes of internal communications with the field components.

F. The Office of Public Inquiries (S5EP).

Establishes and assesses SSA policy for answering public, Congressional and other inquiries. Responsible for Freedom of Information activities, including policy decisions. Receives, analyzes and controls high priority written and telephone inquiries; prepares responses when appropriate and refers those inquiries requiring specialized knowledge to the appropriate component for response. Studies correspondence practices in use throughout SSA. Develops recommendations to improve the effectiveness of SSA's correspondence program. Reviews and clears all computer-generated notices and form letters. With Office of Human Resoruces, Training and Management Analysis' (OHRTMA's) approval and support, participates in training programs in SSA headquarters and the field components to improve correspondence with the public. Provides advice and assistance to SSA officials and liaison with HHS on public correspondence matters. The Office of Public Inquiries (OPI) includes the following components and functions:

1. The Freedom of Information Staff (S5EP8).

a. Directs FOIA activities in SSA headquarters, develops SSA's FOIA policies and procedures, and prepares the Annual Report to Congress on these activities.

b. Decides whether records are required to be dislcosed to members of the public. Develops decisions on FOIA appeals for the Commissioner and Deputy Commissioner. Identifies problems in these areas, and recommends corrective action as necessary.

2. The Division of Correspondence Appraisal and Policy (S5EP5).

a. Develops SSA correspondence program objectives and SSA-wide policies and procedures necessary to implement these objectives.

b. Reviews correspondence practices in use throughout SSA, assessing adequacy of, and adherence to, established policies and procedures.

c. Conducts ongoing appraisal and special studies to evaluate the quality of correspondence produced SSA-wide, identifies problem areas and makes recommendations for corrective action to the appropriate official.

d. With OHRTMA's approval and support, participates in training programs in SSA field and headquarters components to improve the quality of SSA correspondence.

e. Plans for effective and coordinated use of the SSA automated correspondence system to control, track, file and retrieve inquiries and replies throughout SSA.

3. The Inquiries Processing Division I (S5EP6) and II (S5EP7).

a. Receives, controls and replies to incoming correspondence.

b. Performs necessary technical and general research on inquiries dealing with all areas of Social Security. Prepares written responses to the majority of these inquiries and the necessary acknowledgment, referral and transfer letters for those requiring the signature of SSA component heads below the level of Commissioner.

c. Determines, from correspondence received, significant trends which may point up programmatic or procedural difficulties and possible public relations problems and brings these developments to the attention of the appropriate SSA components.

d. Files and retrieves SSA correspondence and replies controlled in the SSA automated correspondence system and operates the terminals for this system. Tracks, follows up and furnishes information on the status of high priority inquiries and responses processed in SSA.

G. The Office of External Affairs (S5EM) implements and directs programs designed to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, the media, and other Federal agencies and State and local governments. The Office presents, explains, advocates and defends the views and objectives of SSA. It provides the avenue for bringing the views and opinions of influential organizations into the Agency. The Office is responsible for reviewing and considering the validity of SSA-related issues and concerns raised by a variety of external sources and recommending changes or referring the matter to other SSA components for further study. The Office facilitates operational dealings between these organizations and other SSA components. The Office is also responsible for directing, coordinating and supporting the regional public affairs/public information activities.

1. The Community Affairs Staff (S5EM1).

a. Plans and implements a program of community liaison for the Baltimore and Washington, DC metropolitan areas. Deals primarily with SSA's role as a large employer and local institution.

b. Identifies problems or issues which affect SSA's relationships with the communities.

c. Provides advisory and consultative services to community groups and other governmental agencies interested in developing community affairs programs related to Social Security programs.

d. Coordinates with the Office of Information Management, Acquisition and Logistics, Office of Materiel Resources, on the SSA headquarters tour programs, modifying the standard tours for special audiences, as necessary.

2. The External Liaison Staff (S5EM2).

a. Is responsible for SSA's interaction and liaison with national-level leadership of key special interest groups and organizations, other Federal agencies, and State and local governments. This includes responsibility for presenting, explaining, advocating and defending SSA programs and initiatives. Through influence gained with the leadership of these organizations and agencies, facilitates operational dealings between these organizations and other SSA components.

b. Develops guidelines and approaches which set the tone for all SSA relationships with Federal, State and local agencies.

c. Reviews all SSA proposals changing or establishing policies, regulations and operating procedures to determine what effect they might have on intergovernmental relations with the public or external affairs initiatives.

3. The Regional External Affairs Staff (S5EM3).

a. Provides onsite leadership and direction to the regional SSA external affairs program. Analyzes and evaluates regional public affairs activities, and issues regional public affairs policies consistent with nationally-issued policies.

b. Serves as the primary regional contact with the news media, community organizations and congressional staff on questions and problems of a regionwide nature.

c. Plans, directs and coordinates the development of regional policies, directives and procedures concerning the relationships of SSA programs to public and private welfare and community service programs; and coordinates SSA's regional interaction with other agencies and organizations, including the extension and improvement of social services.

d. Manages and oversees the regional public information program. Prepares and disseminates public information materials. Coordinates the development and implementation of regional information and referral programs.

4. The Regional Support and Special Projects Staff (S5EM4).

a. Serves as primary liaison with the Regional External Affairs Officers (EAOs), keeping them informed of SSA and HHS public information policy, plans and activities. Provides guidance and assists in interpreting, analyzing, evaluating public affairs/public information needs of the regions.

b. Initiates and directs a variety of short-range to long-range special projects or assignments of substantial significance to OGA. Coordinates the work task forces and workgroups representing all or several SSA components for the purpose of solving complex problems resulting from adverse impacts of SSA programs and program service delivery on special groups or the general public.

Delete Subchapter S5R *The Office of Policy* in its entirety and replace with the following:

Chapter S5R

Office of Policy

S5R.00 Mission
S5R.10 Organization
S5R.20 Functions

Section S5R.00 *The Office of Policy*—(Mission): The Office of Policy (OP) directs the planning and analysis of programs administered by SSA: the Retirement, Survivors and Disability Insurance (RSDI) programs and the Supplemental Security Income (SSI) program. It coordinates the development of policies across program lines to insure consistency in implementation. The Office broadly formulates, promulgates and interprets programs, objectives and policy. It directs studies and makes recommendations about the problems of income maintenance, poverty and the contributions that social insurance and related programs may provide for solving these problems. It conducts the broad research and the statistical programs of the Agency. The Office develops, promulgates and reviews all program regulations for consistency. It also reviews regulations for directly-administered programs for consistency with statutory and congressional intent and with SSA policy decisions and requirements. The Office insures that policies are coordinated internally and that all instructional materials developed are compatible with overall operating policies and practices and that all notices are clear. The Office evaluates the effectiveness of national policies in meeting program goals, and recommends program modifications. It serves as a focal point for international policy matters, other than those relating to refugee programs.

Section S5R.10 *The Office of Policy*—(Organization): The Office of Policy, under the leadership of the Associate Commissioner for Policy, includes:

A. The Associate Commissioner for Policy (S5R).

B. The Deputy Associate Commissioner for Policy (S5R).

C. The Immediate Office of the Associate Commissioner for Policy (S5R).

D. The Policy Analysis and Integration Staff (S5R).

E. The Office of Research and Statistics (S5RH).

1. The Publications Staff (S5RH1).

2. The Program Analysis Staff (S5RH2).

3. The Division of Economic Research (S5RH3).

4. The Division of Statistical Operations and Services (S5RH4).

5. The Division of Statistical Analysis (S5RH5).

F. The Office of International Policy (S5RJ).

1. The Division of International Program Policy and Agreements (S5RJ1).

2. The International Studies and Organizations Staff (S5RJ2).

3. The International Activities Staff (S5RJ3).

G. The Office of Regulations (S5RB).

1. The Division of Regulations (S5RB1).

2. The Division of Technical Documents and Privacy (S5RB2).

H. The Office of Directives Management (S5RG).

1. The Division of Policy, Planning, Analysis and Review (S5RG1).

2. The Division of Publications and Systems Management (S5RG2).

3. The Notice Policy Staff (S5RG3).

Section S5R.20 *The Office of Policy*—(Functions):

A. The Associate Commissioner for Policy (S5R) is directly responsible to DCPEA for carrying out OP's mission, and provides general supervision to major components of OP.

B. The Deputy Associate Commissioner for Policy (S5R) assists the Associate Commissioner in carrying out his/her responsibilities, and performs other duties the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Policy (S5R) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinate the activities of OP components.

D. The Policy Analysis and Integration Staff (S5RA) serves as the focal point throughout the Agency to make certain that strategic policy decisions are properly translated into operational policies and procedures and are implemented in an effective manner. Provides the Executive Staff with information on operational effects of policy decisions under consideration and is responsible for designing, implementing and assessing the results of operational models which test proposed changes in policy. The Staff analyzes issues involving existing agency policies and options for change in those policies. It provides analysis of, and advice on, significant policy issues to the Associate Commissioner for Policy, the DCPEA and the Policy Council, and serves as secretariat to the Policy Council.

E. The Office of Research and Statistics (S5RH) directs the planning and analysis of program policy, and develops and conducts SSA's research and statistical program. It conducts research on income security, redistribution effects on the economy of Social Security benefits, and financing and adequacy of cash benefits. It establishes linkages of SSA data with data from other statistical and record systems, and develops and simulates economic models to analyze the impact of present and projected program alternatives under various conditions. The Office publishes research findings, compiles and publishes statistical data and provides SSA-wide statistical leadership and methodology about statistics.

The Office of Research and Statistics (ORS) includes the following components and functions:

1. The Publications Staff (S5RH1).

a. Advises ORS on the development, organization and presentation of research and statistical studies to be published.

b. Directs a continuous review of the research publications program, analyzes material submitted for publication and

surveys the effectiveness of ongoing publication series.

C. Assesses informational needs of the SSA staff, other Governmental agencies, social scientists and the public for data and findings from the ORS research program.

2. The Program Analysis Staff (S5RH2) plans, designs and conducts surveys of program target groups and performs policy-relevant research. Analyzes the impact of proposed policy options and legislative proposals, analyzes special high priority issues, and prepares briefing materials for SSA administrators.

3. The Division of Economic Research (S5RH3).

a. Plans, directs and executes issue-oriented research to provide information about relationships between the Social Security program, the economy, and other aspects of society.

b. Makes program revenue projections and interprets changing demographic and economic trends as they relate to the broad field of economic security and to overall economic and social policy.

c. Studies such major areas as: Social Security financing, economic impacts of Social Security, income maintenance, effect of Social Security on lifetime income redistribution, alternative measures of income adequacy, and labor market and retirement behavior.

4. The Division of Statistical Operations and Services (S5RH4).

a. Plans and directs the development, implementation, maintenance and revision of a broad statistical program to support the research and analysis responsbilities of ORS concerning the basic RSDI and SSA program statistics.

b. Provides statistical services throughout SSA and technical consultation to users of these statistics, both within and outside SSA.

5. The Division of Statistical Analysis (S5RH5).

a. Plans and develops a continuing program of research and analysis related to Social Security, SSI, other social welfare programs and to the employment, earnings and coverage status of the nation's workforce.

b. Plans and directs the collection for publication of Old-Age Survivors and Disability Insurance and SSI statistics, as well as statistics on employment and earnings covered under the Social Security program.

F. The Office of International Policy (S5RJ) represents SSA on matters of international research and statistics within HHS, within the academic community and in coordination with SSA's OGA, with other public and private agencies and organizations. Serves as SSA liaison to international agencies and associations which deal with Social Security matters. Negotiates international Social Security agreements with foreign governments and develops policies and procedures to implement the agreements. Provides programs of training and technical consultation on Social Security and related fields to foreign Social Security officials and other foreign experts. Plans and coordinates programs of technical assistance to foreign Social Security institutions. Serves as liaison with other Federal agencies, such as the Department of State and the Department of the Treasury on Social Security program matters outside the United States. The Office of International Policy includes the following components and functions:

1. The Division of International Program Policy and Agreements (S5RJ1).

a. Plans, develops and evaluates program policies and procedures relating to foreign claims administration and beneficiaries, and modifies policies and procedures to meet program requirements in foreign countries.

b. Negotiates international Social Security (totalization) agreements with foreign governments and takes the actions necessary to secure their approval, develops and evaluates agreements and administers the coverage provisions of the agreements.

c. Interacts with various SSA components, HHS, other Federal agencies and governments of other countries on all foreign program matters, including evaluation of foreign social insurance systems for alien nonpayment purposes, benefit payment delivery and restrictions, acceptability of foreign evidence and program integrity.

d. Conducts legislative and regulatory reviews, studies and analysis of all matters relating to international policy and international Social Security agreements, and takes necessary legislative or regulatory action on foreign program and agreement problems requiring such remedy.

2. The International Studies and Organizations Staff (S5RJ2).

a. Develops and implements a methodology for international statistical comparisons. Develops statistical methods involving data in such fields as labor statistics, gross national product, benefit formulae and financing for a comparison of the information of these areas of interest between the United States and other nations.

b. Directs analytical studies involving comparisons of particular aspects of Social Security measures in selected groups of countries.

c. Coordinates and advises high-level agency officials, congressional committees and various firms and institutions on the operation of the Social Security systems of foreign countries. Represents the Administration and Department at international conferences and seminars on economic development and Social Security.

d. Plans and organizes the work of consultants, outside contractors and regular staff in establishing international exchanges for the purpose of creating a data bank capable of sustaining the research program.

e. Coordinates and advises high-level agency officials with regard to agency participation in international organizations active in the social policy field.

3. The International Activities Staff (S5RJ3).

a. Provides training, orientation and consultation programs on Social Security to foreign Social Security officials and experts in related field.

b. Develops and coordinates technical assistance to foreign Social Security institutions.

c. Serves as the SSA focal point in providing information about United States Social Security programs to foreign and international sources.

d. Plans and coordinates foreign travel by SSA officials.

G. The Office of Regulations (S5RB) plans, develops and writes SSA regulations and provides for the publication of regulations. Performs an ongoing assessment of the regulations process in SSA. Plans, develops and publishes various technical documents relating to the Social Security Act and programs; directs the formulation and promulgation of SSA confidentiality/disclosure policy. In coordination with SSA's OGA, negotiates with other Federal and non-Federal agencies, organizations and institutions on matters within the Office's mission.

1. The Division of Regulations (S5RB1) plans, develops and writes regulations governing Social Security programs and assesses the regulations process in SSA. Coordinates, within SSA, the review and clearance of regulations for the claims and payment processes developed for the RSDI program; the SSI program and the Black Lung Benefits programs and assures that SSA's OP has input into the regulations development process. Coordinates activities with HHS' Office of the General Counsel on the issuance of regulations. Negotiates with HHS and the Office of the Federal Register on regulations matters and other areas of concern to this Office.

2. The Division of Technical Documents and Privacy (S5RB2) plans

and develops rulings to provide interpretations and applications of the Social Security Act. Develops and publishes general and special compilations of Social Security laws, various technical issuances and program handbooks. Develops and promulgates program policy dealing with the confidentiality/disclosure of SSA records; reviews SSA's activities to assure compliance with the Privacy Act and related laws and regulations. Evaluates policies to determine whether training is needed to assure their effective implementation, and partcipates in the development of training materials.

H. The Office of Directives Management (S5RG) directs the review, coordination, publication and distribution of program instructions and other materials to insure uniformity, lack of duplication and compatability of all SSA operational, instructional and informational material; participates in determining the instructional needs of SSA operating personnel. Directs technical review of program operating instruction to insure proper integration, organization, clearance and audience for materials prepared by various SSA components for the Program Operations Manual System (POMS). Coordinates publication, distribution and warehousing of all program instructional and related materials, and directs a quality review of new issuances to insure proper reproduction of printed materials. Indexes all program instructional materials and determines user needs in this area. Provides direction for notice content and design throughout SSA. Participates with SSA's Systems organizations in the design, development and ongoing administration of a computerized system for storing, updating, publishing and distributing operational instructions and materials; coordinates with SSA's OHRTMA, as appropriate. Establishes policies and guidelines for the distribution, required by the FOIA, of SSA program publications for the public.

1. The Division of Policy, Planning, Analysis and Review (S5RG1) identifies major problems with SSA's program instructions system and researches, analyzes, develops and recommends solutions. Conducts comprehensive planning, market surveys and analyses to determine how current and emerging technologies can be utilized to improve SSA's current and projected program instructions needs and operational environment. Implements, monitors and maintains agencywide writing standards for the content and format of POMS. Designs, establishes and implements nationwide standards, policies and procedures governing the management, development, presentation, publication and distribution of SSA's nationwide program instructions system. The division reviews all SSA requests for approval to publish SSA program instructions and prepares recommendations for approval/disapproval for the Director, ODM.

The division conducts a technical review of all SSA program operating instructions, program circulars, forms and teletypes. Authorizing components are advised on the technical accuracy of each issuance in accordance with established standards and guidelines. These include proper placement, vehicle, organization, format, clearance, clarity, consistency and effectiveness. Operating instructions are reviewed at the preliminary, intercomponent and final stages of development. Regional and processing center program issuances are reviewed and monitored.

2. The Division of Publications and Systems Management (S5RG2) prepares for publishing, distributing and warehousing all SSA program instructions. Conducts an ongoing program of devleopment, maintenance and appraisal of publications operations and procedures for SSA program instructions to insure timely printing and delivery of a good quality instruction. Develops specifications for and manages electronic publication systems. Analyzes content of program directives to determine indexing terminology and references, and synthesizes all indexing activities for index integrity, thesaurus control, and publication of a topical index. Manages all activities within the Office of Directives Management (ODM) dealing with the planning, analysis, design, implementation and maintenance of computer-based office systems, integrated automated information systems, full-text retrieval data bases, automated text processing and electronic publishing. Administers SSA's electronic data base of program policy and directives.

3. The Notice Policy Staff (S5RG3) serves as the focal point for SSA's effort to improve service to the public through issuing clear notices. Designs and writes notices and selected forms. Provides direction for notice content and design throughout SSA. Acts as a clearinghouse through which program offices submit proposed new or revised notices and selected forms. Assesses the impact of new notices on public service. Oversees training for operations and programs components to improve the quality of notices.

Add the following new Subchapter:

Subchapter (S5B)

Office of Legislation and Congressional Affairs

S5B.00 Mission
S5B.10 Organization
S5B.20 Functions

Section (S5B.00) *The Office of Legislation and Congressional Affairs*—(Mission):

The Office of Legislation and Congressional Affairs develops and conducts the legislative planning program of SSA and serves as the focal point for all legislative activity in SSA; analyzes legislative and regulatory initiatives, and develops specific requirements and decisions. The Office evaluates the effectiveness of programs administered by SSA in terms of legislative needs, and analyzes and develops recommendations on related income maintenance, social service and rehabilitation program proposals, particularly those which may involve coordination with SSA-administered program, and on other methods of providing economic security. It provides advisory service to SSA and HHS officials on legislation of interest to SSA pending in Congress. It also provides legislative specification drafting service to officals within the Executive Branch, congressional committees, individual members of Congress and private organizations interested in Social Security legislation. It establishes and maintains a working relationship with all members of Congress.

Section (S5B.10) *The Office of Legislation and Congressional Affairs*—(Organization):

The Office of Legislation and Congressional Affairs, under the leadership of the Associate Commissioner for Legislation and Congressional Affairs, includes:

A. The Associate Commissioner for Legislation and Congressional Affairs (S5B).

B. The Deputy Associate Commissioner for Legislation and Congressional Affairs (S5B).

C. The Immediate Office of the Associate Commissioner for Legislation and Congressional Affairs (S5B).

D. The Legislative Reference Staff (S5BA).

E. The Congressional Relations Staff (S5BB).

F. The Division of Disability and Supplemental Security Income (S5BC).

G. The Division of Retirement and Survivors Benefits (S5BE).

H. The Office of Policy Development (S5BG).

Section (S5B.20) *The Office of Legislation and Congressional Affairs*—(Functions):

A. The Associate Commissioner for Legislation and Congressional Affairs (S5B) is directly responsible to DCPEA, for carrying out the Office of Legislation and Congressional Affairs (OLCA) mission and providing general supervision to the major components of OLCA.

B. The Deputy Associate Commissioner for Legislation and Congressional Affairs assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Legislation and Congressional Affairs provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Legislative Reference Staff (S5BA).

1. Tracks legislative bills, highlights items of interest from the Congressional Record and other publications for OLCA and SSA's Executive Staff, and provides support for other OLCA and SSA components at congressional hearings.

2. Assists individual members of Congress and their staffs and congressional committee staffs by responding to requests for information on pending and proposed Social Security legislation, related legislative proposals and the legislative history of the Social Security program.

3. Reviews legislative proposals for consistency with existing program goals, philosophy and program requirements.

E. The Congressional Relations Staff (S5BB).

1. Develops and preserves working relationships with members of Congress covering the full range of program and administrative matters.

2. Serves as consultant to the Associate Commissioner, OLCA with regard to establishing and maintaining effective congressional relationships.

3. Maintains productive relationships with all members on behalf of the Agency. Conducts dialogue on a routine basis, and participates in negotiations on highly sensitive matters with members.

F. The Division of Disability and Supplemental Security Income (S5BC).

1. Develops and explains Disability Insurance (DI) and SSI programs, principles and philosophy.

2. Studies the SSI program interrelationships with Social Security Income maintenance, child support enforcement, food stamps, employment and other Federal, State and local programs, and recommends methods for coordinating these programs.

3. Reviews proposed regulations dealing with the DI program and the SSI program for the aged, blind and disabled, to assure consistency with policy requirements and decisions.

4. Develops and evaluates legislative proposals for changes in the DI and SSI programs, the SSA hearings and appeals process and the process for approving attorney fees under the programs.

5. Provides technical and advisory services to other agencies within the Executive Branch, congressional committees and individual members of Congress, State officials and private organizations having an interest in the DI and SSI programs, the SSA hearings and appeals process and the process for approving attorney fees under the programs.

G. The Division of Retirement and Survivors Benefits (S5BE).

1. Develops and explains program principles and philosophy.

2. Develops and evaluates legislative proposals for changes in the areas of retirement and survivors benefits and coverage.

3. Conducts studies of broad programmatic issues, including the philosophy, tax rates, alternative methods of financiing trust fund operations, and management and eligibility requirements for dependents and survivors' benefits, the level of Social Security benefits, value of benefits in relation to contributions, benefits computation methods, which dependents should receive benefits and the establishment of priority among these dependents.

4. Recommends methods for coordinating the protection afforded under Social Security with that afforded under other public and private benefit programs.

5. Reviews proposed regulations dealing with Retirement and Survivors Insurance (RSI), Social Security coverage, interprogram relationships and various other issues including the Social Security Retirement Test, insured status and the definitions of employment and wages, to assure cross-program consistency with policy requirements and decisions.

6. Provides technical and advisory service to other agencies within the Executive Branch, congressional committees and individual members of Congress, State officials and private organizations having an interest in RSI, Social Security coverage or interprogram relationships.

H. The Office of Policy Development (S5BG) represents the policy views and goals of the Executive Staff. Provides advice and assistance to DCPEA in the development of basic policy consistent with the objectives and goals of the Administration. Formulates agency policy philosophy and goals covering major aspects of the program, both short and long term. Insures that formulated philosophy and goals are incorporated into agency legislative and policy activities.

Dated: August 24, 1988.

Otis R. Bowen,

Secretary.

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Centers for Disease Control

Breast Cancer Tracking and Surveillance Project; Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for a Cooperative Agreement to establish a 4-year breast cancer screening and tracking program with the State of Colorado Department of Health. Assistance will be provided only to the State of Colorado Department of Health in support of this project. No other applications are solicited or will be accepted.

Authority

This program is authorized under section 317 of the Public Health Service Act. The Catalog of Federal Domestic Assistance Number is 13.283.

Background

Breast cancer represents a serious public health problem in the Denver area. There were 2,287 new invasive breast cancers diagnosed in the Denver 5-county area between 1982–84, representing a 13 percent increase over the previous 3-year period. This increase in the number of new cases is greater than the increase observed nationally. The age-adjusted incidence rate is 1 percent higher than that observed in National Center Institute Surveillance Epidemiology and End Results program data for the same period. Black women actually have a higher lifetime risk than white women (1 in 10.5 vs. 1 in 11.4), and these cumulative risks represent a significant increase over the previous decade for both black and white women. Although the risk of breast cancer does not appear to be as great

among Hispanic women (1 in 21), that risk has also increased since the previous decade. Data also confirm that survival is much poorer among women from poor neighborhoods. It is estimated that the annual cost for providing mammography for medically indigent women (representing 12 percent of the 549,800 women in Colorado over age 40) would be $4.1 million, at an average price of $75 per mammogram. No data are available on the proportion of women in Colorado who have had a mammogram, or had one within the previous year, but it can be assumed that this screening technique is underutilized as is the case nationally.

Purpose and Cooperative Activities

The purpose of this program is to provide support to the Department of Health, State of Colorado, in response to an unsolicited application for assistance to establish a tracking and surveillance component for their planned comprehensive breast cancer control program. The State has requested funds from CDC to support the design and implementation of the client tracking and surveillance system. The Colorado Department of Health is proposing to monitor both screening and diagnostic protocols. In addition to providing centralized computerized tracking of all women screened at one of the State designated sites, they also propose to mail reminders to women 30 days before the first or second yearly anniversary of their last mammogram, as is appropriate according to certain screening guidelines. After several years this tracking and followup system will be available for purchase from Colorado by providers, hospitals, and mammography centers on a subscription basis, thus providing providers and women in Colorado with a major component of a permanent, self-sustaining breast cancer control program.

A. Recipient activities will include:

1. Design and implement a computerized client tracking and follow up system that initiates annual/bi-annual reminders to women about the need for scheduling their mammograms.

2. Utilize a tracking system to monitor diagnostic protocols and through linkage with the Colorado Cancer Registry, evaluate the efficacy of recommended screening and therapeutic protocols.

3. Pilot a system that will provide annual/bi-annual reminders to women about the need for scheduling their mammogram.

4. Increase medical provider endorsement and appropriate referral for screening mammography.

B. Centers for Disease Control will:

1. Provide consultation in computer software design for the development of a computerized tracking and followup system.

2. Provide consultation in analysis of existing epidemiologic data on breast cancer in the State.

3. Provide consultation in analysis of data on availability and utilization of mammography.

4. Provide consultation and assistance in the evaluation of a State-wide computerized tracking/surveillance system for breast cancer screening.

Review Criteria

The application will be reviewed according to the following criteria:

A. The extent of the applicant's understanding of the requirements, problems, objectives, complexities, and interactions required of this cooperative agreement.

B. The quality of implementation plan for project, including a time schedule.

C. The ability to provide knowledge and resources to perform this project and the quality of proposed approach in carrying out the responsibilities.

D. The qualifications and time allocations of the existing staff and staff to be assigned to this project, quality of facilities, office space, necessary equipment, and support staff resources available for the performance of this project.

E. Describe plans to publish results and designate responsibilities for scientific publications and authors, summary documents, new releases, etc.

Other Requirements

Applications are not subject to review as governed by Executive Order 12372 "Intergovernmental Review of Federal Programs."

The Reasons for Proposing the State of Colorado Department of Health as the Recipient of this Program

The Colorado Department of Health has requested funds through an unsolicited proposal to support one component of their State-wide breast cancer control program. The State of Colorado has designed an innovative project that integrates service delivery to high risk groups with computer technology to prevent breast cancer mortality. The proposal is unique in that it positions the Colorado Department of Health for leadership in the design and implementation of a computerized tracking system for mammography that services both the public and private sectors, and if successful, will provide a model that can be used by other States. Moreover, the project will target high-risk women, aged 45 and older, who are medically indigent and cannot afford a mammogram.

It is proposed that this assistance for a tracking and surveillance program be negotiated with the State of Colorado Department of Health for the following reasons:

A. The Colorado Department of Health initiated this program, and with the exception of the tracking and surveillance component, will be entirely supported by the State.

B. The program is statewide and will target high-risk women aged 45 and older who are medically indigent and cannot afford a mammogram.

C. The proposal is unique in that it positions the Colorado Department of Health for leadership in the design and implementation of a computerized tracking system that will provide a model that can be used by other States.

D. The State has demonstrated initiative in this area in establishing the Colorado Breast Cancer Control Commission in 1984 and the Department of Health has established the Breast Cancer Control Advisory Committee consisting of the following subcommittees:

(1) Medical/Technical Subcommittee;

(2) Program Policy/Management Issues Subcommittee;

(3) Marketing/Public Information Subcommittee;

(4) Mammography Quality Control Subcommittee.

E. This program is designed to reduce mortality and morbidity from breast cancer by screening 25 percent of the State's female population age 45 and older within 5 years.

F. This project will increase the proportion of women who follow a lifetime program of breast care by providing education, financial assistance, tracking, and followup. Ultimately this program will develop a permanent, self-sustaining breast cancer control program.

Reporting Requirements

The recipient of this assistance award will submit quarterly and annual summary progress reports providing details of accomplishments.

Financial status reports must be filed no later than 90 days after the end of each budget period. Final Financial Status and Progress Reports are required at the end of the project period.

Availability of Funds

It is expected that approximately $148,000 will be available in Fiscal Year 1988 to fund this cooperative agreement. The cooperative agreement will begin on or about September 29, 1988, and

depending upon the availability of funds, the project will be funded for a 12-month budget period within a 4-year project period with approximately $123,465, $103,792, and $72,708 for years 2, 3, and 4 respectively. Funding for the second and subsequent years is subject to the availability of funds and progress of the applicant in meeting the objectives of the cooperative agreement.

Information

Information regarding the business aspects of this project may be obtained from Terry C. Maricle, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, (404) 842-6575 or FTS 236-6575.

Information regarding the technical aspects of this project may be obtained from Robert A. Smith, Ph.D., Division of Chronic Disease Control, Center for Environmental Health and Injury Control, at (404) 488-4390 or FTS 236-4390.

Dated: August 26, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-19892 Filed 8-31-88; 8:45 am]

BILLING CODE 4160-18-M

Change in Meeting; Subcommittee on Health Care; National Committee on Vital and Health Statistics

ACTION: Notice of change in National Committee on Vital and Health Statistics Subcommittee on Health Care Statistics meeting.

Federal Register Citation of Previous Announcement: 53 FR 30871.

Previously Announced Date and Time of the Meeting:

9:00 a.m.-5:00 p.m.—September 14, 1988
9:00 a.m.-1:00 p.m.—September 14, 1988

Change in the Meeting: The Subcommittee will meet on September 15, 1988, 9:00 a.m.-5:00 p.m. only. It will not meet on September 14.

Dated: August 29, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 88-19984 Filed 8-31-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88N-0309]

Drug Export; PTS Cough Syrup

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pennwalt Corp., has filed an application requesting approval for the export of the human drug PTS Cough Syrup to Japan.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Pennwalt Corp., Pharmaceutical Division, Jefferson Rd., Rochester, NY 14623, has filed an application requesting approval for the export of the human drug PTS Cough Syrup, to Japan. This product is to be used for cough relief. The application was received and filed in the Center for Drug Evaluation and Research on August 22, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 12, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 381)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 25, 1988.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-19914 Filed 8-31-88; 8:45 a.m.]

BILLING CODE 4160-01-M

Office of Human Development Services

[Program Announcement No. ACYF-HS 13.600-88-2]

Administration for Children, Youth and Families Head Start Bureau

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (HHS).

ACTION: Announcement of financial assistance to expand enrollment in current Head Start projects.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth, and Families announces that competing applications will be accepted to expand enrollment in current Head Start projects.

DATE: The closing date for receipt of applications is November 15, 1988. Address Applications to: Head Start Expansion, Office of Human Development Services, Grants and Contracts Management Division, Room 341F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Doug Klafehn (202) 755-0590

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Scope of This Program Announcement

This announcement solicits applications from current Head Start grantees that wish to compete for up to $10,000,000 in grants that are available for Head Start expansion. It is expected that this expansion effort will result in an additional 3,850 children being served in Head Start programs.

This year, special emphasis will be placed on encouraging new, expanded, or improved cooperation with other child care or social service providers in the community and on reaching out to those children and families that have especially compelling needs for Head Start.

B. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves approximately 450,000 children through a network of 1,300 grantees.

While Head Start is targeted primarily on children whose families have incomes at or below the poverty line or are eligible for public assistance, OHDS' policy permits up to 10 percent of the Head Start children in local programs to be from families who do not meet these low income criteria. The Head Start statute also requires that a minimum of 10 percent of enrollment opportunities in each State be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-handicapped peers, and to receive needed special education and related services.

C. Statutory and Regulatory Authority

The Head Start program is authorized by the Head Start Act, 42 U.S.C. 9831 *et seq.*

The relevant regulations are:

- 45 CFR Part 1301, Head Start grants administration.
- 45 CFR Part 1302, Policies and procedures for selection, initial funding, and refunding of Head Start grantees, and for selection of replacement grantees.
- 45 CFR Part 1303, Procedures for appeals for Head Start delegate agencies, and for opportunities to show cause and hearings for Head Start grantees.
- 45 CFR Part 1304, Program performance standards for operation of Head Start programs by grantees and delegate agencies.
- 45 CFR Part 1305, Eligibility requirements and limitations for enrollment in Head Start.
- 45 CFR Part 74, Administration of grants.

D. Available Funds

Pending the availability of funds, Head Start plans to make available up to $10,000,000 to expand Head Start enrollment. ACYF expects to award all of these funds to successful applicants responding to this announcement. The estimated amount of funds available to each State for expansion is included in Appendix A. In those States which have at least $50,000 earmarked for expansion (sufficient monies to permit the funding of at least one additional classroom), applicants will compete against other applicants from the same State. In States where there is less than $50,000 available for expansion, all available funds have been pooled and applicants from these States will compete against each other.

E. Eligible Applicants

Only current Head Start grantees can apply for funding under this announcement. Delegate agencies are not eligible.

Part II. Specific Responsibilities

A. Responsibilities of the Head Start Grantees

In carrying out the proposed expansion of Head Start services under this announcement, grantees who are funded will be expected to:

1. Select appropriate areas for recruitment of new enrollees which will assure the provisions of service to those families and children who have the most serious needs for Head Start services. Recruitment areas may be either areas that are currently unserved or areas that are partially served but need additional services.

2. Give priority to serving three to five year old children for whom public school or pre-kindergarten comprehensive developmental services are not available. For example, it is not expected that applicants would propose serving five-year-old children in communities where kindergarten is available for these children.

3. For applications proposing a center-based program, provide a minimum of three and one-half hours of service per day, 4 or 5 days per week, for 128 days per year, during a minimum of 32 weeks of operation. These minimum days of operation are exclusive of holidays and vacations.

For applications proposing a home-based option, provide a minimum of one 90 minute home visit each week and two three and one-half hour socialization experiences each month during a minimum of 32 weeks of operation.

4. Provide for the involvement of parents and other community members and organizations in the development and planning of the application.

5. Implement the increase in enrollment in a timely and efficient manner. This would include such things as the availability of classroom space which meets all licensing requirements, the ability to provide adequate transportation, the ability to recruit eligible children and families, and the applicant's current ability to assure full enrollment in its program.

6. Hire classroom teachers who have received appropriate training or have experience in early childhood education, and provide opportunities for employment of residents from the service area.

7. Propose reasonable start-up costs and provide quality ongoing services at a reasonable cost.

B. Recipient Share of the Project

Section 640(b) of the Head Start Act requires that at least 20 percent of the total cost of Head Start projects come from sources other than the Federal government. The non-Federal share may be in cash or in-kind, fairly evaluated, including facilities, equipment, or volunteer services.

Part III. Criteria for Review and Evaluation of the Grant Application

In considering how the grantee will carry out the responsibilities addressed under Part II of this announcement, competing application for financial assistance will be reviewed and evaluated against the following criteria:

A. Objectives and Need for Assistance (25 points)

The extent to which the applicant demonstrates the need for this assistance, stating the objectives of the program the applicant intends to operate. In explaining the need for assistance, the applicant must explain why the group of children and families proposed for expansion were chosen in

preference to other eligible children and families in the grantee's service area.

It is expected that in choosing which children and families to serve, the applicant will give preference to enrolling those children and families most in need of a Head Start experience. It is also expected that the applicant will not propose to serve children who could be served by the public school system. The applicant may include supporting documentation or testimonies from other concerned community organizations. Applicants must demonstrate that the proposed program is consistent with the needs of the participants and the community proposed to be served.

B. Results or Benefits Expected (25 points)

In response to the community needs identified above, applicants should indicate how the participants and the community will benefit from the services provided. All proposed programs must be consistent with Head Start goals and the required performance standards for local Head Start programs.

If appropriate, applicants should also explain the beneficial impact the proposed expansion would have on the current Head Start program. This could, for example, include benefits that will flow to current Head Start enrollees from working more closely with other service providers or improvements in overall program efficiency and management, such as better or more efficient use of current staff, that would result from an increase in enrollment.

C Approach (25 points)

In accordance with applicable performance standards and ACYF policies, the applicant should outline a plan of action pertaining to the increased number of children to be served and the scope and detail of how the proposed program will be implemented. Applicants are expected to show what type of cooperative arrangements have been made with other public or private agencies which will assist the applicant in providing quality Head Start services. This may include, but is not limited, to, the securing of funds from non-ACYF sources to permit programs to either serve additional children or to better serve those additional children funded by ACYF. Applicants could, for example, propose to provide a part day program to Head Start children and families using ACYF funds and to extend the part day program to accomodate working parents using funds provided by non-ACYF sources.

Applicants should cite factors which might accelerate or decelerate implementation and discuss the reasons for proposing one Head Start program option as opposed to others. Applicants should describe any unusual features of the project and also should address parent and community participation.

D. Geographic Location (15 points)

Applicants should explain why the proposed service area has been chosen as opposed to other areas within the grantee's service area. This should include demographic information on the socio-economic conditions of the residents of the proposed service area. Applicants should include a map of their service area and indicate on the map the location of the grantee, delegate agencies, and all centers, both current and proposed.

E. Budget Appropriateness and Reasonableness (10 points)

Applicants should demonstrate that the project's costs are reasonable in view of the anticipated results and in comparison to the applicant's current costs. Reasonableness will be judged, in part, on the extent to which the applicant is able to secure other resources in the community which will help support the proposed expansion in enrollment.

Part IV. The Application Process

A. Availability of Forms

Head Start grantees interested in applying for funds may request application kits from Doug Klafehn, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, ((202) 755–0590).

In order to be considered for a Head Start grant, an application must be submitted on Standard Form 424 which has been approved by the Office of Management and Budget (OMB) under Control Number 0348–0006.

Each application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions contained in the application kit.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Head Start Expansion, Office of Human Development Services, Grants and Contracts Management Division, Room 341F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. The program announcement number (ACYF–HS 13600–88–2) must be clearly identified on the application.

C. Application Consideration

Applicants will be scored against the evaluation criteria outlined in Section III. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about the Head Start program and early childhood education and development, including parents of Head Start children, Federal staff, and other experts, such as university staff or staff of child development projects.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with ACYF regional officials, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on relative need, applicant ranking, and funds available.

The Commissioner may elect not to fund any applicants that have management, fiscal, or other problems and situations which make it unlikely that they would be able to provide effective Head Start services to additional children. For example, this might apply to an applicant which has had large, chronic balances of unobligated funds due to poor management, or one that has failed to serve children in agreed upon numbers. Also, the Commissioner may decide not to fund projects which would require unreasonably large initial start-up costs for facilities or equipment. In addition, ACYF will assess the quality of programs recommended for increased funding, using information from the Program Information Report, on-site reviews, cost study, etc., prior to making final funding decision. Programs experiencing problems in providing quality services may not be chosen to receive expansion funding.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided.

D. Closing Date for Receipt of Applications

The closing date for the receipt of applications is November 15, 1988.

1. *Mailed Applications.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the HDS Grants and Contracts Management Office, or

b. Sent on or before the deadline date, and received by the granting agency in time for them to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the HDS Grants and Contracts Management Office during the normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

3. *Late Applications.* Applications which do not meet one of these criteria are considered as late applications and will not be considered in this competition.

4. *Extension of deadline.* The Head Start Bureau may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mail. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval and reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications under OMB Control Number 0980–0016.

F. Executive Order 12372—Notification Process

This program is covered under Excutive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Minnesota, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs).

Applicants from these areas need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as nearly as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a.

SPOCs have 60 days from the application deadline date to comment on applications submitted under this announcement. Therefore, the comment period for State processes will end on January 17, 1989, to allow time for HDS to review, consider, and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independent Avenue SW., Room 341F, Hubert H. Humphrey Building, Washington, DC 20201. HDS will notify the State of any applications received which has no indication that the State process has had an opportunity for review.

A list of single points of contact for each State and territory is included at Appendix B at the end of this announcement.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: August 12, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: August 24, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Appendix A

State Allocations

I. Estimated funding levels for those States having at least $50,000 for expansion:

Alabama	$56,000
Arkansas	137,000
California	1,496,000
Connecticut	56,000
Delaware	51,000
Florida	572,000
Georgia	190,000
Illinois	326,000
Indiana	229,000
Iowa	129,000
Kentucky	101,000
Louisiana	341,000
Maine	61,000
Maryland	277,000
Michigan	223,000
Missouri	200,000
New Jersey	237,000
New York	446,000
N. Carolina	289,000
Ohio	318,000
Oregon	73,000
Pennsylvania	187,000
Puerto Rico	915,000
Rhode Island	57,000
S. Carolina	309,000
Tennessee	260,000
Texas	162,000
Washington	199,000
W. Virginia	64,000
Wisconsin	100,000
Indians	765,000
Migrants	621,000

II. States having less than $50,000:

Alaska, Arizona, Colorado, District of Columbia, Idaho, Kansas, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Outer Pacific, South Dakota, Utah, Vermont, Virginia, Virgin Islands, Wyoming.

Applicants in these States may compete for some portion of the "pooled funds" available. The total funding for these States is $403,000.

III. Administrator's Reserve:

A reserve of $150,000 will be used to supplement the funds available in those States where funds would not permit enrollment increases that were programmatically sound (e.g. 17 children per class).

Appendix B

State Single Point of Contract Address list

ALABAMA
Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939 Tel. (205) 284–8905

ALASKA
None

ARIZONA
Department of Commerce, State of Arizona.

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007. Tel. (602) 255–5004.

ARKANSAS
Joe Gillesbie Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203 Tel. (501) 371–1074

CALIFORNIA
Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814 Tel. (916) 323–7480

COLORADO
State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203. Tel. (303) 866–2156

CONNECTICUT
Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459. Tel. (203) 566–3410.

DELAWARE
Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth. Tel. (302) 736–4204

FLORIDA
Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301. Tel. (904) 488–8114

GEORGIA
Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW—Room 608, Atlanta, Georgia 30334. Tel. (404) 656–3855

HAWAII
Roger A. Ulveling, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804
For Information Contact: Hawaii State Clearinghouse. Tel. (808) 548–3016 or 548–3085

IDAHO
None

ILLINOIS
Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706. Tel. (217) 782–8639

INDIANA
Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204. Tel. (317) 232–5604

IOWA
A. Thomas Wallace, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue. Tel. (515) 281–3864

KANSAS
Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Room 152-E, State Capitol Building, Topeka, Kansas 66612. Tel. (913) 296–2436

KENTUCKY
Bob Leonard, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Tel. (502) 564–2382.

LOUISIANA
Colby S. La Place, Assistant Secretary, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804. Tel. (504) 342–9790

MAINE
State Planning Office, Attn: Intergovernmental Review Process/ Hal Kimbal, State House Station #38, Augusta, Maine 04333. Tel. (207) 289–3154

MARYLAND
Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365. Tel. (301) 225–4490

MASSACHUSETTS
Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202. Tel. (617) 727–3253

MICHIGAN
Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909. Tel. (517) 373–3530
Staff Contact: Don Bailey. Tel. (517) 334–6190

MINNESOTA
None

MISSISSIPPI
Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202
For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy. Tel. (601) 359–3150

MISSOURI
Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809—Room 760, Truman Building, Jefferson City, Missouri 65102. Tel. (314) 751–4834

MONTANA
Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620. Tel. (406) 444–5522

NEBRASKA
None

NEVADA
Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710. Tel. (702) 885–4420

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator. Tel. (702) 885–4420.

NEW HAMPSHIRE
David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301. Tel. (603) 271–2155

NEW JERSEY
Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803 Tel. (609) 292–6613

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803. Tel. (609) 292–9025.

NEW MEXICO
Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503. Tel. (505) 827–3885

NEW YORK
Director of the Budget, New York State

Note: Correspondence & questions concerning the State's E.O. 12372 process should be directed to: Harold W. Juhre Jr., New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224. Tel. (518) 474–1605.

NORTH CAROLINA
Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611. Tel. (919) 733–4131

NORTH DAKOTA
Bill Robinson, Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505. Tel. (701) 224–2094

OHIO
State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215
For Information Contact: Mr. Leonard E. Roberts, Deputy Director. Tel. (614) 466–0699

OKLAHOMA
Don Strain, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116. Tel. (405) 843–9770

OREGON
Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street NE., Salem, Oregon 97310. Tel. (503) 373–1998

PENNSYLVANIA
Laine A. Helterbridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108. Tel. (717) 783–3700

RHODE ISLAND
Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907. Tel. (401) 277–2656

Note: Questions & correspondence concerning this State's review process should be directed to: Mr. Michael T. Marfeo, Review Coordinator.

SOUTH CAROLINA
Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201. Tel. (803) 734–0435

SOUTH DAKOTA
Sue Korte, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501. Tel. (605) 773–3661

TENNESSEE
Charles Brown, Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219. Tel. (615) 741–1676

TEXAS
Leon Willhite, State Planning Director, Office of the Governor, P.O. Box 13561, Capitol Station, Austin, Texas 78711

Note: Questions concerning this State's review process should be directed to: Intergovernmental Relations Division. Tel. (512) 463–1814.

UTAH
Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114. Tel. (801) 533–5245

VERMONT
State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602. Tel. (802) 828–3326.

VIRGINIA
Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219. Tel. (804) 786–4474

WASHINGTON
Washington Department of Community Development. ATTN: Washington Intergovernmental Review process, Dori Goodrich, Coordinator, Ninth and Columbia Building, Olympia, Washington 98504–4151. Tel. (206) 586–1240

WEST VIRGINIA
Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305. Tel. (304) 348–4010

WISCONSIN
Secretary James R. Krauser, Wisconsin Department of Administration, 101 South Webster—GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864. Tel. (608) 266–1741

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864. Tel. (608) 266–8349.

WYOMING
Ann Redman, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002. Tel. (707) 777–7574

VIRGIN ISLANDS
Toya Andrew, Federal Programs Coordinator, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801. Tel. (809) 774–6517

DISTRICT OF COLUMBIA
Lovetta Davis, D.C. State Single Point of Contact for E.O. 12372, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004. Tel. (202) 727–9111

PUERTO RICO
Ms. Patricia G. Custodio, P.E., Chairman and Isael Soto Marrero, Director, Federal Proposal Review Office, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985. Tel. (809) 727–4444

NORTHERN MARIANA ISLANDS
Planning and Budget Office, Office of the Governor, Saipan, CM 97950

AMERICAN SAMOA
None

GUAM
Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910

[FR Doc. 88–19891 Filed 8–31–88; 8:45 am]
BILLING CODE 4130–01–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, October 24–25, 1988, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. on October 24 to adjournment on October 25. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Eugene R. Passamani, M.D., Director, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 416, Federal Building, Bethesda, Maryland 20892, (301) 496–2553, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: August 23, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19868 Filed 8–31–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–730503

Applicant: San Diego Zoo—Center for Reproduction of Endangered Species, San Diego, CA

The applicant requests a permit to import cell lines taken from wild black rhinoceroses (*Diceros bicornis*) in South Africa. The cell lines have already been taken and established at the University of Cape Town, Department of Chemical Pathology. They are to be imported for the purpose of genetic research to enhance propagation and aide in future management of the species in the wild in captivity.

PRT–730495

Applicant: David F. Bilbie, Ann Arbor, MI

The applicant requests a permit to purchase one pair of captive-hatched Hawaiian (=nene) geese (*Nesochen* (=*Branta*) *sandvicensis*) from Mike Lubbock, Sylvan Heights Waterfowl, Sylva, North Carolina, for the purpose of enhancement of propagation.

PRT–730498

Applicant: McRoberts Game Farm, Inc., Gurley, NE

The applicant requests a permit to import one captive-born female Prezewalski's horse (*Equus przesalskii*) from Polar Park, Alberta, Canada, for the purpose of enhancement of propagation.

PRT–730509

Applicant: Sedgewick County Zoo, Wichita, KS

The applicant requests a permit to purchase in interstate commerce one wild-caught male Darwin's rhea (*Pterocnemia pannata*), imported by International Animal Exchange, Ferndale, Michigan, for the purpose of enhancement of propagation.

PRT–730563

Applicant: New York University Medical Center, LEMSIP, Tuxedo, NY

The applicant requests a permit to export or reexport 2 males and 1 female captive white handed gibbons (*Hylobates lar*) of unknown origin to Tiergarten Heidelberg, Heidelberg, West Germany for the purpose of exhibit and propagation.

PRT–730601

Applicant: Gerald Persinger, Grand Island, NB

The applicant requests a permit to purchase in interstate commerce 3 male and 2 female captive-born Hawaiian geese (*Nesochen* (=*Branta*) *sandvicensis*) from Rex Lamb, Carrolton, Missouri for propagation.

PRT–730558

Applicant: Richard Eberle, Stillwater, OK

The applicant requests a permit to import serum samples taken from captive gorillas (*Gorilla gorilla*), Orangutans (*Pongo pyqmaeus*) and gibbons (*Hylobates* species) from Calgary Zoo, Calgary, Canada and Metro Toronto Zoo, Toronto, Canada for scientific research. The serum will be analysed for unknown non-human primate herpesviruses.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: August 19, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–19882 Filed 8–31–88; 8:45 am]

BILLING CODE 4310–AN–M

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe

August 18, 1988.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Choinumni Council, c/o Anna Alec, 2428 South Cedar Avenue, Fresno, California 93725, has filed a petition for acknowledgement by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on July 14, 1988, and was signed by members of the group's governing body.

This is notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgement and Research, Mail Stop 4627–MIB, 18th and C Streets NW., Washington, DC 20240, Phone: (202) 343–3592.

Ralph R. Reeser,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–19899 Filed 8–31–88; 8:45 a.m.]

BILLING CODE 4310–02–M

Indian Tribes Performing Law Enforcement Functions

August 18, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of determination.

SUMMARY: Section 901(a)(3) of Title 2 of the Omnibus Crime Control and Safe

Streets Act of 1968, Pub. L. 90–351, as added by Pub. L. 96–157 and as amended by the Justice Assistance Act of 1984, Pub. L. 98–473, places responsibility on the Secretary of the Interior to determine those Indian tribes which perform law enforcement functions.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: James P. Donovan, Chief, Division of Law Enforcement Services at (202) 343–5786 (FTS: 343–5786).

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The listing below identifies all eligible Indian tribes and the specific law enforcement functions they have responsibility to exercise. Determination by the Secretary concerning Indian tribes not listed below will be made on an individual basis upon application by such tribes under provisions of the Act to the Bureau of Justice Assistance of the Department of Justice.

The following Indian tribes have been determined by the Secretary of the Interior to be performing law enforcement functions in the categories listed below.

This notice supersedes the notice published on page 13758 of the May 25, 1973, **Federal Register** (38 FR 13758) and amended on page 42392 of the December 5, 1974, **Federal Register** (39 FR 42392); page 17870 of the April 23, 1975, **Federal Register** (40 FR 17870); page 20656 of the May 12, 1975, **Federal Register** (40 FR 20656); page 22152 of the May 21, 1975, **Federal Register** (40 FR 22152); page 43932 of the September 24, 1975, **Federal Register** (40 FR 43932); page 54450 of the November 24, 1975, **Federal Register** (40 FR 54450); page 56698 of the December 4, 1975, **Federal Register** (40 FR 56698); page 27095 of the July 1, 1976, **Federal Register** (41 FR 27095); page 43924 of the October 5, 1976, **Federal Register** (41 FR 43924); page 28007 of the June 1, 1977, **Federal Register** (42 FR 28007); page 28937 of the June 6, 1977, **Federal Register** (42 FR 28937); page 36895 of the July 18, 1977, **Federal Register** (42 FR 36895); page 39479 of the August 4, 1977, **Federal Register** (42 FR 39479); page 16426 of the April 18, 1978, **Federal Register** (43 FR 16426); page 20280 of the May 11, 1978, **Federal Register** (43 FR 20280); page 57353 of the December 7, 1978, **Federal Register** (43 FR 57353); page 18563 of the March 28, 1979, **Federal Register** (44 FR 18563); page 48825 of the August 20, 1979, **Federal Register** (44 FR 48825); page 26825 of the April 21, 1980, **Federal Register** (45 FR 26825); page 26826 of the April 21, 1980, **Federal Register** (45 FR 26826); page 50424 of the July 29, 1980, **Federal Register** (45 FR 50424); and page 5–2460 of the August 7, 1980, **Federal Register** (45 FR 52460).

This notice additionally provides a list of Indian tribes who reside on Indian reservations or Indian owned lands subject to partial or full state criminal jurisdiction pursuant to Pub. L. 83–280, 18 U.S.C. section 1162, as amended by 25 U.S.C. 1321–1326, or other similar Federal legislation.

Ralph R. Reeser,

Acting Assistant Secretary—Indian Affairs.

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83–280 jurisdiction or similar legislation
ALABAMA							
Poarch Band of Creek Indians	X	X	X	X	X	X	
ARIZONA [1]							
AK Chin Community	X	X	X	X	X	X	
Cocopah Tribe	X	X	X	X	X	X	
Colorado River Tribe	X	X	X	X	X	X	
Fort McDowell Mohave-Apache	X	X	X	X	X	X	
Fort Mojave Tribe	X	X	X	X	X	X	
Gila River Pima-Maricopa	X	X	X	X	X	X	
Havasupai Tribe	X	X	X	X	X	X	
Hopi Tribe	X	X	X	X	X	X	
Hualapai Tribe	X	X	X	X	X	X	
Kaibab Paiute Band	X	X	X	X	X	X	
Navaho Tribe	X	X	X	X	X	X	
Papago Tribe	X	X	X	X	X	X	
Pascua Yaqui Tribe	X	X	X	X	X	X	
Salt River Pima-Maricopa	X	X	X	X	X	X	
San Carlos Apache Tribe	X	X	X	X	X	X	
Tonto Apache	X	X	X	X	X	X	
White Mountain Apache Tribe	X	X	X	X	X	X	
Yavapai Apache	X	X	X	X	X	X	
Yavaai-Prescott Tribe	X	X	X	X	X	X	
COLORADO							
Southern Ute Tribe [2]	X	X	X	X	X	X	X
Ute Mountain Tribe	X	X	X	X	X	X	
CONNECTICUT [3]							
Mashantucket Pequot Tribe							X
FLORIDA [4]							
Miccosukee Tribe	X	X	X	X	X	X	X
Seminole Tribe—Dania	X	X	X	X	X	X	X
Seminole Tribe—Big Cypress	X	X	X	X	X	X	X
Seminole Tribe—Brighton	X	X	X	X	X	X	X
IDAHO [5]							
Coeur D'alene Tribe	X	X	X	X	X	X	X
Duckwater Shoshone Tribe	X	X	X	X	X	X	X
Kootenai Tribe	X	X	X	X	X	X	X
Nez Perce Tribe	X	X	X	X	X	X	X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Shoshone-Bannock Tribe	X	X	X	X	X	X	X
IOWA [6]							
Sac and Fox Tribe							X
KANSAS [7]							
Kickapoo Tribe					X	X	X
Prairie Potawatomi Band					X	X	X
Sac and Fox Tribe (Kansas & Nebraska).					X	X	X
Iowa					X	X	X
LOUISIANA							
Coushatta Tribe	X	X	X	X	X	X	
Tunica-Biloxi Tribe							
Chitimacha Tribe					X	X	
MAINE [8]							
Houlton Band							X
Passamaquoddy Tribe	X	X	X	X	X	X	X
Penobscott Tribe	X	X	X	X	X	X	X
MICHIGAN							
Bay Mills Community	X	X	X	X	X	X	
Grand Traverse (Ottawa and Chippewa).	X	X	X	X	X	X	
Hannahville Community	X	X	X	X	X	X	
Keweenaw Bay Community	X	X	X	X	X	X	
Saginaw Chippewa Indian Tribe	X	X	X	X	X	X	
Sault Ste. Marie Tribe	X	X	X	X	X	X	
MINNESOTA [9]							
Lower Sioux Community		X	X		X	X	X
Bois Forte Band (Nett Lake—Minnesota Chippewa).	X	X	X	X	X	X	
Fond du Lac Band (Minnesota Chippewa).		X	X		X	X	X
Grand Portage Band (Minnesota Chippewa).		X	X		X	X	X
Leech Lake (Minnesota Chippewa)		X	X		X	X	X
Mille Lac Band (Minnesota Chippewa)		X	X		X	X	X
White Earth Band (Minnesota Chippewa).		X	X		X	X	X
Prairie Island Community		X	X		X	X	X
Red Lake Band	X	X	X	X	X	X	
Skakopee Mdewakanton Sioux Community (Prior Lake).							X
Upper Sioux Indian Community							X
MISSISSIPPI							
Mississippi Choctaw Band	X	X	X	X	X	X	
MONTANA [10]							
Backfeet Tribe	X	X	X	X	X	X	
Crowe Tribe	X	X	X	X	X	X	
Flathead (Salish and Kootenai Tribes)	X	X	X	X	X	X	X
Fort Peck (Assiniboine and Sioux Tribes).	X	X	X	X	X	X	
Fort Belknap Indian Community	X	X	X	X	X	X	
Northern Cheyenne Tribe	X	X	X	X	X	X	
Rocky Boy (Chippewa-Cree Indians)	X	X	X	X	X	X	
NEBRASKA [11]							
Iowa Tribe							
Omaha Tribe	X	X	X	X	X	X	
Sac and Fox Tribe							
Santee Sioux Tribe	X	X	X	X	X	X	X
Winnebago Tribe	X	X	X	X	X	X	
NEVADA [12]							
Duckwater Shoshone Tribe	X	X	X	X	X	X	
Ely Indian Colony	X	X	X	X	X	X	
Fallon Paiute-Shoshone Tribe	X	X	X	X	X	X	
Fort McDermitt Paiute & Shoshone Tribe.	X	X	X	X	X	X	
Fort Mojave Tribe	X	X	X	X	X	X	
Goshute Confederated Tribes	X	X	X	X	X	X	
Las Vegas Tribe of Paiute Indians	X	X	X	X	X	X	
Lovelock Paiute Tribe	X	X	X	X	X	X	
Moapa Band of Paiute Indians	X	X	X	X	X	X	
Pyramid Lake Paiute Tribe	X	X	X	X	X	X	

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Reno-Sparks Colony	X	X	X	X	X	X	
Summit Lake Paiute Tribe	X	X	X	X	X	X	
Te-Moak Bands of Western Shoshone Indians of the Battle Mountain, Elko & South Fork Colonies.	X	X	X	X	X	X	
Walker River Paiute Tribe	X	X	X	X	X	X	
Washoe Tribe	X	X	X	X	X	X	
Winnemucca Colony	X	X	X	X	X	X	
Yerington Paiute Tribe							
Yomba Shoshone Tribe	X	X	X	X	X	X	
NEW MEXICO							
Jicarilla Apache Tribe	X	X	X	X	X	X	
Mescalero Apache Tribe	X	X	X	X	X	X	
Navajo Tribe	X	X	X	X	X	X	
Pueblo of Acoma	X	X	X	X	X	X	
Pueblo of Cochiti	X	X	X	X	X	X	
Pueblo of Isleta	X	X	X	X	X	X	
Pueblo of Jemez	X	X	X	X	X	X	
Pueblo of Laguna	X	X	X	X	X	X	
Pueblo of Nambe	X	X	X	X	X	X	
Pueblo of Picuris	X	X	X	X	X	X	
Pueblo of Pojoaque	X	X	X	X	X	X	
Pueblo of San Felipe	X	X	X	X	X	X	
Pueblo of San Ildefonso	X	X	X	X	X	X	
Pueblo of San Juan	X	X	X	X	X	X	
Pueblo of Sandia	X	X	X	X	X	X	
Pueblo of Santa Ana	X	X	X	X	X	X	
Pueblo of Santa Clara	X	X	X	X	X	X	
Pueblo of Santo Domingo	X	X	X	X	X	X	
Pueblo of Taos	X	X	X	X	X	X	
Pueblo of Tesuque	X	X	X	X	X	X	
Pueblo of Zia	X	X	X	X	X	X	
Zuni Tribe	X	X	X	X	X	X	
NEW YORK [13]							
Cayuga Nation					X	X	X
Oneida Nation					X	X	X
Onondaga Nation					X	X	X
Seneca Nation	X	X	X	X	X	X	X
St. Regis Mohawk Band	X	X	X	X	X	X	X
Tonawanda Seneca Band					X	X	X
Tuscarora Nation					X	X	X
NORTH CAROLINA							
Eastern Band of Cherokees	X	X	X	X	X	X	X
NORTH DAKOTA							
Devils Lake Sioux Tribe	X	X	X	X	X	X	
Three Affiliated Tribes (Fort Berthold)	X	X	X	X	X	X	
Turtle Mountain Chippewa Band	X	X	X	X	X	X	
Standing Rock Sioux	X	X	X	X	X	X	X
OKLAHOMA							
Absentee-Shawnee Tribe	X	X	X	X	X	X	
Alabama-Quassarte Tribal Town of the Creek Nation.					X	X	
Apache Tribe of Oklahoma	X	X	X	X	X	X	
Caddo Tribe					X	X	
Cherokee Nation					X	X	
Cheyenne-Arapaho Tribe	X	X	X	X	X	X	
Chickasaw Nation					X	X	
Choctaw Nation					X	X	
Citizen Band of Potawatomi Indians	X	X	X	X	X	X	
Comanche Indian Tribe	X	X	X	X	X	X	
Creek Nation					X	X	
Delaware Tribe					X	X	
Eastern Shawee Tribe					X	X	
Fort Sill Apache Tribe					X	X	
Iowa Tribe					X	X	
Kaw Indian Tribe					X	X	
Kialegee Tribal Town of the Creek Indian Nation.							
Kickapoo Tribe					X	X	
Kiowa Tribe	X	X	X	X	X	X	
Miama Tribe					X	X	
Modoc Tribe					X	X	
Osage Tribe					X	X	
Ottawa Tribe					X	X	

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Otoe-Missouria Tribe	X	X	X	X	X	X	
Pawnee Indian Tribe	X	X	X	X	X	X	
Peoria Tribe					X	X	
Ponca Tribe					X	X	
Quapaw Tribe					X	X	
Sac and Fox Tribe	X	X	X	X	X	X	
Seminole Nation					X	X	
Seneca-Cayuga Tribe					X	X	
Thlopthlocco Tribal Town of the Creek Indian Nation.					X	X	
Tonkawa Tribe					X	X	
United Keetoowah Band of Cherokee Indians.					X	X	
Wichita Indian Tribe					X	X	
Wyandotte Tribe					X	X	
OREGON [15]							
Burns Paiute Colony	X	X	X	X	X	X	
Coos, Lower Umpqua and Siuslaw Tribes.	X	X	X	X	X	X	X
Cow Creek Band of Umpqua Indians	X	X	X	X	X	X	X
Grand Ronde Community Tribes	X	X	X	X	X	X	X
Siletz Tribes	X	X	X	X	X	X	X
Umatilla Tribes	X	X	X	X	X	X	
Warm Springs Tribes	X	X	X	X	X	X	
RHODE ISLAND [15]							
Narragansett Tribe					X	X	X
SOUTH DAKOTA							
Cheyenne River Sioux Tribe	X	X	X	X	X	X	
Crow Creek Sioux Tribe	X	X	X	X	X	X	
Flandreau Santee Sioux Tribe	X	X	X	X	X	X	
Lower Brule Sioux Tribe	X	X	X	X	X	X	
Oglala Sioux Tribe	X	X	X	X	X	X	
Rosebud Sioux Tribe	X	X	X	X	X	X	
Sisseton-Wahpeton Sioux Tribe	X	X	X	X	X	X	
Standing Rock Sioux Tribe	X	X	X	X	X	X	
Yanton Sioux Tribe	X	X	X	X	X	X	
TEXAS [16]							
Kickapoo Band					X	X	X
UTAH							
Northwestern Band of Shoshone Indians (Washakie).							
Paiute Indian Tribe							
Skull Valley Goshute Band					X	X	
Ute Tribe (Uintah and Ouray)	X	X	X	X	X	X	
WASHINGTON [17]							
Chehalis Tribes	X	X	X	X	X	X	X
Colville Tribes	X	X	X	X	X	X	X
Hoh Indian Tribe	X	X	X	X	X	X	X
Jamestown Clallam Band	X	X	X	X	X	X	X
Kalispel Indian Community	X	X	X	X	X	X	X
Lower Elwha Tribal Community	X	X	X	X	X	X	X
Lummi Tribe	X	X	X	X	X	X	X
Makah Indian Tribe	X	X	X	X	X	X	X
Muckleshoot Indian Tribe	X	X	X	X	X	X	X
Nisqually Indian Community	X	X	X	X	X	X	X
Nooksack Indian Tribe	X	X	X	X	X	X	X
Port Gamble Indian Community	X	X	X	X	X	X	X
Puyallup Tribe	X	X	X	X	X	X	X
Quileute Tribe	X	X	X	X	X	X	X
Quinault Tribe	X	X	X	X	X	X	X
Sauk-Suiattle Indian Tribe	X	X	X	X	X	X	X
Shoalwater Bay Tribe	X	X	X	X	X	X	X
Skokomish Indian Tribe	X	X	X	X	X	X	X
Spokane Tribe	X	X	X	X	X	X	X
Squaxin Island Tribe	X	X	X	X	X	X	X
Stillaquamish Tribe	X	X	X	X	X	X	X
Sauquamish Indian Tribe	X	X	X	X	X	X	X
Swinomish Indian Tribe	X	X	X	X	X	X	X
Tulalip Tribes	X	X	X	X	X	X	X
Upper Skagit Indian Tribe	X	X	X	X	X	X	X
Yakima Indian Nation	X	X	X	X	X	X	X
WISCONSIN [18]							
Bad River Band	X	X	X	X	X	X	X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Forest County Potawatomie Community.			X		X	X	X
Lac Courte Oreilles Band							X
Lac du Flambeau Band		X	X		X	X	X
Menominee Tribe	X	X	X	X	X	X	
Oneida Tribe							X
Red Cliff Band	X	X	X	X	X	X	X
Sokoagon Chippewa Community							X
St. Croix Chippewa							X
Stockbridge-Munsee Community		X	X		X	X	X
Wisconsin Winnebago Tribe							X
WYOMING							
Arapahoe Tribe (Wind River)	X	X	X	X	X	X	
Shoshone Tribe (Wind River)	X	X	X	X	X	X	
ALASKA [19]							
Akiihiok, Native Village of Akiihiok							X
Akiachak, Native Village of Akiachak							X
Akiak Native Community	X	X		X	X		X
Akutan, Native Village of Akutan							X
Alakanuk, Village of Alakanuk	X	X		X	X		X
Alatna Village							X
Alegnagik, Village of Alegnagik							X
Allakaket Village							X
Ambler, Village of Ambler							X
Anaktuvuk Pass, Village of Anaktuvuk Pass.	X	X		X	X		X
Angoona Community Association	X	X		X	X		X
Aniak, Village of Aniak							X
Anvik Village	X	X		X	X		X
Artic Village							X
Atka, Native Village of Atka							X
Atkasook Village							X
Atmauthluak, Village of Atmauthlauk							X
Barrow Native Village (Point Barrow)	X	X		X	X		X
Beaver Village							X
Belkofsky, Native Village of Belkofsky							X
Bethel Native Village	X	X		X	X		X
Betties Field/Evansville Village							X
Birch Creek Village							X
Brevig Mission Village							X
Buckland, Native Village of Buckland	X	X		X	X		X
Cantwell, Native Village of Cantwell							X
Chalkyitsik Village							X
Chanega (Chenega), Native Village of Chanega.							X
Chauthbaluk, Village of Chauathbaluk							X
Chefornak, Village of Chefonak							X
Chevak Native Village							X
Chickaloon Village							X
Chignik, Native Village of Chignik							X
Chignik Lagoon, Native Village of Chignik Loon.							X
Chignik Lake Village							X
Chilkat Indian Village of Klukwan							X
Chilkoot Indian Association of Haines							X
Chistochina, Native Village of Chistochina.							X
Chitina, Native Village of Chitina							X
Circle Village							X
Clark's Point, Village of Clark's Point							X
Copper Center Village							X
Craig Community Association							X
Crooked Creek, Village of Crooked Creek.							X
Deering, Native Village of Deering							X
Dillingham, Native Village of Dillingham.							X
Diomede, Native Village of Diomede (a.k.a. Inalik).							X
Dot Lake, Village of Dot Lake							X
Douglas Indian Association							X
Eagle, Village of Eagle	X	X		X	X		X
Eek, Native Village of Eek	X	X		X	X		X
Egegik Village							X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Eklutna Native Village							X
Ekuk, Native Village of Ekuk							X
Ekwok Village							X
Elim, Native Village of Elim							X
Emmonak Village	X	X		X	X		X
Eyak Native Village							X
False Pass, Native Village of False Pass.							X
Fort Yukon, Native Village of Fort Yukon.							X
Gakona, Native Village of Gakona							X
Galena Village (a.k.a. Louden village)							X
Gambell, Native Village of Gambell	X	X		X	X		X
Golovin, Village of Golovin	X	X		X	X		X
Goodnews Bay, Native Village of Goodnews Bay.	X	X		X	X		X
Grayling, Organized Village of Grayling (a.k.a. Holikachuk).	X	X		X	X		X
Gulkana Village							X
Healy Lake Village							X
Holy Cross Village	X	X		X	X		X
Hoonah Indian Association	X	X		X	X		X
Hooper Bay, Native Village of Hooper Bay.	X	X		X	X		X
Hughes Village							X
Huslia Village	X	X		X	X		X
Hydaburg Cooperative Association							X
Igiugig Village							X
Iliamna, Village of Iliamna							X
Inupiat Community of the Artic Slope							X
Ivanoff Bay Village							X
Kake, Organized Village of Kake	X	X		X	X		X
Kaktovik Village of Barter Island (a.k.a. Barter Island.							X
Kalskag, Village of Kalskag							X
Kanatak, Native Village of Kanatak							X
Karluk, Native Village of Karluk							X
Kasaan, Native Village of Kasaan							X
Kasigluk, Native Village of Kasigluk							X
Kenaitze Indian Tribe							X
Ketchikan Indian Corporation							X
Kiana Village							X
King Cove Village							X
King Island Native Community							X
Kipnuk, Native Village of Kipnuk							X
Kivalina, Native Village of Kivalina	X	X		X	X		X
Klawock Cooperative Association	X	X		X			X
Knik Village							X
Kobuk Village							X
Kohanok Village							X
Kongiganak Native Village							X
Kotlik, Village of Kotlik	X	X		X	X		X
Kotzebue, Native Village of Kotzebue	X	X		X	X		X
Koyuk, Native Village of Koyuk	X	X		X	X		X
Koyukuk Native Village							X
Kwethluk, Organized Village of Kwethluk.							X
Kwigillingok, Native Village of Kwigillingok.							X
Kwinhagak, Native Village of Kwinhagak (a.k.a. Quinhagak).							X
Larsen Bay, Native Village of Larsen Bay.							X
Levelok Village							X
Lime Village							X
Lower Kalskag, Village of Lower Kalskag.							X
Manley Hot Springs Village							X
Manokotak Village	X	X		X	X		X
Marshall, Native Village of Marshall (a.k.a. Fortuna Ledge).							X
McGrath, Native Village of MacGrath							X
Mekoryuk, Native Village of Mekoryuk, Island of Nunivak.							X
Mentasta Village (a.k.a. Mentasta Lake).							X

BEST COPY AVAILABLE

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Metlakatla Indian Community, Annette Islands Reserve, Alaska.	X	X	X	X	X	X	X
Minto, Native Village of Minto							X
Mountain Village, Native Village of Mountain Village.	X	X		X	X		X
Naknek Native Village							X
Napakiak, Native Village of Napakiak							X
Napaskiak Traditional Village	X	X		X	X		X
Nelson Lagoon, Native Village of Nelson Lagoon.							X
Nenana Native Association							X
Newhalen Village	X	X		X	X		X
New Stuyahok Village							X
Newtok Village							X
Nightmute, Native Village of Nightmute							X
Nikolai Village							X
Nikoski, Native Village of Nikoski							X
Noatak, Native Village of Noatak							X
Nome Eskimo Community							X
Nondalton Village							X
Noorvik Native Community	X	X		X	X		X
Northway Village							X
Nulato Village							X
Nunapitchuk, Native Village of Nunapitchuk.							X
Old Harbor, Native Village of Old Harbor.							X
Oscarville, Oscarville Traditional Village							X
Ouzinkie, Native Village of Ouzinkie							X
Pedro Bay Village							X
Perryville, Native Village of Perryville							X
Petersburg Indian Association							X
Pilot Point, Native Village of pilot Point							X
Pilot Station Traditional Village							X
Pitka's Point, Native Village of Pitka's Point.							X
Platinum Traditional Village							X
Point Hope, Native Village of Point Hope.	X	X		X	X		X
Point Law, Native Village of Point Lay							X
Portage Creek Village							X
Port Graham Village							X
Port Heiden, Native Village of Port Heiden.							X
Port Lions, Native Village of Port Lions							X
Prbilof Islands Aleut Communities of St. Paul and St. George Islands.							X
Rampart Village							X
Red Devil, Village of Red Devil							X
Ruby, Native Village of Ruby							X
Russian Mission, Native Village of Russian Mission (Yukon).	X	X		X	X		X
Sand Point Village							X
Savoonga, Native Village of Savoonga							X
Saxman, Organized Village of Saxman	X	X		X	X		X
Scammon Bay, Native Village of Scammon Bay.	X	X		X	X		X
Selawik, Native Village of Selawik	X	X		X	X		X
Shageluk Native Village	X	X		X	X		X
Shakoolik, Native Village of Shaktoolik	X	X		X	X		X
Sheldon's Point, Native Village of Sheldon's Point.							X
Shishmaref, Native Village of Shishmaref.	X	X		X	X		X
Shungnak, Native Village of Shungnak	X	X		X	X		X
Sitka Community Association							X
Sleetmute, Village of Sleetmute							X
South Naknek Village							X
Stebbins Community Association							X
Stevens, Native Village of Stevens							X
Stony River, Village of Stony River							X
St. Mary's Village (a.k.a. Algaaciq)	X	X		X	X		X
St. Michael, Native Village of St. Michael.	X	X		X	X		X
Takotna Village							X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Tanacross, Native Village of Tanacross.							X
Tanana, Native Village of Tanana							X
Tatitlek, Native Village of Tatitlek							X
Tazlina, Native Village of Tazlina							X
Telida Village							X
Teller Native Village	X	X		X	X		X
Tetlin, Native Village of Tetlin							X
Togiak, Traditional Village of Togiak							X
Tlingit and Haida Indians of Alaska							X
Toksook Bay, Native Village of Toksook Bay.							X
Tuluksak Native Community							X
Tuntutuliak, Native Village of Tuntutuliak.							X
Tununak, Native Village of Tununak							X
Twin Hills Village							X
Tyonek, Native Village of Tyonek							X
Ugashik Village							X
Unalakleet, Native Village of Unalakleet.	X	X		X	X		X
Venetie, Native Village of Venetie							X
Wainwright Village	X	X		X	X		X
Wales, Native Village of Wales	X	X		X	X		X
White Mountain, Native Village of White Mountain.	X	X		X	X		X
Wrangell Cooperative Association							X
CALIFORNIA [20]							
Agua Caliente Band of Cahuilla Indians.					X	X	X
Alturas Rancheria of Pit River Indians					X	X	X
Augustine Band of Cahuilla Mission Indians.					X	X	X
Barona Captain Grande Band of Diegueno Mission Indians.				X	X	X	X
Berry Creek Rancheria of Maidu Indians.					X	X	X
Big Band Rancheria of Pit River Indians.					X	X	X
Big Lagoon Rancheria of Smith River Indians.					X	X	X
Big Pine Band of Owens Valley Paiute Shoshone Indians.					X	X	X
Big Sandy Rancheria of Mona Indians					X	X	X
Big Valley Rancheria of Pomo and Pit River Indians.					X	X	X
Blue Lake Rancheria					X	X	X
Bridgeport Paiute Colony					X	X	X
Buena Vist Rancheria of Me-Wuk Indians.					X	X	X
Cabazon Band of Cahuilla Mission Indians.					X	X	X
Cachil Deke Band of Wintum Indians					X	X	X
Cahuilla Band of Mission Indians					X	X	X
Cahto Tribe					X	X	X
Campo Band of Diegueno Mission Indians.					X	X	X
Captain Grande Band of Diegueno Mission Indians.					X	X	X
Cederville Rancheria of Northern Paiute Indians.					X	X	X
Chemehuevi Tribe					X	X	X
Cher-Ae Heights Community					X	X	X
Chicken Ranch Rancheria of Me-Wuk Indians.					X	X	X
Cloverdale Rancheria of Pomo Indians					X	X	X
Coast Community of Yurok Indians					X	X	X
Cold Springs Rancheria of Mono Indians.					X	X	X
Colorado River Tribe					X	X	X
Cortina Rancheria of Wintun Indians					X	X	X
Covelo Community					X	X	X
Coyote Valley Band of Pomo Indians					X	X	X
Cuyapaipe Community of Diegueno Mission Indians.					X	X	X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83–280 jurisdiction or similar legislation
Death Valley TIMBI-Sha Shoshone Band.					X	X	X
Dry Creek Rancheria of Pomo Indians					X	X	X
Elem Colony of Pomo Indians					X	X	X
Elk Valley Rancheria of Smith River Tolowa Indians.					X	X	X
Enterprise Rancheria of Maidu Indians					X	X	X
Fort Bidwell Community of Paiute Indians.					X	X	X
Fort Independence Community					X	X	X
Fort Mojave Tribe					X	X	X
Greenville Rancheria of Maidu Indians					X	X	X
Grindstone Rancheria of Wintun-Wailaki Indians.					X	X	X
Hoopa Valley Tribe					X	X	X
Hopland Band of Pomo Indians					X	X	X
Inaja Band of Diegueno Mission Indians.					X	X	X
Jackson Rancheria of Me-Wuk Indians					X	X	X
Jamul Village					X	X	X
Karuk Tribe					X	X	X
Kashia Band of Pomo Indians					X	X	X
La Jolla Band of Luiseno Mission Indians.					X	X	X
La Posta Band of Diegueno Mission Indians.					X	X	X
Lookout Rancheria of Pit River Indians					X	X	X
Los Coyotes Band of Cahuilla Mission Indians.					X	X	X
Manchester Band of Pomo Indians					X	X	X
Manzanita Band of Dieugueno Mission Indians.					X	X	X
Mesa Grande Band of Diegueno Mission Indians.					X	X	X
Middletown Rancheria of Pomo Indians.					X	X	X
Montgomery Creek Rancheria of Pit River Indians.					X	X	X
Mooretown Rancheria of Maidu Indians.					X	X	X
Morongo Band of Cahuilla Mission Indians.					X	X	X
Northfork Rancheria of Mono Indians					X	X	X
Paiute-Shoshone Indians of the Bishop Community.					X	X	X
Paiute-Shoshone Indians of the Long Pine Community.					X	X	X
Pala Band of Luiseno Mission Indians					X	X	X
Pauma Band of Luiseno Mission Indians.					X	X	X
Pechanga and of Luiseno Mission Indians.					X	X	X
Picayune Rancheria of Chukchansi Indians.					X	X	X
Pinoleville Rancheria of Pomo Indians					X	X	X
Pit River Tribe					X	X	X
Potter Valley Rancheria of Pomo Indians.					X	X	X
Quartz Valley Rancheria of Karok, Shasta and Upper Klamath Indians.					X	X	X
Quechan Tribe					X	X	X
Ramona Band of Cahuilla Mission Indians.					X	X	X
Redding Valley Rancheria of Pomo Indians.					X	X	X
Redwood Valley Rancheria of Pomo Indians.					X	X	X
Rincon Band of Luiseno Mission Indians.					X	X	X
Roaring Creek Rancheria of Pit River Indians.					X	X	X
Robinson Rancheria of Pomo Indians					X	X	X
Rohnerville Rancheria of Bear River Indians.					X	X	X
Rumsey Rancheria of Wintun Indians					X	X	X
San Manual Band of Serrano Mission Indians.					X	X	X

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Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
San Pasqual Band of Diegueno Mission Indians.					X	X	X
Santa Rosa Community					X	X	X
Santa Rosa Band of Cahuilla Mission Indians.					X	X	X
Santa Ynez Band of Chumash Mission Indians.					X	X	X
Santa Ysabel Band of Diegueno Mission Indians.					X	X	X
Sheep Ranch Rancheria of Me-Wuk Indians.					X	X	X
Sherwood Valley Rancheria of Pomo Indians.					X	X	X
Shingle Springs Band of Miwok Indians.					X	X	X
Smith River Rancheria					X	X	X
Soboba Band of Luiseno Mission Indians.					X	X	X
Susanville Rancheria of Paiute, Maidu, Pit River, and Washoe Indians.					X	X	X
Sycuan Band of Diegueno Mission Indians.					X	X	X
Table Bluff Rancheria of Wiyot Indians					X	X	X
Table Mountain Rancheria					X	X	X
Torres-Martinez Band of Cahuilla Mission Indians.					X	X	X
Tule River Tribe	X	X	X	X	X	X	X
Tuolumne Band of Me-Wuk Indians					X	X	X
Twenty-Nine Palms Band of Luiseno Mission Indians.					X	X	X
Upper Lake Band of Pomo Indians					X	X	X
Utu Utu Gwaiti Paiute Tribe					X	X	X
Viejas Baron Long Captain Grande Band of Diegueno Mission Indians.					X	X	X
Yurok Tribe of Hoopa Valley Reservation.					X	X	X

[1] Arizona's Pub. L. 83-280 jurisdiction is limited to enforcement of the State's air and water pollution controls. See Ariz. Rev. Stat. Ann. 36-1801, 36-1865 (1967). See also 50 FR 34555 (1985).
[2] See the Act of May 21, 1984, Pub. L. 98-290, Secs. 1-5, 98 Stat. 201, 202.
[3] See 25 U.S.C. 1751 et seq. (1983).
[4] See Fla. Stat. Ann. 285.16 (West 1975), and 25 U.S.C. 1747. But see *United States* v. *Daye*, 596 F.2d 1305 (1983).
[5] See Idaho Code 67-5101 through 67-5103 (1963).
[6] See the Act of June 30, 1948, 62 Stat. 1161.
[7] See the Act of June 25, 1948, 62 Stat. 827.
[8] See 25 U.S.C. 1721-1735 (1982), and Me. Rev. Stat. Ann. Tit. 30, Secs. 6201-6214 (1979).
[9] See 18 U.S.C. 1162 (1982), and 40 FR 4026 (1975).
[10] See Mont. Rev. Code Ann. 83-801—83-806 (1963).
[11] See 18 U.S.C. 1162 (1982), 25 U.S.C. 713F (1982), 25 U.S.C. 714e (1982), 35 FR 16598 (1970), and 51 FR 24234 (1986).
[12] See Nev. Rev. Stat. 41.430 (1973), and 40 FR 27501 (1975).
[13] See 25 U.S.C. 232 (1982).
[14] See 18 U.S.C. 1162 (1982), 25 U.S.C. 713f (1982), 25 U.S.C. 714e (1982), 25 U.S.C. 711 et seq. (1982), 44 FR 26169 (1979), and 46 FR 2195 (1981).
[15] See 25 U.S.C. 1701 et seq. (1982).
[16] See 25 U.S.C. 1300b-11 et seq. (1982).
[17] See Wash. Rev. Code 37.12.010.-37.12.070 (1963), 34 FR 14288 (1969), and 37 FR 7353 (1972).

[FR Doc. 88-19862 Filed 8-31-88; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[MT-920-08-4111-11; MTM 73031]

Proposed Reinstatement of Terminated Oil and Gas Lease; Montana

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 73031, Fallon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: August 26, 1988.

June A. Bailey,
Chief, Leasing Unit.

[FR Doc. 88-19901 Filed 8-31-88; 8:45 am]
BILLING CODE 4310-DN-M

[AZ-920-08-4212-12; A-22796]

Exchange of Public and State Land; Arizona

August 24, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States transferred, 25,343.47 acres in Coconino, La Paz, Maricopa, Mohave and Yavapai Counties and accepted title on 32,359.59 acres in Yavapai and Mohave Counties.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 206 of the Federal Land Policy and Management Act, the following described public land was transferred to the State of Arizona under Patent No. 02–87–0047:

Gila and Salt River Meridian

T. 27 N., R. 9 E.,
Sec. 6, lot 11.
T. 21 N., R. 2 W.,
Sec. 6, lots 4 to 7, incl.
T. 15 N., R. 9 W.,
Sec. 16, N½N½, SE¼NE¼, SW¼NW¼;
Sec. 19, lots 3 and 4, E½SW¼ SE¼;
Sec. 20, lots 1 to 4, incl., NE¼, E½W½, SW¼SW¼;
Sec. 21, lot 1, lots 7 to 13, incl., E½;
Sec. 27, NE¼, E½NW¼, N½NW¼NW¼, N½S½NW¼NW¼, N½NE¼SW¼, N½N½SE¼;
Sec. 30, lots 1, 5 and 6, N½NE¼, NE¼NW¼.
T. 15 N., R. 8 W.,
Sec. 12, lots 4 and 5;
Sec. 13, lots 5 to 7, incl., NE¼NW¼, S½NW¼, S½;
Sec. 14, lot 2;
Sec. 22, NE¼NW¼, SW¼NW¼, W½SW¼;
Sec. 27, NE¼NW;
Sec. 33, SW¼NW¼.
T. 15 N., R. 7 W.,
Sec. 7, lots 18 to 22, incl.
T. 14½ N., R. 8 W.,
Sec. 31, NE¼.
T. 14 N., R. 9 W.,
Sec. 14, SW¼.
T. 13 N., R. 9 W.,
Sec. 10, S½;
Sec. 11, W½;
Sec. 12, N½NE¼;
Sec. 14, W½, SE¼;
Sec. 15, all;
Sec. 20, W½NW¼, N½SW¼;
Sec. 22, all;
Sec. 23, all;
Sec. 26, N½NE¼, W½;
Sec. 27, all;
Sec. 35, N½.
T. 13 N., R. 8 W.,
Sec. 7, lot 1, NE¼NW¼;
Sec. 11, NE¼NE¼;
Sec. 12, NE¼NW¼, E½SW¼;
Sec. 27, S½;
Sec. 28, S½;
Sec. 33, all;
Sec. 34, all.
T. 12 N., R. 5 W.,
Sec. 22, lots 1 and 2, SE¼NE¼.
T. 8 N., R. 7 W.,
Sec. 3, lots 1 to 4, incl., S½;
Sec. 10, N½, N½SE¼, SW¼;
Sec. 11, N½, N½S½, SE¼SE¼;
Sec. 12, all;
Sec. 13, all;
Sec. 14, NE¼NE¼, S½NE¼, S½SW¼, SE¼;
Sec. 15, W½, W½SE¼;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 34, all;
Sec. 35, all.
T. 7 N., R. 6 W.,
Sec. 26, SW¼SW¼;
Sec. 27, SE¼SE¼;
Sec. 34, NE¼, S½NW¼, S½;
Sec. 35, all.
T. 7 N., R. 5 W.,
Sec. 35, NE¼, S½.
T. 6 N., R. 13 W.,
Sec. 28, NE¼SE¼, S½SE¼.
T. 6 N., R. 12 W.,
Sec. 21, W½SW¼.
T. 6 N., R. 11 W.,
Sec. 10, all;
Sec. 17, all.
T. 5 N., R. 13 W.,
Sec. 24, lots 1 and 2, NE¼, N½NW¼, NW¼SE¼;
Sec. 25, E½NE¼NE¼ SW¼NE¼NE¼, W½NW¼NE¼NE¼.
T. 5 N., R. 12 W.,
Sec. 6, lot 2.
T. 8 S., R. 12 E.,
Sec. 32, SE¼.

The areas described aggregate 22,983.02 acres, according to the official plats of said land, on file in the Bureau of Land Management.

The folowing described public land was transferred to the State of Arizona under Deed No. AZ–87–013:

Gila and Salt River Meridian

T. 30 N., R. 2 W.,
Sec. 33, W½NE¼, SE¼NE¼, NW¼, NE¼SW¼, E½SE¼.
T. 29 N., R. 2 W.,
Sec. 3, lot 3, SW¼NE¼;
Sec. 11, SE¼SE¼.
T. 23 N., R. 14 W.,
Sec. 36, SW¼NW¼. (Surface only)
T. 18 N., R. 13 W.,
Sec. 35, E½NE¼.
T. 6 N., R. 13 W.,
Sec. 32, all. (Surface only)
T. 6 N., R. 12 W.,
Sec. 16, NW¼. (Surface only)
T. 6 N., R. 11 W.,
Sec. 8, all;
Sec. 9, SW¼NE¼. (Surface only)
T. 5 N., R. 13 W.,
Sec. 5, lots 2 to 4, incl., SW¼NE¼, S½NW¼.

Aggregating 2,360.45 acres, more or less.

In exchange the United States accepted title to the following land conveyed by the State of Arizona:

T. 14 N., R. 10 W.,
Sec. 6, lots 1 to 7 incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 23, all; (Surface only)
Sec. 24, S½; (Surface only)
Sec. 31, lots 1 to 4 incl., E½, SE¼W½; (Surface only)
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 36, all.
T. 14 N., R. 9 W.,
Sec. 30, lots 1 to 4 incl., E½, E½W¼;† (Surface only)
Sec. 31, lots 1 to 4 incl., E½, E½W½; (Surface only)
Sec. 32, W½, W½SE¼.
T. 13 N., R. 9 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½; (Surface only)
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼,† SE¼; (Surface only)
Sec. 7, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 8, all; (Surface only)
Sec. 31, that portion SWly of Hwy 93.
T. 13 N., R. 10 W.,
Sec. 2, lots 1 to 5, incl., lot 7, S½N½, E½SE¼;
Sec. 16, all;
Sec. 32, all;
Sec. 33, all; (Surface only)
Sec 34, all; (Surface only)
Sec. 35, all, (Surface only).
T. 12 N., R. 10 W.,
Sec. 3, lots 1 to 4, incl., S½;
Sec. 4, lots 1 to 4, incl., S½;
Sec. 5, lots 1 to 4, incl., S½;
Sec. 6, lots 1 and 2, SE¼;
Sec. 10, E½; (Surface only)
Sec. 11, all; (Surface only)
Sec. 12, all; (Surface only)
Sec. 13, all; (Surface only)
Sec. 24, E½; (Surface only)
Sec. 25, E½; (Surface only on SW¼SE¼ and E½SE¼)
Sec. 34, N½, N½S½, S½SW¼, SW¼SE¼; (Surface only)
Sec. 35, all; (Surface only)
Sec. 36, NE¼, S½NW¼, S½.
T. 12 N., R. 9 W.,
Sec. 5, that portion of SW¼ SWly of Hwy 93;
Sec. 6, that portion SWly of Hwy 93;
Sec. 7, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 8, that portion SWly of Hwy 93; (Surface only)
Sec. 17, all; (Surface only)
Sec. 18, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 19, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 20, all; (Surface only)
Sec. 26, that portion of S½, NE¼, E½NW¼, SW¼NW¼ SWly of Hwy 93; (Surface only)
Sec. 29, lots 1 to 6, incl., NE¼NE¼, W½W½, SE¼SW¼, NE¼SE¼, S½SE¼; (Surface only)
Sec. 30, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 31, lots 1 to 4, incl., E½, E½W½; (Surface only)

Sec. 35, that portion SWly of Hwy 93; (Surface only)
Sec. 36, that portion SWly of Hwy 93.
T. 11 N., R. 10 W.,
Sec. 3, lots 1 and 2, S½NE¼; (Surface only).
T. 11 N., R. 9 W.,
Sec. 1, that portion SWly of Hwy 93; (Surface only)
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 11, all; (Surface only)
Sec. 12, all; (Surface only)
Sec. 13, NE¼, NE¼NW¼, S½NW¼, S½; (Surface only)
Sec. 14, all; (Surface only)
Sec. 23, NE¼; (Surface only)
Sec. 24, N½ (Surface only).
T. 11 N., R. 8 W.,
Sec. 6, that portion SWly of Hwy 93; (Surface only)
Sec. 7, that portion SWly of Hwy 93; (Surface only)
Sec. 8, that portion SWly of Hwy 93; (Surface only)
Sec. 16, that portion of SW¼ SWly of Hwy 93;
Sec. 17, that portion SWly of Hwy 93; (Surface only)
Sec. 18, lots 1 to 8, incl.; (Surface only)
Sec. 19, lots 1 to 4, incl.; (Surface only)
Sec. 20, N½; (Surface only)
Sec. 21, that portion of NW¼ SWly of Hwy 93.

The area comprises 32,359.59 acres, more or less.

The purpose of this Notice is to inform the public and local governmental officials of the exchange of land between the United States and the State of Arizona.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–19863 Filed 8–31–88; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–07–4321–01; AZA–23330]

Realty Action; Exchange of Mineral Estate; Arizona

The following described federal mineral estate has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Approximately 49,153.41 acres of public mineral estate will be exchanged for 49,133.23 acres of state of Arizona mineral estate.

Gila and Salt River Meridian, Apache County, Arizona

T. 8 N., R. 28 E.,
Sec. 1, lot 2, SW¼NE¼, S½SE¼; sec. 11, NE¼SW¼; sec. 17, S½NE¼.
T. 9 N., R. 27 E.,
Sec. 3, S½.
T. 9 N., R. 29 E.,
Sec. 17, SW¼; sec. 23, N½NE¼.
T. 9 N., R. 30 E.,
Sec. 6, NW¼SE¼.
T. 10 N., R. 25 E.,
Sec. 1, lots 1 to 3, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 10 N., R. 28 E.,
Sec. 14, W½NE¼, E½NW¼.
T. 10 N., R. 29 E.,
Sec. 7, W½E½, W½; sec. 27, S½.
T. 10 N., R. 30 E.,
Sec. 11, SE¼SW¼, SE¼; sec. 14, all; sec. 23, all; sec. 33, W½, W½E½, SE¼SE¼.
T. 11 N., R. 27 E.,
Sec. 22, NE¼, W½, N½SE¼, SW¼SE¼.
T. 11 N., R. 28 E.,
Sec. 15, S½NE¼, NW¼NW¼, S½NW¼, S½; sec. 22, NE¼, W½, N½SE¼, SW¼SE¼; sec. 31, lots 2 to 4, incl., NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 11 N., R. 31 E.,
Sec. 30, lots 1 to 4, incl., E½, E½W½.
T. 12 N., R. 28 E.,
Sec. 4, lots 1, 8, 9, 10, 15 and 16.
T. 12 N., R. 29 E.,
Sec. 24, all.
T. 12 N., R. 30 E.,
Sec. 19, lots 2 to 4, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼; sec. 20, S½N¼, S½; sec. 24, all; sec. 25, all; sec. 27, W½, SE¼.
T. 12 N., R. 31 E.,
Sec. 4, lots 1 to 16, incl., S½; sec. 5, lots 1 to 16, incl.; sec. 6, lots 1 to 16, incl.; sec. 7, lots 1 to 4, incl., E½NW¼, NE¼SW¼; sec. 8, E½E½, SE¼SW¼; sec. 9, all; sec. 17, E½NE¼, W½NW¼, S½; sec. 18, lots 1 to 4, incl., E½, E½W½; sec. 19, lots 1 to 4, incl., E½, E½W½; sec. 20, all; sec. 29, all; sec. 30, lots 1 to 4, incl., E½, E½W½; sec. 31, lots 1 to 4 incl., E½, E½W½.
T. 13 N., R. 27 E.,
Sec. 10, all; sec. 12, E½W½.
T. 13 N., R. 31 E.,
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 14 N., R. 24 E.,
Sec. 6, lot 7.
T. 14 N., R. 27 E.,
Sec. 22, SW¼NW¼, NE¼SE¼.
T. 14 N., R. 28 E.,
Sec. 14, all; Sec. 26, all.
T. 15 N., R. 29 E.,
Sec. 30, NE¼NW¼.
T. 16 N., R. 26 E.,
Sec. 6, lots 1 to 6, incl., SE¼SW¼, S½SW¼.
T. 16 N., R. 28 E.,
Sec. 12, all.
T. 17 N., R. 30 E.,
Sec. 4, lots 1 to 4, incl., S½N½, S½; Sec. 6, lots 1 to 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼; Sec. 8, all; Sec. 10, all; Sec. 12, all; Sec. 14, all; Sec. 18, lots 1 to 4, incl., E½,E½W½; Sec. 20, all; Sec. 22, all; Sec. 24, all; Sec. 26, all; Sec. 28, all; Sec. 30, lots 1 to 4, incl., E½,E½W½; Sec. 34, N½, N½SW¼.
T. 17 N., R. 31 E.,
Sec. 30, lots 1 and 4, E½SW¼, SE¼.
T. 18 N., R. 27 E.,
Sec. 34, all.

Gila and Salt River Meridian, Navajo County, Arizona

T. 11 N., R. 22 E.,
Sec. 6, lot 1, SE¼NE¼, NE¼SE¼.
T. 13 N., R. 18 E.,
Sec. 6, lots 3, 4 and 5, SE¼NW¼.
T. 13 N., R. 19 E.,
Sec. 6, lots 6 and 7, E½SW¼, SE¼.
T. 13 N., R. 20 E.,
Sec. 22, N½.
T. 14 N., R. 20 E.,
Sec. 6, lots 5 to 7, incl., S½NE¼, SE¼ NW¼, E½SW¼, SE¼.
T. 17 N., R. 16 E.,
Sec. 10, all; sec. 12, lots 1 to 4, incl., W½ E½, W½; Sec. 14, all; Sec. 22, all.
T. 17 N., R. 17 E.,
Sec. 6, lots 1 to 7, incl., S½NE¼, E½SW¼, SE¼NW¼, SE¼; Sec. 8, all: Sec. 18, lots 1 to 4, incl. E½,E½W½.
T. 18 N., R. 16 E.,
Sec. 14, all; Sec. 22, all; Sec. 24, all; Sec. 26, all; Sec. 28, all; Sec. 34, all.
T. 18 N., R. 17 E.,
Sec. 18, lots 1 to 4, incl., E½,E½W½; Sec. 28, all; Sec. 30, lots 1 to 4, incl., E½, E½ W½.
T. 18 N., R. 19 E.,
Sec. 4, lots 1 to 4, incl., S½N½, S½.
T. 19 N., R. 20 E.,
Sec. 18, SE¼NE¼, SE¼SW¼, SE¼; Sec. 20, W½; Sec. 22, W½; Sec. 28, SE¼ SW¼, S½SE¼; Sec. 30, SE¼; Sec. 34, E½, SE¼NW¼, E½SW¼.
T. 20 N., R. 19 E.,
Sec. 8, all; Sec. 18, lots 3 and 4, E½SW¼; Sec. 28, all; Sec. 30, lots 1 to 4, incl., E½, E½W½; Sec. 34, all.

Gila and Salt River Meridian, Maricopa County, Arizona

T. 3 N., R. 1 W.,
Sec. 1, lot 2, SW¼NE¼, E½SE¼.

In exchange for the federal mineral estate described above, the United States will acquire the following mineral estate from the State of Arizona:

Gila and Salt River Meridian, Coconino County, Arizona

T. 37 N., R. 5 E.,
Sec. 2, lots 1 to 4, incl., S½N½, S½.
T. 38 N., R. 5 E.,
Sec. 36, E½, NW¼, N½SW¼.
T. 40 N., R. 4 E.,
Sec. 36, all.
T. 40 N., R. 5 E.,
Sec. 16, all; Sec. 32, all.
T. 40 N., R. 6 E.,
Sec. 16, all.
T. 41 N., R. 1 E.,
Sec. 36, all.
T. 38 N., R. 1 W.,
Sec. 2, lots 1 to 4, incl., S½N½, N½S½.
T. 39 N., R. 1 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½.

Gila and Salt River Meridian, Mohave County, Arizona

T. 35 N., R. 11 W.,
Sec. 16, all.
T. 36 N., R. 9 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½.
T. 36 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; Sec. 16, N½, SW¼, E½SE¼.
T. 37 N., R. 10 W.,
Sec. 36, all.
T. 37 N., R. 12 W.,
Sec. 16, all; Sec. 32, all.

T. 37 N., R. 14 W.,
Sec. 36, SE¼NE¼.
T. 38 N., R. 10 W.,
Sec. 2, Lots 2 to 4, incl., S½N½; Sec. 16, E½; Sec. 32, all.
T. 38 N., R. 12 W.,
Sec. 16, all; Sec. 32, all.
T. 38 N., R. 14 W.,
Sec. 32, all; Sec. 36, all.
T. 39 N., R. 4 W.,
Sec. 32, all.
T. 39 N., R. 10 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; Sec. 16, SW¼, W½SE¼.
T. 39 N., R. 11 W.,
Sec. 36, SE¼.
T. 39 N., R. 12 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; Sec. 16, all; Sec. 32, all.
T. 39 N., R. 13 W.,
Sec. 16, all; Sec. 36, all.
T. 39 N., R. 16 W.,
Sec. 13, N½NW¼; Sec. 23, NW¼; Sec. 32, lots 1 to 4, incl., E½; Sec. 36, all.
T. 40 N., R. 10 W.,
Sec. 32, N½NE¼.
T. 40 N., R. 15 W.,
Sec. 16, NE¼NE¼, NW¼NW¼, SW¼; Sec. 19, W½NE¼, SW¼NE¼.
T. 40 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; Sec. 33, S½NW¼.
T. 41 N., R. 8 W.,
Sec. 2, lots 1 to 4, incl., S½NW¼, SW¼ SW¼SE¼; Sec. 16, all.
T. 41 N., R. 12 W.,
Sec. 32, all; sec. 36, al.
T. 41 N., R. 15 W.,
Sec. 16, all.
T. 41 N., R. 16 W.,
Sec. 16, all; sec. 32, lots 1 to 4, incl., E½E½; sec. 36, all.
T. 42 N., R. 8 W.,
Sec. 36, lots 1 to 4, incl., S½.
T. 42 N., R. 15 W.,
Sec. 32, lots 1 to 4, incl., S½; sec. 36, lots 1 to 4, incl., S½.
T. 42 N., R. 16 W.,
Sec. 32, lots 1 to 3, incl.; sec. 36, lot 4, S½.

Gila and Salt River Meridian, Maricopa County, Arizona

T. 1 N., R. 7 W.,
Sec. 2, lots 2 to 4, incl., S½NW¼, SW¼NE¼, S½; sec. 16, all; sec. 32, all.
T. 2 N., R. 4 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 36, all.
T. 2 N., R. 5 W.,
Sec. 16, all.
T. 1 S., R. 3 W.,
Sec. 36, all.
T. 1 S., R. 4 W.,
Sec. 32, all.
T. 2 S., R. 3 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 32, all; sec. 36, all.
T. 2 S., R. 4 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 36, all.
T. 3 S., R. 1 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 32, all; sec. 36, all.
T. 3 S., R. 2 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 32, all; sec. 36, all.
T. 3 S., R. 3 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 32, all; sec. 36, all.
T. 3 S., R. 4 W.,
Sec. 36, all.
T. 3 S., R. 5 W.,
Sec. 36, S½, NW¼, W½NE¼, metes and bounds in E½NE¼.
T. 4 S., R. 1 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 32, all.
T. 4 S., R. 4 W.,
Sec. 36, all.
T. 5 S., R. 3 W.,
Sec. 32, all.
T. 5 S., R. 4 W.,
Sec. 36, all.

Based on leasable and locatable mineral potential reports, it has been determined that the overall potential mineral value of the private and federal mineral estates are approximately equal.

Lands transferred from the United States will be conveyed subject to the following oil and gas leases:

AZA–022988
AZA–017205
AZA–023078
AZA–011316

Publication of this notice shall segregate the federal minerals, as described in this notice, from appropriation under the mining laws. This segregative effect shall terminate upon the issuance of a patent or two years from the date of this notice, or upon publication of a Notice of Termination.

Detailed information concerning the exchange, including the locatable mineral potential and the leasable mineral potential reports, can be obtained from the Phoenix Resource Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027. For a period of forty-five (45) days, from the date of this notice, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objective will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objectives, this realty action will become the final determination of the Department of the Interior.

Herman L. Kast,
Associate District Manager.
Date: August 24, 1988.

[FR Doc. 88–19884 Filed 8–31–88; 8:45 am]
BILLING CODE 4310–32–M

[U–54569; UT–040–08–4212–14]

Realty Action; Sale of Public Lands in Washington County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) public land described as Lot 3, Section 11, T. 42 S., R. 13 W., SLB&M, Utah, containing 41.95 acres, is proposed for sale by competitive bidding at no less than the appraised fair market value of $12,300.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomic to manage by a government agency.

DATES: Comments should be submitted to the address listed below by October 20, 1988. The sale will be held on November 15, 1988 at 2:00 p.m. m.d.t.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Dixie Resource Area Office, 225 North Bluff, St. George, Utah 84770 (801) 673–4654. The sale will be held at the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to all valid existing rights. If the tract of public land is not sold pursuant to this notice, it will remain available for sale by sealed bid at no less than the appraised value. Sealed bids will be opened on the first Tuesday of each month at 10:00 a.m. All bids must be received at the Dixie Resource Area Office no later than 4:30 p.m. on the day before the sale.

Any comments or objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Date: August 24, 1988.
Gordon Staker,
District Manger.
[FR Doc. 88-19902 Filed 8-31-88; 8:45 am]
BILLING CODE 4310-DQ-M

Fort Greely Draft Resource Management Plan/Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Military Lands Withdrawal Act of 1986 (Pub. L. 99-606) and section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (DRMP)/Draft Environmental Impact Statement (DEIS) for the Fort Greely military withdrawal. The document addresses planning for nonmilitary use of the withdrawal. The draft statement presents a preferred plan and five alternatives, and analyzes the effects of each. One alternative is the "no action" alternative, describing present management. The preferred plan and the other alternatives describe management with varying emphasis on military uses, habitat protection, recreation, and economic development.

DATES: The DRMP/DEIS will be available for review and comment from September 2, 1988 to December 1, 1988. Comments received after the latter date may be too late to be integrated into the Final EIS. Public meetings on the plan have been scheduled for: November 15, 1988, 7 p.m. at the Delta Junction Community Center and November 16, 1988, 8 p.m. at the Bureau of Land Management Office, 1150 University Avenue, Fairbanks.

ADDRESS: Comments on the DRMP/DEIS may be sent to: Jim Ducker, Military Withdrawals Planning Team Leader, Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Michael J. Penfold,
State Director.
[FR Doc. 88-19894 Filed 8-31-88; 8:45 a.m.]
BILLING CODE 4310-JA-M

Fort Wainwright Draft Resource Management Plan/Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Military Lands Withdrawal Act of 1986 (Pub. L. 99-606) and section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of Interior, Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (DRMP/Draft Environmental Impact Statement (DEIS) for the Fort Wainwright military withdrawal. This withdrawal encompasses that part of Fort Wainwright known as the Yukon Maneuver Area, and is north and east of Eielson Air Force Base. The document addressed planning for nonmilitary use of the withdrawal. The draft statement presents a preferred plan and four alternatives, and analyzes the effects of each. One alternative is the "no action" alternative, describing present management. The preferred plan and the other alternatives describe management with varying emphases on military uses, habitat protection, recreation, and economic development.

DATES: The DRMP/DEIS will be available for review and comment from September 2, 1988 to December 1, 1988. Comments received after the latter date may be too late to be integrated into the Final EIS. BLM will hold a public meeting on the plans at its offices at 1150 University Avenue, Fairbanks, Alaska at 7 p.m. on November 16, 1988.

ADDRESS: Comments on the DRMP/DEIS may be sent to: Jim Ducker, Military Withdrawals Planning Team Leader, Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Michael J. Penfold,
State Director.
[FR Doc 88-19895 Filed 8-31-88; 8:45 am]
BILLING CODE 4310-JA-M

[NM-010-GP8-0121]

Availability of the Farmington Resource Management Plan and the Record of Decision and Notice of Off-Road Vehicle and Area of Critical Environmental Concern Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Farmington Resource Area, Albuquerque District, announces the availability of the Farmington Resource Management Plan (July 1988) as approved in the Record of Decision (July 10, 1988).

The Record of Decision and the Resource Management Plan are available by contacting the Bureau office below. The Record of Decision is free of charge and the Resource Management Plan will be sold for three dollars each.

The Bureau has completed decisions to designate about 1.5 million acres of public land in San Juan, McKinley, Rio Arriba, and Sandoval Counties, in New Mexico, as open, limited, or closed to motor vehicle travel.

Designations are a result of land use planning decisions made in the Farmington Resource Management Plan. The Plan also designates nineteen Areas of Critical Environmental Concern (ACECs) and expands an existing ACEC that was designated by the Rio Puerco Resource Management Plan.

SUPPLEMENTARY INFORMATION: The authority for the off-road vehicle designations is derived from Executive orders 11644 and 11989, and the regulations contained in 43 CFR Part 8340. The area designations and affected acreages are as follows:

1. Closed Designations.

Farmer's Arroyo Site (40)
Beechatuda Tongue (80)
Fossil Forest Research Natural Area (2,770)
Bisti Wilderness (3,968)
De-na-zin Wilderness (24,137)
Thomas Canyon (4,630)
Negro Canyon (1,600)
Simon Canyon-partial (1,770)

2. Limited "Existing Roads and Trails" Designation.

Chaco Outliners Group (2,570)
Reese Canyon Research Natural Area (2,200)
Bald Eagle ACEC (3,840)
Torrejon Fossil Fauna ACEC (4,480)
Kutz Canyon Paleontological Area (25,826)
Betonnie Tsosie (5,240)
Farmington Lake Watershed (1,872)
Ah shi-sle-pah Wilderness Study Area (6,565)
Head Canyon ORV Competition Area (150)
Native American Traditional Use & Sacred Areas (4,430)

3. Limited "Designated Roads and Trails" Designation.

Chacra Mesa ACEC Complex (11,330)
The Hogback ACEC (9,480)
Simon Canyon Recreation Area (2,041)
Angel Park Recreation Area (10,240)
Carracas Mesa (7,000)
East Side Rincon Site (100)
Navajo Refugee Sites (11,600)

4. Open Designation.[1]

[1] Other public lands in the Resource Area that are not accounted for above (about 1,300,000).

Dunes Vehicle Recreation Area (1,000)
Laguna Seca Mesa (2,400)
Coal Belt (77,945)
Rights-of-Way Windows (12,600)

The designations above will be identified on the Albuquerque District Off-Road Vehicle Designation Order Roster. Where areas contain non-Bureau inholdings, the designation cannot apply. However, the designation will apply opon acquisition of the inholding.

ACEC designations and acreages are as follows:

Angel Peak (500)
Badlands (1,360)
Log Jam (320)
Lost Pine (80)
Crow Canyon District (3,580)
Hooded Fireplace and Largo School District (320)
Tapacito and Split Rock District (240)
Frances Ruin (40)
Christmas Tree Ruin (40)
San Rafael Canyon (5,460)
Salt Point (640)
Pierre's Site (440)
Halfway House (40)
Twin Angels (40)
Casamero Community (160)
Chacra Mesa Complex (6,370)
Hogback (7,520)
Aztec Gilia (6,400)
Bald Eagle (1,700)
Torrejon Fossil Fauna (4,480). This ACEC was expaned from 2,900 acres.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain copies of the Farmington Resource Management Plan or the Record of Decision call (505) 325–5344 or write Bill Overbaugh, RMP Team Leader, BLM-Farmington RA, 1235 La Plata Hwy., Farmington, NM 87401.

Dated: August 24, 1988.

Dennis R. Erhart,

Acting State Director.

[FR Doc. 88–19900 Filed 8–31–88; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–921–08–4220–11, A–6641]

Proposed Partial Termination and Partial Continuation of Withdrawal; Arizona

August 23, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years a portion of an order which withdrew lands for an indefinite period of time for Sedona Administrative Site and terminate the remaining lands in the order to facilitate a Forest Service land exchange whereby those lands will be conveyed out of Federal ownership for the benefit of the Flagstaff Public Schools. The portion of the order to be continued is still needed for the purpose it was withdrawn and will have no change in land use. The portion to be terminated is no longer needed for the administrative site. The Forest Service proposes that the lands withdrawn for the Sedona Administrative Site be segregated from operation of the mining laws only.

DATE: Comments to this notice should be received on or before November 30, 1988.

ADDRESS: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: Joy Ayers, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–241–5534.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the order withdrawing lands from appropriation and use of all kinds under the public land laws for an indefinite period of time for the Sedona Administrative Site by Secretarial Order dated July 10, 1908, enlarged by Public Land Order 1091 dated March 10, 1955, and partially revoked by Public Land Orders 4099 and 5200 dated September 29, 1966, and April 5, 1972, respectively, be partially modified and continued for 20 years and the remaining portion be terminated, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Gila & Salt River Meridian

Continue

T. 17 N., R. 6 E.,
Sec. 7, E½SW¼NE¼NE¼SW¼SE¼, SE¼NE¼NE¼SW¼SE¼, E½SE¼NE¼SW¼SE¼, E½W½SE¼NE¼SW¼SE¼, W½E½NW¼NW¼SW¼SE¼, W½NW¼NW¼SW¼SE¼, SW¼NW¼SW¼SE¼, W½SW¼SW¼SE¼, SE¼SW¼SW¼SE¼, S½NE¼SW¼SE¼SW¼SE¼, W½SW¼SE¼SW¼SE¼, SE¼SW¼SE¼SW¼SE¼, E½E½SE¼SW¼SE¼, E½W½E½SE¼SW¼SE¼, SW¼NW¼SE¼SE¼SW¼SE¼,W½SW¼SE¼SE¼SW¼SE¼.

T. 17 N., R. 6 E.,
Sec. 7, NE¼SW¼SW¼SE¼, NW¼SE¼SW¼SE¼, W½W½NE¼SE¼SW¼SE¼, NW¼NW¼SE¼SE¼SW¼SE¼, N½NE¼SW¼SE¼SW¼SE¼.

The areas described contain 21.0975 acres to be continued and 6.09 acres to be terminated in Coconino County.

The purpose of the withdrawal is for the administration and protection of the administrative site. The continued portion of the order will now be closed to operation of the mining laws only. The terminated portion of the withdrawal will open the lands to surface entry and operation of the mining and mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–19865 Filed 8–31–88; 8:45 am]

BILLING CODE 4310–32–M

[WY–930–08–4220–11; WYW 73082, WYW 043671, WYW 043372, WYS 040577, WYW 094183, WYW 0105362, WYW 22216]

Proposed Continuation of Forest Service Withdrawals; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service proposes to continue the existing withdrawals on 990.95 acres of national forest land in the Big Horn National Forest for an additional 20 years. The land has been and will remain segregated from mining location. Only 304.89 acres have been segregated from surface entry. All of the land has been and will remain open to mineral leasing. The remaining acreage in the existing withdrawals will be teminated.

DATE: Comments should be received by November 30, 1988.

ADDRESS: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307–772–2072.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Secretarial Orders of January 14, 1907, and

November 24, 1908, and Public Land Order Nos. 1529, 3250, 1421, 4922, 1560, 3282, and 3302, dated October 18, 1957, October 10, 1963, May 23, 1957, October 19, 1970, December 6, 1957, December 3, 1963, and January 13, 1964, respectively, be continued for a period of 20 years to protect the capital investments on the administrative sites, picnic grounds, campgrounds, ranger stations, lookout towers, recreation areas, organization and highway maintenance camps, a trailer park, and a community center. The land is described as follows:

Sixth Principal Meridian

Big Horn National Forest

Hunter Administrative Site

T. 50 N., R. 84 W.,
Sec. 10, NW¼SE¼, SW¼NE¼SE¼, W½SE¼NE¼SE¼.

Shell Creek Administrative Site

T. 53 N., R. 88 W.,
Sec. 19, NE¼SW¼SE¼, NW¼SE¼SE¼.

Porcupine Creek Administrative Site

T. 56 N., R. 91 W.,
Sec. 18, NW¼NE¼SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼.

Muddy Creek Administrative Site

T. 48 N., R. 84 W.,
Sec. 2, NE¼SW¼SE¼NE¼.

Tensleep Meadows

T. 49 N., R. 86 W.,
Sec. 30, NW¼NE¼SE¼, E½NW¼SE¼, E½W½NW¼SE¼.

Sheridan County Youth Inc., Organization Camp

T. 54 N., R. 88 W.,
Sec. 6, N½ of lot 4.

Bald Mountain Campgrounds

T. 56 N., R. 91 W.,
Sec. 30, SE¼ of lot 1, NE¼ of lot 2, W½NW¼SE¼NW¼.

Burgess Ranger Station

T. 56 N., R. 89 W.,
Sec. 36, S½SW¼NE¼NW¼, S½S½NW¼NW¼, N½SW¼NW¼, NW¼SE¼NW¼, E½SE¼NW¼SW¼, W½SW¼NE¼SW¼.

Porcupine Creek Recreation Area

T. 56 N., R. 91 W.,
Sec. 18, SE¼ of lot 2, S½NW¼SE¼NW¼, SW¼SE¼NW¼, S½SE¼SE¼NW¼, E½E½NE¼SW¼.
T. 56 N., R. 92 W.,
Sec. 12, SW¼NE¼SE¼SW¼.

Big Goose Administrative Site

T. 53 N., R. 88 W.,
Sec. 4, S½ of lot 5.

Big Horn Baptist Youth Organization Camp

T. 55 N., R. 88 W.,
Sec. 4, NW¼NW¼SE¼.

Boulder Park Campground and Trailer Park

T. 48 N., R. 86 W.,
Sec. 6, N½ and SW¼ of lot 12.

Burgess Junction Highway Maintenance Camp

T. 55 N., R. 89 W.,
Sec. 1, SW¼NE¼SW¼NE¼, SE¼NW¼SW¼NE¼, NE¼SW¼SW¼NE¼, NW¼SE¼SW¼NE¼.

Cabin Creek Campground

T. 53 N., R. 89 W.,
Sec. 14, SW¼NE¼SW¼, E½SE¼NW¼SW¼.

Deer Park Campground

T. 49 N., R. 86 W.,
Sec. 4, NW¼NW¼SW¼.

High Park Lookout

T. 48 N., R. 86 W.,
Sec. 4, SE¼SW¼SE¼SW¼;
Sec. 9, NE¼NW¼NE¼NW¼.

Island Park Campground

T. 49 N., R. 86 W.,
Sec. 20, S½NE¼SE¼NW¼, NW¼SE¼SE¼NW¼.

Leigh Creek Picnic Ground

T. 48 N., R. 87 W.,
Sec. 33, S½S½NE¼SE¼, NE¼SE¼NE¼SE¼.

Lower Doyle Campground

T. 47 N., R. 84 W.,
Sec. 5, S½NE¼SW¼NW¼, SE¼NW¼SW¼NW¼.

West Lake Campground

T. 50 N., R. 86 W.,
Sec. 33, E½SE¼NE¼SW¼, NE¼NE¼SE¼SW¼.

North Tongue Campground

T. 55 N., R. 89 W.,
Sec. 1, N½ of lot 4;
Sec. 2, NE¼ of lot 1.
T. 56 N., R. 89 W.,
Sec. 35, S½S½SW¼SW¼, SE¼SE¼SE¼SE¼.

Pine Island Community Center

T. 55 N., R. 88 W.,
Sec. 5, NW¼ of lot 1, NE¼ of lot 2.

Prune Creek Campground

T. 55 N., R. 88 W.,
Sec. 4, S½NE¼NE¼SW¼, NW¼NE¼SW¼, E½NE¼NW¼SW¼, NE¼SW¼NE¼SW¼, N½SE¼NE¼SW¼.

Shell Creek Campground

T. 53 N., R. 888 W.,
Sec. 19, S½ of lot 3.

Sibley Lake Campground and Picnic Ground

T. 55 N., R. 88 W.,
Sec. 10, NE¼NE¼, N½SE¼NE¼.

Worland Boy Scout Organization Camp

T. 49 N., R. 86 W.,
Sec. 31, SE¼NE¼SW¼SE¼.

Ranger Creek Campground

T. 53 N., R. 88 W.,
Sec. 19, SE¼SW¼SE¼, SW¼SE¼, SE¼, SW¼SE¼SE¼SE¼;
Sec. 30, NW¼NE¼NE¼NE¼, N½NW¼NE¼NE¼, N½NE¼NW¼NE¼.

Meadow Lark Lake Area

T. 48 N., R. 86 W.,
Sec. 5, S½ of lot 8;
Sec. 6, NW¼ of lot 8.
T. 49 N., R. 86 W.,
Sec. 32, SE¼SW¼SE¼;
Sec. 33, W½SW¼NE¼, S½NE¼NW¼, E½NW¼NW¼, E½SE¼NW¼, NE¼NE¼SW¼, NE¼SE¼SW¼, NW¼NW¼SE¼, NW¼SW¼SE¼.

Paintrock Lakes Recreation Area

T. 51 N., R. 87 W.,
Sec. 7, SE¼ of lot 3, NW¼SE¼SW¼;
Sec. 18, N½ of lot 2.
T. 51 N., R. 88 W.,
Sec. 12, NE¼NE¼SE¼, E½NW¼NE¼SE¼, SW¼NE¼SE¼SE¼, SE¼NW¼SE¼SE¼, NE¼SW¼SE¼SE¼, NW¼SE¼SE¼SE¼.

Woodrock Recreation Area

T. 54 N., R. 88 W.,
Sec. 3, N½ and SE¼ of lot 3, SE¼NE¼SW¼NW¼, NE¼SE¼SW¼NW¼, NW¼SW¼SE¼NW¼, SW¼NW¼SE¼NW¼.
T. 55 N., R. 88 W.,
Sec. 27, SW¼NE¼NW¼, NW¼SE¼NW¼;
Sec. 34, S½SE¼SE¼SW¼, S½SW¼SW¼SE¼.

Big Horn Baptist Youth Organization Camp Addition

T. 55 N., R. 88 W.,
Sec. 4, NE¼NW¼SE¼.

Coffeen Park Campground

T. 53 N., R. 86 W.,
Sec. 32, SW¼NW¼SE¼.

Cross Creek Campground

T. 53 N., R. 86 W.,
Sec. 21, NE¼SE¼SE¼.

East Fork Campground

T. 53 N., R. 86 W.,
Sec. 3, SW¼SE¼NW¼, W½SE¼SE¼NW¼.

Little Goose Campground

T. 53 N., R. 85 W.,
Sec. 5, E½NE¼SE¼SW¼, W½NW¼SW¼SE¼.

Owen Creek Campground Addition

T. 55 N., R. 88 W.,
Sec. 31, NE¼NW¼NE¼.

Prune Creek Campground Addition

T. 55 N., R. 88 W.,
Sec. 4, SE¼SE¼SW¼NW¼, except area included in PLO 2647 for U.S. 14 Roadside Zone.

Twin Lakes Campground

T. 54 N., R. 87 W.,
Sec. 35, S½SW¼SW¼NE¼, N½NW¼NW¼SE¼.

Tie Flume Campground

T. 55 N., R. 88 W.,
Sec. 27, NE¼SW¼NW¼.

The areas described aggregate 990.95 acres in Big Horn, Sheridan, Washakie, and Johnson Counties.

The purpose of the withdrawals is to protect the capital investments at the administrative sites, picnic grounds, campgrounds, ranger stations, lookout

towers, recreation areas, organization and highway maintenance camps, a trailer park, and a community center. The withdrawals segregate the land from the operation of the mining laws, and some of the land from surface entry. The land is not segregated from mineral leasing. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations, may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Date: August 24, 1988.

Hillary A. Oden,

State Director.

[FR Doc. 88-19903 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-22-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Petition Process for Designation of Federal Lands as Unsuitable for All or Certain Types of Surface Coal Mining Operations and for Termination of Previous Designations 30 CFR Part 769

OMB Number: None assigned

Abstract: This Part establishes the minimum procedures and standards for designating Federal lands unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition. The information requested will aid the regulatory authority in the decision-making process to approve or disapprove a request to designate or terminate an area as unsuitable.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Individuals, Industry, and Environmental Groups

Annual Responses: 5

Annual Burden Hours: 350

Estimated Completion Time: 70. Hours

Bureau clearance officer: Nancy Ann Baka (202) 343-5981.

Date: August 24, 1988.

Richard O. Miller,

Chief, Regulatory Development and Issues Management Office.

[FR Doc. 88-19883 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

Porcelain-on-Steel Teakettles From Taiwan; Dismissal of Request for Institution of a Review Investigation

AGENCY: International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show good cause or changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-299 (Final), regarding porcelain-on-steel cooking ware from Taiwan. The request for termination of the antidumping order on porcelain-on-steel cooking ware from Taiwan applied only insofar as it covered teakettles.[1]

[1] For the purposes of this notice, porcelain-on-steel teakettles are teakettles not having self-contained heating elements, of steel and enameled or glazed with vitreous glasses. Porcelain-on-steel teakettles are provided for in item 654.06 of the Tariff Schedules of the United States and subheading 7023.94.00 of the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-252-1191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On November 26, 1986, the Commission published in the **Federal Register** its determination in investigation No. 731-TA-299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan (51 FR 42946). The Commission determined that an industry in the United States was materially injured by reason of imports from Taiwan of porcelain-on-steel cooking ware which had been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). On December 2, 1986, the Department of Commerce issued an antidumping order, notice of which was published in the **Federal Register** (51 FR 43416).

On April 21, 1988, the Commission received a request filed on behalf of M. Kamenstein, Inc., pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731-TA-299 (Final). Under § 207.45 of the Commission's Rules of Practice and Procedure, "In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of suspension or determination." The petitioner alleged that the circumstances of this case constituted "good cause" for conducting an immediate review.

On June 8, 1988, the Commission requested written comments in the **Federal Register** (53 FR 21531) concerning whether the alleged changed circumstances were sufficient to warrant institution of a review investigation. Comments were supplied by counsel on behalf of General Housewares Corporation (GHC) opposing the institution of a review investigation. GHC was the petitioner in the original investigation (No. 731-TA-299 (Final). Comments were also received from counsel on behalf of

M. Kamenstein, Inc., supporting the institution of a review investigation.

After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) and rule 19 CFR 207.45, that the request does not show good cause or changed circumstances sufficient to warrant institution of a review investigation regarding procelain-on-steel cooking ware from Taiwan. A Memorandum Opinion, setting forth the reasons for dismissing this request, will be made available in the Secretary's office.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 25, 1988.

[FR Doc. 88-19850 Filed 8-31-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-33 (Sub-No. 53]

Finding; Union Pacific Railroad Co.—Abandonment—Between Hansen And River, In Hall County, NE

The Commission has issued a certificate authorizing Union Pacific Railroad Company to abandon its 10.9-mile rail line between Hansen (milepost 7.5) and River (milepost 18.4), all in Hall County, NE. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance will fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 24, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-19905 Filed 8-31-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 16, 1988, a proposed Consent Decree in *United States v. Shell Oil Company*, Civil No. 88-5010-ER was lodged with the United States District Court for the Central District of California. The proposed Consent Decree concerns the prevention of the discharge of sulfur dioxide in excess of the limits set forth in the New Source Performance Standards ("NSPS") promulgated pursuant to the Clean Air Act. The proposed Consent Decree requires Shell to comply with the Clean Air Act and the NSPS, to install equipment to prevent future violatons and to pay a civil penalty of $66,900.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Shell Oil Company, D.J. Ref. 90-5-2-1-1228.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 312 Spring Street, Los Angeles, California 90012, and at the Region 9 Office of the Environmental Protection Ageny, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.50 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19866 Filed 8-31-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-62]

Elliott Pharmacy; Revocation of Registration

On July 2, 1987, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to Elliott Pharmacy (Respondent), 1000 Chartiers Avenue, Pittsburgh, Pennsylvania 15220, proposing to revoke its DEA Certificate of Registration AS1698971. The statutory basis for this action was that the pharmacy's continued registration was inconsistent with the public interest based upon its dispensing of controlled substances for other than legitimate medical purposes, and large shortages of controlled substances. Citing his preliminary finding that the pharmacy's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of the pharmacy's DEA Certificate of Registration during the pendency of proceedings.

The Order to Show Cause and Immediate Suspension of Registration was served on Mr. Sidney Silverman, owner of Respondent pharmacy. By letter dated July 30, 1987, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. The matter was docketed before Administrative Law Judge Mary Ellen Bittner, and a hearing was scheduled for February 10 and 11, 1988, in Washington, DC. Prior to the date of the hearing, Respondent's counsel requested that the hearing be postponed until culmination of an ongoing criminal investigation of Mr. Silverman and Respondent Pharmacy. It was agreed between counsel for the Respondent and counsel for the Government that the hearing would be cancelled and that Respondent would agree that the suspension of its DEA registration would remain in effect until resolution of the pending criminal proceedings. Respondent further agreed that if Mr. Silverman was convicted of a felony relating to controlled substances, Respondent would consent to the revocation of its DEA registration, and

that if Mr. Silverman was not so convicted, the matter would proceed to hearing. The Administrative Law Judge terminated proceedings before her on July 28, 1988, following the conviction of Mr. Silverman in the United States District Court for the Western District of Pennsylvania of 17 counts of unlawful distribution of oxycodone, a Schedule II narcotic controlled substance, one count of unlawful distribution of phenmetrazine, a Schedule II stimulant controlled substance and two counts of mail fraud, all felony violations of Federal law.

The Administrator finds that as the result of a DEA investigation of several physicians and pharmacists in the Pittsburgh area, on April 15, 1988, Sidney Silverman, pharmacist and owner of Respondent pharmacy, was charged in a 98 count indictment in the United States District Court for the Western District of Pennsylvania with 93 counts of illegal distribution of various controlled substances in violation of 21 U.S.C. 841(a)(1) and five counts of mail fraud in violation of 18 U.S.C. 1341. On May 31, 1988, Mr. Silverman pled guilty to 18 counts of unlawful distribution of controlled substances and two counts of mail fraud. On July 6, 1988, Mr. Silverman was convicted and sentenced by United States District Court Judge Gerald Weber to 3 years imprisonment, all but six months suspended, a $5,000 fine and a special assessment of $1,000.

The investigation which resulted in Mr. Silverman's conviction revealed that for a one year period from June 1986 through June 1987, an audit of the pharmacy's records showed shortages for the Schedule II narcotics Percodan and Percocet. In addition, DEA investigators verified approximately 2,000 prescriptions for controlled substances filled at the pharmacy during the one year period. These prescriptions were allegedly written by five physicians. Four physicians indicated in statements to the investigators that they had not written or authorized the prescriptions in question, and that the individuals named as patients on the prescriptions were not their patients. The fifth physician had been dead for five years. There were 34 prescriptions for the narcotics Percodan and Hycodan listing the deceased physician as the prescriber.

An investigation of Gerald Schor, M.D., conducted by DEA Agents, revealed that Dr. Schor was writing prescriptions for individuals without seeing the individuals and in names provided to him. Confidential informants, working with the DEA Agents, told the Agents that arrangements were made with Mr. Silverman to fill Dr. Schor's prescriptions at Respondent pharmacy. An undercover investigation also revealed that Mr. Silverman filled post-dated prescriptions for controlled substances which were presented with other prescriptions, charging an extra five dollars for filling the post-dated prescriptions.

Following the execution of a search warrant at Respondent pharmacy on June 5, 1987, Mr. Silverman was interviewed by DEA Agents and Investigators. Mr. Silverman stated that his volume of controlled substance prescriptions had increased in the last several months. He further indicated that he knew that mnay of the individuals for whom he filled prescriptions for controlled substances were drug abusers and were selling the drugs they obtained from him on the street. Mr. Silverman admitted to filling post-dated prescriptions for controlled substances, and to charging an extra fee for such prescriptions.

The Administrator finds that Mr. Silverman's conviction of felony violations of the Controlled Substances Act provides lawful grounds for the revocation of Respondent pharmacy's DEA Certificate of Registration. The Administrator has consistently held that the registration of a pharmacy may be revoked as a result of the controlled substance felony conviction of the pharmacy's owner, majority shareholder, officer, managing pharmacist or other key employee. See, *White's Best Buy Drugs,* Docket No. 87–41, 53 FR 7251 (1988); *Unarex of Plymouth Road,* d/b/a *Motor City Prescription Center* and *Unarex of Dearborn,* d/b/a *Motor City Prescription Center,* Docket Nos. 84–1 and 84–2, 50 FR 8677 (1985); *Bourne Pharmacy, Inc.,* Docket No. 83–32, 49 FR 32816 (1984), and cases cited therein. Mr. Silverman has consented to the revocation of Respondent's registration as a result of his felony conviction. The Administrator finds that Mr. Silverman's conviction and the conduct which resulted in the diversion of thousands of dosage units of controlled substances per month into illicit channels require that Respondent's registration be revoked.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AS1698971, previously issued to Elliott Pharmacy, be, and it hereby is, revoked. Any outstanding applications for renewal of that registration are hereby denied. This order is effective October 3, 1988.

Dated: August 26, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–19915 Filed 8–31–88; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment on the Arts, Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 22, 1988, from 9:00 a.m.–5:00 p.m., and on September 23, 1988, from 9:00 a.m.–4:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics of discussion will include cultural diversity issues; Visual Artists Fellowships; Visual Artists Fellowships Research Project; guidelines and Five-Year plan update.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

August 26, 1988.

[FR Doc. 88–19924 Filed 8–31–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Nuclear Power Reactor Operating Licenses Annual License Fee for Fiscal Year 1989

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notification regarding annual fee for nuclear power reactor operating licenses.

SUMMARY: The Nuclear Regulatory Commission is hereby noticing that the annual fee amount for FY 1989 for nuclear power reactor operating licenses will not be published at this time

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Chief, License Fee Management Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–7225.

BACKGROUND: Under the provisions of 10 CFR 171.13 on Annual Fee for Power Reactor Operating Licenses, the Nuclear Regulatory Commission (NRC) is required to publish notice of the annual fee amount for each fiscal year on or before September 1 of each year. The formula set forth in 10 CFR 171.15(c) was used for FY 1987 and 1988. That formula will not be applicable for FY 1989 because the NRC is revising its regulations. Comments on the revisions to the rule as proposed on June 27, 1988 (53 FR 24077), are currently being reviewed. This review will not be completed in time for NRC to have a final rule published by September 1, 1988. Therefore, an annual fee amount for FY 1989 will not be published at this time. Invoices for the first quarterly payment in FY 1989 will be delayed. The NRC expects to issue invoices to applicable licensees once the final rule is promulgated and published.

Dated at Bethesda, Maryland, this 26th day of August 1988.

For the Nuclear Regulatory Commission.

Lee Hiller,

Assistant Controller.

[FR Doc. 88–19910 Filed 8–31–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–529, 50–260, and 50–296]

Tennessee Valley Authority; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–33, DPR–52 and DPR–68 issued to Tennessee Valley Authority (TVA or the licensee), for the operation of the Browns Ferry Nuclear Plant, Units 1, 2, and 3, located in Limestone County, Alabama.

The licensee proposes to temporarily remove certain operability requirements for the Control Room Emergency Ventilation System (CREVS). This is TS change 253 in the licensee's application dated August 17, 1988. The proposed change would denote limiting conditions for operations (LCOs) 3.7.E.1, 3.7.E.3, and 3.7.E.4 by an asterisk and would define them as not being applicable until the withdrawal of the first control rod for the purpose of making the reactor critical from the Unit 2, Cycle 5 outage.

Before issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided by the licensee in its submittal and is given below.

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in the margin of safety.

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed temporary changes to the technical specifications involve relaxations to system operability requirements for the CREVS during those activities leading to and just before withdrawal of the first control rod for the purpose of making the reactor critical from the unit 2, cycle 5 outage. The fuel that will be moved form the spent fuel pool to the reactor vessel has decayed for approximately three years, thus reducing the need for this system to be operable by the technical specifications for postaccident iodine removal.

The fuel handling accident evaluated in the Final Safety Analysis Report (FSAR), section 14.6.4, represents the most severe event in the terms of radioactive release and dose consequences that are applicable. The movement of the fuel from the fuel pool to the reactor vessel is a typical refueling operation in which the current FSAR analysis is still valid. The curernt conditions of the fuel are well within the bounds of the FSAR analysis. The FSAR calculations used freshly irradiated fuel (unloaded from the core 24 hours after reactor shutdown) which contains large amounts of fission products, specifically iodine. The irradiated fuel presently being handled has decayed approximately three years and the only remaining volatile fission product of any significance is Kr–85, which is an inert gas. Because of this decay time, there is essentially no iodine present and therefore no need for the operability of this system with iodine removal capability.

The proposed temporary changes to the technical specifications do not affect the precursors for any accident analysis and therefore do not involve a significant increase in the probability of an accident previously evaluated. The present required availability of systems in the technical specifications is based on FSAR accident analysis assumptions and limitations. The present condition of the fuel in the spent fuel pool is such that over 300 assemblies would have to fail before the FSAR limiting assumptions for releases and dose consequences could be reached, thus allowing a reduction in the number of systems required to mitigate such a limiting event. The requested relaxation in system operability for the CREVS has been evaluated and a determination reached that the present FSAR assumptions and limitations will be maintained. Therefore, the proposed temporary changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from an accident previously evaluated. The proposed temporary changes will relax present system operability requirements, however, no new modes of plant operations are introduced which could contribute to the possibility of a new or different kind of accident. The fuel handling accident is the most severe event that could occur during fuel load or any other activity being conducted just before withdrawal of the first control rod for the purpose of making the reactor critical from the unit 2, cycle 5 outage.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The proposed temporary technical specification

changes will reduce the operability requirements of the CREVS during fuel load and those activities leading to the withdrawal of the first control rod for the purpose of making the reactor critical from the current outage. However, the irradiated fuel has decayed for approximately three years and the only remaining volatile fission product of any significance is Kr–85. Essentially, no iodine is present in the decayed fuel. Because of the "scrubbing" effect of the fuel pool water and since Kr–85 is the only radioisotope of any significance, virtually no radioactive particulates would be present in the CREVS intake ductwork. Since essentially no iodine is currently present in the fuel, the filtration function that CREVS provides would not be needed until after reactor [criticality] critically in which the production of iodine would begin. Thus, the relaxation in the system operability requirements for CREVS until just before the withdrawal of the first control rod for the purpose of making the reactor critical from the current outage allows restart work to be completed and does not reduce the margin of safety.

The proposed temporary changes will ensure that the appropriate safety-related systems needed to mitigate the fuel handling accident are operable and will be able to perform their intended safety function if called upon. Therefore, the proposed changes do not represent a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources, Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By October 3, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by the proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions should be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the request for amendment involves a significant hazards consideration, any hearing held would take place before the issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorneys for the Licensee.

Nontimely filings of the petition for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board designated to rule on the petition and/or requests, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 25th day of August 1988.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–19911 Filed 8–31–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–259/260/296]

Tennessee Valley Authority; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its November 20, 1985 application to amend the Browns Ferry Nuclear Plant, Units 1, 2 and 3 Technical Specifications. The proposed amendment would have revised the Technical Specifications to delete the requirement to check smoke detector sensitivity in accordance with the manufacturer's instructions. The Commission issued a Notice of Consideration of Issuance of the Amendment in the **Federal Register** on July 2, 1986 (51 FR 24262). By letter dated August 3, 1988, the licensee stated that the November 20, 1985 application for amendments had been superseded by its August 3, 1988 application for amendments of the same Technical Specifications. Consequently, the licensee requested, pursuant to 10 CFR 2.107, that the November 20, 1985 application for amendments be withdrawn.

For further details with respect to this action, see (1) the application for amendments dated November 20, 1985, and (2) the licensee's letter of August 3, 1988, requesting the November 20, 1985, application for amendments be withdrawn. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Athens Public Library, South and Forrest, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 24th day of August 1988.

For The Nuclear Regulatory Commission.

Suzanne Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–19912 Filed 8–31–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co. et al.[1]; Issuance of Corrected Amendments to Construction Permits

On August 10, 1988 (53 FR 31778–79) the U.S. Nuclear Regulatory Commission (the Commission) issued Amendment No. 9 to Construction Permit No. CPPR–126 and Amendment No. 8 to Construction Permit No. CPPR–127 for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, to show a change in ownership interest.

Due to an administrative error, these amendments did not make clear that the ownership transfers from Texas Municipal Power Agency to Texas Utilities Electric Company authorized by the amendments would take place in 10 installments as set forth in the Agreement attached to the application dated March 4, 1988.

The Commission has issued corrected amendments to provide this clarification regarding authorized transfers.

Dated at Rockville, Maryland, this 25th day of August 1988.

For The Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Special Projects.

[FR Doc. 88–19913 Filed 8–31–88; 8:45 am]

BILLING CODE 7590-01-M

[1] The current Construction Permit holders for the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company, Brazos Electric Power Cooperative, Inc., Texas Municipal Power Agency and Tex-La Electric Cooperative of Texas, Inc. Transfer of ownership interest from Texas Municipal Power Agency to Texas Utilities Electric Company authorized herein takes place in 10 installments as set forth in the Agreement attached to the application for amendment dated March 4, 1988. At the completion thereof Texas Municipal Power Agency is no longer an applicant or construction permit holder.

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 21, 1988, at 10:00 a.m.

ADDRESS: The meeting will be held at the Postmaster General's Suite, Third Floor, Post Office Building, 1200 Pennsylvania Avenue NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Date: August 24, 1988.

M.J. Brodie,

Executive Director.

[FR Doc. 88–19867 Filed 8–31–88; 8:45 am]

BILLING CODE 7630-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–16538; 812–6760]

National Liquid Reserves, Inc., et al.; Application

August 26, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: National Liquid Reserves, Inc. ("NLR"), The Tax Free Money Fund, Inc. ("TFM"), The Muni Bond Funds ("MBF"), Vantage Money Market Funds ("VMM"), Smith Barney Funds, Inc. ("SBF") and Smith Barney Equity Funds, Inc. ("SBEF") (NLR, TFM, MBF, VMM, SBF, and SBEF collectively, "Funds"); Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney"); Smith, Barney Advisers, Inc. ("SBA"); and, Mutual Management Corp. ("MMC") (SBA and MMC collectively, "Advisers").

Relevant 1940 Act Sections: Exemptions requested under section 6(c) from section 15(a).

Summary of Application: Applicants seek an order to permit Advisers to have served as investment advisers (or subadvisers) to the respective Funds pursuant to Interim Agreements entered into without shareholder approval (prior to new management agreements) between the Funds and the Advisers, and to permit Advisers to receive retroactive reimbursement from each of the Funds for the lesser of the fees charged or the costs incurred for providing services during the Interim Agreements.

Filing Date: The application was filed on June 17, 1987, and amended on June 19, 1987, August 14, 1987, April 6, 1988 and July 5, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 21, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272–3023 or Karen L. Skidmore, Branch Chief at (202) 272–3016, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Until June 19, 1987, each of the Advisers was controlled by Smith Barney Inc. ("SBI"). SBI was a holding company engaged, primarily through Smith Barney, in investment banking and brokerage businesses. Pursuant to a May 26, 1987 agreement between NY Acquisitions Inc. ("NY Acquisition"), a wholly-owned subsidiary of Primerica Corporation ("Primerica"), and SBI, NY Acquisition was merged into SBI on June 19, 1987 (the "Closing Date") and became a wholly-owned subsidiary of Primerica. Each of the former, pre-merger management agreements (the "Former Agreements") of the Funds provided that it would terminate upon "assignment" as such is defined in section 2(a)(4) of the 1940 Act. The merger ("Merger") of NY Aquisition into SBI and the consequent passing of control from the shareholders of SBI to Primerica may be deemed to have resulted in an assignment and termination of the Former Agreements under the 1940 Act.

2. Smith Barney is a registered investment adviser and a registered broker/dealer engaged in the securities underwriting and securities and commodities brokerage business. Smith Barney has served as investment manager to VMM since the Fund's commencement of operations in October 1982.

3. SBA, a registered investment adviser, has been the investment manager to SBEF since July 1968 and to SBF since February 1972. (Smith Barney is the subadviser for each of SBEF and SBF and as such is compensated by SBA and not by SBEF or SBF.)

4. MMC, a registered investment adviser, has been the investment manager to NLR since February 1979, to TFM since April 1982 and to MBF since its commencement of operations in August 1986.

5. On June 3,1987, the directors and Trustees of the Funds, including the independent directors and Trustees, unanimously authorized entering into the interim agreements ("Interim Agreements") which were identical to the Former Agreements, including the fees payable by the Funds, except that any such fees or alternatively the costs incurred by the Advisers, were payable on a retroactive basis, subject to shareholder approval of new agreements and receipt of an order by the Commission. The directors and Trustees also caused new agreements ("New Agreements") to be submitted to the shareholders of the Funds (the proxy soliciting period for which commenced on the day following the Closing Date), and authorized the filing of an application for exemption from section 15(a) of the 1940 Act.

On July 17, 1987, the shareholders of the Funds approved the New Agreements between the Funds and their respective Advisers and subadvisers, at which time the New Agreements became effective.

6. When considering the Interim Agreements, the directors and Trustees of the Funds determined that any change in control of SBI as a result of the anticipated merger would not have a detrimental effect on the ability of the Advisers to provide the same advisory and other services as were then being provided to the Funds. There were no changes in the business, corporate structure, capitalization, or composition of senior management or personnel of SBI or its subsidiary Advisers as a result of the merger. Smith Barney remained autonomous as a subsidiary of Primerica, continuing to operate under the same name and under the same management. After the technical assignments, there were no changes in the investment advisory and other services provided to the Funds and the directors of all of the Advisers remained the same. Each Fund continued to receive the same services, as provided by the same personnel.

7. The negotiations for the Merger commenced in early May and their rapid culmination did not present the opportunity to secure prior approval of the new Agreements by shareholders of the Funds. In addition to the financial and other business terms of the Merger, Primerica,, NY Acquisition and SBI concluded, in light of the disruptions that could occur if a securities firm announced the existence of merger negotiations, that the negotiations and the terms of the anticipated Merger should be maintained on a strictly confidential basis. Expeditious consummation of the Merger following any public announcement was essential to assure that the integrity of the transaction was preserved. Accordingly, access to the knowledge that negotiations were underway was closely circumscribed by SBI and its affiliates. The Funds' management had less than one month from the date of the public announcement on May 27th until the Closing Date to convene Boards of Directors (Trustees) Meetings, to draft and file with the SEC proxy soliciting materials for meetings of shareholders of the Funds and to file the application.

8. Applicants filed the application seeking, to the extent necessary, permission for Advisers to: (i) Have served as investment advisers to the Funds, and for Smith Barney to have served as subadviser with respect to SBF and SBEF pursuant to the Interim Agreements (from June 19, 1987, until July 17, 1987); (ii) receive from each of the Funds, after an order of the Commission is issued, for the fees that were it not for the Merger, would have been payable under the Former Agreements, as further reduced by voluntary fee waivers. The fees subsequently determined for the Interim period were $1,520,924; (iii) as an

alternative to the said fees, receive amounts equal to the costs incurred by the Advisers during the Interim period in providing the services performed under the Interim Agreement, but in no event would such amounts exceed the fees otherwise payable under the Interim Agreements, as further reduced by voluntary fee waivers of the Advisers. Based on Smith Barney's fully costed allocation methodology contained in the application, the lesser of minimum costs or fees per Fund (or series) aggregated for all Funds (series) was $915,143 during the Interim Agreement.

10. Applicants state that the time between the filing of amendments to the application was expended on preparing the historical cost data and financial analysis included in the application. Simultaneous with the cost data research, the personnel for Applicants were also developing strategic planning for Smith Barney. In addition, the market break of October 19, 1987 put further strain on the same individuals who were called upon to respond and react to the effects of the market break.

11. The cost data submitted in the application consists of direct expenses and indirect expenses. The method of allocating, on a full costed basis, direct and indirect expenses of the Advisers with respect to their advisory services to the Funds is consistent with the method currently used by Smith Barney senior executives to monitor product profitability on an allocated basis. For a more complete description of Applicants' methodology, see pages 27–30 of the application.

12. Applicants shall not rely on any order of the Commission prior to its issuance as authority for the Advisers serving as investment advisers to the Funds.

Applicants' Legal Conclusions

1. Section 15(a)(4) is intended, in part, to protect an investment company and its shareholders from the trafficking in advisory contracts. The requested relief does not contravene the protection afforded by this section because the Merger was not contingent on either receipt of the relief requested in the application or shareholder approval of the New Agreements. Applicants submit that it would have served no useful purpose to await shareholder approval of the New Agreements prior to the Merger.

2. The exemption would be consistent with the policies of Rule 15a–4 under the 1940 Act. Applicants are unable to rely upon Rule 15a–4 because of the receipt of compensation from the assignment.

3. The rapid culmination of the merger negotiations did not present the opportunity to secure prior shareholder approval of the New Agreements.

4. Denying Advisers the lesser of fees or reimbursement of costs would be a harsh result and would not afford shareholders any extra protection. The Advisers were responsible for managing assets aggregating more than $4.9 billion pursuant to the Interim Agreements, but for which they are entitled to no compensation, including costs, by the terms of the Interim Agreements, absent the relief requested in the application. Management fees that SBA and MMC receive represent substantially all of their revenues.

5. The independent Directors and independent Trustees of the Funds determined that continuity of the Advisers' services to the Funds was advantageous to the Funds. Any change in the Advisers' operations may have had a disruptive effect on the Funds.

In evaluating the effect of the Merger on the Advisers' ability to continue to provide services to the Funds, the independent directors and independent Trustees received and considered information as to Primerica's business organization and financial resources, personnel and other matters. They considered it significant that the acquisition would have no material adverse effect on the Advisers' ability to provide services to the Funds.

6. The requested order will enable the Advisers to receive with respect to the Interim Agreement period the lower of fees or costs from the Funds, as set forth in the New Agreements and approved by shareholders. The terms of the Interim Agreements state that any payment is subject to the granting of a Commission order and shareholder approval of the New Agreements. The Advisers have borne the costs of preparing and filing the original application and all amendments thereto and the costs of the special meetings of shareholders, including the expenses of preparing, printing and mailing proxy statements to solicit shareholder approval of the New Agreements (except that only NLR bore the foregoing costs in connection with its annual meeting of shareholders, other than a portion of such costs allocable to consideration of NLR's proposed agreement which was paid by MMC).

7. It is in the public interest, in the interest of investors and otherwise consistent with the purposes of the 1940 Act that an investment company be able to continue to receive, despite circumstances that may be deemed to be an assignment of the contract, the uninterrupted services of its investment adviser, which performs pursuant to a contract previously approved by its shareholders.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 19932 Filed 8–31–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Exemption or Waiver; Iowa Traction Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that one railroad has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with certain requirements of the regulations entitled Hours of Service of Railroad Employees (49 CFR Part 228).

Iowa Traction Railroad Company (IAT)

FRA Waiver Petition Docket No. HS–88–21

The IAT seeks a permanent waiver of compliance with 49 CFR 228.9(a)(1), which requires that records maintained under Part 228 be signed by the employee whose time on duty is being recorded or, in the case of train and engine crews, signed by the ranking crew member. The IAT states that it seeks this waiver of the records requirements of the Hours of Service of Railroad Employees because it only employs two full-time employees that work from 8:30 a.m. to 5:30 p.m. with an hour for lunch, Monday through Friday. The IAT feels that the burden of recordkeeping and reporting is excessive and costly for the carrier's operation. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (here, Waiver Petition Docket Number HS–88–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief

Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before October 18, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.—5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 25, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc 88-19880 Filed 8-31-88; 8:45 am]

BILLING CODE 4910-06-M

Petitions for Exemption or Waiver; West Virginia Northern Railroad

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that six railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169), 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

West Virginia Northern Railroad (WVN)

FRA Waiver Petition Docket No. HS-88-15

The WVN seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The WVN states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The WVN provides service on over 17 miles of track from a connection with CSX Rail Transport at Tunnelton, West Virginia. Operations are based at Kingwood, West Virginia.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Tradewater Railway (TWRY)

FRA Waiver Petition Docket No. HS-88-16

The TWRY seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The TWRY states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the TWRY's operation if it encountered unusual operating conditions or circumstances. The TWRY provides freight service on over 69 miles of track between Waverly and Princeton, all within the State of Kentucky. Interchange is made with CSX Rail Transport at Providence and with the Illinois Central Railroad at Princeton.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Maryland and Pennsylvania Railroad (MA&PA)

FRA Waiver Petition Docket No. HS-88-17

The MA&PA seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The MA&PA states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The MA&PA provides service on over 66 miles of track between York and Yoe, and from York to Hanover, which are located in the State of Pennsylvania.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

East Cooper and Berkeley Railroad (ECBR)

FRA Waiver Petition Docket No. HS-88-18

The ECBR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The ECBR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The ECBR provides service on over 15 miles of track between Cordesville and Charity Church, South Carolina.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this waiver.

Port Royal Railroad (PRYL)

FRA Waiver Petition Docket No. HS-88-19

The PRYL seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PRYL states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The PRYL provides service on over 25 miles of track between Yemassee and Beaufort, South Carolina.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for the granting of this waiver.

Keokuk Junction Railway (KJRY)

FRA Waiver Petition Docket No. HS-88-20

The KJRY seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The KJRY states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The KJRY provides service on over 32 miles of track between Keokuk, Iowa and LaHarpe, Illinois.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for the granting of this waiver.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity

for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–87–20) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before October 18, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 25, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–19881 Filed 8–31–88; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0461
Form Number: ATF Reporting Requirement 5110/11
Type of Review: Extension
Title: Marks and Labels on Containers of Distilled Spirits
Description: The marking, branding and labeling or containers of spirits by distilled spirits plants provide the data to identify, trace, and quantify the spirits
Respondents: Business and other for-profit, Small businesses or organizations
Estimated Number of Respondents: 254
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: Other
Estimated Total Reporting Burden: 1 hour
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Managment and Budget, Room 3208, New Executive Office Building Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–19875 Filed 8–31–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 9041
Type of Review: New Collection
Title: Application for Electronic/Magnetic Tape Filing of Tax Year 1988 Form 1041, 1065, or 1120S
Description: Form 9041 will be filed by fiduciaries, partnerships, and S Corporations as an application to file their returns electronically or on magnetic tape; and by software firms, service bureaus, and electronic transmitters, to develop auxiliary services
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Response: 5 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 83 hours
OMB Number: 1545–0187
Form Number: 4835
Type of Review: Revision
Title: Farm Rental Income and Expenses
Description: This form is used by landowners (or sub-lessors) to report farm rental income based on crops or livestock produced by the tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. This form is attached to Form 1040 and the data is used to determine whether the proper amount of rental income has been reported
Respondents: Individuals or households, Farms
Estimated Number of Respondents: 407,719
Estimated Burden Hours Per Response: 25 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 172,680 hours
OMB Number: 1545–0978
Form Number: None
Type of Review: Revision
Title: General IRS Customer Satisfaction Questionnaire (Short Form)
Description: The data collected will be used to get an indication of whether the IRS is providing satisfactory service to its customers, the taxpayers. This information will be used by IRS managers to determine if current programs and service are meeting taxpayers' needs. The need for further evaluation of our service and programs will be indicated by this effort.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 25,000
Estimated Burden Hours Per Response: 3 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,250 hours
OMB Number: 1545–1053
Form Number: 8709
Type of Review: Revision
Title: Exemption From Withholding on Investment Income of Foreign Government
Description: This form is used by foreign governments, with certain types of investments in the United States, to file with withholding agents to obtain exemption from withholding under code section 892. The withholding agent uses the information to

BEST COPY AVAILABLE

determine the appropriate withholding, if any.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 3,000
Estimated Burden Hours Per Response: 27 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 13,382 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management officer.
[FR Doc. 88–19876 Filed 8–31–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 26, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0938
Form Number: IRS Form 1120–IC–DISC, Schedule K and Schedule P
Type of Review: Revision
Title: Interest Charge Domestic International Sales Corporation Return—1988, and its Related Schedules K and P
Description: U.S. Corporations that have elected to be an interest charge domestic international sales corporation (ID–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers, etc., Schedule K (Form 1120–IC–DISC) is used to report income to shareholders.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Response:
1120–IC–DISC—14 hours and 7 minutes
Schedule K (Form 1120–IC–DISC)—36 minutes
Schedule P (Form 1120–IC–DISC)—1 hour and 37 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 82,897 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–19877 Filed 8–31–88; 8:45 am]
BILLING CODE: 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 170
Thursday, September 1, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

August 29, 1988.

PLACE: Biltmore Hotel, 506 South Grand Avenue, Los Angeles, CA 90071.

DATE AND TIME: Friday, September 9, 1988, 3:00 p.m.–5:30 p.m.

STATUS OF MEETING: Open (matters I–X) and Closed (matter XI).

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Staff Director's Report
  A. Status of Earmarks
  B. Personnel Report
  C. Activity Report
IV. Status Report: Federal Protection for Handicapped Infants
V. SAC Report: "Civil Rights Issues in Birmingham"
VI. SAC Report: "Segregation in Louisville and Lexington Public Housing"
VII. SAC Report: "The Status of Civil Rights in Louisiana"
VIII. SAC Report: "Civil Rights Issues in Wyoming"
IX. SAC Recharters: Maryland and New York
X. SAC Interim Appointment: North Carolina
XI. Executive Session closed to the public at the end of the public meeting to discuss internal personnel matters

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,
Solicitor.

[FR Doc. 88–19949 Filed 8–30–88; 11:19 am]
BILLING CODE 6335-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 29, 1988.

CHANGE IN PREVIOUS ANNOUNCEMENT: Vol. 53, No. 167, August 29, 1988.

TIME AND DATE: 10:00 a.m., Wednesday, August 31, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Paula Price* v. *Monterey Coal Company*, Docket No. LAKE 86–45–D. (Issues include whether the judge erred in dismissing the discrimination complaint.)

It was determined by a unanimous vote of Commissioners that this meeting be closed and that no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 88–19966 Filed 8–30–88; 11:20 am]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Tuesday, September 6, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive dicussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed project regarding development of an electronic payments production system.

Discussion Agenda

2. Proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to implement the limitations placed on gradfathered nonbank banks by the Competitive Equality Banking Act of 1987. (Proposed earlier for public comment; Docket No. R–0637)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: August 30, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88–19979 Filed 8–30–88; 1:24 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS:

TIME AND DATE: Approximately 10:30 a.m., Tuesday, September 6, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed statement to be presented to the Senate Committee on Banking, Housing, and Urban Affairs regarding consumer protection provisions in H.R. 5094, the Depository Institutions Act of 1988.
2. Federal Reserve Bank and Branch director appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 30, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88–19980 Filed 8–30–88; 1:24 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 7, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of testimony on banking issues in H.R. 5094, the Depository Institutions Act of 1988.
2. Proposed Federal Reserve Bank salary structure adjustments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before the meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–20022 Filed 8–30–88; 3:28 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to **Federal Register** on August 30, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Tuesday, September 6, 1988.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Proposed project regarding development of an electronic payments production system.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–20021 Filed 8–30–88; 3:28 pm]

BILLING CODE 6210–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, September 12, 1988, in Washington, DC, and at 8:30 a.m. on Tuesday, September 13, 1988, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the September 12 meeting is closed to the public. The September 13 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

At its meeting on August 1, 1988, the Board voted to close to public observation its meeting scheduled for September 12, 1988, to consider a temporary mail classification change affecting certain second-class mail matter (See 53 FR 30511, August 12, 1988). By telephone vote on August 29, 1988, the Board voted to add to the September 12, 1988, closed session agenda, consideration of additional funding for the Mid-Island, New York, Mail Processing Facility.

Agenda

Monday Session

September 12—1:00 p.m. (Closed)

1. Consideration of Temporary Mail Classification Change Affecting Certain Second-Class Mail Matter. (Mr. Heselton)
2. Mid-Island, New York, Mail Processing Facility Increased Funding Requirements. (Mr. Smith)

Tuesday Session

September 13—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 1–2, 1988.
2. Remarks of the Postmaster General.
3. Postal Rate Commission FY 89 Budget.
4. U.S. Postal Service Tentative FY 90 Revenue Forgone Appropriation Request. (Mr. Coppie)
5. Review of Legislative Matters and Government Relations.
6. Tentative Agenda for October 3–4, 1988, Meeting in Richmond, Virginia.

David F. Harris,

Secretary.

[FR Doc. 88–20023 Filed 8–30–88; 3:40 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE BOARD OF GOVERNORS

Vote To Close Meeting

By telephone vote on August 29, 1988, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for September 12, 1988, at United States Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting will involve consideration of a management proposal to increase funding requirements for the Mid-Island, New York, Mail Processing Facility.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, McConnell, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–20024 Filed 8–30–88; 3:40 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 8, 1988, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Repayment of the RUIA Loan
(2) Proposal to Reorganize the Bureau of Retirement Claims
(3) Proposed Part 203. Employees Under the Act, of the Board's Regulations
(4) Proposed Disability Regulations
(5) Registration for Unemployment Benefits by Mail
(6) Proposed Changes in the RUIA Regulations
(7) Payment of Unemployment Insurance During Work Stoppages under the Federal Railroad Safety Act

Portion Closed to the Public

(A) Appeal of Nonwaiver of Overpayment, Ora R. Dicks
(B) Appeal from Referee's Denial of Disability Annuity, Richard O. Carmack
(C) Appeal from Referee's Denial of Disability Annuity, Adam J. Shakir
(D) Freels v. U.S. Railroad Retirement Board

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS NO. 386–4920.

Dated: August 29, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–20009 Filed 8–30–88; 3:27 pm]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 53, No. 170
Thursday, September 1, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 80745-8145]

Groundfish of the Gulf of Alaska

Correction

In proposed rule document 88-18809 beginning on page 31728 in the issue of Friday, August 19, 1988, make the following corrections:

1. On page 31730, in the second column, under **Classification**, in the second paragraph, in the fourth line, remove "MRM".

PART 672—[CORRECTED]

2. On the same page, in the third column, in amendatory instruction 2, in the second line, remove "MRM".

§ 672.23 [Corrected]

3. On page 31731, in the first column, in § 672.23(b), in the sixth line, remove "MRM".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-559-000 et al.]

Niagara Mohawk Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 88-19104 beginning on page 32100 in the issue of Tuesday, August 23, 1988, make the following correction:

On page 32101, in the first column, under **6. GWF Power Systems Company, Inc.**, the first line should read:

"[Docket No. QF85-588-002 *et al.*]"

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3453/R978; FRL-3428-9]

Pesticide Tolerances for Bifenthrin

Correction

In rule document 88-18375 beginning on page 30676 in the issue of Monday, August 15, 1988, make the following correction:

PART 180—[CORRECTED]

§ 180.442 [Corrected]

On page 30678, in the second column, in § 180.442, the fifth line should read "trifluoro-1-propenyl]-2,2-".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62035G; FRL 3366-6]

Polychlorinated Biphenyls in Electrical Transformers

Correction

In rule document 88-16194 beginning on page 27322 in the issue of Tuesday, July 19, 1988, make the following correction:

On page 27326, in the third column, in the second complete paragraph, in the eighth line,"§ 761.3)(a)(1)(xv)(D)" should read "§ 761.30(a)(1)(xv)(D)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0242]

Hydrocortisone Acetate and Pramoxine Hydrochloride; Drugs for Human Use; Proposal To Withdraw Approval; Opportunity for a Hearing

Correction

In the correction to document 88-14876 appearing on page 27450 in the issue of Wednesday, July 20, 1988, make the following correction:

In the third column, in the first paragraph, in the second line, the page number should read "25013"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0159]

IOLAB® Intraocular; Premarket Approval of Models 85JS, 85JM, and 85JL Anterior Chamber Intraocular Lenses

Correction

In notice document 88-16300 appearing on page 27400 in the issue of Wednesday, July 20, 1988, make the following correction:

In the second column, under **Opportunity for Administrative Review**, in the sixth line, "360e(b)" should read "360e(g)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Revised Chapter in Regulatory Procedures Manual; Recall Procedures; Availability

Correction

In notice document 88-16297 beginning on page 27400 in the issue of Wednesday, July 20, 1988, make the following correction:

On page 27401, in the first column, under **SUPPLEMENTARY INFORMATION**, in the 13th line, "or" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-08-4220-11; NM NM 056534, NM NM 016634, NM NM 0556981, NM NM 10388, NM NM 12780, NM NM 46827]

Proposed Continuation of Withdrawals; Baca Recreation Area et al., New Mexico

Correction

In notice document 88-17607 appearing on page 29392 in the issue of Thursday, August 4, 1988, make the following correction:

In the second column, under *Elder Canyon Administrative Site*, the second line should read "Sec. 35, NW¼NE¼N W¼, NE¼NW¼NW¼."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 25]

RIN 2127-AC45

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

Correction

In rule document 88-18537 beginning on page 31007 in the issue of Wednesday, August 17, 1988, make the following correction:

PART 571—[CORRECTED]

On page 31009, in the first column, in amendatory instruction 2, the first line should read: "2. Paragraphs (b)(1), (b)(2), and (b)(3) of".

BILLING CODE 1505-01-D

VOL 53 ISS 170 SE 1 1988 UMI

Thursday
September 1, 1988

Part II

National Labor Relations Board

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry; Second Notice of Proposed Rulemaking

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

AGENCY: National Labor Relations Board.

ACTION: Second notice of proposed rulemaking.

SUMMARY: This Second Notice of Proposed Rulemaking provides for appropriate bargaining units for various types of facilities in the health care industry. The Board has determined that establishing bargaining units by rulemaking will better effectuate the purposes and policies of the National Labor Relations Act than continuing lengthy and costly litigation over the issue of appropriate bargaining units in each case.

DATE: Comments must be received on or before October 17, 1988.

ADDRESS: Comments should be submitted in eight copies to: Office of the Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

FOR FURTHER INFORMATION CONTACT: Curtis A. Wells, Associate Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: The following is an outline of the contents of this Notice:

I. Background
II. Validity and Desirability of Rulemaking
III. Standard to be Applied in Determining Appropriate Units
IV. Two Units: All Professionals/All Non-Professionals
V. Registered Nurses
VI. Physicians
VII. Other Professionals
VIII. Technicals
IX. Skilled Maintenance
X. Business Office Clericals
XI. Other Non-Professionals
XII. One Hundred Bed Distinction
XIII. Nursing Homes
XIV. Specialized Hospitals
XV. Partially Organized Facilities
XVI. Facilities Covered
XVII. Decisions to Which Rule Applies
XVIII. Non-Conforming Stipulations
XIX. Combined Units
XX. Extraordinary Circumstances Exception
XXI. Proliferation
XXII. Docket
XXIII. Regulatory Flexibility Act
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I. Background

In our original Notice of Proposed Rulemaking (NPR), we set forth at considerable length the reasons prompting the Board to embark on rulemaking to establish appropriate bargaining units in the health care field. These reasons are set forth fully at 52 FR 25142–25145, July 2, 1987.

Following the Notice, the Board conducted the three hearings announced in the Notice, as well as a fourth hearing requested by several interested parties and announced at 52 FR 29038. At these hearings, all who wished to testify were given an opportunity to do so, and all who wished to ask questions of the various witnesses were given that opportunity. Summaries (cited below as WS) submitted in advance by most of the prospective witnesses facilitated the questioning process.

The first hearing was held in Washington, DC on August 17 and 18, 1987; 20 witnesses appeared, and 496 pages of testimony were taken.

The second hearing was in Chicago, Illinois on August 31 and September 1, 1987; 27 witnesses appeared, and 521 pages of testimony were taken.

The third hearing was in San Francisco, California on September 14, 15, and 16, 1987; 39 witnesses appeared, and 762 pages of testimony were taken.

The final and longest hearing was back in Washington, DC on October 7, 8, 9, 13, 14, 15, and 16, 1987; 58 witnesses appeared, and 1766 pages of testimony were taken.

The comment period, which was originally to last through October 30, 1987, was thereafter extended three times upon the request of various parties [52 FR 36589, 43919, and 47029]. The evidence received by the Board at the hearings and during the comment period substantially exceeded, in both detail and exhaustiveness, what the Board had expected. The transcript of hearing totals 3545 pages, and the 144 individuals who came in person to testify included employees from virtually every broad classification under consideration: registered nurses, physicians, other professionals, technicals, skilled maintenance employees, service and related employees, and business office clericals. In addition, there were union and management negotiators from around the country; a number of professors of nursing, health care management, and other academic disciplines; hospital administrators; health care associations such as the American Medical Association (AMA); representatives of numerous unions including the American Federation of Labor and Congress of Industrial Organizations (AFL), Service Employees International Union (SEIU), International Brotherhood of Teamsters (IBT), United Food and Commercial Workers International Union (UFCW), International Union of Operating Engineers (IUOE), American Nurses Association (ANA) and several of its state associations, Hospital Employees' Labor Program of Metropolitan Chicago (H.E.L.P.), United Nurses' Association of California (UNAC), Communication Workers of America (CWA), Union of American Physicians and Dentists (UAPD), New York State Federation of Physicians and Dentists; and representatives of various employer groups such as the League of Voluntary Hospitals and Homes of New York, American Hospital Association (AHA), New Jersey Hospital Association (NJHA), Metropolitan Chicago Healthcare Council, Missouri Hospital Association, Ohio Hospital Association, Affiliated Hospitals of San Francisco, California Association of Hospitals and Health Systems, Associated Hospitals of the East Bay, Hospital Council of Southern California, American Health Care Association, and Hospital Council of Western Pennsylvania.

During the comment period, the Board received written comments from 315 individuals and organizations, representing diverse points of view and offering information to supplement what the Board had learned from the oral testimony. These comments alone totalled approximately 1500 pages.

In addition, following the close of the hearings, lengthy comments in the nature of briefs were submitted by the AHA; the ANA; the Building and Construction Trades Department of the AFL–CIO; the IUOE; and the AFL, on behalf of SEIU; National Union of Hospital and Health Care Employees (NUHHCE); Local 1199, Drug, Hospital and Health Care Employees Union, Retail, Wholesale, Department Store Union (Local 1199); Federation of Nurses and Health Care Professionals, American Federation of Teachers (AFT); American Federation of State, County and Municipal Employees (AFSCME); CWA; International Union, United Auto Workers; UFCW; and United Steelworkers of America.

The Board is gratified at, and appreciative of, the interest shown in these proceedings by all segments of the industry, including its employees and their representatives. The Board has spent a great deal of time reviewing the evidence collected and the comments received, and believes it is now far better qualified to resolve the issues

raised in the Notice of Proposed Rulemaking.

On July 1, 1988, the Board met in open session to discuss further the issue of appropriate bargaining units in the health care industry. The rules tentatively decided upon in that meeting and proposed below have been derived from our analysis of the empirical evidence and comments received during the rulemaking proceeding. The rules now proposed differ in several important respects from the rules proposed in our original Notice of Proposed Rulemaking. Because this is the Board's first major effort at substantive rulemaking, and because the Board is desirous of giving all interested parties a further opportunity to comment on the proposed rules, including the substantial revisions, we have provided for another period of comment. See, e.g., Note, *The Need for An Additional Notice and Comment Period When Final Rules Differ Substantially From Interim Rules*, 1981 Duke L.J. 377 (1981). This Second NPR contains a lengthy Supplementary Information Sec., addressing the major issues presented and containing numerous citations to the rulemaking record. We wish to emphasize that these citations are merely illustrative of the testimony upon which we relied and are not represented as the entirety of the record. We have carefully studied the complete rulemaking record, including the transcript, the witnesses' statements, the comments and briefs, and the exhibits, and have based our proposed rules on the entirety of this record, and not solely on the testimony specifically cited.

II. Validity and Desirability of Rulemaking

A. Introduction

The Board's statutory authority to engage in rulemaking is derived from section 6 of the National Labor Relations Act, which expressly gives the Board power to make "such rules and regulations * * * as may be necessary to carry out the provisions of this Act * * *."

In response to several commentators' concerns (e.g., AHA Br. 48; Comment 289, Ross WS Albanese, Charter Medical) and also to the concern expressed by our dissenting colleague, the fact that the language of section 9(b) requires a separate determination "in each case" does not in our opinion mean that the Board cannot promulgate rules to assist it (See discussion at 52 FR 25144.) It has long been the Board's practice to formulate "rules" to guide it in representation matters. See, e.g., the "contract bar rules," discussed in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); the "Excelsior Rule," enunciated in *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); and the *Peerless Plywood* rule, 107 NLRB 427, 429 (1953). Although these rules were formulated by adjudication rather than APA rulemaking, and a majority of the Supreme Court in *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969), upheld the validity of the particular rule (the *Excelsior* rule) as applied to the respondent in that case, the plurality implied, and the two dissents explicitly stated, that the Congressionally-preferred course for such prospective pronouncements would be APA rulemaking. To our knowledge, no court or academic commentator has ever made the contrary suggestion, that section 9(b) forbids utilization of APA procedures to formulate generally applicable representation case rules. As Kenneth Culp Davis observed with specific reference to the language of section 9(b), "The mandate to decide 'in each case' does not prevent the Board from supplanting the original discretionary chaos with some degree of order, and the principal instruments for regularizing the system of 'deciding in each case' are classifications, rules, principles, and precedents. Sensible men could not refuse to use such instruments and a sensible Congress would not expect them to." Davis, *Administrative Law Text* 145 (3d ed. 1972).[1]

In the Notice of Proposed Rulemaking, we set forth at length our reasons for embarking on this procedure in the health care industry. Initially, we noted that thirteen years had elapsed since the health care amendments were passed, but none of the Board's previously enunciated doctrinal formulas for determining appropriate health care units had yet met with general judicial acceptance. Moreover, in numerous cases it had proven necessary to engage in lengthy, costly litigation over the appropriate bargaining unit or units. In retrospect, it appeared to the Board that there had been relative uniformity of workforce configurations and job classifications from facility to facility, and even under adjudication the various Board members had reached virtually identical results from case to case. Hence, it did not appear that what some have termed "sensitive, case-by-case adjudication" was serving any useful purpose. The Board also acknowledged that for years it had been urged to engage in APA rulemaking by numerous scholars and judges. In making the decision to engage in rulemaking, the Board expressed the expectation that this type of proceeding would produce the type of empirical evidence most appropriate for a determination as to which of the requested groups warranted separate bargaining units, while not creating such undesirable results as excessive proliferation, interruption in the delivery of health care services, jurisdictional disputes, wage whipsawing, and the like. A fuller exposition of the Board's initial reasons for undertaking rulemaking can be found at 52 FR 25143–145.[2]

Following its issuance of a Notice of Proposed Rulemaking, the Board permitted the parties to comment on this matter, and to present testimony in support of their positions. A significant number of health care providers, including the American Hospital Association, opposed the Board's rulemaking efforts. We have carefully considered all their arguments and the evidence submitted in support thereof.

B. Industry's Position

1. *Dynamics and diversity of health care industry.* One argument advanced by a number of employers in opposition to rulemaking was that the dynamics and diversity of the industry preclude it. Thus, the imposition of diagnostic related groups (DRGs) has required new efforts at cost containment (WS Rhodes [AHA] at 1,4; Comment 108, Bonaventure; Comment 130, St. Vincent's Hosp. Ala; Comment 193, Dolly Vinsant Memorial Hospital; Comment 268, Kane). Inflationary pressures have increased while revenues, particularly for in-patient stays, have either decreased or have been governed by ceilings. (Comment 76, South Suburban Hosp; AHA Br. 3–4; Comment 81, Jordan Hospital; Comment 146, Kennebec Valley Medical Center.) Severe shortages in certain categories of

[1] See also *Continental Web Press v. NLRB*, 742 F.2d 1087, 1093–94 (7th Cir. 1984), in which Judge Posner suggests that the Board's decision in that case with respect to lithographic units would have been more acceptable had the Board used "its dormant rulemaking powers;" and *NLRB v. Majestic Weaving Co.*, 355 F.2d 854, 859–61 (2d Cir. 1966) (Friendly, J.), cited by the court in *Continental Web Press*.

[2] In the NPR, we observed that a number of states, including Florida and Massachusetts, had engaged in rulemaking to formulate appropriate bargaining units for their own employees. 52 FR 25145, fn. 39. We take official notice that, as of November 1987, of the 22 states with comprehensive collective bargaining legislation for state employees, ten (Alaska, California, Connecticut, Florida, Iowa, Maine, Massachusetts, Michigan, New York and Ohio) set their units by administrative rulemaking, and four (Hawaii, Minnesota, Nebraska, and Wisconsin) designate them by statute. Only eight (Illinois, Montana, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island and Vermont) establish units through case-by-case adjudication.

employees have required hospitals to be flexible, which, it is alleged, is inconsistent with the relative inflexibility of rules (Comment 133, Beth Israel Hosp.).

At the same time, there has developed an increasing diversity in hospitals and the services they provide (King, 4232; Comment 19, Johnson City Medical Center Hosp.). Thus, hospitals of all types and sizes are establishing new types of related health care services on outpatient as well as inpatient bases (AHA Br. 5; Dauner, 3217; Comment 44, McDonough District Hosp.; Comment 71, St. Mary Hosp.; Comment 76, South Suburban Hosp.; Comment 174, High Plains Baptist Hosp., etc.). Many hospitals are expanding their markets by developing a number of specialty units, such as arthritis units (AHA Br. 7, citing *Modern Healthcare*, July 31, 1987, p. 42); intensive cardiac care, intensive medical/surgical, and neonatal units (Comment 71, St. Mary's Hosp.); trach units, dialysis units, etc. (Comment 78, Greater Cincinnati Hosp. Council), Another change is that hospitals are using part-time workers in increasing numbers to accommodate rapid fluctuations in inpatient census and reduction in full-time employee schedules (AHA Br. 7). One large group of proprietary hospitals, National Medical Enterprises, has extensively analyzed services provided in its hospitals to determine what allegedly professional services could be handled by non-professionals; in some of its facilities, it has implemented the "caregiver" concept to replace traditional job labels, within the limits of the classifications' competency. (Donnelly, 4063–80.) It is alleged that rulemaking is not suited for today's diverse and complex institutions (AHA, King, 4232).

2. *Changing structure.* The industry's witnesses presented evidence that the structure of the industry is changing in that hospitals are becoming parts of larger systems encompassing intermediate care facilities, urgent care centers, nursing homes, surgery centers, clinics, etc. (Rhodes, 9–11; NJHA, 320–324, 325; Dauner, 3194; Comment 66, Holy Cross Health Sys.; Comment 203, Deaconess Hosp.). It is alleged that an inflexible rule will impede the Board's ability to respond quickly to rapid changes in the industry (AHA, pos. st. 2). It is claimed that, because of the myriad of recent changes, this is an inopportune time to engage in rulemaking, which would be better done after the industry has had time to settle down from the current changes (Robfogel, Chi II 233).

3. *Prospects for litigation.* A number of representatives of the industry contended that rulemaking will not reduce the amount of litigation, partly because it will still be unclear into what category various occupations fall (Rhodes, 14; Stickler, 49; Owley, 4379–80; Comment 213, Mulhall, AtlantiCare Medical Center); there will be continuing litigation over the "special situations" exception (Comment 148, Moeller, Mississippi Hosp. Assn.); and, in general, the industry anticipates more litigation rather than a conservation of agency resources (Stickler, letter dated June 19, 1987, RM 2–10; Comment 289, Ross).

C. Opposing Position

1. *Litigation.* Though the vast bulk of industry commentators opposed rulemaking, two did not oppose it. Thus, one hospital agreed with the observation that unit determinations in the industry were confused and hard to follow, deeming rulemaking a "welcome relief." (Comment 5, Kane, Holy Redeemer Health System.) Kaiser also does not oppose rulemaking, having observed protracted litigation elsewhere in the industry. (Comment 313, addendum to Kaiser comment.) One student with prior experience as a department head in several hospitals observed that rulemaking may help reduce costs in the industry, so that parties can spend fewer dollars on legal maneuvering and less time on organizing campaigns, leading to more industrial stability. (Comment 122, Shumlas.)

The unions participating in these proceedings supported the Board's rulemaking efforts. (ANA Br. 192–93; New York State Federation of Physicians and Dentists, 79–80; Health Professionals and Allied Employees of New Jersey (HPAE), 122, 127; Union of American Physicians and Dentists, 3649; SEIU, 5155; IUOE, Br. 106; IBT, Saporta, 5101.) They acknowledged the protracted litigation that had theretofore ensued (e.g., Saporta, 5141–42; HPAE, 122, 24; Minnesota Nurses Assoc., WS Patek; Federation of Nurses and Health Profs, WS Owley & 4379–80), producing lengthy delays and great difficulties in organizing (e.g., Lumpkin, 84–85; Nathan, 79–80; Union of American Physicians and Dentists, 3649). One management-side consultant is reported to have admitted that such delays were often part of management's strategy in contesting health care units:

> At a workshop on unions, Raymond Mickus, president of Raymond F. Mickus & Associates in Bannockburn, Ill., predicted that the NLRB rules will spark much more union activity. . . . Under the rules there will be much, faster elections, he said, adding that employers won't have access to hearings or briefs which used to delay the proceedings * * *. There also will be less costs for the unions because they will not have to spend the "megabucks" associated with the hearing process, he said. (Current Developments, BNA Daily Labor Report, Aug. 6, 1987, p. A–2.)

Shortly thereafter, another health care industry representative is reported to have said something very similar: "Delaying representation elections. The greater the time between the initial union petition and the election the less chance there is that the union will win." (Metzger, vice president of labor relations for Mount Sinai Medical Center, discussing management's strategy, though not necessarily advocating it himself. Reported in Current Developments, BNA Daily Labor Report, Sept. 29, 1987.)

2. *Diversity.* There is some variation between institutions. No two hospitals are exactly alike, but this is true of all institutions. The relevant question, however, is whether, despite surface differences, there are such similarities that certain institutions may properly be grouped as a class. AHA data from 1986 show that while there are a number of different types of health care providers, the overwhelming majority of private, acute care hospitals are general medical and surgical hospitals. Of the 4,381 registered, private acute care hospitals in the U.S., almost 90% are classified by AHA as general hospitals; less than 9% are classified as psychiatric. Of the general hospitals, 98% are medical and surgical hospitals, while only 2% are pediatric, obstetric, or rehabilitation hospitals. (AFL Exh. 7,8.) Inpatient activity accounts for 84% of hospital revenues, and 88% of inpatient beds are allocated to general medical and surgical care, obstetrics, pediatrics, and intensive care. (AFL Exh. 9,10.) The unions contend that the industry has not shown that such diversity as does exist is reflected in different functions for business office clericals, skilled maintenance employees, unskilled service workers, etc. at the different types of facilities.

The unions concede the presence of cost pressures which have changed the climate in which hospitals must operate today (AFL Br. 134; WS Berliner; Comment 293(i), Feldsine). However, they argue that change is endemic in the health care field, and contend that recent changes are not qualitatively different from changes brought about by the advent of private health insurance or introduction of Medicare and Medicaid, equally profound and dramatic changes (Kennedy, 5549–50). As reflected in the

testimony about particular job classifications, DRGs are an accounting and financing mechanism that has nothing to do with the organization of the hospital labor force, and that has not resulted in employees performing jobs that were traditionally performed by other groups of employees (Kennedy, 5551–53; Berliner, 5628–29). In fact, business office clericals' skills have been upgraded because of increased complexity of their work caused by financial pressures (Berliner, 5600). The unskilled workforce has become even less skilled and more vulnerable to layoffs caused by financial shortfalls (Berliner, 5603–04). Similarly, technical employee ranks have declined in the least skilled technical positions while increasing in the most skilled positions as a result of industry changes (WS Berliner at 11–12; WS Schoen at 14–15). Skilled maintenance employees continue to maintain the physical plant (AFL Br. 132). Neither has the role of RNs changed; they continue to provide direct care to patients and clients as in the past (ANA Br. 163).

3. *Changing structure.* There was evidence that, at least in California, the trend toward consolidation of ownership and management of hospitals into multi-hospital organizations appears to have ended (AFL Exh. 17 at p. 2, from California Assn. of Hospitals and Health Systems Report). Further, corporate mergers and larger organizational changes have not affected relationships between traditional job classifications; rather, the changes are in the corporate officers, locus, and method of corporate decision-making (Federation of Nurses and Health Profs, WS Owley; Patek, Chi I 48; Twomey, 126–127). In any event, the proposed rule does not purport to address the issue of the appropriateness of a single facility when an employer owns a number of facilities, which the Board will continue to address through adjudication. *Manor Healthcare Corp.*, 285 NLRB No. 31 (Aug. 6, 1987).

D. Conclusion

1. *Agency discretion.* The choice between deciding an issue through adjudication or APA rulemaking is, in the final analysis, within the informed discretion of an administrative agency. *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974); *NLRB v. Children's Baptist Home*, 576 F.2d 256, 260 (9th Cir. 1978); *NLRB v. St. Francis Hospital of Lynwood*, 601 F.2d 404, 414 (9th Cir. 1979). Here, we have carefully reconsidered our initial decision in light of all the evidence adduced at the hearings. After examining all this evidence, we remain convinced that rulemaking for establishing appropriate bargaining units in health care institutions is both fair and desirable. The record of these proceedings has supported and amplified our original reasons, set forth in our first NPR, for engaging in rulemaking.

2. *Past adjudicatory decisions.* Our adjudicatory decisions as to appropriate units in the health care industry, where the facts of each case were painstakingly examined in numerous lengthy and costly representation case proceedings, have been remarkably uniform in results, varying only when the Board changed doctrinal formulations, e.g., from "community" to "disparity" of interests. (NLRB Exh. 5, revised.) Thus, for example, from 1975 to 1984, despite lengthy adjudicatory proceedings the Board found RN units appropriate in 24 out of 25 published cases;[3] technical units appropriate in 18 out of 18 cases; business office clerical units appropriate in 8 out of 8 cases; etc. Though adjudication led to varying results for skilled maintenance units, that was largely a function of a single Board member, Member Jenkins, reaching different results on different records. Other members were, individually, remarkably uniform, despite alleged differences in the records. E.g., Member and Chairman Fanning found the separate maintenance unit appropriate 29 out of 29 times; Chairman Murphy, 26 out of 26 times. Continuing to determine appropriate units in this way seems unproductive, especially considering the lack of universal judicial approval of any single doctrinal approach. (See NPR, 52 FR 25143.)

3. *Financial constraints.* It cannot be denied that health care institutions are at this time operating under serious financial constraints. However, the evidence fails to disclose that these constraints have significantly changed the manner in which individual employee classifications perform their specialties or relate to one another. For example, the record shows that maintenance employees continue to maintain the physical facilities, and RNs continue to provide direct patient care under state nursing practice acts. If anything, the work of the business office clericals has been shown to have become more specialized and discrete, due to the increasing complexity of reimbursement arrangements, and also the increasing use of computers and word processing equipment. It is our judgment that the increased predictability which rulemaking will bring to the process of determining bargaining units will, in the long run, be a resource saver and, hence, result in cost savings not only for the Board but also for health care institutions as well as for employee organizations. Money expended on the *procedure* of determining appropriate units is not productively spent, except insofar as it leads to a greater understanding by the Board of the realities of the workplace; we believe the understanding of the health care industry we have achieved through this rulemaking proceeding has been greater than it was through adjudication, where each party presented a very narrow view of the evidence in order to achieve victory in that particular case. Lastly, insofar as adjudication enabled employers to delay and in that sense save additional costs that might be associated with unionization, we do not think that is an appropriate factor to be considered by the Board in support of continuing adjudication.

4. *Diversity of institutions.* Just as this proceeding has not shown that new cost constraints have made rulemaking inappropriate, neither do we find that any new diversification of institutions has had this result. Such diversity as exists has not been shown to be sufficiently significant to preclude uniform treatment for purposes of establishing the general contours of appropriate bargaining units [4] for acute care hospitals in all but truly extraordinary facilities. In fact, one witness, the Vice President of Human Resources, Hospital Council of Western Pennsylvania, testified that, even beyond acute care facilities, "the delivery of health care and the functional integration of services of those providing the care is similar if not nearly identical throughout the health care industry." (Cammarata, 4394). That same witness pointed out that this similarity in the way health care is delivered is "indeed mandated by various accreditation agencies throughout the health care field" (WS Cammarata at 3). The evidence discloses that the vast numbers of hospitals still perform acute care; insofar as other diverse facilities have developed, such as ambulatory facilities, freestanding emergency centers, etc., these will be considered *infra*, and in our definition of the types of facilities

[3] The sole exception was *Mount Airy Psychiatric Center*, 253 NLRB 1003 (1981), involving a psychiatric hospital. In each category, unpublished cases exhibited the same uniformity of result.

[4] See Subrin, *Conserving Energy at the Labor Board: The Case for Making Rules on Collective Bargaining Units*, 32 Lab. L.J. 9 (1987), at 105–108.

covered by this rulemaking or, alternatively, excluded. Recognizing the diversity of facilities other than acute care hospitals and nursing homes, as well as our limited experience with them, the original NPR excluded such other facilities from consideration in the rulemaking proceeding. These other health care facilities continue to be excluded from coverage.

5. *Litigation.* As described above, the Board anticipates that rulemaking will ultimately result in less, rather than more, litigation about the boundaries of appropriate units. It is acknowledged that there will still be litigation about the placement of individual job classifications within the broadly defined appropriate units. This was referred to in our initial NPR (52 NPR 25146), and in the proposed new rule itself (§ 103.30(a)); the Board does not see this as a reason not to engage in rulemaking in order first to establish the larger boundaries of the appropriate units. The Board believes it may well be legally necessary, and in any event is wise, to retain an exception for extraordinary circumstances. However, the Board intends to define that exception narrowly, so that it cannot be used as an excuse for unnecessary litigation and delay. See section XX, The Extraordinary Circumstance Exception, *infra.*

6. *Flexibility.* The Board's engaging in rulemaking has no logical connection with the industry's retention of complete flexibility in responding to the needs of the times. Rulemaking is rather a response to a perception that the industry's workforce is susceptible to rules of general applicability about the contours of bargaining units. Health care providers remain as free as they ever were to respond to external events except, of course, as limited by the constraints of any collective-bargaining obligations that may result from unionization; that, however, is a policy set by Congress, not the Board. If, for some reason we cannot now foresee, employers' flexibility to respond is inhibited, any party could, of course, petition for amendment or repeal of the rules, or the issuance of new rules. Board's Rules and Regulations, § 102.114.

7. *Other considerations.* Our colleague dissents and would not engage in rulemaking. However, were we to continue to decide the appropriateness of units in acute care hospitals solely by adjudication, we would not have the advantage of the great mass of evidence presented to us in this rulemaking proceeding. Indeed, the production of relevant information is one of the chief advantages of rulemaking over adjudication. In addition, as noted above, adjudication itself has resulted in non-fact-sensitive, virtually uniform results, but at great cost in terms both of time and money. These problems, which we have observed in appropriate unit adjudications in this industry since the 1974 amendments, would not necessarily disappear, even were the Supreme Court to grant certiorari and endorse the "community of interests," "disparity of interests," or some other standard. Lengthy hearings would still be required, and the Supreme Court is unlikely to involve itself in particularized, detailed factual inquiries over various appropriate unit determinations. Finally, it is by no means certain that the Supreme Court would grant certiorari on this issue, having declined to do so in *NLRB v. Mercy Hospital Association,* 606 F.2d 22 (2d Cir. 1979), cert. denied 445 U.S. 971 (1980). On another occasion, the Solicitor General refused to file petitions for certiorari, despite the Board's request that he do so, in *NLRB v. Frederick Memorial Hospital,* 691 F.2d 191 (4th Cir. 1982), and *NLRB v. HMO International,* 678 F.2d 806 (9th Cir. 1982). The court in the most recent relevant case, *IBEW, Local Union No. 474, AFL–CIO v. NLRB,* 814 F.2d 697 (D.C. Cir. 1987), remanded to the Board for further consideration, leaving any petition for certiorari susceptible to the argument that the court's disagreement with the Board's result was in any event not final.

III. Standard To Be Applied in Determining Appropriate Units

The Supreme Court has acknowledged on many occasions since the Act's passage that, under section 9, the Board possesses broad discretion to determine employee units "appropriate" for the purposes of collective bargaining.[5] Of course, even the Board's discretion is not without limits; if the Board's decision as to appropriate unit "oversteps the law," it must be reversed.[6] Within this limit, however, the Supreme Court has noted that any decision as to appropriate units "involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed." [7]

It has been observed that, in exercising its discretion to determine appropriate units, the Board must steer a careful course between two undesirable extremes: If the unit is too large, it may be difficult to organize, and, when organized, will contain too diversified a constituency which may generate conflicts of interest and dissatisfaction among constituent groups, making it difficult for the union to represent; on the other hand, if the unit is too small, it may be costly for the employer to deal with because of repetitious bargaining and/or frequent strikes, jurisdictional disputes and wage whipsawing, and may even be deleterious for the union by too severely limiting its constituency and hence its bargaining strength.[8] The Board's goal is to find a middle-ground position, to allocate power between labor and management by "striking the balance" in the appropriate place, with units that are neither too large nor too small.[9]

As if this task, committed to the Board's discretion, were not already sufficiently difficult, in the health care field there may be, as one court has phrased it, a "joker in the deck." [10] Much has been written, especially by reviewing courts, about the effect of the legislative history of the 1974 health care amendments on the Board's discretion to decide appropriate bargaining units. As the D.C. Circuit recently observed, in passing the 1974 amendments "Congress, in the final analysis, decided against modifying section 9 of the Act; [11] * * * hence, the same statutory standards that had existed before the enactment of the 1974 Amendments with respect to unit determinations and certification procedures remained in the statute, entirely unmodified." [12] Even

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[5] *Allied Chemical & Alkali Workers, Local No. 1 v. Pittsburgh Plate Glass Co.,* 404 U.S. 157, 171–72 (1971); *NLRB v. Hearst Publications,* 322 U.S. 111, 132–35 (1944); *Pittsburgh Plate Glass Co. v. NLRB,* 313 U.S. 146 (1941); *Phelps Dodge Corp. v. NLRB,* 313 U.S. 177, 199 (1941). Not all administrative agencies engaged in regulating labor-management relations possess such broad unit-making discretion. Morris, *The Developing Labor Law,* Second Edition, 415 at fn. 12.

[6] *Allied Chemical & Alkali Workers, supra,* 404 U.S. at 171–72.

[7] *Packard Motor Car Co. v. NLRB,* 330 U.S. 485, 491 (1947).

[8] See Gorman, *Basic Text on Labor Law,* 66–69 (1976); Abodeely *et al, The NLRB and the Appropriate Bargaining Unit* 12–13 (rev. ed. 1981); *NLRB v. Hillview Health Care Center,* 705 F.2d 1461, 1469–70 (7th Cir. 1983).

[9] *NLRB v. Hillview Health Care Center,* 705 F.2d at 1469.

[10] *Id.*

[11] *IBEW, Local Union No. 474, AFL–CIO v. NLRB,* 814 F.2d 697, 699 (D.C. Cir. 1987).

[12] *Id.* at 701. The Supreme Court in *Packard, supra,* declined in that case to look at legislative history regarding whether "foremen" could appropriately constitute a bargaining unit, noting that "we are invited to make a lengthy examination of views expressed in Congress while this and later

Continued

the D.C. Circuit recognized, though, that other Courts had disagreed.[13] Two Circuits [14] have required the Board to apply a "disparity of interests" test, based largely on the legislative history, while eight others [15] have made it clear the Board should follow the committee's admonition to give "due consideration * * * to preventing proliferation of bargaining units in the health care industry," though they fail to "dictate the precise weight to be accorded the admonition." [16] We believe that rulemaking renders it unnecessary to resolve this conflict, or pick one doctrinal formulation over the other, since rulemaking eschews doctrinal applications in favor of greatly expanded information gathering, to be followed by unit determinations based on empirical judgments of the type that Congress expected an expert, informed administrative body to make.[17]

Under adjudication the Board has typically stated it was applying either the "community of interests" or "disparity of interests" standard to the facts of the particular case, as indicated reaching virtually the same result in every case, depending on which doctrine was being applied (NLRB Exh. 5, revised). Under the "community of interests" test, the Board has found five or six units appropriate (not including a statutorily-required separate unit of guards, seldom if ever sought, and a separate unit of physicians, sought in only one published decision since 1974 [18]): RNs, other professionals, technicals, service and maintenance, and business office clericals. In addition, some individual Board members have consistently found skilled maintenance units appropriate; others consistently found them inappropriate. (NLRB Exhibit 5, revised.) Under the "disparity of interests" test, the Board has uniformly found three units appropriate, aside from the two seldom-sought units mentioned above: All professional employees, including RNs; technical employees; and service and maintenance employees, including business office clericals.

Though it had consistently reached different results under the two tests, the Board in *St. Vincent Hospital and Health Center,* 285 NLRB No. 64 (Aug. 19, 1987), minimized the conceptual difference between them. Both, the Board stated, looked at the same factors:

> * * * the "disparity-of-interests" standard to a significant extent embodies the "community-of-interests" approach. That is, even under the disparity approach, the Board judges the appropriateness of the unit sought in terms of, traditional community-of-interests criteria: employees' wages, hours, and working conditions; qualifications, training, and skills; frequency of contacts and extent of interchange with each other; frequency of transfers into and out of the unit sought; common supervision; degree of functional integration; collective-bargaining history; and area bargaining patterns and practices. Under the "disparity-of-interests" standard—as under the "community-of-interest" approach—the Board looks at the above factors as they are shared by employees in the unit petitioned for, and as they tend to set those employees apart from other employees. Where the "disparity-of-interests" formulation differs from the "community-of-interests" standard, according to the Board's *St. Francis II* decision, is in the significance afforded the above factors. Because of Congress admonition to avoid unit fragmentation, the "disparity-of-interests" test requires more in the way of "disparities" or differences between the employees requested and those in an overall unit to grant a separate unit in the health care industry than would be required under a "community-of-interests" formulation. (Slip op. at 10–11, footnotes deleted.)

It is difficult to weigh or quantify the requirement of "more" as it applies to separate, different interests, i.e., how much would be enough more to satisfy the "disparities" test? Regardless, as we observed in the NPR, "these tests over the past decade or so have developed a 'life of their own,' and have been taken to refer to more or fewer units, respectively * * *." (52 FR 25143.) As the Board stated in *Newton-Wellesley Hospital,* 250 NLRB 409, 411 (1980), various courts' "disagreement with our approach may be largely semantic." And, as the Second Circuit said in *Masonic Hall v. NLRB,* 699 F.2d 626, 637 (1983), a court sometimes enforces the Board's decision if it "can infer from the Board's result that it has taken the nonproliferation policy into account." The court suggested that perhaps courts "focus * * * on what the Board did as much on what it said." *Id.* As noted in the NPR (52 FR at 25143), and in our discussion above, our decision to determine units by rulemaking reflected a desire to replace earlier doctrinal applications with formulations of units based on the facts, or realities, of the workplace, as learned from evidence presented to the Board by interested parties during the rulemaking proceedings.

Under rulemaking as under adjudication, we intend at all times to be mindful of avoiding undue proliferation, not only because this desire was expressed in the legislative history, but also because it accords with our own view of what is appropriate in the health care industry. It would be most undesirable to create or permit a large-scale splintering of the workforce into the numerous trades, technical disciplines, and professions typically found in health care institutions.[19] To give each such grouping a separate voice for organizing and negotiating would create a never-ending round of bargaining sessions and individualized demands not conducive to stability, industrial peace, or the smooth delivery of services to the public. We have entered the rulemaking endeavor with an intention to create a reasonable number of units that will realistically reflect pronounced natural groupings to be found in health care facilities: groupings that will not be so large that organizing them is exceedingly difficult, and representing them even harder because of inherent conflicts of interest within the groups; but large enough that unnecessary, repetitious rounds of bargaining are avoided along with such undesirable results as frequent strikes, wage whipsawing, and jurisdictional disputes. We have not begun with a preordained number, but at the end of our examination will consider whether the numbers of units found appropriate are, in fact, too numerous. See section XXI, Proliferation, *infra.* In any event, there will be no units found appropriate besides those permitted in the final rule.

Although under rulemaking we shall attempt to avoid the doctrinal formulations utilized under adjudication, many of the factors we consider will be similar. Thus, among the factors to be considered will be uniqueness of

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legislation was pending to show that exclusion of foreman was intended. There is, however, no ambiguity in this Act to be clarified by resort to legislative history * * *." *Id.* 330 U.S. at 492.

[13] 814 F.2d at 704.

[14] The Ninth and Tenth. See discussion by concurring Judge Buckley in *IBEW Local Union 474 v. NLRB,* 814 F.2d at 717.

[15] The Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Eleventh. See cases cited *id.* at 703–05.

[16] *Id.* at 717.

[17] See, e.g., Estreicher, *Policy Oscillation at the Labor Board: A Plea for Rulemaking,* in proceedings of NYU Annual National Conference on Labor (1984), reprinted in 37 Ad. L. Rev. 163, 172 (1985).

[18] *Ohio Valley Hospital Assn.,* 230 NLRB 604 (1977). See also *Montefiore Hospital & Medical Center,* 235 NLRB 241 (1978), where a separate unit of physicians and dentists was found appropriate, but largely because there were no other professionals employed at the employer's health center, which was deemed to constitute a separate appropriate location.

[19] As Abodeely notes, "the health care industry was believed to be particularly vulnerable to the formation of a multiplicity of bargaining units. From the doctors in the top echelon to pot washers on the bottom, the labor force of a large health care facility is composed of a highly stratified, complex myriad of occupational classifications." This was, Abodeely states, the purpose behind the proliferation language referred to in the legislative history. Abodeely, *supra,* at 245. See also *NLRB v. Hillview Health Care Center,* 705 F.2d at 1470.

function; training, education and licensing; wages, hours and working conditions; supervision; employee interaction; and factors relating to collective bargaining, such as bargaining history, matters of special concern, etc. Location and scope of the job market may be relevant: i.e., whether the classification is part of a job market external to the facility or even to health care, or rather shares a job market with others in the facility or, perhaps, in the areawide health care community; job market is a factor not extensively considered under adjudication, probably because evidence regarding it is not likely to be introduced during the litigation of a particular case. In addition to these factors, should the evidence reveal the possibility of a separate unit, we shall examine the likelihood that such a separate unit would result in interruption in the delivery of health care, wage whipsawing, or jurisdictional disputes, matters with which Congress expressed concern during the deliberations that preceded the 1974 amendments. (See, e.g., 52 FR 25145; *St. Francis Hospital (St. Francis I)*, 265 NLRB 1025, 1027, 1035 (1982) (dissent, Chairman Van de Water); but cf. *Manor Healthcare Corp.*, 285 NLRB No. 31, n.7 (Aug. 6, 1987).) [20] The emphasis, during our rulemaking deliberations, has been and will be on the empirical—what, according to the mass of evidence presented, is warranted and will facilitate collective bargaining without jeopardizing the public interest—as opposed to prior, more doctrinal, more conceptually oriented, determinations. We are confident we are now a better informed administrative body in exercising the substantial discretion which we possess in the area of unit determinations.

[20] Senator Taft, in opening the Congressional debate on the health care amendments, said: "The issue of proliferation of bargaining units in health care institutions has also greatly concerned me. Hospitals and other types of health care institutions are particularly vulnerable to a multiplicity of bargaining units due to the diversified nature of the medical services provided patients. If each professional interest and job classification is permitted to form a separate bargaining unit, numerous administrative and labor relations problems become involved in the delivery of health care. . . . I believe this is a sound approach and a constructive compromise as the Board should be permitted some flexibility in unit determination cases. I cannot stress enough, however, the importance of great caution being exercised by the Board in reviewing unit cases in this area. Unwarranted unit fragmentation leading to jurisdictional disputes and work stoppages must be prevented." *Legislative History of the Coverage of Non-Profit Hospitals Under the National Labor Relations Act*, at 113–14.

IV. Two Units: All Professionals/All Non-Professionals

Some members of the hospital industry have argued to us that if the Board engages in rulemaking, it should find only two units appropriate—all professional and all non-professional employees (in addition to guards). Upon consideration of the record, we determine that the evidence does not warrant limiting the number of units to two broad units.

A. Generally; History of the 1974 Amendments

While the industry generally supports two broad units of employees, the support is not universal. Some employers suggest other configurations including a wall-to-wall unit, a separate doctors' unit, and a separate technical unit. (Comment 1, Lancaster Fairfield Community Hospital; Comment 17, Middletown Regional Hospital; Comment 306, Herrin, attorney for health care associations.) Indeed, one employer felt that several separate units was equitable as each had its own characteristics. (Comment 2, Grays Harbor Community Hosp.) The position of some, in favor of two units, is inconsistent with evidence which shows that until *St. Francis II*, employers seldom requested all-professional or all non-professional units (Friedman, 5057), and that where employers did request broad units for elections they sometimes opposed such units during election campaigns or at the bargaining table (see Registered Nurses, section V). On the other hand, unions fully support more than two broad units for organizing (AFL Br. 112; IUOE Br. 8; Local 1199, 3742; FNHP, 3; UFCW, 4457; NUHHCE, 4778; IBT, 5100; SEIU, 5161). These unions' position is consistent with the evidence presented of organizing history (see section V, Registered Nurses; section IX, Skilled Maintenance; section X, Business Office Clericals; etc.).

Contrary to some employers' claim that the legislative history of the hospital amendments supports a two-unit configuration, the history shows that Congress chose not to amend section 9(b) (assuring employees the fullest freedom in exercising rights guaranteed by the Act) in a way that would enact special representation case rules for the health care industry. Even Senator Taft's proposal, which embodied the proposal advanced by *employer* associations in the health care industry but which died in committee, contained special rules establishing as presumptively appropriate three non-professional units (technical, clerical, service and maintenance), in addition to a professional unit and guards, for a total of five. Furthermore, the hospital industry agreed, in a negotiated compromise with organized labor, to abandon its request for special statutory rules limiting the number of hospital units in return for provisions governing strikes. (See Legislative History, *supra*, at 91 (Sen. Cranston); 256 (Sen. Taft); 288 (Rep. Thompson), cited in AFL Br. 18–27.) The arguments of many employers that all professionals interact on the job, and that there are insufficient distinctions between classifications of non-professional employees to warrant their separation into different units, and the unions' argument that the record supports separate associational interests, are dealt with under specific unit categories.

B. The Record Shows That Multiple Units Do Not Undermine Functional Integration of Work; Do Not Result in an Increase in Proliferation, Strikes, Jurisdictional Disputes, or Wage Whipsawing; and Do Not Substantially Increase Industry Costs

The industry's concerns with having more than two units are the following:

1. *Changes in the industry.* The industry has failed to support its claim by concrete evidence that the DRG method of government payments to hospitals has resulted in restructuring of hospital workforces away from traditional departments and toward a product-line organization that requires greater integration of employee functions. It is claimed that product line management (where different types of employees work in a service related group, for example cardiology) is used increasingly in hospitals and requires that traditional lines of employment be crossed to provide appropriate patient care as employees in a department cooperate (Abramovitz, 325; Comment 54, Gepford Hosp.; Comment 192, Chicago Healthcare Human Resources Assn; Comment 108, Resurrection Health Care Corp.). However, the evidence shows that product line management has less to do with actual practice on the wards than it does with financial operations performed in the business office (WS Kennedy at 6–7). There is no more interaction between professionals than under other forms of financial control. New financial requirements have not resulted in changes in interaction among hospital workers. (WS Kennedy at 6–7.) Even in hospitals where RNs and other professionals are subject to dual lines of control (combining authority under own licensure and under team or functional

department), RNs continue to report to nursing on clinical issues, and retain traditional responsibility for nursing (Comment 293(i), Feldsine; Thompson, Chi II 107; Kennedy, 5561; Fine, 3146–48). Contrary to the generalized claim (Comment 105, Mass. Hospital Assn.) that multiple units would be divisive since one department might contain employees from several units, specific evidence shows that separate units have not prevented effective use of product line management (Houston, 4031, 4048).

In arguing that hospital workforces have moved away from a traditional structure, the industry relies heavily on the team concept, claiming that its use has resulted in greater integration among employees requiring integration of units (Rhodes, 11–12). However, the team concept dates back many years in this industry (AFL Exh. 12, 13, 14; AMA, 4348). Hospital representatives relied on the existence of teams in their unsuccessful attempt to defeat the 1974 amendments (ANA Br. 126). The record does not demonstrate a substantial increase in the use of interdisciplinary teams since then (AFL Exh. 15, study by Temkin-Greener; WS Kennedy at 8–9).

Although the industry argued that the team approach is widespread in the country and gave examples of many types of teams such as discharge planning, and special unit teams like oncology, diabetes, and cardiac rehabilitation (Mixon, Chi II 275; Gallagher, 3543–45; Comment 191, Trinity Lutheran Hosp.), the weight of the evidence shows that utilization of team care is neither widespread among hospitals, nor extensively used within hospitals (Bachus, Chi I 132; Lumpkin, 89–90; Dauner, 3236–40; McCullough, 4819–20; Gilmore, 4910). A study of 60 randomly selected hospitals showed fewer than half used discharge planning teams; a minority of the hospitals had special unit teams such as diabetes, oncology, and cardiac rehabilitation (Attachment to AFL Br. from Supplemental Testimony of L. Kennedy). Some hospitals do not utilize the team concept at all (Gilmore, 4910). Most hospitals with teams have no more than six or seven teams, with two to eight members on a team (Coney, 162; Thompson, Chi II 14–15, 72; Mixon, Chi II 277, 294–296), and a majority of employees do not participate on those teams (Bachus, Chi I 129–132). Specialized hospitals, such as children's hospitals, which may use multi-disciplinary teams to a greater extent, are atypical (AFL Br. 104).

The evidence does not support the industry's claim that participation on teams changes the employee's role. Collaboration among professionals is not new (Ballard, 56). For example, one of the most common teams is discharge planning which historically involves nursing and social work. But the team approach does not alter each licensed professional's responsibilities or scope of practice (Ballard, 56; Willman, 4461; Twomey, 131). For example, use of physicians, assistants and nurse practitioners does not alter physicians, scope of practice. Nor does participation on a team affect an employee's wages, hours of work, employment benefits, qualifications, training, skills, job functions, or history of bargaining (AFL Br. 104–105; Graybill, 4174–75; Houston, 4044–45). Where teams are used, only a small proportion of the professional employees are involved. Contact between the members of the team is limited; each member continues to perform the specialized work of his or her profession. The time spent on a team is limited: team members may perform their work separately and then exchange information; team members are not likely to engage in more than fleeting communication regarding collective bargaining matters. (Thompson, Chi II 107, 109, 118–119, 121; and see section V, Registered Nurses, *infra*.) Recognition by the Joint Commission on Accreditation of Hospitals (JCAH) of the need for collaboration on the interdisciplinary level (AHA Br. 16 citing JCAH sec.) does not itself demonstrate that any change in scope of practice occurs.

There is evidence that various employees interact on hospital committees to evaluate hospital programs, but the evidence failed to demonstrate that the interaction affects the professionals' responsibilities or scope of practice (see, e.g., AHA Position Statement p. 8).

The industry made general, unsupported claims that separate units would interfere with the development or use of the team approach (Graybill-Subrin colloquy, 4185–86; Donnelly, 4131; Coney, 162). There is no evidence that separate units have resulted in failure of professional integration and cooperation on teams (ANA Br. 139; Bullough, 4651–53). On the contrary, teams were shown to be compatible with presence of RN-only units (ANA Br. 123; Thompson, Chi II 86–87; Houston 4048; Bullough, 4651–52).

The industry's emphasis on teams and product lines focused almost exclusively on professional employees. There was no claim that these teams brought technical employees and unskilled service employees together in a single group. Nor was it claimed that business office clericals were involved in health care teams. (AFL Br. 75.) The evidence shows that interdisciplinary teams do not include skilled maintenance employees (IUOE Br. 92; Mixon, Chi II 275).

The industry contends that the use of multi-skilled employees is widespread and on the increase as hospitals seek cost-cutting measures, address the needs of rural hospitals with limited full time staffing needs and large facilities with changing patient loads, and as employee shortages, aging and declining population lead to fewer workers; further, that adoption of the proposed units will abrogate the ability of facilities to effectively utilize multi-trained employees whose skills cut across unit lines (AHA Br. 8, 9; AHA Br. attachment 3 attaching survey by CAHEA; Rhodes, 11; Houston, 4025–26, 4040–42; Comment 137, McDonough District Hospital; Comment 189, Memorial Health System, Inc.; Comment 193, Dolly Vinsant Memorial Hospital). However, the evidence shows that cross-training *between job groups* was not substantial and did not result in blurring lines between separate units. There are no examples of any group of professionals being cross trained to perform work of RNs either in organized or unorganized settings (Stickler, 22–25; Twomey, 130–131). The interchange of RN functions is not a viable concept because state licensing statutes preclude cross-training of other health professionals in patient care duties and responsibilities of RNs (Ballard, 56–57; Dumpel, 3277–78; Lipari, 3702–03; Rosen, 4665–67; Comment 293(j), paper on licensure of health care personnel).

The evidence shows that multi-competency programs are overwhelmingly aimed at technical employees. They developed because of a perceived need to provide technicians with a broader range of technician skills (WS Schoen, attaching article by F. Morgan). These programs are mainly confined to acquisition of additional technical skills by employees already holding technical jobs as shown by the operation of the programs referred to in the record. Participants in the Methodist Hospital "Add-A-Comp" program which provides employees with laboratory, respiratory therapy, electrocardiograph, emergency medical technician, and similar skills are already licensed or credentialed and include employees having some of the listed skills (Stickler, 19–21 & Chi I 36). Although the Multi-Competency Technical Program at the University of Alabama provides training in medical office skills, it is basically designed to add basic x-ray skills or

extend laboratory skills for technicians who are already licensed (Stickler, 19–21, Chi I 36–38). There is no showing that students trained in medical office skills actually perform technical tasks. Furthermore, the mere existence of the program does not show widespread participation, since the record fails to show there are many students involved (Stickler, Chi I 38–39). Moreover, even if these programs turn out a number of multi-competent graduates, they are generally employed in physicians' offices or outpatient facilities rather than in hospitals (Schoen, 5236 and WS Schoen, attaching article by F. Morgan) and their use therefore has little relevance to units in acute care hospitals.

We conclude from the record evidence that cross-training programs extending beyond the technical workforce are rare. Unskilled service workers cannot be readily trained to become technical employees because they lack the advanced education required and because of state licensure laws (AFL Br. 35–36; IUOE Br. 42, fn 5). Service workers cannot be easily trained for business office clerical jobs because of the specialized skills required in the business office (AFL Br. 57–58). Cross training from service to skilled maintenance or technical positions is virtually unknown (O'Cleireacain, 5467; McKinney, 5481). Business office clericals do not transfer into skilled maintenance positions (IUOE Br. 42). Nor are skilled maintenance employees being cross-trained into other job groups (Stickler, Chi I 9, 35–37). The few examples of individuals having interchange of functions (emergency technician starting IVs, RNs doing work after daytime hours normally performed by respiratory therapist or physical therapist, medical technologist trained to watch the heart monitor while RN is on break—Houston, 4026–27, 4042) are very limited. Evidence does show that separate RN units are compatible with limited interchange of function (ANA Br. 153, citing Houston, 4040.)

There is no evidence to support the industry's general claim that cross-training has been inhibited by collective bargaining in separate units (ANA Br. 151; IUOE Br. 45; Stickler, 45–49). The suggestion (Comment 142, St. Anthony's Health Corp.) that use of multi-competent workers would be hurt by turf battles between professional groups, separate bargaining unit designations, and existing legal restrictions on practice patterns is speculative and is undercut by finding that most multi-competent workers are within one unit—the technical unit. Any problems raised by legal restrictions such as licensure requirements do not derive from the Board's proposal to allow multiple units. Industry testimony on interchange of functions between professionals and non-professionals (Donnelly, 4073–74; AHA Br. 11) is not relevant because the Act would not permit a unit combining professionals with non-professionals, absent a self-determination election by the professionals.

Countering the claim of increasing integration of health care employees is evidence of increasing fragmentation as a result of greater sophistication of work, decrease in the full time equivalent work force and rise in part-time and temporary jobs, increase in the use of subcontracting, growing gaps between patient care and non-patient care jobs (such as business office clericals), and growing gaps between RNs and other professionals because of the RN shortage (WS Schoen).

2. *Proliferation, strikes, jurisdictional disputes, and wage whipsawing.* There is little if any evidence that multiple units in the health care industry have resulted in any of the problems perceived to arise from proliferation such as strikes, jurisdictional disputes, and wage whipsawing.

First, the record shows that most hospitals that are organized have few units (Robfogel, Chi II 223; Comer, Chi II 329; Cammarata, 4424–4425). Logically, the potential for a number of units does not mean that every hospital will be faced with this number of organizing campaigns. Indeed, a successful organizing effort of one unit in a hospital does not appear to have had a ripple effect on further organization (Gilmore, 4894; Splain, 5252–53; IUOE Br. 69–70). Statistics over the last ten years show little organizing in residual units. Health care workers organize no more frequently in facilities where some workers are already engaging in collective bargaining than in facilities where no employees are represented (WS Splain at 14–17). A vast number of organized hospitals have only one unit (WS Schwarz at Table 1 & 264; Sockell, 4520; Shea, 5163). AFL analysis of all hospital contract renewal notices received by the FMCS from hospitals from 1983 to 1987 shows that 55% of all organized hospitals are party to only one collective-bargaining agreement; almost 80% negotiate no more than two contracts; and almost 90% negotiate no more than three contracts (AFL Exh. 5 p. 1). In an SEIU survey of 200 private hospitals, 74% have 3 or fewer bargaining units (WS Shea, SEIU, Table 2).

Evidence shows that, with the exception of New York State, where pre-1974 practice was to permit each employee group to have its own unit, recognition of RN-only units has not led to organizing efforts by other professionals (King, Chi II 38: In Ohio there is only one unit in which professionals other than RNs are represented separately; Gilmore, 4894: No hospital represented by Maine State Nurses' Association has another professional unit in addition to RN unit). Existence of a physicians' unit is rare; some states, like Texas, do not permit physicians to be employees of health care facilities (IUOE Br. 64, 99; see section VI, Physicians, *infra*). There is no evidence that the existence of a separate skilled maintenance unit has led to the organization of other units (IUOE Br. 62–65 and section IX, Skilled Maintenance, *infra*).

Some witnesses' statements that multiple units lead to strikes, jurisdictional disputes, and wage whipsawing were, for the most part, general and speculative, and not supported by examples. See, for example, Graumann, 397, 409; Dauner, 3199; Corbett, 3369; Emanuel, 3503–04; Weinrich, 4254, 4256; Cammarata, 4403, 4405–06. The industry did not submit data with respect to the degree of organization, number of organized units per hospital, or incidence of strikes or sympathy strikes, nor evidence that a particular type of unit has proven to be strike prone (AFL Br. 118–19).

In fact, the evidence submitted by unions shows there is a low incidence of strike activity in the health care industry; the rate is lower than in other industries (IUOE Br. 75; NLRB Exh. 1; AFL Exh. 6). The ANA had a voluntary no-strike policy until 1968 (Shepard, 4931–32). The California Nurses' Association (CNA) offers binding arbitration (WS Absalom at 16). According to available data, only 3.3% of all contract negotiations, including nurse bargaining, resulted in strikes. From 1984–1987, strikes in the health care industry occurred substantially less often than in all other industries (FMCS data reprinted in WS Schoen at 28 and AFL Exh. 6). The minimal level of strike activity is confirmed by studies done by several health care unions. Since 1938, SEIU has had a strike incidence of 1.4% in over 2700 hospital contracts (WS Shea at 10). Of over 1,000 hospital contracts negotiated since 1975 by the NUHHCE, only 43 involved strikes (Muehlenkamp, 4776). IUOE, which represents almost 300 hospital

bargaining units, has had only 25 strikes in its history (IUOE revised Exh. 2).

Industry witnesses who testified about collective bargaining experiences in the industry confirmed the infrequency of strikes (Comer, Chi II 320; Corbett, 3374–75; Henry, 3026, 3062, 3085–86). Indeed, Kaiser specifically stated that its observation that there is a greater likelihood of work stoppages in facilities with multiple units was limited to craft-specific units, not the broader, traditional unit groupings (Comment 311). The industry's claim that the Board should discount the lack of strike activity in professional units because few facilities have multiple units supports our finding that in fact few facilities have multiple units.

One study showed there is generally no correlation between the number of units in a hospital and the frequency of strikes (AFL Br. 118, fn citing FMCS study). Other evidence suggests, however, that the likelihood of strikes decreases as the number of units in a hospital increases (IUOE Exh. 2 revised). Strikes also tend to occur more frequently in units with more employees than in smaller units (AFL Exh. 5). For example, only 16.4% of hospital contracts covered 300 or more employees, yet these units account for 45.5% of all strikes, while 51.52% of all hospital contracts covered 100 or fewer employees, but accounted for only 17.7% of all strikes. The average size of a striking unit in the 1984–87 period was three times the size of a non-striking unit. (AFL Exh. 5 citing FMCS data.) See also WS Shea at 11–12 with similar variation in size of striking SEIU units. Strikes in broader units have the greatest impact on health care. Strikes in New York City by Local 1199 encompassing many worker classifications including other professionals, technicals, service, and clericals closed down most health care in the city. (Abelow, 229.) Strikes in broader units also draw in groups of employees who, if in their own smaller unit, might have no reason to strike (Dumpel, 3291: Strike over nurse practice issues would have no importance to other groups of employees; Viat, 3466; Shea, 5188: Skilled maintenance employees, technical employees enmeshed in strikes over issues related to other groups of employees).

The evidence shows that sympathy strikes are virtually nonexistent. No-strike clauses in hospital contracts forbid sympathy strikes, and the pattern in the industry is for covered employees to obey their contracts. (Schloop, Chi II 169; Sackman, 3585; Ahmed, 3708–09; Muehlenkamp, 4777.)

We cannot accept the argument that multiple strike notices alone, even absent actual strikes, are disruptive, since the purpose of the notice is to minimize possible disruptive impact by giving hospitals time to prepare for a strike. In any event, there was no showing of widespread frequency of strike notices and no evidence that notices caused disruption in health care delivery. Hospitals have not generally sought common expiration dates, which would be a possible solution to recurring near strikes. (Sackman, 3586; Schmidt, 3625; Willman, 4496; Muehlenkamp, 4771; Henry, 3074–75; Corbett, 3359–60; Weinrich, 4282).

Some hospitals' argument that they do not have the same defensive measures as do employers in other industries, for example, because it is difficult to replace striking professionals, is essentially an argument that hospital employees not be allowed to exercise their statutory right to strike. The record does not show in any event that they engage in strikes frequently.

Industry's general claim (AHA Br. 26–27) that multiple units will inevitably result in jurisdictional disputes is not supported by the record. The record shows a low frequency of jurisdictional disputes in hospitals and no correlation between the occurrence of disputes and the number of units. Jurisdictional issues that have arisen are often resolved on an informal basis without resorting to arbitration (Absalom, 3282–83; Sackman, 3585; Schmidt, 3625; Viat, 3471; IUOE Br. 78–79). There was no record evidence of jurisdictional disputes in hospitals between units of professional employees (Emanuel, 3503–4); such disputes are usually fought and resolved in the public arena (Absalom, 3282). Jurisdictional disputes between non-professional groups are rare, apparently because traditional unit lines separate functional groupings and the unit employees do not view the other units' duties as being within their purview (AFL Br. 124–25). The few disputes specifically referred to by the industry, such as accusations of mistakes on the job, and conflict between duties of RNs and LPNs assigned by the hospital (Krasovec, 413–415; Giblin, 5389–90; Graumann, 396–399, 408), encompassed disagreements that could arise even under all-professional and all non-professional units. The approval of an overall skilled maintenance unit, *infra*, should help reduce the risk of jurisdictional disputes between different skilled crafts.

The industry failed to support its general contention (Rhodes, 13) that multiple units result in employees' competing for the best settlement, burdening negotiations, and inflating settlements. The record shows that wage whipsawing and leapfrogging rarely, if ever, occur in the hospital industry. This is apparently the result of separate labor markets for RNs, clericals, technicals, skilled maintenance, and doctors (ANA Br. 174; AFL Br. 37–38, 59–60, 86–88, 121–22; IUOE Br. 83 citing record), and the method of setting Medicare and Medicaid rates which limits the pass-through of spiralling wage increases (Friedman, 5044–45). In view of the unorganized nature of the health care industry as a whole, separate unit contracts tend to follow wage patterns set by non-union employers (WS Shea at 13).

3. *Costs.* Some unions question the relevance of costs in determining hospital bargaining units. In view of Congressional concern in the health care amendments with the ability of health care institutions to deliver uninterrupted health services, it is relevant to consider whether multiple units increase costs to health care institutions so as to disrupt the stability of the institutions. However, to the extent the industry's contention regarding costs is an argument that employers cannot afford collective bargaining with their employees, we note that the health care amendments were passed in response to Congress' concern with low wages and poor working conditions in the hospital industry. *Beth Israel Hospital* v. *NLRB*, 437 U.S. 483, 497 (1978). It was anticipated by Congress that the amendments might lead to increased union organizing and bargaining which in turn might improve employee wages and working conditions. Costs associated with these anticipated improvements are not relevant to the Board's decision as to appropriate bargaining units.

Some commentators claimed that multiple units would increase costs by increasing expenses for contract negotiations, wage and benefit increases, administration and legal fees, grievances, supervision, and accounting (Comment 62, St. Mary's Hosp.; Comment 153, Sturdy Memorial Hosp.; Comment 140, Park City Hosp.; Comment 130, St. Vincent's Hosp., Birmingham; Comment 224, St. Luke's/Roosevelt; Comment 311, Hosp. Council of Southern Calif.). There was no empirical or specific evidence showing comparative labor costs in hospitals with different numbers of units. For example, one witness stated that facilities in Ohio with three or more

units devoted more time and resources to collective bargaining than hospitals with fewer units, but had no specific examples (Weimer, Chi II 7, 65–66, 77–79). Another industry witness testified generally that increased costs were associated with negotiating in multiple units in Pennsylvania, but gave no specifics (Cammarata, Hosp. Council of W. Pa., 4392–4430). In fact, studies have found minimal cost impact, 3%–5%, of labor unions on hospital costs. This rate is low when contrasted with the overall rate of health care cost inflation (WS Schoen at 31). The example relating to the costs for negotiations at a public hospital in Massachusetts with eight bargaining units (Robfogel, Chi II 222–23, 228, where out-of-state as well as local attorneys appeared for each negotiating session) was not shown to be typical.

The industry contends that small hospitals are particularly vulnerable to increased costs and cannot afford the money and staff resources needed for dealing with multiple units. However, we were not provided with empirical data for comparison. We note also that few health care facilities have more than two or three units.

The industry's claim that hospitals generally treat each bargaining unit as a separate cost accounting center, thereby adding to the complexity of operating a hospital, is unsupported in the record (Dauner, 3233–34), and in any event is irrelevant.

One witness claimed that multiple units would limit an employer's ability to secure significant cost reductions in employee benefits available now by marketing large groups of employees to third party providers and that the cost of administering multiple employee benefit plans is higher. No specific examples were cited of increased costs (Cammarata, 4402–03). Moreover, benefits may be negotiated across-the-board even in multiple units (Jacquin, 5366–68).

The claim by some that multiple units will result in limiting opportunities for job advancement and security are not supported by the record; neither is the claim that multiple units hamper affirmative action because departmental seniority and separate bargaining deter hiring and career development. To the contrary, there is record evidence (set forth in Sec. V, Registered Nurses and other sections), that there is limited career movement in hospitals regardless of whether or not the hospital is organized because promotions, layoffs, etc. are done by department and because of the distinct skills and education of the various groups of employees which restrict interchange and mobility. There is also evidence that in organized facilities, unions have sought career ladders, training, and upgrading, and have not acted to limit movement among workers. (WS Schoen at 15; Supplemental Statement of Schoen.)

Some employers argue that multiple contracts limit their flexibility in job assignments, scheduling, and performance evaluation. This appears to be an argument that the industry does not wish to have to bargain since bargaining limits the employer's flexibility. However, the statute gives employees the right to bargain for more favorable terms of employment, and employers have the opportunity at the bargaining table to seek terms giving them flexibility.

Arguments that multiple contracts will result in confusion for management as to which contract covers which employees (Comment 104, St. Francis Hosp., Hartford), that it would be hard for employees to understand and deal with many units (Comment 51, O'Bleness Memorial Hosp.), and that multiple units work against cohesiveness among smaller groups like business office clericals (Comment 138, Rice Memorial Hosp.) were not supported by specific examples.

Finally, the record demonstrates some countervailing considerations to any increased costs as a result of multiple units. At least some of the administrative costs of unit determinations come from the hospitals' opposition to organizing. In 1981 Congress banned the use of Medicare funds for anti-union consultants on estimates that this activity cost $30 million dollars a year (WS Shea at 15, citing Medicare Manual). There are presently industry costs for prolonged hearings and appeals in many units, which we are confident rulemaking will substantially reduce. Bargaining in large units may prolong negotiations and increase costs as employees are involved who would otherwise have no interest in certain demands (WS Shea at 15). Employers can face increased costs even if there is only one unit, since there may be separate negotiations for different major employee classifications (Owley, 4375–76) or separate contract provisions (Emanuel, 3499–3501). Costs might be contained by combining separate units for bargaining purposes or having common expiration dates for contracts, but the record shows lack of employer support for such union proposals (See Sec. IV(B)(2), *supra*).

C. Broad Units Militate Against Health Care Employees, Organizing and Bargaining, Contrary to Congress' Intent

1. *The impact of broad units on organizing and bargaining is a relevant consideration.* As shown above, Congress passed the health care amendments, in part, to improve conditions for health care industry employees by extending to them the rights of the National Labor Relations Act which permits organizing and collective bargaining. *Masonic Hall* v. *N.L.R.B., supra,* 699 F.2d at 634. While, as the industry correctly contends, the extent of union organization cannot be controlling in unit determinations, it is a factor, and in view of Congress' concerns, the ability of health care employees to organize and bargain is an important consideration in determining whether more than two units are appropriate in the industry.

2. *Historically, health care workers organize and engage in initial bargaining in occupationally homogeneous units.* The evidence shows that broad units militate against organizing by health care workers (AFL Exh. 4, AHA Report on Union Activity in the Health Care Industry). Although there were examples of broad-based bargaining, particularly in New York City, the record shows that organizing and initial bargaining among health care workers has historically been by occupationally-homogeneous units (AFL Appendix A; WS Shea, Table 1, SEIU Survey; and section V, Registered Nurses; section VI, Physicians; and section VII, Other Professionals). For example, in the AFL survey of all private sector hospitals in which an AFL affiliate has organized one or more units, there were 920 homogeneous non-professional units, and only 104 heterogeneous units (AFL Br. Appendix A). The ANA constituent state nurses' associations represent 363 all-RN bargaining units; only 4 all-professional units were organized before *St. Francis II* (Comment 240, ANA, Stull Affidavit). Evidence prepared by the industry confirmed that occupationally diverse bargaining units are found only in a minority of contracts (AFL Exh. 1, [Hospital Industrial Relations Information Services, p. 5]).

The industry contends that unions have requested or agreed to all-professional and all non-professional units, have successfully organized and bargained in these units, and that therefore a Board decision to find appropriate only two broad units (plus guards) would not negatively impact on organizing and bargaining. The record

shows that most union requests for broad-based units occurred after *St. Francis II*, at a time when the Board would have rejected most occupationally-homogeneous units. Broad bargaining, where it does occur, appears to develop over time, after individual employee unit concerns are addressed and the bargaining relationship has matured (WS Shea at 8; WS Pastreich; Friedman, 5046). Even then, the record shows that employers may meet separately with one or more subunits on their concerns and that there may be separate contract provisions for different concerns. See *e.g.* section VIII, Technicals; section X, Business Office Clericals. Thus, in New York City, where Local 1199 engages in citywide bargaining with the League of Voluntary Hospitals on behalf of its Professional, Technical, and Clerical Division (professionals other than RNs), Hospital Division (service and maintenance employees) and Drug Division (pharmacists, social workers, therapists), the individual units in these divisions were separately organized and negotiated their first contracts separately; joint bargaining of these divisions developed over twenty years (Olson, 4694–4700, 4706, 4716–19; Ratner, 3710, 3725–33, 3738). Proposals are submitted by each separate division; each classification has at least one representative at the bargaining table; and there are local negotiations for specific issues at some hospitals after the master negotiations (Ratner, 3739, 3742, 3757–59; Olson, 4702; Muehlenkamp, 4782). At Michael Reese Hospital, the service and maintenance unit and the business office clerical unit bargain jointly but have separate committees, contracts, and stewards (WS Gray).

There is no evidence of a trend toward coordinated bargaining (Shea, 5217–18). In New York City, there has been some movement away from the citywide approach of Local 1199; there is pressure to go back to each hospital after the master agreement to get separate provisions on local issues (Ratner, 3739).

Although some industry commentators now request broad-based units, there are a number of instances in the record in which employers sought, for example, to have RNs in a broad unit with other professionals, and then raised the question of effectiveness of bargaining representation, or appropriateness of unit. See section V, Registered Nurses, *infra*. To the extent that employees represented in different units may wish a number of years later to re-group as a single larger entity for purposes of conducting negotiations, nothing in the rule would interfere.

In sum, the record fails to demonstrate that finding a limited number of occupationally-homogeneous units to be appropriate would inhibit functional integration on the job, increase strikes, jurisdictional disputes, or wage whipsawing, or substantially increase costs to industry or to workers. Rather, we believe that finding only two broad units appropriate would unduly hamper organizing and effective bargaining, and would not carry out Congress' intent in the health care industry.

V. Registered Nurses

A. Introduction

In the Notice of Proposed Rulemaking, the Board tentatively determined that RNs constituted a separate appropriate bargaining unit in acute care hospitals having more than 100 beds. 52 FR 25146. Among the reasons assigned were that RNs:

(a) Work around the clock, 7 days a week;

(b) Have constant responsibility for direct patient care;

(c) Are subject to common supervision by other nurses;

(d) Share similar education, training, experience and licensing not shared by other employees;

(e) Have the most contact with other RNs; and

(f) Have a lengthy history of separate organization and bargaining.

Much of the evidence taken at the rulemaking hearings concerned the RN classification. As discussed in more detail *infra*, we have decided not to differentiate between hospitals having more than 100 beds and those having fewer. However, in other respects, after carefully considering the evidence amassed, we have determined that RNs appropriately constitute a separate bargaining unit.

B. The Record Supports a Finding That RNs Constitute a Separate Appropriate Unit

1. *Work schedules.* There was some evidence of selected other professionals who, at certain hospitals, might be scheduled to work evening and nighttime shifts (Comment 72, McCarthy; Comment 82, Humana). However, the evidence was overwhelming that only RNs have a professional responsibility which requires them as a group to be on duty 24 hours a day, 7 days a week (Chow, 3107–08; Ballard, 55; Schauer, 3155; Ratner, 3735; Graham, 4841–42). They are the only professionals regularly required to work overtime, including as much as two 8- or 12-hour shifts (Bachus, Chi I 144; Wilson, 5074, 5091).

2. *Responsibilities.* Each professional classification obviously possesses its own singular job function and responsibility. However, whereas other professionals specialize, and have intermittent contact with patients, nurses are unique in that their profession demands continuous interaction with patients (Dumpel, 3277–78; Chow, 3108; Ballard, 55, 57–58, WS at 7; Foley, 446). Nursing practice involves the nursing process by which nurses assess patients, as reflected in the nursing practice acts (Comment 240, ANA, Kalisch; WS Foley at 4; WS Ballard at 9–10). RNs continually monitor all patients to be sure that physicians' orders are being carried out and that treatment procedures are not proving harmful (Ballard, 55–56; Bullough, 4627–30). RNs must be alert for errors made by other professionals; for example, if another professional, e.g. a pharmacist, dispenses medication in an improper dosage, the overall responsibility rests with the RN who, if she administers it, is also responsible (Reierson, 3606–07; Sackman, 3586). The RNs' special responsibility is based on a cluster of knowledge which they possess, as opposed to a single skill (Buliough, 4629–30). One 1982 study by Posavac showed that the "perception of nursing care is the single most crucial aspect in the overall rating of hospitals by patients" (Fine, 3143).

3. *Supervision.* All acute care facilities have an organized department of nursing, and that department is supervised by a nurse (Ballard, 52–53). For this reason, the vast majority of nurses in hospitals are ultimately responsible to the director of nursing (Ballard, 67; Lipari, 3703; Gilmore, 4909–10; Comment 293(b), Jones: 3 RNs out of 99 not in nursing department; Comment 293(g), Soltis: 11 out of 200 not in nursing department). The evidence did indicate that in some instances nurses work in departments other than nursing and are subject to supervision by these other departments, such as ambulatory services, discharge planning, home health care, and anesthesiology (Graybill, 4149; Comment 139, S. Baltimore Hospital). However, even in the few instances where a nurse might be hired into another department and report to someone other than the director of nursing, the director of nursing is still responsible for the delivery of nursing care (Ballard, 67–68; Indelicato, 3680).

Product line management is a system of organization by type of service and in response to the DRG method of payment

(Dalstrom, 332; Houston, 4024; Kennedy, 5552). It is argued that, with this type of structure, nurses have more in common with those in their product line than with other RNs with whom they have little contact (Dalstrom, 336–339). Ordinarily however, it results in some RNs' being responsible to a functional manager of a project and to nursing heads for clinical issues (Comment 293(i), Feldsine, at 2–3). Product line management is a financial tool; it does not result in changes in interaction among hospital workers (Kennedy, WS at 6–7). As noted *supra,* nurses overwhelmingly continue to report to nurses (Dalstrom, 335: Only 10% of RNs not members of nursing division, but no showing that not supervised by an RN).

4. *Wages.* The labor market for nurses is distinct from that for other professionals (Gonzalez, 4356). Thus, nurse salaries are low, even within the framework of hospital compensation (Corbett, 3332, 3335). There is no pressure from outside the hospital industry forcing up wages, as for example is the case with pharmacists (ANA Br. 97). Moreover, the overwhelming percentage of nurses are women, and there is evidence that this has contributed to the separateness of the RN wage structure and the distinctiveness of their concerns (Muehlenkamp, 4779; Saporta, 5114–15). When nurses and employers bargain about wages, they look to wages of RNs at other hospitals, not at wages of other professionals (Patek, Chi I 78–79; Absalom, 3316–18). Finally, RN career ladders are very short in terms of pay, quickly levelling out after relatively brief experience (Rosen, 4671). Hospitals recognize the separate RN market by having nurse recruiters; no similar position exists for other professionals (Ballard, 65; Reierson, 3608–09).

Nurses traditionally conduct wage negotiations from these unique disadvantages despite the demand for their services (ANA Br. 99). In fact an employer may insist on a separate wage scale for RNs in an all-professional unit (Comment 51, Castrop: employer re-opened wall-to-wall contract at O'Bleness to increase RN wages only).

5. *Wage whipsawing or leapfrogging.* The record evidence based on actual experience shows that wage leapfrogging has not occurred in the hospital industry (Ratner, Local 1199, 3744; Friedman, Local 1199, 5041, 5045; Absalom, CNA, 3316–3317; Muehlenkamp, NUHHCE, 4775; Twomey, WS at 6, Hosp and Prof Allied Employees of NJ; Schmidt, Oregon Federation of Nurses, AFT, WS at 4; Shea, SEIU, WS at 13–14). The one example offered by the industry as evidence of leapfrogging (involving RNs) occurred 20 years ago in California and concerned the adjustment of wages for RNs who had been underpaid for a long period of time as compared to other hospital employees (as found by a fact-finding panel appointed by the governor). Even this adjustment did not result in any disruption of patient care. Moreover, other professionals did not obtain higher wages or benefits thereafter as a result of the RN unit adjustment (WS Absalom, at 7–8; 3286–87).

The fact that RNs are in a different labor market mitigates against leapfrogging (Shepard, 4959–60). Special considerations such as the nursing shortage, recruitment, and retention are not concerns of other professions and have not been carried over into other units (Absalom, 3316–3318). In addition, there are certain limitations or rigidities in the financing system which preclude the pass-through of spiraling wage increases. A significant limitation is found in the Medicare and Medicaid reimbursement rates. These rates play a prominent role in the economics of hospitals, and are set in a regional area in accordance with the general wage pattern set by the most influential local union and its employers. Thus, there is little incentive for unions to engage in whipsaw strikes and efforts to leapfrog the pattern of wage increases. (Friedman, 5044–45.) Finally, it appears that concern about the potential for leapfrogging could be ameliorated by uniform contract expiration dates. However, the evidence shows that hospitals have declined to accept union proposals to this end. (Henry, 3074–76; Absalom, 3318–19; Sackman, 3586; Willman, 4480–82; Clark, 4685.)

6. *Education, training, experience and licensing.* All professions require specialized education and training (AHA Br. 15; Mixon, Chi II 274), and are subject to prescribed standards of practice (California Health And Safety Code Sec., cited in AHA Br. 15; Comment 248, Cedars-Sinai Medical Center). However, in addition, nurses must pass state licensing exams, which are uniform throughout the country, after graduating from an accredited nursing school. A candidate who passes the exam is competent to practice throughout the country. (Reierson, 3597.) Nurses are required to follow, inter alia, state nurse practice acts, and no other health care worker may function as a nurse under nurse practice acts (Ballard, 56, 57).

RNs' licensing requirements may actually conflict with the requirements and practices of other professions. For example, as previously indicated, RNs fill out incident reports on mistakes in medication dosages made by other workers (Reierson, 3603; Sackman, 3586). This type of responsibility may result in antagonism between the RNs and other professionals which might impede collective bargaining by the professionals as a group.

Several states mandate continuing education for nurse relicensure. Only social workers and pharmacists are subject to such requirements in more states than RNs. (ANA Br. 48; Ballard, 54; Lumpkin, 87.)

7. *Interaction.* RNs work in close and continuous contact with one another within the same hospital (WS Foley; Owley, 4377–78). Moreover, sometimes RNs at different hospitals have more contact with one another than with the other professionals in their own institutions (Owley, 4378; Schauer, 3156–58). With respect to RNs' interaction with non-nurse professionals, while there is some contact, it is not regular and recurring. There are a variety of factors which help to explain why interaction among RNs and non-nurse professionals is limited. For one thing, while there was testimony that there is a crossover of duties between RNs and other professionals (Thompson, Chi II 55–58), there was also testimony that licensing and other regulations clearly prevent RNs from doing much of the work of other professionals and other professionals from doing RN work (Lipari, 3702; WS Dumpel & 3279). Moreover, non-nurse professionals generally are located away from patient units where RNs are located. For example, in Local 1199-organized hospitals, most pharmacists are located in self-contained units, usually in the hospitals' basements. (Crisafulli, 3712–14.) Moreover, RNs typically have different working hours (Indelicato, 3681; Ahmed, 3707). As noted by the ANA, the contact RNs may have with respiratory therapists is not material since respiratory therapists consistently have been found to be non-professionals. See for example *Samaritan Health Services,* 238 NLRB 629, 638 (1978); *Barnert Memorial Hospital Center,* 217 NLRB 775, 779 (1975).

The point is made that RNs in many cases have more frequent contact with other professions than those other professions that the Board proposes to place together have among themselves (AHA Br. 20–21, citing *Long Island Hospital,* 256 NLRB 202 (1981), and other Board cases). However, this point militates more against grouping of the

different professionals than it does toward grouping the RNs with other professionals.

8. *The team concept.* Much evidence was offered during the proceeding concerning the team concept. See also section IV (B)(1), *supra.* After carefully considering this evidence and the parties' arguments in connection therewith, we conclude that the fact that some hospitals utilize the team concept does not detract from the separate appropriateness of RN units.

There are two types of teams found in hospitals. The first is the nursing team which consists of RNs, LPNs, and aides. This type of team is found throughout the industry. However, as this team contains only nurses and non-professionals, and the Act provides that professionals are entitled to a separate unit if they choose, the nursing team is not relevant to the issue presented.

The second type is the multidisciplinary team which contains various classifications of professionals and non-professionals and has been utilized in the health care industry since the early 1900's. Employers unsuccessfully relied on the existence of teams in an attempt to defeat the 1974 Amendments. (ANA Br. 126, citing Ohio Hospital Association testimony.) The team concept remains non-persuasive for several reasons. First, the evidence at the hearing established that many hospitals do not even use the team concept (e.g., McCullough 4819; Gilmore 4910). Moreover, except for some specialized hospitals, e.g., children's hospitals (Sokatch 4194, 4199; Gallagher, 3539, 3543–46), those hospitals with teams often have no more than six or seven teams (Thompson, Chi II 14–15; Mixon, Chi II 294–96; Graybill 4172–86; Comment 283, Leavenworth), with two to eight members on a team (Thompson, Chi II 72; Mixon, Chi II 277; Gallagher, 3543–45). Thus, within the limited number of hospitals that use teams, only a minority of nurses and other professionals participate on the teams (Bachus, Chi I 129–132, most teams are on the management level). Although one comment stated generally that the downsizing of staff has led to more teamwork (Comment 263, Huntsville Mem. Hosp), this was not supported by other specific examples.

While members of teams may have daily interaction and weekly formal meetings (Comment 78, Greater Cincinnati; Comment 288, Graybill, Children's Medical Center, Akron), there was also testimony that the interaction of RNs and other professionals is limited in certain ways. For example, team members only interact with the few other members on their teams. Additionally, other duties of RNs may prevent or limit their actual participation in an assigned team program (Schmidt, 3627, 3635; Bachus, Chi I 129–130; Reierson, 3609–10). More importantly, the fact that the RNs may interact and work with other professionals on teams does not alter the separateness of their identity. The team approach is a process to ensure that the elements of patient care are organized. The evidence was uncontradicted that it does not alter each licensed professional's responsibility for his or her individual scope of practice. (Ballard, 56; Twomey, 131; Wilson, 5095; Bachus, Chi I 129–130.) Nor does participation by some RNs in team care affect wages, hours, benefits, training, skills, or functions of RNs on or off the teams (Graybill, 4174–75; Houston, 4044–45).

Conversely, separate RN units were not shown to have interfered with team care (Gallagher, City of Hope, 3540; Bullough, 4651 and 4653; Houston, Sacred Heart, 4031, 4038, 4048). The industry offered only unsubstantiated speculation that team care would be adversely affected; e.g., one witness testified that the amount of interplay, the exchange that goes on minute-to-minute in critical situations, could be damaged significantly (4185–86). However, at City of Hope, a specialized cancer hospital with a large number of teams and a separate RN unit, the teams remained able to deliver a very high level and quality of care. (Gallagher, 3540 & 3543; Bullough, 4653. See also Thompson, Chi II 9, 86–87: no evidence that separate RN representation at her Ohio hospital has made nurses less able to function as a team.)

9. *Cross-training and interchange.* Because of licensure limitations, cross-training does not take place between RNs and other employees (Lipari, 3702; Dumpel, WS & 3279). Hospital codes also preclude replacement of RNs by other professionals (Rosen, 4666). It logically follows that the extent of interchange between RNs and other non-nursing professionals is limited not only because of RN licensing limitations but also because of the licensing requirements of other professional employees. There was testimony that RNs will perform functions of other "professionals" when the latter are not available, e.g., moving patients instead of physical therapists, or doing respiratory therapist work at night and on weekends (Comment 78, Greater Cincinnati; Comment 198, Marshalltown Medical Center). With respect to the first example, the performance of non-professional tasks such as transferring patients to wheelchairs is not relevant to interchange between professionals. Similarly, respiratory therapists consistently have been held by the Board to be non-professionals. Finally, other examples of interchange, such as medical technologists' watching the heart monitor while a nurse is on break (Houston, 4041–42, 4026–27), appear to be minimal. It was also stated that both pharmacists and RNs dispense drugs and medications; however, pharmacists typically formulate medications and advise on proper medications while RNs administer them (Thompson, Chi II 55–58).

10. *History of representation and collective bargaining.* The ANA, representing RNs, stated that the RNs' desire to be organized to protect their interests as well as their patients' interests began nearly 100 years ago, and persisted through the onset of collective bargaining and the original Taft-Hartley exclusion of employees of non-profit hospitals from federal labor law (ANA p. 74; see Comment 240, attachment, Kalisch, Twelve Key Steps in the Process of Professionalization of American Nursing, 1854–1987; Comment 293, ANA, Flanagan). AHA contends that separate bargaining by RNs does not reflect a freely established pattern because, prior to the 1974 amendments, it was to some degree based upon considerations of the then-current law in each state and because collective bargaining primarily existed only in a few isolated parts of the country and thus could not be deemed representative. Moreover, the AHA contends, subsequent to the 1974 amendments such bargaining was established pursuant to the direction of the Board.

Regardless of what might first have provided the impetus, RNs have for many years exhibited a strong desire for separate representation. Even during the period following *St. Francis II,* RNs consistently sought separate RN units but were forced to organize into units with other professionals or face lengthy, costly, and fruitless litigation (Saporta, 5127–28; Splain, 5273–74; Muehlenkamp, 4764–67; Wilson 5069). Although forced to include other professionals, the organizing drives were strikingly similar to prior nurses-only campaigns. Testimony indicates that the campaigns were led by nurses, issues prompting organization were nurses' issues, and the bargaining was performed by nurses, often with no participation by other hospital professionals. (Gonzalez 4356; Splain, 5293; Lumpkin, 99–100; Patek, Chi I 54–55; Chow, 3108; McCullough, 4811; Gilmore, 4894; Shepard, 4927.) Moreover, comments from a number of hospitals

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indicated they have not had problems bargaining with separate RN units (Comment 79, Baptist Hospital; Comment 105, Mass. Hosp. Assn: 2 examples; Comment 121, Central Michigan).

The AHA makes the point that the more recent history of collective bargaining shows that all-professional units nonetheless are viable, and the record offers some support for this position. Thus, even some RN-only unit proponents have testified that the interests of all professional groups have been adequately represented in bargaining for an all professional unit.[21] (AHA Br. 24.) However, while bargaining could undoubtedly proceed in any one of a number of configurations, this does not necessarily answer the question whether a separate unit of RNs might not also be appropriate; or better reflect the wishes, needs and interests of RNs, other professionals, and perhaps even health care providers themselves.

The testimony shows that not only have the RNs desired separate representation (Saporta, 5127–28; Splain, 5273–74; Muehlenkamp, 4764–67; Wilson, 5069), but other professionals do not appear to react favorably to their inclusion with RNs. As noted *supra*, the other professionals often do not participate in the organizing campaigns and are hostile to being included in bargaining units with RNs. As an example, when Capitol Hill Hospital demanded inclusion of other professionals, the other professionals complained, became hostile, and some even requested separation (Gonzalez, 4351–53). In Langlade Memorial Hospital, Wisconsin, other professionals forced into a unit with RNs tried to decertify the union but were outvoted by the RNs (Owley, 4376).

The main concern of the non-nursing professionals is of being overwhelmed by the large number of nurses and not having their concerns given priority. RNs are the largest professional group in any hospital. In fact, RNs constitute approximately 23% of the hospital workforce (WS Schoen, Table 1, citing data from AHA publication and BLS Hospital Wage Survey.) They may outnumber other professionals by a ratio of 4 to 1 or more. (AFL Br. 92; Twomey, 123–125, 128–129; Gafni, 133–135; Thompson, Chi II 58.) The non-nurse professionals are also concerned that RNs could ignore their interests when they conflict with RNs' (Comment 134, American Physical Therapists Assn). A number of non-nursing professionals who testified at the hearings confirmed the lack of interest which RNs exhibited toward their circumstances, and the fact that, despite their different professions, they were able to achieve collective bargaining in all-professional units, excluding RNs and physicians. See section VII, Other Professionals, *infra*. Evidence showed that even when made part of a unit which wins an election, other professionals sometimes do not participate in negotiations or come to union meetings (Schauer, 3154; Wilson, 5070; Patek, Chi I 54, 55–67 and WS 6–7). Issues discussed during bargaining tend to be those of interest to nurses (Wilson, 5073). Moreover, most grievances at one hospital were from nurses on nurse issues (Bachus, Chi I 122). There is a concern that if forced into units with RNs and RNs do not want representation, other professionals would not have enough votes to obtain representation (Owley 4376–77; Ahmed, 3707–08).

The AHA argues that the size of the RNs' group relative to other professionals should not be a consideration in determining whether to have an all-inclusive unit, and that this is a clear departure from the Board's general unit determination analysis in which the Board routinely has included small ancillary groups in units with one or more large classifications that constitute the bulk of the unit. We acknowledge that units frequently are an amalgam of other special interest categories. See, e.g., *Airco*, 273 NLRB 348 (1984). Nonetheless, the Board routinely also finds appropriate separate groups whose interests have been shown to be sufficiently distinctive. See, e.g., *Pacesetter Corp.*, 241 NLRB 1150 (1979) (separate unit of over-the-road drivers found appropriate); *Newburgh Mfg. Co.*, 151 NLRB 762 (1965) (separate unit of garment cutters found appropriate.)

Some employers argued that the real reason unions want separate RN units is that their constitution and by-laws do not permit them to organize other professionals (Comment 306, Herrin). However there was testimony that some nurses' associations have amended their by-laws to allow organization and representation of other professionals (Gonzalez, 4362; Sackman, 3578). In addition, there was testimony that some employers' true concern with allowing separate RN units is not unit fragmentation but defeating unions. Several witnesses testified that their employer demanded inclusion of other professionals with nurses when nurses wanted separate representation, but then told the RNs they should not include other professionals who did not have their interests. These same employers told the other professionals that they should vote against the "nurses' " union because they would be a minority and nurses could not adequately represent them, thus contradicting the argument of many employers in this proceeding. (Gonzalez, Capitol Hill Hospital, 4351–53; Gilmore, 4896–97; Absalom, 3315; Saporta, 5134, Sackman, 3580–84; WS Splain at 18–19; Wilson, 5096–97.) Employers have also requested the inclusion of lab technicians with RNs, then challenged their inclusion (Wilson, 5087–89).

In several instances, employers who earlier had insisted on the inclusion of all professionals later opposed bargaining with the RNs and other professionals in a single unit when the nurses' union was selected as bargaining representative of an all-professional unit. For example, after the D.C. Nurses Association won an election in a broader unit demanded by the employer, the employer at negotiations proposed removal of non-RNs from the agreement, saying its earlier position had been based on "tactics." (Gonzalez, Capitol Hill Hospital, 4355; see also Lumpkin, Shands Hospital, 95: hospital asked to amend unit to separate RNs from non-RNs; because of problems with recruiting and retaining RNs, the employer needed to set innovative scheduling, overtime pay for shifts, premiun pay.)

11. *Collective bargaining interests.* There are a number of issues of unique concern to nurses in collective bargaining (See Comment 240(b), submission of David Martin, RN, ANA senior staff specialist for labor relations, affidavit analyzing 190 RN-only unit contracts representing nearly every such contract negotiated in 1986). While there may be examples of how special concerns of the RNs have been addressed in all-professional units, this does not necessarily demonstrate that RNs and other professionals have large numbers of common interests. Nurses can emphasize these issues in bargaining regardless of the concerns of non-RN professionals because RNs would constitute 80% or more in a typical unit (WS Shea at 22), and often 100% of those willing to participate in bargaining (Gonzalez, 4355–4356).

Moreover, that unions are capable of addressing special concerns of the RNs in all-professional units does not negate

[21] That other professionals have not filed unfair labor practice charges or grievances against unions where nurses predominate, charging breach of duty of fair representation, does not mean other professionals are satisfied with representation. A breach of the duty of fair representation is found only where conduct is arbitrary, discriminatory or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).

the fact that many of these issues are unique to RNs and that separate representation would frequently provide a more efficacious and just means for responding to their concerns. For example, RNs alone have recurring concerns with respect to floating, i.e. being temporarily transferred from one unit to another to cover understaffed units (Schauer, 3115). RNs have bargained for mandatory orientation both in their own unit and before floating to other units (Schauer, 3115; Comment 240(b), Martin affid.: orientation provision found in 83 of 1986 contracts). Some organizations representing nurses have created "Assignment Despite Objection" forms to be used when nurses are asked to work in a unit or perform a function for which they feel unprepared (Graham, 4827; Shepard, 4929–31). Floating and orientation generally do not concern other hospital professionals since they typically are not required to float to areas where they may be unqualified (Saporta, 5114; Indelicato, 3681). Moreover, other hospital professionals are not as concerned with staffing in general because they do not have constant patient care responsibilities like the RNs and because they are not in critically short supply (Gonzalez, 4364: at Capitol Hill, staffing was a major concern for RNs, not at all for other professionals).

The evidence shows that scheduling issues are of much greater concern to RNs than to other non-nursing professionals. RNs are virtually alone in their concerns with respect to mandatory overtime and double or rotating shifts, or evening, night and weekend shifts, all of which are said to increase the likelihood of nurse error. (Bachus, Chi I 144; Lipari, 3697; Korn 4860–61; Chow 3111, Ballard, 62, 75.) There were only isolated examples of non-nurse professionals working late shifts or weekends. Many other professionals, like social workers, work primarily day shifts during the weekdays. (Roth, 3151: no pharmacist, social worker or physical therapist at night, skeleton crew for respiratory therapy; WS Foley at 6–9: social work, physical therapy, doctors, offices are all closed by 6 p.m., some evenings only RNs provide primary care.)

Collective-bargaining agreements have addressed these issues by, e.g., attempting to limit mandatory overtime, rotating shifts, etc. (Comment 240(b), Martin affidavit; Chow 3110–11.) Collective bargaining agreements covering other professionals do not usually include such provisions (Friedman, 5055: Local 1199 contracts for medical technologists do not prohibit mandatory overtime).

Hospitals have difficulties attracting nurses to work the less desirable evening and night shifts. Ninety-eight percent of contracts in the ANA study provided higher wages on evening and night shifts; 57% offer some form of alternative scheduling designed to attract RNs. (Comment 240(b), Martin affidavit.) Other professionals generally view issue of premium pay and alternative scheduling as less important or irrelevant. This in part is due to the fact that non-nursing professionals usually do not work night shifts and many do not work evening shifts (Patek, Chi I 55: non-RN professionals had grave concerns about bargaining over premium pay for fear that this would mean that they would be required to work shifts they had not worked before. See also WS Lumpkin, supra at 8: re: innovative scheduling for RNs; Gilmore, 4907.)

12. *Education.* Nearly every surveyed contract has provisions for continuing education which is mandated in 15 states (Comment 240(b), Martin affidavit). Continuing education typically presents different issues for nurses, who work around-the-clock schedules and have difficulty attending the courses, which are often given evenings, nights, or weekends. Thus, other professionals typically bargain about continuing education by seeking more money; RNs seek time off to attend as well as tuition. (Lumpkin, 86–88; Foley, 449–450.) This in itself would not justify a separate unit as such concerns could, of course, be accommodated in larger-unit bargaining; however, they are but one of a congery of concerns and special problems that make nurses a substantial, unique group.

13. *RN bargaining units and strikes.* There is testimony that there have been many strikes by nurses (King, Chi II 41, 46, 28; Whelan, Chi II 59–61, 85; Comment 304: one-third of 20 strikes at Kaiser since 1974 amendments are in RN-only units), and that some of these strikes have lasted for a long time (e.g., Ashtabula Hospital, Ohio, 572 day strike: King, Chi II 28, 59–61). However, according to available FMCS data, only 3.3% of all health care contract negotiations, including nurse bargaining, resulted in strikes. The strike percentage in any given year never exceeded 5.1% and fell below 2% in several years. Moreover, during the 1984–1987 period, strikes in the health care industry occurred far less often than in other industries, 1.5% v. 2.4%. (WS Schoen at 28; AFL–CIO Exh. 6.)

There was testimony that RN strikes are particularly disruptive because RNs constitute the largest group of hospital employees. For example, there was a strike of 6,000 nurses in Minneapolis-St. Paul in 1984 over job security (Patek, MNA, Chi I 51, 63). But there was also testimony that where strikes occurred, the hospitals continued operation (Whelan, Chi II 59–60; Viat, 3471). Moreover, we must also be mindful that in an all-professional unit, RNs, because of their predominance, could generally obtain an affirmative strike vote even if all the other professionals were opposed. Because such a strike would involve all professionals in the hospital, greater disruption of hospital services would result than with a separate RN unit. (ANA Comments 173.) Finally, for 18 years ANA had a no-strike policy (Shepard, 4931–32; Comment 293(k), Flanagan, *Collective Bargaining and the Nursing Profession* at 14–15), and CNA has adopted a standing policy that in the event of an impasse in arbitration, it will offer binding arbitration before resorting to strike action (Absalom, WS at 8–9, 12–13, 15–16 & 3286–98: 1974 strike resolved by FMCS; 1978 shift rotation disagreement resolved by advisory arbitration; 1980 disagreement on nursing shortage resolved by mediation-arbitration).

The AHA argues that the history of the RN-only unit bargaining does not support a conclusion that potential work disruptions are not increased by creation of multiple professional bargaining units, since the overwhelming majority of facilities where RN units exist have no other professional units (AHA Br. 24). However, because in all likelihood the latter phenomenon would continue to exist, this argument is not entitled to great weight.

Some commentators argued that multi-professional units may lead to sympathy strikes (Bennett, 3045; Comment 13, Corkin). However, most no-strike clauses in hospital contracts forbid sympathy work stoppages, and there was evidence it is common for RNs to cross picket lines set up by non-nurse health care workers (Sackman, 3585; Lipari, 3696; Korn, 4889; Roth, 3152–53). If sympathy strikes were a problem, it appears that they could be significantly reduced by mandating common expiration dates for all hospital contracts, a proposition which, the evidence showed, hospitals frequently or even universally have rejected (Absalom, 3318–19: Affiliated Hospitals refused to allow new expiration date to coincide with expiration of other contracts; Clark, 4683–85: no common

expiration dates for initial contracts; Abelow, 249–50: no push from any parties to coincide RN contract expiration with master contract of League of Voluntary Hospitals; Lipari, 3697: employer opposes common expiration dates).

14. *Jurisdictional disputes.* The record does not reveal a single jurisdictional dispute between unions of professional employees (Fine, 3156–3158). Witnesses who asserted that such jurisdictional disputes would arise did not substantiate their claims (Dalstrom, 339; O'Connell, 440; Dauner, 3199; Emanuel, 3503–04; WS Cammarata at 7). In fact, the most typical job duty issues involving jurisdictional lines are between RNs and nonprofessionals, i.e., LPNs and nurses' aides (WS Shea at 14). These types of issues would arise even if the RNs were placed in an all-professional unit.

As was the case with regard to strikes, the AHA argues that an assessment of the impact of multiple professional units on jurisdictional disputes can only exist where there are two or more units represented by labor organizations in a facility, and there are very few such instances (AHA Br. 24). For this same reason, we believe the argument that there is a potential for jurisdictional disputes among professionals where a separate RN unit is given, is speculative. To the extent the record deals with this matter, it shows that any issues regarding the possible overlapping duties of professionals have in the past been fought out in the public arena. For example, attempts by other groups to perform some of the nurses' duties under their scope of practice in California were dealt with by the legislature. (Dumpel, 3278–79.) In any event, as noted *supra*, (see subsection (B)(9) on cross-training and interchange), interchange of duties between professionals appears minimal.

15. *Nursing shortage.* It is common knowledge, and the record substantiated, that currently there is an unprecedented and severe nursing shortage (Absalom, 3295; Shea, 5235; WS Schoen at 16, citing ANA Report on Hospital Nursing Supply). Some hospitals have delegated some traditional RN functions, not reserved to RNs by law, to employees with no RN training. Additionally, hospitals currently have more seriously ill patients (higher acuity) than historically reported. Less qualified nurses, and fewer nurses, will be forced to attend to more seriously ill patients, leading to a lower level of care and more stress for the remaining RNs who may then opt out of nursing. (ANA Br. 101, and articles cited therein.)

Nurses testified that they view collective bargaining, in their own unit, as the vehicle for improvement in their working conditions and for allowing them a voice in patient care (Ballard, 72; Lumpkin, 85–86). Additionally, hospitals are trying innovative proposals for nurses: opening contracts for them alone, raising wages, setting weekend differentials. Some think that if other professionals are included in units with RNs, problems could arise if such changes are also not implemented for non-nursing professionals. (Wilson, 5071; Saporta, 5116.)

It has been argued that the Board should not give special consideration to a group in temporary crisis or other groups will also make demands for separate units (Comment 65, Milford Hospital). However, while the evidence establishes that the situation is a serious one and appears to be growing more serious with time (ANA Br. 100–101, and articles cited therein), we view this as only one valid factor in determining the appropriateness of a unit limited to RNs. The concern that this will lead other professionals to follow suit is speculative, and insufficient reason to deny RNs, who have already established their unique concerns and a highly separate identity, a separate bargaining unit.

16. *Proliferation of units.* As has been documented elsewhere, the evidence in the record does not support the assumption that the recognition of RN-only units will lead to a demand by other professional groups to organize as separate units. In fact, as previously indicated, the AHA acknowledges in its brief that in the overwhelming majority of facilities where RN units exist, other professionals have not been represented in separate units. (AHA Br. at 24.) SEIU health care organizing director Splain concluded that 10 years of statistics show relatively little organizing in residual hospital units. There are 16 hospitals in Ohio that have a separate RN unit, and only one unit in which professionals other than RNs are represented separately. (King, Chi II 38–39; Shepard 4927.) Health care workers organize no more frequently in facilities where some workers engage in collective bargaining than they do in facilities where no bargaining units have been represented (WS Splain at 14–17). One witness testified that a typical hospital has an RN unit, an LPN unit or technical unit, a service and maintenance unit, and sometimes an operating engineers unit (WS Patek at 4).

C. Conclusion

We have carefully considered the evidence in the hearings as to how a separate RN unit, or, in the alternative, an all-professional unit including RNs, might fare, based on the realities of hospital operations, organizing, and collective bargaining. We conclude based on this evidence and the arguments advanced that a separate RN unit is appropriate for collective bargaining purposes.[22]

For many years, RNs, who constitute a significant portion of the health care workforce, have demonstrated their commitment both to their careers in the health care industry as well as their patients' well-being. During the time period following *St. Francis II,* it appears that RNs consistently desired separate RN units but were compelled to organize into all-professional units in order to avoid prolonged litigation. However, even when the RNs were forced to include other professionals in their units, the organizing drives were quite similar to prior nurses-only campaigns.

Moreover, it is apparent from testimony taken at the hearings that non-nursing professionals did not wish to be included in a unit with RNs. If we ignore the perspective of the smaller, non-nursing professionals group, i.e., the animosity expressed toward their inclusion with RNs as well as their concern that their "voice" will not be heard, then we are disregarding, at least in part, one of our major objectives. As previously indicated, the Board seeks to avoid finding too large a unit appropriate, as this may result in "too diversified a constituency which may generate conflicts of interest and dissatisfaction among fringe groups, making it difficult for the union to represent * * *." See section III, Standard To Be Applied, *supra.* This

[22] In making our decision on this issue, we have considered *St. Vincent Hospital and Health Center,* 285 NLRB No. 64 (Aug. 19, 1987), a fairly recent case in which we held in an adjudicatory proceeding that a separate RN unit was inappropriate. In so doing we found, *inter alia,* that all of the employer's professional employees "share common personnel policies and procedures and fringe benefits and have sufficient contacts and interaction to support the finding that the smallest appropriate bargaining unit is one consisting of all of the Employer's professional employees." *Id.,* slip op. at 13. Having now had the opportunity to consider the substantial empirical evidence adduced in this rulemaking proceeding, we have a far better understanding of the RNs' training, functions, interests, and involvement in hospital operations, and of the actual and potential ramifications of each type of unit. For the reasons stated in this section, were we to apply the empirical evidence presented in these hearings, we might well reach a different result in *St. Vincent.*

latter point appears to be a concern of nursing and non-nursing professionals alike, and is one reason we have decided to permit RNs to seek bargaining rights apart from other health care professionals.

There was also testimony that would lead us to believe that some hospital employers' true concern with prohibition of separate RN units was not possible fragmentation but rather defeating organization. This was demonstrated by evidence of, *inter alia,* employer opposition to bargaining with the RNs and other professionals in one unit when an all-professional unit was finally certified, despite these same employers' earlier efforts to require that all professionals be included.

The distinct functions and collective bargaining interests of RNs compel the conclusion that a separate RN unit is warranted. RNs are a unique group in that their profession demands continuous interaction with patients. Additionally, because of licensure limitations, other professionals may not perform RN work and vice versa. RNs have a separate labor market, and scheduling issues are more of a concern. These factors and others discussed *supra* support a finding that collective bargaining by RNs as a separate unit should be permitted.

The industry has contended that adverse consequences would follow having separate RN units, such as strikes, jurisdictional disputes, and proliferation of units. The testimony proffered at the hearings has satisfactorily alleviated any concern we had over these possibilities.

Finally, we are mindful of the growing problem involving the nursing shortage. While separate representation for the RNs does not provide the complete solution to this problem, we believe that it is an important step toward making the nursing profession a more attractive employment opportunity as the separate concerns of RNs are addressed more directly in a separate RN unit.

VI. Physicians

In our Notice of Proposed Rulemaking, we provided for separate units of physicians in acute care hospitals having more than 100 beds. Although we did not anticipate the formation of many such units, we stated we would permit them because of physicians' separate education, training, and skills, and particularly because of physicians' unique position as the ultimate supervisors of patient care.

As discussed *infra,* we have decided not to differentiate between hospitals having more than 100 beds and those having fewer. However, as with RNs, see section V, *supra,* the evidence produced during this proceeding supported the proposed separate unit of physicians.

Doctors have considerably more training than other professionals, i.e., four years of medical school plus two to six years of post-graduate residence training, working as student residents in hospitals under the tutelage of licensed physicians (WS Cornfield).

Doctors have the singular responsibility of directing all other patient care employees; the JCAH charges doctors with overall responsibility for the quality of professional services (Robinson, 3650–51; WS Todd at 4–5, citing 1987 Accreditation Manual). Malpractice claims are filed against doctors because they are responsible for medical treatment (Robinson, 3652). The AHA contends that all professionals are held responsible for malpractice (AHA Br. 30); while we do not doubt the truth of this assertion in some circumstances, the AHA offered no details.

It is common knowledge that doctors earn substantially more than other professionals. They are frequently salaried, entering into individual employment contracts with hospitals rather than having an overall wage scale applied to them. (Comment 94, Somers; Robinson, 3652; NYS Federation of Physicians' and Dentists' position paper Exh. D.)

Supervision of doctors is limited and is generally done by other doctors (Robinson, 3651; Comment 293, Feldsine). While we recognize that other professionals are also commonly supervised by their peers (Comment 71, Kowalski, St. Mary's Hospital), as indicated doctors are ultimately responsible for the care given patients.

Doctors, of course, work with other employees, particularly on teams, or committees (Comment 137, McDonough Hospital; Mixon, Chi II 291; Comment 248, appending statement from Spitzer of Cedars-Sinai). However, we are persuaded by the evidence that the team approach does not change the duties of doctors, which are limited by law. Other employees are not permitted to do work within doctors' scope of practice. (Todd, 4348; Comment 269, Todd, AMA.)

Aside from the other factors noted, doctors have particular interest in bargaining about medical education, malpractice insurance, and input into patient care decisions (Robinson, 3655). They have little interest in the issues of special concern to RNs, such as floating, per diem, uniform allowances, overtime, etc. (NYS Federation of Physicians' and Dentists' position paper, Exhs. B, D, E, and F), and are outnumbered by nurses at a ratio of at least 15:1 (Todd, 4324, 4328), and perhaps 20:1 (AHA Br. 28). We are concerned that if doctors were forced to be included in the same unit with nurses and other professionals, doctors' interests would be overwhelmed (Todd, 4324). Florida, after 10 years, removed doctors from an all-professional unit in state facilities because of money considerations (Lumpkin, 100, 111–12). In one wall-to-wall unit including doctors, the hospital wanted raises just for doctors because of recruitment problems; the union opposed this because it would give raises just to one group in the unit (Robinson, 3654–55). A number of employers similarly expressed concerns about putting physicians in units of other professionals (Comment 94, Somers, attorney to many health care facilities; Comment 304, Kaiser Permanente; Comment 1, Lancaster Fairfield Community Hosp.; Comment 17, Middletown Regional Hosp.; Comment 48, St. Vincent's Medical Center, Bridgeport; Comment 141, Ayres). A wall-to-wall unit at O'Bleness Hospital did not include doctors (AHA Exh. 8D).

While the number of doctors employed in hospitals is small, and the percentage of employed doctors compared to other employees remains about the same, the actual number of employed doctors is increasing (Todd, 4335), and there is some evidence that doctors are organizing at increasing rates (AFL Exh. 4).

We are persuaded that the evidence weighs in favor of a separate unit for physicians, where sought. Thus, to include them with RNs and other professionals seems likely to lead to divisiveness and quite possibly to conflicts of interest. We have found no evidence that to grant doctors a separate unit would lead to repetitious bargaining, frequent strikes, or jurisdictional disputes. We believe the proper balance is struck in favor of a separate unit for all physicians, where requested.

VII. Other Professionals

In our original Notice of Proposed Rulemaking, we tentatively provided for a separate unit of all professional employees, excluding registered nurses and physicians, in acute care facilities having over 100 beds. We noted that section 9(b)(1) of the Act mandated separate representation for professional employees unless a majority of those employees vote for inclusion in a unit with non-professionals. In view of the provision for separate RNs' and physicians' units, it was and continues

to be necessary to provide for a separate unit of professionals excluding these two classifications although, as noted *supra*, we have decided to abandon the proposed 100-bed differentiation.

A number of so-called "other professionals" appeared in person at the hearings to testify. In general, they confirmed the lack of interest which RNs exhibited towards their circumstances, and the fact that, despite their different professions, they were able to achieve collective bargaining in all-professional units, excluding RNs and physicians. (Indelicato, social worker, 3673, 3678; Ahmed, laboratory technologist, 3705–06; Crisafulli, pharmacist, 3711, 3737.) In a comment, physical therapists expressed a preference for their own separate unit, but if placed with other professionals they would prefer that unit did not include RNs (Comment 134). Some fear was expressed that, because of their numbers, RNs (and also technicals) would overwhelm the other professionals if included in the same unit with them (Ratner, 3731–32; WS Cornfield, Table 1).

A number of "other professional" classifications work relatively independently, and have no immediate direct supervision (Ratner, 3735). They generally work the day shift, on weekdays (Indelicato, 3681), though some work on other shifts (see, e.g., Comment 275, Presbyterian Hospital). As a group they have high prestige within the hospital because of their superior education and training (WS Cornfield, Table 6).

Despite the desire expressed by some other professionals for their own separate units, and despite some history of separate representation of each profession, mainly in New York (see, e.g., Friedman, 5038), it seems clear to us that to provide for such additional units might create the proliferation which Congress meant to avoid. Moreover, despite the existence of some units combining technicals with other professionals (see, e.g., Willman, 4480, 4483, 4485, 4486; Shea, 5208; Robfogel, Chi. II, 224), Sec. 9(b)(1) of the Act prohibits such a combined unit, unless the professionals separately vote for inclusion with the non professionals. Accordingly, based on the above, we affirm the appropriateness of a separate unit of all professional employees, other than RNs and physicians.

VIII. Technicals

A. Introduction

In our Notice of Proposed Rulemaking, we tentatively determined that technical employees constituted a separate appropriate bargaining unit. Among the reasons we expressed were:

(a) That, in comparison with other non-professionals, they typically have significantly higher levels of skill and training, and are paid substantially more;

(b) That it has been the Board's consistent practice to approve separate units of technical employees; and

(c) That these separate units generally have met with approval from the courts of appeals.

After carefully considering the evidence presented during the rulemaking proceedings, we have determined that technical employees appropriately constitute a separate bargaining unit.

B. Technical Employees Are Separate and Distinct From Other Non-Professional Employees

1. *Education, licensing, training, and skills.* Technical employees are found in major occupational groups including: medical laboratory, respiratory therapy, radiography, emergency medicine, and medical records.[23] (WS McKinney, 2.) The evidence presented at the hearings demonstrates that technical employees perform jobs involving the use of independent judgment and specialized training, as opposed to service and maintenance employees who generally perform unskilled tasks and need only a high school education (AFL Br. 32, citing *Southern Maryland Hospital Center*, 274 NLRB 1470 (1985); McKinney, 5502–03, 5523–24; Colbert, 5020; WS Shea at 20). Testimony indicated that the gap between technical employees and service and maintenance workers actually is widening, with higher levels of technical skills more closely aligned to professional job categories rather than to other non-professional categories (WS Shea at 20; WS Schoen at 14 and 5175–76). Thus, technical employees occupy a high-prestige status distinct from other categories of non-professional employees because of the training requirements for their jobs (WS Cornfield at 12–13).

Technical employees further are distinguished by the support role they play within the hospital, and by the fact that they work in patient care. Examples of their work include: routine clinical tests performed by medical laboratory technicians; general respiratory care administered by respiratory therapists; and x-rays, ultrasound procedures, and CAT scans performed by various technicians. (WS Briguglio at 3.)

Contrary to the AHA's statement that "no evidence of separate or distinct employment attributes of technical employees was presented at the hearings" (AHA Br. 33), the evidence shows that all health care technical employees have significant additional education and/or training beyond high school, including: community college associate degree programs which provide math and science background beyond that which high schools offer (WS McKinney at 5); vocational training programs run by hospitals (WS McKinney at 7); programs at accredited schools of technology (WS Briguglio at 2); and, in some fields, a full 4-year college degree (Schoen, 5176; McKinney, 5477).

Further, the evidence indicates that most hospital technical employees are either certified (usually by passing a national examination), licensed, or required to register with the appropriate state authority (Willman, 4474), although laws regarding such licensure, registration, training and qualifications vary throughout the country (Ahmed, 3709–11).

There was evidence that some deskilling is occurring in the technical categories, reducing the need for higher skills in operating some equipment; however, the evidence further shows that it is not across-the-board (McKinney, 5485). Further, hospitals must purchase expensive and complicated equipment to deskill a task (McKinney, 5486); and where, for example, a technologist's work may be deskilled, it then would be performed by a technician rather than by a service worker (McKinney, 5513–14; Berliner, 5633–34).

2. *Wages, hours, and working conditions.* Although, in general, hospitals apply similar benefit and labor relations policies to technical and other non-professional employees, the evidence shows that the wages and hours of technical employees differ significantly from those of the other non-professionals (Mass. Hospital Assn., Comment 105). Technicians were shown to occupy the middle ranks in the hierarchy of health care workers, and the evidence presented regarding hospital pay scales reflects this standing (WS Schoen at 15). On the average, technicians earn $2,000 per year more than service workers in this industry (WS Schoen at 15, Table 1; Henry, 3084–85). While the wages of service workers are tied to the unskilled labor market,

[23] Although we note that historically, those employees who enter and decode patient data in medical records have been placed in service and maintenance units or overall non-professional units (see e.g., *Levine Hospital of Hayward*, 219 NLRB 327 (1975); Duke University, 226 NLRB 470 (1976)), the inclusion of "medical records technicians" in a separate technical unit may be litigated as a unit placement issue when it arises, on a case-by-case basis.

and those of business office clericals and skilled maintenance workers are similar to those of comparable jobs outside the industry, technicians' wages are tied to the earnings of the more highly skilled technologists with whom they work, and they generally earn approximately 75% of what the technologists earn (WS McKinney at 12–13, & 5479). Thus, management needs to provide higher entry wages for technicians than for service workers (Shea, 5238–39; Briguglio, 5300–01; Henry, 3084–88).

Technical employees work daytime hours, with evening, night, and weekend skeleton crews, while business office clericals work daytime hours and service and maintenance employees are staffed on a 24-hour basis (Colbert, 5016–17).

3. *Supervision.* The evidence indicates that technical employees usually have separate supervision from other non-professional employees; however, this may differ from facility to facility. For example, a supervisor of some technical employees may also supervise business office clericals; or a laboratory manager who supervises technical employees also may supervise some service and maintenance employees. (Mass. Hosp. Assn., Comment 105; Briguglio, 5300.)

4. *Contact with other employees.* Technical employees typically perform their work in laboratories or in technical departments, and not in patient care areas (AFL Br. 41; Booth, 3693), although the AHA's brief states that more hospitals are beginning to locate some laboratory facilities in patient care areas and technicals may have direct and continuing involvement with other categories of employees as well as with patients (AHA Br. 33). The tasks that technicals perform, such as processing and reviewing patient specimens, taking x-rays, EKGs and EEGs, are considered ancillary services, diagnostic in nature (AFL Br. 41). Technicals have no contact with business office clericals, and only minimal contact with service employees, but in a typical laboratory, work with doctors, technologists, clericals, and messengers (WS Briguglio, 4–5; Colbert, 5017–18; AHA Br. 33). The evidence shows that LPNs do work in patient care areas and provide direct patient care; however, the Board has found them to be appropriately included with technicals in light of their skill level and the requirement that they be licensed (AFL Br. 41 citing NLRB Exh. 5, revised).

5. *Cross training.* There is no temporary interchange, and little permanent interchange between technical employees and other non-professionals because of the difference in skills, the specialized functions of the technicals, and the differences in their education (Shea, 5221–22). Service workers typically have only a high school education or less and cannot be placed in technical positions in the absence of elaborate training programs (McKinney, 5481). Contrary to statements of industry witnesses who maintain that a service worker could take a six-week training program and be able to read EKG equipment (King, 5488), we are persuaded that technical training requires full or nearly fulltime education, and a high school education does not provide the mathematics and science background necessary (WS Shea at 21).

The evidence shows that cross-training programs are being offered at some hospitals and colleges; however, training prograns and funds to provide classroom instruction for hospital employees are rare in hospitals that are not unionized (Schoen Supplemental Statement). Thus, the majority of cross-training that occurs is among the technical categories themselves (LPNs doing EKG work formerly done by EKG technicians; medical technologists administering blood gases previously administered by respiratory technicians) (St. Anthony's Health Corp., Comment 142; St. Joseph Mercy Hospital, Iowa, Comment 243). Moreover, new technology has brought about a decline in technician jobs requiring only minimal training, while increasing the need for more intensely-trained technicians, thus widening the gap between technical employees, who are becoming more skilled and sophisticated, and service and maintenance workers (WS Schoen, 14–15; WS Shea at 21).

6. *Career paths and the labor market.* Technical employees have a separate career path and labor market. They do not seek to transfer into other types of non-professional jobs; rather, technicians may seek to become technologists in the same line of technical work; or LPNs may seek to become RNs. (O'Cleireacain, 5426; Ryan, 4733–39.) While some LPNs may become RNs through training programs, progression to technologist is more difficult for technicians because of the 4-year college requirement for many technological positions (WS Schoen at 15; McKinney, 5477). Their existing training is not considered a "building block" toward technologist status, without successful negotiations with licensing and accreditation boards (Schoen, Supplemental Statement). Thus, in addition to little mobility in their immediate workplace, it is also difficult for technicians to move out of that workplace. As long as they wish to practice their specialities, they must remain in the health care industry. (WS McKinney at 12.) Statistics show that 100% of job placements from technical programs are in health care occupations (Ryan, 4744). In contrast, business office clericals and skilled maintenance workers have great mobility outside the industry, as do unskilled service employees (O'Cleireacain, 5427; Marshall, 4018–19).

Evidence presented at the hearings shows that the labor market for technicians, which until recently was expanding steadily, is contracting (McKinney, 5474, 5478). Witnesses testified that with the introduction of cost containment techniques into the industry, the future of technical workers is in a state of flux. Further, even though new technology and equipment continue to be developed, at the same time hospitals are seeking to save on labor costs by replacing expensive, skilled employees, closing laboratories, and contracting out laboratory services. (WS McKinney at 13; Berliner, 5598.) Certificate of Need programs impose limits on the addition of new technology, further reducing the need for new technicians. For all of these reasons, training programs have become an important bargaining issue. (Schoen, Supplemental Statement.)

C. Organizing and Bargaining

The health care industry's bargaining unit proposals in 1973–74 would have allowed a separate unit for technical employees in hospitals (AFL Br. 31); and since 1974, the Board has continued to find separate technical units appropriate (NLRB Exh. 5, revised; *Southern Maryland Hospital Center,* 274 NLRB 1470 (1985)). As we noted in our proposed rule, court decisions have approved the Board's determinations as to technical units. See, e.g., *Wyandanwan Memorial Hospital v. NLRB,* 711 F.2d 848 (8th Cir. 1983); *NLRB v. Sweetwater Hospital Association,* 604 F.2d 454 (6th Cir. 1979). See also *Vicksburg Hospital v. NLRB,* 653 F.2d 1070, 1075 (5th Cir. 1931). Further, the evidence shows that technicals choose to organize in technical groups and not with other non-professionals (Booth, 3686–88). In the 588 hospitals in which a union affiliated with the AFL represents at least one bargaining unit, there are 311 separate technical units (including LPN units), and only 52 units in which technical employees and other non-professionals are combined into a single bargaining unit (AFL Br. 44 and Appendix A; Booth, 3688–90). In addition, LPNs organize with technicals who have the same training, education, licensure, and

certification requirements (Muehlenkamp, 4787).

Organizing drives are initiated by employees with specific concerns and grievances (WS Splain at 4; Sackman, 3592; Schmidt, 3628; Muehlenkamp, 4784). Other interests include professional conferences, training, and rotations (Colbert, 5019). At the hearings, no union organizer who was asked could recall any situation in which technical employees sought to include business office clericals or unskilled service workers, or vice versa (Olson, 4718; Muehlenkamp, 4784).

Technical employees generally choose to have separate initial contracts; however, they may agree, after the initial agreement expires, to engage in joint bargaining, but retain separate delegates for negotiations and for presenting separate issues (Booth, 3688; Colbert, 5021–22). Although industry witnesses maintain that the fact that technical employees organize and bargain their first contract as a separate unit does not justify finding a separate technical unit appropriate where subsequent bargaining history shows that they now bargain in broader units (St. Luke's/Roosevelt, Comment 224; AHA Br. 32–33), there is evidence that difficulties have arisen occasionally where technicals have been included with maintenance employees and clericals because of their different training, duties, and wages (Logan, Comment 150, pp. 3–4).

D. Proliferation

Technical units generally encompass a wide range of classifications, including LPNs, and they constitute approximately 17% of the health care work force—a substantial complement of workers (WS McKinney at 2; WS Schoen at 3, 5). What evidence there is shows that strikes involving technical employees alone are rare. In New York City, for example, strikes involving technical employees occur in broader units of clericals, service and maintenance, and professional employees. (Long Island Jewish (LIJ) Medical Center, Comment 270.)

E. Other Issues

The label "technical" may no longer define a particular group of jobs, and indeed, the union witnesses who appeared at the rulemaking hearings often did not distinguish between technicians and technologists (Schoen, 5175; Ahmed, 3709–11; McKinney, 5471–79; WS Briguglio at 2–3.) Technologists often have been included as professional employees in professional-only units. See, e.g., *Children's Hospital of Pittsburgh*, 222 NLRB 588 (1976); *Mercy Hospitals of Sacramento*, 217 NLRB 765, 769 (1975). Although industry witnesses urge the Board to consider the practical effect of the difficulties of resolving issues of unit placement, and caution that there may be "intense litigation" over unit placement which could be avoided by the inclusion of technicals in a broad non-professional unit (AHA Br. 34), we note that, even with such inclusion, litigation could continue to occur over which technicians were professional employees. Individual placement issues always have been present in the consideration of health care and other cases. In our opinion, their existence should not deter the Board from taking the first step, i.e., determining the threshold appropriateness of a separate technical unit.

F. Conclusion

For the above reasons, we determine that separate technical units are appropriate for collective bargaining. The evidence clearly demonstrates that the varied technical employees employed in the health care industry are appropriately grouped into a single unit by virtue of their education, training, and specialized skills, and do not constitute a unit so large as to be overly diversified and hence unwieldy for organizing and collective bargaining.

IX. Skilled Maintenance

A. Introduction

In the Notice of Proposed Rulemaking, the Board tentatively determined that service and maintenance employees constituted a separate appropriate unit and that skilled maintenance employees should be included in that unit rather than represented in separate skilled maintenance units. Among the reasons we expressed for including skilled maintenance employees in the broader service and maintenance units were:

(a) That their skill levels do not, at times, greatly exceed those of other service and maintenance unit employees;

(b) That they work throughout hospital's facilities, and thus frequently come into contact with other service and maintenance employees;

(c) Their inclusion in broader units will help to prevent unit proliferation; and

(d) As a practical matter, the Board's approval of separate maintenance units had fared poorly in the courts.

After carefully considering the evidence amassed during the rulemaking hearings, we have determined that, contrary to our earlier impressions, skilled maintenance employees can and should constitute a separate appropriate bargaining unit.

B. Relationship to Other Employees

1. *Functions and skill level.* Evidence from the rulemaking hearings shows that skilled maintenance employees perform functions apart from those of unskilled service, maintenance, and clerical employees in that these employees deal with highly complex and sophisticated systems and equipment (Carrick, 3448–3450; Jacquin, 5354–55; Lake, 146–148). While they occasionally perform routine, unskilled tasks, skilled maintenance employees are generally engaged in the operation, maintenance, and repair of the hospital's physical plant systems, such as heating, ventilation, air conditioning, refrigeration, electrical, plumbing and mechanical (Lake, 150–151; Viat, 3457–59, 3476–77; Hach, 5318; Giblin, 5382–83). Work on these systems requires abstract skills and knowledge at levels considerably higher than those of other non-professional hospital employees (Marshall, 4010–4012; Hammond Exh. 1, pp. 340–45, 580–623; Cornfield, 5698; WS Cornfield at 4–6, citing Dictionary of Occupational Titles of U.S. Employment and Training Administration). Skilled maintenance employees are rated more highly, for example, even than physicians on the manipulation of "things" (WS Cornfield at 5). Skilled maintenance employees are frequently required to have postsecondary training in their field, such as vocational or trade school. Even the lower skilled maintenance employees in plant operations and maintenance are required to have higher skills than those required of service employees. (Jacquin, 5363–64, 5374, 5377; Viat, 3459–60; Giblin, 5384.)

2. *Education, licensing, and training.* Contrary to virtually all nonsupervisory service classifications, which require only a grade school education, skilled maintenance classifications require completion of high school; at least some trade or vocational school experience, if not graduation therefrom; completion of formal or informal apprenticeship programs, which may take several years; or an associate's or bachelor's degree (Hammond, 5404–05, 5409–12; AHA Health Care Occupations: A Comprehensive Job Description Manual pp. 340–45, 385–88, 394–402, 499–501, 561–62, 567–70, 573–74, 580–623; Marshall, 4010). Skilled maintenance employees also need continuing education to keep abreast of technological changes in building maintenance, such as computers and remote controls (Carrick, 3454; Marshall, 4011–12; Schloop, Chi II 165; Schwemm, Chi II 186–89; Hammond, 5408; WS

Schwemm, Exh. 5–8; WS Fowler at 4; WS Denevi at 7–9). Moreover, the amount of training available in skilled maintenance classifications compares favorably to that offered in various technical classifications, such as lab technician and medical records technician (WS McKinney at 6–7), and access to the programs and the upward mobility they bring provide a common concern to employees largely unshared by those outside the skilled maintenance group (Schloop, Chi II 165; Ryan, 4739). Another distinction between skilled maintenance and unskilled service employees is that at least seven skilled maintenance classifications, but no service classifications, require licenses. (Hammond, 5404–06; WS Cornfeld, at 6–8)

3. *Supervision.* The distinct nature of skilled maintenance functions is underscored by the frequent placement of skilled maintenance employees in separate departments, usually coinciding with the hospitals' plant engineering or maintenance departments (Carrick, 3448; Viat, 3457, 3478; Marshall, 4014; Hach, 5342, 5354). Thus, skilled maintenance employees frequently have their own supervision (Hammond, Exh. 1, pp. 581–590). Moreover, skilled maintenance employees are not supervised by any supervisors from outside their own departments (see, e.g., WS Fowler at 8).

4. *Wages, hours, working conditions.* While it appears that certain terms and conditions of employment, i.e., fringe benefits and personnel policies, are similar among non-professional employees (Jacquin, 5368–70; Comer, Chi II 328–29; Comment 129, Hall), wage rates paid to skilled maintenance employees underscore their higher skills and training. Thus, the most recent Industry Wage Survey: Hospitals, Aug. 1985, BLS of the DOL, shows that skilled maintenance employees in private hospitals in 23 metropolitan areas averaged $11.89/hour whereas, in comparison, employees in six service classifications averaged $6.84/hour, office clericals in five classifications averaged $7.56/hour, and employees in ten technical classifications averaged $9.89/hour. (Lake, 154–55; IUOE, Exh. 4.) Thus, on the average, skilled maintenance employees earn 25% more than technicians, almost 60% more than business office clericals, and 76% more than service employees. Moreover, the wage rate of lesser skilled maintenance employees, while lower than that of the most skilled maintenance employees, almost always exceeds that of even the highest-paid service employees and often exceeds the rate of employees in other classifications as well.

5. *Interaction with other employees.* Though they primarily work in maintenance areas, skilled maintenance employees do perform work throughout the hospitals (Kelly, Chi II 178; Carrick, 3453; Hach, 5330). As a result, skilled maintenance employees have contact with just about every other employee in a hospital. However, these contacts are brief, limited, and incidental as it appears that the only employees with whom skilled maintenance employees actually work are others from the maintenance department (Carrick, 3453–54; Jacquin, 5360; Kelly, Chi II 212–13), and that the contacts with non-maintenance employees typically consist of other employees' identifying the maintenance problem to the skilled maintenance employees (Kelly, Chi II 178, 213; Jacquin, 5360; WS Fowler at 8).

6. *Labor market and career paths.* Skilled maintenance employees have separate labor markets and highly mobile cross-industrial career paths as the operation and maintenance of physical plant systems are the same no matter in which industry they are performed (Marshall, 4014; Schloop, Chi II 163; Kelly, Chi II 177; Fox, 3436–37; O'Cleireacain, 5427; WS Denevi at 4). Easy mobility in skilled maintenance classifications tends to orient these employees toward their skills rather than the industry in which they are employed (Lake, 144, 490; Marshall, 4010, 4019). The external skilled maintenance labor market also affects the hiring and wage scales in the health care industry since hospitals compete with other industries, such as hotels and office buildings, for these employees (Berliner, 5645; Hach, 5344–45; WS Schoen at 23; Corbett, 3344–45).

Skilled maintenance employees are in a separate internal labor market within the hospital in terms of career path, training, and promotion. There are formal and on-the-job training programs to permit lower level maintenance employees who have acquired skills and knowledge to move into more highly skilled positions; yet, there is virtually no transfer of clerical or service employees into maintenance classifications. (Schloop, Chi II 204–05; Kelly, Chi II 216–17; Giblin, 5400; O'Cleireacain, 5427, 5468; WS Shea at 18.) Even entry level jobs are filled by those with skilled maintenance backgrounds (Hach, 5327; Schloop, Chi II 203–04).

C. History of Representation

The appropriateness of separate skilled maintenance units is supported by a history of separate representation, especially by labor organizations specializing in the separate representation of skilled maintenance employees (IUOE Exh. 2 revised; Holland, Chi II 305–09; Friedman, 5036, 5040–41; Peters, Chi II 131–34; Comer, Chi II 320, 327–28; Hach, 5328; Giblin, 5395). For example, the IUOE currently represents at least 237 separate skilled maintenance units in both private and public health care institutions nationwide (IUOE Br. 56). Twenty percent of IUOE health care units date from the 1940's and '50's, and 85% of them predate the 1974 amendments (IUOE Exh. 2 revised). Admittedly, there are skilled maintenance employees represented in combined service and maintenance units, or in a handful of broader non-professional units, but inclusion of skilled maintenance employees with these other employees does not necessarily show a voluntary grouping as some combined units are the result of stipulations so that elections could be held without further delay, or are atypical situations (Stickler, Chi I 16–26; Twomey, 131–34; Emanuel, 3497; Ratner, 3728; AHA Exh. 4–9; Willman, 4491–92; Muehlenkamp, 4767; Friedman, 5041; King, 4244, 4249, 4251–52). In addition, the evidence regarding combined units is equivocal in that the "maintenance" employees in "service and maintenance" units are frequently unskilled rather than skilled maintenance employees (Silberman, 5651; IUOE Br. 58; Shea, 5227–28; Splain, 5302–04).

D. Organizing and Bargaining Interests

1. *Organizing.* Though clearly not impossible, it appears that because of the variety of personal interests involved it is more difficult to organize larger, combined units than to organize separate smaller units of employees (Viat, 3465; Sackman, 3578; Schwarz, 265; WS Schwarz, Koziara study pp. 1, 4, Figure 1; Delaney, 4517–18, 4525; Silberman, 5686; AFL Exh. 2). Larger heterogeneous units deter decertifications of unions as well (Delaney, 4523). In addition, skilled maintenance employees usually do not wish to organize with other groups, and it is unusual for different groups of non-professional employees to seek to organize in the same unit (Muehlenkamp, 4785; Olson, 4698–99; Ratner, 3730). There is evidence that, where combined units are sought, separate interests of the diverse groups may make it difficult, or impossible, to hold organizing meetings of the entire group (Viat, 3465).

2. *Bargaining interests.* While all employees have some similar bargaining

concerns, i.e., wages, hours, and fringe benefits, skilled maintenance employees have additional interests different from those of other non-professional employees. They seek wage levels commensurate with those of skilled maintenance employees in other industries; access to craft-related education and training programs; tool supply allowances; safety equipment and practices; portable pensions, because of their cross-industrial mobility; and input with respect to subcontracting of work. (Kelly, Chi II 175; Marshall, 4011; Willman, 4492–93; Schloop, Chi II 164–65; Schwemm, Chi II 209; Viat, 3466–67; Giblin, 5388.) Service employees and business office clericals have specialized bargaining interests as well (Schloop, Chi II 168; Viat, 3466–67; Gregory, 5746). These differences lead to difficulties in bargaining in a heterogeneous group, and may result in the smaller group of skilled maintenance employees getting lost in the shuffle in negotiations relating to the more numerous lesser skilled employees (Schloop, Chi II 168–69; Olson, 4729–30; Viat, 3465; Willman, 4492; Ratner, 3734; Shea, 5187; Muehlenkamp, 4795–96). Negotiating in a broader unit may also serve to broaden the scope of labor disputes by involving employees whose personal interests are not of concern in disputes relating to the interests of other unit employees (Viat, 3466). For example, in one hospital in which two unions jointly represented a combined unit of service, skilled maintenance, technical, and plant clerical employees, the skilled maintenance employees were forced to join other employees in a strike over unresolved bargaining issues that affected only the other employees even though all issues involving the skilled maintenance employees had already been settled (Viat, 3466).

E. Proliferation

Contrary to our concern, as expressed in our NPR, there was no evidence adduced at the rulemaking hearings that establishing a separate unit of skilled maintenance employees will lead to proliferation of bargaining units in the industry (Kelly, Chi II 180; Gilmore, 4894; Splain, 5252). No labor organizations have sought or demonstrated the appropriateness of other small units (IUOE Br. 64–65). Moreover, the skilled maintenance employee unit may be viewed as a consolidation of specialized employees inasmuch as it combines such employees as carpenters, painters, plumbers, and electricians (IUOE Br. 65). The only employee classification performing work similar to that performed by traditional craft or trade-type maintenance employees are biomedical technicians (Marshall, 4018–20; Hach, 5346–49; Jacquin, 5377; Viat, 3480–81; Giblin, 5396–98). Biomedical technicians work on and repair sophisticated computer-based equipment, and because of both their skills and training share a community of interest with other skilled maintenance employees and in many instances have already been included in some such units (Fox, Exh. 1 and 2; Hammond, Exh. 12; Viat, 3458, 3460, 3480; Giblin, 5495–97; Marshall, 4019–20; McKinney, 5497, 5525; Hach, 5347–49; Jacquin, 5377; Schloop, Chi II 203–04; Carrick, 3448).

F. Strikes, Sympathy Strikes, Jurisdictional Disputes, and Wage Leapfrogging or Whipsawing

1. *Primary strikes.* The evidence taken at the rulemaking hearings shows that the presence of separate skilled maintenance units has not resulted in a large number of strikes by these units (Lake, 157; IUOE Exh. 2; Viat 3468; Schloop, Chi II 169; Kelly, Chi II 180; Hach, 5323; Giblin, 5389; Hammond Exh. 12, attached affidavits). The hospitals contend that the number of strikes is low because the number of employees involved is small and therefore the cost of a strike exceeds the potential increase in labor costs of the union's demands thereby making it more likely that hospitals will give in to those demands. Nonetheless, the fact remains that in the 237 skilled maintenance units represented by the IUOE, in which hundreds of contracts have been negotiated, there have been only about 25 strikes ever (Lake, 157; IUOE Exh. 2). In addition, the incidence of strikes by skilled maintenance employees has not increased in proportion to the number of other represented units of hospital employees (IUOE Exh. 2; Viat, 3468–69; Fox, 3442). The few strikes that have occurred have been almost exclusively in support of bargaining demands, and have not been disruptive to health care delivery; indeed, skilled maintenance employees have offered to provide skeleton crews to assure uninterrupted service in the event of a work stoppage (Henry, 3059; Fox, 3442; Viat, 3467–68, 3470; Hammond Exh. 12, affidavits of Bess, Tighe, and Scheb.) Moreover, other hospital employees, whether represented or not, generally have not engaged in work stoppages in support of striking skilled maintenance employees (Hammond Exh. 12, affidavits of Bess, Tighe, and Scheb).

2. *Sympathy strikes.* While the strike rate in the health care industry in general is low (Subrin, Chi I 119–20; Schoen, 5181; Silberman, 5659), there is evidence that hospitals have not availed themselves of the opportunity to limit the possibility of successive multiple strikes by supporting union proposals for common contract expiration dates of different units' contracts; indeed, hospitals have opposed such proposals. (Henry, 3075; Absalom, 3318–19; Corbett, 3359–60; Schmidt, 3625; Weinrich, 4274; Muehlenkamp, 4771, 4774). Moreover, there have been virtually no sympathy strikes by skilled maintenance employees in support of other striking hospital employees (Schloop, Chi II 169; Kelly, Chi II 180; Fox, 3442; Friedman, 5060; Hach, 5323; Jacquin, 5361; Giblin, 5389; WS Fowler at 7; Hammond Exh. 12, affidavits of Bess, Tighe, and Chambers). No-strike clauses, which are generally honored, appear to have contributed to the infrequency of such strikes (Fox, 3442; Friedman, 5060–61). And, while the evidence shows that bargaining in broad, heterogeneous groups may serve to expand the scope of a strike by involving employees whose personal interests are not of concern in disputes relating to the interests of other unit employees (Viat, 3466; see above discussion in subsection (d)(2), Bargaining Interests), it also shows that the absence of sympathy strikes in the industry makes it unlikely that such expansions of strikes will occur where employees with separate and distinct interests are represented in separate units.

3. *Jurisdictional disputes.* In general, industry witnesses were unable to support the allegation that allowing separate skilled maintenance units would increase the number of jurisdictional disputes in the industry (Graumann, 409; Weinrich, 4254, 4281; Cammarata, 4406). Instead, the evidence shows that jurisdictional disputes over work assignments involving skilled maintenance employees are, like those in the hospital industry in general, rare and nondisruptive (Roth, 3153; Muehlenkamp, 4775; WS Shea at 14). Moreover, we are persuaded that the types of jurisdictional disputes which do arise, i.e., disputes over job classification, content, and responsibility, occur regardless of whether the employees are represented in one unit or several different units (Krasovec, 420–22; Hach, 5324; Giblin, 5389–90; WS Shea at 14). Finally, the few disputes which have arisen have been resolved informally, minimizing disruption of normal operations (Schloop, Chi II 170–71; Kelly, Chi II 181, 206, 207; Fox, 3442–43 & Exh. 2; Viat, 3471; Hach, 5323; Jacquin, 5361; Giblin, 5389).

4. *Wage whipsawing and leapfrogging.* Wage whipsawing or leapfrogging virtually never occurs with

skilled maintenance units inasmuch as the wages of skilled maintenance employees are generally based on the wages of skilled maintenance employees in other industries, rather than on the wages of other health care industry employees (Corbett, 3344; Hach, 5344–45).

G. Changes in the Industry

The alleged trend toward specialized hospitals and integration of employee functions would appear to have no impact on skilled maintenance units because the physical plant systems will essentially remain the same and will require skilled maintenance employees to operate and maintain them (Viat, 3470). Any move toward interdisciplinary teams also appears to have had no effect on skilled maintenance employees as virtually every team that was described by the industry included only health care personnel (Mixon, Chi II 275; Gallagher, 3541–42; Houston, 4025, 4050–55; Donnelly, 4064, 4080; Sokatch, 4195; Weinrich, 4268–69; Comment 62, Achterhof; Comment 78, Olman Greater Cincinnati Hospital Council). The one example provided at the hearings of skilled maintenance employees' participating on a team involved the skilled maintenance employees' voluntarily critiquing vocational training projects of rehabilitation patients (Coney, 165). This one example of an incidental function undertaken by a maintenance group at one hospital is, so far as we know, unique, but in any event does not involve direct patient care and is clearly insufficient to obliterate their distinct functions. Finally, the industry gave no examples of skilled maintenance employees being cross-trained into other job groups such as clericals or service employees and, cross-training from service to skilled maintenance positions or technical positions is virtually unknown. (Stickler, Chi I 9, 33–37; Houston, 4026; O'Cleireacain, 5467–68; McKinney, 5481.)

H. Other Issues

1. *Costs of multiple units with reference to skilled maintenance.* Assuming the relevance of the potential cost to the industry of negotiating in additional units, the evidence does not support the conclusion that units of skilled maintenance employees would necessarily have any adverse effect on hospitals' expenses. The evidence there is shows that contract negotiations for skilled maintenance units tend to be relatively short, which means relatively inexpensive (Comer, Chi II 328; Viat, 3469; Jacquin, 5378).

2. *Congressional admonition against proliferation.* The admonition against proliferation of units was directed toward problems that could be caused by having many separate bargaining units, i.e., substantial numbers of strikes interfering with the delivery of health care services, wage whipsawing, and jurisdictional disputes. As shown above, there is little or no evidence that the existence of separate skilled maintenance units has resulted, or would in the future result, in these problems. As a practical matter, permitting separate skilled maintenance units would not necessarily result in the creation of still additional bargaining units since most hospitals have substantially fewer organized units than the number proposed by either the Board or the unions. (Schwarz, 264, WS Table 1; Robfogel, Chi II 223; Comer, Chi II 329; Cammarata, 4425; Delaney, 4520; Muehlenkamp, 4770–71; Shea, 5163.)

During the 1973 legislative hearings on S. 794, the fear expressed by a number of witnesses was that Board precedent might permit a separate unit for each trade or craft found in hospitals. Thus, e.g., Sidney Lewine, testifying on behalf of AHA, and Richard V. Whelan, Jr., representing the Ohio Hospital Association, noted with apprehension the proliferation that would result if the Board were to grant a separate unit to each construction craft such as stationary engineers, carpenters, plumbers, electricians, pipefitters, and painters. (Coverage of Nonprofit Hospitals Under National Labor Relations Act, 1973, Hearings on S. 794 and S. 2292, at 128–29, and 465–66, respectively.) The Board's proposal directly takes into account this concern, which was called to Congress' attention, by putting all such separate skilled crafts into *one* skilled maintenance unit.

3. *The most recent Board decision.* In *St. Francis Hospital,* 286 NLRB No. 123 (Nov. 30, 1987) (*St. Francis III*), the Board held that a separate maintenance unit was inappropriate. In so doing, the Board found that the hospital's maintenance employees constituted less than 10% of the hospital's 438 service and maintenance employees, and spent approximately 80–95% of their time working throughout the hospital, thus bringing them in frequent contact with all other hospital employees. The Board further found that the hospital used independent contractors to perform difficult work, and that the sought employees shared the same basic terms and conditions of employment as service employees, including departmental supervision. The Board also noted that its finding that these particular maintenance employees did not constitute a separate appropriate unit was based on the particular facts of the case and was in no way an expression of its view concerning the appropriateness of maintenance units in general. Based on the evidence obtained during the rulemaking hearings, it is unlikely that we would reach the same result. Thus, the evidence from the hearings shows that, in virtually all health care facilities which were the subject of testimony at the hearings, skilled maintenance employees constitute a discrete and distinct group of employees. They perform functions apart from those of unskilled service, maintenance, and clerical employees. Skilled maintenance employees were shown to be highly skilled as evidenced by higher educational, licensing, and training requirements. While they share some common terms and conditions of employment with other hospital personnel, these employees uniformly have higher wages than service and clerical employees and have a number of bargaining interests separate and distinct from those of non-maintenance employees, such as access to craft related education and training programs, tool supply allowances, safety equipment and practices, portable pensions, and the like. Moreover, while skilled maintenance employees do work throughout the entire hospital, their contact with non-maintenance employees is brief and limited. Finally, the hearing evidence shows that transfers are rare in the industry and that skilled maintenance employees have a separate internal and external labor market.

I. Conclusion

For the above reasons, we find that a unit of skilled maintenance employees is separately appropriate for collective bargaining purposes. Although the number of employees in such a unit will be relatively small, their work bears little relationship to that of other hospital employees. It is, essentially, a non-health care occupation involving skills, interests, and job markets largely separate from the hospital itself. For that reason, to require unions to organize and represent skilled maintenance employees as part of a larger group of unskilled employees performing health-related jobs within the hospital is both unrealistic and inefficient. Hence, we have decided that the final rule should provide for separate skilled maintenance units.

The IUOE contends (IUOE Br. 9), and we find, that skilled maintenance units should generally include all employees

involved in the maintenance, repair, and operation of the hospitals' physical plant systems, as well as their trainees, helpers, and assistants. However, evidence from the hearings shows that it may not always be possible to identify in advance those employees properly included in this unit, partly because employees performing essentially the same functions are classified differently in different hospitals. Thus, for example, in Los Angeles and San Francisco all employees represented by the IUOE in skilled maintenance units are classified as stationary engineers regardless of their particular job functions (Viat, 3457–58; Hach, 5318) whereas in Chicago, New York, and New Jersey most health care employers have retained craft titles for their employees. (Schloop, Chi II 203; Schloop affidavit; Hach, 5318; Giblin, 5383.) In addition, many skilled maintenance classifications are subdivided by skill or experience level, e.g., master level, journeyman level, apprentice, and/or helper. Among the employee classifications which should generally be included in such units are carpenter, electrician, mason/bricklayer, painter, pipefitter, plumber, sheetmetal fabricator, automotive mechanic, HVAC [heating, ventilating, and air conditioning] mechanic, maintenance mechanic, chief engineer, operating engineer, fireman/boiler operator, locksmith, welder, and utility man. (Health Care Occupations: A Comprehensive Job Description Manual, Chapter XXXII; Hammond, Exh. 12, affidavits of Bowen, Tighe, Chambers, Scheb, McWade, Scadden, Kelly, Schloop, Gindorf, Fox, Lane, Belfi, and Bess.) As noted above, sometimes relatively unskilled utility workers are included, either if they are involved in the maintenance, repair, and operation of hospitals' physical plant systems (Viat, 3460), or if they are part of a separate maintenance department. This list is not exhaustive; rather, it is illustrative of the types of employee classifications exhibiting the characteristics which the rulemaking record shows are typical of employees included in skilled maintenance units. Because of this variation, in some instances it may be necessary to decide by adjudication the unit placement of individuals in particular job classifications. However, this is also true with respect to technical and business office clerical units, for example. It does not defeat the basic appropriateness of the unit as found in this rulemaking proceeding.

X. Business Office Clericals

A. Introduction

In the Notice of Proposed Rulemaking, the Board tentatively determined that business office clericals should be included in a unit of service and maintenance employees, rather than represented in a separate unit. 52 FR 25147. Among the reasons for including business office clericals in the broader service and maintenance unit were that they:

(a) Often share many terms and conditions of employment with service and maintenance employees;
(b) Have regular and frequent contact with service employees;
(c) Are engaged in recordkeeping as are ward clericals, technicians, nurses, and physicians;
(d) Have not been represented historically by labor organizations specializing in representing business office clericals; and
(e) Their inclusion in the broader unit will help unit proliferation.

After carefully considering the evidence amassed during the hearing, contrary to our tentative determination we have concluded that for the following reasons the business office clericals constitute a separate appropriate bargaining unit.

B. The Record Supports a Finding That Business Office Clericals Constitute a Separate Appropriate Unit

1. *Job duties and functions.* Evidence from the rulemaking hearings shows that although many hospital employees perform some recordkeeping functions, business office clericals perform substantially different functions from those performed by other employees (WS Holtz at 8–9; WS O'Neil at 1 & 5526–29). Business office clericals are primarily responsible for a hospital's financial and billing practices (WS Winn at 6–7), and deal with Medicare, DRGs, varying price schedules, multiplicity of insurance types, and new reimbursement systems (WS Schoen at 9; Berliner, 5599–5600). Increasing computerization of financial management has led to specialization and has reduced the clerical duties of other hospital employees (WS Schoen at 11).

One argument advanced by some employers is that many different professional and non-professional classifications use computers; 2/3 of the hospitals are considering information systems technology which will enable nurses to enter and read programs reporting patients' test results, medication, and scheduling (AHA Br. 45 citing article in *Modern Healthcare*). Unlike these employees, however, business office clericals do not engage in any form of patient care and are not responsible for the patients' physical or environmental health (Wilkinson, 4973–76; Bryant, 116–118). Moreover, although other clerical and professional employees may be utilizing information systems technology and video display terminals (VDTs), and despite the existence at the University of Alabama (Birmingham) of a training program for "clerical technicians" who learn to do billing, perform blood tests, and take x-rays (AHA Br. attachment 5), it has not been shown that service workers or clinical technicians perform functions similar to those performed by the business office clericals, i.e., they are responsible for selecting, completing, or interpreting business forms using computers, keyboard terminals, and typewriters. Nor was it shown that the University of Alabama program was duplicated elsewhere in the country, or that any person from the program was ever placed in a hospital. (AFL Br. 77). Moreover, the evidence indicates that this program was clearly intended for technical employees (Stickler, Chi I 37–38).

2. *Education.* Business office clericals generally are required to have a higher level of education than service and maintenance employees, i.e., a high school diploma and specific clerical skills, and a majority of business office clericals have some college background and formal clerical training (WS Nussbaum at 2; WS Cornfield at 6). Moreover, because of the increased complexity of the hospitals' financial operations, including the introduction of DRGs, hospitals have begun to require more training for business office clericals, and to require skills in such areas as programming, coding, abstracting, and billing procedures (WS Schoen at 9; WS Ryan at 1–2). By contrast, service workers have minimal educational requirements, prior work experience is unnecessary, and they are not required to possess special business-oriented skills (AFL Br. 53; WS Cornfield at 8). There is some evidence that admitting clerks and medical records librarians receive vocational training at many of the same business or trade schools as purchasing clerks and accounts receivable clerks (WS Coney at 5). However, no specific evidence was provided regarding the type of training each receives. The fact that some employees are attending the same schools does not establish that they are receiving identical training. Consequently, we do not place great weight on this factor; in any event, whether some of these other

classifications are also business office clericals is a matter we do not here decide. Further, business office clericals undergo constant retraining to update current skills or acquire new skills as financial operations are updated (WS Holtz at 5, 9–10).

3. *Terms and conditions of employment.* Although clericals often share some terms and conditions of employment with non-professional employees, especially benefits, evidence from the rulemaking proceeding clearly shows other, significant differences between the business office clericals' terms and conditions of employment and those of the service and maintenance employees. Salaries paid to business office clericals reflect their higher skills and training; a 1985 BLS wage survey shows that business clericals on average earn $2,000 more than the top service jobs (WS Schoen at 12; WS O'Neil at 3). Unlike service and maintenance employees, business office clericals may be permitted to smoke and eat at work stations, and have different dress requirements and health and safety concerns. In addition, unlike most service employees who work varying shifts and weekends, business office clericals generally work one shift, 5 days per week. (AFL Br. 59; WS Nussbaum at 5; Bryant, 116–118; Booth, 3686; WS O'Neil at 2.)

4. *Supervision.* The differences in skills and functions are underscored by the separate supervision of business office clerical departments, which has resulted from the almost universal centralization of business office functions (Berliner, 5597; WS Schoen at 9–10 & 5173). The SEIU survey of 250 facilities showed that at 100% of the facilities, business office clericals have separate supervision. Although clericals occasionally may share supervision with other non-professionals (Briguglio, 5300), the evidence establishes that business office clericals regularly have a separate supervisory hierarchy; ultimate supervisory responsibility generally rests with financial administrators as compared to the ultimate supervisory authority for service employees which rests with administrators overseeing patient care (WS O'Neil at 2; WS Holtz at 4, 6–7). Two examples were given in which clericals and other employees report to the same individual (Briguglio, 5300; Comment 157, Halifax Medical Center). Nevertheless, we are persuaded that, with few exceptions, business office clericals are separately supervised. Moreover, in one important respect, the nature of the supervision received by the business office clericals is unlike the traditional supervision received by service and maintenance employees. Technology enables supervisors to monitor closely the output of the business office clericals, measured in keystrokes, paper output, volume of bills processed, time on terminals, and phone calls; this monitoring increasingly is used for purposes of discipline. (WS Holtz at 6–7; WS Nussbaum at 2–3.)

5. *Interaction.* Contrary to our original impression, the evidence shows that business office clericals are physically isolated from other non-professional employees and, therefore, have little contact or interaction with them. (Dretchan, 5002; Bryant, 116–118; Booth, 3689–90; WS Nussbaum at 4). The ballooning costs of new construction, as well as increased technology, have resulted in many instances in hospitals' moving administrative offices outside the health care facility into existing buildings at other locations (Berliner, 5602; WS Schoen at 10). Of 250 hospitals surveyed, 35% of the business offices are located in a separate building, 25% are located in a separate wing of the hospital, and 28% are located on a separate floor (WS Shea at 17; WS McKenna at 3–4). Further, centralized processing of information and the increasing use of computerized communication of data continue to reduce even further the potential for physical interaction (WS Schoen at 14).

6. *Career paths and job mobility.* Business office clericals have few avenues of advancement within health care facilities; rather, they have a separate and increasingly well-defined external labor market (Wilkinson, 4980; WS Ryan & 4749–50). Business office clericals are hired almost exclusively from the external labor market, and hospitals hire business office temporaries as replacements rather than using other hospital personnel. The external market also influences salary scales since hospitals compete with other industries for these employees. (WS Schoen at 11–12: hospitals use BLS wage surveys in determining salaries for business office clericals.) Consequently, while service employees generally remain in health care facilities (WS Berliner at 9–10), business office clericals look elsewhere for other positions if they are dissatisfied.

There is minimal interchange, either permanent or temporary, between employees in service, maintenance, technical or professional jobs and those in business office clerical positions (Ryan at 1–2). Moreover, although one witness testified generally that some clericals receive training to provide direct patient care (Stickler, 16–17 & WS Rhodes at 7), there were no examples of instances where this had actually occurred. There would appear to be little cross-over from clerical positions to patient care positions. Further, the evidence reveals that job mobility between service employees and business office clericals is basically nonexistent and, with the upgrading of skills and additional training received by business office clericals, it is becoming even less feasible (WS Lewis at 2–3; WS Blake at 2; WS O'Neil at 2; WS Berliner at 7). In some hospitals, admitting clerks and medical records librarians, and purchasing clerks and accounts payable clerks are interchangeable and may substitute for each other, and technicals and professionals may handle clerical operations on the night shift (WS Coney at 5; Comment 263, Huntsville Memorial Hospital). Nevertheless, for the most part, even clinical clerical workers cannot shift into business office clerical positions without a substantial degree of retraining and reskilling (WS Berliner at 7). There was testimony that hospitals prohibit or discourage bidding between the business office clerical and service and maintenance positions; however, even where hospital-wide posting of vacancies is required and employees use their seniority to bid, there is little cross-over between service and maintenance employees and business office clericals (WS Shea at 18; WS Roitman at 1.)

7. *History of representation.* The appropriateness of separate business office clerical units is supported by a history of representation separate from service and maintenance employees. For example, at 250 hospitals surveyed by SEIU, business office clericals sought representation in 71 hospitals, of which 46 were separately organized, compared with service employees who organized in 195; a survey conducted by NUHHCE of 200 post-1974 elections in 100-plus bed hospitals showed 37 involved business office clericals, of which 33 were separate units (WS Shea at 15–16; Muehlenkamp, 4767–70). There are 92 separate business office clerical units represented by AFL affiliates in private sector hospitals. (AFL Br. App. A). Local 1199 had no combined non-professional units until *St. Francis II* (Friedman, 5035–41). Although there are business office clericals represented in combined service and maintenance units (Stickler, Chi I 23–31 giving examples), some combined units may have resulted from an effort to minimize delay or to comply with *St. Francis II* (AFL Br. 70). The weight of the evidence establishes that business office clericals predominantly have been separately represented.

8. *Bargaining interests.* While all employees have some similar bargaining concerns, i.e., wages, hours, and fringe benefits, business office clericals have a number of different interests, e.g., pay equity, performance monitoring, productivity standards, career mobility, automation, and VDT stress, as opposed to concerns of service employees such as job security, subcontracting, economic survival, supplies, shift rotations, infectious disease, injuries, and patient care (WS Nussbaum at 3; WS Lewis at 2; WS Holtz at 12–13; WS Barton at 1; AFL Br. 64–65).

Despite the differences, in some instances business office clericals have bargained jointly with other non-professional employees and contracts have covered both non-professional employees and business office clericals. In 1987, Mercy Hospital negotiated a contract which included over 50 classifications in one overall non-professional unit (AHA Br. attach. 15) (One classification included such jobs as accounting clerk and lab department secretary and both received identical wage rates and wage increases for the duration of the contract). See also Comment 162, AMI; Saporta, 5142; Comment 154, Michael Reese Hospital, for other examples. However, in some cases where business office clericals negotiated together with service employees and the resulting contract provided for identical terms and conditions of employment, wages and upgrade negotiations often remained separate, and clericals had different bargaining representatives. In one instance incentive bonuses tied to receivables were offered only to business office clericals, and in others the contracts contained separate wage schedules for business office clericals. (WS Holtz at 10; WS McKenna at 3–4.) At Roosevelt Hospital, although the union bargained jointly for clericals, technicians, and service and maintenance employees, the clericals had their own bargaining delegates, contracts for business office clericals and service and maintenance employees were administered separately, and there was no interchange of delegates or exchange of grievance handling (Colbert, 5020–22).

9. *Proliferation.* Contrary to our concern, as expressed in the NPR, there was no evidence adduced at the rulemaking hearings indicating that a separate unit of business office clericals will lead to the proliferation of bargaining units in the industry. The admonition against proliferation of units was directed toward problems that might be caused by having many separate bargaining units, i.e., substantial numbers of strikes interfering with the delivery of health care services, wage whipsawing, and jurisdictional disputes. There is no evidence that the existence of a separate unit of business office clericals would result in such problems. There were no examples of sympathy strikes by business office clericals in support of service and maintenance employees, and no examples of leapfrogging because of a separate business office clerical unit. (WS Wynn at 3.) In one hospital as to which there was testimony about separate units, there was no evidence of jurisdictional disputes. (WS Gray at 4; Michael Reese Hospital). One argument advanced was that because a business office clerical unit will not include all clerical classifications, e.g., ward clerks, there is a potential for conflicts between clerical groups. There was no evidence of specific examples, and we accord no weight to the theoretical possibility of a conflict.

10. *Legal Precedent.* Legal precedent supports finding separate business office clerical units appropriate. The Board has recognized the appropriateness of separate business office clerical units in every other industry covered by the Act, and until *St. Francis II*, in the health care industry. See e.g., *Armour & Co.*, 15 NLRB 288 (1939); *Legal Services for the Elderly Poor*, 236 NLRB 485 (1978); and cases cited in AFL Br. pp 71–72. From 1974–1984, the Board did not find any business office clerical unit to be inappropriate (See NLRB Exh. 5, revised). Moreover, Senator Taft's industry-sponsored bill would have explicitly provided for separate office clerical units.

In *Baker Hospital*, 279 NLRB No. 38 (Apr. 16, 1986), the Board required the inclusion of business office clericals in a unit of service and maintenance employees. In so doing, the Board found that business office clericals and service and maintenance employees received the same fringe benefits and were covered by the same personnel, salary, promotion, seniority, transfer, and disciplinary policies. The Board also found that there was a significant amount of contact between clericals and unit employees. The Board held, therefore, that there was an insufficient disparity of interests between business office clericals and service and maintenance employees to justify excluding the clericals from the unit. After considering the substantial empirical evidence adduced in the rulemaking proceeding, we find it unlikely that we would reach the same result. The evidence from the hearings shows that business office clericals constitute a distinct group of employees. They perform substantially different functions, have a greater degree of education and training, utilize different skills, are separately supervised, receive higher wages, have a number of distinct bargaining interests, have little or no interaction or interchange with other employees, and frequently are located in geographically separate offices.

11. *Identification of business office clericals.* The evidence from the hearings indicates that there may be other clericals, e.g., ward clericals, medical records clericals, physicians' secretaries, and admitting office clericals who perform functions similar to those performed both by service employees and business office clericals or else perform a combination of functions such that they cannot be readily classified as one or the other. To date, however, the Board has decided the placement of these categories of employees on a case-by-case basis, generally excluding these classifications of employees from business office clerical units. See *Mercy Hospital of Sacramento*, 217 NLRB 765 (1975). There, the Board found a separate unit of business office clericals appropriate, and placed ward clericals in another unit because their work was more closely related to the function performed by personnel in the service and maintenance unit. The precise placement of particular classifications which may be disputed in a particular case is, for the time being, left to the case-by-case adjudicative approach.

C. Conclusion

Business office clericals share some terms and conditions of employment with all other service and maintenance employees, have occasionally participated in joint bargaining, and may even have been covered by the same contracts. However, we are more persuaded by the evidence developed at the hearing as to their separate supervision, their different and specialized skills and education, their minimal interchange and contact, their different career paths and job markets, their maintenance of a separate identity even where bargaining was in a larger group, and, finally, the recent development whereby more and more business office clericals are being moved out of the hospital to different buildings or facilities. We believe that the weight of the evidence strongly supports finding separate business office clerical units appropriate.

XI. Other Non-Professionals

Based on our analysis of the evidence adduced, we have found appropriate separate units of technicals, business office clericals, and skilled maintenance employees. All remaining service and non-professional employees [24] shall, therefore, constitute a separate appropriate unit, where requested.

XII. One Hundred Bed Distinction

The proposed rule suggested establishing a different unit configuration for hospitals over 100 beds than for those of 100 beds or fewer based on the Board's belief that hospital size (as determined by the number of beds) was correlated with integration of labor, and that smaller hospitals were more functionally integrated than larger hospitals, and could function with fewer, broader units. However, the record does not support that belief, and the Board has concluded that its rule regarding units in acute care hospitals should apply regardless of hospital size.

The vast majority of representatives of both unions and employers appeared to agree that hospital size is not well correlated with integration or division of labor, and opposed a rule differentiating between large and small hospitals. Examples of unions opposing the distinction were: AFL Br. 139–140; ANA 4919–20; SEIU, 5215; Hospital Professionals and Allied Employees of New Jersey, 125. Over 40 employers registered specific or general criticism of use of a 100 bed distinction, including AHA, Br. 48; League of Voluntary Hospitals, 226–229, 254; Hospital Council of Western Pennsylvania, 4395; Comment 5, Holy Redeemer Health Systems; Comment 15, Methodist Health Systems; Comment 25, Bradley Memorial Hospital; Comment 78, Greater Cincinnati Hospital Council; Comment 82, Humana, Inc.; Comment 104, St. Francis Hospital. Experts in the field agreed with the parties' position (Rosen, 4663; McKinney, 5519–20). Only a handful of commentators supported the use of any distinction based on the number of beds. For example, Comment 11, National Rehabilitation Hospital; Comment 105, Mass. Hosp. Assn.

A survey by UFCW comparing the number of beds and the staffing in hospitals of varying sizes in five states showed a wide variation in staff size (UFCW Exh 6–11). For example, in New York State, among 46 hospitals surveyed with 20–100 beds, one hospital with 20 beds had over 200 employees, one with 21 beds had 50 employees, one with 20 beds had 209 employees, while another with 129 beds had 181 employees. (UFCW Exh. 11). In California, one hospital with 107 beds had 1011 employees, while another with 110 beds had 299 (UFCW Exh. 6). In Illinois, hospitals with 77 and 91 beds had 279 and 429 employees, respectively, while another hospital with 129 beds had 126 employees (UFCW Exhs. 5, 6). Similar variations, and lack of correlation, appeared throughout the exhibits.

Lack of correlation between number of beds and number of employees may be attributable to specialization or the amount of outpatient services (UFCW Exh. 1–11; WS Willman & 4500; Rosen, 4663; AFL Exh. 20). Thus, it appears that staffing size and patterns might correlate more closely with the nature of services than with bed number (AHA Br. 47; New Jersey Society for Health Care Human Resources Administrators, 439).

The AHA correctly noted that the Board's proposal for a 100 bed distinction did not clarify how it defined the term "bed" (AHA Br. 47). The record shows that there are several meanings of the term in health care facilities. A bed may be licensed or unlicensed; if licensed a bed may be occupied or unoccupied (AHA Br. 47; Comment 52, Hillcrest Baptist Medical Center). Hospitals may change the number of licensed beds more than once a year (California Association of Hospitals and Health Systems, 3229). Occupancy rates vary; a hospital may have occupancy substantially below the number of its licensed beds (Comment 1, Lancaster Fairfield Hospital; Comment 115, National Healthcare, Inc.: rural areas may have only 25–30% patient census). The number of staffed beds (based on average projected occupied beds and patient acuity) can differ from the number of occupied beds (Comment 186, Hiawatha Community Hospital; Comment 191, Trinity Lutheran Hospital.) Beds may also include swing beds (beds that swing between acute care and nursing or long-term care) (Missouri Hosp. Assn., Chi II 265).

The Board also notes that to the extent unions and employers addressed the standard to be used if the Board determined to have a bed-number distinction, they rejected the use of 100 beds as an appropriate bed measure but did not reach a consensus as to the appropriate number of beds to use. For example, some unions suggested using the definition of small hospitals employed by the U.S. Department of Health and Human Services in calculating reimbursements under Medicare, which is those hospitals with fewer than 50 licensed beds. (AFL Br. 141; WS Sweeney.) The AHA suggested a 400 bed cutoff (AHA Br. 141), but other employers suggested 250 beds (Comment 169, Columbus Hospital); 300 beds (Comment 126, Arlington Memorial Hospital); 450–500 beds (Comment 1, Lancaster Fairfield Hospital); and 500 beds (Comment 11, National Rehabilitation Hospital).

The Board's decision to drop the 100 bed distinction is based on the evidence provided by the parties regarding the lack of correlation between bed number and hospital staff, the multiplicity of definitions for the term "bed" in health care, the lack of consensus on the number of beds dividing large and small hospitals, and the parties' general opposition to use of a distinction based on the number of beds.[25]

XIII. Nursing Homes

The only health care facility, other than hospitals, covered by our proposed rule was nursing homes. In so doing, we tentatively determined that the appropriate bargaining units for this type of health care facility should be the same as that for small hospitals, i.e., (1) all professionals, (2) all technicals, (3) all service, maintenance, and c1ericals, and (4) all guards. After careful consideration of all the evidence presented at the hearings, however, we have concluded that the rule should not apply to nursing homes.

To a larger extent than acute care hospitals, nursing homes vary both in size and type of service rendered. Generally speaking, there are three basic types of nursing home facilities: skilled nursing, intermediate care, and residential care. Skilled nursing homes provide 24-hour inpatient nursing care to chronically ill or stable convalescent patients, are state licensed, and are eligible for both Medicare and Medicaid. Intermediate care facilities also provide 24-hour inpatient care, but care is less intensive and more oriented to daily living. These homes are also state licensed or certified but are eligible only for Medicaid. Residential care facilities meet only social needs, not medical, and are not licensed. (Durham, 3164–66, 69, 71, 83; Comment 155, Indiana Healthcare Assn. (IHA).) The facilities range in size from 10–500 patients (Harris, 4294; Comment 284, Ryan). One-third have a capacity for fewer than 50 residents,

[24] Excepting guards, of course, who must be placed in a separate bargaining unit. See section 9(b)(3) of the Act.

[25] We note, parenthetically, that the information we have acquired as to the relationship between staffing and number of beds most likely would not have been acquired in an adjudicatory proceeding, and provides further evidence of the value of rulemaking in obtaining industry-wide information unavailable in a case-by-case approach.

one third for 50–99, and one-third for over 100 (Harris, 4304).

Unlike hospitals, nursing homes are populated primarily by the elderly and provide long term care rather than medical treatment of a specific illness. Consequently, nursing home staff are concerned not only with their residents' physical well-being but also their social and psychological needs. Accordingly, there is less diversity in nursing homes among professional, technical and service employees, and the staff is more functionally integrated. (Harris, 4294–95; Willman, 4501–02.) Generally, nurses provide a less intensive, lower level of care to patients in skilled and extended care facilities, and thus receive lower salaries than that paid in acute care hospitals (AHA Br. 6–7 citing *Modern Healthcare,* Jan. 3, 1986). In addition, RNs in most nursing homes never administer oxygen or assist in surgery, and therefore generally have no interest in or need for acute care pay differentials or for specialization (Comment 155, IHA; Shepard, 4962). Also, there is for the most part little difference in the duties of LPNs and nurses' aides (Comment 155, IHA). Both are primarily responsible for providing nursing care to patients (Comment 155, IHA, affidavits of Miller and Price; AHA Br. 6 citing *Modern Healthcare,* Jan. 3, 1988). Indeed, almost no aspect of nursing home care is in the exclusive domain of any one group of employees (Harris, 4295). Thus, there appears to be a greater overlap of functions as well as greater work contact between the various nursing home non-professionals (Willman, 4501–02; Comment 155, IHA, affidavits of Townsend and Turner-Simpson).

Skilled care homes also differ from hospitals in that a ratio of 50 patients per nurses' station is ideal for nursing homes, whereas the typical ratio for acute care units is half that number (AHA Br. 7 citing *Modern Healthcare,* Jan. 3, 1986).

Also unlike hospitals, there are few professionals employed at nursing homes, and of those, most are RNs who serve as head nurses or charge nurses primarily performing administrative duties (Durham, 3190; Willman, 4501–02; Saporta, 5145–46; Bullough, 4656–57; Comment 155, IHA, affidavits of Davy, Townsend, Turner-Simpson, and Higdon). There are also few business office clericals. In a typical 100 bed nursing home, the business office will have one or two employees. In a 100 bed acute care hospital, the office consists of payroll employees, accounts receivable and payable employees, data processing employees, and others. (Comment 155, IHA.)

Greater differences in the size and purpose of nursing homes have resulted in greater differences in their organization, regulation, and staffing patterns. For example, in very large homes, business office clericals may be physically separated from the home, and have little employee or patient contact. In very small homes, the business office is located next to the patient care areas and there is continuous contact with the patient care staff. (Comment 155, IHA; Durham, 3166–67). Duties of staff also vary with the size of the institution. In a small, 10-resident facility, the staff will have overlapping responsibilities, and thus an overall unit would be appropriate. In a large, skilled care facility with specialized units (see *infra*), more than one unit might be appropriate (Harris, 4298). In an intermediate care facility which also cares for the mentally disabled as a result of trauma, there may be a separate group of employees, such as psychiatrists, who have distinct supervision and little contact with other professionals (Durham, 3170).

Although most homes are regulated by the state, regulations with respect to staffing patterns and employee qualifications vary widely from state to state (Harris, 4296–97; Comment 284, Ryan). For example, Connecticut requires more skilled nursing care than Iowa, and in some states, skilled nursing facilities must have 24-hour RN coverage. Seventeen states have mandated nurses aide training programs ranging from 20 hours to over 100 hours. A majority of states have no specific training requirements. In Massachusetts, the activity director and the social service director must have baccalaureate degrees; in other states, their formal qualifications are less than those of a nurses' aide. (Harris, 4297; Comment 284, Ryan; Comment 155, IHA.) Also in Massachusetts, as in other states, homes must be staffed by LPNs or RNs, and they are required to provide substantial direct patient care. In contrast, in Indiana, with lesser staffing requirements, nurses' aides provide direct patient care, and LPNs perform RN-type duties such as distributing medication and assisting doctors. (Comment 155, IHA.)

The nursing home industry is also in a period of rapid transition. It is currently undergoing enormous growth as the population of older persons increases and family responsibility for older parents lessens. In addition, many long term facilities will increasingly offer nontraditional specialized services, i.e., head and spinal cord injury units, intensive rehabilitation, sub acute care, Alzheimers, respiratory therapy, hospice care, nutrition, AIDS, home health care, and care for ventilator dependent patients. (Harris, 4299; Comment 284, Ryan; Durham, 3161; AHA Br. 6 citing *Modern Healthcare,* Jan. 3, 1986.) These services require different staffing needs. For example, in most Alzheimers' units, nurses' aides receive psychological training in order to respond properly to their patients' behavior, and LPNs are required to perform recreational, educational, and social activities that are normally done by service employees such as recreational aides. A head injury unit requires many more professionals than are usually present in a nursing home facility. An AIDS facility might need more counselors. (Harris, 4300–4301; Comment 284, Ryan.) The professional and technical staff in a specialized service area such as a coma unit may also be far more integrated than RNs and LPNs who work in the nursing area (Comment 306, Harris).

For some or all of the reasons discussed above, numerous witnesses were opposed to applying the rule to nursing homes (Durham, 3179; Harris, 4293–94; Comment 284, Ryan; Comment 155, IHA; Comment 155, IHA, affidavit of Miller; Comment 3, Jefferson Davis Nursing Home). Three witnesses would support a two unit approach (Comment 22, Louisiana Nursing Home Assn; Comment 27, Jefferson Manor Nursing Home; Comment 34, Lewisburg United Methodist Homes). Several commentators thought the Board lacked sufficient experience with respect to nursing homes to formulate a rule as to such facilities (IUOE Br. 2, fn 1; Durham, 3179; Harris, 4304). Board statistics show that only 20% of the elections in the health care industry have involved long term care facilities (Harris, 4302). Also, case-by-case determinations of appropriate units in nursing homes have not caused undue litigation (Comment 155, IHA). In fact, to the best of our knowledge there is not a single published case since the health care amendments in which the Board had to decide appropriate units in nursing homes, and no party testified that it had experienced problems with case-by-case determinations as to this issue.

In view of the evidence set forth above, we have decided to exclude nursing homes from the rule. The evidence shows that there are not only substantial differences between nursing homes and hospitals but also significant differences between the various types of nursing homes which affect staffing patterns and duties. In the absence of a

measure of uniformity of operation, it would be difficult to establish uniform rules with respect to appropriate bargaining units. It also appears that there is no need at this time for a rule with respect to nursing homes as there has been no prolonged litigation and no party has expressed any problems in this area. We, therefore, conclude that it is best to continue a case-by-case approach with respect to nursing homes. For those facilities which provide both hospital and nursing home services, if the facility is primarily an acute care hospital, it will be treated in its entirety as a hospital; if primarily a nursing home, it will be considered a home, and outside the rule. To do otherwise would further fractionalize bargaining within the facility, and cause more, rather than less, proliferation.

XIV. Specialized Hospitals

Some employers suggested that the Board make a separate rule for specialty hospitals, arguing that they are neither acute care hospitals nor nursing homes (Comment 172, New England Sinai Hospital; King, 4230–31). The evidence with regard to most of the specialty hospitals which participated in the rulemaking did not support a conclusion that there are fewer traditional distinctions between employee groups. However, the evidence demonstrated that psychiatric hospitals, are, for a number of reasons, in a category apart, and the Board has decided to exclude psychiatric hospitals from application of the rule.

Initially, the industry's claimed trend toward one-specialty hospitals is not supported by statistics. The AHA classifies 90% of U.S. private, acute care hospitals as general; of these, 98% are general medical and surgical hospitals and only 2% are pediatric or rehabilitation hospitals. Nine of the remaining ten per cent are psychiatric, a category apart. (AFL Exh. 7, 8.) In California, where the industry contends the trend is particularly strong (Dauner, 3206), there are relatively few specialized hospitals (Silberman, 3209–12).

Most of the comments submitted to the Board from specialty hospitals apart from psychiatric hospitals did not argue that these hospitals should be treated differently from general acute care hospitals. See for example, Comment 4, Le Bonheur Children's Medical Center; Comment 10, National Rehabilitation Hosp.; Comment 123, Children's Memorial Hosp.; and Comment 303, Children's Medical Center, Akron, regarding childrens' hospitals. Although Children's Medical Center of Dallas (Comment 276) states that in that hospital RNs integrate patient care with some other professionals, and Cardinal Glennon Children's Hospital (Comment 271) discusses use of the team approach, neither suggests that childrens' hospitals differ from general acute care hospitals for purposes of rulemaking. While Shriners Hospitals For Crippled Children (Comment 238) were unique in their method of obtaining funds and charging patients, they operate like other acute care hospitals, subscribing to the same rules of licensure and accreditation.

Two hospitals, Children's Hospital of Dayton and Children's Hospital of Cincinnati presented more details regarding the operation of childrens' hospitals (Testimony of Graybill, Sokatch; Comment 288, Graybill). There is evidence that childrens' hospitals have higher acuity and outpatient activities than general acute care hospitals, and as a result have more full time equivalent positions and higher budgets than comparably sized general acute care hospitals (Comment 288). There is also evidence that RNs have a somewhat higher level of interaction with other professionals, for example, interacting with respiratory therapists on ICU units and transports (Graybill, 4183), working on special teams like bone marrow transplants, interacting with pharmacists regarding allergies, and tube sequencing (Comment 288). Even assuming that respiratory therapists are professionals, a status the Board has rejected on some occasions, (see for example, *Samaritan Health Services*, 238 NLRB 629, 638 (1978)), the interaction of RNs with other professionals, including presence on teams, is similar to that shown in other hospitals, and RNs' duties were not shown to be different merely because they may work on teams. As in other acute care hospitals, most nurses in childrens' hospitals are directly or indirectly supervised by other nurses (Graybill, 4147–48, 4164).

Comments from rehabilitation hospitals show similar arguments to those made by general acute care hospitals: that there is increased contact between RNs and other professionals, that there is some cross-training and utilization, that teams are used, that a hospital has across-the-board personnel policies (Comment 172, New England Sinai Hospital; Comment 131, The Institute for Rehabilitation and Research). These commentators did not request special treatment for their hospitals. Of course, to the extent rehabilitation hospitals may be long term, they will not fall within the parameters of the Board's rule, *infra*, which applies only to hospitals whose average patient stay is less than 30 days.

Nor was there a suggestion made by commentators of other, non-psychiatric, single specialty hospitals that their type of hospital merited special rules. For example, the Board received evidence from Springfield General Hospital (Comment 201) and Oklahoma Osteopathic Hospital (Comment 300), both osteopathic hospitals, in opposition to the rulemaking, but not claiming a special status for specialty hospitals.

As noted above, the evidence received on psychiatric hospitals supports an exception for this specialty. Psychiatric hospitals constitute a substantial portion (9%) of private hospitals in the U.S. (AFL Exh. 7). Even the AFL, the only union which took a position on psychiatric hospitals, provided a mixed case for including these hospitals under the rule. Thus, while the AFL argued that psychiatric hospitals which provide short term care are acute care hospitals, it recognized that there is evidence to suggest that at least some professionals play different roles in psychiatric hospitals than in acute care hospitals (citing Albanese/Caswell, Chi I 148–165). Further, the AFL noted that the Board has treated psychiatric facilities differently from other hospitals. Thus, *Mt. Airy Psychiatric Center*, 253 NLRB 1003 (1981), was the only pre *St. Francis II* case in which the Board refused to find appropriate a separate RN unit. Finally, even the AFL acknowledged that the Board might wish to exclude exclusively psychiatric facilities from the rule. (AFL Br. 140, fn.).

The two main industry representatives who presented evidence on psychiatric hospitals strongly urged that psychiatric hospitals not be considered acute care hospitals for purposes of rulemaking. Most of the evidence submitted with regard to psychiatric hospitals came from the National Association of Private Psychiatric Hospitals (Comment 307, Thomas) and from Charter Medical Corporation (Albanese/Caswell, Chi I 148–165). The National Association represents a substantial majority of private psychiatric hospitals in the U.S. Charter Medical represents about 60 psychiatric hospitals. Therefore, the Board considers their evidence to be representative of psychiatric hospitals in general. The other employers representing psychiatric hospitals agree that psychiatric hospitals operate in a distinct manner (Comment 110, Charter Lakeside Hosp.; Comment 35, Massachusetts Chapter of the National

Association; Comment 29, Glen Eden Hospital; Comment 120, HCA Belle Park Hospital; Comment 168, Camelback Hospitals; Comment 298, Palo Verde Hospital).

The evidence showed that unlike other acute care hospitals, psychiatric hospitals do not provide patient care for the physically ill. RNs are not the primary facilitators of health care in psychiatric hospitals. Many professionals participate hands-on with patients. Regardless of which of three basic models a psychiatric hospital follows: medical, milieu, or combined, the programs are highly integrated. RNs' work is closely integrated with the work of clinical psychologists, counselors, social workers, and various types of therapists in a treatment plan as designated by doctors and program coordinators.

There are more professionals other than doctors and RNs in psychiatric facilities than in other acute care facilities. The ratio of RNs to other professionals is about 1:1 regardless of facility size. It appears that non-RN professionals would not have the same concerns about being outnumbered in an all-professional unit as they have expressed regarding organization in acute care hospitals.

Psychiatric hospitals also differ from other acute care hospitals in that there are more paraprofessionals (mental health workers), and all employees are specially trained in relating to the patients as all employees' actions have an impact on patient treatment.

Further, the evidence shows that Congress has distinguished between acute care general and psychiatric hospitals under Medicare by setting special Medicare certification requirements with respect to staffing, treatment planning, teams, etc.

For all these reasons, the Board has decided to exclude "primarily" psychiatric hospitals from its rule for units in acute care hospitals and to proceed as to them on a case-by-case basis. A number of acute care hospitals have psychiatric sections, however, and such hospitals are not thereby excluded from application of the rule unless the psychiatric sections predominate. Nor do we adopt the suggestion of the AFL that the exclusion be limited to hospitals that are "exclusively" psychiatric, as we deem such an exclusion to be too limited. See the definition of "psychiatric hospital" contained in 42 U.S.C. 1395 x (f).

XV. Partially Organized Facilities

In the first Notice of Proposed Rulemaking, we limited the applicability of the rule to petitions for initial organization, and commented that "historically the Board has required decertification petitions to be filed in the certified or recognized unit." (52 FR at 25145). By way of further explanation, the Board added that "when institutions are partially organized we assume that petitions for new units will follow the proposed rules, insofar as possible." (*Id.*)

As indicated *infra*, in Sec. XIX, Combined Units, the principle of *Campbell Soup Co.*, 111 NLRB 234 (1955), will continue to apply to decertification petitions. See also *Westinghouse Electric Corp.*, 115 NLRB 530 (1956). With respect to other types of petitions in partially organized facilities, we wish to amplify our previous remarks.

In the Second Notice of Proposed Rulemaking, "insofar as practicable" language [changed from "insofar as possible"] is now part of the proposed rule. However, there are two different possible situations we can envisage:

(1) Where existing units are in conformity with the new proposed final rule, we can foresee no reason that new petitions, for the same or other units, should not also be in conformity with the new rule.

(2) Where existing units are not in conformity with the new proposed final rule, we can anticipate a number of questions arising with respect to the applicability of the new rules. Where units smaller than those permitted by the rules already exist, may the incumbent petition for a residual unit? May another labor organization? What will be the continued viability of the principles enunciated in *Levine Hospital of Hayward*, 219 NLRB 327 (1975)? In Comment 304, Kaiser Permanente raised a number of these questions, claiming that "many health care employers, including Kaiser Permanente, currently have bargaining relationships with unions in units that are narrower than those set forth in the proposed rules." These issues have not been extensively addressed during the rulemaking proceeding, and it is the Board's judgment that their resolution should, for the time being, be deferred pending the adjudication of particular cases that present these issues. The Board will, in the adjudication of cases, attempt to apply the new rules to these situations insofar as practicable.

XVI. Facilities Covered

The Board stated in its proposed rule that the rule would apply to acute care hospitals, but did not define the term. Noting the concern of some commentators during the Board hearings with the absence of a specific definition, the Board has carefully reviewed a variety of sources in order to reach a definition. In particular, the Board has extensively searched Federal health care legislation, agency regulations, legislative history, industry reference materials, and hearing testimony for an authoritatively based and commonly understood distinction suitable to the goals of rulemaking in the health care industry. Research reveals that there is a commonly understood distinction between acute and long term care facilities, but that the terms are not statutorily defined as such.

The Public Health Service, for example, draws a distinction between acute care and long term care facilities for the purpose of administering special projects and grants (42 U.S.C.S. 296k(a)(4) and (7) (1985)), and for administering grants to nurse practitioners and midwife programs (42 U.S.C.S. 296m(a)(2)(A) (1985)). Various sections of the Social Security Act make the same distinction: e.g., for purposes of determining the scope of review of peer group organizations (42 U.S.C.S. 1320c-3(a)(4)(A) (1986)), and for determining the application of payment in accordance with state reimbursement control systems (42 U.S.C.S. 1395ww(c)(1)(A) (1983)). Despite the repeated use of the terms acute care and long term care, however, no statutory definition is provided.

In regulations promulgated by the Department of Health and Human Services, the agency principally responsible for administering health care legislation, there is also a distinction between acute and non-acute care facilities. The term "like [similar] hospital", for example, is used in reference to the special treatment given sole community hospitals and is defined as a "hospital furnishing short-term, acute care." (42 CFR 412.92(c)(2) (1987)).

Finally, a review of the extensive legislative proceedings surrounding health care legislation and related issues likewise reveals regular use of the acute care/long term care distinction, with the terms "short term hospital" and "acute care hospital" used interchangeably. Here again, though, the use of these terms is so commonplace that no specific definition is provided.

In light of this commonplace usage, but lack of statutory or legislative definition, the Board has adopted the definition of an "acute care hospital" provided by the Dictionary of Health Services Management, edited by Thomas Timmreck, Ph.D., 1982, National Health Publishing, Owings Mills, Maryland.

The Dictionary of Health Services Management defines an "acute care hospital" as a short term care hospital with an average length of patient stay of less than 30 days. This definition was also referred to with apparent approval by the AFL in this proceeding and is used by the American Hospital Association (AFL Exh. 20, AHA Guide to the Health Care Field, 1987).

The definition of a "psychiatric hospital" for the purposes of this rule shall be that set forth in 42 U.S.C. 1395x(f). According to that definition, a psychiatric hospital is an institution which:

(1) Is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) Satisfies the requirements of paragraphs (3) through (9) in the definition of a "hospital" in that statute [§ 1395x(e)];

(3) Maintains clinical records on all patients; and

(4) Meets certain staffing requirements found necessary by the Secretary.

Coverage for the purpose of this rule, then, will include all acute care hospitals as defined. A hospital is covered if its primary service is acute care, regardless of the presence of other non-acute care units at the same facility. Psychiatric hospitals, defined above and dealt with in section XIV, are specifically excluded from coverage. Also excluded are nursing homes.

As previously indicated, rehabilitation and drug-alcohol hospitals that meet the 30-day standard are tentatively included as the Board did not receive sufficient information during the proceedings to distinguish these facilities for the purposes of this rulemaking.

XVII. Decisions To Which Rule Applies

The NPR suggested that the Board's new health care rule would be effective "on a prospective basis only, for petitions filed on and after (30 days after publication of the final rule)." In *St. Vincent Hospital and Health Center,* 285 NLRB No. 64 (Aug. 19, 1987), the Board indicated that while its proposed rulemaking procedure was pending, it would continue to make unit determinations in health care cases on a case-by-case basis utilizing the criteria set forth in *St. Francis Hospital,* 271 NLRB 948 (1984) ("*St. Francis II*"). The Board also reiterated that it would apply its new rule prospectively only to cases in which petitions were filed after the rule became effective. Based on comments received in the record, and upon further consideration, the Board has concluded that its rule regarding appropriate units in the health care industry shall apply to all decisions made on and after the effective date of the rule.

Representatives of unions urged the Board to revise the proposed prospective application of the new rule. One union suggested that the rule should be effective for all cases decided after the rule was published, even if the petition was filed prior to that date (ANA Br. 197). Unions suggested that it would be unsound, if not arbitrary, to disregard the rule in pending cases, considering the vast body of knowledge the Board now possessed by virtue of its rulemaking proceedings (ANA Br. 198, AFL Br. 145–146). The AFL asserted that to apply preexisting law would deny employees the right of self organization. The AFL noted that applying the rule retroactively would not have an ill effect on pending representation cases. The AFL also noted that the Board recently gave retroactive application to its decision in *John Deklewa & Sons,* 282 NLRB No. 184 (Feb. 20, 1987), enfd. *sub nom Iron Workers Local 3 v. NLRB,* 843 F.2d 770 (3d Cir. 1988). Further, the AHA and AFL noted that the Board applied its *St. Francis II* decision retroactively, and remanded many bargaining unit cases to regional directors for further consideration. (AHA Br. 203–204; AFL Br. 145.) ANA also noted the incongruity that could result if the Board enacted a rule that conflicted with pre-rule standards, e.g., finding a unit inappropriate that previously was appropriate. (ANA Br. 204 at n.115.)

The Board has decided that its rule on appropriate bargaining units in the health care industry should be applied to all decisions made on and after the effective date of the rule, which will be 30 days after publication of the final rule in the **Federal Register**. See APA, 5 U.S.C. 553(d). The Board agrees that it would be incongruous to apply the rule as originally stated; that is, only to petitions filed 30 days after publication. Such a rule would arbitrarily affect petitions filed just 1 or 29 days after the rule is published, and could conceivably lead to vastly different results based solely on the timing of the petition. However, the Board will apply its pre-rule standards to cases that issue prior to the effective date of the rule. As we indicated in *St. Vincent,* we deem it unwise either to decline to take any action on pending petitions, or to promulgate a new standard while rulemaking proceedings are pending. We continue to deem it contrary to statutory policy to hold cases pending effectuation of the Board's new rule. Accordingly, all cases that issue prior to the effective date of the rule will be analyzed under *St. Vincent.* If cases currently pending before the Board do not issue prior to the rule's effective date, the Board will not apply the rule *de novo* to such cases. Rather, the Board will, where necessary, remand such pending cases to regional directors to determine the need for a hearing or other appropriate course of conduct in order to permit parties to address the rule.

XVIII. Non-Conforming Stipulations

In the initial proposed rule, the Board stated that it would approve consent agreements providing for elections in accordance with the units set forth in the rule, and that no other agreements would be approved. Several commentators urged the Board to permit stipulated units even when they do not comport with those specified in the rule. We have been persuaded that permitting non-conforming stipulations, which are not prohibited by the Act, may, in many instances, better serve the interests of the parties, and perhaps even the Board. The Board therefore has tentatively decided to allow its regional directors to approve stipulations providing for elections in units not provided for in the rules.

It is the Board's established practice in other areas to permit parties to stipulate to the appropriateness of units and to various inclusions and exclusions if the agreement does not violate any express statutory provision or established Board policies. See, e.g., *SCM Corporation,* 270 NLRB 885, 886 (1984). This policy on stipulated units was extended to the health care industry in *Otis Hospital,* 219 NLRB 164 (1975). The Board there reasoned that it is consonant with the design of the Act to give the parties in representation proceedings the broadest permissible latitude to mutually define the appropriate unit. The Board stated that when the parties' perceptions coincide regarding unit appropriateness, in the absence of a statutory command or policy considerations within the Board's expertise, the Board is not the better judge. The Board noted in *Otis Hospital* that the legislative history of the 1974 health care amendments supports the application of general policy regarding stipulated units to the health care industry.

Our expertise acquired throughout this rulemaking proceeding gives us considerable pause with regard to stipulations not in accordance with our proposed rules. Thus, stipulations in conformity with these rules would surely be preferable. However, we recognize the possibility that the parties have their own reasons for preferring to bargain in some other configuration.

Moreover, we note that the majority of certifications issued in representation cases in the health care industry following enactment of the amendments followed either a consent or stipulated election and that these elections gave rise to challenges less often than directed elections. Annual Reports of the National Labor Relations Board, Tables 9, 11B. In view of Congress' concern with stability in health care labor relations, the importance of reducing unnecessary litigation, and expeditiously proceeding with elections, permitting stipulations, even when they do not conform to the Board's explicitly drawn units, seems warranted. For these reasons, we have decided that the reasoning of *Otis Hospital* should remain applicable despite this rulemaking proceeding.

To the extent a stipulation may later result in the creation of a residual group of unrepresented employees, the Board will address their representation concerns as it would those of other groups of residual employees present in partially organized acute care hospitals—on a case-by-case basis applying the rules insofar as practicable.

Despite our tentative decision to accept non-conforming stipulations, we expressly invite any interested party to comment further on this problem during the period provided for comments.

XIX. Combined Units

The Notice of Proposed Rulemaking provided that, in addition to the specified units, "any combination will also be appropriate, at the union's option and so long as the requirements of section 9(b) (1) and (3) are met." The reason for the reference to the union's option was that the union, as petitioner,[26] need seek only *an* appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 417–18, enfd. on other grounds 190 F.2d 576 (7th Cir. 1951); *Parsons Investment Co.*, 152 NLRB 192, 193 at fn. l (1966). It does not benefit an employer to have the option of showing that another unit, perhaps a combined unit, is also appropriate, or even more appropriate, since the appropriateness of an alternative unit is not the issue. *Parsons Investment Company, supra; Federal Electric Corporation*, 157 NLRB 1130, 1131-32 (1966). We therefore reject arguments by some employers that it is unfair to give only unions the option of combining units. (See, e.g., AHA Br. 49; Comment 258, Durham, attorney for California Association of Health Facilities.)

However, upon reflection, we believe that we defined too broadly a union's option to seek, alternatively, combined units. In the NPR, as indicated, we implied that *any* combination of the enumerated units would also be appropriate; after giving this matter further thought, we believe that we have insufficient evidence at this time to say that, *per se*, all combinations will be found appropriate. We believe this is a matter we will have to decide in the course of individual cases, by adjudication. While there are some combinations that, while not required under these rules, would obviously be appropriate, such as all professionals, or all non-professionals, there may be other, more unusual combinations that need to be examined for appropriateness. We meant to say only that combinations of the enumerated units are not thereby precluded, and we have therefore modified the rule to provide that combinations "may" be appropriate.

XX. Extraordinary Circumstances Exception

The Board has, in order to ensure satisfaction of parties' due process rights,[27] included in both the proposed rule and the final rule an exception for "extraordinary circumstances." The exception has been provided to allow for the possibility of individual treatment of uniquely situated acute care hospitals, so as to avoid accidental or unjust application of the rule.[28] However, the Board wishes to emphasize that while the rule does not, therefore, conclusively establish invariable parameters of bargaining units in the industry, our intent is to construe the extraordinary circumstances exception narrowly, so that it does not provide an excuse, opportunity, or "loophole" for redundant or unnecessary litigation and the concomitant delay that would ensue. The Board has considered fully and at length all evidence presented and arguments submitted at the rulemaking hearings and during the comment period. None of the referred-to variations between acute care hospitals, some of which are enumerated below, are matters which would qualify for litigation under the special circumstances exception; rather, they are merely minor differences, inherent in the industry due to the multiformity of individual constituent institutions. The Board deems such variations to be ordinary, and hence by definition not extraordinary,[29] even in situations in which such variations may be highly unusual.[30]

Among the variations in acute care hospitals illustrated at the hearings and considered by the Board are arguments relating to: (1) Diversity of the industry, such as the sizes of various institutions, the variety of services offered by individual institutions, including the range of outpatient services provided, and differing staffing patterns among facilities (as, for example, a particular facility employing a larger or smaller number of RNs than generally employed by similarly situated hospitals); (2) increased functional integration of, and a higher degree of work contacts between, employees as a result of the advent of the multi-competent worker, increased use of "team" care, and cross-training of employees; (3) the impact of nation-wide hospital "chains"; (4) recent changes within traditional employee groupings and professions, e.g., the increase in specialization among RNs; (5) the effects of various governmental and private cost-containment measures; and (6) single institutions occupying more than one contiguous building. Except as specifically noted elsewhere (e.g., exclusion of psychiatric hospitals and nursing homes from coverage by the rule), the Board has concluded that none of the arguments raised in the course of the rulemaking procedure, including those listed above,[31] alone or in combination, constitutes an "extraordinary circumstance" justifying an exception from the rule.

The Board is well aware that facilities will, and do, differ in some respects; however, as we observed in the NPR (52 FR 25144), it is the Board's considered judgment, after issuing health care decisions by adjudication for more than

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[26] If the employer is the petitioner (RM petition), its petition must seek the unit requested by the union. *Wm. Wood Bakery*, 97 NLRB 122 (1951); *Restaurant & Tavern Owners Association of Salem*, 126 NLRB 671 (1960). If the petition seeks decertification, it must be filed in the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955).

[27] See *Chemical Manufacturers Assn. v. Natural Resources Defense Council*, 470 U.S. 116, 133 n.25 (1985); *Heckler v. Campbell*, 461 U.S. 458, 467 (1982); *FPC v. Texaco, Inc.*, 377 U.S. 33, 40 (1964); *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 205 (1956); *National Broadcasting Company v. United States*, 319 U.S. 190, 225 (1943); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); 1 C. Koch, *Administrative Law and Practice* § 4.112 at 321–23 (1985).

[28] Cf. *National Nutritional Foods Assn. v. FDA*, 504 F.2d 761, 784 (2d Cir. 1974), cert. denied 420 U.S. 946 (1975), citing *The New England Divisions Case*, 261 U.S. 184, 204 (1923).

[29] See *Bollman v. Indianapolis Machinery Co.*, 150 Ind. App. 296, 276 N.E.2d 606, 613 (1971); *Black's Law Dictionary* 527 (rev. 5th ed. 1979), and cases cited therein.

[30] See *Kugler v. Helfant*, 421 U.S. 117, 125 (1975).

[31] The arguments listed were selected by way of example and not by way of limitation, and were chosen merely as being illustrative of the Board's intent.

13 years, that acute care hospitals do not differ in substantial, significant ways relating to the appropriateness of units.[32] Moreover, to the extent that the rulemaking hearings demonstrated that at least in some respects acute care hospitals do vary, the Board has made a judgment that, in this area of establishing appropriate units, "[d]etailed analyses of all the facts of the particular case are just not that enlightening," [33] and that the policies of the Act would better be effectuated by the establishment of appropriate units in the enumerated segments of this industry by exercise of the Board's section 6 rulemaking authority.[34]

To satisfy the requirement of "extraordinary circumstances," a party would have to bear the "heavy burden" to demonstrate that "its arguments are substantially different from those which have been carefully considered at the rulemaking proceeding," [35] as, for instance, by showing the existence of such unusual and unforeseen deviations from the range of circumstances revealed at the hearings and known to the Board from more than 13 years of adjudicating cases in this field, that it would be unjust [36] or an abuse of discretion [37] for the Board to apply the rules to the facility involved.

The Board, contrary to some industry representatives (e.g., Comment 148, Mississippi Hosp. Assn.), anticipates that litigation under the "extraordinary circumstances" exception will be rare; the AHA, representing the largest group of health care employers in this proceeding, has indicated it understands that the Board intends to limit exceptions to "truly extraordinary situations" (AHA Br. 55–56), and neither the AHA nor any other employer (or union) representative has raised objections to the Board's stated intent.

In most instances, should a facility claim it comes within the "extraordinary circumstances" exception, it should present an offer of proof to the Hearing Officer, who will then either permit the requested evidence to be adduced or, we anticipate far more commonly,[38] refer the offer to the Regional Director, and, if requested, ultimately to the Board, for ruling.

XXI. Proliferation

As set forth in considerable detail, *supra*, the evidence taken during the rulemaking proceeding has convinced the Board, contrary to its earlier belief, that eight possible units (seven plus guards) should be found appropriate in acute care hospitals. In reaching this conclusion, the Board has carefully considered the Congressional admonition against proliferation set forth in the legislative history of the 1974 health care amendments as well as its own strongly-held view that the number of units found appropriate should not be so many as to lead to a splintering of the workforce into the myriad of occupations and professions found within the industry. The Board has examined the units found appropriate to ensure they are not so numerous as to create a never-ending round of bargaining sessions, and that each unit represents truly distinctive interests and concerns. A number of groups of employees found appropriate have separate labor markets. A thorough examination of the record in this rulemaking proceeding has satisfied us that the health care units established by the Board do not constitute proliferation either in terms of the legislative history of the amendments or in the context of the history or realities of the industry.

We believe that Congressional and industry concern with proliferation was directed towards the fifteen to twenty plus units that had arisen in the health care and other industries prior to the amendments and the possibility of scores of units if each hospital classification were permitted to organize separately. IUOE Br. 96–97: Legislative History of the Coverage of Non-Profit Hospitals Under the National Labor Relations Act at 113–114 (Senator Taft); Hearings on S. 794 and S. 2292 Before the Subcommittee on Labor and Public Welfare, 93rd Cong., 1st Sess. 1973 at 175 (David Brekke, Colorado Hospital Association), 181 (O. Ray Hurst, Texas Hospital Association), 188 (William Whelan, California Hospital Association), Sidney Lewine, 138–139 (American Hospital Association), 563–564 (exchange between Senator Taft and Andrew Biemiller of the AFL–CIO). See also testimony in 1971 and 1972 hearings, cited in IUOE Br. 96–97.

By 1974, a number of state and agency decisions with respect to non-profit hospitals, and Board decisions with respect to proprietary hospitals, had permitted each profession, and in some cases each craft, to form a separate bargaining unit (See discussion in AFL Br. 2–3, 28). As stated in Senator Taft's proposal, Congress feared that patterns such as developed in construction and newspaper industries—wherein units were permitted for each craft, resulting in 15–20 or more units—would result in separate units for the equally, if not more, numerous classifications in a hospital. We find no evidence that Congress opposed a smaller number of units. Thus, Senator Taft's proposal, containing special rules for the health care industry, would have established five units as presumptively appropriate: Technical, clerical, service and maintenance, all professional, and guards, two more than the statutorily mandated three units (professional, non-professional, and guards). The Board's addition of three units, RNs, physicians, and skilled maintenance, raising the total number of proposed possible units to eight, still constitutes half or fewer of the number of units that seem to us to have concerned Congress.

Furthermore, the record shows that the hospital industry understood proliferation to mean a much greater multiplicity of units than is proposed here. The League of Voluntary Hospitals of New York, an association of 54 nonprofit medical centers, hospitals, and nursing homes, and the largest organization of its kind in the country, supported the 1974 amendments because the League wished to remove itself from New York State health care coverage under which there were potentially 15–20 or more units in a health care facility (WS Abelow). Indeed, the American Hospital Association proposed a five-unit configuration: Professional, technical, clerical, service and maintenance, and guards. Hearings on S. 794 and S. 2292 Before the Subcommittee on Labor and Public Welfare, 93rd Cong., 1st Sess. 1973, Sidney Lewine, 140.

There is little evidence that the number of units proposed by the Board will result in proliferation or in the problems perceived to arise from proliferation. The units proposed by the Board are only potential units. Indeed,

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[32] See, e.g., NLRB Exhibit 5, revised, showing that for the 13 years since passage of the health care amendments, variations among facilities and their methods of operation had virtually no effect on the Board's ultimate decisions reached following frequently lengthy, case-by-case adjudications as to appropriate units.

[33] Subrin, *Conserving Energy at the Labor Board: The Case for Making Rules on Collective Bargaining Units*, 32 Lab. L.J. 105, 107 (1981).

[34] See *Cummins* v. *Schweiker*, 670 F.2d 81, 83 (7th Cir. 1982).

[35] *Basic Media, Ltd.* v. *FCC*, 559 F.2d 830, 834 (D.C. Cir. 1977). Accord, *P & R Temmer* v. *FCC*, 743 F.2d 919, 930 n.11 (D.C. Cir. 1984); *Industrial Broadcasting Co.* v. *FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970). See also *WAIT Radio* v. *FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972), cert. denied 409 U.S. 1027 (1972); *WAIT Radio* v. *FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[36] *National Nutritional Foods Assn. v. FDA*, 504 F.2d 761, 763 (2d Cir. 1974), cert. denied 420 U.S. 946 (1975).

[37] *P & R Temmer* v. *FCC*, 743 F.2d 919, 929 (D.C. Cir. 1984); *Ashland Exploration, Inc.* v. *FERC*, 631 F.2d 817, 823 (D.C. Cir. 1980).

[38] See 1 C. Koch, *Administrative Law and Practice* section 4.112 at 323 (1985).

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two of the units, physicians and guards, are rarely sought. A successful organizing effort in one unit in a hospital does not appear to have a ripple effect causing further organization. The record shows that from the 1974 health care amendments until the Board's 1984 decision in *St. Francis II*, most health care units fell into the categories now proposed by the Board. However, the majority of organized hospitals only had one unit, and about 80% had three or fewer units. (AFL Exh. 5 p. 1; SEIU, WS Shea, Table 2.) Nor, as detailed *supra*, was there a showing that the configuration of units proposed by the Board have resulted in an increased number of strikes, jurisdictional disputes, or other disruptions in the delivery of health care services.

Finally, as shown above, the empirical evidence submitted in these proceedings strongly supports the appropriateness of each of the units proposed by the Board.

For all the above reasons, we conclude that our proposal for seven units plus guards is not only well within our discretion, but also consistent with both our own and Congress' concerns about proliferation.

XXII. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the NLRB in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so they can participate effectively in the rulemaking process; and (2) to serve as the record in case of judicial review. As provided in the first NPR (52 FR 25148), the docket, including a verbatim transcript of the hearings, the exhibits, the written statements, and all comments submitted to the Board, is available for public inspection during normal working hours at the Office of the Executive Secretary in Washington, DC.

XXIII. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Board certifies that the proposed rule will not have a significant economic impact on small entities. Prior to this rule, parties before the Board were required to litigate the appropriateness of a unit for election purposes if they could not reach agreement on the issue. Upon enactment of this rule, parties will no longer be required to engage in litigation to determine the appropriateness of units, thereby saving all parties the expense of litigation before the Board and the courts. To the extent that organization of employees for the purpose of collective bargaining will be fostered by this rule, thereby requiring small entities to bargain with unions, and that employees may thereby exercise rights under the National Labor Relations Act, as amended (29 U.S.C. 151 *et seq.*), the Board notes that such was and is Congress' purpose in enacting the Act and the health care amendments thereto.

XXIV. Regulatory Text

List of Subjects in 29 CFR Part 103

Administrative practice and procedure, Labor management relations.

For the reasons set forth in the prior pages, it is proposed to amend 29 CFR Part 103 as follows:

PART 103—OTHER RULES

1. The authority citation for 29 CFR Part 103 is revised to read as follows:

Authority: 29 U.S.C. 151, 156; 5 U.S.C. 500, 533.

2. Subpart C, consisting of § 103.30, is added to read as follows:

Subpart C—Appropriate Bargaining Units

Sec.
103.30 Appropriate bargaining units in the health care industry.

Subpart C—Appropriate Bargaining Units

§ 103.30 Appropriate bargaining units in the health care industry.

(a) This portion of the rule shall be applicable to acute care hospitals, as defined in paragraph (f) of this section: Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National Labor Relations Act, as amended, except that various combinations of units may also be appropriate:

(1) All registered nurses.
(2) All physicians.
(3) All professionals except for registered nurses and physicians.
(4) All technical employees.
(5) All skilled maintenance employees.
(6) All business office clerical employees.
(7) All guards.
(8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

(b) Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate units set forth in paragraphs (a) (1) through (8) of this rule.

(c) Nothing shall prevent the Board from holding additional hearings concerning the specific job classifications to be included in, or excluded from, each of the above units, and from establishing additional rules about such matters.

(d) The Board will approve consent agreements providing for elections in accordance with paragraph (a) of this section, but nothing shall preclude regional directors from approving stipulations not in accordance with paragraph (a), as long as the stipulations are otherwise acceptable.

(e) This rule will apply to all cases decided on or after the effective date of the final rule.

(f) For purposes of this rule, the term "acute care hospital" is defined as a short term care hospital in which the average length of patient stay is less than thirty days. The term "acute care hospital" shall include those hospitals primarily operating as acute care facilities even if those hospitals provide such services as, for example, long term care, outpatient care, or psychiatric care, but shall exclude facilities that are primarily nursing homes or primarily psychiatric hospitals. The definition of "psychiatric hospital" shall be as set forth in 42 U.S.C. Sec. 1395 x (f), Social Security Act. A "non-conforming unit" shall be defined as a unit not in conformity with paragraphs (a) (1) through (8) of this rule.

(g) Appropriate units in all other health care facilities: The Board will establish appropriate units in other health care facilities, as defined in section 2(14) of the National Labor Relations Act, as amended, on a case-by-case basis.

XXV. Dissenting Opinion

Member Wilford W. Johansen, dissenting:

As amply documented in the Notice of Proposed Rulemaking in the **Federal Register** on July 2, 1987, there has been no universal acceptance in the circuit courts of a standard for formulating appropriate units in the healthcare industry. Some courts have simply substituted their own judgment for that of the Board on the question of what constitutes an appropriate unit. Frequently a court has apparently supported its conclusion by a selective reading of portions of the legislative history of the 1974 Amendments. The

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Board in turn has reacted first by trying to explicate that the differences might be "largely semantic" (*Newton-Wellesley Hospital*, 250 NLRB 409 (1980)), then by reversing field and adopting the test advocated by the Ninth Circuit (*St. Francis Hospital*, 271 NLRB 948 (1984) (*St. Francis II*)). That course in turn was roundly criticized by the D.C. Circuit. (*Electrical Workers IBEW Local 474* v. *NLRB (St. Francis Hospital)*, 814 F.2d 697 (1987)). The Board's reaction was to try yet a different approach—i.e., rulemaking.

With all due respect, I disagree. Rulemaking in regard to healthcare units is neither desirable nor appropriate.

First, it is my view that the appropriate method for resolution of questions surrounding the interpretation of Congress' intent, the proper scope of review, and the Board's duty and authority under the statute, is to submit these questions to the Supreme Court, which is the final arbiter on issues of this nature. Submission to the Court is especially appropriate in this area. Second, the Board has received criticism from the courts at both ends of the spectrum. Most of the criticism and disagreement has centered around application of the traditional community of interest standard, versus a separately derived "disparity of interest" test for evaluating units in the healthcare industry.

Thus, the Ninth Circuit, in an early *St. Francis* hospital case, faulted the Board for applying what the court deemed a too rigid presumption *in favor* of a registered nurses unit; and enunciated a "disparity of interest" standard which it deemed necessary for assessing healthcare units. More recently, after the Board itself decided to adopt the disparity of interest standard, the District of Columbia Circuit in yet another *St. Francis* case, severely criticized the Board's action, and strongly "suggested", that some form of the historically accepted community of interest standard is required. Hence the Board is faced with some courts which have indicated a definite preference for the so-called "disparity of interest" analysis. Other courts are equally adamant that nothing in the 1974 Amendments indicates that the Board was to abandon the community of interest standard which had served well for the previous forty years, and of which Congress was cognizant at the time of the Amendments.

It is apparent that the disagreements involve questions concerning the meaning of the statute, analysis of the legislative history, and the deference to be properly accorded to the Board's reading and interpretation of the Act, which is the Board's primary function and responsibility. These questions are all particularly appropriate for submission to, and final resolution by, the Supreme Court. This avenue is also the one which best serves the interests of the parties, the general public, and the Board itself.

Section 9(b) of the Act provides that

> The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *.

I do not read the above language as permissive. It is mandatory. The Board cannot satisfactorily fulfill its statutory obligation by relegating its specialized decisional function in this area to rulemaking procedures. That is not to suggest that I disapprove of rulemaking per se. On the contrary, I agree that rulemaking is desirable, and even a necessary part of the Board's function, in some areas. This is not one of those areas. I believe it is important to keep in mind that Congress did *not* amend Section 9 when it enacted the Healthcare amendments in 1974. Had Congress intended that the Board abandon the decisional approach and utilize a wholly new procedure for determining appropriate units in the healthcare industry, Congress would have told us so explicitly. It did not. Nor did it even implicitly suggest such action. The rule changes cited by the majority (e.g. contract bar, *Excelsior* list, etc.) in support of this radical departure from 50 years of Board precedent, (a) were arrived at decisionally, and; (b) did not involve unit determinations.

There are additional factors which make rulemaking on particular units, at best, inadvisable. Units established by rulemaking will continue to be criticized by courts that deem the Board's approach to healthcare unit determinations to be too rigid. Indeed, as unit specifications derived from a predetermined set of rules are inherently less flexible than those arrived at by decision in individual cases, criticism by some courts may even intensify on the ground that the Board has not arrived at a result through the application of its institutional expertise to a particular fact pattern.

Contrary to the stated expectations of my colleagues, setting unit configurations by rulemaking will not in fact substantially reduce the amount of litigation in this area. It may serve to change part of the focus of that litigation, while at the same time creating more. The amount of evidence produced in rulemaking is not the point. The difficulties encountered over the last several years have not been for lack of evidence. Rather, they have revolved around differing interpretations of the statute and, particularly, the legislative history and the deference to be accorded the Board and its expertise in its role as the primary decision maker under the Act. I do not see that announcing rules by administrative fiat will resolve the divergent views on these fundamental questions. We still will not have obtained a definitive resolution of the basic issues which is so sorely needed.

I would, therefore, vacate the notices of proposed rulemaking and submit the extant issues to the Supreme Court for resolution.

Dated, Washington, DC, August 25, 1988.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

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Part III

Environmental Protection Agency

40 CFR Parts 264 and 265

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL-3361-6]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 21, 1985, the Environmental Protection Agency (EPA or the Agency) published a Notice of Proposed Rulemaking to amend the financial responsibility requirements concerning liability coverage for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) permitted under the Resource Conservation and Recovery Act (RCRA) (50 FR 33902). The proposal set forth several regulatory options, including the authorization of additional financial mechanisms for covering third-party liability requirements, under consideration by the Agency to provide relief for owners and operators who encounter difficulties in obtaining liability insurance. On July 11, 1986, EPA published an interim final rule allowing use of a corporate guarantee as an additional financial responsibility mechanism (51 FR 25350). This rule was issued in final form on November 18, 1987 (52 FR 44314).

EPA is today adopting other financial mechanisms for liability coverage for RCRA TSDFs. These mechanisms are letters of credit, surety bonds, trust funds, and guarantees provided by firms that are not the direct parent of the owner or operator. In addition, the Agency is clarifying the liability insurance requirements to ensure that other firms can purchase insurance for owners and operators of hazardous waste management facilities.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: The regulatory docket for this rulemaking is available for public inspection at Room S-212-E, U.S. EPA, 401 M Street, SW., Washington, DC 20460, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket number is F-88-CGF1-FFFFF. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 50 pages from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll free, at (800) 424-9346 or, in Washington, DC, at (202) 382-3000. For technical information, contact Carlos M. Lago, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4780.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Authority

This regulation is being adopted under the authority of sections 2002(a), 3004, and 3005 of the Solid Waste Disposal Act; as amended by RCRA, as amended (42 U.S.C. 6912(a), 6924, and 6925).

II. Background

A. Current Liability Coverage Requirements

Section 3004(a)(6) of RCRA, as amended, requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment.

On April 16, 1982, EPA promulgated regulations requiring owners or operators to demonstrate liability coverage during the operating life of the facility for bodily injury and/or property damage to third parties resulting from accidental occurrences arising from facility operations (47 FR 16554). Under these regulations (40 CFR 264.147 and 265.147), an owner or operator of a hazardous waste treatment, storage, or disposal facility must demonstrate, on a per-firm basis, liability coverage for sudden accidental occurrences in the amount of $1 million per occurrence and $2 million annual aggregate, exclusive of legal defense costs. An owner or operator of a surface impoundment, landfill, or land treatment facility used to manage hazardous waste is also required to demonstrate, on a per-firm basis, liability coverage for nonsudden accidental occurrences in the amount of $3 million per occurrence and $6 million annual aggregate, exclusive of legal defense costs. (A "nonsudden accidental occurrence," as opposed to a "sudden accidental occurrence," is defined by 40 CFR 264.141 and 265.141 as an occurrence that takes place over time and involves continuous or repeated exposure.) "First-dollar" coverage is required; that is, the amount of any deductible must be covered by the insurer, who may have a right of reimbursement of the deductible amount from the insured.

The requirements for coverage of sudden accidental occurrences became effective on July 15, 1982. The requirements for nonsudden accidental occurrences were phased in gradually according to annual dollar sales or revenue figures of the owner or operator. January 16, 1985, was the final phase-in date.

Financial responsibility for third-party liability currently can be demonstrated by obtaining insurance, by passing a financial test, or by obtaining a corporate guarantee from a parent corporation that passes the financial test. The regulations (40 CFR 264.147(a)(3), 264.147(b)(3), 265.147(a)(3), and 265.147(b)(3)) also allow an owner or operator to meet the liability requirements through a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance.

B. August 21, 1985, Notice of Proposed Rulemaking

In 1984–1985, the availability of pollution liability insurance policies began to decline. A number of insurers who previously had offered coverage ceased to write pollution liability policies. Those still offering coverage raised their premiums substantially while reducing the coverage provided. As a consequence, some owners and operators of hazardous waste TSDFs began to experience difficulties in obtaining necessary coverage and/or paying the increased cost of such coverage.

In response to this situation, EPA took a number of steps, including issuing on August 21, 1985, a Notice of Proposed Rulemaking (NPRM) (50 FR 33902) requesting comment on five possible regulatory options as responses to the problem of reduced availability and increased cost of pollution liability insurance: (1) Maintain the existing requirements; (2) clarify the required scope of coverage and/or lower the required levels of coverage; (3) authorize other financial responsibility mechanisms; (4) authorize waivers; and (5) suspend or withdraw the liability coverage requirements.

EPA received numerous comments from four major categories of commenters on the August 21, 1985, NPRM: Owners and operators of hazardous waste TSDFs; members of the insurance industry; representatives of State and local governments; and members of the public at large. A majority of commenters encouraged the Agency to retain the existing coverage limits and encouraged the Agency not to suspend or withdraw the liability coverage requirements. Numerous commenters did, however, ask EPA to consider waivers in certain circumstances. Some commenters requested EPA to clarify the scope of coverage required or to lower the required limits of coverage, but many commenters urged EPA to authorize additional financial mechanisms that would provide an alternative to insurance. Commenters specifically mentioned mechanisms such as corporate guarantees, surety bonds, letters of credit, and trust funds for use for liability coverage. The commenters, however, did not discuss in detail any of these mechanisms.

Upon analysis of comments received, studies of the cost and availability of the instruments, analysis of the suitability of proposed financial instruments for liability coverage, and consultation with banks and State insurance commissioners, EPA has decided to maintain the existing coverage requirements, while authorizing additional financial responsibility mechanisms for liability coverage. Sections III and V of this preamble discuss the mechanisms being authorized and existing approaches to waivers. The Agency's summary of and responses to comments urging it to change existing requirements on the scope and levels of coverage are provided in Section V of this preamble. Additionally, more specific discussion and response to comments is found in documents included in the docket for today's rule.

C. Rulemaking Authorizing the Corporate Guarantee

In response to the commenters on the August 21, 1985 NPRM who argued that EPA should authorize other financial instruments for liability coverage, EPA examined several additional mechanisms for liability coverage. Commenters particularly encouraged EPA to authorize a corporate guarantee for liability coverage, noting that such guarantees were already authorized as financial assurance mechanisms for closure and post-closure care (40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e)). In response, on July 11, 1986, the Agency issued an interim final rule revising 40 CFR 264.147, 264.151, and 265.147 to authorize, in addition to insurance and the financial test, the use of a corporate guarantee for liability coverage (51 FR 25350). The Agency subsequently made minor revisions to the rule authorizing the corporate guarantee for liability coverage, and finalized that rule on November 18, 1987 (52 FR 44314). As discussed in Section III of this preamble, today's rule further expands the availability of the guarantee by allowing firms that are not the direct corporate parent of the owner or operator to be the guarantor.

D. Justification for Today's Rule

The Agency believes that additional mechanisms for liability coverage are desirable in order to provide a broad set of options for owners or operators who must demonstrate liability coverage but who cannot use one of the existing mechanisms. Although commentary concerning the insurance industry in the Insurance Trade Press and in other sources suggests that underwriting losses in property-casualty insurance peaked around the end of 1985 and that the outlook for the future is more favorable,[1] the market for Environmental Impairment Liability (EIL) insurance has remained constrained.[2] Accordingly, the Agency is seeking to ensure that as many alternative financial assurance mechanisms as possible are available to the regulated community, to reduce the problem created by the constrained insurance market.

Section 3010(b) of RCRA provides that regulations promulgated under Subtitle C of the statute and revisions to existing Subtitle C regulations generally take effect six months after promulgation. However, the period prior to the effective date may be shortened if the Administrator finds the regulated community does not need six months to come into compliance or for other good cause. As the regulation does not add any additional compliance requirements and a six-month period prior to implementation would be contrary to the interest of the regulated community and public by delaying the availability of other compliance mechanisms, the regulatory changes are being issued as a final rule effective 30 days after publication.

E. Key Provisions of Today's Rule

In today's rule, EPA authorizes owners or operators of hazardous waste TSDFs to use the following additional financial assurance mechanisms for liability coverage: A letter of credit; a surety bond assuring payment of liability claims; a fully-funded trust fund; and a guarantee provided by a firm that is not the direct parent of the owner or operator. The Agency is generally not revising the scope and levels of coverage required for third-party liabilities. However, today's rule includes amendments clarifying the liability coverage requirements to allow other firms to purchase insurance for owners and operators. Finally, EPA is specifying more clearly the aggregate amount of coverage that must be provided by financial responsibility mechanisms that offer combined coverage for sudden and nonsudden occurrences.

III. Additional Financial Responsibility Mechanisms Being Authorized for Liability Coverage

In determining which additional financial assurance mechanisms to

[1] United States General Accounting Office, Statement by William J. Anderson before the House of Representatives on "Profitability of the Property/Casualty Insurance Industry," March 13, 1986.

[2] National Association of Insurance Commissioners, "Report of the NAIC Advisory Committee on Environmental Liability Insurance," September, 1986; and "Business Insurance," April 16, 1987, p. 58; May 4, 1987, p. 22; and May 11, 1987, p. 71.

approve for liability coverage, EPA reviewed the other financial assurance programs within EPA, other Federal agencies, and several States. The Agency first analyzed the financial mechanisms already approved for use for closure or post-closure care financial assurance since the regulated community could be expected to be familiar with them. Many of these mechanisms were mentioned by commenters on the August 21, 1985 NPRM as potentially useful. Other EPA financial assurance requirements or proposed requirements, such as the requirements for underground injection wells and underground storage tanks, were also reviewed to identify the mechanisms, if any, used in those programs for third-party liability coverage.

The Agency considered several characteristics of the mechanisms that could affect their suitability for the coverage of third-party liability claims, including (1) availability; (2) cost; (3) whether they are likely to be valid and enforceable contracts under special provisions of State law, such as laws regulating the business of insurance; and (4) whether they are capable of being set up in ways that do not require EPA to act as a "claims adjuster" or otherwise act to determine the merits of third-party liability claims brought against TSDF owners or operators.

On the basis of these analyses, EPA determined that letters of credit, surety bonds, guarantees, and trust funds provide adequate third-party liability coverage. The rationale for authorization of these instruments is described below in the discussion of each instrument.

Other mechanisms suggested by the commenters on the August 1985 NPRM and analyzed by EPA included security interests, indemnity contracts, reserve funds, captive insurance pools, and government-supplied insurance or loan guarantees. As discussed in Section V of today's preamble, EPA has concluded that these instruments are inappropriate, with the exception of captive insurance pools and risk retention groups. Captive insurance pools and risk retention groups are authorized under the current regulations.

The financial mechanisms authorized in today's rulemaking, with the exception of the guarantee, are currently approved mechanisms for closure or post-closure care under 40 CFR Parts 264 and 265, Subpart H. (Performance bonds, which are authorized for use by owners or operators of permitted facilities for assurance for closure and post-closure care, are not included because they are not adaptable to liability coverage; instead, an analogous mechanism, the payment bond, is allowed.) The requirements for these financial mechanisms parallel the requirements for financial mechanisms authorized for closure or post-closure care. However, some provisions of the mechanisms have been adjusted to address issues that arise only in the context of liability claims. Features of the mechanisms that differ include the designation of the beneficiary, exclusions for categories of damages and obligations, the claims-payment trigger, the certification of validity and enforceability, and cancellation provisions. These features are described more fully in Section IV of today's preamble.

A. Letter of Credit

Today's rule authorizes owners or operators of hazardous waste TSDFs to use letters of credit to satisfy the RCRA third-party liability coverage requirements (40 CFR 264.147(a)(3), 264.147(b)(3), 265.147(a)(3), and 265.147(b)(3)). Letters of credit are commitments by a financial institution (e.g., a bank), whose letter of credit operations are regulated and examined by a State or Federal agency, to provide funds if appropriate documents are presented. In general, letters of credit are instruments that can be adapted for various purposes.[3] Banks contacted by EPA have indicated that they would consider issuing letters of credit for liability claims for their established customers. EPA believes that letters of credit may be more readily available to owners or operators than many other mechanisms, if the owner or operator has an established relationship with a qualifying financial institution and can provide adequate collateral.

1. *Features of Mechanism.* A letter of credit is a financial instrument under which an issuing institution (the issuer), generally a bank, undertakes to meet a monetary obligation of its customer (the account party) if the bank is presented with specified documents. The issuer, in return for a fee, becomes the primary obligor. A third party, the beneficiary, initiates payment by making a claim directly on the issuer. Thus, a letter of credit is an instrument that substitutes the issuer's superior credit for the account party's credit.

The instrument authorized in today's rule is an irrevocable stand-by letter of credit in which the third-party beneficiaries are any and all persons who may be damaged by a hazardous waste release from the facility whose owner or operator has secured the letter of credit. The irrevocable nature of the instrument precludes its cancellation prior to the end of a required one-year term by the issuer or the owner or operator. After the one-year term, the letter of credit will automatically renew for another year unless, 120 days before the expiration date, the issuer notifies the owner or operator and the Regional Administrator of a decision not to renew the credit (40 CFR 264.151(k)).

2. *Who May Provide A Letter of Credit.* Today's rule provides that letters of credit for liability coverage must be provided by an authorized financial institution regulated by a Federal or State agency (40 CFR 264.147(h)(2) and 265.147(h)(2)). EPA has established these requirements, which parallel the requirements for letters of credit providing assurance for closure or post-closure care, to ensure the financial viability of the issuer of the letter of credit. The viability of the commercial banks and savings and loan institutions that may issue letters of credit is scrutinized by several oversight organizations, including the Federal Reserve, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, and State banking commissioners. These regulatory bodies attempt to ensure that regulated institutions take actions necessary to avoid bankruptcies. EPA concluded that it would be duplicative to establish additional requirements to ensure the solvency of bank and savings and loan institutions issuing letters of credit.

3. *Validity of Letter of Credit Providing Liability Coverage.* To ensure that letters of credit may be used to provide liability coverage, EPA reviewed the status of legal doctrines that might call into question the authority of a bank to issue a letter of credit for liability coverage, and concluded that no significant legal obstacles currently exist to such use of letters of credit. EPA believes that the proposed use of letters of credit in today's rule is analogous to the use of a letter of credit in situations that courts have approved. The Agency, therefore, concluded that use of a letter of credit for financial assurance for third-party liability coverage is both valid and enforceable.

B. Surety Bond

Today's rule authorizes owners and operators of hazardous waste TSDFs to use surety bonds to satisfy the RCRA

[3] U.S. General Accounting Office, Staff Study, "Financial Services—Developments in the Financial Guarantee Industry," GAO/GGD-87-84, June 25, 1987, pp. 9-13, 17-18 discusses letters of credit as financial guarantees.

third-party liability requirements (40 CFR 264.147(a)(4), 264.147(b)(4), 265.147(a)(4), and 265.147(b)(4)). The adoption of surety bonds as an additional assurance mechanism for liability coverage was widely advocated by the commenters on the August 21, 1985, NPRM.

1. *Features of Mechanism.* Surety bonds represent agreements between three parties: The principal (i.e., the facility owner or operator); the obligee (i.e., third-party liability claimants) to whom the principal promises to complete a specific act; and the surety, who assures the obligee that the principal will fulfill its obligation and, if the principal fails, that the surety will fulfill the principal's obligation to the obligee. Thus, the surety bond authorized today guarantees that if the owner or operator fails to satisfy valid third-party claims, the surety will pay such claims. A surety company is entitled to reimbursement from the principal when it makes a payment under a bond.

There are two types of surety bonds: payment bonds and performance bonds. Payment bonds guarantee that the principal will pay a certain sum to identified parties under the conditions named in the bond, and if the principal fails to make the payment or payments, the surety will make the payment or payments. Performance bond guarantees that the principal will perform a certain act and, if the principal fails, that the surety will either perform the act for the principal or pay someone else to perform it. The surety bond provided in today's rule is a payment bond, because the obligation it guarantees is limited to the principal's payment of third-party liability claims to satisfy the Subtitle C liability requirements.

A surety company's liability under a payment bond is limited to the "penal sum," which is the amount of coverage guaranteed by the bond. The penal sum of the payment bond being authorized by today's rule has two parts, the per-occurrence limit and the annual aggregate limit (40 CFR 264.151(1)). If the payment bond covers claims resulting from both sudden accidental occurrences and nonsudden accidental occurrences, a separate penal sum will be identified for each type of coverage (i.e., such a bond would have four penal sums).

The payment bond authorized in today's rule will remain in effect unless and until the surety notifies the owner or operator and the Regional Administrator of proposed cancellation by certified mail. Cancellation will become effective 120 days from the receipt of notification (40 CFR 264.151(1), conditions clause (7)).

2. *Who May Provide Surety Bonds.* Today's rule requires that surety companies issuing payment bonds to assure liability coverage must be listed by the Department of Treasury in Treasury "Circular 570" as surety companies that may issue bonds to the Federal government (40 CFR 264.147(i)(2) and 265.147(i)(2)). This requirement parallels the closure and post-closure care financial assurance regulations and other financial assurance requirements involving surety bonds and assures that the surety company is subject to regulatory oversight by some government agency. To qualify for such a listing, surety companies must comply with the law and regulations of the Department of Treasury (as specified in sections 9304 and 9308 of Title 31 of the United States Code). The names of the companies meeting these Treasury requirements are published on July 1 of each year by the Department of the Treasury in "Circular 570; Surety Companies Acceptable on Federal Bonds."

3. *Validity of Surety Bond Providing Liability Coverage.* EPA has contacted several State insurance commissions to determine if States would view a surety bond for third-party liability coverage as subject to the State insurance laws. In a number of States, surety companies are already regulated by the State agency that is responsible for insurance. EPA found that in other States, the issue of whether the surety bond constitutes insurance may be examined on a case-by-case (i.e., facility-by-facility or bond-by-bond) basis. Many States may consider it necessary for the firm providing the surety bond to qualify under the State's surety or insurance laws as an insurer. To address this issue, the rule does not allow owners or operators to use a surety bond to demonstrate financial assurance unless the Attorneys General or Insurance Commissioners in the States in which the surety is incorporated and in which the facilities covered by the bond are located certify that the mechanism is valid and enforceable (40 CFR 264.147(i)(4) and 265.147(i)(4)). (See Section IV.C of this preamble for further discussion.)

C. Guarantee

Today's rule extends the use of guarantees for liability coverage to allow guarantees provided by firms that are not the direct parents of facility owners or operators (40 CFR 264.147(g)(1) and 265.147(g)(1)). The use of a parent corporate guarantee for liability coverage was authorized in an interim final rule on July 11, 1986 (51 FR 5350) and promulgated as a final regulation on November 18, 1987 (52 FR 44314). Under this rule, liability coverage may be provided by parent firms that directly own at least 50 percent of the voting stock of a subsidiary firm. Several commenters on the interim final rule urged EPA to allow non-parent firms to provide guarantees. After analyzing the validity and enforceability of guarantee contracts by non-parent firms, the Agency is authorizing guarantees provided by corporate grandparents and by a corporate "sibling" firm (a firm whose parent corporation is also the parent corporation of the owner or operator). The Agency also is allowing guarantees by other related and unrelated firms, provided that such firms have a substantial business relationship with the owner or operator.

The guarantee in today's rule incorporates the features of the November 18, 1987 rule for parent guarantees with minor revisions necessary to address non-parent guarantees and to ensure consistency with the other instruments allowed by today's rule. Since today's rule incorporates the features of this earlier rule, an extensive discussion of the guarantee has not been included in this preamble. Only the distinctive features of the non-parent corporate guarantee, the definition of who may provide the guarantee, and the basis upon which EPA concluded that it would be a valid and enforceable mechanism are discussed below.

1. *Features of Mechanism.* The authorized guarantee is an instrument by which a firm promises to pay the liability obligations of the owner or operator is the owner or operator does not do so. The firm providing the guarantee (the guarantor) must submit proof that it passes the financial test requirements of §§ 264.147(f)(1) or 265.147(f)(1). If the guarantor subsequently becomes unable to pass the financial test, the owner or operator must obtain another financial assurance mechanism for liability coverage.

2. *Who May Provide Guarantees.* Today's rule extends EPA's authorization of corporate guarantees beyond the previously allowed parent guarantee to include multi-tier guarantees by corporate grandparents, cross-stream guarantees by corporate siblings, and guarantees by firms with a "substantial business relationship" with the owner or operator. In general, today's rule authorizes three types of guarantees between corporations: (1) A guarantee by a parent corporation or

principal shareholder of a subsidiary (a "downstream" guarantee), (2) a guarantee by a sibling corporation (a "cross-stream" guarantee), and (3) a guarantee by a firm that has a "substantial business relationship" with the corporation that receives the guarantee (40 CFR 264.147(g)(1) and 265.147(g)(1)).

A simple single-tier downstream guarantee is one where the direct parent corporation guarantees the obligation of its subsidiary. A multi-tier downstream guarantee (consisting of three tiers of ownership, for example) is a guarantee by which the corporate grandparent or great grandparent (i.e., the ultimate owner of the subsidiary) provides a guarantee for the subsidiary. A cross-stream guarantee is a guarantee between sibling corporations, e.g., a "brother" subsidiary's guarantee of a "sister" subsidiary where the siblings are owned by the same parent. Both of these categories of guarantees have been tested in legal actions and are considered strong and binding legal obligations although analyses of guarantees between siblings typically assume that some economic relationship exists between the two corporations aside from the guarantee.

If the guarantee is being provided by a corporate grandparent or sibling, the guarantor must provide the guarantee to the owner or operator directly, irrespective of the number of intervening levels of ownership that exist in the corporate structure (40 CFR 264.147(g)(1) and 265.147(g)(1)). For example, a corporate grandparent would provide a guarantee for the owner or operator's firm directly, not through the corporate parent.

Today's rule also authorizes unrelated firms and other related firms, aside from parents and siblings, that have a "substantial business relationship" with the owner or operator of a hazardous waste facility to provide guarantees (40 CFR 264.147(g) and 265.147(g)). In authorizing guarantees by these other related and unrelated firms, EPA sought to ensure that a valid and enforceable contract was created. To this end, the Agency is requiring these firms to demonstrate a substantial business relationship with the owner or operator to ensure that the guarantee is a valid contract. Under fundamental principles of contract law, contracts must be supported by "consideration." Consideration is generally defined as a legal detriment that has been bargained for and exchanged for the promise. The general principle underlying the concept of consideration is that the law will not enforce gratuitous promises.

The issue of consideration arises in the context of all guarantees; however, parent and sibling firms authorized to issue guarantees under today's rule can demonstrate consideration by the inherent benefits or detriments that accrue to the guarantor firm by virtue of its corporate relationship with the owner or operator. As noted above, courts have generally recognized that guarantees offered by a parent or sibling corporation are valid and enforceable. EPA believes that other related and unrelated firms should be able to demonstrate sufficient consideration for the contract if they have a substantial business relationship with the owner or operator.

The Agency's review of legal literature indicated that a sufficiently close business relationship between two firms could be comparable to the shared economic interests that typify the relationship between corporate siblings and between a parent and its subsidiary. Because it is these mutual economic interests that underlie the validity and enforceability of downstream and cross-stream guarantees, the existence of such interests between other types of firms should enable guarantees between these firms also to be valid and enforceable. No single legal definition exists of what constitutes a business relationship between two firms that would justify upholding a guarantee between them. Furthermore, such a determination would depend upon the application of the laws of the States of the involved parties. Thus, in defining the underlying business relationship that produces an acceptable guarantee, the Agency provides a broad framework for analyzing business relationships while acknowledging the primary role of State law.

In today's rule, EPA is defining substantial business relationship to mean "the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A 'substantial business relationship' must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator" (40 CFR 264.141(h)). A guarantee contract, by itself, would be inadequate to demonstrate a substantial business relationship between two parties. However, an existing contract to supply goods or services, separate from the guarantee contract, could supply evidence of such a relationship. An example of such an arrangement might be a contract for hazardous waste disposal between a generator and a disposal facility. Evidence demonstrating such a substantial business relationship is required to be provided in the letter from the Chief Financial Officer of the guarantor.

In addition to demonstrating the existence of a substantial business relationship, these other related and unrelated guarantors must describe the value that they received in consideration for the guarantee contract. In some cases, preexisting business relationships, no matter how substantial, will be insufficient by themselves to demonstrate consideration because they will not have been bargained for to induce the promise in the guarantee contract. For this reason, these guarantors must also describe the consideration for the contract in the letter from their Chief Financial Officer.

EPA considered as a preliminary matter whether corporate guarantees would be regulated as insurance contracts under States' insurance laws. EPA was concerned that guarantors could subject themselves to States' insurance laws through the issuance of guarantees. This issue has arisen in other of the Agency's financial responsibility rulemakings, including the proposed financial responsibility requirements for underground storage tanks containing petroleum (52 FR 12786, April 17, 1987). A discussion of the applicability of State insurance laws to various mechanisms, including corporate guarantees, is contained in the docket for that rulemaking, in the "Supporting Document for Proposed Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements." That discussion indicates that States' insurance statutes and regulatory bodies have varying ways of describing their jurisdiction over guarantees, oftentimes dependent on the precise circumstances surrounding the transaction. Thus, the Agency cannot state with any certainty whether any particular guarantee would subject the guarantor to a State's insurance laws. Therefore, the responsibility rests on owners and operators to obtain guarantees that are valid and enforceable and on prospective guarantors to ascertain and comply with the State laws they would subject themselves to if they were to provide guarantees. As discussed in Section IV.C of today's preamble, the first responsibility cited is accomplished

by requiring a certification from the Attorney General or Insurance Commissioner of the State in which the guarantor is incorporated and of each State in which a facility covered by the guarantee is located.

3. *Validity of Non-Parent Guarantee Providing Liability Coverage.* Some commenters questioned whether non-parent guarantees would provide assurance equivalent to that provided by a parent guarantee. The Agency concluded that adequate assurance will be provided by these "intercorporate" guarantees. Intercorporate guarantees are a common means of assuring a lender that its loan will be repaid. In particular, "cross-stream" guarantees, which are from a "brother" subsidiary to a "sister" subsidiary where both firms are owned by the same corporate parent, are a typical business practice. Normally, collection of funds assured by intercorporate guarantees is a comparatively simple matter of contract enforcement.

In unusual circumstances, such as the situation where the guarantor declares bankruptcy, efforts could be made to avoid the guaranteed obligation. Certain provisions of the Federal bankruptcy code (11 U.S.C.A. 544(b) and 548(a)(2)) allow avoidance of obligations that deplete the debtor's assets to the detriment of its creditors. If, while the guarantor was involved in bankruptcy proceedings, a liability claim was presented to it for payment, a question could arise over whether bankruptcy laws would enable it to avoid satisfying the claim because the payment would deplete its assets to the detriment of its creditors. Under section 548(a)(2) of the Federal bankruptcy code, a trustee in bankruptcy may avoid payments made to any party within a year before the debtor filed bankruptcy if (1) the debtor was insolvent at that time and (2) the debtor did not receive "reasonably equivalent value" in return for the transfer. Section 544(b) essentially enables similar actions to be pursued under applicable State laws.

Intercorporate guarantees, however, should not be vulnerable to such actions if the owner or operator receives reasonably equivalent value in return for the guarantee. In effect, this reasonably equivalent value serves as consideration supporting the guarantee contract, similar to the guarantor having a "substantial business relationship" with the owner or operator. According to most authorities, there is no difficulty in finding reasonably equivalent value in downstream guarantees, where the guarantor is higher in the corporate hierarchy (e.g., a direct or higher-tier parent) than the subsidiary receiving the guarantee. The subsidiary relationship of a firm to its direct or higher-tier parent is almost always considered a benefit to that parent. In cross-stream guarantees from one subsidiary of a parent to another subsidiary of that same parent, demonstrating reasonably equivalent value is more difficult because the subsidiary to which the guarantee is given is not an asset of the other subsidiary serving as the guarantor. In order to obviate any question about reasonably equivalent value in cross-stream guarantees, therefore, the Agency is requiring a cross-stream guarantor to describe in the Chief Financial Officer's Letter (§ 264.151(g)) the value of the consideration that accrued to it from the guarantee.

The Agency has also concluded that adequate assurance that obligations will not be avoided in the event of bankruptcy will be provided by guarantees made by other related firms (i.e., not corporate siblings or parents) and unrelated firms which demonstrate a substantial business relationship with the owner or operator. As with intercorporate guarantees, collection of funds in most cases will merely be a matter of contract enforcement. In the event of bankruptcy of the guarantor, however, it is particularly important that the guarantee be written so as to demonstrate clearly that the guarantor has received reasonably equivalent value in consideration for the guarantee. As discussed above, the Agency is requiring these guarantors to describe in the Chief Financial Officer's Letter (§ 264.151(g)) both the nature of the substantial business relationship and the value derived from the guarantee.

D. Trust Fund

Today's rule authorizes owners or operators of hazardous waste facilities to use trust funds to demonstrate financial responsibility for third-party liability coverage (40 CFR 264.147(a)(5), 264.147(b)(5), 265.147(a)(5), and 265.147(b)(5)), if assets sufficient to cover the full amount of the assurance to be provided by the trust fund are placed in the fund before it becomes effective (i.e., the trust must be fully funded "up-front") (40 CFR 264.147(j)(3) and 265.147(j)(3)). Several comments received on the August 21, 1985 NPRM supported the use of trust funds to demonstrate financial responsibility for third-party liability coverage.

1. *Features of Mechanism.* A trust fund is an arrangement in which a separate legal entity, the trust, is created to hold property or funds for the benefit of another. At least three parties are necessary under trust agreements: the grantor, who establishes and funds the trust; the trustee, who has a fiduciary responsibility over the property placed in the trust by the grantor; and the beneficiary, the person (or group of people) for whom the arrangement is made. The most significant feature of a trust fund is the shift of legal ownership of the property in the trust from the grantor to the trustee when the trust is established and funded.

The trust document or trust agreement determines the allocation of rights, duties, and responsibilities among the parties to any trust. The trustee, in return for a fee, has a fiduciary responsibility to manage the fund according to the rules specified in the agreement. This agreement also defines the limits of a trustee's liability. In addition, a trust agreement states the manner in which payments are made into and out of the trust, as well as the grounds upon which the trust can be terminated.

2. *Validity of Trust Fund for Liability Coverage.* A trust used as a financial assurance mechanism should have a fund balance equal to the amount of coverage being demonstrated. The trust agreement may allow a pay-in period during which the grantor makes payments of specified amounts into the trust until the trust is fully funded. The length of the pay-in period typically is designed such that the trust fund balance equals the required amount of coverage before funds are needed for the assured activity. Because liability coverage may be needed immediately, the trust in today's rule must be fully paid up at the time it is relied upon for financial assurance. The trust also may not be cancelled unless and until an alternate financial assurance mechanism is in place. A fully funded trust provides a high degree of assurance because funds, up to the required amount of coverage, are set aside specifically for the purpose of liability coverage.

To ensure that the full amount of coverage is available each year in which owner or operator must provide financial assurance, the Agency is requiring both that the trust fund be fully funded immediately and, in addition, if a liability claim is paid out of the trust fund balance, the owner or operator is required to refinance the trust annually up to the amount of the required coverage on or before the anniversary date of the establishment of the fund to satisfy the annual aggregate requirement of §§ 264.147 and 265.147.

Although some owners and operators may conclude that the cost of funding a

trust as the sole financial assurance mechanism is prohibitive, they may find it desirable to use a trust fund in combination with one or more other mechanisms. For example, owners and operators who purchase insurance policies that do not provide the full amount of aggregate coverage might use trust funds to demonstrate financial responsibility for the amounts of the aggregate not covered by the insurance policy.

E. Purchase of Insurance by Other Firms

Under the current liability requirements, proof of adequate insurance coverage can be provided by either a certificate of insurance or an endorsement. A certificate of insurance is a statement obtained from the insurer certifying that it has issued insurance as represented in the certificate. The certificate is not a part of the policy, but can be used to demonstrate the existence of the policy. An endorsement is a form attached to the policy that describes the original terms of the policy and any amendments to those terms. An endorsement is a part of the policy and also evidences that insurance has been issued as described in the endorsement.

The Agency is today making minor revisions to the insurance certificate and endorsement to clarify that other firms may purchase insurance on behalf of owners or operators and to ensure that EPA receives proper notice of actions affecting the policy, such as attempted cancellation, where the policy has been purchased by another firm. These changes are reflected in paragraphs 2(d) of the "Hazardous Waste Facility Liability Endorsement" and of the "Hazardous Waste Facility Certificate of Liability Insurance" in §§ 264.151(i) and 264.151(j), respectively.

Currently, 40 CFR 264.147(a) and 265.147(a) require that an owner or operator must "have and maintain" coverage for bodily injury and property damage to third parties resulting from operation of a hazardous waste management facility. These regulations do not state explicitly that a party other than the owner or operator may purchase or obtain the necessary insurance coverage on behalf of the owner or operator. To clarify in the regulations that such insurance may be purchased by a third party, however, requires only that the language of the notice of cancellation provision in these insurance policies be amended.

To ensure that the cancellation provision in the Endorsement and Certificate covers a situation in which another company has purchased a policy for the owner or operator, the Agency has modified the language of the cancellation provision of both the Certificate and Endorsement to state explicitly that another firm providing insurance for an owner or operator must notify the Regional Administrator and the owner or operator by certified mail 60 days before insurance is cancelled (40 CFR 264.151(i)(2)(d) and 264.151(j)(2)(d)). In addition, the revised cancellation provision also states that another firm providing insurance for an owner or operator must notify EPA in writing (1) whenever claims are made against the firm or the owner or operator for third-party damages and (2) before any changes are made in the policy. The Agency is concerned that reductions in the level of coverage available to the owner or operator, due to claims made against the firm providing the insurance or changes in the insurance policy by the firm providing the insurance, otherwise may not be reported to EPA.

F. Allowable Combinations of Mechanisms

The Agency will allow an owner or operator to demonstrate the required liability coverage through the use of combinations of financial assurance mechanisms (40 CFR 264.147(a)(6), 264.147(b)(6), 265.147(a)(6), and 265.147(b)(6)). Owners or operators may use any combination of insurance, the financial test, the corporate guarantee, a letter of credit, a surety bond, and a trust fund. In allowing combinations of instruments, EPA is extending the general approach of Subtitle C liability coverage requirements. An owner or operator can use its own financial strength to cover some costs and another financial assurance mechanism to cover the remainder, provided that in combining the mechanism assets are not double-counted. To prevent double-counting, combinations of the corporate guarantee and financial test are allowed only if the financial statement of the guarantor and the owner or operator are not consolidated (40 CFR 264.147(a)(6), 264.147(b)(6), 265.147(a)(6), and 265.147(b)(6)). In a consolidated financial statement, the assets and liabilities of a subsidiary are included in the parent company's financial statement. If the financial statements of the guarantor were consolidated with the statement of the owner or operator, the owner or operator could count its own assets once for the financial test and they could be counted again in the corporate financial statement which is used to support the corporate guarantee. Such double-counting of assets would negate the value of the financial test by overestimating the assets of the guarantor.

Today's rule includes a provision requiring owners and operators to specify which of several combined instruments should be drawn upon first in the event of a claim by designating instruments as "primary" or "excess" coverage. Under closure and post-closure care financial assurance rules, priorities may be established by the Regional Administrator either by selecting one instrument and drawing upon it, or by drawing upon all instruments simultaneously and then drawing funds from the standby trust without regard to their source (see 40 CFR 264.143, 264.145, 265.143, and 265.145). The Agency considered giving the Regional Administrator similar authority in today's rule. However, the Agency is seeking in this rule to minimize the role of the Regional Administrator in payment of claims. Consequently, under today's rule the Regional Administrator does not establish the order in which financial assurance mechanisms are drawn upon in cases when owners or operators use more than one mechanism to satisfy the liability coverage requirements.

The Agency also considered the option of establishing standardized priorities for drawing upon mechanisms. This option was not adopted, however, because the Agency believes that priorities can better be established on a case-by-case basis.

While rejecting these two approaches, EPA believes that establishing priorities is necessary to avoid delays in the payment of claims and to define clearly the extent of coverage. For example, priority arrangements are often specified when insurance is combined with another mechanism. Insurers typically include language within policies limiting their obligations in the event that other coverage exists and preventing the "stacking" of policies except in the case of designated "primary" and "excess" coverage. Such language generally specifies that the coverage provided is "primary" (meaning that it is to be drawn upon first) and that if other coverage exists, payment of claims will be shared, or that payment will be made after the other coverage is exhausted up to the liability limits of the policy.

Today's rule requires an owner or operator to specify which of several mechanisms that are being used in combination to satisfy the coverage requirements should be drawn upon first in the event of a claim. The actual determination of priority is, however, left with the owner or operator and may involve negotiation with the providers of the assurance mechanism.

To facilitate the establishment of priorities, the financial assurance instruments adopted in today's rule include language specifying whether the coverage is primary or excess. In addition, the guarantee under § 264.151(h)(2) has been amended to indicate whether it provides primary or excess coverage.

IV. Special Provisions of Additional Mechanisms

This section discusses several special provisions that are common to several of the additional mechanisms for liability coverage authorized by today's rule, and that differ from requirements for closure and post-closure financial assurance.

A. Beneficiaries

In contrast to the mechanisms authorized or proposed under Subtitle C for closure and post-closure care and corrective action, the liability coverage mechanisms authorized today do not name EPA as their beneficiary. In today's rule, the issuer of the mechanism assumes the obligation to satisfy third-party liability claims for personal injury or property damage arising from operation of the facilities covered by the mechanism if the owner or operator does not do so.

Third parties, and not EPA, are designated beneficiaries to ensure that the third parties are paid directly for liability claims without involvement by EPA. The issuer of the mechanism must honor all valid certified claims or judgments upon the mechanism up to the limit of the amount covered.

B. Payment Trigger

To ensure that only valid claims are paid, the mechanisms specify that before making payment the issuer must receive either (a) a certificate of valid claim signed by the third-party claimants and by the owner or operator, or (b) a final court judgment. This provision allows for the resolution of third-party claims without the involvement in the dispute of either the issuer of the mechanism or EPA. Each of the mechanisms authorized today contains a provision that incorporates the payment trigger requirements, including the "certificate of valid claim" (40 CFR 264.151(h)(2), section 13; 264.151(k), clause 2; 264.151(1), condition (4); and 264.151(m), section (4)).

The purpose of this payment trigger is to avoid placing either the provider of the mechanism or the Regional Administrator in the position of deciding the merits of disputes between the owner or operator and the third-party claimant. The payment trigger is also set up so that claims do not have to be litigated for a final judgment. The certification is designed to allow an owner or operator to settle a claim with a third party without conceding liability in a document accessible by the public, which could be used against the owner or operator in future claims.

The requirement to submit the signed and notarized certification assures that the parties have either agreed that the claim is valid and in the correct amount or they have settled any disputes related to the validity or amount of the claim before coming to the provider for payment. The procedure is designed to reduce administrative burdens and to allow efficient payment of valid claims. The Agency does not expect the requirement to submit a signed and notarized certification of claim to place undue burdens on owners or operators or third-party claimants.

Alternatively, if the owner or operator and the third-party claimant cannot agree on the validity and amount of the claim, a final judgment by a court must be submitted by the third-party claimant, indicating that the claim should be paid. Whether payment of a judgment shall be made is a matter of applicable State law and shall be determined by the laws of the jurisdiction in which the action was brought.

Unlike the requirements for closure and post-closure care and corrective action, EPA is not requiring the establishment of a standby trust for mechanisms issued for liability coverage. A standby trust is necessary when funds are payable to EPA, because by law monies paid to the Federal government must be deposited in the United States Treasury. Because the mechanisms will pay third parties directly, a standby trust is not necessary for liability coverage.

C. Certification of Validity and Enforceability

The surety bond and guarantee authorized in today's rule may be subject to the insurance laws and regulations of certain States. To ensure that these instruments are valid and enforceable, EPA has contacted several State insurance commissions to ask how they would view these mechanisms for liability coverage. The results of those contacts are described in the docket for this rulemaking.

Most of the State commissions contacted said they would probably require a firm providing a surety bond to qualify as an insurer under State insurance laws unless the firm was related to the owner or operator in a corporate structure or it was providing the bond incident to its business relationship with the owner or operator. Two factors may influence the State's determination: whether a premium is charged and whether the firm would make such bonds available to the general public. To be certain that any bonds used as financial assurance mechanisms will be valid and enforceable, the Agency will not approve a surety bond for liability coverage unless the Attorneys General or Insurance Commissioners of the State in which the surety is incorporated, and of each State in which a facility covered by the bond is located, submits a written statement that a surety bond written and executed as required is a legally valid and enforceable obligation (40 CFR 264.147(i)(4) and 265.147(i)(4)). The certification by each State is required only once, and need not be obtained on a case-by-case basis by the owner or operator; instead it is provided to EPA or to a State agency. Accepting certifications provided to a State agency may be necessary in some circumstances even if EPA is administering the financial assurance requirements, because in many States officials such as the Attorney General will not issue opinions except to State agencies.

Guarantees for liability coverage also may come within the jurisdiction of a State's insurance laws and regulations. Accordingly, EPA is requiring that the guarantee may be used to fulfill liability coverage requirements only if the Attorney General or Insurance Commissioner of the State in which the guarantor is incorporated, and of each State in which a facility covered by the guarantee is located, submits a written statement that a guarantee written and executed as required is a legally valid and enforceable obligation (40 CFR 264.147(g)(2) and 265.147(g)(2)). The corporate guarantee rule provides a parallel requirement for this guarantee. To date, EPA has received evidence from 28 States that the parent guarantee would be acceptable.

D. Cancellation

Today's rule includes cancellation procedures for the authorized mechanisms. These procedures vary somewhat depending on the instrument. For the surety bond and guarantee provided by an unrelated firm, cancellation is allowed 120 days following notification by certified mail to the owner or operator and to the Regional Administrator(s) of the Region(s) in which the affected facilities are located (40 CFR 264.151(h)(2) and 264.151(1)). The Agency believes that

120 days is sufficient time for an owner or operator to locate a new financial assurance mechanism, and that any more stringent requirement, such as one requiring an in-place alternative prior to cancellation, would limit the availability of these mechanisms and would require extensive involvement of the Agency in the claims process.

The cancellation provisions for guarantees provided by some guarantors related to the owner or operator (i.e., corporate parents, siblings, or grand parents) require the guarantor to continue to provide the guarantee until an alternate mechanism is in place (40 CFR 264.151(h)(2)). This more stringent requirement is currently required for the corporate parent guarantee and is today being extended to guarantees provided by some of the other firms that are related to the owner or operator.

The distinctions in the cancellation provisions are based on the nature of the relationship between the provider of assurance and the owner or operator. EPA believes that a corporate parent or some of the other related corporations, due to their close relationship with the owner or operator, will have a continuing interest in the financial condition of the owner or operator and therefore should bear more responsibility for continued financial assurance than a less related or completely unrelated firm. When guarantees are provided by guarantors closely related to the owner or operator, permitting cancellation only when an alternative has been approved ensures that coverage for liability costs will be continuously available. Similarly, because the owner or operator provides a trust fund directly, it is not allowed to cancel that mechanism until another form of financial assurance has become effective. EPA is not promulgating a similarly stringent cancellation requirement for providers of insurance, surety bonds, or guarantees by less related and unrelated firms, because it believes that third-party providers would not provide coverage if they were unable to cancel that coverage, with reasonable notice, at some later date.

Today's rule does not amend the current provisions (40 CFR 264.151 (i) and (j)) allowing an insurer to cancel an insurance policy 60 days after the notice of cancellation is received by the Regional Administrator. Insurance providers argued that not allowing cancellation until at least 120 days after notice is given exposes them to considerable risk when the insured fails to pay the premium for the final period of coverage. In consideration of this concern, the Agency is maintaining the current 60-day requirement for insurance policies.

E. Exclusions

The mechanisms in today's rule contain a provision that they do not apply to certain categories of damages or obligations (see 40 CFR 264.151(h)(2), paragraph (4); 264.151(k); 264.151(l), conditions clause (l); and 264.151(m), section 3). These exclusions are patterned on existing standard exclusions found in insurance coverage (see, for example, the Insurance Services Office pollution liability coverage form CG 00 39 11 85). They are intended to ensure that the coverage is not exhausted by the payment of claims that are covered by other compensation systems or that are otherwise not intended to be included within the scope of coverage.

The Agency did not adopt all the standard Commercial General Liability (CGL) and Environmental Impairment Liability (EIL) exclusions, but included only those exclusions it considered relevant to the financial assurance mechanisms for liability. EPA has also recently issued guidance on the acceptability of site-specific pollution exclusion within insurance policies. This guidance memorandum is applicable only to insurance policies.

Exclusion (a), for bodily injury or property damage for which the owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement, is intended to exclude liabilities assumed by contract that do not involve the hazardous waste treatment, storage, and disposal facility or facilities of the owner or operator. It does not exclude settlements or other agreements to pay damages in connection with accidental occurrences resulting in bodily injury or property damage caused by hazardous waste.

Exclusion (b), for obligations under workers' compensation, disability benefits, or unemployment compensation law or similar law, is intended to ensure that liability coverage is available for non-employee third parties and does not duplicate coverage provided under these other programs or forms of assurance.

Exclusion (c), for bodily injury to the employees, or the immediate family of employees, of the owner or operator, is also intended to ensure that coverage is available for "third parties" and does not duplicate coverage provided under other forms of assurance.

Exclusion (d), for bodily injury or property damage arising out of the ownership or use of any aircraft, motor vehicle, or watercraft, is to prevent use of an authorized financial assurance mechanism for routine accidents that are not directly related to management of hazardous waste.

Exclusion (e), for property damage to property owned, occupied, rented, or in the care, custody, or control of the owner or operator, is intended to ensure that coverage will be available to compensate third parties, and not the owner or operator, for property damage as a result of activities at TSDFs.

V. Other Issues Presented in the Notice of Proposed Rulemaking

In the August 21, 1985, NPRM, EPA suggested several additional approaches that could be taken to promote compliance with the financial responsibility requirements. Alternatives, other than authorizing additional financial assurance mechanisms, included the suspension or withdrawal of the liability coverage requirements, clarification of the scope of coverage, revision of the required levels of coverage, or authorization of waivers. Numerous comments were received on these alternatives. After considering these comments, the Agency has decided to retain the liability coverage requirements at their present levels, to maintain the present scope of coverage, and to reject the option of generic waivers. This section discusses briefly the comments received on these alternatives in response to the NPRM and explains the reasons why EPA is not adopting them. A more complete discussion of these comments is included within the docket accompanying today's rule.

A. Maintain, Suspend, or Withdraw Existing Liability Coverage Requirements

The Agency received comments from State governments and the public that generally argued in favor of maintaining the requirements. Supporters of the existing requirements argued that the insurance market for EIL coverage would not recover without such requirements; that maintaining the requirement would increase public confidence in hazardous waste facilities and decrease opposition to siting and permitting such facilities; and that low-risk owners and operators were able to obtain coverage. Commenters from State and local governments in particular argued that suspension or withdrawal of the liability coverage requirements would severely damage the chances for an eventual solution to the problem of insurance availability, that suspension would not be acceptable to the public and would undermine the strength of programs to regulate hazardous waste

management, and that liability coverage is necessary to protect human health and environment. Facilities that are unable to obtain such coverage, in these commenters' opinion should not continue in operation.

In contrast, a number of firms in the regulated community argued that EPA should not maintain the existing liability coverage requirements, but rather should suspend or withdraw the requirements, because of the difficulty many firms faced in obtaining insurance. Commenters also argued that the liability coverage requirements could be suspended or withdrawn because they were redundant with permitting conditions and that EPA should concentrate on achieving risk control rather than post-loss compensation. They also pointed out that even if the liability coverage requirements were abolished, third parties harmed by hazardous waste management activities could still sue the owner or operator for damages. Finally, commenters argued that the constraints on insurance availability made a short-term suspension necessary, even if the requirements for liability coverage were later reinstituted.

After considering these comments and suggestions made in response to other questions in the NPRM, EPA has concluded that the current liability coverage requirements should be maintained. The Agency believes that the requirements are an important component of the RCRA management system and are necessary to protect human health and the environment. Further, Congress in the Hazardous and Solid Waste Amendments of 1984 (HSWA) has stressed the importance of satisfying all financial assurance requirements, including liability coverage. Finally, by authorizing the use of additional financial mechanisms for liability coverage, the Agency believes that the problems of insurance availability cited by some commenters as reasons to suspend or withdraw the rule should become less important in the future.

B. Revise Scope and Levels of Coverage

A number of issues were considered by EPA in connection with the scope and levels of coverage. They included coverage levels, distinction between sudden and nonsudden coverage, exclusion of legal defense costs, and deductibles. Each is discussed in this section.

1. *Coverage Levels.* EPA established the sudden accidental and nonsudden accidental liability coverage requirements in 1982 at $1 million per occurrence and $3 million per occurrence, respectively, on the basis of the Agency's investigation of existing third-party damage cases. To account for the possibility that the same firm might experience more than one claim in a year, the Agency also established annual aggregate coverage requirements at twice those amounts, or $2 million and $6 million, respectively.

In July 1986, EPA again reviewed third-party damage claims, awards, and settlements for sudden and nonsudden accidental occurrences involving hazardous chemicals as well as hazardous waste to determine whether the required levels of coverage are adequate. Data were limited, however, for several reasons, including the fact that few cases have been litigated to completion. Thus, available data were generally data on amounts claimed, rather than amounts recovered in awards or settlements. Because final awards and settlements often differ significantly from initial claims, it is difficult to draw conclusions based on this data. In addition, commenters did not supply any additional information indicating that the currently required coverage levels should be changed. The Agency concluded, in light of the limited data, that it had insufficient basis to change the requirements at this time.

2. *Distinction Between Sudden and Nonsudden Coverage.* 40 CFR 264.147(a) and 265.147(a) require all owners or operators of hazardous waste facilities to have "sudden accidental" coverage. Owners and operators of surface impoundments, landfills, or land treatment facilities used to manage hazardous wastes also are required to have "nonsudden accidental" coverage (40 CFR 264.147(b) and 265.147(b)).

A number of commenters on the August 21, 1985, NPRM suggested that the Agency no longer distinguish between sudden and nonsudden accidental coverage. They argued that nonsudden coverage was difficult to obtain, and that insurers were beginning to issue combined policies for sudden and nonsudden coverage. (A more complete discussion of comments on this point is provided in documents accompanying today's rulemaking.)

EPA has decided to maintain the distinction between sudden and nonsudden coverage. The Agency believes that maintaining distinct coverage requirements is still appropriate. Further, the insurance industry continues to write policies that distinguish between sudden and nonsudden events. EPA recognizes, however, that in some cases, courts have interpreted coverage for sudden events broadly to include damage from a gradual release occurring over long periods of time. As a result, some insurers do not distinguish between sudden and nonsudden events, but offer "combined coverage": coverage for both sudden and nonsudden events on the same policy with single aggregate and per-occurrence limits. Today's rule includes a change to the coverage requirements citation specifying that the Agency will accept "combined coverage" policies, but to provide equivalent levels of coverage, the limits must be at least $4 million per-occurrence ($1 million sudden plus $3 million nonsudden) and $8 million annual aggregate ($2 million sudden plus $6 million nonsudden).

3. *Exclusion of Legal Defense Costs from Policy Limits.* Currently, Subpart H requires an owner or operator of a TSDF to maintain liability coverage for sudden and nonsudden accidental occurrences at specified levels, exclusive of legal defense costs (40 CFR 264.147 (a) and (b) and 265.147 (a) and (b)). The Agency decided to exclude legal defense costs for two reasons: (1) The insurance industry standard for CGL policies excluded legal defense costs from the coverage, and (2) legal defense costs could absorb a major portion of the required coverage, leaving an inadequate amount to cover actual damages. The Agency continues to believe that these reasons remain valid and do not affect the availability of insurance.

In its August 21, 1985 NPRM the Agency requested comment on whether, in an effort to increase the availability of EIL coverage for TSDFs, legal defense costs should be included in coverage limits. A number of commenters supported including legal defense costs. They argued that the EIL coverage currently available to TSDFs is written to include defense costs within policy limits. The Agency contacted insurance companies known to provide EIL coverage to ask whether their EIL policies included or excluded legal defense costs. Although some companies stated that defense costs are included in the coverage limits, others said that defense costs were excluded, or that the policy could be written to conform to the RCRA requirements; that is, policies could be written to exclude legal defense costs. Furthermore, current industry practice, including the present industry standard form for this type of insurance, still excludes defense costs from the coverage limits. In addition, while recently there have been attempts by insurers to limit defense cost exposure by including at least some defense costs within policy limits, the trend appears to be toward some other

method of limiting costs outside of policy limits.

The second reason commenters presented for changing the RCRA requirements to include legal defense costs was that the assurance of the availability of defense costs is an important element of claims litigation and further that there were insufficient RCRA claims data to warrant requiring coverage excluding legal defense costs.

The Agency continues to believe that it is important for the full amount of liability coverage to be available to cover claims against owners or operators of TSDFs. The Agency decided on the current coverage levels after a thorough investigation of reported third-party damage cases from hazardous waste accidents and these levels do not account for legal defense costs. Because the size of legal defense costs in this area is somewhat uncertain, the most secure method of ensuring that sufficient funds will be available to cover actual damages is to retain the requirement that defense costs be excluded.

Other commenters stated that including legal defense costs should be permissible, as long as the full amount of RCRA liability coverage was available to claimants. EPA agrees. If the total coverage includes the full amount required for third-party liability plus additional coverage earmarked for legal defense costs, the policy would be acceptable under current regulations. Thus, for example, a policy would provide acceptable assurance for a surface impoundment if the total coverage was $5 million per occurrence and $10 million annual aggregate if legal defense costs covered under the policy were limited to a maximum of $1 million per occurrence and $2 million annual aggregate. A $5 million per occurrence, $8 million annual aggregate policy without an earmarked limit on legal defense costs would not provide adequate assurance.

4. *Deductibles.* A number of commenters argued that EPA should not require "first-dollar" coverage for liability costs. If deductibles were allowed, according to these commenters, insurance coverage might be easier to obtain or be less costly.

Although the insurer must provide first-dollar coverage, EPA notes that the regulations do not prevent insurers from requiring reimbursement from owners or operators for first-dollar expenditures. The owner or operator can agree in the insurance contract that the insurer will be reimbursed for these expenditures. The regulations do not, however, allow self-insurance retention. Policies cannot require the owner or operator to cover first-dollar expenditures. Such self-insurance is available to an owner or operator under the regulations only if it can pass the requirements established in the financial test for liability coverage.

EPA contacted a number of insurers to determine whether self-insurance retention could help to alleviate problems of insurance availability and affordability. In general, however, their responses indicated that current problems with EIL insurance are related to other factors, such as difficulty in predicting the size of the risk being covered, and that deductibles would not significantly enhance insurance availability. Therefore, the Agency is retaining the current first-dollar coverage requirement.

C. Mechanisms Considered But Not Adopted

1. *Security interests.* Security interests are a special procedure, authorized under State law following a pattern established by the Uniform Commercial Code, for creating collateral to serve as a support for the repayment of loans or other financial obligations. Security interests were considered but rejected for liability coverage because of the complicated legal requirements that have to be satisfied to ensure that they provide effective financial assurance. For example, security interests ordinarily must be perfected by filing papers with appropriate agencies in each jurisdiction where collateral exists, and these filings must be kept up to date. EPA would be required to verify that proper filings had occurred. In addition, the Agency would also have to determine that the collateral underlying the agreement had been valued properly. If not, the proceeds from sale of the collateral might fail to supply the amounts required to satisfy valid claims. Finally, the need to satisfy specific legal processes prior to liquidation of collateral could delay payment of valid third-party claims. Because of these problems, EPA has decided not to adopt security interests at this time.

2. *Indemnity contracts.* Indemnity contracts are legally binding commitments by a third party or "indemnitor" to pay a debt or obligation of another party. The duty of the indemnitor generally is to repay the primary debtor after it has satisfied the debt or obligation. The Agency was not willing to adopt such a mechanism because of the administrative difficulties and lengthy time needed to enforce such contracts.

An indemnity contract also may be established in which the indemnitor agrees to assume the obligation even if the primary debtor does not pay. Such a contract, however, so closely resembles a guarantee that EPA determined that in effect no additional financial assurance option would be added to the regulations by inclusion of the indemnity. Therefore the Agency has not added an indemnity contract to the set of options authorized in today's rule.

3. *Reserve funds.* As a temporary measure pending the growth of the insurance market, some commenters suggested that owners or operators set aside the equivalent of insurance premiums in a reserve fund. Such a mechanism could function in a manner similar to trusts, if control over the fund were given to an independent fiduciary agent. Alternatively, however, some commenters suggested that the reserve fund be only a separate bookkeeping entity under the control of the owner or operator. EPA believes that neither approach would ensure that the reserve would contain sufficient funds when required to satisfy claims. Liability coverage funds may be needed at any time after implementation of the mechanism. Because a reserve fund based on the estimated equivalent of insurance premiums, rather than the amounts equal to the required coverage levels, would accumulate slowly, it would be unlikely to contain adequate funds to satisfy liability claims, especially in the early years.

In addition, EPA is convinced that a reserve fund that is not under the control of an independent trustee but instead remains under the control of the TSDF owner or operator will not provide satisfactory financial assurance. No independent third party would administer the reserve fund, including assessing its value and controlling payments from the fund. The Agency determined, therefore, not to authorize the use of reserves. Today's rule authorizes a fully funded trust fund, for owners and operators who want to use a similar mechanism.

4. *Federal Insurance or Loan Guarantees.* Some commenters pointed to other financial assurance programs utilizing Federal insurance or loan guarantees as possible models for EPA. Establishment of insurance or loan guarantees requires specific statutory authority that has not been granted to the Agency. Further, EPA does not believe that as an agency whose primary mandate is protection of human health and the environment, it currently possesses the expertise or resources to administer either an insurance or a loan guarantee program. Such programs or approaches would require the Agency to assess financial characteristics of owners or operators, and to make

decisions concerning the validity of claims, when those assessments and decisions can be made more accurately and efficiently by existing institutions that provide financial assurance.

5. *Captive Insurance Pools and Risk Retention Groups.* EPA believes it is unnecessary in today's rulemaking explicitly to authorize the use of captive insurance pools and risk retention groups. Such instruments are already authorized as forms of insurance. If the policies offered by a pool or risk retention group satisfy EPA requirements, such policies provide acceptable financial assurance.

D. Authorize Waivers

A number of commenters, particularly those from industry, supported granting temporary waivers on a case-by-case basis if a firm can demonstrate that it has made a "good faith effort" to obtain the required liability insurance. However, the Agency believes that the authorization of additional mechanisms, existing enforcement policies, the somewhat improved insurance market for TSDFs and the increased potential of insurance offered by risk retention groups, provide a better solution than simply waiving the liability coverage requirements. Also, existing regulations enable Regional Administrators to grant variances (§§ 264.147(c) and 265.147(c)) or adjustments (§ 264.147(d) and 265.147(d)) to the required liability coverage amounts, if this is justified by the degree and duration of risk associated with a TSDF. The Agency believes that justifiable modifications in the amount of coverage needed are more consistent with the objectives of the liability coverage requirements than would be relieving owners or operators of these requirements entirely, solely because they made a "good faith" effort to obtain coverage.

VI. Consistency With Other Existing and Proposed Financial Assurance Requirements

EPA currently allows owners or operators of hazardous waste TSDFs to use the mechanisms being approved in today's rule, including trust funds, letters of credit, surety bonds, and corporate guarantee contracts, to provide financial assurance for the costs of closure and post-closure care (40 CFR 264.143, 264.145, 264.151, 265.143, and 265.145), and has proposed their use for corrective action (51 FR 37854, October 24, 1986). As described above, certain features of the assurance mechanisms are different because of the differences between these programs and liability coverage.

In addition, EPA has proposed financial assurance rules applicable to owners and operators of underground storage tanks (USTs) containing petroleum under sections 9003 (c) and (d) of RCRA as amended by HSWA (RCRA Subtitle I), and by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (52 FR 12662, April 17, 1987). The proposed rule would establish requirements for demonstrating financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank containing petroleum. As in today's rule, under the UST proposal, owners and operators of underground storage tanks containing petroleum would be allowed to use letters of credit, surety bonds, and expanded guarantees to demonstrate financal responsibility for the costs of corrective action and third-party liability claims (52 FR 12786, 12844, April 17, 1987).

VII. Technical Correction to 40 CFR 264.151(b)

The May 2, 1986 rule amending the closure, post-closure care, and financial assurance regulations mistakenly omitted a portion of the required language for the financial guarantee bond found in 40 CFR 264.151(b) (see 51 FR 16422, 16450). Today's rule makes a technical correction to the regulation to restore the required wording of the bond.

VIII. Effective Date

This regulation is being published as a final rule, effective in 30 days.

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto generally take effect six months after their promulgations. The purpose of this requirement is to allow sufficient time for the regulated community to comply with major new regulatory requirements. The statute allows for a shorter period prior to the effective date, if (i) the Administrator finds that the regulated community does not need six months to come into compliance; (ii) the regulation responds to an emergency situation, or (iii) other good cause. The Agency believes that since the regulation does not add any compliance requirements, but rather expands the number of mechanisms owners or operators may use to come into compliance, a six-month period prior to the effective date is unnecessary.

Today's amendment adopts additional mechanisms for complying with third-part liability coverage requirements and thus makes it easier for some owners and operators to act in accordance with the RCRA liability coverage regulations. An effective date six months after promulgation for the amendment promulgated today would substantially delay the implementation of the regulations and would be contrary to the interest of the regulated community and the public. Accordingly, the Agency believes that it makes little sense to delay needed relief to owners or operators by an additional five months.

IX. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under RCRA sections 3008, 7003, and 3013, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interim.

B. Effect of Rule on State Authorizations

Today's rule promulgates standards that will not be effective in authorized States since the requirements are not being imposed pursuant to HSWA.

Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

In general, 40 CFR 271.21(e)(2) requires that States that have final authorization to modify their programs to reflect Federal program changes and subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs (see 40 CFR 271.1(i)). The standards promulgated today are less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States will not be required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above. If the State does modify its program, EPA must approve the modification for the State requirements to become Subtitle C RCRA requirements. States should follow the deadlines of 40 CFR 271.21(e)(2) if they desire to adopt this less stringent requirement.

X. Executive Order 12291

Under Executive Order 12291 (section 3(b)) the Agency must judge whether a regulation is major and thus subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Exective Order No. 12291.

XI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). This rule relaxes the existing financial assurance requirements and thus reduces costs associated with compliance. Accordingly, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

XII. Supporting Documents

Supporting documents available for this interim final rule include comments on the August 21, 1985 Proposed Rule, summary of the comments on the July 11, 1986 Interim Final Rule, and background documents on the finanical test for liability coverage. In addition, background documents prepared for previous financial assurance regulations, as well as documents prepared for this rulemaking, are also available as are letters received from State Attorneys General concerning the corporate guarantee for liability.

All of these supporting materials are available for review in the EPA public docket (RCRA docket #F–88–CGF1–FFFFF), Room S–212, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds.

Date: August 19, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as set forth below.

40 CFR Part 264 is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.141, new paragraph (h) is added to read as follows:

§ 264.141 Definitions of terms as used in this subpart.

* * * * *

(h) "Substantial business relationship" means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.

3. In § 264.147, paragraph (h) is redesignated as paragraph (k); paragraphs (a) introductory text, (a)(2), (a)(3), (b) introductory text, (b)(2), (b)(3), (b)(4), (g) heading and (g)(1) introductory text are revised, and by removing and reserving paragraph (g)(1)(ii); paragraphs (g)(2)(i) and (g)(2)(ii) are amended by removing "corporate;" and new paragraphs (a)(4), (a)(5), (a)(6), (a)(7), (b)(5), (b)(6), (b)(7), (h), (i), and (j) are added, to read as follows:

§ 264.147 Liability requirements.

(a) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

* * * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraph (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days (i) whenever a claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section and (ii) whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by paragraphs (a)(1) through (a)(6) of this section is reduced.

(b) *Coverage for nonsudden accidental occurrences.* An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraphs (b) (1), (2), (3), (4), (5), or (6), of this section:

* * * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days (i) whenever a claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section and (ii) whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by paragraphs (a)(1) through (a)(6) of this section is reduced.

* * * * *

(g) *Guarantee for liability coverage.* (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(6) of this section. The wording of the guarantee must be identical to the wording specified in § 264.151(h)(2) of this part. A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

* * * * *

(h) *Letter of credit for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter or credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Regional Administrator.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit must be identical to the wording specified in § 264.151(k) of this part.

(i) *Surety bond for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this paragraph and submitting a copy of the bond to the Regional Administrator.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in § 264.151(1) of this part.

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of (i) the State in which the surety is incorporated, and (ii) each State in which a facility covered by the surety bond is located have submitted a written statement to EPA that a surety bond executed as described in this section and § 264.151(1) of this part is a legally valid and enforceable obligation in that State.

(j) *Trust fund for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Regional Administrator.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in § 264.151(m) of this part.

§ 264.151 [Amended]

4. In § 264.151 paragraph (b) is amended by adding the following text to the end of the "Financial Guarantee Bond" to read as follows:

(b) * * *

Financial Guarantee Bond

* * * * *

Or, if the Principal shall provide alternate financial assurance, as specified in Subpart H of 40 CFR Part 264 or 265, as applicable, and obtain the EPA Regional Administrator's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the EPA Regional Administrator(s) from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the EPA Regional Administrator.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator(s), as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the EPA Regional Administrator(s).

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)] _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

Corporate Surety(ies)

[Name and address]

State of incorporation:] _____

Liability limit: $ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ _____

5. In § 264.151, paragraph (g) is revised to read as follows:

(g) A letter from the chief financial officer, as specified in § 264.147(f) or § 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in Subpart H of 40 CFR Parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265: _____.

The firm identified above guarantees, through the guarantee specified in Subpart H of 40 CFR Parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration

of this guarantee _____.] [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following four paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: _____.

2. The firm identified above guarantees, through the guarantee specified in Subpart H of 40 CFR Parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States where EPA is not administering the financial requirements of Subpart H of 40 CFR Parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in part A if you are using the financial test to demonstrate coverage *only* for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.147 or § 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.147 or § 265.147 are used.]

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated.	$.....
*2.	Current assets	$.....
*3.	Current liabilities	$.....
4.	Net working capital (line 2 minus line 3).	$.....
*5.	Tangible net worth	$.....
*6.	If less than 90% or assets are located in the U.S., given total U.S. assets.	$.....
		Yes / No
7.	Is line 5 at least $10 million?	.....
8.	Is line 4 at least 6 times line 1?	.....
9.	Is line 5 at least 6 times line 1?	.....
*10.	Are at least 90% of assets located in the U.S.? If not, complete line 11.	.....
11.	Is line 6 at least 6 times line 1?	.....

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated.	$.....
2.	Current bond rating of most recent issuance and name of rating service.	.....
3.	Date of issuance of bond.	.....
4.	Date of maturity of bond.	.....
*5.	Tangible net worth	$.....
*6.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).	$.....
		Yes / No
7.	Is line 5 at least $10 million?	.....
8.	Is line 5 at least 6 times line 1?	.....
9.	Are at least 90% of assets located in the U.S.? If not, complete line 10.	.....
10.	Is line 6 at least 6 times line 1?	.....

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage *and* closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of § 264.143 or § 264.145 and (f)(1)(i) of § 264.147 are used or if the criteria of paragraphs (e)(1)(i) of § 265.143 or § 265.145 and (f)(1)(i) of § 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of § 264.143 or § 264.145 and (f)(1)(ii) of § 264.147 are used or if the criteria of paragraphs (e)(1)(ii) of § 265.143 or § 265.145 and (f)(1)(ii) of § 265.147 are used.]

ALTERNATIVE I

1.	Sum of current closure and post-closure cost estimates (total of *all* cost estimates listed above).	$.....
2.	Amount of annual aggregate liability coverage to be demonstrated.	$.....
3.	Sum of lines 1 and 2	$.....
*4.	Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6).	$.....
*5.	Tangible net worth	$.....
*6.	Net worth	$.....
*7.	Current assets	$.....
*8.	Current liabilities	$.....
9.	Net working capital (line 7 minus line 8).	$.....
*10.	The sum of net income plus depreciation, depletion, and amortization.	$.....
*11.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).	$.....
		Yes / No
12.	Is line 5 at least $10 million?	.....
13.	Is line 5 at least 6 times line 3?	.....
14.	Is line 9 at least 6 times line 3?	.....
*15.	Are at least 90% of assets located in the U.S.? If not, complete line 16.	.....
16.	Is line 11 at least 6 times line 3?	.....
17.	Is line 4 divided by line 6 less than 2.0?	.....
18.	Is line 10 divided by line 4 greater than 0.1?	.....
19.	Is line 7 divided by line 8 greater than 1.5?	.....

ALTERNATIVE II

1.	Sum of current closure and post-closure cost estimates (total of *all* cost estimates listed above).	$.....

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2.	Amount of annual aggregate liability coverage to be demonstrated.	$.....	
3.	Sum of lines 1 and 2.....	$.....	
4.	Current bond rating of most recent issuance and name of rating service.	.....	
5.	Date of issuance of bond.	.....	
6.	Date of maturity of bond.	.....	
*7.	Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line).	$.....	
*8.	Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.).	$.....	
		Yes	No
9.	Is line 7 at least $10 million?	.....	
10.	Is line 7 at least 6 times line 3?	.....	
*11.	Are at least 90% of assets located in the U.S.? If not, complete line 12.	.....	
12.	Is line 8 at least 6 times line 3?	.....	

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

6. Section 264.151(h)(2) is amended by revising the heading for the "Corporate Guarantee for Liability Coverage" to read "Guarantee for Liability Coverage" and by removing "corporate" from paragraph (h)(2); and by removing paragraph 12 of the "Guarantee for Liability Coverage"; redesignating paragraphs 4 through 11 as paragraphs 5 through 12, adding new paragraphs 4, 13 and 14; and revising paragraph 10; to read as follows:

* * * * *

(h) * * *

(2) * * *

Guarantee for Liability Coverage

* * * * *

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

* * * * *

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate liability coverage complying with 40 CFR 264.147 and/or 265.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

* * * * *

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage cuased by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]
Principal
(Notary) Date

[Signatures]
Claimant(s)
(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 40 CFR 264.151(h)(2) as such regulations were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness of notary:

---

7. In § 264.151(i), paragraph 2.(d) of the "Hazardous Waste Facility Liability Endorsement" is revised to read as follows:

* * * * *

(i) * * *

Hazardous Waste Facility Liability Endorsement

* * * * *

(2) * * *

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.

8. In § 264.151(j), paragraph 2.(d) of the "Hazardous Waste Facility Certificate of Liability Insurance" is revised to read as follows:

* * * * *

(j) * * *

Hazardous Waste Facility Certificate of Liability Insurance

(2) * * *

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corportation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.

* * * * *

9. In § 264.151, a new paragraph (k) is added to read as follows:

* * * * *

(k) A letter of credit, as specified in § 264.147(h) or § 265.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution
Regional Administrator(s)
Region(s)
U.S. Environmental Protection Agency

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of any and all third-party liability claimants, at the request and for the account of [owner's or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft, bearing reference to this letter of credit No. _____, and (1) a signed certificate reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimants], hereby certify that the claim of bodily injury [and/or] property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $_____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]
Principal

[Signatures]
Claimant(s)

or (2) a valid final court order establishing a judgment against the principal for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from operation of the principal's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the USEPA Regional Administrator for Region [Region #], and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess"] coverage.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 264.151(k) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

10. In § 264.151, a new paragraph (l) is added to read as follows:

* * * * *

(l) A surety bond, as specified in § 264.147(h) or § 265.147(h) of this chapter, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Payment Bond

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond: _____

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence.	[insert amount]	[insert amount]
Annual Aggregate.	[insert amount]	[insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules and regulations of the U.S. Environmental Protection Agency (EPA), particularly 40 CFR ["§ 264.147" or "§ 265.147"] (if applicable).

(3) Rules and regulations of the governing State agency (if applicable) [insert citation].

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability

coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidential occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]
Principal

[Notary] Date

[Signature(s)]
Claimant(s)

[Notary] Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Regional Administrator forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the USEPA Regional Administrator for Region [Region #], provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Regional Administrator, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(1), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]
State of incorporation: _____
Liability Limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ _____

11. In § 264.151, a new paragraph (m) is added to read as follows:

* * * * *

(m)(1) A trust agreement, as specified in § 264.147(j) or § 265.147(j) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. *Definitions.* As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. *Identification of Facilities.* This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. *Establishment of Fund.* The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. *Payment for Bodily Injury or Property Damage.* The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]
Grantor

[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. *Trustee Management.* The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that*:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2.(a), shall not be acquired or *held* unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this

Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. *Annual Valuations.* The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. *Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. *Successor Trustee.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. *Instructions to the Trustee.* All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 15. *Notice of Nonpayment.* If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equalling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the EPA Regional Administrator.

Section 16. *Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 17. *Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Regional Administrator will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. *Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. *Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

Section 20. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(m) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]

[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in §§ 264.147(j) or 265.147(j) of this chapter. State requirements may differ on the proper content of this acknowledgement.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

40 CFR Part 265 is amended as follows:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 265.141, new paragraph (h) is added to read as follows:

§ 264.141 Definitions of terms as used in this subpart.

* * * * *

(h) "Substantial business relationship" means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.

3. In § 265.147, paragraph (h) is redesignated as paragraph (k); paragraphs (a) introductory text, (a)(2), (a)(3), (b) introductory text, (b)(2), (b)(3), (b)(4) and (g) heading and (g)(1) introductory text are revised, and by removing and reserving paragraph (g)(1)(ii); paragraphs (g)(2)(i) and (g)(2)(ii) are amended by removing "corporate;" and new paragraphs (a)(4), (a)(5), (a)(6), (a)(7), (b)(5), (b)(6), (b)(7), (h), (i), and (j) are added, to read as follows:

§ 265.147 Liability requirements.

(a) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

* * * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraph (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days (i) whenever a claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section and (ii) whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by paragraphs (a)(1) through (a)(6) of this section is reduced.

(b) *Coverage for nonsudden accidental occurrences.* An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraph (b) (1), (2), (3), (4), (5), or (6) of this section:

* * * * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days (i) whenever a claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section and (ii)

whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by paragraphs (a)(1) through (a)(6) of this section is reduced.

* * * * *

(g) *Guarantee for liability coverage.* (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(6) of this section. The wording of the guarantee must be identical to the wording specified in § 264.151(h)(2) of this chapter. A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

* * * * *

(h) *Letter of credit for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Regional Administrator.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit must be identical to the wording specified in § 264.151(k) of this chapter.

(i) *Surety bond for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this paragraph and submitting a copy of the bond to the Regional Administrator.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in § 264.151(l) of this chapter.

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of (i) the State in which the surety is incorporated, and (ii) each State in which a facility covered by the surety bond is located have submitted a written statement to EPA that a surety bond executed as described in this section and § 264.151(l) of this chapter is a legally valid and enforceable obligation in that State.

(j) *Trust fund for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Regional Administrator.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in § 264.151(m) of this part.

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Part IV

Commission on the Bicentennial of the United States Constitution

Bicentennial of the United States Constitution Education Grant Program; Announcement and Application Instructions

VOL 53 ISS 170 SE 1 1988 UMI

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Bicentennial of the United States Constitution Educational Grant Program; Announcement and Application Instructions

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Grant program announcement and application instructions.

SUMMARY: The Commission on the Bicentennial of the United States Constitution announces its instructions and application deadline for FY 1989 funding under its Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for programs designed to improve the teaching of the Constitution and Bill of Rights to elementary and secondary school students. This grant program announcement and application instructions inform all interested individuals and organizations about the closing date for the receipt of applications for funding and how applications must be prepared for funding consideration by the Commission. The application instructions are based on the law and regulation which contain key requirements for all applicants to follow in seeking funding from the Commission.

DATES: Applications will be accepted from October 1, 1988 until November 14, 1988 at 5:30 pm.

ADDRESS: Constitution Bicentennial Educational Grant Program, Commission on the Bicentennial of the U.S. Constitution, 808 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Anne A. Fickling, (202) 653–5110.

SUPPLEMENTARY INFORMATION

I. Introduction

The 200th Anniversaries of the signing and ratification of the United States Constitution, the creation of the three branches of government, and the adoption of the Bill of Rights present important opportunities to encourage renewed reflection about, education on, and public interest in the principles and foundations of constitutional government. In 1976, we celebrated the Bicentennial of the Declaration of Independence, the document which set forth the principles of representative government. In 1987, we began the commemoration of the Constitution which was designed to put those principles into practice and which has provided a stable and workable plan of government for the past 200 years.

A key element in that commemoration should be the encouragement of renewed vigor in the teaching of the origins and fundamentals of the Constitution and American government in our elementary and secondary schools. The Commission's Educational Grant Program is designed to improve knowledge and understanding of the Constitution through the funding of teacher conferences and institutes, other exemplary programs, and the development of instructional materials for use in elementary and secondary schools. In addition, the Commission seeks proposals from organizations which will demonstrate innovative methods for using existing materials, including those materials developed under previous grants from the Commission. During the completed three rounds of the Grant Program, the Commission received 650 applications requesting over $32 million in project funding. Following its congressional mandate, the Commission funded 66 (+ 1988 Round 2) projects and awarded approximately $4.4 million in discretionary grant assistance.

Applicants are urged to read the program announcement carefully before submitting a proposal to the Commission. The program is very competitive and, therefore, only a small percentage of all applicants will receive assistance.

Funding of grant proposals in FY '89 is contingent upon a final appropriation by Congress. Preparation of an application is at an applicant's own expense and risk; the Commission cannot provide reimbursement for any proposal preparation expenses.

Duties of the Commission

The Commission on the Bicentennial of the United States Constitution (the Commission) was established by Pub. L. 98–101 Stat. 719, and signed by the President on September 29, 1983. Commission activities are governed by a 23 member Commission; the Honorable Warren E. Burger, Chief Justice of the United States, 1969–1986, serves as Chairman.

The Commission was created to promote and coordinate activities commemorating the 200th Anniversary of the United States Constitution and Bill of Rights. Section 6 of Pub. L. 98–101 charges the Commission with the following duties:

- To plan and develop activities appropriate to commemorate the bicentennial of the Constitution, including a limited number of programs to be undertaken by the Federal Government seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education.
- To encourage private organizations, and State and local governments to organize and participate in bicentennial activities commemorating or examining the drafting, ratification and history of the Constitution and the specific features of the document.
- To coordinate, generally, activities throughout the United States.
- To serve as a clearinghouse for the collection and dissemination of information about bicentennial events and plans.

II. The Program Mandate

The Commission's Educational Grant Program invites proposals for projects designed to provide elementary and secondary school students with a strengthened understanding of the Constitution, its antecedents, provisions, structure, and history. The Commission believes that an effective way to reach the students is through their teachers and, therefore, invites proposals which emphasize teacher training. Proposed programs should demonstrate how students will benefit and should result in instructional ideas, methods, and materials which teachers can share with others.

In Pub. L. 98–101, 97 Stat. 719, under Section 6(a), the Commission is authorized to give due consideration to—

(1) The historical setting in which the Constitution was developed and ratified, including such antecedents as the Federalist Papers, the Articles of Confederation, and the ratification debates in the States;

(2) The contribution of diverse ethnic and racial groups;

(3) The relationship and historical development of the three branches of government;

(4) The importance of activities concerning the Constitution and citizenship education throughout all of the States regardless of when such State achieved statehood;

(5) The unique achievements and contributions of the participants in the Constitutional Convention of 1787 and the State ratification proceedings;

(6) The diverse legal and philosophical views regarding the Constitution;

(7) The need for reflection upon both academic and scholarly views of the Constitution and the principle that the document must be understood by the general public;

(8) The substantive provisions of the Constitution itself;

(9) The impact of the Constitution on American life and government;

(10) The need to encourage appropriate educational curriculums designed to educate students at all levels of learning on the drafting, ratification, and history of the Constitution and the specific provisions of that document; and

(11) The significance of the principles and institutions of the Constitution to other nations and their citizens.

Applicants should keep in mind that within the mandate of the Commission, the origins, history, and enduring principles of the Constitution are of paramount importance, as against any particular controversies or issues of the moment. The Commission cannot support any proposal which argues for a partisan or ideological point of view.

Focus should be the men and events of 1787, not controversial interpretations of 1987; the Federalist Papers and the ratification debates in the States, not the textbooks of modern law schools; the substantive provisions of our Nation's foundational document, not the proposed legislative agenda of any single party or group. (Senate Report No. 98-88)

III. Priority Subject Areas for Grants in FY '89

The Commission encourages proposals which correspond to themes highlighted by the Commission during its five-year commemorative plan. The Commission has outlined a program for the Constitution's Bicentennial, and identified a specific anniversary and provided a specific focus for each year. In 1987, the emphasis was on the writing and signing of the Constitution. In 1988, the focus was on the ratification of the Constitution and the development of the Legislative Branch. The focus for the ensuing three years is as follows:

1989: The study of Congress will continue since 1989 marks the 200th anniversary of the first congressional elections. The Executive Branch also will receive special emphasis as we commemorate the 200th anniversaries of the first presidential inauguration and the first administration.

1990: The Bicentennial of the first session of the Supreme Court marks an appropriate year to focus on the Judiciary and its historical development.

1991: The final year of the bicentennial commemoration is designated for a study of the Bill of Rights, adopted in 1791, and subsequent amendments adopted throughout our history.

In its 1989 Educational Grant Program, the Commission continues to encourage project proposals which focus on the study of the Legislative and the Executive Branches; for those projects which will take effect in the 1989-90 school year, the Commission welcomes proposals which focus on the Judiciary. The topic of any proposal should, to some degree, be dictated by when the project will go into effect.

The doctrine of separation of powers should be addressed in any proposal dealing with the three branches of government. Although all three branches may be involved in the treatment of an issue, again the major focus of a proposal submitted to the 1989 Grant Program should be on the Executive Branch or the Judiciary.

One effective approach to these themes is to compare their operation in recent times with what was contemplated by those who drafted and ratified the Constitution and its amendments.

IV. Who May Apply and What May Be Funded

The Commission is authorized to accept applications from and award grants to:

- Local Educational Agencies;
- Private Elementary and Secondary Schools;
- Private Organizations;
- Individuals; and
- State and Local Public Agencies in the United States.

Colleges, Universities, and Adult Education Programs within the above categories are eligible to apply provided that the proposed project or program is designed principally for use in elementary and secondary schools. The Commission also encourages proposals from non-traditional educational organizations and those concerned with ethnic and minority interests, constituents for whom English is a second language, and other special interest organizations, such as those concerned with the learning disabled and hearing impaired. Awards will not be made to profit-making organizations. Non-profit organizations are requested to submit proof of their exempt status.

The Commission is authorized to make awards to organizations which will develop educational activities and programs, and instructional materials on the Constitution and the Bill of Rights for use in the elementary and secondary schools.

The Commission also is authorized by Congress to implement the National Bicentennial Competition on the Constitution and Bill of Rights, a continuing program developed by the Center for Civic Education. No discretionary grants, however, will be awarded for that program.

V. Exemplary Projects

The bicentennial commemoration has inspired an effort to stress civic education in the schools. The Commission urges schools, school districts, or organizations which have established highly successful educational programs on the Constitution or civic literacy to apply for limited funding to expand, replicate, or continue them. These programs could serve as models which, with a well-developed dissemination plan, will increase the availability of teaching materials and methods.

A number of these programs are currently conducted in elementary and secondary schools across the country. Leaders of these programs include educators, representatives of key community groups, bar associations, law enforcement agencies, and public service agencies. Through effective use of such existing programs, education on the Constitution and civic literacy in the nation's schools would be significantly enhanced.

In order to be eligible for funding as an exemplary project, applicants must provide written evidence of past program accomplishments, evidence of project recognition by others, and documentation of continued commitment to the project. There also must be evidence of an established plan of dissemination to other schools, school districts, and educational associations and institutions; in addition, the project must be made available to the Commission. Programs of this nature should link the understanding of the history and principles of the Constitution to civic responsibility today through individual classroom or school-wide projects. These programs may include co-curricular and extra-curricular learning activities as well as curricular studies.

The Commission anticipates funding a limited number of proposals of this nature for project support under the 1989 Educational Grant Program.

VI. In-Service Instruction

To help ensure a minimum level of basic teacher instruction on how to teach the Constitution to a maximum number of teachers, the Commission invites proposals from school districts or consortia of school districts which will develop and implement concentrated in-service training sessions for teachers from a school or school district. The Commission believes that through a cooperative effort, regional school

districts can develop a network whereby resources can be combined for greater effectiveness. Scholarly input, materials, and opportunities can be shared so that small and large districts alike will have the optimum training available. Through single-day training or through on-going supplemental training during the course of the school year, teachers can be provided with information and tools for teaching the concepts inherent in the Constitution.

Because grant support for in-service training is relatively modest, applicants who provide documented in-kind or cash match resources will be given priority consideration. Applicants seeking funding for in-service training are urged to detail their project in as short a narrative as possible.

VII. Diverse Activities

Many Formats Possible

The Commission is often asked to provide examples of fundable projects as guidance for prospective applicants. The Commission encourages a wide range of project activities employing a variety of formats using the funding emphases and themes mentioned above. We look to applicants to use their own imagination in designing a project. At the back of this package are synopses of all the projects which have received funding support from the Commission in the first two years of the Commission's Educational Grant Program. These projects might serve as points of departure for the development of a proposal for this grant cycle.

It is very important that in the proposal narrative, heavy emphasis be placed on the widespread benefits of the developed program. The program should reach more than the immediate project participants. Regardless of the specific project proposed, the result should be to develop student understanding of the history and principles of the Constitution, improve the ability of teachers to teach those topics, and provide the resources and methods to implement those skills.

VIII. What Activities May Not be Funded

Real property acquisition, construction, and research undertaken in pursuit of an academic degree may not be assisted with Commission funding. The Commission will not fund proposals which espouse partisan political or sectarian religious views or attack others, legislative proposals or proposals to intervene in on-going disputes, or proposals that would bring the Commission into the policy-making processes of any government or government agency. Grant money may not be used as honoraria for individuals who simply speak at the conferences or institutes. (This restriction does not prohibit funds from being used to support individuals whose broader participation in a conference or institute includes a speech.)

IX. Budget Information

All costs must be reasonable, necessary to accomplish program objectives, allowable in terms of the applicable federal cost principles, auditable, and incurred during the project period. Charges to the project of items such as salaries, fringe benefits, travel, and contractual services must conform to the written policies and established practices of the applicant organization.

The Commission encourages applications that include in-kind services or other sources of funding. Preference will be given to applicants who propose in-kind services in the project budgets.

Allowable Costs

Allowable project costs include:

- Salaries and wages for key personnel, administrative assistants, and secretaries;
- Fringe benefits;
- Consultant fees;
- Necessary and reasonable travel expenses (including subsistence costs when traveling) for key personnel and participants;
- Stipends for participants;
- Supplies and materials used in the project;
- Project-related services such as cost of duplication and printing, long-distance telephone, equipment rental (or purchase if less expensive), postage, and other services not included in the other categories or in the indirect cost pool and related to the project objectives.

It is important to incorporate donated, in-kind, or cash contributions into the overall budget.

X. Review Process: Introduction

Although applicants must follow the format prescribed under "PROPOSAL CONTENT" (which follows), no proposal should simply mirror the content of this announcement. It also is particularly important that proposals be free of jargon and technical language; they must be clear in both organization and expression. The discussion of the judging process in this section may help the applicant prepare a stronger proposal.

Applicants must submit a narrative of their proposal which is strictly limited to fifteen (15) double-spaced pages excluding the project budget explanation and appendix items. Proposals for in-service training should be shorter. Applicants may submit more than one proposal; each will be assessed independently.

Administrative and Merit Review of Applications. The review process that the Commission has established is highly competitive and involves several steps. Initially, each application is given an administrative review to ensure that all the necessary items are included in the package. Second, a number of external panels composed of educators, curriculum specialists, and scholars independently review and comment on proposals which are categorically related. Third, the Commission Grant Staff conducts its own substantive review of the applications.

Upon completion of the first three steps, the Grant Staff meets with the external panelists to discuss applications on their merits; on the basis of these deliberations, the Staff puts together a tentative list of fundable proposals. In preparing this list, the Staff will, on occasion, seek the advice of special consultants. All project budgets are reviewed independently by the Office of Justice Programs of the U.S. Department of Justice. A final group of recommended applications is then selected from the top rated proposals and presented to the Commission's Advisory Committee for Educational Projects for funding approval. This Advisory Committee considers the proposals and makes the final funding decisions.

The merit review of each application will focus on the relative significance and importance of proposals. Applicants should be sure to discuss: (1) The subject matter and educational needs being addressed; (2) the proposed activities in some detail; (3) the desired result or outcome of the project. As stated above, the applicant must demonstrate that the proposed project will affect a much larger audience than the immediate participants. A well thought out dissemination plan, therefore, should be included in the proposal and will be given weight in the overall review of proposals. Important, as well, is the inclusion of a self-evaluation plan; applicants are encouraged to include an explanation of a plan to evaluate the program and any materials developed during the course of the program. This will ensure that the dissemination of a program will be of use to others.

After a thorough review of the applications, Commission staff may telephone applicants in order to verify or clarify both substantive and budgetary information. The Commission also may contact others who are in a

position to know the applicant's work and plans, or who would be affected by the project.

Commissioners, Commission staff, and external reviewers will remove themselves from consideration of any application for a grant which might present the appearance of a conflict of interest. Individuals who believe they may have a potential conflict of interest arising from present or prior association with an applicant or for any other reason shall bring the situation to the attention of the Commission's Counsel for guidance.

Except in an instance in which some clarification of a grant proposal is needed to facilitate the evaluation, the Grant Staff is not allowed to discuss with applicants the status of a proposal. The staff is not at liberty to divulge the results of preliminary and tentative evaluations during any step of the review process. Given the meticulous nature of the evaluation procedures, involving several steps and several distinct groups of people, the divulging of such incomplete information may be more deceptive than helpful. Comments about proposals will only be made available to the applicants after the final award decisions have been made.

Throughout the review process, external reviewers and Commission staff will make judgments about the extent to which a project will provide elementary and secondary school teachers and students with a strengthened understanding of the Constitution and Bill of Rights.

XI. Selection Criteria

The Commission has developed the following criteria as general guidelines for judging all project proposals.

- The project is designed to strengthen teachers' capacity to understand and teach the Constitution, its antecedents, provisions, structure, and history while benefitting students in an academically sound way appropriate for the age group toward which it is directed. (15 points)
- Potential of the project to make effective and appropriate use of existing and proven curricular materials, including those made available through Commission sponsorship and the Bicentennial Educational Grant Program. (5 points)
- The project is cost-effective in that expenditures are reasonable and appropriate to the scope of the project. (5 points)
- The project must demonstrate the potential for affecting a much wider audience than the immediate project participants. (10 points)
- The project represents an improvement upon existing teaching methods. (5 points)
- Applicants have the capacity to carry out the project as evidenced by:

—Academic and administrative qualifications of the project personnel;
—Quality of project design; and
—Soundness of project management plan.

(10 points)

Unfortunately, the Commission cannot fund projects, however commendable in other ways, which do not conform to its mandate and program emphases. Please, therefore, pay close attention to the Commission's guidelines when writing a proposal.

The decision to award funding assistance is solely within the discretion of the Commission based upon its judgment of how best to fulfill the statutory purposes of the Grant Program.

Funding decisions Cannot be appealed.

The Commission may, as it has in the past, have additional funding available at the completion of the first round and will announce a second round grant competition. Applicants not receiving funding in the first round competition may re-submit their proposals for a later evaluation cycle. Such re-submitted applications, however, will receive no special consideration; they must be submitted as new applications and will be evaluated on the same footing as all other applications.

XII. Commission Assistance

The Grant Staff of the Commission is available to any organization or individual in the process of writing a project proposal.

The Commission has attempted to make the application procedure and process as simple as possible. Nevertheless, applicants may have some questions both technical and general about completing the application for federal assistance. The Grant Staff of the Commission urges you to call them for assistance. Once an application is submitted to the Commission, changes cannot be made; it is to your advantage, therefore, to make sure that the application is properly completed. The staff is permitted to give technical assistance to those who are writing grant proposals.

When you are writing a proposal, especially if the project calls for special participants such as nationally known scholars or curriculum developers, make sure that these participants have at least tentatively committed to participate in the project, contingent upon funding. Also, include any letters of commitment from cosponsoring organizations or supporting organizations. A project will be given more credence if participants or organizations have been approached and tentative commitments have been made.

XIII. Submission Procedures and Closing Dates for Receipt of Proposals

Every application for a grant from the Commission must be made on application forms prescribed by the Commission. A complete application package consists of the following items:

1. Standard Form 424 with attachments;
2. Proposal abstract (one page);
3. Proposal narrative (5–15 *double-spaced* typed pages);
4. Proposal budget and a budget explanation.

The closing date for receipt of grant applications is November 14, 1988.

The announced closing date and procedures for guaranteeing timely submission will be strictly observed. The Commission reserves the option to invite additional applications if program funding is available. If new applicants are invited, notification will be placed in the **Federal Register**.

Applicants also should note that the closing date is the same regardless of whether the application is mailed or hand delivered. A mailed application meets the requirement if it is mailed on or before the stated closing date and the required proof of mailing is provided. Proof of mailing may consist of one of the following: (a) A legibly dated U.S. Postal Service postmark; (b) a legible receipt with the date of mailing stamped by the U.S. Postal Service; (c) a dated shipping label, invoice or receipt from commercial carrier; or, (d) any other tangible proof of mailing acceptable to the Commission.

If an application is sent through the U.S. Postal Service, the Commission will not accept either of the following as proof of mailing: (1) A private metered postmark; or, (2) a mail receipt that is not dated by the U.S. Postal Service. Please use first class mail. All applicants will receive acknowledgment notices upon receipt of proposals.

Mailing Address

Commission on the Bicentennial of the United States Constitution, 808 17th Street, NW., Suite 800, Washington, DC 20006. Attn: Anne A. Fickling, Associate Director, Educational Grants Program, Telephone (202) 653–5110.

Final Proposals Sent by Mail

November 14, 1988.

Hand Delivered Final Proposals

Hand delivered final proposals will be accepted daily between the hours of 8:30 a.m. and 5:30 p.m., Eastern Standard Time except Saturdays, Sundays, and Federal Holidays. Proposals will not be accepted after 5:30 p.m. on any closing date.

Number of Copies of Final Proposal

All applicants must submit one (1) signed original application and five (5) copies. Each copy must be covered with Standard Form 424. Unsigned applications will be rejected.

Proposal Content

Proposals must be concise and clearly written. The proposal must contain the components listed below:

Title Page: Use Standard Form 424 (SF 424). Additional instructions are printed on the reverse side of SF 424.

Abstract: Attach a one-page, double-spaced abstract following SF 424. This is a key element in all applications, and should include: (1) A brief description of the project; (2) the proposed activities; and, (3) the project's intended outcome.

Budget: Applicants will prepare a complete budget including details of expenditures for salary, travel, etc. Indirect costs may be assessed at a rate previously approved by another agency of the federal government. Applicants who need to establish an indirect cost rate should contact the Commission. Be sure to include TOTAL project cost, incorporating all other funding sources.

Budget Explanation: Applicants will include a budget statement explaining (1) the basis used to estimate major costs (professional personnel, consultants, travel and indirect costs) and any other costs that may appear unusual; and (2) how the major costs relate to the proposed budget activities.

Project Narrative: *Applicants Must Provide a Narrative Statement Limited to Fifteen Double-Spaced Typed Pages* for project proposals. Include the following information:

(I) Project Description: A description of the project activities and how they relate to the selection criteria;

(II) Outcome and Plans for Wider Impact: A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the program participants (provide an estimate of number of teachers/students who will benefit); be sure to include a specific dissemination plan.

(III) Other Aspects of the Project: A description of any other especially significant aspects of the proposed project;

(IV) Personnel and Institutional Information: For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten pages of background information on their institutions or agencies which is relevant to a full understanding of the significance and feasibility of the proposed project.)

Equal Opportunity

The Commission on the Bicentennial of the United States Constitution is responsible for ensuring compliance with and enforcement of public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving federal assistance under this grant program. Any person who believes he or she has been discriminated against in any program, activity, or facility receiving a Commission grant should write immediately to Director of Educational Programs, Commission on the Bicentennial of the United States Constitution, 808 17th Street NW., Washington, DC 20006.

Authority Citation

Authority: Title V of Pub. L. 99-104; 45 CFR Part 2010.

Herbert M. Atherton,

Director, Educational Programs.

BILLING CODE 6820-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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VOL 53 ISS 170 SE 1 1988 UMI

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made. and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

[FR Doc. 88-19923 Filed 8-31-88; 8:45 am]
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federal register

Thursday
September 1, 1988

Part V

Department of Education

Law-Related Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

VOL 53 ISS 170 SE 1 1988 UMI

DEPARTMENT OF EDUCATION

[CFDA No.: 84.123]

Law-Related Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

Note To Applicants: This notice is a complete application package containing all the necessary information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: To provide persons with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which these are based.

Deadline for Transmittal of Application: October 17, 1988.

Deadline for Intergovernmental Review: December 16, 1988.

Available Funds: The Department has requested $3,200,000 for this program for fiscal year 1989. However, the actual level of funding is contingent upon final congressional action.

Estimated Range of Awards: $10,000–$500,000.

Estimated Average Size of Awards: $90,000.

Estimated Number of Awards: 35.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), Part 79 (Intergovernmental Review of Department of Education Programs and Activities) and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); and (b) The regulations for this program in 34 CFR Part 241.

Description of Program: Law-related education is designed to support the development of an educated citizenry that understands and participates effectively in our democratic system of government. It seeks to (1) give persons, as part of their general education, knowledge and skills pertaining to the law, the legal system, the legal process, and the fundamental values and principles on which they are based; and (2) help children, youth and adults become more informed and effective citizens.

Invitational Priorities

The Secretary invites applications for projects to develop, test, demonstrate, and disseminate new approaches or techniques in law-related education that can be used or adopted and eventually institutionalized by other agencies and institutions. The Secretary is particularly interested in applications that include activities designed to meet one or more of the following invitational priorities:

(a) Promote and foster an awareness of the fundamental principles of representative democracy and the Federalist concept of government in the United States.

(b) Increase knowledge and understanding of the function of law in different societies, with an emphasis on the evolution of law within the context of Western culture and civilization.

(c) Show the significance of moral and ethical choices in the making and following of laws.

(d) Increase knowledge and understanding of the differing jurisdictional authorities and functions of local, State, and Federal court and legal systems in the United States.

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), an application that meets an invitational priority does not receive from the Secretary a competitive or absolute preference over other applications.

Selection Criteria: The Secretary uses the following selection criteria in evaluating each application:

(a) *Institutionalizing law-related education.* (35 points).

The likely success of the project in helping to institutionalize law-related education programs as measured by the extent and quality of activities that contribute to—

(1) An increase in the number of educators and others who are competent in law-related education; and

(2) The development of partnerships among State educational agencies, local educational agencies, and other public and private agencies for the implementation of law-related education programs in the classroom.

(b) *Plan of operation.* (15 points)

(1) The quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the programs;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (15 points)

(1) The quality of the key personnel the applicant plans to use in the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in the fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Quality of project.* (15 points)

The likely quality of the project as measured by the following:

(1) Evidence of applicability to classroom use and age-level of students of the applicant's materials, programs, or approaches in law-related education.

(2) The applicant's and the staff's experience in and knowledge of law-related education.

(3) How the project addresses a diversity of learning approaches that are—

(i) Appropriate to the students to whom the project is directed;

(ii) Designed to address gains not only in students' knowledge, but also in their skills; and

(iii) Balanced and based on sound scholarship and do not advocate particular legal or political viewpoints.

(4) The involvement of the appropriate State educational agency or agencies in the planning and conduct of the project.

(e) *Budget and cost effectiveness.* (8 points)

(1) The extent to which the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (7 points)

(1) The quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The extent to which the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

Condition of Award: An LEA that receives a grant under this program must provide for the equitable participation of private school children in the project, in accordance with section 586 of the Education Consolidation and Improvement Act of 1981.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process recommendations and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA No. 84.123, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6440.

Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.123, Washington, DC 20202; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.123, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes.—(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope the CFDA number—84.123—of the competition under which the application is being submitted.

For Further Information Contact: Janice Williams-Madison, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2065, FOB #6, Washington, DC 20202. Telephone: (202) 732–4358.

Application Instructions and Forms: The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance SF–424 (Rev. 4/88) and instructions.

Budget Information—Non-Construction Programs (SF–424A) and instructions.

Part II: Assurances—Non-Construction Programs (SF–424B). Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Part III: Application Narrative.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application, the assurances, and the certification form must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

Program Authority: 20 U.S.C. 3851.

Dated: August 26, 1988.

William D. Hansen,

Acting Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State — H Independent School Dist.
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.123

TITLE: Law-Related Education Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 REV 4-88
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. **Federal**	$	$	$	$	$
14. **NonFederal**					
15. **TOTAL** (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. **Direct Charges:**	22. **Indirect Charges:**
23. **Remarks**	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j.. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse. (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

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Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone Number).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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BILLING CODE 4000-01-C

Instructions for Part III—Application Narrative

Prepare the program narrative statement in accordance with the following instructions for all new grant programs. The program narrative should not exceed twenty (20) double-spaced typed letter size pages.

1. Objectives and Need for This Assistance

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood health center provide a description of who will occupy the facility, how the facility will be used, and how the facility will benefit the general public.

3. Approach

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity, provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to other. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

b. Provide for each grant program, function or activity, quantitative monthly or quarterly projections of the accomplishments to be achieved in such terms as the number of jobs created; the number of people served; and the number of patients treated. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item 2 are being achieved.

d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. Geographic Location

Give a precise location of the project or areas to be served by the proposed project. Maps or other graphic aids may be attached.

5. If Applicable, Provide the Following Information

a. For research or demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, phone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project.

b. Discuss accomplishments to date and list in chronological order a schedule or accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location approach, or time delays, explain and justify. For other requests for changes or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded, or if individual budget items have changed more than the prescribed limits contained in Attachment K to Office of Management and Budget Circular No. A–102, explain and justify the change and its effect on the project.

c. For supplemental assistance requests, explain the reason for the request and justify the need for additional funding.

6. Applicants should refer to the Selection Criteria listed in this Notice Inviting Applications for New Awards.

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Thursday
September 1, 1988

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Visayan Deer, Mead's Milkweed and Boulder Darter; Final Rules

VOL 53 ISS 170 SE 1 1988 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Visayan Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Visayan deer, a mammal found only in the central archipelago of the Philippines. It survives in a very restricted range, and is jeopardized by human habitat disruption and direct killing. This rule implements the protection of the Endangered Species Act of 1973, as amended, for the Visayan deer.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority (Mail Stop: Room 527, Matomic Building), U.S. Fish and Wildlife Service, Washington, DC 20240 (202–653–5948 or FTS 653–5948).

SUPPLEMENTARY INFORMATION:

Background

The Visayan deer (*Cervus alfredi*) was described in 1870, and for many years thereafter was considered a separate species (Taylor 1934). In recent decades, however, it was generally treated as a subspecies of the more widespread Philippine sambar (*C. mariannus*), or even of the common sambar (*C. unicolor*) found throughout Southeast Asia (Honacki, Kinman, and Koeppl 1982; Nowak and Paradiso 1983). Then, Grubb and Groves (1983), in a detailed study of the taxonomy of Philippine deer, again recognized *C. alfredi* as a full species. Moreover, they considered it the most, or perhaps second most, distinct kind of sambar deer.

According to Taylor (1934), *C. alfredi* is a small deer, standing about 25 inches (640 millimeters) at the shoulder. The ears, tail, and antlers (of the male) are relatively short. The hair is very fine and remarkably dense and soft. Coloration of the upper parts is generally very dark brown, and the underparts are buffy. The shoulders, back, and sides are marked throughout the year by yellowish white spots. Grubb and Groves (1983) emphasized that the presence of a spotted adult coat distinguishes *C. alfredi* from all other sambar deer. *C. alfredi* also differs from the others in its fine and dense pelage, in having a relatively narrow skull, and in various other cranial characters.

As pointed out by Grubb and Groves (1983), *C. alfredi* is one of the rarest deer, with only 11 museum specimens being reliably recorded. Its range is the most restricted of all extant species of the genus *Cervus*. It is known only from certain of the Visayan Islands in the central archipelago of the Philippines, and not from the larger islands of Luzon or Mindanao. For many years it seems to have been ignored by the world's conservation community, perhaps because it was thought to be only a subspecies of the Philippine sambar, but also because so little was known of its status. There has been a recent upsurge of interest by the Government of the Philippines and conservation organizations. A field survey by the International Union for Conservation of Nature and Natural Resources (Cox 1985) has clarified the precarious situation of this rare deer and shown that it warrants classification as endangered. In addition, at its June 1986 meeting, the American Society of Mammalogists passed a resolution recognizing that the Visayan deer is in imminent danger of extinction, and encouraging conservation efforts.

In the **Federal Register** of August 19, 1987 (52 FR 31051–31053), the Service published a proposed rule to determine endangered status for the Visayan deer. In that proposal, and associated notifications, all interested parties were requested to submit comments and information that might contribute to the development of a final rule. No responses were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service as determined that the Visayan deer should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Visayan deer (*Cervus alfredi*) are as follows (information from Cox 1985, unless otherwise noted):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Visayan deer originally inhabited eight islands in the central Philippine archipelago: Bohol, Cebu, Guimaras, Leyte, Negros, Panay, Samar, and Siquijor. It was still fairly widespread in the early 20th century, but a precipitous decline began after World War II, with the advent of intensive upland logging. Such activity eliminated much of the dense forest habitat on which the deer depends, and also made its range more accessible to settlers and hunters. The increasing human population in the region comprised both indigenous peoples and migrants from coastal lowlands and villages. Each group practiced slash and burn agriculture, which involves clearing an area of forest, planting and harvesting crops, and then moving on to another area. This practice has accounted for nearly as much forest destruction as has commercial logging. In an ironic twist, the latter activity was greatly curtailed in the Philippines in 1983; but the resulting unemployment forced many people to turn to slash and burn agriculture and to subsistence hunting.

Dr. Lawrence R. Heaney (U.S. National Museum of Natural History, pers. comm., 1987), an authority on the mammals of the Philippines, reports that in the area occupied by the Visayan deer "the habitat has been destroyed at a rate that is truly frightening. On Negros Island, for example, were I and my students have done extensive field work since 1981, we have documented a reduction in primary forest from 60 percent of the island's area at the end of World War II to 6 percent currently. There is no island that is exempt from this."

Habitat loss has been so devastating that the Visayan deer is thought to have disappeared entirely from the islands of Bohol, Cebu, Guimaras, and Siquijor. It still survives on the other four islands of its original range, but only in relatively small and isolated patches of remnant habitat. Two extremely localized populations are known on Leyte, one in the north and one in the south of the island. There are also four small groups in south-central Samar and two in southern Negros. On Panay, the Visayan deer is still found in six parts of the western mountain chain. The largest group is in the Mount Madja-as/Mount Baloy area, but if the current rate of habitat loss and hunting pressure continues, even this population would not be expected to survive to the end of the century.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the Visayan deer is

protected by Philippine law, hunting pressure is intense, especially during the dry season when the forests are more accessible. The deer is sought as a source of food by both indigenous peoples of the region and increasing numbers of immigrants from crowded towns and coastal areas. It is not only shot, but is trapped, snared, and run down with dogs.

C. *Disease or predation.* Not know to be factors at the present time.

D. *The inadequacy of existing regulatory mechanisms.* The Visayan deer is legally protected by the Philippine Government, and its habitat also falls to some extent within parks and reserves. Such protective mechanisms, however, are having only a slight effect. Although the present Government is highly concerned about the status of the deer and its habitat, enforcement personnel and funding for conservation efforts are very limited. Rangers can do little to cover all the remote areas where illegal hunting and forest destruction are taking place (see also "E" below). The Government has attempted to establish a captive breeding facility, but no success has yet been achieved and funds are badly needed to improve the operation.

E. *Other natural or manmade factors affecting its continued existence.* The Visayan deer occurs to a large extent in areas that are sometimes under the influence of revolutionary forces and where military operations are carried out. Such activity places further restrictions on the ability of the Government to enforce protective laws and undertake conservation measures.

The decision to determine endangered status for the Visayan deer was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. A decision to take no action would exclude this mammal from benefits provided by the Endangered Species Act. A decision to determine only threatened status would not adequately reflect the evident rarity and multiplicity of problems confronting the species. Critical habitat is not being determined, as such designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. With respect to the Visayan deer, no such Federal actions are now known.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental taken in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. With respect to the Visayan deer, no permits for import, export, or undue economic hardship are now anticipated.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

Cox, C.R. 1985. A field survey of the distribution and conservation status of the wild pig (*Sus barbatus cebifrons*) and Prince Alfred's spotted rusa (*Cervus alfredi*) in the Visayan Islands, Republic of the Philippines. International Union for Conservation of Nature, 27 pp.

Grubb, P., and C.P. Groves. 1983. Notes on the taxonomy of the deer (Mammalia, Cervidae) of the Philippines. Zool. Anz. Jena 210:119–144.

Honacki, J.J., K.E. Kinman, and J.W. Koeppl. 1982. Mammal species of the world. Allen Press, Inc., and Assoc. Systematic Collections, Lawrence, Kansas, ix +694 pp.

Nowak, R.M., and J.L. Paradiso. 1983. Walker's mammals of the world. Johns Hopkins Univ. Press, Baltimore, 2 vols.

Taylor, E.H. 1934. Philippine land mammals. Philippine Bur. Sci. Monogr. no. 30, 548 pp.

Author

The primary author of this proposed rule is Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (202–653–5948 or FTS 653–5948).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Deer, Visayan	*Cervus alfredi*	Philippines	Entire	E	320	NA	NA

Dated: August 18, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19941 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Asclepias Meadii (Mead's Milkweed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Asclepias meadii* (Mead's milkweed), a prairie perennial, to be a threatened species under the authority of the Endangered Species Act (Act) of 1973, as amended. Approximately 81 populations are currently known; 59 in Kansas, 3 in Illinois, 2 in Iowa, and 17 in Missouri. The plant is believed extirpated from Indiana and Wisconsin. It is threatened by destruction and modification of the "tall grass" prairie due to agricultural expansion, urban growth, and agricultural practices such as mowing and grazing, which are detrimental to the plant's reproductive cycle. This action will implement Federal protection provided by the Act for *Asclepias meadii*.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, MN 55111.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see ADDRESSES section) at 612/725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Asclepias meadii (Mead's milkweed) was first collected by Dr. Samuel Barnum Mead in Hancock County, Illinois, in 1843, and subsequently described by John Torrey in an 1856 addendum to the second edition of *Gray's Manual of Botany* (Betz 1967).

Asclepias meadii is a perennial that usually occurs in virgin prairie as a solitary plant or with a few closely associated individuals (Kurz and Bowles 1981). Ronald McGregor (University of Kansas, pers. comm. 1985) has found *Asclepias meadii* only in tall grass prairies. Morgan (1980) reports that Missouri populations are found in unplowed bluestem prairie in the unglaciated region of the State where the soils are deep silt loam. Betz and Hohn (1978) report that this species occurs on virgin mesic silt loam prairies and occasionally on limestone glade prairies in Missouri and southern Illinois. Betz and Hohn (1978), and Kurz and Bowles (1981) report that very few individual plants are found at any given population, with most populations containing less than a dozen plants. Ralph Brooks (Kansas Biological Survey, pers. comm. 1986) reports that populations in Kansas seem to average about 20 plants each. Craig Freeman (Kansas Natural Heritage Program, pers. comm. 1988) recently reported that approximately 20 percent of the known Kansas populations contained over 100 plants, and were of high quality. Associated species found with *Asclepias meadii* are *Sorghastrum nutans, Andropogon gerardii, Petalostemum candidum, Gentiana puberula, Ruellia humilis,* and *Silphium laciniatum* (Betz and Hohn 1978). *Platanthera praeclara* (Western prairie fringed orchid) recently segregated as an allopatric species from *Platanthera leucophaea* (Eastern prairie fringed orchid) and considered as a candidate for Federal listing is also associated with *Asclepias meadii* at several locations in Kansas (Sheviak and Bowles, pers. comm. 1986).

Asclepias meadii usually commences its seasonal growth in mid to late April. It has a solitary, slender, unbranched stalk, 8–16 inches (20–40 centimeters) high, without hairs, but with a whitish, waxy covering. The leaves are opposite, broadly ovate, 2–3 inches (5–7.5 centimeters) long, 3/8–2 inches (1–5 centimeters) broad, without hairs and also with a whitish, waxy covering. A solitary umbel at the top of a long stalk has 6–15 greenish ivory/cream colored flowers which appear in late May and early June. Young green fruit pods appear by late June and reach their maximum length of 1.5–3 inches (4–8 centimeters) by late August or early September. As these pods mature they darken and the hairy seeds borne within are mature by mid October (Morgan 1980, Kurz and Bowles 1981).

Historically *Asclepias meadii* ranged throughout much of the "tall grass" prairie. It is now restricted to 81 known sites in 23 counties within Illinois, Iowa, Kansas, and Missouri. It is thought to be extirpated in Indiana and Wisconsin (Bacone et al 1981, Alverson 1981). In Illinois the plant's former range of seven counties has been reduced to two; Ford and Saline Counties, where two of the three populations are found on public land administered by the U.S. Forest Service. The other population occurs within a railroad right-of-way (Kurz and Bowles 1981). The plant's range in Missouri, once covering 11 counties, as reported by Betz and Hohn (1978), has now been reduced to seven counties: Barton, Benton, Dade, Pettis, Polk, St. Clair, and Vernon (S.Morgan Missouri Department of Conservation, pers. comm. 1986). Nine of the 17 extant Missouri populations are in public ownership. Watson (1983) reported that *Asclepias meadii* was historically known from five counties in Iowa, but all had been extirpated. A recent report by M. Leoschke (Iowa Department of Natural Resources, pers. comm. 1986) reveals one population with one plant in Warren County, Iowa. Larry Wilson (Iowa Department of Natural Resources, pers. comm. 1987) reports another population with six plants in Adair County. All of the Iowa plants are on private land and unprotected from habitat alteration. McGregor (pers. comm. 1985) reported 11 populations of *Asclepias meadii* in 9 Kansas counties (Anderson, Bourbon, Coffey, Douglas, Franklin, Jefferson, Johnson, Leavenworth, and Miami). Brooks (pers. comm. 1986) reports that field survey work conducted in these nine counties, as well as Allen and Linn counties during the summer of 1986, resulted in the discovery of 29 additional populations. More recent survey results show 19 new populations, with one of these in Neosho county (C. Freeman, pers. comm. 1988). Only the population

in Jefferson county is protected. A population in Douglas county and another in Leavenworth county have been destroyed.

Federal Government actions on Mead's milkweed began with section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A) and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Asclepias meadii* (Mead's milkweed) was included in the July 1, 1975, notice of review and the June 16, 1976 proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909).

On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments to the Act. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register**. *Asclepias meadii* was included in that notice as a category 1 species. Category 1 species are those for which data in the Service's possession indicate that proposing to list is warranted. On September 27, 1985 (50 FR 39525) the Service again published a revised notice for native plants in the **Federal Register**; *Asclepias meadii* was included in that notice as a category 2 species. Category 2 species are those for which the Service believes additional data must be obtained before a proposal to list is warranted. Status information received since the September 27, 1985 (50 FR 39525) notice indicated that proposing to list *Asclepias meadii* as a threatened species was warranted. On October 21, 1987, the Service published in the **Federal Register** (52 FR 39255) a proposal to list *Asclepias meadii* as a threatened species. The Service now determines *Asclepias meadii* to be a threatened species with the publication of this final rule.

Summary of Comments and Recommendations

In the October 21, 1987, proposed rule (52 FR 39255) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: *The Daily Register,* Harrisburg, Illinois; *Paxton Record,* Paxton, Illinois; *Record Herald and Indianola Tribune,* Indianola, Iowa; *Coffee County Today,* Burlington, Kansas; *The Lawrence Daily Journal-World,* Lawrence, Kansas; *The Leavenworth Times,* Leavenworth, Kansas; *Ottawa Herald,* Ottawa, Kansas; *Benton County Enterprise,* Warsaw, Missouri; *Bolivar Herald-Free Press,* Bolivar, Missouri; *The Daily Mail,* Nevada, Missouri; *Greenfield Vedette,* Greenfield, Missouri; *Lamar Democrat,* Lamar, Missouri; *Springfield News-Leader,* Springfield, Missouri, and *St. Clair County Courier,* Osceola, Missouri. Eight comments were received and are discussed below.

Comments supporting the listing were received from the U.S. Forest Service, The Nature Conservancy, Iowa Department of Natural Resources, Missouri Department of Conservation, Indiana Department of Natural Resources, and two private citizens. The Nebraska Statewide Arboretum did not take a position on the listing, but did offer findings from germination studies. The Missouri Department of Conservation requested that critical habitat not be designated because publishing a critical habitat map may result in further population decline due to collecting. The U.S. Forest Service reported that a recovery effort for Mead's milkweed has begun on the Shawnee National Forest in Saline County, Illinois, where burning and vegetation control measures are being initiated. The Iowa Department of Natural Resources provided information about a recently discovered population of Mead's milkweed in Adair County.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Asclepias meadii* Torr. (Mead's milkweed) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Asclepias meadii* is threatened by the elimination of its "tall grass" prairie habitat due to urban development, agricultural expansion and detrimental agricultural practices. McGregor (pers. comm. 1985) reports that over the last 40 years he has observed the slow elimination of prairie hay meadows through plowing, conversion to grazing, and development. Betz and Hohn (1978) also note that prairie hay meadows are being plowed and put into grain crops; even those hay meadows remaining, are mowed once or twice each year before *Asclepias meadii* plants are able to set seeds. McGregor (pers. comm. 1985) also reports that yearly mowing of these tall grass prairies where *Asclepias meadii* is found severely restricts the plants reproduction and any chance for increased distribution. Kurz and Bowles (1981) report that *Asclepias meadii* populations occurring within railroad rights-of-way in Ford County, Illinois, are threatened by erosion, lack of fire, use of herbicides and plowing, while the populations in Saline County are threatened by woody encroachment and trampling by hikers. McGregor (pers. comm. 1985) reports that one of the best Kansas populations, the one in which Brooks counted 800–1,000 plants in 1985, is in an area certain to be developed for housing in the next few years. Another large population of Mead's milkweed may be threatened if a proposed perimeter highway around Lawrence, Kansas, is constructed. Larry Gale (Missouri Department of Natural Resources, pers. comm. 1987) believes the principal threat to the species in Missouri, has been the loss of suitable habitat, combined with continual hay mowing and intensive grazing.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites.

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C. *Disease or predation.* McGregor (pers. comm. 1985) reports that it is not unusual to find aerial portions of *Asclepias meadii* plants suddenly wilting and dying because of infestation of a beetle larvae (Curculionidae) in the rootstalk. McGregor (pers. comm. 1985) also notes that other insects puncture the peduncle, killing the inflorescence just at the blooming period. Betz and Hohn (1978) report that the larvae of *Tetraopes femoratus* are destructive to the small root system of *Asclepias meadii*, but not to the larger milkweeds such as *Asclepias syriaca* and *Asclepias sullivantii* which seems to tolerate more infestation than *Asclepias meadii*.

D. *The inadequacy of existing regulatory mechanisms. Asclepias meadii* is officially listed as endangered by the States of Illinois, Iowa, and Missouri. Kansas does not have specific legislation or rules to protect endangered or threatened plants. Illinois law protects those endangered and threatened plants found on State property and prohibits taking State endangered plants without written permission of the owner; it also prohibits sale of State endangered plants. State permits are required for taking or possessing Federal endangered plants. Iowa regulations prohibit removal, possession, and sale of any plant species on the Federal or State lists. The Missouri regulations prohibit exportation, transportation, or sale of plants on the State or Federal lists; collecting, digging, or picking any rare or endangered plant without permission of the property owner is prohibited. Although *Asclepias meadii* is offered various forms of protection under these State laws, monitoring and enforcement are difficult due to limited personnel. While approximately 15 percent of the known populations of *Asclepias meadii* are located on public lands and receive some form of protection, the majority of the known populations are, as yet, unprotected. The Conservation Reserve Program provision of the Food Security Act of 1985 (Pub. L. 99–198) provides an opportunity for landowners to take highly erodible land out of annual crop production and receive annual rental payments for applying soil conservation measures. However, virgin prairies where *Asclepias meadii* is found, do not qualify for this type of conservation treatment, and hence, afforded protection from annual mowing is limited. We are not aware of any populations of *Asclepias meadii* in the Conservation Reserve Program. The "Sodbuster" provision of the Food Security Act of 1985 is aimed at reducing the conversion of highly erodible lands to agriculture production. Some virgin prairies where *Asclepias meadii* occurs could be protected under this regulation. The Endangered Species Act offers possibilities for additional protection of this taxon through Section 6 by cooperation between the States and the Service, and through Section 7 (interagency cooperation) requirements. The Endangered Species Act would afford additional protection to *Asclepias meadii*.

E. *Other natural or manmade factors affecting its continued existence.* Betz and Hohn (1978) report that the low number of individual plants at any one site do not attract potential pollinators, possibly the cause for low reproduction success. Betz and Hohn (1978) also report that studies at the Morton Arboretum indicate five to eight years are necessary for plants to mature from seed. McGregor comments that Kansas populations of *Asclepias meadii* tend to have larger numbers of plants in some years and fewer in others. Betz and Hohn (1978) have also observed that individual plants produce flowers for two or three years and then rest, and in some cases completely disappear for a few years. Research is needed to better understand this fluctuation phenomenon in order to maintain and promote the species. James Locklear (Nebraska Statewide Arboretum, pers. comm. 1987) has found the germination and survival rates of *Asclepias meadii* to be poor, ranging from 23–33 percent. Locklear believes poor germination success may substantiate the theory that the plant is self-sterile. L.R. Gale (pers. comm. 1987) also reports low germination and seed production in Missouri. Gale also mentions that the plant's inability to produce high levels of latex to repulse herbivores, may be a detriment to survival.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Asclepias meadii* as threatened. Eighty-one populations of this species are known to exist. Eighty-five percent of the populations are on privately owned property and receive no protection or management designed to enhance the species' continued existence. Threatened status is appropriate because without protection and further research the vulnerability of this species will continue. For reasons detailed below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Asclepias meadii* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition, if necessary, and cooperation with the States. It also requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following the listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of such a species or result in destruction or adverse modification of critical habitat, if any is being designated. Section 7(a)(2) of the Act, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible

Federal agency must enter into formal consultation with the Service.

The Food Security Act of 1985 (Pub. L. 99–198) also provides, at sections 1314 and 1318, opportunities for the Service and State conservation agencies to acquire restrictive easements beneficial to endangered and threatened species on lands acquired by the Farmers Home Administration from farm foreclosures. Upon notification by the Farmers Home Administration of pending foreclosures, the Service is continually reviewing possible areas where restrictive easements would benefit endangered and threatened species.

The U.S. Forest Service has jurisdiction over the *Asclepias meadii* population in Saline County Illinois. Federal activities that could affect the species and its habitat in the future could include forest management practices and recreational and interpretive development. The Forest Service has conferred with the Service regarding a proposal to initiate management actions which will include prescribed burns, and cutting and removal of woody species to improve the Mead's milkweed habitat. The Service believes these are the types of management actions necessary to enhance the survival of the species and has advised the Forest Service that the Service has no objections to this activity. It has been the experience of the Service that the majority of section 7 consultations are resolved so the species is protected and the project can continue.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commerce in *Asclepias meadii* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27239, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Alverson, W.S. 1981. Status Report on *Asclepias meadii*. Wisconsin Department of Natural Resources. Unpubl. ms. 4 pp.

Bacone, J.A., Crovello, T.J., and Hauser, L.A. 1981. Status Report on *Asclepias meadii*. Indiana Department of Conservation. Unpubl. ms. 10 pp.

Betz, R.F. 1967. The Ecology of *Asclepias*, especially *Asclepias meadii* Torrey, and a study of the factors contributing to their possible extinction as a wild plant. A Research proposal to the National Science Foundation, Washington, DC.

Betz, R.F. and Hohn, J.E. 1978. Status Report for *Asclepias meadii* Torr. prepared for the U.S. Fish and Wildlife Service. 9 pp.

Kurz, D.R. and Bowles, M.L. 1981. Report on the status of Illinois vascular plants potentially endangered or threatened in the United States. Natural Land Institute, Rockford, Illinois. Unpubl. ms. 10 pp.

Morgan, S.W. 1980. Status Report on *Asclepias meadii*. Missouri Department of Conservation. Unpubl. ms. 15 pp.

Watson, W.C. 1983. Status Report of *Asclepias meadii*. Iowa Conservation Commission. Unpubl. ms. 11 pp.

Author

The primary author of this rule is William F. Harrison (see **ADDRESSES** section) (612/725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Accordingly Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asclepiadaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asclepiadaceae—Milkweed family						
•	•	•	•	•	•	•
Asclepias meadii	Mead's milkweed	U.S.A. (IL, IN, IA, KS, MO, WI)	T	321	NA	NA
•	•	•	•	•	•	•

Dated: August 11, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19942 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for the Boulder Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service designates a small fish, the boulder darter (*Etheostoma* (*Nothonotus*) sp.), formerly referred to by the Service as the Elk River darter, as an endangered species under the Endangered Species Act (Act) of 1973, as amended. This species is presently known from only about 25 miles (46 kilometers) of the lower Elk River system in Giles County, Tennessee, and Limestone County, Alabama. The species' decline has resulted primarily from habitat alteration associated with water impoundment. Due to the species' limited distribution, any factor that adversely modifies habitat or water quality in the short river reach it now inhabits could further threaten its survival. Determination of endangered species status implements the protection of the Act of the boulder darter.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: A complete file of this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The boulder darter (*Etheostoma* sp.) is an undescribed species in the subgenus *Nothonotus* (a manuscript describing it is in preparation, Dr. David Etnier, University of Tennessee, personal communications, 1988). It attains a maximum length of about 3 inches (7.6 centimeters) (Dr. David Etnier, personal communications, 1987). The body of males is olive to gray, and they lack the red spots that are characteristic of closely related species. The female's color is similar but lighter. Both sexes have a gray to black bar located below the eye and a similar colored spot behind the eye. Because of the species' rarity (less than 50 specimens have ever been collected), its biology is unknown. This darter has historically been collected from the Elk River as far upstream as Fayetteville, Lincoln County, Tennessee (at approximately river mile 90), and downstream through Giles County, Tennessee, into Limestone County, Alabama (at approximately river mile 30); from two Elk River tributaries, Indian Creek and Richland Creek, Giles County, Tennessee; and from Shoal Creek, Lauderdale County, Alabama (O'Bara and Etnier 1987). Based on knowledge of the species' preferred habitat (fast-moving water runs over large boulder and slab rock substrate), it is believed the species once also inhabited the southern bend of the Tennessee River, at least in areas near its confluence with the Elk River and Shoal Creek (Dr. David Etnier, personal communications, 1987).

Based on a recently completed status survey of the species' historic range and potential distribution in other Tennessee River tributaries in Tennessee and Alabama (O'Bara and Etnier 1987), the species is presently restricted to about 23 miles (43 kilometers) of the Elk River in Giles County, Tennessee (20 miles or 37 kilometers), and Limestone County, Alabama (3 miles or 6 kilometers), and just over 2 miles (3 kilometers) of Richland Creek and Indian Creek (Giles County, Tennessee). The species' extirpation from the upper Elk River, Lincoln County, Tennessee, was likely due to the impacts of cold water releases from Tims Ford Reservoir. The loss of the Shoal Creek population and any Tennessee River populations resulted from water impoundments behind Wheeler and Wilson Dams. The Shoal Creek population loss also may be partially attributed to past pollution from a large manufacturing plant.

Because of the species' present limited distribution (about 25 river miles or 46 kilometers) and the limited availability of boulder darter habitat (fast-moving water with boulder substrate) in the Elk River system, any factor that modifies or degrades the habitat or water quality in these short river reaches could further threaten the species' survival.

On September 18, 1985, the Service announced in the **Federal Register** (50 FR 37958) that the boulder darter (referred to as the Elk River darter in that notice), along with 136 other fish species, was being considered as a candidate for addition to the List of Endangered and Threatened Wildlife. On February 10, 1987, the Service notified Federal, State, and local governmental agencies by mail (State fish and wildlife agencies and affected county governments were also contacted by phone) that a status review of the boulder darter was being conducted and that the species could be proposed for listing. Four responses to the February 10, 1987, notification were received. Support for the proposal was received from the Tennessee Wildlife Resources Agency and the Tennessee Department of Conservation. The Tennessee State Planning Office stated that "State and local government evaluation . . . indicated no conflicts with existing activities." The Department of Housing and Urban Development indicated that it had no information on the species. The boulder darter was proposed for listing as endangered on November 17, 1987 (52 FR 43921).

Summary of Comments and Recommendations

In the November 17, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted and requested to comment. A newspaper notice was published in the Pulaski (Tennessee) Citizen on December 15, 1987. One written comment was received. The U.S. Army Corps of Engineers (Nashville

District) said that they had no programs that would be impacted beyond their normal regulatory programs. They also stated that they felt there were no imminent threats to the species at this time, but they added that the area was within the cotton belt and that the current resurgence in demand for cotton may lead to an increased risk of catastrophic fish kills and chronic pesticide problems.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the boulder darter should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the boulder darter (*Etheostoma* sp.) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The boulder darter is presently known to occur in disjunct segments on about 23 miles (43 kilometers) of the Elk River (from river mile 29.7 to 52.5) in Giles County, Tennessee, and Limestone County, Alabama, and about 2 miles (3 kilometers) total in two Elk River tributaries (Richland Creek and Indian Creek) in Giles County, Tennessee (O'Bara and Etnier 1987). The present distribution represents a substantial reduction over its historically known range, and is only a fraction of the fish's likely range prior to the construction of impoundments on the Elk and Tennessee Rivers.

Historically the fish has been collected in the Elk River upstream as far as river mile 90 in Lincoln County, Tennessee. Recent surveys of the Elk River in Lincoln County have failed to recollect the fish in the county even though suitable habitat is still present (O'Bara and Etnier 1987). It is believed this population segment was extirpated and has not been repopulated because of the cold water releases from Tims Ford Reservoir. Historical records of this species also exist for Shoal Creek, Lauderdale County, Alabama. Sampling in this creek during the summer of 1983 and the fall of 1986 failed to verify presence of the fish. It is believed the Shoal Creek population was lost due to flooding of lower Shoal Creek by Wilson Dam and due to pollution from an upstream industrial complex. Although this discharge has been substantially improved, the boulder darter apparently has not recolonized the area.

Although data are lacking, it is believed, based on the historical availability of suitable habitat, that the boulder darter once inhabited the Tennessee River and the lower portion of some Tennessee River tributaries in the southern bend area of the Tennessee River from the Paint Rock River downstream to at least Shoal Creek (Dr. David Etnier, personal communications, 1987). These main Tennessee River and tributary populations would have been eliminated when the Tennessee River impoundments (Wheeler and Wilson Dams) inundated the preferred habitat of the fish.

No water impoundments are planned for the Elk River in the area presently occupied by the species. However, other factors, such as increased levels of siltation from major land use changes, improper pesticide use, toxic chemical spills, and/or uncontrolled mining of phosphate in the watershed, could further threaten the species in the short river reaches and limited habitat it now occupies.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The specific areas inhabited by the species are presently unknown to the general public. As a result, overutilization of the species has not been a problem. However, there is the potential for vandalism to become a problem because of publicity associated with listing.

C. *Disease or predation.* Although the boulder darter is undoubtedly consumed by predators, there is no evidence that predation is a threat to the species.

D. *The inadequacy of existing regulatory mechanisms.* The States of Tennessee and Alabama prohibit taking wildlife and fish for scientific purposes without a State collecting permit. However, these State laws do not protect the species' habitat from the potential impacts of Federal actions. Federal listing will provide the species additional protection under the Endangered Species Act by requiring a Federal permit to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The boulder darter requires deep (greater than 2 feet or 0.6 meters), fast-moving water over boulder habitat. Because the Elk River's substrate is primarily sand and gravel and many river reaches consist of long, slow pools, the boulder darter's required habitat is extremely limited. The scarcity of this fish's preferred habitat further restricts the species' range and increases its vulnerability to habitat alteration at these sites.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to list the boulder darter (*Etheostoma* sp.) as an endangered species. The species presently ranges over only about 25 river miles (46 kilometers), and within this river reach, it is restricted to very specific habitat areas that are scarce. This restricted range and habitat limitation makes the species vulnerable to extinction. Therefore, the listing of this species as endangered, as opposed to threatened, is most appropriate. See the following section for reasons why critical habitat is not being designated.

Critical Habitat

Section 7(a)(2) of the Endangered Species Act, as amended, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. Section 4(a)(3) requires that critical habitat be designated, to the maximum extent prudent and determinable, concurrent with the determination that a species is endangered or threatened. The Service finds that a determination of critical habitat for the boulder darter is not prudent at this time. Such a determination would result in no known benefit to the species. As part of the development of and subsequent to the publication of the proposed rule, Federal agencies were notified of the boulder darter's distribution and requested to provide data on proposed Federal projects that might adversely affect the species. No projects were identified. Should any potential adverse effects arise from future projects, the involved Federal agencies will already have the species' distributional data needed to determine if the species may be impacted by their action. The listing of a species and the publicity that arises creates the potential for vandalism. Through the designation of critical habitat and the requirement for maps and specific habitat descriptions, the threat to this species from vandalism would increase. Protection of this

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species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard of the Act. Therefore, it would not be prudent to determine critical habitat for the boulder darter at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has notified Federal agencies that may have programs that affect the species. As a result of this notification, no Federal agencies identified any current programs that may impact the boulder darter. However, Federal activities that could occur in the future and impact the species include, but are not limited to, the carrying out of or the issuance of permits for hydroelectric facilities construction, reservoir construction, stream alteration, wastewater facility development, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations are resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell or offer it for sale in interstate or foreign commerce. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

O'Bara, C.J., and D.A. Etnier. 1987. Status survey of the boulder darter. Final report submitted to U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, NC. May 1987. 13 pp.

Author

The primary author of this final rule is Richard G. Biggins, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Treatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Darter, boulder (=Elk River)	*Etheostoma (Nothonotus)* sp.	U.S.A. (TN,AL)	Entire	E	322	NA	NA

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19943 Filed 8-31-88; 8:45 am]

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federal register

Thursday
September 1, 1988

Part VII

Federal Reserve System

Barnett Banks, Inc.; Proposed Acquisition of Savings and Loan Association; Notice

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FEDERAL RESERVE SYSTEM

Barnett Banks, Inc.; Proposed Acquisition of Savings and Loan Association

Barnett Banks, Inc., Jacksonville, Florida, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire all of the voting shares of First Federal Savings Bank Loan Association, Summerville, Georgia.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

In view of the request by the Federal Home Loan Bank Board that the Board act promptly on this application in light of the financial condition of Peoples, the comment period has been shortened to fifteen days.

Accordingly, comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2223, Eccles Building, 20th Street and Constitution Avenue, NW., Washington, DC 20551, not later than 5:00 p.m. on Thursday, September 15, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20087 Filed 8-31-88; 11:36 am]

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Part VIII

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1421

Grains and Similarly Handled Commodities; Final Rule

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Grains and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, that portion of a proposed rule published on August 10, 1988 (53 FR 30068) which affects 7 CFR Part 1421. These amendments set forth which Commodity Credit Corporation (CCC) price support loans may, on maturity, be extended by producers. These amendments are made in order to provide commodity market stability and to provide affected producers with notice of CCC's determinations with respect to the extension of such loans.

EFFECTIVE DATE: This final rule shall become effective August 30, 1988.

ADDRESS: Inquiries concerning this final rule should be directed to Thomas VonGarlem, Assistant Deputy Administrator, State and County Operations, USDA–ASCS, Room 3096, South Building, P.O. Box 2415, Washington, DC 20013.

The Final Regulatory Impact Analysis describing the options considered in developing this final rule is available on request from Thomas VonGarlem at this address.

FOR FURTHER INFORMATION CONTACT: Thomas VonGarlem (202) 447–6761.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been designated as "major".

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchasers, Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that this action will not increase the federal paperwork burden for individual, small businessmen and other persons. The Commodity Credit Corporation (CCC) is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule. Therefore, the Regulatory Flexibility Act is not applicable.

Milton Hertz, Executive Vice President, Commodity Credit Corporation hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities because the action taken in this rule will reduce uncertainty in the operation of the program and will have the effect of stabilizing commodity supply and demand situations.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

I. Summary of Final Regulatory Impact Analysis

Need for Action

The purposes and objectives of the price support loan programs are to comply with statutory requirements, provide price and income protection to producers, provide stability to the commodity markets and provide affected producers with notice of CCC's determinations.

CCC makes available price support loans to eligible producers who comply with applicable program requirements. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act) and the CCC Charter Act, as amended (the CCC Charter Act). The terms and conditions of the loans are set forth in the loan agreement in accordance with 7 CFR Part 1421; these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made unless extended by CCC.

In accordance with section 110 of the 1949 Act, CCC may make available Farmer-Owned Reserve (FOR) extended price support loans to producers who have specified maturing wheat and feed grain price support loans. CCC previously has offered extensions, at the producer's option based upon then-existing market conditions. The authority to extend FOR loans under the 1949 Act was amended in 1985.

Options Considered with Selected Options Designated

Option 1 (Selected)

(a) 1987 and subsequent crop price support regular loans for feed grains, rice, soybeans and wheat will not be extended at maturity.

(b) 1985- and 1986-crop extended loans of wheat, barley, oats and soybeans will not be extended at maturity.

(c) 1985- and 1986-crop corn and sorghum extended loans which mature on March 31, 1988 through and including December 31, 1988, may be extended at maturity for 1 year.

(d) 1984-crop FOR loans which mature on March 31, 1988 through and including December 31, 1988, may be extended at maturity for 1 year.

(e) 1983 and prior crop year FOR loans will not be extended at maturity.

(f) Special Producer Storage loans will not be extended at maturity and regulations supporting such loans will be deleted.

(g) 1987 crops of wheat and feed grains will not be permitted to enter the FOR.

Option 2

(a) 1987 and subsequent crop price support regular loans for feed grains, rice, soybeans and wheat may be extended at maturity for 1 year.

(b) 1985- and 1986-crop loans of wheat, barley, oats and soybeans may be extended at maturity for 1 year.

(c) 1985- and 1986-crop corn and sorghum loans which mature on March 31, 1988 through and including December 31, 1988, may be extended to maturity for 1 1 year.

(d) 1984-crop FOR loans which mature on March 31, 1988 through and including December 31, 1988, may be extended at maturity for 1 year.

(e) 1983 and prior crop year FOR loans may be extended at maturity for 1 year.

(f) Special Producer Storage loans may be extended at maturity for 1 year.

(g) 1987 crops of wheat and feed grains will not be permitted to enter the FOR.

Legislative Basis for Actions

The 1949 Act and the CCC Charter Act.

Expected Impacts

A. Introduction

Prior to the 1988 drought, demand was expected to exceed production, due in large part to high export demand. The supply and demand situation as of August 1988 shows a considerable tightening of stocks for wheat, feed grains and soybeans due to the 1988 drought-reduced crops and continued large disappearance. World grain stocks as a percent of total grain use as of the end of the 1988/89 season are now projected to be the lowest level since 1975; U.S. stocks compared with use will be the lowest since 1981. For example,

corn stocks on September 1, 1989, are expected to be 1,576 million bushels, down 64 percent from September 1, 1988. In the 1988/89 corn marketing year, total use is expected to exceed 1988 production by about 2.8 billion bushels, necessitating market access to CCC-owned grain and grain pledged as collateral for prior crop loans in order to meet market needs. Similarly, wheat stocks are projected to be 597 million bushels on June 1, 1989, down 53 percent from June 1, 1988. These sharp reductions in stocks have caused large increases in prices of food and feed grains. Cash market corn prices are up 30 percent. Since May, wheat is up 25 percent, and soybeans are up 20 percent.

The expected impacts with respect to rice is minimal or none due to the marketing loan program. Accordingly, this analysis does not address rice. A final regulatory impact analysis has been prepared with respect to the 1988 Wheat, Feed Grain, Rice and Soybean CCC Programs.

II. Background of Proposed Changes to 7 CFR Part 1421

CCC makes available price support to eligible producers through a variety of means, including purchase agreements and nonrecourse loans. Producers who comply with applicable program requirements are afforded the opportunity to obtain CCC price support loans for a term determined by CCC. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act). The terms and conditions of the loans are set forth in the loan agreement. *See* 7 CFR 1421.1–1421.32 for feed grain, rice, soybean and wheat price support loans and purchase agreements (53 FR 20280, June 3, 1988). In accordance with the provisions of the loan agreement and 7 CFR 1421.6, these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC. In the event CCC determines to extend such loans, the producer receives actual notice of the terms and conditions of the offered extension. The producer is not, however, required to accept the offered extension.

In accordance with section 110 of the 1949 Act, CCC may make available extended price support loans to producers who have specified maturing regular wheat and feed grain price support loans. These loans are referred to as Farmer-Owned Reserve (FOR) Loans. The minimum and maximum levels of the wheat and feed grain reserves are determined annually. The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.740–54 (53 FR 11,239, April 26, 1988).

Section 110 of the 1949 Act provides that, whenever the total quantity of wheat pledged as collateral for FOR loans is less than 300 million bushels and the market price for wheat is less than 140 percent of the current price support level, entry into the reserve must be allowed. Currently, 395 million bushels are in the FOR wheat reserve and wheat prices are in excess of 140 percent of the current price support rate. With respect to feed grains, the minimum FOR level is 450 million bushels and the minimum market price is 140 percent of the current price support rate. Currently, 1.06 billion bushels of corn, 54 million bushels of sorghum and 50 million bushels of barley are in the FOR feed gran reserve. Corn prices exceed 140 percent of the current price support rate.

Prior to the enactment of the Food Security Act of 1985 (the 1985 Act), which amended section 110 of the 1949 Act, the term of a FOR loan could not exceed 5 years. The 1985 Act amended section 110 to provide for FOR loans of not less than 3 years with extensions as warranted. However, prior to this amendment, producers possessed a substantial number of FOR loans which were maturing and, due to market conditions, the loan collateral would be forfeited to CCC. In order to provide greater flexibility to producers, CCC established the Special Producer Storage Loan Program in accordance with the CCC Charter Act, as amended. The terms and conditions of these loans are set forth in the loan agreement. See 7 CFR 1421.900–1421.917.

In January and March 1988, after evaluating existing and projected supply and demand conditions for wheat and feed grains, CCC determined and announced that certain price support loans would be extended and that certain other loans would not be extended. Accordingly, with respect to loans that were not extended, producers are required to comply with the terms and conditions of their loan agreements which require repayment of the loan or forfeiture to CCC of the loan collateral by a specified date.

Following the announcement of these decisions, the State of Minnesota and several Minnesota producers brought an action in the United States District Court of the District of Minnesota which alleged that the actions taken concerning these loans were not made in accordance with statutory requirements. Among the allegations, plaintiffs contend that these decisions were not made in accordance with the Administrative Procedure Act, as amended, 5 U.S.C. 551 *et seq.* Subsequently, on July 22, 1988, based upon the United States Magistrate's Report and Recommendation, the United States District Court entered an order enjoining the use of two intra-agency notices which were used by the Agricultural Stabilization and Conservation Service (ASCS) to notify State and County ASCS Offices of these decisions.

It is the position of CCC that the provisions of the Administrative Procedure Act, as amended, are not applicable to these decisions since 5 U.S.C. 553(a)(2) specifically exempts agencies from conducting proposed rulemaking actions with respect to "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." It is also the position of CCC that the Statement of Policy signed by the Secretary of Agriculture on July 20, 1971 (*see* 36 FR 13804), which provided that, in certain specified instances, proposed rulemaking would be undertaken by all agencies of the Department notwithstanding the exemption set forth in 5 U.S.C. 553(a)(2) is not applicable to the types of actions involved in these decisions since proposed rulemaking actions would be impracticable.

However, in order to alleviate the concerns of interested parties regarding the procedure which CCC utilized in making these decisions and to provide market stability, comments were requested with respect to proposed amendments to the regulations of CCC which are set forth in Title 7 of the Code of Federal Regulations. These proposed amendments would amend 7 CFR 1421.6 to provide that 1987 and subsequent crop price support loans for feed grains, rice, soybeans and wheat would not be subject to any additional extension of the original loan term of nine months. Section 1421.6 would also be amended to provide that 1985 and 1986 crop loans of wheat, barley, oats, and soybeans would not be extended at maturity and that producers with 1985 and 1986 crop corn and grain sorghum loans which mature on March 31, 1988 through and including December 31, 1988 would be provided the opportunity to extend such loans for one year. The proposed rule would also amend the FOR program regulations which are set forth at 7 CFR 1421.741 to provide that 1984 crop FOR loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year and that 1983 and prior crop year FOR loans would not be extended.

The proposed rule would also amend the regulations at 7 CFR 1421.900–1421.917 which set forth the regulations governing the special producer storage loan program. The basis for the program was explained in the preamble of the rule which set forth the initial regulations which established the program:

The Farmer-Owned Grain Reserve Program has been implemented for wheat, corn, barley, sorghum, and oats in accordance with the provisions of section 110 of the Agricultural Act of 1949, as amended. Producers with matured grain reserve loans will have utilized the entire period of their reserve loan agreement which is available for the commodity. Normally, producers with matured grain reserve loans would be required to redeem the loan collateral or forfeit the collateral to CCC in full satisfaction of the loan obligation. However, under the Special Producer Storage Loan Program, producers will be given the opportunity to pledge the collateral securing a matured grain reserve loan as collateral for a loan obtained under the new program.

50 FR 16221 (April 25, 1985).

The program was determined to be necessary since, at that time, section 110 of the 1949 Act specified that FOR loan agreements could not be for a term in excess of 5 years. Section 110 of the 1949 Act was subsequently amended by the Food Security Act of 1985 by deleting the 5-year maximum limitation and by providing that FOR loans could be extended as warranted by market conditions. Accordingly, it has been determined that this program is no longer necessary. Therefore, the proposed rule would delete the regulations which set forth the provisions which were used to make Special Producer Storage Loans and would also specify that maturing Special Producer Storage Loans will not be extended.

The quantities of outstanding CCC loan collateral as of August 17, 1988 which would be affected by the proposed amendments are as follows:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats	Soybeans
Regular Loans:						
1985	6	*76	*4	2	0	2
1986	23	*454	*27	11	0	7
1987	29	532	11	12	0	44
Farmer-Owned Reserve (FOR) Loans:						
1983 & Prior [1]	166	0	0	3	0	
1984	*71	*281	*11	*14	*0	
1985 [2]	158	781	43	33	0	
Special Producer Storage (SPSL) Loans	0	110	17	25	1	

(Asterisks denote loans which would be available for extension.)
[1] These loans do not begin to mature until 1990.
[2] These loans do not begin to mature until 1989.

Basis For CCC's Actions Regarding CCC Price Support Loans

In January and March 1988, CCC announced that certain CCC price support loans would be extended and that certain loans would not be extended. CCC also announced that 1987 crops of wheat and feed grains would not be allowed entry into the FOR. These decisions were based upon market conditions which existed at that time. Those decisions were based upon expected 1988 normal crop production. In making these determinations, CCC took in account the impact the decisions would have on producers of wheat, feed grains and soybeans as well as on the ultimate users of these products.

At that time, excessive surpluses of these crops existed as the result of overproduction in previous years. These excessive surpluses had occurred due in larger part to the loss of export markets from 1981–1985. In order to reduce these excessive surpluses, the Food Security Act of 1985 amended the 1949 Act to mandate acreage reduction programs for wheat and feed grains and also mandated the use of export enhancement programs. Accordingly, CCC's decisions in January and March 1988 were based in large part upon a concern to maintain regained export markets. The U.S. share of export markets for wheat had increased from 29 percent in the 1985–1986 marketing year to 42 percent in the 1987–1988 marketing year, still below the 1981–1982 marketing year level of 48 percent. With respect to corn, such U.S. share had increased from 58 percent in the 1985–1986 marketing year to 78 percent in 1987–1988 marketing year, still below the 1979–1980 marketing year level of 82 percent. By retaining these markets through the availability of grain from CCC inventory and from free stocks, U.S. producers would be able to market larger quantities of 1988 and subsequent crops. At that time, estimated 1988 crop production was projected to be less than the combined total of 1988 projected uses and would result in sharp declines in both total carryover stocks and free stocks. Accordingly, access to CCC stocks and loan collateral was determined to be necessary.

However, the production of 1988 crops of many commodities, including wheat, feed grains and soybeans, has been severely reduced by the drought conditions which exist throughout major agricultural regions of the United States. For example, on May 10, 1988 the estimated 1988 production of corn was 7.3 billion bushels. These estimates have declined to 5.2 billion bushels on July 12, 1988, and to 4.48 billion bushels on August 11, 1988. Thus, at this time, even greater accessibility to CCC inventory and loan collateral is necessary to meet demand than previously was determined to exist in January and March 1988. Similarly estimated wheat production has fallen from 2.17 billion bushels to 1.82 billion bushels. While soybean production has fallen from 1.88 billion bushels in May 1988 to 1.47 billion bushels in August 1988.

The decrease in feed grain and soybean production, together with the reduction in other feed supplies, has caused significant and unexpected increases in feed prices for livestock and poultry producers and has also resulted in the unavailability of feed in some regions of the country. These factors have resulted in the liquidation of livestock herds and poultry flocks which has adversely affected producers' income.

The United States' supply of wheat has also been reduced due to the 1988 drought. Coupled with the expansion of U.S. export markets during the past year, the drought has resulted in the smallest supply of U.S. wheat in nearly a decade. Durum wheat production was

reduced 41 percent from 1987, while other spring wheat production is down 53 percent. Similar reductions have occurred as a result of the drought in 1988 oat and barley production. Barley production is down 45 percent and oat production, also down 45 percent, will be the lowest since 1866. Accordingly, substantial quantities of oats will be imported into the U.S. during the next year.

In summary, early 1988 estimates showed that the 1988 use of wheat, feed grains and soybeans would exceed 1988 production thereby necessitating access to CCC inventory and CCC loan collateral. The effects of the 1988 drought further necessitate such accessibility.

In order to ensure orderly marketing of these commodities, including 1988 production, it has been determined that some crop year loans with 1988 maturity dates will be extended until 1989. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend certain other loans, CCC's action will provide: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with very minimal forfeitures to CCC; (2) purchasers, both domestic and foreign, with reliable supplies, and (3) parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer.

Section 110 of the 1949 Act provides for the implementation of "a program under which producers of wheat and feed grains will be able to store wheat and feed grains when such commodities are in abundant supply, extend the time period for their orderly marketing, and provide for adequate but not excessive carryover stocks to ensure a reliable supply of the commodities." It is generally accepted that an adequate carryover supply of wheat is .75 —1.0 billion bushels and that an adequate carryover supply of corn is 1.5 —2.0 billion bushels. Sections 107D and 105C of the 1949 Act provide, with respect to wheat and feed grains, respectively, that if the estimated carryover on the first day of the marketing year for a crop will exceed 1 billion bushels for wheat, and 2 billion bushels for corn, acreage reduction programs must be implemented. As of August 29, 1988, ending 1988/89 marketing year wheat stocks are estimated to be 597 million bushels and ending 1988/89 marketing year corn stocks are estimated to be 1.58 billion bushels. Accordingly, assuming that the quantities specified in sections 105C and 107D are adequate carryout quantities, the U.S. will have minimally adequate or less than adequate carryovers of these crops going into the 1989 marketing year. Section 110 of the 1949 Act provides that the FOR program is to be conducted only when wheat and feed grains are in "abundant supply." Such supplies are clearly not abundant and are projected to be below even "adequate carryover" levels. Section 110 also provides that the FOR must be conducted in a manner which does not curtail free market activity. Further entry of grain into the FOR would, by the end of the marketing year, result in record high levels of grain in the FOR and would cause serious market disruptions.

Based upon these estimates, entry of any further crops into the FOR would not only be contrary to market demands but would also violate the provisions of section 110 of the 1949 Act which require that free market activity not be disrupted.

Currently the following quantities are in the FOR as of August 17:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats
1983 and prior	166	0	0	0	0
1984	71	281	11	14	0
1985	158	781	43	33	0
Total	395	1,062	54	50	0

Wheat FOR loans for 1983 and prior crops do not begin to mature until 1990 and 1985 wheat and feed grain FOR loans begin to mature early in 1989. Accordingly, sufficient quantities of FOR loan collateral exist and are in excess of statutory minimums set forth in section 110 of the 1949 Act which must be maintained when prices fall below specified levels.

On July 7, 1988, CCC published in the **Federal Register** a proposed notice of determination with respect to the entry of 1988 crops into the FOR. No comments were received during the 30-day comment period. CCC proposed to allow entry into the FOR only if market prices for wheat and feed grains fell below 140 percent of the respective 1988 crop price support rate and if levels in the FOR fell below 300 million bushels of wheat and 450 million bushels of feed grains. Subsequently, the Disaster Assistance Act of 1988 (the 1988 Act) was enacted principally in response to the 1988 drought. The 1988 Act provided approximately $3.9 billion of disaster related relief measures to producers affected by the 1988 drought and other specified natural disasters.

Included in the 1988 Act were provisions which relate to the FOR Program. Section 303(b) of the 1988 Act provides greater accessibility to FOR stocks which are acquired through the exchange of CCC commodity certificates. Section 303(a) of the 1988 Act provides that, once market prices of a commodity attain the FOR release level during the 1988 marketing year, producers may repay, without penalty, FOR loans during the remainder of such marketing year without regard to market prices. The Joint Explanatory Statement of the Committee of Conference which was prepared in connection with the 1988 Act states as follows:

The conferees believe that the Secretary should operate the farmer owned reserve in a way that will remove wheat and feed grains from the market during times of surplus supply and increase market supply during times of short supply.

Current farmer owned reserve quantities of wheat and feed grains exceed statutory minimums. The Secretary has previously determined not to allow entry of 1987 crops of wheat and feed grains into the reserve. In making any subsequent determination as to whether to permit entry of 1988 or other crops of such commodities into the reserve, the Secretary should take into consideration the reduced production of 1988 crops of wheat and feed grains as a result of the drought, the size of the farmer owned reserve, the impact of such entry upon the availability of these commodities in the marketplace, including, but not limited to consideration of the impact on the domestic livestock and poultry

industry, the ethanol industry, and export market share.

See 134 Cong. Rec. H. 6474 (daily ed. Aug. 8, 1988).

Accordingly, in addressing the manner in which the FOR is to be conducted, Congress has specifically recognized that statutory FOR minimums have been maintained and that entry of 1987 crops will not be permitted.

Discussion of Comments

In response to that portion of the August 10, 1988 proposed rule which relates to the proposed amendment of 7 CFR Part 1421, 21 letters containing 31 comments were received. In addition, one telephone comment was received. Comments were received from individuals, grain companies, three chairmen of three committees of the National Grain and Feed Association, the Commissioner of Agriculture and the Attorney General of Minnesota, a county ASC committee, producer organizations, a bee company, the Rural Life Office, and a border collie breeder.

The comment received from the bee company was not responsive to the proposed rule since it addressed the issue of honey loan extensions. The proposed rule did not address CCC honey price support loans.

One comment stated that no loan extensions should be granted since a majority of producers no longer have 1987 crop price support loans outstanding and these producers do not have the opportunity to benefit from any extension of such loans.

One comment was received in support of CCC's proposed amendment of 7 CFR Part 1421. This comment noted that, given current production and carryover levels, the market's need for this grain is critical and new or additional extensions would have the effect of artificially isolating these stocks from the market thereby aggravating a tight supply-demand situation.

This commenter noted that extensions would be contrary to the market-oriented intent of the Food Security Act of 1985 and would damage the U.S. status as a reliable exporter. The commenter stated that extensions of some of these loans previously were made by CCC in a time of relative surplus and not for the purpose of creating artificial scarcity in times of relative shortages. The commenter also noted that it will take some time through normal market movements for grain that had been pledged as collateral for maturing loans to be positioned and available for the market. The commenter further noted that CCC's exposure to loan forfeitures would be minimal due to current market conditions.

CCC concurs in the view that it would be inequitable at this time to allow extensions of some 1987 crop loans since not all producers in the southern region of the United States would be able to take advantage of such an extension. As of August 17, 1988, only 6 percent of 1987 wheat and 13 percent of corn price support loans remained outstanding.

CCC also concurs with the analysis provided by the second commenter that any further loan extensions would, in general, result in the loss of U.S. status as a reliable exporter. The views of the commenter are also consistent with the discussion of the basis for CCC's actions previously set forth in this document.

Seven comments suggested that, by allowing loan extensions, more orderly marketing of grain would occur. Three of these comments suggested limiting any extension to six months, one of which suggested that any storage payments which would be made should not be made until the loan is settled.

As noted in the previous discussion of CCC's basis for only extending only certain loans, orderly marketing will occur as a result of this proposed amendment. Further, by extending all loans, CCC would merely delay until next year any possible effect on the market that may occur upon maturity of these loans. Current storage availability and transportation facilities are more than adequate to handle 1988 crop production which is marketed as well as grain which will enter the market from those loans which mature in accordance with their stated maturity dates. No data was provided by any commenter that supported the view that, by extending loans, even for a six month period, any more orderly marketing would occur than if such loans are not extended.

Delaying the payment of storage payments until the loan is settled would not result in orderly marketing making storage payments either in advance or on a delayed basis would merely create a disincentive for a producer to follow market forces when deciding whether or not to market a commodity since the producer would have an artificial incentive to hold the commodity. Further, it is not the purpose of CCC to expend its limited funds for producers to store commodities in times of reduced production and high prices. CCC offers storage payments to producers in certain instances in order to encourage producers to store grain when surpluses exist until the grain can enter the market in situations such as those which have existed throughout 1988.

As noted in the previous discussion of CCC's actions, loan extensions are made available by CCC in times of surplus in order to encourage orderly marketing. Once market prices have exceeded the CCC price support level, the purpose of the CCC price support loan has been attained, i.e., to guarantee a producer a specified minimum price for the commodity. Since the formulation of the price support loan concept over 50 years ago, it has not been an objective of the price support program to ensure that, at the expense of CCC's limited funding authority, producers receive a market price in excess of the price support level. Producers who wish to speculate that prices will continue to remain in excess of the price support level after the maturity of their price support loan may redeem the loan collateral and retain control of the commodity until such time as they wish to market the commodity. In addition, traditional marketing devices, such as contingency markets and forward contracting, are available to producers which will allow producers to take advantage of potentially high future market prices if the producers wish to speculate in the market.

As noted in the discussion in response to the comments which addressed the concern for orderly marketing, market prices exceed current price support levels. Accordingly, producers who wish to speculate that higher prices will occur may redeem their loan collateral and market their commodity at a future date if they so desire.

Five comments suggested that, by allowing loan extensions, stabilized or enhanced market prices would be available to producers.

Four comments expressed concern that the current drought and the recently enacted emergency livestock provisions of the Drought Assistance Act of 1988 should be taken into consideration in making the decision as to whether loan extensions should be authorized. These comments suggest that loan extensions would be warranted due to these events.

Significant decreases in 1988 production of wheat, feed grain and soybeans and other feed supplies have occurred as a result of the 1988 drought. Liquidation of livestock herds and poultry flocks has occurred due to unexpected and significant increases in feed prices and due to the unavailability of feed in some regions of the country. Accordingly, CCC has implemented emergency feed programs in order to alleviate the impact of the drought on these producers. To allow all loans to be extended would create artificial incentives in the market and would only

result in even tighter feed supplies which would further injure livestock and poultry producers. Extensions of all loans would also be contrary to the objectives of the emergency feed programs conducted by CCC, as required by the Disaster Assistance Act of 1988, which provide that CCC will make available to livestock and poultry producers CCC-owned inventory at prices which are below current price support levels.

Five comments were received which stated that announcements of decisions which are made with respect to loan extensions should be made in a more timely manner. Several of these comments noted that the decision to extend July 31, 1988, maturing loans was not made in a manner which allowed producers to take advantage of this option. Two comments also stated that producers whose loans matured earlier in the year were not afforded the same opportunity to extend their loans. Two comments also requested that the comment period be extended.

CCC notifies producers with maturing price support loans of the options available to them with respect to the settlement of their loans. Generally, producers receive actual notice of these options 45 days in advance of maturity. However, an injunction was issued on July 22, 1988 in a lawsuit involving CCC's earlier announcement of certain loan extension and FOR entry decisions. CCC received notice of this injunction on July 26, 1988. As soon as CCC had reviewed the situation presented by the injunction, CCC announced on July 29, 1988, that loans maturing on July 31, 1988 would be extended. This extension was made available in order to provide market stability until CCC could fully determine the actions which were required by the injunction.

In order to provide further stability to commodity markets, CCC published a notice of proposed rulemaking on August 10, 1988 in order to correct any possible procedural deficiencies which may exist concerning its announcement of price support loan extensions and FOR entry. Accordingly, producers have had sufficient notice of its proposed actions.

The comment period for the proposed rule was limited to 15 days in order that a decision regarding these loans could be made prior to their maturity on August 31, 1988. Many purchasers of grain, including livestock and poultry producers, and handlers of grain had made commitments well in advance of the July 22, 1988 injunction. In order to analyze all comments which were received in response to the proposed rule and to reduce market uncertainty and maintain stability, the comment period ended August 25, 1988.

Price support loans which are made available to wheat, feed grain, rice and soybean producers provide that such loans will mature the last day of the ninth month following the month in which the loan application is made. The length of the loan is structured in a manner which will allow grain from one crop to enter the market prior to the harvest of the following crop. By limiting the length of the loan to 9 months, staggered entry of commodities occurs throughout the nation in a manner which corresponds to normal harvesting patterns, i.e., loans in the southern region of the United States mature the earliest and those in the northern region mature the latest. This staggered entry provides for market price stability and for the entry of sufficient stocks into the market in an orderly manner. Accordingly, by further extending price support loans with maturity dates of July 31, and August 31, until September 30, normal marketing and handling patterns will be severely disrupted since 1988 crops will be in the process of being harvested and will be in the process of being placed in storage facilities by producers. Due to the 1988 drought, harvest will begin much earlier than normal in most areas of the country. Accordingly, decisions by CCC regarding July 31, and August 31, 1988 maturing loans must be made prior to August 31, in order to allow producers to make necessary marketing decisions. Further, the decisions which are made by CCC regarding these loans will impact all producers who will be harvesting 1988 crops, and not just producers with maturing CCC loans, since they too must make arrangements concerning the storage, shipment and sale of their crop. Accordingly, good cause exists for not providing a longer comment period since a longer comment period would be impracticable and contrary to the public interest.

Two comments stated that, by extending these loans, the government would incur lower storage costs than by storing grain in commercial storage facilities.

By not extending certain loans, the storage payments which would have been made under such loans would have exceeded any increase in CCC storage and handling costs which may be incurred on any forfeitures that occur as the result of the adoption of the proposed rule.

CCC projects that few if any forfeitures will occur as the result of its proposed amendment to 7 CFR Part 1421 since market prices exceed current price support levels. Approximately 99 percent of all 1987 crop year loan settlements which have occurred from January 29, 1988 through August 17, 1988 have been loan repayments. For all crop year loans which were settled in this period, approximately 93 percent of all loans were repaid. Producers may also use commodity certificates to profitably acquire and market any grain which has been pledged as collateral for any CCC price support loan which has a repayment value per bushel which exceeds current market prices. Further, CCC inventory is continuing to decline and uncommitted wheat stocks will likely be less than 50 million bushels by December 31, 1988 and may well approach zero. Uncommitted CCC corn stocks will likely be less than 200 million bushels by such time. By comparison, the quantities of wheat and corn in CCC inventory as of August 1, 1987, were 808 million and 1.47 billion bushels, respectively.

Five comments were received with respect to the effect that the proposed rule has on litigation currently pending which involves CCC's earlier decisions not to allow extension of certain crop year loans or to allow entry into the FOR.

It is CCC's position that the injunction issued on July 22, 1988 prohibited the implementation of two intra-agency notices. Absent these notices, all loans maturing in 1988 would not be extended and entry into the FOR would not be permitted. The injunction did not prohibit the use of other existing authority of CCC and did not preclude CCC from conducting a rulemaking activity in order to remove any possible procedural deficiency which may exist.

One comment merely stated that farmers are under stress and that actions should not be taken which give grain companies an additional advantage over them.

The proposed amendments to 7 CFR Part 1421 are not intended to provide any advantage to grain companies or to any other party. The amendments are intended to provide adequate supplies of grain in the market without imposing an artificial barrier to the market such as through the payment of unnecessary storage payments to producers.

One comment agreed with the proposal of giving producers actual notice by mail of any future extensions. The commenter also stated that this notice should be given at least 14 days prior to loan maturity.

As noted previously, it is the current policy of CCC to provide sufficient and timely notice to producers of offered loan extensions. Since CCC has historically provided actual notice

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approximately 45 days in advance of maturity, the suggestion that such notice be made at least 14 days in advance has been rejected.

One comment stated that the Special Producer Storage Loan Program should not be terminated since it could be used in the future if crop surpluses occur. One commenter agreed with the proposal, noting that the continued use of the program contravenes the intent of the Food Security Act of 1985. This commenter also stated that, for the same reasons previously set forth in support of CCC's proposal to not extend certain loans, that this program should also be terminated.

As noted previously, the Special Producer Storage Loan Program was established in 1985 since CCC could not have FOR loans with a term in excess of 5 years. At the then prevailing market prices, producers would have forfeited large quantities of the maturing FOR loan collateral. In order to provide greater flexibility to producers by allowing producers to retain control of this grain, the Special Producer Storage Loan Program was established. Subsequently, the Food Security Act of 1985 amended section 110 of the 1949 Act to remove the restriction that FOR loans cannot be for a term of longer than 5 years. Accordingly, the need for this program no longer exists.

Two comments stated that the proposal to delete from existing regulations the authority for CCC to extend 1987 and subsequent crops should not be adopted since it is too premature to determine whether future extensions are warranted.

Extensions of CCC price support loans have been made available when large surpluses of commodities exist. The purpose of these extensions has been to allow producers to retain control of the loan collateral beyond the initial loan maturity date in lieu of forfeiting the collateral. When determining whether to offer such extensions, CCC takes into consideration whether it is likely that prices will reach the point that loan repayments are likely to occur and the market demand for the commodity. Extensions of 1984–1986 crop year loans were authorized due to depressed market prices, excessive supplies, tight storage situations and large CCC inventories. These conditions do not currently exist. Further, due to the large reduction in 1988 production, these situations are not projected to occur in the 1988/89 marketing year.

In order to remove the possibility of encountering any further concerns with respect to the procedural manner in which loan extension determinations are made, CCC has determined that 7 CFR Part 1421 will specifically provide that no extensions will be made. However, in the event market and storage conditions and CCC inventory levels change which would warrant the extension of subsequent crop year loans, CCC would still be authorized to take such action. But, in implementing such a decision, CCC would be required to publish in the **Federal Register** an amendment to 7 CFR Part 1421 in order to effectuate any such extension. Therefore, all interested parties would receive sufficient notice of such change.

One comment stated that the proposed rule should set forth standards which would be used to determine when loan extensions would be granted or entry into the FOR would be permitted.

When determining whether to offer loan extensions or to allow entry into the FOR, CCC must take into consideration conditions existing at that time. A myriad of factors must be considered. These factors include existing and projected market prices; foreign and domestic market demands; weather conditions; livestock, ethanol, and poultry industry concerns; storage capacities; foreign agricultural subsidy actions; humanitarian and domestic emergency relief measures; and CCC budgetary restrictions. CCC must also take into consideration statutory requirements applicable to determinations involving wheat and feed grain acreage reduction programs which take into consideration projected carryover supplies. Accordingly, since these factors as well as other factors are continually changing, the suggestion that specific standards be set forth in 7 CFR Part 1421 is rejected.

This commenter also noted that factors other than the statutory FOR minimums which are set forth in section 110 of the 1949 Act must be taken into consideration when allowing entry into the FOR. The commenter also stated that, by allowing the extension of 1984 crop FOR loans only, quantities in the FOR will fall below the statutory minimum. The commenter further stated that since Congress has provided in the Disaster Assistance Act of 1988 for the release of FOR grain without penalty any time during the 1988 marketing year if market prices attain the release level during such year, Congress has indicated the manner in which private stocks should enter the market.

This commenter also noted that if the Secretary perceives that an emergency situation exists which requires the release of FOR stocks, such authority is already provided for in section 110 of the 1949 Act.

As noted in the previous discussion of the basis for CCC's actions regarding price support loan extensions and entry into the FOR, section 110 of the 1949 Act provides for the implementation of "a program under which producers of wheat and feed grains will be able to store wheat and feed grains when such commodities are in abundant supply, extend the time for their orderly marketing, and provide for adequate, but not excessive, carryover stocks to ensure a reliable supply of the commodities." CCC has always taken these and other factors into consideration when determining whether to allow entry into the FOR. However, it should be noted that section 110 of the 1949 Act provides that such a program shall be available when "such commodities are in abundant supply." Current supplies of wheat and feed grains have been significantly reduced by the 1988 drought. For the purposes of determining adequate carryover levels in carrying out domestic price support programs and related activities, ending 1988/89 marketing year stocks will be minimally adequate or below such levels. Projected ending wheat stocks total 597 million bushels, with 395 million bushels currently in the FOR. Projected ending corn stocks total 1.58 billion bushels, with 1.1 billion bushels currently in the FOR. Approximately 65–70 percent of both wheat and feed grain carryover stocks are now in the FOR. These about equal the highest shares of ending stocks accounted for by FOR loan collateral since the FOR was first implemented in 1977. By comparison, ending 1987/88 corn stocks were 4.35 billion bushels with 1.2 billion in the FOR or approximately 27 percent. As noted before, additional entry into the FOR would result in a record high share of ending stocks being in the form of FOR loan collateral. Allowing further entry into the FOR will severely disrupt free market activity contrary to the provisions of section 110 of the 1949 Act which provide that the FOR must be implemented in a manner which does not "unduly depress, manipulate or curtail the free market."

The commenter also stated that entry into the FOR must be allowed in order to fulfill Congressional policies subject to the upper limits set forth in section 110 of the 1949 Act and, when FOR amounts fall below the minimum levels and "prices are below release level", incentives must be offered to encourage participation in the FOR.

For the immediately foregoing reasons, entry of additional quantities of wheat and feed grains would not be in accordance with the provisions of section 110 of the 1949 Act and would,

therefore, be contrary to Congressional policy.

The commenter also stated that levels in the FOR will fall below statutory minimums if the proposed rule is adopted.

CCC has always maintained levels in the FOR which are in excess of statutory minimum requirements. Current FOR levels are 395 million bushels for wheat and 1.06 billion bushels for corn; 166 million bushels of 1980–1983 FOR wheat loans do not begin to mature until 1990, and 158 million bushels of 1985 crop wheat loans do not begin to mature until 1989. The 1985 corn FOR loans also do not begin to mature until early 1989 and total 781 billion bushels. Accordingly, the commenter's conclusion that insufficient FOR levels will result is simply in error. As provided in the proposed amendment to 7 CFR 1421.741, additional extensions of 1984 and 1985 may be offered. Extensions of 1980–1983 crop wheat FOR loans are not provided for since the amendments that were made to section 110 of the 1949 Act by the Food Security Act expire with the 1990 crop. Decisions regarding the 1990 crop year will be made at that time in accordance with then existing statutory requirements.

The commenter also stated that due to section 303 of the "Drought Relief Bill" (sic) "there is no reason to doubt that the FOR will draw down even further." The commenter provides no economic support for this statement.

Section 303(a) of the Drought Assistance Act of 1988 provides that, with respect to the 1988 marketing years only, producers may repay FOR loans throughout such year without the payment of any penalty once market prices reach the FOR release level. The 1988 marketing year FOR release level is $4.23 per bushel for wheat and $2.93 per bushel for corn. The most recent USDA World Outlook Board projections show for 1988/89 season average price of $3.45–$3.95 for wheat and $2.30–$2.70 for corn. Thus, market prices may not reach release levels, if at all, for some time. Further, given the incentive of receiving storage payments there is no assurance that producers will avail themselves of this option in any event.

The commenter also stated that since the action proposed in January was to handle a surplus and the action proposed in August was in response to a drought, the justification provided for in the proposed rule was a "mere sham."

As more fully discussed throughout this document, the initial determinations were based upon assumptions that 1988 demand would exceed 1988 production. This situation was obviously worsened due to the 1988 drought. Accordingly, the fundamental basis for this action still remains the same, i.e., the continued availability of sufficient stocks to meet current export and domestic demand.

The commenter stated that if the Secretary perceives that an emergency exists which requires release of FOR stocks, the Secretary may, in accordance with section 110(d) of the 1949 Act, call FOR loans prior to maturity after reporting the determination and reasons to the President and to the Congress.

Given current supplies, the Secretary may, at some subsequent date, have to resort to calling non-maturing loans. However, the proposed amendments affect maturing loans and not non-maturing loans. As discussed above, allowing further entry into the FOR at this time would be contrary to the provisions of section 110 of the 1949 Act since free markets would be unduly disrupted.

Also, as noted by another commenter, delivery of grain into market accessible positions cannot be done immediately upon loan maturity. Accordingly, by allowing entry into the FOR and, in the near future, calling FOR loans would not necessarily result in timely access to these stocks. Also, by not allowing further entry of grain into the FOR, the possibility of the occurrence of emergency conditions which would necessitate the calling of other FOR loans will be reduced.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1421—[AMENDED]

1. The authority citation for Part 1421 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1972 (15 U.S.C. 714b and 714c); secs. 101, 101A, 105C, 107D, 108, 110, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 1439, as amended, 92 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441–1, 1444b, 1445b–2, 1445c–2, 1445e, 1446, 1447, 1421, 1423, and 1425).

2. 7 CFR 1421.6 is amended by revising paragraph (a)(1)(i) and adding paragraph (c) to read as follows:

§ 1421.6 Maturity and expiration dates.

(a) * * *

(1) * * *

(i) All commodities except peanuts, no later than the last day of the ninth calendar month following the month in which the loan application is made; and

* * * * *

(c) *Extension of loans.* (1) Notwithstanding any other provision of this part, all 1987 and prior crop year loans which have been made available to eligible producers in accordance with the provisions of this part shall not be extended upon maturity except that 1985 and 1986 crop corn and sorghum loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year.

(2) With respect to all commodities, 1988 and subsequent crop year loans may not be extended upon maturity.

3. 7 CFR 1421.741 is revised to read as follows:

§ 1421.741 Length of reserve agreements.

The length of reserve agreements shall be determined and announced by the Executive Vice President, CCC, based upon market conditions which exist at the time such agreements are executed by CCC. Such agreements may be extended by CCC, at the producer's option, upon maturity if CCC determines that an extension is warranted based upon existing market conditions. 1983 and prior crop year loans may not be extended. 1984 crop year loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year. Producers having 1984 and 1985 crop year loans will be notified by mail of any extension or additional extension option which may be made available by CCC. Determinations with respect to the entry of eligible grain from other crop years into the Grain Reserve Program will be announced by CCC by the publication of a final notice of determination in the **Federal Register**.

4. 7 CFR 1421.900 is revised to read as follows:

§ 1421.900 General statement.

Special Producer Storage Loan Program loans shall not be extended upon maturity.

§§ 1421.901 through 1421.917 [Removed]

5. 7 CFR 1421.901 through 1421.917 are removed.

Signed at Washington, DC on August 30, 1988.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–20018 Filed 8–30–88; 3:31 pm]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 1988

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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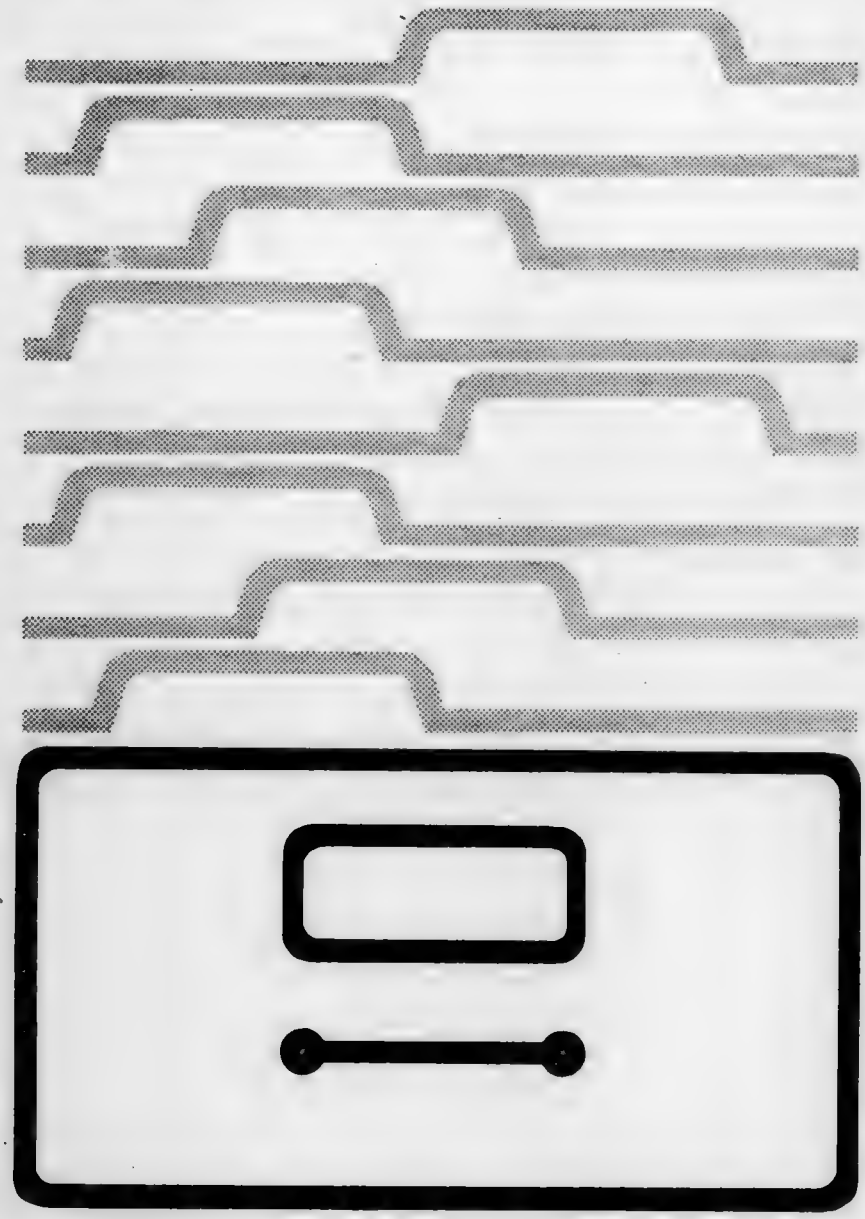

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1986
SUPPLEMENT: Revised January 1, 1988

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Friday
September 2, 1988

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Rules and Regulations

Federal Register
Vol. 53, No. 171
Friday, September 2, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 252

National Commodity Processing Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule will implement two changes to the National Commodity Processing (NCP) Program as proposed in the March 7, 1988 proposed NCP rule. This action will implement those provisions pertaining to (1) "other" approvable donated commodity value-pass-through (VPT) systems and (2) the definition of "refund" as it applies to the VPT systems. These provisions will provide greater administrative latitude to processors and distributors participating in the program and enhance program operations.

EFFECTIVE DATE: This interim final rule is effective September 2, 1988.

FOR FURTHER INFORMATION CONTACT: George C. Rogers, Chief, Special Operations Branch, Nutrition and Technical Services Division, U.S. Department of Agriculture, 3101 Park Center Drive—Room 602, Alexandria, Virginia 22302, or telephone (703) 756–3888.

SUPPLEMENTARY INFORMATION: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), information collection requirements contained in the current interim rules have been approved by the Office of Managment and Budget (OMB #0584–0325) for use through September 30, 1990.

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.based enterprises to compete with foreign-based enterprises in domestic or export markets.

Permitting processors to credit a distributor's account and use other types of value-pass-through systems will enhance program operations. In order for these procedures to be effective for the 1988–89 school year, this rule must be made effective upon publication, since the majority of processing contracts are negotiated prior to the beginning of the school year. This rule relieves restrictions concerning the use of value-pass-through systems. For this reason, in accordance with 5 U.S.C. 553(d), this rule is made effective less than 30 days after publication.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550. for the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29114), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action has also been reviewed with regard to the requirements of The Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities.

Background

On March 7, 1988 the Department published a proposed rule in the **Federal Register** (53 FR 7188–7194) to amend the National Commodity Processing (NCP) Program Regulations to provide for increased State responsibilities, increase the flexibility provided under some processor requirements, and increase uniformity between provisions governing the NCP Program and State processing activities (Part 250).

This interim rule addresses only those provisions that relate to alternative value-pass-through (VPT) systems and the crediting of a distributor's account for the value of the donated foods contained in an end product. In an effort to enhance processing activities for the 1988–89 agreement year, these provisions are being implemented separately. Provisions regarding sales verification, and products reporting requirements, recipient agency masterfile, processor listings, State agency agreements and audits will be finalized at a later date. At that time, Part 252 will also be restructured and issued as a final rule.

Analysis of Comments

A total of 53 comment letters were received in response to the proposed regulations. Comments were received from processors, distributors, recipient agencies, private consultants State agencies, and other interested parties such as the American School Food Service Association, National Association of State Agencies for Food Distribution, National Frozen Pizza Institute and the California School Food Service Association.

Definition of Refund Payments

Under the proposed rule of March 7, 1988, a definition of "Refund' was incorporated in § 252.2 which would permit a processor to credit a distributor's account rather than issue individual checks for refund applications.

Eight of the commentors were in favor of this provision, three were opposed, and one was in support as long as the processor could choose whether the credit was offered as an alternative to a check.

Of the negative responses, two processors were concerned that distributors might "take" credit before the reports of sales are sent into the processor. Although the credit memo will now be available as an option, the regulatory provisions requiring a refund application and documentation will continue to apply. One State agency had the misconception that this refund alternative could apply to recipient agencies. The credit is available only for transactions between the processors and distributors. Since recipient agencies would be unacceptably constrained to continue purchasing

products from a processor/distributor under a credit system, the Department did not propose the availability of such a system for recipient agency transactions. The majority of the commentors who supported this provision support the use of the credit refund system because the proposed change would decrease the paperwork burden for processors.

The Department also wishes to emphasize that processors are not required to offer credit as a refund option to a distributor unless they are satisfied with the business relationship they have established with their distributors. As stated in the preamble to the proposed rule, the NCP Program experience has established that all VPT systems through a distributor need firmly established contractual relationships between processor (who are obligated to FNS) and their distributors.

The Department continues to support the use of a valve-pass-through system which provides refunds to distributors. Thus, since commentors confirmed that permitting a processor to credit a distributor's account rather than issue checks for the value of the donated food contained in an end products sold by the distributor will reduce the paperwork burden for processors while maintaining accountability, the definition of "Refund" as proposed is being incorporated in § 252.2 of this interim rule.

Value-Pass-Through Systems

Under the proposed rule, processors would be permitted to use value-pass-through (VPT) systems that are not explicitly described by the regulations, but which have been approved by FNS.

Eleven respondents supported this provision as an opportunity for innovation, should such a system be independently developed by a program participant. Of the eight commentors conditionally favoring this provision, most wanted the "other" VPT system to undergo careful testing before approval. Additionally, the majority of comments conditionally approving this provision wanted no net sales through a distributor systems to be permitted as an "other" VPT system. Of the twelve respondents opposing this provision, all felt it would lead to encouraging net sales through a distributor—a VPT system thought to increase paperwork, result in poor sales verification, and be a difficult VPT system to monitor.

As discussed in the proposed regulations, the only permissible alternative VPT systems would be those approved by FNS. The Department would only approve those alternative VPT systems that demonstrate a degree of accountability that is at least equal to that of the refund system. To ensure accountability, any alternate system will be made subject to sales verification.

The Department recognizes that the concerns raised have merit. However, the Department is concerned about meeting the needs of recipient agencies. The approval of an alternative VPT system, such as a net sales through a distributor system, will be contingent on whether it is determined to be as accountable as a refund system and the Department will evaluate all such systems closely. In addition, in light of the concerns expressed, the Department will ensure that such systems permit easy monitoring by all responsible parties and do not entail a significant increase in oversight activities by FNS staff. The Department feels that implementation of the provision is a viable means of encouraging the development and use of innovative VPT systems. Thus § 252.4(c) is revised in this interim rule as proposed.

List of Subjects in 7 CFR Part 252

Aged, Agriculture communities, Business and industry, Food assistance processing, Grant programs-social programs, Infant and children price support programs, Reporting requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 252 is amended as follows:

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

1. The authority citation for Part 252 continues to read as follows:

Authority: Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431).

2. In § 252.2, Definitions, a definition for "Refund" is added in alphabetical order to read as follows:

§ 252.2 Definitions.

* * * * *

"Refund" means (1) a credit or check issued to a distributor in an amount equal to the NCP contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price or (2) a check issued to a recipient agency in an amount equal to the NCP contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

* * * * *

3. In § 252.4, paragraph (c)(4)(iii) is added to read as follows:

§ 252.4 Application to participate and agreement.

* * * * *

(c) * * *

(4) * * *

(iii) *Other value pass-through systems.* Processors may submit to FNS for approval any proposed value pass-through (VPT) system not identified in this section. The "other" VPT system must, in the judgment of FNS, be verifiable and easily monitored. Any VPT system approved under this Part must comply with the sales verification requirements specified in paragraph (c)(4)(ii)(B) of this section or an alternative system approved by FNS. If an alternative system is approved, FNS will notify the States in which the system will be used. The Department retains the authority to inspect and review all pertinent records under all VPT systems, including the verification of a required statistically valid sample of sales.

* * * * *

Anna Kondratas,
Administrator.

Date: August 29, 1988.

[FR Doc. 88-20042 Filed 9-1-88; 8:45 am]
BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

[Docket No. 88-094]

7 CFR Part 301

Gypsy Moth Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Gypsy Moth Quarantine and Regulations by (1) removing all regulated areas in Illinois, Indiana, Minnesota, Washington, and Wisconsin from the list of regulated areas and removing these states from quarantined status; (2) removing regulated areas in Ohio from the list of gypsy moth low-risk areas and correcting an earlier omission by adding Ohio to the list of states quarantined because of gypsy moth; (3) removing a portion of a previously regulated gypsy moth high-risk area in Oregon and redesignating the remaining portion of the regulated area as a gypsy moth low-risk area; (4) designating previously nonregulated areas in Maine, Maryland, Michigan, and Ohio as gypsy moth low-risk areas; and (5) designating previously nonregulated areas in Virginia and West Virginia as gypsy

moth high-risk areas and redesignating areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas. The regulations restrict the interstate movement of certain articles from gypsy moth high-risk and low-risk areas. This rule is necessary to prevent the spread of gypsy moth and to remove unnecessary restrictions on the interstate movement of certain articles.

DATES: Interim rule effective September 2, 1988. Consideration will be given only to comments postmarked or received on or before November 1, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090–6464. Please state that your comments refer to Docket Number 88–094. Comments may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Sidney Cousins, Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest trees. The Gypsy Moth Quarantine and Regulations (contained in 7 CFR 301.45 *et seq.*, and referred to below as the regulations), quarantine certain states because of the gypsy moth, and restrict the interstate movements from regulated areas of certain articles to prevent the artificial spread of the gypsy moth.

Areas designated as gypsy moth regulated areas are those in which a gypsy moth infestation has been found by an inspector, or areas regulated because of the proximity to gypsy moth infestation or inseparability for quarantine enforcement purposes from infested localities. Regulated areas are divided into high-risk areas and low-risk areas. Under the regulations an area is designated as a high-risk area when an inspector determines that regulated articles exist within or adjacent to an area where defoliation has occurred or where an inspector has reason to believe that 50 or more egg masses per acre of the gypsy moth are present. Low-risk areas are those portions of regulated areas that are not designated as high-risk areas.

Section 301.45–3 of the regulations imposed the following conditions on the movement of regulated articles from gypsy moth regulated areas:

(a) A regulated article shall not be moved interstate from any high-risk area into or through any nonregulated area unless a certificate or permit has been issued and attached to such regulated articles in accordance with §§ 301.45–4 and 301.45–7.

(b) A regulated article shall not be moved interstate from any low-risk area into or through any nonregulated area when it is determined by an inspector that any life stage of the gypsy moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such articles in accordance with §§ 301.45–4 and 301.45–7.

(c) A regulated article originating outside of any high-risk area, except any regulated article in any low-risk area determined by an inspector to present a hazard of spreading the gypsy moth pursuant to paragraph (b) of this section, may be moved interstate directly through any high-risk area without a certificate or permit, if the point of origin of the article is clearly indicated by shipping documents, their identity has been maintained, and they have been safeguarded against infestation while in any high-risk area.

Section 301.45–11 of the regulations imposes the following conditions on the interstate movement of outdoor household articles from gypsy moth high-risk areas:

(a) No outdoor household article shall be moved interstate from a gypsy moth high-risk area into or through any nonregulated area unless:

(1) Such outdoor household article is free from all life stages of the gypsy moth at the time of the interstate movement; or

(2) Such outdoor household article is accompanied by an OHA document issued by a qualified certified applicator in accordance with the provisions of §§ 301.45–12 and 301.45–13 within five calendar days of the interstate movement from a gypsy moth high-risk area; or

(3) Such outdoor household articles are brought in by vacationers to the gypsy moth high-risk areas.

These regulations are designed to restrict the interstate movement of regulated articles in those circumstances where there would be a significant risk of spread of gypsy moth. A certificate or limited permit is authorized to be issued based on treatment of a regulated article or based on a determination that movement of a regulated article without treatment would not result in the spread of the gypsy moth.

Deletion of Areas From List of Regulated Areas and Removal of States From Quarantine

We made several changes to the Gypsy Moth Quarantine and Regulations in an interim rule published in the **Federal Register** on May 8, 1986 (51 FR 16993–17001, Docket No. 85–343). The addition of Illinois, Indiana, Minnesota, Ohio, and Wisconsin to the list of states quarantined because of the gypsy moth was explained in the supplementary information of the May 8, 1986, document. Although that document amended § 301.45–2a of the regulations by designating portions of these states as low-risk areas, the designation of these states as quarantined states was inadvertently omitted from the list of quarantined states in § 301.45. However, for all practical purposes, these states have been treated as quarantined states.

Prior to the effective date of this document, the following areas in Illinois, Indiana, Minnesota, Ohio, Washington and Wisconsin were designated as gypsy moth low-risk regulated areas. This document removes these areas from the list of gypsy moth low-risk areas:

Illinois

Kane County. SE¼ sec. 3 and NE¼ sec. 10, T. 39 N., R. 8 E.

Lake County. SE¼ sec. 28, T. 43 N., R. 10 E.

Peoria County. Sec. 28, T. 9 N., R. 8 E.

Indiana

Allen County. SE¼ sec. 32, T. 30 N., R. 13 E.

Marion County. SE¼ sec. 20. T. 17 N., R. 3 E.

Minnesota

Dakota County. NW¼ sec. 21, T. 115 N., R. 20 W; NE¼ sec. 16, T. 115 N, R. 20 W; and NE¼ sec. 18, T. 114 N., R. 20 W.

Ohio

Allen County. S½ sec. 9, T. 3 S., R. 5 E.

Lucus County. That portion of the city of Sylvania bounded by a line beginning at the intersection of the Michigan-Ohio state line and Flanders Road; then south along said road to Janet Avenue; then west along Janet Avenue to its intersection with Artwell Drive; then north along Artwell Drive to its intersection with the Michigan-Ohio state line; then east along said state line to the point of beginning.

Darke County. That portion of Richland Township bounded by a line beginning at the intersection of Reed Road and Greenville-Celina Road; then south along Greenville-Celina to its

intersection with Union City Road; then west along said road to its intersection with Kesler-Byard Road; then north along said road to its intersection with Reed Road; then east along said road to the point of beginning.

Wayne County. E½ sec. 23 and W½ sec. 24, T. 16 N., R. 13 W.

Washington

Clark County. That portion of the county bounded by a line beginning at a point where NE 29th Avenue and 179th Street NE intersect; then easterly along 179th Street NE to its intersection with NE 72nd Avenue; then southerly on NE 72nd Avenue to its intersection with 160th Street NE; then westerly on 160th Street NE to its intersection with NE 29th Avenue; then northerly on NE 29th Avenue to the point of beginning.

Kitsap County. The entire county.

Whatcom County. That portion of the county bounded by a line beginning at a point where the Skagit-Whatcom County line intersects the Bellingham-Samish Bays; then easterly along said line to its intersection with State Highway 9; then northerly along said highway to its intersection with State Highway 542; then westerly from said intersection along an imaginary line to its intersection with the easterly most point of Gushen Road; then westerly along Gushen Road to its intersection with Axton Road to its intersection with the Nooksack River; then southerly along the Nooksack River to Bellingham Bay; then southerly along Bellingham Bay to the point of beginning.

Wisconsin

Dane County. Sec. 17, T. 7 N., R. 10 E.

Washington County. Sec. 15 T. 9 N., R. 19 E.

Based on treatments with insecticides and subsequent negative surveys in accordance with the quarantine and regulations, it has been determined that the gypsy moth no longer occurs in the above-described areas or in the area released from quarantine in Lane County, Oregon, as explained below. Accordingly, there is no longer a basis for continuing to list these areas as regulated areas for the purpose of preventing the artificial spread interstate of gypsy moth. Therefore, as an emergency measure, it is necessary to delete these areas from the list of regulated areas in order to delete unnecessary restrictions on the movement of gypsy moth regulated articles.

Further, the effect of deleting the above-described areas in Illinois, Indiana, Minnesota, Wisconsin and Washington from the list of gypsy moth regulated areas is to remove all areas in these states from the list of regulated areas. As a result, there is no longer a basis for quarantining Illinois, Indiana, Minnesota, Wisconsin or Washington for gypsy moth. Therefore, insofar as Illinois, Indiana, Minnesota, and Wisconsin were quarantined, this document releases them from quarantine. This document also deletes Washington from the list of States quarantined because of gypsy moth in § 301.45(a). Ohio is not released from quarantine because previously nonregulated areas are designated as low-risk areas, as explained below. This document corrects an earlier omission by adding Ohio to the list of states quarantined because of gypsy moth.

Removal and Redesignation of Portions of Regulated Area in Lane County, Oregon; Designation of Areas as Low Risk Areas

Prior to the effective date of this document, a portion of Lane County, Oregon, was designated as a gypsy moth high-risk area. This document removes a portion of the previously regulated area from quarantine and redesignates the remaining regulated area as a gypsy moth low-risk area. The newly designated low-risk area in Lane County, Oregon, is as follows:

Oregon

Lane County. That portion beginning at the northwest corner of sec. 15, T. 17 S., R. 6 W.; then due east along the section lines to the intersection of the north boundary of sec. 15, T. 17 S., R. 3 W. and Interstate 5; then north along Interstate 5 to its intersection with Coburg Road; then northwest along this road to its intersection with Powerline Road; then north along this road to its intersection with the north border of sec. 7, T. 16 S., R. 3 W.; then due east along the section lines to the northeast corner of Section 7, T. 16 S., R. 2 W.; then due south along the section lines to the southeast corner of sec. 31, T. 16 S., R. 2 W.; then due east along the section lines to the northeast corner of sec. 5, T. 17 S., R. 1 E.; then due north along the section lines to the northwest corner of sec. 21, T. 16 S., R. 1 E.; then due east along the section lines to the northeast corner of sec. 20, T. 16 S., R. 2 E.; then due south along the section lines to the southeast corner of sec. 20, T. 17 S., R. 2 E.; then due west along the section lines to the southwest corner of sec. 23, T. 17 S., R. 1 E.; then due south along the section lines to the southeast corner of sec. 10, T. 20 S., R. 1 E.; then due west along the section lines to the southwest corner of sec. 9, T. 20 S., R. 2 W.; then due south along the section lines to the intersection of the east border of sec. 32, T. 20 S., R. 2 W. and Row River Road; then west along this road to Dorena Dam; then south along Dorena Dam spillway to a point intersecting the south boundary of sec. 32, T. 20 S., R. 2 W.; then due west along the section lines to the southwest corner of sec. 34, T. 20 S., R. 5 W.; then due north along the section lines to the northwest corner of sec. 10, T. 20 S., R. 5 W.; then due east along the section lines to the northeast corner of sec. 9, T. 20 S., R. 3 W.; then due north along the section lines to the northwest corner of sec. 27, T. 18 S., R. 3 W.; then due west along the section lines to the southwest corner of sec. 20, T. 18 S., R. 4 W.; then due north along the section lines to the northwest corner of sec. 5, T. 18 S., R. 4 W.; then due west along the section lines to the southwest corner of sec. 34, T. 17 S., R. 6 W.; then due north along the section lines to the starting point.

This document also designates previously nonregulated areas in Maine, Maryland, Michigan, and Ohio as gypsy moth low-risk areas. These newly designated low-risk areas are the following:

Maine

Penobscot County. The townships of Sherman and Stacyville.

Maryland

The entire counties of Calvert, Charles, St. Marys, and Somerset.

Michigan

The entire counties of Alcona, Allegan, Alpena, Antrim, Barry, Benzie, Berrien, Cass, Charlevoix, Cheboygan, Crawford, Emmet, Grand Traverse, Hillsdale, Kalamazoo, Kalkaska, Kent, Lake, Leelamau, Manistee, Mason, Monroe, Montmorency, Muskegon, Oceana, Oscoda, Otsego, Ottawa, Presque Isle, St. Joseph, Van Buren, and Wexford.

Ohio

The entire counties of Ashtabula, Geauga, Lake, and Trumbull.

Based on recent surveys, inspectors have determined that infestations of gypsy moth occur in these areas designated as gypsy moth low-risk areas, but that the number of egg masses per acre is not high enough to meet the criteria referred to above for gypsy moth high-risk areas.

The restrictions concerning the gypsy moth are imposed on movements of regulated articles from gypsy moth low-risk areas only if it is determined by an inspector that any life stage of the gypsy moth is on the regulated article, and the person in possession thereof has been

notified by an inspector, unless a certificate or permit has been issued and attached to the regulated article in accordance with §§ 301.45–4 and 301.45–7 of the regulations. It is necessary to designate these areas as gypsy moth low-risk areas in order to advise persons of the likelihood that inspectors would conduct inspections in these areas and that, based on their findings of life stages of gypsy moth, restrictions could apply to the movement of regulated articles from the areas.

Designation of Areas as High-Risk Areas

This document designates previously nonregulated areas in Virginia and West Virginia as gypsy moth high-risk areas and redesignates areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas. These areas are indicated below. If a portion of a county is designated, the specific area is set forth in the regulations portion of this document.

Michigan

The entire counties of Arenac, Bay, Genesee, Gladwin, Gratiot, Huron, Iosco, Lapeer, Mecosta, Missaukee, Montcalm, Ogemaw, Osceola, Roscommon, Saginaw, Sanilac, Shiawassee, St. Clair, and Tuscola; and

Portions of Clare, Isabella, Midland, and Oakland counties.

New York

The entire counties of Genesee, Lewis, Niagara, Orleans, Wayne, and Wyoming; and

Portions of Cayuga, Chenango, Cortland, Erie, Jefferson, Livingston, Madison, Oneida, Onondaga, Ontario, Oswego, Seneca, and St. Lawrence counties.

Pennsylvania

The entire counties of Armstrong, Crawford, and Fayette.

Virginia

The entire cities of Charlottesville, Chesapeake, Fredericksburg, Hampton, Harrisonburg, Manassas Park, Newport News, Norfolk, Poquoson, Portsmouth, Virginia Beach, and Waynesboro; and

The entire counties of Accomack, Albemarle, Augusta, Caroline, Culpeper, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, King George, Lancaster, Louisa, Madison, Mathews, Middlesex, Northampton, Northumberland, Orange, Powhatan, Richmond, Rockingham, Spotsylvania, Stafford, Westmoreland, and York; and

Portions of Augusta, Fauquier, Page, and Rappahannock Counties.

West Virginia

The entire counties of Barbour, Grant, Hampshire, Hardy, Mineral, Monongalia, Pendleton, Preston, and Tucker.

Based on recent surveys, inspectors have determined with respect to all of the areas added to the list of gypsy moth high-risk areas, that defoliation has occurred in these areas because of the gypsy moth or that there is reason to believe that 50 or more egg masses per acre of the gypsy moth are present in these areas. Also, outdoor household articles and regulated articles exist within or adjacent to these areas. Accordingly, there is a substantial risk of artificially spreading the gypsy moth by unrestricted interstate movement of these articles. Therefore, as an emergency measure, it is necessary to designate these areas as gypsy moth high-risk areas and impose restrictions on the interstate movement of outdoor household articles and regulated articles from these areas in accordance with the regulations in order to prevent the artificial spread of the gypsy moth.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this rule without prior opportunity for public comment. Because of the possibility that the gypsy moth could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread. Also, where gypsy moth no longer occurs, or when there is reason to believe that the density of egg masses per acre has decreased sufficiently to remove the area from a gypsy moth high-risk or low-risk area classification, immediate action is needed to remove unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 for making this rule effective upon publication of this document in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individuals, industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from gypsy moth regulated areas in Illinois, Indiana, Maine, Maryland, Michigan, Minnesota, New York, Ohio, Oregon, Pennsylvania, Virginia, Washington, West Virginia, and Wisconsin. For areas designated as high-risk areas, individual and commercial movers moving outdoor household articles to areas outside the quarantined area must determine that their articles are free of gypsy moth. Mobile home haulers, loggers, nurserymen, and firewood haulers are required to obtain certification or limited permit from an inspector that their articles are free of gypsy moth. For areas designated as low-risk areas, the same conditions apply for movement of regulated articles when it is determined by an inspector that the movement of an article presents a hazard of spreading the gypsy moth. For areas determined to be free of gypsy moth and deregulated, no restrictions are imposed for movement of regulated articles.

All regulated articles are inspected and certified without charge to the business. A business not requesting this service in advance of shipment may be delayed in moving the product until service can be provided. A homeowner moving outdoor household articles from a high-risk area to an uninfested area may pay a qualified certified applicator (QCA) to inspect his goods. These charges average between $50–100. In some instances the company moving that person reimburses the mover for their expense. Most QCA's are small businesses. By declaring an area as a high-risk area the regulations may

increase business for the QCA's located in high-risk areas. These businesses will average $50 to $150 per month in additional income per business. Approximately 90 new businesses will be trained to inspect outdoor household articles and will offer this service to the general public. Based on information compiled by the U.S. Department of Agriculture it has been determined that there are many hundreds of small entities that move regulated articles interstate from gypsy moth regulated areas and many thousands of small entities that move regulated articles interstate from other states. However, based on such information, it has been determined that approximately 759 small entities move regulated articles interstate from the specified areas affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372 which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Gypsy Moth.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.45 [Amended]

2. Section 301.45(a) is amended by adding "Ohio" immediately after "New York" and by removing the reference to "Washington".

3. Section 301.45–2a is revised to read as follows:

§ 301.45–2a Regulated areas; high-risk and low-risk areas.

(a) The areas designated below are designated as gypsy moth regulated areas, and such regulated areas are divided into high-risk areas or low-risk areas as follows:

Connecticut

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

Delaware

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

District of Columbia

(1) *High-risk area.* The entire district.
(2) *Low-risk area.* None.

Maine

(1) *High-risk area.*

Androscoggin County. The entire county.

Cumberland County. The entire county.

Franklin County. The townships of Avon, Carthage, Chesterville, Farmington, Industry, Jay, New Sharon, New Vineyard, Perkins, Strong, Temple, Washington, Weld, and Wilton.

Hancock County. The entire county.

Kennebec County. The entire county.

Knox County. The entire county.

Lincoln County. The entire county.

Oxford County. The townships of Albany, Batchelders Grant, Bethel, Brownfield, Buckfield, Canton, Denmark, Dixfield, Fryeburg, Greenwood, Hanover, Hartford, Hebron, Hiram, Lovell, Mason Plantation, Mexico, Milton Plantation, Norway, Oxford, Paris, Peru, Porter, Rumford, Stoneham, Stow, Sumner, Sweden, Waterford, and Woodstock.

Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Burlington, Carmel, Charleston, Clifton, Corinna, Cornith, Dexter, Dixmont, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Hampden, Hermon, Holden, Howland, Hudson, Kenduskeag, La Grange, Levant, Lincoln, Lowell, Mattamiscontis, Maxfield, Milford, Newburg, Newport, Old Town City, Orono, Orrington, Pasadumkeag, Plymouth, Stetson, Summit, Veazie-Eddington, and 1 ND.

Piscataquis County. The townships of Atkinson, Medford, Milo, and Orneville.

Sagadahoc County. The entire county..

Somerset County. The townships of Anson, Athens, Cambridge, Canaan, Cornville, Detroit, Embden, Fairfield, Harmony, Hartland, Madison, Mercer, New Portland, Norridgewock, Palmyra, Pittsfield, Ripley, Skowhegan, Smithfield, Solon, St. Albans, and Starks.

Waldo County. The entire county.

Washington County. The townships of Addison, Beals, Beddington, Centerville, Cherryfield, Columbia, Columbia Falls, Crawford, Deblois, East-Machias, Harrington, Jonesborro, Jonesport, Machias, Machiasport, Marshfield, Milbridge, Northfield, Rouge Bluffs, Steuben, Wesley, Whitneyville, 5 ND, 18 ED, 18 MD, 19 ED, 19 MD, 24 MD, 25 MD, 26 ED, 27 ED, 29 MD, 30 MD, 31 MD, 36 MD, 37 MD, 42 MD, and 43 MD.

York County. The entire county.

(2) *Low-risk area.*

Aroosktook County. The townships of Bancroft, Benedicta, Macwahoc Plantation, Molunkus, North Yarmouth Academy Grant, Reed Plantation, Silver Ridge, Upper Molunkus, Weston, and 1 R5 WELS.

Franklin County. The townships of Crockertown, Dallas Plantation, Freeman, Jerusalem, Kingfield, Madrid, Mount Abraham, Phillips, Rangeley Plantation, Redington, Salem, Sandy River Plantation, 6, E. and D.

Oxford County. The townships of Andover, Andover North, Andover West, Bryon, Gilead, Grafton, Magalloway Plantation, Newry, Richardsontown, Riley, Roxbury, Upton, C, and C Surplus.

Penobscot County. The townships of Carroll Plantation, Chester, Drew Plantation, E. Millinocket, Grindstone, Hersey Town, Hopkins Academy Grant, Indian Purchase, Kingman, Lakeville, Lee, Long A, Mattawamkeag, Medway, Millinocket, Prentiss Plantation, Seboeis Plantation, Sherman, Soldiertown, Springfield, Stacyville, Webster Plantation, Winn, Woodville, Veazie Gore, AR 7, AR 8 & 9, 3 R1, R6 WELS, 1 R8 WELS, 2 R8 WELS, 2 R8 NWP, 2 R9 NWP, 3 R9 NWP, and 5 R1 NBPP.

Piscataquis County. The townships of Abbott, Barnard, Blanchard Plantation, Bowerbank, Brownville, Dover-Foxcroft, Guilford, Kingsbury Plantation, Lakeview Plantation, Monson, Parkman, Sangeville, Sebec, Williamsburg, Willimantic, Willington, 1 R9, 2 R9 WELS, 4 R9 NWP, and 5 R9 NWP.

Somerset County. The townships of Bald Mountain, Bingham, Brighton Plantation, Caratunk, Carrying Place, Carrying Place Town, Concord Plantation, Dead River, Highland Plantation, Lexington Plantation, Mayfield, Moscow, and Pleasant Ridge Plantation.

Washington County. The townships of Alexander, Baileyville, Baring, Brookton, Calais, Codyville Plantation, Cooper, Charlotte, Cutler, Danforth, Dennysville, Dyer, Eastport, Edmonds, Forest, Forest

City, Powler, Grand Lake Stream Plantation, Indian, Kossuth, Lambert Lake, Lubec, Marion, Meddybemps, Pembroke, Perry, Princeton, Robbinston, Talmadge, Topsfield, Trescott, Vanceboro, Waite, Whiting, Plantation 14, Plantation 21, 6 R1 NBPP, 6 NDBPP, 8 R3 NBPP, 8 R4 NBPP, 11 R3 NBPP.

Maryland

(1) *High-risk area.*
Allegany County. The entire county.
Baltimore City. The entire county.
Baltimore County. The entire county.
Caroline County. The entire county.
Carroll County. The entire county.
Cecil County. The entire county.
Frederick County. The entire county.
Garrett County. The entire county.
Harford County. The entire county.
Howard County. The entire county.
Kent County. The entire county.
Montgomery County. The entire county.
Queen Annes County. The entire county.
Washington County. The entire county.
(2) *Low-risk area.*
Anne Arundel County. The entire county.
Dorchester County. The entire county.
Calvert County. The entire county.
Charles County. The entire county.
Prince Georges County. The entire county.
St. Marys County. The entire county.
Somerset County. The entire county.
Talbot County. The entire county.
Wicomico County. The entire county.
Worecester County. The entire county.

Massachusetts

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

Michigan

(1) *High-risk area.*
Arenac County. The entire county.
Bay County. The entire county.
Clare County. The entire county.
Genesee County. The entire county.
Gladwin County. The entire county.
Gratiot County. The entire county.
Huron County. The entire county.
Iosco County. The entire county.
Isabella County. The entire county.
Lapeer County. The entire county.
Mecosta County. The entire county.
Midland County. The entire county.
Missaukee County. The entire county.
Montcalm County. The entire county.
Oakland County. The entire county.
Ogemaw County. The entire county.
Osceola County. The entire county.
Roscommon County. The entire county.
Saginaw County. The entire county.
Sanilac County. The entire county.
Shiawassee County. The entire county.
St. Clair County. The entire county.
Tuscola County. The entire county.
(2) *Low-risk area.*
Alcona County. The entire county.
Allegan County. The entire county.
Alpena County. The entire county.
Antrim County. The entire county.
Barry County. The entire county.
Benzie County. The entire county.
Berrien County. The entire county.
Branch County. The entire county.
Calhoun County. The entire county.
Cass County. The entire county.
Charlevoix County. The entire county.
Cheboygan County. The entire county.
Clinton County. The entire county.
Crawford County. The entire county.
Eaton County. The entire county.
Emmet County. The entire county.
Grand Traverse County. The entire county.
Hillsdale County. The entire county.
Ingham County. The entire county.
Ionia County. The entire county.
Jackson County. The entire county.
Kalkaska County. The entire county.
Kalamazoo County. The entire county.
Kent County. The entire county.
Lake County. The entire county.
Leelanau County. The entire county.
Lenawee County. The entire county.
Livingston County. The entire county.
Macomb County. The entire county.
Manistee County. The entire county.
Mason County. The entire county.
Monroe County. The entire county.
Montmorency County. The entire county.
Muskegon County. The entire county.
Newaygo County. The entire county.
Oceana County. The entire county.
Oscoda County. The entire county.
Otsego County. The entire county.
Ottawa County. The entire county.
Presque Isle County. The entire county.
St. Joseph County. The entire county.
Van Buren County. The entire county.
Washtenaw County. The entire county.
Wayne County. The entire county.
Wexford County. The entire county.

New Hampshire

(1) *High-risk area.*
Belknap County. The entire county.
Carroll County. The entire county.
Cheshire County. The entire county.
Grafton County. The entire county.
Hillsboro County. The entire county.
Merrimack County. The entire county.
Rockingham County. The entire county.
Strafford County. The entire county.
Sullivan County. The entire county.
(2) *Low-risk area.*
Coos County. The entire county.

New Jersey

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

New York

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

Ohio

(1) *High-risk area.* None.
(2) *Low-risk area.*
Ashtabula County. The entire county.
Geauga County. The entire county.
Lake County. The entire county.
Trumbull County. The entire county.

Oregon

(1) *High-risk area.* None.
(2) *Low-risk area.*
Lane County. That portion beginning at the northwest corner of sec. 15, T. 17 S., R. 6 W.; then due east along the section lines to the intersection of the north boundary of sec. 15, T. 17 S., R. 3 W. and Interstate 5; then north along Interstate 5 to its intersection with Coburg Road; then northwest along this road to its intersection with Powerline Road; then north along this road to its intersection with the north border of sec. 7, T. 16 S., R. 3 W.; then due east along the section lines to the northeast corner of Section 7, T. 16 S., R. 2 W.; then due south along the section lines to the southeast corner of sec. 31, T. 16 S., R. 2 W.; then due east along the section lines to the northeast corner of sec. 5, T. 17 S., R. 1 E.; then due north along the section lines to the northwest corner of sec. 21, T. 16 S., R. 1 E.; then due east along the section lines to the northeast corner of sec. 20, T. 16 S., R. 2 E.; then due south along the section lines to the southeast corner of sec. 20, T. 17 S., R. 2 E.; then due west along the section lines to the southwest corner of sec. 23, T. 17 S., R. 1 E.; then due south along the section lines to the southeast corner of sec. 10, T. 20 S., R. 1 E.; then due west along the section lines to the southwest corner of sec. 9, T. 20 S., R. 2 W.; then due south along the section lines to the intersection of the east border of sec. 32, T. 20 S., R. 2 W. and Row River Road; then west along this road to Dorena Dam; then south along Dorena Dam spillway to a point intersecting the south boundary of sec. 32, T. 20 S., R. 2 W.; then due west along the section lines to the southwest corner of sec. 34, T. 20 S., R. 5 W.; then due north along the section lines to the northwest corner of sec. 10, T. 20 S., R. 5 W.; then due east along the section lines to the northeast corner of sec. 9, T. 20 S., R. 3 W.; then due north along the section lines to the northwest

corner of sec. 27, T. 18 S., R. 3 W.; then due west along the section lines to the southwest corner of sec. 20, T. 18 S., R. 4 W.; then due north along the section lines to the northwest corner of sec. 5, T. 18 S., R. 4 W.; then due west along the section lines to the southwest corner of sec. 34, T. 17 S., R. 6 W.; then due north along the section lines to the starting point.

Pennsylvania

(1) *High-risk area.*
Adams County. The entire county.
Armstrong County. The entire county.
Bedford County. The entire county.
Berks County. The entire county.
Blair County. The entire county.
Bradford County. The entire county.
Bucks County. The entire county.
Cambria County. The entire county.
Cameron County. The entire county.
Carbon County. The entire county.
Centre County. The entire county.
Chester County. The entire county.
Clarion County. The entire county.
Clearfield County. The entire county.
Clinton County. The entire county.
Columbia County. The entire county.
Crawford County. The entire county.
Cumberland County. The entire county.
Dauphin County. The entire county.
Delaware County. The entire county.
Elk County. The entire county.
Fayette County. The entire county.
Forest County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Huntingdon County. The entire county.
Indiana County. The entire county.
Jefferson County. The entire county.
Juniata County. The entire county.
Lackawanna County. The entire county.
Lancaster County. The entire county.
Lebanon County. The entire county.
Lehigh County. The entire county.
Luzerne County. The entire county.
Lycoming County. The entire county.
McKean County. The entire county.
Mifflin County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Montour County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Perry County. The entire county.
Philadelphia County. The entire county.
Pike County. The entire county.
Potter County. The entire county.
Schuylkill County. The entire county.
Snyder County. The entire county.
Somerset County. The entire county.
Sullivan County. The entire county.
Susquehanna County. The entire county.
Tioga County. The entire county.
Union County. The entire county.
Venango County. The entire county.
Warren County. The entire county.
Wayne County. The entire county.
Westmoreland County. The entire county.
Wyoming County. The entire county.
York County. The entire county.
(2) *Low-risk area.* Counties not designated as high-risk area.

Rhode Island

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

Vermont

(1) *High-risk area.*
Addison County. The entire county.
Bennington County. The entire county.
Chittenden County. The entire county.
Franklin County. The entire county.
Grand Isle County. The entire county.
Rutland County. The entire county.
Windham County. The entire county.
Windsor County. The entire county.
(2) *Low-risk area.*
Caledonia County. The entire county.
Essex County. The entire county.
Lamoille County. The entire county.
Orange County. The entire county.
Orleans County. The entire county.
Washington County. The entire county.

Virginia

(1) *High-risk area.*
City of Alexandria. The entire city.
City of Charlottesville. The entire city.
City of Chesapeake. The entire city.
City of Fairfax. The entire city.
City of Falls Church. The entire city.
City of Fredericksburg. The entire city.
City of Hampton. The entire city.
City of Harrisonburg. The entire city.
City of Manassas. The entire city.
City of Manassas Park. The entire city.
City of Newport News. The entire city.
City of Norfolk. The entire city.
City of Poquoson. The entire city.
City of Portsmouth. The entire city.
City of Virginia Beach. The entire city.
City of Waynesboro. The entire city.
City of Winchester. The entire city.
Accomack County. The entire county.
Albemarle County. The entire county.
Arlington County. The entire county.
Augusta County. That portion of the county east of Interstate 81 and north of Interstate 64.
Caroline County. The entire county.
Clarke County. The entire county.
Culpeper County. The entire county.
Fairfax County. The entire county.
Fauquier County. The entire county.
Fluvanna County. The entire county.
Frederick County. The entire county.
Gloucester County. The entire county.
Goochland County. The entire county.
Greene County. The entire county.
Hanover County. The entire county.
Henrico County. The entire county.
King George County. The entire county.
Lancaster County. The entire county.
Loudon County. The entire county.
Louisa County. The entire county.
Madison County. The entire county.
Mathews County. The entire county.
Middlesex County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Orange County. The entire county.
Page County. The entire county.
Powhatan County. The entire county.
Prince William County. The entire county.
Rappahannock County. The entire county.
Richmond County. The entire county.
Rockingham County. The entire county.
Shenandoah County. The entire county.
Spotsylvania County. The entire county.
Stafford County. The entire county.
Warren County. The entire county.
Westmoreland County. The entire county.
York County. The entire county.
(2) *Low-risk area.* None.

West Virginia

(1) *High-risk area.*
Barbour County. The entire county.
Berkeley County. The entire county.
Grant County. The entire county.
Hampshire County. The entire county.
Hardy County. The entire county.
Jefferson County. The entire county.
Mineral County. The entire county.
Monongalia County. The entire county.
Morgan County. The entire county.
Pendleton County. The entire county.
Preston County. The entire county.
Tucker County. The entire county.
(2) *Low-risk area.* None.

Done in Washington, DC, on this 29th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-20056 Filed 9-1-88; 8:45 am]
BILLING CODE 3410-34-M

[Docket No. 88-115]

7 CFR Part 354

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing, and adding, commuted traveltime allowances in North Carolina and Vermont. A commuted traveltime allowance is the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

This action is necessary to inform the public of the commuted traveltime between these locations.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Eggert, Director, National Administrative and Planning Operations Staff, PPQ, APHIS, USDA, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, Chapter III, and 9 CFR, Chapter I, Subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing, and adding, commuted traveltime allowances between certain locations in North Carolina and Vermont. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing and adding, in alphabetical order, the information as shown below:

§354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area: Within	Metropolitan area: Outside
Remove:			
North Carolina			
Cherry Point	Kinston		3
Morehead City	Kinston		3
Add:			
Cherry Point	Goldsboro		4
Morehead City	Goldsboro		4
Raleigh	Raleigh	2	
Raleigh	Goldsboro		4
Raleigh	Clinton		4
Remove:			
Vermont			
Burlington	Montpelier		2
Add:			
Burlington	Montpelier		3

Done in Washington, DC, this 29th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-20058 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 41; Doc. No. 5948S]

General Crop Insurance Regulations; Malting Barley Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Friday, July 22, 1988, at 53 FR 27663, amending the General Crop Insurance Regulations (7 CFR Part 401) to revise and reissue the Malting Barley Option (7 CFR 401.135). In that publication, three errors have been noted with respect to: (1) An incorrect cross reference for the definition of two-rowed or six-rowed malting barley; (2) an incorrect reference regarding test weight per bushel of barley; and, (3) an inadvertent repetition of two sentences. This notice is published to correct those errors.

EFFECTIVE DATE: September 2, 1988.

ADDRESS: Written comments on this correction may be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: FR Document 88–16549, appearing at page 27664, is corrected as follows:

On page 27664, in Column 2, § 7.b. introductory text of 7 CFR 401.135, the Malting Barley Option, is correctly revised to read as follows:

§ 401.135 [Amended]

7. * * *

b. Mature malting barley production, which due to insurable causes, is not accepted by a buyer of malting barley and will not meet the applicable standards for two-rowed or six-rowed malting barley (see § 10.a.), will be adjusted by:

* * * * *

On page 27664, in Column 2, § 10.d. of 7 CFR 401.135, the Malting Barley Option, is correctly revised to read as follows:

10. * * *

d. *"Value per bushel"* for the insured malting barley means;

(1) The local market price of U.S. No. 2 barley (basic barley) if the insured mature malting barley production, due to insurable causes, has a test weight of at least 40 pounds per bushel and, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains more than 85 percent sound barley; less than 8 percent damaged kernels; less than 35 percent thin barley; less than 5 percent black barley; and does not grade smutty, garlicky, or ergoty; or

(2) The local market price of basic barley of the same quality as the insured malting barley, if the malting barley does not meet all the standards in § 10.d.(1).

The local market price for basic barley as identified in § 10.d.(1) and (2) above will be the price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

* * * * *

Done in Washington, DC on August 25, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–19946 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV–88–115]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations (Interim Nomination Procedures for the Navel and Valencia Orange Administrative Committees)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of interim nomination procedures for membership on the Navel and Valencia Orange Administrative Committees (committees). These committees are the administrative agencies responsible for local administration of the California-Arizona navel and Valencia orange marketing orders. The navel and Valencia orange marketing orders were recently amended. The Final Order Amending the Orders appears elsewhere in this issue of the **Federal Register.** The amendments changed the provisions of the marketing orders concerning the structure of the committees. The amendments included a change in the basis for industry representation on the committees and the use of the total volume of oranges disposed of in all outlets in the determination of nominating rights. Therefore, new nomination procedures are needed for each respective order to allow the nomination of new members to both committees. This interim final rule will allow the U.S. Department of Agriculture (Department) to conduct initial committee nominations using the interim procedures described herein.

These interim procedures will be used until the committees, with the approval of the Secretary, recommend additions to or modifications of these nomination procedures.

DATE: Interim final rule effective September 2, 1988. Comments which are received by November 1, 1988 will be considered prior to any finalization of this interim final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order Nos. 907 and 908 [7 CFR Parts 907 and 908], as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three fiscal years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3504], the information collection provisions that are included in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0116 and 0581–0212, respectively.

This interim final rule invites comments on the establishment of nomination procedures for membership on the committees. The navel and Valencia orange marketing orders were recently amended. The Final Order Amending the Orders appears elsewhere in this issue of the **Federal Register**. The amendments changed the provisions of the marketing orders concerning the structure of the committees. These committees are established under their respective marketing orders for the purpose of administering the navel and Valencia orange marketing order programs. The amendments included a limitation on tenure for members of the Valencia Administrative Committee (VOAC), a change in the basis for industry representation on the committees, the inclusion of a definition of "Capper-Volstead" cooperatives in the orders, and the use of the total volume of oranges disposed of in all outlets in the determination of nominating rights. The amendments are expected to provide a more flexible framework for apportioning committee membership among segments of the industries based upon their relevant dominance in their respective industries.

The term of office of each member and alternate member of the committees is two years. Members are nominated and selected in each even-numbered year. The term of office for the current VOAC began February 1, 1988, and, for the Navel Orange Administrative Committee (NOAC) the next term of office will begin October 1, 1988. Therefore, a new NOAC should be in place by October 1 and a new VOAC should be selected by February 1, 1988. For these reasons, new nomination procedures for each order are necessary to allow the nomination of new members to the committees and, in particular, the NOAC.

Sections 907.22 and 908.22 of the navel and Valencia orange marketing orders, respectively, provide for nominations of members to the committees by procedures conducted by the Secretary. These sections describe a process whereby three types of nominating entities develop slates of candidates for nomination which may be voted on by the growers affiliated with such groups.

This interim final rule will allow the Department to conduct initial committee nominations using the procedures described below for the three types of nominating entities.

Nominating entity 1 is the cooperative marketing organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the current year. For this nominating entity, its board of directors will develop a slate of candidates for nomination containing, at a minimum, one eligible candidate for each member, alternate member, and additional alternate member for each position the entity qualifies. The board of directors then has the option of nominating its slate of candidates or allowing the cooperative's growers to nominate its slate of candidates through mail balloting.

Nominating entity 2 is composed of groups of handlers who declare themselves to be nominating entities. These groups or coalitions may be a combination of cooperative handlers, cooperative and independent handlers, or solely independent handlers. After notification by the Department of the number of member positions available, each declared group of handlers must develop a slate of candidates for nomination containing, at a minimum, one eligible candidate for each member, alternate member, and additional alternate member for each position the entity qualifies. A handler may not participate as a member of more than one nominating entity. In addition, if a handler coalition fails to develop a slate of candidates, the growers affiliated with the handlers could nominate through write-in ballots. If a handler coalition forms but does not have the percentage necessary to be allocated a member position, the growers affiliated with the handlers could make nominations pursuant to provisions applicable to nominating entity 3.

The Department will use the slates of candidates for nomination developed by each declared group, for mail balloting among those growers who delivered their fruit to the handler or group of handlers which make up that declared group. Growers may receive more than one ballot if they delivered to more than one handler, but growers may vote for nominees of only one group of handlers regardless of the number of handlers to whom the growers delivered oranges. Growers should complete and mail in the ballot of that group of handlers with which the grower wishes to vote. In this way, growers are free to choose the slate of candidates they feel would best represent their interests. The Department will ensure that growers vote for only one slate of candidates. The board of directors of nominating entity 1 may choose to allow its growers to vote directly rather than to nominate by vote of its board of directors. Under those circumstances, the mail balloting procedure outlined above would apply to a grower vote of nominating entity 1 growers.

Nominating entity 3 is comprised of growers not affiliated with handlers in nominating entities 1 or 2. The Department will hold candidate selection meetings for nominating entity 3 growers in all districts of the production area. A slate of grower candidates will be developed at these meetings. Provision is also made for growers to propose candidates for nomination without attending the candidate selection meetings. Mail balloting will then be conducted by the Department.

As the first stage of the revised nomination procedures, the Department will notify all handlers of their percentage of total orange dispositions in the current fiscal (navels) or marketing (Valencias) year and the minimum percentages required to be allocated grower and/or handler members on the committees. Total dispositions to all outlets include, but are not limited to, by-products, animal feed, charitable donations, and exports in addition to fresh domestic shipments. During the current fiscal (navel) or marketing (Valencies) year, each handler will have handled a percent of

total orange dispositions and each nominating entity will be able to nominate one member, one alternate member and one additional alternate member, for each 10.0 percent of total orange dispositions attributable to such entity during the current fiscal (navels) or marketing (Valencies) year in which nominations are made. However, as provided in §§ 907.22(d) and 908.22(d) of the orders, the largest cooperative marketing organization (nominating entity 1) and nominating entity 2 declared groups of handlers are limited to a maximum of 5 members each, thus the 10.0 percent requirement would be reduced whenever the largest cooperative marketing organization (nominating entity 1) or a declared group of handlers (nominating entity 2) has more than 50 percent of total dispositions in the current fiscal (navels) or marketing (Valencies) year. For example, if both the largest cooperative marketing organization and the largest declared group of handlers each controlled less than 50 percent of total dispositions, Handler A's total dispositions of navel oranges are 3.0 percent, Handler B's, 5.0 percent, and Handler C's 20.0 percent, a declared group of handlers formed only of Handlers A, B, and C would have 28 percent of total orange dispositions during the current fiscal year and would be allocated 2 members, 2 alternate members and 2 additional alternate members to the committee. If the largest cooperative marketing organization or the largest group of handlers controlled more than 50 percent (for example, 58 percent) of total dispositions, then the percentage required for other nominating entities to nominate each member, plus an alternate member and additional alternate member for the remaining entities, is calculated as follows:

$$\frac{50\% - 8\%}{5} = 8.4\%$$

In the example suggested above, where the largest cooperative marketing organization or the largest group of declared handlers controlled 58 percent of total dispositions, Group D with 26 percent of total dispositions would receive 3 members, 3 alternatives, and 3 additional alternates; Group E with 9 percent would receive 1 member, 1 alternate, and 1 additional alternate; and Group F with 11 percent would also receive 1 member, 1 alternate, and 1 additional alternate.

The Department will request notifications by nominating entity 1 and nominating entity 2 declared groups of the handlers affiliated with such entities and a list of the growers affiliated with each handler. The nominating entity 1 cooperative or any declared nominating entity 2 cooperative which has a volume percentage such that it qualifies for member positions shall not have to provide the lists of handlers and growers if such entities' boards of directors choose to nominate their candidates through action of their boards. After receiving all grower lists, the Department will notify each nominating entity of the number of member positions it is allocated. If nominations for grower and handler member positions total less than 10, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights. Thus, in the example where a nominating entity composed of Handlers A, B, and C has 28 percent of total orange dispositions and was eligible to nominate 2 members, 2 alternate members and 2 additional alternate members to the committee, this nominating entity had an 8 percent residual percentage. If there were 3 other nominating entities, with 40 percent, 22 percent and 10 percent of total dispositions, respectively, they would nominate 4 members, 4 alternate members and 4 additional alternate members; 2 members, 2 alternate members, and 2 additional alternate members; and 1 member, 1 alternate member, and 1 additional alternate member, respectively. Thus, there would be one member position with appropriate alternates still to be nominated, and the nominating entity with the largest residual percentage (in this example, the declared group made up of Handlers A, B, and C with an 8 percent residual percentage) would nominate this member.

After notification of the number of member positions authorized, each nominating entity (with the exception of nominating entity 3) will then develop a slate of candidates for nomination as described herein and submit such slate to the Department within one week of such notification.

Mail balloting will be conducted by the Department for growers affiliated with handlers in nominating entities 1 (if its board of directors so chooses), 2, and 3. After receipt of the slates of candidates developed by the nominating entities, a ballot will be sent to each grower in order that they may vote for candidate(s) developed by their respective nominating entity. Growers are entitled to cast only one vote on behalf of themselves, their agents, subsidiaries, affiliates, and representatives even though they may have delivered fruit to more than one declared handler or group of handlers. Growers who deliver oranges to handlers in more than one nominating entity, and who thus receive more than one ballot, must select the slate of candidates for whom they wish to vote and may vote for only one slate of candidates. Growers should complete and mail in the ballot of that nominating entity for which the grower wishes to vote. In addition, growers in all nominating entities may nominate qualified individuals other than those appearing on the ballot, by writing in such candidates' names on the mail ballots. The Department will tally the results of mail balloting of all entities. Candidates who receive the highest number of votes for each position will be presented to the Secretary for selection.

The above-described procedures will be utilized until the committees recommend to the Secretary additions to or modifications of these nomination procedures or the Department finds, through other sources, that such modifications are necessary.

After consideration of all available information, including the recently concluded amendatory proceedings relative to these orders, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Based on available information, the Administrator of the AMS has determined that issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The term of office for members of the NOAC begins October 1, 1988, and nomination procedures should be in place in order

for a new committee to be selected by that date; and, (2) handlers and producers are aware of the need for this action as the navel and Valencia orange industry as a whole, during the period June 21 through July 8, 1988, participated in producer referenda to amend the orders.

List of Subjects

7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, and Oranges.

7 CFR Part 908

Arizona, California, Marketing agreements and orders, Oranges, and Valencias.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are amended as follows: [*These sections will appear in the Code of Federal Regulations.*]

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Section 907.102 is revised to read as follows:

Subpart—Rules and Regulations

§ 907.102 Nomination procedures.

(a) The manner of nominating grower and handler members and alternate members of the committee shall be as follows:

(1) All handlers shall be notified by the Secretary of their percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made. For the purposes of forming nominating groups, the Secretary will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities of their formation: *Provided,* That a list containing the names and addresses of all growers who deliver oranges to such handlers shall also be submitted by each handler affiliated with a nominating entity whose members shall be nominated through a mail balloting procedure.

(2) Following the formation of all eligible nominating entities, the Secretary shall notify each such entity of the number of grower or handler members or both that each nominating entity is qualified to nominate, based on the total percentages of navel oranges disposed of in all outlets by all handlers in each nominating entity. This notification will also request nominating entities 1 and 2, pursuant to §§ 907.22 (a)(1) and (a)(2), to develop slates of candidates for nomination and submit such slates to the Secretary by a date specified in the notice. If a declared group of handlers (nominating entity 2) fails to develop a slate of candidates, the growers affiliated with handlers in such group may nominate through write-in ballots.

(3) Growers, pursuant to § 907.22(a)(3), and, if applicable, growers pursuant to § 907.22(a)(2), shall nominate grower members in accordance with the following procedures:

(i) Any grower who in the current fiscal year is not affiliated with nominating entities 1 and 2 and delivered navel oranges to handlers shall be eligible to vote for nominees pursuant to § 907.22(g).

(ii) For the purpose of selecting candidates for nomination, the Secretary shall hold meetings in all districts. Timely notice of such meetings shall be given by the Secretary to each eligible nominating entity 3 grower of record.

(iii) Candidates for nomination shall be selected at such meetings by submitting their names on a form approved by the Secretary and signed by at least 10 eligible growers.

(iv) Growers may propose candidates without attending a candidate selection meeting by submitting the names on a form approved by the Secretary, as specified in paragraph (a)(3)(iii) of this section, to the marketing field office and signed by at least 10 eligible growers. Such submission, if mailed, must be postmarked at least 10 days prior to the date of the first of the district meetings held pursuant to paragraph (a)(3)(ii) of this section, and if hand delivered, must be received at least five days prior to such date.

(v) Persons submitting names for candidacy shall specify the position (i.e., grower member, alternate, or additional alternate) for which they wish to nominate. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the Secretary prior to the date on which the ballots are prepared for mailing to eligible growers.

(4) Following the submission of the slates of candidates by nominating entities 1, 2, and 3, the Secretary shall mail to all eligible growers of record (with the exception of growers whose cooperatives' boards of directors choose to nominate for their members) a ballot containing the names of the candidates for each available position. Growers receiving more than one ballot shall choose the slate of candidates for whom they wish to vote and may only vote for one slate of candidates. Growers may also cast votes for eligible candidates who do not appear on the ballots by writing in the name of such candidates on the ballot. At the discretion of the Secretary, the ballots may include such other information about such candidates as was included on the candidate form specified in paragraph (a)(3)(iii) of this section and as the Secretary deems appropriate.

(5) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and returned to the Secretary's agent at the location and within the time period prescribed. The validity of ballots shall be determined by the Secretary's agent, with such assistance from the committee as may be requested by the agent.

(6) The names of the persons receiving the highest total number of votes for a particular grower or handler position shall be submitted to the Secretary as the nominees for such positions.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

2. Section 908.102 is revised to read as follows:

§ 908.102 Nomination procedures.

(a) The manner of nominating grower and handler members and alternate members of the committee shall be as follows:

(1) All handlers shall be notified by the Secretary of their percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made. For the purposes of forming nominating groups, the Secretary will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities of their formation: *Provided,* That a list containing the names and addresses of all growers who deliver oranges to such handlers shall also be submitted by each handler affiliated with a nominating entity whose members shall be nominated through a mail balloting procedure.

(2) Following the formation of all eligible nominating entities, the Secretary shall notify each such entity of the number of grower or handler

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members or both that each nominating entity is qualified to nominate, based on the total percentages of Valencia oranges disposed of in all outlets by all handlers in each nominating entity. This notification will also request nominating entities 1 and 2, pursuant to § 908.22 (a)(1) and (a)(2), to develop slates of candidates for nominations and submit such slates to the Secretary by a date specified in the notice. If a declared group of handlers (nominating entity 2) fails to develop a slate of candidates, the growers affiliated with the handlers in such group may nominate through write-in ballots.

(3) Growers, pursuant to § 908.22(a)(3), and, if applicable, growers pursuant to § 908.22(a)(2), shall nominate grower members in accordance with the following procedures:

(i) Any grower who in the current marketing year is not affiliated with nominating entities 1 or 2 and delivered Valencia oranges to handlers shall be eligible to vote for nominees pursuant to § 908.22(g).

(ii) For the purpose of selecting candidates for nomination, the Secretary shall hold meetings in all districts. Timely notice of such meetings shall be given by the Secretary to each eligible nominating entity 3 grower of record.

(iii) Candidates for nomination shall be selected at such meetings by submitting their names on a form approved by the Secretary and signed by at least 10 eligible growers.

(iv) Growers may propose candidates without attending a candidate selection meeting by submitting the names on a form approved by the Secretary, as specified in paragraph (a)(3)(iii) of this section, to the marketing field office and signed by at least 10 eligible growers. Such submission, if mailed, must be postmarked at least 10 days prior to the date of the first of the district meetings held pursuant to paragraph (a)(3)(ii) of this section, and if hand delivered, must be received at least five days prior to such date.

(v) Persons submitting names for candidacy shall specify the position (i.e., grower member, alternate, or additional alternate) for which they wish to nominate. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the Secretary prior to the date on which the ballots are prepared for mailing to eligible growers.

(4) Following the submission of the slates of candidates by nominating entities 1, 2, and 3, the Secretary shall mail to all eligible growers of record (with the exception of growers whose cooperatives' boards of directors choose to nominate for their members) a ballot containing the names of the candidates for each available position. Growers receiving more than one ballot shall choose the slate of candidates for whom they wish to vote and may only vote for one slate of candidates. Growers may also cast votes for eligible candidates who do not appear on the ballots by writing in the name of such candidates on the ballot. At the discretion of the Secretary, the ballots may include such other information about such candidates as was included on the candidate form specified in paragraph (a)(3)(iii) of this section and as the Secretary deems appropriate.

(5) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and returned to the Secretary's agent at the location and within the time period prescribed. The validity of ballots shall be determined by the Secretary's agent, with such assistance from the committee as may be requested by the agent.

(6) The names of the persons receiving the highest total number of votes for a particular grower or handler position shall be submitted to the Secretary as the nominees for such positions.

Dated: August 24, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-19992 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 907 and 908

[Docket Nos. AO-245-A9 & AO-250-A7, FV-88-103]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal marketing orders for navel and Valencia oranges grown in Arizona and designated parts of California. The amendments change the provisions of the marketing orders concerning the structure of the Navel and Valencia Orange Administration Committees (committees). These committees are established under their respective marketing orders for the purpose of administering the programs. The amendments include a limitation on tenure for members of the Valencia Orange Administrative Committee, a change in the basis for industry representation on the committees, the inclusion of a definition of "Capper-Volstead" cooperatives in the orders, use of the total volume of oranges disposed of in all outlets in the determination of nominating rights for membership on the committees, and conforming changes. In addition, a number of minor changes are made for clarity. The amendments will provide a more flexible framework for apportioning committee membership among segments of the industries, based on the relative dominance in the respective industries.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued June 4, 1986, and published in the June 6, 1986, issue of the **Federal Register** [51 FR 20664]; Recommended Decision issued June 1, 1987, and published in the June 5, 1987, issue of the **Federal Register** [52 FR 21546]; and Secretary's Decision and Referendum Order issued on June 6, 1988, and published in the June 9, 1988, issue of the **Federal Register** [53 FR 21651].

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

This final rule was formulated on the record of a public hearing held June 10-12, 1986, at Visalia, California to consider the proposed further amendments of Marketing Order No. 907 [7 CFR Part 907] regulating the handling of navel oranges grown in Arizona and designated part of California and Marketing Order No. 908 [7 CFR Part 908] regulating the handling of Valencia oranges grown in Arizona and designated part of California, hereinafter referred to collectively as the "orders." The hearing was held pursuant to the provisions of the agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674 *et seq.*], hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing order [7 CFR

Part 900]. The Notice of Hearing contained amendment proposals submitted by: The Sequoia Orange Company, Inc.; R. E. Herrick of Belridge Farms and Packing Company; the Navel and Valencia Orange Administrative Committees established under the orders, hereinafter referred to collectively as the "committees," and the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture. The proposals pertained to committee size and composition, a limitation on tenure for members of the Valencia Orange Administrative Committee, changing the basis for industry representation on the committees, inclusion of a definition of "Capper-Volstead" cooperatives in the orders, use of the total volume of all oranges in all outlets in determining nominating rights, and conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on June 1, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by July 8, 1987. Eleven exceptions were filed, and were discussed and ruled upon in the Secretary's Decision.

The Secretary's Decision was issued June 6, 1988, directing that referenda be conducted during the period June 21 through July 8, 1988, among producers of navel and Valencia oranges grown in Arizona and designated parts of California to determine whether they favored various amendment proposals to the orders. In those referenda, navel orange producers voted in favor of three of the four amendment proposals listed on the referendum ballot, and Valencia orange producers voted for four of the five amendment proposals listed on the referendum ballot. The proposal that did not receive the requisite approval by three-fourths by number of either navel or Valencia orange producers or two-thirds by volume of such production would have authorized an increase in committee size up to 13 members. Accordingly, those proposed amendments are not included in these orders amending the orders and modifications have been made to the proposed marketing orders amending the orders as appropriate to reflect this change. In addition, language inadvertently omitted from § 907.27 in publication of the proposed amendments in the Secretary's Decision is included in the order.

Pursuant to the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the amendment proposals on small business for purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Given the applicable definition of a small business concern (i.e., for purposes of review pursuant to the RFA, an agricultural services firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of navel and Valencia oranges would fall within that definition. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three fiscal years of less than $500,000. The majority of California-Arizona navel and Valenica orange producers and handlers may be classified as small entities.

The collection of information under the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35] contained in these orders amending orders has been approved by the Office of Management and Budget (Approval Nos. 0581–0116 and 0581–0121).

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing orders and agreements, Navel, Oranges, and Valencia.

Order Amending the Orders—Regulating the Handling of Navel and Valencia Oranges Grown in Arizona and Designated Parts of California

Findings and determinations

The findings and determinations hereinafter set forth are supplementary, and in addition to, the findings and determinations previously made in connection with the issuance of the aforesaid orders and each previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders [7 CFR Part 900], a public hearing was held upon proposed amendment of Marketing Order Nos. 907 and 908 [7 CFR Parts 907 and 908], regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California.

Upon the basis of the record, it is found that:

(1) The said orders, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said orders, as amended, and as hereby further amended, regulate the handling of navel and Valencia oranges grown in the designated production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing orders upon which hearings have been held;

(3) The said orders, as amended, and as hereby further amended, are limited in their application to the smallest regional production areas which are practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production areas would not effectively carry out the declared policy of the Act;

(4) The said orders, as amended, and as hereby further amended, prescribe, so far as practicable, such different terms, applicable to different parts of the production areas, as are necessary to give due recognition to differences in the production and marketing of navel and Valencia oranges; and

(5) All handling of navel and Valencia oranges grown in the designated production areas is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Additional Findings

It is necessary and in the public interest to make all of the amendatory provisions effective upon publication in

the **Federal Register**. Any delay beyond that date would interfere with effective order administration.

The provisions of these amendatory orders authorize tenure requirements (for Valencia oranges only), changes in the basis for industry representation on the committees, inclusion of a definition of Capper-Volstead cooperatives in the orders, and the use of total dispositions for determining nominating rights. It is necessary to implement these changes as soon as possible as nominations of members to the Navel Orange Administrative Committee (NOAC) should be completed by October 1, 1988, and a new Valencia Orange Administrative Committee (VOAC) will be selected soon after. For these reasons, new nomination procedures implementing the provisions of each order are necessary to allow the nomination of new members to the committees and will be published separately.

In view of the foregoing, it is hereby found and determined that good cause exists for making this amendatory order effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the **Federal Register** [Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559].

(c) Determinations

It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity covered by the said order, as amended, and as hereby further amended) who, during the period November 1, 1987, through June 30, 1988, for navel oranges and during the period February 1, 1987, through January 31, 1988, for Valencia oranges, handled not less than 80 percent of the volume of such oranges covered by the said orders, as amended and as hereby further amended have not signed a marketing agreement; and

(2) The provisions of the amendatory order, amending the aforesaid orders, as amended, were favored by at least three-fourths of the producers who participated in the respective referendum, or by producers who produced for market at least two-thirds of the volume of such commodity represented in the respective referendum, all such producers having been engaged during the aforementioned representative periods within the respective production areas in the production of such oranges for market.

(3) In the absence of signed marketing agreements, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of navel and Valencia oranges in the respective production areas.

Order Relative to Handling

It is, therefore, ordered, That, on and after the effective date hereof, all handling of navel and Valencia oranges grown in the respective production areas shall be in conformity to, and in compliance with, the terms and conditions of the said marketing orders, as amended, and as hereby further amended, as follows:

Except for the previously noted modifications, the provisions of the proposed marketing orders amending the orders contained in the Recommended Decision issued by the Administrator on June 1, 1987, and published in the June 8, 1987, issue of the **Federal Register** [52 FR 20664], and in the Secretary's Decision issued on June 6, 1988, and published in the June 9, 1988, issue of the **Federal Register** [53 FR 21659] shall be and are the terms and provisions of these orders, amending the orders, and are set forth in full herein subject to changes in §§ 907.19, 908.19(a), 907.20, 908.20, 907.21, 908.21, 907.22, 908.22, 907.23, 908.23, 907.24, 908.24, 907.26, 908.26, 907.27, 908.27, 907.29, 908.29, 907.30, 908.30, 907.104, and 908.104, which are set forth in full herein.

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows: [*These sections will appear in the annual Code of Federal Regulations.*]

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.19 is added to read as follows:

§ 907.19 Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act," [7 U.S.C. 291, 292].

3. Section 907.20 is revised to read as follows:

§ 907.20 Establishment and membership.

(a) There is hereby established a Navel Orange Administrative Committee which, as soon as nominations are made pursuant to § 907.22 and selections are made pursuant to § 907.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower and handler member there shall be one additional alternate. Ten of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers, employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate handler member, or additional alternate handler member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 907.22 and selections made pursuant to § 907.23.

4. Section 907.21 is revised to read as follows:

§ 907.21 Term of office.

The term of office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin October 1 of each even-numbered year: *Provided*, That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which their are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional

alternate member for the next succeeding term of office.

5. Section 907.22 is revised to read as follows:

§ 907.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:

(1) The cooperative marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the largest percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the year in which nominations are made.

(2) Individual handlers or groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section, who declare themselves to be nominating entities, or the body of growers who deliver navel oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph: *Provided,* That no handler may participate as a member of more than one nominating entity: *Provided further,* That if a handler coalition forms and qualifies for a member position but no slate of candidates for nominations is developed, the growers affiliated with handlers in such coalition would be eligible to nominate through write-in ballots: *Provided further,* That if a handler coalition forms but does not have the percentage necessary to be allocated a member, the growers affiliated with handlers in such coalition would be eligible to nominate under paragraph (a)(3) of this section. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) comprising such entities or by the growers who deliver to the handler(s) comprising such entities:

Type of member to be nominated—	Type of business engaged in by declared handler—	Slates of candidates for nomination developed by—	Nominations made by—
Grower/Handler	Capper-Volstead cooperative	Board of Directors	Board of Directors or growers at the option of the Board.
Grower/Handler	Independent	Handlers	Growers.
Grower/Handler	Combination of Capper-Volstead cooperative and independent.	Handlers	Growers.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b) The committee may, with the approval of the Secretary, establish a cut-off date for determining the current fiscal year dispositions for the nominating groups described above.

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made—	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member.)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to above	5

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table applicable to the other nominating entities shall change according to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made—	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to 59.99	5
60.00 to 69.99	6
70.00 to 79.99	7
80.00 to 89.99	8
90.00 to 99.99	9
100.00	10

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total disposition which exceeds 50 percent, the percentage figures in the preceding table shall change according to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(e) If nominations for member positions pursuant to paragraphs (c) and

(d) total less than 10, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided,* That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section.

(f) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 growers.
2	1 grower, 1 handler.
3	2 growers, 1 handler.
4	3 growers, 1 handler.
5	3 growers, 2 handlers.

All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(g) Nominations made by growers pursuant to this section shall result from mail balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers: *Provided,* That growers may cast votes for candidates who do not appear on the ballots: *Provided further,* That growers who deliver oranges to more than one nominating entity should select the nominating entity in which they desire to cast their vote. Each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The committee may recommend and the Secretary may establish procedural rules and regulations to implement other methods of balloting.

(h) The members of the committee selected by the Secretary pursuant to § 907.23 shall meet on a date designated by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(i) The time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary: *Provided,* That the committee may recommend and the Secretary may establish procedural rules and regulations to implement this section.

6. Section 907.23 is revised to read as follows:

§ 907.23 Selection.

From the nominations made pursuant to §907.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate and additional alternate for each member. From the nominations made pursuant to § 907.22(h) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

7. Section 907.24 is revised to read as follows:

§ 907.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 907.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 907.22.

8. Section 907.26 is revised to read as follows:

§ 907.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 907.22 by the same nominating entity which nominated such person for the term or from other qualified persons.

9. Section 907.27 is revised to read as follows:

§ 907.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member, and, in the absence of such alternate, the additional alternate shall so act; *Provided,* That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's place if the alternate handler member or additional alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 907.29 [Amended]

10. Section 907.29 is amended by removing paragraph (n).

11. Section 907.30 is amended by revising the title to read as follows:

§ 907.30 Voting procedures.

* * * * *

§ 907.104 [Removed]

12. Section 907.104 is removed.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

13. A new § 908.19(a) is added to read as follows:

§ 908.19(a) Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act," [7 U.S.C. 291, 292].

14. Section 908.20 is revised to read as follows:

§ 908.20 Establishment and membership.

(a) There is hereby established a Valencia Orange Administrative Committee which, as soon as nominations are made pursuant to § 908.22 and selections are made pursuant to § 908.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower and handler member there shall be one additional alternate. Ten of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers,

employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate handler member, or additional alternate handler member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 908.22 and selections made pursuant to § 908.23.

15. Section 908.21 is revised to read as follows:

§ 908.21 Term of office.

The term of office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin on February 1 of each even-numbered year: *Provided,* That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office.

16. Section 908.22 is revised to read as follows:

§ 908.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made:

(1) The cooperative marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the largest percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the year in which nominations are made.

(2) Individual handlers or groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section who declare themselves to be nominating entities, or the body of growers who deliver Valencia oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph: *Provided,* That no handler may participate as a member of more than one nominating entity: *Provided further,* That if a handler coalition forms and qualifies for a member position but no slate of candidates for nomination is developed, the growers affiliated with handlers in such coalition would be eligible to nominate through write-in ballots: *Provided further,* That if a handler coalition forms but does not have the percentage necessary to be allocated a member, the growers affiliated with handlers in such coalition would be eligible to nominate under paragraph (a)(3) of this section. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) comprising such entities or the growers who deliver to the handler(s) comprising such entities:

Type of member nominated—	Type of business engaged in by declared handler—	Slate of candidates for nomination developed by—	Nominations made by—
Grower/Handler	Capper-Volstead cooperative	Board of Directors	Board of Directors or growers at the option of the board.
Grower/Handler	Independent	Handlers	Growers.
Grower/Handler	Combination of Capper-Volstead cooperative and independent.	Handlers	Growers.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b) The committee may, with the approval of the Secretary, establish a cut-off date for determining the current marketing year dispositions for the nominating groups described above.

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made—	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 and above	5

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a

percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table for other nominating entities shall change according to the following formula:

$$\frac{50\%\text{—(excess over 50\%)}}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made—	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to 59.99	5
60.00 to 69.99	6
70.00 to 79.99	7
80.00 to 89.99	8
90.00 to 99.00	9
100.00	10

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table shall change to the following formula:

$$\frac{50\%\text{—(excess over 50\%)}}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(e) If nominations for member positions pursuant to paragraphs (c) and (d) of this section total less than 10, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided,* That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section:

(f) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 grower.
2	1 grower, 1 handler.
3	2 growers, 1 handler.
4	3 growers, 1 handler.
5	3 growers, 2 handlers.

All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(g) Nominations made by growers pursuant to this section shall result from mail balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers: *Provided,* That growers may cast votes for candidates who do not appear on the ballots: *Provided further,* That growers who deliver oranges to more than one nominating entity should select the nominating entity in which they desire to cast their vote. Each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The committee may recommend and the Secretary may establish procedural rules and regulations to implement other methods of balloting.

(h) The members of the committee selected by the Secretary pursuant to § 908.23 shall meet on a date designated by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(i) The time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary: *Provided,* That the committee may recommend and the Secretary may establish procedural rules and regulations to implement this section.

17. Section 908.23 is revised to read as follows:

§ 908.23 Selection.

From the nominations made pursuant to § 908.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate and additional alternate for each member. From the nominations made pursuant to § 908.22(h) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

18. Section 908.24 is revised to read as follows:

§ 908.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 908.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 908.22.

19. Section 908.26 is revised to read as follows:

§ 908.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 908.22 by the same nominating entity which nominated such person for the term or from other qualified persons.

20. Section 908.27 is revised to read as follows:

§ 908.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member and, in the absence of such alternate, the additional alternate shall so act: *Provided,* That a grower member may designate any alternate grower member or additional alternate

grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's place if the alternate handler member or additional alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 908.29 [Amended]

21. Section 908.29 is amended by removing paragraph (n).

22. Section 908.30 is amended by revising the title to read as follows:

§ 908.30 Voting procedures.

* * * * *

§ 908.104 [Removed]

23. Section 908.104 is removed.

Signed at Washington, DC, on August 24, 1988.

Robert Melland,

Deputy Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88-19993 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 629]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 629 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 310,000 cartons during the period September 4 through September 10, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 629 (§ 910.929) is effective for the period September 4 through September 10, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The committee met publicly on August 30, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.929 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.929 Lemon Regulation 629.

The quantity of lemons grown in California and Arizona which may be handled during the period September 4, 1988, through September 10,1988, is established at 310,000 cartons.

Dated: August 31, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-20147 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 920

[AMS-FV-88-064FR]

Kiwifruit Grown in California; Final Rule Revising Minimum Quantity Exemption and Clarifying Exempt Shipments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adds a subsection to the handling regulation for kiwifruit grown in California specifying the types of uses which would exempt such handling from the requirements of that regulation. This rule also revises the regulation which exempts kiwifruit handlers from certain regulations based on the sale of a small quantity of fruit sold for home use. These actions clarify provisions relative to the quantity and types of shipments that are not subject to the quality, maturity, size, pack, and

inspection requirements imposed under the marketing order.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–5610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920 [7 CFR Part 920], as amended, regulating the handling of kiwifruit grown in the State of California. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 1,225 producers in the production area. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The 1987 California kiwifruit harvest totalled 7.8 million trays and tray equivalents, 21 percent larger than the 1986 harvest. For the past ten years, kiwifruit production has increased in California and is expected to increase again in 1988 to a total of 8.7 million trays. Most of the crop is shipped to fresh markets, with only a small volume of fruit utilized by processors. Exports increased 31 percent over last year and are estimated to have accounted for 55 percent of the 1987 production. Domestic shipments are also increasing, with a gain of about 20 percent for the 1987 crop. It has been estimated that 20 to 25 percent of domestic shipments is utilized in foodservice markets (e.g. restaurants).

The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 [52 FR 37130, October 5, 1987]. The current requirements specify that kiwifruit shall grade at least 85 percent U.S. No. 2 with not more than 8 percent allowed for defects other than shape causing damage, not more than 4 percent allowed for defects other than shape causing serious damage, and not more than 1 percent allowed for fruit affected by internal breakdown or decay. Kiwifruit also must meet a minimum size of 49 and contain a minimum of 6.5 percent soluble solids at the time of inspection. Pack and container requirements are also specified.

This rule revises the administrative rule pertaining to the minimum quantity exemption and adds a new paragraph (c) to the handling regulation (§ 920.302) listing the types of shipments that are exempt from its requirements. The first change was unanimously recommended, and the second was recommended by a six to five vote by the Kiwifruit Administrative Committee on April 6.

The marketing order specifies in paragraph (a) of § 920.54 that kiwifruit handled for certain uses are exempt from the handling regulations imposed under the order as well as inspection and assessment requirements. Such uses are consumption by charitable institutions, distribution by relief agencies, and commercial processing into products. There currently exists some misunderstanding among kiwifruit handlers as to what activities "commercial processing into products" includes. This rule lists these exemptions in the handling regulation and defines the meaning of "commercial processing into products" consistent with the intent of this order provision.

As previously indicated, the foodservice industry is an important market for California kiwifruit in terms of the volume of fruit utilized in such outlets. Additionally, consumers are often introduced to this fruit while dining outside the home. Therefore, the committee concluded that it is necessary that a quality product reach these markets.

Fresh kiwifruit used by foodservice operators is generally peeled and sliced before serving. Some shippers have mistakenly interpreted this to mean the fruit is being processed and therefore such shipments fall within the exemption provision.

The record evidence supporting this exemption provision in the order, however, indicates that "commercial processing into products" is intended to cover such uses as production into wine, jams and jellies because kiwifruit so utilized does not affect the marketing of kiwifruit in commercial fresh fruit market channels, and therefore no use would be served by requiring such kiwifruit to meet quality standards imposed under the order.

While the acts of peeling and slicing prior to serving do not qualify as "commercial processing into products" under paragraph (a) of § 920.54, the committee considered recommending that shipments to foodservice outlets be exempt from handling regulations under paragraph (b) of that section. The majority of the committee members believed, however, that such shipments should continue to meet the established grade, size and maturity standards because they account for a significant share of total fresh shipments. Allowing such a large volume of potentially substandard fruit to be shipped could depress the market for all kiwifruit. In addition, it would be difficult to monitor the movement of fruit shipped to foodservice outlets to ascertain whether the fruit was, in fact, utilized for exempt purposes.

Therefore, the term "commercial processing into products" is clearly defined to mean that kiwifruit is physically altered in form or chemical composition through freezing, canning, dehydrating, pulping, juicing, or heating. This clarification ensures that fresh kiwifruit served in foodservice outlets meet the minimum quality standards imposed under the order.

The marketing order also provides another exemption from the handling regulation for kiwifruit directly marketed by growers under certain conditions. Such kiwifruit must be sold for home use, and not for resale. The maximum quantity that can be sold to any one person on any one day is currently limited to 200 pounds. Using this current poundage limit, a handler can sell three separate family members in one vehicle up to 600 pounds of kiwifruit free from all regulations. The committee believes that this amount is excessive in view of the basic intent of this exemption provision, i.e. that the fruit is for home use, not resale. The committee recommended that the 200 pound limit be applied to all persons collectively in any one vehicle and believes that this change will further the fulfillment of this provision's objective.

With current annual per capita consumption of kiwifruit in the United States being approximately 0.2 pounds, a 200 pound-per-vehicle exemption amount should be adequate to meet the needs for home use. Therefore, paragraph (b)(2) of § 920.110 is revised accordingly.

Finally, paragraph (a) of the handling regulation (§ 920.302) is revised to remove obsolete language.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on July 13, 1988 [53 FR 26445] allowing interested persons until August 12, 1988, to file written comments. No comments were received.

After consideration of the information and recommendation submitted by the committee, and other available information, it is hereby found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** in that: (1) The 1988 harvest of California kiwifruit will begin in early October, and this action should be effective October 1; and (2) the provisions in this final rule are the same as those in the proposal, which received no opposing comments.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.110 is amended by revising paragraph (b)(2) to read as follows:

Note.—This regulation will appear in the Code of Federal Regulations.

§ 920.110 Exemptions.

* * * * *

(b) * * *

(2) The total weight of such kiwifruit sold to all persons collectively in any one vehicle during any one day does not exceed 200 pounds.

* * * * *

3. Section 920.302 is amended by revising paragraph (a) introductory text and adding a new paragraph (c) to read as follows:

[Note: This regulation will appear in the Code of Federal Regulations.]

§ 920.302 Grade, size, pack, and container regulations.

(a) No handler shall ship any kiwifruit unless such kiwifruit meet the following requirements:

* * * * *

(c) *Exemptions.* Any person may handle kiwifruit without regard to the provisions of this section provided that such kiwifruit is handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; or (3) commercial processing into products. For the purposes of this section, "commercial processing into products" means that the kiwifruit is physically altered in form or chemical composition through freezing, canning, dehydrating, pulping, juicing, or heating of the product. The act of slicing, dicing, or peeling shall not be considered commercial processing into products.

Dated: August 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–19891 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[FV–88–128FR]

Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1987–88 Crop Year; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This action corrects a typographical error contained in a final rule published in the **Federal Register** on July 29, 1988 (53 FR 28631). The action corrects § 981.235 of Subpart—Salable, Reserve, and Export Percentages issued under Marketing Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The action changes the date contained in the heading of § 981.235 from July 1, 1988, to July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This action corrects a final rule which revised salable and reserve percentages for marketable California almonds received by handlers during the 1987–88 crop year, which began July 1, 1987. That rule increased the salable percentage from 82 to 100 percent and correspondingly decreased the reserve percentage from 18 percent to 0 percent.

The error appears in the heading to revised § 981.235 found in the third column on page 28631 of the July 29, 1988, issue of the **Federal Register**. In that heading, an erroneous date of July 1, 1988, was inadvertently used. This action corrects that date to July 1, 1987.

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is corrected to read as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Salable, Reserve, and Export Percentages

2. Correctly revises § 981.235 to read as follows:

§ 981.235 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1987.

The salable, reserve, and export percentages during the crop year beginning July 1, 1987, shall be 100 percent, 0 percent, and 0 percent, respectively.

Dated: August 30, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–20062 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88–100]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by adding the particle concentration fluoresence immunoassay (PCFIA) test to the list of

official tests for brucellosis in cattle and bison. This action is warranted to allow for testing that is faster, more sensitive, and more specific than many of the official laboratory tests currently being used.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Hugh E. Metcalf, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8713.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to prevent the spread of brucellosis.

On April 12, 1988, we published in the **Federal Register** (53 FR 12019-12024, Docket Number 88-020) a document proposing to amend § 78.1 by adding the particle concentration fluoresence immunoassay (PCFIA) test to the list of official tests for brucellosis in cattle and bison. In our proposal, we included portions of the procedures for conducting the PCFIA test. We invited the submission of written comments, which were required to be postmarked or received on or before May 12, 1988. We received nine comments—two from private individuals, one from the American Veterinary Medical Association, one from the Holstein Association, and five from state agencies responsible for animal health.

Four commenters favored the rule as published.

Three commenters favored adoption of the PCFIA test as an official test, but objected to our including test procedures. One commenter objected to inclusion of the procedures, without favoring or opposing adoption of the test. In response to these comments, and based on our concerns with including only portions of the procedures in the regulations, we are adding the PCFIA test to the list of official tests without including the portions of the procedures for carrying out the test. We are, however, considering inclusion of the protocol for the PCFIA test and other official tests in a testing manual for incorporation by reference or inclusion in the regulations.

One commenter supported adoption of the PCFIA test as an official test, but disagreed with our statement in the backgound information of the proposal that the test could stand alone as a diagnostic test. The commenter stated that supplemental tests would be necessary in most cases, particularly in vaccinated populations. According the the commenter, the specificity of the PCFIA test when used for cattle that have received an adult vaccination within the previous year is inferior to the manual complement-fixation (CF) test in the range of S/N ratios (the ratio of sample or positive control to control signal) proposed to indicate a reactor (<.25).

We are making no changes based on this comment. The data supplied by the developer of the test showed no statistical difference in specificity and sensitivity between the PCFIA and CF tests for samples testing positive. Although running two or more types of tests concurrently might provide an increased combined sensitivity, the increase with regard to the PCFIA would likely be slight.

The same commenter expressed concern regarding how the test would be interpreted, stating that because control samples don't usually reveal fluctuations in the test's sensitivity, professional experience is sometimes necessary to make an appropriate diagnosis. We are making no changes based on this comment. The designated epidemiologist (an epidemiologist selected by the state animal health official and the Veterinarian in Charge to perform the functions required) has the authority to supplement the results of the test with considerations regarding the individual animal, herd history, and other epidemiologic factors when determining the brucellosis classification of cattle and bison.

One of the commenters favoring adoption of the PCFIA test as an official test expressed concern that the cost of the test might be prohibitive. According to the commenter, the cost of the required instrumentation and reagents would probably limit the use of the test to one central laboratory. We are making no changes based on this comment. Our inclusion of the PCFIA test as an official test is based on its efficacy as a diagnostic tool. If it proves to be prohibitively expensive, other official tests will still be available for use. As we stated in the proposed rule, it is expected that lower personnel expenses due to the increased speed and automation of the test will offset the start-up and recurring costs.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule, with the changes noted. Additionally, we are including the PCFIA test in the list of official tests at § 78.1(a)(10) of the regulations, rather than at § 78.1(a)(9) as proposed. This change is necessary because another test was added at § 78.1(a)(9) between the time the April 12 proposed rule was published and publication of this final rule. We are also redesignating § 78.1(a)(10) of the current regulations as § 78.1(a)(11).

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action will only provide an additional official brucellosis test for cattle and bison as an option for use in determining whether an animal is infected with the disease. The testing requirements for brucellosis will not change. Moreover, use of the PCFIA test will not affect the market price of the animals tested. Although more rapid testing may allow faster marketing, the economic effect on owners of cattle or bison will not be significant. Nor will the inclusion of the PCFIA test as an official test have a significant economic effect on laboratories. Although the cost of this test may be more than that for other official tests, due to the need for new equipment and to higher reagent costs, lower personnel expenses due to the increased speed and automation of the test are expected to offset the start-up and recurring costs. Other official tests will still be available to those laboratories where the PCFIA test is not used.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Effective Date

The Administrator, Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making it effective upon publication. Inclusion of the PCFIA test as an official test for brucellosis in cattle and bison will allow those laboratories that choose to use the test to conduct testing that is faster, more sensitive, and more specific than many of the official laboratory tests currently being used. Some laboratories already have the equipment necessary to conduct the PCFIA test, are currently using the test with regard to intrastate movement of cattle, and could begin using the test for interstate movement without purchasing new equipment. Delaying the effective date of this rule would create an unnecessary delay in the use of the PCFIA test.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the definition of "official test" is amended by redesignating paragraph (a)(10) as paragraph (a)(11), and by adding a new paragraph (a)(10) to read as follows:

§ 78.1 Definitions.

* * * * *

Official test.

(a) * * *

(10) Particle concentration fluorescence immunoassay (PCFIA) test. An automated serologic test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Service. Cattle and bison are classified according to the following ratio between the test sample and a known negative sample (S/N ratio):

S/N Ratio	Classification
Greater than .70	Negative.
.26 to .70	Suspect.
.25 or lower	Reactor.

* * * * *

Done in Washington, DC, this 30th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–20057 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 92

[Docket No. 88–130]

Restrictions on Importation of Horses From Switzerland

AGENCY: Animal and Plant Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations by adding Switzerland to the list of countries in which contagious equine metritis (CEM) exists. Because Switzerland is no longer free of CEM, we are restricting the importation of certain horses from that country to prevent the livestock of the United States from contracting the disease.

Stallions and mares from Switzerland that are older than 731 days will not be permitted into the United States under standard 3-day quarantine and testing procedures. Instead, they must be tested and treated in accordance with procedures established to qualify stallions and mares from CEM-affected countries for importation into the United States.

We took this action in response to information from Swiss animal health officials, confirming their finding of CEM on April 28, 1988.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR Part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, including contagious equine metritis (CEM), into the United States. CEM, a venereal disease, affects horses' fertility and breeding.

Section 92.2(i)(1) lists the countries in which CEM exists and, with certain exceptions, prohibits importation of horses from those countries and horses that have been in any of those countries within the 12 months immediately preceding their export to the United States.

In an interim rule that was effective May 27, 1988, and published in the **Federal Register** on June 3, 1988 (53 FR 20306–20307, Docket Number 88–092), we added Switzerland to the list of countries in which CEM exists. We took this action in response to information from Swiss animal health officials, confirming their finding of CEM on April 28, 1988. Comments on the interim rule were required to be postmarked or received on or before August 2, 1988. We did not receive any comments. The facts presented in the interim rule still provides a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Stallions and mares from Switzerland that are older than 731 days must undergo testing and treatment in Switzerland and the United States that is more extensive than is standard during a 3-day quarantine. The extra time required for this additional testing and treatment will delay the horses' importation into this country; it will therefore increase the cost to importers of horses from Switzerland. However, of the approximately 22,000 horses imported into the United States in 1987, only 56 came from Switzerland. We

estimate that fewer than half of these would fall into the category of animals affected by this interim rule. We therefore expect this rule to have little or no effect on importers. Those deterred by the cost of testing and quarantining a stallion or mare affected by this interim rule could, instead, import geldings or, for breeding, horses younger than 731 days. Alternatively, they could import horses from any CEM-free country.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 92 and that was published at 53 FR 20306–20307 on June 3, 1988.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 29th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–20059 Filed 9–1–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–20–AD; Amdt. 39–6013]

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to CASA Model C–212 series airplanes, which currently requires replacement of certain elevator rudder, and aileron trim control system rods, levers, links, and tabs. That action was prompted by an FAA determination that, in the event of certain failures in these control systems, the potential exists for damage to the airframe due to flutter. This amendment requires the addition of two collars to the aileron trim tab control. These collars are necessary to properly secure the pins and bolts. The applicability statement is also revised to include all U.S. registered CASA Model C–212 series airplanes.

DATE: Effective October 11, 1988.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas S.A., (CASA) Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 87–18–08, Amendment 39–5724 (52 FR 35233; September 18, 1987), applicable to Model C–212 series airplanes, to require the addition of two collars to the aileron trim tab control, and to expand the applicability to include all U.S.-registered CASA Model C–212 series airplanes, was published in the **Federal Register** on May 25, 1988 (53 FR 18855).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter noted that in the preamble to the Notice, the statement "This airplane model is manufactured in the United Kingdom and Indonesia * * *," should have read "* * * manufactured in Spain and Indonesia * * *." The FAA concurs that the country of manufacture was misidentified and has revised the statement accordingly, as indicated below.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This airplane model is manufactured in Spain and Indonesia and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreements.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $316,800.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, CASA Model C–212 are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation of Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 87-18-08, Amendment 39-5724 (52 FR 35233; September 18, 1987), by expanding the applicability statement, adding new paragraph B., and redesignating existing paragraphs B. and C. as C. and D., respectively, to read as follows:

CASA: Applies to all CASA Model C-212 series airplanes, certificated in any category. Compliance is required by April 19, 1989, unless previously accomplished.

To prevent airframe damage due to flutter caused by certain single failure conditions of the trim control system, accomplish the following:

A. Replace elevator, rudder, and aileron trim control system components, in accordance with CASA Service Bulletin 212-27-25, Revision 2, dated October 23, 1985.

B. Install two collars on the aileron control system, in accordance with CASA Service Bulletin 212-27-25, Revision 4, dated October 28, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends AD 87-18-08, Amendment 39-5724.

This amendment becomes effective October 11, 1988.

Issued in Washington, DC., on August 25, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88-19951 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25681; Amdt. No. 1781]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied

to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN; and VOR/DME or TACAN: § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 20, 1988*

Cordova, AK—Cordova Mile 13, NDB-A, Amdt. 5, *Cancelled*
Cordova, AK—Cordova Mile 13, ILS/DME RWY 27, Amdt. 6
Nenana, AK—Nenana Muni, NDB-A, Amdt. 2, *Cancelled*
Flippin, AR—Marion County Regional, VOR-A, Amdt. 12
Mountain Home, AR—Baxter County Regional, VOR-A, Amdt. 8
Greeley, CO—Greeley-Weld County, VOR or TACAN-A, Amdt. 7
Greeley, CO—Greeley-Weld County, NDB RWY 9, Amdt. 1
Greeley, CO—Greeley-Weld County, ILS RWY 9, Amdt. 3
Bartow, FL—Bartow Muni, VOR/DME RWY 9L, Amdt. 1
Marathon, FL—Marathon, NDB RWY 7, Amdt. 2
Idaho Falls, ID—Fanning Field, VOR RWY 2, Amdt. 5
Idaho Falls, ID—Fanning Field, VOR RWY 20, Amdt. 8
Idaho Falls, ID—Fanning Field, LOC BC RWY 2, Amdt. 3
Idaho Falls, ID—Fanning Field, NDB RWY 20, Amdt. 8
Idaho Falls, ID—Fanning Field, ILS RWY 20, Amdt. 7
Rexburg, ID—Rexburg-Madison County, VOR RWY 35, Amdt. 2
Las Vegas, NM—Las Vegas Muni, VOR RWY 2, Amdt. 9
Las Vegas, NM—Las Vegas Muni, VOR RWY 20, Amdt. 4
Elmira, NY—Elmira/Corning Regional, NDB RWY 24, Amdt. 13
Elmira, NY—Elmira/Corning Regional, ILS RWY 24, Amdt. 15
Elizabeth City, NC—Elizabeth City CG Air Station/Muni, NDB RWY 10, Orig.
Greensboro, NC—Piedmont Triad International, VOR RWY 5, Amdt. 11
Greensboro, NC—Piedmont Triad International, ILS RWY 5, Amdt. 3
Dickinson, ND—Dickinson Muni, VOR-A, Amdt. 3
Dickinson, ND—Dickinson Muni, ILS/DME RWY 32, Amdt. 2
Dickinson, ND—Dickinson Muni, RNAV RWY 14, Amdt. 3
Millersburg, OH—Holmes County, VOR-A, Amdt. 6
Millersburg, OH—Holmes County, NDB RWY 27, Amdt. 5
Newark, OH—Newark-Heath, VOR-A, Amdt. 10
Newark, OH—Newark-Heath, SDF RWY 9, Amdt. 2
Newark, OH—Newark-Heath, NDB RWY 9, Amdt. 4
Newark, OH—Newark-Heath, RNAV RWY 27, Amdt. 4
Willard, OH—Willard, VOR-A, Amdt. 5
Aguadilla, PR—Borinquen, NDB RWY 08, Orig., *Cancelled*
Laurens, SC—Laurens County, NDB RWY 7, Amdt. 1
Fort Stockton, TX—Fort Stockton-Pecos County, VOR/DME-A, Amdt. 5
Fort Stockton, TX—Fort Stockton-Pecos County, VOR RWY 12, Amdt. 7
Friday Harbor, WA—Friday Harbor, RADAR-1, Amdt. 1
Elkins, WV—Elkins-Randolph Cnty-Jennings Randolph Fld, LDA-C, Amdt. 5
Elkins, WV—Elkins-Randolph Cnty-Jennings Randolph Fld, NDB-A, Amdt. 4
Casper, WY—Natrona County Intl, VOR/DME RWY 3, Amdt. 2
Casper, WY—Natrona County Intl, VOR RWY 21, Amdt. 15, *Cancelled*
Casper, WY—Natrona County Intl, VOR/DME or TACAN RWY 21, Amdt. 6
Casper, WY—Natrona County Intl, LOC BC RWY 26, Amdt. 17
Casper, WY—Natrona County Intl, NDB RWY 8, Amdt. 13
Casper, WY—Natrona County Intl, ILS RWY 3, Amdt. 3
Casper, WY—Natrona County Intl, ILS RWY 8, Amdt. 23
Casper, WY—Natrona County Intl, RADAR-1, Amdt. 2

** * * Effective September 22, 1988*

New Haven, CT—Tweed-New Haven, VOR-A, Orig.
Keystone Heights, FL—Keystone Airpark, VOR/DME RWY 4, Orig.
Kenosha, WI—Kenosha Muni, NDB RWY 14, Amdt. 9, *Cancelled*

[FR Doc. 88-19954 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-24-AD; Amdt. 39-6014]

Airworthiness Directives; Cessna Model 208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Model 208B airplanes, which requires the elevator static balance to be established within the correct limits. The FAA had determined that these airplanes may have been manufactured with an improper static balance of the elevators. The proposed actions will preclude possible elevator flutter and the resultant structural damage and loss of control.

DATES: September 30, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Service Bulletin (S/B) CAB 88-27, dated August 19, 1988, applicable to this AD may be obtained from the Cessna Aircraft Company Customer Services, P.O. Box 7704, Wichita, Kansas 67277; telephone number (316) 946-7550. This information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, FAA, ACE-120W, Room 100, 1801

Airport Road, Wichita, Kansas 67209; telephone number (316) 946–4409.

SUPPLEMENTARY INFORMATION: The FAA had determined that the elevators on certain Cessna Model 208B airplanes may not have been manufactured with the correct static balance. Flutter analysis indicates these elevators are flutter free in normal operation but potentially unstable if ice build-up were to occur during flight into icing conditions. Elevator flutter could cause structural failure and result in loss of the airplane. Therefore, to preclude this instability, proper elevator balance must be assured. As a result, Cessna has issued S/B CAB 88–27, dated August 19, 1988, which specifies static balance and rebalance procedures for the affected airplanes.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring the elevator static balance to be checked on certain Cessna Model 208B airplanes, and changed if required. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation in not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me the Administrator, the Federal Aviation Administration amends § 30.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 48 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to Model 208B (Serial Numbers 208B0001 through 208B0106) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service after effective date of this AD, unless already accomplished.

To prevent possible elevator flutter, accomplish the following:

(a) Check both elevators for correct balance in accordance with the procedures given in Cessna Service Bulletin CAB 88–27, dated August 19, 1988. If any elevator is out of balance, prior to further flight rebalance the elevator in accordance with the instructions and the criteria contained in the above Service Bulletin.

Note: The elevator balance limits currently shown in the Maintenance Manual for the 208 series airplane are not applicable to the 208B.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67208; telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Co., Customer Services, P.O. Box 7704, Wichita, Kansas 67277; telephone number (316) 946–7550; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City Missouri 64106.

This amendment becomes effective on October 3, 1988.

Issued in Washington DC, on August 26, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88–19952 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–10]

Establishment of Transition Area; Kenosha, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Kenosha, WI, transition area to accommodate a new VOR Runway 24R Standard Instrument Approach Procedure (SIAP) to Kenosha Municipal Airport, Kenosha, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, June 21, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Kenosha, WI (53 FR 23257).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area airspace near Kenosha, WI.

The development of a new VOR Runway 24R SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kenosha, WI [New]

That airspace extending upward from 700 above the surface within an 8.5 mile radius of Kenosha Municipal Airport, Kenosha, WI (Lat. 42°35'43"N., Long. 87°55'39"W.); excluding the portions which overlie the Chicago, IL, and Milwaukee, WI, transition areas.

Issued in Des Plaines, Illinois, on August 23, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88-19955 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASO-14]

Alteration of VOR Federal Airways; Cape Canaveral, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Several restricted areas located in the vicinity of Cape Canaveral, FL, were realigned and renumbered. Federal Airways V-3, V-437 and V-533 are affected by changes to those restricted areas, and portions of these airways are amended by changing the segments that are affected by the "exclusionary" clause changes. This action amends editorial portions by correcting the exclusionary portions of these descriptions.

DATES: Effective date—0901 UTC, October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the portions of V-3, V-437 and V-533 which fall within restricted areas and does not affect current alignment of the airways. Several restricted areas located in Cape Canaveral, FL, were previously realigned and renumbered (53 FR 6796). Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

Since this action is a minor amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and impracticable.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-3 [Amended]

By removing all after the words "PQ, Canada." and substituting the words "The airspace within R-2916, R-2934, R-2935 and within Canada is excluded."

V-437 [Amended]

By adding the following to the end of the current description "The airspace within R-2935 is excluded."

V-533 [Amended]

By adding the following to the end of the current description "The airspace within R-2935 is excluded."

Issued in Washington, DC, on August 16, 1988.

William C. Davis,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-19956 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 99

[Docket No. 25113; Amdt. No. 99–13]

Security Control of Air Traffic; Modification of the U.S. Air Defense Identification Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: On May 20, 1988, the FAA published a final rule modifying the U.S. Air Defense Identification Zones (ADIZ) (53 FR 18216). This action corrects the name of the ADIZ surrounding the Contiguous United States and corrects an error in the description of that ADIZ.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules Branch, ATO–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Adoption of the Corrections

Accordingly, pursuant to the authority delegated to me, Docket No. 25113; Amdt. No. 99–13, as published May 20, 1988 (53 FR 18216) is corrected as follows:

PART 99—[AMENDED]

1. Section 99.42 on page 18217, in the second column, table of contents under Subpart B—Designated Air Defense Identification Zone, is revised to read as follows: "§ 99.42 Contiguous U.S. ADIZ."

2. Section 99.42 on page 18218, in the third column, is revised to read as follows:

"§ 99.42 Contiguous U.S. ADIZ.

(a) The area bounded by a line from 26°00′N, 96°35′W; 26°00′N, 95°00′W; 26°30′N, 95°00′W; then along 26°30′N to 26°30′N, 84°00′W; 24°00′N, 83°00′W; 24°00′N, 80°00′W; 24°00′N, 79°25′W; 25°40′N, 79°25′W; 27°30′N, 78°50′W; 30°45′N, 74°00′W; 39°30′N, 63°45′W; 43°00′N, 65°48′W; 41°15′N, 69°30′W; 40°32′N, 72°15′W; 39°55′N, 73°00′W; 39°38′N, 73°00′W; 39°36′30″N, 73°40′30″W; 39°30′N, 73°45′W; 37°00′N, 75°30′W; 36°10′N, 75°10′W; 35°10′N, 75°10′W; 32°01′N, 80°32′W; 30°50′N, 80°54′W; 30°05′N, 81°07′W; 27°59′N, 79°23′W; 24°49′N, 80°00′W; 24°49′N, 80°55′W; 25°10′N, 81°12′W; then along a line 3 nautical miles from the shoreline to 25°45′N, 81°27′W; 25°45′N, 82°07′W; 28°55′N, 83°30′W; 29°20′N, 85°00′W; 30°00′N, 86°00′W; 30°00′N, 88°30′W; 29°00′N, 89°00′W; 28°45′N, 90°00′W; 29°26′N, 94°00′W; 28°42′N, 95°17′W; 28°05′N, 96°30′W; 26°25′N, 96°30′W; 26°00′N, 96°35′W; 25°58′N, to 97°07′W;

(b) The area bounded by a line from 32°32′03″N, 117°07′25″W; 32°30′N, 117°20′W; 32°00′N, 118°24′W; 30°45′N, 120°50′W; 29°00′N, 124°00′W; 37°42′N, 130°40′W; 48°20′N, 132°00′W; 48°20′N, 128°00′W; 48°30′N, 125°00′W; 48°29′38″N, 124°43′35″W; 48°00′N, 125°15′W; 46°15′N, 124°30′W; 43°00′N, 124°40′W; 40°00′N, 124°35′W; 38°50′N, 124°00′W; 34°50′N, 121°10′W; 34°00′N, 120°30′W; 32°00′N, 118°24′W; 32°30′N, 117°20′W; 32°32′03″N, to 117°07′25″W; and

(c) A line extending from 32°32′03″N, 117°07′25″W; eastward along the United States-Mexico Border to 25°58′00″N, 97°07′00″W."

Issued in Washington, DC, on August 26, 1988

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 88–19953 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 86F–0459]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, in the manufacture of paper and paperboard intended for use in contact with food. This action responds to a food additive petition filed by Ciba-Geigy Corp.

DATES: Effective September 2, 1988; written objections and requests for a hearing by October 3, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 23, 1986 (51 FR 45955), FDA announced that a food additive petition (FAP 7B3973) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, as a deposit control additive for use in the manufacture of paper and paperboard intended for use in contact with food.

FDA has reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, has not been found to cause cancer, it has been found to contain minute amounts of unreacted ethyl acrylate, a carcinogenic reactant used in the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as ethyl acrylate, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2234, 85th Cong., 2d Sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it

possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

The agency estimated the daily intake of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, on the basis of several factors, including the migration of the additive under the most severe intended conditions of use and the probable concentration of the additive in the daily diet from food-contact articles. The agency estimated the daily intake of the additive to be 66 micrograms per person per day for a 60-kilogram person.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed available data from acute toxicity studies, mutagenicity studies, subchronic studies, and teratology studies on the additive. No adverse effects were reported in these studies.

Because maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, which may contain ethyl acrylate, has not been shown to cause cancer, the anticancer clause does not apply to it. However, FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurity ethyl acrylate has two aspects: (1) Assessment of the worst case exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Ethyl Acrylate

Based on the fraction of the daily diet that may be in contact with surfaces containing maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, and on the level of ethyl acrylate that may be present in the additive, FDA estimated the hypothetical worst case exposure to ethyl acrylate from the use of this additive in paper and paperboard coatings contacting aqueous and fatty foods to be less than 0.18 microgram per person per day (Ref. 3). The agency used data in the National Toxicology Program bioassay on ethyl acrylate to estimate the upper bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed (Ref. 4). The results of the bioassay on ethyl acrylate demonstrated that the material was carcinogenic for rats and mice under the conditions of the study. The test material induced squamous cell neoplasms in both sexes of Fischer 344 rats and B6C3F1 mice when administered by gavage in corn oil.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the committee) reviewed these bioassays and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethyl acrylate. The committee further concluded that an estimate of the upper bound level of human risk from potential exposure to ethyl acrylate stemming from the proposed use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, could be calculated from the bioassays.

The agency used a quantative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the study with male rats (the most sensitive animals) to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst case exposure of less than 0.18 microgram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to ethyl acrylate from the use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, is 1.4×10^{-8} or less than 1 in 71 million (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethyl acrylate is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethyl acrylate that might result from the proposed use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of ethyl acrylate impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which ethyl acrylate may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to this impurity, even under worst case assumptions, is very low, less than 1 in 71 million.

C. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed uses for the additive in paper and paperboard

products in contact with aqueous and fatty foods are safe. Based on this information, the agency has also concluded that the additive will have its intended technical effect. Therefore, § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations, implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "carcinogenicity Testing Programs," *in* "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulation and Compliance," Edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated November 23, 1987, from the Food and Color Additives Review Section to Indirect Additives Branch, "FAP 7B3973—Ciba-Geigy Corp.—Exposure to Components of the Additive."

4. Carcinogenisis Studies of Ethyl Acrylate (CAS Reg. No. 140–88–5) in F–344/N Rats and B63F Mice (Ganage Studies), National Toxicology Program, Technical Report Series No. 259, December 1986.

5. Memorandum dated January 28, 1988, from Quantitative Risk Assessment Committee to Dr. W. Gary Flamm, "Ethyl Acrylate".

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before October 3, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry in the table under the headings "List of Substances" and "Limitations" to read as follows:

§176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed (CAS Reg. No. 110392–51–3).	For use only as a deposit control additive prior to the sheet forming operation to prevent scale buildup in the manufacture of paper and paperboard in contact with food, at a level not to exceed 0.075 percent by weight of the dry paper and paperboard.
* * * * *	

* * * * *

Dated: August 29, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–20031 Filed 9–1–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8223]

Income Taxes; Branch Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the branch tax. This regulation will provide immediate guidance to taxpayers concerning the imposition of tax on profits of a U.S. branch of a foreign corporation that is removed from the branch and on interest that is paid, or deemed paid, by the branch. The text of the temporary regulations set forth in this document also serves as the text of proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard M. Elliott of the Office of the Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL 979–86) (202–566–6457, not a toll-free call).

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SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1070.

The estimated annual burden per respondent/recordkeeper varies from .1 hour to 10.5 hours depending on individual circumstances, with an estimated average of .3 hour.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains temporary Income Tax Regulations under section 884 of the Internal Revenue Code of 1986. This section was added to the Code by section 1241 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 2576).

Need for Temporary Regulations

The proper application of section 884 is dependent upon the Internal Revenue Service's detailed specifications of the manner in which the requirements of the statute will be administered. These regulations are necessary to provide taxpayers with immediate guidance in the application of section 884, as added to the Code by section 1241 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 2576).

Explanation of Provisions

Branch Profits Tax

Section 1.884–1T(b) provides rules for computing the dividend equivalent amount, the base on which the branch profits tax is imposed. The dividend equivalent amount is a foreign corporation's effectively connected earnings and profits for the taxable year reduced by any increase in U.S. net equity during the taxable year or increased by any decrease in U.S. net equity during the taxable year. An increase in U.S. net equity is treated as a reinvestment of effectively connected earnings and profits in a U.S. trade or business and a decrease in U.S. net equity is generally treated as a disinvestment of effectively connected earnings and profits accumulated in prior years. However, an increase in the dividend equivalent amount is limited to post-1986 effectively connected earnings and profits of a foreign corporation that have not been previously subject to the branch profits tax (non-previously taxed accumulated effectively connected earnings and profits).

Section 1.884–1T(c) defines the term "U.S. net equity" as a foreign corporation's U.S. assets reduced by its U.S. liabilities.

Under § 1.884–1T(d), property is a U.S. asset if all of the income from its use and all the gain from its disposition on the date on which a determination is made (if used or sold at a gain on that determination date), would be income that is effectively connected with the conduct of a U.S. trade or business. Rules are given for specific types of property, such as depreciable property, inventory, U.S. real property interests, and partnership interests. The amount taken into account as a U.S. asset with respect to property is the adjusted basis of the property for purposes of computing earnings and profits.

Section 1.884–1T(d)(11) provides that a foreign corporation may elect to treat a limited amount of marketable securities as U.S. assets. The purpose of this election is to provide relief from the requirement that effectively connected earnings and profits be reinvested as of the close of the year. Income from the securities is treated as effectively connected with the conduct of a U.S. trade or business.

Section 1.884–1T(d)(13) enumerates certain types of property that are not treated as U.S. assets even though the property would otherwise qualify as U.S. assets under § 1.884–1T(d). Such property includes property that produces income that is effectively connected with the conduct of a U.S. trade or business but does not produce effectively connected earnings and profits; and property that is acquired or used to artificially increase U.S. net equity.

Under § 1.884–1T(e), "U.S. liabilities" are determined on the basis of fungibility, *i.e.*, as the product of a foreign corporation's U.S. assets at the close of the taxable year and either the ratio of the foreign corporation's worldwide liabilities at the close of the taxable year to its worldwide assets at the close of the taxable year or, if the foreign corporation computes its interest deduction using a fixed ratio of liabilities to assets under § 1.882–5(b)(2)(i), the fixed ratio. A special rule is provided for computing the liabilities of a foreign corporation that is a partner in a partnership. Under an anti-abuse rule, an artificial decrease in the U.S. liabilities of the foreign corporation is disregarded.

As an alternative to fungibility, a booking method was considered for determining U.S. liabilities. However, the regulations adopt the fungibility approach for several reasons. First, section 884(c)(2)(C) provides that the regulations defining U.S. liabilities shall be consistent with the allocation of deductions under section 882(c)(1). Second, fungibility is, in general, more consistent with the principles of the branch profits tax. Because U.S. assets are generally defined as assets that produce effectively connected earnings and profits, which is the base for the branch profits tax, the regulations define U.S. liabilities as liabilities that produce deductions that reduce effectively connected earnings and profits.

Under the regulations, a foreign corporation's U.S. liabilities may shift as a function of the amount of profits generated by its U.S. assets relative to the profits generated by its foreign assets. Thus, if the U.S. assets have a higher profit rate than the foreign assets, the U.S. assets will attract more liabilities than the foreign assets. In such a case, U.S. net equity may not increase sufficiently to reduce the divided equivalent amount to zero even though all the current earnings remain invested in the U.S. trade or business. On the other hand, if the foreign assets have a higher profit rate than the U.S. assets, a corporation may not have a dividend equivalent amount even though it repatriates some of its current earnings. These results occur because the regulations view liabilities as fungible, *i.e.*, as supporting all the assets of the foreign corporation. If U.S. assets increase relative to foreign assets, the U.S. trade or business would be treated as assuming a larger share of the foreign corporation's worldwide liabilities. If the U.S. trade or business were conducted in a separate domestic subsidiary, such assumption would be treated as a dividend distribution by the subsidiary to its foreign parent to the extent of the liabilities assumed. If the U.S. trade or business is conducted in a branch, the assumption of additional liabilities by the branch will reduce U.S. net equity and give rise to a dividend equivalent amount. Similarly, if foreign assets increase relative to U.S. assets, the foreign operations can be viewed as assuming a larger share of the corporation's worldwide liabilities. In that case the assumption is equivalent to a capital contribution to the U.S. trade

or business, and results in an increase in U.S. net equity.

Section 1.884–1T(f)(1) defines the term "effectively connected earnings and profits" to mean earnings and profits attributable to income that is effectively connected with the conduct of a U.S. trade or business. The regulations do not reflect the amendment in H.R. 4333, S. 2238, 100th Cong., 2d Sess. (hereinafter the "technical corrections bill") dealing with certain unearned premium reserves.

Section 1.884–1T(f)(2) enumerates certain types of effectively connected income that do not produce effectively connected earnings and profits. This income includes certain income derived from the operation of ships or aircraft that is excluded from gross income under section 883(a)(1) or 883(a)(2), gain on the disposition of stock of a domestic corporation that is treated as a U.S. real property interest, and income that is exempt from tax under section 892.

Section 1.884–1T(f)(3) requires that, in determining a foreign corporation's effectively connected earnings and profits, deductions and other adjustments be allocated and apportioned under the principles of § 1.861–8 between income that is effectively connected with a U.S. trade or business and produces effectively connected earnings and profits and income that is effectively connected with a U.S. trade or business but does not produce effectively connected earnings and profits.

Section 1.884–1T(g) provides special rules for the calculation of effectively connected earnings and profits and U.S. assets of foreign corporations carrying on an insurance business in the United States.

Consistent with Notice 87–56, 1987–2 C.B. 367, § 1.884–1T(h) provides rules for the application of the branch profits tax to a foreign corporation that is a qualified resident (as defined in § 1.884–5T) of a country with which the United States has an income tax treaty. Section 1.884–1T(h)(1) provides that a foreign corporation that is a resident of a country with which the United States has an income tax treaty may claim an exemption or rate reduction with respect to a dividend equivalent amount for the taxable year only if either (1) the foreign corporation is a qualified resident of the treaty country because its stock is primarily and regularly traded on an established securities market in its country of residence or in the United States (within the meaning of § 1.884–5T(d)), or it is engaged in an active trade or business in its country of residence (within the meaning of § 1.884–5T(e)), or it has obtained a ruling described in § 1.884–5T(f), or (2) it meets, with respect to the dividend equivalent amount, the requirements of a limitation on benefits article in an income tax treaty and the article entered into force after December 31, 1986. A foreign corporation that is a qualified resident of its country of residence because it meets the stock ownership and base erosion requirements of § 1.884–5T (b) and (c) is required to establish its qualified residence status for a 36-month period which includes the year in which the dividend equivalent amount arises. A foreign corporation that fails that requirement and is not otherwise a qualified resident on other grounds may claim treaty benefits only with respect to the portions of its dividend equivalent amount that are attributable; on a last-in-first-out basis, to taxable years in which it was a qualified resident.

Section 1.884–1T(h)(3) provides that the branch profits tax will not be imposed on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the qualified residence requirements (including the 36-month test where applicable) for a country listed in that section, so long as the income tax treaty between the United States and the country, as in effect on January 1, 1987, remains in effect and is not modified by subsequent agreement to expressly provide for the imposition of the branch profits tax. The effect on the branch profits tax of non-discrimination provisions in income tax treaties is currently under consideration in connection with the forthcoming Treasury Department study of the tax treaty program.

Section 1.884–1T(h)(4) provides that a foreign corporation that is a qualified resident of a country with which the United States has an income tax treaty but that is not entitled to exemption from the branch profits tax under § 1.884–1T(h)(3) may claim treaty benefits such as a reduction in the rate of the branch profits tax. The section lists the rate of tax on qualified residents under existing income tax treaties and provides rules for corporations that are qualified residents of Canada.

Section 1.884–1T(h)(5) reserves with respect to benefits under treaties other than income tax treaties (such as Friendship, Commerce and Navigation treaties) in view of provisions in the technical corrections bill.

Section 1.884–1T(i) provides that, if a foreign corporation and a domestic corporation are stapled entities within the meaning of section 269B(c)(2), the foreign corporation shall nonetheless be treated as a foreign corporation for all purposes of the branch tax.

Special Rules for the Termination or Incorporation of a U.S. Trade or Business or the Liquidation or Reorganization of a Foreign Corporation or its Domestic Subsidiary

Section 1.884–2T contains rules announced in Notice 86–17, 1986–2 C.B. 379. It provides special exemption rules for a foreign corporation that completely terminates all of its U.S. trade or business as well as rules for the application of the branch profits tax in the case of the tax-free reorganization or liquidation of a foreign corporation with a U.S. trade or business, the tax-free incorporation of a U.S. trade or business of a foreign corporation, and certain transactions with respect to a domestic subsidiary of a foreign parent corporation.

Under § 1.884–2T(a)(1), a foreign corporation's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits are extinguished as a result of a complete termination of all of the U.S. trade and business of a foreign corporation.

Section 1.884–2T(a)(2) states the four conditions for a foreign corporation to completely terminate all of its U.S. trade and business with respect to a particular taxable year: (1) At the end of that year, it must have no U.S. assets; (2) for the following three taxable years, it must have no income that is effectively connected with the conduct of a U.S. trade or business (other than by reason of section 864 (c)(6) or (c)(7)); (3) for the following three taxable years, neither itself nor a related corporation may use, directly or indirectly, any of the U.S. assets of the terminated U.S. trades or businesses, or property attributable to such property or to the foreign corporation's effectively connected earnings and profits earned in the year of complete termination of a U.S. trade or business; and (4) the foreign corporation must waive the period of limitations for the year of complete termination.

Under § 1.884–2T(b), a foreign corporation may elect, for a maximum two-year period, to treat marketable securities as U.S. assets. This election is a special relief measure designed for foreign corporations that may have liquidated all of their U.S. assets or retired them from use in a U.S. trade or business but continue to hold cash or property with the expectation of continuing a U.S. trade or business in the near future. The procedures applying to this election, including transitional

rules, and its effects, are similar to the election for expansion capital in § 1.884–1T(d)(11).

Section 1.884–2T(c) recognizes that the branch profits tax generally should not be imposed with respect to the transfer of U.S. assets by a foreign corporation merely as a result of a non-divisive tax-free reorganization (into a domestic or foreign corporation) or liquidation described in section 381(a). On the other hand, § 1.884–2T(c) reflects the fact that a foreign corporation that reorganizes does not completely terminate its U.S. trade and business and, therefore, cannot escape branch profits tax liability under the complete termination rules. That section provides rules for computing the dividend equivalent amount of the foreign corporation and its transferee in the year of the transaction and subsequent taxable years.

Consistent with Notice 86–17, 1986–2 C.B. 379, § 1.884–2T(d) provides that a foreign corporation may transfer part or all of its U.S. assets to a domestic corporation in a section 351(a) transfer without branch profits tax consequences provided that the foreign corporation owns, after the transaction, and without regard to other transferors, at least 80 percent of the voting stock and value of the transferee, the transferee agrees to be allocated an amount of the foreign corporation's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits in proportion to the U.S. assets transferred, and the foreign corporation agrees to an increase in its dividend equivalent amount in the event of its disposition of the stock or securities of the transferee received in the exchange.

Section 1.884–2T(e) provides special rules for certain transactions with respect to a domestic subsidiary of a foreign corporation.

Interaction of the Branch Profits Tax and Second-Tier Withholding

Section 1.884–3T reserves with respect to the interaction of the branch profits tax and second-tier withholding in view of the technical corrections bill.

Branch-Level Interest Tax

Section 1.884–4T(a) provides that, for purposes of sections 871, 881, 1441 and 1442, interest paid by a U.S. trade or business (within the meaning of § 1.884–4T(b)) of a foreign corporation that is engaged in trade or business in the United States is treated as paid by a domestic corporation. The technical corrections bill would make § 1.884–4T(a) effective for all purposes of Subtitle A of the Internal Revenue Code but this provision has not been incorporated in the regulations. Such interest is subject to withholding under section 1441 or 1442 unless exempt under the Code or an income tax treaty. A foreign corporation is treated as engaged in trade or business in the United States if, during the taxable year, it has U.S. assets (as defined in § 1.884–1T(d)) or gross income that is effectively connected with the conduct of a U.S. trade or business. The regulations do not incorporate the technical corrections bill's provision that would exempt interest paid by an international organization from the branch tax on interest.

Section 1.884–4T(a)(2) provides generally that, if the interest allowable as a deduction under § 1.882–5 in computing a foreign corporation's effectively connected taxable income exceeds certain interest paid by a U.S. trade or business of the foreign corporation, the excess shall be treated as interest paid to the foreign corporation by a wholly-owned domestic corporation and shall be subject to tax under section 881(a).

Section 1.884–4T(a)(3) provides that the term "interest" includes original issue discount, as defined in section 1273(a)(1).

Section 1.884–4T(b)(1) defines the term "interest paid by a U.S. trade or business" as interest that is paid with respect to one of four classes of liabilities. The first class consists of liabilities identified as liabilities of a U.S. trade or business on the foreign corporation's books. The remaining classes generally consist of liabilities that are treated as liabilities of a U.S. trade or business for regulatory or income tax purposes, that are predominantly secured by U.S. assets, or that give rise to certain nondeductible interest, such as capitalized interest, that is related to U.S. assets.

Section 1.884–4T(b)(2) generally requires that interest with respect to the class of liabilities that is booked to the U.S. trade or business must be treated as interest paid by a U.S. trade or business in all subsequent years.

Section 1.884–4T(b)(3) provides generally that liabilities in the class of liabilities booked to the U.S. trade or business will not give rise to interest paid by a U.S. trade or business of a foreign corporation if the foreign corporation receives a tax benefit from a foreign country with respect to the interest that is inconsistent with the treatment of the interest as paid by a U.S. trade or business, the liability is incurred in the ordinary course of a trade or business conducted by the foreign corporation outside the United States (subject to a special rule for bank deposits over $100,000), or the liability is predominantly secured by assets that are not U.S. assets.

Section 1.884–4T(b)(4) provides that interbranch liabilities are not treated as interest paid by a U.S. trade or business.

Section 1.884–4T(b)(5) generally requires that if 80 percent or more of a foreign corporation's assets are U.S. assets, the amount of interest paid by a U.S. trade or business will be increased, if necessary, to equal the foreign corporation's interest deduction under § 1.882–5 and its nondeductible interest. Where a foreign corporation conducts its business primarily in the United States, it comports more closely with economic reality to treat the foreign corporation's interest payments as being made from a domestic corporation to the actual recipients of the interest payments (*i.e.*, as interest paid by a U.S. trade or business) rather than to the foreign corporation (*i.e.*, as excess interest).

Section 1.884–4T(b)(6) generally provides for a reduction in interest paid by a U.S. trade or business of a foreign corporation where such interest exceeds the amount of the interest deduction allowed to the foreign corporation under § 1.882–5 and the amount of any nondeductible interest paid by a U.S. trade or business during the taxable year. Ordering rules are given for the reduction.

Section 1.884–4T(b)(7) permits a foreign corporation to elect to reduce its excess interest by the amount of interest paid by a U.S. trade or business that accrues in a different taxable year than the year in which the interest is paid. Under this election, the interest is treated as interest paid by a U.S. trade or business in the earlier of the year it is paid or accrues. This election prevents the same interest payment from being included as both interest paid by a U.S. trade or business and excess interest.

Section 1.884–4T(b)(8) describes the effect of treaties on interest paid by a U.S. trade or business. Section 1.884–4T(b)(8)(i) generally provides that relief is available under the payor foreign corporation's income tax treaty only if the foreign corporation is a qualified resident (as defined in § 1.884–5T(a)) of the treaty country for the taxable year in which the interest is paid or for the prior year and the protion of the current year that ends with the date of payment, or meets the requirements of the treaty's limitation on benefits article and the article entered into force after December 31, 1986. Section 1.884–4T(b)(8)(ii) generally provides that relief is available under a recipient foreign

corporation's income tax treaty under the tests described in the preceding sentence applied with respect to the recipient. Section 1.884–4T(b)(8)(iii) reserves with respect to the effect of treaties other than income tax treaties (such as Friendship, Commerce and Navigation treaties) on interest paid by a U.S. trade or business in view of the pending technical corrections bill.

Section 1.884–4T(c) provides rules for the computation of the tax on excess interest. Section 1.884–4T(c)(2) provides generally that a foreign corporation's distributive share of partnership interest will reduce the foreign corporation's excess interest. Under this rule, interest paid by the partnership is treated as if it were paid directly by the foreign corporation for purposes of determining the amount of the foreign corporation's excess interest, and interest paid by the partnership is not subject to taxation both under section 871(a) or 881 and as excess interest.

Section 1.884–4T(c)(3) provides that excess interest of a foreign corporation that is a qualified resident of a treaty country is taxed at a rate not exceeding the reduced rate of tax or exemption provided under such treaty for interest paid by a domestic corporation to a resident of the treaty country. However, exemptions or reduced rates of tax under treaty provisions dealing with interest paid by a resident of the treaty country do not apply to excess interest. The regulations reserve with respect to treaties other than income tax treaties. Section 1.884–4T(c)(3) does not address the effect, if any, of non-discrimination provisions in income tax treaties. This issue is presently under consideration in connection with the forthcoming Treasury Department study of the tax treaty program.

Qualified Resident

Section 1.884–5T(a) provides that a foreign corporation that is a resident of a foreign country for purposes of an income tax treaty if a qualified resident of that country if either (1) it meets a stock ownership and base erosion test; (2) it is publicly-traded in its country of residence or in the United States; (3) it is engaged in the active conduct of a trade or business in its country of residence; or (4) it obtains a ruling that its establishment or maintenance in its country of residence is not for the purpose of obtaining treaty benefits.

Section 1.884–5T(b)(1) provides generally that a foreign corporation meets the ownership test if at least 50 percent (by value) of its stock is owned by individual residents of the foreign corporation's country of residence, or by U.S. citizens or residents, during at least half of the number of days in the foreign corporation's taxable year and it obtains the documentation required under § 1.884–5T(b)(3) to show that the ownership test has been met. The technical corrections bill would require more than 50 percent qualified ownership.

Section 1.884–5T(b)(2) sets forth constructive ownership rules under which stock owned by entities is treated as owned by individuals. Section 1.884–5T(b)(2)(i) provides rules for determining the extent to which stock owned indirectly by an individual through a corporation, partnership, trust or estate is treated as being owned by the individual. Section 1.884–5T(b)(2)(ii) treats stock owned by the government of a country as if it were owned by individual residents of that country.

Section 1.884–5T(b)(2)(iii) generally treats stock owned by a corporation that is publicly traded in its country of residence as if it were owned by individual residents of that country. Section 1.884–5T(b)(2)(iv) generally treats a class of stock of a corporation that is publicly traded in the corporation's country of residence as if it were owned by individual residents of that country.

Section 1.884–5T(b)(3) indicates the documentation a foreign corporation is required to obtain in order to establish that it satisfies the ownership test. This documentation may take one of two forms: Individual documentation (certification of the individual's direct or indirect stock ownership and residency) or an intermediary verification statement (certification by an intermediary that owns (directly or indirectly) stock of the foreign corporation that it holds individual documentation from an indirect individual shareholder of the foreign corporation). The purpose of the intermediary verification statement is to permit an individual who owns stock in a foreign corporation through a nominee, holding company, or other entity to preserve anonymity vis-a-vis the foreign corporation. Where stock of a foreign corporation is held indirectly by an individual, any intermediaries standing in the chain of the individual's ownership of stock in a foreign corporation must furnish an intermediary ownership statement declaring its direct ownership of another intermediary in the chain of ownership or its direct ownership of the stock of the foreign corporation.

Section 1.884–5T(c) describes the base erosion test, which generally requires that not more than 50 percent of a foreign corporation's income for the taxable year be used to meet liabilities to persons who are not residents (or, in the case of foreign corporations, qualified residents) of the foreign corporation's country of residence and who are not U.S. citizens or residents (or, in the case of corporations, qualified residents).

Section 1.884–5T(d) prescribes rules under which a foreign corporation whose stock is primarily and regularly traded on one or more established securities markets in the foreign corporation's country of residence or the United States is treated as a qualified resident of its country of residence. In addition, a foreign corporation is treated as a qualified resident of its country of residence if 90 percent of its stock (by value and voting power) is owned by another corporation that is a resident of the same foreign country and whose stock is primarily and regularly traded on one or more established securities markets in that country or in the United States.

Section 1.884–5T(d)(2)(i) defines the term "established securities market" to include a foreign securities exchange that is officially recognized or supervised by a governmental authority in the country in which the exchange is located, is the principal exchange in that country, and has an annual share turnover exceeding $1 billion. A domestic exchange that is a national securities exchange registered under the Securities Act of 1934 and a domestic over-the-counter market are also treated as established securities markets.

Section 1.884–5T(d)(2)(v) gives the Commissioner authority to treat a foreign securities exchange that does not come within the definition of an established securities market but has the attributes of such a market as an established securities market. Similarly, § 1.884–5T(d)(2)(vi) gives the Commissioner authority to disqualify a foreign securities exchange that meets the definition of an established securities exchange but does not have adequate listing, financial disclosure or trading requirements, or does not enforce such requirements.

Section 1.884–5T(d)(3) provides that stock of a foreign corporation is primarily traded on an established securities market in its country of residence if more than 80 percent of the voting power and value of the stock of the foreign corporation is listed and regularly traded on one or more established securities markets and the volume of trading (on a class-by-class basis) on one or more established securities markets in the country of residence and in the United States exceeds the volume of trading on

established securities markets in any other foreign country.

Section 1.884–5T(d)(4)(i) states that a class of stock is regularly traded on an established securities market if stock in that class is traded, other than in *de minimis* quantities, on at least 60 days during the taxable year and there is a turnover during the taxable year equal to at least 30 percent of the shares in the class. In the case of a foreign corporation with 2,500 or more shareholders of record, the turnover requirement is reduced to 10 percent.

Under § 1.884–5T(d)(4)(ii), a class of stock that would otherwise be treated as regularly traded will not be treated as regularly traded if 100 or fewer persons own 50 percent or more of the outstanding shares of such class.

Section 1.884–5T(d)(4)(iii) contains an anti-abuse rule that disregards trades between related persons and trades conducted so that the class will meet the regularly traded requirement.

Section 1.884–5T(e) generally provides that a foreign corporation is treated as a qualified resident of its country of residence if it has a substantial presence in that country and conducts a U.S. trade or business that is an integral part of a trade or business that is actively conducted in that country.

Section 1.884–5T(e)(2) states that a foreign corporation is engaged in the active conduct of a trade or business if it meets the requirements of the regulations under section 367(a)(3). Special rules are provided for banks and insurance companies.

Under § 1.884–5T(e)(3), whether a foreign corporation has a substantial presence in its country of residence is determined by comparing the ratio of the assets, gross income and payroll expense of its active trades or businesses in its country of residence to its worldwide assets, gross income and payroll expenses. If each ratio is at least equal to 20 percent and the average of the ratios exceeds 25 percent, the foreign corporation has a substantial presence in its country of residence.

Section 1.884–5T(e)(4)(i) provides that a U.S. trade or business of a foreign corporation is an integral part of a trade or business that is actively conducted by the foreign corporation in its country of residence if the businesses are complementary and mutually interdependent steps in the production and sale or lease of goods, or the performance of services. If the U.S. trade or business sells goods that are not manufactured, grown or extracted by the foreign corporation in its country of residence, the business in no event shall be treated as an integral part of a trade or business actively conducted in the foreign corporation's country of residence if the foreign corporation does not take physical possession of the goods in its country of residence.

Section 1.884–5T(e)(4)(ii) treats a U.S. trade or business as an integral part of a trade or business that is actively conducted by a foreign corporation in its country of residence if the type of goods sold or services performed by the trade or business are substantially sold for consumption or disposition (or performed) in the foreign corporation's country of residence.

Section 1.884–5T(f) generally gives the Commissioner authority to rule that a foreign corporation will be treated as a qualified resident of its country of residence if the Commissioner determines that the establishment or maintenance of the foreign corporation in its country of residence does not have as one of its principal purposes obtaining benefits under the income tax treaty between the United States and that country.

Special Analyses

It has been determined that this temporary regulation is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Richard M. Elliott of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.861.1 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * Sections 1.884–0T through 1.884–5T also issued under 26 U.S.C. 884(g). * * *

Section 1.884–1T(d) also issued under 26 U.S.C. 884(c)(2)(A). * * * Section 1.884–1T(e) also issued under 26 U.S.C. 884(c)(2)(B) * * *

Section 1.884–1T(d)(13)(i) also issued under 26 U.S.C. 884(c)(2). * * * Section 1.884–5T (e) and (f) also issued under 26 U.S.C. 884(e)(4)(C). * * *

Par. 2. New §§ 1.884–0T through 1.884–5T are added immediately following § 1.883–1 to read as follows:

§ 1.884–0T Branch Tax. (temporary)

(a) *Introduction.* Section 884 consists of three main parts: A branch profits tax on certain earnings of a foreign corporation's U.S. trade or business; a branch-level interest tax on interest paid, or deemed paid, by a foreign corporation's U.S. trade or business; and an anti-treaty shopping rule. For purposes of the regulations under section 884, the term "a U.S. trade or business" includes all the U.S. trades or businesses of a foreign corporation.

(1) *The branch profits tax.* Section 1.884–1T provides rules for computing the branch profits tax and defines various terms that affect the computation of the tax. In general, section 884(a) imposes a 30-percent branch profits tax on the after-tax earnings of a foreign corporation's U.S. trade or business that are not reinvested in a U.S. trade or business by the close of the taxable year, or are disinvested in a later taxable year. Changes in the value of the equity of the foreign corporation's U.S. trade or business are used as the measure of whether earnings have been reinvested in, or disinvested from, a U.S. trade or business. An increase in the equity during the taxable year is generally treated as a reinvestment of the earnings for the current taxable year; a decrease in the equity during the taxable year is generally treated as a disinvestment of prior year's earnings that have not previously been subject to the branch profits tax. The amount subject to the branch profits tax for the taxable year is the dividend equivalent amount. Section 1.884–2T contains special rules relating to the effect on the branch profits tax of the termination or incorporation of a U.S. trade or business or the liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(2) *The branch-level interest tax.* Section 1.884–4T provides rules for computing the branch-level interest tax. In general, interest paid by a U.S. trade or business (as defined in § 1.884–4T(b)) of a foreign corporation is treated as if it were paid by a domestic corporation and may be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442. In addition, if the interest allowable as a deduction under § 1.882–5 in computing a foreign corporation's effectively connected taxable income exceeds certain interest paid by a U.S. trade or business of the foreign corporation, the excess is treated as interest paid to the foreign corporation by a wholly-owned domestic corporation and is subject to tax under section 881(a).

(3) *Qualified residents.* Section 1.884–5T provides rules for determining whether a foreign corporation is a qualified resident of a foreign country. In general, a foreign corporation must be a qualified resident of a foreign country with which the United States has an income tax treaty in order to claim an exemption or rate reduction with respect to the branch profits tax, the branch-level interest tax, and the tax on dividends paid by the foreign corporation.

(b) *Outline of topics in §§ 1.884–1T through 1.884–5T.* This paragraph lists the headings in §§ 1.884–1T through 1.884–5T.

§ 1.884–1T Branch Profits Tax. (temporary)

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(h) Corporations resident in countries with which the United States has an income tax treaty
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§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary (temporary).

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(c) Liquidation, reorganization, etc. of a foreign corporation
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  (2) Transferor's dividend equivalent amount for the taxable year in which a section 381(a) transaction occurs
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  (3) Transferor's dividend equivalent amount for any taxable year succeeding the taxable year in which the section 381(a) transaction occurs
  (4) Earnings and profits of the transferor carried over to the transferee pursuant to the section 381(a) transaction
    (i) Amount
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  (5) Determination of U.S. net equity of a transferee that is a foreign corporation
  (6) Special rules in the case of the disposition of stock or securities in a domestic transferee or in the transferor
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§ 1.884–3T Coordination of branch profits tax with second-tier withholding. (temporary)

§ 1.884–4T Branch-level interest tax. (temporary)

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(2) Requirement that all interest paid with respect to certain liabilities be consistently treated
(3) Liabilities that do not give rise to interest paid by a U.S. trade or business
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(5) Special rule where a U.S. business constitutes 80 percent or more of a foreign corporation's business
(i) General rule
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(6) Special rule where interest paid exceeds deductible and non-deductible interest of a U.S. trade or business
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§ 1.884–5T Qualified Residents. (temporary)

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(iii) Publicly-traded corporations treated as individual shareholders
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(2) Established securities market
(i) General rule
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(iii) Computation of dollar value of stock traded
(iv) Definition of over-the-counter market
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§ 1.884–1T Branch Profits Tax (temporary).

(a) *General rule.* A foreign corporation shall be liable for a branch profits tax in an amount equal to 30 percent of the foreign corporation's dividend equivalent amount for the taxable year. The branch profits tax shall be in addition to the tax imposed by section 882 and shall be reported on a foreign corporation's income tax return for the taxable year. The tax shall be due and payable as provided in section 6151 and such other provisions of Subtitle F of the Internal Revenue Code as apply to the income tax liability of corporations. However, no estimated tax payments shall be due with respect to a foreign corporation's liability for the branch profits tax. See paragraph (h) of this section for the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty, and § 1.884–2T for the effect on the branch profits tax of the termination or incorporation of a U.S. trade or business, or the liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(b) *Dividend equivalent amount*—(1) *Definition.* The term "dividend equivalent amount" means a foreign corporation's effectively connected earnings and profits (as defined in paragraph (f)(1) of this section) for the taxable year subject to the adjustments in paragraphs (b) (2) and (3) of this section. The dividend equivalent amount cannot be less than zero.

(2) *Adjustment for increase in U.S. net equity.* If a foreign corporation's U.S. net equity (as defined in paragraph (c) of this section) as of the close of the taxable year exceeds the foreign corporation's U.S. net equity as of the close of the preceding taxable year, then, for purposes of computing the foreign corporation's dividend equivalent amount for the taxable year, the foreign corporation's effectively connected earnings and profits for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(3) *Adjustment for decrease in U.S. net equity*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section and in § 1.884–2T, if a foreign corporation's U.S. net equity as of the close of the taxable year is less than the foreign corporation's U.S. net equity as of the close of the preceding taxable year, then, for purposes of computing the foreign corporation's dividend equivalent amount for the taxable year, the foreign corporation's effectively connected earnings and profits for the taxable year shall be increased by the amount of such difference.

(ii) *Limitation based on non-previously taxed accumulated effectively connected earnings and profits.* The increase of a foreign corporation's effectively connected earnings and profits under paragraph (b)(3)(i) of this section shall not exceed the non-previously taxed accumulated effectively connected earnings and profits of the foreign corporation as of the close of the preceding taxable year. The term "non-previously taxed accumulated effectively connected earnings and profits" means the excess of the aggregate amount of effectively connected earnings and profits of a

foreign corporation for preceding taxable years over the aggregate dividend equivalent amounts for such preceding taxable years. The aggregate amount of effectively connected earnings and profits for preceding taxable years shall not include effectively connected earnings and profits for taxable years beginning before January 1, 1987.

(4) *Examples.* The principles of paragraphs (b) (2) and (3) of this section are illustrated by the following examples.

Example (1). Foreign corporation A, a calendar year taxpayer, had $1,000 U.S. net equity as of the close of 1986 and $100 of effectively connected earnings and profits for 1987. A acquires $100 of additional U.S. assets during 1987 and its U.S. net equity as of the close of 1987 is $1,100. In computing A's dividend equivalent amount; for 1987, A's effectively connected earnings and profits of $100 are reduced under paragraph (b)(2) of this section by the $100 increase in U.S. net equity between the close of 1986 and the close of 1987. A has no dividend equivalent amount for 1987.

Example (2). Assume the same facts as in *Example (1)* for 1987. A has no effectively connected earnings and profits for 1988. A's U.S. net equity decreases by $40 during 1988 and its U.S. net equity is $1,060 as of the close of 1988. A has a dividend equivalent amount of $40 for 1988, even though it has no effectively connected earnings and profits for 1988. A's effectively connected earnings and profits of $0 for 1988 are increased under paragraph (b)(3)(i) of this section by the $40 reduction in U.S. net equity (subject to the limitation in paragraph (b)(3)(ii) of this section of $100 of non-previously taxed accumulated effectively connected earnings and profits).

Example (3). Assume the same facts as in *Example (1)* except that A acquires $40 of U.S. assets during 1987 and its U.S. net equity as of the close of 1987 is $1,040. In computing A's dividend equivalent amount for 1987, A's effectively connected earnings and profits of $100 are reduced under paragraph (b)(2) of this section by the $40 increase in U.S. net equity between the close of 1986 and the close of 1987. A has a dividend equivalent amount of $60 for 1987.

Example (4). Assume the same facts as in *Example (3)* for 1987. For 1988, A has $125 of effectively connected earnings and profits and its U.S. net equity decreases by $50. A's U.S. net equity as of the close of 1988 is $990 ($1,040–$50). In computing A's dividend equivalent amount, the $125 of effectively connected earnings and profits for 1988 is not increased under paragraph (b)(3)(i) by the full amount of the $50 decrease in U.S. net equity during 1988, because the increase in effectively connected earnings and profits resulting from a decrease in U.S. net equity is limited to A's non-previously taxed accumulated effectively connected earnings and profits as of the close of 1987. A had $100 of effectively connected earnings and profits for 1987 and a dividend equivalent amount of $60 for that year, so A has $40 of non-previously taxed accumulated effectively connected earnings and profits as of the close of 1987. The increase in effectively connected earnings and profits resulting from a decrease in U.S. net equity is thus limited to $40, and the dividend equivalent amount for 1988 is $165 ($125 effectively connected earnings and profits + $40 decrease in U.S. net equity).

Example (5). (i) Foreign corporation A, a calendar year taxpayer, has $150 of non-previously taxed accumulated effectively connected earnings and profits as of the close of 1990, and has a $90 deficit in effectively connected earnings and profits for 1991. A has U.S. net equity of $450 as of the close of 1990 and U.S. net equity of $350 as of the close of 1991 (*i.e.*, a $100 decrease in U.S. net equity). A has a dividend equivalent amount of $10 for 1991, resulting from A's deficit of $90 in effectively connected earnings and profits for 1991 increased by $100, the decrease in A's U.S. net equity during 1991. A portion of the reduction in U.S. net equity in 1991 is attributable to A's deficit in effectively connected earnings and profits for that year and triggers a dividend equivalent amount only to the extent the reduction in U.S. net equity exceeds the current year deficit in effectively connected earnings and profits for 1991.

(ii) For 1992, A has no effectively connected earnings and profits and its U.S. net equity decreases by $150 (to $200) during the year. Because A has no effectively connected earnings and profits for 1992, its dividend equivalent amount for the year is equal to the decrease in U.S. net equity during the year ($150) limited to the amount of its non-previously taxed accumulated effectively connected earnings and profits as of the close of the preceding taxable year. A has $50 of non-previously taxed accumulated effectively connected earnings and profits as of the close of 1991 (*i.e.*, its non-previously taxed accumulated effectively connected earnings and profits of $150 as of the close of 1990 less its $90 deficit in earnings and profits for 1991 less its dividend equivalent amount of $10 for 1991) and therefore has a dividend equivalent amount of $50 for 1992.

Example (6). Foreign corporation A, a calendar year taxpayer, had a deficit in effectively connected earnings and profits of $100 for 1987 and $100 for 1988, and has $90 of effectively connected earnings and profits for 1989. A had $2,000 U.S. net equity as of the close of 1988 and has $2,000 U.S. net equity as of the close of 1989. A has a dividend equivalent amount of $90 for 1989, its effectively connected earnings and profits for the year, even though it has a net deficit of $110 in effectively connected earnings and profits for the period 1987–1989.

(c) *U.S. net equity.* The term "U.S. net equity" means, as of the close of the taxable year, the U.S. assets (as defined in paragraph (d)(1) of this section) of a foreign corporation on such date reduced (including below zero) by the U.S. liabilities (as defined in paragraph (e)(1) of this section) of the foreign corporation on such date.

(d) *U.S. assets*—(1) *General rule.* Except as provided in paragraphs (d)(13) and (g) of this section, the term "U.S. assets" means—

(i) Property of a corporation that is described in paragraphs (d) (2) through (12) of this section and is held by the foreign corporation on the day on which a determination of whether the property is a U.S. asset is made (the "determination date"), and

(ii) Property of a foreign corporation (other than property described in paragraph (d)(1)(i) of this section) that is held on the determination date if all income from the use, and all gain from the disposition, of the property on the determination date is effectively connected with the conduct of a trade or business in the United States (or would be effectively connected if the property were used or sold on that date). Except as otherwise specifically provided in this paragraph (d), the amount of a U.S. asset shall be the adjusted basis of property for purposes of computing earnings and profits, and the taxable year referred to in this paragraph (d) shall be the taxable year in which the determination date falls. Income that is effectively connected with the conduct of a trade or business in the United States includes income that is treated as effectively connected income under any provision of the Code. See paragraph (d)(13)(ii) of this section regarding property described in section 864(c)(7).

(2) *Depreciable and amortizable property.* Depreciable personal property (other than a U.S. real property interest described in section 897(c)(1)(A)(i)) and amortizable intangible property shall be treated as a U.S. asset of a foreign corporation in the same proportion that the amount of the depreciation or amortization with respect to the property that is allowable as a deduction, or is includible in cost of goods sold, for the taxable year in computing the taxable income of the foreign corporation that is effectively connected with the conduct of a trade or business in the United States bears to the total amount of depreciation or amortization computed for the taxable year with respect to the property.

(3) *Inventory.* Inventory property (as defined in section 865(h)(1)) held on the determination date shall be treated as a U.S. asset in the same proportion that the anticipated amount of gross sales from the sale or exchange of the property that is reasonably anticipated to be effectively connected with the conduct of a trade or business in the United States bears to the anticipated total amount of gross sales from the sale or exchange of the property.

(4) *Receivables arising from the sale of inventory, performance of services, or*

lease of property. An account or note receivable (whether or not bearing stated interest) with a maturity not exceeding six months that arises from the sale or exchange of inventory property (as defined in section 865(h)(1)) or from the performance of services or the leasing of property in the ordinary course of a foreign corporation's trade or business shall be treated as a U.S. asset of the foreign corporation in the same proportion that the amount of gross income represented by the receivable that is effectively connected with the conduct of a trade or business in the United States bears to the total amount of gross income represented by the receivable.

(5) *U.S. real property interests*—(i) *In general.* A U.S. real property interest described in section 897(c)(1)(A)(i) shall be treated as a U.S. asset.

(ii) *Shared appreciation loans and similar interests.* [Reserved]

(6) *Money.* Money needed in a U.S. trade or business within the meaning of § 1.864–4(c)(2)(iii)(*a*) shall be treated as a U.S. asset.

(7) *Installment obligations.* An obligation received in connection with the installment sale (as defined in section 453(b)) of a U.S. asset shall be treated as a U.S. asset in an amount equal to the sum of—

(i) The amount of income that would be effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States if the obligation were satisfied in full on the determination date and

(ii) The basis of the obligation on such date (as determined for purposes of section 453B) attributable to the amounts that would be treated as income that is effectively connected with the conduct of a trade or business in the United States, if the obligation were satisfied in full on the determination date.

(8) *Marketable securities.* Except as provided in paragraph (d)(11) of this section (relating to expansion capital) and in § 1.884–2T (relating to the incorporation or complete termination of a U.S. trade or business, or the reorganization or liquidation of a foreign corporation or its domestic subsidiary), a marketable security shall be treated as a U.S. asset only if all of the income derived from such security during the taxable year is effectively connected with the conduct of a trade or business in the United States and either—

(i) Any gain or loss from the sale or exchange of the security on the determination date would be effectively connected with the conduct of a trade or business in the United States, or

(ii) Such security had a yield for the taxable year (or for the portion of the taxable year during which the security was held) of at least 50 percent of the average of the monthly Federal short-term rates (as determined under section 1274(d)(1)(C)(i)) during such period.

The yield of a marketable security means, for purposes of this paragraph (d)(8), the ratio of gross amounts derived by the foreign corporation during the taxable year from the security (including income accrued or imputed with respect to such security under any provision of the Code, or regulations thereunder) to the adjusted basis of such security on the determination date. For purposes of this paragraph (d), the term "marketable security" means a security (including stock) that is part of an issue any portion of which is regularly traded on an established securities market (within the meaning of § 1.884–5T(d) (2) and (4)) and a deposit described in section 871(i)(3) (A) or (B).

(9) *Partnership interests*—(i) *General rule.* Except as provided in paragraph (d)(9)(iv) of this section, a foreign corporation that is a partner in a partnership shall be treated as having a U.S. asset in an amount equal to the product of the foreign corporation's adjusted basis in the partnership interest (as determined under paragraph (d)(9)(ii) of this section) and the ratio of its distributive share of partnership gross income for the taxable year that is effectively connected with the conduct of a trade or business in the United States to its distributive share of all partnership gross income for the taxable year.

(ii) *Computation of basis in partnership.* For purposes of this section, a foreign corporation's adjusted basis in a partnership interest shall be the foreign corporation's basis in such interest (as determined under section 705)—

(A) Reduced by the foreign corporation's share of the liabilities of the partnership (as determined under section 752),

(B) Increased by the foreign corporation's share of the liabilities of the partnership (as determined under paragraph (d)(9)(iii) of this section), and

(C) Adjusted to take into account any differences between the foreign corporation's distributive share of partnership income, gain, or loss for purposes of computing the taxable income of the foreign corporation and the foreign corporation's distributive share of partnership income, gain, or loss from the partnership for purposes of computing the earnings and profits of the foreign corporation.

(iii) *Computation of share of partnership liabilities.* For purposes of this section, a foreign corporation shall share in any liability of a partnership in the same proportion that it shares for income tax purposes in the interest expenses attributable to such liability for the taxable year.

(iv) *Partnership operated to increase a foreign corporation's U.S. assets artificially.* If the district director determines that one of the principal purposes of the acquisition of a partnership interest or the acquisition or ownership of certain properties by a partnership is to increase the U.S. assets of a foreign corporation artificially, the district director may compute the portion of the foreign corporation's interest in the partnership that is a U.S. asset using a method that more accurately reflects the foreign corporation's interest in partnership properties that would be U.S. assets if held directly by the foreign corporation. Whether a partnership interest is acquired, or partnership property is acquired or owned, for such purpose will depend upon all the facts and circumstances of each case. Factors to be considered include whether the partnership conducts unrelated businesses or whether the partnership accumulates investment property unrelated to its trade or business or liquid assets in excess of the reasonable needs of its business. For purposes of this paragraph (d)(9)(iv), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(v) *Example.* The application of paragraph (d)(9)(iv) of this section is illustrated by the following example.

Example. Foreign corporation A is a partner in partnership X and is entitled to 50 percent of the income of X and 50 percent of the value of all property of X upon X's liquidation. X is engaged in an active U.S. real estate business which, during the taxable year, produces $100 of gross income that is effectively connected with the conduct of a trade or business in the United States. In the same taxable year, X acquires securities (from funds that are either generated by its business, borrowed or contributed) that produce $50 of gross income not effectively connected with the conduct of a trade or business in the United States. The securities are unrelated to the real estate business and substantially exceed the reasonable needs of the business. The real estate and the securities each have an adjusted basis of $1,000. Under paragraph (d)(9)(i) of this section, two-thirds (50/75) of A's distributive share of partnership gross income is effectively connected with the conduct of a trade or business in the United States, and two-thirds of A's basis in its partnership interest (as determined under paragraph

(d)(9)(ii) of this section) would therefore be treated as a U.S. asset. However, because the securities acquired by X are unrelated to X's real estate business and exceed the reasonable needs of the business, the district director may determine that a principal purpose of X's acquisition of the securities is to increase artificially the U.S. assets of A. The district director may, therefore, compute the portion of A's interest in X that is treated as a U.S. asset by, for example, using the ratio of A's pro rata share of the adjusted basis of the property of X that produces income that is effectively connected with the conduct of a trade or business in the United States ($500) to A's pro rata share of all property of X ($1,000). As a result, A would be treated as having a U.S. asset in an amount equal to half of A's basis in X (as determined under paragraph (d)(9)(ii) of this section).

(10) *Trusts and Estates.* [Reserved]

(11) *Election to treat expansion capital as a U.S. asset*—(i) *General rule.* A foreign corporation may elect, for any taxable year, to treat as U.S. assets marketable securities (as defined in paragraph (d)(8) of this section) that are not otherwise U.S. assets provided that the fair market value of each such security on the date the security is identified as a U.S. asset under paragraph (d)(11)(iii) of this section is not less than its adjusted basis on such date. The adjusted basis of marketable securities that may be treated as U.S. assets for any taxable year shall not exceed 25 percent of the sum of the foreign corporation's effectively connected earnings and profits for the taxable year and the non-previously taxed accumulated effectively connected earnings and profits attributable to the two preceding taxable years. The securities must be held for the entire taxable year following the year for which the election is made or, if disposed of during that taxable year, must be replaced on the date of disposition by other marketable securities that are purchased on or before such date, or are received in exchange for the securities that have been disposed of, and the fair market value of which as of the date of substitution is not less than their adjusted basis.

(ii) *Treatment of income from deemed U.S. assets.* The income or gain from marketable securities subject to an election under this paragraph (d)(11) that arises in the taxable year following the taxable year for which the election is made shall be treated as effectively connected with the conduct of a trade or business in the United States (other than for purposes of section 864(c)(7)), and losses from the disposition of such marketable securities shall be allocated entirely to income that is effectively connected with the conduct of a trade or business in the United States. The marketable securities that are held on the last business day of the following taxable year shall be treated as sold for their fair market value on that day, and any gain (but not loss) and accrued interest shall be taken into account in such following taxable year as income that is effectively connected with the conduct of a trade or business in the United States. The adjusted basis of such property shall be increased by the amount of any gain recognized by reason of this paragraph (d)(11).

(iii) *Method of election.* An election under this paragraph (d)(11) to treat marketable securities as U.S. assets may be made only with respect to securities identified on the books and records of the U.S. trade or business within 30 days after the close of the taxable year for which the election is made. The election shall be made by the foreign corporation for any taxable year by attaching to its income tax return for the taxable year a statement—

(A) Identifying the marketable securities that it elects to treat as U.S. assets under this paragraph (d)(11),

(B) Setting forth the adjusted bases of such securities, and

(C) Agreeing to treat any income, gain or loss from such securities (or replacement securities) as provided in paragraph (d)(11)(ii) of this section. Such statement must be filed on or before the due date (including extensions) of the foreign corporation's income tax return for the taxable year. For taxable years ending on or before December 1, 1988, the election may be made, and securities identified on the books and records of the foreign corporation, on the later of the date on which the return is due (including extensions) or 120 days after September 2, 1988.

(iv) *Ruling to permit an increase in expansion capital in cases of involuntary conversion.* If property that is a U.S. asset of a foreign corporation is compulsorily or involuntarily converted into property not similar or related in service or use to the converted property, the foreign corporation may apply to the Commissioner for a ruling to increase the amount of marketable securities that may be treated as U.S. assets. The Commissioner may prescribe terms and conditions for the treatment of marketable securities as U.S. assets under this paragraph (d)(11)(iv).

(12) *Losses involving U.S. assets.* If a foreign corporation sustains a loss with respect to property that is a U.S. asset and is not allowed a deduction under section 165 for the entire amount of the loss because there exists a reasonable prospect of recovering compensation for the loss, the property shall be treated as a U.S. asset from the date of the loss in an amount equal to its adjusted basis immediately before the loss reduced (but not below zero) by—

(i) The amount of any deduction claimed under section 165 by the foreign corporation with respect to the loss and

(ii) Any compensation received with respect to the loss.

(13) *Property that is not a U.S. asset*—(i) *Property that does not give rise to effectively connected earnings and profits.* U.S. assets shall not include property of a foreign corporation if, on the determination date, income from the use of the property, or gain or loss from the disposition of the property, would be described in paragraph (f)(2) of this section (relating to certain income that does not produce effectively connected earnings and profits).

(ii) *Section 864(c)(7) property.* U.S. assets shall not include property that would qualify as a U.S. asset under the provisions of paragraph (d)(1) of this section solely by reason of section 864(c)(7) (relating to the tax treatment of property that ceases to be used or held for use in connection with a U.S. trade or business).

(iii) *Assets acquired to increase U.S. net equity artificially.* U.S. assets shall not include money or property acquired or used by a foreign corporation if one of the principal purposes of such acquisition or use is to increase artificially the U.S. assets of a foreign corporation on the determination date. Whether money or property is acquired or used for such purpose will depend upon all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes in acquiring or using such property is to increase artificially the U.S. assets of a foreign corporation include the length of time during which the asset was used in a U.S. trade or business, whether the asset was acquired from, or disposed of to, a related person, and whether the aggregate value of the U.S. assets of the foreign corporation increased temporarily on the determination date. For purposes of this paragraph (d)(13)(iii), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(14) *Examples.* The principles of this paragraph (d) are illustrated by the following examples:

Example (1). Foreign corporation A, a calendar year taxpayer, is engaged in a trade or business in the United States. A owns equipment that is used in its manufacturing business in country X and in the United

States. The equipment has an adjusted basis (for purposes of computing earnings and profits) of $100 at the beginning of 1987. Under § 1.861–8, A's depreciation deduction is allocated to sales income and is apportioned 70 percent to income that is effectively connected with the conduct of a trade or business in the United States and 30 percent to income that is not effectively connected with the conduct of a trade or business in the United States. A's depreciation deduction (for purposes of computing earnings and profits) with respect to the equipment is $10. As of the close of 1987, the machine is treated as a U.S. asset with an adjusted basis of $63 (*i.e.*, 70 percent of $100 reduced by $7 of depreciation in 1987).

Example (2). (i) For 1987, foreign corporation A, a calendar year taxpayer, has $100 of effectively connected earnings and profits and has no non-previously taxed accumulated effectively connected earnings and profits. A elects under paragraph (d)(11) of this section to treat marketable securities with an adjusted basis of $25 as U.S. assets (*i.e.*, 25 percent of its effectively connected earnings and profits for 1987), the maximum amount permitted. A also reinvests $75 in 1987 in other U.S. assets. As a result of the reinvestment and election, A has no dividend equivalent amount for 1987.

(ii) For 1988, A has $100 of effectively connected earnings and profits and $100 of non-previously taxed accumulated effectively connected earnings and profits attributable to its preceding taxable year. A elects to treat as U.S. assets marketable securities with an adjusted basis of $50 (*i.e.*, 25 percent of $200), the maximum amount permitted. A's U.S. net equity decreases by $20 during 1988 after taking into account the marketable securities which A elects to treat as U.S. assets. A's dividend equivalent amount for 1988 is $120 ($100 effectively connected earnings and profits increased by the $20 decrease in U.S. assets). The dividend equivalent amount in the current year does not affect the calculation of the amount of marketable securities that A may elect to treat as U.S. assets under paragraph (d)(11) of this section.

(iii) For 1989, A has $56 of effectively connected earnings and profits. Its non-previously taxed accumulated effectively connected earnings and profits attributable to the two preceding taxable years are $80 (*i.e.*, $200 of effectively connected earnings and profits for the two preceding taxable years, reduced by the dividend equivalent amount of $120 for its 1988 taxable year). Thus, the maximum amount of marketable securities that A may elect under paragraph (d)(12) of this section to treat as U.S. assets for 1989 is $34 (*i.e.*, 25 percent of the sum of $56 and $80).

Example (3). Foreign corporation A owns a condominium apartment in the United States. Assume that holding the apartment does not constitute a U.S. trade or business. The condominium apartment constitutes a U.S. asset of A by reason of paragraph (d)(5) of this section. Thus, the disposition by A of the condominium apartment at a gain may give rise to a branch profits tax liability unless the gain is exempt from the branch profits tax under paragraph (h)(1) of this section (relating to the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty) or § 1.884–2T (relating to the incorporation or complete termination of a U.S. trade or business or the reorganization or liquidation of a foreign corporation).

(e) *U.S. liabilities*—(1) *General rule.* The term "U.S. liabilities" means the product of (i) the U.S. assets of a foreign corporation as of the close of the taxable year and either (ii) the ratio of the foreign corporation's worldwide liabilities as of the close of the taxable year to its worldwide assets as of the close of the taxable year or, (iii) if the foreign corporation computes its interest deduction using a fixed ratio of liabilities to assets (as determined under § 1.882–5(b)(2)(i)), such fixed ratio. The asset valuation method used for purposes of this paragraph (e) must be the same asset valuation method used for determining the amount of the foreign corporation's interest deduction that is apportioned to effectively connected income under § 1.882–5.

(2) *Liabilities of a partnership.* If a foreign corporation is a partner in a partnership, the worldwide liabilities of the foreign corporation shall include, for purposes of this section, the foreign corporation's share of the liabilities of the partnership (as determined under paragraph (d)(9)(iii) of this section).

(3) *Artificial decrease in U.S. liabilities.* If a foreign corporation repays or otherwise decreases its U.S. liabilities and one of the principal purposes of such decrease is to decrease artificially its U.S. liabilities on the determination date, then such decrease shall not be taken into account for purposes of computing the foreign corporation's U.S. net equity. Whether the U.S. liabilities of a foreign corporation are artificially decreased will depend on all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes for the repayment or decrease of the liabilities is to decrease artificially the U.S. liabilities of a foreign corporation shall include whether the aggregate liabilities are temporarily decreased as of the close of the taxable year by, for example, the repayment of liabilities or the acquisition with contributed funds of passive-type assets that are not U.S. assets. For purposes of this paragraph (e)(3), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(f) *Effectively connected earnings and profits*—(1) *In general.* Except as provided in paragraph (f)(2) of this section and as modified by § 1.884–2T (relating to the incorporation or complete termination of a U.S. trade or business or the reorganization or liquidation of a foreign corporation or its domestic subsidiary), the term "effectively connected earnings and profits" means the earnings and profits (or deficits therein) determined under section 312 and this paragraph (f) that are attributable to income that is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States. Effectively connected earnings and profits shall not be reduced by distributions made by the foreign corporation during any taxable year or by the amount of branch profits tax or tax on excess interest (as defined in § 1.884–4T(a)(2)) paid by the foreign corporation. Earnings and profits are attributable to income that is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States regardless of whether the earnings and profits are taken into account under section 312 in an earlier or later taxable year than the taxable year in which the income is taken into account.

(2) *Income that does not produce effectively connected earnings and profits.* The term "effectively connected earnings and profits" shall not include any earnings and profits attributable to—

(i) Income excluded from gross income under section 883(a)(1) or 883(a)(2) (relating to certain income derived from the operation of ships or aircraft),

(ii) Income treated as effectively connected with the conduct of a trade or business in the United States under section 921(d) or 926(b) (relating to certain income of a FSC and certain dividends paid by a FSC to a foreign corporation or nonresident alien) that is not otherwise effectively connected with the conduct of a trade or business in the United States,

(iii) Gain on the disposition of a U.S. real property interest described in section 897(c)(1)(A)(ii) (relating to certain interests in a domestic corporation) that is not otherwise effectively connected with the conduct of a trade or business in the United States,

(iv) Income treated as effectively connected with the conduct of a trade or business in the United States under section 953(c)(3)(C) (relating to certain income of a captive insurance company that a corporation elects to treat as effectively connected with the conduct of a trade or business in the United States) that is not otherwise effectively

connected with the conduct of a trade or business in the United States, and

(v) Income that is exempt from tax under section 892 and the regulations thereunder.

(3) *Allocation of deductions attributable to income that does not produce effectively connected earnings and profits.* In determining the amount of a foreign corporation's effectively connected earnings and profits for the taxable year, deductions and other adjustments shall be allocated and apportioned under the principles of § 1.861–8 between income that is effectively connected with the conduct of a trade or business in the United States and that gives rise to effectively connected earnings and profits and income described in paragraph (f)(2) of this section (relating to income that is effectively connected with the conduct of a trade or business in the United States but does not give rise to effectively connected earnings and profits).

(4) *Examples.* The principles of paragraph (f)(2) of this section are illustrated by the following examples.

Example (1). Foreign corporation A owns a tax-exempt municipal bond that is a U.S. asset as of the close of its 1989 taxable year. The municipal bond gives rise in 1989 to income that is effectively connected with the conduct of a trade or business in the United States (even though the income is excluded from gross income under section 103(a) and is not gross income of a foreign corporation by reason of section 882(b)), and therefore gives rise to effectively connected earnings and profits in 1989.

Example (2). Foreign corporation A derives income that is effectively connected with the conduct of a trade or business in the United States but is not included in A's gross income, and is exempt from tax, under section 894(a) because, under an income tax treaty, it constitutes business profits that are not attributable to a permanent establishment maintained by A in the United States. However, the income gives rise to effectively connected earnings and profits. Such earnings and profits may be exempt from the branch profits tax by reason of paragraph (h) of this section (relating to the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty).

(g) *Special rules for foreign insurance companies.* A foreign corporation described in section 842(a) (relating to foreign companies carrying on insurance business in the United States) that, for the taxable year, includes in taxable income net investment income as computed under section 842(b), shall—

(1) Treat as effectively connected earnings and profits for the taxable year the amount of minimum effectively connected investment income determined under section 842(b), as adjusted under section 312 to arrive at earnings and profits; and

(2) Determine its U.S. assets solely under this paragraph (g).

A foreign corporation described in this paragraph (g) shall have U.S. assets for the taxable year in which it includes in taxable income net investment income as computed under section 842(b) in an amount equal to the same proportion of the foreign corporation's worldwide assets as of the close of the taxable year that the sum of its effectively connected earnings and profits for the taxable year and non-previously taxed accumulated effectively connected earnings and profits bear to its worldwide current and accumulated earnings and profits for the taxable year.

(h) *Corporations resident in countries with which the United States has an income tax treaty*—(1) *General rule.* Except as provided in paragraph (h)(2) of this section, a corporation that is a resident of a country with which the United States has an income tax treaty in effect for a taxable year in which it has a dividend equivalent amount and that meets the requirements, if any, of the limitation on benefits provisions of such treaty with respect to the dividend equivalent amount shall not be subject to the branch profits tax on such amount (or will qualify for a reduction in the amount of tax with respect to such amount) only if—

(i) The foreign corporation is a qualified resident of such country for the taxable year, within the meaning of § 1.884–5T(a) or

(ii) The limitation on benefits provisions entered into force after December 31, 1986.

(2) *Special rules for foreign corporations that are qualified residents on the basis of their ownership*—(i) *General rule.* A foreign corporation that, in any taxable year, is a qualified resident of a country with which the United States has an income tax treaty in effect solely by reason of meeting the requirements of § 1.884–5T (b) and (c) (relating, respectively, to stock ownership and base erosion) shall be exempt from the branch profits tax or subject to a reduced rate of branch profits tax under paragraph (h)(1) of this section with respect to the portion of its dividend equivalent amount for the taxable year attributable to non-previously taxed accumulated effectively connected earnings and profits if the foreign corporation is a qualified resident of such country within the meaning of § 1.884–5T(a) for the taxable years includable, in whole or in part, in a 36-month period that includes the taxable year of the dividend equivalent amount. A foreign corporation that fails the 36-month test described in the preceding sentence shall be exempt from the branch profits tax or subject to the branch profits tax at a reduced rate under paragraph (h)(1) of this section with respect to non-previously taxed accumulated effectively connected earnings and profits (determined on a last-in-first-out basis) accumulated only during prior years in which the foreign corporation was a qualified resident of such country within the meaning of § 1.884–5T(a).

(ii) *Rules of application.* A foreign corporation that has not satisfied the 36-month test as of the close of the taxable year of the dividend equivalent amount but satisfies the test with respect to such dividend equivalent amount by meeting the 36-month test by the close of the second taxable year succeeding the taxable year of the dividend equivalent amount shall be subject to the branch profits tax for the year of the dividend equivalent amount without regard to paragraph (h)(1) of this section on the portion of the dividend equivalent amount attributable to non-previously taxed accumulated effectively connected earnings and profits derived in a taxable year in which the foreign corporation was not a qualified resident within the meaning of § 1.884–5T(a). Upon meeting the 36-month test, the foreign corporation shall be entitled to claim by amended return a refund for the tax paid with respect to the dividend equivalent amount in excess of the branch profits tax calculated by taking into account paragraph (h)(2)(i) of this section, provided the foreign corporation establishes in the amended return for the taxable year that it has met the requirements of such paragraph. For purposes of section 6611 (dealing with interest on overpayments), any overpayment of branch profits tax by reason of this paragraph (h)(2)(ii) shall be deemed not to have been made before the filing date for the taxable year in which the foreign corporation establishes that it has met the 36-month test.

(3) *Exemptions for foreign corporations resident in certain countries with income tax treaties in effect on January 1, 1987.* The branch profits tax shall not be imposed on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the requirements of paragraph (h) (1) and (2) of this section for a country listed below, so long as the income tax treaty between the United States and that country, as in effect on January 1, 1987, remains in effect, except

to the extent the treaty is modified on or after January 1, 1987, to expressly provide for the imposition of the branch profits tax:

Aruba	Jamaica
Austria	Japan
Belgium	Korea
People's Republic of China	Luxembourg
Cyprus	Malta
Denmark	Morocco
Egypt	Netherlands
Finland	Netherlands Antilles
Germany	Norway
Greece	Pakistan
Hungary	Philippines
Iceland	Sweden
Ireland	Switzerland
Italy	United Kingdom

(4) *Modifications with respect to other income tax treaties*—(i) *Limitation on rate of tax*—(A) *General rule.* If, under paragraphs (h) (1) and (2) of this section, a corporation qualifies for a reduction in the amount of the branch profits tax and paragraph (h)(3) of this section does not apply, the rate of tax shall be the rate of tax on branch profits specified in the treaty between the United States and the corporation's country of residence or, if no rate of tax on branch profits is specified, the rate of tax that would apply under such treaty to dividends paid to the foreign corporation by a wholly-owned domestic corporation.

(B) *Certain treaties in effect on January 1, 1987.* The branch profits tax shall be imposed at the following rates on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the requirements of paragraphs (h) (1) and (2) of this section for a country listed below, for as long as the relevant provisions of those income tax treaties remain in effect and are not modified or superseded by subsequent agreement:

Australia (15%)
Barbados (5%)
Canada (10%)
France [reserved]
New Zealand (5%)
Poland (5%)
Romania (10%)
South Africa (30%)
Trinidad & Tobago (10%)
U.S.S.R. (30%)

(ii) *Limitations other than rate of tax.* If, under paragraphs (h) (1) and (2) of this section, a foreign corporation qualifies for a reduction in the amount of branch profits tax and paragraph (h)(3) of this section does not apply, then—

(A) The foreign corporation shall be entitled to the benefit of any limitations on imposition of a tax on branch profits (in addition to any limitations on the rate of tax) contained in the treaty, and

(B) No branch profits tax shall be imposed with respect to effectively connected earnings and profits of the foreign corporation unless attributable to a permanent establishment in the United States or, if not otherwise prohibited under the treaty, to gain from the disposition of a U.S. real property interest described in section 897(c)(1)(A)(i), except to the extent the treaty specifically permits the imposition of the branch profits tax on such earnings and profits.

No article in such treaty shall be construed to provide any limitations on imposition of the branch profits tax other than as provided in this paragraph (h)(4).

(iii) *Limitations under the Canadian treaty*—(A) *Effect of deficits in earnings and profits.* In the case of a foreign corporation that is a qualified resident of Canada, the dividend equivalent amount for any taxable year shall not exceed the foreign corporation's non-previously taxed accumulated effectively connected earnings and profits as of the close of the current taxable year. Thus, for example, if a foreign corporation that is a qualified resident of Canada has a deficit in non-previously taxed accumulated effectively connected earnings and profits of $200 as of the close of the preceding taxable year and effectively connected earnings and profits of $100 for the current taxable year, it will have no dividend equivalent amount for the taxable year because, as of the close of its current taxable year, it has a $100 deficit in non-previously taxed accumulated effectively connected earnings and profits. For purposes of this paragraph (h)(4)(iii)(A), any net deficit in accumulated earnings and profits attributable to taxable years beginning before January 1, 1987, shall be includible in determining non-previously taxed accumulated effectively connected earnings and profits.

(B) *One-time exemption of Canadian $500,000*—(*1*) *General rule.* In the case of a foreign corporation that is a qualified resident of Canada, the branch profits tax shall be imposed only with respect to that portion of the dividend equivalent amount for the taxable year that, when translated into Canadian dollars and added to the dividend equivalent amounts for preceding taxable years translated into Canadian dollars, exceeds Canadian $500,000. The value of the dividend equivalent amount in Canadian currency shall be determined by translating the effectively connected earnings and profits for each taxable year that are includible in the dividend equivalent amount (as determined in U.S. dollars under the currency translation method used in determining the foreign corporation's taxable income for U.S. tax purposes) by the weighted average exchange rate for the taxable year (determined under the rules of section 989(b)(3)) during which the earnings and profits were derived.

(*2*) *Reduction in amount of exemption in the case of related corporations.* The amount of a foreign corporation's exemption under this paragraph (h)(4)(iii)(B) shall be reduced by the amount of any exemption that reduced the dividend equivalent amount of an associated foreign corporation with respect to the same or a similar business. For purposes of this paragraph (h)(4)(iii)(B), a foreign corporation is an associated foreign corporation if it is related to the foreign corporation for purposes of section 267(b) or it and the foreign corporation are stapled entities (within the meaning of section 269B(c)(2)) or are effectively stapled entities. A business is the same as or similar to another business if it involves the sale, lease, or manufacture of the same or a similar type of property or the provision of the same or a similar type of services. A U.S. real property interest described in section 897(c)(1)(A)(i) shall be treated as a business and all such U.S. real property interests shall be treated as businesses that are the same or similar.

(*3*) *Coordination with second-tier withholding tax.* The value of the dividend equivalent amount that is exempt from the branch profits tax by reason of paragraph (h)(4)(iii)(B)(*1*) of this section shall not be subject to tax under section 871(a) or 881, or to withholding under section 1441 or 1442, when distributed by the foreign corporation.

(5) *Benefits under treaties other than income tax treaties.* [Reserved]

(6) *Example.* The application of this paragraph (h) is illustrated by the following example.

Example. Foreign corporation A, a calendar year taxpayer, is a resident of the United Kingdom. A has a dividend equivalent amount for its taxable year 1991 of $300, of which $100 is attributable to 1991 effectively connected earnings and profits and $200 to non-previously taxed accumulated effectively connected earnings and profits. A is a qualified resident for its taxable year 1991 because for that year it meets the requirements of § 1.884–5T (b) and (c), relating, respectively, to stock ownership and base erosion. For 1991 A does not meet the requirements of § 1.884–5T (d), (e), or (f) for qualified residence. A is not a qualified resident of the United Kingdom for its taxable year 1989 but is a qualified resident for its taxable years 1990 and 1992.

Because A is a qualified resident for the 3-year period (1990, 1991, and 1992) that includes the taxable year of the dividend equivalent amount (1991), A satisfies the 36-month test of paragraph (h)(2) of this section and no branch profits tax is imposed on the total $300 dividend equivalent amount. However, since A was not a qualified resident in 1989 and therefore cannot establish that it has satisifed the 36-month test until the taxable year following the year of the dividend equivalent amount, A must pay the branch profits tax for its taxable year 1991 with respect to the portion of the dividend equivalent amount attributable to non-previously taxed accumulated effectively connected earnings and profits relating to years prior to 1990 without regard to paragraph (h)(1) of this section. A may file for a refund of the branch profits tax paid with respect to its 1991 taxable year at any time after it establishes that it is a qualified resident for its 1992 taxable year.

(i) *Stapled entities.* Any foreign corporation that is treated as a domestic corporation by reason of section 269B (relating to stapled entities) shall continue to be treated as a foreign corporation for all purposes of section 884 and the regulations thereunder, notwithstanding section 269B or the regulations thereunder.

(j) *Effective date.* This section is effective for taxable years beginning after December 31, 1986.

§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary. (temporary)

(a) *Complete termination of a U.S. trade or business*—(1) *General rule.* A foreign corporation shall not be subject to the branch profits tax for the taxable year in which it completely terminates all of its U.S. trade or business within the meaning of paragraph (a)(2) of this section. A foreign corporation's non-previously taxed accumulated effectively connected earnings and profits as of the close of the taxable year of complete termination shall be extinguished for purposes of section 884 and the regulations thereunder, but not for other purposes (for example, sections 312, 316 and 381).

(2) *Operating rules*—(i) *Definition of complete termination.* A foreign corporation shall have completely terminated all of its U.S. trade or business for any taxable year ("the year of complete termination") only if—

(A) As of the close of that taxable year, the foreign corporation either has no U.S. assets, or its shareholders have adopted an irrevocable resolution in that taxable year to completely liquidate and dissolve the corporation and, before the close of the immediately succeeding taxable year (also a "year of complete termination" for purposes of applying this paragraph (a)(2)), all of its U.S. assets are either distributed, used to pay off liabilities, or cease to be U.S. assets;

(B) Neither the foreign corporation nor a related corporation uses, directly or indirectly, any of the U.S. assets of the terminated U.S. trade or business, or property attributable thereto or to effectively connected earnings and profits earned by the foreign corporation in the year of complete termination, in the conduct of a trade or business in the United States at any time during a period of three years from the close of the year of complete termination;

(C) The foreign corporation has no income that is, or is treated as, effectively connected with the conduct of a trade or business in the United States (other than solely by reason of section 864 (c)(6) or (c)(7)) during the period of three years from the close of the year of complete termination; and

(D) The foreign corporation attaches to its income tax return for each year of complete termination a waiver of the period of limitations, as described in paragraph (a)(2)(ii) of this section.

If a foreign corporation fails to completely terminate all of its U.S. trade or business because of the failure to meet any of the requirements of this paragraph (a)(2), then its branch profits tax liability for the taxable year and all subsequent taxable years shall be determined under the provisions of § 1.884–1T, without regard to any provisions in this paragraph (a), taking into account any reduction in U.S. net equity that results from a U.S. trade or business of the foreign corporation ceasing to have U.S. assets. Any additional branch profits tax liability that may result, together with interest thereon (charged at the underpayment rates determined under section 6621(a)(2) with respect to the period between the date that was prescribed for filing the foreign corporation's income tax return for the taxable year with respect to which the branch profits tax liability arises and the date on which the additional tax for that year is paid), and applicable penalties, if any, shall be the liability of the foreign corporation (or of any person who is a transferee of the foreign corporation within the meaning of section 6901).

(ii) *Waiver of period of limitations.* The waiver referred to in paragraph (a)(2)(i)(D) of this section shall be executed on such forms as are prescribed by the Commissioner and shall extend the period for assessment of the branch profits tax for the year of complete termination to a date not earlier than the close of the sixth taxable year following that taxable year. Such waiver shall contain such other terms with respect to assessment as may be considered appropriate by the Commissioner to ensure the assessment and collection of the correct tax liability for each year for which the waiver is required. The waiver must be signed by the person authorized to sign the income tax returns for the foreign corporation (including an agent authorized to do so under a general or specific power of attorney). The waiver must be filed on or before the date (including extensions) prescribed for filing the foreign corporation's income tax return for the year of complete termination. For taxable years ending on or before December 1, 1988, such waiver may be filed by attaching it to an amended Form 1120F and filing such document on or before January 3, 1988.

(iii) *Property subject to reinvestment prohibition rule.* For purposes of paragraph (a)(2)(i)(B) of this section—

(A) The term "U.S. assets of the terminated U.S. trade or business" shall mean all the money and other property that qualified as U.S. assets of the foreign corporation as of the close of the taxable year immediately preceding the year of complete termination; and

(B) Property attributable to U.S. assets or to effectively connected earnings and profits earned by the foreign corporation in the year of complete termination shall mean money or other property into which any part or all of such assets or effectively connected earnings and profits are converted at any time before the expiration of the three-year period specified in paragraph (a)(2)(i)(B) of this section by way of sale, exchange, or other disposition, as well as any money or other property attributable to the sale by a shareholder of the foreign corporation of its interest in the foreign corporation (or a successor corporation) at any time after a date which is 12 months before the close of the year of complete termination (24 months in the case of a foreign corporation that makes an election under paragraph (b) of this section).

(iv) *Related corporation.* For purposes of paragraph (a)(2)(i)(B) of this section, a corporation shall be related to a foreign corporation if either corporation is a 10-percent shareholder of the other corporation or, where the foreign corporation completely liquidates, if either corporation would have been a 10-percent shareholder of the other corporation had the foreign corporation remained in existence. For this purpose, the term "10-percent shareholder" means any person described in section 871(h)(3)(B) as well as any person who

owns 10 percent or more of the total value of the stock of the corporation, and stock ownership shall be determined on the basis of the attribution rules described in section 871(h)(3)(C).

(v) *Direct or indirect use of U.S. assets.* The use of any part or all of the property referred to in paragraph (a)(2)(i)(B) of this section shall include the loan thereof to a related corporation or the use thereof as security (as a pledge, mortgage, or otherwise) for any indebtedness of a related corporation.

(3) *Complete termination in the case of a section 338 election.* A foreign corporation whose stock is acquired by another corporation that makes (or is deemed to make) an election under section 338 with respect to the stock of the foreign corporation shall be treated as having completely liquidated as of the close of the acquisition date (as defined in section 338(h)(2)) and to have completely terminated all of its U.S. trade or business with respect to the taxable year ending on such acquisition date provided the foreign corporation that exists prior to the section 338 transaction complies with the requirements of paragraph (a)(2)(i) (B) and (D) of this section. For purposes of the preceding sentence, any of the money or other property paid as consideration for the acquisition of the stock in the foreign corporation (and for any debt claim against the foreign corporation) shall be treated as property attributable to the U.S. assets of the terminated U.S. trade or business and to the effectively connected earnings and profits of the foreign corporation earned in the year of complete termination.

(4) *Complete termination in the case of a foreign corporation with income under section 864(c)(6) or 864(c)(7).* No branch profits tax shall be imposed on effectively connected earnings and profits attributable to income that is treated as effectively connected with the conduct of a trade or business in the United States solely by reason of section 864(c)(6) or 864(c)(7) if—

(i) No income of the foreign corporation for the taxable year is, or is treated as, effectively connected with the conduct of a trade or business in the United States, without regard to section 864(c)(6) or 864(c)(7),

(ii) The foreign corporation has no U.S. assets as of the close of the taxable year, and

(iii) Such effectively connected earnings and profits would not have been subject to branch profits tax pursuant to the complete termination provisions of paragraph (a)(1) of this section if income or gain subject to section 864(c)(6) had not been deferred or if property subject to section 864(c)(7) had been sold immediately prior to the date the property ceased to have been used in the conduct of a trade or business in the United States.

(5) *Coordination with second-level withholding tax.* Effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits of a foreign corporation that are exempt from branch profits tax by reason of the provisions of paragraph (a)(1) of this section shall not be subject to tax under section 871(a), 881(a), 1441 or 1442 when paid as a dividend by such foreign corporation (or a successor-in-interest).

(b) *Election to remain engaged in a U.S. trade or business.* A foreign corporation that would be considered to have completely terminated all of its U.S. trade or business for the taxable year under the provisions of paragraph (a)(2)(i) of this section, but for the provisions of paragraph (a)(2)(i)(B) of this section that prohibit reinvestment within a three-year period, may make an election under this paragraph (b) for the taxable year in which it completely terminates all its U.S. trade or business (as determined without regard to paragraph (a)(2)(i)(B) of this section) and, if it so chooses, for the following taxable year (but not for any succeeding taxable year). The election under this paragraph (b) is an election by the foreign corporation to designate an amount of marketable securities (as defined in § 1.884–1T(d)(8)) as U.S. assets for purposes of § 1.884–1T. In order to qualify for this election—

(1) The marketable securities must be identified within 30 days of the date an equivalent amount of U.S. assets ceases to be U.S. assets; and

(2) On the date a marketable security is identified, its adjusted basis must not exceed its fair market value.

The marketable securities identified pursuant to the election under this paragraph (b) shall be treated as being U.S. assets in an amount equal, in the aggregate, to the lesser of the adjusted basis of the U.S. assets that ceased to be U.S. assets during the taxable year in which the election is made (determined on the date or dates the U.S. assets ceased to be U.S. assets) or the adjusted basis of the marketable securities as of the end of the taxable year. The securities must be held from the date they are identified until the end of the taxable year for which the election is made, or, if disposed of during that taxable year, must be replaced on the date of disposition with other marketable securities that are acquired on or before that date and the fair market value of which as of the date of substitution is not less than their adjusted basis. Except as otherwise provided in this paragraph (b), the election under this paragraph (b) shall be made in accordance with the provisions of § 1.884–1T(d)(11), subject to the same conditions as are set forth in that section, and shall have the same consequences as provided in § 1.884–1T(d)(11)(ii) (including the marking to market of such securities at the close of each taxable year for which the election is effective) except that such consequences start with the first day of the taxable year for which the election is effective and continue until the earlier of the date of substitution by the foreign corporation of a U.S. asset for such marketable security or the close of the taxable year for which the election is effective. The securities shall be marked to market immediately prior to the date of substitution. An election under § 1.884–1T(d)(11) shall not be effective for any taxable year for which the election under this paragraph (b) is effective. A foreign corporation shall not be permitted to make an election under this paragraph (b) more than once. See § 1.884–1T(d)(11) for other rules regarding the effect and manner of making this election, including transition rules.

(c) *Liquidation, reorganization, etc. of a foreign corporation.* The following rules apply to the transfer by a foreign corporation engaged (or deemed engaged) in the conduct of a U.S. trade or business (the "transferor") of its U.S. assets to another corporation (the "transferee") in a complete liquidation or reorganization described in section 381(a) (a "section 381(a) transaction") if the transferor is engaged (or deemed engaged) in the conduct of a U.S. trade or business immediately prior to the section 381(a) transaction. For purposes of this paragraph (c), a section 381(a) transaction is considered to occur in the taxable year that ends on the date of distribution or transfer (as defined in § 1.381(b)–1(b)) pursuant to the section 381(a) transaction.

(1) *Inapplicability of paragraph (a)(1) of this section to section 381(a) transactions.* Paragraph (a)(1) of this section (relating to the complete termination of a U.S. trade or business of a foreign corporation) does not apply to exempt the transferor from branch profits tax liability for the taxable year in which the section 381(a) transaction occurs or in any succeeding taxable year.

(2) *Transferor's dividend equivalent amount for the taxable year in which a section 381(a) transaction occurs.* The

dividend equivalent amount for the taxable year, including a short taxable year, in which a section 381(a) transaction occurs shall be determined under the provisions of § 1.884–1T, as modified under the provisions of this paragraph (c)(2).

(i) *U.S. net equity.* The transferor's U.S. net equity as of the close of the taxable year shall be determined without regard to any transfer in that taxable year of U.S. assets to or from the transferee pursuant to a section 381(a) transaction, and without regard to any U.S. liabilities assumed or acquired by the transferee from the transferor in that taxable year pursuant to a section 381(a) transaction. The transferor's adjusted basis (for earnings and profits purposes) in U.S. assets transferred to the transferee pursuant to a section 381(a) transaction shall be the adjusted basis of those assets (for earnings and profits purposes) immediately prior to the section 381(a) transaction, adjusted as provided under section 362(b), treating the transferor, for that purpose, as though it were the transferee and treating the gain taken into account for earnings and profits purposes as gain recognized.

(ii) *Effectively connected earnings and profits.* The transferor's effectively connected earnings and profits for the taxable year in which the section 381(a) transaction occurs and its non-previously taxed accumulated effectively connected earnings and profits shall be determined without regard to the carryover to the transferee of the transferor's earnings and profits under section 381 (a) and (c)(2) and paragraph (c)(4) of this section. Effectively connected earnings and profits for the taxable year in which a section 381(a) transaction occurs shall be adjusted by the amount of any gain recognized to the transferor in that year pursuant to the section 381(a) transaction (to the extent taken into account for earnings and profits purposes).

(iii) *Waiver of period of limitations and transferee agreement.* In the case of a transferee that is a domestic corporation, the provisions of paragraph (c)(2)(i) of this section shall not apply unless, as part of the section 381(a) transaction, the transferee executes a Form 2045 (Transferee Agreement) and a waiver of period of limitations as described in this paragraph (c)(2)(iii), and files both documents with its timely filed (including extensions) income tax return for the taxable year in which the section 381(a) transaction occurs. The waiver shall be executed on such forms as are prescribed by the Commissioner and shall extend the period for assessment of any additional branch profits tax for the taxable year in which the section 381(a) transaction occurs to a date not earlier than the close of the sixth taxable year following the taxable year in which such transaction occurs. The waiver shall contain such other terms with respect to assessment as may be considered appropriate by the Commissioner to ensure the assessment and collection of the correct tax liability for such year. The waiver must be signed by the person authorized to sign Form 2045. For taxable years ending on or before December 1, 1988, Form 2045 and the waiver may be filed by attaching both documents to an amended Form 1120F on or before January 3, 1989.

(3) *Transferor's dividend equivalent amount for any taxable year succeeding the taxable year in which the section 381(a) transaction occurs.* Any decrease in U.S. net equity in any taxable year succeeding the taxable year in which the section 381(a) transaction occurs shall increase the transferor's dividend equivalent amount for those years without regard to the limitation in § 1.884–1T(b)(3)(ii), to the extent such decrease in U.S. net equity does not exceed the balance of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits carried over to the transferee pursuant to section 381 (a) and (c)(2), as determined under paragraph (c)(4) of this section.

(4) *Earnings and profits of the transferor carried over to the transferee pursuant to the section 381(a) transaction*—(i) *Amount.* The amount of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits of the transferor that carry over to the transferee under section 381 (a) and (c)(2) shall be the effectively connected earnings and profits and the non-previously taxed accumulated effectively connected earnings and profits of the transferor immediately before the close of the taxable year in which the section 381(a) transaction occurs. For this purpose, the provisions in § 1.381(c)(2)–1 shall generally apply with proper adjustments to reflect the fact that effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits are not affected by distributions to shareholders but, rather, by dividend equivalent amounts. Therefore, the amounts of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits that carry over to the transferee pursuant to those provisions are reduced by the transferor's dividend equivalent amount for the taxable year in which the section 381(a) transaction occurs. Such amounts are also reduced to the extent of any dividend equivalent amount determined for any succeeding taxable year solely as a result of the provisions of paragraph (c)(3) of this section. For purposes of this paragraph (c)(4)(i), if the transferor accumulates non-previously taxed effectively connected earnings and profits, or incurs a deficit in effectively connected earnings and profits, attributable to a period that is after the close of the taxable year in which the section 381(a) transaction occurs and before the liquidation of the transferor, then such effectively connected earnings and profits, or deficits therein, shall be deemed to have been accumulated or incurred on or before the close of the taxable year in which the section 381(a) transaction occurs.

(ii) *Retention of character.* All of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits that carry over to the transferee shall constitute non-previously taxed accumulated effectively connected earnings and profits of the transferee. In the case of a domestic transferee, such non-previously taxed accumulated effectively connected earnings and profits shall also constitute accumulated earnings and profits of the transferee for purposes of section 316(a)(2).

(iii) *Treatment of distributions by a domestic transferee out of non-previously taxed accumulated effectively connected earnings and profits.* In the event the transferee is a domestic corporation, distributions out of the transferee's non-previously taxed accumulated effectively connected earnings and profits that are received by a foreign distributee shall qualify for benefits under an applicable income tax treaty only (A) if the distributee qualifies for the benefits under such treaty and (B) to the extent that the transferor foreign corporation would have qualified under the principles of § 1.884–1T(h) (1) and (2)(i) for an exemption or reduction in rate with respect to the branch profits tax if the non-previously taxed accumulated effectively connected earnings and profits had been reflected in a dividend equivalent amount for the taxable year in which the section 381(a) transaction occurs. (The tax rate on dividends

specified in the treaty between the distributee's country of residence and the United States shall apply to any dividends received by a distributee who qualifies for a treaty benefit under the preceding sentence.) In addition, distributions out of such non-previously taxed accumulated effectively connected earnings and profits shall retain their character in the hands of any domestic distributee up a chain of corporate shareholders for purposes of applying this paragraph (c)(4)(iii) to distributions made by any such person to a foreign distributee. If a domestic transferee has non-previously taxed accumulated effectively connected earnings and profits carried over from the transferor as well as accumulated earnings and profits, then each category of earnings and profits shall be accounted for in two separate pools, and any distribution of earnings and profits shall be treated as a distribution out of each pool in proportion to the respective amount of undistributed earnings and profits in each pool. Section 871(i) (relating, in part, to dividends paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1)) shall not apply to any dividends paid by a domestic transferee out of its non-previously taxed accumulated effectively connected earnings and profits.

(5) *Determination of U.S. net equity of a transferee that is a foreign corporation.* In the event the transferee is a foreign corporation, then for purposes of determining the transferee's increase or decrease in U.S. net equity under § 1.884–1T for its taxable year during which the section 381(a) transaction occurs, its U.S. net equity as of the close of its immediately preceding taxable year shall be increased by the amount of U.S. net equity acquired by the transferee from the transferor pursuant to the section 381(a) transaction, taking into account the adjustments to the basis (for earnings and profits purposes) of U.S. assets under the principles of section 362(b).

(6) *Special rules in the case of the disposition of stock or securities in a domestic transferee or in the transferor*—(i) *General rule.* This paragraph (c)(6)(i) shall apply where the transferee is a domestic corporation, subdivision (A), (B), or (C) of this paragraph applies and subdivision (D) of this paragraph applies.

(A) Shareholders of the transferor sell, exchange or otherwise dispose of stock in the transferor at any time during a 12-month period before the date of distribution or transfer (as defined in § 1.381(b)–1(b)) and the aggregate amount of such stock sold, exchanged or otherwise disposed of exceeds 25 percent of the value of the stock of the transferor, determined on a date that is 12 months before the date of distribution or transfer.

(B) Shareholders of the transferee (or of the transferee's parent in the case of a reorganization described in the parenthetical clause in section 368(a)(1)(C)) who in the aggregate owned more than 25 percent of the value of the stock of the transferor at any time within the 12 month period preceding the close of the year in which the section 381(a) transaction occurs sell, exchange or otherwise dispose of their stock or securities in the transferee at any time during a period of three years from the close of the taxable year in which the section 381(a) transaction occurs.

(C) In the case of a reorganization described in the parenthetical clause in section 368(a)(1)(C), the transferee's parent sells, exchanges or otherwise disposes of its stock or securities in the transferee at any time during a period of three years from the close of the taxable year in which the section 381(a) transaction occurs.

(D) A corporation related to any such shareholder or the shareholder itself if it is a corporation (subsequent to an event described in subdivision (A) or (B) of this paragraph (c)(6)(i)), or the transferee's parent (subsequent to an event described in subdivision (C) of this paragraph (c)(6)(i)), uses, directly or indirectly, the proceeds or property received in such sale, exchange or disposition, or property attributable thereto, in the conduct of a trade or business in the United States at any time during a period of three years from the date of sale in the case of a disposition of stock in the transferor, or from the close of the taxable year in which the section 381(a) transaction occurs in the case of a disposition of the stock or securities in the transferee (or the transferee's parent in the case of a reorganization described in the parenthetical clause in section 368(a)(1)(C)).

Where this paragraph (c)(6)(i) applies, the transferor's branch profits tax liability for the taxable year in which the section 381(a) transaction occurs shall be determined under § 1.884–1T, taking into account all the adjustments in U.S. net equity that result from the transfer of U.S. assets and liabilities to the transferee pursuant to the section 381(a) transaction, without regard to any provisions in this paragraph (c). If an event described in paragraph (c)(6)(i) (A), (B), or (C) of this section occurs after the close of the taxable year in which the section 381(a) transaction occurs, and if additional branch profits tax is required to be paid by reason of the application of this paragraph (c)(6)(i), then interest must be paid on that amount at the underpayment rates determined under section 6621(a)(2), with respect to the period between the date that was prescribed for filing the transferor's income tax return for the year in which the section 381(a) transaction occurs and the date on which the additional tax for that year is paid. Any such additional tax liability together with interest thereon shall be the liability of the transferee within the meaning of section 6901 pursuant to section 6901 and the regulations thereunder.

(ii) *Operating rule.* For purposes of paragraph (c)(6)(i) of this section paragraphs (a)(2) (iii)(B), (iv) and (v) of this section shall apply for purposes of making the determinations under paragraph (c)(6)(i)(D) of this section.

(d) *Incorporation under section 351*—(1) *In general.* The following rules apply to the transfer by a foreign corporation engaged (or deemed engaged) in the conduct of a U.S. trade or business (the "transferor") of part or all of its U.S. assets to a U.S. corporation (the "transferee") in exchange for stock or securities in the transferee in a transaction that qualifies under section 351(a) (a "section 351 transaction"), provided that immediately after the transaction, the transferor is in control (as defined in section 368(c)) of the transferee, without regard to other transferors.

(2) *Inapplicability of paragraph (a)(1) of this section to section 351 transactions.* Paragraph (a)(1) of this section does not apply to exempt the transferor from branch profits tax liability for the taxable year in which a section 351 transaction described in paragraph (d)(1) of this section occurs and shall not apply for any subsequent taxable year of the transferor in which it, or a successor-in-interest, owns stock or securities of a transferee as of the close of the transferor's taxable year.

(3) *Transferor's dividend equivalent amount for the taxable year in which a section 351 transaction occurs.* The dividend equivalent amount of the transferor for the taxable year in which a section 351 transaction described in paragraph (d)(1) of this section occurs shall be determined under the provisions of § 1.884–1T, as modified by the provisions of this paragraph (d)(3) provided that the transferee elects under paragraph (d)(4) of this section to be allocated a proportionate amount of the

transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits and the foreign corporation files a statement as provided in paragraph (d)(5)(i) of this section and complies with the agreement included in such statement with respect to a subsequent disposition of the transferee's stock.

(i) *U.S. net equity.* The transferor's U.S. net equity as of the close of the taxable year shall be determined without regard to any transfer in that taxable year of U.S. assets to or from the transferee pursuant to a section 351 transaction, and without regard to any U.S. liabilities assumed or acquired by the transferee from the transferor in that taxable year pursuant to a section 351 transaction. The transferor's adjusted basis for earnings and profits purposes in U.S. assets transferred to the transferee pursuant to a section 351 transaction shall be the adjusted basis of those assets for earnings and profits purposes immediately prior to the section 351 transaction, increased by the amount of any gain recognized by the transferor on the transfer of such assets in the section 351 transaction to the extent taken into account for earnings and profits purposes.

(ii) *Effectively connected earnings and profits.* Subject to the limitation in paragraph (d)(3)(iii) of this section, the calculation of the transferor's dividend equivalent amount shall take into account the transferor's effectively connected earnings and profits for the taxable year in which a section 351 transaction occurs (including any amount of gain recognized to the transferor pursuant to the section 351 transaction to the extent the gain is taken into account for earnings and profits purposes) and, for purposes of applying the limitation of § 1.884–1T(b)(3)(ii), its non-previously taxed accumulated effectively connected earnings and profits, determined without regard to the allocation to the transferee of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits pursuant to the election under paragraph (d)(4)(i) of this section.

(iii) *Limitation on dividend equivalent amount.* The dividend equivalent amount determined under this paragraph (d)(3) shall not exceed the sum of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits determined after taking into account the allocation to the transferee of the transferor's earnings pursuant to an election under paragraph (d)(4)(i) of this section.

(4) *Election to increase earnings and profits*—(i) *General rule.* The election referred to in paragraph (d)(3) of this section is an election by the transferee to increase its earnings and profits by the amount determined under paragraph (d)(4)(ii) of this section. An election under this paragraph (d)(4)(i) shall be effective only if the transferee attaches a statement to its timely filed (including extensions) income tax return for the taxable year in which the section 351 transaction occurs, in which—

(A) It agrees to be subject to the rules of paragraph (c)(4) (ii) and (iii) of this section with respect to the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to the transferee pursuant to the election under this paragraph (d)(4)(i) in the same manner as if such earnings and profits had been carried over to the transferee pursuant to section 381 (a) and (c)(2), and

(B) It identifies the amount of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits that are allocated from the transferor.

An election with respect to a taxable year ending on or before December 1, 1988, may be made by filing an amended Form 1120F on or before January 3, 1988, to which the statement described in this paragraph (d)(4)(i) shall be attached.

(ii) *Amount of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to the transferee.* The amount referred to in paragraph (d)(4)(i) of this section is equal to the same proportion of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits (determined immediately prior to the section 351 transaction and without regard to this paragraph (d)(4) or any dividend equivalent amount for the taxable year) that the adjusted bases for purposes of computing earnings and profits in all the U.S. assets transferred to the transferee by the transferor pursuant to the section 351 transaction bear to the adjusted bases for purposes of computing earnings and profits in all the U.S. assets of the transferor, determined immediately prior to the section 351 transaction.

(iii) *Effect of election on transferor.* For purposes of computing the transferor's dividend equivalent amount for the taxable year succeeding the taxable year in which a section 351 transaction occurs, the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits as of the close of the taxable year in which the section 351 transaction occurs shall be reduced by the amount of its effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to the transferee pursuant to the election under paragraph (d)(4)(i) of this section (and by its dividend equivalent amount for the taxable year in which the section 351 transaction occurs).

(5) *Dispositions of stock or securities of the transferee by the transferor*—(i) *General rule.* The statement referred to in paragraph (d)(3) of this section is a statement executed by the transferor stating the transferor's agreement that, upon the disposition of part or all of the stock or securities it owns in the transferee (or a successor-in-interest), it shall treat as a dividend equivalent amount for the taxable year in which the disposition occurs an amount equal to the lesser of (A) the amount realized upon such disposition or (B) the total amount of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits that was allocated from the transferor to that transferee pursuant to an election under paragraph (d)(4)(i) of this section, which amount shall be reduced to the extent previously taken into account by the transferor as dividends or dividend equivalent amounts for tax or branch profits, tax purposes. The extent and manner in which such dividend equivalent amount may be subject to the branch profits tax in the taxable year of disposition shall be determined under the provisions of section 884 and the regulations thereunder, including the provisions of paragraph (a) of this section (relating to complete terminations), as limited under paragraph (d)(2) of this section. Except as otherwise provided in paragraph (d)(5)(ii) of this section, the term "disposition" means any transfer that would constitute a disposition by the transferor for any purpose of the Internal Revenue Code and the regulations thereunder. This paragraph (d)(5)(i) shall apply regardless of whether the stock or securities of the transferee are U.S. assets in the hands

of the transferor at the time of sale, exchange or disposition.

(ii) *Exception for certain tax-free dispositions.* For purposes of paragraph (d)(5)(i) of this section, a disposition does not include a transfer of stock or securities of the transferee by the transferor in a transaction that qualifies as a transfer pursuant to a complete liquidation described in section 332(b) or a transfer pursuant to a reorganization described in section 368(a)(1)(F). Any other transfer that qualifies for non-recognition of gain or loss shall be treated as a disposition for purposes of paragraph (d)(5)(i) of this section, unless the Commissioner has, by published guidance or by prior ruling issued to the taxpayer upon its request, determined such transfer not to be a disposition for purposes of paragraph (d)(5)(i) of this section.

(iii) *Distributions governed by section 355.* In the case of a distribution or exchange of stock or securities of a transferee to which section 355 applies (or so much of section 356 as relates to section 355) and that is not in pursuance of a plan meeting the requirements of a reorganization as defined in section 368(a)(1)(D), § 1.312–10(b) (relating to the allocation of earnings and profits in certain corporate separations) shall not apply to reduce the transferor's effectively connected earnings and profits or non-previously taxed accumulated effectively connected earnings and profits.

(iv) *Filing of statement.* The statement referred to in paragraph (d)(5)(i) of this section shall be attached to a timely filed (including extensions) income tax return of the transferor for the taxable year in which the section 351 transaction occurs. An election with respect to a taxable year ending on or before December 1, 1988, may be made by filing an amended Form 1120F on or before January 3, 1988, to which the statement described in this paragraph (d)(5)(iv) shall be attached.

(6) *Example.* The provisions of this paragraph (d) are illustrated by the following example.

Example. Foreign corporation X has a calendar taxable year. X's only assets are U.S. assets and X computes its interest deduction using the actual ratio of liabilities to assets under § 1.882–5(b)(2)(ii). X's U.S. net equity as of the close of its 1988 taxable year is $2,000, resulting from the following amounts of U.S. assets and liabilities:

U.S. assets		U.S. liabilities	
U.S. building A	$1,000	Mortgage A	800
U.S. building B	2,500	Mortgage B	1,500

U.S. assets		U.S. liabilities	
Other U.S. assets	800		
Total	4,300		2,300

Assume that X's adjusted basis in its assets is equal to X's adjusted basis in its assets for earnings and profits purposes. On September 30, 1989, X transfers building A, which has a fair market value of $1,800, to a newly created U.S. corporation Y under section 351 in exchange for 100% of the stock of Y with a fair market value of $800, other property with a fair market value of $200, and the assumption of Mortgage A. Assume that under sections 11 and 351(b), tax of $30 is imposed with respect to the $200 of other property received by X. X's non-previously taxed accumulated effectively connected earnings and profits as of the close of its 1988 taxable year are $200 and its effectively connected earnings and profits for its 1989 taxable year are $330, including $170 of gain recognized to X on the transfer as adjusted for earnings and profits purposes (*i.e.*, $200 of gain recognized minus $30 of tax paid with respect to the gain). Y takes a $1,200 basis in the building transferred from X, equal to the basis in the hands of X ($1,000) increased by the amount of gain recognized to X in the section 351 transaction ($200). Y makes an election in the manner described in paragraph (d)(4)(i) of this section to increase its earnings and profits by the amount described in paragraph (d)(4)(ii) of this section and X files a statement as provided in paragraph (d)(5)(i) of this section. The branch profits tax consequences to X and Y in the taxable year in which the section 351 transaction occurs and in subsequent taxable years are as follows:

(i) *X's dividend equivalent amount for 1989.* The determination of X's dividend equivalent amount for 1989 is a three-step process: determining X's U.S. net equity as of the close of its 1989 taxable year under paragraph (d)(3)(i) of this section; determining the amount of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits for its 1989 taxable year under paragraph (d)(3)(ii) of this section; and applying the limitation in paragraph (d)(3)(iii) of this section.

Step one: Pursuant to paragraph (d)(3)(i) of this section, X's U.S. net equity as of the close of its 1989 taxable year is calculated without regard to the section 351 transaction except that X's basis in its U.S. assets is increased by the $170 amount of gain it has recognized for earnings and profits purposes in connection with the section 351 transaction. Thus, X's U.S. net equity as of the close of its 1989 taxable year is $1,870, consisting of the following U.S. assets and liabilities, taking into account the fact that X's other U.S. assets have decreased to $500:

U.S. assets		U.S. liabilities	
Building A	$1,170	Mortgage A	800
Building B	2,500	Mortgage B	1,500

U.S. assets		U.S. liabilities	
Other U.S. assets	500		
Total	4,170		2,300

Thus, X's U.S. net equity as of the close of its 1989 taxable year has decreased by $130 relative to its U.S. net equity as of the close of its 1988 taxable year.

Step two: Pursuant to paragraph (d)(3)(ii) of this section, X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits for the taxable year are determined without taking into account the allocation to Y of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits pursuant to the election under paragraph (d)(4)(i) of this section. Thus, X's effectively connected earnings and profits for its 1989 taxable year are $330 and X's non-previously taxed accumulated effectively connected earnings and profits are $200. Thus, but for the limitation in paragraph (d)(3)(iii) of this section, X's dividend equivalent amount for the taxable year would be $460, equal to X's effectively connected earnings and profits for the taxable year ($330), increased by the decrease in X's U.S. net equity ($130).

Step three: Pursuant to paragraph (d)(3)(iii) of this section, X's dividend equivalent amount for its 1989 taxable year may not exceed the sum of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits, determined as of the close of its 1989 taxable year, after taking into account the allocation of the transferor's earnings and profits pursuant to the election under paragraph (d)(4)(i) of this section. Based upon subdivision (ii) of this example, X's dividend equivalent amount for 1989 cannot exceed $423, which is equal to the total amount of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits, determined as of the close of its 1989 taxable year without regard to the allocation of earnings and profits to Y pursuant to Y's election under paragraph (d)(4)(i) of this section ($530), reduced by the amount of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to Y pursuant to Y's election under paragraph (d)(4)(i) of this section ($107). Thus, X's dividend equivalent amount for its 1989 taxable year is limited to $423.

(ii) *Amount of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits transferred to Y.* Pursuant to Y's election under paragraph (d)(4)(i) of this section, Y increases its earnings and profits by the amount prescribed in paragraph (d)(4)(ii) of this section. This amount is equal to the sum of X's effectively connected earnings and profits and non previously taxed accumulated effectively connected earnings and profits

determined immediately before the section 351 transaction, without regard to X's dividend equivalent amount for the year, allocated in the same proportion that X's basis in the U.S. assets transferred to Y bears to the bases of all of X's U.S. assets, which bases are determined immediately prior to the section 351(a) transaction. The amount of X's effectively connected earnings and profits immediately before the section 351 transaction is assumed to be $280. The total amount of effectively connected earnings and profits ($280) and non-previously taxed accumulated effectively connected earnings and profits ($200) determined immediately before the section 351 transaction is, therefore, $460. The portion of $460 that is allocated to Y pursuant to Y's election under paragraph (d)(4)(i) of this section is $107, calculated as $46? multiplied by a fraction, the numerator of which is the basis of the U.S. assets transferred to Y pursuant to the section 351 transaction ($1,000), and the denominator of which is the basis of X's U.S. assets determined immediately before the section 351 transaction ($4,300). Pursuant to paragraph (d)(4)(i) of this section, the amount of $107 of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to Y pursuant to paragraph (d)(4)(i) of this section constitutes non-previously taxed accumulated effectively connected earnings and profits of Y.

(iii) *X's non-previously taxed accumulated effectively connected earnings and profits for 1990.* Pursuant to paragraph (d)(4)(iii) of this section, X's non-previously taxed accumulated effectively connected earnings and profits as of the close of its 1989 taxable year for purposes of computing its dividend equivalent amount for its taxable year 1990 are zero, *i.e.*, $530 of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits reduced by $107 of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to Y, and further reduced by X's $423 dividend equivalent amount for its 1989 taxable year.

(iv) *X's U.S. net equity for purposes of determining the dividend equivalent amount for succeeding taxable years.* For 1990, X must determine its U.S. net equity as of December 31, 1989, in order to determine whether there has been an increase or decrease in its U.S. net equity as of December 31, 1990. For this purpose, X's U.S. net equity as of December 31, 1989 is determined under the provisions of § 1.884–1T without regard to the special rules in paragraph (d)(3)(i) of this section. Thus, X.'s U.S. net equity as of December 31, 1989 is $1,500, consisting of the following. U.S. assets and liabilities:

U.S. assets		U.S. liabilities	
Building B	$2,500	Mortgage B	1,500
Other U.S. assets	500		
Total	$3,000		1,500

(e) *Certain transactions with respect to a domestic subsidiary.* In the case of a section 381(a) transaction in which a domestic subsidiary of a foreign corporation transfers assets to that foreign corporation or to another foreign corporation with respect to which the first foreign corporation owns stock (directly or indirectly) meeting the requirements of section 1504(a)(2), the transferee's non-previously taxed accumulated effectively connected earnings and profits for the taxable year in which the section 381(a) transaction occurs shall be increased by all of the domestic subsidiary's current earnings and profits and earnings and profits accumulated after December 31, 1986, that carry over to the transferee under sections 381(a) and (c)(1) (including non-previously taxed accumulated effectively connected earnings and profits, if any, transferred to the domestic subsidiary under paragraphs (c)(4) and (d)(4) of this section and treated as earnings and profits under paragraphs (c)(4)(ii) and (d)(4)(ii) of this section). For purposes of determining the transferee's dividend equivalent amount for the taxable year in which the section 381(a) transaction occurs, the transferee's U.S. net equity as of the close of its taxable year immediately preceding the taxable year during which the section 381(a) transaction occurs shall be increased by the greater of

(1) The amount by which the transferee's U.S. net equity computed immediately prior to the transfer would have increased due to the transfer of the subsidiary's assets and liabilities if U.S. net equity were computed immediately prior to the transfer and immediately after the transfer (taking into account in the earnings and profits basis of the assets transferred any gain recognized on the transfer to the extent reflected in earnings and profits), or

(2) The total amount of U.S net equity transferred (directly or indirectly) by the foreign parent to the domestic subsidiary in one or more prior section 351 or 381(a) transactions.

(f) *Effective date.* This section is effective for taxable years beginning after December 31, 1986.

§ 1.884–3T Coordination of branch profits tax with second-tier withholding (temporary).

[Reserved]

§ 1.884–4T Branch-level interest tax (temporary).

(a) *General rule*—(1) *Tax on interest paid by a U.S. trade or business.* In the case of a foreign corporation engaged in trade or business in the United States, any interest paid by such trade or business (within the meaning of paragraph (b) of this section) shall be treated, for purposes of sections 871, 881, 1441, and 1442, as if it were paid by a domestic corporation (other than a corporation described in section 861(c)(1), relating to a domestic corporation that meets the 80-percent foreign business requirement). Such interest shall thus be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442, if received by a foreign person and not effectively connected with the conduct by the foreign person of a trade or business in the United States, unless the interest, if paid by a domestic corporation, would be exempt under section 871(h) or 881(c) (relating to exemption for certain portfolio interest received by a foreign person), section 871(i) or 881(d) (relating, in part, to exemption for certain bank deposit interest received by a foreign person), or another provision of the Code. See paragraph (b)(8) of this section for the effect of income tax treaties on interest paid by a U.S. trade or business of a foreign corporation. For purposes of this section, interest paid by a U.S. trade or business of a foreign corporation that would be treated as portfolio interest under section 871(h) or 881(c) but for the fact that it fails to meet the requirements of section 163(f)(2)(B)(ii)(II) (relating to the legend requirement) shall nevertheless be treated as portfolio interest provided the interest arises with respect to a liability incurred by the foreign corporation prior to January 3, 1988. For purposes of this section, a foreign corporation shall be treated as engaged in trade or business in the United States for a taxable year if it owns U.S. assets at any time during the taxable year or it derives gross income during the taxable year that is effectively connected (or deemed effectively connected) with the conduct of a trade or business in the United States.

(2) *Tax on excess interest.* If the amount of interest allowable as a deduction under § 1.882–5 in computing the effectively connected taxable income of a foreign corporation for the taxable year exceeds the interest paid by a U.S. trade or business of the foreign corporation within the meaning of paragraph (b) of this section, the foreign corporation shall be liable for tax under section 881(a) in the same manner as if such excess were interest paid to the foreign corporation by a wholly-owned domestic corporation (other than a corporation described in section 861(c)(1)) on the last day of the foreign corporation's taxable year. Such interest

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shall not be exempt from tax under any subsection of section 881. For purposes of this paragraph (a)(2), interest paid by a U.S. trade or business shall not include interest described in paragraph (b)(1)(iv) of this section (relating to certain nondeductible interest) or interest accruing in a taxable year beginning before January 1, 1987. For purposes of this § 1.884–4T, the term "excess interest" means interest described in this paragraph (a)(2).

(3) *Original issue discount.* For purposes of this section, the term "interest" includes original issue discount, as defined in section 1273(a)(1).

(4) *Example.* The application of this paragraph (a) is illustrated by the following example.

Example. Foreign corporation A, a calendar year taxpayer, is allowed an interest deduction of $150 under § 1.882–5 for 1991. The interest paid by a U.S. trade or business of A (within the meaning of paragraph (b) of this section) during 1991 is as follows: $55 of portfolio interest (as defined in section 871(h)(2)) to B, a nonresident alien; $35 of interest on deposits (within the meaning of section 871(i)(2)(A)) to C, a foreign corporation; $25 of interest to foreign corporation D, which owns 15 percent of the combined voting power of A's stock, with respect to bonds issued by A; and $20 to E, a domestic corporation. Neither B, C or D is engaged in the conduct of a trade or business in the United States. A, B, C and D are residents of countries with which the United States does not have an income tax treaty. The interest payments made to B, C and E are not subject to tax under section 871(a) or 881 and are not subject to withholding under section 1441 or 1442. The payment to D is subject to withholding of $7.50 ($25X30 percent). In addition, because A's interest deduction under § 1.882–5 ($150) exceeds the amount of interest paid by a U.S. trade or business of A ($135), A is subject to a tax of $4.50 ($15X30 percent) under section 881 on the amount of the excess.

(b) *Interest paid by a U.S. trade or business*—(1) *Definition of interest paid by a U.S. trade or business.* Except as provided in paragraph (b)(3) of this section, the term "interest paid by a U.S. trade or business" means, for purposes of this section, interest paid by a foreign corporation with respect to a liability that—

(i) Is specifically identified as a liability of a U.S. trade or business of the foreign corporation on books and records maintained in the United States by the foreign corporation and either

(A) Interest on the liability is allowed as a deduction (in whole or in part) by reason of § 1.882–5(b)(3)(i) or

(B) The liability is entered on such books and records on or before the earlier of 60 days after the liability is incurred by the foreign corporation or the date on which the first payment of interest is made with respect to the liability;

(ii) Is specifically identified as a liability of a U.S. trade or business of the foreign corporation on either

(A) Financial statements that are required to be provided to a regulatory agency of the United States, a State, or the District of Columbia or

(B) Books and records of the foreign corporation that are maintained in order to comply with regulatory requirements of any agency of the United States, a State, or the District of Columbia, and are used to prepare financial statements that are required to be provided to such regulatory agency;

(iii) Is secured (during at least half the days during the portion of the taxable year in which the interest accrues) predominantly by property of the foreign corporation that is a U.S. asset (as defined in § 1.884–1T(d)) unless such liability is secured by substantially all the property of the foreign corporation; or

(iv) Gives rise to interest for which a deduction is disallowed and either—

(A) The liability is incurred or continued to purchase a U.S. asset (as defined in § 1.884–1T(d)) or

(B) The basis of a U.S. asset is increased by the amount of the disallowed deduction.

A foreign corporation may comply with the time limits specified in paragraph (b)(1)(i)(B) of this section by identifying liabilities on its books and records on or before January 3, 1989.

(2) *Requirement that all interest paid with respect to certain liabilities be consistently treated.* Except as provided in paragraph (b)(3) of this section (relating to liabilities that do not give rise to interest paid by a U.S. trade or business), any interest paid by a U.S. trade or business with respect to a liability described in paragraph (b)(1)(i) of this section (relating to liabilities on U.S. books) shall be treated as interest paid by a U.S. trade or business for the entire taxable year, and for all subsequent taxable years, until the liability to which the interest is attributable has been satisfied in full.

(3) *Liabilities that do not give rise to interest paid by a U.S. trade or business.* For purposes of this section, a liability described in paragraph (b)(1)(i) of this section (relating to liabilities on U.S. books) that is not also described in paragraph (b)(1) (ii) through (iv) of this section (relating to liabilities on regulatory or tax books, secured by U.S. assets, or that give rise to certain nondeductible interest) shall not, for any taxable year, be treated as giving rise to interest paid by a U.S. trade or business of a foreign corporation if—

(i) Interest paid (or treated as paid by reason of paragraph (b)(7) of this section) with respect to the liability during the taxable year is taken into account for any taxable year for purposes of the income tax of any foreign country as a reduction of income from sources within such country for purposes of computing a foreign tax credit or, in the case of a foreign country that provides relief from double taxation by way of an exemption system, as a reduction of income from sources within that country, or is otherwise taken into account in a manner that is inconsistent with its treatment by the foreign corporation as interest stated on the books of a U.S. trade or business, or

(ii) Except in the case of a liability of a foreign corporation engaged in the active conduct of a banking, financing or similar business (as defined in § 1.864–4(c)(5)) that is a deposit within the meaning of section 871(i)(3)(A) and that exceeds $100,000, the liability is incurred in the ordinary course of a trade or business of the foreign corporation conducted outside the United States, or

(iii) The liability is secured (during more than half the days during the portion of the taxable year in which the interest accrues) predominantly by property that is not a U.S. asset (as defined in § 1.884–1T(d)) unless such liability is secured by substantially all the property of the foreign corporation.

(4) *Interbranch interest disregarded.* Interest with respect to liabilities to another office or branch of the same foreign corporation shall be disregarded for purposes of computing the interest paid by a U.S. trade or business.

(5) *Special rule where a U.S. business constitutes 80 percent or more of a foreign corporation's business*—(i) *General rule.* If—

(A) The U.S. assets (as defined in § 1.884–1T(d)) of a foreign corporation at the close of the taxable year equal or exceed 80 percent of all money and the adjusted bases (for purposes of computing earnings and profits) of all property of the foreign corporation, and

(B) The sum of the amount of interest allowable as a deduction to the foreign corporation under § 1.882–5 for the taxable year and the amount of interest paid by the foreign corporation with respect to liabilities described in paragraph (b)(i)(iv) of this section (relating to liabilities that give rise to certain nondeductible interest) exceeds the interest paid by a U.S. trade or business of the foreign corporation (without regard to this paragraph (b)(5)),

then the amount of interest paid by a U.S. trade or business of the foreign corporation for the taxable year shall be increased by the amount of the excess described in paragraph (b)(5)(i)(B) of this section. The interest that is treated as paid by a U.S. trade or business of the foreign corporation by reason of this paragraph (b)(5) shall be treated as being paid pro rata, first, with respect to liabilities of the foreign corporation that do not, for the taxable year, already give rise to interest paid by a U.S. trade or business of the foreign corporation and are not described in paragraph (b)(3) of this section (relating to liabilities that do not give rise to interest paid by a U.S. trade or business) and, second, with respect to liabilities of the foreign corporation that do not, for the taxable year, already give rise to interest paid by a U.S. trade or business of the foreign corporation and are described in paragraph (b)(3) of this section. This paragraph (b)(5) shall apply notwithstanding any other provision of this paragraph (b).

(ii) *Example.* The application of this paragraph (b)(5) is illustrated by the following example.

Example. Foreign corporation A, a calendar year taxpayer, is allowed an interest deduction of $80 under § 1.882–5 for 1992. Before application of this paragraph (b)(5), the interest paid by the U.S. trade or business of A in 1992 is $40, of which $30 is attributable to liabilities described solely in paragraph (b)(1)(i) of this section and $10 is attributable to liabilities described in paragraph (b)(1)(iv) of this section. A pays $60 of other interest during 1992. The money and aggregate adjusted bases (for purposes of computing earnings and profits) of all property of A as of the close of 1992 is $1,000, and A has $800 of U.S. assets as of the close of 1992. Because 80 percent of the money and aggregate adjusted bases (for purposes of computing earnings and profits) of all property of A consists of U.S. assets as of the close of 1992, the interest paid by a U.S. trade or business of A in 1992 is treated as being $90 (*i.e.*, the sum of the interest deduction allowable to A under § 1.882–5 and the $10 of interest paid by A with respect to liabilities described in paragraph (b)(1)(iv) of this section). The interest paid by a U.S. trade or business of A is thus increased from $40 to $90, and 5/6ths ($50/$60) of each interest payment that, before application of this paragraph (b)(5), was not treated as paid by a U.S. trade or business of A, is treated as being paid by a U.S. trade or business of A. Such interest may be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442.

(6) *Special rule where interest paid exceeds deductible and non-deductible interest of a U.S. trade or business*—(i) *General rule.* If the amount of interest that is both paid by a U.S. trade or business of a foreign corporation during the taxable year and accrued for that year (including interest that the foreign corporation elects under paragraph (b)(7)(i) of this section to treat as paid during the taxable year) exceeds the sum of

(A) The amount of interest allowable to the foreign corporation as a deduction under § 1.882–5 for the taxable year, and

(B) The amount of interest attributable to liabilities described in paragraph (b)(1)(iv) of this section for which a deduction is disallowed for the taxable year,

Then the amount of interest paid by a U.S. trade or business of the foreign corporation shall be reduced by the amount of such excess. Except as provided in paragraph (b)(6)(ii) of this section (relating to an election to specify liabilities that do not give rise to interest paid by a U.S. trade or business), the amount of the excess shall reduce interest paid by a U.S. trade or business of the foreign corporation first with respect to liabilities described in paragraph (b)(1)(i) (relating to liabilities on U.S. books) that are not also described in paragraphs (b)(1) (ii) through (iv) of this section (relating to liabilities on regulatory or tax books, secured by U.S. assets, or that give rise to certain nondeductible interest), and then, if such interest has not been reduced to zero, with respect to the group of liabilities described in paragraphs (b)(1) (ii) and (iii) of this section. The reduction of interest paid with respect to each group of liabilities (*i.e.*, liabilities described solely in paragraph (b)(1)(i) of this section and liabilities described in paragraphs (b)(1) (ii) and (iii) of this section) shall be made beginning with interest attributable to the latest-incurred liability and continuing, in reverse chronological order, with interest paid with respect to the next-latest incurred liability. The interest paid with respect to a liability must be reduced to zero before a reduction is made with respect to interest attributable to the next-latest incurred liability. Where only a portion of the interest paid with respect to a liability is reduced by reason of this paragraph (b)(6)(i), the reduction shall be made beginning with the last interest payment made with respect to the liability during the taxable year and continuing, in reverse chronological order, with the next latest payment until the amount of interest paid by the U.S. trade or business has been reduced by the amount specified in this paragraph (b)(6)(i). The amount of interest paid by the U.S. trade or business that is not treated as interest paid by a U.S. trade or business of the foreign corporation by reason of this paragraph (b)(6)(i) shall not be subject to tax under section 871(a) or 881.

(ii) *Election to specify liabilities that do not give rise to interest paid by a U.S. trade or business.* For purposes of reducing the amount of interest paid by a U.S. trade or business under paragraph (b)(6)(i) of this section, a foreign corporation may, instead of using the method described in paragraph (b)(6)(i) of this section, elect for any taxable year to specify which liabilities will not be treated as giving rise to interest paid by a U.S. trade or business or will be treated as giving rise only in part to such interest. The election may be made only with respect to liabilities described in paragraph (b)(1)(i) of this section that are not also described in paragraphs (b)(1) (ii) through (iv) of this section and that were not identified as a liability of a U.S. trade or business during a preceding taxable year. The interest paid during the taxable year with respect to a liability specified under this paragraph (b)(6)(ii) must be reduced to zero before a reduction is made with respect to interest attributable to the next specified liability. If all interest payments with respect to a specified liability, when added to all interest payments with respect to other liabilities specified under this paragraph (b)(6)(ii), would exceed the amount of the reduction under paragraph (b)(6)(i) of this section, then only a portion of the interest paid with respect to that specified liability shall be reduced under this paragraph (b)(6)(ii), and the reduction shall be made beginning with the last interest payment made with respect to the liability during the taxable year and continuing, in reverse chronological order, with the next-latest payment until the amount of interest paid by a U.S. trade or business has been reduced by the amount of the reduction under paragraph (b)(6)(i) of this section. A foreign corporation that elects to have this paragraph (b)(6)(ii) apply shall note on its books and records maintained in the United States that the liability is not to be treated as giving rise to interest paid by a U.S. trade or business, or is to be treated as giving rise to such interest only in part. Such notation must be made after the close of the taxable year in which the foreign corporation pays the interest and prior to the due date (with extensions) of the foreign corporation's income tax return for the taxable year. The amount of interest paid by a U.S. trade or business that is not treated as interest paid by a U.S. trade or business by reason of this

paragraph (b)(6)(ii) shall not be subject to tax under section 871(a) or 881.

(iii) *Examples.* The application of this paragraph (b)(6) is illustrated by the following examples.

Example (1). Foreign corporation A, a calendar year, accrual method taxpayer, is allowed an interest deduction of $200 for 1990 under § 1.882–5. The amount of interest paid by a U.S. trade or business of A during 1990 is as follows:

(1) $100 to B, a domestic corporation, with respect to a note issued on March 10, 1990, and secured by real property located in the United States;

(2) $80 to C, an individual resident of country X who is entitled to a 10 percent rate of withholding on interest payments under the income tax treaty between the United States and X, with respect to a note issued on October 15, 1989, which gives rise to interest subject to tax under section 871(a);

(3) $80 to D, an individual resident of country Y who is entitled to a 15 percent rate of withholding on interest payments under the income tax treaty between the United States and Y, with respect to a note issued on February 15, 1990, which gives rise to interest subject to tax under section 871(a);

(4) $70 of portfolio interest (as defined in section 871(h)(2)) to E, a nonresident alien, with respect to a bond issued on March 1, 1990; and

(5) $30 to F, a foreign corporation that is a qualified resident of country X, with respect to a note issued on January 10, 1990.

The interest paid by a U.S. trade or business of A during 1990 accrues during 1990 for purposes of calculating A's interest deduction under § 1.882–5 except that the amount of interest paid to F increases A's basis in a U.S. asset under section 263A but is not deductible as an interest expense in 1990. A does not make an election under paragraph (b)(6)(ii) of this section to specify liabilities that do not give rise to interest paid by a U.S. trade or business. The amount of interest paid by a U.S. trade or business of A in 1990 is limited under paragraph (b)(6)(i) of this section to $230, the sum of the interest allowable to A as a deduction for 1990 ($200) and the amount of interest paid during 1990 to F that increases the basis in a U.S. asset of A ($30). The amount of interest paid by a U.S. trade or business of A must thus be reduced by $110 ($340–$230) under paragraph (b)(6)(i) of this section. The reduction is first made with respect to interest attributable to liabilities described only in paragraph (b)(1)(i) of this section (*i.e.*, liabilities not on regulatory books or connected with U.S. assets) and, within the group of liabilities described only in paragraph (b)(1)(i) of this section, is first made with respect to the latest incurred liability. Thus, the $70 of interest paid to E with respect to the bond issued on March 1, 1990, and $40 of the $80 of interest paid to D with respect to the note issued on February 15, 1990, are not treated as paid by a U.S. trade or business of A. The interest paid to D is no longer subject to tax under section 871(a), and A may claim a refund of amounts withheld with respect to the interest payments. There is no change in the tax consequences to E because the interest received by E was portfolio interest and was not subject to tax when it was interest paid by a U.S. trade or business.

Example (2). Assume the same facts as in *Example (1)* except that A makes an election under paragraph (b)(6)(ii) of this section to specify which liabilities are not to be treated as giving rise to interest paid by a U.S. trade or business. Also assume that the liability to C was identified in 1989 as a liability that gives rise to interest paid by a U.S. trade or business. A may not specify, as liabilities that do not give rise to interest paid by a U.S. trade or business, the liabilities to B or F, which are described in paragraphs (b)(1)(iii) and (iv) of this section, respectively, or the liability to C, which was identified in a preceding taxable year as a liability that gives rise to interest paid by a U.S. trade or business. A specifies the liability to D, who would be taxable at a rate of 15 percent on interest paid with respect to the liability, as a liability that does not give rise to interest paid by a U.S. trade or business, and D is therefore not subject to tax under section 871(a) and is entitled to a refund of amounts withheld with respect to the interest payments. A also specifies the liability to E as a liability that gives rise to interest paid by a U.S. trade or business only in part. As a result, $30 of the $70 of interest paid to E is not treated as interest paid by a U.S. trade or business of A, but this does not change the tax consequences to E because the interest is portfolio interest that is not subject to tax.

(7) *Election to reduce excess interest where interest is paid and accrued in different years*—(i) *Accrual before year of payment.* A foreign corporation that accrues an interest expense that would be interest paid by a U.S. trade or business of the foreign corporation in one or more later taxable years (before application of this paragraph (b)(7)(i)) may elect under this paragraph (b)(7) to reduce its excess interest for the taxable year in which the interest accrues by the amount of such interest expense. In such case, the interest shall be treated as interest paid by a U.S. trade or business of the foreign corporation on the last day of the taxable year in which the interest expense accrues and shall not again be treated as interest paid by a U.S. trade or business of the foreign corporation in the taxable year in which it is actually paid. This paragraph (b)(7)(i) shall apply only if the election is in effect for both the taxable year in which the interest expense accrues and the taxable year in which the interest is paid. This paragraph (b)(7)(i) shall not apply to interest expenses that accrued in a taxable year beginning before January 1, 1987.

(ii) *Payment before year of accrual.* In the case of interest paid by a U.S. trade or business of a foreign corporation that will accrue as an expense in one or more later taxable years, the foreign corporation may elect under this paragraph (b)(7) to reduce (but not below zero) the amount of its excess interest for such later taxable year by the amount of such interest. The preceding sentence shall apply only if the election is in effect for both the taxable year in which the interest is paid and the taxable year in which the interest expense accrues. With respect to interest paid in a taxable year beginning before January 1, 1987, this paragraph (b)(7)(ii) shall apply only if the interest was income from sources within the United States and an election under this paragraph (b)(7) is in effect for the taxable year in which the interest accrues.

(iii) *Requirements for election.* A foreign corporation electing the provisions of this paragraph (b)(7) shall attach to its timely-filed income tax return a statement that it elects to have the provisions of both paragraph (b)(7)(i) and (ii) apply. The election shall be effective for the taxable year to which the return relates and for all subsequent taxable years unless the Commissioner consents to revocation of the election. In the case of interest paid or accrued in a taxable year ending on or before December 1, 1988, an election may be made by attaching the statement to an amended Form 1120F and filing both documents on or before January 3, 1989. If interest is deemed paid before January 3, 1988, by reason of paragraph (b)(7)(i) of this section, no penalties or interest shall be due with respect to any tax imposed under section 871(a) or 881 on such interest provided such tax is paid on or before January 3, 1989.

(iv) *Examples.* The following examples illustrate the application of this paragraph (b)(7).

Example (1). Foreign corporation A, a calendar year, accrual method taxpayer, is allowed an interest deduction of $100 under § 1.882–5 for 1987. A has $60 of interest paid by a U.S. trade or business in 1987 before application of this paragraph (b)(7). A has an interest expense of $20 which properly accrues for tax purposes in 1987 but is not paid until 1988. When the interest is paid in 1988 it will meet the requirements for interest paid by a U.S. trade or business under paragraph (b)(1) of this section. A makes a timely election under this paragraph (b)(7) to treat the accrued interest as if it were paid in 1987. A will be treated as having interest paid by a U.S. trade or business of $80 for 1987 and excess interest of $20 in 1987. The $20 of interest treated as interest paid by a U.S. trade or business of A in 1987 will not again be treated as interest paid by a U.S. trade or business of A in 1988.

Example (2). Foreign corporation A, a calendar year, accrual method taxpayer, has $80 of interest paid by a U.S. trade or business in 1987. The interest expense does not accrue until 1988 and the interest deduction that is allowable to A under

§ 1.882–5 is zero for 1987 and $60 for 1988. A makes an election under this paragraph (b)(7) with respect to 1987. As a result of the election, the $60 of interest paid by a U.S. trade or business of A in 1987 reduces the amount of A's excess interest for 1988.

(8) *Effect of treaties*—(i) *Payor's treaty.* In the case of interest paid by a U.S. trade or business of a foreign corporation, relief shall be available under an article of an income tax treaty between the United States and the foreign corporation's country of residence relating to interest paid by the foreign corporation only if—

(A) The corporation is a qualified resident (as defined in § 1.884–5T(a)) of that foreign country for the taxable year in which the interest is paid by a U.S. trade or business (or is treated as paid by a U.S. trade or business under paragraph (b)(7) of this section) or for the prior taxable year and such portion of the current taxable year that ends with the date of the interest payment or

(B) The foreign corporation meets, with respect to the interest payment, the requirements of the limitation on benefits or similar article in the treaty and such article entered into force after December 31, 1986.

(ii) *Recipient's treaty.* A foreign person (other than a foreign corporation) that derives interest that is interest paid by a U.S. trade or business (or is treated as paid by a U.S. trade or business under paragraph (b)(7) of this section) shall be entitled to claim benefits under provisions of an income tax treaty between the United States and its country of residence relating to interest derived by the foreign person. A foreign corporation may claim such benefits if it meets, with respect to the interest payment, the requirements of the limitation on benefits or similar article in the treaty and such article entered into force after December 31, 1986. A foreign corporation may otherwise claim such benefits only if

(A) The foreign corporation is a qualified resident (as defined in § 1.884–5T(a)) of the foreign country for the taxable year in which the interest is paid by a U.S. trade or business (or is treated as paid by a U.S. trade or business under paragraph (b)(7) of this section) or for the prior taxable year and such portion of the current taxable year that ends with the date of the interest payment and

(B) In the case of interest paid in a taxable year beginning after December 31, 1988, with respect to an obligation with a maturity not exceeding one year, each foreign corporation that beneficially owned the obligation prior to maturity was a qualified resident (as defined in § 1.884–5T(a)) of a foreign country with which the United States has an income tax treaty or met the requirements of the limitation on benefits or similar article in a treaty with respect to the interest payment and such article entered into force after December 31, 1986.

(iii) *Treaties other than income tax treaties.*

[Reserved]

(iv) *Effect of income tax treaties on interest paid by a partnership.* If a foreign corporation is a partner (directly or indirectly) in a partnership that is engaged in a trade or business in the United States, the relief that may be claimed under an income tax treaty with respect to the foreign corporation's distributive share of interest paid or treated as paid by the partnership shall not exceed the relief that would be available under paragraph (b)(8) (i) and (ii) of this section if such interest were interest paid by a U.S. trade or business of the foreign corporation. See paragraph (c)(2) of this section for the effect on a foreign corporation's excess interest of interest paid by a partnership of which the foreign corporation is a partner.

(v) *Examples.* The following examples illustrate the application of this paragraph (b)(8).

Example (1). The income tax treaty between the United States and country X, of which foreign corporation A is a qualified resident, provides that the United States may not impose a tax on interest paid by a corporation that is a resident of that country (and that is not a domestic corporation) if the recipient of the interest is a nonresident alien or a foreign corporation. Interest paid by a U.S. trade or business of A is not subject to tax under section 871(a) or 881 regardless of whether the recipient is entitled to benefits under an income tax treaty.

Example (2). A, a foreign corporation and B, a nonresident alien, are partners in a partnership that owns and operates U.S. real estate and each has a distributive share of partnership interest deductions equal to 50 percent of the interest deductions of the partnership. There is no income tax treaty between the United States and the countries of residence of A and B. The partnership pays $1,000 of interest to a bank that is a resident (but not a qualified resident) of foreign country Y, which has an income tax treaty in effect with the United States providing that the rate of tax on U.S. source interest paid to a resident of that country may not exceed 5 percent. The partnership is required to withhold at a rate of 30 percent on $500 of the interest paid to the bank (*i.e.*, A's 50 percent distributive share of interest paid by the partnership) because the bank is not a qualified resident of Y and cannot, under paragraph (b)(8)(iv) of this section, claim greater treaty benefits than it could claim if the $500 were interest paid by a U.S. trade or business of A.

(c) *Excess interest*—(1) *Reporting and payment of tax on excess interest.* The amount of tax due under section 884(f) and this section with respect to excess interest of a foreign corporation shall be reported on the foreign corporation's income tax return for the taxable year in which the excess interest is treated as paid under section 884(f)(1)(B) and paragraph (a)(2) of this section, and shall not be subject to withholding under section 1441 or 1442. The tax shall be due and payable as provided in section 6151 and such other sections of Subtitle F of the Internal Revenue Code as apply.

(2) *Interest paid by a partnership*—(i) *General rule.* Except as otherwise provided in this paragraph (c)(2)(i) and in paragraph (c)(2)(ii) of this section, if a foreign corporation is a partner in a partnership that is engaged in trade or business in the United States, the amount of the foreign corporation's distributive share of interest paid or accrued by the partnership shall reduce (but not below zero) the amount of the foreign corporation's excess interest for the year in which such interest is taken into account by the foreign corporation for purposes of calculating the interest deduction allowable to the foreign corporation under § 1.882–5. A foreign corporation's excess interest shall not be reduced by its distributive share of partnership interest that is attributable to a liability described in paragraph (b)(3) of this section (relating to certain liabilities that do not give rise to interest paid by a U.S. trade or business) or would be described in such paragraph (b)(3) if entered on the partner's books. The amount that reduces the foreign corporation's excess interest under this paragraph (c)(2) shall not in any taxable year exceed that proportion of the foreign corporation's distributive share of interest paid or accrued by the partnership that is allowed to the foreign corporation as a deduction under § 1.882–5. See paragraph (b)(8)(iv) of this section for the effect of income tax treaties on interest paid by a partnership.

(ii) *Special rule for interest that is paid and accrued in different years.* Paragraph (c)(2)(i) of this section shall not apply to any portion of a foreign corporation's distributive share of partnership interest that is paid and accrued in different taxable years unless the foreign corporation has an election in effect under paragraph (b)(7) of this section that is effective with respect to such interest and any tax due under section 871(a) or 881 with respect to such interest has been deducted and

withheld at source in the earlier of the taxable year of payment or accrual.

(3) *Effect of treaties*—(i) *General Rule.* The rate of tax imposed on the excess interest of a foreign corporation that is a qualified resident of a country with which the United States has an income tax treaty shall not exceed the rate provided under such treaty that would apply with respect to interest paid by a domestic corporation to that foreign corporation.

(ii) *Provisions in income tax treaties relating to interest paid by a foreign corporation.* Any provision in an income tax treaty that exempts or reduces the rate of tax on interest paid by a foreign corporation does not prevent imposition of the tax on excess interest or reduce the rate of such tax.

(iii) *Treaties other than income tax treaties.*

[Reserved]

(4) *Examples.* The following examples illustrate the application of paragraph (c) (2) and (3) of this section.

Example (1). Foreign corporation A, a calendar year taxpayer, is not a resident of a foreign country with which the United States has an income tax treaty. A is engaged in the conduct of a trade or business both in the United States and in foreign countries, and owns a 50 percent interest in partnership X, a calendar year taxpayer engaged in the conduct of a trade or business in the United States. For 1989, all of X's liabilities are of a type described in paragraph (b)(1) of this section (relating to liabilities on U.S. books) and none are described in paragraph (b)(3)(i) of this section (relating to certain interest giving rise to a foreign tax benefit). A's distributive share of interest paid by X in 1989 is $20. For 1989, A is allowed a deduction of $150 under § 1.882–5, $120 of which is attributable to interest paid by a U.S. trade or business. Thus, the amount of A's excess interest for 1989, before application of paragraph (c)(2)(i) of this section, is $30. Under paragraph (c)(2)(i) of this section, A's $30 of excess interest is reduced by $20, representing A's pro rata share of interest paid by X. Thus, the amount of A's excess interest for 1989 is reduced to $10. A is subject to a tax of 30 percent on its $10 of excess interest.

(d) *Stapled entities.* For treatment of a foreign corporation that is a stapled entity by reason of section 269B, see § 1.884–1T(i).

(e) *Effective date.* This section is effective for taxable years beginning after December 31, 1986, and for payments of interest described in section 884(f)(1)(A) made during taxable years of the payor beginning after December 31, 1986.

§ 1.884–5T Qualified resident (temporary).

(a) *Definition of a qualified resident.* A foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty in effect if the foreign corporation is a resident of that country within the meaning of the income tax treaty between the United States and that country and the foreign corporation either—

(1) Meets the requirements of paragraph (b) of this section (relating to stock ownership) and the requirements in paragraph (c) of this section (relating to base erosion),

(2) Meets the requirements of paragraph (d) of this section (relating to a foreign corporation whose stock is primarily and regularly traded on an established securities market in its country of residence or in the United States),

(3) Meets the requirements of paragraph (e) of this section (relating to a foreign corporation engaged in an active trade or business in its country of residence), or

(4) Obtains a ruling as provided in paragraph (f) of this section.

(b) *Stock ownership requirement*—(1) *General rule.* A foreign corporation satisfies the stock ownership requirement of this paragraph (b) for the taxable year or a portion of the taxable year if—

(i) 50 percent or more of its stock (by value) is beneficially owned, or is treated as beneficially owned by reason of paragraph (b)(2) of this section, during at least half of the number of days in the foreign corporation's taxable year (or at least half the number of days in the portion of the taxable year) by individuals who are either residents of the foreign country of which the foreign corporation is a resident or citizens or individual residents of the United States,

(ii) It obtains the documentation required under paragraph (b)(3) (i) or (ii) of this section to show that the requirements of paragraph (b)(1)(i) have been met, and

(iii) Such documentation is maintained and made available to the District Director as provided in paragraph (b)(7) of this section.

(2) *Rules for determining ownership*—(i) *Constructive ownership*—(A) *General rules for attribution.* For purposes of this section, stock owned by a corporation, partnership, trust or estate shall be treated as owned proportionately by its shareholders, partners, or beneficiaries. The proportionate interest rules of this paragraph (b)(2)(i) shall apply successively upward through a chain of ownership. Except as otherwise specifically provided, stock treated as owned by a person by reason of this paragraph (b)(2)(i) shall, for purposes of applying this paragraph (b)(2)(i), be treated as actually owned by such person.

(B) *Partnerships.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the lesser of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock, (B) The partner's percentage distributive share of gain from disposition of the stock by the partnership, or (C) The partner's percentage share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

(C) *Trusts and Estates.* In general, a beneficiary of a trust (including a grantor thereof) or a beneficiary of an estate shall be treated as having an interest in stock owned by a trust or estate in proportion to the beneficiary's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B) and the regulations thereunder, except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock and the interest rate used to compute the income beneficiary's actuarial interest in the trust shall equal the income beneficiary's actual rate of return on the fair market value of the stock for the taxable year. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (b)(2)(i)(C), shall not be considered owned by an individual who is a resident of a country with which the United States has an income tax treaty in effect unless all potential beneficiaries with respect to the stock are qualified residents.

(D) *Corporations.* A shareholder shall be treated as having an interest in stock of a foreign corporation owned by another corporation in a proportion equal to the lesser of (1) the shareholder's percentage share of current earnings and profits of the corporation as determined under the principles of section 1248, (2) the shareholder's percentage share of accumulated earnings and profits of the corporation as determined under the principles of section 1248, or (3) the shareholder's percentage share of assets upon liquidation of the corporation. If

there is an agreement, express or implied, that designated pools of earnings are to be paid only with respect to certain stock, then any shareholder not entitled to share in a designated pool of earnings shall not be considered to be a shareholder with respect to such stock.

(ii) *Governments treated as individual shareholders.* For purposes of this section, the government of the country of which a foreign corporation is a resident (or a political subdivision or local authority of such country), or the United States, a State, the District of Columbia, or a political subdivision or local authority of a State shall be treated as an individual resident of such foreign country or of the United States, as the case may be.

(iii) *Publicly-traded corporations treated as individual shareholders.* For purposes of this section—

(A) A domestic corporation whose stock is primarily and regularly traded on an established securities market (within the meaning of paragraph (d) of this section) in the United States shall be treated as an individual resident of the United States and

(B) A foreign corporation whose stock is primarily and regularly traded on an established securities market (within the meaning of paragraph (d) of this section) in the country of which it is a resident (within the meaning of the income tax treaty between the United States and such country) shall be treated as an individual resident of such country for purposes of determining the ownership of stock in another foreign corporation that is a resident of the same foreign country.

Stock that is treated as owned by individual residents by reason of this paragraph (b)(2)(iii) shall not be treated as owned by any other person for purposes of determining stock ownership under this paragraph (b).

(iv) *Publicly-traded stock treated as owned by individuals.* A class of stock of a corporation that is primarily and regularly traded on an established securities exchange (within the meaning of paragraph (d) of this section) in the United States or in the foreign corporation's country of residence shall be treated as owned by individual residents of the United States or such foreign country, as the case may be.

(3) *Required documentation.* In order to satisfy the stock ownership requirement of paragraph (b)(1) of this section for a taxable year, a foreign corporation must, before the due date (including extensions) for filing its income tax return for the taxable year (or, where applicable, in the case of a foreign corporation claiming treaty benefits under § 1.884–4T(b)(8) (i) or (ii), before the interest payment) obtain the following written documentation from a sufficient number of its direct or indirect individual shareholders (including a government or corporation treated as an individual shareholder by reason of paragraph (b)(2) (ii) or (iii) of this section) to show that it has satisfied the 50 percent ownership test of paragraph (b)(1)(i) of this section:

(i) Individual documentation described in paragraph (b)(4) of this section and, if applicable, an intermediary ownership statement described in paragraph (b)(5) of this section from each intermediary standing in the chain of the individual shareholder's ownership of his interest in the foreign corporation, or

(ii) An intermediary verification statement described in paragraph (b)(6) of this section and, if applicable, an intermediary ownership statement described in paragraph (b)(5) of this section from each intermediary standing in the chain of the verifying intermediary's ownership of its interest in the foreign corporation.

(4) *Individual documentation.* The individual documentation shall consist of a statement described in paragraph (b)(4)(i) of this section from the individual shareholder (or from a government or corporation treated as an individual shareholder by reason of paragraph (b)(2) (ii) or (iii) of this section) and, in the case of any individual who is not a citizen or resident of the United States, a certificate of residency described in paragraph (b)(4)(ii) of this section.

(i) *Statement from individual shareholder or from government or corporation treated as an individual shareholder.* A statement from an individual shareholder shall be a written statement signed by the shareholder under penalties of perjury stating that the individual is a direct or indirect beneficial owner of an interest in the foreign corporation and that the individual does not own such interest on behalf of another person. In addition, the statement must include the following information:

(A) The number of shares owned directly or indirectly by the individual shareholder in each class of stock of the foreign corporation;

(B) The period of time during the taxable year during which the individual shareholder owned the stock;

(C) The name and permanent address of the individual shareholder;

(D) The country of residence of the individual shareholder; and

(E) If the stock in the foreign corporation is held indirectly by the individual shareholder through one or more intermediary, whether acting as nominees or beneficial interest holders, then the name and address of each such intermediary and the description of the chain of ownership through which the individual shareholder holds stock in the foreign corporation, to the extent known to the individual shareholder.

A statement from a government treated as an individual shareholder by reason of paragraph (b)(2)(ii) of this section shall be signed by the Competent Authority of the foreign country, as defined in the income tax treaty between the foreign country and the United States, shall state that the government is a direct or indirect beneficial owner of an interest in the foreign corporation, and shall contain the information specified in paragraph (b)(4)(i) (A), (B) and (E) of this section. A statement from a corporation that is treated as an individual shareholder under paragraph (b)(2)(iii) of this section shall be signed under penalties of perjury by a person authorized to sign a tax return on behalf of the corporation, shall state that the corporation is a direct or indirect beneficial owner of the foreign corporation and that the corporation's stock is primarily and regularly traded on an established security exchange (within the meaning of paragraph (d) of this section) in the United States or its country of residence, and shall contain the information specified in paragraph (b)(4)(i) (A) through (E).

(ii) *Certificate of residency.* A certificate of residency must be signed by the authorities of the country of residence of the individual shareholder and must state that the individual is a resident of that country for purposes of its income tax laws. The authorities shall be the Competent Authority of the foreign country, as defined in the income tax treaty between the foreign country and the United States, or such other governmental office of the foreign country that customarily provides statements of residence. Such statement shall have the official seal of the Competent Authority (or such other governmental office of the named foreign country that customarily provides statements of residence) if it generally affixes such a seal to official documents. An individual shall be considered a resident of a country with which the United States has an income tax treaty if such individual is considered a resident of such country under the provisions, if any, of the income tax treaty between the United

States and such country or, if there are no such provisions, if such individual is considered a resident of such country for purposes of such country's income tax laws.

(5) *Intermediary ownership statement.* An intermediary ownership statement must be obtained from each intermediary in the relevant chain of ownership described in paragraph (b)(3)(i) or (ii) of this section regardless of whether the intermediary is merely a legal owner or recordholder acting as nominee for an individual or for another intermediary, or a beneficial owner through which an individual or another intermediary indirectly owns stock in the foreign corporation. The intermediary ownership statement shall be signed under penalties of perjury by a person that would be authorized to sign a tax return on behalf of the intermediary and shall contain the following information:

(i) The number of shares owned directly or indirectly by the intermediary in each class of stock of the foreign corporation;

(ii) The period of time during the taxable year during which the intermediary owned directly or indirectly the stock described in paragraph (b)(5)(i) of this section;

(iii) The name and principal place of business of the intermediary (*i.e.*, the name of a corporation or partnership and the address of its principal place of business, or the name and permanent address of all trustees of a trust (or equivalent under foreign law) or of all executors of an estate (or equivalent under foreign law);

(iv) The country of residence of the intermediary;

(v) If the stock is held as nominee for an individual or another intermediary, the name and permanent address of the individual, or the name and principal place of business of such other intermediary;

(vi) If the stock is not held as nominee for an individual or another intermediary, the amount and nature of the interest owned in the intermediary issuing the statement by its direct shareholder, partner or beneficiary which indirectly owns an interest in the foreign corporation and the period of time during the taxable year for which the interest in the intermediary was owned by such stockholder, partner, or beneficiary; and

(vii) If the intermediary owns stock in the foreign corporation indirectly through one or more other intermediaries as nominees or beneficial interest holders, the name and principal place of business of each such intermediary and a description of the chain of ownership through which the intermediary holds the stock described in paragraph (b)(5)(i) of this section to the extent known by the intermediary.

(6) *Intermediary verification statement.* An intermediary verification statement is a statement from any intermediary standing in the chain of the ultimate individual shareholder's ownership of his interest in the foreign corporation (or in the chain of ownership of a government or corporation treated as an individual shareholder under paragraph (b)(1)(ii) or (iii) of this section) certifying that stock in the foreign corporation owned by the verifying intermediary as a nominee or beneficial interest holder is owned directly or indirectly by one or more individuals described in paragraph (b)(1)(i) of this section. An intermediary verification statement may be made only by a domestic corporation, a resident of the United States, or a resident (for treaty purposes) of a country with which the United States has an income tax treaty in effect. The intermediary verification statement shall be signed under penalties of perjury by the individual (if the verifying intermediary is an individual) or by a person that would be authorized to sign a tax or tax information return on behalf of the intermediary (if the verifying intermediary is not an individual) and shall contain the following information:

(i) A statement that the verifying intermediary has obtained individual documentation described in paragraph (b)(4) of this section (or an intermediary verification statement described in this paragraph (b)(6) that is received from an upper-tier intermediary) that establishes that the stock of the foreign corporation that is the subject of the verification is in fact owned by individuals described in paragraph (b)(1)(i) of this section or by a government or corporation treated as such an individual by reason of paragraph (b)(2)(ii) or (iii) of this section;

(ii) A statement that the verifying intermediary has obtained an intermediary ownership statement described in paragraph (b)(5) of this section from every intermediary standing in the chain of ownership between the verifying intermediary and any indirect individual shareholder for whom documentation described in paragraph (b)(6)(i) of this section is obtained (or between the verifying intermediary and any upper-tier intermediary that has issued an intermediary verification statement described in this paragraph (b)(6));

(iii) An agreement to make available to the Commissioner at such time and place as the Commissioner may request the underlying documentation described in paragraphs (b)(6)(i) and (ii) of this section;

(iv) A specific and valid waiver of any right to bank secrecy or other secrecy under the laws of the country in which the verifying intermediary is located, with respect to any individual documentation, intermediary verification statement and intermediary ownership statement which the verifying intermediary has obtained pursuant to paragraphs (b)(6)(i) and (ii) of this section;

(v) The number of shares in each class of stock of the foreign corporation that are owned directly or indirectly by the verifying intermediary and that is covered by the intermediary verification statement;

(vi) The period of time during the taxable year during which the verifying intermediary owned directly or indirectly the stock described in paragraph (b)(6)(v) of this section;

(vii) The name and the principal place of business of the verifying intermediary;

(viii) The country of residence of the verifying intermediary; and

(ix) If the verifying intermediary owns stock in the foreign corporation indirectly through one or more other intermediaries as nominees or beneficial interest holders, the name and principal place of business of each such intermediary and a description of the chain of ownership through which the verifying intermediary holds the stock described in paragraph (b)(6)(v) of this section, to the extent known to the verifying intermediary.

(7) *Availability of documents for inspection*—(i) *Retention of documents by the foreign corporation.* The documentation described in paragraph (b)(3) of this section must be retained by the foreign corporation until expiration of the period of limitations for the taxable year to which the documentation relates and must be made available for inspection by the District Director at such time and place as the District Director may request.

(ii) *Retention of documents by an intermediary issuing an intermediary verification statement.* The documentation upon which an intermediary relies to issue an intermediary verification statement under paragraph (b)(6) of this section must be retained by the intermediary for a period of six years from the date of issuance of the intermediary verification statement and must be made available for inspection by the District Director at such time and place as the District Director may request.

(8) *Examples.* The application of this paragraph (b) is illustrated by the following examples.

Example (1). Foreign corporation A is a resident of country L which has an income tax treaty in effect with the issued and outstanding consisting of 1,000 shares, which are beneficially owned by the following alien individuals, directly or by application of paragraph (b)(2) of this section:

Individual	Shares owned [1]	Percentage
T—resident of the U.S.	200	20
U—resident of country L	400	40
V—resident of country M	100	10
W—resident of country L	210	21
X—resident of country N	90	9
Total	1,000	100

[1] Shares owned, directly or by application of paragraph (b)(2) of this section.

(i) T owns his 200 shares directly and is a beneficial owner.

(ii) U and V each own respectively an 80 percent and a 20 percent actuarial interest in a foreign trust FT which beneficially owns 100 percent of the stock of a foreign corporation B with bearer shares which beneficially owns 500 shares of foreign corporation A. Foreign corporation B is incorporated in a country that does not have an income tax treaty with the United States. The foreign trust has deposited the bearer shares it owns in foreign corporation B with a bank in a foreign country which has an income tax treaty with the United States.

(iii) W beneficially owns all the shares of foreign corporation C, which are registered in the name of individual Z, a nominee, who resides in Country L; foreign corporation C beneficially owns a 70 percent interest in foreign corporation D, which beneficially owns 300 shares of foreign corporation A. Foreign corporation D's shares are bearer shares which foreign corporation C (not a resident of a country with which the United States has an income tax treaty) has deposited with a bank in a foreign country that has an income tax treaty with the United States.

(iv) X beneficially owns a 30 percent interest in foreign corporation D.

(v) Countries M (where V resides) and N (where X resides) have no income tax treaty with the United States.

Foreign corporation A is a qualified resident of country L if it obtains the documentation either from individuals U and W or from individuals T and U, since either combination of qualifying ultimate individual shareholding in foreign corporation A will add up to at least 50 percent. The shareholdings of individuals V and X are ignored in determining whether foreign corporation A meets the stock ownership of this paragraph (b) since neither of them is a U.S. citizen or a resident of the United States or of a country with which the United States has an income tax treaty.

Example (2). Assume the same facts as in *Example (1)* and assume that foreign corporation A chooses to obtain documentation with respect to individuals T and U.

(i) With respect to T, foreign corporation A must obtain the individual documentation regarding T's shareholding in foreign corporation A which, pursuant to paragraph (b)(3)(i) and (b)(4) of this section, consists of an individual statement by T, as described in paragraph (b)(4)(i) of this section. No certificate of residency need be furnished since T is a U.S. resident.

(ii) As to U's shareholding in foreign corporation A, U must provide the foreign trust FT with the individual documentation described in paragraph (b)(4) of this section; the trustees of FT must provide the depository bank holding foreign corporation B's bearer shares with an intermediary ownership statement concerning its indirect beneficial ownership of foreign corporation A's shares and must attach to it the individual documentation provided by U. The depository bank has the choice of providing foreign corporation B with either (A) an intermediary ownership statement regarding its direct ownership of shares in foreign corporation B on behalf of FT, to which must then be attached the individual documentation issued by U and the intermediary ownership statement issued by FT, or (B) an intermediary verification statement as described in paragraph (b)(6) of this section, in which case foreign corporation B would not be provided with U's individual documentation or FT's intermediary ownership statement, both of which are retained by the depository bank. In either case, foreign corporation B must then provide foreign corporation A with an intermediary ownership statement regarding its direct beneficial ownership of shares in foreign corporation A and, as the case may be, either (A) U's individual documentation and the intermediary ownership statements by FT and the depository bank, or (B) the depository bank's intermediary verification statement. Thus, with respect to U, foreign corporation A must obtain under paragraph (b)(3)(i) of this section the individual documentation regarding U and an intermediary ownership statement from each intermediary standing in the chain of U's indirect beneficial ownership of shares in foreign corporation A, *i.e.*, from FT, the depository bank and foreign corporation B. In the alternative, foreign corporation A must obtain under paragraph (b)(3)(ii) of this section an intermediary verification statement issued by the depository bank and an intermediary ownership statement from foreign corporation B, which, in this example, is the only intermediary standing in the chain of ownership of the verifying intermediary (*i.e.*, the depository bank).

Example (3). Assume the same facts as in *Example (1).* In addition, assume that foreign corporation A chooses to obtain documentation with respect to individuals U and W. With respect to U, foreign corporation A must obtain the same documentation that is described in *Example (2).* With respect to W, foreign corporation A must obtain, under paragraph (b)(3)(i) of this section, individual documentation regarding W and an intermediary ownership statement from each intermediary standing in the chain of W's indirect beneficial ownership of shares in foreign corporation A, *i.e.*, from individual Z, foreign corporation C, the depository bank in the foreign treaty country, and foreign corporation D. In the alternative, foreign corporation A must obtain, under paragraph (b)(3)(ii) of this section, either (i) an intermediary verification statement by the depository bank in the foreign treaty country and an intermediary ownership statement from foreign corporation D or (ii) an intermediary verification statement from individual Z and an intermediary ownership statement from each intermediary standing in the chain of ownership of shares in foreign corporation A, *i.e.*, from foreign corporation C, the depository bank in the foreign treaty country and foreign corporation D. Corporation C may not issue an intermediary verification statement because it is not a resident of a country with which the United States has an income tax treaty.

(c) *Base erosion.* A foreign corporation satisfies the requirement relating to base erosion for a taxable year (or for a portion of a taxable year) if it establisnes that less than 50 percent of its income for the taxable year (or for the portion of the taxable year) is used (directly or indirectly) to meet liabilities (such as liabilities to pay interest, rents, royalties, or reinsurance premiums) to persons who are not residents (or, in the case of foreign corporations, qualified residents) of the foreign country of which the foreign corporation is a resident and who are not citizens or residents (or, in the case of domestic corporations, qualified residents) of the United States. Whether a domestic corporation is a qualified resident of the United States shall be determined under the principles of this section. The meeting of a liability does not include a repayment of the principal amount of an obligation. For purposes of this paragraph (c), a liability is met in the taxable year (or portion of the taxable year) in which the satisfaction, in whole or in part, of such liability gives rise (or would give rise if the portion of the taxable year were a short taxable year) to a tax benefit (including a deduction, an increase in the basis of an asset, or a tax credit) under U.S. tax principles. For purposes of this paragraph (c), the income of a foreign corporation means the corporation's gross income (or, if the foreign corporation has no gross income, gross receipts) under U.S. tax principles.

(d) *Publicly-traded corporations*—(1) *General rule.* A foreign corporation that is a resident of a foreign country shall be treated as a qualified resident of that country for any taxable year in which—

(i) Its stock is primarily and regularly traded (as defined in paragraph (d)(3) and (4) of this section) on one or more established securities markets (as defined in paragraph (d)(2) of this

section) in that country, or in the United States, or both; or

(ii) It is wholly-owned (within the meaning of paragraph (d)(5) of this section) by a foreign corporation that is a resident of the same foreign country or a domestic corporation and the stock of such parent corporation is primarily and regularly traded on an established securities market in that foreign country or in the United States, or both.

(2) *Established securities market*—(i) *General rule.* For purposes of section 884, the term "established securities market" means, for any taxable year—

(A) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the country in which the market is located, is the principal exchange in that country, and has an annual value of shares traded on the exchange exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the taxable year;

(B) A national securities exchange that is registered under section 6 of the Securities Act of 1934 (15 U.S.C. section 78f); and

(C) A domestic over-the-counter market.

(ii) *Exchanges with multiple tiers.* If a principal exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(iii) *Computation of dollar value of stock traded.* For purposes of paragraph (d)(2)(i)(A) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges, located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(iv) *Definition of over-the-counter market.* An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers that regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets that are prepared and distributed by a broker or dealer in the regular course of business and that contain only quotations of such broker or dealer.

(v) *Discretion to determine that exchange qualifies as established securities market.* The Commissioner may, in his sole discretion, determine in a published document that a securities exchange that does not meet the requirements of paragraph (d)(2)(i)(A) of this section qualifies as an established securities market. Such a determination will be made only if it is established that—

(A) The exchange, in substance, has the attributes of an established securities market (including adequate trading volume, and comparable listing and financial disclosure requirements);

(B) The rules of the exchange ensure active trading of listed stocks; and

(C) The exchange is a member of the International Federation of Stock Exchanges.

(vi) *Discretion to determine that market does not qualify as established securities market.* The Commissioner may, in his sole discretion, determine in a published document that a securities market that meets the requirements of paragraph (d)(2)(i) of this section does not qualify as an established securities market. Such determination shall be made if, in the view of the Commissioner—

(A) The market does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements) or

(B) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(3) *Primarily traded.* For purposes of section 884, stock is "primarily traded" on an established securities market in the country of residence of a foreign corporation or in the United States in any taxable year in which—

(i) One or more classes of stock of the foreign corporation that in the aggregate, represent more than 80 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation, are listed on one or more established securities markets in such country or in the United States and each class is regularly traded on one or more established securities markets (within the meaning of paragraph (d)(4) of this section) in such countries; and

(ii) The number of shares in each class of stock described in subdivision (i) of this paragraph (d)(3) that are traded during the taxable year on all established securities markets in the foreign corporation's country of residence or in the United States on which the class is regularly traded exceeds the number of shares in each such class that are traded during that year on established securities markets in any other single foreign country.

(4) *Regularly traded*—(i) *General rule.* For purposes of section 884, a class of stock of a foreign corporation listed during the taxable year on one or more established securities markets in the country of residence of the foreign corporation or in the United States is "regularly traded" on such established securities market or markets in that taxable year if—

(A) Trades in such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the taxable year (or ⅙ of the number of days in a short taxable year or in a portion of a taxable year where relevant under §§ 1.884–4T(b)(8) (i) and (ii)), and

(B) The aggregate number of shares of that class traded on such market or markets during the taxable year is at least 30 percent of the average number of shares outstanding in that class during the taxable year (or at least 10 percent in the case of a foreign corporation that establishes that it has at least 2,500 shareholders of record during the taxable year). In the case of a short taxable year or a portion of a taxable year where relevant under § 1.884–4T(b)(8) (i) or (ii), the applicable percentage shall equal 30 percent or 10 percent, respectively, times the number of days in the short taxable year or in the portion of a taxable year, divided by 365.

(ii) *Closely-held companies not treated as regularly traded.* If, at any time during the taxable year, 100 or fewer persons own 50 percent or more of the outstanding shares of a class of stock, then such class of stock shall not be treated as regularly traded for that year. Persons related within the meaning of section 267(b) shall be treated as one person for purposes of this paragraph (d)(4)(ii). In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). Further, in determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

(iii) *Anti-abuse rule.* Trades between persons described in section 267(b) (as modified in subdivision (ii) of this paragraph (d)(4)) and trades conducted

in order to meet the requirements of this paragraph (d)(4) shall be disregarded. The stock of a foreign corporation will not be treated as regularly traded if there is a pattern of trades designed to meet the requirements of this paragraph (d)(4). For example, trades between two persons that occur several times during the taxable year may be treated as an arrangement or a pattern of trades designed to meet the requirements of this paragraph (d)(4).

(iv) *Stock traded on domestic established securities markets.* A class of stock that is traded during the taxable year on an established securities market located in the United States shall be treated as regularly traded if the stock is regularly quoted by brokers or dealers making a market in the stock. A broker or dealer makes a market in a stock only if the broker or dealer holds himself out to buy or sell the stock at the quoted price.

(5) *Stock treated as wholly-owned.* For purposes of paragraph (d)(1) of this section, stock of a foreign corporation shall be treated as wholly-owned by a corporation (the "parent corporation") if at least 90 percent of the total combined voting power of all classes of stock of such foreign corporation entitled to vote and at least 90 percent of the total value of the stock of such foreign corporation is owned, directly or by application of paragraph (b)(2) of this section, by the parent corporation.

(6) *Burden of proof for publicly-traded corporations.* A foreign corporation that relies on this paragraph (d) to establish that it is a qualified resident of a country with which the United States has an income tax treaty shall have the burden of proving all the facts necessary for the corporation to be treated as a qualified resident, except with respect to paragraph (d)(4)(ii) of this section. With respect to paragraph (d)(4)(ii) of this section, a foreign corporation must maintain a list of shareholders of record, and, on request, shall make available to the district director such list and any other relevant information known to the foreign corporation.

(e) *Active trade or business*—(1) *General rule.* A foreign corporation that is a resident of a foreign country shall be treated as a qualified resident of that country if—

(i) It is engaged in the active conduct of a trade or business (as defined in paragraph (e)(2) of this section) in its country of residence,

(ii) It has a substantial presence (within the meaning of paragraph (e)(3) of this section) in its country of residence, and

(iii)(A) The activities that give rise to the income for which a treaty exemption or rate reduction is claimed constitute part of a U.S. trade or business in which the foreign corporation is engaged (or is deemed to be engaged) and such U.S. trade or business is an integral part (as defined in paragraph (e)(4) of this section) of an active trade or business conducted by the foreign corporation in its country of residence, or

(B) In the case of interest received by the foreign corporation for which a treaty exemption or rate reduction is claimed pursuant to § 1.884–4T(b)(8)(ii), the interest is derived in connection with, or is incidental to, the trade or business described in paragraph (e)(1)(i) of this section.

(2) *Active conduct of a trade or business.* A foreign corporation is engaged in the active conduct of a trade or business only if either—

(i) It is engaged in the active conduct of a trade or business within the meaning of section 367(a)(3) and the regulations thereunder or

(ii) It qualifies as a banking, financing or credit institution under the laws of the foreign country of which it is a resident and it is engaged in the active conduct of a banking, financing, or similar business within the meaning of § 1.864–4(c)(5)(i).

A foreign corporation that is an insurance company within the meaning of § 1.801–3 (a) or (b) is engaged in the active conduct of a trade or business only if it is predominantly engaged in the active conduct of an insurance business within the meaning of section 952(c)(1)(B)(v) and the regulations thereunder.

(3) *Substantial presence test.* A foreign corporation that is engaged in the active conduct of a trade or business in its country of residence has a substantial presence in that country if, for the taxable year, the average of the following three ratios exceeds 25 percent and each ratio is at least equal to 20 percent:

(i) The ratio of assets used or held for use in the active conduct of the foreign corporation's trade or business in its country of residence to the worldwide asset of the foreign corporation,

(ii) The ratio of the gross income from the active conduct of the foreign corporation's trade or business in its country of residence that is derived from sources within such country to the worldwide gross income of the foreign corporation, and

(iii) The ratio of the payroll expenses in the foreign corporation's country of residence to the foreign corporation's worldwide payroll expenses.

(4) *Integral part of an active trade or business in a foreign corporation's country of residence*—(i) *In general.* A U.S. trade or business of a foreign corporation is an integral part of an active trade or business conducted by a foreign corporation in its country of residence if an active trade or business conducted by the foreign corporation in both its country of residence and in the United States comprises, in principal part, complementary and mutually interdependent steps in the United States and its country of residence in the production and sale or lease of goods or in the provision of services. Subject to the presumption in paragraph (e)(4)(ii) of this section, if a U.S. trade or business of a foreign corporation sells goods that are not, in principal part, manufactured, produced, grown or extracted by the foreign corporation in its country of residence, such business shall in no event be treated as an integral part of an active trade or business conducted in the foreign corporation's country of residence if the foreign corporation does not take physical possession of the goods in a warehouse or other storage facility that is located in its country of residence and in which goods of such type are normally stored prior to sale to customers in such country.

(ii) *Presumption if business principally conducted in country of residence.* A U.S. trade or business of a foreign corporation shall be treated as an integral part of an active trade or business of a foreign corporation in its country of residence with respect to the sale or lease of property (or the performance of services) if at least 50 percent of the foreign corporation's worldwide gross income from the sale or lease of property of the type sold in the United States (or from the performance of services of the type performed in the United States) is derived from the sale or lease of such property for consumption, use, or disposition in the foreign corporation's country of residence (or from the performance of such services in the foreign corporation's country of residence). A U.S. trade or business that is engaged in the active conduct of a banking or financial business and makes loans to the public shall be treated as an integral part of an active trade or business of the foreign corporation in its country of residence with respect to loans made to the public if the foreign corporation is engaged in the active conduct of a banking or financial business and makes loans to the general public and at least 50 percent of the principal amount of the foreign corporation's loans are to residents of the foreign corporation's country of residence. In determining whether property or services are of the

same type, a foreign corporation shall follow recognized industry or trade usage or the three-digit major groups (or any narrower classification) of the Standard Industrial Classification as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President. The determination of whether income is of the same kind must be made in a consistent manner from year to year.

(f) *Ruling that a foreign corporation is a qualified resident.* In his sole discretion, the Commissioner may rule that—

(i) The establishment or maintenance of a foreign corporation in its country of residence does not have as one of its principal purposes obtaining benefits under the income tax treaty between the United States and the foreign corporation's country of residence, and

(ii) The foreign corporation has substantial business reasons for residing in its country of residence.

In such case, the foreign corporation shall be treated as a qualified resident of its country of residence for the taxable year in which the ruling was obtained and the succeeding two taxable years. If there has been a material change in either the ownership or trade or business of the foreign corporation, the foreign corporation must notify the Secretary within 90 days of such change. The Commissioner will then rule whether the change affects the foreign corporation's status as a qualified resident, and such ruling will be valid for the taxable year in which the ruling was obtained and for the two succeeding taxable years, subject to the requirement in the preceding sentence to notify the Commissioner of a material change.

(g) *Effective date.* This section is effective for taxable years beginning after December 31, 1986.

OMB Control Numbers Under the Paperwork Reduction Act (26 U.S.C. Part 602)

PART 602—[AMENDED]

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4 Section 602.101(c) is amended by inserting in the appropriate place in the table—

"§ 1.884–0T	1545–1070"
"§ 1.884–1T	1545–1070"
"§ 1.884–2T	1545–1070"
"§ 1.884–4T	1545–1070"
"§ 1.884–5T	1545–1070"

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: August 3, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 88–19832 Filed 8–29–88; 1:29 pm]
BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1–88–076]

Temporary Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the New Jersey Department of Transportation, the Coast Guard is issuing temporary regulations permitting the Route 7 (Belleville Turnpike) drawbridge over the Passaic River, at mile 8.9, to remain closed for 30 days from August 24 through September 23, 1988. This temporary regulation is needed to facilitate necessary rehabilitation and structural repairs of the bridge. This action will relieve the bridge owner of the burden of having to open the draw during the repairs and will only permit marine traffic which can pass under the closed bridge to have access to facilities above the bridge.

EFFECTIVE DATE: This regulation is effective on August 24, 1988 through September 23, 1988.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since immediate action is needed to repair the bridge and the State of New Jersey has awarded a contract to do so.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project manager, and CDR R.B. Ellard, project attorney.

Discussion of Temporary Regulations

Current regulations provide that the draw of the bridge shall open on signal at all times. The temporary regulations would allow the bridge to remain in the closed position from 9 a.m. on August 24 through 5 p.m. on September 23, 1988, inclusive. Bridge logs show limited number of openings for commercial and recreation vessels during the past several years.

The deteriorated conditions of the machinery and trunnion bearings, along with a need for replacement of structural members, has necessitated the bridge owner to limit normal bridge angle of opening to only 45 degrees except upon special request of vessel operators. A full opening of the span is to approximately a 70 degree angle.

The Belleville Turnpike (Route 7) bridge provides a vertical clearance of 8 feet above Mean High Water and 13 feet above Mean Low Water in the closed position. This is not adequate for the transit of any commercial vessels using the upstream oil facility, nor can it accommodate the recreational/charter cruiser which occasionally picks up passengers upstream of the bridge during various weekend periods each spring and summer.

The temporary regulation will affect the charter cruise approximately four weekends. The vessel would have to make arrangements to have passengers board downstream of the bridge. The owners were advised during the preliminary investigation and made no objection or comment.

The oil facility upstream of the Belleville Turnpike (Route 7) bridge is engaged in both the wholesale and retail market, which provides and stores home heating oil, diesel fuel and kerosene. During August and September business is slow and facility has indicated that product would be trucked into the facility as needed. Penalty provisions have been made in the construction contract to provide incentive for contractor to complete work on schedule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This regulation is a temporary inconvenience to the upstream oil facility in that no

petroleum product can be delivered to the facility by marine vessel during the proposed 30 day closure. This temporary inconvenience and loss of service will be offset by the benefit of improved reliability and more efficient openings. Without these repairs and rehabilitation, it is likely that the bridge could experience additional unscheduled failures. An altenative of requiring the bridge to be repaired in the open position, was considered. However, this would result in additional repair costs, possible redesign of repair procedures, rebidding or renegotiating awarded contracts, and extending the time vehicular traffic will have to be rerouted. The contract provides for vehicular traffic to be rerouted for 45 days to expedite repairs. A penalty/incentive clause is included in the contract and will apply during the closure period.

Since the economic impact of this proposal is expected to be minimum, the Coast Guard certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.739(n) is added to read as follows for the period of August 24, 1988 through September 23, 1988. Because this is a temporary rule, the following amendment will not be codified in the Code of Federal Regulations:

§ 117.739 Passaic River.

* * * * *

(n) The draw of the Belleville Turnpike (Route 7) highway bridge, mile 8.9 at Belleville, need not be opened for the passage of vessels from 9 a.m. on August 24, 1988 through 5 p.m. on September 23, 1988, inclusive, to effect major repairs.

Dated: August 24, 1988.

R.O. Buttrick,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 88–19961 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3433–9]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Administrative Rules of South Dakota (ARSD) 74:26 (Air Pollution Control Program). The revisions, which were submitted by the Governor on January 28, 1988, consist of: (1) Updating various citation to the federal regulations in ARSD 74:26; (2) adopting the new ambient air quality standards for particulates (PM_{10}); (3) revising the State administrative procedures for handling permit hearings and contested cases; and (4) correcting deficiencies in the stack height regulations. The South Dakota submittal was received by EPA at about the same time that the court decision on the July 9, 1985 stack height regulations was made. The July 8, 1985 stack height regulations were challenged by the Natural Resource Defense Council (NRDC) and resulted in the remand of three provisions of the regulations to EPA for reconsideration. The remand is not believed to significantly affect the South Dakota submittal. However, should EPA promulgate revisions to the stack height regulations as a result of the remand, the State has agreed, in a letter dated May 11, 1988, to modify its regulations accordingly. EPA's approval, therefore, is given with this understanding.

DATES: This action will be effective on November 1, 1988, unless notice is received by October 3, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Houk, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405, (303) 294–7613, (FTS) 564–7613.

SUPPLEMENTARY INFORMATION: On January 28, 1988, the Governor of South Dakota submitted to EPA certain revisions to its air pollution control regulations, ARSD 74:26. The revisions consisted of updating various citations to the federal regulations in ARSD 74:26, adopting the new ambient air quality standards for particulates (PM_{10}), revising the State administrative procedures for handling permit hearings and contested cases and correcting deficiencies in the stack height regulations. A more detailed discussion of the revision follows below.

Revisions to ARSD 74:26

(1) Chapter 74:26:01—Air Pollution Requirements

The ARSD 74:26:01:12 (standard for the issuance of construction permit) and ARSD 74:26:01:64 (references to *Code of Federal Regulations* (CFR)) were updated to reference the most recent version of the CFR. In addition, ARSD 74:26:01:12 was revised to include several definitions related to stack height (40 CFR 51.100(z) "emission limitations and emission standards"; (ff) "stack"; (gg) "stack in existence"; (jj) "nearby"; (kk) "excessive concentration"; and (nn) "intermittent control systems") previously missing from the State regulations. The ARSD 74:26:01:35 was revised to reflect the earlier adoption of two New Source Performance Standards (NSPS) (40 CFR Part 60, Subparts LL (Metallic Mineral Processing Plants) and OOO (Nonmetallic Mineral Processing Plants)) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Asbestos (40 CFR Part 61, Subpart M). These standards are found in the South Dakota regulations at ARSD 74:26:21 to 74:26:23.

The ARSD 74:26:01:37 was revised to changes the time period in which a person must petition the State Board of Minerals and Environment to contest a recommendation of the State Department of Water and Natural Resources on a permit or variances application. The time period changes from "not less than 30 days nor more than 40 days after publication of the notice" to "within 30 days after publication of the notice". This section

is now consistent with 40 CFR 51.102 and 51.161.

(2) Chapter 74:26:02—Ambient Standards—Episode Criteria

At ARSD 74:26:02:35, the State incorporated by reference to the CFR ambient air quality standards for PM_{10}, as well as associated monitoring methods and requirements (40 CFR 50.6 and Appendix J; 40 CFR 53.1 to 53.4, 53.9, 53.30 to 53.34, and 53.40 to 53.43; 40 CFR 58.1, 58.13, 58.20, 58.23, 58.30, 58.34, 58.35, and Appendices A–G). The State had proposed to simultaneously repeal its total suspended particulate ambient standards, but ultimately chose to retain these standards to protect the enforceability of the existing Total Suspended Particulate (TSP) SIP.

(3) Chapter 74:26:08—NSPS

This chapter of ARSD 74:26 was simplified by deleting the text (which was substantially similar to the Federal regulations) and incorporating the general provisions of 40 CFR Part 60 by reference (Subpart A, 40 CFR 60.1 to 60.18).

(4) Chapters 74:26:09 to 74:26:21, and 74:26:23 (various NSPS)

These chapters of ARSD 74:26 were simplified by deleting the text (which was substantially similar to the Federal regulations) and incorporating the following sections of 40 CFR Part 60 by reference:

Subpart D	40 CFR 60.40 to 60.46
Subpart Da	40 CFR 60.40a to 60.49a
Subpart E	40 CFR 60.50 to 60.54
Subpart F	40 CFR 60.60 to 60.64
Subpart I	40 CFR 60.90 to 60.93
Subpart K	40 CFR 60.110 to 60.113
Subpart O	40 CFR 60.150 to 60.154
Subpart Y	40 CFR 60.250 to 60.254
Subpart DD	40 CFR 60.300 to 60.304
Subpart GG	40 CFR 60.330 to 60.335
Subpart HH	40 CFR 60.340 to 60.344
Subpart Ka	40 CFR 60.110a to 60.115a
Subpart LL	40 CFR 60.380 to 60.386
Subpart OOO	40 CFR 60.670 to 60.676

(5) Chapter 74:26:22—Emission Standards for Asbestos Air Pollutants

This chapter was updated to reference the most recent version of the CFR (40 CFR 61.140 to 61.156).

Issues

EPA Region VIII reviewed and commented on a draft of the revisions to ARSD 74:26 on September 16, 1987. Several of the revisions proposed by the State Department of Water and Natural Resources were not approved by the State Board of Minerals and Environment due to inadequate public notice. Among the revisions not adopted by the Board was an addition to ARSD 74:26:01:31 (conditions for obtaining a variance) which would have prohibited the issuance of variances in a nonattainment area for the pollutant for which the area is in nonattainment. This revision would have brought the State's variance structure in line with section 110(i) of the Clean Air Act, which would permit no less stringent provision. The existing variance provision is one of several deficiencies in the State New Source Review (NSR) regulations for nonattainment areas, which EPA proposed to disapprove on February 25, 1986 (51 FR 6564).

South Dakota has one area designated as nonattainment (Rapid City, for TSP). With the repeal of the Federal TSP standard on July 1, 1987 (52 FR 24634), certain NSR requirements will no longer apply in the Rapid City area. However, until the State PM_{10} SIP is approved and the TSP nonattainment area is redesignated, the nonattainment area NSR requirements (including the offset provisions) in the existing South Dakota SIP still apply. (The existing South Dakota NSR regulations were approved on November 3, 1981 (46 FR 54541).) The State is required to submit adequate NSR regulations as part of its PM_{10} SIP, which the State is in the process of developing. The variance provision (as well as the other NSR program deficiencies) must be addressed before the PM_{10} SIP can be approved by EPA.

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the DC Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

(1) Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

(2) Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

(3) Grandfathering pre-1979 use of the refined H+1.5L formula (40 CFR 51.100(ii)(2)).

Although EPA generally approves the State's stack height rules on the grounds that they satisfy 40 CFR Part 51, EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir. 1988). If EPA's response to the *NRDC* remand modifies the July 8, 1985 regulations, EPA will notify the State that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by the State and source owners or operators. The State, in a letter dated May 11, 1988, has agreed to make such changes to its regulations as appropriate if the July 8, 1985 stack height regulations are modified. In addition, EPA is interpreting this commitment as an agreement to reevaluate any affected permits for conformance to any revisions to the regulations. The State agrees with this interpretation, as confirmed in a telephone conversation on July 11, 1988.

Adequacy of State Submittal

As received by EPA, the January 28, 1988 submittal was lacking several elements necessary for EPA review and processing. Missing elements included:

(1) Evidence that the State has actually adopted the revisions to the State regulations (i.e., a copy of the revised regulations signed and dated by the appropriate State official).

(2) Evidence of adequate opportunity for public participation:

(a) A copy of the notice of public hearing, including certification of the date it was published and verification that adequate public notice was provided to affected parties;

(b) Certification of the date, time, and place at which the public hearing was held; and

(c) Any public comments, and the State's responses to them.

(3) A specific listing of what revisions were made.

These additional materials were submitted by the State on February 26, 1988.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 1, 1988.

Final Action

EPA hereby approves the revisions to ARSD 74:26 as part of the South Dakota SIP. As stated earlier, the EPA approval of the stack height regulations in ARSD

74:26 is given with the understanding that the State will revise as necessary its regulations to comply with Federal requirements after the decision in the *NRDC* v. *Thomas* remand is made. Today's action approves revisions to the existing NSR program.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 1988. This action may not be challenged later in proceedings to enforce its requirements. (see 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Sulfur oxides, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of South Dakota was approved by the Director of the Federal Register on July 1, 1982.

Date: August 18, 1988.

Lee M. Thomas,

Administrator.

Part 52 Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

Subpart QQ—South Dakota

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2170 is amended by adding paragraph (c)(11) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(11) On January 28, 1988, the Governor submitted a plan revision (1) updating citations to Federal regulations in the South Dakota air pollution control regulations (Administrative Rules of South Dakota 74:26), (2) adopting new ambient air quality standards for particulates (PM_{10}), (3) revising the State administrative procedures for handling permit hearings and contested cases, and (4) correcting deficiencies in the stack height regulations.

(i) Incorporation by reference

(A) Revisions to the Administrative Rules of South Dakota (ARSD) 74:26:01:12, ARSD 74:26:01:35, ARSD 74:26:01:37, ARSD 74:26:01:64, ARSD 74:26:08 through ARSD 74:26:23, inclusive, and addition of a new section, ARSD 74:26:02:35, were revised through November 24, 1987.

3. Add a new § 52.2180.

§ 52.2180 Stack height regulations.

The State of South Dakota has committed to revise its stack height regulations should EPA complete rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir. 1988). In a letter to Douglas M. Skie, EPA, dated May 11, 1988, Joel C. Smith, Administrator, Office of Air Quality and Solid Waste, stated:

"* * * We are submitting this letter to allow EPA to continue to process our current SIP submittal with the understanding that if EPA's response to the NRDC remand modifies the July 8, 1985 regulations, EPA will notify the State of the rules that must be changed to comport with the EPA's modified requirements. The State of South Dakota agrees to make the appropriate changes."

[FR Doc. 88–19165 Filed 9–1–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3436–7]

40 CFR Parts 260, 264, 265, and 270

Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today providing an interpretation of certain terms and provisions, and correcting typographical and other errors, that originally appeared in the revised final standards for hazardous waste tank systems (51 FR 25422, July 14, 1986). These interpretations and amendments are being made in response to litigation and numerous inquiries that the Agency has received on certain aspects of the final rule.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, (800) 424-9346 (in Washington, DC, call (202) 382–3000)), or William J. Kline, (202) 382–7917, Office of Solid Waste (OS–322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

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I. Background

On July 14, 1986, EPA issued a final rule that revised the standards for hazardous waste storage and treatment tank systems (51 FR 25422). Since then, the Agency has received requests for interpretation of a number of terms or provisions of the final rule, and has found several typographical errors in the rule. In addition, the revised tank system standards were challenged by industry petitioners in *Edison Electric Institute (EEI). et al.* v. *U.S. EPA*, No. 86–1549 (D.C. Circuit). This notice provides additional interpretation and clarification of the final rule, both in response to public inquiry and in settlement of the *EEI* litigation. This notice also corrects a number of typographical errors.

II. Discussion of Issues Requiring Interpretation

Three major areas of the final rule require further clarification: (1) The exemptions for wastewater treatment systems and elementary neutralization tank systems, (2) issues concerning secondary containment requirements, and (3) the applicability of the immediate response exemption under 40 CFR 265.1(c)(11) and 270.1(c)(3).

A. Scope of the Exemptions for Wastewater Treatment/Elementary Neutralization Tank Systems

1. Effect of Revised Tank System Standards on Wastewater Treatment/ Elementary Neutralization Units

On November 17, 1980, EPA promulgated an amendment to the hazardous waste standards that suspended applicability of the requirements in 40 CFR Parts 122 (now codified in Part 270), 264, and 265 to owners and operators of wastewater treatment tanks and elementary neutralization tanks (45 FR 76074).

In the July 14, 1986, revised standards for hazardous waste tank systems (51 FR 25422), the Agency, in response to evidence indicating a high incidence of failures in piping and other equipment ancillary to tanks, made a special effort to focus on the proper management of such equipment. Thus, all equipment that is ancillary to the tank and used "to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site" was made subject to the revised standards (see definition of "ancillary equipment", 40 CFR 260.10). EPA used the term "tank system" to emphasize that both the tank and its ancillary equipment must be managed in accordance with the revised standards. EPA has received several inquiries regarding the extent to which the term "tank system" might result in previously exempt wastewater treatment/neutralization tanks being regulated by the revised hazardous waste tank system standards.

In the July 14, 1986, rulemaking, the Agency had no intention of altering the scope of the November 17, 1980, exemption for such units as provided under 40 CFR 264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v) by subjecting the ancillary equipment of such exempt tanks to regulation. EPA attempted to make this point clear in the preamble of the revised standards (see 51 FR 25462). However, numerous parties believe the preamble language is still ambiguous. This ambiguity was also an issue in the *EEI* litigation. To add to the confusion of the status of these exemptions, EPA inadvertently neglected to amend the 40 CFR 260.10 definitions of "elementary neutralization unit" and "wastewater treatment unit" to reflect the Agency's intent to address hazardous waste tank systems, rather than simply hazardous waste tanks. In this notice, EPA corrects this oversight.

In order to remove any remaining ambiguity over this issue, EPA is today amending the wastewater treatment and elementary neutralization unit definitions to clarify that the exemptions apply to the tank systems, not just the tank. The only additional equipment intended to be covered under the revised standards was ancillary equipment that is associated with a regulated hazardous waste storage or treatment tank.

Thus, if a wastewater treatment or elementary neutralization unit is not subject to the RCRA Subtitle C hazardous waste management standards, the ancillary equipment connected to the exempted unit is likewise not subject to the Subtitle C standards. Similarly, the exemptions apply to sumps that meet the definition of a tank in 40 CFR 260.10 and that are used for the purpose of conveying hazardous wastewater to an exempted wastewater treatment or elementary neutralization unit (including conveyance by way of intermediate sumps, tanks, and holding ponds) since such sumps are ancillary equipment to the exempted tanks. Also, the revised hazardous waste tank system standards do not apply to ancillary equipment that is associated with hazardous waste management units other than storage or treatment tanks (*e.g.*, surface impoundments).

2. Clarification of "Wastewater Treatment Unit"

One of the conditions under 40 CFR 260.10 for qualifying as a wastewater treatment unit is that the unit must be part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act. EPA has received numerous inquiries regarding the meaning of the term "wastewater treatment facility."

Based on EPA's property-boundary interpretation of the term "facility" under RCRA and the purpose of the exemption, which is to exclude tank systems subject to regulation under the Clean Water Act, it is EPA's position that in order for a wastewater treatment unit to be covered by the exemption, it must be part of an on-site wastewater treatment facility. Accordingly, any hazardous waste tank system that is used to store or treat the wastewater that is managed at an on-site wastewater treatment facility with an National Pollution Discharge Elimination System (NPDES) permit or that discharges to a Publicly Owned Treatment Works (POTW), is exempt from the RCRA regulations. Whether the wastewater is conveyed from the tank system directly to the treatment unit or indirectly by way of intermediate sumps, tanks or holding ponds does not affect the applicability of the exemption. For example, this exemption would apply if a sump is used to collect the rinse from periodic cleaning of utility boilers and this wastewater is then conveyed to a wastewater treatment unit at the same facility. Also, the means of conveyance of the waste between storage and treatment does not affect the applicability of this exemption. The applicability of the exemption does not depend on whether the wastewater is piped or trucked, or conveyed in any other manner to the wastewater treatment facility within the boundaries of the facility generating the wastewater. Likewise, the applicability of the exemption does not depend on whether the on-site wastewater treatment facility also treats wastewater generated off-site.

However, any tank system that was employed in managing wastewater at a facility prior to its off-site transfer to another location, whether or not the off-site location includes an NPDES permitted wastewater treatment facility, or a facility that discharges to a POTW sewer system, is not covered by this exemption.

EPA intends that this exemption apply to any tank system that manages hazardous wastewater and is dedicated for use with an on-site wastewater treatment facility. However, if a tank system, in addition to being used in conjunction with an on-site wastewater treatment facility, is used on a routine or occasional basis to store or treat a hazardous wastewater prior to shipment off-site for treatment, storage, or disposal, it is not covered by this exemption. Unless the tank system otherwise qualifies for some other exemption, it would be subject to the revised standards for hazardous waste tank systems.

A final clarification of this exemption concerns an on-site wastewater treatment facility that has no discharge to surface water. As previously stated in 45 FR 76078 (November 17, 1980), the wastewater treatment unit exemption is intended to cover only tank systems that are part of a wastewater treatment facility that (1) produces a treated wastewater effluent which is discharged into surface waters or into a POTW sewer system and therefore is subject to the NPDES or pretreatment requirements of the Clean Water Act, or (2) produces no treated wastewater effluent as a direct result of such requirements. This exemption is not intended to apply to wastewater

treatment units that are not required to obtain an NPDES permit because they do not discharge treated effluent.

B. Issues Regarding Secondary Containment Requirements

The Agency has also received numerous requests for interpretation of the regulatory provisions concerning the secondary containment requirements. The areas of confusion include; the meaning of welded flanges, the exemption for certain types of joints and connections, the exemption of above-ground sealless valves, the extent of required leak detection for concrete liners, and the secondary containment of pressurized piping with automatic shut-off devices.

1. Welded Flanges

The primary purpose of a flange is to enable connection of piping to vessels, pumps, valves, and other equipment. A flange connection provides an easy means of removing equipment from the pipe system for inspection, maintenance, repair, or replacement. Like other piping connections, flanges can be joined to piping by two basic techniques: threaded joints or metallurgical bonds (e.g., welds). If a piece of equipment is connected to piping by a threaded joint, it may be difficult to remove the equipment without disassembly of a portion of the piping system or without loosening other pipe-threaded connections. If the equipment is welded to the pipe, the pipe must be cut to remove the equipment. In contrast, equipment joined together with flanged connections can be easily removed by unbolting the flanges.

In §§ 264.193(f) and 265.193(f) of the revised hazardous waste tank system standards, EPA exempted welded flanges from the requirement to have secondary containment as long as the flanges were visually inspected on a daily basis. Numerous questions have been raised as to the intended meaning of the term "welded flange" because EPA did not define this term in the July 14, 1986, final rules. Apparently, several different meanings can be attributed to the term.

A term typically used in national piping codes, "welded flange" refers to welding only the piping to the flange. The flange-to-flange seal is achieved by mechanical seals, such as gaskets and o-rings. The flanges are usually held together by bolts. For a perfect seal, the bolt holes would have to be eliminated, and a circumferential weld made at the flange-to-flange joint. However, EPA is not aware of any national standards or codes that discuss this type of weld. And, most important, such a weld would defeat the purpose of the flange—i.e., to allow easy coupling and uncoupling of equipment from the piping system.

In exempting welded flanges from secondary containment, EPA intended to discourage the use of threaded joints, which EPA believes are susceptible to more frequent and larger quantities of releases than welded flanges. Threaded joints are used in metals where the walls are thick enough to withstand considerable pressure and corrosion after reduction in thickness due to threading. Threading is not a precise machining operation, and filler materials such as "pipe dope" are necessary to block the spiral leakage path.

Several characteristics of threaded joints make them more susceptible to leakage than welded flanges. Threads notch the pipe and reduce its strength and fatigue resistance. Enlargement and contraction of the flow passage at threaded joints creates turbulence. Thus, corrosion and erosion may be aggravated at the point where a pipe has already been thinned by threading. The tendency of pipe wrenches to crush pipes and fittings limits the torque available for tightening threaded joints thereby possibly excluding the necessary amount of tightening. For low-pressure systems, a slight rotation in the joint may be used to impart flexibility to the system, but this same rotation may cause leaks to develop in higher-pressure systems. In some metals, galling (i.e., a wearing down) occurs when threaded joints are disassembled.

Flanged joints come in a wide variety of types and facings. Welded-neck flanges provide joints as strong as the pipe under all types of static and cyclic loading. Slip-on, socket-weld, and lap-joint flanges provide joints as strong as the pipe under static loading but have lower resistance to cyclic stresses.

EPA realizes that flanged connections cannot be considered equivalent to an all-welded pipe system without flanges and will, therefore, pose a potential leak source. However, welded flanges eliminate, in EPA's opinion, the point of most probable leakage—i.e., the threaded pipe connection to the flange. With respect to potential leakage, flanges are superior to threaded connections because of the higher quality and more consistent workmanship and supervision associated with flange assembly and because of the inherent problems with threaded joints discussed above. While the flange-to-flange seals can leak, the occurrence of leakage from flanges is much lower than from threaded joints due to the larger seal surface area for the flange joint (a large surface on flange face versus a few sealing threads in the threaded connection). Also, with proper selection of bolt materials and washers, the mechanical seal can be kept under continuous compressive force, whereas the threaded joint relies on thread sealing compound to compensate for the contraction and expansion of the threaded joint. In any case, if a leak does occur in the mechanical seal it can be easily detected visually and corrected immediately.

Weld-neck and lap-joint flanges are preferable to socket-weld and slip-on flanges because they provide the greatest resistance to static stress. Socket-weld and slip-on flanges provide a lesser degree of structural integrity because the welds may eventually weaken, particularly from cyclical stress (vibration, hammering, opening/closing of valves, etc.). Nevertheless, EPA believes that any of these welded flanges, if properly specified, installed, inspected, and maintained in accordance with American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), and other piping component standards, and if properly managed in compliance with the revised hazardous waste tank system standards (e.g., compatibility, design certification, installation certification, inspections, and response to leak/spills), should pose a very low risk of leakage. For example, a properly designed piping system should take cyclical loading into account and use pulsation dampers, flex joints, expansion joints, etc., to eliminate or substantially minimize the effect of cyclical stresses. Thus, as specified on the revised tank system rules, the Agency believes secondary containment is not necessary for aboveground welded flanges (i.e., welded at the joint of the pipe to the flange) that are visually inspected on a daily basis. For the purpose of §§ 264.193(f) and 265.193(f) EPA interprets the term "Welded flange" to mean weld-neck, lap-joint, slip-on, and socket-weld flanges.

2. Applicability of Exemption for Certain Types of Joints and Connections

Since promulgation of the revised tank system standards, EPA has received numerous inquiries regarding the intended scope of the exemption from secondary containment for welded joints and welded connections. For example, inquirers have requested clarification on the applicability of this exemption to plastic piping connections, and compression, soldered/brazed and other tubing connections.

A wide diversity of joints/connections can be used in the construction of a hazardous waste tank system. Considering the broad spectrum of reliability that can be expected of the joint/ connection, given such variables as material of construction, method of joining, quality control of joint/ connection assembly, etc., the issue is which types of joints/connections are sufficiently "welded" so as to be exempt from the requirement of secondary containment.

In general, and as previously discussed, one of EPA's main concerns lies with threaded fittings and joints. As explained below, fittings and joints that avoid the inherent problems associated with threaded fittings and joints, and that thereby provide a more reliable connection, are the types of fittings and joints most likely to be considered "welded" (that is to say, permanently joined in such a fashion as to be comparable to welding in reliability) and thus eligible for exemption from the secondary containment requirement. This exemption is only applicable to aboveground piping systems that are visually inspected on a daily basis.

a. *Plastic piping connections.* Plastic pipe and fittings may be joined by a solvent-cement, by heat fusion, or by a mechanical device such as threads or a ring seal. A brief description of each type of joint is given below:

- Solvent cement softens the surfaces of the components, which then solidify as the solvent evaporates.
- With heat fusion, the surfaces are heated with special tools until they have softened. When engaged, the softened surfaces flow together, forming a joint as the material cools. There are three basic types of heat-fused joints: butt fused, socket or insert fused, and saddle fused.
- Mechanical means or devices can be used to develop a pressure seal. Types of mechanical joints include threaded joint, compression gasket joint, compression fitting joint, clamped insert-fitting joint, bell-and-spigot gasket or push-on joint, flanged joint, and flare joint.

Of all the joining techniques, solvent-cementing and heat fusion can be considered equivalent to welding in metal pipe systems. In both cases, the plastic is melted or "welded" together. The choice of the particular bonding depends on the type of plastic. Polyvinylchloride (PVC) and chlorinated polyvinylchloride (CVPC) pipes are solvent cemented, but polyvinylidene fluoride (PVDF) and polypropylene (PP) pipes require heat fusion, since they are not susceptible to solvent cementing. As with all joining techniques, the leak characteristics depend on the quality of workmanship involved. If the plastic components are properly joined, the risk of leakage should be the same as that of welded pipe.

According to ASTM standards, the pressure rating of solvent-cemented joints, properly fabricated, is equivalent to the pressure rating for the original pipe, after a reasonable time has been allowed for the joint to cure. The pressure rating of well-made, heat-fused joints is the same as the pressure rating for the original pipe after the material in the joint has cooled to the pipe temperature.

However, EPA notes that care must be taken in the selection and application of a particular plastic pipe. The pipe must be suitable for the internal fluid and the external conditions. For example, some pipes may need to be wrapped to prevent stress cracking from ultraviolet light.

Flared-tube joints, insert fittings, and threaded joints are not as reliable as heat fusion and solvent-cement joining techniques and have a greater incidence of leaks than do the welded pipes. Of these, threaded joints have the greatest likelihood of leaking, insert fittings the next greatest, and flared-tube joints the least likelihood of the three.

Depending on the type of material and/or the manufacturer, certain joining devices may lower the maximum pressure rating of the piping system. Typically, threaded and mechanical joints of particular plastics may lower the maximum pressure rating (of the pipe joined) by as much as 50 percent.

Given this information, EPA is convinced that solvent-cemented and heat-fused connections in plastic piping systems are analogous to welded metallic connections and should thus be considered "welded" for purposes of the exemption from secondary containment requirements under 40 CFR 264.193 and 265.193. Mechanical joints, however, would need secondary containment.

The methods used to join plastic pipes and fittings depend on the type of plastic(s) being joined. Applicable ASTM practices should be consulted to ensure that the method used is compatible with the materials being joined. In addition, the recommendations of the manufacturer should be considered when determining which method and the details of the procedure to be used.

The ASTM standards provide specifications, test methods, practices, and guides for plastic pipes and fittings made from these plastics. Plastic pipes and fittings made from several other types of plastic—most notably polypropylene (PP) and poly(vinylidene fluoride)(PVDF)—are commonly available in a wide variety of sizes. However, they are not covered as such by ASTM specifications.

b. *Tubing connections.* Since promulgation of the revised standards for hazardous waste tank systems, the Agency has received numerous questions concerning the equivalence of tubing components to all-welded piping. These components, used in making connections to valves, instruments, pressure gauges, and other ancillary devices, employ soldered and brazed joints, compression-fittings, and flared-fitting joints.

EPA does not have sufficient information to determine that these types of connections are equivalent to "welding" and thus is not exempting these connections from the requirement of secondary containment. The Agency believes that further consideration of an exemption for these connections is necessary and welcomes any data that addresses the reliability of these connections.

i. *Soldered and brazed joints.* Soldering is a metal-joining process wherein a nonferrous alloy is heated to a suitable temperature and fused to the metals being joined. The filler metal (solder) is distributed between closely fitted surfaces of the joint by capillary attraction. In general, solders are lead-tin alloys and may contain antimony, bismuth, and other elements.

Soldered joints are most widely used in pipe or tubing sizes 2 inches and smaller where the heat requirements are less burdensome. Properly made, the joints are completely impervious. Soldered joints should not be used in areas where plant fires are likely because exposure to fire rapidly and completely melts the joints. Nor should they be used where the pipe contains flammable or toxic fluids or where the piping is subject to thermal shock or mechanical vibrations.

Brazing is a metal-joining process wherein a nonferrous metal is heated to a suitable temperature and fused to the metals being joined. The filler metal is distributed between the closely fitted surfaces of the joint by capillary attraction.

Silver-brazed joints are similar to soldered joints, except they require a temperature of about 1100°F for fusion to occur. Silver-brazed joints are used where temperature or the combination of temperature and pressure is beyond the range of soldered joints. They are also more reliable in the event of plant fires and are more resistant to vibration.

Braze welding is a welding process using a nonferrous filler metal having a melting point below that of the base

metals, but above 800 °F (427 °C). The filler metal is not distributed in the joint by capillary attraction.

EPA believes that soldered and brazed fittings are not equivalent to welded piping. Regardless of how well these joints are made, they will continue to be a greater source of leakage than a welded connection, which has the strength of the pipe itself. However, if installed properly and within their design limitations, EPA believes that these joints have a very low risk of leakage. If a leak does occur, it should be visually detected in most circumstances, and tubing normally has a piping take-off valve for isolation. Tubing also generally has small bores so leaks will normally be minor, except in high-pressure service.

Although the Agency acknowledges that these types of connections are somewhat less reliable than a welded connection, EPA believes that the combination of a relatively low risk of leakage, the required compliance with standards for proper design, installation, and inspection, and the impracticality of designing secondary containment for such connections may make a reasonable case for exempting these connections from the requirement for secondary containment. The Agency is continuing to study this issue and may amend the regulations in the future to provide such an exemption for these connections.

ii. *Compression Fittings.* A compression fitting can be an integral part of a tank system component (e.g., the fitting is built into the valve or pressure gauge), or it can be a separate piece that is threaded to the component. These fittings are used where the tubing has too high a ratio of wall thickness to diameter for flaring or where the tubing lacks sufficient ductility for flaring. The seal is made by a ferrule ring that is slipped over the end of the tube and compressed onto the tube by a compression nut on the fitting. The ferrule ring has two sealing surfaces: a smooth-bore inner-diameter surface that is compressed onto the tube surface, and a smooth conical-shaped outer-diameter surface that makes a metal-to-metal seal to a matching machined-cone surface in the body or housing of the compression fitting. The sleeve must be considerably harder than the tubing, yet still ductile enough to be diametrically compressed. It also must be as resistant as the tubing to corrosion by the fluid handled. Because the ferrule is under great compression force, a very tight seal is obtained. This force is usually sufficient to overcome differences in coefficients of thermal expansion of the materials used for the tube and fitting, normal vibration, and other factors that would cause threaded joints to leak.

Properly designed and manufactured compression fittings rarely leak. They are used in highly critical applications, such as connections for fuel lines and hydraulic systems on aircraft. Flareless compression fittings are used extensively and can be designed for systems up to 60,000 pounds per square inch gauge (psig). The ANSI B31.3 Code lists no restrictions for compression fittings, except that they be safeguarded if used in severe cyclic conditions. Leaks, when they occur, are usually attributed to one of the following causes:

—Dirt or debris trapped on the sealing surface;

—Improper torqueing (too loose or over-tightening);

—Wear or scoring from excessive removal and reinstallation of the connection;

—Damage from handling during installation or removal; or

—Excessive vibrations or bending moments at the tube-to-fitting interface.

EPA believes that compression fittings used on metallic tubing may be nearly as reliable as welded connections. EPA is considering amending the rules to exempt metal tubing that uses compression fittings (but not with a threaded connection between the fitting and device) from the secondary containment requirement.

The Agency is convinced, however, that secondary containment should be required for plastic piping connections that use compression fittings. Although plastic piping can be joined in a manner similar to compression fittings for metal piping, the technique is substantially different. Since metals are ductile, the ferrule metal seal and the tubing are both actually compressed by the compression nut. On the other hand, plastics are not as ductile or as strong as metals, and a seal is made by the much lower compressive force of an elastomer sealing ring. Thus, EPA does not believe that these plastic systems afford sealing equivalent to that of solvent-cemented or fused joints.

iii. *Flared-fitting joints.* Flared-fitting joints are used for ductile tubing in cases where the ratio of wall thickness to the diameter is small enough to permit flaring without cracking the inside surface. The tubing must have a smooth interior surface. A flared fitting that employs a sleeve avoids torsional strain on the tubing and minimizes vibration fatigue on the flared portion of the tubing. More labor is required for assembly, but it is more resistant to temperature cycling than other tubing fittings and is unlikely to be damaged by over-tightening. For these fittings, less control of tube diameter is required.

The Agency believes that flared-fitting joints, although not as reliable as compression fittings, still present a low risk of leakage. However, given the lack of available data on the reliability of flared-fitting joints, EPA is unable at this time to determine whether these joints should be exempted from the requirement of secondary containment. The Agency may consider this issue in a future rulemaking.

3. Exemption of Aboveground Sealless Valves

As previously discussed, 40 CFR 264.193 and 265.193 of the final rule exempt certain aboveground piping system components from the secondary containment requirement. EPA has received several inquiries regarding an apparent inconsistency between the discussion of these exemptions in the preamble (51 FR 25450, July 14, 1986) and the list of exemptions codified in 40 CFR 264.193(f)(1)–(4) and 265.193(f)(1)–(4) (51 FR 25475 and 25481). Sealless pumps are exempted under §§ 264.193(f) and 265.193(f) because they do not use traditional packing materials, which are a common source of leakage. Similarly, the Agency intended to exempt sealless valves, as mentioned in the preamble discussion, provided that a welded connection is used to join the sealless valve to the piping. However, the regulatory exemption refers to sealless pumps, but not sealless valves. Thus, today EPA is correcting its omission of sealless valves from the regulatory language of 40 CFR 264.193(f)(3) and 265.193(f)(3) by adding sealless valves to the list of piping components that need not be provided with secondary containment.

4. Extent of Required Leak Detection.

Sections 264.193(b) and 265.193(b) set out the performance standards for secondary containment systems. Additional details on how to meet these performance standards are found in §§ 264.193(c) and 265.193(c). EPA has received several inquiries regarding the intent of the wording in 40 CFR 264.193(c)(3) and 265.193(c)(3) which states that secondary containment systems must be:

> Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours * * *.

Numerous inquirers took this provision to mean that the Agency was intending that a leak detection capability be provided both within, and external to, the secondary containment structure. Several other inquirers requested clarification of whether the Agency requires detection of failure of either the primary or secondary containment structures or the presence of any release, or both.

Under this provision, EPA intended that the leak detection component of a secondary containment system promptly detect any release from the primary structure into the secondary containment structure. EPA used the wording, "Provided with a leak detection system that is designed and operated so that it will detect failure of either the primary or secondary containment structure", to ensure that double-walled tanks which detect failure of either the primary or the secondary containment structure (e.g., via loss of pressure in the interstitial space between the two walls) meet the requirements of §§ 264.193(b) and 265.193(b). This provision should not be interpreted to require leak detection outside of the secondary containment structure in order to detect failure of the secondary containment structure.

5. Requirements for Concrete Liners

In 40 CFR 264.193(e) (1) and (2), and 265.193(e) (1) and (2), EPA promulgated standards applicable to external liners and vault systems. The external liner requirements of 40 CFR 264.193(e)(1) and 265.193(e)(1) address the subject of liners generically. For example, they do not differentiate between synthetic membrane liners and concrete. On the other hand, the requirements for vault systems under 40 CFR 264.193(e)(2) and 265.193(e)(2) are applicable only to concrete.

However, EPA did not intend that concrete used, for example, as a base and diking material for secondary containment of an aboveground tank or onground tank should be subject to requirements significantly different from concrete that is used in the construction of a secondary containment vault. Certain of the requirements promulgated for concrete vaults are appropriate and are intended to be applied to situations where concrete is used in the construction of any secondary containment structures. Thus, concrete liner systems must also meet the more specific requirements of 40 CFR 264.193(e)(2) (iii) and (iv) and 265.193(e)(2) (iii) and (iv) in order to meet the general performance standards under 40 CFR 264.193(e)(1) (iii) and (iv) and 265.193(e)(1) (iii) and (iv), which specify that the liner system be free of cracks or gaps and designed to prevent migration of the waste. Chemical-resistant water stops at all joints, as specified in 40 CFR 264.193(e)(2)(iii) and 265.193(e)(2)(iii) are appropriate for any concrete structure serving as a secondary containment device. Likewise, given the relative permeability of concrete, the Agency believes that most secondary containment concrete structures, vaults or otherwise, will require an impermeable coating or lining that will prevent migration of waste into the concrete as specified in 40 CFR 264.193(e)(2)(iv) and 265.193(e)(2)(iv). Such coating or lining must also be compatible with the waste(s) managed within the secondary containment structure.

6. Secondary Containment of Pressurized Piping with Automatic Shut-Off Devices.

EPA has received a number of questions regarding the exemption from secondary containment of pressurized piping with automatic shut-off devices.

Under 40 CFR 264.193(f)(4) and 265.193(f)(4), aboveground pressurized piping systems with automatic shutoff devices that are visually inspected on a daily basis are exempt from the secondary containment requirement. Furthermore, this provision allows this exemption even if welded flanges, welded joints, welded connections, sealless valves, and sealless or magnetic coupling pumps are not used. However, the Agency is reconsidering this exemption. EPA may have over-estimated the effectiveness of automatic shut-off devices. Although these devices should certainly limit the quantity of waste released in case of a substantial failure somewhere in the piping system (e.g., pipe rupture), they would be unlikely to have any effect on reducing the number or size of releases in piping systems due to small or slow leaks at valves, connections, flanges, etc.

It was not EPA's intent to prescribe less importance to small leaks in pressurized piping systems. In fact, such less-than-major leaks would be of greater concern in pressurized piping systems compared to nonpressurized systems due to the potential to release larger quantities of hazardous waste.

Thus, the Agency believes that it may be prudent to require all aboveground piping systems, pressurized as well as nonpressurized, and even with automatic shut-off devices, to use welded joints, sealless valves, sealless or magnetic coupling pumps, etc., in order to be exempted from the secondary containment requirement. In fact, automatic shut-off devices may also need to be welded so as not to be a source of leakage. Using this approach, automatic shut-off devices might be used to protect against catastrophic releases and serve as a means to limit the size of the secondary containment system(s), where needed, rather than serve as a means for the entire piping system to be exempted from secondary containment. EPA is considering proposing such an amendment to the tank system standards in the near future.

C. Extent of Cathodic Protection for Primary Tanks

EPA received several inquiries regarding the intent of the 40 CFR 264.193(e)(3)(ii) and 265.193(e)(3)(ii). That regulation specifies double-walled tanks must be "protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell * * *." Apparently, this wording has been interpreted to mean that cathodic protection must be provided for the interior surface of the primary tank. This was not EPA's intent.

With respect to the interior of the primary tank, this requirement was chiefly intended to address the excessive or accelerated corrosion of the primary tank's interior surface resulting from incompatibility between the tank construction material and the stored waste(s). This provision thus reiterates the requirement found elsewhere in the standards (e.g., 40 CFR 264.191(b), 264.192(a)), that accelerated corrosion of the primary tank's interior surfaces must be prevented. However, this provision does not mandate cathodic protection of the interior surface of primary tank structures.

D. Application of the Immediate Response Exemption to Sumps

As part of the settlement of the *EEI* litigation, EPA agreed to clarify the applicability of the immediate response exemption under 40 CFR 264.1(g)(8) and 265.1(c)(11) to sumps. The July 14, 1986, final rule discussed three types of sumps that may be regulated as tanks under this revised rule: "temporary tanks," secondary containment sumps, and primary containment tanks. With respect to temporary tanks, i.e., tanks used for storage of waste in response to a leak or spill, and other temporary, unplanned occurrences, the Agency stated that no Subpart J standards were applicable since such storage was exempted from these regulatory requirements under 40 CFR 264.1(g)(8) and 265.1(c)(11) (51 FR 25445). Those sections (along with 40 CFR 270.1(c)(3))

exempt any person from permitting requirements and regulatory standards for "treatment or containment activities taken during immediate response to * * * [a] discharge of a hazardous waste", except requirements concerning preparedness and emergency procedures. The purpose of the exemption is to allow appropriate immediate response to hazardous waste discharges in emergency situations where treatment or storage is necessary but the facility owner or operator would not have had sufficient previous warning to comply with regulatory standards or obtain a RCRA permit for such treatment or storage (51 FR 25445, July 14, 1986); (48 FR 2509, January 19, 1983). A sump that may be used to collect hazardous waste in the event of a spill, whether accidental or intentional, and that is not designed to serve as a secondary containment structure for a tank storing hazardous waste, is generally exempt from regulatory and permitting requirements so long as it is used to contain hazardous waste only as an immediate response to such a spill.

Sumps that serve as part of a secondary containment system, i.e., to collect spills from a primary containment vessel storing hazardous waste, are subject to all applicable requirements for tank systems except for the requirement to obtain secondary containment. (51 FR 25441, July 14, 1986). In contrast to "temporary tanks", secondary containment sumps and all other secondary containment structures, are specifically designed to serve as the collection device for spills of hazardous waste from an adjacent primary containment vessel.

Finally, except as noted in section II.A. above, sumps that store hazardous waste as primary containment vessels are subject to all tank system requirements, including the requirement to obtain secondary containment (or a variance). Primary containment sumps are sumps designed to collect and transport routine and systematic discharges of hazardous waste (51 FR 25441, July 14, 1986). Sumps designed to serve as the storage for hazardous waste from periodic cleaning of utility boilers, for example, are primary containment vessels, although as explained above they will still qualify for an exemption from the tank system requirements if they are used as ancillary equipment to an exempted wastewater treatment or elementary neutralization unit. See Section II.A. *supra*.

In short, upon consideration of 40 CFR 264.1(g)(8) and 265.1(c)(11) and the interrelationship of these provisions with the July 14, 1986 final rule, EPA believes that some sumps may be exempt from regulation under this provision. This interpretation is consistent with the preamble discussion of the spill exemption provision (48 FR 2508, January 19, 1983). As explained in that preamble, the purpose of the provision was to address emergency situations, whether due to accidental discharges or to spills during routine maintenance of equipment, where there is no time to comply with technical and procedural requirements pertaining to storage and treatment of hazardous waste (48 FR 2509, January 19, 1983). This rationale is inapplicable to units constructed for the purpose of containing hazardous waste from routine and systematic discharges of hazardous waste or designed to serve as the secondary containment for a tank system treating or storing hazardous waste.

III. Correction of Typographical Errors

On August 15, 1986, EPA published in the **Federal Register** a notice of corrections to the revised final tank system standards (51 FR 29430). Since that time, a number of additional typographical or coding errors in the final rules or in the notice of corrections have been brought to EPA's attention.

Several coding errors were a result of EPA's omission on several occasions of the word "system" when the term "tank system" as opposed to "tank" was intended to be used. In general, it is the Agency's intent that both a regulated hazardous waste tank and its ancillary equipment be subject to the revised standards of July 14, 1986. As such, EPA promulgated a definition of "tank system." Although the Agency tried to ensure that the term "tank system" was incorporated, wherever applicable, into the final rule, EPA apparently overlooked several situations where this term should have been likewise inserted. As previously discussed in Section II.A.1, the definition of "elementary neutralization unit" and "wastewater treatment unit" should have included the term "tank system." Likewise, the word "system" was inadvertently omitted from 40 CFR 264.190 and 265.190. In these paragraphs, the exemption from secondary containment was intended to apply to any tank and its ancillary equipment, i.e., any portion of the tank system, situated inside a building with an impermeable floor. In 40 CFR 264.190(b) and 265.190(b) a different omission occurred. Although the Agency's intent is not to require secondary containment of tank systems, including sumps, that serve the purpose of secondary containment, EPA does intend that these secondary containment systems, or portions thereof, must meet the design, installation, and operation requirements for a secondary containment system in accordance with 40 CFR 264.193(b)–(i) and 265.193(b)–(i). It is EPA's intent that these units be exempted only from 40 CFR 264.193(a) and 265.193(a), that, in any case, is redundant of the provision requiring secondary containment.

Another omission occurred in 40 CFR 264.193(f) and 265.193(f) in that EPA neglected to include aboveground sealless valves under the exemption from secondary containment. As evidenced in the preamble discussion for the July 14, 1986 standards (51 FR 25450), it was the Agency's intent that the exemption be applicable to these valves. A detailed discussion of this omission is provided in Section II.B.3.

EPA, in the process of including tank systems in the applicability section of the closure and post-closure requirements in Subpart G (40 CFR 265.110), inadvertently deleted the previously existing 40 CFR 265.110(b)(2), that addresses the applicability of Subpart G to waste piles and surface impoundments. Consistent with 40 CFR 264.110, EPA is today reinstating this provision in 40 CFR 265.110 and renumbering the paragraph as applied to tank systems. Today's rule also incorporates a conforming change into 40 CFR 264.114 and 265.114. In the revised tank system standards, EPA promulgated specific closure and post-closure care requirements in 40 CFR 264.197 and 265.197 and stated that tank systems also must meet the requirements of Subparts G and H, unless otherwise specified. EPA neglected to make the cross-reference in 40 CFR 264.114 and 265.114 to allow alternate post-closure care for certain tank systems as specified in CFR 264.197 and 265.197.

Several typographical errors have also been brought to the Agency's attention. In the first Note for 40 CFR 264.196 and 265.196, the reference to RCRA section 3004(u) and 3004(w), respectively, is a mistake. The correct reference should be RCRA section 3004(v). Another typographical error appeared in 40 CFR 265.201(c)(3) where a wrong citation of a paragraph was made. Instead of referring to "40 CFR 265.192(c)," a provision that has nothing to do with the level of waste in a tank, "40 CFR 265.201(b)(3) " requiring that uncovered tanks be operated to ensure at least 60 centimeters of freeboard, should have been cited. In this notice, EPA is also correcting these errors.

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IV. Compliance With Administrative Procedure Act Requirements

Section 553(b) of the Administrative Procedure Act generally requires proposal of administrative rulemakings to receive public comment prior to promulgation. However, section 553(b) excludes certain types of rules from the prior notice-and-comment requirement, including interpretative rules and rules for which public comment is unnecessary. Because today's notice includes only interpretative statements concerning existing hazardous waste tank system requirements and minor technical corrections, prior notice and the solicitation of public comment on this notice is unnecessary.

List of Subjects in 40 CFR Parts 260, 264, 265, and 270

Administrative practice and procedure, Environmental protection, Hazardous waste, Tank systems, Waste storage and treatment, Water pollution control, Water supply.

Dated: August 24, 1988.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

40 CFR Part 260 is amended as follows:

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, and 3019 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939).

2. Section 260.10 is amended by revising the following definitions in alphabetical order:

§ 260.10 Definitions.

* * * * *

"Elementary neutralization unit" means a device which: (1) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in § 261.22 of this chapter, or they are listed in Subpart D of Part 261 of the chapter only for this reason; and

(2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in § 260.10 of this chapter.

* * * * *

"Wastewater treatment unit" means a device which: (1) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in § 261.3 of this chapter, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in § 261.3 of this chapter, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of this Chapter; and

(3) Meets the definition of tank or tank system in § 260.10 of this chapter.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 264 is amended as follows:

3. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002, 3004, and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

4. Section 264.114 is amended by revising the first sentence to read as follows:

§ 264.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of or decontaminated unless otherwise specified in §§ 264.197, 264.228, 264.258, 264.280 or § 264.310. * * *

5. Section 264.190 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 264.190 Applicability.

* * * * *

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in § 264.193. * * *

(b) Tank systems, including sumps, as defined in § 260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in § 264.193(a).

* * * * *

6. Section 264.193 is amended by revising paragraph (f)(3) to read as follows:

§ 264.193 Containment and detection of releases.

* * * * *

(f) * * *

(3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

* * * * *

7. Section 264.196 is amended by revising the first Note to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

Note.—The Regional Administrator may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under RCRA section 3004(v), 3008(h), or 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

* * * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 265 is amended as follows:

8. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

9. Section 265.110 is amended by redesignating existing paragraph (b)(2) as (b)(3), and adding a new paragraph (b)(2) to read as follows:

§ 265.110 Applicability.

* * * * *

(b) * * *

(2) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in § 265.228 or § 265.258; and

* * * * *

10. Section 265.114 is amended by revising the first sentence to read as follows:

§ 265.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in §§ 265.197, 265.228, 265.258, 265.280, or 265.310. * * *

11. Section 265.190 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 265.190 Applicability.

* * * * *

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements in § 265.193. * * *

(b) Tank systems, including sumps, as defined in § 260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in § 265.193(a).

* * * * *

12. Section 265.193 is amended by revising paragraphs (f)(3) and (g)(3)(iii) to read as follows:

§ 265.193 Containment and detection of releases.

* * * * *

(f) * * *

(3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

* * * * *

(g) * * *

(3) * * *

(iii) If contaminated soil cannot be removed or decontaminated in accordance with paragraph (g)(3)(ii) of this section, comply with the requirements of § 265.197(b);

* * * * *

13. Section 265.196 is amended by revising the first Note to read as follows:

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

Note.—The Regional Administrator may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under RCRA section 3004(v), 3008(h), or 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

* * * * *

14. Section 265.201 is amended by revising paragraph (c)(3) to read as follows:

§ 265.201 Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks.

* * * * *

(c) * * *

(3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3);

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

40 CFR Part 270 is amended as follows:

15. The authority citation for Part 270 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

16. Section 270.2 is amended by revising the following definitions in alphabetical order:

§ 270.2 Definitions.

* * * * *

Elementary neutralization unit means a device which: (a) Is used for neutralizing wastes only because they exhibit the corrosivity characteristic defined in § 261.22 of this chapter, or are listed in Subpart D of Part 261 of this chapter only for this reason; and (b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in § 260.10 of this chapter.

* * * * *

Wastewater treatment unit means a device which:

(a) Is part of a wastewater treatment facility which is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in § 261.3 of this chapter, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of this chapter, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of this chapter; and

(c) Meets the definition of tank or tank system in § 260.10 of this chapter.

* * * * *

[FR Doc. 88-19630 Filed 9-1-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6806]

Suspension of Community Eligibility; Alabama et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is

published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Community Name	County	Community No.	Effective date
Texas	Unincorporated areas	Kinney	481176	Sept. 2, 1988.
Do	Kountze, city of	Hardin	480845	Do.
Do	La Vernia, city of	Wilson	481050	Do.
Do	Ladonia, city of	Fannin	480811	Do.
Do	Lake Ransom Canyon, village of	Lubbock	481577	Do.
Do	Marfa, city of	Presidio	481493	Do.
Do	Morton, city of	Cochran	480127	Do.
Do	Nash, city of	Bowie	480058	Do.
Do	Needville, town of	Fort Bend	480820	Do.
Do	Unincorporated areas	Newton	480499	Do.
Do	Normangee, city of	Leon	480436	Do.
Do	Primera, town of	Cameron	481198	Do.
Do	Reno, city of	Lamar	481254	Do.
Do	San Diego, city of	Duval	481199	Do.
Do	Seagraves, city of	Gaines	480239	Do.
Do	Shamrock, city of	Wheeler	480656	Do.
Do	Shepherd, city of	San Jacinto	480554	Do.
Do	Tenehe, city of	Shelby	481006	Do.
Do	Trinidad, city of	Henderson	480333	Do.
Do	Trinity, city of	Trinity	481033	Do.
Do	Tuscola, city of	Taylor	481017	Do.
Do	Valentine, town of	Jeff Davis	481131	Do.
Do	Warren City, city of	Gregg	480840	Do.
Alabama	Tallassee, town of	Tallapoosa	010069	Do.
Florida	Pahokee, city of	Palm Beach	120219	Do.
Do	Pembroke Park, town of	Broward	120052	Do.
Kentucky	Unincorporated areas	Rowan	210203	Do.
Do	South Shore, city of	Greenup	210091	Do.
Do	Taylor Mill, city of	Kenton	210246	Do.
North Carolina	Kill Devil Hills, town of	Dare	375353	Do.
Do	Unincorporated areas	Lenoir	370144	Do.
Do	Kinston, city of	....do	370145	Do.
Do	Bayboro, town of	Pamlico	370183	Do.
Do	Vandemere, town of	....do	370438	Do.
South Carolina	Port Royal, town of	Beaufort	450028	Do.
Do	Sullivans Island, township of	Charleston	455418	Do.
Tennessee	Unincorporated areas	Roane	470267	Do.
Do	Rockwood, city of	....do	475443	Do.
Do	Unincorporated areas	Rutherford	470165	Do.
Do	....do	Sumner	470349	Do.
Do	Tazewell, city of	Claiborne	475449	Do.
New York	Poquott, village of	Suffolk	361518	Sept. 16, 1988.
Do	Alabama, town of	Genessee	361067	Do.
Do	Amsterdam, city of	Montgomery	360440	Do.
Do	Ancram, town of	Columbia	361312	Do.
Do	Arkport, village of	Steuben	360763	Do.
Do	Ballston Spa, village of	Saratoga	360710	Do.
Do	Black Brook, town of	Clinton	361309	Do.
Do	Boonville, town of	Oneida	360519	Do.
Do	Bradford, town of	Steuben	361207	Do.
Do	Broadalbin, village of	Fulton	361128	Do.
Do	Canastota, village of	Madison	360393	Do.
Do	Cazenoria, village of	....do	360394	Do.

State	Community Name	County	Community No.	Effective date
Do	Centre Island, village of	Nassau	360461	Do.
Do	Clinton, town of	Dutchess	361334	Do.
Do	Deposit, village of	Delaware	360043	Do.
Do	East Otto, town of	Cattaraugus	360067	Do.
Do	Fair Haven, village of	Cayuga	360109	Do.
Do	Fort Edward, village of	Washington	361536	Do.
Do	Gainesville, village of	Wyoming	361511	Do.
Do	Gallatin, town of	Columbia	361316	Do.
Do	Grafton, town of	Rensselaer	361150	Do.
Do	Grand View-on-Hudson, village of	Rockland	360680	Do.
Do	Greenport, village of	Suffolk	361004	Do.
Do	Hannibal, village of	Oswego	360652	Do.
Do	Hardenburgh, town of	Ulster	361578	Do.
Do	Herkimer, village of	Herkimer	360306	Do.
Do	Hornell, city of	Steuben	360776	Do.
Do	Hornellsville, town of	....do	360777	Do.
Do	Huntington, town of	Suffolk	360796	Do.
Do	Huntington Bay, village of	....do	361543	Do.
Do	Islip, town of	....do	365337	Do.
Do	Jackson, town of	Washington	361444	Do.
Do	Madison, town of	Madison	361292	Do.
Do	Martinsburg, town of	Lewis	360372	Do.
Do	Morristown, village of	St. Lawrence	360706	Do.
Do	New Castle, town of	Westchester	360921	Do.
Do	Orangetown, town of	Rockland	360689	Do.

Issued: August 28, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-19988 Filed 9-1-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6906]

Final Flood Elevation Determinations; Arizona; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Notice of Final Flood Elevation Determinations of base (100-year) flood elevations previously published at 53 FR 19795 on May 31, 1988. This correction notice provides a more accurate representation of the flood hazards in the unincorporated areas of Mohave County, Arizona, because it reflects revisions made to the FIRM to remove the base (100-year) flood elevations along the Colorado River.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: According to information developed by the U.S. Bureau of Reclamation for the Colorado River Floodway Task Force, the flood elevations on the Colorado River may be significantly lower than previously predicted. As a result, the Federal Emergency Management Agency has determined that the base (100-year) flood elevations previously determined for the Colorado River in the unincorporated areas of Mohave County, Arizona, should be retracted. Therefore, the Agency hereby gives notice of the correction to the Notice of Final Determinations of base flood elevations for selected locations in Mohave County previously published at 53 FR 19795 on May 31, 1988, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67).

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The final base (100-year) flood elevations for selected locations in Arizona are correctly revised to read as follows:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Mohave County (unincorporated areas) (FEMA Docket No. 6906)	
Topock Marsh:	
Entire area	*460

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: August 29, 1988.

[FR Doc. 88-19987 Filed 9-1-88; 8:45 am]

BILLING CODE 6718-03-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 542

[APD 2800.12 CHGE 58]

General Services Administration Acquisition Regulation; Novation Agreements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), is amended by adding subpart 542.12 to establish a uniform policy for processing novation agreements for GSA contracts that were set aside for small business. The intended effect is to ensure uniform handling of requests to recognize third-party successors in interest to GSA contracts.

EFFECTIVE DATE: September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566-1224.

SUPPLEMENTARY INFORMATION:

Background

The General Services Administration (GSA) published GSAR Notice 5–264 in the **Federal Register** (53 FR 26092) on July 11, 1988, inviting comments from interested parties. Public comments received supported the proposal or did not object to its prospective application. Comments received from various offices within GSA have been reviewed, reconciled, and incorporated when appropriate, in the final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA indicated in GSAR Notice 5–264 that this rule may have an economic effect on a substantial number of small entities and invited comments from the public. No comments were received on the impact of the proposed rule. The final regulatory flexibility analysis which is available from the office identified above indicates that when a request to process a novation agreement is processed under FAR 42.12 the rule may affect small business firms that have been awarded contracts under the small business set-aside program and large business firms who are successors in interest to such small businesses. During FY 87, GSA awarded 3,598 contracts valued at $197,004,000 to small businesses under the small business set-aside program. Historical data is not maintained that would identify how many requests to process novation agreements involve a transfer from a small business to a large business. The rule will have a beneficial impact in that it will preserve the integrity of the small business set-aside program. However, the rule may also have a detrimental impact from the perspective of individual small business firms because it would adversely impact them by reducing the value of their assets in the event of a sale of all or part of their assets to a large business concern. This rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 48 CFR Part 542

Government procurement.

PART 542—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 542 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for Part 542 is amended by adding Subpart 542.12 to read as follows:

Subpart 542.12—Novation and Change-of-Name Agreements

Sec.
542.1203 Processing agreements.

3. Subpart 542.12 is added to read as follows:

Subpart 542.12—Novation and Change-of-Name Agreements

542.1203 Processing agreements.

In determining whether it is in the Government's interest to recognize a successor in interest under FAR 42.12, the contracting officer shall consider, in addition to information provided by affected contracting and contract administration offices, information provided by the agency small business technical advisor where the contract was awarded to a small business under a small business set-aside and the third-party successor is a large business. Under the following conditions the contracting officer should refuse to recognize the successor and nonconcur in the transfer of the contract(s): (a) There is adequate reason to believe that the transaction is intended to circumvent the requirements and objectives of the small business program, or (b) the contract involved is a multiple award schedule (MAS) contract and other MAS small business contracts exist for the same special item number(s). If the MAS contract involves both set-aside and non-set-aside special item numbers, the contracting officer shall cancel that part of the contract related to the set-aside items and process the novation request for the non-set-aside items under FAR 42.12.

Dated: August 19, 1988.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88–20007 Filed 9–1–88; 8:45 am]
BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Reporting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved revisions to DFARS Subpart 204.6 and DD Forms 350 and 1057. Much of the redesign pertains to the data elements that were previously added to Part E of the DD Form 350 for fiscal year 1988. These revisions do not have a significant effect beyond the internal operating procedures of the Department of Defense and publication for public comment is not required.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Effective October 1, 1988, contract reporting will be accomplished using revised forms DD Form 350 and DD Form 1057. Extensive revisions have been made to the two forms and to DFARS Subpart 204.6. Much of the redesign pertains to the data elements that were previously added to Part E of the DD Form 350 for fiscal year 1988.

In addition to changes to the forms, the instructions in DFARS Subpart 204.6 have been extensively revised. In some cases, the instructions have been changed for clarity or simplification without a corresponding change to the forms. The numbering of subsections within 204.671–5 and 204.672–5 has been revised to simplify text search and reference.

Four additional data elements have been added (items B4, B5E, B5F, B5G) to capture data regarding Taxpayer Identification Numbers at a future time. These data elements are to be left blank until further regulations are issued. The corresponding text at 204.671–5 is reserved.

A new data element (D4E) concerns the percent of premium associated with special treatment for disadvantaged businesses and institutions.

Orders under Federal Schedules and under another agency's contract have been revised in Item B13, Kind of Contracting Action, and changes should be noted at Item C2, Reason Not Synopsized; Item C5, Type of Contract; Item C13C, Place of Manufacture; and Item D1, Type of Business. Item D4, Preference Program, is a restructuring for reporting of preference programs and Item E1 is a relocation of Consulting Service Contract.

Various other report elements have been simplified or clarified, and clauses have been restructured at 252.204.

Coverage regarding Distribution of Defense Subcontracts Placed Overseas, formerly at 204.670–4, has been restructured and relocated at 204.674. The clause at 252.204–7005 has also been restructured.

With respect to awards of $25,000 and less, revisions have been made to be consistent with the data collected on the DD Form 350 and in the Federal Procurement Data System.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88–610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Owen L. Green III,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 204 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Subpart 204.6 is revised to read as follows:

Subpart 204.6—Contract Reporting

Sec.

204.601 Record requirements.
204.670–1 Scope.
204.670–2 Definitions.
204.670–3 Solicitation provisions and contract clauses.
204.670–4 Numbering of subpart.
204.671 Individual contracting action report (DD Form 350).
204.671–1 Scope.
204.671–2 Purpose.
204.671–3 Applicability and coverage.
204.671–4 Due date and distribution.
204.671–5 Instructions for completion of DD Form 350.
204.671–6 Instructions for preparing magnetic tape of DD Form 350 actions, DD–P&L (M) 1014.
204.672 Monthly contracting summary of actions $25,000 or less (DD Form 1057).
204.672–1 Scope.
204.672–2 Applicability and coverage.
204.672–3 Due date and distribution.
204.672–4 Definitions.
204.672–5 Instructions for completion of the DD Form 1057.
204.672–6 Instructions for preparing magnetic tape of DD Form 1057 actions. DD–P&L(M)1015.
204.673 Record of weighted guidelines method application (DD Form 1547).
204.674 Overseas distribution of defense subcontracts (DD Form 2139).
204.674–1 Definition.
204.674–2 Purpose.
204.674–3 Contract clause.

Subpart 204.6—Contract Reporting

204.601 Record requirements.

(a) The Defense Contract Action Data System (DCADS) meets the record retention requirements of FAR 4.601.

(d) The information required to be transmitted to the Federal Procurement Data System shall be transmitted by Washington Headquarters Services via the DCADS based on feeder reports (DD Forms 350 and 1057) submitted to it by the Departments.

204.670–1 Scope.

This section prescribes uniform reports which are required to be prepared by purchasing and contract administration offices in order to meet the requirements of the Federal Procurement Data System and the DCADS, and to provide management with necessary information to help formulate, change or measure the effectiveness of acquisition policy.

204.670–2 Definitions.

As used in 204.671 and 204.672, the following terms have the meanings stated below:

"Commercial and Government Entity (CAGE) Code" means:

(a) A code assigned by the Defense Logistics Services Center (DLSC) to identify a contractor or manufacturer; or

(b) A code assigned by a member of the North Atlantic Treaty Organization (NATO) and maintained by DLSC; or

(c) One of the above codes used in subpart 204.6 to identify contractors.

"Contract Administration Office" means the office which awards or executes a contracting action as defined below, when such action is accomplished by an ACO on behalf of the Contracting Officer who assigned contract administration responsibility to that office. This includes actions taken by a TCO relating to the settlement of terminated contracts.

"Contracting Action" means any written action obligating or deobligating funds in connection with the purchasing, renting, leasing, or otherwise obtaining supplies, services, or construction. The term includes: preliminary contractual instruments; letter contracts; definitive contracts, including notices of award; purchase orders; BPA calls; job orders; task orders; delivery orders; contigency orders; administrative notices; communication services authorizations (CSA's); production lists; priced exhibits; other orders under existing contracts; and contract modifications such as change orders or agreements, supplemental agreements, funding changes, option exercises, and notices of termination or cancellation.

"Contracting Office" means any office which awards or executes a contracting action when that action is accomplished by the Contracting Officer. Included in the term are activities which place orders against DoD contracts, against another agency's contract, or against Federal Supply Schedules, when such action is not taken in conjunction with an assigned contract administration responsibility.

"Nonprofit Institution" means any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inure to the benefit of any private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature, and state, local, and other non-Federal Government agencies.

"United States and Outlying Areas" is defined by Federal Information Processing Standard Publication (FIPS PUB) 55–2, *Guideline: Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States and Outlying Areas.* Included are American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of Palau, Puerto Rico, the U.S. Minor Outlying Islands and the Virgin Islands of the U.S.

204.670–3 Solicitation provisions and contract clauses.

(a) Contractor Establishment Code. The contracting officer shall insert in solicitations exceeding the small purchase limit the provision at 252.204–7004 when it is appropriate to request the offeror to supply his Contractor Establishment Code.

(b) Contractor and Government Entity (CAGE) Codes. CAGE is the umbrella term for DoD assigned codes used to identify commercial and government activities. CAGE codes have also been known in the past as Federal Supply Codes for Manufacturers (FSCM), Federal Supply Codes for NonManufacturers (FSCNM), MILSCAP

codes, H–4 codes, H–8 codes, or other terms.

(1) The contracting officer shall insert the provision at 252.204–7007 when it is appropriate to request the offeror to supply its CAGE code.

(2) The contracting officer shall assist the offeror in obtaining the required CAGE code(s).

(3) Prospective offerors may not be denied a solicitation or bid set because the offeror does not have a CAGE code.

204.670–4 Numbering of subpart.

The numbering in this subpart differs from the standard DFARS numbering system in that the principal subdivisions within subsections 204.671–5 and 204.672–5 pertain to the parts of DD Form 350 or the section of DD Form 1057. These subdivisions are further segmented by reference to the report item or line number. Where appropriate, there is further segmentation by code descriptors. This provides for ease in identifying coverage for a specific item and entry code. For example, 204.672–5(b) Item B13 Code 1 readily identifies the citation as belonging to Code 1 of Item B13 of Part B of the DD Form 350.

204.671 Individual contracting action report (DD Form 350).

204.671–1 Scope.

This section prescribes the reporting on DD Form 350 of individual contracting actions in excess of $25,000. This reporting requirement has been assigned Report Control Symbol: DD–P&L(M)1014.

204.671–2 Purpose.

The DD Form 350 is used to collect data on contract placement statistics within DoD. The data gathered by means of the DD Form 350 are used for reporting the size and distribution of DoD contracting actions; types of contracts used; numbers and amount of contracts placed with categories of contractors such as small, small disadvantaged, and women-owned small business concerns; the extent competed and other essential facts about contract actions over $25,000 written by DoD. In many respects, the data summarized from the DD Form 350 are used to measure the efficiency and adequacy of the way in which the DoD acquisition program is executed. The data serve as the basis for internal DoD reports as well as reports to other departments of the executive branch, Congress, GAO and others. The data frequently provide a basis for new or revised acquisition policies. Therefore, it is most important that accurate and complete data be reported in a timely manner through the DD Form 350.

204.671–3 Applicability and coverage.

(a) DD Form 350 consists of 6 parts. Part A identifies the report and the reporting activity. Part B identifies the transaction: contract number, contractor, dollars, product, etc. Part C gathers data concerning contracting procedures, labor statute requirements and contracting methodology. Part D gathers data relating to the various Socioeconomic programs to which DoD acquisitions are subject. Part E is set aside for departmental or higher authority use. Part F identifies the cognizant reporting official.

(b) DD Form 350 shall be prepared for each contracting action obligating or deobligating more than $25,000 which is executed by a Component of the Department of Defense except as indicated in (d) below. At the option of the headquarters of the Departments, contracting offices shall submit an automated record in lieu of a hardcopy DD Form 350. The contract file shall contain the hardcopy DD Form 350, an automated facsimile or an electronic equivalent as directed by the headquarters of the Departments for each individual contracting action in excess of $25,000.

(c) Multiple reports are required for a single action when both the Foreign Military Sales Program and other programs are involved (see 204.671–5(b), Item B9). Multiple reports may be required if more than one type of contract is involved (see 204.671–5(c) Item C5(i)).

(d) DD Form 350 shall not be prepared for the following contracting actions:

(1) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange Service. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(2) Transactions for purchase of land, or rental or lease of real property.

(3) Orders from GSA Stock and the GSA Consolidated Purchase Program.

(4) Transactions which involve Government bills of lading or transportation requests.

(5) Grants for basic research with educational institutions and other nonprofit organizations.

(6) Orders placed against indefinite delivery contracts entered into by the Military Sealift Command or orders against indefinite delivery contracts for petroleum products entered into by the Defense Fuel Supply Center or the Defense General Supply Center. The estimated value of the orders to be placed in each fiscal year against each Military Sealift Command contract shall be reported on a separate DD Form 350 in the appropriate fiscal year. The total estimated value of the orders to be placed against each Defense Fuel Supply Center contract and each Defense General Supply Center contract for petroleum and petroleum products, shall be reported at the time of contract award.

(7) Awards to individuals in support of dependent schools, e.g., principals and teachers. These translations shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350.

(8) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract.

(9) Orders placed by the Services for resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10–500. Orders under each such contract shall be consolidated monthly by the Services and cumulative dollar amounts reported on a single DD Form 350 in accordance with departmental regulations. DLA activities shall submit individual rather than consolidated reports.

(10) Vouchers processed by the U.S. Army Contracting Agency, Europe (USACAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 in accordance with departmental regulations.

204.671–4 Due date and distribution.

(a) The signed original of each DD Form 350, or electronic equivalent, shall be forwarded by the contracting office within 3 working days after the date on which the dollars were actually obligated or deobligated by the contracting office, with the following exceptions:

(1) For those Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the signed original of the DD Form 350 shall be forwarded within 10 working days.

(2) For actions executed in the month of September only, prescribed due dates may be extended 10 calendar days for the forwarding of reports in order to assure complete coverage of all contracting actions occuring in the fiscal year at the option of the activity set forth in 204.671–4(d) below.

(b) Corrected reports shall be distributed in exactly the same manner as original reports.

(c) DD Forms 350 shall be submitted as unclassified documents. If necessary, the commodity description (Item B12E) may be omitted and the word "classified" inserted in lieu thereof. In addition, enter 9999 in Items B12A and B12D and zeros (000) in Item B12C. Should further modification of coding items on DD Form 350 be deemed necessary for security classification purposes, the appropriate departmental offices identified in (d) below shall be contacted for special instructions.

(d) Distribution of DD Form 350 shall be as follows:

(1) Army contracting offices (including Corps of Engineers Civil Works) to: US Army Contracting Support Agency, Attn: Contract Support Office (SFRD–KS), Room 1C642, the Pentagon, Washington, DC 20310–0103.

(2) Navy contracting offices as directed by NAVSUP–024.

(3) Air Force contracting offices as directed by SAF/AQCX.

(4) Defense Logistics Agency contracting offices as directed by HQ DLA.

(5) All other contracting offices of the Department of Defense shall forward the signed originals to the address shown in (d)(1) above.

(e) Contracting offices shall prepare DD Form 350 for contracting actions in excess of $25,000 which are accomplished by contract administration offices and are reportable in accordance with 204.671–3. To facilitate such reporting, the ACO or TOC shall transmit to the contracting office on whose behalf the action was taken a copy of the contractual instrument clearly annotated in the heading in large block letters as the "DD FORM 350 REPORTING COPY" within one working day after the action date. The contracting office shall prepare and submit the DD Form 350 within 3 working days after the receipt of this "REPORTING COPY."

204.671–5 Instructions for completion of DD Form 350.

(a) Part A of DD Form 350,

Item A1, Type of Report.

Code 0—Original Report. Enter this code if this is an original report (including termination actions) and complete sections A through F as appropriate.

Code 1—Cancelling Report. Enter this code if it is necessary to cancel a previously submitted report in its entirety (i.e., the report should not have been submitted), or if there was an error in Item A2, A3 or B1 of the original report. To cancel a report, complete only Items A1, A2, A3, and B1. Code 1 shall not be used for termination or cancellation actions (Item B13 is coded E, F or G).

Code 2—Correcting Report. Enter this code if it is necessary to correct a previously submitted report for any error other than in Items A2, A3 and B1. Enter the same codes in Items A2, A3, and B1 that were entered on the incorrect report and correct the codes in only those items being corrected. Leave all remaining items blank. If it is necessary to change Item A2, A3, or B1 regarding a previously submitted report, that report must be cancelled and a new "original" report submitted with the correct data.

Item A2, Report Number.

(i) Each contracting office shall assign to DD Forms 350 a unique 4-position number with alpha or numeric characters. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each such activity in order to prevent duplication of report numbers.

(ii) If Item A1 is coded 1 or 2 (a canceling or correcting action), then enter the report number assigned to the report being canceled or corrected.

Item A3, Contracting Office Code. Enter in Item A3 the code assigned to the contracting office in accordance with DoD Procurement Coding Manual, Volume III, DoD 4105.61M.

Item A4, Name of Contracting Office. Enter, in the space provided, sufficient detail to establish the identity of the contracting office submitting the report.

(b) Part B, DD Form 350.

Item B1, Contract Number. Enter, left justified, either the Department of Defense contract number or, for orders under contracts awarded by other Federal agencies, the contract number of that Federal agency.

(i) For DoD contracts, enter the basic (13 alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.70. Contracts numbered under exceptions permitted by 204.7001 shall include the identification of the contracting office and the fiscal year in accordance with 204.7003–1 (a) and (b) and Appendix N, plus 5 characters. Do not enter other supplementary procurement instrument numbers as part of the contract number; such numbers shall be entered in Item B2. Also, do not enter dashes, slants, or similar punctuation marks, and do not show spaces between numbers or letters in the PIIN.

(ii) For other agency contracts, enter the contract number of the federal agency as it appears in the contractual instrument, except that spaces between characters shall not be shown, and dashes, slants, and other punctuation marks shall not be entered (e.g., for GS–00S–27773, enter GS00S27773; for GP–16251 A, enter GP16251A, etc.).

Item B2, Modification. Order or Other Supplementary Procurement Instrument Identification Number. If applicable, enter the supplemental procurement identification number (up to 19 characters) that was assigned in accordance with 204.7004 or other identification permitted by 204.7001. Usually calls and orders will be assigned a four position number in accordance with 204.7004–4. Usually a modification, including a modification of a call or order, will be assigned a six position modification number in accordance with 204.7004–3 or 204.7004–4(b) respectively.

Item B3, Action Date. Enter the year, month and day when a mutually binding agreement was reached. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. Enter each segment as a 2-digit number. Use 01 through 12 for January through December. For example, enter 2 January 1999 as 990102. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the funds availability.

Item B4, Completion Date. Reserved.

Item B5, Contractor Identification Information. The Contractor name and codes requested in the items B5A through B5E refer to the contractor whose name and address appears in the contract document. For contracts placed with the Small Business Administration pursuant to the Small Business Act, Public Law 85–536, section 8(a), or orders placed against a contract awarded by another agency, enter the name and codes for the contractor establishment which will be performing under the contract. For Federal Supply Schedule orders, enter the name and codes of the contractor whose name appears on the schedule, not the name and codes of the agent to whom orders may be sent. For awards to the Canadian Commercial Corporation (CCC), enter the name and codes of the

appropriate CCC office, except as noted in Item B5B.

Item B5A, Contractor Establishment Code.

(i) Enter the 9-position Contractor Establishment Code, assigned by Dun & Bradstreet, that identifies the contractor.

(ii) The Contractor Establishment Code is available from one of the following sources:

(A) The offeror's response to the solicitation;

(B) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable Contractor Establishment Code;

(C) If not provided by the successful offeror, the FPDC Contractor Establishment Code file Alphabetical Listing shall be consulted.

(D) If this listing has no entry or has multiple Contractor Establishment Codes for the establishment, the applicable Contractor Establishment Code shall be obtained by contacting the representative at the following commercial telephone numbers: 215–776–4388/4389/4390/4391. All requesters should provide the following information:

Name of requesting contracting office;
Contracting office location (city/town; state/country);
Contracting office area code and commercial telephone number;
Name of individual making the request;
Total number of requests, if more than one; and
Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable, as displayed in Items B5C and B5D.

Item B5B, Commercial and Government Entity (CAGE) Code.

(i) Enter the 5-position code assigned by the Defense Logistics Services Center (DLSC) that identifies the Contractor plant or establishment.

(ii) For awards to the Canadian Commercial Corporation (CCC), enter the code which identifies the contractor establishment performing under the contract.

(iii) The CAGE code is available from one or more of the following sources:

(A) The offeror's response to the solicitation;

(B) The bimonthly H–8 publication issued by DLSC–JBDA, Federal Center, 74 N. Washington, Battle Creek, MI 49017–3084, telephone numbers: AUTOVON 932–4725, FTS 522–4725, commercial (616) 961–4725.

(C) On-line access to the CAGE file through the Defense Integrated Data System (DIDS);

(D) On-line access to the Defense Logistics Agency CAGE file through the DLA Network; or

(E) Submission of a DD Form 2051, Request for Assignment of a CAGE Code, or electronic equivalent to DLSC–FBA at the above address. It is the responsibility of the contracting activity to request the assignment of the CAGE code by completing Section A of the DD Form 2051—*Request for Assignment of a Commercial and Government Entity (CAGE) Code.* (See 53.303–70–DD–2051). The prospective contractor will complete Section B of the form. The completed form will be submitted by the contracting activity to DLSC–FBA for processing and code assignment after it has verified the data submitted by the contractor.

(iv) Questions concerning obtaining computer tapes, electronic updates or code assignments should be directed to DLSC, Attn: DLSC–FBA, telephone numbers: AUTOVON 932–4358, FTS 522–4358, commercial (616) 961–4358.

Item B5C, Contractor name. In the space provided, enter the name (including division name) of the contractor.

Item B5D, Contractor address. In the space provided, enter the address of the contractor. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable.

Item B5E, Contractor's Taxpayer Identification Number (TIN). Reserved.

Item B5F, Parent TIN. Reserved.

Item B5G, Parent Name. Reserved.

Item B6, Principal Place of Performance. Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, place of mining, or place where a service is performed for the Government, including military installations.

(i) If more than one location is involved, show the location involving the largest dollar amount of the acquisition. Do not show more than one location in Item B6.

(ii) For purchase from regular dealers (FAR 22.601), the place of performance shall be the dealer's location if shipment is made from stock, or the subcontractor's location if shipment is made from a subcontractor's plant.

(iii) For construction contracts, report the actual site of construction.

(iv) For architect-engineering contracts, report the planned site of the construction.

(v) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(vi) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

Item B6A, City or Place Code.

(i) Where the place of performance is in the U.S. and Outlying Areas, enter the city or place code of the principal place of performance from FIPS PUB 55–2. If the city or locality is not listed, find the appropriate county in FIPS PUB 55–2 and enter the 5–digit place code for the county. For Washington, DC enter 50000. It may be necessary to refer to FIPS 55–2, Paragraph 5.2, *Entry Selection With the Aid of the Class Code,* to ensure that the correct city or place code is chosen. The class code must be used in addition to the place code in many instances to correctly identify the code which most accurately identifies the place of performance.

(ii) Leave this item blank for foreign countries.

Item B6B, State or Country Code.

(i) Enter the numeric state code for the U.S. and Outlying Area. FIPS PUB 5–2, *Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas,* or FIPS PUB 55–2 may be used for the identification of states and state equivalents in the United States and Outlying Areas.

(ii) Enter the alpha country code from FIPS PUB 10–3, *Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions,* to identify foreign countries.

Item B6C, City or Place/State or Country Names. Enter the name of the principal place of performance. If the location is the same as for Item B5D, enter the word "same". Do not leave blank.

Item B7, Type of Obligation. This item is used to identify the nature of the amount to be entered in Item B8. Enter Code 1 to show an obligation; Code 2 to show a deobligation.

Item B8, Total Dollars. Enter the net amount of funds obligated or deobligated by the contractual instrument being reported. Enter whole dollars only.

Item B9, Foreign Military Sale.

(i) If only part of a contracting action is for foreign military sales, that part (if in excess of $25,000) shall be reported on one DD Form 350, and the other part (if in excess of $25,000) shall be reported on a second DD Form 350. Any part of $25,000 or less shall be reported on the DD Form 1057.

(ii) Enter Code Y if the contracting action is under foreign military sales

arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. If not, enter Code N.

Item B10, Multiyear Contract. Enter Code Y if this report concerns multiyear contracting for supplies or services pursuant to FAR 17.1; otherwise, enter Code N.

Item B11, Total Multiyear Value. Enter the estimated multiyear contract value if Item B10 is coded Y and Item B13 is coded 1 or 3. Enter whole dollars only. Otherwise, leave this item blank.

Item B12, Principal Product or Service.

Item B12A, FSC or Service Code. Enter a Federal Supply Classification Code, a Research, Development, Test and Evaluation (RDT&E) Code, or a Service Code in accordance with Section I, Volume I of the Department of Defense Procurement Coding Manual (DoD 4105.61M). Each DD Form 350 must contain a 4–character entry for this item. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

(i) Research, development, test, and evaluation (RDT&E) is defined in FAR 35.001. Each DD Form 350 action or RDT&E shall be assigned a code beginning with the letter A in accordance with Section I, Part A of the referenced coding manual. Do not assign RDT&E codes for the acquisition (including rental or lease) of equipment, supplies, or services separately purchased in support of RDT&E work. Acquisition of services or supplies that is incidental to the fulfillment of RDT&E work, but does not require contractor RDT&E performance, shall be coded in accordance with Parts B and C, Section I of the referenced coding manual, even though such purchases are in support of RDT&E work and RDT&E funds are cited. In no case shall RDT&E codes be assigned for orders under GSA Federal Supply Schedule contracts.

(ii) Services. All services (except RDT&E actions) and lease or rental of equipment or facilities shall be coded in accordance with Part B, Section I of the referenced coding manual. Each category is assigned a series of 4-character codes for specific types of services and construction.

(iii) Supply. Acquisition of supply items shall be assigned a Federal Supply Classification (all numeric) Code from Part C, Section I of Volume I of the referenced coding manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 also may be used as a reference in identifying the correct 4-character code. Lease or rental of equipment/facilities should be coded as a service in accordance with Part B, Section I of the referenced coding manual.

Item B12B, DD Claimant Program Code. Enter the appropriate code that identifies the commodity described in Item B12E. Claimant Program Codes are defined in Section III, Volume I of the DoD Procurement Coding Manual (DoD 4105.61M).

(i) If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

(ii) If the description in Item B12E is for research and development, the objective of the research and development shall control the Claimant Program code to be entered; e.g., if the objective of the research and development is a guided missile, enter Code A20.

(iii) If the description in Item B12E is for research that cannot be identified with a particular claimant program, enter Code S10.

(iv) Contracts for ship repair, inspection and repair as necessary (IRAN), modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible.

(v) Equipment rental (including rental of automated data processing equipment (as defined at Part 70)) and utility services shall be coded S10.

(vi) If a particular claimant program cannot be identified, enter Code S10 for services or code C9E for supplies or equipment.

Item B12C, System or Equipment Code. Enter the appropriate weapons system or equipment code in accordance with Section II, Volume I of the DoD Procurement Coding Manual (DoD 4105.61M). If the action is funded by the Strategic Defense Initiative (SDI), enter code CAA in this item in preference to any other applicable code. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition. If a weapon system or equipment code is not applicable, enter 3 zeros. DLA activities will use the code assigned by the sponsoring Service.

Item B12D, Standard Industrial Classification (SIC) Code. This item identifies the SIC of the procurement (as opposed to the SIC of the Manufacturer or Dealer). Enter the SIC Code in effect at the time of award from the OMB Standard Industrial Classification Manual. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

Item B12E, Name or Description. Enter the name or brief description of the commodity or service. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Trident, Pershing, etc., or an identifying program number; e.g., WS–107A, can be used without classifying the report.

Item B13, Kind of Contracting Action.

(i) Enter one of the available codes as appropriate.

(ii) For a contract action which initially funds an award made in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons, enter the code best describing the action.

Code 1—Initial Letter Contract. Enter this code when a new letter contract is executed. For a letter contract which is designated as a modification of an existing contract, enter Code A.

Code 2—Definitive Contract Superseding Letter Contract. Enter this code when applicable. Enter code A for a definitive modification which supersedes a letter contract designated as a modification of an existing contract.

Code 3—Definitive Contract (including notice of award). Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Use this code for definitive contract awards under the Small Business Administration 8(a) Program.

Code 4—Order Against DoD Basic Ordering Agreement. Enter this code when reporting orders against basic ordering agreements, priced exhibits and production lists entered into by a DoD Component. Use Codes A–G, as appropriate, for modifications of such orders.

Code 5—Order Against DoD Contract. Enter this code when reporting orders against indefinite delivery type contracts, DLA schedules, job orders, task orders, and the like where firm obligations are created by the issuance of such documents and where the basic contract was awarded by a DoD Component. Use this code for orders place against DoD contracts with the Small Business Administration 8(a) Program. Also use this code for contracting actions placed with workshops for the blind or other

severely handicapped. Use Codes A–G, as appropriate, for modifications of such orders.

Code 6—Order/Modification Under Federal Supply Schedule. Enter this code for all contracting actions (including modifications) under a Federal Supply Schedule contract (see FAR 8.401). This includes contracting actions against Veterans Administration Supply Schedules, GSA ADP Schedule contracts and GSA Area Contracts for Utility Services.

Code 7—Order Against Another Federal Agency's Contract. Enter this code for orders against a contract awarded by another Federal agency, other than a Federal Supply Schedule. Code 7 includes modifications and orders against contracts written by the Government Printing Office, Federal Prison Industries, Tennessee Valley Authority, or the Departments of Treasury, Agriculture or Energy.

Code 8—Action With Another Federal Agency. Enter this code for all contracting actions, including modifications, placed directly with another Federal Agency where the Federal Agency is acting as the contractor. Use Code 7 for orders placed with a contractor who is performing on a contract written by another Federal Agency.

Code A—Additional Work, New Agreement. Enter this code when additional work is acquired by means of a bilateral supplemental agreement which increases the scope of existing contracts, including letter contracts.

Code B—Additional Work, Other. Enter this code when additional work is acquired by means of modification to the basic contract as follows:

(i) Exercise of options for increased quantities or extended performance.

(ii) Incremental yearly buys under multiyear contracts.

(iii) Amendments to letter contracts, supplemental agreements, and other modifying actions which add work and are made pursuant to the terms of existing contracts.

Code C—Funding Action. Enter this code for amendments to letter contracts and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multiyear contracts), increasing the estimated cost on cost reimbursement contracts, and repricing actions covering incentive price revision, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/ modification awarded in one fiscal year but not effective until a subsequent fiscal year.

Code D—Change Order. Enter this code when reporting change orders issued pursuant to the "Changes," "Differing Site Conditions," or similar provisions of existing contracts.

Code E—Termination for Default. Enter this code for termination for default.

Code F—Termination for Convenience. Enter this code for termination for convenience.

Code G—Cancellation. Enter this code for a cancellation action. Do not use this code to report the cancellation of a DD Form 350. (See Item A1).

(c) Part C of DD Form 350—The following rules apply to each of the items listed in Part C of DD Form 350:

(1) If Item B9 is coded Y or Item B13 is coded 8, leave all items in this Part C blank.

(2) If Item B13 is coded 1 through 4, 6 or A, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item.

(3) If Item B13 is coded 5, enter the same code in each item in Part C that was reported for the original contract governing this transaction.

(4) If Item B13 is coded 7, completer Items C1, C2, C3, C5, C7, C8, C9, C10, C13A, C13B & C13D based on information obtained from the agency which awarded the initial contract. Leave Items C4, C6, C11 and C13 blank. Complete Item C12 based on information in the contract document.

(5) If Item B13 is coded B through G, the correct coding is controlled by the date of the solicitation.

(i) For solicitations issued prior to 1 April 1985 (pre–CICA), leave items C6 through C9 blank and enter the same code in each other item in Part C that was reported for the original contract governing this transaction.

(ii) For solicitations issued on or after 1 April 1985 (post–CICA), enter the same code in each item in Part C that was reported for the original contract governing this transaction.

(6) If the code representing the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, enter the most accurate code now available.

Item C1, Synopsis.

Code Y—Enter if a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR 5.2.

Code N—Enter if Code Y does not apply and complete Item C2.

Item C2, Reason Not Synopsized. Leave blank if Item C1 was coded Y, if not, enter the appropriate code.

Code A—The action was not synopsized due to urgency.

Code B—The action was not synopsized due to some other reason.

Item C3, Extent Competed. Enter the appropriate code shown below.

Code A—Competed Action. Enter code A if item B13 is coded 6 or when any of the following conditions apply:

(i) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1);

(ii) Full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside a procurement for small business or labor surplus area concerns (FAR 6.2);

(iii) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received;

Note: Any procurement authorized or required by statute to be awarded to a specified source, e.g., 8(a) awards; brand name commercial products for authorized resale; or awards for utilities, except telecommunications, are excluded from Code A and shall be reported in Code B.

(iv) Contract action resulted from a contract awarded prior to CICA that used two-step sealed bidding, other sealed bidding, or was negotiated competitively.

Code B—Not Available for Competition. Enter code B when any of the following conditions apply to the award:

(i) Awards to regulated monopolies for utilities, except telecommunications, where the price negotiated is based on prices set by law or regualtion;

(ii) Brand name commercial products for authorized resale;

(iii) Procurements authorized or required by statute to be awarded to a designated source;

(iv) If the contract was awarded to the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act pursuant to FAR 19.8;

(v) Foreign Military Sales/ International Agreements;

(vi) Actions with another Federal Agency;

(vii) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD(P)) has determined that there is no opportunity for competition.

Code C—Follow-on to Competed Action. Enter Code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program

where such placement was necessitated by prior acquisition decisions (see Item C4, Code C).

Code D—Not Competed. Enter Code D when Codes A, B, or C do not apply.

Item C4, Competitive Characteristics. If Item C3 is coded B, do not complete this item. If B13 is coded 6, enter Code A. If Item B13 is coded 7, leave Item C4 blank. Otherwise, enter the code below which corresponds to the action:

Code A—Price Competition.

(i) A contract shall be reported as price competition if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices (including catalog or market prices). However, actions shall not be reported as "price competition" solely on the basis of the number of solicitations make. Contracting officers shall consider the content of the response of the solicitation, the contract history of the items purchased, and other relevant information, and shall exercise sound judgment in reporting actions as "price competition."

(ii) Even though catalog or market prices were offered, if the criteria for "price competition" as specified here have been met, then enter Code A.

(iii) A contract may also be reported as "price competition" even though only one offer is received, when offers are solicited from at least two responsible offerors who normally contend for contracts for the same or similar items.

(iv) Where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, enter code E or F as appropriate.

(v) In no case shall cost-reimbursement type contracts be coded A.

(vi) Multiple awards in such areas as subsistence, clothing, and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition," even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition."

Code B—Design or Technical Competition. Design or technical competition is present when two or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts and many initial contracts for new military weapons fall into the category of design or technical competition.

Code C—Follow-on After Price Competition and

Code D—Follow-on After Design/Technical Competition.

(i) A follow-on contract means a new acquisition (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor which continues or augments a specific military program in instances where such placement was necessitated by prior acquisition decisions. An example of a follow-on contract is one which by force of circumstances was awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor furnishing the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (i.e., price or design or technical) shall be reported as Code C or D, as appropriate.

(ii) For follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis, enter code E or F as appropriate.

Code E—Noncompetitive—Catalog of Market Price. A contracting action shall be reported Code E if there was no competition in the award and the reasonableness of price was based on established catalog or market prices of commercial items sold in substantial quantities to the general public as defined in FAR 15.804–3(c). If the award involves catalog or market prices and the criteria for "price competition" as specified in Code A above have been met, enter Code A versus Code E.

Code F—Noncompetitive—Other. Enter Code F if there was no competition in the award, the work involved was not a follow-on acquisition reportable above, and the reasonableness of price was not based on established catalog or market price reportable above. Also enter this code to report actions where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, unless a catalog or market price applies.

Item C5, Type of contract. (i) Enter the code below which corresponds to the type of contract provided for in the provisions of the action reported:

(ii) Multiple contract types. Where the action involves more than one type of contract, the predominant type based on dollars shall be entered. However, if any nonpredominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the action. The total of the DD Form 350 reports shall equal the total contract action.

(iii) Letter contracts. When reporting original letter contracts and amendments thereto, enter the code for the type of contract that will be used when the letter contract is converted to a definitive contract.

Code A—Fixed Price Redetermination.

Code J—Firm Fixed Price.

Code K—Fixed Price Economic Price Adjustment.

Code L—Fixed Price Incentive.

Code R—Cost Plus Award Fee.

Code S—Cost Contract.

Code T—Cost Sharing.

Code U—Cost Plus Fixed Fee.

Code V—Cost Plus Incentive Fee.

Code Y—Time and Materials.

Code Z—Labor Hour.

Item C6, Number of Offerors Solicited. If Item B13 is coded 6 enter Code 2. If Item B13 is coded 7, leave Item C6 blank. Otherwise, enter the code below which describes the number of offerors solicited.

Code 1—Enter if only one offeror was solicited.

Code 2—Enter if more than one offeror was solicited.

Item C7, Number of Offers Received. Enter the code below which describes the number of offers received. If Item B13 is coded 6, enter Code 2.

Code 1—Enter where only one offer was received.

Code 2—Enter when more than one offer was received.

Item C8, Solicitation Procedures. (i) This item pertains to the requirements of FAR Part 6, Subparts 6.1, 6.2, and 6.3, (with the exception of the statutory authorities for other than full and open competition (Subpart 6.3) which are reported in Item C9 below). Code A through K designate the full and open competition requirements set forth in FAR Part 6. Code M designates actions which do not require the application of the Competition in Contracting Act (see FAR 6.001(b)). Code N designates exceptions to full and open competition. (See FAR 6.3).

(ii) Modifications within the scope of a contract and delivery orders under requirements or definite quantity contracts shall be reported the same as the initial contract. Delivery orders under indefinite quantity contracts shall

be reported the same as the initial contract when the conditions in FAR 6.001(e) are met. If these conditions are not met, the delivery order shall be reported pursuant to the conditions applicable to that order.

(iii) If Item B13 is coded 6, enter Code B for single award schedules or Code F for multiple award schedules.

(iv) Enter Code K for all set-aside, including a Small Disadvantaged Business Set-Aside (see 206.203–70), a total set-aside for Historically Black Colleges and Universities (HBCU) or Minority Institutions (MIs) (see 206.207), or a portion of a Broad Agency Announcement (BAA) which was set-aside for HBCUs or MIs.

(v) Enter the code below which accurately describes the action.

Code A—Full and Open Competition—Sealed Bidding. Enter if the action resulted from an award pursuant to FAR 6.102(a).

Code B—Full and Open Competition-Competitive Proposals. Enter if the action resulted from an award pursuant to FAR 6.102(b).

Code C—Full and Open Competition—Combination. Enter if the action resulted from an award using a combination of competitive procedures (e.g., Two-Step Sealed Bidding) pursuant to FAR 6.102(c).

Code D—Architect-Engineer. Enter if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

Code E—Basic Research. Enter if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

Code F—Multiple Award Schedule. Enter if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

Code G—Alternate Source-Reduced Cost. Enter if the action resulted from use of procedures to reduce overall costs pursuant to FAR 6.202(a)(1).

Code H—Alternate Source—Mobilization. Enter if the action resulted from use of procedures for having a facility available for national defense or industrial mobilization pursuant to FAR 6.202(a)(2).

Code J—Alternate Source—Engineering/R&D Capability. Enter if the action resulted from use of procedures for establishing or maintaining an essential engineering, research, or development capability pursuant to FAR 6.202(a)(3).

Code K—Set-Aside. Enter if the action resulted from use of procedures for set-asides pursuant to 206.203–70, 206.270 or FAR 6.203.

Code M—Otherwise Authorized by Statute. Enter if the agency uses contracting procedures that are expressly authorized by statute and not addressed in FAR Part 6 (See FAR 6.001(b)). Code M should not be used for statutes addressed in FAR 6.302–5; these statutes require Code N in Item C8 and Code 5A in Item C9.

Code N—Other Than Full and Open Competition. Enter if the action resulted from use of other than full and open competition pursuant to FAR 6.3. Specifically included are those awards authorized or required by statute where, pursuant to FAR 6.302–5, acquisition was made from a specified source or other agency: Federal Prison Industries (UNICOR); qualified nonprofit agencies for the blind or other severely handicapped; Government printing or binding; or the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

Item C9, Authority for Other Than Full and Open Competition. Enter the appropriate code below when Item C8 is coded N. Explanations of the authorities are set forth in FAR 6.302.

Code 1A—Unique Source. Enter if the action was justified pursuant to FAR 6.302–1(b)(1).

Code 1B—Follow-on Contract. Enter if action was justified pursuant to FAR 6.302–1(a)(2)(ii).

Code 1C—Unsolicited Research Proposal. Enter if action was justified pursuant to FAR 6.302–1(a)(2)(i).

Code 1D—Patent/Data Rights. Enter if action was justified pursuant to FAR 6.302–1(b)(2).

Code 1E—Utilities. Enter if action was justified pursuant to FAR 6.302–1(b)(3).

Code 1F—Standardization. Enter if action was justified pursuant to FAR 6.302–1(b)(4).

Code 1G—Only One Source—Other. Enter if action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in Codes 1A through 1F above.

Code 2A—Urgency. Enter if action was justified pursuant to FAR 6.302–2.

Code 3A—Mobilization. Enter if action was justified pursuant to FAR 6.302–3(a)(2)(i).

Code 3B—Essential R&D Capability. Enter if action was justified pursuant to FAR 6.302–3(a)(2)(ii).

Code 4A—International Agreement/ Foreign Military Sales. Enter if action was justified pursuant to FAR 6.302–4.

Code 5A—Authorized by Statute. Enter if action was justified pursuant to FAR 6.302–5(a)(2)(i).

Code 5B—Authorized Resale. Enter if action was justified pursuant to FAR 6.302–5(a)(2)(ii).

Code 6A—National Security. Enter if action was justified pursuant to FAR 6.302–6.

Code 7A—Public Interest. Enter if action was taken pursuant to FAR 6.302–7.

Item C10—Subject to Labor Standards Statutes. If Item B13 is coded 6, leave Item C10 blank. Otherwise, enter the appropriate code as follows:

Code A—Walsh-Healy Act, Manufacture. Enter this code when subject to the provisions of the FAR 22.6 and the offeror represents that it is a manufacturer.

Code B—Walsh-Healy Act, Regular Dealer. Enter this code when subject to the provisions of the FAR 22.0 and the offeror represents that it is a regular dealer.

Code C—Service Contract Act. Enter this code when subject to the provisions of the Service Contract Act (see FAR Part 37).

Code D—Davis-Bacon Act. Enter this code when subject to the Davis-Bacon Act.

Code Z—Not Subject to Above. Enter this code when this action is not subject to any of the statutory requirements above.

Item C11—Certificate of Current Cost or Pricing Data. If Item B13 is coded 6 or 7, leave Item C11 blank. Otherwise, enter the appropriate code below:

Code Y—A certificate of current cost or pricing data (see FAR 15.804–4) was obtained.

Code N—A certificate was not obtained.

Code W—The requirement was waived.

Item C12, Contract Financing (Progress Payments or Advance Payments). Enter the appropriate code as follows:

Code A—Enter if the action contains the provisions at 252.232–7007, FAR 52.232–16, or Alternate I.

Code B—Enter if the action contains the clause at 252.232–7004.

Code C—Enter if the action provides Percentage of Completion Progress Payment financing (see 232.102(e)(2)) and is for either:

(i) construction; or

(ii) shipbuilding and ship conversion, alteration or repair.

Code D—Enter if the action provides Unusual Progress Payments or Advance Payments (see FAR 32.4 and FAR 32.501–2).

Code Z—Enter if none of the above apply.

Item C13—Foreign Trade Data. The term "United States" (U.S.), as used in this item, includes the United States and Outlying Areas as defined in this

subpart, but excludes the Trust Territory of Palau.

Item C13A, Number of Offerors. Enter the number of offerors of foreign end product as defined in FAR 25, or services performed by foreign concerns. If zero, enter 0; if greater than 9, enter 9.

Item C13B, Buy American Act Percent Difference.

(i) Enter 2 zeros (00) if the evaluation factor under the Buy American Act is not used.

(ii) If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a two position whole number (i.e., for 5%, enter 05; for 11%, enter 11).

Item C13C, Place of Manufacture of Foreign Product.

(i) If Item B13 is coded 6 or 7, leave Item C13C blank. Otherwise, enter the appropriate code shown below:

Code A—Enter if the end product offered is manufactured in the U.S. but 50% or more of the cost of components represents components manufactured outside the U.S.

Code B—Enter if the end product offered is manufactured, mined, or grown outside the U.S. or the service shown is performed by a foreign concern.

(ii) If neither code applies, leave blank.

Item C13D, Country of Origin. If the product is a foreign end product, or the service is performed by a foreign concern, enter the FIPS PUB 10–3 code of the Country of Origin. If more than one foreign country is involved enter the code of the predominant foreign country based on dollar value.

(d) Part D of DD Form 350—The following rules apply to each of the items listed in Part D of DD Form 350:

(1) If Item B9, Foreign Military Sale, is coded Y or if Item B13 is coded 6 or 8, leave all items in this part blank.

(2) If Item B13 is coded 1 through 4, or A, coding of all items in this Part D shall be accomplished in accordance with the coding instructions for that item, and the status of the concern, such as its size or ownership, shall be determined in accordance with FAR 19.301–70 and FAR 19.301.

(3) If Item B13 is coded 5, or B through G, enter the same code in each item in Part D that was reported on the DD Form 350 to the original contract governing this transaction.

(i) If a DD Form 350 report was not submitted because none was required for the original action, enter the code which is applicable to the original contract action governing this transaction.

(ii) If the code representing the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, enter the most accurate code now available.

(4) If Item B13 is coded 7, complete Items D1, D4A, D4B, D4D, D6 and D8 based on information from the agency which awarded the original contract. Complete Items D4C and D4B in accordance with the instructions for that item. Leave all other items in Part D blank.

Item D1, Type of Business.

Code A—Small Disadvantaged Business (SDB). Enter Code A if the award was made to an SDB concern as defined in 219.001 and the place of performance is within the United States and Outlying Areas.

Code B—Other Small Business. Enter Code B if the award was made to a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and Outlying Areas.

Code C—Large Business. Enter Code C if the award was made to a domestic large business concern, and the place of performance is within the United States and Outlying Areas.

Code D—Workshop for the Blind or Severely Handicapped. Enter Code D if the award was made to a workshop for the blind or other severely handicapped (FAR 8.701), and the place of performance is within the United States and Outlying Areas.

Code F—Hospital. Enter Code F if the award is made to a hospital, and the place of performance is within the United States and Outlying Areas.

Code L—Foreign Concern/Entity. Enter Code L if the award is made to a foreign concern, the Canadian Commercial Corporation, or a non-U.S. chartered nonprofit institution.

Code M—Domestic Firm Performing Work Outside the United States. Enter Code M if the award is made to a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and Outlying Areas.

Code N—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI). Enter Code N for an award to an HBCU/MI as defined at 226.7002 and the place of performance is within the United States and Outlying Areas.

Code P—Other Educational. Enter Code P if award was made to an educational institution not qualifying as a HBCU/MI, and the place of performance is within the United States and Outlying Areas.

Code Z—Other Nonprofit. Enter Code Z if the award was made to a nonprofit or not for profit institution, that did not meet any of the above criteria and the place of performance is in the United States and Outlying Areas.

Item D2—Reason Not Awarded to SDB. If Item B7 is coded 7, leave Item D2 blank. If item D1 above is coded B, or C, enter the appropriate code below. Otherwise, leave this item blank.

Code A—No Known SDB Source. Enter if applicable.

Code B—SDB Not Solicited. Enter this code if there was a known SDB source but it was not solicited.

Code C—SDB Solicited—No Offer. Enter if an SDB was solicited but no offer was received from such concern or the concern did not offer sufficient quantity to cover the total requirement but received a separate award for the portion bid under this solicitation.

Code D—SDB Solicited—Offer Not Low. Also use this code if the SDB was not willing to accept award of a partial Small Business set-aside portion of an action at the price offered.

Code Z—Other Reason. Report this code when a SDB did not receive the award for any other reason.

Item D3, Reason Not Awarded to Small Business Concern. A Small Disadvantaged Business is included in the term Small Business Concern. If Item B13 is coded 7, leave this item blank. If Item D1 above was coded C, enter an appropriate code from the available codes below. Otherwise, leave blank.

Code A—No Known Small Business Source. Enter if applicable.

Code B—Small Business Not Solicited. Enter this code if there was a known small business source but it was not solicited.

Code C—Small Business Solicited—No Offer. Enter if a small business concern was solicited, but no offer was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but ... received a separate award for ... portion bid on under this solicitation.

Code D—Small Business Solicited—Offer Not Low. Enter this code if a small business concern was solicited but the low or most advantageous offer was not from small business. Also enter Code D if a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

Code Z—Enter if not awarded to small business for any other reason.

D4 Preference Program.

Item D4A—Type of Small Business Set-Aside. For Historically Black Colleges and Universities and Minority Institution set-asides, enter Code A and report in D4C below. Enter the appropriate code shown below:

Code A—None. Enter this code if no set-aside preference for small business concerns was given. Enter this code for Historically Black Colleges and Universities and Minority Institution set-asides and report in D4C below.

Code B—Total Small Business Set-Aside. Enter this code if total small business set-aside preference was given pursuant to FAR 19.502–2.

Code C—Partial Small Business Set-Aside. Enter this code if partial small business set-aside preference was given pursuant to 219.502–3(70) or FAR 19.502–3.

Code D—Combined Small Business/Labor Surplus Set-Aside. Enter this code if combined labor surplus and set-aside preference was given pursuant to 219.502–70. The place of performance shown in Item B6 above must be located within a Labor Surplus Area.

Code E—Total Small Disadvantaged Business Set-Aside. Enter this code if this action was totally set-aside for small disadvantaged businesses pursuant to 219.502–72 and complete Item D4B below.

Item D4B—Type of Small Disadvantaged Business Set-Aside/SDB Preference. Enter the appropriate code shown below:

Code A—None. Enter this code if no preference was given.

Code B—Section 8(a) awards. Enter this code if the contract was awarded to the Small Business Administration (SBA) under section 8(a) of the Small Business Act pursuant to FAR 19.8.

Code C—Total SDB Set-Aside. Enter this code if the contract was awarded to as a result of SDB set-aside pursuant to 219.502–72.

Code D—SDB Evaluation Preference—Unrestricted. Enter this code if the solicitation was unrestricted but the SDB received an evaluation preference pursuant to 219.7000.

Code E—SDB Preferential Consideration—Partial Small Business Set-Aside. Enter this code if the action was partially set-aside for small business and preferential consideration was given to the SDB pursuant to 219.502–3(70).

Item D4C—Type of HBCU or MI Set-Aside Preference. If Item B13 is coded 7, use Code A. Otherwise, enter the appropriate code shown below:

Code A—None. Enter this code if the action was not set-aside for HBCUs or MIs.

Code B—Enter this code if the action was totally set-aside for HBCUs and MIs pursuant to 226.7004.

Code C—Enter this code if the action was partially set-aside for HBCUs or MIs pursuant to 226.7004.

Item D4D—Other Preference Program. Enter the appropriate code below which identifies whether or not additional preference was given in this action. Combined Small Business/Labor Surplus Set-Asides are reported in Item D4A above. The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code B or C is entered, the entry in Item B6 must be a location which on the date of the initial action was located within a labor surplus area.

Code A—Directed to Workshops. Report this code for an award to a workshop for the blind or a workshop for the other severely handicapped pursuant to FAR 8.7 for an item(s) on the Procurement List.

Code B—Partial Labor Area Set-Aside. Enter if the action was awarded to a concern in a labor surplus area wherein preference was given under partial labor surplus area set-aside procedures (FAR 20.7003).

Code C—Tie Bid Labor Surplus Area Preference. Enter this code if the contract action was awarded to a concern in a labor surplus area and tie bid preference (FAR 14.407–6) was given.

Code Z—None of the Above. Enter this code if no other code in this item applies.

Item D4E, Premium Percent. Complete only if Item D4B is coded C–E or Item D4C is coded B or C. Otherwise, leave blank.

(i) If Item D4B is coded C–3, or Item D4C is coded B or C, enter the applicable premium percentage.

(ii) If Item B13 is coded 1–4 or A and a premium percentage was paid for the contract action, enter the premium percentage as a three digit number calculated in accordance with 219.202–5(b) and rounded to the nearest tenth, (e.g., 7.55% shall be entered as 076).

(iii) If Item B13 is coded 5 or B–G, enter the same percentage as the initial contract action (see 219.202–5(b)).

(iv) If the contract did not result in the payment of a premium, enter three zeroes (000).

Item D5—Ethnic Group. If Item B13 is coded 7, leave this item blank. If the award was made to a small disadvantaged business concern, enter the code below which corresponds to the ethnic group the contractor represented (see representation provision 252.219–7005). Otherwise, leave blank.

Code A—Subcontinent Asian (Asian-Indian) American.

Code B—Asian-Pacific American.

Code C—Black American.

Code D—Hispanic American.

Code E—Native American.

Code F—Other SDB (certified/determined by SBA).

Code Z—No representation.

Item D6, Women-Owned Small Business.

Code N—Enter if the contractor's response to FAR 52.219–3 indicates the firm is not a women-owned small business.

Code Y—Enter if the response to FAR 52.219–3 indicates in the affirmative that the contractor is a women-owned small business.

Code U—Enter if the information is not available because the contractor did not complete the representation under FAR 52.219.3.

Item D7—Small Business Innovation Research (SBIR) Program (Public Law 97–219). If B13 is coded 7, leave this item blank. Otherwise, enter the appropriate code as follows:

Code A—The action is not in support of a Phase I or II SBIR Program.

Code B—The action is related to a Phase I contract in support of the SBIR Program.

Code C—The action is related to a Phase II contract in support of the SBIR Program.

Item D8, Subcontracting Plan for Small Business, Small Disadvantaged Businesses or Historically Black Colleges and Universities or Minority Institutions. Enter the appropriate code as follows:

Code A—Plan Not Included—No Subcontracting Possibilities. Enter if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.705–2(c)).

Code B—Plan Not Required. Enter if the subcontracting plan was not required (FAR 19.702(b)).

Code C—Plan Required—No Incentive Provisions. Enter if the subcontracting plan was required but the incentive provisions referenced in FAR 19.708(c) were not included.

Code D—Plan Required—Includes Incentives Provisions. Enter if the subcontracting plan was required and incentive provisions referenced in 219.708(c)(1) or FAR 19.708(c) were included for subcontracting with small

business, small disadvantaged business, historically black colleges and universities, or minority institutions.

(e) Part E, DD Form 350.

Item E1, Contracting Advisory & Assistance Services. Enter the appropriate code below:

Code Y—Enter if the action includes any Contracting Advisory & Assistance Services (CAAS) as defined in FAR 37.2.

Code N—Enter if code Y does not apply.

Item E2–E8: Reserved.

(f) Part F, DD Form 350.

Item F1, Name of Contracting Officer or Representative. Enter the name (Last, First, MI) of the contracting officer or representative.

Item F2, Signature. Contracting officer or representative.

Item F3, Telephone Number. Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

Item F4, Date. Enter date (YYMMDD) that the DD Form 350 Report is submitted.

204.671–6 Instructions for preparing magnetic tape of DD Form 350 actions, DD–P&L(M)1014.

A magnetic tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR-WHS by the DoD reporting elements specified at 204.671–4(d) to cover individual DD Form 350 transactions for each month (noncumulative). The instructions for preparing the tape are developed by DIOR–WHS with the agreement of the Departments.

204.672 Monthly contracting summary of actions $25,000 or less (DD Form 1057).

204.672–1 Scope.

This section prescribes the reporting on DD Form 1057 of contracting actions of $25,000 or less each. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 204.671–2. This reporting requirement has been assigned Report Control Symbol: DD–P&L(M)1015.

204.672–2 Applicability and coverage.

(a) A DD Form 1057 shall be prepared by each contracting office of the Department of Defense to which a reporting office code has been assigned in the DoD Procurement Coding Manual, Volume III. The DD Form 1057 shall cover all contracting actions of $25,000 or less. Separate codes may be assigned to an installation, base, or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of acquisition, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Subject to the approval of the organizations listed in 204.672–3, a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Form 1057 shall include all debit or credit contracting actions of $25,000 or less involving:

(1) Appropriated funds;

(2) Contract authorizations;

(3) Stock or other revolving funds which are replenished or reimbursed from appropriated funds;

(4) Appropriated funds transferred to the Departments, such as Military Assistance Program funds; and,

(5) Appropriated funds obligated pursuant to provisions of Public Law 85–804.

(c) The report shall exclude actions of $25,000 or less which:

(1) Involve nonappropriated funds;

(2) Involve orders placed against indefinite delivery contracts entered into by the Military Sealift Command or orders for petroleum or petroleum products entered into by the Defense Fuel Supply Center or the Defense General Supply Center. These offices shall report the estimated total cost of indefinite delivery contracts;

(3) Are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;

(4) Are orders on GSA stores depots;

(5) Involve Government bills of lading or transportation requests; or,

(6) Are for purchase of land, or rental/lease of real property.

(d) Actions and dollars shall be reported as indicated below:

(1) *Adjustments.* Revised DD Form 1057 reports shall not be submitted; but the amounts of corrections or adjustments, if required, shall be included in the report of the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "–" preceding the amount to signify a credit entry.

(2) *Number of actions.* Enter the number of actions being reported as follows:

(i) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (B) below, each call or order under a blanket purchase agreement, basic ordering agreement, or indefinite delivery contract shall be counted as an action. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(ii) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $25,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(A) Meals and lodging;

(B) Automatic deliveries, such as, bread, milk, and ice cream;

(C) Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on electricity and gas contracts for all Naval Shore Establishments.

(3) *Dollar value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. If the net amount is a decrease, enter the symbol "–" immediately preceding the amount to signify a credit entry. Do not enter parentheses.

204.672–3 Due date and distribution.

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date may be extended by 10 additional calendar days, but the cut-off date must be no later than 30 September.

(2) Letter of transmittal is not required.

(b) Distribution of the DD Form 1057 shall be as follows:

(1) Army contracting offices, including Corps of Engineers Civil works to:
U.S. Army Contracting Support Agency,
Attn: Contract Support Office (SFRD–KS), Room 1C642, the Pentagon,
Washington, DC 20310–0103

(2) Navy contracting offices as directed by NAVSUP–024.

(3) Air Force contracting offices as directed by SAF/AQCX.

(4) Defense Logistics Agency contracting offices as directed by HQ DLA.

(5) All other contracting offices of the Department of Defense shall forward the signed originals to the office indicated in (b)(1) above.

(c) Contracting actions of $25,000 or less which are reportable in accordance with 204.672–2 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly

annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in Appendix N.

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057.

204.672-4 Definitions.

The terms used on DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350. For the purposes of this subsection, the following terms have the meanings stated below:

"Delivery Orders—GSA Federal Supply Schedules" is restricted to orders and modifications of such orders under Federal Supply Schedules awarded by GSA.

"Delivery Orders—Other Federal Supply Schedules" is restricted to orders and modifications of such orders under Federal Supply Schedules awarded by an Agency other than GSA. Orders under DoD or civilian agency indefinite delivery contracts which are not classified as Federal Supply Schedules are to be reported as "delivery orders—all others."

"Delivery Orders—All Other" includes orders under basic ordering agreements, orders under indefinite delivery contracts, and modifications of such orders.

"Other Contracting Actions" includes actions using other procurement methods not reported above, such as large purchases, tasking orders, job orders and modification of such actions.

"Small Purchase Procedures" as defined in FAR Part 13 includes: Purchase Orders; Orders under Blanket Purchase Agreements; Modifications to small purchase actions.

"Tariff or Regulated Industry" means an industry in which rates are fixed or adjusted by a Federal, State or other public regulatory body.

"United States and Outlying Areas" includes American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of Palau, Puerto Rico, the U.S. Minor Outlying Islands and the Virgin Islands of the U.S.

204.672-5 Instructions for completion of the DD Form 1057.

(a) Section A, General Information.

Line A1—Month Ending. Enter the year, month and day indicating the ending date of the month reported. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, for the month ending 30 April 1989, enter 890430.

Line A2—Contracting Office and Mailing Address. Enter sufficient detail to establish the identity of the contracting office submitting the report.

Line A3—Reporting Office Code. Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item A3 of DD Form 350.

(b) Section B, Contracting Actions. The entries for Lines B1 through B7E include new awards and modifications. For Lines B3 through B6, enter the total number of actions and total dollar value of actions and also complete each subcategory shown.

Line B1—Tariff or Regulated Acquisitions, Total. Enter on line B1 the number and dollar value of actions reportable as tariff or regulated industry actions (sole source and service rates are fixed or adjusted by a Federal, State or other public regulatory body).

Line B2—Contract for Foreign Government or International Organization. Enter the total number of actions and total dollar value of actions where the foreign government or international organization bears any part of the cost of the action. Also report any actions placed directly with a foreign government on this line, e.g., base maintenance performed with the foreign government acting as the contractor.

Line B3—Small Business Firms. Enter the total number of actions and total dollar value of actions which were placed with Small Business concerns and the place of performance was in the U.S. and outlying areas as defined above. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B3A—Small Purchase Procedures.

Line B3B—Delivery Orders—GSA Federal Supply Schedules.

Line B3C—Delivery Orders—Other Federal Supply Schedules.

Line B3D—Delivery Orders—All Other.

Line B3E—Other Contracting Actions.

Line B4—Large Business Firms. Enter the total number of actions and total dollar value of actions which were placed with Large Business concerns and the place of performance was in the U.S. and outlying areas as defined above. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B4A—Small Purchase Procedures.

Line B4B—Delivery Orders—GSA Federal Supply Schedules.

Line B4C—Delivery Orders—Other Federal Supply Schedules.

Line B4D—Delivery Orders—All Other.

Line B4E—Other Contracting Actions.

Line B5—Domestic and Foreign Entities Performing Outside the U.S. and Outlying Areas. Enter the total number of actions and total dollar value of actions which were placed with Domestic and Foreign entities and the place of performance was outside the U.S. and outlying areas as defined above. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B5A—Small Purchase Procedures.

Line B5B—Delivery Orders—GSA Federal Supply Schedules.

Line B5C—Delivery Orders—Other Federal Supply Schedules.

Line B5D—Delivery Orders—All Other.

Line B5E—Other Contracting Actions.

Line B6—Educational, Nonprofit and Other Entities. Enter the total number of actions and total dollar value of actions which were placed with entities not listed above such as educational, not for profit and nonprofit institutions and the place of performance was in the U.S. and outlying areas as defined above. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B6A—Small Purchase Procedures.

Line B6B—Delivery Orders—GSA Federal Supply Schedules.

Line B6C—Delivery Orders—Other Federal Supply Schedules.

Line B6D—Delivery Orders—All Other.

Line B6E—Other Contracting Actions.

Line B7—Total Contracting Actions. Enter the total number of actions and total dollar value of actions reported in lines B1 through B6 above. Do not include the sublines from B3 through B6 in this total line. If directed by agency procedures, also enter the total number and total dollar value of actions corresponding to the following subtotals:

Line B7A—Small Purchase Procedures.

Line B7B—Delivery Orders—GSA Federal Supply Schedules.

Line B7C—Delivery Orders—Other Federal Supply Schedules.

Line B7D—Delivery Orders—All Other.

Line B7E—Other Contracting Actions.

Line B8—Total Modifications Excluding Small Purchase Procedures. Enter the total number of actions and total dollar value of modification actions. This includes modifications to delivery orders and other contract

actions which may be included elsewhere in Part B.

(c) Section C, Extent Competed. Enter the total number of actions and total dollar value of actions in the appropriate category below based on the following criteria:

(i) Line C1 "Competed"—Except when the conditions in (ii) below apply, use when any of the following conditions apply:

(A) Actions not subject to CICA (see FAR 6.001) where at least two quotations or quotes were received.

(B) Small Business Small Purchase Set-Asides over $1,000.

(C) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1);

(D) Full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside a procurement for small business or labor surplus area concerns (FAR 6.2);

(E) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received (Note: Any procurement authorized or required by statute to be awarded to a specified source, e.g., UNICOR, Sheltered workshops, Government printing or binding, 8(a) awards; brand name commercial products for authorized resale; or awards to regulated monopolies for utilities are excluded from competition and should be reported on Line C2 below);

(F) Contract action resulted from a contract awarded competitively prior to CICA (including two step formal advertising); or

(G) Delivery orders/modifications under a Federal Supply Schedule.

(ii) Line C2 "Not Available For Competition"—Use when any of the following conditions apply to the award:

(A) Awards to regulated monopolies for utilities where the price negotiated is based on prices set by law or regulation;

(B) Brand name commercial products for authorized resale;

(C) Procurements authorized or required by statute to be awarded to a designated source. This includes a contract awarded to the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act (see FAR 19.8);

(D) Foreign Military Sales/ International Agreements;

(E) Actions with another Federal Agency;

(F) Awards, or modifications thereto, made pursuant to FAR 13.106(a) Purchases not over $1,000; or

(G) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD (P)) has determined that there is no opportunity for competition.

(iii) Line C3 "Not Competed"—Complete when Lines C1 or C2 do not apply.

Line C1—Competed, Total. Enter the total number of actions and total dollar value of actions which were competed. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C1A—Small Business Concerns.

Line C1B—Large Business Concerns.

Line C1C—Domestic or Foreign Entities Performing outside the U.S. and outlying areas.

Line C1D—Educational, Nonprofit and Other Entities.

Line C2—Not Available for Competition, Total. Enter the total number of actions and total dollar value of actions which were not available for competition. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C2A—Small Business Concerns.

Line C2B—Large Business Concerns.

Line C2C—Domestic or Foreign Entities Performing outside the U.S. and outlying areas.

Line C2D—Educational, Nonprofit and Other Entities.

Line C3—Not Competed, Total. Enter the total number of actions and total dollar value of actions which were not competed. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C3A—Small Business Concerns.

Line C3B—Large Business Concerns.

Line C3C—Domestic or Foreign Entities Performing outside the U.S. and outlying areas.

Line C3D—Educational Institutions, Nonprofit and Other Entities.

(d) Section D, Research, Development, Test and Evaluation Actions. Enter the number and dollar value of actions for research, development, test and evaluation work on the Lines D1 through D5 as appropriate. Do not include purchases of supplies or services that are incidental to the fulfillment of RDT&E work but do not require contractor RDT&E performance.

Line D1—RDT&E Awarded to Small Business Concerns.

Line D2—RDT&E Awarded to Large Business Concerns.

Line D3—RDT&E Awarded to Domestic or Foreign Entities Performing outside the U.S. and outlying areas.

Line D4—RDT&E Awarded to Historically Black Colleges or Universities or Minority Institutions.

Line D5—RDT&E Awarded to Other Entities. Enter awards to other entities such as educational, nonprofit or not for profit institutions which were not reportable above.

(e) Section E, Selected Socioeconomic Statistics. Enter the total number of actions and total dollar value of actions on the appropriate lines below:

Line E1—Small Business Set-Aside Actions. Enter the total number of actions and total dollar value which were small business set-aside actions. Also enter the total number and total dollar value of actions corresponding to the following subtotals:

Line E1A—Small Business—Small Purchases Set-Aside. Enter actions pursuant to FAR 13.105.

Line E1B—Small Business Set-Asides. Enter actions pursuant to FAR 19.502, as supplemented.

Line E1C—Combined Small Business/ Labor Surplus Area Set-Asides. Enter actions pursuant to 219.502–70.

Line E2—Small Disadvantaged Business Actions. Enter the total number of actions and total dollar value which were small disadvantaged business actions. Also enter the total number of actions and total dollar vlaue associated with each of the SDB categories shown below:

Line E2A—Section 8(a). Enter actions with the Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act (FAR 19.8).

Line E2B—SDB Set-Aside or SDB Preference. Enter actions resulting from Total Small Disadvantaged Business Set-aside pursuant to 219.502–72 or actions resulting from application of an SDB evaluation preference (see 219.7002); or SDB preferential consideration (see 219.502–3(70)).

Line E2C—Small Business—Small Purchase Set-Aside. Enter actions pursuant to FAR 13.105 where award is to an SDB without the application of a preference.

Line E2D—Small Business Set-Aside. Enter actions pursuant to FAR 19.502, without a preference or preferential consideration to an SDB, but where the award is to an SDB.

Line E2E—Other awards made to SDB concerns.

Line E3—Women-Owned Small Business. Enter total actions and dollars made to Women-owned small businesses.

Line E4—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI). Enter the total actions and dollars made to an HBCU/MI pursuant to 226.7004.

Line E5—Sheltered Workshop. Enter total actions and dollars made to a

workshop for the blind or a workshop for the severely handicapped from the procurement list pursuant to FAR 8.7.

Line E6—Labor Surplus Area Set-Aside. Enter total actions and dollars made pursuant to 220.7003 or FAR 20.2. Do not include awards reported in Line E2C as a combined small business/labor surplus area set-aside.

(f) Section F—Small Purchase Procedures—Dollar Value Ranges. Enter the total number of small purchase procedure actions and total dollar value in the appropriate category shown below.

Line F1—$0.01–1,000.00.
Line F2—$1,000.01–2,500.00.
Line F3—$2,500.01–10,000.00.
Line F4—$10,000.01–25,000.00.

(g) Section G—Remarks and Authentications.

Line G1—Remarks. Enter any remarks applicable to this report.

Line G2—Contracting Officer.

Line G2A—Contracting Officer's Name. Enter the typed name (Last, First, Middle Initial) of the contracting officer or duly authorized representative.

Line G2B—Contracting Officer's Signature. Enter the signature of the person identified in line G2A above.

Line G2C—Telephone Number. Enter the telephone number (and area code) of the person identified in line G2A above.

Line G3—Date Report Submitted. Enter the date submitted as year, month and day in 2-digit numeric segments (YYMMDD). For example, enter 2 January 1999 as 990102.

204.672–6 Instructions for preparing magnetic tape of DD Form 1057 actions, DD–P&L(M) 1015.

Magnetic tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR–WHS by the Departments to cover DD Form 1057 transactions for each month (noncumulative). The instructions for preparing the magnetic tape are developed by DIOR–WHS with the agreement of the Departments.

204.673 Record of weighted guidelines method application (DD Form 1547).

* * * * *

204.674 Overseas distribution of defense subcontracts (DD Form 2139).

204.674–1 Definition.

"Country of Origin," as used in this section, means the country where the actual producer of supplies or provider of services is located.

204.674–2 Purpose.

To assist DoD monitoring of the volume, type, and nature of subcontracts with foreign sources the clause at 252.204–7005 requires prime contractors and first tier subcontractors to report (using DD Form 2139) those subcontracts or modifications thereof exceeding $25,000 where the country of origin is outside the United States, its territories and possessions.

204.674–3 Contract clause.

The contracting officer shall insert the clause at 252.204–7005, Overseas Distribution of Defense Subcontracts, in any contract for other than Commercial items which is expected to exceed $500,000, or when any modification increases the amount of a contract to more than $500,000. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to the modification. This clause shall not be inserted in contracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs) and subsistence.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7004 [Amended]

3. Section 252.204–7004 introductory paragraph is amended by removing "204.670–3" and adding "204.670–3(a)".

4. Section 252.204–7005 is revised to read as follows:

252.204–7005 Overseas Distribution of Defense Subcontracts.

As prescribed at 204.674–3, insert the following clause:

OVERSEAS DISTRIBUTION OF DEFENSE SUBCONTRACTS (AUG 1988)

(a) For each subcontract or modification thereof which exceeds $25,000, where the country of origin is outside the United States or its territories and possessions, the Contractor agrees to prepare and submit the Subcontract Report of Foreign Purchases on DD Form 2139 to Director for International Acquisition, OASD (P&L) (P), Department of Defense, The Pentagon, Washington, DC 20301–3060. Copies of the form may be obtained from the Contracting Officer. Contractors who maintain information on foreign subcontracts on an automated data base may submit the information in a report format compatible with their automated system. In all cases, however, the report shall include all of the information required by the DD Form 2139. A sample of the form is shown at DoD FAR Supplement 53.303–70–DD–2139.

(b) For purposes of this clause, the term "country of origin" means the country where the actual producer of supplies or the actual provider of services is located.

(c) The required information, if any, shall be as of the last day of the calendar year quarter and submitted within ten (10) days of the end of each quarter.

(d) The prime Contractor agrees to insert a provision substantially similar to this in all first-tier subcontracts over $100,000 except subcontracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs), and subsistence. The prime Contractor shall also identify the applicable prime contract number to the subcontractor for reporting purposes.

(End of clause)

252.204–7007 [Amended]

5. Section 252.204–7007 introductory paragraph is amended by removing "204.670–5(a)" and adding "204.670–3(b)(f)".

[FR Doc. 88–19534 Filed 9–1–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Ch. 63

[Docket 45353; Amdt. 63–1]

Contract Appeals Board Procedures; Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule adopts as final, the Department of Transportation (DOT) Board of Contract Appeals (BCA) Rules of Procedure, which were recodified and republished as an interim final rule in Part III of the **Federal Register** on Wednesday, December 23, 1987 (52 FR 48630). The interim final rule allowed for 60 days within which interested parties could submit comments on the interim final rule to the Department of Transportation. Two comments were received. As a result of these comments, this final rule incorporates a number of changes to the Rule as published on December 23, 1987. The comments received and our response to each are discussed in detail below.

DATES: September 2, 1988.

FOR FURTHER INFORMATION: Contact Roger Martino at 400 Seventh Street SW., Room 9100, Washington, DC 20590, phone number (202) 366–4271.

SUPPLEMENTARY INFORMATION: Comments were received from the American Bar Association (ABA) Public Contract Law Section and from the Administrative Conference of the United States (ACUS).

The Comments

The ABA Public Contract Law Section stated that it is unclear from the wording of Board Rule 18 (Discovery—Depositions) whether parties may agree to take depositions without application to the Board. It recommended that the Board eliminate the ambiguity by adopting language similar or identical to

that used by the Armed Services Board of Contract Appeals (ASBCA) and other boards. In pertinent part, ASBCA Rule 14 states: "After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination * * *"

DOT BCA Rule 18 (Discovery—Depositions) as presently drawn states in subparagraph (a) that, "[the] parties are encouraged to engage in voluntary discovery procedures." Subparagraph (b) (Obtaining a deposition) states, "After an appeal has been docketed, the Board upon application of any party and for good cause shown, may order the taking of testimony of any person by deposition upon oral examination * * *"

We do not recall receiving inquiries regarding the need for a Board order as a prerequisite to taking depositions under Rule 18(b). We believe the lack of inquiries is because most parties read Rule 18(b) in context with Rule 18(a). Under such a reading, one would consider the taking of depositions as part of the voluntary discovery process, and apply for a Board order to compel the taking of a deposition only after voluntary efforts have failed. This has been the general procedure of parties practicing before the Board.

Nonetheless, we believe the ABA's recommendation does have merit, and we have changed paragraph (b) of section 6302.18 (Rule 18).

Many government officials, contractors and attorneys agree that contract disputes are becoming increasingly more complex, expensive and time-consuming, and that litigation of such disputes is escalating beyond manageable levels. ACUS suggests that the Board revise its rules to incorporate less formal procedures designed to make resolution of contract disputes faster and less expensive. ACUS recommends adding procedures to the Board's rules allowing for mini-trials, settlement judges, and "other alternative means of dispute resolution." ACUS reports that these methods have been used successfully in the private sector for many years, and suggests they be adopted by the Board.

We agree that the Board may benefit significantly by adopting two of the Alternative Dispute Resolution (ARS) methods and, where appropriate, encouraging practitioners before it to use such methods. The two ADR methods appropriate for Board employment are the use of Settlement Judge and a Mini-Trial. A Settlement Judge (a judge (i.e., neutral advisor) other than the presiding judge) is used where it is possible to achieve resolution of a case through frank, off-the-record, discussion of a case's strengths and weaknesses before a neutral advisor. A Mini-Trial is a flexible, off-the-record, expedited procedure where each side presents an abbreviated version of its case.

The Congressional mandate of section 8(e) of the Contract Disputes Act of 1978, that agency boards "shall provide to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes" (41 U.S.C. 607), clearly gives the Board authority to institute procedures such as ADR to resolve disputes. We, therefore, adopt a new Rule 30 (Alternative Dispute Resolution Methods).

Executive Order 12291

Under Bulletin No. 85–7, the Director of the Office of Management and Budget (OMB) withdrew the general exemption from Executive Order 12291 that OMB had created on February 17, 1981, for agency procurement regulations.

This final rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. The rule will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is considered as nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since the economic impact of this rule is expected to be minimal, a formal economic analysis has not been prepared.

Regulatory Flexibility Act

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the rule simply finalizes the recodification and transference of the Department of Transportation Board of Contract Appeals Rules from 41 CFR Parts 12–60, to 48 CFR Chapter 63. To the extent changes are made to the current rules, they are either for clarification purposes, or are designed to implement quicker resolution of disputes.

Papework Reduction Act

This rule does not contain any information collection requirements requiring review under section 3504(h) of the Paperwork Reduction Act of 1960 (44 U.S.C. 3504 (h)).

National Environmental Policy Act

DOT has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

Administrative Procedure Act

Section 553 of the Administration Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB), has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. In OFPP letter 83–2, OFPP states that an agency must provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something that has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. As explained above, changes made to the DOT BCA Rules are either for clarification purposes or to allow for quicker resolution of disputes.

The Department traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act. For this reason, the Rules were published as an interim final rule on December 23, 1987, which allowed for the submission of comments for a period of 60 days. The Departmental Docket Clerk received two comments within the allotted period for submission of comments. Both comments were reviewed and the rules are being changed as described herein, to incorporate the suggestions.

Executive Order 12612

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

BEST COPY AVAILABLE

This rule is issued under delegated authority under 49 CFR Part 1.59(q).

List of Subjects in 48 CFR Ch. 63

Government procurement.

Dated: August 26, 1988.

Jan H. Seymour,

Assistant Secretary for Administration.

Accordingly, the Department of Transportation amends 48 CFR Ch. 63 as follows:

1. The authority for Chapter 63 continues to read:

Authority: Contract Disputes Act of 1978 (41 U.S.C. 600, et seq.).

6302.18 [Amended]

2. Paragraph (b) of section 6302.18 (Rule 18), is revised to read:

* * * * *

(b) Obtaining a deposition. After an appeal has been docketed, the parties may voluntarily agree to take, or the Board may, upon application of either party and for good cause shown, order the taking of, testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for such order shall specify whether the purpose of the deposition is for discovery or for use as evidence.

3. The table of contents for Part 6302, Rules of Procedure, is amended as follows: "6302.30 Reserved (Rule 30)" is changed to read "6302.30 Alternative Dispute Resolution Methods (Rule 30)".

4. Section 6302.30 (Rule 30) is revised to read:

6302.30 Alternative Dispute Resolution Methods (Rule 30).

(a) To facilitate settlements in cases which might involve lengthy hearings (in excess of one week) of complex factual disputes and settled legal principles, the Board has adopted two methods of Alternative Dispute Resolution (ADR): Settlement Judges and Mini-Trials. These procedures are designed to supplement existing settlement techniques and not to replace them. Procedures regarding implementation of these ADR methods will be distributed to the parties, in appropriate cases, but may be obtained from the Board upon request.

(b) To employ ADR both parties must initially agree to use an ADR method. The parties must communicate that agreement in writing to the presiding judge as early as possible, preferably before commencement of voluntary discovery. The presiding judge shall promptly decide the appropriateness of the ADR method requested and so advise the parties. Where, after application of an ADR method, the parties are unable to resolve a dispute, the matter shall be restored to the docket of the presiding judge for hearing.

[FR Doc. 88-20053 Filed 9-1-88; 8:45 am]
BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 53, No. 171
Friday, September 2, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Expenses and Assessment Rate for Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 910 for the 1988–89 marketing year established for the lemon marketing order. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by September 12, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, D.C. 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 910 (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disporportionately burdened. Marketing orders issued prusuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assesment rate for a particular fiscal year shall apply to all assessable lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Lemon Administrative Committee (Committee), the agency responsible for local administration of the lemon marketing order, and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of lemons. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 26, 1988, and unanimously recommended 1988–89 marketing order expenditures of $734,000 and an assessment rate of $0.045 per carton of lemons. In comparison, 1987–88 marketing year budget expenditures were $695,000 and the assessment rate was $0.045 per carton. Assessment income for 1988–89 is estimated at total $715,500 based on a crop of 15,900,000 cartons of lemons. The remaining $18,500 is expected to be derived from interest and miscellaneous income. Reserve funds may also be used to meet any deficit in assessment income.

While this proposal action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that a new § 910.226 be added as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Add new § 910.226 to read as follows:

§ 910.226 Expenses and assessment rate.

Expenses of $734,000 by the Lemon Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 910.41 is fixed at $0.045 per carton of assessable lemons. Unexpended funds may be carried over as a reserve.

Dated: August 29, 1988.

Robert C. Keaney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–19990 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 987

[Docket No. FV–88–117]

Domestic Dates Produced or Packed in Riverside County, CA; Proposal To Change the Conversion Factor Used To Compute the Whole Data Equivalent Weight of Pitted Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the conversion factor used to convert the weight of pitted dates to their whole date equivalent. Currently, the weight of pitted dates is converted to whole date weight by dividing the weight of pitted dates by 0.875. This proposal would change this factor to 0.83. This change would result in more precise inventory, sales, and shipment reports. Carryover determinations and assessment determinations would also be affected.

DATE: Comments must be received by September 19, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 987 [7 CFR Part 987], regulating the handling of domestic dates produced or packed in Riverside County, California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of California dates regulated under this marketing order, and approximately 135 date producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the date handlers and producers may be classified as small entities.

This proposal would change § 987.105 of Subpart—Administrative Rules [7 CFR 987.101—987.172]. That section specifies a conversion factor of 0.875 for use in computing the whole date equivalent weight of pitted dates. The weight of pitted dates is converted to whole date weight by dividing the weight of the pitted dates by that factor. The current factor has been in place since the late 1960's.

The current conversion factor is based on a weight loss resulting from the removal of the pit, estimated at 12.5 percent of the whole date weight. However, the 12.5 percent represents the weight of the pit only, and does not account for all of the date flesh lost in the pitting process. Use of updated conversion factor would result in more precise sales, shipment, and inventory reports. Carryover determinations completed on a whole date weight would be affected. Use of the updated factor will also affect assessment weight obligations for pitted dates because the assessment obligations of date handlers are computed on a whole date weight basis.

At a meeting held on June 27, 1988, the committee unanimously recommended that the conversion factor be changed from 0.875 to 0.83, effective October 1, 1988. Handlers of pitted dates furnished information to the committee indicating that the weight loss resulting from the pitting process ranges from 15 to 19 percent with an average of 17 percent. The conversion factor of 0.83 is based on a 17 percent weight loss. The committee stated that the 0.83 conversion factor would more accurately reflect the weight loss resulting during the pitting process. Updating the conversion factor would not add to or complicate handlers reporting requirements.

Based on the above, the administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

It is found and determined that a comment period of less than 30 days is appropriate because this action needs to be effective October 1, 1988, the beginning of the 1988–89 shipping season. A comment period longer than provided could delay the effective date into the shipping season.

Lists of Subjects in 7 CFR Part 987

Marketing agreements and orders, Dates, California.

For the reasons set forth in the preamble, § 987.105 of Subpart-Administrative Rules [7 CFR 987.101–987.172] is proposed to be revised as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 987.105 is revised to read as follows:

§ 987.105 Whole equivalent of pitted dates.

For the purposes of this part, the whole date equivalent weight of pitted dates shall be determined by dividing the weight of the pitted dates by 0.83.

Dated: August 30, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-20063 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) withdraws proposed amendments to 12 CFR Part 615 published for comment on October 16, 1986 (51 FR 36824), and proposes for comment amendments to 12 CFR Part 615, Subparts I, J, K, L, M, and N relating to the adoption of capitalization bylaws, the issuance and retirement of equities thereunder and related disclosure requirements, and the unallocated surplus of banks for cooperatives. The proposed regulations set forth requirements for capitalization bylaws, requirements that must be met in order for equities issued thereunder to qualify as permanent capital, requirements designed to ensure implementation of cooperative principles, disclosure requirements for the issuance and retirement of equities, requirements for the retirement of equities, and requirements for additions to unallocated surplus in banks for cooperatives. The proposed amendments reflect changes in the capitalization provisions of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2001 et seq., made by the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233. Upon the adoption in final form of these proposed regulations as well as the proposed capital adequacy regulations published for comment on May 12, 1988 (53 FR 16948), the FCA would rescind Capital Directive No. 1. The effect of the proposed regulations would be to give Farm Credit System (System) institutions greater flexibility in determining their capital structures and to provide guidance to such institutions in the adoption of capitalization bylaws that will enable them to meet minimum permanent capital standards established by the FCA, as required by the 1987 Act.

DATE: Comments must be submitted on or before September 16, 1988.

ADDRESSES: Written comments may be mailed (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Va. 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis and Standards Division, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4402

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444

SUPPLEMENTARY INFORMATION: On July 23, 1986, the Farm Credit Administration (FCA) published for comment proposed regulations (51 FR 26402) relating to capital adequacy and minimum capital standards for Farm Credit System (System) institutions pursuant to section 4.3(a) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2154. On October 16, 1986, the FCA published for comment proposed amendments to Parts 614 and 615 of Title 12 of the Code of Federal Regulations that were referred to as "capital adequacy related regulations." Before final action had been taken on these proposals, the Agricultural Credit Act of 1987 (1987 Act) was enacted on January 6, 1988, substantially amending, among other things, the capitalization provisions of the 1971 Act and directing the FCA to adopt regulations setting minimum "permanent capital" standards that take into account risk factors. As a result of the statutory changes the FCA, on April 5, 1988, (published May 12, 1988, at 53 FR 16948) withdrew the proposal of July 23, 1986, and published for comment a regulation setting forth a minimum permanent capital standard expressed as a ratio of permanent capital to risk-adjusted assets. In that proposal, the FCA announced its intention to propose amendments to the capital adequacy related regulations necessary to conform the regulations to the statutory changes made by the 1987 Act. The capital adequacy regulations proposed on May 12, 1988, were the subject of a public hearing on June 9, 1988. The FCA is considering the comments submitted during the comment period and the testimony given at the public hearing and will be adopting a final capital adequacy regulation in the near future. The FCA is also considering what changes to the proposed amendments to Part 614 published on October 16, 1986, are appropriate and will be taking into action on that proposal in the near future. The FCA withdraws the proposed amendments to Part 615 published on October 16, 1986, and publishes for comment proposed amendments that reflect changes made by the 1987 Act in the capitalization provisions of the 1971 Act. Upon the adoption in final form of these proposed regulations and the proposed capital adequacy regulations published on May 12, 1988, the FCA's Capital Directive No. 1 would be rescinded.

I. Statutory Changes

Prior to the 1987 Act, the 1971 Act contained detailed and specific provisions relating to the issuance and retirement of equities of System institutions and the distribution of their earnings. Also boards of directors of System institutions were empowered to adopt bylaws without shareholder approval and the FCA was empowered to issue and amend bylaws. FCA had in fact prescribed model bylaws and required FCA approval for any deviation therefrom. As a result of the detailed statutory provisions and required FCA approvals, System institutions had limited discretion in the issuance and retirement of equities and the distribution of earnings. Only production credit associations could issue stock to persons other than eligible borrowers, and this was rarely done. Borrowers were required to purchase stock in an amount equal to a specified percentage of their loan. The Federal land bank and the Federal land bank associations were required to retire the borrower's stock upon repayment of the loan, and borrowers from other System institutions had expectations that their stock would be retired soon after repayment of a loan or on some revolving cycle based on board policy or custom and practice. Transfer rights were restricted.

The 1987 Act provided a mechanism for Federal assistance to financially troubled System institutions by providing for the establishment of the Farm Credit System Assistance Board (Assistance Board) and the Farm Credit System Financial Assistance Corporation (FAC). Upon certification by the Assistance Board, the FAC was authorized to purchase preferred stock in System institutions. The 1987 Act provided assurance that stock issued prior to the 1987 amendments and

during a brief transitional period thereafter would be retired at par, regardless of its book value. However, the 1987 Act also significantly changed the capitalization of System institutions prospectively by adding a new section 4.3A to the 1971 Act, which directs System institutions to adopt shareholder-approved capitalization bylaws that meet certain statutory requirements and that will enable the institution to meet minimum permanent capital standards established by the FCA. These statutory requirements have the effect of assuring that stock and participation certificates issued by the System institutions after the adoption of the new bylaws will be ture "at risk" equity investments that can only be retired at the discretion of the board of directors (providing the minimum permanent capital standards established by FCA are met). Section 4.3A also allows equities, except for voting stock, to be issued to non-borrowers.

Although the 1987 Act allowed for the consolidation of all of the banks for cooperatives (BCs) into a national bank for cooperatives, the statutory provisions relating to the capitalization and distribution of earnings of BCs in Title III of the 1971 Act were generally unchanged except that a number of required FCA prior approvals were deleted. However, BCs are subject to the requirements of new section 4.3A of the Act.

On the other hand, the 1987 Act mandated the merger of the Federal land bank (FLB) and the Federal intermediate credit bank (FICB) in each district into a Farm Credit Bank (FCB) within 6 months of enactment, and enacted a new Title I and Title II under which such banks and their related associations are to operate. The 1987 Act authorized the merger of Federal land bank associations (FLBAs) and production credit associations (PCAs) into associations having the combined powers of an FLBA and a PCA (agricultural credit associations, or ACAs). The 1987 Act also allows FLBAs to become direct lenders. The extensive statutory provisions governing capitalization and distribution of earnings under which the FLB, FICB, FLBAs and PCAs operated were repealed by the 1987 Act, effective 6 months from enactment. Under the new Title I, the boards of directors of FCBs are authorized to "provide in accordance with section 4.3A, through bylaws and subject to FCA regulations, for the capitalization of the bank and the manner in which bank stock is issued, held, transferred and retired and the bank earnings distributed." Associations are similarly authorized under new Title II.

Section 4.3A of the 1971 Act, as amended, requires institutions to adopt shareholder-approved capitalization bylaws that meet the following statutory requirements:

(1) Issuance of voting stock must be restricted to farmers, ranchers, producers or harvesters of aquatic products, eligible cooperatives, and System associations and banks for cooperatives;

(2) Borrowers must be required to purchase stock in an amount that cannot be less than 2 percent of the loan amount or $1,000, whichever is less;

(3) Voting stock must be converted to non-voting stock within 2 years after the loan of a borrower is repaid in full;

(4) Holders of stock and participation certificates issued before the adoption of the capitalization bylaws must be required to exchange a portion of such stock (which is protected from impairment under section 4.9A of the 1971 Act, as amended) for new stock (which is not protected);

(5) Stock must be retirable solely at the discretion of the board (provided the minimum permanent capital standards established by the FCA are met);

(6) Stock must be transferable to persons eligible to hold it; and

(7) The bylaws must enable the institution to meet capital adequacy standards established by the FCA.

The FCA's authority to issue and amend bylaws was deleted by the 1987 Act. The FCA's primary regulatory interests in the capitalization of Farm Credit Banks after the 1987 amendment of the 1971 Act are: (1) To set minimum capital standards for safe and sound operation and the protection of investors; (2) to assure that capitalization bylaws enable institutions to meet minimum capital standards; (3) to assure that capitalization bylaws are consistent with law and cooperative principles (including one-person-one-vote and equitable treatment); (4) to assure that adequate disclosure is made to purchasers of equities of individual System institutions; and (5) to assure that obligations under joint and several liability can be met. The proposed regulations are deemed to be necessary and appropriate to achieve those ends. The details of capitalization are otherwise left to the boards of directors of the institutions and their shareholders.

II. Proposed Regulation

Subpart I—Issuance of Equities

The current provisions of Subpart I relate to debt-to-capital ratios, which will be superseded by the minimum permanent capital standards proposed on May 12, 1988, when they are adopted in a final regulation. Therefore, the FCA proposes to amend Subpart I to set forth the statutory requirements for the bylaws, requirements designed to assure that the bylaws are consistent with law and with cooperative principles and that equities issued thereunder will enable the institution to meet minimum permanent capital standards established by the FCA, and disclosure requirements for the issuance and retirement of equities by individual System institutions.

Section 615.5220 Issuance of Equities

Section 615.5220 of proposed Subpart I would require the capitalization bylaws to set forth:

(1) The classes of stock authorized to be issued and the manner in which they can be issued, transferred, converted, and retired;

(2) For each class of stock, classes of persons to whom it may be issued, voting rights, dividend rights and preferences, and priority upon liquidation, including rights, if any, to share in the distribution of the residual estate;

(3) The number of shares and par value of stock authorized to be issued for each class of stock other than stock required to be purchased as a condition for obtaining a loan (which may be authorized in unlimited amounts to permit loan volume to increase without shareholder approval);

(4) The percentage amount of stock that will be required to be purchased as a condition for obtaining a loan (which may be more than but must not be less than 2 percent of the loan amount or $1,000, whichever is less);

(5) The amount of stock protected under section 4.9A of the 1971 Act, as amended, that will be required to be exchanged for voting stock issued under the new capitalization bylaws; and

(6) A statement that such equities are retirable at the sole discretion of the board of directors;

(7) The manner in which earnings will be allocated and distributed, including the basis on which patronage refunds will be made, which shall be consistent with cooperative principles; and

(8) The manner of allocating the capital requirements of the FCB among its owners and periodically equalizing the allocation.

Section 615.5230 of the proposed Subpart I would require the bylaws to reflect the cooperative priniciples of one-person-one-vote and equitable treatment of patrons. Under the

proposed paragraph (a), Farm Credit associations would be required to accord each holder of voting stock one vote regardless of the number of shares owned, except when voting on the issuance of preferred stock. In FCBs, each association/shareholder vote would be required to be weighted according to the number of the association's voting shareholders. This requirement would assure that the bank is cooperatively controlled by its ultimate owners, the borrowers. In addition, the bylaws of the FCBs would be required to reflect a weighting plan that would not discriminate against ACAs, which result from the merger of FLBAs and PCAs. The bylaws of both banks and associations would be required to permit every shareholder be entitled to vote in the election of each director.

Proposed paragraph (b) would require that the bylaws provide for the equitable treatment of all equityholders and would set forth provisions that must be included in the bylaws to assure such equitable treatment. The proposed regulation would require the issuance of preferred stock to be authorized by a majority vote of the shares of each class of stock affected by the preference, whether or not its members are otherwise entitled to vote. This modification of cooperative voting principles is necessary to protect the interests of holders of common stock and participation certificate holders. The proposed regulation would also require that shareholders be treated equitably with respect to the distribution of earnings and priority upon liquidation. Dividends would be required to be on a per share basis and without preference between holders of stock and holders of participation certificates, between members of a class, and between classes of common stock except that a class of common stock that resulted from the conversion of allocated surplus may be subordinate to other classes of common stock.[1]

Section 615.5240 of the proposed regulation sets forth the statutory requirement that the capitalization bylaws must enable the institution to meet the minimum permanent capital standards established by the FCA. Proposed paragraph (a) sets forth requirements that would have to be met in order for equities issued under the bylaws to qualify as permanent capital. These requirements are designed to assure that the equities issued under the bylaws are at risk and to distinguish them from debt. All equities would be required to be retirable at no more than book value and only at the discretion of the board (provided minimum permanent capital standards established by Subpart H of this Part are met) and not on a date certain or upon the happening of an event, such as repayment of the loan, or pursuant to an automatic retirement or revolvement plan. Dividends would be required to be payable only at the discretion of the board. Cumulative dividends could be paid only on preferred stock and only if they could be indefinitely deferred and any obligation to pay such dividends subordinated to the right of the holders of common stock and participation certificates to have their equities retired at book value not to exceed par upon liquidation. Disclosure of the nature of the equities as an investment at risk would have to be made pursuant to proposed § 615.5250.

Paragraph (b) of proposed § 615.5240 would require the capitalization bylaws of the FCB to allow the FCB, with the prior approval of the FCA, to require its owners to subscribe for additional capital when needed to honor the FCB's obligations under joint and several liability or to meet the FCB's capital requirements under Subpart H. The FCB would be required to take into account the financial condition of its owners in making such capital calls. This provision is similar to provisions in existing regulations for the FICB (currently found in § 615.5270), which mirror statutory provisions of the 1971 Act that were eliminated by the 1987 Act. However, since the 1987 Act did not change the basic nature of the relationship between the funding bank and direct lender association, the FCA believes that the owners of the FCB have an obligation to assure that the FCB has access to sufficient capital resources to honor its obligations under joint and several liability and meet its capital standards. The FCA believes that such a regulatory provision is necessary and appropriate to implement the joint and several liability provisions of section 4.4 of the 1971 Act, which allocates residual liability on the basis of assets. Since loans and discounts to direct lenders constitute a large portion of the FCBs' assets, such an allocation would be meaningless unless the FCBs have some access to the capital of their owners in the event the FCBs are unable to meet their statutory obligations from their own capital resources. The FCA proposes to require FCA approval for such capital calls to assure that the interests of the owners of the FCB are protected and that any such subscription requirements are equitably allocated.

Paragraph (c) of the proposed regulation would require that the capitalization bylaws to require that until minimum permanent capital standards established by the FCA are met, stock required to be purchased as a condition of obtaining a loan be purchased from the institution. The FCA believes such a requirement is necessary and appropriate to carry out the purposes of the 1987 amendment of the 1971 Act. Since stock is now transferable, it is possible for prospective borrowers to purchase their required number of qualifying shares from borrowers who have paid off their loans. Such a practice would make it even more difficult for institutions that do not meet the minimum standard to do so, since increasing volume without increasing stock levels would decrease the minimum permanent capital ratio. Such a practice could operate as a circumvention of the statutory prohibition against reducing permanent capital by retiring stock or distributing earnings, since stock that could not be retired because minimum permanent capital standards are not met could be transferred and allowed to count as qualifying shares. While the FCA has no objection to such a practice if capital standards are met, allowing it when they are not would exacerbate an already difficult situation for System institutions.

Section 615.5250 of the proposed regulation sets forth disclosure requirements for the issuance of equities, both for equities required to be purchased as a condition of obtaining a loan and for other sales of equities. For equities required to be purchased as a condition of obtaining a loan, the institution would be required to give the purchaser, prior to the loan closing, a copy of the institution's latest annual and quarterly reports to shareholders, a copy of the institution's capitalization bylaws, and a written description of the equity that describes the terms and conditions under which it is issued and its nature as an investment at risk and not a compensating balance. Similar disclosure would be required when a borrower is required to exchange protected stock for new at-risk stock issued under the new capitalization bylaws, except that no annual and

[1] In the recent mandatory merger of the Federal land banks and Federal intermediate credit banks, some institutions converted allocated surplus into a separate class of common stock which is not dividend bearing and continues to have the same subordinate position upon liquidation as the allocated surplus had. The FCA believes System institutions should have the flexibility to discontinue the practice of allocating surplus to members if they choose and thinks it appropriate that stock that results from conversions of allocated surplus retain the subordinate position allocated surplus had.

quarterly reports would be required since borrowers will have already received a copy of these reports. For other sales of equities, the institution would be required to submit a disclosure statement to the FCA for review and clearance 45 days prior to the proposed sale. Under the proposed regulation, no equities could be sold except through the use of such a statement that has been reviewed and cleared by the FCA. The disclosure would be required to contain all of the information required by 12 CFR Part 620 for the annual and quarterly reports to shareholders, as well as a description of the equity and the intended use of the proceeds of the sale and a copy of the institution's capitalization bylaws. The most recent annual and quarterly reports filed under Part 620 could be incorporated by reference in partial satisfaction of the disclosure requirements. The proposed regulation would allow the FCA to waive any or all of the disclosure requirements when the sale is to a single investor in a denomination of $100,000 or more if the sophistication of the investor warrants, provided the certificate evidencing the investment bears a legend that prohibits dividing the equity into smaller denominations without FCA approval. All disclosures would be required to include a statement that the equity may be retired only at the discretion of the board.

These proposed sections would replace existing §§ 615.5220, 615.5230, and 615.5240 of Subpart I and § 615.5250 of Subpart J.

Subpart J

Subpart J would be retitled, "Retirement of equities" to reflect its narrower focus after amendment. All of the provisions of Subpart J except § 615.5255 would be deleted, as they either are no longer appropriate after the 1987 Act, duplicative of statutory provisions, or incorporated into the proposed regulation. Section 615.5255 would be redesignated as § 615.5280, amended as described below and retitled, "Retirement in event of default." Although the specific equalization provisions of §§ 615.5270 and 615.5280 would be deleted, the FCA would expect the FCBs to continue to treat associations equitably. In view of the different types of association that may evolve in a district under the 1987 amendments of the 1971 Act, the FCA believes that the method of equalization is a matter that is best left to the board and shareholders of each institution and their capitalization bylaws.

Section 615.5260 of the proposed regulation would set forth provisions related to the retirement of "eligible borrower stock," which is defined in proposed paragraph (a) as equities that are protected under section 4.9A of the 1971 Act, as amended, and any equities for which such equities are exchanged in connection with a merger, consolidation, or other reorganization, or a transfer of territory. Proposed paragraph (a) would also set forth definitions of "eligible borrower stock," "retirement in the ordinary course of business," and "par value." For the purposes of the proposed regulations, "retirement in the ordinary course of business" would be defined to mean: (1) Retirement upon repayment of a loan or retirement under a retirement or revolvement plan in effect prior to January 6, 1988, or, for stock issued after that date, at the time the loan was made; and (2) retirements in the event of the borrower's default pursuant to § 615.5280. "Par value" would have the meaning set forth in section 4.9A of the Act.

Paragraph (b) of proposed § 615.5260 would restate the statutory requirements for an institution to retire eligible borrower stock at par (even if its book value is less than par) and to coordinate with the Assistance Board and the FAC when retiring eligible borrower stock that is impaired, as determined in accordance with generally accepted accounting principles (GAAP).

Paragraph (c) of proposed § 615.5260 would require FCB pass-through equities that are retired solely to enable an FLBA to retire eligible borrower stock, to be retired at par, and, if they are impaired, to coordinate their retirement with the Assistance Board and the FAC.

Paragraph (d) of proposd § 615.5260 would require the approval of the FCA for any out-of-the-ordinary-course-of-business retirement of eligible borrower stock.

Section 615.5270 of the proposed regulation would set forth the requirements for the retirement of equities other than eligible borrower stock. Proposed paragraph (a) would require equities other than eligible borrower stock to be retirable at not more than their book value, and only in the discretion of the board and not on a date certain and not upon the happening of an event (such as repayment of a loan) or pursuant to an automatic retirement or revolvement plan. This paragraph reflects the FCA's judgment that the effect of the capitalization provisions of the 1987 Act is to require that all equities issued after October 5, 1988, be issued in such a manner as to qualify as permanent capital. Proposed paragraph (b) would prohibit the retirement of such other equities if after their retirement the institution would not meet minimum permanent capital standards established under Subpart H of this part.

Section 615.5280 of the proposed regulation would set forth the current provisions of § 615.5255 relating to the retirement of equities when the borrower's loan is in default and would incorporate a similar provision currently found in § 615.5260 for BCs. A new paragraph (a) would be added to incorporate the requirement to retire eligible borrower stock at par and a new paragraph (c) would be added to incorporate the BC provision. Subsequent paragraphs would be renumbered accordingly. Paragraph (b) of exiting § 615.5255 would be redesignated as paragraph (c) and amended to delete the reference to production credit associations and to exclude Federal land bank associations that are direct lenders. This paragraph currently requires that any retirements in event of default by Federal land bank associations and production credit associations be made with the specific prior approval of or in accordance with procedures prescribed by the district Federal land bank and Federal intermediate credit bank, respectively. The FCA believes that the effect of the 1987 amendments is to allow associations that are direct lenders more autonomy. FLBAs that are not direct lenders, on the other hand, appear to be more in the nature of branch lending offices and the application of borrower stock to the borrower's indebtedness at the association level may in some cases require a retirement of bank stock. However, since retirement of bank stock may not always be required, the proposed revision would allow the FCBs, at their option, to require that such retirements either have the FCB's prior approval or be made pursuant to the procedures prescribed by the FCB.

Existing paragraphs (c) and (d) would be unchanged, but would be redesignated as paragraph (e) and (f), respectively. The FCA has previously proposed to add paragraphs (e), (f), and (g) to existing § 615.5255 in connection with its borrower rights regulations (53 FR 16937), and will be taking action on that proposal in the near future. If that proposal is adopted in final form, the adoption of this proposed amendment would redesignate paragraphs (e), (f), and (g) as paragraphs (g), (h), and (i), respectively.

Subpart K—Surplus and Reserves

The FCA proposes to delete all of the existing provisions of Subpart K. Most of the deleted provisions relate to requirements to establish allowances for

loan losses, which duplicate either the statutory provisions or the requirement under GAAP and 12 CFR Part 621 of FCA regulations to maintain an adequate allowance for losses.

The FCA proposes to revise § 615.5330 to require BCs to add at least 10 percent of net earnings after taxes to unallocated surplus each year until such surplus reaches 50 percent of the minimum permanent capital required by Subpart H of this part. Since it has been the practice of most banks for cooperatives to revolve nearly all capital out over a 5 to 7 year period, the resulting level of capital not allocated to individual borrowers is relatively small in relation to the potential unreserved loss on many individual loans. An unexpected loss may impair the allocated equities of a BC and have an immediate effect on the balance sheet of its members. This could have a pronounced effect on the confidence in the bank and result in borrower flight. The proposed regulatory requirement would be lower than equivalent standards adopted for the System by the FCCA. The Systemwide Financial Standards adopted by the FCCA set a standard for return on average total assets of 75 percent, and a maximum debt-to-capital ratio of 12 to 1. For banks, the standard for contributions to unallocated surplus is one-tenth of 1 percent of average assets until the unallocated surplus reaches an amount equal to stock and allocated surplus. If the standard return on assets is achieved, this would translate into an addition to unallocated surplus of approximately 15 percent of net earnings. In addition, many BCs have already embraced a 10 percent addition standard and in fact maintained such a minimum addition in 1987. The regulatory requirement would be lower and would apply regardless of the return on assets achieved by the institution.

Subpart L—Distribution of Earnings

The FCA proposes to delete all of the provisions of Subpart L and reserve the section. The deleted provisions relate to the payment of patronage, and in the case of the FLB and FLBAs are based on statutory provisions eliminated by the 1987 Act. The FCA believes that under the 1971 Act as amended by the 1987 Act, the payment of patronage is a matter that is more appropriately left to an institution's board of directors and its shareholders in the capitalization bylaws, subject to proposed FCA regulations requiring that such payments be made in accordance with cooperative principles, including the principle that all patrons should be treated equitably. In addition, section 4.3A(d) of the 1971 Act, as amended, prohibits the payment of patronage if it would reduce the institution's permanent capital below the minimum permanent capital standards established by the FCA. The FCA believes that this statutory prohibition, the minimum permanent capital standards established by the FCA, and the proposed regulations requiring equitable treatment of patrons provide sufficient guidance in this area.

In the case of BCs, the statutory basis for the regulations is unchanged except for deletions of FCA prior approvals. The FCA believes the statutory provisions, the minimum permanent capital standards, the proposed regulations requiring equitable treatment of patrons, and the proposed Subpart K will provide adequate guidance for BCs.

Subpart M—Payment of Dividends

The FCA proposes to delete and reserve Subpart M. So long as an institution has adequate capital, the FCA's primary regulatory interest in the payment of dividends is focused on dividend rights and preferences insofar as they have some bearing on the status of equities as permanent capital and the safety and soundness of the institution, and the equitable treatment of shareholders and participation certificate holders. These concerns are addressed in proposed Subpart I.

Subpart N—Association Supervision

The FCA proposes to delete and reserve Subpart N. This section directs bank boards to prescribe policies and regulations and guidelines necessary for the banks to discharge their supervisory responsibilities over the financial and fiscal affairs of the associations and to monitor compliance with such policies, regulations and guidelines. Because the 1987 Act encourages greater autonomy on the part of associations that are direct lenders and provides an opportunity for all associations to become direct lenders, the FCA believes that the FCBs and associations should have greater flexibility to work out an effective relationship between them under the provisions of the 1971 Act as amended by the 1987 Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, Part 615 of Chapter VI of Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 continues to read as follows:

Authority: Secs. 4.3, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2154, 2243, 2252, 2278b, 2278b–6.

2. Subpart I is revised to read as follows:

Subpart I—Issuance of Equities

Sec.
615.5220 Capitalization Bylaws.
615.5230 Implementation of cooperative principles.
615.5240 Permanent capital requirements.
615.5250 Disclosure requirements.

Subpart I—Issuance of Equities

§ 615.5220 Capitalization Bylaws.

The board of directors of each Farm Credit institution shall, pursuant to section 4.3A of the Farm Credit Act of 1971, adopt capitalization bylaws, subject to the approval of a majority of its voting shareholders present and voting, or voting by written proxy, at a duly authorized shareholders' meeting, that set forth:

(a) Classes of equities and the manner in which they shall be issued, transferred, converted and retired;

(b) For each class of equities, a description of the class(es) of persons to whom such stock may be issued, voting rights, dividend rights and preferences, and priority upon liquidation, including rights, if any to share in the distribution of the residual estate;

(c) The number of shares and par value of equities authorized to be issued for each class of equities, except that equities that are required to be purchased as a condition of obtaining a loan may be authorized to be issued in unlimited amounts;

(d) The percentage amount of equities that will be required to be purchased from the institution as a condition for obtaining a loan, which may be more than, but shall be not less than, 2 percent of the loan amount or $1,000, whichever is less;

(e) The amount of stock protected under section 4.9A of the Act that existing borrowers will be required to exchange for stock issued under capitalization bylaws adopted pursuant to section 4.3A of the Act;

(f) The manner in which stock will be retired, including a provision stating that equities other than those protected under section 4.9A of the Act are retirable at the sole discretion of the board, provided minimum permanent

capital adequacy standards established in Subpart H of this part are met;

(g) The manner in which earnings will be allocated and distributed, including the basis on which patronage refunds will be made, which shall be in accord with cooperative principles; and

(h) The manner in which the capitalization requirements of the Farm Credit Bank shall be allocated and equalized from time to time among its owners.

§ 615.5230 Implementation of cooperative principles.

(a) The bylaws shall provide for voting rights based upon cooperative principles, except as otherwise required by statute or regulation, and shall include, at a minimum, the following provisions:

(1) For associations—

(i) A provision according each voting shareholder one vote, except as modified by paragraph (b) of this section.

(ii) A provision according each voting shareholder the right to vote in the election of each director.

(2) For Farm Credit Banks—

(i) A provision according the vote of each association a weight proportional to the number of the association's voting shareholders in a manner that does not discriminate against agricultural credit associations that have resulted from the merger or consolidation of Federal land bank associations and production credit associations; and

(ii) A provision according each voting shareholder the right to cast its vote in the election of each director.

(b) Bylaw provisions shall provide for the equitable treatment of all shareholders and participation certificate holders. To assure such equitable treatment, the bylaws shall, at a minimum, provide for the following:

(1) The authorization to issue preferred stock other than preferred stock to be issued to the Farm Credit System Financial Assistance Corporation shall be approved by a majority of the shares of each class of stock affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

(2) Any dividends paid to the holders of common stock shall be on a per share basis and without preference between classes of common stock, between classes of participation certificates, between classes of common stock and classes of participation certificates, or between holders of the same class of stock or participation certificates, except that any class of common stock that results from the conversion of allocated surplus may be subordinated to other classes of common stock in the payment of dividends.

(3) Patronage refunds may be paid, consistent with cooperative principles, on a proportionate basis determined by the board of directors in accordance with the capitalization bylaws, provided that any earning pools that may be established for the payment of patronage shall be established on a rational and equitable basis and shall ensure that each patron of the institution receives its fair share of all of the earnings of the institution and bears its fair share of the expenses of the institution.

(4) All classes of common stock and participation certificates (except those resulting from a conversion of allocated surplus) must be accorded the same priority with respect to impairment and restoration of impairment and have the same rights and priority upon liquidation.

§ 615.5240 Permanent capital requirements.

The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards established under Subpart H of this Part and the total capital standard established by the board of directors of the institution.

(a) In order to qualify as permanent capital, equities issued under the bylaws must meet the following requirements:

(1) For common stock and participation certificates—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan adopted by the board of directors.

(ii) Retirement must be at not more than book value.

(iii) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued, and the rights, if any, to share in any patronage distributions that may be made.

(iv) Dividends must be payable only at the discretion of the board and must be noncumulative.

(2) For preferred stock issued to persons other than the Farm Credit System Financial Assistance Corporation—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan adopted by the board of directors.

(ii) Retirement must be at not more than book value.

(iii) Dividends must be payable only in the discretion of the board, and may be cumulative, provided the obligation to pay can be indefinitely deferred so long as no dividends are paid to holders of common stock and participation certificates or patronage refunds paid to patrons, and provided further that such obligation is subordinated to the rights of the holders of common stock and participation certificates to have their stock or participation certificates retired at book value not to exceed par upon liquidation.

(iv) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued.

(b) The capitalization bylaws of the Farm Credit Bank shall allow the Farm Credit Bank, with the prior approval of the Farm Credit Administration, to require the holders of its common stock and participation certificates to subscribe for such additional capital as may be needed by the Farm Credit Bank to meet its capital requirements under Subpart H of this part or its joint and several liabilities under section 4.4 of the Act. In making such a capital call, the Farm Credit Bank shall take into account the financial condition of the holders of its common stock and participation certificates.

(c) The capitalization bylaws of the banks for cooperatives and associations shall require that until the institution meets the minimum permanent capital standard established by the FCA, all equities required to be purchased as a condition for obtaining a loan shall be purchased from the institution.

§ 615.5250 Disclosure requirements.

(a) Equities purchased as a condition for obtaining a loan. Prior to loan closing, the institution shall provide the prospective borrower with the following:

(1) The institution's most recent annual report filed under 12 CFR Part 620;

(2) The institution's most recent quartely filed under 12 CFR Part 620, if more recent than the annual report;

(3) A copy of the institution's capitalization bylaws; and

(4) A written description of the terms and conditions under which the equity is issued, including an express disclosure that the equity is retirable only at the discretion of the board of directors and is an investment that is at risk and not a compensating balance.

(b) Prior to any mandatory exchange of eligible borrower stock, as defined in § 615.5260(a)(1), for stock issued under capitalization bylaws required under § 615.5220, equity holders shall be provided with the disclosures required by paragraph (a)(3) and (4) of this section.

(c) Other equities.

(1) No stock or participation certificates other than those required to be purchased as a condition of obtaining a loan may be offered for sale except pursuant to a disclosure statement containing all of the information required by 12 CFR Part 620 in the annual report to shareholders as of a date within 135 days of the proposed sale, which disclosure statement must have been reviewed and cleared by the Farm Credit Administration.

(2) At least 45 days prior to the proposed sale of such equities, the institution shall submit the disclosure statement required by paragraph (b)(1) of this section to the Farm Credit Administration for review and clearance. The most recent annual report to shareholders and the most recent quarterly report filed with the Farm Credit Administration may be incorporated by reference into the disclosure statement in satisfaction of this requirement. In addition, the disclosure statement shall include items (3) and (4) of paragraph (a) of this section and a discussion of the intended use of the sale proceeds.

(3) Within 30 days of the receipt of such disclosure statement and any clarifying information the Farm Credit Administration may request, the Farm Credit Administration shall inform the institution whether the Farm Credit Administration will consider the issuance permanent capital for the purpose of meeting the minimum permanent capital standards established under Subpart H and shall inform the institution of any required changes or additions to the disclosure materials.

(4) No officer, director, employee, or agent of a System institution shall make any disclosure, through the disclosure statement or otherwise, in connection with the sale of equities that is inaccurate or misleading, or omit to make any statement needed to make other disclosures made by such person not misleading.

(5) The Farm Credit Administration may waive any or all of the disclosure requirements of this paragraph (b) when a single investor acquires $100,000 or more of a single class of equity if the sophistication of the purchaser warrants, provided that any certificate that may be issued evidencing such an equity states on its face in boldface type *"The denomination of this equity may not be reduced to less than $100,000 without the prior approval of the Farm Credit Administration."*

(c) The requirements of this section shall not apply to the sale of Farm Credit System institution equities to other Farm Credit System institutions or other financing institutions having a discount or lending relationship with the selling Farm Credit System institution.

3. Subpart J is revised to read as follows:

Subpart J—Retirement of Equities

Sec.
615.5260 Retirement of eligible borrower stock.
615.5270 Retirement of other equities.
615.5280 Retirement in event of default.

Subpart J—Retirement of Equities

§ 615.5260 Retirement of eligible borrower stock.

(a) *Definitions.* For the purpose of this Subpart the following definitions shall apply:

(1) "Eligible borrower stock" means:

(i) Stock, participation certificates or allocated equities outstanding on January 6, 1988, or purchased as a condition of obtaining a loan prior to the earlier of the date of shareholder approval of capitalization bylaws under section 4.3A of the Act or October 5, 1988; and

(ii) Any stock, participation certificates or allocated equities for which such eligible borrower stock is exchanged in connection with a merger, consolidation, or other reorganization or transfer of territory. "Eligible borrower stock" does not include equities for which eligible borrower stock is required to be exchanged pursuant to the bylaws adopted under section 4.3A or equities for which eligible borrower stock is voluntarily exchanged in consideration of a benefit to the shareholder, such as early retirement.

(2) "Retirement in the ordinary course of business" means:

(i) Retirement upon repayment of a loan or under a retirement or revolvement plan in effect prior to January 6, 1988, and for eligible borrower stock issued after that date, at the time the loan was made; and

(ii) Retirement pursuant to § 615.5280.

(3) "Par value" means:

(i) In the case of stock, par value;

(ii) In the case of participation certificates and other equities (except equities unable to be retired in connection with a liquidation occurring after January 1, 1983, and before January 1, 1988), face or equivalent value; or

(iii) In the case of participation certificates and allocated surplus subject to retirement under a revolving cycle and retired out or order pursuant to § 615.5280 or othewise under the Act, par or face value discounted at a rate determined by the institution to reflect the present value of the equity as of the date of such retirement.

(b) When an institution retires eligible borrower stock in the ordinary course of business, such equities shall be retired at par, even if book value is less than par. If the book value is less than par, such retirement shall be coordinated with the Farm Credit System Assistance Board and the Farm Credit System Financial Assistance Corporation.

(c) When a Farm Credit Bank retires stock for the sole purpose of enabling an association to retire eligible borrower stock that was issued in connection with a long term real estate loan, such stock shall be retired at par even if its book value is less than par. If the book value is less than par, such retirement shall be coordinated with the Farm Credit System Assistance Board and the Farm Credit System Financial Assistance Corporation.

(d) No eligible borrower stock shall be retired other than in the ordinary course of business without the prior approval of the Farm Credit Administration.

§ 615.5270 Retirement of other equities.

(a) Equities other than eligible borrower stock shall be retirable only in the discretion of the board and not on a date certain or upon the happening of an event such as repayment of a loan, or pursuant to an automatic retirement or revolvement plan, and shall be retired at not more than their book value.

(b) No equities shall be retired unless after the retirement the institution would continue to meet the minimum permanent capital standards (including interim standards) established under Subpart H of this part.

§ 615.5280 Retirement in event of default.

(a) When the debt of a holder of eligible borrower stock issued by a production credit association, Federal land bank association or agricultural credit association is in default, such institution may, but shall not be required to, retire at par eligible borrower stock owned by such borrower in total or partial liquidation of the debt.

(b) When the debt of a holder of stock, participation certificates or other equities issued by a production credit association, Federal land bank association, or agricultural credit association is in default, such institution may, but shall not be required to, retire such stock, participation certificates or other equities, other than eligible

borrower stock as defined in § 615.5280(a)(1), at book value not to exceed par, all or part of the equity owned by such borrower in total or partial liquidation of the debt.

(c) When the debt of a holder of eligible borrower stock issued by a bank for cooperatives is in default, the bank for cooperatives may, but shall not be required to retire such stock, in total or partial liquidation of the debt. If such stock qualifies as eligible borrower stock, it shall be retired at par, as defined in § 615.5280(a)(3). All other stock shall be retired at fair market value.

(d) Any retirements made under this section by a Federal land bank association that is not a direct lender shall be made only upon the specific approval of or in accordance with approval procedures issued by the district Farm Credit Bank.

(e) Prior to making any retirement pursuant to this section, except retirements pursuant to paragraph (c) of this section, the institution shall provide the borrower with written notice of the following matters:

(1) A statement that the association has declared the borrower's loan to be in default;

(2) A statement that the association will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan;

(3) A description of the effect of the retirement on the relationship of the borrower to the association;

(4) A statement of the amount of the outstanding debt that will be owed to the association after the retirement of the borrower's equities; and

(5) The date on which the association will retire the equities of the borrower.

(f) The notice required by this section shall be provided in person at least 10 days prior to the retirement of any equities of a holder, or by mailing a copy of the notice by first class mail to the last known address of the equity holder at least 13 days prior to the retirement of such person's equities.

4. Subpart K is revised to read as follows:

Subpart K—Surplus and Reserves

Sec.
615.5330 Banks for cooperatives.

Subpart K—Surplus and Reserves

§ 615.5330 Banks for cooperatives.

Each bank for cooperatives shall add to the unallocated surplus account annually an amount not less than 10 percent of net earnings after taxes until such time as the unallocated surplus equals half of the minimum permanent capital requirements established under Subpart H of this part.

(Subpart L) [Reserved]

§§ 615.5350–615.5370

(Subpart M) [Reserved]

§§ 615.5390–615.5430

(Subpart N) [Reserved]

§ 615.5440

* * * * *

5. Subparts L, M, and N are removed and reserved.

Date: August 30, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–20046 Filed 9–1–88; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–99–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require inspection of the fuselage skin lap splice between body stations (BS) 400 and 520 at stringers S–6L and S–6R. This proposal is prompted by a recent report of multiple adjacent cracks found on one airplane. This condition, if not corrected, could lead to sudden loss of cabin pressurization and the inability to withstand fail-safe loads.

DATES: Comments must be received no later than October 27, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–99–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–99–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The manufacturer has notified the FAA of the finding of cracks in the fuselage skin lap splice between body station (BS) 400 and BS 520, at stringers S–6L and S–6R, on one Boeing Model 747 series airplane. The cracks initiated in the fastener countersink and propagated along the fastener line due to fatigue. Cabin pressurization was the primary loading source for the fatigue cracking. Failure to detect and repair a skin crack in this area prior to reaching critical crack length, may result in in-flight depressurization of the airplane and the inability of the airplane to withstand fail-safe loads.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2302, dated June 2, 1988, which defines the specific inspection procedures to be used to check for cracks in the fuselage skin lap splice between BS 400 and BS 520 at stringers

S–6L and S–6R on certain Boeing Model 747 airplanes. A modification is described in the service bulletin which consists of replacing the top row of fasteners with protruding head fasteners or installing an external doubler. Inspections are to continue after modification.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and repair, if necessary, of certain Boeing Model 747 series airplanes, in accordance with the service bulletin previously mentioned.

It is estimated that 200 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, listed in Boeing Alert Service Bulletin 747–53A2302 dated June 2, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a failure of the fuselage skin lap splice between body station (BS) 400 and BS 520 at stringer S–6L and S–6R, accomplish the following:

A. Conduct close visual and high frequency eddy current (HFEC) inspection of the fuselage skin lap splice between BS 400 and BS 520, at stringers S–6L and S–6R for cracking, in accordance with Boeing Alert Service Bulletin 747–53A2303, dated June 2, 1988, at the following thresholds:

1. Within the next 100 landings after the effective date of this AD for airplanes that have accumulated 16,000 or more landings as of the effective date of this AD.

2. Within the next 1,000 landings after the effective date of this AD or prior to the accumulation of 16,100 landings, whichever occurs first, for airplanes that have accumulated between 12,000 and 16,000 landings, as of the effective date of this AD.

3. Prior to the accumulation of 13,000 landings for airplanes that have accumulated 12,000 or fewer landings as of the effective date of this AD.

Adequate lighting must be used for this inspection. The eddy current inspections may be conducted without removal of the paint, provided the paint does not interfere with the inspections. Paint must be removed, using an approved chemical striper, in any situation where the inspector determines that the paint is interfering with the proper functioning of the inspection instrument.

B. On airplanes which have been modified to the stretched-upper-deck configuration, as identified in Boeing Alert Service Bulletin 747–53A2302, dated June 2, 1988, the accumulated landing threshold for compliance with paragraph A., above, is measured from the time of the stretched-upper-deck modification.

C. If no cracking is detected, repeat the close visual and HFEC inspections required by paragraph A., above, at intervals not to exceed 5,000 landings.

D. If cracks are detected, accomplish the preventive modification of the affected lap splice, in accordance with Boeing Alert Service Bulletin 747–53A2302, dated June 2, 1988, prior to further pressurized flight, except as noted in paragraph E., below.

E. If there are no more than three cracks that are less than 0.10 inch in length from BS 340 to BS 520, as defined in the Boeing Alert Service Bulletin 747–53A2302, dated June 2, 1988, per lap splice, accomplish preventive modification of the affected lap splice in accordance with Boeing Alert Service Bulletin 747–53A2302, dated June 2, 1988, prior to the accumulation of 1,500 additional landings, provided that the non-repaired area is reinspected in accordance with paragraph A., above, at intervals not to exceed 100 landings.

F. For airplanes incorporating the preventive modification, as described in Boeing Alert Service Bulletin 747–53A2302, dated June 2, 1988, accomplish the inspections required by paragraph A., above, prior to the accumulation of 10,000 landings after the modification and thereafter at intervals not to exceed 5,000 landings. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region, or FAA Designated Engineering Representatives (DER) of The Boeing Company, prior to the next pressurized flight.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 6, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88–19957 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–110–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require replacement or

repetitive leakage checks of aileron power control units which have accumulated 18,000 or more hours time in service. This proposal is prompted by reports of aileron power control units binding due to piston seal and flange failure. This condition, if not corrected, could lead to immobilization of the ailerons and partial loss of controllability of the airplane.

DATES: Comments must be received no later than October 27, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-110-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-110-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Two operators of Boeing Model 727 airplanes have reported three occurrences of aileron control wheel binding due to internal damage in the aileron power control unit (PCU). Subsequent investigation by the manufacturer indicates that the damage was due to deterioration of the hydraulic piston seals, which allowed hydraulic pressure to load and cause fatigue fracture of the piston seal retainer flanges, leading to binding of the PCU output shaft. Available service experience indicates that seal deterioration has been observed on units that have accumulated 19,000 or more hours time in service. Binding of the PCU output shaft results in immobilization of the ailerons in the position they occupied when PCU binding occurred. Limited roll control can be regained with spoilers by applying opposite control wheel movement, overriding a disconnect device. All reported instances of control wheel binding have occurred on the ground during control checks, but PCU failure can occur at any time with the control wheel in any position. This condition, if not corrected, could lead to immobilization of the ailerons and partial loss of controllability of the airplane.

Service history and testing by the manufacturer indicate that the seal failure which causes the eventual PCU binding can be expected on units with more than 18,000 hours time in service. Periodic replacement will preclude PCU failure from this source. Additionally, failed seals can be detected by an internal leakage test. If this test is performed at 2,500 hour intervals, and units which fail the test are replaced, the seal failure will not have time to cause flange failure and PCU binding. For these reasons, either a periodic replacement or a repetitive leakage test will provide assurance that aileron PCU binding will not occur.

An overhaul procedure has been developed by the PCU manufacturer which eliminates the pressure rise which occurs when the piston seals fail; hence, PCU's which have been overhauled in this manner do not require replacement or leakage tests.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727-27A0220, Revision 1, dated July 28, 1988, which describes periodic replacement or internal leakage checks of PCU's; and National Water Lift Control Systems Service Bulletin 27-21-1/200, dated April 8, 1988, which describes the overhaul of aileron power control units.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require either replacement or repetitive testing of certain aileron power control actuators.

It is estimated that 1,246 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to replace the PCU, and that the average labor cost would be $40 per manhour. If a bench internal leakage test were performed, an additional 3 manhours per airplane would be required. Based on these estimates, replacement only would cost $149,500 per year. If the leakage test only were accomplished, that estimate increases to $250,000 per year. The cost to rebuild the PCU after removal is estimated to be $6,545. Based on these figures, the total cost impact of the AD on U.S. operators would be between $300,000 and $8,300,000 depending on the option selected by the operators.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Excutive Order 12291. and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures. (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent binding of the aileron control wheel caused by internal damage in the aileron power control unit (PCU), accomplish the following:

A. Prior to the accumulation of 18,000 hours time in service on the PCU since new or overhauled with new seals, or within the next 3,000 hours time in service on the PCU after the effective date of this AD, whichever occurs later, accomplish either of the following, in accordance with Boeing Alert Service Bulletin 727–27A0220, Revision 1, dated July 28, 1988:

1. Replace any aileron power control unit with a PCU which has been overhauled including new piston seals or one which has accumulated less than 18,000 hours time in service. Continue to replace any PCU prior to the accumulation of 18,000 hours time in service on the PCU.

2. Perform a hydraulic bench internal leakage test on the aileron power control unit. Before further flight, replace any PCU which fails the test. Repeat the hydraulic bench internal leakage test at intervals not to exceed 2,500 hours time in service.

Note: If the time in service on the aileron power control unit cannot be accurately determined, use the airplane time in service for determining compliance time for this AD.

B. Overhaul of the aileron power control unit in accordance with National Waterlift Service Bulletin 27–21–1/200, dated April 8, 1988, constitutes terminating action for the repetitive replacement or internal leakage test required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the rework required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commerical Airplanes, P.O. Box 3707, Seattle, Washington, 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 26, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88–19958 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 16

[Docket No. RM87–33–000]

Hydroelectric Relicensing Regulations Under the Federal Power Act

Issued August 26, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; order granting request for reply comment period.

SUMMARY: On May 24, 1988, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking in Docket No. RM87–33 (53 FR 21,844 (June 10, 1988)), proposing to revise its regulations governing relicensing of hydroelectric projects. In this order, the Commission establishes a reply comment period of 30 days following the expiration of the initial comment period on September 8, 1988. Reply comments, not to exceed 15 pages in length, may be submitted to the Commission on or before October 11, 1988.

DATES: Initial comments are due September 8, 1988. Reply comments are due October 11, 1988.

ADDRESS: All filings should refer to Docket No. RM87–33–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the context of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

Order Granting Request for Reply Comment Period

The Federal Energy Regulation Commission (Commission) issued a notice of proposed rulemaking (NOPR) in this docket on May 24, 1988. In that NOPR, the Commission proposed to revise its regulations governing the relicensing of hydroelectric power projects and required the filing of written comments no later than September 8, 1988. Edison Electric Institute has requested that the Commission establish a reply comment period of 30 days during which interested parties may file replies to comments filed by others. The Commission grants that request and will permit the filing of reply comments during a 30-day period following the expiration of the initial comment period.

Interested persons may inspect or copy initial comments during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426 or may telephone the Commission's Public Reference and Files Maintenance Branch at (202) 357–8118 to learn how to obtain copies of the comments in this rulemaking docket. Reply Comments must be in writing and an original and 14 copies must be received by October 11, 1988. Reply Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and should refer to Docket No. RM87–33–000. Reply Comments must not exceed 15 pages in length.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–20034 Filed 9–1–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

Federal-State Unemployment Compensation Program; Income And Eligibility Verification System

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; amendment.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to amend the regulations for implementing the State Income and Eligibility Verification System. The amendment will provide that State unemployment insurance information related to child support enforcement shall be provided upon request and at cost to the Federal Parent Locator Service (FPLS).

DATE: Written comments must be received by the close of business on October 3, 1988.

ADDRESS: Comments should be mailed to Mary Ann Wyrsch, Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S4231, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Barbara Ann Farmer, Director, Office of Program Management, Unemployment Insurance Service, (202) 535–0610 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Sections 303(f) and 1137 (a) and (b) of the Social Security Act (SSA) require States to establish an income and eligibility verification system (SIEVS) for the exchange of information to verify eligibility for, and the amount of, benefits available under several Federally assisted programs, including the Federal-State Unemployment Compensation Program. SSA Section 1137(a)(4)(B) makes mandatory the use of SIEVS information "to assist in the child support program under Part D of title IV * * * of the SSA. The Federal Parent Locator Service (FPLS) is a key operating agency in the child support program under Part D of Title IV. This statutory language demonstrates that Congress intended the FPLS, in addition to the State and local child support enforcement agencies (which currently have access to SIEVS information under § 603.2(d)(5)), to have access to such information as well. To ensure that the regulations reflect the full intent of Congress with respect to child support enforcement, the Department is amending section 603.2(d)(5) to include the FPLS, as well as State and local child support enforcement agencies, as an agency authorized to request wage and claim information from State unemployment compensation agencies under § 603.5.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 535–0600 (this is not a toll free number).

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

Information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), and have been assigned OMB control number 1205–0238.

Regulatory Flexibility Act

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" under 5 U.S.C. 605(b). This proposed rule amends the regulations for the State Income and Eligibility Verification System and affects only the States, which are not within the definition of "small entity" under 5 U.S.C. 601(6). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 603

Employment and Training Administration, Labor, and Unemployment Compensation.

Words of Issuance

For the reasons set forth in the preamble, it is proposed that 20 CFR Part 603 be amended as set out below.

Signed at Washington, DC on August 30, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

PART 603—INCOME AND ELIGIBILITY VERIFICATION SYSTEM

1. The authority citation for Part 603 is amended to read as follows:

Authority: 42 U.S.C. 1302; Secretary's Order No. 4–75 (40 FR 18515).

2. Section 603.2 is amended by revising paragraph (d)(5) to read as follows:

§ 603.2 Definitions.

* * * * *

(d) "Requesting agency" means:

* * * * *

(5) Any State or local child support enforcement agency charged with the responsibility of enforcing child support obligations under a plan approved under Part D of Title IV of the Social Security Act, and the Federal Parent Locator Service established under the provisions of section 453 of such Part D; and

* * * * *

§ 603.7 [Amended]

3. In paragraph (a)(6)(ii) of § 603.7 remove the words "State agency" and add, in their place, the words "requesting agency".

[FR Doc. 88–20072 Filed 9–1–88; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL–934–86]

Income Taxes; Branch Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed Income Tax Regulations relating to the branch tax. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of these temporary regulations also serves as the

comment document for this proposed rulemaking.

DATES: These regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by November 1, 1988.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, (Attention: CC:LR:T, INTL–934–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard M. Elliott of the Office of Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:LR:T, INTL–934–86) (202–566–6457, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for reivew in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Internal Revenue Service, with copies to the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer TR:FP.

The collection of information in this regulation is in §§ 1.884–1T(d)(11), 1.884–2T(a)(2), 1.884–2T(b), 1.884–2T(c)(2), 1.884–2T(d)(1), 1.884–2T(d)(4), 1.884–2T(d)(5), 1.884–4T(b)(7), 1.884–4T(c)(1), 1.884–5T(b)(3) through (7), 1.884–5T(d)(6), and 1.884–5T(f). This information is required by the Internal Revenue Service to ensure the correct computation of tax under section 884. This information will be used in audits of taxpayers. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 20,500 hours.

The estimated annual burden per respondent/recordkeeper varies from .5 to 10.5 hours depending on individual circumstances, with an estimated average of 6.5 hours.

Estimated number of respondents and/or recordkeepers: 3000.

Estimated annual frequency of responses: Annually.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.884–0T through 1.884–2T, 1.884–4T, and 1.884–5T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Parts 1 and 602. For the text of the temporary regulations, see FR Doc. 88–19832 [T.D. 8223] published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Request for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Richard M. Elliott of the Office of the Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.861–1 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements. Proposed Amendments to the Regulations.

PARTS 1 AND 602—[AMENDED]

The temporary regulations, FR Doc. 88–19832 [T.D. 8223], published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 884 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–19833 Filed 8–29–88; 1:29 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–023]

Virginia State Plan; Eligibility for Final Approval Determination; Comment Period and Opportunity To Request Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed final State plan approval; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the eligibility of the Virginia State occupational safety and health plan, as administered by the Virginia Department of Labor and Industry, for determination under section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State plan should be granted.

If an affirmative determination under section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the Virginia plan. This notice announces that OSHA is soliciting written public comment regarding whether or not final State plan approval should be granted, and offers an opportunity to interested persons to request an informal public hearing on the question of final State plan approval.

DATES: Written comments requests for a hearing must be received by October 7, 1988.

ADDRESS: Written comments or requests for a hearing should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–023, Room N2439 Rear, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs.

Occupational Safety and Health Administration, U.S. Department of Labor, Room N3649, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*, (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and .4, finds that the plan provides or will provide for State standards and enforcement which are at least as effective as Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this detemination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period a provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a three-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34).

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA (29 CFR 1954.3(f)).

A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied.

An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for section 18(e) determinations are found at 29 CFR Part 1902, Subpart D. In general, in order to be granted final approval, actual performance by the State must be "at least as effective" overall as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

A final requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final approval.

History of the Virginia Plan and of Its Compliance Staffing Benchmarks.

Virginia Plan

On December 18, 1972, Virginia submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on April 11, 1973, a notice was published in the **Federal Register** (38 FR 9194) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons 30 days in which to submit data, views and arguments in writing concerning the plan.

Comments addressing specific areas of the Virginia plan, including alleged deficienices, were received from the Virginia State Association of Professional Fire Fighters; Mary A. Marshall, Member of the Virginia House of Delegates; Harold Gordon of Gordon and Healy; the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO); and the Virginia State AFL–CIO. Following review of the Virginia plan, the public comments, and the results of discussions with the State, several modifications and clarifications were received from the State.

Plan review and a subsequent determination as to effectiveness, required under section 18(c) of the Act and Subpart B of 29 CFR Part 1902, disclosed several reasons for determining that the Virginia plan as submitted, which relied primarily on criminal enforcement procedures, was not "at least as effective" as the Federal civil enforcement scheme. Consequently, the Assistant Secretary initiated formal proceedings in accordance with section 18(d) of the Act and 29 CFR 1902.19(a) to reject the plan. A Notice of the Proposed Rejection and Notice of Hearing was published in the **Federal Register** (39 FR 24844, August 1, 1974) which fully described the ramifications of the State's reliance on a criminal enforcement process and the Assistant Secretary's conclusions regarding the resulting lack of effectiveness of the proposed Virginia program in comparison to Federal enforcement procedures. Although an opportunity was given for a public hearing on the rejection proceeding, only representatives of the District of Columbia requested permission to appear, and that request was subsequently withdrawn.

In view of the complexity of the subject matter involved in the proposed rejection, Requests for Admissions, Interrogatories and Answers to Interrogatories were exchanged between the parties to the proceeding. Before the commencement of a formal hearing on the proposed rejection, the Virginia General Assembly, in its 1975 regular session, amended section 40.1–49.1 of the Code of Virginia (1950) which serves as the enforcement portion of the enabling legislation. On June 16, 1975, the U.S. Department of Labor filed a motion to dismiss the proposed rejection on the grounds that the amended legislation, which provided for civil rather than criminal court review of contested enforcement actions and the

right of employees to participate as parties in those proceedings, was in the process of being reviewed for possible approval and had rendered moot the proceeding on which the rejection was based. To this end, pursuant to section 18(c) of the Act and 29 CFR 1902.12, the Assistant Secretary published for public comment in the **Federal Register** (40 FR 25741, June 18, 1975) a notice of Submission of Modifications to the Developmental Plan which recognized that the 1975 amendments appeared substantially to remove the basis for the proposed rejection. Public comments to this notice were received from Area 4, United Paper Workers International Union, AFL–CIO. There were no requests for a public hearing.

Prior to the date scheduled for argument on whether the proposed rejection proceeding should be dismissed, the Assistant Secretary and the Virginia Commissioner of Labor and Industry agreed upon Consent Findings, confirmed by a subsequent Consent Order, notice of which was published in the October 30, 1975 **Federal Register** (40 FR 50584), to suspend the proposed rejection proceedings pending the outcome of OSHA's review of the amended Virginia plan.

Although the 1975 legislative amendments appeared to resolve many of the objections to Virginia's enforcement process, the Department of Labor's review tentatively determined that the Virginia plan still did not provide enforcement procedures "as effective as" their Federal counterparts. Discussions and meetings between State and Federal representatives, however, resulted in several administrative commitments and legislative proposals by Virginia in response to the concerns expressed by Federal reviewers. The 1976 session of the Virginia General Assembly enacted further amendments to the State's enabling legislation. On June 21, 1976, the State formally submitted its revised plan, including the amended enabling legislation, to the Assistant Secretary. As noted above, the plan included provisions for the review of contested cases by the Virginia civil court system whereas Federal OSHA utilizes an administrative review process.

On September 28, 1976, the Assistant Secretary published a **Federal Register** notice granting approval of the Virginia plan as a developmental plan under section 18(b) of the Act (41 FR 42655). The plan provides for a program patterned in most respects (other than its procedures for contested cases) after that of the Federal Occupational Safety and Health Administration.

The Virginia plan covers all occupational safety and health issues except private sector maritime employment and employment on military facilities. The Virginia Department of Labor and Industry is designated as having responsibility for administering the plan throughout the State. At the time of initial plan approval, the responsibility for health standards enforcement rested with the Bureau of Occupational Health in the Virginia Department of Health. Effective July 1, 1985, the Bureau of Occupational Health was transferred from the Department of Health to the Department of Labor and Industry. The plan provides for the adoption by Virginia of standards which are "at least as effective" as Federal occupational safety and health standards. In most cases the State standards are identical to the Federal. The plan requires employers to furnish employment and place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the State agency. Employees are required to comply with all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; coverage under the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Appeals of citations and penalities are filed with the Commissioner of Labor and Industry and are heard by the General District Courts of Virginia, which are located in each Virginia county and in the independent cities. (Although the General District Courts are not courts of record, the 1979 session of the Virginia General Assembly enacted amendments to Title 40.1 of the Code of Virginia to require the Virginia courts to issue written orders based on findings of fact and conclusions of law in cases involving the contest of citations and penalties related to violations of occupational safety and health standards.) Decisions of the General District Courts may be appealed to the Virginia Circuit Courts. Decisions of the Circuit Courts may be appealed to the Virginia Supreme Court.

The notice of initial approval noted a few additional distinctions between the Federal and Virginia programs. The State does not cover private sector maritime employment or military facilities. As indicated above, unlike the Federal administrative process for the review of contested cases, in Virginia, General District Courts hear formal contests of penalties and/or citations for safety and health violations. Appeals of District Court determinations are heard de novo by the State Circuit Courts.

The Assistant Secretary's initial approval of the Virginia developmental plan, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart EE; 41 FR 42655, September 28, 1976). A minor correction to the approval notice was published on February 25, 1977 (42 FR 10989). As a result of the approval of the Virginia State plan, the Assistant Secretary published a notice announcing the Dismissal of Rejection Proceedings against the Virginia plan (41 FR 56412, December 28, 1976).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and documentation submitted for OSHA approval on or before September 23, 1979. These "developmental steps" included amendments to Title 40.1 of the Code of Virginia, promulgation of State occupational safety and health standards essentially identical to Federal standards and establishment of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program including, among other things, legislative amendments, a judicial system of review for contested cases, a merit staffing system, regulations for inspections, citations and proposed penalties, recordkeeping and reporting regulations, a voluntary compliance program, including on-site consultation services, and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Virginia subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.104).

On October 1, 1981 an operational status agreement was entered into

between Federal OSHA and Virginia. A **Federal Register** notice announcing the operational status agreement was published on June 11, 1982 (47 FR 25323). Under the terms of the agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Virginia plan.

On August 15, 1984, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Virginia had satisfactorily completed all developmental steps (49 FR 33123, August 21, 1984). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the Virginia plan—to be at least as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with section 18(e) of the Act whether the statutory or regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On June 13, 1978, OSHA published a notice in the **Federal Register** (43 FR 25491) requesting public comment on a petition received by the Agency requesting withdrawal of OSHA approval of the Virginia State plan. The petition was submitted by the Oil, Chemical, and Atomic Workers (OCAW) International Union. Three additional petitions requesting plan withdrawal were subsequently filed by the Fairfax County, Virginia, Board of Supervisors, the Virginia State AFL–CIO, and the Building and Construction Trades Department of the AFL–CIO. On October 3, 1980, a **Federal Register** notice was published (45 FR 65625) requesting public comments on the three petitions as well as providing an additional time period for public comments on the OCAW petition.

The OCAW petition alleged that Virginia's enforcement of safety and health standards was not as effective as that of Federal OSHA. The Virginia State AFL–CIO criticized Virginia's judicial review system and alleged that Virginia had failed to enforce safety and health standards as effectively as Federal OSHA. The Fairfax County Board of Supervisors and the Building and Construction Trades Department of the AFL–CIO alleged that Virginia's enforcement in the construction industry was ineffective and insufficient.

Of the 101 written comments received in response to the two notices requesting public comment, 97 expressed support for the Virginia plan while four letters supported the petitions for withdrawal, two of those letters having been submitted by petitioners themselves. In a **Federal Register** notice dated July 14, 1981 (46 FR 36141) the Assistant Secretary announced that in light of recent Federal monitoring data, comparison with Federal performance, information provided in the public comments, and other relevant factors, a withdrawal proceeding against the Virginia State plan was not warranted and the petitions were therefore denied.

On December 12, 1986, OSHA published a **Federal Register** notice (51 FR 44784) that effective October 1, 1986, concurrent Federal authority would be exercised in Virginia with respect to general schedule inspections resulting in denials of entry under the Virginia State plan. The resumption of concurrent enforcement authority was undertaken as a temporary measure to allow Virginia to complete its efforts to legislatively address difficulties it had encountered in the area of right of entry. The specific difficulty resulted from a 1985 Virginia Supreme Court decision that suggested, but did not expressly hold, that Virginia employers challenging general schedule inspection warrants would be entitled to discovery, including the release of confidential inspection scheduling information and "establishment lists" of workplaces likely to be inspected in the future. In a subsequent case involving a challenge to a State inspection warrant, the Circuit Court for the City of Roanoke, relying on the 1985 Virginia Supreme Court decision, ordered State officials responsible for enforcing the plan to submit to discovery requested by the employer, including the submission of data underlying the Virginia inspection plan, deposition of officials responsible for developing and implementing the inspection scheduling plan, and the release to the employer of various confidential scheduling material, including establishment lists. In cases involving similar challenges to Federal OSHA inspection warrants, the Federal courts have held such discovery improper. It was the Assistant Secretary's determination that these State court decisions rendered Virginia's right of entry authority less effective than the Federal and necessitated the reinstitution of limited concurrent Federal enforcement authority to ensure worker protection.

The 1987 session of the Virginia General Assembly enacted legislative amendments to remedy the Virginia plan's right of entry difficulties. OSHA's review of those amendments determined that the amendments provided the Virginia plan with a basis to obtain search warrants on terms and conditions equivalent to those which are available Federally. Accordingly, the Assistant Secretary approved the legislative amendments in the September 17, 1987 **Federal Register** (52 FR 35069) and announced that the limited exercise of concurrent Federal jurisdiction in Virginia had been terminated when the amendments became effective on July 1, 1987. A recent court decision has upheld the State's revised warrant authority.

Virginia Benchmarks

Under the terms of a 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In 1980, in response to the Court Order, OSHA established benchmarks for all approved State plans, including benchmarks of 51 safety and 74 health compliance officers for Virginia. The 1978 Court Order noted that new information might warrant an adjustment by OSHA of the fully effective benchmarks. In September 1984 Virginia in conjunction with OSHA, completed a reassessment of the levels staffing benchmarks of 38 safety and 21 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986 (51 FR 2481).

Determination of Eligibility

This **Federal Register** notice announces the eligibility of the Virginia plan for an section 18(e) determination. (29 CFR 1902.39(c) requires that this preliminary determination of eligibility be made before section 18(e) procedures begin.) The determination of eligibility is based upon OSHA's findings that:

(1) The Virginia plan has been monitored in actual operation for at least one year following certification. The results of OSHA monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are prepared annually and made available to the State and to the public. The results of OSHA's most recent post-certification

monitoring during the period from January 1, 1987 through March 31, 1988 are set forth in an section 18(e) *Evaluation Report of the Virginia Plan*, which has been made part of the record of the present proceedings.

(2) The plan meets the State's revised benchmarks for enforcement staffing. In January 1986, pursuant to the terms of the Court Order and the *1980 Report to the Court* in *AFL–CIO* v. *Marshall*, OSHA approved revised fully effective benchmarks of 38 safety and 21 health compliance officers for Virginia based on an assessment of State-specific characteristics and historical experiences. Virginia has allocated these positions, as evidenced by the FY 1988 *Application for Federal Assistance* in which the State has committed itself to funding the State share of salaries for 38 safety and 21 health compliance officers. The FY 1988 application has been made part of the record in the present proceeding.

(3) Virginia participates and has assured its continued participation in the Integrated Management Information System (IMIS) developed by OSHA.

Issues for Determination in the 18(e) Proceedings

The Virginia plan is now at issue before the Assistant Secretary for determination as to whether the criteria of section 18(c) of the Act are being applied in actual operation. 29 CFR 1902.37(a) requires the Assistant Secretary, as part of the final approval process, to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). OSHA believes that the results of its evaluation of the Virginia plan, contained in the section 18(e) Evaluation Report, considered in light of these regulatory criteria and the criteria in section 18(c) of the Act, indicate that the regulatory indices and criteria are being met, and the Assistant Secretary accordingly has made an initial determination that the Virginia plan is eligible for an affirmative section 18(e) determination. This notice initiates proceedings by which OSHA expects to elicit public comment on the issue of granting an affirmative section 18(e) determination to Virginia. In order to encourage the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

(a) Standards and Variances

Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate standards and amendments at least as effective as the Federal standards. See §§ 1902.37(b)(3), 1902.3(c), 1902.4 (a) and (b). The Virginia plan provides for adoption of standards which are in most cases identical to Federal standards. For OSHA standards requiring State action during the section 18(e) evaluation period, Virginia's adoption process met the six-month time frame for 12 of 13 standards. (One standard took 7 months to adopt.) [Evaluation Report, p. 6.]

Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure coverage at least as effective as comparable Federal standards. While acknowledging prior approval of individual standards by the Assistant Secretary, this requirement stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902.3(c)(1), 1902.3(d)(1), 1903.4(a), and 1902.4(b)(2). As already noted, the Virginia plan provides for adoption of standards identical to Federal standards. Virginia also adopted standards interpretations which are identical to the Federal.

The State is required to take the necessary administrative judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is adopted from the Federal standards or developed by the State. See § 1902.37(b)(5). No such challenge to State standards has ever occurred in Virginia.

When granting permanent variances from standards, the State is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if the standard were in effect. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). Virginia had four requests for a permanent variance during the 18(e) evaluation period. Two were closed owing to lack of response from the applicants, one application was withdrawn, and one was pending. [Evaluation Report, p. 7.]

Where a temporary variance is granted, the State must ensure, among other things, that the employer complies with the standard as soon as possible and provides appropriate interim employee protection. See §§ 1902.37(b)(7) and 1902.4(b)(2)(iv). The Virginia temporary variance procedures require that any employer granted a temporary variance must have an effective program for coming into compliance with the standard as soon as possible. During the section 18(e) evaluation period, no temporary variance requests were received. [Evaluation Report, p. 7.]

(b) Enforcement

Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA; section 18(c)(3) requires the State plan to provide for right of entry and inspection of all work places at least as effective as that in section 8 of the Act.

The State inspection program must provide that sufficient resources be directed to designated target industries while providing adequate protection to all other workplaces covered under the plan. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). Data contained in the section 18(e) Evaluation Report indicates that 96.2% of State programmed safety inspections and 100% of programmed health inspections were conducted in high hazard industries. [Evaluation Report, p. 12.]

In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9), 1902.3 (e) and (f), and 1902.4(c)(2) (i) and (ix). Title 40.1 of the Code of Virginia allows the Commissioner to seek a warrant to permit entry into such establishment that has refused entry for the purpose of inspection or investigation. Virginia had 18 denials of entry during this evaluation period, was successful in obtaining entry in 14 instances. Once case was referred to Federal OSHA during the 9-month period of concurrent Federal jurisdiction, and in 3 instances the short-term construction jobs were completed before entry could be obtained. [Evaluation Report, pp. 15–16.]

Inspections must be conducted in a competent manner following approved enforcement procedures which include the requirement that inspectors acquire information adequate to support any citation issued. See § 1902.37(b)(10), 1902.3(d)(1), and 1902.4(c)(2). Procedures for the Virginia Occupational safety and health compliance program are set out

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in the Virginia Field Operations Manual, which is patterned after the Federal manual, and thus follows inspection procedures, including documentation procedures, which are similar to Federal. The Evaluation Report notes overall adherence by Virginia to these procedures.

Virginia cited an average of 3.6 violations per programmed safety inspection with citations and 4.5 violations per programmed health inspection with citations, and 17.8% of safety violations and 8.6% of health violations were cited as serious. The percentage of serious safety and health violations were lower than the comparable Federal statistics and were attributed to instances of incorrect hazard classification and identification by compliance officers. The State provided compliance officers with supplemental training to ensure the proper classification of violations of certain specific standards. [Evaluation Report, p. 17.]

State plans must include a prohibition on advance notice, and exceptions must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). Virginia adopted approved procedures for advance notice similar to the Federal procedures. There were 13 instances of advance notice. In all 13 instances, advance notice was properly given in accord with procedures as required for the effective conduct of inspections. [Evaluation Report, p. 16.]

State plans must provide for inspections in response to employee complaints, and must provide an opportunity for employee participation in State inspections. See § 1902.4(c)(i) through (iii). Virginia has procedures similar to Federal OSHA for processing and responding to compliants. The data indicates that during the evaluation period the State responded to 56.6% of safety complaints and 56.4% of health complaints with an inspection. The State's relatively high percentage of health complaints responded to with inspections as compared to the Federal experience is attributed to the State's policy of investigating all complaints (both formal and non-formal) alleging potential asbestos exposure. [Evaluation Report, pp. 13–14.] During the current evaluation period, 97.6% of all State inspections included either an employee representative on the walkaround or interviews with employees.

State plans must also provide protection for employees against discrimination similar to that found in section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). Title 40.1 of the Code of Virginia and State regulations provide for discrimination protection equivalent to that provided by Federal OSHA. A total of 25 complaints alleging discrimination were investigated during the evaluation period, 4 of which were determined to be meritorious. All 4 had been settled or litigated by the end of the period. [Evaluation Report, pp. 19–20.]

The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2) (x) and (xi). The State's lapse time from last day of inspection to issuance of citation averaged 28.8 days for safety and 48.3 days for health.

The State must propose penalties in manner that is at least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of comparable factors required in the Federal program. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c) (x) and (xi). Virginia's procedures for penalty calculation are the same as the Federal procedures with the exception that the State has not adopted the Federal procedure of citing willful violations with instance-by-instance penalties. The section 18(e) Evaluation Report noted that Virginia proposes appropriate penalties. The average penalty for serious safety violations was $325.50 and the average serious health penalty was $447. [Evaluation Report, pp. 18–19.]

The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c) (vii) and (xi). Follow-up inspections accounted for .9% of Virginia's total safety inspections and 3.7% of its health inspections, with 17.2% of the safety follow-up inspections and 28.6% of the health follow-ups resulting in failure-to-abate notifications. Virginia's abatement periods for serious violations averaged 7.9 days for safety and 28.3 days for health. [Evaluation Report, p. 18.]

Whenever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3 (d) and (g). As noted above, a 1985 decision by the Virginia Supreme Court had created a situation whereby the State's ability to obtain search warrants when denied entry on general schedule inspections was severely compromised. The State plan officials recognized the difficulty and successfully sought corrective legislative amendments from the 1987 session of the Virginia General Assembly. Those amendments became effective on July 1, 1987. The Virginia section 18(e) Evaluation Report noted no other instances of adverse adjudications. [Evaluation Report, pp. 4 and 19–20.]

(c) Staffing and Resources

The State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1), 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See section 18(c)(5) of the Act and § 1902.3(i). As discussed above, the Virginia plan provides for 38 safety compliance officers and 21 industrial hygienists as set forth in the Virginia FY 1988 grant. This staffing level meets the approved, revised "fully effective" benchmarks for Virginia for health and safety staffing, as discussed elsewhere in this notice.

Virginia provides its safety and health personnel with formal training based on the needs of the staff and availability of funds. The OSHA Training Institute is utilized for staff training, and the State conducts semi-annual conferences to train personnel in new and updated policy and technical changes. In 1987, safety compliance officers received 6,278 hours and industrial hygienists received 6,431 hours of formal training. [Evaluation Report, pp. 9–10.]

(d) Other Requirements

States which have approved plans must maintain a safety and health program for State and local employees which must be as effective as the State's plan for the private sector. See § 1902.3(j). The Virginia plan provides a program in the public sector which is comparable to that in the private sector, except that no penalties are proposed. Injury and illness rates are higher in the public sector than in the private (all case rate—9.4; lost workday case rate—4.5). The State and local government lost workday case rate decreased slightly from 1985 to 1986 (4.6 to 4.5) while the private sector rate showed a slight increase (from 3.4 to 3.5).

As a factor of its section 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those

under the Federal program. See § 1902.37(b)(15). The 1985 and 1986 Bureau of Labor Statistics injury and illness rates for Virginia (private sector all case rate for 1985 was 7.3 and for 1986 was 7.6; lost workday case rate for 1985 was 3.4 and for 1986 was 3.5) were comparable to rates in States where Federal OSHA provides enforcement coverage. In 1986, the all case incidence rates and the lost workday case rates for private sector, manufacturing and construction experienced a mix of increases and decreases in Virginia, the rates of increase were within the acceptable range established under OSHA's State Plan Activities Measures. In addition, only one of the five most hazardous industries in Virginia showed an increase from 1985 to 1986 in its lost workday case rate (SIC 42, Lumber and Wood Products, except Furniture), and that rate (8.9) was the same as the 1986 Federal rate for that particular industry.

State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect. See section 18(c)(7) of the Act; 29 CFR 1902.3(k). The plan must also provide assurance that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require. Section 18(c)(8) of the Act; 29 CFR 1902.4(1). Virginia employer recordkeeping requirements are identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illness and Injuries. As noted above, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

Section 1092.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. Training programs for both the State's staff and the public sector have been established and are ongoing. In the public sector, 199 employers and supervisors and 5,789 employees participated in 149 training sessions in 1987. In the private sector, 192 employers and supervisors and 3,864 employees participated in 280 training sessions. [Evaluation Report, p. 10.] In addition, on-site consultation services are provided in the public sector. (The State's on-site consultation program for the private sector is conducted apart from the State plan under an agreement with OSHA under section 7(c)(1) of the OSH Act.)

Effect of § 18(e) Determination

If the Assistant Secretary, after completion of the proceedings described in this notice, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to issues covered by the Virginia plan, as provided by Section 18(e) of the Act and 29 CFR 1902.42(c). Virginia has excluded from its plan: Safety and health coverage in private sector maritime activities (enforcement of occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments). In addition, Virginia does not cover employment on military facilities. Thus, Federal coverage of private sector maritime employment and military facilities would be unaffected by an affirmative section 18(e) determination.

In the event an affirmative section 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the **Federal Register** in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal authority is withdrawn, will state that Federal authority with respect to enforcement under section 5(a)(1) of the Act and discrimination complaints under section 11(c) of the Act remains in effect, and will state that if continuing evaluations show that the State has failed to maintain a compliance staff which meets the revised fully effective benchmarks, or has failed to maintain a program which is at least as effective as the Federal, or that the State has failed to submit program change supplements as required by 29 CFR Part 1953, the Assistant Secretary may revoke final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State plan. At the same time, Subpart C of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the Virginia plan, would be amended to reflect the section 18(e) determination if an affirmative determination is made.

Documents of Record

All information and data presently available to OSHA relating to the Virginia section 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. The contents of the record are available for inspection and copying at the following locations:

Docket Office, Room N–2439 Rear, Docket No. T–023
Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.
Regional Administrator—Region III, U.S. Department of Labor–OSHA, Gateway Building, Suite 21000, 3535 Market Street, Philadelphia, Pennsylvania 19104.
Virginia Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia 23241–0064.

To date, the record on final approval determination includes copies of all **Federal Register** documents regarding the plan, including notices of plan submission, initial Federal approval, certification of completion of developmental steps, codification of the State's operational status agreement, and other plan supplements. The record also includes the State plan document, which includes a plan narrative, the State legislation, regulations and procedures, an organizational chart for State staffing; the State's FY 1988 Federal grant; and the January 1, 1987 through March 31, 1988 18(e) Evaluation Report and all previous, post-certification reports.

Public Participation

Request for Public Comment and Opportunity to Request Hearing

The Assistant Secretary is directed under § 1902.41 to make a decision whether an affirmative section 18(e) determination is warranted or not. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by Virginia of the requirements of section 18(c) of the Act and all specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and indices must be considered in light of the 15 factors in 29 CFR 1902.37(b) (1) through (15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during an informal public hearing, if held, is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, criteria and factors presented in 29 CFR Part 1902, as they

apply to Virginia State plan, are available to the Assistant Secretary during this administrative proceeding.

Interested persons are invited to submit written data, views, and arguments with respect to this proposed section 18(e) determination. These comments must be received on or before (35 days) and submitted in quadruplicate to the Docket Officer, Docket No. T–023, Room N–2439 Rear, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. The State of Virginia will be afforded the opportunity to respond to each submission.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed section 18(e) determination. Such requests also must be received on or before (35 days) and should be submitted in quadruplicate to the Docket Officer, Docket T–023, at the address noted above. Such requests must present particularized written objections to the proposed section 18(e) determination. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish his decisions in the **Federal Register**. All written and oral submissions, as well as other information gathered by OSHA, will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing and all materials submitted in response to this notice and at any subsequent hearing, will be available for inspection and copying in the Docket Office, Room N–2439 Rear, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in Virginia under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736)).

Signed at Washington, DC, this 30th day of August, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88–19972 Filed 9–1–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Missouri permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Regulation changes in the area of blaster certification are in response to a required program amendment placed on the Missouri program at 30 CFR 925.16(i). Regulation changes related to prime farmland and definitions are in response to a December 4, 1987, issue letter from OSMRE to the Missouri program concerning inadequacies of an amendment submitted to OSMRE for approval on June 22, 1987. These changes are being made so that the State's laws and regulations will be consistent with SMCRA and the Federal regulations.

Regulations changes related to use of explosives, surface mining permit applications, and review, public participation, and approval of permit applications are being proposed at the State's own initiative to improve its program.

This notice sets forth the times and locations that the Missouri program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. October 3, 1988. If requested, a public hearing on the proposed amendments will be held on September 27, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., on September 19, 1988.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below. Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contracting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374–6405

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5215, 1100 L Street, NW, Washington, DC 20240, Telephone: (202) 343–5492

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (314) 751–4041

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office at the address listed in "**ADDRESSES.**" Telepone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Missouri program on November 21, 1980. Information regarding the general background of the Missouri program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions taken with regard to the program and amendments can be found at 30 CFR 925.15 and 925.16.

II. Proposed Amendments

On August 3, 1988, (Administrative Record No. MO–392) Missouri submitted proposed amendments to its permanent regulatory program under SMCRA.

Missouri submitted proposed regulations in response to a required program amendment placed on the Missouri program at 30 CFR 925.16(i) concerning the State's program for training, examination, and certification of blasters. The amendment contains revisions that rescind and replace those regulations within the Missouri Code of State Regulations (CSR) at 10 CSR 40–3.160 Training, Examination, and Certification of Blasters.

Missouri submitted proposed regulations regarding prime farmland and definitions in response to a December 4, 1987 issue letter from OSMRE to the Missouri program concerning the adequacies of an amendment submitted to OSMRE for approval on June 22, 1987. The amendment contains revisions that modify Missouri's regulations at 10 CSR 40–4.030 (4) and (7) Operations on Prime Farmland and 10 CSR 40–8.010(1) Definitions.

At Missouri's own initiative, the State revises its regulations at 10 CSR 40–3.050 (1), (2), (3), and (5) Requirements for the Use of Explosives Underground Operations; 10 CSR 40–3.210 (1), (2), (3), and (5) Requirements for the Use of Explosives; 10 CSR 40–6.040(12) Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; and 10 CSR 40–6.070(8) Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendments proposed by Missouri satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. September 19, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 19, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–20076 Filed 9–1–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11–88–10]

Proposed Drawbridge Operation Regulations; Petaluma River, Petaluma, CA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of City of Petaluma, the Coast Guard is considering a change to regulations for the "D" Street Bridge, across the Petaluma River, mile 13.7, at Petaluma, California, by requiring that four hours advance notice of opening be given from 6 a.m. to 6 p.m. and 24 hours advance notice be given from 6 p.m. to 6 a.m. The bridge currently opens upon four hour advance notice at all times. This proposal is being made because the percentage of nighttime opening is decreasing and the City is seeking to reduce operating costs. This action should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 17, 1988.

ADDRESSES: Comments should be mailed to Commander (oan-br), Eleventh Coast Guard District, Bldg 10 Room 214, Coast Guard Island, Alameda, CA 94501–5100. The comments and other materials referenced in this notice will be available for inspection and copying at the same address. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Sharol Taylor, Bridge Administrator, Eleventh Coast Guard District at (415) 437–3514.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Eleventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Sharol E. Taylor, project officer, and Lieutenant Commander J. J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The "D" Street Bridge is a single-leaf bascule, two lane, highway bridge constructed in 1933. It provides vertical clearance of 13 feet above Mean Lower Low Water (MLLW) (5 feet above Mean High Water (MHW)) and horizontal clearance of 65 feet between fenders. The waterway upsteam of the bridge is a turning basin used for mooring commercial fishing vessels and recreational boats. The City of Petaluma has requested a change to the existing regulation for the bridge to require

greater advance notice for nighttime openings, so that they will not have to pay operators to remain on call except when openings are needed. The current nighttime openings account for 8% of all bridge openings. The percentage of openings is decreasing. In 1986, 14% of openings were at night. The Coast Guard believes that this regulation may provide for the reasonable needs of navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Exective Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

While the proposal may have some economic impact on commercial waterway users, the impact is expected to be minimal. Therefore, a full regulatory evaluation is considered unnecessary at this time. However, before any final regulations are issued, the economic impact will be re-evaluated based upon comments received. Anyone who believes their business will suffer as a result of this proposal is requested to document the problem in their comments.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.187 (b) is revised to read as follows:

§ 117.187 Petaluma River.

* * * * *

(b) The draw of the Petaluma highway bridge at "D" Street, mile 13.7 at Petaluma, shall open on signal if at least four hours notice is given for openings from 6 a.m. to 6 p.m., and if at least 24 hours notice is given for openings from 6 p.m. and 6 a.m. The draw shall open as soon as possible for vessels, including commercial vessels, engaged in rescue or emergency salvage operations.

Dated: August 25, 1988.

J. W. Kime,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 88–19982 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–88–27]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Florida Department of Transportation, Sarasota County, and the Venice Area Chamber of Commerce have requested the Coast Guard to consider adding regulations governing the Hatchett Creek (SR 45/US–41), Venice Avenue, and South Venice (SR 45/US–41) drawbridges, mile 56.9, 56.6, and 54.9 respectively, at Venice, Florida by permitting the number of openings to be limited during certain periods. This proposal is being made because an increase in highway traffic has occurred on weekdays and bridge openings intensify traffic congestion. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 17, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, Brickell Plaza Federal Building, 909 SE 1st Ave, Miami, Florida. Office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerald Fleming at (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses identify the bridge(s), and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Lieutenant Commander Gerald Fleming, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The Hatchett Creek, Venice Avenue, and South Venice (SR 45/US–41) drawbridges cross the Gulf Intracoastal Waterway at Venice, Florida. Existing regulation of the Hatchett Creek drawbridge requires that the draw open on signal, except that, from 7 a.m. to 6 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On Saturdays, Sundays, and Federal holidays from 7:30 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half hour, and three-quarter hour. The Venice Avenue drawbridge regulations require that the draw open on signal, except that, from 7 a.m. to 6 p.m., Monday through Friday except Federal holidays, the draw need open only at 10 minutes after the hour, 30 minutes after the hour, and 50 minutes after the hour. The South Venice drawbridge opens on signal. The Florida Department of Transportation, Sarasota County, and the Venice Area Chamber of Commerce have proposed that the Hatchett Creek, Venice Avenue, and South Venice drawbridges need not open on weekdays between the hour of 4:30 p.m. and 5:30 p.m. It is also proposed to open the South Venice drawbridge on the hour and half hour between 7:00 a.m. and 7:00 p.m., on weekdays, January through December. The proposed rule would not substantially change the existing timed regulations in effect on the Hatchett Creek and Venice Avenue drawbridges but would merely establish a closed period of one hour between 4:30 p.m. and 5:30 p.m. on weekdays. The Coast Guard feels this change would reduce the number of bridge openings thereby reducing the incidence of vehicular traffic jams, and would still provide for the reasonable needs of navigation. However, after careful review of the number of bridge openings, highway traffic data, and waterway traffic conditions, the Coast Guard does not feel that the timed openings and the one hour closed period proposed for the

South Venice (SR 45/US–41) drawbridge are justified. The Coast Guard will seek comments on this proposal from the public. The regulations, if approved, would exempt public vessels of the United States, tugs with tows, and vessels in distress, which would be passed through the draw at anytime.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certified that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.287 (a–1) and (b) are revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway, Caloosahatchee River To Perdido River.

* * * * *

(a–1) The draw of the Venice Avenue bridge, mile 56.6 at Venice, shall open on signal, except that from 7 a.m. to 4:30 p.m., Monday through Friday except Federal holidays, the draw need open only at 10 minutes after the hour, 30 minutes after the hour and 50 minutes after the hour and except between 4:35 p.m. and 5:35 p.m. when the draw need not open.

(b) The draw of the Hatchett Creek (US–41) bridge, mile 56.9 at Venice, shall open on signal, except that, from 7 a.m. to 4:20 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour and except between 4:25 p.m. and 5:25 p.m. when the draw need not open.

* * * * *

Dated: August 19, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 88–19963 Filed 9–1–88; 8:45 am]

BILLING CODE 49–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Transfer of Records to the National Archives

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule prescribes how agency heads certify that permanently valuable records more than 30 years old are needed for current agency business and to clarify the procedures for removing statutory and other restrictions imposed on records transferred to the National Archives of the United States. The proposed rule affects only Federal agencies.

DATES: Comments must be received by October 3, 1988.

ADDRESSES: Comments should be sent to Director, Program Policy and Evaluation Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION:

Under 44 U.S.C. 2107, the Archivist of the United States may "direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than 30 years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certifies in writing to the Archivist that they must be retained in his custody for use in the conduct of the regular current business of the agency." The current 36 CFR 1228.180(a)(2) merely restates this provision of the law.

The proposed rule establishes criteria for the agency head to consider in determining whether the records should be retained by the agency for the conduct of its regular current business or whether the agency's needs can be met by NARA reference services on the records after transfer. The proposed rule also specifies what information must be contained in the written certification, including a comprehensive description and location of the records to be retained. NARA will not accept an agency certification that the records are being used for the conduct of regular current business if the agency is retaining the records only to provide access to persons outside the agency or to function as an unauthorized agency archives.

The National Archives was established to provide a central repository for Federal records of continuing value, to preserve the records and make them available for research use in a centralized cost-efficient manner by agency managers, historians, genealogists, lawyers, other specialized researchers and the general public. Agencies should not maintain their older records in order to make them accessible for general reference and research. This proposed rule should assist agencies in making an informed determination whether their permanently valuable records over 30 years old are needed for current business in agency space.

The certification procedures are followed only when NARA directs the transfer of records. Where a NARA-approved records schedule specifies that the records are to be transferred to the National Archives at a date later than 30 years after creation or where NARA recognizes legitimate agency needs for the records, NARA will not direct the transfer of records from the agency.

Procedures for removing statutory and other restrictions in § 1228.180 are moved from the current paragraph (b) into a new paragraph (c) and rewritten to improve their clarity. No substantive changes are made to these procedures, which reflect the statutory requirements of 44 U.S.C. 2108. Agencies should note that 36 CFR Part 1256 sets forth the general and specific restrictions which may apply to transferred records beyond the initial 30 year period provided in 44 U.S.C. 2108. For example, transferred records which are security classified will remain restricted until properly declassified pursuant to Executive Order 12356 and its implementing directive (36 CFR 1256.10).

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend Chapter XIII of Title 36 of the Code of Federal Regulations as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 is revised to read as follows:

Authority: 44 U.S.C. chapters 21, 29, and 31.

2. Section 1228.180 is revised to read as follows:

§ 1228.180 Authority.

(a) *Transfer of records.* The Archivist of the United States is authorized by 44 U.S.C. 2107 to:

(1) Accept for deposit with the National Archives of the United States the records of a Federal agency or of the Congress determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government; and

(2) Direct and effect the transfer to the National Archives of the United States of Federal agency records that have been in existence for more than 30 years and that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, unless the head of the agency which has custody of the records certifies in writing to the Archivist that the records must be retained in agency custody for use in the conduct of the regular current business of the agency. Records that are scheduled in a NARA-approved records schedule to be transferred to the National Archives of the United States after a specified period of time are subject to the certification requirement only if the records are not transferred as scheduled.

(i) In order to certify that records must be retained for the conduct of regular current business, an agency should consider the following factors:

(A) Character of use (to be retained by an agency, records should be used for the normal routine business of the agency at the time of certification);

(B) Frequency of use (to be retained by an agency, records should be used more than one time per month per file unit); and,

(C) Preservation of the records (to be retained by an agency, permanently valuable records should be preserved in accordance with NARA guidelines).

(ii) The written certification of need of a series of 30 year-old records for current agency business must:

(A) Include a comprehensive description and location of records to be retained;

(B) Cite the NARA approved authority for the disposition of the records if scheduled (GRS or SF 115 item number);

(C) Describe the current business for which the records are required;

(D) Estimate the length of time the records will be needed by the agency for current business (if no date is provided by the agency, approved certification requests will be effective for a maximum of five years);

(E) Explain why the current needs of the agency cannot be met by the services NARA provides for records deposited with the National Archives of the United States; and,

(F) If the records are being retained to enable the agency to provide routine public reference, cite the statute authorizing this agency activity.

(iii) NARA will not accept an agency certification that a specific body of records over 30 years old, regardless of physical form or characteristics, is being used for the "conduct of the regular current business," if that agency is retaining such records primarily to:

(A) Provide to persons outside the agency access which can be provided by NARA; or

(B) Function as an agency archives, unless specifically authorized by statute or NARA.

(b) *Custody of records transferred.* Under 44 U.S.C. 2108, the Archivist of the United States is responsible for the custody, use, and withdrawal of records transferred to him.

(c) *Transferred records subject to statutory or other restrictions.*

(1) When records, the use of which is subject to statutory limitations and restrictions, are so transferred, permissive and restrictive statutory provisions concerning the examination and use of records applicable to the head of the transferring agency are applicable to the Archivist of the United States and the employees of the National Archives.

(2) Before records are transferred to the National Archives, the head of the agency may state in writing restrictions that appear to him or her to be necessary or desirable in the public interest on the use or examination of records. The head of the agency must, however, justify and cite the statute or Freedom of Information Act exemption (5 U.S.C. 552(b)) that authorizes placing restrictions on the use or examination of records being considered for transfer. If the Archivist agrees, restrictions will be placed on the records.

(i) *For records less than 30 years old.* Unless required by law, the Archivist will not remove or relax restrictions placed upon records less than 30 years old without the concurrence in writing of the head of the agency from which the material was transferred or of his or her successor, if any. If the transferring agency has been terminated and there is no successor in function, the Archivist is authorized to relax, remove or impose restrictions in the public interest.

(ii) *For records 30 or more years old.* After the records have been in existence for 30 years or more, statutory or other restrictions referred to in this section shall expire unless the Archivist determines, after consulting with the head of the transferring agency, that the restrictions shall remain in force for a longer period. Such restrictions may be extended by the Archivist beyond 30 years only for reasons consistent with standards established in relevant statutory law, including the Freedom of Information Act (5 U.S.C. 552).

Dated: August 5, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-20004 Filed 9-1-88; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3440-2]

Approval and Promulgation of Implementation Plans; California; San Diego Volatile Organic Compound (VOC) Rules for Graphic Arts Printing and Coating, and Pharmaceutical and Cosmetic Manufacturing Source Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Through this notice EPA solicits public comments on two draft rules for the control of VOC from certain operations of graphic arts printing and coating, and pharmaceutical and cosmetic manufacturing sources in San Diego County, California. When adopted, Rules 67.15 and 67.16 will formalize, for the most part, the emission reductions previously obtained by the County through conditions on its stationary sources operating permits Only through the formal rulemaking process (going on concurrently at the

County and Federal levels) can EPA ensure the continuation of the full emission reduction potential envisioned by the County. Most of the emission reduction is already reflected in improved ozone air quality data. The County estimates additional emission reductions will amount to about 0.25 tons VOC/day (from graphic arts sources). No further air quality improvement is anticipated as a result of the adoption of the subject rules. The EPA approval, however, will provide federally enforceable limits and creditable air quality improvements. EPA's proposed approval is contingent upon County adoption and official State submittal of regulations at least as stringent and enforceable as those available for review through this notice. Such approval authorized under Sections 110 and 172 of the Clean Air Act (CAA), undertaken through "parallel processing", expedites the approval process. When completed, the process provides states with expedited federal enforceability of its local air pollution control regulations.

DATES: Written comments may be submitted on or before October 3, 1988.

ADDRESSES: Comments may be sent to Morris I. Goldberg, States Implementation Plan Section, at the EPA Regional Office address listed below. Copies of the EPA Rule Evaluations and the draft rules are available for public inspection at the EPA Region 9 Office and at the following locations during normal business hours.

California Air Resources Board (ARB), 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

San Diego County Air Pollution Control District (APCD), 9150 Chesapeake Drive, San Diego, CA 92123.

FOR FURTHER INFORMATION CONTACT: Morris I. Goldberg, State Implementation Plan Section (A–2–3), Air Management Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Telephone: FTS 454–8213, Commercial (415) 974–8213.

SUPPLEMENTARY INFORMATION: .

Background

San Diego County was identified as a nonattainment area for ozone on March 3, 1978 (43 FR 8970). State Implementation Plan (SIP) revisions satisfying the requirements of CAA Part D were required to be submitted by the state for each such nonattainment area. SIP revisions submitted by California for San Diego County were approved as completely satisfying the federal requirements specific to attainment of the ozone NAAQS. One such requirement, imposed on areas demonstrating the need for an extension of the ozone attainment deadline from 1982 to 1987, was for the adoption of control measures comparable to those specified by EPA in its "Control Techniques Guidelines" (CTG) as "Reasonably Available Control Technology" (RACT). RACT was defined as the minimum level of control which EPA would approve in SIP revisions for extension areas. EPA published its CTGs for control of VOC emissions from pharmaceutical manufacturing and graphic arts industry operations in December 1978 as report numbers EPA–450/2–78–029 and EPA–450/2–78–033, respectively.

Evaluation

Although the APCD did not adopt regulations for the control of emissions from sources in the subject CTG categories prior to EPA approval, the ozone SIP control strategy approval was given because the County had already achieved most of the emission control through permit conditions. The County concentrated its efforts on permit conditioning where possible and regulatory development, a more time consuming process, where necessary. EPA prefers to obtain enforceable rules, directly and selectively, through formal rule development and the approval of SIP submittals instead of through permit conditions. The Regional Office made use of the latter mechanism because the purpose of the CAA, to obtain emission reductions through the use of constant controls for the attainment and maintenance of the NAAQS, was well served. Concurrent with preparation of this notice, the APCD is developing and proposing rules, and soliciting public comments in preparation for the adoption of rules identified as:

Rule 67.15—Pharmaceutical and Cosmetic Manufacturing Operations

Rule 67.16—Graphic Arts Printing and Coating Operations

EPA is soliciting public comment on the rules. EPA has evaluated the subject regulations and finds them enforceable and generally consistent with the CTG control levels. Details of the EPA evaluation involve recordkeeping requirements, the low solvent graphic arts materials definition, and minor wording changes. Comments may be found in the previously referenced Rule Evaluations. VOC emission reductions of only 0.25 tons/day are expected to occur as a result of County adoption and EPA approval, as most sources are believed to be currently in compliance with such limits. These approvals will strengthen the federally enforceable SIP.

Proposed Action

This notice proposes to approve, under section 110 and Part D of the CAA, San Diego County APCD Rules 67.15 and 67.16, for control of VOC emissions from certain graphic arts printing and coating, and pharmaceutical and cosmetic manufacturing source operations in the County. This approval is contingent upon adoption of the rules by the APCD Board, submittal by the ARB to EPA as a SIP revision, and subsequent re-review by EPA. The re-review is to ensure that the rules submitted as SIP revisions are substantively equivalent to the current draft regulations proposed for San Diego County APCD Board adoption.

Regulatory Process

Under 5 U.S.C., section 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons.

Authority: 42 U.S.C. 7401—7642.

Editorial Note: This document was received at the Office of the Federal Register August 30, 1988.

Dated: September 23, 1987.

John Wise,

Acting Regional Administrator.

[FR Doc. 88–20001 Filed 9–1–88; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 53, No. 171
Friday, September 2, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meetings

ACTION: Notice of Public Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of meetings of the Committees on Administration, Governmental Processes, and Rulemaking of the Administrative Conference of the United States.

Committee: Committee on Administration.
Date: Friday, September 16, 1988 at 8:30 a.m.
Location: Library of the Administative Conference, 2120 L Street, N.W., Suite 500, Washington, D.C.
Agenda: The committee will meet to discuss (1) a study by Philip Harter on possible agency rules to afford an appropriate degree of confidentiality for communications to ADR neutrals, and (2) research by Crowell and Moring into use of alternative means of dispute resolution by government contracting officers.
Contact: Charles Pou, Jr.

Committee: Committee on Governmental Processes.
Date: Thursday, September 22, 1988 at 3:00 p.m.
Location: Offices of Covington and Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. (11th Floor, Main Conference Room).
Agenda: The committee will discuss: (1) a study by Professor Henry H. Perritt, Jr. on computer-aided transmission and handling of regulatory documents; (2) a related draft report by Professor Susan G. Hadden on the use of computers in connection with the Emergency Response and Community Right to Know Act (Title III of the Superfund Amendment of 1986); and (3) a study by Professor Michael Baram on disclosure of risk information as a regulatory technique.
Contact: David Pritzker.

Committee: Committee on Rulemaking.
Date: Wednesday, September 28, 1988 at 10:00 a.m.
Location: Office of Jones, Day, Reavis, and Pogue, Metropolitan Square, 655 15th Street NW., 6th Floor Receptionist, Washington, DC (Use G Street entrance).
Agenda: The committee will meet to discuss a draft report by Professor Harold H. Bruff on presidential management of agency rulemaking.
Contact: Michael W. Bowers.

Public Participation: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Contact persons listed above, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: August 30, 1988.
Jeffrey S. Lubbers,
Research Director.
[FR Doc. 88–20067 Filed 9–1–88; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88–113]

Disqualification Under the Horse Protection Act

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Notice of disqualification.

SUMMARY: We are advising the general public and the horse industry of individuals who have been disqualified, under the Horse Protection Act, from showing or exhibiting any horse, and from judging or managing any horse show, exhibition, sale, or auction.

FOR FURTHER INFORMATION CONTACT: Frank W. Germaine, Senior Compliance Officer, Compliance and Enforcement Program Staff, VS, APHIS, USDA, Room 822, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5149.

SUPPLEMENTARY INFORMATION: Section 6(c) of the Horse Protection Act (15 U.S.C. 1825(c)) provides authority for disqualifying individuals from showing or exhibiting any horse, and from judging or managing any horse show, exhibition, sale, or auction. We are giving notice that the following individuals have been disqualified, for the times specified, from showing or exhibiting any horse, and from judging or managing any horse show, exhibition, sale, or auction:

Name and address	Disqualification period
Charles Alex Bobo, Shelbyville, TN.	12–1–1987 through 11–80–1989.
John Hornberger, Victoria, MS.	11–21–1987 through 11–20–1988.
Donald H. Campbell, Guthrie, KY.	4–15–1988 through 4–14–1989.
Linda Scrivner, Stafford, MO...	7–1–1988 through 6–30–1989.
Sonny Scrivner, Stafford, MO..	7–1–1988 through 12–31–1988.
Margarette Reeves, Shelbyville, TN.	7–24–1988 through 11–23–1988.

Any person who knowingly fails to obey a disqualification order shall be subject to a civil penalty of not more than $3,000 for each violation. Any horse show, exhibition, sale, or auction, or its management, which knowingly allows any disqualified person to judge, manage, or participate in a horse show, exhibition, sale, or auction in violation of a disqualification order shall be subject to a civil penalty of not more than $3,000 for each violation.

Done in Washington, DC, this 29th day of August, 1988.
James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 88–20061 Filed 9–1–88; 8:45 a m]
BILLING CODE 3410–34–M

[Docket No. 88–126]

Availability of Environmental Assessment and Finding of No Significant Impact for Field Testing a Recombinant Derived Live Pseudorabies Virus Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection

Service concerning its authorization given to Fermenta Animal Health Company to conduct limited field trials of an experimental veterinary biological product consisting of a recombinant derived live virus pseudorabies vaccine. The assessment indicates that the field testing of the live recombinant derived pseudorabies virus vaccine will not cause any significant impact on the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

DATE: The field trials will commence October 3, 1988.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to a request for authorization to conduct limited field trials using an experimental recombinant derived live pseudorabies virus vaccine produced by the Fermenta Animal Health Company, Kansas City, Missouri.

Before a veterinary biological product can be licensed under the Virus-Serum-Toxin Act (VSTA), (21 U.S.C. 151 *et seq.*), it must be shown to be pure, safe, potent, and efficacious. Field testing is necessary in order to satisfy vaccine safety requirements as a prerequisite to licensing vaccines under the VSTA. In the course of reviewing the testing protocol for the recombinant derived live pseudorabies virus vaccine, APHIS assessed the impact on the human environment of authorizing the manufacturer to conduct field testing of the product in five States as set forth in the environmental assessment.

The environmental assessment and finding of no significant impact provides the public with documentation of APHIS' review and analysis of environmental effects which may be associated with the gathering of information in these limited field trials.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to facilitate two gene deletions in the pseudorabies virus (PRV) genome. One deletion destroyed the viral thymidine kinase (tk) gene which is required for the virus to replicate in the host's central nervous sytem and hence cause infection and disease. A second deletion destroyed a gene coding for a viral coat glycoprotein (gIII), thus allowing vaccinated animals to be distinguished from those infected with PR virus from other sources.

2. The recombinant derived pseudorabies vaccine virus was shown to be avirulent and yet fully capable of eliciting an immune response that protects pigs from the PRV, but unable to evoke antibodies to gIII which allows the differentiation between infected pigs and vaccinated ones.

3. Transmission of the vaccine virus derived from recombinant DNA techniques could not be demonstrated in that vaccine virus was not detected from nasal swabs taken from vaccinated pigs or from sentinel animals which were held as nonvaccinated controls. All sentinel animals remained fully susceptible to challenge with wild-type PRV.

4. Vaccination by the recombinant vaccine reduces replication and shedding of wild-type virus that could subsequently infect other animals in the herd. Therefore, the vaccine will reduce the dissemination of the virulent wild-type virus into the environment.

5. The tk gene deletion is a stable characteristic of the vaccine virus with a probability of reversion being essentially zero.

6. The wild-type PRV is found widely distributed in nature and it does not contain an oncongene or cancer-causing substance. Because the recombinant derived virus does not contain any new genetic information there is no likelihood of it being oncogenic.

7. The wild-type PRV is not considered pathogenic to man. Since the recombinant vaccine only differs from wild-type PRV by two deletions, it is also considered nonpathogenic to man.

8. The recombinant derived modified live virus vaccine was shown to be safe in safety and efficacy studies which were carried out in isolation. The results of these experiments demonstrate that the vaccine is safe and effective in a variety of laboratory animal model systems.

Based on the foregoing, APHIS has determined that the field testing of the recombinant derived modified live pseudorabies virus vaccine would have no significant impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 30th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–20060 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 71273–7273]

Sputtering Equipment; Foreign Availability Assessment and Solicitation of Public Comments

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of finding of foreign availability and request for comments.

SUMMARY: The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by section 5(f) and (h) of the Export Administration Act of 1979, as amended (EAA), to request and review claims of foreign availability on items controlled for national security purposes.

The OFA completed an assessment on magnetically-enhanced sputtering equipment that is controlled under paragraph (b)(1)(vi) of the "List of Equipment Controlled by ECCN 1355A" in ECCN 1355A on the Commodity Control List (Supplement No. 1 to 15 CFR 399.1). This equipment incorporates a cathode assembly having an integral magnetic structure for enhancing the plasma intensity. Based on the assessment, the Department of Commerce found foreign availability for this commodity.

Despite the finding of foreign availability for magnetically-enhanced sputtering equipment abroad, the

President, in conformance with the national security override provisions of the EAA, has determined that the absence of export controls on it would be detrimental to the national security of the United States. Therefore, the President has directed that controls on magnetically-enhanced sputtering equipment be maintained. The President has also directed the Secretary of State to negotiate with the governments of appropriate foreign countries to remove the sources of foreign availability for the commodity, as prescribed by law.

The Department of Commerce will issue a statement of the economic impact of the decision to maintain controls on the magnetically-enhanced sputtering equipment. To assist the Department in the preparation of such a statement, comments are requested from U.S. manufacturers of magnetically-enhanced sputtering equipment regarding the economic impact of maintaining controls on such equipment. The specific types of information requested are described in the "Supplementary Information" portion of this document.

DATE: Comments should be received by November 1, 1988.

ADDRESS: Written comments should be sent to: John Pastore, Office of Foreign Availability, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John Pastore, Office of Foreign Availability, Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION: If the Office of Foreign Availability receives substantive new evidence affecting the foreign availability determination on magnetically-enhanced sputtering equipment, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to OFA at the address given above.

The period for submission of comments on the economic impact of maintaining controls on the magnetically-enhanced sputtering equipment will close November 1, 1988. The Department will consider all comments received before the close of the comment period in developing the economic impact statement. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured.

The Department requests that comments from U.S. manufacturers of magnetically-enhanced sputtering equipment contain general statements of the economic impact of maintaining controls, in terms of sales, employment and profitability. Where appropriate, comments should be made relative to the specific company producing magnetically-enhanced sputtering equipment as well as to the industry as a whole. Comments will be used to supplement other publicly available information needed to analyze the economic effects of maintaining current U.S. controls on the trade of this equipment. Information for which confidential treatment is required should be submitted separately as described below.

Specifically, the Department requests that comments contain the following information relative to magnetically-enhanced sputtering equipment in 1987 and projections for 1988:

1. Estimate of total world sales, including sales to both Eastern bloc and other countries; estimates should be both in terms of dollar sales and number of units;

2. Description of market demand, including distribution of sales by country; type of buyer (i.e., industrial, government); and by use application;

3. Description of market supply, including distribution of production and potential capacity by country;

4. Degree to which production facilities are dedicated exclusively to the production of magnetically-enhanced sputtering equipment;

5. Price level and range of prices for equipment; is there a significant price differential between U.S. and non-U.S. producers? Could prices be substantially reduced if production levels were increased (i.e., do significant production economies of scale exist)?

6. Are there significant quality differences among suppliers? Is there a significant quality difference between equipment produced by the U.S. and outside of the U.S.? If significant differences exist, description of their nature;

7. Primary components and/or materials used in the manufacture of equipment and source of components and/or materials (i.e., domestic or foreign);

8. Estimate of number of employees required per million dollars of sales and number of production workers required per million dollars of sales; what occupational skill levels are generally required by production workers?

9. To what extent do export restrictions on this equipment affect research and development (R&D) activities in terms of total R&D expenditures and focus of R&D activities?

10. Estimate of man-hours needed to complete export forms for sale of equipment to non-Eastern bloc countries.

[OMB Control No. 0625–0195]

Public comments will be a matter of public record and will be available for public inspection and copying except those comments that are accorded confidential treatment, as described below. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The Department will accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) on sheets of paper separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration will either accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submission of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

The public record of comments received on the economic impact of maintaining controls on the magnetically-enhanced sputtering equipment will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

Dated: August 30, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-20030 Filed 9-1-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration, Import Administration

[A-351-803]

Initiation of Antidumping Duty Investigation; Shock Absorbers From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of shock absorbers from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 23, 1988, and we will make our preliminary determination on or before January 17, 1989.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Louis Apple, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-2613 or (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On August 9, 1988, we received a petition filed in proper form by the Monroe Auto Equipment Company of Monroe, Michigan, on behalf of the industry in the United States which manufactures shock absorbers. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports of shock absorbers from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner's estimate of United States price was based on a Brazilian manufacturer's price list to a warehouse distributor in the United States. Petitioner made deductions for inland freight in Brazil and the U.S., ocean freight, insurance, brokerage and customs charges in Brazil, warehousing costs, promotional expenses, warranty costs, inventory returns, credit expense, cash discounts, and U.S. duty.

Petitioner based foreign market value on prices to a warehouse distributor in Brazil. Deductions were made for sales tax, credit expense, freight, insurance, advertising and promotion expense, warranty cost, and inventory carrying cost.

Based on a comparison of United States price and foreign market value, petitioner alleges dumping margins ranging from 399 to 950 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on shock absorbers from Brazil and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of shock absorbers from Brazil are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 17, 1989.

Scope of Investigation

The products covered in this investigation are shock absorbers and parts thereof, as provided for in item 692.3282 of the *Tariff Schedules of the United States Annotated (TSUSA)* and currently classifiable under Harmonized System (HS) item number 8703.80.50. The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized System (HS). Until that time, the Department will be providing both the appropriate TSUSA item number(s) and the appropriate HS item number(s) with its product descriptions. As with the TSUSA, the HS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

For purposes of this investigation, a shock absorber is a cylindrically-shaped motor vehicle suspension component made essentially of sheet steel which is designed to limit the motions, vibrations, and oscillations that affect a vehicle due to uneven road surfaces, centrifugal forces, or other disturbances. This investigation covers all conventional front and rear shock absorbers manufactured in Brazil that are suitable for use in front and rear motor vehicle suspension systems. The investigation also covers all parts, components, and subassemblies manufactured in Brazil for use in the final assembly of shock absorbers. Covered parts include, but are not limited to, pistons, rods, valving components, reserve tubes, pressure tubes, rod guides, base cups, and mounting stems, loops, and bushings.

The investigation does not cover other types of dampers such as MacPherson struts, MacPherson strut cartridges, steering dampers, engine dampers, trailer stabilizers, hatchback supports, exercise dampers, and other types of dampers which are not suitable for use in motor vehicle suspension systems.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by the ITC

The ITC will determine by September 23, 1988, whether there is a reasonable indication that imports of shocks absorbers from Brazil materially injure, or threaten material injury to, a U.S.

industry. If its determination is negative, this investigation will terminate; otherwise it will proceed according to statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

August 29, 1988.

[FR Doc. 88-20044 Filed 9-1-88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

POSIX; Portable Operating System Interface for Computer Environments; System Implementors; Workshop

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces a workshop to discuss implementation issues related to the Proposed Federal Information Processing Standard (FIPS) for POSIX (Portable Operating System Interface for Computer Environments), including planned additions to the standard for Shell and Tools, System Administration, and User Interfaces (X Windows System). The workshop is intended for organizations which implement and build software systems for the government.

DATES: The workshop will be held on September 22 and 23, 1988 at the National Bureau of Standards in Gaithersburg, MD.

ADDRESS: To register or to receive a brochure on the workshop, contact: Workshop for POSIX System Implementors, ATTN: Debbie Jackson, National Bureau of Standards, Building 225, Room B-266, Gaithersburg, MD 20899, Telephone: (301) 975-3295.

FOR FURTHER INFORMATION CONTACT: James A. Hall, (301) 975-3273.

SUPPLEMENTARY INFORMATION: Attendance at the workshop is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee of $60 will be charged for attending the workshop. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshop.

Ernest Ambler,

Director.

Date: August 29, 1988.

[FR Doc. 88-19977 Filed 9-1-88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, September 19-22, 1988, at the Westin South Coast Plaza, 666 Anton Boulevard, Costa Mesa, CA, as follows:

Council—will convene September 21 at 9 a.m., with a closed session (not open to the public), to discuss litigation, personnel, and other appropriate matters. At 10 a.m., the Council will convene its open session to consider administrative matters, groundfish management issues, i.e. inseason management adjustments, preliminary management specifications for 1989, a progress report for 1989 sablefish allocation discussions, limited entry, and the schedule for completing Amendment 4 to the fishery management plan (FMP). There also will be a status report on the Pacific halibut fishery.

There will be a public comment period on September 21 at approximately 4 p.m., to hear comments on issues not on the agenda. Public comments on agenda items will be heard during the Council's discussion of each issue.

On September 22 the Council will convene at 8 a.m., to address habitat matters and salmon management issues. Salmon issues include review of the 1988 fisheries, FMP amendment for 1989, scoping session for amending the FMP in 1990, review of the March salmon process, salmon research needs, review of Indian and non-Indian catch sharing, and feasibility of methodology review for Washington coho salmon stocks.

Scientific and Statistical Committee (SSC)—will convene September 19 at 1 p.m., to address issues on the Council agenda and will reconvene September 20, at 8 a.m.

Council Performance Select Group Subcommittee—will convene September 20 at 8 a.m., to consider changes to the March salmon meeting process.

Groundfish Select Group—will convene September 20 at 1 p.m., to consider inseason adjustments to groundfish regulations and 1989 measures and catch limits.

Habitat Committee—will convene September 20 at 1 p.m., to consider relevant and timely habitat issues for fisheries under Council jurisdiction.

Budget Committee—will convene September 20 at 5 p.m., to review 1988 and 1989 funding for Council operations.

Detailed agendas for the above meetings will be available to the public after September 9. For further information contact Lawrence D. Six, Exectutive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Dated: August 29, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-20011 Filed 9-1-88; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 495]

Marine Mammals; Modification of Permit; Dr. Susan Shane (P127B)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 495 issued to Dr. Susan Shane, 250 Cottini Way, Santa Cruz, California 95060, on April 11, 1985, (50 FR 15232) is modified in the following manner:

Section B.6 is replaced by:

6. This Permit is valid with respect to the taking authorized herein until December 31, 1990.

This modification becomes effective August 17, 1988.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–20012 Filed 9–1–88; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 573]

Marine Mammals; Permit Modification; Dr. William A. Watkins (P70C)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 573 issued to Dr. William A. Watkins, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543, on November 2, 1986 (51 FR 43422), as modified on December 31, 1987 (53 FR 9348) is further modified as follows:

Section B.3 is revised as:

3. The Holder shall suspend tagging activities if: a) an animal is killed, injured or develops an infection as a result of the authorized activities; or b) if there is any uncertainty as to the survival or health of more than one of the previously radio tagged animals. The Holder may proceed with subsequent tagging activities provided that a) following a tagging attempt, part or all of the tag antenna can be seen, the radio signal is received as would be expected if the tag were properly implanted, or the tag is seen to miss the target animal; and b) further tagging efforts be suspended pending consultation with the National Marine Fisheries Service and authorization to resume tagging the second time that condition "a" is not met. Authorization to continue research activities in subsequent years be contingent upon submission and approval of a report on the preceding year's activities which shall include a summary and description of the information and rationale used to conclude that each tagged whale was not harmed; and the basis upon which the decision to proceed with the subsequent tagging activities was made.

This modification became effective on August 25, 1988.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, Room 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida, 33702.

Date: August 25, 1988.

Nancy Foster,

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–20013 Filed 9–1–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products From the Republic of Korea; Correction

August 30, 1988.

In footnote 3 of the letter to the Commissioner of Customs published in the **Federal Register** on January 5, 1988 (53 FR 161), add TSUSA number 355.3500 to the TSUSA's for Category 229–F.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–20028 Filed 9–1–88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

August 30, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 7, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: At the request of the Government of the Republic of Singapore, the current designated consultation levels are being increased for Categories 222 and 442.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49188, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 30, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on September 7, 1988, the directive of December 24, 1987 is being amended to increase the limits for cotton, wool and man-made fiber textile products in the following categories:

Category	Amended 12-mo limit [1]
222	450,000 pounds.
442	11,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–20029 Filed 9–1–88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 3, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557–1145.

SUPPLEMENTARY INFORMATION: On July 1 and July 15, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 24992 and 26847) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby addded to Prodcurement List 1988:

Lanyard, Camouflage
1080–000–571–5015
Strap Assembly, Litter
1680–00–878–6964 BZ

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 88–20019 Filed 9–1–88; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 commodities to be produced and a service to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: October 3, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodities

Pad, Writing Paper
7530–01–124–5660 (GSA Regions 9, 10 and New Cumberland Army Depot)
7530–01–131–0091 (GSA Regions 2, 9, 10 and New Cumberland Army Depot)
Slacks, Women's
8410–01–029–6690
8410–00–591–1165
8410–00–591–1181
8410–00–591–1182
8410–00–591–1185
8410–00–591–1186
8410–00–591–1188
8410–00–591–1189
8410–00–591–1191
8410–00–591–1196
8410–00–591–1197
8410–00–591–1201
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8410–00–591–1217
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8410–00–591–1263
8410–00–591–1290
8410–00–591–1292
8410–00–591–1293
8410–00–591–1300
8410–00–591–1311
8410–00–591–1320
8410–00–591–1337
8410–00–591–1352
8410–00–591–1357
8410–00–591–1358

Service

Commissary Shelf Stocking and Custodial Service
Fort Monmouth, New Jersey

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 88–20020 Filed 9–01–88; 8:45 am]
BILLING CODE 6820–33–M

COMMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a contract market in futures on the Morgan Stanley Capital International United Kingdom Stock Index. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before September 19, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Morgan Stanley United Kingdom Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading

Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: On May 19, 1988, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the U.K. stock index futures contract (53 FR 17969). In an August 12, 1988 letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb,, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 30, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–20033 Filed 9–1–88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Personnel Security Questionnaire (Industrial); DD Form 49; and OMB Control Number 0704–0002.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 1 hour, 30 minutes.

Frequency of Response: One-time basis.

Number of Respondents: 30,000.

Annual Burden Hours: 45,000.

Annual Responses: 30,000.

Needs and Uses: The Personnel Security Questionnaire (Industrial), DD Form 49, is used to obtain background information for personnel security investigative and evaluate purposes in order to determine the security eligibility of contractor personnel for assignment to a sensitive position and/or access to information classified TOP SECRET. The completed form is routinely used by the Defense Investigative Service to determine the scope of a personnel security investigative. It is also used to provide evaluators or adjudicators with personal history information relevant to personnel security determinations. The information contained in the form may also be disclosed to other Federal agencies that are authorized under specific statutory or Executive authority to make personnel security determinations.

Affected Public: Individuals/households.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 30, 1988.

[FR Doc. 88–20065 Filed 9–1–88; 8:45 am]

BILLING CODE 3810-01-M

National Guard Bureau; Availability of an Environmental Impact Statement (EIS)

AGENCY: National Guard Bureau, DoD/Minnesota Department of Military Affairs, DoD.

ACTION: Notice of availability of an environmental impact statement; proposed mission expansion/multiple construction at Camp Ripley Army National Guard Training Site, Minnesota.

Background

Camp Ripley Army National Guard Training Area is a state owned, state operated, federally funded installation. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Guard Bureau and Minnesota Department of Military Affairs have, acting as co-lead agencies, prepared a Final Environmental Impact Statement on the proposed master plan mission expansion/multiple construction at Camp Ripley, Minnesota. On July 22, 1986, a Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register**. A scoping meeting (in accordance with the Council on Environmental Quality Regulations (40 CFR 1500–1508)) was conducted on July 31, 1986, at Morrison County Courthouse, Little Falls, Minnesota, to identify significant issues related to the proposed master plan mission expansion/multiple construction at Camp Ripley. A Draft EIS was prepared and a Notice of Availability was published in the **Federal Register** on March 18, 1988. Public comments were received between March 18, 1988 and May 18, 1988. The public hearing was held at Camp Ripley, Minnesota on April 12, 1988. Comments and responses are included in the Final EIS.

Action

The proposed action includes renovation and rehabilitation of existing facilities, construction of new facilities, range improvements, development of new ranges, and associated maneuver areas, and a potential for increased training site utilization. The Final EIS

addresses direct and indirect environmental impacts, both beneficial and detrimental. Environmental impacts addressed include those affecting air quality, noise, physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and social and economic resources.

In addition to the proposed actions, three alternatives were considered in the Final EIS:

(a) No Action (Status Quo).

(b) Modification/Alteration of Proposed Action.

(c) Conduct actions at another location.

Document Availability

The identification of preferred alternatives in the Final Environmental Impact Statement does not constitute a final decision. The Final EIS and any comments received will be used by the Army National Guard to prepare a Record of Decision. Copies of the Final EIS may be obtained from: Minnesota Department of Military Affairs, ATTN: John F. Ebert, Facilities Management Office, P.O. Box 348, Little Falls, Minnesota 56345–0348, or telephone (612) 632–6631.

Lewis D. Walker,

Deputy for Environment, Safety, and Occupational Health OASA (I&L).

[FR Doc. 88–19874 Filed 9–1–88; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Army Laboratory Command; Availability of a Rechargeable Li/$LiCoO_2$ Electrochemical Cell; Exclusive Licensing

In accordance with 37 CFR 404.7 announcement is made of the availability of a rechargeable Li/$LiCoO_2$ electrochemical cell containing an electrolyte of $LiAsF_6$ in dimethylcarbonate mixtures with methylformate for exclusive licensing. Inventors at the U.S. Army Electronics Technology and Devices Laboratory (USAET&DL) have been awarded a patent on a new lithium rechargeable electrochemical cell comprising lithium as the anode, the lithium intercalating compound Li_xCoO_2 ($o<x<1$) as the cathode, and an electrolyte of 1 to 2 mol dm^{-3} $LiAsF_6$ in dimethylcarbonate mixtures with methylformate in which the mass percent of the dimethylcarbonate component can vary from 25 mass percent to 100 percent. The rights to this electrochemical system belong to the United States Government.

The new rechargeable electrochemical cell utilizes an electrolyte which provides increased solvent stability with both the Li anode and $LiCoO_2$ cathode over a wide voltage range of −1.0V to +5.0V versus Li. The electrolyte also provides significantly improved cell cycle life due to the improved lithium plating efficiency (> 85%) of the solvent mixtures. The research and development of this rechargeable electrochemical cell has been completed such that working prototypes have been built and successfully demonstrated. Prototype results were obtained for button cells (2.3 cm diameter x 0.3 cm thickness) cycled between 4.3V and 3.5V at 25°C. Nominal cell capacities were 70 mAh at an average load potential of 3.9V. Practical energy densities of 95 Wh/kg and 220 Wh/l have been obtained for discharge rates up to C/6.5 (11 mA). High charging rates up to 2 mA have also been demonstrated without dendritic shorting.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and section 207 of title 35, United States Code, the Department of the Army as represented by USAET&DL wishes to exclusively license rights to this electrochemical system to a party interested in manufacturing and selling a rechargeable Li/$LiCoO_2$ electrochemical cell.

FOR FURTHER INFORMATION, CONTACT: Mr. Edward J. Plichta, U.S. Army Electonics Technology and Devices Laboratory, ATTN: SLCET–PR, Fort Monmouth, NJ 07703–5000; (201) 544–2691.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc 88–20006 Filed 9–1–88; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Next Generation Computer Resources will meet on September 22–23, 1988. The meeting will be held at the Hughes Aircraft Company, Arlington, VA. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on September 22 and 23, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on computer resources. The agenda will include discussions on Navy computer needs, submarine combat systems, government computer standards, commercial computer standards and OSD/Joint Service Coordination. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: August 30, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88–19974 Filed 9–1–88; 8:45 am]

BILLING CODE 3810–AE–M

Performance Review Board Membership

Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRB's). The purpose of the Boards is to provide fair and impartial review of the SES performance appraisals prepared by the senior executive's immediate and second level supervisor; to make recommendations to the Secretary of the Navy regarding acceptance or modification of the performance rating, transfer, reassignment, or removal from the SES of any senior executive whose performance is considered to be unsatisfactory; and to make recommendations for monetary performance awards. Composition of the particular Boards will be determined on an ad hoc basis from among individuals listed below:

Ailes, R.H. RADM
Angrist, E.P. Mr.
Ashe, O.R. Mr.
Baker, III, A.D. Mr.
Beach, C.P. Mr.
Bergquist, K. The Honorable
Blickstein, I.N. Mr.
Calvert, J.F. RADM
Cammack, E.G. Mr.
Campbell, JR, W. Mr.
Cantrell, W.H. RADM

Cipriano, J.R. Mr.
Clark, C.C. Ms.
Clark, C.H. Mr.
Clautice, W.G. Capt
Coffey, K.J. Dr.
Coffey, T. Dr.
Collie, J.D. Mr.
Comstock, E.T. Mr.
Conn, R.H. The Honorable
Costello, J.N. Mr.
Cropsey, S. Mr.
Dalrymple, J.R. RADM
Deprete, A. Mr.
Dilworth, G. Mr.
Ditrapani, A.R. Mr.
Dixson, H.L. Mr.
Doak, R. Mr.
Donalson, E. Mr.
Eastin, K.E. Mr.
Esau, A.C. Capt
Everett, D.G. Mr.
Faught Jr, T.E. The Honorable
Filipiak, F.L. RADM
Ford, F.B. Mr.
Forssell, A.G. Mr.
Fox, C.E. Mr.
Friichtenicht, R RADM
Gaines, J.E. Mr.
Geiger, C.G. Mr.
Goodman, R.O. Mr.
Gorsey, C.V. Mr.
Grimes, A.B. Mr.
Hallex, R.A. Mr.
Harner, P.A. Mr.
Hathaway, D.L. Mr.
Haver, R.L. Mr.
Haycock, T.J. Mr.
Hendrickson, D. Capt
Higgins, M.L. Mr.
Hitch, P.M. Mr.
Hoffman, G.C. Mr.
Horne, R.B. Radm
Houley, W. Radm
Ilg, R.P. Radm
Johnson, A.E. Mr.
Johnson, R.V. Mr.
Keane, J.J. Mr.
Keightley, G. Mr.
Kinney, E.T. Mr.
Kiss, R.K. Mr.
Knudsen, R. Dr.
Lafande, R.A. Dr.
Leuschner, R. Radm
Lindahl, W.H. Mr.
Loftus, S.F. Radm
Mackinnon, III, M. Radm
Malatino, R.E. Mr.
Marchesani, M.F. Mr.
Marsh, J.W. Mr.
Masciarelli, J.R. Mr.
Matteo, D.A. Mr.
Meletzke, D.M. Ms.
Messere, E. Mr.
Moore, R.M. Radm
Moore, R.P. Mr.
Murphy, P.M. Mr.
Myatt, J.M. Bgen
McElhaney, M.K. Mr.
McManus, C. Mr.
Nathan, H.J. Mr.
Nemfakos, C.P. Mr.
Nickell, Jr, J.R. Mr.
O'Connor, J.J. Mr.
Olsen, M.A. Ms.
Panek, R.L. Mr.
Phelps, F.A. Mr.
Pyatt, E.A. The Honorable
Quast, H. Radm
Rae, W.G. Mr.
Reed, J. Mr.
Renfro, J.G. Mr.
Roark, Jr, J.E. Mr.
Robinson, B.B. Dr.
Rojas, R.R. Mr.
Roth, A.J. Mr.
Rumpf, R.L. Mr.
Saalfeld, F. Dr.
Sansone, W. Mr.
Saul, E.L. Mr.
Schaefer, Jr, W. Mr.
Schaeffer, T.W. Mr.
Schneider, P.A. Mr.
Seely, J.M. Radm
Selwyn, P. Dr.
Shaffer, R.L. Mr.
Shepard, J.J. Dr.
Sheridan, F.L. Mr.
Shrader, J.N. Mr.
Silva, E.A. Dr.
Smith, W.H. Dr.
Steele, R.H. Mr.
Sterns, F.S. Mr.
Stratton, A.M. Ms.
Swofford, F.W. Mr.
Tarbell, W.A. Mr.
Taussig, Jr, J.K. Mr.
Thomas, R.O. Mr.
Tiedgen, D.W. Mr.
Topping, R. Radm
Turnquist, C.J. Mr.
Wagner, G.F.A. Capt
Walsh, R.M. Radm
Weiss, A.R. Mr.
Whalen, J.R. Mr.
Wilcox, H.J. Mr.
Wilgenbusch, R. Radm
Willoughby, W.J. Mr.
Wilson, J.R. Radm
Wyant, F.E. Mr.

August 30, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 88-19975 Filed 9-1-88; 8:45 am]

BILLING CODE 3810-AEM-M

DEPARTMENT OF EDUCATION

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full Council Meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: September 26 and 27, 1988.

ADDRESS: The Council will meet on September 26 in the Conference Room of Alumni Memorial Residence I, Johns Hopkins University, 3400 North Charles Street, Baltimore, Maryland 21218, from 9 a.m. to 5 p.m. The Council will meet on September 27 in the Board Room, Shriver Auditorium, Johns Hopkins University, from 9 a.m. to 4 p.m..

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4076, Washington, DC 20202-7579, (202) 732-1205.

SUPPLEMENTARY INFORMATION: The Council is authorized by section 405 of the 1972 Education Amendments, Pub. L. 92-318, as amended by the Higher Education Amendments of 1986 (Pub. L. 99-498, 20 U.S.C. 1221e. The Council advises the President, the Secretary of Education, and the Congress on policies and activities carried out by the Office of Educational Research and Improvement.

Meetings of the Council are open to the public. The agenda for September 26 includes briefings on the education of the talented and gifted by administrators of the Center for the Advancement of Academically Talented and Gifted Youth, and reports on research and development activities of the Center for Research on Elementary and Middle Schools.

On September 27 the Council will formulate its recommendations to the President, the Secretary of Education and the Congress, its agenda for Fiscal Year 1989, and consider other Council business.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4076, Washington, DC 20202-7579, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Dated: August 30, 1988.

Mary Grace Lucier,

Executive Director.

[FR Doc. 88-20043 Filed 9-1-88; 8:45 am]

BILLING CODE 4000-01-M

National Council on Vocational Education; Public Meeting

AGENCY: National Council on Vocational Education.

ACTION: Public Meeting of the Council.

SUMMARY: This notice set forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under Section 10(a) (2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: September 23, 1988—9:00 a.m. to 4:00 p.m.

ADDRESS: Harbor View Inn, 28 West Cabrillo Blvd., Santa Barbara, CA 92101, Conference Room, (805) 963-0780.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include: Review of the National Awareness Campaign and Council Initiatives.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street SW., Suite 4080, Washington, DC 20202, (202) 732-1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC August 30, 1988.

Joyce Winterton,

Executive Director.

[FR Doc. 88-20069 Filed 9-1-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Award a Grant Agreement to CBI Research Corporation

AGENCY: U.S. Department of Energy (DOE).

ACTION: The U.S. DOE announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for award of grant number DE-FG01-88CE26559 for construction and testing of a laboratory scale ice slurry district cooling system.

SUMMARY: The U.S. DOE, Office of Building and Community Systems, Building Services Division, has prepared a request to fund an application submitted by CBI Research Corporation. This project is one of six projects previously selected by a competitive solicitation, issued in 1986, which contained a provision for follow-up of complementary research. The work to be performed is a modification and expansion of the facility previously constructed. Storage and heat exchangers will be added to the test facility to replicate a complete district cooling system. The compressor and the pump will be replaced and a vessel used in the production process will be redesigned. The pilot plant will incorporate the CBI direct freeze process which efficiently produces ice slurry by directly contacting water with refrigerant.

Eligibility

Award of this effort is being restricted to CBI Industries, Inc. due to the following:

a. CBI has built a unique facility for testing ice slurries.

b. CBI has the knowledge and expertise in the testing of ice slurries.

c. CBI has developed a unique technique, and is the only entity that can produce ice through the direct freeze process.

d. The proposed work, to test the direct freeze process for district cooling applications, is an integral part of the ice slurry testing completed under a previous grant to to this entity.

e. Based on our cost evaluation, the proposed work is advantageous to the government. It is estimated that CBI will perform the research at least cost to the Government in terms of funding and time considerations.

f. The proposed modification of the facility is complementary and consistent with the advanced fluids program objectives.

The term of this grant will be for one (1) year.

FOR FURTHER INFORMATION CONTACT: Rosemarie Marshall, MA-453.2, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1061.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88-20068 Filed 9-1-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-558-000 et al.]

Niagara Mohawk Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 29, 1988.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER88-558-000]

Take notice that on August 10, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing as an initial rate schedule, an Agreement between Niagara Mohawk and the County of Orleans (Public Body) dated July 21, 1988. Niagara Mohawk proposes an effective date of October 9 for the Agreement.

This Agreement provides for Niagara Mohawk to allow the use of such portions of its electric system and facilities as are required for the delivery of Preference Power to Eligible Customers of the Public Body. The Public Body's agent purchases the Preference Power from the Power Authority of the State of New York.

Niagara Mohawk states that the Agreement is an initial rate schedule because it is a new service to a new customer. Niagara Mohawk further states that the proposed rate is the rate per kWhr charged under Niagara Mohawk's applicable, residential rate tariff, minus the cost of fuel included in the retail rates, plus additional A&G expenses incurred by Niagara Mohawk as a result of the services provided the Agency under the Agreement. Niagara Mohawk states that the rate was arrived at through arms-length negotiations

between the parties, and that the proposed rate is intended to produce a return to Niagara Mohawk essentially equivalent to which Niagara Mohawk would have received had it supplied at its residential retail rates the amount of power delivered as Preference Power.

Copies of this filing were served upon the Public Service Commission of the State of New York and the County of Orleans.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER88-577-000]

Take notice that on August 24, 1988, Southern California Edison Company (Edison) tendered for filing a change of rates for transmission service as embodied in Edison's agreements with the following entities which reflects a reduction in rate of return from 11.24 percent to 10.75 percent and changes to depreciation rates authorized by the California Public Utilities Commission (CPUC) to be made effective January 1, 1988.

Rate Schedule FERC No.

1. City of Anaheim—130, 164, 193, 200, 204, 208
2. City of Azusa—160, 189, 196, 201, 209
3. City of Banning—159, 190, 199, 210
4. City of Colton—162, 191, 202, 211
5. City of Riverside—129, 165, 192, 194, 198, 205, 212
6. City of Vernon—149, 154.7, 172, 195, 207
7. Contract Rate TN—FPC Electric Tariff Original Volume No. 1

Edison requests waiver of the Commission's prior notice requirement and an effective date for these rate changes of January 1, 1988.

In addition, Edison tendered for filing exhibits supporting changes in the presently authorized filed rates for transmission service under Rate Schedule FERC No. 159 (Banning) and 200 (Anaheim) filed in Docket No. ER87-516-000.

The presently authorized filed rates for Rate Schedule FERC No. 159 did not contain the Vincent Point of Receipt, and Rate Schedule FERC No. 200 was calculated using a 230 kV path instead of a new 500 kV path.

Edison requests waiver of the Commission's prior notice requirement and an effective date retroactive to January 1, 1987, for the correction of Rate Schedule FERC No. 159 and an effective date retroactive to July 1, 1987, for the correction of Rate Schedule FERC No. 200.

In addition, Edison placed into operation the Devers-Valley-Serrano 500 kV T/L and related 500 kV facilities on July 22, 1987, which provides a new path for both Anaheim's and Azusa's nonfirm energy purchases from Palo Verde switchyard to their respective points of delivery.

Edison requests waiver of the Commission's prior notice requirements and tenders for filing the revised ITS rates FERC Nos. 130 and 160 with an effective date retroactive to July 1, 1988.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20036 Filed 9-1-88; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission; August 30, 1988

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Filing: Transfer of License.

b. Project No.: 1986-002.

c. Date Filed: August 19, 1988.

d. Applicants: CP National Corporation and Oregon Trail Electric Consumers Cooperative, Inc.

e. Name of Project: Rock Creek Project.

f. Location: On Rock Creek, in Baker County, Oregon. The project occupies lands of the United States within the Whitman National Forest.

g. Filed Pursuant to: Federal Power Act. 16 U.S.C. § 791(a)-825(r).

h. Applicant Contacts:

William J. Madden, Jr., Esq., Donald K. Dankner, Esq.; Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, D.C. 20005-3502; (202) 371-5700

Henry Lorenzen, Corey, Byler, Rew, Lorenzen & Hojem, P.O. Box 218, Pendleton, OR 97801, (503) 276-3331

i. FERC Contact: Thomas Dean, (202) 376-9562.

j. Comment Date: September 16, 1988.

k. Description of Application: CP National Corporation (transferor) proposed to transfer its license issued on June 26, 1951, to Oregon Trail Electric Consumers Cooperative, Inc. (transferee) in order to sell all of its electric properties located in Oregon to the transferee. The transferee is a cooperative organized pursuant to the provisions of the Oregon Cooperative Corporation Act.

1. This notice also consists of the following standard paragraphs: B & C (except for notice of intent to file competing application and competing application filings, which are not applicable to transfer of license applications).

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments. A protest, or a motion to intervene in accordance with the requirements of the Rule of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR THE TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTESTS" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division or Project Review, Office of Hydropower Licensing, Federal Energy Regulatory

BEST COPY AVAILABLE

Commission, Room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88–20035 Filed 9–1–88; 8:45]

BILLING CODE 6717–01–M

[Docket Nos. CP88–692–000 et al.]

Trunkline LNG Co. et al.; Natural Gas Certificate Filings

August 30, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline LNG Company

[Docket No. CP88–692–000]

Take notice that on August 18, 1988, Trunkline LNG Company (TLC), P. O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–692–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to amend its certificate of public convenience and necessary to reflect TLC's proposed release of approximately 51 acres of land leased by TLC, which constitutes part of the buffer areas adjacent to the site of TLC's LNG terminal facilities at Lake Charles, Louisiana, all as more fully set forth in the application which is on file with the commission and open to public inspection.

TLC states that the agreement for leases of such acreage provides for restrictions on use of the land consistent with the current safety regulations of the Department of Transportation. TLC further states that it is intended that the subject land will be used to relocate or expand the storage area and railroad right-of-way for an existing, adjacent, cargo handling operation, Trailer Maritime Transport Corporation, to facilitate commencement of construction of facilities to provide a new home post for several United States Navy vessels.

No construction of facilities or change of facilities or operation is proposed by TLC herein. Upon effectuation of this release, TLC will receive a pro-rata refund of its lump-sum payment, which will be approximately $175,000.

Comment date: September 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Gas Gathering Corporation

[Docket No. CP88–707–000]

Take notice that on August 22, 1988, Gas Gathering Corporation (GGC), Post Office Box 519, Hammond, Louisiana 70404, filed in Docket No. CP88–707–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Transcontinential Gas Pipe Line Corporation (Transco) in Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

GGC states that the service, which was authorized by the Commission in Docket No. CP82–203, is no longer required because the wells supplying the natural gas being transported have been plugged and abandoned. GGC explains that it was notified on September 3, 1987, by Bintliff Properties, the producer, that the wells had ceased to produce gas. It is stated that no customers would have their service terminated as a result of the proposed abandonment and that the impact on Transco would be a direct function of the loss of production sources due to depletion.

Common date: September 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission Company

[Docket No. CP88–696–000]

Take notice that on August 18, 1988, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP88–696–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to transport natural gas on behalf of Loutex Energy, Inc. (Loutex), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern requests authorization to transport on behalf of Loutex, on an interruptible basis, up to 120,000 dt equivalent of natural gas per day. Midwestern, it is said, would receive such gas at the United States-Canadian border at Emerson, Manitoba, and redeliver gas to Loutex at Midwestern's interconnection with ANR Pipeline Company near Marshfield, Wisconsin.

For this transportation service, Midwestern represents that it would charge Loutex a transportation rate as set forth in Midwestern's rate schedule IT–2.

Midwestern avers that the transportation agreement would remain in force for a primary term of two years from the date of initial deliveries, and year to year thereafter unless and until terminated by either party giving proper notice.

Comment date: September 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commisison on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting secretary.

[FR Doc. 88–20037 Filed 9–1–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM88–1–15–000]

Mid Louisiana Gas Co.; Proposed Change of Rates

August 29, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on August 24, 1988, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas

Tariff the following Tariff Sheets to become effective October 1, 1988:

Superseding

Sixty-Fifth Revised Sheet No. 3a Substitute

Sixty-Fourth Revised Sheet No. 3a

Fifth Revised Sheet No. 3a.1 Substitute

Fourth Revised Sheet No. 3a.1

Mid Louisiana states that the purpose of the filing of Sixty-Fifth Revised Sheet No. 3a and Fifth Revised Sheet No. 3a.1 is to reflect the collection of the Annual Charges imposed by Section 382 of the Commission's Regulations.

Mid Louisiana states this filing is in accordance with section 22 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions of protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20038 Filed 9-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-163-001]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

August 30, 1988.

Take notice that on August 25, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing the following original and revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of June 1, 1988:

Substitute First Revised Sheet No. 31A
Substitute Seventh Revised Sheet No. 32
Substitute First Revised Sheet No. 32A
Substitute Second Revised Sheet No. 32B
Substitute Original Sheet No. 34.2
Original Sheet No. 34.3

South Georgia states that the proposed tariff sheets reflect certain changes to the Purchased Gas Adjustment (PGA) clause of South Georgia's tariff as agreed at the technical conference held on August 10, 1988 in Docket No. RP88-163.

Copies of the filing were served upon the Company's jurisdictional customers, interested parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before Sept. 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20039 Filed 9-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-180-002]

Trunkline Gas Co.; Compliance Filing

August 30, 1988.

Take notice that Trunkline Gas Company (Trunkline) on August 24, 1988, tendered for filing certain revised tariff sheets. The proposed effective date of these revised tariff sheets is December 1, 1988.

Trunkline states that on May 31, 1988, it filed a general rate application with the Federal Energy Regulatory Commission (Commission) in Docket No. RP88-180-000. On June 30, 1988 the Commission issued an Order "Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Hearing Procedures (Order)." Ordering Paragraph (G) of that Order permits Trunkline's firm sales and firm transportation customers, if they choose, to submit D-2 nominations to Trunkline.

Trunkline states that the Order imposed a D-2 nomination process in part because the same had been required in connection with other pipeline rate filings. However, that Order failed to include reference to overrrun charge provisions for use of the system in excess of D-2 nomination, as had been imposed in other cases in which this process has been implemented. Trunkline's existing tariff has no provision for use of the system by customers above the level of D-2 nominations. The Commission has found that such overrun charge provisions are necessary in order to provide an incentive to prevent undernominations by customers. Without such provisions, uncontrolled and inappropriate cost-shifting may eventuate. Trunkline states that in order to correct this deficiency the revised tariff sheets include the D-2 overrun tariff provisions form firm sales and firm transportaion customers made necessary as a result of the imposition of a D-2 nomination process pursuant to the Order issued in Docket No. RP88-180-000.

Trunkline further states that in order to provide its firm sales and firm transportation customers time to consider the effect of these tariff provisions on their nominations under the suspension order in Docket No. RP88-180-000, Trunkline respectfully requests a thirty (30) days extension of time for its customers to submit their D-2 nominations and for Trunkline to file to reflect these new D-2 nominations in the rates filed in Docket No. RP88-180-000.

Trunkline states that copies of its filing have been served on all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20040 Filed 9-1-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3437-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 15, 1988 through August 19, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 22, 1988 (53 FR 13318).

DRAFT EISs

ERP No. D–NPS–L61096–AK, Rating LO, Cape Krusenstern National Monument, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY:** EPA has no objections to the proposed action.

ERP No. D–NPS–L61176–AK, Rating LO, Glacier Bay National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action as described.

ERP No. D–NPS–L61177–AK, Rating LO, Aniakchak National Monument and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action.

ERP No. D–NPS–L61178–AK, Rating LO, Kobuk Valley National Park, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action as described in this document.

ERP No. D–NPS–L61179–AK, Rating LO, Katmai National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action as described in this document.

ERP No. D–NPS–L61180–AK, Rating LO, Denali National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action as described.

Final EISs

ERP No. FS–FHW–E40174–SC, Mark Clark Expressway/I–526 Construction Project, I–526/Cooper River Bridge Crossing, Fog Hazard Alternate Mitigation Measures, Funding, Berkeley and Charleston Counties, SC. **SUMMARY** EPA has no objections to this project.

ERP No. FS–FHW–E40174–SC, Mark Clark Expressway/I–526 Construction Project, I–526/Cooper River Bridge Crossing, Fog Hazard Alternate Mitigation Measures, Funding, Berkeley and Charleston Counties, SC. **SUMMARY** EPA has no objections to this project.

ERP No. F–FHW–L40152–WA, I–405 Construction, South Renton Interchange to Sunset Interchange, Funding and Section 10 Permit, City of Renton, King County, WA. **SUMMARY** EPA has no objections to the project.

ERP No. F–FHW–L51012–OR, Airport Way Widening and Extension, I–205 to I–84, Funding, Multnomah County, OR. **SUMMARY** EPA has no objections to the project as described in this document.

ERP No. F–FRC–L05046–WA, Rock Island Hydroelectric Project No. 943, Operating License Renewal, Columbia River, Chelan County, WA. **SUMMARY** Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

Dated: August 30, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88–20070 Filed 9–1–88; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3437-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075.

Availability of Environmental Impact Statements Filed August 22, 1988 Through August 26, 1988 Pursuant to 409 CFR 1506.9.

EIS No. 880275, Draft, FHW, VA, George P. Colemen Bridge Traffic Congestion Alleviation, York River Crossing Study, Section 10 and 404 Permits, Coast Guard Permits and Funding, York and Glocester Counties, VA, Due: October 17, 1988, Contact: James M. Tumlin (804) 771–2371.

EIS No. 880276, Draft, BLM, AK, Fort Greely Maneuver Area and Air Drop Zone, Resource Management Plan for Nonmilitary Uses, AK, Due: December 1, 1988, Contact: Jim Ducker (907) 271–5595.

EIS No. 880277, Draft, BLM, AK, Fort Wainwright Maneuver Area, Resource Management Plan for Nonmilitary Uses, AK, Due: December 1, 1988, Contact: Jim Ducker (907) 271–5595.

EIS No. 880278, LDraft, SFW, AK, Alaska National Wildlife Refuges Native Owened Inholdings Acquisition in Exchange for Limited Oil and Gas Interest in the Coastal Plain of the Arctic National Wildlife Refuge, AK, Due: October 17, 1988, Contact: Ann Rappoport (907) 786–3399.

EIS No. 880279, Final, AFS, CA, Plumas National Forest Land and Resource Management Plan, Implementation, Plumas, Lassen, Butte, Sierra and Yuba Counties, CA, Due: October 3, 1988, Contact: Mary J. Coulomber (916) 283–2050.

EIS No. 880280, Final, MMS, MXG, AL, MS, TX, LA, 1989 Central and Western Planning Areas Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales No. 118 and 122, Lease Offerings offshore the coast of Alabama, Mississippi, Louisiana and Texas, Due: October 3, 1988, Contact: Jesse L. Hunt (504) 736–0557.

EIS No. 880281, Final, USA, MN, Camp Ripley Army National Guard Training Site, Mission Expansion and Multiple Construction, Implementation, Morrison County, MN, Due: October 3, 1988, Contact: Joh F. Ebert (612) 632–6631.

EIS No. 880282, Final, GSA, CA, Oakland Federal Building Construction, Approval, Alameda County, CA, Due: October 3, 1988, Contact: Ken Schreiber (415) 974–7624.

EIS No. 880283, Final, UAF, AZ, Sells Military Operations Area/Air Traffic Control Assigned Airspace, Supersonic Flight Operations Overlying Tohono O'Odham Indian Reservation and Organ Pipe Cactus National Monument, Continuation, Pima County, AZ, Due: October 3, 1988, Contact: Michael Reardon (804) 764–4430.

EIS No. 880284, Draft, DOE, AZ, CO, IL, MI, NC, TN, TX, Superconducting Super Collider Construction and Operation, Site Selection, Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee and Texas, Due: October 17, 1988, Contact: Dr. Wilmot Hess (301) 353–6570.

Dated: August 30, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88–20071 Filed 9–1–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3440-1]

National Advisory Council for Environmental Technology Transfer; Open Meeting

Under Pub. L. 92463 (the Federal Advisory Committee Act), EPA gives notice of the first meeting of the National Advisory Council for Environmental Technology Transfer (NACETT) on September 22, 1988, at

9:00 a.m. at the Board Room of the American Institute of Architects, 1735 New York Avenue, NW., Washington, DC 20006.

The agenda for the first meeting of NACETT will include discussions on the following topics:

1. What is technology transfer in the context of business and industry, education and government and how does it differ from technology transfer in the process of achieving environmental goals?
2. What should EPA and involved communities do to assure that environmental educational and training programs will adequately transfer up-to-date management practices and technical expertise to current and future environmental managers?
3. What steps should be taken to promote public and private investment in the development and demonstration of new and better environmental technologies, steps that will both smooth and facilitate the evaluation of new technologies (e.g., easing permitting processes, providing better environmental data for better forecasting) and provide methods to support early investment?
4. What approaches to technology transfer will best extend environmental awareness and results internationally?

Members of the public wishing to make comments are invited to submit them in writing to R. Thomas Parker, Designated Federal Official for NACETT, by September 19, 1988. Please send comments to R. Thomas Parker (A-101 F6), EPA, 499 South Capitol Street, SW., Washington, DC 20460.

The meeting will be open to the public. Additional information on the meeting may be obtained from R. Thomas Parker by writing to the above address or by calling Mr. Parker at 475-9741.

Date: August 29, 1988.

Robert S. Cahill,

Associate Administrator for Regional Operations.

[FR Doc. 88-20003 Filed 9-1-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 25, 1988.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0004

Title: Sections 1.1307, 1.1308, and 1.1311—Environmental Information Collection Requirements.
Action: Revision.
Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions.
Frequency of Response: On occasion.
Estimated Annual Burden: 1,154 Responses; 2,423 Hours, 2.1 hours each.
Needs and Uses: In fulfilling its obligation under the National Environmental Policy Act, the Commission collects environmental information from applicants whose proposals to construct or modify communications facilities may have a significant environmental impact.

OMB Number: None

Title: Sections 76.94, 76.155, 76.157, and 76.159—Syndicated Exclusivity and Network Non-duplication.
Action: New collection.
Respondents: Businesses.
Frequency of Response: On occasion.
Estimated Annual Burden: 864,675 Responses; 137,483 Hours, 10 minutes each.
Needs and Uses: Notifications by television stations and program suppliers will provide cable systems with information on programs for which they have syndicated exclusivity/network non-duplication rights. The data provided to cable systems by television stations will be used to determine when programs subject to deletion will be aired, so that cable systems can delete carriage of signal at appropriate time.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-19973 Filed 9-1-88; 8:45 am]

BILLING CODE 6712-01-M

Privacy Act of 1974; Notice of Systems of Records

AGENCY: Federal Communications Commission (FCC).

ACTION: Notices of systems of records; proposed new systems of records; altered systems of records; deletion of systems of records.

SUMMARY: This notice meets the requirement of the Privacy Act of 1974 regarding the publication of an agency's notice of systems of records. It documents minor administrative changes to FCC's inventory of systems of records, proposes major alterations to three existing systems, proposes to establish two new systems of records, proposes revision of a system by combining two existing systems and deleting one redundant system notice, and deletes those systems which no longer exist or which are not systems of records under the Privacy Act. Also, this document establishes certain blanket routine uses which may be made of the information in FCC's systems of records.

Proposals in this notice are written in the present, rather than the future tense, to avoid unnecessary expenditure of public funds to republish it, unless FCC receives comments which make republication necessary.

DATES: Written comments on the proposed changes should be received by October 3, 1988. All proposals shall be effective after this date, except for new/altered systems, unless FCC receives comments that would require a contrary determination. A longer comment and review period will be required for the two new systems of records described in **"SUPPLEMENTARY INFORMATION"** below. As required by 5 U.S.C. 552a(o) of the Privacy Act, FCC submitted reports of new and altered systems to the Congress and to the Office of Management and Budget (OMB) on August 29, 1988. The new systems of records, including routine uses, will become effective 60 days from publication unless FCC receives comments which would require a contrary determination. For the three altered systems proposed below, FCC is requesting a waiver from OMB of its 60-day advance review period. If OMB grants the waivers, the proposed altered systems will be effective 30 days from publication, unless FCC receives comments which would require a contrary determination.

ADDRESS: Comments should be mailed to Terry D. Johnson, Privacy Act Officer, Information Resources Branch, Room 416, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Written comments will be available for inspection at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, Privacy Act Officer, Information Resources Branch, Room 416, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, (202) 632–7513.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), this document sets forth notice of the existence and character of the systems of records maintained by the FCC. This agency previously gave complete notice of its systems of records by publication in the **Federal Register** on December 30, 1981, 46 FR 63108. This notice is a summary of more detailed information which may be viewed at the location and hours given in the "**ADDRESS**" section above.

PREFATORY STATEMENT

Minor Corrections and Changes:

This document corrects minor typographical or editorial errors and reflects minor administrative changes such as to organization names, location of the records, and records disposition instructions which appeared in the last complete publication of FCC's system notices at 46 FR 63108, December 30, 1981. Existing routine uses for some systems have been editorially improved to clarify the purposes and compatible uses of the system. Where minor stylistic differences occur, routine uses have been made editorially uniform by making reference to the Blanket routine uses listed below. None of these typographical, editorial, or administrative changes alter the purposes for which the systems were created, nor do they meet other criteria which would require an Altered System report under the Privacy Act and OMB Circular No. A–130.

Revision of a System by Combining Two Existing Systems:

FCC is revising FCC/OMD–2 and deleting FCC/Central–3, in order to combine two existing systems of records into one composite notice. The composite notice, published in its entirety below, is titled "FCC/OMD–2, Labor and Employee Relations Case Files" and supersedes the previous notice "Employee Relations Case File" published in the **Federal Register** on December 30, 1981, 46 FR 63108. "FCC/Central–3, Grievance Records" which last appeared in the same December 30, 1981 system notice, is combined into the composite "FCC/OMD–2" notice published below. FCC/Central–3 is hereby deleted from the FCC inventory of Privacy Act system of records notices.

The combining of the record systems reflects a change in the actual manner in which the records were formerly maintained. The change does not alter the purposes of the system, nor does it create increased access to it.

Seven new compatible routine use disclosures are being applied to the Labor and Employee Relations Case Files. Also, six other compatible routine use disclosures formerly applicable to FCC/Central–3 are being applied to Labor and Employee Relations Case Files.

Altered Systems of Records:

Three systems of records are being substantially revised. As required by the Privacy Act and OMB Circular No. A–130, Altered System Reports for these systems were submitted on August 29, 1988 to the Office of Management and Budget, the President of the Senate, and the Speaker of the House for the following three systems. Because these altered systems are existing systems necessary for the conduct of internal security programs, regulatory enforcement activity, and committee management, we have requested the Office of Management and Budget to waive the 60-day advance review period for all three. All new and revised text for altered systems is printed *in italics* in each individual system notice below. The proposed modifications are as follows:

1. For FCC/Central–6, Personnel Investigation Records, the categories of records included in the system is expanded to include, in some instances, photographs of the subject individual.
2. For FCC/FOB–2, Violators File (on individual subjects of FCC field enforcement actions), a new intra-agency use is added which permits the forwarding of limited information via an automated database to the central computer facility and field facilities. This use is compatible with the original purpose of the records. Because this modification constitutes a change in computer configuration, the FCC is establishing safeguards to counteract the increased potential for unauthorized access to the system.
3. FCC/OMD–3, National Industry Advisory Committee Membership File, is renamed "Federal Advisory Committee Membership File" and the categories of individuals covered by the system are expanded to include members of all advisory committees sponsored or co-sponsored by FCC. The expansion is necessary for the FCC to properly administer the committees it sponsors pursuant to the Federal Advisory Committee Act. This change avoids the unnecessary duplication that would result from creating a separate system of records for each type of advisory committee. Also, new compatible routine uses are being established to permit disclosures that are permitted by the Federal Advisory Committee Act.

New Systems of Records:

Two new systems of records are included in this document: FCC/Central–8, Telephone Call Detail Records, is being established by the FCC to enable it to carry out a program to help it control the costs of operating its telephone system. The proposes for this collection of information are (1) to deter the use of the telephone system for unofficial purposes and (2) to recover for the agency the cost of unofficial calls.

FCC/OGC–7 is being established by the FCC Office of General Counsel to enable it to implement orders received from courts of competent jurisdiction or authorized government entities concerning garnishment or levy of wages payabled to FCC employees, as set forth in the system notice published below.

These systems will be effective 60 days from publication, unless comments received require a contrary determination.

Deletion of Existing Systems:

A total of eight FCC systems of records are being deleted, all of which last appeared in the **Federal Register** on December 30, 1981, 46 FR 63108.

Six systems are being deleted because they are not systems of records as defined by the Privacy Act, in that information in the six systems is not retrievable by name of individual: FCC/BCB–1, Broadcast Station Ownership File; FCC/CTB–1, Cable Operator Ownership File; FCC/CCB–2, Contracts for Personal Services; FCC/CCB–3, Employment Discrimination Complaints Against Common Carriers; FCC/OMD–1, Docket History Cards; and FCC/PRB–3, Current Projects File (Applications/Licensees that may not comply with rules).

One system FCC/PRB–1, Amateur and CB License Fees, Refunded and Uncollectable, is being deleted because it is no longer maintained and all records formerly in the system have been destroyed. Also, FCC is deleting FCC/Central–3, Grievance Records because the records have been incorporated into another system, FCC/OMD–2, as explained above.

Blanket Routine Uses:

The Commission is establishing general or "blanket" routine uses that

may be made of the information in its systems of records. The following blanket routine uses may be applied to, and incorporated by reference into, every record system maintained within the Commission. The extent of their application is indicated by a listing of the blanket routine use numbers in each individual system notice. These blanket routine uses are published in this manner in order to avoid unnecessary repetition and in the interest of simplicity and economy, rather than repeating them in each individual system of records notice:

1. ROUTINE USE—LAW ENFORCEMENT: Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, the relevant records may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation or order.

2. ROUTINE USE—DISCLOSURE WHEN REQUESTING INFORMATION: A record may be disclosed to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. ROUTINE USE—DISCLOSURE OF REQUESTED INFORMATION TO A FEDERAL AGENCY: A record may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

4. ROUTINE USE—CONGRESSIONAL INQUIRIES: A record on an individual in a system of records may be disclosed to a congressional office in response to an inquiry the individual has made to the congressional office.

5. ROUTINE USE—DISCLOSURE TO THE GENERAL SERVICES ADMINISTRATION (GSA) AND THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA): A record from a system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. Sec. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

6. ROUTINE USE—DISCLOSURE TO A COURT OR ADMINISTRATIVE BODY: A record on an individual in a system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

7. ROUTINE USE—DISCLOSURE TO THE DEPARTMENT OF JUSTICE OR A COURT FOR LITIGATION: A record from a system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

8. ROUTINE USE—DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT (OPM): A record in a system of records which concerns information on pay and leave, benefits, retirement deductions, and any other pertinent information may be disclosed to the Office of Personnel Management in order for it to carry out its legally authorized Government-wide functions and duties.

For some systems of records, blanket routine uses are replacing existing routine uses which are identical except for minor stylistic differences. The compatible blanket routine uses are incorporated into FCC systems of records as specified in the following table:

System No.	System name	Blanket routine uses proposed (numbers)
FCC/Central-1	Pay, Leave and Travel Records.	1 through 8.
FCC/Central-4	Employee Activity Reporting System.	1 through 8.
FCC/Central-6	Personnel Investigation Files.	1, 4, 5, and 6.
FCC/Central-8	Telephone Call Detail Records.	1, 3, 4, 5, 6 and 7.
FCC/FOB-1	Radio Operator Records.	1 through 7.
FCC/FOB-2	Violators File (individuals . . .).	1 through 7.
FCC/PRB-4	Persons Operating Radio Equipment Improperly.	1 through 7.
FCC/OMD-4	Security Office Control Files.	1, 2, 4 and 5.
FCC/OMD-6	Records of Money Received, Refunded and Returned.	1 through 7.
FCC/OGC-4	Parties Involved in Current Litigation Before Federal Courts.	6 and 7.
FCC/OGC-5	Parties with Pending Civil Cases Before Any District Court that Affect the Commission.	6 and 7.
FCC/OGC-6	Garnishment and Levy of Wages.	1, 6 and 8.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

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Central Systems; Common to Several Bureaus/Offices or Which May Include All FCC Employees:

FCC/Central-1 Pay, Leave and Travel Records
FCC/Central-2 Employee Locator Card Files
FCC/Central-4 Employee Activity Reporting System
FCC/Central-5 Alcoholism and Drug Abuse Case Files
FCC/Central-6 Personnel Investigation Records
FCC/Central-7 Freedom of Information Act Case Files
FCC/Central-8 Telephone Call Detail Records

Common Carrier Bureau:

FCC/CCB-1 Complaints and Inquiries File
FCC/CCB-4 Public Land Mobile Individual Users File

Field Operations Bureau

FCC/FOB-1 Radio Operator Records
FCC/FOB-2 Violators File (on individuals who have been subjects of FCC field enforcement actions).

Private Radio Bureau:

FCC/PRB-2 Application and License File
FCC/PRB-4 Licensees or Unlicensed Persons Operating Radio Equipment Improperly
FCC/PRB-5 Application Review List for Present or Former Licensees, Operators or Unlicensed Persons Operating Radio Equipment Improperly.

Office of Engineering and Technology:

FCC/OET-1 Experimental Radio Station License File

Office of General Counsel:

FCC/OGC-1 Alleged Violators File (Ex Parte Rules)
FCC/OGC-2 Attorney Misconduct Files
FCC/OGC-3 Employee Complaint Adjudication
FCC/OGC-4 Parties Involved in Current Litigation Before Federal Courts
FCC/OGC-5 Parties with Pending Civil Cases Before Any District Court That Affect the Commission.

FCC/OCC–6 Private or Civil Injury Claimants
FCC/OGC–7 Garnishment and Levy of Wages

Office of Managing Director:

FCC/OMD–2 Labor and Employee Relations Case file
FCC/OMD–3 Federal Advisory Committee Membership File
FCC/OMD–4 Security Office Control Files
FCC/OMD–5 Emergency Communications Committee Membership File
FCC/OMD–6 Records of Money Received, Refunded, and Returned

FCC/Central–1

SYSTEM NAME:

Pay, Leave, and Travel Records.

SYSTEM LOCATION:

Financial Management Division and administrative offices of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, and FCC field offices. (See FCC telephone directory for field offices addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains various records required to administer the pay, leave, and travel requirements of the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3102, 3309.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used:

a. To authorize payroll deductions for allotments, savings bonds, charitable contributions, union dues, health benefits and life insurance; collect indebtedness for overpayment of salary and unpaid Internal Revenue taxes; pay income tax obligation to Internal Revenue Service; authorize issuing of salary checks by Treasury Department; obtain reimbursement of travel expenses for official business report gross wages and separation information for unemployment compensation; pay any uncollected compensation due a deceased employee; and provide for a summary of employees payroll data and retirement contributions.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

All of the blanket routine uses of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual files in folders, cards, magnetic tapes, and loose leaf binders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in filing cabinets in an office that is locked when not occupied by staff. Records are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for varying periods of time from one year to permanently in accordance with General Records Schedules issued by the National Archives and Records Administration. Disposal is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of the Managing Director, 1919 M Street NW., Washington, DC 20554 or the appropriate administrative office in which the individual is employed.

NOTIFICATION PROCEDURE:

Same as above. It is necessary to furnish the following information in order to identify the individual whose records are requested:

A. Full name.
B. Date of Birth.
C. Social Security Number.
D. Mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above. Requesters should reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Same as above. Requesters should reasonably specify the record contents being sought.

RECORD SOURCE CATEGORIES:

Information is provided by management officials and by the individuals on whom the record is maintained.

FCC/Central–2

SYSTEM NAME:

Employee Locator Card Files.

SYSTEM LOCATION:

Personnel and administrative offices of the Federal Communications Commission, 1919 M Street NW., 2025 M Street NW., and 2000 L Street NW., Washington, DC 20554, and FCC field offices. (See FCC telephone directory for field office addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Current employees of the Federal Communications Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone number of individual office employees. The system also contains the home address and telephone number of the employee and the name, address, and telephone number of an individual to contact in the event of a medical or other emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The record serves to identify an individual for office officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. These records may be used to locate individuals for personnel research.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3" x 5" paper.

RETRIEVABILITY:

Records are retrieved by name of individual employee.

SAFEGUARDS:

Records are maintained in secured areas and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an employee of the Commission. Expired records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate Personnel or administrative office in which the employee is employed.

NOTIFICATION PROCEDURE:

FCC employees wishing to inquire whether the system contains information about them should contact the appropriate FCC administrative officer where employed. Individuals must supply their full name in order for records to be located and identified.

RECORD ACCESS PROCEDURE:

Employees should contact the appropriate FCC adminstrative officer where employed.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

FCC/Central–4

SYSTEM NAME:

Employee Activity Reporting System.

SYSTEM LOCATION:

1919 M Street NW., 2025 M Street NW., 2000 L Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current FCC employees whose bureau or office is a participant in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual activity reporting forms containing a person's name, social security number (optional), organization code, activity code and number of hours spent working on the reported activity during a semimonthly reporting period. Monthly reporting forms listed total Bureau/Office output of selected production measures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4 and 5 of the Communications Act of 1934, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Bureau and Office management personnel use data to measure time expended on various programs, services or activities and productivity at Divisional or Bureau level. Financial Management Division uses data to develop future budget estimates.

All of the blanket routine uses of the Prefatory Statement are applicable to this system:

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original forms are stored in file cabinets by reporting period and organizational unit. Data is also contained on magnetic tapes stored in computer room, also denoted by reporting period.

RETRIEVABILITY:

Forms and tapes are maintained by semimonthly or monthly reporting period to facilitate aggregation for monthly report. Data is only rarely retrieved for an individual; Normal retrieval is by organizational levels and program, service or activity codes. Forms will be filed in each participating bureau to facilitate location for correction purposes only.

SAFEGUARDS:

Records are maintained in file cabinets in offices that are locked at the end of each business day. Access to tapes is controlled by computer room personnel.

RETENTION AND DISPOSAL:

Original forms are retained for three months and then destroyed by shredding. These original input documents are maintained for three months in order to facilitate correction of error listings. Tapes are retained for up to two years.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate bureau or office chief in the Commission located at 1919 M Street NW., 2025 M Street NW., or 2000 L Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquires to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual Activity Reports of employees participating the system. Monthly output reports from Bureau/Office management personnel.

FCC/Central–5

SYSTEM NAME:

Alcoholism and Drug Abuse Case Files.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FCC employees who seek guidance and counseling through the agency Alcoholism and Drug Abuse Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal history as it relates to the employee's problem. Records on employees referred for counseling.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

FPM 792.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reference material for the use of the Program Administrator and Counselors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in locked metal cabinets in the Program Administrator's Office.

RETRIEVABILITY:

Records are filed and retrieved by name of employee.

SAFEGUARDS:

Records are maintained in an office that is locked when not occupied by the Program Administrator. They are maintained in strict confidence and are accorded the same security and accessibility restrictions provided for medical records.

RETENTION AND DISPOSAL:

Records are kept indefinitely or until the employee leaves the FCC, at which time they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Employee, employee's supervisor, and counselors.

FCC/Central–6

SYSTEM NAME:

Personnel Investigation Records.

SECURITY CLASSIFICATION:

None for the system; however items or records within the system may have national defense/foreign policy classifications up through secret.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former FCC employees or applicants for employment in the Federal service.

b. Individuals considered for access to classified information or restricted areas and/or security determinations as contractors, experts, instructors, and consultants to Federal programs.

c. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a co-operative agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with present and former supervisors, coworkers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries with law enforcement agencies, employers, educational institutions attended; reports of action after OPM or FBI Section 8(d) Full Field Investigation; Notices of Security Investigation; and other information developed from the above Certificates of Clearance *and in some instances a photograph of the subject.* Also contained is investigative information concerning allegations of misconduct by an FCC employee, miscellaneous complaints not covered by the FCC's formal or informal grievance procedure, and inquiries conducted under the President's Program to eliminate waste and fraud in Government.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR Part 5; 5 U.S.C. Sections 1303, 1304, and 3301, E.O. 10450 and 11222; FCC Rules and Regulations, 47 CFR 19.735–107.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used to provide investigatory information for determinations concerning compliance with Federal regulations and for individual personnel determinations including suitability and fitness for Federal employment, access and security clearances, evaluations of qualification, loyalty to the U.S., and evaluations of qualifications and suitability for performance of contractual services for the U.S. Government; to document such determinations; to take action on or respond to a complaint or inquiry concerning an FCC employee or to counsel the employee; to otherwise comply with mandates and Executive orders.

The following disclosures of information from this system may be made outside the FCC:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative and judicial branches of the Federal Government, and the District of Columbia Government, when such agency, office or establishment conducts an investigation of the individual for the purpose of granting a security clearance, making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

b. To respond to a request for discovery or for appearance of a witness, when relevant to the subject matter involved in a pending judicial or administrative proceeding.

Blanket routine uses No. 1, 4, 5 and 6 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by *name of the individual subject.*

SAFEGUARDS:

Records are maintained within a secure, access-controlled area, and stored in approved security containers. Access is limited to cleared Security Office personnel and to Commission officials on a "need to know" basis when required to take decisional action on the records.

RETENTION AND DISPOSAL:

Records are retained during employment; records are returned to investigating agencies after employment terminates. Those originated by the FCC are retained for 20 years from the date of the most recent investigative activity. Records are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street, NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager indicated above in writing. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social security number.
d. Signature.
e. Any available information regarding the type of record involved.
f. The category of covered individuals under which the requester believes he or she fits.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a (c)(3) and (d), regarding access to records. The section of this notice titled "Systems exempted from certain provisions of the Act," which appears below, indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their records should contact the system manager indicated above, in writing. Individuals must furnish the following information for their records to be located and identified.

a. Full name.
b. Date of birth.
c. Social security number.
d. Signature.
e. Any available information regarding the type of records involved.
f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting access must also comply with FCC Privacy Act regulations regarding verification of identity and access to records (47 CFR 0.554 and 0.555)

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment to records. The section of this notice titled "Systems exempted from certain provisions of the Act," which appears below indicates the kinds of material exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment to their non-exempted records should contact the system manager indicated above, in

writing. Requests should be directed only to the system manager, whether the record sought is in the primary system or in a decentralized segment. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social security number.

d. Signature.

e. Any available information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting amendment must also comply with the FCC Privacy Act regulations regarding verification of identity and amendment of records (47 CFR 0.556 and 0.557).

RECORD SOURCE CATEGORIES:

a. Applications and other personnel and security forms furnished by the individual.

b. Investigative and other record material furnished by Federal agencies.

c. Notices of personnel actions furnished by Federal agencies.

d. By personnel investigation or written inquiry from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system may contain the following types of information:

a. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

1. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

2. Reveal the identity of a source, who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

The Federal Communications Commission has claimed these exemptions from the requirements of 5 U.S.C. 552a (c)(3) and (d). These requirements relate to providing an accounting of disclosures to the individual whom the records are about and access to and amendment of records.

FCC/Central–7

SYSTEM NAME:

Freedom of Information Act Case Files.

SYSTEM LOCATION:

1919 M Street, NW., 2025 M Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals or organizations requesting access to inspect and/or copy records of the Commission under provisions of the Freedom of Information Act (FOIA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and other individually identifying information about the requester and the records sought.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act, Pub. L. 93–402 (5 U.S.C. 552).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are available to FOIA staff involved in correspondence and investigative processes, including appeals officials and members of the General Counsel. Disclosures of information from this system may be made outside the Commission as follows:

1. In the event the Commission deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act (FOIA), disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

2. Where the appropriate official of the Commission, pursuant to the Commission's FOIA Regulation determines that it is in the public interest to disclose a record which is otherwise exempt from mandatory disclosure, disclosure may be made from this system of records.

3. The Commission contracts with a private firm for the purpose of searching, duplicating, and distributing to the public the documents maintained by the Commission and available for inspection under the Act. The contractor is required to maintain Privacy Act safeguards on such records.

4. A record on an individual in this system may be disclosed to a congressional office in response to an inquiry the individual has made to the congressional office.

5. In the event of litigation where the defendant is (a) the Commission, or any employee of the Commission in his or her official capacity, (b) the United States where the Commission determines that the claim, if successful, is likely to directly affect Commission operations; or (c) any Commission employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Commission may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in case files (original or copy of incoming request and written response).

RETRIEVABILITY:

For the most part, records are indexed by name of individual requester.

SAFEGUARDS:

Records are maintained in file cabinets in the offices of FOIA Liaisons throughout the Commission with limited access.

RETENTION AND DISPOSAL:

Individual case files are maintained for 2 years after date of reply. Denied requests and appeals of denials may be retained for longer periods (up to 5 years after final action) in accordance with FOIA and FCC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate bureau or office chief in the Commission located at 1919 M Street, NW. or 2025 M Street, NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the appropriate system manager.

RECORD ACCESS PROCEDURES:

Address requests to the appropriate system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals and organizations making requests under FOIA or from bureaus or offices of the Commission reporting on the handling of such requests for inclusion in the annual report to Congress.

FCC/Central–6

SYSTEM NAME:

Telephone Call Detailed Records.

SYSTEM LOCATION:

1919 M Street, NW., 2025 M Street, NW., 2000 L Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make long distance calls and individuals who received telephone calls placed from or charged to agency telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of agency telephones to place long distance calls; records indicating assignment of telephone numbers to employees and location of telephones in the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4(i) of the Communications Act; 43 Compt. Gen. 163; 41 CFR 101–37.105–4; 5 CFR 735.205.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed (a) to FCC employees and officials of labor organizations representing FCC employees to determine their responsibility for telephone calls; (b) to Commission officers and staff responsible for certifying official long distance calls; (c) to the Financial Management Division for the purpose of obtaining reimbursements for unofficial calls and to maintain accounting of the funds received; (d) to Commission staff responsible for considering or taking disciplinary action against employees for unofficial use of agency telephones.

Information in this system may be disclosed outside the FCC as stated in Blanket Routine Uses Nos. 1, 3, 4, 5, 6 and 7 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVINGS, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and on magnetic tape.

RETRIEVABILITY:

Records are retrieved by employee name or identification number, by name of recipient of telephone call, and by telephone number.

SAFEGUARDS:

Paper records are maintained in file cabinets in offices which are locked at the end of each business day. Information on magnetic tape is secured through controlled access and passwords restricted to administrative office personnel.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule 12, National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate bureau or office chief in the Commission located at 1919 M Street, NW., 2025 M Street, NW., or 2000 L Street, NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Inquiries regarding this system should be addressed to the system manager in the appropriate bureau or office.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the system manager in the appropriate bureau or office.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the system manager in the appropriate bureau or office.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

FCC/CCB–1

SYSTEM NAME:

Complaints and Inquiries File.

SYSTEM LOCATION:

2025 M Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals who have made complaints or inquiries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints and related supporting information, company replies to complaints, letters of inquiry and Commission letters regarding such complaints and inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 208 of the Communications Act; FCC Rules, 47 CFR 1.711 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by Commission personnel to handle and process complaints and inquiries received from individuals and companies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper file.

RETRIEVABILITY:

Records are retrieved by individual name.

SAFEGUARDS:

Stored in unlocked files which are secured in office after hours.

RETENTION AND DISPOSAL:

The records are retained in the Commission and then destroyed 2 years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Common Carrier Bureau, 1919 M Street, NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Complainants and subject carriers.

FCC/CCB–4

SYSTEM NAME:

Public Land Mobile Individual Users File.

SYSTEM LOCATION:

1919 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

To the extent that Public Land Mobile Service application/license files

occasionally contain records on individuals as defined by the Privacy Act, this system covers individual applicants and licensees for Public Land Mobile Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for airborne (air-to-ground) licenses; related forms and correspondence; a computerized list of licensees by name and call sign.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 307 of the Communications Act, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system is used by Mobile Services Division staff to grant, dismiss or revoke applications.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfiche, and computer printout.

RETRIEVABILITY:

Records are retrieved by licensee name or call sign.

SAFEGUARDS:

The records are maintained in rooms which are secured at the end of the business day.

RETENTION AND DISPOSAL:

License files for Public Land Mobile service are cut off when superceded or a major modification occurs, then transferred to the Federal Records Center and destroyed when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Common Carrier Bureau, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals making applications.

FCC/FOB-1

SYSTEM NAME:

Radio Operator Records.

SYSTEM LOCATION:

Primary: 1919 M Street, NW., Washington, D.C. 20554. Secondary: Various field facilities. (See FCC telephone directory for field office addresses, or locate local office in commercial telephone directory under "U.S. Government.")

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals who have applied for radio operator licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for commercial radio operator licenses, examination papers, records of documents issued, correspondence, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Geneva Radio Regulations; 47 U.S.C. Section 303(l), (m) and 318.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For use in connection with the administration of the Commission's radio operator program including examinations, applications, and determinations of license applicant qualifications. Limited file material concerning licensed radio operators is forwarded for inclusion in the agency's central computer facility.

If the records indicate a possible violation of law, they may be referred, as a routine use, to the General Counsel and to the appropriate agency charged with the responsibility of investigating or prosecuting such violation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microfilm and magnetic tape.

RETRIEVABILITY:

All records are retrievable by applicant name.

SAFEGUARDS:

Records are kept in file cabinets in offices that are secured at the close of the business day. Information provided by applicants concerning their mental or physical health or disability is kept in confidence and afforded the same security and accessibility restrictions as provided for medical records.

RETENTION AND DISPOSAL:

Commercial applications are destroyed when 11 years old. Both General and Restricted Permit applications are retained for 75 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Field Operations Bureau, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals making applications. FOB field employees engaged in radio operator application processing.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f) of the Privacy Act because such parts contain investigatory material compiled solely for law enforcement purposes pursuant to Section (k)(2) of the Act.

FCC/FOB-2

SYSTEM NAME:

Violators File (records kept on individuals who have been subjects of FCC field enforcement actions).

SYSTEM LOCATION:

Primary: 1919 M Street, NW., Washington, D.C. 20554. Secondary: Various field facilities (See FCC telephone directory for field office addresses, or locate local office in commercial telephone directory under "U.S. Government.")

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals who have been subjects of FCC field enforcement actions (monitoring, inspection, investigation) for violations of radio law, FCC Rules and Regulations, or International Radio Treaties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inspection reports, complaints, monitoring reports, investigative cases, referral memos, correspondence, discrepancy notifications, warning notices and forfeiture actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. Sections 101, 102, 104, 301, 312, 315, 318, 386, 401, 404, 501, 502, 503.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For use in connection with the Commission's field enforcement programs to determine levels of compliance among radio users; to issue marine certificates of compliance; *to document Commission monitoring, inspections and investigations for enforcement purposes; to provide a basis for various administrative, civil, or criminal sanction actions taken against violators by FOB or other appropriate Commission bureaus or offices.*

Limited information elements are transferred to the Commission's central computer facility and to FOB field facilities to maintain a cross-reference which prevents duplication of enforcement actions, and to track the progress of enforcement cases.

If the records indicate a possible violation of law, they may be referred, as a routine use, to the appropriate agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing the applicable statutes or rules.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, *magnetic tape, and computer printout.*

RETRIEVABILITY:

All records are retrievable by name and FCC-issued call sign.

SAFEGUARDS:

Paper records are kept in file cabinets in offices that are secured at the close of the business day. *Access to information on computer is restricted by use of passwords and location of terminals in rooms which are designated non-public areas, and which are secured outside of business hours.*

RETENTION AND DISPOSAL:

All violation notices are maintained for a period of 4 years, then destroyed. (Classified material is destroyed by burning or shredding.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Field Operations Bureau, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Correspondence with the individual subject. Commission employees located in the Field Offices, District Offices and Monitoring Stations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f) of the Privacy Act and from 0.554—0.557 of FCC Rules because such parts are maintained as a protective service for individuals described in Section 3056 of Title 18, and because they are necessary for FCC employees to perform their duties, pursuant to sections (k)(1), (2) and (3) of the Act.

FCC/PRB–2

Application and License File.

SYSTEM LOCATION:

2025 M Street, NW., Washington, D.C. 20554, and Route 116, Gettysburg, PA 17325. Records consisting of extracts of selected information can also be inspected at FCC field offices. (See FCC telephone directory for field office addresses, or locate local ofice in commercial telephone directory under "U.S. Government."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Radio service applicants and licensees under Parts 80, 87, 90, 94, 95, and 97 of the Commission's Rules.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, licenses, and correspondence maintained by various radio categories: Aeronautical and Fixed Group, Aircraft Group, Alaskan Group, Amateur, Automobile Emergency, Aviation Auxiliary Group, Aviation Radio Navigation Land, Business Citizens Band, Civil Air Patrol, Coastal Group, Disaster, Fire, Forest Products, Forestry Conservation, General Mobile, Highway Maintenance, Industrial Radio Location, Interurban Passenger (Motor Carrier), Interurban Property (Motor Carrier), Local Government, Manufacturers, Marine Auxiliary Group, Marine Radar Land, Motion Picture, Operational Fixed Microwave, Personal Radio, Petroleum, Police, Power, Radio Amateur Civil Emergency Service (RACES), Radio Control, Railroad, Relay Press, Ship Group, Special Emergency, Special Industrial, State Guard, Taxicab, Telephone Maintenance, Urban Passenger (Motor Carrier), Urban Property (Motor Carrier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 310, 303 of the Communications Act of 1934, and amendments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used to administer the Commission's program relating to radio categories listed above including licensing, enforcement, rulemaking, and other actions requiring record information; to evaluate unique systems; to provide a service of information for the general public. Selected informational elements are incorporated in the Commission's central computer facility to maintain a current inventory of licensees for those services which are computerized.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file boxes or cabinets. Automated records are on microfiche or computer media.

RETRIEVABILITY:

Records can be retrieved alphabetically by name of applicant/licensee within each radio service. Automated records can be retrieved by means other than personal identifier, such as location or call sign.

SAFEGUARDS:

Records are freely available for public inspection. There are safeguards against alteration of computer records by unauthorized persons (passwords). Paper files are maintained in offices which are locked at the end of each business day.

RETENTION AND DISPOSAL:

Records are normally retained as long as the station remains licensed, although some bulky files may be divided and older material sent to the Federal Records Center, and maintained a minimum of 2 years and a maximum of 11 years after expiration date.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Private Radio Bureau, 2025 M Street, NW., Washington, DC 20554

NOTIFICATION PROCEDURE:

Address inquiries to the system manager. In order to facilitate the location of a specific record, the name of the raido category under which the application was filed and the call sign of the license issued should be included with the request.

RECORD ACCESS PROCEDURE:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Original applications and supplemental material submitted by applicants; correspondence from complainants; inspection reports; application processors.

FCC/PRB–4

SYSTEM NAME:

Licensees or Unlicensed Persons Operating Radio Equipment Improperly.

SYSTEM LOCATION:

2025 M Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Licensees operating under Parts 80, 87, 90, 94, 95, and 97 of the Rules in violation of the Commission's Rules or the Communications Act of 1934. Unlicensed perons operating radio equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enforcement case history cards; investigatory and hearing files with inspection reports, complaints, correspondence, pleadings, legal memoranda, investigative findings, forefeiture notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 47 U.S.C. 301, 303, 309(e), 312, 362, 364, 386, 507, and 510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by bureau employees in enforcement and hearing cases to document, to evaluate, and to impose sanctions for violations of the Rules or Act. Blanket Routine uses No. 1–7 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders, card files.

RETRIEVABILITY:

Records are filed and retrieved by name of licensee or unlicensed individual.

SAFEGUARDS:

Records are maintained on a division level in appropriate file cabinets in offices which are locked at the end of each business day.

RETENTION AND DISPOSAL:

The documentation portions of these records are retained for 3 years, after the case is closed and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Private Radio Bureau, 2025 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Information originates from various sources: FCC Field Engineers; private citizens; Department of Justice; other Commission personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act of 1974, 5 U.S.C. 552(a), and from §§ 0.554–0.557 of the Commission's Rules because such parts contain investigatory material compiled solely for law enforcement purposes pursuant to Section 552(k)(2) of the Act.

FCC/PRB–5

SYSTEM NAME:

Application Review List for Present or Former Licensees, Operators or Unlicensed Persons Operating Radio Equipment Improperly.

SYSTEM LOCATION:

2025 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or have been licensed under Parts 13, 80, 87, 95, or 97 of the Rules who have operated in violation of the Commission's Rules or the Communications Act. Unlicensed persons who have operated radio transmitting equipment. Persons who have had a license revoked or have had an application dismissed or denied, and are prohibited from filing another application within one year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, date of birth (if known) of individual, authorization code of staff member who placed name in the file, and the date the name was placed in the file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 301, 303, 309(e), 312.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Needed by selected staff and filed employees to determine whether the applications of these individuals should be granted, dismissed or set for hearing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On magnetic tape and computer printout.

RETRIEVABILITY:

Information is filed alphabetically by name of individual in a computer and is retrieved periodically through computer printout.

SAFEGUARDS:

Access to computer is controlled by password in a secured office and the printouts are availably only to selected staff personnel.

RETENTION AND DISPOSAL:

The printouts are destroyed by machine shredding or by tearing into pieces when a new list is distributed. The computer tapes are retained for four back-cycles and on the fifth update, the oldest tape is destroyed. Individual names are removed from the file when retention is no longer appropriate; entire lists of names is reviewed quarterly.

SYSTEM MANAGER AND ADDRESS:

Chief, Private Radio Bureau, 2025 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Applicants and FCC Field Engineers.

FCC/OET–1

SYSTEM NAME:

Experimental Radio Station License Files.

SYSTEM LOCATION:

Room 7316, 2025 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those who have been granted a license to operate an experimental radio

station under Part 5 of the Commission's Rules.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains the application form (FCC Form 442, Application for a New or Modified Station) or renewal form (FCC Form 405, Application for Renewal of Station License) and supporting exhibits submitted by the applicant. May also include experimental project reports submitted by the applicant as required by FCC Rules, Part 5. File also includes comments from other Commission bureaus on interference potential of operation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Communications Act of 1934, as amended, Section 308. FCC Rules and Regulations, Part 5, Experimental Radio Services (other than Broadcast).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To make a determination of applicant's eligibility to operate a station in the experimental radio service; to determine interference potential to other radio services, as well as determine if project of experimentation is valid; to Federal agencies, other FCC bureaus, or to the public if it feels it may be impacted or wants to know what new experimentation is being conducted. FCC bureaus use the information to determine the interference potential as well as possible use in rulemakings. The information is available to anyone, unless the applicant has requested confidentiality under § 0.459 of the Commission's Rules or the information is classified.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Files are retrieved by licensee name. If more than one station per licensee, then also filed by call sign.

SAFEGUARDS:

All files are available to the public except classified files and files that have been granted confidentiality under § 0.457 of the Commission's Rules. Classified files are kept in locked cabinets in accordance with security regulations. Files that have been granted confidentiality under § 0.457 are marked "NOT FOR PUBLIC INSPECTION" and may only be accessed by Branch personnel and Commission employees who have a need to know the information.

RETENTION AND DISPOSAL:

Records are maintained in the office; destroyed 2 years after expiration of license.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Frequency Liaison Branch, Room 7322, 2025 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORDS ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The majority of information comes from the individual. Other information comes from coordination with other FCC bureaus and from that which is generated within the Branch during the normal processing of the application.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

FCC/OGC-1

SYSTEM NAME:

Alleged Violators File (Ex Parte Rules).

SYSTEM LOCATION:

1919 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals alleged to have violated the Commission's ex parte rules.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaint letters, memoranda, briefs, Commission decisions recommending action and new releases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4(i) of the Communications Act of 1934, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record information is used by staff attorneys to make a determination whether, in fact, a violation of the ex parte rules has occurred. The records may be referred to the appropriate agency charged with the responsibility of prosecuting such violation or enforcing the applicable statute or rule.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are maintained by the name of the party accused of an ex parte violation.

SAFEGUARDS:

Records are maintained in unlocked file cabinets in an office that is secured at the end of each business day. Since only one or two office persons have need to routinely access this system, unauthorized examinations would be easily detected.

RETENTION AND DISPOSAL:

Destory when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Complaints, Security Officer, Bureau Chiefs.

FCC/OGC-2

SYSTEM NAME:

Attorney Misconduct Files.

SYSTEM LOCATION:

1919 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any attorney who appears in a representative capacity before the FCC and who is being charged with attorney misconduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, briefs, related Commission agenda items, ABA recommendations, investigative findings, complaints of attorney misconduct, memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Section 500(d)(2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record information is used by staff attorneys to prosecute a case for attorney misconduct before the administrative law judge and the Commission. Record information may be referred, as a routine use, to the appropriate agency charged with the responsibility of enforcing any Commission penalties imposed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrived by the name of the attorney charged with misconduct.

SAFEGUARDS:

Records are kept in file cabinets in offices that are secured at the end of each business day. Since only one or two staff persons routinely access this record system, unauthorized examination during business hours would be easily detected.

RETENTION AND DISPOSAL:

Destroyed 5 years after case closure.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Letters from pubic, pledgings, agenda items, intra-agency memoranda.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from Subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of the Privacy Act of 1974, 5 U.S.C. 552a, and from § 0.554–0.557 of the Commission's Rules because it is maintained for law enforcement purposes pursuant to subsection (k)(2) of the Act.

FCC/OGC–3

SYSTEM NAME:

Employee Complaint Adjudication.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Commission employee who is the subject of a complaint investigation involving internal personnel actions or activities, i.e., discrimination, grievance, political activity, separation or adverse action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system involve internal personnel disputes that have reached the hearing stage, and may include correspondence, memoranda, transcripts of hearings, briefs, investigative reports, decisions of hearing examiners and Commissioners.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S. Code Section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used by staff attorneys in the General Counsel's office in pre-hearing settlement negotiations with opposing parties; records are also used in preparation for the actual hearing before an administrative body or a court.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by the name of the subject individual in the investigation.

SAFEGUARDS:

Records are maintained in unlocked file cabinets in an office that is secured at the end of each business day.

RETENTION AND DISPOSAL:

Destroyed 5 years after case closure.

SYSTEMS MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Co-workers, other supervisors, classification experts, other persons involved in the case.

FCC/OGC–4

SYSTEM NAME:

Parties Involved in Current Litigation Before Federal Courts.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who is a captioned party of record in an appeal from or petition for review of a Commission action, or other court filing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Litigation Division docket files (duplicate files of those filed with the Court and other parties).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Communications Act of 1934, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record information is used by Commission attorneys for case preparation and reference.

Blanket routine uses No. 6 and 7 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by case name.

SAFEGUARDS:

Records are filed in the Litigation office and secured after working hours.

RETENTION AND DISPOSAL:

After cases have been decided or dismissed and reach the inactive mode, the precedent-setting or important cases are reviewed to delete duplicative or unnecessary material and then are forwarded to the Library for binding. The cases remain in the Library for reference and research purposes. The remainder of the case records are destroyed when no longer needed or three years after closure, whichever occurs first.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

U.S. Circuit Court of Appeals and parties to proceedings.

FCC/OGC–5

SYSTEM NAME:

Parties with Pending Civil Cases Before Any District Court That Affect the Commission.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has a miscellaneous case before any District Court that involves the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, briefs, bankruptcy papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Communications Act of 1934, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record information is used by Commission attorneys to update information or furnish additional data for the Government agency handling the case.

Blanket routine uses Nos. 6 and 7 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual filing the claim.

SAFEGUARDS:

Records are maintained in unlocked file cabinets in an office that is secured at the end of each business day.

RETENTION AND DISPOSAL:

The records are destroyed when no longer needed or after five years, whichever occurs first.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Justice Department; U.S. Attorneys; other Federal agencies; U.S. District Courts; and parties to the proceedings.

FCC/OGC–6

SYSTEM NAME:

Private or Civil Injury Claimants.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who files a damage claim against the Commission or commits a tort against a Commission employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident reports, tort claim vouchers, correspondence, memoranda, medical and payment receipts, repair and payment receipts, pictures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. Section 2672.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Record information is used by attorneys in the Office of General Counsel to determine whether a damage claim filed against the Commission should be paid and for reference when assigned a similar case. If it is determined that the claim should not be paid or in cases when, pursuant to the limitations set out in 28 U.S.C. Section 2672, the Commission cannot make the final determination whether or not to pay a claim, the record is routinely transferred to the appropriate agency charged with the responsibility of disposition.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual who filed the claim.

SAFEGUARDS:

Records are kept in an unlocked file cabinet in an office that is locked at the end of each business day. Since only one or two office persons routinely access this system, unauthorized examination during business hours would be easily detected.

RETENTION AND DISPOSAL:

Destroy 5 years after case closure.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Witnesses; General Counsel; Office of Managing Director; claimants; and employees.

FCC/OGC–7

SYSTEM NAME:

Garnishment and Levy of Wages.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Commission employee who is the subject of a garnishment or levy order issued by a court of competent jurisdiction or by another government entity duly authorized to issue such order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Garnishment or levy orders served upon the agency for implementation, correspondence, memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used by staff attorneys in the General Counsel's office in directing the agency's implementation of garnishment and levy orders. Also, blanket routine uses number 1, 6 and 8 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

Records are maintained by the name of the individual subject to garnishment or levy order.

SAFEGUARDS:

Records are kept in file cabinets in offices that are secured at the end of each business day. Because only one or two office persons have need to routinely access this system, unauthorized examinations would be easily detected.

RETENTION AND DISPOSAL:

Records are normally retained as long as the Commission remains under the obligation to implement the particular garnishment or levy order.

SYSTEM MANAGER(S) AND ADDRESSES:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Bankruptcy courts, state domestic relations courts, state public health and welfare departments or agencies, Internal Revenue Service, intra-agency memoranda.

FCC/OMD–2

SYSTEM NAME:

Labor and Employee Relations Case Files.

SYSTEM LOCATION:

Labor-Management and Employee Relations Branch, Office Of Associate Managing Director—Human Resources Management, Office of Managing Director, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to formal and informal actions based on conduct or performance; grievances filed under the negotiated or administrative grievance procedures; requests for reconsideration; arbitrations; appeals; and miscellaneous inquiries and complaints. The records may include information such as case number; employee name, social security number, grade, job title, and employment history. The records may also include copies of notices of proposed actions; materials relied on by the agency to support the proposed action; statements of witnesses; employee responses or appeals; transcripts; and agency decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 33, 35, 43, 61, 63, 71, 73, 75, and 77; 5 CFR Parts 315, 359, 432, 531, 532, 610, 530, 715, 733, 735, 752, and 771.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

These records and information in these records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation or civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested in the course of processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source or the purpose(s) of the request, and to indentify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C Section 2904 and 2906.

H. By the agency maintaining the records or the Office of Personnel Management to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual indentifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

J. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C Section 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with applicable laws and regulations, or other functions vested in the Commission by applicable law.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

m. To provide officials of other Federal agencies information they need to know in the performance of their official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved preliminarily by case number. An examination of case logs will disclose the name of an employee associated with a case number.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

a. Records pertaining to the following matters are disposed of at the end of the first fiscal year following completion of the fiscal year in which the action was taken: Informal actions based on conduct or performance; oral admonishments confirmed in writing; and written reprimands.

b. Records pertaining to the following matters are disposed of at the end of the third fiscal year following completion of the fiscal year in which the action was taken: Grievances processed under the negotiated or administrative grievance procedures; and appeals.

c. Records pertaining to the following matters are disposed of at the end of the fourth fiscal year following completion of the fiscal year in which the action was taken: Within-grade increase denials/postponements; suspensions, removals, and furloughs taken under authority of 5 U.S.C. Chapters 35 and 75; and requests for reconsideration/review.

d. Records pertaining to the following matters are disposed of at the end of the fifth fiscal year following completion of the fiscal year in which the action was taken: Removals, demotions, and reassignments based on unacceptable performance; and arbitrations.

SYSTEM MANAGER(S):

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Individuals subject to an action governed by this system of records will be provided access to the record upon request, subject to applicable law and regulation. Individuals should contact the System Manager for access. They must furnish the following information in writing for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate opening and closing date of the case and the kind of action involved.

d. Organizational component involved.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records to correct factual errors should contact the System Manager in writing. The following information must be provided:

a. Name.

b. Date of birth.

c. Approximate opening and closing date of the case and the kind of action involved.

d. Organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Testimony of witnesses.

c. Supervisors and managers.

d. Union officials.

e. Arbitrators and other third-parties, such as the Department of Labor, Federal Labor Relations Authority, and Merit Systems Protection Board.

FCC/OMD-3

SYSTEM NAME:

Federal Advisory Committee Membership File.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of *Federal advisory committees sponsored or co-sponsored by FCC.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 92–463, Federal Advisory Committee Act

CATEGORIES OF RECORDS IN THE SYSTEM:

Information showing individual name, business address, business telephone number, and occupation or title.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To distribute information to members of *each* committee, convene meetings, and conduct general committee business; *(2) to provide information to the public upon request; (3) to furnish information to the General Services Administration for use in compiling an annual report.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are grouped by name of committee and filed and retrieved thereunder by name of committee member.

SAFEGUARDS:

Paper records are maintained in file cabinets in offices which are locked at the end of each business day.

RETENTION AND DISPOSAL:

Records are retained until the Committee is terminated, and then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of the Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager. Name of advisory committee should be included in the inquiry.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Committee members.

FCC/OMD–4

SYSTEM NAME:

Security Office Control Files.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of cards, filed alphabetically, containing date of birth, place of birth, Social Security Number, classification as to position sensitivity, types and dates of investigations, investigative reports, dates and levels of clearances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 10450 and 12065.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by FCC Security Officers and employees of the Security Office for administrative reference in connection with controlling position sensitivity and personnel clearances.

The following disclosures of information from this system may be made outside of the FCC:

1. To a Federal agency or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

2. To the security office of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request for verification of security clearance, to FCC employees to have access to classified data or areas where their official duties require such access.

Blanket routine uses No. 1, 2, 4 and 5 in the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVINGS, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards.

RETRIEVABILITY:

Records are retrieved by the name and date of birth of the idividuals on whom they are maintained.

SAFEGUARDS:

The cards are stored within a secured area. The cards do not leave the security office.

RETENTION AND DISPOSAL:

Cards are retained for twenty years after the individual leaves the agency and then are disposed of by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the appropriate system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting access must also follow FCC Privacy Act regulations regarding verification of identity and access to records (47 CFR 0.554 and 0.555).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting amendment must also follow the FCC Privacy Act regulations regarding verification of identity and amendment of records (47 CFR 0.556 and 0.557).

RECORD SOURCE CATEGORIES:

a. The individual to whom the information applies.

b. Investigative files maintained by the OPM Division of Personnel Investigations.

c. Employment information maintained by the Personnel officer.

FCC/OMD-5

SYSTEM NAME:

State and Operational Areas Emergency Communications Committee Membership.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Chairmen and Vice Chairmen of State and Operational Area Emergency Communications Committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information showing individual name, business address, business telephone number and title.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 92–463, Federal Advisory Committee act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to forward appropriate information to State Committee members, each broadcast station in the State and to Federal, State and local government officials for Emergency Communications planning.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are filed by state and by name of committee member within the state.

SAFEGUARDS:

Records are maintained in file cabinets which are locked at the end of each business day.

RETENTION AND DISPOSAL:

Records are retained indefinitely while the individual is a member of the committee; when member resigns, individual file material is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURES:

Address inquiries to the system manager. Name of state must be provided with any request for information.

BEST COPY AVAILABLE

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Committee member.

FCC/OMD–6

SYSTEM NAME:

Records of money received, refunded, and returned.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554; Route 116, Gettysburg, PA 17326 and Room 207, Post Office Building, Gettysburg, PA 17325.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and companies making payments to cover goods acquired, forfeitures assessed, fees collected and services rendered; refunds for incorrect payments or overpayments; billing and collection of bad checks; and miscellaneous monies received by the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of individuals or companies, records of goods acquired or services rendered; forfeitures assessed and collected; amounts; dates; check numbers; locations; bank deposit information; transaction type information; United States Treasury deposit numbers; ship name and call sign; and information substantiating fees collected, refunds issued, and interest penalties assessed individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1921; Budget and Accounting Precedures Act of 1950; Consolidated Omnibus Budget Reconciliation Act of 1985 and 31 U.S.C. 525.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) to account for all monies received by the Commission from the public and refunded to the public; (b) to compute vouchers to determine amounts claimed and reimbursed.

Disclosure outside the Commission may be made to Federal, State or local Government agencies performing a tax, investigative or regulatory function.

Blanket Routine Uses No. 1 thru 7 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, computer printout, microfilm, microfiche, magnetic disc, and magnetic tape.

RETRIEVABILITY:

By name and/or type of transaction; call sign; processing number, employer identification number, soundex number, fee control number, payment ID number or sequential number.

SAFEGUARDS:

Records are located in lockable metal file cabinets, metal vaults, and in metal file cabinets in secured rooms or secured premises, with access limited to those individuals whose official duties require access.

RETENTION AND DISPOSAL:

Retained for one year following the end of the fiscal year; then transferred to the Federal Records Center and destroyed when 6 years and 3 months old.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Subject individual and/or company; Federal Reserve Bank; agent of subject or company; or Attorney-At-Law.

[FR Doc. 88–19976 Filed 9–1–88; 8:45 am]
BILLING CODE 6712–01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 26, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238 for copies of package)

1. Annual Report on Home and Community Based Waivers—0938–0272—States with an approved waiver are required to submit the HCFA–372 annually in order to determine the waivers impact on the type, amount and cost of service provided under the state plan. Respondents: State or local governments; Number of Respondents: 46; Frequency of Response: Annually; Estimated Annual Burden: 9,556 hours.

OMB Officer: Allison Herron.

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415 for copies of package)

1. Report to Congress on Voluntary Placement Assistance—0980–0166—Section 102 (e) of Pub. L. 96–272 requires that the Secretary, Department of Health and Human Services shall submit to the Congress a report on the number of children in foster care pursuant to voluntary placement agreement and on the reasons for such placement. Respondents: State or local governments; Number of Respondents: 26; Frequency of Response: 1; Estimated Annual Burden: 520 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. *Cancer Prevention (Smoking) in Black Populations: Multiple Community Based Intervention—New*—Both in-person and telephone surveys will be used to assess the effectiveness of a community based Smoking intervention in three district geographic locations. The data will help guide NCI's National Cancer Prevention and Control program and provide needed information to assess an educational intervention in the black population which is disproportionately effected by cancers related to smoking. Respondents: Individuals or households; Number of Respondents: 6,634; Frequency of Response: Single-time study; Estimated Annual Burden: 2,393 hours.

2. Regulation—45 CFR 96—Preventive Health and Health Block Grant—0920–0106—The purpose of this data collection is to collect annual applications and reports on use of funds from 61 State grantees for the Preventive

Health and Health Service Block Grants. Respondents: State or local governments; Number of Respondents: 61; Frequency of Response: Annually; Estimated Annual Burden: 7,320 hours.

3. PHS Supplements to Application for Federal Assistance (SF-424)—Project Approval Checklists (Part II) and Project Narrative (Part IV)—New—Federal Grants Parts II and IV are part of application forms used to elicit information primarily from governmental and other nonprofit organizations requesting financial assistance from various PHS health grant programs. Respondents: State of local governments, Business or other for-profit, Non-profit institutions; Number of Respondents: 3,000; Frequency of Response: 1; Estimated Annual Burden: 6,750 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–966–2088
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. *Attn:* Shannah Koss-McCallum.

Date: August 26, 1988.

James V. Oberthaler,

Deputy Assistant Secretary, Information Resources Management.

[FR Doc. 88–20000 Filed 9–1–88; 8:45 am]

BILLING CODE 4110–60–M

Food and Drug Administration

[Docket No. 87P–0339/CP]

Petition Requesting 5 Years Exclusivity for Haloperidol Decanoate Instead of the 3 Years Exclusivity Granted

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the filing of a citizen petition from McNeil Pharmaceutical, Spring House, PA 19477–0776, requesting that the agency grant 5 years marketing exclusivity for haloperidol decanoate, instead of the 3 years exclusivity granted when the new drug application (NDA) for this product was approved on January 14, 1986. FDA is giving notice of filing of the petition to all interested persons because a decision to grant the petition, if it is made, would affect the date when applications for marketing generic versions of haloperidol decanoate could be submitted.

DATE: Comments by October 3, 1988.

ADDRESS: Requests for a copy of the petition and written comments should be made to the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act authorizing FDA to accept abbreviated new drug applications (ANDA's) for generic versions of many previously approved new drug products. The new legislation also provides for periods of exclusive marketing for certain new drug products approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)). An ANDA or an NDA for a generic version of a drug product granted such exclusivity may not be submitted or its approval made effective until the period of exclusive marketing ends.

New drug products that have been granted exclusivity under any of the exclusivity provisions of the new legislation are set forth in a publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" (the list) and its supplements. The period of exclusivity for such products is included in the information in the list.

Persons may disagree with the agency's findings in granting a period of exclusivity to a drug product. A person may file a citizen petition with the agency seeking a change in the exclusivity status of an approved drug product. The agency's past practice has been to publish a notice in the **Federal Register** announcing the submission of a citizen petition after such a petition has been filed. Such notices state that copies of that petition are available on request. Such an announcement is constructive notice to all persons that they may be affected by that petition, and that they have an opportunity to submit their comments to the agency. Persons potentially affected include, among others, holders of approved ANDA's or NDA's described in section 505(b)(2) of the act, the effective dates of which application might be affected by a decision to grant such a petition; persons who have such applications pending or who contemplate submitting such applications; and persons whose rights to submit such applications may be affected.

On October 30, 1981, McNeil Pharmaceutical submitted an NDA for the drug haloperidol decanoate. The agency determined that a 3-year marketing exclusivity for haloperidol decanoate was appropriate pursuant to section 505(c)(3)(D)(iii) and (j)(4)(D)(iii) of the act, granted that period of exclusivity in approving NDA 18–701 for that drug product on January 14, 1986, and announced that determination in cumulative supplement 15 to the sixth edition of the list. The 3-year period of exclusivity for haloperidol decanoate is shown in the current edition of the list. The 3-year exclusivity period ends January 14, 1989.

On October 2, 1987, McNeil Pharmaceutical submitted a citizen petition (87P–0339/CP) challenging that determination and requesting that a 5-year period of exclusivity be granted pursuant to section 505(c)(3)(D)(ii) and (j)(4)(D)(ii). The petitioner amended its application in response to comments made by Quad Pharmaceuticals, Inc., 6340 La Pas Trail, Indianapolis, IN 46268, and to FDA's decision on Abbott Laboratories' Depakene/Depakote petition (Docket No. 86P–0367/CP). The petitioner contends that the statute was incorrectly applied by the agency. In accordance with FDA's past practice, the agency hereby announces the submission of that petition. FDA is reviewing the merits of the petition, and by this notice, is giving anyone who may be affected by this petition an opportunity to comment.

Interested persons may, on or before October 3, 1988, submit to the Dockets Management Branch (address above) written comments on the petition. These comments will be considered in preparing an agency response to the petition. Two copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should

be sent to the Dockets Management Branch.

Dated: August 26, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-20032 Filed 9-1-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 26-27, 1988, in the Conference Room of the Lee Building at the Federation of American Societies for Experimental Biology (FASEB), 9650 Rockville Pike, Bethesda, Maryland 20814.

This meeting will be open to the public on October 26 from 1:00 p.m. to recess and from 8:30 a.m. to adjournment on October 27 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated August 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-20048 Filed 9-1-88; 8:45 am]

BILLING CODE: 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 26-27, 1988, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 7, C Wing.

The entire meeting will be open to the public from 1 p.m. to adjournment October 26, 1988, and 9 a.m. to adjournment October 27, 1988, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, telephone number (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institutes of Health, Bethesda, Maryland 20892, telephone number (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-20049 Filed 9-1-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, October 26-27, 1988, at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9, Bethesda, Maryland 20892.

The entire meeting, from 1:00 p.m. on October 26, to adjournment on October 27, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1990. Attendance by the public will be limited to the space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health.)

Dated: August 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-20050 Filed 9-1-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, October 25, 1988. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 6, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-20051 Filed 9-1-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting, National Kidney and Urologic Diseases Advisory Board

Pursuant to Pub. L 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on September 26–27, 1988, from 8 a.m. to approximately 5 p.m. each day at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 29, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–20052 Filed 9–1–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–08–4322–02]

Boise District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Boise District Grazing Advisory Board Meeting.

SUMMARY: The Boise District Grazing Advisory Board will conduct a field tour September 27 in the Cedar Creek Area of the Jarbidge Resource Area, and will conduct a business meeting September 28 to discuss range improvement funding proposals for Fiscal Year 1989. A public comment period will be held at 2:00 p.m., September 28.

DATE: The field tour will depart the Boise District Office at 8:00 a.m., Tuesday, September 27. The business meeting will be conducted at Cactus Petes Motel in Jackpot, Nevada beginning at 8:00 a.m. on Wednesday, September 28.

ADDRESS: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District BLM, (208) 334–9303.

David B. Vail,

Acting District Manager.

Date: August 25, 1988.

[FR Doc. 88–19967 Filed 9–1–88; 8:45 am]

BILLING CODE 4310–GG–M

[WY–060–88–4212–14; W–101835A, W–101835B]

Realty Action; Modified Competitive Sale of Public Lands; Sheridan County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Sheridan County.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale under sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713 and 1719, at not less than fair market value. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal is consistent with the Buffalo Resource Area's Resource Management Plan.

PARCELS

County	Serial No.	Legal description	Acreage	Appraised value
Sheridan	WYW–101835A	T. 55 N., R. 85 W., 6th P.M. Section 13: NE¼SW¼	40	$4,000
Sheridan	WYW–101835B	T. 55 N., R. 86 W., 6th P.M. Section 23: SE¼NE¼	40	$4,000

FOR FURTHER INFORMATION CONTACT: Glen Bessinger, Area Manager, Bureau of Land Management, Buffalo Resource Area, 189 North Cedar, Buffalo, Wyoming 82834, (307) 684–5586.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposed to sell all surface estates on both parcels and the mineral estate, excepting oil and gas on parcel WYW–101835B, pursuant to sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713 and 1719. The mineral estate on parcel WYW–101835A is owned by the State of Wyoming.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws, upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever comes first.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. For parcel WYW–101835B, a reservation of oil and gas to the United States.

3. For parcel WYW–101835B, oil and gas lease BLM serial number W–84302.

Sale and Bidding Procedures

The sale will be conducted by modified competitive bidding, and each parcel will be offered by a sealed bid process to the adjoining landowners. The apparent high bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted.

All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the state of Wyoming, a state, state instrumentally or political; subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

Sealed bidding is the only acceptable method of bidding. All bids must be received in the Buffalo Resource Area Office by October 22, 1988, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked in the front lower left-hand corner with the words "Public Land Sale, Serial Number _____

All sealed bids must be accompanied by a payment of not less than ten (10) percent of the total bid. Each bid and any final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: DEPARTMENT OF THE INTERIOR–BLM

For parcel WYW–101835B, a bid will also constitute an application for conveyance of those mineral interests being offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the purchaser will be required to pay a $50.00 nonreturnable filing fee (in addition to their bid) for all unreserved mineral interests.

Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next high bid will be honored or the land will be reoffered under competitive procedures. If two (2) or more envelopes containing valid bids of the sale amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

If any parcels fail to sell, they will be reoffered for sale under competitive bidding procedures. For reoffered land, bids must be received in the Buffalo Resource Area Office by 4:30 p.m. on the fourth (4th) Wednesday of each month beginning November 23, 1988. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding according to the procedures and conditions of this Notice.

For a period of 45 days from the date of this Notice Published in the **Federal Register**, interested parties may submit comments to the District Manager, Casper District Office, 1701 East "E" Street, Casper Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: August 26, 1988.

James W. Monroe,

District Manager.

[FR Doc. 88–19968 Filed 9–1–88; 8:45 am]

BILLING CODE 4310-22-M

[CO–940–08–4220–10; COC–48697]

Hearing on Withdrawal; Snowmass Ski Area, CO

August 26, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming hearing on the proposed Forest Service withdrawal application for the protection of recreational and resource values near Snowmass Village, Colorado. This hearing will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: Hearing will be held on October 19, 1988, at 7:00 p.m. All comments or requests to be heard should be made by close of business on October 7, 1988, to the Colorado State Office, Bureau of Land Management.

ADDRESS: Town of Snowmass Village Conference Room, 16 Kearns Road, Snowmass Village, Colorado 81615.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withrawal for the Snowmass Ski Area which was published on August 6, 1988 (53 FR 30873, 30874) is hereby modified to allow for public hearing as provided in 43 U.S.C. 1714 and 43 CFR Part 2310.

This hearing will be open to all interested persons; those who desire to be heard in person and those who desire to submit written statements on this subject. All comments and requests to be heard should be submitted to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, by October 7, 1988.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88–19983 Filed 9–1–88; 8:45 am]

BILLING CODE 4310–JB–M

[CO–940–08–4220–10; COC–48691]

Notice of Hearing on Withdrawal; Vail Ski Area CO

August 26, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming hearing on the proposed Forest Service withdrawal application for the protection of recreational and resource values near Vail, Colorado. This hearing will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: Hearing will be held on October 20, 1988, at 7:00 p.m. All comments or requests to be heard should be made by close of business on October 7, 1988, to the Colorado State Office, Bureau of Land Management.

ADDRESS: Vail Public Library, Community Room, 292 W. Meadow Drive, Vail, Colorado 81658 (parking available in Lions Head Parking Structure).

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withrawal for the Vail Ski Area which was published on August 2, 1988 (53 FR 29090) is hereby modified to allow for public hearing as provided in 43 U.S.C. 1714 and 43 CFR Part 2310.

This hearing will be open to all interested persons; those who desire to be heard in person and those who desire to submit written statements on this subject. All comments and requests to be heard should be submitted to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, by October 7, 1988.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88–19985 Filed 9–1–88; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–08–4220–11: GP–08–239; OR–21729, OR–21580, OR–21320, OR–2900, ORE–016434–A, ORE–06518]

Proposed Continuation of Withdrawals; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service propses that all or portions of six separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The Forest Service proposes that the following identified land withdrawals be continued in whole or in part for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Umatilla National Forest

1. OR–21729, Secretarial Order of March 27, 1908, Corporation R.S. #6, 40 acres, Located in Umatilla County, approximately 35 miles northeast of Pendleton,

T. 3 N., R. 37 E., W.M.,
Sec. 22.

2. OR–21580, Secretarial Order of January 23, 1907, Corporation R.S. #1, 31.12 acres, Located in Umatilla County, approximately 35 miles northeast of Pendleton,

T. 3 N., R. 37 E., W.M.,
Sec. 21.

Wallowa-Whitman National Forest

3. OR–21320, Secretarial Order of October 23, 1907, Billy Meadows Guard Station, 7.80 acres, Located in Wallowa County, approximately 30 miles northeast of Enterprise,

T. 4 N., R. 46 E., W.M.,
Sec. 15.

Siskiyou National Forest

4. OR–2900, Public Land Order No. 4538 of November 20, 1986, Lower Rogue River Recreation Area Addition, 216 acres, Located in Curry County, approximately 15 miles of northeast of Gold Beach,

T. 35 S., R. 12 W., secs. 10, 11, 14 and 20; and
T. 36 S., R. 13 W.,
Sec. 2.

5. ORE–016434–A, Public Land Order No. 3897 of December 1, 1965.
Recreation Sites, 240 acres, Located in Curry County, approximately 15 miles northeast of Gold Beach,

T. 36 S., R. 13 W., W.M.,
Secs. 1, 2 and 3.

6. ORE–06516, Public Land Order No. 1844 of May 5, 1959, Rogue River Recreation Areas, 151.88 acres, Located in Curry County, approximately 20 miles northeast of Gold Beach,

T. 35 S., R. 11 W., W.M.,
Secs. 19 and 29.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

LaVelle Black,
Chief, Branch of Lands and Minerals Operations.

Dated: August 26, 1988.

[FR Doc. 88–19969 Filed 9–1–88; 8:45 am]
BILLING CODE 4310–33–M

[OR–943–08–4220–11; GP–08–237; ORE–03219]

Proposed Continuation of Withdrawal; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that an existing withdrawal continue for 20 years and requests that the lands remain closed to mining and be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the withdrawal made by Public Land Order No. 2335 of April 17, 1961 continue for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands involved are located in the Rogue River National Forest and aggregate approximately 5,670 acres in T. 37 S., R. 3 E., Tps. 31, 36 and 37 S., R. 4 E., T. 37 S., R. 4 E., Tps. 35, 36 and 37 S., R. 5 E., and T. 35 S., R. 6 E., W.M., Jackson and Klamath Counties, Oregon.

The purpose of the withdrawal is to protect the Lake of the Woods, Recreation Creek, Four-mile Lake, Fish-Lake, Dead Indian Soda Springs and Huckleberry City Recreation Areas. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal except that the lands be opened to operation of the public land laws generally.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

B. Lavelle Black,
Chief, Branch of Lands and Minerals Operations.

Dated: August 25, 1988.

[FR Doc. 88–19970 Filed 9–1–88; 8:45 am]
BILLING CODE 4310–33–M

[OR–943–08–4220–11; GP–08–236; ORE–013615]

Proposed Continuation of Withdrawal; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that an existing withdrawal continue in part for an additional 20 years and requests that the lands remain closed to mining.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the withdrawal made by Public Land Order No. 3361 of April 7, 1964 continue in part for a period of 20 years pursuant to Section 204 of the Federal Land Policy

and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands involved are located in the Siskiyou National Forest and aggregate approximately 429.5 acres in Tps. 33 S., Rs. 10 and 11 W., W.M., Curry County, Oregon.

The purpose of the withdrawal is to protect the Lower Rogue River Recreation Area Addition. The withdrawal currently segregates the land from the mining laws. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: August 25, 1988.

[FR Doc. 88-19971 Filed 9-1-88; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Gettysburg National Military Park; Draft Boundary Study; Public Meeting and Comment Period

AGENCY: National Park Service: Gettysburg National Military Park.

ACTION: Release of Draft Boundary Study, Public Meeting and Comment Period.

SUMMARY: The National Park Service has developed a draft Boundary Study which identifies key battlefield areas not currently a part of the park, monuments and other important elements of the historic setting that require protection, and some areas no longer needed for park purposes. This draft document will be sent to all interested parties for their review and comment.

The public review period will begin on September 1, 1988 and will end September 30, 1988. The public is encouraged to comment on the draft during this period. A public meeting is scheduled to assist in this effort.

DATE: September 14, 1988, 7:00 p.m.

ADDRESS: Gettysburg Junior High School, Gettysburg, PA.

SUPPLEMENTARY INFORMATION: Public comments made during this phase of the planning process will be considered before a Final Boundary Study is approved. Comments should be addressed to:

John Earnst, Superintendent, Gettysburg NMP, Gettysburg, PA 17324, (717) 334-1124

or

Division of Park and Resource Planning, National Park Service, U.S. Customs House, 2nd and Chestnut Streets, Room 260, Philadelphia, PA 19106, attn: Jonathan Doherty

Dated: August 23, 1988.

Alec Gould,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 88-19995 Filed 9-1-88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Colorado River Quality Improvement Program, Price-San Rafael Rivers Salinity Control Unit, Utah

AGENCY: Bureau of Reclamation, Interior Soil Conservation Service, Agricultural.

ACTION: Notice of intent to prepare a joint draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Department of the Interior and the Department of Agriculture intend to prepare a joint Draft Environmental Impact Statement (DEIS) for the Price-San Rafael Rivers Unit of the Colorado River Water Quality Improvement Program. Reclamation will also integrate the DEIS with a planning report for the salinity control unit. The DEIS will address the environmental impacts of and the alternatives to reducing salt loading to the Colorado River through irrigation systems improvements.

FOR FURTHER INFORMATION CONTACT: The Bureau of Reclamation contact for this DEIS is Larry W. Fluharty, Chief, Planning Division, Bureau of Reclamation, Utah Projects Office, P.O. Box 1338, Provo, Utah 84603, telephone (801) 379-1155.

The Soil Conservation Service contact for this DEIS is Gary R. Gross, Assistant State Conservationist, Soil Conservation Service, Utah State Office, P.O. Box 11350, Salt Lake City, Utah 84147, telephone (801) 524-5054.

SUPPLEMENTARY INFORMATION: The Price-San Rafael Rivers Unit is located in east-central Utah, 120 miles southeast of Salt Lake City, encompassing Carbon and Emery Counties. The Price and San Rafael Rivers and their tributaries deliver approximately 425,000 tons of salt annually to the Colorado River. Of this amount approximately 60 percent is the result of deep percolation of irrigation water into salt-bearing ground formations. This salt causes economic problems for municipal, industrial, and agricultural water users downstream. The purpose of the Price-San Rafael Rivers Unit is to decrease this salt loading in a cost-efficient manner.

Numerous alternatives have been evaluated for the unit including irrigation systems improvements, using irrigation return flows for powerplant cooling, treatment or disposal of return flows, using return flows for other industrial purposes, selective withdrawal and treatment of disposal of return flows, retiring farmland, using fresh water for other beneficial purposes, and no Federal action. Of these alternatives, all but the Irrigation Systems Improvements and No Federal Action Alternatives were determined to be nonviable and have been eliminated from further consideration.

Prior to 1986 the Bureau of Reclamation and the Soil Conservation Service were independently investigating methods of reducing salt loading within the study area. However, in March 1986, it was determined that greater effectiveness and economic efficiency could be achieved by both agencies jointly developing a salinity control project.

The Irrigation System Improvement Alternative would reduce deep percolation of irrigation water through development of more efficient irrigation systems. Under this alternative, pressurized sprinkler irrigation systems would be developed to serve approximately 26,000 acres of presently irrigated farmland. Additionally, surface irrigation improvements would be developed for 10,000 acres of existing farmland. Canal seepage due to winter water practices could be eliminated by providing winter water for livestock through existing culinary systems,

enlarging and lining existing stockponds in remote areas, making improvements to the existing Cottonwood Creek livestock watering system to improve its reliability, and constructing a pipeline to deliver raw water to the Orangeville and Castledale water treatment plants. Implementation of these measures would reduce salt loading by about 100,000 tons per year.

Measures to replace lost wildlife habitat caused by off-farm developments would be provided by Reclamation by development of new habitat in the vicinity of Three Forks on the San Rafael River. Measures to replace lost wildlife habitat onfarm would be provided voluntarily by individual farmers in accordance with the Colorado River Salinity Control Act of 1974 (Pub. L. 93–320) and as amended (Pub. L. 98–569) in 1984.

The Bureau of Reclamation and the Soil Conservation Service have each conducted their own separate scoping activities for the DEIS. No further formal scoping activities are planned.

The DEIS is scheduled to be circulated for public review during the summer of 1989.

Date: August 5, 1988.

Joe D. Hall,

Deputy Commissioner of Reclamation.

Date: August 1, 1988.

Norman W. Priest,

Deputy State Conservationist, Soil Conservation Service.

[FR Doc. 88–19981 Filed 9–1–88; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–183 (Sub-No. 1)]

Union Railroad Co.; Abandonment of Rail Line in Allegheny County, PA

The Commission has issued a certificate authorizing the Union Railroad Company to abandon its 0.84-mile rail line between Survey Station 190+71 and survey Station 235+10 in Munhall, Allegheny County, PA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: August 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–20134 Filed 9–1–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Hoechst Celanese Corp.; Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Hoechst Celanese Corporation,* was lodged with the United States District Court for the Western District of North Carolina. That action was brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), pertaining to ground water contamination at Celanese's Fiber Operations facility near Shelby, North Carolina.

Under the Consent Decree, Celanese agrees to implement the remedy selected by the Environmental Protection Agency ("EPA"), to remedy contaminated ground water at the facility, and to reimburse EPA for its past costs. A prior study performed by Celanese under an administrative order with EPA determined that ground water under the facility was contaminated with various organic chemicals and that remedial action was necessary to clean up the ground water to acceptable standards to prevent migration of contaminated ground water to offsite drinking water wells. Celanese will install ground water extraction wells at its facility and pump and treat contaminated ground water until acceptable levels are reached. Study is continuing at the facility to determine the location of the soruces of the ground water contamination. EPA will choose a remedy for those parts of the Site based on the study's conclusions.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Hoechst Celanese Corporation,* D.J. Ref. 90–11–3–342.

The proposed Consent Decree may be examined at the office of the United States Attorney, Post Office Building, Room 306, Asheville, North Carolina 28802 and at the Region IV office of the U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $5.10 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–20008 Filed 9–1–88; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Advisory Board Meeting

The Missing Children's Advisory Board will meet in Indianapolis, Indiana on September 22, 1988. The meeting will take place at the Hyatt Regency Indianapolis, One South Capitol Avenue, Indianapolis, Indiana, (317) 632–1234. The public is welcome to attend.

The Board will discuss the annual comprehensive plan and other issues related to missing and exploited children.

For further information, please contact Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531. (202) 724–7655.

Dated: August 29, 1988.

Approved:

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–20017 Filed 9–1–88; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on Workforce Quality and Labor Market Efficiency; Meeting

The Commission on Workforce Quality and Labor Market Efficiency was established under the provisions of the Federal Advisory Committee Act to increase the excellence of the American workforce.

A public meeting of the Commission on Workforce Quality and Labor Market Efficiency will be held on September 19, 1988, commencing at 1:00 p.m., in Room S–2508 of the Department of Labor, 200 Constitution Avenue NW., Washington, DC.

The purposes of the meeting are to:

1. Set an agenda for the Commission over the course of the next year.

2. Provide direction to the staff of the Commission for carrying out the agenda.

For additional information, contact: Laurie J. Bassi, Deputy Director, Commission on Workforce Quality and Labor Market Efficiency, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–2313, Washington, DC 20210, telephone (202) 523–6836.

Individuals or organizations wishing to submit written statements pertaining to the agenda of the Commission on Workforce Quality and Labor market Efficiency should send 40 copies to the address given above. Papers will be accepted and included in the record of the meeting if received on or before September 16, 1988.

On October 18, 1988, and thereafter, official records of the meeting will be available for public inspection at: Department of Labor, 200 Constitution Avenue, Room C–2313, Washington, DC.

Signed at Washington, DC this 29th day of August 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88–19962 Filed 9–1–88; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Research, Evaluation, Pilot and Demonstration Procurement Plan for Program Year 1988

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor announces its research, evaluation, pilot and demonstration (R,E,P&D) procurement plans for Program Year 1988 (July 1, 1988 throught June 30, 1989). The current plans are to implement approximately 39 new projects. These projects will address specific issues related to enhancing the productivity of the American work force. Additional projects may be announced later in the year.

This notice is for information only. The purpose is to alert interested parties to the plan. The notice does not solicit applications or proposals. Solicitations for grant awards (SGSs) and requests for proposals (RFPs) will be published at a later date.

A procurment plan conference will be held for the following purposes:

(1) To summarize ETA's Program Year 1988 procurement plan;

(2) To describe in general terms the agency's procurement processes;

(3) To present the expected timetable for issuance of SGAs and RFPs;

(4) To introduce ETA's, R,E,P&D program to individuals and organizations that have not recently participated in the agency's activities.

No additional substantive detail on the subject areas will be provided at the conference. Further, it will not be necessary to attend the conference in order to participate in any of the procurement actions. The conference should be most valuable for those who have not recently participated in ETA's R,E,P&D programs.

DATE: The procurement plan conference will be held on Friday, October 7, 1988, at 9 a.m.

ADDRESS: The procurement plan conference will be held at the Department of Labor, Department Auditorium, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Persons planning to attend the procurement plan conference should call the telephone answering service established to accept responses: (202) 535–0884.

SUPPLEMENTARY INFORMATION:

Introduction

The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) announces its research, evaluation, pilot and demonstration (R,E,P&D) procurement plan for Program Year 1988 (July 1, 1988 through June 30, 1989). The current plans are to implement approximately 39 new projects. These projects will address specific issues related to enhancing the quality of work, the productivity of workers, and labor market efficiency into the 21st century.

This notice serves to alert interested parties to ETA's plan. It does not solicit applications or proposals. Solicitations for grant award (SGAs) or requests for proposals (RFPs) will be announced in the **Federal Register** and the "Commerce Business Daily," respectively, the months ahead. Some projects will result from intra-agency agreements with such organizations as the Department's Women's Bureau and Bureau of International Labor Affairs, and an agreement with the Department of Health and Human Services. In some cases, these agencies will offer competitions for the projects. Some future competitions may be limited (for example, among States, Service Delivery Areas, or Private Industry Councils under the Job Training Partnership Act (JTPA) program) and, therefore, will be announced only through ETA's administrative communications system. These procurement plans are subject to change; one or more of these may not be issued and/or others may be added. This announcement is for general information purposes to indicate the direction of the R,E,P&D agenda.

There are seven subject areas for these projects. These are:

(1) Workforce 2000,
(2) Youth 2000,
(3) Workplace Literacy,
(4) Worker Adjustment,
(5) Women, Family and Welfare,
(6) Immigration, and
(7) Improving the Training and Employment System.

This announcement consists of three parts. Part I provides general background information concerning the R,E,P&D program. Part II describes the seven subject areas and provides brief project information. Part III discusses the pre-bidders' conference.

Part I—Background

A. Mission of the Employment and Training Administration and its Research, Evaluation, Pilot and Demonstration Program

ETA is the Federal agency with the lead responsibility for the Federal Government's training and employment programs. Both U.S. workers and employers, and ultimately the economy, benefit from the comprehensive system of training and employment programs ETA administers. Its major programs include:

—JTPA which consists of a wide range of activities targeted to individual groups who need job-related assistance, with emphasis on economically disadvantaged youth and adults, dislocated workers, and

others who face severe problems in the job market,
—The Employment Service System which operates as a labor exchange, matching workers with available jobs, as well as carrying out other functions;
—The Unemployment Insurance program which provides limited compensation to workers who lose their jobs through no fault of their own; and
—Trade Adjustment Assistance which is available to workers who lose their jobs as a result of increased imports.

ETA's R,E,P&D program is operated to measure the impact and effectiveness of the agency's various activities, explore new program concepts, techniques and designs, and to assist the Nation in expanding current and future work opportunities and assuring access to those opportunities for all who desire them. ETA carries out its R,E,P&D program through State and local public agencies, private-for-profit and nonprofit organizations, colleges and universities, community-based and labor groups, and other Federal agencies.

B. Workforce 2000

R,E,P&D projects for Program Year 1988, which began on July 1, 1988, will continue to focus on workplace issues confronting the Nation through the year 2000. These issues, initiated in Program Year 1987, were the outcome of a 17-month study sponsored by the Department and included in the report "Workforce 2000: Work and Workers for the Twenty-first Century". The report, prepared by the Hudson Institute, crystallized key issues and questions the Nation must deal with if it is to prosper in the intensely competitive and technologically sophisticated global market of the 21st Century. For example the U.S. must:
—Fully integrate women, blacks, Hispanics, immigrants, and handicapped workers into the economy. The labor force will grow more slowly over the next 16 years than at any time in U.S. history, except during the decade of the Great Depression. The net growth in workers will be predominantly women, blacks and immigrants, sources of labor that have long been underutilized. Because there will be fewer young people beginning their careers overall, this could provide opportunities to bring groups historically underused into full participation in the economy.
—Provide the work force with the education and skills new jobs in the expanding service-oriented economy will demand. Most new jobs in fast growing service industries will require higher levels of reading, math and reasoning skills than traditional jobs in manufacturing industries. Individuals with less than a high school education will face increasing difficulty in finding work and fewer opportunities for good pay and advancement. Yet 700,000 students drop out of school each year, and literacy has become a major problem among young adults.
—Ensure that the increasingly middle-aged work force is adaptable and retains its willingness to learn. The rapidly changing economy will demand workers who are flexible and willing to respond to new opportunities and conditions. Workers with years of experience often lack the flexibility and specialized skills they need to move into expanding industries.
—Reconcile the conflicting demands of work and family responsibilities especially for women. The increase in the labor force participation of mothers, including women with young children, has been striking. As of March 1987, 66.6% of women with children under 18 and fifty-two percent of mothers with children under 2 years were in the labor force. Welfare mothers and displaced homemakers are among groups needing special consideration.

A basic step in meeting these challenges is strengthening ETA's information base. the R,E,P&D procurement plan announced in this notice is designed to provide more complete information to enable the agency to better understand and deal with specific issues.

Part II—Subject Areas

A. Workforce 2000

The U.S. economy is expected to continue to grow at least at its current rate through the year 2000. Nonetheless, the efficiency of our labor markets will be severely tested. More sophisticated jobs will demand greater skills. Fewer young people will be entering the labor market, and a growing fraction will be minorities who are traditionally educationally disadvantaged as a group. Greater flexibility will be demanded of all workers, but particularly the middle aged worker. In the anticipated tight labor market of the year 2000, employers will be forced to either seek out and invest in workers heretofore underutilized, or to bid up wages or export jobs overseas.

A critical part of any planning for the future is a sound information base. The work effort sought through these Workforce 2000 projects is intended to supplement and expand on information bases for National, local, and occupation-specific improvements.

Two of the studies are proposed as interagency agreements with the Department's Women's Bureau and the Department of Health and Human Services.

ETA plans to solicit a support contract to develop background research on current and emerging policy and legislative trends to augment the continuing search for information upon which future public policy can be based.

The dynamism and efficiency of labor markets relies on accessible and timely information. Given the changes that continue to occur in markets for various users and providers of information, ETA intends to evaluate the adequacy of existing Labor Market Information (LMI) systems at Federal, State and local levels. The needs of LMI users at all levels in private industry and in educational institutions need to be assessed.

Apparent shortages in some professional occupations such as nursing have resulted in permitting non-U.S. workers into the country, possibly depressing wages and working conditions. This, in turn, may have further aggravated problems with domestic labor supplies. ETA wishes to research the dynamics that have created the scarcity of such professionals and the resulting policy responses through a series of case studies. Information is needed in order to develop a coherent public policy regarding selective shortages of qualified workers.

Some cities are already presaging future labor shortages in their growing highly skilled service sector. ETA will sponsor through the Women's Bureau a series of community case studies to document the economic and labor market changes and record the perspectives of those directly affected by such labor market changes. The studies in a number of the largest cities with tight labor markets will provide insights into what adjustments and actions will be necessary to cope with these changes.

The joint study with HHS will investigate in finer detail the effects of geographic concentration on unemployment, underemployment, welfare use and dependency. ETA's support will permit the study to be directed to its information needs, with particular attention to young minority males living in such areas.

B. Youth 2000

Improving the educational preparedness of workers is a challenge we must meet to be competitive into the 21st century. This is most important for our young people. Today's youth at risk of dropping out are our entry level workers of the next two decades. They face jobs demanding higher skills in math, reading and communications. Yet recent studies have shown that many of these youth are reading, writing, and computing at levels below present day expectations. Further, many of these youth are disenfranchised from and disillusioned with schools, and fail to see the connection with good paying jobs.

ETA intends to closely examine programs that seem successful in helping our youth make the connection between education and work. A number of programs linking school and employment and training programs with apprenticeship are successfully operating. In an effort to inform and encourage expansion of these school/training-to-work bridges, these programs and the factors that make them successful need to be identified. Publication of a popular booklet about these programs could provide incentives for program operators to get involved in similar ventures, and capture the interest of young people.

Another concern about making connections is in effectively linking many Federal, State and local youth services programs, particularly schools, with JTPA programs serving disadvantaged youth. We need to do a better job of attracting and retaining at-risk youth. An assessment is therefore planed to document effective recruitment practices, and identify gaps in services. Counseling practices/components including the different disciplinary and supportive atmospheres need to be examined as well as the range of services offered to in-school youth.

ETA will solicit a quick-turnaround evaluation capacity for the Job Corps program in support of several initiatives. Recognizing the need for increased communication skills, the Job Corps developed a new GED curriculum with greater emphasis on writing skills. An evaluation is planned to test its effectiveness, and the effectiveness of other new program concepts now being piloted. Another evaluation effort is planned to examine assessment tools for rating the quality of the physical learning environment.

ETA offered a competitive grant, which closed in late August, to promote replication of the Summer Training and Education Program (STEP), which provides summer remediation and life skills instruction. STEP programming has proven to reduce learning losses that usually occur over the summer months.

C. Workplace literacy

As the remainder of this century unfolds, it is expected that jobs requiring higher levels of literacy and analytic skills will increase, and those requiring only strength and manual ability will shrink. Further, the population groups presently in jobs with lesser skill requirements can expect a more difficult time in the job markets ahead, unless their literacy skills are increased. In addition to increased skills, increased flexibility to new working conditions, new technology and new environments will be required. In the rapidly increasing service sector, the jobs will spring up in places to accommodate customers. Job mobility will be required. Effective mobility rests on the premise that skills learned and tested in one area will be rated and recognized in another.

ETA has undertaken a wide variety of programs to explore, test and demonstrate new learning techniques and programs for groups in particular need of enhancing their workplace literacy skills. Most of these R,E,P&D efforts are presently underway. The primary focus of this Program Year's workplace literacy projects will be on assessing the validity of existing testing and certification practices.

Vocational and educational accomplishments are sometimes recognized by certificates of competency which are developed for an acknowledged in only a limited environment. An extensive literature review is needed to assess the competencies certification experience in the training and employment system, including the views of National and State specialists and certifying organizations. The review would serve as the basis for determining the feasibility of developing an employer validated, protable certificate of occupational competencies that would be awarded based upon tested competencies.

The National Academy of Sciences will complete its study of the General Aptitude Test Battery (GATB) Validity Generalization in February. It is expected that their findings will result in additional research or evaluation studies related to the GATB, specific ES applicant groups tested by the GATB, and/or ETA/U.S. Employment Service (USES) test research programs to determine whether the current work priorities meet State and DOL needs and how the test research may be focused upon any deficiencies identified by the NAS review, and answer any concerns arising from the overall GATB review.

Although ETA is not announcing its expectations for further study, it is contingent on findings of the on-going study.

D. Worker adjustment assistance

Trade Adjustment Assistance (TAA) and JTPA Title III Programs are available to assist dislocated workers train for and find new employment. Major new legislation was enacted this year substantially revising and expanding these important programs. Several projects are intended to complement the implementation of these legislative changes.

ETA will solicit an implementation analysis of the new worker adjustment program, documenting startup successes and problems. ETA also intends to evaluate the TAA program to determine its effectiveness in serving workers whose jobs and skills become obsolete because of foreign imports. The program's impact has not been assessed since it became primarily an extended unemployment insurance and job training program in the early 1980's.

In order to promote improved, comprehensive services for dislocated workers, ETA plans to compete multiple grants to States to demonstrate a unified worker adjustment program, fully integrating JTPA Title III and TAA service delivery. Voucher programs for retraining would also be tested and implemented. The intent is to document and disseminate model implementation designs.

When a firm is viable but jobs within it become obsolete because of new technology, upgrade training might be considered. Upgrade training might prevent dislocation by retraining workers in obsolete jobs for new work in their employing firm. However, upgrade training is not available under JTPA Title III, since a layoff notice is required for eligibility. It is allowable under Title II–A, though of limited applicability. Therefore, a study is planned to identify the public policy issues which upgrade training raises, and review previous government sponsored upgrading programs, and the views of unions, employers, and workers toward upgrade training.

E. Women, work and family

Since the mid-1940's the labor force participation rate for women has grown dramatically from about 33% to more than 70%. Last year, 66.7% of women

with children participated in the labor force. The rate for mothers with toddlers was 55.2%, more than double the rate of only 20 years ago.

Contrary to popular belief, most working women (78%) work full-time, and only 17% work part time voluntarily. Estimates for the remainder of the century indicate that women will increase their labor force participation, at a slower rate. By the year 2000, the labor force participation rate for women is expected to reach 81%, while that of men will be nearly 93%.

Clearly, the conflicts between work and family needs will increase. Among these conflicts are the adequacy of arrangements for the care of children and elderly family members. As women continue to work more hours per week and more weeks per year, solutions to this problem will become increasingly critical.

Solutions will have to include flexible hours to care for sick children and dependents, and the overall time and financial resources to raise children. Better paying, full-time, skilled jobs will be needed by many women to adequately care for their families and their own occupational aspirations. A series of projects under this topic area will be funded through an interagency agreement with the Department of Labor's Women's Bureau.

Women have been traditionally underrepresented in apprenticeable and other highly skilled occupations, which also tend to be highly paid. Employment opportunities in the construction trades are expected to increase through the Year 2000. A conference is planned to convene tradeswomen and organizations representing them (such as the construction union) to share information and develop strategies to facilitate women's entry into the skilled trades. The ETA Bureau of Apprenticeship and Training may also participate. It should be noted that a contractor has been selected for the conference.

The Women's Bureau is developing a work and family clearinghouse that will provide current statistics, bibliographic references and an inventory of model employer practices in three work and family areas: child and elder care, alternative work scheduling and flexible leave, and benefit polices. This project will permit the clearinghouse to be augmented by a referral network linking it to major sources of privately maintained information on dependent care. It will also permit an expansion of the data base. Employers, unions, public officials, researchers, and dependent care advocates are among those expected to use the clearinghouse.

Specific implementation information is needed on work and family options for small employers. Generally, it is the large firms who support policies and programs responsive to work and family concerns, such as employer-sponsored day care and flexible benefits and work hours. The majority of employment, however, is in small to medium sized firms. Options are available such as cooperative pooling with other small firms to jointly support a child care center, or a referral system. This project would support the research and publication of ideas and information that could encourage the involvement of these smaller firms.

F. Improving the Training and Employment System

ETA will focus its planned systems improvements in two major areas: JTPA performance management and Unemployment Insurance (UI) progamming.

Some JTPA program operators use 6% funds to experiment with new program designs serving clients with the most severe employment related problems. These programs cost considerably more to operate and may not currently be included in calculations of performance against Title II–A standards. A study is planned to analyze and compare the characteristics of clients, types of training and services provided, costs and outcomes with more typical programs clients. As part of the same RFP, ETA plans to compete a contract for statistical support for the development and refinement of the nationwide system of performance standards.

It is asserted that the countercyclical stimulus that UI dollars have on the economy has decreased by almost one-fourth. A study is planned to develop a methodology to measure the effectiveness of the UI program as a fiscal stabilizer over the course of the business cycle.

ETA plans to offer a contract to research and publish successful UI payment program improvements. The contractor will identify agencies which have developed special organizational structures or mechanism and program processes for the formulation and institution of practical program improvement measures driven by Quality Control data. Case studies will be developed and how-to manuals prepared for distribution to State Employment Security Agencies (SESAs).

States are becoming increasingly reliant on automated systems for basic UI functions. Major disruption of services on a State-wide basis could ensue if a major disaster or deliberate destruction of these systems occurred. Therefore, a general disaster recovery/contingency plan should be developed in the form of a technical assistance guide for State use in such an emergency.

In FY 1987, a new UI cash management/banking system was developed. This permits SESAs to select from numerous cash management techniques and banking system interfaces, to adopt the combination best suited to the individual State, and to provide overall improved UTF cash management. Technical assistance and support are sought to facilitate this transition until staff become proficient in the administration, operation and maintenance of the new system.

G. Immigration

New and proposed immigration legislation, particularly the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), will promote widespread changes in the conduct of alien labor certification. The Department of Agriculture and three of the Department of Labor's agencies share many of the research and implementation responsibilities. Among these, IRCA charges the Secretaries of Labor and Agriculture to determine the supply conditions facing agricultural employers over the first three years of the next decade. The Department also has responsibilities under IRCA to analyze the impact of employer sanctions on employment, wages and working conditions of U.S. workers and on the economy, and to prepare a triennial report on the economic and labor market impacts of admissions of immigrants, refugees, asylees, and parolees into the U.S.

Two of the proposed projects will be competed by ETA. Four interagency agreements are planned, two each with the Office of the Assistant Secretary for Policy (OASP) and with the Bureau of International Labor Affairs (ILAB).

DOL has consistently proposed changes in legislation which would permit the use of general labor market information as a basis for making permanent alien labor certification determinations rather than the current case-by-case testing of the labor market. Since such a proposal is now being seriously and quickly considered, DOL wishes to begin specific planning for implementation. This implementation study would include identification of suitable data sources, specific criteria for determining shortage/surplus occupations and estimated costs for regular updates of finding. Another planned project would analyze the

current operation of the permanent alien labor certification program, and assess its impact on employers and U.S. workers with the goal of improving its efficiency and effectiveness.

With respect to temporary alien agricultural (H–2A) certifications, ETA/OASP will jointly administer several case study demonstration projects in which a "supply area" of domestic workers will be paired with a "receiving industry" to determine whether "positive recruitment" efforts made by employers to find domestic labor are effective as an alternative to the use of H–2A workers. Also, as required by IRCA, a determination will be made as to whether the "50-percent rule" of the H–2A program should be continued.

To assist in determining the labor supply conditions facing agricultural employers, and the IRCA requirement to stay abreast of changes in wages, working conditions, and recruitment practices, ETA and OASP propose interviewing: (1) A random sample of perishable crop employers to determine how they have adapted to changes in the supply of labor caused by IRCA; and (2) a random sample of workers employed by these employers during peak seasonal crop activities, to determine exit and entry rates of seasonal agricultural workers.

Using R,E,P&D funds through an intra-agency agreement, ILAB plans to fund three studies on the impact of IRCA sanctions on traditionally heavy users of illegal workers. These studies will focus on understanding the employment patterns of illegal workers and how both employers and the newly legalized workers respond to legalization and employer sanctions.

As part of the first phase of the triennial report, ILAB plans to explore information about the labor market behavior of different types of legal alien workers. This would permit more accurate evaluation of calims and counterclaims by those who petition for H–2B (i.e., temporary nonagricultural) workers. The second phase survey methodology would also be developed as part of this study.

Part III—Procurement plan Conference

A procurement plan conference will be held on Friday, October 7, 1988, at 9:00 a.m. at the Department Auditorium of the Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The Conference will be held for the following purposes:

(1) To summarize ETA's Program Year 1988 procurement plan:

(2) To describe in general terms the agency's procurement processes;

(3) To present the expected timetable for issuance of SGA's and RFP's; and

(4) To introduce ETA's R,E,P&D program to individuals and organizations which have not recently participated in the agency's activities.

No additional substantive detail on the subject areas will be provided at the conference. Further, it will not be necessary to attend the conference in order to participate in any of the procurement actions. The conference should be most valuable to those who have not recently participated in ETA's R,E, P&D program.

Signed at Washington DC, this 24 day of August, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor for Employment and Training.

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BILLING CODE 4510–30–M

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Preapplications for Federal Assistance, and Solicitation for Grant Application

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of invitation to submit preapplications and funding applications for migrant and seasonal farmworker training and employment programs.

SUMMARY: The Department of Labor announces preapplication and funding application instructions for Program Year (PY) 1989 (July 1, 1989 through June 30, 1990) Migrant and Seasonal Farmworker Programs pursuant to Section 402 of the Job Training Partnership Act (JTPA). Applicants selected for funding will be designated as grantees for PY 1989. In addition, such applicants will not have to recompete for funding for PY 1990 (July 1, 1990 to June 30, 1991) if applicable regulatory requirements are met, an acceptable training plan is submitted, and funds are available.

DATES: No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Preapplications and applications not meeting the conditions set forth in this notice will not be accepted.

Preapplications submitted by mail must be posted by certified or registered mail, return receipt requested, and postmarked no later than September 22, 1988. Preapplications submitted by hand-delivery will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time, but no later than 4:45 p.m., Eastern Time, on September 22, 1988.

Applications submitted by mail must be posted by certified or registered mail, return receipt requested, and postmarked no later than October 17, 1988. Applications submitted by hand-delivery will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time, but no later than 4:45 p.m., Eastern Time, on October 17, 1988.

ADDRESS: Preapplications and applications must be mailed or hand-delivered to Robert D. Parker, Grant Officer, ETA, Room C4305, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Charles C. Kane, Chief, Division of Seasonal Farmworker Programs, Room N4641, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 535–0500.

SUPPLEMENTARY INFORMATION: This notice consists of: Part I—Introduction, Part II—Preapplication for Federal Assistance, and Part III—Solicitation for Grant Application (SGA). Parts II and III constitute invitations from the Department of Labor (DOL) for public agencies, and private nonprofit organizatoins authorized by their Charters or Articles of Incorporation to provide training and employment, and other services described in this notice, to submit Preapplications for Federal Assistance and funding applications for PY 1989 JTPA Title IV, section 402, Migrant and Seasonal Farmworker Programs.

Part I—Introduction

The DOL announces preapplication and funding application instructions for PY 1989 (July 1, 1989 through June 30, 1990) Migrant and Seasonal Farmworker Programs pursuant to section 402 of the JTPA. Applicants selected for funding will be designated as grantees for PY 1989. In addition, such applicants will not have to recompete for funding for PY 1990 (July 1, 1990 to June 30, 1991) if applicable regulatory requirements are met, an acceptable training plan is submitted, and funds are available.

Background

JTPA established programs to prepare youth and unskilled adults for entry into the labor force, and to afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment. In accordance with 29 U.S.C. 1501 *et seq.*, regulations promulgated by the DOL to

implement JTPA are set forth at Parts 626 through 638 and 684 of Title 20, Code of Federal Regulations (CFR).

As stated at 20 CFR 633.102, it is the purpose of Section 402 of JTPA, 29 U.S.C. 1672, to provide job training, employment opportunities, and other services for those individuals who suffer chronic seasonal unemployment and underemployment in the agriculture industry. These conditions have been substantially aggravated by continual advancements in technology and mechanization resulting in displacement and contribute signficantly to the Nation's rural employment problem. These factors substantially affect the entire national economy. Because of farmworker employment and training problems, such programs shall be centrally administered at the national level. Programs and activities supported under this section shall, in accordance with section 402(c)(3) of JTPA:

(1) Enable farmworkers and their dependents to obtain or retain employment;

(2) Allow participation in other program activities leading to their eventual placement in unsubsidized agricultural or nonagricultural employment;

(3) Allow activities leading to stabilization in agricultural employment; and

(4) Include related assistance and supportive services.

Regulations promulgated by the DOL to implement the provisions of Title IV, section 402, of JTPA are set forth in 20 CFR Part 633 and Part 636. (Note: With the announced adoption of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 29 CFR Part 97 on October 1, 1988, 41 CFR Part 29–70 will no longer be applicable to State and local governments and Indian and Native American entities). These Parts contain all the regulations under JTPA applicable to migrant and other seasonally employed farmworker programs. 20 CFR 633.103(a). Should the regulations at Parts 633 and 636 conflict with regulations elsewhere in 20 CFR, the regulations at Parts 633 and 636 shall prevail with respect to programs and activities governed by these Parts. 20 CFR 633.103(b). Further, should any instructions in this notice conflict with JTPA regulations, the JTPA regulations shall prevail. Applicants should consult and be familiar with 20 CFR Part 633 in its entirety.

Pursuant to 20 CFR 633.201, the DOL will not consider any funding application when fraud or criminal activity has been proven to exist within the applicant organization, or when efforts by the DOL to recover debts established by final agency action have been unsuccessful. Prior to the final selection of an applicant as a potential grantee, the DOL, as provided for in 20 CFR 633.204, will conduct a Responsibility Review of the available records to establish an organization's overall responsibility to administer Federal funds. Any applicant which does not have its application considered or is not selected as a potential grantee because of these provisions shall be advised of its appeal rights.

Comments From the States

Executive Order 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 29 CFR Part 17, are applicable to this program. Pursuant to these requirements, in States which have established a consultation process expressly covering this program, applications shall be provided to the State for comment. Since States may also participate as competitors for this program, applications shall be submitted to the State upon the deadline for submission to the DOL. 20 CFR 633.202(d).

To strengthen the implementation of E.O. 12372, the DOL specifies the following timeframe for its treatment of comments from the State's Single Point of Contact (SPOC) on JTPA Section 402 applications:

1. As required by 29 CFR 17.8(a)(2), the SPOC must submit comments, if any, to the DOL no later than 60 days after the deadline date for applications;

2. The DOL will forward those comments to the applicant within 10 days of their receipt from the SPOC;

3. The applicant must submit its response to the SPOC's comments, if any, to the DOL no later than 10 days after the date of receipt from the DOL; and

4. The DOL will notify the SPOC of its decision regarding the comments and response, but will not implement that decision for at least 10 days after the SPOC has been notified.

State Planning Estimates

State planning estimates are provided in an Appendix to this notice solely for the purpose of developing the funding applications. These estimates are the same as the PY 1988 allocations. Final allocation levels for PY 1989 will be published at a later date.

Recommendation From the Governor

Following the 1986 review of JTPA section 402 grantee selection procedures, the DOL decided to award five extra rating points in the competition to the one application for each State that receives a recommendation from the Governor. This practice is consistent with the requirement of JTPA section 402(d) that the DOL consult with State and local officials in the administration of Section 402 programs.

The recommendation must be in writing, and will only be accepted if submitted as part of the application package to the Grant Officer. The application deadline date is announced elsewhere in this notice.

Part II—Preapplication for Federal Assistance

All States and the Commonwealth of Puerto Rico are open for competition for section 402 funds for PY 1989. Regulations at 20 CFR 633.105(b)(2) reserve for the DOL the right not to allocate any funds for use in a State whose funding allocation, to be determined by formula at a later date, is less than $120,000.

Applications for Statewide programs are strongly encouraged. Applicants applying for grants shall submit a preapplication consisting of:

(1) A Standard Form 424 Facesheet found in Attachment M to OMB Circular No. A–110;

(2) An attachment identifying, by State or counties, the target area to be served;

(3) For a private nonprofit organization, a recent (within the last six months) certification from a Certified Public Accountant that its financial management system is capable of properly accounting for and safeguarding Federal funds; and

(4) For a public agency, a recent (within the last six months) certification by the Chief Fiscal Officer attesting to the adequacy of the agency's accounting system to properly account for and safeguard Federal funds.

Two copies of the Preapplication for Federal Assistance shall be submitted either by mail or hand-delivery, along with two copies of the following:

(a) A statement indicatiang the legally constituted authority under which the organization functions;

(b) An employer identification number from the Internal Revenue Service and, for nonprofit applicants, proof of the organization's tax-exempt status.

As noted earlier in this announcement, mailings must be posted by registered or certified mail, return receipt requested, and postmarked no later than September 22, 1988. All hand-delivered preapplications will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time. A

receipt will be provided bearing the time and date of delivery. No hand deliveries will be accepted after 4:45 p.m., Eastern tile on September 22, 1988. No exceptions to these mailing and hand-delivery conditions will be granted. Preapplications not meeting these conditions will not be accepted.

Preapplications for Federal Assistance must be mailed or hand-delivered to: Robert D. Parker, Grant Officer, ETA, Room C4305, 200 Constitution Avenue, NW., Washington, DC 20210.

Part III—Solicitation for Grant Application

The DOL is soliciting applications for grants under the provisions of JTPA Title IV, section 402, to provide training, employment opportunities, and other services to migrant and other seasonal farmworkers.

Review of Funding Applications

Applications will be reviewed and rated by a competitive review panel, using the specific review standards cited at 20 CFR 633.203. Panel results are advisory in nature and are not binding on the Grant Officer. In addition, prior to the final selection of an applicant as a potential grantee, the DOL will conduct a Responsibility Review of the available records pursuant to 20 CFR 633.204. This review is intended to establish overall responsibility to administer Federal funds and is independent of the competitive process. Applicants failing to meet the requirements of this section of the regulations will not be selected as potential grantees irrespective of their standing in the competition.

Specific Rating Criteria

The rating criteria and the weights assigned to each are described below:

(i) *An understanding of the problems of migrant and seasonal farmworkers. Range 0 to 20 points.* This factor rates the applicant's analysis of the needs of the target group, and the proposed program's potential to address those needs. Ratings will be based on a clear and concise narrative demonstrating this understanding, and the appropriateness of the proposed program mix of trainng and supportive service to be implemented to meet the identified needs.

(ii) *A familiarity with the area to be served. Range 0 to 20 points.* This factor rates the applicant's knowledge of the socioeconomic characteristics and resources of the target area, and the proposed linkages and coordination; *i.e.*, plans for involving appropriate area agencies and programs in the design and delivery of training and other services proposed to meet the needs of participants. Rating will be based on a clear and concise narrative demonstrating this familiarity, and documented programmatic ties to appropriate area agencies and programs.

(iii) *A previously demonstrated capability to administer effectively a diversified employability development program for migrant and seasonal farmworkers. Range 0 to 30 points.* This factor rates program experience, and capability of meeting or exceeding planned goals. Ratings will be based on the successful past operation of a comprehensive multiactivity training and employment program for farmworkers, and on documentation that planned performance goals were either met or exceeded during the period of performance.

(iv) *General administrative and financial management capability. Range 0 to 30 points.* This factor rates the applicant's managerial experience, and the potential for efficient and effective administration of the proposed program. Ratings will be based on consideration of the administrative expertise of present and proposed managerial and decision-making staff, and the extent to which the management plan demonstrates the ability to capably operate a multiactivity delivery system.

Content and Format of Funding Application

Exclusive of charts or graphs and letters of support and commitment, the funding application should not exceed 75 pages of double-spaced unreduced type. Detailed budget and planning estimates are not to be a part of the funding application. These will be negotiated later with applications selected for grant awards.

The application format must be followed and contain the sections listed below. The sections correspond to the rating criteria listed in the preceding subpart of this notice, so that information pertinent to rating criterion item (i) is contained in Section I, information pertinent to rating criterion item (ii) is contained in Section II, etc.

Section I—Program Approach

This section should describe the applicant's approach to fulfilling the intent of JTPA Section 402. Elements to be included are:

(a) A description of the needs and problems of migrant and seasonal farmworkers in the target area, including the socioeconomic characteristics of the farmworker population to be served;

(b) A detailed description of each major activity and component of the program proposed to meet the identified need, including a discussion of outreach and recruitment, eligibility verification, and participant assessment; and

(c) The rationale for the program mix of training, employability development, and supportive services activities.

Section II—Linkages-Coordination and Delivery System

This section should describe the applicant's current and proposed programmatic ties to appropriate State and local agencies, private nonprofit organizations, and other groups, particularly JTPA/Service Delivery Area entities, providing resources and services to farmworkers such as literacy training and child care services. This section should also describe the method of delivering the program proposed in Section I. Elements to be included are:

(a) A description of linkages to agencies, organizations and institutions within the target area that will result in the coordinated delivery of services to the disadvantaged farmworker population. Letters of commitment documenting appropriate programmatic ties should be attached to the application;

(b) A description of the proposed delivery system, including a list of field/regional office locations and any other delivery agents, and the services to be provided by each;

(c) A labor market assessment with projections for employment growth and specific job opportunities available in the target area; and

(d) An analysis of the extent to which the proposed employment and training program, including linkages and delivery system, is consistent with the labor market assessment.

Section III—Program Experience

This section should describe the applicant's experience in capably administering employment and training programs for migrant and seasonal farmworkers. Elements to be included are:

(a) The type of programs operated, including the contract, grant or agreement number, the name of the funding agency, the amount of funding and the period of performance;

(b) The nature of the training, employability development, and supportive services activities which were provided; and

(c) The actual vs. planned numbers of participants and placements into unsubsidized employment for each program activity; and

(d) Performance standards results.

Section IV—Administration and Staff

This section should describe the applicant's organizational and staffing plans. Elements to be included are:

(a) The number of people presently involved in the administration of the organization and the number of people who will be involved in the administration of the proposed program, including job titles. Position descriptions of managerial and decision-making positions should be attached;

(b) A description of the management and administration plan including:

(1) Organizational structure;

(2) Personnel management procedures;

(3) Fiscal accounting system, including a plan for maintaining cash on hand at a reasonable level, not to exceed an average daily need; the allowance payment system, if applicable; and fiscal reporting procedures;

(4) Participant tracking and reporting system;

(5) Internal monitoring system;

(6) Program evaluation system;

(7) Property management system;

(8) Participant grievance procedures; and

(9) Equal Employment Opportunity policy.

Submission of Funding Application

Three copies of the funding applications shall be submitted either by mail or hand-delivery. As noted earlier in this announcement, mailings must be posted by registered or certified mail, return receipt requested, no later than October 17, 1988. All hand-delivered applications will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time. A receipt will be provided bearing the time and date of delivery. No hand-deliveries will be accepted after 4:45 p.m., Eastern Time, on October 17, 1988. No exceptions to these mailing and hand-delivery conditions will be granted. Applications not meeting these conditions will not be accepted.

Funding applications must be mailed or hand-delivered to: Robert D. Parker, Grant Officer, ETA, Room C4305, 200 Constitution Avenue, NW., Washington, DC 20210.

Notification of Selection

The following conditions are applicable, pursuant to 20 CFR 633.205:

(a) Respondents to this SGA which are selected as potential grantees will be notified by the DOL. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant, will establish a reasonable time and place for the negotiation, and will indicate the State or area to be covered by the grant. Grants will be awarded for the performance period July 1, 1989 to June 30, 1990. Applicants selected will not have to recompete for funding for FY 1990 (July 1, 1990 to June 30, 1991) if applicable regulatory requirements are met, an acceptable training plan is submitted, and funds are available.

(b) In the event that no grant applications are received for a specific State or area or those received are deemed to be unacceptable, or where a grant agreement is not successfully negotiated, the DOL may give the Governor first right to submit an acceptable application pursuant to the Precondition for Grant Application and Responsibility Review tests at 20 CFR 633.201 and 633.204, respectively. Should the Governor not accept the offer within 15 days after being notified, the Department may then: (1) Designate another organization or organizations, (2) reopen the area for competitive bidding, or (3) use the funds for national account activities.

(c) An applicant whose grant application is not selected by the DOL to receive JTPA Section 402 funds will be notified in writing.

(d) Applicants who submit grant applications which have been rejected may not resubmit a new grant application for the State(s) or area(s) in which they are interested in providing services until the jurisdiction is announced by the DOL as reopened for competition.

(e) Any applicant whose grant application is denied in whole or in part by the DOL will be advised of its appeal rights.

Signed at Washington, DC, this 23rd day of August, 1988.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

Charles C. Kane,

Chief, Division of Seasonal Farmworker Program.

Robert D. Parker,

Grant Officer, Division of Acquisition and Assistance.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

Appendix—U.S. Department of Labor Employment and Training Administration PY 1988 MSFW Allotment to States

	Allotment
Alabama	$866,160
Alaska	0
Arizona	1,229,762
Arkansas	1,275,909
California	10,065,737
Colorado	821,256
Connecticut	203,922
Delaware	122,633
District of Columbia	0
Florida	4,446,057
Georgia	1,712,016
Hawaii	270,706
Idaho	934,079
Illinois	1,198,137
Indiana	851,759
Iowa	1,445,131
Kansas	741,465
Kentucky	1,498,307
Louisiana	873,730
Maine	360,686
Maryland	314,554
Massachusetts	316,152
Michigan	942,849
Minnesota	1,407,443
Mississippi	1,604,547
Missouri	1,207,423
Montana	738,683
Nebraska	842,243
Nevada	154,220
New Hampshire	120,103
New Jersey	302,676
New Mexico	553,108
New York	1,645,506
North Carolina	3,205,351
North Dakota	519,071
Ohio	995,475
Oklahoma	635,257
Oregon	1,021,691
Pennsylvania	1,318,740
Rhode Island	0
South Carolina	1,179,787
South Dakota	768,385
Tennessee	1,052,966
Texas	5,217,228
Utah	256,408
Vermont	235,979
Virginia	1,068,299
Washington	1,710,814
West Virginia	241,190
Wisconsin	1,351,369
Wyoming	221,058
Puerto Rico	3,206,973
Formula Total	63,273,000
TA/Housing	2,299,000
Grant total	65,572,000

[FR Doc. 88-20075 Filed 9-1-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes

of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled, "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Louisiana:
LA88-7—pp. 408a-408b

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT88-1 (Jan. 8, 1988)—pp. 63,66
District of Columbia:
DC88-1 (Jan. 8, 1988)—pp. 81-82
New York:
NY88-2 (Jan. 8, 1988)—pp. 688,691-692
NY88-3 (Jan. 8, 1988)—p. 702
NY88-6 (Jan. 8, 1988)—p. 729
NY88-7 (Jan. 8, 1988)—p. 740
NY88-11 (Jan. 8, 1988)—p. 782
NY88-12 (Jan. 8, 1988)—p. 794
NY88-17 (Jan. 8, 1988)—p. 820-822
Pennsylvania:
PA88-5 (Jan. 8, 1988)—p. 880
Virginia:
VA88-15 (Jan. 2, 1988)—p. 1154
VA88-17 (Jan. 2, 1988)—p. 1160b

Volume II

Illinois:
IL88-12 (Jan. 8, 1988)—p. 165
IL88-14 (Jan. 8, 1988)—p. 186
Kansas:
KS88-7 (Jan. 8, 1988)—p. 352
Louisiana:
LA88-3 (Jan. 8, 1988)—p. 374
Missouri:
MO88-1 (Jan. 8, 1988)—p. 586
Texas:
TX88-9 (Jan. 8, 1988)—p. 958
Wisconsin:
WI88-4 (Jan. 8, 1988)—p. 1096

Volume III

Washington:
WA88-1 (Jan. 8, 1988)—pp. 361,369

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 26th day of August 1988.

Alan L. Moss,

Director, Division Of Wage Determinations.

[FR Doc. 88-19851 Filed 9-1-88; 8:45 am]
BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of

the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303(a).

DATE: Requests for copies must be received in writing on or before October 17, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the dispostion process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1–77–88–2). Raw data of the Corps of Engineers New England Division pertaining to the Passamaquoddy tidal power project.
2. Department of the Army (N1–AU–88–12). Civil Works project and operations files of the Office of the Chief of Engineers. (Significant corresponding field office records are designed for permanent retention.)
3. Defense Intelligence Agency (N1–373–88–3). Routine and facilitative communications records of the Defense Intelligence Agency.
4. General Accounting Office, General Services and Controller (N1–411–88–1). Records relating to the merit selection process.
5. Department of Justice, U.S. Parole Commission (N1–438–88–1). Case files on inmate and parolee participants in the federal witness security program.

Dated: August 29, 1988.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 88–20045 Filed 9–1–88; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 10, 1988, in Room P–118, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on August 26, 1988. The agenda for September 10 is revised as follows to include a discussion of classified information.

Saturday, September 10, 1988

8:30 A.M.–12:00 Noon and 1:00 P.M–2:00 P.M.—Preparation of ACRS reports on matters considered during this meeting and proposed resolution of A–45, Decay Heat removal and the High Temperature Gas Cooled Reactor considered during the 340th meeting of the Committee.

2:00 P.M.–3:30 P.M.: ACRS Subcommittee and Member Activities (Open/Closed)—Report and discussion of recent meetings on Thermal-Hydraulic Phenomena and Feedback of Operational Safety Experience from Nuclear Plants.

Portions of this session will be closed as required to protect information provided in confidence by a foreign source and to discuss classified information.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be otained by a prepard telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of the September 10, 1988 meeting, as noted above, to protect information provided in confidence by a foreign source [5 U.S.C. 552(c)(4)], and to discuss classified information [5 U.S.C. 552b(c)(1)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Farley (telephone 301/492–4516), between 8:15 A.M. and 5:00 P.M.

Date: August 30, 1988.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 88–20025 Filed 9–1–88; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 4.19, "Guidance for Selecting Sites for Near-Surface Disposal of Low-Level Radioactive Waste," provides guidance on site selection to be conducted in steps with the goal of finding a site that has a reasonable likelihood of being licensed.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 24th day of August 1988.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director for Generic Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 88–20026 Filed 8–31–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–313 and 50–368]

Arkansas Power & Light Co.; Exemption

I

Arkansas Power & Light Company (AP&L or the licensee) is the holder of Facility Operating License Nos. DPR–51 and NPF–6 which authorize the operation of Arkansas Nuclear One, Units 1 and 2 (the facilities) at steady state power levels not in excess of 2568 and 2815 megawatts thermal respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Pope County, Arkansas.

II

10 CFR 50.71, "Maintenance of records, making of reports," sets forth the requirements for recordkeeping and reporting in connection with licensed activities. Paragraph (e) of this section sets forth specific requirements for the filing of annual evisions to the Final Safety Analysis (FSARs).

III

By letter dated May 13, 1988 as supplemented July 19, 1988, AP&L requested an exemption from the schedular requirement of 10 CFR 50.,71(e)(4). The specific exemption requested was a one-time 90-day exension of the filing date for the year 1988 annual FSAR revisions for the facilities. The date of the last previous FSAR revisions for the facilities was July 22, 1987. Therefore, the licensee requests that the annual filing date be moved, this one time, from July 22 to October 20, 1988. It should be noted that the staff is requiring that this delayed revision reflect all changes to the facilities through April 20, 1988, and that all future revision filing dates shall be July 22.

The staff's principal concern was that a delay in revising the FSAR could lessen the FSAR's effectiveness in support of safey-related activities by AP&L. However, the need for the filing date extension was to allow completion of the licensee-initiated Safety Analysis Report (SAR) Upgrade Project, which was delayed by the sixth refueling outage on Unit 2. The grant of this exmption would allow the benefits derived from the SAR Upgrade Project to be incorporated into the 1988 annual FSAR revision. This SAR Upgrade project goes beyond the requiremnts of 10 CFR 50.71(e) in regard to what must be included in the annual FSAR revisions. Begun in April of 1987, it has included a chapter-by-chapter detailed technical review of the entire FSARs for both facilities. The SAR Upgrade Project should result in a better defined and more comprehensive licensing basis, which will greatly enhance the effectiveness of the FSARs in support of safety-related activities. Therefore, the staff concludes that the granting of the 90-day filing date extension will not result in an adverse impact on public health and safety, and should improve the quality of safety related activities of AP&L because of the significant improvements to be made in the quality of the FSARs.

The special circumstances of 10 CFR 50.12 apply in that the exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of the exemption. In this case, no decrease in safety is expected and a benefit to the health and safety of the public through improved quality in the conduct of safety-related activities by AP&L, should be realized.,

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.,12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(iv), are present justifying the exemption, namely that the exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption.

Accordingly, the Commission hereby grants the exemption from the schedular requirement of 10 CFR 50.71(e)(4) as described in Section III above.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (53 FR 29398).

The Safety Evaluation concurrently issued and related to this action and the licensee's May 13 and July 19, 1988 submittals are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

This exemption is effective upon issuance.

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 26th day of August 1988.

Dennis M. Crutchfield,

Director Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–20027 Filed 8–31–88; 8:45am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

August 29, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Amcast Industrial Corp.
Common Stock, No Par Value (File No. 7–3759)
Bond International Gold, Inc.
Ordinary Shares, $.01 Par Value (File No. 7–3760)
Blackstone Income Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–3761)
Colonial Intermediate High Income Fund
Shares of Beneficial Interest, No Par Value (File No. 7–3762)
Comprehensive Care Corp.
Common Stock, $.01 Par Value (File No. 7–3763)
City Trust Bancorp
Common Stock, $2.50 Par Value (File No. 7–3764)
Diagnostic Products Corp.
Common Stock, No Par Value (File No. 7–3765)
Emerald Mortgage Investment Corp.
Common Stock, $.01 Par Value (File No. 7–3766)
Kemper Intermediate Government Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3767)
MFS Multimarket Total Return Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3768)
Nuveen Premium Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3769)
Warner Comptuer Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–3770)
Allstate Municipal Income Trust II
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3771)
Dreyfus Strategic Government Income, Inc.
Common Stock, $.001 Par Value (File No. 7–3772)
Empresa Nactional de Electricidad S.A.
American Depository Shares, No Par Value (File No. 7–3773)
National Australia Bank, Ltd.
American Depository Shares, No Par Value (File No. 7–3775)
Putnam Intermediate Government Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3776)
Chaparral Steel Co.
Common Stock, $.10 Par Value (File No. 7–3777)
York International Corp.
Common Stock, $.001 Par Value (File No. 7–3778)
Spain Fund, Inc. (The)
Common Stock, $1 Par Value (File No. 7–3779)
Score U.S. Corp.
Common Stock, $.30 Par Value (File No. 7–3780)
Copperwald Corp.
$2.48 Convertible Exchangeable Preferred, No Par Value (File No. 7–3781)
Hatteras Income Securities, Inc.
Capital Stock, No Par Value (File No. 7–3782)
JWP, Inc.
Common Stock, $.10 Par Value (File No. 7–3783)
Michigan Energy Resources
Common Stock, $2.50 Par Value (File No. 7–3784)
Oppenheimer Capital, L.P.
Units of Limited Partnership Interest, No Par Value (File No. 7–3785)
Oxford Industries, Inc.
Common Stock, $1 Par Value (File No. 7–3786)
Smucker (J.M.) & Co.
Common Stock, No Par Value (File No. 7–3787)
Tootsie Roll Industries, Inc.
Common Stock, $.69 4/9 Par Value (File No. 7–3788)
Toro Co.
Common Stock, $1 Par Value (File No. 7–3789)
XTRA Corp.
$1.9375 Convertible Preferred B, No Par Value (File No. 7–3790)
Amwest Insurance Group, Inc.
Common Stock, No Par Value (File No. 7–3791)
Banner Industries, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–3793)
Chemical Banking
Class B Common Stock, No Par Value (File No. 7–3794)
Computer Task Group, Inc.
Common Stock, $.01 Par Value (File No. 7–3795)
First Wyoming Bancorp
Common Stock, No Par Value (File No. 7–3796)
Freeport-McMoran Copper, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–3797)
New Jersey Resources Corp.
Common Stock, $2.50 Par Value (File No. 7–3798)
Pauley Petroleum, Inc.
Common Stock, $1 Par Value (File No. 7–3799)
RB Industries, Inc.
Common Stock, $1 Par Value (File No. 7–3800)
Sahara Casino Partners, L.P.
Depository Units, No Par Value (File No. 7–3801)
Sotheby's Holdings, Inc.
Class A Limited Voting Stock, No Par Value (File No. 7–3802)
Union Fed Financial Corp.
Common Stock, No Par Value (File No. 7–3803)
BIC Corp.
Common Stock, $1 Par Value (File No. 7–3804)
Burlington Resources, Inc.
Common Stock, $.01 Par Value (File No. 7–3805)
Century Telephone Enterprises, Inc.
Common Stock, $1 Par Value (File No. 7–3806)
Excel Industries, Inc.
Common Stock, No Par Value (File No. 7–3807)
First Union Corp.
Common Stock, $3.33⅓ Par Value (File No. 7–3808)
Gottschalks, Inc.
Common Stock, $.01 Par Value (File No. 7–3809)
Nova Corp. of Alberta
Common Stock, No Par Value (File No. 7–3810)
Oxford First Corp.
Common Stock, $1 Par Value (File No. 7–3811)
Riedel Environmental Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–3812)
Wyse Technology
Common Stock, No Par Value (File No. 7–3813)
Alliance Capital Management L.P.
Units, No Par Value (File No. 7–3820)
American Government Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3821)
American Reality Trust, Inc.
Shares of Beneficial Interest, $1 Par Value (File No. 7–3822)
First Boston Strategic Fund

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Common Stock, $.001 Par Value (File No. 7–3823)
Finevest Foods, Inc.
Common Stock, $.01 Par Value (File No. 7–3824)
High Yield Plus Fund
Common Stock, $.01 Par Value (File No. 7–3825)
Kemper High Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3826)
New American Shoe, Inc.
Common Stock, No Par Value (File No. 7–3827)
National Heritage, Inc.
Common Stock, $.01 Par Value (File No. 7–3828)
Putnam Master Intermediate Income Trust
Shares of Beneficial Interest (File No. 7–3829)
Standard Commercial Corp.
Common Stock, $.20 Par Value (File No. 7–3830)
Universal Medical Buildings, LP
Limited Partnership Units, No Par Value (File No. 7–3831)
Wedgstone Financial
Shares of Beneficial Interest, $1 Par Value (File No. 7–3832)
Zenith Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3833)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 20, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88–19996 Filed 9–1–88; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–26039; File No. SR–NASD–88–9]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Concerning an Amendment to the NASD's "Free-Riding and Withholding" Interpretation

On March 16, 1988, the National Association of Secrurities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, and an amendment thereto on May 5, 1988, to amend the NASD's "Free-Riding and Withholding" Interpretation ("Interpretation") of Article III, Section 1 of the NASD's Rules of Fair Practice by providing members with an alternative means of "hot issue" securities to the accounts of investment partnerships and corporations; including hedge funds, investment clubs and other similar accounts.

The proposed rule change would provide a member or associated person a "safe harbor" presumption of compliance with the requirements of the Interpretation's section on investment partnerships if, prior to executing a transaction with an investment partnership, the member has obtained a copy of a current opinion of counsel stating that counsel reasonably believes that no person with a beneficial interest in the account is a restricted person under the Interpretation and stating that, in providing such opinion, counsel has complied with the specific provisions outlined in the proposal. If the information discloses that a restricted person has a beneficial interest in the account, the transaction can be effected only in compliance with the restrictions of the Interpretation. If a member has actual knowledge that a restricted person has a beneficial interest in the account, the member may not rely upon an opinion of counsel.[2]

The proposal requires the member to maintain in its files a copy of the current opinion of counsel or list of names for at least three years following the members' last sale of a new issue to that account, and to have the information obtained from the account manager or counsel as of a date not more than 18 months prior to a transaction. Also, in connection with sales to accounts of foreign investment partnerships where disclosure of the names of the beneficial owners is prohibited by law, the proposal no longer permits the member to rely on a representation from the account manager tha no restricted person has a beneficial interest in the account.[3] Instead a member must obtain an opinion of counsel stating that no person with a beneficial interest in the account is a restricted person.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25727, May 20, 1988) and by publication in the **Federal Register** (53 FR 19076, May 26, 1988).

The Commission received one comment letter, from the Securities Industry Association ("SIA"), on the proposed rule change [4] and the NASD submitted a letter in response.[5] The SIA raises two concerns. First, the SIA asserts that, if there has been no change in the membership of the investment partnership within the previous 18 months, the account manager should be permitted to make such a representation in lieu of obtaining an updated opinion of counsel. The SIA further asserts that, if the composition of the partnership has changed, then the updated opinion of counsel only should be required to address the business affiliations of the new members of the partnership. Second, the SIA believes that, in connection with foreign investment partnerships, the NASD should continue to permit members to obtain representations from the account manager as an alternative means of compliance.

In its response, the NASD states that the NASD Board of Governors and National Business Conduct Committee adopted the "opinion of counsel approach" [6] because it believed that a

[1] *See* 15 U.S.C. 78s(b)(1).

[2] The NASD notes the inability to use the opinion of counsel alternative under these circumstances is "implicit" in the proposal. *See* Securities Exchange Act Release No. 25727 (May 20, 1988), 53 FR at 19077.

[3] The NASD states that this exception was included in the rule to accommodate foreign investment partnerships, and required a member to determine if the law of the particular country in fact prohibited the disclosure of the names of the beneficial owners before it could accept a representation from the account manager.

[4] Letter to Jonathan G. Katz, Secretary, SEC, from Dennis Greenwald, Chairman, Federal Regulation Committee, SIA, dated June 22, 1988.

[5] Letter to Katherine A. England, Branch Chief, SEC, from John F. Mylod, Assistant General Counsel, NASD, dated July 19, 1988.

[6] An earlier proposal would have permitted members to rely upon a blanket representation from the account manager. *See* NASD Notice to Members 86–40, May 23, 1986.

representation frm the account manager is not adequate to assure an appropriate degree of reliability. The NASD believes that adopting the SIA's suggestion would undermine its attempt to assure that members are provided with an accurate report of the status of the account. The NASD does not agree that obtaining a new opinion of counsel every 18 months necessarily will result in inappropriate added costs. The NASD believes that the fees charged by the attorney who provided the original opinion of counsel normally should be less for updating an opinion previously provided, particularly where there have been no intervening changes or few intervening changes in the ownership of the account.

With respect to the SIA's second suggestion, the NASD believes that in order to achieve an appropriate degree of accuracy, members should be permitted to rely only upon a representation in the form of an opinion of counsel. In this regard, although the SIA expressed reservations about the reliability of opinions of foreign counsel who may be subject to varying standards of professional responsibility, the NASD noted that its proposal requires the opinion of counsel to be issued by an attorney admitted to practice in the United States. While the NASD recognizes that there may be somewhat greater difficulty associated with obtaining an opinion of counsel for a foreign account compared with a domestic account, the NASD believes that the purposes of the proposal override any such inconvenience.

The Commission carefully has considered the comment letter and believes that the NASD adequately has addressed the concerns expressed by the commentator. The NASD has designed an alternative means of complying with the Interpretation. As such, a member is still free to follow its current practices. Accordingly, the Commission believes it is appropriate for the NASD to develop specific safeguards to ensure that its "safe harbor" is not subject to abuse.

As a separate matter, the NASD received seven comment letters in response to its Notice to Members 87–73 originally proposing the safe-harbor. Of these comment letters, two objected to the opinion of counsel portion of the proposed rule change because in their view it appeared to require lawyers to conduct a factual "audit" before rendering an opinion.[7] The commentators argued that such an inquiry by lawyers goes beyond the standards established by the Code of Professional Responsibility of the ABA. In its filing, the NASD states that it gave active consideration to this concern and that the NASD Board of Governors and National Business Conduct Committee concluded that the degree of factual inquiry contemplated by the proposal is consistent with the applicable provisions of the ABA's Code of Professional Responsibility which does require reasonable inquiry into the facts upon which legal opinions on securities law matters are based.

The Commission carefully has considered these comment letters along with the applicable provisions of the ABA's Code of Professional Responsibility [8] and believes reasonable inquiry into the facts contemplated by the proposed opinion of counsel is consistent with the standards established by the ABA's Code of Professional Responsibility.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: August 29, 1988.

[FR Doc. 88–19997 Filed 9–1–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26040; File No. SR–NSCC–88–06]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corporation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 11, 1988, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change reduces the charge for flip trades.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to change the fees from $.15 per side to $.05 per side for NSCC's Flip Trades as of July 1, 1988.

The proposed rule change provides for the equitable allocation of reasonable fees among its participants and is, therefore, consistent with the requirements of the Act, as amended and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

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[7] Letters to Lynn Nellius, NASD, from Paul E. Uhlenhop, Law Offices of Lawrence, Kamin, Saunders & Uhlenhop, and James H. Cheek III, Linda A. Wertheimer and Lawrence C. Tondel, American Bar Association ("ABA"), dated November 18, 1987 and December 23, 1987, respectively.

[8] *See* Model Code of Professional Responsibility DR 7–102(A)(5) and DR 1–102(A)(4). *See also* ABA Comm. on Professional Ethics and Professional Responsibility, Formal Op. 335 (1974).

[1] For purposes of this rule proposal, a "flip trade" is a trade where an NSCC participant does its trade comparison through NSCC but the settlement is transferred to the account of another NSCC participant, which guarantees the trade on behalf of the initial participant. Such trades are frequently used by participants having a parent-subsidiary relationship. Telephone conversation between Alison Hoffman, Attorney, NSCC, and Thomas C. Etter, Attorney, Securities and Exchange Commission, August 17, 1988.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above (SR–NSCC–88–06) and should be submitted by September 23, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 29, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–19998 Filed 9–1–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16540; (811–4974)]

Criterion Equity Trust (formerly, Criterion 1000 Louisiana Trust); Application

August 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Criterion Equity Trust.

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The Application was filed on July 5, 1988, and amended on August 26, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1000 Louisiana, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Brancyh in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations: 1. On January 8, 1987, Applicant filed Form N–8A to register under the 1940 Act as an open-end, diversified management investment company. On March 17, 1987, Applicant also filed Form N–1A pursuant to the 1940 Act and the Securities Act of 1933, but such registration statement did not become effective and Applicant never made a public offering of its securities. Applicant does not have any assets or liabilities. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

2. Applicant has terminated its legal status as a business trust under the laws of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–19999 Filed 9–1–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area # 2317]

Pennsylvania; Declaration of Disaster Loan Area

The City of Perkasie, Pennsylvania, constitutes a disaster area as a result of damages from a fire which occurred on June 26, 1988, at 7th and Market Streets. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on October 24, 1988, and for economic injury as a direct result of this fire until the close of business on May 24, 1989, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Businesses with credit available elsewhere	8.000%
Businesses without credit available elsewhere	4.000%
Businesses (EIDL) without credit available elsewhere	4.000%
Other (non-profit organizations including charitable and religious organizations	9.000%

The number assigned to this disaster is 231705 for physical damage and for economic injury the number is 665000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: August 24, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–20014 Filed 9–1–88; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 07/07-0093]

First of Nebraska Investment Corp.; Application for License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by First of Nebraska Investment Corporation, First National Center, 16th and Dodge Streets, Omaha, Nebraska 68102, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and principal stockholder of the Applicant are as follows:

Name and position	Percentage of shares owned
John R. Lauritzen, 6621 Underwood Street, Omaha, Nebraska 68132, Chairman of the Board	0
J. William Henry, 6625 Burt, Omaha, Nebraska 68132, Treasurer, Director	0
Dennis A. O'Neal, 2223 South 86th Avenue, Omaha, Nebraska 68124, Director	0
Bruce R. Lauritzen, 608 Fairacres Road, Omaha, Nebraska 68132, President, Director	0
Eric S. Turille, 11517 Queens Drive, Omaha, Nebraska 68164 Secretary, Director	0
Frank Phillips Giltner, 858 North 63rd Street, Omaha, Nebraska 68132, Vice President, Director	0
Charles H. Fries, Jr., 2508 Brookside Avenue, Omaha, Nebraska 68124, Senior Managing Officer	0
Steven F. Kros, 8819 Valley View Drive, Omaha, Nebraska 68128, Managing Officer	0
Thomas L. Davis, 1177 California Street, San Francisco, California 94109	0
First National of Nebraska, Inc., One First National Center, Omaha, Nebraska 68102	100

First National Of Nebraska Inc., a bank holding company, will own all issued and outstanding voting common stock of the Applicant. Mr. John R. Laureitzen is the beneficial owner of 46.1% of the parent corporation. Mr. Thomas L. Davis is the beneficial owner of 12.6% of the parent corporation.

The Applicant, will begin operations with $1,000,000 of paid-in capital and paid-in surplus.

The Applicant will conduct its operations in the State of Nebraska and will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administration for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Omaha area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: August 25, 1988.

[FR Doc. 88-20015 Filed 9-1-88; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 04/04-0248]

Mariner Venture Capital Corp.; Application for License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Mariner Venture Capital Corp., (Applicant), 2300 West Glades Road, Suite 440, West Tower, Boca Raton, Florida 33431, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name and position	Percentage of ownership
Gary O. Marino, President/Director	0
Donald D. Redfearn, Vice President/Treasurer	0
Irwin J. Newman, Vice President/Secretary Director	0
[1] Mariner Corporation, Manager/Advisor	100

[1] Mariner Corporation is a business development company. Mr. Gary O. Marino is Chairman, Chief Executive Officer and owns 50.9 percent of Mariner Corporation Common Stock. Mr. Donald D. Redfearn is Vice President, Treasurer and owns 2.5 percent of Mariner Corporation Common Stock.

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of Florida.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed Applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Boca Raton, Florida area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: August 25, 1988.

[FR Doc. 88-20016 Filed 9-1-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on September 16, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks and introductions, (2) approval of minutes of the meeting held on July 22, 1988, (3) Executive Director's Report, (4) Special Committee Activities Report for July-August 1988, (5) approval of RTCA operations and special budgets for 1989 and operations planning budget for 1990, (6) Report of ad hoc committee on RTCA

Federal Charter Proposal, (7) consideration of proposals to establish new special committees, (8) approval of Special Committee 156 Report "Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard," Volumes I and II, (9) consider RTCA action on Fokker B.V. recommendations concerning compatibility of regulations on Marker Beacon RF System, (10) other business, and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 18, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-19959 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

Air Traffic Procedures Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held from October 24 through October 27, 1988. Attendance is open to the public, but will be limited to the space available.

FOR FURTHER INFORMATION CONTACT: Mr. Paul H. Strybing, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from October 24, at 1 p.m., through October 27, 1988, at 4 p.m., at the Federal Aviation Administration headquarters, Washington, DC, in the Administrator's Round Room (10th floor). The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 21, 1988. The next quarterly meeting of the FAA ATPAC is planned to be held from January 23 through January 27, 1989, in San Diego, CA. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on August 22, 1988.

Paul H. Strybing,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 88-19960 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: August 29, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0052.

Form Number: IRS Forms 990-PF and 4720.

Type of Review: Revision.

Title: Return of Private Foundation or section 4947(a)(1) Trust Treated as a Private Foundation (990-PF); Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code (4720).

Description: Internal Revenue Code (IRC) section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940-1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Section 4947(a)(1) trusts may file Form 990-PF in lieu of Form 1041 under the provisions of sections 6033 and 6012.

Respondents: Businesses or other for-profit, Non-profit institutions.

Estimated Number of Respondents: 43,067.

Estimated Burden Hours Per Response:

Form 990-PF
20 hours and 14 minutes
Form 4720
5 hours and 55 minutes

Frequency of Response: Annually.

Estimated Total Reporting Burden: 941,317 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-19978 Filed 9-1-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 29, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0036.
Form Number: ATF F 5020.20.
Type of Review: Extension.
Title: Form Letter—Personnel Inquiry Re: Applicant for Federal Permit.
Description: ATF F 5020.20 verifies references given by a person applying for an ATF permit or license. The information requested of a respondent asks for the following character traits of an applicant-integrity, business responsibility and general reputation for conformity with laws and regulations and length of association respondent has known applicant.
Respondents: Individuals or households, Businesses or other for-profit, Small business or organizations.
Estimated Number of Respondents: 1,500.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,500 hours.

OMB Number: 1512–0115.
Form Number: ATF F 5220.4 (2140).
Type of Review: Extension.
Title: Monthly Report—Export Warehouse Proprietor.
Description: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor including receipts, dispositions and on-hand quantities. ATF F 5220.4 (2140) is used for product accountability and is examined by regional office personnel.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 241.
Estimated Burden Hours Per Response: 49 minutes.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 2,343 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–19986 Filed 9–1–88; 8:45 am]
BILLING CODE 4810-25-M

[Supplement to Department Circular—Public Debt Series—No. 22–88]

Treasury Notes, Series AE–1990

Washington, August 24, 1988.

The Secretary announced on August 23, 1988, that the interest rate on the notes designated Series AE–1990, described in Department Circular—Public Debt Series—No. 22–88 dated August 18, 1988, will be 8⅝ percent. Interest on the notes will be payable at the rate of 8⅝ percent per annum.

Marcus W. Page,
Acting Fiscal Assistant Secretary.
[FR Doc. 88–19947 Filed 9–1–88; 8:45 am]
BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 23–88]

Treasury Notes, Series M–1993

Washington, August 25, 1988.

The Secretary announced on August 24, 1988, that the interest rate on the notes designated Series M–1993, described in Department Circular—Public Debt Series—No. 23–88 dated August 18, 1988, will be 9 percent. Interest on the notes will be payable at the rate of 9 percent per annum.

Marcus W. Page,
Acting Fiscal Assistant Secretary.
[FR Doc. 88–19948 Filed 9–1–88; 8:45 am]
BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

University affiliations Program; Solicitation of Services

The United States Information Agency seeks to secure the services of an organization to assist in the processing and review of proposals for the FY 1989 University Affiliations Program. The University Affiliations Program strives to promote institutional relations between American and foreign institutions of higher education.

Washington based educational organizations with experience in international education, with emphasis on educational exchanges, are invited to submit proposals for a cooperative agreement award from the Agency. For application information, please contact Dr. Winnie D. Emoungu no later than September 19, 1988 at the following address: University Affiliations Program (E/AS), Office of Academic Programs, United States Information Agency, 301 4th Street SW., Washington, DC 20547, Phone: (202) 485–8489.

Dated: August 26, 1988.

Omar G. Encarnacion,
Program Officer.
[FR Doc. 88–20010 Filed 9–1–88; 8:45 am]
BILLING CODE 8230-01-M

VETERANS' ADMINISTRATION

Geriatrics and Gerontology Advisory Committee; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Geriatrics and Gerontology Advisory Committee has been renewed for a two year period beginning August 15, 1988, through August 15, 1990.

Dated: August 19, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 88–19965 Filed 9–1–88; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 171
Friday, September 2, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 13, 1988.

PLACE: 2033 K St. NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the New York Futures Exchange for designation as a contract market in CRB Price Index Options
Program Objectives/First Quarter, FY 1989

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 88–20149 Filed 8–31–88; 3:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, September 13, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Objectives

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 88–20150 Filed 8–31–88; 3:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 20, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review
Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 88–20151 Filed 8–31–88; 3:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 13, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review
Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 88–20152 Filed 8–31–88; 3:40 pm]

BILLING CODE 6351–01

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, September 12, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC. 20507

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Office of Communications and Legislative Affairs)
3. Volume I of the Compliance Manual

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634–6748.

Date: August 30, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88–20106 Filed 8–31–88; 2:52 pm]

BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION:

DATE AND TIME: Wednesday, September 7, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, September 8, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth FLoor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988–35:
Anthony F. Marra on behalf of the Federal National Mortgage Association
Petition for Rulemaking Filed by Ted Haley Congressional Committee:
Notice of Disposition.
Draft Notice of Proposed Rulemaking on 11 CFR 100.7(b)(8), 100.8(b)(9), 110.11(a)(1)(iv)(A) and 114.8(f)
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88–20054 Filed 8–30–88; 4:51 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 32493, August 25, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, August 31, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposals regarding Federal Reserve Bank building requirements.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: August 31, 1988.

James McAfee, Associate Secretary of the Board.

[FR Doc. 88–20141 Filed 8–31–88; 8:45 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 53, No. 171
Friday, September 2, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 25147; Amdt. No. 23-36]

Small Airplane Airworthiness Review Program, Amendment No. 1

Correction

In rule document 88-18267 beginning on page 30802 in the issue of Monday, August 15, 1988, make the following corrections:

1. On page 30809, in the first column, under *Proposal 1-6*, in the second paragraph, the sixth line should read "of maximum weight when".

2. On the same page, in the second column, in the second line, before the word "Notice" insert "(".

3. On the same page, in the third column, the second line should read "23-34:".

4. On page 30810, in the second column, in the 12th line and in the 16th line, "is" should read "in".

5. On the same page, in the same column, in the first complete paragraph, in the ninth line, "set/restraint" should read "seat/restraint".

§ 23.787 [Corrected]

6. On page 30814, in the third column, in § 23.787(c), in the second line, "9%" should read "9g".

7. On the same page, in the same column, in amendatory instruction 8, in the second line, "andm" should read "and"

§ 23.807 [Corrected]

8. On the same page, in the same column, in § 23.807(b), in the fifth line, "airplanes" should read "airplane".

§ 23.811 [Corrected]

9. On the same page, in the same column, in § 23.811(a), in the second line, "them" should read "the".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8217]

Income Tax; Taxable Years Beginning After December 31, 1953 and OMB Control Numbers Under the Paperwork Reduction Act; Certain Cash or Deferred Arrangements Under Employee Plans

Correction

In rule document 88-17720 beginning on page 29658 in the issue of Monday, August 8, 1988, make the following corrections:

1. On page 29659, in the third column, in the first complete paragraph, in the sixth line, "rational" should read "rationale" and in the ninth line, "received" should read "receive".

§ 1.401(k)-1 [Corrected]

2. On page 29665, in the second column, in § 1.401(k)-1(b)(1)(i), in the 11th line, "section 410(b)(1)(H)" should read "section 410(b)(1)(B)".

3. On page 29666, in the first column, in § 1.401(k)-1(b)(3)(v), in the third line, after "contributions" insert "and qualified matching contributions treated as elective contributions".

4. On the same page, in the same column, in § 1.401(k)-1(b)(4), in the seventh line, "test" should read "tests".

5. On the same page, in the same column, in § 1.401(k)-1(b)(4)(B), in the fourth line, "more" was misspelled.

6. On the same page, in the same column, in § 1.401(K)-1(b)(4)(B)(ii), in the sixth line, "test" should read "tests".

7. On the same page, in the second column, in § 1.401(k)-1(b)(5)(ii), in the 18th line, the section number should read "§ 54.4975-11(a)(5)".

8. On page 29669, in the first column, in § 1.401(k)-1(d)(2)(iv)(B), in the ninth line, after "to" insert "a".

9. On the same page, in the third column, in § 1.401(k)-1(e)(1)(ii), in the third line from the bottom, "§ 1.40(a)-" should read "§ 1.401(a)-".

10. On page 29670, in the third column, in § 1.401(k)-1(f)(3)(ii)(B), in the 12th line, after "respect" insert "to".

11. On page 29671, in the first column, in § 1.401(k)-1(f)(3)(v), in the *Example*, in the third line after the table, "7.50% [2]" should read "7.50%/2".

12. On the same page, in the second column, in § 1.401(k)-1(f)(3)(v), in *Example* (v), in the seventh line, ".50" should read ".05".

13. On page 29673, in the second column, in § 1.401(k)-1(h)(4)(iii)(B), in the first line, remove "the" and in ninth line, "high-" should read "highly-".

§ 1.402(a)-1 [Corrected]

14. On page 29673, in the third column, in § 1.402(a)-1(d)(1), in the eighth line, after "to" insert "a" and in the third line from the bottom, "§ 1.40(k)-" should read "§ 1.401(k)-".

15. On page 29674, in the first column, in § 1.402(a)-1(d)(3)(ii), in the 6th line, after "of" insert "a" and in the 11th line, after "of" insert "a".

16. On the same page, in the first column, in § 1.402(a)-1(d)(3)(iv), in the second line, after "of" insert "a".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[EE-158-86, 160-86]

Excise and Income Taxes; 401(k) Arrangements Under the Tax Reform Act of 1986 and Nondiscrimination Requirements for Employee and Matching Contributions

Correction

In proposed rule document 88-17721 beginning on page 29719 in the issue of Monday, August 8, 1988, make the following corrections:

1. On page 29720, in the first column, in the second complete paragraph, in the seventh line, after "Estimated" insert "annual".

2. On the same page, in the second column, in the first complete paragraph, in the 11th line, after "of" insert "the".

3. On the same page, in the third column, in the first complete paragraph, in the last line, "in" should read "on".

§ 1.401(k)-1 [Corrected]

4. On page 29725, in the third column, in § 1.401(k)-1(d)(1)(ii), in the eighth line, "of" should read "if".

5. On page 29727, in the first column, in § 1.401(k)-1(e)(6)(ii), in the 17th, "benefits" should read "benefit".

6. On page 29728, in the second column, in § 1.401(k)-1(f)(4)(ii)(C), in the last line, after "day" insert "will be treated as having been made on the first day".

7. On the same page, in the third column, in § 1.401(k)-1(f)(4)((vi), in the fourth line, "rate" should read "rata".

8. On page 29729, in the first column, in § 1.401(k)-1(f)(5)(ii), in the 7th line, after "employee" insert "to elect" and in the 10th line, "recharacterization" should read "recharacterized".

9. On the same page, in the second column, in § 1.401(k)-1(f)(7), in *Example (1)*, in the first paragraph under the table, in the third line, "414(g)" should read "414(q)".

10. On the same page, in the third column, in § 1.401(k)-1(f)(7), in *Example (3)*, in the sixth line, "compensated" should read "compensation".

§ 1.401(m)-1 [Corrected]

11. On page 29733, in the third column, in § 1.401(m)-1(d), in *Example (3)*, in the first line after the table, "This" should read "The".

12. On page 29737, in the first column, in § 1.401(m)-1(e)(6), in *Example (4)*, the 11th line should read "aggregate contributions in plan C by distributing".

13. On the same page, in the same column, in § 1.401(m)-1(e)(6), in *Example (5)*, in the 9th line, "This" should read "Thus" and in the 12th line, "if" should read "is".

14. On page 29738, in the second column, in § 1.401(m)-1(f)(13)(iii)(*1*), the third line should read "contributions, matching contributions compensation, and amounts treated as matching contributions of".

§ 1.401(m)-2 [Corrected]

15. On page 29739, in the third column, in § 1.401(m)-2(b)(1)(ii), in the fifth line, "sum" should read "such".

16. On page 29745, in the first column, in amendatory instruction Par. 20, the second line should read "after § 54.4979-0 and new § 54.4979-1 to read as follows:"

17. On the same page, in the second column, in § 54.4979-1(c)(1), in the 16th line, "plan" was misspelled.

BILLING CODE 1505-01-D

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federal register

Friday
September 2, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33
RIN 2120-AA28
Rotorcraft Regulatory Review Program; Amdt. No. 3; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33

[Docket No. 24337; Amdts. 1-34, 27-23, 29-26, and 33-12]

RIN 2120-AA28

Rotorcraft Regulatory Review Program; Amdt. No. 3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts new and revised airworthiness standards for the powerplant and rotor drive aspects of type certification of normal and transport category rotorcraft. These new and revised standards are necessary because both the government and the rotorcraft industry recognize that the existing certification rules have been outdated by rapidly advancing rotorcraft technology. In addition, extensive experience with certification programs, based on the existing rules, has revealed a need for numerous clarifications in regulatory definitions and terminology, as well as the need for editorial corrections and regulatory simplifications which can materially reduce the burden that the current regulations impose on the rotorcraft industry without derogating safety.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Federal Aviation Administration, Aircraft Certification Division, Fort Worth, Texas 76193-0111, telephone No. (817) 624-5123.

SUPPLEMENTARY INFORMATION: These amendments are the fourth in a series of amendments being issued as a part of the Rotorcraft Regulatory Review Program. The first of the series of amendments in this program addressed applicability and icing certification standards and was published in the **Federal Register** on January 31, 1983 (48 FR 4374). The second of the series of amendments dealt with rotorcraft flight characteristics and systems and equipment and was published in the **Federal Register** on November 6, 1984 (49 FR 44422). The third in the series, Rotorcraft Regulatory Review Program, Amendment No. 5, updated operations and maintenance and was published in the **Federal Register** on November 7, 1986 (51 FR 40692). The amendments in this fourth series involve the powerplant, rotor drive mechanism, and associated support and protective systems for the powerplant and the rotor drive mechanism.

These amendments are based on Notice of Proposed Rulemaking (NPRM) No. 84-19 published in the **Federal Register** on November 27, 1984 (49 FR 46670). All interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of nonsubstantive changes and minor changes of an editorial and clarifying nature have been made to the proposals based upon relevant comments received and upon further review by the FAA. Except as indicated herein, the proposals contained in the notice have been adopted without change.

One general comment is worthy of special note. An industry association deplores the fact that some 20 percent of the proposals in the notice were not included in the agenda at the formal Rotorcraft Regulatory Review Program Conference held December 10-14, 1979, in New Orleans, Louisiana. However, as indicated in the preamble to the NPRM, additional proposals which were previously the subject of various rotorcraft certification program special conditions were included, as well as a number of proposals derived by the FAA from ongoing review and day-to-day application of the existing rules. The FAA's plans to amend the certification standards based on these activities were presented to the public at the earliest opportunity by way of the NPRM and every proposal adopted is within the scope of the notice.

A total of seven comments were received. The commenters represented airframe manufacturers, engine manufacturers, rotorcraft owners, and operators. The majority of the commenters agreed with the substance of the NPRM. Several recommended minor changes. These recommendations and their resolutions are contained in the discussion of comments.

Discussion of Comments

The following are keyed to like-numbered proposals in Notice No. 84-19 and are presented in the same order as the corresponding amendments found in the rules portion of this document.

Proposal 3-1. The notice proposed to amend § 1.1 of the Federal Aviation Regulations (FAR) to add a new definition for "rated continuous OEI power" and to revise the definition of existing "rated 30-minute power" and "rated 2½-minute power." This amendment is needed as a part of a program to introduce a new rotorcraft and engine one-engine-inoperative (OEI) rating and to clarify the limitations on the use of the existing 30-minute and 2½-minute power ratings. Two commenters submitted identical objections to the addition of the term "OEI" in the definition of the 30-minute rating. They contend that this change would prevent designers, constructors, and operators of single-engine rotorcraft from taking advantage of this rating to provide extra power during abnormal or emergency operating conditions, and that such denial will reduce the utility and safety of these rotorcraft.

A review of the history and an examination of the qualification programs and the performance credit allowed for this 30-minute rating in both Parts 27 and 29 of the FAR clearly indicate that this rating is intended only as a rating to be used after failure of an engine in a multiengine turbine-powered rotorcraft. Hence, the term OEI is applicable, both from a definitive standpoint and for standardization of nomenclature that becomes apparent in subsequent definitions and usages in the regulations affected by this rule change.

Two commenters also question the need to add the term "OEI" to the "rated 2½-minute (OEI) power" definition of "rated 2½-minute power" since the limitations on the use of this rating are already clear in the current definition. The FAA concludes, as indicated above, that standardization of nomenclature will be achieved by this change and that it may preclude misinterpretation associated with an ongoing and expansive use of the FAR by the foreign rotorcraft community. Therefore, the proposal is adopted without change.

Proposal 3-2. The notice proposed to amend § 1.2 to include, as a new abbreviation, the term "OEI" meaning "one engine inoperative." This abbreviation has found widespread acceptance in the aviation community. No comments were received, and the proposal is adopted without change.

Proposal 3-3. The notice proposed to amend paragraph (b) of § 27.67 to permit rotorcraft climb performance to be determined at "continuous OEI" power for rotorcraft certificated for this power. In addition, the term "30-minute power" would be revised to read "30-minute OEI power." These changes are needed to coordinate and implement the use of the new "continuous one-engine-inoperative (OEI) rating" for rotorcraft and to implement the revision to the definition of "30-minute power" included in Proposal 3-1. This proposal is one of a series of revisions to Parts 1, 27, 29, and 33 which are directed at creating a new continuous OEI rotorcraft power rating. This rating would be available as an alternate to the existing 30-minute OEI rating presumably at a lower power, but without a time limitation. This rating

would enable rotorcraft dispatched on routes requiring en route stay-up ability for more than 30 minutes after an engine failure to carry a higher useful load and thus improve productivity. Rotorcraft operators servicing distant offshore petroleum industry facilities would particularly benefit by the availability of this rating. No comments were received, and the proposal is adopted without change.

Proposal 3–4. The notice proposed to amend § 27.361 to require design consideration of the engine torque loads associated with emergency operation of governor-controlled turboshaft engines and also torque reaction loads from sudden engine stoppage that may be expected with turbine engines. This amendment requires design features to ensure that the engine will remain in place and not jeopardize the continued safe operation of the rotorcraft in the event of these conditions.

One commenter objects to the proposal and contends that the term "sudden engine stoppage" is vague and could be interpreted to mean instant stoppage with the concurrent assumption of infinite loads and is, therefore, unrealistic. However, FAA experience with the application of similar wording regarding engine mount limit loads in corresponding subparts of Parts 23 and 25 indicates that the engine manufacturers can reasonably provide data on inertia of rotating parts and deceleration times to be expected in the event of sudden engine stoppage which generates critical loads. These data should be acceptable for design analysis in this amendment and should avoid the need to consider any concepts regarding infinite and unrealistic loads.

This same commenter objects to the last phrase in proposed paragraph (a)(5) which would have required engine torque limit load values for governor-controlled engines to include the "torque imposed by inadvertent or abnormal control motions to be expected in service." The objection is that this requirement would be unrealistic as well as impractical to apply. Upon reconsideration, the FAA agrees the proposed language could create undue burdens because of difficulty of interpretation or application and, accordingly, proposed paragraph (a)(5) is removed. A similar change to Proposal 3–40 for § 29.361 has been made. This proposal is adopted with these changes.

Proposal 3–5. The notice proposed to amend Part 27 to add a new § 27.833 which is a revised version of the lead-in paragraph of existing § 27.859(c) as it relates to the approval requirements for fuel heaters. This new section is needed to facilitate the extensive changes adopted for § 27.859 in Proposal 3–6 and to achieve parallel rule construction with Part 29. This revision will ensure that all combustion heaters, not just those gasoline-operated, will be approved. No comments were received, and the proposal is adopted without change.

Proposal 3–6. The notice proposed to amend § 27.859 extensively by revising the existing combustion heater design and qualification standards to make them equivalent to those now prescribed in Part 29. This amendment will minimize the probability of hazardous fires from malfunction or failure of combustion heaters. No comments were received, and the proposal is adopted without change.

Proposal 3–7. The notice proposed to amend § 27.901(b)(1) to require satisfactory determination that the affected rotorcraft can operate safely throughout adverse environmental conditions, such as high altitude and temperature extremes. This amendment is needed to provide consistent application of environmental qualification aspects. The notice also proposed to add a new paragraph (b)(5) to require design precautions to minimize the potential for incorrect assembly of components and equipment essential to safe operation. Without such precautions, errors in the assembly and maintenance of the complex systems and equipment found in modern rotorcraft can introduce hazards. No comments were received, and the proposal is adopted without change.

Proposal 3–8. The notice proposed to amend § 27.903 to include a requirement that reciprocating engines must be qualified under § 33.49(d) to be eligible for approval in helicopters. Also, changes were included which prescribe tests and qualifications for powerplant, area cooling fans. This will serve to ensure that correct qualification procedures are used for helicopter engines and that all powerplant cooling fans are properly tested. No comments were received, and the proposal is adopted without change.

Proposal 3–9. Currently § 27.923(e), as it relates to the 2½-minute power rating, and § 27.923(j), as it relates to the 30-minute power rating, provide for only minimal testing of the capability of the rotor drive system to sustain these powers. The notice proposed to amend these paragraphs to extend the testing to adequately assure valid qualification tests. These changes ensure the integrity of the rotor drive system so that it will safely sustain the higher stresses expected with actual, repeated use of these power ratings.

New paragraph (k) provides a qualification test schedule for the optional, continuous OEI rating introduced in the notice by proposed amendments to §§ 1.1, 1.2, and 27.67, and by similar proposed amendments to Parts 29 and 33. This new paragraph is needed to provide a basis for endurance testing qualification for this new rating.

The notice proposed to remove, where applicable, the reference to "engine power" to avoid confusion regarding whether the tests prescribed by this section must be conducted at powers corresponding to engine ratings established under Part 33 rather than rotorcraft powers which may be lower than those established under Part 33 but selected by the applicant as a limit on its product. Also, the notice proposed to add the abbreviation "OEI," where applicable, to coordinate the introduction of this term as defined in an amendment to Part 1.

No comments were received, and the proposal is adopted without change.

Proposal 3–10. The notice proposed to amend § 27.927 to add a requirement that the rotor drive system overtorque tests prescribed by paragraph (b) be conducted at the maximum rotational speed intended for the power condition of the test. The existing rule, which specifies only the torque to be applied to the rotor drive system during the overtorque test, does not otherwise completely define the applicable test requirements.

One commenter objects to the proposal, claiming that to specify the rotational speed as "maximum" would preclude the concept of reducing speed during the test to facilitate achieving required test torque. However, existing paragraph (b)(3) already provides relief from exacting test conditions if there is adequate substantiation. This proposal is, therefore, adopted without change. It is noted that this section, as revised, is not totally parallel with Part 29 but that inconsistency must be considered separately from this rulemaking action as it is beyond the scope of the notice.

Proposal 3–11. The notice proposed to add a new § 27.954 that sets forth requirements for design features to prevent ignition of fuel vapor in the fuel system due to lightning strike to the rotorcraft. Lightning strike and any subsequent strokes which might cause streamering, corona, and arcing associated with a lightning strike can result in catastrophic explosions in the rotorcraft's fuel system. No comments were received, and the proposal is adopted without change.

Proposal 3–12. The notice proposed to amend § 27.955 to reorganize and restate the rotorcraft fuel system flow performance requirements and to add new requirements for test conditions to

ensure that adequate fuel flow is available to the engine in critical combinations of adverse conditions which may be expected during operation of the rotorcraft. Additionally, the amendment requires a correlation between fuel filter blockage and the fuel filter warning device required by existing § 27.1305(q), and provides design and performance standards for auxiliary fuel tank and transfer tank fuel systems. These changes were proposed to ensure that all parameters associated with fuel supply to the engine are adequately addressed.

One commenter suggests that the fuel flow considerations in proposed paragraphs (a)(1) through (a)(7) require an excessive number of tests. Also, the commenter objects to the concept that all of the test conditions should be assumed to occur or exist simultaneously.

Aside from new requirements in this proposal pertaining to fuel filter blockage, the use of critical fuel properties, and critical pump and pump motive power or speed, the statement of flow requirement is not technically changed. The new requirements should be relatively easy to adopt into a carefully planned flow test. However, the FAA agrees that it may be unreasonable to expect all conditions which can adversely affect fuel flow to exist simultaneously, and a phrase allowing the exclusion of improbable combinations of conditions has been added in the final rule.

This same commenter offers without further comment alternate wording for the proposed revisions. Included in this was the suggestion that the fuel pressure (during the fuel flow test) may be allowed to fall below the minimum limit specified by the engine type certificate data sheet during transients for which only safe operation must be shown in flight. The FAA considers that this change would be confusing to the crew (e.g., fuel pressure below the red radial on the fuel pressure gauge) and may even compromise the safety margin established during the engine certification test program. This suggested change is inappropriate and is not included in the amendment.

Another suggested change to the proposal would, in effect, remove any requirement to have fuel flow capability to continue normal engine operation with fuel filter blockage in excess of the degree of filter blockage associated with activation of the indicator required by § 27.1305(q). After considering the success of fuel system performance based on previously approved fuel flow testing methods, the FAA concurs that the proposed requirement may be excessive, and accordingly, the section is revised to only require an adequate flow with filter blockage associated with activation of the warning indicator required by the associated provisions of § 27.1305(g).

Another commenter states that the automatic fuel transfer provisions of new paragraph (b) and revised paragraph (c) are not justified by service experience and will introduce unnecessary complexity in the fuel system. An FAA review of presently certificated rotorcraft fuel systems indicates that most already employ the features of these proposals. Rotorcraft designs and operations often impose a high workload on the flightcrew; therefore, reasonable steps to alleviate this increasingly burdensome trend are not only appropriate but necessary.

The proposal is adopted with the change noted.

Proposal 3–13. The notice proposed to amend § 27.961 to restate the fuel system hot weather qualification requirements and to add a requirement for the system to be capable of providing adequate fuel during overpower transients to be expected. This amendment makes needed improvements to the existing wording of § 27.961 to assure adequate qualification testing. No comments were received, and the proposal is adopted without change.

Proposal 3–14. A new paragraph (b) to § 27.963 would have specified higher load factors in the design and retention of fuel tanks to provide better assurance that the tanks would retain their contents as a means of minimizing postcrash fuel fire hazards. A commenter objects to the higher load factors, stating that these factors will actually degrade fuel system crashworthiness in many cases. The commenter offers an alternate proposal for improved fuel system crash resistance which includes a fuel tank drop test, allowances for relative motion between fuel system components, and a requirement for fuel cells (presumably, bladder cells) to meet the puncture, tear rate, impact penetration, panel, and fitting strength of an unspecified technical standard order.

The drop test suggested by the commenter was previously presented as an FAA proposal at the Rotorcraft Regulatory Review Conference held at New Orleans, and received favorable comments. However, the proposal was not included in the notice because associated benefit/cost studies failed to show a positive beneficial result. Nevertheless, the FAA is interested in continuing efforts to develop regulatory criteria for rational fuel system crashworthy designs for rotorcraft. The FAA is active in related programs in progress at its Technical Center and is also participating in the proceedings of the General Aviation Safety Panel (GASP) as well as studying the progress in this regard of foreign manufacturers. As a result of all of these activities, the FAA expects to develop, in the near future, an NPRM specifically for rotorcraft fuel system crash resistance that would be directly related to the survivability of the occupants. As a result and after further consideration, the portion of the proposal to add a new paragraph (b) is withdrawn, and existing paragraphs (a) through (d) of this section will remain unchanged.

The notice also proposed to add new paragraphs (f) and (g). These additions, now redesignated as paragraphs (e) and (f), respectively, require designs and tests to ensure that no exposed surface inside a fuel tank would, under normal or malfunction conditions, constitute an ignition source. They also set forth standards for the design and qualification of fuel tanks located in personnel compartments. These additions are needed to ensure freedom from the hazards of fuel tank internal explosions and to ensure that fuel tanks in passenger compartments are installed to present no hazards to the personnel or to the rotorcraft. No comments were received regarding this portion of the proposal.

The proposal is adopted with the changes discussed.

Proposal 3–15. The notice proposed to amend § 27.969 so that properly interconnected fuel tanks will not be required to have an expansion space for each tank if adequate expansion space is otherwise provided. This amendment will eliminate unnecessary design requirements when simpler designs have been proven satisfactory. No comments were received, and the proposal is adopted without change.

Proposal 3–16. The notice proposed to amend § 27.971 to prescribe finite, minimum values for fuel tank sump capacity, to authorize the use of a sediment bowl in lieu of a sump, and to require these sumps or sediment bowls to be effective in any ground attitude which can reasonably be expected in service.

A commenter objects to the fuel tank sump volume requirements on the basis that lower sump volumes acceptable under § 29.971 for transport category rotorcraft have been shown by service experience to be adequate for Part 27 rotorcraft. Also, the commenter questions the need for a larger capacity sump bowl than is required for Part 29

rotorcraft. The sump volume selected for the proposed rule is identical to that required for normal category airplanes (Part 23) and, as noted by the commenter, is larger than that required for transport category rotorcraft. In the FAA's view, this difference is warranted when it is considered that general aviation fuel supplies are likely to have more water and other contaminants than may be expected for fuel supplies for transport aircraft. However, the FAA concurs that the 2-ounce-for-every-20-gallons-sediment-bowl requirement of proposed § 27.971(a)(1) is not justified, and after reconsidering it has been changed to 1 ounce for every 20 gallons. The proposal is adopted with this change.

Proposal 3–17. The notice proposed to amend § 27.975 to add a new paragraph (b) which requires fuel tank vent systems to be designed to minimize spillage in the event of rollover of the rotorcraft during landing or ground operation. This is intended to reduce the potential for fuel fires when fuel escapes from a vent port after a rollover and encounters an ignition source. No comments were received, and the proposal is adopted without change.

Proposal 3–18. The notice proposed to amend § 27.991 to restate the existing fuel pump redundancy requirements, to remove unnecessary definitions and detail design requirements, and to extend the requirement for consideration of pump failure to include the fuel pump motivation device (such as a generator for electric pumps). These changes clarify the pump requirements and ensure that the intent of the rule is met; i.e., that fuel flow is adequate regardless of whether the failed component is a pump or the pump's motivating device. No comments were received, and the proposal is adopted without change.

Proposal 3–19. The notice proposed to amend § 27.993 to require fuel lines to be constructed and routed to withstand the same new higher load factors as discussed in Proposal 3–14 for § 27.963. A commenter objects to this new requirement citing the same reasons expressed for paragraph (b) of Proposal 3–14. For the reasons expressed in the discussion of Proposal 3–14, this proposal is withdrawn.

Proposal 3–20. The notice proposed to amend the introductory paragraph of § 27.997 to include a requirement that the fuel filter must be located in the fuel system to protect any component sensitive or susceptible to fuel contamination, including fuel metering devices or pumps. The intent of the proposed amendment has been clarified by inserting the words "but not limited to" in the third line of § 27.997. This will ensure that any component sensitive to fuel contamination, not just fuel metering devices or an engine positive displacement pump, is protected.

A commenter objects to including fuel metering devices in the requirement, stating that fuel meter malfunction due to contaminants will have no effect on fuel flow. It is believed that the commenter is referring to fuel flow rate measuring devices whereas the proposal involves the fuel metering devices intended to control flow rate such as fuel injection devices. These latter items require filter protection from fuel contaminants.

The amendment to paragraph (d) will clarify and limit the scope of the existing rule to only provide for adequate filtration since the capacity aspect of the rule is addressed elsewhere by revisions to §§ 27.955 and 27.1305.

Accordingly, this proposal is adopted without substantive change.

Proposal 3–21. The notice proposed to amend § 27.999 to require fuel system drains to be effective with the rotorcraft in any ground attitude position. This change would ensure effective fuel drainage when the rotorcraft is parked on uneven terrain. In addition, the notice proposed to amend paragraph (b)(2) to require fuel drains to have means to ensure positive closure, as contrasted to positive locking, in the "off" position. This will accommodate designs that feature spring-loaded drain closures which have been found to be satisfactory. No comments were received, and the proposal is adopted without substantive change.

Proposal 3–22. The notice proposed to amend the title of § 27.1011 from "General" to "Engines: General" to reflect the concept that it applies specifically to engine oil systems and not to other systems such as those for transmissions and rotor drive system components. A new § 27.1027 provides standards for oil systems for transmissions and rotor drive systems. No comments were received, and the proposal is adopted without change.

Proposal 3–23. The notice proposed to relax what has been found to be an unduly restrictive requirement in current § 27.1019(a)(3) for an "indicator" to indicate the contamination level of oil filters. The amendment instead allows accepting a "means to indicate" the contaminate level to allow a wider range of acceptable methods of compliance. No comments were received, and the proposal is adopted without change.

Proposal 3–24. New § 27.1027, introduced in the notice, provides oil system standards for transmissions and other drive system components. This amendment complements an amendment to § 27.1011 which limits its scope to engine oil systems. (See Proposal 3–22.) A commenter correctly notes that the reference to paragraph (a)(1) in paragraph (c) should be to paragraph (b). This correction and other minor editorial changes have been made to paragraph (c).

Another commenter suggests that the function of the screen required by paragraph (c) is only to protect the oil pump associated with pressurized lubrication systems. While that function is important, this screen should also serve to prevent any debris, regardless of its source, which could obstruct oil flow from the oil tank or sump, from entering the parts of the system not protected by the screen required by paragraph (b). Paragraph (c), revised as discussed, will accomplish this purpose.

After the consideration of comments received on the oil system proposal for transport rotorcraft (Proposal 3–62), it is apparent that compliance with § 27.1011, which after this amendment pertains only to engine oil systems, should not be required for transmissions and other rotor drive system components. Accordingly, new § 27.1027 is revised to remove reference to § 27.1011. The proposal is adopted with the changes discussed.

Proposal 3–25. The notice proposed to amend § 27.1041 to provide clarification and definition of powerplant components required to be considered when evaluating the performance of the powerplant cooling systems and arrangements. This amendment will minimize needless interpretation or extrapolation of the existing rule.

A commenter suggests that the general powerplant cooling system requirements of § 27.1041 or other appropriate rules should be revised to require the cooling arrangements for rotorcraft gearboxes to be capable of cooling the gearboxes at abnormally high "emergency" temperatures commensurate with continued cruise flight after a failure in the normal cooling system. The commenter claims that such arrangement could eliminate unnecessary and perhaps hazardous, unscheduled landings when the rotorcraft gearbox cooling system actually had the capability, although unknown to the crew, to continue flight. While there is some merit to this, there is adequate information on continued operation in failure modes found in the Emergency Procedures Section of the applicable Rotorcraft Flight Manual. Furthermore, rulemaking on this subject is beyond the scope of the notice. The

proposal is adopted without substantive change.

Proposal 3–26. The notice proposed to add to the powerplant cooling tests required by § 27.1045 an alternate acceptance criterion which may be appropriate if, during the cooling test, component temperatures peak and then decline rather than stabilize. In these instances, the current requirement to continue the test until "stabilization" occurs is unduly restrictive and should be eliminated. No comments were received, and this proposal is adopted without change.

Proposal 3–27. The notice proposed to amend § 27.1091 to remove paragraph (d) since the specific test defined by this paragraph may be meaningless or at least not critical for certain rotorcraft. Further, the turbine inlet foreign-object-ingestion protection provided by paragraph (d) is adequately evaluated by existing § 27.1091(e)(2). No comments were received, and the proposal is adopted without change.

Proposal 3–28. The notice proposed to amend § 27.1093 to relocate the phrase "within the limitations of the rotorcraft" from paragraph (b)(1) to paragraph (b)(1)(ii). This change will restore this phrase to its original and proper context; i.e., as pertinent to the requirements for demonstrating flight into snow. The existing location of the phrase may be read to imply that limitations may be established for the rotorcraft in lieu of demonstrating capability of the engine inlet to operate in icing meteorological conditions. This was not intended or justified by the editorial misplacement to this section made by Amendments 27–9 (39 FR 35461; October 1, 1974) and 27–12 (42 FR 15044; March 17, 1977).

A commenter objects to the proposal stating that the change would require the engine air inlet system to operate in a severe, possibly continuous, icing environment although the rotorcraft to be certificated may be otherwise completely unprotected and incapable of operation in icing conditions. Engine inlet ice protection is required whether or not the remainder of the rotorcraft is protected. This is the reason that engine power assurance during even an inadvertent icing encounter is of critical importance to continued safe flight. Thus, there is an independent requirement for engine air inlet operation in icing conditions regardless of the icing capability of the remainder of the rotorcraft.

Another commenter states that the requirements of § 27.1093(b)(2) for ground operation (taxiing) in certain meteorological conditions should be limited in applicability to rotorcraft which are qualified for flight into atmospheric icing (ref. § 27.1419). A proposal for such a rule change of this order is beyond the scope of the notice and is, therefore, inappropriate in this rulemaking action.

The proposal included changing the reference in paragraph (b) from Appendix C of Part 25 to Appendix C of Part 29. These appendices are identical. This change is required to correlate the airframe icing requirements in § 27.1419 to the powerplant icing requirements of this section.

Accordingly, the proposal is adopted without change.

Proposal 3–29. The notice proposed to amend paragraph (c) of § 27.1141 to extend its applicability to any powerplant valve regardless of the location of the valve control, except that valves are excluded if their function is not required for safety. No comments were received, and this proposal is adopted without change.

Proposal 3–30. The notice proposed to amend paragraphs (a) through (d) of § 27.1143 to replace the terms "throttle control" and "thrust control," which are appropriate only to certain engines, with the more general term "power control." This change should preclude misconceptions regarding engine control arrangements when governor-controlled turboshaft engines are employed in rotorcraft. No comments were received, and this proposal is adopted without change.

Proposal 3–31. The notice proposed to amend paragraph (b) of § 27.1163 to restate the design requirement for accessory drive torque limiting devices in terms which will now allow the torque limiting device to be included in either the accessory or the rotor drive system. This will eliminate the ambiguity in the present rule which implies that the torque limiting device required for accessories must be in the design of the rotor drive system. No comments were received, and the proposal is adopted without change.

Proposal 3–32. The notice proposed to amend § 27.1189 to require flammable fluid shutoff devices and controls for these devices to be designed, located, and protected to function properly under conditions likely to result from a critical fire in a powerplant area. This change eliminates design arrangements wherein valves located outside the fire zone but in close contact to the firewall may be adversely affected by heat transfer through the firewall during a substantial powerplant fire and may interfere with the operation of these shutoff devices, thus, adding to the hazards of an engine fire. No comments were received, and this proposal is adopted without change.

Proposal 3–33. The notice proposed to amend § 27.1193 by adding a new paragraph (f) to require redundant retention means for each openable or readily removable panel, cowling, or engine or rotor drive system covering. Conventional fasteners for these devices are subject to frequent operation by maintenance personnel and are known to deteriorate or fail from wear or vibration. Such failure could be hazardous if it results in a loose panel, cowling, or covering striking or being struck by the rotors or by critical controls.

One commenter requests that proposed § 27.1193(f) be revised to reflect the single failure concept when evaluating the need for redundant cowling or panel retention devices. Such a limitation to the rule would be inappropriate since one failure can contribute directly to loads carried by other retention devices and thus result in multiple failures. The amendment provides relief from multiple failure considerations if such failure modes are extremely improbable. Therefore, the proposal is adopted without change.

Proposal 3–34. Paragraph (1) of § 27.1305 is revised to require a low fuel warning device for each tank that can be used to feed an engine, including single tank configurations. In addition, new wording is added to allow, if desired, a longer time between warning actuation and fuel exhaustion and to require the low fuel warning device to be independent of the normal fuel quantity indicating system. This change will clarify which tanks (i.e., any tank which directly feeds an engine) require low fuel warning devices and allow the designer flexibility to set the device to signal low fuel earlier than 5 minutes before fuel exhaustion if needed for operational reasons. A requirement for the low fuel warning device to be independent of the normal fuel quantity indicator is needed since without independence, errors or malfunctions of the normal indicators could mask the signal to the low fuel warning device and negate its value.

Paragraph (m) currently requires "a means to indicate to the pilot when each emergency pump is in operation." The existing rule was intended to alert crew members to the fact that the primary pump has failed so that appropriate precautions for continued flight in this failure mode may be instituted. Some rotorcraft configurations operate the main pump and the emergency pump simultaneously. Others rely on suction fuel feed systems after failure of the main pump, thus leading to possible confusion regarding acceptable means

of compliance. This proposal revises paragraph (m) to simply state that an indication of pump failure is required. Other rules require continued fuel feed in the event of this type of failure.

One commenter suggests that the proposed change to paragraph (m) should include, as a means of compliance, a preflight check to enable the crew to establish that all fuel pumps are functioning properly. The FAA does not concur because a preflight check would not provide the flightcrew with the in-flight failure indication needed to enable the crew to institute any appropriate precautions associated with continued operation on the remaining derogated fuel system.

The notice proposed to amend paragraph (q) to extend its application to all rotorcraft (not just those with turbine engines) and to require an indication to the crew of the degree of filter blockage established in conjunction with the fuel flow demonstrated in compliance with § 27.955. This change clarifies the intentions of the rule and correlates the setting of the indicator to the fuel system performance.

Paragraph (s), which currently requires an indicator to indicate the functioning of all fuel heaters, is revised to require function indicators only for selectable or controllable fuel heaters. Thermostatically modulated fuel heaters do not need crew attention and a requirement for an indicator for the function of heaters of this type is removed.

No other comments were received. For the foregoing reasons, this proposal is adopted without change.

Proposal 3–35. The notice proposed to amend § 27.1337 to add a new paragraph (e) to require rotor drive system transmissions and gearboxes to be equipped with magnetic chip detectors. These chip detectors are needed to alert the crew of impending failure of ferromagnetic components in these transmissions and gearboxes. No comments were received, and this proposal is adopted without change.

Proposal 3–36. The notice proposed to amend § 27.1521 to add new paragraphs (g), (h), and (i) which establish and define the powerplant limitations associated with OEI ratings. These new paragraphs will ensure proper recognition in the powerplant limitations listing required by § 27.1583(b). No comments were received, and this proposal is adopted without change.

Proposal 3–37. The notice proposed to amend § 27.1549 to add a new paragraph (e) which requires arrangement of instrument markings for OEI ratings to be clearly differentiated from the normal operating limits. This will ensure that instruments are marked to avoid or minimize possible inadvertent use of OEI ratings when operation of the rotorcraft should be limited to the normal operating limits. No comments were received on this proposal; however, it was subsequently noted that the proposed wording would preclude use of the 2½-minute OEI power rating to achieve a safe one-engine-inoperative climbout after a balked landing or to avoid the hazardous zones of the HV diagram if the associated engine failure occurred in conjunction with flight conditions which dictate use of this power. This was not intended or justified, and a revision to this section eliminates this possiblilty. The revision is editorial only.

Proposal 3–38. The notice proposed to amend paragraph (c) of § 29.45 to require published rotorcraft performance to be adjusted conservatively to account for powerplant instrument error. One commenter objects stating that the proposed rule is unnecessary because the subject of powerplant instrument accuracy is already adequately addressed in the guidance contained in paragraph 55 of FAA Advisory Circular 29–2A, "Certification of Transport Category Rotorcraft," dated September 16, 1987. As a result, not just of this comment, out after a review of several similar discussions in Committee II—Propulsion, held at the New Orleans Rotorcraft Regulatory Review Conference, the FAA agrees that the current regulation is adequate on a standalone basis. Accordingly, this proposal is withdrawn.

Proposal 3–39. The notice proposed to introduce in § 29.67 a requirement to determine climb performance at the new "continuous" OEI rating discussed in detail in the explanation for Proposal 3–3 and to revise the term "30-minute power" to read "30-minute OEI power." The new wording of § 29.67 sets forth the requirements for performance at the continuous OEI rating as parallel, alternative performance available to rotorcraft which have met the corresponding component and system qualifications specified by this proposal. Subsequent to issuance of the NPRM, it was brought to the attention of the FAA that engine installations may be designed with a critical engine. The proposal, if adopted, would not account for this design although the original intent was to determine climb performance with loss of the engine in a "worst-case" situation; i.e., the most critical engine. As a result, the rule as adopted has been clarified to substitute "the critical engine inoperative" for "one engine inoperative." These changes will clarify the eligibility and requirements associated with this new continuous one-engine-inoperative rating. No comments were received, and the proposal is adopted with only the change noted.

Proposal 3–40. The notice proposed to amend § 29.361 to set forth new and more realistic design limit torque requirements for turbine engine installations. For a discussion of this proposal, see the discussion under Proposal 3–4 pertaining to § 27.361. Comments received for this proposal are identical to comments received for Proposal 3–4. Accordingly, Proposal 3–40 is adopted with the same changes discussed in Proposal 3–4.

Proposal 3–41. The notice proposed to amend § 29.549(e) to add the term "OEI" to the existing term "2½-minute power." The term "OEI" is a new abbreviation added to § 1.2 by this amendment. This change standardizes and clarifies the title and limitations appropriate for the use of 2½-minute OEI power. No comments were received on this proposal. It is adopted without change.

Proposal 3–42. The notice proposed to amend § 29.901 by revising paragraph (b)(2), adding a new paragraph (b)(6), and revising paragraph (c).

For an explanation of the part of the proposal to revise paragraph (b)(2) and to add a new paragraph (b)(6), see Proposal 3–7. No comments were received, and this part of the proposal is adopted without change.

The proposed change to paragraph (c) would limit the scope of the powerplant systems fault analysis to "single failure or malfunction or probable combination of related secondary failures." Several commenters object to the new wording of paragraph (c) on the grounds that limiting the analysis to "related" secondary failures could result in a lower level of safety. These commenters, who have extensive experience with application of the corresponding rule in Part 25 for transport airplanes, deny that the wording as it now exists would cause a "proliferation of endless failure modes and effects analysis" as contended by the original proponents of the proposed wording. In view of these comments and the FAA's general objective of not lowering the level of safety, the proposed change to paragraph (c) of § 29.901 is withdrawn.

Proposal 3–43. The notice proposed several changes to § 29.903. The first change adds a requirement to paragraph (a) that reciprocating engines used in helicopters must be qualified in accordance with the special helicopter engine testing requirements in § 33.49(d).

This change is needed to ensure that this aspect is not overlooked when such engines are installed in Part 29 programs. No comments were received on this part of the proposal. It is adopted without change.

Another change revises paragraph (b)(2) to identify and clarify crew action; i.e., normal pilot action allowable with primary flight controls, in determining if adequate powerplant systems isolation is provided. Most, if not all, of the power lever motion for rotorcraft engines is mechanically or electronically affected by the flight controls, and this change eliminates any possible confusion that may exist regarding the acceptability of modifying optimum flight control manipulation to protect engine parameters. No comments were received on this part of the proposal. It is adopted as proposed.

New paragraph (c)(3) is added and changes existing paragraph (c) from simply requiring restart capability to requiring the restart capability to be available throughout a flight envelope appropriate to the rotorcraft. This will avoid the concept that an in-flight engine restart envelope which is minimal and impractical constitutes acceptable compliance with this rule.

Due to a printing error, the word "appropriate" was omitted from the Federal Register publication of Proposal 3-43. Paragraph (c)(3) should read, "Engine restart capability must be established throughout a flight envelope appropriate to the rotorcraft."

A commenter notes the ommission and suggests that the engine restart capability should be established throughout a defined flight envelope. This alternate wording, however, could result in certification of rotorcraft with a restart capability so limited as to be of little or no use to the crew. Another commenter suggests that the requirement for an air restart envelope should include restart capability throughout the flight envelope of the rotorcraft. However, this wording could be interpreted to require restart at the extremes of the flight envelope. Neither of these suggestions are justified and, therefore, the proposal is adopted with the editorial change to paragraph (c)(3) as discussed.

Proposal 3-44. The notice proposed to amend paragraph (a) of § 29.908 to require the rotorcraft to have the capability of safe operation, including adequate cooling, following a cooling fan failure. Under the existing rule, fan failure modes could be accepted which may result in hazards to the rotorcraft caused by loss of cooling air to critical powerplant components. The notice also proposed a new paragraph (c) requiring a determination that cooling fans which are not part of the rotor drive system are not subject to fan blade resonant conditions within the operating limits of the rotorcraft. This will ensure that cooling fans which by location or definition may not be included in other fatigue tests or evaluations are evaluated for possible fatigue failure. Finally, the title of this paragraph has been changed from "Failure Evaluation" to "Fatigue Evaluation" to be consistent with the subject material of the paragraph as revised. No comments were received, and this proposal is adopted without change.

Proposal 3-45. The notice proposed a number of amendments to § 29.923. These include editorial changes, additional endurance test criteria for a new continuous OEI rating, and clarification of the torque and r.p.m. relation intended for the various power ratings involved in the tests prescribed by this section.

Paragraph (a)(1) is amended to require the test cycle to be extended beyond 10 hours if OEI rating tests are included in the test program. This change is needed to maintain the cyclic aspect of the test if OEI ratings are included.

Paragraph (a)(3) is amended to include rotational speed as a part of the test because the term "torque" by itself does not adequately define the test.

Paragraph (a)(3)(ii) is amended for clarity.

Paragraphs (b)(2), (f), and (k) are amended to add the test requirements for the new continuous OEI rating and retain, as an alternate, the 30-minute OEI rating tests for those applicants who may request this rating. This change provides a regulatory test basis for qualifying the rotor drive system for optional OEI ratings.

Paragraph (g) is amended to remove the inference that the 2½-minute OEI runs must be repeated if the takeoff run is reconducted. Under these circumstances, additional testing for the 2½-minute rating is unnecessary for safety.

Additional amendments are made to paragraphs (b), (c), (d), (e), (f), (h), and (k) to clarify the provisions with respect to power parameters to ensure that appropriate torque and rotational speeds are used during the tests.

No comments were received on this proposal, and it is adopted without change.

Proposal 3-46. The notice proposed several amendments to § 29.927. Paragraph (c) is changed by revising and extending the rotor drive system lubrication failure test requirements for Category A rotorcraft and by clarifying the corresponding test requirements for Category B rotorcraft. Category A aircraft must have significant continued flight capability after a failure in order to optimize eventual landing opportunities. However, indefinite flight following the lubrication system failure is not expected. The changes to the Category B rotorcraft drive system lubrication failure test requirements are largely for clarification and are not substantive.

A commenter notes that paragraph (c), as proposed, could be interpreted to preclude credit for auxiliary lubrication systems or to require consideration of lubricant failures to self-lubricated bearings. This was not intended, and the wording of paragraphs (c)(1) and (c)(2) has been revised to eliminate this possible ambiguity.

The change to the overspeed test requirements in paragraph (d) removes the arbitrary requirement of 120 percent and substitutes a more realistic one which will relate to the operating characteristics of the rotorcraft. This change is needed because the existing 120 percent overspeed requirement may be unnecessarily severe for some rotorcraft. An additional change eliminates the requirement for accomplishing the acceleration phase of the overspeed tests within 10 seconds when the maximum acceleration rate of the engine requires more time. This will avoid special engine fuel control modifications for test purposes which are unnecessary and may damage the engine.

One commenter suggests that the overspeed tests required by paragraph (d) should be limited to the speed associated with speed and torque limiting devices. The FAA concurs with this comment provided that the speed and torque limiting device is reliable and independent from the normal engine control for rotational speed, and the amendment reflects this concept. The same commenter also suggests that the overspeed tests required in paragraph (d) should be limited to 105 percent of the maximum rotational speed, not considering transients. The FAA does not concur since it is essential that overspeed above the maximum expected transient speed be demonstrated to assure a margin of safety for this condition.

Further change to § 27.927 is made to add a new paragraph (f) which requires each individual test specified by this section to be conducted without intervening disassembly and, except for the lubrication failure tests of paragraph (c), requires each part tested to be in a serviceable condition at the conclusion of the test. Intervening disassembly is

unacceptable since it can invalidate the required serviceability findings. The serviceability requirement is needed to ensure that only test results which are satisfactory may be used to show compliance.

One commenter incorrectly assumes that new paragraph (f) requires all tests under § 29.927 to be conducted in the sequence listed in the section and on the same test specimen. New paragraph (f) is intended to require, in part, the test specified by any selected paragraph, such as the 200 applications of torque specified by paragraph (b)(1) of this section, to be conducted without intervening disassembly on any one specimen of the rotor drive system.

This proposal is adopted with the changes discussed.

Proposal 3–47. For an explanation of new § 29.954, see the explanation for Proposal 3–11. No comments were received on this proposal, and it is adopted without change.

Proposal 3–48. For an explanation and a discussion of the comments related to the proposed changes to § 29.955, see the discussion of Proposal 3–12. As a result of the comments received for Proposal 3–12, corresponding changes have been incorporated into this proposal, and it is adopted with those changes.

Proposal 3–49. The notice proposed an amendment to § 29.961 to simplify and restate the fuel system hot weather qualification requirements. This would eliminate detail requirements in the existing rule which were to some extent redundant or not necessarily critical for some rotorcraft. No comments were received on this proposal. The phrase "including, if applicable, the engine operating conditions defined by §§ 29.927 (b)(1) and (b)(2)" is added in the amendment to be consistent with the corresponding amendment being made to § 27.961 and to ensure that certain critical qualification aspects are properly considered. This change is clarifying in nature and falls within the scope of the notice. The proposal is adopted with only this editorial addition.

Proposal 3–50. For comments related to the proposed revision to paragraph (b) of § 29.963, see the discussion of Proposal 3–14. As indicated in that discussion, the higher load factor requirements for fuel tanks may not be appropriate and, therefore, the proposed change to paragraph (b) is withdrawn.

For an explanation of the proposal to add a new paragraph (e) to § 29.963, see the discussion for Proposal 3–14. No comments were received on this part of the proposal, and it is adopted as proposed.

Proposal 3–51. The notice proposed an amendment to remove paragraph (f) from § 29.967. The requirements of paragraph (f) are adequately covered by § 29.963. No comments were received, and the proposal is adopted without change.

Proposal 3–52. For an explanation of this proposal to amend § 29.969, see the explanation for Proposal 3–15. No comments were received, and the proposal is adopted without change.

Proposal 3–53. The notice proposed to amend § 29.971 to require that fuel tank sump designs be arranged so that drainage to the sump area will occur with the rotorcraft parked in any ground attitude which can reasonably be expected in service. Current § 29.971, which requires only that drainage to the sump be effective with the rotorcraft parked in the "normal" attitude, may not accomplish its intended purpose when rotorcraft are parked on uneven terrain. No comments were received, and the proposal is adopted without change.

Proposal 3–54. For an explanation of this proposal to amend § 29.975, see Proposal 3–17. No comments were received, and the proposal is adopted without change.

Proposal 3–55. For an explanation of this proposal which amends § 29.991, see Proposal 3–18. No comments were received, and the proposal is adopted without change.

Proposal 3–56. The proposal to amend § 29.993 has been withdrawn. For an explanation, see the discussion of Proposal 3–19.

Proposal 3–57. The notice proposed to amend § 29.997 in a manner similar to Proposal 3–20 for § 27.997. For a discussion of the comments received, see Proposal 3–20. The proposal is adopted without substantive change.

Proposal 3–58. For an explanation of this proposal to amend § 29.999, see Proposal 3–21. No comments were received, and the proposal is adopted without change.

Proposal 3–59. The notice proposed to add a new § 29.1001 to set forth certification safety standards for fuel jettisoning systems. While these systems are optional, this new section establishes the minimum safety precautions which designers must consider when choosing to produce systems of this type.

A commenter suggests that demonstration of fuel jettisoning during "emergency descent" should not be required since it is not a condition that can be quantified and is not a normal flight regime. The FAA agrees that a requirement for fuel jettisoning during emergency descent is unnecessary and that flight limitations prescribed for use of the fuel jettisoning system are adequate to ensure safety. Another commenter suggests that jettisoned fuel should be allowed to impinge on certain parts of the rotorcraft if no hazard is involved. Such a finding, if established, should be allowed for credit toward meeting this rule. The rule, as adopted, incorporates both of these changes.

Proposal 3–60. The notice proposed to amend § 29.1011 by revising its title from "General" to "Engines: General," by removing existing paragraph (b), and by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d), respectively. To be consistent with the restructuring of § 29.1011, this amendment includes an editorial change to redesignated paragraph (d) to remove the words "* * * and rotor drive system * * *." These changes will also coordinate the requirements of this section with new § 29.1027. No comments were received, and except for the deletion noted, the proposal is adopted without change.

Proposal 3–61. For an explanation of this proposal to amend § 29.1019, see the explanation for Proposal 3–23. No comments were received, and the proposal is adopted without change.

Proposal 3–62. The notice proposed to add a new § 29.1027, "Transmissions and Gearboxes: General," which contains the requirements removed from § 29.1011 by Proposal 3–60 plus additional lubrication system requirements appropriate for transmissions and gearboxes. These requirements are derived from existing engine oil system requirements which have been adjusted or modified to suit the needs of transmissions and gearboxes.

A commenter suggests that paragraph (b) should apply only to oil systems which employ separate tanks and not to systems which employ gearbox sump type oil reservoirs. In response to the comment, the FAA has determined that the relevant oil system requirements are those relating to strength, including pressure tests, lines and fittings, vent arrangements, drains, vibration, and fire protection and that these requirements are valid for pressure lubrication systems regardless of the oil storage configuration. Nonpressurized splash lubrication arrangements are usually free from the problems of pressurized systems and, therefore, should be exempt from the detail requirements addressed above. This commenter's suggestion is, therefore, not incorporated.

A second commenter suggests that paragraph (b) of the proposal is confusing and should be clarified to ensure proper application. The FAA

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concurs and, accordingly, has made several changes to identify specifically the pertinent parts of other oil system rules referenced in this proposal as well as to remove apparent redundancies.

The third commenter suggests that paragraph (b)(2) should be revised to require a coarse mesh screen in the scavenge to the oil pump rather than the tank or sump outlet screen specified by the proposal. The FAA does not concur since this would, in effect, remove the protection a tank outlet screen provides from trash, paper, or other objects which might enter the system via the tank filler opening.

The proposal is adopted with the changes discussed.

Proposal 3–63. The notice proposed to amend § 29.1041 to revise paragraph (a) to include the phrase "for which certification is requested." This change is needed to clarify and identify the range of operating conditions for which powerplant cooling provisions must be effective. In addition, the notice proposed to amend paragraph (c) to exempt ground-use-only auxiliary power units from the requirement for in-flight cooling tests. No comments were received, and the proposal is adopted without change.

Proposal 3–64. The notice proposed to add a new paragraph (a)(5) to § 29.1043 which includes a definition of "stabilization" as it pertains to powerplant systems cooling tests. This will define more clearly the extent of cooling tests and eliminate prolonged and unnecessary extension of cooling tests which may be interpreted as required if test parameters continue to change slightly during the cooling test. No comments were received and this proposal is adopted without change.

Proposal 3–65. The notice proposed to revise paragraph (c) of § 29.1045 to include requirements for the OEI en route climb cooling tests applicable to the new "continuous OEI" rating introduced in this rulemaking. The existing OEI en route climb cooling test requirements are not adequate to ensure proper evaluation of powerplant cooling parameters during operation at this power rating. No comments were received, and this proposal is adopted without change.

Proposal 3–66. The notice proposed to revise paragraph (a) of § 29.1047 to include requirements for the OEI takeoff/climb cooling tests applicable to the new "continuous OEI" rating for reasons similar to those in Proposal 3–65. No comments were received, and this proposal is adopted without change.

Proposal 3–67. The notice proposed to restate paragraph (b)(1) of § 29.1093 so that the phrase "within the limitations established for the rotorcraft" applies only to the requirement in paragraph (b)(1)(ii) for demonstrating flight in falling and blowing snow. For an explanation of this proposal and a discussion of the comments received from the public, see Proposal 3–28.

The notice also proposed to change the reference in paragraph (b) from Appendix C of Part 25 to Appendix C of Part 29 to correlate the airframe icing requirements of § 29.1419 to the powerplant icing requirements of this section. These appendices are identical.

The proposal is adopted without change.

Proposal 3–68. For an explanation of this proposal to amend § 29.1141, see the discussion for Proposal 3–29. No comments were received, and this proposal is adopted without change.

Proposal 3–69. The notice proposed to amend paragraphs (a) through (e) of § 29.1143 to replace the terms "throttle control" and "thrust control" with the more general term "power control." For an explanation of these changes, see the discussion for Proposal 3–30. No comments were received, and this proposal is adopted without change.

Proposal 3–70. The notice proposed to amend paragraph (d) of § 29.1163 to rephrase the design requirement for accessory drive torque limiting devices so that the torque limiting device may be included in either the accessory or the rotor drive system. For an explanation of this proposal, see the discussion for Proposal 3–31. No comments were received, and the proposal is adopted without change.

Proposal 3–71. The notice proposed to add a new paragraph (b) to § 29.1181. Paragraph (b) reinstates a requirement pertaining to powerplant fire zones which was inadvertently dropped by Amendment 29–3 (33 FR 956; January 26, 1968). Paragraph (b) requires that fire zones, as defined in this section, must be protected from powerplant fires in accordance with specific protective systems defined in other associated rules in the Part. No comments were received on this proposal, and it is adopted without change.

Proposal 3–72. The notice proposed to amend paragraph (e) of § 29.1189 to require flammable fluid shutoff devices and controls for these devices to be designed, located, and protected to function properly under conditions likely to result from a critical powerplant area fire. This change is needed to preclude approval of design arrangements wherein heat from an engine compartment fire is conducted through the firewall to the extent that it jeopardizes the operation of these shutoff devices.

The notice also proposed to amend paragraph (f) to exempt ground-use-only auxiliary power unit shutoff devices from the requirement for a guarded control. This eliminates the need for a design feature when no flight or ground safety objective is involved.

No comments were received, and this proposal is adopted without change.

Proposal 3–73. This proposal adds a new paragraph (f) to § 29.1193 which would, in effect, require redundant retention means for each openable or readily removable panel, cowling, engine, or rotor drive system covering. For an explanation of this proposal and the comment received, see the discussion for Proposal 3–33. This proposal is adopted without change.

Proposal 3–74. The notice proposed to revise, edit, and add new powerplant instrument requirements to § 29.1305.

For a discussion of the revisions to paragraphs (a)(4), (a)(17), and (a)(19), see Proposal 3–34.

New paragraph (a)(20) combines into one rule, without substantative change, the existing identical requirements for fuel pressure indicators currently contained in paragraphs (b)(2) and (c)(2) of this section and further modifies the applicability of this requirement to only those fuel systems with devices or components which, in the event of failure, could adversely affect fuel pressure at the engine. These changes are needed to simplify the presentation in this section for fuel pressure indicators and to eliminate the requirement for fuel pressure indicators in fuel systems such as suction or gravity feed systems which do not incorporate pumps, filters, etc., subject to deterioration which could be reflected on a fuel pressure indicator.

New paragraph (a)(21) requires a warning device to indicate the failure of any fuel pump required for adequate fuel flow to the engine. This alerts the flightcrew that fuel flow and engine operation are now dependent on the emergency system and to institute precautionary operating procedures.

New paragraph (a)(22) adds a requirement for a warning or caution device to alert the flightcrew when particles are detected by the chip detector required by new § 29.1337(d) proposed as another amendment to this part. This amendment is one of a two-part amendment to require chip detectors and associated warning signals to alert the crew to possible impending failures in rotorcraft transmissions and gearboxes. These devices have been found to be a relatively inexpensive method of

significantly improving the safety of rotorcraft in these respects.

New paragraph (a)(23) adds a requirement for powerplant instruments or warning devices for auxiliary power units installed in rotorcraft. This ensures that flightcrews will have indicators or warning devices needed to avoid possible unsafe conditions which may be expected during operation of auxiliary power units.

Additional editorial changes to existing paragraphs (b)(2) and (c)(2) have been added to integrate new paragraph (a)(20) with these other provisions.

No comments were received, and this proposal is adopted without change.

Proposal 3–75. The notice proposed to amend § 29.1337 to add a new paragraph (e) to require certain rotor drive system transmissions and gearboxes to be equipped with chip detector systems which detect and signal the presence of ferromagnetic particles to the flightcrew. Also, the amendment requires a means to permit crewmembers to check, in flight, the function of each detector's electrical circuit and signal. Because not all chips generated in a transmission or gearbox will be detected by these magnetic detectors, the amendment does not include extensive performance requirements for these systems. However, these devices have been found to be a relatively inexpensive and effective method of detecting impending mechanical failures in gearboxes. This amendment will improve the level of safety available with the installation of chip detector systems.

A commenter notes that in Proposal 3–35 (§ 27.1337), chip detectors would be required for "rotor drive system transmissions and gearboxes," whereas in this proposal, affecting Part 29, chip detectors would be required only for "transmission gearboxes." This inconsistency between the two parts is not intended and paragraph (e) is changed to agree with the amendment to § 27.1337(c). This commenter also suggests removal of the phrase "when ferromagnetic particles exist in the vicinity of the detector." The FAA agrees that these words are unnecessary, and this phrase has been removed.

Accordingly, this proposal is adopted with the changes discussed.

Proposal 3–76. The notice proposed to revise paragraphs (f) and (g) and add a new paragraph (h) to § 29.1521. The changes to paragraphs (f) and (g) introduce the term "OEI" to emphasize and clarify the limitations on the use of the 2½-minute and 30-minute power ratings as defined in this section. This amendment also correlates the title of these ratings to their definitions in Part 1, as revised by this amendment. Additionally, these changes add the introductory phrase "unless otherwise authorized," in order to authorize use of these ratings when appropriate, additional qualification testing or other adequate safety measures have been instituted. Also, both paragraphs (f) and (g) have been reworded to set forth specifically the limitations on the use of these ratings. These changes are intended to assist the public in avoiding misconceptions regarding the eligibility of these ratings.

New paragraph (h) establishes and defines a new continuous OEI power rating using terminology similar to that developed by this amendment for the 2½-minute and 30-minute power ratings. This change ensures proper recognition in the powerplant limitations listing required by § 29.1583.

No comments were received on this proposal; however, it was subsequently noted that the proposed wording would preclude use of the 2½-minute OEI power rating to achieve a safe one-engine-inoperative climbout after a balked landing or to avoid the hazardous zones of the HV diagram if the associated engine failure occurred in conjunction with flight conditions which dictate use of this power. This was not intended or justified and this section, as adopted, clarifies this aspect.

Proposal 3–77. The notice proposed to add a new paragraph (e) and make associated editorial changes to § 29.1549 to set forth requirements for powerplant instrument markings applicable to the OEI ratings eligible on certain rotorcraft. For an explanation of this proposal and its disposition, see the explanation for Proposal 3–37.

Proposal 3–78. The notice proposed to revise paragraph (c)(1)(iii) of § 29.1557 to permit, for turbine-powered rotorcraft, the use of flight manual listings of approved fuels in lieu of decals and placards at the fuel filler openings, as required by the existing rule. The listing of approved fuels is, in some instances, too extensive to include on decals or placards in the space available. No comments were received, and the proposal is adopted without change.

Proposal 3–79. The notice proposed to revise paragraph (c) of § 33.7 to add to the list of ratings and limitations the new "continuous OEI power" rating discussed in Proposal 3–3. This amendment will ensure recognition and correlation of this new rating to Part 33 test requirements. Paragraphs (c)(1)(v) and (c)(1)(vi) have been revised in the amendment by adding the term "OEI" to the phrases "rated 30-minute power" and "rated 2½-minute power" to be consistent with the addition of this term to other appropriate sections of this part. No comments were received, and this proposal is adopted with the editorial changes noted.

Proposal 3–80. The notice proposed to amend § 33.87 as follows:

Paragraphs (a) and (b) are revised to include reference to the test run necessary to qualify rotorcraft engines for the new continuous OEI rating consistent with amendments to other sections of this subpart. Additionally, paragraph (b)(2) is restated for clarification, without substantive change.

Paragraph (d) is revised and redesignated as paragraph (e) and a new paragraph (d) is added to prescribe the test requirements for the new continuous OEI rating.

Newly redesignated paragraph (e), pertaining to the 2½-minute OEI rating, is revised to incorporate the option of combining this rating with the conventional takeoff and maximum continuous power ratings or with either of the en route OEI ratings. The reference in the last sentence of (e)(1) is changed from (c)(5) to (d)(6) for consistency in paragraph numbering.

The word "rotorcraft" is substituted for "helicopter" throughout § 33.87 to be consistent with the broader installation applications of turboshaft engines. The term "OEI" is added to existing "30-minute power" and "2½-minute power" phrases used in paragraphs (c), new (d), and (e). In addition, the words "and thrust" are removed from the phrase "power and thrust" in paragraphs (c), (d), and (e) since rotorcraft engines are not normally thrust-rated.

These changes coordinate the test requirements related to the new continuous OEI power rating and eliminate unnecessarily restrictive requirements for qualification for the 2½-minute OEI power rating.

A commenter expresses concern that the proposed block test schedule for the continuous OEI power rating differs unnecessarily from the block test schedule prescribed for engines by the Joint Airworthiness Requirements (JAR) for the similarly used intermediate contingency power rating. The commenter indicates that these differences exist in the maximum continuous power run and the incremental power run and recommends a 12½-hour increase in incremental power running at the expense of time spent testing at maximum continuous power. The FAA disagrees. In this proposal, the time of testing at incremental power for the continuous OEI power rating is the same (50 hours)

as that which has been found satisfactory for the 30-minute OEI power rating. The redistribution of test time at maximum continuous power and above is introduced to account for the fact that the continuous OEI power rating is not time limited (as is the 30-minute OEI power rating) and thus, should have a proportionate amount of associated qualification test time.

The same commenter notes that in the **Federal Register** publication of the NPRM, the sentence, "For engines tested under paragraph (b), (c), (d), or (e) of this section, the prescribed 6-hour test sequence must be conducted 25 times to complete the required 150 hours of operation," was inadvertently omitted from § 33.87(a). The same commenter also notes that in the **Federal Register** publication, the title line of proposed § 33.87(c) should have read "* * * for which a 30-minute OEI power * * *,"; and that the word "hour" was omitted from the first sentence of proposed § 33.87(e)(1). These changes with corrected wording have been made in the amendment.

This commenter finally notes that Amendment 33–10 (49 FR 6852; February 23, 1984) added 5 minutes to the endurance test requirements of § 33.87(d) for certification of the 2½-minute OEI rating. He contends this further jeopardizes the uniformity of requirements between the FAR and the JAR. This change to Part 33 was introduced as part of the Engine Regulatory Review Program, NPRM No. 80–21, Docket No. 16919, and became effective in February 1984. This comment is, therefore, beyond the scope of the notice and cannot be considered in this rulemaking.

This proposal is adopted with the changes discussed.

Economic Summary

A regulatory evaluation of the amendments published herein has been prepared and filed in the docket. This evaluation addresses the pertinent requirements of the Regulatory Flexibility Act of 1980, Executive Order 12291, Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and the impact on international trade. A summary of this evaluation follows.

Seventy of the amendments reflect current rotorcraft industry practice or clarify existing rules and, therefore, impose negligible or no additional costs and in some cases will result in savings. Amendments in this category are listed in Table 1.

A second group of 12 amendments, listed in Table II, pertain to safety standards for optional equipment or to new optional rotorcraft powerplant operating limitations. The FAA assumes that since these equipment items and powerplant ratings are optional, they will only be introduced into any model rotorcraft if the manufacturer of that rotorcraft determines that the benefits of such action will exceed the costs. One option that may result in an economic benefit is the introduction of a new continuous one-engine-inoperative rating which will permit rotorcraft manufacturers to qualify certain rotorcraft to perform long-range missions at gross weights approaching those now associated with use of the existing 30-minute OEI rating. Corresponding improvements in productivity should also be expected.

A third group of proposals listed in Table III was identified as having significant cost impact. For these proposals, the FAA's analysis of the costs and benefits failed to show that the imposition of these proposals was justified. These proposals were not included in the final rule and are being deferred for further study. They may appear in subsequent notices if they are found to be warranted.

TABLE I.—RULE CHANGES WITH ZERO OR NEGLIGIBLE COMPLIANCE COSTS

Item No.	FAR Section	Subject	Evaluation
2	1.1	30-minute rating	Definition.
3	1.2	Definition	Definition.
6	27.361(a)	Design torque limitations	Current practice.
7	27.833	Combustion heaters	Current practice.
8	27.859(c) thru (k)	Combustion heaters	Current practice.
9	27.901	Powerplant installation	Current practice.
10	27.903(a), (b)	Powerplant cooling fans	Negligible cost.
11	27.923(c), (d), (e), (j), (k)	Drive system tests	Negligible cost.
12	27.927(b)	Drive systems	Clarification.
13	27.954	Fuel system lightning protection	Current practice.
14	27.955	Fuel flow requirements	Current practice.
15	27.961	Fuel system hot weather tests	Current practice.
16	27.963(e), (f)	Fuel tank safety	Current practice.
17	27.969	Fuel expansion space	Negligible savings.
18	27.971	Fuel tank sump	Negligible cost.
19	27.975	Fuel tank vent arrangement	Current practice.
20	27.991	Fuel pump	Current practice.
21	27.997	Fuel strainer	Current practice.
22	27.999	Fuel system drains	Current practice.
23	27.1011	Engine oil systems	Clarification.
24	27.1019	Oil strainer contamination indicator	Negligible savings.
25	27.1027	Transmission oil systems	Current practice.
26	27.1041	Powerplant cooling	Current practice.
27	27.1045	Powerplant cooling	Clarification.
28	27.1091	Engine induction system	Negligible savings.
29	27.1093	Engine ice and snow protection	Negligible savings.
30	27.1141	Powerplant valves	Current practice.
31	27.1143	Engine controls	Clarification.
32	27.1163	Powerplant accessories	Negligible savings.
33	27.1189	Flammable fluid shutoff valves	Current practice.
34	27.1193	Cowling retention	Current practice.

TABLE I.—RULE CHANGES WITH ZERO OR NEGLIGIBLE COMPLIANCE COSTS—Continued

Item No.	FAR Section	Subject	Evaluation
35	27.1305(l), (m), (q), (s)	Powerplant instruments	Negligible savings.
36	27.1337	Magnetic chip detectors	Negligible cost.
37	27.1521(g), (h)	Powerplant limitations	Clarification.
38	27.1549(e)	Powerplant instrument markings	Current practice.
41	29.361(a), (b)	Design torque limitations	Negligible cost.
42	29.549(e)	Fuselage structural loads	Clarification.
43	29.901(b)(2), (b)(6)	Powerplant installation	Negligible cost.
44	29.903(a), (b)(2), (c)(3)	Powerplant installation	Clarification.
45	29.908(a), (c)	Powerplant cooling fans	Negligible cost.
46	29.923(a) thru (h), (k)(l)	Drive system tests	Clarification.
47	29.927(c), (d), (f)	Drive system tests	Clarification.
48	29.954	Fuel system lightning protection	Current practice.
49	29.955	Fuel flow requirements	Current practice.
50	29.961	Fuel system hot weather tests	Current practice.
51	29.963(e)	Fuel tank safety	Negligible cost.
52	29.967(f)	Fuel tank installation requirements	Clarification.
53	29.969	Fuel expansion space arrangements	Negligible savings.
54	29.971	Fuel tank sump	Current practice.
55	29.975	Fuel tank vent arrangements	Current practice.
56	29.991	Fuel pumps	Current practice.
57	29.997	Fuel strainer	Current practice.
58	29.999	Fuel system drains	Current practice.
60	29.1011	Engine oil systems	Clarification.
61	29.1019(a)	Oil strainer contamination indicator	Negligible savings.
62	29.1027	Transmission oil systems	Negligible savings.
63	29.1041	Powerplant cooling	Clarification.
64	29.1043	Powerplant cooling	Clarification.
67	29.1093	Engine ice and snow protection	Negligible savings.
68	29.1141	Powerplant valves	Current practice.
69	29.1143	Engine controls	Clarification.
70	29.1163	Powerplant accessories	Current practice.
71	29.1181	Designated fire zones	Definition.
72	29.1189(e), (f)	Flammable fluid shutoffs	Current practice.
73	29.1193(f)	Powerplant cowling retention	Negligible cost.
74	29.1305(a)(4), (a)(17), (a)(19) thru (a)(23), (b)(2), (c)(1) and (c)(2).	Powerplant instruments	Negligible cost.
75	29.1337(e)	Magnetic chip detectors	Negligible cost.
76	29.1521(f), (g)	Powerplant limitations	No cost.
77	29.1549(e)	Powerplant instrument markings	Current practice.
78	29.1557(c)	Markings and placards	Negligible cost.

TABLE II.—RULE CHANGES FOR OPTIONAL RATINGS OR EQUIPMENT

Item No.	FAR Section	Subject
5	27.67(a)(2), (a)(3), (b).	Continuous OEI power.
11	27.923(d), (e), (j), (k).	Continuous OEI power.
16	27.963(g)	Cabin fuel tanks
37	27.1521(i)	Continuous OEI power.
40	29.67(a)(2), (a)(3), (b).	Continuous OEI power.
45	29.923(k)(2)	Continuous OEI power.
59	29.1001	Fuel jettisoning system.
65	29.1045(a)(4), (c)	Continuous OEI power.
66	29.1047(a)	Continuous OEI power.
76	29.1521(h)	Continuous OEI power.
80	33.7(c)	Continuous OEI power.
81	33.87(d)	Continuous OEI power.

TABLE III.—PROPOSALS DEFERRED FOR FURTHER STUDY

Proposal No.[1]	FAR Section	Subject
103	27.964	Fuel cell crashworthiness.
284	29.903	Engine rotor containment.
303	29.927	Overrunning clutch test.
316	29.964	Fuel cell crashworthiness.
358	29.1305	Engine failure warning.

[1] Numbering corresponds with proposal as presented to the New Orleans Rotorcraft Regulatory Review Conference, December 1979.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact" on a substantial number of small entities.

Within the context of these amendments, the FAA definition of a small entity is a small rotorcraft manufacturer with less than 75 employees. Under these "small entity" size standard criteria, only three of eleven helicopter manufacturers in business today is a small entity.

The FAA estimates that there will be six new helicopters certificated before the year 2000. Three are expected to be Part 27 helicopters and three Part 29 helicopters. The three new Part 29 helicopters are expected to be certificated by three of eight large firms. Of the three new Part 27 helicopters, two are expected to be certificated by large firms and one by a small firm.

Clearly, the final rule changes will not impact a substantial number of small entities.

Trade Impact Analysis

This section discusses the impact of these amendments on the sale of foreign rotorcraft in the United States and the sale of U.S. rotorcraft in foreign countries.

Since the certification rules are applicable to both foreign and domestic entities which manufacture rotorcraft to sell in the United States, there will be no competitive advantage to either. Because of the large U.S. market, foreign manufacturers are likely to certify their rotorcraft to U.S. rules and, therefore, U.S. manufacturers would not suffer a disadvantage in foreign markets.

Those amendments which reduce the life cycle cost of rotorcraft should aid in developing increased sales in the United States since it can be expected that a decrease in price should stimulate sales. Because many foreign countries follow U.S. certification rules, foreign sales by U.S. manufacturers should also increase.

Federalism Implications

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

In the context of these analyses, it is concluded that this rule is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, based on the findings made with respect to the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects

14 CFR Part 1

Airmen, Flights, Aircraft pilots, Pilots, Air safety, Safety, Air transportation, Air carriers, Aircraft, Helicopters, Rotorcraft.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 33

Engines, Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, Parts 1, 27, 29, and 33 of the Federal Aviation Regulations (14 CFR Parts 1, 27, 29, and 33) are amended as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 1.1 by adding the definition of "Rated continuous OEI power" after the definition of "Public aircraft," and by removing the definitions "Rated '30-minute power' " and "Rated '2½-minute power' " and substituting in place thereof the definitions of "Rated 30-minute OEI power" and "Rated 2½-minute OEI power."

§ 1.1 General definitions.

* * * * *

"Rated continuous OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, and limited in use to the time required to complete the flight after the failure of one engine of a multiengine rotorcraft.

* * * * *

"Rated 30-minute OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, and limited in use to a period of not more than 30 minutes after the failure of one engine of a multiengine rotorcraft.

"Rated 2½-minute OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, and limited in use to a period of not more than 2½ minutes after the failure of one engine of a multiengine rotorcraft.

* * * * *

3. By amending § 1.2 by adding the definition of "OEI" after the definition of "NOPT" as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

"OEI" means one engine inoperative.

* * * * *

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

4. The authority citation for Part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

5. By amending § 27.67 by removing paragraph (c) and by revising paragraph (b) to read as follows:

§ 27.67 Climb: One engine inoperative.

* * * * *

(b) The critical engine inoperative and the remaining engines at either—

(1) Maximum continuous power and, for helicopters for which certification for the use of 30-minute OEI power is requested, at 30-minute OEI power; or

(2) Continuous OEI power for helicopters for which certification for the use of continuous OEI power is requested.

6. By revising § 27.361 to read as follows:

§ 27.361 Engine torque.

(a) For turbine engines, the limit torque may not be less than the highest of—

(1) The mean torque for maximum continuous power multiplied by 1.25;

(2) The torque required by § 27.923;

(3) The torque required by § 27.927; or

(4) The torque imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming).

(b) For reciprocating engines, the limit torque may not be less than the mean torque for maximum continuous power multiplied by—

(1) 1.33, for engines with five or more cylinders; and

(2) Two, three, and four, for engines with four, three, and two cylinders, respectively.

7. By adding a new § 27.833 following § 27.831 and before the heading, Fire Protection, to read as follows:

§ 27.833 Heaters.

Each combustion heater must be approved.

8. By amending § 27.859 by revising paragraph (c) and by adding new

paragraphs (d) through (k) to read as follows:

§ 27.859 Heating systems.

* * * * *

(c) *Combustion heater fire protection.* Except for heaters which incorporate designs to prevent hazards in the event of fuel leakage in the heater fuel system, fire within the ventilating air passage, or any other heater malfunction, each heater zone must incorporate the fire protection features of the applicable requirements of §§ 27.1183, 27.1185, 27.1189, 27.1191, and be provided with—

(1) Approved, quick-acting fire detectors in numbers and locations ensuring prompt detection of fire in the heater region.

(2) Fire extinguisher systems that provide at least one adequate discharge to all areas of the heater region.

(3) Complete drainage of each part of each zone to minimize the hazards resulting from failure or malfunction of any component containing flammable fluids. The drainage means must be—

(i) Effective under conditions expected to prevail when drainage is needed; and

(ii) Arranged so that no discharged fluid will cause an additional fire hazard.

(4) Ventilation, arranged so that no discharged vapors will cause an additional fire hazard.

(d) *Ventilating air ducts.* Each ventilating air duct passing through any heater region must be fireproof.

(1) Unless isolation is provided by fireproof valves or by equally effective means, the ventilating air duct downstream of each heater must be fireproof for a distance great enough to ensure that any fire originating in the heater can be contained in the duct.

(2) Each part of any ventilating duct passing through any region having a flammable fluid system must be so constructed or isolated from that system that the malfunctioning of any component of that system cannot introduce flammable fluids or vapors into the ventilating airstream.

(e) *Combustion air ducts.* Each combustion air duct must be fireproof for a distance great enough to prevent damage from backfiring or reverse flame propagation.

(1) No combustion air duct may connect with the ventilating airstream unless flames from backfires or reverse burning cannot enter the ventilating airstream under any operating condition, including reverse flow or malfunction of the heater or its associated components.

(2) No combustion air duct may restrict the prompt relief of any backfire that, if so restricted, could cause heater failure.

(f) *Heater control: General.* There must be means to prevent the hazardous accumulation of water or ice on or in any heater control component, control system tubing, or safety control.

(g) *Heater safety controls.* For each combustion heater, safety control means must be provided as follows:

(1) Means independent of the components provided for the normal continuous control of air temperature, airflow, and fuel flow must be provided for each heater to automatically shut off the ignition and fuel supply of that heater at a point remote from that heater when any of the following occurs:

(i) The heat exchanger temperature exceeds safe limits.

(ii) The ventilating air temperature exceeds safe limits.

(iii) The combustion airflow becomes inadequate for safe operation.

(iv) The ventilating airflow becomes inadequate for safe operation.

(2) The means of complying with paragraph (g)(1) of this section for any individual heater must—

(i) Be independent of components serving any other heater, the heat output of which is essential for safe operation; and

(ii) Keep the heater off until restarted by the crew.

(3) There must be means to warn the crew when any heater, the heat output of which is essential for safe operation, has been shut off by the automatic means prescribed in paragraph (g)(1) of this section.

(h) *Air intakes.* Each combustion and ventilating air intake must be located so that no flammable fluids or vapors can enter the heater system—

(1) During normal operation; or

(2) As a result of the malfunction of any other component.

(i) *Heater exhaust.* Each heater exhaust system must meet the requirements of §§ 27.1121 and 27.1123.

(1) Each exhaust shroud must be sealed so that no flammable fluids or hazardous quantities of vapors can reach the exhaust system through joints.

(2) No exhaust system may restrict the prompt relief of any backfire that, if so restricted, could cause heater failure.

(j) *Heater fuel systems.* Each heater fuel system must meet the powerplant fuel system requirements affecting safe heater operation. Each heater fuel system component in the ventilating airstream must be protected by shrouds so that no leakage from those components can enter the ventilating airstream.

(k) *Drains.* There must be means for safe drainage of any fuel that might accumulate in the combustion chamber or the heat exchanger.

(1) Each part of any drain that operates at high temperatures must be protected in the same manner as heater exhausts.

(2) Each drain must be protected against hazardous ice accumulation under any operating condition.

9. By amending § 27.901 by revising paragraph (b)(1); by removing the word "and" after the semicolon in (b)(2); by removing the period at the end of (b)(3) and inserting a semicolon in its place; by removing the period at the end of (b)(4) and inserting "; and" in its place; and by adding a new paragraph (b)(5) to read as follows:

§ 27.901 Installation.

* * * * *

(b) * * *

(1) Each component of the installation must be constructed, arranged, and installed to ensure its continued safe operation between normal inspections or overhauls for the range of temperature and altitude for which approval is requested;

* * * * *

(5) Design precautions must be taken to minimize the possibility of incorrect assembly of components and equipment essential to safe operation of the rotorcraft, except where operation with the incorrect assembly can be shown to be extremely improbable.

* * * * *

10. By amending § 27.903 by revising paragraphs (a) and (b) to read as follows:

§ 27.903 Engines.

(a) *Engine type certification.* Each engine must have an approved type certificate. Reciprocating engines for use in helicopters must be qualified in accordance with § 33.49(d) of this chapter or be otherwise approved for the intended usage.

(b) *Engine or drive system cooling fan blade protection.* (1) If an engine or rotor drive system cooling fan is installed, there must be a means to protect the rotorcraft and allow a safe landing if a fan blade fails. This must be shown by showing that—

(i) The fan blades are contained in case of failure;

(ii) Each fan is located so that a failure will not jeopardize safety; or

(iii) Each fan blade can withstand an ultimate load of 1.5 times the centrifugal force resulting from operation limited by the following:

(A) For fans driven directly by the engine—

(1) The terminal engine r.p.m. under uncontrolled conditions; or

(2) An overspeed limiting device.

(B) For fans driven by the rotor drive system, the maximum rotor drive system rotational speed to be expected in service, including transients.

(2) Unless a fatigue evaluation under § 27.571 is conducted, it must be shown that cooling fan blades are not operating at resonant conditions within the operating limits of the rotorcraft.

* * * * *

11. By amending § 27.923 by revising paragraphs (c), (d), (e), and (j) and by adding new paragraph (k) to read as follows:

§ 27.923 Rotor drive system and control mechanism tests.

* * * * *

(c) A 60-hour part of the test prescribed in paragraph (b) of this section must be run at not less than maximum continuous torque and the maximum speed for use with maximum continuous torque. In this test, the main rotor controls must be set in the position that will give maximum longitudinal cyclic pitch change to simulate forward flight. The auxiliary rotor controls must be in the position for normal operation under the conditions of the test.

(d) A 30-hour or, for rotorcraft for which the use of either 30-minute OEI power or continuous OEI power is requested, a 25-hour part of the test prescribed in paragraph (b) of this section must be run at not less than 75 percent of maximum continuous torque and the minimum speed for use with 75 percent of maximum continuous torque. The main and auxiliary rotor controls must be in the position for normal operation under the conditions of the test.

(e) A 10-hour part of the test prescribed in paragraph (b) of this section must be run at not less than takeoff torque and the maximum speed for use with takeoff torque. The main and auxiliary rotor controls must be in the normal position for vertical ascent. For multiengine helicopters for which the use of 2½-minute OEI power is requested, 12 runs during the 10-hour test must be conducted as follows:

(1) Each run must consist of at least one period of 2½ minutes with takeoff torque and the maximum speed for use with takeoff torque on all engines.

(2) Each run must consist of at least one period, for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at 2½-minute OEI torque and the maximum speed for use with 2½-minute OEI torque for 2½ minutes.

* * * * *

(j) For multiengine rotorcraft for which the use of 30-minute OEI power is requested, five runs must be made at 30-minute OEI torque and the maximum speed for use with 30-minute OEI torque, in which each engine, in sequence, is made inoperative and the remaining engine(s) is run for a 30-minute period.

(k) For multiengine rotorcraft for which the use of continuous OEI power is requested, five runs must be made at continuous OEI torque and the maximum speed for use with continuous OEI torque, in which each engine, in sequence, is made inoperative and the remaining engine(s) is run for a 1-hour period.

12. By amending § 27.927 by revising paragraph (b)(3) to read as follows:

§ 27.927 Additional tests.

* * * * *

(b) * * *

(3) The tests prescribed in this paragraph must be conducted on the rotorcraft at the maximum rotational speed intended for the power condition of the test and the torque must be absorbed by the rotors to be installed, except that other ground or flight test facilities with other appropriate methods of torque absorption may be used if the conditions of support and vibration closely simulate the conditions that would exist during a test on the rotorcraft.

* * * * *

13. By adding a new § 27.954 to read as follows:

§ 27.954 Fuel system lightning protection.

The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by—

(a) Direct lightning strikes to areas having a high probability of stroke attachment;

(b) Swept lightning strokes to areas where swept strokes are highly probable; or

(c) Corona and streamering at fuel vent outlets.

14. By revising § 27.955 to read as follows:

§ 27.955 Fuel flow.

(a) *General.* The fuel system for each engine must be shown to provide the engine with at least 100 percent of the fuel required under each operating and maneuvering condition to be approved for the rotorcraft including, as applicable, the fuel required to operate the engine(s) under the test conditions required by § 27.927. Unless equivalent methods are used, compliance must be shown by test during which the following provisions are met except that combinations of conditions which are shown to be improbable need not be considered.

(1) The fuel pressure, corrected for critical accelerations, must be within the limits specified by the engine type certificate data sheet.

(2) The fuel level in the tank may not exceed that established as the unusable fuel supply for that tank under § 27.959, plus the minimum additional fuel necessary to conduct the test.

(3) The fuel head between the tank outlet and the engine inlet must be critical with respect to rotorcraft flight attitudes.

(4) The critical fuel pump (for pump-fed systems) is installed to produce (by actual or simulated failure) the critical restriction to fuel flow to be expected from pump failure.

(5) Critical values of engine rotation speed, electrical power, or other sources of fuel pump motive power must be applied.

(6) Critical values of fuel properties which adversely affect fuel flow must be applied.

(7) The fuel filter required by § 27.997 must be blocked to the degree necessary to simulate the accumulation of fuel contamination required to activate the indicator required by § 27.1305(q).

(b) *Fuel transfer systems.* If normal operation of the fuel system requires fuel to be transferred to an engine feed tank, the transfer must occur automatically via a system which has been shown to maintain the fuel level in the engine feed tank within acceptable limits during flight or surface operation of the rotorcraft.

(c) *Multiple fuel tanks.* If an engine can be supplied with fuel from more than one tank, the fuel systems must, in addition to having appropriate manual switching capability, be designed to prevent interruption of fuel flow to that engine, without attention by the flightcrew, when any tank supplying fuel to that engine is depleted of usable fuel during normal operation, and any other tank that normally supplies fuel to the engine alone contains usable fuel.

15. By revising § 27.961 to read as follows:

§ 27.961 Fuel system hot weather operation.

Each suction lift fuel system and other fuel systems with features conducive to vapor formation must be shown by test to operate satisfactorily (within certification limits) when using fuel at a temperature of 110 °F under critical operating conditions including, if applicable, the engine operating conditions defined by §§ 27.927 (b)(1) and (b)(2).

16. By amending § 27.963 by adding new paragraphs (e) and (f) to read as follows:

§ 27.963 Fuel tanks: General.

* * * * *

(e) The maximum exposed surface temperature of any component in the fuel tank must be less, by a safe margin as determined by the Administrator, than the lowest expected autoignition temperature of the fuel or fuel vapor in the tank. Compliance with this requirement must be shown under all operating conditions and under all failure or malfunction conditions of all components inside the tank.

(f) Each fuel tank installed in personnel compartments must be isolated by fume-proof and fuel-proof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosure must provide necessary protection for the tank and be adequate to withstand loads and abrasions to be expected in personnel compartments.

17. By revising § 27.969 to read as follows:

§ 27.969 Fuel tank expansion space.

Each fuel tank or each group of fuel tanks with interconnected vent systems must have an expansion space of not less than 2 percent of the tank capacity. It must be impossible to fill the fuel tank expansion space inadvertently with the rotorcraft in the normal ground attitude.

18. By revising § 27.971 to read as follows:

§ 27.971 Fuel tank sump.

(a) Each fuel tank must have a drainable sump with an effective capacity in any ground attitude to be expected in service of 0.25 percent of the tank capacity or 1/16 gallon, whichever is greater, unless—

(1) The fuel system has a sediment bowl or chamber that is accessible for preflight drainage and has a minimum capacity of 1 ounce for every 20 gallons of fuel tank capacity; and

(2) Each fuel tank drain is located so that in any ground attitude to be expected in service, water will drain from all parts of the tank to the sediment bowl or chamber.

(b) Each sump, sediment bowl, and sediment chamber drain required by this section must comply with the drain provisions of § 27.999(b).

19. By amending § 27.975 by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 27.975 Fuel tank vents.

* * * * *

(b) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing or ground operation unless such an event is extremely remote.

20. By revising § 27.991 to read as follows:

§ 27.991 Fuel pumps.

Compliance with § 27.955 may not be jeopardized by failure of—

(a) Any one pump except pumps that are approved and installed as parts of a type certificated engine; or

(b) Any component required for pump operation except, for engine driven pumps, the engine served by that pump.

21. By amending § 27.997 by revising the introductory text and paragraph (d) to read as follows:

§ 27.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of the first fuel system component which is susceptible to fuel contamination, including but not limited to the fuel metering device or an engine positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

* * * * *

(d) Provide a means to remove from the fuel any contaminant which would jeopardize the flow of fuel through rotorcraft or engine fuel system components required for proper rotorcraft fuel system or engine fuel system operation.

22. By amending § 27.999 by revising paragraphs (a) and (b)(2) to read as follows:

§ 27.999 Fuel system drains.

(a) There must be at least one accessible drain at the lowest point in each fuel system to completely drain the system with the rotorcraft in any ground attitude to be expected in service.

(b) * * *

(2) Have manual or automatic means to assure positive closure in the off position; and

* * * * *

23. By revising the title of § 27.1011 to read as follows:

§ 27.1011 Engines: General.

* * * * *

24. By amending § 27.1019 by revising paragraph (a)(3) to read as follows:

§ 27.1019 Oil strainer or filter.

(a) * * *

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate a means to indicate contamination before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

* * * * *

25. By adding a new § 27.1027 after § 27.1021 and before the heading Cooling to read as follows:

§ 27.1027 Transmissions and gearboxes: General.

(a) Pressure lubrication systems for transmissions and gearboxes must comply with the engine oil system requirements of §§ 27.1013 (except paragraph (c)), 27.1015, 27.1017, 27.1021, and 27.1337(d).

(b) Each pressure lubrication system must have an oil strainer or filter through which all of the lubricant flows and must—

(1) Be designed to remove from the lubricant any contaminant which may damage transmission and drive system components or impede the flow of lubricant to a hazardous degree;

(2) Be equipped with a means to indicate collection of contaminants on the filter or strainer at or before opening of the bypass required by paragraph (b)(3) of this section; and

(3) Be equipped with a bypass constructed and installed so that—

(i) The lubricant will flow at the normal rate through the rest of the system with the strainer or filter completely blocked; and

(ii) The release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flowpath.

(c) For each lubricant tank or sump outlet supplying lubrication to rotor drive systems and rotor drive system components, a screen must be provided to prevent entrance into the lubrication system of any object that might obstruct the flow of lubricant from the outlet to the filter required by paragraph (b) of this section. The requirements of paragraph (b) do not apply to screens installed at lubricant tank or sump outlets.

(d) Splash-type lubrication systems for rotor drive system gearboxes must comply with §§ 27.1021 and 27.1337(d).

26. By amending § 27.1041 by revising paragraph (a) to read as follows:

§ 27.1041 General.

(a) Each powerplant cooling system must be able to maintain the temperatures of powerplant components within the limits established for these components under critical surface (ground or water) and flight operating conditions for which certification is required and after normal shutdown. Powerplant components to be

considered include but may not be limited to engines, rotor drive system components, auxiliary power units, and the cooling or lubricating fluids used with these components.

* * * * *

27. By amending § 27.1045 by revising paragraph (c)(1) to read as follows:

§ 27.1045 Cooling test procedures.

* * * * *

(c) * * *

(1) The temperatures stabilize or 5 minutes after the occurrence of the highest temperature recorded, as appropriate to the test condition;

* * * * *

§ 27.1091 [Amended]

28. By amending § 27.1091 by removing paragraph (d) in its entirety and by redesignating paragraph (e) as paragraph (d).

29. By amending § 27.1093 by revising paragraph (b)(1) to read as follows:

§ 27.1093 Induction system icing protection.

* * * * *

(b) * * *

(1) It must be shown that each turbine engine and its air inlet system can operate throughout the flight power range of the engine (including idling)—

(i) Without accumulating ice on engine or inlet system components that would adversely affect engine operation or cause a serious loss of power under the icing conditions specified in Appendix C of Part 29 of this chapter; and

(ii) In snow, both falling and blowing, without adverse effect on engine operation, within the limitations established for the rotorcraft.

* * * * *

30. By amending § 27.1141 by revising the introductory text of paragraph (c) to read as follows:

§ 27.1141 Powerplant controls: General.

* * * * *

(c) Controls of powerplant valves required for safety must have—

* * * * *

31. By amending § 27.1143 by revising paragraphs (a) and (c) and the introductory texts of paragraphs (b) and (d) to read as follows:

§ 27.1143 Engine controls.

(a) There must be a separate power control for each engine.

(b) Power controls must be grouped and arranged to allow—

* * * * *

(c) Each power control must provide a positive and immediately responsive means of controlling its engine.

(d) If a power control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

* * * * *

32. By amending § 27.1163 by revising paragraph (b) to read as follows:

§ 27.1163 Powerplant accessories.

* * * * *

(b) Unless other means are provided, torque limiting means must be provided for accessory drives located on any component of the transmission and rotor drive system to prevent damage to these components from excessive accessory load.

33. By amending § 27.1189 by revising paragraph (c) to read as follows:

§ 27.1189 Shutoff means.

* * * * *

(c) Each shutoff valve and its control must be designed, located, and protected to function properly under any condition likely to result from an engine fire.

34. By amending § 27.1193 by adding a new paragraph (f) to read as follows:

§ 27.1193 Cowling and engine compartment covering.

* * * * *

(f) A means of retaining each openable or readily removable panel, cowling, or engine or rotor drive system covering must be provided to preclude hazardous damage to rotors or critical control components in the event of structural or mechanical failure of the normal retention means, unless such failure is extremely improbable.

35. By amending § 27.1305 by revising paragraphs (l), (m), (q), and (s) to read as follows:

§ 27.1305 Powerplant instruments.

* * * * *

(l) A low fuel warning device for each fuel tank which feeds an engine. This device must—

(1) Provide a warning to the flightcrew when approximately 10 minutes of usable fuel remains in the tank; and

(2) Be independent of the normal fuel quantity indicating system.

(m) Means to indicate to the flightcrew the failure of any fuel pump installed to show compliance with § 27.955.

* * * * *

(q) An indicator for the fuel filter required by § 27.997 to indicate the occurrence of contamination of the filter at the degree established by the applicant in compliance with § 27.955.

* * * * *

(s) An indicator to indicate the functioning of any selectable or controllable heater used to prevent ice clogging of fuel system components.

36. By amending § 27.1337 by adding a new paragraph (e) to read as follows:

§ 27.1337 Powerplant instruments.

* * * * *

(e) Rotor drive system transmissions and gearboxes utilizing ferromagnetic materials must be equipped with chip detectors designed to indicate or reveal the presence of ferromagnetic particles resulting from damage or excessive wear. Chip detectors must—

(1) Incorporate means to indicate the accumulation of ferromagnetic particles on the magnetic poles; or

(2) Be readily removable for inspection of the magnetic poles for metallic chips. Means must be provided to prevent loss of lubricant in the event of failure of the retention device for removable chip detector components.

37. By amending § 27.1521 by adding new paragraphs (g), (h), and (i) to read as follows:

§ 27.1521 Powerplant limitations.

* * * * *

(g) *Two and one-half-minute OEI power operation.* Unless otherwise authorized, the use of 2½-minute OEI power must be limited to engine failure operation of multiengine, turbine-powered rotorcraft for not longer than 2½ minutes after failure of an engine. The use of 2½-minute OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(h) *Thirty-minute OEI power operation.* Unless otherwise authorized, the use of 30-minute OEI power must be limited to multiengine, turbine-powered rotorcraft for not longer than 30 minutes after failure of an engine. The use of 30-minute OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(i) *Continuous OEI power operation.* Unless otherwise authorized, the use of

continuous OEI power must be limited to multiengine, turbine-powered rotorcraft for continued flight after failure of an engine. The use of continuous OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

38. By amending § 27.1549 by removing the word "and" at the end of paragraph (c); by removing the period at the end of paragraph (d) and inserting "; and" in its place; and by adding a new paragraph (e) to read as follows:

§ 27.1549 Powerplant instruments.

* * * * *

(e) Each OEI limit or approved operating range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

39. The authority citation for Part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

40. By amending § 29.67 by revising paragraphs (a)(2)(i), (a)(3)(i) and (b) to read as follows:

§ 29.67 Climb: One engine inoperative.

(a) * * *

(2) * * *

(i) The critical engine inoperative and the remaining engines at—

(A) Maximum continuous power;

(B) Thirty-minute OEI power (for helicopters for which certification for the use of 30-minute OEI power is requested); or

(C) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested);

* * * * *

(3) * * *

(i) The critical engine inoperative and the remaining engines at—

(A) Maximum continuous power and at 30-minute OEI power (for helicopters for which certification for use of 30-minute OEI power is requested); or

(B) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested);

* * * * *

(b) For multiengine Category B helicopters meeting the requirements for Category A in § 29.79, the steady rate of climb (or descent) must be determined at the speed for the best rate of climb (or minimum rate of descent) with the critical engine inoperative and the remaining engines at either—

(1) Maximum continuous power and at 30-minute OEI power (for helicopters for which certification for the use of 30-minute OEI power is requested); or

(2) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested).

41. By revising § 29.361 to read as follows:

§ 29.361 Engine torque.

The limit engine torque may not be less than the following:

(a) For turbine engines, the highest of—

(1) The mean torque for maximum continuous power multiplied by 1.25;

(2) The torque required by § 29.923;

(3) The torque required by § 29.927; or

(4) The torque imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming).

(b) For reciprocating engines, the mean torque for maximum continuous power multiplied by—

(1) 1.33, for engines with five or more cylinders; and

(2) Two, three, and four, for engines with four, three, and two cylinders, respectively.

42. By amending § 29.549 by revising paragraph (e) to read as follows:

§ 29.549 Fuselage and rotor pylon structures.

* * * * *

(e) If approval for the use of 2½-minute OEI power is requested, each engine mount and adjacent structure must be designed to withstand the loads resulting from a limit torque equal to 1.25 times the mean torque for 2½-minute OEI power combined with 1g flight loads.

43. By amending § 29.901 by revising paragraph (b)(2) and by adding new paragraph (b)(6) to read as follows:

§ 29.901 Installation.

* * * * *

(b) * * *

(2) Each component of the installation must be constructed, arranged, and installed to ensure its continued safe operation between normal inspections or overhauls for the range of temperature and altitude for which approval is requested.

* * * * *

(6) Design precautions must be taken to minimize the possibility of incorrect assembly of components and equipment essential to safe operation of the rotorcraft, except where operation with the incorrect assembly can be shown to be extremely improbable.

* * * * *

44. By amending § 29.903 by revising paragraphs (a) and (b)(2); by removing the "or" at the end of paragraph (c)(1); by removing the period at the end of paragraph (c)(2) and inserting "; or" in its place; and by adding a new paragraph (c)(3) to read as follows:

§ 29.903 Engines.

(a) *Engine type certification.* Each engine must have an approved type certificate. Reciprocating engines for use in helicopters must be qualified in accordance with § 33.49(d) of this chapter or be otherwise approved for the intended usage.

(b) * * *

(2) Require immediate action, other than normal pilot action with primary flight controls, by any crewmember to maintain safe operation.

(c) * * *

(3) Engine restart capability must be established throughout a flight envelope appropriate to the rotorcraft.

* * * * *

45. By amending § 29.908 by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 29.908 Cooling fans.

* * * * *

(a) *Category A.* For cooling fans installed in Category A rotorcraft, it must be shown that a fan blade failure will not prevent continued safe flight either because of damage caused by the failed blade or loss of cooling air.

* * * * *

(c) *Fatigue evaluation.* Unless a fatigue evaluation under § 29.571 is conducted, it must be shown that cooling fan blades are not operating at resonant conditions within the operating limits of the rotorcraft.

46. By amending § 29.923 by revising paragraphs (a)(1), (a)(3) (introductory text), (a)(3)(ii), (b), (c) (introductory text), (d) through (h), and (k) to read as follows:

§ 29.923 Rotor drive system and control mechanism tests.

(a) * * *

(1) Ten-hour test cycles must be used, except that the test cycle must be extended to include the OEI test of

paragraphs (b)(2) and (k), of this section if OEI ratings are requested.

* * * * *

(3) The test torque and rotational speed must be—

* * * * *

(ii) Absorbed by the rotors to be approved for the rotorcraft.

(b) *Endurance tests; takeoff run.* The takeoff run must be conducted as follows:

(1) Except as prescribed in paragraph (b)(2) of this section, the takeoff run must consist of 1 hour of alternate runs of 5 minutes each at takeoff torque and the maximum speed for use with takeoff torque, and 5 minutes each at as low an engine idle speed as practicable. The engine must be declutched from the rotor drive system, and the rotor brake, if furnished and so intended, must be applied during the first minute of the idle run. During the remaining 4 minutes of the idle run, the clutch must be engaged so that the engine drives the rotor at the minimum practical r.p.m. The engine and the rotor drive system must be accelerated at the maximum rate. When declutching the engine, it must be decelerated rapidly enough to allow the operation of the overrunning clutch.

(2) For helicopters for which the use of a 2½-minute OEI rating is requested, the takeoff run must be conducted as prescribed in paragraph (b)(1) of this section, except for the third and sixth runs for which the takeoff torque and the maximum speed for use with takeoff torque are prescribed in that paragraph. For these runs, the following apply:

(i) Each run must consist of at least one period of 2½ minutes with takeoff torque and the maximum speed for use with takeoff torque on all engines.

(ii) Each run must consist of at least one period, for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at the 2½-minute OEI torque and the maximum speed for use with 2½-minute OEI torque for 2½ minutes.

(c) *Endurance tests; maximum continuous run.* Three hours of continuous operation at maximum continuous torque and the maximum speed for use with maximum continuous torque must be conducted as follows:

* * * * *

(d) *Endurance tests; 90 percent of maximum continuous run.* One hour of continuous operation at 90 percent of maximum continuous torque and the maximum speed for use with 90 percent of maximum continuous torque must be conducted.

(e) *Endurance tests; 80 percent of maximum continuous run.* One hour of continuous operation at 80 percent of maximum continuous torque and the minimum speed for use with 80 percent of maximum continuous torque must be conducted.

(f) *Endurance tests; 60 percent of maximum continuous run.* Two hours or, for helicopters for which the use of either 30-minute OEI power or continuous OEI power is requested, 1 hour of continuous operation at 60 percent of maximum continuous torque and the minimum speed for use with 60 percent of maximum continuous torque must be conducted.

(g) *Endurance tests; engine malfunctioning run.* It must be determined whether malfunctioning of components, such as the engine fuel or ignition systems, or whether unequal engine power can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be accomplished under those conditions, 1 hour of which must be included in each cycle, and the remaining hours of which must be accomplished at the end of the 20 cycles. If no detrimental condition results, an additional hour of operation in compliance with paragraph (b) of this section must be conducted in accordance with the run schedule of paragraph (b)(1) of this section without consideration of paragraph (b)(2) of this section.

(h) *Endurance tests; overspeed run.* One hour of continuous operation must be conducted at maximum continuous torque and the maximum power-on overspeed expected in service, assuming that speed and torque limiting devices, if any, function properly.

* * * * *

(k) *Endurance tests; OEI power run.*—(1) *30-minute OEI power run.* For rotorcraft for which the use of 30-minute OEI power is requested, a run at 30-minute OEI torque and the maximum speed for use with 30-minute OEI torque must be conducted as follows: For each engine, in sequence, that engine must be inoperative and the remaining engines must be run for a 30-minute period.

(2) *Continuous OEI power run.* For rotorcraft for which the use of continuous OEI power is requested, a run at continuous OEI torque and the maximum speed for use with continuous OEI torque must be conducted as follows: For each engine, in sequence, that engine must be inoperative and the remaining engines must be run for 1 hour.

(3) The number of periods prescribed in paragraph (k)(1) or (k)(2) of this section may not be less than the number of engines, nor may it be less than two.

* * * * *

47. By amending § 29.927 by revising paragraphs (c), (d) (introductory text), and (d)(2), and by adding new paragraph (f) to read as follows:

§ 29.927 Additional test.

* * * * *

(c) *Lubrication system failure.* For lubrication systems required for proper operation of rotor drive systems, the following apply:

(1) *Category A.* Unless such failures are extremely remote, it must be shown by test that any failure which results in loss of lubricant in any normal use lubrication system will not prevent continued safe operation, although not necessarily without damage, at a torque and rotational speed prescribed by the applicant for continued flight, for at least 30 minutes after perception by the flightcrew of the lubrication system failure or loss of lubricant.

(2) *Category B.* The requirements of Category A apply except that the rotor drive system need only be capable of operating under autorotative conditions for at least 15 minutes.

(d) *Overspeed test.* The rotor drive system must be subjected to 50 overspeed runs, each 30±3 seconds in duration, at not less than either the higher of the rotational speed to be expected from an engine control device failure or 105 percent of the maximum rotational speed, including transients, to be expected in service. If speed and torque limiting devices are installed, are independent of the normal engine control, and are shown to be reliable, their rotational speed limits need not be exceeded. These runs must be conducted as follows:

* * * * *

(2) Acceleration and deceleration must be accomplished in a period not longer than 10 seconds (except where maximum engine acceleration rate will require more than 10 seconds), and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

* * * * *

(f) Each test prescribed by this section must be conducted without intervening disassembly and, except for the lubrication system failure test required by paragraph (c) of this section, each part tested must be in a serviceable condition at the conclusion of the test.

48. By adding a new § 29.954 to read as follows:

§ 29.954 Fuel system lightning protection.

The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by—

(a) Direct lightning strikes to areas having a high probability of stroke attachment;

(b) Swept lightning strokes to areas where swept strokes are highly probable; and

(c) Corona and streamering at fuel vent outlets.

49. By revising § 29.955 to read as follows:

§ 29.955 Fuel flow.

(a) *General.* The fuel system for each engine must provide the engine with at least 100 percent of the fuel required under all operating and maneuvering conditions to be approved for the rotorcraft, including, as applicable, the fuel required to operate the engines under the test conditions required by § 29.927. Unless equivalent methods are used, compliance must be shown by test during which the following provisions are met, except that combinations of conditions which are shown to be improbable need not be considered.

(1) The fuel pressure, corrected for accelerations (load factors), must be within the limits specified by the engine type certificate data sheet.

(2) The fuel level in the tank may not exceed that established as the unusable fuel supply for that tank under § 29.959, plus that necessary to conduct the test.

(3) The fuel head between the tank and the engine must be critical with respect to rotorcraft flight attitudes.

(4) The fuel flow transmitter, if installed, and the critical fuel pump (for pump-fed systems) must be installed to produce (by actual or simulated failure) the critical restriction to fuel flow to be expected from component failure.

(5) Critical values of engine rotational speed, electrical power, or other sources of fuel pump motive power must be applied.

(6) Critical values of fuel properties which adversely affect fuel flow are applied during demonstrations of fuel flow capability.

(7) The fuel filter required by § 29.997 is blocked to the degree necessary to simulate the accumulation of fuel contamination required to activate the indicator required by § 29.1305(a)(17).

(b) *Fuel transfer system.* If normal operation of the fuel system requires fuel to be transferred to another tank, the transfer must occur automatically via a system which has been shown to maintain the fuel level in the receiving tank within acceptable limits during flight or surface operation of the rotorcraft.

(c) *Multiple fuel tanks.* If an engine can be supplied with fuel from more than one tank, the fuel system, in addition to having appropriate manual switching capability, must be designed to prevent interruption of fuel flow to that engine, without attention by the flightcrew, when any tank supplying fuel to that engine is depleted of usable fuel during normal operation and any other tank that normally supplies fuel to that engine alone contains usable fuel.

50. By revising § 29.961 to read as follows:

§ 29.961 Fuel system hot weather operation.

Each suction lift fuel system and other fuel systems conducive to vapor formation must be shown to operate satisfactorily (within certification limits) when using fuel at the most critical temperature for vapor formation under critical operating conditions including, if applicable, the engine operating conditions defined by § 29.927(b)(1) and (b)(2).

51. By amending § 29.963 by adding a new paragraph (e) to read as follows:

§ 29.963 Fuel tanks: General.

* * * * *

(e) The maximum exposed surface temperature of all components in the fuel tank must be less by a safe margin than the lowest expected autoignition temperature of the fuel or fuel vapor in the tank. Compliance with this requirement must be shown under all operating conditions and under all normal or malfunction conditions of all components inside the tank.

§ 29.967 [Amended]

52. By amending § 29.967 by removing paragraph (f).

53. By revising § 29.969 to read as follows:

§ 29.969 Fuel tank expansion space.

Each fuel tank or each group of fuel tanks with interconnected vent systems must have an expansion space of not less than 2 percent of the combined tank capacity. It must be impossible to fill the fuel tank expansion space inadvertently with the rotorcraft in the normal ground attitude.

54. By amending § 29.971 by revising paragraph (c) to read as follows:

§ 29.971 Fuel tank sump.

* * * * *

(c) Each fuel tank must allow drainage of hazardous quantities of water from each part of the tank to the sump with the rotorcraft in any ground attitude to be expected in service.

* * * * *

55. By amending § 29.975 by removing the word "and" after the semicolon in paragraph (a)(5); by removing the period at the end of paragraph (a)(6)(ii) and inserting "; and" in its place; and by adding a new paragraph (a)(7) to read as follows:

§ 29.975 Fuel tank vents and carburetor vapor vents.

(a) * * *

(7) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing or ground operations, unless a rollover is shown to be extremely remote.

* * * * *

56. By revising § 29.991 to read as follows:

§ 29.991 Fuel pumps.

(a) Compliance with § 29.955 must not be jeopardized by failure of—

(1) Any one pump except pumps that are approved and installed as parts of a type certificated engine; or

(2) Any component required for pump operation except the engine served by that pump.

(b) The following fuel pump installation requirements apply:

(1) When necessary to maintain the proper fuel pressure—

(i) A connection must be provided to transmit the carburetor air intake static pressure to the proper fuel pump relief valve connection; and

(ii) The gauge balance lines must be independently connected to the carburetor inlet pressure to avoid incorrect fuel pressure readings.

(2) The installation of fuel pumps having seals or diaphragms that may leak must have means for draining leaking fuel.

(3) Each drain line must discharge where it will not create a fire hazard.

57. By amending § 29.997 by revising the introductory text and paragraph (d) to read as follows:

§ 29.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of the first fuel system component which is susceptible to fuel contamination, including but not limited to the fuel metering device or an engine positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

* * * * *

(d) Provide a means to remove from the fuel any contaminant which would jeopardize the flow of fuel through rotorcraft or engine fuel system components required for proper

rotorcraft or engine fuel system operation.

58. By amending § 29.999 by revising paragraphs (a) and (b)(2) to read as follows:

§ 29.999 Fuel system drains.

(a) There must be at least one accessible drain at the lowest point in each fuel system to completely drain the system with the rotorcraft in any ground attitude to be expected in service.

(b) * * *

(2) Have manual or automatic means to ensure positive closure in the off position; and

* * * * *

59. By adding a new § 29.1001 after § 29.999 and before the heading Oil System to read as follows:

§ 29.1001 Fuel jettisoning.

If a fuel jettisoning system is installed, the following apply:

(a) Fuel jettisoning must be safe during all flight regimes for which jettisoning is to be authorized.

(b) In showing compliance with paragraph (a) of this section, it must be shown that—

(1) The fuel jettisoning system and its operation are free from fire hazard;

(2) No hazard results from fuel or fuel vapors which impinge on any part of the rotorcraft during fuel jettisoning; and

(3) Controllability of the rotorcraft remains satisfactory throughout the fuel jettisoning operation.

(c) Means must be provided to automatically prevent jettisoning fuel below the level required for an all-engine climb at maximum continuous power from sea level to 5,000 feet altitude and cruise thereafter for 30 minutes at maximum range engine power.

(d) The controls for any fuel jettisoning system must be designed to allow flight personnel (minimum crew) to safely interrupt fuel jettisoning during any part of the jettisoning operation.

(e) The fuel jettisoning system must be designed to comply with the powerplant installation requirements of § 29.901(c).

(f) An auxiliary fuel jettisoning system which meets the requirements of paragraphs (a), (b), (d), and (e) of this section may be installed to jettison additional fuel provided it has separate and independent controls.

§ 29.1011 [Amended]

60. By amending § 29.1011 by revising the section heading to read "Engines: General."; by removing existing paragraph (b); by redesignating paragraphs (c) and (d) as (b) and (c), respectively; and by removing the words "* * * and rotor drive system * * *" from paragraph (c) and redesignating it as paragraph (d).

61. By amending § 29.1019 by revising paragraph (a)(3) to read as follows:

§ 29.1019 Oil strainer or filter.

(a) * * *

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate a means to indicate contamination before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

* * * * *

62. By adding a new § 29.1027 after § 29.1025 and before the heading "Cooling" to read as follows:

§ 29.1027 Transmission and gearboxes: General.

(a) The oil system for components of the rotor drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure—

(1) Operation with any engine inoperative; and

(2) Safe autorotation.

(b) Pressure lubrication systems for transmissions and gearboxes must comply with the requirements of §§ 29.1013, paragraphs (c), (d), and (f) only, 29.1015, 29.1017, 29.1021, 29.1023, and 29.1337(d). In addition, the system must have—

(1) An oil strainer or filter through which all the lubricant flows, and must—

(i) Be designed to remove from the lubricant any contaminant which may damage transmission and drive system components or impede the flow of lubricant to a hazardous degree; and

(ii) Be equipped with a bypass constructed and installed so that—

(A) The lubricant will flow at the normal rate through the rest of the system with the strainer or filter completely blocked; and

(B) The release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flowpath;

(iii) Be equipped with a means to indicate collection of contaminants on the filter or strainer at or before opening of the bypass;

(2) For each lubricant tank or sump outlet supplying lubrication to rotor drive systems and rotor drive system components, a screen to prevent entrance into the lubrication system of any object that might obstruct the flow of lubricant from the outlet to the filter required by paragraph (b)(1) of this section. The requirements of paragraph (b)(1) of this section do not apply to screens installed at lubricant tank or sump outlets.

(c) Splash type lubrication systems for rotor drive system gearboxes must comply with §§ 29.1021 and 29.1337(d).

63. By amending § 29.1041 by revising paragraphs (a) and (c) to read as follows:

§ 29.1041 General.

(a) The powerplant and auxiliary power unit cooling provisions must be able to maintain the temperatures of powerplant components, engine fluids, and auxiliary power unit components and fluids within the temperature limits established for these components and fluids, under ground, water, and flight operating conditions for which certification is requested, and after normal engine or auxiliary power unit shutdown, or both.

* * * * *

(c) Except for ground-use-only auxiliary power units, compliance with paragraphs (a) and (b) of this section must be shown by flight tests in which the temperatures of selected powerplant component and auxiliary power unit component, engine, and transmission fluids are obtained under the conditions prescribed in those paragraphs.

64. By amending § 29.1043 by adding a new paragraph (a)(5) to read as follows:

§ 29.1043 Cooling tests.

(a) * * *

(5) For the purposes of the cooling tests, a temperature is "stabilized" when its rate of change is less than 2 °F per minute.

* * * * *

65. By amending § 29.1045 by revising paragraph (c) to read as follows:

§ 29.1045 Climb cooling test procedures.

* * * * *

(c) Each operating engine must—

(1) For helicopters for which the use of 30-minute OEI power is requested, be at 30-minute OEI power for 30 minutes, and then at maximum continuous power (or at full throttle when above the critical altitude);

(2) For helicopters for which the use of continuous OEI power is requested, be at continuous OEI power (or at full throttle when above the critical altitude); and

(3) For other rotorcraft, be at maximum continuous power (or at full throttle when above the critical altitude).

* * * * *

66. By amending § 29.1047 by removing the words "at least" from the end of the introductory text of paragraph (a)(4) and by revising

paragraphs (a)(4)(i) and (a)(4)(ii) to read as follows:

§ 29.1047 Takeoff cooling test procedures.

(a) * * *

(4) * * *

(i) Thirty minutes, if 30-minute OEI power is used; or

(ii) At least 5 minutes after the occurrence of the highest temperature recorded, if continuous OEI power or maximum continuous power is used.

* * * * *

67. By amending § 29.1093 by revising paragraph (b)(1) to read as follows:

§ 29.1093 Induction system icing protection.

* * * * *

(b) * * *

(1) It must be shown that each turbine engine and its air inlet system can operate throughout the flight power range of the engine (including idling)—

(i) Without accumulating ice on engine or inlet system components that would adversely affect engine operation or cause a serious loss of power under the icing conditions specified in Appendix C of this Part; and

(ii) In snow, both falling and blowing, without adverse effect on engine operation, within the limitations established for the rotorcraft.

* * * * *

68. By amending § 29.1141 by revising the introductory text of paragraph (f) to read as follows:

§ 29.1141 Powerplant controls: General.

* * * * *

(f) Controls of powerplant valves required for safety must have—

* * * * *

69. By revising § 29.1143 to read as follows:

§ 29.1143 Engine controls.

(a) There must be a separate power control for each engine.

(b) Power controls must be arranged to allow ready synchronization of all engines by—

(1) Separate control of each engine; and

(2) Simultaneous control of all engines.

(c) Each power control must provide a positive and immediately responsive means of controlling its engine.

(d) Each fluid injection control other than fuel system control must be in the corresponding power control. However, the injection system pump may have a separate control.

(e) If a power control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

(1) Have a positive lock or stop at the idle position; and

(2) Require a separate and distinct operation to place the control in the shutoff position.

70. By amending § 29.1163 by revising paragraph (d) to read as follows:

§ 29.1163 Powerplant accessories.

* * * * *

(d) Unless other means are provided, torque limiting means must be provided for accessory drives located on any component of the transmission and rotor drive system to prevent damage to these components from excessive accessory load.

71. By amending § 29.1181 by adding a new paragraph (b) to read as follows:

§ 29.1181 Designated fire zones: Regions included.

* * * * *

(b) Each designated fire zone must meet the requirements of §§ 29.1183 through 29.1203.

72. By amending § 29.1189 by revising paragraphs (e) and (f) to read as follows:

§ 29.1189 Shutoff means.

* * * * *

(e) Each shutoff valve and its control must be designed, located, and protected to function properly under any condition likely to result from fire in a designated fire zone.

(f) Except for ground-use-only auxiliary power unit installations, there must be means to prevent inadvertent operation of each shutoff and to make it possible to reopen it in flight after it has been closed.

73. By amending § 29.1193 by adding a new paragraph (f) to read as follows:

§ 29.1193 Cowling and engine compartment covering.

* * * * *

(f) A means of retention for each openable or readily removable panel, cowling, or engine or rotor drive system covering must be provided to preclude hazardous damage to rotors or critical control components in the event of—

(1) Structural or mechanical failure of the normal retention means, unless such failure is extremely improbable; or

(2) Fire in a fire zone, if such fire could adversely affect the normal means of retention.

74. By amending § 29.1305 by revising paragraphs (a)(4), (a)(17), (a)(19), (b)(2), (c)(1), and (c)(2); by adding new paragraphs (a)(20) through (a)(23); by removing the word "and" at the end of paragraph (a)(18); and by removing paragraph (c)(3) as follows:

§ 29.1305 Powerplant instruments.

* * * * *

(a) * * *

(4) A low fuel warning device for each fuel tank which feeds an engine. This device must—

(i) Provide a warning to the crew when approximately 10 minutes of usable fuel remains in the tank; and

(ii) Be independent of the normal fuel quantity indicating system.

* * * * *

(17) An indicator for the filter required by § 29.997 to indicate the occurrence of contamination of the filter to the degree established in compliance with § 29.955;

* * * * *

(19) An indicator to indicate the functioning of any selectable or controllable heater used to prevent ice clogging of fuel system components;

(20) An individual fuel pressure indicator for each engine, unless the fuel system which supplies that engine does not employ any pumps, filters, or other components subject to degradation or failure which may adversely affect fuel pressure at the engine;

(21) A means to indicate to the flightcrew the failure of any fuel pump installed to show compliance with § 29.955;

(22) Warning or caution devices to signal to the flightcrew when ferromagnetic particles are detected by the chip detector required by § 29.1337(e); and

(23) For auxiliary power units, an individual indicator, warning or caution device, or other means to advise the flightcrew that limits are being exceeded, if exceeding these limits can be hazardous, for—

(i) Gas temperature;

(ii) Oil pressure; and

(iii) Rotor speed.

(b) * * *

(2) An independent fuel pressure warning device for each engine or a master warning device for all engines with provision for isolating the individual warning device from the master warning device; and

* * * * *

(c) * * *

(1) An individual oil pressure indicator for each engine; and

(2) Fire warning indicators, when fire detection is required.

75. By amending § 29.1337 by adding a new paragraph (e) to read as follows:

§ 29.1337 Powerplant instruments.

* * * * *

(e) Rotor drive system transmissions and gearboxes utilizing ferromagnetic materials must be equipped with chip

detectors designed to indicate the presence of ferromagnetic particles resulting from damage or excessive wear within the transmission or gearbox. Each chip detector must—

(1) Be designed to provide a signal to the indicator required by § 29.1305(a)(22); and

(2) Be provided with a means to allow crewmembers to check, in flight, the function of each detector electrical circuit and signal.

76. By amending § 29.1521 by revising the introductory texts of paragraphs (f) and (g) and by adding a new paragraph (h) to read as follows:

§ 29.1521 Powerplant limitations.

* * * * *

(f) *Two and one-half minute OEI power operation.* Unless otherwise authorized, the use of 2½-minute OEI power must be limited to engine failure operation of multiengine, turbine-powered rotorcraft for not longer than 2½ minutes for any period in which that power is used. The use of 2½-minute OEI power must also be limited by—

* * * * *

(g) *Thirty-minute OEI power operation.* Unless otherwise authorized, the use of 30-minute OEI power must be limited to multiengine, turbine-powered rotorcraft for not longer than 30 minutes after failure of an engine. The use of 30-minute OEI power must also be limited by—

* * * * *

(h) *Continuous OEI power operation.* Unless otherwise authorized, the use of continuous OEI power must be limited to multiengine, turbine-powered rotorcraft for continued flight after failure of an engine. The use of continuous OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value shown during the type tests.

(2) The maximum allowable gas temperature;

(3) The maximum allowable torque; and

(4) The maximum allowable oil temperature.

77. By amending § 29.1549 by removing the word "and" at the end of paragraph (c); by removing the period at the end of paragraph (d) and inserting "; and" in its place; and by adding a new paragraph (e) to read as follows:

§ 29.1549 Powerplant instruments.

* * * * *

(e) Each OEI limit or approved operating range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section.

78. By amending § 29.1557 by revising paragraph (c)(1)(iii) to read as follows:

§ 29.1557 Miscellaneous markings and placards.

* * * * *

(c) * * *

(1) * * *

(iii) For turbine-engine-powered rotorcraft, the permissible fuel designations, except that if impractical, this information may be included in the rotorcraft flight manual, and the fuel filler may be marked with an appropriate reference to the flight manual; and

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

79. The authority citation for Part 33 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

80. By amending § 33.7 by revising paragraphs (c)(1)(v) and (c)(1)(vi); by redesignating paragraph (c)(1)(vii) as (c)(1)(viii); and by adding a new paragraph (c)(1)(vii) to read as follows:

§ 33.7 Engine ratings and operating limitations.

* * * * *

(c) * * *

(1) * * *

(v) Rated 30-minute OEI power;

(vi) Rated 2½-minute OEI power;

(vii) Rated continuous OEI power; and

* * * * *

81. By amending § 33.87 by redesignating paragraph (e) as (f) without change; by revising paragraphs (a) (introductory text), (b) (introductory text), (b)(2), (c) (introductory text), (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5); by revising paragraph (d) and redesignating it as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 33.87 Endurance test.

(a) *General.* Each engine must be subjected to an endurance test that includes a total of 150 hours of operation and, depending upon the type and contemplated use of the engine, consists of one of the series of runs specified in paragraphs (b) through (f) of this section, as applicable. For engines tested under paragraph (b), (c), (d), or (e) of this section, the prescribed 6-hour test sequence must be conducted 25 times to complete the required 150 hours of operation. The following test requirements apply:

* * * * *

(b) *Engines other than certain rotorcraft engines.* For each engine except a rotorcraft engine for which a rating is desired under paragraph (c), (d), or (e) of this section, the applicant must conduct the following runs:

* * * * *

(2) *Rated maximum continuous and takeoff power and thrust.* Thirty minutes at—

(i) Rated maximum continuous power and thrust during fifteen of the twenty-five 6-hour endurance test cycles; and

(ii) Rated takeoff power and thrust during ten of the twenty-five 6-hour endurance test cycles.

* * * * *

(c) *Rotorcraft engines for which a 30-minute OEI power rating is desired.* For each rotorcraft engine for which a 30-minute OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff and idling.* One hour of alternate 5-minute periods at rated takeoff power and at idling power. The developed powers at takeoff and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. During any one period, the rotor speed and power may be controlled manually while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented power rating. In changing the power setting after each period, the power control lever must be moved in the manner prescribed in paragraph (c)(5) of this section.

(2) *Rated 30-minute OEI power.* Thirty minutes at rated 30-minute OEI power.

(3) *Rated maximum continuous power.* Two hours at rated maximum continuous power.

(4) *Incremental cruise power.* Two hours at the successive power lever positions corresponding with not less than 12 approximately equal speed and time increments between maximum continuous engine rotational speed and ground or minimum idle rotational speed. For engines operating at constant speed, power may be varied in place of speed. If there are significant peak vibrations anywhere between ground idle and maximum continuous conditions, the number of increments chosen must be changed to increase the

amount of running conducted while being subjected to the peak vibrations up to not more than 50 percent of the total time spent in incremental running.

(5) *Acceleration and deceleration runs.* Thirty minutes of accelerations and decelerations, consisting of six cycles from idling power to rated takeoff power and maintained at the takeoff power lever position for 30 seconds and at the idling power lever position for approximately 4½ minutes. In complying with this paragraph, the power control lever must be moved from one extreme position to the other in not more than 1 second, except that if different regimes of control operations are incorporated necessitating scheduling of the power control lever motion in going from one extreme position to the other, a longer period of time is acceptable, but not more than 2 seconds.

* * * * *

(d) *Rotorcraft engines for which a continuous OEI rating is desired.* For each rotorcraft engine for which a continuous OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff and idling.* One hour of alternate 5-minute periods at rated takeoff power and at idling power. The developed powers at takeoff and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. During any one period the rotor speed and power may be controlled manually while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented power rating. In changing the power setting after each period, the power control lever must be moved in the manner prescribed in paragraph (c)(5) of this section.

(2) *Rated maximum continuous and takeoff power.* Thirty minutes at—

(i) Rated maximum continuous power during fifteen of the twenty-five 6-hour endurance test cycles; and

(ii) Rated takeoff power during ten of the twenty-five 6-hour endurance test cycles.

(3) *Rated continuous OEI power.* One hour at rated continuous OEI power.

(4) *Rated maximum continuous power.* One hour at rated maximum continuous power.

(5) *Incremental cruise power.* Two hours at the successive power lever positions corresponding with not less than 12 approximately equal speed and time increments between maximum continuous engine rotational speed and ground or minimum idle rotational speed. For engines operating at constant speed, power may be varied in place of speed. If there are significant peak vibrations anywhere between ground idle and maximum continuous conditions, the number of increments chosen must be changed to increase the amount of running conducted while being subjected to the peak vibrations up to not more than 50 percent of the total time spent in incremental running.

(6) *Acceleration and deceleration runs.* Thirty minutes of accelerations and decelerations, consisting of six cycles from idling power to rated takeoff power and maintained at the takeoff power lever position for 30 seconds and at the idling power lever position for approximately 4½ minutes. In complying with this paragraph, the power control lever must be moved from one extreme position to the other in not more than 1 second, except that if different regimes of control operations are incorporated necessitating scheduling of the power control lever motion in going from one extreme position to the other, a longer period of time is acceptable, but not more than 2 seconds.

(7) *Starts.* One hundred starts, of which 25 starts must be preceded by at least a 2-hour engine shutdown. There must be at least 10 false engine starts, pausing for the applicant's specified minimum fuel drainage time, before attempting a normal start. There must be at least 10 normal restarts with not longer than 15 minutes since engine shutdown. The remaining starts may be made after completing the 150 hours of endurance testing.

(e) *Rotorcraft engines for which a 2½-minute OEI power rating is desired.* For each rotorcraft engine for which a 2½-minute OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff, 2½-minute OEI, and idling.* One hour of alternate 5-minute periods at rated takeoff power and at idling power except that, during the third and sixth takeoff power periods, only 2½ minutes need be conducted at rated takeoff power, and the remaining 2½ minutes must be conducted at rated 2½-minute OEI power. The developed powers at takeoff, 2½-minute OEI, and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. The applicant may, during any one period, control manually the rotor speed and power while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented rating. In changing the power setting after or during each period, the power control lever must be moved in the manner prescribed in paragraph (d)(6) of this section.

(2) The tests required in paragraphs (b)(2) through (b)(6), or (c)(2) through (c)(6), or (d)(2) through (d)(7) of this section, as applicable, except that in one of the 6-hour test sequences, the last 5 minutes of the 30 minutes at takeoff power test period of paragraph (b)(2) of this section, or of the 30 minutes at 30-minute OEI power test period of paragraph (c)(2) of this section, or of the 1 hour at continuous OEI power test period of paragraph (d)(3) of this section, must be run at 2½-minute OEI power.

* * * * *

Issued in Washington, DC, on August 26, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-19848 Filed 8-30-88; 10:55 am]

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 etc.

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 7, 9, 10, 19, 29, 31, 36, 47, and 52

[Federal Acquisition Circular 84-39]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-39 amends the Federal Acquisition Regulation (FAR) with respect to the following: Anti-Kickback Enforcement Act of 1986; Acquisition Streamlining; Walsh-Healey Eligibility Determination; Qualification Requirements; Small Business Size Standards; State of New Mexico Gross Receipts and Compensating Tax; Severance Pay; Price Negotiation for Construction Contracts; and F.O.B. Destination.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

FAC 84-39, Item I

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, *et seq.*, under OMB Control No. 9000-0091.

FAC 84-39, Items II, III, V, VII, VIII, and IX

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

FAC 84-39, Item IV

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, *et seq.*, under OMB Control No. 9000-0083. Because the final rule does not alter the collection requirements, the approval number remains valid.

FAC 84-39, Item VI

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because this final rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The certifications and other information specified in the clause at 52.229-10 are existing requirements under New Mexico State law.

B. Regulatory Flexibility Act

FAC 84-39, Item I

The interim rule published in the **Federal Register** on February 27, 1987 (52 FR 6120) contained an Initial Regulatory Flexibility Analysis. DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* A Final Regulatory Flexibility Analysis has been prepared and is on file in the FAR Secretariat. The Final Analysis will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

FAC 84-39, Item II

DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the program primarily involves the engineering and design of systems and equipment which ordinarily is not accomplished by small business.

FAC 84-39, Items III, V, VIII, and IX

The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

FAC 84-39, Item IV

The interim rule published in the **Federal Register** on August 30, 1985 (50 FR 35474) contained an Initial Regulatory Flexibility Analysis. The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis has been prepared and is on file in the FAR Secretariat. The Final Analysis will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

FAC 84-39, Item VI

DoD, GSA, and NASA certify that the final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, because its application is limited to cost-reimbursement contracts of a limited number of agencies performed within a single state. The majority of contracts awarded to small businesses are fixed price.

FAC 84-39, Item VII

DoD, GSA, and NASA certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because removal of the last sentence of section 31.205-6(g)(2)(i) results in no additional burden to any business and, in fact, eliminates a limitation on cost allowability. Furthermore, situations involving dual retirement and severance payments have not been frequently encountered.

C. Public Comments

FAC 84-39, Item I

On February 27, 1987, Federal Acquisition Circular (FAC) 84-24 was published in the **Federal Register** (52 FR 6120) as an interim rule. The comments that were received were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council in the development of this final rule.

FAC 84-39, Item II

On January 4, 1988, a proposed rule was published in the **Federal Register** (53 FR 100). The comments that were received were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council in the development of this final rule.

FAC 84–39, Item IV

On August 30, 1985, FAC 84–11 was published in the **Federal Register** (50 FR 35474) as an interim rule to implement certain provisions of Pub. L. 98–525 and Pub. L. 98–577. Item III of the FAC implemented those provisions of the public laws related to "qualification requirements." After reviewing the public comments on the interim rule the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council made revisions to the coverage. The FAR Councils issued for public comment on February 9, 1987 (52 FR 4082), revisions to Parts 9 and 52 to modify the definition of "qualification requirement" at § 9.201 and as used in the clause at § 52.209–1, as well as revisions to the policy in § 9.202. The FAR Councils have considered those public comments in the development of this final rule.

FAC 84–39, Item VI

On September 24, 1987, a proposed rule was published in the **Federal Register** (52 FR 35996) soliciting public comments on the Regulatory Flexibility Statement that there did not appear to be a significant impact on a substantial number of small entities. No comments were received regarding that statement. No commenters expressed opposition to the proposed FAR coverage. One commenter's suggestion, that the source of the definition of the word "services" used in the coverage be placed in the coverage, was adopted.

FAC 84–39, Item VII

On September 17, 1987, a proposed rule was published in the **Federal Register** (52 FR 35191) recommending the removal of the last sentence of FAR 31.205–6(g)(2)(i) which disallowed severance payments when paid in addition to early or normal retirement payments. The comments that were received were considered by the Councils in the development of this final rule.

List of Subjects in 48 CFR Parts 1, 3, 7, 9, 10, 19, 29, 31, 36, 47, and 52

Government procurement.

Dated: August 29, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–39 is effective October 3, 1988.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

John Alderson,

Acting Administrator, GSA.

August 22, 1988.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–39 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Anti-Kickback Enforcement Act of 1986

FAR 3.502, 9.406–1, and 52.203–7 are being revised to implement the Anti-Kickback Enforcement Act of 1986 (41 U.S.C. 51–58). The Act was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act requires each contracting agency to include in all contracts a requirement that the contractor shall (a) have in place and follow reasonable procedures designed to prevent and detect violations of the Act, and (b) cooperate with any Federal agency investigating a violation of the Act.

Item II—Acquisition Streamlining

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have approved changes to FAR Parts 7 and 10 to institutionalize the implementation of acquisition streamlining.

Item III—Walsh-Healey Eligibility Determination

FAR 9.104–3(a) is being revised to eliminate redundant portions of text already stated in FAR 22.608–2.

Item IV—Qualification Requirements

Federal Acquisition Circular (FAC) 84–11 was issued as an interim rule on August 30, 1985, to implement certain provisions of Pub. L. 98–525 and Pub. L. 98–577 related to "qualification requirements" and imposed new procedural obligations on Federal agencies before they could require testing or other quality assurance demonstration as a condition to award of a Government contract.

Public comments raised two significant problems. First, the interim rule appears to have defined "qualification requirements" too broadly, in that the rule appears to imply that it covers industry specifications and restrictions which the Government has neither approved nor endorsed. Second, the interim rule may have applied the new policies concerning "qualification requirements" too narrowly, in that the rule treats components of end items differently from the specific supplies or services actually purchased on a Government prime contract.

As a result of these comments, a proposed rule was issued that would modify FAR 9.206–1(d) and the clause at 52.209–1 to require that any qualification requirements applicable to a component be met before award of a prime contract, whether the contractor intends to purchase or manufacture the component. The proposed rule would have deleted the clause at 52.209–2 as no longer necessary.

Having considered all public comments received on the proposed rule, the FAR Councils have developed this final rule coverage. Changes have been made strictly for the purpose of clarification and involve no substantive changes. They are as follows:

a. The first sentence of subsection 52.209–1 has been rewritten to clarify the concept that a product or service must be qualified whether it will be provided by the contractor or a subcontractor. FAR 9.207(a)(3) is editorially revised to reflect removal of the clause at 52.207–2.

b. FAR 9.202(a)(1)(ii) is changed to indicate that the testing and evaluation costs referenced are those of a potential offeror.

Item V—Small Business Size Standards

FAR 19.102 is revised to incorporate changes made to the size standards regulations as published in the **Federal Register** by the Small Business Administration on May 25, 1988. The modified size standard, SIC Code 4724, published in 53 FR 18820 (FR Doc. 88–11693) applies to solicitations issued on or after June 24, 1988. SIC Code 8731 is effective March 30, 1988, by issuance of an SBA emergency interim rule (53 FR 10244). Modified size standards, SIC Codes 3339, 3569, 3996, 5735, and 7361, published in 53 FR 18821 (FR Doc. 88–11694) apply to solicitations issued on or after July 1, 1987.

Item VI—State of New Mexico Gross Receipts and Compensating Tax

Nine Federal agencies have entered into separate agreements with the Taxation and Revenue Department of the State of New Mexico to eliminate double taxation of Government cost-reimbursable contractors who purchase

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tangible personal property to be used in performing services, title to which passes to the United States upon delivery of the property to the contractor by the vendor.

The agreement is effective only when the clause at FAR 52.229–10, State of New Mexico Gross Receipts and Compensating Tax, is included in each cost-reimbursement contract for the following Federal agencies:

United States Department of Agriculture
United States Department of the Air Force
United States Department of the Army
United States Department of Energy
United States Department of the Interior
United States Department of Labor
United States Department of the Navy
United States General Services Administration
United States National Aeronautics and Space Administration

Failure to include the clause in each cost-reimbursement contract means the Government reimburses the contractor the gross receipts tax paid to a vendor for purchased tangible personal property and reimburses the contractor for its own gross receipts tax which includes the tax already paid on purchased property (double taxation).

The coverage in FAR 29.401–6 encourages other agencies which expect to enter into cost-reimbursement contracts in the State of New Mexico to execute similar agreements with the New Mexico Taxation and Revenue Department.

Item VII—Severance Pay

FAR 31.205(g)(2)(i) is being revised to delete the provision disallowing severance payments which are in addition to early or normal retirement payments.

Item VIII—Price Negotiation for Construction Contracts

FAR 36.402(b) is being revised to clarify when certified cost or pricing data is required in connection with negotiated construction contracts.

Item IX—F.O.B. Destination

FAR 47.303 is being revised to remind contracting activities that the terms and conditions contained in FAR Subpart 47.3 are applicable to fixed-price contracts, and are only to be used as a guide for cost-reimbursement contracts. Therefore, 48 CFR Parts 1, 3, 7, 9, 10, 19, 29, 31, 36, 47, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 3, 7, 9, 10, 19, 29, 31, 36, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

§ 1.105 [Amended]

2. Section 1.105 is amended by adding in numerical order, two FAR segments and corresponding OMB Control Numbers, to read as follows:

FAR segment	OMB Control No.
* * * * *	
52.203–7	9000–0091
* * * * *	
52.209–1	9000–0083
* * * * *	

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.502–1 is amended by adding in alphabetical order the definition "Prime Contractor" to read as follows:

§ 3.502–1 Definitions.

* * * * *

"Prime Contractor," as used in this section, means a person who has entered into a prime contract with the United States.

* * * * *

4. Section 3.502–2 is amended by revising paragraph (i)(1) to read as follows:

§ 3.502–2 General.

* * * * *

(i) * * *

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies against kickbacks, related company procedures and the consequences of detection; procedures requiring subcontractors to certify they have not paid kickbacks; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

* * * * *

PART 7—ACQUISITION PLANNING

5. Section 7.101 is amended by adding alphabetically the definition "Acquisition streamlining" to read as follows:

§ 7.101 Definitions.

* * * * *

"Acquisition streamlining," as used in this subpart means any effort that results in more efficient and effective use of resources to design and develop, or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems.

* * * * *

6. Section 7.105 is amended by adding paragraph (a)(8) to read as follows:

§ 7.105 Contents of written acquisition plans.

* * * * *

(a) * * *

(8) Acquisition streamlining. If specifically designated by the requiring agency as a program subject to acquisition streamlining, discuss plans and procedures to

(i) Encourage industry participation by using draft solicitations, presolicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements;

(ii) Select and tailor only the necessary and cost-effective requirements; and

(iii) State the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory (see 10.002(c)).

PART 9—CONTRACTOR QUALIFICATIONS

7. Section 9.104–3 is amended by revising paragraph (a) to read as follows:

§ 9.104–3 Application of standards.

(a) *Manufacturer or regular dealer.* See 22.608–2.)

* * * * *

8. Section 9.201 is amended by revising the definition "Qualification requirement" to read as follows:

§ 9.201 Definitions.

* * * * *

"Qualification requirement" means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

* * * * *

9. Section 9.202 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 9.202 Policy.

(a) * * *

(1) * * *

(ii) Estimating the likely costs for testing and evaluation which will be incurred by the potential offeror to become qualified; and

* * * * *

10. Section 9.206–1 is amended by revising paragraphs (b), (c), and (d) to read as follows:

9.206–1 General.

* * * * *

(b) Except when the agency head or designee determines that an emergency exists, whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established, the requirement may not thereafter be enforced unless the agency complies with 9.202(a).

(c) If a qualification requirement applies, the contracting officer need consider only those offers identified as meeting the requirement or included on the applicable QPL, QML, or QBL, unless an offeror can satisfactorily demonstrate to the contracting officer that it or its product or its subcontractor or its product can meet the standards established for qualification before the date specified for award.

(d) If a product subject to a qualification requirement is to be acquired as a component of an end item, the contracting officer must assure that all such components and their qualification requirements are properly identified in the solicitation since the product or source must meet the standards specified for qualification before award.

* * * * *

11. Section 9.206–2 is revised to read as follows:

9.206–2 Contract clause.

The contracting officer shall insert the clause at 52.209–1, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.

12. Section 9.207 is amended by revising paragraph (a)(3) to read as follows:

9.207 Changes in status regarding qualification requirements.

(a) * * *

(3) A supplier fails to request reevaluation following change of location or ownership of the plant where the product which met the qualification requirement was manufactured (see the clause at 52.209–1, Qualification Requirements);

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

13. Section 10.000 is revised to read as follows:

10.000 Scope of part.

This part prescribes policies and procedures for using specifications, standards, and other purchase descriptions, and related considerations of acquisition streamlining (see 7.101).

14. Section 10.002 is amended by adding paragraph (c) as follows:

10.002 Policy.

* * * * *

(c) Requiring agencies, for programs which they have designated as subject to acquisition streamlining, should apply specifications standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely. The objective of acquisition streamlining is to reduce the time and cost, and improve the quality of systems acquisitions, by ensuring that contracts contain only those necessary specifications, standards, and related documents which have been tailored for application at the most appropriate time in the system acquisition cycle. To the extent practicable, contractors should be involved in recommending application and tailoring of such specifications, standards, and related documents in one phase for proposed application to the succeeding phase of the acquisition cycle.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

15. Section 19.102 is amended in the size standards tables by removing in Group 17 SIC Code 1799 Base Housing Maintenance, footnote "16" and inserting in its place footnote "17"; by removing in Group 26, SIC Code 2661 and its corresponding description and size; by revising in Group 33, SIC Code 3339; by revising in Group 35, SIC Code 3569; by removing in Group 39 SIC Code 3996, the size "500" and inserting in its place "750"; by removing in Group 44, SIC Code 4459 and its corresponding description and size; by removing in Group 47 SIC Code 4724, the size "$3.5" and inserting in its place "$0.5"; by removing in Group 49 SIC Code 4911, footnote "20" and inserting in its place "21"; by removing in Group 57 SIC Code 5735, the size "$4.5" and inserting in its place "$3.5"; by adding in Division I, following the word "Services", the footnote "16"; by removing in Group 73 SIC Code 7361, the size "$5.5" and inserting in its place "$3.5"; by removing under SIC Code 7363, the description "Base Maintenance" and corresponding size, and removing a duplication of SIC Code 7379 and its corresponding description and size; by removing in Group 76 SIC Code 7699, the footnote "17" and inserting in its place "18"; by removing in Group 87 SIC Code 8731, the footnote "18" and inserting in its place "19"; by removing in SIC Code 8744 footnote "19" and adding the additional description "Base Maintenance 17" and corresponding size "$13.5"; by removing in footnote "9", the second sentence; by revising footnotes "10" and "19"; by redesignating the existing footnotes "16" thru "20" as "17" thru "21"; by adding a new footnote "16"; by removing in footnote "17" SIC Code "7363" and inserting in its place "8744"; and by revising in the definition "Base Maintenance" the fifth sentence to read as follows:

19.102 Size standards.

* * * * *

3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum	750

* * * * *

3569	General Industrial Machinery and Equipment, N.E.C	500

* * * * *

Footnotes.

* * * * *

[10] SIC 4724 and 6531: As measured by total revenues, normally consisting primarily of commissions in millions of dollars.

* * * * *

[16] For all industries not specifically listed in this division, the size standard is $3.5 million.

[17] * * *

"Base Maintenance" * * * If the contract involves the use of special trade contractors

(plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. * * *

* * * * *

[19] SIC–8731: For research and development contracts requiring the delivery of a manufactured product, the size standard to use is that of the manufacturing industry in which the specific products are classified.

Research and Development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: Economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See Part 121.7 of 13 CFR.

For research and development for aircraft, a size standard of 1,500 employees shall apply.

For research and development for guided missiles and space vehicles; aircraft engines; aircraft parts; guided missiles and space vehicle propulsion units and propulsion unit parts; guided missile and space vehicle parts and auxiliary equipment, not elsewhere classified, a size standard of 1,000 employees shall apply. Research and development for guided missiles and space vehicles includes evaluation and simulation and other services requiring thorough knowledge of complete guided missiles and space craft.

* * * * *

16. Section 19.705–6 is amended by revising paragraphs (a) and (b) to read as follows:

19.705–6 Postaward responsibilities of the contracting officer.

* * * * *

(a) Notifying the SBA of the award by sending a copy of the award document to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contract will be performed.

(b) Forwarding a copy of each plan and any associated approvals to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contractor's headquarters is located, if any company-wide plans were received from offerors of commercial products.

* * * * *

PART 29—TAXES

17. Section 29.401–6 is added to read as follows:

29.401–6 New Mexico gross receipts and compensating tax.

(a) *Definition.* "Services," as used in this subsection, is as defined in the Gross Receipts and Compensating Tax Act of the State of New Mexico, Sec. 7–9–3(k) NM SA 1978, and means all activities engaged in for other persons for a consideration, which activities involve predominately the performance of a service as distinguished from selling or leasing property. "Services" includes activities performed by a person for its members of shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Services" also includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property.

(b) *Contract clause.* The contracting officer shall insert the clause at 52.229–10, State of New Mexico Gross Receipts and Compensating Tax, in solicitations and contracts issued by the executive agencies identified in paragraph (c) of this subsection when all three of the following conditions exist:

(1) The contractor will be performing a cost-reimbursement contract.

(2) The contract directs or authorizes the contractor to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the vendor.

(3) The contract will be for services to be performed in whole or in part within the State of New Mexico.

(c) *Participating agencies.* (1) The executive agencies listed below have entered into an agreement with the State of New Mexico to eliminate the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Therefore, the clause applies only to solicitations and contracts issued by the—

United States Department of Agriculture;
United States Department of the Air Force;
United States Department of the Army;
United States Department of Energy;
United States Department of the Interior;
United States Department of Labor;
United States Department of the Navy;
United States General Services Administration; and
United States National Aeronautics and Space Administration.

(2) Any other Federal agency which expects to award cost-reimbursement contracts to be performed in New Mexico should contact the New Mexico Taxation and Revenue Department to execute a similar agreement.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–6 [Amended]

18. Section 31.205–6 is amended by removing the last sentence in paragraph (g)(2)(i).

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

19. Section 36.402 is amended by revising paragraph (b)(1) to read as follows:

36.402 Price negotiation.

* * * * *

(b) * * *

(1) When the submission of certified cost or pricing data is not required (see 15.804–2 and 15.804–3), and any element of a proposal differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost data concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

PART 47—TRANSPORTATION

20. Section 47.303 is revised to read as follows:

47.303 Standard delivery terms and contract clauses.

Standard delivery terms are listed in 47.303–1 through 47.303–16 (but see 47.300 regarding applicability to cost reimbursemernt contracts).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Section 52.203–7 is amended by removing in the title of the clause the date "(FEB 1987)" and inserting in its place "(XXX 1988)"; by adding in alphabetical order in paragraph (a) of the clause the definition "Prime Contractor"; and by revising paragraphs (c)(4) and (c)(5) to read as follows:

52.203–7 Anti-Kickback Procedures.

* * * * *

(a) * * *

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

* * * * *

(c) * * *

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under under this contract.

22. Section 52.209–1 is revised to read as follows:

52.209–1 Qualification Requirements.

As prescribed in 9.206–2, insert the following clause:

QUALIFICATION REQUIREMENTS (XXX 1988)

(a) Definition: "Qualification Requirement," as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name) ———————————

(Address) ———————————

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name ———————————

Manufacturer's Name ———————————

Source's Name ———————————

Item Name ———————————

Service Identification ———————————

Test Number ———————————

(to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product, or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror shall submit evidence of qualification with its offer in order to receive consideration. If this is a sealed bid acquisition and the product, manufacturer, or offeror that is already qualified or is to be qualified before award is not identified, either above or elsewhere in the bid, the Contracting Officer shall reject the bid. Unless determined to be in the Government's interests, this acquisition will not be delayed in order to provide an offeror with an opportunity to meet the standards specified for qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause.)

52.209–2 [Reserved]

23. Section 52.209–2 is removed and reserved.

24. Section 52.229–10 is added to read as follows:

52.229–10 State of New Mexico Gross Receipts and Compensating Tax.

As prescribed in 29.401–6(b), insert the following clause:

STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (XXX 1988)

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR–3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the (*———) and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The (*———) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (*———), may participate in any matters or proceedings pertaining to this clause or the above-mentioned agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the (*———) to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401–6(b) (1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

(End of clause.)

(*Insert appropriate agency name in blanks.)

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Friday
September 2, 1988

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for June 1988

ENVIRONMENTAL PROTECTION AGENCY

(OPTS-53107; FRL-3433-1)

Premanufacture Notices; Monthly Status Report for June 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for JUNE 1988.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53107)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during June; (b) PMNs received previously and still under review at the end of June; (c) PMNs for which the notice review period has ended during June; (d) chemical substances for which EPA has received a notice of commencement to manufacture during June; and (e) PMNs for which the review period has been suspended. Therefore, the June 1988 PMN Status Report is being published.

Date: August 10, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

PREMANUFACTURE NOTICE MONTHLY STATUS REPORT—JUNE 1988

I. 164 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH

PMN No.	
P 88-1486	P 88-1551
P 88-1487	P 88-1552
P 88-1488	P 88-1553
P 88-1489	P 88-1554
P 88-1490	P 88-1555
P 88-1491	P 88-1556
P 88-1492	P 88-1557
P 88-1493	P 88-1558
P 88-1494	P 88-1559
P 88-1495	P 88-1560
P 88-1496	P 88-1561
P 88-1497	P 88-1562
P 88-1498	P 88-1563
P 88-1499	P 88-1564
P 88-1500	P 88-1565
P 88-1501	P 88-1566
P 88-1502	P 88-1567
P 88-1503	P 88-1568
P 88-1504	P 88-1569
P 88-1505	P 88-1570
P 88-1506	P 88-1571
P 88-1507	P 88-1572
P 88-1508	P 88-1573
P 88-1509	P 88-1574
P 88-1510	P 88-1575
P 88-1511	P 88-1576
P 88-1512	P 88-1577
P 88-1513	P 88-1578
P 88-1514	P 88-1579
P 88-1515	P 88-1580
P 88-1516	P 88-1581
P 88-1517	P 88-1582
P 88-1518	P 88-1583
P 88-1519	P 88-1584
P 88-1520	P 88-1585
P 88-1521	P 88-1586
P 88-1522	P 88-1587
P 88-1523	P 88-1588
P 88-1524	P 88-1589
P 88-1525	P 88-1590
P 88-1526	P 88-1591
P 88-1527	P 88-1592
P 88-1528	P 88-1593
P 88-1529	P 88-1594
P 88-1530	P 88-1595
P 88-1531	P 88-1596
P 88-1532	P 88-1597
P 88-1533	P 88-1598
P 88-1534	P 88-1599
P 88-1535	P 88-1600
P 88-1536	P 88-1601
P 88-1537	P 88-1602
P 88-1538	P 88-1603
P 88-1539	P 88-1604
P 88-1540	P 88-1605
P 88-1541	P 88-1606
P 88-1542	P 88-1607
P 88-1543	P 88-1608
P 88-1544	P 88-1609
P 88-1545	P 88-1610
P 88-1546	P 88-1611
P 88-1547	P 88-1612
P 88-1548	P 88-1613
P 88-1549	P 88-1614
P 88-1550	P 88-1615
P 88-1616	P 88-1633
P 88-1617	P 88-1634
P 88-1618	P 88-1635
P 88-1619	P 88-1636
P 88-1620	Y 88-0200
P 88-1621	Y 88-0201
P 88-1622	Y 88-0202
P 88-1623	Y 88-0203
P 88-1624	Y 88-0204
P 88-1625	Y 88-0205
P 88-1626	Y 88-0206
P 88-1627	Y 88-0207
P 88-1628	Y 88-0208
P 88-1629	Y 88-0209
P 88-1630	Y 88-0210
P 88-1631	Y 88-0211
P 88-1632	Y 88-0212

II. 259 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.	
P 83-0669	P 87-1436
P 84-1182	P 87-1437
P 84-1183	P 87-1471
P 85-0216	P 87-1542
P 85-0535	P 87-1546
P 85-0536	P 87-1547
P 85-0619	P 87-1548
P 85-0718	P 87-1549
P 85-0941	P 87-1555
P 86-0065	P 87-1673
P 86-0066	P 87-1676
P 86-0067	P 87-1677
P 86-0092	P 87-1679
P 86-0294	P 87-1680
P 86-0295	P 87-1694
P 86-0592	P 87-1759
P 86-1078	P 87-1769
P 86-1189	P 87-1770
P 86-1235	P 87-1787
P 86-1356	P 87-1830
P 86-1602	P 87-1865
P 86-1603	P 87-1872
P 86-1604	P 87-1879
P 86-1607	P 87-1881
P 87-0057	P 87-1882
P 87-0058	P 88-0049
P 87-0059	P 88-0079
P 87-0068	P 88-0083
P 87-0105	P 88-0134
P 87-0197	P 88-0138
P 87-0198	P 88-0156
P 87-0199	P 88-0157
P 87-0200	P 88-0182
P 87-0201	P 88-0195
P 87-0318	P 88-0225
P 87-0323	P 88-0245
P 87-0326	P 88-0262
P 87-0641	P 88-0263
P 87-0642	P 88-0275
P 87-0723	P 88-0290
P 87-0770	P 88-0319
P 87-0794	P 88-0320
P 87-0930	P 88-0353
P 87-0931	P 88-0387
P 87-0963	P 88-0388
P 87-0971	P 88-0393
P 87-0973	P 88-0410
P 87-1028	P 88-0436
P 87-1041	P 88-0468
P 87-1066	P 88-0515
P 87-1104	P 88-0522
P 87-1192	P 88-0547
P 87-1226	P 88-0567
P 87-1227	P 88-0568
P 87-1273	P 88-0576
P 87-1337	P 88-0598
P 87-1379	P 88-0602
P 87-1417	P 88-0606

P 88-0622
P 88-0658
P 88-0671
P 88-0701
P 88-0715
P 88-0716
P 88-0728
P 88-0759
P 88-0770
P 88-0792
P 88-0821
P 88-0831
P 88-0836
P 88-0837
P 88-0854
P 88-0862
P 88-0864
P 88-0875
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P 88-1471
P 88-1472
P 88-1473
P 88-1475
P 88-1480
P 88-1484
P 88-1485
Y 88-0178

III. 205 Premanufacture Notices and Exemption Request for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)

PMN NO.

P 86-1712
P 87-0547
P 87-0549
P 87-0752
P 88-0348
P 88-0410
P 88-0441
P 88-0468
P 88-0601
P 88-0720
P 88-0742
P 88-0781
P 88-0782
P 88-0879
P 88-0910
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Y 88-0202
Y 88-0203

IV. 87 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 81-0240	N,N'-bis(2-ethylhexyloxycarbonylphenyl)formamidine	May 9, 1988.
P 82-0289	Aliphatic polyamine and bisphenol A, epichlorohydrin condensate; reacted with acrylonitrile and ethylene oxide	Mar. 25, 1988.
P 83-0603	G Substituted nitrile	Oct. 6, 1983.
P 83-1042	Acridine, 9-phenyl-	Apr. 18, 1988.
P 85-0569	G Alkyl calixaryl acetate	May 13, 1988.
P 86-0548	G Alicyclic aliphatic polyester	Apr. 20, 1988.
P 86-0554	Poly(oxy-1,2-ethanediyl), alpha-(1 oxo-2-propenyl)-omega-(dodecyloxy)-	Do.
P 86-0594	G Modified formal dehyde polymer	Apr. 5, 1988.
P 86-0701	G Acrylic resin	June 18, 1986.
P 86-1639	G Octadecanoic acid, glycol ester	Apr. 27, 1988.
P 86-1701	G Hydroxylated, unsaturated natural ester	Mar. 23, 1988.
P 87-0005	G 2-methyl-4-methoxy-diphenylamine	Mar. 26, 1988.
P 87-0148	G Acrylate-capped polyurethane diol	Apr. 5, 1988.

IV. 87 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 87-0170	Carboxylic acid salt of a tertiary amine	Apr. 6, 1988.
P 87-0524	G Substituted benzoyl benzoic acid	Apr. 12, 1988.
P 87-0759	G Fluorinated cotelomer	May 13, 1988.
P 87-0836	G Inert perfluorocarbon liquid	Apr. 21, 1988.
P 87-0864	G Fluorinated copolymer	May 13, 1988.
P 87-1091	Copolyester based on arsonatic dicarbonic acids	Apr. 9, 1988.
P 87-1117	G Epoxylated alkyl amine	Mar. 14, 1988.
P 87-1118	G Epoxylated alkyl quaternary ammonium salt	Mar. 22, 1988.
P 87-1320	G Chlorohexidine base	May 9, 1988.
P 87-1400	G Vinyl resin or vinylchloride-acrylic acid ester copolymer with oh-functional sites	May 11, 1988.
P 87-1460	G Substituted-phenyl Substituted-(methoxyphenyl alkanamide)	Apr. 18, 1988.
P 87-1498	Butene-2-oic acid, cyclohexyl ester	Apr. 28, 1988.
P 87-1528	G Acetyl-1-dimethyl-3,3-cyclohexene-1	Do.
P 87-1560	G Poly(propylene carbomate)	Apr. 14, 1988.
P 87-1577	G Alkoxy modified Organopolysiloxane	May 7, 1988.
P 87-1580	Dimethyl cyclosilane	Apr. 12, 1988.
P 87-1601	G Modified polymeric amine	Apr. 13, 1988.
P 87-1632	G Alkylbenzene	Apr. 25, 1988.
P 87-1633	G Metal salt of alkaryl sulfonate	May 2, 1988.
P 87-1635	G Metal salt of alkaryl sulfonate	Apr. 29, 1988.
P 87-1648	G Substituted phthalic anhydride	May 2, 1988.
P 87-1660	G Halogenated alkene	Mar. 25, 1988.
P 87-1696	G Amine salt of phosphoric acid	May 4, 1988.
P 87-1786	4,4'-bis(5-Chloro-3-(2,4-disulfo-5-(N-ethyl-2-oxo-3-carbamide-4-methyl-6-hydroxypyridyl-5-azo)phenylamino)-5-triazinylamino)) stilbene-2,2'-disulfonic acid, hexasodium salt.	Apr. 19, 1988.
P 87-1838	G Acrylic lactone copolymer	Apr 21, 1988.
P 87-1839	G Acrylic lactone copolymer	Apr. 29, 1988.
P 87-1844	Toluene	Apr. 12, 1988.
P 87-1847	G Organosilane	May 7, 1988.
P 87-1848	Dimethyl cyclosiloxane; 2,4,6,8-tetramethyl-2,4,6,8-tetrakis (3,3,3-trifluoropropyl); cyclotetrasiloxane	Do.
P 88-0025	G Substituted-aminophenyl substituted-heteromono, salt	Apr. 22, 1988.
P 88-0074	G Styrene butadiene polymer with alkanedioic acid and alkane ester	Apr. 18, 1988.
P 88-0077	G Alicycle acid anhydride	Apr. 17, 1988.
P 88-0088	G Aromatic substituted ethylene diamine	Mar. 21, 1988.
P 88-0098	G Polyamide-olefin graft copolymer	Apr. 18, 1988.
P 88-0108	G Modified organo silicone	May 7, 1988.
P 88-0113	Diethyl cyclosiloxane	Apr. 12, 1988.
P 88-0133	Tris((1-methylethenyl)oxy)phenyl silane	Mar. 4, 1988.
P 88-0152	Methanol	Apr. 10, 1988.
P 88-0159	Propionic acid, lithium salt (1:)	Apr. 21, 1988.
P 88-0160	Maleic acid, dilithium salt	Do.
P 88-0161	Maleic acid, monolithium salt	Do.
P 88-0273	Organic ester	May 9, 1988.
P 88-0291	G Unsaturated acidic polycarboxylic acid ester	May 4, 1988.
P 88-0308	G Polyterpene resin	Apr. 29, 1988.
P 88-0310	G Polyurea A polyisocyanate(aliphatic) and A polyamine(aliphatic) condensate	May 30, 1988.
P 88-0342	G Polyurea. A polyisocyanate(aliphatic) and A polyamine(aliphatic) condensate	Do.
P 88-0344	G Terpene-stryene resin	May 1, 1988.
P 88-0386	G Hydroxy resin	Apr. 20, 1988.
P 88-0397	G Polyester acetate	Apr. 18, 1988.
P 88-0486	Resin; sulfuric acid, aluminum salt (3:2)	May 11, 1988.
P 88-0500	G Rubber modified polyamide	Apr. 22, 1988.
P 88-0501	G Aliphatic aromatic reaction products	Do.
P 88-0502	G S-Triaryl-branched aryl-alkyl-aryl-capped polycarbonate	Apr. 19, 1988.
P 88-0558	G Hydroxyacrylic resin	May 6, 1988.
P 88-0620	G Derivative of poly-(oxy(1-ethyl-1,2-Ethanediyl))-.alpha.-(P-Tetra(propopene)-phenoxy-.omega.-Hydro)ester with carbonochloridic acid.	May 16, 1988.
P 88-0656	G Water-reducible epoxy ester copolymer resin	Apr. 26, 1988.
P 88-0695	G Substituted polysiloxane	May 6, 1988.
P 88-0775	G Polymer of benezenedicarboxylic acid, alkanetriol, vegetable oil and fatty acids, and phenolic resin	May 9, 1988.
P 88-0784	G Solvent-free baking alkyd	Do.
Y 85-0080	G Polyoxyalkylene modified dimethylsilicone	May 1, 1988.
Y 87-0097	G Alkyd	May 2, 1988.
Y 87-0259	G Polyester	May 6, 1988.
Y 88-0054	G Styrene copolymer	Apr. 26, 1988.
Y 88-0101	G 2-Oxepanone, polymer with, glycols and 1,1'-methylenebis(isocyanatobenene)	Mar. 10, 1988.
Y 88-0130	G Polymer of aromatic diacid, alkanediol, and branched alkanediol	Apr. 23, 1988.
Y 88-0135	G Resin modified phenolic resin	Apr. 24, 1988.
Y 88-0136	G Resin modified phenolic resin	Do.
Y 88-0139	G Polymer of aromatic diacid, alkanediol, and branched-alkanediol	May 2, 1988.
Y 88-0140	G Aliphatic polyester urethane	Apr. 8, 1988.
Y 88-0143	G Carboxylated polyamide	Apr. 25, 1988.
Y 88-0162	G Aqueous solutions of acrylic polymer salts	Apr. 29, 1988.
Y 88-0170	G Unsaturated polyester resin	May 6, 1988.
Y 88-0171	G Random copolymer emulsion	Do.
Y 88-0176	G Butadiene-containing polymer	May 10, 1988.

V. 50 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.	
P 87-1767	P 88-1186
P 88-0179	P 88-1200
P 88-0183	P 88-1217
P 88-0212	P 88-1218
P 88-0395	P 88-1219
P 88-0522	P 88-1221
P 88-0701	P 88-1271
P 88-0759	P 88-1272
P 88-0770	P 88-1273
P 88-0864	P 88-1274
P 88-0884	P 88-1303
P 88-0886	P 88-1308
P 88-0952	P 88-1309
P 88-0953	P 88-1313
P 88-0972	P 88-1314
P 88-0981	P 88-1405
P 88-0985	P 88-1425
P 88-0997	P 88-1471
P 88-0998	P 88-1485
P 88-0999	P 88-1520
P 88-1021	P 88-1546
P 88-1031	Y 88-0178
P 88-1059	Y 88-0188
P 88-1063	Y 88-0196
P 88-1106	Y 88-0201

[FR Doc. 88-18956 Filed 9-1-88; 8:45 am]
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federal register

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September 2, 1988

Part V

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for January 1988

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53102; FRL-3424-1]

Premanufacture Notices; Monthly Status Report for January 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for January 1988.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53102)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during January; (b) PMNs received previously and still under review at the end of January; (c) PMNs for which the notice review period has ended during January; (d) chemical substances for which EPA has received a notice of commencement to manufacture during January; and (e) PMNs for which the review period has been suspended. Therefore, the January 1988 PMN Status Report is being published.

As stated in the February 1988 monthly status report, published in the **Federal Register** of June 28, 1988 (53 FR 24402), publication of the monthly status reports since October 1987 was delayed due to a computer sorting error, which has been corrected. This document reflects a cumulative publication of PMN activity from October 1987 through January 1988.

Date: July 25, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report

January 1988

I. 792 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	
P 88-0001	P 88-0060
P 88-0002	P 88-0061
P 88-0003	P 88-0062
P 88-0004	P 88-0063
P 88-0005	P 88-0064
P 88-0006	P 88-0065
P 88-0007	P 88-0066
P 88-0008	P 88-0067
P 88-0009	P 88-0068
P 88-0010	P 88-0069
P 88-0011	P 88-0070
P 88-0012	P 88-0071
P 88-0013	P 88-0072
P 88-0014	P 88-0073
P 88-0015	P 88-0074
P 88-0016	P 88-0075
P 88-0017	P 88-0076
P 88-0018	P 88-0077
P 88-0019	P 88-0078
P 88-0020	P 88-0079
P 88-0021	P 88-0080
P 88-0022	P 88-0081
P 88-0023	P 88-0082
P 88-0024	P 88-0083
P 88-0025	P 88-0084
P 88-0026	P 88-0085
P 88-0027	P 88-0086
P 88-0028	P 88-0087
P 88-0029	P 88-0088
P 88-0030	P 88-0089
P 88-0031	P 88-0090
P 88-0032	P 88-0091
P 88-0033	P 88-0092
P 88-0034	P 88-0093
P 88-0035	P 88-0094
P 88-0036	P 88-0095
P 88-0037	P 88-0096
P 88-0038	P 88-0097
P 88-0039	P 88-0098
P 88-0040	P 88-0099
P 88-0041	P 88-0100
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P 88-0044	P 88-0103
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P 88-0059	P 88-0118
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II. 87 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.

P 83-0669
P 84-1182
P 84-1183
P 85-0216
P 85-0535
P 85-0536
P 85-0619
P 85-0718
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III. 775 Premanufacture Notices and Exemption Requests for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)

PMN No.

P 83-0770
P 84-0713
P 85-0676
P 85-0949
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IV. 87 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 80-0010	G Substituted ketone pyran	Sept. 9, 1987.
P 83-0471	G Metal salt of saccharin	Nov. 24, 1987.
P 83-0660	G Perfluorinated hydrocarbon	Aug. 1, 1983.
P 84-0116	G Substituted aromatic polymer	Sept. 14, 1987.
P 86-0056	G Hydrocarbon resin, hydrogenated	Nov. 17, 1987.
P 86-0061	G Hydrocarbon resin	Nov. 10, 1986.
P 86-0116	G Esterified aromatic carboxylic acid	June 24, 1986.
P 86-0235	G Aromatic isocyanate-terminated polyether polymer	Sept. 23, 1987.
P 86-0571	Alkenes reaction products with 2,5-furandione substituted alkyl amines	Nov. 11, 1987.
P 86-0572	G Alkenes reaction products with furandione and substituted alkyl amines	Nov. 13, 1987.

IV. 87 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 86-0639	G Copolymers of fluoroolefin and vinyl ethers	July 15, 1986.
P 86-1169	G Polyester modified epoxy resin	Apr. 23, 1987.
P 86-1170	G Polyamide/acrylic copolymer	Apr. 3, 1987.
P 86-1216	G Benzenedicarboxylic acid, substituted	Sept. 19, 1987.
P 86-1273	G Low molecular weight polybutadiene oil containing carboxyl groups	Sept. 12, 1987
P 86-1502	G Polyester-imide resin	Apr. 8, 1987.
P 86-1739	G Acrylylalkyl substituted benzenepolyolcarboxylic acid derivative	Dec. 11, 1987.
P 87-0060	G Cumene derivative	Feb. 25, 1987.
P 87-0083	G Alkylene diol alkyl ether	July 27, 1987.
P 87-0109	G Perfluoroalkyl ester	Jan. 22, 1987.
P 87-0125	Series isomers of undetermined structure	Jan. 26, 1987.
P 87-0158	4-ethenylphenol acetate	Aug. 17, 1987.
P 87-0161	G Disubstituted quinoline hydrochloride	Apr. 1, 1987.
P 87-0236	G Chromate,(1-),bis[(5-chloro-2-hydroxyphenyl)azo-2-naphtalenolato(2-)]-,hydrogen, compound with 1-tetradecanamine(1:1)	June 19, 1987.
P 87-0259	G Hydrolyzable alkylsilane	Oct. 23, 1987.
P 87-0309	Benzophenonetetra-carboxylic acid	Aug. 27, 1987.
P 87-0328	G Piperidinyl triazine derivative	Dec. 8, 1987.
P 87-0330	Aluminum,t-	Oct. 5, 1987.
P 87-0332	G Substituted benzenesulfonamide	Sept. 18, 1987.
P 87-0334	G Substituted benzenesulfonyl chloride	Do.
P 87-0366	Polymer of trichloromethylsilane; dichlorodimethylsilane; and trichlororphenylsilane	Nov. 14, 1987.
P 87-0388	G Substituted triphenodioxazine	Sept. 9, 1987.
P 87-0420	G Alkyl amine polyether	Nov. 22, 1987.
P 87-0447	G Perfluoroelastomer	Nov. 4, 1987.
P 87-0477	G Aliphatic polyester	Oct. 5, 1987.
P 87-0494	G Isocyanate modified alkyd resin	Aug. 6, 1987.
P 87-0537	Polymerized cashew nutshell liquid	June 2, 1987.
P 87-0538	....do	Do.
P 87-0601	G Aromatic polymeric polyester	May 8, 1987.
P 87-0754	G Modified polyacrylate polymer	Nov. 30, 1987.
P 87-0939	G Organofunctional polysiloxane	Sept. 9, 1987.
P 87-0972	G Waterborne urethane-acrylic copolymer	Sept. 10, 1987.
P 87-1035	G Aromatic sulfonate polymer salt	Sept. 9, 1987.
P 87-1061	G Zirconium (4+) alkanolamine polyol complex	Sept. 3, 1987.
P 87-1076	Polyetheramide based on nylon 6-monomers	Nov. 12, 1987.
P 87-1097	G Dialkyl dimethyl amine graft copolymer with ethoxylated cellulose	Sept. 9, 1987.
P 87-1126	1,1'-ethylene-2,2' bipyridylium dibromide	Dec. 10, 1987.
P 87-1152	G Organopolysiloxane containing epoxy group	Oct. 2, 1987.
P 87-1172	G Acetylalazine	Sept. 4, 1987.
P 87-1178	G Modified Organopolysiloxane	Sept. 8, 1987.
P 87-1189	G Benzenesulfonic acid, alkyd derivation	Sept. 25, 1987.
P 87-1207	G Sulfur/olefin adduct	Sept. 28, 1987.
P 87-1243	Ethanol,2-Phenoxy, formate	Nov. 19, 1987.
P 87-1245	G Benzene sulfonic acid, alkyl derivatives, calcium salts	Sept. 25, 1987.
P 87-1298	G Alkoxysilane	Sept. 9, 1987.
P 87-1305	G Crosslinked ethylene interpolymer	Sept. 23, 1987.
P 87-1307	G Epoxy alkyl diol	Nov. 23, 1987.
P 87-1324	G Bicyclic tertiary alcohol	Oct. 2, 1987.
P 87-1325	G Bicyclic olefin	Do.
P 87-1326	G Tricyclic epoxide	Do.
P 87-1328	G Bicyclic ketone	Do.
P 87-1329	G Nitroaromatic alkanoic acid, derivative	Nov. 18, 1987.
P 87-1330	G 1,4 Benzenedicarbonyl dichlororide polymer with bis(4-phenoxyphenyl methanole) and substituted benzene	Sept. 25, 1987.
P 87-1336	G Styrenated copolymer alkyd resin	Sept. 27, 1987.
P 87-1341	G Divalent metal salt of an acid	Nov. 13, 1987.
P 87-1363	G Metal alkyl compounds	Nov. 30, 1987.
P 87-1418	G Acetate of modified fatty acid polyamine condensate	Nov. 23, 1987.
P 87-1419	G Propoxylated formaldehyde resin	Do.
P 87-1420	G Cyanoacrylate ester polymer	Oct. 13, 1987.
P 87-1454	Turpentine oil, reaction products with phenol	Nov. 30, 1987.
P 87-1455	G Polyalkoxylated quaternary ammonium compound	Do.
P 87-1513	Olefin terminated polythioether polymer	Nov. 5, 1987.
P 87-1526	Mercaptan terminated polythioether polymer	Nov. 25, 1987.
P 87-1563	G Mixed metal oxide compound	Dec. 6, 1987.
P 87-1593	G Potassium alcoholates	Nov. 16, 1987.
P 87-1644	G Aryl alkylarylpolyamide resin	Dec. 2, 1987.
P 87-1645	G Aryl alkylpolyamide resin	Dec. 4, 1987.
P 87-1663	G Oil modified high solids aliphatic urethane	Nov. 29, 1987.
P 87-1683	G Acrylic terpolymer	Nov. 30, 1987.
Y 86-0200	G Acrylic polymer	Nov. 24, 1987.
Y 87-0022	G Polyester resin of aryl of dicarboxylic acids and alkane diols	Apr. 22, 1987.
Y 87-0024	G Polyacrylate	Sept. 1, 1987.
Y 87-0091	Diphenylmethane-4,4-diisocyanate, polymer with 1,3-butanediol and (dimethyl polysiloxane, 6-hydroxy-4-oxahenyl terminated) and (hexanedioic acid polymer with 1,4-butadienediol and 1,6-hexanediol).	Mar. 10, 1987.
Y 87-0182	G Styrene, acrylic polymer	July 23, 1987.
Y 87-0210	G Glutaric adipic, and terephthalic polyesters with neopentyl glycol ethylene glycol, and isodecanol	Sept. 19, 1987.
Y 87-0224	G Alkyd resin	Sept. 11, 1987.
Y 88-0016	G Substituted aryl dicarboxylic acid/diol polymer	Nov. 5, 1987.

V. 129 Premanufacture Notices for Which the Period Has Been Suspended

PMN No.					
P 85-0901	P 87-1456	P 87-1574	P 87-1731	P 87-1893	Y 88-0006
P 86-1078	P 87-1464	P 87-1628	P 87-1733	P 87-1894	Y 88-0007
P 87-0758	P 87-1465	P 87-1636	P 87-1734	P 87-1900	Y 88-0008
P 87-0968	P 87-1468	P 87-1657	P 87-1740	P 88-0049	Y 88-0009
P 87-1028	P 87-1471	P 87-1673	P 87-1741	P 88-0056	Y 88-0012
P 87-1041	P 87-1484	P 87-1676	P 87-1742	P 88-0060	Y 88-0013
P 87-1104	P 87-1499	P 87-1677	P 87-1743	P 88-0063	Y 88-0015
P 87-1123	P 87-1531	P 87-1679	P 87-1746	P 88-0083	Y 88-0031
P 87-1212	P 87-1541	P 87-1680	P 87-1760	P 88-0132	Y 88-0033
P 87-1213	P 87-1542	P 87-1710	P 87-1769	P 88-0172	Y 88-0042
P 87-1226	P 87-1546	P 87-1711	P 87-1770	P 88-0177	Y 88-0043
P 87-1227	P 87-1547	P 87-1712	P 87-1784	P 88-0180	Y 88-0044
P 87-1385	P 87-1548	P 87-1714	P 87-1785	P 88-0195	Y 88-0047
P 87-1436	P 87-1549	P 87-1716	P 87-1813	P 88-0267	Y 88-0072
P 87-1437	P 87-1553	P 87-1718	P 87-1814	P 88-0280	Y 88-0073
P 87-1440	P 87-1555	P 87-1719	P 87-1830	P 88-0345	Y 88-0075
P 87-1441	P 87-1565	P 87-1720	P 87-1831	P 88-0352	Y 88-0076
		P 87-1721	P 87-1832	P 88-0372	Y 88-0077
		P 87-1723	P 87-1865	P 88-0441	Y 88-0078
		P 87-1724	P 87-1877	Y 87-0254	Y 88-0079
		P 87-1725	P 87-1878	Y 87-0264	Y 88-0091
		P 87-1726	P 87-1879	Y 87-0265	Y 88-0092
		P 87-1727	P 87-1881	Y 88-0003	
		P 87-1728	P 87-1882		
		P 87-1729	P 87-1884		

[FR Doc. 88-17340 Filed 9-1-88; 8:45 am]

BILLING CODE 6560-50-M

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Friday
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Part VI

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting and Recombinant DNA Research; Proposed Actions Under Guidelines; Notices

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, on October 3, 1988, from approximately 9 a.m. to adjournment at approximately 5 p.m. This meeting will be open to the public to discuss:

Amendment of Guidelines;
Proposed major actions;
Human gene therapy protocol;
Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770–0131, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 23, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19869 Filed 9–1–88; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on October 3, 1988. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue a decision on these proposals in accord with the NIH Guidelines.

DATE: Comments received by September 23, 1988, will be reproduced and distributed to the RAC for consideration at its October 3, 1988, meeting.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, MD 20852. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770–0131.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Proposed Amendment of Section I–C

Section I–C of the NIH Guidelines currently reads as follows:

I–C General Applicability

The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by the NIH directly.

An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an institution that can and does assume the responsibilities assigned in these Guidelines.

The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. The NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

In a letter dated January 9, 1987, Mr. Edward Lee Rogers, Counsel for the Foundation on Economic Trends, and Mr. Jeremy Rifkin, Foundation on Economic Trends, Washington, DC, proposed that the following text be inserted after the first sentence of the third paragraph of Section I–C:

For purposes of the preceding sentence, the term "project" includes any research or development of the recombinat organism or other product or process in question, including all such work that is reasonably foreseeable when the NIH support is received. NIH support includes both money grants and any type of in-kind support, including research conducted directly by NIH, supplies, equipment, the use of facilities, and biological research materials. NIH support has been given where the source of funds or in-kind support is, directly or indirectly, the NIH.

This proposed amendment of Section I–C was initially published for comment in the **Federal Register** of March 11, 1987 (52 FR 7525), prior to a scheduled RAC meeting on June 15, 1987. The June 15, 1987, meeting was postponed and rescheduled on September 21, 1987. Accordingly, this proposed amendment was published again for comment in the **Federal Register** of August 11, 1987 (52 FR 29800).

After extensive discussion at its meeting on September 21, 1987, the RAC voted to establish a working group to make recommendations regarding international projects and to report back to the full RAC.

A Working Group on International Projects met at the NIH on February 1, 1988. After extensive discussion, the working group voted seven in favor, none opposed, and no abstentions that the following proposed revision of the last paragraph of Section I–C be published for comment:

The NIH Guidelines are also applicable: (1) to projects done abroad if they are supported by NIH funds or (2) to research done abroad if it involves deliberate release into the environment or testing in humans of materials containing recombinant DNA developed with NIH funds and the research is a direct extension of the development process. If the host country, however, has established rules for the conduct of recombinant DNA projects then a written assurance of compliance with those rules

may be submitted to NIH in lieu of compliance with the NIH Guidelines. Alternatively, if the host country does not have such rules, written acceptance by an appropriate government office of the host country is necessary in lieu of compliance with the NIH Guidelines. The NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

After extensive discussion of this proposed amendment of Section I–C and attempts to draft revised language, the RAC recommended that the many issues raised be referred back to another working group for further consideration.

A Working Group on International Projects met at the NIH on August 15, 1988. After extensive discussion, the working group recommended that the following proposed revision of the last paragraph of Section I–C be published for comment:

The NIH Guidelines are also applicable to recombinant DNA projects done abroad:

1. if they are supported by NIH funds; or
2. if they involve deliberate release into the environment or testing in humans of materials containing recombinant DNA developed with NIH funds, and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, but not mere provision of research materials.

If the host country has established rules for the conduct of recombinant DNA projects, then the project must be in compliance with those rules. If the host country does not have such rules, the proposed project must be reviewed by an NIH approved IBC or equivalent review body and accepted in writing by an appropriate national governmental authority. The safety practices to be employed abroad must be reasonably consistent with the NIH Guidelines.

II. Human Gene Transfer Protocol

The RAC will consider a human gene transfer protocol submitted by Drs. Steven A. Rosenberg, R. Michael Blaese, and W. French Anderson of the National Institutes of Health to mark tumor infiltrating lymphocytes (TIL) and to study their distribution and survival in the body. The proposal was initially reviewed by the RAC Human Gene Therapy Subcommittee at a meeting on July 29, 1988.

III. Proposed Amendment of Section I–B

Dr. Anne Vidaver of the University of Nebraska and a member of the RAC has proposed that the following paragraph regarding transposons be added to Section I–B, Definition of Recombinant DNA Molecules:

Unmodified transposons (wild-type) that become inserted into a genome, even if carried by a recombinant vector or plasmid, are not subject to these guidelines. For example, it is common to use vectors that either are naturally unstable (suicide vector) in a desired host or that can be rendered unstable by manipulating physiological conditions. In the process of suicide (inability of the vector to replicate), transposon transfer may occur. This process is not considered recombinant DNA.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 30, 1988.

James C. Hill,

Acting Director, National Institute of Allergy and Infectious Diseases.

[FR Doc. 88–20047 Filed 9–1–88; 8:45 am]

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September 2, 1988

Part VII

Department of Labor

Employment and Training Administration

Apprenticeship 2000—Summary of Comments; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Apprenticeship 2000, Summary of Comments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; summary of comments.

SUMMARY: The Department of Labor's Employment and Training Administration is conducting a comprehensive review of the apprenticeship concept to determine its role in meeting America's future needs for skilled workers. A major component of this review is a public dialogue. The Employment and Training Administration has requested and received comment on five issues surrounding the apprenticeship review. Following is a report containing a summary and analysis of written comment and public testimony received in response to the request for public input.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Director, Bureau of Apprenticeship and Training, Office of Job Training Programs, Employment and Training Administration. Telephone: (202) 535–0540 (this is not a toll-free number).

Signed at Washington, DC, this 29th day of August, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor for Employment and Training.

Apprenticeship 2000—Report of Public Comments

Background

In December 1987, the Department of Labor launched the Apprenticeship 2000 initiative with the publication of an issue paper in the **Federal Register**, 52 FR 45904 (December 2, 1987). The purpose of this initiative is to review the apprenticeship concept to determine its future role in meeting America's needs for a skilled work force.

The basic premise of the initiative is that scrutiny should be given to the apprenticeship concept of structured on-the-job training combined with related classroom instruction, and serious consideration given to increasing the role of apprenticeship in preparing workers for skilled jobs. This is a concept which holds potential for meeting both the needs of employers in industries facing skill shortages as well as the needs of targeted populations, such as workers who may periodically require retraining or upgrading, dislocated workers, or the at risk youth population.

The outcome of the review will be a comprehensive report of findings and recommendations to be implemented over the next several years. These recommendations may result in administrative, regulatory, and possibly, legislative changes.

The apprenticeship review combines a public dialogue with a research program that includes both short and longer term research projects. The public dialogue began with the publication of the issue paper that identified five issues surrounding the review and possible expansion of the apprenticeship concept and invited public comment. These five issues are:

- Should/can the apprenticeship concept be broadened to all industries?
- What should be the limitations or parameters, in terms of occupations, of an expanded apprenticeship effort?
- What should be the delivery system for an expanded apprenticeship system?
- What should be the role of government in an expanded apprenticeship program?
- How can apprenticeship be more effectively linked to the education system?

Publication of the issue paper was followed by three public meetings held in February in San Francisco, Chicago, and Washington, DC. The meetings were announced in the **Federal Register**, 53 FR 961 (January 14, 1988), and the public was invited to attend and testify on these issues.

Analytical Approach

As of July 1, there were 310 respondents to the Apprenticeship 2000 issue paper. The analysis which follows was undertaken to arrive at a general understanding of how these respondents viewed the five issues and to gather a sense of their opinions on related concerns.

Persons interested in commenting had the opportunity to do so by letter or in person at one of the public meetings. Some did both, and their comments were treated as one submission.

Several organizations or associations were represented, at different meetings or by letter, by more than one individual. The general rule in this analysis was to treat such comments as separate submissions.

For purposes of this analysis, each submission was assigned to a respondent category to indicate what major interest was being represented. The major respondent groups were: Business and Industry; Labor Unions; Joint Apprenticeship and Training Committees; Government, including Federal, State and local, except education; Education, including governmental education agencies; and Public/Special Interest Groups.

The assignment of respondents to a particular group was based primarily on the letterhead for written responses and, for the public meetings, on how respondents identified themselves. Respondents who identified themselves in several ways, e.g., as an employer and a representative of an association, were assigned to a category based upon the reviewer's judgment of the strength of the identification with one group or another.

The responses were reviewed against the five basic issues. Each of the five issues was assigned key words which were used to match the responses to the issues. For example, Issue 1 was tracked by the key words "expand," "study," "limited expansion," "do not expand," and "no response." Key words were also assigned to each of the other four issues. The key words used in this analysis are listed in Appendix A. Additional specific suggestions made by respondents and other significant comments relating to the issues were also captured and incorporated into the analysis.

The key words were not, for the most part, mutually exclusive. A respondent, in voicing an opinion or suggesting one approach, did not necessarily reject the opinions or alternatives represented by other key words. Many respondents included the thoughts embodied in several key words in their opinions; each was separately recorded, producing more total opinions than total respondents. Because respondents frequently had several opinions or suggestions on a given issue, most of the analysis and most of the accompanying charts use opinions, and not respondents, as the basis for analysis. However, in some cases, it was both desirable and possible to report on the percent of respondents who addressed a particular issue. The narrative and the charts indicate whether the base is respondents or opinions.

Not all of the 310 respondents addressed each of the five issues. In these cases, a "No Response" code was used. The "No Response" codes were backed out of the equation so that the analysis would show opinions as a percent of those respondents who specifically addressed an issue.

Many people responded quite broadly to some or all of the issues, or responded only indirectly. Thus, the analysis of the opinions cannot be a precise count, but is instead an

indication of the relative frequency of the views expressed by respondents.

The comments were reviewed and coded by a review team of several staff from the Bureau of Apprenticeship and Training who among them possess a mix of experience with apprenticeship programs and other employment and training programs. Initially, a sample of letters and testimony was read and coded independently by each member of the team. The key words that each used to track opinions were compared and discussed by the review team to make sure that each member conducted the review from the same understanding of the key words. This procedure was undertaken to produce as consistent and objective a review as possible.

Respondents

Figure 1 shows the number of respondents in each of the six respondent groups and provides a graphic illustration of the distribution of the 310 respondents among the groups. Figure 2 shows the percentage of total respondents represented by each of these categories.

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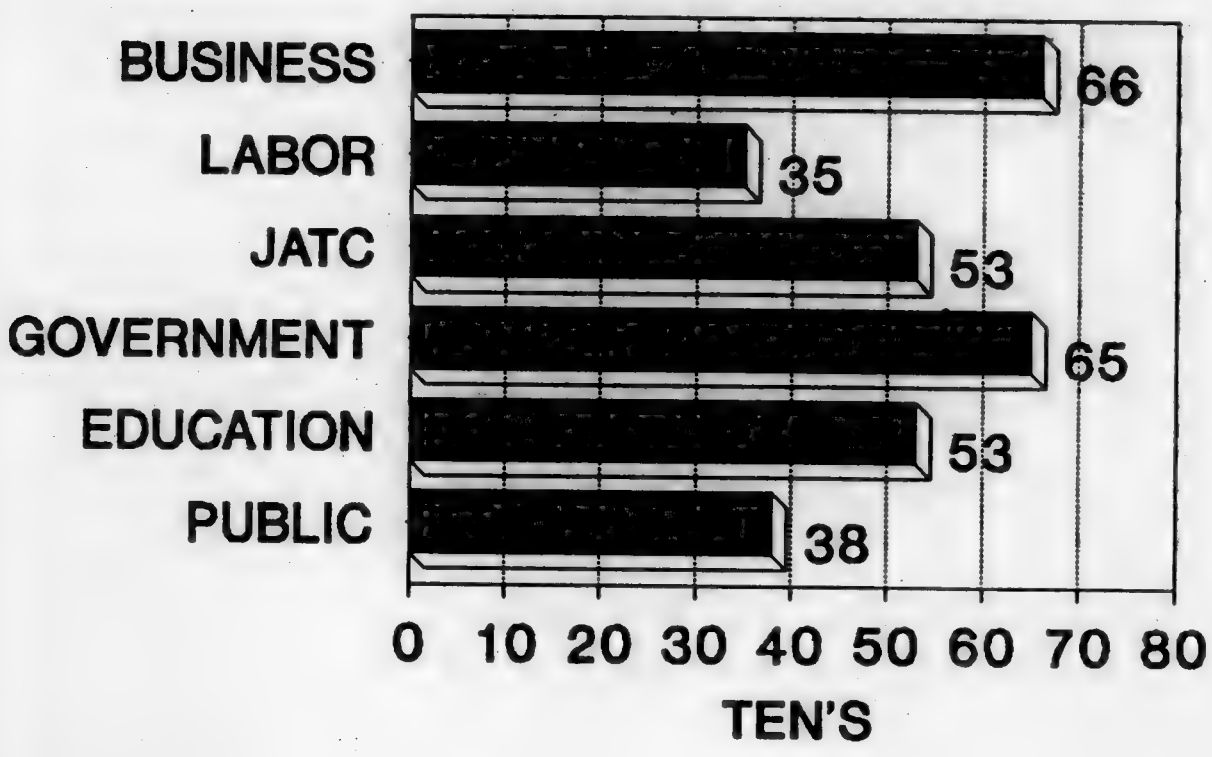
APPRENTICESHIP 2000
TOTAL RESPONDENTS BY GROUP
BUSINESS
LABOR
JATC
GOVERNMENT
EDUCATION
PUBLIC
66
35
53
65
53
38
0 10 20 30 40 50 60 70 80
TEN'S

FIGURE 1

APPRENTICESHIP 2000
TOTAL RESPONDENTS

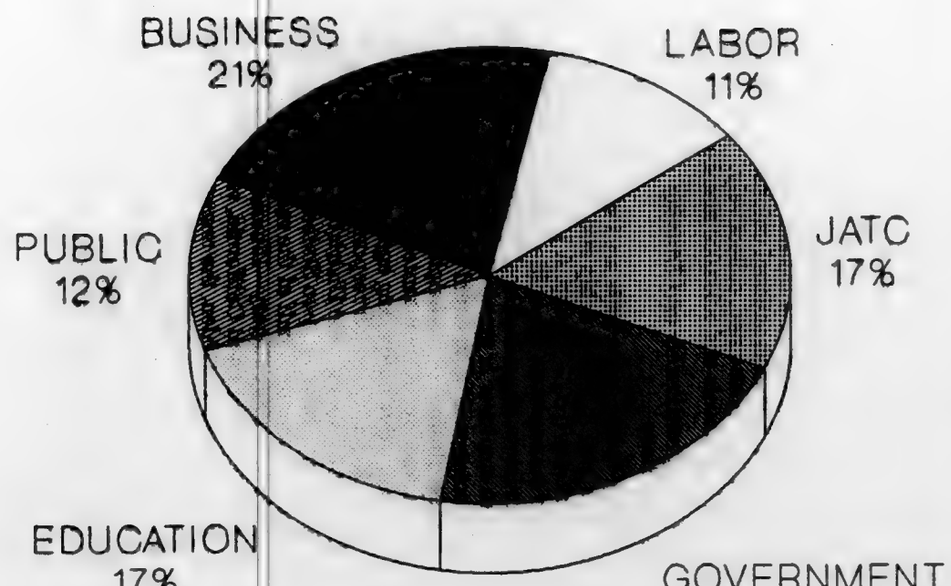

FIGURE 2

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Business and Industry

Sixty-six respondents are included in the Business and Industry Group. Respondents in this category include both individual employers and associations representing groups of employers.

Thirty-eight percent of the respondents in this group represented associations while the remaining 62 percent were from individual employers, ranging from small firms to large corporations. In addition to the construction and building trades industry, the traditional apprenticeship core, there was substantial response from employers and associations in fields other than the construction industry. Employers and associations in these other industries such as transportation, manufacturing, printing and utilities accounted for 60 percent of the total respondents in this group.

The range of respondents in the Business and Industry Group is broad, and together they represent a variety of interests in the private sector. Individual employers ranged in size from small local firms employing less than 50 persons to large national and multinational corporations employing many thousands of workers.

Respondents in the association subgroup included national associations, regional or statewide divisions or affiliates of national associations, and local associations. Several associations each represented well over 3,000 employers while two of the larger associations represented 33,000 and 135,000 employers.

Labor Unions

Thirty-five respondents are included in the Labor Union Group. Respondents in this category include both international unions and local unions. About 71 percent of the responses came from international and local unions representing the construction industry, and the remaining 29 percent came from international and local unions outside the construction industry.

The largest subgroup of respondents in this category came from the local unions in the building and construction trades. Over half of the respondents came from this subgroup, covering 13 different States and the District of Columbia. The international unions that responded represented, collectively, over 6,600 locals and 5,660,000 members.

Joint Apprenticeship and Training Committees

Fifty-three respondents are included in the Joint Apprenticeship and Training Committee (JATC) Group. A JATC is a labor management committee that administers an apprenticeship program for an employer or group of employers. It is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s).

The 53 JATCs which responded came from 14 States plus the District of Columbia. However, two States accounted for over half of the responses received in this category—Illinois, with about 30 percent and California, with almost 21 percent. Also, the responses in this category were dominated by JATCs representing the construction industry—particularly for occupations such as electrician, sheet metal worker, plumber, pipefitter, operating engineer, ironworker, painter and carpenter.

Government

Sixty-five respondents are included in the Government Group. Government agencies representing "education" were excluded from this group because the Education Group includes both public and private education institutions.

Seventy-five percent of the responses came from State governments representing 31 States plus Puerto Rico. While most of the responses received from State governments came from the offices of the State Labor Commissioner or the State Secretary of Labor, other State interests were included among the respondents, including corrections, health, transportation, human services, and economic development.

At the Federal level, responses were received from other components within the Department of Labor such as the Women's Bureau and the Employment Standards Administration, and from other agencies such as the Department of the Navy, the U.S. Army Continuing Education System and the Veterans Administration.

Education

Fifty-three respondents are included in the Education Group. Over half of the responses were received from public educational institutions which included 15 responses from institutions of higher learning. Of the remaining respondents, most were from State and local educational agencies, State Departments of Education and local Boards of Education.

Public/Special Interest Group

Thirty-eight respondents are included in the Public/Special Interest Group. Associations representing special interest groups accounted for 60 percent of the responses received in this category. A diverse range of interests was represented by respondents in this subgroup including the elderly, retired persons, women, nurses, and children. It should be noted that one association boasts a membership of 24,000,000 people. Other respondents in this group were individuals.

Analysis of Opinions

Issue #1: Should/Can the Apprenticeship Concept Be Broadened to All Industries?

A large percentage of respondents (79 percent) addressed this basic issue, and they expressed 255 opinions on broadening the apprenticeship concept. Figure 3 shows that the great majority of the opinions were favorable to expansion.

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EXPANSION OF APPRENTICESHIP
TOTAL OPINIONS

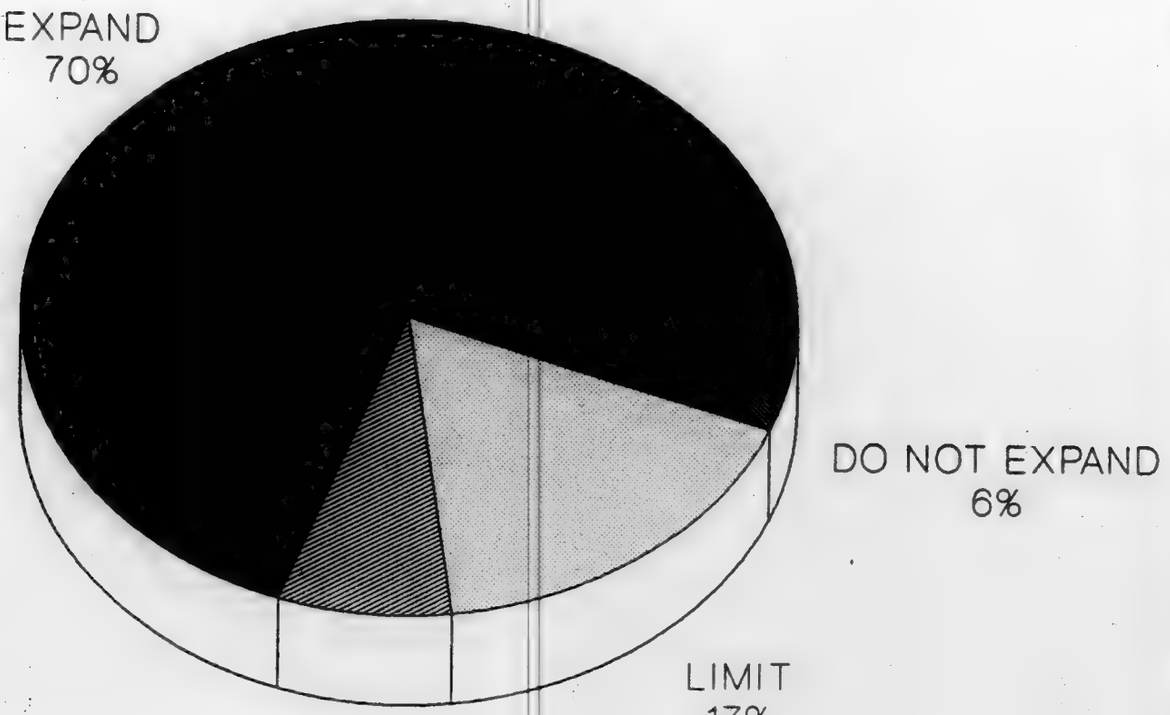

FIGURE 3

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Of these 255 opinions, 94 percent believed that the apprenticeship concept could or should be expanded to additional occupations or to additional industries. Those who were in favor of expansion were counted in three categories: "expand", "limit", and "study". Although the line between "expand" and "limit" was often difficult to discern, it was possible to draw some broad distinctions. Thus, 70 percent of the opinions endorsed expansion without significant qualifiers; 17 percent supported expansion, but with limitations; and 7 percent were supportive but thought that additional study was needed to define suitable industries.

Of those who would limit expansion, some suggested limiting expansion to specific industries. Among the industries suggested were banking and insurance, trucking, petrochemical, service, high tech and electronics, Federal agencies, and health care.

However, many, if not most of those who would limit expansion by industry, did not necessarily intend to exclude all others but were simply suggesting industries they believed suitable for apprenticeship. It is important to note that many respondents answered this question on industry expansion in terms of occupations (e.g., the concept is adaptable to most high skill occupations, or expansion should be limited to those industries which require substantial training).

For others who favor limits, the limitations were more generally stated. In this category, a few believed that expansion should only be to industries willing to commit funds to the endeavor, and a few would expand to those Industries important to the nation's security or to its competitive position in the world economy. For many respondents, expansion was not specifically limited to particular industries, but was more generally tempered by labor market realities or experience with the existing apprenticeship system. For example, some respondents believed that any expansion should be designed to insure the participation of those members of the work force whose relative numbers will be expanding.

The "study" opinion sometimes reflected a hesitancy to embrace expansion wholesale because it might, for example, perpetuate exclusion of women. And sometimes this opinion indicated the belief that no expansion should be undertaken without a careful, structured analysis of areas appropriate for apprenticeship.

All of these opinions were supportive of a broadened apprenticeship concept, though with differing degrees of qualifiers. Figure 4 shows the difference in support for expansion across all respondent lines. However, the most important point about this chart is the strength of support from all groups, ranging from 82 percent to 100 percent.

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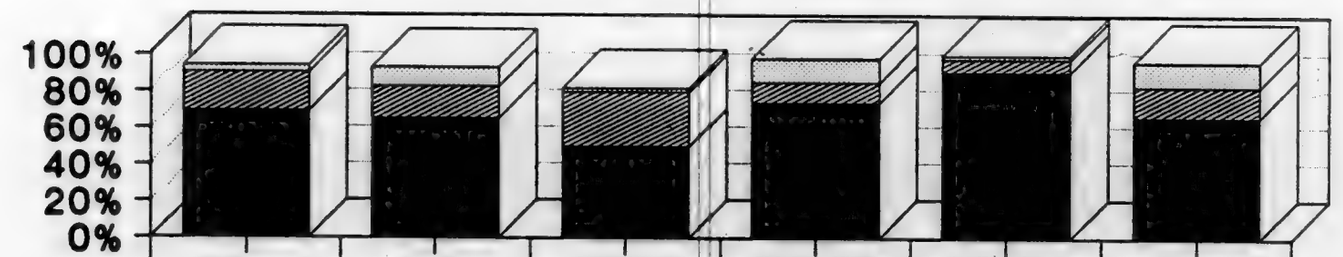
EXPANSION OF APPRENTICESHIP
FAVORABLE OPINIONS BY GROUP



	BUS	LAB	JATC	GOV	EDUC	PUB
TOTAL	94%	93%	82%	98%	100%	97%
STUDY	4%	10%	2%	13%	2%	13%
LIMIT	21%	17%	30%	11%	7%	17%
EXPAND	69%	66%	50%	74%	91%	67%

EXPAND LIMIT STUDY

FIGURE 4

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Only 6 percent of the opinions, shown in Figure 3, indicated that apprenticeship should not be broadened to all, or additional industries. This opinion was held more strongly by some respondent groups than others. None of the respondents in the Education Group was opposed to expansion, while 18 percent of the JATCs did not favor expansion. Some of those who were opposed to expansion were not attempting to address the issue of broadening apprenticeship to all industries, but were answering narrowly, for their particular industry. Others thought that no expansion should take place until improvements had been made to the existing system, such as standardizing the course work for apprentices or improving the record on participation of women.

Issue #2: What should be the Limitations or Parameters, in Terms of Occupations, of An Expanded Apprenticeship Effort?

A large percentage of the respondents addressed this issue. Of the 310 total respondents, 200 (65 percent) expressed views as to whether there should be occupational limits and how these limits should be defined. In addition, a number of respondents expressed opinions and concerns relating to the quality of apprenticeship training and how it can be restructured.

Respondents, in general, believed that the apprenticeship concept should not be expanded to all occupations. Rather, there needs to be some definition or limit to those occupations to which the apprenticeship model is applied.

Figure 5 illustrates, by group, percentages of those responding to this question who favor limits compared with those who believe there should be no limits, in terms of occupations, for expansion of apprenticeship. A high percentage of all groups felt there should be limits to the occupations considered apprenticeable.

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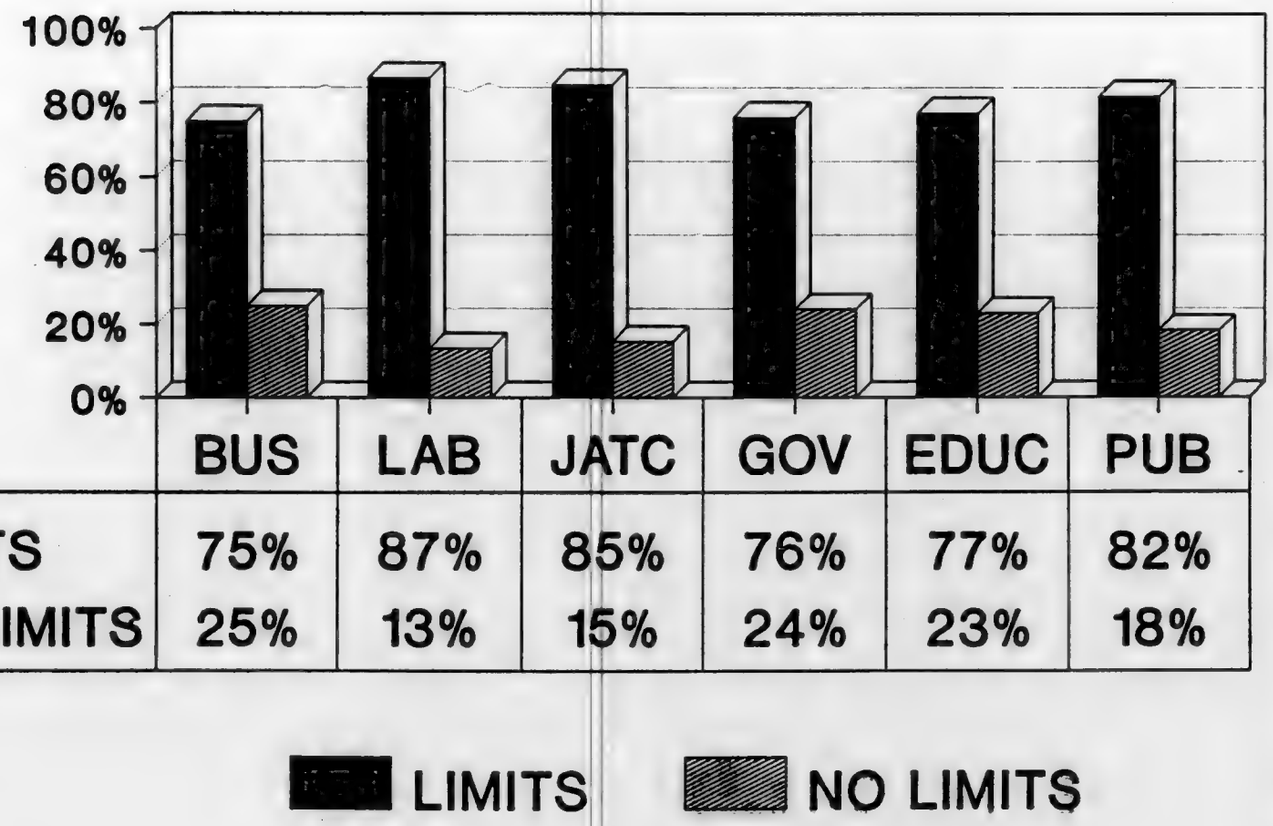
OCCUPATIONAL LIMITS
OPINIONS BY GROUP



	BUS	LAB	JATC	GOV	EDUC	PUB
LIMITS	75%	87%	85%	76%	77%	82%
NO LIMITS	25%	13%	15%	24%	23%	18%

FIGURE 5

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There were no significant differences among the respondent groups on this basic question, indicating a general consensus. For example, at the lower end of the range, 75 percent of the opinions expressed by business were in favor of limits while at the higher end, 87 percent of the opinions of labor were supportive of occupational limits.

While there was consensus on establishing limitations, there was no general agreement on how these limitations should be defined. It was possible, however, to categorize responses into specific kinds of limitations. Figure 6 shows the specific limiting factors, including "none," as a percentage of all those opinions directly related to occupational limits. Those who made more general comments related to this issue such as "don't dilute the apprenticeship concept" were not included in calculating the percentages.

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OCCUPATIONAL EXPANSION
LIMITING FACTORS

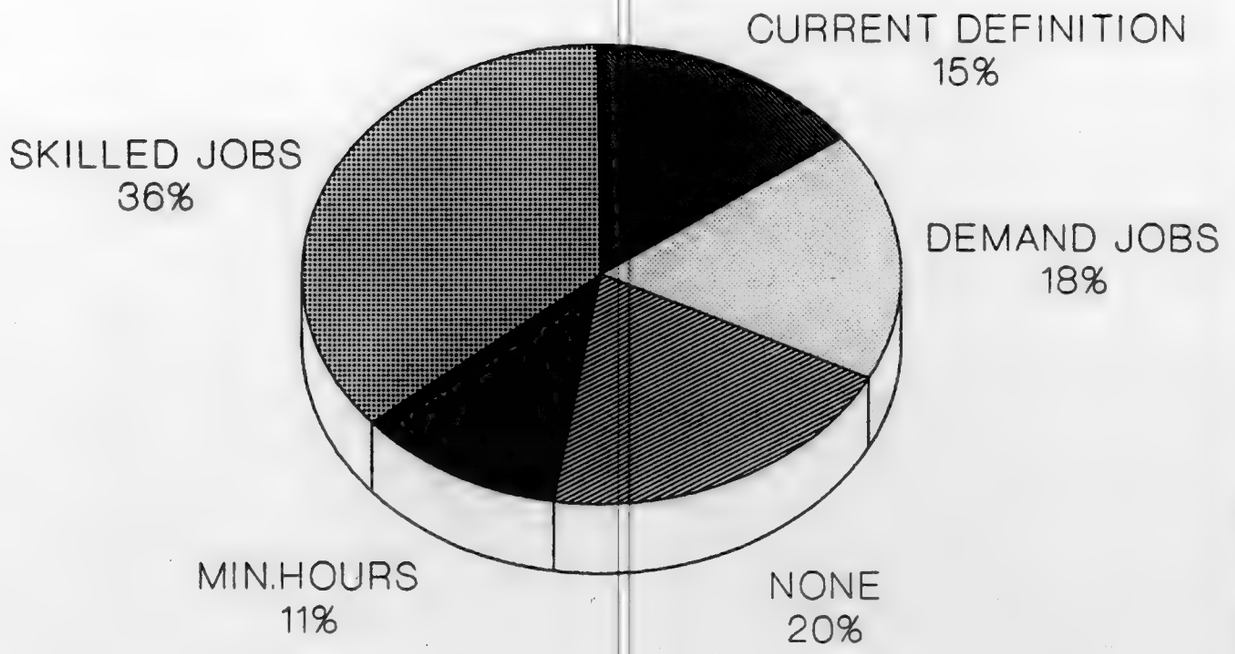

FIGURE 6

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As shown in Figure 6, the most common response, representing 36 percent of the opinions, was that expansion of the apprenticeship model should be targeted to skilled occupations. This response significantly outnumbered any other for the business, JATC, education and government groups and also was a frequent response given by labor and public interest group representatives.

After "skill" the next most frequent opinion was "none". This does not necessarily mean, however, that these respondents believed that apprenticeship is applicable to all occupations. More typically, opinions were expressed that there should be no rigid definition of apprenticeable occupation. Instead, the definition should be flexible enough to allow for a broad expansion of apprenticeship. In this connection, one respondent said that there should be no artificial time limits, but that a distinction should be made between the expansion occupations and existing, proven apprenticeship occupations. By making this distinction, the results of the expansion effort can be separately evaluated.

Another frequent response, representing 18 percent of the opinions, was to target expansion of apprenticeschip to demand occupations. In defining demand occupations, some respondents specifically mentioned emerging technical jobs in the service and health care industries. Others indicated it would be appropriate to identify critical skill shortage occupations. Others specifically said that industry, not government, should define demand occupations.

A smaller percentage of all opinions (15 percent) specified that the current definition of apprenticeable occupations was adequate and could be applied to any expanded apprenticeship effort. Criteria for apprenticeable occupations currently stipulate a minimum of 2000 hours of progressive on-the-job work experience with a recommended minimum of 144 hours of related technical training. While this opinion represented a small percentage of all opinions, it was the most frequent response given by individuals representing labor and JATC groups. Only a few individuals in the other groups specifically referred to the current definition.

Slightly more than 10 percent of the opinions recommended continuing using a minimum number of hours to determine apprenticeable occupations. It is quite likely that some of these respondents had in mind the current definition but did not specifically say so and thus, were counted in the "minimum hours" category. For others, however, using minimum hours was an appropriate criteria, but the existing minimum was not viewed as appropriate. Some did not specify a number, some thought the minimum number of hours should vary by occupation, and some had a particular number in mind, whether it was 1 year, 4,000 hours, or 4 years.

In defining apprenticeable occupations, a number of respondents said that instead of requiring specific hours of work experience in an occupation, that apprenticeship should be competency-based, with successful completion tied to achieving specified milestones rather than serving a miminum time period. This comment came most frequently from education and business representatives but was also made in several responses from government and public interest representatives. One respondent went further by saying that there should be uniform standards to measure competency in order to promote transferability of apprentinceship credentials. Another recommended a competency-based instruction program combined with a method for awarding credit for previously acquired skills.

Several other respondents said apprenticeship should be limited to occupations below the professional level, i.e. technical and subprofessional levels. However, another respondent suggested that apprenticeship should be used more broadly for managers. At least one respondent suggested that the term "internship" could be used for professions adopting the apprenticeship concept.

In addressing occupational limits, a number of opinions focused on the need to preserve the basic structure of apprenticeship. About 6 percent of the responses specifically cautioned against any dilution or watering-down of the apprenticeship concept. This comment was made by representatives from each of the interest groups. In this connection, a number of respondents expressed concern about maintaining the quality of current programs.

Although the words "quality" and "don't dilute" were frequently used, respondents had different ideas about quality and preserving the structure of apprenticeship. For some, quality was tied to minimum program standards while for others it is tied to the length of the programs. One responent who believed that quality is essential believed that no programs should be less than 2 years. Another respondent said that minimum standards are needed to prevent "watered-down" programs which were defined as programs of less than 2 years. Both of these respondents were from the education community.

In this connection, several respondents maintained that the apprenticeship model should be applied only to occupations requiring a broad base of skills and knowledge and encompassing multi-disciplinary training. On the other hand, several respondents indicated that apprenticeship should address the more narrow, specialized occupations that are emerging in the labor market. Typical opinions ranged from the need to train "complete journey persons" to the need for shorter apprenticeships to accommodate emerging new technological positions.

A compromise to the narrow vs. general apprenticeship issue was suggested by about 5 percent of the opinions. Those who held this opinion suggested that apprenticeship programs can be modified to include tiered or levels of training, and could allow for specialization as well as the broader-based training. Such an arrangement could also provide a career ladder for workers. This suggestion came mostly from representatives of business, government, education and the interest groups.

As an example of tiered training, one respondent suggested as many as 12 levels of apprenticeship training, ranging from pre-apprentice to international business/industry/labor generalist. Within these levels, a wide range of occupations and specialties could be accommodated. The notion was that an individual could stop at any level but that all levels would receive regular technological and skill development updating. Another respondent suggested a "step ladder" approach whereby a trade would identify the highest attainable skill level for an occupation and an individual could work towards that point.

Finally in addressing apprenticeable occupations, a number of respondents mentioned the need for continuing or upgrade training for journey level workers. Some thought that since nothing is static, all skills need to be refreshed over time. And for some, continued training was considered especially important because of the rapidly changing technology occurring in all industries. While this response was most frequently given by representatives from business, it was by no means isolated to business. Responses from all groups addressed the importance of continuing training.

Issue #3: What Should be the Delivery System for an Expanded Apprenticeship System?

Most respondents addressed this issue; however, there was little consensus among groups and some confusion over the meaning of a delivery system. When responding to this issue, many individuals addressed the role of government in administering apprenticeship rather than the role of those who can or should sponsor programs or deliver services. Thirty-seven percent of respondents did not address this issue.

The 195 respondents to this issue, representing 63 percent of the total, provided 261 specific suggestions on possible delivery systems for an expanded apprenticeship system. Even though there was a diversity of responses, it was possible to categorize most suggestions into six delivery possibilities—JATC, the existing system, flexible systems, partnerships, individual employers and associations.

It should be noted that there may be overlap among the areas because the term delivery system and who should participate in such a system may have had different meanings for different respondents. There was undoubtedly little agreement among all respondents on the meaning of the key words used in compiling the opinions.

Figure 7 shows the distribution of opinions among the six delivery system possibilities, for those who specifically commented on the delivery system. It also should be noted that some respondents had more than one suggestion and, accordingly, the number of opinions from which the percentages were calculated well exceeds the number of respondents.

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DELIVERY OF APPRENTICESHIP
OPINIONS

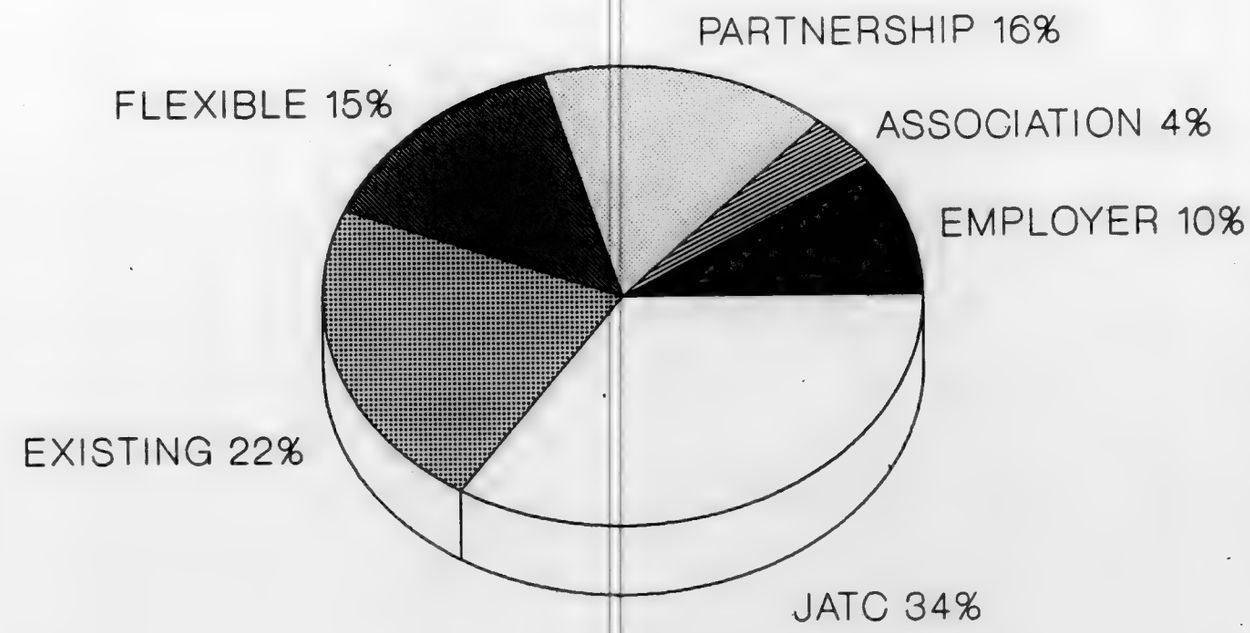

FIGURE 7

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The type of delivery system with the highest percentage of responses is the Joint Apprenticeship and Training Committee—JATC. This is the traditional delivery system for apprenticeship and is prevalent in the sectors of the building and construction trades industry represented by labor unions as well as in certain manufacturing industries. The percent of opinions suggesting the JATC as the delivery system in any expanded effort ranged, within respondent groups, from a low of 5 percent to a high of 29 percent. Not surprisingly, the highest percentage was from the JATC respondents.

A high percentage of opinions from labor recommended either the JATC or the existing system. The existing system was also recommended by a significant percentage of those representing JATCs. Because of the likely confusion of terminology mentioned above, many of those who specifically cited "existing system" as the appropriate delivery system may have meant the JATC, which is the prevalent "existing system" in the construction trades and manufacturing industries. However, for other respondents, the opinion "existing system" meant what the reviewers intended by the key word—the range of entities which currently sponsor apprenticeship programs, including JATCs, associations, individual employers, State and local government units and the military.

As indicated, a number of opinions from labor and the JATC groups gave the "existing system" suggestion, but this same recommendation was also made by at least several respondents from each of the other interest groups. It was the second most prevalent opinion, representing 22 percent of all suggestions. A typical comment made was that the current system works well and is a strong base for building an expanded apprenticeship effort.

Flexibility and partnership were the only other two areas to receive more than 10 percent of the opinions and partnership had somewhat different meanings for different respondents. Specifically, who should be included in the partnership differed among opinions. The typical response suggested a partnership of government, business, labor and education. However, there were variations on this basic recommendation. Within this framework, several individuals specifically said that there needs to be worker representation included in the delivery system regardless of whether there is a formal labor organizations.

For example, one respondent believed that apprentices should be included on the committee that administers the apprenticeship program. Another respondent said if there is no worker involvement, there will not be broad acceptance of the program. This same respondent made specific reference to the fast growing, nonunion service sector.

There was greater consistency among respondents who said that the delivery system needs to be flexible. About 15 percent of the opinions expressed were for a flexible system. This meant that no one system is applicable to all situations. Instead, the delivery system must be suited to particular circumstances, and most thought it should be determined locally. This comment was made by respondents from all interest groups, except the JATCs, but most frequently by representatives from government.

About 10 percent of the respondents recommended that individual employers sponsor apprenticeship programs. One respondent suggested that major corporations can take a leading role in sponsoring apprenticeship programs. However, this suggestion came mainly from individuals representing business and government. Few respondents outside these two interest groups made this recommendation. Finally, a small percentage of responses, mainly from business, recommended using associations as a delivery system for an expanded apprenticeship system.

In responding to issue 3, many respondents focused on the role of education. This is logical since education, particularly the community and technical colleges, are a primary source for providing the related instruction outside the work site. Many respondents felt that the role of education in apprenticeship needs to be strengthened. Opinions ranged from better coordination with education to making education a full participant in apprenticeship programs. The suggestion that education should be a full partner in delivery of apprenticeship programs came primarily from the education respondents, with almost 60 percent of the education respondents recommending specifically that education should be an equal partner in the delivery of apprenticeship programs. Typically, the education responses were directed at a greater role for the community colleges or for the vocational educational system in general.

Within business and government a relatively significant percentage of respondents recommended strengthening the role of education in any expanded apprenticeship effort. Thirty-five percent of business and 21 percent of government respondents made this recommendation. However, with the other groups, relatively few respondents addressed education as it relates to delivery systems for apprenticeship programs.

Issue #4: What Should Be the Role of Government in An Expanded Apprenticeship Program?

A total of 238 respondents addressed this issue, with 556 opinions on the role of government. Although some were commenting on what the role of government should be in the current system, many were addressing more directly the needs that they anticipated in an expanded program. An attempt was made in coding the responses to delineate the differences in roles that were suggested for State and Federal governments. Because a great number of respondents did not distinguish between the appropriate roles for the Federal government vs. State governments and, for those who did, the frequency of opinions related to each level of government was quite similar, opinions pertaining to State and Federal government roles were combined.

Furthermore, the issue was open-ended, and the list of conceivable opinions on government role was long. A great number of functions for government were suggested and many of these functions overlap, making generalizations difficult. Nevertheless, a number of observations are possible and useful.

Figure 8 depicts the total opinions from all who responded with view on the role of either the Federal government, State governments, both, or government in general.

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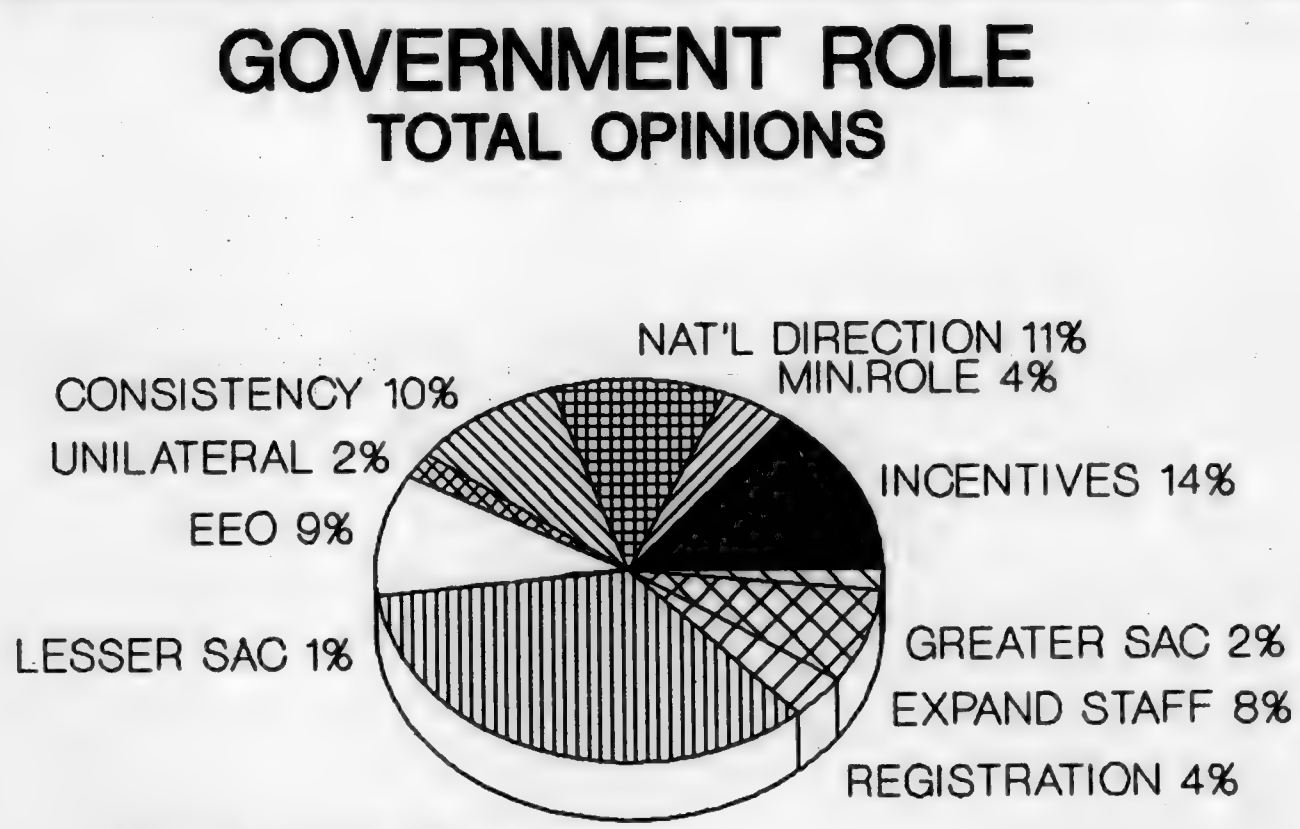

FIGURE 8

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Technical assistance and promotion were mentioned most frequently as a role for government in the apprenticeship program and this preference was common to all respondent groups. Together they accounted for 35 percent of the opinions. What type of assistance the government should provide and under what circumstances varied somewhat. For a few, the appropriate role for government was to provide assistance, but only when asked. For others, the provision of technical assistance was seen as an essential ingredient in an effective apprenticeship system, needed on many fronts—from technical assistance in encouraging development of national standards, to technical assistance in promoting equal employment opportunity, to assisting in establishing JATCs. For some technical assistance meant establishing apprenticeship information centers in all States, and others thought the focus should be on assistance in developing and updating curricula. In addition to traditional promotional activities, a few suggested that government should promote apprenticeship by providing a forum for linkages.

After technical assistance and promotion, the frequency of responses on any particular role for government falls off considerably. The next most frequently mentioned role for government was to provide incentives. Fourteen percent of the opinions involved some form of incentive or financial assistance.

The type of specific incentive envisioned ranged from tax incentives and seed money for employer-based training, to pilots and model programs for different industries, to funding apprenticeship information centers. Several respondents suggested reimbursing States with Federal funds—in a relationship similar to the Federal/State unemployment insurance arrangement—for supporting an apprenticeship agency. Some suggested that government resources should be used to improve the quality of training.

Of all opinions on this issue, 11 percent were related to providing national direction. For the most part, this opinion reflects a general belief that to expand apprenticeship significantly will require considerable national attention, support and leadership. For some, national direction meant an aggressive marketing campaign at the national level, and for others it meant assuring quality training sufficient to meet national needs for a strong economy and a strong defense. Several respondents believed that government should provide leadership by initiating apprenticeships for its employees.

Closely allied to the role of providing national direction was the role of assuring consistency and promoting uniformity, which accounted for 10 percent of the responses. This sometimes meant that government should establish national standards and use such standards to develop uniform training formats, and sometimes it reflected a concern with portability and the ability of apprentices and/or journeyworkers to transfer between companies or industries. Some thought that uniformity and portability could best be advanced through maintenance of a Federal data base, especially lists of jobs and certifications. For some, consistency meant equal access for parallel programs (apprenticeship programs, sponsored by open shops, in occupations for which there are existing registered programs sponsored by JATCs), and many who held this view thought consistency could not be assured with the existence of both Bureau of Apprenticeship and Training States and State Apprenticeship Council States.

Nine percent of the total opinions were related to the government's role in equal employment opportunity. Some believed the government must take a strong and active role in enforcing anti-discrimination regulations. And some expressed the view that the apprenticeship program needed to be strengthened for the Year 2000; and to accomplish this, the Bureau of Apprenticeship and Training needed to establish clear guidelines to help industries attract more women and minorities.

Although relatively few respondents delineated separate roles for the Federal and State governments, of those who specifically addressed State functions, 17 percent specifically supported an increased role for State Apprenticeship Councils and 12 percent thought their role should be decreased. About 9 percent of the opinions specifically addressing the Federal government role endorsed strengthening the role of the Bureau of Apprenticeship and Training.

Issue #5: How Can Apprenticeship Be More Effectively Linked to the Education System?

The 242 respondents to Issue 5 registered 335 opinions on whether and how apprenticeship could be linked with the education system, either through school-to-work activities or through coordination arrangements designed to accomplish other objectives.

Although the title of Issue 5 asked, in general, how apprenticeship could be linked more effectively to education, the discussion of this issue focused more specifically on the school-to-work transition. (Can apprenticeship be linked to education in ways that could reduce the unproductive time that youth spend finding their niche in the labor market and thereby help to alleviate labor shortage problems anticipated because of the declining youth labor pool?) Opinions varied, with somewhat less than half specifically related to the school-to-work issue.

Among those who specifically addressed the advisability of developing a school-to-work linkage, there was overwhelming support for the concept, with 92 percent responding favorably, as shown in Figure 9. Support for school-to-work was highest among the government and education representatives, none of whom specifically stated opposition. Business support was also high, with 98 percent of the business opinions favorable. The least support for a school-to-work arrangement was found in the JATC group, which was evenly split among those who supported and those who opposed school-to-work linkages.

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EDUCATION LINKAGES
SCHOOL TO WORK OPINIONS

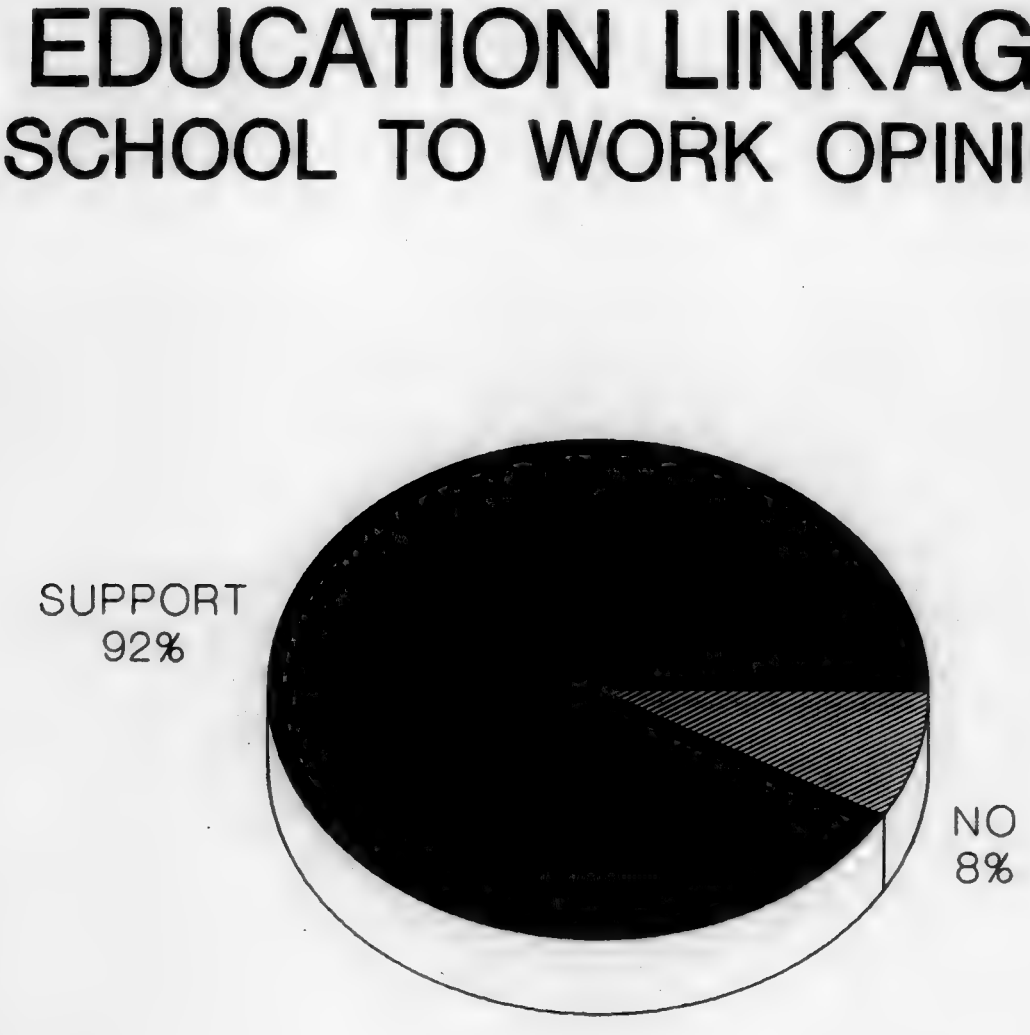

FIGURE 9

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There was a variety of opinions about how best to structure or design a school-to-work program. About a third thought that the secondary schools needed to initiate well-rounded career counseling programs, which could present apprenticeship as an attractive alternative to college. For this group, schools were too often rated on their ability to send students to college and educators were believed to see college as the only success. Some stated that counselors should have equal knowledge of the trades and the professions and that they needed to help remove the unfavorable image of the skilled trades apprenticeships that exists among some parts of both the education community and the broader population.

About 10 percent of the opinions were specifically related to the idea of receiving credit for academic and vocational skills acquired in secondary school and having it count towards apprenticeship requirements. Some suggested structured internships designed specifically to qualify students for apprenticeship upon graduation. And others specified the need for close employer involvement in any school-to-work programs to assure responsiveness to industry needs. Illustrative of this thinking was the recommendation to integrate vocational education with employer-specified standards and grant credit to students for achieving certain competencies.

More than half the opinions on school-to-work were more general in nature, primarily showing unspecified support for the concept. Several believed that occupational education should begin long before career decisions are likely to be made, and suggested some career programs from grades Kindergarten through 12. More than one respondent remarked that school-to-work programs are designed to work for youth, but the Workforce 2000 projections will require that we utilize all current workers and potential workers. Consequently, attention must be given to building links with the education system that can attract women, minorities, and workers changing careers in mid-life.

Eight percent of those who voiced opinions on the school-to-work concept were opposed to it. Some of these questioned the basic premise that we need to reduce the unproductive time of young people after they leave high school. Instead, some of these respondents thought that high school students were not mature enough to decide on a career and/or needed time to explore career possibilities. At least one respondent answered from the perspective of a particular industry, and did not encourage student involvement because of the pessimistic job growth prospects in that industry. A few did not want the apprenticeship system tied to the vocational education system.

The "other" responses were not separately categorized, but a sampling of the comments in this group illustrates the rich variety of opinion on this subject. Some responses were related to the role of the education community in providing related instruction to apprentices. Improvements to this process were suggested, such as arranging for apprentices to attend classes during normal working hours. Several respondents looked to a relationship with education as a link with resources, with some favoring full appropriation of Carl D. Perkins Vocational Education Act resources. One recommended redirecting Perkins Act, Job Training Partnership Act and Federal Unemployment Tax Act resources for preapprenticeship programs and for programs of continuing education.

For many, the question of links was primarily one for industry and education to address together, with many holding the opinion that industry needed to better communicate its concerns and needs to those in the education community. There was the suggestion that the use of vouchers by employers should be explored as a way to make the education system responsive to industry needs.

Many in the "other" category lamented the attention paid to college-bound youth, at the expense of those who wanted or needed to begin their careers following high school. Among the most ambitious recommendations was the creation of a National Center for Applied Technology and Skills which would, among other things, train faculty for the nation's vocational schools, design curricula, and develop a certification system for teachers.

In general, those who had comments in the "other" category believed that education was a natural ally of training, particularly of apprenticeship which, by its nature, recognizes the interdependence of hands-on experience and theoretical knowledge. Coordination between education and apprenticeship was very much on people's minds, with several suggesting that the scrutiny now being placed on the education system represented an opportunity for building better linkages.

A substantial percentage of respondents to Issue 5 commented on the need to improve the basic education of students coming out of the public secondary schools. The data, shown in Figure 10, are especially significant because the issue of basic education was not specifically raised in the issue discussion. JATCs, the respondent group which can be expected to have the most direct contact with apprentice applicants, mentioned the need to improve basic education with significantly more frequency than any other group.

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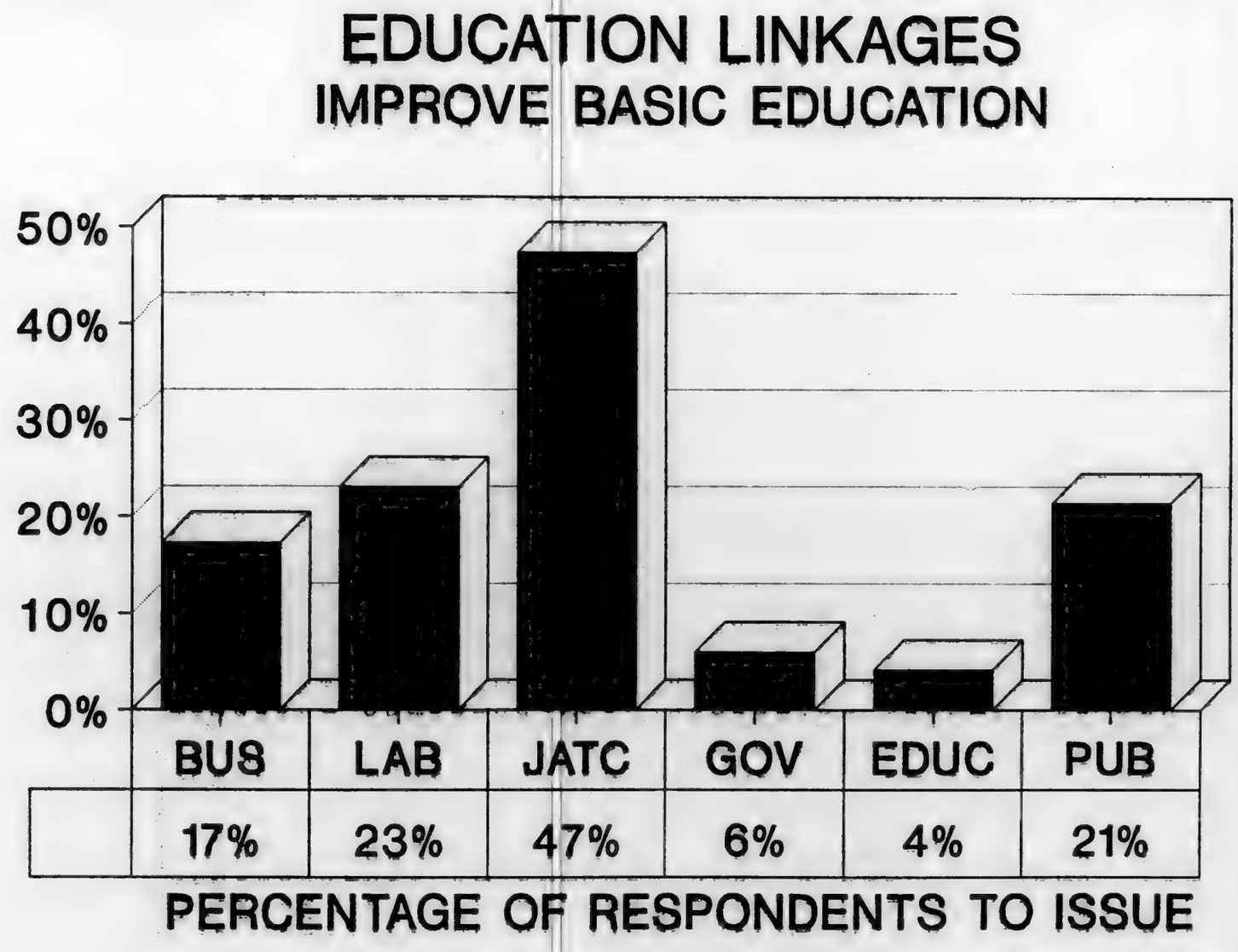

FIGURE 10

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The range of opinion on the need to improve basic education is from 47 percent for the JATCs to 6 percent and 4 percent for government and education, respectively. A few of the respondents, across all groups, were simply underlining the importance of basic education to any training effort.

But many more were explicitly critical of the education system for the alarming number of graduates who lack basic competencies in the "3Rs." These respondents often said that the job of the schools is to lay the foundation for developing skills, while the job of apprenticeship programs is to teach skills. And some expressed it as not getting their money's worth for their tax dollars.

Next Steps

These responses and other available information have been analyzed in order to provide focus and direction for the next stages of the apprenticeship review. From this analysis, it was possible to identify areas of general consensus and other areas of broad interest and concern. As a result, three policy objectives have been formulated. These policy objectives will form the underpinnings for the next stage of the apprenticeship initiative—development of short-term research issue papers and continued public outreach and dialogue. These policy objectives are:

- To expand the apprenticeship model to new occupations and industries.
- To build an apprenticeship system which encourages consistent standards, high quality, flexible, portable, competency-based, and variable length apprenticeship programs.
- To ensure that there is an effective delivery system to administer new approaches to apprenticeship training and that apprenticeship programs are coordinated with related education and training systems.

The research program was announced as a notice in the June 3, 1988, **Federal Register**, 53 FR 20386. This program includes both short and longer term research. Thirteen specific topics for the shorter term research were identified and announced. These topics support the basic policy objectives for the apprenticeship review. In addition to the specific topics, the Department will undertake a review of the basic authority for the national apprenticeship system—the legislation and regulations.

A series of contracts were awarded to develop a number of the short-term papers. Other issue papers will be completed utilizing Bureau of Apprenticeship and Training staff. The short term research will be completed in the early fall of 1988. Longer-term research and demonstration projects are planned to begin in early 1989.

The Department also plans additional public input. Bureau of Apprenticeship and Training officials have been meeting with key business and labor representatives to discuss the apprenticeship review. In the late summer and early fall a series of focus papers will be published for public comment in the **Federal Register**. These papers will present a wide range of options for expansion and change of the apprenticeship system.

The research and the public dialogue will culminate in a comprehensive report of findings and recommendations to be titled *Apprenticeship: A Blueprint for the Future*. This report is scheduled to be completed in December of 1988. It will include a series of specific recommendations and a possible timetable for implementing them.

Appendix A—Key Words

ISSUE #1—EXPANSION OF APPRENTICESHIP

- Expand.
- Study.
- Limited Expansion.
- Do not Expand.
- No Response.

ISSUE #2—DEFINING APPRENTICESHIP OCCUPATIONS

- No Limits.
- Current Definition.
- Skilled Occupations.
- Minimum Hours.
- Demand/Industry Recognition.
- Tiered Programs.
- Don't Dilute.
- No Response.

ISSUE #3—DELIVERY SYSTEM

- Existing System.
- JATC.
- Employer.
- Association.
- Partnership.
- Flexibility.
- Worker Involvement.
- Include Education.
- No Response.

ISSUE #4—GOVERNMENT ROLE

- General Government.
- Quasi-government.
- National Direction.
- Minimum Role.
- Incentives.
- Uniformity/consistency.
- Facilitate unilateral programs.
- EEO compliance.
- TA/coordination.
- Promotion.
- Expand staff/status.
- Registration.
- State—TA.
- State—Promotion.
- State—Incentives.
- State—EEO.
- State—Registration.
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